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Irreverent Performances, Heterodox Subjects, and the Unscripted Crowd from the Medieval Courtroom to the Stocks and Scaffold

Introduction: Mooning the Law with Calefurnia and Catharina Arndes

In 1482, the Archbishop of Bremen sent a deputation to the female monastery of Harvestehude (near Hamburg) to institute a series of “reforms.” Throughout Germany, such reforms involved punishing the nuns for their impious accumulation of wealth by relieving them of their tableware, liturgical objects, textiles, personal property, and more (a reform recently undertaken in nearby Wienhausen). When the Archbishop’s deputies arrived at the monastery, a surprise met them: a riotous crowd of townspeople, including a group of “insulting and offending women, [who], carried away in the tumult, lost their minds [and] claimed to be the counsellors of the people” (as one chronicle reports).¹

[M]any of them violently push[ed] themselves into the monastery, . . . climbing upon the walls and making a great noise, . . . screaming, ‘Do not obey the traitors!’

Among them was a townswoman named Catharina Arndes. When the Archbishop’s chaplain “kindly begged [the crowd] to calm down and stop rioting,” she “rudely repulsed” him “with mocking and shameful words” and a much more expressive action: she “lift[ed] up [her] clothes,” and showed him her privates.² Astonishingly, the strategy succeeded: the ecclesiastics fled in horror.

¹ Krantz, *Wandalia* [Bk 13, Ch 29]; quoted in Heß, “Skirts and Politics,” 79. I draw on Heß’s account for details of the incident. Heinrich von Schwarzburg (Heinrich XXVII) was Archbishop of Bremen 1463–96 and Bishop of Munster 1466–96. In Harvestehude, the deputation was bent on a reform that would give the Archbishop possession of the village of Wellingsbüttel, which the Hamburg city council had refused to sell him (Heß, 63).

² Langebek, “Des Bürgermeisters Herman Langebek *Bericht*,” 342; quoted in Heß, “Skirts and Politics,” 67. Catharina Arndes (or Arends) was a member of a prosperous, upper-class Hamburg family, among whom were several nuns (Heß, 71–3). It is unclear precisely what Catharina exposed to the delegation, but that they viewed it as obscene is clear from the context. Heß notes the similar use of



Fig. 4.1 Calefurnia scolds the judge in an illustrated manuscript of the *Sachsenspiegel* (c.1295–1304).

Heidelberg University Library, Cod. Pal. germ. 164.

Catharina Arndes may have gotten the idea for her performance of obscenity-as-resistance from an image that circulated widely in late medieval Europe (fig. 4.1). The image originally appeared in illustrated editions of Eike von Repgow's influential compilation of Saxon law: the *Sachsenspiegel* (*Mirror of Saxons*) (c.1220–25), widely distributed and commonly chained to courtroom walls so that judges could easily consult it.³ The image shows a woman named Calefurnia scolding a royal judge. The text that accompanies the image explains the legal rule it illustrates: “[n]o woman may be a pleader, nor may she bring a suit without a guardian.” The reason? Calefurnia was angry “because her demands could not proceed without a spokesman,” and so, “in a fit of rage,” she

obscenity as resistance against the “reform” of female monasteries elsewhere: the chronicler Johannes Busch, for instance, reports that the nuns in Nuremberg's St. Katharinen monastery defeated the reformers with “unchaste manners and songs and gestures” (quoted in Heß, 69).

³ The *Sachsenspiegel* became one of the most influential lawbooks of the Middle Ages, appearing in many languages, surviving in hundreds of manuscripts, and serving as a source of law from the time of its composition until well into the sixteenth century (and in some places through the nineteenth century). For discussions, see Dobozy, ed., *Saxon Mirror*, 1–49; Caviness, “Giving ‘The Middle Ages’ a Bad Name” and “Putting the Judge in his P(a)lace”; and Caviness and Nelson, *Women and Jews* (especially 74–9 on the judiciary's use of the *Sachsenspiegel* picture books chained to courtroom walls, and 58 on the representation of “ritualistic scenes” and “gestures and body language . . . encoded with legal meaning” in the images).

“misbehaved before the emperor.” She thus “forfeited [for] all [women]” the right to bring a suit or plead in court.⁴ In the image, Calefurnia holds her left hand over her crotch, while a peculiar hairy brush protrudes from her backside: a devil’s tail? pubic hair gone wild? The Augsburg *Schwabenspiegel* (c.1275) explains: Calefurnia misbehaved by displaying her “*hinde schamme*” (her shameful hind parts): that is, she mooned the judge.⁵ Later references elaborate. In a description of the scene in Martin Le Franc’s *Champion of Women* (c.1440–42), one lawyer challenges another—a champion of women—to defend the indefensible Calefurnia, who (he declares) “decked herself out in her robe so badly” that she put on display her “*de profundis*,” that is, she “showed her ass to the judge.”⁶ An image in the 1488 Lyon edition of Le Franc’s text illustrates (fig. 4.2).⁷

Scholars often treat such portrayals as characteristic bits of medieval misogyny: such women are punished for their unruliness and alarming sexuality; they are victims, silenced by law. But the image in the *Sachsenspiegel* does not show a chastened Calefurnia. Her hand over her privates seems to say “*noli me tangere!*” as she aggressively leans toward the judge pointing two fingers at him, perhaps delivering a curse along with her demand. If the judge accuses her, she accuses him right back. Jehan Le Fèvre suggests something like this in his translation of the *Lamentations of Matheolus* (c.1380–87), declaring ambiguously that she “showed her ass in judgment” (during judgment? or in a judgment upon the judge himself?)⁸ Defying the edict, Calefurnia vigorously pleads her case (*sans* guardian),

⁴ Dobozy, ed., *Saxon Mirror*, 112. The image of Calefurnia appears in different versions in all four of the lavishly illustrated early editions of the *Sachsenspiegel* that have survived (c.1295–1371). The image here is from the Heidelberg manuscript (c.1295–1304). The figure of Calefurnia derives from Valerius Maximus’ “Carfania,” whom he loosely based on the first-century BCE plebeian Caia Afrania. According to Valerius, she “was ever ready for a lawsuit and always spoke on her own behalf, . . . not because she could not find advocates but because she had impudence to spare. So by constantly plaguing the tribunals with barkings to which the Forum was unaccustomed she became a notorious example of female litigiousness, so much so that women of shameless habit are taunted with the name Carfania by way of reproach.” Valerius, *Memorable Doings and Sayings* [Loeb], 2:211 [8.3]. Justinian’s sixth-century *Digest* explains that the rule prohibiting women from pleading for others “goes back to a shameless woman called Carfania who by brazenly making applications and annoying the magistrate gave rise to the edict” (*Digest of Justinian* [1998 trans.], 79 [3.1.1.5]). Later medieval texts, probably drawing on the *Digest*, transformed “Carfania” into “Calefurnia” (perhaps an unconscious amalgam of the pushy Carfania and the virtuous Calpurnia, Caesar’s wife). For discussions of Calefurnia, see Caviness and Nelson, *Women and Jews*, 59–60, 194–6; and Westphal, “Calefurnia’s Rage” and “Bad Girls in the Middle Ages.”

⁵ The *Schwabenspiegel* was an adaptation of the *Sachsenspiegel*. On the *Schwabenspiegel*’s Carfania, see Caviness and Nelson, *Women and Jews*, 59; Caviness, “Putting the Judge in his P(a)lace,” 316; and Westphal, “Calefurnia’s Rage,” 166–7, 170–3, 177–8 (stressing the *Schwabenspiegel*’s translation of the *Sachsenspiegel*’s “*Torn*” as “*Zorn*,” which renders “rage” as “battle” or heroic anger).

⁶ “Calfurnie . . . si mal sa robe accoustra / Que monstra son de profundis”; “son cul au juge monstra.” Le Franc, *Champion des dames* (1999 ed.), 4:169 [4.18737–44].

⁷ Le Franc, *Champion des dames* (1488 ed.), sig. s8r.

⁸ “Son cul monstra en jugement.” Matheolus and Le Fèvre, *Lamentations de Matheolus* (1892–1905 ed.), 1:52 (Le Fèvre adds these lines to his translation of Matheolus’ Latin).



Fig. 4.2 Calefurnia moons the judge in an edition of Martin Le Franc's *Champion of Women* (1488).

Champion des dames (1488), sig. s8r. Newberry Library, Chicago, Special Collections.

prohibition be damned.⁹ In the Lyon image, her exposure of her “*de profundis*” is clearly obscene protest, speaking the depths of her outrage. The judge appears alarmed, recoiling, his staff clutched between his legs, a sign of his body’s response: what has she done to him? But the woman in attendance smiles, her hands open toward Calefurnia, seeming to applaud: a “Champion of Women.”

Both the Calefurnia images and Catharina Arndes’ live performance might stand as parables of how performance can upend legal scripts: the Archbishop or

⁹ As Caviness and Nelson note, in the illustrated editions the page also shows a rape victim bringing a lawsuit against her rapist, i.e. another woman violating the prohibition (*Women and Jews*, 60). They stress, however, that the page represents disgraced women, and the necessity of their “forcible repression.”

the *Sachsenspiegel* say one thing; but what happens in the courtroom or the streets is quite another. Most of the *Sachsenspiegel* images represent the text's official ideology: in one, God gives swords of justice simultaneously to Charlemagne and the Pope, showing ecclesiastical and secular power ruling together harmoniously; in another, the Emperor and the Pope cuddle.¹⁰ (Never mind that Popes and Emperors were often at each other's throats.) When Calefurnia appears in these pages, disrupting judgment with her "*hindere scham*," she reminds us: life (and the unmentionable) happens, even in a courtroom.

Modern scholars have sometimes treated official legal ideologies as if they describe the participants' and spectators' actual experiences: what they actually thought and felt rather than what officials told them they were supposed to think and feel. Especially notable in this regard are accounts of the transformations that took place in the wake of the twelfth-century "legal revolution."¹¹ The more romanticized versions of this account explain that the whole community used to gather in open-air trials and the old ordeals to participate in the process of judgment: a collective ritual in which all partook. But as the Church and jurists took over in the twelfth century, law became an occult science that ceased to belong to the people and became the tool of a privileged class of experts. They grabbed judgment from the hands of the many and moved trials into secret chambers. What remained visible to the people were only two "rituals," which were "comprehensively stage-managed by authorities: sentencing and execution." These might appear participatory, but they were actually technologies of control: staged spectacles of "justice" that were spectacularly brutal. The people accepted them because the terror the spectacle produced also held out a promise: do not resist; repent of your sins (like the criminal on the scaffold); and you too will reap heavenly joys.¹²

¹⁰ Caviness and Nelson reproduce both images (*Women and Jews*, 56).

¹¹ See Chapter 3, 93–4, on the rise of lawyers and proliferation of records and written rules, phenomena often associated with the twelfth-century legal revolution. To summarize the standard account of the twelfth-century legal revolution: Roman-canon law displaced accusatorial by inquisitorial procedures throughout the Continent. Inquisitors could initiate proceedings *ex officio*, without an accuser, and thus became both accusers and judges, interrogating the accused behind closed doors. For examples of this historiography, see e.g. Peters, *Torture*, 41–4; and Deane, *History of Medieval Heresy and Inquisition*, 100–1. See also Berman, *Law and Revolution*, for an influential (if contested) study arguing that the "revolution" in fact consisted primarily in the Church's seizure of power in the eleventh and twelfth centuries and its creation of an international legal order that produced the "Western legal tradition" as we know it.

¹² On the two "rituals," see Merback, *Thief, the Cross, and the Wheel*, 132; and, for this narrative generally, see Evans, *Rituals of Retribution*, 37; Dülmen, *Theatre of Horror*, 13, 34–9; Cohen, *Crossroads of Justice*, 54, 75 (in the early period, "judges and community could work together, expressing shared values and norms through legal rituals" [75]); and Merback, *Thief, the Cross, and the Wheel*. Merback's description of the "historic shift from one legal paradigm to another" is worth quoting at length: "Before the late Middle Ages an *accusatorial* system of criminal process predominated, in which judges had to rely on the accusations of injured parties before they could try a case; most trials were held in open-air courts and were very public occasions.... Older methods for determining guilt or innocence... took place in full view of crowds gathered for the purpose. But with the advent of an

inquisitorial criminal process in the course of the twelfth century, which gradually empowered courts to initiate investigations, make accusations, denunciations and arrests, judicial inquiries (including the use of torture) and deliberations were now conducted behind closed doors. Community participation here was denied, and as a result refocused on the two rituals that could be comprehensively stage-managed by authorities: sentencing and execution" (132).

A vast body of scholarship significantly qualifies such accounts. Even in twelfth-century Bologna—whose university was arguably at the heart of the Roman law revival—courts established new *accusatorial* procedures and these remained dominant through at least the thirteenth century. As Massimo Vallerani writes in his "Criminal Court Procedure in Late Medieval Bologna," a "new model" of "public trial . . . based on procedure of an accusatory type" was "shared in the civil and ecclesiastical tribunals of the late twelfth century." The new communal statutes of Bologna of 1288, for instance, included "absolute freedom to accuse." Throughout Europe, "English, German, and French professors were all active in the spread of the new model [in] local courts" (29–30). Vallerani stresses the "public and shared aspect of the trial": "the communal courts were able to accept and execute hundreds of trials, involving thousands of Bolognese citizens as litigants, *fideiussores*, advocates, and witnesses." The "convergence of so many cultural actors . . . produced a model of the accusatory trial that was coherent and stable over time" (30–1). Also notable "is the increase in the number of intermediaries in the trial—by the late thirteenth century *procuratores* and *fideiussores* crowded the tribunals" (32). "[F]or the jurists of the *ancien régime*, [who] founded their treatises [on] the jurisdictional acts of the tribunals, the trial was a great 'theater of the world,' a collective representation of the reality constructed by a chorus of judges, litigants, advocates, and rulers" (28) (and see Vallerani's *Medieval Public Justice*). See also Vitiello, *Public Justice*, 67–82 on the mixture of inquisitorial and accusatorial procedures in late medieval Reggio Emilia (including penalties for unproven accusations: "the late fourteenth century record at Reggio Emilia indicates neither the triumph of inquisitorial procedure nor the centralized position of the judge, but rather the synchronizing of inquisition and accusation" [80]).

As John Langbein notes, while the "outline" of "the Roman-canon prototype . . . had matured in the church courts by the end of the thirteenth century," it was not until the sixteenth century that "*Inquisitionsprozesse*" fully took hold in most of Europe (see Langbein, *Prosecuting Crime*, 129, for a summary of the legislation in sixteenth-century Spain, Italy, Sweden, Germany, France, and the Spanish Netherlands). Even the *Constitutio Criminalis Carolina* (1530), often taken to mark the definitive transition in Germany from Saxon to Roman law, not only preserved accusatorial procedures alongside inquisitorial but treated the accusatorial as the normal form, which remained dominant through at least the sixteenth century. See Boes, *Crime and Punishment in Early Modern Germany*, 25, 45, 68, 94 (and generally on "the late fifteenth and sixteenth century[.] . . . reception and integration of a foreign legal code, Roman Law, into the pre-existing *Germanische Recht* or Germanic Common Law" [25], identifying significant changes in Frankfurt with legislation introduced only in 1578 [268]). In the sixteenth century (in the German states at least), there was still lively opposition to the introduction of Roman law (see Strauss, *Law, Resistance, and the State*). See also Pohl-Zucker, *Making Manslaughter*, noting that her study of Germany 1376–1700 and other recent scholarship confirm "that the prosecution of interpersonal violence in early modern Europe continued to be influenced by 'traditional patterns of private retaliation, compensation and negotiation'" (2).

It is perhaps also worth noting that courts in which inquisitorial procedures were dominant, and (specifically) the Inquisition, often gave defendants far greater protections than those in which accusatorial procedures were dominant. Under the Inquisition, most punishments were light (penance or fines), and even corporal punishment was rare, let alone capital punishment. The Inquisition provided defendants with many more procedural safeguards than English common law courts: the right to a lawyer; legal aid; strict *habeas corpus* rules; and the promise of habitable prison conditions (specified in detail).

On safeguards in Roman-canon law procedural treatises (heavily favoring defendants), see Fowler-Magerl, *Ordines Iudicarii*, 21–4. On legal aid in ecclesiastical courts in the twelfth century, see Brundage, *Medieval Origins*, 190–1. In medieval and Renaissance Florence, inquisitions initiated *ex officio* (by the court) had the lowest conviction rate: far lower than those initiated by accusation (Stern, *Criminal Law System*, 207). On the Inquisition's procedural protections (for a later period, but noting that safeguards were in fact *stricter* in the earlier period), see Tedeschi, *Prosecution of Heresy*, especially 135–54, and 141 on legal aid. Tedeschi notes that "a survey of the thousands of surviving sentences suggests that in actual fact milder forms of punishment prevailed, [mostly] abjurations, . . . fines or services, . . . and a seemingly endless cycle of prayers and devotions. . . . Despite popular notions to the

One of the central points of this chapter may seem obvious but is sometimes forgotten: law does not always follow scripts. As I note in the Introduction, even heresy and witch trials—which were supposed to be among the most secret (on the Continent at least)—were not in fact always so secret. Later in this chapter, I discuss the heresy trial of Jan Hus, at which there were hundreds of spectators. But his trial is not the only instance. At Gilles de Rais’ trial for heresy and the alleged murder and sodomy of hundreds of children in 1440, “the crowd . . . pressed into the deliberation room” of the great upper hall of the Château La Tour Neuve on the first day of ecclesiastical proceedings. On the second day, the trial “opened in the presence of the judges and the promoter, . . . and in all parts of the vast hall, [there was] an ever-increasing crowd of witnesses and curious people, attracted from the city of Nantes and the whole country.”¹³ If inquisitorial trials were not always secret, nor were Inquisitors always all-powerful. Whether in England or on the Continent, even Inquisitors with papal bulls granting them absolute authority could encounter opposing lawyers, a host of procedural traps, and tough local opponents like Helena Scheuberin, whom I also discuss below.

One would expect fifteenth-century heresy and witch trials to be the paradigmatic instances of secret trials with all-powerful Inquisitors.¹⁴ And yet the heresy trial and witch trial I discuss at length here both defy the dominant model, each in its own way. So do other scenes I describe: for instance, those in which raucous trial crowds pressed at the barriers and took on the guards, or impious spectators acted out at the execution site. In describing gaps between the normative ideal and actual events, this chapter extends some of the arguments of Chapter 3. There, I look primarily at theoretical texts. Here, I look primarily at historical events and their representation. There, I focus on the individual legal actor’s bodily expression and experience. Here, I focus on collective events with multiple actors: crowd behavior; crowd emotion. That said, both chapters contest the persistent view that on the Continent in the later Middle Ages, so-called justice was a pure exercise in united ecclesiastical and secular power, which delivered summary judgments that it was futile to resist.

We might think Calefurnia an anomaly, but mooning the judge was actually a common medieval narrative motif, appearing in countless stories and images, representing the power of those at the bottom to use their bare backsides to stand

contrary, only a small percentage of cases concluded with capital punishment” (151). On the predominance of acquittals or settlements in late medieval Bologna, see Vallerani, “Criminal Court Procedure in Late Medieval Bologna,” 34. On the light punishments in Italian courts generally and the extreme rarity of even corporal, let alone capital punishment, see Dean, “Criminal Justice in Mid-Fifteenth-Century Bologna,” 26–7. In English common law courts, while defense lawyers were not allowed to argue during trials, they did work to get charges dismissed, change venue, protest jury composition, and more. For examples of English criminal defense lawyers’ successes, see Bellamy, *Criminal Trial in Later Medieval England*, 100, 140.

¹³ Bossard, *Gilles de Rais*, 271, 277.

¹⁴ A thank you to Eleanor Johnson for discussions that helped me clarify my claims in this chapter, particularly about the special status of heresy and witch trials.

up to law.¹⁵ Perhaps more important—as Catharina Arndes’ act of defiance suggests, and as this chapter will show—it was not only in the world of fantasy that the accused used their bodies to defy its representatives, talked back to judges through symbolic action, chose anarchy over order, refused to follow the script. And it was not always futile to do so.

Ideals of Order, Scripted Trials, and the Disorderly Crowd

The Doge, the Judge, and the Sword: Allegorizing Justice as Terror and Pleasure in Venetian Civic Spectacle (c.1311)

In his *Splendor of the Customs of Venice* (c.1311), Ducal Chancellor Jacopo Bertaldo explains the meaning of the processions representing Venetian justice: the “*andate*” (“goings out”) that the Doge and other magistrates performed whenever they left the Doge’s palace. The “majesty of ducal glory is displayed in the regalia and rich, splendid ornament of [the Doge’s] person,” explains Bertaldo, “so that the good [people of Venice] may be instructed by the splendor of his grace [such that they are] amply rewarded for their goodness and obtain their lawful desires.”¹⁶ Arrayed in “regalia and rich, splendid ornament,” the person of the Doge—the Republic’s Chief Magistrate—represents the “splendor” of Venice and serves as a promise: be “instructed by [this] splendor” to obey the law and you will share in the prosperity it represents. The spectacle conveys its lesson as an idea, but it also instructs through affective experience. The pleasure of viewing the gorgeous display is a reward in itself for the good people’s righteousness, and offers a taste of what it might be like to “obtain [your] desires.” The lawful ones at least. As to the unlawful ones, the spectacle has a different message: the “judge is displayed to [the Doge’s] right,” explains Bertaldo, “so that evil-doers, upon seeing the judge,” may be “frightened by the terror of judgment,” and “taught to avoid wickedness and guard themselves against wrongdoing” (104–5). The emblematic sword of justice represents the consequences of such judgment: “the sword of the

¹⁵ See e.g. Ziolkowski, ed., *Solomon and Marcolf*, 98–9, 237–41 on the motif of mooning in medieval and folk literature generally; and Randall, *Images in the Margins of Gothic Manuscripts*, images #533, 539, 540.

¹⁶ The passage I discuss in this section is as follows: “Primo enim ostenditur mayestas glorie ducalis in apparatu et ornamento precioso et splendido sue persone, ut doceantur boni de splendor gracie, per suam bonitatem largiter remunerari et iusta desideria obtinere. Secundo, ostenditur iudex in dextra iudicandi malefactores, ut, iudice viso, ipsi doceantur declinare a malo et sibi cavere de faciendo malum, terrore iudicii spaventati. Tercio ostenditur ensis sive spata domini ducis, que post eum aportatur, ut doceantur de vindicta potencia et fortitudinis ducalis ad penas iudicantis incisione membrorum graviter infligendas. Et debet post dominem ducem ensis sive spata portari, quia vindicta malefactorum post iudicium fieri debet. Et nota, quod ubicumque spata portatur in publicio, iudex in dextra debet interesse.” *Splendor Venetorum Civitatis Consuetudinum* (in Gaudenzi, ed., *Scripta anecdota glossatorum*), 3:104–5; and see the discussion in Barzman, *Limits of Identity*, 88.

Lord Doge is displayed . . . so that [people] may be taught about the justice of ducal power and strength,” which inflicts “penalties with a heavy hand by the cutting of members [*incisione membrorum*]” (105).

The civic parade seeks at once to form the spectators as virtuous legal subjects and to train them in the emotions they are to feel when watching the actual spectacle of punishment. They are to experience deterrent “terror” as they watch the “heavy hand” of the law first cut off the limbs of the malefactors and ultimately cut these rotten members out of the body politic. At the same time, they are to rejoice that the “heavy hand” of the law does what is necessary to keep Venice—“that most serene Republic”—safe. The civic parade represents these emotions in its central triad: Doge, judge, and sword. It is essential (insists Bertaldo) that all three figures appear together and parade in the proper formation. “The sword must be carried behind the Doge” (he explains), “since the punishment of evildoers must happen [only] after judgment.” And “wherever the sword is carried in public, the judge must be present to [the Doge’s] right” (105). This order shows that judgment is founded in right and law (*dextra*). The three figures form a triangle that represents law as force but also, sequentially, justifies legal force. The Doge and the judge side-by-side embody law and judgment; the sword embodies the punishment that enacts the justice of law and judgment. In its spatial logic, the spectacle thus stands not merely for “ducal glory, . . . power and strength” but for that power and strength *as* justice.

*Rex as Lex before the Throng in Jean Fouquet’s
“Lit de Justice de Vendôme” (1458)*

The Venetian civic parade offers an exemplary instance of the spectacle of power as a display of sovereign legal order. Bertaldo treats the spectacle not merely as an ideal but as a description of how law actually works in Venice. In actual courts and scenes of punishment, of course, the reality could be rather different. We have what is probably a fairly realistic representation of one such court in Jean Fouquet’s miniature of the “Lit de Justice de Vendôme” (1458) (fig. 4.3).¹⁷ Portraying the treason trial of Jean, Duc d’Alençon, the miniature was completed within a month of the trial.¹⁸ Fouquet includes portraits of the dignitaries who actually presided: under the canopy in the corner, King Charles VII (in what contemporaries called his “judiciary tribunal” or “lit de justice”); standing before

¹⁷ Boccaccio, *Des cas des nobles hommes et femmes* [*De casibus virorum illustrium*], trans. Laurent de Premierfait (1458); Munich, Bayerische Staatsbibliothek, Codex Gall. 369, fol. 2v.

¹⁸ On the image, see Morrison and Hedeman, *Imagining the Past in France*, 239; Hanley, *Lit de Justice*, 39–40; and Vale, *Charles VII*, 204–9 (on both image and trial, including many of the details that follow). Vale writes that the portrayal is so “faithful to the event” that it is “an almost photographic image” (206). The figure on the far right in the red hat gazing at the viewer is a self-portrait: the gaze



Fig. 4.3 The orderly court and the restless throng at the treason trial of the Duc d'Alençon in Jean Fouquet's "Lit de Justice de Vendôme" (1458).

Bayerische Staatsbibliothek München Cod.gall. 6 fol. 2v.

him, the king's chancellor and constable; to his left (in blue), twelve-year-old Prince Charles (etc.). Moreover, he portrays what we know to have been the

seems to communicate to the viewer that Fouquet was there and thus to authenticate his rendering. See "Fouquet: peintre et enlumineur du XV^e siècle," Bibliothèque nationale de France, <http://expositions.bnf.fr/fouquet/arret/26/index26g.htm> (accessed April 11, 2021).

official seating plan and the decor of the great hall of the Château de Vendôme where the trial took place.¹⁹

Contemporary accounts of the trial stress its magnificence and the order that reigned: the majesty of the king; the sumptuousness of the fleur-de-lis fabric spread across the walls and floor; the reverential silence. “The King [was] seated triumphantly, [a] beautiful thing to see” writes the chronicler Georges Chastellain, and everyone watched “in silence.” All sat “according to order and degree”; “dukes and counts [sat] just as they should . . . in the correct order according to their peerage.”²⁰ We can see such magnificence and order inside the diamond-shaped trial arena—the “parquet”—in Fouquet’s miniature. The three figures under the canopy are its focal point: king, chancellor, and constable representing the union of “*Lex et Rex* . . . together on that bed of Justice” (as one commentator put it).²¹ The “lords temporal” and “spiritual” (peers, archbishops, bishops) take the highest seats. The next tier seats other high-ranking officials (judges and courtiers). Below them are councilors of the Parlement and civil servants. At the bottom (on the floor) are the lawyers: advocates, proctors, notaries.²² All are similarly dressed in legal attire appropriate to their positions: all wear long colored robes, with either hoods with white miniver fur-trimmed capes or black close-fitting caps (*pilei*).²³ It is a relatively static image: most of the figures sit upright, arms folded; their faces are largely expressionless.

Laurens Girard, notary and secretary to Charles VII, commissioned the manuscript in which Fouquet’s miniature appears: a manuscript of Boccaccio’s treatise on the fall of the once-illustrious.²⁴ Fouquet’s rendering of the parquet illustrates both the official royal judicial ideology for which Girard stood and the ostensible moral of Boccaccio’s treatise: the King’s justice punishes treason, no matter how illustrious the traitor. It is an image that Bertaldo would have approved. But Fouquet chooses not only to include but quite literally to foreground what most of the accounts of the trial ignore: the teeming crowd inside the Château that presses against the barriers surrounding the parquet. We know from Chastellain

¹⁹ For the participants and other details, see Vale, *Charles VII*, 206–8; and Hanley, *Lit de Justice*, 39 (noting references to the king’s seat as both a “judiciary tribunal” and “lit de justice”). The word “lit” in the “lit de justice” from which kings presided over cases referenced its bed-like canopy (see Hanley, *Lit de justice*, 17–22). But it clearly also referenced the Latin *lis* (plural *lites*), meaning lawsuit.

²⁰ “Le roy donques assis triumpamment, [qui] estoit belle chose à voir, et là . . . tout le monde se disposa à silence” (3:478). Everyone “estoit assis par ordre et par degré,” “ducs et contes, ainsi que aller devoient par ordre en leur pairie” (3:477). Chastellain, *Oeuvres [Chronique]* (1863–66, ed.), 3:477–8.

²¹ Vale, *Charles VII*, 204 (citing a seventeenth-century commentator). On this arena as the “Parquet,” see La Roche-Flavin, *Treze livres des parlemens de France* (1617 ed.), 300 [Bk 4, sec. 77] (describing its arrangement in ways that match both Fouquet’s image and Chastellain’s description [299–300]).

²² Vale, *Charles VII*, 207–8.

²³ On the figures’ attire, see Hargreaves-Mawdsley, *History of Legal Dress*, 21–3.

²⁴ Vale, *Charles VII*, 205.

that “the hall was also opened [publicly] and given up to everyone to come in and hear the king’s sentence,” and he specifies that “people of all estates” came to Vendôme for the event (not just “high and great barons, bishops, and prelates”), many traveling great distances because they knew “it must be something great and special, as it in fact was.”²⁵ In Fouquet’s miniature, the chaotic vitality of the packed crowd contrasts strongly with the scene inside the barriers. Outside, we see a patchwork of classes, genders, and attire: a motley array of local and foreign fashions, short tunics and long robes, multi-colored stockings, hats and shoes in all styles. Here, the peasants jostle with the nobility, men with women, young with old. Unlike the dignitaries inside the parquet, the spectators express a multitude of emotions: excitement, curiosity, alarm, anger, bemusement, disdain, mirth, and more. The spectators at the front pull themselves upward to peer into the trial scene, pressing their hands against the barrier. The soldiers and guards carry maces and no fewer than nine ugly bayonets, prepared to subdue anyone who gets out of line. The vignette that dominates the foreground is in fact just such a confrontation: the spectator in blue is in open defiance, ready for battle as the guard tries to push him back into the crowd: is he resisting arrest? will an all-out struggle ensue? In representing the force of law to punish defiance, Fouquet (like the Calefurnia image) places defiance front and center.

*Noisy Crowds, Lawyers’ Harangues, and Scripted Trials:
Thomas Basin’s Proposal (1455)*

In his “Proposal for the Best Procedure for Hearing and Delivering Public Trials” (1455), jurist and Bishop of Lisieux Thomas Basin offers a vivid portrait of the vast crowds that routinely gathered to watch trials in high courts (parlements) throughout France.²⁶ In Normandy (explains Basin), one can see the worst excesses. There, at the start of a trial, a huge “multitude assembles.” There is such “a grea[t] tumult of cases” that it is almost impossible even to “obtain an audience.” “[H]ow great [are] the long-winded delay[s] in Normandy!” There “perhaps as many as ten thousand cases are pending,” yet “a whole day is taken up

²⁵ Chastellain, *Oeuvres*: “Estoit aussi la salle ouverte et abandonnée à tout le monde pour y entrer et pour oïr la sentence du roy” (3:477). “Y estoient aussi tous les haulx et grans barons, évesques et prélats du royaume, . . . ensamble toutes conditions de gens autres, . . . pensant que ce devoit estre quelque chose de grant et d’especial, comme de fait estoit” (3:467). And see Basin on the people “gathered in great numbers” (“in magno numero collectos”) for d’Alençon’s trial: *Histoire de Charles VII* (1933–44 ed.), 2:301.

²⁶ “Libellus de optimo ordine forenses lites audiendi et deferendi,” in Basin, *Histoire des règnes de Charles VII et de Louis XI* (1859 ed.), vol. 4 (hereafter cited in the Latin text in my notes). See the discussion of portions of this text in Enders, *Rhetoric and the Origins of Medieval Drama*, 40–2, 96; and thank you to Eugene Petracca for assistance with translations.

with hearing one or two cases.”²⁷ But trials in “many other provinces of this kingdom” are almost as bad, including those in “our venerable Parlement—I mean in the Grande Chambre” in the Paris Palais de Justice. “What shall we say about [our] supreme court?” Is not its trial process just as “tedious and almost as intolerably drawn-out? . . . [I]nnumerable cases fall to it daily,” and because of our procedures, “some fifteen-hundred people” end up having to “occupy themselves for a whole day in hearing just one miserable case.” The delays are so extreme that “almost everyone” thinks it is “better to give up from the very beginning,” even when there is “certain victory.”²⁸ Certainly, “that old proverb of the comedian [is] true: ‘The highest law is the highest injury’ [*Summum jus, summa injuria*].”²⁹

Even worse, in Normandy and elsewhere, a “vocal audience is [actually] allowed [by] customary law,” following “the custom of that most abundant marketplace”: the forum. The cries of the audience turn the trial into a circus. An atmosphere of “festivity” reigns.³⁰ Scripture specifically prohibits being swept up in the passions of the multitude in court: “the Lord says in Exodus: ‘in judgment, do not acquiesce to the opinion of the majority,’” writes Basin. And yet, in Normandy at least, “judges [do] decide cases according to the opinion of the majority of [those] present,” siding with the loudest party, most of whom “are utterly ignorant of both written and customary law.”³¹ Ruling through applause (in an updated version of Plato’s teatrocracy), the spectators control the judges.

Even worse than the crowd, however, are the lawyers. Given that they control the spectators, it is really they who control the judges. Daily their “almost

²⁷ “[M]ultitudo confluit negotiorum” (51). “[U]bi est major causarum concursus, ibi difficilior audientia obtinetur” (34). “[Q]uanta est prolixitas in Normannia, in plerisque causis in quibus loci sive praedii ostensio postulator” (34). “[C]uria in qua forsan causae sunt pendentes ad decem mille vel amplius, una dies in audienda vel duabus causis occupetur” (40).

²⁸ “Si vero consequenter ad alias curias atque tribunalia, tam illi regiae urbis Parisiensis, quam ducatus Normanniae et aliarum multarum provinciarum hujus regni respexerimus, non dissimilem fore, sed parem et consimilem dispendii prolixitatem reperimus” (34). “Quid de curia nostri scacarii suprema dicemus? Estne in ea taediosa multis et paene intolerabilis prolixitas, tum propter innumeram causarum dietim devolutionem ad ipsam, tum propter expediendi modum, cum aliquando mille et quingentae personae ad audientiam unius miserae causae per totum diem integrum occupentur?” (35). “[O]mnium fere communi et vulgata opinione, ut melius et consultius quamplurimis foret causis justissimis ab ipso initio cedere, quam post tam molestas ac graves sumptuum et laborum jacturas victoriae indubitate eventum expectare” (33).

²⁹ “Ex quibus optime verificari ostenditur vetustum illud comici proverbium: ‘Summum jus, summa injuria’” (35).

³⁰ “Atqui consuetudo patria videtur satis hujuscemodi prolixitatibus occurrere, dummodo probe et legaliter servaretur” (39). “[J]uxta illius amplissimi fori consuetudinem” (33). “[C]um illa placitandi festivitate declamari” (51).

³¹ “Dicit enim Dominus in Exodo: ‘Non acquiesces in judicio plurium sententiae, ut devies a vero’” (61), citing Exodus 23:2. “[I]n plerisque curiis Normanniae observatur, quod videlicet iudices ex opinione majoris numeri assistentium causas diffiniunt, quorum saepius major pars est a juris scripti et consuetudinarii penitus ignara” (61).

innumerable arguments come before the court.” Every day there is both “insolence [and] begging to engross [the attention of the] audience.” They thrill the audience with the “splendor,” “magnificence,” and “pomp” of their “verbal pleading [and] forensic oratory,” inflame the audience with their “declamation,” producing “feeling[s]” that become “fixed deeply in the souls of those listening.” They drone on through already long-winded cases, their “superfluous and deceitful delays” drawing out each case as they “reap [their] great reward[s].” And the parties, “patiently or impatiently, . . . wait through [the] years” for their verdicts. When cases are finally decided, it is “wretched silver” that has decided them.³²

There may be no remedy for “wretched silver,” which can turn even the most expert of judges into “demons”: “corrupt and twisted” by “perversity”; trampling justice in pursuit of “their depraved desires.”³³ But Basin does have a “salubrious and effective remedy” for the theatrocracy and its insolent lawyers. He proposes that “pleading [be] done only by means of written texts” rather than being declaimed oratorically: the “verbose and trifling garrulity of [the] lawyers’ haranguing” would thereby be “cut off.”³⁴ “But perhaps” (he muses) “someone will object that I am trying to introduce a novel theory . . . little tested by use and experience . . . Assuredly not!” For “thousands and thousands” of people have seen how in certain places “a court of twelve or thirteen [judges]” can, “during [a single] hour,” dispatch as many cases as can “be done in an entire year in the court of our venerable Parlement.” Where have they seen this? In his ideal of a court in the “apostolic seat” in “the city of all Christians”: the Roman Rota, the Church’s highest court of appeals.³⁵

³² “[P]raestat argumentum importunitas innumerabilium paene quotidie . . . supplicantium pro obtinenda audientia” (35). “Sed difficile atque durum erit . . . a placitationis verbalis seu forensis orationis pompa divellere, quae splendorem quemdam ac magnificentiam” (50). “[A]ltius audientium animis infingitur sententia a deserto oratore prolata” (51). “[S]upervacuae et frustratoriae dilationes” (37). “[D]icendi exercitationem, in qua magnus est fructus, atque orationis copiam advocatis praeberere” (50). “[V]el patienter, vel impatienter ad alios annos” (35). “[M]isero . . . argento” (58).

³³ “[S]ed deterius forsan aestimaverim malum, juris peritiam copulatam cum perversitate et corruptione voluntatis. Nam uti daemones, quibus est perversa et in malum obstinata voluntas . . . [Q]uibus est cum juris scientia perversa voluntas, tanto sunt potentiores ad exsequendum quod perverse volunt, quanto, juris scientia instructi, majorem astutiam habent ad media perquirenda quibus concupiscentias suas pravas deducant ad effectum!” (58–9).

³⁴ “Quid igitur? possibile est circa hoc salubre et efficax invenire remedium?” (37). “[E]x scripto tantummodo et non verbaliter placitetur” (51). “[V]erbosa atque nugatoria plurimorum advocatorum perorantium causas garrulitas sive in placitando, sive in scribendo amputator” (37).

³⁵ “Sed forsan aliquis objiciet me introducere velle theoriam novam, quae minime usu et experimento probata sit. Non ego profecto id facio . . . sed mille et mille superstites sunt, qui pariter et melius me viderunt, cognoverunt et experimento probaverunt qualiter aliquibus in locis per curiam XII aut XIII personarum, una hora qua curia sedet, tanta et in tot causis expeditio datur, quanta fortassis in uno integro anno posset in venerabili curia parlamenti, dico in magna camera, ubi causae verbaliter placitantur” (41). “Ad romanam quippe curiam et apostolicam sedem de toto christianorum orbe causae paene innumerae dietenus per appellationes et alias deferuntur” (41).

The Rota took its name from the fact that the judges sat in the form of a wheel (“Rota”).³⁶ The wheel signified, among other things, the kind of closed completeness, wholeness, or divine perfection that admitted of no addition or subtraction. “Oh, how greatly do we esteem it!” writes Basin. “[F]rom every Christian nation and people” come the “judges [*auditores*] of the Rota.” And yet, collectively, they form a harmonious whole, following a precisely choreographed ritual: “on the judicial days, . . . at a certain hour [of] the morning, [at] the solemn stroke of the bell, [the] lord auditors come out of their conclave and enter the great palace nearby.” They all proceed “in turn and by order.” There, “each sits in tribunal, separate from the others” but exactly equidistant. “At once . . . with exact diligence, the litigators [and] proctors come [before] the lord [judges].”³⁷ There, the lawyers and judges rapidly pass a great number of written documents back and forth: petitions, articles, depositions, explanations, scribes’ reports. No one “is supplicated before an audience” and “no one complains.” In such proceedings, “the truth of the matter speaks for itself.” There are no “deceitful delays,” litigators’ tricks, shouting audiences with their ignorant judgments. Let the French follow this model!³⁸ No more rule of the insolent lawyer or ignorant majority in court!

And yet, admittedly (writes, Basin, quoting Saint Jerome), “the performance of the live voice [*vivae vocis actus*] has [that] ‘certain something of latent energy’; [the] meaning expressed by an eloquent orator is implanted more deeply in the souls of the listeners than if it were not heard [but only] read.”³⁹ If the French were

³⁶ For a famous 1468 image of the auditors of the Rota seated at a round table, see Brundage, *Medieval Origins*, 422. The c.1483 image of Cicero pleading before judges who sit in a circular formation (fig. 3.1, 108) suggests that courts, or at least illustrators, treated the Rota’s circular formation as a model. Brundage, “My Learned Friend,” 187, notes that advocates and proctors did actually engage in oral pleading in the Rota. For details on the medieval Roman Rota, see Salonen, *Papal Justice* (especially 42–55 on its normal procedures). I am grateful to Kirsi Salonen for clarifications about its practices.

³⁷ “O, quantum aestimare possumus” (43). “Ibi enim sunt . . . iudices electi de omne christianorum gente et natione, qui ‘auditores Rotae’ appellantur” (42). “Diebus itaque juridicis . . . certa hora quam pulsus solemnus campanae omnibus palam facit, exeunt praefati domini auditores de suo conclavi et intrant palatium magnum propinquum” (44). “[V]icissim et per ordinem” (43). “[S]edet pro tribunali quilibet seorsum ab aliis per loci distantiam competentem . . . Statim autem cum exacta diligentia veniunt litigatores et causarum procuratores ad singula dominorum” (44). By “litigatores” Basin presumably means the lawyers historians normally refer to as “advocates.” Proctors were generally highly experienced in ordinary courtroom practice, but less well educated (and less expensive) than advocates, who had usually studied law in the university, and were thus equipped to handle difficult legal problems. See Brundage, “My Learned Friend,” 183–4 and *Medieval Origins*, 203–14; and Helmholz, *Profession of Ecclesiastical Lawyers*, 7–38.

³⁸ “[N]emini pro audientia supplicatur, nullus de denegata conqueritur” (41). “[R]es ipsa per se ipsam satis liquido se ostendat” (54; and see 50).

³⁹ “Amplius etiam habet, ut Hieronymus ait, nescio quid latentis energiae vivae vocis actus, et altius audientium animis infigitur sententia a disertio oratore prolata, quam si ab aliquo minime audita, sed scripta tantummodo legeretur” (51).

See Jerome, *Letters* [letter 53], <http://www.patrologia-lib.ru/patrollog/hieronym/epist/epist03.htm> (accessed April 6, 2021). Basin quotes from the following passage: “Spoken words possess an indefinable hidden power, and teaching that passes directly from the mouth of the speaker into the ears of the disciples is more impressive than any other. When the speech of Demosthenes against Aeschines was

to adopt the Rota's practices, they would, regretfully (he sighs), have to "give up their oral pleading," and thus the "pomp" and ceremony of their "forensic oratory," which "display[s] the magnificence and splendor of the courts" so brilliantly. In fact, on second thought, he would not wish to *altogether* forbid oral speech in trials, a fact underlined by his repeated references to "hearing" in his proposed proceedings: after all, the judges are *auditores* who *hear* cases (indeed, they are the "lords" of "auditors").⁴⁰ Such ambivalence may account for the fact that, in Basin's portrait of this paragon of courts, where the silent document supposedly reigns, somehow there is a lot of exciting activity. Inside the wheel of the Rota, there are twelve or thirteen judges, each with four "public notaries" at his feet. There are many lawyers in the circle ("litigators [and] proctors"). "[R]unners or attendants" run back and forth among the judges, into the back rooms and out, in a positively dizzying "vicissitude" (the whole court appears to spin like a "Wheel").⁴¹ All of these people are not merely passing documents among themselves: it turns out that some of their activity is dedicated to performing for an audience. In the Rota, "[i]f something must be said against the articles or petition," Basin explains, the judge "exhibits judicially" his attack on them. These exhibitions take place before spectators whom Basin explicitly identifies as a "public audience" distinct from the judicial audience. The "lord judges si[t] before the tribunal and public audience [*publica audientia*]." They "consult, deliberate, and conclude" their cases "in public [*publice*]," and announce their decision to that public. Indeed, his entire proposal is aimed at "the Best Procedure for Hearing and Delivering Public Trials." That is, however scripted the trial, however chastened the lawyers, Basin's ideal courtroom remains—in his vision—a public theatre.⁴²

*Open Courtrooms, Festive "Law-Days,"
and the German Rechtstag as Mock Trial*

That Basin envisions the chastened, controlled trial as nevertheless a kind of public theatre is not perhaps surprising. As I indicated in the Introduction,

recited before the latter during his exile at Rhodes, amid all the admiration and applause he sighed, 'if you could but have heard the brute deliver his own periods!' New Advent, Letters of St. Jerome, <https://www.newadvent.org/fathers/3001053.htm> (accessed April 6, 2021; translation modified).

⁴⁰ "Sed difficile atque durum erit valde nostrates, ut arbitror, a placitationis verbalis seu forensis orationis pompa divellere, quae splendorem quemdam ac magnificentiam curiarum ostentare videtur" (50). And see 53.

⁴¹ "Quilibet autem praefatorum dominorum quatuor publicos tabelliones secum habet" (42). "Comissiones praefatae, ut signatae sunt in pede supplicationis, auditoribus, quibus justitia partibus ministranda mandatur, per cursores seu apparitores qui eas de cancellaria recipiunt, praesentantur" (42). "[O]b quam ordinis vicissitudinem . . . curia illa Rota sive audientia Rotae appellatur" (43).

⁴² "[S]i ad dicendum contra articulos vel contra libellum, similiter rationes, quibus eos impugnare credit, judicialiter exhibit" (44–5). "[P]raefati domini auditores pro tribunali et publica audientia sedent" (45). "[M]ature et graviter publice . . . consultant, deliberant, et concludunt" (43).

while some courts held trials behind closed doors, many held them in public spaces, often outdoors, even in the later Middle Ages: at natural landmarks such as hills; at columns, crosses, statues, or bridges; in places where the crime had occurred (often in public streets); in tents; or in the open market square.⁴³ Variants on the great public courts of the early Middle Ages—the *placita*—appeared and reappeared, in (for instance) the *Grands Jours*: courts that met in public throughout France from the thirteenth century on.⁴⁴ Among the most common locations for court sessions in the twelfth and thirteenth centuries were church porticos, vestibules, or gardens.⁴⁵ Louis IX of France heard litigants and gave judgment under an oak tree in the Forest of Vincennes or in public parks in Paris in the mid-thirteenth century.⁴⁶ The tiered stone benches where the magistrates of the city of Arles heard cases and issued judgments in the thirteenth century are still standing outside the doors of the Palais des Podestats.⁴⁷ Fourteenth- and fifteenth-century German regulations specified that trials were to be held in “public” [*öffentlich*] “under the heavens”: “in the open market”; in a street wide and long enough for a wagon to pass; “before the town hall . . . under the naked sky.”⁴⁸ Many German images in fact show late medieval courts outdoors surrounded only by tents, or in open porticos or streets in towns.⁴⁹ In fourteenth- and fifteenth-century Cologne, courts continued to meet in open civic spaces such as marketplaces, even after the city built a set of magnificent new structures to house the expanding municipal administration.⁵⁰ Many criminal assizes took

⁴³ For a concise discussion of the location of ecclesiastical courts (identifying such outdoor locations), see Deimling, “Courtroom.” At the end of the fifteenth century, some judicial hearings were still being held under the arcades of the Ducal Palace in Venice. In England, most ecclesiastical trials were held in churches, though (as Martin Ingram notes for the early modern period), ecclesiastical courts “sometimes left [church courtrooms] to go on circuit, and sessions were held in improvised surroundings in parish churches or in inn parlours” (*Church Courts, Sex, and Marriage in England*, 2). Courts throughout the Middle Ages and early modern period often met in informal, *ad hoc* spaces: a bishop’s kitchen with the cook as witness (Hardman, *Conflicts, Confessions, and Contracts*, 43); the dining room of Doctors Commons (Senior, *Doctors’ Commons*, 93–5).

⁴⁴ On the *Grands Jours*, see Trotry, *Grands jours des parlements*.

⁴⁵ On these locales for twelfth- and thirteenth-century bishops’ courts, see Brundage, *Medieval Origins*, 422–4.

⁴⁶ Brundage, *Medieval Origins*, 373–4.

⁴⁷ With thanks to Francesco Cassini for discovering the site, and for photos of the benches and plaque.

⁴⁸ Maurer, *Geschichte des altgermanischen . . . öffentlich-mündlichen Gerichtsverfahrens*, 357: trials were to be held “vor dem Rathhuse . . . unter bloßem Himmel”; “an der fryn Rychs Straß so weit, braut und lang das ein Wagen durch Gericht faren mögt öffentlich”; “underm Himmel”; “auf öffentlichem Markte”; “bey Sonnenschein unnter dem Himmel und unter keinen obendach.”

⁴⁹ For images of late fifteenth-century outdoor urban courts, see e.g. Reincke and Bolland, ed., *Die Bilderhandschrift des Hamburgischen Stadtrechts von 1497* (unpaginated, images H and L). For images of outdoor tented courts, see Tengler, *Der neü Layenspiegel* (1511), fol. 34r, 99r, 162r, 199r.

⁵⁰ Arlinghaus, *Inklusion-Exklusion*, 75–118, 376–7 (on legal space, ritual, and the public in late medieval German-speaking Cologne). Arlinghaus writes that even when courts met indoors, “the spatial concept was the same as for those municipal courts [that] work[ed] in the open [air],” noting the general scholarly consensus that the absence of dedicated courtrooms in the Middle Ages was due to the view that courts ought to be public: “the basic idea was to embed the courts into the urban space instead of taking them out” (*Inklusion-Exklusion*, 376–7).

place in marketplaces, as (quite naturally) did the English pie-powder courts for criminal and civil disputes emerging from markets and fairs.⁵¹ In late medieval Marseille, courts met at market stalls in front of the house of a local chandler, or in front of the lower doors of Notre Dame des Accoules “above the stone drain of the apothecary.”⁵²

Even where courts were held indoors, these were often in public spaces: churches or open palaces halls. A late thirteenth-century royal ordinance specified that every day that the Paris Parlement met, three counsellors of the Court of Requests must sit in the corner of the great hall of the Palais de Justice, “surrounded by the ever-present noise and bustle of that tumultuous place” (as one historian writes), making themselves available to all potential plaintiffs.⁵³ Such courts were porous spaces: in the c.1483 Cicero miniature I reproduce in Chapter 3, spectators wander in through the open door in the church and peer over the backs of the judges’ benches; in the 1497 image of the Hamburg municipal courtroom I reproduce in the Introduction, the crowd at the vast open window seems to be virtually inside the courtroom.⁵⁴ Town halls that held courtrooms often faced the market square to ensure that the populace could see the proceedings and have access to justice.

Large events might take place outdoors outside the city walls. In the fourteenth century, the Inquisitor Bernard Gui held huge condemnation ceremonies both in Toulouse Cathedral and outside the walls, always with an “immense crowd of clergy and people.”⁵⁵ Officials like the Mayor of Hereford routinely staged court sessions on city walls or at city gates.⁵⁶ Scholars of early modern London theatre have stressed that theatres were often situated in the “liberties”: outside the legal controls of the city. But so was law itself: Southampton, for instance, preserved the custom of keeping courts on hillsides by designating a mound called Cutthorn as

⁵¹ English town courts included urban fair courts, market courts, staple courts, coroner’s courts, and more. See Kowaleski, “Town Courts in Medieval England,” 18. On assizes held in marketplaces (as well as town halls), see Langbein, *Prosecuting Crime*, 198.

⁵² Smail, *Emotions, Publicity, and Legal Culture*, 33–4. Smail describes a 1351 Marseille town council resolution announcing that from henceforth only lawyers, procurators, and kin would be able to speak on behalf of defendants. In his view, the resolution points to “the large crowds that could forgather at the court space in the hopes of swaying the proceedings” (34); and see 224–5 and throughout on the fact that all the courts of late medieval Marseille met outdoors, and on the medieval view that “[o]utdoor and open legal ceremonies contributed to the public and honest character of the law” (225).

⁵³ Shennan, *Parlement of Paris* [1998 ed.], 18; and see Shennan generally on “the noise and bustle which succeeded the partial conversion of a private residence into a court of law” in the late thirteenth and early fourteenth centuries (100).

⁵⁴ See Chapter 3, fig. 3.1, 107 and Introduction, fig. 0.2, 14.

⁵⁵ See e.g. March 3, 1308: “la foule immense du clergé et du peuple”; Gui, *Livre des sentences* (2002, ed.), 1:177. (Gui repeatedly uses this and similar phrases to describe the crowd.)

⁵⁶ Johnson, *Law in Common*, 63–4, and 58–9, describing the mayor’s tour for the city wards at each of Hereford’s five gates and noting that the walls of the city itself were legal spaces that served to “provid[e] a stage for court sessions” (58–9).

the site of the town leet (criminal court). In Hereford, the mayor held the city's annual "Law Day" in Tollfield outside the city walls.⁵⁷

The phrase "law-day" appears in various forms throughout Europe—*jour de droit*, *dies iuris*, *Rechttag* or *Rechtstag*—denoting everything from general assemblies to legal festivals, general court meeting days (as in Basin's "judicial days"), specific days in a trial, or sentencing proceedings.⁵⁸ In Germany (as in much of Europe), the *Rechtstage* were three days specially set aside for trials: during the first two, the parties appeared in court and argued their cases; on the last day, the court announced its decision. Though the *Rechtstage* seem often to have taken place in town halls in the late Middle Ages, regulations still specified that they should ideally be held outdoors under the open sky.⁵⁹ Often such events were seasonal (like seasonal theatrical events): on certain days of the year, people from neighboring communities and farther afield would converge for manorial courts, sheriffs' courts, assizes (or "sittings") of different bodies, or for fairs with special courts like the pie-powders.⁶⁰ The phrase "law-day" signals the fact that these were set apart from ordinary time, like holidays, contributing to their festive feel. On days on which extraordinary trials like the Duc d'Alençon's took place, one was free—as on holy days—to leave ordinary routines and go to the scene of the action. The law-day, in other words, was also a day of license.

Marketplaces were already full of activity on market days, but still noisier and more bustling on those rare and exciting occasions when a public trial or punishment was to take place there. Huge crowds gathered not only for the punishments I discuss later in this chapter but for trials and sentencing proceedings, producing the kind of carnival atmosphere Basin describes in the Norman and Paris Parlements. Trial attendees were far from sedate, and could be outright riotous.

⁵⁷ Johnson, *Law in Common*, 60–2.

⁵⁸ "Diebus . . . iudicis" (Basin, "Libellus," 44). On variants such as *jors de dret* or *jour de dret*, see the glossary entries for "dret (dret)" and "droytura" in Vitali, *Mit dem Latein am Ende?* 449–51; and on the Swiss version of the law day, see Gallone, *Organisation judiciaire et procédure*, 185–7, 256–9. In England, meetings of the "hundreds" courts were often called "law-days" (Jolliffe, *Constitutional History*, 63; Jones, *Gender and Petty Crime*, 14). Although the words "law-day" and "folk-moot" were not generally interchangeable, the London "law-day" was sometimes called a "Folkmoot," identifying it with early medieval lawcourts (moots or motes), often viewed as popular assemblies (Jolliffe, *Constitutional History*, 63).

⁵⁹ The word *Rechtstag* (or *Rechttag*) goes back at least to the thirteenth century and probably much earlier: defendants are granted a *Rechtstag*; plaintiffs are ordered to appear at the *Rechtstag*. See e.g. the references to the "Rechttag" in Freyberg, ed., *Sammlung historischer Schriften*, 1:325, 1:371, 3:107. On the medieval *Rechtstag*, see Knapp, *Alte Nürnberger Kriminal-Verfahren*, 131–43; and Maurer, *Geschichte des altgermanischen . . . öffentlich-mündlichen Gerichtsverfahrens*, 342. See note 48 (above) on the various codes specifying that medieval courts be held in public. Maurer notes that codes for Lübeck (1537), Württemberg (1537 and 1545), and Wurtzberg (1577–82) all specified that the *Rechtstag* was still to be held "under the heavens." And see Pohl-Zucker, *Making Manslaughter*, 202 (on the "Blood-courts" that the *Reichsvogt* held in public squares; and 227–33, 243, 246, 249, 255, 258 for additional examples of public or semi-public court locations in Württemberg and Zurich between c.1376 and 1700).

⁶⁰ Johnson, *Law in Common*, 63–4.

The “quarrels, brawls, bloodshed, murder, and other evils” that sometimes took place in the midst of a trial led the Council of Saumer to ban courts from meeting in churches in the mid-thirteenth century, and several later councils followed suit.⁶¹ The Statute of Northampton of 1328 targeted precisely those rebels who went with armed followers to judicial sessions, sometimes attacking jurors en route to the proceedings.⁶² It read, in part: “no Man [may] come before the King’s Justices . . . with force and arms, nor bring [any] force in affray of the peace, [nor] ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers” (notably associating sessions of the peace with fairs and markets).⁶³ The Statute was clearly needed (as were similar regulations in medieval Cologne).⁶⁴ In the records of Sir William Shareshull, Chief Justice of the King’s Bench 1350–61, we find numerous cases in which people had caused “affray” during sessions of the peace: in-court brawls; armed assaults on justices during a trial. Groups of armed men sometimes threatened assizes (for instance in Wiltshire in 1336) or resisted the king’s justices (for instance in Tredington in 1347). In one case, a crowd acting “like madmen and men possessed” imprisoned a justice of the peace in Eynsham Abbey. In another case, a knight and an esquire attacked a justice with a sword in an attempt to rescue a man who had himself been arrested for making an affray during the session.⁶⁵ During the Peasants’ Revolt of 1381, law was a central target. It was rumored that the peasants were going to “kill all the lawyers” (as Shakespeare’s Dick the Butcher says), and they did in fact execute many lawyers, jurors, and others with legal training.⁶⁶

While the Statute of Northampton may have been a response to the particular vulnerability of the king’s justice in the fourteenth century, and Basin’s pamphlet may have been a one-off initiative, there were many people in the next two centuries who sought to restrain the unruliness of the crowd at such events. In fifteenth- and early sixteenth-century Germany, reformers launched a sustained attack on what they viewed as the disorderliness and chaos of public trials, attempting to transform these into scripted public performances before silent and reverential audiences.⁶⁷ Perhaps the most influential of these reformers was Johann Freiherr von Schwarzenberg, judge of the Episcopal Court of Bamberg,

⁶¹ Brundage, *Medieval Origins*, 423. ⁶² Bellamy, *Criminal Law and Society*, 55.

⁶³ *Statutes of the Realm*, vol. 1 [1235–1377] (1810 ed.), 258 (2 Edward III item 3).

⁶⁴ See Arlinghaus, *Inklusion-Exklusion*, 382–3, on frequent prosecution of litigants’ and lawyers’ for “undisciplined behaviour” in late medieval Cologne, in violation of regulations forbidding violence or offensive speech in court.

⁶⁵ Putnam, *Place in Legal History*, 130, 147–8; and Green, *Crisis of Truth*, 411, note 12.

⁶⁶ See Green, *Crisis of Truth*, 198 (and generally 198–205); and for Dick the Butcher, Shakespeare, *Henry VI, Part 2* [4.2].

⁶⁷ On the attack on German public and oral traditions of adjudication, see Leue, *Der mündliche öffentliche Anklage-Prozeß*, 65; and Maurer, *Geschichte des altgermanischen . . . öffentlich-mündlichen Gerichtsverfahrens*, 306–62.

whose 1507 criminal code for Bamberg (the “*Bambergensis*”) became a model for the codes that followed.⁶⁸

Among the *Bambergensis*’ prescriptions was a radical reformation of the *Rechtstag*: the law days during which accused and accusers routinely confronted one another in open court in highly emotional, often dramatic encounters.⁶⁹ Some of these events were probably large, festive, unruly affairs like many other medieval “law days.” Schwarzenberg was determined to “bring order” to the *Rechtstag*’s current disorder and eradicate “unseemly abuses”: not only to squelch courtroom drama but also to eliminate the “superfluous questions” that he said took up most of the proceedings: questions that (he charged) serve “neither truth nor justice and in fact delay and prevent the law” from taking its proper course.⁷⁰

A description of one public *Rechtstag* in Ulm in 1457 gives a vivid sense of what he was protesting.⁷¹ Accusing seven men of theft, one Andrees Widenmann came into court with the stolen property as evidence. He also brought with him a team of oath-takers and the former mayor, who was to act as his lawyer. Not to be outdone, the alleged robbers brought in a judge as their lawyer. The judge acting for the defense insisted that each of the seven defendants had a right to his own lawyer in court, demanded *habeas corpus* for his clients, and asserted that they would not answer the charges until they were freed from their chains (a request that the court granted, against the plaintiff’s protests). The defense had a substantive argument: there had been no theft because his clients had justifiably taken the property in a feud. But he also had many procedural objections: there were only eleven judge-assessors rather than the twelve required for a quorum; one of the oath-takers had been convicted of manslaughter so his oath was legally void; the plaintiff had bribed the oath-takers so none of their oaths were valid; the presiding judge did not have authority to issue capital sentences; moreover, he had, against strict rules, failed to remain seated throughout the proceedings. The judge acting for the defense demanded more time for his clients to acquire further proofs of their innocence and bring in more people to testify to their reputation. Ultimately, the trial judges ruled in favor of Widenmann, but the decision was a close one, clearly due to the defense’s maneuvers.

In an attempt to eliminate such scenes, Schwarzenberg proposed a radical reform. Instead of a three-day proceeding, the *Rechtstag* was to become a one-

⁶⁸ Schwarzenberg, *Bambergensis* (short for *Bamberger Halsgerichtsordnung* or *Constitutio Criminalis Bambergensis*).

⁶⁹ Provisions on the *Rechtstag* in Schwarzenberg’s *Bambergensis* include art. 91–4, 107, 123, 217, 224, 236–9, 256, https://de.wikisource.org/wiki/Bambergische_Peinliche_Halsgerichtsordnung (accessed June 30, 2021).

⁷⁰ “[O]rdnung zubringen” (Schwarzenberg, *Bambergensis*, fol. 3v [“Die vorrede dis Buchs”]). “Item nach dem auch an uns gelangt ist das bißher an etlichen unsern halßgerichten vil uberflussiger frage gebraucht sindt die zu keiner erfahrung der warheyt oder gerechtigkeit not sein sunder alleyn das Recht verlongern und verhindern Sölche und andere unzimliche mißbreuch” (*Bambergensis*, fol. 32v [art. 121]). The word “*ordnung*” appears seventy-five times in the text.

⁷¹ Narrated in Dülmen, *Theatre of Horror*, 34–6.

day show: a public trial-and-sentencing proceeding plus punishment rolled into one. The revamped *Rechtstag* would retain many of the features of the traditional sentencing proceeding: at the “customary time of day,” with the ringing of “the customary bells,” the court would “assemble itself for judgment according to the dictates of good custom,” with the whole town assembled to watch.⁷² However, the trial portion would, in fact, be a mock trial. The judge and *Schöffen* (lay judges) would have already determined the verdict in advance behind closed doors, but all the participants would *pretend* that the trial performed for the spectators involved a genuine weighing of the evidence.

Seeking order, the *Bambergensis* “prescribed and appointed” every element, specifying not merely the general outlines but scripting every word.⁷³ The presiding judge, with “his staff in his hands,” was to first tell his co-judges to sit down and then himself sit, ordering everyone assembled not to move till the end.⁷⁴ Participants were to recite their parts exactly as specified: no improvisation allowed. (Blanks allowed one to fill in the names of parties and crimes: “A” for accuser, “B” for criminal, “C” for crime, and so on.) Even the advocates were to recite from scripts:

[*Prosecution*]: ‘My Lord (name of judge): A, the complainant, complains against B, the culprit, who presently stands before the court on account of the crime of C which he committed . . .’ [etc.]

[*Defense*]: ‘Lord judge: B, the accused, . . . prays that on the basis of his revealed innocence he be declared innocent with final judgment and law, . . . and that the complainant, . . . be bound to final process before the court . . . regarding punishment and compensation . . . [etc.]’⁷⁵

The judge and *Schöffen* were then to appear to confer and write down their judgment but (as John Langbein writes) “this is pantomime,” since they would have already met and decided on the verdict: guilty.⁷⁶

⁷² Schwarzenberg, *Bambergensis*, fol. 28r [art. 95]. Like the sixteenth-century codes for Lübeck, Württemberg, and Wurtzberg, the *Brandenburgensis* [art. 98] and *Carolina* [art. 94] specify that the reformed *Rechtstag* is to be public.

⁷³ Schwarzenberg, *Bambergensis*, fol. 28r [art. 95], fol. 33r [art. 123].

⁷⁴ Schwarzenberg, [Bambergensis], fol. 28r [art. 95].

⁷⁵ I quote here from the clearer version in the *Constitutio Criminalis Carolina*, sec. 190–1, 90 (translated in Langbein, *Prosecuting Crime*, 289–90, 302), which mostly reproduces the *Bambergensis*’ provisions. For a discussion of the relationship between the *Bambergensis* and *Carolina*, see Langbein, *Prosecuting Crime*, 163–5 (the “Carolina is effectively a version of the *Bambergensis*” [164, note 96]). Since the advocates could be selected only from among the *Schöffen*, they were among those who had already collectively condemned the defendant.

⁷⁶ Langbein, *Prosecuting Crime*, 190. Langbein comments: “One would be hard pressed to describe the Carolina’s final phase of public condemnation and execution without resort to the language of the theater. For the *Rechtstag* is theater” (188). See also Schild, “Der ‘entliche *Rechtstag*’ als das Theater des Rechts.”

Scholars have tended to interpret the reforms in the *Bambergensis* and its imitators, most notably the influential *Constitutio Criminalis Carolina* (1532), as instances of the more general transformation of accusatorial procedure into “*Inquisitionsprozess*.” (Never mind that that transformation was supposed to have already taken place in the twelfth century).⁷⁷ Many courts do seem to have implemented such reforms in one form or another. But if early sixteenth-century codes like the *Bambergensis* and *Carolina* aspired to universal law reform in the German-speaking world, they failed. For at least through the seventeenth century, accusers and accused—along with the parties’ relatives, witnesses on both sides, lawyers, and sometimes audiences—continued to gather in courts for *Rechtstage*: genuine multi-day trials in which both sides argued their claims and counter-claims; victims and their relatives voiced their anger; emotions ran high.⁷⁸

Even for courts that did try to follow the prescriptions of the new codes, visions of by-the-book performance—with no one including the defendant ever going off-script, perfect crowd docility, and the judge and Schöffen “seated in a dignified manner until the end of the proceeding”—were clearly wildly aspirational. The *Carolina* seems to recognize that audiences could not stay dignified and docile for too long, for it includes a kind of release valve in the middle of the scripted ceremony. At some point in the proceedings, “there shall be maintained (where it is customary) the practice of putting the culprit publicly in the market or square for some time in stock, pillory, or iron collar.”⁷⁹ This concession to custom is a huge one. For it invites the spectators to come to the *Rechtstag* with hands and pockets full of rotting missiles and to begin pelting the “culprit” with slop and insults, perhaps even before the judge has given the order to rise. Misfires would be inevitable (“your honor, that dung ball was not meant for you!”) And calming a crowd so inflamed would not have been easy. There are hints that, if there was not already trouble, there would be trouble ahead. For after the judge was to break his staff ceremonially, marking the moment in which he was to “turn over the

⁷⁷ See above, notes 11–12.

⁷⁸ I am paraphrasing the summary of later sixteenth- and seventeenth-century *Rechtstage* in Pohl-Zucker, *Making Manslaughter*, 232–3 (and see 227, 230, 243, 246, 249, 255, 258, and throughout). To mention just a few such instances, in one 1608 case in Nuremberg in which an alleged thief faced the gallows, the accused’s parents, siblings, many friends, a priest, and the representatives of five different parishes showed up for the *Rechtstag*. In a 1725 case, the defendant’s wife and daughter, the town priest, and seventy parents of children whom the defendant had sponsored appeared at the trial and pleaded for mercy on their knees. (Dülmen, *Theatre of Horror*, 29–30, describes both cases.) In a case from 1669/70, the University of Tübingen’s criminal court insisted (against the wishes of the father of the accused) that the trial be held in public, though the university agreed to hold it earlier in the day to make it less public. (Pohl-Zucker, *Making Manslaughter*, 107–8.) In a 1661 case, there was “nothing to hear [in court] but great lamenting, bewailing, moaning and crying” and “great sighs and lamentations” (quoted in Pohl-Zucker, 243, describing “the first *Rechtstag*” in a 1661 manslaughter case, which the slayer used for the “public staging of the reconciliation process”). Statutes continued to specify that trials were to last three days. When courts combined the last two days (as many did), what they gave up (at least in seventeenth-century Zurich) was the elaborate sentencing ceremony, *not* the public trial. See Pohl-Zucker, *Making Manslaughter*, 249.

⁷⁹ *Carolina* [art. 82, 85], in Langbein, *Prosecuting Crime*, 288–9.

miserable fellow to the executioner,” he was to “command the executioner by his oath faithfully to carry out the judgment delivered,” then “rise from the court and see to it that the executioner carri[e]d out the sentence pronounced under adequate security conditions.” The next provision, for the public at large, suggests why “adequate security conditions” were necessary: “the executioner is under no circumstances to be hindered”; in other words, a member of the crowd was all too likely to try to hinder him.⁸⁰

Heretics and Witches: Staging Heterodoxy in the Fifteenth-Century Courtroom

Performing Radical Theology as Legal Counter-Narrative: The Trial and Defrocking of Jan Hus (1415)

Chapter 5 will suggest the extent to which reformers like Basin and Schwarzenberg failed in their attempts to script trials, control crowds, and get rid of grand-standing lawyers. What follows is a closer look at a trial that ended in what was supposed to be a solemn, stately, scripted sentencing proceeding (a *Rechtstag* of sorts): the trial of the Czech priest Jan Hus for heresy at the Council of Constance in 1415.⁸¹ If we were seeking a paradigmatic example of the medieval inquisitorial trial as these are often portrayed—a secret proceeding in which an omnipotent Inquisitor subjects a prostrate victim to pitiless torture, and protest is futile—the Hus trial might at first seem like an ideal candidate. It was an ecclesiastical trial dedicated to carrying forward the Inquisition’s central project—rooting out heresy—and Hus looked to many like a very dangerous heretic. Alternatively, as a trial in a papal court, one might perhaps imagine it as something like the Rota trials that Basin initially portrays: orderly, ceremonial, scripted performances before a group of judges “organiz[ed] by rank,” who quietly pass their tablets and then announce their judgments to the assembly. But the Hus trial was nothing like either of these. What actually happened there reminds us how great the gap was between ideal models like Basin’s or Schwarzenberg’s and real trials. It offers just one example of how utopian it was to portray the Pope and Emperor ruling together in cozy harmony. And it also suggests the power of an accused heretic to rewrite the meaning of his trial performatively, even after condemnation had become certain.

⁸⁰ Carolina [art. 96–7], in Langbein, *Prosecuting Crime*, 292.

⁸¹ Several descriptions of the trial survive, including three eyewitness accounts that, together, provide a level of detail unusual for medieval trials: one by Constance citizen Ulrich Richenthal; and two by the Hus devotees Petr of Mladoňovice and Jan Bradaty. I have relied primarily on these, on Provvidente, “Hus’s Trial,” and on Thomas Fudge’s extraordinarily comprehensive and learned account (*Trial of Jan Hus*). I am grateful for his helpful comments on my discussion.

Already known for his fiery sermons, Hus began defending the teachings of John Wycliffe early in his career, attacking the sale of indulgences, defending the right of ordinary people to partake in certain rites, and condemning priests for their immorality: “but many of you are like dogs who should be put out of the house of God.”⁸² Such declarations did not endear him to his enemies but helped win him a huge following, which of course made him more dangerous. The Church began lodging a series of formal accusations, excommunicated him (four times), and finally, in 1414, demanded that he appear at the Council of Constance, one of whose principal aims was to crush the various heretical movements springing up across Europe.⁸³ Promised safe conduct, Hus made his way to Constance. There, he lived comfortably in a boarding house until Pope John XXIII suddenly had him arrested and imprisoned. Eventually, the Council put him on trial, in a series of highly public proceedings.⁸⁴

The refitting of the Cathedral of Our Lady—where the final day of the trial was to take place—reflects the Council’s aspirations.⁸⁵ Carpenters built a magnificent new high altar with “handsome throne[s]” for the Pope, one positioned so that “he might see every man clearly, down into the cathedral and everywhere,” according to Constance burgher Ulrich Richenthal. They created matching thrones near the Pope’s for Sigismund—“King of the Romans and Hungary” and soon-to-be Holy Roman Emperor (representing the secular power)—and the Grand Master of Rhodes (representing the sacred). They created facing tiers of seats in the nave, with seating arrangements very similar to those for trial of the Duc d’Alençon, descending by rank from princes and cardinals to the lawyers and clerical workers in the ecclesiastical beehive: “clergy, clerks, proctors, and men of that kind” (as Richenthal describes them).⁸⁶ The arrangement stood for unity, authority, and order, as well as Church hierarchy, which heretics like Hus had challenged. The Cathedral itself evoked the divine presence: it was to be a house of judgment where the Lord’s most holy representative, the Pope, could, like God, see all and judge all.

Unfortunately, the Pope was not very godlike in 1415. For there were by 1415 not two but three rival popes: Pope John; Pope Benedict XIII in Avignon; Pope Gregory XII in Rome. Sigismund had called the Council to end the papal schism. Forced to attend, perhaps Pope John hoped that Sigismund would end up getting rid of his papal rivals. But the Council decided that, of all the “wicked

⁸² Quoted Fudge, *Trial*, 117. For biographical details, see Spinka, *John Hus*.

⁸³ For an account of the cycles of accusation and excommunication between 1409 and 1414, see Fudge, “O Cursed Judas,” 59–70.

⁸⁴ See Fudge, *Trial*, 182–7, 240, 245, 270–85.

⁸⁵ On the refitting, see Petr of Mladoňovice (hereafter, Mladoňovic), *Relatio*, 225; Richenthal, *Chronik*, 92–3; and Fudge, *Trial*, 277–8.

⁸⁶ Richenthal, *Chronik*, 92–3.

popes,” John was among the wickedest, and—only a week before the start of Hus’s trial—deposed him.⁸⁷ He had in fact already fled Constance disguised as a laborer.⁸⁸ At one point, King Sigismund accused Duke Frederick of Austria of having carried off the Pope himself, despite the fact that the King had warned him: “[d]o not do it!”⁸⁹ Skirmishes followed. Eventually, now-Antipope John was dragged back in chains and put on trial. (As Edward Gibbon put it wryly, “the most scandalous charges were suppressed; the Vicar of Christ was only accused of piracy, murder, rape, sodomy and incest.”)⁹⁰ Pope Gregory had taken his place, but just two days before Hus’s final sentencing in the Cathedral, Gregory abdicated. Those who had ordered the refitting of the Cathedral perhaps thought only a miraculous *coup de théâtre* could restore the credit of the papacy: the new-and-improved Cathedral was to be its backdrop. The Pope’s magnificent raised throne—from which he was to gaze down like God—was still there. But it was now *sans* Pope. (The papacy remained unfilled for another two years.) So much for unity, authority, and order.

The Hus question stirred up further dissension. Some authorities insisted on his guilt, others on his innocence, including the principal Inquisitor. Many defended Hus vigorously.⁹¹ The issues were technical, and passionately debated. Some who thought him guilty nevertheless did not want to see him condemned, and repeatedly visited him in prison, begging him to recant. The conflict was palpable in the streets. There were pro- and anti-Hus placards posted all over town, springing up again as soon as they were torn down.⁹² Given this atmosphere of conflict and chaos, it is perhaps no surprise that the trial itself was far from a solemn, orderly, perfectly choreographed event, as those who staged it might have wished. Guards armed with swords, crossbows, and long axes policed the entrance and exit to the Franciscan monastery refectory where the trial initially took place, trying to keep out rabblers. But many had asked that the trial be “public,” and hundreds of people managed to crowd through the doors: high Church officials, nobility, proctors, secular lawyers, notaries, theologians, priests (the groundlings crowded

⁸⁷ For “wicked popes,” see Mladoňovic, *Relatio*, 205–6 (quoting an unnamed monk at the trial). On the Council’s struggle to maintain its authority as the court of highest jurisdiction during this period (its claim of temporary *plenitudo potestatis in foro exteriori*), and its use of heresy sentences to secure this authority, see Providente, “Hus’s Trial,” 254–6, 286. My discussion of these events draws primarily on Spinka, *John Hus*, 219–57; and Richenthal, *Chronik*, 115–27. On Pope John, the schism, and the intrigues in the Council generally, see Greenblatt, *Swerve*, 19–21, 155–81.

⁸⁸ Richenthal, *Chronik*, 115–19; Mladoňovic, *Relatio*, 120–1; Spinka, *John Hus*, 245 (for various accounts of his disguise).

⁸⁹ Richenthal, *Chronik*, 116.

⁹⁰ Gibbon, *Decline and Fall of the Roman Empire* (1993–94 ed.), 6:603.

⁹¹ Mladoňovic, *Relatio*, 142–4 (on the Inquisitor). Mladoňovic also notes that the bishop of Nezero and barons of the kingdom of Bohemia wrote letters defending Hus, demanding a fair public hearing, and insisting that he be freed (*Relatio*, 151–4). And see Providente, “Hus’s Trial,” 264, 276.

⁹² Cerretano, *Journal*, 478; and see Fudge, *Trial*, 249.

onto temporary seats).⁹³ All was noise and chaos: “voice[s] clamored,” reports eyewitness Petr of Mladoňovice. Everyone “continued to shout simultaneously”; “tumult” prevailed.⁹⁴

The Council had denied Hus’s request for a lawyer. (He would later assert that Jesus was his lawyer.)⁹⁵ In the letters leading up to the trial, he repeatedly expressed his fervent wish to defend himself publicly: “to be heard [and] examined,” not “in secret, but at a public hearing” (119; and see 145–6, 159–60). “I desire that my body be consumed by fire,” he writes, “rather than that I should be so iniquitously kept out of sight by them” (164). If only he could appear at the trial, he wrote, “I imagine that many who shout would turn dumb!” (160). The Council was clearly not planning to allow him to appear in court.⁹⁶ But in a dramatic intervention on the first day of the trial, two princes charged in on horseback to report that King Sigismund had demanded that the Council allow Hus to defend himself. Hus was summarily rushed from his prison cell to the courtroom. The Council, it seems, was not fully in control.⁹⁷

Anti-Hus Council members had tried to ensure that the guards would admit only Hus’s opponents during the three days of hearings in the refectory.⁹⁸ And, indeed, of the “many [who] shouted,” the anti-Hus contingent was loudest. “I [was] often overwhelmed by [the] clamour,” writes Hus. “[W]hat mocking, jeering, and reviling arose against me in that assembly[!]” (210). In Mladoňovic’s view, “the so-called hearings” were “in truth not hearings but jeerings and vilifications.”⁹⁹ Hus “turned here and there, now to the right then to the left, then to the back, responding to those shouting and attacking him”: “See! He speaks captiously and obstinately”; “[I]leave off your sophistry and say ‘Yes’ or ‘No’” (166, 214, 166)! At one point, a monk dressed in a black cape covered in shiny black satin suddenly rose up behind him and cried out, “Lords, see to it that this Hus does not deceive himself as well as you” (205–6)! At another point, a “fat priest, sitting in the window, [clad] in an expensive tunic . . . shouted: ‘Do not

⁹³ Mladoňovic, *Relatio*, 222, 164, 167–8; Fudge, *Trial*, 278. An additional thank you to Thomas Fudge for producing a detailed calculation of likely audience size at both the hearings (100–200 people) and the sentencing proceeding (500–700 people) (email communication). Richenthal writes that twenty-nine cardinals, over three hundred abbots, bishops, and archbishops, and scores of secular dignitaries, lower-order members of the clergy, lawyers, secretaries, notaries, and others attended the Council (*Chronik*, 92–3). Given the interest of the trial, many of these must have attended the hearings as well.

⁹⁴ Mladoňovic, *Relatio*, 166, 194. All in-text page references for quotes or views I attribute to Mladoňovic here and below refer to the *Relatio*.

⁹⁵ Fudge, *Trial*, 251–2; Hus, *Letters* (1972 trans. Spinka), 145–6. All in-text page references for quotes or views I attribute to Hus here and below refer to Spinka’s translation of the *Letters* unless otherwise noted.

⁹⁶ See Hus, *Letters*, 132. ⁹⁷ See Mladoňovic, *Relatio*, 165; Fudge, *Trial*, 266.

⁹⁸ Fudge, *Trial*, 11; Mladoňovic, *Relatio*, 167–8, 221–2 (noting that when the guards left, “our [friends] approached the window”: presumably the guards had kept them out).

⁹⁹ Mladoňovic, *Relatio*, 163. In this paragraph, in which I evoke the mood rather than following precise chronology, parenthetical citations are to Mladoňovic unless otherwise noted.

permit him to revoke, because even if he should revoke, he will not keep it” (217). When Hus grew silent, writes Mladoňovic, the crowd cried: “Look! Since you are silent, it is a sign that you consent to these errors!” (217). The “whole Council shouted at me,” writes Hus: they all “shouted at me like the Jews [against] Jesus.”¹⁰⁰

And yet, not “all,” either on the Council or in the room, were hostile. Some dedicated Hus supporters were there: Baron John of Chlum, Baron Wenzel of Duba, Jan Bradaty, and Mladoňovic himself.¹⁰¹ Seeking to portray Hus as a martyr attacked on all sides, Mladoňovic reports only the “jeerings and vilifications.” But the jeerers got their fair share of jeering too: when one attacker “began a noisy speech,” reports Hus, “the crowd shouted him down.” Both the Council and Sigismund (who appeared at some point in the proceedings) also sometimes intervened, for the court ordered another attacker “to keep still” and he cried out: “Beware, lest the Council be deceived.”¹⁰² Far from silencing Hus, the Council repeatedly allowed him to grab the floor, which he did with gusto, using the courtroom as a cross between a pulpit and a university disputation podium. In his account, at least, he invariably emerged victorious. A Cardinal, reportedly “the highest in the Council,” rose to the attack, writes Hus, but he quickly revealed his utter “lack of knowledge of the argument,” and was soon reduced to silence. Immediately, “an English doctor began to argue, but he similarly floundered.” Another English theologian then rose to his feet only to “[fail] in the argument” (210). After another man began to “argue noisily” only to be shouted down by the crowd, Hus stood up and cried, “Argue boldly; I shall gladly answer you,” but (he writes) “he likewise gave it up and ill-temperedly added: ‘It is a heresy!’” (210). “They did not dare to oppose me with Scripture,” he declared victoriously (196). Far from trembling before the Council, Hus scolded its members: “I had supposed that there would be greater reverence, goodness, and better order in this Council than there is!” he chided. “You spoke more humbly at the castle,” the presiding Cardinal observed. “[A]t the castle,” Hus retorted, “nobody shouted at me, and here all are shouting!” (196). After the first day of the trial, he reported with triumph: “Two articles are already deleted [!]” (159).

Hus did not ultimately win his case. The Council found him guilty, and spent roughly a month preparing for the culminating event. This was to be, effectively, an ecclesiastical version of a *Rechtstag*: a spectacular, public, ceremonial, scripted replay of the trial leading to the climactic drama of sentence, denunciation, and punishment. A central element of the punishment was a formal defrocking: Hus

¹⁰⁰ Hus, *Letters*, 166, 159.

¹⁰¹ Mladoňovic, *Relatio*, 221–2; Provvidente, “Hus’s Trial,” 283. On Jan Bradaty’s presence as an eyewitness, see Fudge, “Jan Hus,” 48–52. Hus describes “those gracious lords . . . who, despite all shame, stood bravely by the truth—the Czechs, Moravians, and the Poles; but especially Lord Wenceslas of Dubá and Lord John of Chlum,” noting that “King Sigismund himself permitted them to be in the Council” (*Letters*, 287, and see 294).

¹⁰² Hus, *Letters*, 210.

would, in traditional fashion, be ceremonially stripped of his priestly garments before being taken to the execution site.¹⁰³ The event, in the magisterially refitted Cathedral, would display the “reverence, piety, and discipline” so notably absent in the previous proceedings. To ensure such discipline, the Council passed a resolution of silence. There were to be no “noise[s] made with mouth, hands or feet,” no “signs, words or gestures” either affirming or protesting, with severe penalties for infractions: excommunication, fines, two months in prison, and more.¹⁰⁴ But—unsurprisingly, given that there were now well over five hundred spectators—chaos again broke out: shouting, jeering, precisely the kinds of rude “noise[s] made with mouth, hands [and] feet” that the resolution had sought to suppress. One scholar has (perhaps extravagantly) described the crowd as “a howling mob.”¹⁰⁵

In the midst of this chaos was a sort of still life. High on a pedestal that stood on an elevated table in the center of the Cathedral, the Council had carefully arranged the objects for Hus’s defrocking: “the vestments and the chasuble for the mass and the sacerdotal garments,” as Mladoňovic describes them, along with a chalice (225). Positioned for maximum visibility, this looming centerpiece remained an ominous presence throughout what must (for some) have been an excruciatingly long morning. It began with Mass at 6 a.m., followed by a long sermon on Romans 6:6, the reading of a series of legal formulae, and a detailed review of every event in the trial from 1410 to the present.¹⁰⁶ For most of the Mass, the main attraction—Hus himself—was absent. In his absence, the display on the pedestal stood in as a surrogate. Sarah Beckwith has described the Mass as a “visual theophany”: a palpable manifestation of God.¹⁰⁷ Here, an iconic still life echoing that visual theophany but uninhabited stood in wait. As an archbishop led the assembly in the Mass, the parallel would have been dramatically visible: in the central apse, the priests performing holy Mass garbed in vestments, chasuble, and sacerdotal garments, holding the sacred chalice; on the pedestal (directly in line with the altar and partially blocking it from view), a still life of their ghostly doubles, prepared for an anti-Mass of sorts.

Whether or not the trial’s organizers deliberately staged this parallel, they certainly staged Hus’s entrance: *after* the Eucharist (so he would not receive the blessing of the Sacrament); during “Concluding Rites.” Brought through the Cathedral, he was made to mount the elevated table so that he would be visible to all. This arrangement—Hus displayed on high with the garments prepared for

¹⁰³ On the defrocking, see Fudge, *Medieval Religion*, 201–19. Fudge notes that Hus’s defrocking followed traditional defrocking practices and, generally, practices of stripping and shaming malefactors: see 201–26 (the “Stripping and the Shaming of Heretics”).

¹⁰⁴ Fudge, *Trial*, 279.

¹⁰⁵ Lea, *History of the Inquisition*, 2:485. (Fudge justifiably characterizes Lea’s description as “overwrought” [*Trial*, 282], but it does capture something of the mood.)

¹⁰⁶ Fudge, *Trial*, 279–80.

¹⁰⁷ Beckwith, “Ritual, Church, and Theatre,” 76.

his defrocking—served as a tableau illustrating the sermon that followed. The Bishop who delivered it focused on one line in Romans 6:6: “the body of sin [must] be destroyed, to the end that we may serve sin no longer.” No one could miss the application to the figure before them: the man on the table, who stood throughout the sermon as “the body of sin” that the Council had to destroy.

Seven bishops performed the defrocking itself: the climax of the proceedings.¹⁰⁸ As they removed each of the vestments, “they pronounced in each instance an appropriate curse,” writes Mladoňovic: “‘O cursed Judas, because you have abandoned the counsel of peace and have counseled with the Jews, we take away from you this cup of redemption’” (120).¹⁰⁹ The withdrawal of “this cup of redemption” signified performatively that Hus could not hope for salvation: like Judas, he could not be redeemed. Hus’s heresy had re-enacted Judas’s betrayal, and that of the Jews generally: in betraying God, Hus had, effectively, joined the Jews in re-crucifying Jesus. The withdrawal of the cup thus also stood for his expulsion from Christendom, an expulsion that the bishops enacted through a performative utterance as they took the cup, in a moment that Jan Bradaty reports: “[b]y taking the chalice from you,” they declared, “[we] separate you from the community” (67b). The “paper crown” that the bishops placed on his head after the defrocking reiterated this message. Its inscription read “Heresiarch” (“Arch-Heretic”) and (in Bradaty’s description) it had “three revolting demons drawn on it” (68a). As they placed the paper miter on Hus’s head, they declared: “We commit your soul to the devil!”¹¹⁰ The miter’s burning devils stood for the fact that Hus was destined to burn not only at the stake but forever in hell, like Judas and the Jews. The nonverbal narrative was unequivocally clear.

There was only one problem (a perennial theatrical problem): costume changes. The vestments and chalice waiting in the still life needed to go on before they could come off, and before they could go on, the Bishops had to get Hus out of his clothes. Hus, at least, managed to find some sardonic humor in the situation, for, writes Richenthal, when they first “dressed him in a priest’s habit and [then] took it off again, . . . he made only a mock of that.”¹¹¹ Bradaty’s note on the undressing and dressing of Hus in preparation for the defrocking is terse: “in the middle of the church they stripped him of his own clothing, dressed him in his priestly

¹⁰⁸ Mladoňovic, *Relatio*, 229. Richenthal identifies these instead as “two cardinals, two bishops, and two bishops-elect” (*Chronik*, 132).

¹⁰⁹ In Jan Bradaty’s account: “because you have exercised the priesthood unworthily in the manner of Judas the traitor,” by “taking the chalice from you we do this day degrade, disqualify and separate you from the community of the faithful of Christ.” “Passio” in Fudge, “Jan Hus at Calvary,” 67a–68a. Hereafter, citations to quotes I explicitly attribute to Bradaty refer to this text (referencing the double columns with the “a” and “b” versions of the text that Fudge provides). As Fudge notes, some of the defrocked garments had specific significance: “the stole is removed, meaning such a one can no longer be regarded as a servant of the Lord; . . . the chasuble is taken away, reinforcing his removal from the sacerdotal functions of the church; [the] rest of the priestly vestments are stripped from the prisoner, indicating that he has forfeited every claim to the priesthood” (Fudge, *Medieval Religion*, 204).

¹¹⁰ Mladoňovic, *Relatio*, 230.

¹¹¹ Richenthal, *Chronik*, 132.

vestments, and placed a chalice in his hand” (67a).¹¹² But the process cannot have been as streamlined as this description suggests. In order to defrock Hus, the seven bishops had to first undress Hus, then dress him, then undress him again. All while standing on a table (at least at first). Since the donning of priestly vestments did not normally take place in front of the congregation, the public dressing would have appeared as extraordinary as the undressing.¹¹³ Mladoňovic’s reference to the “vestments,” “sacerdotal garments,” “alb,” “stole, . . . chasuble, and others” (225, 229–30) suggests that the dressing was quite laborious. If these “sacerdotal garments” included the traditional ones (as seems likely), dressing Hus required the bishops first to place an alb (a big white gown) over his head and get his arms through both sleeves, then wrap an amice around his head and neck, then drape a stole across his chest and around his back, then tie a cincture around these garments and knot it, then rest a maniple on his forearm in such a way that it would not accidentally drop off, then place a large chasuble over his head without knocking off anything else, then pull the amice back over the chasuble and fold it into a high collar. The chasuble is a stiff, bulky cape, shaped like a giant triangle that makes one feel as if one is wearing a “small house” (hence its name: *casula*).¹¹⁴ It must have been challenging for seven bishops standing on a table to dress a priest in a small house. They decided to bring him down from the table to finish the job. However, once he was fully dressed in the priestly garments, he rose (explains Mladoňovic), “and ascending the table before which he was being dressed, [he] turn[ed] toward the multitude” (229).

The bishops did not prevent Hus from ascending the table. If the frocking was awkward, what really mattered was the *defrocking*: the table would serve as a stage, displaying it as visibly as possible. But Hus was determined not to waste the opportunity to use the table as his own stage—a stage that would help him, with all eyes on him before this vast “public audience,” to recast the meaning of the ceremony. Throughout, he had portrayed himself as not Judas but Jesus. As the bishops had dressed him in the alb, he had declared: “My Lord Jesus Christ, when He was led from Herod to Pilate, was mocked in a white garment.”¹¹⁵ Now, fully dressed as a priest, holding the sacramental chalice, he behaved (as Mladoňovic puts it) “as if he were about to celebrate the mass” (229): playing the role of priest-as-Christ, a double role already inherent in the Mass. As the priest donned the sacerdotal garments, he ceased to act as a mere man and instead acted in the person of Christ himself. Wearing the chasuble usually adorned with a large

¹¹² At one point, Mladoňovic suggests that Hus did the dressing himself, but just below describes Hus as “being dressed” by the bishops before the table (*Relatio*, 229), as do the other sources (see Bradaty, “Passio,” 67a; and Richenthal, *Chronik*, 132).

¹¹³ See Miller, *Clothing the Clergy*, 79, 174, and generally on priestly garments (with thanks to Maureen Miller for confirming that in the Western Church priests normally donned their vestments in the sacristy before Mass).

¹¹⁴ See Miller, *Clothing the Clergy*, 57, on Isidore’s etymology of “chasuble”: “little house.”

¹¹⁵ Mladoňovic, *Relatio*, 229. For Christ in His white garment, see Romans 6:11.

crucifix, the body of the priest took on the cross that Jesus bore. The purple chasuble recalled the purple vestment in which Pilate's soldiers dressed Jesus as they put the crown of thorns on his head (as well as recalling the Blood).¹¹⁶ In the Mass, Amalarius of Metz had explained, "the priests resemble Christ, as the bread and liquid resemble the body of Christ."¹¹⁷ Resemblance here was not *mere* resemblance but the sign of the miraculous metamorphosis: the Mass did not merely represent the Passion but *was* the Passion. In the figure of the priest, the crucifixion took place anew each time. One representation of the defrocking (fig. 4.4) tellingly portrays not just a cross but a crucifixion scene on Hus's chasuble: Hus and the crucified Jesus are one.¹¹⁸ Elevating the chalice—the very vessel Jesus had held at the Last Supper—Hus may have appeared to be actually performing the Mass. In the Mass, the chalice contained the Blood and thus its



Fig. 4.4 The crucified Christ superimposed on the figure of Jan Hus during his defrocking ceremony at the Council of Constance in 1415.

Ulrich Richenthal, *Das Concilium so zu Constanz gehalten ist worden* (1536), fol. 25v. Courtesy of Princeton University Library.

¹¹⁶ Mark 15:16–18; John 19:1–3.

¹¹⁷ Quoted Beckwith, "Ritual, Church, and Theatre," 76.

¹¹⁸ Richenthal, *Das Concilium so zu Constanz* (1536 ed.), fol. 25v.

elevation was a re-enactment of the resurrection. Having been, himself, elevated on the table and now elevating the chalice, at least for his followers Hus-as-Christ must have seemed to enact symbolically both Christ's resurrection and his own to come on the true Day of Judgment.

At the same time, raising the chalice was a protest. While the "cup" was never as important as the Host, access to it was a far more fraught political-theological issue.¹¹⁹ Once blessed, chalices were sacred: no one but a priest, deacon, or bishop was to touch them. While the priesthood struggled to retain control of the Eucharist, a growing cult of blood kindled protests demanding access to the chalice. As Jesus had declared, the "chalice" was "the new testament in my blood, which shall be shed for you" (Luke 22:20). Where the Body (in the Host) was at rest, the Blood was in motion: it "streamed copiously as if it had been pressed out of a ripe cluster of grapes."¹²⁰ Christ bled directly into the chalice. One could drink the blood, wash in it, drown in it. It was tears for His suffering, ink for inscribing His wounds in one's heart, anointing oil, sweet milk. Why should that ecstatically living blood be reserved to priests? The Council had charged Hus with a number of wild beliefs he did not hold (for instance, that he was the fourth person of the Trinity).¹²¹ But ultimately he did believe that anyone—priest or lay person—could participate in "the sacrament of the cup."¹²² The bishops' withdrawal of the chalice thus symbolically enacted a repudiation of the heresy Hus most unabashedly embraced. And, conversely, the cup in Hus's hands, as he held it up, signified defiance: not only would he partake, defrocked or not. He would offer it to the people.

"[T]urning toward the multitude" in this moment, declaring that to recant would be to "offend the multitude to whom I have preached" (in Mladoňovic's description [229–30]), Hus clearly envisioned himself preaching to that very multitude, there in the Cathedral. During the Bishop of Lodi's sermon, the tableau had represented Hus as the silent "body of sin." The image of him now—preaching to the multitude in the sacred garments of a priest and holding the chalice (one of the attributes of John the Apostle)—offered a revision of that tableau, perhaps serving as a kind of visual counter-sermon restoring the meaning

¹¹⁹ Duffy, *Stripping of the Altars*, 95–6; Rubin, *Corpus Christi*, 48–8, 291–2; Bynum, *Wonderful Blood*, 5, 93–6, 250, 258; Beckwith, *Christ's Body*, 30. With the intensification of struggles for priestly control of the Eucharist, the Church grew more adamant about this rule.

¹²⁰ From prayers on the Passion called "Fifteen Oes" (widely distributed in the fifteenth century); quoted in Bynum, *Wonderful Blood*, 12 (and, for what follows, see Bynum 11, 15).

¹²¹ He was also wrongly charged with sharing Wycliffe's remanence theory of the Eucharist: the view that the wine and bread remained in the substance of the Eucharist. On both, see Fudge, *Trial*, 282.

¹²² See *Letters*, 248 (and 140, 181–2) for Hus's discussion of lay participation in "the sacrament of the Lord's cup," and his insistence that his views on this point were not heretical. Excommunicated, he himself (according to John Foxe) "hath said mass all the ways between this and the city of Prague," asserting that "a man, being once ordained a priest or deacon, cannot be forbidden or kept back from the office of preaching" (Foxe, *Acts and Monuments* [1877 ed.], 3:437); and see Patapios, "Sub Utraque Specie."

of Romans 6.¹²³ There, far from urging that anyone's body be destroyed (sinful or otherwise), Paul actually mounts an attack on the "infirmity of [the] flesh": an infirmity that Hus (who was himself famously chaste) regularly denounced. The spectators cannot have forgotten Hus's attacks on the Council: an "iniquitous congregation"; a "great harlot"; an "abomination." It would take thirty years, he declared, for Constance to "rid itself of the sins which that Council has committed" there.¹²⁴ In fact, the Council had allegedly set up temporary brothels in the city (already notorious for its red-light district), and it was said that its members spent their days pursuing heretics and their nights pursuing whores.¹²⁵ In his list of those who attended the Council, Laurence of Březová includes not only "23 cardinals, 27 archbishops, 106 bishops" (and so on) but also "718 whores and public girls."¹²⁶ Cease to "obey the lusts" of "your mortal body" commands Paul, but "as you have yielded your members to serve uncleanness and iniquity, . . . so now yield your members to serve justice" (Romans 6:12, 19).

On the table stood Hus, preaching to the multitude while displaying his sanctified and holy body. At his feet were the bishops, who (everyone knew) spent their nights yielding their members up to uncleanness and iniquity in the Constance stews. The bishops must have felt that the table was a mistake after all, for they ordered Hus to descend.¹²⁷ Another mistake for, where everyone had been able to see him on the table in his priestly garments, now the defrocking was to be performed much less visibly. Moreover, getting off the table did not stop his mouth, and Hus had a very loud one.¹²⁸ "And where now is Pilate, who has removed the clothing of Christ from me?" he cried.¹²⁹ But he would "gladly embrac[e] the[ir] vilifications," for, he proclaimed (still in his loud voice), "I trust in the Lord God Almighty . . . that He will not take away from me the cup of His redemption; [I] hope to drink from it today in His kingdom."¹³⁰ And, as they placed the paper "Arch-Heretic" crown on his head, he "raised his hands and eyes to the sky" and cried out:

My Lord Jesus Christ on account of me, a miserable wretch, bore a much heavier and harsher crown of thorns Therefore I, a miserable wretch and sinner, will humbly bear this much lighter, even though vilifying crown for His name and truth.¹³¹

¹²³ Later images of Hus holding the chalice came to associate him iconographically with John (Bartlová, "Iconography," 329).

¹²⁴ Hus, *Letters*, 196, 203–4. ¹²⁵ Fudge, *Trial*, 275–6.

¹²⁶ Březová, *Origins of the Hussite Uprising*, 53.

¹²⁷ Mladoňovic, *Relatio*, 230. Mladoňovic does not explicitly say that the bishops ordered Hus to descend, but it seems highly unlikely that he would have chosen to descend at the moment he began addressing "the multitude" unless so ordered.

¹²⁸ Mladoňovic repeatedly refers to Hus's loud voice (*Relatio*, 226, 229, 230, 232).

¹²⁹ "Relatio de concilio Constanciensi," in Novotný, ed. *Fontes rerum bohemicarum*, 13.

¹³⁰ Mladoňovic, *Relatio*, 230.

¹³¹ "Relatio de concilio Constanciensi," in Novotný, ed. *Fontes rerum bohemicarum*, 13; Mladoňovic, *Relatio*, 230–1.

While Hus's final performance could not save him, the multitude of images that circulated in the century that followed his death often represented him during the defrocking in his full priestly garments, sometimes holding a chalice. Such images helped to inspire the vast proto-Protestant movement that spread throughout Eastern Europe in the period after his death: the Hussites, known in Czech as the *Kališníci*, or "Chalice People," who often wore the image of a chalice on their clothes, weapons, or banners.¹³² In many of these images, Hus stands in the likeness of Jesus, bringing another verse from Romans 6 to mind: "in the likeness of His death, we shall be also in the likeness of His resurrection," and "death shall no more have dominion" (6:5, 6:9).

*Spitting at the Inquisitor: Helena Scheuberin, Heinrich Institoris,
and the Innsbruck Witch Trial (1485)*

If Hus's performance did not change the verdict, making a scene in court or outside of it often could, as in the case I turn to now. Some time in late summer 1485, passersby saw an encounter in the streets of Innsbruck: the newly arrived Heinrich Institoris—"Inquisitor of Heretical Depravity" (as he described himself)—in a showdown with a local Innsbruck citizen, Helena Scheuberin.¹³³ Institoris had just come from Ravensburg, where he had successfully prosecuted a number of local women for witchcraft, condemning two to be burned at the stake.¹³⁴ (He would soon after publish the *Malleus maleficarum* or *Hammer of Witches* [1486]: arguably the most influential witchcraft treatise of all time).¹³⁵ Rolling into Innsbruck in late July, he immediately began posting papal bulls that declared his absolute authority to prosecute heresy, preaching against "the Heresy of Witches," and poking into local gossip.¹³⁶ As he walked by Scheuberin that day, according to him she began to "harass [him] with . . . rebukes" (197). Indeed, he complains, "I had scarcely been in town for three days" when she began her "constant rebukes" (197). When he responded by refusing to "acknowledge her" (197), shockingly, "she spat on the ground, publicly uttering these words: . . . 'Fie on you, you criminal monk! To you the falling sickness [epilepsy] should [come!]" (197).

¹³² See Fudge, *Medieval Religion*, 218.

¹³³ Mackay, ed., '*Unusual Inquisition*' (hereafter, "Mackay"), 149, 197. My discussion is indebted to Mackay's invaluable organization and translation of the documents from the Ravensburg and Innsbruck trials and his detailed notes (Mackay, ed., '*Unusual Inquisition*'), as well as to his collection of the original Latin and German documents (Mackay, ed., *Est insolitum inquirere taliter*). All page references to the Innsbruck trials in both the text and the notes refer to Mackay's '*Unusual Inquisition*' unless otherwise noted. The "Apostolic See" had granted Institoris the title "Inquisitor of Heretical Depravity" (Mackay, 210): for examples of Institoris' references to himself by this title, see Mackay, 144, 149, 165. On the papal bull authorizing Institoris to seek out and prosecute witches, see Wilson, "Institoris at Innsbruck," 87–90.

¹³⁴ Anna of Mindelheim and Agnes Baderin ("the Bathkeeper"). See Mackay, 22–5.

¹³⁵ On the likely composition date of the *Malleus* and its relationship to the Ravensbruck and Innsbruck trials, see 68–71; and Mackay's introduction to Institoris, *Hammer of Witches*, 4–5, 7–8.

¹³⁶ For the timeframe, see Mackay, 27–8, 33.

While we know only a few facts about Scheuberin, her vivid and powerful personality emerges from the trial record.¹³⁷ She was married to an Innsbruck burgher (204), but both before and after her marriage, she seems to have gotten around. In Institoris' malicious assessment, "she was a lax and promiscuous woman" who, "in her single years and outside of the marriage bed . . . had familiarity with witches and suspects in adultery, [and] maintained neither her period of time as a virgin nor her marital status without infamy" (196).¹³⁸ Her sexual freedom seems not to have harmed her marriage prospects, or her marriage, since we find her husband later pledging "all his property" to ensure that she will not "tak[e] flight" (213–14). It also allowed her (among other things) to hobnob with the nobility. At the time of the trial, she had practiced "public adultery . . . for many years" (as Institoris puts it) with a knight named Jörg Spiess, whom (he writes) she "so seduced in his mind that no persuasion on the part of his friends could induce him to cut off relations with her" (198).¹³⁹

After a few months of preaching and gossip-gathering, Institoris narrowed down his long list of suspects to Scheuberin and six other women and threw them into the local jail. The deponents' allegations were colorful: primarily charges of non-diabolical *maleficium* or blasphemy (rather than the diabolical witchcraft that Institoris suspected).¹⁴⁰ Some had allegedly put hexes on enemies by means of garments, dead mice, voodoo dolls, bones, the thigh of an unbaptized infant, Jews' turds (42–3, 64). Others went about with black cats and dogs (115), stole milk from neighbors' cows (118), or caused impotence through gingerbread (65). One witness reported dramatically on a scene in which the "baptized Jewess" Ennel Notterin whipped an image of the crucifixion with switches and blasphemed both God and the Virgin Mary, uttering the curse: "May you have pain in your thought like Mary had when she bore Jesus in her slot" (115).¹⁴¹

Most of the reports were hearsay, and many witnesses later refused to repeat them under oath.¹⁴² But the allegations against Scheuberin were particularly vague (as even Institoris was forced to acknowledge).¹⁴³ In addition to being "lax and promiscuous," she was (he said) "deceitful, spirited and pushy" (197). She had a bad

¹³⁷ Little has been written on the case generally, and less on Scheuberin, but see Brauner, *Fearless Wives and Frightened Shrews*, 46; and Broedel, *Malleus Maleficarum*, 1–3, 16–17, 99.

¹³⁸ For "lax and promiscuous woman," see Institoris' discussion of Scheuberin in Institoris, *Hammer of Witches*, 279. For his further comments on her alleged promiscuity, see Mackay, 198–9, 200.

¹³⁹ On the social status of the accused women, see Mackay, 56–7 (and 54 on Spiess).

¹⁴⁰ For a list of charges and a discussion of how they reflected Institoris' diabolical conception of witchcraft, see Mackay, 42–6, 64–6.

¹⁴¹ In the original, "*sin*" (head or mind) rhymes with "*krin*" (vulgar word for vagina). I have adapted Mackay's translation ("mind" and "slot") and changed the order of the clauses to preserve the rhyme. For the original, see Mackay, ed., *Est insolitum inquirere taliter*, 27.

¹⁴² Ammann, "Innsbrucker Hexenprozess," 25.

¹⁴³ See, for instance, his "Articles and list of questions in connection with the trial of Scheuberin": "it is difficult for her to be punished unless the preceding ones have been punished, on account of a vague adherence to very many [crimes]" (Mackay, 196) (and see 32–3 on the weakness of the evidence against her generally).

reputation. There were grave doubts about her orthodoxy. She “spat on the ground, publicly” and “utter[ed] unsalutary words”: two signs Institoris would identify in the *Malleus* as evidence of diabolical influence.¹⁴⁴ She had dealings with persons suspected of witchcraft (37). The story of the spell Scheuberin put on a rival was, he claimed, well known: a man who “knew her carnally, just as many others had” (200), ended up taking another bride; at the wedding, Scheuberin told the bride, “[y]ou shall not have many good and healthy days here”; and indeed she had been ill ever since (171). Finally, Scheuberin may have killed the lovesick and late lamented Spiess: someone told someone that an Italian doctor had warned Spiess not to visit Scheuberin any more; gossip said that one of Spiess’s female relatives had reported that Spiess had said on his deathbed, the “‘reason why I’m dying is that that woman killed me’” (166, 167, 170, 196, 199). But (the accusers admitted), it might have been poison, not witchcraft. Or maybe just food poisoning.

The weakness of the evidence against Scheuberin makes it clear that she was arrested not because she practiced magic (as several of the others probably did), but because of her willingness to tell Institoris what she thought of him to his face, fearlessly, in public, and in no uncertain terms. She had accused *him* of heresy (he reported), cursed his “grey skull” (172) upon leaving the church where he was preaching, and “was spurning and had spurned his sermons” (172), telling everyone that they should do so too (language in which he inadvertently seems to cast himself as a spurned lover: perhaps the comment on his “grey skull” stung). What seemed to gall him particularly was the *public* nature of her denunciation. As he explains, what first led him “to investigate her” was the encounter in the street in which she “publicly” spat at him, called him a criminal monk [*schnöder Mönch*], and cursed him (197). He had been posting papal bulls and delivering his pulpit jeremiads against the “Heresy of Witches.” But “that woman”—“spirited,” “pushy,” and clearly alluring—had her own public sphere.

Scheuberin was certainly “spirited,” as her encounters with Institoris suggest. Her arrest seems in no way to have crushed that spirit, for we next find her holding forth dramatically in the prison itself to the other women, the guards, and anyone else in earshot. One of those in earshot was Institoris. He heard her declaiming,

assert[ing] to certain women standing with her that the Catholic doctrine disseminated by me in public was heretical, saying the following words: . . . ‘When the devil leads a monk astray, he brings nothing but heresy. May the falling sickness affect him in the head!’ (197–8)¹⁴⁵

¹⁴⁴ Institoris, *Hammer of Witches*, 276.

¹⁴⁵ The record offers two separate accounts of this scene (Mackay, 172, 197–8), each with slightly different details, so I draw on both. The fact that Institoris describes the women as “standing with her” and gives a verbatim quote suggests that he witnessed this exchange. What follows (“When I asked the reason . . .”) seems a direct response to her charges. On the guards, see Mackay, 212.

It seems likely that this display was a deliberate attempt to bait him. (She spoke loudly enough for him to make out her words, and when he appeared, she did not seem surprised.) Despite the fact that he had already had a similar encounter with her, and that people had told him of her public attacks on him, he was shocked and astonished. He had been told that when he was preaching “she always left the church, giving a curse with the following words: . . . ‘May the falling sickness fall into your grey skull [*grauen Schädel*]! When will the Devil take you away?’” (172). But he “would never have believed that she had spoken in this way if he had not heard these words from her own mouth when she was in custody” (172).

Institoris proceeded to interrogate her, but, far from disavowing, she used the moment as an opportunity to elaborate with a new accusation:

When I asked the reason why she asserted that the doctrine of the Church was heretical, she answered, because I had preached nothing except against *Unholden* [witches], and added that I had given the method of striking a milk jug for getting knowledge of a witch who has taken milk from the cows. (198)¹⁴⁶

In describing such practices as striking the milk jug, she charges, Institoris has effectively been offering instruction in them: it is he who is spreading witchcraft, not she. Institoris protested: “I asserted that I had cited such things *against* those who would carry out such practices, *rebuking* them and not instructing them” (198; emphasis added). Her response was to declare that “in future”—after her “release”—she would continue to boycott his sermons (198). Why should she listen to a devil-led monk who preaches against witches but at the same time teaches witchcraft? Institoris was so shaken by this confrontation, and so certain that it proved her guilt, that he rushed off to get a statement from the most credible witness available: himself. Taking his own statement violated all normal procedures and, moreover, he was in such a hurry that he did not bother to gather any of the usual religious witnesses. (He seems to have grabbed one of the accused women—the widow Agnes Schneiderin—as a stand-in.)¹⁴⁷ He proceeded to interrogate himself, writing up a deposition that included both “the inquisitor[’s]” questions of the witness and “the inquisitor[’s]” answers as witness (using the third person to identify both of his roles): “[t]he inquisitor asserts that . . .”; “the inquisitor further inquired” (172).

On October 29th, Institoris, seven commissioners, three Dominicans, notaries and others gathered in the largest chamber of the Innsbruck town hall for the beginning of formal proceedings (203). Institoris expected to deliver a guilty

¹⁴⁶ It is unclear whether this exchange took place immediately (before the assembled women), or only later in a separate interrogation. In any case, it took place soon after, since Institoris wrote it up in his October 4th report.

¹⁴⁷ On the absence of the customary religious witnesses and the presence only of Schneiderin, see Mackay, 172, note 131.

verdict and “abando[n] [Scheuberin] to the secular court” that would carry out the death sentence (34, 182). In her confrontation with him in the prison, she had referred to her imminent “release” and her plans to continue her public boycott of his sermons. It is tempting to speculate that the reason she was so confident is that she was party to the plans for the scene that would unfold in court on the 29th, perhaps even helping to engineer them. Certainly, most of the officials gathered in the town hall chamber were by then less than friendly to Institoris’ project. Archduke Sigismund of Tyrol and Georg Golser, Bishop of Brixen—the secular and ecclesiastical authorities in the region—had urged leniency from the start.¹⁴⁸ Their deputies—the Commissary General Christian Turner (standing in for the Bishop), the parish priest Sigismund Samer, and a doctor of theology named Paul Wann—attended the proceedings, and seem to have come to the courthouse with a plan for derailing Institoris’ prosecution.¹⁴⁹ But Scheuberin’s presence and leading role at most of the key moments suggests that she was not merely a helpless defendant but involved in the plan as well.

Institoris decided to call Scheuberin to the stand first, perhaps to make an example of the most defiant of the accused. But the trial offered her a new semi-public platform and the opportunity to defy him again before an audience prepared to support her. Bartholomew Hagen, the notary who would produce the trial report, hints that there was an extended showdown between the two before they even got down to business: “after *many* words were put to her by the inquisitor, she *finally* swore” on the Bible (204).¹⁵⁰ The showdown resulted at least in part from Institoris’ determination, in the absence of better evidence, to display Scheuberin before the court as the “lax and promiscuous woman” she was, and thus make her guilt visible. He was to argue in the *Malleus maleficarum* that palpable promiscuity was evidence that a woman had become the devil’s instrument: women devoted to “debauchery” and “inflamed with the purpose of satisfying their base lustings” (such as “adulteresses, female fornicators [and] concubines”) are known to “engage in acts of sorcery more than do the rest.”¹⁵¹ Given that Scheuberin’s sexual history was one of the principal pieces of evidence against her, Institoris was determined to bring it into the courtroom. “He wished to question her about her virginity and other secret matters” (204), reports Hagen.

¹⁴⁸ On Bishop Golser’s and other officials’ attitudes to Institoris’ prosecutions, see Mackay, 29, 39–40; Wilson, “Institoris at Innsbruck,” especially 92–100; and on Golser’s role in the trial generally, Exenberger, ed., *Ein Fels in der Brandung?*

¹⁴⁹ Since Institoris’ papal bull made it clear that he was to have sole authority as judge, the exact status of the other officials present at the trial is unclear. Several were initially appointed to “assist” Institoris (perhaps as coadjutors) (Mackay, 75), and they also clearly served to represent the Archduke’s and Bishop’s interests.

¹⁵⁰ Emphasis added. Mackay comments: “right from the start he got into some sort of wrangling with her,” engaging in “pointless contentiousness,” which Hagen “disdains to report” (Mackay, 34, 204).

¹⁵¹ Institoris, *Hammer of Witches*, 171.

Turner however objected: he “was unwilling to take part in these matters because [they were] irrelevant” (204) (and “hardly concern th[e] case” adds Hagen) (204).

Unable to show the court just how “lax and promiscuous” Scheuberin was, Institoris was at something of a loss, and things went further downhill for him from there. After being told that he could not in fact examine Scheuberin at all because he had neglected to draw up the proper articles, he scurried off to draft them. When he returned, he found that she was already back, now with a lawyer by her side: “the venerable and outstanding gentleman, Lord Johannes Merwait of Wending, licentiate in decretals [canon law] and doctor in medicine” (205). Institoris did not like lawyers. He repeatedly cited the *Clementines* (a fourteenth-century addition to the *Corpus Iuris Canonici*), which explained that in matters of Faith, “the proceeding is summary, straightforward and informal, without the screeching and posturing of advocates in courtrooms.”¹⁵² In the articles he drew up against Scheuberin, he pointedly reiterated this claim (in terms that sound a bit like Basin’s or Schwarzenberg’s complaints about lawyers): “the judge has to reject obstructive exceptions, appeals and delays [and] conduct the proceedings in a straightforward, simple manner without the screeching of lawyers” (202).

Hagen’s report is spare, but reading between the lines, it is possible to envision Merwait and Scheuberin working in tandem to stage-manage what followed (with the collaboration of Turner, Samer, Wann, and perhaps Hagen himself).¹⁵³ The report’s phrasing—Merwait is acting “in the capacity of legal representative for said Helena Scheuberin and the other women in detention” (205)—suggests that Merwait began as Scheuberin’s lawyer, and then someone (perhaps Scheuberin) decided that he should represent all of the women.¹⁵⁴ It also suggests that, if Merwait was their formal legal representative, Scheuberin was the women’s representative: the lead defendant who, given her “spirited and pushy” personality, seems likely to have vigorously communicated to Merwait her views on how to defeat Institoris. Whatever they may have discussed, Merwait’s initial defense was not based on great jurisprudential or theological principles but on minute objections to technical violations: Institoris had failed to notarize his depositions properly; he had failed to draw up articles before examining the women; he “ought to have . . .”; he “should have . . .”; “this was by no means done”; “he just

¹⁵² Institoris, *Hammer of Witches*, 513, quoted in Mackay, 35. Institoris does acknowledge that if the accused ask for a lawyer, they must not be denied, so long as the lawyer “is a respectable and circumspect zealot for the Faith, and carefully upholds the terms for a true and circumspect representative in cases involving the Faith” (Mackay, 202).

¹⁵³ On Turner and Merwait’s collusion, see, for instance, Mackay, 207, note 20.

¹⁵⁴ Wilson assumes that it was Golser who “recruited Merwai[t] to defend accused” (“Institoris at Innsbruck,” 95), but Merwait stepped in first as Scheuberin’s lawyer. Given this, it seems unlikely that Golser appointed him (he would presumably not have appointed a lawyer for only one of the accused), and far more likely that Scheuberin hired him for herself, and then agreed that he should represent all of the women.

seized the women” (206).¹⁵⁵ “[A]nd so he again” (and again, Merwait implies) “violated the text of the bull” (206). He has behaved as if he is above the law. Merwait’s tone—cool objectivity and technical expertise—reinforced his general approach. He was a doctor of law as well as medicine (it suggested), not a “screeching and posturing” lawyer. Indeed, it was Institoris who had been “screeching and posturing” from the pulpit. Having “just seized the women,” he was similarly attempting to “just seiz[e]” the law. Where Institoris thus stood for the excesses of arbitrary power, Merwait (his strategy implied) stood for the restraints of law.

One event early in the proceedings serves to dramatize this contrast. Upon arrival, Merwait explained that he had of course been properly appointed as lawyer in the case (205). But he unfortunately did not have the “mandate” with him to prove it (presumably a notarized document). To remove any possible doubts about the legality of his appearance for the defense, “he wished to show his good faith [appointment]” (205) by sending for a notary who would testify to it. Meanwhile, while waiting for the notary, he “insisted that the appointment take place anew” before Hagen (as notary) and the official witnesses (205). And so (writes Hagen), “[o]n the same day, at 12 o’clock,” an hour or so after Merwait’s arrival, all of the women—“Helena Scheuberin, Rosina Hochwartin, her mother Barbara, Barbara Pflüglin, Barbara Hüfeyesen, Barbara Selachin, and Agnes Schneiderin”—gathered in a group in the town hall courtroom and enacted “anew” for the witnesses their formal appointment of Merwait as their lawyer. At first glance, this scene may seem insignificant: a minor bit of business to be taken care of before the main event. But Hagen emphasizes its formality: “[t]hese proceedings were conducted in the [larger chamber of the town hall], in the presence of the lord inquisitor together with [others] asked and requested as witnesses” (206). And he suggests its ritual nature. All of the women were “present in person” and, one after another, “all together and each apart, jointly and separately,” repeated the proper formula. The formula was long, and, with seven women repeating it “each apart,” the scene must have been quite protracted.

Perhaps the story of the notary who would testify to Merwait’s previous appointment was at least a partial fiction whose purpose was to conceal his own procedural irregularities. (We never hear of this second notary again.)¹⁵⁶ In any case, the ceremony enacted rather than merely demonstrating: it was not *evidence* of the appointment but a legally efficacious ceremonial creation of the

¹⁵⁵ Merwait’s claims were in fact mostly without legal foundation: see Mackay, 206–7.

¹⁵⁶ Merwait might have had no “mandate” at all, or one only for Scheuberin, not for the other women. If so, the supposed acting “anew” of the ceremony was not in fact a re-performance, but a legal act necessary to Merwait’s appearance in court. If, on the other hand, he had already gone through the proper procedures, he could presumably have waited for the notary to appear with the mandate. In that case, it would be all the more striking that he nevertheless “insisted that the appointment take place anew.”

appointment itself; a legal performative utterance in ceremonial form. At the same time, it was not merely legally utilitarian: it also served several expressive or demonstrative functions. Its overt demonstrative purpose was to “show” the witnesses Merwait’s “good faith appointment.” But it also set up the contrast between legality and arbitrary authority that Merwait’s arguments would take up. Turner would ultimately declare that the whole prosecution had been “instituted in violation of the legal system” (210). The ceremony’s first function was to show Merwait’s own commitment to that system.

It seems possible that Scheuberin had some hand in devising the ceremony, but even if not, we can assume that she was an enthusiastic participant.¹⁵⁷ Performing legalism alongside Merwait and the other women gave her an opportunity to revise her previous strategies for attacking Institoris: instead of spit and curses, her weapon could now be law. Moreover, in the ceremony, law was not merely acting on her: she was acting on it. In fact, all of the women were doing so, and they were doing it together. Hagen’s description registers the women’s palpable collective presence and active participation: they were “present in person” as they “appointed [Merwait] as their legal representative”; they spoke first in a kind of chorus (“all together”) declaring their collective will and then each in turn (“each apart”). Here, they were also (at least for the moment) freed from Institoris’ illegal “seiz[ure]” of their persons, no longer prisoners but public legal actors. These were the very people (and others like them) whom Scheuberin had been working to rouse to collective action against Institoris in the church, streets, and prison. Here, they were engaging in precisely such action, action that was simultaneously demonstrative and legally efficacious.

In this, the ceremony also stood as an antidote to the scenes Institoris had been conjuring in his sermons and interrogations. It showed a covey of women pledging themselves to a male representative, purportedly revealing a previous behind-the-scenes compact with him. But instead of a diabolical scene, it was a legal one. Instead of showing witches gathered in secret covens, it showed legal citizens gathered in the town hall. For Institoris, on the other hand, the scene—in which a group of proven witches chanted in unison, ritually pledging their allegiance to their male leader—probably appeared to confirm that there were diabolical forces at work.¹⁵⁸ In his view, it was ultimately the power of witches like Scheuberin that defeated him.

¹⁵⁷ At first blush, it may seem improbable that she could have helped devise the ceremony: without legal training, she was unlikely to know about such formalities. But the fact that, at the moment that she returned to the courtroom, Merwait “likewise appeared” (Mackay, 205) suggests that they were conferring. I do not wish to overstate Scheuberin’s possible role: there were others working behind the scenes. But if Merwait was initially her lawyer alone, she would, at a minimum, have had to grant him permission to represent the other women. If he said he had no mandate to do so, one can imagine her saying: “create one!”

¹⁵⁸ Certainly, Institoris believed that witches and sorcerers were capable of creating fantastical illusions: what was really a sabbat dance might appear to others as a harmless legal ritual in a town hall. And, unlike many theorists of witchcraft, he was certain that witches had the power to bewitch officials who failed to take proper precautions. See e.g. Institoris, *Hammer of Witches*, 548–56, on “how

The trial record reveals Merwait and Turner delivering the final blows. Merwait “rejected and rejects the lord inquisitor as . . . a suspect judge in this cause” (207), and “openly and publicly enjoined Scheuberin . . . and the other women . . . not to give the lord inquisitor any responses to his questions because he was no longer their judge” (208). He “insist[ed] on the nullity of the [Inquisitor’s] proceedings” (210), and demanded that Turner “han[d] [Institoris] over to custody” (208).¹⁵⁹ Turner did not ultimately arrest Institoris, but he did declare the trial officially “invalidated.” The women were to be released, having sworn that they would not “take flight” (212) or “inflict . . . any insult or harm on the lord inquisitor” (213), at least not “outside of lawful procedure” (213). This limit on the prohibition clearly served as a threat to Institoris: he would be liable to prosecution if he attempted to renew his witch-hunt (as he clearly hoped to do).¹⁶⁰ But it also served as a promise to the women and an acknowledgement of their role. If Institoris again sought their condemnation, they were free to use the kind of “lawful procedure” for which the appointment ceremony had stood—collective action, civic participation, law—to defend themselves, even if doing so meant offering him the kind of “insult” that had gotten Scheuberin into so much trouble; even if it meant answering harm with harm.

We remember Institoris, of course, because of the phenomenal success of the *Malleus maleficarum*, which would serve as the principal theoretical foundation for the execution of tens of thousands of alleged witches—mostly women—over the next two centuries. But we should also remember those like Scheuberin—largely invisible in histories of the trials—who stood up to witch-hunters like him. Scheuberin was not alone in doing so, though not all were as successful. In Ireland in 1324, the accused witch Alice Kyteler countercharged the Inquisitor Bishop Richard Ledrede with defamation and unjust excommunication and succeeded in having him arrested and dragged off to the Kilkenny Castle prison, which eventually led to his forced exile.¹⁶¹ In Draguignan (in Provence) in 1439, a woman named Catherine David—given ten days to prepare her defense with the help of

[the judge] ought to forearm himself against [witches’] acts of sorcery.” It is possible that he thought the Archduke’s and Bishop’s deputies had failed to forearm themselves and were all laboring under a diabolical delusion.

¹⁵⁹ As a mendicant monk who was supposed to have vowed himself to poverty (Merwait implied), Institoris could not provide surety against his flight (Mackay, 208, note 25).

¹⁶⁰ Instead of leaving, Institoris was still lurking in Innsbruck three months later, hoping something might change. Commenting to a “Brother Nicholas” that Institoris was perhaps senile and certainly seemed crazy, the Bishop enclosed a letter, to be conveyed to Institoris himself: “I am very astonished that you remain in my diocese, in a place so close to the court . . . You should not be annoying to other people. [You] should depart. In fact, I actually thought that you had long since left. Good bye” (Mackay, 220–1).

¹⁶¹ See the accounts in Davidson and Ward, *Sorcery Trial of Alice Kyteler*; and Callan, *Templars, the Witch, and the Wild Irish*, 117–48.

lawyers—demanded the court documents and insisted on serving as her own lawyer. By the time she had finished, the main witness against her fell to his knees before the court, admitted to having lied, and begged her forgiveness, and the Inquisitor (Father Guilhem de Malavielle) declared her innocent.¹⁶² And in 1431, Joan of Arc—more visibly if less successfully—stood before the court in the Rouen Castle’s great hall and in the market square wearing the men’s clothes she refused to change, cleverly evading her judges’ traps, “repl[ying] boldly to all the articles enumerated before her” without “falter[ing]” or shame.¹⁶³

The Spectacle of Punishment Beyond the Script

Execution as “Sacred Event” and “Theater of Devotion”?

Joan’s execution looked much like the kinds of classic scenes we call up when we picture the European witch trials: the innocent condemned is tied to the stake amidst the flames, while members of the frenzied mob scream “burn the witch!” It offered a spectacle of punishment that in many ways aligns with that in the dominant scholarly account I identify at the beginning of this chapter: an account that casts such spectacles as at once ruthless technologies of power (in Foucault’s vision) and transcendent enactments of sacred martyrdom.¹⁶⁴ Such accounts describe the spectacle of punishment as “a clearly defined, ancient ritual which could not be altered” (in the words of Richard van Dülmen), with “a script” that always “remained the same,” allowing the community to purge itself of evil.¹⁶⁵ But they also somehow argue that this ritual underwent a profound change some time in the fourteenth or fifteenth century. What had begun primarily as a ritual of retribution, they argue, was transformed in the later Middle Ages into a ritual of

¹⁶² Aubenas, *La sorcière et l’inquisiteur*, 45–6, 49–51, 66–7.

¹⁶³ *Parisian Journal 1405–1449* (trans. 1968), 263.

¹⁶⁴ Foucault argues, famously, that the execution spectacle was a technology of power that replicated the crime on the tortured body. At the same time, drawing on Bakhtin’s conception of the “carnival-esque,” he writes that the public execution could be a “saturnalia”: in “these executions, which ought to show only the terrorizing power of the prince, there was a whole aspect of the carnival, in which rules were inverted, authority mocked and criminals transformed into heroes” (Foucault, *Discipline and Punish* [1995 trans.], 60–1). On the as sacred rite and purgative sacrifice, see e.g. Cohen, *Crossroads of Justice* (“[s]ecular capital rituals were essentially rites of severance,” “expulsion[s] [that] translated the exclusion from the physical to the metaphysical plane” [195]); Merback, *Thief, the Cross, and the Wheel* (“a proper execution” “held the potential to lift the miasma” of the “taint of corruption and infamy” that crime brought “upon the social body” [146]); Evans, *Rituals of Retribution* (the punishment “was a sacred ritual” that “purged the community of its blood-guilt” [85]). Merback and Evans are critical of the “ersatz anthropology,” “incestuous scholarship,” and racist foundations of the early twentieth-century characterization of executions as pagan earth rituals and sacrifices, in the work of, for instance, Karl von Amira, Hans von Hentig, and the German *Volkskunde* (Merback, *Thief, the Cross, and the Wheel*, 141; Evans, *Rituals of Retribution*, 3–7). Nevertheless, some of their own claims seem to echo such accounts.

¹⁶⁵ Dülmen, *Theatre of Horror*, 2; Proserpi, *Crime and Forgiveness*, 145.

atonement and redemption. The title of Adriano Prosperi's influential *Crime and Forgiveness: Christianizing Execution in Medieval Europe* captures the alleged change. "The noisy, ferocious spectacle," writes Prosperi, "had given way to an orderly and solemn religious ritual," a "sacred event," a "theater of devotion."¹⁶⁶ As Mitchell Merback writes, "compassion for the suffering martyr-criminal [took on] the status of a cultic obligation" and "the reeking scaffold [became] a surrogate altar and a place of veneration."¹⁶⁷ In what follows, I pursue the claims of this chapter as a whole into the arena of punishment, pointing to some of the problems with this account and sketching the outlines of an alternative: one that acknowledges the gap between penal theory and practice, the script and its performance, official proclamations and actual spectator experience.

Medieval punishments were in some ways "rituals" and they were certainly forms of spectacle. Like most medieval theatrical events, they were perambulatory and participatory, with heavily ceremonial and symbolic features. Execution rituals unfolded according to certain widespread norms: the procession often passed through sites that represented the community the criminal had violated; sometimes the executioner severed body parts that signified the crime along the way; the condemned was subjected to symbolic degradation (tethered to the tail of an animal, dragged through mud), sometimes elevated for purposes of display; afterwards dismembered body parts were exhibited at key symbolic locations. If punishments followed procedural norms, they also brought with them certain kinds of behavioral expectations. At noncapital punishments such as the pillory (blocks clamping the neck and arms), stocks (heavy leg restraints), thews (neck rings attached to posts), or tumbrels (dung carts), crowds were not merely permitted to vilify the condemned and pelt them with rotten food, mud, and dung: they were urged to do so. A fifteenth-century Dover ordinance ordered: "all the peple that will come" to the pillory are to "do [the malefactor] vylonye."¹⁶⁸

Although decidedly unspectacular punishments such as fines, exile, imprisonment, or private penance vastly outnumbered spectacular ones, from at least the thirteenth century on, most jurisdictions did regularly stage spectacular public punishments for certain crimes, often for enormous crowds.¹⁶⁹ According to Jean

¹⁶⁶ Prosperi, *Crime and Forgiveness*, 144–5.

¹⁶⁷ Merback, *Thief, the Cross, and the Wheel*, 129. While I challenge the master narrative in these accounts, I am indebted to them for the rich evidence they provide, on which I draw freely.

¹⁶⁸ Carrell, "Ideology of Punishment," 305–6, quotes the Dover ordinance. For this list of punishment devices, see Masschaele, "Public Space of the Marketplace," 400, and 400–7 on marketplace punishments generally.

¹⁶⁹ On the predominance of unspectacular punishments, see Dean, *Crime in Medieval Europe*, 180, and "Criminal Justice in Mid-Fifteenth-Century Bologna," 26–7; Jordan, *From England to France*, 24–7; and Caviness, "Giving 'The Middle Ages' a Bad Name," 194 (and generally). For an excellent short history of the medieval revival of Roman practices of visible capital and corporal punishment, see Friedland, *Seeing Justice Done*, 23–45 (arguing that this process began around the turn of the ninth century and appeared more decidedly in the twelfth and thirteenth, but noting that many jurisdictions continued to impose punishments inconsistently: the same crime might sometimes be punished with a capital sentence, sometimes merely with a fine).

de Roye, over two hundred thousand people attended the execution of the Count of Saint-Pol for treason in 1475 (perhaps an exaggerated number but nevertheless telling).¹⁷⁰ Spectacular public punishments were viewed as essential to deterrence: the populace was to “witness [the] punishment as a fright and a warning.”¹⁷¹ Thus punishments were “by law [to] be carried out in the sight and presence of the people,” producing “terror” to “serve as a warning to others.”¹⁷² Commenting on the execution of Saint-Pol, Basin notes that the king created a “spectacle” with such “*éclat*” both “to give satisfaction to [the] sentiment” of “hatred” that “the entire population had [for] the condemned” and “so that the punishment would serve everyone as an example and strike terror” into the hearts of the people.¹⁷³ Practice followed theory, in the form of new permanent gallows (usually at crossroads) and a regular practice of allowing the bodies of the executed or their severed body parts to hang in public view—on city gates, towers, bridges, and elsewhere—until they decomposed and fell by themselves.¹⁷⁴ Various forms of penal display could serve as frightening *aides-mémoire*, as Boncompagno da Signa explained: the “swords of justice that are carried before princes for the sake of instilling fear . . . have been devised for the purpose of supporting the weakness of natural memory,” along with “pillories, forks, gibbets, iron chains, . . . eye extractions, mutilations, and various tortures of bandits and forgers.”¹⁷⁵

The classic account describing the shift from noisy ferocious spectacle to “solemn religious ritual” sometimes points to the various practices that came to institutionalize scaffold repentance-as-atonement. In 1312, Pope Clement V declared that the condemned must no longer be barred from confessing their sins at the final hour.¹⁷⁶ “Comforting societies” such as the Italian “Company of Death” formed, providing clergy to accompany the condemned to the execution site.¹⁷⁷ These carried *tavolette*—images of the Passion or of saints—which they held before the eyes of the condemned as they walked in procession to the scaffold. Towns constructed small chapels with images of the Passion near their gallows (in Germany, the *Armsunderkreuz*, or poor sinner’s cross), so that

¹⁷⁰ Roye, *Journal de Jean de Roye* (1894–96 ed.), 2:361 (“Iic mil personnes et mieulx”).

¹⁷¹ Sentencing formula from Aargau, Switzerland; quoted in Dülmen, *Theatre of Horror*, 97.

¹⁷² Northamptonshire *quo warranto* plea and fourteenth-century Norwich customal, both quoted in Masschaele, “Public Space of the Marketplace,” 405.

¹⁷³ “[S]pectaculum”; “Quorum ut desiderii atque odio *utcumque* satisfaceret, et ut cunctis aliis exemplum ad terrorem; exoculationes, mutilationes et diverse pene latronum [ac] falsariorum . . . inventa fuerunt ad substendandum imbecillitatem memorie naturalis.” Boncompagno, *Opera omnia*, [*Rhetorica novissima*, 8.1.13]; trans. Sean Gallagher in Carruthers and Ziolkowski, ed., *Medieval Craft of Memory*, 111.

¹⁷⁴ See e.g. the examples in Dean, *Crime in Medieval Europe*, 126.

¹⁷⁵ “[C]ampanilia, berline, furce, patibula, catene ferree et gladii iustitie, quid portantur ante principes ad terrorem; exoculationes, mutilationes et diverse pene latronum [ac] falsariorum . . . inventa fuerunt ad substendandum imbecillitatem memorie naturalis.” Boncompagno, *Opera omnia*, [*Rhetorica novissima*, 8.1.13]; trans. Sean Gallagher in Carruthers and Ziolkowski, ed., *Medieval Craft of Memory*, 111.

¹⁷⁶ Cohen, *Crossroads of Justice*, 198–9.

¹⁷⁷ See Prosperi, *Crime and Forgiveness* (especially 50–7, 107–33, 410–37); and Edgerton, *Pictures and Punishment*, 182.

the condemned could confess while gazing on these scenes.¹⁷⁸ Theological texts and images showed what the “good death” was supposed to look like: in these, a representative of the Church holds out a crucifix toward the condemned, who kneels, repentant.

These practices go some way to explaining the puzzling fact that medieval artists insistently represented ordinary executions as types of the crucifixion: the scaffold appears as the cross on Calvary; instruments of torture appear as instruments of the Passion; and the condemned appears as a type of the suffering Jesus.¹⁷⁹ Accounts of the execution spectacle as “solemn religious ritual,” “sacred event,” and “theater of devotion” are, in part, attempts to explain this puzzling fact. Performing “good death,” the condemned did in fact strive to enact the likeness. Catherine of Siena’s account of the execution of the nobleman Nicolas Tuldo in 1375 offers one such vision. “His will was in accord with and submissive to God’s will,” she writes. “[H]e arrived like a meek lamb” at the scaffold and “called the place of execution a holy place.” As she placed his head on the block, “[h]is mouth said nothing but ‘Gesù!’ and ‘Caterina!’ and as he said this, I received his head into my hands, . . . my eyes fixed on divine Goodness.”¹⁸⁰ In such scenes, the condemned could offer a model for the spectator: submit; act the meek lamb; in fixing your eyes on the spectacle of suffering—so like Jesus’ suffering on the cross—you are fixing your “eyes . . . on divine Goodness,” with its promise of mercy. Accounts of the 1440 execution of Gilles de Rais, rumored to have raped and murdered hundreds of children and drunk their blood, testify to the extraordinary power of this narrative to recast even the most diabolical criminals as penitent sinners.¹⁸¹ At his execution, “there was a great multitude of people [there] to pray to God for the condemned.”¹⁸² Despite his “false and inhuman will,” he “was very beautiful and pious” in his death.¹⁸³

Deterrent Terror, Crowd Vengeance, and Going Off-Script

And yet, however committed the clergy and many of the condemned may have been to performing good death in the likeness of Christ, the officials who staged executions and the documents that offered justifications for the bloody spectacle virtually never mention sacrifice, atonement, or redemption. Instead, they stress

¹⁷⁸ Timmermann, “‘Locus calvariae,’” 137–8.

¹⁷⁹ See Prospero, *Justice Blindfolded*, 164–6 (specifically on the instruments of the Passion).

¹⁸⁰ Catherine of Siena, *Letters* (trans. Noffke), 1:87–8.

¹⁸¹ For a concise account of the actual facts and skepticism about Gilles de Rais’ guilt, see Fudge, *Medieval Religion*, 51–87 (on “The Strange Case of Gilles de Rais”).

¹⁸² “[F]ut grant multitude de peuple pour prier Dieu pour lesdiz condempnez.” Marchegay, ed. “Récit authentique de l’exécution de Gilles de Rays,” 177.

¹⁸³ “Et jà-soit-ce qu’il eût eu cette fausse et inhumaine volonté, néanmoins si eut-il à la fin très belle et dévoute connoissance et repentance.” Monstrelet, *Chroniques*, 7:96.

visible deterrence, collective retribution and public annihilation of criminal and crime. Public punishments regularly executed corpses, effigies, and animals, none of which could atone.¹⁸⁴ And the bodies that remained on the gallows till they rotted seem hardly calculated to inspire visions of divine mercy. In fact, visions of divine mercy seem to have inspired crowds far less than the models of worldly vengeance that executions offered. For crowds could remain vengeful even in the face of a stellar scaffold performance. As the cart made its way toward the gallows where Prévôt of Paris Henry de Taperel was to be shamefully hung on the common gallows, he cried out repeatedly to the “great multitude of people assembled, . . . ‘Good people, pray for my soul.’” But, as an eyewitness reports, all “were hoping he would . . . die” and many cried “‘Let him be hung!’”¹⁸⁵ When several alleged traitors were executed in Forlì in 1488, the crowd cut off the genitals of one and stuffed them in his mouth, “slit [another] in half” and removed the fat, “the viscera[,] and all the innards” from both men.¹⁸⁶ In 1381, a gang of boys cut off the hands of a man who had been executed and began playing football with them.¹⁸⁷ Such scenes hardly seem a renunciation of the “noisy, ferocious spectacle” in favor of “an orderly and solemn religious ritual.”

It is generally recognized that botched executions, broken ropes, or wrongly withholding benefit of clergy enraged crowds. Florentine diarist Luca Landucci describes the botched execution of a young ensign in 1503, in which “the people felt such compassion” for the condemned that, instead of kneeling in prayer for divine mercy, they killed the executioner by stoning him to death “on the [very] place of justice.”¹⁸⁸ Scholars usually take such reactions as evidence of the spectators’ commitment to the execution script: “so deeply meaningful and extraordinarily important were penal rituals to members of the community, that on those rare occasions when the ritual was interrupted, the crowd immediately responded with frustration and anger, almost as if a spell had been broken.”¹⁸⁹ But those who stage managed executions were not committed to creating spellbinding rituals. When Michelet de Terreblay, condemned for theft in 1357, confessed on the gallows to the additional crime of murder, his judges interrupted the hanging,

¹⁸⁴ See the discussion in Friedland, *Seeing Justice Done*, 89–116.

¹⁸⁵ In the “grant multitude de peuple de Paris assemblez,” he cried, “‘Bonnes gens, priés pour l’ame de moy.’” But “aucuns esperans que il ne mourroit mie, et lez aultres si disoient: ‘Penduz soit-il!’” Hellot, ed., *Chronique parisienne anonyme*, 53 [#53].

¹⁸⁶ Prosperi, *Crime and Forgiveness*, 314–15. Prosperi’s chapter on “Factional Conflict and Mob Justice in the Late Middle Ages” (96–106) in fact describes numerous scenes of late medieval “noisy, ferocious spectacle” that were in no sense “orderly and solemn religious ritual[s].”

¹⁸⁷ Prosperi, *Crime and Forgiveness*, 98. For examples of similar English execution crowds, see Royer, *English Execution Narrative*, 15–60. Writing of thirteenth- and fourteenth-century Germany, Arlinghaus similarly stresses the difference between executions and sacred rituals in his evocative contrast between the treatment of the bodies of saints after death (preciously clothed, their bodies considered intact and “fragrant” forever) and that of criminals (stripped, dragged into the street, left hanging on the gallows without burial) (*Inklusion-Exklusion*, 389–90).

¹⁸⁸ Landucci, *Florentine Diary*, 204.

¹⁸⁹ Friedland, *Seeing Justice Done*, 106.

brought him down from the scaffold, increased his sentence, and *then* proceeded to hang him, without any concern that the interruption might break the spell or that doing so might discourage confession and atonement.¹⁹⁰ Nor do crowds themselves seem to have treated executions as spellbinding rituals, for they often themselves went off-script: sometimes in retributive fury (as in the case of the Forlì traitors whom the crowd eviscerated); sometimes in outright rebellion against the system. In Hull in 1402, an angry crowd released inmates from the jail and stocks and attacked the mayor, shouting “doune with the maire, doune with hym.”¹⁹¹ When a Bologna court announced the death sentence of an alleged Cathar heretic named Bompietro in 1299, the crowd stood in the city square crying, “Death to the inquisitor!”¹⁹² When a thief was condemned to torture in the town of Saint-Quentin in 1406, “there were at least a thousand people screaming not to kill the prisoner.”¹⁹³ Such spectators were hardly acting the part of the “meek lamb” gazing upon the scaffold as a “holy . . . place of justice.”

The *Carolina*'s threat of serious punishment for interference with an execution (which I note above) suggests that attempting to intervene may have been common, or at least seemed an ongoing possibility: it is “publicly proclaimed and announced—and ordered by the authorities on pain of body and property—that the executioner is under no circumstances to be hindered.”¹⁹⁴ We can in fact see an image of a spectator attempting to stop an execution in the *Book of Misdeeds (Nequambuch)* from Soest (1315) (fig. 4.5).¹⁹⁵ A group of people holds a strap around the distraught man's waist to restrain him, their faces expressing mixed emotions: one watches the jubilant executioner with a furrowed brow expressing sorrow; another appears angry; several gaze up curiously at the two figures in the tree who look serenely down on the scene.

Politics and the Heterogeneous Crowd

Such images remind us that spectators could be as diverse as the trial spectators Fouquet represents. Accounts that portray executions as spellbinding collective rituals obscure critical differences among (for instance) nobles and peasants, scholars and illiterates, women and men, the orthodox and the heretical, upright citizens and career criminals, friends and enemies. In fact, they obscure what was probably the most important factor of all: politics. Bitter divisions produced

¹⁹⁰ Prosperi, *Crime and Forgiveness*, 53–4.

¹⁹¹ Carrell, “Ideology of Punishment,” 308 (also describing a similar incident in 1444 in Norwich).

¹⁹² Prosperi, *Crime and Forgiveness*, 105.

¹⁹³ “[I] se trouverent bien mil personnes qui crierent qu'on n'nerast point le prisonnier” (quoted in Gauvard, “Pendre et dépendre,” 203).

¹⁹⁴ *Carolina*, sec. 97, reproduced in Langbein, *Prosecuting Crime*, 292.

¹⁹⁵ Soest *Nequambuch*; Stadtarchiv Soest, A 2771, illus. V; reproduced in Caviness, “Giving ‘The Middle Ages’ a Bad Name,” 201.



Fig. 4.5 A distraught spectator restrained from attempting to stop an execution in the *Book of Misdeeds (Nequambuch)* from Soest, Westphalia (1315).

Stadtarchiv Soest, A 2771.

bitterly divided emotional responses. One was supposed to laugh at the villain in the stocks, but surely some spectators also wept. Many in fact wept while watching Joan of Arc burn, grieving yet honoring her exemplary death and pious martyrdom.¹⁹⁶ Others threw stones, viewing her as a cross-dressing virago who “would wallop [her men] hard with this stick, like a very brutal woman” (in the words of

¹⁹⁶ See e.g. Pernoud, ed., *Retrial of Joan of Arc*, 216–19, 223, 237, 242–3.

an anonymous Parisian chronicler), a witch who could “produce thunder and other marvels if she liked,” “one wholly given over to Satan.”¹⁹⁷ According to Guillaume de la Chambre, “the English laughed” as they watched: it was a pleasure to see her burn.¹⁹⁸

For those Guillaume de la Chambre describes, jeering at Joan was at once serious political theology and sport. Far from celebrating atonement and promising redemption, the spectacle invited mockery. The executioner later lamented “the cruel way in which she was . . . made a show of” on the “tall scaffold” the English had built. But making a show of her was essential to her theological-political shaming. According to the notes of the Rouen Parlement clerk, before she was taken to the pyre, the court placed a “mitre” on her head very like Hus’s, with the words “heretic, relapsed, apostate, idolater” on it, and a placard before the scaffold: “Joan, self-styled the Maid, liar, pernicious, abuser of the people, soothsayer, superstitious, blasphemer of God; presumptuous, misbeliever in the faith of Jesus-Christ, boaster, idolater, cruel, dissolute, invoker of devils, apostate, schismatic and heretic.”¹⁹⁹ This shaming was, like Hus’s, both integral to her punishment and essential to its effect.

Jeering “Like the Jews [Against] Jesus”

If penal shaming was integral to most punishments, it was at the same time associated with the crucifixion narrative. The mocking of Christ on the way to Calvary and the *Ecce Homo*—the scene in which Pilate displays the condemned Jesus to a crowd of Jews, declaring “*Ecce Homo*” (“behold the man”), and they cry “crucify him!” (John 19:6,15)—were, along with the crucifixion itself, the most widely available penal images in medieval Europe. Sometimes portrayed with realistic details such as chains and handcuffs, they could look very like contemporary sentencing proceedings or punishment scenes, as in the Swiss printmaker Urs Graf’s *Ecce Homo* (c.1503), in which the crowd jeers, capers, and clamors for crucifixion (fig. 4.6).²⁰⁰

It was not only images and stories that represented these scenes, of course, but performances of the crucifixion narrative itself. By the later Middle Ages, scenes of the mocking of Christ were a regular part of the Passion plays performed annually

¹⁹⁷ *Parisian Journal 1405–1449* (trans. 1968), 262–3; and on members of the crowd who threw stones, Pernoud, ed., *Retrial of Joan of Arc*, 206.

¹⁹⁸ Pernoud, ed., *Retrial of Joan of Arc*, 216.

¹⁹⁹ Pernoud, ed., *Retrial of Joan of Arc*, 240, 239.

²⁰⁰ Geiler von Kaysersberg, *Passio domini nostri Jesu Christi* (1508), sig. D3v. (Catalogs give a date of c.1503 for the image.) Merback reproduces an arguably even more realistic *Ecce Homo* by the Braunschweig Master (c.1505–6), describing it as a boisterous version of a sentencing proceeding, rescripted as a popular ritual of degradation: “the painter’s apparent desire to convey the murderous hysteria of the Jews overrides his sense of judicial realism, but not by very much” (*Thief, the Cross, and the Wheel*, 132–3).



Fig. 4.6 The crowd of Jews jeers, capers, and cries “crucify him!” in Urs Graf’s “Ecce Homo” (1503).

Johannes Geiler von Kaysersberg, *Passio domini nostri Jesu Christi* (1508), sig. D3v. Courtesy of Princeton University Library.

in any town large enough to have a guild. In the N-Town Plays (c.1450–1500), for instance, Pilate asks the crowd of Jews whether he should set Jesus free, and they all cry “Nay, nay, nay!” What should he do with Jesus then? “Crucify him! . . . crucify him!” they all cry together. And in the procession to Calvary, after four Jews nail Jesus to the cross, the stage directions instruct: “Here shall they leave off and dance about the cross.”²⁰¹ Like the images, such performances stressed the parallel between the crucifixion narrative and real executions in a variety of ways. At least some cast the local executioner in the role of Christ’s tormentor, as Avignon did for a 1430 Easter performance of the *Play of the Passion*.²⁰² Guild members were famously assigned roles appropriate to their métiers. So (for instance) the Pinners, who made nails and spikes, performed the York crucifixion and contributed to the construction of real stocks, pillories, and execution scaffolds as well.²⁰³ Moving past actual trial-and-execution sites in a Passion play reinforced the parallel.²⁰⁴ The York plays, for instance, passed several trial locations on their way to “the Pavement”: a marketplace where pillories, floggings, and executions took place. It would have been hard not to identify the flogging and execution that the plays represented with the real ones in these sites.²⁰⁵

In real executions, it was natural for those who sought to cast themselves as martyrs to draw a parallel between the Passion and their own torture and execution. We have seen Hus accusing his attackers of “shout[ing] at me like the Jews [against] Jesus” and likening his miter-of-shame to Jesus’ “vilifying crown” of thorns. It is not surprising that officials and religious participants like Catherine of Siena encouraged the condemned to enact a pious *imitatio Christi* on the scaffold. What is more surprising is the official use of crucifixion symbols to *shame* the condemned by casting them as Jesus in burlesque crucifixion scenes that invited mockery rather than reverence. In 1326, when Hugh Despenser the Younger—alleged sodomite, pirate, traitor, and Edward II’s “husband”—was captured, a “crown of thorns” (or nettles) was placed on his head, and psalms written on his tabard. Despenser was then (wrote Jehan Le Bel) “dragged

²⁰¹ *N-Town Plays* (2007 ed.), 260–1 [play 31], 267 [play 32] (spelling modernized). See, similarly, the Benediktbeuern Passion Play, in Bevington, ed., *Medieval Drama* (2012 ed.), 217 (“Let him be crucified!”). Pamela King notes that the manuscript we possess was written for contemplative reading rather than for performance (email communication), but it surely reflects actual performances. For a close reading of the N-Town Passion analyzing its unfolding in performance, see King, *Reading Texts for Performance*, 53–60.

²⁰² Chiffolleau, *Justices du pape*, 239 (describing the 1430 Avignon *Jeu de la Passion de Jésus Christ* and suggesting that it was common for towns to have the executioner play the role in Passion plays).

²⁰³ With thanks to Christopher Baswell for this vivid example, and to Pamela King for noting that, while the Pinners and Painters botch the job in the York play, they were probably also promoting their wares.

²⁰⁴ See Davis, “Spectacular Death,” 137, for a similar observation about Corpus Christi processions.

²⁰⁵ See Teo, “Mapping Guild Conflict in the York Passion Plays,” 144, noting the audience’s potential identification of the actor playing Christ with criminals they had seen at these locations.

along in shame” on “the smallest, scrawniest, most wretched horse [they] could find, . . . through every town . . . accompanied by fanfares to humiliate him all the more” (a “*horridus sonus*”).²⁰⁶ This scene did not invite the crowd to feel “compassion for the suffering martyr-criminal.” The principal aim of the spectacle was “to humiliate him,” and it seems to have succeeded, for the “great popular multitude” that attended played its part in adding to the “*horridus sonus*.” Le Bel reflects popular sentiment in celebrating the execution that followed, and relishing its gory details, with no mention of atonement or redemption. Despenser was (he writes)

tied to a tall ladder so that everyone could see him. [They] first cut off his penis and testicles because he was alleged to be a pervert and a sodomite, [then] they slit open his belly and tore out his heart and threw it in the flames to burn, because it was a false and treacherous heart.²⁰⁷

Such scenes as Despenser on his scrawny horse wearing his crown of thorns invited the crowd to behave like the mocking Jews. The images and performances of the Ecce Homo or road to Calvary that spectators had seen generally represented not a reverential body of worshippers but a mocking, jeering crowd like the crowd Graf represents. These offered the principal models for crowd behavior at sentencing proceedings and executions. When popular sentiment was against the condemned, the crowd tended to enthusiastically replicate the behavior such images depicted, as they did at Despenser’s execution. Many citizens already theoretically had the experience of playing the part of jeering Jews in Passion plays, since the guilds had to recruit a substantial number of people to represent the crowd crying “crucify him” and following Jesus to Calvary. Even those people not specifically drafted to play Jews often followed the procession and joined in the cries. Jeering in a Passion play thus served as a kind of bodily and psychological training for jeering in a real execution procession.

Such performances effectively haunted real execution processions. To dance around the cross or cry “crucify him” was, of course, a means of vividly calling up the villainy of the Jews through scenic representation. Perhaps it gave performers a

²⁰⁶ Le Bel, *True Chronicles* (trans. Bryant), 31; and Knighton, *Chronicon Henrici Knighton* (1889–95 ed.), 1:436 for “*horridus sonus*” and on the multitude gathered to watch. Le Bel describes Despenser’s summary trial and brutal execution soon after. See also the discussions in Tarlow and Lowman, *Harnessing the Power of the Criminal Corpse*, 49–50; and Musson, *Medieval Law in Context*, 232 (including several similar examples of shameful crowns in the parade of the condemned). On the reference to Despenser as Edward’s “husband,” see Phillips, *Edward II*, 98 (“*rex et maritus eius*”). For a similar argument about the sometimes verging-on-blasphemous representations of Christ in Palm Sunday processions, see Harris, *Christ on a Donkey* (with a thank you to Max Harris for provocative thoughts on Palm Sunday and the liturgy).

²⁰⁷ Le Bel, *True Chronicles*, 31.

deeper experience of their own complicity—as sinners—in the crucifixion.²⁰⁸ But while performing the part of a jeering Jew in a Passion play may have officially been an act of solemn reverence, it did not look like one and probably did not always feel like one. Such performances must have produced, for at least some, an equivocal experience of identification with the jeering Jews, perhaps even a thrilling frisson of impiety: dallying with the demons; reveling in sacrilege. Certainly, some people found impiety irresistible, as the various cases of sacrilegious desecration suggest: Bartomeo de Cases, who confessed to desecrating images of the Virgin Mary in 1493; Antonio Rinaldeschi, found guilty in 1501 of throwing horse dung at a painting of the Annunciation on the exterior of a church (he was hanged out the window of the Florence city hall).²⁰⁹ To mock Jesus with the Jews in a Passion play was to enjoy licensed impiety, and to earn special approbation if one did it with special zeal. Insofar as crowd behavior at real executions echoed the mocking of Christ, it re-enacted the crucifixion: not as a pious act of veneration, but as an opportunity for irreverent sport in which one could (unofficially) jeer like the Jew with impunity.

Penal Pleasures

Certainly, for many, watching the spectacle of punishment involved not painful penitence for one's sins but enjoyable pastime. When a fourteenth-century Florentine advice manual admonished its readers to "go to see men executed" but "*not* out of pleasure," rather only so that "it can be an example to you," it acknowledged that many did go "out of pleasure."²¹⁰ Those who arranged for "torturers dressed like devils" to ride around the alleged traitor Thomas de Turberville on the way to his execution in 1295, or who dressed executioners in garish feathered hats or skintight breeches with prominent codpieces that associated them with the devil, understood not merely the power but also the pleasure of such spectacle.²¹¹ Certainly, there was spice in what Madeline Caviness has called "sado-erotic spectacles" of punishment, visible (for instance) in the various illustrated editions of the *Sachsenspiegel* that show half-naked women being flogged.²¹² An image in the fourteenth-century *Custumal of Toulouse* shows the punishment

²⁰⁸ Thank you to Eleanor Johnson for this point (and generally for inspiring conversations on the Passion plays). And see Johnson's *Staging Contemplation*, especially Ch 6 ("Laughing Our Way toward God"), 169–90, which explores, among other things, how performance may allow spectators to indulge in sinful pleasures, while ultimately seeking to inspire recognition, reform, and repair.

²⁰⁹ Connell and Constable, ed., *Sacrilege and Redemption* (volume dedicated to the Rinaldeschi case); Edgerton, *Pictures and Punishment*, 47–58 (reproducing images from an anonymous early sixteenth-century panel depicting the case, including one joyfully showing Rinaldeschi *in flagrante delicto* [48]); and Crouzet-Pavan, "Emotions in the Heart of the City," 29–30 (for several similar cases).

²¹⁰ Quoted in Dean, *Crime in Medieval Europe*, 126 (emphasis added).

²¹¹ See Davis, "Spectacular Death," 141–2; Edgerton, *Pictures and Punishment*, 134–5.

²¹² Caviness, *Visualizing Women* ("Sado-Erotic Spectacles," 83–124).

of an adulterous couple: a naked woman leads a naked man by a rope attached to his penis, accompanied by a trumpeter and an armed guard.²¹³ In towns in southern France, if a man and woman were found naked behind closed doors or a man was found with his trousers down with a married woman, they were to run naked through the town from one gate to another: presumably through a crowd and accompanied by a whipping.²¹⁴ Ecclesiastical punishments like that for Margery Baxter in 1428 often featured flogging parades in short garments, visiting “all of the places of the market, . . . where a multitude of people is present” (as a 1447 trial report put it).²¹⁵ John Kynget’s 1429 punishment mandated that he “wea[r] only a linen shirt to the length of his things” and parade around the cemetery chapel and through the marketplace while genuflecting and being solemnly flogged with a rod by the Vicar of Nedham.²¹⁶ That spectators watched with avid interest is clear. When Joan of Arc was dead (according to the Parisian chronicler), “the fire was raked back and her naked body . . . and all the secrets that could or should belong to a woman” were “shown to all the people,” who “stared a long [while] at her dead body bound to the stake.”²¹⁷

The general exclusion of discussions of shaming punishments from discussions of execution-as-atonement-ritual presumes that we should divide punishments by genre: shamings in the stocks or pillory were comedy; executions were tragedy. But they had a shared repertoire: executions commonly included shaming elements similar to those in noncapital punishments; malefactors not actually condemned to death were sometimes required to parade with ropes around their necks signifying their civil death.²¹⁸ In both capital and noncapital punishments, comedy often mixed with tragedy, jeering with tears. At the end of Hus’s sentencing, after the bishops managed to balance the eighteen-inch-tall “Arch-Heretic” hat with dancing devils on his head, they realized they had to take it off again because they had forgotten to “obliterate his tonsure.”²¹⁹ One bishop pulled out a razor. Another pulled out a scissors. They started arguing. We must “shave [his] head all over,” said one. No, “shave his head in separate squares!” said another. “[A]ll over!” “[S]eparate squares!” Hus—on his way to the stake and weeping—suddenly began to laugh at them: “Look how you cannot come together in this act of blasphemy, how will you be able to agree on others?”²²⁰ The bishops did eventually cut his tonsure into a checkerboard and put the paper crown back on. But it is not easy to keep an eighteen-inch-tall cone on one’s head, however

²¹³ See Jones, *Secret Middle Ages*, 94.

²¹⁴ See Dean, *Crime in Medieval Europe*, 130.

²¹⁵ On Baxter’s punishment, see Hornbeck, Lahey, and Somerset, ed., *Wycliffite Spirituality*, 329. For the quote from the trial report, see Masschaele, “Public Space of the Marketplace,” 409. For many examples of malefactors paraded in their underwear or in loincloths, see Fudge, *Medieval Religion*, 209–17.

²¹⁶ Hornbeck, Lahey, and Somerset, ed., *Wycliffite Spirituality*, 337.

²¹⁷ *Parisian Journal 1405–1449* (trans. 1968), 263–4.

²¹⁸ Cohen, *Crossroads of Justice*, 165.

²¹⁹ Mladoñović, *Relatio*, 230.

²²⁰ Bradaty, “Passio” in Fudge, “Jan Hus at Calvary,” 68b.

well tied under the chin, so it must have slipped and tottered as the procession made its way to the execution site.

Conclusion

Mocked by the court, Joan herself (complained an English “doctor” at her trial “ma[de] a mock of them” throughout.²²¹ Hus may have been “mocked in [his] white garment,” but he mocked the mockers right back, even on the brink of execution.²²² Transforming shame into honor, he seems to have worn his Arch-Heretic hat, with its dancing devils, proudly. Certainly, for his hundreds of thousands of followers, the hat became the central icon of his martyrdom and a paradoxical signifier of his holiness: every image of the martyr-Hus burning in the pyre shows him sporting his three dancing devils (a sign of victory over the devil? or a reworking of the shaming epithet as a badge of pride?) We have a description in the *Journal of a Bourgeois of Paris* of at least one condemned man who laughed all the way to the scaffold: Pierre des Essarts, Prévôt of Paris, condemned for treason and corruption in 1413. “[D]ressed in a black checkered robe lined in sable, [with] white stockings and black slippers on his feet,” dragged on a hurdle all the way from the palace to the marketplace, “he did nothing the whole time but laugh, . . . in his great majesty.” Perhaps his laughter was the product of terror (many “took him for truly mad”). But it was also majestically defiant laughter that inspired not outrage but pity: “he alone laughed,” whereas “everyone who saw him wept so piteously that [never were there] greater tears for the death of a man.”²²³ In “sado-erotic spectacles” like Margery Baxter’s or John Kynget’s floggings or those represented in the *Sachsenspiegel*, it is possible that people who felt unshamed of what they had done or what they believed sometimes flaunted their punishment, their half-clothed bodies in postures of defiance. Had Helena Scheuberin been required to wear the short garment that Margery Baxter wore, undergoing flogging as she paraded around the market square, it is impossible to

²²¹ Pernoud, ed., *Retrial of Joan of Arc*, 207.

²²² Mladoñovic, *Relatio*, 229 (“many . . . jeered at him”); Richenthal, *Chronik*, 132 (“he made only a mock of [them]”).

²²³ “[V]estu d’une houppelande noire dechicquetée fourrée de martres, unes chausses blanches, ungs escafinons noirs en ses piez.” “[D]epuis qu’il fut mis sur la claie jusques à sa mort, il ne faisoit touzjours que rire, . . . en sa grant majesté, dont le plus des gens le tenoient pour vray fou; car tous ceulx qui le veoient plouroient si piteusement que vous ne ouysiez oncques parler de plus grans pleurs pour mort de homme, et lui tout seul rioit.” *Journal d’un bourgeois de Paris*, 32–3. According to the *Journal*, the Prévôt had granted himself lucrative posts that would have satisfied “six or eight sons of counts or knights,” had engaged in “very great and cruel massacres, . . . pillaged and robbed the good inhabitants” of Paris (“who loved him so loyally”), and had planned “to betray the city and deliver it into the hands of its enemies” (“il avoit assez offices pour six ou pour huit filx de contes ou de bannerez”; “il avoit en sa volenté . . . de faire . . . tres grans et cruelles occisions, et piller et rober les bons habitans de la bonne ville de Paris, qui tant l’aymoient loyaulment,” “de trahir la ville et de la livrer es mains de ses ennemis” [33]).

imagine her—a woman who spat at the Inquisitor and charged *him* with heresy, who seduced a knight and (effectively) the monk himself—now hiding her head in shame. Instead, she would (it seems certain) have used the spectacle as a platform for protest, as Catharina Arndes and the mythic Calefurnia did: mooning the judge, earning laughter and applause, capturing the scene.