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# What Rights for Criminals Condemned to Death? Jurisdictional Dialogue and Clash Between Religious and Secular Authorities, c.1250–1320

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## ABSTRACT



Between the thirteenth and fourteenth centuries, a variety of legal actors became involved in disputes regarding the right of criminals condemned to death to access religious comforts such as sacraments, Christian burial, and the possibility to make bequests *pro anima*. These debates centred around important questions such as: which authorities held the right to grant or deny spiritual assistance to executed criminals? What normative bases could be invoked to support these claims? This paper argues that, in the period c.1250–1320, lay and religious authorities reiterated norms deriving from a multiplicity of pre-existing systems (canon law, Roman law, theological principles) to answer these questions. The underlying agenda of these debates, however, was a struggle for power regarding whose ultimate authority it was to decide who could be considered a member of the community and to what extent. In time, this struggle contributed to a gradual separation between the political community and a previously all-encompassing *Ecclesia*.

**KEYWORDS** Late medieval Europe; capital punishment; canon law; Roman law; community; exclusion; sacraments

## 1. Introduction

In 1276, the Sheriff of Ilchester imprisoned some agents of the Knights Hospitallers for having illegally retrieved the corpses of hanged criminals from the scaffold in order to bury them; they objected that a papal privilege enabled them to do so, and were freed.<sup>1</sup> In 1299, a riot started in Bologna after the condemnation of a heretic to the stake; the acts of the local inquisition preserve more than 300 hundred depositions from the participants, the majority of

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<sup>1</sup>Ralph B. Pugh, 'The Knights Hospitallers of England as Undertakers', 56 *Speculum* (1981), 566.

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whom declared that their actions had been motivated by the fact that the bishop and the civic magistrate had unjustly denied the heretic access to the sacraments before his execution.<sup>2</sup> Finally, in 1333, the *Manipulus curatorum* by Guy de Montrocher complained about how lay authorities did not grant access to the Eucharist to criminals condemned to death, despite papal provisions on the matter.<sup>3</sup> These few examples will suffice to show how, in thirteenth- and fourteenth-century Europe, disputes regarding the right of criminals condemned to death to receive religious comforts gained prominence. Such disputes concerned access to both sacraments, in particular confession and communion, and sacramentals, such as Christian burial and the possibility of making or receiving bequests *pro anima*.

Previous scholarship has suggested that the 1330s–1340s might represent a turning point in the treatment of criminals condemned to death, at least in the Italian peninsula, where this period marked the foundation of the first confraternities specifically devoted to the spiritual assistance of this category; in other parts of Europe, though, such devotional practices would sometimes be banned by secular authorities.<sup>4</sup> This article will not concern itself with proving whether this is an accurate depiction of the condemned criminals' experience in late medieval Europe, or if the decades indicated by scholars such as Prospero are indeed a turning point in this respect or not. Rather, it will focus on the normative bases that religious and secular authorities could utilize when making claims concerning their right to grant or deny spiritual comforts to this category. Little work has been done on the question, and scholarship is still divided regarding what the ultimate stakes of making these claims were.<sup>5</sup> Many scholars working on medieval capital punishment, in particular, interpret the rise to prominence of the aforementioned disputes on the treatment of executed criminals and devotional practices surrounding capital punishment as a culmination of a process of 're-humanisation' of criminals, who had not previously been the object of spiritual attentions.<sup>6</sup> Others, however, argue that the developments of the 1330s–1340s should be linked to the fact that the Church eventually put aside previous objections to its participation in the infliction of corporal punishments,<sup>7</sup> on account of the fact

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<sup>2</sup>The documents are edited in Lorenzo Paolini and Raniero Orioli, eds., *Acta S. Officii Bononie ab anno 1291 usque ad annum 1310*, Rome, 1982, 152–ff.

<sup>3</sup>Guido de Monte Rocheri, *Manipulus curatorum*, Venetiis, per Petrum Bergomensem, 1514, fol. 24v–25r, quoted in Vincenzo Lavenia 'Ipse Christus innocentissimus. Inquisizione, eretici condannati e sacramenti', 121 *Mélanges de l'École française de Rome. Italie et Méditerranée* (2009), 155–172.

<sup>4</sup>Adriano Prosperi, *Delitto e perdono. La pena di morte nell'orizzonte mentale dell'Europa cristiana. XIV–XVIII secolo*, Turin, 2013.

<sup>5</sup>An exception is Lavenia, 'Ipse Christus innocentissimus'.

<sup>6</sup>Esther Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France*, Leiden, 1993, 195–200; Christiane Klapisch-Zuber, *Le voleur de paradis. Le Bon Larron dans l'art et la société (xive–xvie siècles)*, Paris, 2015, 85–87.

<sup>7</sup>Claude Gauvard, 'Pendre et dépendre à la fin du Moyen Âge : les exigences d'un rituel judiciaire', in Jacques Chiffolleau, Lauro Martines and Agostino Paravicini Bagliani, eds., *Riti e rituali nelle società medievali*, Spoleto, 1994, 191–211.

that the latter had been on the rise in the Western Europe from the late thirteenth century on.<sup>8</sup> This process would have resulted in its gradual abandonment of the moral principles that had previously kept the clergy away from the scaffolds, except in the case where they could obtain a pardon for a condemned criminal.<sup>9</sup> Both theories, therefore, clearly link the treatment of individuals condemned to death to broader transformations in late medieval history, such as the growth of an embodied spirituality centred on the humanity of the crucified Christ,<sup>10</sup> or the processes of consolidation of western European polities to the detriment of ecclesiastical influence.<sup>11</sup> These explanations have the merit of establishing the relevance of a theme that might at first appear as marginal (especially since the majority of historians agree that executions remained a relatively rare occurrence even after the 1330s–1340s).<sup>12</sup> However, they fall short of providing a thorough analysis of the normative bases for the claims described so far in the context of the multiplicity of legal traditions of late medieval Europe, as well as of the variety of actors interested in participating in the definition of such claims.

This article will therefore aim to contribute to clarifying the meaning that coming up with norms that attributed or denied spiritual rights to individuals sentenced to death could have around 1250–1320. It will do so by analysing the three main papal rulings issued in this period to provide guidelines on this matter. The perspective used here will be diachronic (i.e. these rulings will be placed in the context of previous ecclesiastical norms on this topic) and pluralistic (that is, they will be analysed in their relationship with the other normative material regarding this matter produced in Europe around the same time by other legislative powers). The article will argue that, through these interventions, the late medieval Church was not innovating its doctrine, as suggested by some of the theories previously mentioned, since for the most part it reiterated norms that had been formulated in the early and central Middle Ages. Instead, it was trying to reassert itself in a context in which secular authorities and local communities in most of Western Europe were appropriating the Church's traditional authority, exercised through tools such as excommunication, to decide who could be

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<sup>8</sup>Trevor Dean, *Crime and Justice in Late Medieval Italy*, Cambridge, 2007, 18; Claude Gauvard, *Condamner à mort au Moyen Âge: Pratiques de la peine capitale en France XIII-XVe siècle*, Paris, 2018, 12.

<sup>9</sup>Michèle Bordeaux, 'Le sang du corps du droit canon ou des acceptions de l'adage *Ecclesia abhorret a sanguine*', 28 *Droit et société* (1994), 543–563; Kirsi Salonen, 'Killer Clergy: How did Clerics Justify Homicide in Petitions to the Apostolic Penitentiary in the Late Middle Ages?', in Thomas W. Smith and Helen Killick, eds., *Petitions and Strategies of Persuasion in the Middle Ages: The English Crown and the Church, c. 1200–c. 1550*, York, 2018, 202–217.

<sup>10</sup>Trisha Olson, 'The Medieval Blood Sanction and the Divine Beneficence of Pain: 1100–1450', 22 *Journal of Law and Religion* (2006/2007), 63–129.

<sup>11</sup>Gauvard, 'Pendre et dépendre'; Gauvard, *Condamner à mort au Moyen Âge*, 162.

<sup>12</sup>Although this view is not unchallenged: see Samuel K. Cohn, 'Repression of Popular Revolt in Late Medieval and Early Renaissance Italy', in Samuel K. Cohn and Fabrizio Ricciardelli, eds., *The Culture of Violence in Renaissance Italy*, Florence, 2012, 99–120.

considered a member of the community and to what extent. Inclusion or exclusion in a community, and who exercised the right to make decisions in this regard, was therefore the fundamental issue lying behind provisions regarding the spiritual rights of executed criminals, and the reason why a variety of late medieval legal actors were willing to start jurisdictional conflicts to assert their claims in this regard. The term ‘legal actor’ is intended here in the capacious sense defined in the Introduction to this collection: in particular, ecclesiastical and lay authorities (such as popes, bishops, kings and communes emanating legislation), but also inquisitors, legal commentators, notaries and local communities who had a stake in interpreting the multiplicity of norms on the matter accumulated in centuries of reflection to react to specific situations and promote their own aims. The spiritual rights of criminals condemned to death can be therefore seen as having been a ‘wedge issue’ through which such actors asserted conflicting political claims.

As a consequence, this topic can allow for a broader reflection on how the plurality of norms – intended again in a capacious sense as generalizing and organizing concepts of rightful or wrongful behaviour, be they strictly legal, or moral, or customary in origins<sup>13</sup> – that circulated on the same matter but through different channels in late medieval Europe could be interwoven by different parties in creative ways, thus reshaping pre-existing jurisdictional boundaries. The claims emerging from this process remained contested and highly political, exactly because no single authority had the power to control the significance and interpretations that norms, once issued, developed when they came in contact with these multiple legal actors. The ‘cases’ that lie at the centre of this article, therefore, are not simply the three main papal letters issued in the period 1250–1320 on the definition of spiritual rights of criminals condemned to death, but include also the broader vicissitudes linked to the dissemination and interpretation of the norms they transmitted to the legal actors that encountered them.

## 2. Three Papal Rulings in a Multiplicity of Legal Traditions

In 1255, Pope Alexander IV wrote a letter to the clergy of the diocese of Constance. The document aimed to combat the custom of not allowing penitent usurers, homicides and arsonists to be granted a Christian burial, which, according to the Pope, was better defined as an abuse (‘consuetudine, que corruptela dicenda est potius’).<sup>14</sup> Shortly after, in 1259, the same Pope issued the decretal *Super Eo*, to answer the question whether relapsed

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<sup>13</sup>Paul Dresch, ‘Introduction. Legalism, Anthropology and History’, in Paul Dresch and Hannah Skoda, eds., *Legalism: Anthropology and History*, Oxford, 2012, 17.

<sup>14</sup>Charles Bourel de la Roncière, *Les registres d’Alexandre IV*, t. I, Paris 1895, 250, n. 828.

heretics could be granted access to sacraments before their execution.<sup>15</sup> In this text, the Pope made it clear that the difficulty arose from the disagreement between different types of norms considered as equally fundamental. The first, i.e., the principle according to which relapsed heretics were to be entrusted to the secular arm without granting them any further hearing ('saeculari iudicio sine ulla penitus audentia decernimus relinquendos'), derived from the bull *Ad abolendam*, issued by Pope Lucius III in 1184 and seen as a turning point in the fight against medieval heresy.<sup>16</sup> The second was the maxim *Ecclesia nulli claudit gremium redeunti* ('the Church always readmits penitents into its fold'), mentioned in the *Code of Justinian*.<sup>17</sup> This phrase was often quoted in theological discussions on how to punish heretics in the late Middle Ages, on account of its kinship with biblical injunctions to mercy such as Luke 15: 11-ff (the story of the prodigal son), John 6: 37 ('Omne quod dat mihi Pater, ad me veniet: et eum qui venit ad me, non ejiciam foras'), and Matthew 18: 21-22 (the command to forgive seventy times seven).<sup>18</sup> The solution offered by the Pope to solve this contradiction was that of distinguishing between the aims of the two authorities: if the maxim *Ecclesia nulli claudit* promoted the salvation of the heretics' souls, the dictates of *Ad abolendam* regarded the fate of their bodies. Therefore, inquisitors must have these individuals executed, but at the same time grant them access to sacraments and thus save their souls if they repented before the execution. Still on the topic of access to sacraments prior to executions was the decretal issued by Clement V in 1312, at the Council of Vienne, which, together with all the other acts of that council, was published in 1317 by Clement's successor John XXII in the *Constitutiones Clementinae*.<sup>19</sup> In the decretal, Clement reiterated that, according to the canons ('statuta canonica'), it was unlawful to deny access to the sacraments to criminals condemned to death if they repented and asked for them; the provision was expressly meant 'to completely abolish the condemnable abuse introduced in some regions' ('abusum damnabile in quibusdam partibus contra hoc introductum') by the 'dominos temporales'. It is generally recognized that Clement was specifically targeting the crown of France, who would keep denying access to spiritual comforts to executed criminals long after

<sup>15</sup>Hyacinthus Sbaralea, *Bullarium Franciscanum*, t. II, Typ. Sacrae congregationis de propaganda fide 1761, 308, n. 444. The decretal was later included in *Liber Sextus*: VI 5.3.4.

<sup>16</sup>X 5.7.9.

<sup>17</sup>*Corpus Iuris Civilis*, Cod. Iust., 1.1.8 (35); on this maxim, whose history in legal and theological thought has not been thoroughly investigated yet, see also Thomas Werner, *Den Irrtum Liquidieren. Bücherverbrennungen im Mittelalter*, Göttingen, 2007, 301-ff.

<sup>18</sup>These passages are linked to the maxim *Ecclesia nulli claudit* in works such as Alexander of Hales, *Summa Halensis*, IIA-IIAE, Inq. 3, Tract. 8, S.1, Q.1, T.3, C.13; and Thomas Aquinas, *Summa Theologiae*, IIA-IIAE, Q. 11, art. 4.

<sup>19</sup>Jacqueline Tarrant, 'The Clementine Decrees on the Beguines: Conciliar and Papal Versions', *12 Archivum Historiae Pontificiae* (1974), 300-301.

this decretal was issued.<sup>20</sup> The context of the Council of Vienne, in which King Philip IV of France was pressuring the Pope into judging the Order of the Knight Templars on heresy charges, makes it indeed likely that the target of this provision was the French monarchy, against whose abuses of the norms concerning criminals condemned to death the Pope even threatened excommunication ('ecclesiastica censura').<sup>21</sup>

The examination of these three papal letters on the topic of the spiritual rights of criminals or heretics condemned to death can highlight a few central features of the debate. First, it reveals the entanglement of norms and legal traditions that papal attempts to provide clearer guidelines on the spiritual rights of executed criminals had to deal with. Roman law, papal decretals and conciliar canons, statutes, customs, and scriptural passages all played a role in discussions on the issue. Second, this analysis highlights how Alexander IV and Clement V strove to present the perceived abuses enacted by local authorities against the rights of condemned criminals as newly introduced deviations or corruptions ('corruptela', 'abusum damnable ... introductum') to the traditional norm established by the Church ('statuta canonica').<sup>22</sup> The latter, even when seemingly contradictory as in the case of the clashing norms discussed in the bull *Super Eo*, had to be upheld as the only binding guideline to answer doubts regarding the treatment of individuals condemned to capital punishments. Third and finally, these sources imply an interconnection between access to Christian burial and to sacraments.

This link would have been clearly present in the minds of late medieval people, not only when it came to the condition of individuals who were soon to be executed, but more broadly of all members of the Christian community. The influential canon *Omnis utriusque sexus* of the Fourth Lateran Council (1215) had made annual participation in the sacraments of confession and communion a *conditio sine qua non* to be considered as a proper member of the Christian community, and therefore to obtain ecclesiastical burial after passing ('alioquin et vivens ab ingressu ecclesiae arceatur et moriens christiana careat sepultura').<sup>23</sup> More generally, the doctrine of

<sup>20</sup>Mireille Vincent-Cassy, 'La confession des condamnés à mort: l'exception française du XIV siècle', in Stefano Gensini, ed., *Vita religiosa e identità politiche. Universalità e particolarismi nell'Europa del tardo medioevo*, Ospedaletto, 1998, 383–402.

<sup>21</sup>Clem. 5.9.1.

<sup>22</sup>In the case of Clem. 5.9.1, moreover, the *Glossa ordinaria* further underscores this feature by claiming that denying access to sacraments to condemned criminals is a 'consuetudinem quae potius abusus dicitur', a formulation that closely mirrors that used by Alexander IV in his letter to the clergy of Constance: *Corpus juris canonici emendatum et notis illustratum*, Romae: In aedibus Populi Romani, 1582, v.III, col.303.

<sup>23</sup>Antonio García y García, Alberto Melloni, eds., 'Concilium Lateranense IV', in *Conciliorum Oecumenicorum Generaliumque Decreta* (henceforth COGD), II/1, Turnhout 2013, c.21, 178. See also Véronique Beaulande, 'Excommunication et pratiques eucharistiques à la fin du Moyen Âge en Champagne méridionale', 90 *Revue d'histoire de l'Église de France* (2004), 414. On the significance of debates on the

excommunication, as it had been systematized from the twelfth century on, denied access to both sacraments and Christian burial to those who had incurred this sanction.<sup>24</sup> This was true even for cases of minor excommunication, which did not entail a complete exclusion from contacts with all other Christians as major excommunication did.<sup>25</sup> In the case of the 1255 decretal issued by Alexander IV, in particular, it seems that the clergy of Constance might have excluded certain categories of criminals because they were interpreted as being automatically excommunicated on account of their misdeeds. Canon 18 of the Second Lateran Council of 1139, for instance, explicitly punished arsonists with an automatic excommunication, and deprived them of a Christian burial if they had not obtained an absolution by refunding the damage they had caused and performed due penance.<sup>26</sup> The exclusion of homicides could be motivated on the other hand by Canon 18 of the First Council of Lyon of 1245, which, however, did not apply to generic murderers, but only to those who hired assassins.<sup>27</sup> It has been claimed that local synodal statutes might have included homicide as a ground for excommunication *latae sententiae*; however, there were no such rules on the matter that were valid for the whole of Western Christianity.<sup>28</sup> Many councils, finally, had condemned usury as a behaviour that would entail excommunication if it was not followed by due penance.<sup>29</sup> The clergy of Constance seem therefore to have claimed their right to permanently exclude these categories of people from the community even after their death on the basis of this legislation.<sup>30</sup> At the same time, it cannot be dismissed that behind this

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Eucharist as the real body of Christ in thirteenth-century Europe, and especially Italy and Flanders, see Miri Rubin, *Corpus Christi. The Eucharist in Late Medieval Culture*, Cambridge, 1991.

<sup>24</sup>Véronique Beaulande, *Le Malheur d'être exclu? Excommunication, réconciliation et société à la fin du Moyen Âge*, Paris, 2006, ch.1, available at <<https://books.openedition.org/psorbonne/12500#bodyfn14>> (accessed 12/06/2023); Mathieu Vivas, 'Christiana sepultura priventur. Privation de sépulture, distinction spatiale et inhumations atypiques à la lumière des pratiques funéraires (Xe-XIVe siècle)', in Isabelle Cartron, Dominique Castex, Patrice Georges, Mathieu Vivas, Martine Charageat, eds., *De corps en corps. Traitement et devenir du cadavre*, Bordeaux, 2010, 196.

<sup>25</sup>Elisabeth Vodola, *Excommunication in the Middle Ages*, Berkeley, CA, 1986, 36. On the extent to which excommunication did entail social ostracism see however Felicity Hill, *Excommunication in Thirteenth Century England: Communities, Politics, and Publicity*, Oxford, 2022, II.

<sup>26</sup>Thomas Izbicki, ed., 'Concilium Lateranense II', in COGD II/1, 110–111.

<sup>27</sup>Atria Larson, Kenneth Pennington, eds., 'Concilium Lugdunense I', in COGD II/1, 231–232.

<sup>28</sup>Beaulande, *Le Malheur d'être exclu?*; Mathieu Vivas, 'La mise en scène de l'outrage dans la mort à travers l'étude de la privation de sepultura ecclesiastica et des sépultures atypiques (XIe – XIVe siècles)', in Lydie Bodiou, Véronique Mehl, and Myriam Soria, eds., *Corps outragés, corps ravagés de l'Antiquité au Moyen Âge*, Turnhout, 2011, 372.

<sup>29</sup>Beaulande, *Le Malheur d'être exclu?*, ch.1. An example is c.26 of the Second Council of Lyon of 1274, which reiterated previous condemnations of this sort: VI 5.5.1.

<sup>30</sup>On top of the literature mentioned in the previous notes on categories of deviants deemed to be automatically excluded from Christian burial, see also Anthony Perron, 'The Medieval Cemetery as Ecclesiastical Community: Regulation, Conflict, and Expulsion 1000–1215,' in Thea Tomaini, ed., *Dealing With The Dead: Mortality and Community in Medieval and Early Modern Europe*, Leiden, 2018; Anthony Perron, 'Grave Concerns: Law, Miracles, and the Cemetery, 1100–1300', in Atria Larson and Andrea Masironi, eds., *The Fourth Lateran Council and the Development of Canon Law and the ius commune*, Turnhout, 2018, 205; Sara Butler, 'Legislating Sanctity: Protecting the Graveyard in Medieval England', *Legal History Miscellany* (10 Aug. 2023), available at: <https://legalhistorymiscellany.com/2023/08/10/>

local practice lay also the influence of Germanic customs, such as those attested for Anglo-Saxon England or medieval Norway, according to which certain types of outlaws, whose crimes were seen as particularly treacherous and dangerous for the community, were denied regular burial and were occasionally buried under the gallows.<sup>31</sup> In any case, however, Alexander IV invalidated the legitimacy of claims to exclude certain types of criminals from Christian burial, even when adopting a strict reading of the canons regarding minor excommunicates. Although his letter does not clearly spell out the normative bases for the Pope's decisions, the latter can potentially be inferred when the document is compared to previous canons and decretals.

The possibility that criminals condemned to death might receive spiritual comforts had already been discussed by ecclesiastical authorities centuries before. The Council of Reims of 630 had already established that homicides were to be excluded from communion before they performed due penance; however, they had to be granted the Eucharist *in exitu* (it is not clear, however, whether this refers to the administration of sacraments to homicides before executions or on their deathbed, or both).<sup>32</sup> In 847, moreover, the Council of Mainz approved of burying people condemned to death in the same cemeteries as everyone else, as well as celebrating suffrage masses in their memory.<sup>33</sup> The opinions expressed in these canons, based on the merciful promise made by Christ to the Good Thief on the cross (Luke 23:43), were however not shared by the ecclesiastical hierarchy in its entirety. In the ninth century, Regino, abbot of Prüm, for instance, argued that the corpses of condemned malefactors should be buried together with animals, to avoid contamination;<sup>34</sup> in early medieval sources, it is possible to find complaints about the lack of systematic access to sacraments by criminals on the scaffold.<sup>35</sup> Nevertheless, Gratian's *Decretum* and a series of letters by pope Gregory IX reiterated the spirit of the conciliar canons, by stating that, although homicides and other serious sinners could be denied the

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[regulating-sanctity-protecting-the-graveyard-in-medieval-england/#\\_edn24](#) (accessed 06/07/2024). Other significant categories of people excluded from consecrated cemeteries were suicides (on which see Alexander Murray, *Suicide in the Middle Ages, vol.2: The Curse on Self-Murder*, Oxford, 2000) and interdicted persons or communities (on which see Peter D. Clarke, *The Interdict in the Thirteenth Century: A Question of Collective Guilt*, Oxford, 2007).

<sup>31</sup>For England: Alyxandra Mattison, *The Execution and Burial of Criminals in Early Medieval England, c.850–1150*, unpublished PhD thesis, University of Sheffield 2016, 315–319. For Norway: Anne Irene Riisøy, 'Deviant Burials: Societal Exclusion of Dead Outlaws in Medieval Norway', in Mia Korpiola, Anu Lahtinen, eds., *Cultures of Death and Dying in Medieval and Early Modern Europe*, Helsinki, 2015, 49–81.

<sup>32</sup>Gian Domenico Mansi, ed., *Sacrorum conciliorum nova et amplissima collectio*, Florentiae-Venetis-Parisii 1759–1798, vol.10, coll.592–594.

<sup>33</sup>Mansi, *Sacrorum conciliorum*, vol.14, coll.899–912. The canon was reiterated in 868 at the Council of Worms: *ibid.*, coll.865–ff.

<sup>34</sup>Regino Prumiensis, *Libellus de ecclesiasticis disciplinis et religione christiana*, in *Patrologia Latina* 132, col.362.

<sup>35</sup>Prosperi, *Delitto e perdono*, 56.

Eucharist if they had not yet performed proper penance and satisfaction for their misdeeds, these restrictions did not apply to those who, being *in articulo mortis*, would not have time to go through this lengthy process. Gratian, in particular, asserted that ‘when they are about to die, the Eucharist is granted even to those who repent of horrible sins’ (*eucharistia (...) in articulo mortis penitenti etiam de nefariis peccatis conceditur*);<sup>36</sup> Gregory IX explicitly commanded that even those excommunicated as homicides or arsonists ‘when they are about to die, if absolved by their own priest in accordance with the precepts of the Church, should not be denied regular burial in a graveyard and other spiritual comforts’ (*dum ageret in extremis, per presbyterum suum iuxta formam ecclesiae absolutus, non debent coemeterium et alia ecclesiae suffragia denegari*).<sup>37</sup> The satisfaction prescribed by the ecclesiastical legislation could be performed in this case by the family of the soon-to-be-deceased. As suggested by specialist of medieval irregular burials Matthieu Vivas, therefore, the normative framework of the Church recognized, besides the dead and the living, also a third legal category, that is, those who were about to die.<sup>38</sup> Because of their impending condemnation, criminals sentenced to capital punishments were automatically included in this latter category, for which exceptions when it came to both access to sacraments and Christian burial were easily made.

On the basis of this previous legislation ranging from the 7th century to the 1230s, therefore, it could be argued that in the period 1250–1320 the late medieval papacy reasserted the idea that repentant criminals condemned to death, be it for spiritual or for secular crimes, had the right to receive confession and communion. This granted them the automatic right also to obtain a Christian burial and suffrage masses, as they could not be treated as excommunicates, since the sacraments had reinstated them as full members of the *Ecclesia*.<sup>39</sup> At a local level, moreover, even more favourable interpretations of the spiritual rights conceded by the papacy to condemned criminals and of the consequences they entailed on their penal treatment could prevail. This is partly due to an uneven circulation of the papal rulings discussed here, as is the case for the *Super Eo*, which for this reason had to be reissued for the benefit of the French Dominicans in

<sup>36</sup>Gratian, *Decretum*, C.1 q.1 d.p.c. 42.

<sup>37</sup>X 3.28.14, 5.17.5 (commenting on this latter passage, the *Glossa ordinaria* specifies moreover that ‘simplex sacerdos in necessitate potest absolvere a maiori excommunicatione, de qua alias absolvere non possit’: *Corpus juris canonici emendatum*, v.II, col.1728).

<sup>38</sup>Mathieu Vivas, *La privation de sépulture au Moyen Âge: l'exemple de la Province ecclésiastique de Bordeaux (Xe-début du XIVe siècles)*, unpublished PhD thesis, Université de Poitiers 2012, 10, n. 17, available online at: <<http://www.theses.fr/2012POIT5005/document>> (accessed 12/06/2023). On leniency towards excommunicates who repented on their deathbed see also Perron, ‘The Medieval Cemetery as Ecclesiastical Community’, 264.

<sup>39</sup>As made explicit by the *Glossa ordinaria* to the previously discussed X 3.28.14: *Corpus juris canonici emendatum*, v.II, col.1209: ‘nota quod cui unum sacramentum conceditur, omnia alia quae sunt eiusdem censurae sunt concedenda’.

1260,<sup>40</sup> and possibly also for the Umbrian Franciscans in 1261.<sup>41</sup> On account of this, the interpretation provided by famed theologian and canonist Raymond de Penyafort at the 1242 provincial council of Tarragona, according to which relapsed heretics should not only be allowed access to the sacraments when they asked, but should also have their punishment commuted to life imprisonment, could still be upheld by inquisitors as a valuable alternative.<sup>42</sup> There are moreover indications that, even when the contents of the *Super Eo* were known, some inquisitors decided not to deliver penitent *relapsi* who had received communion to the secular arm, as proven by a petition submitted by the inquisitors of Lombardy in 1265.<sup>43</sup> Among the laity, moreover, reasons in favour of an attitude of radical mercy towards criminals kept circulating through other channels of communication between them and the ecclesiastics, such as preaching. The Dominican preacher Giordano da Pisa (1260–1311), for instance, asserted in one of his sermons, delivered in Florence just a few years after the Bolognese riot mentioned in the introduction, that ‘as far as God is concerned, the robber that has committed a theft and has repented does not truly deserve to be hung because of that theft, since he received the mercy of God’ (*‘quanto a-dDio, lo ladrone che à facto lo furto et èssi pentuto, non è degno per quel furto di essere appiccato in verità, però ch’elli à ricevuto misericordia da Dio’*), although admittedly he concluded that corporal punishments were still acceptable as a means to avoid the proliferation of crime.<sup>44</sup> It is thus easy to understand why papal attempts to set up a solid framework regarding the spiritual rights of condemned criminals were not fully successful and uncontested. The uninterrupted circulation of alternative norms and interpretations on the matter through a variety of channels provided a certain leeway for other legal actors to participate in this discussion, sometimes in support of an even more lenient view of the condition of criminals, but in the case of lay elites mostly to reinforce the latter’s complete removal from the community, as will be seen.

<sup>40</sup>Thomas Ripoll, *Bullarium ordinis fratrum praedicatorum*, I, Romae, 1729, 391, n. 266 (30/04/1260).

<sup>41</sup>Giacinto Sbaraglia, *Bullarium Franciscanum*, II, Romae, 1761, 308, asserts that a copy dated 13/09/1261 can be found in the archives of the order in Assisi, and quotes Pedro de Alva y Astorga, *Indiculus Bullarii Seraphici*, Camerae Apostolicae 1655, as his source. I was not able, however, to find mention of such a copy in this work.

<sup>42</sup>Sergi Grau Torras, ‘Ramon de Penyafort i el procedement inquisitorial contra els heretges’, 13 *Revista de dret històric català* (2004), 167. In his *Summa*, too, the Dominican interprets the command of judging relapsed heretics ‘sine ulla penitus audientia’ as not necessarily entailing their physical elimination, but only the impossibility of recovering their possessions that had been confiscated by the Church: Aloisio Diez and Javier Ochoa Sanz, eds., *S. Raimundus de Pennaforte. Summa de paenitentia*, I, 1, c.5, par.8: ‘Sed nonne audit eos Ecclesia, quae nulli claudit gremium redeunti? Utique quoad fidem et sacramenta; sed quoad bona recuperanda, non debent audiri’.

<sup>43</sup>Riccardo Parmeggiani, *I consilia procedurali per l’Inquisizione medievale (1235–1330)*, Bologna, 2011, XXXIV, n. 88. This is further proof of the strong link between admissions to sacraments and membership in the community postulated in this paper.

<sup>44</sup>Cecilia Iannella, *Giordano da Pisa. Etica urbana e forme della società*, Pisa, 1999, 65.

### 3. Radical Exclusion of Deviants in Late Medieval Europe

The reason why the papacy decided to reassert the spiritual rights of criminals condemned to death in the decades 1250–1320 becomes clearer when considering the transformations that were happening in the systems of criminal justice of much of western Europe around the same time. The aforementioned growing use of corporal punishments, as opposed to other forms of sentences such as fines and banishment, can be seen as part of a broader tendency to employ more radical forms of exclusion to punish deviant members of the community. In a number of geographical contexts such as France, Central Europe, and England, the period considered in this article sees secular governments increasingly making claims to the bodies of executed criminals, which could lead to their permanent exclusion from the community on account of not being buried in consecrated ground.<sup>45</sup>

Normative legitimation for such a prerogative came from a legal source that, as seen in the case of the decretal *Super Eo*, was taken seriously by the Church even in cases of disagreement with its own legislation: the *Corpus Iuris Civilis*. In the section of the *Digest* ‘On the corpses of those who have been executed’ (*De cadaveris punitorum*), a passage attributed to Ulpian maintained that princes could surrender corpses to their relatives to allow for regular burial, but that ‘often this is not granted, especially for those condemned for lèse-majesté’ (*nonnumquam non permittitur, maxime maiestatis damnatorum*).<sup>46</sup> The thirteenth-century Bolognese glossator Francesco d’Accursio (Accursius) added that the prince’s assent to retrieve the body of an executed criminal was always necessary, implying that crimes of lèse-majesté were not the only cases in which the request could be denied.<sup>47</sup> According to legal scholars, Ulpian’s commentary was actually a postclassical addition to Roman law, which previously had routinely granted the bodies of executed criminals to their families (as proven

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<sup>45</sup>For northern France: Esther Cohen, ‘To Die a Criminal for the Public Good: The Execution Ritual in Late Medieval Paris’, in Bernard Bachrach, David Nicholas, eds., *Law, custom, and the social fabric in medieval Europe. Essays in honor of Bryce Lyon*, Kalamazoo MI, 1990, 293–294. For southern France and Germany, Mathieu Vivas, ‘Les lieux d’exécution comme espaces d’inhumation. Traitement et devenir du cadavre des criminels (XIIe–XIVe siècle)’, 670 *Revue historique* (2014), 295; Idem, ‘L’inhumation des condamnés à mort aux fourches patibulaires (Moyen Âge – Époque moderne)’, in Michel Lauwers, Aurélie Zémour, eds., *Qu’est-ce qu’une sépulture? Humanités et systèmes funéraires de la Préhistoire à nos jours*, Antibes, 2016, 241. For England: Kenneth Duggan, ‘The Ritualistic Importance of Gallows in 13th-Century England’, in Sara Butler, Krista Kesselring, eds., *Crossing Borders: Boundaries and Margins in Medieval and Early Modern Britain*, Leiden 2018, 195–196 (however, in some cities such as Norwich executed criminals were buried in consecrated cemeteries, albeit different from those of the rest of the population: Brian Ayers, ‘Norwich’, 122 *Current Archaeology* (1990) 56–59).

<sup>46</sup>*Corpus Iuris Civilis*, D.48.24.1.

<sup>47</sup>*Digestum novum pandectarum iuris civilis tomus tertius*, apud Hugonem à Porta, Lugduni, 1560, col.1433. Medieval canonists also accepted the possibility that, in some specific cases, secular authorities might not grant immediate burial of a condemned criminal’s corpse, so as to elicit feelings of terror in the population (although they must eventually grant it): *Corpus juris canonici emendatum*, v.III, col.303.

by *Digest* 48.24.3): this insert was motivated by the desire to assert the direct derivation of the imperial power from God, felt particularly strongly in Justinianic times.<sup>48</sup> The high-medieval rediscovery of Roman law rekindled the popularity of such ideas, and historians have connected its influence to thirteenth-century reforms of criminal justice which tended to make a greater use of the death penalty as a means to assert the *plenitudo potestatis* of kings and other authorities.<sup>49</sup> In the period 1250–1320, moreover, some governments expanded the list of crimes that were considered as a threat to the supreme authorities, through the use of categories such as *crimina enormia* (enormous crimes) or *cas royaux* (royal cases), alongside that of *lèse-majesté*.<sup>50</sup> Being able to ‘seize’ both the souls and the bodies of felons condemned for these infractions, therefore, increasingly meant the possibility for governments of asserting the superiority of their power on a specific territory (including in opposition to that of the Church) and the direct derivation of their criminal policies from divine justice.

The rediscovery of Roman law in the high Middle Ages also revived the notion of *servitus poenae* introduced under the Antonine dynasty (second century AD), according to which individuals condemned to death were deprived of all legal rights (including that of ownership and will-making) from the moment of their condemnation.<sup>51</sup> This was a form of slavery from which no emancipation was possible, since the person exposed to it was considered as ‘suspended between life and death’.<sup>52</sup> Thus Roman law possessed, too, a legal category intermediate between the dead and the living applicable to soon-to-be-executed individuals, but meant to curtail their rights instead of asserting them. The impact of this romanistic construction is again fully visible in the doctrine and practice of criminal justice of the period considered here. First, *servitus poenae* was explicitly quoted by Bolognese jurist Rolandino Passaggeri in his influential *Summa artis notarie* (1255) as one of the causes of intestability.<sup>53</sup> Around that time, too, secular governments from many regions of Europe started

<sup>48</sup>Barbara Fabbrini, ‘La deposizione di Gesù nel sepolcro e il problema del divieto di sepoltura per i condannati’, 61 *Studia et documenta historiae et iuris* (1995), 149–150.

<sup>49</sup>E.g., Andrea Zorzi, ‘La pena di morte in Italia nel tardo Medioevo’, 4 *Clio & Crimen* (2007), 47–62.

<sup>50</sup>Julien Théry, ‘Atrocitas/Enormitas. Per una storia della categoria di “crimine enorme” nel Basso medioevo (sec.XII–XV)’, 44 *Quaderni Storici* (2009), 329–375; Idem., ‘Philippe le Bel, pape en son royaume’, 289 *L’Histoire* (2004), 14–17, available online at: <<https://shs.hal.science/halshs-00219769>> (accessed 14/06/2023). On the development of a jurisprudence on *lèse-majesté* in late medieval Europe and the disagreements between jurists and sovereigns on the extent to which this category could be used see Mario Sbricoli, *Crimen laesae maiestatis: il problema del reato politico alle soglie della scienza penalistica moderna*, Milan, 1974, especially 16, 25, 44–ff.

<sup>51</sup>Aglaia McClintock, *Servi della pena. Condannati a morte nella Roma imperiale*, Naples, 2010.

<sup>52</sup>*Ibid.*, 19. The intestability of criminals condemned to death is expressed in *Corpus Iuris Civilis*, D.28.1.8 (Gaius).

<sup>53</sup>Rolandino Passaggeri, *Summa artis notariae*, per magistrum Gabrielem quondam Petri Tarvisini, Tusculani 1480, fo.49v: ‘testari non possunt (...) damnatus ad mortem sive condemnatus ut moriatur vel efficiat servus poenae’.

making claims to the ownership not only of the body of executed criminals, but also of all their goods (which in some cases were to be fully destroyed to avoid contamination of the community).<sup>54</sup> These prerogatives, however, seemed again to encroach upon the religious and ecclesiastical sphere, since in the high Middle Ages the focus of will-making had shifted from the *institutio haeredis* (the appointment of an heir) to the possibility of making bequests to ensure the salvation of one's soul.<sup>55</sup> Gregory IX had consequently intervened to allow for exceptions being made for last dispositions *ad pias causas*, for which it was necessary to proceed not '*secundum humanam legem*' but '*secundum divinam*', thus allowing also intestable individuals to make bequests.<sup>56</sup>

Despite the latter corrective and the other papal letters discussed above, systems of criminal justice between the thirteenth and fourteenth century went in the direction of reclaiming the right to totally exclude at least certain categories of criminals from both the political and the religious community through corporal punishments.<sup>57</sup> The broader attitude of the Church to judicial violence might have actually facilitated this evolution since, despite according access to sacraments to relapsed heretics before their executions, it still legitimized the death penalty (as seen in Thomas Aquinas' works) and adopted an analogous strategy of radical exclusion against them by burning them at the stake, so as to eliminate – as much as it was possible – their physical remains and prevent their burial.<sup>58</sup> It can be concluded, therefore, that the Church also had a desire to radically exclude certain deviants from the community; however, these were often not the same individuals that lay governments were aiming to ostracize. At the same time, secular governments' policies regarding the bodies of executed criminals should not be interpreted as a sign of their indifference to Christian spirituality: as shown by a growing body of works, criminal justice in late medieval Europe was often influenced by religious notions.<sup>59</sup> Once again, though, the way in which spiritual ideals and their role in the penal sphere were interpreted by different legal actors

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<sup>54</sup>A summary of premodern (including medieval) legal thought on this custom can be found in Annamaria Monti, 'Illegitimate Appropriation or Just Punishment? – The Confiscation of Property in Ancien Régime Criminal Law and Doctrine', in Luigi Lorenzetti, Michela Barbotet and Luca Mocarelli, eds., *Property Rights and their Violations. Expropriations and Confiscations, 16th-20th Centuries*, Berne, 2012, 15.

<sup>55</sup>Giovanni Rossi, 'Il testamento nel Medioevo fra dottrina giuridica e prassi', in Maria Clara Rossi, ed., *Margini di libertà: testamenti femminili nel Medioevo*, Verona, 2010, 54.

<sup>56</sup>X 3.26.11.

<sup>57</sup>Cohen, 'To Die a Criminal', 293–294.

<sup>58</sup>On Thomas Aquinas and the legitimation of the death penalty see *Summa Theologica* II-II, q. 64, a. 2 and *Summa Contra Gentiles* III. c.146. On the elimination of the bodies of executed heretics see Romedio Schmitz-Esser, 'The Cursed and the Holy Body: Burning Corpses in the Middle Ages', 45 *Journal of Medieval and Early Modern Studies* (2015), 131–157, at 146–147.

<sup>59</sup>To cite but a few recent examples: Lidia L. Zanetti Domingues, *Confession and Criminal Justice in Late Medieval Italy. Siena, 1260–1330*, Oxford, 2021; Sara M. Butler, *Pain, Penance and Protest. Peine Forte et Dure in Medieval England*, Cambridge, 2022, especially ch.4.

could vary. The material discussed so far seems to indicate that lay powers did in fact promote views on the matter that were not just a mirroring of those maintained by the ecclesiastical hierarchy, and that this interpretive autonomy was precisely the reason behind the jurisdictional conflicts described in this paper.

Ultimately, the result of these conflicting claims to the bodies, souls, and possessions of executed criminals – and of the consequent affirmation of the right to include or exclude an individual as member of the community – caused in the period 1250–1320 and beyond clashes involving not only ecclesiastical and secular authorities, but also local communities. Besides the 1299 Bolognese riots mentioned in the introduction, there are numerous examples of commoners using concepts and formulas stemming from the multiplicity of normative traditions mentioned so far to assert yet other visions regarding who counted as members of their community. Tuscan peasants, for instance, invoked the vocabulary of excommunication and of *interdictio aquae et ignis* to exclude those whom they saw as the real outsiders in their communities, i.e. the sharecroppers of rich citizens who contributed to the impoverishment of local small landowners.<sup>60</sup> At the same time, though, for many rural and urban poor (from Italy, England and elsewhere) heretics and brigands did on the contrary not deserve to be physically eliminated from the community, and hence were often provided assistance to escape their executions.<sup>61</sup> The implementation of a process through which authorities expanded the criteria for the exclusion from the civic body of marginals of various types has been suggested by a number of scholars. The period c.1100–1200 has been described by R. I. Moore as that of the ‘formation of a persecuting society’ where heretics, Jews and lepers were excluded from the ‘sacral community’ through physical elimination or segregation;<sup>62</sup> that c.1300–1500, according to Todeschini, witnessed processes of exclusion from the market and from full participation to social life of a growing part of the population that were based not only of religious deviance but also of one’s profession, economic status and generic ‘bad reputation’.<sup>63</sup> At the same time, though, other studies, for example those focusing on the concession of citizenship to newcomers in the Italian communes, have shown that for a long time such processes of social hierarchization were subjected to intense debates among

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<sup>60</sup>Gabriella Piccini, ‘Contadini e proprietari nell’Italia comunale: modelli e comportamenti’, in *Ceti, modelli, comportamenti nella società medievale (secoli XIII- metà XIV)*, Pistoia, 2001, 226–227.

<sup>61</sup>For some examples: Giovanni Cherubini, ‘Appunti sul brigantaggio in Italia alla fine del Medioevo’, in Maria Serena Mazzi and Sergio Raveggi, eds., *Studi di storia medievale e moderna per Ernesto Sestan*, I, Florence, 1980, 126; Henry Summerson, ‘Attitudes to Capital Punishment in England, 1200–1350’, in Michael Prestwich, Richard Britnell, Robin Frame, eds., *Thirteenth-Century England VIII*, Woodbridge, 2001, 123.

<sup>62</sup>Robert I. Moore, *The Formation of a Persecuting Society*, 2nd ed., Oxford, 2006, ch.5.

<sup>63</sup>Giacomo Todeschini, *Visibilmente crudeli: malviventi, persone sospette e gente qualunque dal Medioevo all’età moderna*, Bologna, 2007, 272.

elites, jurists and broader communities. The result was that, despite a clear trend towards confining growing parts of the population to ‘downgraded’ forms of citizenship,<sup>64</sup> it was still possible for communities to try and limit the scope of such restrictions by presenting petitions, or for legal scholars to rediscuss the extent of exclusion that punishments such as banishment entailed (and to impose their views to communal courts in the frequent cases in which they were summoned by the former as advisors).<sup>65</sup> A few examples of this possibility are the 1287 Bolognese petitions through which a group of individuals of rural origins managed to restore their inscription to the list of city-dwelling taxpayers (a prerequisite for the obtention of full citizenship),<sup>66</sup> or the defence of the creditors’ rights of criminals banished from the commune by thirteenth-century scholars such as Tommaso da Piperata and Guido da Suzzara.<sup>67</sup> Conflicts about the spiritual rights of criminals condemned to death, therefore, also have to be examined in the broader context of the late medieval debate on social inclusion and exclusion that involved a multiplicity of actors, including non-elite ones.

#### 4. Conclusion

As argued by a number of legal scholars, late medieval corporal punishments seem to have evolved from the sanctions inflicted on slaves in Roman and Germanic law.<sup>68</sup> In these systems, full members of the community would be punished through making payments or banishment, whereas slaves and other types of outsiders would be subject to more radical forms of physical elimination: still in the twelfth century, French urban charters reserved mutilations and executions only to those deviants that could be labelled as *extranei*.<sup>69</sup> The reforms of criminal justice of the thirteenth and fourteenth centuries, which increased the types of offences carrying the death penalty and extended its

<sup>64</sup>Paolo Grillo, ‘Da diritto a privilegio: la cittadinanza nell’età comunale’, in Beatrice del Bo, ed., *Cittadinanza e mestieri: radicamento urbano e integrazione nelle città bassomedievali (secc.XIII-XVI)*, Rome, 2014, 25.

<sup>65</sup>For which see 125 *Mélanges de l’École Française de Rome. Moyen-Âge* (2013), special issue ‘Cittadinanza e disuguaglianze economiche: le origini storiche di un problema europeo (XIII-XVI secolo)’, particularly the contributions by Todeschini, Menzinger and Vallerani; Massimo Vallerani, ‘La cittadinanza pragmatica. Attribuzione e limitazione della “civilitas” nei comuni italiani fra XIII e XV secolo’, in S. Menzinger, ed., *Cittadinanze medievali. Dinamiche di appartenenza a un corpo comunitario*, Rome, 2017, 113.

<sup>66</sup>Vallerani, ‘La cittadinanza pragmatica’, 117.

<sup>67</sup>Massimo Vallerani, ‘Diritti di cittadinanza nelle quaestiones giuridiche duecentesche (II). Limiti dell’appartenenza e forme di esclusione’, 125 *Mélanges de l’École Française de Rome. Moyen-Âge* (2013), online at <<https://journals.openedition.org/mefrm/1446#tocto1n2>> (accessed 18/11/23).

<sup>68</sup>Petrus Wernerus Adam Immink, *La liberté et la peine: Étude sur la transformation de la liberté et sur le développement du droit pénal public en Occident avant le XIIe siècle*, Assen, 1973; Johan Thorsten Sellin, *Slavery and the Penal System*, New York-Oxford-Amsterdam, 1976, ch.III-IX; Orlando Patterson, *Slavery and Social Death. A Comparative Study*, Cambridge MA, London, 1982, 127-ff.

<sup>69</sup>Philippe Godding and Jacques Pycke, eds., *La paix de Valenciennes de 1114. Commentaire et édition critique*, Brussels, 1981, 72, 97, 118.

use also to fully-fledged free locals, can therefore be interpreted as an attempt by governments to establish that membership in the community could be fully revoked to anyone who dared to commit offences against their authority, regardless of an individual's social status. This can be interpreted as part of the larger processes of exclusion mentioned above. By implementing such criminal justice reforms, though, political regimes opened up a dilemma regarding from what community deviants would be specifically expelled.<sup>70</sup> Was this simply the particular body politic to which the criminals had sworn their allegiance? Or could governments also exclude from the broader *Ecclesia*, the community of Christians operating on principles of *caritas* whose influence permeated every aspect of medieval society, and exclusion from which had been the traditional prerogative of spiritual authorities?<sup>71</sup> The debates and jurisdictional conflicts that have been outlined in this article are a direct consequence of this question regarding the ultimate boundaries of exclusion and inclusion in late medieval times. The risk authorities could be exposed to if executed criminals were still treated as members of the *Ecclesia* is particularly evident in the case of individuals condemned to death becoming the object of popular cults and being venerated as martyrs.<sup>72</sup> This was however just the extreme end of the spectrum of behaviours that could be implemented to criticize the rightfulness of the authorities' legal actions if the secular exclusion of criminals was not paralleled by a spiritual one. Riots in case of executions perceived as unjust or when the rights of the condemned criminal were not respected were a more common outcome.<sup>73</sup> More implicit criticism could also arise from miracle stories in which saints interceded for people facing corporal punishments, clearly demonstrating that – notwithstanding their position as secular outcasts – these individuals still benefited from the

<sup>70</sup>As noted also by Caterina Bruschi, 'Detur ergo Sathane. Il tema della *vindicta* nel *Liber Suprastella* di Salvo Burci', 112 *Mélanges de l'École Française de Rome. Moyen-Âge* (2009), 177.

<sup>71</sup>Anita Guerreau-Jalabert, 'L'*Ecclesia* médiévale, une institution totale', in Otto Gerhard Oexle and Jean-Claude Schmitt, eds., *Les tendances actuelles de l'histoire du Moyen Âge en France et Allemagne*, Paris, 2003, 219.

<sup>72</sup>This phenomenon is particularly prominent in medieval England: e.g., Danna Pirovansky, *Martyrs in the Making: Political Martyrdom in Late Medieval England*, Basingstoke, 2008; Elizabeth Dachowski and M. Wendy Hennequin, 'Waltheof: The Journey from Warrior to Saint', 88/2 *Scandia* (2022), 264. I thank Tom Lambert for bringing the topic of political martyrdom in England to my attention. For a comparable Italian case, see Lidia L. Zanetti Domingues, 'Foules émués au pied de l'échafaud l'Italie communale des XIIIe et XIVe siècles', in Damien Boquet, Piroška Nagy and Lidia L. Zanetti Domingues, eds., *Emporté par la foule. Histoire des émotions collectives: épistémologie, émergences, expériences*, Paris, 2022, 315. For broader reflections on the sanctification of executed criminals see Maria Pia Di Bella, 'Pietà e giustizia: la "santificazione" dei criminali giustiziati', 29 *La Ricerca folklorica* (1994), 69; Carlo Donà, 'Pessimae vitae finis optimus: la santità dei briganti nei racconti religiosi del Medioevo', in Alessandro Grossato, ed., *Le vie spirituali dei briganti*, Milan, 2006, 57.

<sup>73</sup>Besides the aforementioned Bolognese riot of 1299, other examples can be found in Giovanni Bronzino, 'Documenti riguardanti gli eretici nella Biblioteca dell'Archiginnasio. Parte II (1265–1648)', 78 *L'Archiginnasio* (1983), 285, at 295–298; Andrea Zorzi, 'Politiche giudiziarie e ordine pubblico', in Monique Bourin, Giovanni Cherubini, and Giuliano Pinto, eds., *Rivolte urbane e rivolte contadine nell'Europa del Trecento*, Florence, 2008, 381–420.

help of the heavens.<sup>74</sup> To avoid these risks some polities, such as France, insisted for a longer time on the authority of their kings to fully seize the body, soul and goods of executed criminals without the need to compromise with the rights proclaimed by the Church for the protection of this category.<sup>75</sup> Others, such as Castile, the Italian communes and (to a certain extent) England, admitted that exclusion from the body politic did not automatically imply exclusion from the *Ecclesia*, and accepted to guarantee the spiritual rights of those condemned to a capital punishment.<sup>76</sup> In the late fifteenth and sixteenth centuries, after the period covered in this paper, most European polities resorted to much grander rituals of public execution in which secular governments, now ever more firmly in control of such ceremonies, might reintegrate at least partly the condemned criminals in the spiritual community, so long as the latter openly accepted their deserved exclusion from the political one.<sup>77</sup> Nevertheless, in most of Western Europe political authorities continued also in this period to reserve to themselves the possibility of *not* granting any form of spiritual reintegration to executed criminals, as shown by the case of the Pazzi conspiracy in 1478 Florence, when more than eighty of its participants were denied Christian burial, and by numerous Spanish, French and German examples from the sixteenth century.<sup>78</sup> Eventually, the normative claims purporting a disjunction between the criminals' exclusion from the *res publica* and their ongoing inclusion in the *Ecclesia* might have contributed to a gradual separation between two spheres that in Western Europe had previously been, according to the historiographical consensus, inextricably intertwined.<sup>79</sup>

## Disclosure statement

No potential conflict of interest was reported by the author(s).

<sup>74</sup>Baudouin de Gaiffier, 'Un thème hagiographique : le pendu miraculeusement sauvé' and Baudouin de Gaiffier idem., 'Liberatus a suspensio', in idem., ed., *Études critiques d'hagiographie et d'iconologie publiées à l'occasion du 70e anniversaire de l'auteur*, Brussels, 1967, 194–226 and 227–232; Friedrich Lotter, 'Heiliger und Gehenkte. Zur Todesstrafe in hagiographischen Episodenerzählungen des Mittelalters', in Dieter Berg and Hans-Werner Goetz, eds., *Ecclesia et Regnum. Beiträge zur Geschichte von Kirche, Recht und Staat im Mittelalter*, Bochum, 1989, 1.

<sup>75</sup>Vincent-Cassy, 'La confession des condamnés à mort'.

<sup>76</sup>E.g., Summerson, 'Attitudes to Capital Punishment', 131; Gabriele Farronato, ed., *Gli statuti del comune di Treviso secondo il codice di Asolo*, III, XI, 3, 505, Asolo, 1988; Iñaki Bazán Díaz, 'La pena de muerte en la corona de Castilla en l'Edad Media', 4 *Clio & Crimen* (2007), 335.

<sup>77</sup>On fifteenth- and sixteenth-century public executions and their reintegrative components, see for France, Esther Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France*, Leiden-New York, 1993, especially ch.4; Paul Friedland, *Seeing Justice Done: The Age of Spectacular Capital Punishment in France*, Oxford, 2012, especially ch.5; for Germany, Mitchell B. Merback, *The Thief, the Cross and the Wheel: Pain and the Spectacle of Punishment in Medieval and Renaissance Europe*, Chicago, 1998.

<sup>78</sup>On the Pazzi, see Scott Nethersole, *Art and Violence in Early Renaissance Florence*, New Haven, CT, 2018, 44; for cases of denial of access to spiritual comforts to criminals in sixteenth-century Europe see Lavenia, '*Ipse Christus innocentissimus*'.

<sup>79</sup>Guerreau-Jalabert, 'L'*Ecclesia* médiévale'.

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