

The Formation of a Persecuting Society?

Questions?

1. *Merum imperium* and *mixtum imperium*.
2. Types of law:
 - a. Canon
 - b. Civil
 - c. Customary and statutes
 - d. Common
 - e. Natural
 - i. Law of nations
 - ii. What nature has taught all animals
 - f. Divine positive
 - g. Internal and external forum
3. The development of criminal law in the 13th century.
 - a. *Licet Eli* (p. IX–13) and the development of inquisitorial procedure
 - b. Albertus Gandinus (pp. XII–16 to XII–19, at p. XII–17):

Whence it is asked how fame can be proven. It can be said and it seems that fame is said to be proved as often as witnesses above every exception depose and say that it is publicly said in the city, village or place about which inquiry is being made that so it happened or so it was done But if it is asked whether fame proved by the aforesaid witnesses in this way suffices for a full proof, so that out of it alone one can proceed to a definitive sentence, I reply: it seems that a distinction must be made, whether the question is being asked about civil or a criminal case. For in a criminal case, although proof of fame alone, proceeding from lawful time, place and persons above every exception, leads to indication [*indicium*] and presumption, so that one can proceed, according to some, to interrogation, as is said below in the treatise concerning interrogations and tortures, nonetheless, by that alone no one can be definitively condemned, for no one is to be definitively condemned on the basis of suspicions . . . , for in criminal matters, since the salvation of a man is at stake, proofs ought to be clear and open And well I propose and say that on the basis of such a fame as this alone one can proceed to interrogation, because the proof of such a fame makes a presumption and is said to be an argument very like the truth

- c. The use and abuse of torture
4. R. I. Moore, *The Formation of a Persecuting Society: Authority and Deviance in Western Europe 950–1250* (2d ed., Blackwell, 2007) (1st ed. 1987)
 - a. Heretics

- b. Lepers
 - c. Jews
 - d. Male homosexuals
 - e. Witches
5. The notion of societal capacity and the difficulty of controlling what one has unleashed.
 6. The psychological-anthropological explanation of Moore
 7. The expressed concerns of the reform movement
 8. Religious reform movements that turn to law and those that do not—some suggestions from comparative religion
 - a. The specific concerns of the reformers, e.g., simony in the 12th century
 - b. The relation of the reform to a pre-existing legal tradition
 - c. The goals of the reform in terms of the relationship of the believer to God