

Political Theory in the Glossators

The Formation of a persecuting society?

Key Texts from Roman Law

1. The problem of *merum imperium*, Ulpian in *Digest* 2.1.3.

Ulpian, *Edict, book 1*. *Imperium* is pure or mixed. To have pure *imperium* is to have the power of the sword to punish the wicked and this is also called *potestas*. *Imperium* is mixed where it also carries jurisdiction to grant *bonorum possessio*. Such jurisdiction also includes the power to appoint a judge.

This is a really hard text. Roman public law used the word *imperium* to describe the full possession of governmental power. The consuls and the praetors of Republican Rome had *imperium*. So did the emperor during the Principate. As a general matter in Roman public law *imperium* did not admit of gradations, either you had it or you didn't. The Ulpian text seems to distinguish between *merum imperium* and *mixtum imperium*. While scholars continue to debate today exactly what Ulpian meant by that distinction, it seems likely that he was trying to distinguish between that power which a magistrate has by virtue of his office alone, as opposed to that power which he has by delegation from a higher authority in combination with that power which has from his office alone. The distinction between delegated and inherent power is important for Roman public law, because a number of texts hold that one could not redelegate power which one had by way of delegation whereas one could delegate power that one had inherently. The problem with the Ulpian text was that the way in which it was worded made it difficult to see that *mixtum imperium* was in fact a greater power than *merum imperium*. *Merum imperium* was defined as the power of the sword, the power to impose capital punishment for the violation of criminal laws; whereas *mixtum imperium* is spoken of here in the context of civil jurisdiction. Understandably the medieval jurists regarded the power to execute a criminal as a higher power than the power to render a civil judgment, although in fact a number of Roman magistrates had extensive criminal powers, whereas only a very few had civil jurisdiction.

2. *Princeps legibus solutus* D.1.3.31(30)

Ulpian, *Lex Julia et Papia, book 5*. The emperor is not bound by statutes. And though the empress is bound by them, nevertheless, emperors give the empress the same privileges as they have themselves.

The Latin is *princeps legibus solutus*. We have already seen that the word *lex* (*legibus* is the plural of *lex* in an oblique case) has a rather narrow meaning in Roman law. It means statutes passed by one of the Republican *comitia*. The context of Ulpian's statement also makes it reasonably clear that all that he is saying here is that the emperor is not bound by the Augustan statutes about marriage, the *Leges Juliae et Papia Poppaeae*, and that he confers the same privilege on the empress.

3. C.1.14(17).4 *digna vox*

The emperors Theodosius [II] and Valentinian to Volusianus pretorian prefect (429)

It is a cry worthy (*digna vox*) of the majesty of the one who reigns for the prince to profess himself bound by the laws, so much does our authority depend on the authority of the law. And in truth it is greater in *imperium* to submit the principate to the laws. And by the oracle of the present edict we indicate that we will not tolerate what we do not allow to ourselves.

What is the argument of this passage? Why should prince “profess himself bound by the laws”?

4. *Institutes* 1.2.6, *quod principi placuit* with the addition of the *lex regia*.

Again, what pleases the prince has the force of law, the people having conferred on him and in him all their *imperium* and power by the *lex regia*.

A strikingly absolutistic statement made somewhat less so by the implication of an ascending theory of political power.

Canonists (especially Hostiensis) on the Power of the Pope

The role of the canonists and canon law in developing the idea of sovereignty. A word on who Hostiensis was: Born probably c.1200 in a tiny town called Susa (*Segusium*) in northeast Italy but then the duchy of Savoy, he was a doctor of both laws, completing his studies at Bologna probably around 1235. One of his fellow students was Sinibaldo dei Fieschi (Sinibaldus Fliscus), the future pope Innocent IV [1241–54]. After a brief and imperfectly recorded period of teaching embarked on a long career in pastoral and diplomatic work. From 1236?–1244, he served in the household of Eleanor of Provence, the queen of Henry III of England. In 1244 he served as ambassador of Henry III of England to the pope, Innocent IV. In the same year he was made bishop of Sisteron, in 1250 archbishop of Embrun. In 1261 he became cardinal-bishop of Ostia. He worked on his commentary on the decretals until the very end of his life in 1271.

Innocent III on the power of the pope to translate bishops (*Quanto personam*, X 1.7.3, p. XI–7 [no. 1]). A number of the ancient canons of the church forbade bishops from leaving their dioceses to become bishops of another diocese. Perhaps in the ancient world and certainly in the early MA bishops were seen as married to their dioceses. In *Quanto personam*, Innocent III said that he had the power, if there were good reasons, to dissolve the marriage and translate a bishop from one diocese to another. Here’s how he put it:

The Lord and master retained the power of transferring bishops to himself in such a way that he granted and conceded it by a special privilege only to blessed Peter his vicar and through him to his successors, as ancient practice, to which the decrees of the fathers order reverence to be paid, attests, and as the sanctions of the sacred canons plainly assert. For it is not man but God who separates whom the Roman Pontiff, who performs on earth the function not of a simple man but of the true God, separates, having weighed the necessity of the churches and their utility, by divine rather than human authority.

Simple man (Laurentius Hispanus, c. 1215) (Pennington, 47): Hence [the pope] is said to have divine will [*arbitrium*, the word can mean “discretion”]. [C.1.1.1.1] **O**,

how great is the power of the prince; he changes the nature of things by applying the essences of one thing to another, argument [C. 6.43.2], and he can make iniquity from justice by correcting any canon or law, for in these things his will is held to be reason, argument [I.1.2.6]. And there is no one in this world who would say to him, “Why do you do this?” [De pen. D.3 d.p.21] He is held, nevertheless, to shape this power to the public good.

Function (Hostiensis, Pennington, 51): Therefore the consistory of God and of the pope are to be regarded as one and the same thing [VI 2.15.2], for he holds the very place of God [X 3.12.1] and in binding and in loosing whatever he does is ratified, for the key does not err. This is how you should understand [C.24 q.1 c.6] and you have the same thing in [X 1.7.1]. And briefly, except for sin, he can do almost anything like God [De pen. D.2 c.5?] where you should say what is noted in [X 3.8.4] and [X 3.34.7].

The basic point of the next two sets of glosses is the same: that the pope exercises divine power.

X 3.8.4. Hostiensis on dispensing power (*Proposuit*).

The issue in this decretal is complicated. The basic provision of the canon law of benefices was that one could not institute someone to a benefice that was not vacant. Acting pursuant to a papal mandate the dean of Reims had instituted a man to the next benefice to become vacant in the cathedral church of Cambrai. The canons had gone ahead and instituted someone else when the benefice became vacant. Clement III had quashed this institution and had invested the first appointee. The question was whether the dean had done the right thing. Innocent III says that he need not reach that question, because the benefice was clearly vacant after Clement had quashed the canons’ institution. In passing, however, he says: “It is not our intention to ratify investitures made against the canonical institutes of [benefices] to become vacant, although according to the plenitude of power we could dispense over the law.” Hostiensis glosses “dispense”:

Dispense (Hostiensis, Pennington, 60 nn. 85, 87): Even against the Apostle without, however, breach of faith [D.34 c.18 (concerning clerks who marry widows)] or against a canon of the apostles [D.78 cc. 4–5 (concerning the age for ordination)] or against the Old Testament so far as tithes are concerned He cannot, however, dispense against the general state of the church which I understand to mean in subversion of the faith. Otherwise I do not deny him anything, even if wishes to change squares into circles. But what if he wants to issue a statute that all the clergy could marry, since divine law does not forbid clerical marriages? (But [a contrary argument would be that] he cannot dispense the monastic rule forbidding a monk to have property, as is noted below [X 3.35.6].) This alone you should believe: he can dispense in all things provided that he does not violate the faith and provided that his dispensation does not lead to mortal sin, subversion of the faith, or danger for the salvation of souls. In these matters, he has no power against God. ... So, he may dispense from canon law generally and from divine law when he is not prohibited from dispensing and where there is no obvious mortal sin.

Over the law (Hostiensis, Pennington, 58): As if he says, we are bound by no law

but rather we are placed above all laws and councils This [law], however, is fitting for us, even though it does not bind us. [D.1.3.31; C.1.14.4] Truly, because it conforms to our will, it is to be obeyed even though it is hard Nonetheless I hand over a rule to you: that the pope of his own accord has so much power that even if he does and says whatever he pleases, he cannot be accused or condemned by any man, so long as he is not a heretic He can, however, and ought to be warned in secret or even openly, if he sins mortally, for willy-nilly he is subject to the truth of the Gospel so far as warnings are concerned But as to the matter that he speaks of here, he is not subject to the church except in heresy. I shall, however, say this, if he is impenitent, that it is for the church to pray to God that He inspire him and for the church triumphant to pray for him [translation uncertain]; otherwise, even if the emperor and all the clergy and people should gather together, they cannot judge him, but [can] warn him that his very soul is in his own hands, particularly to him [who is] above all others, [and] if he should so die, a terrible judgment awaits him and unbearable suffering Over subjects, however, he has such plenitude of power that as soon as he commands something, he is to be obeyed, even if there is doubt whether it is a mortal sin, so long as conscience can be overcome But if one is certain that the pope's command would result in mortal sin, then the heavenly pope should be obeyed. ... The church triumphant never fails, and has not failed. If your conscience dictates that you should not obey, you should stand by your conscience, but endure excommunication patiently ... even if your conscience is in error, unless you can detect it In every case in which you would commit a mortal sin by breaking divine law, you should not obey. If a mortal sin is committed by breaking human or canon law, then the pope should always be obeyed. ... And thus you should understand that when Innocent says "over the law," it means positive law.

X 3.34.7. The same on the same (*Magnae devotionis*) (but use both, they suggest very different limits).

Here the issue is the power of pope to dispense a bishop from the vow that he has taken to go on crusade. In the process of dispensing the bishop, Innocent said: "Truly, we think that three things are to be attended to in this matter: what is permissible according to equity, what is fitting according to honesty, and what is expedient according to utility."

Three (Hostiensis, Pennington, 62 nn. 90–2): Which it is always important to consider in such matters, argument from [D.4 c.6; C.11 q.1 c.34], and especially the Roman church and pope who are above all ought [to consider] these things. I ask, therefore, what is permitted to the apostolic see? Reply: What have I asked? Rather, what is not permitted? It can do all things provided that it does not deviate from the faith. Saving that so long as the pope does not deviate from the faith, he cannot be condemned by anybody, as appears above in what I said about [X 3.8.4], and this is to be understood so far as transgression of the law of Ten Commandments is concerned and all other things the commission or omission of which is regarded as mortal sin by divine law, either in the new or the old testaments, as is apparent above and is noted in [X 5.19.4] and [X 1.4.11]. It is otherwise in those things that are mortal sins by canon law, for in all of those anything is permissible [to the pope], as is apparent in [X 3.8.4]. Although, however, according to the aforesaid all things

are permissible to the pope, I ask whether all these things are fitting for him? I reply either there is sufficient cause for him to deviate from the written law or there is not. If there is such a cause, everything that is permitted is fitting, and whatever is fitting is permitted, argument [X 5.1.18]. If, on the other hand, there is no cause, or there is one but it is not sufficient, it is not fitting for him in any way to deviate from the law. [C.1.14.4; C.11 q.1 c.39; X 3.35.7] The utility of the state and especially the church of God and the salvation of souls is always to be preferred to private utility In this place I put down this rule: When it is asked whether something is expedient, always excepting a perversion of justice, a greater is always preferred to a lesser utility provided that it is licit.

X 3.32.7. *Ex publico instrumento* (no. 6).

In this case, Alexander III allowed a woman to enter religion, even though she was married, but the marriage had not been consummated. Clearly, what the Lord says in the Gospel, that it is not permitted to a man to dismiss his wife except for the cause of fornication, is to be understood according the interpretation of holy writ concerning those whose marriage is consummated by carnal coupling, without which it cannot be consummated.

Consummated (Hostiensis, Pennington 65–7) [There are two recensions of this gloss. The second contains the material set off in diamond brackets. The printed edition combines the two.] Since the marriage has not been consummated, a couple may part with papal permission ... because an equal good has been substituted for the marriage ... but after consummation, this is no longer possible. ... I understand that when the pope permitted the wife to enter a monastery without her husband's permission, he exercised his absolute, not his ordained power, unless there were another [here not expressed] reason for his action. Alexander did not issue this decretal without cause. <But most likely it can be said that since the church has the power of restricting or relaxing impediments to marriage ... it can legislate that a spouse can enter a religious order, even though the other spouse is opposed, and, at the same time, permit the other to remarry, the impediment of the first marriage notwithstanding. Cardinal deacon Matteo Rosso Orsini argued this position in my presence. If you would ask, from where does this great power of the church come, see [X 1.7.1–3].> Therefore, the pope might have promulgated this constitution even with his ordained power. <When therefore there has been no joining of bodies, we do not offend God. And in this case, we can make laws, insofar as we please, with our absolute power, that is plenitude of power. This is true. But it is not expedient that we loosen the reins too much; it is not safe.>

A very difficult gloss. The problem seems to be that Hostiensis never fully made up his mind on the ordained and absolute power question. The distinction may be similar to that between constitutional and sovereign power.

X 3.35.6 *Cum ad monasterium* (no. 7). More on the question of dispensing, here with some remarkable examples of what might constitute a good reason for dispensing a monk from his vow.

But for cause the pope can dispense a monk to have private property. For what if all Christianity or a large part of it were in danger unless a monk became king,

perchance that there is no one else who knows how to and can govern the realm? Would you not say that the monk should be king in this case? Should he not offer himself entirely as a sacrifice to God to serve him who chose him to serve in a matter that pleases him more? But it pleases God above all else to preserve his rational and bodily creation for which he himself laid down his life. The greater good is to be preferred to the less and the common utility to the private Further, if for common utility a monk can be made a bishop ... and even a clerk or rector with care of souls, ... why in the same manner can he not be king? What if Christianity would not be safe unless he took the kingdom as his own and left it to his sons whom he had before he became a monk? What if those who had the power to give the kingdom, the heir to which was a girl, said to him “we are ready to give you the girl and the kingdom, but if you refuse we will give it to a tyrant or to some infidel”? In such a case do you place such value on the contemplation of one monk or the continence of one man, and do you think God so cruel that he would not provide by the dispensation of his vicar for such a multitude of Christians? Should it not be said that the pope can dispense in such a case, since greater power than this seems to be given to him Surely, it is to be believed that it would please God more if what was useful for the community was chosen.

The notion of procedural rights. My best text for this is late. The base text is *Rem non novam*, p. XI–19. In this decretal Boniface VIII holds that he can proceed against someone, who happened to be Philip IV the king of France, even when the king had not been personally summoned but was notified of the proceedings by a summons posted on the door of St. John Lateran in Rome. The style of this gloss is different, much more scholastic. Jean le Moine was intimately involved in the dispute between Boniface VIII and Philip the Fair. He was born near Amiens and he studied in Paris and not in Bologna. He served on the council of both Philip the Fair and of Charles II of Sicily. In 1294 he was made a cardinal and served as papal legate in France. Although he was on the papal side (and briefly was put into prison by Philip) he managed to continue talking to both sides. He was made bishop of Meaux. After the death of Philip and Boniface, he served as chancellor of the Roman church and legate in Avignon. He died in 1313. It has been suggested that the gloss was compiled in 1304–5 in connection with the consistory that elected Clement V, and was, in fact, marked by a political shift in Jean’s thought.

Notwithstanding any privileges: On the evidence of the foregoing, I ask whether the pope could proceed against someone without citation? And it would seem that he could, because he is above the law. [X 3.4.8] Again because the prince is freed from the laws. [D. 1.3.31(30).] Again the pope has plenitude of power. [C.2 q.6 c.11; X 5.38.14; X 1.8.4.] But on the other hand: The citation is the beginning of the judicial process, as is noted above, and as you find in [X 2.19.11], and it is not possible to proceed to the end of the judicial process, which is the sentence, without the beginning. ... No one can be above the law which he has not laid down, but [the law that the pope makes] presupposes what has been laid down. But the pope or a simple man laid down none of the said laws [*iurium*, perhaps “rights”] [C.25 q.1 c.6], therefore he has power over none of them. The major [premise] is apparent; the minor is also apparent so far as eternal law [*lex*], or eternal *ius*, or divine or natural, and so far human *ius* derived from natural [is concerned] The conclusion therefore follows, to wit, that the pope has power over only of the law that is said to

be of the fifth mode, to wit law purely positive. It remains, however, to see if citation is of natural law or of human law derived from natural, so that the conclusion follows from the premise, since if the pope has no power over such laws as appears in what preceded, the consequence is that he can proceed against no one without having issued a citation Since it is not possible to understand or to know fully a fact or justice or injustice without the presence of the person against whom the judgment is to be rendered, [C.30 q.5 p.c.9; X 2.27.18; C.11 q.3 c.76], then it is necessary that he be cited or called. And the pope cannot omit this, nor any lesser judge, because thereby he would omit the *cognitio* [a play on words, literally “understanding,” but also the technical term for a judicial hearing], which is of necessity required for a judgment And thus both the second and the third appear at the same time, to wit, that citation is of the natural law, and by consequence that the pope cannot proceed against anyone without having issued a citation. And this constitution proves this evidently. This is also plain in notorious matters in which, though the *iuris ordo* is not to be observed completely, it is to be observed in citation and sentencing. [X 2.24.21; C.2 q.1 c.7; X 4.19.13; C.2 q.1 c.15; note X 5.1.17] And Genesis 18, where the fact was notorious, nevertheless God wanted to proof before he judged. Nor does [X 5.1.9] stand in the way, for neither citation nor sentence is taken away there, because Genesis 3 proves them both necessary. Again, anyone is presumed innocent unless he is proved guilty. [X 2.23.16; X 1.12.1; D.40.4.20] And the law is quicker to absolve than to condemn. But perhaps you might say that the pope or another judge knows the cause and the truth of the matter in secret, in his capacity as a private person, but as a public person and therefore publicly the truth ought to be known to him, to wit by laws public, divine or human, together. ... To the third [objection; perhaps “second” is meant] it ought to be said that the will of the prince has the force of law if it is ruled by reason and comes about in the spirit of laying down law according to form of which it has been passed on, [C.1.14(17).8], for will is not a secure rule, as the Philosopher says in Politics 2. When moreover the prince judges or renders sentence without discussion and examination of the cause he does not have a will regulated according to the right judgment of reason. To the fourth [objection; perhaps “third” is meant] it ought to be said that according to the Philosopher in Politics 1 there are two kinds of principate, despotic and political. The first is of the owner over a slave who does not have the right to resist, because he is the slave of his owner entirely according to this manner. The second is the principate over children, who have [?no] right of resisting in anything, and such is the principate of the church over her subjects. It is not plausible that the principate of the church is despotic. We are not the children of the slave woman but of the free woman for which liberty Christ freed us, Galatians 4[:31, reading *nos* for *non*]. Johannes Monachus, Cardinal.

Bracton

[fol. 7a] The king has no equal within his realm, <Subjects cannot be equals of the ruler [cf. D.4.7.3.pr], because he thereby lose his rule, since equal can have no authority over equal.> nor *a fortiori* a superior, because he would then be subject to those subjected to him. The king must not be under man but under God and under the law, because law makes the king, <Let him therefore bestow upon the law what the law bestows upon him, namely, rule and power.> for there is no *rex* where will

rules rather than *lex*. Since he is the vicar of God, <And that he ought to be under the law appears by the analogy of Jesus Christ, whose vicegerent on earth he is, for though many ways were open to Him for his ineffable redemption the human race, the true mercy of God chose this most powerful way to destroy the devil's work, he would use not the power of force but the reason of justice. Thus he willed himself to be under the law that he might redeem those who live under it. [Cf. Gal. 4:5.] For He did not wish to use force but judgment. [Cf. Leo the Great in P.L. 54:196.] And in that same way the Blessed Mother of God, the Virgin Mary, Mother of our Lord,, who by an extraordinary privilege was above law, nevertheless, in order to show an example of humility, did not refuse to be subjected to established law. Let the king, therefore, do the same, lest his power remain unbridled.> there ought to be no one in his kingdom who surpasses him in the doing of justice, but he ought to be the last, or almost so, to receive it, when he is plaintiff. If it is asked of him, since no writ runs against him there will [only] be opportunity for a petition, that he correct and amend this act; if he does not, it is punishment enough for him that he await God's vengeance. No one may presume to question his acts, much less contravene them.

[fol. 107a–107b] Since nothing pertaining to the clerical estate is relevant to this treatise, we therefore must see who, in matters pertaining to the realm, [has ordinary jurisdiction, and then who] ought to act as judge. It is clear that it is the king himself and no other, could he do so unaided, for to that he is held bound by virtue of his oath. For at his coronation the king must swear, having taken an oath in the name of Jesus Christ, these three promises to the people subject to him: In the first place, that to the utmost of his power he will employ his might to secure and will enjoin that true peace shall be maintained for the church of God and all Christian people throughout his reign. Secondly, that he will forbid rapacity to his subjects of all degrees. Thirdly, that he will cause all judgments to be given with equity and mercy, so that he may himself be shown the mercy of a clement and merciful God, in order that by his justice all men may enjoy unbroken peace. To this end is a king made and chosen, that he do justice to all men <that the Lord may dwell in him, and he by His judgments may separate> and sustain and uphold what he has rightly adjudged, for if there were no one to do justice peace might easily be driven away and it would be to no purpose to establish laws (and do justice) were there no one to enforce them. The king, since he is the vicar of God on earth, must distinguish *jus* from *injuria*, equity from iniquity [D.1.1.1.], that all his subjects may live uprightly, none injure another, and by a just award each to be restored to what which is his own [I.1.1.3; D.1.1.10.1]. He must surpass in power all those subjected to him, <He ought to have no peer, much less a superior, especially in the doing of justice, that it may truly be said of him, 'Great is our lord and great is his virtue etc.,' [Ps. 146:5] though in suing for justice he ought not to rank above the lowliest of the kingdom.> nevertheless, since the heart of a king ought to be in the hands of God, [Prov. 21:1; C.1.1.8.3] let him, that he be not unbridled, put on the bridle of temperance and the reins of moderation, lest being unbridled, he be drawn toward injustice. For the king, since he is the minister and vicar of God on earth, can do nothing save what he can do *de jure*, <despite the statement that the will of the prince has the force of law, [I.1.2.6; D.1.4.1pr] because there follows at the end of the *lex* the words 'since by the *lex regia*, which was made with respect to his sovereignty'; nor is that anything

rashly put forward of his own will, [I.1.2.6, gloss on *placuit* “not every word of a judge is a sentence just like not every word of the prince is law.”] what has been rightly decided with the counsel of his magnates, deliberation and consultation having been had thereon, the king giving it *auctoritas*.> His power is that of *jus*, not *injuria* <and since it is he from whom *jus* proceeds, from the source whence *jus* takes its origin no instance of *injuria* ought to arise, [C.8.4.6] and also, what one is bound by virtue of his office to forbid to others, he ought not to do himself. [D.8.5.15]> as vicar and minister of God on earth, for that power only is from God, <the power of *iniuria* however, is from the devil, not from God, and the king will be the minister of him whose work he performs,> whose work he performs. Therefore, as long as he does justice he is the vicar of the Eternal King, but the devil’s minister when he deviates into injustice. For he is called *rex* not from reigning but from ruling well, since he is a king as long as he rules well but a tyrant when he oppresses by violent domination the people entrusted to his care. [John of Salisbury, *Policraticus*, 8.17] Let him, therefore, temper his power by law, which is the bridle of power, that he may live according to the laws, for the law of mankind has decreed that his own laws bind the lawgiver, [D.2.2; D.2.2.1] and elsewhere in the same source, it is a saying worthy of the majesty of a ruler that the prince acknowledge himself bound by the laws. [C.1.14.4] Nothing is more fitting to the sovereign than to live by the laws, [C.6.23.3] nor is there any greater sovereignty than to govern according to law, [C.1.14.4] and he ought properly to yield to the law what the law has bestowed upon him, for the law makes him king.

The Formation of a Persecuting Society?

R. I. Moore, *The Formation of a Persecuting Society: Authority and Deviance in Western Europe 950–1250* (2d ed., Blackwell, 2007) (1st ed. 1987). The twelfth century sees the systematic persecution of:

1. 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): “Whence it is asked how fame can be proven.” (p. XII–17)

“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 [citations omitted]. 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 [citations omitted], for in criminal matters, since the salvation of a man is at stake, proofs ought to be clear and open

[citation omitted]. 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 [citation omitted].”

- c. The use and abuse of torture
- 2. More’s argument.
 - a. Heretics
 - b. Lepers
 - c. Jews
 - d. Male homosexuals
 - e. Witches
- 3. The notion of societal capacity and the difficulty of controlling what one has unleashed.
- 4. The psychological-anthropological explanation of Moore.
- 5. The articulated concerns of the reform movement of the 11th century.
- 6. 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.