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THE INQUISITOR'S PROCEDURE IN *THE NAME OF THE ROSE*

In the English paper-back edition of *The Name of the Rose* we are told that William the English Franciscan who is the central character of the story received suddenly some unwelcome news.¹ He gave forth an exclamation in his own language which "had an obscene hissing sound". We still use the word.

The imperial legates, of whom William was the chief, were waiting at the abbey to meet the papal legates from Avignon: the two groups were to try to reach some accord on the tangled matters that divided emperor and pope. It was when William heard the name of the man in real command of the papal legation that the obscene-sounding hissing word burst from his lips.

The name was Bernard Gui.

In *The Name of the Rose* there are both fictional and real characters. Bernard Gui, as the French called him, or Bernardo Guido or Guidoni as he was known to the Italians, or Bernardus Guidonis in the universal Latin, was real indeed. He was an inquisitor of fame.

The word "inquisition" has a sinister ring for us, but is itself harmless. Take the words "question", "enquiry", "query", "inquest", "inquisition". They all come from the same Latin word or its compound, and they all mean much the same thing. But the words "question", "enquiry" and "query" are still used in a general sense; "inquest" and "inquisition" have acquired a specialized sense through their history.

"Inquest" we associate today almost solely with coroners, and with investigations into deaths and fires. The coroner's inquest in England goes back certainly to 1194, and is perhaps older. For centuries English legal records were kept in Latin. The Latin word for "inquest" was "inquisitio" - the same as for "inquisition". They both meant simply an enquiry. There's nothing wrong with asking questions. Whether you can expect or compel an answer is another matter.

It was by an inquest, a questioning, an inquisition that William the Conqueror got his Domesday Book; and it is by inquisition that our Australian Bureau of Census and Statistics can extract from the citizens

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1 Eco, *The Name of the Rose* Wenner (trans), (Secker & Warburg, London 1983) p210.

compulsory information on whether they eat weet-bix and what kind of toothpaste they use. We are well familiar today with Royal Commissions of Enquiry; they are true inquisitions.

With minds unprejudiced against the word "inquisition" we can look now to the European history of it before Bernard's time. We are concerned with one sense only: that is, an enquiry into and trial for crime.

There are, broadly speaking, two methods of criminal trial that have vied with each other through the European years. There are some others, primitive and now gone, like ordeal, that do not concern us. The two that do concern us are accusation and inquisition.

In accusation, the system we live under in England and Australia, one party makes a charge and tries to prove it. That party may be a private citizen, as almost always in former days; or may be the State, as now, through the public prosecutor. After the accuser's case has been presented, the defendant replies. The court, after hearing both, gives its verdict.

That is, the judge is passive till the end. He is like an umpire, watching the two tennis players hit the ball to and fro over the net. He is, in the main, not supposed to ask questions. He just listens, poised and watchful, weighing the evidence, till the time comes for judgement. He is engaged with what the parties put before him, nothing else; it is not his business to go looking beyond that. (In some accusatorial systems, mostly of older times, the accused could be questioned, but not till the charge and evidence had been presented against him.)

In inquisition, on the other hand, the judge is active. He goes looking for the facts. He asks people questions, whether they are willing or not, and expects answers. There need be no accuser. There may be a charge for the judge to investigate, or there may be no charge but only rumours or some suspicions. He is not limited by any facts, or lack of facts, put before him by anyone. This is the general notion, though details vary with times and places.

Roman law had had both systems, now one, now the other. Theoretically the inquisitorial power was always there in the consuls and later in the emperors. In practice, however, accusation was mostly used - always with a private accuser, not with any sort of public prosecutor. With the later emperors, and in particular from Diocletian (about AD 300), the theory of inquisition became the practice too, and accusation largely faded away. Cross-examination of the suspect was the central point of the process, and no one could refuse to answer. The judge, so Constantine ruled in the early fourth century, was "to search into everything by full inquisition to bring out clearly

the array of the facts".² Trials under both systems seem generally to have been fair, at any rate in non-political matters. Clear proof was required before conviction.

So far as the church was concerned, when in its young days the small, scattered Christian communities grew and spread and met, organization grew with them; and a law of trial and procedure grew, modelled almost entirely on that of Rome. As early as the *Didaschalia* of the third century a combination of accusation and inquisition, using Roman framework and terminology, is prescribed for a church trial. This law of the church - canon law as it came to be called - developed greatly from the time of Constantine, and on Roman law lines. Its criminal trials settled solidly, though with many exceptions, into an accusatorial method.

The next major influence on canon law came from the wandering Germanic tribes invading the Roman empire. It took time for their influence to work. The conquering invaders used their own law for themselves, leaving Roman law to the defeated Romans, and leaving church law, based on Roman, to the church. Hence arose the adage from the seventh century, *Ecclesia vivit iure Romano*, the church lives by Roman law.

There was however not only still something of an elementary form of inquisition in the church courts, there was also the *iuramentum purgatorium*, the purgative oath of one's own innocence, by taking which the accused person could free himself from the charge. He was acquitted if he would swear he was innocent! - so great was the sacredness and force of an oath. This above all remained through the following centuries and was the embryo of the great weapon of the inquisition that Bernard Gui knew.

The combination of these two, of some form of inquisition and of the oath of purgation, explains the later reconciliation without difficulty between the church's procedure and that of the Germanic peoples, for with them inquisition and purgation played a great part.

In the centuries from the seventh on, Germanic laws and practices had a notable effect on canon law and on what was to be its flowering in the high Middle Ages. So did the extension in German lands of the authority of ecclesiastical judges to secular criminal matters. In the eighth and ninth centuries this spread widely. Charlemagne in 802 ordered the bishops on their visitations of their territory to enquire into crimes of incest, murder of kindred, adultery, prostitution and similar crimes with religious connotations. Regino of Prüm at the beginning of the tenth century gives a detailed account of this episcopal inquisitorial procedure for all crimes which was rapidly ousting the local secular courts. All were subject to it. None could refuse to

2 Pharr (trans), *The Theodosian Code* (Greenwood Press, New York 1969) 2, 18, 1.

answer questions. A compulsory oath was administered to disclose the truth. Note that this was now more than just an oath of one's own innocence.

There was, however, no universal juridic order through Christian Europe. Much was in flux. Regions differed. The bishop was often both secular feudal lord as well as ecclesiastical judge. In the collections of laws made privately for use in church matters, Roman and Germanic laws oscillate, mingle and differ. For ordinary church cases, apart from the episcopal visitations of the countryside in Germany, accusation remained the usual method. The use of the purgative oath grew, and the practice of strengthening it with oath-helpers, *compurgatores*, who would swear that the defendant was worthy to be believed on his oath.

Towards the end of the eleventh century the strong hand of Pope Gregory VII unified church government and claimed authority on all matters relating to faith, even matters in secular hands. At the same time the scientific study of Roman law was reborn at Bologna - Umberto Eco's university city. Half a century later, in 1140, the monk Gratianus or Gratian published, also at Bologna, the first critical analysis of canon law. He described criminal procedure in detail. It was an accusation procedure; there is no trace of inquisition in Gratian's account of canon law trials. The accused could be questioned, but only after evidence had been brought against him by an accuser. Neither spiritual nor physical force could be used to compel an answer. Gratian expressly forbade torture, and quoted church decrees against it.

There were however some problem areas that accusation could not well handle; in particular the case of the person against whom there was strong public rumour but no direct evidence. (There were no investigatory police then). There could be no accusation unless some private person came forward as accuser, and he had of course to produce proof. He usually got into trouble if the accusation failed. Procedure was complicated. There were long lists of classes of persons who could not be called as witnesses, as theoretically unreliable. The whole accusation process was too cumbersome for the fast changing social scene and the urgent need for reform in the church. A swifter, more efficient procedure was required.

The great change came with Pope Innocent III at the end of that twelfth century. It was he who made the inquisition the ordinary mode of proceeding, and gave it an order and precision it had previously lacked.

The first clear text explaining and approving inquisition in the church seems to have been his letter to the archbishop of Milan in 1198.³ In May of the

3 c. un. X, III, 12. (The references in fns 3, 4, 5, 6 are the usual citations of the *Corpus Juris Canonici*.)

next year he was more explicit and succinct when writing to the archbishop of Sens:⁴

...when no lawful accuser has appeared, but public rumour has given an indication, we do not disapprove that you proposed by your office - *ex officio tuo* - to enquire more fully into the truth.

In December that same year 1199 he wrote of the three methods of commencing criminal proceedings: accusation, denunciation, inquisition. There must be fairness and justice in each case, he said. The judge must not be the accuser. For inquisition there must be public rumour about someone before an inquisition can begin - and it must be a public rumour of some duration amongst good, upright people, not just tattle-tale talk. Without such strong public rumour there could be no inquisition: there could not be an enquiry in blank, a sort of fishing expedition.⁵

The following years saw further steps in exact regulation of the inquisition procedure. In 1206 in the decretal *Qualiter et Quando* ("How and When" - how and when the bishop is to proceed in enquiring and punishing) Innocent ordered that the oath to tell the truth be imposed upon suspected clerics. The oath, however, was to apply to disorders in the local church, not to secret crimes. (Significantly, the clerics there in question were those of the diocese of Novara, that region that enters so prominently into *The Name of the Rose*.)⁶

In summary, the essential features of it, as it began to take firm shape, were: that the judge could not proceed without either an accusation in writing or a strongly founded public rumour; that if he was satisfied of such a rumour - and he was strictly obliged to decide this before proceeding further - he was not to wait for an accusation but was to proceed by virtue of his office - *ex officio*. The suspect had to be present; the matter against him had to be explained to him; he had to take the oath to tell the truth and was then questioned; names and evidence of witnesses had to be disclosed to him; his replies to their evidence had to be listened to. All was to be taken down in writing. He could have a lawyer. He had certain rights of appeal.

This interrogation of the defendant was not new, but two things were: that the judge was to act *ex officio*, of his own motion, when there was solid suspicion; and the compulsory oath to tell the truth was built into the procedure. This oath gave the suspect the awful choice between damning his soul by perjury, and telling the truth, with all that that might bring, even

4 c. 10, X, V, 34.

5 c. 31, X, V, 3.

6 c. 17, X, V, 1.

death. Under Innocent, however, the oath did not apply to secret crimes, but only to things that could be publicly known.

Trial by inquisition spread rapidly, superseding accusation. At first it was used mainly against heresy, especially in the south of France, and for crimes of murder, simony and perjury; then it came to be the ordinary procedure in all criminal trials. It was immensely superior at that time to the rough gropings of the Common Law of England; and, apart from that oath, fairer. It is the basis of the criminal procedure of modern continental Europe, though the *ex officio* oath has gone. The oath has now gone from Canon Law too, beginning with the year 1725.

Under Innocent III inquisition, as we have seen, could not be used on mere suspicion. Later in that century another notable canonist, Sinibaldus Fliscus, became pope as Innocent IV. In all matters concerning the common good of the church he allowed inquisition without previous public rumour, *inquisitio sine infamia*. At the end of that century mere suspicion was enough; and mere suspicion, of course, could be something solely within the inquisitor's mind, or what he said was there.

Later, public dislike of having the same person as accuser and judge - for that is what it came to - brought a swing back to a semi-accusation procedure. In time a public official was appointed, and no inquisition could begin until he laid a charge. Thus began the public prosecutor that we know today. But at the beginning of the fourteenth century that lay in the future.

That is, when Bernard Gui stepped on the scene in the early 1300s, the strictly regulated inquisitorial procedure was the rule for most criminal trials; but for heresy and similar matters a laxer procedure was officially sanctioned, with far fewer safeguards for the suspected person.

Torture to obtain confessions or other evidence had been disapproved by the church from the beginning; nor had it had any place in the laws of the Germanic peoples. Torture returned to the European scene with the revival of Roman law, and first touched canon law officially in 1252, when Innocent IV approved the ordinances of the emperor Frederick II for the use of torture against heretics. In the letter of the law torture did not enter canon law as such, but in practice it did, when papal legislation in 1260 and 1262 allowed ecclesiastical inquisitors to be present at secular torturing.

And now to Bernard Gui.

He was born in 1261 to a family of the lesser nobility in the Limousin in south central France. His mother tongue was probably the Languedoc, or as we call it, Provençal. In 1279 he joined the Dominican order. He was

appointed inquisitor in Toulouse in 1307, just twenty years before the story told in the novel.

He was a devoted inquisitor. He was also a diligent writer, though with it a diligent plagiarist. He copied extensively from previous inquisitors and other writers. But he has left an invaluable book, *Practica Inquisitionis*, usually known in English as *The Inquisitor's Manual*. It is in five parts, of which the fifth, and easily the most important, has been published separately.⁷

He gave this fifth part the title, "The Method, Art and Skill of Questioning and Examining Heretics and Their Accomplices". It was completed at the latest in 1324, that is, three years before our story. (There is one copy in the library of the University of Adelaide. When I took it out in 1988, it had been borrowed only once in the preceding twenty-one years. Some of the pages were still uncut in 1988. It seems that few people in Adelaide have wished to acquire the method, art and skill of interrogating heretics.) I shall call this volume henceforth the *Manual*. *The Name of the Rose* I shall call the *Book*. Any reference to the other four parts of Bernard's work will be to the *Practica*. There is also a film, made from the *Book* but not altogether faithful to it; it needs no special comment.

We can now consider two things together: the canon law under which Bernard operated, and whether the *Book* shows him as sticking to that law.

Throughout the whole *Manual* one thing is pre-eminent: Bernard's fiery conviction that heretics of all kinds are tricky and slippery, are full of verbal dodging and double-talk, and will evade questions unless the inquisitor is alert and energetic and unremittingly persistent and can pin the wriggling suspect down. We see that shown up too in the *Book*.

The opening words of the *Manual* are classic:

When then someone coming forward either spontaneously or summoned as a suspected person or unfavourably known or of ill repute or even accused of the crime of heresy or favouring or harbouring heretics...has had to be heard and questioned, firstly mildly and modestly by the inquisitor, he is to swear on the gospels to tell the full pure truth, *plenam et meram dicere veritatem*, both concerning himself and concerning others.

7 G Mollat (ed and trans), *Manuel de L'Inquisiteur* (Société d'Édition, text Latin and French, Paris Tome I 1926, Tome II 1927).

(There is a strained sequence of tenses in the Latin of this passage. The editor of the printed *Manual*, Mollat, remarks on the inelegance of Bernard's style).

Note here that suspicion alone justifies the imposition of the oath. There is no mention in Bernard of any need for public rumour. He actually notes in *Practica* that a slight suspicion would do. At page 327 of the *Book*, the finding of a black cat and a cock on Salvatore and the starving girl are twisted into suspicions of witchcraft. On page 64 Ubertino had told William, "Don't build a castle of suspicions on one word". William had replied, "I would never do that. I gave up being an inquisitor precisely to avoid doing that". We have come a long way from the prescribed safeguards of Innocent III.

About twelve years before the *Manual* was completed, Pope Clement V at the Council of Vienne (1311-1312) in *Multorum Querela* had acted on "the complaint of many" against excessive torture by inquisitors, and the confining of suspects in irons in foul prisons, which, the pope said, turned custody into punishment. He prohibited these excesses and ordered local bishops to share power with and to check the inquisitors.

Bernard was appalled at these new directives, and more than once asked the pope to withdraw them. The pope ignored him. John XXII (cast as a villain in the *Book*) on succeeding Clement ordered the inquisitors to communicate their files to the local bishops. Yet, as Bernard noted in *Practica*, the inquisitors ended up in full control anyway, because the local bishops played the game properly by simply delegating their supervisory powers back to the inquisitors.

Bernard is quite frank in *Practica* about his powers. Many of them are noted at page XLVII of the introduction to the *Manual*. He is exempt from all jurisdiction; he is not obliged to follow the ordinary inquisitorial procedure for crime; he can take short cuts; he can do without lawyers and refuse to hear them; he needs no written charge; he was not bound by the 37th canon of the 4th Lateran Council of 1215 forbidding the summoning of people more than two days' journey from their homes; he could use witnesses who would be disqualified in ordinary trials because of their unreliability; he could refuse to allow appeals from his decisions. Much of this appears in the *Book* at page 369.

In many places in the contest between Bernard and Remigio, the *Book*, beginning at page 370, reflects the *Manual*.

In the *Manual* Bernard writes again and again of the trickery of modern heretics; of the crooked way they will misrepresent a question in their answers, or answer something a little different from what was asked. On

page 6 he speaks twice of their foxlike cunning ("*vulpinas versutias*", "*vulpinam astutiam*" - vulpine astuteness). The inquisitor, he says in a magnificent if mixed metaphor, must be able with the Lord's help to extract with an obstetrician's hand the wriggling snake from the putrid abyss of the heretic's errors.⁸

Speaking of the Waldensians, Bernard says on page 64 of the *Manual* that when one of them is brought forward for questioning he will appear quite confident and with no sign of uneasiness or guilt. And so in the *Book* Bernard cries aloud that Remigio - though he was not a Waldensian but a Pseudo-Apostle - is facing judgement as if his conscience were at peace; and this is the most obvious sign of his guilt, because a righteous man would be uneasy.

On the same page of the *Manual* Bernard says that if one of them is asked if he knows why he has been arrested he will reply, "My lord, I would gladly learn that from you". Remigio at page 371 of the *Book* when asked if he knew why he had been arrested, answered, "My lord, I would be happy to learn it from your lips". To which Bernard cried to the assembly again, "There...the typical reply of the impenitent heretic. They cover trails like foxes...".

William in the *Book* says that Bernard often linked one heresy with another, using an admission in one matter as an argument in another, and so on. So too in reality the Spirituals and Beguins, though they were not the same, were lumped together and pursued together by Bernard as inquisitor of Toulouse. In the *Manual* he treats these two together. In the *Book* he begins interrogating Remigio as a Beguin, but then as a Pseudo-Apostle.

In the *Manual* at page 64 Bernard says that when asked what they believe, they reply, "I believe everything that a good Christian should". In the *Book* he asks Remigio, "What do you believe?" and Remigio answers, "My lord, I believe everything a good Christian should" (page 372). And so the duel goes on. Asked in the *Manual* whom he considers to be a good Christian, the suspect answers, "He who believes as the holy church teaches"; Remigio, asked in the *Book* "What does a good Christian believe?", answers, "What the holy church teaches".

Asked next what is the holy church, he answers in the *Manual*, "Lord, it is what you say and believe is the holy church"; in the *Book* (page 372) Remigio replies, "My lord, tell me which you believe is the true church".

In each volume the inquisitor then says, "I believe it is the Roman church, governed by the pope and the bishops". In each volume the suspect answers,

8 At p8.

"So I believe". And in each volume the inquisitor then says, to quote from the *Book*, "Admirable shrewdness!...he means to say that I believe in this church, and he evades the requirement of saying what he believes in"; this is put more briefly in the *Manual*, but it is there.

The dialogue in the *Book* - the inquisitor: "I did not ask what you *should* believe, but what you do believe;" and the reply, "I believe everything you and the other good doctors command me to believe"; and the inquisitor again, "But are not the good doctors you mention perhaps those who command your sect?" - all this is almost word for word from the *Manual*.

Adso observed (page 371) that the cellarer Remigio seemed to be answering ritual questions with equally ritual words, "as if he were well versed in the rules of the interrogation and its pitfalls, and had long been trained to face such an eventuality". In the *Manual* (page 8) Bernard says that that is exactly what used to happen. If the inquisitor followed the same line of questioning in every case, "the sons of darkness" would get to know it and would be ready for it. So a wise inquisitor will always be alert to switch his interrogation and to vary his questions according to the circumstances of the moment, using all his experience and his keen ability, as the Lord will enable him to do.

So again in the section on the Pseudo-Apostles (*Manual* page 98ff and *Book* page 373), the questioning in the two goes side by side. "Have you ever heard of Gherardo Segarelli of Parma?" "Have you ever heard of Fra Dolcino of Novara?" "Have you ever seen them?" "Have you ever spoken with them?" Those four questions are found in both the *Manual* and the *Book*.

In the *Manual* (page 118) Bernard speaks of the Beghards/Beguins praying, in the church or elsewhere, crouching and huddled up, facing the wall, or prostrate on the ground and hooded; rarely kneeling upright with folded hands, as other people do.

In the *Book* at page 371, he demands of Remigio, "Can you deny...that you have been seen in church huddled down with your face against the wall, or prostrate with your hood over your head, instead of kneeling with folded hands like other men?"

It remains now only to say a few words on Remigio's trial as such. It was not the real trial, we are told: that was to follow a few weeks later at Avignon.⁹ Nevertheless the trial at the abbey is on the real lines of Bernard's *Manual*, down to the very dialogue. The oath to tell the truth was not administered to Remigio; that was apparently waiting for the real trial. By strict canon law it could be administered only at the real trial, not at the

9 *Book* pp360, 389.

preliminary investigation. So in this matter the law was observed. But it was not observed in the torture. The law allowed torture, but only in the due course of procedure, and only if the prisoner had refused to confess or to disclose the names of his accomplices. Not even Bernard Gui's real law allowed preliminary torture, as the *Book* (pages 373, 374) shows happening to both Salvatore and Remigio, just to soften them up for future questioning. But there is no doubt it was done in fact: as Clement V said, there were many complaints about it.

We read in the *Book* (page 385) that Remigio is to be tortured again, but Bernard warns the torturers that they must avoid mutilations and danger of death. This too is in *Practica*.

Poor Bernard! There is no doubt that he had to work very hard. He said so, and his record shows it. There was all this stinking cesspool of heresy, this obduracy, this mendacity, this sophistry of equivocation and paltering in a double tongue, this mental restriction, this laying of false trails, these answers to questions that were never quite the answers, these simulations of madness by suspects, so that they gabbled and made meaningless sounds when interrogated; there were all these jocose utterances in the midst of seriousness - and all this with the intent by the heretics to conceal what they were, or to tire the inquisitors so that they would give up the investigation in boredom or despair; or - mark this! - so that the inquisitor would lose his reputation with lay people, because he would seem to be persecuting simple folk without good reason. All this is in the *Manual*.

To pierce all this deviousness and these disguises it is very necessary, Bernard said, that the inquisitor have skill, energy, vigilance and persistence. Bernard had them all. It was very hard work, but he was very good at it.