From Legal Object to Legal Subject: Changing Conceptions of Criminal Animals in Fourteenth- and Fifteenth-Century France



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A thesis submitted for the degree of
Doctor of Philosophy in History
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Fury said to a mouse,
That he met in the house,
'Let us both go to law:
I will prosecute you.—
Come, I'll take no denial;
We must have a trial:
For really this morning
I've nothing to do.

'The Mouse's Tale'
Alice's Adventures in Wonderland
Lewis Carrol

Dedication

This thesis is dedicated to my father,

Ian C. S. MacGregor.

My mentor, teacher, and editor,

who told me I could do anything I set my mind to.

From the bottom of my heart, thank you.

Short Abstract

From Legal Object to Legal Subject: Changing Conceptions of Criminal Animals in Fourteenth- and Fifteenth-Century France
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This thesis concerns cases against harm-causing animals which occurred in France in the fourteenth and fifteenth centuries. I have focused on Eastern and Northern France, particularly Burgundy and areas around Paris. As a subject deemed at best a curiosity and at worst a remnant of a superstitious age, my purpose is to suggest how we might more effectively read, interpret, and understand cases where an animal that had killed a human became subject to the judicial process.

To this end, I put forward a study revealing practices and modes of thought that both reaffirmed and challenged the notion of animals as criminals. Specifically, I am interested in the ways criminal status was applied or denied after an animal had killed a human. In receipts of animal executions found in seigneurial financial registers, for example, criminality was applied through the use of particular legal terminology and the insistence on following standard criminal procedure. Here, the status of the animal was no longer that of mere property; it acquired a legal personality with which to operate within the confines of the law. This transformation from legal object to legal subject not only challenged the idea that humans, and only humans, could be subjects within the law, but it highlighted the flexibility and adaptability of the legal system.

By examining moments of criminalisation alongside sources in which harm-causing animals were denied a legal personality, such as within the customary tradition, I challenge the persistent historiography which portrays the treatment of such animals in medieval France as static or uniform. The records show that there was not a single ‘medieval’ attitude toward

criminal animals, but rather multiple discourses that existed side by side. My sources thus range from customals and legal commentaries, to receipts and petitions relating to verifiable cases. Instead of one narrative, I will present here a multitude of views that engaged with as well as argued against the idea of criminal animals.

Long Abstract

From Legal Object to Legal Subject: Changing Conceptions of Criminal Animals in Fourteenth- and Fifteenth-Century France

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This is a thesis about cases against harm-causing animals which occurred in France in the fourteenth and fifteenth centuries. I have focused on Eastern and Northern France, particularly Burgundy and areas around Paris. As a subject deemed at best a curiosity and at worst a remnant of a superstitious age, my broad purpose is to suggest how we might more effectively read, interpret, and understand cases where an animal that had killed a human became subject to the judicial process.

To this end, I put forward a study that uncovers modes of thought and practices which both reaffirmed and challenged the notion of animals as criminals. Specifically, I am interested in the ways criminal status was applied or denied after an animal had killed a human being. In cases where it was applied, such as in receipts of animal executions found in seigneurial financial registers, the status of the animal was no longer that of mere property; it acquired a legal personality with which to operate within the confines of the law. This transformation from legal object to legal subject not only challenged the idea that humans, and only humans, could be subjects within the law, but it highlighted the flexibility and adaptability of the legal system.

By examining such moments of criminalisation alongside sources in which harm-causing animals were denied a legal personality, such as within the customary tradition, I hope to challenge the persistent historiography which portrays the treatment of such animals in medieval France as static or uniform. The records show that there was not a single ‘medieval’ attitude toward criminal animals, but rather multiple discourses that existed side by side. My sources

range from stories about animals in vernacular bibles, to receipts and petitions relating to verifiable cases, to legal commentaries and customals. Instead of one narrative, I will present here a multitude of views that engaged with and even argued against the idea of criminal animals. By focusing on the original records of these events, we can determine how such sources were used by contemporaries; how the actions of animals were defined and presented; and lastly, how these records shaped and reflected the reality of medieval practice. My aim is to actively interrogate the manner in which late medieval legal culture articulated the harm caused by animals and how such harm was treated in practice, particularly as it was in practice that the notion of criminality included space which nonhumans might occupy. By examining both learned law and verifiable cases, this thesis helps move us toward a more textured understanding of the way in which harm-causing animals were considered and managed.

Chapter One ('The Creation of a 'Natural' Hierarchy: Animals as 'Other' in Textual Tradition') introduces a history of attitudes toward animals that influenced late medieval perceptions of the human-animal relationship. Using the story of creation from Genesis as the foundation of my analysis, I draw on biblical sources, early Christian writings, and medieval commentaries to explore the establishment of distinctions between humans and animals. I then explore the way these distinctions shaped expectations of the nature of domestic animals. We see how animals were understood to be lacking the traits that made up man, such as the ability to reason and an upright posture. This lack demonstrated animals' inferior status making them suitable for man's use. I also explore the idea of domestication, looking at encyclopaedias, husbandry manuals, and vernacular bibles, specifically how domestication was understood to have come about and what it meant for human expectations of animal behaviour. It was these expectations that allowed for daily activities upon which humans depended, such as riding a

horse or milking a cow. The moment an animal killed a human, these expectations were defied, and the human-animal relationship was turned on its head, requiring a formal and legal response.

In Chapter Two ('The Law in Theory: Animals and Liability in French Customals'), I examine how animal behaviour played out in the customary tradition. The treatment of harm-causing animals was framed by the Roman suit, the *actio de pauperies*, which was governed by two requirements: no human intervention could be the direct or proximate cause of the harm, and the animal had to act *contra naturam sui generis* meaning it had to act in such a way that was against its domesticated nature. The *pauperies* suit understood the damage caused by animals as "harm without guilt", committed by one without reason or agency. Similarly, in late thirteenth-century customals, such as Philippe de Beaumanoir's *Coutumes de Beauvaisis* and the *Établissements de Saint Louis*, the focus was on human acts in determining who, if anyone, was liable for the harm. Jean Boutillier's *Somme rural*, composed in the second half of the fourteenth century, diverged from this model by looking closely at animal behaviour and comparing troublesome animals to rebels, thereby hinting not only at animal agency, but also at criminality. Yet in none of these sources was the animal punished for its wrongdoing. However, foreshadowing the cases discussed in Chapter Three, this idea was directly challenged by the fifteenth-century *Coutumes de Bourgogne,* which insisted that certain animals be formally executed for their misdeeds. Chapter Two will demonstrate not only that there was no uniform view of harm-causing animals within the customary tradition, but that early legal theory on the subject was manifestly different from the way in which such animals were treated in practice.

Chapter Three ('The Law in Practice: Creating a Criminal and a Crime') examines receipts from seigneurial financial registers which detail the formal execution of harm-causing animals. These receipts went through a stringent auditing system where financial officers had to

justify their expenses before the Court of Accounts. With the opportunity to dispute costs, this process not only validated events surrounding the animal's execution but the appearance of these receipts alongside other more mundane expenses implies that such events were simply considered part of standard judicial action.

The receipts from executions reveal a persistent application of legal terminology and an insistence on following standard criminal procedure, which not only criminalised the animal and its behaviour, but created a framework through which to view the animal's deed. Often using a common vocabulary, the records highlighted the culprit and the harm committed (often referring to the animal's act as murder), the decision-making authority, as well as the attainment of tools or equipment necessary for the execution. The application of specific legal terms and procedures, which included a possible prison stay, placed the animal both physically and symbolically in the category of 'criminal' with its actions defined as a crime. As a result, legal personhood was temporarily extended to the animal, transforming it from a legal object into a legal subject. Such a transformation enabled contemporaries to consider the case in a particular way (i.e., as a criminal matter) and provided a guide that dictated the way in which the animal and its actions would be treated.

An animal's transformation into a criminal, and thus a legal subject, challenged the usual relation between that animal and the human community. Not only did it undermine the accepted role of a domestic animal as understood in Chapter One, but it also undermined the idea set forth in the Digest that harm caused by an animal was "harm without guilt"; an idea at the heart of many of the customals examined in Chapter Two. The receipts from seigneurial records took a radically different approach, dealing with the harm not as a civil matter, but as a criminal one. By doing so, the animal and its behaviour became answerable under and constrained by criminal

law, suggesting a flexibility within the legal system where the borders defining who or what was a legal subject could be expanded and manipulated.

In Chapter Four ('Contested Spaces: Animals in Legal Disputes'), the concern for following proper procedure can also be seen in jurisdictional disputes where it produced a similarly criminalising effect. These disputes involved a variety of judicial bodies ranging from local lords to municipalities, princes and royal officers, each arguing that they and only they had the proper authority to order the execution of a criminal animal. These cases were not considered a petty matter to be dealt with quickly and quietly, but were taken with all seriousness, demonstrating that the punishment of animals was a closely guarded right. By subjecting an animal and its case to the laws of jurisdiction – a domain of law that, like criminal law, was usually applied only to humans - the animal was symbolically placed within a particular legal context. By becoming an entity whose punishment could be contested, jurisdictional disputes over criminal animals speak not only to what contemporaries believed was the aim and function of law but reflects the nuance and complexity with which jurisdictional law was understood to work.

Finally, in Chapter Five ('*Faire Justice*: The Execution of Criminal Animals'), I return to receipts of animal executions in order to examine the particular kind of punishment to which harm-causing animals were subjected. Once again, there was an insistence on following correct procedure: a professional executioner was summoned; the animal was punished in the manner appropriate for those condemned for murder, that is, they were dragged and hanged; and the punishment took place on *les fourches patibulaires,* a structure whose purpose was to hang and display the bodies of the condemned. The formality with which the animal was put to death not only emphasised its crime, but it justified the time, effort, and expense that had preceded the

execution. Being dragged and hanged upon *les fourches* by a professional executioner represented the final and conclusive step in the process of criminalisation which saw the condemned transformed from animal to criminal, from legal object to legal subject.

For legal theorists the idea of executing animals was both condemned and supported. In the Appendix, I briefly sketch three responses by Renaissance jurists to the medieval practice of punishing animals. Guy Pape and Julius Clarus made use of biblical passages, specifically the goring ox in Exodus and cases of bestiality in Leviticus, as well as alleged eyewitness accounts. Joos de Damhouder, on the other hand, supported the execution of animals by returning to the Roman *actio de pauperies*. These different strategies highlight the difficulty in bridging the gap between theory, which largely denied criminality to animals, and practice, which saw consistent and careful application of criminal processes to animals.

Like today, legal thought in the Middle Ages relied on a set of fictions that rendered the meaning of legal persons and relations shifting and tentative. By highlighting the knowing incongruity that existed between learned law and the law in practice, I have not sought to create a causal link between them or imply a unified body of thought. Nor do the sources examined here tell us the 'Truth' about why animals were punished for killing a human and what purpose it served. Instead, this thesis reveals the complex set of ideas surrounding criminal animals as the product of varied and collective experiences set against the backdrop of a particular legal culture. The multiplicity of thoughts and meanings that such events could have demonstrates that there was no single 'medieval' attitude toward such animals and the harm they caused and further demonstrates the danger of condensing those meanings into a single explanation (as much scholarship on the subject is wont to do).

In fact, it was the flexible nature of the law that could be seen most clearly in the range of sources examined here, where the law acted as a system of thinking rather than a rigid construct into which cases against animals were shoehorned. Equally capable of creating similarity as it was in producing difference, the application of legal terminology and procedures created legal subjects that in other contexts were legal objects. Without confusing animals for humans, or using animals as human proxies, this flexibility not only enabled animals and their actions to be subject to the judicial process but suggested that the relationship between the animal and human community could be structured and regulated by criminal law.

The transformation of an animal into a criminal by virtue of their inclusion in and treatment by the legal system prompts us to think about what it means to be considered in terms of law. It is through law that persons, variously figured, gain or lose definition. An animal may be recognisable as a pig, but when charged with a crime, becomes likewise recognisable as a criminal. This transformation necessitated a perceptual shift in which the animal's behaviour transitioned from a moment of unprovoked violence to a punishable offence. It was this shift which allowed for the creation of a legal fiction: animal as murderer. With this legal fiction in place, cases against animals played out as careful and deliberate legal performances with an emphasis on following standard procedure and ensuring that the appropriate authorities were involved. Throughout this thesis, I continually ask how such a shift destabilises categories that are ordinarily relied upon, such as animal as legal object and murderer as legal subject, or between rational being and irrational beast. To this end, I saw my task as trying to understand a particular legal reality, which was ever-present and could be reimagined.

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My husband, Matt, for his love and technical know-how;

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Fig. 2: Woodcut, Joos de Damhouder, *Praxis rerum criminalium* (Antwerp, 1562), ch. 142, p. 405.

Abbreviations

AN	*Archives Nationales*, Paris
BNF	*Bibliothèque Nationale de France*, Paris
CB	Beaumanoir, Philippe de, *Coutumes de Beauvaisis,* ed. Amédée Salmon (2 vols, Paris, 1899-1900)
C. 1 q. 1 c. 1	*Decretum Gratiani,* Causa 1, quaestio 1, canon 1, in C*orpus iuris canonici*
D 1. c. 1	*Decretum Gratiani,* Distinctio 1, canon 1 in *Corpus iuris canonici*
CCCM	*Corpus Christianorum, continuatio mediaevalis* (365 vols, Turnhout, 1966-)
CIC	*Corpus iuris civilis,* ed. Paul Krueger and Theodor Mommsen (3 vols, Berlin, 1872-7)
Codex Theod.	*Codex Theodosianus, cum constitutionibus Sirmondinis,* ed. Paul Krueger and Theodor Mommsen (2 vols, Berlin, 1905)
Corpus iuris canonici	*Corpus iuris canonici,* ed. Emil Friedberg in (2 vols, Leipzig, 1879-81)
D.	*Digesta,* ed. Paul Krueger, CIC, vol. 1 (Berlin, 1872)
ESL	*Établissements de Saint Louis: accompagnés des textes primitifs et des textes dérivés avec une introduction et des notes,* ed. Paul Viollet (4 vols, Paris, 1881-86)
Inst.	*Institutiones Iustiniani,* ed. Paul Krueger, CIC, vol. 1 (Berlin, 1872)
PL	*Patrologia Latina*, ed. J.-P. Migne (221 vols, Paris, 1844-64)
PG	*Patrologia Graeca,* ed. J-P. Migne (161 vols, Paris, 1857-66)
X 1. 1. 1	*Liber extra (Decretales Gregorii IX),* book 1, tit. 1, cap. 1. in *Corpus iuris canonici.*

Money in Late Medieval France

In the late Middle Ages, money existed as coins of various kinds whose precious metal content was meant to dictate its equivalence in units of account.[1] Coinage was a 'regalian right', meaning its minting pertained to the King. As the most important issuer of coins, the Crown could also alter their value by lowering the metal content or increasing the valuation of the coin. However, the Crown was not the sole source of coinage: money was also minted by the counts of Flanders, the dukes of Brittany, the Plantagenet rulers of Gascony, those of the Dauphiné, and the Pyrenean rulers.

Money existed as coins and as money of account with different denominations used for record-keeping when large sums were involved. There were two main types of money: the *livre tournois* and the *livre parisis.* The former was minted in Tours, and ultimately came to be the dominant currency, while the latter was minted in Paris, and was predominately used in the Île-de-France and areas of Northern France. The ratio was five *livres tournois* was equal to four *livres parisis*.

The gold *livres* were further divided into silver coins, the *sous* and *denier,* so that one *livre* was worth twenty *sous* and each *sol* was worth twelve *deniers.*[2] For centuries, the *denier* was the largest circulating coin and it was only the increased range and volume of trade that made the minting of larger coins necessary.[3] The largest silver coin was the *gros* (existing as *gros parisis* and *gros tournois*), whose nominal value was twelve *deniers*, although this changed over time due to the variability of the value of the *denier*.[4]

The value of the gold coinage fluctuated due to the fluctuations in the gold-silver ratio. The period of the Black Death only exacerbated this instability.[5]

For further information, see *The Handbook of Medieval Exchange* (London, 1986), an invaluable guide by Peter Spufford, Wendy Wilkinson and Sarah Tolley, as well as Peter Spufford's *Money and Its Use in Medieval Europe* (Cambridge, 1988).

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[1] 'Note on Monetary Units', in David Potter (ed.), *France in the Later Middle Ages, 1200-1500* (Oxford, 2002), p. xiii.

[2] Ibid.

[3] John Bell Henneman, Jr., 'Currency', in William M Kibler (ed.), *Medieval France: An Encyclopedia* (New York, 1995), p. 535.

[4] Peter Spufford, 'The Commercial Revolution: the Silver Mark, the Silver Groat and the Gold Florin', in M. M. Postan and Edward Miller (eds), *The Cambridge Economic History of Europe*, 2nd edn (8 vols, Cambridge, 1987), ii, p. 822.

[5] 'Note on Monetary Units', p. xiii.

Introduction

In 2013 in the French city of Tours, a judge called forth a witness during the preliminary hearing of a murder case. The witness was a nine-year old Labrador named Tango, who was asked to confirm the allegations against his owner's alleged killer. The judge ordered the suspect to threaten Tango with a bat, believing Tango's reaction would indicate whether the suspect had indeed been the killer. For the sake of fairness, a second Labrador named Norman was brought in to serve as a 'control group'. The attorney for the defence thought the whole thing was absurd. "I find it very troubling for the French legal system", he told RTL radio.[1] The results were inconclusive and the whole enterprise deemed a failure.

A similar attempt had been made several years earlier in Paris, when a Dalmatian named Scooby was led to the witness box to see how he reacted to two potential murder suspects. The victim's death had initially been described as a suicide and the goal was to decide if there was sufficient evidence to launch a murder inquiry. The dog was said to have "barked furiously", according to *The Telegraph*, and the judge praised the pet for his "exemplary behaviour and invaluable assistance".[2]

While these cases may seem surprising, we have long been intrigued by the idea of animals as subjects within judicial proceedings. Should one happen to mention that they are researching, say, legal cases against animals in the later Middle Ages, they might be greeted with a pair of raised eyebrows. If less fortunate, the response will be along the lines of "you must be

[1] *RTL,* 'Une judge d'instruction tente d'élucider un meutre grâce à un chien' (3 April 2014), http://www.rtl.fr/actu/insolite/une-juge-d-instruction-tente-d-elucider-un-meurtre-grace-a-un-chien-7770918067 (31 Jan. 2017).

[2] Jessica Salter, 'Dog appears as witness in murder trial', *The Telegraph* (10 Sept. 2008), http://www.telegraph.co.uk/news/worldnews/europe/france/2775597/Dog-appears-as-witness-in-murder-trial.html (31 Jan. 2017).

joking!" I have, on one memorable occasion, been told by a noted member of the civil service to "wait right there" while she called to her colleagues in the next room because they "have just *got* to hear this".

Perhaps this kind of reaction is to be expected. Many may be familiar with the topic and might even tell you that beginning in the thirteenth century, there were judicial actions against animals that occurred in areas across France, Switzerland, Italy, and even Germany. Secular cases from this period involved domestic animals and were invoked solely for the crime of killing or injuring persons. Ecclesiastical cases can be found as far back as the tenth century and were directed against so-called vermin or pests (such as insects, mice, etc.) that were usually found guilty of destroying crops intended for human consumption. The sentences in such cases took the form of an anathema and sometimes excommunication.

This thesis focuses on secular cases and the most famous is undoubtedly that of the sow of Falaise. This case has been written about more than any other, helped along by the gradual embellishment of generations of historians. The details of the case were found in a receipt of payment to the executioner of Falaise and first reported by Claude François Blondeau de Charnage in 1764. Although Charnage dated the receipt to 1396, he correctly included it with documents from 1386-87.[3] According to his transcription, the receipt read:

> *[p]our sa paine et salaire d'avoir traîné, puis pendu à la Justice de Falaise une truie de l'âge de trois ans ou environ qui avoit mangé le visage de l'enfant de Jonnet le Maçon, qui étoit au bers et avoit d'âge trois mois ou environ, tellement que ledit enfant en mourut, et de dix s. tournois pour un gand neuf quand le Bourreau fit ladite execution: cette quittance est donné a Regnaud Rigaut, Vicomte de Falaise; le Bourreau y declare qu'il se tient pour bien content desd. sommes: et qu'il en quitte le Roi notre Sire et ledit Vicomte.*[4]

[3] Claude François Blondeau de Charnage, *Dictionnaire de titres originaux pour les fiefs, l'histoire, la géneologie* (5 vols, Paris, 1764), ii, p. 72.
[4] Ibid., p. 72-3.

> [f]or his efforts and salary for having dragged, then hanged on the gibbet in Falaise a sow of three years of age or thereabouts who had eaten the face of the child of Jonnet le Maçon, who was in his cradle and who was three months old or thereabouts, in such a way that the said infant died, and ten *s*[*ous*] *tournois* for a new glove when the executioner performed the said execution: this receipt is given to Regnaud Rigaut, Vicomte de Falaise; the executioner declares that he is well satisfied with this sum and that he makes no further claims on the King our Sire and the said Vicomte.

Based on this receipt, Charnage concluded that the "sow underwent a trial, and that she was declared guilty in true juridical fashion".[5] According to Paul Friedland, who painstakingly tracked down the receipt and its subsequent mutations, this account was the only extant written evidence concerning the execution of a pig in Falaise.[6] Yet five years after Charnage's report, Michel Béziers included the case in a study of Caen, along with a few changes. For reasons known only to Béziers, the name of the victim's father was transformed from Jonnet le Maçon to Journet le Maçon.[7] The case was then included in the *Dictionnaire de Jurisprudence,* published in 1786, and Béziers was cited as the main source.[8] It then appeared in P. G Langevin's history of Falaise in 1814, where the case was given the correct date, but the author inexplicably claimed that the sow ate the child's arm instead of his face. Langevin characterised the execution as based on deterrence, saying that "in punishing the sow, [the *Vicomte*] deprived the negligent individual who owned her".[9] Suddenly, according to Langevin's version, we discover that the owner and the father of the victim were forced to attend the execution, which was meant to incentivize the owner to keep a better eye on his pigs and the father to keep a better eye on his

[5] Ibid., p. 73.

[6] Paul Friedland, *Seeing Justice Done: The Age of Spectacular Capital Punishment in France* (Oxford, 2012), p. 3.

[7] Michel Béziers, *Chronologie historique des Baillis et des Gouverneurs de Caen* (Caen, 1769), p. 67.

[8] Pierre-Jacques Brillon, 'Animal', *Dictionnaire de Jurisprudence et des arrêts, ou Nouvelle edition du Dictionnaire de Brillon* (7 vols, Lyon, 1786), v, p. 85.

[9] P. G. Langevin, *Recherches historiques sur Falaise* (Falaise, 1814), p. 146.

children. Friedland is convinced that this new information was not based on any source, but rather Langevin's own ideas about what must have taken place.[10]

In a follow-up to his work, Langevin returned to the sow of Falaise in 1826 and detailed how the pig ate the child's arm *and* face.[11] More surprisingly, the pig was now dressed in a mask of a human face, as well as wearing a jacket, breeches, and white gloves as it was led to the gibbet. An event originally meant to serve deterrent purposes was replaced by a story of retaliation. Lastly, Langevin stated that the entire event was memorialized in a fresco on the western wall of the church in Falaise, which was later whitewashed.[12] This painting gained a life of its own and appeared (along with the fully embellished story) in E. P. Evans' *The Criminal Prosecution and Capital Punishment of Animals* in 1906*,* still the most widely read book on 'medieval animal trials'.[13] In 1999, Michel Pastoureau included a lengthy description of the case and the commemorative fresco in his study of 'animal trials', referring to the sow of Falaise as "one of the best documented" cases in thirteenth and fourteenth century France.[14]

As it turns out, what is most remarkable about the case of the sow of Falaise is the ways in which later historians shaped it to fit their presumptions about the role of justice and why a nonhuman would be subject to it. In fact, Friedland contends that there was nothing extraordinary about the case at the time it occurred.[15] As this thesis will show, there were many

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[10] Friedland, *Seeing Justice Done,* p. 4.

[11] P. G. Langevin, *Supplément aux recherches historiques sur Falaise* (Falaise, 1826), p. 12.

[12] Ibid. One enthusiast claimed that parts of the fresco were visible in 1896 and gave measurements of the figures depicted, see Julien-Modeste Hurel, *Le Château de Falaise*: *étude historique* (Falaise, 1896), p. 57. However, according to Friedland, who went in search of the fresco, the area in which it was meant to exist is now a storeroom and not open to the public. *Seeing Justice Done,* p. 18. Thus, it seems the existence of the fresco will remain a mystery.

[13] E. P. Evans, *The Criminal Prosecution and Capital Punishment of Animals* (New York, 1906), p. 16.

[14] Michel Pastoureau, 'Une justice exemplaire: Les procès faits aux animaux', in Claude Gauvard and Robert Jacob (eds), *Les Rites de la justice: Gestes et rituels judiciaires au Moyen Âge* (Paris, 1999), p. 180.

[15] Friedland, *Seeing Justice Done,* p. 11.

judicial proceedings undertaken against animals that ended in the hands of a professional executioner. For Friedland, who uses the case as an introduction to his work on the history of public executions in France and our preoccupation with deterrence, the mutations to the sow of Falaise's story were done so that a seemingly inexplicable moment in history would be made more familiar. The sow of Falaise thus highlights the importance of leaving behind our modern assumptions about the role of law and returning with a fresh pair of eyes. It is only by focusing on the original records of these events that we can determine how such sources were used by contemporaries; how the actions of animals were defined and presented; and lastly, how these records shaped and reflected the reality of medieval practice.

The focus of this thesis is on secular cases which occurred in France in the fourteenth and fifteenth centuries. Concentrating on France, specifically Burgundy and the surrounding areas, seemed an easy choice as that is where the majority of cases have been found. My broad purpose is to suggest how we might more effectively read, interpret, and understand cases in which animals were subject to the judicial process. In closely examining such cases, this thesis is intended as a corrective to the existing scholarship, which by and large relies on secondary source material and treats the public execution of domestic animals as a uniform phenomenon explainable by a single over-arching theory.

Using original sources whenever possible, I will argue, instead, that there was no single 'medieval' approach to cases against animals. To this end, this thesis examines a range of sources to determine how the law considered and treated harm-causing animals, uncovering practices that both reaffirmed and challenged the traditional human-animal relation. I am specifically interested in the ways criminal status was applied or denied after an animal had killed a human being. Drawing animals into the legal framework as criminals granted them a

kind of legal personhood, while at the same time challenging notions of who was a recognisable legal subject and who, or what, was not. The continued understanding that there was a separation between humans and animals even while judicial actions against animals followed the same procedural steps as their human counterparts reveals the law's inherent flexibility and its multidimensional character. The fact that an animal and a human were capable of occupying the same legal space, that of a criminal, reflects the interplay between Christian teachings, popular belief, lived experiences, and legal principles, which informed complex and even contradictory understandings of harm-causing animals. My examination of such cases is less about identifying "coherent conceptualisations – 'the attitude toward'", and more about highlighting the plurality and complexity of medieval thought associated with humans, animals, and the law.[16]

It is here that I must make an important distinction. In the literature, secular cases against animals which end in a formal execution are often referred to as 'trials' while the subject as a whole – both secular and ecclesiastical cases together – is referred to as 'the medieval animal trials'. I have found this overly general umbrella term to be largely unhelpful in my research but indicative of the urge to find a one-size-fits-all description and explanation for these events. Instead, I will be referring to 'cases' in this thesis, as this allows for subtle differences and important distinctions in a way that 'medieval animal trials' does not. Perhaps even more importantly, I did not come across any court documents such as you would find resulting from a trial: no pleadings, witness statements, or judges' sentences.[17] This is not to say that they do not

[16] Beth Berkowtiz, 'Animal', in Catherine M. Chine and Moulie Vidas (eds), *Late Ancient Knowing: Explorations in Intellectual History* (Oakland, 2015), p. 41.

[17] For an overview of the various stages of a civil trial (meaning a trial in a lay court, not an ecclesiastical court) and the documents that would be created in such a process, see Philippe de Beaumanoir's *Coutumes de Beauvaisis* (hereafter *CB*), particularly ch. 6 (complaints or *demandes* made by the plaintiff), ch. 7 (response by the defendant or *excepcions,* and a plaintiff's reply), ch. 39 (regarding proof, witnesses, and alibis), ch. 40 (examining witnesses), and ch. 67 (judgements). See also Louis Tanon, *L'ordre du Procès Civil au XIV^e siècle au Châtelet de Paris* (Paris, 1886) and Yvonne Bongert, *Recherches sur les cours laïques du X^e au XIII^e siècle* (Paris, 1949).

exist. However, I have focused on learned law in the form of customals, and verifiable cases recorded in receipts, petitions, and even jurisdictional disputes. My analyses are based on these documents, so it seemed misleading and even inaccurate to make any references to or conclusions about 'animal trials'. If and when modern scholars do use such terminology, I will keep their wording if I am quoting them directly and hope it causes no undue confusion.

Legal Personhood

The application of legal personhood to nonpersons is not a new concept nor was it new at the time of the cases examined here. As a legal construct, the idea of legal personhood dates back to Roman law and was developed throughout the Middle Ages. It is an idea rooted in the ways in which the law imagines 'personhood', that is, a 'right-and-duty-bearing unit'.[18] By legal construct, I mean that personhood is created by the law and necessarily expresses a conception of the relative worth of the objects included and excluded by the scope of that term.[19] As Joseph Vining pointed out:

> [p]ersons do not come before a court self-defined or ready-made. A court must make a judgement before it can perceive, hear, or talk about. . . 'the plaintiff,' 'the challenger,' or whatever other general term is used to refer to those who make legal arguments on the merits.[20]

This construct reflects and communicates who 'counts' for the purpose of law; a crucial determination. Even laws that do not specifically refer to persons address the issue by including

[18] This definition was provided by the English jurist and historian, Frederic William Maitland (d. 1906), see *The Collected Papers of Frederic William Maitland,* ed. H. A. L. Fisher (3 vols, Cambridge, 1911), iii, p. 143. See also, John Dewey, 'The Historic Background of Corporate Legal Personality', *Yale Law Journal,* vol. 35 (April 1926), pp. 655-73.

[19] See David Fagundes, 'What We Talk about When We Talk about Persons: The Language of a Legal Fiction', *Harvard Law Review*, vol. 114, no. 6 (April 2001), p. 1760.

[20] Joseph Vining, *Legal Identity: The Coming of Age of Public Law* (New Haven, 1978), p. 144.

or excluding certain categories of individuals, either specifically or through judicial interpretation. The expressive dynamic through which law communicates norms and values to society makes it difficult to find a clear division between the legal definition of 'person' and the everyday understanding of the term. Many writers have attempted to address this problem, but generally do so by asking whether the legal category of 'person' does or ought to include a particular marginalised entity.[21]

Today, there are two types of legal persons: natural persons (humans) and juridical persons, which are generally entities such as corporations that are treated as if they have certain rights and responsibilities similar to those of a natural person.[22] The doctrine of legal personhood (*persona ficta*) has been attributed to Pope Innocent IV (1243-54).[23] Under canon law, the doctrine allowed groups of people, be that a *universitas, collegium, corpus,* or *societas*, to have a legal existence apart from the individuals who made up that group.[24] Such institutions could thus

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[21] See, e.g., Steven Goldberg, 'The Changing Face of Death: Computers, Consciousness, and Nancy Cruzan', *Stanford Law Review*, vol. 43 (1996), pp. 659-84 (those in permanently vegetative states); Lawrence B. Solum, 'Legal Personhood for Artificial Intelligences', *North Carolina Law Review,* vol. 70, no. 4 (1992), pp. 1231-86 (artificial intelligence); Michael D. Rivard, 'Toward a General Theory of Constitutional Personhood: A Theory of Constitutional Personhood for Transgenic Humanoid Species, *UCLA Law Review,* vol. 39, no. 5 (June 1992), pp. 1425-1510 (genetically engineered species). See also the recent moves towards personhood as a method of environmental protection, e.g., Christopher Stone, 'Should Trees Have Standing? Toward Legal Rights For Natural Objects', *Southern California Law Review,* vol. 45 (1972), pp. 450-501, and more recently, Gwendolyn J. Gordon, 'Environmental Personhood', *Columbia Journal of Environmental Law,* vol. 43, no. 1 (2018), pp. 50-88.

[22] The concept of allowing one or more natural persons to act as a single entity for legal purposes in order to protect individual members is not absolute. For instance, the notion of 'piercing the corporate veil' refers to looking at the individuals acting as agents on behalf of that entity. The idea of corporations as legal persons is one of the most enduring, but also the most problematic of legal fictions. See Carl J. Mayer, 'Personalizing the Impersonal: Corporations and the Bill of Rights', *Hastings Law Journal,* vol. 41 (1990), p. 650.

[23] In his Apparatus, a commentary of the five books of decretals of Pope Gregory IX, Innocent IV announced that a *collegium* had the option of delivering an oath using a single person as a representative, "since the College is in corporate matters figured as a person" (*cum collegium in causa universitatis fingatur una persona*) X 2.20.57, cited in Pierre Gillet, *La Personnalité Juridique en droit ecclésiastique* (Malines, 1927), p. 165. For a definition of a corporation, see Pillius de Medicina, *Summa Trium Librorum* in *Azonis Summa super Codicem, Instituta Extraordinaria* (Turin, 1578, repr. 1966), bk. 11, p. 430: "Collegium est personarum plurium in corpus unum quasi coniuctio vel collectio: quod generali sermone universitas appellatur, corpus quoque, vulgariter apud nos consortium vel schola".

[24] See Joannes Andreae, in VI 5.11.5, n. 8-9: "Nomina 'universitas', 'communitas', 'collegium', 'corpus', 'societas' sunt quasi idem significantia. . . ob hoc nullum horum est vera persona, que est rei rationabilis individua substantia; inde collegium dicitur persona non vera, sed representata", cited in J. P. Canning, 'The Corporation in the Political

be the subject of certain rights and prerogatives under the law, possess inheritable property, and be capable of acting within the legal framework.[25]

A legal existence composed of rights and duties has generally been denied to animals, who, throughout history have been treated as things or property, rather than persons.[26] The distinction between property and persons is considered not only self-evident, but universal. Persons have the ability to act within the legal system and be held accountable by it, signifying rationality and intention. This ability provides not only legal privileges, such as the right to appear and be heard in court, but also legal protections. It is understood that property, and thus animals, do not have such legal privileges and protections. Personhood is thus commonly equated with humanity.

There is an obvious problem in using humans as the benchmark for granting legal personhood to nonhuman entities. Law is a domain of culture. As Elizabeth Fowler said, "legal persons. . . are best understood as personifications of social relations, as abstractions of social bonds that have been elaborated and given discursive life".[27] Because certain relations are valued more than others, some legal persons enjoy more rights and duties than others. Alexander Nékám described this as the "gradations among legal entities".[28] Medieval law was no different. In fact,

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Thought of the Italian Jurists of the Thirteenth and Fourteenth Centuries', *History of Political Thought*, vol. 1, no. 1 (1980), p. 17, who provides a useful examination of the application of legal personhood in a medieval context.

[25] See Gillet, *La Personnalité Juridique,* pp. 100-5.

[26] There are some exceptions. E.g., Spain has recently extended certain legal rights to great apes. See Lisa Abend, 'In Spain, Human Rights For Apes', *Time Magazine* (18 July 2008) http://content.time.com/time/world/article/0,8599,1824206,00.html (3 Jan. 2018). In addition, some courts in the U.S. have recognized animals as named plaintiffs. See e.g., *N. Spotted Owl v. Hodel*, 716 F. Supp. 479 (W.D. Wash. 1988) (naming a species of owl as a plaintiff); *N. Spotted Owl v. Lujan*, 758 F. Supp. 621 (W.D. Wash. 1991) (naming a species of owl as a plaintiff); *Mt. Graham Red Squirrel v. Yeutter*, 930 F.2d 703 (9th Cir. 1991) (naming a species of squirrel as a plaintiff). However, animals usually cannot sue in their own names. See e.g., Cass R. Sunstein, 'Can Animals Sue?', in Cass R. Sunstein and Martha C. Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford, 2004) pp. 251, 259–60 (noting that animals lack standing in some U.S. courts).

[27] Elizabeth Fowler, *Literary Character: The Human Figure in Early English Writing* (Ithaca, 2003), p. 186.

[28] Alexander Nékám, *The Personality Conception of the Legal Entity* (Cambridge, 1938), p. 45.

it distinguished between many classes of natural persons whose legal rights depended on their value to society. The most valued were, of course, noble men. This was followed by free men and men who were not free. The clergy represented a different category altogether, as did outsiders, such as Jews. Some had restricted legal rights, such as women, minors, and the 'mad'. Others, such as excommunicates, outlaws, and felons, lacked rights entirely. As Andreea Boboc remarked, understanding this "situational anchoring of personhood" is particularly useful where certain beings are considered and treated in different ways by the law.[29]

Throughout the next five chapters, I will use the law as an interpretive framework to reveal the ideas, mentalities, and values regarding animals, humans, and the way the law created or shifted the boundaries between them. The extension of a legal personality to animals was the result of the manipulation of status distinctions (i.e., who is a criminal), which, in turn, enabled animals and their actions to be subject to the judicial process. By examining such moments of criminalisation alongside sources in which harm-causing animals were denied a legal personality, I will challenge the persistent historiography which portrays the treatment of such animals in medieval France as uniform or monolithic. The records show that there were, in fact, multiple discourses that existed side by side.[30] My sources thus range from stories about animals in vernacular bibles, to receipts relating to verifiable cases, to legal commentaries and customals. Instead of one narrative, I will present here a multitude of views that engaged with and even argued against the idea of 'criminal animals'.

[29] Andreea Boboc, 'Theorizing Legal Personhood in Late Medieval England', in Andreea Boboc (ed.), *Theorizing Legal Personhood in Late Medieval England* (Leiden, 2015), p. 6.

[30] Rosalind Hill quite rightly cautioned against a specifically definable "medieval" attitude towards animals, insisting that opinions and relationships to animals were just as varied then as they are today. See Rosalind Hill, *Both Small and Great Beasts,* 2nd edn (The Universities Federation for Animal Welfare, 1987), p. 3.

I begin in Chapter One with a history of attitudes toward animals and its influence on late medieval perceptions of the human-animal relationship. Using the story of creation from Genesis as the foundation of my analysis, I draw on biblical sources, early Christian writings, and medieval commentaries to explore the establishment of distinctions between humans and animals. I then explore the way these distinctions shaped expectations of the nature and behaviour of domestic animals.

Whether harm caused by an animal was done according to the animal's nature formed a crucial part of the Roman *actio de pauperies*, a suit which I explore in Chapter Two. This suit and its criteria were deeply influential for many French customals, which looked at various scenarios involving harm-causing animals in order to pinpoint liability for the damage done. While there was variation within the customary tradition, demonstrating that there was no uniform view of harm-causing animals, remedies in the majority of customals were consistent with those dictated under Roman law. Harm caused by animals remained justiciable within the customary tradition as a civil matter, not a criminal one, and the status of the animal remained that of property.

However, as I will discuss in Chapter Three, receipts detailing the formal execution of animals took a different approach. They applied specific legal terms to the actions of the animal and highlighted the importance of involving the right decision-makers and having the necessary equipment on hand. Some animals even spent time in prison. The insistence on such measures effectively placed the animal in the category of 'criminal' and its actions became a crime. As a result, legal personhood was temporarily extended to the animal, transforming them from a legal object into a legal subject.

In Chapter Four, the concern for following standard procedure seen in Chapter Three is extended to jurisdictional disputes and, I argue, produced the same criminalising effect. Finally, in Chapter Five, I return to receipts of animal executions in order to examine the particular kind of punishment to which harm-causing animals were subjected. Once again, the insistence on following standard criminal procedure and the formality with which animals were put to death not only emphasised the crime but represented the final and conclusive step in the process of criminalisation.

The range of opinion on punishing animals for their crimes is demonstrated in the Appendix, where I briefly sketch three Renaissance responses to the medieval practice. Deserving of further study, these examples highlight the different ways in which jurists writing after the period examined in this thesis explained such events. With a focus on biblical passages, specifically the goring ox in Exodus and cases of bestiality in Leviticus, as well as legal precedent and alleged eyewitness accounts, these commentaries highlight the difficulty in bridging the gap between theory (which largely denied criminality to animals) and practice (which saw consistent and careful application of criminal processes to animals).

Like today, legal thought in the Middle Ages relied on a set of fictions that rendered the meaning of persons and relations shifting and tentative. The transformation of an animal into a criminal by virtue of their inclusion in and treatment by the legal system prompts us to think about what it means to be considered in terms of law. It is through law that persons, variously figured, gain or lose definition, become victims or criminals. An animal may be recognisable as a pig, but when charged with a crime, becomes likewise recognisable as a criminal. Throughout this thesis, I continually ask how this destabilises categories that are ordinarily relied upon, such as animal as legal object and murderer as legal subject, or between rational being and irrational

beast. To this end, my task is to understand a particular legal reality, one which was not static but dynamic.

The Curious Case of Madame P.

Over the last few decades, there has been a surge of interest in the notion of animals charged with crimes. The Sow of Falaise has even garnered attention from audiences outside of academic circles. In 2010 the sow was the unlikely subject of a multimedia production entitled "The MindBoggling, Tragical-Comical Trial of Madame P and Other 4-Legged and Winged Creatures".[31] Written by Susan Yankowitz and performed off Broadway, the show centred around the sixteenth-century trial of a sow, Madame P, who was accused of killing a child. She was accused alongside her alleged accomplice, a dog named Lilah. Dressed in human clothing for her trial, Madame P was rigorously defended by an assigned attorney, modelled on the celebrated French jurist Bartholomew Chassanée (1480-1541). The play incorporated actors, puppets, and video, using the prosecution of animals as metaphors for the treatment of legally disenfranchised groups. Madame P even gave an online interview through the words of the playwright, decrying the lack of justice she received while on trial.

> I honestly believe that my trial was unjust at its core. The law had absolutely no flexibility or understanding when it came to pigs or other animals; it just squeezed us into the system as if we were humans. Well, of course you'd prosecute a woman who killed a baby! But me? What did I do wrong? Everyone knows that a pig will eat anything. I was just obeying my God-given nature. I didn't know it was a child; I didn't even know that eating it would cause its death! In fact, I don't even know what death is! But that's the word that kept cropping up in my trial. My lawyer did his best for me but, face it, a sow can't compete for sympathy with a mother who's mourning her infant.[32]

[31] 'Excerpts from the Mind-Boggling, Tragical-Comical Trial of Mrs. P and Other 4-Legged and Winged Creatures', https://www.theatermania.com/shows/new-york-city-theater/off-off-broadway/excerpts-from-the-mind-boggling-tragical-comical-trial-of-mrs-p-and-ot_176338 (24 Oct. 2017)

[32] Leonard Jacobs, '5 Questions I've never been asked: Susan Yankowitz and Madame P.', *The Clyde Fitch Report* (3 Dec. 2010), http://www.clydefitchreport.com/2010/12/5-questions-ive-never-been-asked-susan-yankowitz-and-madame-p (7 Oct. 2016).

In her rant, Madame P hits upon many of the key themes that will be explored in this thesis. Firstly, she complains that since she was acting according to her nature, she should not be punished, echoing the ideas in Chapters One and Two about the importance of an animal's nature and how it should be considered in determining how the harm should be treated. Secondly, Madame P protests being "squeezed" into the legal system "as if [pigs] were humans", thereby highlighting a popular misconception that these animals were somehow equated with humans. R. Howard Bloch, for instance, a prominent French literary critic, explained cases against animals as happening "under the assumption that the responsibility of domestic animals is identical to that of humans".[33] When I first came across this explanation – and there are many scholars who assert that this is the case – it struck me as somewhat misguided.[34] Are we seriously suggesting that municipal and royal officers, lawyers and jurists, conflated animals with humans in this particular context so that the law could apply to them? That seems unlikely.

In the following chapters, I will demonstrate that the fact that the accused was an animal was never forgotten. A pig did not momentarily become 'human-like' after killing an infant in its cradle. There wasn't confusion about what was a human and what was an animal, nor were animals standing as human proxies. Rather, it is more accurate to say that for a brief moment, the animal gained something of a legal personality based on its behaviour. This did not make them human, but instead allowed them to occupy a typically human space so their behaviour could be managed by the legal system. Cases against animals highlighted that what was flexible was not

[33] R. Howard Bloch, *Medieval French Literature and Law* (Berkeley, 1977), p. 33.

[34] For instance, Esther Cohen wrote that animals "were thought of as humans, precisely because they were litigants facing the law" in her work 'Animals in Medieval Perceptions', in Aubrey Manning and James Serpell (eds), *Animals and Human Society: Changing Perspectives* (London, 1994), p. 75.

so much the concepts of humans and animals in this particular context, but concepts of the law itself.

Animals and History: the Benefits of a Posthumanist Methodology

Discussions of animals today largely revolve around the growing concern about how animals have been represented, thought about, related to, and treated. At their core, these concerns are often about the ways in which animals are – or are not – like us, and consequently the ways that they should – or should not – be treated like us. What makes the story of the sow of Falaise so unsettling is the fact that an animal was subjected to a process made by and for humans (the criminal process). As if to capitalise on our disquiet, in later representations she is even dressed as a human. As Erica Fudge remarked, "[t]he categories we use to think about the past do not comfortably offer explanations for such enigmatic events".[35] This is not to say that there are no explanations, but those explanations may come from within or even beyond categories that we find difficult to grasp. By treating the sow's actions as a crime, the condemned occupied an ambiguous space as a nonhuman placed within a legal classification that, like the criminal process itself, was made by and for human legal subjects. This raises some key questions: what are the implications of the sow's legal transformation and how does it affect the traditional human-animal relationship? What does it say about the articulations of legal personhood and the way in which the law could be adapted?

In thinking through such questions, it is important to remember that there is always a challenge in writing about animals. Capturing this very conundrum, Michel Montaigne asked in

[35] Erica Fudge, 'Introduction', in Erica Fudge (ed.), *Renaissance Beasts: Of Animals, Humans, and Other Wonderful Creatures* (Urbana, I.L., 2004), p. 6.

1580, "how knoweth he by the vertue of his understanding the inward and secret motions of beasts?"[36] One way, Hilda Kean suggested, was to simply 'write in' animals into existing frameworks of history.[37] However, if the historian is striving "to disrupt accepted ways of looking at aspects of the past by highlighting animal-human relations", Kean rightly noted that the task becomes somewhat trickier.[38] In fact, it is possible that this challenge is insurmountable. Lynda Birke and Jo Hockenhull argued that *all* research into human-animal relationships is problematic. Becoming the objects of research positions nonhumans as 'Other', just as they are positioned as 'Other' in relation to humans by virtue of their definition as nonhumans.[39] To this end, Dorothee Brantz contended that only human representations of and discourse on animals can be studied.[40] Garry Marvin agreed, pointing out that historical narratives that include animals are always described in and on human terms.[41] This will certainly remain the case as long as we see animals, in the words of Susan J. Pearson and Mary Wesimantel, as "objects in human culture" and "containers of human projections".[42] Pearson and Wesimantel imagine an attempt at any alternative understanding of animals as doomed to failure, caught between the "Scylla of anthropomorphism and the Charybdis of anthropocentricism".[43]

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[36] Michel de Montaigne, 'Apology for Raymond Sebond', in *The Essayes or Morall, Politike and Millitarie Discourses,* trans. John Florio (London, 1603), p. 260.

[37] Hilda Kean, 'Challenges for Historians Writing Animal-Human History: What Is Really Enough?', *Anthrozoos*, vol. 25, no. 1 (2012), p. 64.

[38] Ibid.

[39] Lynda Birke and Jo Hockenhull, 'Introduction: On Investigating Human-Animal Relationships', in Lynda Birke and Jo Hockenhull (eds), *Crossing Boundaries: Investigating Human-Animal Relationships* (Boston, 2012), p. 6.

[40] Dorothee Brantz, 'Introduction', in Dorothee Brantz (ed.), *Beastly Natures: Animals, Humans, and the Study of History* (Charlottesville, 2010), p. 5.

[41] Garry Marvin, 'Wolves in Sheep's (and Others') Clothing', in *Beastly Natures,* p. 62. Marvin further argued that creatures of interest to us scholars in humanities are always socially and culturally constructed, meaning that we cannot have much to say about animals outside the human context.

[42] Susan J. Pearson and Mary Wesimantel, 'Does 'The Animal' Exist? Toward a Theory of Social Life', in *Beastly Natures,* p. 17.

[43] Ibid.

It is thus important to note that I am not writing a history of medieval animals. My project does not concern the animal *per se*, but how animals and humans intersected in a particular historical and cultural circumstance, more specifically the way in which the law and its authority transformed animals from legal objects to legal subjects. As Fudge noted, "if our only access to animals in the past is through documents written by humans, then we are never looking at the animals, only ever at the representation of the animals by humans".[44] We must acknowledge that records of animals, and certainly records of animals subjected to the criminal process, have been produced by humans and for humans. If the study of animals can be situated only at the point of human-animal relations, then these relationships must themselves be specifically situated.

While our studies may seem inevitably human-centred, one way in which to acknowledge this power disparity while at the same time challenge the human-animal binary is through posthumanism. As a methodology, posthumanism allows for the decentring of man in relation to either evolutionary, ecological, or technological coordinates and points toward the necessity of new modes of thought and new theoretical paradigms.[45] It focuses on the dissatisfaction with the idea of human hegemony by critiquing the definition of humans and animals that lie at the core of a humanist's justification for their separation; the definition based on the Cartesian iteration *cogito ergo sum* that separated humans, who were alone marked by rationality, from the entire spectrum of animals. The traditional human-animal binary, which will be explored in relation to early Christian and later medieval writing in Chapter One, under a posthumanist approach must

[44] Erica Fudge, 'A Left-Handed Blow: Writing the History of Animals', in Nigel Rothfels (ed.), *Representing Animals* (Bloomington, I.N., 2002), p. 6.

[45] Cary Wolfe, *What is Posthumanism?* (Minneapolis, 2010), p. xvi.

now, as Susan Crane put it, "melt into a multiplicity of intersecting and competing distinctions that better reflect medieval ways of thinking".[46]

According to Cary Wolfe, the term 'posthumanism' first appeared in contemporary critical discourse during the mid-1990s, though it can be traced to the 1960s and Michel Foucault's description of man as an invention.[47] As a branch of cultural theory, it forces us to recontextualise experiences by acknowledging that the human is "a fundamentally prosthetic creature", occupying a category that is constructed by us and for us.[48] Ideas and assumptions around 'human' and 'animal' are therefore not 'natural' but political, adopted and maintained in order to preserve the purity of those categories. Under the gaze of posthumanism, relations and meanings are revealed not as fixed but as emergent, multiple, mobile, and performative. Recognition of this dynamic allows us to deconstruct the various ways in which we have presumed to master or appropriate the boundaries we share with nonhumans.

For the purposes of this thesis, posthumanism is a useful methodology for offering a way to go beyond traditional limits and presumptions by recognising that categories (including legal categories) whose borders have historically been thought of as immutable and unchanging are, in fact, constructed – and so can be altered. These categories, like that of legal object and legal subject, can be created, shifted, defended, and reimagined. They are used politically and ideologically to include one group and not another. Posthumanism recognises the messiness of such categories, acting as a direct challenge to the notion that these categories represent the 'Truth' and are permanently defined.

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[46] Susan Crane, *Animal Encounters: Contacts and Concepts in Medieval Britain* (Philadelphia, 2012), p. 8.

[47] Wolfe, *What is Posthumanism?*, p. xii. See also, Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (New York, 1971), p. 387.

[48] Wolfe, *What is Posthumanism?*, pp. xxv, xxii.

Using a posthumanistic approach, I want to think across the traditional human/animal divide and bring together social, intellectual, and legal history to suggest ways of empirically investigating judicial actions against animals. The notion of an animal as a criminal challenges the traditional categories of human and animal by undermining the idea that only humans possess the capability to act in a criminal capacity and be punished for it. Thus, it is only by decentring the human that one can engage with the very notion of a 'criminal animal' and recognise that as a framework, the legal system was more fluid than is generally imagined. By exploring the mechanisms that define and regulate both humans and animals when an animal is deemed to have committed a crime, we can shed light on what the records of such events meant and how the law touched on and shaped the treatment of criminal animals. In this way, I consider how legal rhetoric and processes intersected with strategies of social negotiation, pointing to the dis/connections between learned works and records of verifiable cases, and the world in which they were used. As a result, my emphasis is on the intersection between humans, animals, and the legal system, focusing not on binary oppositions, but on, as Dorothee Brantz called them, "the relational spaces 'in between'".[49]

Literature Review

The punishment of harm-causing animals has long been a source of fascination, curiosity, and even ridicule.[50] Social historian Gerald Carson, in examining the often-contradictory behaviour

[49] Dorothee Brantz, 'Introduction', in *Beastly Natures*, p. 5.

[50] Civil and ecclesiastical cases against animals have both been of particular interest to French scholars. See, for example, P. Lebrun, *Histoire critique des pratiques superstitieuses* (3 vols, Rouen, 1733), i, p. 243; Jacques Berriat-Saint-Prix, 'Rapport et Recherches sur le Proces et Jugements relatives aux Animaux', *Memoires de la Société Royale des Antiquaires de France,* vol. 8 (1827), pp. 403-50; Léon Ménabréa, *De L'Origine de la Forme et de l'Esprit des Jugements rendus au Moyen-Age contre les Animaux* (Chambéry, 1846); Jules Desnoyers, 'Excommunication des insectes et d'autres animaux nuisibles à l'agriculture', *Bulletin du Comité historique des monuments écrits de l'histoire de France*, vol. 4 (1853), pp. 35-54; A. Giraud, 'Procédure contre les chenilles et

of humans with respect to animals throughout history, summed up the thoughts of many scholars when he remarked:

> [i]t requires a considerable act of imagination for a person living in the culture of the 20th century to understand the involute thought of the medieval legal mind, and the high seriousness of our ancestors in arraigning cabbageworms, he-goats, and indeed, all animal kind, domestic and wild, in a court of justice where to the solemn tolling of bells they were tried…[51]

Several nineteenth-century scholars couldn't believe their eyes. The French jurist Jacques Berriat-Saint-Prix (1769-1845), who studied such cases extensively, wrote:

> [w]e doubted for a long time whether, in the middle ages, those prosecutions against animals, which have been mentioned by some ancient chroniclers, were ever in fact instituted. Even the ignorance and superstition of the times did not seem to us a sufficient reason to render their relations credible.[52]

The earliest attempt at a systematic study of known animal cases was Karl von Amira's *Thierstrafen und Thierprocesse* (1891). A legal historian, Von Amira's key contribution was the clear distinction he made between *Thierstrafen* and *Thierprocesse,* the former being cases against domestic animals which followed civil procedure and the latter involving judicial

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autre animaux nuisibles', *Bulletin de la Société départemental d'archéologie et de statistique de la Drôme*, vol. 1 (1866), pp. 100-2; A. Sorel, *Procès contre les Animaux et Insectes suivis au Moyen-Age dans la Picardie et le Valois* (Compiègne, 1877); E. Robert, 'Procès intentes aux Animaux', *Bulletin de l'Assoc. Génerale des étudiants de Montpellier*, vol. 1 (1888), pp. 169-181. For more recent work from scholars around the world, see Joseph P. McNamara, 'Animal Prisoner at the Bar', *Notre Dame Lawyer*, vol. 3 (1927), pp. 30-6; Harry B. Weiss, 'The Criminal Prosecution of Insects', *Journal of the New York Entomological Society*, vol. 45 (1937), pp. 251-8; Frank A. Beach, 'Beasts Before the Bar', *Natural History Magazine*, vol. 59 (1950), pp. 356-9; E. V. Walter, 'Nature on Trial: The Case of the Rooster that Laid an Egg', in E. V. Walter et al. (eds), *Civilizations East and West: A Memorial Volume for Benjamin Nelson* (Atlantic Highlands, N.J., 1985), pp. 51-72; Catherine Chène, *Juger les vers: Excorcismes et procès d'animaux dans la diocese de Lausanne (XVe – XVIe s.)* (Lausanne, 1995); William Ewald, 'Comparative Jurisprudence: What Was It Like to Try a Rat?', *University of Pennsylvania Law Review*, vol. 143, no. 6 (June 1995), pp. 1889-2149; Alan Watson, 'Curses, Oaths, Ordeals and Trials of Animals', *Edinburgh Law Review*, vol. 1 (1996), pp. 420-36; Michel Pastoureau, 'Nouveaux regards sur le monde animal à la fin du Moyen Âge', in idem, *Les signes et les songes: études sur la symbolique et la sensibilité médiévales* (Florence, 2013), pp. 111-26.

[51] Gerald Carson, *Men, Beasts and Gods: A History of Cruelty and Kindness to Animals* (New York, 1972), pp. 25-6.

[52] Jacques Berriat-Saint-Prix, 'Prosecutions Against Animals', *American Jurist & Law Magazine*, vol. 1 (April 1829), p. 223.

proceedings against wild animals undertaken by ecclesiastical courts.[53] Unfortunately, such distinctions tend to be blurred in later studies on the topic.[54] It is important to note that between the ninth and thirteenth centuries, the records discussed by Von Amira and later scholars were exclusively ecclesiastical cases. It is only in the latter half of the thirteenth century that we find mentions of cases that followed civil procedure.

Cases concerning murderous animals first became available to an English audience with the work of E. P. Evans (1831-1917) and his pivotal book *The Criminal Prosecution and Capital Punishment of Animals.* First published in 1906, Evans' book documented close to two hundred European cases in which animals were charged with crimes. Although he did not formally separate the secular from ecclesiastical cases, he described in detail how bulls, horses, and pigs were charged with homicide while insects were threatened with anathematization. Most helpfully, Evans provided a list which included the source of information on the case, the type of animal, the location, and the date.[55] The first ecclesiastical case listed by Evans is dated to 824 when moles were excommunicated from the Valley of Aosta, Italy. The earliest civil case occurred in Fontenay-aux-Roses near Paris in 1266 where a pig was put to death for killing a child. The last case cited by Evans was in 1906 when a dog was tried in Switzerland and the event reported in the New York Herald.

The cases that Evans compiled are for the most part concentrated in northern and eastern France, as well as parts of Italy, Germany, and Switzerland. A few cases are cited from Belgium, Denmark, and Spain. Additionally, he listed two cases from England: a dog hanged in Chichester

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[53] See Karl Von Amira, *Thierstrafen und Thierprocesse* (Innsbruck, 1891).

[54] For example, Walter Hyde failed to make such a distinction, see 'The Prosecution and Punishment of Animals and Lifeless Things in the Middle Ages and Modern Times', *University of Pennsylvania Law Review,* vol. 64, no. 7 (May 1916), p. 703.

[55] Evans, *Criminal Prosecution* (1906), pp. 265-86.

in 1771 and a rooster executed in Leeds in 1861.[56] The bulk of Evans' examinations, however, focused on France. Drawing any sort of conclusion from this is difficult: while the keeping of some medieval records was superb (this was the case in many parts of England), others were often poorly kept, if they were kept at all. The lack of English records may indeed indicate that judicial actions involving harm-causing animals did not occur there.[57] However, as many have pointed out, there are still lingering questions about whether such cases occurred more often in certain geographic locations and not in others, or whether this disparity is the result of certain locations having particularly persistent local scholars.[58]

The concept of animal accountability has been traced by modern scholars to classical Athens. Walter Hyde described a special court in Athens known as the Prytaneum, whose duty it was to try unknown murderers as well as animals and inanimate objects that caused the death of a human being.[59] The second-century traveller, Pausanias, mentioned the court in his descriptions of Greece, saying its existence went back to the founding of city.

> The Court in the Prytaneum, as it is called, where they try iron and all similar inanimate things, had its origin, I believe, in the following incident. It was when Erectheus was king of Athens that the ox-slayer first killed an ox at the altar of Zeus Polieus. Leaving the axe

[56] There does not seem to be a consensus regarding cases against animals in England. J. J. Finkelstein was adamant that they did not occur, see 'The Ox that Gored'*, Transactions of the American Philosophical Society,* vol. 71, no. 2 (1981), p. 74. However, Hyde believed that they were common during the Elizabethan era, see 'Prosecution and Punishment of Animals', p. 709, as did George Ives, see *A History of Penal Methods: Criminals, Witches, Lunatics* (London, 1914), p. 256. Both based their claim on the passage from Shakespeare's *Merchant of Venice* in which Gratiano chides Shylock, saying "They currish spirit / Govern'd a wolf, who, hanged for human slaughter / Even from the gallows did its fell soul fleet" (Act IV, scene 1).

[57] For more on this argument, see Piers Beirnes, 'A note on the facticity of animal trials in early modern Britain; or, the curious prosecution of farmer Carter's dog for murder', *Crime Law Soc Change*, vol. 55 (2011), pp. 359-75. Although he rightly queried whether the idea of a 'trial' should be extended to include cases of informal justice in which animals were executed.

[58] See Von Amira, *Thierstrafen und Thierprocesse,* p. 559; see also Finkelstein, 'The Ox that Gored', p. 67 and Piers Beirnes, 'The Law is An Ass: Reading E. P. Evans' *The Medieval Prosecution and Capital Punishment of Animals', Society and Animals, Society and Animals,* vol. 2, no. 1 (1994), p. 32

[59] Hyde, 'Prosecution and Punishment of Animals', pp. 699-702.

> where it lay he went out of the land into exile, and the axe was forthwith tried and acquitted, and the trial has been repeated year by year down to the present.[60]

Descriptions of cases that came before the court can be found in multiple sources, such as Demosthenes' speech against Aristocrates, Aristotle's *Constitution of Athens*, and Plato's *Laws.* According to Demosthenes, trying an inanimate object was done if the human offender could not be found. The object which was responsible for the death served as a proxy:

> [the function of the Prytaneum] is that, if a man is struck by a stone, or a piece of wood or iron, or anything of that sort, falling upon him, and if someone, without knowing who threw it, knows and possesses the implement of homicide, he takes proceedings against these implements in that court.[61]

Aristotle suggested a similar role for the Prytaneum, stating that when a culprit was unknown, the court proceeded against a strawman and the case was tried just like cases for the "prosecutions of inanimate objects and animals for homicide".[62] These practices suggest the ameliorative role that process played even in the absence of a suspect. Perhaps such a process confirmed that a wrong has been committed and this confirmation was highly valued by the community.

There was a specific procedure for cases involving homicide, including those against animals. Warnings were issued throughout the community, as well as to the accused. Once convicted, the prosecutor declared that the accused was banned from holy places and the victim's country. If the accused did not abide by these rules, he would be put to death and cast out.[63] Plato

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[60] Pausanias, *Description of Greece,* trans. W. H. S. Jones (5 vols, London, 1918-35, repr. Cambridge, M.A., 2014), i, ch. 28, para. 11, p. 153.

[61] Demosthenese, *Orations,* trans. J. H. Vince (7 vols, London, 1935, repr. Cambridge, M.A., 2014), iii, bk. 23.76, p. 267.

[62] Aristotle, *The Athenian Constitution,* trans. H. Rackham (Cambridge, M.A., 1952), bk. 57.4, p. 161.

[63] Plato, *Laws,* trans. Robert Gregg Bury (2 vols, London, 1967-8, repr. Cambridge, M.A., 2014), ii, bk. 9.874 B, p. 269.

indicated that trials at the Prytaneum followed a similar process to that of the other courts in Athens which oversaw homicide cases:

> [i]f a mule or any other animal murder anyone, - except when they do it when taking part in a public competition, - the relatives shall prosecute the slayer for murder, and so many of the land-stewards as are appointed by the relatives shall decide the case, and the convicted beast they shall kill and cast out beyond the borders of the country.[64]

According to Hyde, these cases of wrongful death necessitated prosecution and condemnation because an unavenged murder would upset the equilibrium of the community. The soul of the deceased had to be appeased or the wrath of the Furies would be unleashed.[65] These cases were thus a manifestation of *lex talionis* (the law of retaliation) which, Hyde believed, was also the reason such cases occurred in the Middle Ages.[66] The motivation behind the crime was not important; a crime had been committed and the community had to be cleansed.

Hyde's theory and its classical origin has not been without its critics. Finkelstein argued that there are no surviving records of actual trials, and the cases found in literature suggest that these procedures served more of a religious, rather than a legal, function.[67] Even Hyde described the cases as having a distinctly religious character, admitting that no legal decisions seem to have been issued.[68] Instead, the guilty animal was cast beyond the walls of the city, thus ridding the community of a contaminating presence.[69] In addition, Finkelstein, an expert in the ancient Near East, asserted that societies of non-Western derivation did not have cases against harm-causing animals. According to him, these cases were a cultural manifestation of a hierarchical mentality

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[64] Ibid., bk. 9.873 E, p. 267.

[65] Hyde, 'Prosecution and Punishment of Animals', p. 698.

[66] Ibid.

[67] Finkelstein, 'The Ox that Gored', pp. 58-64.

[68] Hyde, 'Prosecution and Punishment of Animals', p. 700.

[69] Plato, *Laws*, bk. 9.873 E, p. 267; see also *The Speeches of Aeschines,* 'Against Ctesiphon', trans. Charles Darwin Adams (London, 1919), bk. 3.244, p. 501: "When sticks and stones and iron, voiceless and senseless things, fall on any one and kill him, we cast them beyond the borders".

based on biblical precedent which classified animals as subordinate to man. Any disruption of this order, such as the killing of a human by an animal, required a swift resolution in order to rebalance the world. Thus, Finkelstein argued that the practice of punishing animals for their misdeeds was specific to the Judaeo-Christian tradition.[70] Von Amira also commented on the paucity of evidence for the trying and punishing of animals in early societies.[71] He noted that there was no punishment of animals in early Germanic law, but rather the surrendering to the victim of the person or thing that did the damage, similar to the noxal surrender (*noxae deditio*) of Roman law.[72] Von Amira concluded that cases against animals should thus more accurately be understood as a private form of vengeance.[73]

Hyde's theory has by and large been accepted and most who approach the topic agree that judicial actions against animals originated in classical Greece. As a result, scholars spend most of their time trying to find 'rational' explanations for such events. Most of the nineteenth and early twentieth-century literature on the subject offered theories based on cultural positivism, equating animal cases with remnants of a superstitious age. Evans himself described the practice as "the childish disposition to punish irrational creatures and inanimate objects, which is common to the infancy of individuals and of races".[74] The nineteenth-century Swiss jurist, Eduard Osenbrüggen, explained the cases as the result of the personification of animals: since only humans were capable of committing crimes and thus rendering themselves liable to

[70] Finkelstein, 'The Ox that Gored', p. 64.

[71] Von Amira, *Thierstrafen und Thierprocesse,* p. 579: "bei Naturvölkern hört man von Thierstrafen auffallend wenig".

[72] See also Geoffrey MacCormack, 'On Thing-Liability (*Sachhaftung*) in Early Law', *Irish Jurist*, vol. 19 (1984), p. 326. Cf: Philip Jamieson, 'Animal Liability in Early Law', *Cambrian Law Review*, vol. 19 (1988), p. 47 who suggested that the cases were, in fact, of Germanic origin based on Salian and Burgundian codes of law.

[73] Von Amira, *Thierstrafen und Thierprocesse*, p. 587.

[74] Evans, *Criminal Prosecution* (1906), p. 186.

punishment, it was only by the act of personification that an animal could be subject to the same penalties.[75] To support his view, Osenbrüggen pointed to the alleged case of the cock in Basel, who in 1474 was burned at the stake for laying an egg.[76] Because the animal acted in such gross violation of its nature, it was feared to be diabolical and so was treated like a human heretic.

This approach to animal cases persisted into the twentieth century. The legal theorist Hans Kelsen, in describing the rule of law as a system to order human behaviour, explained that "in primitive law, animals, and even plants and other inanimate objects are often treated in the same way as human beings and are, in particular, punished".[77] He attributed this practice to the "animism of primitive man", which he defined as a tendency to ascribe a spirit or consciousness to plants and animals.[78] Likewise, anthropologist James Frazer derided "primitive legislators" who tried animals with all the solemnity of the law.[79] In fact, he harshly criticised his juridical predecessors, calling them "savages that took deliberate vengeance on animals" and operated in an "intellectual fog".[80] In his *History of Penal Methods* (1914), George Ives wrote that holding animals responsible for crimes was the result of an age that had outgrown the need to take vengeance upon stationary objects, such as a stone or a tree, but it was still "sufficiently animistic" to assume a kind of guilt in other unconscious things and certainly in animals.[81]

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[75] Eduard Osenbrüggen*, Studien zur Deutschen und Schweizerischen Rechtsgechichte* (Schaffhausen, 1868), pp. 139-41.

[76] Ibid., p. 147: "Zum Ketzer personificirt war der Hahn, welcher im Jahre 1474 auf dem Kolenberge bei Basel lebendig verbrannt wurde, weil er überwiesen war, ein Ei gelegt zu haben".

[77] Hans Kelsen, *General Theory of Law and State*, trans. Anders Wedberg (Cambridge, M.A., 1945), p. 3.

[78] Ibid., p. 4.

[79] James George Frazer, *Folk-lore in the Old Testament: studies in comparative religion, legend and law* (3 vols, London, 1918), iii, p. 445.

[80] Ibid.

[81] Ives, *A History of Penal Methods*, p. 254.

Even the great Chief Justice of the U.S. Supreme Court, Oliver Wendell Holmes Jr., weighed in on the issue in his hugely influential treatise *The Common Law*, first published in 1881. In the section on the development of early liability theory, he referred to the practice of holding animals accountable as the "primitive customs of Greece".[82] When an animal caused damage, the action was not based on the fault of the owner (as is dictated by public policy today), but on the thing that caused the harm. Holmes explained that under Roman law, only the failure to surrender the animal would result in the owner being monetarily penalised. Thus, the right of surrender was not meant to limit the owner's liability for the harm, but rather acted as an alternative to being fined for keeping the animal. From this Holmes concluded that "vengeance on the immediate offender was the object of the Greek and early Roman process, not indemnity from the master or owner".[83] Liability was attached to the body doing the damage - the result of an impulse to get back at the object which had inflicted the pain. Evans agreed that such a system was a far cry from the 'modern' understanding of the role of law, summing up animal cases as "an extremely crude, obtuse, and barbaric sense of justice".[84]

As Esther Cohen has pointed out, these theories not only fail to find an adequate explanation for judicial action involving harm-causing animals but fail even to distinguish between civil and ecclesiastical procedures.[85] Furthermore, a cultural positivist approach would suggest that the number of cases should taper off at the end of the Middle Ages as civilisation marched toward a more 'rational' modern period. Yet the majority found by Evans took place in the fifteenth and even sixteenth centuries. The seemingly anachronistic character of animal cases

[82] Oliver Wendell Holmes, Jr., *The Common Law* (Cambridge, M.A., 2009), p. 11.

[83] Ibid.

[84] Evans, *Criminal Prosecutions* (1906), p. 41.

[85] Esther Cohen, 'Law, Folklore and Animal Lore', *Past & Present,* n. 110 (Feb. 1986), p. 17.

has been a major puzzle for scholars and, consequently, Evans and others have been roundly criticized for their assertion that these cases were a "primitive" invention. Finkelstein described Evans' analysis in particular as "full of evolutionary pronouncements of the crudest sort". [86]

In her 1986 essay, 'Law, Folklore, and Animal Lore', Esther Cohen challenged the primitive/not-primitive debate by asking about the qualifications used to identify an 'animal trial'. Using an anthropological approach, she argued against viewing the dispute resolution mechanisms of other cultures through the lens of our own legal paradigms. Additionally, she pointed to the gap between ancient precepts and medieval judicial reality. Referring to the goring ox of Exodus 21:28 that was stoned to death, she argued that it was impossible to assume that a practice lasting centuries would survive solely based on biblical injunctions.[87] Instead, Cohen re-contextualised cases against animals and explored the contemporary cultural traditions that may have influenced them. She argued that explanations for their occurrence must be sought within their actual social and intellectual environment. To this end, Cohen examined late medieval judicial developments, looking particularly at French customals. She also explored folklorist traditions and literary motifs as tools that reinforced the involvement of animals in the judicial process; the most famous example being the imitation of a trial in the *Roman de Renard* where a fox stands trial before a court of animals. Cohen concluded that the cases against animals were closely tied to conceptions of justice, which confined animals to their subordinate position to man, but also ensured that justice was dispensed to all who came before the courts: even "animals got their just due". [88] The continuation of such cases was thus the result of popular

[86] Finkelstein, 'The Ox that Gored', p. 55.

[87] Cohen, 'Folklore', p. 19.

[88] Ibid., p. 36.

anthropomorphism meeting ideas of justice, which not only reaffirmed society's self-image as universally just but simultaneously defined man's relationship to the animal world.

Cohen's approach was a breath of fresh air. Like Cohen, I will also be recontextualising the cases by looking critically at juristic texts, including French customals, as well as verifiable cases to gain insight into the different ways criminal animals were perceived and treated. Yet her emphasis on the attribution of human qualities is misplaced. Cohen understands the incorporation of animals into preordained legal constraints and frameworks to mean that the judicial actions against animals were guided by "an ineradicable anthropomorphism".[89] Joyce E. Salisbury had a slightly different argument, but ultimately ended up in a similar place. In her work, *The Beast Within: Animals in the Middle Ages* (1994), she contended that lawyers could only have pled cases on behalf of animals if there was an assumption that "animals were like humans in their rationality and in the responsibility for their actions".[90] As a result, "the lines between humans and animals had blurred sufficiently that courts were required to sort out responsibility".[91] She argued that the later Middle Ages were marked more distinctly by this confusion of boundaries as a result of popular fables in which animals took on human attributes.[92] Whereas Cohen saw the spread of these fables as reinforcing animal cases, Salisbury suggested that the fables were, in fact, responsible for such cases.

Both of these explanations rely on the 'blurring of boundaries' idea – that including an animal in a judicial action as a defendant somehow makes that animal more human than it was before. This idea is a popular one and yet the records do not to imply that animals were credited

[89] Esther Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France* (Leiden, 1993), p. 132.

[90] Joyce E. Salisbury, *The Beast Within: Animals in the Middle Ages* (New York, 1994), p. 115.

[91] Ibid.

[92] Ibid.

with or even recognised as having human emotions or intentions. In fact, the 'blurring boundaries' theory grossly oversimplifies how cases against animals operated and continued to operate throughout the Middle Ages. In the range of sources examined in this thesis, there is no indication that contemporaries believed animals that had killed a human were sufficiently human-like and for that reason deserved formal punishment. Cases against animals were not shoehorned into the legal system; the system itself was deemed flexible enough to accept an animal and its actions into pre-existing legal categories based on a recharacterization of those actions. It is thus more accurate to say that the animals came to occupy a human space (rather than becoming human-like) by virtue of being subject to the same legal processes as humans. A subtle distinction, albeit an important one.

Relatedly, culpability is often assumed to have been imputed to the animals because they were formally executed like criminals. Salisbury mentioned both rationality and responsibility – key aspects of culpability - as underlying assumptions in the cases.[93] Culpability entails blame based on intent involving either a fault or a breach of some duty imposed by law. While the egregious nature of the crime was certainly emphasised in records of executions, the idea of culpability or responsibility was never mentioned. Similarly, in legal commentaries, there was little discussion about the intent of the animals and for good reason. Jurists would have found themselves spiralling down a rabbit hole trying to prove what an animal did or did not intend. The focus in the sources examined here is on the behaviour of the animal, which if anything, implies a system more like strict liability where the focus is on the harm committed rather than on the perpetrator's mental state. Assuming culpability, like the blurring boundaries argument,

[93] Ibid.

relies on an understanding of animals in these situations as human-like, which must be handled with care.

Nevertheless, Cohen's work, in particular, has had a profound effect on the secondary literature and she is arguably the foremost expert on the subject of animal cases. Her major work, *Crossroads of Justice: Law and Culture in Late Medieval France* (1993), is liberally cited by anyone who approaches the topic. The book examined the socio-cultural functions of legal practices with a focus on perceptions of law and punitive rituals. She discussed cases against animals within a chapter on rituals of inclusion – rituals which "created a universe of justice that transcended the human community by imposing its normative boundaries upon the whole world".[94] Cohen concluded that there was ambivalence towards animals in legal proceedings. Viewing animals as both property and criminals reflected the spectrum of cultural attitudes towards animals and the mutual influence of jurisprudence and culture.[95] Cases against animals thus functioned both as a reflection of the human world while also shaping human perceptions of the animal world.

In the last few decades, scholars by and large have followed Cohen's example and grounded their explanations in legal and socio-cultural influences, while still attempting to find a convincing explanation for animal cases. To this end, many rely on modern theories of punishment and argue that cases against animals served one or several of the following functions: 1) deterrence; 2) incapacitation as a means of ridding the community of a nuisance; 3) retribution; or 4) a method of social control.[96]

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[94] Cohen, *Crossroads,* p. 100.

[95] Ibid.

[96] The prevailing features of modern penal theory were developed by analytic philosophers in the mid-twentieth century. H.L.A. Hart in England (1959) and John Rawls (1955) in the United States were two of the earliest and most influential writers who outlined the concept of punishment as distinct from the justification or practice of

Deterrence: Preventing Future Harms

Classified broadly as a utilitarian theory, deterrence is a theory of punishment which seeks to discourage future wrongdoing. Deterrence operates on both a general and a specific level. Punishment serves the purpose of general deterrence if it prevents others from committing criminal acts. The punishment is an example to the rest of society and puts others on notice that such behaviour will be punished in a particular way. Specific deterrence, meanwhile, is about preventing the same offender from committing crimes. The punishment is meant to be unpleasant so as to discourage *that* offender from repeating their actions. Deterrence thus takes into consideration the perceived benefits to society that are produced by the suffering of the wrongdoer. Punishment is justified by nature of its extrinsic social value where the positive consequences of punishment outweigh the negative consequences of non-punishment.[97] The role of crime prevention will be discussed in more depth in Chapter Five in the context of the rise of public and spectacular punishments and its application to animals.

The deterrence theory was favoured by many early commentators as a rationale for cases against animals. The German philosopher and mathematician, Gottfried Wilhelm Leibniz (1646-1716), for instance, suggested that the imposition of capital punishment was justified if it deterred other animals from committing similar acts.[98] This explanation seems to make little

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punishment. The only major theory of punishment which is not discussed in relation to animal cases is the theory of rehabilitation, that is, changing the lawbreaker through correctional interventions. There is no indication in the records that this was considered by jurists or courts at the time.

[97] See C. L. Ten, *Crime, Guilt and Punishment: A Philosophical Introduction* (Oxford, 1987), p. 3.

[98] See Gottfried Wilhelm Leibniz, *Essais de Theodicée sur la Bonté de Dieu, la Liberté de l'Homme, et l'Origine du Mal* (Amsterdam, 1734), sec. 70, p. 121: "On infligeroit encore aux bêtes des peines capitals, (où il ne s'agit plus de la correction de la bête qu'on punit) si cette peine pouvoit server d'exemple, ou donner de la terreur aux autres". While this seems to suggest that the deterrent effect might be aimed at both humans and animals, Leibniz implied that animals were, in fact, the target audience by describing how lions were crucified in Africa to drive away other lions just as wolves were hanged to keep other wolves away from sheepfolds, and birds of prey were nailed to doors. Ibid., pp. 121-2. Similarly, Nicholas Humphrey asked (presumably with tongue in cheek) "if word got around about

sense because, as Joyce Salisbury pointed out, the culprit was executed in front of humans, not other animals.[99] More plausible is the theory advocated by criminologist Piers Beirnes, who argued that such cases sent a message to the owners of animals with dangerous behavioural tendencies.[100] In his review of Evans, Beirnes pointed to the 1567 case in Senlis, France where, after executing a pig for killing a child, the judge warned the villagers "not to permit [pigs] to go unguarded on pain of an arbitrary fine and of corporal chastisement in default of payment".[101] In other words, the punishment of a homicidal animal served a deterrent function for the community, reminding them of the importance of overseeing their charges. The seventeenth-century jurist Laurent Bouchel agreed and remarked:

> [i]f we still see a swine hung and strangled on the gibbet, for having devoured an infant in the cradle, (a punishment with which we are familiar), it is to admonish us, fathers, mothers, nurses, domestics, not to leave infants entirely alone: or to keep these animals carefully shut up, that they shall not have it in their power to do any mischief.[102]

Paul Friedland, on the other hand, argued against the deterrence theory, stating that the public punishment of animals was not intended as an example, but as a "ritual of overcoming".[103] According to Friedland, it was the act itself that had to be addressed, meaning that when an atrocity had been committed, even by an animal, whoever or whatever committed the act had to be punished.[104] The aim of the punishment was not deterrence but to right a wrong. Punishment

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what happened to the last pig that ate a human child, might not other pigs have been persuaded to think twice?" 'Foreword' in E.P. Evans, *The Criminal Prosecution and Capital Punishment of Animals* (London, 1987), p. xxii.

[99] Salisbury, *The Beast Within,* p. 114. Also rejecting Liebnitz's theory, the nineteenth-century French philosopher and historian Claude-Joseph Tissot stated that it was not animals but men upon whom cases against animals were meant to have a deterrent effect, see *Le droit penal étudié dans ses principes, dans ses usages, et les lois des divers peuples du monde,* 2nd edn (2 vols, Paris, 1879-80), i, p. 28.

[100] Beirnes, 'The Law is An Ass', p. 38.

[101] Ibid.

[102] Laurent Bouchel, 'Bestail', *La Bibliothèque ou Thresor du Droit François* (3 vols, Paris, 1629), i, p. 391.

[103] Friedland, *Seeing Justice Done*, p. 112.

[104] Ibid.

could thus be meted out whether the criminal was dead or alive, present or absent, human or nonhuman.

Incapacitation: A Method of Removal

A second theory that is commonly used in discussing cases against animals is that of incapacitation. This theory of punishment hinges on removing a criminal from the community as a way to protect the public. Under modern legal theories, the idea is to make it physically impossible for the criminal to commit further crimes. Incapacitation generally refers to imprisonment, and, as will be discussed in Chapter Three, animals could indeed be imprisoned for their actions. Executing the animal was another, more final, form of incapacitation.

Several scholars propose that this theory played an important role in animal cases. In studying the term 'culpability' in French penal law, Henri Gilles argued that among the many purposes served by executing animals, the most important was preventing dangerous animals from harming others. Making the case a legal matter and sending the offending animal through the court system consequently gave power to judicial authorities to remove nuisance animals from the community.[105] Geoffrey MacCormack suggested a similar idea, stating that the underlying justification for such cases was the need for a community to remove an animal which had killed a human. Incapacitation was thus both an instinctive reaction to the death of a human by a non-human and meant to prevent it from killing again.[106] In the 1987 edition of Evans' book, Nicholas Humphrey reminded readers that a pig which killed once could do so again and

[105] Henri Gilles, 'La culpabilité dans l'ancien droit français', *Annales de l'Université des Sciences Sociales de Toulouse,* vol. 24 (1976), p. 41.

[106] MacCormack, 'On Thing-Liability', pp. 348-9. MacCormack maintained that "the object of intervention by the community is the removal of something which poses a threat to it", ibid., p. 348.

thus represented a persistent danger. Removing such a danger by sentencing the animal to death ensured the safety of the community.[107]

Retribution: Make the Punishment Fit the Crime

Thirdly, scholars have attributed the judicial actions against animals to a retributive impulse. The theory of retribution focuses on the crime itself as the reason for imposing punishment. The punishment is thus a justified form of vengeance: wrongdoers should be made to suffer because they have made others suffer. This intuitive judgement is supported by a widely shared emotional response to serious crime, which Jeffrie Murphy calls "retributive hatred".[108] Whereas the deterrence theory is forward looking and bases the punishment on future social benefits, retribution looks backward at the transgression itself.[109]

However, it is important that the punishment be proportionate to the crime. As mentioned earlier, many nineteenth and twentieth-century scholars subscribed to the theory of retribution: the animal was killed because it killed a human.[110] More recently, Philip Jamieson argued that the law of retribution provided the most coherent underlying explanation. Acknowledging that this theory has been criticised for being overly simplistic, Jamieson nevertheless believed that it reinforced popular perceptions of animals as endowed with anthropomorphic qualities.[111] Classical historian Raphael Sealey also contended that retribution was at the heart of the cases

[107] Humphrey, 'Foreword', in Evans, *Criminal Prosecution* (1987), p. xxi.

[108] J. G. Murphy and J. Hampton, *Forgiveness and Mercy* (Cambridge, 1988), p. 95.

[109] John Cottingham famously distinguished between nine kinds of retribution in 'Varieties of Retribution', *The Philosophical Quarterly,* vol. 29, no. 116 (July 1979), pp. 238-46.

[110] See, e.g., Von Amira, *Thierstrafen und Thierprocesse*, p. 587; Albert du Boys, *Histoire du droit criminel de la France, depuis le XVI^e^ jusqu'au XIX^e^ siècle* (Grenoble, 1874), p. 658, who in describing the case of the sow of Falaise stated that the motivation behind the case was "la loi du talion, toujours et partout applicable".

[111] Jamieson, 'Animal Liability in Early Law', p. 62.

against animals. He argued that before judicial processes were put into place, people had recourse to self-help as a form of vengeance in which they could ask for satisfaction from the source of their injury. Litigation emerged as a way of substituting a controlled means of self-help for uncontrolled self-help, which limited the form of retribution that aggrieved parties would exact. The treatment of an animal as a criminal was thus a natural extension of the new form of self-help; a mechanism both to meet challenging situations and to recover from them.[112] Jean Vartier described the purpose of the cases in a similar vein, arguing that the intense collective response aroused by the untimely death of the victim necessarily called for condemnation of the one responsible.[113]

Social Control & Restoration of Order

By far the most popular theory, many scholars have argued that applying criminal law to a harm-causing animal was a method of control both in the way animals were viewed in relation to man and in the way inexplicable events were understood by the community. Paul Schiff Berman theorised that integrating animals into a human scheme of justice allowed the community to assign and affirm a place for animals in the hierarchy of creation.[114] Berman referred to the cases as "cultural storytellers" and discussed the way in which they allowed a community to respond to a breach of a social norm.[115] This 'normalising' mechanism was also

[112] Raphael Sealey, 'Aristotle, Athenaion Politeia 57.4: Trial of Animals and Inanimate Objects for Homicide', *The Classical Quarterly,* vol. 56, no. 2 (2006), p. 484.

[113] Jean Vartier, *Les Procès d'Animaux du Moyen Age à nos jours* (Paris, 1970), p. 59.

[114] See Paul Schiff Berman, 'Rats, pigs, and statues on trial: the creation of cultural narratives in the prosecution of animals and inanimate objects', *New York University Law Review,* vol. 69 (May 1994), p. 291. J. J. Finkelstein agreed, see 'The Ox that Gored', p. 73. He explained cases against animals as instances in which animals transgressed the natural hierarchical boundary and were punished so that the "cosmologic equilibrium" would be recognised as restored.

[115] Berman, 'Rats, pigs, and statues', p. 314.

mentioned by Nicholas Humphrey, who argued that the true purpose of cases against animals was to "domesticate chaos" and alleviate the deep uncertainty that surrounded people at the time.[116] Peter Dinzelbacher articulated a similar theory, explaining the treatment of harm-causing animals as a means for a community to cope with a threat by reaffirming the authority of law and order.[117] Likewise, Joyce Salisbury stated that "the most plausible speculation was that the animal trials were simply part of the late-medieval desire to bring order in society through laws".[118]

These theories, while appealing, are largely based on a functional approach. In other words, cases are explained in terms of the social needs they fulfil. The trouble with such an approach is that the explanation becomes circular: a phenomenon occurred because it served a particular function, which then accounts for why the phenomenon continued to occur. Effects become easily confused with motivations. Émile Durkheim, one of the first theorists to explain a phenomenon with reference to the function it served for society, made a clear distinction between historical and functional analysis, stating that "when. . . the explanation of a social phenomenon is undertaken, we must seek separately the efficient cause which produces it and the function it fulfills".[119] The formal execution of animals may have had the effect of restoring cosmic equilibrium, but does that necessarily mean this was their conscious purpose? And can we assume that such events performed only one immutable, integrative function?

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[116] An intriguing argument, Humphrey may be confusing effects with motivation. 'Foreword', in Evans, *Criminal Prosecution* (1987), p. xxvi.

[117] Peter Dinzelbacher, 'Animal Trials: A Multidisciplinary Approach', *Journal of Interdisciplinary History,* vol. 32 (2002), pp. 405-21.

[118] Salisbury, *The Beast Within,* p. 114.

[119] Cited in L. Coser, *Masters of Sociological Thought: Ideas in Historical and Social Context,* 2nd edn (Fort Worth, 1997), p. 141.

Like anything relating to law, there is no simple answer. Legal systems cannot be imagined as stable wholes. Cultural institutions and practices often served a variety of purposes that changed over time and might be "subject to contested interpretation by different sub-cultural units".[120] Cohen, for instance, described law as "a many faceted phenomenon shifting its shape and meaning according to one's perspective".[121] Despite the variety of explanations illustrated above, scholars seem united in their intent on characterising cases against animals in terms of a single and common purpose; one which forms the foundation of a permanent social structure that existed beyond the lifetime of the participants. Consequently, scholarship generally focuses on these judicial actions as a phenomenon, rather than as a collection of individual cases. While more recent work has tried to ground the evidence in contemporary practices and modes of thought, following the lead of Cohen and Salisbury, the idea that one grand overarching theory can explain cases against animals in all their forms ought to be treated with a heavy dose of scepticism.

It is therefore important to remember that any particular case could be motivated by a wide variety of factors. Jen Girgen was right to caution us in accepting any one explanation, noting that each seems to ignore the possibility that motivations would have varied between communities and that more than one motivation may have been at play in any particular case.[122] A useful approach may be the one undertaken by Melodie Slabbert, who explored several of the above explanations as factors that would have worked in conjunction with each other.[123] By

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[120] Anila Srivastava, 'Mean, dangerous, and uncontrollable beasts: Mediaeval Animal Trials', *Mosaic,* vol. 40, issue 1 (2007), p. 133.

[121] Cohen, *Crossroads,* p. 1.

[122] Jen Girgen, 'The Historical and Contemporary Prosecution and Punishment of Animals', *Animal Law*, vol. 9 (2003), p. 121.

[123] Melodie Slabbert, 'Prosecuting Animals in Medieval Europe: Possible Explanations', *Fundamina*, vol. 10 (2004), pp. 159-79.

looking at deterrence, retribution, and incapacitation as each playing a role, the law becomes a framework through which these elements are integrated. Recognising the diverse motivations behind animal cases, rather than trying to identify a single explanation, may bring us closer to understanding why they were believed to be such an important custom in late medieval France.

From this standpoint, Girgen, Srivastava, and Slabbert all provided new ways of accepting that multiple factors would have been at play; factors which would shift and change across time and geography. Yet all three relied on the work of Evans as the foundation of their interpretations. This dependency remains an outstanding issue. Even Cohen and Salisbury relied on Evans' work as the definitive word on the subject or, at the very least, an accurate transcription of medieval sources. Such reliance can prove problematic since Evans often lacked historical rigour in terms of sourcing and citing, making many of his observations interesting, certainly, but not always instructive. This is not to say that Evans' work is not worthy of note; it is a useful starting point and the wide range of cases demonstrates Evans' dedication to the subject. Furthermore, we owe much to Evans' habit of excerpting many of the original sources, enabling subsequent scholars to at least head off to the archives armed with some idea of where to begin their research. However, it seems that once scholars discover Evans' work, they proceed no further.

To remedy this, I will engage with primary sources whenever possible. In addition, rather than looking at 'the medieval animal trials' as a whole and searching for an explanation, I will explore the distinctive characteristics of particular cases and reverse the telescope, as it were, by looking from the micro to the macro. Cases involving animals should be read as instances where ideas about human/animal identity, accountability, and the role of law found expression and interacted, influencing each other in the process. My goal here will be to brush off the

judgements and modern theories and re-examine these cases with a clear and critical eye. As Nicholas Humphrey pointed out in his introduction to the 1986 reprint of Evans' work:

> We can be sure that they (the people of the Middle Ages) made something of it (the trial of a non-human) and moreover that whatever that something was, it made sense. The question is, can we make sense of what made sense to them.[124]

Conclusions

As the anthropologist Claude Lévi-Strauss said, animals are not only "good to eat" but "good to think with" (*bonnes à penser*).[125] This applies particularly well to harm-causing animals that were the subject of judicial actions. Such cases existed at a junction where concrete experiences met different ideas and components of the medieval system of values and convictions. While the existence of such cases is often depicted in modern scholarship as a static (if curious) phenomenon stretching across centuries, a more accurate picture entails dynamic variance and nonconformity. While the majority of customals explored in Chapter Two insisted on treating animals as property regardless of their actions, the seigneurial records and jurisdictional disputes detailed in Chapters Three, Four, and Five subject animals to the same labels and processes as human criminals, thereby bestowing on them an indirect form of legal personhood. Even jurists that tried to explain the punishment of animals did so in different ways as seen in the Appendix.

This multiplicity of views should not come as a surprise to modern readers. Even today, animals and their treatment mean different things to different people. We might be able to trace these views to the difference between theory and practice: the thirteenth-century jurist Philippe de Beaumanoir notably wrote in *Les Coutumes de Beauvaisis* that the punishment of animals did

[124] Humphrey, 'Foreword' in Evans, *Criminal Prosecution*, p. xviii.

[125] Claude Lévi-Strauss, *Le Totémisme aujourd'hui* (Paris, 1962), p. 128.

happen in practice, but they were legally pointless. Such a difference could also be attributed to changing views over time, where the early customary law compilations eventually could no longer offer explanations for the raft of executions that occurred in the fourteenth century and had to be accounted for in fifteenth and sixteenth-century legal commentaries.

The benefit of looking at such a range of sources is that it not only highlights the fact that each source makes possible a different kind of thinking, but that the law itself was understood to be sufficiently flexible to accommodate those differences. In fact, the sources examined in this thesis demonstrate that the law was equally capable of producing similarity between subjects as it was in creating difference, even creating legal subjects that existed in other contexts as legal objects. The law could thus assimilate an animal into the legal framework while the community simultaneously insisted on disavowing that animal through capital punishment. Read alongside each other, the sources examined here will reveal a complex network of mutually dependent ideas that feed into the different ways in which judicial actions involving animals were understood.

Chapter 1
The Creation of a 'Natural' Hierarchy: Animals as 'Other' in Textual Tradition

For centuries, philosophers and historians have thought hard about what we mean by 'animal' and, by implication, what we mean by 'human'. The division between these two categories lies at the heart of subject constitution, and thus the law. It is humanity's degree of difference from nonhumans which constitutes their identity. As Susan Crane argued, "when animals define the human by contrast, they are configured as humanity's formative others – both unlike and, importantly, like the human".[1] This chapter sets out a framework for how animals were thought about in medieval jurisprudence by examining the history of attitudes toward animals and the human-animal relation. On the one hand, humanity was characterised by reason which impacted everything from our ability to use language to our physical form. Animality was characterised by a lack of reason and was demonstrated by an animal's inferior mental and physical makeup.

Using Genesis as a foundational text, I will first explore early Christian and medieval writings that established a 'natural' hierarchy based on the distinctions between man and beast. Specifically, I investigate how these distinctions influenced the role of animals in society and how this shaped expectation of animal natures. God's declaration that man ruled over animals, and domestic animals in particular, meant that they were to be used by man and must serve him. Their nature and consequently their behaviour were expected to correspond to this divinely ordained role. To understand these expectations, it will therefore be useful to explore the ways in which domestication was understood, and for this I turn to vernacular bibles, encyclopaedias, and husbandry manuals. These texts reveal existing habits of thought regarding the nature and

[1] Crane, *Animal Encounters*, p. 2.

characteristics of domesticated animals, which, in turn, influenced how the law addressed particular animal behaviour.

As will be explained in Chapter Two, ideas about an animal's nature, specifically what behaviour was in keeping with their nature and what was not, played a key role in the cases against them. Under Roman law, it was only when an animal acted *against* its nature (or *contra naturam*) that a particular suit, the *actio de pauperies*, was available to the victim. This requirement was carried forward in various forms into medieval customals, bringing with it the idea that an animal defying human expectations by acting against its nature necessitated a particular legal response. It was within such a response, which saw humans, animals, and the law brought together, that the traditional distinction between man and beast – one a rational legal subject, the other an irrational legal object – was largely maintained within the learned legal tradition and yet challenged in practice. Not only does this divergence demonstrate that there was no single 'medieval' answer to harm-causing animals, but it highlights the inherent flexibility of the legal system which could support both the notion of the animal as 'Other' and as an entity subject to criminal law.

Animals in Textual Tradition and Living Practice

The word *animal* or *animans* in Latin meant "living creature" and frequently included humans alongside other animals. The broadest available term in medieval French was "beast" (*beste*) meaning any species of animal, wild or domestic, or more broadly still, the term could mean "all that is living" (*tout être animé*).[2] It could also be used as a point of comparison to describe behaviour or an attitude that stood in opposition to intelligent and civilised man: *beste* might be

[2] 'Beste', *Dictionnaire du Moyen Français (1330-1500)*, http://zeus.atilf.fr/dmf/ (2 May 2021).

used to describe a particularly stupid person, for example. It was thus a term with a fair amount of flexibility. In the twelfth century, Alan of Lille (d. 1202) noted in his *Liber in distinctionibus dictionum theologicalium* that animal was defined as "all animals including man", "all animals except for man", and "man only".[3] By contrast, John Trevisa (d. 1402) placed man within the broader category of animal. In his fourteenth-century translation of Bartholomaeus Anglicus' *De Proprietatibus Rerum,* Trevisa wrote:

> [a]ll that is compounded of flesh and spirit of life, and so of body and soul, is called *animal,* a beast, whether it be of the air like birds, or of the water like fish that swim, or of the earth such as beasts that go on the ground and in the fields, like men and wild and tame beasts.[4]

From a linguistic standpoint, humans existed both within and beyond the category of animal. This language thus promoted a "dualistic logic", as Laurie Shannon said in her examination of animal terminology in Shakespeare's work, by invoking both the idea of human *and* animal, as well as human *versus* animal.[5] Exploring what is at stake in defining these terms helps us think critically about the human-animal relation, how it was formulated, and how it was simultaneously challenged and reaffirmed in judicial actions against animals.

Medieval culture abounded in animals. Zooarchaeologists have accumulated vast quantities of data revealing much about human-animal interactions and how animals were critically linked to social and cultural practices. The study of animal remains has provided insight into husbandry strategies, herd compositions, butchering practices, food choices, as well as the medieval economy.[6] Living alongside animals and working with them every day meant

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[3] Alan of Lille, *Liber in distinctionibus dictionum theologicalium* in PL 210:701A–B.

[4] *On the Properties of Things: John Trevisa's Translation of Bartholomaeus Anglicus, De Proprietatibus Rerum,* ed. M. C. Seymour (3 vols, Oxford, 1975), ii, bk. 18, ch. 1, p. 1092.

[5] Laurie Shannon, 'The Eight Animals in Shakespeare; Or, before the Human', *PMLA*, vol. 124, no. 2 (March 2009), p. 474.

[6] See, e.g., Diane Unsain, Vincent Buccio, and Pierre Magniez, 'Zooarchaeology, medieval economy and culinary practices: The case of Petra Castellana *castrum* (South of France)', *Journal of Archaeological Science: Reports*, vol.

that humans and animals shared social worlds. As Erica Fudge described in her examination of seventeenth-century English wills, animals were both property and known members of the household, both "agents and things. . . colleagues and meat".[7] For those in rural communities, one's day as well as duties were structured around animal care. Nobles, too, would spend a great deal of time with animals: hunting game with dogs or falcons was an important marker of status and wealth. The mutual dependency between humans and animals created "cross-species contacts", as Susan Crane called them, which were often complexly coordinated partnerships.[8] These contacts had both a tactile and a communicative component, perhaps taking the form of a scholar and a cat, a dairymaid and a milk cow, or a knight and his warhorse. The texts in this chapter are a learned response to such daily interactions and address real-world situations involving humans and their relation to and with domesticated animals.

In conjunction with daily and bodily engagement, an understanding of animal natures was drawn from textual traditions, including bestiaries, natural histories, encyclopaedias, as well as husbandry and hunting manuals. These sources covered such topics as the habits, care, and characteristics of animals, and were influenced by both ancient works, such as Pliny's *Historia naturalis (*77 AD), and even direct observation. I am not suggesting that those involved in the judicial actions against animals, from the animal owners to the various officials, would have read

30 (April 2020) (shedding light on supply systems and culinary practices by examining bone density and animal utility indices); Richard Thomas, 'Zooarchaeology, Improvement and the British Agricultural Revolution', *International Journal of Historical Archaeology,* vol. 9 (2005), pp. 71-88 (looking at the increase in size of animal bones to challenge traditional dating of agricultural improvements in late medieval Britain); Idoia Grau-Sologestoa et al, 'Urban medieval and post-medieval zooarchaeology in the Basque Country: Meat supply and consumption', *Quaternary International*, vol. 399 (April 2016), pp. 1-12 (examining zooarchaeological evidence to better understand urban diets, butchery practices, and the economic relationship between town and country in the late medieval Basque region).

[7] Erica Fudge, *Quick Cattle and Dying Wishes: People and their Animals in Early Modern England* (Ithaca, 2018), p. 169.

[8] Crane, *Animal Encounters,* p. 2

all the aforementioned texts. However, when examining cases of criminal animals, it is useful not only to understand the ways in which animals appeared in learned texts but also to understand the way in which such texts built on and reaffirmed the expectations of animals present in living practice.

While experiences with animals often resulted in cross-species comparison, the understanding of animals – and how they related to humans - proceeded from a cosmological framework in which the diversity of life was hierarchical and marked by difference. For Aristotle, man and animals could very simply be distinguished by language and reason. Humans were the only creatures endowed with the gift of speech and the ability to tell good from evil.[9] While the categories of 'human' and 'nonhuman' have long existed, as Joanna Bourke reminded us, the distinctions between them are not so straightforward as Aristotle would have us believe.[10] Rather they are constantly undermined, contested, and reconstructed. The instability of these categories is captured by what Giorgio Agamben referred to as the "anthropological machine"; a metaphorical device for producing the recognition of the human from the nonhuman.[11] One of the great driving forces of history, this machine "verifies the absence of a nature proper to *Homo,* holding him suspended between a celestial and a terrestrial nature, between human and animal – and, thus, his being always less and more than himself".[12]

A rigorous inspection of these categories is thus a risky business. In the words of Cary Wolfe, looking closely at all sentient beings "poses grave definitional and practical threats to the

[9] Aristotle, *Politics,* trans. Benjamin Jowett (2 vols, Oxford, 1885), i, bk. 1, no. 1253a, p. 4.

[10] Joanna Bourke, *What it means to be human: reflections from 1791 to the present* (Berkeley, 2011), p. 5.

[11] Giorgio Agamben, *The Open: Man and Animal,* trans. Kevin Attell (Stanford, 2004), p. 29.

[12] Ibid.

discourse of humanism".[13] In fact, Jacques Derrida concluded that distinguishing between humans and nonhumans could be quite problematic:

> [n]one of the traits by which the authorized philosophy or culture has thought it possible to recognize this 'proper of man' – none of them is, in all rigor, the exclusive reserve of what we humans call human. Either because some animals also possess such traits, or because man does not possess it as surely as is claimed.[14]

Derrida's deconstruction of the supposed dichotomy between 'human' and 'animal' revealed that these two categories are actually fluid constructions which are mutually dependent. There is not a single opposition between humans and nonhumans, but rather "different organizational structures of the living being".[15] He criticized the classification of 'animal' as simply another word for 'other'; a category against whom humans could be constituted.[16] For Derrida, 'the animal' is nothing more than "a word that men have given themselves the right to give. . . They have given themselves the word in order to corral a large number of living beings within a single concept".[17] It is a word that doesn't really define 'animals', but rather is useful for humans in recognising and identifying themselves.[18]

Derrida was writing more about the cultural understandings of human and animal, rather than living beings, but the notion that these two classifications were fundamentally different has had quite a long history. Echoing the views of Thomas Aquinas, the seventeenth-century philosopher, René Descartes, described animals as mere 'automata' or moving machines that

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[13] Cary Wolfe, *Animal Rites: American Culture, the Discourse of Species, and Posthumanist Theory* (Chicago, 2003), p. 100.

[14] Jacques Derrida, 'Violence Against Animals' in Jacques Derrida and Elisabeth Roudinesco (eds), *For What Tomorrow: A Dialogue,* trans. Jeff Fort (Stanford, 2004), p. 66.

[15] Ibid.

[16] Ibid.

[17] Jacques Derrida, 'The Animal that Therefore I am (More to Follow)', *Critical Inquiry,* trans. David Wills, vol. 28, no. 2 (Jan. 2002), p. 400.

[18] Ibid.

were driven solely by instinct. They displayed no freedom of will or choice. "[I]t is nature", wrote Descartes, "which acts in them according to the disposition of their organs, as one sees that a clock, which is made up of only wheels and springs, can count the hours".[19] Like Descartes, Immanuel Kant emphasised at the end of the eighteenth century that intelligence was the key feature differentiating humans from animals. A human being was:

> [d]istinguished from all other living beings by his technical disposition for manipulating things (mechanically joined with consciousness), by his pragmatic predisposition (to use other human beings skilfully for his purposes), and by the moral predisposition in his being (to treat himself and others according to the principle of freedom under the laws).[20]

Even at the end of the fourteenth century when a great many of the cases against animals were underway, it was well understood that man, while certainly interconnected with animals, was also different from them. In Genesis God decreed that man should have dominion over all living things. This mastery was reinforced by daily experience, and was reflected every time you disciplined your dog, trained your horse, or milked your cow. The cases involving criminal animals endorsed this view, but also challenged it. Subjecting an animal to the legal process for killing a human produced a narrative in which animals were capable of upsetting or disrupting the 'natural' hierarchy. As seen in the chapters that follow, the legal system presented a way to set things right again. It was a way to turn an inexplicable and uncontrollable event into one in which a set procedure must be followed. The formal execution of an animal was a response to a moment in which the human-animal hierarchy was contested, yet it also presented a challenge to this relationship with the transformation of an animal into a criminal.

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[19] René Descartes, *Discourse on Method, and Other Writings,* ed. F. E. Sutcliffe (Harmondsworth, 1968), pp. 75-6. Descartes acknowledged that animals, like machines, can "imitate passions", and may even show more skill than man in certain activities, but warns that "what they do better. . . does not prove that they have a mind", ibid., p. 75.

[20] Immanuel Kant, *Anthropology from a Pragmatic Point of View,* ed. and tr. Robert B. Louden (Cambridge, 2006), p. 226.

This transformation, achieved by bringing an animal into the legal framework as a legal subject, does not, however, support a reading in which human and animal boundaries were blurred. The legal treatment of animals in the chapters that follow highlights the flexibility of the law, not the flexibility of the categories of human/animal. Including an animal in a judicial action did not somehow make that animal more human than it was before. It was never forgotten that a criminal pig was still a pig and there is no sense in the records that animals were credited with or even recognised as having human emotions or intentions. The difference was that a criminal pig, by virtue of the application of legal rules and procedures, came to occupy a human space (rather than becoming human-like), thereby acquiring legal personhood such that it could rightly be the subject of a criminal case, a jurisdictional dispute, or even a petition for freedom.

Creating a 'Natural' Hierarchy: the Story of Genesis

It is easy to generalise about animals in Christian theology and the sense that they were viewed with contempt, as minor supporting players, or with a lack of interest altogether. In fact, Christianity instilled in its believers the notion that divine truth was reflected in the natural world, and the study of nature only enriched their faith. As part of the natural world, there were divinely ordained hierarchies and animals had their assigned place. In their place, they even served multiple roles: animals could be companions in saints' lives or protagonists in Romance narratives. They could be obedient servants that performed essential functions at home and in the community, like dogs trained to protect sheep. They could even offer lessons for humans or

demonstrate certain human Truths.[21] Yet whatever their role, there was a 'natural' hierarchy in which animals were subservient to humans.

One sign of man's superiority was the ability to exercise power over animals. The first book of Genesis offers two instances in which God decreed that man should rule over animals. The first was before the creation of man.

> And [God] said: Let us make man to our image and likeness: and let him have dominion over the fishes of the sea, and the fowls of the air, and the beasts and the whole earth, and every creeping creature that moves upon that earth. (Gen. 1:26)[22]

God then instructed the newly created man and woman to assume command over all animals.

> Increase, and multiply, and fill the earth, and subdue it, and rule over the fishes of the sea and the fowls of the air and all living creatures that move upon the earth. (Gen. 1:28)

The human relation to animals took a more antagonistic turn when Adam and Eve were expelled from Eden. Man retained his superior position, but he was more than a benign master. Peaceful dominion was replaced by a more oppressive kind of subjugation. After the flood, God commanded:

> [t]hen let the fear and dread of [man] be upon all the beasts of the earth, and upon all the fowls of the air, and all that move upon the earth: all the fishes of the sea are delivered into your hand. (Gen. 9:2)

This verse marked an important shift in the relationship between humans and animals. Andrew of Saint Victor (d. 1175) understood the deliverance of creatures "manui vestrae" as meaning "into your power", replacing benevolent stewardship with a more straightforward ownership.[23] Whereas the animals "went with Noah" in Genesis 7:9, that trust between them has disappeared.

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[21] For more on animals in this role, see Jill Mann, *From Aesop to Reynard: Beast Literature in Medieval Britain* (Oxford, 2009).

[22] The English translations of the Latin Vulgate Bible used here can be found in the Douay-Rheims Bible except where otherwise noted, http://www.drbo.org/drl/ (6 May 2021).

[23] *Andreae de Sancto Victore Opera: I Expositionem super Heptateuchum,* ed. Charles Lohr, CCCM 53 (Turnhout, 1986), line 1605, p. 52. See John Taylor, *Elements of Civil Law* (London, 1848), p. 6, who, in relaying the history of Roman law, defined *manus* as including the idea of power, authority, or absolute control.

Now, according to Andrew of Saint Victor, all animals no matter their size flee from man in fear.[24]

One reason for this shift is the change in man's diet. It was commonly thought that prior to the Flood, humans were vegetarians. In Genesis 1:29, God declared, "Behold I have given you every herb bearing seed upon earth, and all trees that have in themselves seed of their own kind, to be your meat". However, after the Flood, God revealed that "every thing that moveth and liveth shall be meat for you" (Gen. 9:3). Man was no longer simply the divinely appointed steward of animals - his rule now included the power to consume them.

The issue of human dominion has generated a diverse range of views amongst modern scholars. Lynn White controversially argued that Genesis 1:26 gave man unlimited power over the rest of creation,[25] while Walter Eichrodt maintained that man did not have the world utterly at his disposal, rather he was at the mercy of divine will.[26] Claus Westermann and others have held that Genesis 1:26 reflected ideas about Ancient Near Eastern kingship.[27] Gerhard Hasel, on the other hand, argued that the creation narrative of Genesis consciously polemicizes against Babylonian and other Near Eastern cosmogonies.[28]

By contrast, the issue of dominion generated relatively little controversy for early Christians. Jeremy Cohen has shown that the Church Fathers focused more on themes of man's

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[24] *Andreae de Sancto Victore Opera*, CCCM 53, line 1605, p. 52: "Naturaliter omnia animantia quantumcumque ferocia faciem hominis formidant".

[25] Lynn White, Jr., 'The Historical Roots of Our Ecological Crisis', *Science,* vol. 155, no. 3767 (1967), pp. 1205-6.

[26] Walter Eichrodt, *Man in the Old Testament,* trans. K. and R. Gregor Smith (London, 1951), pp. 29-30.

[27] Claus Westermann, *Genesis 1-11: A commentary* (London, 1984), pp. 158-60. See also H. Wildberger, *Theologische Zeitschrift*, vol. 21 (1965), pp. 481-3.

[28] Gerhard F. Hasel, 'The Polemic Nature of the Genesis Cosmology', *The Evangelical Quaterly*, vol. 46 (1974), pp. 81-102.

creation and sexuality than on God's command to claim dominion over the earth.[29] In fact, most theologians held a similar view: animals were created to be mastered and to be used by man. This position on the human-animal relation paved the way for later medieval commentators: man represented the midway point between animals and the divine giving him license to rule over all other created beings.

Dominion in Early Christian Writing

According to the third-century theologian Origen, man's power over lesser beings was granted for two main reasons. Firstly, humans are rational. This means that men are "capable of ruling by reason", which, for Origen, acted as justification for human dominion over animals.[30] This rationality had a divine origin and was bestowed upon humans because they were made in the image of God.[31] Animals, on the other hand, have no "origin for their impulses other than irrationality".[32] Secondly, Origen argued that God "made all things for man".[33] All animals were thus created by God "to serve the rational being and his natural intelligence".[34] Once in the service of man, animals were even given particular tasks. For instance, dogs were used to guard flocks or to protect homes, and oxen were needed for the production of crops. Even wild animals served a purpose and "have been given to us" to foster a sense of courage in men.[35]

[29] See Jeremy Cohen, "*Be Fertile and Increase, Fill the Earth and Master It": The Ancient and Medieval Career of a Biblical Text* (Ithaca, 1989). Cohen noted that although the Greek fathers paid considerably more attention to the theme of dominion than Talmudic rabbis, it was rarely a controversial issue, see ibid., p. 229.

[30] Origen, *Contra Celsum,* trans. Henry Chadwick (Cambridge, 1980), bk. 4, sec. 84, p. 251.

[31] Ibid., bk. 4, sec. 85, p. 251.

[32] Ibid.

[33] Ibid., bk. 4, sec. 99, p. 262.

[34] Ibid., bk. 4, sec. 78, p. 246; see also, bk. 4, sec. 99, pp. 262-3.

[35] Ibid., bk 4, sec. 78, p. 246.

Not only does Genesis 1:26 have a literal meaning, but Origen gave an allegorical interpretation to God's command of dominion. In his homilies on Genesis, he wrote that the creation of animals represented "the impulses of our outer man, that is, of our carnal and earthly man".[36] Thus dominion over animals symbolized the soul's dominion over bodily desires.

Basil the Great, bishop of Caesarea, provided a similar interpretation of the human-animal relationship in his *Homilies on the Hexaemeron.* Composed in 370, they are the earliest work on creation which survived into the Middle Ages.[37] He reasserted that animals are irrational, being endowed "with neither reason nor voice".[38] Like Origen, Basil linked human dominion over animals with our very creation: God had "placed all things under us because we have been made in the image of the Creator".[39] This included the ability to use animals to ensure human survival.

John Chrysostom, archbishop of Constantinople in the fourth century, believed humans to be the pinnacle of creation. He wrote:

> [t]he human being is the creature more important than all the other visible beings, and for this creature all the others have been produced – sky, earth, sea, moon, sun stars, the reptiles, the cattle, all the brute beasts.[40]

Like Origen and Basil, he maintained that animals were inferior to humans and existed for our use. Some animals were "useful for our food, others for serving us".[41] Domestic animals, in

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[36] Origen, 'Homilies on Genesis' in *Homilies on Genesis and Exodus,* trans. Ronald E. Heine (Washington D.C., 1982), homily 1, sec. 11, p. 60.

[37] See J. C. M. Van Winden, 'Hexaemeron', in *Reallexikon für Antike und Christentum: Sachwörterbuch zur Auseinandersetzung des Christentums mit der antiken Welt* (24 vols, Stuttgart, 1988), xiv, pp. 1250-70.

[38] Saint Basil, 'Homilies on the Hexaemeron', in *Exegetic Homilies,* trans. Sister Agnes Clare Way (Washington, D.C., 1963), homily 7, sec. 3, p. 110.

[39] Ibid., homily 9, sec. 5, p. 145.

[40] Saint John Chrysostom, *Homilies on Genesis 1-17,* trans. Robert C. Hill (Washington, D.C., 1986), homily 8, sec. 4, p. 107.

[41] Ibid., homily 7, sec. 15, p. 100.

particular, were "intended to come under the control of the creature soon to be created" (i.e. man).[42]

Naming the animals therefore became symbolic of man's dominion over them. In his homilies on Genesis, John Chrysostom described the act of naming as encapsulating "control, authority, and enjoyment".[43] By distinguishing one animal from another, man imposed order and rule. Just as humans could name newly acquired slaves, "Adam, too, as their master should give names to the brute beasts".[44] Since there was a vast variety of beasts, this required a vast variety of names. Admiring the daunting task set before Adam, Chrysostom wrote: "[d]o you see the unrivalled authority? Do you see his lordly dominance?"[45]

Even when God provides for animals, John Chrysostom interpreted this benevolence as having its roots in the desire to provide for man. In Genesis 1:30, God gave food to all the beasts of the earth so that they might eat. God was not only looking after "the tame beasts that meet our needs for food and service, but also for wild beasts".[46] Although this was clearly for the immediate benefit of animals, it was also for the benefit of humans. Providing adequate food for animals prevented "[man] being distressed at once from the outset by the sight of the vast number of beasts".[47] Likewise, saving animals from the Flood was not done solely for the sake of animals, but for man "to induce confidence and security in the human race".[48]

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[42] Ibid.

[43] Ibid., homily 9, sec. 8, p. 122. Chrysostom's definition of dominion can be found in *Homilies on Genesis 18-45,* trans. Robert C. Hill (Washington, D.C., 1990), homily 27, sec. 17, p. 174.

[44] Saint John Chrysostom*, Homilies on Genesis 1-17,* homily 14, sec. 19, p. 190.

[45] Ibid., homily 14, sec. 19, p. 191. For Jacques Derrida, it was moment in which Adam named the animals which inaugurated the domination, exploitation, and violence which has ever since characterized the human relation with nonhumans. See *L'Animal que donc je suis* (Paris, 2006), pp. 33–8.

[46] Saint John Chrysostom*, Homilies on Genesis 1-17*, Homily 10, sec. 11, p. 135.

[47] Ibid.

[48] Saint John Chrysostom*, Homilies on Genesis 18-45,* homily 28, sec. 7, p. 188.

Writing in the fourth century, Augustine of Hippo maintained the distinction between humans and animals by articulating an order to the world based on sentience and intelligence.

> Among living things, the sentient are placed above those which do not have sensation: animals above trees, for instance. And, among the sentient, the intelligent are placed above those which do not have intelligence: men, for example, are above cattle.[49]

As beings limited to sense experience, animals lack reason and instead are governed by "the pursuit of physical pleasures and avoidance of pains".[50] Humans, on the other hand, are in control of the "impulses of the soul".[51] He acknowledged that humans may be equal to some animals in certain physical matters, even inferior in others. Some animals can run faster than man, have sharper teeth, and so on. He thus concluded that human superiority was based not on physical traits, but on mental acuity.[52] Once again, it was man's reason which set him apart and it was his reason which allowed him to tame animals. This ability flowed in only one direction. As Augustine pointed out in his *Eighty-Three Different Questions,* "animals can be domesticated and tamed by men, but men not at all by animals".[53] He developed this argument further in his work *On Free Choice of Will.*

> We often see animals that have been tamed by human beings. I don't mean just their bodies; their spirits too are so much under human control that they obey a human will by a kind of instinct and habit. Do you think that there is any way that a wild animal,

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[49] Augustine, *The City of God against the Pagans,* ed. and tr. R. W. Dyson (Cambridge, 1998), bk. 11, ch. 16, p. 470.

[50] Augustine, *On Free Choice of the Will,* trans. Thomas Williams (Indianapolis, 1993), bk. 1, sec. 8, p. 14.

[51] Ibid.

[52] Ibid., pp. 14-5. Like Origen and Basil the Great, Augustine connected human rationality with having been made in God's image. He wrote: "At this point we must also note that God, after saying 'Our image,' immediately added, 'And let him have dominion over the fish of the sea and the birds of the air' and the other irrational animals. For this we are to understand that man was made in the image of God in that part of his nature wherein he surpasses the brute beasts. This is, of course, his reason or mind or intelligence, or whatever we wish to call it". Augustine, *The Literal Meaning of Genesis*, trans. John Hammond Taylor (2 vols, New York, 1982), i, p. 96.

[53] Augustine, *Eighty-Three Different Questions,* trans. David L. Mosher (Washington, D.C., 1982), p. 43. Animals are defined as lacking reason in Question 5 (p. 39), Question 7 (p. 40), Question 53 (p. 93), and Question 80 (p. 207).

however strong or ferocious, however keen his senses, could in turn attempt to subdue a human being?[54]

The Church Father, Athenagoras of Athens, had made a similar observation more than two centuries earlier, remarking that it would not be "natural" for animals to have this sort of power over humans.[55] For Augustine, the ability to tame them was sufficient to lump animals together as a general class of being, all of whom were inferior to humans.[56] He was thus free to embrace the principle that all earthly beings existed for the sake of humans. He wrote that for animals "both their life and their death are subject to our needs".[57] Consequently, in one of his responses to the Manichees, Augustine classified animals as being "useful to us, or pernicious or superfluous".[58] Thus, it was because of and through the subjugation of animals, and their usefulness to us, that humans achieved a privileged place in the cosmic order.

Medieval Interpretations

Centuries later, the human-animal hierarchy as defined in Genesis was explored by commentaries and vernacular bibles without any great departure from the interpretations of their Christian predecessors. The *Glossa ordinaria* was instrumental in spreading the notion that the

[54] Augustine, *On Free Choice of Will*, p. 13. A similar argument can be seen in Adelard of Bath (d. 1152), *Conversations with his Nephew: On the Same and the Different; Questions on Natural Science; and, On Birds,* ed. and tr. Charles Burnett (Cambridge, 1998), sec. 15, p. 121, which explained that humans master animals even without a physical advantage: "For he has that which is much better and more worthy than these – I mean reason, by which he excels the very brute animals so much that they are tamed by it, and, once tamed, bridles are put on them, and once bridled, they are put to various tasks".

[55] Athenagoras of Athens, *De resurrectione,* 12.4, cited in Janet E. Spittler, *Animals in the Apocryphal Acts of the Apostles: The Wild Kingdom of Early Christian Literature* (Tübingen, 2008), p. 35: "irrational creatures [are] by nature ruled over and fulfil the needs of man, each one in whatever way is natural, and it is not natural for them to make use of man. It was not and is not right that the ruling and governing being should exist for the deeds of what is inferior, nor should the rational being serve the irrational that are unfit to rule".

[56] Augustine, *On Free Choice of Will,* bk. 1, sec. 9, p. 15.

[57] Augustine, *City of God,* bk. 1, ch. 20, p. 33.

[58] Augustine, *On Genesis: A Refutation of the Manichees, Unfinished Literal Commentary on Genesis, the Literal Meaning of Genesis,* ed. John E. Rotelle, tr. Edmund Hill (New York, 2002), bk. 1, ch. 16, sec. 26, p. 55.

world was a divinely ordered hierarchy. In fact, according to Philippe Buc, the glossators used Genesis to argue that "legitimate power (*potestas*) is symbolized, rendered legitimate, and clarified by the superiority of man over animals".[59] Furthermore, the superiority of humans over animals signified the "prelature of the governing over the governed"; the pre-eminence of wisdom over passions.[60] The human-animal hierarchy not only structured the order of creation, but offered a model for the exercise of power.

While Anselm Oelze is right to remind us that there was a spectrum of medieval views on animal rationality and capacity, as well as on their relationship to humans, one cannot ignore the notion of hierarchical difference that underpinned a great deal of medieval learned texts on the subject.[61] This hierarchy provided the foundation for expectations of the human-animal relation, and, not only that, but expectations around animal behaviour. It is thus useful to continue to briefly examine the textual tradition that set out the human-animal relationship in which domestic animals were described as 'naturally' subservient to humans. While the view of animals as human property – to be used by and for humans - was echoed in the customary tradition (Chapter Two), as we shall see in Chapters Three, Four, and Five, it was a view which became more complex in practice when an animal was subject to criminal law.

For many medieval commentators, the mastery of animals was understood as natural and fitting. Remigius of Auxerre (*c.* 841-908) wrote in his *Exposition on Genesis* that mankind "was

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[59] Philippe Buc, *L'ambiguïté du Livre: Prince, Pouvoir, et Peuple dans les commentaires de la Bible au Moyen Age* (Paris, 1994), p. 73.

[60] Ibid., at p. 75.

[61] Anselm Oelze, *Animal Rationality: Later Medieval Theories, 1250-1350* (Leiden, 2018). See, e.g., the exchange between Gregory of Rimini (1300-58), who ascribed "complex knowledge" (*notitia complexa*) to animals while still maintaining the human-animal distinction, and Adam Wodeham (1298-1358), who argued that animals do not possess the capacity to judge. Anselm Oelze, *Animal Minds in Medieval Philosophy: A Sourcebook from Augustine to Wodeham* (Cham, C.H., 2021), pp. 139-42.

rightfully placed ahead of other animals, because without doubt in all things humans are preeminent over the animals".[62] Andrew of St. Victor (*c.* 1110-1175) interpreted man having been made in the likeness of God as meaning that man excelled beyond that of brute beasts (*antecellit irrationabilibus)*.[63] Just as in earlier works, man's dominion over animals was understood as being part of the divine order; a microcosm of the wider universe. Hugh of St. Victor (*c.* 1096-1141), in his commentary on the Pentateuch, saw the human relation to animals as a reflection of God's relation with man: "just as man is ruled by God, so animals are ruled by man" (*sicut Deus hominibus, ita homo animalibus dominatur*).[64]

Echoing early Christian writers before them, medieval commentators based man's superiority on his capacity to reason. For Remigius, it was this *rationis capax* that made it possible to "rule and manage" animals.[65] Like Augustine, Remigius interpreted the moment when Adam was asked to name the animals as a demonstration of man's control over lesser beings. The act of naming was "so that the human would be shown how much better he was than all the creatures and how much he exceeded them in worthiness because of his rationality".[66] Andrew of Saint Victor was somewhat vague regarding the origins of man's rationality but connected it to "reason or mentality or intelligence" (*ratio vel mens vel intelligentia*).[67] For him,

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[62] *Remigii Autissiodorensis expositio super genesim,* ed. Burton Van Name Edwards, CCCM 136 (Turnhout, 1999), p. 29, lines 637-9: "Iure aliis animantibus creatus homo praeponitur, quia nimirum in hoc ceteris creaturis antecellit". Remigius was representative of Carolingian biblical scholarship and was chiefly interested in the literal or historic sense of the text. He borrowed ideas from Jerome, the Venerable Bede, Isidore of Seville, and Augustine. For an introduction to Remigius and his commentary, see *The Book of Genesis*, ed. and tr. Joy Schroeder (Grand Rapids, M.I., 2015), pp. 12-15.

[63] *Andreae de Sancto Victore Opera*, CCCM 53, p. 20, line 493.

[64] Hugonis de S. Victoire, *Adnotationes elucidatoriae in Pentateuchon,* ch. vii, in PL 175:37D.

[65] *Remigii Autissiodorensis expositio super genesim*, CCCM 136, p. 29, lines 639-40.

[66] Ibid., p. 48, lines 1086-8: "ut sic demonstraretur homini quantum melior esset omnibus creaturis quantumque eas in rationis dignitate praecelleret".

[67] *Andreae de Sancto Victore Opera,* CCCM 53, p. 20, lines 493-4.

this gift not only defined man, but its lack defined animals. And it was precisely this lack which allowed for man's dominion. Imagining what animals might do if they were endowed with reason, the twelfth-century Cistercian monk, Aelred of Rievaulx, warned that it would herald the end of mankind.

> If sparrows and crows had the dictates of reason to tell them what to do, where to do it and what precautions to take, how many cities and castles could they not burn down? If they enjoyed reason and were equal to men, could not all the birds and beasts mass together and destroy the human race?[68]

Without reason, animals remained powerless and man remained safe.

In the cosmology envisioned by the theologian Thomas Aquinas (1225-1274), it was rationality which brought one closer to God.[69] Those with reason he described as active, while those without reason, such as plants and animals, were passive. Quoting John of Damascus, Aquinas stated that animals, as passive beings, "do not themselves have mastery over their own inclination. Hence 'they do not act but are rather acted upon' (*non enim agunt sed magis aguntur*)".[70] Animals thus act based on their senses or appetites "without making any choice".[71] John of Salisbury (d. 1180) had made a similar argument in his *Metalogicon*.

> Although brute animals have a certain power of discernment, whereby they select their food, shun snares, leap across precipitous places, and recognise relationship, still, they do not reason, but are rather moved by their natural instincts.[72]

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[68] Aelred of Rievaulx, *Dialogue on the Soul,* trans. Charles H. Talbot (Kalamazoo, M.I., 1981), p. 81

[69] Thomas Aquinas, *Quaestiones disputatae et quaestiones duodecim quodlibetales,* editio VII, 'De veritate' (5 vols, Turin, 1942)*,* iii, q. 5, art. 6, resp.

[70] Thomas Aquinas, *Summa theologiae* (Turin, 1948), I-II, q. 6, art. 2, citing to John of Damascus, *De fide orthodoxa,* bk. II, ch. 27 in PG 94:962.

[71] Thomas Aquinas, *Summa theologiae*, I-II, q. 13, art. 2, repl. Obj. 2: "absque electione in illud solum movetur". See also, idem *Quaestiones disputatae,* iv: 'De veritate', q. 24, art. 2, resp. where animals act "non propter usum liberae electionis". Similarly, Bonaventure (1221-74), concluded that despite the appearance of free choice in animals (e.g., they can choose to exhibit certain types of behaviour, they can restrain themselves from acting, and they have freedom of movement), only humans have true free choice, *Commentaria in quatuor libros Sententiarum magistri Petri Lombardi: In secundum librum Sententiarum* (*Opera Omnia,* t. 2) (Florence, 1885), Dist. 25, single art., q. 1, pp. 592–4. For English trans., see Oelze, *Animal Minds,* p. 184.

[72] John of Salisbury, *The Metalogicon: A Twelfth Century Defense of the Verbal and Logical Arts of the Trivium,* trans. Daniel D. McGarry (Philadelphia, 2009), p. 227.

Both John of Salisbury and Aquinas viewed animal volition as a process that lacked the cognitive quality that made up human decision-making. Aquinas admitted that animals had "a certain amount of prudence and reason" (*quondam participationem prudentiae et rationis*) which allowed, for instance, cranes to follow their leader and bees to obey their queen.[73] Yet *true* reason, Aquinas argued, was "found fully and perfectly only in man".[74] Man's behaviour was based on "rational judgement", which involved deliberation about future actions, while "all brutes act and are moved by a natural judgement".[75] This form of judgement allowed animals to determine beneficial behaviour based on "instinct" but theirs was decision-making without the benefit of reflection.[76] Creatures acted but did not think, felt but did not judge.

Human and Nonhuman Bodies

Animals further proclaimed their lesser role in God's plan through their bodies. Humans had the ability to look up at the sky, whereas animals could only stare at the ground. Laying the basis for the medieval tradition of humans' corporeality, Ovid described the creation of humans in the *Metamorphoses*. He first explained that the earth was populated with creatures, "fish were given the waves for dwelling / And beasts the earth, and birds the moving air".[77] Yet that there was

[73] Thomas Aquinas, *Summa theologiae,* I, q. 96, art. 1, repl. Obj. 4. The English philosopher, Roger Bacon (1220-1292) referred to this type of thinking as *virtus cogitativa*, a trait found in both humans and animals, which allowed, e.g., monkeys to ambush people, spiders to weave a web, and bees to make a hive. See *Roger Bacon and the origins of Perspectiva in the Middle Ages: A critical edition and English translation of Bacon's Perspectiva with introduction and notes*, ed. and trans. D. C. Lindberg (Oxford, 1996), pp. 246–50.

[74] Thomas Aquinas, *Quaestiones disputatae,* iv: 'De veritate', q. 24, art. 2.

[75] Ibid., q. 24, art. 1. Bacon argued that the cogitation of animals "proceeds from instinct alone", see Oelze, *Animal Minds,* p. 107.

[76] Thomas Aquinas, *Summa theologiae,* I-II., q. 12, art. 5, repl. Obj. 3: "quod bruta animalia moventur ad finem, non quasi considerantia quod per motum suum possunt consequi finem, quod est proprie intendentis, sed concupiscentia finem naturali instinctu, moventur ad finem quasi ab alio mota, sicut et cetera quae moventur naturaliter"; see also, ibid. 1.2., q. 15, art. 2.

[77] Ovid, *Metamorphoses,* trans. Rolphe Humphries (Bloomington, I.N., 2018), bk. 1, p. 7.

still something missing, "a finer being / More capable of mind. . . a ruler".[78] Thus man was born "in God's image" and while "other animals look downward; Man, / Alone, erect, can raise his face toward Heaven".[79]

This verse neatly encapsulated the notion that animals were earthbound based on physical constraints and were thus confined to material concerns. As Albertus Magnus (d. 1280) noted:

> [a]ll such animals are prone to the ground, i.e., because of the weight of their head and the earthy character of their body, they tend to bear themselves in a horizontal plane, their innate heat being inadequate to maintain them in an erect posture.[80]

Conversely, man was upright. "Man alone", wrote Albertus Magnus, "has a tall, well-built, erect body".[81] Man's stature could carry multiple meanings. For Saint Justin Martyr, a second-century Christian apologist, man's physique not only separated him from the beasts, but was reminiscent of the crucified Christ.

> And the human form differs from that of the irrational animals in nothing other than its being erect and having the hands stretched out. . . and this shows nothing other than the form of the cross.[82] (1 Apology 55)

According to Bartholomaeus Anglicus (d. 1272), it was man's physical form that allowed him to pursue a contemplative life. In his work *De rerum proprietatibus*, he stated that "man strives for heaven, and is not like livestock obeying its stomach, with a mind fixed on earth" (*homo itaque coelum quaerat, et non tanquam pecus ventri obediens, mentum in terra figat*).[83]

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[78] Ibid.

[79] Ibid.

[80] Albertus Magnus, *Man and the Beasts (De animalibus, Books 22-26*), trans. James J. Scanlan (Binghamton, N.Y., 1987), p. 69.

[81] Ibid., p. 67.

[82] Cited in *Ante-Nicene fathers,* ed. Alexander Roberts and James Donaldson (10 vols, Grand Rapids, M.I., 1999), i, p. 181.

[83] Bartholomaeus Anglicus, *Proprietates Rerum domini bartholomei anglici* (Heidelberg, 1488), bk. 3, ch. 1. Albertus Magnus had a similar thought, saying that "the bodies of brute beasts are material and earthbound, while the human body, infused with a spiritual soul, has a greater affinity with the heavens" in *Man and the Beasts (De animalibus, Books 22-26*), p. 68.

The English chronicler Ranulf Higden (d. 1364), observed in his *Polychronicon* that well-proportioned limbs, such as those possessed by man, signified a good mind.[84] The assumption was that the outward appearance reflected one's inner state. A disproportionate body was thus a sign of mental weakness or disharmony. This applied to certain birds and fish, said the scholar Michael Scotus (d. 1232), which are less intelligent than man because they have "more flesh in the front part of their bodies" than humans.[85] Man's upright, well-formed, and proportionate body was thus another indication of man's superiority. As the English scholastic, Robert of Melum (d. 1167), remarked in his comments on the *Sentences*, it was the upright human form which symbolised that man "has rulership over other living things".[86]

Traditionally then, man was presented as upright, rational, and dominant, while animals were horizontal, irrational, and subjugated. More than simply marking difference, the fundamental division in physical form identified capabilities. Without these characteristic 'human' traits, man became no different from animals, a possibility which was vividly imagined by the twelfth-century Benedictine Abbot, William of St. Thierry. He focused on the use of hands, which, similar to an upright posture, were instrumental in enabling man to obtain and live a spiritual life. He pictured:

> [i]f man had no hands his mouth would have to be fashioned like those of quadrupeds so he could take food from the ground. The length of his neck would have to be increased,

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[84] *Polychronicon Ranulphi Higden, Monachi Cestrensis: with English Translations of John Trevisa and of an Unknown Writer of the Fifteenth Century*, ed. Churchill Babington (9 vols, London, 1869), ii, bk. 2, ch. 1, pp. 180-1: "Insuper cum membra bene fuerint proportionata quoad figuram, colorem, qualitatem, quantitatem, situm, et motum, denotatur bona mentis habitudo".

[85] Michael Scot, *De animalibus: Michael Scot's Arabic-Latin translation. Part Two, Books XI-XIV: Parts of Animals*, ed. Aafke M. I. van Oppenraaij (Leiden, 1998), p. 188: "habens plus carnis in parte superiori, scilicet in parte anteriori corporis".

[86] Robert of Melun, *Sentences,* Cod. Lat. Brugens., 191, bk. I, ch. 2, fo. 163v in Richard Heinzmann, *Die Unsterblichkeit der Seele und die Auferstehung des Leibes: eine problemgeschichtliche Untersuchung der frühscholastischen Sentenzen – und Summenliteratur von Anselm von Laon bis Wilhelm von Auxerre* (Münster, 1965), p. 86: "Hominis vero forma in altum erigitur et sursum elevatur, qui et praeter cetera animantia rectum habet incessum et ad superna aspectum, quo liquide declaratur eum illa quae sursum sunt sapere debere et tota mentis intentione illuc tendere" (lines 12-14).

> his nose shaped like that of a brute animal. He would have to have heavy lips, thick, coarse and projecting, suited to cutting fodder. The fleshy part around the teeth would have to be solid and rough, as in dogs and other animals that eat meat. Thus if hands had not been provided for the body, an articulated and modulated voice could not exist. Man would have to bleat or low or bark or make some other kind of animal noise. But now, with the hand serving the mouth, the mouth serves reason and through it the intellectual soul which is spiritual and incorporeal. This is something not shared with irrational animals.[87]

The possession of hands is thus connected to the ability to speak, the means by which man expresses his rationality. In Thomas of Cantimpré's thirteenth-century encyclopaedia, the *Liber de natura rerum,* he described hands as being "naturally created for man in place of the front feet. . . since man is more intelligent than all animals and more clever".[88] Here, God has given man hands so they might fully express their other God-given qualities. Without this ability, man would be unable to serve his "intellectual soul" and then becomes no better than the beasts themselves.[89] Aquinas later articulated the same point in the *Summa theologiae*, stating that if "man's stature were prone to the ground, and he used his hands as fore-feet. . . such an attitude would quite hinder speech, which is the proper work of the reason".[90] A handless, prone body that had consequently lost the ability to craft speech would be functionally irrational. Like an animal, it would merely make noise, sliding indelibly from a life of reason and spirit to a life with no voice and no agency.

As we have seen, there were capacities unique to rational creatures and this required a certain bodily form. Animals lack this form, and so must lack those capabilities. Such

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[87] *Three Treatises on Man: A Cistercian Anthropology*, ed. Bernard McGinn (Kalamazoo, M.I., 1977), bk. 2.4, p. 131.

[88] Thomas of Cantimpré, *Liber de natura rerum: Editio princeps secundum codices manuscriptos,* ed. Helmut Boese (Berlin, 1973), bk. 1.23: 'De manibus', p. 29: "Manus in homine loco pedum anteriorum naturaliter create sunt, ut dicit Aristotiles, quoniam homo maioris intellectus est omnibus animalibus et maioris ingenii".

[89] See Thomas Aquinas, quoting Augustine, *Summa theologiae,* I, q. 93, art. 2, sed contra: "hoc excellit in homine, quia deus ad imaginem suam hominem fecit, propter hoc quod dedit ei *mentem intellectualem*, qua praestat pecoribus" (my emphasis).

[90] Ibid., I*,* q. 91, art. 3, repl. Obj. 3.

distinctions were useful in defining humans and, perhaps more importantly, nonhumans. The differences, both mental and physical, believed to exist between humans and animals were thus critical for understanding an animal's place within the human community. Expectations of animal behaviour were shaped in response to these differences and, as we shall see below, this was particularly the case with domesticated animals. Yet moments in which animals and the law intersected, such as when an animal killed a child, not only challenged these differences, but upset expectations. I will explore such intersections within the customary law tradition (Chapter Two) as well as in verifiable cases of animal executions (Chapters Three, Four, and Five).

Domestic Animals: Origins and Expectations

Given the importance of domestication – specifically, how it informed expectations of certain animals and the laws crafted to manage them - it is useful to explore the ways in which domestication was understood in fourteenth and fifteenth century France. An animal is said to be domestic when it has lost its fear of humans and will breed in captivity.[91] In medieval sources, the Latin word *domesticus* (French: *domestique*) meant "of or belonging to one's family", denoting the idea of familiarity or a member of the household.[92] Regarding animals, the term could be used to refer to entire species and also to taming particular members of a species.[93]

[91] A more complete definition is provided by Juliet Clutton-Brock, *A Natural History of Domesticated Mammals,* 2nd edn (Cambridge, 1999), p. 32: "the keeping of animals in captivity by a human community that maintains control over their breeding, organization of territory, and food supply". For more on domestication, see Frederick E. Zeuner, *A History of Domesticated Animals* (London, 1963).

[92] 'Domesticus', *The Oxford Latin Dictionary*, ed. P. G. W. Glare, 2nd edn (2 vols, Oxford, 2012), i, p. 626. For the French, see the term's use in, e.g., *Le Roman de Perceforest,* originally written in French between 1330-45. *Perceforest. Troisième partie*, ed. Gilles Roussineau (3 vols, Geneva, 1988), i, p. 87: "illecq trouva ung pasteur gardant toutes manieres de bestes domesticques".

[93] In Geoffrey of Burton's *Life and Miracles of St Modwenna,* "domesticus" first denoted a wolf who went to St. Modwenna "like a tame dog" (*in modum domestici canis*) and was "against his nature suddenly made tame" (*domesticus*). The term was then used to denote livestock, which the wolf was forbidden to eat: "from then on he

Like the term 'animal' discussed earlier in this chapter, 'domestic' could encompass quite a broad category. In fact, Michel Pastoureau argued that 'domestic' was a problematic term in the context of medieval attitudes towards animals because it could refer to any animal that lived in the *domus* (house) of a man or in the neighbourhood. Pastoureau believed that for the usages and taxonomies of the medieval era, all animals living in and around the *domus* were 'domestic': dogs, horses, bulls, pigs, but also some creatures we might not refer to as domestic today, such as mice, moles, and hedgehogs.[94] Pietro de' Crescenzi (d. 1305), a Bolognese jurist known for his writings on agriculture and husbandry and whose work was translated into French in the later fifteenth century, captured the idea of domesticated animals in the notion that they were those "that are fed. . . for profit and for consumption".[95] He included the usual suspects (sheep, goats, pigs, cows, horses, dogs) as well as the peacock, pheasant, and honeybee.[96]

The system of domestication made a clear distinction between animals by taking into account their physical proximity, their use, and their dependency on humans. In fourteenth and fifteenth century France, animals that would have been considered *domestica*, such as pigs, sheep, horses, cows, and fowls, were instrumental to human well-being. They thus occupied a special place within human communities. Living animals were used alongside a full range of animal products, such as wool, milk, meat, and manure. Horses, for example, were critical for transportation and physical labour. A pig was a provider of food – ham, pork, bacon, and fat -

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lived on beasts of the chase, never ventured to attack any farm animals" (*domestici*), Geoffrey of Burton, *Life and Miracles of St Modwenna*, ed. and tr. Robert Bartlett (Oxford, 2002), pp. 20–1.

[94] Michel Pastoureau, *The Bear: History of a Fallen King,* trans. George Holoch (Cambridge, M.A., 2011), pp. 161-2.

[95] Pierre de Crescens, *Livres des prouffitz champestres et ruraulx* (1470-1475), Paris, BNF, MS. 5064, fo. 210r. Book nine covers animal husbandry with animals listed from largest to smallest, starting with the horse and ending with the honeybee. Pietro's work also included information about animal diseases and their cures.

[96] Ibid., fos. 210r – 264v.

that was vital for a healthy diet.[97] Such animals required attention from trained caretakers and resided in purpose-built accommodation. Not only were they appraised and counted, these animals were cared for, killed, exchanged, and even named. They were both co-workers and property, fully incorporated into the human social structure.

Pigs, in particular, were a popular animal to keep during the fourteenth and fifteenth centuries, and indeed, this had been the case since the early Middle Ages. Their popularity was due to a whole host of reasons: they had versatile eating habits meaning they could be reared even on poor quality land, and they required little hands-on management. Pigs could be herded into the woods to forage on acorns and beech nuts or kept in a sty near the house to eat scraps and refuse from the kitchen. Furthermore, as Bartholomaeus Anglicus pointed out, pigs are more prolific breeders than other large mammals, they mature quickly, and can produce two litters each year.[98] These traits make the pig an ideal animal to rear. However, as we shall see in the following chapters, its omnivorous eating habits and the fact that they were frequently left to roam unaccompanied meant that pigs – despite being *domestica* - were also more likely to injure and kill human beings.

The idea of domestication, both in terms of the particular species and in terms of taming an animal species, was portrayed in a variety of ways in learned texts. Some authors used particular terminology to denote domestication. In his *Etymologies*, Isidore of Seville referred to "livestock" (*pecus*) to cover a wide range of domestic animals, referring to "animals that are

[97] For more on the central role that pigs played in the medieval diet, see Melitta Weiss Adamson, *Food in Medieval Times* (Westport, C.T., 2004), p. 30.

[98] Bartholomaeus Anglicus*, Proprietates Rerum domini bartholomei anglici*, bk. 18, ch. XCVII: 'De sue'. For an excellent analysis of the pig and its history, see Jamie Kreiner, *Legions of Pigs in the Early Medieval West* (New Haven, 2020). See also, Max Price and Hitomi Hongo, 'The Archaeology of Pig Domestication in Eurasia', *Journal of Archaeological Research,* vol. 28 (2020) for an evaluation of the theoretical concept of domestication as it relates to pigs, the behavioural and physiological uniqueness of pigs, and their management.

either suitable for food, such as sheep and swine, or are suitable for use by humans, such as horses and oxen".[99] Thomas Aquinas used similar terminology, describing domestic animals as "cattle" to distinguish them from wild animals or "beasts".[100] In John Trevisa's translation of Bartholomaeus Anglicus' *De rerum proprietatibus,* he noted that "tame bestes" were also called *iumenta* ("beasts of burden"), which were animals that had been "granted and ordained to be used and be of help to mankind".[101] Of the animals classified as *iumenta*, some were used for travel, such as horses, oxen, and camels, while some were used for "wool for the clothing of man", and others still were to be eaten.[102]

Vincent of Beauvais used an animal's behavioural traits to denote domestication in his thirteenth-century encyclopaedia, *Speculum Naturale*: the lamb, for example, was "the most tame" (*mansuetissimum)* while the wild boar was "wild and savage" (*ferum et immite*).[103] Characteristics such as gentleness and obedience were often associated with domestic animals. Wild animals displayed the opposite traits. There were some animals, however, that lived between these two extremes, such as the hart, which, according to John Trevisa, was "not tame but wild . . . more strong than tame beasts and more mild than cruel beasts".[104] Animal traits could thus exist along a spectrum. However, it was expected that tame and mild animals were those that existed in close proximity to humans with "cruel beasts" kept well away.

Authors were also aware that domestication was a process. John Trevisa remarked that while "some beasts will always be wild and some always tame", other animals – his example

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[99] *The Etymologies of Isidore of Seville,* ed. and tr. Stephen A. Barney (Cambridge, 2006), bk. XII.i.5, p. 247.

[100] Thomas Aquinas, *Summa theologiae,* I, q. 72, art. 1, repl. Obj. 2: "per iumenta, vel pecora, intelliguntur animalia domestica. . . per bestias autem intelliguntur animalia saeva, ut ursi et leones".

[101] *On the Properties of Things*, bk. 18, ch. 1, p. 109.

[102] Ibid.

[103] Vincentius Bellovacensis, *Speculum Naturale* (Strasburg, 1477), bk. 19, paras. 4-5.

[104] *On the Properties of Things,* bk. 18, ch. 1, p. 1093.

was the elephant - could be "made tame".[105] Such a process involved the cultivation of certain traits that humans found advantageous. Isidore noted in his *Etymologies* that the key was human intervention. The taming of the wild ass (*asinus*), for instance, was achieved by people sitting on it (*praesidere*). Isidore wrote that the animal "allowed itself to be domesticated (or sat upon) as soon as mankind wished it".[106] Creating favourable breeding scenarios was another way to cultivate domestic animals, especially if you wished to reproduce specific traits. Isidore confidently recorded that "people present well-bred stallions to the view of the mares as they conceive, to enable them to conceive and create offspring resembling these stallions".[107] Similarly, the first-century agrarian writer, Columella, wrote in his book of husbandry, which was often reproduced in the later Middle Ages, that characteristics pass from the male, noting that "careful choice" must be made in order to achieve an animal of fine appearance.[108] Other husbandry books offered more practical advice. To create the best dogs for hunting, for instance, Albertus Magnus recommended crossbreeding large male mastiffs with female greyhounds so the offspring would be both strong and agile.[109]

Such descriptions often approached certain traits as being intrinsic to certain animals, which could, if necessary, be further developed through diligent training. Horses, for instance, while loyal, could "lose their tameness if their ownership changes", remarked Isidore, and thus

[105] Ibid., p. 1094: "somme bestes beþ alway wilde and somme alway tame, as man, mule, and þe goot, and some beþ soone ymade tame, as þe olifaunt".

[106] *The Etymologies of Isidore of Seville*, bk. XII.i.38, p. 249.

[107] Ibid., bk. XII.i.58, p. 250.

[108] Lucius Junius Moderatus Columella, *On Agriculture*, trans. E. S. Forster and Edward H. Heffner (Cambridge, M.A., 2014), bk. VII, ch. IX, para. 1, p. 291; regarding the difficulty of breeding for particular traits, see bk. VI.6, ch. XXXVI, paras. 2-3, pp. 213-15.

[109] Albertus Magnus, *Man and the Beasts: de animalibus (books 22-26),* trans. James J. Scanlan (Binghampton, N.Y., 1987), p. 81.

required continuous effort and management.[110] However, for many animals, such as cows and sheep, it was simply in their nature to be "mild" – a fact pointed out by John Trevisa - while others would always be wild and untamable.[111] While Aristotle attributed the diversity of animal traits to the presence or absence of blood, according to Thomas Aquinas, such traits were attributed to an animal's God-given nature.[112] He wrote in his *Summa theologiae:*

> [u]nder the Divine Lawgiver, various creatures have various natural inclinations, so that what is, as it were, law for one, is against the law for another: thus I might say that fierceness is, in a way, the law of a dog, but against the law of a sheep or another meek animal.[113]

Animals that acted against their natures, sheep acting fiercely to continue with Aquinas's example, were thus an aberration and represented a violation of their true selves.

Assumptions around the ways in which domestic animals would behave, that is, in a manner that was generally mild and obedient, extended to the belief that they would assist humans, fulfilling their role set out in Genesis. Labouring animals, for instance, were meant to display a helpful and hardworking disposition. The carter's address to his horse in Chaucer's *Friar's Tale* recognised the value of the animal as a committed worker, toiling alongside his human master.

> That was wel twight [pulled], myn owene lyard boy!
> I pray God save thee, and Seinte Loy [St. Eligius]!
> Now is my cart out of the slow [mud], pardee [indeed]![114]

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[110] *The Etymologies of Isidore of Seville,* bk. XII.i.43, p. 249.

[111] *On the Properties of Things,* bk. 18, ch. 1, p. 1093.

[112] Aristotle's classification of animals as blooded or bloodless very roughly corresponds to the categories of vertebrates and invertebrates. See Aristotle, *Historia Animalium,* trans. A. L. Peck (London, 1965).

[113] Thomas Aquinas, *Summa theologiae,* I-II, q. 91, art. 6, resp: "Sic igitur sub Deo legislatore diversae creaturae diversas habent naturales inclinationes, ita ut quod uni et quodammodo lex, alteri sit contra legem, ut si dicam quod furibundum esse est quodammodo lex canis, est autem contra legem ovis vel alterius mansueti animalis".

[114] Geoffrey Chaucer, *Canterbury Tales*, in Larry Dean Benson and F. N. Robinson (eds), *The Riverside Chaucer*, 3rd edn (Boston, 1987), *Friar's Tale*, III (D), lines 1563-5, p. 126. A "lyard" is a type of horse with dappled grey and white spots.

Such characteristics were also highlighted in Walter of Henley's book of husbandry where he distinguished his "best oxe" from his "waster oxe", the latter being feeble or sickly but also imbued with a presumptively unhelpful attitude.[115] In Gaston de Foix's late fourteenth-century hunting manual, the *Livre de Chasse*, he bemoaned hunting dogs that were not useful and hard-working, saying that some were "chatty and gossipy and dizzy just as among people".[116] Obedient dogs, on the other hand, were highly praised, with de Foix remarking that they "understand me and do what I tell them better than any man of my household".[117]

The writers of bestiaries, encyclopaedias, and even husbandry manuals were not looking to analyse the laws of the natural world, but rather to expound upon them. Thus, they tend to provide physical and behavioural descriptions of animals and their uses from the standpoint that animals were already (and thus inherently) wild or tame.[118] There is less interest in exploring *why* certain animals were tame and others were not. For explanations of this sort, we turn to vernacular bibles.

In *La Bible anonyme*, a thirteenth-century rhymed version of the Vulgate, beasts were described in Genesis as having been created for the use of man. In vernacular bibles, the chapter

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[115] Walter of Henley, *Boke of husbandry* (London, 1508), ch. 10. An English agricultural writer of the thirteenth century, Walter of Henley's popular work on husbandry was concerned with the practical day-to-day operations of a farm. His "best oxe" would have been extremely helpful in such operations as oxen were known to be reliable labourers. Columella had the utmost respect for oxen, praising them as "man's most hardworking associate in agriculture", *On Agriculture*, bk. VI, preface 7, p. 123.

[116] *Gaston Phébus: Livre de Chasse*, ed. Gunnar Tilander (Karlshamn, 1971), p. 210: "il y a des chienz parlerres et janglerres et estourdiz einsi que des genz".

[117] Ibid., p. 217: "m'entendent et font ce que je leur di mieulx que homme qui soi ten mon ostel".

[118] Walter of Henley's work, for example, focused on how to care for livestock and the benefits one should derive from them, but contains no discussion of how or why such animals came to be tame. Anthony Fitzherbert's *Book of Husbandry* (1534) also provided directions on how to succeed as a husbandman. Although written in the sixteenth century, the late medieval reader would have recognised the world Fitzherbert described. Like Walter of Henley, Fitzherbert portrayed animals as having traits that were an inherent part of their domesticated status. See, *The Book of Husbandry by Master Fitzherbert,* ed. Walter W. Skeat (London, 1882). He described horses, for instance, as being characteristically "mery of chere","well paced", "easye to lepe upon", and "good at a longe journeye", traits which, interestingly, Fitzherbert also defined as being "properties of a woman", ibid., p. 65, item. 79.

on Genesis was often directly adapted from the *Glossa ordinaria*, which was not a direct translation of the Latin Bible, but rather paraphrased the biblical narrative alongside commentary provided by the translator or borrowed from other sources. Thus, in *La Bible anonyme,* all animals before the Fall were meant "serve" man (*toutes les bestes lou servoient*).[119] In Guyart de Moulins' *Bible historiale*, also from the thirteenth century, God granted animals to man in order to help him overcome the adversity he would face in a postlapsarian world.[120]

> *Et Dieu qui scavoit que lomme devoit tantost cheoir en pechie et avoir paine et travail pour son pechie luy donna une maniere de beste pour luy ayder a son travail. Et si luy donna pour son menger une autre maniere.*[121]
>
> And God who knew that man must immediately fall into sin, and have pain and work for his sin, he gave a manner of beast to him to aid in his work. And he gave him another kind of animal to eat.

When conveying the idea of dominion, the *Bible historiale* translated the Latin verbs indicating "to rule" or "to have dominion over" as *avoir seignorie* meaning "to have lordship". For example, after creating man, God tells him:

> *[c]roissez et multiplies et remplissez la terre / et la soubzmettes a vous et ayez seigneuries sur les poissons de la mer et sur les oyseaulx et toutes bestes qui sont venues sur terre*.[122]
>
> [g]row and multiply and replenish the earth / and submit to you and have lordship over the fish of the sea and over the birds and all beasts which come onto the earth.

[119] *La Bible anonyme du Ms. Paris B.N.f.fr. 763: edition critique*, ed. Julia C. Szirmai (Amsterdam, 1985), line 381, p. 93.

[120] According to Rosemarie Potz McGerr, de Moulins' work is a close translation of Peter Comester's *Historia scolastica*, written *c*. 1170. See her article, 'Guyart Desmoulins, the Vernacular Master of Histories, and His Bible Historiale', *Viator,* vol. 14 (1983), pp. 211-44. For more on the purpose and function of medieval translations of the Bible into French, see Clive R. Sneddon, 'The Bible in French' in Richard Marsden and E. Ann Matter (eds), *The New Cambridge History of the Bible: from 600-1450* (Cambridge, 2012), pp. 251-67.

[121] Guyart des Moulins, *Le premier volume de la bible historiée*, (1498), fo. 5v.

[122] Ibid.

In Old French, the term *seigneurie* was used to describe a particular set of power relations in which one had authority or jurisdiction over others. It was used again in the *Bible historiale* in a summarising sentence: "Our lord gave to man lordship over all the other creatures" (*Nostre seigneur donna a lomme seigneurie sur toutes les autres bestes*).[123] It was likewise used in the *Bible française du XIIIe siècle*, another Old French translation of the Bible. The text reads that after making man in his image and likeness, God gave him "lordship over the fish of the sea and the birds of the air and the beasts of the earth" (*ait seingnorie sus les poisons de la mer et sus les oisiaux du ciel et sus les bestes de la terre*).[124]

The use of such a politically charged word entails both a practice and a display of mastery according to Peggy McCracken, who provided an insightful analysis of vernacular bibles in relation to man's dominion over animals in her work, *In the Skin of a Beast: Sovereignty and Animality in Medieval France* (2017).[125] To go beyond McCracken's analysis, the term *seigneurie* adds a dimension to the human-animal relationship in addition to the generic form of power highlighted by the early Christian and later medieval writers discussed above. *Seigneurie* includes a territorial aspect to man's power encapsulating a bundle of rights held by lords over other people within their domain. The term thus implies a legal dimension: one based on the feudal rights of the lord and the obligations of his vassals. The term introduces the idea that not only do animals owe humans their service, but they are legally bound to this two-way relationship. Since *seigneurie* recalls the relation between a lord and his subjects, normally a

[123] Ibid., fo. 6r.

[124] *Bible française du XIIIe siècle: édition critique de la Genèse*, ed. Michel Quereuil (Geneva, 1988), Gen. 1:26, p. 100. See also ibid., Gen. 1:28, p. 102: "Croissiez et soiez monteploiez et raemplez la terre et soumetez icele et aiez *seingnorie* sus les poisons de la mer et sus les oisiaux du ciel et sus toutes les choses qui on tames qui se muevent sus terre" (my emphasis).

[125] Peggy McCracken, *In the Skin of a Beast: Sovereignty and Animality in Medieval France* (Chicago, 2017), p. 36.

relationship between humans, the use of the term also suggests the idea of animals as subjects over whom the lord has power in various guises, including the power to condemn. The placement of animals in a category usually occupied by humans not only foreshadows the characterisation of animals as criminals explored in Chapter Three, but the right to execute them as explored in Chapters Four and Five.

Vernacular bibles therefore understood the idea of domestication within this context of lordship. For both *La Bible anonyme* and *La Bible historiale*, domestication was described in Genesis as the natural state of all animals. Animals demonstrated their domesticated status through submission to human mastery. After the Fall, this state was lost for certain animals and retained for others. For the latter (i.e., domestic animals), their submissive state was their natural state, forming a crucial part of how those animals' characters were understood even beyond the literary genre. The natural state of these animals was thus instrumental in shaping expectations of their behaviour. As I will show in the following chapter, these expectations were key in determining the kind of legal response that was required when a domestic animal seemed to act against its nature by injuring or killing a human being.

The true nature of animals can be seen before man's fall from grace. In *La Bible anonyme*, we read that all animals coexisted in Paradise: they lived with each other and served man in peace and without discord (*Tout le servit en pais, sans guerre*).[126] No distinction was made between hunter and hunted:

> *Lai est li loux joste l'oaille,*
> *Li uns por l'autre ne soumoille,*
> *Li cers dejoste lou lion. . .*
> *Chascune beste estoit privee,*
> *N'iert l'une de l'autre adesee*
> *Et li oisel et li poisson*

[126] *La Bible anonyme,* line 116, p. 89.

Erent en pais et sans tançon.
Chescunne riens selonc sa guise
Rendoit a home son servise.

The wolf lies beside the ewe,
neither is wary of the other.
The stag lies beside the lion. . .
All the animals were intimate,
And none was opposed to the other.
And the birds and the fish were in peace without strife.
Each animal served man according to its abilities.[127]

As McCracken noted, here animals are grouped into pairs – predator with prey, wild with domestic, the vulnerable with the mighty – that anticipates their relationship to each other after the Fall.[128] But these relationships do not yet define them. Instead, their bonds are described as "privee", which captures the idea of familiarity and closeness; relations one might see among family members. They relate to humans through a similar form of friendship and but also through "son service", a phrase denoting submission to lordship. Even in a paradisical state, animals relate to humans in a context built around (human) rights and (animal) obligations. Thus, helping humans was not only a natural state for animals, but a defining aspect of their relationship to humans.

Unfortunately, this peaceful coexistence did not last. The freely-given service of animals was only available while humans submitted to God's commands. After original sin, the animals became divided and hostile, no longer living peacefully amongst themselves or amongst humans.

Preirent les bestes hardement
Contre Adan qui ot trespassee
Obedïance commandee:
Toutes li firent laide chiere
Et chasconne se trait arriere
Et de lui et de sa moillier
Et se prirent au guerroier. . .
De ce vint guerre entre les bestes.

[127] Ibid., lines 387-400, pp. 93-4, trans. McCracken, *In the Skin of a Beast*, p. 39.

[128] McCracken, *In the Skin of a Beast,* p. 39.

> The animals turned against Adam when he transgressed the interdiction given to him.
> They all shunned him and drew away from him and his wife,
> and they went to war against them.
> This caused strife among the animals.[129]

By rejecting human mastery, animals lost the harmony that was created by their submission. Animals now interact through conflict, a state of being emphasised by the terms *guerroier* and *guerre*.[130] Thus, in *La Bible anonyme*, animals relinquished their domestic nature and became wild because of human failings.

Guyart de Moulins' *Bible historiale* likewise attributed the distinction between wild and domestic to original sin. There were some animals that remained loyal to Adam after the Fall and by continuing to serve man, these animals were understood to be domestic. The animals that rebelled against man became wild. This division necessitated a drastic reordering of the animal kingdom and man's relationship to it. Animals were separated into categories based on size with the smallest and largest animals becoming wild, and the medium-sized animals remaining tame.

> First, man lost his power over large beasts.
>
> *Et notez cecy que lomme perdit sa seigneurie par son pechie des grands bestes / si comme des lyons affin quil sceust quil perdit telle seigneurie par son pechie*.[131]
>
> And note this that man lost his lordship through his sin of large beasts / like the lions in order for him to learn that he lost this lordship by his sin.

Then he was deprived of dominion over small beasts.

> *Et aussi fist il des petites bestes perdit il la seigneurie / si comme des mousches / affin quil sceust la verite de luy*.[132]
>
> And he also lost his lordship over small beasts / like the flies / in order that he learned the truth of himself.

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[129] *La Bible anonyme,* lines 494-505, pp. 95-6, trans. McCracken, *In the Skin of a Beast*, p. 40.

[130] McCracken, *In the Skin of a Beast,* p. 40.

[131] des Moulins, *Le premier volume de la bible historiée*, fo. 6r., trans. McCracken, *In the Skin of a Beast*, p. 41.

[132] Ibid.

Just when the situation was looking quite hopeless, man was granted some consolation by retaining control over medium-sized beasts: "And the middle beasts he has lordship to provide him with solace" (*Et des moyennes bestes a il la seigneurie pour soy solacier.*)[133]

Not only was this division of animals useful in explaining the current state of the world, but it reaffirmed the importance of domestic animals to humans: not only did they exist to serve, but they were examples and even reminders of man's mastery which was formerly over all of creation. In this interpretation, as McCracken observed, dominion was a 'natural' state for all animals, even if some no longer abided by it.[134] The idea of lordship as set of power relations thus only applied in any real sense to the relationship between humans and domestic animals. It was those animals that were bound as subjects to their lord, to whom they owed an obligation in return for his care. And consequently, it was those animals that could be condemned.

Whether domesticated animals were obedient through rigorous training or obedient by nature, domestication was understood as a relationship between owner and owned. As creatures that were owned, the "medium-sized" animals of *La Bible historiale* were defined by their duty to serve mankind. From this duty sprang the belief that they would do just that. As a result, there emerged human expectations of animal behaviour. When these animals did not act according to expectations, humans were required to take precautions and protect themselves. A fifteenth-century proverb captured the notion that even a tame animal might act contrary to its nature, warning that a rebellious dog needs a strong leash (*A rebelle chien / dur lien*).[135] The danger, of

[133] Ibid.

[134] McCracken, *In the Skin of a Beast,* p. 42.

[135] Antoine Jean Victor Le Roux de Lincy, *Le Livre des proverbes Français*, 2nd edn (2 vols, Paris, 1859), i, p. 166. The fourteenth-century customal, the *Somme rural,* also refers to misbehaving animals as rebellious, an idea which I will discuss at greater length in Chapter Two.

course, was that such an animal could not be trusted to act in accordance with expectations and perform its usual functions. A rebellious dog might exercise a will of its own and not heed its master, and thus could not be let off-leash. Another proverb counselled that "one cannot show the wolf to a bad dog" (*A mauvais chien on ne peut montrer le loup*), reminding us that a "bad" dog might not fulfil its duty to protect us when faced with a threat.[136] While the possibility of a wild animal becoming tame was intriguing, and appeared often in hagiography, the possibility of the opposite – a domesticated animal suddenly becoming wild and uncontrollable – was frightening.

Of course, the most egregious transgression a domestic animal could make was to kill a human being, thereby rejecting its assigned role as a servant of man. Killing a human represented a reversal of the domestic animal's place in the community and a challenge to the social order. An eleventh-century ecclesiastical law stated that due to humankind's dominion over animals, animals were to fear humans; humans were not to fear animals.[137] However, when an unpredictable animal roamed the street, bringing the wild into an ordered world, spaces such as towns and villages were no longer safe. Places that were supposed to represent the dominance of humans over nature, civilization over chaos, had their meaning turned upside down. Even when animals were seen as mere instruments for human use, that use brought with it not only a reminder of human dominance, but also of human vulnerability.

[136] *Le Livre des proverbes Français,* p. 166.

[137] See, for example, Gregory the Great (d. 604), 'De terrore et de rectoribus super brutis animalibus', in M. Fornasari (ed.), *Collectio Canonum in V Libris, Corpus Christianorum VI* (10 vols, Turnhout, 1970), iii, p. 496.

Conclusions

Like today, animals served a great many purposes in the Middle Ages and, as one might expect, medieval sources and their predecessors were not uniform in their understanding or use of animals. In terms of the textual sources discussed here, different genres used different concepts of animals and their natures to serve particular ends, reflecting a range of attitudes that were rooted in everyday experience. The practical and hands-on approach to animals in husbandry manuals, for example, presents a marked contrast to the instructional and symbolic use of animals as seen in vernacular bibles. Yet underlying these sources was the fundamental sense that humans and animals were *meant* to be different; animals were 'naturally' inferior and so were meant to provide humans with their services. As Remigius of Auxerre noted, animals had been given to man "so that humans might be able to receive their help, either for food or clothing, or as help for the labour of travel".[138] The investigation in this chapter of Genesis and its interpretations, alongside vernacular bibles, encyclopaedias, and husbandry manuals is thus valuable for delineating the nature and limits of the human-animal relationship as one that was multi-faceted and nuanced, certainly, but built on difference and subservience.

More specifically, these sources are useful in telling us about domestication and the corresponding expectations of domestic animals and their behaviour. A domestic animal was expected to fulfil a certain role: being under the *seigneurie* of man meant that it owed humans "son service" and was bound to this relationship in the same way that a vassal was bound to their lord. When the animal acted against human interests by killing a child, these expectations were disturbed and fundamental assumptions about how humans shaped their relation to animals were

[138] *Remigii Autissiodorensis expositio super genesim,* CCCM 136, p. 31, line 674. See also *Andreae de Sancto Victore Opera*, CCCM 53, lines 568-73, p. 22.

called into question. The moment the child was killed, that animal unforgivably crossed the threshold that kept domestic animals apart from and subservient to humans, frustrating the boundaries between 'us' and 'them' that were so carefully guarded and fortified in the textual traditions surveyed in this chapter. Understanding what an animal was expected to do was key in determining when an animal had acted against their natures, or *contra naturam*, which, as will be demonstrated in the next chapter, signalled the moment when the law stepped in.

On the one hand, by addressing man-killing beasts through the law, order could be restored. It was both a way to reassert control over the animal world and a way to fix responsibility for the harm. As will be demonstrated in Chapter Two, customals addressed the incident largely by following the Roman example set forth in Justinian's Digest and strove to keep animals in the legal category of property. However, Chapter Three details receipts of executions in which the killing was described as "murder" and particular criminal procedures were insisted upon, transforming the animal from property into a legal subject. Although the approaches in Chapters Two and Three represent starkly different ways of treating the offending animal, they both allowed society to reaffirm a relationship in which animals were subordinate to humans and under their control.

Yet, on the other hand, one could also argue that subjecting an animal to the legal process only compounded the disturbance created when that animal killed a human. Treating animals as criminals and formally executing them underscored that humans and animals were part of an integrated legal system. By placing the criminal animal into a category made by and for humans, the animal became a legal subject to whom the rules and laws of the human community applied. Such efforts therefore seemed to undermine and challenge the ideas expressed throughout this chapter that the human-animal relation was one built on difference and inferiority.

With this in mind, one can see why some historians, such as Cohen and Salisbury, have argued that cases against animals reflect a blurring of boundaries between humans and nonhumans, the result of enduringly popular anthropomorphism. However, in the cases which saw animals transformed into criminals, it was not the categories of human/animal that were disturbed or made vulnerable. Rather, as I will demonstrate in the chapters that follow, the animal moved between the categories of legal object and legal subject. It was the legal system itself which was revealed to be flexible by incorporating and managing deviant animal behaviour.

Chapter 2
The Law in Theory: Animals and Liability in French Customals

As shown in Chapter One, humans had expectations of domestic animals and the role that they fulfilled based on an understanding of the human-animal relationship that was rooted in Genesis. In this chapter, I will illustrate how the customary tradition addressed incidents in which animal behaviour did not conform to these expectations and resulted in harm to persons or property. The customals examined here span the thirteenth through the fifteenth centuries and draw chiefly on the customs of Northern France and Burgundy. By comparing a range of French customals, this chapter demonstrates how the law in theory perceived the behaviour of harm-causing animals and how such behaviour should be addressed.

Under barbarian law codes, such as the *Lex Salica*, the harm caused by animals was assigned a monetary value that was to be paid to the victim. However, this changed with the influence of Roman law in the twelfth century. Under Roman law there was a special suit available to victims of harm-causing animals, the *actio de pauperies*. This suit was governed by two distinct requirements: no human intervention could be the direct or proximate cause of the harm, and the animal had to act *contra naturam sui generis* or against the nature of its kind. Using the *actio de pauperies* as a framework, early medieval customals tended to focus on whether there was human involvement in the incident, what that involvement looked like, and how then to appropriately assign liability. Philippe de Beaumanoir's *Coutumes de Beauvaisis* and the *Établissements de Saint Louis*, for example, explored various scenarios in which owners or third parties were responsible for the harm caused by the animal. With little agency of their own, the status of those animals remained that of property, thereby denying them any form of criminality. The results of the animal's action thus remained a civil matter. Later customals, on

the other hand, complicated this picture by expressing more interest in the nature of the harm-causing animal and its behaviour. Jean Boutillier's *Somme rural* described misbehaving animals as rebellious, a term with both human and criminal connotations, and the *Coutumes de Bourgogne* even mandated the execution of animals that killed human beings. This divergence from earlier customals not only challenged the idea that injury caused by animals was, as the Digest described, "harm without guilt", but also the idea that there was a uniform understanding of harm-causing animals within the customary tradition. An exploration of customals is thus critical in revealing not only a range of juridical opinion over time, but the way that later medieval practice deviated from earlier customals. It is only with the later customals that we see learned law come more into line with practice as epitomised by the executions of animals examined in Chapters Three, Four, and Five.

The Legal Landscape: Early Law Codes

The ways in which harms are addressed can differ across time and place and are often used by historians as a way to trace attitudes to social values.[1] In the early Middle Ages, punishment was largely retroactive and comprised of fines. As a result, the treatment of cause-harming animals was based on the cost of the harm to the victim. In contrast to later customals, the cost to the owner would thus vary depending on the victim.

One such code was the *Pactus legis Salicae*, one of the earliest Frankish law codes, which contained a brief paragraph on harm-causing animals within a lengthy list of punishments

[1] See Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New Brunswick and London, 2009), pp. 8-11; see also Wendy Davies and Paul Fouracre (eds), *The Settlement of Disputes in Early Medieval Europe* (Cambridge, 1986).

whose purpose was to establish monetary penalties for various criminal acts. [2] A particular worth or "wergeld" was ascribed to victims of murder depending upon their gender, class, and status.[3] The same rule applied if an animal caused the victim's death. The monetary value of the harm was to be paid to the injured party by the owner of the animal. Under Salic law the owner must pay for half the worth of the harm and the other half was satisfied by the surrender of the animal to the victim's kin.

> If a man has been killed by a domesticated four-footed animal and it is proved by witnesses that the owner of the animal had not fulfilled the law beforehand [by taking proper care of his beast], the owner of the animal shall pay half of the composition; and let him hand over the animal that caused the offense to those demanding it to count for the other half-composition.[4]

The emphasis in the *Pactus legis Salicae* was on the worth of the victim and monetary restitution.[5] There was only the slightest attempt at determining liability and little discussion of the animal's behaviour. Unlike later customals which were keen to distinguish between cases in which animals caused harm seemingly for no reason and when human actions were responsible, Salic law made no such distinction. Here, it was not important why the animal acted the way it

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[2] Emerging sometime between 507 and 511 and promulgated by the Frankish king Clovis, the *Pactus legis Salicae* combined elements of Roman law, local custom, royal statutes, and Christian ideals. For more, see Friedland, *Seeing Justice Done*, p. 29. In these codes, law was centred on the individual, and such rights and obligations as he was given would follow him regardless of where he travelled or resided. While certain crimes in the later Middle Ages, including death caused by an animal, would come to be seen as a crime against the community and thus require a very public resolution, crime in the early law codes was seen as a wrong against a particular person.

[3] See *Pactus Legis Salicae*, title XLI in *The Laws of the Salian Franks,* trans. Katherine Fischer Drew (Philadelphia, 1991), pp. 104-6. The laws of the Burgundians contain similar determinations of monetary redress. See *Liber Constitutionum sive lex Gundobada*, title II (for murder); title V (where each blow suffered by the victim is given a monetary value); and title XI (fine determined by the type of wound). For an English translation, see *The Burgundian Code,* trans. Katherine Fischer Drew (Philadelphia, 1976).

[4] *Lex Salica,* ed. Paul Johannes Merkel (Berlin, 1850), title XXXVI: "Si quis homo ex quolibet quadrupedem domesticum occisus fuerit et hoc per testibus fuerit ad probatum, medietatem conposicionis dominus ipsius quadrupedis cogatur exsolvere. Ipsum vero quadrupedum [auctorem criminis] pro medietatem conposicionis restituat requirenti". The English translation is taken from Drew, *Laws of the Salian Franks,* p. 98.

[5] Friedland, *Seeing Justice Done,* pp. 31-2. The death penalty was very rare in barbarian laws and only slightly more common in the capitularies of the sixth century. See, e.g., Capitulary VI, II, 3, of the *Lex Salica,* which stated that "the man who kills another man without cause" shall be put to death, in Drew, *Laws of the Salian Franks,* p. 50.

did because the law only applied if the owner was negligent. The law focused on the results of the actions, rather than the actions themselves: it stated only that when a man was killed by an animal, it must be proved by witnesses that the owner was being irresponsible in terms of its care. In such cases where fault can clearly be attributed, it seemed only right that the owner paid the damages. This system was useful in preventing blood feuds and maintaining peace by substituting money payments for vengeance.[6] However, there was no indication that a suit would be available to a victim if the owner had taken proper care of the animal and no human fault could be found. It was into this gap that the Roman action *in pauperies* would step. The medieval customals discussed below thus drew greater legal inspiration from Roman law than from sixth century law codes.

The Legal Landscape: the actio de pauperies

The *Corpus Iuris Civilis* and its 're-discovery' in Italy at the end of the eleventh century was one of the most important legal developments in the Middle Ages. Commissioned by the Byzantine Emperor Justinian, the *Corpus* spurred a renaissance in Roman legal studies that spread from Italy into southern France and beyond with one law in particular being hugely influential in cases against miscreant animals.

The *Corpus Iuris Civilis* contained four parts: the *Codex* (existing imperial legislation), the *Digesta* (a collection of juristic writings), the *Institutiones* (a law student textbook), and the *Novellae* (laws that had been passed after 534).[7] The *Digesta* or Digest provided in fifty books a

[6] See Drew, *Laws of the Salian Franks,* p. 35; Friedland, *Seeing Justice Done*, p. 30.

[7] For more on the development of the *Corpus Iuris Civilis,* see *The Corpus Iuris Civilis in the Middle Ages: Manuscripts and Transmission from the Sixth Century to the Juristic Revival,* ed. Charles M. Radding and Antonio Ciaralli (Leiden, 2007).

condensed version of passages from Roman doctrine mainly dealing with private law. The majority of the work consisted of extracts from the writings of five great lawyers: Ulpian, Paul, Papinian, Modestinus, and Gaius. The Digest sought to establish a rationale for determining the penalties of particular crimes and consequently the focus shifted to the intent of the offender and the assignment of liability. Distinctions were made between criminal cases involving malicious intent, negligence, and harm that was unforeseeable.

The Digest was key in forming the foundation of the treatment of harm-causing animals in medieval customals and other juristic texts. In Digest 9.1.1, entitled *Si quadrupes pauperiem fecisse dicetur* ("If a four-footed animal is said to have made one poorer"), a variety of theoretical cases were presented in which domestic animals caused damage or loss followed by a discussion of the extent to which the owners would be liable. Originally found in the Twelve Tables, and later in the *Lex Aquilia,* the term *quadrupes* at first limited the action to four-footed beasts of burden. However, when Ulpian wrote his commentary there was no such limitation and the action was enlarged to apply to all four-footed animals.[8]

The term *pauperies* derived from *pauper* and means 'poverty'.[9] The term thus gives the sense of 'harm which makes one poorer'. The Twelve Tables used this term rather than *damnum* (meaning loss, damage, or injury), perhaps because it also reflects the idea that the wrong committed was a faultless wrong. It was acknowledged, after all, that an animal lacked reason and so could not commit a legal offence: "nec enim potest animal iniuria fecisse, quod sensu caret".[10] This lack of reason was emphasised throughout the commentary to the Digest, with the

[8] D. 9.1.1.2: "Quae actio ad omnes quadrupedes pertinent".

[9] 'Pauperies', *The Oxford Latin Dictionary*, ii, p. 1477. See also Alan Watson, 'The Original Meaning of Pauperies', *Revue Internationale des Droits de l'Antiquite*, vol. 17, série 3 (1970), pp. 357-76, available at: https://digitalcommons.law.uga.edu/fac_artchop/391 (11 May 2021).

[10] D. 9.1.1.3.

thirteenth-century jurist, Vivianus Tuscus, famously describing the animal's actions as "harm without guilt" (*damnum datum sine culpa facientis*).[11] As a result, the criminal intent of the animal was not at issue. The legal question therefore was not whether the animal had a certain state of mind at the time the harm was committed, but whether certain requirements concerning human involvement and the animal's action had been met.

In order for the *actio de pauperies* to apply, there were two requirements*:* 1) the harm could not be traced to any human fault; and 2) the animal must have acted *contra naturam sui generis*.[12] Regarding the first requirement, the general rule was that if human intervention caused the harm, the action was not available.[13] Thus, the action did not apply if the animal was provoked.[14] Here liability hinged on causality. The question was: what were the origins of the animal's actions? If, for instance, as in Digest 9.1.1.7, a horse kicked because it was reacting to pain inflicted by a human, the action was not available.[15] In such cases whoever hit or wounded the horse would be liable for an action of wrongful damage under the *lex Aquilia*.[16] But, as the Digest noted, "if the horse kicked someone who was stroking it or someone who was patting it, this action will be available".[17] In other words, if the human action could not reasonably be said

[11] *Corpus iuris civilis Iustinianei: cum commentariis Accursii* (6 vols, Lyon, 1627), i, D. 9.1.1: 'Si quadrupe', p. 1052.

[12] Vivianus Tuscus broke the two requirements into three components: 1) the animal is four-footed (*quadrupes*); 2) the animal acted contrary to the nature of its kind (*quod fecerit contra naturam sui generis*); and 3) no human guilt intervened (*quod hominis culpa non interveniat*), ibid.

[13] Ibid.: "Sed autem hominis culpa intervenient, cessat haec actio".

[14] D. 9.1.1.6: "Sed et si instigatu alterius fera damnum dederit, cessabit haec actio".

[15] D. 9.1.1.7: "ideoque si equus dolore concitatus calce petierit, cessare istam actionem".

[16] Ibid.: "sed eum, qui equum percusserit aut vulneraverit, in factum magis, quam lege Aquilia teneri". The *lex Aquilia* was Roman law that provided compensation for property that had been damaged. It was concerned with *damnum iniuria datum* ("damage unlawfully inflicted") and applied whether the culprit acted intentionally or through negligence. For more, see Peter Birks, *The Roman Law of Obligations*, ed. Eric Descheemaeker (Oxford, 2014), pp. 192-220.

[17] D. 9.1.1.7: "At si, cum equum permulsisset quis, vel palpatus esset, calce eum percusserit, erit actioni locus".

to have provoked the animal into causing harm, the *actio de pauperies* was the appropriate suit to bring.

The second requirement was not precisely defined in the Digest, making the idea of acting *contra naturam* a conveniently flexible concept. Behaviour that was *contra naturam* was described in the commentary of Accursius as *crudelitate* (cruel) or *feritas* (savage).[18] Digest 9.1.1.7 defined the action as applying to an animal that was "moved by some wildness contrary to the nature of its kind".[19] The *pauperies* suit was thus used when such cruel and savage wildness was stirred up and the animal acted upon it.[20] This requirement was not meant to tie jurists into knots about what may or may not be the general disposition of a particular animal. In fact, Digest 9.1.1.4 stated that the action applied even if a horse with a tendency to kick did indeed kick someone.[21] To avoid any convoluted assessment of animal natures, *contra naturam sui generis* did not refer to the behaviour of a particular animal or even the species to which the offender belonged. Rather, the rule referred to behaviour that was uncharacteristic of a domesticated animal.[22] Recalling Chapter One, humans expected domestic animals to be submissive and act according to their divinely-ordained role as servants of mankind. The expectation was that the horse would *not* kick and the ox would *not* gore. When animal behaviour did not conform to these expectations, it was because fierceness or wildness had overcome their domesticated nature. However, if the animal was reacting to some outside force – the ox gored because it was provoked, or the horse slipped on uneven ground - then they acted

[18] *Commentariis Accursii,* i, D. 9.1.1.4 (g): 'Feritate', p. 1053: "Id est crudelitate contra naturam sui generis".

[19] D. 9.1.1.7: "Et generaliter haec actio locum habet, quotiens contra naturam fera mota pauperiem dedit".

[20] See *Commentariis Accursii*, i, D. 9.1.1.4 (g)(n), p. 1053: "Actio de pauperie utilis datur ex damno dato ab animali natura sua commoto".

[21] D. 9.1.1.4: "tunc haec actio locum habet. . . puta si equus calcitrosus calce percusserit".

[22] *Commentariis Accursii*, i, D. 9.1.1.4 (i): 'Nimian ferociam', p. 1053. Accursius wrote that the action was available only if the particular animal's nature was tame ("si etiam propria natura fit mansueta").

secundum naturam.[23] This reaction was not seen as inconsistent with their natures and so in such cases the action in *pauperies* was not available.

The requirement that an animal's behaviour be *contra naturam* served to limit the owner's liability by necessitating a spontaneous and unexpected outburst on the part of the animal. Owners could not be held responsible when their animals acted contrary to their nature for no obvious reason.[24] The key question in the assignment of liability thus became *who or what was responsible for the animal's actions?* If the harm was based on the animal's own temperament and there was no human action that could be said to be the direct or proximate cause of the harm, then no human could be held responsible.

Lastly, the *actio de pauperies* only applied to animals that were within human control. Wild animals were considered a different matter altogether because "they are savage by nature" (*naturalem feritatem)*.[25] Consequently, if they caused harm, they were treated differently under the law. For instance, if someone reared or maintained a wild animal (i.e., one that was not typically domesticated), such as a boar, fox, bear, or lion, which then killed or injured another person or animal, the owner was responsible. The victim would be compensated at the discretion of the judge.[26] Here the owner of the wild animal was liable for the harm regardless of his state of mind or the level of care he took in securing the beast. Like today's strict liability suits, the injured party did not have to show that the owner was at fault because the owner knew or should

[23] For other examples of animals acting *secundum naturam*, see D. 9.2.11.5 (someone irritates a dog and causes it to bite another person); D. 9.2.9.3 (someone scares a horse, who as a result, throws its rider into the river).

[24] Reinhard Zimmermann referred to this as the "spontaneity doctrine", although it is really just a foreseeability test. See *The Law of Obligations: Roman Foundations of the Civilian Tradition* (Oxford, 1996), pp. 1102-4. On its own, the test is only feasible as a legal principle when based on the expected behaviour of domestic animals.

[25] D. 9.1.1.10.

[26] Inst. 4.9.1.

have known that such an animal could harm someone.[27] Injuries were foreseeable because of the natural propensity of a wild animal, whereas domestic animals were expected to behave in a certain way that comported with their status as the mild and obedient servants of man.

The exception to this rule was if the wild animal had fled. According to Digest 9.1.1.10, if the owner could neither follow the animal nor knew where it had gone, the owner was not liable for any damage that the animal caused.

> Therefore, if a bear breaks loose and so causes harm, its former owner cannot be prosecuted because he ceased to be owner as soon as the wild animal escaped. Accordingly, if I kill the bear, the corpse is mine.[28]

Thus, liability only attached if the wild animal was in the owner's possession.[29] When an animal had fled, it no longer belonged to anyone: its actions were its own and were not connected to any human caretaker. This left open the possibility that someone else could seize or kill the animal and consider it their property.

One last consideration in the *pauperies* suit was timing. It was the owner of the animal at the time of contestation of the suit, rather than at the time the damage had been committed, who was liable. What this meant in a practical sense was that the harm followed the body of the

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[27] Historically, the keeping of wild animals has been assigned strict liability status and this is still true today. E.g.: Chapter 22, §2(1) of the Animals Act 1971 states that where damage is caused by an animal which belongs to a "dangerous species", any person who is a keeper of that animal is strictly liable for any harm which may have been caused by the animal regardless of whether the keeper was at fault. A "dangerous species" is one that is "not commonly domesticated in the British Isles". Available at http://www.legislation.gov.uk/ukpga/1971/22 (27 Jan. 2017). No-fault based liability is usually relegated to activities that are considered abnormally hazardous. It is justified by a focus on compensating the injured individual, and today, by a desire for the law to send particular signals about the allocation of the cost of accidents. See Joseph Sanders et al, 'Must Torts be Wrong?: An Empirical Perspective', *Wake Forest Law Review,* vol. 49, issue 1 (2014), p. 5.

[28] D. 9.1.1.10: "In bestiis autem propter naturalem feritatem haec actio locum non habet: et ideo si ursus fugit et sic nocuit, non potest quondam dominus conveniri, quia desinit dominus esse, ubi fer evasit: et ideo et si eum occidi, meum corpus est".

[29] Inst. 4.9; D. 21.1.40.1.

offender (*noxa caput sequitur*).[30] Thus, if the animal died before the suit, the right to bring the action disappeared.[31]

Wild or tame, the intimacy of space between people and animals in medieval life meant that when an animal acted violently, it could easily provoke anxiety and fear. A sudden burst of wild behaviour from a domesticated animal inevitably took humans by surprise. The transformation into frenzied beast turned a once loyal worker or companion into a killer. It defied the natural order, in a moment rendering the animal uncontrollable and threatening. The domestic animal that killed its owner or a third party had submitted to its baser instincts, not unlike a human criminal. Despite the animal's lack of reason, by manifesting behaviour deemed beyond the boundaries of what was acceptable, it presented a threat to civilised society.

The remedies available under the *actio de pauperies* reflected the forward-thinking aspect of the Digest. While earlier law codes were retroactive in that they sought to compensate for damage already done, the Digest sought to prevent future harm for the sake of public interest. In a *pauperies* suit, either the owner of the animal compensated the victim an amount equivalent to the harm, or the animal was surrendered (*noxae dare*).[32] These remedies ensured that the victim would not have incentive to kill the animal, which would violate the owner's rights. Furthermore, they avoided the injustice of making the owner pay more than the value of the animal. Given that the owner was not directly responsible for the injury, incurring a loss worth

[30] D. 9.1.1.12: "Et cum etiam in quadrupedibus noxa caput sequitur, adversus dominum haec actio datur, non cuius fuerit quadrupes, cum noceret, sed cuius nunc est".

[31] D. 9.1.1.13: "Plane si ante litem contestatam decesserit animal, extincta erit actio".

[32] D. 9.1.1 pr.; also D. 9.1.1.11: "aut noxam sarcire aut in noxam dedere". The same remedies were also available when a slave committed damage: either compensation was paid or the ownership of the slave was transferred to the plaintiff of the noxal action, see D. 9.4.1 and D. 42.1.6.1.

more than that which caused the harm struck jurists as unfair.[33] Thus the surrender of the delinquent provided a suitable remedy, not only incentivizing owners to guard their animals closely, but also providing a measure of safety for the public. Surrender remained a characteristic feature of cases against animals throughout the fourteenth and fifteenth centuries. It continued to be a commonly used remedy in the customary tradition, as we shall see below, as well as in practice, as we shall see in Chapters Three, Four, and Five, as the offending animal steadily made its way through the criminal justice system.

Animals in Customary Law

It is with the framework of the *pauperies* suit in mind that we must approach French customals, a key source in the study of criminal animals. These customals provide insight into the diverse legal practices of local feudal jurisdictions by exploring various scenarios in which animals caused harm. Using the requirements of the *actio de pauperies,* early customals, such as the *Coutumes de Beauvaisis* and the *Établissements de Saint Louis*, both from the thirteenth century, focused on human actions in order to determine when an owner or third party might be liable. Although it was the animal that committed the harm, its actions were not discussed in terms of intent*,* the element associated with criminal behaviour. As a result, the animal did not undergo any kind of legal transformation – it remained property. Later customals, however, diverged from this model by expressing a greater interest in the animal's behaviour. The fourteenth-century *Somme rural* described the animal's actions as rebellious, a distinctly human term with criminal repercussions, implying not only that the animal had flouted expectations relating to its

[33] D. 47.2.62.5. There is also the suggestion in D. 9.4.1 that surrender of the animal proved more popular than offering compensation.

kind, but that acting outside these expectations was unlawful. The fifteenth-century *Coutumes de Bourgogne* went so far as to insist on executing animals that killed human beings. This departure from the *pauperies* framework undermined the idea that injury caused by animals was "harm without guilt". An in-depth examination of customals thus demonstrates that there was a range of legal opinion on how the harm caused by animals ought to be addressed. Furthermore, it highlights the divergence between learned law and practice, where, as we shall see in the following chapters, animals were not only property but were temporarily transformed into criminals by the application of criminal language and procedure.

Coutumes were originally a set of local customary laws which emphasised the spoken word rather than the written word and developed as the result of practice over an extended period of time.[34] Rather than emanating from the state, customs developed organically and could apply to an area as small as a castellany or as large as a duchy. To be legally binding, the practice had to be known and tolerated by the authorities who have the power to abrogate it, according to the twelfth-century decretist, Rufinus.[35] It was precisely this process that made the custom an accepted standard of judgement. Additionally, custom could not, according to Gratian, conflict with reason or Christian faith.[36] Jacques d'Ableiges' *Grand coutumier de France* (*c.* 1380) provided a helpful definition:

> *Coustume est un raisonnable establisement non escript et pour le commun profit mis au pais, et par le prince gardé et approuvé notoirement par le cours de XL ans*.[37]

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[34] See Jacques d'Albleiges, *Le Grand Coutumier de France*, ed. Éd. Laboulaye and R. Dareste (Paris, 1868), ch. 2, p. 190: "droict non escript est ce que long usaige a confermé, ou les longues coustumes qui sont confermées par l'assentement de ceulx qui en usent, et sont tennues comme droict". See also *Decretum Gratiani,* D. 11, c. 4, describing custom as "usus que longeui".

[35] Rufinus, *Summa Decretorum,* ed. Heinrich Singer (Aalen, 1963), *ad* D. 4 c. 4, p. 13.

[36] *Decretum Gratiani,* D. 11, c. 4: "usus et consuetudo legem et rationem vincere non potest"; ibid., D. 12 c. 8: "immota maneat consuetudo, que contra fidem catholicam nichil usurpare dignoscitur".

[37] d'Albleiges*, Le Gand Coutumier de France,* ch. 3, p. 192.

> Custom is a reasonable establishment, oral and for the common good of the country, and by the Prince manifestly guarded and approved for the course of forty years.

By comparison, a law (*lex*) was the result of a single legislative act that was issued and supported by a positive legal authority. Isidore of Seville summarized the difference in his *Etymologies* as follows:

> [b]etween law and custom there is this difference, that law is written, while custom is usage (*consuetudo*) tested and found good by its antiquity, or unwritten law. Indeed, law (*lex*) is so named from 'reading' (*legere*) because it is written. Custom (*mos*) is longstanding usage, taken likewise from 'moral habits' (*mores,* the plural of *mos*).[38]

If a law and custom conflicted, it was generally the more recent written law that was deemed invalid.[39] More often, however, a system of preference was developed. For example, according to the customary laws of Bordeaux, when custom could not provide an adequate answer to a legal problem, courts should resort to similar customs, then to natural reason, and lastly to written law, such as statutes or royal decrees.[40] In this way, both customary and statutory law existed side-by-side, creating a multi-layered legal topography. In such an environment, law was not a coherent corpus but was constantly being made and re-made.[41]

To refer both to the customary laws and usages of a region, as well as to any collection of these laws, jurists used the term *coutumes*. As the chief laws in the central and northern part of France, *les coutumes* were theoretically enforced in lay courts. In order to be accepted as custom, a law or usage had to show certain characteristics:

1. The custom had to been generally applied throughout the territory;

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[38] *The Etymologies of Isidore of Seville*, bk. II.x.1, p. 73.

[39] *Le Grand Coutumier de France* tells us that unwritten custom takes precedence over a conflicting written law: "Et ès pays coustumiers les coustumes qui sont contraires au droict escript passent et destruissent le droict", ch. 2, p. 190.

[40] *Livres des coutumes,* ed. Henri Barckhausen (Bordeaux, 1890), no. iii, p. 176.

[41] See Sally F. Moore, *Law as Process: An Anthropological Approach* (London, 1978), pp. 42-8.

2. The custom had to be applied often enough to constitute an established habit or norm;
3. The custom had to be sufficiently old; and
4. The custom had to be notorious or manifest and without doubt.[42]

Just how old a custom had to be was somewhat flexible. As we saw above, the *Grand Coutumier de France* required forty years.[43] Without giving a specific number, Boutillier's *Somme rural* declared that the custom had to be "kept and guarded in the territory by ancient wisemen" which had to remain the case according to the territory in which it was practiced.[44]

Because *coutumes* were numerous and varied from region to region, legal practitioners (lawyers, *baillis*, and other government officials) collected those which were in force in their region. These collections might be referred to as *anciennes coutumes* and were generally private works meant for local application. As a result, there was no attempt to formulate general principles or a systematic discussion of legal theory. Rather, the customal provided detailed descriptions of a specific area's customs as it related to particular situations.

The first compilations of customary laws were written in the second half of the twelfth century.[45] One of the earliest appeared in the region of Avignon in 1154. The *Très Ancien*

[42] Jean Boutillier, *Somme rural* (Paris, 1611), bk 1, title II, p. 6: The custom must be "si notoire et si manifeste qu'il ne la faut avoir en doubte aulcun, comme plusiers choses sont si notoirement usées et gardées en aulcuns pays que elles sont congeues et notoires à tous, et de celle se peut on bien rapporter à la discretion de la court en cas que la partie adverse le mettroit en faire contraire".

[43] d'Ableiges*, Le Gand Coutumier de France,* ch. 3, p. 192. See also *Decretum Gratiani,* C. 16, q. 3, d.p.c 15 §4: "Hec de prescriptionibus decenni, vel vicennii, vel tricennii intelligenda sunt, si sine interruptione possessa probentur".

[44] Boutillier, *Somme rural,* bk. 1, title II, p. 5. A norm was determined to be custom in an *enquête sur turbe,* an inquest at which a group of men would report on the ruling local custom. See L. Waelkens, 'L'origine de l'Enquête par Turbe', *Revue d'Histoire du Droit,* vol. 53, issue 3 (1985), pp. 337-46. Rather than referring to written text, these men were simply locals who knew the law. According to the *Somme rural,* these men were "the wisest and oldest", and with their approval, the decision that the norm was indeed a custom was sent to the *Parlement* in Paris where a final decision would be made. See *Somme rural*, book 1, title II, p. 6.

[45] The twelfth century is referred to by many legal historians as the birth of punishment or the emergence of public penal law. For a socio-historical view on the subject, see P. W. A. Immink, who places the origins of punishment in the context of changing power relationships in twelfth century feudal society, *La Liberté et la Peine: Étude sur la*

Coutumier appeared in Normandy around 1200. By the second half of the thirteenth century, codifications of customary laws were compiled in many other regions of France, such as: the *Grand Coutumier de Normandie* (*c*. 1254), which updated the customary laws of French Normandy; the *Livres de Jostice et de Plet* (*c*. 1260–70) and the *Établissements de Saint Louis* (1272–3), which detailed the customary laws of the Orléans region; and Philippe de Beaumanoir's *Coutumes du comté de Clermont en Beauvaisis* (*c*. 1283). The first written *coutumes* of Bordeaux, Provence, and Toulouse also date from the thirteenth century.[46] These were followed by several important customals which appeared over the course of the fourteenth and fifteenth centuries: Jacques d'Ableiges' *Grand Coutumier de France* (*c*.1380); Jean Boutillier's *Somme rural* (*c*. 1385); and the *Coutumes et stilles observez et gardez ès pays d'Anjou et du Maine* (1411).[47] Drawn up by lawyers, these works were meant to aid both litigants and judges in navigating various suits and applying customary law in an efficient manner.

The culmination of this trend occurred in 1454 when Charles VII issued the ordinance of Montil-lès-Tours. Along with other sweeping juridical reforms, Article 125 dictated that the "coutumes, usages et stiles" of all of France be codified, which would then be brought before the King for verification.[48] The customs of all the regions of France from then on were to have the

Transformation de la Liberté et sur le Développement du Droit Pénal public en Occident avant le XIIe siècle (Assen, 1973).

[46] Jean Caswell and Ivan Sipkov, *The Coutumes of France in the Library of Congress: An Annotated Bibliography* (Washington, D.C., 1997), pp. 61-5.

[47] Ibid., pp. 7, 29.

[48] *Recueil général des anciennes lois françaises: depuis l'an 420, jusqu'a la Révolution de 1789,* ed. François André Isambert et al. (29 vols, Paris, 1825), ix, p. 252: "ordonnons et décernons, déclairons et statuons que les coutumes, usages et stiles de tous les pays de nostre royaume soyent redigez et mis en escrit, accordez par les coutumiers, practiciens et gens de chascun desdiz pays de nostre royaume, lesquelz coutumes, usages et stiles ainsi accordez seront mis et escritz en livres, lesquelz seront apportez par-devers nous, pour les faire veoir et visiter par les gens de nostre grand conseil, ou de nostre parlement, et par nous les décréter et conformer".

force of law.[49] In 1457, Philip the Good, Duke of Burgundy, issued a similar order for the *coutumes* of his territory. The *coutumes* of both the duchy and the county of Burgundy were codified in 1459.[50] As a result of this codification, changes in custom were slower and more conscious.[51] The simultaneous pressures from the gradual encroachment of royal jurisdiction and the increasing emphasis on the study of Roman law likewise obliged those who worked within customary law to focus more clearly on defining its boundaries. The efforts by compilers to preserve local custom are attested to by Philippe de Beaumanoir, who wrote at the beginning of his *Coutumes de Beauvaisis*:

> [i]t seemed to me, and to others as well, that it would be good and profitable to write down and register all customs that are currently used so that they may be maintained without change from now on. Because memories are fleeting and the lives of people are short, that which is not written down is soon completely forgotten.[52]

As private works that varied both geographically and chronologically, it is perhaps not surprising that there were some differences in the way customals approached animals that had committed a misdeed. The customals examined here thus give us a good idea of the ways in which jurists grappled with determining liability and what the law was meant to achieve, all while relying on the framework provided by the *pauperies* suit. Such an in-depth examination of the treatment of harm-causing animals not only demonstrates that there was no uniform approach to this topic in the customary tradition (there could, in fact, be a great deal of disagreement on

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[49] This was part of a larger programme of judicial reform, see *Ordonnances des roys de France de la troisième race*, ed. Eusèbe Laurière et al. (21 vols, Paris, 1790), xiv, pp. 284-314.

[50] Ernest Champeaux, 'Coutumes de Bourgogne et coutumes du duché de Bourgogne', *Mémoires de la Société pour l'histoire du droit et es institutions des anciens pays bourguignons, comtois et romands*, vol. 2 (1935), p. 75.

[51] Bloch, *Medieval French Literature and Law*, p. 119. For the process involved in writing down custom, see Esther Cohen, *Crossroads of Justice,* pp. 28-39.

[52] *CB*, i, *Li Prologues,* title 7, pp. 4-5: "il m'est avis et as autres aussi, que tues coustumes qui maintenant sont uses sont bonnes et pourfitables a escrire et a enregistrer si qu'eles soient maintenues sans changier des ore en avant, par les memoires qui sont escoulourjans et par les vies as gens qui sont courtes, ce qui n'est escrit est tost oublié".

the matter), but it also makes the animal's treatment in practice as seen in the following chapter all the more remarkable.

Causality & Human Actions

Early customals tended to emphasise the role of human actions and intent in an effort to fairly assign liability for damage caused by animals. The animals themselves were not the focus, but rather were treated like property that could simply be confiscated if needed. This approach can be seen clearly in *Li Livres de Jostice et de Plet* and Philippe de Beaumanoir's *Coutumes de Beauvaisis*, both from the second half of the thirteenth century. Their emphasis on human behaviour and causality not only reflected the requirement in the *pauperies* suit that the harm not be traced to a human act or omission but ensured that the animal and its actions remained devoid of any sign of legal personhood. In fact, Beaumanoir was an outspoken opponent of punishing animals for their behaviour, which would not only go beyond the remedies of the *pauperies* suit but also add, in his opinion, a pointless criminal element to the case.

The *Livres de Jostice et de Plet*, written around 1260, contained the customary law of the Orléans region, and included texts from Roman and canon law that were often translated directly from the source. The chapter on four-footed animals that caused "damage and homicide" (*fet domage, et d'omecide*) consisted solely of a word for word translation of the Digest.[53] In the section on penalties, the customal stated that four-footed animals which caused harm "are lost by forfeiture" (*ele est perdue par le forfet*), but if the owner "wants to retain possession of the animal, he must pay a fine for the damage" (*se il la veut avoir, il amendera le domage*).[54] There

[53] *Li Livres de Jostice et de Plet,* ed. Louis Nicolas Rapetti (Paris, 1850), bk. 5, ch. 1, p. 149.

[54] Ibid., bk. 18, ch. 24: 'Des Paines', art. 10, p. 278.

was no assignment of liability; the question was simply whether the owner valued the animal more than the monetary penalty.

The interest in human intervention appeared later in the *Livres de Jostice et de Plet* in situations where liability was at issue. In chapter 48, the author explored various scenarios in which a third party was involved. First the author asked: "If my horses run down the path and I am there. . . and the horses kill or injure a man, am I responsible?"[55] The answer was no, presumably because no fault of the owner had been mentioned. However, if a third party had "run in a disorderly manner", which had, in turn, caused the horses to run, then that third party would be responsible.[56]

The last scenario investigated a situation in which the owner might be responsible. It asked:

> *[e]t se ton cheval ou ta beste, ton buef, ta vaiche, tes truies, me font domage, i es-tu tenuz? Nenil, s'a ne l'a fet par ma négligence ou par mauvèse garde; mès la beste est tenue; car l'en droit bien garder tex bestes. . .et metre i grant diligence.*[57]
>
> [a]nd if your horse or your beast, your bull, your cow, your pigs, cause me damage, are you responsible there? No, if it is done by my negligence or by being badly guarded. But the beast is surrendered, because your beasts must be well guarded. . . and kept with great diligence.

Once again, it appears that the owner can avoid liability. If the court determined that the victim had not acted as a reasonable person should and so was guilty of negligence, the owner was not responsible for the harm caused by his animal. Nor was the owner responsible if the animal was not guarded sufficiently, which would presumably be the fault of a third party. However, the duty of care imposed on the guardian and the victim also applied to the owner. The customal

[55] Ibid., bk. 19, ch. 48: 'Se Home ou Beste A Quatre Piez Fet Domage', art. 9, p. 322: "se mis chevaus vet la voir, et je suis desus. . . et li chevaus tut ou mehaingt un home, i sui-je tenuz?"

[56] Ibid.: "mès se tu aloies désordeneement, et an ce fust fet, tu seroies tenuz".

[57] Ibid., art. 10, p. 322.

stated that the animals "must be well guarded", suggesting that if an owner was not sufficiently diligent in ensuring that his animals were enclosed and/or being watched, he might indeed be liable beyond the surrender of his animal. This served both a deterrent purpose (owners were more inclined to guard their animals), as well as an incapacitating purpose (confiscation of the animal prevented future harm).

Li Livres de Jostice et de Plet did not imagine animals as actors in their own right, nor did their actions require more than fines and confiscations. A similar approach can be seen in Philippe de Beaumanoir's *Coutumes de Beauvaisis,* compiled in 1283. This work, described as the "most significant work on customary law to survive from thirteenth-century France", covered the customs of the Beauvais region and specifically the county of Clermont.[58] It is particularly useful as testimony of an important public official who was familiar with the law. Beaumanoir was a seigneurial *bailli* of Clermont in 1279, and shortly thereafter, became part of the royal administration of Philippe III le Hardi and his successor, Philippe IV le Bel. He served as *sénéchal* in Poitou (1284-1287) and Saintonge (1287-1288) before acting as a royal *bailli* in Vermandois (1289-91), Touraine (1291-1292), and Senlis (1292-1296).[59]

The *Coutumes de Beauvaisis* is not completely comprehensive. For example, it provided little guidance on the actual course of procedure. Yet it did cover more law than other customals and offered definitions of legal terms for the non-specialist.[60] Chapters deal with both procedure and substantive law, although the treatise does not appear to be systematically arranged by modern standards. Its purpose was to instruct those who might be involved in litigation in the

[58] Fredric Cheyette, 'Beaumanoir', *Dictionary of the Middle Ages,* ed. Joseph R. Strayer (13 vols, New York, 1983), ii, p. 144.

[59] *The Coutumes des Beauvaisis of Philippe de Beaumanoir,* trans. F. R. P. Akehurst (Philadelphia, 1992), p. xv. Note that it was normal for the *bailli* to change positions every few years.

[60] Ibid., p. xiv.

jurisdiction of Beauvais and so is arranged to be most helpful to litigants.[61] Not content to merely repeat the law, Beaumanoir searched for the rationale behind it, and by so doing provided a defence of various customs, usually based on the custom's reasonableness or because doing otherwise would simply be "a bad thing".[62]

Beaumanoir is well known for his forthright opposition to the notion of criminal animals. He was content to use the requirements provided by the *pauperies* suit to frame his discussion of remedies involving confiscation of the animal and compensation for the victim. However, he disagreed with the idea of using a *pauperies*-like suit and taking it one step further, as done in the *Coutumes de Bourgogne*, by mandating that the animal be subject to capital punishment. He acknowledged that such occurrences took place but believed them to be done in error. Under a chapter that dealt with cases of misfortune he wrote:

> [s]ome people with jurisdiction on their lands, do justice to animals when they put someone to death: for example, if a sow kills a child, they hang and drag it (*pendent et trainent*), and it is the same with other animals. But this should not be done (*mes c'est nient a fere*). . .[63]

The purpose of holding an offender responsible for their actions, according to Beaumanoir, was to avenge the wrong that had been committed. Following retributive thinking, he wrote that "justice must be done to avenge the misdeed".[64] This was accomplished if the offender "knows

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[61] Beaumanoir described his work as "a book by which those who wish to live in peace can be quickly taught how to defend themselves from those who wrongfully and for evil reasons attack them in lawsuits, and how they can distinguish right from wrong, according to the usage and custom in Clermont in the county of Beauvais", *CB*, i, *Prologue,* para. 1. The structure of the work is as follows: early stages of a lawsuit are discussed in chapters 2-9; jurisdiction in chapters 10-11; and matters of substantive law are taken up in chapters 12-38. This is followed by the procedure in interrogations (chapters 39-40), another large section on substantive law (chapters 41-60), appeals (chapters 62-64), and judgements (chapters 65-67). Within these chapters, there is a great deal of information on general legal matters. For instance, the distinction between custom and usage (chapter 24), the difference between high and low justice (chapter 58), and when law should be tempered by mercy (chapter 69).

[62] E.g., *CB,* ii, ch. LXI, para. 1710, in which Beaumanoir stated that being forced to seek vengeance instead of making a formal accusation would be a "male chose".

[63] *CB,* ii, ch. LXIX, para. 1944.

[64] Ibid.

and understands" that for his crime, he is subject to a particular punishment.[65] This kind of reasoning was beyond animals, declared Beaumanoir, who referred to them as *bestes mues*.[66] Since animals do not understand the difference between good and evil (*n'ont pas entendement qu'est biens ne qu'est maus*), punishing them was done in vain.[67] For this reason, it was erroneous to put a beast to death for its misdeed and resulted in *justice perdue* or "justice lost".[68]

Although he was critical of the practice of executing animals, Beaumanoir nevertheless included it in his work. Perhaps he felt that as an observed tradition in the region of Beauvais, it had to be included. As an officer of the law, Beaumanoir stated in the Prologue that he had undertaken "to protect and to enforce protection of the rights and customs" of the county.[69] Yet even while including the practice, he offered what he believed to be a viable and superior alternative. Instead of executing a creature that did not know wrong from right, the *seigneur* should confiscate it. Beaumanoir wrote that "the lord should take charge of the animal as his own, for it is his by right".[70]

Within this alternative, Beaumanoir distinguished between animals in the equine family and other farm animals. For bulls, pigs, sheep, or other animals that have "gone wild" (*enragie*), the lord was advised to kill the animal and profit from it in whatever way he could.[71] This served as a warning for other owners and protected the community from further harm. Once killed, the

[65] Ibid.: "cil qui a fet le mesfet sache et entende que pour tel mesfet il en porte tele peine".

[66] Ibid.

[67] Ibid.

[68] Ibid.: "et pour ce se melle il de nient qui en maniere de justice met beste mue a mort pour mesfet . . . et pour ce est ce justice perdue".

[69] *CB*, i, *Prologue,* para. 1: "de garder et de fere garder les drois et les coustumes".

[70] *CB*, ii, ch. LXIX, para. 1944.

[71] Ibid.: "Et toutes voies est il bon, se c'est tors ou pourceaus ou moutons ou beste enragie, quele qu'ele soit, qu'il face que'ele muire en son pourfit fesant".

animal would "not do the same thing again".[72] However, if the animal was a horse, mule, or donkey, the lord could keep it and "use it without killing it".[73] Clearly, Beaumanoir had determined that animals in the equine family were more valuable than bulls, pigs, or sheep and so deserved different treatment. He may also be suggesting that the latter were more prone to act *enragie* or against their natures, meaning they could not be trusted after their misdeed. It may have been thought that horses, mules, and donkeys were less likely to act *contra naturam* without human provocation, thus making it safer to continue using them.

Confiscation, rather than a suit against the owner, appears to be the preferred remedy if the harm could not be traced back to a human act or omission.[74] However, if the horse only wounded someone or caused damage to the victim's property, the owner must pay a fine. Once the fine was paid, the animal was returned. Of course, the owner would be held responsible if the animal caused "loss of life or limb" (*mort ou mehaing*) because of what the owner "had caused the animal to do".[75] If, for instance, the owner was riding his horse and spurred the horse into a crowd and the horse "killed someone by its speed" (*par la raduer de li en tuoit aucun*), then the owner would be liable.[76] However, if "it was obvious" that the horse had gotten away from the owner by its hard mouth (*dure gueule*) or confusion (*desroi*), then the owner was not responsible.[77] Instead, he could use his horse's behaviour as an excuse. The liability of the owner

[72] Ibid.: "pour ce qu'ele ne face une autre fois autel".

[73] Ibid.

[74] See, e.g., *CB*, ii, ch. LXIX, para. 1945: "Et s'ele fet mort ou mehaing, la beste qui fet le mehaing est aquise au seigneur de son droit et ne m'en puet ou riens demander".

[75] Ibid.

[76] Ibid.

[77] Ibid. Generally, medieval bits came in two varieties: snaffles or curbs. Snaffles were usually milder and acted on the tongue and bards of the mouth. Curbs were harsher and used with indirect reining. If the bit was too severe, horses could become uncontrollable. See Ann Hyland, *The Warhorse, 1250-1600* (Somerset, 1998), pp. 7-8. Beaumanoir does not specify the type of horse for which this rule applies, implying that it was a generally applicable rule.

was therefore based on causality: if the harm caused by the horse was due to its owner, the owner was responsible. If the horse appeared to be acting of his own volition (i.e., not based on a human act or omission), the owner escaped liability.

The discussion of death caused by animals was tellingly placed in the chapter on "misadventures". It sits alongside other examples of misfortune, which includes when one is struck by an arrow shot from someone engaged in target practice (para. 1941); and when one is injured by a falling tree (para. 1942). The suggestion is clear that the animal, like the arrow or the tree, cannot intend to harm anyone. Despite being described as "enragie", the harm-causing animal is stripped of agency, passive. As under Roman law, the damage was "harm without guilt". Even in the case of the horse charging into the crowd based on its hard mouth or confusion, neither of those traits indicated a malicious intent. In either case, the horse was guided by instinct, not free will. A "hard mouth" implies that the horse won't give to the bit. It cannot feel the rein cues given by its owner to steer clear of the crowd. Likewise, a confused horse would be marked by uncertainty and panic. The horse was reacting to stimuli, rather than acting with purpose.

Beaumanoir not only provided evidence that executing animals for crimes was part of customary law, at least in a particular region, but also that not everyone agreed with it. For Beaumanoir, the practice was legally pointless given an animal's lack of reason. Punishment was only effective against humans. Thus, in none of his examples were animals given human traits or compared with human offenders. They were treated either as chattel to be seized or objects involved in accidents. For both the *Coutumes de Beauvaisis* and *Li Livres de Jostice et de Plet*, the actions of animals were therefore not justiciable as a criminal matter – the animals did not become legal subjects in their own right based on their behaviour. The question was merely

whether the harm could be sufficiently traced back to a human, necessitating the imposition of a fine or some other penalty.

An Owner's Knowledge & Animal Defects

For other customals, the emphasis was less about tracing human actions and more about discovering whether the animal had some kind of propensity to cause harm. For the *Établissements de Saint Louis*, the key question was whether the owner had prior knowledge of such a trait in his animal. Written sometime around 1272, the *Établissements* contains several passages on damage caused by animals. The author is unknown, although Esmein suggested that he was a royal officer.[78] The work is divided into two books and was originally believed to be the legislative work of Saint Louis himself. Paul Viollet was instrumental in delineating the various parts of the work, revealing that the first seven chapters of the first book are copies of a regulation for the *Prévôté* of Paris, while chapters 8-168 contain the customary laws of Anjou and Maine.[79]

Unlike the *Coutumes de Beauvais* and the *Livres de Jostice,* which focused on human acts or omissions, the emphasis in the *Établissements* was on the owner's knowledge of the likelihood that the animal would harm someone or something. According to chapter 125 of the second book, a victim must be compensated for his injuries and the owner must swear he did not know about his animal's proclivity to cause damage.

> If a man was taking his animal to market or among people, and it bit or struck someone, and the injured person made a complaint to the judge, and the other party said: 'Sir, I did not know the animal had this defect (*teiche*)', he must reimburse the damages to the

[78] A. Esmein, *Cours élémentaire d'histoire du droit français: A l'usage des étudiants de première année*, 9th edn (Paris, 1908), p. 799.

[79] Paul Viollet, 'Les Sources des Établissements de Saint Louis', *Comptes rendus des séances de l'Académie des Inscriptions et Belles-Lettres,* 21e année, issue 1 (1877), pp. 95-7.

> injured person and will pay no fine to the judge; but he must swear that he did not know about the defect. And if he dared not swear, he would lose the animal and it would go to the judge.[80]

If the owner was unaware that his animal was likely to cause damage, he was not penalised, although he must still provide for the victim. If he can't (or won't) swear to this effect, the penalty was confiscation. Compensation to the victim, referred to as the "relief d'homme", was set at 100 *sous* and one *denier*.[81]

The owner could, of course, avoid liability by denying that the animal belonged to him. If the animal killed someone, the owner "must swear on the saints that [the animal] is not his, and he did not bring it".[82] The animal would then be confiscated by the judge and nothing further could be done.[83] This remedy was borrowed from Roman noxal actions, a suit in which the owner was liable for the tort committed by his slave or his animal and could either pay for the damage or give the offender to the victim.[84] In such cases, renouncing the slave or animal was permitted because it was considered "unjust" to make the master liable beyond the body of the wrongdoer himself.[85] Furthermore, since actions in tort were considered personal, that is, they

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[80] *Établissements de Saint Louis: accompagnés des textes primitifs et des textes dérivés avec une introduction et des notes* (hereafter *ESL)*, ed. Paul Viollet (4 vols, Paris, 1881), ii, livre 1, ch. CXXV, pp. 233-5: *Coment l'om rent domache por sa beste, droit fasiant*: "Se aucuns hom menoit sa beste ou marchié ou entre genz, et ele mordist ou ferist aucune gent, et cil qui seroit bleciez s'en plainsist à la joutise, et li autres deist: 'sire, je ne savoie mie qu'ele aust tele teiche'; o itant rendra son domache au blecié, à sa prueve, et n'en fera ja droit à la joutise; mais il jurra qu'il ne savoit mie la teche. Et s'il ne l'osoit jurer, il perdroit la beste, et seroit à la joutise". Nearly identical language can be found in the fifteenth-century *Coutumes de l'Anjou et du Maine*, where an owner can deny knowledge of the animal's defect ("Je ne savoie mie que el eust tele tache") or deny ownership altogether ("Sire, elle n'est pas moye"), *Coutumes et institutions de l'Anjou et du Maine antérieures au XVI^e^ siècle,* ed. C. J. Beautemps-Beaupré (8 vols, Paris, 1877), i, art. 132, pp. 146-7.

[81] *ESL*, livre 1, ch. CXXV, p. 236: "et fera cil à qui la beste estoit le relief d'un home, c'est à savoir C s. et I d.". This seems to be the standard amount. See livre 1, ch. CVIII, p. 190.

[82] *ESL*, livre 1, ch. CXXV, p. 235: "li puet l'en esgarder qu'il jurra sor sainz qu'ele n'est pas soue, et que il ne l'amena pas".

[83] Ibid.: "et si ne l'en puet l'en à plus mener".

[84] Inst. 4.8: "Ex maleficiis servorum, veluti si furtum fecerint aut bona rapuerint aut damnum dederint aut iniuriam commiserint, noxales actiones proditae sunt, quibus domino damnato permittitur, aut litis aestimationem sufferre aut hominem noxae dedere"; see also D. 9.1.

[85] Inst. 4.8.2: "namque erat iniquum, nequitiam eorum ultra ipsorum corpora dominis damnosam esse".

followed the body of the offender, the owner was only liable while the animal or slave belonged to him.[86] By mandating a similar remedy in the *Établissements,* the owner was provided with an opportunity to denounce the animal entirely and thus escape liability. This principle was explained more clearly in a late fourteenth-century customal, *Le Livre des Droiz et des Commandemens D'Office de Justice*.

> *Si un chien ou un cheval mordoit ou féroit un homme ou faisoit aucun dommage, cellui à qui il seroit en seroit quicte en le désadvouant, ou autrement il seroit tenu au dommage. Et si après le désadveu il reprenoit, il y seroit tenu comme dessus est dit*.[87]
>
> If a dog or a horse kills or harms a man or does any damages, he to whom (the animal) belongs will be free in disavowing it, or otherwise he will be responsible for the damage. And if after he disavows it, he takes it back again, he will be liable as said above.

Like slaves, the legal status of an animal in respect of third parties was subsumed within that of his owner.[88] With no legal status of its own, liability for an animal's actions could be transferred from one owner to another. There is no indication that the animal itself would be punished. Nor is there is any discussion of what may have caused the animal's behaviour.

The *Établissements* used the term 'teiche', meaning defect, to describe an animal's propensity to cause harm. While the term was not defined in the text, it fits comfortably within the *contra naturam* parameters: an animal was 'defective' if it acted in a way that was contrary to its domestic nature. Yet looking closely at the term adds some nuance to our understanding of the way *contra naturam* was understood. *Teiche* can have a negative connotation and mean

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[86] Inst. 4.8.5: "Omnis autem noxalis actio caput sequitur". See also Digest 9.1.12, which states that liability for damage attaches to the physical corpus which caused the damage even in the case of animals. The action thus does not lie against the owner of the beast at the time the damage was caused, but against whoever owns the animal when the action is brought.

[87] *Le Livre des Droiz et des Commandemens D'Office de Justice,* ed. C. J. Beautemps-Beaupré (2 vols, Paris, 1865), ii, ch. 871, pp. 246-7.

[88] See M. I. Finley, *Ancient Slavery and Modern Ideology* (London, 1980), p. 99, who stated that while Roman lawyers may have linked slaves and animals in noxal actions and in other property contexts, no one forgot the fundamental differences between them. While both lacked juristic personality, meaning that the slave or animal's misdeed became the owner's responsibility, it was understood that slaves could think and act deliberately.

'vice' as well as the more neutral meaning of 'quality'. Both meanings suggest an innate characteristic, rather than a spontaneous action. In other words, when an animal acted upon a 'defect', it was an act based on a flaw in the fundamental makeup of the animal, rather than a momentary slip-up. The animal in its entirety was defective and in time this would become apparent. Recalling the discussion on domestication in Chapter One, the use of 'defect' suggests that some domestic animals were only masquerading as such: well-behaved animals were obedient and mild, while others were marked by an imperfection, wearing only a veneer of domestication.

Interestingly, the *Établissements* presented a situation in which an owner admitted that he knew about the animal's penchant for misbehaving. In such a case, which was clearly not encouraged, the owner was deemed responsible for the damage and so faced the ultimate penalty: death.

> *S'il estoit si fous qu'il deist qu'il queneüst bien la teche de la beste, il en seroit panduz por la requenoissance*.[89]
>
> If [the owner] were so crazy as to say that he knew about the defect in the animal, he would be hanged for his admission.

The issue of taking reasonable care is not mentioned. Similar to strict liability cases, it was sufficient that the owner knew that the animal *could* cause harm to others. In such a case, it was the owner who faced the possibility of death, not the animal.

In the *Établissements de Saint Louis* the focus was on determining when the owner was obligated to pay a fine and when the animal had to be confiscated. The key was firstly, the level of ownership, and secondly, the owner's familiarity with the animal. This makes sense from the standpoint of a legal practitioner. The first issue was fairly easy to deduce and could be reduced

[89] *ESL*, livre 1, ch. CXXV, p. 236.

to a yes or no answer. The second issue was more challenging, but only involved the owner making certain assertions under oath. If he wanted to retain possession of the animal, he must swear that he did not know his animal had, as the law put it, a 'defect'. In all other situations, the animal was seized. At no point was the court required to trace the causality of the incident in order to assign liability. This made the court's task easier: there was no need for third party witnesses or to inquire whether the beast had been adequately guarded. The animal was simply chattel, to be confiscated or not, and at no point attained characteristics beyond that of property.

Animals Acting Out: the Somme Rural

A very different idea of misbehaving animals, one more in line with the cases to be discussed in Chapter Three, can be found in Jean Boutillier's *Somme rural.* Written in the second half of the fourteenth century, Boutillier applied the requirements of the *pauperies* suit most obviously in cases involving wild animals (cases which under Roman law were not pursued). Yet in contrast to the *pauperies* suit, domestic animals accused of misbehaving were characterised as rebellious. While reminiscent of the 'defect' mentioned in the *Établissements*, Boutillier's animal-rebel metaphor described an animal's actions in human terms; their actions were based on rage, rather than provocation or a flaw in their character. As a result, there was little discussion of the root cause of the animal's behaviour in an effort to assign liability to a human. Despite his claim that reason belonged to man alone, Boutillier's 'rebel' terminology conjures up the idea of unlawful activity, foreshadowing to some extent the punishment mandated in the *Coutumes de Bourgogne* and carried out in the records examined in Chapters Three, Four, and Five.

Boutillier (d. 1395), a citizen of Tournai, wrote his compilation as a summary of the customary law of Northern France, rather than focusing on the laws of a particular province.[90] Although general in scope, Boutillier often reported the customs of Artois, Flanders, and Picardy. He was also interested in demonstrating in easily understood terms the rules of Roman law insofar as they were received in secular courts. Like Beaumanoir, he was a jurist who held many public positions: he acted as the *lieutenant du bailli* of Tournais, Mortagne, and Saint-Armand before becoming *bailli* of Vermandois.[91]

Boutillier devoted an entire chapter to animals that caused harm to persons and property. He first investigated rules surrounding the keeping of wild animals, which included bears, bulls and lions, and other similar beasts that "were not domestic" or "not used to being amongst people".[92] He urged lords who kept such animals, despite it being forbidden by law, to "keep (the animals) in strong walls and in strong places so that they cannot do evil to people".[93] He then applied a duty of care to owners as well as to the public at large, adding a more nuanced approach to the Roman framework. Within this section, the *Somme rural* explored scenarios in which animals were aggravated (fault of a third party), the animal broke off its leash (no liability assigned), and even cases in which an animal injured someone but was deemed to have acted "according to its nature" because it was, after all, wild.[94]

Domestic animals included "ewes, sheep, pigs, cattle, cows, horses, asses, mules or similar beasts", and more specifically, those "ordered to domestic use among men, for the

[90] Esmein, *Cours élémentaire d'histoire*, p. 804.

[91] Ibid.

[92] Boutillier, *Somme rural,* p. 263: "ne autre semblable beste qui n'est commune d'estre entre les gens, ne d'estre domestique".

[93] Ibid.

[94] Ibid.

governing or subsistence of man".[95] Boutillier first outlined a few scenarios in which animals acted in keeping with their nature. There was no liability, for instance, if an animal attacked out of fear or because of a "disordered route".[96] Once again, this was a case where an outside force was responsible for the animal's outburst and consequently, the animal "did not know what to do".[97] Since "there is no rule of reason in animals" (*reigle ne raison n'est en beste*), there cannot be a legal expectation that they act reasonably as a man might do.[98] For Boutillier, this provided valid justification for asserting that man must maintain his position above animals in the hierarchy of beings: "he must guide and govern by reason, for more can and must be asked of man than of beast" (*car plus en peut et doit estre demandé â l'homme qu'à la beste*).[99]

The majority of the chapter, however, was concerned with animals that did act contrary to their nature. Boutillier described this type of behaviour as "rebellious". It was defiance, rather than any human provocation, that was the source of the damage. The animals "by their rebellious and coarse nature" (*par leur rebel et crasse naturelle*) were said to "resist and rebel" (*regibassent et rebellassent*) and consequently injured someone or caused damage to someone's property.[100] Alternatively, some animals were just characteristically nasty. They were described as "large beasts that are accustomed to biting or throwing or striking" (*grosses bestes qui coustumieres fussent de mordre ou getter ou ferir*).[101] If the owner had been aware that the beast

[95] Ibid.

[96] Ibid., p. 264.

[97] Ibid.: "beste qui ne sçait que faire doive par raison".

[98] Ibid.

[99] Ibid., pp. 264-265.

[100] Ibid., p. 264.

[101] Ibid.

could cause harm, the owner had to pay a fine as well as compensation for the damage.[102] In addition, the owner had a duty of care. No matter the animal's temperament, the owner was obligated to guard the animal diligently either by a guardian or by some form of enclosure.[103]

Some animals were unmanageable to the extent that they represented a risk to the entire community. These creatures were "accustomed to biting or tossing" and were "so rebellious that [they represented] a danger to the neighbours, their children and their beasts".[104] Such animals required constant guard and it seems that there was no case in which the owner could avoid liability. Boutillier warned that in the unfortunate event that this sort of animal did injure someone, "the owner of the animal cannot be excused".[105]

Referring to a recalcitrant animal as a rebel is an intriguing word choice. The idea of rebelling implies striking out at authority. To rebel is a conscious choice, an act of resistance and defiance. It is the recognition of your place in the world and being unsatisfied with it. When the *Somme rural* was written around 1385, the memory of the rural uprisings known as the Jacquerie may not have been far from Boutillier's mind. This rebellion had begun when the garrison at Saint-Leu d'Esserent was attacked by peasants from the surrounding area on 28 May 1358. From there the rebellion had spread quickly, encompassing the Beauvaisis, Picardy, and the Île de France, stretching as far west as Rouen and as far east as the borders of Bar. However, success was fleeting. The rebellion ended a mere two weeks later after the Jacques were crushed by crown forces when attempting to destroy the Marché, a fortress in Paris. Yet in the eyes of the

[102] Ibid.: "si elles font à aucun dommage par tel rebel, le seigneur à qui elles sont, sera tenu d'amender le dommage par la beste ainsi fait".

[103] Ibid.:"au moins ne meist diligence de les tenir et garder par garde ou par emmuëment de muë ou d'autre detention".

[104] Ibid.: "accoustumée de mordre, ou de regetter, ou si rebelleuse que peril est aux voisins pour eux, leurs enfans et leurs bestes".

[105] Ibid., p. 264: "excuser ne s'en pourroit le seigneur de la beste".

chroniclers, the Jacquerie of 1358 was the most important peasant revolt in late medieval France and no doubt left a lasting impression for jurists writing in the second half of the fourteenth century.

There are over twenty accounts of the Jacquerie, by chroniclers in France, Flanders, England, and Italy. According to Douglas James Aiton, no other single revolt can claim such coverage.[106] The most influential account comes from the chivalric chronicler, Jean Froissart (d. *c.* 1405). The eye-popping tales of pillage, murder, and rape, with peasants roasting their lords on spits, were taken almost verbatim from the chronicler and canon of Liège, Jean le Bel (d. 1370). Both le Bel and Froissart, as well as many other chroniclers, portrayed the Jacquerie as a rebellion of crazed men and attributed the revolt to brute animal instinct.

The beastly nature of the Jacques was revealed in their senseless slaughter. Froissart recalled that the rebels killed "without pity and without mercy, like mad dogs".[107] The continuator of Richard Lescot's chronicle wrote that the rebels were like a pack of "rabid dogs" (*canina rabie)* that perpetrated "nefarious and wicked deeds".[108] Worse still, the rebels could not articulate their motives or objectives. When asked why they had revolted, "they said they didn't know, except that they'd seen others do it and decided to do the same".[109] Like Boutillier's animals, the rebels displayed no rational thought, and instead were driven by their impulses.

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[106] Douglas James Aiton, '*Shame on him who allows them to live': The Jacquerie of 1358* (Ph.D. Thesis, University of Glasgow, 2007), p. 13.

[107] *Chroniques de J. Froissart*, ed. Siméon Luce (11 vols, Paris, 1874), v, p. 100: "sans pité et sans merci, ensi comme chiens esragiés".

[108] *La Chronique du continuateur de Richard Lescot*, ed. Jean Lemoine (Paris, 1896), pp. 126, 127. The chronicle emphasised that while the rebels may have had just cause to be unhappy, the killings done under their insurrection were committed "inhumaniter" (p. 126).

[109] *The True Chronicles of Jean le Bel, 1290-1360*, trans. Nigel Bryant (Cambridge, 2011), p. 236. Not all chroniclers portrayed the participants of the Jacquerie as bereft of reason. *La Chronique normande* reported the cause of the revolt, saying that the peasants "were mortified that the knights who were supposed to protect them had decided to seize their property", *La Chronique normande du XIVe siècle,* ed. Auguste and Émile Molinier (Paris, 1882), pp. 127–8. The greatest justification was provided by Jean de Venette, who claimed that Paris was "ill-treated and little defended", and the people of Paris suffered "wrongs and oppression inflicted on them on every side and

Even those who might have sympathised with the rebels condemned them for their violation of the feudal hierarchy. Similar to the reversal which occurred when animals acted *contra naturam* by attacking their owners, the chronicler Jean de Venette (d. *c.* 1370) bemoaned the reversal of the natural order instituted by the Jacques which began "entirely of themselves, not of God nor of due authority, such as that of an overlord".[110] This violation so tarnished their actions that what had begun as a "zeal for justice" turned to "base and execrable deeds".[111] *La Chronique normande* decried "the cruelty of the peasants, who without pity and without reason killed men, women and children of noble lineage".[112] When the royal forces finally caught up with the rebels, de Venette reported with obvious relief that "their whole fatuous faction and unjust stewardship vanished like smoke and ceased".[113]

As the Jacquerie came to an end, authors relished in continuing the ignoble comparison of rebels to beasts. Froissart wrote that the remaining rebels left Paris "in herds and flocks" to converge on Meaux, near the garrison of the castle of Marché.[114] When the royal forces at Meaux attacked, Le Bel declared that the rebels were slaughtered "like pigs, in heaps".[115] Froissart painted a similar image, describing how the royal forces struck down the rebels and "beat them senseless, butchering them like animals".[116] The *Anonimalle Chronicle*, written by a monk at St. Mary's Abbey in York, contended that the rebels knew nothing of military strategy and so "were

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seeing that the nobles gave them no protection, but rather oppressed them as heavily as the enemy", in *The Chronicle of Jean de Venette*, ed. Richard Newhall, trans. Jean Birdsall (New York, 1953), pp. 76–7.

[110] *The Chronicle of Jean de Venette,* p. 76.

[111] Ibid., p. 77.

[112] *La Chronique normande du XIVe siècle,* p. 128.

[113] *The Chronicle of Jean de Venette,* p. 77.

[114] *Chroniques de J. Froissart,* p. 104: "se partirent un jour de Paris par fous et par tropiaus".

[115] *The True Chronicles of Jean le Bel,* p. 237.

[116] *Chroniques de J. Froissart*, p. 106: "si les abatoient à fous et à mons et les tuoient ensi que bestes".

defeated like beasts".[117] After their defeat at Meaux, the remaining rebels, according to the *Chronique des quatre premiers Valois*, were "hunted down", as if they were wild animals being pursued for sport.[118]

There is, in fact, a history of depicting rebels as animals. In 1233, Pope Gregory IX proclaimed a crusade against peasant rebels in the ecclesiastical province of Bremen, likening them to "wild beasts" (*feris bestiis*) who "spill blood like water, sparing no one regardless of age or sex".[119] For the chroniclers of the Jacquerie, many of them contemporaries in elite society, they momentarily saw their world turned on its head. The impression they leave is that rebellions represent a violent backlash against authority, which despite legitimate grievances, cannot be justified. Furthermore, rebellions are highly contagious. Where a few rebels might be an annoyance, as a group, they become frighteningly close to unstoppable.

When Boutillier characterised a harm-causing animal as rebellious in the *Somme rurale*, he provided readers with an intriguing but ambiguous metaphor. A rebel acts out of rage with no rational thought (like an animal), and yet to rebel suggests the actor had normative boundaries and expectations placed upon them. Such expectations echo those discussed in Chapter One which saw a 'natural' hierarchy established and maintained between man and beast based on difference and subservience: the role of domestic animals was to serve and obey their human owners. Boutillier's use of 'rebellious' not only implied that by behaving in a certain way, the

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[117] *The Anonimalle Chronicle,* ed. V. H. Galbraith (Manchester, 1927), p. 42: "les queux vilayns neient sachaunt de la guerre, ne apris de batailler, come bestes furent desconfites".

[118] *Chronique des quatre premiers Valois (1327-1393)*, ed. Siméon Luce (Paris, 1862), p. 77. Luce is convinced the work was written by a Rouennais in the second half of the fourteenth century. See, ibid., p. xi.

[119] *Bremisches Urkundenbuch,* ed. Diedrich R. Ehmck and Wilhelm von Bippen (5 vols, Bremen, 1873), i, n. 176, p. 211. See also, John Gower, who a few years before the *Somme rural* was compiled, described the Peasants' Rising of 1381 in his poem *Vox Clamantis.* The rebels approached the city of London like "wolves and bears" that "came forth and multiplied" and taken by a "mad frenzy" sought to overthrow the laws. Similar to depictions of the Jacquerie, Gower linked the rebellion to irrationality: "madness prompted the goings on, all restraint was gone" in *Poema quod dicitur Vox clamantis,* ed. Henry O. Coxe (London, 1850), ch. 13, lines 883-901, pp. 53-4.

animal was not being obedient and servile, but that the animal was acting in a way that was also unlawful. Thus, an initial reading of the *Somme rurale* might suggest that Boutillier was criminalising misbehaving animals and their actions through his terminology, thereby complicating their legal status as property.

Yet the Jacques were most often characterised by chroniclers as irrational, closer to animals than to men, their humanity denied. In remission letters the revolt was described using terms such as *commotions*, meaning violent and sudden shocks, or *effroiz* meaning fear or terror.[120] The emphasis in the chronicles on strong emotions rather than on strategy suggests that a rebellious animal might in fact be closer to the 'defective' animal from the *Établissements* whose violent and unpredictable behaviour was based on a flaw in their makeup, rather than on conscious desire to carry out some sinister plot. Boutillier's animal has not been provoked, whether by a human action or some outside force, but was acting out its own predisposed rage. As a result, the animal was "rebellious by nature", and, like the Jacques, could not be controlled by either physical barriers or societal rules. Both disregarded the boundaries of public order and natural hierarchy, defying the expectations placed upon them by their superiors. The animal-rebel metaphor, while a useful tool for encapsulating the threat such disregard poses, is like the status of the animal itself in Boutillier's work; caught between two legal realities as a legal object and as a legal subject, neither wholly one nor the other, yet encompassing aspects of both.

[120] Justine Firnhaber-Baker, 'The Eponymous Jacquerie: Making revolt mean some things', in Justine Firnhaber-Baker with Dirk Schoenaers (eds), *The Routledge History Handbook of Medieval Revolt* (New York and Abingdon, 2017), p. 57. Firnhaber-Baker argues that the Jacquerie was more than an emotional outburst, it was strategic with evidence of urban-rural cooperation, hierarchical structure, and long-distance coordination. See Justine Firnhaber-Baker, *The Jacquerie of 1358: A French Peasants' Revolt* (Oxford, 2021). Furthermore, it may not have been as violent as chroniclers made out. In looking at judicial sources, such as remission letters, Firnhaber-Baker demonstrates that the violence was aimed almost exclusively at adult men and property damage was the Jacques' primary objective. See ibid., pp. 120-42.

Boutillier's fictionalising of animal behaviour created a boundary between animals that could be managed and those that could not. For Boutillier, this difference had legal ramifications and highlighted the danger posed when domestic animals acted *contra naturam*. Yet ironically, in the effort to maintain the difference between types of animals, Boutillier shortened the distance between animals and humans. The comparison to rebels explained animal behaviour in terms of human actions and aligned those animals with an undesirable element of human society. Perhaps unwittingly, he prepared the ground for later cases, such as those examined in the next chapter, in which animals were transformed into criminals and their actions into crimes despite customals' collective refusal to view animals and their behaviour in that way.

Animals and Their Crimes: Les Coutumes du Duché de Bourgogne

The most noticeable departure from the *pauperies* framework can be found in the customs of Burgundy. Dating to the second half of the fifteenth century, *Les Coutumes du Duché de Bourgogne* has several articles on the subject of animals causing harm. This is hardly surprising since a great many of the verifiable cases against animals have their origins in the Burgundy region. Here, the focus on human liability was left behind and the harm caused by the animal was no longer considered a civil matter. Instead, the Burgundian customal defined the wrongs committed by the animal in a criminal context. While the idea that the animal was acting *contra naturam* may have underpinned the assessment of the animal's behaviour, the use of terms such as "homicide" added a distinctly felonious dimension to the case that was entirely lacking under Roman law. As a result, gone were attempts found in the *actio de pauperies* and early customals to determine when compensation or seizure were appropriate responses. The customs of Burgundy were interested in punishing the animal itself for the wrong committed.

In an eighteenth-century edited version by the jurist Jean Bouhier (d. 1746), title 25 is designated "Of Beasts, Chattel, and Misdeeds" (*Des Bestiaux, Cheptels, et Mésus*) and begins in a similar manner as the customals we have so far examined.[121] If an animal has harmed property, the owner of the animal was responsible for the damage caused and must pay a fine to the lord according to the "coutumes du pays".[122] However, unlike the other customals, if an animal harmed a human, the Burgundian customal explicitly referred to that harm as a "homicide" or "délit" (crime). This immediately transformed the harm from a civil issue into a criminal one and implied that as a criminal, the animal itself could be subject to the judicial process, a possibility whose realisation I will examine in the following chapter.

Even in cases of homicide, certain animals were singled out for special treatment. Article 275 detailed what should happen if an ox or a horse killed a human being, saying that it should not be executed.

> *Se un buef, ou un cheval fait un, ou plusieurs homicides, ils n'en doivent point mourir, ne n'en doit-on point faire Justice. Mais ils doivent être prins par le Seigneur, en quelle Justice ils on fait le délit, ou par ses gens, et lui sont confisquez, et doivent être vendus, et exploitiez ou proufit dudit Seigneur.*[123]
>
> If an ox, or a horse commits one, or several homicides, they should not be put to death, they must not be executed. But they must be taken by the Lord, in whose jurisdiction they have committed the crime, or by his officers, and confiscated, and must be sold, and exploited for the profit of the said Lord.

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[121] According to the second preface, entitled 'Histoire des commentateurs de la coutume du Duché de Bourgogne', Bouhier's edition is based on a customal which appeared in 1516, having been published in Lyon by Pierre Ballet under the title *Les Coustumes de Bourgongne, etc. avec les Postilles de Droit Ecrit, interpretant lesdites Coustums, par Me. Hugues Descousu, Docteur és Droits*. For more on Bouhier's collection of manuscripts pertaining to Burgundian customary law, and the way in which he combined them for his edited versions, see Ernest Champeaux, 'La Compilation de Bouhier et les coutumiers bourguignons du XIVe siècle', *Nouvelle revue historique de droit Français et étranger,* vol. 30 (1906), pp. 499-538.

[122] *Les coûtumes du duché de Bourgogne: avec les anciennes coûtumes*, ed. Jean Bouhier (2 vols, Dijon, 1742), i, art. 279, p. 138: "Toutes bestes, qui sont trouvées en dommage, sont tenuës de rendre le dommage, et l'amende au Seigneur, selon ce que le lieu, ou le cas le desire, selon la Coustume du Pays".

[123] Ibid., i, art. 275, p. 138.

As seen in the *Coutumes de Beauvaisis,* it was decided that horses and oxen were too valuable to be put to death. Instead, the local lord was to profit from them in whatever way he could.

However, if the animal was neither a horse nor an ox, the punishment for killing a human was death. The surprising feature is the nature of the punishment, whose application to animals appears to be unique to Burgundy. Article 275 concluded that "if other beasts do it [commit homicide], they must be hanged by their back legs" (*se autres bestes le font, ils doivent estre penduz par les piez derriére*).[124]

Why this specific and unusually harsh form of punishment? Death by upside down hanging was seen as particularly humiliating and severe, and was closely associated with the persecution of Jews.[125] It caused greater suffering and degradation to the condemned, who remained conscious for longer than those hanged by the neck. As a practice, it became common beginning in the thirteenth century and, according to Norbert Schnitzler, lasted into the seventeenth century.[126] The earliest cases in France date to the fourteenth century. A remission

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[124] Ibid.

[125] See Cohen, 'Animals in Medieval Perceptions', p. 69. Irven M. Resnick suggested that this practice may relate to the legend of Werner of Oberwesel, a boy who was allegedly killed by Jews in 1287 and hanged upside down like an animal. See *Marks of Distinction: Christian Perceptions of Jews in the High Middle Ages* (Washington, D.C., 2012), p. 151, fn. 30. Interestingly, the *coutumes* of Burgundy were printed again in a work edited by Charles Giraud in 1846. Here the connection between inverted hanging and Jews was made explicit. Rather than merely mentioning "other animals", the text reads: "But if another animal *or a Jew* [commit homicide], they should be hanged by their back legs" (*mes se autres bestes ou juyf le font, ilz doiuent estre pendus par les piez derreniers*) in Charles Giraud, *Essai sur l'histoire du droit francais au moyen âge* (2 vols, Paris, 1846), ii, p. 302, item 197 (my emphasis). The reason for this textual difference may be because Bouhier and Giraud relied on different manuscripts. According to Champeaux, Bouhier relied on two manuscripts identified as 'MS. de Beaune, n. 24' (a copy of which can be found at Paris, BNF, NAF 1230) and 'MS. de Dijon, n. 216' (now at Bibliothèque Municipale de Dijon as MS. 293: *Coustumes et stilles gardez ou duchié de Bourgoingne, et les coustumes et stilles des cours sont à garder*) for the text of Title 25, art. 275; see Champeaux, 'La Compilation de Bouhier', p. 50. Giraud, on the other hand, relied solely on 'Ms. de Dijon 216', see *Essai sur l'Histoire,* ii, p. vii, item 7. One might assume from this, then, that while both manuscripts contain sections on harm-causing animals – and, interestingly, such a section appears to be a rarity among collections of Burgundian customary law – it is 'Ms. de Dijon, 216' that makes the explicit reference to Jews.

[126] Norbert Schnitzler, 'Anti-Semitism, image desecration, and the problem of Jewish execution' in Axel Bolvig and Phillip Lindley (eds), *History and Images: Towards a New Iconology* (Turnhout, 2003), p. 369. According to Schnitzler, hanging *capite traverso* was also a symbolic execution used by the Florentine city-state against traitors to the community. See ibid., pp. 371 -2.

letter recounts that in 1326, a canon from Beauvais applied to the Pope for absolution for throwing stones at a Jew, who had been hanged "by the feet on the gibbet" (*per pedes in patibulo*).[127] Beyond France, records from the town of Colmar in Alsace recall the case of a Jewish thief who had been sentenced to death in 1296 by upside down hanging. He was left hanging for eight days and even attempted to escape, although he was ultimately unsuccessful.[128]

Hanging upside down was a symbolic strategy used to stigmatize an individual as an outcast. Hanging the body in the wrong direction created a powerful visual narrative of shame. In the late fourteenth-century English poem, *The Siege of Jerusalem,* Christians hanged prominent Jews upside down alongside dogs to avenge the sufferings of Christ.[129] Bernard of Cluny used the iconography of inversion to describe punishments in Hell, in which sinners were hanged upside down and backwards. He added that the filth from their feet was now over their heads, highlighting the inversion of purity and impurity.

> *Stat cruce triplice gens rea, vertice mersa deorsum,*
> *Ora tenet sua, dorsa simula sua versa retrorsum,*
> *Sunt superhorrida, nam lue sordida, crura, pedesque,*
> *Inferius caput. Haec mala sunt apud infera certe.*
>
> The guilty race abides in triple torment:
> their heads are plunged downwards, their faces and backs reversed;
> their legs and feet filthy with mud are sticking out above, with the head below.
> These are surely the punishments in Hell.[130]

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[127] Shlomo Simonsohn, *The Apostolic See and the Jews, Documents: 492-1404* (Toronto, 1988), doc. 333, p. 349.

[128] 'Annales Colmarienses Maiores a. 1277-1471', in *Monumenta Germaniae Historica,* ed. G. H. Pertz, Series Scriptores (Hannover, 1861), xvii, p. 222, lines 21-3: "Iudeus in anno precedent pro furto in Sultzematin per pedes suspenditur, qui octo diebus supervixit et se elevans super patibulum liberavit; sed propter lesiones pedum fugere non valebat".

[129] *The Siege of Jerusalem,* ed. Ralph Hanna and David Lawton (Oxford, 2003), lines 709-12, p. 48: "The learned men of the law a little beneath / were tormented on a tree, hung upside down (*Weren tourmented on a tre, topsail[es] walten*) / Tied to each clerk two savage stray dogs (*Knyt to euerech clerk kene corres twey*) / That all the city might see the sorrow that they suffered".

[130] Bernard de Cluny, *De Contemptu Mundi* 1.545-48 in *Scorn for the world: Bernard of Cluny's De contempt mundi: the Latin text with English translation and an introduction,* ed. and tr. Ronald E. Pepin (East Lansing, M.I., 1991), pp. 44-5.

The punitive measures against Jewish criminals facing capital punishment were far more painful and humiliating than those dispensed to Christian criminals. From the perspective of the Church, Christian criminals could attain salvation for their souls by confessing, atoning for their crimes with their deaths; a Jewish offender, like an animal, could not.[131] In cases against an animal, such staging drew attention to the reversal that had taken place when the animal killed a human being; the reversal of the natural hierarchy, the lack of correctness and reason. Only with this particular punishment could order be restored.

As Claudine Fabre-Vassas pointed out, following a specialised form of punishment for animals and Jews "humanizes the former while animalizing the latter".[132] We saw a similar phenomenon occur in Boutillier's rebellious animal and in descriptions of the Jacques. Hanging Jews and animals together or in a similar way expressed the affinity between the two. Jody Enders believed that pigs in particular were equated with Jews as creatures characterised by their thirst for the blood of Christian children.[133] Furthermore, Jews were often identified precisely with what they avoided, believing pigs to be unclean.[134] Although the *coutumes* of Burgundy do not mandate inverted hanging for pigs specifically, it did acknowledge that pig were dangerous and must be watched closely. Article 278 cautioned that "pigs must be guarded at all times", noting that by their exploring and digging, they destroy meadows and vineyards.[135] Furthermore,

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[131] Elisheva Carlebach, *Divided Souls: Converts from Judaism in Germany, 1500-1750* (New Haven, 2001), p. 40. Thomas Aquinas stated that "there was no reward for [animals] after death" (*nullum est eis praemium post mortem*) in *Quaestiones disputatae,* iii, 'De veritate', q. 5, art. 6.

[132] Claudine Fabre-Vassas, *The Singular Beast: Jews, Christians, and the Pig,* trans. C. Volk (New York, 1997), p. 126.

[133] Jody Enders, 'Homicidal pigs and the anti-Semitic imagination', *Exemplaria*, vol. 14.1 (2002), p. 204.

[134] See Fabre-Vassas, *The Singular Beast,* pp. 8-9.

[135] *Les coûtumes du duché de Bourgogne*, i, art. 278, p. 138: "Les porcs doivent estre en tout temps gardez, et ne doivent point pasturer en prez, ne en vignes. Car par leur foüillir ils rompent les prez, et les vignes, et les hayes, qui les cloüent". Similar mandates can be found in customals across France. See, e.g., the *coutumes* of Sens, title XV, art. CL: "En quelque tems que ce soit on ne peut mener ni mettre porcs ès prés; car ils les souyssent et gâtent", cited

pigs were most often the animal recorded as having killed infants and young children. It was therefore well known that the keeping of pigs posed a particular risk for communities.[136]

For Enders, the execution of pigs represented a 'rehearsal' for the killing of Jews and an effective way for the law to appropriate the violent behaviour it was seeking to condemn.[137] However plausible, Enders' theory would be difficult to verify. There is little indication in customals or records of executions that pigs acted as proxies for human offenders, and so made it easier to execute humans (for a start, this does not explain the execution of other animals). What is clear is that the mixing of penal forms and practices allowed for the exploration and testing of fundamental boundaries within the legal system. It was at these boundaries that the relations between human, animal, and criminal – and even what constituted a legal subject and what did not - were fleshed out and determined. Ultimately, the ritual of hanging an offender upside down was not only meant to exclude him from the social community, but to visually set him apart from other offenders in a manner meant to provide the greatest degree of humiliation. Echoing the subversion of the natural hierarchy that had occurred when an animal killed a human, an inverted hanging recalled the animal's crime and highlighted that the proper order of the world had been disregarded and blatantly turned on its head. Such was the nature of the animal's act that the punishment required was one that offered neither mercy nor reconciliation.

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in *Conférence de la coutume de Sens, avec le droit romain, les ordonnances du royaume, et les autres coutumes,* ed. M. Pelée de Chenouteau (Sens, 1787), p. 217.

[136] The Kings of France were particularly aware of the dangers posed by pigs. Phillipe, son of Louis le Gros, fell from his horse when a pig darted into the street, dying hours later in 1131.

[137] Enders, 'Homicidal pigs', p. 205.

Conclusions

By the late Middle Ages, penal practices in France tended to be regional, "a hodepodge of customs", as Paul Friedland called them, that were derived from a variety of sources and gradually layered on top of each other.[138] Customals were in a sense a process of defining social reality. It was this reality that consequently helped to shape the legal framework of a particular time and place. For our purposes, customals are useful in tracking the shifting relation between legal entities (human) and non-legal entities (animal) within various scenarios. Guided by the Roman *pauperies* suit, the customals each strove to adopt the suit's two requirements: the harm could not be traced to any human fault, and the animal must have acted *contra naturam* or against its domesticated nature. Both requirements served to pinpoint or limit human liability. The use of these requirements provided customals with a framework in which to demonstrate the different concerns and responses raised by an animal that had caused a human death.

In the *Li Livres de Jostice et de Plet* and the *Établissements*, the focus was largely on whether human acts or omission were responsible for the harm. In the latter, the *contra naturam* requirement can be seen in the way a misbehaving animal was labelled as 'defective'. Likewise, the *Coutumes de Beauvaisis* described harm-causing animals as "enragie" and recommended that they be confiscated and given to the lord. As discussed in Chapter One there were cultural expectations placed on animals based on their perceived role, which impacted what was deemed acceptable and unacceptable behaviour. The idea of behaviour being *contra naturam* was to determine the moment in which domestic animals (whether described as defective or enraged) did not conform to human expectations. While the sense from earlier customals is of property run amok, Boutillier's *Somme rural* diverged from this model by comparing troublesome animals to

[138] Paul Friedland, *Seeing Justice Done,* pp. 23, 45.

rebels, thereby hinting not only at animal agency, but also at criminality. Such differences aside, the unifying element among these customals is the fact that the animal was not punished for its wrongdoing. Culpability was neither assigned nor assumed. Yet, foreshadowing the cases discussed in Chapter Three, this idea was challenged by the *Coutumes de Bourgogne,* which insisted that certain animals be formally executed for their misdeeds. Thus, while early customals diverged quite substantially from late medieval practice, it is with the *Coutumes de Bourgogne* that we see learned law and practice come more into line with each other.

This comparison of customals raises almost as many questions as it answers. How can we account for the differences among them? Perhaps this variation was linked to a shift in the development of the law away from Roman precedents, or perhaps the later customals were used to legitimise certain practices relating to cases against animals and their executions. Since custom could be moulded by social or political pressure, even shaped by the compiler's design, the processes or influences that led to the variation might be largely shielded from a modern audience. The pressures that shaped these texts could relate to disputes and cases that we may never see. I suspect that a great deal of variation can be attributed to differences in the local way of life and the individuals who compiled the customs. For example, Beaumanoir's *Coutumes de Beauvaisis* represented the customs of a particular region, and more specifically, Beaumanoir's interpretation and assessment of them. Certainly for Beaumanoir, the passages examined here represented the chance for the compiler to express what *should* happen when an animal caused injury or death. This, of course, left open the possibility that theory and practice could diverge at various points, perhaps even substantially.

What a comparison of customals does make clear is that there was no universal way that deaths or injuries caused by animals were treated within the customary tradition. The shifts

between the customals reveal the different ways that a community believed order could be restored after an animal caused harm. There was no single solution within the law or 'medieval attitude' toward animals that had killed human beings. Instead, there were a multiplicity of ideas running parallel with each other**,** all adding to the nuanced, sometimes conflicting ways that animals accused of committing misdeeds were perceived. This conflict is most apparent between the customary tradition, where animals generally retained the status of property, and in seigneurial records, which detailed the formal executions of animals and the strict adherence to criminal procedure. In the latter, animals were no longer simply chattel. As the next chapter demonstrates, the act of treating animals as lawbreakers and insisting on certain procedures, such as the presence of particular officials and equipment, marked them as criminals and their actions as crimes. Such a transformation challenged the animal's status as a legal object and instead granted them a temporary form of legal personhood, not only highlighting the flexibility of the legal system, but marking the animal as a subject under criminal law.

Chapter 3
The Law in Practice: Creating a Criminal and a Crime

The killing of a human being by an animal was a tragic event. Yet a community had a choice in how they treated such an incident. In Chapter One, I explored the perceived distinctions between humans and animals and how these distinctions shaped expectations of animal behaviour. In Chapter Two, I demonstrated the ways in which customals used the Roman action *in pauperies* to determine liability when animal behaviour did not conform to these expectations and resulted in harm to persons or property. In this chapter, I will illustrate how the law in practice addressed such incidents. Unlike the customary tradition, which typically denied animal criminality, seigneurial records of animal executions assigned criminality to animals by labelling their actions as crimes and insisting on following standard criminal procedure. As a result, the animal and its behaviour were placed both symbolically and physically into specific legal categories; spaces usually occupied by human beings. This enabled contemporaries to consider the case in a particular way (i.e., as a criminal matter) and provided a guide that dictated the way in which the animal and its actions would be treated.

A critical examination of receipts for the expenses incurred in animal executions provides concrete access to the ways in which these executions were viewed by contemporaries. The surviving records reflect mandates of a governing body regarding what information to collect, how to order it, and how to record it. They thus expose not only what was important, but what was ignored. As receipts, these records reveal a high degree of standardisation owing in large part to the criteria set by the Court of Accounts (*Chambre des Comptes*) that audited them. Their presence in seigneurial financial registers signifies that the expenses relating to animal executions were defended by accounting officers, scrutinized under a rigorous auditing system,

and ultimately approved by the court. The court thus played an important role in legitimizing such cases and permitting their continuance.

Seigneurial records are a key source in the study of cases against animals because they express in legal language the essential features of the execution and the way in which particular procedures were applied to a harm-causing animal. In a close reading of the receipts, I examine these features and the ways in which the transformation of an animal into a criminal occurred. Drawing mainly on records from the *Chambre des Comptes* of Burgundy,[1] and comparing them to those from Normandy and areas around Paris, it is clear that the following were consistently emphasised: the culprit and the crime, time the animal spent under guard, the decision-making authority involved in the case, and any tools or equipment needed for the execution. These were standard features for receipts relating to executions and their inclusion provides important insight into the ways in which nonhuman offenders were considered and treated. They demonstrate that by adhering to specific procedures, the animal, their actions, and the ramifications of those actions, could be positioned within pre-existing legal categories. Using these receipts as access points to a particular socio-legal context, we can see how the cases were framed by legal requirements and how the concern over these requirements shaped the reality of medieval practice. Such requirements clarified not only the treatment of the animals, but also the duties of officials. They represented an articulation of law and justice, and helped shape expectations of what was lawful.

[1] Dijon, France, Archives départementales de la Côte-d'Or, Série B. The account records are found mainly in Série B with registers divided geographically. Within each geographic area, they are divided chronologically. The earliest pieces date from the beginning of the fourteenth century. Within a register, there is a particular order to the accounts. The first matters involve agriculture, then receipts relating to taxes, fines, and sales, followed by expenses, such as salaries. Records of the executions of animals fell under the heading of "other expenses" (*autres dépenses*).

In talking about procedure, it is important to remember that such records do not refer to due process, that is, the legal rights owed to a person that ensures fair treatment by the law. Rather, they reveal the insistence on applying particular practices required under criminal law, reaffirming the notion that abiding by such practices was important even in cases against animals. Furthermore, by insisting that an animal and its actions were answerable through the criminal justice system, these records challenged traditional notions of who or what was a recognisable legal entity while at the same time revealing the law's inherent flexibility. Looking closely at these records thus provides valuable insight into individual cases and highlights the divergence between how the law in theory and the law in practice understood and treated animals that had harmed humans.

The Source: the Chambre des Comptes

Records relating to the executions of domestic animals are found in seigneurial financial registers, which give figures for income and expenses relating to the running of the *seigneurie*. The first such sustained financial accounts appeared in the late thirteenth century and became widespread by the 1350s, providing insight into the costs of various activities.[2] As a result of the marked increase in documentation, modern historians are provided with a picture of the formal punishment of animals as it was practised in a particular time and place. It is important to note that these records do not reveal the 'Truth' about why animals were executed for their behaviour. Instead, they help us understand the ways in which the law responded to the killing of a human by an animal, the key actors within the law, and how they were deployed in these situations.

[2] Graeme Small, *Late Medieval France* (Basingstoke, 2009), p. 4.

The *Chambre des Comptes* of Burgundy contains records from the executions of animals from the late fourteenth through the early fifteenth century. As receipts, these texts were produced in a strict legal process using standardized vocabulary and are thus a product of a specific late medieval legal system, one that was based on careful and bureaucratic accounting procedures. To borrow from Julia Kristeva's notion of intertextuality, a concept which requires abandoning the notion of texts as self-contained systems, the records examined here were institutionally fashioned and reflect a series of processes and practices that not only upheld the execution of animals but characterised them as standard judicial actions.[3] These records thus need to be understood through this very specific lens, necessitating an in-depth examination of the precise processes that produced such records.

The *Chambre des Comptes* was a specialized court that developed in the beginning of the fourteenth century.[4] The most important courts were those at Paris, Dijon, Lille, and Vannes. It was here that individuals involved in the management of the royal or princely domain filed their accounts with auditors (*gens des comptes*), who verified receipts and expenses, and maintained financial registers. The court was thus involved in a wide range of matters, from agricultural to commercial, and even penal. Records might reveal the payment of rents, taxes, fines, salaries, the cost of fortifications and repairs, even privileges and appointments. Such records are important sources for verifying events, the financial cost of those events, and who was involved. From the point of view of the *gens des comptes,* the auditing process, or *audition,* provided them with

[3] Intertextuality is a theory which highlights the interconnections between a text and context, where texts are shaped by the repetition and structure of other texts. Thus, any text is at once literary, social, creative, and cultural. See Julia Kristeva, 'Word, Dialogue, and Novel', in Leon S. Roudiez (ed.), *Desire in Language: a semiotic approach to literature and art*, trans. Thomas Gora, Alice Jardine, and Leon S. Roudiez (Oxford, 1981), pp. 64-91.

[4] Courts could be urban, such as those at Auvergne and Velay, monastic, or seigneurial. It has been suggested that the origin of the *Chambres des Comptes* can be found in the Exchequer created by the Dukes of Normandy prior to the twelfth century. See Léopold Delisle, 'Les revenus publique en Normandie', *Bibliotheque de l'école des chartes,* série 2, vol. 5 (1843-4), pp. 268-74.

regular opportunities to impose checks on the agents of the Prince or King, which, in turn, ensured the maintenance and defence of the domain.[5] An ordinance of Louis XII in 1511 characterised the original task of the Parisian court thus:

> *[c]omme nostre Chambres des Comptes à Paris ait esté establye pour soustenir, congnoistre, observer, entretenir et avoir la superintendence de tous et chacuns les droiz, domaines et finances de nostre royaume et couronne de France. . . et noz gens et officiers d'icelle, chacun en son regard, pour vacquer et entendre à oyr et examiner, clorre et affiner les comptes des officiers et autres ayans charge, manyment et entremise du faict desdictes finances ordinaires et extraordinaires, comptables en icelle Chambre. . .*
>
> [a]s our Court of Accounts in Paris had been established to support, know, observe, maintain and have responsibility of each and every law, domain, and finance of our Kingdom and Crown of France . . . and our men and officers of the Court, each in his regard, to employ and perceive by hearing and examining, close and refine the accounts of officers and others having charge, administration and business of doing the said ordinary and extraordinary finances, accountable in this Court. . .[6]

For some historians, such as Jean Kerhervé, this process created important and on-going dialogues between the central government and local officials.[7] The records are thus useful tools not only for viewing events within a particular legal context, but also for tracing the history of a region more broadly.

The Court of Accounts in Paris was set up in the twelfth century and formed the model for those created by the territorial princes during the second half of the fourteenth century.[8] The

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[5] Olivier Mattéoni, 'Vérifier, Corriger, Juger: Les Chambres des comptes et le contrôle des officiers en France à la fin du Moyen Âge', *Revue Historique,* vol. 309 (Jan. 2007), p. 33.

[6] *Documents relatifs à l'administration financière en France de Charles VII à François I^er^ (1443-1523),* ed. Gilbert Jacqueton (Paris, 1891), pp. 153-4. By the end of the fourteenth century, the role of the Court of Accounts was reduced when matters involving currency moved to a separate body (*Chambre des monnaies*). "Extraordinary" taxes, meaning those that were, at least in theory, intended to be infrequent or indirect (such aide*, tallage,* and *gabelle*) became the responsibility of the *Cour des aides.*

[7] Jean Kerhervé, *L'État breton aux XIV et XV siècles: Les ducs, l'argent et les hommes* (2 vols, Paris, 1987), i, pp. 375, 414.

[8] A special commission was charged under Louis IX in 1256 for receiving royal accounts, but it wasn't until the ordinance of Pontoise in 1318 that a fully organised and distinct institution appeared. See Jacques Magnet, 'La juridiction des comptes dans la perspective historique', in Philippe Contamine and Olivier Mattéoni (eds), *La France des principautés. Les Chambres des comptes, XIV^e^ et XV^e^ siècles. Actes du colloque tenu aux Archives départementales de l'Allier, Moulins-Yzeure, les 6, 7 et 8 avril 1995* (Paris, 1996), p. xix.

basic composition of financial courts was laid out in the ordinance of Vivier-en-Brie of 1320: masters of accounts (*maîtres*) would act as the chief auditors, who would hear and judge accounts, while other *clercs des comptes* or *correcteurs* would assist them. It was the obligation of *baillis* and *sénéchaux,* treasurers, *châtelains,* and *prévôts*– in short, all accounting officers – to regularly report to the court on their financial management.[9] Generally, the audit took place within one year after the expiration of the account.[10] However, this rule was not always strictly followed, particularly in the ducal domains. The *Chambre des Comptes* of Dijon allowed the officer to report to the court three to four months from a year after the closing of the account.[11] Eventually, the royal ordinance of Saumur of 1443 allowed accounts to be delayed for up to two years.[12]

The principle behind the *Chambre des Comptes* was that each account was examined, and the court decided whether transactions were lawful. The rigorous rules and procedures were, according to Olivier Mattéoni, defined from the outset as essentially judicial: the accounts had to be reported and justified before a judge, even if there was no dispute about them.[13] It was not unusual for such officers to have a legal role. In fact, it was a prevailing principle of the time to give the King's functionaries and administrative officers sufficient judicial powers to settle disputes that arose out of the performance of their duties.[14] The duty set before the *Chambre des Comptes* was to examine the records for regularity. If the records were found to be satisfactory, the officer putting forth the receipts was protected from subsequent litigation. If not, he could be

[9] Mattéoni, 'Vérifier, Corriger, Juger', p. 34.

[10] Ibid., p. 47.

[11] See Article 27 of the 1386 Ordinance, published in P. Riandey, *L'organisation financière de la Bourgogne sous Philippe le Hardi* (Dijon, 1908), p. 146.

[12] *Documents relatifs à l'administration financière en France*, p. 8.

[13] Mattéoni, 'Vérifier, Corriger, Juger', p. 34. See also Magnet, 'La juridiction des comptes', p. xvii.

[14] Henri Jassemin, *La Chambre des comptes de Paris au XVe siècle* (Paris, 1933), pp. 92-3.

personally liable and subject to fines.[15] The auditing sessions occurred in a precise order where days were reserved for different *bailliages* and *sénéchaux.*[16] Furthermore, these sessions were not open to the public. Like those at the *Parlement* in Paris, deliberations were secret and took place in a closed and guarded space.[17] This helped ensure that that those present would respect the confidentiality of the deliberations. Even an oath was taken by the accounting officials when they entered the Court.[18]

The meeting in which records were verified could last several days. Before the process began, the officer organised his records in a logical and readable manner according to a prescribed style.[19] There was an order for various headings, their internal organisation, and their articulation. There were also standards for the register itself, including its size, pages, and binding.[20] This gave each record, as well as the register as a whole, a precise and unified structure.

At the scheduled date, the accounting officer deposited the accounts before the court clerks, along with the supporting documents that would be used for the examination. The first step in the auditing process was an inspection.[21] Using the supporting documents, clerks examined whether expenditures were justified and in conformity with their associated receipts.[22] They pointed out mistakes, omissions, dubious cases, or even outright misconduct, which the

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[15] Magnet, 'La juridiction des comptes', p. xix.

[16] Mattéoni, 'Vérifier, Corriger, Juger', p. 48.

[17] Ibid., p. 44.

[18] Ibid. Breaking the oath of secrecy could result in a fine. See Katia Weidenfeld, *Les origines médiévales du contentieux administrative*: *XIVe-XVe siècles* (Paris, 2001), p. 335, n. 238, citing the example of Bertrán de Terme, condemned to pay a fine of 300 *livres parisis* in 1497.

[19] Jassemin, *La Chambre des comptes de Paris,* p. 122.

[20] See Patrice Beck, *Archéologie d'un document d'archives: Approche codicologique et diplomatique des cherches des feux bouguignonnes (1258-1543)* (Paris, 2006) for a demonstration of these requirements.

[21] For a thorough analysis of the auditing process, see Jassemin, *La Chambre des comptes de Paris,* pp. 106-150.

[22] Mattéoni, 'Vérifier, Corriger, Juger', p. 50.

masters would then have to consider.[23] This process was the work of one or two clerks and lasted several days.[24]

During the second stage, the accounting officer or his representative presented his defence of the accounts.[25] This was a chance for the masters to question the officer so that they could decide whether the errors were, in the words of an ordinance from 1541, due to "inadvertence or ignorance" (*l'inavertence ou ignorance)* or to "falsity and evil malice" (*fausseté et mauvaise malice*).[26] This phase most clearly resembled a trial: the officer was asked questions about his financial management and at each disputed point, he had to provide a justification.[27] This was also the stage at which the sums were calculated. These calculations were hardly straightforward. Accounts might be kept in different currencies and would have to be converted one by one.[28]

The final calculation was done by the master, demonstrating their dual role as judge and accountant. After this point, the case was considered closed.[29] The third and final stage of the process – the correction of the account - was performed by the clerks. This comprised of a final

[23] The remarks of the clerks were written in a type of code, and typically in Latin, even though the account was written in French. For instance, the phrase *videatur* indicated to the masters that a closer reading of a passage was necessary; *corrigatur* invited masters to make a correction; and *loquatur,* often abbreviated to *lo^{a},* meant that the accounting officer needed to explain an expense or receipt. Mattéoni emphasized that this systematic use of specific verbal forms created a type of insider language or authorized speech, which added an air of legitimacy to the clerk's examination and the auditing process as a whole. See 'Vérifier, Corriger, Juger', p. 50. For more on these terms and their use, see Jassemin, *La Chambre des comptes de Paris,* pp. 124-8. For these terms in the *Chambre des Comptes* in Dijon, see Riandey, *L'organisation financière de la Bourgogne,* pp. 156-8.

[24] Mattéoni, 'Vérifier, Corriger, Juger', p. 38.

[25] Ibid., p. 52. This stage could last a day or just a few hours. See Jassemin, *La Chambre des comptes de Paris,* p. 142-50.

[26] Cited in Jean Mireille, *La Chambre des comptes de Lille (1477-1667): l'institution et les hommes* (Paris, 1992), p. 42.

[27] Mattéoni, 'Vérifier, Corriger, Juger', p. 53.

[28] For more on the different currencies that might be present in accounts, see Marc Bompaire, 'Compter au XIII^{e} siècle avec la diversité des monnaies: livres, sous, deniers', *Revue d'histoire des comptabilités*, vol. 7 (2015).

[29] Mattéoni, 'Vérifier, Corriger, Juger', p. 53.

examination and a return to the passages which had been marked for revision. The clerks also verified that the accounting officer provided any missing receipts or documents and proceeded with any pending payments.[30]

The degree of precision reflected by this rigorous three-stage process, according to Mattéoni, was due in large part to the economic situation at the time, which was marked by a series of crises, including an unstable currency and frequent recessions.[31] The mid-fourteenth through the mid-fifteenth century also saw the return of the plague and famine.[32] These crises necessitated more rigorous financial management and an increased defence of ducal rights and revenues.

The auditing system described above, which was based on the royal *Chambre des Comptes* in Paris, served as the model for the princely courts in France, including that of Dijon.[33] The court in Dijon had loosely existed at the beginning of the fourteenth century.[34] However, it only became a well-structured and cohesive organisation after the judicial and financial reforms of Philippe le Hardi in 1386, its jurisdiction spreading over the duchy and county of Burgundy, the county of Nevers and the barony of Donzy, the seigneurie of Isle, and the lands of Champagne.[35] The ordinance of July 1386, which governed the organisation and function of the

[30] Ibid., p. 54.

[31] Ibid.

[32] See Elisabeth Carpentier and Michel Le Mené, *La France du XI au XV siècle: population, société, économie* (Paris, 1996), pp. 361-497.

[33] See Henri Jassemin, 'Le controle financier en Bourgogne sous les derniers ducs capétiens (1274-1353)', *Bibliothèque de l'École des chartes,* vol. 79 (1918), p. 136; see also Mattéoni, 'Vérifier, Corriger, Juger', p. 50. In fact, a commission came to Dijon from the *Chambre* of Paris in order "to inspect, visit, and reform, if needed, the position and the state of the said Court of Accounts of my Lord in Dijon", Dijon, Archives départementales de la Côte-d'Or (hereafter A. D. Côte-d'Or), B. 1465, fo. 40v.

[34] For more on the origins of the court, see Jassemin, 'Le controle financier en Bourgogne', pp. 102-141.

[35] See Bertrand Schnerb, 'L'activité de la Chambre des Comptes de Dijon entre 1386 et 1404 d'aprés le premier registre de ses mémoriaux', in *La France des principautés*, p. 55. For the court's jurisdiction, see art. 1 of the 1386 ordinance, published in Riandey, *L'organisation financière de la Bourgogne,* p. 175. Eventually Lille became the location of a second *Chambre des Comptes* in Burgundy with jurisdiction over the county of Flanders. With such a

court, made the court at Dijon the main authority for ducal management and specified the procedure for the auditing of financial documents.[36]

To deal with the large geographical area for which the court at Dijon was responsible, the court imposed some general rules regarding the composition of registers, but respected local differences, preferring to let accounting officers adapt to particular situations.[37] Even so, there is a remarkable homogeneity among the records (for example: the use of parchment, rather than paper; a codex format; and a standardized layout) suggesting frequent exchanges between the *gens des comptes* and accounting officers. The accounting officers themselves differed according to locality. It might be the castellan who appeared before the Court, since often the *châtellenie* was the first level of local administration.[38] Where the main administrative division was the *bailliage*, such as in Auxois, the *bailli* would appear. The number of officers varied each year,

large geographical jurisdiction, the court in Dijon might see accounts in *livres* (*tournois* or *parisis*), *francs*, or even *florins*. For more on dealing with different currencies, see Sylvie Bépoix, 'Le savoir-faire comptable des receveurs du comté de Bourgogne au XVe siècle: fiabilité des chiffres et des opérations', *Revue d'histoire des comptabilités,* vol. 7 (2015).

[36] See Riandey, *L'organisation financière de la Bourgogne*, pp. 175-87. Initially, the *Chambre de comptes* in Dijon was not fully distinct from the *Conseil* or ducal Council. See Edouard Andt, *La Chambre des comptes de Dijon à l'époque des ducs Valois* (Paris, 1924), p. 12. The Council was the permanent representative of the Duke in the two Burgundies, acting in both an advisory role and as the centre of administration. The Council was also a court, both of first instance and appeal, in which councillors prepared cases and received petitions. By the 1360s, there was a core group of eight or so members who attended the council's sessions regularly. Some were given the task of auditing accounts and eventually formed a distinct part of the Council, becoming the *gens des comptes.* See Richard Vaughan, *Philip the Bold: The Formation of the Burgundian State* (London, 1962), p. 115. Even after this point, however, there was no concrete distinction between the Council's various roles: for instance, the judicial sessions originally took place in the same room in which the accounts were audited. The *gens de comptes* might even be present at the majority of meetings on judicial matters, see ibid., p. 116. Even by 1400, the Council had the right to intervene in important matters that came before the *Chambre des Comptes.* See, e.g., the case of Jehan of Auxonne, which was deliberated by "Messeigneurs du Conseil et des Comptes", A. D. Côte-d'Or, B. 15, fo. 52r. In fact, the *Chambre des comptes* did not gain full autonomy until 1450. See Andt, *La Chambre des comptes de Dijon,* p. 13.

[37] See Sylvie Bépoix, Fabienne Couvel, Matthiew Leguil, 'Entre exercice imposé et particularismes locaux. Étude codicologique des comptes de châtellenie des duché et compté de Bourgogne de 1384 à 1450', *Revue d'histoire des comptabilités,* vol. 2 (2011).

[38] See, e.g., the accounts discussed here of the castellan of Arnay (B. 2276), the castellan of Duesme (B. 4650), the castellan of Pontailler (B. 5612), and the castellan of Rouvre (B. 5764). In the duchy of Burgundy, the castellan has been referred to as "l'officier domanial par excellence", Jean Richard, *Les ducs de Bourgogne en la formation du duché du XI^e^ au XIV^e^ siècle* (Dijon, 1954), p. 484.

but four masters and four clerks eventually became the norm.[39] These officers were then further divided into two groups: one was responsible for the *duché de Bourgogne* and the territory of Champagne, while the other was responsible for the *comté de Bourgogne* and the remaining territories.[40] These roles alternated every two years.[41]

Given the rigours of this system, the clerks and masters of the court would have had ample opportunity to question receipts for the execution of animals and potentially to put a stop to such events. Yet they did not. The continued existence of such receipts means that the expenses related to animal executions were found to be acceptable. Furthermore, they appear in the registers in a similar form to other expenses. No deviation in their arrangement or formulation was thought to be necessary. This suggests that they were not believed to be so irregular or shocking as to require the clerk to highlight or make note of the fact. They were simply filed under "other expenses" within each register.

As the power and territory of the Dukes of Burgundy spread, the *Chambre des comptes* became more important and served as the central organisation used to survey the management of ducal domains. As the later Valois dukes spent more of their time in the Pays-Bas, the court acted as a critical intermediary between the duke and his local agents.[42] As such, the *gens des comptes* become more than judges and accountants. The court represented a system of governance – a tool that allowed the duke to effectively govern property, persons, and rights. It acted as a unifying force throughout the state by resolving social conflicts and emphasising

[39] Andt, *La Chambre des comptes de Dijon,* pp. 22-4. In 1371, there was only one master and one clerk (A. D. Côte-d'Or, B. 4418, fo. 28r). By 1387, there was still only one clerk (A. D. Côte-d'Or, B. 4429, fo. 34v). However, by 1400, there were four clerks (A. D. Côte-d'Or, B. 4449, fo. 26r).

[40] Riandey, *L'organisation financière de la Bourgogne,* p. 129.

[41] As dictated in art. 2 of the 1386 ordinance, see ibid., p. 176.

[42] Andt, *La Chambre des comptes de Dijon,* p. 17.

stability and continuity. To this end, the court made sure that payments were made, they were reported, and they were justified. We may never know how the court viewed cases in which animals were executed, or what (if any) questions were asked about them, but their continuous appearance in the registers of the *Chambres des Comptes* suggests that they were seen like any other judicial action. Perhaps they were understood as a method of conflict resolution or a stabilising mechanism. What is clear is that the court agreed the executions were not only reasonable but justified expenses, the sums calculated and found to be appropriate. As a result, the court legitimised the capital punishment of animals for the killing of human beings and indirectly fostered the continuation of this practice.

Account Records: The Crime

The records detailing the expenses of animal executions appear in financial registers as finalised, meaning they have been audited by the *gens des comptes* and approved. If any questions had been raised by the clerks or masters, they had been justified by the financial officer presenting the records. Thus, the records we now view describing the formal execution of harm-causing animals have successfully completed the auditing process. As a result, these receipts appear just like any other upon first glance. One such receipt listed the fees and salary paid to an executioner (*mitre*) in 1378 for "executing a pig who had been executed in the village of Auxonne for the act of homicide of a child, which the said pig had killed".[43] There is no sign of concern or even surprise about the events described. No marginal notation indicates that this was considered unusual. In fact, for the vast majority of records that describe the execution of an animal, they

[43] A. D. Côte-d'Or, B. 4425, fo. 37r: "pour paier les depens et salaire de mitre de avoir execute un porc qui a este execute en la ville d'auxonne pour le fait de lomicide d'un enfant qui ledit porc avoit tue".

appear to be written alongside other records on the page in a chronological manner, with one record written in its entirety after another, and generally in the same hand. This has a homogenizing effect and indicates that the scribe was not surprised by the nature of the entry. In other words, he wasn't forced to leave extra space or continue the entry elsewhere, which he might have done if he was unfamiliar with the practices and costs associated with such events. This suggests that animal executions were simply seen as a part of judicial action. Even if these executions were not regular occurrences, a conscious decision was made by the financial officer to leave no sign that these records were different from any other.

The receipts detailing the executions of animals are generally brief, but the terminology used not only reveals the procedures applied in the case but the way in which the harm-causing animal was viewed. One of the first details provided in such receipts was the reason for the execution. Generally, a few words were given to outline the wrong that had been committed. In cases against animals, the record often stated that the animal had "killed" a child, using the verb *tuer.* A general term that may or may not call for a legal response, this seemed to provide a sufficient description of the act and no further information was required. A case from Pontailler in 1350 simply stated that the pigs "had killed one child" (*hanoyent tue un enfant*).[44] Likewise, a sow from Duesme was found to have "killed a child" in 1386 (*avoit tuey d'ung enfant*).[45] A donkey in Plombières was executed because he "put to death" a child in 1405 (*mis a mort un enfant*).[46]

In 1474, a pig was described as having killed a child (*avoit tué ung enffant*) in the town of Maçon, but no further details were given. Jehan Bernard, the lieutenant provost of Maçon, was

[44] A. D. Côte-d'Or, B. 5612, fo. 5r.

[45] A. D. Côte-d'Or, B. 4650, fo. 32r.

[46] A. D. Côte-d'Or, B. 4455, fo. 13r.

reimbursed "for his pain and salary to have to execute a certain criminal sentence given against a pig" (*pour ses peines et salaire d'avoir fait mectre à execution certaine sentence criminelle donnée à l'encontre d'un pourceaul*).[47] Although the verb *tuer* was used, providing only a general picture of the animal's deed, the mention of a criminal sentence is noteworthy. It suggests that the pig underwent some form of judicial process, which transformed the killing from an accident into a crime. This likewise means that procedures and roles were undertaken so that the decision to execute the pig would be in conformity with prescribed rules and be obeyed. The pig's fate was neither accidental nor arbitrary.

Some records provided a detailed description of the animal's act and the victim's death, using terminology that hinted more strongly at criminal activity. For example, in the accounts from the *bailli* of Caen, a pig was described as having strangled a child in 1356 (*avoit estranglé un enfant*).[48] In 1401 in the village of Puis, a sow had "killed and strangled a child named William, son of Prenot" (*eust tue et estrangle ung enfant appellee Guillaume, fils de Prenot*).[49] Usually records described the victim as a child, or a young boy or girl. Was using the victim's name, as well as the parent's name, a reminder for the financial officer as to what happened? Was it an attempt to influence the clerks of the *Chambre des Comptes* into approving the related costs? Whatever the reason, the reminder that the victim was someone's beloved child made the crime all the more personal and all the more terrible.

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[47] A. D. Côte-d'Or, B. 11467, cited in *Annales de Bourgogne,* vol. 8 (March 1936), p. 97.

[48] Léopold Delisle, *Études sur la condition de la classe agricole et l'état de l'agriculture en Normandie* (Évreux, 1851), p. 107. This case is cited by a number of secondary sources, including Edouard Le Héricher, *Histoire et glossaire du normand: de l'anglais et de la langue Français d'après la méthode historique, naturelle et étymologique* (3 vols, Paris, 1862), ii, p. 102 under the entry for "Bouerri" and Pierre Larousse, *Grand dictionnaire universel du XIXe siècle: Français, Historique, Géographique, Mythologique, Bibliographique, Littéraire, Artistique, Scientifique, etc.* (17 vols, Paris, 1875), xiii, p. 201 under the entry for "proces". Delisle himself cited the source as AN, K. 677 but this does not appear to reflect the current way in which the records have been organised.

[49] A. D. Côte-d'Or, B. 4964, fo. 68r.

A similarly grisly case where the victim was identified by name can be found beyond Burgundy. In Fresne-l'Archevêque, Normandy, a child was severely injured by a pig in 1499. The victim was identified by his family ties. The record described the pig as "having eaten the face of a child in his cradle, belonging to Jehan Morin, son of Guillaume Morin" (*avoit mengé le visage d'un enfant au bers, appartenant à Jehan Morin, fils de Guillaume Morin*).[50] The record went on to decry the incident as "an occasion of such excess and violence" that the child died from its injuries.[51] Furthermore, the pig's behaviour and the accompanying results were explicitly stated as the reason for the pig's execution and the related costs: the record declared that the pig's acts "had been done and produced the expenditures which follow" (*ont esté faictes et exposées les mises qui ensuivent*).[52]

It is clear that the description of the deed which lead to the victim's death played a role in justifying the subjection of an animal to the judicial process. Recalling the idealised submissive state of domestic animals explored in Chapter One, here the records underscored the uncharacteristic nature of the animal's behaviour by highlighting the violence of the incident. As creatures that were created to be gentle and mild while serving man's best interest, the killing of a child flew in the face of a domestic animal's assigned role. The more violent the animal's actions, the more their actions seemed *contra naturam* (to use the term discussed in Chapter Two). In such instances, it seemed appropriate for the law to step in and condemn them.

Many records from the duchy of Burgundy did not provide details about the animal's actions, but rather employed legal terminology, which emphasised the criminal nature of the

[50] Rouen, Archives départementales de Seine-Maritime (hereafter A. D. Seine-Maritime), G. 574, unfoliated (14 Sept. 1499); transcribed in Charles de Robillard de Beaurepaire, *Notes et documents concernant l'état des campagnes de la Haute Normandie dans les derniers temps du moyen age* (Rouen, 1865), p. 420.

[51] A. D. Seine-Maritime, G. 574, unfoliated (14 Sept. 1499).

[52] Ibid.

animal's behaviour. For instance, the 1378 case from Auxonne described the pig's actions as "homicide" (*lomocide*).[53] A more general portrayal of events was added later, using the term *tuer* and explaining that a child had been killed by the pig (*un enfant qui ledit porc avoit tue*).[54] The use of the term "homicide" clearly labelled the pig's behaviour as a particular criminal act. The child's death was not merely an unfortunate event but was recharacterized within the eyes of the law. The action that led to the resulting harm was reassessed as a moment of deviance, thereby creating a criminal and a crime.

However, the use of "homicide" appears to be relatively rare. If legal terminology was used, it was more often the term for murder. A pig from Mortain was described as "killing and murdering a child" in 1394 (*tué et meurdis un enfant*).[55] The pig from Pont-de-l'Arche was accused of having "murdered and killed a small child" in 1408 (*muldry et tué ung pettit enfant*).[56] In Rouvre, a town northeast of Paris, three pigs "murdered and ate" a child in 1404 (*avoient murtir et mengir ung enfant*), which necessitated repairing the gibbet so that the pigs could be properly brought to justice.[57] In 1444, a pig "killed and murdered" (*avoit tue et murtey*) a girl in the fields of Saint Prix and, as we shall see in Chapter Four, became embroiled in a jurisdictional dispute in Arnay-le-Duc.[58]

The pig of Saint Prix stands out in the records for being identified by name: the record begins with "for the costs of a pig named Verray" (*pour la despense d'ung porc appelle Verray*) before describing the pig's crime. While it was unusual to name the victim, it was even more

[53] A. D. Côte-d'Or, B. 4425, fo. 37r.

[54] Ibid.

[55] Berriat-Saint-Prix, 'Rapport et Recherches', p. 439.

[56] Ibid., p. 440.

[57] A. D. Côte-d'Or, B. 5764, fo. 17v.

[58] A. D. Côte-d'Or, B. 2276, fo. 24r.

unusual to name the culprit. As in the 1401 case from Puis in which baby William was killed, seeing a name makes the described event more personal and less formal. Having the name of the culprit creates the sense that we, the readers, have intimate knowledge of the case before us. Names draw us in, like a news story, where pieces of information are given extra life and colour, allowing us to engage our imaginations.

One must take care, however, in how to interpret the presence or absence of names. It may tell us more about the nature and limitations of these documents rather than about people's understanding and relationship with animals. I suspect that a record detailing expenses, like the wills explored by Erica Fudge in *Quick Cattle and Dying Wishes* (2018), was viewed as distinct from life experienced at home or in the field.[59] Censoring the document by leaving out the names of animals may thus have reflected the understanding of the role of the receipt as a financial record rather than reflecting the status of the animal. Conversely, it may have been unusual to name pigs unless they were of particularly high economic value. Yet it must be noted that in the case of Verray, the animal was individualized in the same way as humans, that is by a personal name and not by a description.[60] For Keith Thomas and Virginia DeJohn Anderson, naming indicates the close connection between humans and their animals. For Thomas, names are "suggestive of an affectionate attitude on the owner's part" and Anderson believes that this attitude could "undermine the supposedly rigid boundaries between humans and animals".[61] Including a name in the record not only emphasised the close relationship between owners and

[59] For reasons why the inclusion of animal names in wills was a rare occurrence, see Fudge, *Quick Cattle*, p. 93.

[60] It is possible that the name is related to the word "verrat" which refers to a male uncastrated pig. In which case, the name acted as both a description and a way to individualise the animal.

[61] Keith Thomas, *Man and the Natural World: Changing Attitudes in England 1500-1800* (London, 1983), p. 96; Virginia DeJohn Anderson, *Creatures of the Empire: How Domestic Animals Transformed Early America* (Oxford, 2004), p. 90.

their animals, but perhaps also emphasised the betrayal of this connection when these animals killed a human in the community. Furthermore, naming the culprit perhaps served a more practical purpose in that it left no doubt as to who committed the crime.

Returning to terminology, murder and homicide were distinguishable in most sources by the thirteenth century, although their meanings could be ambiguous. According to the jurist Philippe de Beaumanoir, who as we saw in Chapter Two wrote critically of punishing animals in his *Coutumes de Beauvaisis,* homicide occurred in the heat of a moment and without malice aforethought. He stated that:

> [h]omicide is when someone kills someone else in a fight, as it happens when a disagreement arises, and from that disagreement comes harsh words and the fight in which people often get killed.[62]

Murder, on the other hand, involved criminal intent. According to Beaumanoir, murder occurred when someone killed another with premeditation (*aguet apensé*) between sunset and sunrise, or during a truce or guaranteed peace.[63] The *Livres de Jostice et de Pletz* was similarly precise when it came to the time of the killing, stating that those carried out at night automatically constituted murder.[64] In fact, the characteristics of murder often resembled that of assassination. In the *Établissements de Saint Louis*, murder was defined as killing a man or woman "in their bed, or in some manner" as long as it was not in a fight.[65] The *Grand Coutumier de France* similarly described murder as when the killing happened "deliberately or premeditatively" (*délibéré, ou par apensé*).[66] In other words, murder was a planned event and not an immediate

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[62] *CB,* ii, ch. 30, para 828.

[63] Ibid., para. 825.

[64] *Li Livres de Jostice et de Plet,* bk. 19, ch. 6, art. 2, p. 290: "homicide fet nuitantre fet murtre".

[65] *ESL*, livre 1, ch. XXVII, pp. 37-8: "Murtres si est d'ome ou de fame quant l'en la tue en son lit, ou en aucune meniere por coi ce ne soi en mellée. . . sanz tencier à lui et sanz lui deffier".

[66] d'Ableiges*, Le Grand Coutumier de France,* ch. 8, p. 637. See also *Le Livre des Droiz,* i, title 251, p. 407.

response to a provocation. For most sources, the essential distinction hinged on the idea of a killing that was committed publicly or in the open (homicide) or one that was hidden (murder).

While Claude Gauvard believes that there was often confusion about these two terms, and they may even have been used interchangeably, murder appears to be the more serious crime.[67] It was accomplished intentionally and often by stealth. The *Très Ancien Coutumier de Normandie* (*c*. 1200) classified murder among the crimes that could not be pardoned.

> *De larrecin, de murtre, de traïson, d'arson de meson par nuit, de roberie ne puet nule pes estre fete o ceus qui en sont convaincu; mes se il sont pris, il soient pandu*.[68]
>
> There can be no pardon for those convicted of theft, murder, treason, arson of houses at night; but if they are captured, let them be hanged.

Given the wide spectrum of words that could be used to designate the taking of life, the fact that account records generally accused animals of murder implies that animals were judged to have committed the worst kind of killing: one that was done with malice and without justification. Murder implied that the killing involved a kind of deception in which the culprit knowingly took unfair advantage of the victim through trickery or surprise. Assigning such a deed to an animal was a far cry from the Digest's understanding of animal behaviour as "harm without guilt".

By examining the words used to describe the animal's act, the victim, and even the animal itself, we can better understand the way in which the incident was viewed by contemporaries and the reason particular procedures were applied. Highlighting the gravity of the animal's act by using particular legal terminology served the dual purpose of emphasising the drastic nature of the deed as well as the criminal nature of the culprit. As Justine Firnhaber-Baker

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[67] Claude Gauvard, "*De Grace especial": crime, état et société en France à la fin du Moyen Âge* (Paris, 1991), p. 801. According to Gauvard, in Northern France sources often spoke indifferently of "murdre" and "d'omechide", both of which could fall under the term "occisio".

[68] *Très Ancien Coutumier*, in *Coutumiers de Normandie*, ed. Ernest-Joseph Tardif (2 vols, Rouen, 1881), i, part 2, ch. 36, p. 28.

remarked, "labelling an activity makes it mean something".[69] By labelling a pig's action as murder, the incident was no longer accidental or one to be dealt with informally between the victim and the pig's owner. As murder, the act becomes a crime. This labelling thus consigned the act to the realm of criminal law which not only made it a formal matter to be undertaken by specific officials but necessitated that certain rules of procedure be applied. Furthermore, designating an animal's behaviour as murder branded the animal as a criminal, more specifically a *murderer*. A human term, this placed the animal in a category usually reserved for humans and suggested that the animal was subject to a particular expectation (thou shalt not kill) to which a human was also subject. For humans, this expectation arose from Exodus 20:13[70] and was reiterated in man-made laws. For animals, it arose implicitly from the duty to be obedient and subservient to mankind as demonstrated in Chapter One. The receipts examined here suggest that when behaviour did not conform to this expectation, both man and beast (as murderers) were answerable to the law. Once a legal response was deemed appropriate and necessary, the subsequent steps in the case and the duties of the participants were standardised and familiar, helping to guide the case and provide a lens through which to understand it.

[69] Firnhaber-Baker, 'The Eponymous Jacquerie', p. 55. Note that labelling theory has its own criminological literature. The theory states that people come to identify and behave in ways that reflect how others label them. In other words, labelling someone as deviant can lead to poor conduct. Labelling theory found its roots in Howard S. Becker's *Outsiders* (1966) and even in the work of Emile Durkheim. While I am not suggesting that labelling theory in its entirety can be attributed to animals, I am borrowing the more general notion that the very act of labelling is, in part, a creative act. By labelling an animal's behaviour as murder, it has created a crime and, necessarily, a criminal.

[70] Exodus 20:13 is generally understood as "thou shalt not kill", however, St. Jerome's translation "non occides" could mean either "do not kill" or equally "do not murder". The original Hebrew text read "ratsoah", which can be translated as "murder" hence a change in modern translations. Cf: the King James Version (1611) ("thou shalt not kill") with the New International Version UK (1973) ("you shall not murder"); see also the New King James Version (1983) ("you shall not murder"), and the New Living Translation (1996) ("you must not murder"). However, Bailey argued that the term could be translated as either "murder" or "kill". See Wilma A. Bailey, *"You Shall Not Kill" Or "You Shall Not Murder"?: The Assault on a Biblical Text* (Collegeville, M.N., 2005), pp. 3-9.

Pigs in Prison

As newly created criminals, it was not unusual for animals to remain in prison while their fate was being decided. In 1403, the *lieutenant du bailli* of Mantes and Meullant paid for the upkeep of an imprisoned sow: "For the cost accrued for [the sow] in the prison, six *sous parisis*" (*pour depense faite pur* [*la truye*] *dedans le geole, six sols parisis*).[71] In 1444, the pig named Verray condemned for killing a girl near Arnay-le-Duc was carted from prison to the place where it was hanged. The receipt stated that the master of high works was compensated for "carting the said pig from the said prison up to the tree where it was executed" (*charroyer ledit proc de ladit prison jusque a l'arbre ou il fut execute*).[72]

The practice of keeping animals in prison was not unique to Burgundy. It also occurred in other areas of France. For example, between 1337 and 1339, a sow was imprisoned on the order of the mayor of Martigny in the duchy of Bar for a period of fourteen weeks.[73] During that time, the sow was the subject of a jurisdictional dispute, which explains its prolonged prison stay. The account records of Henri de Lattre, *prévôt* of Saint-Mihiel in what is now the region of Grand Est, recounted how several men were paid ten *sous* in 1408 to guard a pig that was condemned to hang for devouring a child in Dompcevrin.[74]

Prison was typically used to hold those awaiting punishment, and in theory, was not meant to be a punishment itself. According to Jean Dunbabin, within thirteenth-century secular courts, prison served an important function where it was thought of as "preliminary to, not a

[71] Berriat-Saint-Prix, 'Rapport et Recherches', p. 433.

[72] A. D. Côte-d'Or, B. 2276, fo. 24v. It was unusual for a criminal animal to be hanged on a tree and not on the *fourches*. This facet of Verray's case will be discussed in more detail in Chapter Five.

[73] *Archives départementales de la Meuse* (hereafter A. D. M.), B. 2397, cited in *Inventaire-Sommaire des Archives Départementales de la Meuse antérieures à 1790,* Série B, ed. Ad. Marchal (2 vols, Paris, 1875), i, p. 335.

[74] A. D. M., B. 1046, fo. 228 v.

consequence of, a legal trial".[75] For animals, it could be used simply for custodial purposes. Such was the case in 1408, where three pigs were imprisoned, not for committing a crime, but for running amok unsupervised. Without their owner's knowledge, they had wandered into the home of a butcher and helped themselves to some tallow.[76] Once they were rounded up, the pigs were kept in prison while their owner decided what to do.

The notion of punitive imprisonment, in fact, was not supported by medieval jurists and consequently it was uncommon in the penal legislation of the fourteenth century.[77] As a result, only a few jurists contemplated prisons and their various roles, and there does not seem to have been any major debate on the subject. One jurist who did consider prison and its role was Baldus de Ubaldis, who distinguished between different types of imprisonment, including coercive, custodial, and house arrest, likening penal imprisonment to death.[78] This idea, along with the categories of imprisonment, was echoed by later French jurists.[79] The author of the treatise *De*

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[75] Jean Dunbabin, *Captivity and Imprisonment in Medieval Europe, 1000-1300* (Basingstoke, 2002), p. 2.

[76] Paris, AN, Z^2 3264, fo. 70 (Nov. 1408): "a emprisonné 3 pourceaulx appartenant à Jacquet Jarnoy, pour ce que ilz ont mengé et degasté certaine quantité de suif et on fait en son hostel grand interest, pour la deffaute de la garde dud. Jacquet", cited in Benoît Descamps, '"Chairs loyales et déloyales": les animaux de boucherie dans les règlements de métiers urbains à la fin du Moyen Âge', in Irène Fabry-Tehranchi and Anna Russakoff (eds), *L'Humain et l'Animal dans France médiévale (XIIe-XVe s.)* (Amsterdam, 2014), p. 199.

[77] Guy Geltner, *The Medieval Prison: A Social History* (Princeton, 2008), p. 44. The aversion to punitive incarceration can be traced back to Roman Law. The *Codex Theodosianus* declared that such a punishment was itself a crime. See *Codex Theod.* 11.7.3: "Carcer poenalium, carcer hominum noxiorum est". The issue was briefly addressed in the Digest when Ulpian stated that "prison is meant for the detention of men, not their punishment" at D. 48.19.8.9. However, Geltner argued that Ulpian was reacting to an existing practice which saw Roman provincial governors using imprisonment as a punishment, indicating that on this subject there was tension even in the third century between jurisprudence and what went on in reality, see *The Medieval Prison*, p. 44.

[78] Baldus de Ubaldis, *Commentaria in primam digesti veteris partem* (Lyon, 1585), bk. 1: 'De iurisdictione comnium iudicorum', liber 2, fo. 77r., para. 9: "Circa primum de carcere, dico quod est quadruplex carcer. . . poena ad canonistas, tunc carcerare est meri imperii, quia poena illa aequiparat morti . . . Secundus est carcer modicae coercitionis . . . Tertius est carcer custodiae . . . Quartus carcer est domesticus, qui non est licitus nisi in casibus expressis in iure".

[79] See, e.g., the French jurist Guillaume Maynier (1420–1502), who echoed Baldus' notion that perpetual imprisonment was akin to death: "Idem est de carceratione perpetuae poenae, secundum Bartol. et Bald. . . et aequiparatur morti" in *Commentaria in titulum Pandectarum, de Regulis Iuris* (Lyon, 1545), fo. 102r, para. 5. See also, the sixteenth-century French jurist, Johannes Nicolaus, who likewise stated that "perpetue poenae et huiusmodi carceratio est meri imperii, quia illa poena aequiparat morti" in *De haereticis aureus tractatus* (Lyon, 1536), q. XI, fo. 28r, para. 10.

carceribus defined prison as "a secure and dreadful place", and maintained that it should be used for the custody of offenders and debtors, rather than for punishment.[80]

Still, prisons were recognised as having a multifaceted purpose in late medieval France where they served a variety of functions: they might be used for retribution or deterrence, to remove a danger from the community, to reaffirm normative values, or to establish or promote royal or princely power. Philippe de Beaumanoir, for example, embraced not only a punitive, but also a reformative function for prisons.[81] The power of detention became closely linked to a new urban identity which saw the control of criminal justice as a sign of the growing political and economic importance of towns.[82]

For my purposes, I focus on the custodial aspect of imprisonment and its role in physically demarcating the accused as a criminal. Custodial imprisonment in much of France had originally been meant for either those unlucky enough to be caught in the act or for those who were deemed to be 'notorious'.[83] In these cases, the trial was held as soon as possible after the arrest and the sentence was quickly carried out after the trial.[84] However**,** as the inquisitorial method became more prevalent, delays between the time of arrest and the trial grew.

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[80] *Tractatus exquisitissimi* (Paris, 1509), fo. 9r: "Carcer est locus securus horribilis repertus non ad penam sed ad delinquentium vel debitorum custodiam"; cited in Geltner, *The Medieval Prison,* p. 46. According to Geltner, the authorship of this work has been attributed to several fourteenth-century jurists, including Mathaeus de Matesilanis, Bartolus de Saxoferrato, Baldus de Ubaldis, and even Angelus de Ubaldis. The version cited here is attributed to Baldus de Ubaldis.

[81] E.g., Beaumanoir was in favour of imprisonment as a way of punishing people who had insulted their superiors. See *CB,* ii, ch. 30, para. 842.

[82] Dunbabin, *Captivity and Imprisonment,* p. 41.

[83] Ibid., p. 107.

[84] E.g., according to the laws of Orléans, a murderous thief who was caught should be given a swift trial and not be put into prison, see *ESL,* livre 2, *Prologue,* p. 330. In terms of a case proceeding *per notorium*, the problems with such an approach were well-noted by proceduralist writers for whom it went against due process. For the role of *fama* in the customary tradition, see F. R. P. Akehurst, 'Good Name, Reputation, and Notoriety in French Customary Law', in Thelma Fenster and Daniel Lord Smail (eds), *Fama: The Politics of Talk and Reputation in Medieval Europe* (Ithaca, 2018), pp. 75-94.

Imprisonment provided more time for laws to be examined and arguments to be gathered. As prosecutorial powers expanded, so too did the need for prisons.[85]

As we have seen, keeping animals in prison was not unheard of or at least was not unduly remarked upon. An animal could, in fact, endure quite a lengthy prison stay. In Normandy, a pig spent an incredible 146 days in the prison of Pont-de-l'Arche in the year 1349. The receipt for keeping the pig during that time stated the crime, the number of days in prison, the cost per day, and the total cost.

> *Pour le vivre d'un porc amené en prison pour avoir mengié un enffant, pour vii^{xx} vi jours, ii d. par jour, xxiiii s. iiii d.*[86]
>
> For the upkeep of a pig taken to prison for having eaten a child, for one hundred and forty-six days, two *deniers* per day, twenty-four *sous*, four *deniers*.

For killing a child, the pig was kept in prison for almost five months at a cost of two *deniers* per day. This amounted to a total cost of one *livre*, four *sous* and four *deniers*. One might imagine that there was a special rate for keeping pigs in prison, perhaps even a discounted one. However, the prison at Pont-de-l'Arche charged the same price regardless of the whether the inmate was human or animal. Michiel Lion was also a guest of the prison in 1349 on suspicion of having stolen fabric from the village of Louviers. He stayed even longer – 181 days – at the same cost of two *deniers* per day.[87]

The same town also recorded keeping a pig in prison in 1408. In a receipt signed by the jailer, Toustain Pincheon, he acknowledged the payment of nineteen *sous* and six *deniers* for the

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[85] Geltner, *The Medieval Prison*, p. 107.

[86] *Actes normand de la Chambre des comptes sous Philippe de Valois: 1328-1350,* ed. Léopold Delisle (Rouen, 1871), p. 383. This source consists of records that Delisle compiled from the Parisian *Chambre des comptes*, which he then published without commentary.

[87] This may have been a standard fee. See the record dated September 1422 in Paris, BNF, Français 7645: *Recueil de pièces originales relatives à différentes peines ou exécutions capitales, la plupart en Normandie (1391-1762)*, no. 28: "chacun prisonnier pour chacun jour ung pain de deux deniers".

upkeep of the prison's occupants. The payment included nine *sous* and six *deniers* for bread.[88] This was followed by the names of the prisoners, including one pig, who began his prison term on 21 June.

> *Item à ung porc admené es dictes prisons, le 21^e^ jour de juing 1408 inclus, jusques au 17^e^ jour de juillet . . . exclut que icellui porc fu pendu par les gares à un des posts de la justice de Vaudereuil. . .par [le bailly] tenues le 13^e^ jour dudict mois de juillet, pource que icellui porc avoit muldrey et tué ung pettit enfant, auquel temps il a xxiiii jours. . .*[89]
>
> Item: for a pig admitted to the said prison, the 21st day of June 1408 inclusive, until the 17th day of July . . . excluding that the said pig was hanged by the *gares* at one of the posts of the gibbet of Vaudereuil. . . by [the bailiff] taken the 13th day of the said month of July, because the pig had murdered and killed a small child, at which time he has 24 days. . .

The record stated that the pig was in prison for a total of 24 days. At the cost of two *deniers* per day, this aspect of the pig's case alone cost four *sous* and two *deniers*. However, it would appear that the pig escaped for some period of time. The last expense related to this case was ten *deniers* "for finding and carrying the rope that is suitable to garrotte the said pig which escaped from the said prison where he had been taken" (*pour avoir trouvé et baillé la corde qu'il esconvint à lier icelui porc qu'il reschapast de ladite prison où il avait esté mis*).[90] Although the sequence of events in this record is unclear, the pig's escape may explain why the receipt included the end date of 17 July, but noted that the *bailli* took the pig to be hanged four days earlier.[91]

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[88] Berriat-Saint-Prix, 'Rapport et Recherches', p. 440.

[89] Ibid. This case is also referred to in Delisle*, Études sur la condition de la classe Agricole*, p. 107, who cited to the *Archives annuelles de la Normandie: historiques, monumentales, littéraires et statistiques,* ed. Louis-François du Bois (2 vols, Caen, 1826), ii, p. 331. It is unclear what the term *gares* refers to. I initially believed the term to refer to the body part by which the pig was hanged but it is perhaps referring to the structure. The *Dictionnaire de l'ancienne langue française et de tous ses dialectres du IX^e^ au XV^e^ siècle* defines it rather vaguely as "an architectural term", ed. Frédéric Godefroy (10 vols, Paris, 1885), iiii, p. 226.

[90] Berriat-Saint-Prix, 'Rapport et Recherches', p. 441.

[91] The chronology in this record appears to be contradictory. Under my reading, the pig entered prison on 21 June. If it left prison on 17 July, it spent 26 days in prison, not 24. If it was taken to be hanged on 13 July, why mention 17 July? The idea that the pig escaped for two days provides some explanation for these discrepancies, although does not explain why the prison would be compensated during the pig's absence.

The records do not mention how the pigs were kept or even how they were treated in prison. To a certain extent, prisons mirrored the classifications of the outside world. Wealth, status, and social connections might all affect one's position in prison. Geltner stated that prisons were often segregated so that condemned men, women, debtors, and those about to stand trial were held in different areas.[92] Inmates might also be in prison for different amounts of time and at a different cost per day. It is conceivable then that a pig would be kept in the least desirable place in prison and with no prominent allies, would have no way to change his situation. It was only in the later Middle Ages that the gravity of the crime influenced the conditions of captivity.[93] Beaumanoir, for instance, believed that the nature of the crime should dictate where one should be held. Those imprisoned for serious crimes, such as murder, or those who would be executed if found guilty of their crime, should be consigned to the dungeon and put in irons.[94] Those accused of crimes which were not punishable by loss of life or limb should be treated more leniently.[95] Unfortunately, the account records provide no details as to the quality of an animal's stay in prison so it is unclear whether Beaumanoir's opinion was put into practice.

Keeping an animal in prison, like anyone else, served a practical purpose: it was a way of retaining physical control over the accused and ensuring that they did not reoffend. Yet there are important differences between human and animal criminals which make the act of keeping a pig in prison significant. Unlike human criminals, there were other (possibly less expensive) ways to confine animals. The cheapest option would obviously be for the animal to remain with the owner. The owner's family or perhaps extended kin could also be asked to guard the animal.

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[92] Geltner, *The Medieval Prison*, p. 63.

[93] See Dunbabin, *Captivity and Imprisonment*, p. 42.

[94] *CB,* i, ch. 1, para. 48.

[95] Ibid.: "li autre aient plus legieres prisons, qui sont pris pour mesfès dont l'en ne doit perdre ne vie ne membre".

Choosing instead to keep the pig in prison not only reiterated the importance of following standard criminal procedure, but also suggested that the animal posed such a risk to the community that incarceration was considered the safest option.

Unlike humans, there was also little chance that an animal would flee in order to avoid prosecution, although the case of the pig from Pont-de-l'Arche demonstrated that escapes were indeed possible. An animal that snuck out of its pen was one thing, but once that animal was considered a prisoner, it was altogether a more serious matter. The owner or whoever was temporarily guarding the animal might face certain repercussions, but an escaped prisoner represented certain liability for the jailer. According to *Les Établissements,* a castellan unfortunate enough to have a prisoner break free had to prove by oath that he had guarded him as well as he could.[96] In another case, the Viscount of Mortain was sued for damages in 1267 after a thief named Thomas le Gesle escaped from prison and reoffended.[97] Jailers thus had a real incentive to ensure that their prisoners remained in their care. Accepting an animal as a prisoner meant jailers considered the crime and the criminal important enough to risk personal liability.

The fear of not being able to find or identify an escaped criminal animal no doubt played a part in keeping that animal in prison, but it does not seem a sufficient reason for a lengthy stay at the same cost as a human offender. Imprisonment therefore suggests that officials considered it a necessary part of the case. Furthermore, the fact that an animal was considered a fit subject for imprisonment by judicial officials granted the case a degree of seriousness and legitimacy. Just as the *gens de comptes* approved the costs of executing an animal and by so doing validated such events, imprisonment supported the treatment of the animal as a criminal and the

[96] *ESL,* livre 1, ch. XLIII, p. 61.

[97] See *Les Olim, ou Registres des arrêts rendus par la Cour du Roi*, ed. A. Beugnot (3 vols, Paris, 1839), i, pp. 251-2.

subsequent adherence to criminal procedure. It confirmed the felonious nature of the animal's actions. Like labelling the pig's act as murder, imprisoning the pig for its deed placed the animal in a category made by and for humans - *murderer*, *prisoner*. Both titles presupposed that the bearer could act within the legal system and that the legal system and its personnel could, in turn, respond to those actions.

The Importance of Judicial Personnel

A key step in the execution of an animal was the involvement of certain personnel. Many of the receipts stressed that the appropriate judicial officers were part of the decision-making process. The most important officer was the *bailli* or bailiff*,* a role that emerged in the twelfth century and became the principal agent in the royal effort to build effective central administration.[98] The *bailli* had a wide range of duties, which included promulgating the king's edicts, recruiting men for military service, sending tax revenues to the royal treasury, and paying the salaries of local officials.[99] Perhaps most importantly, the *bailli* was also tasked with exercising and maintaining law and order.[100] Consequently, he presided over the local court or assize, which determined and applied the appropriate law to the cases that came before it.[101]

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[98] James W. Fesler, 'French Field Administration: The Beginnings', *Comparative Studies in Society and History*, vol. 5, issue 1 (October 1962), p. 83. See also, Hunt Janin, *Medieval Justice: Cases and Laws in France, England and Germany, 500-1500* (London, 2004), p. 46. I will be using the term *bailli* throughout this thesis, instead of 'bailiff', to avoid confusion with the English bailiff. See Theodore F. T. Plucknett, *Studies in English Legal History* (London, 1983), ch. 5, pp. 1-33, which, while dated in some of its commentary, gives a good overview of medieval English bailiffs and their role.

[99] Michelle Bubenicek and Richard Partington, 'Justice, law and lawyers', in Christopher Fletcher, Jean-Philippe Genet, and John Watts (eds), *Government and Political Life in England and France, c. 1300-1500* (Cambridge, 2015), p. 150.

[100] Jean Boutillier provided a description of the duties of a *bailli* in *Somme rural*, title 3, p. 9: "si comme le Prince ou autre seigneur qui commet et establist aucun son bailli ou son seneschal en un lieu pour faire garder et exercer sa iustice en lieu de luy".

[101] Ibid. Boutillier defined assizes as an assembly of wise judges and officers convened by the *bailli* of the province.

The *bailli* was a representative of *haute justice* or high justice. There were three kinds of justice in medieval France: high, middle, and low (*haute, moyen,* and *bas*). As will be explored in more detail in Chapter Five, only those with high justice had the authority to impose the death penalty.[102] *Le Grand Coutumier de France* distinguished between the three categories by reserving the most egregious cases for high justice. These were crimes that had been committed consciously, with knowledge, forethought, or with malice (*scientement, et apensément, ou par aguet*). Such crimes included arson, rape, and murder (*bouter feu, ravissement, et meurtre*).[103] The *bailli* therefore oversaw the most serious cases that came before the court.

Since animals were accused of killing someone, their cases naturally fell under the *bailli*'s jurisdiction. For instance, a pig was condemned in 1408 by the *bailli* of Rouen and his advisors at the assize in Pont-de-l'Arche. The record stated: "[the pig] had been condemned for the said case by the *bailli* of Rouen and the councillors at the assize of Pont de Larche" (*il avoit esté condempné pour ledit cas par monsieur le bailly de Rouen et les conseuls, es assises du Pont de Larche*).[104]

Noting that the *bailli* was involved in the case granted legitimacy to the process as well as to the final decision. The execution of a sow in Montboson in 1393, for example, was done by "the order of the *bailli*" (*ordenance du bailli*).[105] The hangman in the case of the sow from Mantes and Meullant – the sow who spent time in prison in 1403 - came from Paris "by the command and order of our said master the *bailli* and the royal procureur".[106] These orders were

[102] See, e.g., d'Ableiges*, Le Grand Coutumier de France,* ch. 8, pp. 637-8.

[103] Ibid., p. 637.

[104] Berriat-Saint-Prix, 'Rapport et Recherches', p. 440.

[105] A. D. Côte-d'Or, B. 1498, fo. 30r.

[106] Berriat-Saint-Prix, 'Rapport et Recherches', p. 433: "par le commandement et ordonnance de nostre dit maistre le bailli et du procureur du roi".

an important part of the judicial process. As official proclamations, they authorised the carrying out of certain procedural steps in the case. Furthermore, they were perceived as worthy of obedience and respect because they came from one with the authority to make them. An order from the *bailli*, as a representative of high justice, thus lent the executions the support and approval of an institutional power.

Assizes were eventually taken over by auxiliary judges, such as the *lieutenants de bailliage*, who were served by their own staff of sergeants, clerks, and notaries.[107] The pig that was executed in Mortain in 1394 was, in fact, "condemned" (*fut condanney*) by the *lieutenant du bailli*.[108] As in the examples above, the record made clear that the decision to execute the pig was arrived at by one who had the authority to do so. The use of the term "condemned" added a further layer of validity. It implies a pronouncement of guilt and suggests that an official decision was arrived at by a judicial body. In other words, the pig's death was not an arbitrary choice, it was a considered verdict. Furthermore, the term brings with it notions of blame and censure as well as the idea that the animal's behaviour was worthy of being assessed by criminal law.

Although it happened rarely, it was always possible that the proper officials would be unavailable as the case against an animal proceeded. It would have been understandable under such circumstances (since pigs could not launch appeals) to amend certain procedures or even avoid them altogether. Yet that does not seem to have happened. On the contrary, not having the proper officials was viewed as a problem that could cause serious delays or even halt the judicial process altogether. In the case of the sow who had "killed and strangled a child named William" in the village of Puis, the record bemoaned the fact that the governor of Jaucourt, Jacques du

[107] Bubenicek and Partington, 'Justice, law and lawyers', p. 159.

[108] Berriat-Saint-Prix, 'Rapport et Recherches', p. 439.

Courtrambles, was away and so presumably was not able to decide the case. Worse, the governor required another judge to sit the case with him and he did not seem to know of anyone suitable to perform the execution. The sow had been taken by the father of the victim and was currently imprisoned. The record claimed that under the circumstances this was perfectly lawful and described the father as "non accusé".[109] However, the case could not proceed without the second judge with whom the governor could deliberate. The following reason was given for why "the execution could not take place" (*ne pot faire prendre execution*):[110]

> *Jaque du Courtrambles gouveneur dudit Jaucourt nestoit pas au pais ne n'avoit aucuns connues de par lui pour faire la Justice. Excepte le dit proces qui bonement ne povoit par faire l'execution de la dite truye sans autre Juge avec lui. . .*[111]
>
> Jacques du Courtrambles, governor of the said Jaucourt, was not in this territory nor did he know anyone to do the execution. Excepting the said trial which could not happen satisfactorily by performing the execution of the said sow without another judge with him. . .

As a result, the *bailli* was asked to delay the proceedings. The record concluded by stating that a messenger by the name of Millot was paid ten *sous* and sent to rectify the situation.

While there is a record reimbursing the lieutenant of Maçon for handing down a "criminal sentence" against a pig in 1474, strongly suggesting that a trial of some sort had occurred, the receipt for the sow from Puis is the only record that I came across in my research which explicitly stated that the animal was undergoing a trial or *proces*. Interestingly, there was no indication in the record, no marginal notation or additional expenses, that suggested trying an animal in a court of law was unusual, or at least unfamiliar to the scribe. Nor was there an indication that the crime of this particular pig was somehow more egregious than that of other

[109] A. D. Côte-d'Or, B. 4964, fo. 68v.

[110] Ibid.

[111] Ibid.

animals thus requiring a full-blown trial. In the Introduction, I stated that I would refer to 'animal cases' rather than 'animal trials' because I was looking at receipts relating to executions rather than records from a trial. The example of the sow from Puis suggests that harm-causing animals were indeed subject to trials thus confirming the generalisation used by many secondary sources. While I shall continue to be cautious with such terminology, what this evidence does strongly indicate is that cases against animals were not situations in which certain criminal procedures were either cherry-picked and/or modified in their application. Rather, the measures taken in these cases were standard judicial procedures that followed the usual course of events in criminal processes.

The Equipment

Just as it was important to have the right decision-makers involved in the case, it was critical for the right equipment to be available for the execution. Like prisons, certain equipment acted as both a visual and material demarcation of criminality. Such items might include a cart to take the accused to the place of execution, rope for the hanging, and a new pair of gloves for the executioner. All items would be duly noted in the record as expenses. For instance, the *lieutenant du bailli* of Mantes paid for a number of items in order for the sow's execution to be performed. Along with time spent in prison, the execution required: a cart in which to take the pig to the location of the hanging (six *sous parisis*), ropes to bind and haul the sow (two *sous* and eight *deniers*), and a new pair of gloves for the hangman (two *deniers*).[112] The pig from Pont-de-l'Arche that spent twenty-four days in prison in 1408 required a rope that was deemed to be

[112] Berriat-Saint-Prix, 'Rapport et Recherches', p. 433. The total cost for the execution, including the salary of the hangman, amounted to sixty-nine *sous* and eight *deniers*.

suitable for hanging it, which cost ten *deniers tournois*.[113] Similarly, a rope-maker in Duesme named Saignen received one *gros* for a rope twelve *toisses* in length (one *toise* was about six feet) that was used to hang a sow in 1386. The receipt read: "To the ropemaker, Saignen, for twelve *toisses* of large rope to hang the said sow" (*au courdier Saignen pour douze toisses de grosse corde pour pendre la dit truhe*).[114] The hanging of a bull which had killed a man from Argançon generated similar expenses. The expenditures listed by Jean de Foissy, the *bailli* of Jaucourt, from the accounts of 1380-85 included "a rope and other cords for hanging the said bull and to pull it by the force of horses to the beam of the gibbet" (*un sambeau et autres cordres pour lier le dit torel et le tirer à force de chevaux jusqu'au tref des fourches*).[115]

A new pair of gloves was often included in the costs of the execution. In the case of the donkey of Plombières, the hangman was paid two and a half *francs* for leading the animal to the *fourches* of Dijon, as well as "for gloves and ropes" (*pour gans et chevestres*).[116] An executioner from Louviers received a new pair of gloves at the cost of twelve *deniers* for executing a pig in 1349.[117] Gloves were not confined to cases involving animals and were, in fact, a common courtesy afforded to many executioners. For instance, a case from the area of Châtillonais in 1381 listed the costs for the execution of a human criminal, which included "white gloves given to the hangman" (*gants blancs donnes au mitre*).[118] The idea, according to Evans, was that the

[113] Ibid., p. 441: "pour avoir trouvé et baillé la corde qu'il esconvint à lier icelui porc".

[114] A. D. Côte-d'Or, B. 4650, fo. 32r. Twelve *toisses* is the equivalent of about seventy-two feet or twenty-two metres.

[115] A. D. Côte-d'Or, B. 4947, cited in *Inventaire Sommaire des Archives Départementales antérieures à 1790: Côte-d'Or,* ed. Claude Rossignol and Joseph Garnier, Série B: Chambre des Comptes de Bourgogne (6 vols, Paris, 1864), ii, p. 191.

[116] A. D. Côte-d'Or, B. 4455, fo. 13r.

[117] *Actes normand de la Chambre des comptes*, p. 384: "Pour les gans du dit bourrel, xii d".

[118] A. D. Côte-d'Or, B. 4012, cited in *Inventaire Sommaire*, ii, p. 53. Gloves were given by the same community in 1438 (B. 4074) and in 1499 (B. 4120).

executioner could perform his duty with clean hands, indicating that as a minister of justice, he incurred no guilt for his role in killing the condemned.[119] Providing gloves in the execution of an animal therefore suggests that it was possible to incur the same sort of guilt or "unclean hands" that might result in the execution of a human. This reinforced the idea that the animal was temporarily occupying a criminal space, necessitating a new pair of gloves when putting it to death.

For some communities, the execution of an animal required more than a cart, a rope, and a pair of gloves. Some had to repair their *fourches,* a specialised wooden structure, which will be discussed in more detail in Chapter Five, that was used to hang and display the condemned. In the 1350 case from Pontailler, five carpenters (*chappeux*) were employed for two days to "repair and straighten" the town's *fourches*.[120] In addition, they were asked to build a new ladder as well as make other necessary changes.[121] The total cost for these repairs was forty-nine *sous* and six *deniers*. Carpenters in the town of Rouvre were given a similar task in 1404. They were asked to build a *fourches* so that the three pigs could be executed after they had killed a child:

> *A plusiers personnes tant chappuiz comme autre de la ville de Rouvre pour la facon dunes fourches faites en Justice dudit Rouvre pour metter et executer iii pourceaulx. . .*[122]
>
> To the many people both carpenters and others of the town of Rouvre for the construction of a gibbet made in the jurisdiction of the said Rouvre for placing and executing three pigs. . .

[119] Evans, *Criminal Prosecution* (1906), p. 140.

[120] A. D. Côte-d'Or, B. 5612, fo. 5r.

[121] Ibid.: the carpenters were paid for having "faict une [grant] eschele toute neuve et l'autre bois necess a changier es des forches".

[122] A. D. Côte-d'Or, B. 5764, fo. 17v.

The construction was done by the express order of the *bailli* of Dijon (*lesquelles fourches on este faites par mandement de monsieur le bailli de Dijon*).[123] This indicates that the highest local authority considered rebuilding the *fourches* for the execution of three pigs a necessity and possibly even a community priority. The cost of this endeavour*,* which included buying the necessary wood, totalled seven *francs*, seven *gros*, and one *denier*. Such an endeavour was equally expensive in 1499, when a carpenter was paid ten *livres tournois* for building a *fourches*, a ladder, and finding sufficient wood for the execution of the pig in Fresne-l'Archevêque.[124]

In 1474, the town of Maçon wanted to rebuild their gallows in order to hang a pig. As we saw earlier in this chapter, the pig had been accused of killing a child. It was therefore "hanged at the said Maçon on a gallows" (*a esté pendu audit Mascon à une potence*).[125] However, in order to carry out the execution, the structure of the gallows had to be made "toute neufve" or entirely new.[126] This firstly required two pieces of wood.[127] This wood would then be "squared" (*esquarrer*) and once fashioned into a suitable shape, carted to where the gallows would be located. Lastly, a ladder measuring three and a half *toises* in length was required to pull the pig into position.[128] Four men helped set up the gallows with the total cost amounting to one hundred *sous tournois* and ten *deniers.* The material, manpower, and expense related to the hanging of a single pig is striking when one considers that the pig could have just as easily been dispatched

[123] Ibid.

[124] A. D. Seine-Maritime, G. 574, unfoliated (14 Sept. 1499): "pour le charpentier qui feist la fourche, l'eschielle et trouva la bois, 10 l. t".

[125] *Annales de Bourgogne,* p. 97. I have translated the term *potence* here as "gallows" to distinguish it from the *fourches patibulaires* because, unlike the latter, it was not used to display the body of the condemned after death. See Christophe Regina, 'Exhiber le crime vaincu: les fourches patibulaires et la justice criminelle sous l'Ancien Régime', *Criminocorpus* (Dec. 2015), para. 7. However, the record refers to the pig's execution a little later as occurring on a "gibet" so it appears that the scribe was using the two terms interchangeably.

[126] *Annales de Bourgogne*, p. 97.

[127] Ibid.*,* p. 98.: "pour deux pièces de boys quarrt qu'il a fournies pour faire ladicte potence".

[128] Ibid.: "pour une eschielle pour ledit gibet de trois toises et demie . . . pour tirer au gibet ledit pourceaul".

quietly by the local butcher. Once again, we see the insistence on following proper criminal procedure, a theme which will be continued in Chapter Five which explores the execution of criminal animals in more detail.

It seems that even in a community with an operational *fourches*, there could be some assembly required. In 1466, workers were paid for setting up a structure upon which a man and a sow would hang in the city of Corbeil, just south of Paris. Specifically, they fastened an *attache,* a type of harness from which the noose hung. This harness was identified as "fourteen feet in length or thereabouts" and cost two *sous parisis*.[129] The record of these costs included those for the executioner, Henriet Cousin, who was described as an *executeur des hautes Justices.* The record stated that he made two trips to Corbeil during which he "executed and burned" (*executé et brûlé*) a human offender, a man named Gillet Soulart, as well as the sow.[130]

It is not altogether clear what crimes were being punished here. Soulart was condemned rather broadly for "his demerits" and the sow's crime was unspecified.[131] It must have been fairly serious because similar to the cases in Mantes and Ponte-de-l'Arche that occurred several decades earlier, the sow of Corbeil appears to have spent time in prison or at least under some form of arrest. The final costs associated with the case were for the sow's food and for having been guarded for eleven days. The record reads: "*Item* pour la nourriture de ladite truye et icelle

[129] Printed in Henri Sauval, *Histoire et recherches des antiquités de la ville de Paris* (3 vols, Paris, 1724), iii, p. 387: "*Item* pour l'attache de quatorze pieds de long ou environ, deux sols parisis". Sauval cited the *Comptes du Domaine de la ville de Paris, 1466,* fo. 264v. Expenses related to the pigs' execution were filed under the heading "Depsense Commune".

[130] Sauval, *Histoire et recherches*, p. 387: "*Item* à Henriet Cousin, Executeur des hautes Justices, qui a executé et brûlé ledit Gullet Soulart et la truye, pour deux voyages qu'il est venu faire en la Ville de Corbeil, pour ce six livres douze deniers parisis".

[131] Ibid.: "executé pour ses demerites".

avoir gardée par l'espace de onze jours".[132] Each day cost eight deniers *parisis,* for a total cost of seven *sous* and four deniers *parisis*.

It is also unclear whether the crimes of Soulart and the sow were in any way connected. It might have involved bestiality. In such cases the animal was typically burned alongside the human offender in order to rid the community of all memory of the deed. But then why two trips? Alternatively, the account record may simply have combined two executions because the same executioner was employed and they occurred close in time to one another (or at least within the same financial year). One clue might be the payment for the digging of *les fosses*, or graves. The record stated that the payment was "for those who dug the graves [in which] to put the harness and the sow, for this two *sous parisis*" (*pour ceux qui firent les fosses pour mettre l'attache et la truye, pour ce deux sols parisis*).[133] There was no further mention of Soulart, suggesting that his crime and the crime committed by the sow were, in fact, unrelated. Thus, it appears that even after the sow was executed and burned, it was buried. Why? And why bury the harness? It seems that the sow's crime was so heinous that not only was it not mentioned in the record, but material associated with its death had to be removed from sight.

Regardless of the motivation behind the burial, graves were usually dug to bury humans. Burying the sow and combining the expenses of its execution with those of a human offender (even using the same executioner) had the same effect as placing an animal in prison or accusing it of murder: it labelled the animal and its actions as a particular type of criminal that

[132] Ibid. The case clearly gained some notoriety; it was even mentioned in Victor Hugo's *Hunchback of Notre Dame* (Paris, 1831, repr. London, 2004), p. 397: "Nothing was more common in those times than to indict animals for sorcery. Among others, in the accounts of the provost's office for 1466, may be seen a curious detail concerning the expenses of the trial of Gillet-Soulart and his sow, executed 'for his demerits' at Corbeil. Everything is there: the cost of the pen in which the sow was put; the five hundred bundles of short faggots from the wharf of Morsant . . . down to the eleven days' custody and feed of the sow, at eight Paris pence each".

[133] Sauval, *Histoire et recherches,* p. 387.

necessitated capital punishment, which for most communities was an involved and expensive affair. It meant involving the *bailli*, gathering sufficient equipment, and having a *fourches* in good working order. As will be discussed in Chapter Five, it also meant summoning a professional executioner, perhaps even from a distant town. The fact that there was always an alternative available should not be forgotten – the animal could have been seized immediately thus avoiding any time in prison, and promptly dispatched by a butcher or someone else familiar with animal anatomy. The animal could even have been sold after its death for profit. Yet this did not happen, making the community's investment in a criminal process all the more significant. The account records examined here instead reveal that there was a strict adherence to standard criminal procedure, demonstrating the importance of having the animal condemned by the appropriate officials and put to death in the officially designated place for such punishments. These requirements not only reinforced the criminal aspect of the animal's actions but dictated how the animal should be treated. They granted a final note of legitimacy to the entire proceeding and at the same time added a further dimension to the human-animal relationship, one which was structured and regulated not by divine law, but by criminal law.

Conclusions

The records of animal executions found within seigneurial financial registers provide a window into the ways in which harm-causing animals were treated after killing a human. The persistent application of legal terminology and criminal procedure to a nonhuman and its behaviour effectively criminalised the animal and by so doing, created a framework through which to view the animal's deed. Often using a common vocabulary, the records expressed in legal language a set of features relating to the animal's ultimate fate: they highlight the culprit and the crime, time

spent under guard, the decision-making authority involved in the case, as well as tools or equipment required for the execution. These features had a particular function within the records and were carefully detailed (even if only briefly) to trace various transactions and payments. The consistency of these features in records from Burgundy, Normandy, and areas around Paris speaks to the fact that these records had first and foremost an evidentiary and financial purpose. They provided an authoritative voice testifying to an event and its careful orchestration, acting as proof that expenses had been paid and those involved were compensated for their services.

The consistency of these features also reminds us that as receipts, these records were scrutinized under a rigorous auditing system. The expenses were defended by accounting officers, tallied by clerks, and ultimately approved by the *maîtres des comptes*. With plenty of opportunity to question such events and their related costs, the steady appearance of animal executions in financial registers demonstrates the key role played by the *Chambre des Comptes* in not only legitimizing such cases but in sanctioning their continued occurrence.

The insistent criminalisation of the offending animal seen in the records examined here placed that animal in a pre-existing legal category and reflected particular judgements about the animal and the ramifications of its actions: namely, that an animal killing a human is a crime, a crime is committed by a criminal, and a criminal must be formally punished. The animal's transformation thus challenged the usual relation between that animal and the human community. Not only did it undermine the gap between humans and nonhumans as understood in Chapter One, with the latter a legal subject and the former a legal object, but it also undermined the idea set forth in Chapter Two by the majority of customals that injury caused by animals was "harm without guilt". The receipts from seigneurial records took a radically different approach, dealing with the incident not as a civil matter, but as a criminal one.

Notwithstanding this thorough transformation, seigneurial records reveal the flexible nature of the law by creating a purposeful ambiguity. The animal was not 'us' yet was brought into the legal framework and treated as a legal subject for the very human crime of murder. In such cases, the animal no longer simply occupied a divinely-ordained place in creation, but simultaneously occupied a space ordained by man - that of a condemned lawbreaker. As a result, the animal was more than a legal object; for the purposes of the case against it, the animal became a legal subject. The application of criminal law and its accompanying procedures to a nonhuman suggests that the borders that had previously defined and confined such categories could be expanded. This flexibility allowed for the manipulation of status distinctions (who was a legal subject and who was not), which enabled animals and their actions to be subject to the judicial process. Such flexibility will be seen again in the next chapter, in cases where animals become embroiled in jurisdictional disputes, as well as in Chapter Five, where only a certain type of death was deemed appropriate for animals condemned for murder. Yet the presence of such flexibility did not make animals into humans or place the two groups in the same ontological category. Rather it allowed animal behaviour to be categorised and managed by the legal system.

Chapter 4
Contested Spaces: Animals in Legal Disputes

The animals discussed in this thesis are the subjects of conscious decisions to treat their misdeeds not as unfortunate accidents, but as crimes. As Paul Schiff Berman pointed out, this effectively claimed dominion over the crime by conceiving of the criminal as a member of the community.[1] The crime then became an internal offence, one to be managed and resolved by that community. In a legal context, this dominion is referred to as jurisdiction; it is the official power to render legal decisions and judgements over a matter. By asserting jurisdiction over the criminal, the community turned an external and inexplicable threat into a crime suitable for internal adjudication.

Today, the word 'jurisdiction' is used to describe the authority of a court or the territory within which a court or government agency may exercise its power. Determining whether a particular court has the power to hear a case is a key issue to be decided. In medieval France justice was negotiated in a range of courts where numerous actors called for and legitimised themselves through practices associated with dispensations of the law. At the lowest level were seigneurial courts, presided over by minor noblemen or hired judges. These courts might coexist alongside a village or small-town court. Above these were intermediary courts, which were presided over by appointed professional administrators, such as *baillis*. Decisions in the lower courts could be appealed until they reached the king's court in Paris, the *Parlement*, which was the court of last resort.

[1] Paul Schiff Berman, 'An Observation and a Strange But True 'Tale': What Might the Historical Trials of Animals Tell Us about the Transformative Potential of Law in American Culture?', *Hastings Law Journal,* vol. 52, no. 1 (2000), p. 158. The other way for a community to treat a criminal is to define itself in opposition to the criminal and treat him as a purely external threat.

Given the multiplicity of legal systems and courts in medieval France, jurisdictional disputes were an ordinary feature of juridical life. In fact, jurisdictional rights were one of the most consistently disputed prerogatives, requiring frequent defence against perceived encroachments.[2] According to James Brundage, a specialist in medieval canon law, "disputes over jurisdictional questions erupted with lamentable regularity".[3] Cases involving animals were not immune from such disputes. As demonstrated in Chapter Three, having the right personnel involved in and making decisions about the case of a criminal animal was an important matter. Consequently, these matters could be also a source of conflict. In this chapter, I will demonstrate that the concern for following proper procedure extended to disputes over who had the power to condemn the animal and decide the location of the execution. To do this, I will explore three cases in which various judicial bodies argued that they, and only they, had the proper authority to order the animal's execution. Then, noting that the power to free an animal was just as important and closely guarded as the power to execute one, I will turn to the Duke of Burgundy's response to a petition from a local priory to free a herd of pigs. Lastly, I will examine a petition to build a gibbet, in which the hanging of a sow was used to demonstrate that the community in question had the jurisdiction to perform capital punishments.

As demonstrated in the previous chapter, the rhetoric and procedural strategies used in seigneurial receipts to define and treat a harm-causing animal transformed that animal into a criminal and its actions into a crime. In this chapter, I will show that within jurisdictional disputes there was a similar emphasis on following correct procedure and this likewise produced a criminalising effect. In both seigneurial receipts and the disputes examined here, the legal

[2] Hannah Skoda, *Medieval Violence: Physical Brutality in Northern France, 1270-1330* (Oxford, 2013), p. 41.

[3] James Brundage, *Medieval Canon Law* (New York, 1995), p. 2.

status of the animal was no longer simply that of property. The subjection of an animal and its case to the laws of jurisdiction – a domain of law that, like criminal law, was usually applied only to humans - endowed that animal with the temporary status of a 'legal person'. As such, the animal became an entity whose behaviour could be managed by the legal system and whose death could be contested.

Jurisdiction under Roman and Medieval Law

The term 'jurisdiction' (*iurisdictio*) was a very specific term under Roman law, where "declaring law" (*ius dicens*) – that is, to grant a civil remedy in a dispute - was performed by Roman magistrates and fully delegable to agents appointed to act on their behalf.[4] For Ulpian, the term was understood broadly to mean an office which included, amongst others, the right "to appoint judges to settle legal disputes" (*iudices litigantibus dare*).[5] This definition formed the basis of the medieval theory of legal authority developed by Azo, who understood *iurisdictio* as including authority that ranged from the *imperium* held by kings to the feudal jurisdiction held by a lord.[6] It was through this conception of *iurisdictio* that the term came to acquire a broader meaning of power. Irnerius connected the idea of power with jurisdiction in what would become the standard theoretical definition in the Middle Ages. In a gloss on Digest 2.1.3, he described *iurisdictio* as

[4] See Daniel Lee, *Popular Sovereignty in Early Modern Constitutional Thought* (Oxford, 2016), pp. 105-6. Echoing the sixteenth-century Italian jurist Andrea Alciato, Lee argued that *iurisdictio* should really be understood as a verbal noun so that jurisdiction is not so much *iuris dictio* (the declaration of law), but *iuris dicens* (declaring law). The more active meaning demonstrates how jurisdiction implies a use or exercise; "it is a 'doing'", wrote Lee, "not a 'thing'", ibid., p. 83, fn. 12.

[5] D. 2.1.1. See also D. 2.1.3 for a more narrow meaning (*iurisdictio est etiam iudicis dandi licentia*).

[6] Azo, *Azonis Summa super Codicem,* fo. 67. For the terminological variety used by decretists to capture the idea of jurisdiction, see Martinien Van de Kerckhove, 'La notion de juridiction chez Décrétistes et les premiers Décretalistes (1140-1250)', *Études Franciscaines*, vol. 49 (1937), pp. 420-5.

"power associated with the necessity to pronounce law and provide equity".[7] Although the concept of jurisdiction remained quite broad, some level of precision was given under Accursius, Azo's pupil, who specified degrees of jurisdiction based on concepts in Roman legal texts.[8] His analysis created a scale of jurisdictional authority where different forms of jurisdiction could exist side by side.

Jurisdiction, it was agreed, was important because it was based on the idea of rightfulness combined with coercive force. For Hervaeus Natalis, a fourteenth-century Dominican, the key aspect of jurisdiction was that the holder could make binding pronouncements, which created obligations.[9] But these pronouncements could only be binding if they were made by one with the appropriate authority. As Gratian pointed out, one needed knowledge as well as power (*non solum est necessaria scientia sed etiam potestas)* to settle legal cases.[10] Jurisdiction thus not only created a conceptual framework for dispensing justice, it created a source of power and control.

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[7] "Potestas cum necessitate iuris scilicet reddendi aequitatisque statuendae", in Enrico Besta, *L'Opera d'Irnerio: Contributo alla storia del diritto italiano* (2 vols, Torino, 1896), i, *gl. ad. de Iurisdictione,* p. 20. Bartolus de Saxoferrato, building on the Gloss, defined *iurisdictio* as power that was held by a public person. See Bartolus, ad D. 2.1.1, n. 3 in *Bartoli a Saxoferrato, In Primam Digesti Vet. Partem Commentaria* (Turin, 1577), p. 46. See also Pietro Costa, *Iurisdictio: Semantica del potere nella pubblicistica medievale, 1100-1433* (Milan, 1969) for a thorough and very useful examination of the term *iurisdictio* in the language of the late Middle Ages to describe different locations of power.

[8] *Accursii Glossa in Digestum vetus*, *gl. ad. mixtum est,* fo. 22 (Turin, 1969), p. 41. The degrees are: *merum imperium, mixtum imperium, modica coercitio,* and *iurisdictio* (sometimes referred to as *iurisdictio simplex*). *Merum imperium* is the highest possible level of jurisdiction which included the power to hear criminal cases for which the punishment was death and to impose such penalties. *Iurisdictio simplex* was the lowest form of jurisdiction and was held by a hired judge. See also, Bartolus ad D. 2.1.3, n. 4 in *Bartoli a Saxoferrato, In Primam Digesti,* p. 48. For more detail on these categories and some very useful charts, see Jesús Vallejo, 'Power Hierarchies in Medieval Juridical Thought: An Essay in Reinterpretation', in *Ius Commune: Zeitschrift für Europäische Rechtsgechichte*, vol. 19 (1992), pp. 1-29 and Nikitas E. Hatzimihail, *Preclassical Conflict of Laws* (Cambridge, 2021), table 8.1: 'Grades of *Iurisdictio* in Bartolus (ad D.2.1.)', p. 257.

[9] Hervaeus Natalis, *De iurisdictione,* ed. Ludwig Hödl (Munich, 1959), pp. 14-15. In his work, *de potestate papae,* Hervaeus examined the content of jurisdiction. He believed it consisted of two powers: the power to legislate and the power to judge (*statuendo vel sententiando*). See 'Tractatus de potestate Papae', in *Quator Libros sententiarum Commentaria* (Paris, 1647; repr. 1966), p. 364.

[10] *Decretum Gratiani,* D. 20, d.a.c 1. For more on the use of the term *iurisdictio* and its synonyms in Gratian, see Van de Kerckhove, 'La notion de jurisdiction chez Décrétistes', p. 421, fn. 1.

The fact that cases involving criminal animals could be the subject of jurisdictional disputes is noteworthy. It might be tempting to see these cases as simply a pretext for such disputes. Even if true, they offered no more pretext than cases involving humans. The records indicate that cases involving animals were taken seriously; they called for and even necessitated certain legalistic procedures. In fact, such cases may have been a perfect avenue for asserting jurisdiction. According to Patricia Turning, authorities chose their criminals with discretion. If royal or municipal governments chose to demonstrate their authority by conducting an execution, the most viable candidate was someone who had committed a crime which resonated with the public and whose death would not cause any popular protest.[11] The most common profile for an executed criminal was a young male, who was lower class and unmarried.[12] A pig that had killed a child was another ideal candidate. The crime was both shocking and unjustified, and objections to the execution would be minimal. The hanging of a pig could be one way to intervene in local relationships thereby establishing a precedent of taking control while creating the least amount of controversy. Thus, in a narrow sense, the disputes examined here were concerned with the usurpation of specific judicial practices. In a broader sense, however, they were disputes about the maintenance of the right to enact capital punishment and in the appropriate location. Ultimately, these cases represent the way in which communities understood the enactment of justice and the way in which animals accused of killing a human fit within a specific judicial framework.

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[11] Patricia Turning, *Municipal Officials, Their Public, and the Negotiation of Justice in Medieval Languedoc: Fear Not the Madness of the Raging Mob* (Leiden, 2012), p. 141.

[12] The criminal trials found in *Les Registres criminelle du Châtelet de Paris* from 1389-1392 suggest a strong connection between the marginalised poor and crime, where outsiders and transients suffered the majority of executions or amputations. Local inhabitants and those with financial or social ties to the community, on the other hand, were more often assigned lesser monetary sentences. See Rodrigue Lavoie, 'Les statistiques criminelles et le visage du justicier: justice royal et justice seigneuriale en Provence au Moyen Âge', *Provence historique,* vol. 115 (1979), pp. 15, 18.

The Horse of Amiens

In 1334, the mayor and aldermen of Amiens were charged with an abuse of justice after they hanged a horse that had killed a child. The Count of Saint-Pol believed that he had the right to exercise jurisdiction over this abuse, but the *bailli* of Amiens clearly thought differently. When the *bailli* would not relinquish the case, the Count appealed to the *Parlement* in Paris. It appears that the parties settled, for the Court dismissed the appeal without prejudice.

> *Annulation, sans amende, de l'appel interjeté par le comte d'une sentence du bailli d'Amiens, qui avait refuse de lui remettre, en sa qualité de sire de Doullens, la connaissance d'un abus de justice commis par les maire et échevins de cette ville et consistant dans la pendaison d'un cheval meutrier d'un enfant. On en poussera pas plus loin la poursuite contre l'échevinage*.[13]
>
> Cancellation, without fine, of an appeal lodged by the Count of a sentence of the bailiff of Amiens, who had refused to give him, in his capacity as Lord of Doullens, the jurisdiction over an abuse of justice committed by the mayor and aldermen of this town and consisting in the hanging of a horse that had murdered a child. No further action will be taken against the aldermen.

Northern cities like Amiens, which obtained their charter (*charte de commune*) between the eleventh and twelfth centuries, benefited from large autonomous administrations and divided communal powers.[14] With formally installed municipal officials, the municipal court was a non-royal court of first instance. These civic courts developed in the later part of the Middle Ages and tended to overshadow the older seigneurial courts.[15] The jurisdiction of municipal courts was generally limited within the walls of a city but could extend to the suburbs beyond. The court

[13] *Actes du Parlement de Paris: Deuxième série de l'an 1328 à l'an 1350,* ed. H. Furgeot and M. Dillay (3 vols, Paris, 1920), i, n. 988, pp. 102-3.

[14] For more on the city as a framework which effected the development and diffusion of law, see Sébastien Hamel, *Le justice dans une ville du Nord du Royaume de France au Moyen Âge: Étude sur la practique judiciaire à Saint-Quentin (fin XI^e – début XV^e siècle)* (Turnhout, 2001), p. 1

[15] Leah L. Otis-Cour, 'Crime and Punishment', in William W. Kibler (ed.), *Medieval France: An Encyclopedia* (New York, 1995), p. 520. For the development of seigneurial justice which began in the tenth century, see Alan Harding, *Medieval Law and the Foundations of the State* (Oxford, 2002), pp. 48-54.

was presided over by a magistrate who was bound to respect and uphold the city's chartered privileges.

With only the final decision from the Parisian *Parlement*, it is difficult to say in what way the municipal court of Amiens committed the alleged abuse of justice. Was it the execution? Or was it the execution of a horse? The key word may be *meutrier.* If the horse was charged with murder, this was a crime over which the *échevinage* did not have jurisdiction. The authority to try cases of voluntary and involuntary killing had long been a source of dispute in Amiens. By the end of the twelfth century, Augustin Thierry argued, the commune was exercising the power of high justice even though there was no specific mention of murder in Amiens's foundational charter of 1117.[16] Thierry does not believe that this omission implied that the punishment of such crimes was left to seigneurial justice. In fact, in an 1182 letter from the abbot of Sainte-Geneviève, the abbot stated that those who confessed or were convicted of a crime were tried and punished before "la commune d'Amiens" to whom belonged "le jugement du sang" or cases in which blood was shed.[17] While this was a personal letter and not a legal document, nor was it written by a jurist (hence the use of legally imprecise language), it suggests that by the late twelfth century *judicium sanguinis* was believed to belong to the commune. However, the criminal jurisdiction of the *échevinage* was redefined by the communal charter of 1190 granted by King Philippe-Auguste. According to Article 48, the jurisdiction of all crimes and misdeeds were given to the *échevinage*, but cases of rape and murder were reserved for the King.[18] This

[16] The full text of the charter is reproduced in *Recueil des Monuments inédits de l'histoire du Tiers état,* ed. Augustin Thierry, première série (2 vols, Paris, 1850), i, p. 46.

[17] Ibid.*,* i, p. 100. Étienne, abbot of Sainte-Geneviève, and later bishop of Tournay in 1192 made this statement in his letter to Cardinal Laborans, who had worked in Amiens on behalf of Count Philippe d'Alsace.

[18] Ibid., i, p. 114: "Omnia autem fortifacta, que infra banleugam civitatis fient, major et scabini judicabunt, et de illis justitiam facient, sicut debent, presente ballivo nostro, si ibi voluerit interesse; si vere interesse noluerit, vel non poterit, pro ejus absentia justitiam facere non desinent, sed debitam justitiam facient, *excepto tamen multro et raptu,*

division between murder and other kinds of killings was restated in Article 24 of the city's *coutume* in 1280 where it was repeated that cases of rape and murder were the prerogatives of the King: "Li maires et li esquevin ne sont à meller en nulle cose de rat ne du murdre; car ch'est le roy sans part d'autruy".[19]

This did eventually raise questions about the definitions of these terms. By the fourteenth century, this issue was submitted to the *Parlement* in Paris. As was examined in the previous chapter, customals treated killings as murder if they occurred secretly, at night, and with malice aforethought. The commune thus adopted an interpretation that gave them jurisdiction over *homicide simple,* or killing without premeditation.[20] They argued that homicide was distinguished from murder in three ways: homicide was a killing committed without treason and during the day; it was committed in cases of *chaude mélée* (in the heat of the moment); and lastly, homicide was a killing that was done in public with no indication that the accused was trying to hide his crime.[21]

The royal *procureur*, on the other hand, argued for a broad definition of murder to create more expansive royal jurisdiction. He argued that murder, "as understood in the common language of the kingdom", was any criminal action in which one person killed another, no matter the method.[22] This included all attacks on one's person, which, he argued, the communal charter

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quod nobis et successoribus nostris in perpetuum retinemus, sine parte alterius" (my emphasis). Thierry believes that this article was added to the original charter of 1117. See ibid., i, p. 478.

[19] *Coutumes locales du bailliage d'Amiens,* ed. A. Bouthors (2 vols, Amiens, 1845), i, p. 80. It was also repeated in a 1315 decision from the Parisian *Parlement,* which stated that the mayor and magistrates had high and low justice, except in cases of murder and rape (*habent omnimodam justiciam altam et bassam, duobus casibus exceptis, videlicet murtro et raptu*), cited in *Recueil des Monuments inéits de l'histoire du Tiers état*, i, p. 357.

[20] Ibid., i, p. 479.

[21] Ibid.

[22] Ibid., i, p. 480.

and customs had neglected to define clearly.[23] Not surprisingly, the *Parlement* did not find this curiously vague reasoning particularly persuasive and in February 1341 rendered a decision that prevented the expansion of royal power. Murder remained a royal case but was limited to premeditated homicide. The *échevinage* maintained jurisdiction over *homicide simple*:

> *per punctum carte et privilegio regis. . . dicebat dictos majorem et scabinor habere et ad ipsos pertinere cognicionem, judicium et execucionem omnium maleficorum in dicta villa et baleuca ejusdem exceptis murtro et raptu. . . et specialiter de casibus simplis homicidii, declarando de casibus simplices homicidii et non murtri, de usu et consuetudine patrie et maxime dicte ville Ambianensis.*[24]
>
> by the point of the charter and by the privilege of the King . . . it is declared that the mayors and magistrates have and to themselves belong jurisdiction, the administration of justice and enforcement of all criminals in the said town and its suburbs except murder and rape . . . and especially of cases of simple homicide, having been declared cases of simple homicide and not murder, according to the practice and customary law and especially asserted by the said town of Amiens.

It seems possible then that the abuse of justice committed by the *échevinage* only seven years before was indeed that they had assumed jurisdiction over a case of murder. The record did not indicate why the killing committed by the horse was considered murder and not *homicide simple.* In Chapter Three, we saw that when legal terminology was used to describe an animal's crime, it was typically "murder", the worst kind of killing. Would the horse's crime automatically be considered murder? Or perhaps the killing did not meet all three requirements for *homicide simple* in which the killing must occur during the day and without treason, in the heat of the moment, and publicly. Unfortunately, we are given no details about the event so are left to wonder which of these requirements the horse failed to meet. Perhaps the killing happened at night or without any eyewitnesses, although this raises the question of how the killing could then

[23] Édouard Maugis, *Recherches sur les transformations du régime politique et social de la ville d'Amiens, des origines de la commune à la fin du XVIe siècle* (Paris, 1906), p. 325.

[24] *Recueil des Monuments inéits de l'histoire du Tiers état*, i, p. 480.

be traced back to the culprit. Could the horse have struck out seemingly without provocation thereby failing to meet the 'heat of the moment' requirement? Such a requirement is reminiscent of the *contra naturam* element of the *actio de pauperies* suit discussed in Chapter Two. In both cases, there was a desire to ensure that the animal was acting without provocation in such a way that was unforeseeable. From a legal standpoint, this helped authorities avoid difficult assessments of the animal's state of mind at time the harm was committed.

Of course, under this interpretation, if it was unclear whether the killing had occurred in the heat of the moment, it was automatically deemed to be premeditated. The horse's action could therefore be classified as premeditated not because it was assumed the horse had actually plotted to kill the victim, but because there was insufficient proof that it had not. This interpretation seems odd to modern eyes because it is the opposite of our legal system today where the burden of proof falls on the State to show that the killing *was* premeditated; that the killer had *intended* to kill the victim. My interpretation places the burden of proof on the commune to prove that the killer did *not* intend to kill the victim. Furthermore, the commune must also prove that the other requirements for *homicide simple* were met. Thus, if any requirement could not be met, the case would be removed from the commune's jurisdiction and royal jurisdiction would be effectively broadened. Whichever requirement the horse failed to meet, failure would make it a case of murder, and it should have been in the hands of the royal *bailli*.

One question remains regarding the role of the Count de Saint-Pol. What was his interest in the case and why did he believe that he had jurisdiction over it? Just as the exercise of justice was a key aspect of municipal and royal powers, it was also an important seigneurial privilege. A city was part of a *seigneurie*, and the lord's jurisdiction extended over the inhabitants of his

domain and emphasised his authority within the locality.[25] A lord might claim to have the monopoly on justice over his citizens, or even cite the place where the crime was committed and expect his privileges to be respected in that location.[26] Most lords had powers of high justice, but they remained subordinate to royal courts in a number of matters.[27] Therefore, in order to bypass the appeals process that seemed to so heavily favour royal officers, local lords sometimes appealed directly to the King's court.[28] This may have been what happened in the case of the horse from Amiens.

Jurisdiction was usually determined by the domicile of the litigants.[29] If there were multiple defendants who belonged to different jurisdictions or if the criminal had been caught in the act (*flagrant delit*), the location of the crime could be used to determine jurisdiction instead.[30]

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[25] Graeme Small, *Late Medieval France,* p. 62. Seigneurial courts could hold low, medium, or high justice.

[26] Nicole Gonthier, *Cris de Haine et Rites d'unité: La violence dans les villes, XIII^{ème} – XVI^{ème} siècle* (Turnhout, 1992), p. 16. According to Gonthier, the attribution of judicial cases remained the most frequent pretext for disputes between the various political powers that occupied urban spaces, ibid., p. 15.

[27] See David Potter, ''Rigueur de Justice': Crime, Murder and the Law in Picardy, Fifteenth to Sixteenth Centuries', *French History*, vol. 11, issue 3 (1997), p. 267.

[28] See Gustave Dupont-Ferrier, *Les officiers royaux des bailliages et sénéchaussées et les institutions monarchiques locales en France à la fin du Moyen Age* (Paris, 1902), p. 402-3. Royal officials often encroached on the jurisdiction of subordinate courts in an effort to expand royal jurisdiction. The most common method of encroachment was through the appellate process. When a case was appealed it was heard before the *bailli* and then the *Parlement* in Paris. Seigneurial judges generally had to appeal cases to their immediate suzerain. Bailiffs therefore heard appeals from sentences of royal provosts *and* those of the seigneurial and municipal courts, which effectively granted the *bailli* control over the entire lower court system. See ibid., p. 408. Only after the *bailli* rendered his judgement could an appeal be brought before the *Parlement.* For abuses of power due to the hierarchy of the appeals process, see Maugis, *Recherches*, pp. 322-4 and Dupont-Ferrier, *Les officiers royaux*, pp. 423-6. Once an appeal was accepted by the *Parlement*, the parties could decide to settle. The *Parlement* could even decide to annul the appeal without any sort of fine, as seen here in our case of the horse from Amiens.

[29] Domicile was considered the determinant in selecting a forum under normal circumstances. See Tancredus, *Ordo iudiciarius* in *Pillii, Tancredi, Gratiae libri de iudiciorum ordine*, ed. Friedrich Bergmann (Göttingen, 1842), part 2, title 1: 'Quod iudicium actor adire debeat', secs. 1-2, p. 127. See also *ESL*, livre 2, ch. 2, pp. 331-2: if arrested during the commission of a crime, the domicile of the victim determined jurisdiction. Otherwise, the offender must be charged in the jurisdiction in which he is domiciled. See Bernard Guenée, *Tribunaux et gens de justice dans le bailliage de Senlis à la fin du Moyen Age (vers 1380- vers 1550)* (Paris, 1963), pp. 104-5 on the difficulty of determining domicile.

[30] Philippe de Beaumanoir wrote in his *Coutumes de Beauvaisis* that if the offender was caught in the act, the jurisdiction of the case belonged to the judge on whose land the crime took place. However, if the offender escaped, jurisdiction belonged to the judge where the offender was domiciled (*la connoissance en apartient au seigneur dessous qui il est couchans et levans*), i, ch. XXX, para. 911. The determining factor in deciding jurisdiction fluctuated over the years. The argument that the location of the crime had to be considered was made by the

The count could have believed that he had jurisdiction over the case if the murder occurred in Doullens, an area over which he ruled. That would give the count a jurisdictional foothold. His control over this area was explicitly stated in the final decision: his appeal was made "in his capacity as the Lord of Doullens", suggesting that this formed the basis of the count's argument. Whether the victim was from Doullens or even if the crime had been committed there, the *Parlement* clearly thought this insufficient reason to hand the count jurisdiction over the matter. In this case, jurisdiction over the type of crime (murder) trumped jurisdictional rules relating to the domicile of the litigants or location of the crime. The count's appeal was therefore rejected and jurisdiction over the case of the murderous horse remained with the *bailli* of Amiens.[31]

It is noteworthy that the case of the horse of Amiens did not seem to have provoked worry or even further inquiry as it made its way through the appellate process to the highest court in France. There was no indication in the record, what little there is, that anyone thought a horse was an unfit subject for a murder case. It appeared simply as a jurisdictional matter, the sort beloved by law school classes everywhere featuring multiple parties and conflicting interests. Yet this does not seem to have been a juridical exercise. It was taken with all

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beginning of the fourteenth century. See, e.g., Philippe IV's ordinance of 1303: "Quod in causa civili, vel criminali, nulla fiat persone remissio per gentes nostras extra loca et castra bajuliarum nostrarum ubi causa fuerit, vel delictum commissum", *Ordonnances des roys de France de la troisième race*, i, art. 17, p. 400. However, a 1315 ordinance under Louis X returned domicile as the controlling factor. See ibid., i, art. 9, p. 555. By 1453, the location of the crime was once again used to determine jurisdiction. See ibid., xiv, art. 29, p. 292: "les crimes soyent puniz là où ilz auront esté commis". This was repeated under Charles IX's ordinance of 1566, art. 35: "voulons que la connaissance des délits appartienne aux juges de lieux où ils auront esté commis, nonobstant que le prisoner ne soit surprise en flagrant délit", cited in *Recueil général des anciennes lois françaises*, xiv, p. 198. By the seventeenth century, this had become the general rule, see Albert N. Hamscher, *The Royal Financial Administration and the Prosecution of Crime in France, 1670-1789* (Newark, 2012), p. 21.

[31] There are a number of examples around the time of this case where the *bailli* of Amiens declared himself competent at the expense of the jurisdiction of local lords. In January 1332, the *Parlement* confirmed the decision of the *bailli* not to relinquish jurisdiction to the Lord of Saint-Venant in a matter that came before his court. See *Actes du Parlement de Paris: Deuxième série de l'an 1328 à l'an 1350*, i, n. 478, p. 49. In 1336, a similar decision was made against the Count d'Eu, see ibid., i, n. 1410, p. 143. Yet sometimes the *bailli* went too far. In 1333, he claimed jurisdiction over a man who was imprisoned by the *bailli* of Calais, see ibid., i, n. 822, p. 84, and the *Parlement* rejected his claim.

seriousness, demonstrating that the punishment of animals was a closely guarded right and not given up lightly. The decision to classify the horse's action as murder, which was both a legal and a political act, had a two-fold effect: it not only criminalised the animal, making its actions a very specific crime, but it granted jurisdiction to the *bailli* and allowed the Crown to assert its sovereignty by way of jurisdictional control. In a multi-layered legal landscape, the horse was no longer simply chattel, but temporarily became a legal subject over whom jurisdiction could be contested.

The Pigs of Châtillon

A second example of the seriousness of punishing a criminal without proper authority (even if that criminal was nonhuman) occurred in 1380 when a local lord executed two pigs near Châtillon-sur-Seine, northeast of Dijon. It was decided that he did not have the authority to do so which necessitated drastic action and even a second hanging. The record of the case detailed how the provost of Châtillon was reimbursed for "certain commissions carried out by him in May 1380 to hang two pigs", which had been erroneously hanged by Monsieur de Ray, the Lord of Balaon.[32] It appears that Monsieur de Ray had hanged the two pigs on a pear tree (*perier*) in Balaon "for the death and killing of a child which the said pigs had killed and murdered" (*pour la mort et ocision d'un enfant que les diz pourceaux avoient tue et murtri*).[33] However, this was judged to be an unforgiveable interference with ducal authority. Châtillon was one of the six *bailliages* that made up the duchy of Burgundy in the late fourteenth century. As such, by

[32] A. D. Côte-d'Or, B. 4011, fo. 29r: "pour certaines misions par li faites en may ccc iiii^{xx} pour faire despendre ii pourceaux". Balaon corresponds to modern-day Balot in the canton of Laignes, Côte-d'Or.

[33] Ibid.

hanging the pigs, Lord de Ray was accused of "taking and usurping the high Justice of Monsieur the Duke of Burgundy".[34]

Consequently, on the order of the *bailli* of La Montagne and the ducal *procureur,* the pear tree was torn down and demolished:

> *par le mandement et ordonn(ance) de Jehan de Foissy bailli de la Montagne et a la requeste du procureur et en nom de procureur de mon dit seigneur ledit perier abatu et demoli et iceulx pourceaux amenes et fait pendre aux fourches de Chastillon.*
>
> by the command and order of Jehan de Foissy, bailiff of La Montagne and at the request of the procureur and in the name of the procureur of my said Lord the said pear tree was torn down and demolished and those pigs were brought and hanged on the gibbet of Châtillon.[35]

The pigs were then removed from de Ray's possession and taken to Châtillon to be hanged officially on the *fourches*.

As with the horse of Amiens, the pigs of Châtillon were accused of murder. Not only did this transform the pigs into criminals, but it necessitated a particular type of punishment. Those condemned for murder were generally hanged on a *fourches* and as the receipts from Chapter Three demonstrated, this punishment also applied to criminal animals. While Chapter Five explores in more detail why and how this particular punishment was meted out in practice, the *fourches* was generally located outside the town and in an elevated position so that it could be seen clearly by passers-by. It was an official symbol of judicial power; such was not the case with a pear tree. With this in mind, it is difficult to know how to read de Ray's use of the tree. Was it an outright jurisdictional challenge? Did he know that the execution usurped ducal authority? If so by performing it in an unofficial place, he was sending a clear message that the case did not belong to the duke. Or did the hanging occur on a pear tree because, lacking the

[34] Ibid.: "ostant et usurpant la haute Justice de mons. le duc de Bourgogne".

[35] Ibid.

appropriate administrative power, Monsieur de Ray did not have access to a *fourches*? In which case, he was simply improvising with what was at hand. It seems unlikely that the pear tree was used because the culprits were pigs and thus believed to be unfit to hang next to human criminals. We have seen many cases in which animals were hanged on a town's *fourches* and the Duke of Burgundy, by insisting the pigs hang on the *fourches* at Châtillon, clearly did not think the use of such a structure was inappropriate.

Regardless of the reason behind the pear tree's use, Seigneur de Ray's jurisdictional blunder was considered such an insult to the Duke of Burgundy that significant effort was made to remedy it. The cost to destroy the pear tree at Balaon and take the pigs to Châtillon was seventy-six *sous tournois*. The second hanging alone cost *sixty-five sous*. But why tear down the pear tree? Did it usurp authority, like Monsieur de Ray, by standing in the place of a *fourches*? Or was it like the harness examined in the previous chapter which was buried alongside the sow of Corbeil in 1466 in an effort to erase all memory of the sow's crime? In which case, the tree's destruction was an attempt to remove all traces of the unlawful hanging of the two pigs. Whatever the reason, it was clearly considered an important part of the remedy. Tearing down the tree required manpower, time, and expense. The alternative, that is, to simply let the tree be, could easily have been followed and yet it was not. In the end, the total cost of the entire episode, after reimbursing the provost, came to seven *livres* and twelve deniers *tournois*.

Again, the case highlights the tension between two different kinds of authority, here seigneurial and ducal. The key issue was not whether it was possible or even permissible to punish pigs, but rather who represented the final arbiter. If the pigs had died when they were hanged under the auspices of Monseigneur de Ray, that means that the *bailli* and the *procureur* ordered dead bodies to be hanged again. This purely symbolic action is reminiscent of the case

from Noisy where a horse was hanged in effigy. The execution thus became a political tool, a means of establishing and reaffirming both jurisdiction and territorial control. As Cuttler reminded us, the administration of justice was "a manifestation of power and authority".[36] By ordering the pigs to be hanged again, the Duke, Philip the Bold (d. 1404), was effectively claiming jurisdiction over all serious crimes, including murder, as a way of expanding his judicial authority. In fact, at the time of this case, the Duke of Burgundy was involved in several initiatives to expand his authority. In the early 1380s, he was instrumental in putting down a revolt in Ghent at the request of his father-in-law, Count Louis of Mâle, and later became the ruler of Flanders in 1384.[37] The jurisdiction of the ducal council in Dijon was extended to the counties of Burgundy and Nevers around the same time, and in 1386, Philip undertook significant judicial and administrative reforms in his territories.[38] Hanging the pigs of Châtillon a second time thus fits within a programme of substituting ducal authority for local decisions as a way to expand ducal power.

The Pig of Arnay-le-Duc

A similar jurisdictional dispute involving multiple parties arose in 1444 in the commune of Arnay-le-Duc in Burgundy. The debate was over the authority to condemn the pig, Verray, who was first introduced in Chapter Three. There are, in fact, four records relating to the costs of the case which appear one after another in the 1444-45 register of the castellany of Arnay. The first record provided details of the dispute and the crime that led to it. As we may recall, Verray "killed and murdered a young girl in the fields in the jurisdiction of Saint Prix" (*avout tue et*

[36] S. H. Cuttler, *The Law of Treason and Treason Trials in Later Medieval France* (Cambridge, 1981), p. 84.

[37] See Vaughan, *Philip the Bold,* pp. 19-31.

[38] Ibid., pp. 120-49.

murtry une fille aux champs en la Justice de saint pry).[39] Étienne de Salins, whose official position was not recorded, believed that he had authority over the case.[40] His rationale was not mentioned in the record either, but it may be that he represented Saint Prix in some capacity and as the girl's death occurred there, he claimed jurisdiction over the matter. However, Philip the Good (d. 1467), then Duke of Burgundy, and his *procureur* disagreed.

The case between Étienne de Salins and the *procureur* was brought before the *bailli* of Auxois while the pig was put in the care of the ducal provost. The *bailli* declared that de Salins would have to conclusively demonstrate that he had jurisdiction over the case.

> *Le procez demeure entre ledit procureur et ledit Estienne de salins par devant mons. le bailli d'auxois au seige dudit arnay et jusques a ce que ledit Estienne ait justissie et prouve ladit haulte Justice aly appertenir. . .*[41]
>
> The case remains between the said procureur and the said Étienne de Salins before monsieur the bailiff of Auxois at the seat of the said Arnay and until such time as the said Étienne has justified and proved the said high justice belongs to him. . .

The parties then reached a compromise in the local assize.[42] The record stated that it was "agreed in the said assize" that the pig would be "returned and restored" to de Salins if he could prove that he had jurisdiction.[43] If he could not, jurisdiction would remain with the duke, which the scribe unhesitatingly added "as is right" (*comme raison est*).[44]

It would seem that de Salins was unable to provide the requisite proof because the next entry recorded how the ducal provost was reimbursed for his costs after traveling to Autun to

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[39] A. D. Cote-d'Or, B. 2276, fo. 24r.

[40] Ibid.: "la quelle estienne de salins dit aliu appertenir en haulte Justice".

[41] Ibid.

[42] By the middle of the fourteenth century, a hierarchical court system had developed in Burgundy. Appeals from the lower courts, as well as cases of first instance, come before the assizes, which were held once a month in each *bailliage* where the *bailli* judged both civil and criminal cases. See Vaughan, *Philip the Bold,* pp. 119-20.

[43] A. D. Cote-d'Or, B. 2276, fo. 24r: "Auquel cas se ainsi le fait a este apponctis en ladite assise de liu rendre et restaublir ledit porc".

[44] Ibid.

fetch the executioner, referred to as the "master of high works", and bring him back safely.[45] An interlinear note was inserted above this line, adding that this was done was "to perform the execution of the said pig" (*pour faire l'execution dudit porc*).[46] This task took the provost two days and he was compensated with one *franc*. The next entry detailed the amount due to the executioner himself. It stated that the sum of three *francs* was paid to the provost, who then paid the executioner "for having performed the execution" (*pour avoir mis a execution*).[47]

In the case of Verray, the pig from Arnay, as with the other disputes discussed in this chapter, judicial officers clearly believed they had a vested interest in seeing the animals executed under their control. The court that tried the case bore the associated expenses so overseeing a case against an animal was not without its burdens. Generally, the financial costs for the prosecution of serious criminal cases fell on public authorities, rather than on private individuals.[48] For *seigneurs* exercising justice, the expense of holding assizes and the salaries of personnel often outweighed revenues.[49] Furthermore, there is no indication in the records that a case against an animal was any less expensive or somehow priced differently than a case against a human. The amount of care and attention paid to following the proper procedure is therefore significant especially when one considers that in all cases mentioned here, there was always the option to do nothing – in other words, permit the aldermen of Amiens to hang a horse and

[45] A. D. Cote-d'Or, B. 2276, fo. 24r: "pour ses dispenses destre aler querre a ostun le maist. de la haute Justice Icelly ramener securement".

[46] Ibid., fo. 24v.

[47] Ibid.

[48] Hamscher, *Royal Financial Administration*, p. 22.

[49] See Michel Le Mené*, Les campagnes angevines à la fin du Moyen Age (1350-1530)* (Nantes, 1982). Le Mené calculated that in Pin, a commune in the region of Bourgogne-Franche-Comté, holding four sessions a day at the assizes cost seven *livres*; two for expenses and five for wages, ibid., p. 452. The fact that trials and executions were so costly may be a reason why there were so few executions. According to Le Mené, the accounts of Châteauneuf reveal that between 1487 and 1522, there were only three executions. During the same period in Possonnière, there was only one execution, ibid., p. 450.

Monsieur de Ray to hang two pigs from a pear tree. The fact that disputes occurred over such incidents suggests that there must have been an element of public opinion at play: a lack of ducal intervention might have been interpreted by communities as signifying the authority of their lord or commune over such crimes. The involvement of the duke and the ensuing disputes, like the criminal procedure and language applied in Chapter Three, therefore signalled the seriousness with which cases of harm-causing animals were taken and the thoroughness of the law which, once applied, would guide the case to its conclusion.

Treating the three cases examined above as standard judicial actions not only ensured that the law was upheld and jurisdictional rights were protected, but it also had the effect of criminalising the animal at the heart of the dispute. Using language identical to the receipts in Chapter Three, the horse of Amiens was accused of having "murdered a child", the pigs of Châtillon "killed and murdered" a child, while the pig, Verray, was described as having "murdered a young girl". In all three cases, the animals' actions were characterised as crimes and fit within the context of criminal law. Since murder was a crime that required capital punishment, it thus became important to establish who had the authority to order the execution. The fact that this authority was contested (and in some cases contested at great length) demonstrates not only the way in which the power of judicial bodies overlapped, but that the laws of jurisdiction were considered applicable and appropriate in cases against animals. Such application reaffirmed the status of the animal as a legal subject; a subject that was capable of breaking the law and suffering the consequences imposed by it.

The Pigs of Saint-Marcel-les-Jussey

As we have seen, the power and jurisdiction needed to condemn an animal was closely guarded. It is perhaps no surprise then that this power was just as important if one wanted to free a criminal animal. A striking example of such a request is a fourteenth-century *lettre de grâce* in which the Duke of Burgundy released a herd of pigs. In 1379, Brother Humbert de Poutiers, the prior in Saint-Marcel-les-Jussey, petitioned Philip the Bold and requested that his herd of pigs be freed in relation to the death of a young boy.[50] Petitions, which had grown in use by the later Middle Ages, generally served private interests whether to gain favours, privileges, or to ask for compensation.[51] It was a key mechanism for subjects to contest the actions of government by drawing on notions of equity and the ruler's ability to provide mercy. In this case, the prior asked the Duke of Burgundy to overturn the decision of the mayor when the priory's economic interests were threatened.

The event in question occurred on 5 September when a boy named Perrinot Muet, the son of the communal pig herder, was guarding a group of pigs in Saint-Marcel-les-Jussey. One herd was owned by the priory and the other was owned by the community. Suddenly and without any warning, the boy was attacked:

> *et au cry de l'un diceulx pors, trois truyes estans entre lesdits porcs ayent couru sus audit perrnot l'ayaent abatu et mis par terre entre eulx. . .*[52]
>
> and with a cry of one of these said pigs, three sows being among the said pigs, ran up to the said Perrinot, knocked him down and put him on the ground between them. . .

[50] Jussey is a commune roughly 100 kilometers Northeast of Dijon in the region of Bourgogne-Franche-Comté.

[51] Gwilym Dodd and Sophie Petit-Renaud, 'Grace and favour: the petition and its mechanisms', in Christopher Fletcher, Jean-Philippe Genet, and John Watts (eds), *Government and Political Life in England and France, c. 1300-c.1500* (Cambridge, 2015), p. 241. In fact, Dodd and Petit-Renaud call the later Middle Ages "the age of the petition par excellence", ibid., p. 240.

[52] A. D. Côte-d'Or, B. 10440, fo. 7r. A similar incident can be found in the financial register of Auxois, 1381-3, where thirty pigs "avoient tue d'un enffant qui les gardoit", A. D. Côte-d'Or, B. 2772, fo. 5v.

The boy was found in his injured state by his father and by Jehan Benoit, the pig herder for the priory. Perrinot relayed his story in their presence which was not a moment too soon since "very quickly after, he would be dead" (*et asses tost apres il soit en mort*).[53] The town mayor, afraid of being accused of negligence, arrested all the pigs "in order to bring them to justice in the proper manner".[54]

Holding pigs in prison was not an unheard-of phenomenon as we saw in Chapter Three. In 1403 the *lieutenant du bailli* of Mantes had a sow imprisoned before it was carted off to be hanged.[55] In 1349, a pig spent an incredible 146 days in the prison of Pont-de-l'Arche in Normandy.[56] The same town also recorded keeping a pig in prison in 1408.[57] Even so, holding entire herds in prison must have been unusual. Yet that seems to have been the case for the pigs of Saint-Marcel-les-Jussey. The letter referred to the pigs as "the detained prisoners" (*les detient prisonniers*) and pointed out that in his zeal, the mayor arrested both the herd belonging to the town and the herd belonging to the priory. This was understandable because "the said Jehan Benoit had found them together with the said sows when the said Perrinot was so injured".[58] Without being able to tell precisely who had done what, it may have seemed safer to simply confine all the pigs.

The priory was clearly reluctant to lose their herd so the prior requested that the Duke of Burgundy release them. Specifically, Brother Humbert asked "that in doing Justice to three or four of the said pigs, the rest be freed" (*que en faisant Justice de trois ou quatre dedits porcs le*

[53] A. D. Côte-d'Or, B. 10440, fo. 7r.

[54] Ibid: "en faire raison en Justice en la maniere quil appertient".

[55] Berriat-Saint-Prix, 'Rapport et Recherches', p. 433.

[56] *Actes normand de la Chambre des comptes*, p. 383.

[57] Berriat-Saint-Prix, 'Rapport et Recherches', p. 440.

[58] A. D. Côte-d'Or, B. 10440, fo. 7r: "ledit Jehan Benoît, ils furent trouvez ensemble avec lesdites truyes quant ledit Perrenot fut ainsi blessié".

demourant soit delivrez).[59] "Doing Justice" in this context referred not only to the legal notion of fair treatment, but also to capital punishment more specifically. A thorough examination of this phrase (*faire justice*) can be found in Chapter Five where I shall examine the execution of criminal animals in more depth. For the pigs of Saint-Marcel-les-Jussey, Brother Humbert's use of the phrase indicated his acknowledgment that the three sows responsible for the victim's death should be executed – or at least he recognised that this was how such cases generally proceeded. Once again, we see animals' actions placed within a criminal context through the use of particular legal terminology. And once within this context, it was understood that the animals in question must meet a very particular end.

Brother Humbert's petition appeared to have been sufficiently persuasive for the duke graciously accepted the Prior's terms:

> *et par ces presentes ouctroyons et consentons que en faisant Justice et execution dudit trois treuyes et de lun des pourceaulz dudit prieur que le demourant desdits pourceaulx soient mis a delivre non obstant quils aient este a la mort dudit pourchier. . .*[60]
>
> and by these present agreements and consents that by doing Justice and the execution of the said three sows and of one of the pigs of the said Prior that the remaining said pigs be delivered notwithstanding that they were at the death of the said swineherd. . .

Thus Brother Humbert got his wish and we can only presume that his herd was released.

I would argue that the duke's response is best characterised as a *lettre de grâce* in which he granted the priory an exceptional favour while at the same time demonstrating his jurisdiction over the matter. The word 'grace' had a particular meaning in penal law. It designated a measure of clemency through which the sovereign substituted or overruled the penalty pronounced by a

[59] Ibid., fo. 7v.

[60] Ibid. This was not always the outcome in situations like this. When a child was devoured by pigs in Boucq, just west of Nancy in 1558, the whole herd was executed after the guilty animal was unable to be identified, see Archives départementales de Meurthe-et-Moselle, B. 666, fo. 79.

judge against a condemned criminal.[61] The exercise of grace thus included the ability to postpone court proceedings, modify sentences, or even grant a full pardon following the receipt of a petition.[62] The idea behind a *lettre de grâce* was to moderate the rigour displayed by customs or law. Such petitions thus reveal how authority was solicited, expressed, and upheld, and they remained an important way in which governors and the governed interacted with each other. Conferring such a letter was essentially asserting jurisdiction over the matter; both were an expression of power held by the ruler to dispense justice. In turn, by accepting the ruler's grace and his ultimate decision, supplicants recognised the ruler's authority over the matter and their own judicial subjugation. In the duchy of Burgundy, the *droit de grâce* evolved into the exclusive competence of the duke.[63] For Brother Humbert, his petition was an implicit acceptance that his request was entirely subject to the duke's judgement and authority.

My characterisation of the duke's response as a *lettre de grâce* relies mainly on the emphasis placed within the document on the duke's "special grace". The duke's decision began with the phrase: "We incline to your request having the special grace to agree and consent" (*Nous inclinans a sa requeste avons de grace especiale ouctroye et consenty*).[64] At the end of the letter, the decision was finalised by an order of "our present grace" (*nostre presente grace*). [65]

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[61] Peter J. Arnade and Walter Prevenier, *Honor, vengeance, and social trouble: pardon letters in the Burgundian Low Countries* (Ithaca, 2015), p. 6.

[62] Pardon letters, also referred to as remission letters, are defined by Gauvard as "an act of the Chancery by which the King grants his pardon as a result of a crime or an offense, thus arresting the ordinary course of justice", in "*De grace especial",* p. 63. Letters of remission began to appear in abundance from 1350. They were later given only for homicides with mitigating circumstances, while other crimes were pardoned through *lettres d'abolition.* If successful, not only did the beneficiary of the remission letter avoid the penalty which had been pronounced against him, but he recovered his good name in the community as well as his goods, which may have been confiscated. Along with Gauvard's work, for an excellent examination of remission letters see Natalie Zemon Davis, *Fiction in the Archives: pardon tales and their tellers in sixteenth-century France* (Cambridge, 1987).

[63] Arnade and Prevenier, *Honor, vengeance, and social trouble,* p. 8.

[64] A. D. Côte-d'Or, B. 10440, fo. 7v.

[65] Ibid.

The phrase left little doubt that it was the duke's grace alone that could grant the release of Brother Humbert's pigs. There was an initial temptation to read Brother Humbert's request as a type of remission letter, that is, asking for a pardon for his herd, but none of the pigs were actually pardoned for their crime – they were simply released. Esther Cohen reads the priory's request too narrowly as a remission letter, stating that "the herd of swine arrested in Saint-Marcel-les-Jussey were formally pardoned by the Duke of Burgundy".[66] This simply did not happen. Firstly, and perhaps most importantly, the words "to remit" (*remettre*) or "to pardon" (*pardoner*) are not found in the text; both of which being hallmarks of remission letters.[67] Secondly, a remission letter would have required the priory to prove that the crime committed by the pigs was unpremeditated or somehow excusable. There is little evidence that any effort was made in that direction.[68] Furthermore, particular formulas were used in remission letters to craft a narrative which cast the petitioner in the best possible light. The pigs, it must be said, were not described in either kind or flattering terms. Thus, it seems safer to characterise the letter more broadly as a *lettre de grâce.*

Brother Humbert's petition was granted on 12 September, exactly one week after the victim's death. Both herds were freed save for the original three perpetrators and one pig from the priory's herd. How this arrangement was decided is unclear. It is even less clear how the

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[66] Cohen, *Crossroads of Justice*, p. 111.

[67] See Quentin Verreycken, ''En nous humblement requerant': Crime Narrations and Rhetorical Strategies in Late Medieval Pardon Letters', *Open Library of the Humanities*, vol. 5, issue 1 (2019), p. 62, who provided a thorough overview of remission letters and what they contained. See also Gauvard, "*De Grace especial",* pp. 63-8.

[68] The letter does emphasise that the sows ran toward the victim "with a cry", suggesting that they perhaps acted suddenly and in the heat of the moment. This could be reflecting the idea of *chaude colle* or "hot anger", which Arnade and Prevenier described as one of the most striking tropes in pardons. See *Honor, vengeance, and social trouble,* p. 18. However, this seems like quite a stretch of the imagination when applied to this case as nothing more was made of the sows' sudden outburst. It does, however, faintly echo the *contra naturam* requirement of the *pauperies* suit explored in Chapter Two. The cry and ensuing rush toward the victim indicated that the sows were not provoked by any human act or omission, or by some environmental factor (terrain, weather, etc). No human could thus be held liable for their actions, making it appropriate to confiscate the sows.

authorities were keeping track of the three who were known to have killed the swineherd. E. P. Evans posited that including the additional pig from the priory was meant to symbolise possible collusion between the herds. He even supplied a justification for the sweeping arrest, stating that all the pigs "hastened to the scene of the murder and by their cries and aggressive actions showed that they approved of the assault, and were ready and even eager to become *participes criminis*".[69] The reason that all but one pig was released from the prior's herd was that the duke found them guilty by association. According to Evans, their very presence at the scene made them at best accomplices to the crime and at worst co-conspirators.

Evans' explanation provides some interesting food for thought and is one of the many examples of modern post-hoc rationalisation with which this subject abounds. There is no convincing indication in the response from the duke that the pigs in Prior Humbert's herd were considered to be accomplices. If anything, the mayor comes across as a bit overeager by arresting both herds in order to protect himself from accusations that he was lax in his duties. Additionally, the pigs were all found together (*trouvez ensemble*) perhaps making it difficult to distinguish the true authors of the crime.

Evans was not the only one to offer a theory for why a single unfortunate pig from the priory's herd had to be condemned. Historian Thomas Fudge wondered if it was based on a failure to render aid to the victim.[70] There were medieval law codes that declared that living creatures in the vicinity of certain crimes should be punished. The Saxon Mirror (1234), for example, stated that all living creatures present when a woman was raped should be beheaded.[71]

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[69] Evans, *Criminal Prosecution* (1906), p. 144.

[70] Thomas A. Fudge, *Medieval religion and its anxieties: history and mystery in the other Middle Ages* (New York, 2016), p. 29.

[71] *The Saxon Mirror: A Sachsenspiegel of the Fourteenth Century*, trans. Maria Dobozy (Philadelphia, 1997), bk. 3.1, p. 117.

However, Maria Dobozy doubts – as do I - that this law was enforced due to the economic value of animals.[72] It would have been expensive for the community to dispatch all living creatures in and around such crime scenes, not to mention the difficulty in identifying which animals had been present at the time. In the case of the pigs from Saint-Marcel-les-Jussey, there is no indication that the priory's herd was expected to help the boy or were judged for failing to do so.

We may never know conclusively why one pig from the priory's herd was held accountable for a crime it may not have committed. However, both Evans' and Fudge's theories remind us of the importance of securely grounding our discussions of harm-causing animals in the surviving evidence as well as in a specific legal context. While we may be left with some lingering questions, it is imperative in such moments that historians avoid the temptation to speculate, borrow notions from modern law, or jump to conclusions. Attributing various motivations and rationales to those involved in these cases must be supported by the source itself. Without such a grounding, we are likely to create an imagined narrative as was done for the famous sow of Falaise, mentioned in the Introduction, whose story underwent a series of mutations based on what historians thought *must* have happened to her. In the case of the pigs from Saint-Marcel-les-Jussey, a close reading and contextual analysis of the duke's response gives us little reason to think that anyone believed pigs could be condemned for being accomplices or for simply being in the wrong place at the wrong time. In a subject already awash with these sorts of explanations, such speculation does little to move the field forward.

The duke's letter does, however, leave us with an interesting caveat. It stated that the herd was to be released so long as it was not later discovered that they were present at the death of the victim. There is no indication of what sort of evidence authorities imagined could come to light.

[72] Ibid., p. 229.

Perhaps if an eyewitness came forward the freedom of the priory's herd could be revoked. If so, the single condemned pig was a representative for the rest of the herd, standing as a form of collateral. This not only emphasised the seriousness with which the ducal authorities regarded this event, but also served as deterrence for the priory and other pig owners. Making an example of this single pig incentivized owners to look after their herds more carefully.

While it would be interesting to see how often confiscated animals were the subject of ducal petitions, the pigs in this particular *lettre de grâce* shared many of the same attributes as the animals at the centre of jurisdictional disputes. Again, we see a painstaking concern for following proper procedure. The mayor was so afraid of being accused of not following procedure, in fact, that he simply seized both herds. They were then duly held in prison until their fate was decided. Finally, rather than casually dispatching the culprits, the duke declared that three sows and a pig be executed for their deed and the penalty they faced was specifically associated with the unlawful killing of a human being. In addition, the language used in the petition took on a distinctly criminal tone. The culprits, for instance, were referred to as *les prisonniers* and the outcome of the case was referred to as 'doing justice' (*en faisant Justice*), a phrase which will be examined further in Chapter Five. The prior agreed that the duke must "do justice to three or four of the said pigs" and the Duke consented to the "doing of justice and execution" of the pigs. This phrase not only referred to the ability to enact public executions thereby placing the pigs' case in a specific criminal context, but it reaffirmed the authority granted to the Duke of Burgundy to carry out such punishments. The response to Brother Humbert's petition – like the jurisdictional disputes discussed above – thus acted as a useful reminder of the duke's power. The acceptance of his ability to order the execution of the four animals was also the acceptance of his jurisdiction of the matter and his rule more generally.

The Sow of Colognes sous Vergy

Nearly fifty years later, the Duke of Burgundy, now Philip the Good, was the recipient of another request involving a criminal animal although this time rather obliquely. The request concerned a town which claimed to have the appropriate jurisdiction necessary to rebuild the gallows on which a sow had been hanged some time earlier. In a letter dated 10 August 1424, the duke wrote to the *bailli* of Dijon saying that he had received the "humble supplication of our good friends", the dean (*doyen*) and the Chapter of the Chapel of Dijon.[73] This Chapter, due to a donation or endowment of some kind, were the "earthly lords" (*seigneurs temporels)* of Colognes sous Vergy, a "very poor village".[74] The letter noted that this village was part of the Chapter's *finaige* or territory over which jurisdiction is exercised. It further noted that the Chapter had the right to exercise all forms of justice (low, medium, and high) in this territory.[75] As a result, the town of Colognes sous Vergy had erected a gibbet.[76] As a visually prominent symbol of high justice, which will be explored in more depth in Chapter Five, the building of such a structure proclaimed the right to enact capital punishment.[77] As we have seen from the jurisdictional disputes discussed earlier in this chapter, that right was a jealously guarded prerogative.

The letter stated that at some unspecified date - it was "a long time ago" (*pieca*) – a sow had been condemned, sentenced, and hanged on the orders of a local judge: "fut pendue une

[73] A. D. Côte-d'Or, G. 1351.

[74] A. D. Côte-d'Or, G. 1351. The petition refers to an endowment, but there may have been a few ways that the Chapter gained temporal authority over Colognes sous Vergy. In the same register, there is documentation dated 8 July 1369 relating to the sale of forty "livrées de terre" (a measure of land that brought in a pound of rent) to the Chapter for the sum of 400 *livres* for which the Chapter received "les finaiges de Collognes". A few years later, records dated 1371/2 describe the Chapter accepting a donation of 1200 florins from Bertaut d'Uncey for the foundation of religious services for which land in Colognes sous Vergy was acquired, see A. D. Côte-d'Or, G. 1195.

[75] A. D. Côte-d'Or, G. 1351: "et aient audit lieu toute Justice haulte moyenne et basse".

[76] Ibid.: "dont ils ont cause aient eu ung gibet esleve ou territoire dudit Coulonges".

[77] Ibid.: the letter refers to the gallows as as a "signe d'icelle haulte Justice".

truye par sentence et condempuaton faire par le juge diceulx".[78] Like the other cases we have seen, the sow's crime had been infanticide. Without providing any details about the victim or the injuries that lead to the victim's death, the letter simply stated that the sow had been hanged "because of a certain child that the said sow had killed" (*pour cause de certain enfant que ladite truye avoit tue*).[79]

Unfortunately, there appears to have been an accident: at some point the gibbet which "had long been upright", suddenly "fell and tumbled to the ground".[80] No reason was given for its collapse. How long this event occurred after the hanging of the sow is unclear, but there is no indication that the hanging itself was in any way incomplete or problematic. Rather, it seems as if the event concerning the homicidal sow was used as a timestamp. The supplicants, at the very least, believed it to be a notable event; something that would stand out in people's memory. Not only would the event remind people of *when* something had happened, but by the end of the letter, the hanging of the sow was used almost like a descriptor. It appeared once again in reference to the gibbet itself, described as follows: "at this gibbet the said sow had been hanged" (*que a icelliu gibet ladite truye avoit este pendue*). More than a timestamp, this event became a marker; differentiating this particular gibbet, and thus the town, from others.

The fact that a hanged sow was used to distinguish the town does not imply that the sentencing and execution of an animal was considered inappropriate. There is nothing in the description of the event that indicates the supplicants, the duke, or even the scribe thought the hanging of an animal was misguided or a miscarriage of justice. I suggest instead that for this community hangings themselves were rare. Given the earlier description of Colognes sous Vergy

[78] Ibid.

[79] Ibid.

[80] Ibid.

as a "very poor village", perhaps they had not had the opportunity to perform many examples of capital punishment prior to the collapse of the gibbet. The mention of the sow was thus used to demonstrate that the community had, in fact, enacted capital punishments successfully in the past. All aspects of justice were seen to: the sentence and the execution were performed locally and there is no indication that this was not accepted by the community or even by the duke's judicial officers. The mention of the sow who killed a child thus acted as a reminder that the community had the power and authority to condemn and execute a certain class of criminal.

After its collapse, the community long had the intention, according to the letter, "to rebuild, set up, and raise a new gibbet in the customary place" (*de refaire, dretier et eslever ung gibet neuf en la place a ce acoustumce*).[81] All seemed to be in order: the *procureur* was informed and a license was sought from the *bailli*. However, there was some hold up amongst the officials. The duke's officers doubted whether the community did indeed have the requisite jurisdiction that enabled them to erect such a structure. Presumably at this point, the Chapter petitioned the Duke of Burgundy, who then issued this letter in response. As a result of their petition, the *procureur* was appraised of the matter and witnesses attested to the prior existence of a gibbet and its collapse. The duke then confirmed that the supplicants did indeed have the appropriate jurisdiction and the license to rebuild a gibbet was duly granted. In this case, the execution of a pig was not the matter in dispute, but rather used as proof of jurisdiction. The Chapter evidently thought it was compelling evidence and consequently it was highlighted throughout their petition. It is difficult to say just how persuasive this element of the petition was found to be, but it was clearly not detrimental to the Chapter's case.

[81] A. D., G. 1351.

Conclusions

The cases of the horse from Amiens, the pigs of Châtillon, the pig of Arnay, the pigs of Saint-Marcel, and the sow of Colognes sous Vergy show just how important it was to ensure that a harm-causing animal was executed under the proper authority. Seeing to an animal that had killed a human was not considered a petty matter to be dealt with quickly and quietly. It was an issue that could very well find itself before the highest court in France, the *Parlement de Paris*.

The right to punish criminals (even if that criminal was not human) was a closely guarded privilege that came with a certain type of jurisdiction. It was a privilege that, as the town of Colognes sous Vergy discovered, could be questioned and might even have to be reaffirmed from time to time. Jurisdiction over criminal matters gave legitimacy to political administrations and granted control over legal and policing structures.[82] The cases in this chapter reveal the tension that arose between different judicial bodies as each sought to assert its jurisdiction in situations where an animal was accused of killing a human. Disputes concerning the authority to condemn a criminal or to free them consequently became points of contact between such bodies and an important example in our understanding of how the overlapping of authority affected not only individual cases, but also the practice of law. These points thus became a place where notions of law and order could be negotiated in both subtle and dramatic ways as authorities each sought to maintain, legitimise, or expand their control. By claiming jurisdiction and officially holding a criminal accountable, officers fulfilled their duty to restore law and order while at the same time claiming the space they believed their office protected.

The cases examined in this chapter share the same rhetoric as the receipts discussed in Chapter Three and operate under the same legal presupposition; that is, a case in which an

[82] Turning, *Municipal Officials*, p. 137.

animal killed a human was not only justiciable in a criminal context, but the laws of jurisdiction also applied. In other words, certain laws normally applicable only to humans were understood to be validly applied and enforceable in the context of a case against an animal. The insistence on freeing or executing an animal under the proper authority and in the proper location placed that animal both symbolically and physically into a category normally occupied by a legal subject – that of a convicted criminal. As a result, the animal was understood to be more than property; it acquired a legal personality with which to operate within the confines of the legal system. This transformation from legal object to legal subject not only challenged the idea that humans, and only humans, could be subjects within the law, but it highlighted the law's flexibility and adaptability. As the subject of a jurisdictional dispute, where territorial and legal boundaries became enmeshed, it is important to remember that animals did not become human or even acquire human characteristics. Rather, by existing in such contested spaces, their temporarily acquired legal status speaks to what contemporaries believed was the aim and function of law and reflects the nuance and complexity with which jurisdictional law was understood to work.

Chapter 5
Faire Justice: The Execution of Criminal Animals

Much of the information we have on cases against animals relates to the final stage of their progression through the criminal law system - their punishment. Although it was not one of the remedies suggested in the *pauperies* suit, by the end of the fourteenth century executions of animals could be seen in towns across Burgundy and Northern France. It is thus important to examine the role of punishment at the time and the way it was applied to animals accused of killing a human being. The receipts cited in Chapter Three demonstrated that animals were typically hanged on a local *fourches* on the order of the *bailli*. In Chapter Four, we even examined disputes over who could exercise jurisdiction over such executions. In one case the informal hanging of a pig on a tree necessitated a second, more official hanging on a *fourches*. Why was capital punishment, and this punishment in particular, considered appropriate? And what does this tell us about the way in which law was applied in these situations? We have seen how criminality was denied to animals within the customary tradition (Chapter Two) where the emphasis was on human involvement and the damage caused by the animal remained a civil matter. Although not a uniform view (the *Coutumes de Bourgogne* went so far as to mandate capital punishment for animals that harmed humans), the written secular legal tradition presented a stark contrast to the law in practice where the application of legal terms and procedures assigned criminality to the animal, transforming it from a legal object into a legal subject.

To continue fleshing out this knowing incongruity, this final chapter will offer an in-depth examination of the kind of punishment to which harm-causing animals were subjected. Although those writing legal texts were almost certainly aware that executions of animals occurred (such events were, in fact, roundly condemned by Beaumanoir), it is less clear whether

those engaged in the executions were aware that the practice was not supported in the customary tradition. If they were, and certainly some of the judicial officials must have been, then a conscious decision was made to take a drastically different approach with executions continuing steadily throughout the fourteenth and fifteenth centuries. Their continued occurrence not only highlights the fact that there were different attitudes concerning how a harm-causing animal should be treated, but that the law existed as a system of thinking, rather than a strict set of rules. Its flexibility – a trait I have emphasised throughout this thesis - was not passive or reflexive, but one that was actively engaged with and promoted.

This chapter begins with some general features of criminal law and punishment in late medieval France since the executions of animals were modelled on those of human criminals. I will then look at specific examples in fourteenth and fifteenth-century receipts from the Burgundian Court of Accounts to see how the punishment of animals was imposed in practice. Many of these receipts were examined in Chapter Three with a focus on the procedural steps leading up to the execution, such as the description of the culprit and the crime, the officials involved, and any tools or equipment needed to perform the execution. In this chapter, I will focus specifically on the manner of the animal's death, which was usually by being drawn and hanged. I will examine the role of the *fourches* as the mandated location of the execution, the importance of using a professional executioner, what such an event might have meant to contemporary viewers, and how the animal's death signalled not only their crime but acted as the final stage in the process that transformed them into a criminal.

It is useful to remember as we did in Chapter Three that these records were standardised legal documents and, owing to the criteria established by the court that audited them, were governed by a set of rules. There was thus a common format and vocabulary, as the records

provided an authoritative voice testifying to an event and its careful orchestration. There was also no indication that the hanging of the animal was treated any differently than the hanging of a human criminal. No special allowances, procedures, or mitigating measures appear to have been used. The emphasis instead was on ensuring that the condemned animal was put to death in an appropriate and legally justified way. It was as if killing a human set the animal on a path that once initiated and guided by the legal system, must be completed by the legal system. Ultimately, drawing and hanging the animal on the *fourches* using the services of a professional hangman was a decisive and irrevocable way of casting the animal out of the community and righting the wrong that the animal had committed. At the same time, the animal's execution, while reaffirming man's dominion over beasts, also granted the animal a degree of legal personhood by marking as complete its journey through the legal system and its transformation from animal to criminal, from legal object to legal subject.

Contextualising Punishment in Medieval France

In its most basic definition, punishment is the intentional infliction of something physically or psychologically unpleasant by a person in authority onto an individual or group as the consequence of that individual's or group's violation of established customs or norms.[1] By the second half of the Middle Ages financial compensation was still a viable remedy for certain lesser crimes, but serious crimes, such as causing someone's death, required corporal and public punishment.[2] Furthermore, crime came to be seen as a public, rather than a private affair. In

[1] For the complexities in defining punishment, see Leo Zaibert, *Law, Justice and Power: Punishment and Retribution* (Burlington, V.T., 2006), pp. 24-8. Punishment is distinct from taxes and other penalties by virtue of its reprobative or condemnatory nature. See Joel Feinberg, 'The Expressive Function of Punishment', in J. Feinberg (ed.), *Doing and Deserving: Essays in the Theory of Responsibility* (Princeton, 1970), pp. 95-118.

[2] In 1357, the future Charles V abolished compensation as a remedy, arguing that this practice had effectively allowed crime to go unpunished "against reason and good Justice". *Ordonnances des roys de France,* iii, p. 130,

1203, Pope Innocent III had proclaimed that crimes should not remain unpunished as a matter of public interest.[3] Jurists seized upon this idea and it became the driving force behind many innovations in criminal law between the thirteenth and the sixteenth centuries.[4] Tancred in his *Summula de criminibus* (1210), for instance, was one of the first to promote the importance of punishment for the sake of public order.[5] Hostiensis (d. 1271) echoed this sentiment, pointing out that allowing crimes to go unpunished lead to delinquency.[6] Punishment was therefore necessary, he argued, to deter future wrongdoing.

Drastic and dramatic forms of punishment seemed to offer the best way to deter such wrongdoing. In fact, deterrence, both general and specific, was listed as one of the key reasons for the infliction of punishment in the customary tradition.[7] The prioritization of crime prevention can be traced back to Roman Law, where it was succinctly captured in the Digest: *ut*

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item 9: "composicions, dont les crimes estoient estains et demouroient senz estre deuëment punis contre raison et le bien de Justice, Nous avons ordonné et ordonnons que toutes telles composcicions cessent dores-en-avant".

[3] X 5.39.35: "et publicae utilitatis intersit, ne criminal remaneant impunita".

[4] See Richard M. Fraher, 'The Theoretical Justification for the New Criminal Law of the High Middle Ages: 'Rei Publicae Interest, Ne Crimina Renaneant Impunita'', *University of Illinois Law Review,* vol. 3 (1984), p. 580.

[5] The *Summula de criminibus* begins: "Quoniam rei publice interest ut crimina non remaneant impunita", quoted in Richard Fraher, 'Tancred's Summula de criminibus: A New Text and a Key to the Ordo iudiciarius', *Bulletin of Medieval Canon Law*, vol. 9 (1979), p. 29. The fourteenth-century legal scholar, Lucas de Penna, agreed, arguing that every crime was an offence committed against society in general and thus constituted a public wrong. He wrote "Ipso jure etiam omne crimen est publicum", quoted in Walter Ullman, *The Medieval Idea of Law as represented by Luca de Pena: a study in fourteenth-century legal scholarship* (New York, 1969), p. 144.

[6] Henricus de Segusio, *Lectura sive apparatus domini Hostiensis super quinque libris Decretalium* (Strasbourg, 1512) *ad* X 5.39.35 *s.v. per impunitatis:* "Alias et per impunitatis. Nam facilitas venie incentivum tribuit delinquenti. . . et pena terrorem incutit, et retrahit alios a peccatis", cited in Fraher, 'Theoretical Justification', p. 581, fn. 16.

[7] As described in the Introduction to this thesis, general deterrence prevents others from committing a crime, while specific deterrence aims to prevent the specific offender from offending again. It should be noted here that there is some division concerning the efficacy of deterrence in actually preventing criminal activity. In fact, research suggests that the general public tends to underestimate the severity of sanctions and are often unaware of particular sentencing policies. According to a report from The Sentencing Project, increases in the certainty of punishment, as opposed to the severity of punishment, are more likely to produce deterrent benefits. See Valerie Wright, 'Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment', (2010), https://www.sentencingproject.org/publications/deterrence-in-criminal-justice-evaluating-certainty-vs-severity-of-punishment/ (3 Aug. 2019).

exemplo aliis ad deterrenda maleficia sit ("setting an example to deter other wrongdoers").[8] Among customals, it can be seen in the thirteenth-century *Établissements de Saint Louis*, which stated that "all justice should inquire into all things and learn how it should and can punish malefactors" so that the malefactors may stand as examples to others.[9] Beaumanoir's *Coutumes de Beauvaisis*, also from the thirteenth century, followed similar reasoning, stating that physical penalties were enacted "so that people will avoid wrongdoing" (*pour ce que l'en se gart de fere mal*).[10] The emphasis on deterrence can also be seen in the fifteenth-century *Coutumes de l'Anjou et du Maine* which gave four reasons why wrongdoers should be punished:

> 1) for their crimes; 2) to put into fear and give example to others not to do evil; 3) to remove the said evildoers from the community of the good so that they do not make them worse; 4) to prevent the evils that they could still do if they escape.[11]

The first reason is based on retribution, a theory which looks back in time to the offense and believes that wrongdoers should be punished because they deserve to be.[12] This theory, the idea of just desert, has a more punitive sense to it. However, crime prevention (as expressed in reasons two, three, and four) was clearly the principal concern. This would be accomplished

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[8] D. 16.3.31.

[9] *ESL,* livre 2, ch. XVII, p. 390: "toute joustice doit tous jorz enquerre et aprandre coment ele devra et porra pugnir les mauffetors, car mauffetors ne doit mie remanoir qu'il ne soit puniz, por ce que li autre n'i praignent essample de lor mal faire".

[10] *CB,* ii, ch. XLII, para. 1306.

[11] *Coutumes et institutions de l'Anjou et du Maine*, iv, art. 404, p. 308: "*Primo,* pour ses forfaiz; 2^0 pour mectre en crainte et donner exemple aux autres de non mal faire; 3^0 pour oster lesdiz mauvays de la communité des bons ad ce qu'ilz ne les empirent; 4^0 pour obvier aux maulx qu'ilz pourroient encores faire s'ilz eschapoient". Pieter Breughel the Elder closely echoed this multi-pronged approach to justice in his caption of the engraving *Justitia* (1559): "The aim of law is either to correct him whom it punishes, or that his punishment should improve others, or that, once the evil ones are removed, the rest should live in greater safety" (*Scopus legis est, au ut eum quem punit emendet, aut poena eius caeteros meliores reddet, aut, sublates malis, caeteri securiores vivant*). While retribution has been substituted with correction, the emphasis on deterrence remains.

[12] See Michael Cavadino and James Dingan, *The Penal System: An Introduction,* 3rd edn (London, 2002), p. 40: "It is the fact that the offender has committed a wrongful act that deserves punishment, not the consequences of punishment, that is important to the retributivist. Retributivism claims that it is in some way morally right to return evil for evil, that two wrongs somehow make a right".

through the educational impact of the punishment, which would not only instruct the criminal himself in an effort to avoid recidivism but would serve as a cautionary example to the community. Of course, this communal instruction could only occur if the public was able to witness the punishment and glean the necessary lessons, hence the movement away from financial penalties and toward public displays of corporal and capital punishment. The Neapolitan scholar Lucas de Penna (1320-1390) was in favour of such public displays, arguing that the purpose behind public executions was to avert future crime "by inculcating fear of punishment in potential criminals".[13]

I do not mean to suggest that deterrence was the sole aim of justice. With the variation of customs across region, it is difficult to make any kind of generalisation about penal practices in medieval France. However, deterrence was clearly an important concern and no doubt played a role, at least in part, in the marked shift beginning in the twelfth century which, according to Paul Friedland, saw "a dramatic increase in the severity and the spectacularity of punishments".[14] By spectacular, Friedland is referring to the theatrical or ceremonial quality of punishments, a subject on which much has been written.[15] As an elaborately staged and precisely paced ritual

[13] Quoted in Ullman, *The Medieval Idea of Law,* p. 143 (citing C. X 16, 3, no. 3). According to Ullman, deterrence was the cornerstone of Lucas de Penna's penological theories: it was not the wrongful act itself which justified punishment, but the useful purpose that punishment could serve. The early fifteenth-century *avocat* Pierre de Marigny held a similar view, remarking that it was customary for people to attend executions to reinforce both a sense of justice and the example served by the condemned. See AN, X 2a 14, fol. 317v (1406), cited in Claude Gauvard, 'Justification and the Theory of the Death Penalty at the *Parlement* of Paris in the Late Middle Ages', in Christopher Allmand (ed.), *War, Government and Power in Late Medieval France* (Liverpool, 2000), p. 201.

[14] Friedland, *Seeing Justice Done,* p. 57.

[15] Friedland's notion of spectacular punishment owes much to Michel Foucault's *Discipline and Punish: the Birth of the Prison,* first published in 1975, which delineated the idea of the 'theatre of punishment'. Foucault described public executions as "not only as a judicial, but also a political ritual. It belongs, even in minor cases, to the ceremonies by which power is manifested", *Discipline and Punish: the birth of the prison,* trans. Alan Sheridan (New York, 1977), p. 56. Esther Cohen has explored the idea of capital punishment as a ritualistic performance in her article ''To die a criminal for the public good': the execution ritual in medieval Paris', in Bernard S. Bachrach and David Nicholas (eds), *Law, Custom, and the Social Fabric in medieval Europe* (Kalamazoo, M.I., 1990), pp. 285-304 as well as in 'Symbols of Culpability and the Universal Language of Justice: The Ritual of Public Executions in Late Medieval Europe', *History of European Ideas*, vol. 11 (1989), pp. 407-16. See also Mitchell B.

drama, executions were carefully planned and followed specific instructions down to the clothing worn, the gestures performed, and the words spoken. The 1391 execution of the mercenary Mérigot Marchès illustrated not only the care that went into the staging of such events but also its spectacular nature:

> [the execution should be conducted] in the following fashion: that the said Mérigot, prisoner, be dragged on a hurdle as a gentleman and then, seated high on a shield placed across the sided railings of a cart, be carried to the sound of trumpets through the market place of Paris and elsewhere past the main gates of the city of Paris, and that at the marketplace the aforesaid Mérigot should be beheaded, his head placed on the point of a lance upon the scaffold, his four limbs hanged at the four gates of the city of Paris, and the trunk hanged at the king's gallows in Paris.[16]

After the sentence was read, the condemned was lead along a "prescribed processional penal route", as Cohen called it, that could be watched and followed, allowing for interaction between the condemned and the public.[17] The focus of community participation thus became the sentencing, the procession to the location of the execution, and the execution itself, all of which took on additional meaning since community members could not be present as litigating parties.[18] The punishment of the culprit was therefore crucial to the public's understanding of the crime and the determination of guilt.

The beginning of such 'spectacularization' can be seen in *Les Très Ancien Coutumier de Normandie* (c. 1200) and other customals that used particular forms of capital or corporal

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Merback, who referred to the "theatre of criminal justice, with its attendant rituals", in *The Thief, the Cross and the Wheel: Pain and the Spectacle of Punishment in Medieval and Renaissance Europe* (Chicago, 1999), p. 32.

[16] *Registre criminel du Châtelet de Paris, du 6 septembre 1389 au 18 mai 1392* (2 vols, Paris, 1864), ii, p. 208: "en la manière qui ensuit, c'est assavoir: que icellui Merigot, prisonnier, soit trainé sur un claue, comme gentilhomme, et en après, assis en hault sur un haiz mis au travers des paumeles d'une charrete, et que, à trompes cornans, il soit menez tant ès hales de Paris comme aillieurs, aus notables portes de la ville de Paris, et esqueles hales icellui Merigot feust decapité, et la teste mise au bout d'une lance sur l'eschaffaut; en après les quatres membres d'icellui pendus aus quatre portes d'icelle ville de Paris, et le corps dudit Merigot pendu à la justice du roy nostre seigneur, à Paris", trans. by Cohen, 'To die a criminal for the public good', p. 291.

[17] Cohen, 'To die a criminal for the public good', p. 287.

[18] Merback, *The Thief, the Cross and the Wheel,* p. 132.

punishment for serious and premeditated crimes. For example, a son who intentionally killed his mother or father was drawn and hanged (*trainez et pandu*) as was a man who killed his lord, whether intentionally or not.[19] For those crimes that required the total elimination of the offender's body, such as in cases of sodomy and treason, the *Livres de Jostice et de Plet* (*c.* 1260-70) required that the condemned be burned alive.[20] Those who ran brothels "must be whipped and thrown out of town, and their assets forfeited to the King".[21] In the *Coutumes et stilles observez et gardez ès pays d'Anjou et du Maine* (1411) thieves and those accused of property destruction risked dismemberment.[22] Denis Lechecome, an accomplished criminal, was unlucky enough to face a whole collection of punishments and was to die in 1441 in the following manner: "to be drawn as a murderer, decapitated as a traitor, quartered for various other crimes, and the body hanged as an armed robber".[23] Punishment thus acted like a form of code for what would otherwise have been invisible and compensatory. To function successfully as a code, particular punishments had to carry specific meaning for spectators: when watching a man being dragged to the gibbet, you knew he had been condemned for murder.

Les Fourches*: A Murderer's Resting Place*

For those convicted of intentional killings, as criminal animals tended to be, the punishment usually entailed hanging on the *fourches patibulaires,* a type of gallows that appeared sometime

[19] *Le Très Ancien Coutumier de Normandie*, bk. 1, part 2, ch. 35, art. 6 and art. 5, p. 27.

[20] *Livres de Jostice et de Plet*, bk. 18, ch. 24, art. 22 and art. 38, pp. 279, 281.

[21] Ibid., ch. 55, p. 282: "Li maquerel de femes doivent estre fusté et geté hors de la ville, et leur biens sont le roi".

[22] *Coutumes et institutions de l'Anjou et du Maine*, i, art. 27, p. 81.

[23] Paris, BNF, Français 7645, no. 50; trans. by Cohen, 'To die a criminal for the public good', pp. 297-8.

in the twelfth century.[24] By the middle of the thirteenth century, this structure had spread throughout France.[25] By the later fifteenth century, hanging became the most frequent manner of death. Also called a *gibet,* the structure was generally placed near a main road outside the city walls in an elevated position to maximize visibility. Anyone entering or leaving the city received a clear message about the city's power to punish criminals. The *fourches patibulaires* of Dijon, for instance, was located on the road to Beaune in a place called *les Grandes Justices*.[26]

Not only were the *fourches* used as a place of execution, but they were used to display the corpses as well. Consisting of stone columns that were connected by wooden beams, the *fourches* were built so that the bodies of multiple criminals could be hanged or displayed at the same time. The number of stone columns corresponded to the kind of *seigneur* or lord who exercised jurisdiction over the area. Generally, simple officers of high justice would be represented by two columns, castellans represented by three, barons by four, counts by six, and

[24] See the definition of *fourches partibulaire* in Sylvie Bépoix, *Une cité et son territoire: Besançon, 1391: l'affaire des fourches patibulaires* (Besançon, 2010), p. 82.

[25] One of the earliest mentions of the *fourches*, according to Friedland, is from 1258 when a thief in the vicomté of Rouvroy was displayed on the pillory and then led to the "fourkes de le ville et pendus*".* See the letter reprinted in Ernest Prarond, *La Topographie historique et archéologique d'Abbeville* (3 vols, Paris and Abbeville, 1884), iii, p. 476. A slightly later mention can be found in *Li Roumans de Berte aus Grans Piés*, composed between 1270-1274 by the poet Adnès. It describes how a certain Tybert was dragged and hanged at the famous *fourches patibulaires* in Paris, also known as *le gibet de Montfaucon*: "Quant la vielle fu arse, Tybert font ateler / Tout parmi la grant rue le firent traîner / A Montfaucon le firent sus au vent encroer", Adnés li Rois, *Berte Aus Grans Piès,* ed. Aug. Scheler (Brussels, 1874), ch. XCVI, lines 2307-9.

[26] Joseph Garnier and Ernest Champeaux, *Les Institutions communales en Bourgogne sous l'ancien régime* (Roanne, 1976), n. 3, p. 445, 459.

dukes by eight columns.[27] As such, the structure was a prominent symbol of both judicial and territorial power.[28]



Fig. 1: *Grandes Chroniques de France*, illuminated by Jean Fouquet between 1455-1460, BNF, MS Français 6465, fo. 236. In the background, the *gibet de Montfaucon* looms on the crest of the hill. One can just make out the bodies hanging from the top and bottom levels. First built in the late thirteenth century, it was used until 1629 and was the main *gibet* of the Kings of France. The late sixteenth century English travel writer, Thomas Coryat, described it as "the fayrest Gallowes that I ever saw. . . [with] fourteene fair pillars of free-stone".[29]

If the execution was conducted elsewhere, the body of the condemned could still be suspended on the *fourches* and bodies usually remained there until they decomposed or were consumed by birds.[30] The French poet, François Villon (d. 1463) who was no stranger to criminal activity himself, described the hanging bodies in grim detail:

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[27] Arthur Nouail de Lavillegille, *Des Anciennes Fourches Patibulaires de Montfaucon* (Paris, 1836), p. 8. See, e.g., the costs for a carpenter to build a *fourches* "à quatre hautes colonnes et six pommeaux" in the name of the Duke of Burgundy in 1416-17 in the town of Poligny (A. D. Côte-d'Or, B. 1590, fo. 111). The distinction between rank and the number of columns was not uniform across France. Cf: *Coutumes générales du pays et Comté de Blois*, ed. F. Fourré (2 vols, Blois, 1777), i, art. 16, stating that *Châtelains* could use four columns.

[28] For the *fourches patibulaires* as a symbol of territorial power, see the 1391 jurisdictional dispute between Châtillon and Besançon in Bépoix, *Une cité et son territoire,* where the Bisontins saw the erection of such a structure as a gross violation of their territorial rights.

[29] *Croyat's Crudities* (3 vols, London, 1611, repr. 1776), i, p. 26.

[30] In Dijon, the town council only conceded in 1457 on the "advis des médecins" to take down and bury the corpses after they were persuaded that the bodies contained dangerous diseases, *Correspondance de la mairie de Dijon,* ed. J. Garnier (3 vols, Dijon, 1868), i, p. 90.

> Here, five and six, we hang before your view,
> our flesh, that all too lavishly we fed,
> long since devoured and rotten to shred,
> while we, the bones, to ash and dust decay.[31]

The vision of the body hanging on the *fourches* prolonged the deterrent effects of the execution. In Montpellier, for instance, the *procureur du roi* decided in 1405 that the body of Pierre Moret should stay on the gibet "for the good of justice and to provide an example for all others".[32] Other platforms might be used for displaying criminals, such as the ladder (*les échelles*) and the pillory, but they were only meant to temporarily expose the condemned or to inflict non-lethal punishments.[33] The *fourches* was therefore instrumental in prolonging an image of justice and inspiring horror at the crime that had warranted such a punishment.

Furthermore, the *fourches* were symbolic of a particular kind of lay power, that of high justice. As discussed briefly in Chapter Three, there were three kinds of justice in medieval France: high, middle, and low. According to *Le Grand Coutumier de France,* the most egregious cases were reserved for high justice. These were crimes that had been committed consciously, with knowledge, forethought, and malice and included arson, rape, and murder (*bouter feu, ravissement, et meurtre*).[34] Crimes that had been committed without malice aforethought, but were nonetheless sufficiently serious, were reserved for middle justice. This included homicide and other events that were not done "délibéré ou apensé", but in the heat of the moment. A simple hanging (*pendre seulement*) was the punishment meted out by middle justice, while those

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[31] H. B. McCaskie, *The Poems of François Villon* (London, 1946), lines 6-8, see original on p. 234 and trans. on p. 235: "Vous nous voiez cy attachez cinq, six: / Quant de la chair, que trop avons nourrie, / Elle pieça devorée et pourrie, / Et nous, les os, devenons cendre et pouldre".

[32] AN, X 2a 15, fol. 275 (August 1405, Montpellier): *Registres d'arrêts rendus par le Parlement de Paris (1400-1417):* "pour le bien de justice et pour donner exemple a touz autres".

[33] de Lavillegille, *Des Anciennes Fourches Patibulaires,* p. 7.

[34] d'Ableiges, *Le Grand Coutumier de France,* ch. 8, p. 637.

within the jurisdiction of high justice were drawn and hanged.[35] *Li Livres de Jostice et du Plet* also reserved the crimes it considered to be the most serious for high justice, including cases of murder, rape, larceny, treason, and homicide.[36] The *Établissements de Saint Louis* contained a similar list, applying high justice to cases of treason, rape, arson, larceny, and all serious crimes in which the punishment may include loss of life or limb (*de touz crimes où il ait peril de perdre vie ou mambre*).[37] Philippe de Beaumanoir included the serious cases (*cas vilain*) already mentioned, as well as cases which could lead to a wager of battle, counterfeiting, and consenting to or procuring any of those crimes.[38]

The important feature of high justice thus lay not only in jurisdiction over certain serious crimes, but also in the kind of punishments that those with high justice were entitled to execute. Like the *baillis* mentioned in Chapter Three who played a crucial role in ordering the hanging of condemned animals, it was only the *haut-justiciers* who had the right to pass capital punishments. As we saw in Chapter Four, the issue of who exactly had this right and over which cases could be a matter of some dispute. It was a right that was jealously guarded even in cases against animals. According to the *Coutume de Sens,* for instance, such rights included the power over cases requiring the death penalty and the ability to inflict other corporeal punishments, such as "to strike with whips, put on the pillory, to be exposed on the ladder, to banish, to brand with a hot iron, to deport, and other similar punishments".[39] Although hanging was by far the most

[35] Ibid.

[36] *Li Livres de Jostice*, bk. 2, ch. 5, p. 83.

[37] *ESL*, livre 1, ch. V, p. 14.

[38] *CB*, ii, ch. LVIII, para. 1642.

[39] *Conférence de la Coutume de Sens,* ed. Pelée de Chenouteau (Sens, 1787), title 1, art. 1: "Fustiger, pilorier, écheler, bannis, marquer, déporter et autres semblables".

common sentence, there was a variety of punishments for officials to choose from.[40] These methods were, according to both *Le Grand Coutumier de France* and the *Coutume de Sens,* quintessential signs of high justice.[41]

Faire Justice: *Punishment in Practice*

An important aspect of punishment, and certainly in the execution of animals, was the idea of justice. The phrase *faire justice* (in Latin: *iustitiam facere*) is commonly found in records relating to the execution of criminal animals. It was used in the receipts examined in Chapter Three, as well as the Brother Humbert's petition from Chapter Four. Using this phrase not only placed the matter squarely in a legal context, it emphasised the criminal nature of the animal's actions: the idea being that the animal had done a wrong which only justice could right. Yet the term "justice" involved more than an abstract notion of fairness or lawfulness. Rather, "doing justice" referred to the authority to try criminals and to perform public capital executions.[42] In fact, *faire justice* was the vernacular term used for execution. According to Esther Cohen, the identification of justice with execution was common in late medieval France, as well as in other European countries.[43] As mentioned above, an executioner was sometimes referred to as the *executer de la haute justice,* which signified his role as the representative of judges that had the political

[40] In Paris and Avignon, hanging represented the majority of the executed death sentences in the fourteenth and fifteenth centuries. See Bronislaw Geremek, *The margins of society in late medieval Paris* (Cambridge, 1987), Table 5, p. 53 (of those accused of theft, the most common offense brought before the Châtelet between 1389 and 1392, 60 per cent were sentenced to hang); Jacques Chiffoleau, *Les justices du pape: Délinquance et criminalité dans la region d'Avignon au XIV siècle* (Paris, 1984), p. 238 (stating that 70 per cent of capital punishments in Avignon were done by hanging). For examples of other types of punishment, see Cohen, 'To die a criminal for the Public Good', pp. 285-304.

[41] d'Ableiges*, Le Grand Coutumier de France,* ch. 8, p. 638; *Coutume de Sens,* title 1, art. 2.

[42] Cohen, *The Crossroads of Justice*, p. 156.

[43] Ibid. The term for execution in Italian was "giustiziare" and "Hinrichtung" in German.

authority to mete out death. Thus, when the religious community of Fontenay hoped in 1363 "to do justice to two sows" (*a faire Justice de deux trues*), they were asking for more than the chance to hold two pigs accountable for their actions.[44] They specifically wanted the pigs executed. The same language can be seen in a record from Jaucourt in 1401, in which an official was required to "perform the execution" (written as *pour faire la justice*) in a case where a sow killed a young boy.[45]

This standardized language was not limited to Burgundy and can be found in account records across France. A case from the Court of Accounts of Normandy listed the cost associated with the execution of a pig in 1334. The sow had eaten a child in Durval in the *bailliage* of Rouen. A receipt for the sow's execution stated that it cost five *sous* "pour faire justice d'une true".[46] A follow-up entry indicated that wood was bought for two *sous* "pour faire la dite justice".[47] The receipt from Ile-de-France in 1403, introduced in Chapter Three, maintained this connection between the term justice and the death penalty. Addressed to the Lord of Maintenon and the *bailli* of Mantes and Meullant, the *lieutenant du bailli* had listed the costs involved in the execution of a sow which had devoured a child.[48] He stated that these expenses were necessary "pour faire et accomplir la justice d'une truye" meaning "to do and accomplish justice (and more specifically the execution) of a sow".[49] There was a later reference to "the said execution" (*ladite execution*) which was the only explicit mention in the record of the sow's punishment. Clearly

[44] A. D. Côte-d'Or, B. 2751, fo. 3r.

[45] A. D. Côte-d'Or, B. 4964, fo. 68v.

[46] *Actes normand de la Chambre des comptes*, p. 86.

[47] Ibid.

[48] Mantes and Meullant probably corresponds to the modern-day communes of Mantes-la-Ville and Meulan-en-Yvelines in the Île-de-France region in north-central France.

[49] Berriat-Saint-Prix, 'Rapport et Recherches', p. 433.

"la justice" was understood to signify capital punishment both by those who wrote the records and the *gens de comptes* who verified them.

The noun "la justice" could also be used more specifically to indicate the method of execution. In 1394, the hangman, Jehan Micton, was tasked with hanging a pig. The account stated that Micton was paid:

> *pour faire aconplir et pendre à la justice dudit lieu de Mortaing, un porc, lequel avait tué et meurdis un enfant en la paroisse de Roumaygne, en ladite viconté de Mortaing.*[50]
>
> to accomplish and hang 'upon the justice' of the said place of Mortain, a pig, which had killed and murdered a child in the parish of Roumaygne, in the said viscounty of Mortain.

Here "la justice" is given the meaning of "gibbet" by virtue of the place name that follows it. The receipt thus reads that the executioner was paid to hang "upon the gibbet of the said place of Mortain". The same formula can be found in the case of the sow of Falaise, discussed at length in the Introduction, who was hanged "on the gibbet of Falaise" (*a la Justice de Falaise*). The notion of justice was thus connected not only with the death penalty more generally but with a particular method of execution – that of hanging – as well as with the structure on which the hanging occurred. Furthermore, as we saw in Chapters Three and Four, this penalty could only be imposed by officers with the power to do so; those with high justice. Thus, the idea of justice, as Cohen pointed out, meant both the authority (urban, feudal, or royal) to try and condemn criminals, as well as a form of execution, rooting the term in both the notions of political authority and capital punishment.[51]

As demonstrated throughout this thesis, the decision to inflict capital punishment on an animal was not taken lightly. For the criminal animal, the execution was a final stage in a lengthy

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[50] Ibid., p. 439.

[51] Cohen, *Crossroads of Justice,* p. 156. For the connection between the growth of penal law and state formation, see Julius Goebel, *Felony and Misdemeanor: A Study in the History of Criminal Law* (Philadelphia, 1976).

process which, as established in Chapter Three, required the appropriate personnel and the right equipment. Each requirement was a considered choice and attested to the validity of the entire proceeding. Even, and perhaps especially, in the case of an animal, "justice" was not performed lightly or arbitrarily.

Trainé et Pendu: *Punishment that Fits the Crime*

By the time the cases examined in this thesis occurred, somewhere between the late fourteenth and early fifteenth century, there was a fairly standard ritual of execution. Capital punishments contained three distinct stages.[52] They began with exhibition and disgrace. The condemned was displayed to the public and there would be a reading of the sentence. This was followed by the ritual expulsion of the offender from the community as the offender was taken to the place of execution. The last stage was the death of the condemned. In all three stages the ceremonial and spatial organisation of the event was meant to be interpreted and understood by those in attendance.

As mentioned earlier, by the fourteenth century, punishment worked like a kind of code and thus much could be inferred about the crime and the offender by the manner in which the offender was taken to their death. As we shall see, animals were most often drawn (*trainer*), which involved being tied to a hurdle and dragged through town to their place of execution, and then hanged (*pendre*).[53] This was a common method by which murderers, and others deserving of a particularly shameful end, were punished. Philipe de Beaumanoir's *Coutumes de Beauvaisis*

[52] Friedland, *Seeing Justice Done,* p. 91; Merback, *The Thief, the Cross and the Wheel,* pp. 138-9. See also Cohen, 'Symbols of Culpability', p. 410.

[53] Paul Friedland argued that being dragged through the dirt could be seen as dishonouring the offender just as the offender had dishonoured the victim (and by extension his lord) through his criminal actions. See *Seeing Justice Done,* p. 59.

mandates this sort of penalty in cases of serious crime, such as murder and rape, stating that the culprit "must be drawn and hanged" (*être traînés et pendus*).[54] Drawing and hanging as the official response to murder was fairly consistent across the customary tradition.[55] The *Registre criminel du Châtelet de Paris* from 1389 to 1392 attested that this was also the case in practice. Of the dozen or so executions during that timeframe, those accused of murder were without exception "drawn and hanged" for their crime. For example, in September 1389, Adenet le Brioys, a truly unsavoury character, was accused of murder, larceny, and rape and so was "trainé et pendu" for his deeds.[56] Perrin Le Gay, described as "an evil murderer and thief" was likewise "trainé et pendu" in May 1390.[57] In June 1390, the provost of Paris declared that Pierre Gauchier, for beating a man to death in order to steal his horse, "must be executed like a murderer and a thief, that is to say, drawn and hanged".[58] In July 1390, Jehan le Porchier, was "executed as a traitor and a murderer" by being "trainé et pendu" on the gibbet at les Tuilleries.[59]

Being dragged to the place of execution was not only a humiliating end, but when dealing with criminal animals, it was no doubt the most practical way to haul a potentially recalcitrant pig to a particular location. Criminals were generally dragged by a horse, and the sight of an animal being dragged by another animal to the *gibet* must have been an intriguing one. As we

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[54] *CB*, i, ch. XXX, para. 824.

[55] See the customal of Artois*: "*hom attaint de murder, d'arsin, ou de rat doit iestre traisné et pendus", while other less serious criminals faced being hanged "sans traisner" in *Coutumier d'Artois*, ed. Adolphe Tardif (Paris, 1883)*,* title XLVIII, art. 3, p. 111; When describing baronial power, Jean Boutillier stated that the *seigneurie* had the authority "de trainer et de pendre" in cases of murder, *Somme rural,* p. 900.

[56] *Registre criminel du Châtelet du Paris,* i, p. 12.

[57] Ibid., pp. 243-4.

[58] Ibid., p. 289: "feust executez comme murdrier et lerres, c'est assavoir trainé et pendu". Similar wording can be found in a record from August 1390 in which it was decided after careful deliberation that Jehannin Machin, after drowning a man in order to relieve him of his belongings, "estoit dignes de soufrir mort, et estre pugnis comme murdrier et larron très-fort, c'est assavoir: trainé et pendu". Ibid., p. 378.

[59] Ibid., p. 322: "execute comme traitre et murdrier". In rare occasions, women convicted of murder were also dragged and hanged on the gibbet. See A. D. Côte-d'Or, B. II 362/01, fo. 173v (14 June 1462), for murder of a cleric.

may recall from Chapter Three, a receipt from Jaucourt found in the 1380-1385 register described how a bull was pulled to his place of execution "by the force of horses".[60] Such a sight would have highlighted the distinction between an animal that was doing its duty and performing as expected (the horses), and an animal that had acted unexpectedly and *contra naturam* (the bull). Both animals were part of the performance of criminal justice while occupying polar opposite roles.

Once the criminal animal reached the *gibet*, however, death was not immediate. To be hanged did not mean death by the sudden fall of the body. Rather the culprit died from slow strangulation due to the culprit's own weight. The struggling body only added to the ignominy of the punishment as well as to the grim performance.[61]

Such was the fate awaiting an animal that had killed a human and been condemned for it. The sow of Falaise provides a typical example: she was ordered to be "dragged and then hanged" (*traîné, puis pendu*) in 1386-7 by the Vicomte of Falaise.[62] As mentioned earlier in this chapter, Jehan Micton, a hangman from Avrenches, received fifty *sous tournois* from the Viscount of Mortain to execute the pig that had killed a child in a nearby parish. The pig had been "condemned to be drawn and hanged" (*condamney à estre trayné et pendu*) in 1394, an event which was overseen by Jehan Pettit, the *lieutenant du bailli*.[63] Outside of Paris in 1317, a pig was

[60] A. D. Côte-d'Or, B. 4947, cited in *Inventaire-Sommaire*, ii, p. 191.

[61] For more on the final stage of death, see Claude Gauvard, 'Pendre et dépendre à la fin du Moyen Âge: les exigences d'un rituel judiciare', in J. Chiffoleua, L. Martines and A. Paravicini Baglioni (eds), *Riti e rituali nelle società medievali* (Spoleto, 1994), pp. 191-211.

[62] de Charnage, *Dictionnaire de titres originaux,* p. 72.

[63] Berriat-Saint-Prix, 'Rapport et Recherches', pp. 439-40. Of course, there was some level of variation in the records. Some cases simply list the animal's punishment as being hanged. See, e.g., the sow of Colognes de Vergy who has simply "pendu" (A. D., G. 1351).

"drawn and hanged on the *fourches* of Noisy" for having killed a child (*trainerent et pendirent aus fouches de Noisi*).[64]

If the method of punishment wasn't specified, the *fourches* was often named specifically as the place of the animal's execution. The bull of Jaucourt was hanged "on the beams of the *fourches*" (*jusqu'au tref des fourches*).[65] In another example, the receipt from 1405 marking the payment to Master Collart, *le bourreau*, explained that the donkey which had killed a child was taken "aux fourches de Dijon" to be executed.[66]

It was only in rare cases that a condemned animal was not hanged on the *fourches.* In Chapter Three, we were introduced to the pig Verray that killed a girl in Saint-Prix in 1444. In Chapter Four, we saw how Verray became embroiled in a jurisdictional dispute between one Étienne de Salins and the Duke of Burgundy. Verray was executed in Arnay-le-Duc and the record described how the *maistre de la haulte justice* hanged the pig "by an oak" (*a d'ung chaisgne*) on the main road to Dijon.[67] An interlinear note placed just above the location of the hanging helpfully added that this was "where the pig was killed" (*ou il a este mort*).[68]

It was initially unclear whether the "oak" referred to here was in fact an oak *tree* or whether the record was merely referring to the beams of the *fourches* which had been crafted out of oak. It seemed simpler to assume the latter – that *chaisgne* referred to the material used to construct the gibbet. This interpretation created fewer discrepancies amongst the records. However, as mentioned in Chapter Three, the fourth and last entry relating to Verray's expenses

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[64] Louis Tanon, *Registre Criminel de la Justice de Saint Martin des Champs a Paris au XIVe siècle* (Paris, 1877), p. 227.

[65] A. D. Côte-d'Or, B. 4947, cited in *Inventaire Sommaire,* ii, p. 191.

[66] A. D. Côte-d'Or, B. 4455, fo. 13r.

[67] A. D. Côte-d'Or, B. 2276, fo. 24v.

[68] Ibid. The castellan paid the executioner three *francs* for his services.

explicitly stated that the pig had been taken "from the prison to the tree where it was executed" (*de ladit prison jusque a l'arbre ou il fut execute*).[69] This begs the questions, why was hanging Verray on a tree permissible when the pig that was hanged from a pear tree by M. de Ray in Chapter Four considered impermissible? Was it simply a matter of holding the right jurisdiction? Perhaps Verray's case suggests that while the physical structure used for the execution was important, the fact that the case was overseen by the duke – the highest judicial authority in the duchy - was sufficient to legitimise the execution (even if on a tree) and ensure it would not be contested. In all other aspects, Verray's punishment had followed proper procedure: it had been done by a professional executioner, a master of high works, and under the auspices of the Duke of Burgundy.

In fact, hanging a criminal animal on the *fourches* was considered so important that, as we saw in Chapter Three, repairs might be necessary so that the execution could go ahead. Around 1350 in the community of Pontailler-sur-Saône six carpenters were paid to repair the *fourches* so that two pigs which had killed a child could be hanged.[70] In 1404, carpenters were paid to build a *fourches* in Rouvre so that it could be used to execute three pigs.[71] If the town did not have immediate access to such a structure, the condemned animal was taken to the nearest one within the *bailliage.* The pig that had killed a child outside Paris in 1317 had committed the crime in the town of Bouffémont and was led three kilometres away to Noisy-le-Grand where it was executed "on the *fourches* of Noisy for this deed" (*aus fouches de Noisi pour ce fait*).[72] The

[69] Ibid.

[70] A. D. Côte-d'Or, B. 5612, fo. 5r: the receipt reads that the carpenters "redresser les fourches de Pontailles questoient chant et faict une grant eschele toute neuve et lautre bois necessaire a changier es des fourches. . .pour pendre deux porcels lequels havoyent tué un enfant".

[71] A. D. Côte-d'Or, B. 5764, fo. 17v: the carpenters were paid "pour la facon dunes fourches faites en Justice dudit Rouvre pour metter et executer iii pourceaulx".

[72] Tanon, *Registre Criminel de la Justice de Saint Martin des Champs,* p. 227.

pig from Pont-de-l'Arche that was executed in 1408 was taken eight kilometres to the south so that he could be hanged on the *fourches* at Vaudreuil.[73]

The act of punishment was considered so important that if the animal itself was not available, an effigy could be hanged instead. Executing a culprit in effigy, like the execution of a live culprit, was a public enactment of justice and symbolised the power of the law. In the same year as the hanging of the pig from Bouffémont, a horse "killed a man" (*tua un homme*) in Bondy.[74] The owner apparently did not want to relinquish his horse and so hid the animal before the judges could seize him.[75] The owner was then obliged to pay a fine and pay for the value of the horse. However, the judges were not entirely satisfied with this outcome. Thus, "a figure of the horse" (*une fygure de cheval*) was drawn and hanged from the *fourches* of Noisy.[76] The dissatisfaction of the judges suggests that in a case where an animal killed a human, hanging filled a critical role that a fine did not. Even if the criminal escaped unharmed, hanging an effigy communicated a strong message about legal authority as well as the importance of the public performance of justice.

The punishment of animals and effigies indicates, according to Paul Friedland, that executions were not simply displays of power but should be better understood as "quasi-secular passion plays through which the community both dispensed with the offending body and recovered from its injuries".[77] The purpose of such a hanging was to remove both the criminal

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[73] Berriat-Saint-Prix, 'Rapport et Recherches', p. 440: "pendu . . . à un des posts de la justice de Vaudereuil".

[74] Tanon, *Registre Criminel de la Justice de Saint Martin des Champs,* p. 227. Bondy is ten kilometers North of Noisy-le-Grand.

[75] Ibid.: "Symon Foloy de . . ., à qui estoit icil cheval, le transhita hors de la justice Saint Martin, avant que la justice Saint Martin y mist arrès".

[76] Ibid., p. 228.

[77] Paul Friedland, 'Beyond Deterrence: Cadavers, Effigies, Animals and the Logic of Executions in Premodern France', *Historical Reflections,* vol. 29, no. 2 (2003), p. 314.

and the crime from the community through the re-enactment of suffering. This suggests that effigies were reserved for the worst sort of crimes; the sort which the community could not bear to remember. Such was no doubt the case in the execution of Guillaume Guyart from Leons de Chartres, who, in 1606, was condemned to death with his dog on a charge of bestiality. The judges ordered Guyart to be hanged on a gallows which "for best effect" would be erected in the town's horse market.[78] The dog would be killed in the same place and both bodies burned. However, if Guyart could not be found and apprehended, the judge decreed that "the sentence will be executed in effigy in a tableau which will be taken and attached to the said gallows".[79] As in the case of the horse of Noisy, the performance of justice and the recovery of the community was considered so important that if the body of the criminal was unavailable, a substitute could be used instead.

Although it does not appear in cases from Burgundy, being burned alive was another possible punishment for animals that killed a human. A late-thirteenth-century example from Paris described how a pig was burned in Fontenay for having eaten a child. To ensure that there would be no questions regarding its legitimacy and lawful nature, the event was presided over by a member of the monastery of St. Geneviève, a sergeant (an enforcement official who often oversaw the execution of judicial sentences), as well as the mayor:

> *L'an de grace m cc lxviii ou environ fu pris a Fontenai i pourcel qui avoit mengie i enfant . . . et fu arse en la court. . . de Sainte Genevieve à Fontenai. Presenz, frere Guerin . . . Guillaume le seriant, Aubert le mere, etc*.[80]

[78] Berriat-Saint-Prix, 'Rapport et Recherches', p. 436.

[79] Ibid. Another example can be found in A. D. Côte-d'Or, B. 2656 (1582-83), in which the executioner, Alain Lemort, was paid for hanging two men in effigy ("une somme donnée à Alain Lemort, executer de la haute justice, pour avoir pendu en effigie Antoine de France et Nicolas Guillier de Auxerre"), who had been condemned by the provost to be hanged and strangled.

[80] Paris, *Bibliothèque de Sainte-Geneviève,* MS 640, fo. 57: *Livre de Justice de l'abbaye de Sainte-Geneviève.*

> In the year of our lord 1268, one pig was taken from Fontenay, who had eaten one child. . . . and was burned in the courtyard. . . of Saint Genevieve at Fontenay. Present were brother Guerin . . . William the sergeant, Aubert the mayor, etc.

While it was a far less popular method of executing criminal animals, being burned alive was also a possible method of punishment in Normandy. The executioner of Louviers was paid ten *sous* in 1349 "to burn a pig who had eaten a child" (*pour ardre un porc qui avoit mengié un enffant*) in Pont-de-l'Arche.[81] A woman named Jehannine la Cauchoise was paid two *sous* for bringing the branches of a shrub "to burn the said pig" (*à ardre le dit porc*).[82] Another executioner was recorded as being paid five *sous* by the *bailli* of Caen for "burning a pig" (*ardoir un poc*) in 1356 with an additional two *sous* spent on tinder.[83]

The difference in methods of punishment could be attributed to several factors: simple regional differences no doubt played a large part, but the way in which the animal's crime was viewed by the community, and how that community would heal after the fact, could also have played an important role. In Burgundy, the use of the *fourches* guaranteed that the criminal animal could be viewed by spectators for a considerable amount of time. Until it decomposed or was removed, its hanging body acted as a reminder that the animal had been condemned for murder and held accountable. If burned alive, however, as seen in records from Normandy, it was clear that the community did not want such a reminder. In fact, burning ensured that the body of the condemned was permanently removed from the public gaze along with the memory of its deed. In such cases, perhaps the focus was on the unnatural quality of the animal's crime where, as in cases of bestiality, a sacrosanct boundary had been transgressed. As an instrument of

[81] *Actes normand de la Chambre des comptes*, p. 384.

[82] Ibid.

[83] Delisle, *Études sur la condition de la classe agricole*, p. 107.

sin, it was necessary to burn the animal according to many medieval commentators and only then would the community be cleansed.[84]

Whether an animal was dragged and hanged on the *fourches* or burned alive, the transformation of that animal into a criminal as demonstrated in Chapters Three and Four meant that the animal could not be disposed of carelessly or informally. Once the animal was labelled a murderer, and firmly situated within a criminal framework, the appropriate response was a legal response – and one that required a particular form of capital punishment. A state sanctioned death, one that was performed on the *fourches*, was thus a legitimate and fair outcome; a fitting end for the animal's grisly act and the culmination of the legal procedures through which the animal had been ushered. In this context, the nature of the crime and the punishment became self-reinforcing: describing the animal's actions as murder necessitated the death penalty and insisting that the animal be dragged and hanged on the *fourches* (similar to human offenders) reinforced the notion that the animal committed a serious crime. In the words of R. Howard Bloch, there was thus created a "necessary correlation between the sureness of punishment and the certainty of infraction".[85] Whether by hanging or by being burned alive, the punishment of the condemned animal represented not only an important final step in the animal's case but a conclusive step in the process of criminalisation.

[84] See, e.g., Ivo of Chartres, 'Decreti Pars IX', *PL* 161:682A, 686 and Thomas of Chobham, *Summa Confessorum,* ed. Rev. F. Broomfield (Louvain, 1968), art. 7, dist. 2, q. 19, ch. 2, pp. 402, both of whom are discussed in more detail in the Appendix.

[85] Bloch, *Medieval French Literature and Law,* p. 59.

The Role of Executioners

As we have seen, criminal animals were subject to capital punishment for their crimes, which generally required being "dragged and hanged" upon the *fourches.* Such punishment required the services of an official executioner. Although regularly linked to ideas about cruelty and evil, executioners were an indispensable part of the medieval judicial system where they played an essential role as the securers of justice and stability.[86] As a profession, the office of executioner can be traced to the early thirteenth century and gradually spread throughout France. As a result of the increasingly important role of punishment as a public matter, there developed a need for professionals who were tasked with carrying out the various sentences.

One of the first regions to institute the office of executioner was Normandy in 1202.[87] Paris had an official executioner by 1275, Blois by 1376, Amiens by 1401, and Dijon by 1403.[88] The growth of this profession paralleled many of the judicial changes in late medieval France. *Le bourreau* (earlier versions are spelled *bourrel*) played an essential role in the new penal system which saw public authorities dictate and monopolize legitimate violence while eliminating private forms of vengeance.[89] In such a role, the executioner secured social harmony, and signified law and order. The executioner was sometimes referred to as *executer de la haulte*

[86] Valérie Tourneille, 'Bourreau', in Claude Gauvard, Alain de Libera, Michel Zink (eds), *Dictionnaire du Moyen Âge* (Paris, 2002), pp. 190-1. For the ambiguous role played by hangmen in medieval society, see Hannele Klemettilä, *Epitomes of Evil: Representations of Executioners in Northern France and the Low Countries in the Late Middle Ages* (Turnhout, 2006).

[87] Nicolas Jouhanne assumed the position of executioner in the *vicomté* of Caux in 1202. Most major towns in Normandy acquired an executioner over the next hundred years. See Friedland, *Seeing Justice Done,* p. 73; Jacques Delarue, *Le métier de bourreau du Moyen Age à aujourdhui* (Paris, 1979), pp. 62-3.

[88] Friedland, *Seeing Justice Done,* p. 73; A. Dubois, *Justice et bourreaux à Amiens dans les XVe et XVIe siècles* (Amiens, 1860), p. 4 (citing the first named *bourreau* of Amiens as dating to 1401, with another designated in 1403 and 1410); Michel-Hilaire Clément-Janin, *Le Morimont de Dijon: Bourreaux et suppliciés* (Dijon, 1889), pp. 9–10 (citing the first public execution in Dijon in which the name of the executioner appeared as occurring in March 1403. The same executioner, *maître* Jehan, went on to hang a donkey from Plombières in 1407).

[89] Tourneille, 'Bourreau', *Dictionnaire du Moyen Âge*, pp. 190-1.

justice ("executor of high justice") or *maître de hautes oeuvres* ("master of high works") which denoted his role as the representative of those judges that held high justice and emphasised his instrumental position as a servant of a lawful authority.

Despite his critical function, attitudes toward executioners were highly ambiguous. Ostracised from most aspects of daily life, executioners existed at the margins of society: they wore distinctive clothing and lived in prescribed places, generally beyond the city walls.[90] Like other outsiders, they might even wear a badge sewn to their clothing or special colours that visually signalled their profession.[91] They were restricted to a special pew in church and could only enter the town to perform their designated tasks. Yet their performance of executions was expected to be perfect. A clumsy hangman could be assaulted or worse.[92]

Understandably, this did not make the job a popular one. The position was generally occupied by men of the lowest rank or even pardoned criminals and throughout the later Middle Ages, the number of hangmen remained low.[93] However, demand for executioners grew as capital and corporal punishments became the exclusive domain of state and other public authorities. Thus, when needed, executioners received compensation not only for expenses associated with the execution but for travel and lodging as well.

By the time the animals discussed in this chapter were put to death, executions were ritualised public spectacles that were carefully planned and elaborately staged. The necessity of a

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[90] Friedland, *Seeing Justice Done*, p. 72. See also Delarue, *Le métier de bourreau,* p. 31.

[91] Delarue, *Le métier de bourreau,* pp. 45-6.

[92] Petrus Cornelis Spierenburg, *The Spectacle of Suffering: executions and the evolution of repression* (Cambridge, 1984) p. 14-16. Spierenburg recounted the story of a beheading in Angers in 1625 in which the executioner needed twenty strokes to finish the job. The people threw stones at the executioner, grabbed him when he attempted to flee, and eventually killed him. Ibid., p. 15. The sixteenth-century Flemish jurist, Joos de Damhouder, wrote in his legal treatise *La practique et enchiridion des causes criminelles* that if hangmen were unpopular, it was their own fault for ineptly and brutally dispatching the condemned. (Louvain, 1555), pp. 365-6.

[93] Spierenburg, *The Spectacle of Suffering*, p. 39.

professional executioner with their particular set of skills meant that many communities had to summon an executioner from outside their community. It is noteworthy that given this scarcity, a reasonable alternative was not found in cases of harm-causing animals. Why wasn't a butcher or even a farmer hired to dispatch the animal? With their intimate knowledge of animal anatomy, they would arguably have been a better choice. Yet this option was not pursued. The importance of adhering to proper criminal procedure was such that only a professional executioner was considered for the job.

For some cases, the executioner did not have to travel far. The execution of pigs in Pontailler in 1350 involved an executioner from the neighbouring town of Pesmes.[94] The donkey accused of killing a child in Plombières in 1405 was taken by an executioner named Collart to be hanged in Dijon, six and a half kilometres away. The record stated that Collart was paid not only "for his pains and salary", but also for traveling to execute the donkey.

> *A maistre Collart le bourreau pour sa pene et salaire et par marchie et accord fait a lui pour mettre a execution . . . aux fourches de Dijon. . . et pour avoit mene aux dit fourches et illec tue un asne qui avoit este pris a Plombieres pour ce quil avoit mis a mort un enfant. . .*[95]
>
> To master Collart the hangman for his pain and salary and coming by foot and agreeing to perform the execution . . . on the *fourches* of Dijon. . . and for having led to the said *fourches* and there killed a donkey who was taken at Plombieres because he had killed a child. . .

However, it was more often the case that the executioner had to travel a great distance. There was no indication in the records I examined that this was because some executioners refused to hang a pig, making the community look further afield.[96] Rather, it seems simply that

[94] A. D. Côte-d'Or, B. 5612, fo. 5r.

[95] A. D. Côte-d'Or, B. 4455, fo. 13r.

[96] That is not to say that refusals did not occur. In 1349, a "vallet" was compensated for requesting that *maitre* Johan de Doilla, who was staying in Gonaincourt, execute a sow (*faire justice d'une treue*) that had killed a child (*qui avoit tuer i. enfant*) in Châtillon. It seems de Doilla was reluctant to perform his duties because the following entry in the record details how a mounted sergeant (*sergent a chevaul*) was then sent to Gonaincourt to fetch him so that the

professional executioners were in short supply. In 1393, an executioner named Niquando Vigueur journeyed approximately thirty-five kilometres from Besançon to Montboson. He received a salary of sixty *sous* for hanging a sow and an additional seven *sous* and six *deniers* for his travel expenses.[97] The executioner, Jehan Micton, travelled a similar distance from Avrenches to hang the pig of Mortain.[98] In the 1403 case from Mantes and Meullant, the executioner, referred to as a master of high works, travelled over fifty kilometres from Paris.[99] At a cost of fifty-four *sous parisi*, the record stressed that he was officially summoned "by the order and command of our said master the bailiff and the royal procureur" (*par le commandement et ordonnance de nostre dit maistre le bailli et du procuereur du roi*).[100]

Of the records I investigated, the farthest distance was travelled by Jehan de Vimens in 1386, who journeyed close to eighty kilometres from Bar-sur-Aube to the town of Duesme. He received three *francs* and eight *gros parisis* for executing a sow which had killed a child, identified as the grandson of the local wool trader.

> *Autre despence pour faire execution a maistre Jehan de Vimens demourant a Bar sur Aube mistre pour la cause d'une execution faite d'une truhe qui avoit tuey d'ung enfant qui estoit un fils du fils au lainier de Duisme. . .*[101]
>
> Other expenses for the execution to master Jehan de Vimens staying at Bar-sur-Aube, the executioner regarding the case of an execution performed on a sow who had killed a child who was the son of the son of the wool trader of Duesme. . .

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execution could take place. The execution ultimately did occur and de Doilla received a new pair of gloves "pour trayner et pendu la dite treue". A. D. M., B. 2523, fo. 28v.

[97] A. D. Côte-d'Or, B. 1498, fo. 30r: "Audit Nequando mittre pour sa paine et salaire d'avoir pendu ladite truye lx s. C'est pour ses despenses faiz en alant de Besancon audit Momboson demand pour ce fait . . . vii s vi d".

[98] Berriat-Saint-Prix, 'Rapport et Recherches', p. 439: "pour sa paine et salaire d'estre venu d'Avrenches jusques à Mortaing".

[99] Ibid., pp. 433-4.

[100] Ibid., p. 433.

[101] A. D. Côte-d'Or, B. 4650, fo. 32r.

It seems that an executioner was sometimes hard to find. In the 1499 case from Fresne-l'Archevêque, twelve *sous tournois* was paid to an individual whose title or profession is never revealed, but who was "passing by chance".[102] The record stated that the sergeant took three days to find this *compagnon* who could conduct the execution.[103] One can only guess at the qualifications held by this *compagnon* but if the sergeant took three days to find him, they were clearly skills that not everyone had. This record thus reinforces the idea that the execution of offending animals could not simply be delegated within the community if an executioner could not be found. Procedure dictated that a professional be used; one with a particular set of skills and experience. Consequently, communities had to make an effort to ensure that the execution was done by the right person. Adhering to this requirement was the final step in the animal's transformation from property to criminal. Additionally, it underscored that the punishment was lawful and done in an approved manner, granting a final note of legitimacy and validity to the case.

There was, of course, the daunting possibility that the summoned executioner would not appear. The case from Auxonne suggests that this could indeed happen. As mentioned in Chapter Three, a pig was charged with homicide for killing a child in 1378. The record noted that payment was made to the provost of Auxonne in order to pay the costs and salary of the executioner.[104] The pig had already been delivered to the provost by the mayor and the magistrates of Auxonne: "le quell porc a este livré au dit prevost par les maieur et eschevins d'auxonne pour le faire executer".[105] The provost also certified the sum to be paid to the

[102] A. D. Seine-Maritime, G. 574, unfoliated (14 Sept. 1499): "ung compagnon passant d'aventure".

[103] Ibid.: "au sergent, pour avoir vacque troys journees pour ledit cas tant a chercher ledit compagnon pour faire ladite execucion. . . 8 s. t.".

[104] A. D. Côte-d'Or, B. 4425, fo. 37r.

[105] Ibid.

executioner. The total cost came to nine *francs*, fifteen *sous*, and eighteen *gros*. On the surface, it appears as if all is in order. However, the entry was crossed out by two clear diagonal lines. The associated sum written in the right-hand margin was likewise crossed out. The entry following this case continued in the same hand without interruption.

One possible interpretation is that these marks indicated that the recorded event (i.e., the execution) did not take place. There is a note in the left-hand margin written in much abbreviated Latin which reads: "Rach who did not appear as here recited".[106] Who was Rach and why would his non-appearance affect the hanging of a pig? Could he have been the executioner? Perhaps then this was a note by the scribe stating that the executioner did not arrive as the record suggested. If the execution did not occur, the provost could not rightly claim the expenses. Hence a possible reason that the record was crossed out.

It would seem, then, that the entry was written in the past tense in order to secure payments in anticipation of a future event. According to Jassemin, payments for recurring events that came before the Parisian *Chambre des Comptes* were deemed "ordinaires" and money was duly assigned for those needs. However, for costs relating to events that were unexpected or "extraordinaires", the accounting officer had to apply to the royal Treasury in advance.[107] A similar arrangement may have existed in the *Chambre des Compes* of Dijon, which would explain the verbal tense used in the Auxonne entry. It was therefore crossed out, not because the scribe or the *gens des comptes* believed it was absurd to execute a pig, but because the future event on which the payment was based never occurred. This suggests that the execution of an animal was considered a legitimate expense even before it happened. Furthermore, all the entries

[106] Ibid.: "Rach qi non appert de lr".

[107] Jassemin, *La Chambre des comptes de Paris,* p. 88. Note that this was no longer the case in the fifteenth century when the Treasury took on a broader role.

on the page, including the case of the pig, appear evenly spaced and in the same hand, indicating that the entries were written one after another. In other words, the fee to execute an animal was treated like all the other expenses: it simply had to be paid.

There do not appear to be any follow-up records on the matter, so we are left to wonder about the pig's eventual fate. However, the case from Auxonne shows just how important the role of a professional hangman was in the case of a criminal animal. There was no indication that a substitute was sought so that the case could be completed. This suggests that when it was not possible to follow proper procedure, the event in question did not occur. The case from Auxonne thus acts as a reminder of the value that was not only placed upon the judicial process as a whole but on the individual steps that made up that process.

Why Execute a Pig?

A popular misconception is that executions, and violence more generally, were quite common throughout the Middle Ages.[108] However, they may not have occurred as frequently as has been imagined.[109] For example, Robert Muchembled found in his study of Artois that the penal system

[108] The Dutch historian, Johan Huizinga, for instance, wrote that life in the Middle Ages was dominated by ruthless and frequent forms of punishment: "So violent and motley was life that it bore the mixed smell of blood and roses", in *The Waning of the Middle Ages: A Study of the Forms of Life, Thought and Art in France and the Netherlands in the XIVth and XVth Centuries* (London, 1924), p. 27. For a similar view, see Henry Charles Lea, *Superstition and Force: Essays on the Wager of Law, the Wager of Battle, the Ordeal, Torture* (Philadelphia, 1866). Marc Bloch described violence as "the distinguishing mark" of the Middle Ages, being "deep-rooted in the social structure and in the mentality" of the time. This was due to the fact that "[m]edieval men had little control over their immediate impulses; they were emotionally insensitive to the spectacle of pain, and they had small regard for human life", in *Feudal Society,* trans. L. A. Manyon (2 vols, London, 1961, repr. 2014), ii, ch. 30, p. 432. More recently, SKY T.V.'s History channel confidently told its viewers that "during the Middle Ages (also known as the medieval period) public torture and execution was common… [it was] widespread and completely unregulated", 'Execution in the Middle Ages,' https://www.history.co.uk/shows/britains-bloodiest-dynasty/articles/execution-in-the-middle-ages (6 April 2021).

[109] For instance, Claude Gauvard argued that the number of culprits that were executed was actually low in relation to the number of people charged with crimes. For example, between 1387 and 1400, the *Parlement de Paris* heard over two hundred cases with only four resulting in capital punishment. Gauvard, "*De grace especial",* p. 897. The death penalty did remain an option for lower courts, however, and it was therefore the task of the *Parlement* to ensure that it was used appropriately. See Gauvard, 'Justification and Theory of the Death Penalty', p. 203.

was largely based on fines and banishment, rather than capital punishment.[110] If there was a perceived increase in capital punishments between the twelfth and sixteenth centuries, Spierenburg argued that it did not demonstrate an increased desire by the populace to witness suffering, but rather reflected the growth and stabilisation of the criminal justice system.[111] Furthermore, the relatively low number of executions indicates that this form of punishment was reserved for only the most serious crimes.[112] As an infrequent event that was inflicted on the nastiest criminals, it is thus striking that animals were subject to such a punishment. Clearly officials were keen to send the message that the animal had committed the worst kind of crime and that it must be addressed by this particular punishment. But who was the hanging of a pig meant to satisfy? Was it meant as a cathartic moment for the entire community? The victim's family in particular? Sadly, I have yet to come across an eyewitness account of such an event so it is difficult to say how they were received by audiences. We have, of course, the claim of fifteenth-century French jurist Guy Pape that he saw a pig hanged in Burgundy (discussed in the Appendix), but his brief almost nonchalant mention of this sight at the end of his defence of animal executions brings us no closer to understanding how people might have reacted to seeing a pig drawn and hanged upon the *fourches*.

A question that is inevitably asked by modern audiences involves the mechanics of hanging animals. How exactly was it done? Pigs, being the most frequent offender, would appear to be particularly difficult to hang given their weight and the additional fat around their neck

[110] Robert Muchembled, *Le temps des supplices: De l'obéissance sous les rois absolus, XVe-XVIIIe siècle* (Paris, 1992).

[111] Spierenburg, *The Spectacle of Suffering,* p. 12.

[112] Muchembled, *Le temps de supplices,* p. 57. E.g., Muchembled found that in Arras executions averaged one per year in the fifteenth century and some years had none, concluding that capital punishment was reserved for truly exceptional circumstances.

acquired before being butchered. However, the records give no indication that hangings necessitated the use of any methods or equipment particular to pigs or indeed to any animal. Pigs were simply described in the receipts as being "trainé et pendu" just like human criminals. As a legal record that has gone through an arduous and thorough auditing process, this type of standardisation might be expected. While we can only imagine how a pig was hefted onto the *fourches* and strung up by the neck, it was clearly important that the pig received the same punishment meted out to human murderers. That is not to say that there was no room for improvisation in practice. Presumably, material such as ladders and rope were of a sufficient size and strength to manage the hanging of the animal in question. To ensure that nothing went wrong, small modifications may well have taken place. What the records demonstrate, however, is that significant digressions from a standard hanging were not made, meaning that no additional expenses were incurred in order to make the process easier or more expedient for the officials involved. Even if costs were simply standardised for executions, rather than the cost of hanging an animal deliberately mimicking the cost to hang a human, what is made clear by these records is that there was no distinctly 'animal' form of punishment.

There could be many reasons for this. Standard criminal law and its procedures was clearly seen as applicable to cases against animals so there was no need to develop a different form of punishment. Furthermore, for punishment to successfully act like a code, the animal's death had to follow the procedure of the particular punishment assigned to the crime for which the animal had been condemned. This would explain the consistent and continuous application of drawing and hanging to condemned animals, which strongly implies that it was important for spectators to understand exactly what offense the animal had committed. It not only reminded spectators that those who intentionally killed another could expect the harshest of punishments,

but also that the arm of justice could reach all in the community, human and nonhuman alike. On a more practical level, perhaps such a spectacular death justified the expenses incurred throughout the judicial process. Why go to such trouble if ultimately the animal was going to be taken behind a shed and dispatched discretely by the local butcher? It would have been odd to follow criminal procedure as closely as these cases did and then *not* complete the process with a formal execution. While we can only speculate about these issues until further evidence comes to light, what is clear is that hanging a pig cannot have been a particularly easy exercise and must have provided a truly grim sight.

While we are left to wonder what spectators must have thought at seeing a pig hanged, there has been a great deal written about why people attended the executions of human beings. Claude Gauvard found that the late medieval crowd could cry out to show their approval and Nicole Gonthier agreed, observing that people might also shout insults at the condemned.[113] Others, such as Michel Bée, focused on how spectators might have experienced something akin to a spiritual ceremony.[114] Paul Friedland claimed that there was a tendency among the French during the later Middle Ages to view executions as a form of entertainment, while Esther Cohen argued they were seen as rituals of exclusion and enforced liminality.[115] These interpretations, not all of which are mutually exclusive, were obviously written about human criminals but might also be applied to the execution of animals. The hanging of a pig was undoubtedly a great spectacle. As shown by the receipts examined in Chapter Three, communities spared no expense when executing a homicidal animal: such cases involved the *bailli* or local magistrates, possibly

[113] Gauvard, 'Pendre et dépendre', pp. 202-5; Nicole Gonthier, *Le châtiment de crime au Moyen Age, XIIe-XVIe siècles* (Rennes, 1998), pp. 188-9.

[114] Michel Bée, 'Le spectacle de l'exécution en France d'Ancien Régime', *Annales Histoire, Sciences Sociales*, vol. 38, issue 4 (1983), pp. 843-62.

[115] Friedland, *Seeing Justice Done,* pp. 119-20; Cohen, *Crossroads of Justice,* pp. 85-99, 182-201.

included the cost of keeping the animal in prison, and would require equipment and even repairs. As we have seen in this chapter, these steps then culminated with the arrival of a professional executioner and an official hanging on the *fourches*. Yet the insistence on following this procedure suggests that the hanging of an animal was more than entertainment. The formality with which the animal was removed from the community emphasised not only its crime but the seriousness with which the crime was being treated. The image of the suffering body of the condemned conveyed a powerful message about the reach of the law and the role it had in righting wrongs. At the same time, like Esther Cohen's ritual of exclusion, the animal underwent a form of expulsion where it was removed from the community and divested of its identity as a loyal and predictable servant of mankind. This divestment went hand-in-hand with the acquisition of a new identity: that of a criminal. Even after death, the condemned animal did not simply return to its former status as legal object; it was now an outcast (and dead) legal subject.

Understanding that the same procedure that applied to human criminals was being applied to an animal may have struck some in the audience as a strange sight, possibly even a moment of "justice perdue" as Beaumanoir put it.[116] Even so, the audience could simultaneously acknowledge that criminal procedure was being applied properly. The effort undertaken to ensure that the right elements of an execution were in place reveals that it was a conscious decision to ensure that the hanging of an animal appeared just like the hanging of a human. Even the costs of such events looked just like other seigneurial expenses. This does not indicate that those involved with such expenses understood the animal to be 'human-like' or that the boundaries could be blurred between humans and animals. There is nothing in the records that equates animals with humans or suggests that animals acted with the same intent or mind frame

[116] *CB*, ii, ch. LXIX, para. 1944.

as humans. Rather, the notion of a pig as a criminal and the eventual hanging of that pig tells us about how the law was understood to operate, and specifically how criminality could include space which nonhumans might occupy.

In whatever way an audience understood the combination of visual oddity (a hanged pig) and proper procedure, the continued execution of harm-causing animals not only demonstrates the duality that could be entertained by the people in the Middle Ages, but indicates that such events filled a purpose that would not have been satisfied had the animal been casually carted off and butchered. With the formal punishment of such an animal, presided over by magistrates and conducted by a professional, it became an official and legally sanctioned response to a perceived breach of norms. The animal, by acting *contra naturam* and killing a human being, had upended the human-animal hierarchy in which it was supposed to occupy a subservient position. The execution of an animal allowed the human community to redress this imbalance, reinstate its rules, and reassert its power over the animal. Punishment was thus a method not of only regulating human-animal relations, but of reaffirming the social structure and the natural order.

And yet, the formal punishment of an animal was itself a challenge to social norms. Communities did not create a different system of punishment, a uniquely 'animal' form of death, but instead made a conscious decision to use the same method as those applied to humans. What might be thought of as belonging exclusively to the realm of mankind was now applied to nonhumans. The inclusion of animals within the penal system thus showcased the inherent flexibility of the law, both reaffirming and challenging traditional assumptions about human-animal interactions as well as what constituted a legal subject.

Conclusions

Punishment is a public and moral statement, and it plays a critical role in society: it conceptualises a particular threat, and by doing so defines what is a crime and what is not, and then addresses that threat. The killing of a human by an animal was perceived as one such threat - a serious breach of an agreed pact, a betrayal of the master by his once loyal servant, and represented a transgression of the natural order. By examining receipts of animal executions, we can see that the usual penalty imposed on an animal for killing a human was to be drawn and hanged upon the *fourches*, the typical punishment for those convicted of murder. We have also seen that this penalty was widely and consistently used. In fact, the term "justice" was often used in connection with the animal's execution, encapsulating both ideas of lawfulness and the method by which the animal would be punished. This particular form of punishment required the service of a professional executioner, who may have travelled quite a distance to perform his duties. As part of a programme of penal 'spectacularisation', such punishments were elaborately staged and precisely paced ritual dramas. They not only provided a focus for community participation, but also created and reinforced a type of penal code: particular punishments were assigned to certain serious and premeditated crimes such that spectators could view an execution and understand what crime had been committed. The consistency of animals being *trainé et pendu* thus implies that it was important for the community to understand precisely why the animal was being put to death in such a public (and expensive) way: it had committed murder. The animal's punishment therefore served the dual role of cementing the animal's criminal status while also justifying the time, effort, and expense that had preceded the execution.

Customals, such as the *Coutumes de Beauvaisis* and the *Coutumes de l'Anjou et du Maine*, focused largely on deterrence as the rationale for such punishments, but one could argue

that the execution of a criminal animal served both retributive and deterrent functions: it redressed the social imbalance of the crime by dispensing the animal's just desert; it acted as a warning to owners of the consequences of such a transgression; and it improved society by eliminating the threat that the animal may commit any future transgressions. It also had the effect of reinforcing lay power and thus created a sense of stability. It may even have been comforting to know that such crimes, even those committed by animals, would not go unpunished.

A question asked by many is what happened to the animal *after* it was hanged? With the exception of the sow of Corbeil from Chapter Three, who was burned and then buried, none of the records indicated that anything was done with the body after the execution, leading me to believe that the animal was simply left to decompose on the *fourches* as happened with many a human criminal. After all, the very purpose of the *fourches* was to display the bodies of the condemned; to not only provide a method of death but to provide a stage for its viewing. The fact that this applied to animals is important because if the animal was firmly occupying a criminal space within the legal framework, as I've argued, then the animal must be left on the *fourches* like other criminals. To remove the animal from the designated space for those convicted of capital crimes would be removing it from the legal framework, thereby negating the processes that had placed the animal on the *fourches* in the first place.[117] The *fourches* thus acted as a

[117] I suspect that people would not have wanted to use or consume the condemned animal even if it was brought down from the *fourches*. As might be expected, for health reasons there were strict civic rules regarding meat preparation. A royal ordinance from 1351, for example, addressed the concerns of contaminated meat by banning the sale of animal meat that had been butchered more than two days prior in the winter or more than a day a half prior in the summer. See *Ordonnances des roys de France* (21 vols, Paris, 1729) (Feb. 1351), ii, p. 363, item 145: "Nul Boucher ne vendra chair sursemée, ne aussi gardera chair tuée plus de deux jours en hyver, et en esté jour et demi au plus". Another royal ordinance in 1363 mandated that animals must arrive at abattoirs in visibly good health and that the butcher could not sell meant from animals that the butcher had not killed himself: "nul Boucher de ladicte Boucherie de Sainte Genevieve, ne pourra doresnavant acheter ne vendre char morte quelle soit, se elle n'a éste tuee en ladicte Boucherie", ibid. (Paris, 1732), iii, p. 640, item 1. The meat from a condemned animal, having been killed by a professional executioner, would not have met the requirements of this ordinance and would therefore not have been able to be sold as consumable meat.

physical anchoring of the animal and its status as a criminal. Negating these processes would have made a mockery of the actions taken by the various judicial officials involved in the case, the painstaking insistence on following appropriate procedures, the fees for keeping the animal in prison or paid to the executioner. Allowing the animal's body to remain on the *fourches* not only served as a reminder to the community of the grisly crime for which the animal was condemned but also that the animal was held accountable for its actions.

At the conclusion of the animal's punishment, the inversion and displacement of the human-animal relationship that occurred when the animal killed a child was reinverted and corrected with human dominance asserted once more over the body of the now criminalised animal. Yet even this 'reinversion' was an inversion in itself, and one that was intentional, desired, and carefully enacted: it was with the application of the criminal process culminating in a formal execution that the animal's previous status as a legal object was transformed into that of a legal subject. The movement between categories was thus not between that of 'animal' and 'human' as many modern scholars have suggested, but within the legal framework itself. The transformation from animal as property to animal as criminal did not make the animal 'human-like'; instead, it points to the flexible nature of the legal system, and the ways in which it was made to incorporate and manage deviant behaviour.

Conclusion

"When one sees a custom rooted in a people and maintained for centuries,
it is necessary to listen carefully. . . before charging it with absurdity or ridicule". [1]
Léon Ménabréa

The notion of animals charged with crimes, and the challenge this posed to traditional categories and assumptions around human and nonhuman interactions, has puzzled and intrigued scholars since the eighteenth century. And I suspect that such cases will continue to puzzle historians far into the future. In fact, rather than fading into obscurity, there has been a surge of interest in these cases over the last few decades. Returning to our celebrated sow of Falaise mentioned in the Introduction, the English poet Ted Walker (1943-2004) made her the subject of his poem 'Pig pig'. In his collection *Gloves to the Hangman: Poems 1969-1972,* he reimagined the case in vivid, earthy language, using legal terminology to emphasise both the criminal nature of the sow's behaviour and to satirize the notion of an animal on trial. The narrator of the poem is the sow's owner. When a sow attacks a local girl, "gnaw[s] / her face from her ringlets", and leaves her with "stump arms", the owner must act quickly.[2] He finds the sow, whom he calls his "murderess", safely ensconced in her pen.[3] When a group of men come for her, she is hauled off to a dungeon and chained. The public wants revenge, "an eye for an eye", but the quick-thinking owner calls for a trial, citing precedent in which a bull was hanged for murdering a child.[4] Nothing about the trial is serious. The village thug was set "to guard the convict pig", while the parish was sent the bill. The owner's "boozing companion" agreed to prosecute, while "some

[1] Léon Ménabréa, *De l'origine de la forme et de l'esprit des jugements rendus au moyen âge contre les animaux: avec documents inédits* (Chambéry, 1846), pp. 3-4: "Quand on voit une coutume s'implanter chez le people et s'y maintenir pendant plusieurs siècles, il faut bien s'écouter. . . avant de la taxer d'absurde ou de ridicule".

[2] Ted Walker, 'Pig pig', *Gloves to the Hangman: Poems 1969-1972* (London, 1973), p. 38.

[3] Ibid., p. 40.

[4] Ibid., p. 41.

sense-less lush got the defence".[5] A judge is assigned to the case, and the owner himself is appointed the executioner.

The day of the trial dawns and we are assured that court procedures are treated "with all due reverence".[6] "We wanted no mistakes", confides the owner.[7] Yet the procedures are effectively meaningless. The owner snickers, "[i]t was a farce, right enough".[8] The sow is found guilty of the crime of eating flesh on a Friday, and the owner takes her to the scaffold. The owner describes the experience as "a good day's work": he gets to take the carcass home along with a new pair of gloves, his associates made a profit, and the parish paid for it. The owner sighs contentedly, "knowing how justice was seen / through me to have been done".[9]

Walker's account not only highlights the cruelty involved in putting a pig on trial and then hanging it, but the way in which we imagine such an undertaking would undermine the dignity of the entire justice system. Here, the animal's behaviour strikes us as outrageous and deplorable, but resorting to a trial seems equally outrageous. Walker's owner refers to the trial as a "game" and once the pig steps inside it, the courtroom becomes a "slum".[10] Rather than being a legitimate response to a tragedy, the trial and execution are driven and manipulated by human desires, grief, and even greed.

Walker's representation of a 'medieval animal trial' draws upon many of the assumptions made in academic scholarship. The perception of such cases as nonsensical (despite their adherence to proper procedure) can be traced back to Evans, who stated that subjecting an animal

[5] Ibid., p. 42.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Ibid., p. 44.
[10] Ibid., p. 42.

to the judicial process was "a parody and perversion" of the justice system.[11] The case of the sow of Falaise, in particular, was "a travesty of justice" costing the state ten *sous* and ten *deniers,* as well as a pair of gloves for the hangman.[12] Under Evans' reading, cases against animals were devoid of any true meaning. Katie Sykes, who in one breath applauded a legal system that could "tolerate the movement of animals between the categories of 'thing' and 'person'", in the very next breath called animal cases "absurd exercises in legal formalism that often ended with very nasty things being done to animals".[13] Similarly, Peter Dinzelbacher argued that such cases proceeded "because they created the impression" that legal authorities were maintaining law and order, suggesting that, in reality, the cases were no more meaningful than the trial in 'Pig pig'.[14]

It is my hope that by examining both learned law and verifiable cases, this thesis helps move us toward a more textured understanding of the way in which the law considered and treated harm-causing animals. More specifically, my goal was to actively interrogate the manner in which late medieval legal culture articulated the harm caused by animals and how such harm was treated in practice, particularly as it was in practice that the notion of criminality included space which nonhumans might occupy.

By highlighting the knowing incongruity between learned law and the law in practice, I have not sought to create a causal link between them or imply a unified body of thought. Rather, I hope this thesis reflects the range of (sometimes conflicting) ideas that could be entertained by people in the Middle Ages. The formal execution of animals was the product of varied and collective experiences set against the backdrop of a particular legal culture. Just like today, there

[11] Evans, *Criminal Prosecution* (1906), p. 41.

[12] Ibid., p. 140.

[13] Katie Sykes, 'Human Drama, Animal Trials: What the Medieval Animal Trials can teach us about justice for Animals', *Animal Law*, vol. 17 (2010-2011), p. 279.

[14] Dinzelbacher, 'Animal Trials', p. 406.

were different ways of thinking about these cases in fourteenth and fifteenth century France which may have differed community to community and even person to person. There was no 'medieval attitude' or single solution within the law for animals that had killed human beings. There was instead a multiplicity of views where the law acted as a system of thinking rather than a rigid construct into which cases against animals were shoehorned. In fact, it was the flexible nature of the law that was demonstrated most profoundly by the sources examined here, where the law was equally capable of creating difference as it was in producing similarity, even creating legal subjects that in other contexts were legal objects. It was only by going back to the original sources and abandoning the many modern interpretations that plague this topic that this point became clear.

Throughout this thesis, I was interested in examining how the law worked, rather than taking the traditional 'what the law was' approach, which allowed me to focus on the law in action and on particular legal outcomes. With this in mind, I chose diverse source groups from which to gain a range of opinions. None of these sources necessarily tell us the 'Truth' about why animals were punished for killing a human and what purpose it served. Instead, they illustrate the diversity of thoughts and meanings that such events could have and the danger of condensing those meanings into a single explanation. In the words of Anthony Musson and Chantal Stebbings, the "investigation of the legal past is often merely a guideline to what happened, a gloss on the mixed and (to the ordered legal mind) wholly unsatisfactory muddle of reality".[15]

[15] Anthony Musson and Chantal Stebbings, 'Introduction', in Anthony Musson and Chantal Stebbings (eds), *Making Legal History: Approaches and Methodologies* (Cambridge, 2012), p. 5.

While Walker clearly wrote 'Pig pig' with an air of satire, many of the elements in the poem correspond to what we know about the formal execution of domestic animals in fourteenth and fifteenth century France. The attack by Walker's sow was gruesome and sudden, seemingly done without warning or provocation. She normally spent her time "slobber[ing] on the gate" and looking for apples, behaviour much more in line with our expectations of domestic animals that live in close proximity to humans.[16] Such expectations were explored in Chapter One, where I used Genesis as a foundational text and examined early Christian and later medieval writings that established a 'natural' hierarchy between man and beast. I was particularly interested in how perceived distinctions between humans and nonhumans influenced the role of domestic animals in society and how this shaped expectation of animal natures. We saw how animals were understood to be lacking the traits that made up man, such as the ability to reason and an upright posture. This lack demonstrated animals' inferior status making them suitable for man's use. As Augustine noted in his interpretation of the sixth commandment:

> [w]e do not apply 'Thou shalt not kill' to plants, because they have no sensation; or to irrational animals that fly, swim, walk, or creep, because they are linked to us by no association or common bond. By the Creator's ordinance they are meant for our use, dead or alive.[17]

Vernacular bibles, such as *La Bible historiale* and *La Bible française du XIIIe siècle*, went a step further and captured the human-animal relation through the idea of sovereignty. Such terminology constructed not only a relationship in which animals were subservient to humans, but also a set of power relations which included obligations. It expressed the idea that animals owed humans their service in the same way that vassals were in service to their lord. The idea of

[16] Walker, 'Pig pig', p. 36.

[17] Augustine of Hippo, *The City of God, Books I-VII,* trans. Demetrius B. Zema and Gerald G. Walsh (Washington, D.C., 1950), p. 53.

man having sovereignty over animals further implied that animals were legally bound to this two-way relationship. Vernacular bibles, in conjunction with encyclopaedias and husbandry manuals, were also useful in exploring ideas of domestication, specifically how it was understood to have come about and what it meant for human expectations of animal behaviour. It was these expectations and, more importantly, animals abiding by these expectations that allowed for daily activities upon which humans depended, such as riding a horse or milking a cow. When these expectations were defied, the human-animal relationship was turned on its head, requiring a formal and legal response.

In Chapter Two, I examined how animal behaviour played out in the customary tradition. The treatment of harm-causing animals was framed by the Roman suit, the *actio de pauperies*, which was governed by two requirements: no human intervention could be the direct or proximate cause of the harm, and the animal had to act *contra naturam sui generis* meaning it had to act in such a way that was against its domesticated nature. Just as the owner of the sow in Ted Walker's poem regarded his animal as property, referring to her as a "thing" and a "brute", the *pauperies* suit understood the damage caused by animals as "harm without guilt", committed by one without reason or agency. Similarly, Beaumanoir's *Coutumes de Beauvaisis* and the *Établissements de Saint Louis* focused on human acts, rather than the animal's, in determining who, if anyone, was liable for the harm. Boutillier's *Somme rural* diverged from this model by comparing troublesome animals to rebels, thereby hinting not only at animal agency, but also at criminality. Yet in none of these sources was the animal punished for its wrongdoing. The animal retained its status as a legal object; someone's property that could be confiscated and sold as required. Yet, foreshadowing the cases discussed in Chapter Three, this idea was directly challenged by the *Coutumes de Bourgogne,* which insisted that certain animals be formally

executed for killing a human. My examination demonstrated not only that there was no uniform view of harm-causing animals within the customary tradition, but that legal theory on the subject was manifestly different from the way in which such animals were treated in practice.

With criminality largely denied to animals in customals, in Chapter Three I explored the way that it was assigned to them in verifiable cases. Receipts from animal executions found in seigneurial financial registers reveal the use of particular legal terminology when describing the animal, its behaviour, and its death. This terminology tells us something concrete about how these animals were viewed and why certain procedures were applied. The fact that these descriptions were inherently brief acts as a useful reminder that such records served first and foremost a financial purpose. In fact, they went through a vigorous auditing system that took several days and were seen by a variety of clerks and *maitres des comptes.* Financial officers had to justify their expenses which ultimately had to be approved by the Court of Accounts. With plenty of opportunity to raise questions or dispute costs, this process not only validated events surrounding the animal's execution but the appearance of these receipts alongside other more mundane expenses implies that such events were considered part of standard judicial action.

In a stark departure from the customals examined in Chapter Two, receipts labelled the harm-causing animal's actions as a crime, and, like the sow in 'Pig pig', it was the crime of murder. Walker's "murderess" would have found good company among the pig of Mortain who "killed and murdered" a child in 1394 or the three pigs of Rouvre who "murdered and ate" a child in 1404. The emphasis on the animal's deed highlighted just how blatantly the animal had acted *contra naturam* and contrary to the expectations of its human owner. The effect of this labelling assigned a sense of criminality to the animal and occurred alongside an insistence on following standard criminal procedure. The receipts detailed the presence of the appropriate

decision-making authority and any tools or equipment needed to enact the execution. Like Walker's sow, some animals even spent time in prison, such as the pig of Pont-de-l'Arche who spent 146 days in prison in 1349. Just as the *gens de comptes* approved the costs of executing an animal and by so doing validated such events, imprisonment supported the treatment of the animal as a criminal and the subsequent adherence to criminal procedure. As a prisoner, the pig became part of a distinct social group, a fellow member of undesirables. The prison setting created a physical boundary between the animal and the (non-offending) community, and by doing so conceptually categorised the animal alongside the other occupants of the prison.

The persistent application of legal terminology and criminal procedure in these receipts transformed the animal into a criminal and its behaviour into a crime, placing the animal physically and symbolically into a specific legal category. This enabled contemporaries to consider the case in a particular way (i.e., as a criminal matter) and provided a guide that dictated the way in which the animal and its actions would be treated. Bringing the animal, their actions, and the ramifications of those actions into the legal framework ultimately granted a type of legal personhood to the animal, firmly placing it in a legally defined and typically 'human' space. Not only did this suggest a more nuanced relationship between the animal and the human community than the one depicted in the biblical commentaries of Chapter One or in the early customals of Chapter Two, but it highlighted the flexibility of the legal system. Without confusing animals for humans, or using animals as human proxies, this flexibility allowed for the manipulation of status distinctions (who was a legal subject and who, or what, was not), enabling animals and their actions to be subject to the judicial process.

The concern for following proper procedure even extended to determining who had the right to condemn an animal and the location of the execution. In Chapter Four, I explored

jurisdictional disputes in which judicial bodies, ranging from local lords to municipalities, princes and royal officers, argued that they and only they had the proper authority to order and oversee the execution of an animal. In such a multi-layered legal landscape, the condemned provided a physical form upon which to centre abstract concepts of judicial power and efficacy with disputes acting as a means of establishing and reaffirming both jurisdiction and territorial control. By accepting a particular legal decision, one accepted that body's power to give it.

In the case of the horse of Amiens, the mayor and aldermen had hanged a horse for murdering a child and the royal *bailli* objected, claiming that cases of murder belonged under royal jurisdiction. The lord of Doullens, for reasons we can only guess at, felt he too had a stake in the proceedings and lodged a complaint against the issued sentence. The case ended up before the *Parlement* of Paris, which dismissed the Lord of Doullens' complaint and ruled that the *bailli* of Amiens did indeed have jurisdiction over the matter. I speculated over the Court's rationale, arguing that it depended on the difference between *homicide simple* and murder, cases of the former belonging to the municipality and the latter falling under the jurisdiction of the *bailli*. Yet what is more noteworthy, perhaps, is that there was no indication in the record that anyone thought a horse was an unfit subject for such a dispute. The same could be said of the cases involving the pigs of Châtillon and Verray, the pig of Arnay-le-Duc. In both situations, the Duke of Burgundy asserted his jurisdictional control over the case at the expense of a local lord. In all three of these cases, the issue of jurisdiction was taken with all seriousness, implying that the punishment of animals was a closely guarded right and not taken lightly. Even the power to free an animal was a guarded privilege as we saw in the Duke of Burgundy's response to Brother Humbert's petition to release his herd of pigs.

Using language identical to the receipts in Chapter Three, the cases explored in Chapter Four condemned animals for murder. Since murder was a crime that required capital punishment, it was important to establish who had the authority to perform such punishment. The fact that this authority was disputed in such cases demonstrated not only the way in which the power of judicial bodies overlapped, but that the laws of jurisdiction were considered applicable and appropriate in cases against animals. Even the "poor town" of Colognes sous Vergy classified the killing of a child by a sow as murder, using the fact that they had hanged the sow on their *fourches* as proof that the community had the appropriate jurisdiction to perform capital punishments. By subjecting an animal and its case to the laws of jurisdiction, a domain of law that, like criminal law, was usually applied only to humans, the animal was symbolically placed within a particular legal context. Within this context, the animal was endowed with the temporary status of a legal subject, an entity whose behaviour could be managed by the legal system and whose outcome could be contested.

Finally, Chapter Five looked in depth at the kind of punishment to which harm-causing animals were subjected, first examining the role of punishment in the fourteenth and fifteenth centuries and then how it was applied to animals. Just as Ted Walker described the owner of the sow, who "managed to drag / her bulk up like a lab" before he had to "mangle and hang her", criminal animals were typically "trainé et pendu" or dragged and hanged upon the *fourches patibulaires.* As a structure which could both hang and display condemned criminals, this particular punishment developed as part of a programme of penal spectacularisation where punishments were elaborately staged and precisely paced ritual dramas. Not only did these types of punishments provide a focus for community participation, but they also created and reinforced a type of penal code where certain kinds of punishments were assigned to serious and

premeditated crimes such that spectators could view an execution and understand what crime had been committed. The consistency of animals being "trainé et pendu" thus implies that it was important for the community to understand precisely why the animal was being put to death in such a public and expensive way: it had committed murder.

Here too was an emphasis on following correct procedure: a professional executioner was summoned who may have had to travel quite a distance to perform the hanging; the animal was punished in the manner appropriate for those condemned for murder; and the punishment took place in the legally mandated location. The animal's punishment thus signalled not only their crime, thereby cementing the animal's criminal status, but it also justified the time, effort, and expense that had preceded the execution. It marked the final stage of the animal's journey through the legal system and the completed transformation from animal to criminal, from legal object to legal subject.

In subjecting an animal to the criminal process, one might assume that this was a time of order and control; a time secured by laws and judicial officials who ensured social harmony. Criminals that were successfully prosecuted and condemned offered an ideal picture of law and justice. Yet the hanging of a pig might also suggest the opposite by drawing attention to the fact that life was vulnerable to sudden and inexplicable eruptions of violence that challenged social institutions and customs. As Peter Arande and Walter Prevenier noted, the two contrasting images of late medieval society – one marked by stability and the other by unpredictability - were established motifs within the late medieval cultural imagination.[18] On the one hand, the killing of a human by an animal confirmed the vulnerability of the cosmic order. Threats to human life could arise from creatures that humans worked with and depended upon in a very

[18] Arande and Prevenier, *Honor, Vengeance, and Social Trouble*, p. 224.

direct and inescapable way. Yet the execution of animals also demonstrated that such wrongs could be made right, that there was a mechanism in place (the legal process) which allowed a moment of senseless violence to be adequately addressed and order restored.

The very act of criminalising an animal, however, necessitated a perceptual shift in which the animal's behaviour transitioned from an unprovoked outburst to a criminal act. This shift allowed for the creation of a legal fiction: pig as murderer, which challenged traditional notions in which animals were recognised only as property within the law. As a murderer, the pig encapsulated a bodily simulation of legal personhood, becoming a being to whom criminal and even jurisdictional law could be applied. With this legal fiction in place, cases against animals played out as careful and deliberate legal performances with an emphasis on following standard procedure and ensuring that the appropriate authorities were involved. While the jurist Philipe de Beaumanoir bemoaned the fact that such executions took place, there is no indication in the records that detail the hanging of an animal that such events were viewed as anything other than standard judicial action. There was not even a specific 'animal' form of death. When a component of the case could not be completed satisfactorily, there was no indication in the records that a substitute was sought. In the 1378 case from Auxonne, for example, the crossed-out entry indicated that the executioner had not arrived even after the provost had received the condemned pig from the mayor of Auxonne and the payment to the executioner had been tallied and set aside. Because the execution in question had not occurred, the payment was not made, and the scribe, who wrote out the receipt in anticipation of the event occurring, simply crossed out the entry in its entirety.

Similarly, if a community did not have a *fourches* in good working order, there was no indication that an alternative was found despite an alternative being undoubtedly cheaper and

less time-consuming. Instead, we find cases like that of Rouvre where in 1404 carpenters were ordered by the *bailli* of Dijon to construct an entirely new *fourches* in order to properly hang three pigs. When an alternative was used, it was roundly condemned. Such was the case of the pigs of Châtillon from Chapter Four which were hanged on a pear tree by the Lord of Balaon. The pigs, as we may recall, were taken on the authority of the Duke of Burgundy to be hanged a second time on the *fourches* at Châtillon and the unsuspecting pear tree was destroyed.

By highlighting the role of procedure throughout this thesis, I do not mean to suggest that those responsible for hanging a murderous animal were slaves to legal processes, mindlessly going through the motions for the sake of some legal exercise. A great many people were involved in such cases and a great deal of effort was made to ensure that animals condemned for killing a human were consciously and methodically ushered through the criminal system. This approach to harm-causing animals underscored that the punishment was lawful and done in an approved manner, granting legitimacy and validity to the case and its conclusion. Short cuts, substitutes, or even removing the animal from its assigned place on the *fourches* after its death would have removed the animal from the legal framework, thereby negating the processes that had come before. Only by fully following procedure was the animal's transformation into a criminal complete and effective.

Perhaps it was thought that only through the criminal system – with its many steps designed to deliberately and visibly mark the condemned – could a wrong be put right in which such a transgression of the natural order had occurred. Yet the very application of criminal law to an animal undermined the system of thought in which humans and animals existed in a purely dichotomous relationship with humans recognised as legal subjects and animals as legal objects. By virtue of their inclusion within the criminal system, animals were treated like 'us' yet were

not ‘us’, suggesting that the borders that had previously defined and confined legal subjects could be expanded. This flexibility was not passive or reactive but was actively and deliberately promoted in order for animals and their actions to be incorporated into and managed by the judicial process. The cases examined in this thesis reveal that attitudes to animals, while rooted in a basic understanding fashioned by Genesis, were, in fact, complex and sometimes contradictory. Animals could occupy multiple roles as property, work colleague, and even criminal, without contemporaries forgetting that they were animals. The cases against criminal animals were therefore important in their own right, not as proxies for human cases or as extravagant legal exercises. They functioned as vehicles to define the boundary between defensible and indefensible violence, as well as acceptable modes of responding to violence. The law could thus assimilate an animal into the legal framework while the community simultaneously disavowed them through the ritual of capital punishment. By touching on a whole matrix of legal, political, and social relationships, cases against animals challenge ways of looking at the law’s operation, leading us to redefine and reshape our own understanding of the law and how it operated historically in all its various contexts.

Appendix:
Fifteenth- and Sixteenth-Century Juristic Views on the Punishment of Animals

Following the period examined in detail in this thesis (the thirteenth to fifteenth centuries) there was an era of juristic reflection upon the punishment of animals. An inflexion point in the history of animal jurisprudence, the texts produced during this era and the way in which they understood animal criminality is deserving of further study. In this Appendix I offer sketches of three Renaissance responses to the medieval practice of executing animals. While we saw the thirteenth-century jurist Philippe de Beaumanoir adamantly oppose such practice in Chapter Two, believing it to result in *justice perdue,* the texts below supported the idea albeit to different degrees.[1]

Guy Pape, a fifteenth-century jurist from Grenoble, found support for the killing of animals that had killed human beings in the Old Testament, referencing both Exodus and Leviticus. Others took an approach somewhere between Beaumanoir and Pape. One such was Julius Clarus, a sixteenth-century Italian jurist, who disagreed with Pape for many of the reasons cited by Beaumanoir but believed animals should be executed in cases of bestiality. The sixteenth-century Flemish jurist, Joos de Damhouder, took a third approach, grounding his examination of harm caused by animals in the Roman tradition and relying on the *actio de pauperies* as a guide.

While there is a range of arguments found in these legal commentaries, they largely defend the execution of animals by demonstrating that such a practice had a long and established history. Even so, no one, it must be said, provided a wholly convincing argument. For both Pape

[1] *CB*, ii, ch. LXIX, para. 1944.

and Clarus, their support was largely based on no better reason than it was customary in several regions of the country to hang animals and they had seen examples of it themselves. The opinions read as if jurists accepted the fact that such punishments occurred and looked for an explanation in retrospect. This brings into focus the knowing incongruity between theory and practice; a gap which these legal opinions tried to bridge.

Guy Pape: Defender and Eyewitness

Guy Pape (d. 1477) was a commonly cited authority on the matter of punishing animals. A civil jurist, he not only examined the issue of animal criminality on a theoretical level but claimed to have seen an animal executed with his own eyes. As both a judge and a practicing lawyer, Pape's works include *Lectura* on Justinian's Digest and Codex, as well as a collection of legal advice which he gave to his clients over the course of his career. [2] However, he is best known for his *Decisiones Parlamenti Dalphinalis*, which was written before 1461.[3] The work purports to be a collection of final judgements issued by the *Parlement* in Grenoble. Pape covered a range of issues, including jurisdiction, testimony in court, dowries, and wills. Such collections were meant for future reference, a sort of guide to precedent for both courts and practitioners, which became popular at the start of the fourteenth century.[4] Pape organised the decisions into over six hundred *Quaestiones*. Although it is unclear how many of the *Quaestiones* were truly based on

[2] See *Dictionnaire de Droit Canonique,* ed. Raoul Naz (7 vols, Paris, 1953), v, p. 1010. Pape's *Consilia* was first published in 1515 and went through nine editions. For more on Pape, which includes an abridged version of the *Decisiones*, see Nicholas Chorier, *Le jurisprundence du célèbre conseiller et jurisconsulte Guy Pape dans ses 'Décisions',* 2nd edn (Lyon, 1692).

[3] *Dictionnaire de Droit Canonique*, v, p. 1011.

[4] According to Cohen, such a collection was useful because the French judicial system granted court decisions the status of proven custom. Consequently, jurists in the fourteenth and fifteenth centuries kept records of such decisions, which could be used as a non-authoritative source of law and later as custom. See Cohen, *Crossroads,* pp. 13, 68-9.

cases that came before the *Parlement*, Pape's work contains a mixture of such decisions as well as comments on more general legal issues.[5]

In *Quaestio* 238, Pape asked whether a "brute beast" can be punished for a crime and specifically asks whether the animal must be put to death. He answered in the affirmative:

> *[s]i animal brutum delinquat, sicut quandoque faciunt porci, qui comedunt pueros, an debeant mori? Dic quod sic.*[6]
>
> [it is asked] if a brute animal commits a crime, as is often done by pigs who devour children, whether they must die? I say yes.

Both the question and the accompanying explanation read as a general inquiry, rather than a question based on a particular judgement. Neither were not concerned with detailing any particular legal procedure or the way in which the court reached a certain decision. Rather Pape provided a rationale for why animals that kill humans must themselves be killed. Since works such as Pape's were often used as reference tools, the inclusion of harm-causing animals suggests not only that this topic was a familiar one, but that Pape at least believed that *Quaestio* 238 might be of use to legal practitioners in the future. By placing it in his collection, Pape validated the practice of punishing animals for their misdeeds and helped to set legal precedent regarding the treatment of such animals.

Interestingly, Pape's question holds a bit of a contradiction. He wrote *animal brutum* where *brutum* can mean a brute beast, but also irrational, stupid, and insensitive. The question thus begins with an irrational animal as its subject, distinct from rational humans, yet to capture the harm caused by the animal, Pape used the verb *delinquere,* meaning to do wrong or commit

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[5] Smith believes that only about 130 of the *Quaestiones* rest on actual decisions. See J. A. Clarence Smith, *Medieval Law Teachers and Writers, Civilian and Canonist* (Ottawa, 1975), p. 111. The majority of *Quaestiones* concern private law, and particularly the division or allocation of assets.

[6] *Decisiones Magistri Guidonis pape* (Lyon, 1511), Q. 238: 'Brutum an propter delictum puniatur', fo. lxxvi.

an offense. With its legal connotation, the use of *delinquere* immediately places the animal and its action in a criminal context. Similar to the rhetorical choices explored in Chapters Three and Four, in which the animal's act was labelled murder and particular legal procedures were applied, Pape's use of *delinquere* has a criminalizing effect. *Delinquere* can also mean to fail in one's duty, echoing the idea explored in Chapter One in which man has *seigneurie* over animals, binding them to a legal relationship built on obligations. In such a relationship, domestic animals were understood to have been created to assist humankind and were meant to act accordingly. In other words, they had a duty to act obediently and, according to the commentary to the Digest, without cruelty or savagery.[7] In Pape's question, devouring children represented a failure of that duty. Pape's verb choice thus suggests not only that the devouring of children should be considered a criminal matter, but that such an act also signified a failure of an animal's God-given duty to serve and submit to humankind.

Readers thus begin Pape's question faced with the incongruity of an irrational and brutish animal that has acted like a legal subject by committing a crime and failing in its duty. The criminalisation of the animal is reinforced in the next sentence where Pape stated that "if [animals] commit homicide, they must be surrendered by their owner to justice in order to die".[8] As in the receipts in Chapter Three, the killing of a human by an animal is labelled a punishable offence, which further removes the animal from its traditional status as a legal object. By such actions these animals "commit a crime" (*delinquunt*), Pape asserted, and so they "must be punished" (*debent puniri*).[9] The criminal nature of the animal's deed by is emphasised with the

[7] See *Commentariis Accursii,* D. 9.1.1.4 (g), p. 1053.

[8] *Decisiones Magistri Guidonis pape,* Q. 238, fo. lxxvi: "Et si homicidium committant, debent per suum dominum tradi iustitiae ut moriantur".

[9] Ibid.

use of the verbs *deliquere* and *punire*, firmly cementing in readers' minds that the killing of the animal is done not simply to dispose of a troublesome beast, but to avenge a wrong. Thus, within the span of a few short sentences, what begins as an *animal brutum* is quickly transformed into a legal subject that has committed a crime and must face formal punishment.

To support his assertion that animals should be put to death, Pape's first reference is to an opinion of Augustine's, which Pape excerpted from Gratian's *Decretum*. In the opinion, Augustine examined Leviticus 20 which stated that if a woman had intercourse with an animal, both must be killed.[10] The reason for killing the animal, according to Augustine, was not based on the animal's guilt, but on the necessity of erasing all memory of the deed.[11] While this leap to bestiality at first seems surprising, cases of bestiality and cases of harm-causing animals both involve the violation of understood norms. In both scenarios, there has been a transgression of the agreed-upon boundaries between humans and animals; a violation of the natural order. The instigator of the crime has succumbed to their baser instincts, and the animal for its role must pay the ultimate penalty. Pape clearly thought that the parallel between criminal animals and bestiality was compelling because he used the example of bestiality to bookend his opinion, citing Augustine (through the *Decretum*) at the beginning and Leviticus at his conclusion. Pape thus begins with a universally acknowledged legal authority and by so doing both legitimises the idea of punishing nonhumans for their improper interactions with humans and demonstrates that this idea had an established history in law.

[10] *Decretum Gratiani*, C. 15, q. 1, c. 4: "Mulier que accesserit ad omne pecus ascendi ab eo, interficietis mulierem et pecus: morte moriatur". The French jurist Jean Papon (1505-1590) included a section on bestiality in his work *Recueil d'arrests notables des cours souveraines de France* (Paris, 1608), 'De Luxure Abominable', (Book 22, Title 7), where he too cited C. 15, q. 1, c. 4 to anchor his opinion that the person and the animal must both be killed.

[11] *Decretum Gratiani*, C. 15, q. 1, c. 4: "Non propter culpam, sed propter memoriam facti pecus occiditur, ad quod mulier accesserit".

Turning from bestiality back to homicide, Pape then defended his position by citing Exodus 21, where verse 28 dictates that if a bull gores a man or woman to death, that bull is to be stoned until it is dead.[12] Medieval interpretations of this passage focused largely on killing the offending animal as a form of deterrence.[13] Among the interlinear glosses to Exodus 21:28, for example, the bull is described as a creature that needs to be "corrected with threats" (*comminationibus corrigetur*).[14] An ox that gores a human is stoned so that no other creature will mimic its behaviour (*id enim nemo imitabitur*).[15] The stoned ox thus acts as a warning to others, meant perhaps for both animals and humans. Not to unduly target oxen, the Franciscan exegete, Nicholas of Lyra (d. 1349), clarified that "because of the horror of homicide", the Exodus passage applied to all domestic animals no matter the manner in which they had killed a human.[16]

Killing an offending animal was also described as a form of retributive justice. In another gloss to Exodus 21:28, Augustine emphasised that animals were meant to be used by man and so were subordinate to him. Therefore, it was justice which dictated that an animal which was harmful to humans must be killed: "Ad iustitiam pertinet, ut animal hominibus noxium perimatur".[17] It is not explicit whether *iustia* refers to the law of man or divine law so here the

[12] See Douay-Rheims, Exodus 21:28, http://www.drbo.org/chapter/02021.htm (2 Sept. 2021).

[13] Deterrence, in fact, remained a popularly cited reason for punishing animals. See also the French jurist, Pierre Ayrault (1536-1601), who believed the purpose of hanging homicidal animals was to warn the owners of animals as well as those tasked with looking after children, in *L'ordre, formalité et instruction judiciare don't les anciens Grecs et Romans ont usé és accusations publiques* (Paris, 1615), bk. iiii, p. 603.

[14] *Bibliorum sacrorum cum glossa ordinaria* (Venice, 1603), fos. 695-6.

[15] Ibid.

[16] Ibid., fo. 697: "Propter horrorem homicidii. . . quod illud quod dictum est hic de impetitione bovis cornu, intelligendum est etiam si per recalcitrationem vel morsum et consimilia interfecerit, sed scriptura solum exprimit illud quod communis accidit. . . quod interficiat cum cornibus. Dicit etiam quod idem est intelligendum de alliis animalibus domesticis si interficiant".

[17] Ibid., fo. 696.

punishment of the animal is possibly grounded in notions of both equity and divine will. This statement also suggests that since the matter of a harm-causing animal pertains to justice, the response to the animal's behaviour is in fact a legal matter and should not be addressed outside the law. The adjective *noxium* is used to describe the animal, meaning "harmful", but it can also mean "guilty" or "criminal", terms with clear legal connotations. Not only does this have a criminalising effect similar to the one seen in Chapters Three and Four, but it further supports the notion that the actions of a 'criminal animal' must face an appropriate punishment as dictated by law.

Pape's next biblical reference was to Leviticus, where he noted that "as it says in Leviticus 20, he who has intercourse or lived with beasts of burden must be put to death and the beast must be killed".[18] Echoing his earlier reference to the *Decretum*, Pape returned to bestiality at the end of his opinion as an example in which an offending animal was put to death. By suggesting that there was a parallel between homicide and bestiality, Pape raised important questions about an animal's role in a crime and how it should be addressed. In both cases, there was a disregard of clear boundaries which resulted in a violation of nature.[19] Laws that were meant to preserve the distinction between man and animal had been ignored. According to Thomas Aquinas, bestiality, referred to as a "vice contrary to nature", was a special form of lust

[18] *Decisiones Magistri Guidonis pape,* Q. 238, fo. lxxvi*:* "et alibi dicitur Levit. 20. C. qui cum iumento coivit seu cohabitavit, morte moriatur, pecusque occidatur". Leviticus 20:15 and 20:16 are distinguished along gender lines, with verse 15 dictating that men who copulate with beasts should be put to death and verse 16 stating that women who do likewise should be put to death. In both cases, the animal is killed. Bestiality is also forbidden in Exodus 22:28, Leviticus 18:23, and Deuteronomy 17:21.

[19] The Hewbrew Bible describes the act of bestiality as *tevel,* which Tikva Frymer-Kensky defined as "improper mixing" in 'Law and Philosophy: The Case of Sex in the Bible', in Jonathan Magonet (ed)*, Jewish Explorations of Sexuality* (Providence, 1995), p. 13. Historically there have been three overarching theories about why sexual relations with animals have been condemned: 1) it is a perversion of the natural order of the universe; 2) it violates the procreative intent of sex; and 3) it can result in monstrous human-animal hybrids. See Piers Beirnes, 'Bestiality', in Marc A. Beckoff (ed), *Encyclopaedia of Animal Rights and Animal Welfare* (Westport, 1998), pp. 92-3.

that was contrary to reason.[20] Thus an animal that harmed a human acted *contra naturam* and a human that had sex with an animal likewise acted contrary to their nature.

By the time of Pape's *Decisioni,* the punishment of animals in bestiality cases had long been established. Ivo of Chartres (d. 1115), in citing the same Leviticus passages as Pape, warned that in bestiality cases the animal should be put to death.[21] The English theologian Thomas of Chobham (d. 1233) in his *Summa Confessorum* likewise counselled that when such a crime was discovered, the animal must be killed.[22] It was commonly agreed by medieval commentators that the reason for such a punishment was to rid the community of all traces of the crime. For both Ivo of Chartres and Thomas of Chobham, the death of the animal erased any memory of the contaminating act.[23] This idea was echoed by later writers who emphasized the importance of destroying anything that might trigger unwanted memories. French jurist Guillaume Benoit (d. 1514) cited Leviticus 20 when stating that in cases of bestiality both the human and animal offender must be burned alive.[24] He argued that the evidence of the sin must be destroyed quickly and so the bodies could not remain on the gibbet to act as reminders.[25]

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[20] Thomas Aquinas, *Summa Theologiae,* II-II, q. 154, art. 11. Jean Papon referred to bestiality as an act that was "des plus malheureux et abominables, et contre la nature humaine" in *Recueil d'arrests notables,* p. 710.

[21] Ivo of Chartres, 'Decreti Pars IX', in PL 161:686C (discussing Augustine on Leviticus 20). For the gradations of punishment meted out to men for bestiality, see ibid., 686A-B. Ivo stressed that these punishments should be "dura et districta", ibid., 682A.

[22] Thomas of Chobham, *Summa Confessorum,* ed. Rev. F. Broomfield (Louvain, 1968), art. 7, dist. 2, q. 19, ch. 2, pp. 402-3.

[23] Ivo of Chartres, 'Decreti Pars IX', PL 161:686C: "Pecora inde credendum est jussa interfici, quia tali flagitio contaminata, indignam refricant facti memoriam"; Thomas of Chobham, *Summa Confessorum,* art. 7, dist. 2, q. 19, ch. 2, p. 402: "In primis enim debet pecus illud occidi et comburi vel subterrari, ne per ipsum memoria criminis refricetur".

[24] Guillaume Benoit, *Repertorium utilissimum in prima et secundam partes Repetitionis ca. Raynutius* (Lyon, 1530), fo. ccclxvi, para. 138: "hoc crimine si cum bruto committant punit etiam pecus: et ambo comburunt".

[25] Ibid.: "quia pena ignis huic crimini debetur ut citius a memoria hominis scelus hoc deleatur: quod non fieret si corpora pro eo occisa in patibulo remanerent".

Beyond his short summary of Leviticus 20, Pape provided no guidance on how these passages were to be understood. The most obvious connection between the two crimes can be summed up as the confusion of legal classifications. According to Kalpana Seshadri-Crooks, bestiality threatened not so much the degradation of man to the level of animal, but rather the opposite: "it threatens to bring the animal into discourse, as an agent and a subject".[26] The response of an animal during sex is a *reaction* to a particular act and addresses the human partner; they are not simply the noises made by Descartes' automaton. In a similar move, we have seen Pape's use of certain terminology bring homicidal animals into the legal discourse as criminal subjects, using verbs such as *delinquare* and *committare*, which have active meanings centred on committing an offense. Not only do these terms bring the animal into a legal context based on its behaviour, but the animal is characterised as an active instigator of a crime rather than a passive participant. This shift disrupts what we think we know about the role of animals as legal objects: they are meant to be eaten, not to kill and eat us. Relatedly, since they are food objects, they cannot be sex objects.

Perhaps it is this disruption which, for Pape, explains the mandatory death sentences for both crimes. In both cases, animals must be punished because accepted norms have been violated in such an egregious fashion. In order for the human community to heal after witnessing such perversions, the animal itself must be removed from sight – and death is the most permanent sort of removal there is.

While Pape was often mentioned by other jurists, it was his role as eyewitness that was deemed important, rather than his legal argument. In the last sentence of *Quaestio* 238, Pape

[26] Kalpana Seshadri-Crooks, 'Being Human: Bestiality, Anthropophagy, and Law', *Umbr(a): a journal of the unconscious,* vol. 1 (2003), p. 103.

stated that he did not see any animals killed for their crimes in his own land of Dauphiné, but he described a time when he was in Burgundy and he saw a hanged pig.

> *Sed in patria Burgundum ibam ad civitatem Cathalani in Campania, ad Regem, tunc ibi existentem, vidi quendam porcum in furcis suspensum, qui dicebatur occidisse quendam puerum.*[27]
>
> But in the land of Burgundy, when I was going to the city of Châlons in Champagne to see the King who was there, I saw a certain pig, which was said to have killed a certain child, hanged by the *fourches patibulaires*.

With this observation, Pape becomes more than a commentator on the executions of animals; he becomes an eyewitness, thereby establishing the limits of possible belief. For uncommon events such as this, credibility largely depended on the authority of whoever reported them and eyewitness testimonies were especially valued. Pape provided several details of his journey to make his claim seem credible: readers were told where he was when he saw the hanged pig, where he was going, and for what purpose. He therefore legitimised his own argument that animals should be punished by demonstrating that places exist in which animals are held accountable for their crimes.

Julius Clarus: the Sceptic

A clue into Pape's use of bestiality may lie with another jurist who mentioned Pape and concluded that bestiality was, in fact, the only instance in which it was appropriate to punish an animal. Voicing an opinion similar to Beaumanoir's, the Italian jurist Julius Clarus (d. 1575) wrote that animals should not be held accountable for their crimes.[28] However, he admitted that

[27] *Decisiones Magistri Guidonis pape,* Q. 238, fo. lxxvi.

[28] Clarus studied law in Pavia in the first half of the sixteenth century, receiving his doctorate in 1550. He is best known for the fifth volume of his legal encyclopaedia, *Sententia receptae*, which dealt with criminal law and procedure. It was reprinted as part of the *Julii Clari Opera omnia,* which was first published in 1572. For more, see

such things did happen under the customary law of some regions. The question was framed in Clarus's work, *Opera Omnia sive Practica civilis atque criminalis,* as whether a judge must punish an "animal irrationale" if that animal kills a human.[29] He noted that this question assumed that the actions of a creature lacking sense could, in fact, be called a crime. According to Clarus, the answer was no; the duty of a judge was not exercised in the case of animals.[30] However, he cited Pape's *Quaestio* 238, and specifically Pape's mention of having seen a pig hanged in Burgundy, as evidence that the punishment of animals did occur. He went on to say that such events happened in "many places", but he was decidedly against this idea.[31] Nor was Clarus keen on ecclesiastical cases, "which thrive in some regions", against locusts, mice, snails, and other animals that damage fields.[32]

Bestiality, however, was a different matter.[33] For such a detestable crime, Clarus believed that the human offender should be hanged or burned alive together with the animal: "pariter facem ipsum animal irrationabile cum ipso homine suspendi, aut comburi".[34] Like Pape, his reasoning was based on a mixture of penal theories, divine law, and observation. He stated that punishment was required due to "the detestation of the crime" and to terrify would-be

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Ernst Holthöfer, 'Claro, Giulio' in Michael Stolleis (ed.), *Juristen: ein biographisches Lexikon; von der Antike bis zum 20. Jahrhundert*, 2nd edn (Munich, 2001), pp. 134-5.

[29] Julius Clarus, *Opera Omnia sive Practica civilis atque criminalis* (Lyon, 1672), bk. 5, q. 99, c. 8: "Quaero, etiam, si animal irationale aliquod delictum commiserit (si tamen praesupposita carentia ratione potest delictum appellaris) puta, quia hominem interfecit, vel huiusmodi, nunquid debet iudex illud animal punire paena mortis?"

[30] Ibid: "Quod non, nam merum imperium non exercetur in belluas".

[31] Ibid.: "Caeterum hoc consuetudo mihi nunquam placuit".

[32] Ibid: "Nono est etiam loco praemittenda consuetudo, quae viget in nonnullis regionibus procedendi contra locustas, mures, limaces, et huiusmodi animalia fructibus terrae damnum inferential". The famous French jurist, Bartholomew Chassenée (1480-1541) is perhaps best known for his defence of such cases. He relied on biblical precedent as well as contemporary examples to argue that the pronouncement of anathemas against wild animals was valid because it prevented future harm, see his treatise 'De excommunicatione animalium insectorum', first published in 1531, in *Consilia D. Bartholomaei a Chasseneo* (Lyon, 1588).

[33] Clarus, *Opera Omnia,* bk. 5, q. 99, c. 8: "nisi in uno casu, quando se homo se cum bestia carnaliter comiscuisset".

[34] Ibid. In a gloss to the phrase "suspendi aut comburi", Augustine's take on Leviticus 20 is once again cited via the Decretum at C. 15, q. 1, c. 4.

offenders.[35] Such measures were taken "under divine law" (*in lege divina*) and, to ground his reasoning in practice, he remarked that these measures had "been observed on several occasions" (*pluries etiam observatum*).[36] The harshness of the penalty was thus based on precedent, a reaction to the crime itself (retribution), and the belief that such a sentence would instil a sufficient amount of fear in men to prevent them from committing such crimes in the future (deterrence).

To bolster his argument, Clarus then recounted the story of a stranger, who had had relations with a mare (*alienigena cognovisset equa*) and had then fled.[37] As a result of the crime, the head of the mare had been cut off and fixed in a prominent place in the community.[38] Clarus described the stranger as a "vir illiteratus" who had taken advice from other ignorant men, thinking they were knowledgeable on such matters.[39] The stranger attempted to use his ignorance as an excuse and he presumably decided to flee upon learning how his deed was to be treated, leaving the mare to bear the punishment. Even as hearsay, the story accorded Clarus an air of authority. Like Pape's eyewitness account, the story acted as precedent and reaffirmed Clarus's argument that animals should only be punished for their involvement in bestiality cases. In all other incidents where animals caused harm, criminality – including a criminal's death - should be denied.

[35] Clarus, *Opera Omnia,* bk. 5, q. 99, c. 8.: "propter detestatioem criminis, et ad terrorem aliorum".

[36] Ibid.

[37] Ibid.

[38] Ibid.: "fecit abscindi caput equae, et in loco eminenti affigi".

[39] Ibid.

Joos de Damhouder: a Return to Roman Law

The question of liability for harms caused by animals appeared in its own chapter in a popular criminal law manual written in the sixteenth century, including a breakdown of types of harm and how they should be addressed. The *Praxis rerum criminalium* was written by the Flemish jurist Joos de Damhouder (1507-1581) and first published in 1554.[40] Like the *Établissements de Saint Louis* and other early customals explored in Chapter Two, Damhouder relied on the *actio de pauperies* to frame his discussion of harm-causing animals. Borrowing from the *contra naturam* requirement, an animal was only to be punished, in Damhouder's opinion, if it acted with "internal malice". In such cases, the owner of the animal could avoid liability, although they were still required to relinquish the animal or otherwise compensate the victim. Thus, Damhouder hints at animal criminality with his use of the term "malice" while at the same time grounding his position in Roman law.

Of all Damhouder's works, the *Praxis rerum criminalium* was by far the most popular.[41] It contained instructions on criminal proceedings as well as descriptions of crimes and their appropriate punishment. In each chapter, Damhouder considered both Flemish customary law and *ius commune* criminal doctrine, thus connecting local practice with a larger legal framework.[42] Its popularity was increased substantially by Damhouder's novel approach of

[40] Harald Maihold, 'Praxis rerum criminalium', in Serge Dauchy et al. (eds), *The Formation and Transmission of Western Legal Culture: 150 Books that Made the Law in the Age of Printing* (Cham, C.H., 2016), p. 99. See also R. Feenstra, 'Damhouder, Joos de' in *Juristen, Ein biographisches Lexikon*, pp. 158-9.

[41] Maihold refers to Damhouder's *Praxis* as "undoubtedly among the most important criminal legal treatises of the early modern era", 'Praxis rerum criminalium', p. 102. The *Praxis* was published thirty-six times between 1554 and 1660, and translated from Latin into Dutch, French, and German.

[42] Maihold, 'Praxis rerum criminalium', p. 100. The first part of the *Praxis* focused on the legal process (chapters 3-59) and presented the procedure of local courts against a backdrop of both the Roman legal tradition and Flemish customary law. The procedural stages are discussed in detail, beginning with the initiation of a case by accusation or inquisition, the charge and detention of the defendant, possible defenses and the types of evidence, torture, confession, and finally the verdict and sentence. However, Damhouder did not always strictly follow this sequence

illustrating the manual with woodcuts. There are fifty-four woodcuts in total, each depicting a specific crime. As images were relatively expensive, they were uncommon in manuals, such as the *Praxis,* that were meant for practical use.[43] The woodcuts thus greatly added to the book's prestige, making it both functional and a showpiece.

It wasn't until the nineteenth century that the *Praxis* was discovered to be not an entirely original work. A great deal was borrowed from an earlier text by another Flemish jurist, Philips Wielant (1441-1520). Wielant's *Corte instructie in materie criminele* was written around 1510, but not published until long after his death.[44] Almost fifty years after it was written, Damhouder came into possession of a manuscript of Wielant's work and translated it into Latin.[45] Wielant's text contained simple language and a clear, concise style, which Damhouder retained. According to Strubbe, Damhouder was able to retain the majority of Wielant's content as well since there had been no foundational changes in criminal law and punishment in the intervening decades.[46] Damhouder did, however, add references to legal literature, comments, several additional chapters, as well as illustrations before publishing the work under his own name in 1554.[47]

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of events and frequently delved into other topics. For instance, after the chapter on arrests, there are chapters on prisons, escapes from prisons, the freeing of prisoners, and the provision of guarantees.

[43] Ibid., p. 102.

[44] Born in Ghent around 1440, Wielant studied law at Leuven and Orléans, obtaining his license in 1464. He was a councilor for a time in the Parliament in Mechelen, appointed to the Great Council by Mary of Burgundy, and was later a member of the Council of Flanders. See J. Buntinx, 'Wielant, Filips', *Nationaal biografisch woordenboek,* (23 vols, Brussels, 1972), v, p. 1009. Wielant's criminal law manual was edited around 1515 and again in 1519. However, it was only published in print at the end of the nineteenth century, see Philips Wielant, *Practijcke criminele,* ed. A. Orts (Ghent, 1872). A new edition was printed in 1995, *Filips Wielant verzameld werk I Corte instructive in matierie criminele,* ed. Jos Monballyu (Brussels, 1995).

[45] Maihold, 'Praxis rerum criminalium', p. 102. Damhouder likewise based his follow-up work, *Praxis rerum civilium* (1567), on Wielant's text on civil law. A French version appeared in 1572 under the title *Practique judiciaire et causes civiles.* It seems that none of Wielant's work appeared in print during his lifetime. See H. P. Schaap, *Philips Wielant en diens Corte Instructie omme jonge practizijnen in civiele zaken* (Haarlem, 1927); see also J. Th. de Smidt, 'Philips Wielant and the "Brième instruction en causes civiles"', *Tijdschrift voor rechtsgeschiedenis,* vol. 79 (2011), pp. 121-7 for a comparison of Damhouder and Wielant's work on civil law.

[46] I. Strubbe, 'Joos de Damhouder als Criminalist', *Tijdschrift voor Rechtsgeschiedenis,* vol. 38 (1970), pp. 31-2.

[47] Maihold, 'Praxis rerum criminalium', p. 100.

Wielant was not mentioned in any edition of the *Praxis rerum criminalium* and the plagiarism was not discovered until 1872.[48] Damhouder even produced a shortened Dutch translation in 1555 under the title *Practycke ende handbouck in criminele zaeken,* as well as a French translation, *Practique judiciare es causes criminelles*. Like the Latin version before them, these were also very successful.[49]

The main part of Damhouder's *Praxis* dealt with offenses, ranging from treason to homicide to theft (chapters 60-142). There was no attempt to find common ground between these crimes: each was discussed as having particular characteristics and was conceived of as separate from other wrongs. Chapter 142 outlined harm caused by animals and here Damhouder relied exclusively on the Roman *pauperies* suit as his source of authority, citing both the Institutes and the Digest. In common with the other chapters, a helpful chart at the beginning of Chapter 142 divided its contents into easily digestible categories and subcategories. In this case, the topic was broadly split by type of animal and traced who was responsible should that animal cause harm.

Citing Institutes 4.9 as well as Digest 9.1.1, Damhouder first addressed domestic animals.[50] Echoing the *contra naturam* requirement from the *actio de pauperies*, Damhouder stated that when an animal such as a horse, donkey, pig, cow, ox, dogs, or "a similarly domestic animal", caused harm based on "internal malice" (*ex interna malitia*), they should be punished (*ipsa punienda est*).[51] By their actions, such animals expressed a naturally wicked character

[48] Ibid.

[49] See Jos Monballyu, *Six Centuries of Criminal Law: History of Criminal Law in the Southern Netherlands and Belgium (1400-2000)* (Leiden, 2014), p. 18.

[50] Instit. 4.9 is cited at the end of paragraph one; D. 9.1.1.3 and D. 9.1.1.5 are cited at the end of paragraphs three and four.

[51] Joos de Damhouder, *Praxis rerum criminalium* (Antwerp, 1562), ch. 142, para. 1, p. 404. Damhouder doesn't detail exactly what punishment would look like in such a case so we are left to assume that the animal would be put to death.

(*propria naturali malitia*) and it was not the heat of the moment or some outside force that led them to cause harm to humans.[52] Like the 'defect' in the *Établissement de Saint Louis* which caused an animal to strike out, Damhouder's description of an animal being internally malicious suggests something flawed about the animal's fundamental makeup. Here again the nature of the animal and the corresponding human expectations come into play. Yet Damhouder's term *malitia* goes further than the idea of a 'defect', which applies to things, rather than people. A defect implies something is simply not working as it should be. *Malitia,* on the other hand, captures the idea of evil or immoral behaviour and seems closer to the rebel metaphor seen in Boutillier's *Somme rural.* Applying the term *malitia* to animals alludes to criminality, even agency.

Damhouder assured readers that in cases where an animal acted based on its wickedness rather than on human intervention, the owner was not liable (*possessor nullo modo in culpam caderet*).[53] However, the owner must relinquish the animal "because it committed a wrong" (*quod noxiam commisit*).[54] If the owner could not or did not wish to surrender the animal, he could pay a financial penalty or an amount based on an assessment of the harm. As in the *pauperies* suit, if an animal had been incited by a third party, that person would be liable and should provide restitution for the damage. In fact, he who incited the animal was liable for all the resulting harm.[55]

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[52] Ibid.

[53] Ibid.

[54] Ibid. The surrender of the animal or payment of compensation was not an admission of guilt, but rather a means of compensating the victim.

[55] Ibid., para. 2, p. 405.



Fig. 2: Woodcut, Joos de Damhouder, *Praxis rerum criminalium* (Antwerp, 1562), p. 405.

There is a woodcut accompanying Chapter 142, which illustrates the various types of harms that could be committed by animals. In the foreground, a pig with sharp, angry eyes bites the foot of a child. The child gazes upward, its mouth forming a small-o of dismay. Swaddled and trapped in a cradle, which has been propped against a wooden fence, the child can do nothing to save itself. In the middle of the image, a bull leaps upon a man who lies on the ground. The bull prepares to thrust its horns at the man's head, while the man weakly tries to protect himself with a single raised arm. Finally, a dog in the background can be seen running toward a small flock of sheep grazing peacefully in front of a house. We see the moment before the sheep scatter and the scene descends into chaos. All three scenes take place in a courtyard. On the left there is a two-storey building with a tidy fence around it. Behind the house, the artist gives the impression of fields, a single tree, and a sky dotted with birds.

These scenes have no doubt been chosen as situations that would be most frequently encountered in a community: a child could be bitten, a man injured, or livestock accosted. The demonic expression on the pig's face suggests that this animal might easily be described as

having some sort of internal malice. One can't help but feel the child's sense of helplessness as it looks on. Viewers are reminded in a powerful way that there are situations in which man is at the mercy of beasts.

In the second part of the chapter, there are different, and less forgiving, rules for owners of wild animals that cause damage. If someone reared or maintained a wild beast, such as a boar, wild pig, fox, bear, lion or wolf, which killed or injured another person or animal, the owner was responsible and must compensate the victim at the discretion of the judge.[56] In this case there was no distinction made between malice and negligence, introducing a kind of strict liability: the owner was liable for the harm regardless of his state of mind or the level of care he took in securing the animal. In other words, the injured party did not have to show that the owner was at fault because the owner knew or should have known that such an animal could harm someone.

As he did in the paragraphs on domestic animals, Damhouder justified his position on wild animals by citing Institutes 4.9 and, indeed, he simply restated the relevant sections almost in their entirety.[57] As we may recall from the discussion of the *pauperies* suit in Chapter Two, the exception to the rules on wild animals applied if the animal had fled. Damhouder explained that as soon as the animal had fled, it no longer belonged to anyone: its actions were its own and were not connected to any human caretaker, thus releasing humans of any liability.[58]

A large part of Damhouder's chapter on harm caused by animals was borrowed directly from Wielant's work. In Wielant's *Practijcke criminele,* Chapter 143 was entitled "of injuries or death caused by animals".[59] He made a clear distinction between domestic animals that

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[56] Ibid., para. 9, p. 406.

[57] See the end of paragraphs nine and eleven.

[58] Damhouder, *Praxis rerum criminalium*, ch. 142, para. 11, p. 406: "Cum enim à me procul fugerat, tum mea esse desierat, et factus est illius".

[59] Wielant, *Practijcke criminele,* ch. 143, p. 185.

committed a harm by virtue of their own nature ("bij hemselven ende uuit sijnder natuere") and those that caused harm based on the instigation of others ("noch uuijt haerder natuere, maer bij tissinge oft instigatie van mij oft anderen").[60] Wielant stated that in the first case, the owner of the animal was not responsible for the damage ("ic en soude in die scade niet gehouden sijn"), but had the option of providing compensation to the victim or surrendering the animal.[61] However, when an animal was prompted to act by the behaviour of a human, the guardian or the instigator must compensate the victim. In such a case, Wielant wrote that the animal should not be surrendered.[62]

In keeping with the requirements of D. 9.1.1, both Wielant and Damhouder emphasised that an owner's liability was dependent on the nature of the animal. What Wielant described simply as the animal's "natuere", Damhouder called "interna malitia", a term as mentioned above with a much more sinister connotation. Applying this term to animals directly challenged the idea that underpinned the *pauperies* suit; that animals committed crimes without guilt. Thomas Aquinas, for instance, understood the term "malitia" to involve intent. He wrote that to sin through malice was to sin voluntarily and knowingly.[63] Damhouder's use of the term not only cast judgement on the animal's behaviour but implied that animals acting through malice are doing so through free will, consciously, and with purpose. This is a far cry from the harm as understood in D. 9.1.1. committed by creatures lacking in sense. Conceptually at least, Wielant's description of an animal's nature is more in line with Roman law than Damhouder's. Yet both

[60] Ibid.

[61] Ibid.

[62] Ibid., p. 186.

[63] Thomas Aquinas, *Quaestiones disputatae,* vol. 2: 'De malo', q. 2, art. 8, resp.: "quod peccare ex certa malitia est peccare ex electione, idest voluntarium et scientem". See also, *Summa Theologiae,* I:II, q. 78, art. 3, arg. 1: "est peccare ex certa malitia est peccare ex *electione* mali, ut dictum est" (my emphasis).

indicated that there was a way that domestic animals were expected to behave and ways that they were not.

By grounding the rules regarding harm-causing animals in the *actio de pauperies,* Damhouder's text allowed readers to trace the various routes to liability against a steady backdrop of Roman law. With the frequent citations to the Institutes and Digest*,* Damhouder's rules were granted authority and at the same time Roman law was made relevant to contemporary problems. There was no such contextualisation in Wielant's work. For example, Wielant did not detail why the offending animal must be surrendered. He simply stated that the owner must mend the damage or surrender the animal on account of the harm it had caused: "mer ic soude kueren hebben, die scade te beteren oft de beeste daervoor te abandonnerene oft laten".[64] Damhouder repeated this rule, but based it on the Digest.[65]

Although copied from a Flemish source, the reliance on Roman law in chapter 142 of Damhouder's *Praxis rerum criminalium* created principles which did not simply reflect Flemish customary law but also reflected the *ius commune*. His answer thus had its roots in Roman textual tradition and at the same time transcended it. By using Roman law as both a model and an authority, Damhouder provided an unambiguous and historically legitimate answer to the tricky legal problem of what to do when an animal caused harm. In this way, the general principles of customary law were reshaped by the well-defined injuries in Roman law, closing the gap between the two legal systems.

[64] Wielant, *Practijcke criminele,* ch. 143, p. 185.

[65] Damhouder, *Praxis rerum criminalium,* ch. 142, para. 1, p. 404.

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