

RESEARCH ARTICLE

“The Lord does not wish the death of a sinner”: Investigating Selected Ordinary Glosses to Pope Gregory IX’s *Decretales* (1234) on Heretics

Yanchen Liu

The Chinese University of Hong Kong, Hong Kong, China
Email: yanchenliu@cuhk.edu.hk

Abstract

This article provides a new perspective on the discussion of heresy from one of the most influential canonical-jurisprudential commentaries of the Middle Ages: Bernard of Parma’s *Glossa ordinaria* to Pope Gregory IX’s *Decretales* (commonly known as the *Liber extra*). Based on an analysis of Bernard’s legal glosses, with special emphasis on his citation of Roman and canon law traditions, I argue that the often-overlooked *Glossa ordinaria* provides scholars a unique window into medieval conceptions of heresy, jurisprudence, and ecclesiastical-legal practice. This study demonstrates that this important mid-thirteenth-century legal-educational text not only reoriented the canonical definition of heretics toward an emphasis on sects rather than individuals, but, differing from the contemporary, often severe papal and conciliar rulings against heretics, also stressed the centrality of mercy and temperance in how heretics should be treated by the ecclesiastical court. The *Glossa ordinaria*, as this article discusses, might have served as an intellectual force that could have counter-balanced the overzealousness of emerging inquisitors in an age of intensifying repression of heretics.

Keywords: heresy; canon law; *Decretales*; *Glossa ordinaria*; inquisition

The *Decretales*, Its *Glossa ordinaria*, and Heresy¹

Building on the work of many scholars over the past 150 years, the history of Western canon law is increasingly well mapped, especially prior to the year 1234. General surveys

¹Texts of canons in this article are translated from Aemilius Friedberg, ed., *Corpus Iuris Canonici*. 2 vols. Leipzig, Germany: Bernhardt Tauchnitz, 1879–1881. Texts of glosses, unless specifically explained in the notes, are my own translations based on the earliest surviving manuscript of the *Decretales* with the *Glossa ordinaria*, that is, MS Florence, BML Plut. 3 sin. 9, dated 1239 [hereafter cited as F]. Later additions (on the textual development of the *Glossa*, see note 4), when appear, are enclosed by “+” and translated from selected manuscripts or the 1582 *Editio Romana* with explanations in the notes when necessary. Spacing, punctuations, and the shades marking legal allegations in the translations are editorial. Abbreviations for medieval legal texts follow the modern forms listed in James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), 190–205. On F, see Martin Bertram, “Zur Entwicklung der *Glossa Ordinaria* des Bernardus Parmensis,” *Kanonisten und ihre Texte (1234 bis Mitte 14. Jh.)*: 18

are at hand, as well as many studies of specific collections, individuals, or topics.² Some scholars, therefore, have termed the current situation as “a renaissance in the study of medieval canon law.”³ Pope Gregory IX’s *Decretalium domini gregorii papae noni compilatio*, or *Decretales/Liber extra* (hereafter *Decretales*), the first Church law collection that was promulgated by the papacy for universal and exclusive use in 1234 and remained in use until the 1917 Code of Canon Law, has also become a scholarly focus in recent decades.⁴

But one essential text has not gotten its due treatment in this flourishing landscape. Bernard of Parma’s *Glossa ordinaria/Ordinary Gloss* (hereafter *Bernard* and *Glossa*) is a full set of legal glosses (that is, legal-commentarial texts composed for canons in canonical collections with explicative and educational purposes) composed between 1234 and 1239 to the *Decretales*, and continued to be updated in several redactions until Bernard’s death in 1266.⁵ Bernard was a canon law magister, papal chaplain, and legal consultant. Much of what we now know about his life came from the Camaldulense abbot and scholar Mauro Sarti (1709–1766). Sarti assumed that Bernard was born in the early thirteenth century. He moved to Bologna to study law, and became a student of the well-known canonist, Master Tancred. Sarti found that Bernard was already called a magister by 1232 in an official Bolognese statue and was mentioned as a papal chaplain and canon in several papal letters from Innocent IV (1247), Alexander IV (1255), and Urban IV (1264), seeking advice regarding local church affairs. Indeed, Bernard in a gloss called himself a Bolognese canon and papal chaplain.⁶ His *Glossa* consults both Roman law and canonical texts, and incorporates his contemporaries’ commentaries on earlier decretal collections. As a work that became popular immediately after its appearance, it accompanied hundreds of manuscripts and most of the early printings of the *Decretales*. In fact, there are at least 678 surviving manuscripts of the *Decretales*, completed or with all five books of the

Aufsätze und 14 Exkurse (Leiden, Netherlands: Brill, 2013), 525; and Martin Bertram, “Dekorierte Handschriften der Dekretalen Gregors IX. (Liber Extra) aus der Sicht der Text- und Handschriftenforschung,” *Marburger Jahrbuch für Kunstwissenschaft* 35 (2008): 33 and n27. Recently, Dr. Bertram has kindly pointed out to this author that whether the date 1239, provided by the scribe of the manuscript on fol. 200r, applies to the *Glossa* in the manuscript remains to be investigated, as the latter seems to have been copied by several hands, and therefore careful paleographical examinations are still needed to determine if they, or any of them, belong to the same scribe, Bergognonus.

²For a recent bibliographical essay, see Robert Somerville and Bruce Clark Brasington, eds., *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500–1317*, 2nd ed. (Washington, DC: The Catholic University of America Press, 2020), 209–215.

³Kriston R. Rennie and Jason Taliadoros, “Why Study Medieval Canon Law?” *History Compass* 12, no. 2 (Feb. 2014): 133.

⁴For instance, Frédérique Cahu, *Un témoin de la production du livre universitaire dans la France du XIII^e siècle : la collection des Décrétales de Grégoire IX*, *Bibliologia* 35 (Turnhout, Belgium: Brepols, 2013).

⁵In 1945, Stephan Kuttner and Beryl Smalley proposed an influential four-redaction hypothesis, using the citations of several dated papal decretals in the *Glossa*’s manuscripts: “first redaction 1234–c. 1241; second 1243–1245; third 1245–c. 1253; final 1263–1266.” Stephan Kuttner and Beryl Smalley, “The ‘Glossa Ordinaria’ to the Gregorian Decretals,” *The English Historical Review* 60, no. 236 (1945): 101. See also Stephan Kuttner, “Notes on the Glossa Ordinaria of Bernard of Parma,” *Bulletin of Medieval Canon Law* 11 (1981): 86–93. For an important discussion of this hypothesis, see Bertram, “Zur Entwicklung der Glossa Ordinaria des Bernardus Parmensis,” 525–527.

⁶*Glos. ord.* to X 1.6.28, *dividatur*. See Mauro Sarti and Mauro Fattorini, *De claris archigymnasii bononiensis professoribus a saeculo XI usque ad saeculum XIV* (Bononiae: Ex Typographia Laelii a Vulpe instituti scientiarum typographi, 1769–1772), vol. 1, 355–359; vol. 2, 118–131, 218.

Decretales copied “at least with more or less large parts (*mindestens mit mehr oder weniger großen Teilen*).”⁷ As medieval theologians embraced the *Glossa ordinaria* to the Bible, medieval law scholars studied Bernard’s *Glossa* to the *Decretales*, and trained their students—many of whom would become professional lawyers in ecclesiastical or even secular courts—with it. When the post-Tridentine Catholic Church published in 1582 the so-called *Editio Romana* version of the *Corpus iuris canonici*, both to preserve its canonical traditions and to provide authoritative compilations of canon law books for the use of the church officials all over Western Europe and beyond, Bernard’s *Glossa* surrounded the text of the *Decretales*.

Nonetheless, our understanding of this text—as both an essential canonical-jurisprudential work and a rich resource for medieval institutional, social, and religious history—is far from satisfactory. Further, Bernard’s *Glossa* has not been much studied as a source for church history beyond canon law. This is unfortunate, for its jurisprudence likely reflected or even shaped actual legal practice. Medieval canonists did not compose their works and live their lives in ivory towers. Besides training future lawyers and judges who would be responsible for the operation of ecclesiastical courts and for the solution to innumerable real-life cases, they themselves often had careers that involved legal affairs outside academia. Bernard, for example, as abovementioned, was both a chaplain and judicial consultant to the papacy; Ricardus Anglicus (d. 1242) served multiple times as an officer in court and as a judge-delegate under Pope Innocent III; Hostiensis (d. 1271) and Goffredus Tranensis (d. 1245) ended up as cardinals; Jacobus Albanus (d. c. 1273) served as an advocate before he became a bishop; and Sinibaldus Fliscus once worked as an auditor of the papal curia before he became a cardinal and then Pope Innocent IV (1243–1254).⁸ They heard and judged real-world cases treating both ecclesiastical affairs and civil disputes. Therefore, their writings could be understood as mirrors of the institutional world out of which they emerged. Through investigating the legal concerns and discussions in these texts, we stand better to understand aspects of the medieval Church and the challenges facing society from the perspective of canonists—especially influential ones like Bernard. The examples to follow deal with the topic of heresy.

Histories and historiographies of heresy have been written by generations of scholars.⁹ From the condemnation of the Arianists at the First Council of Nicaea in 325 to the anathematization of various heretics by Pope Gregory IX in 1229, the Christian Church has been no stranger to the practice of recognizing and punishing those it deems heterodox and/or heteroprax within the community. Notably, diverse and sporadic heresies, “most of [which] can be related to the religious temper of the age and the movement for reform that touched all aspects of religious life from

⁷Martin Bertram, *Signaturenliste der Handschriften der Dekretalen Gregors IX. (Liber Extra)*. Neubearbeitung April 2014, Rom 2014 (Online-Publikationen des Deutschen Historischen Instituts in Rom [12]), http://www.dhi-roma.it/bertram_extrahss.html.

⁸See Jane E. Sayers, *Papal Judges Delegate in the Province of Canterbury, 1198–1254: A Study in Ecclesiastical Jurisdiction and Administration* (London: Oxford University Press, 1971), 114–118 and 296–301; J. Ferrer Ortiz, “Enrique de Susa (el Ostiense),” and E. Tejero, “Gofredo de Trani,” in *Juristas universales*, ed. Rafael Domingo (Madrid: Marcial Pons, 2004), vol. 1, 444–448 and 405–407; J. Lips, “Jacques ou Jacobus de Albertino ou D’Alberti,” in *Dictionnaire de droit canonique* (Paris: Librairie Letouzey, 1957), vol. 6, 77–78; A. de la Hera, “Sinibaldo Fieschi (Inocencio IV),” in *Juristas universales*, vol. 1, 430–434.

⁹An overview of recent studies on medieval heresy can be found in Lucy J. Sackville, *Heresy and Heretics in the Thirteenth Century: The Textual Representations* (Rochester, NY: Boydell & Brewer, 2011), 1–11.

1050 on,”¹⁰ emerged during the eleventh and especially early twelfth centuries. This age witnessed religious nonconformists such as Peter of Bruys, Henry of Lausanne, Arnold of Brescia, Amalric of Bène, and others, including those “Manichees” noted by Guibert of Nogent at Soissons in 1114.¹¹ While it is difficult to systematize and catalogue their heretical characteristics, two particular groups of heretics stood out after the middle of the twelfth century. These were the Cathars/Albigensians and the Waldensians, which held religious beliefs and practices that posed threats to the institutional church. Briefly speaking, the former, with its dualistic theology, special rites such as *consolamentum*, and hierarchical organization, represents an essentially heterodox, antisacramental, and antisacerdotal institution in the eyes of the Roman church. The latter, on the other hand, poses a challenge to the church and its clerics based on its insistence on apostolic poverty and various radical means to satisfy lay piety, such as the availability of the bible in vernaculars and public preaching by laymen.

Heresy since the twelfth century had been dealt with by a continuously developing legal system, in tangent both with the intellectual trends emerging in the schools and with the institutional development in the papacy. As Edward Peters points out, “The twin movements of dogmatic definition and the papal juridical approach to heretics . . . slowly increased ecclesiastical resistance to heresy and dissent.”¹² Canon law on heresy transitioned from repeating antique and early-medieval patristic theological/pastoral writings to conciliar and papal decrees that treated contemporary movements. Scholars have long noted the legislative efforts taken by local church authorities and the papacy, which left their prints directly or indirectly in the canonical tradition.¹³ Many of these texts, from the 1184 papal bull *Ad abolendam* of Pope Lucius III, the *Vergentis in senium* of Innocent III in 1199, to the *Excommunicamus et anathematizamus* of Gregory IX in 1229 (X 5.7.15), were codified in the *Decretales*, and indeed have been well studied by generations of researchers.¹⁴ Another institutional apparatus that emerged and developed against the heretics during the twelfth and the thirteenth centuries was the heresy inquisitors. The phrase “inquisitors of heretics (*inquisitores hereticorum*)” emerged as early as 1233 in a text from Count Raymond VII of Toulouse. Several months after the promulgation of the *Decretales*, Raymond of Peñafort, the editor of this compilation, mentioned “inquisitor constituted by the Apostolic See (*inquisitor a sede Apostolica constitutus*)” in his instruction on the treatment of heretics. Five years later, the most common designation for medieval heresy inquisitors, that is, “inquisitors of heretical depravity (*inquisitores heretice pravitatis*),” appeared for the first time in Pope Gregory IX’s letter *Actore Deo* of May 3, 1238.¹⁵ These inquisitors were bishops, local clerics appointed by bishops, and, especially since the early-thirteenth century, papal appointees that were usually mendicant friars. The

¹⁰Edward Peters, *Heresy and Authority in Medieval Europe* (Philadelphia: University of Pennsylvania Press, 1980), 103.

¹¹See P. Roche, B. Chudoba, and E. D. Mcshane, “Heresy, History of.” In *New Catholic Encyclopedia*, 2nd ed., vol. 6 (Detroit: Gale, 2003), 772–779; and Guibert de Nogent, *Guibert de Nogent: Histoire de sa vie (1053–1124)*, ed. Georges Bourgin (Paris: A. Picard et fils, 1907), 213.

¹²Peters, *Heresy and Authority in Medieval Europe*, 167.

¹³See Lucy J. Sackville, “The Church’s Institutional Response to Heresy in the 13th Century,” in Donald Prudlo, ed., *A Companion to Heresy Inquisitions* (Boston: Brill, 2019), 108–140.

¹⁴*Ibid.*, 116–117.

¹⁵See Henry Ansgar Kelly, “The Fourth Lateran Ordo of Inquisition Adapted to the Prosecution of Heresy,” in Donald Prudlo, ed., *A Companion to Heresy Inquisitions* (Boston: Brill, 2019), 83–84.

consultation manuals composed or used by inquisitors, as well as the inquisitorial records produced by them, have also attracted much modern scholarly attention.¹⁶

Nonetheless, compared with the legislative or administrative dimension of the story, and despite the heated debates around the very existence of dualist heresy during the past decades,¹⁷ our understanding of thirteenth-century juridical thinking on the subject of heresy could be further deepened. How did medieval judges and lawyers analyze heresy? What if a pope's regulation on the heretics conflicted with what St. Augustine prescribed against the Donatists? Examining legal writings from the second half of the twelfth and the thirteenth centuries, such as the *Glossa*, provides sources to deal with such questions.¹⁸ The following sections, in the first place, will provide an overview of the title on heresy, that is, *De haereticis*, in the *Decretales* (= X 5.7) and the *Glossa* to it. I will then show that the *Glossa*, compared with the *Glossa ordinaria* to Gratian's *Decretum*, offers a new emphasis in the definition of heresy, which not only reflects but also further solidifies the increasingly clear identification of heretics as self-conscious assembly rather than nonconforming individuals in the thirteenth century. The next section will demonstrate that the *Glossa* embeds mercy in its treatment of heretics: by limiting the scope of the culpable, suggesting to sustain the heretic's life, remaining silent on the use of violence to extract confession, and, last but not least, scrupling about handing over heretics to secular courts. In the end, I will briefly contrast the *Glossa*, especially its temperance in dealing with heretics, with the contemporary inquisitorial practice and literature.

An Overview of *De Haereticis* and Its Ordinary Glosses

The Massacre at Béziers happened on July 22, 1209. This first slaughter of heretics during the Albigensian Crusade marks the appearance of the notorious saying, "Kill them all; for the Lord knoweth them that are His (cf. 2 Timothy 2:19)!"¹⁹ in history, according to Caesarius of Heisterbach. At this point, Bernard was probably still a young boy. His years of studying law at Bologna under the influential canonist Tancred (c. 1185–1236), who composed the *Glossae ordinariae* to several previous important decretal collections, saw the signing of the Treaty of Paris on April 12, 1229, which ended the twenty-year Albigensian Crusade under Popes Innocent III, Honorius III, and finally Gregory IX. As he was revising his *Glossa* to the *Decretales*, hundreds of Cathars, including both *perfecti* and *credentes*, were burned at the end of the siege of Montségur on March 16, 1244. These events were part of the backdrop against which the *Glossa* was produced and gradually updated. Yet, similar to his treatment of other legal topics, Bernard did not mention these specific historical instances in his glosses. However, his numerous comments and allegations—the supporting texts that the *Glossa* cited from both Roman law and canon law traditions—cited, ranging from St. Augustine's writings

¹⁶See, for instance, Vasil Bivolarov, *Inquisitoren-Handbücher: Papsturkunden und juristische Gutachten aus dem 13. Jahrhundert mit Edition des Consilium von Guido Fulcodii* (Wiesbaden, Germany: Harrassowitz Verlag, 2014).

¹⁷For a recent historiographical survey of this debate, see Deborah Shulevitz, "Historiography of Heresy: The Debate Over 'Catharism' in Medieval Languedoc," *History Compass* 17, no. 1 (2019): e12513.

¹⁸Another important kind of judicial resource that should be studied is contemporary consultation texts that were circulated among the inquisitors. An recent compilation of these texts is Riccardo Parmeggiani, *I consilia procedurali per l'Inquisizione medievale (1235–1330)* (Bologna, Italy: Bononia University Press, 2011).

¹⁹Caesarius of Heisterbach, *The Dialogue on Miracles*, vol. 1 (London: G. Routledge & Sons, 1929), 346.

against the Donatists to Emperor Frederick II's constitutions against the Cathars and other heretics in the *Glossa* to the sixteen canons under X 5.7, testify to the importance to him of the subject of heresy in the high medieval legal landscape.

This article examines the section of the *Decretales* that specifically addresses the issue of heretics: X 5.7 "On Heretics (*De haereticis*)."²⁰ X 5.7.1–8 constitute an array of papal rulings for various subjects regarding heresy, ranging from people who do not correct heretics to bishops who provide inheritances to heretics/pagans. Beginning with X 5.7.9, that is, the aforementioned 1184 *Ad abolendam* from Pope Lucius III, we have a relatively comprehensive and systematic treatment concerning heretics. The canons X 5.7.9–16, from Popes Lucius III, Innocent III, the Fourth Lateran Council, and Pope Gregory IX, are relatively more focused on legislating against contemporary heretical movements.

There are 110 glosses to X 5.7.²⁰ The number of glosses of each canon roughly matches the length of that canon, that is, the longer the canon the more points Bernard found to explicate. The length of each gloss, nevertheless, has nothing to do with the length of the canon that it comments on. Thus, the selection of glosses to be analyzed in this article does not depend on the lengths of and the number of allegations, that is, cross-referenced Romano-canonical texts in the glosses, nor does it favor the longer canons and their glosses. Among several possibilities, I have extracted two themes to illustrate the *Glossa*'s judicial thoughts: the definition of heretics and, more importantly, mercy in treating heretics. Glosses are selected as they embody these themes either *per se* or in their allegations.

Two *Glossae ordinariae*: A New Emphasis in the Judicial Definition of Heresy²¹

The *Glossa* offers a clear and detailed definition of heresy in its comment on the third canon of X 5.7, where the word "heretics" is mentioned for the first time in this title. The flexibility of the concept itself, however, requires Bernard to establish some legal definition and to probe implications of heresy since the very beginning, as is seen in the gloss to the first chapter in the title:

X 5.7.1

Pope Stephan to All Bishops.

A person who has doubts²² about the faith is unbelieving (*infidelis*). Credibility is completely lacking in people who ignore belief in the truth.²³

One of the continuous issues throughout the *Decretales* that the *Glossa* as an educational text treats is the succinctness, often also the vagueness, of the canons. The glosses are, therefore, responsible for both explicating concepts and delving into their implications. The *Glossa* for canon 1 implies that the person who is *infidelis* equates with the heretic in the legislation of Roman law. This was decades before Thomas Aquinas in his *Summa Theologica* straightforwardly claimed that heresy "is a subspecies of unbelief

²⁰This number drops to 108 if one counts only glosses from the earliest surviving manuscript (thus possibly representing the first recession) of the *Glossa*, F (see note 1).

²¹Othmar Hageneder, *Il sole e la luna: Papato, impero e regni nella teoria e nella prassi dei secoli XII e XIII* (Milan, Italy: Vita e Pensiero, 2000), 69–130, provides a survey of high medieval canonists' definitions of heresy.

²²Underlined texts in translations throughout this article are *lemmata*, that is, words or phrases that are commented upon by the *Glossa*.

²³X 5.7.1: "Dubius in fide infidelis est; nec eis omnino credendum est, qui fidem veritatis ignorant."

(*sub infidelitate continetur*).²⁴ However, the matter is not spelled out explicitly, and the medieval law student had to look into the allegations to follow it. The first allegation in the gloss on “about the faith (*in fide*)”²⁵ points the reader to a section in the Justinianic Codex, book one, title five (“Heretics, Manichaeans, and Samaritans”) and a direct definition of heretics: “Under the term heretics . . . are included those who are found to deviate from the doctrine and path of the Catholic Religion [Cod. 1.5.2.1].”²⁶ Ruggero Maceratini has briefly summarized the diverse definitions of heresy in Roman law collections, and here, it seems, the gloss precisely picks up “the proper judicial definition (*la definizione propriamente giuridica*).”²⁷

The most comprehensive definition of heresy in the *Glossa* on this title, however, comes from a gloss to X 5.7.3 (translated in the right column below). Bernard in this gloss heavily relied on the *Glossa ordinaria* composed between 1210 and 1220 by his master at Bologna, Tancred, to the same decretal (*Comp. I. 5.6.3*).²⁸ At first glance, it seems to demonstrate a shared understanding of the legal definition of *haereticus* when compared with the equally influential *Glossa ordinaria* to Gratian’s *Decretum* on the same issue (translated in the left column in Table 1).²⁹

Table 1. Definitions of *haereticus* in the *Glossae ordinariae*

Glos. ord. to C. 24 q. 3 dict. post c. 25, <i>heresy (haeresim)</i> ³⁰	Glos. ord. to X 5.7.3, <i>every heretic (omnem haereticum)</i> ³¹
A heretic is designated in many ways. The first is that whoever doubts in the faith is	A heretic is designated in many ways: he is called a heretic, who subverts the

(Continued)

²⁴*Summa Theologica*, II-II, Q. 11, Art. 1, contra.

²⁵Glos. ord. to X 5.7.1, *in fide*: “That is, in a subtle article. [See] C. de haeret. l. ult. in fi. [that is, Cod. 1.5.2.1].”

²⁶Bruce W. Frier et al., eds., *The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text Based on a Translation by Justice Fred H. Blume* (Cambridge, UK: Cambridge University Press, 2016), 189.

²⁷See Ruggero Maceratini, “Innocenzo III, il Concilio Lateranense IV e lo status giuridico dell’eretico nella glossa ordinaria al Decreto di Graziano ed in quella di accursio al Codice di Giustiniano.” *Vergentis. Revista de Investigación de la Cátedra Internacional conjunta Inocencio III 3*, no. 1 (2016): 20–21.

²⁸It seems that Tancred, in turn, in composing his gloss consulted the *Glossa Palatina* on C. 24 q. 3 dict. post c. 25 by his teacher Laurentius Hispanus. See Hageneder, *Il sole e la luna*, 76 n25 for Laurentius’s gloss.

²⁹For a brief discussion of definitions of heresy and heretics in Gratian’s *Decretum* and later canonical sources, including a summary of Glos. ord. to X 5.7.3, *every heretic (omnem haereticum)*, see Edward Peters, *Inquisition* (Berkeley, CA: University of California Press, 1989), 61–63.

³⁰“Vario modo dicitur haereticus. Uno modo quicumque est dubius in fide, infidelis est, ut extra. de haere. dubius. Secundo modo dicitur haereticus omnis simoniacus, ut i. q. i. quisquis. Tertio omnis praecisus ab ecclesia, secundum quod excommunicatus dicitur haereticus, ut iv. q. i. cap. ii. Quarto modo omnis qui male interpretatur sacram scripturam, ut infra. ead. haeresis. Quinto modo qui novam opinionem invenit, ut infra. ea. haereticus. Sexto modo qui vult auferre privilegium Romanae ecclesiae, ut xxii. dist. omnes. Septimo qui transgreditur praecepta sedis apostolicae, ut supra xix. d. nulli. Item quandoque large dicitur haereticus omnis, qui non tenet articulos fidei, et secundum hoc Iudaei et gentiles sunt haeretici, et secundum hoc non omnis haereticus est excommunicatus. Stricte sumitur haereticus omnis qui remotus est ab ecclesia, quia errat in fide: et secundum hoc omnis haereticus est excommunicatus, ut extra. de haere. ad abolendam et cap. excommunicamus.”

³¹“Haereticus multis modis dicitur: ille dicitur haereticus, qui pervertit sacramenta Ecclesiae, ut simoniacus. i. q. i. eos qui per pecuniam. et vi. q. i. +cap. nos sequentes.+ §. sed licet. Item qui scindit

Table 1. (Continued.)

Glos. ord. to C. 24 q. 3 dict. post c. 25, <i>heresy (haeresim)</i> ³⁰	Glos. ord. to X 5.7.3, <i>every heretic (omnem haereticum)</i> ³¹
<p>unbelieving (<i>infidelis</i>), as in extra de haere. dubius.³² The second is that every simoniac is said to be a heretic, as in i. q. i. quisquis.³³ The third is that whoever is cut away from the Church through excommunication is a heretic, as in iv. q. i. cap. ii.³⁴ The fourth is that who misinterprets the scriptures, as in infra. ead. haeresis.³⁵ The fifth is that whoever invents a new conjecture (<i>novam opinionem invenit</i>), as in infra. ea. haereticus.³⁶ The sixth is that whoever wants to deprive the Roman Church of its privileges, as in xxii. dist. omnes.³⁷ The seventh is that whoever disobeys the precepts of the Apostolic See, as in xix. d. nulli.³⁸ . . . Strictly speaking a heretic is whoever has been removed from the Church when he/she errors in the faith and hence every heretic should be excommunicated, as in extra de haere. ad abolendam.³⁹ and cap. excommunicamus.⁴⁰</p>	<p>sacraments of the Church, like a simoniac. [See] i. q. i. eos qui per pecuniam.,⁴¹ and vi. q. i. +cap. nos sequentes.+ §. sed licet.⁴² Likewise, he who separates himself from the unity of the Church. [See] vii. q. i. denique.⁴³ Likewise, all excommunicated persons. [See] iiiii. q. i. quod autem hii.⁴⁴ Likewise, he who errs in exposition of the sacred scripture. [See] xxiii. q. iii. haeresis.⁴⁵ And likewise, he who fabricates a new sect (<i>confinxit novam sectam</i>), or follows a fabricated one. [See] xxiii. q. iii. haereticus. Likewise, he who in any other way understands differently the articles of the faith from the Roman Church, [see] xxiii. q. i. hec est fides⁴⁶ and c. quoniam.,⁴⁷ or who understands wickedly (<i>male</i>) concerning the sacraments of the Church, [see] infra. e. ad abolendam. in prin.⁴⁸ +Tanc.+⁴⁹</p>

It is not difficult to observe the similarities between these two ordinary glosses. But more importantly, one should note that while it is “whoever invents a new conjecture (*novam opinionem invenit*)” is a heretic in the left column, it is “he who fabricates a new

se ab unitate Ecclesiae. vii. q. i. denique. Item omnis excommunicatus. iiiii. q. i. quod autem hii. Item qui errat in expositione sacrae scripturae. xxiii. q. iii. haeresis. Et item qui confingit novam sectam, vel confictam sequitur. xxiii. q. iii. haereticus. Item qui aliter sentit de articulis fidei, quam Romana Ecclesia, xxiii. q. i. hec est fides. et c. quoniam., vel qui male sentiunt de sacramentis Ecclesiae. infra. e. ad abolendam. in prin. +Tanc.+”

³²X 5.7.1.

³³C. 1 q. 1. c. 5.

³⁴C. 4 q. 1. c. 2.

³⁵C. 24 q. 3 c. 27.

³⁶C. 24 q. 3 c. 28.

³⁷Dist. 22 c. 1.

³⁸Dist. 19 c. 5.

³⁹X 5.7.9.

⁴⁰X 5.7.13/15, as both canons start with “*excommunicamus*.”

⁴¹C. 1 q. 1 c. 21.

⁴²C. 6 q. 1 dict. post c. 19.

⁴³C. 7 q. 1 c. 9.

⁴⁴C. 4 q. 1 c. 2.

⁴⁵C. 24 q. 3 c. 27.

⁴⁶C. 24 q. 1 c. 14.

⁴⁷C. 24 q. 1 c. 25.

⁴⁸X 5.7.9.

⁴⁹On the transmission of this gloss from Tancred’s *Glossa* to Bernard’s *Glossa*, see Hageneder, *Il sole e la luna*, 72–73.

sect (*confingit novam sectam*), or follows a fabricated one” in the right.⁵⁰ Further, both glosses here cite the same allegation from St. Augustine’s *De utilitate credendi*, but apparently they pay attention to different parts of it: Augustine in this text argued that a heretic is a person who either gives birth to or follows false and new opinions.⁵¹ Moreover, the *Glossa* to the *Decretales* in this sense of focusing on sects and followers also, compared with the one to the *Decretum*, steps further from the thirteenth-century definition of heresy made by influential theologians. Thomas Aquinas in his discussion of heresy and heretics⁵² largely followed Augustine’s definition above. Similarly, Bishop Robert Grosseteste of Lincoln’s definition, which was quickly quoted in his contemporary English chronicles, states, “Heresy is an opinion chosen by human faculties, contrary to Holy Scripture, openly held, and pertinaciously defended.”⁵³

It is important to note, however, that although the *Glossa* provided different definitions from those listed above, its emphasis on “new sect,” inherited from Tancred and Laurentius Hispanus (see note 28), echoes specific mention of high medieval heretical groups such as the Cathars in X 5.7.8⁵⁴ and especially in X 5.7.15.⁵⁵ Put simply, the *Glossa* of the *Decretales* here reflects its contemporary papal-ecclesiastical concern with heretics through the novel emphasis on the formation of heretical *sects*: a sense of self-conscious gathering that would remain a key feature of medieval literature on heresy.⁵⁶ Moreover, this set of definitions of heretics would remain influential in the medieval canonical landscape. For instance, it was largely repeated by eminent canonists such as Hostiensis (d. 1271).⁵⁷

Limiting the Scope of the Culpable

The second chapter of the title on heretics in the *Decretales* consists of a very brief statement that could lead users to an over-zealous expansion of who qualifies as a heretic. The canon reads as follows:

X 5.7.2

Pope Leo.

He who does not recall others from error when he is able, demonstrates that he himself errs.⁵⁸

⁵⁰It should be noted that Gratian in C. 29 q. 1 dict. ante c. 1, which discusses different errors with respect to the concept of consent, also spoke of “hereticorum sectam.” However, this specific notion, as demonstrated here, was not incorporated in the *Glossa ordinaria* to the *Decretum*.

⁵¹C. 24 q. 3 c. 28.

⁵²See *Summa Theologica*, II-II, Q. 11, Art. 1.

⁵³Henry Richards Luard, ed., *Flores Historiarum*, vol. 2 (London: Eyre and Spottiswoode, 1890), 392. This passage was also quoted in Matthew Paris, *Matthæi Parisiensis, Monachi Sancti Albani, Chronica Majora*, ed. Henry Richards Luard (London: Longman, 1872), vol. 5, 401. The translation here comes from Peters, *Inquisition*, 42.

⁵⁴X 5.7.8: “[S]ince in . . . Toulouse and its neighborhood, and in other places, the perversity of the heretics, whom some call Cathari, others Patarini, . . .” Rev. H. J. Schroeder, O. P., trans., *Disciplinary Decrees of the General Councils: Text, Translation, and Commentary* (London: B. Herder Book, 1937), 234.

⁵⁵X 5.7.15: “We excommunicate and anathematize all heretics, Cathars, Patarnes, the Poors of Lyons, Passagines, Josephines, Arnaldists, Speronists, and others by whatever name they are recognized. . . .”

⁵⁶See Euan Cameron, *Enchanted Europe: Superstition, Reason, & Religion, 1250–1750* (Oxford, UK: Oxford University Press, 2010), 8–9.

⁵⁷“Quinto qui nouam sectam fingit, vel confictam sequitur.” Henrici de Segusio cardinalis Hostiensis, *In Quintum Decretalium librum Commentaria* (Venetiis: Apud Iuntas, 1581), 35r.

⁵⁸X 5.7.2: “Qui alios, cum potest, ab errore non revocat, se ipsum errare demonstrat.”

This canon comes from a letter of Pope Leo I addressing the dualistic Priscillian heresy. However, the historical context or the description of specific issue was completely omitted when this text became a canon in the *Decretales*. The original letter claims that bishops who do not forbid the possession of apocryphal writings or permit the Priscillian writings to be read in churches are considered heretics. The result of the omission, however, is an imprecise ruling that in the textual context of *De haereticis* can be interpreted in an extreme manner as “whoever does not correct a heretic is a heretic him/herself.” This would contradict how a heretic is defined in *Glos. ord.* to X 5.7.3, *every heretic*, which is translated and discussed above. The *Glossa* here, relying on Tancred’s comment on the same canon, struggles to narrow the scope of the culpable and to dissolve the potential extremity in legal practice.

Glos. ord. to X 5.7.2, *does not recall (non revocat)*

When one can... But can that pertain to all? I respond: In the case of a crime already committed, only clerics are obligated to reprove (*corripere*). [See] xxiii. q. iiiii. duo ista.⁵⁹ and c. ita plane.⁶⁰ However, anyone is obligated to reprove another privately for a sin about to be committed. [See] infra. e. cum ex iniuncto.⁶¹, and the arguments [in] xxiii. q. iiiii. ipsa pietas.⁶², xxii. q. v. hoc videtur.⁶³, xciii. di. diaconi.⁶⁴, supra. de cog. spirituali. tua.⁶⁵, and ii. q. vii. quapropter.⁶⁶ . . . +Tanc.+⁶⁷

The gloss begins with a short but straightforward delimitation of the canon. After asking “[b]ut can it pertain to all?” it proposes a dialectical qualification that essentially indicates not everyone who does not correct other’s error errs (or even becomes a heretic). More importantly, an examination of the allegations in this gloss reveals the underlying concern of Tancred (and Bernard, who compiled this gloss into his *Glossa*) here: mercy. Notably, Ivo of Chartres (d. 1115) in the prologue to his influential *Decretum* and *Panormia*, which both Tancred and Bernard possibly were familiar with or even have studied, highlighted the importance of mercy/charity in ecclesiastical jurisprudence.⁶⁸ When claiming that only clerics are obliged to correct others for committed crimes, the gloss invokes two allegations. The first one (C. 23 q. 4 c. 35), ascribed to Augustine, calls for indiscriminate mercy from anyone who is in charge of others—“not only the bishop ruling his people, but also . . . the father ruling his children, the judge ruling his province, the king ruling his nation.”⁶⁹ In the other one (C. 23 q. 4 c. 6),

⁵⁹C. 23 q. 4 c. 35.

⁶⁰C. 23 q. 4 c. 6.

⁶¹X 5.7.12.

⁶²C. 23 q. 4 c. 24.

⁶³C. 22 q. 5 c. 8.

⁶⁴Dist. 93 c. 23.

⁶⁵X 4.11.7.

⁶⁶C. 2 q. 7 c. 47.

⁶⁷“Cum potest. . . Sed nunquid istud pertinet ad omnes? Respondo: de crimine iam commisso soli praelati tenentur corripere. xxiii. q. iiiii. duo ista. et c. ita plane. A peccato autem committendo quilibet tenetur alium occulte corripere. infra e. cum ex iniuncto. et ar. xxiii. q. iiiii. ipsa pietas. et xxii. q. v. hoc videtur. et xciii. di. diaconi. et supra de cog. spirituali. tua. et ii. q. vii. quapropter. . . +Tanc.+”

⁶⁸See Somerville and Brasington, *Prefaces*, 95–99 and 113–132.

⁶⁹C. 23 q. 4 c. 35: “Duo ista nomina cum dicimus, homo peccator, non utique frustra dicuntur. Quia ergo peccator est corripere: et quia homo, miserere. . . Huic officio omnis inuigilat disciplina, sicut cuique regenti

Augustine in his letter to the Donatist bishop Parmenian indicated that if a person without an official function does not correct another's sin, he is not guilty as long as he does not participate or approve the crime; and when the person does have the official responsibility to correct sinners, he should do so "with love (*cum dilectione*)"⁷⁰ Both allegations selected in the gloss, therefore, support its accentuation of judicial sensitivity with an emphasis on mercy.

Sustaining the Heretic's Life

Such implicit employment of mercy or charity in order to moderate, or at least to encourage discretion in, the judicial application of canons also appears in *Glos. ord.* to X 5.7.6, *should not bestow*. The latter is a short canon forbidding present and future clerics from bestowing inheritances to non-Catholics even if they were relatives.⁷¹ The gloss here does not directly challenge the canon. But Bernard nonetheless offered a limit on it while painstakingly employing papal, theological, and conciliar sources encouraging judicial leniency:

Glos. ord. to X 5.7.6, *should not bestow (nihil conferant)*

. . . By reason of charity (*causa pietatis*) perhaps something can be given to him [that is, the non-Catholic], lest he dies of hunger, [see] lxxxvi. d. pasce fame.⁷² Because at this point he could be converted to the faith: since he ought to be given up by no one. [See] de pen. d. vii. nemo.⁷³, xxxii. q. ii. ancillam.⁷⁴, and also the argument on this [in] xlii. di. quiescamus.⁷⁵ and xi. q. iii. quoniam multos.⁷⁶ +Ber.+⁷⁷

The humble tone of the *Glossa* here with the word "perhaps" indicates that the gloss is less about instructing a juridical antithesis to the canon, but more about providing a pastoral-judicial suggestion. But as I demonstrate below, through the allegations—most of which *do not concern heresy at all*—Bernard once more implied the principle of mercy that he believed should be applied to the treatment of heretics.

apta et accommodata est, non solum episcopo regenti plebem suam, sed etiam . . . patri regenti prolem suam, iudici regenti provinciam suam, regi regenti gentem suam."

⁷⁰C. 23 q. 4 c. 6: "Ita plane, sociatur, id est si mali aliquid cum eis conmittit, aut conmittentibus fauet. Si autem neutrum facit, nullo modo sociatur. Porro, si addat tertium, ut non sit in uindicando piger, sed uel corripit iustus in misericordia et arguat, uel etiam, si eam personam gerit, et ratio conseruandae pacis admittit, et coram omnibus peccantes arguat, ut ceteri timeant, remoueatur etiam uel ab aliquo gradu honoris, uel ab ipsa communionem sacramentorum, et hec omnia cum dilectione corrigendi, non cum odio persequendi faciat, plenissimum offitium non solum castissimae innocentiae, sed etiam diligentissimae seueritatis inpleuit. Ubi autem cetera impediuntur, illa duo semper retenta incorruptum castumque custodiunt, ut nec faciat malum, nec approbet factum."

⁷¹X 5.7.6: "In eos, qui catholici non sunt, etiamsi consanguinei fuerint, episcopi vel presbyteri nihil conferant. Denique hoc, quod de episcopis et presbyteris dictum est, debet de reliquis clericis exaudiri."

⁷²Dist. 86 c. 21.

⁷³*De pen.* D. 7 c. 1.

⁷⁴C. 32 q. 2 c. 11.

⁷⁵Dist. 42 c. 2.

⁷⁶C. 11 q. 3 c. 103.

⁷⁷"Causa pietatis forte posset ei dari ne pereat fame. lxxxvi. d. pasce fame. Quia adhuc posset converti ad fidem: quia de nemine desperandum est. de pen. d. vii. nemo. et xxxii. q. ii. ancillam. et ar. +Ber.+"

Two allegations from Pope Leo I order pity toward judging young people in affairs such as entering marriage while separating from lovers with whom they have had children (C. 32 q. 2 c. 11). The *Glossa* further advocates for merciful treatment of heretics, hoping the latter performing penance in the end, through *De pen. D. 7 c. 1*, a canon implying that the time for penance can extend to death.⁷⁸ Another allegation, coming from the same pope, emphasizes the necessity of helping starving people (Dist. 86 c. 21). One allegation from John Chrysostom's homilies underlines the hospitality demonstrated by Abraham as he gave hospitality to people who came to him (Dist. 42 c. 2). Finally, the allegation from Pope Gregory VII from one of his 1078 Roman Synods at the end (C. 11 q. 3 c. 103) touches upon the group of the excommunicated, which is closely related to the status of the heretics. As a "relaxation of the Apostolical rule,"⁷⁹ Gregory VII here permitted, out of *miseriordia*, communicating with the excommunicated under some situations, such as between family members, providing that the interaction does not support their obstinacy. This rule, later reaffirmed by Pope Paschal II and incorporated into Gratian's *Decretum*, is clearly an influential one.⁸⁰ The *Glossa*, extracting the principle of mercy from this variety of canonical traditions, thus constitutes here a nuanced counterbalance in its legal interpretation of a strict canon.

Silence on the Use of Violence for Extracting Confession

Another major judicial issue concerning the trial of heretics is conviction. Should the ecclesiastical court employ violence in order to convict potential heretics? To be more specific, can confession from the heretics be produced through torture? The *Decretales*, promulgated in 1234, is silent on this matter. The *Glossa* to X 5.7 does not address this issue either, at least not directly. Nevertheless, the gloss translated below to X 5.7.9, that is, the *Ad abolendam*, offers a window for speculation, together with more information concerning the usage of compulsion in the treatment of heretics. In this canon, Pope Lucius III instructed that clergymen convicted of heresy will lose their clerical position and privileges unless they voluntarily return to the church and perform required penitential actions.⁸¹ Of course, Lucius III in this context was not implying that the returning action is optional, but that voluntary repentance leads to leniency and the possibility of rehabilitation in terms of ecclesiastical censure. Bernard's comment on this ruling further emphasizes such *voluntarity*, while essentially remarking at the very beginning that compulsion should be used, however, for returners to *stay* in the faith.

⁷⁸*De pen. D. 7 c. 1*: "Nemo desperandus est, dum in hoc corpore constitutus est, quia 'nonnumquam quod diffidentia etatis differtur consilio maturiore perficitur.'"

⁷⁹Herbert Thorndike, *The Theological Works of Herbert Thorndike* (Oxford, UK: J. H. Parker, 1844), vol. 1, pt. 2, 566, footnote no. r.

⁸⁰See Uta-Renate Blumenthal, "The Collection of St Victor (= V), Paris: Liturgy, Canon Law, and Polemical Literature," in Kathleen G. Cushing and Richard Gyug, eds., *Ritual, Text, and Law: Studies in Medieval Canon Law and Liturgy Presented to Roger E. Reynolds* (Aldershot, UK: Ashgate, 2004), 303.

⁸¹On the issue of clerical exemption from secular jurisdiction, see Anne J. Duggan, "Clerical Exemption in Canon Law from Gratian to the Decretals," *Medieval Worlds* 6 (2017): 78–100.

Glos. ord. to X 5.7.9, *voluntarily to return (sponte recurrere)*

But it seems that still he ought to be compelled to preserve the faith, [see] xlv. di. de Iudaeis.⁸² After he has been condemned as a heretic, he is not compelled. . . .+Ber.+⁸³

The single allegation in this gloss refers to canon 57 from the Fourth Council of Toledo in 633 (Dist. 45 c. 5), through which the *Glossa* analogizes the situation under discussion to the conversion of Jews. On the one hand, this conciliar canon forbids forcing Jews to convert. On the other hand, nonetheless, it commands that the Jews already converted through compulsion should still be forced to retain Christianity. The exact nature of such compulsion awaits further investigation; neither the *Glossa* to this canon (or X 3.42.3, where Innocent III invoked the same decree from the Council of Toledo), nor the *Glossa* to the allegation (D. 45 c. 5) yields clarification on this matter. But the two levels of parallel here are not difficult to see. Convicted heretics are like Jews, since they should come (return) to the Christian faith on their own will and not to be forced; nonetheless, once they convert, they can be compelled to preserve the faith, as the beginning of the gloss indicates.

Does it mean that a “potential” heretic who does not admit his/her guilt of heresy in the first place (and has not been condemned as a heretic yet) can be compelled to confess using force, or the opposite? The gloss does not yield an answer. Notably, nothing was added after Pope Innocent IV promulgated his bull *Ad extirpanda* in 1252, which legitimizes the usage of torture against heretics for secular rulers *after* the ecclesiastical court has convicted them of heresy.⁸⁴ The silence of the *Glossa* on this matter throughout the entire title on heresy in the *Decretales* leaves its modern readers in wonder, and perhaps also leaves its medieval readers a gray realm in this case for the practice of law.

In terms of the general use of force in ecclesiastical judicial system, the popes until this point had been condemning the practice of ordeal—although it is important to remember that ordeal is a form of divination rather than torture—for decades: from Alexander III’s denunciation of a hot iron ordeal that some priests in Sweden went through in 1171/1172, Lucius III’s rejection of an acquittal of a clerical homicide case through water ordeal in 1181, to the formal prohibition against ordeal trials by Innocent III and Honorius III, respectively, in 1215 and 1222.⁸⁵ Nevertheless, as Henry Ansgar Kelly has demonstrated, the twelfth- to the early-thirteenth-century ecclesiastical judicial system and canonists since Gratian had not been as so averse to torture as historians used to assume.⁸⁶ Further, compulsion as an effective way of inducing confessions was undoubtedly employed in the developing inquisitorial practice against heresy. If Innocent IV’s *Ad extirpanda* does not formally invite the inquisitors to do so, Alexander IV’s *Ut negotium* in 1256, which allows inquisitors to absolve one another’s canonical irregularity incurred through inquisitorial actions (thus including torture), certainly was taken as an endorsement of such practice. But again, *Ut negotium*

⁸²Dist. 45 c. 5.

⁸³“Sed videtur quod etiam compelli debeat servare fidem. xlv. di. de Iudaeis. Postquam est condemnatus haereticus, non compellitur. . . .+Ber.+”

⁸⁴It is important to note that this decretal has never been included into official decretal collections after the *Decretales*, thus never made its way into the *Corpus iuris canonici*.

⁸⁵See Henry Charles Lea, *Superstition and Force*, 4th ed. (Philadelphia: Lea Brothers, 1892), 417–418 and 423.

⁸⁶See Henry Ansgar Kelly, “Judicial Torture in Canon Law and Church Tribunals: From Gratian to Galileo,” *The Catholic Historical Review* 101, no. 4 (2015): 754–793.

did not appear in the *Glossa's* references either. It is possible that the glossator was not following closely the clandestine side of the inquisitorial practice of his day (especially that under some overzealous judges) and thus neglected to consider this issue.⁸⁷ It is also probable that the *Glossa's* silence on using compulsion to induce confessions reflects its unease about proofs that are produced through torture. Ulpian's influential remark about torture as a *res fragilis et periculosa* would certainly sound familiar to high medieval law professors and students.⁸⁸ Within one decade or two after the death of Bernard, Albertus Gandinus, a Bolognese judge, would warn against "judges that are ferocious beyond measure (*iudicibus immodice sevientibus freni*)" when discussing investigative torture.⁸⁹

In sum, the *Glossa* remains silent on the issue of using force to extract confession. It straightforwardly acknowledges the legitimacy of forcing converts to preserve the Christian faith, but does not do so to the torturing of potential heretics for confession in either ecclesiastical or secular courts. Admittedly, the *Glossa* does not warn against such practice either. The two contemporary papal decrees listed above, which it does not incorporate (perhaps intentionally), demonstrate the increasing toleration or even encouragement of employing force to deal with heresy. The *Glossa*, understandably, cannot challenge this trend from the institutional top of the church. But its silence on this matter—either because of mercy or the suspicion of evidence extracted by torture, or both—could potentially serve as a counterbalance. Such hesitancy about procedures that involve bodily harm can also be seen in the *Glossa's* scruples over handing over heretics to secular courts, as demonstrated below.

Scruples about Handing Heretics over to Secular Courts

Regarding the trial of heretics—especially that concerning the cases of lay heretics, the procedural balance between the jurisdictions of the church and secular authorities is another major concern for the *Glossa*. As a canonist, the glossator was eager to emphasize the active role to be performed by the ecclesiastical tribunal in collaboration with that of the secular. After laying out treatments for clerical heretics, as mentioned above, X 5.7.9 switches to laymen and simply instructs them to be sent to secular courts for punishment. The *Glossa*, however, carefully supplements the procedural lacuna here and reminds its readers that the ecclesiastical condemnation of the heretics by the church needs to *precede* the punishments by the secular court:

Glos. ord. to X 5.7.9, a layman (laicus)

Indeed, laymen ought to be condemned for heresy through the Church, but a secular judge should punish him, and the layman is not handed over to a secular court, but only a clergyman, [see] *infra. de verb. sig. novimus*.⁹⁰ Because a layman always belongs to the secular jurisdiction, but in this case +the sentence must be

⁸⁷ "[T]he great canonistic commentators of the time . . . failed to confront the theoretical and practical problems raised by the prosecution of heresy and who failed to instruct the inquisitors." Kelly, "Inquisition and the Prosecution of Heresy," 451.

⁸⁸ See Kenneth Pennington, "Torture and Fear: Enemies of Justice," *Rivista internazionale di diritto comune* 19 (2008): 210.

⁸⁹ Hermann U. Kantorowicz, *Albertus Gandinus und das Strafrecht der Scholastik*, vol. 2 (Berlin: Walter de Gruyter, 1926), 156.

⁹⁰ X 5.40.27.

produced by the Church:⁹¹ only the execution occurs through a secular judge. How such people ought to be punished will be told below, [see] *infra e. excommunicamus.*⁹² +Ber.+⁹³

The gloss first invokes X 5.40.27 from Pope Innocent III. In the decretal, which is a canon that does not concern laymen, the pope ordered clerics degraded by the church because of heavy crimes such as forgery to be sent to secular courts for punishment after losing their privilege. In the meantime, Innocent III claimed that the church will intervene if there is danger of death involved. Although it seems that Innocent III's command is supporting the X 5.7.9's ruling that heretics as criminals are to be sent to secular courts, it is important to note that the deposition of the clergy—in other words, the removal of clerical status and *privilegium fori*—by the ecclesiastical court happens first in the cited decretal. The addition made by Bernard himself during the thirteenth century, enclosed by “+” in the translation above (see note 91), further demonstrates his concern for this procedural matter, perhaps owing to his fear for the abuse of secular power or to the dereliction of duty by the Church courts. Although earlier redactions of the *Glossa* carefully limit secular judges' involvement to the execution of punishment, the post-1263 redaction(s) accentuate(s) the message. The text, in effect extending clerical *privilegium fori* to the laity in the case of heresy trials, stresses that “the sentence must be produced by the Church.” The second allegation is a bit confusing for it could either denote X 5.7.13 or X 5.7.15, as both canons begin with “[E]xcommunicamus.” Nevertheless, both decrees indicate that the condemnation by the Church, together with the deposition of the clergy, *precedes* the due punishment by the secular court.⁹⁴

However, the *Glossa* sometimes encounters substantial difficulties as it tries to stress discretion in the legal procedures treating heretics. In the same decretal, *Ad abolendam*, Pope Lucius III strictly instructed that those who have abjured their heretical mistake or even completed penance assigned by their bishop, if convicted of relapsing into heresy, will be sent to secular courts without ecclesiastical sentencing. The following gloss, however, calls this strict ruling into question:

⁹¹This part, enclosed by “+,” was only added in the post-1263 redaction of the *Glossa* represented by MS Munich, BSB, Clm 26301 (fol. 201v). On the chronology of the *Glossa*'s thirteenth-century textual development, see note 4. In this and the following analyzed glosses (that is, *Glos. ord.* to X 5.7.9, *hearing [audientia]*), additions from later developments of the *Glossa* are important indicators of the evolution of Bernard's judicial thinking regarding the treatment of heretics.

⁹²X 5.7.13/15.

⁹³“Laici enim per ecclesiam condempnandi sunt de haeresi, sed iudex saecularis illum punire debet, nec trahitur laicus curiae seculari, sed clericus solummodo. *infra de verb. sig. novimus.* Quia laicus semper est de foro seculari, sed in casu isto +sententia debet ferri per ecclesiam:+ executio solummodo fit per saecularem iudicem. Qualiter tales puniri debeant, dicitur *infra e. excommunicamus.* +Ber.+”

⁹⁴X 5.7.13: “Excommunicamus et anathematizamus omnem haeresim, extollentem se adversus hanc sanctam, orthodoxam et catholicam fidem, quam superius exposuimus, condempnantes haereticos universos. . . . Dampnati vero praesentibus saecularibus potestatibus aut eorum ballivis relinquuntur animadversione debita puniendi, clericis prius a suis ordinibus degradatis.” X 5.7.15: “Excommunicamus et anathematizamus universos haereticos. . . . Dampnati vero per ecclesiam saeculari iudicio relinquuntur, animadversione debita puniendi; clericis prius a suis ordinibus degradatis.”

Glos. ord. to X 5.7.9, *hearing (audientia)*

Likewise [in] xxiii. d. in nomine Domini.⁹⁵ But if they wish to return, should they not be heard and accepted—since the Church does not close its bosom to those who wish to return to her? [See] C. de summa. Tri. inter claras. circa fi.⁹⁶, and indeed the Emperor says that we do not deny pardon for a crime to those who repent, [see] C. e. t. Manichaeos.⁹⁷ and de pen. d. iii. adhuc instant.⁹⁸ I properly believe that he should be accepted, since the Lord does not wish the death of a sinner,⁹⁹ +and [see] c. 26. q. 6. agnovimus.¹⁰⁰ + but that he should be converted, live,¹⁰¹ and be put into perpetual incarceration (*in perpetuum carcerem detrudatur*), [see] *infra*. e. c. penult.¹⁰² But a hearing is denied in terms of goods (*quo ad bona*), in case otherwise he would wish to defend himself. +<Despite Tancred's contradiction>,¹⁰³ today this [principle] is to be adhered to, as it has been handed down. [See] *infra*. eod. c. penult. §. si qui.¹⁰⁴ Ber.+¹⁰⁵

Admittedly, Bernard commented that once these people come back, they need to be put into perpetual incarceration (under the church), presumably in a monastery.¹⁰⁶ Perpetual incarceration or imprisonment would soon, if not already, become one of the most common sentences prescribed by medieval inquisitors. For instance, almost 50 percent of more than 600 penalties recorded in the famous Bernard Gui's register in the early fourteenth century are different forms of perpetual imprisonment.¹⁰⁷ While this ecclesiastical penalty does not necessarily mean that the imprisoned person will never be released, it certainly does not offer amicable conditions either. Pope Honorius III, in one decretal on apostates who abandon their religious habits,

⁹⁵Dist. 23 c. 1.

⁹⁶Cod. 1.1.8.35.

⁹⁷Cod. 1.5.4.6.

⁹⁸*De pen.* D. 3 c. 32.

⁹⁹Cf. Pope Innocent III's bull "Etsi Karissimus in Christo" from 1215: "[I]llo misericorditer inspirante qui non vult mortem peccatoris sed ut convertatur et vivat, tandem reversus ad cor." C. R. Cheney and W. H. Semple, eds., *Selected Letters of Pope Innocent III Concerning England (1198–1216)* (London: T. Nelson, 1953), 212.

¹⁰⁰C. 26 q. 6 c. 13, this allegation appears in post-1243 redactions, see MS BAV, Vat. lat. 1365, fol. 554v, MS BAV, Vat. lat. 1383, fol. 215v, MS BAV, Borgh. 237, fol. 184v, and MS Munich, BSB, Clm 26301, fol. 201v.

¹⁰¹This word only appears in F. Cf. Ezekiel 18:23.

¹⁰²X 5.7.15.

¹⁰³Texts within the pointed brackets have been added after 1243, as demonstrated on MS BAV, Vat. lat. 1365, fol. 554v.

¹⁰⁴X 5.7.15.

¹⁰⁵"Si. xxiii. d. in nomine Domini. Sed si volunt redire, nonne debent audiri et recipi: quia ecclesia non claudit gremium volentibus redire ad ipsam? C. de summa. Tri. inter claras. circa fi. Et delicti enim veniam penitentibus non negamus, dicit Imperator. C. e. t. Manichaeos. et de pen. d. iii. adhuc instant. Bene credo quod debet recipi, quia Dominis non vult mortem peccatoris, +etc. xxvi. q. vi. agnovimus.+ sed ut convertatur et vivat et in perpetuum carcerem detrudatur. *infra* e. c. penult. Sed audientia denegatur quo ad bona, vel si alias vellet se defendere. +<Tamen littera ista contradicit Tanc.>, hodie servandum est prout traditur. *infra* eod. c. penult. §. si qui. Ber.+" The part enclosed by "+" exists in post-1245 redactions.

¹⁰⁶See Jean Dunbabin, *Captivity and Imprisonment in Medieval Europe* (New York: Basingstoke, 2002), 144–158; and Guy Geltner, "Detrusio: Penal Cloistering in the Middle Ages," *Revue Bénédictine* 118 (2008): 89–108.

¹⁰⁷See James B. Given, *Inquisition and Medieval Society: Power, Discipline, and Resistance in Languedoc* (Ithaca, NY: Cornell University Press, 1997), 68–69.

summarized the situation of ecclesiastical incarceration as such: “to the extent that only a miserable life would be preserved for them, until their obstinacy would recover from wickedness.”¹⁰⁸ Nevertheless, the multiple allegations emphasizing mercy from the *Codex Justinianus* and Gratian’s *Tractatus de penitentia* imply that Bernard clearly still considered ecclesiastical reacceptance to be more lenient than secular judgment. Not unlike Pope Innocent III in X 5.40.27, the gloss associates the secular treatment with death, which, as a matter of fact, has been indeed prescribed in some contemporary secular law codes including the *Liber Augustalis*.¹⁰⁹ The *Glossa* agrees with X 5.7.9 that people relapsed into heresy should not be given the opportunity of another hearing to defend themselves, but indicates that the *audientia* is to be denied to the person *as far as his property is concerned*. In other words, the glossator was suggesting that the penitent sinner should be taken back by the church, but cannot retrieve his confiscated goods. The *Glossa* represented in F abruptly stops here. After considering and rejecting his teacher Tancred’s opinion in his revisions after 1243, however, in the end, Bernard decided to support Lucius III’s papal ruling in his comment by acknowledging that “today this [principle] is to be adhered to, as it has been handed down.”

But the very end of the post-1245 version of the gloss invokes X 5.7.15, a decretal from Pope Gregory IX in the same title, where the pope instructed that repentant heretics should be put into perpetual incarceration.¹¹⁰ Apparently, Gregory IX here was not ruling the same matter as Lucius III, but no more argumentation was added by the glossator to justify this allegation that contradicts his final line of comment in the gloss. It therefore almost seems as though Bernard was making a humble attempt through this confusing allegation to suggest that putting relapsed heretics, who again wish to return to the church, into ecclesiastical prison, still could be a potential option, rather than immediately and directly sending them to secular courts to face judgment and possibly capital punishment.

To what extent, in the end, did the *Glossa*’s inclination toward leniency influence the contemporary development of inquisitorial practice as well as literature, and the overall treatment of heretics? Surviving in hundreds of medieval manuscripts, Bernard’s *Glossa* with little doubt was well received in law schools and universities during the High and Late Middle Ages. Nonetheless, references to it in its contemporary inquisitorial literature such as inquisitors’ manuals and registers are few. And when indication of potential references appears, it often does not concern mercy. Moreover, the year 1239, when the possibly earliest dated manuscript of the *Glossa* (already surrounding the texts of the *Decretales* on the folios’ margins) was copied, saw the burning of 183 heretics at Mont Wimer by a former heretic and now Dominican inquisitor Robert le Bougre.¹¹¹ Around

¹⁰⁸X 5.9.5: “Ita, quod solummodo vita sibi misera reservetur, donec a suae praesumptionis nequitia respiscant.”

¹⁰⁹*Liber Augustalis* I.I.2: “[I]n erroris concepti constantia perseverent, presentis nostre legis edicto damnatos mortem pati Patarenos decernimus quam affectant, ut vivi in conspectu Populi comburantur flammaram commissi iudicio.” Huillard-Bréholles, *Historia Diplomatica Friderici Secundi*, vol. 4 (Paris: Henricus Plon, 1854), pt. 1, 7.

¹¹⁰X 5.7.15: “Dampnati vero per ecclesiam saeculari iudicio relinquuntur, animadversione debita puniendi, clericis prius a suis ordinibus degradatis. Si qui autem de praedictis, postquam fuerint deprehensi, redire noluerint ad agendam condignam penitentiam, in perpetuo carcere detrudantur.”

¹¹¹According to a contemporary chronicle written by a Cistercian monk, Aubry de Trois-Fontaines. See Aubry de Trois-Fontaines, *Albrici monachi Triumphontium Chronicon*, ed. P. Scheffer-Boichorst, in Georg Heinrich Pertz, ed. *Monumenta Germaniae Historica. Scriptores*, 23 (Hannoverae: Impensis Bibliopolii Aulici Hahniani, 1874), 944.

1266, the year when Bernard passed away, the Dominican master general Humbert de Romans—who once studied canon law in Paris—in a treatise claimed that heretics “multiply ways of going to hell by inventing new sects of errors (*vias descendendi ad infernum multiplicant, dum novas inveniunt sectas errorum*),” and that they deserve death.¹¹² The emphasis on the fabrication of new sects here reminds us of the *Glossa*’s definition of heretics discussed earlier in this article, but the sense of infusing mercy into the treatment of heretics is nowhere to be found.

The *Glossa*’s separation from its contemporary inquisitorial literature can be readily detected when one compares it with the two instructional/consultation texts, or *consilia*, composed by Raymond of Peñafort on dealing with heretics.¹¹³ In other words, these two documents were written by the compiler of the *Decretales* himself. Raymond composed the first *consilium*, that is, *Credo quod*, one year after the promulgation of the *Decretales*. It accompanied Gregory IX’s letters *Ex parte tua* to the archbishop-elect of Tarragona in April 30th, 1235. Considering that the promulgation of the *Decretales* through Gregory IX’s papal bull *Rex pacificus* happened on September 5, 1234, *Credo quod* appeared before the first edition of Bernard’s *Glossa*. Notably, it directly mentions that the church is pursuing Waldensians, and that they are handed over to the secular princes to be burned.¹¹⁴ Raymond’s second and more detailed *consilium*, *Queritur qui*, appeared in 1242, thus after the earliest edition of the *Glossa*. In this text, Raymond claimed that the bones of the heretics who are already dead should be exhumed and also burned (*extumulentur et comburantur*).¹¹⁵

Surprisingly, there is no trace showing that Bernard ever considered these two works as he composed and revised his *Glossa*. At least, the glossator cited neither of these two *consilia* as allegations. For instance, Raymond in *Credo quod* carefully instructed about the incarceration of the heretics, including details such as preventing the suspects communicating with the prisoners. When the *Glossa* mentions imprisoning the heretics, however, it simply rests upon X 5.7.15 as its sources.¹¹⁶ Similarly, what Raymond said without hesitation in his *consilia* regarding the burning of the Waldensians—whether alive or posthumously after exhumation—does not exist in the *Glossa* to X 5.7. The texts of X 5.7.3 and X 5.7.5 indeed prescribe posthumous condemnation, so does gl. *post mortem* (X 5.7.5). The gloss claims that because of the detestable nature of the crime of heresy (*in detestationem criminis*), even “after death one could be accused and excommunicated.”¹¹⁷ But still throughout its comment on X 5.7, the *Glossa* does not mention death penalty, nor posthumous burning. Similarly, there is little evidence suggesting that Raymond, when composing his second *consilium* in 1242, ever considered the *Glossa*, of which the first edition was already in circulation by then.

¹¹²See Marguerite de La Bigne, ed. *Maxima bibliotheca veterum patrum et antiquorum scriptorum ecclesiasticorum*, vol. 25 (Lugduni: Apud Anissonios, 1677), 556.

¹¹³For the edited texts of these two documents, see Parmeggiani, *I consilia procedurali per l’Inquisizione medievale*, 6–8 and 15–22.

¹¹⁴“ . . . Si quis recepit aliquando Valdenses credens illos esse bonos homines, licet sciret quod ecclesia sequeretur [Parmeggiani’s footnote here: “Evidentemente per persequeretur, come giustamente proposto nelle successive riedizioni.”] eos, et principes seculares igni traderent cremandos. . . .” *Ibid.*, 7.

¹¹⁵“Item si in inquisitione inveniatur aliquis hereticus vel insabattatus vel credens fuisse sepultus in cimiterio, ossa ejus extumulentur et comburantur, si possint discerni.” *Ibid.*, 19.

¹¹⁶See gl. *sponte recurrere* (X 5.7.9), gl. *audientia* (X 5.7.9), and gl. *potestatibus* (X 5.7.13).

¹¹⁷Gl. *post mortem* (X 5.7.5): “[E]nim speciale est in crimine haeresis, in detestationem criminis, ut post mortem possit accusari et excommunicari.”

However, a combination of the aforementioned *Glossa's* phrase condemning heresy, “*in detestationem criminis*,” and Raymond’s instruction of posthumous burning, seems to have become a model for contemporary and later inquisitorial literature and practice. The formula “*in detestationem criminis*” appears in none of the canons in the *Decretales*, nor in the later entire *Corpus iuris canonici*. But it was mentioned verbatim in *Processus inquisitionis*, that is, one of the earliest inquisitorial manuals (following Raymond’s *consilia*) by the mid-thirteenth-century inquisitors, Bernard de Caux and Jean de Saint-Pierre, regarding burning the bones of deceased heretics.¹¹⁸ Then, it appears again in a similar paragraph from the register of an inquisitorial trial in Carcassonne on February 22, 1325.¹¹⁹

Finally, back to the issue of death penalty. The *Decretales* and the *Glossa* never mention the burning of heretics. Such practice, however, certainly has been no stranger to the medieval Latin West since the burning of heretics at Orleans in 1022 under King Robert II the Pious.¹²⁰ Also, it would be difficult for us to imagine that Bernard would be ignorant of what Frederick II prescribed in his 1224 rescript for Lombardy, which is “the first law in which death by fire is contemplated,”¹²¹ or in his 1231 *Liber Augustalis* concerning the death penalty by fire against heretics. After all, one gloss from the *Glossa* to X 5.7.10 even cites a constitution against heretics from Frederick II on November 22, 1220.¹²² But still, unlike Raymond’s *consilia*, the *Glossa* emphasizes “the Lord does not wish the death of a sinner” and is clearly hesitant about sending heretics to secular courts, as demonstrated by this article. This sentiment apparently did not affect the Council of Narbonne in 1243/1244, which repeated the *Ad abolendam* that relapsed heretics are to be relinquished to secular judgment without further hearing.¹²³

Nevertheless, could it be due to the *Glossa's* encouragement to accept repentant, previously relapsed heretics back into the Church, or at least its emphasis on discretion in the judicial application of canonical decrees, that inquisitors Bernard de Caux and Jean de Saint-Pierre did not sentence relapsed heretics Pons Bladier, Pierre

¹¹⁸“Nos inquisitores, etc., visis ac diligenter inspectis et attentis culpīs ac demeritis talis superius notati, et defensionibus propositis pro eodem, et circumstantiis quas circa personas et dicta testium et alia considerari oportuit et attendi, adjunctis et assistentibus nobis talibus, etc., eundem talem, etc., definitive pronuncians, iudicamus hereticum decessisse atque ipsum et ipsius memoriam pari severitate dampnantes, ossa ejus, si ab aliis discerni poterunt, de cemeterio ecclesiastico exhumari simulque comburi decernimus in detestationem criminis tam nefandi.” Ad. Tardif and Fr. Balme, “Document pour l’histoire du ‘Processus per Inquisitionem’ et de l’Inquisitio Heretice Pravitatis,” *Nouvelle revue historique de droit français et étranger* 7 (1883): 677.

¹¹⁹“[D]eclaramus magistrum Arnaudum Morlana predictum per bec que contra ipsum invenimus bereticum fuisse et in sectam hereticorum detestabilem decessisse, precipientes eius ossa de sacris cimiteriis si possint discerni ab aliis fidelium ossibus exhumari et comburi in detestationem criminis tam nefandi, eius memoriam in futuro perpetuo damnantes.” Jean Duvernoy, “Le registre DDD de l’inquisition de Carcassonne 1325–1327,” n.d., 75, <http://jean.duvernoy.free.fr/text/pdf/DDD.pdf>.

¹²⁰See Michael Barbezat, “The Fires of Hell and the Burning of Heretics in the Accounts of the Executions at Orleans in 1022,” *Journal of Medieval History* 40, no. 4 (2014): 399–420.

¹²¹Joseph Blötzer, “Inquisition,” in *The Catholic Encyclopedia*, vol. 8 (New York: Robert Appleton, 1910), 30.

¹²²Gl. *exhaeredatio* (X 5.7.10): “Et hoc est expressum in constitutione Frederici, hac decret. quae olim erat in v compilatione eodem tit.”

¹²³“[I]llos qui post abjuracionem erroris seu purgationem, deprehensi fuerint in abjuratam haeresim recidisse: saeculari iudicio sine ulla penitus audientia relinquatis, animadversione debita puniendos.” Kurt-Victor Selge, ed. *Texte zur Inquisition* (Gütersloh, Germany: Mohn, 1967), 63.

d'Albigeois, Raymond Sabbatier, and others to secular courts on May 6, 1246?¹²⁴ In this sense, studying the *Glossa* prevents one from simply assuming the system of canon law as an integral machinery of a persecuting and suppressing society during the thirteenth century. Moreover, examining the *Glossa* can also shed light on the transmission and transition in the understanding of heresy by medieval lawyers, as demonstrated above through the case of the definition of heretics. Further tasks, therefore, await to investigate the *Glossa*'s influence upon both the canonical jurisprudence and the ecclesiastical-judicial treatment of heresy from the second quarter of the thirteenth century onward.

Yanchen Liu is a teacher of the University General Education of The Chinese University of Hong Kong (CUHK).

¹²⁴See Célestin Douais, *Documents pour servir à l'histoire de l'Inquisition dans le Languedoc*, vol. 2 (Paris: Renouard, 1900), 8–10.

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