

BETWEEN A ROCK AND A HOT PLACE: THE ROLE OF SUBJECTIVITY AND RATIONALITY IN THE MEDIEVAL ORDEAL BY HOT IRON

By IAN C. PILARCZYK

I. Policy and Procedure

i. Introduction

The ordeal played a prominent part in the adjudication of criminal matters in the early Middle Ages. Even at that time, however, the institution of the ordeal was often the subject of ardent controversy. Contemporary critics alleged that the ordeal was blasphemous as it demanded God's intervention, or that it was simply too susceptible to human manipulation. Part I of this article discusses the ordeal and the role it played in criminal procedure. Part II addresses the ambiguities and possibilities of manipulation in the interpretative and procedural aspects of the ordeal by hot iron. Part III discusses the influence the proband could exert on the results, both consciously or unconsciously. Lastly, Part IV analyses what it means to ask if the ordeal was rational, and concludes that the ordeal could be viewed as largely rational in the context of the early Middle Ages.

ii. Procedure of the ordeal

Prior to the advent of the thirteenth century, the ordeals by hot and cold water, battle, and hot iron were commonplace methods of criminal procedure. Commonly referred to as *Judicium Dei*, the ordeals were "solemn invocation[s] to heaven to decide the matter in dispute".¹ The ordeal by hot iron, one of the most prevalent of the ordeals in medieval Europe, flourished in the period between 800 AD and 1200 AD before fading into obscurity,

1. Bigelow, *History of Procedure in England* (1987), p.322.

largely as a result of the Fourth Lateran Council in 1215 which prohibited clerical participation in the administration of ordeals.²

The ordeal by hot iron was administered in two different forms. The ordeal by glowing ploughshares was the less common variant, in which the proband walked barefoot over a series of glowing ploughshares, usually 12 in number.³ The more usual variant consisted of the proband carrying a hot iron in his or her hands for nine measured feet. As "The Doom of King Aethelstan Regarding the Ordeal of Red-Hot Iron" illustrates, the ordeal procedures were quite standardized:

"If any one shall have given pledge to undergo the ordeal of iron ..., let him go three days beforehand to the priest whose duty it is to bless him with the sign of the cross; and let him live upon bread, water, salt and herbs, and hear mass each one of the three days; and let him make his offering and go to the holy communion on the day when he is to be examined by the ordeal; and before he is examined let him swear that by the law of the realm he is innocent of the charge ... Concerning the ordeal we enjoin in the name of God any by the command of the archbishop and of all our bishops that no one may enter the church after fire has been brought in with which the ordeal is to be heated except the priest and him who is to undergo judgment. And let nine feet be measured off from the stake

-
2. See, eg, Baldwin, "The Intellectual Preparation For the Canon of 1215 Against Ordeals" (1961) *Speculum* 36 [hereinafter *Canon*]; Bartlett, *Trial by Fire and Water* (1986), p.13. For a general discussion of ordeals in a largely non-European setting, see Goitein, *Primitive Ordeal and Modern Law* (1980); Roberts, "Oaths, Autonomic Ordeals and Power" (1965) 67 *Amer. Anthropologist* 186.
 3. See, eg, Lea, *The Ordeal* (1973), p.41. The most well-known account involves Queen Emma's successful defense against the charge of adultery, and is best considered apocryphal. See, eg, "Ordeals, Compurgation, Excommunication, and Interdict", in *Translations and Reprints from Original Sources of European History*, vol.IV, no.4 (1897), p.13 [hereinafter *Trans. and Reprints*]; Watts, *The Law's Lumber Room*, 3rd edn (1896), p.102 (referring to it as "a picturesque circumstantial and absolutely untrustworthy monkish account").

to the mark, by the feet of him who is to be tried ... And when the ordeal is ready let two men from each side go in and certify that it is as hot as we have directed it to be. Then let an equal number from both sides enter and stand on either side of the judgment place along the church, and let them all be fasting and abstinent from their wives on the preceding night. And let the priest sprinkle them all with water and let them bow themselves every one to the holy water and let the holy Gospel and the cross be given them all to kiss. And no one shall mend the fire any longer than the beginning of the hallowing, but let the iron lie on the coals until the last collect. Afterwards let it be placed on a frame, and let no one speak except to pray diligently to God, the Father Omnipotent, to deign to manifest His truth in the matter. And let the accused drink of the holy water and then let the hand with which he is about to carry the iron be sprinkled, and so let him go [to the ordeal] ... Then let his hand be sealed up, and on the third day let examination be made whether it is clean or foul within the wrapper."⁴

The proband spent three days in church with the clergy, fasting and attending mass. In all likelihood the proband was far from home, cloistered in the church responsible for performing the procedure. For those three days the proband essentially lived the life of a member of the clergy, being "liberally doused with holy water and transformed by long prayers of benediction into a prototype of the ancient righteous man delivered in times of tribulation".⁵ The weight of the iron was fixed at one or three pounds, depending on the severity of the offence; one pound in

-
4. *Trans. and Reprints, supra* n.3, p.12 (citing Thorpe, *Ancient Laws of England* I, p.226).
 5. Brown, "Society and the Supernatural: A Medieval Change", in (1975) 104 *Daedalus* 133, reprinted in (1982) *Society and the Holy in Late Antiquity* 302, 313. Morris, in his article "Judicium Dei: The Social and Political Significance of the Ordeal in the 11th Century", in (1975) 12 *Studies in Church Hist.* 96, 100, appears to be in the minority when he states that the proband was given holy water to drink prior to undergoing the ordeal, but this is evidenced by the procedure set out *supra* at n.4.

the case of the "simple ordeal" and three pounds in the case of the "triple ordeal".⁶ Before the proband picked up the iron, a bishop performed a benediction over the iron and sprinkled the iron with holy water, which sizzled as the holy water struck.⁷ The bishop's benediction might typically state:

"O God, lover and author of peace, Thou who lookest on the earth and causest it to tremble, look down we pray Thee on the faith and prayers of Thy supplicants, who have brought the causes of their complaint to Thy judgment. Send forth Thy blessing on this iron glowing with the fire to dissolve their contentions ... that by its agency, justice should shine abroad and evil-dealing be conquered."⁸

The proband's hand was washed and allowed to touch nothing before undergoing the ordeal,⁹ in order to contravene any attempt at manipulating the results. The proband then picked up the hot iron and carried it for nine measured feet before dropping it, probably none too hastily. As Brown states, "it was a dramatic and often a desperately cruel moment."¹⁰ The proband's hands were then wrapped and sealed for three days, to be unwrapped and examined in the presence of the clergy and accuser to ascertain whether the proband was guilty or innocent.

It would not overstate the point to emphasize that the psychological pressure brought to bear on the proband would

6. Lea, *supra*, n.3, p.41.

7. Hyams, "Trial By Ordeal: the Key To Proof in the Early Common Law", in *On the Laws and Customs of England* (1981), p.111 (citing Ordo, XVI.8 (1067-1210)).

8. Brown, *supra*, n.5, p.309 (citing *Registrum Varadiense* (Kakacsanyi and Borovszky eds. (1903), p.150). For a similar example, see Bartlett, *supra*, n.2, p.1 (citing Zeumer, *Formulae Merovingici et Karoliui Aevi* (1886), p.700).

9. See, eg, Lea, *supra*, n.3, p.42. Similar precautions were taken when a proband was to undergo the ordeal by glowing ploughshares.

10. Brown, *supra*, n.5, p.310.

be enormous.¹¹ As Colman summarized, the entire process was geared to exert psychological pressure, consisting of:

"carefully thought out preliminaries, attendance at special masses, abstinence from sexual intercourse the night before, and the state of fasting prescribed for all taking part; the impressive adjurations by the priest of the accused and of the inanimate elements during the ceremony; the references to Old Testament miracles in Daniel or Exodus; and finally the appeal to cherubim and seraphim, saints, apostles, and martyrs, and all the company of heaven, for aid in a miraculous demonstration of God's judgment."¹²

Every aspect of the rituals exhorted God to manifest divine judgment over the proband. The prayers characteristically referred to scriptural precedents of God controlling the elements in order to fulfill His will, such as "the Lord, the just judge, will free you, just as he snatched the three children from the burning fire."¹³ Perhaps the proband was brought to mass but warned not to accept the Eucharist if guilty, as he might choke.¹⁴ The

-
11. See, eg, Hyams, *supra*, n.7, pp.110-111; Brown, *supra*, n.5, p.138; Colman, "Reason and Unreason in Early Medieval Law", in (1974) 4 *J. of Interdisc. Hist.* 571, 588.
 12. Colman, *supra*, n.11, p.589. See also Plucknett, *A Concise History of the Common Law*, 5th edn (1956), p.114 ("In consequence we find the ordeal surrounded by Christian ceremonies which must, no doubt, have added considerably to its moral effectiveness - and perhaps even to its practical value as a psychological test of truth-telling."); Lea, *supra*, n.3, p.149.
 13. Bartlett, *supra*, n.2, p.21; see also Lea, *supra*, n.3, p.42 ("[T]he intervention of God was invoked in the name of all the manifestations of Divine clemency or wrath by the agency of fire - Shadrach, Meshach, and Abednego, the burning bush of Horeb, the destruction of Sodom, and the day of judgment.")
 14. I would argue that the taking of the Eucharist itself might be viewed as an ordeal within an ordeal, as the taking of the Eucharist may be seen as similar to the ordeal by morsel. Morris may allude to this when he writes that "communion itself became an ordeal, a practice common in the tenth and eleventh centuries ..." *Supra*, n.5, p.99. For a brief description of the ordeal by morsel, see *infra*, n.87 and accompanying text.

clergy might even hold a mortuary mass, considered to "possess deadly powers of peculiar efficacy" when sung for the living.¹⁵ A mortuary mass would further act as to remind the proband that he or she was not facing mere human judgment, but the judgment of God. Thus, throughout the entire procedure, "the theme of no escape for the wicked thunders out; the keeper of truth and guardian of the weak will make evident any maleficia, and thwart all diabolic attempts to subvert the proof".¹⁶

Under this relentless barrage, and coupled with an understandable human tendency to be anxious at the prospect of picking up a glowing iron, only the most self-assured would not succumb. In the context of the ordeal by boiling water, Lea writes:

"In those ages of faith, the professing Christian, conscious of guilt, must have indeed been hardened who could undergo these awful rites, pledging his salvation on his innocence, and knowing under such circumstances that the direct intervention of Heaven could alone save him from having his hand boiled to rags, after which he was to meet the full punishment of his crime, and perhaps in addition lose a member for the perjury. With such a prospect, all motives would conspire to lead him to a prompt and frank acknowledgement in the early stages of the proceedings against him."¹⁷

Indeed, some probands chose to flee rather than face divine judgment. In the thirteenth century registry of the Hungarian town of Varad, 120 are recorded as having lost their nerve before undergoing the ordeal¹⁸ while 12 more fled before their wounds could be examined.¹⁹

15. Lea, *supra*, n.3, p.148.

16. Hyams, *supra*, n.7, p.111.

17. Lea, *supra*, n.3, p.149.

18. Brown, *supra*, n.5, p.314 (citing Zatjaj, *Le Registre de Varad*, pp.541, 546).

19. *Id.*, p.315 (citing Zatjaj, p.547).

iii. *The role of the ordeal in the early Middle Ages*

In order to comprehend the place of the ordeal, one must first analyse the system of justice prevalent in Europe in the early Middle Ages. Normal criminal procedure consisted of an accuser, who not only brought forth the accusation and offered proof thereof, but also bore the consequences for failing to do so. The ordeal itself was an extraordinary method of proof, "not to be permitted except where the naked truth cannot otherwise be explored".²⁰ The ordeal was used when there was not only a paucity of witnesses, but also no specific accuser.²¹ As such, the crimes most often tried by the ordeal were crimes of stealth, those exhibiting a "common tenacious opacity".²² Such crimes included adultery, disputed paternity, arson, murder, burglary, witchcraft, and heresy. The ordeal may therefore be viewed as a tool used in situations where certainty was impossible but uncertainty was intolerable.²³

Some scholars have suggested an alternative way of categorizing cases which were tried by the ordeal, suggesting that the ordeal was used when the cases were so grave as to be beyond the possibility of just recompense, or when the parties involved were inherently disqualified from having the benefit of

-
20. Bartlett, *supra*, n.2, p.26; see also Hall, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* (1965), p.171 ("Let the truth of the matter be brought out by many and varied questionings, to be made before the justices ... [but if not absolved, let the proband be] made to purge himself by the ordeal."). But see Southern, *The Making of the Middle Ages* (1953), p.96 ("[There was] a tendency to fly to the ordeal in all matters of doubt whatsoever").
21. See Bartlett, *supra*, n.2, p.29.
22. *Id.*, p.33.
23. *Id.* See also Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and his Circle* (1970), p.323 ("They were often designated as judgments of God because they required direct divine intervention into the judicial process, and were particularly useful when normal means of proof were unavailable or inconclusive. To the Judge of the early Middle Ages the ordeal was the philosopher's stone which, as if by miracle, could decide the vexatious uncertainties of the legal process") [hereinafter *Masters*]; Colman, *supra*, n.11, p.583.

other procedures.²⁴ Probands could be disqualified on the grounds of foreign or unfree status, prior perjury convictions, or the inability to find a sufficient number of compurgators to swear to the truth of their claims.

Both categorizations may be somewhat limiting. Crimes such as murder, heresy, treason, disputed paternity and burglary all presented difficult questions of adjudication, and it was precisely for this reason that such cases amounted to "threats to that internal cohesion which was essential to the well-being and security of the community", thereby being "intolerably antisocial".²⁵ In a feudal and rigidly hierarchical society with no strong, central authority, such offences undermined stability. Given the importance of adjudicating such cases and the absence of witnesses or other requisites, the ordeal allowed for an outcome and promoted social order.²⁶

In this context, the ordeal takes form as a controlled miracle, used to adjudicate temporal matters of controversy.²⁷ The ordeal by hot iron was unilateral, pitting the proband against the natural elements. The underlying premise was that the natural elements were subverted at God's behest, thereby condemning the guilty and vindicating the innocent. Like many human endeavours, however, the ordeal was affected by both the proband's desire to ensure a favorable outcome and the tendency of those administering it to influence the result.²⁸ In addition, the ordeal

24. See, eg, Morris, *supra*, n.5, p.96 (categorizing such cases as including "the refusal of the oath-helpers to swear; the grave or the private character of the crime; or ... the low social standing of the accused"). See generally Helmholz, "Crime, Compurgation and the Church Courts" (1983) 1 *Law & Hist. Rev.* 1.

25. Colman, *supra*, n.11, p.583.

26. See, eg, Roberts, *supra*, n.2, p.208.

27. Brown, *supra*, n.5, p.308.

28. See, eg, George Riley Scott, *A History of Torture* (reprinted 1995), p.228 ("The fact that so many persons proved their innocence by appealing to this form of ordeal and escaping without burns, suggests either knowledge of some method of protecting the skin ... or collusion between the accused and the officiating priest.") But see Radding, "Superstition to Science: Nature, Fortune, and the Passing of the Medieval Ordeal" (1979) 84 *Amer. Hist. Rev.* 945, 947 ("[I]t is hard to believe that, if such manipulations were taking place on a large scale,

reflected the inherent subjectivity involved in interpreting results which, in some way, were supernatural in origin.²⁹

As one account tells us:

"A slave arrested for an unspecified crime was brought to trial before Eadric the reeve, and sentenced to the ordeal by the hot iron. Eadric ordered that the slave be kept in custody until his master Flodoald, a well-known foreign merchant from Winchester, could be present to witness the proof ... Arrogant Eadric had his men 'bank the fire unusually high' and ordered a heavier iron than was customary. At the appropriate moment in the ritual, the slave lifted the iron and experienced immediate, searing pain, apparently increased by a guilty conscience. Nevertheless, the prescribed procedure was followed: the hand was bound for re-examination after three days. By now Flodoald despaired, and ... turned to prayer as a last resort, offering the slave to St Swithin if God could be persuaded to preserve him. The bandages were unwrapped and a clean (*mundus*) hand was revealed. The astounded reeve and his cronies had to admit: this man is not guilty ... The rest of the on-lookers were even more amazed, for they could clearly discern the signs of guilt, the pus and decay on the hand."³⁰

suitors would not have complained of unfairness or deviation from custom.") I believe they probably did complain, as the accounts in this article seem to suggest. Hyams, for example, seems unwilling to concede that such complaints indicate widespread manipulation. He states that "in every system of law, failed litigants blame their woes on fraud and mismanagement, or anything else except their own lack of a good case." *Supra*, n.7, p.103.

29. Brown, *supra*, n.5, p.315, points to *Tristan* as illustrating the "cunning with which medieval men actually faced and manipulated the supernatural in their affairs". See also Bartlett, *supra*, n.2, p.18.
30. Hyams, *supra*, n.7, p.93 (citing *Frithegod's Monachi Breviloquium Vitae Beati Wilfredi et Wulfstani Cantoris Narratio Metrica De S. Swithino* (Campbell ed. (1950)), p.150.

This account offers a glimpse into a procedure wherein the party administering the ordeal could attempt to manipulate the outcome by using a heavier iron or heating it excessively. Furthermore, it illustrates how the results could appear to unequivocally show guilt, yet be interpreted liberally so as to vindicate the proband. Also interesting is Eadric's acquiescence in the result, perhaps indicative of God's intervention - not intervention in the result itself, but in the manner in which the result was interpreted.

II. Issues of Interpretative and Procedural Subjectivity

i. Interpretative subjectivity

The ordeal by hot iron indicated guilt or innocence by reference to the injuries sustained by the proband. There were, however, no clear stipulations as to what injuries would constitute guilt. The inherent ambiguity of the ordeal procedure could mean that a finding of guilt was dependent on whether the proband sustained any visible burn at all, or, alternately, whether the burn had become infected.

Some accounts indicate that the test was whether there were any signs of injury following the ordeal, as "a blister found on the hand was sufficient for conviction, in some cases at least".³¹ For example, the registry of Varad indicates guilt was ascertained by examining whether the probands were burnt.³² In addition, there are accounts of the ordeal which refer to probands emerging unscathed.³³

However, simple physics leaves doubt that this was the common standard. To provide a frame of reference, contact with water heated to 155 degrees fahrenheit - considerably below the boiling temperature of 212 fahrenheit - will result in a serious burn in approximately one second.³⁴ Iron, however, glows at

31. *Eng. Hist. Rev.* III, p.159; see also *Trans. and Reprints, supra*, n.3, p.12.

32. See, eg, Hyams, *supra*, n.7, p.100, n.43 ("At the hot iron of Varad, Hungary, a proband was either *justificatus* or burnt.")

33. For an example, see *supra*, n.45 and accompanying text.

34. *Clinical Burn Therapy* (Hummel ed. (1982)), p.531.

nearly 10 times that temperature.³⁵ Given the high temperatures involved in the ordeal, coupled with the likelihood of infection³⁶ and the high acquittal rate which the surviving records indicate were the norm,³⁷ it is safe to assume that the clergy were not grappling with the issue of whether a burn was sustained, but rather whether it was healing cleanly. This assumption is confirmed by the majority of surviving accounts which frame the issue in terms of whether the burn was unclean, ie, whether it was without "suppuration or discoloration".³⁸

After only three days to heal under less than optimal conditions, however, what constitutes "normal healing" of a burn would remain ambiguous.³⁹ This ambiguity may be illustrated by an Icelandic account of the ordeal by hot iron undertaken by Fridgerd to resolve an issue of disputed paternity:

"Eyjolf volunteered to examine the ordeal. He saw it was obvious that their opponents still wished to interfere with the procedure 'and so one must be all the more careful to make an exact examination'. Thorkel came and now the

-
35. *The New Encyclopaedia Britannica* vol.21, 15th edn (1993), p.425. Iron becomes malleable at 1100-1300 degrees fahrenheit, and begins to undergo chemical change at 1650 degrees fahrenheit.
 36. See *infra*, n.68 and accompanying text.
 37. Approximately half of the probands who underwent the ordeal were vindicated, at least in the waning years of the ordeal's existence. See, eg, Baker, *An Introduction to English Legal History*, 2nd edn (1990), p.6.
 38. Bartlett, *supra*, n.2, p.1. However, an intriguing possibility is that excessive heating of the iron could actually *lessen* the possibility of injury. Scott makes passing reference to this possibility when referring to a similar ordeal which involved the proband's licking of a red-hot spoon. See Scott, *supra*, n.28, p.230 ("Burckhardt and others, in relation to the hot-iron ordeals, have stated that if iron is heated to such a degree that it is white-hot rather than red-hot, it can be 'licked' with safety ...") (citing the *Encyclopaedia Britannica* and Hastings' *Encyclopaedia of Religion and Ethics*).
 39. Brown, *supra*, n.5, p.316 (citing Cantor, *Verbum abbreviatum*, ch.78, Migne, PL, CCV, 239A). But see Radding, *supra*, n.28, p.949 ("It is at least possible that the Judges knew what they were looking for when they interpreted ordeals. Early medieval courts do not seem to have fallen into disagreement when pronouncing the judgment of God, or, if they did, the disputes have not come down to us.")

bindings were unwound from [Fridgerd's] hands. The priest did not give his judgment immediately. Then Thorkel said, 'What sort of degenerate are you, that you don't say she is badly burned!' And he designated himself a witness for that fact. The priest said, 'This is a heavy-handed action, to appropriate the sentence for yourself and take it out of my hands, when I should make the decision! We must have another and clearer proof.' Eyjolf answered, 'The result cannot be clearer. But because of your hostility and the bribes you have taken, I will demand compensation worth as much as my patrimony'.⁴⁰

This account demonstrates the ambiguity present in evaluating the results of the ordeal: the priest hesitates in pronouncing judgment, Thorkel is adamant that Fridgerd has failed the ordeal, and Eyjolf - equally convinced that Fridgerd has been vindicated - accuses the priest of overt favouritism and corruption. The clergy, by benefit of the essential role they were accorded in the ordeal, were uniquely situated to affect the result.⁴¹ After having spent three days before and after the ordeal with the proband in confession, contemplation and prayer, the clergy would undoubtedly have formed an opinion as to the proband's guilt or innocence. Community opinion was also a strong force, and the clergy would have felt obligated to ensure that justice was done.⁴²

-
40. Bartlett, *supra*, n.2, p.40 (citing "Ljosvetninga Saga", cap.23, *Fünf Geschichten aus dem Östlichen Nordland*, Ranisch tr. (1921)), pp.195-196.
41. See, eg, Van Caenegem, *The Birth of the Common Law*, 2nd edn (1988), p.69 ("Much in the ordeal of the hot iron depended on the clergy and they may have been inclined not to be too strict when forest offences were concerned") [hereinafter *Common Law*]; Plucknett, *supra*, n.12, p.114, ("[T]here was also obviously the possibility of the priest manipulating the ordeal, and Peter the Chanter ... suggests that he had some sort of moral responsibility for the rightness of the result.")
42. See, eg, Baker, *supra*, n.37, p.6 ("There is some evidence that those who administered ordeals ... began to feel a responsibility to facilitate the result they considered right: for instance, by letting the iron cool in cases where suspicion was weak, or by interpreting a burned hand liberally.")

ii. Procedural subjectivity

The story of Flodoald's slave illustrates, furthermore, that those overseeing the ordeal could attempt to affect the outcome by the manner in which it was administered.⁴³ So often did the clergy manipulate the results, they had to be ordered not to "mishandle ordeals".⁴⁴

An example of clerical manipulation of procedure is shown by the account from 1098 of King William Rufus, who subjected 50 Saxons to the ordeal in the hope of confiscating their lands:

"Some 50 men, who in those days seemed still blessed with some traces of wealth from the old English nobility, were apprehended and falsely accused of having taken, killed and eaten the king's deer. They denied it. Thereupon they were promptly hauled off to the seat of judgment where judgment was given that they must clear themselves of the accusation brought against them by the ordeal of the red-hot iron. So a day was fixed, and without scruple or mercy they were made to undergo the punishment prescribed by that judgment. It was a pitiful sight. But Almighty God, whose mercy and judgment are celebrated in the psalter of David, by mercifully preserving the hands of all of them from burning made clear to all their innocence, and by His just judgment declared how unjust was the malice of the men who so wickedly sought to ruin them. When the king was told that on the third day after the ordeal these men who had been condemned all presented themselves in a body with hands unburnt, he is said to have exclaimed in disgust: 'What is this? God a just Judge? Perish the man who after this believes so. For the future, by this and that I swear it, answer shall be made to my judgment, not to

43. For instance, Rembar in *The Law of the Land* (1980), p.108 writes that "we can reasonably assume that the management of ordeal ... was now and then diverted from the hand of God to the mind of man. It is not difficult to imagine openings for the intrusion of reality, or of mercy, or corruption."

44. Bartlett, *supra*, n.2, p.41 (citing "Northumbrian Priests' Law", cap.39, in *Councils and Synods*, p.460).

God's, which inclines to one side or the other in answer to each man's prayer'.⁴⁵

This example illustrates several things: first, the ordeal was described as a "pitiful sight", once again demonstrating the potential for abuse in the ordeal; second, it provides an example of an instance when the probands were not only deemed vindicated, but were unburnt. It seems virtually certain that the clergy were responsible for this mass acquittal, possibly as a result of allowing the iron to cool.⁴⁶ Factors such as the heat of the iron were integral; for instance, the iron could be heated to an unusually high temperature.⁴⁷ Conversely, the iron could be allowed to cool off⁴⁸ or simply not be heated to full redness.

While some procedures explicitly required that the fire not be stoked (thereby lessening heat transfer), generally there were no standards specifying the length of time for which the iron was to be heated or carried in order for the ordeal to be valid.⁴⁹

-
45. 106 Seldon Society, *English Lawsuits From William I to Richard I*, vol.I (1990), p.122; see also Van Caenegem, "The Law of Evidence in the Twelfth Century", in *Proceedings of the Second International Congress of Medieval Canon Law* (1985), pp.297, 309 [hereinafter *Evidence*]; Lea, *supra*, n.3, p.49.
 46. See, eg, *Pipe Roll*, 21 Henry II, *Pipe Roll Society* vol.22 (1897), p.131; Rembar, *supra*, n.43, p.108 ("It is a statistic that must owe something to human interference."); Brown, *supra*, n.5, p.116, n.140.
 47. Similarly, the water could be heated to a raging boil in the ordeal by hot water. See, eg, Brown, *supra*, n.5, p.315 ("[T]he rivals of the Monks of Angers had kept their opponents talking until the cauldron boiled to a higher temperature") (citing Marchegay, *Archives d'Anjou* (1843), p.474); Hyams, *supra*, n.7, p.93, n.16 (referring to an ordeal where "the water was boiled *ultra statutum morem*"). But see *supra*, n.38, suggesting excessive heating of the iron might work to the proband's benefit.
 48. See, eg, *Pipe Roll*, *supra*, n.46, p.131.
 49. See, e.g., Colman, *supra*, n.11, p.589. For an example of a procedure providing some specific guidelines, see *supra*, n.4 and accompanying text ("And no one shall mend the fire any longer than the beginning of the hallowing, but let the iron lie on the coals until the last collect"). The term "hallowing" refers to the beginning of the prayers said prior to the ordeal, while the "last collect" indicates the concluding prayer. Morris is in the minority when he states that "it seems there were conventions about how long the iron and water should be heated, and although hot,

Furthermore, other factors such as the temperature inside or outside the church could affect the speed with which the iron cooled off. Despite the high temperatures involved in the ordeal, such ambiguities could alter the results, particularly if coupled with other factors. In situations where there were multiple probands undergoing the ordeal, other subjective elements could come into play. Peter the Chanter stated that "occasionally, when several criminals were examined together, the same piece of heated iron was borne by them successively, giving a manifest advantage to the last one, who had to endure a temperature considerably less than his companions."⁵⁰

It is worth noting that clerical manipulation of the ordeal need not be viewed as cynical. Clergy were believed to possess special interpretative powers of God's law on earth. As such, the clergy would have felt that they were especially adroit at ascertaining God's judgment of guilt or innocence. Furthermore, the clergy felt that it was their role to facilitate a just result, particularly in the waning days of the ordeal when its potential for oppressive use was well known.⁵¹ As Colman states, ordeals "allowed wide scope for manipulation ... [and] it is very likely that there was much elasticity in their conduct".⁵² The administration of the ordeal therefore may have reflected a community consensus on both the desired severity of the ordeal as well as the desired outcome.

Sporadic attempts to provide procedural safeguards give further proof that ordeals were being manipulated. Such safeguards included requirements that three persons be chosen by each side to prevent collusion, that three sworn witnesses should be present to attest to the outcome, and that a proband accompanied by more than 12 supporters should be deemed to

they were not impossibly so." *Supra*, n.5, p.98.

50. Lea, *supra*, n.3, p.43 (citing Petri Cantor, *Verb. Abbreviat* cap. lxxviii (Patrol. ccv. 233)); see also Baldwin, *supra*, n.2, p.629. However, as this account suggests, such a procedure would likely have been exceptional.

51. See, eg, Baldwin, *Masters*, *supra*, n.23, p.329 ("[I]n practice priests could hardly remain neutral throughout the procedure, but tended to become implicated in the decision and the condemnation.")

52. Colman, *supra*, n.11, p.590.

automatically fail the ordeal.⁵³

III. Issues of Personal Subjectivity

The proband, while in a position much less amenable to affecting the results of the ordeal, could also exert some influence on the outcome, although not always consciously. In a largely agrarian society any farmer or manual labourer would have had the benefit of calluses, rendering his hand less susceptible to burns. This fact led Peter Cantor to write that "innocence is too closely connected with calluses".⁵⁴ The same may be said of the ordeal of glowing ploughshares, as "some medieval feet would obviously have a better chance than others to make it across".⁵⁵

Additionally, there was some possibility of prior preparation. Probands practised immersion in water prior to the ordeal by cold water, and used alcohol or other agents to protect their arms in the ordeal by boiling water.⁵⁶ Likewise, some probands may

53. Lea, *supra*, n.3, pp.159-160 ("A rule ... that if the accused is accompanied by more than 12 comrades he shall be adjudged as though he had failed in the ordeal, points to an obvious source of miscarriage of justice by which a crowd of partisans could interfere with the proceedings and then proclaim that the result had been successful") (citing *Martene de Antiq. Eccl. Rithbus* Lib. III. c. vii. Ordo I).

54. Radding, *supra*, n.28, p.945; see also Baldwin, *Canon, supra*, n.2, p.629. For a general account of Peter the Chanter's views on the ordeal, see Baldwin, *Masters, supra*, n.23, pp.323-332.

55. Colman, *supra*, n.11, p.589.

56. See, eg, Bartlett, *supra*, n.2, p.71 (referring to a proband who "spread his arm with oil and covered it with ointment"). Scott, *supra*, n.28, p.230: "In reference to the apparently miraculous phenomenon of a person being able to plunge the naked hand into boiling liquid, there may be an explanation available. According to Voltaire, at the time when the ordeals of this nature were so generally used, there were many persons in possession of a secret method of plunging the hand into boiling water with impunity. This method consisted to rubbing the skin with spirit of vitriol and alum mixed with the juice of onions."

Scott goes on to say that "I have no knowledge of the power of the chemical preparation referred to by Voltaire ... but many years ago, in relation to a very different matter, I was assured by an old tar-boiler that it was possible, once one acquired the knack, to dip one's finger into

have sought protection by applying an unguent to their hands prior to the ordeal. The ingredients of such an unguent were given by Albertus Magnus, consisting of "mallow and radish juice, white of egg, lime and psillus seeds", said to enable the proband to carry the hot iron without injury.⁵⁷ In all likelihood such practices would have been common if not prevented.⁵⁸ Procedural precautions often required that the proband's hands be wrapped and sealed for three days prior to the ordeal, or be washed prior to undergoing the ordeal. It is at least possible that some probands could have availed themselves of unguents or other agents, with or without the knowledge of the clergy administering the ordeal.

The proband also had other possibilities to manipulate the outcome. As Van Caenegem has written, "success in the ordeal of the hot iron depended on [such] ... tricks such as having a holy host in one's hand or blessed ointment on it ..."⁵⁹ This reference to a holy host is verified by an account revealing that a proband had surreptitiously removed the consecrated host from his mouth and put it in his hand prior to picking up the iron.⁶⁰ Query as to whether the proband was trying to avail himself of whatever protection he could get by interposing the host between his bare skin and the hot iron, or whether he had hoped the consecrated host would offer him divine protection. Any other object would have offered as good - or even better - protection, but the consecrated host was the only object the proband was given before undergoing the ordeal. Perhaps both thoughts played in his mind, for reality in the early Middle Ages was heavily permeated by mysticism.⁶¹ For instance, the proband could also

boiling tar without suffering any ill effect." *Id.*, p.230, n.4.

57. Lea, *supra*, n.3, p.162.

58. Lea interestingly concludes that "doubtless, reliance on some such expedients may partially explain the readiness with which the ordeal was undertaken." *Id.*

59. Van Caenegem, *Evidence*, *supra*, n.45, p.307; Morris, *supra*, n.5, p.102.

60. Morris, *supra*, n.5, p.102 (citing *Regestrum de Varad*, p.723).

61. See, eg. Lea, *supra*, n.3, p.161 ("[I]t was generally believed that a criminal who drank the chrism or anointed himself with it could not be convicted by any ordeal."); Bartlett, *supra*, n.2, p.71 ("Concern that the results could be interfered with through magic was recurrent. Laws directed against

have used "blessed ointment", either as an unguent or for spiritual protection. Indeed, the real concern among those administering the ordeal may have been with magical interference, rather than with temporal manipulation.⁶²

The speed with which the proband carried the iron could theoretically affect the outcome, but it is unlikely that this alone would have had any significant impact. While it would be unreasonable to expect that most probands slowly walked the nine measured feet before depositing the iron on the ground, at such high temperatures burns would normally be sustained immediately upon contact.⁶³

Anxiety also played a part in the procedure.⁶⁴ Robert's explanation states that:

"The walls of the peripheral blood vessels are under the control of the autonomic nervous system which may be influenced by suggestion. Certainly there appears to be a relationship between suggestibility and blistering as various studies in hypnosis have shown, and blisters are said to have appeared in some psychoanalytic sessions with anxious subjects ... The behaviour of scratches on the skin are related to the autonomic nervous system and particularly to the relaxability of skeletal musculature and

the abuse of chrism for this purpose, the stripping of the proband of the amulets, the repeated exorcisms in the rituals, all point to ... precautions against magical or diabolical interference.")

62. See, eg, Morris, *supra*, n.5, p.102 ("[They were] only a little worried by the possibility of fraud in our sense. A more serious danger was that spiritual or magical powers might disrupt the course of justice.")
63. See *supra*, pp.96-97. Originally I had wondered by what standard the "nine measured feet" were gauged and if this could also play some part in deciding the proband's chances of success. See *supra*, n.4 and accompanying text, as an example of a procedure which stipulates that "nine feet be measured off from the stake to the mark, by the feet of him who is to be tried".
64. See Colman, *supra*, n.11, p.589 ("[W]e do not, however, find it difficult to accept the findings of modern medical experience that mental states can produce marked physical, and sometimes instantaneous, effects.") But see Bartlett, *supra*, n.2, p.161 ("[I]t would require a considerable physiological alteration to have much impact on the experience of picking up a hot iron.")

... these responses are also related to antecedent psychological states. If blistering is related to suggestibility and to anxiety, the subjects of legal ordeal might well be differentiated on the basis of guilt or innocence."⁶⁵

Anxiety could also affect more than mere blistering. The anxiety which often accompanies deception may manifest itself through physiological alterations in blood acidity, hydrogen-ion concentrations in perspiration, and electrodermal changes.⁶⁶ These same physiological changes could also render the proband more susceptible to infection.⁶⁷ Blood acidity increases as a result of extreme stress on the system, concomitantly increasing the likelihood of infection. Similarly, perspiration alters skin pH and hence the rate of infection. Infection would be the bane of any proband sustaining burns, as infection typically sets in between one and three days, depending on the severity of the burn.⁶⁸ Given the likelihood of infection, psychological factors could very well increase the speed or severity with which infection set in,

-
65. Roberts, *supra*, n.2, pp.206-207; see also *Psychology of Physical Illness* (Bellak ed. (1952)), p.191 ("The skin is influenced by the autonomic nervous system ... [which is] related to cerebration.")
66. See Trovillo, "A History of Lie Detection" (1939) 29 *J. Crim. Law* 848; 30 *J. Crim. Law* 104, 112-113. Trovillo also makes reference to medieval ordeals, but discounts their efficacy in psychologically determining guilt, stating that "it will be noted that in many instances of the ordeal, the ordeal technique is not based on any peculiar insight into the psychological processes underlying awareness of guilt; rather, it arises out of superstition and religious faith ... It is doubtful that the ordeal arose upon the basis of observations of physiological changes occurring in deception; for if this were so, many false observations must have been made." *Id.*, pp.850-851.
67. See, eg, *Stress and Human Health* (Elliott and Eisdorfer eds. (1981)), p.271 ("streptococcal infections occur more frequently following stressful life events.")
68. See, eg, Hummel, *supra*, n.34, p.336 (stating that all severe burns are colonized by streptococci bacteria within 24 hours); *The Art and Science of Burn Care* (Boswick ed. (1987)), p.104 ("[B]urn wounds are invariably contaminated with microbes ... progress[ing] to heavy colonization during the first few days.")

thereby affecting the outcome of the ordeal.⁶⁹

IV. Rationality

While some contemporary historians have been more beneficent in their appraisals of the ordeal, historians have traditionally derided the ordeal as being fundamentally irrational.⁷⁰ For example, Robertson wrote that "among all the whimsical and absurd institutions which owe their existence to the weakness of human reason, [trial by ordeal], which submitted questions that affected the property, the reputation, and the lives of men, to the determination of chance, or of bodily strength and address, appears to be the most extravagant and preposterous".⁷¹ Plucknett, for his part, stated that ordeals "can only be described as irrational".⁷²

While it would be nonsensical to suggest that the ordeal was an ideal of fairness and reliability, the tendency to be capriciously dismissive of the ordeals has been largely - and, I believe, wisely - left behind. In order to discuss the rationality of the ordeal, however, one must first define what is meant by "rationality".

69. A more comprehensive analysis of the intricate (and not wholly understood) relation between anxiety, stress and human physiology is beyond the scope of this paper. Interesting issues arise on peripheral issues such as the relationship between pain and anxiety, prompted by the account of Flodoald's slave, *supra*, p.95 ("[T]he slave lifted the iron and experienced immediate and searing pain, apparently increased by a guilty conscience ...") On the relationship between stress and physiology, see generally, *Dynamics of Stress* (Appley and Trumbell eds. (1986)).

70. But see Rembar, *supra*, n.43, p.106 ("[It is] a symptom of a pitiful human weakness, distrust of our minds and senses.") He goes on to say that "whatever else it may have been, one thing I think is clear: ordeal was institutionalized sadism. If it were only the appeal to heaven of an unsophisticated folk, if the judgment was humbly left to God, the procedures were peculiar. God has innumerable ways of signalling his decision without demanding burning flesh." *Id.*, p.106.

71. Robertson, "A View of the Progress of Society in Europe", in *The History of the Reign of the Emperor Charles V* (1802), p.60, I, s.I.

72. Plucknett, *Edward I and the Criminal Law* (1959), p.69.

i. Did the ordeal achieve a specific goal?

Typically, historians who concluded that the ordeal was irrational assumed that the purpose of the ordeal was to detect guilt or innocence, and that it failed to do so in any understandable, empirical way. However, the ordeal could have served other purposes than merely ascertaining the truth in matters of controversy.

Asking whether the ordeal was rational may be to inquire whether the ordeal achieved a specific goal. It is apparent that the ordeal may have accomplished several different purposes. First, the ordeal was intended to deal with especially unyielding cases and seek out concealed guilt. As such, the ordeal enabled the judicial process to continue in circumstances where otherwise it would have been immobilized.⁷³ Whatever other faults the ordeal may have had, it rendered a conclusive judgment, especially prized when the matters requiring adjudication were difficult.⁷⁴

Second, the ordeal may have minimized societal discord.⁷⁵ Europe in the early Middle Ages was an uncertain and dangerous place, wherein people usually resided for all of their lives in a small community. There was no strong central authority, and as

73. Bartlett, *supra*, n.2, pp.158-159. See also Colman, *supra*, n.11, p.583.

74. See Lea, *supra*, n.3, p.153 ("Judicially, the trial was, for the most part, conclusive; he who had ... walked unharmed among the burning shares, or withdrawn an unblistered hand from a cauldron of legal temperature, stood forth among his fellows as innocent ... even now, the verdict of a few fools or knaves in a jury-box may discharge a criminal, against the plainest dictates of common sense, but in neither case would the sentiments of the community be probably changed by the result.") Bartlett, however, claims it is "true but trivial to say that the main end of the ordeal was to produce a result." See *supra*, n.2, p.159.

75. See, eg, Hyams, *supra*, n.7, p.97 ("[I]n this more localized world of the ordeal, the goal is as much 'to make a balance' and re-establish a workable peace with the community as to redress any specific grievance."); Brown, *supra*, n.5, pp.310-311; Colman, *supra*, n.11, pp.573-574.

such, conflict between families propagated the blood feud.⁷⁶ As Brown writes:

"[T]he greatest explicit ideal of the early Middle Ages is a minimal one of peace and, above all, concord: this amounted to the maintenance of a minimal consensus in a face-to-face society built up of evenly balanced family groupings. In such a society the ordeal takes on its meaning as an instrument of consensus and as a theatrical device by which to contain disruptive conflict."⁷⁷

The ordeal enabled the community to see firsthand both the procedure and the result. Clerical participation and the solemn nature of the invocations made it clear that the outcome was put in God's hands, "thus giving the court's verdict a better chance of lasting acceptance".⁷⁸ The fact that the entire community was commonly involved helped ensure that a judgment was binding, as to disregard the verdict was to risk the wrath of the entire community.⁷⁹ Furthermore, the ordeal was a time-consuming and arduous process, "mercifully slow",⁸⁰ and it therefore allowed for situations to evolve, parties to withdraw from litigation, and for the guilty to concede their guilt, even if they

76. See, eg, Bloch, *Feudal Society* (1961), p.130 ("In March, 1134, after the assassination of the sub-Dean of Orleans, all the relatives of the dead man assembled to receive the homage, not only of one of the murderers, of his accomplices and of his vassals, but also of the 'best of his kin' - in all 240 persons. In every way a man's action was propagated throughout the circle of his kinsfolk in successive waves.")

77. Brown, *supra*, n.5, p.310. See also Bloch, *supra*, n.76, p.63 ("[I]mplicitly, the *Judicium Dei* fostered the physical survival of the community by providing an alternative to the blood feud.")

78. Hyams, *supra*, n.7, p.98.

79. See, eg, Brown, *supra*, n.5, pp.312-313. But see Bartlett, *supra*, n.2, p.42 ("[O]ver-emphasis on the cohesiveness of the group obscures the factions, tensions, and dissension within any medieval jural community. The ordeal got results, but it did not generate consensus.")

80. Brown, *supra*, n.5, p.311.

did so by fleeing.⁸¹

ii. *Was the ordeal just?*

Asking whether the ordeal was rational may also be to inquire whether it facilitated justice - were the guilty punished and the innocent vindicated? It is no more possible to answer this question than to say with certainty that modern jury trials arrive at just results. As Colman writes, "the modern verdict of the jury in perplexing cases often has all of the inscrutability of a judgment of God ..."⁸² Given that the ordeal was customarily resorted to in situations where the issues were not easily resolvable, the difficulty of this question is compounded.⁸³

However, the ordeal merely constituted a component of the entire trial process. At the very least, the verdict still had to be declared at the conclusion of the ordeal. The historical evidence of verdicts being returned against impossible odds and the frequency of judicial tampering show that the community could ensure that the desired result occurred. For instance, West Frisian Synod Law allowed the community-at-large to determine whether or not a wound was unclean.⁸⁴ As Brown states, the ordeal was "as open-ended as a Rorschach test. Yet, paradoxically, it is around this ambiguous experience that unanimity is crystallized."⁸⁵ As such, the ordeal could theoretically have

81. But see Radding, *supra*, n.28, p.956 ("Some scholars have argued that the ... lengthy process [of the ordeal] allowed ample time to settle a dispute by compromise, but no one has sufficiently stressed that this social utility was grafted onto a psychological reality. The elaborate precautions were necessary to preclude the interference of malign spirits, who might otherwise skew the results ... one would no more have thought of conducting an ordeal without the proper ritual than someone today would take an automobile trip without checking the fuel and the spare tire: the precautions may not be necessary, but there is no other way to be sure.") Radding's point is well taken, given the pervasive mysticism of the early Middle Ages, but one should not lose sight of the social utility served by the protracted nature of the ordeal.

82. Colman, *supra*, n.11, p.59.

83. Bartlett, *supra*, n.2, p.59.

84. Colman, *supra*, n.11, pp.589-590.

85. Brown, *supra*, n.5, p.317.

achieved a result as just as that rendered by a modern day judge or jury.

Furthermore, many probands fled the ordeal or broke down before the test.⁸⁶ As Thomas has pointed out, "the terror produced by [the proband's] belief in the infallibility of the procedure may lead him to fail so simple a test" as the ordeal by morsel, in which the guilty party is unable to swallow consecrated bread or cheese.⁸⁷ This would only result in an indirectly just result, somewhat akin to trying people on the basis of polygraph tests,⁸⁸ with the concomitant shortcomings. While the psychological element may have resulted in a just result with some degree of frequency, there is no way of knowing when it punished the culpable and when it punished merely the anxious.⁸⁹

iv. Was the ordeal consistent?

Asking whether the ordeal was rational may also be to question if the ordeal was capable of being administered consistently; that is, could the ordeal be applied with little variation in different circumstances and by different people? This question must be answered in the negative. The inherent subjectivity of the ordeal makes it ill-fitted to systematic application, especially as procedures were usually ambiguous. Without specific measures of timing, heat, extent of permissible burns and other factors, the ordeals simply could not be capable of being applied in a reliable fashion. Any strength the ordeal possessed lay in its ability to reflect the outcome desired by the community or those

86. See *supra*, n.18-19 and accompanying text.

87. Thomas, *Religion and the Decline of Magic* (1971), p.260.

88. See, eg, Roberts, *supra*, n.2, p.205 ("Perhaps ... the modern lie detector which also depends upon autonomic responses constitutes a new form of ordeal.")

89. Bartlett, *supra*, n.2, p.161. But see Morris, *supra*, n.5, p.101 ("The ordeal was not designed ... to discover if the accused was self-consciously guilty, nor was it a test of fortitude in face of pain. These aspects were rarely mentioned at the time, and in any case the ordeal was frequently taken by a deputy. The assumption was that guilt was actually present, even in a deputy who might have come in good faith, and that it was almost physically embodied in him.")

administering it, not in consistent application.

iv. Conclusion

The issue of rationality of the ordeal admits of no easy answer, but perhaps attempting to decipher its rationality largely misses the point. The ordeal cannot be accurately or equitably judged by a modern conception of rationality, as humanity in the early Middle Ages was a product of a wholly different reality. As such, the ordeal must be viewed as a creature of the time and environment in which it existed. The early Middle Ages were a time when mysticism and divine influence were inseparable from daily occurrences, with "every event represent[ing] an expression of the divine will".⁹⁰ In such a time, therefore, "chance has no place ... for it is assumed that God remains essentially watchful of men's actions and that everything that occurs within the human sphere has the status of Godly intervention".⁹¹ If the ordeal protected social cohesion, or sporadically convicted guilty probands of crimes that were amenable to no other adjudicatory method, then it served a rational purpose. As Hyams writes:

"In a world of this type, trial by ordeal performs, I believe, several sensible functions in a useful manner. A device like the ordeal [was] rational within the particular social and intellectual context where it originated. In its context the ordeal is rational and remains so until the transformation of its world demands a new rationality."⁹²

When people were no longer willing to accept the premise behind the ordeal - when it had become apparent that human influence had more effect on the outcome than divine influence - and when governmental institutions were able to more effectively maintain social cohesion, the ordeal became irrelevant. The decline of the ordeal may be said to represent the "victory of a reasoned, rational mode

90. Bloch, *supra*, n.76, p.19.

91. *Id.*

92. Hyams, *supra*, n.7, p.99.

of proof over the old irrational appeals to God or the obscure forces of nature",⁹³ but this fails to recognize that the void left by the demise of the ordeal was not easily filled. It also fails to acknowledge that when the ordeal was no longer trusted, faith had to be put in purely human methods of ascertaining guilt or innocence. As a result, much of Europe embraced perhaps the most irrational of adjudicatory means: judicial torture.

Acknowledgement

I wish to thank Professor Jeffrey Hackney of Wadham College, Oxford, for providing inspiration and insight into the subject of this paper, as well as Professor David Seipp, Boston University School of Law, for his invaluable criticism and encouragement.

93. Van Caenegem, *Common Law*, *supra*, n.41, p.63.