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Animal Trials: A Multidisciplinary Approach

This contribution discusses a phenomenon that is ignored not only in most general cultural histories of the Middle Ages and early modern times but also in most legal histories—trials against animals. What are we to make of the fact that both intellectuals and common people in late medieval and early modern Europe regarded as perfectly reasonable such acts as filing a suit against cockchafers, bringing mice before an ecclesiastical court, or having a dangerous pig punished officially by the town's hangman?

One of the principal aims of the history of mentalities is to deal with phenomena that seem alien to us now. If we find the right questions to ask about these puzzling phenomena, we may be able to put them into better context. In the case of animal trials, the abstrusity consists not only of attributing guilt to animals, both in a moral and a juridical sense—thus implying their free will—but also supposing that animals could have understood a judge's sentence, even though such communication between human beings and beasts had no precedent in everyday life. Another surprising fact is that animal trials were by no means an invention of the "archaic" early Middle Ages but were confined primarily to the period from the thirteenth century to the Enlightenment, though they appeared even later. Moreover, they were concentrated within certain regions, whereas they seem to have been completely unknown in others.

A proper understanding of animal trials requires that diverse aspects of the period be taken into account: the extent to which the later Middle Ages were an epoch of crisis, when extreme measures to ensure law and order were held to be necessary; the devel-

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opment of the legal *processus officiales*—processes initiated by the authorities to maintain law and order—and the tendency to submit all spheres of life to juridical categories; the magical powers ascribed to the Latin formulas used in ecclesiastical ceremonies; and the general changes taking place in the relationship between people and animals during the Middle Ages. Note that animal trials took place only under extremely unusual circumstances in order to help the local community cope with an otherwise recalcitrant threat—not because they were proven to work but because they created the impression that the authorities were assiduously maintaining law and order in a cooperative and decided manner, even if the delinquents were not human beings.

FACTS From the thirteenth to the twentieth century, animal trials were held in many European regions, especially in France, but also in Switzerland, Tyrol, Germany, the Netherlands, the southern Slavonic countries and, on rare occasions, in Italy and Spain. Secular and ecclesiastical courts handled the criminal prosecution of both domestic animals and noxious insects and pests, painstakingly observing all of the juridical formalities that applied to human trials. These were serious proceedings, carried out by professional lawyers—not by archaic-minded and superstitious peasants—sanctioned by bishops, and often discussed by university professors. Suffice it to quote a "lettre de grace" by which, in 1379, Duke Philip the Bold of Burgundy granted a petition to pardon two herds of swine that had been imprisoned "in order to go to law with them in due form (*pour en faire raison et justice en la manière qu'il appartient*)." He treated this case as he would any other, permitting the execution of the four most guilty animals and sparing the rest. Implicitly nonhuman beings were therewith declared members of the one community of justice.[1]

1 Using "facts" as a heading betrays a belief in the accessibility of historical facts, albeit with a higher or lower degree of probability. For a similar view, see Keith Windschuttle, *The Killing of History: How Literary Critics and Social Theorists Are Murdering Our Past* (New York, 1998; 3d ed.). The bulk of the extant sources about animal trials have been edited by nineteenth-century French antiquarians. Though dated both in their manner of scientific approach and in their quoting of sources, the most reliable monographs on the subject are Carlo D'Addosio, *Besti Delinquenti* (Napoli, 1892–1992) and (heavily relying on the same) Edward Payson Evans, *The Criminal Prosecution and Capital Punishment of Animals* (London, 1906; repr. New York, 1998). All of the more recent monographs are shorter rewrites of Evans' work. Evans, *Criminal Prosecution,* 342–343.

The foremost proof of just how serious these cases were is the money that they cost. Judges, advocates, bailiffs, and hangmen did not officiate for nothing; they had to be paid their usual fees. Jailers charged the same daily rates for a pig's board as for that of a human prisoner. Receipted bills are still extant from the hangman of Falaise for the execution of a pig and the purchase of a pair of new gloves (1386); from the Parisian "*maître des hautes-oeuvres*" for the expense of his journey from the capital to execute yet another criminal swine (1403); and from experts who inspected a piece of land in order to determine its suitability for the relocation of vermin condemned to leave the cultivated soil that they were currently devastating (1546).[2]

The terminology in the legal documents dealing with animals is identical with that used to describe the criminal offenses of humans. A sentence of the high court of Savigny, for instance, speaks of the guilt of prisoners caught red-handed in the act of murder, though, in this instance, the perpetrators were pigs (1457): "a pig and six suckling piglets who are, at the moment, prisoners of the named lady [in possession of the judicature] as having been captured in flagranti since these pigs have committed and done themselves murder and homicide to the person of Jehan Martin, aged five years . . . if it is found out that they were culpable of this delict." A late medieval law document of 1466 from northern Germany is no less outspoken, calling a horse, *expressis verbis,* a murderer ("*enen morder des mannes*").[3]

Two forms of animal trials must be distinguished. The first comprised lawsuits brought against domestic animals for wounding or killing a human being, the earliest case known—the burning of a swine in Fontenay, near Paris—dating from 1266 or 1268. These animals—most frequently pigs accused of devouring a small child—were cited before secular courts and usually condemned

2 Evans, *Criminal Prosecution,* 340, 335; M. Berriat-Saint-Prix, "Rapport et recherches sur les procès et jugements relatifs aux animaux," *Mémoires de la Société nationale des antiquaires de France,* VIII (1829), 433; Léon Ménabréa, "De l'origine de la forme et de l'esprit des jugements renus au Moyen-Age contre les animaux," *Académie des sciences, belles-lettres et arts de Savoie,* XII (1846), 409, 416, 419.

3 A. Sorel, "Procès contre des animaux et insectes suivis au Moyen Age dans la Picardie et le Valois," *Bulletin de la société historique de Compiègne,* III (1876), 304, supplemented by a sentence not printed in this edition but in the transcription of the same minute by Evans, *Criminal Prosecution,* 350. Max Pappenheim, "Zur Frage der Tierstrafen und Tierprozesse," *Zeitschrift der Gesellschaft fur Schleswig-Holsteinische Geschichte,* LII (1923), 118.

to death, most often by hanging or live burial. On rare occasions, they were mutilated before, or instead of, being executed. Evidently, local magistrates could act ex officio—that is, without a formal charge from the family of the person hurt or killed. Wild beasts, like wolves or bears, were never subject to such legal action; nor were dogs. Most frequently accused were the corniculate animals, capable of goring, that humans tended to keep. The devastation or demolition of lifeless goods caused by such animals, however, constituted grounds for a civil suit for compensation laid against their owners.[4]

The other form of animal trial comprised lawsuits against collections of noxious insects, mollusks, and rodents who were capable of large-scale damage to such victuals as grapes, fish, grain, etc. These pests, among them locusts, leeches, rats, and mice, were nearly always summoned before an ecclesiastical tribunal, which, after due deliberation, usually resorted to excommunication and exorcism. Contrary to secular trials, ecclesiastical ones never dealt with an individual animal. The earliest incident seems to have occurred in 1338/39, when the parish priest of Kaltern had an army of grasshoppers that devastated southern Tyrol banned after a trial by jury, uttering the solemn formulas of anathema from the church ambo.[5]

In general, a beleagured local community asked the bishop or his official representative for this kind of legal help. The modus procedendi, which can be reconstructed best via documents from the episcopal court of Lausanne, was to name a proxy, who, with the help of an official messenger, had the task of ordering the vermin to appear in person before the court on a given date. At the hearing, the judge would take one member of the species in hand and command it to depart the endangered area within a certain time. If the animals complied, the community gave its thanks to God with prayers. If not, as usually happened, the process *in contumaciam* had to continue. The judge would curse the delinquents, excommunicate them, and organize a procession aimed at destroying them. From time to time, however, even vermin and

4 Evans, *Criminal Prosecution,* 140, 214; G. MacCormack, "On Thing-Liability (Sachhaftung) in Early Law," *The Irish Jurist,* XIX (1984), 322–349; Philip Jamieson, "Animal Liability in Early Law," *Cambrian Law Review,* XIX (1988), 45–68, n. 17.

5 P. Justinian Ladurner (ed. B. Klammer), *Chronik von Bozen 1844* (Bozen, 1982), 242–243; B. Mahlknecht, "Die sog. 'Bozner Chronik' aus dem 14. Jh.," *Schlern,* LXX (1996), 665.

parasites were acknowledged a natural right to life and granted a piece of barren land to inhabit—that is, if they could be persuaded to emigrate there.[6]

The anathema pronounced by the ecclesiastical court at Mâcon in 1481 conveys the kind of ceremonious formalism used in denunciation of destructive insects, mice, and similar small creatures:

> If they are, by virtue of Satan's instigation, not obedient to this our order, or rather the order of the Church and God, we curse and excommunicate them on part of God Omnipotent and all saints, and on these [animals] thus cursed and excommunicated we heap the sentence of anathema in these writings. You [the clergy] have to curse and to anathematize them on part of God Omnipotent, our Lord Jesus Christ and His passion, the holy virgin Mary, His mother, and all His saints, and have to inform them of that curse and anathema and have to declare them cursed, excommunicated and anthematized.[7]

It is remarkable that an excommunication—an expulsion from the Catholic Church, *extra quam nulla est salvatio*—was a regular feature in these actions, since only baptized humans were able to become members of this institution, let alone be exiled from it. If nonprofessing creatures were considered subject to excommunication, why did the Church never attempt to punish its non-Catholic enemies—say, the Muslims—in this manner?

Since this legal procedure usually had no beneficial consequences, at the end of all these trials, processions were held to win God's mercy, and the faithful were admonished to pay more tithes. If the misfortune continued, the incontrovertible explanation was that God wanted to punish his people for their sins—an

6 Adolph Franz, *Die kirchlichen Benediktionen im Mittelalter* (Freiburg, 1906/09), II, 124 ff.; Catherine Chène, *Juger les vers. Exorcismes et procès d'animaux dans le diocèse de Lausanne (XVe-XVIe siècle)* (Lausanne, 1995).

7 Franz, Die *kirchlichen Benediktionen,* II, 157 (D'Addosio, *Besti delinquenti,* 54, gives the date as 1488): *"Quodsi precepto nostro huiusmodi, imo uerius ecclesiastico et diuino, instigante sathana [non obediant] . . . ex parte dei omnipotentis et omnium sanctorum eius maledicimus et excommunicamus et in eas [sc. bestias] sic maledictas et excommunicatas anathematizationis sententiam ferimus in his scriptis. uosque [sc. capellani et ecclesiarum rectores] ex parte et in uirtute ipsius omnipotentis dei, domini nostri Iesu Christi eiusque passionis, beate Marie uirginis, eius matris, et omnium sanctorum eius maledicatis et anathematizetis ac eisdem maledictionem et anathema proferatis et sic maledictas, excommunicatas et anathematiziatas nuncietis."*

explanation to which no contradiction was possible, given the intensive feeling of guilt that traditional Christianity perennially sought to engender in its devotees. Nor was it difficult to find precedents for their plight in Holy Scriptures—for example, the maledictions in Lv. 26 concerning the damage to be done by locusts: "*locustae devorabunt omnia . . . vastabitur vermibus.*"[8]

The many archive documents, and many pages of learned discussion in legal treatises, that have been handed down to us provide a wealth of information about when, where, and how animal trials were carried out. But to the best of my knowledge, there is not one instance of positive law—no urban code, no regional law book, or royal law—declaring or even mentioning the possibility of summoning an animal before a judge. This discrepancy between legal prescription and juridical practice is yet to be explained.[9]

QUESTIONS The first question concerns the late chronological appearance of the animal-trial phenomenon. The sources usually treat it as a long-standing custom, though the documentary evidence for animal trials does not begin until the second half of the thirteenth century. The general evolution of medieval mentalities would seem to indicate the origin of such procedures in the early Middle Ages, an epoch that has been called an archaic one by many medievalists, rather than in the age of "gothic rationalism"—scholasticism, urban development, etc.—which, according to Max Weber, marked the beginning of the world's disenchantment ("*die Entzauberung der Welt*"). Notwithstanding this incongruence, however, it may be no accident that the frequency curve of animal trials is similar to that of the witch trials, showing a maximum in the sixteenth and seventeenth centuries, albeit animal trials must have been less frequent than lawsuits against sorceresses and sorcerers.[10]

8 On the Catholic guilt culture, see Jean Delumeau, *Sin and Fear: The Emergence of a Western Guilt Culture* (New York, 1990); Dinzelbacher, *Angst im Mittelalter* (Paderborn, 1996).

9 Legal prescription for the corporal punishment of an animal was exceptional. Francesco C. Casula, *La "Carta de Logu" del regno di Arborèa* (Sassari, 1995), 114, notes one for a thievish donkey in late medieval Sardinian law, and J. Steadman, "The Prioress's Dogs and Benedictine Discipline," *Modern Philology,* LIV (1956), 1–6, discusses dogs breaking into a monastery's enclosure, according to the statutes of the abbey of Whitby. See pages 415–416 herein for the legal critique of animal trials found in Philippe de Beaumanoir (ed. Am. Salmon), *Coutumes de Beauvaisis* (Paris, 1970), 3v.

10 Dinzelbacher (ed.), *Europäische Mentalitätsgeschichte* (Stuttgart, 1993; 2d. ed.). Ancient Greece and Rome had both witnessed a few capital punishments of animals, but without any

That certain traditions of this legal procedure persisted in remote areas as late as the early twentieth century is not strange, since vestiges of older mentalities often remain synchronically with dominant recent ones—especially in regions where Catholicism continued to exercise its influence. Animal trials did not tend to survive in Reformed countries. As one of the councils of the protestant Geistlicher Convent of the town of Bern formulated in 1666: "Since the ox did not receive any law, he cannot, by breaking one, commit a sin. And therefore he cannot be punished." In Catholic France, however, even so high ranking an institution as the Parlément de Paris (the supreme court) upheld disputed sentences against animals, sometimes judging against an animal itself, as in 1575 and even 1726.[11]

The geographical distribution of these lawsuits is another puzzle. Certain regions, such as northern France or Switzerland, had a comparatively high number of animal trials, whereas other regions, like England and Scandinavia, seem to have been completely unaffected by them before the eighteenth century. The institution of courts formed by peers, along with a general resistance to Roman law, may help to explain the absence of animal trials in England; after all, animals could hardly serve as members of a bench. But these factors do not account for the absence of ecclesiastical suits. Moreover, does the scarcity of cases in Italy and Spain reflect the facts or simply scholars' lack of interest in them? The question remains, How did the inhabitants of those regions where

influence on those of the Middle Ages. See R. Düll, "Zum Anthropomorphismus im antiken Recht," *Zeitschrift für Rechtsgeschichte Romanistische Abteilung,* LXIV (1944), 346–350; *idem,* "Archaische Sachprozesse und Losverfahren," *ibid.,* LXI (1941), 1–18. Usually, the owner, not the beast, was held liable for any damage to property. See F. Jaehningen, *Die Haftung für den ohne menschliches Verschulden durch ein Tier angerichteten Schaden nach römischem Recht, Diss.* (Hannover, 1905); G. L. Williams, *Liability for Animals* (Cambridge,1939); B. S. Jackson, "Liability for Animals in Roman Law," *Cambridge Law Journal,* XXXVII (1978), 122–143. Nor should the confiscation of a noxious beast or object (as found, for instance, in the much discussed "deodand" of English law) be merged with the animal trials. See W. Pietz, "Death of the Deodand: Accursed Objects and the Money Value of Human Life," *Res,* XXXI (1997), 97–108. J. Winckelmann, "Die Herkunft von Max Weber's 'Entzauberungs'-Konzeption," *Kölner Zeitschrift für Soziologie und Sozialpsychologie,* XXXII (1980), 12–53.

11 Hans Albert Berkenhoff, *Tierstrafe, Tierbannung und rechtsrituelle Tiertötung im Mittelalter* (Strasbourg,1937), 50: *"Gleichwie dem Ochsen kein gesetz gegeben, also kann er auch keins überträtten und hiemit sündigen und volgendts nit gestrafft werden."* On the Parlément de Paris in 1575, see Berriat-Saint-Prix, "Rapport et recherches," 428, 430; Evans, *Criminal Prosecution,* 161. For 1726, see Émile Agnel, *Curiosités judiciaries et historiques du Moyen Age. Procès contre les animaux* (Paris, 1858), 18; Jean Vartier, *Les Procès d'Animaux du Moyen Age à Nos Jours* (Paris, 1970), 92–93; D'Addosio, *Besti delinquenti,* 75.

animals were commonly put on trial differ mentally, legally, or otherwise from the inhabitants of other countries who did not share their disposition?[12]

But the main problem, not considered earlier by scholars, is that of communication. How could people have expected "unreasonable" beasts to understand their queries, admonitions, and commands? That they did so expect cannot be doubted. In a document dated 1452, the officials of Lausanne urged noxious vermin to appear before the court at a certain hour, "in order to respond to those matters about which they [were] accused (*responsura de his quae sibi obiicientur*)." The cockchafer larvae jeopardizing the food supply of Berne in 1478 were invited "to appear before the bishop in order to tell their story (*zuo erschinen und iren glimpf zuo erzellen*)." In 1515 or 1516, the officialate at Troyes addressed the insects devastating the vineyards, "however they might be named, to depart from the vineyards of Viallanoxa within six days, otherwise, if they do not obey to our admonition, we will anathemize them."[13]

The implication is that the insects would be able to understand what the messenger of the court was to tell them; had a free will by which to determine how to react to it; and could feel the weight of anathema, though not being members of the Catholic Church. Vermin appearing before the ecclesiastical court were often spared immediate extermination and brought back to their dwelling place to inform the others of their kind about the verdict. A document authorized by the bishop of Lausanne, dated 1479, says, "We, Benedict of Monferrand, bishop of Lausanne etc., have heard the prayers of the mighty lords of Berne against the cockchafers, and the vicious and abominable answer of the same, and having armed ourselves with the holy cross . . . have pronounced our sentence in this case." Thus, the prelate testified to have heard not only the gravamina of the burghers of Berne but

12 Karl von Amira, "Thierstrafen und Thierprozesse," *Mitteilungen des Instituts für österreichische Geschichtsforschung,* XII (1891), 565, 559.

13 Chène, *Juger les vers,* 126, 128, 138; M. Desnoyers, "Excommunication des insectes et d'autres animaux nuisibles à l'agriculture," *Bulletin du comité historique des monuments écrits de l'histoire de France,* LXVI (1853/54), 46–47. Quotation from Chène, *Juger les vers,* 96: "*animalia praedicta, quocumque nomine censeantur, monemus in his scriptis, sub poenis maledictionis et anathematisationis, ut infrà sex dies à monitione, in vim sententiae hujus, à vineis et territoriis dicti loci de Villanoxá discedant . . . Quod si, infrà praedictos dies, jam dicta animalia huic nostrae admonitioni non paruerint cum effectu . . . illa . . . anathematisamus.*"

also the answer of the young cockchafer. In another case, the plaintiffs drew up an elaborate contract with weevils that they tried to enforce at court (St. Julien, 1587).[14]

Can any tradition help to make sense of this phenomenon? Learned authors from antiquity and the Renaissance occasionally told of animals being able to speak, but these were most extraordinary cases (like Achilles' horse Xanthos). As late as the nineteenth and twentieth centuries, in some places, it was customary to announce the death of a farmer to his animals, and the late medieval belief in animals' ability to talk at Christmas is well documented. But these isolated moments have little to do with what could transpire in a medieval court of justice. Must we assume that most sober lawyers and prelates underwent a psychic regression into an infantile worldview, acting as if they were living in the world of fairytales where animals and men can communicate as a matter of course? They certainly did not consider themselves saints like Francis of Assisi or Antonio of Padua, whose preaching was supposed to have been intelligible to the wolf of Gubbio and the birds in the field. Nor do the archive documents hint at any divine intervention to facilitate the conversations of ecclesiastical or urban dignitaries at court with mice or pigs.[15]

The sources make it completely clear, however, that another form of effective communication with animals was expected—visual. The public execution of animal delinquents, as stated in court minutes, was meant, on the one hand, as a warning to the holders of potentially dangerous beasts to supervise them sufficiently, and, on the other hand, as a warning to the beasts themselves. The acts signed by the mayor and the jury of the university town of Leiden in 1595, concerning a dog that had bitten a child, state that the animal, which had confessed without torture, was to be executed publicly "in order to deter all other dogs and to set an example for each (*tot afschrik van alle andere honden, en elk tot een exempel*)." In his *Theodicée,* Leibniz emphasized that animals convicted of certain

14 Chène, *Juger les vers,* 156: "*Wir Benedict von Monferrand bischoff zuo Losann etc., haben gehoert die bitt der grosmaechtigen herrn von Bernn gegen den aengern [Engerlinge], und derselben unnútze und verwúrfflich antwurt, und unns daruff bewaret mitt dem heiligen crútz . . . und daruff in diser sach geurteillt.*" Ménabréa, "De l'origine," 403 ff.

15 Paul Geiger, "Tod ansagen," *Handwörterbuch des deutschen Aberglaubens,* VIII, 985–991; J. Staber, "Ein altbayerischer Beichtspiegel des 15. Jahrhunderts," *Bayerisches Jahrbuch für Volkskunde,* VII (1963), 7.

crimes were to be killed—not to take revenge but to dissuade other potential malefactors. Wolves were the frequent victims of such exemplary hanging (often without a preceding lawsuit), which was carried out in the open countryside so that their kindred might learn from it. We find testimonies to such a punishment from the tenth century onward. Until recently, the Eskimos of Greenland used to execute dangerous sled dogs in the same way.[16]

Such punitive actions present what might be called a breach in the history of mentalities: How many dogs, chained to their houses as they were, could possibly have seen their kindred executed? How many oxen or pigs in their stables? Are these sentences no more than attempts to conform to the letter of the law? Or to put the question in more general terms: How was it possible, for learned jurists and theologians to think, against both all everyday experience and nearly all learned tradition about the place of animals in creation, that the creatures tried would be both able to understand human language and follow the directions decreed by the tribunal, and that at the same time moral correction would be the effect for the remaining individuals of that species?

As a case in point, Bartholomé Chassenée (1480–1542), a French jurist, is said to have made a reputation for himself by successfully defending the rats of the dioceses of Autun, arguing that

16 M. Gijswijts-Hofstra, "Mens, dier en demon. Parallelen tussen dieren-en heksenprocessen?" in E. Grootes and J. Haan (eds.), *Geschiedenis, godsdienst, letterkunde. Opstellen . . . S. Zilverberg* (Roden, 1989), 59; Berkenhoff, *Tierstrafe,* 34; Gottfried Wilhelm Leibniz (ed. H. Herring), *Theodicée* (Frankfurt, 1996; orig. pub. 1710), I, 314. The belief in werewolves is not related to the animal trials; the human beings able to change into wolves were prosecuted, not the animals that they were supposed to have become. See M. Feigl, *De homicida. Eine Untersuchung zur mittelalterlichen und frühneuzeitlichen Rechtsmentalität anhand von Dokumenten über die strafrechtliche Verfolgung von Tieren, Mag. Arb.* (Vienna, 1994), 48 . The most recent general publications on werewolves are Claude Lecouteux, *Fées, sorcières et loups-garous* (Paris, 1992); Martin Rheinheimer, "Die Angst vor dem Wolf. Werwolfglaube, Wolfssagen und Ausrottung der Wölfe in Schleswig-Holstein," *Fabula,* XXXVI (1995), 25–78. A bibliography can be found in Malcolm South (ed.), *Mythical and Fabulous Creatures: A Source Book and Research Guide* (New York, 1987), 286 ff. The hanged wolf mentioned in William Shakespeare, *The Merchant of Venice,* I, i, 133 ff., has led several authors to hold that animal trials must have been common in England as well. The play itself, however, contains no hint of a trial. Odilo of Cluny, *Vita Maioli,* in Jacques-Paul Migne (ed.), *Patrologia latina* (Paris 1880), CXLII, 962A, depicts a knight capturing an extraordinarily aggressive wolf in order to kill it by hanging it from a tree, thereby scaring away any others: "*Occisus trunco suspenditur, et dum unus occiditur, omnes alii ab illis finibus effugantur.*" Matthias Koglbauer, *Berge und Packeis. Ein Grönlandbuch* (Graz, 1965), 107.

they had failed to appear before the court in the allotted time because they had been threatened by too many cats. Thus did he win an extension for his clients. In 1520, he allegedly devised a similar defense for the woodworms of Mamirolle. Chassenée closed his days as the Président du Parlement de Province. Though there may have been an erroneous blending of his own cases with others in which he did not participate but discussed, nonetheless, in his *Consilia,* this book, with its detailed argumentation about citing and excommunicating animals through the action of an ecclesiastical court, manifests how seriously even highly respected jurisconsults took this task.[17]

A hair-splitting consideration of all circumstances, however, was characteristic of the epoch. In 1520, the judge of Glurns in southern Tyrol banned voracious field mice from the region but granted temporary reprieve to the youngest and pregnant ones. What to us looks like a parody was indeed regular process; the documents to that effect rest in the local archives.[18] Yet, not all contemporaries were convinced of the rationality of these proceedings. Roman Law permitted a steady stream of learned legal criticism. A passage in the *Digesta* reads, "Pauperies is a damage which occurred without infringement by the committer: so an animal cannot commit an infringement because it is senseless [irrational]." In 1283, Beaumanoir, the compiler of the *Coutumes de Beauvaisis,* stated that since all crimes were done with intention, beasts, lacking both speech and understanding of good and bad, could not commit them. Nor could they be punished for them, since culprits had to know and understand the reasons for their punishment. Only the greediness of the feudal lords, he maintained, who were entitled to a portion of the penalties, could explain the existence of such a custom. During the sixteenth and seventeenth centuries, lawyers discussed with full particulars the

17 J. Henri Pignot, *Un jurisconsulte au seizième siècle, Barthélemy de Chasseneuz* (Geneva, 1970; orig. pub. Paris, 1880), 212 ff., 303–304, 315–316. Édouard L. de Kerdaniel, *Les Animaux en Justice, Procédures et Excommunications* (Paris, 1925), 113, asks whether "*Chassanée s'efforcat-il de cacher ses débuts et de faire oublier la cause véritable*" (Chassanée worked hard to conceal how he started his career and to make people forget the real cause)—the only inventive idea in this superficial booklet.

18 K. F. Zani, "Der große Tierprozeß von Glurns vom Jahre 1520," *Schlern,* XXII (1948), 203–204; J. Pardeller, *ibid.,* XXIII (1949), 113; *idem,* "Der Gemain Stillfß Verlob Brief," *ibid.,* XXVIII (1954), 466–467.

extent to which animal trials were compatible with the exigencies of Roman Law.[19]

APPROACHES In the nineteenth and twentieth centuries, historians of law and other scholars tended to regard animal trials as "cultural curiosities," manifestations of the irrational impulses of a bygone age. Frazer, for example, felt them to be grounded in "mental confusion" and "intellectual fog." This attitude is not helpful. It is the task of the historian of mentalities to try to understand phenomena that seem to defy modern sensibilities. The impression of inexplicability that most studies on this subject leave behind is based, to no small extent, on the writers' reluctance to ponder more than one key notion relating to this problem.[20]

Certain elements seem to have functioned as necessary preconditions for animal trials, if not as immediate causes. The general crisis of the late Middle Ages (the beginning of which is currently dated as early as the economic recession of the second half of the thirteenth century) probably made people more disposed to react severely against any irritations. Both the introduction of torture, first into Church law and then into secular law, points in this direction, as do the many elaborate corporal punishments with which legislators then replaced financial penalties. Animal trials may be understood partly as the local magistracy's demonstration of its concern for law and order, even as disturbed by pigs or beetles.[21]

In the administration of justice, the adoption of the processus officialis permitted legal action against animals without a plaintiff. It likewise became the main weapon against sorcery. Although

19 P. Kruger (ed.), *Corpus iuris civilis,* D 4, 9, 1 (Berlin, 1908; 11th ed.), I, 155: "*Pauperies est damnum sine iniuria facientis datum: nec enim potest animal injuriam fecisse, quod sensu caret.*" Beaumanoir (ed. Salmon), *Coutumes,* 69, 6, 1944–1945.: "*Bestes mues n'ont pas entendement qu'est bien ne qu'est maus, et pour ce est ce justice perdue, car justice doit estre fete pour la venjance du mesfet, et que cil qui a fet le mesfet sache et entende que pour tel mesfet il en porte tele peine; mes cis entendemens n'est pas entre les bestes mues.*" Compare, for example, Franz, *Die kirchlichen Benediktionen,* II, 148; Chène, *Juger les vers,* 144; D'Addosio, *Besti delinquenti,* 52; M. Rousseau, "Les Procès d'animaux," in A. Couret and F. Oge (eds.), *Histoire et animal* (Toulouse,1989), 94.

20 James George Frazer, *Folk-Lore of the Old Testament* (London, 1919), III, 445. Dinzelbacher, "Zur Theorie und Praxis der Mentalitätsgeschichte," in *idem* (ed.), *Mentalitätsgeschichte,* xv-xxxvii.

21 M. Montanari, "L'argicoltura medievale," in Valerio Castronovo (ed.), *Storia dell'economia mondiale* (Rome, 1996), I, 412.

both witchcraft and noxious animals had existed in the early Middle Ages, the response to them had been different: In the earlier period, recourse against animals could be obtained without the help of the "state"—that is without calling for an official of the king, such as a "*missus dominicus.*" Sorceresses and sorcerers had not been the objects of systematic hunts. Their punishment often consisted of nothing more than ecclesiastical penitence. The beginning of the thirteenth century, however, witnessed a new attitude toward these offenders. Their crimes were redefined as deserving more elaborate, and excruciating, treatment. The secular tribunals, at least, were eager to see the animal culprits executed before a numerous public in a manner that would deter both men and beasts. Since executions were not lawful without a trial, the force of analogy served to extend this legal principle even beyond the world of humans.[22]

The ecclesiastical trials had some precedent in the religious ideas of pre-Enlightenment Christianity. One important tradition concerned the so-called "*Sachbeschwörungen*" (adjurations of objects). The medieval ritual books contained many formulas directed at such inanimate objects as salt, wax, fruit, cheese, and milk. If God was inclined to operate on these everyday things in accordance with a priest's benedictions, why would He not honor the malediction of living creatures as well? In his *Summa Theologiae,* Aquinas first stated, completely in conformity with our way of thinking, that animals could not be charged because they could not be guilty, could neither use nor understand words or think rationally, and had no control over their actions. Nonetheless, when he turned to the authority of Holy Scripture and tradition, he cited Jesus' curse of a fig tree (Mt. 21:19) and the ability of the saints Judas and Simon to banish dragons to the desert. From that evidence, the Dominican drew the conclusion that, albeit it would be both blasphemous and useless to condemn a reasonless creature, direct petitions to God and incantations against the devil were sensible because the devil could lead an animal astray. The very fact that Jesus had sent legions of demons into a herd of swine (Mk. 5:12) stamped the animals as the fiends' hosts.[23]

22 For the processus officialis, see Dinzelbacher, *Heilige oder Hexen?* (Reinbek, 1998; 2d ed.), 128 ff.

23 Franz, *Die kirchlichen Benediktionen,* I, 229, 392, 404, 452, 592, 598: "*creaturam salis,*" "*creaturam raphani,*" "*creaturam cere,*" "*creaturas fructuum,*" "*creaturam omnis florum, frondium et*

Strangely, however, the conjuration of demons played no part in the ecclesiastical process; it was a matter of course when exorcizing a sick person, for example. All the formulae were directed against the beasts themselves, not against any malevolent spirits in their bodies. In 1487/88, the vicaire-général of Autun considered the possibility that the insects might not obey his precept "*instigante Satana,*" thereby distinguishing clearly between the natural beings and the devil who might have been goading them (as he goaded humans). Yet, if he and others could believe that the larvae or rats devouring their food were acting at the instigation of demons within them, how could they ever have given them a proxy or defense attorney? No Christian could defend a demon. Further, how could they have reserved a piece of land near their village for the devils to occupy in the future?[24]

Neither do the sources contain any evidence that the secular cases were trials involving demons or ghosts—"*Gespensterprozesse*" (as Amira, and his followers, called them). In this regard, the idea that the public execution of animals should serve as a warning to other animals is telling; no one would have thought for a moment that the devil would have been deterred by even the cruelest form of criminal justice.

Though communication between humans and animals ran counter to all everyday experience, the ecclesiastics may have hoped that vermin would respond to commands in the sacred Latin of the Church. In 1477, a Swiss writer related that the bishop of Lausanne had "commanded by virtue of his mandates to solemnly admonish the same vermin and cockchafer by the obedience and duty due to the holy church." In a long letter, dated c. 1485, about how to deal with noxious mice, Bishop John of Autun quoted as examples several stories from the Bible featuring human beings acting on seemingly obdurate inanimate objects—Jesus' cursing of the fig tree, David's execration of the Gelboan mountains, and Joshua's destruction of the walls of Jericho. His point was that since the mice were made for human beings, according to the opinion of the holy authorities, they could be

fructuum," even "*creaturam casei,*" "*creaturas fontis, mellis, et lactis.*" Thomas Aquinas, *Summa Theologiae,* II, 76, 2 (1613), and 90, 3 (1697) (Cinisello Balsamo, 1988; 2d ed.), 1401–1402, 1472. See also Franz, *Die kirchlichen Benediktionen,* II, 147 ff.

24 Ménabréa, "De l'origine," 501 n. 101.

cursed and anathemized by them. Alas, the argument ends without naming the authorities in question.[25]

The oft-quoted prescription in Ex. 21:28 to kill the ox that gored had only peripheral importance during the Middle Ages. Though it is mentioned in some laws, it has nothing to do with opening a lawsuit against an animal (dangerous beasts could also be killed without legal permission). This regulation stems from the Old Testament preoccupation with ritual cleanness, as does the one commanding the death of any animal that had sexual intercourse with a human. This Biblical foundation for killing had no bearing on the legal apparatus of a court action. The irrelevance of these passages is further illustrated by the fact that animal delinquents during the Middle Ages were hung, suffocated, buried alive, and butchered, not stoned, as they would have been had the Biblical prescription been followed.[26]

From the point of view of the history of law, the late medieval extension of secular and, later, ecclesiastical jurisdiction helped to foster the emergence of the animal-trial phenomenon. The evolution of urban and courtly-residential culture implied a growing autonomy of the judicial machinery. Not only did the courts multiply; so did the juridical faculties and the specialized literature at the universities. With this evolution came an increase in red tape, which tended to attach itself to all spheres of life. The animal trials, like all others, were sources of income for professionals, but their profitability could hardly have been their raison d'être (as Beaumanoir thought). Though the lawsuits staged against mammals may have been processus officiales, the prosecutions of vermin do not seem to have been initiated by the ecclesiastical courts; they were responses to petitions from a harassed community.

Like witch trials, animal trials cannot be explained sufficiently by the fact that prosecutors and members of the bench often profited from them. Rather, jurisprudence of the late medieval and early modern period appears to have developed a certain con-

25 Chène, *Juger les vers,* 136–137: "*craft siner gebotsbriefen bevohlen, dieselben wúrm und enger bi gehorsam und pflicht der heiligen kirchen hoch und tief zuo ermanen.*" Sorel, "Procès contre les animaux, 303: "*in ordine ad hominem, proper quem facti sunt ipsi, maledictionis et anathematizationis capaces fore sanctorum doctorum affirmat auctoritas.*"

26 I. Grünfeld, *Das Tier als Subjekt einer schädigenden Handlung im biblisch-talmudischen Recht, Diss.* (Frankfurt, 1925); Jacob J. Finkelstein, *The Ox That Gored* (Philadelphia, 1981).

ceit about its sphere of influence, operating in a manner not unlike the notion of a medical panacea (a similar fantasy about the reach of technical/scientific progress took hold in the nineteenth century). "Ultimately, the trials allowed the community to apply its notions of justice to the animal kingdom by constructing a narrative that could harmonize the needs of the society with the natural forces it could not control."[27]

From the perspective of functional anthropology, the trials can be viewed as attempts to relieve the disquieting and uncontrollable effects of the animal world by asserting the accustomed moral order and using a public ritual meant to heal the offended society. Thus could menacing and inexplicable events be integrated within an intelligible and orderly framework, appearing more controlled and less painful through this verbalization.

Was this mode of thought no more than an intellectually acceptable form of the recourse to magic that was so prevalent during that epoch? The regularity, as well as the formal language, of the juridical proceedings might well have had the same soothing quality that magical rites did.[28]

Any assessment of the phenomenon from the viewpoint of the history of mentalities must consider the changes that took place in the relationship of man to animal during the Middle Ages. Salisbury in *The Beast Within* suggests that, although Christian antiquity and the early Middle Ages stressed the wide distance separating man and beast, the gap began to narrow in the twelfth century, as people began to realize that analogies were possible between them. Suffice it to mention the numerous animal epics that presented the animal kingdom as a mirror of human virtues and vices, or the countless combinations of human and animal bodies in the illuminated manuscripts and architectural sculpture of the Gothic era. The animal trials undoubtedly betray the same tendency to reduce the ontological distance between man and beast.[29]

27 P.S. Berman, "Rats, Pigs, and Statutes on Trial: The Creation of Cultural Narratives in the Prosecution of animals and Inanimate Objects," *New York Law Review,* LXIX (1994), 309, 314–315.

28 *Ibid.,* 292 ff.

29 Dinzelbacher, "Mittelalter," in *idem* (ed.), *Tier und Mensch in der Geschichte* (Stuttgart, 2000), 181–292, 586–605, 628–636 (bibliography); Joan Salisbury, *The Beast Within: Animals in the Middle Ages* (New York, 1994). Trials against foxes are a standard feature in many of the romances in the Roman de Renard tradition. But this parody of human behavior takes

Finally, if the sources are taken seriously, our ancestors in the Middle Ages appear to have had an outlook that we no longer share: They believed that in circumstances of exceptional danger or import, animals could be regarded as humanlike (the fact that domestic animals, particularly dogs, can demonstrate feelings of guilt may have facilitated such a conception). This view of animals is evident in the matter of shore rights (right of salvage): Several law codes from the thirteenth to the eighteenth century (the same period covered by the animal trials), among them the highly influential *Rôles d'Oléron* (before 1286), included the stipulation that the goods on a grounded ship had to remain in the possession of the ship owner if one man—or one animal—survived the wreck. The animals that ranked with men in this context were dogs and cats (eventually the ship's rooster as well). The *Rôles* formulated their equality clearly: "*nullus homo vivus evaserit nec alia bestia.*" We therefore have to accept that in this special situation, too, animals could be invested with a juridical personality.[30]

A combination of various factors is necessary to explain how so extravagant a procedure as the animal trial was able to take root during the late Middle Ages: (1) the insecurity that arose from epidemics, economic depression, and social conflicts; (2) the establishment of Roman law and court procedure in late medieval society; (3) the religious subordination of all beings to priestly power; (4) the comfort derived from the ritual "magic" of legal formalism, and public execution; (5) the interest of lords and lawyers to continue a lucrative practice; and (6) the tendency to personify animals in extreme situations. All of this is not to say that other immediate and background conditions cannot be located, but these factors represent a significant step toward surpassing the notion that animal trials were nothing more than mystifying curiosities in the history of law.

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place among animals only; it has nothing to do with the nonfictive trials of humans against animals.

30 For the point about domestic animals demonstrating feelings of guilt, with regard to Chassenée, see Evans, *Criminal Prosecution,* 35. For the point about animals and salvage, see O. Opet, "Zur Personifikation der Tiere im Strandrecht," *Mitteilungen des Instituts für österreichische Geschichtsforschung,* XLVIII (1934), 417.