

## REFLEXIVE ARGUMENT, THE HEART OF INQUISITORIAL PROCEDURES

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The purpose of this paper is to explore a particular argument form and to show its intimate connection to the procedures followed by various of the medieval inquisitions. The argument form, reflexive argument, is interesting in its own right, but takes on some additional importance when its role in inquisitorial practice is seen.

Throughout this paper, I will speak generally of the inquisition, as though there were only one, and for many purposes that is clearly a mistake. Inquisitions existed from the earliest centuries of Christianity. But the inquisition that is the topic of this paper began at the end of the twelfth century as an official response to the Catharist heresy in southern France. During the thirteenth century, inquisitorial responsibilities were given over mainly to the Dominican and Franciscan orders, although bishops continued to have the requisite authority as well. Inquisitions tended to be occasional, somewhat sporadic, and papally initiated until the end of the fifteenth century, when they became more centralized. Two organizations arose at about that time. The Spanish Inquisition was formalized with papal authority in 1479 but almost immediately escaped from Roman oversight, becoming independent of the Pope and subservient to Spanish political, cultural, and religious priorities instead. 1542 saw the establishment of the Congregation of the Inquisition, or Holy Office, as a stable part of the Catholic bureaucracy, operating under the Pope's authority. The Spanish Inquisition formally terminated in 1820, although it had not been vigorous for a century or more by that time. These three inquisitions—the medieval, the Spanish, and the papal—constitute the bulk of the history of the inquisition, although this type of jurisprudence was also used by local bishops and Protestants as well. Various inquisitions can be distinguished on several grounds: whether they were Roman or Protestant; whether they were instigated and controlled locally or by the Holy Office; whether they were politically, personally, or theologically motivated; whether they were aimed at what now seems to

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be a real issue, such as Lutheranism, or at what now seems a fiction, such as witchcraft; whether they were honestly intentioned or somehow corrupt; whether they were concerned with matters truly internal to Christianity or with matters resulting from an inadequate integration of an external religious community (e.g., native religions in the Americas or the results of forced conversions in Spain or India).<sup>1</sup>

However, these different inquisitions do have some things in common, matters that make it possible for us to see that these are all variants of the same thing. The general inquisitorial mode of jurisprudence was an inheritance from Roman times. The commitment to confession and the willingness to forgive most offenses derive from basic Christian premises.

These few elements give the inquisition some of its more remarkable features: anonymous denunciations (in which the informer is not held to penalty if the complaint turns out to be invalid), control of the procedures by a churchman who is not necessarily sophisticated about legal subtleties, the independence of the inquisition from secular jurisprudence, and the ready belief in any confession (even those concerning otherwise implausible matters, such as black magic). The eventual siting of all the inquisitions within church bureaucracy makes it natural that the institution be controlled by Scripture, Patristic writings, and ecclesiastical practice. These elements, combined with the emerging technology of record-keeping (see Given, especially the early chapters), result in the elaborate inquisitorial documents and the careful written specification of required practices that have survived to our day. The records, and particularly the inquisitorial manuals, are the main sources of information for this paper.

### **Reflexive Argument**

A reflexive argument is one in which the only reasonable refutation serves to strengthen the original position.<sup>2</sup> This is a three-turn interaction. In general, it runs as follows:

Person A claims C;

Person B says C is wrong because of reason R;

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and A replies that the *saying of R* counts as evidence in favor of C.

Reflexive argument bears a certain family resemblance to begging the question, but differs in important ways. Begging the question occurs when one person “draws” a conclusion that was already implicit in his or her premises. That is, begging the question is essentially monological, and is easily illustrated by single-author texts such as editorials or public speeches. Reflexive arguments, in contrast, are inherently dialogical. They have an interactional form, but they do not have a required form in the sense of a system of propositional types. They take their nature more from the argument’s context than its internal features.

Here is a non-inquisitorial example. In the 1970s, many large midwestern campuses were visited by Preacher Jed, who would go to a central public place and begin haranguing passing students for their sinfulness. They would heckle, and he would respond. The exchanges were often somewhat unkind, proceeding from very different understandings. Here is one between a passing student (A) and Jed (J):<sup>3</sup>

- A: But *you* can’t speak rationally with any truth.  
J: Oh yes. I can speak rationally. We speak very rationally.  
A: ((laughter)) We can’t speak rationally to you though.  
J: We have two basic assumptions. Number one, that there is a God and this is His Word.  
A: Defend that assumption!  
J: We don’t have to defend our assumptions.  
A: *Ohhhh*. Okay. That’s rational. ((laughter)) How come *we* do?

We can recast this into canonical form, as follows:

Jed says the Bible is the word of God, and the Bible says that A is sinful;

A denies this, pressing Jed to defend the assumption that the Bible is the word of God;

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Jed concludes that asking for a defense of that assumption *proves* that A is damned.

From Jed's point of view, any assault on his premises is a further proof that his conclusion is right. This is reflexive: all available responses to his initial claim "prove" it.

### **Reflexive Argument in the Inquisition**

The primary task of this paper is to show the involvement of reflexive argumentation in the inquisition. Since I do not want to stimulate higher expectations than I can satisfy, however, let me begin by saying that I do not frequently find reflexive arguments in inquisitorial transcripts; nor do I maintain that it is a required sort of exchange in the inquisitorial manuals. Instead, I want to show that this sort of argumentation is always in the background, and serves as the ultimate bulwark against risk by the inquisition.<sup>4</sup>

The inquisition's purpose was not to determine guilt. Guilt had already been decided upon before proceedings were initiated. Certainly there are many examples of inquisitions being brought for reasons of envy or avarice, but often—perhaps most of the time—I have the impression that these determinations of guilt were sincere and careful. Since the inquisitors therefore generally took guilt for granted before talking to the accused, they did not regard claims of innocence as productive. From the viewpoint of the inquisitor, the following things seemed obviously true: (1) The best repentance occurs after a voluntary confession. (2) Protestations of innocence establish that the sin is deep and the sinner hardened. (3) A failure to cooperate with the inquisition displays a sinful disrespect for the church militant. This presuppositional background makes many sorts of resistance or protest into proof of guilt. Let us examine three particular respects in which reflexive argument is at the kernel of inquisitorial practice.

*A. Refusal to confess results in harsher punishment.* The inquisition prized confessions for several reasons. Most prominently, confession is the first step toward washing away the stain of the sin. Another reason for

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the prominence of confession was that a certain number of testimonies was generally required for a finding of guilt, and the accused's confession was often needed to reach the minimum number. A few people were actually released by the inquisition because their refusal to confess left the tribunal without enough testimonies. Things rarely worked out that way, however.

Inquisitions generally began with the inquisitor asking the accused, "Do you know why you are here?" If the accused answered with a confession that matched the inquisition's documents, matters moved forward with some efficiency. However, if the accused made no answer, or if his or her answer did not correspond to what the inquisitor was expecting to hear, the accused was simply returned to prison for further meditation.<sup>5</sup> From the viewpoint of the inquisitor, this was a kindness: it gave the person another chance for salvation, another opportunity for an unforced confession. Many people spent years in prison, wondering what they needed to say, and many died without ever hearing what they were supposed to have done.

Why is this a reflexive argument? Let me break it out into a hypothetical exchange that represents what I take to be the inquisitor's view:<sup>6</sup>

The inquisitor conveys that the accused is guilty of something;

The accused says, "I cannot confess, for I do not know what I am supposed to have done";

The inquisitor concludes that the stubborn refusal to confess is proof of unrepentant sin.

This has the standard reflexive form: an accusation, a denial, and the conclusion that the denial proves the accusation.

*B. Claims of innocence prove guilt.* A closely related argumentative possibility is the constructive claim of innocence. Perhaps the accused has been clever enough to figure out the charge, either through reflection on what others might have deposed or through inference from the inquisitor's questions. Perhaps the inquisitor or the accused's advocate has simply

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explained the charge. The accused might claim not to have done the alleged action or might argue that the action does not constitute heresy. Though both possibilities are clearly approved by the classical forensic doctrines of *stasis*, both are deadly in an inquisition because both are assimilated by the power of reflexive argumentation.

Here is what happens when one denies the facts that have already been proved to the inquisitor's satisfaction:

The inquisitor says, "You have done X, which is a great sin";

The accused replies, "I never did X";

The inquisitor replies, "Your obstinate denial makes me fear for your soul and proves your guilt."

A similar argumentative summary can be given for the denial that the action was heretical:

The inquisitor says, "You have done X, which is heresy";

The accused replies, "I did X, but it is not a heresy";

The inquisitor concludes, "Your disrespect for the church's judgments about what affronts the faith is itself heretical and so doubles your offense."

Not only were the factual issues beyond dispute, so were the definitional ones.

Besides denying the facts or their definition as heresy, defendants might take a third course. Sometimes the accused would offer a substantial defense and would attempt to excuse the apparently heretical action by offering a justification. Perhaps the most famous instance of this is Joan of Arc. She was tried for various sorts of obvious sins, such as wearing men's clothing and disobeying her parents. Her defense was that she did these things in obedience to her visions. The inquisition wraps up this argument as follows: "On this point the clerks of the University of

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Paris and others have considered the manner and end of these revelations, the matter of the things revealed, and the quality of your person: and having considered everything relevant they declare that it is all false, seductive, pernicious, that such revelations and apparitions are superstitions and proceed from evil and diabolical spirits.”<sup>7</sup> Joan’s claims were never plausible, never to be taken seriously: no divine spirit would ever instruct a person to sin, and even Joan did not deny that she had worn men’s clothing and so forth. We can summarize the reflexive form in this way:

The inquisitor says, “You have sinned in violation of Deuteronomy”;

Joan replies, “I did these things in obedience to the revelations given to me by the saints in my visions”;

The inquisitor concludes, “Thus you prove you have been an agent of Satan, who has impersonated divine creatures.”

Joan’s trial, of course, was an essentially political one, and the modern reader has little doubt that evidence would have been manufactured or ignored if necessary to bring in the proper verdict. But no such fictionalization was ever needed, and Cauchon and the others may very well have burnt her with clear consciences. Such is the power of the reflexive argument.

*C. Assaults on the integrity of the inquisition prove guilt.* Not only is the reflexive argument a potent offensive weapon, but it was also harnessed to defend the inquisition from any sort of criticism. Briefly, to insult the inquisition, to resist the inquisition, to critique the inquisition, or to illuminate its secrets—all these were self evidence of heresy. Reflexive arguments protect the inquisition, both within each particular trial and in the outside world of discourse.

The dangers of an energetic defense are often noted in histories of the inquisition. Anyone who counseled the accused to do anything but confess was straightforwardly interfering with the inquisition’s ability to do God’s

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work. Kramer and Sprenger's comments (part 3, question 10) on these points have a black fascination to them. Certainly the accused can put on a defense: "[T]he accused shall as far as possible be given the benefit of every doubt, provided that this involves no scandal to the faith nor is in any way detrimental to justice. . . ." We need not pause here for comment, because we have already seen what counted as a "scandal to the faith," and what might seem "detrimental to justice." These witch-hunting inquisitors go on to describe what sorts of counsel are and are not permissible: "[I]t should be noted that an Advocate is not to be appointed at the desire of the accused, as if he may choose which Advocate he will have; but the Judge must take great care to appoint neither a litigious nor an evil-minded man. . . ." The advocate is warned to look over the case very carefully, for "if he finds it unjust he must refuse it," and in conducting it must avoid "introducing legal quirks and quibbles." Just to be fair, "[T]he Judge must make the above conditions clear to the Advocate, and finally admonish him not to incur the charge of defending heresy, which would make him liable to excommunication." In this way, the inquisitor can be confident that he will not be contradicted during the trial.

A similar protection was put in place external to the proceedings as well. The workings of the inquisition were generally secret, both as regards specific cases and as regards standard practice. The churchmen knew how things worked, of course, but for the general public the inquisition could be a dark and mysterious thing. Many of those who came before the various tribunals were penanced and released, but it was common to require them to promise not to discuss what they experienced. For instance, Dellon published the penances assigned him, and the last one was standard: "He [Dellon] shall be inflexibly reserved as to every thing which he has seen, said, or heard, or the treatment which has been observed toward him, as well at the Board as in the other places of the Holy Office." In fact, this provision aroused enough fear in Dellon that even though he was living beyond the reach of the inquisition, he debated whether to publish his account and originally represented the author's name as D+++.<sup>8</sup>

Whether secrecy was a wise policy or not is well beyond the scope of this paper. Here, we need only to notice how this protected the inquisition against any risk of effective criticism or any need to defend itself. Roughly



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the same reflexive argument summarizes what happens either to a vigorous defense attorney or an external critic:

The inquisitor says that a person is guilty of heresy;

An advocate or external critic says the inquisitor is wrong in some way;

The inquisitor takes note of this self-evidently heretical attack on the Holy Office's authority and proceeds to punish it.

Reflexive argumentation, then, is the essential insulation against irritants either within proceedings or beyond them.

### **Conclusions**

This paper's central claim is that reflexive argumentation was at the heart of the inquisition. This sort of argument form made it possible for the inquisition to appear reasonable while, in fact, making real argumentation impossible. The inquisition's reflexive arguments all have a coherent internal logic about them, so that the church could easily see the justice of every move it made. I offer no judgment about whether or not the churchmen knew that what they were doing was irrational, because I think it is quite likely that they regarded their premises as following clearly from Scripture, tradition, and theological interpretation. From those premises, I want to emphasize, the reflexive arguments are all entirely convincing.

It is historically clear that the reflexive arguments worked. That is, they convicted people who would not today be found guilty, they set aside impertinent defenses, and they served as an effective discursive bulwark against otherwise pointed criticisms. The completely reflexive form of the arguments is an essential part of this story. However, I have found reflexive arguments in other places, contexts in which the reflexive arguments were ineffective. What distinguishes the inquisition from these other argumentative situations is that in the inquisition, the accused could not leave the field. The inquisition possessed and used the power to define

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the domain of allowable discourse (see Hample, "Pragma-Dialectical"). This is a very dictatorial move in a dialogue, and where there is no authority behind the framing, the intended victim can simply walk away. Both the argumentative form and the power of the church were needed to make the inquisition work as it did.

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### Notes

<sup>1</sup>A convenient summary of the chronology is in the *Oxford Dictionary of the Christian Church* ("Inquisition"). For general histories of the various inquisitions, see books by Peters, by Henningsen and Tedeschi, and of course Lea's *Hist. Inq. Middle Ages*. For the Spanish inquisition, see Kamen, and Lea's *Hist. Inq. in Spain*. The Portuguese inquisition is explored by Herculano. Spanish and Portuguese colonial inquisitions are treated in Priolkar, in Cervantes, and in Lea's *Inq. in Spanish Dependencies*. Books connecting the inquisition to witchcraft include a general study by Russell, a study of Spain's flirtation with witchcraft by Henningsen, Hall's collection of documents from the Salem trials, and a study of the North Berwick, Scotland trials in the 1590s by Normand and Roberts. Maccoby has explored and translated transcripts of thirteenth- and fifteenth-century "disputations" between Christians and Jews, in which the Christians forced the rabbis into an inquisitorial exchange on the subject of whether the Talmud proved the divinity of Christ. This brief list omits many of the more specialized studies of specific regions, issues, and times.

<sup>2</sup>The following material that generally explains reflexive argument is a rewriting of the opening portions of Hample ("Reflexive"). A more limited treatment is in Hample ("Pragma-Dialectical").

<sup>3</sup>The extract to follow is from transcripts (lines 004 - 033, pp. 140-41) reported in Jacobs and Laufersweiler. These interactions between Preacher Jed and passers-by are also explored in van Eemeren, Grootendorst, Jackson, and Jacobs, chapter 7, as well as in Hample ("Reflexive"). The last paper points out that this sort of exchange is actually doubly reflexive. From the student's point of view, Jed's refusal to defend his premise is a proof that the student is right, but to illustrate this would be too great a digression at this point.

<sup>4</sup>The concept of risk is important to contemporary dialectical theories of argument. Briefly, the idea is that each interlocutor must make himself or herself vulnerable in an authentic encounter. That is, one cannot reasonably set out to persuade another person unless one opens oneself to similar exposure. See Brockriede or Johnstone.

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<sup>5</sup>This is common to several inquisitorial manuals. Lea generalizes: “Persistent denial of guilt and assertion of orthodoxy, when there was evidence against him, rendered him an impenitent, obstinate heretic, to be abandoned to the secular arm and consigned to the stake” (*Hist. Inq.*, v. 1, p. 407). Boguet (ch. 45) notes disapprovingly that Satan sometimes kills witches while they are in prison or causes them to kill themselves. Thus, neither silence, nor patience, nor death can do anything but prove the truth of the accusation.

<sup>6</sup>For an illustration from the point of view of the accused, see Charles Dellon’s 1687 *Relation of the Inquisition of Goa*, reprinted in English translation by Priolkar.

<sup>7</sup>*The Trial of Jeanne d’Arc* (301). Abelard was also concerned that apparent miracles might be the devil’s work: see Fichtenau (224). One issue in Joan’s trial was whether she had consulted clergy about the authenticity of the visions. As early as 1022, with the trial of the Orleans heretics, the church had worried about how to regard private revelation that might be heretical—mystical ones in the case of the Orleans heretics, but visions in Joan’s trial. See Fichtenau (199-200), for this issue in the Orleans matter. Giles also points out that bodily ecstasies experienced by women generally had very debatable authenticity in the eyes of the male clergy (12).

The church was often reluctant to argue with heretics, because such disputation immediately confers some credibility on the opponent. Edwards points out that this was a problem for the Roman church in dealing with Lutheranism. Luther’s supporters castigated the Catholics for not having public disputations with Luther (92-98). Consider this reflexive argument: (1) I say that you, the Roman church, are wrong; (2) No, we are right for reason R; (3) Your willingness to argue with me proves that I have a point. This is not as problematic as some of the other reflexive arguments discussed in this paper, but, on Edwards’s analysis, it appears to be what the Catholics were concerned about.

The reluctance to argue with heretics was not confined to the Roman church. Geis and Bunn report the Puritan views that the devil can actually trick us into not believing in him (150, n. 86), and that apparently cogent arguments against religion or one of its institutions are clear evidence of

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Satanic presence (162, n. 27). Both of these, of course, are reflexive arguments that absorb the other's view without answering it.

<sup>8</sup>The penance is printed in ch. 36 of Dellon. See ch. 4 of Priolkar for discussion of the publication of Dellon's account. Dellon was punished by the Portuguese colonial inquisition in Goa, India. His is one of many cases in which false charges seem to have been brought because of personal animosity.

The inquisition's insistence that it be completely insulated from external criticism is recurrent throughout its history. For instance, Kamen (157-61) discusses the Spanish inquisition's interest in Archbishop Carranza in about 1565. Kamen notes the opinion among the supporters of Carranza that to speak in favor of him is exactly equivalent to opposing the inquisition, and that that was not feasible (161). He quotes Marañón, as follows: The inquisition's "authority . . . would not allow it to admit that it had imprisoned Carranza unjustly. The most ardent defenders of justice here consider that it is better for an innocent man to be condemned than for the Inquisition to suffer disgrace."

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