

The signification for *de excommunicato cupiendo* by the bishop

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I. Excommunication, its meaning and the need of secular aids

Excommunication, compound word of 'ex' and 'communicate' means exclusion from the communion of the faithful. It separates a person from christian community. Basically, excommunicate was removed from the participation of sacraments. Its influence, in actuality, reached more extensive area in his social life.¹⁾

Since, in essence, excommunication had a purpose of the cure of a soul, it had been called a medicinal censure. Separation from the company of the faithful was intended to induce the excommunicate to seek absolution, reconciliation to the church, and restoration to his place in society. Nevertheless, it was the most austere penalty among the ecclesiastical disciplines. Definitely it was a spiritual penalty, but it had serious social consequences.²⁾

Excommunication sentenced by the spiritual power was to limit the spiritual life of excommunicate in christian community. It, however, resulted in limiting the temporal life, taking out his wealth, position, and security. In the middle ages there were numerous persons who were outlawed and lost lawsuit rights and feudal privileges by the sentence of excommunication. Especially when the struggle between the secular power and papacy was

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- 1) Cyrille Vogel, "Les Sanctions infligées aux laïcs et aux clercs far les conciles gallo-romains et mérovingiens," *Revue de droit canonique* 2 (1952): 5-29: Vogel maintained that three meanings were current by the term 'excommunicatio': exclusion from partaking in the Eucharist, exclusion from Eucharist and the church building and activities, and complete ostracism by members of th Christian community.
 - 2) Wilfried Hartmann, ed., *Die Konzilien der Karolingischen Teilreiche, 843-859, Monumenta Germanica Historia, Concilia*, 3 (Hannover, 1984): 375-376; Genevieve Steele Edwards, *Ritual Excommunication in Medieval Frand and England, 900-1200*. A Dissertation, Stanford University, 1997: 16-7: The provisions of a council held at Mâcon in 855 tried to lay out a gradual program of sanctions against malefactors of varying degrees of criminality and repentance, attempting to make balance ecclesiastical discipline with the cure of souls.

bitter, papacy utilized excommunication as a compulsory sword. At least, the sentence of excommunication and the formal procedure of its enforcement were very significant in the aspect of law of the middle ages.

Although sentence of excommunication was a crucial discipline of the ecclesiastical court, it was not armed with secular sword and power enough to execute its decision except divine authority. Therefore, excommunication did not always succeed in effecting the desired repentance, and consequently a lot of excommunicates still remained obdurate and contumacious. In case that the penalty of excommunication failed to achieve its desired effect, the church had no further penalty to inflict. In such circumstances the church could not help seeking for the aids of the secular power, for which church strenuously insisted on the general duty of temporal rulers to lend support to the church whenever the good of society required. It was inevitable that the secular arm of society was used to coerce obdurate excommunicates to repentance.³⁾

From as early as the fourth century ecclesiastical synods claimed that the secular power should assist the church against such obduracy.⁴⁾ Merovingian and Carolingian legislation restated the role of the secular power in this respect.⁵⁾ By the twelfth century some form of secular action was in use in the most parts of western Europe.⁶⁾

2. Penance, the origin of secular aids

The relationship of church and state in the aspect of justice was very important element from the early middle ages. Morel rendered that the request for secular assists was found even in the ecclesiastical synods of the fourth century.⁷⁾ It leads us to have a consideration for the reason why church decisions related to sins were in need of secular aids. What encouraged secular power to support ecclesiastical court in its enforcement of excommunication? Ironically, secular aids to the church can be traced its root

3) F. Donald Logan, *Excommunication and Secular Arm in Medieval England* (Toronto: Pontifical Institute of Medieval Studies, 1968): 15-6.

4) Maurice Morel, *L'Excommunication et le pouvoir civil en France du droit canonique classique au commencement du XV^e siècle* (Paris, 1926): 5-12.

5) Paul Hinschius, *Das Kirchenrecht der Katholiken und Protestanten in Deutschland* (Berlin, 1869-1897) vol. 5: 375-76.

6) Logan, 16.

7) Morel. 5-12.

to the status quo in which the secular government required the support of the church to deal with the malefactors. While ecclesiastical discipline expected the support from the secular power for its effective enforcement, secular law also required a supplementary procedure to fulfill its purpose by help of church from the early times.

The rise of orderly and relatively peaceful methods of settling disputes transmuted the blood-feud into money payments, made disputes submit to the judgment of a court, and made some provisions for the enforcement of court decision. Still malefactors existed as breakers of the kings's peace. Orderly processes had to struggle against powerful obstacles, which long retarded the development of peaceful justice. Private vengeance was still allowed in some cases, and it often developed into dangerous private wars. Sometimes the secular law left unpunished certain heinous offences.

Under the circumstances in which the secular government was unable to cope with all the crimes, the pressure to reinforce and supplement the law against malefactors was needed on the side of state. This substantial aids was given to the state from the Church through religious sanctions and discipline. Ecclesiastical discipline was the natural means used for this cooperation, and the chief instrument for such discipline was penance.⁸⁾ Penitential discipline had close connections with many aspects of medieval life. Social life was profoundly affected by numerous penitential prescriptions, which regulated such various matters as food and drink, marriage, sexual relation, charity, the treatment of children, the emancipation of bondmen, and the sacredness of oaths.⁹⁾ Hence, the close associations between Church and State was observed in various aspects, and had influences over a great part of life in the Middle Ages.

From these, a question why secular law took it for granted the reception of the aid from Church arises in mind. What is the common interest between the secular area and the church in the aspect of law? It can be understood from the conception of sins in the middle ages. The secular laws of that time constantly reiterated that crimes were sins, and that secular penal law had a religious, as well as a punitive purpose.¹⁰⁾ Crimes were regarded as corrupting

8) T. P. Oakley, *English Penitential Discipline and Anglo-Saxon Laws*, (*Columbia University Studies in History*, CVII no. 2. New York, 1923): I, 156.

9) Oakley: 141-142.

the soul of the criminal himself. The Old-Irish verb used to express the commission of a crime also means 'to defile,' and it is definitely stated that 'body and soul are defiled by committing crime. To purge the criminal from this defilement and to punish him for his crime, the secular laws constantly aided the Church by requiring and enforcing auricular confession, penance and excommunication.

The bishops of seventh-century England produced the Penitential Codes. They attempted to rely on the support of the king for the effective enforcement of the rules, and to borrow his antique and traditional methods of legislation.¹¹⁾ The legislation of the Synod of Herford produced the Penitential Codes which deal with a collection of sins, ranging from parricide to drinking liquid in which a dead mouse or weasel is found.¹²⁾

In the Laws of Alfred the Great, criminals who sought sanctuary, and confessed there their offences to a priest, should have half of the secular composition remitted. Other laws of the Anglo-Saxons required penance for sins in general and for crimes specifically, under penalty of fines for failure to do penance.¹³⁾ In addition to the pressure of penance and of secular compositions, the criminal was subjected to the ban of excommunication.

Frankish secular laws for the enforcement of penance were even more numerous and thoroughgoing than among the Welsh, Irish, and Anglo-Saxons. A decree of Childebert of 595 showed an example, requiring penance for incest. The Carolingian monarchs constantly reiterated severe laws requiring the performance of public and private penance. The capitularies of Charlemagne frequently ordain ecclesiastical penalties. In the general capitulary of 760-761, there were several general provisions for enforcing penance.¹⁴⁾ In 779, the bishops were empowered to deal with those who were guilty of incest, and those who resisted episcopal action should suffer confiscation.¹⁵⁾ A capitulary attributed to the year 802 instructs the counts and the *missi* to

10) Thomas P. Oakley, "The cooperation of mediaeval penance and secular law," *Proceedings of the Second International Congress of Medieval Canon Law*, Boston College, 12-16 August 1963: 516-517.

11) Rosalind Hill, "The theory and practice of excommunication in medieval England," *History* 42 (1953): 1-11.

12) A. L. Smith, *Church and State in the Middle Ages*: 56.

13) Oakley, "Medieval penance and secular law," 517.

14) *MGH Legg.*, I, 32-34.

15) *MGH*, I, 35

coerce all who refuse to submit to sentences from their bishops, and to perform penances imposed.¹⁶⁾

In the secular laws, criminals must perform penance, in addition to fulfilling the secular penalties. Hence, in the medieval system of social control, a total of severe discipline against crimes, it might be said, was composed of secular and ecclesiastical parts. While the secular penalties were usually money compositions, paid to the victim's kindred in case of homicide, or to the injured person in case of other personal wrongs, penitential discipline generally consisted of fasting for three days a week or for three forty-day periods a year, with some commutation or redemption of penance for those who could not fast. The terms of penitential discipline assigned for criminals were differed in accordance with the degree of sins, and appeared to be various in the laws of every countries.

At the time when the secular law and jurisdictions were not well arranged and the secular authority was not strong enough to punish all the criminals as much as it desired, the state needed the support of ecclesiastical discipline in order to make up for the place where it could not reach. On the other hand, to establish the stable social order was not only the work of the state, but also an important mission to the church. Therefore, penance which was enforced by the model of church discipline was one of the indispensable components in penal law for the king to deal with malefactors. Later, at least after tenth century, some part of criminals were to be rendered that they belonged to the ecclesiastical court. Moreover, secular power went so far as respecting the decision of church justice. So it was natural for the state to cooperate with the church, giving its support of secular arm. When the secular power wish to impose more intensive authority on his legal process, he accepted the penitential element for the constraint of law. Gradually the state conceded some parts of crimes to the boundary of ecclesiastical court, providing support for effective enforcement of church discipline instead. In this respect, penance used by secular power can be considered to be an important origin of secular aids to the church.

3. Signification for the request of *de excommunicato capiendo*

16) H. C. Lea, *Auricular Confession and Indulgences* (3vols, Philadelphia), II, *passim*.

(1) England

The authority of ecclesiastical court in the middle ages could be preserved by the support of secular power. There was a step of procedure by which church achieved its purpose to punish contumacy through secular aids. From uncertain date, a compromise between Church and State was made in the matter of persons who had offended against ecclesiastical law or resisted ecclesiastical courts. These were publicly excommunicated by the proper authority of church. If they remained contumacious for forty days, the authority signified this to the Chancery of the State, and a writ of *significavit* or *de excommunicato capiendo* was issued to the sheriff for their arrest and imprisonment until they should yield.

The original significations were preserved in the Chancery, and several ten thousand of them remained so far. The signification shows almost common and regular format in its style. Merely the name of the offender is given in most cases, and offence is sometimes specified. It seems that almost every subject could be dealt with by an ecclesiastical court: non payment of tenths is perhaps the most common, and then matrimonial and testamentary cases, fornication, adultery, perjury, and defamation.¹⁷⁾ Besides these, the matter of religious belief was the most important of all: apostates from the catholic faith, heresy, sacrilege, and priest marriage.¹⁸⁾

The power to excommunicate belonged to bishops, archdeacons, abbots, and judges acting by their commission. In practice every ecclesiastical judge could excommunicate culprits. On the other hand the ability to signify excommunicates to the royal chancery for arrest was severely restricted. It belonged properly to the residential bishops of England and Wales, and then only in respect to the persons subject to their jurisdiction. If other prelates and judges wished to secure the capture of obdurate excommunicates and had

17) R. C. Fowler, "Secular Aid for Excommunication," *Transactions of the Royal Historical Society*, vol. VIII (London: Offices of the Society, 1914): 115.

18) *Ibid.*: Sixteen persons were reported by the archbishop of Canterbury as apostates from the Catholic faith after baptism in 1282; By the reason of heresy, John Balle was excommunicated in the diocese of London in 1364 and 1379, and also in the dioceses of Norwich and Canterbury at various dates. Excommunications of Master Nicholas Herford in 1378 and five Lollards at Northampton in 1394 were noted at those days; Thomas Wilson, later rector of Badsworth, was denounced as married priest by the archbishop of York in 1556.

no special royal privilege to signify, they had to petition their bishop to send a signification to chancery; in case he refused it, recourse could be had to the metropolitan.¹⁹⁾

The power to signify excommunicates belonged properly only to the bishop and was exercised principally by him.²⁰⁾ The restriction of this power to bishops seems to be originated from the conception of William the Conqueror. William provided the ordinance that offenders of episcopal law should appear at the place assigned by the bishop, and he removed spiritual cases from the hundred courts. He rendered that the bishop would do what is just belong to the church and to the bishop according to the canons and the episcopal laws. In order to accomplish this principle, excommunication and the secular arm were to be used against anyone refusing to come to episcopal justice.²¹⁾ It was clearly the emphasis on the jurisdiction of the bishop, separating it from that of secular court. The lawyers of the common law from the time of Bracton considered that bishops possessed temporalities held from the king, which the king could seize if a bishop refused to obey the king's order to absolve an imprisoned excommunicate.²²⁾ This was the reason why the king could not do to the pope or to the archdeacon.

In general the secular arm was used chiefly against those who had been excommunicated for contumacies against ecclesiastical courts. The ordinance of William the Conqueror for the use of the secular arm against excommunicates was clearly directed only towards persons who were excommunicated for contumacy committed against ecclesiastical courts.²³⁾ Judging from the instances of the use of the signification procedure, it is certain that the secular arm was used only against persons whose

19) Logan, 25; H. G. Richardson, "Azo, Drogheds, and Bracton," *English Historical Review* 59 (1944) 22-47: Even in a bishop's lifetime, the official of a bishop could himself signify excommunicated persons, at least during the reign of Henry III. The official who signified excommunicates performed his works by ordinary authority but by authority delegated by the bishop. In any way the practice was short-lived.

20) Logan 28.

21) Richardson, 17-20.

22) *Year Book 8 Henry VI*, no. 8; H. M. Chew, *Ecclesiastical Tenants-in-Chief* (Oxford, 1932), chap 5; *Decretals of Gregory IX* X l.31.1.: the canonists agreed with the common lawyers and chancery practice by denying to lesser prelates the power of signifying excommunicates, but not for the same reason. The *Decretals of Gregory IX*(1234) clearly acknowledged the right of bishops to invoke the secular arm.

23) Logan, 43.

excommunication resulted from proceedings in ecclesiastical courts. The key to the writ *de excommunicato capiendo* lies clearly in the canonical notion of contumacy, for this writ could be issued only if a person was excommunicated for contumacy.

Contumacy was considered to be disobedience to the orders of a court and to the law itself.²⁴⁾ It could be committed by failing to come to court when cited, by leaving before a case was finished, or by refusing to obey the decisions of a court.²⁵⁾ This contumacy for non-appearance must surely have been the most common form of contumacy.²⁶⁾

The evidence yielded by the files of significations shows that contumacious persons were regularly excommunicated both in civil and in criminal cases. From the cases of significations, it shows that excommunication was used against contumacious persons in every type of case over which the ecclesiastical courts enjoyed competence. So to speak, excommunication was used against contumacious persons in all manner of cases without distinction. There was the cleric who neglected his property or his celibacy, the woman given to concubinage, the thief, the adulterer, the assaulter of clerics, the defamer, the perjurer, the debtor, the magician, and so forth. Besides these, there were different types of violators summoned in suits because of relations to testaments, tithes, mortuary rights, benefices, marriage, and even suspicion of heresy.²⁷⁾ Excommunication was regularly imposed against contumacious persons regardless of the type of case in which they were involved. In these cases the excommunicated persons had one thing in

24) Alfons Gommenginger, "Bedeutet die Exkommunikation Verlust der Kirchengliedschaft?," *Zeitschrift für katholische Theologie* 73 (1951) 45-46; To the Fathers *contumacia* signified a deliberate and obstinate opposition to the very authority of the church and, as such, merited exclusion from the Christian community. The ecclesiastical reformers of the eleventh and twelfth centuries began to use excommunication as a means of enforcing church discipline: PL 144. 215; In the high middle ages *contumacia* was reduced to simple disobedience. The canonists of the post-Gregorian period, based their teaching on contumacy largely on Roman Law: L. Charvet, "Contumacia, Contumax," *Dictionnaire de droit canonique* 4, 506-07.

25) C.11 q.3 c.43. from the council of Tribur, 895)

26) *Speculum Iuris* 2. 1. de contumacia 3; In England a different practice prevailed: excommunication was the usual penalty for contumacies of every kind from at least the mid-thirteenth century. William the Conqueror established excommunication as the penalty to be used against persons refusing to come to an ecclesiastical court after three citations.

27) Logan 50-52.

common that they disobeyed the church and as a result were considered contumacious.

Even the heretics were subject to the constraint of the secular arm through excommunication. But more directive and strong system was required for the church to deal with the frequent cases of heretics in England not until the end of 14th century. The bishops of the Canterbury province in 1382 requested the king for a specific procedure for dealing with Lollards. By the new arrangement the bishops were provided with commissions which allowed them to demand directly without recourse to the royal chancery the assistance of the sheriffs and other royal officials in handling heretics. At this time the penalty imposed by secular arm extended only to imprisonment. Confiscation of property was not added as a penalty until 1388. Moreover, With the statute *de heretico comburendo* of 1401 heresy became a secular offense and it was punishable by death of burning.²⁸⁾

(2) France

Until the twelfth century a sort of secular action was performed by the request of the church over all in medieval Europe. The council of Melun, called by the archbishop of Sens in 1216, legislated that the secular power should be compelled to seize the persons and properties of all who remained under the ban of the church for a year and a day. Those who remained excommunicate for more than a year were assimilated to the state of heresy or suspicion of heresy and were subject to the confiscation of their movables and immovables and perhaps to arrest.²⁹⁾

The first formal acceptance of this doctrine by the state in France appear to have arisen from the efforts to suppress the Albigensian heresy. At the time Regent Blanche of Castile deplored the sentence of excommunication was contemned in the district of Nismes and Narbonne. The procedure in much of France was influenced by the Albigensian troubles. The Albigensian question was a very formidable issue in the first years of Saint Louis's reign (Louis

28) Logan 68-69.

29) Ludwig Wahrmund, *Quellen zur Geschichte des römisch-kanonischen Processes im Mittelalter*. Herausgegeben von Dr. Ludwig Wahrmund. . (Innsbruck, 1905-31) vol. 1, 3: 7-8; Curialis a cleric in northwest France, wrote in his *Summa* in the third quarter of the thirteenth century that after a year an excommunicate should be imprisoned and his goods sequestrated.

IX 1220-1270). The ordinance *Cupientes* of 1229 was issued in the name of the king for the repression of the Albigenian heresy. The royal ordinance *Capientes* addressed to various cities and dioceses in Languedoc provided for seizure of goods by the bailiffs after a year.³⁰⁾

By the ordinance the barons, their officials, and subjects were ordered diligently to investigate and search out heretics, so that they might be properly punished by ecclesiastics. The power of keys had been contemned in the south. Therefore, the officials should inflict temporal punishment on anyone who remained in excommunication for a year and did not return to the unity of the faith. The royal officials should seize his temporal goods, which should not be returned until the guilty party was absolved by the Church.³¹⁾ So to speak, the property of those who have remained under excommunication for a year without seeking absolution should be seized and should not be returned until the excommunicates were reconciled with the Church and even then, the property should not be returned without the king's special command.

Cupientes was an influential document throughout Saint Louis's reign. The royal seneschals were ordered to take an oath to enforce it. Raymond VII, count of Toulouse, agreed in the treaty of Paris to implement it. In 1233 the seneschal of Beaucaire pledged assistance to the bishop of Mende in pacifying the territory. He committed his authority to the enforcement of fines imposed by the bishop on people who remained in excommunication for forty days without seeking absolution.³²⁾

The councils of the South kept up constant pressure to insure civil enforcement of excommunications. In the provincial Council of Narbonne in 1227 the prelates recalled that Louis VIII had made a regulation that anyone who let himself be excommunicated after three admonitions should pay nine pounds, one penny of Tours. If he remained in the excommunication for a year, his property should be seized. The Council of Toulouse (1229) decreed in canon seven that if any official was not zealous in carrying out orders to

30) Morel 69-78.

31) Gerard J. Campbell, "The attitude of the monarchy toward the use of ecclesiastical censures in the reign of Saint Louis," *Speculum: A Journal of Mediaeval Studies* Vol. XXXV No. 4 (October 1960): 541-42.

32) Robert Michel, *L'Administration royale dans la sénéchaussée de Beaucaire au temps de Saint Louis* (Paris, 1910): 384-386.

pursue heretics, his property should be seized, and he should be deprived of his office. The concil of Béziers (1246) required of counts, baron, *rectores consules*, and *ballivi* of cities and other places an oath to aid the church against heretics. The Council of Avignon in 1326 called upon the secular authorities to do their duty in compelling all who remained for two months under excommunication to seek absolution. Judges and seigneurs who neglected this were themselves threatened with the anathema and if persistently contumacious, their territories were placed under interdicted.³³⁾ From the above cases, it can be concluded that the church laid the constant pressure on temporal authorities to enforce civil constraint on heretics and the excommunicates to bring them back to the Church.³⁴⁾

It is not precise to say that all the persons who were excommunicated by the church were always put into the constraint of secular power. In actuality, the king demanded the right to judge whether the excommunication was just before he would use civil constraint. In case a prelate wished the king to commit the royal power to the enforcement of an excommunication, St. Louis felt that he could not make such a commitment until he knew whether the excommunication was just. If the prelate refused to permit such a judgment, the king did not punish him or attempt to use any force on him. In the case of money devaluation³⁵⁾ by the bishop of Clermont in 1269, the king not only assumed the right to decide whether excommunication was abuse, but he used constraint to have excommunications withdrawn, when he was convinced that they were unjust. The spiritual power was used in some instances merely for a prelate's personal, temporal gains. So Alphonse of Toulouse (Saint Louis's brother) made a regulation in 1254 that civil constraint should not be used by the count's officials in cases which involved quarrels over tithes or money matters.³⁶⁾

33) Henry C. Lea, *The Rise of the Temporal power.-Benefit of Clergy.-Excommunication.-The Early Church and Slavery* in *Studies in Church History* (Philadelphia: Henry C. Lea's Son & Co., 1883): 402.

34) Campbell, 542.

35) Edgaed Boutaric, *Saint Louis et Alfonse de Poitiers* (Paris, 1870): 216; The bishop of Clermont had devalued his money in 1269 so that twenty-five shillings of the new money would have the value of twenty shilling of the old. Saint Louis's brother, Alphonse of Toulouse, complained to the king that the bishop then proceeded to excommunicate anyone who refused to accept this devalued money. Saint louis opposed such moves.

36) Campbell 543-44.

(3) Germany

The constitution and vicissitudes of the Holy Roman Empire brought church and state into almost inseparable connection. This necessarily resulted in the supremacy of the church, and almost all the claims of Gregory VII and Innocent III were not only admitted but enforced by the secular power in the German law of the middle ages. In the Nürnberg decree of 1187, issued by Frederic Barbarossa incendiaryism was punished with proscription. If this does not secure submission, the offender is to be excommunicated by his bishop. On the other hand, whoever is excommunicated by a bishop shall similarly be proscribed by the secular judges, until he shall have been reconciled to the church. If he proves obstinate and remains under proscription and excommunication for a year and a day, he becomes an outlaw, deprived of all legal rights. Under the weakness of central power and anarchy of Germany the authority unable to enforce the law was obliged to implore the assistance of the church, and to pay for that assistance by placing its forces at the disposal of the spiritual courts.³⁷⁾

Frederic II who promulgated an ordinance, *Confederatio* in 1220, confirmed that any one incurring excommunication for infringing the liberties of the church, and so remaining for a year, was threatened with the imperial ban until he should obtain absolution. If excommunicated for harboring heretics, and not reconciled within a year, he was declared infamous and ineligible to any office or place of trust, disabled from bequeathing or receiving inheritance, from bearing witness, and from appearing as plaintiff.³⁸⁾

Surprisingly, a different tradition from other countries was founded in Germany through emperor's excommunication privilege. Both the church and the state shared reciprocal aids each other. This privilege was based on the status as *filius specialis* of the Apostle. Holy Roman Emperors was consecrated and crowned by the pope since Otto the Great in 962. It was at the crowning of king Heinrich V in April 13, 1111, that unction was preceded by a series of ceremony consisted of adoption, investigation, and reception within the spiritual status, and at last he was proclaimed a *filius specialis*.³⁹⁾

37) Lea, 409-10.

38) Const. Frid. II. post Lib. Feudor.3, 8.

39) Eduard Eichmann, "Das Exkommunikationsprivileg des deutschen Kaisers im

Archbishop Dietrich of Trier attempted to strengthen his jurisdiction over his own people through excommunication, exploiting the king's decree *Confederatio*.⁴⁰⁾ But it seems that even the constraint of king's ordinance could not make too often the prowess of excommunication effective. From the unpleasant situation in which excommunications of the archbishop could not be enforced as much as he desired, a church council of 1310 in Trier says that "because the sentence of excommunication is despised by many," the secular arm was to be called in.⁴¹⁾ Already, in 1266, the council of Cologne directed the excommunication of any secular magistrate who would refuse or neglect to compel the submission of any one remaining under excommunication for a year. The civil and the ecclesiastical powers were bound together with the closest requirements of mutual support, yet with the supremacy of the spiritual authority fully admitted in the last resort.⁴²⁾

4. Conclusion

In the middle ages excommunication was the most austere discipline whose influences permeated to ordinary social life as much as to religious life. Excommunication was, in principle, to be severed from christian congregation, but in case he resisted the church authority and remained as obdurate for definite time without repent, he was laid under the constraint of secular

Mittelalter," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 32 (1911): 192-94.

40) Brian A. Pavlac, "Excommunication and territorial politics in High Medieval Trier," *Church History* vol. 60, No. 1 (March 1991): 34.

41) J. D. Mansi, *Sacrorum Conciliorum Nova et Amplissima Collectio*, vol. 25: 250.

42) Lea 412-13; The Suabian law, which ruled all Southern Germany, detailed that any one remaining under excommunication for six weeks and a day is to be proscribed by the lay courts, and similarly proscription, after the same interval, is to be followed by excommunication. Whichever of the two penalties has been first inflicted is to be removed before the other is removable. On the other hand Northern Germany was by no means disposed to yield the same implicit obedience to the demands of the church. The *Sachsenspiegel*, the recognized code of the North, declared that no one could be deprived by excommunication of the privileges of the common or feudal law unless the excommunicate was put under ban by the emperor. The censures of the church were specially asserted to be directed against the soul, and they could have no effect upon the temporal condition of the sinner. This code was to be regarded with extreme disfavor by the church. So it was condemned and anathematized in 1374 by Gregory XI, and all good Christians were forbidden to obey it. Nevertheless, the *Sachsenspiegel* remained in force, notwithstanding that the condemnation was emphatically repeated by the council of Bâle and Eugenius IV.

power.

Secular aid in England was requested by the bishop through the writ *significavit* for the king to arrest contumacious person. *Decretum* defined that secular action to enforce against the excommunicate could be requested after forty days of contumacy. But the term of contumacy appeared to be various from time and place. While in most of cases from France and Northern Germany it was a year after excommunication, England kept forty days and Southern Germany six weeks.

The bishop acquired the customary right of bishops in England to request a royal writ for the capture of excommunicated persons (*de excommunicato capiendo*). So the right to signify excommunicates to the royal chancery for arrest was severely restricted to the bishop. In France St. Louis issued royal ordinance *cupientes* addressed to various cities and dioceses in Langudoc provided for seizure of goods by the bailiffs after a year of excommunication. In the side of church, clerics continuously desired that after a year an excommunicate should be imprisoned and his goods confiscated. In Germany the imperial ban was enforced on the persons who remained excommunicate of six weeks without returning back to church. Imperial outlawry imposed on the person excommunicated by church according to the ordinance *Conferatio* which was promulgated by Frederick II in 1220.

From the cases regulated and enforced in medieval kingdoms, the fact that the request for secular arms to punish obdurate excommunicates was frequently taken to the king by church authority is proper understanding. Nevertheless, the category of culprits who caused the signification to the king was differed from each other in European countries. While the writ *de excommunicato capiendo* in England was issued to the various kinds of culprit such as matrimonial case, perjury, fornication, adultery, and defamation, besides tithes, the other types of payment to the church, and heresy, St Louis intended to limit the enforcement of secular arm mainly to the heresy. He strongly desired to know whether excommunication imposed was just. If it was unjust, he not only refused to accept the request of church, but tried to have excommunication withdrawn from the church.

The church and the state needed reciprocal aids each other to protect society from deterioration. This mutual needs allowed that the state used penance of christian capacity for dealing with criminals. Gradually some part

of crimes were submitted under the control of the church courts from that of the state. Such an inclination resulted in the support of secular power, because the church was recognized to have burden with the secular power to cure the soul of malefactors. On the other hand, the church wanted the support of secular arm to lay the contumacious persons under the constraint of king. From this respects it can be said that penance was one of origins for the secular aids, and in part, the effort to protect society from unlawful culprits was gradually transferred to the role of the church through signification for *de excommunicato cupiendo*.