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Radcliffe's Inquisition and Eighteenth-Century English Legal Practice

At the heart of *The Italian* (1797) lies the disturbing image of the Inquisition, one whose associations could not escape contemporary readers: as Miles notes, 'the Bastille and the Inquisition were, for the Protestant imagination, virtually the same thing.'¹ This paper seeks to investigate Radcliffe's text in the light of eighteenth-century images of the Inquisition and the Bastille, their significance as political symbols, and their implications for English ideals of law and of justice, articulated by a Guilford magistrate in 1740: 'Those Forms of Government are the mildest and best that So temper their Justice and Mercy...Where Justice is not loose to range at large in an arbitrary cruell manner and carry its avenging Sword without control.'²

To the eighteenth-century imagination the Bastille was a powerful and politically charged symbol; as Boker explains, it was a 'collective symbol of political cruelty, despotism and the suppression of political dissent, the symbol of the *Ancien Regime*'.³ Radcliffe's Inquisition finds an imaginative parallel in the workings not only of the hated Bastille but English courts and prisons, acting as a symbolic base for consideration of the English legal system. Hoeveler notes that '*The Italian* has often been ridiculed for its blatant historical anachronisms: its pretence to being set very specifically in the Naples of 1764 while it presents a thriving Inquisition that had not existed in Italy for over a hundred years', pointing out that 'The psychological action of *The Italian* occurs in the same time and place as do all of Radcliffe's novels – England, 1790-97'.⁴

Eighteenth-century accounts of the Inquisition⁵ helped to reinforce its status as popular myth and provided a rich and powerful symbol of juridical inequity, one which has particular resonance for 1790s England; as Miles argues, 'Gothic romances echo the cultural convulsions that increasingly racked the decade'(p.72). Prison reform was at the top of the political agenda at the close of the eighteenth century, politicians reflecting and arguably feeding public fears by exploiting the image of the Bastille in critiquing English prisons: 'when the people are taught to view the magistrates with contempt or hatred and consider every gaol a Bastille, annexing to that appellation some indefinite idea of severity and tyranny, it is greatly to be feared that their indignation will next be turned against the laws of the land'.⁶

The English legal system was justly praised in the eighteenth century as being more equitable than its European counterparts, which were primarily Inquisitorial.⁷ Blackstone articulates national pride in the system, speaking confidently of England as 'A land, perhaps the only one in the universe, in which political or civil liberty is the very end and scope of the constitution'.⁸ John Dent's play *The Bastille* (1790) articulates such pride in a more popular form. It dramatises the fall of the Bastille, closing with 'the figure of Britannia descend[ing] holding portraits of the English king and queen while a statue of liberty is seen trampling the figure of despotism'.⁹

Legal theorists such as Blackstone and Beccaria testify to concern for justice from within the system itself, concern which is reflected in Charges given by individual magistrates. The Norfolk charges in 1767 declared: 'the most tender Regard has always been had on the Tryal of [capital crimes] so as to preserve the Life of the Criminal where other Circumstances do not render him an Object unfitt for mercy'(p.378). Judges throughout the century sought to reassure the public of the equity of English as opposed to Continental practice. A Justice charged the Norfolk jury in 1749, 'with us Courts are open...Friends and Witnesses of the Accused and Accuser have equally access...Witnesses are publicly produc'd and confronted...Their Examination is free and not the Effect of that Infernal practice, Torture and the Wrack'(p.354).¹⁰

The Inquisition functions as an image of cruelty and injustice which English common law has repudiated but its parallels with common law practice reveal the potential dangers of complacency regarding English justice. Eighteenth-century readers would inevitably have seen certain parallels: individuals feeling that they are pitted against a seemingly merciless system, lack of defence counsel, fear of physical ill-treatment, imprisonment and sometimes death before trial.

Vivaldi is arrested dramatically at the altar, on the point of a secret marriage with Ellena. He, Ellena and the reader assume that the armed men, 'singularly habited', are from the Inquisition but in fact Schedoni has hired them to deliver Vivaldi to the Inquisition and abduct Ellena. One of the seeming 'terrible messengers of evil...summon[s] [them] to surrender' in a voice 'like bursting thunder' but Vivaldi insists, 'Produce your form of summons' as he would be entitled to under English law.¹¹

The warrant¹² is described in appropriately dramatic terms as 'a black scroll', imposingly official due

to 'The kind of parchment, the impression of the seal', all the more terrifying in the popular eighteenth-century imagination in view of the infamous lettres de cachet. Yet there is a clear parallel with the *mittimus* of English law, that is, the warrant by which a Justice could have someone arrested and imprisoned. Some of the terms used to assess the validity of the warrant are reminiscent of the criteria of English law: 'the particular form of words...understood only by the initiated - all announced this to be a true instrument of arrestation'(p.187). Blackstone explained that 'particular words of art must be used, which are so appropriated by the law to express the precise idea...no other words, however synonymous they may seem, are capable of doing it'(IV,p.302). Legal terminology was criticised throughout the century because it was designed to be 'understood only by the initiated'.

The Inquisition prison receives appropriate Gothic treatment, described from a distance as 'an extent of lofty walls and towers, that...bounded the horizon'(p.195), suggesting a vast building imposing itself on the environment, almost imprisoning it. Yet it also reflects the reality of Inquisition prisons, which were often magnificent buildings such as palaces. Kamen notes, 'The Inquisition was fortunate in its choice of residences...it was allowed the use of fortified castles with ancient and reliable prison cells'(p.169). The political implications are also significant: Miles argues that 'The description [of the prison] does not match the historical Bastille but it does closely duplicate the Bastille's popular representation'(p.157).

When Vivaldi arrives, there is 'a death-like silence' and he believes that he is walking through 'one of the burial vaults of the victims'(p.196). He hears 'half-stifled groans, as of a person in agony'(p.186) and sees Inquisition officials in 'long black robes'(p.196), their faces 'stamped with the characters of demons'(p.197). Tompkins dismisses such descriptions: 'one can classify all the ingredients of Mrs Radcliffe's romances under the two headings of Beauty and Terror'¹³ but Scott, an historian, uses similar vocabulary, describing the Inquisition torturer as 'an extraordinary, awesome apparition. Clothed from head to foot in a black garment, with his head and face covered, except for two eye-holes, with a black cowl, he presented a most diabolical and satanic appearance'.¹⁴ Inquisition officials were masters of dramatic effect; many of the 'Gothic' elements in *The Italian* owe more to real Inquisition practice than to Radcliffe's imagination. While Kamen does much to counter the myths surrounding the Inquisition, he acknowledges their skill in psychological manipulation, 'often the accused was merely in *conspectu tormentorum*, when the sight of the instruments of torture would provoke a confession'(p.172).

Vivaldi's prison is at once real and the objective correlative of his fears. The intricate and puzzling structure of the buildings, with long dark corridors and unexplained doors, functions as an image for the Inquisition and its procedures, but it also replicates the plight of anyone caught up in the toils of an elaborate and mysterious legal system.¹⁵ Scott explains that the 'torture chamber was well designed to afflict' the prisoner 'with horror, dread and despair. It was usually an underground apartment, devoid of windows'(p.66), lit only by candles. Kamen attacks the myth of the Inquisition, arguing that Inquisitorial 'gaols were not dens of horror. Prisoners were fed regularly and adequately from their own purse...prisoners in some tribunals were well cared for, this depending on their financial resources'. He acknowledges that there are records of hardship in Inquisition prisons, including lack of food and water, 'having to wear chains (which were not frequently used by the Inquisition) and being left interminably in unlit and unheated cells...a regular death-rate...disease and relatively unhealthy conditions'(p.172) but notes that 'These were standard complaints which could have been made of any other prison'(pp.171-2).

Torres de Castilla described the cells at the Portuguese Inquisition at Goa as the 'dirtiest, darkest and most horrible that can possibly be...a dry well in the middle of the space where the prisoners were confined and which is always uncovered, is used as a privy, the emanations from which have no other outlet for escape than a small opening. The prisoners live in a common privy'.¹⁶ The accounts of John Howard and others reveal depressing similarities with English practice. In Knaresborough, Howard found an open sewer running through a cell in the local debtors' prison; a prisoner 'took in with him a dog to defend him from vermin; but the dog was soon destroyed, and the prisoner's face much disfigured by them'.¹⁷

Radcliffe is not simply presenting the dark horrors of fantasy. In presenting issues such as the imprisonment and ill treatment of innocent people, she reflects the discourse of social reformers such as John Howard and William Smith, arguing for penal reform in England.¹⁸ Punter argues that 'The settings of the Gothic writers may not at first glance appear to resemble what we know of eighteenth-century prisons' but points out 'that in the Bridewells there was continuous danger of starvation...Newgate, calculated to hold 427 prisoners, was at one time holding 1200...many contemporary observers noted a sickening increase in levels of punishment in the last two decades of the century', concluding, 'one realises that the writers of terror were carrying a significant aspect of real social anxiety'(p.31).

Godwin criticised complacency regarding English justice in *Caleb Williams* (1794): "'Thank God,"

exclaims the Englishman, "we have no Bastile! Thank God, with us no man can be punished without a crime!" Unthinking wretch! Is that a country of liberty, where thousands languish in dungeons and fetters? Go, go, ignorant fool! and visit the scenes of our prisons! witness their unwholesomeness, their filth, the tyranny of their governors, the misery of their inmates! And after that, show me the man shameless enough to triumph, and say, that England has no Bastile!"¹⁹

Scott recounts that in 1752 Francisco Moyon 'was seized by the Inquisition', found guilty of heresy, Vivaldi's alleged crime, and 'sentenced to 200 lashes and ten years imprisonment'. He was 'shackled for the whole of these ten interminable years', suffering 'malignant ulcers'(p.84) on his ankle which were so severe that his captors, fearing gangrene, ordered the shackles to be removed. The account is horrific, as one would expect of the mythical cruelty of the Inquisition but it reveals disturbing similarities to English practice. Prisoners could be shackled in English prisons if they had attempted to escape, and torture was still legal in England under alternative names.

Pressing to death with iron weights, used to extract testimony or confession from prisoners who refused to speak in court, was particularly brutal. Blackstone explains: 'the prisoner shall be...laid on his back, on the bare floor, naked, unless where decency forbids' and 'as great a weight of iron as he can bear, and more' will 'be placed upon his body'. In addition, 'he shall have no sustenance, save...on the first day, three morsels of the worst bread; and, on the second day, three draughts of standing water...this shall be alternately his daily diet, till he dies'(IV,p.322).²⁰

Although torture per se was no longer in use in late eighteenth-century England, the frequent anxious allusions to Inquisitorial tribunals and extortive practices in English writers of the time do not derive entirely from horror at what happened abroad. As Scott wryly points out, 'Execution by burning at the stake was never considered by the inquisitors of Spain or by the English courts to be a form of torture'(p.161). Joseph Strutt wrote in 1775: 'The letter of the law to this very day, I believe condemns a woman, who doth murder her husband, to be burnt alive, but the sentence is always mitigated, for they are first strangled. However, in the case of Catherine Hayes...the fire taking quick hold of the wood...blew the smoke and blaze so full in the faces of the executioners...that they were obliged to let go [of the rope] before they had quite strangled her...I have been informed by some there present, she suffered much torment before she died.'²¹

Blackstone does not deny the cruelty of English legal practice but argues, 'Disgusting as this catalogue may seem, it will afford pleasure to an English reader...to compare it with the shocking apparatus of death and torment, to be met with in the criminal codes of almost every other nation in Europe'(IV, pp.370-1). Grosley, visiting Italy in 1758, the period in which *The Italian* is set, argued that the Inquisition was not torturing prisoners at that time.²² Tompkins notes that in his *New Observations on Italy and its Inhabitants* 'Grosley had belittled the power of the Roman Inquisition in the most unromantic way; for over a hundred years, he said, it had passed no capital sentence; "everything there is transacted in private by spiritual and pecuniary penalties"'(pp.279-80). Grosley's account testifies to eighteenth-century perceptions of torture, which did not include the use of iron gauntlets, still in use by the Spanish Inquisition in the early nineteenth century, or indeed the thumbscrews so popular in English prisons in the late eighteenth century.²³

Scott notes that in the early seventeenth century, 'torture was...looked upon as a necessary part of criminal procedure'(p.62) throughout Europe: 'On an accusation, unsupported by any evidence whatever, being made by any one individual...the accused...was liable to be seized and put to the *question*(p.63)'; the horrors of repetitive torture in France were being denounced by Beccaria as late as 1764.²⁴ John Howard's account of Continental prisons in 1784 describes evidence of torture in many cities, including a torture room in Madrid with walls covered in blood.²⁵ Blackstone warned, 'CHRISTIANITY being thus deformed by the daemon of persecution upon the continent, we cannot expect that our own island should be entirely free from the same scourge'(IV,p.46).²⁶

Radcliffe presents a powerful critique of the English system through Vivaldi's experience, for example, his 'astonishment and indignation' when 'he considered that [the Inquisitors] had not only voluntarily undertaken the cruel office they fulfilled, but had probably long regarded it as the summit of their ambition'(p.312). Murray dismisses the Inquisition prison as a romance motif, arguing, 'The occasion is hardly sufficient for [Vivaldi's] outburst'.²⁷ Yet Vivaldi's arguments cannot simply be interpreted as heroic defiance of a foreign Gothic institution, although there is an element of this; the tone fits the genre but also the issues presented: the Gothic is peculiarly suited to exposing cruel judicial systems. Vivaldi's outburst echoes Godwinian criticisms of the system: 'by the partial administration of our laws, innocence, when power was armed against it, had nothing better to hope for than guilt'(p.256).

It is the legend of the Inquisition which informs Radcliffe's text and acts as a disturbing image for juridical power. We read that Vivaldi's soul 'thrilled with horror' at the thought of prisoners tortured by

Inquisitors from whom he hides, 'as if their very looks possessed some supernatural power, and could have struck death'(p.197). This example of Vivaldi's much cited 'ardent imagination'(p.397) leads on to his impassioned plea against ill treatment of prisoners: 'Can man, who calls himself endowed with reason...argue himself into the commission of such horrible folly', arguing, 'Brutes do not deliberately slaughter their species'(p.198). Blackstone warned, 'sanguinary laws are a bad symptom of the distemper of any state'(IV,p.17), recognising the absurdity of the fact that 'no less than an hundred and sixty'(p.18) offences in England were punishable by death at the time of writing, the period in which *The Italian* is set.

Lest we, like the original arresting officer, tell Vivaldi, 'When you have wearied yourself with these heroics...our patience is wearied already'(p.187), we need to address the legality of torture. Blackstone declares: 'the constitution is an utter stranger to any arbitrary power of killing or maiming the subject without the express warrant of law'(I,p.133); he admits the possibility of torture by a 'legal authority', for example, pressing to death. Blackstone's comments elucidate the significance of Vivaldi's 'outbursts', dismissed by Tompkins, Murray and others as the 'usual paraphernalia of the Gothic',²⁸ for example, when he expresses 'astonishment and indignation [at] the sufferings, which the frenzied wickedness of man prepares for man, who, even at the moment of infliction, insults his victim with assertions of the justice and necessity of such procedure'(p.198).

Kamen insists, 'Torture was used only as a last resort and applied only in a minority of cases' but he acknowledges that it was used, arguing that 'At a time when the use of torture was universal in European criminal courts, the Spanish Inquisition followed a policy of mildness and circumspection which makes it compare favourably with other institutions'(p.172). This 'mildness' is indeed relative: Kamen admits, for example, that 'the Inquisition used two instruments to punish awkward prisoners: one was the *mordaza* or gag used to prevent prisoners talking or blaspheming; the other was the *pie de amigo*, an iron fork utilised to keep the head upright forcibly'(p.172). Kamen explains the rule of torture, 'that the victim should suffer no danger to life or limb'(p.173) but admits to 'a few examples of victims who had their legs or arms broken because they persisted in refusing to confess'(pp.173-4).

Scott's approach to the Inquisition is less sympathetic; he recounts the case of an Englishwoman living in Madeira in 1704 who was charged with heresy, the crime for which Vivaldi is arrested. She was imprisoned for nine months, with nothing but bread and water to sustain her, during which period she insisted that she was innocent. Scott writes: 'In attempts to extort confession she was whipped...with knotted cords; her breast was burnt with a red-hot iron...conveyed to the torture chamber...to sit in a fixed chair, to which she was bound with cords...Her left foot was then bared, and an iron slipper, which had been put in the fire until it was red-hot, was fixed on her naked foot, where it remained until the flesh was burnt to the bone...She was then flogged so fiendishly that her back from the shoulders to the waist was one mass of torn flesh. They then threatened to put the red-hot slipper on her right foot'(p.82).²⁹ Not surprisingly, she signed the confession.

Radcliffe exploits this image of the Inquisition, manipulating the familiar Gothic trappings of the Inquisition with its crosses, dark curtains and black hoods, providing a pervasive atmosphere of evil. As Punter notes, 'Godwin and Radcliffe insist on representing the face – or mask – of terror which the law wears to those enmeshed in its toils'(p.42). Yet despite the 'props' to what is effectively a dramatisation of Vivaldi's trial, the procedure is very close to that of English courts, reflecting in a more sinister form the reality of English court procedure and language, a language which deliberately alienates itself from everyday life, highly formalised and symbolically powerful, with hidden meanings of life and death. Radcliffe exploits the dramatic potential of courtrooms, which can have an almost mystical atmosphere of power, be they English or Inquisitorial. Punter argues that Radcliffe represents 'the psychic state produced by the "majesty" of the law'(p.37), a fundamental strategy of English law. Fielding acknowledged, 'It is not the essence of the thing itself, but the dress and apparatus of it which makes an impression on the mind'.³⁰ In eighteenth-century England, dramatic and sombre robes reinforced the image of power, of life and death, symbolised by the black cap worn when pronouncing the death penalty and the white gloves worn at the end of a "maiden assize" when no prisoners had been condemned to death.³¹

The legal context would have been evident to contemporary readers: attending trials and executions was a popular form of entertainment. Hay notes that 'Tradesmen and labourers journeyed in to enjoy the spectacle, meet friends, attend the court and watch executions'(p.27). This, together with the publication of a wide variety of popular literature concerning trials, ensured a strong awareness of legal procedure.³² Radcliffe, in common with writers throughout the century, is able to capitalise on this interest in court procedure in order to comment on the justice system.

Vivaldi has to 'swear to reveal the truth'(p.201) while holding a book, presumably the Bible and, 'as

is usual' in both Inquisition and English courts, he is required to state his name, family and address, while the 'attendant', an equivalent to the English clerk of the court, 'noted it in his book'(p.202); the matter of fact tone reflects an approximation to equitable aspects of English procedure. Blackstone explains that according to English law, 'indictments must set forth the christian name, surname, and addition of the state and degree...town, or place, and the county of the offender' in order 'to identify his person'(IV,p.301).

Radcliffe exploits the drama inherent in the oath required of a prisoner of the Inquisition to 'keep for ever secret whatever he might see or hear'(p.201), reminding us that we are not in an English court of law. Kamen notes that prisoners 'were obliged to take an oath not to reveal anything they had seen or experienced in the cells'(p.171), acknowledging that 'absolute secrecy' was 'the distinguishing feature of the Inquisition...which made it more open to abuses than any public tribunal'. He notes that absolute secrecy was introduced in the early sixteenth century and initially 'helped the tribunal by creating reverential fear in the minds of evildoers, but...in its later period led to the rise of fear and hatred based on a highly imaginative idea of how the tribunal worked'(p.167). Kamen argues that the reality of Inquisition practice did not live up to the bloodthirsty myths surrounding it in the eighteenth century but he recognises that 'The Inquisition was...largely to blame for the unfounded slanders cast upon it in the eighteenth century'(p.167).

Radcliffe's text blends Italian excesses with apparently English practice, for example, Vivaldi is asked 'whether he understood the nature of the accusation'(p.202), a protective clause developed in English law to ascertain mental capacity to ensure that the accused understood why he was on trial. Blackstone explains that a prisoner must first acknowledge 'himself to be of that name by which he is called' and that the 'indictment is...read to him distinctly' in English, as opposed to Latin, 'that he may fully understand his charge'(IV,p.318).

Vivaldi is aware that 'torture was inflicted upon the accused person, till he made confession of the crime' and believes that the Inquisitors are 'preparing...the instruments'(p.200) of torture for him. Yet the Inquisitor tells Vivaldi that the court 'never applies the torture but in cases of necessity' because of 'the obstinate silence of the prisoner'.³³ The Inquisitor explains, 'we are in possession of facts' but 'though we have sufficient proof of your guilt, we require you to confess'(p.205). Kamen explains, 'Confessions gained under torture were never accepted as valid...the accused [was required] to ratify his confession the day after the ordeal'. The rules 'forbade anyone to be tortured more than once' but were easily circumvented: 'the end of every torture session was treated as a suspension only, and refusal to ratify the confession would be met with a threat to "continue" the torture'(pp.172-3).

Similar principles underpinned recent English common law procedure: Blackstone explains that pressing to death 'was probably introduced, in order to extort a plea; without which it was held that no judgment of death could be given'(IV,p.324). The drama of Vivaldi's personal fears combines with denunciation of such practices: 'the innocent were certain of suffering longer than the guilty; for, as they had nothing to confess, the Inquisitor, mistaking innocence for obstinacy, persevered in his inflictions'(p.200). The implicit criticism of the recent horrors of the English system could not have escaped contemporary readers. Pressing to death was not abolished until 1772; it was rare but its existence, at least on the statute books, was terrifying and raised serious questions about the legal system which the English were so keen to believe differed fundamentally from its European counterparts.

Fears in the eighteenth century concerning possible influence from European Inquisition procedure were far from unreasonable. English procedure was related to continental practice: the central issue was the extent of that influence, that is, to what extent Inquisitorial procedure was modified by English ideals of justice embodied in the common law. Blackstone speaks of a history of 'contest and emulation...between the laws of England and those of Rome'(III,p.64), in opposition to 'the spirit of Saxon liberty'(p.62).³⁴

Blackstone exhorts his reader: 'The protection of THE LIBERTY OF BRITAIN is a duty which they owe to themselves, who enjoy it; to their ancestors, who transmitted it down; and to their posterity, who will claim at their hands this, the best birthright, and noblest inheritance of mankind'(IV, p.436). In much the same vein Radcliffe celebrates the equitable practices of English law, exploiting national pride in order to encourage support for just legal mechanisms. Yet she also reflects the fears of her contemporaries that although inequitable legal practices such as pressing to death had largely died out in England, the justice system remained deeply flawed. As Punter points out, Radcliffe is discussing 'the administration of a judicial system in which, at the Black Assizes of 1750, two prisoners were brought on trial so infected with typhus after their lengthy stay in gaol that, after they had been somewhat pointlessly sentenced to death, fifty other people died as well, including judge, jury and legal officers'.³⁵

Vivaldi objects to being 'tried and condemned without being confronted with either his Prosecutor, or the Witnesses'. The Inquisitor explains that, unlike English common law, 'the name of the Informer [and

witnesses] is always kept sacred from the knowledge of the Accused'(p.205). The 'Holy Office' is 'the Prosecutor, and the dispenser of justice; its Public Accuser lays the circumstances, and the testimonies of the Witnesses, before the Court'(p.206). The need for justice to be public was reiterated throughout the century. Beccaria's influential *Of Crimes and Punishment* insisted that 'Proceedings and proofs of guilt alike should be public'(p.25).

The process reflects that of English ecclesiastical courts in which, as Holdsworth explains, 'the Judge was the accuser...As a rule the...officers supplied the information; and they used their powers in many cases in the most corrupt manner'(I,p.619). They could 'proceed on the accusation of some individual' or by 'denunciation', in which case 'the person who gave the information was not the accuser, nor subject to the conditions attaching to this position'(p.620), a procedure approximating to that used by Schedoni. Baker explains: 'the inquisitorial procedure centred upon an official inquisitor or judge who directed all the proceedings, often in secret, gathered the evidence and gave the judgment. Emphasis was placed on written evidence, and especially on confessions extracted under torture'(p.21). English ecclesiastical courts lost the power to torture in the seventeenth century but, perhaps inevitably, their reputation for cruelty continued into the eighteenth. Beccaria criticised 'the solemn priests of justice, who with tranquil indifference have a criminal dragged with slow ceremony to his death'(p.59).

We learn that the charge of heresy brought against Vivaldi has been fabricated by Schedoni. Scott notes, 'In a considerable number of instances charges were deliberately faked against individuals who...had incurred the enmity of the inquisitors or of high and powerful authorities, ecclesiastical or otherwise, connected with the Church'(p.74). Blackstone admits that in seventeenth-century England, 'the Romish ecclesiastics determin[ed] without appeal, whatever they pleased to be heresy'(IV,p.45).³⁶ Scott argues that 'So wide was the interpretation of the term heresy that the free expression of opinion in all Catholic countries, for the five hundred years of the Inquisition's tyranny, may be said to have been inexistent'(p.74).

When Vivaldi is asked, 'Did you ever express...a contempt for the Catholic faith?', he replies honestly, 'Never'(p.313). Heresy was defined as anything against the principles or interests of the Catholic faith, as interpreted by the Inquisitors; as a quasi-political offence, the correlation with contemporary concerns regarding political freedom is significant. It is perhaps difficult for many twenty-first-century English readers to register the fear with which our eighteenth-century counterparts would have regarded the legal code, particularly in view of recent events such as the suspension of Habeas Corpus in 1794. Civil liberties were being eroded in England during the period in which Radcliffe was writing: in 1792 Paine's *Rights of Man* was banned as seditious libel and he was outlawed from England; in 1793 Godwin was threatened with prosecution for writing *Enquiry Concerning Political Justice* and booksellers were prosecuted for selling *Rights of Man*.

Vivaldi's offence is insulting a church minister, Schedoni, 'while he was performing an act of holy penance'. Vivaldi attempts to explain, 'I have offended a minister of the church...but never could intentionally insult our holy religion'(p.314). However, 'he began to perceive the real nature of the charge'(pp.313-4), recognising Schedoni's malicious intent and realising that the charge was only 'too plausible'(p.314). Radcliffe gives a detailed account of Schedoni's machinations: 'it had been only necessary to send a written accusation, without a name, to the Holy Office, with a mention of the place where the accused person might be seized', the word 'only', suggesting that the procedure is too easy and reminding us that English common law did not accept anonymous accusations.³⁷ Beccaria objected, 'Who can defend himself from slanders which arise secure inside tyranny's strongest amour, secrecy?(p.30). Radcliffe denounces the practice as 'the unjust and cruel rule...which permitted anonymous Informers'. She explains that 'if the Informer failed to discover himself to the Inquisitors, the prisoner, after many examinations, was released, unless he happened unwarily to criminate himself'(p.244) during torture, a practice which had also been current in England under ecclesiastical law until the latter half of the seventeenth century. A Justice charging the Norfolk jury in 1749 articulated popular criticism of European practice; with Swiftian echoes, he declared: 'Their Judges are chosen for the very purpose of murdering by Law the best of Mankind', 'the Charge...Dark and Ambiguous subject to any construction these Worthy Judges will put upon it and made by an unknown Accuser'(p.355).³⁸

However, Radcliffe does not present English common law as a flawless juridical ideal. Throughout Vivaldi's trial, he is repeatedly told 'he must not ask questions'(p.313) and he has no defence counsel.³⁹ This glaring injustice is closer to English procedure than twenty-first-century readers might expect. When the state, that is, common law, adopted inquisitorial procedure, it strengthened ecclesiastical restrictions on the accused's liberty in defending himself.⁴⁰ Baker argues that during the eighteenth century it became more common 'for counsel to be permitted to conduct the case or to prompt the accused'(p.38). However, this right was by no means universal and was, as Blackstone complained, 'left to the good pleasure of [the]

judge'(IV,p.350); the right to a defence lawyer did not emerge until 1836.

Vivaldi's 'examiners cautiously [avoid] informing him of the subject of the accusation'(p.305), which he believes to be abducting a nun. Inquisition courts did not allow the accused to know either the nature of the evidence or the identity of the witnesses. This is in obvious contrast to English common law, based on specific accusation, brought by a named individual, to which, as Blackstone explains, the accused 'may make answer according to law'(I,p.135). Blackstone defended English law as a system 'where crimes are more accurately defined, and penalties less uncertain and arbitrary [than continental procedure]; where all our accusations are public, and our trials in the face of the world'(IV,p.3).

To add to the atmosphere of foreign horrors, Vivaldi hears sounds of torture and is threatened with 'the Question'(p.308). He is taken before the Inquisitors, shrouded in 'A portentous obscurity'(p.311) in a suitably dark 'lofty' Gothic chamber, with a 'large iron frame, which Vivaldi conjectured to be the rack'(p.310). They 'ma[ke] ready the instrument of torture' and he is bound and covered with 'the customary black garment'(p.313) so that he cannot see. Scott explains, 'The inquisitors reduced torture to something approaching a fine art, and in the process showed the possession of much psychological knowledge and insight, the procedure being nicely calculated to wear down the resistance...First, the accused was threatened with torture, which threat, in itself, had often the desired effect. If this failed...he was conducted to the torture chamber and shown the instruments used'(p.66).

Kamen criticises 'The lurid scenes of sadism conjured up by enemies of the Inquisition'(p.173) but acknowledges their practice of systematic torture: 'The *garrucha* or pulley involved being hung by the wrists from a pulley on the ceiling, with heavy weights attached to the feet. The victim was raised slowly and then suddenly allowed to fall with a jerk. The effect was to stretch and perhaps dislocate the arms and legs'. In '*toca* or water torture...The victim was tied down on a rack, his mouth was kept forcibly open and a *toca* or linen cloth was put down his throat to conduct water poured slowly from a jar...The *potro*...involved being bound tightly on a rack by cords which were passed around the body and the limbs and were controlled by the executioner [torturer] who tightened them by turns of cords at the end. With each turn the cords bit into the body and travelled round the flesh...A victim would often have to undergo all the three tortures before he would confess'(p.174).

Scott recounts the torture of Maria de Coceicao, charged with heresy in Lisbon: 'So severe were the torments that, unable to endure them longer, she confessed...On recovery...she refused' to ratify, insisting 'as soon as I am released from the rack I shall deny what was extorted from me by pain'(p.69). Vivaldi clearly speaks for Radcliffe when he expostulates angrily: 'If, to escape the horrors of these moments, I could be weak enough to declare myself guilty, not all your racks could alter truth'(p.312). Had Caleb Williams uttered these words, they would not have been dismissed simply as heroic posturing.

English penal reformers were shocked at the ease with which confessions could be wrought by thumbscrews. Scott cites Bishop Burnet's intriguingly titled *History of His Own Time with the Suppressed Passages* (1823): 'they put his thumbs in the screws; and drew them so hard...they could not unscrew them, till the smith that made them was brought with his tools'(pp.236-7). Vivaldi's comments echo Beccaria's humanitarian analysis: 'requiring pain to be the crucible of truth...is the certain way of letting sturdy criminals go free and condemning those who are innocent but weak'(pp.36-7). In this context, Punter's analysis of the Gothic is both challenging and pertinent: 'the Gothic is...not an escape from the real but a deconstruction and dismemberment of it'(p.97).

We read, 'Vivaldi almost believed himself in the infernal regions'(p.311); the Inquisition was legendary for its dramatic settings, designed to make the prisoner believe that escape was impossible and to remind him of the Hell they claimed he would enter if he did not confess. Radcliffe mingles terrifying Gothic spectacle with denunciation of the inequity of a system which allows ill treatment, let alone torture, of unconvicted prisoners. The Gothic setting heightens the reader's emotional response to Vivaldi's impressions and encourages sympathy for Radcliffe's humanitarian argument: 'That any human being should willingly afflict a fellow being who had never injured, or even offended him...should deliberately become the means of torturing him, appeared to Vivaldi nearly incredible'(pp.311-2). Radcliffe's words move beyond Gothic tension and drama, providing a profound comment on her society which, although it was technically no longer torturing people, was still flogging prisoners, cutting off the ears of those locked in the pillory and allowing innocent people to die in prison while awaiting trial.

Unexpectedly, Vivaldi is taken back to his cell and Nicola visits him, telling him to ask the court to summon Schedoni and Ansaldo. On agreeing to this, the chief examiner tells Vivaldi with a note of surprising kindness, 'sleep this night without fear'(p.333), encouraging both the reader and Vivaldi to have confidence in the legal process. As Vivaldi's trial merges into that of Schedoni, he becomes increasingly

surprised by the justice of the tribunal and we move closer to ideals of English justice, reflecting the historical progression in England from the excesses of ecclesiastical practice to the relative equity of common law. The Judge hears Schedoni's deposition concerning the wrongful accusation and Vivaldi is ultimately released.

Hoeverler argues, 'This is a gothic world in which the inquisitional tribunal – or the traditional hierarchical authority that had so recently been destroyed by the forces of the French Revolution – actually does discover the truth', concluding 'Radcliffe it would seem is conservative to the end'(p.104). Hoeverler rightly points out that in *The Italian*, 'Evil is a product of not only the abuse of power and authority, but the failure to exercise it'(p.177). Radcliffe's work promotes a profound questioning of the legal system and its ethics but her 'solution' to the problems within the legal system lies in enlightened, virtuous use of the existing system; the implications for 1790s Europe are clear.

Speculation concerning Radcliffe's legal knowledge is difficult but justifiable in view of the accuracy of legal detail in her work. Her husband was trained in law and so she presumably had access to legal information through him if from no other source, quite possibly access to Blackstone's *Commentaries*, which were designed to educate both laymen and lawyers in the principles and history of English law and which discussed not only the mechanics of law but also what Blackstone refers to as 'romantic'(IV,p.18) notions of justice and human rights.⁴¹ Blackstone argues that the proper principles of law should be 'conformable to the dictates of truth and justice, the feelings of humanity, and the indelible rights of mankind'(IV,p.3), an ideal which Radcliffe articulates in *The Italian*.

Miles testifies to the difficulty of addressing Radcliffe's work as socio-political critique: 'To dwell on the horrors of the Inquisition in 1797 could thus be read as a patriotic assault on Catholicism...as a ladylike alternative to matters current and political'(p.70) or, more challengingly, 'as coded assaults on aristocracy and institutional despotism everywhere'(p.71). Spencer identifies the 'scene of fairy-land' which concludes the novel as Radcliffe's 'solution...retreat into an idealized pastoral world'.⁴² We would do better to locate Radcliffe's work not in the realms of fantasy but contemporary intellectual debate, for example, what Miles refers to as 'the bourgeois liberal-humanism of Bentley's'⁴³ circle'(p.29), which included figures such as Hester Thrale, Elizabeth Montagu and Anna Laetitia Barbauld. Radcliffe's husband, William, was a parliamentary reporter for the *Gazette*, which had links to radical Whigs such as Charles James Fox and may also have informed Radcliffe's thinking.⁴⁴

Even when apparently enthusing about the idyll with which the novel concludes, Paulo reminds the other characters and perhaps the reader, 'none of you...ever saw the roof of a prison...it's quite beyond what you can understand'(p.415). His joy derives not from the prospect of a pastoral idyll but from having escaped 'that diabolical place, the Inquisition', from the knowledge that he is 'All at liberty'(p.414). His deference to the upper classes aligns him with traditional patriarchal patterns, distancing him from the dangerous discontent of his French counterparts but even he articulates the importance of liberty as a human right. Paulo represents, as Kilgour argues, 'a comic version of revolutionary energy'(p.181) in a carnivalesque atmosphere of 'licensed subversion'. Yet Kilgour insists pertinently that the 'conclusion is a powerful image for authority so absolutely sure of its own control that it can permit licence'(pp.184-5).

Radcliffe goes further than providing a fictional rationale and justification for the aristocracy and the systems it underpinned; the conclusion posits an ideal which in no way negates the novel's critique of the system and its operation. *The Italian* grapples with issues of justice which have yet to be resolved, difficulties in reconciling practice and principle in a system struggling with the contradiction of principles of justice and the common good sitting alongside what Beccaria referred to as 'cold, legalized barbarity'(p.8), issues which must have been particularly resonant in the 1790s. Many Charges to the Jury stress the importance of equitable application of the law: a Guilford magistrate declared 'All Laws...are no more than a dead letter, except they are enliven'd and actuated by a fair and due Execution'(p.294). Radcliffe advocates the ideal, if not always the practice, of eighteenth-century law, echoing a Guilford magistrate exhorting his jury: 'Our laws are neither writ in Sand nor with Blood'(p.283).

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¹ Robert Miles, *Ann Radcliffe: The Great Enchantress*, Manchester: Manchester University Press, 1995, p.70.

² *Charges to the Grand Jury 1689-1803*, edited by Georges Lamoine, London: Royal Historical Society, 1992, p.293. The Charges to the Jury were delivered in public and sought not only to explain the law but to encourage belief in the universality of justice, collective ownership of the system. All references to charges are taken from this edition.

- ³ Uwe Boker, 'The Prison and the Penitentiary as Sites of Public Counter-Discourse', in *Sites of Discourse – Public and Private Spheres – Legal Culture*, New York: Rodopi, 2002, ed. Uwe Boker and Julie Hibbard, pp.211-247 (p.224).
- ⁴ Diane Hoeveler, *Gothic Feminism: The Professionalization of Gender from Charlotte Smith to the Brontes*, Liverpool: Liverpool University Press, 1998, p.104.
- ⁵ See for example Philip a Limborch, *The History of the Inquisition*, translated by Samuel Chandler, London, 1731.
- ⁶ Cited in Michael Ignatieff, *A Just Measure of Pain: the Penitentiary in the Industrial Revolution, 1750-1850*, New York: Pantheon, p.137.
- ⁷ See J.Baker, 'Criminal Courts and Procedure at Common Law 1550-1800', in *Crime in England 1550-1800*, ed.J.S.Cockburn, London: Methuen and Co., 1977, pp.21,32.
- ⁸ Sir William Blackstone, *Commentaries On The Laws Of England* (1765-9), sixth edition, 4 vols, Dublin, 1775, I,p.6. Jeffrey Cox, 'Romantic Drama and the French Revolution', in *Revolution and English Romanticism: Politics and Rhetoric*, ed. Keith Hanley and Raman Selden, Hemel Hempstead: Harvester Wheatsheaf, 1990, pp.241-260 (p.242). Cited in Boker, pp.225-6. Cox attests to the popularity of the Bastille myth, noting that Dent's play ran for seventy-nine successive nights but also to political sensitivity: the Lord Chamberlain refused to licence Reynold's play the same year on the fall of the Bastille.
- ⁹ Jeffrey Cox, 'Romantic Drama and the French Revolution', in *Revolution and English Romanticism: Politics and Rhetoric*, ed. Keith Hanley and Raman Selden, Hemel Hempstead: Harvester Wheatsheaf, 1990, pp.241-260 (p.242). Cited in Boker, pp.225-6. Cox attests to the popularity of the Bastille myth, noting that Dent's play ran for seventy-nine successive nights but also to political sensitivity: the Lord Chamberlain refused to licence Reynold's play the same year on the fall of the Bastille.
- ¹⁰ See also Sir John Gonson's charge to the jury, 1728, p.213 and Thomas Marley's charge in 1749, p.346 for other examples of criticism of European practice.
- ¹¹ Ann Radcliffe, *The Italian* (1797), edited by Frederick Garber, Oxford: Oxford University Press, 1984, p.186.
- ¹² Kamen explains, 'If the *calificadores* [theologians] decided that there was sufficient proof of heresy, the prosecutor or *fiscal* drew up a demand for the arrest of the accused', although he admits that some 'prisoners sat in inquisitorial gaols without any charge'. Henry Kamen, *The Spanish Inquisition: An Historical Revision*, London: Phoenix Press, 1997, p.168.
- ¹³ J.M.S.Tompkins, *The Popular Novel in England: 1770-1800*, London: Constable, 1932, p.252.
- ¹⁴ George Ryley Scott, *A History of Torture* (1940), London: Senate, 1995, p.67.
- ¹⁵ Hoeveler argues 'His presence here reifies the Protestant / English consciousness confronting its own buried and repressed primitive / Catholic past. Wandering through the underground tunnels and prison cells, Vivaldi is very much the Enlightenment man excavating an unpleasant historical era, characterized not simply by superstition but inhuman cruelty and degradation'(p.116).
- ¹⁶ Cited by Scott, *History of Torture*, p.65.
- ¹⁷ John Howard, *The State of the Prisons* (1784), p.410.
- ¹⁸ Kamen argues that in Spain Inquisitorial prisons were often in better condition than the royal or ordinary ecclesiastical prisons, noting a case in Cordoba in 1820 when 'the prison authorities complained about the miserable and unhealthy state of the city prison and asked that the municipality transfer its prisoners to the prison of the Inquisition'(p.169).
- ¹⁹ William Godwin, *The Adventures of Caleb Williams* (1794), New York: Holt, Rinehart and Winston, 1965, p.209.
- ²⁰ See J.M.Beattie, *Crime and the Courts in England 1660-1800*, Oxford: Clarendon Press, 1986, pp.337-8; J.H.Langbein, *Torture and the Law of Proof*, London: The University of Chicago Press, 1977, pp.74-7,184 n.20; J.F.Stephen, *A History of the Criminal Law of England*, London: Macmillan, 1883, 3 vols, vol 1, pp.297-301. For accounts of real cases, see *The London Magazine*, 21st August 1735 and the *Universal Spectator* no.674, October 1741.
- ²¹ Joseph Strutt, *Manners and Customs of the Inhabitants of England* (1775), vol. III, pp.47-8. See also the account in *The Newgate Calendar*, edited by George Theodore Wilkinson, London: Cardinal, 1991, pp.170-89.
- ²² The tale dates itself at 1764. Kamen confirms that 'By the mid-eighteenth century torture had virtually fallen out of use in the tribunal, and finally in 1816 the pope forbade its use in any of the Inquisitions subject to the Holy See'(p.173).
- ²³ See Howard's description of the prison at Lavenham in 1779, where 'the keeper had a number of thumbscrews, sent by the magistrates, to secure the prisoners'. *State of the Prisons*, p.207.
- ²⁴ Cesare Beccaria, *Of Crimes and Punishment*, translated by Jane Grigson, Oxford: Oxford University Press, 1996.
- ²⁵ Howard, *State of the Prisons*, p.410.
- ²⁶ Kamen points out the significance of the Protestant / Catholic divide in interpreting the Inquisition and Catholic justice: 'Protestant pens depicted the struggle of heretics as one for freedom from a tyrannical faith. Wherever Catholicism triumphed, they claimed, not only religion but civil liberty was extinguished' by 'the fetters of darkness and superstition'. Henry Kamen, *The Spanish Inquisition: An Historical Revision*, London: Phoenix Press, 1997, p.305.
- ²⁷ E.B.Murray, *Ann Radcliffe*, New York: Twayne Publishers, 1972, p.156. Murray's critical approach is characterised by comments such as: 'It may be no small praise to have been one of the most influential mediocre writers that English literature has produced'(pp.166-7).
- ²⁸ Murray, *Ann Radcliffe*, p.156.
- ²⁹ Scott gives an interesting account of the Inquisition and its procedures in *History of Torture*, pp.64-85.

³⁰ Henry Fielding, 'An Enquiry Into the Causes of the Late Increase of Robbers' (1751). In *The Complete Works of Henry Fielding*, vol 7, *Legal Writings*, London: Cass and Co., 1967, p.124.

³¹ See Douglas Hay, 'Property, Authority and the Criminal Law', in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, edited by D.Hay, P.Linebaugh, London, 1975, pp.27-9.

³² Stone notes the different kinds of legal publications, making the important distinction between transcripts written for lawyers and unashamedly salacious versions of court events. L.Stone, *Road to Divorce: England 1530-1987*, Oxford: Clarendon Press, 1990, pp.248-253.

³³ The difficulty for twenty-first-century readers lies in eighteenth-century legal definitions of 'necessary' torture.

³⁴ There were three legal systems running parallel in eighteenth-century England: ecclesiastical or civil law, common law and equity. English ecclesiastical law was based on Roman civil and canon law, that is, Inquisitorial practices. The power of the ecclesiastical courts was gradually eroded in England during the latter half of the seventeenth century, when common law courts became increasingly involved in the punishment of offences such as heresy. However, common law was also influenced by Inquisitorial practice: Holdsworth explains that in the thirteenth century 'the procedure per inquisitionem was adopted by the state and made the regular procedure in criminal cases' at common law. Sir William Holdsworth, *A History of English Law*, 17 vols, London: Methuen, 1938, V,p.172. Holdsworth discusses the relationship between continental and English procedure on pp.170-201.

³⁵ David Punter, *Gothic Pathologies: the Text, the Body and the Law*, London: Macmillan, 1998, p.37. See Michael Ignatieff, *A Just Measure of Pain: the Penitentiary in the Industrial Revolution, 1750-1850*, London: Macmillan, 1978.

³⁶ Holdsworth notes that 'heretics were burned in 1575 and 1612'(I,p.618). However, in 1677 the statute 29 Car.II.c.9 abolished the death penalty for heresy in ecclesiastical courts.

³⁷ Kamen argues that 'In the Spanish Inquisition, unfortunately, witnesses were given more advantages than in any secular judicial tribunal, because their names were concealed'(p.166).

³⁸ Blackstone explains that in contrast to the inequities of inquisitorial procedure, common law 'commands [those giving evidence] to appear at the trial on pain of 100l. to be forfeited to the king' and '10l. to the party aggrieved, and damages equivalent to the loss sustained by want of his evidence'(IV,p.369).

³⁹ Kamen explains that although the Instructions of 1484 made provision for the accused to have a legal advocate, by the mid-sixteenth century the choice of lawyer was confined to those nominated by the tribunal, effectively 'recognized as officials of the Inquisition'(p.178).

⁴⁰ Holdsworth, *A History of English Law*, V,p.171.

⁴¹ Blackstone's *Commentaries* were originally published in 1765-9 but went through several editions; Radcliffe could have had access to the 1775 or 1793 edition.

⁴² J.Spencer, *The Rise of the Woman Novelist*, Oxford: Basil Blackwell, 1986, p.207.

⁴³ Radcliffe's uncle, Thomas Bentley; she was a regular visitor.

⁴⁴ Maggie Kilgour, *The Rise of the Gothic Novel*, London: Routledge, 1995, p.49.