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Casting Justice Before Swine: Late Mediaeval Pig Trials as Instances of Human Exceptionalism

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Abstract

In recent years, several cases about the legal personhood of nonhuman animals garnered global attention, e.g. the recognition of 'basic rights' for the Argentinian great apes Sandra and Cecilia. Legal scholars have embraced the animal turn, blurring the once sovereign boundaries between persons and objects, recognising nonhuman beings as legal subjects. The zoonotic origins of the Covid-19 pandemic stress the urgency of establishing 'global animal law' and deconstructing anthropocentrism. To this end, it is vital to also consider the extensive premodern legal history that humans share with other animals. Over 200 so-called animal trials have been documented in premodern Europe. In these proceedings, certain nonhuman animals—particularly domestic pigs—were prosecuted, often resulting in their capital punishment or anathema. This paper takes a history of ideas approach to these historical instances where Western philosophy of law and philosophical anthropology intersect, problematising the notion that such trials constitute wholesome precedents of the kind of legal personhood presently debated in jurisprudence. My counter-hegemonic analysis of the legal prosecution and execution of several pigs in fifteenth-century France demonstrates that late mediaeval notions of criminality transcended the alleged human-nonhuman divide *whilst* reaffirming and reifying human distinctiveness. I propose that pig trials were local laboratories where Christian communities reflected upon the natural hierarchy of God's creation. Ensuing the apparent breach of the prescribed boundaries of nature, these communities renegotiated and re-naturalised everyday interspecies sociability by utilising the offending animals to exemplify particular norms about what it means to be human, generally to the animals' detriment.

Keywords History of ideas · Philosophical anthropology · Philosophy of law · History of Christian thought · Posthumanism · Critical animal studies

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Introduction

The history of legal personhood is rife with monkey business. As an example, I here paraphrase a trial record that was published by Jacques Berriat-Saint-Prix (1829). On the tenth of January 1457, Sustitia and her six children faced justice in the jurisdiction of Savigny-sur-Étang for having been caught while murdering a five-year-old child. The mother and her suspected accomplices were found covered in the boy's blood, eating from his body. The court convened, summoned witnesses—among whom one Jehan Bailly, a close relative of Sustitia's—yet they could not obtain a reasonable explanation for why they had committed this gruesome murder. Sustitia was therefore found guilty of manslaughter, and she was sentenced to be hanged upside down until death. After this solemn ordeal, the court reconvened to decide on what was to be done with Sustitia's children. As it could not be proven that they had *also* eaten from the murder victim, the court was willing to let Jehan Bailly bail out Sustitia's children, provided that he vouch for their future conduct. Upon Bailly's decisive refusal, the court declared that Sustitia's children were to be remitted to the custody of the Lady of Savigny.

Sustitia and her young accomplices were not human in the slightest. Despite my initial narration of these events, Sustitia and her children were members of an altogether different species: the domestic pig, *Sus scrofa domesticus*.[1] These legal proceedings mark but two of numerous historical instances in which nonhumans were tried, convicted, and/or punished by law.[2] Scholars such as Jacques Berriat-Saint-Prix (1829), Léon Ménabréa (1846), Karl von Amira (1891), Carlo d'Addosio (1892), and Edward Evans (1906) have collected over 200 examples of these 'nonhuman trials'.[3] Though the earliest records date back to the Antiquity,[4] the majority of trials occurred in premodern Western Europe, particularly in the late mediaeval Francophone world.[5] Only a minority of these

[1] *Sus scrofa domesticus* is currently considered a subspecies of the wild boar (*Sus scrofa*). In what follows, when I speak of 'pigs' or 'suids' I refer to domestic pigs.

[2] I see 'animals' as a category that encompasses all fauna—including humans. When I refer to other-than-human beings, I use the term 'nonhumans' to highlight buried assumptions and inspire 'articulate contradiction' (see Ritvo 2007, 119). I therefore prefer the term 'nonhuman trials' to 'animal trials'.

[3] Recent studies demonstrate that there are still more archival records of this phenomenon to be found (e.g. MacGregor 2019). However, I use the term 'trial' cautiously because the historical record is not always clear about the extent to which a nonhuman animal's incarceration/punishment was the result of an actual trial procedure (see Frank 2021). I therefore use 'trial' as a shorthand for 'legal action(s) against'.

[4] At the centre of Ancient Athens sat the *Prytaneion*, a ceremonial area that occasionally hosted a court of law for unusual murder cases. Plato's *Laws*, Aristotle's *Athenaion Politeia*, and certain stories by Pausanias and Dyo Chrysostom indicate that this court considered cases in which (1) the murderer could not be found or identified, (2) the killer was a nonhuman object (e.g. a statue or axe), or (3) a nonhuman animal had killed a human (Sealey 2006; Naiden 2013; also see Ayrault 1591; Evans 1906; Hyde 1916; Berman 1996).

[5] While documentary evidence suggests a fairly Eurocentric picture of historical prosecutions of nonhumans, the existence of such proceedings cannot be settled in strictly empirical terms: 'many non-literate, non-western societies prosecuted and punished offending animals, albeit less formally than the Europeans, for their entire judicial structure was conceived in a different form' (Cohen 1986, 18). For examples of such extra-occidental proceedings, see von Amira (1891, 28–31), Jamieson (1988, 58), and Girgen (2003, 108–9).

proceedings was fictitious.[6] Diverse species were tried: horses, dogs, locusts, dolphins, snails, donkeys, weevils, and so on. However, one specific kind of animal appears to have been the main 'star' of this judiciary bestiary: the domestic pig.[7] Sustitia's kind amounts to over 25% of all nonhuman trials and more than half of all legal actions against nonhumans in premodern France.[8]

A common early theory is that nonhumans were legally prosecuted because premodern people were ignorant, superstitious, cruel, and barbaric (Berriat-Saint-Prix, 1829, 20; Evans, 1906, 41; Frazer, 1919, 445).[9] This conclusion has largely shifted towards an interpretation that seemingly competes with the former: such trials demonstrate what one might call a 'prehumanist' or 'proto-posthumanist' relationality. They betray a 'tendency to reduce the ontological distance between man and beast' (Dinzelbacher, 2002, 420; also see Dinzelbacher, 2006, 152), blurring the imagined lines of distinctiveness that separate humans from nonhumans (Salisbury, 2010, 115).[10] As premodern people considered nonhumans 'their equal', they imbued them with legal personhood, so *all* animals 'had to answer for their crimes to tribunals' (Daboval, 2003, 68).[11] This interpretation often inspires hopeful musings that premodern trials constituted promising precedents of present efforts to recognise the legal personhood of nonhumans: maybe the Enlightenment's separation of humankind from nature which attributed moral and legal status solely to the former 'was just a brief parenthesis, marking the boundaries of an era that is now coming to a close' (Ferry, 1995, xvi). Or perhaps animal advocacy will lead 'back to the middle ages' (Newman [1978] 2017, 93–4) and 'it is time for a return of some form of the animal trials of years past' (Girgen, 2003, 133). While these two perspectives (bygone brutality vs. wholesome examples of pre-/posthumanist values) apparently clash, both actually depart from modern conceptions of criminality: only human *persons* can commit crimes and be held legally accountable. Assuming that nonhuman trials 'anthropomorphised' nonhumans, 'elevated' them to human status, perhaps tells us more about scholars' perception of law and nonhumans than about the reality of these trials.

[6] These cases were mainly satirical parodies or enchiridia for nonhuman trial procedures that were provoked by or based on real legal precedents (Cohen 1993, 119; Sykes 2011, 282–3; van Bruaene 2015).

[7] I borrow this phrasing from Michel Pastoureau (2000, 192; 2001, 192; 2012, 206).

[8] Based on the cases mentioned by Evans (1906), Pastoureau (2012), MacGregor (2019), and my own discoveries, there have been at least 52 legal actions against pigs between the thirteenth and nineteenth century.

[9] Though scholars from the last few decades are more careful and nuanced in their phrasing, this tenor still persists in some studies, cf. *infra*.

[10] Dinzelbacher's claim has been endorsed or reiterated by legal scholar Melodie Slabbert (2004, 420), philosopher Patrick Phillips (2012, 46), and the historians Thomas Fudge (2016, 34) and Nigel Harris (2020, 99).

[11] Daboval 2003, 68: 'Longtemps, l'animal a été considéré par l'homme comme étant son égal. Pour cette raison, l'animal a été paré d'une personnalité juridique et comme l'homme, il a dû répondre devant les tribunaux de ses crimes'.

What *different* conclusions might we draw if we start out by considering the possibility that it was not a prerequisite to be a (legal) 'person' to be declared a 'criminal' in the Middle Ages? What historical set of expectations, motivations, and hopes do nonhuman trials imply if we do *not* position ourselves as astonished 'modern' observers (with the preconceptions of animality and criminality that this implies)—and revisit these practices from the vantage point that they seemed perfectly reasonable to those humans communities who organised and participated in them? This paper considers nonhuman trials as historical instances where Western philosophy of law and philosophical anthropology intersect and, from the bottom-up, (re)invented particular notions about human distinctiveness. I investigate late mediaeval legal actions against pigs from a history of ideas perspective, concentrating on the case of Sustitia and her piglets. The trial's *procès verbal* is preserved with remarkable completeness and exemplifies a typical secular nonhuman trial: it took place in Burgundy, featured porcine defendants, and insisted emphatically on observing legal custom and judicial procedure (Cohen, 1986, 11). I will develop the following argument: legal actions against pigs constituted (1) elaborate anthropopoietic rituals in which a multiplicity of motivations and narratives converged, among which that of 'the pig' itself—the nature of the beast and its significance to mediaeval Christians; (2) sites where human communities debated, performed, and (re)stabilised notions of human exceptionalism by appealing to what I coin the myth of the *Homo Legifer* ('Legislative Human'). This is, briefly defined, the notion that humans are exceptional animals because they exercise an allegedly unique capacity for reason and morality through the invention and enforcement of laws, by which they purport to protect an anthropocentrically imagined universal value of Justice.[12]

Significantly, the *procès-verbal* records the names of many human individuals present during the proceedings:

- The judge ('noble man Nicolas Quarroillon, esquire')[13]
- Nine named and 'multiple other witnesses'
- 'Huguenin Martin, prosecutor of the noble lady Katherine de Barnault, lady of the said Savigny'
- The defendant (Jehan Bailly)
- The victim (Jehan Martin) and his father (Jehan Martin senior)
- 'the honourable and wise man, master Benoist Milot from Autun,[14] licensed in law and bachelor in decree, counsellor of milord the duke of Burgundy'
- 'Huguenin de Montgachot, clerk, public notary of the court of milord the duke of Burgundy'

[12] E.g., the legal scholar Alain Supiot (2007) claims that law's capacity to link the biological and symbolic dimensions of humans together institutes us as 'rational beings' (ix).

[13] Little else is known about the judge, save that he used to be garrisoned at the castle of Montcenis (where his brother Jacquot was castellan) around 1430 and that, on at least one occasion, he aided Jacquot in evading the taxes imposed by the Burgundian Chamber of Accounts in Dijon (Lagrost 2009, 225–6).

[14] Milot is also mentioned as counsellor of duke Charles the Bold in a receipt (dated 30 September 1473) by Guillaume Charnot, receiver of the bailiwick Autun (Barre 1729, 266).

– And finally the executioner, 'master Etienne Poinceau, master of high justice, residing at Chalon-sur-Saône'[15]

This can be seen as a kind of roll call of the main cast in this trial, if you will, with titles indicating the capacity in which these people attended the proceedings (e.g. judge, prosecutor). These names attest to the lawful, public nature of the case and the involvement of the local nobility of Savigny ('noble man', 'esquire', 'noble lady'). The records also leave no question as to within whose jurisdiction this trial occurred: Catherine de Barnault, Lady of Savigny-sur-Étang, which was part of the territories of the duke of Burgundy, here represented through his counsellor, Benoist Milot, and his clerk of the court, Huguenin de Montgachot. Additionally, these names—especially those of the witnesses—attested to the reliability of the proceedings. The reputation (*fama*) of witnesses 'was crucial in establishing if they were appropriate for legal cases' as *fama* functioned as an essential form of social capital in the late mediaeval French legal system (Hutchison, 2018, 258).[16]

By contrast, neither Sustitia nor her six infants were named in the original record, even though the trial essentially revolved around their potential guilt and punishment. Perhaps the pigsty, Jehan Bailly, never found a reason to name his pigs, or perhaps they did have a name, but it was omitted from the record for some reason.[17] Domestic animals such as dogs, cats, pigs, horses, sheep, and birds could and did bear personalising names—albeit of a generally different kind than human names (Cohen, 2008, 41). Nonhumans that were tried rarely had a name, especially if they were pigs.[18] However, that can also be attributed to the limitations of the sources. Most nonhuman trials are recorded in administrative documents, mainly receipts, which due to their formal nature rarely allowed nonessential information. In any case, the Savigny pigs' namelessness tacitly contributes to their discursive objectification. Names are a form of social currency: even if often the bearer did not choose their proper name, names inevitably accumulate tremendous meaning, both for the

[15] Montgachot 1829, 41, 43, 44: 'par noble homme Nicolas Quarroillon, escuier, juge dudit lieu de Savigny,... présens maistre Philebert Quarret, Nicolas Grant-Guillaume, Pierre Borne, Pierre Chailloux, Germain des Muliers, André Gaudriot, Jehan Bricard, Guillaume Gabrin, Philebert Hogier, et plusieurs autres tesmoins à ce appellés et requis,... honorable homme et saige M[aistr]e Benoist Milot d'Ostun, licencié en loys et bachelier en décret, conseillier de monseigneur le duc du Bourgoingne... multre et homicide en la personne de Jehan Martin, en aige de cinq ans, fils de Jehan Martin dudit Savigny.... Huguenin de Montgachot, clerc, notaire publicque de la court de Monseigneur le duc de Bourguoigne.... maistre Etienne Poinceau, maistre de la haute justice, demeurant à Châlons-sur-Saône'.

[16] Hutchison 2018, 260: 'Because it belongs to the larger community within which it emerges, it [*fama*] is a public, material, yet fluid thing of significance.... medieval *fama* was constructed through the moral binary of good and bad. A person's moral character was contingent on the reputation they had earned in the public mind, but which that same public constructed through its judgements of the individual's deeds'.

[17] For instance, maybe the court and/or notary deemed it irrelevant or inappropriate to mention the pigs' names.

[18] The only exception I know of in this context is the pig named Verray that was hanged in 1444 the townspeople of Saint Prix (Arnay-le-Duc) after he killed a girl. Lesley MacGregor (2019) explains that 'the name of the animal not only represents the close relationship community members had with their animals, but it leaves no doubt as to who committed the crime' (6).

individual and for the society in which they participate. On a literary level, namelessness reflects powerlessness (Bal, 1988, 23).[19] Unnamed animals 'are objects, not subjects. They have no history, no biography, no intentions, and no emotions'—by contrast, having a name 'incorporates that creature into our social world' (DeMello, 2012, 49). The name 'Sustitia', a contraction of *Sus* ('pig') and *Justitia* ('justice'), is a literary invention I assigned to the unnamed sow of the Savigny-sur-Étang trial records.[20] I realise that any alteration to the source material, however minute, teeters on anachronism, yet this intervention also opens up new possibilities. By preposterously naming this otherwise nameless sow, I seek to establish a field of creative tension within the vast spatiotemporal gap between present observers and the world of meaning encoded in the mediaeval trial records. I deliberately forego a Rankean history *Wie es eigentlich gewesen ist* for a narrativist vision of history: interpretation of the past—based on rigorous source analysis—forged into a narrative that interweaves the 'hunger for fact' with the intangible mental and relational processes of that past (Davis, 1992; see also Ankersmit, 2012). My intention is to fashion a history that welcomes the pre-posterous as 'a way of "doing history" that carries productive uncertainties and illuminating highlights' (Bal, 1999, 7).[21] Carefully examining the preposterous reveals that 'the presentation of an order authorized as "natural" is actually 'rhetorically produced', raising awareness for 'the workings of "smooth discourse"—the histories it forges and the authority it creates' (Parker, 1992, 213). Naming Sustitia enables a change in perception by retrospectively levelling the ontological playing field. Sustitia's name thus facilitates reading her trial counter-hegemonically: no longer merely an unknown 'mute beast', an anonymous historical *object* of knowledge surrounded by human protagonists, Sustitia becomes an agential *partner* in knowledge. This allows me to avoid a normative, humanist reading of the reality of Sustitia's trial—which would instrumentalise Sustitia's ordeal to celebrate that humans have abandoned the crude silliness of prosecuting nonhumans—in favour of a posthumanist interpretation that challenges and decentres anthropocentrism by conjugating with the nonhuman, recognising the value of its alterity (Marchesini, 2016a, 164–5; 2016b, 224–5, also see Barcz, 2015, 256).

[19] Bal assigned names to the originally unnamed women of the Book of Judges to start remedying the women's disempowerment. She elaborated more on this in person in a discussion during her masterclass, *Travelling Cultures: Movement, Conflict, and Performance*, at the Royal Dutch Institute of Rome (KNIR), 20–30 September 2017.

[20] Initial inspiration for the name came from the article 'Animal Morality: What It Means and Why It Matters' (Monsó, Benz-Schwarzburg & Bremhorst 2018).

[21] I also support Bal's contention that 'by endorsing the present as a historical moment in the act of interpretation itself, one can make much more of the object under scrutiny. One can learn from it, enable it to speak and to speak back, as a full interlocutor in debates about knowledge, meaning, aesthetics, and what matters about these in today's world' (18).

A Brief Historiography of Legal Actions Against Nonhumans

Scholars commonly distinguish the nonhuman trials by their procedure. Ecclesiastical cases debated what to do about particular (groups of) critters who had damaged the livelihood of a specific human community.[22] In secular cases, royal, urban, and seigneurial authorities prosecuted specific domestic animals that had injured or killed a human.[23] Some also discern a third, hybrid procedure: secular prosecutions of individual nonhumans for spiritual transgressions, preternatural or diabolical behaviour (Cohen, 1986, 33–4).[24] Theories for *why* humans have taken legal actions against other animals can be clustered in five primary drives.[25]

1. Upholding tradition:
    1.1. Biblical prescriptions
    1.2. Roman law
2. Evening the scales:
    2.1. Retaliation
    2.2. Retribution
3. Maintaining law and order:
    3.1. Deterrence
    3.2. Intimidation

[22] For instance, in 1487, the Church anathemised a multitude of snails from Autun because 'they nibbled and ravaged, gnawed and devastated the seeds and fruits of the lands' (Chassenée 1588, 19).

[23] At the time, the term 'domestic' (*domestica*) included any nonhuman that lived in or around the house (*domus*) with which one was familiar, so not only pets or farm animals (swine, cows, horses) but also weasels, crows, hedgehogs, et cetera (Pastoureau 2011, 161–2).

[24] For example, in Basel, Switzerland, a chicken with the appearance of a rooster was burned in 1474 for laying an egg; the egg was also burned (Berriat-Saint-Prix 1829, 28). Eggs laid by roosters allegedly hatched basilisks, infernal monsters that brought death and devastation Interestingly, in traditional China, egg-laying chickens that passed for roosters were also perceived as dark omens, yet this actually resulted in the castigation of government officials, as they were held responsible for maintaining organic harmony in the realm (Walter 1985, 53–4).

[25] This article primarily focuses on actions taken against nonhumans that had caused material damage to humans (either physically or to their possessions)—particularly homicide-related cases—so I have not included the prosecution of human copulation with nonhuman animals (i.e. zoophilia/bestiality) here. Bestiality was often classified as a form of sodomy and hence punished as such, usually by fire (Cohen 1989, 410; Friedland 2012, 110–1; for the Burgundian Low Countries: Wielant 1995, 91, ch. 64). While bestiality cases also constituted legal actions against nonhumans, they differ in that typically offenders of *both* species were punished and that—in principle—no human had been physically harmed by the nonhuman. Further research into bestiality cases and their relation to other legal actions against nonhumans would be valuable.

4. Protecting the community:

    4.1. Incapacitation of a threat
    4.2. Psychosocial coping

5. Increasing affluence:

    5.1. Profit (prestige, tithings, etc.)
    5.2. Material/financial compensation

A pervasive theory holds that communities organised such trials because of abiding ancient legal traditions, e.g. persistent adherence to the Mosaic injunction that if an ox lethally injures any human then that ox must be killed (Ex. 21:28–32) or to Roman law, i.e. the chattel law principle of *noxae deditio*: if a person's property had caused harm to a human being, the latter person was entitled to take ownership of the noxious property (Fath, 1906, 8–10; 23–5). Legal custom departed entirely from this principle as injurious nonhumans were often penalised. Offending nonhumans were rarely, if ever, extradited to the injured party as local authorities usually executed or confiscated them instead (Cohen, 1986, 26–7). Likewise, although the Mosaic laws certainly provided a Biblical justification (e.g. Pape, 1541, 268, art. 238), it is unlikely that they *incited* the prosecution of nonhumans. In fact, the purposes of Mosaic law are every bit as contested as the theories for the nonhuman trials (see Finkelstein, 1981; Wise, 1996, 485–6 and n. 95). Moreover, the 'oft-quoted prescription in Ex. 21:28 to kill the ox that gored had only peripheral importance during the Middle Ages' as capital punishment of nonhumans was never stoning: they were usually hanged, burned, or suffocated (Dinzelbacher, 2002, 419).

Some proffer that nonhuman trials were motivated by a deep-seated, infantile need for vengeance (Von Amira, 1891, 9; Evans, 1906, 186; Hyde, 1916, 698; Frazer, 445; Carson, 1917, 410; Newman [1978] 2017, 93). However, the notion that even the highest layers of institutionalised justice invested considerable time and effort debating which sentence to pass on injurious nonhumans because of petty retaliation is rather facile (Cohen, 1986, 16). A nuanced vengeance interpretation abides: mediaeval culture was still 'immersed in the *lex talionis*' (Enders, 2002, 211), i.e. the Mosaic law to 'award life for life, eye for eye' (Ex. 21:22–25).[26] There is, however, no evidence that this injunction was invoked for any situation of interhuman or interspecies injury.[27] Contrariwise, Scripture insists on charity and forgiveness (e.g. Lev.

[26] For other endorsements (to varying extents) of the 'talionic law'-theory, see Jamieson (1988, 59–60; 62); Beirne (1994, 31; 37), Girgen (2003, 120–1), Sealey (2006, 483–4), Phillips (2012, 17), and Fudge (2016, 28).

[27] This retaliative principle is iterated in Exodus in the context of a brawl between people that causes a pregnant woman to miscarry, so it had nothing to do with nonhuman animals.

19:18; 19:34; Mt. 5:38–39).[28] Alternatively, nonhuman trials have been interpreted as a form of societal retribution. Homicide (especially by nonhumans) unravelled communities' social cohesion and tarnished their moral integrity, necessitating the culprit's expulsion to restore order (Ayrault, 1591, 27v; Ménabréa, 1846, 123; Thonissen, 1875, 414; Hyde, 1916, 697–8; MacCormack, 1984, 349). Perhaps the trials were ritualistic attempts to restore the cosmic equilibrium after a nonhuman had disturbed the would-be insurmountable human/animal divide (Finkelstein, 1981, 73; Tester, 1991, 91) or, 'like all other rituals involving animals', symbolic gestures 'to affirm the perception of justice in the universe', restoring the imbalance of justice caused by nonhuman violations of the ontological order (Cohen, 1993, 110).[29]

Penologically, the trials likely constituted deterrents: punishments that make an example of criminals. Some submit that the trials were intended to deter other *nonhumans* from committing similar infractions, much like the killing and public display of so-called nuisance animals to repel others of their kind (Jamieson, 1988, 58; Humphrey, 2002, 258–9; Girgen, 2003, 118 and n. 147). These are different categories of infractions and procedures, so I think it is unhelpful to equate the summary execution and display of nonhumans that encroached onto human property with the ritualised executions of nonhumans that killed a human. It is also presumptuous to assume that premodern courts believed that so-called irrational animals learned from the offending nonhuman's punishment. Perhaps, instead, such punishments deterred the *human* keeper, so they would guard their charge(s) more diligently (Jamieson, 1988, 58; Beirne, 1994, 38; Girgen, 2003, 118–9; Rainis, 2011, 118; Dubois, 2018, 171); the victim's parents, who might be punished for insufficiently monitoring their child's safety (Ayrault, 1591, 24r; Dubois, 2017, 10; Rainis, 2011, 118); or even a spectacular antisemitic warning for Jewish people.[30] Others, however, propose that the trials were a general deterrent: ritualised *exempla* that demonstrated a performance of 'good justice' to *all* spectators (Pastoureau, 2000, 200). The fervour to subject *any* species to justice could also have been an expressive display of power, to intimidate people into believing that their authorities maintained unfaltering control over their environment (Humphrey, 2002, 249; Dinzelbacher, 2002, 406; Pervukhin, 2003, 14; Salisbury, 2010, 114; Van Bruaene, 2015, 35–6; Dubois, 2017, 10; MacGregor, 2019, 16).

[28] This ambiguity also puzzled mediaeval scribes (Hyams 2018, 44). In those (strictly human) cases where talionic law was put into practice, it primarily served to rein in vigilante justice and disproportionate vengeance as this law *limited* the extent of harm that the injured party was allowed to cause the injurer (VanDrunen 2008, 950). In some areas, talionic law even functioned as a legal *disincentive* intended to protect defendants. For instance, accusers in thirteenth-century Italy required a written accusation (*libellus inscriptionis*) to be able to accuse any layman or cleric. If the accuser's lawsuit failed, then he was subject to the *poena talionis*, 'a penalty equivalent to that which the defendant would suffer if found guilty' (Pennington 2016, 147–8).

[29] Similarly, Steven Wise (1996) argues that the trials served 'to right terrible insults against the ordained, immutable, and universal hierarchy, which were insults against justice itself' (512–3).

[30] Enders 2002, 221–3: 'It was men and women who would learn from such an exemplary spectacle of deterrence that human beings must also pay for their transgressions. Human beings and human pigs'.

Others suggest that nonhuman trials provided humans with a rational discursive framework and a spiritually moving ritual that allowed human communities to mend the social rift caused by the breach of societal norms, and restore order (Berman, 1996, 318; Friedland, 2012, 116; Frank, 2021, 5).[31] The (quasi-)legal discourse provided a practical vocabulary to (re-)evaluate communal issues and adjudicate 'among the multiple narratives that are invariably present in a heterogeneous society' (Berman, 2000, 129–31). Legal courts publicly established the meaning of the offender and their actions (Humphrey, 2002, 251) and ascertained if the homicide was caused by a nonhuman or by human foul play (Dubois, 2017, 11). The ritualised nature and formality of legal discourse perhaps comforted perturbed human communities, functioning as an 'intellectually acceptable form of the recourse to magic that was so prevalent during that epoch'—in other words, 'efforts to address and relieve the menacing, inexplicable and uncontrollable elements of the medieval world' (Dinzelbacher, 2002, 420; 2006, 154; also: Berman, 2000, 129–31; Slabbert, 2004, 178–9; Fudge, 2016, 37; Newman [1978] 2017, 92–3). This functionalist interpretation enlightens little more than it obscures.[32] It presupposes that the mediaeval world was exceedingly harsh and inherently frightening, an assumption that is as common as it is unhelpful.[33] The notion that late mediaeval people prosecuted nonhumans simply because it gave them a sense of stability and order in what was—allegedly—an unendingly turbulent world arguably says more about the scholar entertaining this notion than about the actual people being studied. Functionalist theories based on the notion of a 'mediaeval anxiety culture' ultimately only explain *away* the legal actions of a mediaeval culture that entertained complex, dynamic, and sometimes paradoxical world views.[34]

Some scholars attribute the trials to avarice. For instance, after dismissing the contributions of 'noneconomists' in a footnote, Peter Leeson (2013) proclaims that the Catholic Church deliberately propagated such 'superstitions' among the supposedly

[31] Similarly, Alan Watson (1997, 435) proposes that the trials constituted 'The Last Best Chance' of a system in which 'other systems avoid resolution by law of the (very real) problem'.

[32] For many humans, court rooms and procedures are hardly comforting. The guardian of the accused nonhuman would likely have felt more concern than reassurance, as they risked getting punished for their lack of supervision. The parents might worry that justice would not be done sufficiently, and that is not to mention the nonhuman accused, who would not have had the slightest notion of what was going on (provided she was also summoned to the court room, for which there is no clear evidence).

[33] For example, Humphrey (2002) claims that the trials were the product of people who 'lived every day at the edge of explanatory darkness' and thus had an intrinsic need to 'establish cognitive control.... domesticate chaos, to impose order on a world of accidents-and specifically to make sense of certain seemingly inexplicable events' (251–2). Similarly, Berman (1996) writes that the trials forged a narrative 'to assert cognitive control over chaos' (323).

[34] The considerable upheavals of the *Ancien Régime* do not justify the assumption that the inhabitants of this vast epoch were all condemned to a life riddled with anxiety, social dysfunction, or collective insanity. In fact, while suffering through natural disasters, epidemics, or wars does impact one's well-being, the resulting dissatisfaction 'does not result in a *longue durée* of anxiety' (Soergel 2007, 310). Major positive and negative events ultimately impact a person's happiness only for a limited duration (Lyubomirsky 2010).

ignorant and easily manipulable common folk to increase ecclesiastical tithe revenues (813–4). Enders (2002) already suggested that pig trials imply 'the same kind of persecuting mentality which stimulated so many accusations of witchcraft for the purpose of economic gain' (221). Even mediaeval jurists like Philippe de Beaumanoir, who wrote the influential *Coutumes de Beauvaisis* (1283), reasoned that the trials were driven by local authorities' desire for personal profit (Beaumanoir, 1899, 481).[35] Beaumanoir himself vehemently condemned the nonhuman trials, maintaining that animals who possess neither knowledge of good and evil nor malicious intent cannot be held responsible for their actions (482). Yet for all of their censure, customary jurisprudents like him appear to have had little influence on the nonhuman trials. The high cost of incarcerating an offending nonhuman, the executioner's time and travel costs, and the legal process itself suggest that it was unlikely that secular trials were driven by an economic rationale. Moreover, the persistence of ecclesiastical trials 'was due mainly to indirect *popular pressure* voiced by hired lawyers' as theologians and jurists often opposed the notion of prosecuting nonhumans (Cohen, 1993, 115; 126).

Many of these theories attribute the prosecution of nonhumans to the cruelty, irrationality, and primitive superstition of a culture lacking the intellectual rigour to separate humans from beasts.[36] This cultural positivism indicates historical exceptionalism, an attitude that projects everything 'antithetical to the modern world'—i.e. 'violence, ignorance, backwardness, and filth'—onto a past framed as a distant 'dark age' (Fazioli, 2017, 155–7). Some dismiss the trials as actions of a human 'race' in its 'infancy': 'In that hazy state of the human mind it was easy and almost inevitable to confound the motives which actuate a rational man with the impulses which direct a beast', leading these 'savages' to take 'deliberate vengeance' on noxious nonhumans (Frazer, 1919, 445)—until the 'progress of the Enlightenment banned measures contrary to reason and humanity' (Berriat-Saint-Prix, 1829, 20). Significantly, however, the peak of nonhuman prosecutions lies between 1500 and 1700, clashing with 'the picture of humanity advancing in linear progression from the superstitious middle ages to the rational nineteenth century' (Cohen, 1986, 17; Girgen, 2003, 116).[37] Moreover, cultural positivism's politics of time and species, like modernism, are grounded in a dual dissymmetry (Latour, 2002). Firstly, modernism pretends to rupture the regular flow of time as though its advancements have abolished its past.[38] The second dissymmetry is the parallel contrasting of

[35] I thank Esther Cohen (1986, 20) for this reference.

[36] Nineteenth- and twentieth-century studies are most explicit: nonhuman trials resulted from 'an extremely crude, obtuse, and barbaric sense of justice... a social state, in which dense ignorance was governed by brute force', where 'club-law' made 'a travesty of the administration of justice' (Evans 1906, 41). Nearly every published work on the nonhuman trials since cites Evans' work, so his study is decidedly not 'greatly neglected' (Phillips 2012, 1)—on the contrary: its errors and sensationalism have informed a great deal of later scholarship.

[37] The zenith of nonhuman trials also parallels contemporary witch hunts and sodomy trials (e.g. Roelens 2018; Stokes 2011). Their coexistence could indicate that such legal practices of purification evolved from the kind of 'persecuting society' that Robert Moore [1987] (2007) argues had developed in Europe by the end of the thirteenth century.

[38] No longer 'removed from the Middle Ages by a certain number of centuries', modernity is distinguished by 'Copernican revolutions, epistemological breaks, epistemic ruptures so radical that nothing of that past survives in them – nothing of that past ought to survive in them' (Latour 2002, 68).

past/future and nature/culture: time as a battle in which modernity inevitably vanquishes premodernity, thus creating 'two entirely distinct ontological zones: that of human beings on the one hand; that of nonhumans on the other' as premodernity becomes 'the confusion of things and men', whereas modernity 'will no longer confuse them' (10–1; 71). Presupposing that premodern people were so backwards as to sluggishly accept any nonsense 'the Church' allegedly spoon-fed them insinuates that those people were as savage and irrational as the nonhumans they persecuted. This attitude leans on two sinister convictions: (1) the a priori that nonhumans are irrational and slavishly docile (if led by a firm hand), and (2) humans who are part of cultures with a different normative scheme and set of conventions are essentially nonhumans.[39] This fusion of human *and* historical exceptionalism suggests that humans imagined guilty of 'premodern' sins are subhuman, less evolved than 'modern Western Man'.[40]

A single global motivation cannot explain all nonhuman trials. The purpose of any trial inevitably depended on a 'variable configuration of temporal, national, gender, class, religious, and other factors' (Beirne, 1994, 39). Some scholars propose a combination of explanations and factors to explain the nonhuman trials (e.g. Dinzelbacher, 2002, 421; Girgen, 2003, 121). Multifactorial theories are certainly fruitful, but arguably not for 'the nonhuman trials' as a whole. Despite their one shared distinctive feature (legal action against one or several nonhumans), the trials did not constitute a single curious tradition; they were not an idiosyncrasy of the mediaeval Occident. To seek a global (multifactorial) explanation for legal actions against nonhumans—a widespread, multiform practice throughout human history—anyway would be tantamount to seeking a 'general theory of holes'.[41] Elsewhere, Stuart Clark (1980) once remarked that 'What is at stake are the criteria for interpreting a past world of thought without recourse to anachronism or reductionism', as linguistic utterances are dependent of a particular context—or Wittgensteinian 'language game'—within which they make sense (99–100). Likewise, I maintain that each nonhuman trial must be examined within its own linguistic and spatiotemporal context as no two trials were identical; each involved specific actors within a particular spatiotemporality. Every trial constituted a unique twilight zone where

[39] I here place 'the Church' between apostrophes to emphasise its stereotypical framing in this—in my view—inadequate presupposition. The fact that prosecutions of nonhuman animals also took place in ecclesiastical settings (and on theological grounds) does not mean that the Church as a whole supported prosecuting nonhuman animals. For instance, the thirteenth-century theologian Thomas Aquinas explicitly condemned anathemising nonhuman animals on account of each of them being an 'irrational creature' (*creatura irrationali*) consisting purely of the nature that God gave them, incapable of guilt or punishment (Aquinas 1894, 539).

[40] Such a dehumanising teleology has long been a rhetorical device in the imperialist's and (neo)colonialist's instrumentarium to justify the white man's burden, i.e. to light the way for any non-Western, non-modern people towards their only destiny: assimilate into the evolutionary pinnacle of the spatiotemporal hierarchy that is 'Western-style modernity and civilization', or slip into extinction (Fazioli 2017, 39–40).

[41] I here refer to a parable from Alasdair MacIntyre (quoted in: Efron 2010, 250): 'There was once a man who aspired to be the author of the general theory of holes. When asked, "What kind of hole – holes dug by children in the sand for amusement, holes dug by gardeners to plant lettuce seedlings, tank traps, holes made by roadmakers?" he would reply indignantly that he wished for a general theory that would explain all of these'.

different categories, social classes, species, customs, and narratives encountered and challenged each other, the end result to be determined by the presiding human court. When embracing their individual multiplicity, each nonhuman trial can be perceived as a kind of social laboratory, providing entryways into the rich mental and behavioural worlds of premodern humans, other animals, and the ways in which they (re) negotiated interspecies sociability.

Seven Pigs on Trial in Savigny-sur-Étang, 1457

Despite the *procès-verbal*'s remarkable extensiveness, the local context of the trial remains elusive.[42] The records do not specify Savigny's location, but Savigny-sur-Étang (sometimes spelled Savigny-l'Étang or Sauvigny-l'Estang) was situated in the bailiwick of Autun.[43] When Catherine de Barnault married Guyot de Brasiers, she also became the Lady of Savigny-sur-Étang.[44] The trial records reveal little more, save that Huguenin Martin acted as her prosecutor in this case.[45] Apparently, Barnault's justice was 'not presently elevated'.[46] Late fourteenth-century juridical texts such as *Le grand coutumier de France* and *Le coutumier bourguignon glosé* distinguished three forms of justice: low, middle, and high justice. Most crimes were covered by low or middle justice (which included hanging), and high justice (*haute justice*) was reserved for the most severe transgressions that warranted spectacular punishments such as the pillory, burning, drawing and hanging, and execution on the *fourches* (a gibbet with three or more columns).[47] *Le coutumier bourguignon* also reserved the management of 'wild pigs and other large beasts of the nature of wild

[42] At present, the only known version of the trial records is a transcript published by the nineteenth-century legal scholar Jacques Berriat-Saint-Prix (see: Montgachot 1829, 41–45). He notes on p. 45 that the record was copied from a 'charter of Montjeu and dependencies' (among which 'Savigny-sur-Étang'). Charles Desmaze (1866) attributes the record to 'Bibliothèque impériale (manuscrits), *Variae chartae*, fonds latin, 9072' (89) and Alexandre Sorel (1877, 309) likewise points to the Bibliothèque nationale. The document is now probably still in the Bibliothèque nationale de France, but it has yet to be rediscovered.

[43] Patrice Vachon (2009) proposes that it was the hamlet Savigny that borders the present-day town Étang-sur-Arroux, which is close to the castle of Montjeu and Autun (51). This is plausible as it is also at a reasonable distance from Chalon-sur-Saône (whence the executioner was summoned).

[44] Spelled in the records as 'Katherine de Barnault' and in some works as 'Catherine de Bernault'. The marriage was officiated before 1440, Catherine was widowed by 1473, and they were survived by their son, Girard de Brasiers (de Marolles, 1867, 146; 748). Catherine's family appears to have originated in Barnault (a parish in Tazilly) yet they also maintained several lordships in Burgundy by the end of the fourteenth century. Catherine inherited Saint-Éloi in Nevers from her father, Philippe de Barnault, who had also been lord of Sauvigny-les-Bois and Montmort. Her older brother, Louis de Barnault, married Guyonne de Thoisy and continued the family name. Catherine's younger sister, Jeanne, married Philippe Lobbe, lord of Écutigny (Villenaut 1900, 604; Soultrait 1847, 86).

[45] In contemporary cases from Dijon, Rudi Beaulant (2021) observes that the gravity with which the killing of a child was regarded 'could seem variable according to the social quality of the parents of the child' (7). Huguenin Martin may have been a relative of the victim, Jehan Martin, which could also explain the import attached to this trial.

[46] Montgachot 1829, p. 42: 'la justice de madite dame n'est mie présentement élevée'.

[47] d'Ableiges 1868, 637–8: 'Celluy qui a haulte justice a puissance de trainer et de ardoir, et peult avoir gibet à trois piliers, ou plus s'il veult.... Nota que pillori et eschelle sont signe de haulte justice'.

pigs' for authorities with high justice.[48] The dukes of Burgundy utilised high justice as 'a political tool, a means of establishing and reaffirming both jurisdiction and territorial control' (MacGregor, 2021, 180) and only granted this power to select jurisdictions—the *seigneurs* of Savigny-sur-Étang apparently not included.[49] Involving the lawyer and counsellor Benoist Milot as well as the clerk and public notary, Huguenin de Montgachot, likely provided a loophole as the presence of these two functionaries of duke Philip the Good granted legitimacy to the trial and verdict.[50] Sustitia's case thus reflects how Savigny-sur-Étang's court navigated the precarious dynamic between seigneurial and ducal authority at this time.

I here pursue a deeper examination of the trial of Sustitia and her six piglets, all charged with homicide. Shortly before Christmas 1456, Sustitia and her six suine accomplices were arrested and as of then,

> prisoners of the aforesaid lady, as they had been apprehended *in flagrante delicto* [in blazing offence], having committed and perpetrated... murder and homicide onto the person Jehan Martin, aged five years, son of Jehan Martin, for the fault and blame of said Jehan Bailly alias Valot.[51]

Significantly, although the pigs' incarceration might have resulted from a pragmatic concern to retain physical control over them, less expensive options were available to detain them. Imprisoning nonhumans, just like labelling their actions 'homicide', had a criminalising and 'othering' effect as it suggested that these nonhumans (*ipso facto* already 'Other') warranted incarceration *because* of their actions (MacGregor, 2019, 10). As *prisonniers*, the pigs were spatially separated from Savigny-sur-Étang's community. This framed their aggression towards Jehan Martin as criminal, underlining the necessity to follow legal procedure. By contrast, the pigs' owner, Jehan Bailly, had not been imprisoned, so the court clearly did not suspect him of having committed a criminal offence.[52]

Though the records' parlance safely adheres to the legal repertoire of the time, it is also full of unresolved tensions. The suids deliberately and purposefully (*commis et perpétré*) killed the child. Paradoxically, while these terms suggest agency and voluntary action, Jehan Bailly—the pigs' guardian—is named as sole defendant

[48] N. N. 1982, 157: '153. Porc sanglier et grosses bestes de nature de porc sanglier appartiennent à haulte justice'.

[49] MacGregor (2021, 170–83) discusses several examples and observes that the 'key issue was not whether it was possible or even permissible to punish pigs, but rather who represented the final arbiter' (180).

[50] Benoist Milot remained in the employ of the Dukes of Burgundy as he is also mentioned as 'Maître Benoist Milot, Conseiller du Duc' in a receipt (dated 30 September 1473) from the receiver of Autun (Barre 1729, 266).

[51] Montgachot 1829, 41: 'le mardi avant Noel dernier passé, *une truye*, et six coichons ses suignens, que sont présentement *prisonniers* de ladite dame, comme ce qu'ils ont été prins en flagrans délit, ont commis et perpétré... murtre et homicide en la personne de Jehan Martin, en aige de cinq ans, fils de Jehan Martin dudit Savigny, pour la faulte et culpe dudit Jehan Bailly, alias Valot'.

[52] *Cf. Le coutumier bourguignon glosé*: 'le corps de l'omme ne doit estre emprissonéz, fors que pour cas criminel prins en present meffait ou pour vrayes conjectures de suspecçon ou par vrays ensaignemens' (N. N. 1982, 106).

(*defendeur*) and the pigs' role remains undefined.[53] Bailly was clearly considered liable. In legal discourse, the term *faulte* ('negligence') indicated a person's failure to act as a reasonable person, thus damaging other persons (Dalrymple, 1948, 62).[54] Likewise, *culpe* denoted 'blameworthiness' and 'negligence' (*Ibid.*), signifying the 'failure to foresee and guard against what a careful person would foresee and guard against' (Bell & Ibbetson, 2012, 52).[55] The records' terminology indicates that if Bailly were an attentive custodian, the child's death could have been avoided. In his negligence, Bailly had failed to act like a human (viz. reasonable animal). Contrariwise, Sustitia's kind was not expected to behave reasonably. The human victim is regularly identified as a *personne* whereas Sustitia and her infants are never named, nor identified otherwise than by their species, familial interrelation, or human guardian.[56] The agential vocabulary for their actions (*commis et perpétré... murtre et homicide*) contradicts the objectifying terminology and genericity in which the pigs as living beings are cast. To me, this implies that the pigs were considered like to mute, interchangeable automatons that had severely 'malfunctioned' (behaved far outside the acceptable parameters of chattel behaviour).[57] Framed as 'faulty livestock,' the pigs remained ontologically inferior to humans. Thus, while porcine animals might kill humans (the apex of terrestrial animals in God's creaturely hierarchy), the trial's phraseology reassuringly maintained that such acts could not, in any definitive sense, upend the order of nature.

The terms used for the suids' behaviour (*commis et perpétré... murtre et homicide*) signify evil, criminal acts.[58] They highlight the pigs' deliberateness, their awareness of committing a crime. Within legal discourse, the concept of intentionality[59] became essential to European penology as of the twelfth century.[60] Late mediaeval French speakers

[53] Either the pigs had no role at all, they were considered a kind of familial dependent of Bailly, or (this is what I suspect) they were simply considered Bailly's objects (property).

[54] This was specifically the case under the *lex Aquilia* (Bell & Ibbetson 2012, 57).

[55] In Roman Law, *Culpa* had three gradations of severity: *lata culpa* (gross negligence), *levis culpa* (ordinary neglect), and *levissima culpa*—slight neglect (Baldwin 1928, 259). Neither Burgundian customary law nor practice appears to have made such a distinction. Pleading negligence could shift the court's suspicions away from intentional homicide, but it did not exonerate defendants from their civic responsibility (Beaulant 2021, 7).

[56] Burgundian legal custom appears to have excluded nonhumans entirely from the category of legal personhood (*cf.* N. N. 1982, 49, art. 21: 'Qui habet legitimam personam standi in judicio').

[57] My choice for the term 'automaton', a human-made contraption with a self-contained principle of motion (Truitt 2015), is deliberate because I strongly suspect that mediaeval attitudes to such devices mirror human attitudes to nonhuman animals.

[58] *Trésor de la langue Française informatisé* (henceforth 'TLFi'), s.v. 'Commettre'; *TLFi*, s.v. 'Perpétrer'.

[59] I only focus on the legal inception of intentionality here—the concept's embedding in technical philosophical discussions regarding free will is beyond the scope of this essay.

[60] For instance, Philippe de Beaumanoir differentiated premeditated murders (*traisons*) from murders in the heat of an argument (*homicides*) and from murders committed because of insanity. Likewise, the *Livre de jostice et de plet* distinguished homicide from murder on the basis of the killer's intentions (Friedland 2012, 49–50; Komornicka 2018, 107).

distinguished *multre* ('unlawful killing') from *homicide*, a 'man-killing' (Williman, 1986, 76–7). The latter was a crime of passion, whereas *multre* designated a 'premeditated, deliberate kill', implying treachery and a secret grudge. Treacherous murder was understood as a 'violent, non-accidental death through which the murderer violated a culture shared with the victim' (Komornicka, 2018, 97–8). Linking treachery with murder spoke to a broader stratum of ideas about social order, framing the perpetrator as a pollutant that threatened social cohesion at large. Treacherous murder, a breach of trust and a personal offence, constituted an infraction of communal bonds that, if left unsanctioned, might pervert and undo the entire community. In using these labels, public authorities essentially (re)asserted the behavioural norms of their citizenry (99–101; 105; 108). Invoking murder *and* homicide, as in Sustitia's trial, signalled that the case could be considered a so-called *cas énorme* (Gauvard, 2010, 800–3).[61] Enormity indicated infringements of basic moral taboos like incest, heresy, sodomy, or infanticide. Public authorities (rather than private plaintiffs) typically acted as prosecutors. Convicted criminals received punishment suited to the crime's 'enormity' (Monter, 1999, 10–1; Gauvard, 2000, 200–2). While Sustitia's case is never explicitly typified as such, its terminology and procedure are comparable. Huguenin Martin, a public prosecutor of the Lady of Savigny-sur-Étang, pursued Sustitia's case.[62] Additionally, it warranted a veritable 'assembly' (*jours*)—though not quite a 'grand assembly' (*grand-jours*)—and the presence of many witnesses. On a regional scale, this trial was evidently considered of the utmost gravity.

The gravity of the case undoubtedly relates to the fact that Sustitia had killed a human *child*, a major moral taboo.[63] Though the first known invocation of the term *infanticide* in French dates to the sixteenth century, the concept and its practice were already known and reviled in mediaeval Christian Europe.[64] Women reportedly suffered gruesome punishments in hell if they aborted their unborn child or if they

[61] The concept of 'enormity' was a late mediaeval invention (based on the Roman concept of *atrocitas*) based on the notion that the mediaeval world order was ordained by the Christian notion of a Godhead whose justice was beyond this world and whose power was represented by the papal church of this world, which in turn was emulated by secular—insofar as that term can be used in this time frame—authorities (Théry 2007, 535–7; Théry 2012, 74–5). Consequently, an insult to the divine order of nature was an insult to Church and state, and vice versa.

[62] This allowed Catherine de Barnault to position herself as a ruler who actively pursued justice. After all, *Le coutumier bourguignon* stipulated that inhabitants of a city could only appoint a prosecutor with the 'license of their *seigneur*' (N. N. 1982, 125–6, my emphasis).

[63] The complicated history of the infanticide taboo is too intricate to fully explain here. Suffice it to say that the deliberate killing of a child—either directly through such things as poison or strangling, or passively, by abandoning or selectively neglecting the child—is a cultural and historical universal on which certain societies rely as a form of post-partum family planning (Miller 1994; Scheper-Hughes 1987).

[64] *TLFi*, s.v. 'Infanticide'. In most late mediaeval occidental communities, infanticide was strictly prohibited. However, there is ample evidence to suggest that the practice persisted, that it was even tolerated in certain forms, and that parents were viewed with great suspicion when a child had allegedly died by accident (Corby et al., 2012, 20–1). In the Middle Ages, the tolerated method for parents to dispose of an unwanted child after birth was either through *expositio* (leaving the child somewhere for someone else to find and raise it) or *oblatio* (donating the child to a monastery to be raised as a monk), as both practices gave the child the chance to live. John Boswell (1984) notes that these two common forms of child abandonment 'violated neither conscience nor law in most of Europe' and 'built much demographic flexibility into societies that tolerated it' (31).

harmed or killed their infant after birth (Price, 2003, 19). This religiously informed aversion also suffused late mediaeval secular courts of law, which considered killing a human child homicide and potential grounds for burning, drowning, hanging, or burying alive the guilty party and any accomplices (Cohen, 1993, 99; Riddle, 1994, 140–1; Sandidge, 2011, 291; McDougall, 2021, 238).[65] Even when the cause of death was deemed an accident, urban courts sometimes sought to achieve satisfaction in other ways, for instance by seizing the nonhuman animals involved in the death.[66] In any case, when local authorities decided to investigate the killing of a child, they assiduously followed inquisitorial procedure and adapted this to the particular circumstances of the case as they were keen to ascertain whether or not the child's death had been an accident or intentional (Beaulant, 2021, 18; 27). Thus, contrary to the notorious thesis that a dead infant 'which had disappeared so soon in life was not worthy of remembrance' (Ariès, 1962, 38), mediaeval religious imagination, legal practice, and infanticide literature clearly indicate that the killing of a child was not a matter of indifference but a cause of great consternation. Significantly, the majority of secular nonhuman trials in the Late Middle Ages concerned nonhumans that had been responsible for the death of a child (Gauvard, 2010, 826). This was especially the case in legal actions against pigs.

Before judge Nicolas Quarroillon pronounced the verdict for Sustitia and her infants, the court required a statement from the pigs' legal guardian. The court summoned Bailly not one but three times to vouch for Sustitia and her six children yet he never answered the call. The judge insisted that he was 'very eager to hear' Bailly's defence, whether 'he wanted to say anything as to why justice should not be done' to Sustitia and her children, who would otherwise face 'the punishment and execution of justice'.[67] Quarroillon thus profiled himself as an impartial judge

[65] In practice, it is difficult to say with certainty whether accusations of infanticide generally led to criminal prosecution, not to mention punishment or pardon. Riddle nuances that courts would consider the social situation of the mother, a mitigating factor that might let her get away with public humiliation and/or several years of penance. Gauvard (2010), on the other hand, argues that charges of infanticide and/or abortion were rarely pardoned (823). McDougall (2021) challenges this thesis, observing that actual rate of remissions, convictions, or even prosecutions of infanticide remains unclear, so it is only possible to speculate as to how frequently charges of infanticide were pardoned (229–53, particularly: 236–8). In Burgundy, Beaulant (2021) notes that a child's death 'does not always imply the condemnation of the one who has caused it' as the accused might vindicate themselves or appeal to intercession from the ecclesiastical or ducal court (26).

[66] For example: in 1440, Jacquot Pépin lost control of his cart and ran over a young boy in Dijon. Though the court ultimately accepted Pépin's explanation that he had accidentally lost control of his horses, the mayor, several aldermen, and sergeants then attempted to seize the horses instead, perhaps with the intention to punish them instead (Beaulant 2021, 6–8).

[67] Montgachot 1829, 41–2: 'lequel par nous a esté sommé et requis ce il vouloit avoher ladite truhie et ses suignens, sur le cas avant dit, et sur ledit cas luy a esté faicte sommacion par nous juge, avant dit, pour la première, deuxième et tierce fois que s'il vouloit rien dire pourquoy justice ne s'en deust faire l'on estoit tout prest de les ouïr en tout ce qu'il vouldrait dire touchant la pugnycion et exécution de justice que se doit faire de ladite truhie'.

Jody Enders (2002) interprets the 'les' in 'l'on estoit tout prest de les ouïr' as referring to Sustitia's piglets which leads her to remark '(one can only wonder what *that* sounded like)' (234). I, however, interpret this word differently: as a reference to an unspoken plural implied in 's'il vouloit rien dire pourquoy justice ne s'en deust faire', which in my estimation makes more sense in this context.

guided by reason.[68] At this point in time, reason was an essential aspect of human distinctiveness, one that legitimised superiority over other animals (Gins, 2021, 10–1). Bailly ultimately responded that he 'did not want to say anything'.[69] Bailly's silence served his own protection: him already being considered negligent, he likely chose to remain silent to save face and avoid punishment. As there appears to be no record of an investigation into how or why Sustitia fatally injured the boy, and because Sustitia could not utter human speech to defend herself, her only possible line of defence for acquittal arguably lay in Bailly, whose silence thus sealed her fate. According to some scholars, Sustitia 'confessed (!) under torture that she had killed and partially devoured the young Jehan Martin'.[70] The trial records, however, provide no indication that Sustitia was tortured to extract any kind of confession from her.[71] Her being caught in the heat of the murder, the boy's blood on her skin, feasting on his flesh, combined with Bailly's refusal to explain her actions sufficiently proved her guilt.

The court also claimed to have consulted 'with sages and practitioners', considering 'in this case the [habitual] usage and customs of the land of Burgundy, having God before [their] eyes'.[72] This statement attests that the court of Savigny-sur-Étang was playing the *Homo Legifer* 'game'.[73] Their phrasing befitted contemporary legal repertoire and underlined the court's the intention to follow established legal procedures. While highlighting the jury's legal diligence, the appeal to expertise (human specialists of jurisprudence) and tradition (customary laws of Burgundy) tacitly suggests that this case might not have been as 'habitual' as it was presented. Moreover, in relying on this linguistic repertoire, the jury implicitly distanced their verdict from the very humans that reached it, conferring final responsibility for their decision to anonymous or absent authority figures, to human tomes and human laws, even to a godhead. Such

[68] This reflects contemporary customary prescriptions of what it takes to be a good judge. As earthly, temporary equivalent of the eternal judge, God, human judges were expected to 'have a humble and debonair heart and mind to show grace and compassion where it belongs' and to have their 'eyes towards heaven... For who regards up high, towards the sky, rather thinks of celestial matters; and to those who regard the earth, earthly matters will sooner come to mind. This is how their understanding can be deprived of reason' (N. N. 1982, 100–1).

[69] Montgachot 1829, 41–2: 'veu ledit cas, lequel deffendeur a dit et respond qu'il ne vouloit rien dire pour le present'.

[70] Pastoureau 2000, 183: 'Elle avoua (!) sous la torture avoir tué et en partie dévoré le jeune Jehan Martin'.

[71] He cites d'Addosio (1892, 286–90) and Evans (1906, 298–303) as evidence. However, d'Addosio mentions nothing of the sort, neither does Evans (who actually treats Sustitia's trial on pages 153–4; 346–51), nor do the trial records indicate that Sustitia was tortured to extract a confession. Unfortunately, sensational misrepresentations abound in discussions of the nonhuman trials.

[72] Montgachot 1829, 42: '*Aussi conseil avec saiges et practiciens*, et aussi considéré en ce cas l'usence et coustume du païs de Bourgoingne, aïant Dieu devant nos yeulx'.

[73] I want to stress that my perception of the game-like aspect of this *Homo Legifer* narrative/ritual differs from the 'playfulness inherent in the legal system' that Anna Pervukhin (2003, 23) claims to detect in the nonhuman trials. Pervukhin herself cites Johan Huizinga's suggestion that the essence of genuine play is 'fun. It is a source of amusement and pleasure... incompatible with ritual acts' because participants have a 'consciousness, *however latent*, of "only pretending" (24). While some nonhuman trials may well have had an amusing element of play-pretend, I am sceptical as to its applicability here and I am certain that the trials' ritualistic features of the trials merit more consideration.

projection is a common human stratagem to escape the anthropopoietic task and its vast responsibility (Remotti, 1998, 27–8). By appealing to human vestiges of knowledge, tradition, and divinity, the human jury implicitly relegated their own accountability to 'other' entities—be it human, nonhuman, or superhuman—all of which inhabited a different, more transcendent spatiotemporal plane of existence than the humans of Savigny-sur-Étang's court. Their explicit belief to have judged *aïant Dieu devant nos yeulx* also signalled that questioning the jury's decision was tantamount to heresy, thus solidifying the power of the legal apparatus—thereby validating the narrative of the *Homo Legifer*.

Having emphasised the legitimacy of their capacity to judge nonhumans, the court subsequently pronounced its sentence for Sustitia:

> we speak and pronounce by our definitive sentence, and by law, and... we declare the sow of Jehan Bailli, alias Valot, for the reason of murder and homicide by the said sow committed and perpetrated onto the person of Jehan Martin, of Savigny, to be confiscated by the justice of the lady of Savigny to be put to justice and to the final ordeal, and to be hanged by the hind feet to a bent tree in the justice of the lady of Savigny, considering that... this sow [is] to take death on the said bent tree.[74]

Sustitia, framed as human property (*la truye de Jehan Bailli*), was convicted of having *commis et perpétré* both *multre* and *homicide* onto the young person Jehan Martin. As a result, she was condemned *au dernier supplice*, the death sentence, much like human offenders of other enormous cases. However, caught in the jaws of late mediaeval judicial machinery as she was, Sustitia never truly stood a chance of being released.[75] By contrast, human defendants accused of a capital offence often emerged relatively unscathed as they could apply for a letter of pardon, their charges might be lessened, or they were never even prosecuted to begin with (Gauvard, 2010, 2018; Porteau-Bitker, 1988).[76] In principle, letters of remission were issued solely by the king, but the Valois dukes of Burgundy, always keen to showcase their ambition for supremacy, regularly granted pardons to their subjects as well (Spierenburg, 2008, 56–7; Verreycken, 2014). Moreover, Burgundy's customary tradition tended towards reconciliation: legal authorities were only to be involved if no reconciliation could be achieved through apology, pecuniary compensation, or other compromise (N. N. 1982, 49–50).

[74] Montgachot 1829, 42: 'nous disons et pronunçons par notre sentence deffinitive, et a droit, et par icelle, notre dite sentence, déclairons la truye de Jehan Bailli, alias Valot, pour raison du multre et homicide par icelle truye commis et perpétré en la personne du Jehan Martin, de Savigny, estre confusquée à la justice de madame de Savigny, pour estre mise à justice et au dernier supplice, et estre pendue par les pieds derrièrs à ung arbre esproné en la justice de madame de Savigny, considéré que la justice de madite dame n'est mie présentement élevée, et icelle truye prendre mort audit arbre esproné'.

[75] I thank the anonymous reviewer for this felicitous phrasing.

[76] In her study of crime in the Burgundian Low Countries, Mireille J. Pardon (2022) also draws attention to the role of composition payments in avoiding more drastic penalties: by paying a settlement to the bailiff, a person accused of a crime could elude formal prosecution. Pardon observes that in Bruges and Ghent 'many more people accused of homicide made a composition payment than faced the executioner' throughout the second half of the fifteenth century (78).

The method of Sustitia's execution warrants further attention for two reasons. Firstly, mediaeval executions were intended to be impressive public spectacles that visually and dramatically enunciated extra-legal norms and beliefs to establish a 'framework for the articulation of any micro-society's self-perception, regarding its own structure and place within the larger configurations of humanity and the world' (Cohen, 1993, 75; also see Friedland, 2012; MacGregor, 2019). Secondly, the records emphatically affirmed in an addendum that the sentence had been carried out exactly as the court prescribed by an executioner they had summoned from a village some 60 kms from Savigny-sur-Étang to take Sustitia on a cart to a gallows-tree:

> *Item*,... let it be known to all... [that] we have made deliver verily and de facto the said sow by master Etienne Poinceau, master of high justice, residing at Châlons-sur-Saône, to put this one to execution according to the form and tenor of our said sentence, which deliverance of this one sow made by us, as is said, forthwith the said master Estienne has taken the said sow on a cart to a bent tree, being within the justice of the said lady of Savigny, and at this one bent tree, this one master Estienne has hanged the said sow by the hind feet.[77]

Involving a professional in a nonhuman's execution underlined the criminality of their offence. It legitimised the procedure by assimilating the nonhuman into existing legal frameworks, emphasising the punishment's lawfulness (MacGregor, 2019, 11; 13). Étienne Poinceau, as *maistre de la haute justice*, handled spectacular sentences like execution, flagellation, and the pillory. Poinceau's involvement validated the court's justitial theatrics. As hands of justice, executioners handled unclean bodies: criminals, nonhumans, and corpses.[78] In policing the margins of society, executioners occupied an ambiguous position between revulsion and fearful respect. By touching unclean matter, their hands became carriers of corruption.[79] They were forbidden from touching law-abiding citizens because of the popular notion that the executioner was an 'extraordinary being, someone whose touch was so profane that he could not come into contact with other people or objects without profoundly altering them' (Friedland, 2012, 71–9; 93–4). Poinceau's touch irrevocably separated Sustitia from ordinary human society, showcased her impurity to human spectators, and publicly (re)affirmed her culpability. To transport Sustitia to

[77] Montgachot 1829, 44: '*Item*,... savoir faisons à tous une incontinent après les chouses dessus dictes, avons faict délivrer réalement et de faict ladicte truye à maistre Etienne Poinceau, maistre de la haute justice, demeurant à Châlons-sur-Saône, pour icelle metre à exécucion selon la forme et teneur de nostre dicte sentence, laquelle délivrance d'icelle trühie faicte par nous, comme dit est, incontinent ledict maistre Estienne a menné sur une chairette ladicte truye à ung chaigne esproné, estant en la justice de ladite dame Savigny, et en icelluy chaigne esproné, icelluy maistre Estienne a pendu ladite truye par les piez derriers'.

[78] As is apparent in the Book of Leviticus (Lev. 11:24; Lev 21: 1–3; Lev. 22:4–8), corpses generated 'the most extreme impurity' (Kimuhu 2008, 344; also see: Douglas [1966] 2001, 11; 160).

[79] It is no coincidence that executioners were often recompensed with new gloves after realising particular punishments. The executioner's gloves were all that stood between the polluted criminal and the (already marginal) hangman's own skin.

the gallows-tree, Poinceau used an open cart (*charette*). Such ignominious carts promulgated the criminal's disgrace (Friedland, 2012, 94).[80] After arriving at a *chaigne esproné* within Savigny-sur-Étang, Sustitia was executed *selon la forme et teneur* of the sentence. Her hind feet were bound and affixed to this bent tree, where she was hanged.[81] Using the lordship's gallows-tree imbued executions with additional legal legitimacy (MacGregor, 2019, 15). The combination of all these procedural elements indisputably asserted Sustitia's criminal status. Her arrest and incarceration removed her from her position as a living cohabitant of human society. The trial determined that her behaviour had no place in a human world. The hangman's touch, cart, and the gallows-tree execution completed the spectacle of disgrace by stripping Sustitia of all purity and, finally, life itself.[82]

Significantly, the form of Sustitia's execution aligned with Burgundy's customs pertaining to homicidal nonhumans.[83] The *Costumes et stilles de Bourgoigne* (c. 1270–1360) prescribe that homicidal oxen or horses should be impounded by the lord of the jurisdiction where they had committed the crime so they could be sold for the lord's profit. However, 'if other beasts or Jews do it, they ought to be hanged by their hind feet'.[84] While this law differentiates oxen and horses from the entire remaining nonhuman world and Jews, there is no proof that the distinction was honoured in practice.[85] Significantly, however, the court of Savigny-sur-Étang did endorse hanging homicidal nonhumans *upside down*. While hanging in itself was no unusual punishment for mediaeval nonhumans (e.g. Ménabréa, 1846, 123–4), Burgundy appears to have been the only region where inverted hangings of nonhumans were common (Cohen, 1993, 116).[86] The authorities of Savigny-sur-Étang evidently saw justice in upholding this custom with Sustitia. Her inverted hanging must have appealed to a regional repertoire

[80] Such carts were, of course, simply also a pragmatic tool for the transportation of criminals, but the use of a *charette* for a nonhuman punishment was not a given. Other courts, for instance, elected to lead their (porcine) convicts to the town gallows with a rope or they dragged them to the gibbet like human murderers (Evans 1906, 141–2; Berkenhoff 1937, 125).

[81] Whether she was hanged only until death or much longer after is not indicated in the records.

[82] According to Claude Gauvard (2010), mediaeval capital justice commonly utilised ritualised processes leading up to execution as deterrents: to make an example of offenders who had set a bad (criminal) example (902).

[83] The punishments prescribed for human murderers varied depending on the nature of the crime and the level of justice of the local lord. Hanging appears to have been a common method of execution (Friedland 2012, 57). By contrast, the Burgundian Low Countries favoured decapitating murderers, confiscating their goods, and displaying their corpse on the wheel (Wielant 1995, 85).

[84] N. N. 1846, 302: '197. Lon dit et tient selon droit et la coustume de Bourgoigne que se un beuf ou un cheuau fait un ou pluseurs homicides il nan doiuent poinct morir, ne lon nen doit faire justice, feur quilz doiuent estre pris par le seigneur en qui justice ilz on fait le delit ou par ses gens, et lui sont confisquez et doiuent estre vendus et exploictiez au prouffit du dit seigneur; mes se autres bestes ou juyf le font, ilz doiuent estre pendus par les piez derreniers'.

[85] In fact, Dijon, the capital of the duchy of Burgundy, executed a horse in 1389 for killing a human (Berkenhoff 1937, 32).

[86] There is, to my knowledge, no proof that 'inverted hanging was... the standard punishment for homicidal animals' outside Burgundy as well (Bayless 2012, 155).

of penal iconography, allowing spectators to see and understand the lawfulness of her execution. After all, a felicitous 'public execution justified justice, in that it published the truth of the crime in the very body of the man to be executed' (Foucault, 1995, 44).[87]

Hanging, which initially only sanctioned theft, 'became "the punishment of the Jews" in the early fourteenth century' (Fabre-Vassas, 1997, 125) and inverted hanging was an especially infamous form of execution (Cohen, 1993, 174). Based on the story that in Falaise, 1386, a sow was dressed up like a human, drawn, and hanged for maiming and killing a child, some scholars argue that inverted hangings humanised pigs whilst animalising Jews (Fabre-Vassas, 1997, 126; Enders, 2002, 230). Though the aforesaid sow was hanged, the original source material contains no indication that she was dressed up, nor that was she hanged upside down.[88] I cannot agree that inverted hangings *humanised* pigs or that 'to kill a pig is to kill a Jew' (Enders, 2002, 229). I propose that inverted hangings served to utterly degrade and animalise Christian society's 'others'. Hanging Jews like pigs (and a wide variety of other species) framed *both* as criminal, irrational, and above all subhuman beasts, highlighting that '*human*' (i.e. Christian) criminals merited special treatment.[89] This was not a Circean transformation of humans into pigs but a public revelation of the imagined porcine nature of 'the Jew' (cf. Gins, 2021)—and a horrific subversion of Jewish dietary restrictions. It suggested that Jewish abstinence of pig meat was because Jews *were* actually pigs in human skin, now hanging just like pigs for slaughter.[90] Significantly, the laws of Burgundy lumped Jews together with *all*

[87] In this sense, there could be some relation between these executions and the defamatory iconography of northern Italian *pitture infamanti* or –to lesser extent—the Germanic *Schandbilder* or English *baffuls*. While these practices differed in terms of their conventions, they all revolved around the 'basic nexus of image/insult' and they had a particular purpose in legal history and judicial practice. In some such images, a hanged traitor was surrounded by pigs or other nonhumans (Ortalli 2016, 31; 33–5). Although the practice of *pitture infamanti* faded by the sixteenth century, the pictorial topos of the inverted hanging lives on—albeit with an entirely different meaning—via tarot decks, in which 'The Hanged Man' traditionally constitutes the twelfth card from the Major Arcana.

[88] Friedland (2012, 2–11) admirably details the genealogy of the historiographical legend-making and bastardisation of the actual execution, originally described in a rather meagre receipt. Most scholars who claim that this sow was dressed up in human clothing rely on Evans' (1906) incorrect rendition of the events (e.g. Berkenhoff 1937, 16; 118; Pastoureau 2000, 178–82; Pervukhin 2003, 15; Salisbury 2010, 108–15; Phillips 2012, 17; Spencer & Fitzgerald 2015, 410; Fudge 2016, 18; 37; Newman 2017, 91). One scholar even claims that nonhuman convicts were '*often* dressed up in human clothes in order to underline the seriousness of the proceedings' (Slabbert 2010, 144, my emphasis). This generalisation is as sensational as it is incorrect.

[89] Pigs and dogs were particularly offensive nonhuman insults to defame someone's honour (Gauvard 2010, 732). This undoubtedly relates to the fact that Jews were commonly likened to and hanged alongside dogs. As Esther Cohen (1993) observes, 'The Jew was seen as a creature of doubtful humanity, closely associated with the animal world and with specific, symbolic animals in it. His dying quite literally 'like a dog' or a wolf was no more than another expression of justice, for the punishment had to suit not only the crime but also the criminal' (93). Depictions of Jews hanged alongside dogs can be found in Schreckenberg (1996, 263; 360), Carlebach (2001, 41), and Riggenmann (2017, 212).

[90] Equating Jews to porcine animals was also common in extra-legal antisemitic discourse, as illustrated by the Middle English children in the oven miracle, for instance (cf. Pareles 2019).

nonhumans (except for oxen and horses) for inverted hangings. Even if one did not see Jews as pigs, one would certainly see that to kill a Jew was to kill a *nonhuman*, a creature inferior to Christian humans. This equation of Jews to nonhumans excluded them from the 'exceptional' category of the human, making Jews 'bear the burden of the failure of the operations of the human' (Steel, 2011, 188–9).

In Christian iconography, punishing a sinner with corporeal inversion symbolically represented their *moral* inversion, signifying that sinners prioritised the base urges of their lower body (the nexus of carnality and sin) over the virtues of their upper body (the nexus of reason and spirit). For instance, according to the twelfth-century monk Bernard of Cluny, sinners were punished in hell by hanging them backwards and upside down, the filth on their feet now above their heads.[91] Likewise, in the fourteenth-century English poem *The Siege of Jerusalem*, Christians avenged Christ's death by hanging Jews upside down (Bayless, 2012, 94–5). Corporeal inversion also speaks to the image of uprightness, an essential feature of humanness in mediaeval Christian literature (Steel, 2011, 44–58), where this *homo erectus* topos 'signified or enabled reason', occasionally even 'worldly dominance' (51). Inverted hangings in Burgundy grouped Jews (who—in the mediaeval imaginary—failed to use human reason) together with nonhumans, animals devoid of reason because of their physical lack of uprightness. This calls to mind Basil of Caesarea's influential assertion that any animal which has its head inclined downwards, to the ground—the base material from which all creatures were made—is a reasonless beast lacking spiritual purity, too subservient to its own carnal whims to lift its gaze towards God (Gins, 2021, 10–1). Sustitia, a pig with a downwards-oriented snout, was an easy victim to exemplify this lesson explicitly. I therefore do not subscribe to the theory that inverted hangings of nonhumans and Jews signified counter-reversals to restore the natural order after it was upended by the murder of a Christian human (Wise, 1996, 511; also see Finkelstein, 1981, 47; Cohen, 1993, 175).[92] Rather, upside-down hangings plainly reaffirmed the notion that nonhumans and Jews remained irrational, subhuman animals in the order of nature, unworthy of a Christian's death.[93]

Christian murderers, by contrast, were usually hanged with their face up. Their suffering spoke to a complex constellation of religious doctrines, beliefs and devotional practices. Convicts' public agony was a humiliating deterrent that could lead to communal

[91] In Dante's fourteenth-century *Inferno* (19.13–81), sinners guilty of simony are also subjected to inverted punishment, though of a somewhat different kind: the sinners are stuck face-down in holes in the ground, buried on top of prior simonists, legs squirming and feet aflame, in a kind of infernal inversion of the baptismal sacrament (cf. Alighieri 1996, 289–93).

[92] To my knowledge, mediaeval accounts of inverted hangings also do not evince the notion that such a punishment would (or could) restore the universal balance (nor that the natural order was truly disturbed in the first place).

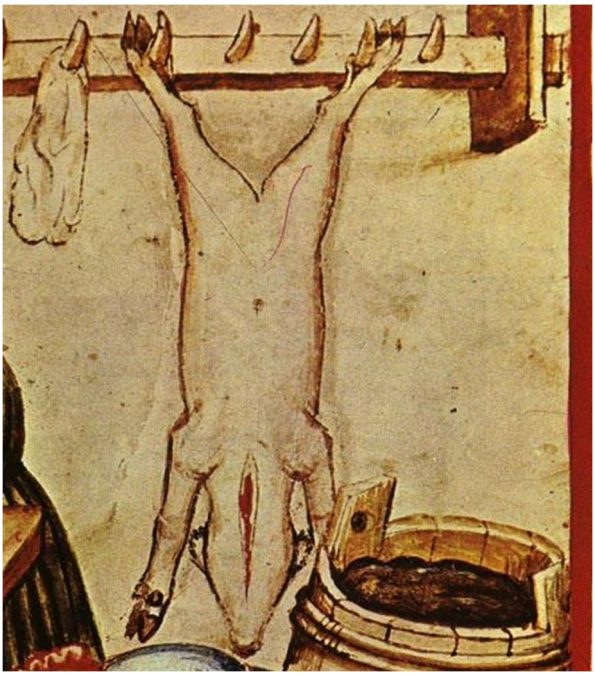
[93] I am reminded of Peter the Apostle, who, according to several apocryphal narrations, was crucified upside down because he felt unworthy to be raised up the same way as Jesus had been (Eastman 2015; 2019). While I am cautious to link Burgundy's law to this devotional example, both arguably do share the concern that dying in an upright position is beholden solely to (worthy) Christians.

catharsis (Komornicka, 2012, 209; 217–20). The recalcitrant, remorseless convict's suffering embodied a 'living *exemplum* of despair', their final moments on earth 'a foretaste of hell's endless torments' (Merback, 1999, 19). Meanwhile, the spectacle of a compliant, repentant convict's agony resembled the penitent suffering of a pseudo-martyr, revealed 'purgation and expiation', and elicited strong sentiments of sympathy, identification, perhaps even compassion, among onlookers (20). While regular hanging often broke the neck quickly, death by inverted hanging was an excruciatingly long process. For days, blood pooled to the convict's head, their organs weighing on their lungs, until finally they died of asphyxiation, haemorrhages, or heart failure (Byard, 2016, 208; Sauvageau et al., 2008, 51–4). Any creature in this position would be hard-put to appeal to an audience for sympathy. Sustitia, too, would unequivocally have resembled an *exemplum* of infernal despair. Still, domestic pigs are known to be sensitive animals, capable of emotional contagion, experiencing an arousal of emotion when witnessing emotion in another—which is suspected to be the basis for empathy (Marino & Colvin, 2016, 16–8). Before and during her execution, Sustitia was undoubtedly deeply distressed by the intensely emotional animals that surrounded her, yet her own suine capabilities did not enable her to intuit and partake in this *Homo Legifer* game of penitent shame. It is safe to say—without demeaning her suine intelligence—that to Sustitia, none of these penitentiary rituals signified anything of the above. All of the violence she endured likely elicited nothing other from her than squeals of terror, agony, and finally death.

Sustitia's inverted hanging suggests a degree of liminality between jurisdiction and the slaughterhouse.[94] However, the records carefully avoid any suggestion that Sustitia was eaten afterwards. I do not think this is because an 'execution humanizes the pig to a sufficient extent that consumption of that pig would be tantamount to cannibalism', but I do agree that nonhumans 'subjected to such ordeals were unclean and could not be eaten'—indeed a 'terrifying appropriation of Jewish tradition' (Enders, 2002, 232). None of the procedures Sustitia was subjected to evince genuine interest in anthropomorphising or humanising her nonhumanity. As I have argued, Sustitia's porcinity and nonhumanity was very clear to contemporary observers. One reason why she was not eaten is because prolonged upside down hanging (whilst alive and uncut) rendered much of her meat and blood unfit for human consumption.[95] Another reason, one that held more weight, was that it was impossible to disconnect the manner of her death from the moral considerations and legal rituals that led up to it. While Sustitia's inverted hanging restored her to the familiar sight of a slaughtered pig, this had been accomplished by an executioner, not by a butcher. She had been hanged, not because of her suitability as human meal, but because legal procedures had determined her to be *polluted* (viz. unclean) by gorging on human flesh and blood. In its deliberate ambiguity, the image of Sustitia's execution-slaughter asserted that this was a nonhuman *murderer* while reassuring human viewers that she nonetheless remained inferior chattel in the creaturely hierarchy.

[94] Unlike public slaughterhouses (*abbatoires*) that emerged as of the nineteenth century and where nonhumans are slaughtered discretely, mediaeval slaughterhouses (*tueries*) butchered their animals in plain sight, using the streets as a kind of extended shop window (Baldin 2014, 54–5; also see Descamps 2014).

[95] Typically, a pig that was to be slaughtered was hoisted upside down, then rendered unconscious by cutting the carotid artery so the heart would quickly pump the pig's blood out, which was then collected for black puddings (Rogers 2012, 37).



The authorities were particularly interested in ascertaining whether the pigs had eaten human flesh. Anthropophagy violated human exceptionalism; consuming human flesh impossibly confounded the sacrosanct boundary between humans (who can only be *murdered*) and nonhumans (who can only be *slaughtered*). A human who was slaughtered and eaten lost the exemption from being eaten that defined its very humanity (i.e. non-animality), perhaps ceasing to be recognisable as an *anthropos* altogether (Steel, 2011, 124). Sustitia thus claimed human privilege by killing and eating from Jehan Martin as if *he* were a pig. Such an offence was intolerably transgressive, which is why nonhuman trials returned 'humans, humiliated by having been killed by domestic animals, to the status of having been murdered' (184). The six piglets received a very different verdict, however. Initially, a decision was postponed because 'it appears in no way that these piglets have eaten from aforementioned Jehan Martin, however much they may have been found bloodied,' so Jehan Bailly could bail them out, provided he return them 'if it is found that they have eaten from the said Jehan Martin'.[96] At the time, the amount of blood shed in the enactment of a crime 'could serve as evidence that a serious capital crime

[96] Montgachot 1829, 42–3: 'au regard des coichons de ladite truye pour ce qui n'appert aucunement que iceuls coichons ayent mangiés dudit Jehan Martin, combien que aient estés trovés ensanglantés, l'on remet *la cause d'iceulx coichons* aux autres jours, et avec ce l'on est content de les rendre et bailler audit *Jehan Bailli*, en baillant caucion de les rendre s'il est trové qu'il aient mangiers dudit Jehan Martin'.

had been committed' (Hutchison, 2018, 266). To save his own hide, Bailly utterly refused to publicly vouch for the piglets, stating that 'he did not acknowledge them at all, and that he demanded nothing of the said pigs', hence the court ruled that they should remain incarcerated.[97] The court's initial clemency and their willingness to postpone a definitive sentence (until they ascertained whether the piglets committed anthropophagy) indicate that the piglets' complicity in murder was pardonable. Any proof that they too had eaten the boy's flesh would have necessitated high justice, however. That is why Sustitia had to die and could not be eaten by humans, and why her non-anthropophagous piglets were spared capital punishment. Indeed, after careful 'deliberation with sages', the court ruled 'these pigs to be competent and to belong as vacant goods' to the Lady of Savigny.[98] Though acquitted and confiscated by the Lady of Savigny, it is unlikely that Sustitia's children lived happily ever after. With their mother out of the picture, the suckling piglets could yet again resume their primary role within the Christian hierarchy. They now safely qualified as ingredients for a luxurious dish such as roast suckling pig, which required piglets that had only been fed on mother's milk (Rogers, 2012, 43).[99] Justice was served.

Conclusion

The prosecution of Sustitia and her infants was informed by a complex multiplicity of human motivations, pragmatic as well as conceptual:

1. To restore peace and order in the human community through a public ritual
2. Setting an unforgettable example to deter the inhabitants of Savigny-sur-Étang from leaving their children and/or pigs unattended
3. The desire of Savigny-sur-Étang's local authorities—in response to the increasing centralisation of legal authority—to display their active pursuit of justice and order by their willingness to engage with so-called enormous cases, in strict adherence to the existing legal protocols of Burgundy

[97] Montgachot 1829, 43: 'Item en oultre, nous juge dessus nommé, savoir faisons que incontinent après notre dicte sentence ainsi donnée par nous les an et jour, et en la presence des tesmoings que dessus, avons sommé et requis ledit Jehan Bailli, se il voulait avoher lesdits coichons, et se il vouloit bailler caucion pour avoir recréance d'iceulx; lequel a dit et répondu qui ne les avohait aucunement, et qui ni demandait rien en iceulx coichons: et que s'en rapportoit à ce que en ferions; pourquoy sont demeurez à la dicte justice et seignorie dudit Savigny'.

[98] Montgachot 1829, 44–5: 'Veue les sommacions et requisitions faictes par nous juge... à Jehan Bailly, alias Valot de advohé ou répudié les coichons de la truye nouvellement mise à execution par justice,..., lequel Jehan Bailli a esté remis de advoher lesdits coichons, et de baillier caucion d'iceulx coichons rendre, s'il estoit trouvé qu'ils feussions culpables du delict avant dict commis par adictre truye...; pourquoi le tout veu en conseil avec saiges, déclairons et pronunçons par notre sentence definitive, et a droit; iceulx coichons compéter et appartenir comme biens vaccans à ladite dame de Savigny et les luy adjugeons comme raison, l'usence et la coustume du païs le vüeilt'.

[99] The mediaeval archaeological record indicates that piglets 'were slaughtered as soon as they could yield sufficient meat' (Steel 2011, 180).

4. The deep-seated horror of Christians to the taboo of infanticidal anthropophagy, which violated the sacred integrity of human children, and the risk of eating from an animal that had consumed human flesh
5. A profound conviction that all creatures had their proper place in the world and that behaving otherwise than the norms one's station prescribed violated the moral membrane of the whole community
6. A sense that the killing of a human upends a kind of balance

These motivations coincided within the ritualised space of the trial itself, fostering the human exceptionalist narrative that I call *Homo Legifer*, the notion that, by divine imperative, humankind conceives, encodes, and reinforces laws to protect anthropocentrically defined and measured universal notions of Justice. This anthropopoietic fiction translates to a Protagorean perspective that humans use to construct themselves as 'rational' human beings and to mould their environment—violently if need be. This way, the rituals of law and the cultural value of Justice function as a sort of 'original myth' that imbues humankind with an existential purpose (to impose order onto the world), expressed through a contextually dependent game of linguistic utterances and gestures that assume humanity's superiority. Law—and its application in (nonhuman) trials—is thus 'not a bounded set of norms, rules, principles, values, or whatever from which jural responses to distilled events can be drawn', to borrow Clifford Geertz's (1983) phrasing, 'but part of a distinctive manner of imagining the real' (173). Consequently, trials constitute liminal spaces where the model of the *Homo Legifer* is put to the test, performed, and—if felicitous—justified.[100]

Premodern legal actions against swine were organised by humans solely for human concerns. They merely involved pigs and—rarely—at best acquitted them. That is why I cannot agree with the proposition that these procedures were anthropomorphic 'rituals of inclusion' (Cohen, 1993, 100) that reintegrated and incorporated nonhuman offenders 'within one community of justice' with humans (Berman, 1996, 321) by genuinely reducing the ontological distance between humans and other animals through anthropomorphism (Dinzelbacher, 2002, 420). I maintain that late mediaeval notions of criminality transcended the human-nonhuman binary *whilst* reifying the so-called human/nonhuman divide. The court of Savigny was well aware that Sustitia and her infants were pigs, lower beasts in God's creaturely hierarchy, and legal property of the pigsty Jehan Bailly. The trial records do not evince any interest in anthropomorphising the suids, treating them as conspecifics, nor in bridging the human-nonhuman divide by considering the meaninglessness of this legal ritual to Sustitia.[101] Pigs were involved in

[100] Trials are liminal in the sense that they are ritual spaces that provide a transitional spatiotemporality, 'a sort of social limbo' with its own proper conventions, and in this 'seed-bed of cultural creativity', communities decide whether an offender of the law will be returned to their previous social state (in some form), whether they will be cast out, or perhaps even transformed into an example (Turner 1974, 57–60).

[101] Indeed, Sustitia only has a name because I intervened by giving her that name, otherwise she would still be no more than the 'sow-who-mothered-six-infants-and-who-killed-and-ate-from-Jehan-Martin' as the record only notes her species, her relationship to the other pigs and Bailly, and her crime.

premodern trials because human contemporaries were aware that humans were beasts too—albeit reasonable, superior creatures—which is why *they* presided the trials, determined the narrative and the outcome, not pigs. The court's diligence to procedure and their willingness to treat the killing of Jehan Martin as an enormous case underlined the court's legal proficiency and capabilities and the fact that they favoured reason over petty retaliation, emphasising the exceptional rationality of human animals. Due to the decidedly anthropocentric terms of their prosecution, the pigs were essentially unwillingly co-opted into a (for Sustitia) deadly performance of the *Homo Legifer*—a model that legitimises the objectification and torture of animals under the pretext of 'Justice' and an anthropopoietic game that, without a persuasive human advocate, they could only lose.

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Declarations

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