

Legal system

- Three main legal changes that helped to make the witch-hunts possible were:
 - the change from the accusatorial system to the inquisitorial system
 - changes in the use of torture
 - secular courts acquired jurisdiction over witchcraft.

Accusatorial system

- A criminal action was both initiated and prosecuted by a private individual, who was usually the injured party or their kin.
- The accusation was a formal, public, sworn statement that resulted in the trial of the accused before a judge.
- If the accused admitted their guilt, or if the private accuser could provide certain proof, then the judge would decide against the defendant. However, if there was any doubt, the court would appeal to God to provide some sign of the accused person's guilt or innocence, usually by trial by ordeal (carrying a hot iron, being thrown into a river, etc.).
- During the trial, the judge would remain an impartial arbiter who regulated the procedure of the court, but who did not in any way prosecute the accused. The prosecutor was the accuser themselves, and if the defendant proved their innocence, then the accuser became liable for criminal prosecution.

Inquisitorial system

- A criminal action could be initiated by a private individual, but they would not prosecute the case.
- The inhabitants of a community could denounce a suspected criminal before the judicial authorities.
- An officer of the court - either the public prosecutor, or the judge himself - could cite a criminal on the basis of information he had obtained himself, often by rumour.
- The officers of the court - the judge and his subordinates - took it upon themselves to investigate the crime and to determine whether or not the defendant was guilty. They did this mainly by conducting interrogations of the accused and all available witnesses, recording their testimony in written depositions. In this way they established the facts of the case, which they then evaluated, on the basis of carefully formulated rules of evidence, to determine whether or not the accused was guilty and to sentence them accordingly.
- The only acceptable proof of a person's guilt was the testimony of two eye witnesses (unlikely in witchcraft trials) or the confession of the accused.
- The inquisitorial system was not introduced all at once across Europe, and some countries, such as England and Scotland, introduced different procedures altogether.

Legal system in England

- Lay jurymen - men not trained in the law - could initiate legal proceedings and determine their outcome.

- A presenting jury, acting in the name of the king, initiated or at least exercised prior review over all 'public' prosecutions, while the determination of guilt was left to a trial jury, whose duty it was to establish the facts of the case.
- Originally the jurymen were actual witnesses to the crime, but by the beginning of the 16th century they were no longer self-informed and sat in court as lay judges of evidence brought before them by local judicial officials.
- A guilty verdict was often reached on the basis of hearsay, circumstantial evidence or the basis of only one eye witness.
- The system was not inquisitorial because the lay jurors, and not the officials of the court, reached the verdict.
- The system was still accusatorial in some ways. Technically, a private individual, the person who swore out the original complaint, not a legal official, prosecuted the crime. The trial remained public and oral and still resembled a contest between two adversaries, not a secret judicial investigation to establish truth. Also, the judge remained at least in theory (though hardly in practice) an impartial arbitrator who presided over the judicial process, rather than an official who was entrusted with the detection, investigation, prosecution and conviction of the crime.

Use of torture

- The use of torture was revived in the thirteenth century and was usually reserved for suspects of 'concealed' crimes, such as heresy and witchcraft. The authorities were aware that confessions extracted under torture are not always reliable, so legal writers and other authorities devised rules to govern its application.
- These rules varied from place to place and also changed over time. The main objective was to minimize the chances that an innocent person would be tortured, to prevent the fabrication of confessions and to place some limits on the severity and duration of the torture.
- In most places the rules contained a prohibition against the use of torture unless the judge could prove that a crime had been committed. Once that had been ascertained, the judge still could not sentence a suspect to be tortured unless there was a solid presumption of guilt, which was usually provided by the testimony of one eye witness or circumstantial evidence, that was the legal equivalent of one eye witness. Even when this requirement was satisfied, the judge was forbidden to use torture unless it was the only way to determine the facts of the case, and before he ordered it he was first required to threaten the suspect with its use.
- Most torture devices either distended or compressed the extremities, to reduce the chances of the suspect dying. Some of the most common torture devices were the strappado, the rack, the ladder, thumb screws, leg screws, head clamps and tourniquets.
- Another set of rules was designed specifically to prevent the fabrication of confessions. The use of leading questions was forbidden and testimony taken in

the torture chamber was not admissible, the prisoner being required to repeat their confession 'freely' outside the chamber within a period of twenty-four hours.

- However, during witch trials these rules were often greatly relaxed and the system was grossly abused. In some jurisdictions the rules were officially changed in order to facilitate the prosecution of all crime. In others the rules were routinely suspended in the prosecution of crimes that were considered to be especially grave and difficult to prosecute, such as witchcraft.
- Witchcraft was regarded by many jurists as a *crimen exceptum*, an exceptional crime, and in the prosecution of such an offence certain procedural rules, such as those regarding the need for witnesses, did not apply.
- Illegal forms of torture, such as gouging out eyes, cutting off ears and squeezing a man's balls, were sometimes used on suspected witches. This was often because it was believed that witches could use magic to help them withstand pain, and so especially cruel forms of torture were needed to break through this.
- The use of torture helped to increase witch-hunting by formulating and disseminating the cumulative concept of witchcraft (see relevant sheet), greatly increasing the chances of a 'witch' being convicted and by encouraging 'witches' to accuse others (usually at least 20) whilst under torture.

Secular vs. ecclesiastical courts

- In the late Middle Ages, witchcraft cases were prosecuted by both ecclesiastical and secular (temporal) courts, as it was a crime of mixed jurisdiction (as it contained aspects of both heresy and maleficium).
- Ecclesiastical courts prosecuted heretics, but they were aided in this by the secular authorities.
- Ecclesiastical courts could not inflict bodily harm, and so had to refer heretics to secular courts for execution.
- Inquisitors were primarily responsible for the numerous witch-hunts that took place in southern France in the early 15th century, but in other parts of France and Europe both ecclesiastical and secular courts prosecuted witches, sometimes in cooperation with inquisitors or with each other and sometimes independently.
- A number of developments resulted in the reduction of clerical (clergy) jurisdiction over witchcraft and a corresponding increase in the amount of secular judicial concern over it. These were:
 - The legislative bodies of many European states passed specific laws against witchcraft.

- The general weakening of Papal authority and the Reformation led to the decline of both the papal inquisition (but not the Spanish and Roman Inquisitions) and ecclesiastical courts.
- Ecclesiastical courts lost much of their authority and found themselves clearly subordinated to the secular power of the state.
- Church lawyers and judges were often reluctant to tolerate the procedural abuses upon which successful witch-hunting depended.
- The assumption of secular control over witchcraft had a profound impact on the process of witch-hunting in many European countries, such as Scotland, Transylvania and Poland.
- The two European countries in which ecclesiastical authorities kept control over witch-hunting were Spain and Italy, where witchcraft prosecutions and executions were both kept relatively low.
- In areas where the secular authorities took control over witch-hunting, the clergy often became auxiliaries to judicial authorities, and so were still involved in the process.