

PALGRAVE HISTORICAL STUDIES IN WITCHCRAFT AND MAGIC



Demons of Urban Reform

Early European Witch
Trials and Criminal Justice, 1430–1530

Laura Stokes

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Criminal Justice, 1430–1530

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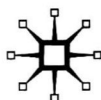
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First published 2011 by
PALGRAVE MACMILLAN

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Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

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ISBN: 978-1-4039-8683-2 hardback

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

A catalog record for this book is available from the Library of Congress.

10 9 8 7 6 5 4 3 2 1
20 19 18 17 16 15 14 13 12 11

Printed and bound in Great Britain by
CPI Antony Rowe, Chippenham and Eastbourne

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Acknowledgments

The questions that eventually grew into this book began at Reed College nearly fifteen years ago, as part of a senior thesis investigating the social construction of deviance. Accordingly, the first thanks go to my advisors there: Ray Kierstead, who inspired my love for the early modern, and David Sacks, who showed me how to be a historian. At the University of Virginia my interest matured through a series of seminar papers and a master's thesis on Johannes Nider that owed much to the assistance of Ted Lendon. This book appeared in its first draft as a dissertation under the mentorship of Erik Midelfort, with the advice and support in particular of Anne Schutte, Paul Halliday, and Sönke Lorenz.

With invaluable input from many friends and colleagues, this project has changed much in the years since its appearance as a dissertation. I am grateful to engaged and interrogative audiences at the Arbeitskreis interdisziplinäre Hexenforschung conference (2003), the Sixteenth Century Society & Conference (2005, 2006, 2007, and 2009), the "Boundaries of Witchcraft" conference at Oxford (2008), and the "Devil in Society in the Premodern World" conference in Toronto (2008). I am also indebted to audiences at Bucknell University (2006) and the University of Minnesota (2008) and to innumerable individuals who have taken the time to listen and offer their thoughts along the way. In particular I am grateful for the collegial friendship of an emerging cohort of young demonographers and witchcraft researchers, especially Mike Bailey, Tamar Herzig, and Maryse Simon. I have also benefitted from the intellectual community at Stanford, where I have enjoyed opportunities to present my thoughts in various forums, including workshops of the Stanford Humanities Center. This book has been improved by a long list of readers along the way, to whom I remain grateful: Erik Midelfort, Anne Schutte, Paul Halliday, Alison Weber, Philippe Buc, Desi Hopkins, Willem de Blécourt, and Sara Beam.

This book is dedicated to the entire community of witchcraft scholars, who have welcomed me into their ranks and encouraged my work. I hope this book proves an interesting contribution to the grand conversation.

Contents

<i>List of Figures</i>	vi
<i>Acknowledgments</i>	vii
Introduction	1
1 Evil by Any Other Name: Defining Witchcraft	10
Part I Witch Trials in the Cities	
2 Basel: Territorialization and Rural Autonomy	37
3 Nuremberg: The <i>Malleus</i> that Never Struck	50
4 Lucerne: Urban Witch Hunters	62
Part II A Revolution in Criminal Justice	
5 Between Two Worlds: Fifteenth-Century Justice at the Threshold of the Early Modern	81
6 The Advancing Death Penalty and the Re-imagining of Magical Crimes	104
Part III Reforming Zeal and Persecution in Lucerne	
7 Urban Reform and Social Control	129
8 Witchcraft, Sodomy, and the Demonization of Crime	154
Conclusion	174
<i>Appendix: Selected Trial Documents</i>	179
<i>Notes</i>	186
<i>Bibliography</i>	210
<i>Index</i>	225

Figures

6.1	Executions and witch burnings in Basel	106
6.2	Executions and witch burnings in Lucerne	107
6.3	Modes of execution in Lucerne	108
6.4	Punishments for theft in Lucerne	110
7.1	Nuremberg fines for misbehavior	136

Introduction

In July of 1519, Andreas from Tschafel was condemned to die in Lucerne along with two accomplices: Hans Stächli from Meerschwand and Barbel Vermeggerin from König in the territory of Bern. Under what tortures the three confessed their supposed crimes is unknown to us, but their confessions bear all the marks of creativity inspired by torment. Andreas confessed first to one theft, then to several more. His interrogators, clearly unsatisfied with the list, pressed him further. Under pressure, Andreas not only confessed generally to more thefts than he could remember, but to a whole litany of anti-religious and anti-social crimes:

He has confessed that he has stolen so much money that he cannot remember the amount. He has admitted to having had sex with a cow, and he has confessed to having florentinized six boys. Also he has confessed how he was gambling once and could not win, and so he gave the little finger on his left hand to the Devil, that he might make him win. But it never helped him. Also he has admitted that he has not been to confession in fifteen years. Moreover, he has confessed that he has renounced God, His worthy mother, and the whole heavenly host, and has given himself to the Devil and believed in him. [The Devil] instructed him, taught him how to make hail and overcome good. He has confessed that he made a storm in Güns, not far from Chur, but it was not a big storm. This he attempted often; at times he succeeded, others not.¹

Even then, Andreas's confession was not at an end. He went on to tell of a quarrel with a shoemaker whose dog had tried to bite him. He said he stabbed the shoemaker and ran off, not knowing if he lived or died.

Last of all, Andreas confessed to having chanced upon a sleeping man, murdered him in his sleep, and stolen his money.

Andreas's confessions raise compelling questions. What was the Devil doing in the confessions of a thief? Historians of the witch hunts have long recognized that interrogators in witch trials often sought confessions of diabolism and that it was usually in the process of interrogation that the Devil and the more fantastic elements of witchcraft entered the trials. The Devil was central to the elite concept of witchcraft, and in many jurisdictions investigators may have felt they needed a confession of diabolism to ensure a conviction. This was certainly not what motivated Andreas's interrogators. As a foreigner, his confession of habitual theft would have guaranteed execution in Lucerne during the early sixteenth century. His questioners seem to have sought confessions of every crime Andreas had ever committed, a complete biography of crime and sin. The combination of charges such as theft and murder with those of sodomy and witchcraft was more pronounced in this case than in many others, but the appearance of witchcraft in conjunction with other crimes was not unusual. This might come as something of a surprise if one approached the subject with a mental image of witchcraft as a kind of heresy, a particularly religious crime. Andreas's trial, however, was conducted entirely by a secular, urban court. His judge and interrogators were members of the Lucerne city council, yet they did not hesitate to prosecute him for religious transgressions like avoidance of confession. At Andreas's execution, where his confession would likely have been read aloud, they demonstrated their authority to the gathered people by establishing their power to control and punish both crime and sin, and thus to protect the community from the wrath of God.

The story of how such a powerful demonstration came to take place stretches back a full century before this trial, to a time when criminal justice in Lucerne almost never ended in execution and the main focus of the council's efforts at social control was the maintenance of civic harmony through the prevention and mediation of interpersonal conflict. Over the years there have been calls to examine witch trials in the context of other forms of prosecution, but the project has rarely been undertaken.² Andreas Blauert did so for the Hochstift Speyer, and his results in that study are similar to my own; he concludes that witchcraft prosecution, criminal justice generally, and the policing of indecent behavior were interrelated phenomena.³ The story of how this interrelationship developed in Lucerne is central to the argument of this book because, as we shall see, the origins of witchcraft prosecution

and its subsequent establishment were inextricably bound up with fifteenth-century developments in criminal justice and other modes of social control. The unusual nature of these developments in Lucerne, moreover, will help us understand how witchcraft prosecution became established in that city, while in both Basel and Nuremberg it was ultimately rejected.

The question of the definition of witchcraft is a particularly important one. It is a question that has dominated the scholarship on the early witch trials, but the definition that I choose to employ here diverges substantially from the general consensus of that scholarship. Whereas most scholars of early witchcraft prosecution understand witchcraft as by definition a *crimen mixti fori*, necessarily involving both the secular crime of harmful magic and the religious heresy of diabolism, I use a much simpler definition. In this work, I define a *witch* as a person who is believed to use magic for malicious purposes.⁴ When discussing the specific mixture of sorcery and heresy, I will refer to *diabolic witchcraft*.

This simpler definition of witchcraft facilitates an examination of early witch trials – with and without diabolism – as a collective phenomenon within a broader context. One of the first details that becomes clear when examining the early witch trials is a shift in punishment. In the early years of the fifteenth century, a woman accused of being a witch in Basel or Lucerne would most likely have been banished, if she were punished at all. By the last decades of the fifteenth century in these two cities, however, a woman accused of the same crime faced a high probability of being executed at the stake. This transformation has been interpreted as the effect of the new concept of the diabolic witch. Yet even within formal, legal formulations of the crime and its punishment, diabolism was not necessary for the application of the death sentence. It seems, therefore, that other forces may have been at play in the increased judicial severity vis-à-vis crimes of magic. In order to place this shift in punishment within a broader context, this study examines the handling of witchcraft alongside the treatment of other kinds of crime within a secular, urban context.

An urban context is provided in this work through three case studies: the cities of Basel, Lucerne, and Nuremberg, of which Lucerne emerges as the case of primary interest. Although not constitutionally identical, these three cities shared basic structural similarity; they were governed by city councils, possessed a fair degree of legal autonomy, and had predominantly German-speaking populaces. In each case there were also factors of particular interest to the history of witchcraft which aided my choice of these cities. Basel and Lucerne shared a regional,

indigenous witchcraft concept. Lucerne, despite its relatively small size, has a marked history of early witch trials, providing an exceptionally rich source-base for examining those early trials in a secular context. Basel, which experienced fewer witch trials during the fifteenth century than Lucerne, is of particular interest because it played host to the Council of Basel. As will be further discussed below, the Council has been identified as a point of dissemination for demonological ideas associated with the developing stereotype of the diabolic witch. Having entered the Swiss Confederation in 1501, Basel is also interesting as a bridge between Swiss Lucerne and Imperial Nuremberg. The third city, Nuremberg, serves mainly as a negative case. Nuremberg did not execute accused witches during the fifteenth century, and only very rarely thereafter. The sources from the city are rich enough, however, to demonstrate that witchcraft accusations did arise and cases of magical crime were handled before the courts from time to time. We also know that the idea of the diabolic witch was present in the city, as the Nuremberg city council commissioned an abbreviated translation of the witch-hunting manual *Malleus Maleficarum* in the 1490s. The early witch trials have already been examined for each of these cities; this project builds on existing studies by examining those trials in a new comparative framework.⁵

The most important comparative innovation of this study is not a comparison among the three cities but within each city, between the treatment of witchcraft and the handling of other crimes and moral transgressions. As such, this study restores witch trials to their prosecutorial context, alongside other capital crimes and within the broad spectrum of social control. One might be inclined to ask if we can even compare accused witches to, say, accused thieves. After all, we would all agree that theft really does take place. Witchcraft, however, is impossible from the standpoint of Western, twenty-first-century law. Yet as historians, we must acknowledge that witchcraft was legally as real as theft five hundred years ago. It may even have had real, physical effects.⁶ Conversely, when we push the question, all crime has a constructed nature. Representations of crime – be they news reports or the carefully orchestrated products of official justice – have a profound effect on how the public perceives the reality and probability of particular crimes.⁷ What is or is not a crime is defined by legal codes that change over time and can also be the subject of great ambiguity, as is made clear by the controversy over the constitutionality of sodomy laws in America today. Then, too, there is the uncertainty created by the procedures of justice. When a man is tortured into a confession of theft, can we trust

that he is truly a thief? What if he is only threatened with torture? Or forced to sit three days without food? Or left for a month in a dank dungeon without contact with the outside world? The usual procedures of fifteenth-century criminal justice are such as to undermine any confidence in the relation between the confession of a given individual and the truth of his guilt or innocence. From the sources remaining to us, we can be no more certain of the guilt of a thief than the guilt of a witch. What we can seek to know is how they were imagined, prosecuted, and punished.

By placing witch trials in the context of other legal proceedings, I have been able to examine both the persecution and prosecution of witchcraft. The idea of persecution is one that we impose on the past, but in this case, we have good reason to do so. The persecution of witches in the fifteenth century in Basel and Lucerne was paralleled by a growing persecution of sodomy. The social foundations of these persecutions must be understood; the forces that drove them and the fear and hate that fueled them must be examined. Alternately, there are persecutory elements in the prosecution of certain classes of persons more heavily for crimes like theft, especially given the greater vulnerability of the poor and the stranger to the harsh procedures of criminal justice. But the idea of persecution is limited, because the trials that I examine were not chaotic witch hunts where legal procedure was thrown to the wind. It is difficult to look on torture and recognize any procedural rationality, but it did indeed grow from the very rationalization of legal procedure. It is in the legal transformations of the fifteenth century, as much as in the demonological ones, that we must seek the roots of witchcraft prosecution.

The history of criminal prosecution in Germany has long been told from the standpoint of legal history. That narrative emphasized the fifteenth century as a time of procedural transformation under the general rubric of the "reception" of Roman law into Germany.⁸ Recent legal-historical work has highlighted the slow, spotty, and incomplete nature of this transformation.⁹ Meanwhile, work in the relatively new field of German criminal history has radically challenged the assumptions about practice that this old narrative entailed.¹⁰ While the present work takes into account both legal-historical and praxis-oriented literature, at its heart lies a story of fifteenth-century procedural transformation. Rather than assuming that this transformation simply derived from the availability of new legal concepts, I ask why the men in power chose to avail themselves of new procedures when and how they did.

The intersection of witchcraft with ordinary crime during the fifteenth century, its definition, the use of torture and execution, and

the meaning of the wave of prosecution which peaked with Andreas's trial comprise the context for a new attempt to answer an old question: how did the crime and prosecution of witchcraft emerge during the fifteenth century? Witch hunts did not occur prior to the fifteenth century, but they marked the three centuries that followed, in a pattern that has been called the great European witch hunt. Why? What had changed? Where did the pattern of witch hunting originate? The simplest answer to this question, based on the best scholarship available, is that the change took place in what is now western Switzerland during the 1430s.

The doctrine of diabolic witchcraft coalesced during the years of the Council of Basel.¹¹ The Council itself must have played a decisive role in the development of the diabolic witch concept and its subsequent distribution. Several key figures were present at the Council of Basel, not least of whom was Duke Amadeus VIII of Savoy, whom the Council elected as Pope Felix V. The Duchy of Savoy was the site of some of the earliest cases of diabolic witchcraft, including the trials in the diocese of Lausanne. Pope Eugene IV, who was reigning when the duke of Savoy was elected pope by the Council and who ultimately successfully defended his claim to the papacy, lambasted Savoy as a land brimming with heretics, *Waudenses* – the term at that time could mean either Waldensians or witches.¹² The political power struggles that centered on the Council of Basel and the theological development of the idea of diabolic witchcraft were intimately linked.

Recent research into the impact of the Basel convocation of clerics on the development of demonology demonstrates that an active exchange of demonological ideas took place at the Council. Reflections of this exchange appear after the Council in the works of various participants.¹³ The Council of Basel also appears to have been crucial to the dissemination of the diabolic witch doctrine that had been developed among inquisitors, judges, and theologians in the western Alpine region. Beginning in the 1440s, the diabolic witch appeared throughout western Europe, mostly in isolated trials but occasionally in small witch panics.¹⁴ In the fifth book of his *Formicarius*, Johannes Nider discussed the witch trials in the Duchy of Savoy. Andreas Blauert argues that we should read this as an example of the reception of the west-Swiss diabolic witch concept into the international milieu of the Council. University towns and bishops' cities then became centers of distribution for the witch doctrine in other regions.¹⁵

The most pronounced spread of witch trials during and after the Council of Basel, however, was within the Alpine region. Some of the

earliest trials in the region took place within the diocese of Lausanne. In Neuchâtel, the earliest witch trials were linked with these; in 1439 an inquisitor of Lausanne conducted witch trials there.¹⁶ In the southern Alpine Leventine valley, the diabolic witch stereotype, which had appeared there in an inquisitorial trial in the early 1430s, resurfaced during the 1450s in a locally-run, secular witch panic which claimed about twenty lives.¹⁷ In the same decade, the diabolic witch also appeared in Lucerne and Basel for the first time. The confession of Else of Meersburg, recorded around 1450 in Lucerne, included explicit elements of diabolism. In describing how she raised a hailstorm, Else testified that she had thrown water in the air "in the names of all the devils," in particular Beelzebub and her own special demon, Krütli.¹⁸ A similar element of diabolism appeared in the trial of Gret Frölicherin and Verena Symlin in the territory of Basel in 1458:

Verena Symlin of Pratteln, [...] stood before an open country court, [...] on account of much evil and many misdeeds which she has practiced and committed in her days, especially that she denied almighty God and His worthy mother, and gave herself to the Devil and his spirit and therewith committed her evil with her companion Gret Frölicherin.¹⁹

Such diabolism appears to support the argument that the stereotype of the diabolic witch was the primary fuel for the trials that began in these regions around the mid-century.

This contention is central to the only comparative study that has been made of the early witch trials in the last twenty years, Andreas Blauert's *Frühe Hexenverfolgungen*. Blauert argues that the diabolic witch doctrine migrated during the 1440s from the west-Swiss region of its inception into German-speaking Alpine territories where it gained ground within secular jurisdictions. He places Heinrich Kramer's *Malleus Maleficarum* at the end of this process, as Kramer integrated earlier formulations of the witch doctrine with his own practical experience of witch hunting in the region around Lake Constance. Blauert points to the Lucerne chronicle of Hans Fründ regarding witch hunts in the Valais around 1428 as evidence of the reception of the witch stereotype. Fründ's report, probably written around 1450, contained a full-blown reflection of the diabolic witch stereotype from western Switzerland:

There were [...] some among them who came together at a secret place at night for the school [the witches' sabbath]. Then the evil

spirit came in the manner of a teacher and preached to them against the Christian faith and forbade them to confess and do penance. [...] There were also some among them who killed their own children and roasted them and ate and drank. [...] And they went to see their neighbors, and where they placed their evil hands, the children turned black or blue; they had rubbed evil poison on their hands.²⁰

Yet Fründ's description, Blauert argues, was anachronistic. Fründ was reflecting the witch concept as he knew it around 1450, and his chronicle thus provides us better evidence of the ideas current at the mid-century than of confessions in the Valais from 1428.²¹ Blauert's argument is generally compelling and well-grounded, but it offers no explanation for the absence of diabolism from many witch trials.

I do not intend to argue that diabolism played no important role in the early witch trials. It was precisely in the study of the fifteenth-century origins of European witch hunting that the theological distinction between witch and sorcerer became so important to historians. The emergence of diabolic witchcraft was of profound importance to witch hunting in Europe. It was the role of the Devil that provided the theoretical context for mass witch hunting. The fantasy of the diabolic conspiracy gave interrogators a reason to seek denunciations; the witches' sabbath provided the structure for those denunciations. Thus in seeking the roots of the witch hunts in the fifteenth century, historians have searched especially for the roots of diabolism. Yet this has had the unfortunate side-effect of eclipsing from view those magical crimes which preceded and ran parallel to diabolic witchcraft, especially in the fifteenth century. The appearance of diabolic witchcraft is insufficient to fully explain the development of witchcraft prosecution. For all of these reasons, the definition used for *witch* in this study is much broader and more encompassing than the usual definition within historical witchcraft research. Following Wolfgang Behringer, the *witch* in this work is defined simply as a person who maliciously uses evil magic.²²

Armed with this simpler definition of witchcraft, we quickly find that the fear of witches long predated the arrival of the diabolic witch. The chronological brackets of this study, 1430–1530, were selected to encompass roughly the first century following the introduction of the diabolic witch concept. My research soon revealed to me that the earlier prosecution of witchcraft was an important part of the story, so I have stretched back in time earlier than 1430 to gather evidence on earlier witchcraft concepts. In my last chapter I stretch forward in time, to

place the developments described in the rest of this text in a longer historical context. In general, however, I have remained within the somewhat arbitrary confines of the titular century.

I begin my analysis in Chapter 1 with an essay in defining witchcraft for the specific historical context of this work. There I introduce the theological and judicial innovation of the diabolic witch as well as the indigenous witch concept that existed earlier in Basel and Lucerne. Part I presents the proper subject of the book, the urban witch trials in Basel, Nuremberg, and Lucerne. The first two cases follow a pattern common to the free cities of the Holy Roman Empire: each experienced deadly witch trials over a few generations but generally resisted the model of witch hunting followed elsewhere. Lucerne presents a quite different pattern, with hundreds of witch trials across the centuries and several distinct periods of witch hunting. The case of Lucerne in particular demands a deeper and more nuanced explanation than that offered by current models of urban witch hunting. Accordingly, as the book progresses, the initial comparison becomes less important and my emphasis shifts to explaining the unusual circumstances in Lucerne. Part II turns to the judicial context of early witch trials. Together these two chapters present the fifteenth-century transformation of criminal justice in both structure and practice. The strong coincidence between general prosecutorial zeal and the timing of witch trials makes clear the importance of this context for understanding the history of those trials. Once again, Lucerne stands out; with the long transformation to an early modern mode of criminal justice packed into a shorter period, its effects seem to have been more intense. Part III focuses in on the case of Lucerne to offer an explanation of the particular convergence of prosecutorial zeal, urban reform, social control, and witch trials that took place there. Chapter 7 is an examination of late medieval urban social control. The German cities pioneered innovations that became more widespread after the Reformation. Chapter 8 is a close analysis of the trial that opens this book, and provides a bridge between the early witch trials discussed in Part I and the later history of witch hunting in Lucerne. In the conclusion I will return to a broader focus, first discussing all three cities and then providing some reflections on the implications of this study both for witchcraft research and for our understanding of the role of witch hunts in early modern history.