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Witchcraft and Gender in Early Modern Europe

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Abstract and Keywords

This article addresses the following questions: Why was the overall majority of those prosecuted for witchcraft in early modern Europe female? Was it because women were linked more readily than men with negative beliefs about the practice of harmful magic and association with the devil, or because systems of power in communities and courts worked against women rather than men? What sorts of women were accused and why, and did other factors – age or marital and socio-economic status – influence their vulnerability to accusation? Why did witch-hunting claim a significant proportion of male victims, and why did the gendering of witchcraft prosecutions vary geographically? The article explores answers to these questions in the context of debates about witchcraft and gender, which have been shaped in particular by the influence of feminism on witchcraft historiography.

Keywords: witchcraft prosecutions, witch-hunting, gender, feminism, witchcraft historiography

THE French demonologist Jean Bodin noted in 1580 that women were fifty times more likely than men to succumb to the temptation of witchcraft,¹ while street urchins from the German city of Lemgo described the willingness of the authorities to hunt witches there in 1631 in terms of ‘the building of a big fire, at which to warm [i.e. burn] the women’.² Shared by early modern people of such differing social status, the idea that witches were predominantly female is confirmed by modern statistical analysis, which shows that overall, 70 to 80 per cent of those tried for the crime of witchcraft in early modern Europe and New England were women.³ There was, however, significant regional variation in the gendering of witch persecution. Women constituted 75 per cent or more of those accused of witchcraft in Norway, Sweden, Denmark, the northern Netherlands, England, Scotland, Hungary, Croatia, Piedmont, Siena, the Holy Roman Empire, Geneva, the bishopric of Basel, Neuchâtel, and Graubünden/Grisons, but men were in the majority in Iceland, Normandy, Estonia, and Russia; men and women were prosecuted in roughly even numbers in Finland, Burgundy, and those parts of France subject to the Parlement of Paris.⁴

(p. 450) These data raise several questions. Why were the overall majority of those prosecuted for witchcraft in early modern Europe female? Was it because women were linked more readily than men with negative beliefs about the practice of harmful magic and association with the devil, or because systems of power in communities and courts worked against women rather than men? What sorts of women were accused and why, and did other factors—age or marital and socio-economic status—influence their vulnerability to accusation? Why did witch-hunting claim a significant proportion of male victims, and why did the gendering of witchcraft prosecutions vary geographically? This chapter explores answers to these questions in the context of debates about witchcraft and gender, which have been shaped in particular by the influence of feminism on witchcraft historiography.

25.1 Feminism

Radical feminist accounts of witch-hunts portray them as a brutal means by which patriarchy exerted control over

women and sought to curb the perceived threat posed to men's dominance of early modern society by women's allegedly rapacious sexuality; by the 'illicit' medical skills women supposedly exercised as wise women or midwives; by the power women supposedly possessed as the priestesses of surviving pre-Christian fertility cults; or by the challenge that women were deemed to pose to men in the economic sphere. Such accounts emphasize the horrors of the legal procedures used against accused women, especially the excessive use of torture and the burning of condemned witches at the stake. They also see misogyny, defined as a hatred of women and fear of women's sexuality, as the 'cause' of the hunts. These accounts often focus on the *Malleus maleficarum*, the demonological treatise written by the Dominican inquisitor Heinrich Kramer and published in 1486, as evidence of that misogyny among elites, who are seen as the driving force behind a 'top-down' persecution of witches. They point out, for example, that Kramer chose the term *maleficarum* (female evildoers) for the title of his work and that, in answering the question 'Why are there more workers of harmful magic found in the female sex...than among men?', Kramer replied: 'because of fleshly lust, which in [women] is never satisfied'.⁵

The most radical feminist interpretations of witch-hunting emerged in the context of feminist political activism outside academia, and were thus polemical and historically inaccurate. First-wave feminism produced one such account: *Woman, Church and State: A Historical Account of the Status of Woman through the Christian Ages*, (p. 451) published by the American suffragist Matilda Joselyn Gage in 1893. Gage asserted that nine million people—most of them women—were executed as witches, with old women, wise women, and the priestesses of anti-Christian cults the particular targets of a money-hungry Church, which taught that women were more likely to be witches than men because of their original sinful nature.⁶ Radical second-wave feminists of the 1970s went further, claiming that witch-hunting was an egregious example, not just of patriarchal oppression, but also of 'gynocide'—the deliberate killing of women. In her 1974 essay entitled 'Gynocide: The Witches', Andrea Dworkin recycled many of Gage's ideas but placed greater emphasis on the Church's hatred and fear of women's sexuality, as shown in the 'frenzied and psychotic woman-hating' of the *Malleus maleficarum*, as the prime cause of witch-hunting.⁷ A chapter on the 'gynocidal ritual' of 'witchburning' was also integral to Mary Daly's 1978 book *Gyn/Ecology*, in which the misogyny of the *Malleus*, allegedly directed towards wise women who possessed spiritual and medical knowledge that challenged the Church, was again central to the discussion.⁸ The argument that early modern witch-hunters specifically targeted female healers, especially midwives, also found support in 1973 in the work of Barbara Ehrenreich and Deirdre English, who claimed that this had been done in order to eliminate the female rivals of male physicians and ensure a male dominance of the medical profession that continued to modern times.⁹

Radical feminist writing has had significant influence on perceptions of witchcraft outside academia: its emphasis on witches as wise women and pagan priestesses persecuted by the Church helped shape modern witches' perception of their craft's 'history', for example. It also continues to be taken seriously by publishers, with two major reworkings of the radical feminist line emerging in the early 1990s: *Lewd Women and Wicked Witches* by Marianne Hester, and *Witchcraze* by Anne Llewellyn Barstow. For both authors, men's sexual violence against women provided the key explanation for witch persecution.¹⁰ Academic historians, however, are dismissive of such interpretations, criticizing radical feminists for their assumption that witch-hunting was 'woman-hunting', their over-reliance on the *Malleus*, their unwillingness to engage with manuscript records of witch trials, and their ahistorical use of the terms misogyny and patriarchy, which downplays the historical specificity of early modern culture and society.¹¹

(p. 452) Much of this criticism is entirely justified. Many elements of the radical feminist interpretation of witch-hunting stem from factually inaccurate myths created by nineteenth- and early twentieth-century writers on witchcraft, which feminists have adopted uncritically to suit their own agendas.¹² Archival research has shown that the total number of executions for witchcraft in early modern Europe was around 45–60,000, certainly not nine million,¹³ and that there is no evidence for the survival of organized pagan cults into the early modern period, let alone priestesses who presided over them.¹⁴ Historians have also disproved the idea that midwives and female healers were the specific targets of elite-orchestrated witch persecution.¹⁵ Midwives were occasionally prosecuted for witchcraft, but they were far more likely to assist in the prosecution of infanticide than to find themselves accused of using witchcraft to kill the infants they delivered.

Female practitioners of healing or 'white' magic, such as Ursula Kemp of St Osyth in Essex, who was executed for witchcraft in 1582, were also potentially vulnerable to accusations of witchcraft.¹⁶ Ordinary people, however, saw healers as a source of protection against misfortune, disease, and harmful magic, and were therefore reluctant to

accuse them. Moreover, scholarly estimates suggest that a significant proportion (two-thirds, in England)¹⁷ of all practitioners of white magic were men rather than women. Indeed, cunning men emerged as one of the distinct groups of men at risk of prosecution for witchcraft in some regions. The simplistic feminist representation of the witch as 'victimized wise woman' has thus been replaced by a more nuanced analysis of the gendered practice of white magic and popular medicine. This analysis suggests that, while early modern housewives made herbal remedies for household use, and while certain harmful female witches were also believed to be 'healing' witches (insofar as they were thought capable of lifting the spells they had inflicted), the semi-professional practice of 'good' magic was male dominated. More research is needed to establish the relative vulnerability of cunning men and women to accusations of harmful witchcraft at the regional level. Were cunning women dissuaded over time (p. 453) from practising white magic because they were more likely to be accused of harmful magic than their male counterparts?

The antipathy many academic historians feel towards feminism in general and radical feminism in particular can be counterproductive, however, as it discourages them from engaging with any helpful insights feminism offers into the gendering of witchcraft prosecutions, particularly in relation to the analysis of patriarchy.¹⁸ It is striking, for instance, how selectively many historians use the groundbreaking study of witch-hunting in early modern Scotland published by the feminist historian Christina Lerner in 1981.¹⁹ Lerner's seminal conclusion that 'Witchcraft was not sex-specific but it was sex-related' is quoted frequently, because it undermines the assumption that witch-hunting was 'woman-hunting'. Her subsequent observation that 'The women who were accused were those who challenged the patriarchal view of the ideal woman' is cited much less often, however.²⁰ The workings of patriarchy, defined as historically specific ways of organizing and exercising political, legal, social, economic, and cultural power, which generally (but not exclusively) privilege men over women, need more analysis in order to establish how they shaped witchcraft belief, processes of accusation, and local trial episodes. As a starting point, we must accept the fact that the patriarchal organization of early modern society was not a 'cause' but a necessary precondition for witch-hunts that produced predominantly female victims. The role of patriarchy was particularly important in relation to the law, where patriarchy functioned to keep the making and implementation of law in the hands of men, to women's obvious disadvantage. Less plausible are feminist claims that witch trials were used against women as a strategic tool in a process of restructuring undertaken by a 'patriarchal system' that felt threatened during the upheavals of the early modern period,²¹ or that witchcraft prosecutions were part of a long-term process of modernization, which resulted in the taming of women within the domestic sphere.²² Such developments cannot be linked concretely to specific witch trials, and they also miss the point that witch-hunts were as likely to cause, as to resolve, anxieties about the stability of patriarchal social order.

(p. 454) 25.2 Belief

Was belief about witchcraft gendered in ways that made early modern people more likely to imagine witches as women than men? Scholars seeking to answer this question in relation to the educated male elites study demonologies and analyse the extent to which demonologists associated witchcraft (understood as the making of a pact with the devil) with women. Such scholars fall broadly into two categories: those who argue that demonologists asserted an overwhelmingly powerful conceptual link between women and demonic witchcraft, and those who argue that, while this link was of central importance in demonological thinking, it did not exclude the possibility of male witches.

The work of the feminist literary scholar Sigrid Brauner falls into the first category. Like radical feminists, Brauner focused on the *Malleus maleficarum* as the demonology that cemented the idea that witches were women. Unlike her radical foremothers, who simply plundered the *Malleus* for its most misogynistic quotations in order to give some historical gloss to their polemical claims that woman-hating 'caused' witch-hunts, Brauner published a much more subtle study. She compared the *Malleus* to earlier fifteenth-century demonologies, and argued that Kramer's emphases on women's greater susceptibility to the heresy of witchcraft because of their lust, and on the sexual nature of their pact with the devil, represented a significant departure from older traditions of thinking about heretical groups as male dominated. Brauner also argued that the *Malleus* was extremely influential, shaping subsequent demonological thinking about the 'sex-specificity' of witchcraft and the ways in which Martin Luther and key Lutheran playwrights wrote about 'good' and 'bad' women.²³

In *Thinking with Demons*, his groundbreaking study of all published demonologies, Stuart Clark also argued that

demonologists associated demonic witchcraft overwhelmingly with women. Clark, however, differed from Brauner in downplaying the novelty of this association and its links to the *Malleus*, suggesting instead that it drew on long-standing and widespread ideas about women's weakness, credulity, and carnality, all of which made them more open to demonic seduction. According to Clark, the association demonologists made between women and witchcraft was 'built on entirely unoriginal foundations; indeed, it was built on what, in the sixteenth and seventeenth centuries, had become the merest of clichés'.²⁴ Demonologists were not arch-misogynists, then, but simply thought and wrote within a system of dual classification, within which they automatically associated women with the negative (evil/devil/witch) and men with the positive (good/God/not-witch) side of any pair of binary opposites. Clark (p. 455) concluded that, 'in the high culture of the age, the conceptual link between witchcraft and highly anomalous women was provided by the symmetries of inversion'.²⁵

Unsurprisingly, historians interested in male witches suggest that the demonologists' gendering of ideas about witchcraft was more flexible and open to change over time than Brauner and Clark imply. Lara Apps and Andrew Gow tested Clark's argument that the male witch was 'literally unthinkable' for demonologists by means of the (admittedly relatively crude) method of taking ten key demonologies and counting the number of times that their authors used masculine and feminine terms for the word 'witch'. Their results showed a significant number of references to male witches in all, and a predominance of references to male witches in six of the demonologies studied.²⁶ They concluded that demonologists operated within 'a flexible linguistic and conceptual framework', rather than the straitjacket of binary oppositions suggested by Clark. According to Apps and Gow, demonologists thought that women were more likely than men to become witches, but this did not prevent them from imagining that men could also fall prey to the same temptation.²⁷

Rolf Schulte reached similar conclusions in his study of male witches in the Holy Roman Empire, but offered a more nuanced comparison of demonological thinking along the lines of confessional difference. Schulte showed that the stereotype of the witch as woman remained dominant in Protestant demonology, while Catholic demonologists (with the exception of Kramer) were more willing to incorporate the male witch into their writings. This was partly because Protestants and Catholics had different ways of translating the all-important biblical exhortation 'Thou shalt not suffer a witch to live': Luther's translation referred specifically to 'female sorcerers', while the Catholic translation referred to 'sorcerers' who could be either female or male.²⁸ It was also because Catholic demonologists, unlike their Protestant counterparts, accepted and discussed at length the reality of the witches' sabbath: the collective gathering of witches to worship the devil. As the sabbath was imagined by Catholic demonologists as an event that both women and men could attend, this provided an important conceptual route by which male witches could enter the demonological picture. It also helps explain why the prosecution of men increased in the Holy Roman Empire during the seventeenth century.²⁹

Rita Voltmer has shown how this shift occurred during the mass witch trials in the late sixteenth century in the Catholic Rhine-Meuse region, which centred on the German city of Trier. Here the idea of the dual-gendered sabbath first emerged as the result of the presence of a significant number of boy witches, who were pressured into confessing that they had played music at sabbaths. These imagined, gender-specific (p. 456) roles reflected the reality of village life, where men were the pipers and drummers at communal festivities. Subsequent trials against prominent local men who had been accused of witchcraft were both driven by, and helped to strengthen, the idea that men could attend sabbaths. This idea then spread to other Catholic parts of Germany by means of a demonological treatise, *Tractatus de confessionibus maleficorum et sagarum*, which the suffragan bishop of Trier, Peter Binsfeld, published in 1589, drawing on his first-hand experience of the Rhine-Meuse trials.³⁰ The presence of men as musicians and 'kings' of the sabbath was also confirmed in a finely detailed etching of the Trier witches' meeting, which was incorporated into a pamphlet published in three editions between 1593 and 1603.³¹ The fact that men were portrayed as witches in printed images of the sabbath, while individual or small groups of women dominated the high art of the period that was concerned with witchcraft, points again to the importance of the concept of the sabbath in encouraging the incorporation of men into the imagined world of witchcraft.³²

Demonologists were both deeply misogynistic and perfectly capable of imagining men as witches. How can these two, apparently contradictory, positions be reconciled? Thought-provoking answers to this question have been offered by Apps and Gow, and by Claudia Opitz-Belakhal. Apps and Gow suggest that demonologists understood weak-mindedness (meaning a lack of rational and intellectual strength, not mental illness in the modern sense) as the primary characteristic of the witch, as weakness of mind allowed the devil to seduce a person into witchcraft in the first place. Weak-mindedness was strongly, but not exclusively, associated with women in Western thinking; it

was one of the 'web of assumptions' about gender (in this case, femaleness), which was 'not so rigidly polarised as to prevent "leakage" across the gender boundary'.³³ Some men, in other words, could plausibly be weak-minded too. Male witches were proof of this lamentable possibility; their 'weak-minded' pacts subordinated them to the devil and associated them with the female-connoted follies of witchcraft and irrationality. Apps and Gow conclude that demonologists accommodated male witches relatively unproblematically into their conceptual frame of reference by feminizing them, and that the 'feminized male witch' produced by such demonological thinking 'is an excellent example of the construction of difference (p. 457) within a gender category [i.e. maleness], and forces us to rethink the binary model of early modern gender'.³⁴ These ideas make a great deal of sense in the wider context of research into gender in early modern Europe, which has shown that, while there was an overarching gender hierarchy that placed men above women, the cultural category of masculinity was riven with divisions between men who had attained full patriarchal manhood and men who were deemed to have failed to do so.³⁵

Opitz-Belakhal pursues a similar line of analysis in her study of Jean Bodin's 1580 demonology, *De la démonomanie des sorciers*. Women were fifty times more likely than men to be drawn to the devil, according to Bodin, because of the strength of their animal appetites and carnality. Bodin also portrayed women as strong of body and spirit, but only in order to stress that they were responsible for their actions before God and the law; this justified their merciless persecution as witches and lent credibility to their testimony against other 'witches'. Despite his emphasis on witchcraft as a predominantly female crime, anxiety about men whom he believed to be in league with the devil was a key theme of Bodin's work. He cited significantly more male than female witches by name and also reserved his greatest ire for educated men, most notably the German physician and witch-hunt critic, Johann Weyer, who did the devil's work by speaking out against witch-hunting. According to Bodin, such men were driven by their 'evil will' (their rationality corrupted by pride or the desire for power and knowledge) to make pacts with the devil, thereby associating themselves with the female-connoted sins of witchcraft and carnality. Opitz-Belakhal concludes that Bodin's misogynistic rhetoric could have fuelled a greater willingness to persecute not just women, but also men who were imagined to be 'like' women, as witches.

Opitz-Belakhal also reads Bodin's demonology as an exercise in masculine self-fashioning in which Bodin used strongly gendered language to represent himself as the virile, rational, and heroic defender of godly order and legal authority against witches and their defenders, while portraying his opponents (any men in positions of authority who disagreed with his call for more zealous witch-hunting) as cowardly, effeminate, stupid, and probably in league with the devil.³⁶ The extent to which the prosecution of witches was imagined, carried out, and justified as an expression of godly, dutiful, patriarchal manhood needs exploring in more depth in relation to other men who wrote in favour of witch-hunting or were particularly active in witchcraft prosecutions as judges, witchfinders, or witch-commissioners. Was there a code of 'merciful manhood' enabling witch-hunt critics and court officials who lacked enthusiasm for witch-hunts to justify their more moderate stance, and was declining elite enthusiasm for witch-hunts in the late seventeenth and eighteenth century linked to new ideas about 'enlightened' masculinity?

(p. 458) At the elite level, then, women were more easily imagined as witches because they were believed to be more vulnerable to demonic temptation than men. Kramer's insistence on the witch's sexual seduction by the devil gave added emphasis to this belief in the late fifteenth century. But even this did not construct the witch as exclusively female, because it had always been possible for demonologists to imagine men having sexual intercourse with female demons. Popular beliefs about witchcraft were likewise gendered in ways that meant that women were, overall, associated more easily than men with harmful magic. In Tuscany, for example, only two of the 178 people tried for *maleficium* by the inquisitorial tribunal in Siena between 1580–1721 were men. Harmful male witches also appeared rarely before the courts in England, the Netherlands, and New England.³⁷ Eva Labouvie, furthermore, concluded that there was an overwhelming popular association between women and the practice of mysterious and harmful magic connected to childbirth, love, and death in the Saar region of Germany. Labouvie argued that this association resulted from long-standing popular beliefs that linked women with the world of spirits, night-flying, the mixing of poisons, and the casting of harmful spells. It was also rooted in the household division of labour that recognized women's power, as mothers and housewives, to create and sustain life—a power that harmful witchcraft, which attacked health, life, and fertility, inverted. Men in the Saar region were associated with positive, practical magical techniques aimed at preventing and curing illness and at ensuring the maintenance, recovery, or increase of property and goods.³⁸ Willem de Blécourt also argued that popular beliefs were strongly gendered, noting that 'Within a gendered society the idea of an ungendered witch was unimaginable.' His work on rural communities in the Netherlands yielded two witch stereotypes similar to those identified by Labouvie: one

male (the profit-making witch who favoured individual gain above the communal good), and one female (the worker of harmful magic).³⁹

The association between women and harmful witchcraft was never exclusive, however. Even in Tuscany the harmful male witch was not 'unthinkable'; at the other end of the spectrum of possibility lay Iceland, where men constituted the clear majority of those prosecuted (110 out of 120 trials) and executed (twenty-one out of twenty-two victims) for harmful witchcraft between 1604 and 1720.⁴⁰ Between these two extremes there was much regional variation in the gendering of belief about the practice of magic in general and harmful magic in particular. In her study of the German Duchy of Mecklenburg, for example, Katrin Moeller has shown that, while some magical practices were associated more strongly with one gender than the other, no magical (p. 459) practices of either the harmful or the healing variety were imagined as exclusively male or female. Men could be accused of practising harmful magic, even in relation to the apparently quintessentially female area of childbirth, while women were believed to engage in the supposedly male activity of enrichment through magical means by using techniques (such as butter and milk magic) to improve their dairy yields.⁴¹ Ordinary people may have imagined witchcraft in terms of gendered witch stereotypes, but this did not stop them applying such stereotypes flexibly in the context of everyday social interactions with neighbours whom they suspected of witchcraft. As de Blécourt noted for the rural Netherlands, men could be classified under the female stereotype as harmful witches, and women under the male stereotype as profit-seekers, while entire 'witch families' might be classified under either the male or female witch stereotype, regardless of the gender of individual family members.⁴²

De Blécourt's ideas are important for our understanding of gender and witchcraft because—like those of Apps and Gow and Opitz-Belakahl—they encourage us to separate gender at the conceptual level from the sex of actual accused witches. De Blécourt, however, pays insufficient attention to the possibility that the flexible application of gendered witch stereotypes could, over time, blur their distinctiveness, thus allowing for the accusation of men for acts of harmful magic, especially in regions where the idea of the dual-gendered sabbath influenced popular beliefs. The idea of the sabbath was absent in Iceland: here, men were far more strongly associated than women with malevolent magical powers in local folkloric stereotypes that pre-dated, and then held firm during, the period of the witch trials.⁴³

For all regions we need to know more about the gendering of popular magical beliefs, and especially beliefs about harmful magic, for the late medieval period. We also need to make beliefs about witch families—meaning groups of people related by blood or marriage among whom the ability to work witchcraft was imagined as being passed down from generation to generation—much more central to the analysis, in order to explore how they were gendered and what impact they had on patterns of prosecution. Finally, we need to analyse more systematically the extent to which the interactions between different social groups that occurred in the context of witch trials reconfigured gendered witch stereotypes among both the learned and the unlearned. Who were the key mediators in such processes of cultural exchange and what role did printed texts play in them?

25.3 Accusation

Beliefs about witchcraft were one thing, but individuals only came to trial if they were formally accused of the crime. What sorts of women were particularly vulnerable to (p. 460) accusation? Historians agree that older women—those aged 50 and above—were over-represented among the accused in many regions, although they disagree about why this was so.⁴⁴ In the early 1970s Alan Macfarlane and Keith Thomas explained witchcraft accusations in English (and in Macfarlane's work, specifically Essex) communities in the context of requests for material assistance made by poorer villagers of their wealthier neighbours. Macfarlane and Thomas suggested that wealthier neighbours were increasingly likely to refuse such requests because of the economic pressures of the early modern period, but felt guilty about their behaviour because it contravened long-standing traditions of Christian charity. They thus assumed that their spurned neighbours would seek revenge against them and were encouraged to believe that any misfortune their household suffered subsequently was caused by the spurned neighbour's harmful magic. A witchcraft accusation against the latter offered the chance to resolve the tensions in the wealthier neighbour's favour. In this economic explanation of accusation, older women, who were often widows, were more vulnerable because they were most likely to be poor and dependent on neighbourly assistance.⁴⁵ This is the classic stereotype of witches as 'women which be commonly old, lame, bleare-eied, pale, fowle, and full of wrinkles', which took centre stage in the writings of witch-hunt critics seeking to generate

sympathy for the victims of the persecution.⁴⁶

Much work has been done since the early 1970s to complicate and criticize the Macfarlane/Thomas model. Lyndal Roper also concluded that old women were disproportionately represented among the victims of early modern German witch-hunts. This was not because of socio-economic tensions, however, but because post-menopausal women were feared and reviled in an age that revered fertility. In Roper's reading of trials and the emotional tensions that underpinned them, old women who were past childbearing were assumed to be jealous of—and to want to harm—younger women and their children. Roper also argued that post-menopausal women's bodies were viewed very negatively in early modern culture: as dried up and potentially poisonous, rather than flowing with the life-giving fluids of the maternal body (menstrual blood and breast milk). On both counts, old women were more easily imagined as witch-like by contemporaries. Roper's idea that anxieties about fertility were psychologically central to witchcraft fears is important, but she assumes too much about unlearned conceptions of the post-menopausal female body from elite artistic representations of it, and places too much emphasis on a handful of witch trials, like those in (p. 461) Augsburg involving poor, post-menopausal lying-in maids, that best fit her explanatory model.⁴⁷

Other historians posit links between aging and vulnerability to accusation that have much less to do with women's bodies and contemporaries' perceptions of them. Robin Briggs suggested that women were more likely to be accused of witchcraft between the ages of 40 and 60 because early modern people were imagined to attain the apex of their exercise of power at this stage of their lives. Witchcraft was understood as the exercise of magical power, so it was plausible to imagine witches as at the peak of their malevolent powers at this age, and to fear them accordingly. Moreover, in many parts of Europe women were formally accused of witchcraft years, and sometimes decades, after they had first gained a reputation as witches. Their age at trial thus resulted from the fact that communities could cope informally with reputed witches for lengthy periods before the final step of formal prosecution was contemplated.⁴⁸ This final step might have been shaped at some level by anxieties generated by a woman's menopause, but was more probably taken because the balance of power within a community had shifted in favour of the accusers and against the accused. This was particularly the case if a woman lost the protection of her husband: 36 per cent of women accused of witchcraft in the Jura region were widows, while the figure was 50 per cent in the Duchy of Lorraine and 64 per cent in the German Saar region (although most of these women had probably first gained their reputations for witchcraft while still married).⁴⁹

Christina Lerner described the stereotypical Scottish witch as 'a married middle-aged woman of the lower peasant class', with a 'sharp tongue and a filthy temper'.⁵⁰ This observation reminds us that socio-economic weakness alone did not render women vulnerable to accusation; what was important was how they managed their position of material dependence within a community. Society demanded that they be humble and grateful; women who quarrelled, cursed, and expressed anger in their dealings with neighbours were more likely to be imagined as witches who would use magic to gain revenge. Malcolm Gaskill's work on the English county of Kent,⁵¹ and a number of studies of early modern German witchcraft, have also shown that the Macfarlane/Thomas model was never the only explanation for witchcraft accusations. Social conflicts of any sort were open to interpretation through the imaginative mesh offered by the belief that the witch was the archetypal 'bad neighbour', and thus that someone perceived as a 'bad neighbour' was potentially a witch. Women of relatively (p. 462) high socio-economic standing could be accused of witchcraft by neighbours who were less well-off and jealous of them, and who believed that their economic success had been unfairly achieved by means of magic. In parts of western Germany where the witch-hunting initiative was seized from overlords by village witch-hunting committees, for example, it was often the case that the middle- to high-ranking village men who made up the committees attacked the wealth and influence of their more powerful neighbours by targeting the latter's wives as witches. Such accusations, like those of the wealthy against their poorer neighbours identified by Macfarlane for Essex, ran along generational lines, with younger villagers accusing neighbours who were a generation or two older of witchcraft.⁵² This suggests that generational conflict over communal resources and power rather than a hatred of old women may have been at the heart of many accusations, even if women were the softest, and thus preferred, targets in these conflicts. How far such accusations were motivated by genuine fear of witchcraft and how far by the desire to gain economic and political advantage is hard to determine; a similarly inextricable tangle of motives was apparent in the New England witch trials analysed by Carol Karlsen, in which women who owned or stood to inherit land were vulnerable to accusations of witchcraft so that patriarchal control of property could be maintained.⁵³ Some women acquired a reputation for witchcraft simply by being born into a reputed witch family; for others, the

roots of reputation lay in bad luck or bad timing. Crossing a household boundary just before its inhabitants suffered misfortune might be enough to arouse suspicions, for instance, although women who went in and out of neighbours' houses too often, even with good intentions, were more at risk in this context. Once a woman had gained such a reputation, anything she did or said could be reinterpreted by fearful neighbours as 'witch-like'.

Other scholars link women's vulnerability to accusation to their roles as mothers and housewives, and draw on psychoanalytic theory to explore what motivated people at the subconscious level to make accusations. The historian John Demos pioneered this approach in 1970, suggesting that accusations by adolescent girls against middle-aged women in the Salem witch trials of 1692 'masked deep problems stemming ultimately from the relationship of mother and daughter'.⁵⁴ The psychoanalyst Evelyn Heinemann reached more sweeping conclusions in 1986, claiming that the oppressive childrearing practices of early modern Europeans encouraged people to develop a split perception of the mother, which was divided into the good, providing mother (symbolized by the Virgin Mary) on the one hand, and the hated, depriving mother (p. 463) (symbolized by the witch) on the other.⁵⁵ Heinemann's idea that witchcraft accusations were essentially about the projection of this latter image by accusers onto women by whom they felt threatened was also central to Deborah Willis' book, *Malevolent Nurture*, in which she concluded that 'Witches were women...because women were mothers.'⁵⁶ Lyndal Roper also argued that 'deeply conflicted feelings about motherhood' were at the heart of witch trials from the German city of Augsburg. In Augsburg accusations were typically made by newly delivered mothers against the lying-in maids who cared for them and their babies, after some harm had befallen either mother or child. According to Roper, this was because the mother dealt with her anxieties about her baby's survival and her ability to feed it by projecting them onto the lying-in maid, who was imagined as the evil 'other' mother who sought to harm rather than nurture the infant.⁵⁷ Diane Purkiss suggested that concerns about housewifery as well as motherhood were central to the testimony of female accusers and witnesses from English witch trials, arguing that they projected anxieties about their own social identities, by means of witchcraft accusations, onto female neighbours who were perceived to threaten their domestic power. Here again 'the witch is the dark other of the early modern woman', an anti-housewife as well as an anti-mother.⁵⁸

The work of Roper and Purkiss is important because it reminds us of the need to take accusers' concerns seriously in any analysis of the gendering of witchcraft prosecutions. Their work also suggests that allegations of witchcraft often emerged from disputes that developed around areas of responsibility that were socially and culturally defined as female in the early modern household, such as food production, childbirth, childcare, and the policing of household boundaries, and were thus more likely to target women than men. Such allegations were often made by women against other women in the context of a communal competition among them for status, which was fought by means of gossip, insult, and, ultimately perhaps, formal accusation.⁵⁹ This gave female accusers some power with which to fight for social position within their communities, but this was only because they did so according to patriarchal priorities. They helped uphold the ideal womanly roles of the good housewife and mother by vilifying other women as witches. Moreover, usually only married women had enough influence to spearhead such accusations, and then only against female and not male neighbours. Psychoanalytic approaches to the history of witchcraft have been generally valuable in (p. 464) helping us theorize the role of emotions in explaining witchcraft accusations. Heinemann and Willis, however, are too reductive in their implication that psychic conflicts around the mother-child relationship 'caused' accusations. Mono-causal explanations for witch-hunts are never plausible, and this one has the added disadvantage of 'blaming' women, albeit unintentionally, for witch-hunting because of their 'bad' mothering. The work of Roper and Purkiss is more helpful because it embeds a psychoanalytic approach more firmly in the social and cultural realities of specific witchcraft cases, with the implication that certain accusations could be shaped, rather than explicitly 'caused', by the psychic legacies of infancy. Both works focus on the few cases that best fit their interpretative models, however, and both underplay the extent to which accusations could be motivated by strategic reasons as well as unconscious fears on the part of accusers.

All the theories for explaining accusation discussed above share one major flaw: they ignore or downplay the fact that men could be accused of witchcraft and thus fail to incorporate men adequately into their explanatory frameworks. This problem, which has its roots in the radical feminist refusal to acknowledge the persecution of male witches, is most marked among scholars using psychoanalytic theory who make motherhood and the maternal body central to their analysis, thus effacing men entirely. This sidelining of male witches has meant that sustained scholarly attention has only been paid to them since the late 1990s; the first monograph to deal explicitly with them

was published in German by Rolf Schulte in 2000,⁶⁰ with the first English-language book following in 2003.⁶¹ We now know that men made up 20–30 per cent of all those tried for witchcraft in early modern Europe, and constituted a majority in a few regions. We also know that men were prosecuted for witchcraft in all areas thus far researched, even if only in small numbers in some regions.⁶² Various distinct groups of men have emerged among the accused, suggesting factors that rendered them vulnerable to accusation. Cunning men and other male purveyors of magical and illicit quasi-religious rituals—including clerics in some parts of Europe, the shamans of the Sami people of northern Norway, and the herdsmen identified as particularly vulnerable to accusation in Normandy—were recategorized as workers of witchcraft, particularly in the context of attempts by local elites to impose new standards of religious orthodoxy.⁶³ Male vagrants, feared for their mobility and magical aggression, were vulnerable to (p. 465) accusation in some areas, notably Carinthia and Salzburg, while itinerancy was also perceived as a threat to social order by the state and settled inhabitants of early modern Russia, a point which helps explain why men, who were more likely to be itinerant than women, were also more likely to be accused of witchcraft there.⁶⁴

For men, as for women, simply being related to someone who had already been prosecuted for witchcraft increased the likelihood of accusation: this was one of the few common characteristics of male witchcraft suspects in the Duchy of Lorraine, where men made up 28 per cent of those prosecuted.⁶⁵ Like women, men who were deemed to have contravened patriarchal expectations about their social roles as good neighbours could find themselves vulnerable to accusation. This might be because they had committed adultery or indulged in criminal behaviour, or because they had failed markedly to live up to the standards of rational self-control and probity expected of the early modern household head.⁶⁶ In this context the male witch represented the inverse of the good husband and father in the same way that the female witch was imagined as the inverse of the good housewife and mother.

Men were also drawn into trials in greater numbers during large-scale witch panics, in which unrestrained torture forced suspects to denounce other people whom they had supposedly seen at witches' sabbaths. This process was identified, for the large witch-hunts of south-western Germany, in 1972 by Erik Midelfort, and was an important feature of witch panics that occurred in several Catholic territories of the Holy Roman Empire.⁶⁷ In such episodes even men of the political and social elite, like Johannes Junius of Bamberg and Dietrich Flade of Trier, could be tried, tortured, and executed for witchcraft. Midelfort's idea that this process involved a breakdown of the stereotype of the witch as an older woman, which led to a crisis of confidence about witch-hunting that brought such panics to an end, needs refining, however. Such panics were fuelled by the emergence of new stereotypes, like that of the feminized male witch, in addition to existing ones, which justified the prosecution of increasing numbers of men without any discernible crisis of confidence among the judicial authorities.⁶⁸ This pattern was not universal, however. In Scotland the number of men prosecuted decreased during large-scale panics that were driven by state concerns about the threat posed to godly society by 'deviant' women. The degree to which a particular and strongly gendered stereotype of the witch was utilized by elites in the context of post-Reformation state-building also needs further exploration.

(p. 466) 25.4 Conclusions

Gender shaped every aspect of early modern witchcraft and witch trials: beliefs about magic and witchcraft; the social and psychological tensions from which accusations emerged; the anxieties about their own gendered identities expressed by accusers and demonologists; the legal processes by which people were tried; and the degree of power that individuals had to defend themselves against formal prosecution. Historians of witchcraft must bear this in mind and think about gender in more nuanced ways: statistics on the numbers of men and women tried should be the starting point, not the conclusion, of analysis. Regional studies are crucial to enable us to identify similarities and differences in the gendering of belief and prosecution between individual European territories. A chronological dynamic is equally important: we need to delineate and explain the possibility of changes in gendered witch stereotypes and patterns of prosecution over time and in relation to specific trial episodes. We must, of course, be careful not to make gender, as a category of analysis, do too much work. Other factors, notably age and socio-economic status, affected an individual's vulnerability to accusation; we need to work harder to explain why some women (and some men) rather than others were accused, tried, and ultimately executed as witches. Work on male witches has enriched our understanding of early modern witchcraft (and gender) and shown clearly that male witches were both 'thinkable' and 'prosecutable'. Rather than focusing

exclusively on either female or male witches, however, historians need to take their cue from early modern people and accept that they used concepts of witchcraft that could plausibly accommodate, or be adapted to accommodate, both. In this regard more work needs to be done on gender and witches' bodies. Was the concept of the threatening maternal body so powerful that it could be applied to male witches, who could be imagined as having unnatural teats and other, quasi-maternal characteristics, as a result? Or were the bodies of male witches imagined in the same way as those of men of the lower social orders—as disorderly and dangerous because of a lack of rational self-control on the part of the 'weak-minded' witch? The inclusion of male witches must not blind us to the fact that women were the main and easiest victims of witch-hunts, however. It is telling that even in parts of Germany where the notion of the dual-gendered sabbath was accepted and the authorities had lists of denounced male witches to work from, the overall proportion of male accused never spiralled out of control. Such was the power of patriarchy that even the witches' sabbath—supposedly the archetype of inversion—was imagined as governed by men: the male devil, assisted by male officials and kings of the sabbath. As long as the overall power of patriarchy remained firm, ruling male elites could countenance the executions of a minority of men, along with a much greater number of women, in their endeavour to rid society of witches.

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(2) Uschi Bender-Wittman, 'Gender in der Hexenforschung: Ansätze und Perspektiven', in Ingrid Ahrendt-Schulte, Dieter R. Bauer, Sönke Lorenz, and Jürgen Michael Schmidt, eds, *Geschlecht, Magie und Hexenverfolgung* (Bielefeld, 2002), 13–37, 13.

(3) See Éva Pócs, 'Why Witches are Women', *Acta Ethnographica Hungarica*, 48/3–4 (2003), 367–83, 372 (c.78 per cent women); Lara Apps and Andrew Gow, *Male Witches in Early Modern Europe* (Manchester, 2003), 45 (c.66 per cent women); Brian P. Levack, *The Witch-Hunt in Early Modern Europe* (3rd edn, Harlow, 2006), 142 (c.69 per cent women); Rolf Schulte, *Man as Witch: Male Witches in Central Europe* (Basingstoke, 2009), 71–2 (c.69 per

cent women).

(4) Schulte, *Man as Witch*, 71–2.

(5) P. G. Maxwell-Stuart, ed., *The Malleus Maleficarum* (Manchester, 2007), 74, 75, 77. For such use of the *Malleus* by radical feminists, see Matilda Joslyn Gage, *Woman, Church and State* (1893; Charleston, 2008), 122–69; Andrea Dworkin, 'Gynocide: The Witches', in *Woman Hating* (New York, 1974), 118–50; Mary Daly, 'European Witchburnings: Purifying the Body of Christ', in *Gyn/Ecology: The Metaethics of Radical Feminism* (Boston, 1978; London, 1979), 178–222.

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(18) For further discussion, see Whitney, 'International Trends'; and Willem de Blécourt, 'The Making of the Female Witch', *Gender & History*, 12 (2000), 287–309, 291.

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- (25) Clark, *Thinking with Demons*, 133.
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- (28) Exodus 22:18 (King James Bible); Exodus 22:17 (Catholic Bible).
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Abstract and Keywords

The law as it applied to witchcraft has often been viewed as a system of repression because witchcraft was considered a religious crime, and because many of the courts that prosecuted witches used torture to extort confessions from them. This article examines the role played by the law – both the written law and the officials who administered it – in restricting the number of prosecutions, curbing the use of torture in witchcraft cases, introducing new rules of evidence in witchcraft trials, and playing the leading role in ending the trials.

Keywords: witchcraft prosecutions, religious crime, torture, witchcraft trials, law

EVER since the beginning of the scholarly study of witchcraft prosecutions in the nineteenth century, historians have recognized the central role played by the law in what has become known as the great European witch-hunt. This should not be surprising, since witch-hunting was primarily a judicial process. Suspicions and accusations of witchcraft arose within village communities, but once witches had been identified and informal countermeasures had proved ineffective, the witches' fate was placed in the hands of law courts. Even when witches took their own lives, they usually did so in order to avoid the often gruesome and apparently inevitable processes of the law.¹ Occasionally, agitated villagers took justice into their own hands and executed witches vigilante style, but even this type of extra-judicial activity represented an effort to uphold community standards of justice. The law also played a role in the development of the witch beliefs that provided the basis for the prosecutions. Witch beliefs originated long before the prosecutions began in the fifteenth century, but they did not have a demonstrable effect on witch-hunting until judicial authorities defined the alleged activity of witches in statutes, edicts, or law codes. Furthermore, many of these beliefs, especially those regarding the witch's relationship to the devil, did not acquire legitimacy until prescribed criminal procedures, especially the use of torture in criminal trials, forced witches to confess to diabolical activity.

(p. 469) Because witchcraft was considered a religious crime, and because many of the courts that prosecuted witches used torture to extort confessions from them, the law, as it applied to witchcraft, has often been thought of as a system of repression. The common reference to witchcraft prosecutions as persecutions reflects this view.² Without denying this coercive, repressive role of the law in the trial of witches, this chapter will study the role played by the law—both the written law and the officials who administered it—in restricting the number of prosecutions, curbing the use of torture in witchcraft cases, introducing new rules of evidence in witchcraft trials, and playing the leading role in ending the trials. By the mid-eighteenth century European courts devoted more energy to the prosecution of those who took illegal action against witches than those accused of this crime.

26.1 The Definition of the Crime

The most fundamental way in which the law facilitated the prosecution of witches was the formal definition of the crime in both the secular and the ecclesiastical courts. Although there was some foundation for trying perpetrators

of *maleficia* in the secular courts, on the grounds that such deeds involved physical harm, and in the ecclesiastical courts, on the grounds that they implied a pact with the devil, those who wished to proceed more vigorously against witches required a more specific definition of the crime. The definition of witchcraft as involving diabolism, especially the pact with the devil, which many demonologists considered the essence of the crime, required legislative action in all temporal jurisdictions, while papal bulls or demonological works by papal inquisitors were necessary to persuade episcopal authorities to take action against a new breed of heretics who differed from other, more familiar offenders in their practice of magic and their alleged ability to fly.

The identification of witchcraft as a crime that could be prosecuted in the church courts came about as a result of its gradual assimilation with the crime of heresy, on the basis of the belief that the witch made a pact with the devil. There was no clear statement of the crime of witchcraft in canon law. The only reference to activities and beliefs later interpreted as witchcraft was an eleventh-century restatement of a document drafted by Regino of Prüm in the ninth century known as the canon *Episcopi*. This canon warned bishops and their officials to punish those who practised the pernicious art of sorcery invented by the devil, but it did not call for their execution. It also condemned the beliefs of women who believed that they went out at night with (p. 470) the pagan goddess Diana and covered great distances, but the claim that these rides were illusory and the failure to call for the systematic prosecution of such offenders provided more support for early modern critics of the trials than those who called for their more vigorous prosecution. Without a clear statement in canon law, the assimilation of magic with the crime of heresy was brought about by a variety of means, including a decree by Pope Alexander IV in 1258, a handbook for inquisitors compiled by the Aragonese inquisitor Nicholas Eymeric in 1376, and an opinion by the theological faculty of the University of Paris under the leadership of Jean Gerson in 1398. When the trial of witches began in the early fifteenth century, two demonological treatises—Johann Nider's *Formicarius* (1437) and Heinrich Kramer's *Malleus maleficarum* (1487)—helped to define the new composite crime of witchcraft as a particularly heinous offence that involved both maleficent magic and diabolism.

The secular definition of witchcraft as a crime took place by means of legislation, such as the English statutes of 1542, 1563, and 1604, and the Scottish act of 1563; royal edicts or ordinances, such as the law passed by King Christian IV of Denmark in 1617; and the promulgation of law codes, such as the *Constitutio Criminalis Carolina*, the massive corpus of law published by the Holy Roman Emperor Charles V in 1532.³ Treatises by jurists, such as Benedict Carpzov, which were recognized as authoritative in specific jurisdictions, also gave authoritative sanction to the prosecution of witches.⁴

Jurisdictions that defined witchcraft as diabolism witnessed far more intense prosecutions than those that restricted it to *maleficium*, mainly because diabolism was often thought of as a collective crime, in which witches allegedly gathered to worship the devil at the sabbath. The passage of such legislation was essential for the intensification of prosecutions in such jurisdictions as Denmark, Sweden, and Saxony.⁵ By contrast, the almost exclusive attention given to harmful magic in the English witchcraft statutes of 1563 and 1604 helped to ensure that 95 per cent of English trials dealt exclusively with *maleficia*. The only diabolical activity prohibited by the act of 1604 was for covenanting with, feeding, or entertaining any evil spirit, a provision devised mainly to prevent witches from using demonic imps or familiars to help them perform their magical deeds.

(p. 471) 26.2 Criminal Procedure

Before the thirteenth century European courts used a system of criminal procedure that made all crimes, and especially concealed crimes, difficult to prosecute. This procedural system, which is generally referred to as accusatorial, existed in its purest form in the secular courts of north-western Europe, but it was also followed, with some significant modifications, in the secular courts of Mediterranean lands and in various tribunals of the Church.⁶ According to the accusatorial system, a criminal action was both initiated and prosecuted by a private person, who was usually the injured party or his kin. The accusation was a formal, public, sworn statement that resulted in the trial of the accused before a judge. If the accused admitted his guilt, or if the private accuser could provide certain proof, then the judge would decide against the defendant. If there was any doubt, however, the court would appeal to God to provide some sign of the accused person's guilt or innocence. The most common way of doing this was the ordeal, a test that the accused party would have to take to gain acquittal. Either he would have to carry a hot iron a certain distance and then show, after his hand was bandaged for a few days, that God had miraculously healed the seared flesh; or he would have to put his arm into hot water and, in similar fashion, reveal a healed limb

after bandaging; or he would be thrown into a body of blessed cold water and would be considered innocent only if he sank to the bottom; or he would be asked to swallow a morsel in one gulp without choking. As an alternative to the ordeal the accused or his champion might be asked to engage in a duel with the champion of the wronged party, his victory in this 'bilateral ordeal' or trial by combat being construed as a sign of his innocence. He also might be allowed, as an alternative to the ordeal, a trial by compurgation. In this case the accused would swear to his innocence and then obtain a certain number of 'oath-helpers' who would solemnly swear to the honesty (and indirectly, therefore, to the innocence) of the accused. During the trial, in whatever form it took, the judge would remain an impartial arbiter who regulated the procedure of the court but did not in any way prosecute the accused. The prosecutor was the accuser himself, and if the defendant proved his innocence of the charge, then the accuser became liable to criminal prosecution according to the old Roman tradition of the *lex talionis*.⁷

This medieval, accusatorial system of criminal procedure had two features that made it difficult for courts to serve the cause of justice. First, it did not allow for the determination of guilt or innocence by means of a rational inquiry into the facts of the case but by seeking guidance from the deity. In cases that were hard to prove it (p. 472) abdicated human responsibility for dealing with crime. Second, the system did not prove to be particularly successful in prosecuting crime. Not only did every prosecution require an accuser who was willing to risk the possibility of a countersuit on the basis of the *talion*, but the trial itself could be manipulated in favour of the accused. Calloused hands and proper breathing techniques could, for example, help one pass the ordeal, while men of high reputation (which admittedly many men accused of serious crimes were not) could usually secure acquittal by their mere oath or by compurgation. The system stands as a testament to human faith in God's immanence but not to human efforts to use the law as an effective instrument of social control.

Beginning in the thirteenth century, however, the ecclesiastical and secular courts of Western Europe abandoned this early medieval system of criminal procedure and adopted new techniques that assigned a much greater role to human judgement in the criminal process. The change from the old system to the new was stimulated to some extent by the revival of the formal study of Roman law in the eleventh and twelfth centuries,⁸ but the main impetus came from the growing realization that crime—both ecclesiastical and secular—was increasing and had to be reduced. In bringing about this change, the Church, which was faced with the spread of heresy, took the lead. The Church also encouraged the new procedures in the secular courts by formally prohibiting clerics from participating in ordeals at the Fourth Lateran Council of 1215.⁹ Since the ordeals, being appeals to divine guidance in judicial matters, required clerics to bless the entire operation, the action taken by the council signalled their end.¹⁰

The new system of criminal procedure that gradually took form during the thirteenth, fourteenth, and fifteenth centuries, and was employed in many parts of Continental Europe by the sixteenth century, is generally referred to as inquisitorial. Its adoption changed both the procedures by which criminal cases could be initiated and the procedures of the trials themselves. Regarding initiation, it is important to note that the adoption of inquisitorial procedure did not preclude the commencement of a legal action by private accusation.¹¹ Many crimes tried according to inquisitorial (p. 473) procedure, including a large number of witchcraft cases, were initiated in this way.¹² The only difference between the new system and the old, when suits were begun by accusation, was that in an inquisitorial system the accuser was no longer responsible for the actual prosecution of the case, as shall be discussed below. In addition to the initiation of cases by accusation, however, the new procedure allowed the inhabitants of a community to denounce a suspected criminal before the judicial authorities, a procedure that the church courts had used in certain circumstances during episcopal visitations as early as the ninth century.¹³ Even more importantly, the new system allowed an officer of the court—either the public prosecutor, who was sometimes known as the fiscal, or the judge himself—to cite a criminal on the basis of information he had obtained himself, often by rumour.¹⁴ Once again, the Church had employed this procedure in certain cases as early as the ninth century, claiming that the *infamia* or ill-repute of the criminal was the legal equivalent of the private accusation.¹⁵ During the late Middle Ages this practice became widespread both in the ecclesiastical and secular courts. The initiation of cases in this way led to a significant increase in the number of criminal prosecutions, but it also made individuals vulnerable to frivolous, malicious, politically motivated, or otherwise arbitrary prosecutions.

Even more important than the adoption of new modes of initiating criminal actions was the officialization of all stages of the judicial process once the charge had been made.¹⁶ Instead of presiding over a contest between private parties in which the outcome was at least theoretically left to divine judgement, the officers of the court—judges and their subordinates—took it upon themselves to investigate the crime and to determine whether or not the defendant was guilty. This they did by conducting secret interrogations of the accused and witnesses, and

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. The procedure, therefore, was not only completely officialized but also rationalized. Men were using their own judgement—which was informed by the rational rules of the law—to prosecute crime.

The introduction of inquisitorial procedure made possible the prosecution and conviction of witches on an unprecedented scale, especially in Germany, southern France, and Switzerland. But inquisitorial procedure was not essential to the successful (p. 474) prosecution of witches. Kingdoms that had resisted its adoption, including England, Hungary, and Denmark, or had introduced only elements of it, such as Scotland and Sweden, were still able to convict witches using criminal procedures that were essentially accusatorial. English courts, which could not initiate prosecutions by themselves and which, after the abolition of the ordeals, assigned responsibility for determining guilt or innocence to lay juries, nevertheless managed to convict significant numbers of witches, although not on the same scale as in many German territories. As long as English villagers were willing to bring charges against individuals whom they believed had harmed them by magical means, and as long as trial juries were determined to convict them, the courts could prosecute witches without the involvement of the government, and in some cases without the approval of trial judges.¹⁷ In Scotland, where juries also decided guilt or innocence (in some cases by majority votes), the courts participated in some of the most intense witch-hunting in all of Europe.¹⁸

On the other hand, some jurisdictions that had adopted inquisitorial procedure did not convict large numbers of witches. The *Carolina* had established strict rules regarding the use of inquisitorial procedure, and the degree to which courts in German territories followed those recommendations had a bearing on the number of witchcraft convictions and executions.¹⁹ When jurists in the county of Hohenlohe in the 1660s and 1670s scrupulously adhered to those procedures, they slowed the momentum of witch-hunting.²⁰ The same was true in Iberia and Italy, where the adherence to strict procedural rules by the Spanish, Portuguese, and Roman inquisitions in the late sixteenth and early seventeenth centuries explains the relatively low incidence of executions in those jurisdictions.

26.3 Torture

More instrumental than the adoption of inquisitorial procedure in the conviction and execution of witches was the use of torture to extract confessions from the accused. Like (p. 475) inquisitorial procedure, with which it was closely associated, torture was reintroduced into European ecclesiastical and temporal jurisdictions (after its prohibition in the early Middle Ages) in the thirteenth century. The main reason for its adoption was the demanding rule of proof that accompanied the introduction of inquisitorial procedure.²¹ The rule that capital punishments required either a confession or the testimony of two eyewitnesses made it difficult to convict those accused of secret crimes, such as heresy and witchcraft, since eyewitnesses could rarely be produced in such circumstances. This placed a premium upon confessions, and when the accused refused to confess and judicial authorities were convinced of their guilt, they used a variety of instruments of torture to extract the desired confession.

The adoption of inquisitorial procedure cannot, however, explain the use of torture in all jurisdictions. In Scotland, for example, which had a primarily accusatorial system of procedure in which torture could be administered (as in England) only by special permission of the Privy Council, the procedure was employed in most cases by local magistrates under the pretext that they were using sharp instruments simply to find the devil's mark on the witch's body.²² In Hungary, Norway, and Russia torture was used, even though those jurisdictions had not adopted the main features of inquisitorial procedure. In all these cases torture was administered for the practical reason that it was the only way to obtain evidence for a crime that authorities were convinced had been committed but which the accused denied.

The use of torture in witchcraft cases was the single most important factor in increasing the number of victims. Not only did it secure a large number of convictions, but the subsequent torture of confessing witches to force them to name their accomplices accounted for hundreds of additional executions. The use of torture in witchcraft trials clearly had a bearing on the large witch-hunts in German territories, most notably in the area bordered by the Meuse, Rhine, and Moselle rivers. In these mass prosecutions, which numbered among the most brutal in Europe, the officials who conducted the trials often appealed to the definition of witchcraft as a *crimen exceptum*, a crime

that was so heinous that the rules governing its prosecution did not apply. In other cases they simply proceeded in violation of due process.²³ There were, however, great disparities not only in the numbers of tortured witches from one jurisdiction to the next, but in the numbers of those who were able to survive its application. These (p. 476) variations, which have been uncovered only through laborious archival research, depended mainly on the degree to which local jurisdictions adhered to the strict rules that accompanied the introduction of torture to ensure that the procedure be bearable and that suspects would not confess simply to stop the pain. In locations that observed these rules it was not at all uncommon for accused witches to withstand the torture and gain their freedom, however unwelcome such liberation might have been when they returned to their communities. William Monter has demonstrated that adherence to the strict rules regarding the administration of torture in the Jura region prevented the occurrence of large chain-reaction hunts such as those that took place in some German territories, while Alfred Soman has studied a pattern of even more remarkable restraint in the appellate review of witchcraft convictions by the Parlement of Paris.²⁴ Even within Germany, where torture was often applied without restraint, some jurisdictions followed a much more humane policy. The relatively low number of convictions and executions for witchcraft in Rothenburg ob der Tauber can be attributed at least in part to the reluctance of authorities in that city to torture those accused of witchcraft.²⁵ The severity and duration of torture administered to witches, and the rationales that authorities used to justify ignoring or violating the rules in the hundreds of jurisdictions, should be part of the agenda for future research in witchcraft studies.

The administration of torture and the confessions that it often adduced have also attracted the interest of scholars interested in the psychological dimensions of witch-hunting. Etienne Delcambre pioneered this approach in his psychological study of the judges as well as the witches in Lorraine,²⁶ while Lyndal Roper has proposed that witchcraft confessions were the product of collusion between the witch and the torturer.²⁷ Torture has attracted the attention of cultural historians interested in the history of the human body. Lisa Silverman has investigated how judges approving of the administration of torture in the parlements of Old Regime France based their decisions on theories regarding the location of truth in the body, while Elaine Scarry has explored both the effects of bodily pain on suffering and the political dimension of torture.²⁸ Scarry's work also fits into a large corpus of scholarship on confessions, many of which address the issue of the reliability of 'free' confessions.²⁹ Some of these (p. 477) contributions say little about witchcraft per se, but they nonetheless have direct relevance to witchcraft studies.

26.4 Legal Caution and Due Process

If the prosecution and execution of thousands of witches reveals the most repressive dimension of the law in early modern Europe, efforts by judges, inquisitors, jurists, and advocates to defend witches, secure their acquittal, and bring the trials to an end represent an often neglected side of 'the law' during the great witch-hunt. These judicial efforts dated from the earliest years of witch-hunting, but they increased in number in the late seventeenth and eighteenth centuries, and they contributed directly to the dramatic reduction in the number of witchcraft convictions and executions during those years. This insistence on adherence to due process was most evident in the implementation of new procedures in witchcraft cases, the adoption of more demanding standards of evidence and proof, and the prosecution of those who took illegal action against witches.

Most of the lawyers and judges who insisted upon due process in the prosecution of witches held positions as superior court justices or jurists who were otherwise not directly involved in the original prosecution of witches, and who therefore did not share the same fear of witchcraft as those who had participated in efforts to rid their communities of the devil's confederates. Superior court justices were also better trained in the law than the village and municipal judges who heard witchcraft cases in the first instance. Their demand for adherence to due process could not be separated from their condescending opinion of local judges, especially those who had little or no legal training, and their need to remedy the miscarriages of justice they believed such local officials had caused. The lawyers who staffed the Parlement of Paris, which acquired and enforced the right to review all witchcraft convictions in lower courts over which it exercised control in the early seventeenth century, fit this profile perfectly.³⁰ So too did the inquisitors who staffed *La Suprema*, the Supreme Council of the Spanish Inquisition, which published a new set of guidelines for the prosecution of witches in the wake of the massive witch-hunt of 1609–14 in the Basque country. Most of these instructions originated in the recommendations of the inquisitor Alonso de Salazar Frías, a university-trained lawyer who conducted a visitation of the afflicted region and concluded that none of the activities described in the witches' confessions had actually taken place.³¹ In Italy the Roman Inquisition also insisted upon adherence to strict (p. 478) procedural rules in the conduct of witchcraft

trials.³² The instructions drafted by the inquisitor Cardinal Desiderio Scaglia in the 1620s, which circulated widely in manuscript until they were published as an appendix to the 1655 edition of Cesare Carena's manual for inquisitors, dealt with all aspects of criminal procedure, establishing strict rules for examining accused witches, calling for restraint in the administration of torture, and recommending particular care in the evaluation of witches' confessions.³³

In the German territories, the lawyers who distinguished themselves as guardians of due process were the members of the law faculties of the German universities, who were regularly consulted by local jurisdictions when they conducted prosecutions of witches. Towards the end of the seventeenth century these law faculties often recommended procedural restraint, refused to sanction the use of torture, and recommended acquittals in witchcraft cases.³⁴ The consideration of the case of Barbara Labarentin by the law faculty of the University of Halle in 1694 was especially significant in this regard, since it led one member of that faculty, Christian Thomasius, to develop his ideas regarding the conduct of witchcraft trials. These ideas found their place in Thomasius' treatise on the crime of magic (1701), which argued that witchcraft prosecutions should end, and his dissertation on torture (1705), which condemned the procedure on legal and religious grounds.³⁵

In Scotland Sir George Mackenzie, who received his education in Roman law at the University of Bourges in France, became the most vocal of those who called for the use of due process in the prosecution of witches. Mackenzie, who was responsible for the acquittal of a number of accused witches, published a treatise on the criminal law of Scotland in which he deplored the conviction of Scottish witches by 'country-men' who were not learned in the law. Mackenzie argued that the use of inquisitorial procedure, in which judges rather than ignorant juries would determine the guilt or innocence of the accused, would prevent the miscarriages of justice for which local Scottish magistrates and juries had been responsible.

The caution recommended by these judges, inquisitors, and advocates in witchcraft prosecutions contributed to a broader development in European jurisprudence regarding the admission and evaluation of evidence in criminal trials. Witchcraft (p. 479) provided the inspiration for much of this evidentiary revisionism because witchcraft was a capital crime that was, at the same time, notoriously difficult to prove. Moreover, because of the deep fear of witchcraft in all levels of society, traditional standards for the admission of testimony, the permissibility of torture, and the proof of guilt in witchcraft cases had often been relaxed, sometimes on the grounds that witchcraft was a *crimen exceptum*. These miscarriages of justice were especially evident in large witch-hunts, and it is no coincidence that demands for new procedural safeguards arose in the wake of these prosecutions. The new evidentiary standards that were recommended and eventually implemented in witchcraft trials were central, therefore, to the jurisprudential revolution of the late seventeenth and eighteenth centuries that established modern rules of evidence, the assignment of non-capital punishments in serious crimes, and the restriction and eventual abolition of torture.

The new procedural instructions and recommendations in witchcraft cases were mainly concerned with the evidentiary value of confessions, and in particular with the question of whether they were in any way coerced. Confessions had to be written down in the person's actual words, and the person had to be interrogated regarding his or her motivation for confessing. The new concern for reliable evidence also dealt with alleged acts of *maleficium*. The advocates of new standards of evidence and proof demanded that the crime had actually been committed (the *corpus delicti* in modern evidentiary law) and refused to accept the pronouncement of a curse followed by a misfortune suffered by the person cursed as evidence of maleficent magic. The refusal of courts to convict witches for having caused instances of demonic possession was based on the impossibility of proving that witches could command demons in this way. The argument of many physicians and some clergymen that the demoniacs' afflictions had natural causes gave further support to this judicial scepticism. The reluctance of courts to convict witches for causing demonic possession, first evident in the Parlement of Paris in the early seventeenth century, played a significant role in the decline of witchcraft prosecutions and convictions in the late seventeenth and early eighteenth centuries.

The evidentiary revolution of this period also had an English dimension, although the English prohibition of torture, the absence of any clearly defined law of proof in criminal trials, and the fact that the English rules of evidence were in their infancy during the early modern period meant that the revolution would take a different path from those Continental European jurisdictions that followed Roman-canonical criminal procedure. Many of the pressures for greater judicial caution in England came from critics of the witchcraft trials who were not judges or lawyers, a

pattern that reflected the role of lay jurors in conducting pre-trial hearings, granting indictments, and determining the facts of the case. The scores of pamphlets that were written in response to the outcome of witchcraft trials nevertheless contributed to greater scepticism regarding the evidentiary value of confessions (which in England were still considered the most reliable indication of guilt, even if they were not required for conviction), the admissibility of certain types of evidence, and the qualifications of (p. 480) witnesses.³⁶ This literature contributed to the scepticism manifested by English assize judges both in the admissibility of witnesses and in their recommendations to lay juries regarding the sufficiency of evidence to convict. One indication of this increased judicial caution was the refusal to admit spectral evidence—the claim by a victim of witchcraft that she could see the spectre of her assailant in the courtroom—a claim that was rejected on the grounds that evidence allegedly produced by the devil himself was not admissible in court. Spectral evidence was not used in English criminal trials after 1662, and it was finally abandoned in colonial New England after it had led to the conviction and execution of nineteen witches at Salem, Massachusetts, in 1692.

The clearest indications of judges serving as the defenders of due process occurred when they took action against the lynching of witches. Lynching was a term coined in late eighteenth-century America to denote public executions without due process of law. A lynching bears the primary connotation of mob violence, but when applied to witchcraft it also describes the summary execution of witches by village or municipal judges who acted under pressure from the local community. Witches were lynched when it appeared that the regular judicial process would take too long, cost too much, or result in lenient punishments or acquittals.³⁷ The earliest known witch lynchings took place in Denmark in 1543, when fifty-two women were murdered for being witches in Jutland, while throughout the country peasants were reported to have hunted witches ‘like wolves’.³⁸ Another fifty lynchings took place in the province of Champagne in north-eastern France in the 1580s, and isolated instances occurred in other parts of France in the early seventeenth century.³⁹

Such manifestations of *Volksjustiz* became fairly common when prosecutions for witchcraft entered a period of decline, since it appeared to local communities that more guilty witches were being set free. Witchcraft scholars disagree whether the lynching of witches increased after decriminalization. It makes sense to assume that the number would rise considerably, since witch beliefs among the rural population showed few signs of abating, and since official judicial action was no longer an option. On the other hand, decriminalization was usually accompanied by an increase in state judicial power, and the prospect that central or superior judicial authorities might proceed against those who took illegal action against witches could easily have discouraged angry and frustrated villagers from taking justice into their own hands. This appears to have happened in Western and Central Europe, where central governments were able to uphold the rule of law and take swift, decisive judicial action against lynchers. In those places where the state had difficulty enforcing its judicial authority in the (p. 481) localities, most notably in Eastern Europe, lynchings either continued to take place in large numbers or, in some places, actually increased.⁴⁰

26.5 Witchcraft and Other Crimes

The legal revolution affected not only the prosecution of witchcraft but other crimes as well. Many of the regional and local studies of witchcraft prosecutions written in the past four decades might be viewed, at least to some extent, as contributions to the history of crime. A more distinct set of historical works, however, has specifically investigated the relationship between witchcraft and other crimes. Such an approach has challenged a long-standing tendency to consider witchcraft separately, as a crime that must be explained on its own special terms rather than as one crime among many. The special status of witchcraft as a crime stemmed mainly from the belief that it was the worst possible crime one could commit, a composite offence that entailed not only the infliction of physical harm and the abandonment of one’s Christian faith but, in some cases, sexual promiscuity, cannibalism, and political conspiracy.

Some historians who have placed witchcraft in a broader criminal context have conducted comparative research in the records of a specific locality. Studies of this sort include Elisabeth Biesel’s essay on witchcraft and other crimes in the city of Toul between 1570 and 1630, William Monter’s work on the ‘mixed crimes’ of sodomy and witchcraft in Aragon, and Malcolm Gaskill’s book on witchcraft, coining, and murder in early modern England.⁴¹ Gaskill’s study possesses considerable methodological interest, since it is concerned more with the cultural than the social context of crime, exploring the mentalities of the people who were involved in the prosecution of these

offences. By investigating the social meaning of witchcraft, Gaskill reveals the way in which people from different social environments viewed the transgression of witchcraft.

Studies of witchcraft included in collections of essays on early modern European crime serve similar comparative purposes. A volume on female criminality in early modern Germany, for example, has revealed that witchcraft was not as central to the criminalization of women as Christina Lerner and others have argued.⁴² A collection of essays on women and the legal process in early modern England allows us to study the (p. 482) role of women, both as witnesses and defendants, in the broader context of women accused of other crimes.⁴³

The crime of witchcraft occasionally intersected or overlapped with political crimes, especially conspiracy and treason. In the Middle Ages, practitioners of ritual magic sometimes attempted to use their craft to inflict harm on high-ranking political or ecclesiastical figures, including popes and kings.⁴⁴ The main reason King James VI of Scotland became involved in witchcraft prosecutions in the 1590s was that he was convinced that witches were trying to kill him.⁴⁵ In the early eighteenth century the untimely death of Prince Vittorio of Piedmont led the Piedmont senate to investigate and try some seventy witches for using image magic to kill members of the royal family.⁴⁶

Statistical studies of the criminal caseloads of various jurisdictions have also allowed us to assess the level of judicial concern with witchcraft at a particular time and place. Contemporaries may have believed that witchcraft was the most horrific crime one could commit, that its practitioners were legion, and that it presented a grave threat to society, but the actual records of criminal courts, especially the secular courts where most witches were tried, often present a picture of less urgent concern. Only during periods of intense prosecution, such as when large chain-reaction hunts took place, did witchcraft cases occupy a significant percentage of judicial time and effort. Even within the Mediterranean inquisitions, which tried only spiritual crimes, witchcraft was not the dominant concern, perhaps because strict procedural rules kept the number of cases fairly low.⁴⁷

Investigations by historians into early modern European definitions of the crime of witchcraft have also raised the question of the relationship between witchcraft and other crimes. Witchcraft, as it was defined in the sixteenth and seventeenth centuries, was a composite crime. In its most elaborate form it combined the crime of maleficent magic with that of diabolism, although different social and professional groups tended to place different degrees of emphasis on one component or the other. More specifically, the crime of witchcraft encompassed a variety of activities that could be prosecuted as crimes in the ecclesiastical or secular courts. Witchcraft could denote heresy, apostasy, blasphemy, maiming, murder, poisoning, theft, the destruction of (p. 483) crops, the killing of livestock, arson, sodomy, fornication, adultery, infanticide, and conspiracy. In 1584 the English sceptic Reginald Scot identified fifteen different crimes attributed to witches.⁴⁸

Most historical studies that deal with these definitions and relationships focus either on the late Middle Ages, when the definition of witchcraft was in the process of formation, or the late seventeenth and early eighteenth centuries, when the concept was disintegrating. In the formative period, the crimes that eventually became identified with witchcraft were magic and heresy, although separate prosecutions for both crimes continued throughout the period of witch trials. In the period of decline and disintegration, persons accused of witchcraft were often prosecuted for committing some of the more specific acts encompassed in the composite notion of witchcraft. The most common of these was the crime of poisoning, which could be interpreted in either a natural or supernatural terms.⁴⁹ Less common were trials for making pacts with the devil—such as those prosecuted in Sweden between 1680 and 1789—the trials for sacrilege in late seventeenth- and eighteenth-century France, and the trials for magic that took place in Finland when witchcraft trials began to wane.⁵⁰

A further dimension of this study of witchcraft and its relationship to other crimes was the legal situation caused by the repeal of witchcraft statutes or edicts. The two legislative acts that have received the greatest historical attention are the French edict of Louis XIV in 1682 and the British statute of 1736. The French edict, the product of the 'Affair of the Poisons' that rocked Parisian high society, as well as a series of miscarriages of justice in the provincial parlements, in effect reclassified witchcraft as fraud while reserving the severest penalties for the crimes of poisoning and blasphemy.⁵¹ One effect of this legislation was the pursuit of 'false sorcerers' by the Paris police in the eighteenth century.⁵² The criminality of these people, who were versed in various occult practices, including fortune-telling, alchemy, and the sale of talismans and philters, represented a transformation rather than an elimination of the crime of witchcraft.

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Notes:

(1) Marie-Sylvie Dupont-Bouchat, 'La Répression de la sorcellerie dans le duché de Luxembourg aux XVI^e et XVII^e siècles', in M.-S. Dupont-Bouchat, Willem Frijhoff, and Robert Muchembled, eds, *Prophètes et sorciers dans les Pays-Bas XVI^e–XVIII^e siècles* (Paris, 1978) 106; Christina Larner, *Enemies of God: The Witch-Hunt in Scotland* (Baltimore, MD, 1981), 114, 116, 119; Hans Eyvind Naess, 'Norway: The Criminological Context', in Bengt Ankarloo and Gustav Henningsen, eds, *Early Modern European Witchcraft: Centres and Peripheries* (Oxford, 1990), 376. The French demonologist Nicolas Remy interpreted suicides as attempts to escape the devil's powers. See Remy, *Demonolatriy*, tr. E. Allen Ashwin; ed. Montague Summers (London, 1929), 161.

(2) The use of 'persecution' might be appropriate when courts considered witches to be members of a heretical sect, although even in those circumstances the fact that the accused were not, in fact, religious dissidents and did not hold heretical beliefs renders its usage problematic. But it is inappropriate to use the term when witches were tried for practising harmful magic.

- (3) Territorial rulers within the empire subsequently passed additional ordinances that gave more specific definitions of the crime and provided guidelines for its prosecution. See Edmund M. Kern, 'An End to Witch Trials in Austria: Reconsidering the Enlightened State', *Austrian History Yearbook*, 30 (1999), 161–4.
- (4) The Polish parliament, the *Sejm*, never defined witchcraft as a secular crime. A law of 1543 explicitly reserved jurisdiction over witchcraft to the ecclesiastical courts. See Michael Ostling, *Between the Devil and the Host: Imagining Witchcraft in Early Modern Poland* (Oxford, 2011), 47–8. Nevertheless, the secular courts gradually assumed jurisdiction over the crime.
- (5) For the Danish ordinance on 1617, which made the pact with the devil the essence of the crime, see Louise Nyholm Kallestrup, 'Lay and Inquisitorial Witchcraft Prosecutions in Early Modern Italy and Denmark', *Scandinavian Journal of History*, 36 (2011), 266–8.
- (6) For a brief discussion of the differences between Germanic and Roman forms see G. Bader, *Die Hexenprozesse in der Schweiz* (Affoltern, 1945), 11–12.
- (7) Henry Charles Lea, *The Ordeal* (Philadelphia, PA, 1973); Jean Gaudemet, 'Les ordalies au moyen âge: Doctrine, législation, et pratique canoniques', in *La Preuve* [Recueils de la Société Jean Bodin, 17] (Brussels, 1965), 99–136.
- (8) On this influence see Bruce Lenman and Geoffrey Parker, 'The State, the Community and the Criminal Law in Early Modern Europe', in V. Gatrell, B. Lenman, and G. Parker, eds, *Crime and the Law: The Social History of Crime in Western Europe since 1500* (London, 1980), 29–30.
- (9) On the growth of clerical opposition to the ordeal and the crucial role played by the papacy in suppressing it see Robert Bartlett, *Trial by Fire and Water* (Oxford, 1986), 70–102.
- (10) Some municipal jurisdictions nevertheless continued to use the ordeals into the seventeenth century. For the use of the hot water ordeal at Braunsberg in 1637 see Henry Charles Lea, *Materials toward a History of Witchcraft* (New York, 1957), iii, 1234.
- (11) See John Langbein, *Prosecuting Crime in the Renaissance* (Cambridge, MA, 1974), 130–1. Until the early seventeenth century a person in the Netherlands could bring an accusation before the secular courts, but after 1600 the court only rarely entertained such accusations. See Hans de Waardt, 'Prosecution or Defense: Procedural Possibilities following a Witchcraft Accusation in the Province of Holland before 1800', in Marijke Gijswijt-Hofstra and Willem Frijhoff, eds, *Witchcraft in the Netherlands: From the Fourteenth to the Twentieth Century* (Rotterdam, 1991), 79–90.
- (12) Some of the witchcraft cases tried in Schleswig-Holstein were initiated by private accusation, but the early modern accusatory process was not the same as that which was used in the Middle Ages, and it often followed the same course as an inquisitorial process. See D. Unverhau, 'Akkusationsprozess-Inquisitionsprozess: Indikatoren für die Intensität der Hexenverfolgung in Schleswig-Holstein', in C. Degn, H. Lehmann, and D. Unverhau, eds, *Hexenprozesse: Deutsche und skandinavische Beiträge* (Neumünster, 1983), 59–143, esp. 116.
- (13) On denunciation see *Malleus maleficarum*, pt. 3, qu. 1; Bader, *Die Hexenprozesse in der Schweiz*, 15.
- (14) On the function of the fiscal see Friedrich Merzbacher, *Die Hexenprozesse in Franken* (Munich, 1957), 78–80.
- (15) Henry Charles Lea, *Torture* (Philadelphia, PA, 1973), xiv.
- (16) Langbein, *Prosecuting Crime in the Renaissance*, 130–1.
- (17) In a witchcraft trial in Hertfordshire in 1712, the sceptical assize judge, Sir John Powell, could not prevent the jury's conviction of Jane Wenham, although he did reprieve her after the trial. See [Francis Bragge], *A Full and Impartial Account of the Discovery of Sorcery and Witchcraft* (London, 1712).
- (18) The high execution rate in Scotland had little to do with the adoption of some features of inquisitorial procedure by Scottish courts. See Brian P. Levack, 'State-Building and Witch-Hunting in Early Modern Europe', in Jonathan Barry, Marianne Hester, and Gareth Roberts, eds, *Witchcraft in Early Modern Europe: Studies in Culture*

and *Belief* (Cambridge, 1996), 96–115.

(19) On the *Carolina* and the controversy regarding the nature of inquisitorial procedure see Langbein, *Prosecuting Crime in the Renaissance*; Robert Zagolla, *Folter und Hexenprozess: Die strafrechtliche Spruchpraxis der Juristenfakultät Rostock im 17. Jahrhundert* (Bielefeld, 2007), 147–65.

(20) W. Trusen, 'Rechtliche Grundlagen der Hexenprozesse und ihrer Beendigung', in S. Lorenz and D. R. Bauer, eds, *Das Ende der Hexenverfolgung* (Stuttgart, 1995); Thomas Robisheaux, 'Zur Rezeption Benedict Carpzovs im 17. Jahrhundert', in Herbert Eiden and Rita Voltmer, eds, *Hexenprozesse und Gerichtspraxis* (Trier, 2002), 527–43.

(21) On the difference between English and Continental practice in this regard see John Langbein, *Torture and the Law of Proof* (Chicago, 1977).

(22) Brian P. Levack, 'Judicial Torture in Scotland during the Age of Mackenzie', in Hector L. MacQueen, ed., *Stair Society Miscellany Four* (Edinburgh, 2002), 185–98. Many Scottish witches were apparently tortured illegally by local authorities but not in sufficient number to account for the intensity of Scottish witch-hunting.

(23) Rita Voltmer, 'Witch-Finders, Witch-Hunters or Kings of the Sabbath? The Prominent Role of Men in the Mass Persecutions of the Rhine-Meuse Area (Sixteenth-Seventeenth Centuries)', in Alison Rowlands, ed., *Witchcraft and Masculinities in Early Modern Europe* (Basingstoke, 2009), 77–9; Christina Lerner, '"Crimen Exceptum"? The Crime of Witchcraft in Europe', in *Witchcraft and Religion: The Politics of Popular Belief* (Oxford, 1984), 35–67. Edward Peters, 'Crimen Exceptum', in Richard M. Golden, ed., *Encyclopedia of Witchcraft: The Western Tradition* (Santa Barbara, CA, 2006), i, 232–3.

(24) William Monter, *Witchcraft in France and Switzerland* (Ithaca, NY, 1976); Alfred Soman, 'The Parlement of Paris and the Great Witch-Hunt (1565–1640)', *Sixteenth Century Journal*, 9 (1978), 31–44.

(25) Alison Rowlands, 'Eine Stadt ohne Hexenwahn: Hexenprozesse, Gerichtspraxis und Herrschaft in frühneuzeitlichen Rothenburg ob der Tauber', in Herbert Eiden and Rita Voltmer, eds, *Hexenprozesse und Gerichtspraxis* (Trier, 2002), 331–47.

(26) Etienne Delcambre, 'La Psychologie des inculpés Lorrains de sorcellerie', *Revue historique de droit français et étranger*, 4th ser., 32 (1954), 383–403, 508–26; Delcambre, 'Les procès de sorcellerie en Lorraine: Psychologie des juges', *Tijdschrift voor Rechtsgeschiedenis*, 21 (1954), 389–419.

(27) Lyndal Roper, *Oedipus and the Devil: Witchcraft, Sexuality and Religion in Early Modern Europe* (London, 1994), 203–5.

(28) Lisa Silverman, *Tortured Subjects: Pain, Truth and the Body in Early Modern France* (Chicago, 2001); Elaine Scarry, *The Body and Pain* (Oxford, 1987).

(29) O. John Rogge, *Why Men Confess* (New York, 1975); Peter Brooks, *Troubling Confessions: Speaking Guilt in Law and Literature* (Chicago, 2000).

(30) Robert Mandrou, *Magistrats et sorciers en France au XVII^e siècle* (Paris, 1968).

(31) Gustav Henningsen, *The Witches' Advocate: Basque Witchcraft and the Spanish Inquisition, 1609–1611* (Reno, NV, 1980). The new instructions issued by the Supreme Council are summarized on 371–6.

(32) John Tedeschi, 'Inquisitorial Law and the Witch', in Bengt Ankarloo and Gustav Henningsen, eds, *Early Modern European Witchcraft* (Oxford, 1990), 83–118; Tedeschi, *The Prosecution of Heresy* (Binghamton, NY, 1991).

(33) 'Instructio pro formandis processibus un causis strigum sortilegiorum et maleficiorum', in Cesare Carena, *Tractatus de Officio Sanctissimae Inquisitionis et modo procedendi in causis fidei* (Cremona, 1655).

(34) Sönke Lorenz, *Aktenversendung und Hexenprozess. Dargestellt am Beispiel der Juristfakultäten Rostock und Greifswald (1570/82–1630)*, 2 vols (Frankfurt, 1982–3); Lorenz, 'Die letzten Hexenprozesse in den Spruchakten der Juristfakultäten: Versuch einer Beschreibung', in Sönke Lorenz and D. R. Bauer, eds, *Das Ende der Hexenverfolgung* (Stuttgart, 1995), 227–47; Zagolla, *Folter und Hexenprozess*.

- (35) Christian Thomasius, *De Crimine magiae* (Halle, 1701); Thomasius, *De Tortura ex foris Christianiorum proscribenda* (Halle, 1705).
- (36) Orna Alyagon Darr, *Marks of an Absolute Witch: Evidentiary Dilemmas in Early Modern England* (Farnham, 2011).
- (37) Brian P. Levack, 'Witch-Lynching Past and Present', in William D. Carrigan and Christopher Waldrep, eds, *Swift to Wrath: Lynching in Global Historical Perspective* (Charlottesville, VA, 2013), 49–67.
- (38) Wolfgang Behringer, 'Lynching', *Encyclopedia of Witchcraft*, iii, 683–5.
- (39) Alfred Soman, 'Le role des Ardennes dans la décriminalisation de la sorcellerie en France', in *Revue historique ardennaise*, 23 (1988), 30–1, 36; William Monter, 'Burgundy, Duchy of', *Encyclopedia of Witchcraft*, i, 152–3.
- (40) Aldona Christina Schiffmann, 'The Witch and Crime: The Persecution of Witches in Twentieth-century Poland', *ARV: Scandinavian Yearbook of Folklore*, 43 (1987), 147–67.
- (41) Elisabeth Biesel, 'Hexerei und andere Verbrechen: Gerichtspraxis in der Stadt Toul um 1570–160', in *Hexenprozesse und Gerichtspraxis*, 123–69; William Monter, *Frontiers of Heresy: The Spanish Inquisition from the Basque Lands to Sicily* (Cambridge, 1990), 255–99; Malcolm Gaskill, *Crime and Mentalities in Early Modern England* (Cambridge, 2000).
- (42) O. Ulbricht, ed., *Von Huren und Rabenmüttern: weibliche Kriminalität in der Frühen Neuzeit* (Cologne, 1995).
- (43) Jim Sharpe, 'Women, Witchcraft and the Legal Process', in Jenny Kermonde and Garthine Walker, eds, *Women, Crime and the Courts in Early Modern England* (Chapel Hill, NC, 1994), 113–30.
- (44) Edward Peters, *The Magician, the Witch and the Law* (Philadelphia, PA, 1978), ch. 5; Richard Kieckhefer, *European Witch Trials: Their Foundations in Popular and Learned Culture, 1300–1500* (London, 1976), 52–3.
- (45) Brian P. Levack, *Witch-hunting in Scotland: Law, Politics, and Religion* (London, 2008), ch. 3.
- (46) Sabina Loriga, 'A Secret to Kill the King: Magic and Protection in Piedmont in the Early Eighteenth Century', in Edward Muir and Guido Ruggiero, eds, *History from Crime* (Baltimore, MD, 1994), 88–109.
- (47) See, for example, E. W. Monter and J. A. Tedeschi, 'Toward a Statistical Profile of the Italian Inquisitions, Sixteenth to Eighteenth Centuries', in Gustav Henningsen and John Tedeschi, eds, *The Inquisition in Early Modern Europe* (Dekalb, IL, 1986), 130–57.
- (48) Reginald Scot, *The Discoverie of Witchcraft* (London, 1584), 32–9.
- (49) Giovanna Fiume, 'The Old Vinegar Lady, or the Judicial Modernization of the Crime of Witchcraft', in *History from Crime*, 65–87.
- (50) Soili-Maria Olli, 'The Devil's Pact: A Male Strategy', in Owen Davies and Willem de Blécourt, eds, *Beyond The Witch Trials: Witchcraft and Magic in Enlightenment Europe* (Manchester, 2004), 100–16; Mandrou, *Magistrats et sorciers*; Marko Nenonen, *Noituus, taikuus ja noitavainot: Ala-Satakunnan, Pohjois-Pohjanmaan ja Viipurin Karjalan maaseudulla vuosina 1620–1700* [Witchcraft, Magic and Witch Trials in Rural Lower Satakunta, Northern Ostrobothnia and Viipuri Carelia, 1620–1700] (Helsinki, 1992).
- (51) Ian Bostridge, *Witchcraft and Its Transformations, c.1650–c.1750* (Oxford, 1997), 203–31.
- (52) Ulrike Krampfl, 'When Witches Became False: Séducteurs and Crédules Confront the Paris Police in at the Beginning of the Eighteenth Century', in K. A. Edwards, ed., *Werewolves, Witches and Wandering Spirits: Traditional Belief and Folklore in Early Modern Europe* (Kirksville, MO, 2002), 137–54.

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