**The Community’s Peace: Witchcraft, Popular Culture, and the Law, xxxx-xxxx**

* “And beneath the surface of an ever more sophisticated society what dark passions and inflammable credulities do we find, sometimes accidentally released, sometimes deliberately mobilized!”[[1]](#footnote-1)
* “All Christendom, it seems, is at the mercy of these horrifying creatures.”[[2]](#footnote-2)

**Ideas to consider:**

* What are the objectives of criminal law at this time?
	+ Is restoration an objective? And if so, what is the law the restoring and to whom?
* What is the law of evidence at this time?
* “The light [of advancement] continually, if irregularly, gains at the expense of darkness”[[3]](#footnote-3)
* In terms of witch hunts, “[t]he years 1550-1600 were worse than the years 1500-1550, and the years 1600-1650 were worse still.”[[4]](#footnote-4)
	+ “For in the Dark Age there was at least no witch-craze. There were witch-beliefs, of course—a scattered folk-lore of peasant superstitions: the casting of spells, the making of storms, converse with spirits, sympathetic magic….I am concerned with the organized, systematic ‘demonology’ which the medieval Church constructed out of those beliefs and which, in the sixteenth and seventeenth centuries, acquired a terrible momentum of its own”
* “We cannot see the long persistence and even aggravation of the witch-craze merely as a necessary effect of clerical domination, or its dissolution as the logical consequence of release from religious fundamentalism”[[5]](#footnote-5)
* “Isolated rural societies anywhere—in the dreary flats of the Landes in Frances, or of Essex in England, or in the sandy plain of north Germany—would always be subject to witch-beliefs…Individual inquisitors, too, would discover or create beliefs in any area in which they happened to operate: Krämer and Sprenger would have plenty of counterparts among the Protestant clergy—and among them laity too, like Matthew Hopkins, the famous ‘witch-finder general’ of the English civil war.”[[6]](#footnote-6)
* The question is not “ ‘why people believed in witchcraft,’ but rather, ‘who witchcraft functioned for, once the basic assumptions about the nature of evil, the types of causation, and the origins of supernatural ‘power’ were present.’” (Ginzburg at 3)

**Witchcraft and Society**

* “Since a system was presupposed, a system was found.”[[7]](#footnote-7)
* “Magic is thus, like desire, ambivalent from the start: it may provide protection for a society, but it also suggests the existence of the need for protection.”[[8]](#footnote-8)
	+ Consider the conditions in place that require communities to protect themsel
* “Year after year inflammatory books and sermons warned the Christian public of the danger, urged the Christian magistrate to greater vigilance, greater persecution. Confessors and judges were supplied with manuals incorporating all the latest information, village hatreds were exploited in order to ensure exposure, torture was used to extract and expand confessions, and lenient judges were denounced as enemies of the people of God, drowsy guardians of the beleaguered citadel”[[9]](#footnote-9)

The Common Belief:

* “the witches’ sabat would become [93] an objective fact, disbelieved only…by those of unsound mind; and the ingenuity of churchmen and lawyers would be taxed to explain away that inconvenient text of canon law, the *canon Episcopi*.”[[10]](#footnote-10)
* “Laymen might not accept all of the esoteric details supplied by the experts, but they accepted the general truth of the theory, and because they accepted its general truth, they were unable to argue against its more learned interpreters. So the experts effectively commanded the field.”[[11]](#footnote-11)
* “But once the mythology had been established, it acquired, as it were, a reality of its own. Ideology is indivisible, and those who believed that there were devil-worshipping societies in the mountains soon discovered that there were devil-worshipping individuals in the plains.”[[12]](#footnote-12)

**Time Frame**

* “The middle of the seventeenth century was a period of revolutions in Europe”[[13]](#footnote-13)
	+ “There is the Puritan Revolution in England which fills the twenty years between 1640 and 1660, but whose crisis was between 1648 and 1653.”[[14]](#footnote-14)
	+ “For a generation they had felt it coming. Ever since 1618 at least there had been talk of the dissolution of society, or of the world; and the undefined sense of gloom of which we are constantly aware in those years was justified sometimes by new interpretation of Scripture, sometime by new phenomena in the skies.”[[15]](#footnote-15)
	+ “It is as if a series of rainstorms has ended in one final thunderstorm which has cleared the air and changed, permanently, the temperature of Europe”[[16]](#footnote-16)

**Who are witches?/What do witches do?**

* “The basic evidence of the kingdom of God had been supplied by Revelation. But the Father of Lies had not revealed himself so openly. To penetrate the secrets of his kingdom, it was therefore necessary to rely on indirect sources. These sources could only be captured members of the enemy intelligence service: in other words, confessing witches.”[[17]](#footnote-17)

**A transition from witch-belief to witchcraft**

* “…the essential substance of the new demonology—the pact with Satan, the witches’ sabbat, the carnal intercourse with demons, etc., etc.—and the hierarchical, systematic structure of the kingdom of the Devil, are independent product of the later Middle Ages”[[18]](#footnote-18)
* “At a popular level every kind of magical activity, including any unacceptable brand of religion, might be lumped together under the blanket title of ‘witchcraft’, and there was no special term to indicate maleficent magicians.”[[19]](#footnote-19)
	+ “Nevertheless, it is possible to isolate that kind of ‘witchcraft’ which involved the employment (or presumed employment) of some occult means of doing harm to other people in a way which was generally disapproved of.”[[20]](#footnote-20)

**What is a witch in 17th century England?**

* “A witch was a person of either sex (but more often female) who could mysteriously injure other people”[[21]](#footnote-21)
	+ *Discourse on the Damned Art of Witchcraft* (1608) (suggesting that women, as the weaker sex, were more prone to the “devil’s illusions”)
* By the sixteenth century, the belief in the existence of witchcraft was common. It was regarded as “the logical corollary of the equally widespread possibility in the belief of beneficent magic.”[[22]](#footnote-22)
	+ Thomas contends that “witch-beliefs of [the maleficent] kind were as old as human history, and in no sense peculiarly English” and that, during the late Middle Ages, a new element distinguished this type of witchcraft from that of past primitive peoples: Christianity.[[23]](#footnote-23)
		- “In return for her promise of allegiance, she was thought to have been given the means of wreaking supernatural vengeance upon her enemies. Seen from this new point of view, the essence of witchcraft was not the damage it did to other persons, but its heretical character—devil-worship.”[[24]](#footnote-24)
* “Not witches riding brooms, nor kissing the devil’s behind, nor cannibalizing babies—but simple *maleficium* characterized English witchcraft.”[[25]](#footnote-25)
	+ “*Maleficium* is the damage that he might to do: this would take the form of injuring or killing someone or causing harm to their property—such as killing or injuring livestock or frustrating the production of goods.”[[26]](#footnote-26)
	+ “The witch could exercise her power through physical contact, either touching the victim or emanating power from her eyes (in which case, the victim is said to have been ‘fascinated’ or ‘overlooked’), or pronounce a verbal curse (in which case, the victim was ‘forspoken’).”[[27]](#footnote-27)
* “Whether or not the witch injured other people, she deserved to die for her disloyalty to God.”[[28]](#footnote-28)
	+ “It was common-place medieval theology to assert that any magical activity, however beneficent in intention, necessarily involved a tacit compact wit the Devil, and should therefore be punished.”[[29]](#footnote-29)

**Trial of witches**

**Substance:**

* Three Acts of Parliament on witchcraft:
	+ 1542 (repealed in 1547), 33 Hen. Viii, cap. 8 (repealed by I Edw. vi, cap. 12)
		- “In 1542 it was made a felony (and therefore a capital offence) to conjure spirits or to practise witchcraft, enchantment or sorcery, in order to find treasure; to waste or destroy a person’s body, limbs, or goods; or ‘for any other unlawful intent or purpose’.”[[30]](#footnote-30)
		- “this Act clearly treated the crime of witchcraft as consisting in positive acts of hostility to the community, rather than in relations with the Devil as such.”[[31]](#footnote-31)
	+ 1563 (repealed 1604), 5 Eliz., cap. 16;
		- “It was more severe than its predecessor, in that it made it a felony to invoke evil spirits for any purpose whatsoever, whether *maleficium* was involved or not. But it was also more lenient, in that witchcraft…[was] deemed [a] capital felon[y] only if [it actually resulted in the death of a human victim.”[[32]](#footnote-32)
	+ 1604 (repealed 1736), I Jac. I, c. 12 (repealed by 9 Geo. Ii, cap. 5)
		- “the full continental doctrine” taking effect.
		- Included the previous felony categories. “It furthermore declared it to be felony if the victim was only injured; and it replaced life imprisonment by death as the penalty for a second offence in the case of lesser kinds of magic”… “to ‘consult, covenant with, entertain, employ, feed, or reward any evil and wicked spirit to or for any intent or purpose.’”[[33]](#footnote-33)
* The Act of 1604 “represented the furthest point to which the English law on witchcraft was adapted to fit continental doctrines. For it meant that evidence of relationship with evil spirits or animal familiar was technically sufficient to secure the judicial condemnation of an accused person, regardless of whether or not he or she had harmed anyone.”[[34]](#footnote-34)
* “the evidence of the statute-book, taken as a whole, suggests that in England witchcraft was prosecuted primarily as an anti-social crime, rather than as a heresy”[[35]](#footnote-35)
	+ “This impression is confirmed by the records of the trials. In practice, most prosecutions were provoked by alleged acts of damage against other persons and seldom drew on allegations of devil-worship.”[[36]](#footnote-36)

**Process (evidence, torture, etc.)[[37]](#footnote-37)**

[Broadly, what were the rights afforded to ∆s at trial? What was the trial process like? How did these rights differ from those afforded to witches?]

* Contract with the Devil: “No reference in a trial to an oral compact with the Devil is recorded before 1612; and not until the investigations of Matthew Hopkins, the professional witch-finder who was active in the late 1640s, was there sworn evidence testifying to a written covenant”[[38]](#footnote-38)
	+ For other examples (i.e., sabbath, sexual assault, flying), see Thomas at 445.
* Body marks: “The one common feature of English witch-trials which does indicate some sort of association in the popular mind…was the notion that the witch bore on her body the mark of her profession in the form of a spot or excresence, which could be discovered by searching her for an ‘unnatural’ mark, usually recognisable because it would not bleed when pricked and was insensible to pain.”[[39]](#footnote-39)
	+ “The witch’s mark was sometimes thought of as a teat from which the familiar [an animal] could suck the witch’s blood as a form of nourishment. IT thus became a common procedure in witch-detection to isolate the suspect and wait for some animal or insect to appear as proof of her guilt”[[40]](#footnote-40)
	+ “Familiars gained a recognized place in witch-accusations at an early stage”[[41]](#footnote-41)

*The Confession:*

*Use of Torture*

* “…England alone escaped from the judicial use of torture in ordinary criminal [119] cases, including cases of witchcraft.”[[42]](#footnote-42)
	+ But “[t]here was also some non-judicial torture in ill-regulated cases: e.g. during the civil wars, when Matthew Hopkins and his assistant used the *tortmentum imsomniae*.”[[43]](#footnote-43)
* However, according to T-R, torture alone is insufficient to explain “why even in England, where there was no judicial torture, witches confessed to absurd crimes; why the people were so docile in the face of such mania; and above all, why some of the most original and cultivated men of the time not only accepted the theory of witchcraft, but positively devoted their genius to its propagation.”[[44]](#footnote-44)
* “What was ‘subjective reality’ to the penitent was ‘objective reality’ to the confessor. Out of those fragments of truth, spontaneously given if amplified by suggestion or torture, a total picture of Satan’s kingdom could, by logic, by the ‘rationalism’ of the time, be built up.”[[45]](#footnote-45)
	+ Trial of Alison Device (Pendle witches, 1612)
	+ [Perhaps the confession serves as a way to do God’s work against Satan. Internalized self-regulation?]

*Comparative Perspective*

* *Malleus Maleficarum* advocated the use of torture if other means proved unsatisfactory
* Continental use of torture
	+ “Judicial torture had been allowed, in limited cases, by Roman law; but Roman law, and with it judicial torture, had been forgotten in the Dark Ages.”[[46]](#footnote-46)
	+ Returned in the eleventh century.[[47]](#footnote-47)
	+ Eventually judges would sometimes disallow testimony because “they knew that it had been created by tortured and was therefore unreliable”[[48]](#footnote-48)
* Discussing Scottish and continental witch trials: “For such a crime, the ordinary rules of evidence, as the ordinary limits of torture, were suspended. For how could ordinary methods prove such extraordinary crimes?”[[49]](#footnote-49)
	+ “So, in the absence of ‘a grave indicium’…circumstantial evidence was sufficient to mobilize the process.”[[50]](#footnote-50)

The End of Witch-hunting

* “By the 1680s the battle is effectively won, at least in the west.”[[51]](#footnote-51)
* “The rubbish of the human mind which for two centuries, by some process of intellectual alchemy and social pressure, had become fused together in a coherent, explosive system, has disintegrated. It is rubbish again.”[[52]](#footnote-52)
1. T-R at 90 [↑](#footnote-ref-1)
2. T-R at 93. [↑](#footnote-ref-2)
3. T-R at 90. [↑](#footnote-ref-3)
4. T-R at 91. [↑](#footnote-ref-4)
5. T-R at 100 [↑](#footnote-ref-5)
6. T-R at 105. [↑](#footnote-ref-6)
7. T-R at 117 (discussing efforts made by Dominicans to find witches) [↑](#footnote-ref-7)
8. Noone at 27. [↑](#footnote-ref-8)
9. T-R at 96. [↑](#footnote-ref-9)
10. T-R at 92-3. “[A]nd another unknown Church dignitary declared that night-flying and metamorphosis were hallucinations and that whoever believed in them ‘is beyond doubt an infidel and a pagan.’ This statement was accepted into the canon law and became known as the canon Episcopi or capitulum Episcopi.” T-R at 92. [↑](#footnote-ref-10)
11. T-R at 96. [↑](#footnote-ref-11)
12. T-R at 127. [↑](#footnote-ref-12)
13. Travis-Roper at 46. [↑](#footnote-ref-13)
14. Travis-Roper at 46 [↑](#footnote-ref-14)
15. T-R at 47. [↑](#footnote-ref-15)
16. T-R at 50. [↑](#footnote-ref-16)
17. T-R at 117. [↑](#footnote-ref-17)
18. T-R at 116. (“It became an established folklore, generating its own evidence….” Id.) [↑](#footnote-ref-18)
19. Thomas, at 436. [↑](#footnote-ref-19)
20. Thomas, at 436. [↑](#footnote-ref-20)
21. Thomas, at 436. [↑](#footnote-ref-21)
22. Thomas, at 437 [↑](#footnote-ref-22)
23. Thomas, at 438 (“This was the notion that the witch owed her powers to having made a deliberate pact with the Devil.”) [↑](#footnote-ref-23)
24. Thomas, at 438 [↑](#footnote-ref-24)
25. Thomas, at 461. [↑](#footnote-ref-25)
26. Thomas, at 436-37 [↑](#footnote-ref-26)
27. Thomas, at 437. Thomas notes that “the use of physical aids, such as wax images or paper were a lot less common.” Id. [↑](#footnote-ref-27)
28. Thomas, at 438. [↑](#footnote-ref-28)
29. Thomas, at 439. [↑](#footnote-ref-29)
30. Thomas, at 442. [↑](#footnote-ref-30)
31. Thomas, at 442. [↑](#footnote-ref-31)
32. Thomas, at 442. [See same for lesser punishments and death after second sentence] [↑](#footnote-ref-32)
33. Thomas, at 443 [↑](#footnote-ref-33)
34. Thomas, at 443 [↑](#footnote-ref-34)
35. Thomas, at 443 [↑](#footnote-ref-35)
36. Thomas, at 443 [↑](#footnote-ref-36)
37. “Our knowledge of the evidence presented against the witches depends upon the irregular survival of depositions, either at first-hand or in contemporary pamphlet accounts. This means that we know virtually nothing of what was said at most of the trials. But the evidence which has survived suggests that not until the seventeenth century did the diabolical compact figure very prominently in the witch-trials, and even then it was far from being an indispensable feature.” Thomas, at 444. See *id*. n.4 (providing sources.) “On witchcraft…we possess only hostile testimonies, originating from or filtered by the demonologists, inquisitors and judges. The voices of the accused reach us strangled, altered, distorted; in many cases, they haven’t reached us at all.” Ginzburg, at 10. [↑](#footnote-ref-37)
38. Thomas, at 444. [↑](#footnote-ref-38)
39. Thomas, at 445. [↑](#footnote-ref-39)
40. Thomas, at 446. [↑](#footnote-ref-40)
41. Thomas, at 446. [↑](#footnote-ref-41)
42. T-R at 118-19. [↑](#footnote-ref-42)
43. T-R at 119 n. 1. [↑](#footnote-ref-43)
44. T-R at 122. [↑](#footnote-ref-44)
45. T-R at 126. [↑](#footnote-ref-45)
46. T-R at 118. [↑](#footnote-ref-46)
47. T-T at 118. [↑](#footnote-ref-47)
48. T-R at 119. [↑](#footnote-ref-48)
49. T-R at 120. [↑](#footnote-ref-49)
50. T-R at 120. [↑](#footnote-ref-50)
51. T-R at 97. [↑](#footnote-ref-51)
52. T-R at 97. [↑](#footnote-ref-52)