

The Bavarian Witchcraft Law (1611)

Abstract

The German lands produced a rich body of legislation on prosecuting accusations of witchcraft. Its status as a capital crime was fixed in Imperial law by the law code [*Lex Carolina*] issued by Emperor Charles V in 1532. Laws for the individual principalities followed. Whereas most earlier jurisprudence required the demonstration of injury [*maleficium*] in witchcraft prosecutions, a Saxon law of 1572 declared that all who made pacts with the Devil were to be executed, whether injury could be proven or not. In the great wave of prosecutions and executions that swept across the German lands between the 1570s and the 1660s, such statutes were issued and more or less enforced in principalities of all three confessions—Catholic (Baden-Baden 1588), Lutheran (Electoral Saxony, 1572), and Reformed (Electoral Palatinate, 1582). In the German lands, at least 22,000 and perhaps even 30,000 persons (disproportionately women) were executed for witchcraft, more than in any other European kingdom.

Every attempt by modern historians to ascribe this wave of laws, prosecutions, and executions to a single cause, or even to a specific group of causes, has failed the test of criticism. Much easier to explain is how this wave was eventually undermined. The prosecution of witches by the state, which was an innovation of this era, responded to a genuine popular fear that witches were allied with the Devil, but it also attempted to bring this fear under legal control. This move, not a general attitude of skepticism toward the reality of witchcraft, challenged lawyers by raising serious procedural issues about the judicial wisdom—not necessarily the reality—of prosecutions. These issues, first raised in the inquisitorial (i.e., ecclesiastical) courts of Catholic Italy and Spain, where prosecutions were halted earlier than elsewhere, also presented themselves to the secular courts of the German territories. By the first decade of the seventeenth century, there was disagreement about the efficacy of judicial solutions to the problem. It arose first in Munich, where a debate among the duke of Bavaria's advisors led to a division of opinion that is expressed in the Bavarian Witchcraft Law of 1611. While the party favoring the strict prosecution of accused witches held the upper hand in the drafting of the law, a party of moderates was able to hobble the law's execution to the extent that it became ineffective. Bavaria witnessed no more large waves of prosecutions. The Bavarian law, it has been said, marks a departure from the pursuit of religious aims (the salvation of souls) with political instruments (law and punishment). The preamble and the excerpts presented here display ideas and beliefs about witchcraft and sorcery that were held by educated people—but not only by them.

Source

Bavarian Mandate against Superstition, Sorcery, Witchcraft, and Other Felonious Black Arts

We, Maximilian, by God's grace Count Palatine, Duke of Upper and Lower Bavaria, etc.

[...] Because nothing has been more important to us in the territorial government heretofore entrusted to our hands than to rule and preserve the lands and people entrusted to us by God in the desired state of peace, of good, evenhanded law, of Christian discipline and respectability by organizing and setting in place all that promotes, nurtures and is beneficial to the spiritual and physical well-being of our subjects, and [because we] are particularly inclined and eager henceforth to continue and persist in our fatherly, Christian oversight:

And as we have been reliably informed of superstition and suspicious incantations to avert illnesses in

livestock and people and, *in summa*, soothsaying or the presumptuous revelation of secret, hidden, and future events (which only God Almighty is rightfully entitled to know) as well as strong suspicions of sorcery and the likelihood of *expressae invocationis*, that is, deliberate invocation of the evil spirit. All these have unfortunately entered into our lands and principalities, where they strive to take the upper hand among the common, simple folk. Thus it is not only to be feared that some might be misled and led astray by these means, gradually [to enter] fully into the strictly forbidden, damned vices of witchcraft and sorcery and to deny God the Almighty, His most worthy Mother, the most highly blessed Virgin Mary, and all the saints. To which end superstitious practices and so-called blessings (usually in rhyme) are the first rung and step. Furthermore, also *pactum si non expressum, tamen tacitum & impliciatum cum Daemone*, that is, where there is no explicit pact [with the Devil], a secret hidden trust in the evil enemy, to whom the effects that arise from these same superstitious rites are necessarily attributed, nevertheless commonly develops. Such is attested by respected theologians and doctors of law. In addition, where the suspension of such superstition and fortune-telling and dark arts (devised by the evil spirit to take the place of idolatry) is not undertaken with fitting and thoroughgoing vigilance, God Almighty will be moved to righteous anger against us and may punish and assail our land and people with inflation, war, pestilence and various other plagues:

Therefore we, as a Christian prince, have rightly taken the following to heart: firstly, that superstition is not such a slight or venial sin or misdeed as it is generally held to be, since all superstitions and *vanae observationes* [empty observances] were invented by that enemy of all mankind, the damned Devil (may God graciously protect us from him), who from the beginning of the world has incited men to idolatry. And when the evil spirit's kingdom was destroyed through the bitter suffering and death of our dear Lord Jesus Christ, he introduced (under the pretence of benevolence) hidden appeals for his help through the superstitious arts, incantations in prose and verse, and prognostications in place of publicly visible idolatry (which was abolished by our Christian faith) in order that he might thus secretly and deceitfully regain possession of those poor souls of which he was deprived through the death of our Savior on the Holy Cross. For in this way the first and highest commandment to which a Christian binds himself in Holy Baptism is violated and broken, and the hope that man is to have in God is turned aside to the vain and empty observances, superstitions and *vim carminis*, that is, magical or superstitious, fabricated charms and incantations in rhyming or unrhymed verse.

Because there is no better way to appease God the Almighty and to avert the threat of punishment for unbelief and for this kind of clandestine idolatry than for the Christian ruler himself to champion God's honor and strictly forbid rhyming and unrhymed incantations and prognostications, [...] we have that much more reason to [emulate the] example and follow in the footsteps of other Christian rulers and replicate the salutary statutes intimated above.

We intend, therefore, to punish not only the *artem divinandi* or spurious divination and the offensive practice of consulting such soothsayers but also all superstitions, incantations, and other questionable practices with the penalties established in imperial law.

In particular recognition of the fact that all supernatural arts are open to the charge of sorcery, we also command that no distinction be made in these cases as to whether the superstitious and reprehensible art or incantation is meant to effect a good end, [i.e.,] in order to help livestock, people and essential crops or in order to cause harm. [...]

[Therefore it is necessary] to inquire about and investigate with the utmost vigor not only those who arrogate to themselves the art of divination, regardless of whether it is to recover stolen goods or for other purposes, but also those who employ superstitious actions, words or incantations or similar questionable practices. It is also necessary to inquire especially of the local sources and such folk concerning the old women, whose advice is commonly sought in such matters, and the blacksmiths in the countryside. Further, to search out the places where the supernatural arts are sometimes practiced

and used. [...]

[Our] officials shall have this mandate together with the appendix read out from the pulpit twice a year, once at Christmas and again around or after Pentecost.

[...] Given and announced in our city of Munich under the stamp of our privy seal, the twelfth day of February in the year of our Lord 1611.

[Appended is a detailed survey of superstitious, magical practices.]

A Catalogue and register of some of those arts and divinations as well as superstitious practices and objectionable beliefs forbidden by this present mandate so that others, which are not specified, might easily be recognized and evaluated.

[The mandate concludes with sixteen articles that establish detailed punishments. Devil worship is threatened with death by fire (Art. 1), those who call on the Devil without worshipping him as God shall “only” be beheaded (Art. 2). Further examples:]

Article 3: The fortune tellers, sorcerers, masters of the black arts and other rabble, who visit people in their homes or elsewhere in order to prognosticate or practice and perfect their sorcery and divination; also those who practice the diabolical, magical, forbidden arts to search out, discover, and reveal future events, secret or otherwise obscure, unknown, and hidden things, interpret dreams, and draw up horoscopes, etc.; and those who pass themselves off as magicians and want to be regarded as such, declaring themselves willing and ready [to help] those who come to them and inquire about such things: all those who have deliberately committed such crimes or led others astray with them shall die by the sword.

Article 4: Similarly, those who make or cause one person to love another using witches’ salves or by giving food or drink or other things [i.e., using love potions] or conversely incite envy and hatred between people by these or other magical means; nor less those who bewitch men and women, whether by giving them something or by mystic association or in other ways, so that they become permanently disabled and barren, or are deprived of their health; and those who inflict dangerous and deadly diseases on anyone through witchcraft and sorcery shall also be executed with the sword and, depending on the circumstances, [their bodies] shall in some cases subsequently be burnt to ashes.

Article 5: All those who go or run to sorcerers, fortune-tellers, and others as listed above or summon them to ask their advice, believe them, applaud them, and make use of their help and counsel without any serious injury that would be punishable by death ensuing shall be banished from the land in perpetuity, and their goods and possessions shall become the property of the state. [...]

Article 7: The man or woman who—not seriously, but only out of curiosity or for amusement and entertainment—shows their palm to gypsies, fortune-tellers, and others as the opportunity arises, and asks them to look at [their hands] and tell their fortunes, and one actually knows that they have done this, shall either be put in jail on bread and water for a whole month or sent to work on a building project or the like in return for only the barest necessities of life, or set in front of the church on a Sunday or holiday, as mentioned earlier, to be disgraced before and derided by everyone or to take their punishment in the stocks with the rod once or twice. If there should be reasons or circumstances why the punishments laid out above cannot take place, then an appropriate and proportionate fine shall be determined and levied on the perpetrator. [...]

Article 10: In addition to the commensurate punishment of death by fire and confiscation of their property, those who not only call on, worship, and honor the Devil as God, but also injure or harm people, animals, or crops with sorcery shall also be branded on the body with red-hot tongs or

something similar once, twice, or more often depending on the nature of their crimes before they are put into the fire. [...]

Article 15: Alchemy and making gold out of something that is not gold and silver out of something that is not silver [...] shall [...] be completely and utterly forbidden herewith, and the transgressors of this prohibition shall be considered contemptible and incompetent by everyone and shall be punished by a considerable fine (possibly with an appropriate discount depending on their ability to pay) or, failing this, with imprisonment, exile, etc.

Source of original German text: Wolfgang Behringer, ed., *Mit dem Feuer vom Leben zum Tod. Hexengesetzgebung in Bayern*. Munich, 1988, pp. 165–70; reprinted in Bernd Roeck, ed., *Gegenreformation und Dreißigjähriger Krieg 1555–1648*. Deutsche Geschichte in Quellen und Darstellung, edited by Rainer A. Müller, Volume 4. Stuttgart: P. Reclam, 1996, pp. 160–68.

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