

# THE PIG THAT WAS NOT CONVICTED OF HOMICIDE, OR: THE FIRST ANIMAL TRIAL THAT WAS NONE

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There is hardly a subject regarding animals in legal history that will draw the reader's attention in as assuredly as animal trials. They are just so scandalously and seemingly irrational, perfectly fitting our desire to feel more enlightened than previous times. Add a pinch of the brutish details of the ensuing executions and what emerges is dark age gore porn at its finest. Unsurprisingly, animal trials have been used in many dubious pamphlets and other such publications as their selling point. Yet, even when recently reading Joyce E. Salisbury's impressively concise and – in general – highly respectable treatise on animals in the European Middle Ages, I tripped over a certain fallacious point, which I have seen time and time again. Introducing the chapter "Animals on trial", Salisbury writes:

In 1266, at Fontenay-aux-Roses, near Paris, a pig was brought to trial. This is the first record we have of a mammal put on trial for murder. The pig was convicted of eating a child and was sentenced to be publicly burned [...] the court treated this as a criminal matter in which the pig had the free will to choose to commit homicide, so it was solely responsible for its acts and punished accordingly.<sup>1</sup>

The only source Salisbury gives for this incident is, as per usual, E. P. Evans' 1906 work *The Criminal Prosecution and Capital Punishment of Animals*, in which he most vaguely states that "[i]n 1266, at Fontenay-aux-Roses, near Paris, a pig convicted of having eaten a child was publicly burned by order of the monks of Sainte Geneviève"<sup>2</sup>. This account by Evans has frequently been cited as the first recorded instance of an animal trial in

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<sup>1</sup> Joyce E Salisbury, *The Beast Withing: Animals in the Middle Ages* (2<sup>nd</sup> edn, Routledge 2011) 108.

<sup>2</sup> E P Evans, *The Criminal Prosecution and Capital Punishment of Animals* (reprint of the 1<sup>st</sup> edn 1906, Faber and Faber 1987) 140.

medieval France, not only in English<sup>3</sup>, but also in German<sup>4</sup> language scholarly literature. Even in a French treatise on animal trials, his account can be found.<sup>5</sup>

Evans was not the first to discover the topic of animal trials.<sup>6</sup> He was, however, by far the most influential scholar writing about it, as almost everyone coming afterwards heavily relied on his work.<sup>7</sup> A notable exception being the 1937 dissertation by Hans Albert Berkenhoff, who lists Evans in his bibliography, yet barely quotes him.<sup>8</sup>

So where did Evans get the story of the nasty pig from? While he does not indicate a source in the actual text, he rectifies this in an appendix chronologically listing – supposed – cases of the prosecution of animals, where he refers to the French historian Jean “L’abbé” Lebeuf (1687-1760).<sup>9</sup> The latter cites an unnamed writer that lived “vers l’an 1300”<sup>10</sup> as follows:<sup>11</sup>

En 1266, dit-il, ou environ, fut pris un porcel qui avoit mengié I enfant chez Eftienne le Camus: & fu ars en la Cour au Mere sainte Geneviefve à Fontenei, présent Frere Guerin leur Chamberier, Guillaume le Seriant, Aubert le Mere, Eftienne le Camus, Marie sa femme.<sup>12</sup>

The same account in a slightly different, abridged version – the year being 1268 – is recorded in the “Glossarium” of Charles du Fresne, sieur du Cange (1610-1688):<sup>13</sup>

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<sup>3</sup> A few examples apart from Salisbury: Paul Schiff Berman, ‘Rats, Pigs and Statues on Trial: The Creation of Cultural Narratives in the Prosecution of Animals and inanimate Objects’ [1994] NYU L Rev 288, 298; Katie Sykes, ‘Human Drama, Animal Trials: What the Medieval Animal Trials can teach us about Justice for Animals’ [2011] Animal L Rev 273, 281; Patrick J J Phillips, *Medieval Animal Trials: Justice for All* (The Edwin Mellen Press 2013) 17; Allie Terry-Fritsch, ‘Animal Trials, Humiliation Rituals, and the Sensuous Suffering of Criminal Offenders in Late Medieval and Early Modern Europe’ in Heather Graham and Lauren G Kilroy-Ewbank (eds.), *Visualizing Sensuous Suffering and Affective Pain in Early Modern Europe and the Spanish Americas* (Brill 2018) 57 et seq.

<sup>4</sup> E.g.: Wolfgang Schild, *Folter, Pranger, Scheiterhaufen: Rechtsprechung im Mittelalter* (Bassermann 2010) 185; and the current standard reference: Peter Dinzelbacher, *Das fremde Mittelalter: Gottesurteil und Tierprozess* (2<sup>nd</sup> edn, wbg Academic 2020) 158 and 252.

<sup>5</sup> David Chauvet, *La personnalité juridique des animaux jugés au Moyen Âge* (L’Harmattan 2012) 153.

<sup>6</sup> Coming before him, e.g.: Karl von Amira, ‘Thierstrafen und Thierprocesse’ [1891] Mitteilungen des Instituts für Österreichische Geschichtsforschung 545.

<sup>7</sup> See Peter Dinzelbacher, supra note 4, 151.

<sup>8</sup> Hans Albert Berkenhoff, Tierstrafe, Tierbannung und Rechtsrituelle Tiertötung im Mittelalter (Heitz & Co 1937).

<sup>9</sup> E P Evans, supra note 2, at 266.

<sup>10</sup> Translation: “around the year 1300”.

<sup>11</sup> Jean Lebeuf, *Histoire du Diocese de Paris, Tome IX*, (Prault Pere 1757) 400 et seq.

<sup>12</sup> Translation: “In 1266, they say, or circa, a pig which had eaten a child of Eftienne le Camus was apprehended: & was burned in the court(yard) by the Steward (of) Saint Geneviefve in Fontenay, being present Brother Guerin, their chamberer, Guillaume le Seriant, Aubert the Steward, Eftienne le Camus, Marie his wife.”

<sup>13</sup> Charles du Fresne, sieur du Cange et al. (eds), *Glossarium mediae et infimae latinitatis* (new edn 1883-1887) vol IV, ‘HOMICIDIA, de animali’ 214.

L’an de grace 1268. fu pris à Fontenai un pourcel, qui avoit mengié un enfant, ... et fu ars en la court au mere de<sup>14</sup> S. Genevieve à Fontenai.<sup>15</sup>

Evans seems not to have known this version. Curiously, however, the aforementioned Berkenhoff comes to the same conclusion as him, on the basis of du Cange.<sup>16</sup> Although Berkenhoff only calls the incident an animal punishment (“Tierstrafe”), this is his terminology for a secular animal trial in distinction from ecclesiastical ones leading to the proclamation of anathema on pests and vermins (“Tierbannung”).<sup>17</sup>

Esther Cohen, who utilizes both Evans and Berkenhoff, and even lists their primary sources in the respective footnote, adheres to their interpretation as a trial as well. Sadly, Cohen does not elaborate on her own examination of the records transmitted by Lebeuf and du Cange and on how she came to see a trial in them.<sup>18</sup> She seems to rely solely on two compilations of customary laws that mention animal trials and which Cohen invokes as vaguely correlated to the case at hand.<sup>19</sup>

From the fact that animal trials occurred *per se*, one cannot, however, infer that every instance of the termination of a dangerous animal was in fact a criminal trial, even if the records give no indication whatsoever of it. The legal pluralism of the Middle Ages, the “thick interweaving of norms”<sup>20</sup>, and the great variation between places, strictly prohibit such hasty generalisations. A certain custom of one village might not have been applicable even in the next one, while another kind of legal authority in the very same place might have applied a whole other set of rules. And indeed, in my appraisal, the primary accounts contain nothing to support the notion that the pig was formally charged and put on trial in the matter at hand.

The “Cour” is not some kind of monastic tribunal as I figure Evans read the report in Lebeuf (“[...] by order of the monks of Sainte Geneviève”<sup>21</sup>). The preposition “en” reveals it to be a place, namely an open place, the court as in “courtyard”, where the pig was burned. Still, in contemporary French, the term can either mean a judicial body or a courtyard. The former meaning would not fit into the structure of the sentence, whereas the latter perfectly does. From the fact, that the “Cour” is addressed via the direct article “la” we learn that there appears to have been only one such place in Fontenay. Hence, “la Cour” refers to something like a “village square”.

While this would naturally have been the place to – *inter alia* – hear lawsuits or hold criminal proceedings in Fontenay, no trial can be inferred from this circumstance

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<sup>14</sup> This “de” is missing in the version transmitted by Lebeuf, thereby making it a little confusing to determine the relationship between “Mere” and “fainte Geneviefve”. With the “de” being in its expected place in this version, we can be sure that inserting an “(of)” into the translation was correct.

<sup>15</sup> Translation: “In the year of grace 1268. a pig that had eaten a child was taken in Fontenai, ... and was burned in the court(yard) by the Steward of S. Genevieve in Fontenai.”

<sup>16</sup> Hans Albert Berkenhoff, *supra* note 8, 26.

<sup>17</sup> *Ibid.*, 5.

<sup>18</sup> Esther Cohen, ‘Law, Folklore and Animal Lore’ [1986] *Past & Present* 6, 20.

<sup>19</sup> *Ibid.*

<sup>20</sup> Antonio Padoa-Schioppa, *A History of Law in Europe: From the Early Middle Ages to the Twentieth Century* (Caterina Fitzgerald tr, Cambridge University Press 2017) 177; more specifically for France see *ibid.*, 184 et seqq.

<sup>21</sup> E P Evans, *supra* note 2.

alone. The “village square” would have typically served a wide array of “public” functions. Most importantly, it is safe to assume that it was the only location encompassing enough open space so that one could light a fire the size of a stake without risking setting the whole of Fontenay ablaze.

To no more avail could the people present at the burning be construed to constitute a judicial body. The chronicler quoted by Lebeuf appears to list them as witnesses like many medieval sources do, perhaps to demonstrate credibility or perhaps out of an interest for these persons. Without more context, it is difficult to tell. The account contained in the “Glossatorium” does not mention them at all, anyway. Presumably because the people present at the incineration were not considered important, unlike a tribunal would have been. It must be conceded, however, that there is no certainty regarding the question whether they were already lacking in the original source or were cut in the editing process of the “Glossatorium”. Yet, given the closeness of both records, even if the latter were the case, it is improbable that the (hypothetical) cut out depiction of people present in du Cange’s source would be substantially different from the one quoted by Lebeuf and, thus, allow for a different conclusion.

One particular Person merits closer attention: The “mere de S. Genevieve” / “Mere sainte Geneviefve”, who was responsible for burning the pig and, probably, for its prior apprehension albeit the latter is not completely certain from the sources. Their wording could be construed in the way that first, unspecified people apprehended the pig and he then only burned it. Anyway, the pig’s incineration is the crucial point here. Perhaps we can deduce the underlying legal nature of the affair from the fact who was orchestrating it.

“Mere” is a spelling variant of *maire*. Unlike today, in the Middle Ages, a *maire* was not the peasants’ representative for self-governance and to the outside,<sup>22</sup> but an agent of the feudal master entrusted with the domain’s administration<sup>23</sup>. Hence, while contemporary French *maire* and English *mayor* are near perfect equivalents, a more fitting, functional translation of the medieval *maire* would be *steward*.<sup>24</sup> The steward who oversaw affairs in Fontenay on behalf of the abbey of St. Genevieve was a man named Aubert, as we learn from the record transmitted by Lebeuf: He appears in the list of people present at the incineration as „Aubert le Mere“.

The office of *maire* or steward was not a strictly uniform institution, there were differences from one to another. Thus, the exact details of said Aubert’s powers and responsibilities remain blurry. Yet, typically, a *maire* would be responsible for *inter alia* cultivating his lord’s lands, caring for the forests, levying taxes (and organizing their shipment to the master), orchestrating the corvée,<sup>25</sup> and generally keeping “good order among the tenants”<sup>26</sup>. This usually included holding the jurisdiction over minor

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<sup>22</sup> Nathalie Verpeaux, ‘Maires, prévôts, doyens, les intermédiaires entre seigneurs et exploitants: À propos du temporel des dames d’Autun (XIII<sup>e</sup>-XIV<sup>e</sup> siècles)’ [2011/2] *Histoire & Sociétés Rurales* 7, 16.

<sup>23</sup> Marc Bloch, *Feudal Society: Volume 2* (L A Manyon tr, Phoenix Books: The University of Chicago Press 1964) 337.

<sup>24</sup> See Ibid, 338: “[...] the *maire*, the lord’s steward [...]”; Jane Cuyler Borgerhoff, ‘Mayor’, *Dictionary of the Middle Ages* (Charles Scribner’s Sons 1987) vol VIII, 234: “[...] appears most often as the steward [...]”.

<sup>25</sup> Marc Bloch, supra note 23, 337; Nathalie Verpeaux, supra note 22, 17 et seqq and 29 et seqq.

<sup>26</sup> Marc Bloch, supra note 23, 337.

offences,<sup>27</sup> but some stewards even presided over “high justice”<sup>28</sup>. In essence, the position combined various executive and certain judicial functions to varying degrees.

Therefore, a scenario in which Aubert had previously indicted and convicted the pig in a trial before lighting the stake is a possibility. However, considering that the sources do not include a single word to hint in this direction as well as considering that the emphasis of a *maire’s* tasks and powers lay on executive administration, it is a very unlikely scenario. The role Aubert played in the affair of the homicidal pig was probably comparable to a modern “chief of police” who puts down a dangerous animal. Although, admittedly, a *purely* precautionary measure alone seems at first insufficient to explain the pig’s incineration as there would have been less extravagant ways to ensure that it will not strike again.

A wish for revenge, for inflicting pain on the loathsome creature might have come into play. One may even call this a *non-judicial* punishment. But then again, the pig might have been clubbed to death without any ado when it was caught and only afterwards burned. The records remain entirely obscure on this point and in contrast to a criminal trial, it would not be a big thing to omit.

Most likely, however, the pig was delivered to the flames because it was considered “impure” after it had eaten human flesh. Incinerating the pig’s body may have served a *second precautionary* goal, namely, to prevent anyone and anything from consuming the carcass and thereby further spreading the impurity. Burying the cadaver could have been regarded as polluting the land. Presumably going back to the influential mosaic law<sup>29</sup> proscribing the meat of an oxen who had gored a man or a woman to death, killing a human alone was in other cases enough to render an animal impure in the eyes of a medieval spectator.<sup>30</sup> Doubtless, eating from the victim’s flesh only made it more abominable. An akin mosaic<sup>31</sup> principle of impurity comes to light, when medieval (and early modern) legal sources command that animals which had been abused for bestiality be put to death.<sup>32</sup> Likewise, in today’s times, few would want to eat the meat of a pig that had previously nibbled on a child and we would frown upon someone who did. The same is probably true for products from an object of bestiality.

Besides this, conducting the incineration rather ceremoniously at the “village square” in the presence of the parents and other members of the community may possibly also have been a way of coping with the trauma that a child from the community had been killed and devoured by a pig. While the need to extinguish the impurity alone would already make a strong case for burning the animal, this form of disposal might, in addition, have served yet another – subconscious – purpose of inducing healing through public ritual. This, however, is where things become very speculative.

To conclude, there is no evidence of an actual, formal trial and the pig need not in the slightest have been considered a criminal perpetrator. While the possibility of an unspoken animal trial looming *between the lines* of the records cannot be strictly ruled

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<sup>27</sup> Nathalie Verpeaux, *supra* note 22, 18 and 31.

<sup>28</sup> Jane Cuyler Borgerhoff, *supra* note 24, 234.

<sup>29</sup> Exodus XXI,28.

<sup>30</sup> Karl von Amira, *supra* note 6, 557 et seq and 591 et seq.

<sup>31</sup> Leviticus XX,15 et seq.

<sup>32</sup> Karl von Amira, *supra* note 6, 556.

out, nothing *in the lines* does support it. On the contrary, there are more likely scenarios in harmony with what the primary sources in fact tell us. Hence, scholars should stop uncritically retelling the myth that in 1266/1268 a pig was charged with homicide and sentenced to burn. It would be laudable if, instead, more people put further examples of animal trials under scrutiny to uncover which of them need to be eliminated from the canon. Eva Schumann, for instance, investigated reports from early modern times in Germany a little more than a decade ago – with rather disenchanting results.<sup>33</sup> Most importantly, however, it is time to redeem the nasty pig of Fontenay from the defamation of being a convicted criminal and let it finally rest in peace...

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<sup>33</sup> Eva Schumann, “Tiere sind keine Sachen“ – Zur Personifizierung von Tieren im mittelalterlichen Recht‘ in Bernd Herrmann (ed), *Beiträge zum Göttinger Umwelthistorischen Kolloquium 2008 – 2009* (Universitätsverlag Göttingen 2009) 190 et seqq.