

# THE BURNING

by Duncan Ley

-SCENE EXCERPT-

## ACT TWO - SCENE TWO.

The Bamberg Courthouse, four days later.

(PHILIPP, FRANCIS *and* BENEDICT *are seated behind a table, waiting. Two GUARDS stand behind them*)

BENEDICT They are late.

PHILIPP Yes. (*after a while, BERGËN, CLAUDIO, ERNST and FREDERICK enter, laughing. The SCRIBE and the BAILIFF walk behind. PHILIPP, FRANCIS and BENEDICT stand up*)

BERGËN That is quite extraordinary, Doctor.

ERNST Yes, I thought it would amuse!

CLAUDIO Very good, Ernst. All may sit. (*BERGËN and CLAUDIO take their seats at the magistrate's table. The SCRIBE takes up his position. FREDERICK sits down behind the prosecution table. ERNST walks over to the defence table*)

ERNST (*enjoying himself*) Good morning, gentlemen. I hope we did not keep you waiting.

PHILIPP You know, Ernst, I have taken confessions from diseased whores who would not sell themselves as you have done.

ERNST Now, now, Philipp. Remember your manners. You may need them very soon. (*he takes his seat next to FREDERICK*)

BERGËN Before this trial begins let me make it clear that although the royal decree allows a defence to be mounted, accusations to be made public and that the court cannot confiscate property, it does not demand the abolishment of torture. Therefore, I am quite prepared, at the prosecution's request and if I see no further use in ordinary legal proceeding, to allow further imprisonment and torture.

CLAUDIO With that in mind, I suggest strongly the accused refrains from his earlier display of refusing to answer any question put to him by the prosecution. Am I understood?

FRANCIS Yes, your Honour.

BERGËN Everyone here is familiar with the indictment? (*there are nods of approval*)

PHILIPP Yes, your Honour.

BERGËN Then it will remain as previously read. (*FREDERICK, ERNST, PHILIPP, FRANCIS and HENRY sit*) I have decided that the defence will present their arguments first.

BENEDICT (*standing*) Your Honour, this was not in your instructions of conduct, and I needn't remind you that prosecution arguments are always –

BERGËN You are not ready to defend yourself?

BENEDICT We are ready, your Honour, but –

BERGËN Then begin your defence!

BENEDICT Very well. (*he sits down. FRANCIS stands*)

FRANCIS     Your Honour. I am a witch and a heretic. I performed sexual intercourse with a Succubus. I did many other things to spite and slander the word of God. (*he pauses*) These are the charges against me. I am in the unique position to offer some defence against these charges. Others have not been so fortunate. One of those less fortunate was Madeline Schiller, my wife. In one week she was arrested, tried, tortured and executed. In one week. It was the quickest trial and execution of a witch Bamberg has ever seen. And now I face a similar fate, accused of similar crimes. Crimes against God. Crimes that are so extraordinary in their nature, that no innocent man or woman may witness them. Crimes that do not exist. So how does one defend themselves against crimes that does not exist? How can one refute hearsay when hearsay is all that is needed to condemn you? I do not know. I am a lawyer, your Honour. That is my profession. I can only argue for and against evidence that is real, events that have occurred. Therefore, I will use the court transcripts of Madeline Schiller's trial as my defence. It is my intention to prove she was imprisoned without cause; tried without an opportunity to prove her innocence; tortured into confessing her guilt when guilt could not otherwise be reasonably established; and executed in order that the Church and the state would gain the expenses and share of property of her husband, and for no other reason. That is what I will prove. And in doing so, I will convince this court that the crimes of which I stand accused are the fabrications of a twisted, illogical and ultimately corrupt doctrine. My wife should never have been arrested, never have been tortured, never have been burnt at the stake. If I can prove that, then surely, your Honour, you must grant the same conclusion in this case. (*BERGËN and CLAUDIO confer briefly*)

BERGËN     That is a most unusual defence, but if Doctor Vasolt is in agreement, then so is this court.

ERNST       (*standing*) Your Honour, I have made aware my feelings toward this trial. The accused stands here and slights the word of the Church, the Commission and the Lord our God. However, I am confident righteousness will prevail against such an unwarranted attack. Therefore, the court has my reluctant agreement.

CLAUDIO     Francis Schiller, you may begin your defence.

FRANCIS     (*taking his seat*) Thank you, your Honour. Doctor Vasolt, I will examine you now.

ERNST       If you must. (*he takes the stand. FRANCIS vacillates, checks some notes. ERNST finds this slightly disconcerting*) You are just going to sit there?

FRANCIS     You are a Doctor of Law, are you not?

ERNST       Yes.

FRANCIS     And the Commissioner of Bamberg for the purposes of conducting investigations and trials into all reports of heresy and witchcraft.

ERNST       Yes.

FRANCIS     You are considered an expert in the field of heresy?

ERNST       I would agree.

FRANCIS     How many witches has your Commission tried since its inception?

ERNST       Over four hundred.

FRANCIS     Can you be more specific?

ERNST       Four hundred and two.

FRANCIS From those tried, how many have been executed?

ERNST Four hundred and one.

FRANCIS And one?

ERNST One prisoner escaped before execution.

FRANCIS So, from four hundred and two suspects you found all of them guilty of the accused crimes?

ERNST Yes.

FRANCIS That is a remarkable success rate, don't you think?

ERNST I am proficient in my work.

FRANCIS Very proficient, yes. So proficient in fact that from all arrested and tried not one has been found innocent. Not one. How do you account for that?

ERNST They were all guilty of crimes against God.

FRANCIS Well then why haven't you arrested everyone? I believe that crimes against God are defined as sinful acts, and the Church says that we all commit sinful acts.

ERNST (*slightly amused he has been caught out*) I will clarify my answer. They were guilty of crimes against God involving an act which, by the power of a contract entered into with the Devil, some wonders are wrought which pass the common understanding of man.

FRANCIS Ah, Martin Del Rio's classic definition of witchcraft, I believe.

ERNST Yes. From the *Disquisitionum Magicarum*.

FRANCIS But he is a Jesuit. You are not.

ERNST We are all children of God facing a common enemy.

FRANCIS I see. The common enemy being the witch.

ERNST And the heretic.

FRANCIS And the heretic. But heresy is different from witchcraft. (*picking up a book*) Canon Law defines heresy as (*he reads*) 'religious error held in wilful and persistent opposition to the truth after it had been defined and declared by the Church in an authoritative manner'. (*he puts the book down*)

ERNST The witch commits heresy by opposing the truth of the Church. That is how the two crimes may be viewed together.

FRANCIS And can one trust the word of a heretic? Or a witch?

ERNST Trust the word of a heretic? Don't be ridiculous.

FRANCIS I will ask the question once more, and please provide a more suitable answer this time. Can one trust the word of a heretic or a witch?

ERNST Absolutely not. They are in league with the devil.

FRANCIS (*repeating the answer*) Absolutely not. They are in league with the devil. In order to proceed, I will take the case of Madeline Schiller. She was tried for witchcraft and heresy and executed when found guilty.

ERNST How can you use that case to sustain your argument when you do not have the case transcripts?

FRANCIS But I do. These are the official scripts.

ERNST I see. Your father must have provided them.

FRANCIS Now Doctor, Madeline was accused of attending a witches' sabbat and having sexual intercourse with a devil. Those are her apparent crimes. From your knowledge, who accused her of these acts?

ERNST The Burgomaster, Johannes Junius.

FRANCIS Correct. You have an excellent memory. He was found guilty of heresy and witchcraft. Do you believe he was a witch and a heretic?

ERNST He was found so by this very court.

FRANCIS That was not my question. Do you believe he was a witch?

ERNST I have no doubt he was.

FRANCIS But if Johannes Junius was a witch, then why did the Commission act on his word?

ERNST I don't understand.

FRANCIS Johannes Junius is condemned as a witch, and you state the word of a witch is not to be trusted. So why did the Commission trust Johannes' word that Madeline was at a sabbat and had intercourse with a devil?

ERNST Well, he confessed it.

FRANCIS But he confessed to being a witch!

ERNST Yes.

FRANCIS Then his word could not be trusted! So why was my wife imprisoned?

ERNST She was accused of having intercourse with an Incubus!

FRANCIS By another witch!

ERNST Well how else would the Commission discover her crime?

FRANCIS My point exactly. Your Honour, it is clear the imprisonment of Madeline Schiller was instigated on false pretences, hereby confirmed by Doctor Ernst Vasolt in his own testimony.

ERNST I have confirmed nothing.

BERGÈN I will be the judge of that. An interesting point you raise, Schiller. I see the contradiction.

FRANCIS Thank you, your Honour. Doctor Vasolt, you are familiar with Jean Bodin?

ERNST Of course.

FRANCIS (*returning to his table*) Please inform the court of your knowledge.

ERNST Jean Bodin was a French Professor of Roman Law and a Trial Judge.

FRANCIS And among his published manuals, which - in your opinion - has had the greatest influence on the conduct of witch trials in Germany?

ERNST The *Démonomanie des Sorciers*.

FRANCIS *The Demonomania of Witches*. I would agree. And your opinion of the

manual?

ERNST        Definitive and instructive.

FRANCIS      Definitive and instructive. Interesting. So the court would gather you ascribe to Bodin's recommendations?

ERNST        Certainly.

FRANCIS      Well let us examine! Let us examine his recommendations for conducting witch trials. (*he picks up a book from the table*) Bodin writes, (*he reads*) 'Wherefore it is that one accused of being a witch ought never to be fully acquitted and set free unless the calumny of the accuser is clearer than the sun, inasmuch as the proof of such crimes is so obscure and so difficult that not one witch in a million would be accused or punished if the procedure were governed by the ordinary rules.' (*he closes the book and puts it back on the table*) For the court, Bodin is effectively stating that, one; once accused of being a witch a person should never be found innocent, and two; if we tried witches as we do other criminals not one witch in a million would be found guilty. I repeat, not one witch in a million. Doctor Vasolt, why would we find not one witch in a million guilty?

ERNST        Because their crimes are, by their very nature, difficult to prove.

FRANCIS      Would it be fair to say 'impossible to prove'?

ERNST        No, I wouldn't say impossible.

FRANCIS      I would disagree. In the case transcripts of Madeline Schiller, under torture she confessed that in order to attend a sabbat, she would fly on her broomstick through the air some fifty miles. She confessed one of the sabbats she attended was on April 19th, 1628. But on that night my wife and I were entertaining guests from Treves. So how could she have been at a sabbat? At least five people, including myself, can attest to her being present on that night.

ERNST        She must have bewitched the household before leaving. Your Honour, it is a common occurrence.

FRANCIS      I can prove my wife was with me on April 19th. Now, you prove that she wasn't.

ERNST        I cannot prove it without interrogating her.

FRANCIS      But I can. There lies the difference. You cannot prove a single crime without resorting to interrogation.

ERNST        You are forgetting that she confessed! She made a clear, recorded confession she committed acts of sacrilege against God! She confessed she attended a sabbat and had intercourse with the devil! She betrayed you with her lustful appetite!

FRANCIS      How can you call it a confession when someone is forced by torture to call out the very names you suggest to them!

ERNST        But you treat witchcraft as you would stealing, or philandering. You cannot compare earthly crimes to crimes against God! Just as you cannot compare our methods of examination against yours. What, you expect me to just ask if they are guilty or not, and act upon their answer?

FRANCIS      Of course not!

ERNST        And how could one possibly witness a supernatural act? Bodin was right. You cannot examine witchcraft under the ordinary rules. If we did the accused, however guilty,

could flatly deny all charges and, under your system of justice, be set free!

FRANCIS     Legal examination is not simply asking whether they're guilty or not. By force of evidence, persuasion and deduction we arrive at the truth.

ERNST        At the truth! Do not delude yourself that your only purpose is to find the truth. When a witness takes the stand they risk being tricked, by you, into betraying themselves, their family and their friends. We are not so different, you and I. We are after the same result. Our methods separate our professions, not some concept of truth.

FRANCIS     Our methods? Let us examine your methods. I submit to the court Madeline Schiller confessed to crimes she did not commit due to the extreme nature of the torture inflicted upon her. Doctor, tell the court what tortures await a prisoner.

ERNST        I can tell you what happened to your wife. The transcript of her torture is there on the table.

FRANCIS     I do not want to hear that.

ERNST        Very well. Later, perhaps.

FRANCIS     What tortures may await a prisoner?

ERNST        There are many, and they are varied.

FRANCIS     Can you present to us a routine program of torture?

ERNST        Routine? Very well. It would include the rack, thumbscrews, stabbing and piercing, water emersion, strappado-

FRANCIS     *(taking from the prosecution table the torture transcript)* And after examining this document, would you describe my wife's torture as fairly routine? *(ERNST does not answer)* Did you hear? Was it a routine torture?

ERNST        No, it was not.

FRANCIS     It wasn't routine?

ERNST        She was a very difficult case. She withstood much punishment.

FRANCIS     Then how would you describe her torture?

ERNST        It was brutal. Often she could not even scream, she was in so much pain. Yes, it was one of the more severe tortures I've the unpleasant duty to witness.

FRANCIS     *(taking the paper from him)* And have you ever known any person subjected to these atrocities who has not, finally, confessed?

ERNST        A few.

FRANCIS     What, you have subjected them to all this *(holding up the script)* and more, and they have never confessed?

ERNST        There have only been a few. Your wife was not one of them.

FRANCIS     And what has happened to these few? No wait, let me guess. As they have not confessed and you have had no proof against them, they have set been free. Am I right?

ERNST        You know the answer.

FRANCIS     Tell the court! Am I right?

ERNST        No, you are not right.

FRANCIS But what has happened to them then?

ERNST They would've been executed.

FRANCIS I'm confused. There is no proof of their crime, and they do not confess. Why execute them?

ERNST For refusing to co-operate with the Commission.

FRANCIS For refusing to co-operate?

ERNST That is correct.

FRANCIS They are executed for refusing to co-operate. Let us say then, for the sake of argument, that the accused, before torture has even begun, confesses to the crimes. They are not tortured then surely, are they? Well? Are they?

ERNST Yes.

FRANCIS But they have already confessed! Why bother torturing them?

ERNST They may be admitting to their crimes to avoid the punishment of torture.

FRANCIS So? It's the confession you want, isn't it?

ERNST That is not the point.

FRANCIS Let the court understand this properly. You have a prisoner. If he or she does not confess, they are tortured. If they do confess, they are still tortured. The prisoner confesses during torture, they are executed. But, if the prisoner by some act of supreme will, does not confess during torture, they are still executed. (*turning to ERNST*) Have I got it right?

ERNST (*after a pause*) Yes.

FRANCIS So, regardless of whether they are innocent or guilty, regardless if there is little or no proof of their crimes, regardless whether you can force them into confessing or not, the end result is the same. They will be tortured and they will die. Wouldn't you agree? Isn't that the reality?

ERNST Yes, but-

FRANCIS (*cutting him off*) Thank you. The court understands the process. So Madeline would have died even if she hadn't confessed?

ERNST Most probably.

FRANCIS Most definitely. Tell me Doctor, have you ever undergone the tortures yourself? Just to – how should I put this – to see how they work?

ERNST Of course not.

FRANCIS But you would agree that the idea of torture is principally to cause pain and suffering?

ERNST The idea of torture is principally to encourage people to confess to acts against God!

FRANCIS But pain is instrumental in torture?

ERNST Of course it is!

FRANCIS Do you employ any other methods of deduction to discover whether a person is innocent or guilty?



ERNST           Well, we question them without torture first.

FRANCIS       How very generous of you! In the case of my wife, was anyone besides her questioned?

ERNST           Probably not.

FRANCIS       Was an investigation of my house conducted?

ERNST           I imagine, no.

FRANCIS       So, other than torture, how else do you discover the truth?

ERNST           Torture is the most efficient way to discover the truth.

FRANCIS       Then how could my wife do anything but confess what you told her to? There was no interest in discovering the truth. Apart from what the Commission wanted to hear, all else said by her in defence of the charges was dismissed as if it had never been said. She had no choice but to confess and die quickly. Did she?

ERNST           *(losing his patience)* You read these records of torture and weep for the loss of what you see as humanity. But you fail to see, by this, *(holding up the transcript)* we ensure the survival of their soul. And however brutal you may think torture is, compared with the eternal fires of Hell it is little more than being burnt by a candle. The witch is lost in this life, but through the church and their confession they are saved for the next!

FRANCIS       I will repeat my question. Madeline had no choice but to confess and die quickly. Did she?

ERNST           If you will not listen to my reasoning I refuse to answer any more questions.

BERGÈN        That is not your decision to make.

FRANCIS       Then by rights under your convention I should torture you until you do answer. But no, I have no desire to torture you.

ERNST           That is because you are weak.

FRANCIS       Is it? And your desire to apply torture makes you strong?

ERNST           You turn my words against me.

FRANCIS       Do I? For the accused there is no way out. They are condemned from the first moment. So why bother spending hours, locked up in a steaming dungeon, surrounded by screams and blood, torturing those that will be found guilty anyway? You are just wasting your time! Or could it be, by hurting them, by having them under your total control, subject to your slightest whim, you find a secret enjoyment in it all? I am forced to wonder just who is on the Devil's side.

ERNST           How you mock what you know so little about. Just who do you think you are? Your sentimentality does little to disguise your self-importance.

FRANCIS       My self-importance is not the issue here. Just a few more questions, Doctor. Who pays for the trial of Madeline Schiller?

ERNST           You would, being her husband.

FRANCIS       Who pays for the torture and execution?

ERNST           You know that you pay for it.

FRANCIS       Why?

ERNST        The state should not have to finance the trial and execution of those facing the judgement of Christ for their sins.

FRANCIS      But supposing it was myself who had been tried and executed? Who would pay then?

ERNST        The cost would be confiscated from your treasury.

FRANCIS      And what would happen to my property and wealth?

ERNST        It would be surrendered to the Church, and to the State.

FRANCIS      Very profitable.

ERNST        That is of little importance. The witch has no further need for material wealth.

FRANCIS      But their families do. Think on it; an entire family reduced to poverty because of one witch. When a criminal is sentenced to prison, we don't lock their children up with them.

ERNST        Do you wish me to applaud your leniency?

FRANCIS      How long have the witch trials lasted in Bamberg?

ERNST        Nineteen years.

FRANCIS      And how much has the Church and the state confiscated in that time?

ERNST        How am I expected to know that? I don't work for the treasury!

FRANCIS      Then I will tell you. Three hundred and ten thousand florins since 1609.

ERNST        (*grudgingly*) That is possible.

FRANCIS      I could buy a small kingdom with that amount.

ERNST        The Church has to find some way to finance its services.

FRANCIS      But the Church receives taxes! So why does a witch's wealth go into your pocket?

ERNST        Because God granted them with wealth in the first place! And those who turn their back on God do not deserve to keep what He has given. It is returned to Him through the Church.

FRANCIS      Why then in the town of Cologne, where confiscation of property has been prohibited, are there virtually no witch trials?

ERNST        I cannot answer that.

FRANCIS      What, is it mere coincidence?

ERNST        I've said I don't know the answer!

FRANCIS      Yes, you do. Isn't it true the only reason you sit in wealth today is that your livelihood is funded by those you have condemned?

ERNST        I am paid for my profession, just as you are!

FRANCIS      But the more you condemn, the more you profit. Is that not the nature of your profession? Answer me! Is that not the nature!

ERNST        In the terms you put it, you force me to agree with you!

FRANCIS      And the principal reason these trials continue well past any rational semblance

of witchcraft is to sustain the expanding wealth of the Church! Yes or no?

ERNST I cannot answer.

FRANCIS Answer the question! Yes or no?

ERNST Oh, you are more than a misguided heretic, Francis Schiller, you are also a fool. You think you can trap me? You believe you can stand there and through the force of your passion convince me to cry aloud a full confession? You want an answer to your question? Then I say 'no'. These trials do not exist to expand the wealth of the church or the state. They exist because men and women like you think they are above God. You want to be the champion of the cause, don't you? The man who stood up for the people in the face of tyranny. But you also know, despite whatever you prove, Madeline won't be sitting there, clapping her hands, congratulating you. But still, you continue interrogating me because it gives you a feeling of power; a feeling you haven't felt since your wife was taken from your house, because whatever happened to her, you were powerless to prevent. And you can't bear the guilt. I'm right, aren't I? You feel guilty - guilty because you couldn't save her. So now you want to rid yourself of the guilt and replace it with power. But understand this. I can assure you all the power you think you've won back will start to slip away the moment you sit back down. Madeline will still be dead, you will remain condemned, and you will have won nothing. For now, you have no further questions to ask me, do you? Francis? Because you are finished. Because you are nothing. *(there is a long pause)*

BERGËN Do you have any more questions?

FRANCIS No. I don't.

BERGËN Then you may step down, Doctor.

ERNST Thank you, your Honour.

BERGËN The court will adjourn until tomorrow morning. Francis Schiller, we will consider your arguments on their... merits. Doctor Vasolt, tomorrow you will present the arguments for the prosecution. Guards, take the accused back to his house. That is all for today, gentlemen. *(CLAUDIO and BERGËN exit. FRANCIS is led away by the GUARDS. ERNST and FREDERICK walk over to PHILIPP and BENEDICT)*

ERNST Your son will die here tomorrow. *(he and FREDERICK exit)*

BENEDICT Pay him no mind.

PHILIPP *(sadly)* But he is right.

BENEDICT Do not say that, sir. We will win.

PHILIPP We cannot.

BENEDICT How can you believe that?

PHILIPP Because Benedict, we are fighting against our own history. What weapons do we have? None, save logic and reason. You can't fight faith with logic and expect to win. Faith will not listen. It is over, Benedict. I will lose my son. *(he exits, leaving BENEDICT sitting there, alone)*

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