

How was witchcraft ever a crime?

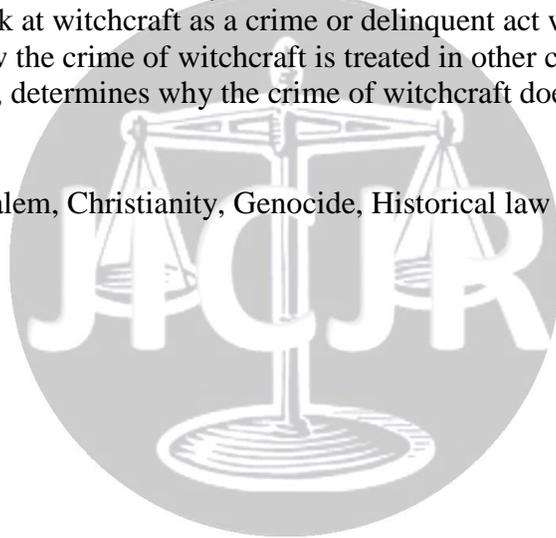
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ABSTRACT

Witchcraft has been around in the law since the time of Hammurabi, and witches are still prosecuted and persecuted today in many countries. Even with the United States and many other first world countries jaded pasts, we do not share the idea of witchcraft as a crime. We rejoice in stating that it is now a religion. Why are we not threatened by witches anymore?

Witches are said to be people who have formed a pact with the devil to gain special favors from him on earth; thereby allowing the devil to work against the community through the accused bodies. Hence, witchcraft is a crime of thought not action. Countries executed women who did not perform acts of witchcraft. They only had to confess that they formed a bond with the devil. This article chronicles the history of the crime of witchcraft, discusses why most first world countries do not look at witchcraft as a crime or delinquent act with more threat than other petty crimes; looks at how the crime of witchcraft is treated in other countries; chronicles the history of witchcraft; and, determines why the crime of witchcraft does not exist in the United States today.

Keywords: Witchcraft, Salem, Christianity, Genocide, Historical law



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INTRODUCTION – CURRENT ISSUES IN WITCHCRAFT

In a large segment of the world people are accused of witchcraft and ostracized by their communities. The morality of the community is an issue so much that the accused is said to have committed heresy or crimes against the government. In Saudi Arabia, witchcraft is still punishable by death. It is not an arcane law which still sits on the books. For instance, in 2009, a female was charged with witchcraft and beheaded in Saudi Arabia. In 2007, an Egyptian male in Saudi Arabia, was charged with witchcraft and executed. The country has even set up an anti-witchcraft unit of police. This unit was created to teach the public about the ills of sorcery and to make sure that the Saudi population do not worship another Deity. They even have banned the Harry Potter book series to keep witchcraft and sorcery away from the country. (Human Rights Watch, 2009)

Saudi is not the only country currently killing witches. Individuals circumvent the government believing that the anti-witchcraft laws are too lenient. For example, in Zambia, the punishment for committing witchcraft is about one year in prison (Zambian Code, 1994). The villagers use vigilante justice to scare away or take revenge on the suspected witches. Seven people in Zambia were killed by a group, who stated that the accused killed a local ruler. The ruler was giving a speech when he was struck down by lightning and subsequently died (Zambia Daily Mail, 2011). The death toll of victims accused of witchcraft by vigilantes in Zambia is about 150 a year. Not only Zambian villagers kill or dislocate their accused witches, Mozambique residents have, in recent years, killed 20 people accused of witchcraft this year (BBC News, 2011). In order to save people who have been accused of witchcraft, Africa developed witch camps. Witch camps are developed for women and children that have been displaced because of being driven out of their villages. Ghana's witch camps have about 1,700 people living in them. The camps were created to help the women of Ghana escape the torture and to save the displaced women and children; but now the camps have become pits of despair where famine is starting to take place because the lack of funding for these places. Ghana's Deputy Minister of Women and Children's Affairs wants to disband the camps and send the accused back to their villages (Modern Ghana News, 2011). However, the women are scared of the retaliation that they will receive if they go back to their old villages. As one part of government is fighting the despair of being accused of witchcraft, the other part of government is trying to impose harsher sentences. In South Africa, the government convened a special commission of academics to determine if they should put anti-witchcraft laws back on the books. The Ralushai Report, the result of the findings, determined that anti-witchcraft laws were needed, and these witches should be found by witch hunters or native magicians (Tebbe, 2007).

Vigilante witch hunts are currently happening in India as well. It is estimated that over 2500 accused witches have been killed in the last 15 years. These hunts are mostly in the uneducated more rural tribal areas (Vernon, 2010). The victims, mostly women, are tortured, branded, run out of town, and even killed (Niazi, 2010; Vernon, 2010). Vigilante justice has been so plentiful, and the backlash from the villagers of the accused is so brutal; a bill has been drafted that they writers believe would protect people accused of witchcraft. The proposed law states that individuals who instigate the identification of a witch can receive up to seven years in prison (Niazi, 2010).

On the complete opposite end of the sphere, Romania just created a law that would tax witches (The Church of England Newspaper, 2011). This law added witches to the group of people labeled self-employed. There were mixed opinions about this by self-acclaimed witches.

Some sent hexes to the government, and others were happy that they were now a recognized part of society (Murler, 2011).

Great Britain is talking about making the distant past witches more of martyrs. They are campaigning to pardon a witch that was jailed in 1944 for the 1735 act outlawing witchcraft (Carrell, 2007). In Lancashire, a statute of an accused witch was commissioned to be made to commemorate the 400th anniversary of her death. Parish councilor, James Starkie even said that it was their way of ridding her of the image of a witch (BBC News. 2011).

A BRIEF HISTORY OF THE CRIME OF WITCHCRAFT

The history of the crime of witchcraft goes back to the origins of the first crimes. Conjuring was frowned upon since at least 1700 BC, when the Code of Hammerabi mentioned the penalties for witchcraft in the first two laws. The first law stated that putting a “nertu” or a death spell on someone was punishable by death and in the second law talked about the trial of ordeal that would be placed on a person who was accused of casting a “Kispu” or spell against another. The Code of Hammerabi had 282 laws; one would think that the first laws written would be very important to the people or gods at that time. Many other pagan emperors had laws forbidding people from using witches and sorcery with the penalty of death (Summers, 1971). However, the first known prosecution of a witch occurred a bit later in 1300 BC (Fox, 1968).

Legal history continues to frown on witchcraft with the writings of the Hebrew *Bible*. The Hebrew *Bible* is said to have originated from Babylonian laws. It was written, many scholars say, in the 15th Century BC. There are approximately five places in the *Bible* that define witches and give the penalty for witchcraft. The most famous of these is the passage in Exodus (22:18) “thou shall not suffer a witch to live” and follows with the not as well mentioned Leviticus (20:27) which states “A man or woman who is a medium or spiritist must be put to death”. The penalty of death for witchcraft does not stop there. The Roman 12 Tables (500 BC) also made mention of witchcraft. Table number VII – Concerning Crimes – law number III states that anyone who by spell or magic harms the crops of another shall be put to death. Consensus of the literature states that the Roman republic of antiquity killed more witches than during any other era or country (Hutton, 2007).

As people started believing in Christianity, witchcraft became more of a superstition instead of a crime punishable by death. Witches were seen as the mistresses of Satan and seduced by the illusions of demons. In the 7th Century, the penalty for witchcraft was very light. The punishment for someone using spells to become animals was three years penance for being devilish. This law was put into effect by Theodore, Archbishop of Canterbury (Hansen, 1969). The *Leges Henrici* (1114), the code of King Henry I, stated that homicide by witchcraft was punishable by death (Fox, 1968), but no known charges have come from that era.

As heresy and the inquisition of it bloomed in the 13th century AD, the inquisitors lumped all of witchcraft into one main crime – that of heresy. They believed a witch drew her powers not from a love of God, but by a pact with Satan (Davies, 1947; Fox, 1968). In the 15th Century, the Pope, Innocent VIII, had appointed two Dominican Inquisitors to write a complete guide for the discovery, examination, and execution of witches. This book, the *Malleus Maleficarum* published in 1490, influenced the belief that witches were in collusion with the devil (Hansen, 1967). The suspected witch could be tried by either the secular or the ecclesiastical courts. The penalty for witchcraft, good or bad, was burning alive. The belief in the

evils of witchcraft increased exponentially within the next two centuries. It's the Calvinists of that time who considered witches to be the spreaders of the plague and who made the crime of witchcraft swell resulting in the deaths of the accused to rise into the tens of thousands. They took the passage, "thou shall not suffer a witch to live" as a virtual commandment (Davies, 1947).

In the Holy Roman Empire (Germany, Netherlands, Switzerland, Lorraine, Austria and Czech), witch hunts were beginning. The hunts took started 1560 and ended in 1680 (Midelfort, 1981). The Holy Roman Empire found their witches through illicit means. Many witch hunters were paid per witch that they found. The prison staff, torturers, judge, and executioner were paid from the accused estate. Most of the accused witches in this area were women of means (Davies, 1947). For a witch to be executed, the court had to have a confession. Therefore, the torturers helped the accused confess. If the accused did not confess under torture, she usually died in jail. The government could hold an accused in prison for as long as it wished (Currie, 1973). The number of suspected witches killed by the hands of the Holy Roman Empire is estimated between 25,000 (Levack, 2006) and 500,000 (Currie, 1973). Needless to say, during that century, the most witches died in this area than in any other part of the world (Hutton, 2007). While this witch mania was going on in Scotland and Germany in the 16th, 17th and 18th Centuries, England hardly saw any desire to rid themselves of witches. There were laws on the books since the Anglo-Saxon era. However, England did not find the need to hunt witches. (Currie, 1973).

Even though there were laws on the books since the Anglo-Saxon time and also during the Roman witch-hunts in the 16th, 17th and 18th Centuries, England hardly saw any desire to rid themselves of witches. England did not hunt witches (Davies, 1947). There were a few differences between this time in England and in the Roman Empire. In England, torture was not used unless it was by royal decree. England found witches by one of three ways. The first way was called pricking. The hunter would prick the witch in bodily marks. If the mark did not bleed, she was a witch. The second way to find a witch was by swimming the witch. The suspected witch would be bound thumb to toe on each side. If the accused drowned, she was not a witch. If she stayed afloat, she was a witch. And, the third way was finding the witch's familiar. If the witch's familiar (an animal or small human like creature) appeared sometime during the detention of the accused, she was considered a witch (Currie, 1973).

This was until Elizabeth I succeeded to the throne of England in the 16th Century (Davies, 1947). The Elizabethan statute put to death witches who bewitched someone who consequently died. Practicing witchcraft without a resulting death was considered a lesser offense with less of a punishment (Currie, 1973). Witch hunting established itself in England in the regions where returning protestant exiles and others who had returned from Calvinistic influenced areas (Davies, 1947). For these people, breaking one's faith was a very serious offense against morality (Hansen, 1967).

The crime of witchcraft in England was strengthened with the succession of Elizabeth. During King James's reign, the crime of witchcraft applied to all witches, those using powers for good or bad. Witchcraft during this time was defined as someone who made a pact with the devil to be able to obtain supernatural powers. The crime was one of mental acts instead of physical. Therefore, all one needed to be convicted of this crime was the mens rea to commit the crime. Witches were usually women and usually of the lower class. Accusers were also usually from the lower classes in England (Currie, 1973). King James I was an avid witch hunter himself and the punishment for being a witch was death. At this time, witch hunting was a very profitable business. Witch hunters were paid on the number of witches that they found within

the towns. The witches were also required to pay the court fees and pay for the use of the inquisitional tools (Currie, 1973). Before James died, he renounced the idea that witchcraft was a crime mainly due to Spanish law and influence.

Charles I succeeded James I in the early 1600's, which succession brought a new way of thinking to England. Charles I did not believe in witches and he renounced the crime of witchcraft. Witches were in turn not tried by the King's Courts and records of their executions were not kept during this time. It was not recorded if witches were persecuted in the small villages without the help of the Kings Courts. Charles wanted to renounce the law that executed people accused of witchcraft, but parliament would not rescind it. During his reign, the American Colonies were being established. In the Massachusetts and Connecticut Colonies, witches were executed. However, in Virginia, where most of the population were Royalists, witchcraft was not punished (Davies, 1947).

As areas rebelled against King Charles, witch hunting was back in full force. Determining if the accused was a witch actually was harsher to the accused than the punishment of death. The witch hunters used torture to gain confessions from the accused and many people who were accused of witchcraft died during the confession process, while jailed awaiting court, or on the gallows. During the eight years spanning 1642-1649, people were accused of being witches more than any other time in history. In the mid-1600's England's witch executions diminished until they finally ended in 1670. There are two additional reasons adding to the end of witch executions. One reason is that England had an influx of people who adhered to Stuart Royalism, who believed that the prosecution of witchcraft was wrong; while many of the people who adhered to Calvinism, who believed in witchcraft and its ties to the devil, diminished in number (Davies, 1947). Another reason that executions diminished was that judges were reluctant to execute witches (Currie, 1973). Even though execution of witches did end at this time in England, the prosecution against them did not. Blackstone (Blackstone, 1796) has two passages about witchcraft in his Commentaries. One is a passage about giving false prophecies and the other passage states:

“A sixth species of offenses against God and religion, of which our ancient books are full, is the offense of witchcraft, conjuration, enchantment, or sorcery. As to which it is enacted by 9 Geo II. c. 5. that persons pretending to use witchcraft, tell fortunes, or discover stolen goods by skill in the occult sciences, shall be punished with a year's imprisonment, and standing four times in the pillory.” (p. 434-435)

England continued to prosecute people under this act until 1950. The next year the act was repealed. The same witchcraft laws are still in effect in Northern Ireland and in Israel (Davies, 1947). All in all, During the 200 plus years of English witch hunts, the English courts only had 513 indictments for witchcraft; 112 of these resulted in death (Currie, 1968).

US HISTORY OF WITCHCRAFT

The history of witchcraft in the United States is as old as the colonies themselves. The Native American Indians believed in supernatural phenomenon and witchcraft prior to becoming influenced by any outside culture (Dennis, 1998). The practice of witchcraft also emigrated with some of the first pilgrims from England (Berger, 2005). Witches also arrived from other parts of Europe. A large settlement of German oculists settled right outside of Philadelphia (Butler,

2001). In the early 17th Century, witchcraft did exist and was widely practiced in the New England area (Hansen, 1969). Evidence of Colonists practicing and relying on the occult can be found in old farmer's almanacs. These books, which are said to be the most popular books in the colonies, contained astronomical information and calculations (Butler, 2001). The year 1630 marked a thirteen year mass migration to the New England colonies by Puritans. It has been suggested that one of the main reasons that the puritans left the protection of England was because of the witchcraft skepticism that was beginning to take hold of England. The Colony of Massachusetts Bay adopted the following statute in 1641: "If any man or woman be a WITCH, that is, hath or consulteth with a familiar spirit, they shall be put to death." Louis-Jacques (2012) connected this statute to The Old Testament of the Christian *Bible* by the following verses written prior to 700 B.C. *Exodus* 22. 18 states: "Thou shall not suffer a witch to live." *Leviticus* 20. 27 advocates the punishment. Witches ... "shall surely be put to death: they shall stone them with stones: their blood shall be upon them." *Deuteronomy* 18. 10. 11 denounces witchcraft and is where the line *consulter of familiar spirits* is delineated. "There shall not be found among you any one that maketh his son or his daughter to pass through the fire, or that useth divination, or an observer of times, or an enchanter, or a witch. Or a charmer, or a consulter with familiar spirits, or a wizard, or a necromancer." Connecticut and New Haven Colony followed suit (Davies, 1947). Witchcraft in Europe was considered heresy, a crime against God. In England and New England, the crime of witchcraft was written from the use of the Old Testament and considered a felony, punishable by death (Hansen, 1969). It could have been considered a crime of Heresy, but it was now considered a crime by itself. This crime was based on a belief and no act. A normal criminal statute must show some act or will to act (in the case of conspiracy or attempt). This statute condemned people to death by the act of *consulting with a familiar spirit*. This *act* is not one that could be conclusively proved. So, to be legally convicted, the only proof the courts could use was that the person must *confess* that he or she had actually *consulting with a familiar spirit*. Getting to this confession was a lucrative business in Europe and one of hearsay in the United States.

Puritan ministers at that time stood on the pulpit and preached against the sins of few. They were warned against the evils of magic, whiskey, charms, abortion, and witchcraft. The preachers told the parishioners that they must repent their evil doings and repent their sins (Dennis, 1998). A well-known minister, Cotton Mather, defined witches as those who do strange or ill things at the expense of other people. The Puritans believed that witches were people who created a covenant with the devil rather than with God. Therefore, a witch would allow the devil to use her to fight the battle against God. Puritans believed that the crime was not the act of witchcraft, but the heretical bond with Satan. Therefore, the crime of being a witch occurred only in the mind of the accused.

The puritans persecuted many women in the United States. There are many diverse theories on why mostly women were persecuted. One theory for the persecution could be monetary. Many of the accused women had no male relatives to inherit their land if they would have died. Therefore, it would be in the best interest of the community to take the witch's land away from them and give it to people in the community. This type of persecution happened mostly in the Holy Roman Empire and not in the United States (Reis, 1998; Starhawk, 1998). Another reason mentioned in literature was the different ways in which people distinguished sins at that time. Men were able to distinguish their sins from a pact with the devil. Women, on the other hand, saw their past deeds and upon analysis of those deeds, the women would believe that they fell out of favor with God and had an implied pact with the devil. Therefore, the accused

would be convinced that she was, after all, a witch (Kamensky, 1998). This thought may seem more correct because the Puritans believed that women were more frail than men, both physically and mentally; thereby, allowing the devil to enter them more easily than he would enter a man. When Satan gained access to the woman's body, Satan gained access to her soul (Reis E. , 2003), thus arming Satan with more women followers than men. This thought gained control of the society of the United States.

In the New England area, many witches were accused by their neighbors. Cross words by one woman to another neighbor may have ended up with the accusation of witchcraft (Kamensky, 1998). Many of the women in New England, who were poor and/ or had ill-repute with community or violated community norms (Norton, 2003), were sent to court on the words of others who thought they were hexed. Even husbands testified against wives (Rosenthal, 1998). Many of these neighbors were suffering from a moral panic. Moral panic is a community wide panic in which the reaction is significantly more than the threat (Wright, 2005). Moral panic fed the need to identify all the witches in the community. The accused witches could have their lives spared if they told on their accomplices. The women accused, then would also tell on other members of the community until the whole community would be in turmoil. The first execution of a person accused of being a witch was in Connecticut in the year 1647. Approximately 22 people accused of witchcraft in the colonies were executed prior to 1692 when the famous Salem witch hunts killed an additional 20 more (Butler, 2001).

WHEN THE CRIME STOPPED BEING TRIED BY THE COURTS

There are many reasons stated in literature why the western countries stopped executing witches. One of the reasons was that the people were becoming more literate. The people of the western countries started to believe that witchcraft was not real. Most of the power of witchcraft comes from the victim's belief that she was hexed (Butler, 2001; Hansen, 1969). Without this belief, there can be no witchcraft. Thus, witchcraft executions and many of the other penalties disappeared. Another theory is that witchcraft and the occult were very popular in the colonies in the 1600's (Butler, 2001); a time that only 15% of colonists belonged to any church in their lifetime. Because of that, many of the colonists practiced occult and magic. Most of the occultists changed to another form of religion at that time. The United States was changing as well during that time. The Philosophies of the Enlightenment, evangelical Christians, and English Protestants increased in the colonies, so the worship of witchcraft and the occult declined (Butler, 2001). Belief in witchcraft diminished by the early 1700's; thereby, concluding the horrors of the witch-hunts. The more probable reason that witch-hunts and witch-executions ended in New England was because of the Massachusetts Governor. Complainants, who witnessed the Salem witch trials, told the governor that supernatural evidence should not be used in a court of law. Upon delivering that mandate, the Governor disbanded the lower court and had the rest of the accused Salem women brought before the Massachusetts Superior Court. The Court convicted no one. This put the end to the manic hysteria of witchcraft and the end of the crime of witchcraft in America (Buckland, 2002). A crime of witchcraft could not be based on the beliefs of the hysteric. The prosecution must show (in the United States beyond reasonable doubt) that a crime had existed and that the defendant had the ability and action to commit this crime. The courts could find no solid connection. There was not even circumstantial evidence in most cases.

WITCHCRAFT IS SEEN AS A RELIGION

The Puritans and many other others around the world who persecuted witches did so because witchcraft is a pagan act. Witchcraft was seen as a pact made with the devil turning the suspect's soul over for fortunes of some sort in the current life; it is considered a pagan ritual. The witchcraft which is practiced in the United States today is said not to cohort with the devil. It grew from a pagan earth based religion where the goddess is celebrated in the natures yearly cycles (Berger, 2005). Magic is practiced in this cult and they don't quite consider it "witchcraft" but if they were in ancient times doing the same thing the populous would believe it was. The popular word for these people is Wicca or Wiccan.

The practice of Wicca mainly appeals to white, middle class, well-educated women (65%) and men. The Wiccan beliefs have stemmed from many places and beliefs and end up with widely diverse outcomes. Most of the stem beliefs of witchcraft were taken from Pagan religions which are older than the Christian religion. Victor Anderson, who mentored many in Faery Witchcraft, had witchcraft taught to him by his grandmother and then created some of his own practices of Wiccan witchcraft (Berger, 2005). This practice of modifying Wiccan witchcraft happened frequently.

However, most Wiccan cult practices have similarities. They worship a god, but the Wiccan god is seen as a feminine spirit who is the oldest of all deities. She is the mother of all deities. Some see her as both male and female (Berger, 2005). Wiccans are said to do no harm to others in their practice of magic. They believe that whatever they use their power of magic for will come back to them three-fold.

The Wiccan belief is not the feared witchcraft of the past, it is a pagan belief such as witchcraft; but witches are no longer the ugly old hags who kill children for sacrifices or ride on broomsticks in the mid of night (Starhawk, 1998). Instead they are sects of women and men who gather outside under a full moon and dance exotically around in a circle (Griffin, 2005). Wiccans, known to practice an earth based religion, are sometime seen by American Christians as kooky cultists practicing kooky rituals.

PROTECTION OF RELIGION FROM SUPREME COURT

According to the Civil Rights Act of 1964, a religion protected under the First Amendment of the US Constitution must be a belief that is sincerely held and what the believers deem a religion. Many lower federal courts around the country have found that people who follow the Wiccan beliefs do believe that they are actually following a religion. The religion of Wicca encompasses their daily actions. The federal courts have ruled that Wiccan practices are very similar to that of other more accepted religions (Dettner v Landon, 1985). The Supreme Court has yet to decide if Wicca is an actual religion, but they have ruled on other religions unlike the Christian religion. Even though it has not been formally deemed a religion by the Supreme Court, Wicca has gained religious status in other Departments of the government. Wicca is recognized as a tax exempt organization. The US Air Force has placed an outdoor arena for their Wiccan and pagan members of the Air Force Academy in Colorado Springs (Deams, 2011).

And, in the United States, the Air Force academy has just spent \$80,000 to create a worship center for witches, and others who worship nature and develop spells like Pagans, Druids, and Wiccans (Deam, 2011); so that they too could worship as they see fit.

CONCLUSION

All in all, the consensus of the witchcraft scholars is that witchcraft did exist. However, it only existed because of *victim's* beliefs. The beliefs would cause hysterical symptoms resulting from the victim's fear. Some times this fear would lead to the victim's death followed by mass hysteria. Therefore, the wrongful uneducated beliefs of the masses made witchcraft a crime, one of the oldest crimes in the world. This crime was one of thought and not of action. The mass hysteria that existed helped to fuel the belief that witches existed and became a lucrative business to find these witches. In the western world, humans cannot be tried and executed based only on the belief of others. Proof would have to be given. This crime virtually vanished when the higher courts of the western countries took it upon themselves to find the connection that the accused actually committed some deed or act in malice which then could be linked to the regretful happenstance. There was no act, and therefore, no crime committed. After the population of the United States, England, and most of Europe became more educated and realized that the reality of witchcraft was based on misguided beliefs, this devil craft lost its power because it lost its *victims*. Thereby, witchcraft lost its criminality. Now, witchcraft is protected in the US under the First Amendment and the Government is doing everything in its power to uphold the Wiccans' and Druids' First Amendment rights. The rest of the world's problems with witches may be solved by educating their populous to the non-effectiveness of this devil based witchcraft. The few people who practice *magic* or believe themselves to have some psychic ability consider this power to be given by a divine being as a *gift* for them to share with others. They may be very convincing to be in possession of this supernatural power and may charge for this *help*. If the population would like to believe that certain members of society have powers and are able to help by implementing these powers, and these *blessed* few are profiting from these beliefs, maybe Western Countries can follow the Romanian lead and cut some of the National debt by taxing those that are profiting from the profession of witchcraft.

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