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Bahrprobe* (cruentation, ordeal of the bier) – obtaining evidence in cases of homicide in legal practice in 16th- and 17th-century Silesian and Moravian towns and the countryside

Law of the bier (Latin *jus feretri*, Ger. *Bahrprobe*), or cruentation (Latin *cruentatio*), is a less-known method in medieval and early modern legal systems used to obtain evidence of guilt or to determine innocence.¹ Cruentation was staged in cases where evidence was lacking to prove the murder suspect was either guilty or innocent of that crime.² It seems that originally the bier ordeal was a legal process used to determine guilt. According to the 19th-century *Wetzer-Welte Kirchenlexikon*, an encyclopaedic work first compiled by Heinrich Joseph Wetzer and Benedict Welte:

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¹ The origins of the trial of the bier, and arguments for and against recognizing it as a method of trial by ordeal are discussed in: K. Lehmann, *Das Bahrgericht* [in:] O. Brenner, K. von Maurer (eds.), *Germanistische Abhandlungen zum LXX. Geburtstag Konrad von Maurers*, Göttingen 1893, pp. 22–45.

² Ch. Riggenbach, *Die Tötung und ihre Folgen. Ein Beitrag zur alamannisch-schweizerischen Rechtsgeschichte im Mittelalter*, “Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung” 1929, vol. 49, issue 1, pp. 154–156.

[...] where a murder had been committed and the murderer could not be discovered, but suspicion had fallen on someone, then the naked body of the deceased was laid out on a bier and murder suspects were required to approach to touch the wounds and the navel of the corpse. The party whose touch had caused the corpse to reanimate, change colour, or displayed a sense of shame, was recognized as the guilty party; the lack of reanimation of the corpse was evidence that the perpetrator was not among the accused.³

Consequently, the key element of the ordeal of the bier was the physical contact of the perpetrator with the body of their alleged victim. The one accused of homicide would touch the corpse in the presence of the court while invoking divine intervention. Some researchers have also considered interpreting this phenomenon as a manifestation of dark forces or natural phenomena associated with the decomposition of a corpse. However, such considerations do not appear in the source material used. The ordeal took place in the presence of the local court, the relatives of the murder victim, and presumably, members of the local community.⁴ As such, it was a public affair. The suspect was made to stand next to the coffin which held the body of the slain individual, and often, to place their hands on the deceased. If blood issued from the fatal wound, or the corpse was seen to reanimate, if only slightly, the magistrates closely watching the proceedings would consider this as proof that the accused was guilty, the understanding being that the body of the victim had identified the perpetrator.⁵ In Prague in 1600, the observers of the proceedings made this amply

³ M. Nowotarski (ed.), *Encyklopedia Kościelna podług teologicznej encyklopedji Wetzera i Weltego z licznymi jej dopełnieniami*, vol. 2, Warszawa 1873, p. 536.

⁴ We found next to no written evidence that it was customary for the headsman to participate in the trial by bier as an official of the judiciary. The headsman could have been present at the 1614 successful trial of a murderer from Żąbkowice Śląskie (Ger. Frankenstein); this is suggested by the fact that with almost no delay, the accused was subjected to torture. The only exception is the trial by bier held in Lubań (Ger. Lauban), in Upper Lusatia, recorded in an entry made in 1645 in a local chronicle; it refers to the local executioner as the direct participant of the ordeal of the bier, and in fact, even to a certain extent, its organizer. His duty was to control the crowd along with municipal guards, one of whom ultimately turned out to be the perpetrator. All those assembled were subjected to the ordeal of the bier, but when a man named Gruner, a suspect in the likely homicide, approached the corpse, blood started flowing from the dead man's nostrils, *Archiwum Państwowe we Wrocławiu, Oddział w Bolesławcu, Akta miasta Lubania*, ref. 2280, *Nachtrag und Berichten aus der Wiesnerisches Chronik 1000–1804*, f. 129.

⁵ For more on the use of this sample, see further literature: A.G. Akopian, *Le cadavre accusateur dans le procès du XIII^e au XVIII^e siècle en Occident: de la preuve révélée à la preuve raisonnée*, "Droit et Cultures" 2022, issue 82, vol. 2; A. Boureau, *La preuve par le cadavre qui saigne au XIII^e s., entre expérience commune et savoir scolastique*, "Micrologus. Natura, scienze e società medievali" 1999, vol. 7: *Il cadavere*, pp. 247–281; R.P. Brittain, *Cruentation in legal medicine and literature*, "Medical History" 1965, vol. 9, issue 1, pp. 82–88; F.P. de Ceglia, *Saving the Phenomenon: Why Corpses Bled in the Presence of their Murderer in Early Modern Science* [in:] F.P. de Ceglia (ed.), *The Body of Evidence Corpses*

clear; seeing blood flow from the wound, they shouted – “it is enough! The blood has pointed at him!”⁶ If nothing had been observed, no reanimation of the body, and no blood seeped from the wound, the suspect would be set free.⁷

The recommended order of the cruentation ordeal was the following: first, the body of the slain individual was placed outdoors, in a coffin, or laid out on a bier. The one accused of homicide, dressed only in new linen, had to carry a candle in their left hand. The body of the suspect had to be uncovered, to prevent the concealment of a magical object meant to foil the disclosure of guilt.⁸ Seven officers were in attendance, responsible for confirming the result of the ordeal. The accused was supposed to kneel to the right of the coffin, say five Lord's Prayers and Hail Marys, place a hand on the wounds of the deceased, and swear their innocence of the crime, in the name of God and the saints. Usually, this was done by placing two fingers (the symbol of oath-taking) on the wound, the forehead, or elsewhere. Another rule was

and *Proofs in Early Modern European Medicine*, Leiden–Boston 2020, pp. 23–52; P. Dinzelbacher, *Das fremde Mittelalter. Gottesurteil und Tierprozess*, Darmstadt 2020; H. Fehr, *Das Bahrrecht, insbesondere in der Schweiz*, “Deutsches Jahrbuch für Volkskunde” 1960, vol. 6, pp. 85–90; H. Platelle, *La voix du sang: le cadavre qui saigne en présence de son meurtrier* [in:] *Extrait de Actes du 99^e Congrès des sociétés savantes, Besançon (1974)*, t. I: *La piété populaire au Moyen Age*, Paris 1977, pp. 161–179; S. Spreckelmeier, *Vom erzählten Brauch zum verschriftlichten Recht: Die Bahrprobe als Entscheidungsprozess in literarischen und rechtlichen Quellen*, “Frühmittelalterliche Studien” 2018, vol. 52, no. 1, pp. 189–215.

⁶ Z. Winter, *Svědeckví mrtvého*, “Český Lid” 1892, p. 157. In some cases, it was enough for the murderer to merely appear near the location of the corpse. The court records from Ochla (Ger. Ochelhermsdorf) – today within the borders of Zielona Góra – refer to the murder of a sheep herder committed in 1604. The perpetrator was said to be Adam von Unruhe, who, however, fled after committing the criminal act. When he returned to Ochla, the fatal wound on the shepherd's corpse immediately began to bleed. The oozing of blood only stopped when the perpetrator withdrew. As soon as he approached again, the corpse immediately bled. This reportedly continued for a full 26 weeks, for as long as the deceased lay unburied. Both the court and the entire community, as well as many strangers, looked on with great surprise. Even when the gravedigger from Bytom Odrzański (Ger. Beuthen an der Oder) placed the body of the slain in the grave, and the murderer at the time reappeared before the local court, blood flowed profusely from the coffin, F. Koschel, *Aus dem Rechtsbrauch des Mittelalters. Nach den Gerichtsakten: Schäfermord zu Ochelhermsdorf 1604*, “Welt und Heimat. Beilage zum Grünberger Wochenblatt” no. 50, 18 December 1932.

⁷ Interesting facts related to the legal aspects of the human body, but also to popular beliefs, were enumerated in an article by Georg Schoppe, see G. Schoppe, *Volkskunde in schlesischen Archivalien*, “Mitteilungen der Schlesischen Gesellschaft für Volkskunde” 1924, vol. 25, pp. 86–88.

⁸ The court records of the town of Náchod note an unusual case of a miller who killed his wife in 1580. Presumably, his guilt was not fully confirmed, so he was brought before her corpse awaiting burial in a graveyard and required to place two fingers on the right breast of the woman and swear his innocence. However, the body gave a sign, and this was understood to confirm the miller's guilt. He was interrogated, tortured (by burning), and confessed. It is interesting that in his confession he mentioned a method used to side-step the ordeal, the oath-taking in particular, recommended by his comrades: to have on him a knife with a handle made of sandalwood. There is no record of whether the accused had taken this advice, Státní okresní archiv Náchod, Archiv města Náchod, ref. 449a, Smolná kniha města Náchod z let 1513–1598, f. 29r–29v; Z. Winter, *Svědeckví mrtvého*, pp. 157–158.

to hold the dead individual's hand for a specified time, and in Wrocław (Ger. Breslau), in 1570, a suspected murderer was required as a first step, to put two of his fingers on the dead man's nose.⁹ Earlier still, the individual subjected to the bier ordeal had to jump over the corpse twice (*er uber die leiche 2 mahl springen müssen*).¹⁰ In 1609, the individual suspected of homicide had to place two fingers on the forehead of the deceased, laid out in front of the town hall, then on the mouth, and finally on the chest, each time making a circular movement with his hand.¹¹ In Lubań in 1645, the participants of the bier ordeal stood in a circle inside which were the bier, the executioner, and the murder suspect.¹²

If, on the other hand, there was no reanimation of the dead body during the ordeal, the case would be clear to all, particularly to the members of the grieving party and friends of the deceased. None of them must then show any hostility towards the acquitted individual, both immediately after the ordeal or in the future.

It is unclear what the actual duration of the bier ordeal was, or the duration of each of the prescribed gestures performed at the time the accused stood before the corpse of the alleged victim. Very likely, this depended on the region, and on the established scenario of actions which guaranteed the proper performance of the cruentation. Apparently, an ordeal carried out in 1662 in the rural locality of Kolce (Ger. Dörnhau), between the urban centres of Wałbrzych (Ger. Waldenburg) and Nowa Ruda (Ger. Neurode), and near the town of Głuszyca (Ger. Wüstegiersdorf) lasted for a "good quarter of an hour".¹³ This is consistent with the duration of a trial by the bier held at Nuremberg in 1576 after the killing of a blacksmith's helper. In this case, there were four suspects and each was made to undergo the bier ordeal. All four were brought before the corpse, which had been moved to the town hall from the graveyard and prepared according to the established custom. The ordeal took place outdoors. Each of the four was required to place a finger on the fatal wound on the dead man's body. In addition, each suspect was made to take the dead man's hand to hold in his own for a quarter of an hour. Thus, in this case, the ordeal would last for

⁹ If the tested subject put his finger on the nose and blood flowed from the nostrils, this meant that the soul lingering in the head of the deceased gave a sign. It should be remembered that it was through these orifices that the soul was thought to escape from the body, S. Anger, *Die Bahrprobe in Sagen und Rechtsbrauch*, "Die Heimat. Zeitschrift für Natur und Landeskunde von Schleswig-Holstein und Hamburg" 1967, vol. 74, no. 1, p. 13; P. Kowalski, *Leksykon – znaki świata. Omen, przesąd, znaczenie*, Warszawa 1998, p. 357.

¹⁰ G. Schoppe, *Volkskunde...*, p. 87.

¹¹ Ch. d'Elvert, *Geschichte und Beschreibung der (königlichen Kreis) und Bergstadt Iglau in Mähren*, Brünn 1850, p. 247.

¹² Archiwum Państwowe we Wrocławiu [APW], oddział w Bolesławcu, Akta miasta Lubania, ref. 2280, f. 129.

¹³ APW, Akta majątku Hochbergów z Książa, ref. VII 2322, Gerichts – Protocollum 1606–1668, f. 329.

more than one hour. However, this time the corpse provided no clue to incriminate those made to take the ordeal and so they were set free.¹⁴

Without a doubt, those taking part in the ordeal were under great pressure, given that – as was noted earlier – this judgement of God was performed in public and took the form of a staged ritual; the individual subjected to this test might dread its outcome and the verdict. The onlookers had their expectations; after all, the belief was that the innocent and righteous would survive the ordeal. In reality, the trial of the bier was a psychological test for a suspect. Therefore, from the second half of the 17th century, it can be seen that a new, interesting method was used, not only to observe but also to induce emotional reactions in the suspect in the hopes of obtaining the necessary evidence. It was believed that the sight of a dead body was likely to evoke genuine feelings of guilt and remorse. As such, the spectacle had evolved into a secularized test of individual human fibre. The trial of the bier involved a specific repertoire of gestures and emotions, strongly expressed by the women in particular. They would throw up their arms, fall to their knees, and, most importantly, weep with abandon. Obviously, the onlookers were aware that the women were putting on an act.¹⁵

Two key elements were at work in the trial of the bier which were supposed to and could create a sense of justice. First, there was the belief, characteristic for trials by ordeal, in divine intervention – the judgement of God, an infallible, supreme being, was final. Second, there was a deeply rooted belief that the soul does not leave the human body immediately after death, rather it lingers for a time, and its presence makes it possible for the corpse to intervene in the judicial process (by bleeding, miraculous signs, etc.). The soul could see to it that the guilty party was sentenced but also that the death was explained, and this would put it at rest. In this way, the corpse was both a legal agent (witness, prosecutor, and participant of the trial) and a legal object (as evidence *per se*). It played a central role in the ordeal, and its careful inspection was a key element.¹⁶

The relationship between the human body and soul was examined by John Webster; this 17th-century physician and sceptic about witchcraft claimed that the soul need not always leave the human body at the time of death. While it still resides in the body, it “retains its sensation, fancy, and understanding” and “will easily have a presension (perception) of the murderer”; the soul “through the vehement desire for revenge may exert so much force upon the organs as for some small time to move the whole body, the hands, or the lips and nostrils”.¹⁷ This belief in the desire for revenge of a soul still residing in the body would be reflected in the practice of having the

¹⁴ J.Ch. Siebenkees, *Materialien zur Nürnbergischen Geschichte*, Nürnberg 1792, pp. 595–596.

¹⁵ U. Rublack, *The Crimes of Women in Early Modern Germany*, Oxford 1999, p. 58.

¹⁶ R. Schmitz-Esser, *Der Leichnam im Mittelalter*, Ostfildern 2014, p. 422.

¹⁷ J. Webster, *The Displaying of Supposed Witchcraft*, London 1677, p. 308.

victim and murderer buried in the same grave. This was dictated by the fear of the community that an insufficiently avenged victim might rise from the grave to seek redress from some member, or members, of the community who had failed to do all in their power to avenge this particular death.¹⁸ This practice was known, and put into effect, by the law courts in Silesia, as amply confirmed by the chronicles.¹⁹ However, the peculiarity of the inquisitorial criminal process was the means of proof, that is, the confession of guilt by the accused. It took on central importance in the whole case, relegating to the background the testimony of witnesses or the presentation of physical evidence of the crime and, therefore, required the use of torture against the accused person. In order to conform to the current legal model, attempts were made to substitute other procedures that would indicate guilt. The trial of the bier could only be a “hint” or “half-evidence” for the court leading further to the torture of the suspect. During the infliction of physical pain, a confession could be obtained from the suspect and thus a key piece of evidence in the inquisition process, on the basis of which the accused could be sentenced to death. Torture was ordered in the case of a positive trial of the bier in the examples discussed below from Jihlava in Moravia in June 1610 and in November 1614 from Ząbkowice Śląskie in Lower Silesia.²⁰

¹⁸ M. Vivas, “Ni larmes ni sépulture”. *Privation de sépulture et inhumation infamante dans la province ecclésiastique de Bordeaux (fin XI^e–XIV^e s.)*, Bordeaux 2023, pp. 86–106.

¹⁹ For instance, in Wrocław and Świdnica (Ger. Schweidnitz), this practice of a double burial of victim and perpetrator, put to death for his crime, is recorded more than once. The murderer executed in 1533, beheaded in front of the town hall in Wrocław, was buried with the body of his victim, the man he had stabbed to death, Biblioteka Uniwersytecka we Wrocławiu [BUWr], Oddział Rękopisów, ref. IV F 118, Breßlische Cronika 965–1601, f. 179. In 1631, the same was done with the body of a murder victim and the body of his murderer who had been beheaded with a sword (Biblioteka Narodowa w Warszawie [BN], Oddział Rękopisów, acquisition ref. 7234, *Annales ex libro cujusdam Lutherani Manuscripto, qui et in Collegio Schwidnicensi asservat excerpta a Tobia Kliman socio Procuratoris* ao. 1683, f. 906). Henryk Biegeleisen notes that an unavenged soul of a murder victim would haunt the murderer, following him or her about, giving them not a moment’s peace. According to the lore, no matter how hard the criminal tried to evade it, once the victim, now the “undead,” finally caught up with the perpetrator in the graveyard, the two would be swallowed up by the earth (H. Biegeleisen, *Lecznictwo ludu polskiego*, Kraków 1929, p. 76). Apparently, to assist the murder victim in this posthumous persecution of the perpetrator, and not less, for the sake of peace for the community, the law courts ruled that after the death sentence had been performed, the corpse of the criminal was to be buried with the body of his victim. Sometimes, when there was more than one victim, they would all be buried in one grave with their murderer. The chronicler of Świdnica recorded a case in Wrocław where, in February 1503, three bodies were buried in one grave (alle 3 in ein grab geleget) (BN, Oddział Rękopisów, acquisition ref. 7234, f. 91).

²⁰ Both the Codex Criminalis Carolina of 1532, as applied in the territories in question, but also Pavel Kristián Koldín’s Code of 1579, required an admission of guilt by the accused in the inquisitorial process. The last chapter of the latter code, entitled “De questionibus et tormentis,” contained detailed provisions on the inquisitorial process and the use of torture to force a confession to the alleged crime, in this case, murder. On the subject of torture in the inquisition process, especially

Typically, when the trial of the bier had been ordered, it would be carried out while the body still awaited burial; in some exceptional cases, however, the ordeal might be accomplished after the funeral. This happened when, despite the efforts of the justice system, it wasn't possible to identify the perpetrators, so the method was applied to establish the innocence (or guilt) of some suspects. Then, the body would be exhumed, but not later than a month after death. The first step was always to settle on a suspect, otherwise the trial of the bier could not take place. Once the court had ordered the exhumation of the body, it was made ready for the ordeal. The wounds were washed with wine and water, allowed to dry, and only then was the corpse brought out before the law court. The jury present during the ordeal included members of the legal system, but an effort was also made to include someone with knowledge of medical matters (surgeon, barber-surgeon). The individual suspected of having perpetrated the crime was brought before the corpse. Based on the written record, it is safe to conclude that trials of the bier staged in different regions of Europe, and during different periods of history, vary in some details from an established standard. The suspect might be required to walk around the bier on their knees, kiss the deceased, address the victim by his or her name, and invoke God to confirm the suspect's innocence. If able to complete the process without any signs of reanimation of the corpse, without blood seeping from the wound or wounds, the suspect was free from further claims made by the relatives of the victim and by the legal system. Prior to the ordeal, the dead body was exposed to air for a few hours, the chest and torso bare, to ensure the blood could thoroughly coagulate. The suspect had to approach the dead body and was required to read certain oaths to it; to touch various parts of the dead body: the mouth, the navel, and the fatal wound or wounds.²¹ Next, the subject of the ordeal called upon God, or the deceased, to reveal whether he, or she, was guilty of this particular death.²² The oath taken by suspects differed in its wording, but mostly invoked God, as Supreme Judge, to reveal the guilty party, as, for example, in Zielona Góra (Ger. Grünberg) in 1647, or during the bier ordeal performed before the law court in the rural locality of Kolce in 1662 – "Hannß Welitz!

with regard to the first trials using it for Bohemia and Moravia, see P. Kreuz, *Čarodějnické procesy a právo* [in:] J. Francek, *Čarodějnické příběhy*, Praha–Litomyšl 2005, p. 11.

²¹ P. Müller, *Dissertatio de Jureferetri sive Cruentationis vom Baar Rechte*, Jena 1688, p. 8; M. Ingram, *Bodies That Speak: Early Modern European Gender Distinctions in Bleeding Corpses and Demoniacs* (unpublished master's thesis), University of Oregon, 2017, <https://scholarsbank.uoregon.edu/xmlui/handle/1794/22689>.

²² This practice is similar to the inspection of the corpse of someone accused of posthumous magic, which was examined for evidence of collusion with the devil when the alleged sorcerer was still alive: D. Wojtucki, *Magia posthuma. Procesy i egzekucje zmarłych na Śląsku i Morawach w XVI–XVIII wieku*, Wrocław 2022, pp. 441–460.

If I caused your death, may God make a sign!”²³ But there were also cases where the suspect brought to stand before the bier declared their innocence – “I am innocent of the blood, whether (or not) the perpetrator is caught” – Żagań (Ger. Sagan) – 1578.²⁴ Close relatives of the murder victim and the local law court were not the only parties to request a bier ordeal. It sometimes happened that a suspect himself (or herself) came forward, ready to undergo this test.²⁵

Cruentation as a method of obtaining evidence was anchored in beliefs associated with the non-material realm. The understanding was that a soul, still lingering in the body of a victim, unavenged, meaning that the perpetrator had not been punished, could take revenge. But there is another, more prosaic explanation for the use of ordeals, *Bahrprobe* included. Should a judge give a verdict without holding an ordeal, and sentence an innocent party, he risked becoming a murderer himself.²⁶ In cruentation, the corpse was immediately involved in identifying the perpetrator, and thus, in the sentence passed against him, or her.²⁷

The bier ordeal involved two important forms of evidence known at the time. One of them was the oath taken when testifying in the law court, with an invocation of divine agency (God and the crucifix) as guarantor of the oath taker’s veracity. The sacred oath was the most frequent, and less complicated means of obtaining

²³ *Hannß Welitz! Dafern ich an Deinem Tode Ursach, wolle Gott ein Zeichen thun*, Archiwum Państwowe we Wrocławiu, Akta majątku Hochbergów z Książa, ref. VII 2322, f. 329.

²⁴ *Ich bin unschuldig an dem Blutte, ob man den Thäter hat ergreifen können*, BUWr, Oddział Rękopisów, ref. IV Q 141, E. Fiebig, *Extract der Antiquiteten dieser Stadt Sagan (bis zum Jahr 1615)*, f. 143r.

²⁵ W. Ogris, *Bahrprobe* [in:] A. Erler, E. Kaufmann (eds.), *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. 1, Berlin 1971, pp. 408–409.

²⁶ J.Q. Whitman, *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial*, New Haven 2008, p. 12.

²⁷ Where blood had appeared on the dead body, this was regarded as a legitimate reason to apply torture in order to extract a full confession, and contemporary authors only recommended moderation in the use of the bier ordeal, R. Zagolla, *Folter und Hexenprozess: Die strafrechtliche Spruchpraxis der Juristenfakultät Rostock im 17. Jahrhundert*, Bielefeld 2007, pp. 288–290. This is indicated by cases known from Świdnica and Żąbkowice Śląskie. In 1585, large livid blotches were observed on the body of the wife of a day labourer when it was inspected in a cemetery in Świdnica; they appeared intermittently on her back. Suspicion fell on the husband, Fabian Keil (Kaýl). When brought before the body of his wife in the burial grounds of the no longer existing churchyard of St Nicholas, the marks turned deep red. Under torture, the man confessed to the crime, committed for financial reasons. He was sentenced to beheading with a sword, and his corpse was to be displayed on the execution wheel; this was done. A similar case, only this time, the husband had murdered his wife and child, is known from 1614 in Żąbkowice, see discussion below (BN, Oddział Rękopisów, acquisition no. 7234, f. 162); A. Schimmelpfennig, T. Schönborn (eds.), *Schweidnitzer Chronisten des XVI. Jahrhunderts*, SRS, vol. XI, Breslau 1878, p. 84; W. Ogris, *Bahrprobe*, pp. 408–409. An interesting view about the use of torture as a continuation of trials by ordeal was presented by Karol Koranyi in his article *Czy tortury są dalszym ciągiem sądów bożych?*, “Lud” 1926, vol. 25, pp. 96–97.

evidence.²⁸ The other means was autopsy – an external examination of marks of injury identified by a judicial official, and also by a medic, on the body of the victim, inflicted during a prohibited act (in this case, manslaughter or murder).²⁹ The use of marks noted on a dead body as evidence was not unknown in the legal practice of the day.³⁰ This was a popular piece of evidence commonly used in the early practice of modern law.³¹ Law courts would seek a specialist opinion on medical matters from physicians. The use of expert assistance in court proceedings is well documented. The key steps taken by experts were: inspection, a “search” of the body and objects.³² The individual charged with making the inspection took an oath to proceed with care, to the best of his knowledge and in good faith. External examination was made of the corpse and of objects found at the scene of the crime as well.³³ Furthermore, special attention was paid to the crime scene.

It may be seen from the above discussion that to be recognized by the law court, the trial by the bier had to include several elements. It seems that the most important of these was the oath made in the presence of magistrates, and the marks observed on the corpse. Matters became more complicated when there was more than one suspect in the case. Then, each potential perpetrator had to be subjected to the ordeal. There is written evidence of an incident in Olomouc when, in 1576, a whole family were suspected of having murdered Lorenz Walker: Lorenz Pinder, his wife,

²⁸ P. Kitowski, *Przysięga dowodowa w polskim prawie miejskim i ziemskim w XVII–XVIII wieku. Model normatywny oraz praktyka sądowa na przykładzie wybranych mniejszych miast województwa pomorskiego i malborskiego, a także sądu grodzkiego w Kiszporku* [in:] M. Głuszak, D. Wiśniewska-Józwiak (eds.), *Nil nisi veritas. Księga dedykowana Profesorowi Jackowi Matuszewskiemu*, Łódź 2016, p. 315. On oath-taking in the context of cruentation see: K. Lehmann, *Das Bahrgericht...*, pp. 31–33; M. Mikołajczyk, *Proces kryminalny w miastach Malopolski XVI–XVIII wieku*, Katowice 2013, pp. 371–394.

²⁹ P. Kitowski, *Obdukcja jako środek dowodowy w mniejszych miastach pruskich w XVIII w. na przykładzie województwa pomorskiego* [in:] P. Klint, D. Wojtucki (eds.), *Przestępczość kryminalna w Europie Środkowej i Wschodniej w XVI–XVIII w.*, Łódź–Wrocław 2017, p. 137.

³⁰ It is important to note in this context an incident known from Bautzen in the year 1500: Jacob Tham killed his mother-in-law with an axe and drowned the body. The first inspection determined the cause of death as suicide. Only when the woman's body had been handed over to the headsman for burial in the knackery grounds (*Schind-Anger*), the executioner noticed some axe-blow marks. The perpetrator was subjected to the bier ordeal, found guilty, and sentenced to a beheading followed by having the corpse displayed on the execution wheel, Stadtbibliothek Bautzen, ref. 2'29, *Budissinische Chronica*, k. 180–181; A. Bergmann, *Das Bahrrecht in der Oberlausitz*, “Gebirgsfreund. Illustrierte Zeitschrift für Topographie, Geschichte und Touristik des Riesen- und Isergebirges, des Jeschken- und Lausitzter Gebirges, Nordböhmens und des Spreewaldes” 15 September 1898, vol. 10, no. 18, p. 208.

³¹ At more length on this subject, P. Kitowski, *Obdukcja...*, pp. 137–150.

³² M. Mikołajczyk, *Proces kryminalny...*, pp. 405–412.

³³ J. Koredczuk, *Ordynacja kryminalna Józefa I z 1707 roku. Z dziejów procesu karnego na Śląsku w pierwszej połowie XVIII wieku*, Wrocław 1999, p. 211.

sons, and also, their servants.³⁴ The accused were taken to the town hall where, one by one, they were required to place two fingers on the body of the murdered man. The first to do so was Lorenz Pinder, followed by his youngest son, then the eldest son, a manservant, the wife, and finally, a man named Czinczare Walker; his family suggests that the latter was a relative of the murder victim.³⁵ When Hans Springer was killed in his own house in Jihlava in 1592, suspicion fell on not less than nine people; they were required to approach and touch the corpse laid out outside the town hall. The chronicler noted that the ordeal failed because the corpse did not reveal the culprit.³⁶ In Lower Silesia, in Dzierżoniów (Ger. Reichenbach), on 12 July 1649, a Sunday, the body of David Zange was discovered outside the town gate (Brama Ząbkowicka, Ger. Frankensteiner Tor). The linen weaver (*Züchner*) had lost his life when on guard duty. The corpse was examined by persons appointed for the task, and they identified marks suggesting a violent death. Several homicide suspects were subjected to the bier ordeal. The chronicler did not specify their number, but apparently, there were quite a few of them. When the last of the suspects approached the dead body, it became reanimated, giving a clear sign and identifying the culprit. However, in the end, the incident was covered up, and, for the sake of the ignorant, the alleged perpetrator was only fined *in natura*, being required to make a payment of an unspecified quantity of grain.³⁷

The best-known, and most frequently invoked bier ordeal was described in the Swiss illuminated chronicle of Diebold Schilling the Elder. A murder had been committed in 1503 at Ettiswil, and Hans Spiess, a former soldier, was accused of having strangled his wife.³⁸ Her body had to be exhumed for the ordeal because Spiess had been away from Ettiswil after the murder and had returned only after some time. The ceremony took place in the cemetery. This we know from the description and from the accompanying image of a man, head shaved bald, his body all but naked, bound with a rope held by a servant of the law court, accompanied by the magistrates. With his right hand, the man is touching the body of a woman lying in a coffin. The author of the scene deliberately used a red pigment to colour the area of the face and chest of the dead woman; the same marks are visible on the outer part of the coffin. Thus was the defendant's guilt revealed.³⁹

³⁴ Státní okresní archiv Olomouc, Archiv města Olomouc, ref. 5702, Kronika města Olomouc Hannse Kranicha z let 1521 až 1589, f. 36r.

³⁵ Ibidem.

³⁶ A. Altrichter, *Das Gottesurteil im altmährischen Rechtsbrauch*, "Mährisches Tagblatt" 27 August 1939, p. 10.

³⁷ BUWr, Oddział Rękopisów, ref. R 3049, Auszug aus der Chronik der Kreisstadt Reichenbach von August Sadebeck, f. 28v–29r.

³⁸ P. Kost, *Die Bahrprobe von Ettiswil anno 1503: ein berühmtes Gottesurteil*, "Heimatkunde Wiggertal" 2006, vol. 63, pp. 78–87.

³⁹ Ibidem, p. 87.

Below we describe a few cases which confirm that the legal practice had spread to Lower Silesia. Cases analogous to that of Hans Spiess have been identified in Silesian records.⁴⁰ A good example is the events of November 1614 in Ząbkowice Śląskie. A cruel murder had been committed in the town. On 10 November, the grinder, George Hammer, murdered his wife and daughter and made the deaths appear to be a suicide of the woman who first had killed her child (thus, an extended suicide). The town authorities and the governor soon became suspicious of this false scenario of events. The most likely perpetrator, the woman's husband, pleaded not guilty to the accusations against him. A day later, on 11 November, the authorities had him arrested and brought before his wife's body. As he approached the corpse, a few drops of blood were seen to flow from the wound. Next, the man was handed over to the executioner, Master Wolff of Kłodzko (Ger. Glatz), to be examined under torture. Despite severe interrogation, Hammer continued to plead not guilty. He would confess to murdering his wife and daughter only on 12 November 1614, "in the presence of Georg Gebhardt." Like Hans Spiess a hundred years before him, this widower was sentenced to breaking on the wheel from below, his mutilated corpse braided into its spokes.⁴¹

The ordeal of the bier was staged for murderers whose crimes had been premeditated but also for those guilty of involuntary manslaughter, who had not planned their criminal act, only their inebriated state and lack of control had resulted in a tragic turn of events. Something of this sort happened in Lubomierz (Ger. Liebethal) and was recorded in an extract made from one of the volumes of a *Konzeptbuch* (May 1602 – June 1606) of the local Ursuline convent. The exact date of this case is not given, but sometime during the period covered by the *Konzeptbuch* there was a brawl, and the son of Matthes Scholz lost his life, most likely from a knife wound. Since the perpetrator was not identified, and the participants of the brawl did not name the guilty party, the authorities chose to use a method dating to the Middle Ages. The

⁴⁰ The case of Hans Spiess inspired other authors to take interest in the use of the bier ordeal in judiciary practice in Switzerland. This interest is reflected by several contributions, some of them regional, including J. Baechtold, *Über die Anwendung der Bahrprobe in der Schweiz*, "Romanische Forschungen" 1893, vol. 5: *Festschrift Konrad Hofmann zum 70. Geburtstag*, p. 221; W. Merz, *Die Bahrprobe in Aarau im Jahre 1648*, "Schweizerische Zeitschrift für Strafrecht" 1897, vol. 10, p. 95; Ch. Studer, *Die Bahrprobe (Beispiele aus dem alten solothurnischen Gerichtsverfahren)*, "Jahrbuch für Solothurnische Geschichte" 1983, vol. 56, pp. 109–114; A. Widmer, *Gottesurteil und Bahrprobe nach den alten schweizerischen Rechtsquellen*, "Die Alpen. Monatsschrift für schweizerische und allgemeine Kultur" 1910/1911, vol. 5, issue 2, pp. 101–107; E. Zschokke, *Ein Gottesurteil in Aarau 1648*, "Aarauer Neujahrsblätter" 1930, vol. 4, pp. 3–12.

⁴¹ Geheimes Staatsarchiv Preußischer Kulturbesitz Berlin, HA, Rep. 135, Nr. 1449, Chronik der Stadt Frankenstein und des Herzogtums Münsterberg 1720–1821, f. 165; Österreichisches Staatsarchiv, Abteilung Haus, Hof und Staatsarchiv in Wien, ref. HHStA SB Auersperg XXVII-37, Annales Francostenensis oder Francksteinische Jahreszeitungen [Geschichte der Stadt Frankenstein in Schlesien von 1000 bis 1654], f. 429.

suspect was brought before the dead body as the magistrates looked on to see if there was a reaction. However, the use of this process to obtain evidence failed to produce the expected results – the corpse did not give any signs, and the perpetrator of this early 17th-century tragic death was not revealed.⁴² Another brawl, which broke out over wine in Zielona Góra in the middle of December 1647, ended badly for Hans Hering. Badly injured, he managed to reach his home, but the damage proved fatal and he died that night. Three men involved in the incident were brought before the corpse to place two fingers on the dead man's lips and speak the following words, three times: "if I have caused your death, let God make a sign on your body."⁴³ The outcome of the ordeal is not recorded by the local historian; presumably, it went well for all three accused men since there is no reference that a penalty was adjudicated and administered.

The noble-born might be subjected to the bier ordeal too: in 1557, in the town of Löbau in Upper Lusatia,⁴⁴ Jurge Panewitz von der Eibe was brought before the corpse of a murder victim and was required to address it three times, to have it reveal the guilty party. Finally, after the third plea, a black discharge was seen to flow from the wounds (*aus den wunden schwarze Jauche gelauffen*).⁴⁵

Three interesting trials by the bier, none of them successful as no evidence was produced by the corpse, took place over two years in the Moravian town of Jihlava. On 8 June 1610, Gírg Stefan battered his wife to death with a hoe as she was busy milking. He refused to plead guilty, so two days later, on 10 June, he was made to take the ordeal, staged outside the town hall. In this case, no evidence was obtained, but the suspicion towards the accused was sufficiently strong that, despite the negative results of the test in the presence of the dead body, the decision was made to have him tortured. At first, thumbscrews were applied, but the man resisted; when more severe torture was applied, he confessed and pleaded guilty to the crime. In the meantime, there was one more crime, the killing of one court bollard by another. In the end, two murderers were beheaded with a sword on the same day, 19 June 1610.⁴⁶ A year later, on 14 October 1611, the body of the wife of a local thresherman was discovered near a fountain in one of the town squares. Violent death by strangulation was suspected even though the barber-surgeons who examined the corpse discovered no marks to confirm this. Suspicion fell on the husband, with whom the woman had

⁴² P. Drechsler, *Die Seele nach dem Tode in der Anschauung des Volkes*, "Mitteilungen der Schlesischen Gesellschaft für Volkskunde" 1908, vol. 10, issue 19, pp. 21–22.

⁴³ H. Schmidt, *Geschichte der Stadt Grünberg, Schlesien*, Grünberg 1922, p. 212.

⁴⁴ A. Bergmann, *Das Bahrrecht...*, p. 208.

⁴⁵ Ibidem; O. Philipp, *Zum Bahrrecht*, "Zeitschrift des Vereins für Volkskunde" 1914, vol. 24, p. 81.

⁴⁶ M.L. von Löwenthal, *Chronik der königlichen Stadt Iglau (1402–1607)*, ed. Ch. d'Elvert, Brünn 1861, p. 277.

been in conflict for some time. A bier ordeal was held, once again, outside the town hall. First, the suspect was required to walk three times around the bier on which the dead body lay. Next, he had to place his hands on the forehead, lips, and chest. However, also in this case, the corpse produced no sign to confirm the widower was guilty. Interestingly enough, the woman was buried in unhallowed ground, rather than in a graveyard.⁴⁷

In contrast to the above cases, known from chronicle records⁴⁸ which tend to give an incomplete account of the bier ordeals, the court records of the estate of the family von Hochberg in Książ (Ger. Fürstenstein) for the period 1606–1668 offer a more detailed account of the process, adding further elements to what the local historians had recorded.⁴⁹ According to the written record from Książ, the magistrates of Głuszyca and Kolce first took action on 13 August 1662, when they paid a visit to Hans Welitz whose health was failing. The objective was to determine the cause of his strange decline and to examine his body for significant symptoms. Possibly, this was the final stage of his illness, which explains why the representatives of the local court decided to take steps. Only a month later, on 13 September 1662, the ailing Welitz spoke up and ascribed his illness to poison. He accused the woman Scholtzin of drugging his beer. Hans Welitz died on the night of 9 November. The accusation was serious enough, and apparently, the alleged perpetrator had not admitted her guilt, therefore, steps were needed to obtain further evidence. Five days later, on 14 November, seven magistrates assembled to confirm Scholtzin's guilt, or possibly, to absolve her. They all made their way to the house of Michael Welitz to see the dead body. The written record includes a reference to the condition of the corpse five days after death. This suggests a detailed examination made prior to the bier ordeal. Except for the head, the whole body was livid; only the right thigh was of a lighter complexion, and the left thigh – like the rest of the body – was bluish and slightly swollen.⁵⁰ An order was given to have the corpse carried outside; thus, the

⁴⁷ Ibidem, p. 290.

⁴⁸ The works of local historians are an invaluable early record of the bier ordeal administered to obtain evidence in regions bordering on Silesia. In Trutnov in July 1494, Paul Kolbe who lived outside the Lower Gate (*Nieder Thor*) of that town was accused of killing his pregnant wife. The reason for this crime was his lover Anna, a maidservant. When Kolbe was brought before the body of his wife, blood was seen to trickle from the wound. On this evidence, he was found guilty and sentenced to breaking on the wheel. His lover Anna was buried alive, S. Hüttel, *Chronik der Stadt Trautenau 1484–1601*, Prague 1881, p. 22. It is notable that a dozen-odd pages earlier the same historian mentions a nearly identical case from 1488. At that time, a man called Paul Kolbe, living in the same place, also had a hand in his wife's death, the reason being he wanted to run away with a maidservant with whom he had been having an affair. However, in this earlier case, the bier ordeal is not mentioned, only the execution of the two culprits. Ibidem, p. 9.

⁴⁹ APW, Akta majątku Hochbergów z Książa, ref. VII 2322, pp. 328–330.

⁵⁰ Ibidem, f. 329.

ordeal of the bier was to take place outdoors. Next, the alleged female poisoner was brought to the site, to submit to the key element of cruentation. Scholtzin was made to approach the corpse, to place her right hand on the dead man's chest, and to speak the traditional formula, one that is very well known from other cases of this type, and one that was cited earlier in this text, namely: "Hannß Welitz! If I caused your death, may God make a sign!"⁵¹ After a good quarter of an hour of observation, the assembled had observed no signs of reanimation of the corpse. Neither the magistrates nor any of three brothers of Welitz could produce evidence to incriminate the woman accused of poisoning him. The case was closed, and Scholtzin was acquitted.⁵² Four local magistrates put their signatures under the verdict, and a seal was impressed on the document. The detailed record of the bier ordeal entered the chancellery of what is now Książ Castle (today, in a northern district of Wałbrzych). As may be seen from the case of the village of Kolce, for a bier ordeal to be administered, the body of the victim did not need to display visible wounds. An ordeal might also be staged in cases where the cause of death had been poisoning or even sorcery.⁵³

Bier ordeals were usually held in a place accessible to all, to guarantee the largest possible assembly of witnesses, but at the same time suited to the judiciary purpose of the trial. As a result, when the test turned out favourable for the alleged perpetrator, and he or she was found not guilty, the outcome had to be accepted not only by the close relatives of the victim but also by the local community. In Żagań (1578),⁵⁴ Jihlava (1610 and 1611),⁵⁵ and Zielona Góra (1647),⁵⁶ the ordeal was staged in front of the town hall or in the courtyard. In the rural locality of Kolce (1662), it was held outside a house belonging to the victim's family.⁵⁷ Cemeteries were often selected as well; a natural location with a long tradition established in the symbolism of the late medieval and early modern legal system. Ideally, the spot selected in a graveyard should be near a lime tree, because of the association of this plant with ancient legal practices. So far, this choice of site has been confirmed only outside our study area.⁵⁸

⁵¹ Ibidem.

⁵² Ibidem.

⁵³ Apparently, bier ordeals were performed in connection with 17th-century witch trials. On this occasion, the witches would be brought before the dead body to receive its verdict. We know of at least two cases of similar "trials" against witches staged in 1612 and 1661 in England and Scotland, <https://das-hexenbad.beepworld.de/bahrprobe-hexenproben-info-hexenverfolgung.htm> [access: 27.06.2024].

⁵⁴ BUWr, Oddział Rękopisów, ref. IV Q 141, f. 143r.

⁵⁵ M.L. von Löwenthal, *Chronik...*, p. 277.

⁵⁶ H. Schmidt, *Geschichte...*, p. 212.

⁵⁷ APW, Akta majątku Hochbergów z Książa, ref. VII 2322, f. 329.

⁵⁸ E.g., the ordeal of the bier administered in 1534 at Hochdorf to the north of Lucerne, and two years later, in 1536, in Zürich, H. Meili, *Der Baum in Geschichte und Volksbrauch*, "Appenzeller Kalender" 1954, vol. 233, np.

It is important to note that cruentation, a relic of earlier legal practices, survived and continued in use as late as the 18th century, although only in rare cases of manslaughter or murder. In our study area, this is documented by a record about a bier ordeal administered in 1737 by the law court in Skarszyn, a rural locality near Trzebnica (Ger. Skarsine and Trebnitz respectively) to reveal the murderer of a man who had been a fruit thief. Suspicion had fallen on the owner of a nearby orchard. The suspect was required to approach the body in the presence of the magistrates and place his right hand on the forehead of the dead man. However, the corpse remained inanimate, the deceased was buried, and the case was reported to the owners of the family von Reuss, owners of the village.⁵⁹

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⁵⁹ J. Klapper, *Schlesische Sagen älterer Zeit*, "Mitteilungen der Schlesischen Gesellschaft für Volkskunde" 1938, vol. 37, p. 30.

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BAHRPROBE (CRUENTATION, ORDEAL OF THE BIER) – OBTAINING EVIDENCE IN CASES OF HOMICIDE IN LEGAL PRACTICE IN 16TH- AND 17TH-CENTURY SILESIAN AND MORAVIAN TOWNS AND THE COUNTRYSIDE

Abstract

The article describes the evidentiary method in murder trials known as the *Bahrprobe*, or trial by cruentation. Although classified as a type of ordeal and primarily associated with the Middle Ages, it was successfully employed during the early modern period as well. The article reconstructs the procedure of the trial by bier in the early modern era based on court records and chronicle entries. Early modern practitioners largely regarded the *Bahrprobe* as a legal relic, however, despite frequent criticism of the practice, it persisted in tradition and was still employed as late as the 18th century. It occurred in cases where the perpetrator of the crime was unknown or when there were multiple suspects accused of committing the crime.

Keywords: Silesia, cruentation, ordeal of the bier, bahrprobe, history of law, early modern period, Moravia, court, penalties, Customary law