New Perspectives on Witchcraft, Magic and Demonology

Volume 3

Witchcraft in the British Isles and New England

Edited by

Brian P. Levack

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Series Content

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Edited with introductions by

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Contents

Introduction

This volume brings together a selection of recent articles on accusations of witchcraft and on and prosecutions in the British Isles (England, Scotland, Wales, and Ireland) and colonial New England. The main reason for grouping these geographical areas together, aside from their isolation from the European continent, is that after 1603, when James VI of Scotland became James I of England, all of them owed allegiance to the same king. This dynastic unity did not give these countries a single government, but it did make them part of a loosely structured "empire" that possessed common religious, social, and cultural bonds. These countries were not exclusively English-speaking, but political elites in all of them, including English and Scottish settlers in Ireland, spoke English.

As an area of study in the history of witchcraft, the British Isles and New England possess only a fragile unity. There were considerable variations in the intensity of witchcraft prosecutions from one country to another. Scotland, a country with only one-quarter of the population of England, probably executed three times as many witches. The Scottish pattern of prosecutions had more similarities with some continental European countries, especially the German lands, than with England. Prosecutions were also more intense in New England than in England, especially in Massachusetts, but that intensity owes much of its strength to the large-scale witch-hunt that took place at Salem, Massachusetts, in 1692. There were relatively few prosecutions and even fewer executions in Wales and in Ireland.

Despite this broad variation in the number and the intensity of prosecutions, witchcraft trials in all these countries shared some similarities. The most significant was the absence of a fully developed image of the witch's sabbath--the alleged nocturnal gathering of witches--in the trial records. In England there was little mention of the pact with the Devil and no mention of the sabbath until 1612, and it was only during the witch trials instigated by the professional witch-finders Matthew Hopkins and John Stearne in the 1640s that such references appeared more than occasionally. Even then, the sabbaths described in these confessions were relatively tame affairs. In Scotland confessions to witches' gatherings occur as early as the 1590s, but the reported meetings did not include promiscuous sexual activity, the sacrifice of children, or the cannibalistic eating of dismembered children's bodies. Nor did witches allegedly fly to these assemblies. In New England a few references to the sabbath occurred in the trials, especially in 1692, but the details did not conform to the continental European stereotype.

The absence of graphic depictions of the sabbath in the British Isles and New England can be explained in part by the distinctive features of the criminal

procedures used in their courts. Most continental European countries followed inquisitorial procedure under which professional judges controlled the entire judicial process and determined guilt or innocence by weighing pieces of evidence to determine if they satisfied prescribed standards of judicial proof. In England, Scotland, and Ireland, however, lay juries played an important role in determining guilt or innocence, and the entire system of criminal justice in these areas was characterized by an adversarial encounter between the defendant and his or her accusers. This system resulted in a number of acquittals, especially in England. Even more important, in none of these countries was torture a regular instrument of judicial interrogation. In England and Scotland torture could be used only if authorized by a special warrant from the Privy Council, as it was in the Scottish witch trials of 1591. In Scotland, however, it was used in an informal, illegal way at the time of the witches arrest, very often in connection with the pricking of the witches skin by long pins in order to discover the Devil's mark. This mark was a spot on the witch's body, allegedly given at the time of the negotiation of the demonic pact, that demonologists claimed was insensitive to pain and did not bleed. Torture administered in this way resulted in the production of a number of confessions that would not otherwise have been forthcoming. The use of this type of legal coercion provides the best explanation not only for the higher number of convictions in Scotland but for the admission by Scottish witches that they had attended the sabbath.

The history of witchcraft prosecutions in England continues to be the subject of new scholarship. Three of the articles in this collection deal with different aspects of the legal process. C. R. Unsworth provides a comprehensive study of English criminal procedure in the trial of witches, which he views as possessing some of the features of inquisitorial justice. Brian Levack studies the role played by the Court of Star Chamber in prosecuting people who falsely accused others of witchcraft. He sees the prosecution of Brian and Anne Gunter for accusing three women of causing the possession of Anne as the turning point in the history of English witch-hunting. Jim Sharpe's article on women and witchcraft focuses on the role played by women in the legal process, mainly in searching for the Devil's mark and as witnesses in the trials.

Another group of articles, all based on materials in local archives, deals in different ways with the social and economic foundations of accusations of witchcraft, which came from women as well as men. J. T. Swain studies the economic foundations of the famous Lancashire witch-hunts of 1612 and 1634. Anabel Gregory explores the way in which conflict between two political factions in the town of Rye in Sussex led to charges of witchcraft at a time when a slump in trade during the 1590s had caused a change in the relative fortunes of the two factions. The witches were believed to have challenged prevailing standards of good neighborliness. Anne Reiber de Windt explores the competing visions of community that found expression in the famous witchcraft case at Warboys, Huntingtonshire, in 1593. Malcolm Gaskill provides a thorough study of the social characteristics of witches brought to trial in the county of Kent, and J. A. Sharpe studies the depositions taken against witches in the county of Yorkshire in the

seventeenth century. These articles also address the question of gender, which is the subject of Volume 4 in this series.

Another group of articles deals in one way or another with witch-beliefs, reflected not so much in the demonological literature written by clerics but in witchcraft accusations and confessions. Some of these articles also contribute to a scholarly discourse on the role of gender and sexuality in the prosecutions. Deborah Willis's article on Shakespeare and the English witch-hunts uses material from Shakespeare's plays to advance her argument that many English witches were mothers or caretakers of small children. Gillian Bennett also draws on the literature of the period to show that beliefs in ghosts and witches were so closely linked that they formed intrinsic parts of the same belief system. Diane Purkiss focuses on fantasies regarding witches and witchcraft during the English Civil War of 1642-1646. She interprets these fantasies as reflections of anxieties among soldiers and noncombatants regarding their masculinity. Much of her material comes from the witchcraft narratives of Matthew Hopkins, who conducted a major witch-hunt in southeastern England in 1645 and 1646. Malcolm Gaskill writes about the charges against one woman, Margaret Moore, who was tried as a witch during this hunt. James Sharpe also contributes a revisionist interpretation article on Hopkins's hunt, which among other things explores the sexual content of the accusations. The article by Ian Bostridge on the repeal of witchcraft laws also deals with witchcraft beliefs, especially those that prevailed in Scotland in 1736, when the British parliament repealed the English witchcraft statute of 1604 and the Scottish statute of 1563.

Bostridge's article is one of three in this volume that deals with witchcraft in Scotland. P. G. Maxwell-Stuart contributes a piece on the famous witchcraft trials of 1590-1591 in which King James VI was the intended victim. Maxwell-Stuart emphasizes the king's fear of an alliance between the witches of East Lothian and the earl of Bothwell, who was rebelling against the king at that time. S. W. Macdonald, A. Thom, and A. Thom offer a psychiatric reassessment of a Scottish witch-hunt involving demonic possession that took place more than 100 years after the East Lothian trials. The case, which involved the demonic possession of Christian Shaw, attributes her violent seizures to a dissociative disorder. The article by Elwyn Lapoint addresses the question why so few witchcraft prosecutions took place in Ireland.

The final set of essays all deal with witchcraft in New England and focus on the large-scale hunt that took place at Salem in 1692. Michael Clark uses the writings of Cotton Mather to explore the interaction of the natural and the supernatural realms that underlies all manifestations of witchcraft. Bernard Rosenthal's article on Tituba, the Indian slave whose confession played a crucial role in the Salem witch-hunt, questions many of the myths that have arisen surrounding this woman, including her identification as a black from Barbados. Wendel D. Craker minimizes the importance of spectral evidence in the Salem trials, showing that no one was convicted on the basis of spectral evidence alone. Philip Gould's article on the politics of reason in the early American republic explores the early nineteenth-century characterization of Puritan witch-hunting as delusional, zealous, and irrational and the result of unbridled human passions. The

article by Louis Kern deals with the important demonological question of the sexual relationship between demons and human beings, especially women. He places the sexual elements of witchcraft in England and New England within a broader Europeans framework.

Chapter 5

Witchcraft Beliefs and Criminal Procedure in Early Modern England

C R Unsworth

The relationship between the witch-hunt which took place in Europe in the early modern period and the machinery, procedure and conceptual apparatus of the law was especially intimate. The following analysis explores the contribution of legal culture and institutions to England's distinctive experience of the witch-hunt, focusing in particular upon the various respects in which trial and pre-trial procedures were adapted to take account of the exceptional nature of the crime of witchcraft, which was perceived as posing special problems of evidence and proof.

1. Law and Witchcraft: The General Relationship

The role of law in the witch-hunt has three main aspects, which will be considered in turn. Firstly, witchcraft beliefs did not simply form the basis of prosecutions as a pre-existing component of the mental fabric of early modern European society. Rather they were themselves in an important sense legally constructed. Pollock and Maitland conclude their survey of the legal history of the subject with the paradox that 'Sorcery is a crime created by the measures taken for its suppression'.[1] This proposition anticipates the work of the sociological school of labelling theory in the 1950s and 1960s in according priority to the role of the agencies of social control in producing, shaping and ironically amplifying the deviance they purport to eradicate, a perspective applied to witchcraft by, amongst others, Thomas Szasz[2] and Thomas Scheff.[3] It was, however, an insight shared by contemporary sceptics. In 1610, the Spanish Inquisitor, Antonio de Salazar, observed that 'there were neither witches nor bewitched until they were talked and written about',[4] – and a crucial site for this talking and writing was the courtroom. Confession evidence

[1] Sir F. Pollock and F.W. Maitland, *The History of English Law*, 2nd edn. (Cambridge, 1968), p.556.

[2] T.S. Szasz, *The Manufacture of Madness* (London, 1970).

[3] T. Scheff, *Being Mentally Ill* (Chicago, 1966).

[4] B. Levack, *The Witch-Hunt in Early Modern Europe* (London, 1987), p.150.

extracted by torture, or in England by less formalized means of judicial coercion, was the primary form in which suggestion, delusion, fantasy and fabrication (in addition to an unquantifiable proportion of naturalistic evidence relating to the actualities of occult activity) acquired the status of legally validated official knowledge. Trial and pre-trial proceedings generated and disseminated knowledge of the nature and extent of witchcraft practices, systematically exposing the workings of this subterranean threat to social order. Contemporaries employed the term 'discovery' of witches to describe the object of legal proceedings, as in Matthew Hopkins's *The Discovery of Witches* and Reginald Scot's *The Discoverie of Witchcraft*.[5] By virtue of the trials, the reality of witchcraft was constantly reaffirmed, and religious dogma and peasant belief vindicated. Legal proceedings provided a fertile source of the witchcraft lore which became incorporated in formal knowledge as a department of law, divinity and physic, for legal, clerical and medical treatise writers relied significantly upon experience and accounts of the trials. It was, however, a corollary of the interconnection of witchcraft belief and legal process that the growth of scepticism within the legal culture was a cardinal factor in the decline of the witch-hunt. An example is Mr. Justice Powell's reported remark at the trial at Hertford in 1712 of Jane Wenham – the last convicted witch in England[6] – that there was no law against flying.[7]

The substantiation and elaboration of witchcraft beliefs within the criminal process lends itself to analysis as a case of the interdependence of power and knowledge as conceived in the later work of Michael Foucault. For Foucault, instances of power entail knowledge, which itself reinforces power in a circular process.[8] He traces the origins of the human sciences in the practice of techniques of discipline, examination and observation upon captive populations in proliferating institutional settings such as prisons, schools, hospitals and asylums mainly from the late eighteenth century onwards. So, for example, when public asylums for the insane were established under medical control in early and mid-nineteenth century England, sometimes on the basis of Jeremy Bentham's model prison, the Panopticon, they functioned as medical observatories of insanity, fostering the development of a body of knowledge which laid the foundations for a formal science of medical psychology. The possession of

[5] Matthew Hopkins, self-styled 'witch-finder general' was in the forefront of England's most highly developed and large-scale witch-hunting campaign, in the south eastern counties of England in 1645-7. *The Discovery of Witches* was an account and defence of his activities published in 1647, the year of his death. Reginald Scot, on the other hand, was an early sceptic. His *Discoverie of Witchcraft*, which appeared in 1584, was much despised by James VI of Scotland, who, it seems, ordered its burning when he became king of England.

[6] She was, however, reprieved and saved from execution.

[7] K. Thomas, *Religion and the Decine of Magic* (London, 1971), p.547.

[8] M. Foucault, *Discipline and Punish* (London, 1977), p.224.

this block of positive knowledge in turn legitimated doctors' claims to exclusive authority in the treatment of the insane.[9] Adapting this analysis to a different type of power-knowledge relationship at an earlier historical juncture, witchcraft trials, especially in those jurisdictions where inquisitorial methods and torture were deployed, effectively involved courts in functioning as workshops for the production of witchcraft knowledge. The resultant revelations reinforced public fear and so further legitimated the enterprise of the witch-hunters, creating a circle which it was difficult, but not impossible, to break. Foucault himself considers the contribution of the inquisitorial investigative process to the formation of knowledge, identifying in it the model for the deployment of the empirical natural sciences. As the inquisitorial technique, derived from tax collection and administration, came to dominate European judicial process in harness with the rise of church and state power, he describes it as providing the 'juridico-political matrix' of the natural sciences.[10] In the context of witchcraft trials inquisitorial technique may be credited with having played an immediate and direct role in the constitution of a corpus of knowledge which was concerned partly with man, partly with the natural world, and partly with the spiritual world: the investigation of the witch was directed to the exposure of her capacity to work magic for malign purposes as a result of having entered into a league with Satan.

Secondly, it was through the invocation of the powers of the law that the social denunciation of witches was given effect in the imposition of legitimately sanctioned penalties, primarily physical extermination, which, so it was believed, destroyed the witch's power enabling victims to recover, while those accused of witchcraft were able to retaliate by taking legal countermeasures in the form of actions for defamation, assault and false imprisonment. As Levack has recently stated, 'the great European witch-hunt was essentially a judicial operation'.[11] As a means of combating bewitchment, law represented one of a range of options available to a victim or potential victim. One other possibility was private vengeance. When an incredulous parliament adopted the Witchcraft Act in 1736 (against the eighteenth century's trend of increasing the number of capital offences) witchcraft ceased to be a crime of occult power and was brought down to earth as a mere crime of deceit. The result was that from then on local communities within which witchcraft belief persisted were forced back into private vengeance. A notorious incident of this took place in 1751. Thomas Colley, a chimney sweep, conducted a witch-swimming in which a woman was drowned and as a result of which her husband later

[9] See H. Dreyfus and P. Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (Brighton, 1982); P.Q. Hirst, 'Constructed Space and the Subject', in R. Fardon (ed.), *Power and Knowledge: Anthropological and Sociological Approaches* (Edinburgh, 1985), p.171.

[10] Foucault, p.225.

[11] Levack, p.63.

died. Tried at Hertford Assizes and convicted, he was returned to the scene of the crime under an escort of 108 men, 7 officers and 2 trumpeters, and hanged, his body swinging there in chains for many years.[12]

Another option was countermagic. This could take many forms, including the wearing of amulets or charms, the assistance of white witches or wizards, and direct action against the witch of types that were believed to cancel her magic, such as scratching her, or burning some of her hair or thatch from her roof. In line with a current theory that both ecclesiastical and secular judges were protected from her powers once the witch was apprehended and the subject of legal process,[13] James I in his *Daemonologie* depicted law itself as possessing magical properties, divine disarming demonic intervention:

> If they be apprehended and deteined by anie private person, upon other private respects, their power no doubt either in escaping, or in doing hurte, is no lesse nor ever it was before. But if on the other parte, their apprehending and detention be by the lawfull Magistrate, upon the just respectes of their guiltinesse in that craft, their power is then no greater then before that ever they medled with their master. For where God beginnes justlie to strike by his lawful Lieutennents, it is not in the Devilles power to defraude or bereave him of his office, or effect of his powerfull and revenging Scepter.[14]

A further resource was religion, in the form of religious magic (exorcism), or, in the Reformed Church, prayer and faith, the supplication of the deity. The co-involvement of religious powers makes the point that legal authorities took part in the processing of witchcraft accusations as one sector of the elite. This is strikingly evident in the famous Warboys case in Huntingdonshire in 1592-3, where the victims themselves were of somewhat elevated social status. The case concluded with the execution of an old woman, her husband and her daughter. It arose from the insistence of a sick child, one of the daughters of Sir Robert Throckmorton, a prominent Huntingdonshire landowner, that a humble neighbour, Alice Samuel, looked just like a witch. Here, medical authority was the initial basis for granting credence to the claim, as Dr. Barrow, a Cambridge physician who was consulted regarding the child's illness, gave it as his opinion that she was bewitched, witchcraft providing a convenient explanation when a malaise did not fall within available diagnostic categories. Lady Cromwell (step-grandmother of Oliver Cromwell), coming to visit the children, took up the accusation and cut off a lock of Alice Samuel's hair to burn it as a countermeasure. Afterwards she became afflicted with a strange illness, languished and died. Throckmorton's other four daughters and seven maidservants resident at

[12] See J.H. Langbein, *Torture and the Law of Proof* (Chicago, 1977), p.210, n.49; C. Hole, *Witchcraft in Britain* (London, 1980), pp.169-71.

[13] E. Peters, *The Magician, the Witch and the Law* (Philadelphia, 1978), p.153.

[14] James VI, *Daemonologie* (Edinburgh, 1597), pp.50-1

the house also suffered otherwise inexplicable fits. The views of Cambridge scholars, colleagues of Henry Pickering, a relative, were sought, and confessions were eventually forthcoming before, first, a local clergyman and then the bishop of Lincoln. In the formal judicial proceedings which followed the bishop joined two justices, Francis Cromwell and Richard Tryce, in the examination, an instance of the auxiliary role played by ecclesiastical figures in secular tribunals charged with judging witchcraft. Three different clerics gave evidence. The issue therefore involved medical, academic, social and ecclesiastical as well as, and in conjunction with, legal authority.[15]

Before witchcraft became a statutory crime in 1542,[16] it had been treated as essentially a matter for the ecclesiastical courts, where usually minor witchcraft offences fell for decision and sanctions had been lenient and directed more to penance and atonement than punishment. These courts retained a substantial role in the determination of witchcraft accusations until the beginning of the seventeenth century.[17] However, although clerical authorities participated in the resolution of witchcraft cases, in the early modern period it was secular law that dominated, punitive displacing reformative justice. The decline of ecclesiastical jurisdiction in this area has indeed been identified as one of the preconditions of the witch-hunt.[18] We can say that in the medieval period witchcraft was treated primarily as a pastoral matter, in the early modern period predominantly as a legal matter, and in the modern period as a myth, or, to the extent that confessions have been explained as the product of derangement, senility or drug-induced fantasy, as a medico-scientific matter.[19] Effectively, after the early modern period, witchcraft was

[15] *The most strange and admirable discoverie of the three witches of Warboys* . . . (London, 1593), reprinted in R. Boulton, *A Compleat History of Magick* (1715), vol.i, 49-152; C.L. Ewen, *Witchcraft and Demonianism* (London, 1933), pp. 169-73; W. Notestein, *A History of Witchcraft in England from 1558-1718* (Washington, 1911), p.47 *et seq.*

[16] 32 Henry VIII, c.8.

[17] A. Macfarlane, *Witchcraft in Tudor and Stuart England* (London, 1970), p.68.

[18] Levack, pp.77-84. Three other statutes of the second half of Henry VIII's reign imposed secular penalties for moral or ecclesiastically related offences:
(1) 23 Henry VIII, c.11: 'an acte for breking of prison by Clerks convicte:
(2) 25 Henry VIII, c.6: this classified buggery 'with mankind or beast' as a felony, there being as yet no 'condigne' punishment.
(3) 31 Henry VIII, c.14: a statute for 'abolishing diversity in Opynions'.

[19] Although the so-called Zilboorg thesis (G. Zilboorg, *The Medical Man and the Witch during the Renaissance* (Baltimore, 1935), which asserts that witchcraft was the misrecognition of mental illness in a less rational age, should be rejected, as should the thesis of Thomas Szasz which stands this on its head by portraying modern psychiatry as a social functional substitute for persecutory witch-hunting, a position which, despite the fact that it highlights some arresting parallels, denies the irreducible historical specificity of witchcraft as concept and practice. See P.Q. Hirst and P. Woolley, *Social Relations and Human Attributes* (London, 1982), pp.219-23, 236, 240; G.R. Quaife, *Godly Zeal and Furious Rage* (London, 1987), pp.204-6, 209, n.8.

blotted from social reality by a revised conception of the possible.

In terms of the role of law in the witch-hunt in Continental Europe the most important features were the adoption of inquisitorial procedure and the use of torture. Both of these were generally formally absent in English secular courts.[20] One characteristic of witch trials which was common to England was the phenomenon Hirst and Woolley term 'disorderly legality':

> Witchcraft trials are a part of conditions of *disorderly legality*. They are desperate measures and by their very form they undermine the possibility of creating a stable, useful and pacified population. Although conducted by authority, and serving as a means to enforce religious conformity, they threaten both political order and religious conformity. For if the courts of authority provide the theatre, popular accusations and the confessions of the accused determine the cast, and those accusations are not limited by considerations of social standing or outward belief. Beggar women can denounce merchants and councillors . . . Witch trials, like the disorder of festivals and organized licenced begging, threaten to give rise to an institutionalized anarchy in which popular forces rather than state agencies set the norms of conduct.[21]

The most intense moments and phases of the witch-hunt tended to take place where and when local courts were least subject to corrective central control and able to improvise in ways prejudicial to suspected witches, spawning a legality that was unstable, elastic and volatile. The point was made early in the modern historiography of witchcraft by Wallace Notestein, an American historian in the liberal humanist tradition, that a significant proportion of English witch trials took place in towns possessing separate rights of jurisdiction, citing Yarmouth, King's Lynn, Newcastle-upon-Tyne, Berwick and Canterbury.[22] The virulence of England's most notorious witch-hunting episode, promoted by Matthew Hopkins, assisted by John Stearne, in the south eastern counties in 1645-7, may be attributed in part to the interruption of normal government and legality by the conditions of the Civil War. This campaign, which yielded a total of about 200 executions, entailed something of a continentalization of the legal process, with oppressive procedure and *de facto* torture being brought to bear upon the accused. The trial of Essex witches at

[20] Exceptions are dealt with below in the body of the article.

[21] Hirst and Woolley, p.254; hence the link between the rise of absolutism and the decline of witch-hunting as inimical to strong central control. On the subject of the lowly directing accusations at the mighty, this could rapidly induce an attack of scepticism in the elite, as in the case of the accusation of Lady Phips, wife of the governor of the Bay Colony and Samuel Willard, president of Harvard College and pastor of the First Church of Boston in the Salem trials in New England in 1692: J. Bednarski, 'The Salem Witch-Scene Viewed Sociologically', in M. Marwick (ed.), *Witchcraft and Sorcery*, 2nd edn. (Harmondsworth, 1982), pp.193-4.

[22] Notestein, p.201.

Chelmsford in late July 1645 was conducted, not by judges of assize, but before the J.P.s presided over by Robert Rich, earl of Warwick, who had no clear judicial status.

That the political centre did from time to time intervene correctively is illustrated by the fact that Parliament constituted a special commission of oyer and terminer to try witches imprisoned at Bury gaol in August 1645 because of suspicion of Hopkins' and his confederates' methods. As a result the swimming of witches was abandoned and a new evidential emphasis upon genuinely voluntary confession and clear proof introduced.[23] Another example of central intervention to restrain a witch-hunt in danger of spiralling out of control took place in Lancashire in 1634. A boy of ten, Edmund Robinson, was set up by his father as a witch-finder and made a series of remarkable allegations. After the assizes, where twenty were found guilty, execution was stayed and proceedings reported to the king in council. The bishop of Chester was ordered to examine seven of the convicted. Four witches were later ordered to be brought to London for examination by physicians and midwives under the direction of Dr. William Harvey, and nothing incriminating was found. The boy witch-finder was also ordered by Sir Francis Windebank, Secretary of State, to be examined by George Long, J.P. for Middlesex, and admitted his allegations were fabricated.[24]

The third aspect of the relationship between law and the witch-hunt to be considered is the notion of the demonic pact. This concept was a core element in the continental European elite's composite picture of witchcraft and exerted influence in English trials from the early seventeenth century. The Jacobean statute against witchcraft of 1604[25] imposed the death penalty for anyone who 'shall consult *covenant with* entertaine employ feede or rewarde any evill and wicked Spirit to or for any intent or purpose'.[26] Parliamentary recognition was thereby given to the Continental concept of witchcraft as arising from an heretical bargain between the witch and the devil, the demonic pact. This pact was contractually conceived and discussed in legalistic terms.

In the medieval notion of the pact between sorcerer and the devil, the sorcerer obtained mastery over demons and emerged with reward from the bargain. In the early modern era the witch was portrayed as cheated by the devil, the victim of a trick. Matthew Hopkins in his *The Discovery of Witches* provides an account of witchcraft in which *maleficium* (the harm done by witches) is itself treated as an illusion, the product of 'the great deceiver's' own sleight of hand. Hopkins' explanation runs as follows. The

[23] C.L. Ewen, *Witchcraft and Demonianism*, p.260.

[24] *Ibid.*, pp.244-51. There are European examples of the centre promoting a witch hunt in the face of local inaction. See Quaife, p.118.

[25] 1 Jas. I, c.12.

[26] Author's italics.

devil knows X is fatally diseased. He tells the witches that X is conspiring against them. They call upon him to dispose of X. X dies a natural death but the witches believe the Devil has granted their request and so are further wedded to him.[27] For Hopkins the illusory quality of *maleficium* was not a problem: the pact with Satan was the essence of the crime. This pact could be merely oral, or take written form, being signed and sealed in blood. The witch might commit herself for life, or for a fixed term of years. The relationship thus initiated has been characterized as a replica of that between feudal lord and vassal.[28]

An interesting quasi-legal discussion of the demonic pact is to be found in William Perkins' *A Discourse of the Dammed Art of Witchcraft* (1608) and repays quotation at length. Perkins is concerned to refute three arguments advanced by 'the patrons of witches':

I. In every league and contract the parties must be mutually bound each to the other: now betweene man and woman, and the devill, there can be no bond made, and though there could, yet man is bound in conscience to God, to renounce the bond of obedience to Satan, and to break the covenant. *Ans.* There be two sorts of Leagues; lawfull, and unlawfull: in all lawfull leagues it is true, that there must be a mutuall bond of both parties, each to other, which may not be dissolved; but in unlawfull compacts it is otherwise. And no man can say that this league between a Witch and the Devill is lawfull, but wicked, and damnable, yet being once made, howsoever unlawfully, it is a league and compact. This therefore prooveth not, that there can be no covenant at all, but that there can be no lawfull covenant betwixt them, which no man will denie.

II. Satan and the Witch are of divers natures: he is spirituall, they are corporall substances: therefore there can be no league made betweene them. *Ans.* The reason is not good. For even God himselfe, who is of nature most simple and spirituall made a covenant with Adam, renued the same unto Abraham, Isaac and Jacob: and continueth it with his Church on earth from age to age. Hence it appeareth, that diversitie of nature in the parties, can not hinder the making of a covenant. And therefore if man may make covenant with God himselfe, who is most spirituall; then may he likewise come in league with the devill, whose substance is not so pure and spirituall. Againe, we must remember, that in making of a covenant, it is sufficient, that the parties consent and agree in will and understanding, though other circumstances and rites, which are but signes of confirmation be wanting. Be it then, that Satan hath not a bodily substance, as man hath, yet considering that man is indued with understanding to conceive of things as the devill doth, and hath also will to yield consent, and approbation thereunto, though in a corrupt and wicked manner, there may passe a confederacie, and a covenant may be made, and stand in force betweene them.

[27] Hopkins, p.10.
[28] Quaife, p.55.

III. Whatsoever the devil doth in this compact, he doth it in fraud and deceit, never meaning in his promises, as man doth, and when both parties mean not one and the same thing, how can they grow to agreement in any kind? *Ans.* Suppose this be true, yet it only prooveth, that the covenant made between them, was deceitful and unlawfull. But what of that? Still it remaineth a bargain howsoever: for it faileth only in the circumstance, the substance, which is the consent of the parties was not wanting.[29]

In this extract, Perkins, a Puritan divine, addresses a series of issues of an essentially legal nature relating to the validity of contracts, as they apply to the demonic pact: the possibility of illegal contracts, the capacity of the parties to contract, the sufficiency of consensus between the parties to found a contract in the absence of formalities, and the effect of deceit upon the contractual relationship. These issues are rationally resolved on the basis of the combination of a Biblically sanctioned conception of cosmic order and a theory of contract.

2. *The Modesty of England's Witch-Hunt*

Having examined these general features of the relationship between law and witchcraft with principal reference to English experience, the rest of the discussion will be concerned with the impact of witchcraft beliefs upon English criminal law and procedure. Before the last years of Henry VIII the position regarding the legal basis of witch prosecutions appears confused. It seems that witchcraft could be dealt with in the secular courts where fraud, treason, murder or injury were involved,[30] and following *De Haeretico Comburendo* (1401), witches could be handed over by the ecclesiastical courts to be executed. In 1542 the first of a series of statutes was enacted, remaining in force only until 1547 when it fell as part of a general repeal. It became a capital offence to conjure spirits or practise witchcraft, enchantment or sorcery in order to find lost treasure, waste or destroy a person's body, members or goods, provoke to unlawful love, or for any other unlawful intent or purpose. Benefit of clergy and sanctuary were lost, and land and goods forfeit. A second statute,[31] enacted in 1563, imposed the death penalty for 'any Invocacons or Conjuracons of evill and wicked Spirites, to or for *any* Intent or Purpose',[32] but where the victim of witchcraft, enchantment, charming or sorcery merely suffered injury rather than death; where there was only an attempted murder or injury; where animals or goods were damaged or the purpose was to find lost

[29] London, 1610 edn. pp.188-90.
[30] Thomas, pp.557-8.
[31] 5 Eliz., c.16.
[32] Author's italics.

treasure or provoke to unlawful love, the penalty was reduced to one year's imprisonment with quarterly appearances in the pillory and confession of error. In the case of a second offence in these categories, however, actual injury to person or property attracted the death penalty, while the other crimes were punishable by life imprisonment. This statute also protected wives and successors against forfeiture, but loss of goods was introduced as a sanction in certain of the lesser categories of offence. The third statute, enacted in 1604, imposed more severe penalties. Injury to the person by witchcraft, enchantment, charm or sorcery became a capital crime, as did a repeated transgression in the other lesser categories. Further, the employment of a corpse 'or the skin bone or any other parte' thereof in witchcraft or allied practices became a capital offence. All three Acts encompassed not only the direct practitioners of witchcraft but also their 'counsellors, abettors and procurers'.[33] The Jacobean statute was repealed in 1736 when the Witchcraft Act abolished witchcraft as a crime consisting in the exercise of occult powers for personal ends and introduced instead a penalty of one year's imprisonment for pretending to exercise such powers.[34]

Compared with some other areas of Europe, notably France, Switzerland, parts of Germany, and Poland, England underwent a modest and only semi-developed witch-hunt. The witch-hunt in England remained preoccupied with *maleficium*, the infliction of harm by occult power, rather than with heresy and the demonic pact, even after the raising of evil spirits per se had been criminalized by statute. The demand for prosecutions arose substantially from the populace of local communities rather than being stoked by the elite. It therefore rested upon the traditional peasant stereotype of the witch as an ill-disposed, indigent and aged woman, rather than upon the learned concept of a diabolical compact rooted in demonological theory, although the latter did exert significant influence. Witch-hunts based upon the demonological conception were more liable, because of the collective nature of witchcraft as a criminal activity celebrated at the sabbath, and particularly when fuelled by torture, to snowball out of control and so engulf men, children and other members of the elite, whereas in England the proportion of women amongst accused witches was exceptionally

[33] An Act of 1582 (23 Eliz., c.2) is also relevant. The casting of horoscopes to predict the length of the Queen's reign and who should succeed her was made punishable by death.

[34] This statute remained in force for more than two centuries, and its use was revived as late as 1944 in the prosecution of a spiritualist medium, Helen Duncan. After a campaign by the Spiritualist National Union, the act was repealed and replaced by the Fraudulent Mediums Act 1951, which made it clear that merely purporting to contact the spirit world was not an offence: there must be an intent to deceive and it must be done for reward..

high, Macfarlane recording a figure of 92% for the county of Essex.[35] Another index of moderation is that the character of the confessional and supporting evidence was less florid than in the Continental heartlands of the witch-hunt, where elements such as the sabbath, nocturnal flight, sexual relations with demons, cannibalism and infanticide were well entrenched. Taking the example of flight, which was central to the continental concept, as it accounted for rapid journeying over long distances to the sabbath, mention in the learned literature or the trials in England was very rare. One reference is made by William West in a legal treatise, *Symbolaeographie* (1594), listing the practices of a witch to include being

> conveyed of her familiar which hath taken upon him the deceitful shape of a goate, swine or calfe etc. into some mountaine farre distant, in a wonderfull short space of time. And sometimes to flie upon a staffe or forke, or some other instrument.[36]

Mention of a broom-stick occurs only once in an account of an English trial. This was in the case of Julian Cox, a woman of about 70, who was indicted for bewitching a servant maid. The defendant confessed that 'there came riding towards her three persons upon three broomstaves borne up about a yard and a half from the ground'. The third person, in the shape of a black man, tempted her to sign a compact with her own blood, agreeing to give him her soul in return for help in 'carrying out revenge', but she had refused. Having prejudiced herself by error in reciting the Lord's Prayer, she was found guilty and executed.[37]

Another sign of restraint was that the witch-hunt in England began later than in most of the European countries affected, but ended earlier.[38]

[35] *Witchcraft in Tudor and Stuart England*, p.160. In qualification of this picture, it should be noted that Christina Larner found that when Scottish witch-hunts escalated, the proportion of women witches rose. She gives the explanation that male witches needed more time to build up a reputation, so in times of panic, accusers, and convicted witches pressed to incriminate accomplices, felt more secure in denouncing women: *Enemies of God: The Witch-Hunt in Scotland* (London, 1981), p.92; see also Quaife, p.81; Levack, p.24; and A. Anderson and R. Gordon, 'Witchcraft and the Status of Women – the Case of England', *British Journal of Sociology*, 29 (1978), p.171. In a neat demonstration of sex discrimination, Larner points out in relation to a ratio of 80 women to 20 men amongst Scottish witch suspects that men enjoyed a similar preponderance over women amongst thirteenth and fourteenth century saints: *Enemies of God*, p.94.

[36] C.L. Ewen, *Witch-Hunting and Witch Trials* (London, 1919), p.22.

[37] C.L. Ewen, *Witchcraft and Demonianism*, p.337. The judge allowed the test, whilst cautioning against its being taken into account.

[38] Witch prosecutions in England accelerated from the mid-sixteenth century as opposed to the mid-fifteenth century (although there was a period of dormancy in Europe in the first half of the sixteenth century). The last official execution in England was that of Alice Mulholland at Exeter in 1685, the last conviction in 1712 and the last trial in 1717. The last execution in Scotland was in 1722 and in some areas of Europe executions continued well into the eighteenth century, the last taking place, possibly illegally, in Poland in 1793.

Further, there were proportionately fewer trials and executions. England probably provided less than 1,000 of upwards of 60,000 executions in Europe as a whole.[39] There were other interesting differences. In England the death penalty for witchcraft took the form of hanging rather than burning, which is perhaps reflective of the lesser link with heresy, although there was an exception in cases of petty treason (including *inter alia* murder of husband by wife, parent by child and master or mistress by servant), where men were to be drawn and hanged, but women burned alive.[40] Thus Mother Lakeland was burned at Ipswich in September 1645 for bewitching to death her husband. The concept of the witch's animal familiar was uniquely prominent in England, a divergence from European practice as remarkable as the virtual absence of the animal trials which were such an exotic aspect of continental juridical reason.[41] Finally, in contrast to European experience, there is scant evidence in England of witch-finding being taken up as a species of entrepreneurial profit-seeking.[42]

This profile of restraint can partly be explained by the legal situation in England, notably the persistence of accusatorial as opposed to inquisitorial criminal procedure, and the normal exclusion of judicial torture. The categorization of witchcraft as an exceptional crime creating special evidential problems was used to justify adaptations and innovations in both European and English systems.[43] The exceptionality of the crime of witchcraft flowed from its occult, that is its secret and supernatural, quality. The witch need not be present at the time of injury or death, so it was unlikely that there would be witnesses to the offence, conceived as *maleficium*. This lack of direct witness applied even more strongly when the crime was defined to consist of a pact with the Devil. However, there was a prosecutorial advantage here in that an alibi for the time of death or injury was of no value. These evidential characteristics were shared by the crime of poisoning, with which witchcraft possessed close affinities. Both involved the artful concotion and application of noxious substances. While poisoning depended upon natural processes, witchcraft depended upon supernatural effects. The line between the two could be difficult to draw.[44] Significantly, the Latin term *veneficium* was

[39] This estimate is given by Levack, at p.21. Geoffrey Scarre in *Witchcraft and Magic in Sixteenth and Seventeenth-Century Europe* (London, 1987), estimates 100,000 while Quaife sets the figure at about 200,000.

[40] M. Dalton, *The countrey justice, conteyning the practice of the justices of the peace out of their sessions* (London, 1618), pp.204-6.

[41] See K. Thomas, *Man and the Natural World*, p.97; E.P. Evans, *The Criminal Prosecution and Capital Punishment of Animals* (London, 1987) (originally published 1906).

[42] An English example is Samuel Cocwra in Salop, Worcester and Montgomery: see C.L. Ewen, *Witch-Hunting and Witch Trials*, pp.69-70.

[43] See C. Larner, 'Crimen Exceptum', in *Witchcraft and Religion* (Oxford, 1984).

[44] See R. Kieckhefer, *European Witch Trials* (London, 1976), p.34.

used for both.[45]

If witchcraft was evidentially problematic because it was secret, the answer was to rely upon indirect evidence; and if it was problematic because it was supernatural, the answer was to admit evidence of a supernatural or quasi-miraculous character. English judicial practice responded as follows. Firstly, an important part was played by circumstantial evidence. The suspect's association with an animal or insect could be interpreted as the entertaining of a familiar spirit. Witnesses willing to testify to this were a convenient substitute for witnesses to the demonic pact itself when the legal emphasis shifted from *maleficium* to heresy in the early seventeenth century.[46] If some contact with the suspected witch, together with a history of bad relations, were to be followed by mishap, a causal connection could be imputed. Thus Richard Bernard in his *A Guide to Grand Jury Men* (1627) took the view that if a woman gave a child an apple and the recipient quickly fell ill after eating it, then given a background of ill will, there was a sufficient basis for the accused to be condemned and executed.[47] Secondly, various categories of physical evidence were accepted. There might be residual physical evidence of witchcraft practices, such as a waxen image of the victim found in the accused's possession after a misfortune had been suffered. This type of evidence would of course be convincing in a modern sceptical culture as a demonstration that witchcraft had been practised against the victim, with the difference that in the absence of some belief supportive of the efficacy of image-magic, such as, in the early modern period, Renaissance Neoplatonism, it would not be acceptable as evidence that the victim had thereby been harmed. In a more radical departure, however, physical evidence was admitted which involved attributing various supernatural properties to the witch's body. If there was one source of evidence which was at the disposal of the court it was the witch's body, and investigation of its physical qualities would provide a means of judging the witch's spiritual status. This entailed the legal recognition and incorporation in the judicial process of traditional peasant witch beliefs and a primitively magical brand of Christianity which drew censorship from learned commentators.[48] The manifestation

[45] Again, poisoning was conceived as characteristically a female crime as its commission did not require physical strength. Terminologically there is an analogy with the use of the term 'buggery' to refer both to heresy and sodomy: see T. Szasz, *Manufacture of Madness*, p.38.

[46] This was the central evidential concern of commentaries on the law in the first half of the seventeenth century, following upon the 1604 statute's specification of the covenant. Bernard, for example, states 'to convict anyone of witchcraft, is to prove a league made with the devil . . . Now, they that make this league, have a familiar spirit. For this is true, as soone as the league is made . . .': *A Guide to Grand Jury Men*, pp.216-17.

[47] Macfarlane, p.18.

[48] See e.g. discussion below of Dr. John Cotta's opinions on the use of the water ordeal.

of certain of the supernatural bodily properties which provided a judicial litmus test required the witch's active participation. Thus if the accused's alleged crime was to have committed murder by witchcraft and the corpse bled at her touch, this was evidence of guilt. Similarly a witch was deemed incapable of standing up in court and giving voice to a particular religious form of words – reciting the Lord's Prayer, the creed, or some other scriptural passage – without faltering or failing. In other cases, the witch was the passive object of an experimental test. The medieval water ordeal was resuscitated as a mode of proof in cases of witchcraft. As the symbol of purity and instrument of baptism, water would reject the witch, and therefore if the accused floated it was evidence of guilt. Another more obscure oracular practice was to weigh the witch in a pair of scales against the weight of a Bible and if she was outweighed it was a sign of guilt.[49] If a victim scratched the witch responsible drawing blood, and the harm ceased forthwith, this also connoted guilt. Then there was physical evidence which involved the observation of the witch's body rather than the revelation of its properties by some proceeding. Thus witches were thought incapable of shedding tears, when so accused, and were searched for the witch's mark, conceived according to the demonic model as bestowed by Satan as a sign of his dominion over the witch, or more traditionally as providing a place at which her familiars would suck blood to gain sustenance, and sometimes consisting of an insensible spot of flesh detectable by pricking with needles. Thirdly, on occasion spectral evidence, testimony relating to demonic apparitions, was treated as admissible.[50]

Most highly valued, though, was the extraction of a confession, and pressure was also sometimes exerted upon those who confessed guilt to implicate other witches. So there was an impetus to judicial coercion, inquisitorial investigative techniques and strategies, and, in Continental Europe, legalized torture. Procedures tended to presuppose guilt: they were designed to unmask or 'discover' witches.[51] It must be appreciated

[49] See R.D. Hunt (ed.), 'Henry Townshend's "Notes of the Office of a Justice of the Peace" 1661-3' in Worcestershire Historical Society, *Miscellany II* (1967), p.118.

[50] As in the case of that given by Matthew Hopkins regarding the appearance of imps at the trial of Elizabeth Clarke of Manningtree in 1645.

[51] This is one of many parallels with the modern treatment of psychiatric illness. The 1959 Mental Health Act (now replaced by the more liberal Mental Health Act 1983) introduced a system of Mental Health Review Tribunals to consider the discharge of long-term detained patients in part substitution for the safeguard of reference to a magistrate before commitment, which was being abolished. Although these were the only tribunals in the English legal system to be vested with the power to determine issues of individual liberty, they were designed to proceed with the minimum of formality. The assumption was that a more formal procedure would be disturbing for the mentally disordered. Mental Health Review Tribunals were devised to operate as an outlet for the frustrations of 'paranoid' patients and to provide a therapeutic second opinion rather than to function in

that, despite the influence of the comforting notions that bringing her within the control of legal authorities disarmed the witch and that the Devil himself malignantly betrayed witches into the hands of temporal justice, witch trials, compared with trials of other types of offence, were perceived to be peculiarly vulnerable. Earthly courts, as they took on board the demonic conception of witchcraft, saw themselves as confronted by malign spiritual powers, creating an atmosphere of tension and apprehension of spectacular supernatural interference, especially during episodes of panic when multiple trials were in progress. With supernatural assistance a witch could carry a hot iron several paces further than was necessary to prove her innocence,[52] make her Devil's mark disappear to frustrate the searchers,[53] torture her child accusers with violent fits in the courtroom itself[54] and even break the leg of a justice as he sat in judgement on the bench.[55] The witch trial became a contest beween the forces of light and those of darkness, which sixteenth-century Christianity portrayed as unprecedently powerful, sinister and socially pervasive. What was being dispensed was very much an emergency justice and procedures were tailored accordingly.

In assessing the legal contribution to the witch-hunt of the sixteenth and seventeenth centuries, we may consider two contrasting theses, those of Keith Thomas in *Religion and the Decline of Magic* (1971) and Norman Cohn in *Europe's Inner Demons* (1976). Thomas asks why, if English popular witch beliefs were much the same as they had been in the Middle Ages, it was only in this epoch that legal action against witchcraft really took off. There are two explanations on offer. One is that the demand for witchcraft prosecutions suddenly grew, the second that the legal situation itself changed in such a way as to encourage an upsurge in prosecutions. The latter explanation is smartly dismissed because it would seem that 'a woman who killed a man by sorcery was in medieval law as liable to prosecution as if she had used a hatchet!'[56] The former proposition – that it was demand for legal redress that increased – is preferred, the growth in demand being related to the decline of magic within the church as a result of the Reformation, depriving the populace of a major source of magical

the manner of a court of law. Therefore tribunal procedure presupposed the character of the standard applicant, and so denied him or her the benefits of earlier more 'legalistic' machinery for the protection of individual liberty.

[52] See R. Bartlett, *Trial by Fire and Water* (Oxford, 1986), pp.145-6, in reference to a case in the Black Forest in 1485 which is treated in the *Malleus Maleficarum*.

[53] J.W. Willis Bund (ed.), *The Diary of Henry Townshend of Elmley Lovett 1640-1663*, Worcestershire Historical Society (1915), p.40.

[54] This was a common feature of the Warboys trial in 1593 and the Salem trials in 1692.

[55] Reginald Scot recorded this claim made by an Essex Justice: see A. Macfarlane, *Witchcraft in Tudor and Stuart England*, p.88.

[56] K. Thomas, *Religion and the Decline of Magic*, p.548.

protection and pointing it in the alternative direction of the law.[57] Norman Cohn, on the other hand, emphasises that the legal situation itself *had* changed. From the early thirteenth century, in its drive to combat heresy, the church, its example quick to be followed by secular powers, had replaced an accusatorial tradition of judicial procedure favourable to the accused with an inquisitorial procedure facilitative of successful prosecution, and judicial torture had replaced trial by ordeal. The installation of the inquisition and torture constituted the legal preconditions of the Great Witch-Hunt.[58] Cohn treats this proposition as diminishing the cogency of Thomas's argument, but however compelling the Cohn thesis may be as a contributory explanation of the European witch-hunt, English circumstances were of course here as in so many other regards culturally discrepant. A basically accusatorial model of criminal justice was preserved and torture only selectively authorized under the royal prerogative. Nevertheless once the crime of witchcraft was taken seriously in a legal context and dealt with punitively there were inherent pressures towards the assumption, even within an accusatorial system, of inquisitorial features. This facilitated the witch-hunt and propelled English experience towards the continental model. The Hopkins campaign was the most advanced episode of the English witch-hunt in this respect. It is therefore legitimate to classify English witch trials as to a greater or a lesser extent, depending upon their circumstances, 'sub-inquisitorial' in character, and to arrive at a conclusion in relation to the situation in England which represents a compromise between the positions of Thomas and Cohn, that is that the decline of ecclesiastical magic stimulated an upsurge in popular demand for witch prosecutions, while the criminal process underwent inquisitorial modifications which eased the legal accommodation of that demand.

The possible methods of proceeding against a witch can be arranged in a spectrum running from informal, which might variously be termed immediate popular justice, remedial crime, private vengeance or lynching, to highly formal and structured, with built-in procedural protections for the accused. Commencing with the informal proceeding, this might take on features borrowed from or also integral to the formal criminal process. For example, a lynch mob might submit a suspected witch to the swimming test or oppressive interrogation to name other witches. Such an overlap was possible because the witch trial furnished a setting for the expression of popular hostility. It was the climax of a cumulative process of community denunciation, whereby social

[57] *Ibid.*, p.594: 'What the religious changes in the mid sixteenth century did was to eliminate protective ecclesiastical magic which had kept the threat of sorcery under control . . . Ecclesiastical magic crumbled, and society was forced to take legal action against a peril which for the first time threatened to get seriously out of hand.'

[58] N. Cohn, *Europe's Inner Demons* (London, 1976), pp.160-3.

ostracization could be translated into judicially mediated physical extermination.[59] Witch trials were organic to the local community, a dark manifestation of popular democracy. Thus there was no sharp disjunction between formal and informal proceedings: each influenced the other. Formal proceedings reflected popular belief in admitting types of evidence and modes of proof regarded as vulgar and superstitious by sections of the elite, while the elite's conception of witchcraft as heresy filtered downwards partly as a result of the involvement of learned lawyers, doctors and divines in the trials, an exchange now widely recognized as lying at the heart of the Great Witch-Hunt.[60] Meanwhile acts of private vengeance mirrored official conceptions of appropriate methods for the identification and disposal of witches.

If informal, non-judicial methods of proceeding against witches are ranked as most prejudicial to, and placing greatest pressure on, the accused, then, of the formal methods available, the inquisitorial mode must be ranked next.[61] Michel Foucault describes it as 'an authoritarian search for truth observed or attested'.[62] The object of the proceedings is to extract the truth of the issue. To this end, the judge occupies an unfettered position and pursues an investigative and directive course. As Max Weber characterizes it, 'the trial is dominated by the presiding judge whose position it is to ascertain what has happened and who is, therefore, alone or primarily entitled to call and examine the witnesses and to require such

[59] George Gifford's *A Discourse of the Subtill Practices by Devilles by Witches and Sorcerers* (1587) is quoted to this effect by Alan Macfarlane in 'Witchcraft in Tudor and Stuart Essex' in J.S. Cockburn (ed.), *Crime in England 1550-1800* (London, 1977), at pp.83-4:

> 'Some woman doth fall out bitterly with her neighbour; there followeth some great hurt, either that God hath permitted the devil to vex him, or otherwise. There is a suspicion conceived. Within a few years after she is in some jar with another. He is also plagued. This is noted of all. Great fame is spread of the matter. Mother W is a witch. She hath bewitched goodman B. Two hogs which died strangely; or else he is taken lame. Well, mother W doth begin to be very odious and terrible unto many. Her neighbours dare say nothing but yet in their hearts they wish she were hanged. Shortly after another falleth sick and doth pine; he can have no stomach unto his meat; now he can not sleep. The neighbours come to visit him. "Well neighbour", sayth one, "do ye not suspect some naughty dealing; did ye never anger mother W?" "Truly neighbour" (sayth he) "I have not liked the woman a long time. I can not tell how I should displease her, unless it were this other day, my wife prayed her, and so did I, that she would keep her hens out of my garden. We spake her as fair as we could for our lives. I think verily she hath bewitched me." Everybody sayth now that mother W is a witch indeed, and hath bewitched the good man E. He cannot eat his meat. It is out of all doubt: for there were (those) who saw a weasel run from her house-ward into his yard even a little before he fell sick. The sick man dieth, and taketh it upon his death that he is bewitched. Then is mother W apprehended, and sent to prison.'

[60] See Cohn, p.xiii; Kieckhefer, p.ix.

[61] See A. Esmein, *A History of Continental Criminal Procedure with Special Reference to France*, trans. J. Simpson (London, 1914).

[62] *Discipline and Punish*, p.225.

proof as he thinks necessary'.[63] Apart from judicial activism, the hallmarks of inquisitorial process are that accusations emanate from public officials rather than private citizens and that the accused is subject to extensive judicial interrogation beyond the public gaze. The truth is established by judicial agents on the basis of a rational assessment of the assembled evidence rather than by submission of the issue to a panel of unaccountable lay jurors. Historically the quest for truth in inquisitorial systems has been lubricated by the systematic and regulated administration of torture. As the adoption of inquisitorial procedure was pioneered by the church to hound down heresy, it was peculiarly fitting for the trial of witchcraft as a species, indeed the ultimate embodiment, of heresy, representing as it did a parodic total inversion of Christianity.[64] The most significant feature of early modern inquisitorial practice in the present context was that on the continent of Europe, where this procedure was the norm, in the case of witchcraft exceptional measures were held to be justified and what can be termed a 'super-inquisitorial' procedure prevailed weighing even more heavily upon the accused than standard inquisitorial trial. Thus rules regarding the qualification of witnesses were relaxed, torture could be applied without first establishing that a crime had been committed, and repetition of torture, normally forbidden, was permitted.[65] Super-inquisitorial procedure accordingly ranks between non-judicial and inquisitorial modes of proceeding.

The accusatorial form of criminal process should be ranked as least directed to imposing pressure to reveal the truth upon the accused. It rests upon the accusation of a private citizen, the trial taking the form of a contest between two formally equal adversaries who choose their own witnesses, the judge acting as umpire. There is an emphasis upon public, oral testimony. Whereas the inquisitorial mode aspires to establish the absolute truth of the matter, the accusatorial system is formalistic. It makes a fetish of the rules of the game, and arrives at a relative, synthetic truth sufficient for practical legal purposes. Where the inquisition ranges state, church or some other concentration of power against the individual, the accusatorial mode entails the formal equality of the parties, a feature underscored in the medieval period by the *lex talionis,* which threatened accusers that if they failed to prove their case they faced a similar penalty to that the accused escaped. This concept of balance preempts the use of torture to assist in proof of the case of one side, and this form of procedure has evolved historically in association with the common law institution of jury trial, celebrated in liberal democratic political cultures as an

[63] M. Rheinstein, *Max Weber on Law in Economy and Society*, (Cambridge, Mass., 1954), p.46, n.12.

[64] J. Gaule, *Select Cases of Conscience Touching Witches and Witchcrafts* (London, 1646), p.57 *et seq.*, p.68.

[65] Levack, pp.73-5.

important safeguard for the accused.

In characterizing these two systems, the one influential in Roman law-based continental legal orders, and the other in common law jurisdictions, it is desirable to avoid any simplistic ideological representation of the latter as inherently more 'fair'. The criminal process in any given historically developing legal system consists of a complex and shifting ensemble of arrangements. The foregoing characterizations are typological, and operational legal systems combine elements of both. Thus police interrogation of suspects is an inquisitorial component of the English 'accusatorial' system of criminal justice – and one which many civil libertarians might well prefer to see made subject to magisterial supervision on the continental model. It is by no means the case that inquisitorially inclined systems inevitably leave the accused bereft of procedural guarantees. The Italian Code of Criminal Procedure, for example, secures that failure to observe any provision relating to the defence of the accused leads to the absolute nullity of the proceedings.[66] When comparing the English and continental European criminal justice systems historically, it must be appreciated that before the eighteenth century, an 'age of legalism' when a rational, formal justice was emergent,[67] the accused's position in an English trial for felony was anyway precarious, and only slowly improved thereafter. The lack of a developed law of evidence meant that hearsay was frequently allowed; the testimony of one eye witness was sufficient for conviction of felony compared with the two required by the romano-canonical law of proof; the right of the accused to call witnesses was subject to limitations that did not apply to the prosecution; and counsel for the defence was not allowed unless a point of law arose on indictment.[68] The self-satisfaction of the English with their common law liberties and disdain for the barbarism of continental juridical and penal practices, a style of cultural nationalism evident as early as the fourteenth and fifteenth centuries, could be countered with the charge that evidence which on the mainland of Europe might bring defendants to the threshold of torture frequently in England led straight to the scaffold. This was a point made by Dr. Samuel Johnson in debate with a Dutchman at Colchester in 1763:

> The Dutchman . . . thinking to recommend himself to us by expatiating on the superiority of the criminal jurisprudence of this country over that of Holland . . . inveighed against the barbarity of putting an accused person to the torture, in order to force a confession. But Johnson (responded) 'Why, Sir, you do not, I find, understand the law of your own country. The torture in Holland is

[66] Article 185(1) n.3; see G. Certoma, *The Italian Legal System* (London, 1985).

[67] See D. Hay 'Property, Authority and the Criminal Law' in D. Hay *et al.*, *Albion's Fatal Tree* (London, 1975).

[68] The latter two disabilities were removed by the Criminal Law Amendment Act 1867, section 3 and the Trials for Felony Act 1836 (6 and 7 Will. IV, c.114) respectively.

> considered as a favour to an accused person; for no man is put to the torture there, unless there is as much evidence against him as would amount to conviction in England. An accused person among you, therefore, has one chance more to escape punishment, than those who are tried among us.[69]

It has been seen that in witchcraft trials continental inquisitorial practice and the application of techniques of torture were procedurally unshackled so that they might stand a better chance of success in the prosecution of occult crime. While English practice remained distinctly more moderate, the theoretical insulation of the defendant from concentrated pressure by the accusatorial tradition could be significantly eroded in proceedings against witches. We shall now turn to examine the respects in which English criminal proceedings developed tendencies which led them to resemble an inquisitorial process, sometimes intensified by de facto torture.

3. Sub-Inquisitorial Trial

Inquisitorial procedure was officially installed in certain corners of England's complex tapestry of courts. This was true of secular courts: the Star Chamber, which tried a number of witchcraft cases, but did not have a substantial role in the witch-hunt,[70] the Chancery, the court of Requests and coroners' courts, and, most relevantly, justices of the peace conducting preliminary examinations, as well as ecclesiastical courts. In the latter, judges themselves acted as accusers on the basis of common fame or personal knowledge, or proceeded upon accusations by promoters, or denunciation.[71] The potential of these inquisitorial forms to colour the evidence extracted was offset by four factors: the lack of gravity of many of the complaints, the use of purgation, the absence of torture and the purpose of the proceedings, which remained one of reclamation rather than punishment. In the event of a conclusion unfavourable to the accused witch, common practice was that she be ordered to attend the parish church on the Lord's day wearing a white sheet and carrying a white wand, and confess, committing herself to lead a reformed life.[72] The great majority of trials in the secular courts were conducted at the assize courts. Quarter sessions did not try capital felonies, but certified examinations of suspected witches to the justices of Gaol Delivery.[73] The usual procedure was for a complainant to lay an information before a justice in which personal misfortunes were recited and responsibility

[69] J. Boswell, *The Life of Samuel Johnson* (Harmondsworth, 1979), p.119.
[70] C.L. Ewen, *Witchcraft in the Star Chamber* (1938).
[71] W. Holdsworth, *A History of English Law*, 7th edn. (London, 1956), 1, 619-20.
[72] A. Macfarlane, *Witchcraft in Tudor and Stuart England*, p.69.
[73] *Ibid.*, p.23.

attributed to the accused witch. The suspect would be brought under examination and witnesses might be called. If the matter came to trial, the resultant written depositions would be read out in court, forming a major part of the evidence. Pending the next assizes, the accused witch might be committed to gaol. At the assizes, the complainant preferred a bill of indictment. Evidence was presented to the grand jury to determine whether the issue should go to trial. If a majority consisting of twelve jurors found a true bill, the accused was then indicted. The prisoner being arraigned before the court and the indictment read, she was called upon to enter a plea. Where the charge was witchcraft this was normally a plea of not guilty. Suspected felons who refused to plead were subject to a judicial torture, *peine forte et dure*, involving pressing with heavy weights until the victim either relented or died, thought to have been last applied in 1741, and finally abolished in 1772.[74] This allowed those who saw conviction as practically inevitable to die without conviction and so protect their families against forfeiture of property,[75] thus opting for a form of judicial suicide, a rationale which did not however pertain to witchcraft after 1563 as wives and successors were already so protected by statute. Once a plea of not guilty was entered, the petty jury or 'jury of life or death' was empanelled, evidence taken, a verdict reached and sentence passed.

One inquisitorial element demonstrable in English witch trials and affecting the quality of the evidence and the chance of conviction was judicial activism. Several judges acted oppressively towards accused witches in order to secure a confession or otherwise managed the trials in such a way as strongly to promote conviction, in particular Brian D'Arcy at St. Osyth in Essex in 1582; Edward Fenner at the Warboys trial in 1593; Sir Edmund Anderson, C.J. of the Common Pleas at the trial of Elizabeth Jackson in 1602 and in several other cases in the 1590s and early 1600s; Sir Edmund Bromley in the trial of the Pendle witches in 1612; and Humphrey Winch and Sargeant Ranulph Crewe at Leicester in 1616.[76] In contrast George Gifford, a perceptive critic of witch-hunting, prefaced his *Dialogue concerning Witches* (1593) with a dedication to Robert Clarke, Baron of the Exchequer, praising him for his discrimination in the conduct of witchcraft trials.[77] Keith Thomas emphasizes that 'the judges as a class do not seem to have been any more vindictive towards witches than their contemporaries'.[78] Although they may not have been entrepreneurs of witch-hunting in the manner of their continental

[74] 12 Geo. III, c.20.

[75] J.W. Baker, *An Introduction to English Legal History*, 2nd edn. (London, 1979), p.415. Giles Cory, a witch suspect in the Salem episode, stood mute at his trial and was crushed to death under a pile of stones.

[76] K. Thomas, p.546; C.L. Ewen, *Witchcraft and Demonianism*, pp.126-8.

[77] Although Ewen points out that he was responsible for a proportion of witches convicted or hanged which was quite up to the average.

[78] Thomas, p.546.

counterparts, the signal importance of the fact that they shared the hostility of their contemporaries is thrown into relief by the central contribution of the reversal in judicial opinion to the decline of the witch-hunt in the latter half of the seventeenth and early eighteenth centuries; entrepreneurial activity by sceptical judges then barred off legal avenues of redress for the victims of witchcraft.

Zealous judges were not the only inquisitors. Bernard recommended as follows:

> Now while these sorts (witches) are in examining, it were very good, in the meanspace, to have a godly and learned Divine, and somewhat well read in the discourses of Witchcraft and impieties thereof, to be instructing the suspected, of the points of salvation, of the damnable cursednesse of witchcraft, and his or her fearfull state of death eternall, if guilty and not repentent: That thus . . . the suspected may be haply prepared to confession before Authority, when he or shee is examined.[79]

This recommendation lent further support to a practice which intensified the pressure upon the accused, Ewen describing the victims as being 'harassed almost to dementia by the divines'.[80] It is another respect in which religious authority combined with legal authority in the determination of witchcraft allegations, participating in the transformation of the judicial instance from a supposedly neutral arbiter into an engine for discovering the truth of witchcraft.

Another group awarded privileged access to the prisoners were the panels of women searchers whose function it was to investigate the bodies of accused female witches for the witch's or Devil's mark, and who make their first recorded appearance at the court leet of Southampton in 1579. These panels, frequently appointed by the court or as part of a preliminary or post-trial inquiry, and sometimes remunerated, were recruited from the ranks of 'honest matrons', 'women of credit' or midwives, and were akin to the panels appointed to warrant pregnancy when raised as a ground for the stay of execution.[81] Clearly women of maturity and experience, at least in 1645 they were in the nature of professional witnesses, experts in the location and recognition of the mark, the Manningtree witch Elizabeth Clarke being 'searched by women who had for many yeares known the Devill's marks'.[82] For it was not every uncommon bodily marking that necessarily sufficed as evidence, at least in theory.[83] As the anthropological literature systematically demonstrates

[79] Bernard, pp.237-8.

[80] C.L. Ewen, *Witchcraft and Demonianism*, p.126.

[81] Alice Samuel of Warboys pleaded pregnancy and was examined by a 'jury of matrons', although eighty years of age.

[82] Notestein, p.167.

[83] J. Stearne, *A Confirmation and Discovery of Witchcraft* (1648), pp.46-7; M. Hopkins, *The Discovery of Witches*, p.4.

for developing societies, witchcraft beliefs possess a sophisticated internal rationality. Thus Evans-Pritchard provides us with an exposition of the logic whereby the Azande differentiate misfortune attributable to witchcraft powers from that to be assigned to natural causes.[84] So in Stuart England, various brands of expertise were acknowledged as relevant in the forensic detection of witchcraft, including medical knowledge to demarcate sickness attributable to occult intervention from other sickness, and special knowledge in the identification of the Devil's mark to distinguish it from other bodily excrescences. The search itself may be classified as an inquisitorial process, comprising not this time an inquisition of the individual as legal personality, but an inquisition of the body, an experienced reading of the body for signs of Satanic dominion. It was also characteristically inquisitorial in the sense that it was, inevitably, an examination in private, ancillary to the court-bound proceedings determinant of guilt. In the Hopkins campaign, a domestic crusade against witches which Macfarlane has linked to the millenarian currents[85] at their strongest during this phase of the English Revolution,[86] Goodwife Mary Phillips, one of his disciples, performed the role of an itinerant searcher, organizing local assistants as the bandwagon rolled from place to place.[87]

As in continental Europe, rules relating to the giving of evidence were modified for the exceptional crime of witchcraft. Bernard thought that the testimony of 'fearfull, superstitious, or children, or old silly persons' should be admissible though it should be 'not easily credited',[88] while in his three-tiered scheme of evidence, accusation by another witch counted as conclusive proof, being placed alongside the Devil's mark, two witnesses of the pact or entertaining familiars, the discovery of images of the victim in the witch's house, bleeding of the corpse, and confession, in the third and highest category.[89] In practice, children below the normal age of competence for witnesses, fourteen, frequently gave evidence in witchcraft trials, including against their own parents, as in the cases of the Essex witch Ellen Smythe's thirteen-year-old son in 1579, and Elizabeth Device's nine-year-old daughter Jennet at Lancaster assizes in 1612. Wives also gave evidence against their husbands contrary to the usual rule. This deregulation of the capacity to give evidence further weighted judicial proceedings against the accused, conspiring with established

[84] E.E. Evans-Pritchard, *Witchcraft, Oracles and Magic among the Azande* (Oxford, 1937), abridged with an introduction by E. Gillies (Oxford, 1976), pp.25-30.

[85] A. Macfarlane, *Witchcraft in Tudor and Stuart England*, p.141.

[86] C. Hill, *The World Turned Upside Down: Radical Ideas During The English Revolution* (Harmondsworth, 1975), p.96.

[87] John Stearne was the leading searcher in the case of male suspects.

[88] Bernard, p.230.

[89] *Ibid.*, pp.226-7.

structural features such as denial of legal counsel, and the social circumstances of the trials, which were sometimes marked by such popular clamour that the suspected witch could not follow the proceedings.

Roles in the judicial process could become blurred. Magistrates anxious for conviction, in presenting evidence from the initial inquiry to the trial court, were in a strategic position to prejudice the later proceedings. A major trial at Chelmsford in 1566 was conducted by the Reverend Thomas Cole, a local rector, Sir John Fortescue, keeper of the Queen's wardrobe, John Southcote, justice of the King's Bench, with Sir Gilbert Gerard, the Queen's Attorney. It was unclear whether the last of these eminent figures was in charge of the prosecution or sitting in judgement, some of the evidence suggesting the latter.[90] On occasion it seems that testimony was taken from the bench. In the trials at Chelmsford promoted by Matthew Hopkins and John Stearne in 1645, one of the justices, Sir Thomas Bowes, testified that a glover, 'a very reliable man', had witnessed three or four imps emerging by moonlight from the house of one of the suspects, Anne West, an 'old Beldam'. At St. Osyth in 1582 one of those appointed to search for the Devil's mark had given evidence for the prosecution,[91] and the searches which took place under the auspices of Hopkins in 1645 were clearly an integral part of a promotional campaign.

The inquisitorial reorientation of legality could be reinforced by torture of the accused. Torture was a part of English criminal justice, but more marginal than on the continent. Although not recognized by the common law, it could lawfully be authorized under the prerogative. This was done where sorcery or magic were practised against the person of the monarch, and under Mary I and in the late Tudor and Stuart periods also in cases of non-treasonable witchcraft.[92] Kingly and queenly fear of treason by witchcraft was a factor in the accumulation of concern over the power of witches.[93] In 1620, Peacock, a schoolmaster, was committed to the Tower and subjected to torture for practising sorcery against James I.[94] But it was *de facto* rather than *de jure* torture which influenced the course of the English witch-hunt. Suspected witches, regarded with great hostility by the community, were often brutally served and physical hardship no doubt helped to bring them to confess. Matthew Hopkins and his associate raised maltreatment to a new level, forcing suspects to endure solitary confinement, constant intense observation, extended deprivation

[90] Notestein, pp.34-5.

[91] *Ibid.*, p.45.

[92] J.G. Bellamy, *The Tudor Law of Treason* (London, 1979), pp.111, 120; D. Veall, *The Popular Movement for Law Reform* (Oxford, 1970), p.26.

[93] See n.34, and C. Larner, 'James VI and I and Witchcraft' in *Witchcraft and Religion*, which deals with the trials for treason by sorcery in Scotland in 1590-1.

[94] C.L. Ewen, Witch-Hunting and Witch Trials, p.65.

of sleep, and starvation. John Gaule, a powerful critic of Hopkins' campaign, who declared that the office of witch-finder ought not to be assumed by a private person in a Christian church or state,[95] and who opposed the excesses of populism with the proposal that the petty jury of laymen of modest status be replaced by a tribunal of 'Eminent Physicians, Lawyers and Divines',[96] provides us with the following account of these practices:

> Having taken the suspected witch, she is placed in the middle of the room upon a stool or table, crosslegged, or in some other uneasy posture, to which if she submits not, she is then bound with cords; there is she watched and kept without meat or sleep for the space of twenty four hours for within that time they shall see her impe come and suck. A little hole is likewise made at the door for the imp to come in at; and lest it might come in some discernible shape, they that watch are taught to be ever and anon sweeping the room, and if they see any spiders or flies, to kill them. And if they cannot kill them, then they may be sure they are her imps.[97]

The function of observation generated circles of professional watchers who gave evidence of the materialization of familiars and other unnatural happenings in the course of their vigil.[98] This parallels the way in which the function of detecting the Devil's mark generated clusters of professional searchers, and was again a procedure closed off from public scrutiny. Witchcraft beliefs thus proliferated the categories of personnel engaged in the judicial process.

John Lowes, vicar of Brandeston in East Suffolk, was a particular victim of these methods. Lowes, possibly nearly eighty years of age at the time of his ordeal, was an obstreperous, turbulent and uncomfortable character, who had a long history of conflict with sections of his parishioners, on a number of occasions reaching the courts.[99] His case illustrates the utility of witchcraft accusations, or the fear of provoking them, as a means of imposing accountability upon or else disposing of unpopular or divisive figures in authority within the local community. A milder example is the treatment of Richard Alchurch, a controversial headmaster of King Edward VI Grammar School, Stourbridge in Worcestershire, who was dismissed at the end of the sixteenth century *inter alia* upon charges of occult activity.[100] Lowes was searched for marks,

[95] Gaule, p.88 *et seq.*

[96] *Ibid.*, p.195.

[97] *Ibid.*, p.78.

[98] C.L. Ewen, *Witchcraft and Demonianism*, p.275.

[99] C.L. Ewen, *The Trials of John Lowes, Clerk*, 1937.

[100] See R.L. Chambers, *The Headmasters of King Edward's School, Stourbridge from 1552 to 1691* (1960), pp.17-22, 25-9. Vulgar distrust of learned engagement with the occult was violently manifested when John Dee, Elizabeth I's astrologer, sometimes consulted in connection with witch trials, suffered the sacking of his house at Mortlake at the hands of a mob in 1583. On Dee, see F. Yates, *The Occult Philosophy of the Elizabethan Age* (London, 1979), Chapter 8.

forced to undergo the swimming test, and kept awake for several nights in succession by being constantly walked up and down. Eventually he admitted to having covenanted with the Devil and having bade a yellow imp sink 'a new vessel sailing in the middle of a large fleet', killing fourteen, near Harwich,[101] and so paved the way for his execution.

Although enforced sleeplessness was a recognized mode of torture on the continent,[102] its English perpetrators compiled an apologetic justifying it in terms of the logic of witchcraft belief. John Stearne maintained that 'the watching is not to use violence or extremity to force them to confesse, but only the keeping awake is first to see whether any of their spirits or familiars come to or neere them'. Solitary confinement was similarly defended on the basis that it was 'also to the end that Godly Divines might discourse with them . . . For if any of their society come to them to discourse with them, they will never confess'.[103] The pricking or prodding of witches' skin with needles to locate the Devil's mark, much used in Scotland, and occasionally in England,[104] was also a form of de facto torture motivated and legitimated by a specific witchcraft belief. So we may contrast a continental practice of torture limited by legalism (albeit significantly attenuated in witchcraft cases) with an English torture limited by belief, mitigated only by the self-restraint, if any, of its technicians.

A final element of interest in the early modern trial of witchcraft is the revival of trial by ordeal as a contributory mode of proof. In later medieval times the hot iron had been the usual form of ordeal for suspected witches, but it was the water ordeal which found favour as the vehicle for this anomalous and anachronistic re-enchantment of the trial.[105] The swimming of witches in connection with criminal proceedings against them was in recorded use in England from 1590, its incidence increasing in the seventeenth century, especially during the Hopkins episode. When trial by ordeal was abandoned with the withdrawal of clerical support in 1215, it was succeeded by divergent strategies probative: on the continent by the inquisition and torture; in England by jury trial, jurors initially presenting from their own knowledge and later coming to be seen as qualified triers of fact precisely by virtue of their lack of personal knowledge. Max Weber saw the English solution to the problem of proof as expressive of the persistent archaism of the common law tradition, classifying the jury as itself an oracular method of judicial resolution, a reincarnation of the ordeal, the jurors being unconfined by any

[101] C.L. Ewen, *The Trials of John Lowes, Clerk*, pp.6-7.

[102] Levack, p.75.

[103] Notestein, pp.189-90; Stearne, pp.13-14.

[104] Ewen cites a case at Newcastle-upon-Tyne in 1649.

[105] Bartlett, p.146. The water ordeal was also employed in the trial of witches during the medieval period: see G. Kittredge, *Witchcraft in Old and New England* (Cambridge, Mass., 1929), p.233.

requirement to indicate reasons for their decision,[106] (and therefore positioned to return 'perverse' verdicts and refract or defeat the formal law). From this perspective, English legal culture could be seen as providing a uniquely favourable environment for the recrudescence of the ordeal, especially in witchcraft cases, where proof on the basis of witness was problematic and the operation of supernatural powers was anyway at issue. Trial by ordeal was particularly indicated in intractable cases.[107] However, the swimming test was also in vogue on the continent where it appeared as early as the 1560s, and its propriety was vigorously contested in England as in Roman-based jurisdictions.

Stripped of the clerical superintendence and sacramental trappings of its medieval precursor, the procedure was carried out in a perfunctory fashion. Bernard provides us with a description of the ritual as performed upon Mary Sutton, who was executed with her mother at Bedford in 1612: 'She was . . . cast into a Mill-damme very deep, then bound; her right thumbe to her left toe, and her left thumbe to her right toe, who sat upon the water, and turned round like a wheele, as in a whirlepoole, yet they had her tyed in a rope, lest she should have sunke'.[108] The practice was commended by James I in his *Daemonologie*: '. . . so it appears that God hath appoynted (for a super-natural signe of the monstrous impietie of the Witches) that the water shal refuse to receive them in her bosom, that have shaken off them the sacred Water of Baptism and wilfullie refused the benefite thereof'.[109] But it was vilified by semi-sceptical treatise writers of the first half of the seventeenth century, who represented a transitional stage towards scepticism; recognizing that many convictions were unsafe by dint of the procedures adopted whilst maintaining a firm belief in the evil reality of witchcraft. Their arguments echo those advanced by critics of the ordeal in the middle ages.[110] Bernard himself did so in endorsing condemnation of the test for tempting God: 'There needs no miraculous meanes more to detect witches, then other secret practises, as it is an adulterous, and unbelieving generation to look for a signe: and what is this but a presumptuous expectation of an extraordinary revelation from God without warrant'.[111]

Dr. John Cotta, entering a plea for rationalism, deduced the correct mode of proceeding to proof at law from man's position in the cosmic order. Man's imperfection was to be contrasted with God's perfection. Man was confined to the use of natural means to discover witchcraft, even though it partook of a supernatural character. Reason was 'the sole eye

[106] M. Rheinstein, pp.79-80, 229; A. Hunt, *The Sociological Movement in Law* (London, 1978), pp.122-7.
[108] Bartlett, p.144.
[108] Bernard, p.214.
[109] James VI, *Daemonologie*, p.81.
[110] For these arguments, see Bartlett, pp.70-90.
[111] Bernard, p.215.

and light of natural understanding which God hath given to reasonable man'. Accordingly, trial must proceed on the basis of an evaluation of testimony in the light of a system of presumptions and proofs, and the water ordeal be excluded.[112] These texts depended very much upon the authority of the Bible, but scripture could be turned to liberal ends – there was no Biblical warrant for the water ordeal – and in time the authoritative mode of argument itself was to give way to analytical and experimental methods of reasoning.[113]

The swimming test did not always have to be imposed, for it attracted volunteers.[114] No doubt an important motivation to undergo the test was to restore a reputation damaged by local rumour. Once in the clutches of the law, the ordeal could provide a possible life-line for those protesting their innocence. Jane Wenham offered to be searched or cast into the water in order to establish her freedom of guilt. Trial could be precipitated by the victims of witchcraft accusations as a positive aid to rehabilitation, and superstitious modes of proof appeared to avail an opportunity for vindication, especially where the defendant's faith led her to believe that the divinity would intervene to save her. On the other hand such tests did not necessarily yield determinate results, and provided a persuasive source of evidence rather than a legal decision of guilt or innocence. In concert with the inquisitorial elements of the witch trial, they increased the physical and psychological pressure upon the accused.

4. Conclusion

The witch trial may be envisioned as a multi-layered site of interaction or exchange: between class cultures, affording a forum in which authority could speak and an outlet for popular expression in a pre-democratic political order; between the mundane and spiritual dimensions; between distinct but overlapping orders of discourse: scripture and demonology, natural philosophy, medicine and the law itself; between different terrains of political struggle, reflecting social, economic, religious, sexual, professional and community division; and ultimately, in the period of its decline, as judicial scepticism deepened, between competing magical and mechanistic world-views. It thus helped to effect a transition from one hegemonic conception of natural order to another. The formal and abstract qualities of the legal process enabled it to accommodate and negotiate these diversities, whilst its ritual and dramaturgical qualities equipped it to celebrate and sanctify a quasi-military victory over witchcraft in spectacular, public, physical modes of punishment calculated to repair the fabric of society and the authority of princes.

[112] J. Cotta, *The Triall of Witchcraft, shewing the True and Right Methode of the Discovery: with a Confutation of Erroneous Waves* (London, 1616), p.19.

[113] S. Anglo, 'The Desiderata of Belief' in S. Anglo (ed.) *The Damned Art: Essays in the Literature of Witchcraft* (London, 1977), pp.246-7.

[114] A. Macfarlane, *Witchcraft in Tudor and Stuart England*, p.141.

Possession, Witchcraft, and the Law in Jacobean England

Brian P. Levack*

In 1606, three years after the accession of King James I, the English government prosecuted a Berkshire gentleman, Brian Gunter, and his teen-aged daughter, Anne, for conspiracy to indict two women for the crime of witchcraft. Sir Edward Coke, the greatest jurist of the seventeenth century, initiated the case in the Court of Star Chamber, and many of the witnesses were members of the country's academic elite. This fascinating trial, which lasted more than eighteen months, involved demonic possession as well as witchcraft, and it had a lasting effect upon the prosecution of the crime of witchcraft in England for the remainder of the seventeenth century.[1]

In the mental world of the early seventeenth century, witchcraft and demonic possession were considered to be distinct but related phenomena. Witchcraft was, in its most basic form, harmful or black magic: the alleged infliction of physical harm or misfortune by one person on another through some kind of preternatural, supernatural, or mysterious means. It often took the form of a spell or a curse, and it was referred to in Latin as *maleficium*. The witch's maleficent power was believed, at least by educated Europeans during the early modern period, to have been acquired by a pact with the Devil. This meant that the witch was not only a felon who murdered her enemies, inflicted illness on children, killed cattle, started fires, and caused

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1. The interrogatories and depositions of the case are preserved in the Public Record Office, London, STAC 8/4/10, a volume consisting of 230 folios. The information was exhibited on January 20, 1606, and the last deposition was taken on April 25, 1607. Further interrogatories and depositions, taken on July 29, 1607, are preserved in the Ellesmere manuscripts at the Huntington Library in San Marino, California, EL MS. 5955/1-2. There is no record of a decree or sentence because the order and decree books have been lost. For a brief summary of the case, see C. L'ESTRANGE EWEN, WITCHCRAFT IN THE STAR CHAMBER 28-36 (1938).

sexual impotence in bridegrooms but also a heretic and apostate, one who had sold her soul to the Devil and who, according to widespread learned belief, worshiped her master with other witches at nocturnal orgies known as sabbaths. In some countries, although not in England, these same Devil-worshiping magicians were believed to have flown to these sabbaths, transported not so much by their brooms with which witches are still depicted today but by the power of the Devil with whom they were allied.[2] Both ecclesiastical and secular authorities declared witchcraft to be a crime, and somewhere between 100,000 and 200,000 persons, the great majority of them women, were tried for this offense between 1450 and 1750. More than half of those tried were executed, usually by burning at the stake.[3]

The second phenomenon, demonic possession, is the process whereby, according to Christian belief, a demonic spirit invades the body of a human being, assumes control of its physical movements, and alters its personality. This assault upon the possessed person resulted in bodily contortions and convulsions, the performance of great feats of strength, clairvoyance, the vomiting of foreign objects, insensitivity to pain, the knowledge of previously unknown foreign languages, and speaking in strange voices. Those individuals who were possessed, whom we refer to as demoniacs, also exhibited a horror and revulsion of sacred things or the words of Scripture, and they frequently uttered obscenities and blasphemies.

Demonologists of the sixteenth century usually made a sharp distinction between demoniacs and witches on the grounds that possession, unlike witchcraft, was an involuntary condition and was not considered sinful or criminal.[4] Demoniacs, unlike witches, were not held legally or morally

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2. Accusations or confessions that witches flew to the sabbath are rare in England. C. L'ESTRANGE EWEN, WITCHCRAFT AND DEMONIANISM 84 (1933). Flight was implied in some of the testimony against the Lancashire witches in 1612 and against Anne Baites in 1661. *See* THE TRIAL OF THE LANCASTER WITCHES, 1612, at 61-62 (G. B. Harrison ed., 1929); DEPOSITIONS FROM THE CASTLE OF YORK 191 (J. Raine ed., London, Surtees Society 1861). The belief in flight was in large part dependent upon a belief that witches gathered in large numbers and at great distances from their homes to worship the Devil, and such beliefs were uncommon in English witch-trials. The English prohibition of judicial torture, which on the Continent was instrumental in securing confessions to both Devil-worship and flight, explains the paucity of such references in English witch-trials.

3. For different estimates of the total number of prosecutions and executions throughout Europe, see BRIAN P. LEVACK, THE WITCH-HUNT IN EARLY MODERN EUROPE 19-22 (1987), and ANNE L. BARSTOW, WITCHCRAZE: A NEW HISTORY OF THE EUROPEAN WITCH-HUNTS 20-23, 179-81 (1994).

4. Despite the distinction, possessed persons did occasionally incur the suspicion of witchcraft, while some women accused of witchcraft actually manifested signs of possession after they had been accused. *See* CAROL KARLSEN, THE DEVIL IN THE SHAPE OF A WOMAN

responsible for their actions. They could, therefore, violate cultural norms with impunity. They could shout and scream, disobey their superiors, and exhibit sexually immodest behavior, claiming in effect that the Devil, rather than they themselves, was responsible for their actions. This fact helps to explain why possession tended to occur among subordinate groups in society, especially young women who would not otherwise engage in unconventional or rebellious behavior.[5] Possession allowed these women to acknowledge illicit impulses in themselves without according those impulses any legitimate status.[6]

Yet however distinct witchcraft and possession may have been, there was a close connection between the two phenomena because witches were often accused of causing the possession of another person. Traditional demonological theory acknowledged two methods of possession: A demon could enter a person's body either directly, with God's permission but without any human agency, or as the result of a witch's command. In the latter case, demonic possession became just one of many maleficent deeds that a witch might be accused of.[7] The afflictions that the demoniac suffered were thus classified as acts of harmful magic. The classic illustration of the connection between the two phenomena occurred at Salem, Massachusetts, in 1692, when a group of girls, manifesting various signs of demonic affliction, accused scores of women and men of harming them by means of witchcraft and ultimately sent nineteen of those accused witches to their deaths.[8]

243-44 (1987); H.C. Erik Midelfort, *The Devil and the German People: Reflections on the Popularity of Demon Possession in Sixteenth Century*, 11 RELIGION & CULTURE IN THE RENAISSANCE & REFORMATION, SIXTEENTH CENTURY ESSAYS & STUDIES 116-17 (1989). The girls in a home founded by Antoinette Bourignon in the early seventeenth century experienced hallucinations and underwent exorcism, but they also declared that they could practice witchcraft and worship the Devil. *See* 3 HENRY C. LEA, MATERIALS TOWARD A HISTORY OF WITCHCRAFT 1044 (1957).

5. On the gender and social status of demoniacs, see KARLSEN, *supra* note 4, at 231-36, and Midelfort, *supra* note 4, at 109-12.

6. KARLSEN, *supra* note 4, at 249-51. *See generally* Michael MacDonald, *Introduction* to WITCHCRAFT AND HYSTERIA IN ELIZABETHAN LONDON (Michael MacDonald ed., 1990).

7. On the connection between possession and witchcraft, see KEITH THOMAS, RELIGION AND THE DECLINE OF MAGIC 478 (1971). Occasionally contemporaries challenged the belief that a man could send a Devil into another person's body. For the opinion of a skeptical Jesuit in 1555, see 3 LEA, *supra* note 4, at 1051.

8. A total of 78 possessed persons, all but twelve of whom were women, were responsible for only a small percentage of the witchcraft accusations at Salem, but they made the initial accusations and played a decisive role in the progress of the hunt by directing accusations at more than one suspect. KARLSEN, *supra* note 4, at 223-25. The possessed girls,

At the beginning of the seventeenth century, the time of the trial with which we are concerned, both witchcraft and possession appeared to be on the rise. The number of reported cases of possession had risen significantly during the late sixteenth century, and now, as a result of the demonization of European culture that accompanied the Protestant and Catholic Reformations, Europe was about to enter what has been referred to as the "golden age of the demoniac," a period when literally thousands of instances of possession would be observed.[9] During the same period of time the number of witchcraft trials had also been steadily increasing and would soon reach an all-time high.[10] Many of the witchcraft trials of the seventeenth century, such as that of Urbain Grandier at Loudun in France in 1634, originated in charges brought by demoniacs, in that case a convent of possessed Ursuline nuns.[11]

England conformed fairly closely to this general European pattern. Although the prosecution of witches never became as intense in England as it did in Germany, Switzerland, Poland, or Scotland, there had been a large increase in the number of trials during the 1570s and 1580s.[12] The number of trials dropped in the 1590s and in the first years of the seventeenth century, but the percentage of trials resulting in executions rose precipitously after 1597.[13] In 1602, a record number of executions occurred in the county of Essex, and there were signs that the trend would continue.[14] The accession of James I in 1603 certainly pointed in this direction because James, as king of Scotland, had published a treatise on witchcraft, entitled *Daemon-*

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together with the confessing witches, were exclusively responsible for making accusations regarding the worship of the Devil; all the other witnesses accused witches simply of *maleficium*. RICHARD GODBEER, THE DEVIL'S DOMINION: MAGIC AND RELIGION IN EARLY NEW ENGLAND 205 (1992).

9. E. WILLIAM MONTER, WITCHCRAFT IN FRANCE AND SWITZERLAND 60 (1977). In Geneva, possessed women became a problem at the beginning of the seventeenth century. For a listing of some of the most prominent cases, see TRAUGOTT K. OESTERREICH, POSSESSION, DEMONIACAL AND OTHER, AMONG PRIMITIVE RACES IN ANTIQUITY, THE MIDDLE AGES, AND MODERN TIMES 188-89 (D. Ibberson trans., 1966).

10. Witchcraft prosecutions peaked at different times in different countries and regions, but the height of the entire European phenomenon was the period from 1580 to 1650. *See* LEVACK, *supra* note 3, at 170-75.

11. *See generally* ALDOUS HUXLEY, THE DEVILS OF LOUDUN (1952).

12. *See* C. L'ESTRANGE EWEN, WITCH HUNTING AND WITCH TRIALS 101 (1929) (charting numbers of prosecutions for home circuit during entire period of witch-hunting).

13. *Id.* at 100.

14. ALAN MACFARLANE, WITCHCRAFT IN TUDOR AND STUART ENGLAND 58 (1970). The annual number of accusations and indictments had been significantly higher in a number of years during the 1580s and 1590s. *Id.* at 26-27.

ologie, which refuted the views of skeptics such as Reginald Scot and encouraged the vigorous prosecution of the crime.[15] During the first year of James's reign in England, moreover, Parliament had passed a new witchcraft statute, which extended the scope of the crime specifically to include commerce with demons as well as maleficent magic and established stricter penalties for those convicted.[16] Witchcraft and possession were also becoming more closely associated. During the reign of Elizabeth, a number of witchcraft prosecutions, including the widely publicized trial of Elizabeth Jackson in 1602, had originated in accusations made by demoniacs.[17]

With a demonologist like James on the throne and with a new statute at the disposal of the justices of the peace, we would expect that a person tried for witchcraft in 1604 or shortly thereafter would incur the full wrath of state power. Everything would suggest that we would find the government using the system to root out witches and prosecute them to the full extent of the law. Much has been made of the connection between the rise of witch-hunting on the one hand and the development of state power on the other. Some have argued that witchcraft was one of the means by which the early modern state disciplined and Christianized the masses, suppressed rebellion, and contributed to the advance of that Leviathan, the secular, absolutist state.[18] Because James, like the French political theorist Jean Bodin, had written in support of royal absolutism as well as witch-hunting, the vigorous prosecution of witchcraft seemed all the more likely.[19] But as events

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15. *See generally* JAMES VI, DAEMONOLOGIE (G. B. Harrison ed., 1924) (Edinburgh 1597).

16. 1 Jam., ch. 12 (1604) (Eng.). This act was more severe than the Elizabethan statute, 5 Eliz., ch. 16 (1563) (Eng.), which it replaced in four respects: 1) It declared it to be a felony if the victim of witchcraft was merely injured rather than killed; 2) it replaced life imprisonment with death for the second offense in cases involving the use of magic to locate lost treasure or an unsuccessful attempt to kill someone by magical means; 3) it made it felonious to use a dead body for magical purposes; and 4) it made it a felony to "consult, covenant with, entertain, employ, feed, or reward an evil and wicked spirit." *Id.* The act is summarized in MATTHEW HALE, PLEAS OF THE CROWN: A METHODICAL SUMMARY 1678, at 6-8 (1972). For a comparison of the penalties enumerated in the statutes of 1563 and 1604, see MACFARLANE, *supra* note 14, at 14-15.

17. On the sixteenth-century English cases of possession, see D. P. WALKER, UNCLEAN SPIRITS: POSSESSION AND EXORCISM IN FRANCE AND ENGLAND IN THE LATE SIXTEENTH AND EARLY SEVENTEENTH CENTURIES 42-73 (1981). For the Mary Glover Case of 1602, which resulted in the trial of Elizabeth Jackson, see generally MacDonald, *supra* note 6.

18. For a discussion and critique of these theories, see Brian P. Levack, *State-Building and Witch Hunting in Early Modern Europe*, *in* WITCHCRAFT IN EARLY MODERN EUROPE: STUDIES IN CULTURE AND BELIEF 96-115 (J. Barry et al. eds., 1996).

19. *See generally* JEAN BODIN, DE LA DÉMONOMANIE DES SORCIERS (Paris 1580).

unfolded in England between 1604 and 1606, the government of James I surprisingly used its secular judicial power for very different purposes.

The Possession of Anne Gunter

The case began in 1604 with an instance of demonic possession. Anne Gunter, the fourteen-year-old daughter of Brian Gunter, a gentleman from North Moreton, Berkshire, displayed many of the symptoms that had become common in both English and Continental cases of possession. She experienced convulsive fits in which her body writhed, quivered, and shook; she acquired temporary deafness and blindness; her body became extraordinarily stiff; she sneezed up, voided, and vomited pins — sometimes numbering in the hundreds — while still more pins exuded from her breasts and fingers; she foamed at the mouth; her pulse was temporarily interrupted; and she went as many as twelve days without eating. She physically assaulted those around her, throwing her sisters against the walls of their house. Her shoes, stockings, petticoats, and garters all displayed the remarkable ability to untie themselves, come out from under her clothes of their own power, crawl around the ground, and return to her body, tying themselves neatly in place. She also told people who were brought before her how much money they had in their purses.[20]

Like so many alleged demoniacs, Anne also claimed that witches were responsible for her afflictions. In fact, she named three women: Elizabeth Gregory, Mary Pepwell, and Agnes Pepwell. Anne further claimed that she had had visions of these women's familiar spirits. Familiar spirits or imps were common features of English witchcraft. Appearing in the form of domestic animals who often possessed unusual features, they were believed to be the demonic source of the witch's power. They were also believed to have received nourishment from the witch, usually by sucking an extra nipple on the witch's body, a nipple that when examined could be shown to be insensitive to pain. Location of this extra teat had become a main concern of those who were responsible for arresting and interrogating suspected witches, and the identification of such a nipple, known as the witch's mark, could provide grounds for the indictment and sometimes even the conviction of the accused.[21] In the case of the North Moreton witches, Anne Gunter

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20. STAC 8/4/10, fol. 201 & *passim*. The fits began shortly after mid-summer 1604.

21. On familiars and the witch's mark, see EWEN, *supra* note 2, at 70-76. William Perkins claimed that the mark constituted sufficient presumptive evidence for examining a witch, a claim that Sir Robert Filmer later challenged. *See* [Sir Robert Filmer], AN ADVERTISEMENT TO THE JURY MEN OF ENGLAND TOUCHING WITCHES 9-10 (London 1653).

identified the three familiars as a white mouse with a man's face, a black rat with a swine's face, and a white toad (presumably with a toad's face).[22] Because Anne made this identification in a vision, her evidence was considered to be spectral, the same type of evidence that was to become so controversial in the Salem witchcraft trials and ultimately rejected as unreliable, it being possibly the product of demonic illusion. At this time, however, such evidence was admissible, and it remained so in English witchcraft cases well into the 1660s.[23]

It is not entirely clear why the Gunters preferred charges of witchcraft against these three women. We do know, however, that witchcraft accusations served the function not only of explaining misfortune but also of eliminating socially undesirable people or one's personal rivals. Evidence from later depositions in Star Chamber suggests that the Gunter family had long been at odds with the three accused women and their families. Testimony from various sources revealed that Gunter had been involved in a fight with members of Elizabeth Gregory's family at a football match and that his neighbors held him to be responsible for the death of her two brothers-in-law.[24] Indeed, Elizabeth Gregory, upon coming to the Gunter residence, accused Brian of being a "murdering bloodsucker" and demanded revenge.[25]

RICHARD BERNARD, A GUIDE TO GRAND JURY MEN 214-15 (London 1627), considered discovery of the witch's mark one of seven proofs sufficient to convict a person of witchcraft, since it established "a league made with the Devil." On the use of language borrowed from Continental law regarding presumptive and convictive evidence in witchcraft cases, see BARBARA J. SHAPIRO, BEYOND REASONABLE DOUBT AND PROBABLE CAUSE: HISTORICAL PERSPECTIVES ON THE ANGLO-AMERICAN LAW OF EVIDENCE 51-54, 164-68 (1991).

22. STAC 8/4/10, fols. 101, 144v, 210.

23. Sir Matthew Hale allowed the use of spectral evidence in the trial of Amy Duny and Rose Collender in 1662. *See generally* A TRYAL OF WITCHES AT THE ASSIZES HELD AT BURY ST. EDMONDS FOR THE COUNTY OF SUFFOLK (London 1682) [hereinafter A TRYAL OF WITCHES]. On spectral evidence at the Salem witchcraft trials in 1692, see generally Daniel G. Payne, *Defending Against the Indefensible: Spectral Evidence at the Salem Witchcraft Trials*, 129 ESSEX INST. HIST. COLLECTIONS 62 (1993). For a list of English cases in which spectral evidence was admitted, either in examination or actual trial, see GEORGE L. KITTREDGE, WITCHCRAFT IN OLD AND NEW ENGLAND 363-64 (1929). The most important question was not whether such evidence would be admitted but whether it should pass for proof.

24. STAC 8/4/10, fols. 2b, 167v, 178. The parish register of North Moreton confirms that in May 1598 John and Richard Gregory were killed by "old Gunter and his sons" at a football match. Gunter "drew his dagger and broke both their heads." Berkshire Record Office, D/P 86/1/1. Gunter's three sons are identified as Brian, Harvey, and William. STAC 8/4/10, fol. 11.

25. STAC 8/4/10, fol. 178; *see also id.* fol. 168 (recording deposition of William Sawyer).

Further tension might have arisen from the fact that the three women, being from the lower classes of society, threatened to drain the resources of the more well-to-do members of society, such as the Gunters, or simply that they, being aggressive and contentious women, did not conform to the ideal of feminine conduct that was being proclaimed at the time. Agnes Pepwell had in fact been suspected of witchcraft for many years, while Elizabeth Gregory, whose mother-in-law, Katherine Gregory, was reputed to be a witch, was a "notorious scold."[26] When Brian Gunter had himself been gravely ill in the summer of 1604, he had suspected Elizabeth Gregory as the cause of his misfortune, and indeed, after scratching her head, he had quickly recovered, thereby confirming his suspicion.[27]

In the course of her afflictions, Anne also accused a godly minister, Reverend Thomas Bird from the neighboring parish of Brightwell, of coming to her parish to preach and "choke me with his pins."[28] This charge suggests a possible source of Anne's possession. Ministers, especially those of the godly or Puritan persuasion, could be particularly effective in making the members of their congregations aware of their moral shortcomings and of creating moral anxiety regarding salvation. We know that many demoniacs came from environments in which strict moral standards were enforced. In Europe, hundreds of demoniacs were nuns from cloistered convents, while in England and America a consistent pattern of possession occurred within families known for their piety.[29] The Gunter family probably conforms to this pattern, as does that of the Throckmorton girls, who were dispossessed by the charismatic Puritan minister and healer John Darrel in 1593. In these situations, the demands created moral pressures that the children or nuns could not bear, resulting in a hysterical reaction. The fact that Anne railed against Bird and other godly ministers who came to observe her fits would be consistent with this analysis.[30]

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26. *Id.* fols. 160, 196, 226.

27. *Id.* fols. 88, 106.

28. *Id.* fol. 209 (recording deposition of Thomas Bird).

29. On the possession of nuns in European convents, see the incidents reported in JOHANN WEYER, WITCHES, DEVILS, AND DOCTORS IN THE RENAISSANCE 304-12 (George Mora & Benjamin Kohl eds. & John Shea trans., Medieval & Renaissance Text & Studies 1991) (1583), and generally in HUXLEY, *supra* note 11. In England and America, possession often occurred in the households of Puritans. THOMAS, *supra* note 7, at 481. One commentator argues that possession occurred among women who experienced crises regarding conversion. GODBEER, *supra* note 8, at 114-15

30. There is no direct evidence of the piety practiced in the Gunter household, although during her fits at Oxford Anne did ask to receive the sacrament. She also requested that her brother-in-law, Thomas Holland, the regius professor of divinity, first give a sermon, noting

The possibility that Anne was responding, either consciously or subconsciously, to the pressures of her moral training raises the more general question of whether she was suffering from some sort of psychiatric disorder. Scholars who do not believe that demons can actually possess the bodies of human beings have traditionally advanced two explanations of the symptoms that demoniacs manifested. The first is that they were engaged in deliberate deception, faking their symptoms in order that they could either behave in an unconventional manner or retaliate against their rivals. The second is that they were experiencing some sort of natural illness, whether it be physical or psychological in origin. Epilepsy, St. Vitus Dance, Tourette's Syndrome, ergot poisoning, and hysteria have all been advanced as the "real" cause of the afflictions suffered by demoniacs. These two explanations are not mutually exclusive. Even if Anne were feigning some of her symptoms, which she later admitted to having done, that does not exclude the possibility that other symptoms, particularly her convulsive fits, were genuine. Anne herself ultimately adopted this position, admitting to deception while insisting that she had not faked her convulsions.[31]

The problem of distinguishing between fakery and natural illness in these circumstances is compounded by the fact that in both cases cultural traditions and expectations shape the demoniac's behavior. Anne and the other members of her family clearly were fully familiar with the behavior of other demoniacs, and this knowledge allowed her to feign certain activities, such as reacting violently to the reading of the Lord's Prayer. But that same body of knowledge also explains why her "natural" convulsive fits took the form that they did. Demoniacs in all societies act the way their religious culture tells them they should act. Either consciously or unconsciously, they *learn* how to act like possessed persons. This is not as surprising as it may seem. Anthropologists and many psychiatrists would argue that psychiatric illness tends to manifest itself in forms that reflect the cultural expectations of the society in which it occurs.[32] What we are probably witnessing in 1604 are the symptoms of a psychiatric disorder that was taking its most common cultural form in seventeenth-century Europe.

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that while the Devil could deny food to her body, he could not do likewise to her soul. STAC 4/8/10, fol. 207v (recording deposition of Susanna Holland).

31. *Id.* fols. 112-129v (recording deposition of Anne Gunter).

32. MacDonald, *supra* note 6, at xxxiv-xxxv & n.65. The possibility that individuals can learn to be possessed or hysterical explains why many instances of demonic possession in the early modern period spread from one person to another, often afflicting large groups. For examples of such contagious and collective possessions, besides the well-known ones at Loudun and Salem, see 3 LEA, *supra* note 4, at 1045-46.

When Anne began to exhibit the symptoms of possession, her father arranged for a number of doctors from nearby Oxford and Newbury to examine her. Their inability to find any natural cause of her ailment strengthened the suspicion that witchcraft had been responsible.[33] Not everyone, however, was convinced that Anne was the victim of a supernatural illness. As in many cases of possession, the suspicion of deception naturally arose. The strength of that suspicion became apparent after Anne was moved first to Staunton, Oxfordshire, where she spent some time at the house of her brother Harvey, and then to the University of Oxford, where she stayed with Dr. Thomas Holland, the regius professor of divinity and the rector of Exeter College. The reason for the selection of Holland's residence is that Holland's wife, Susan, was Anne's sister.[34] Anne apparently already knew many of the members of the college, some of whom later accompanied her to Abington.[35]

While staying at Holland's residence, Anne continued to exhibit her symptoms of possession, and it is quite possible that they became more pronounced as she became the main theatrical attraction in Oxford, sometimes commanding an audience of forty people at one time. The similarities between possession and theater have been noted before: Both possession and attempts to end it by means of exorcism involved the recitation of a script and the staging of an action.[36] The main question was whether God or the human actors wrote the script. This is the question that the large number of

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33. STAC 8/4/10, fols. 95v, 96, 105, 140v, 156.

34. Holland had married Susan Gunter in North Moreton on July 22, 1593. Berkshire Record Office, D/P 86/1/1. DIARY OF WALTER YONGE, ESQ. 12 (George Roberts ed., London, J.B. Nichols & Son 1848) refers to Anne as "a near kinswoman" to Holland's wife. John Harding, D.D., in his deposition before Star Chamber, specifically identified Anne as Mistress Holland's sister. STAC 8/4/10, fol. 6. In a Star Chamber case in 1621, Brian Gunter was accused together with William Holland, gent., who was identified as his grandchild, and with one Susan Holland, widow, and her spinster daughter Susan, in a dispute over tithes due to Gilbert Bradshawe. STAC 8/80/6. The younger Susan was baptized as "Susanna, daughter of Mr. Thomas Holland, Doctor in Divinity," at North Moreton on December 3, 1601. Berkshire Record Office, D/P 86/1/1.

35. STAC 8/4/10, fol. 18, refers to her "being supported on either side and behind her with some of her friends and scholars of Oxford." John Hall, MA, held one of Anne's hands during her fits at Exeter College. *See* STAC 8/4/10, fol. 207 (recording deposition of Susanna Holland). A number of the fellows of Exeter later gave testimony in Star Chamber *ex parte* Brian Gunter.

36. KARLSEN, *supra* note 4, at 231, discusses possession as "cultural performance" in which shared meanings were communicated by the demoniacs, the ministers, and the audience. For a discussion of exorcism as theater, see STEPHEN GREENBLATT, SHAKESPEAREAN NEGOTIATIONS 96-114 (1988).

fellows, students, and dons who visited Holland's home to view Anne's behavior were asking. Many of these visitors noted inconsistencies in the demoniac's actions or discovered that she could not pass various tests they devised to prove the authenticity of her fits. Dr. John Harding, the Hebrew reader for the University and the president of Magdalen College, observed that, while claiming to be able to read while blind, she could not continue her reading once the lights went out.[37] A student at the college, the second son of the Scottish earl of Murray, discovered the different means she used to untie her shoes and garters and move them along the floor.[38] As we shall see, the list of skeptics grew steadily during the next year and eventually included the king himself.

The Abington Witchcraft Trial

Although suspicion of Anne was growing, Brian Gunter proceeded to have the women whom his daughter had named as the cause of her afflictions charged with witchcraft. The trial of Elizabeth Gregory and Agnes Pepwell (Mary Pepwell had fled) took place at the Lent assizes held at Abington on March 1, 1605.[39] The trial was by all standards unusual, not the least because of its length. At a time when trials were often handled with great haste and juries decided many cases at one sitting, this one trial lasted at least eight hours, with the jury not withdrawing to "confer of the issue and the proofs thereof made by the evidence" until after 10 p.m. Although Gunter marshaled some fifteen witnesses, and the presentation of the evidence involved some "very long discourses," the jury decided on a verdict of not guilty.

Two developments during the trial appear to have been decisive in producing this verdict. The first was the determination of Thomas Hinton of Chilton Park, a cousin of one of the judges, to expose Anne's fits as counterfeit. Not only did he succeed in making a declaration of his incredulity before the court, but he also spoke with others who attended the proceedings, including Sir Francis Knowles and Alexander Chokke, a justice of the peace.[40] The second development was the selection of Chokke and

37. STAC 8/4/10, fol. 21 (recording deposition of John Harding). Harding and Holland were both members of the commission that prepared the King James version of the Bible.

38. Examination of Murray by Lord Ellesmere, July 29, 1607, Huntington Library, EL MS. 5955/2.

39. The depositions of Thomas Hinton and Alexander Chokke in the later trial of Anne and Brian in Star Chamber, STAC 8/4/10, fols. 9-18, remain the only source for the proceedings of this trial. The assize records for the Oxfordshire circuit are no longer extant.

40. STAC 8/4/10, fol. 18v (recording examination of Alexander Chokke).

two other justices of the peace as members of the jury. Chokke, who was appointed foreman of the jury, became increasingly skeptical regarding the authenticity of Anne's fits when he observed Anne's behavior during the trial. The same was true of the other two justices of the peace, who interviewed Anne just before the trial began.

As unusual as the conduct of this trial may have been, its outcome was by no means exceptional, at least not in England. An accused witch had a better chance of securing an acquittal in England than in any other country in western Europe, with the possible exception of the Netherlands and Finland. In the early seventeenth century, more than fifty percent of all English witchcraft trials ended in acquittals.[41] The absence of inquisitorial procedure and the prohibition of torture in English common-law courts had a great deal to do with this high acquittal rate. In criminal trials at the common law, the officers of the court could not force defendants to confess to deeds they had not in fact performed. The method of proof that the common-law courts did use, trial by jury, by no means guaranteed acquittal, especially when a witch's neighbors believed that she possessed malevolent powers. But in this particular trial, as in many others in which the jury became skeptical, the system worked to the defendant's advantage.

Perhaps the main reason for the relatively low conviction rate in England was the supervision of local justice by judges from the central courts. Throughout Europe a fairly close correlation existed between the exercise of central control over witchcraft trials and the maintenance of a fairly low percentage of convictions and executions.[42] In England most trials took place in the local assizes, but the circuit judges who heard these cases were the judges of the central common-law courts at Westminster. Regarding themselves as the conservators of the law, these men were in large part responsible for preventing some of the procedural abuses that reportedly took place in many German and Scottish regions

41. MACFARLANE, *supra* note 14, at 57. This figure is based on an analysis of the Essex assizes and includes those whose bill of presentment was dismissed. In Österbotten, Finland, at least 57% of those tried for witchcraft between 1666 and 1685 were acquitted. *See* Antero Heikkinen & Timo Kervinen, *Finland: The Male Domination, in* EARLY MODERN EUROPEAN WITCHCRAFT 319, 335 (Bengt Ankarloo & Gustav Henningsen eds., 1990). On acquittals in Holland, see generally Hans de Waardt, *Prosecution or Defense: Procedural Possibilities Following a Witchcraft Accusation in the Province of Holland Before 1800, in* WITCHCRAFT IN THE NETHERLANDS: FROM THE FOURTEENTH TO THE TWENTIETH CENTURY 79 (Marijke Gijswijt-Hofstra & Willem Frijhoff eds. & Rachel van der Wilden-Fall trans., 1991).

42. *See* LEVACK, *supra* note 3, at 85-90 (comparing central courts' leniency towards witchcraft prosecutions with local courts' harsher approach).

when local officials — often without legal training — conducted witchcraft trials.

A few English assize judges, to be sure, did use their power and influence to secure the conviction and execution of witches. At the trial of Elizabeth Jackson held in London in 1602, for example, the judge, Edmund Anderson, in summing up the evidence, assured the jury that "the land was full of witches" and claimed that he had hanged more than twenty of them.[43] But it was far more common for English judges to exercise caution and restraint in witchcraft cases. In the trial of Gregory and Pepwell, David Williams, a justice from the Court of King's Bench, served as one of the assize judges, and his actions during the trial certainly contributed to the acquittal of the two women.[44] Williams allowed Thomas Hinton to declare his skepticism before the court; he appointed three skeptical justices of the peace to the jury; and when Brian Gunter entreated him to have the court hear Elizabeth Gregory pronounce the spell that allegedly would relieve Anne of her fits, the judge deliberately substituted a different spell from the one Gunter had given him.[45]

The Investigation of Anne Gunter

The acquittal of Gregory and Pepwell by no means settled the issue. In the following months Anne Gunter came under the care or observation of many different persons, all of whom became more skeptical of the authenticity of her alleged demonic affliction. The first were the members of the Royal College of Physicians. Just before the trial, the newly appointed bishop of London, Richard Vaughan, asked the fellows of the College to examine the young demoniac. Three of the fellows visited Anne and concluded on March 4 that she was feigning possession.[46] A few weeks later,

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43. Regarding Anderson's conduct in 1602, see Clive Holmes, *Popular Culture? Witches, Magistrates and Divines in Early Modern England*, *in* UNDERSTANDING POPULAR CULTURE 86, 91 (Steven L. Kaplan ed., 1984).

44. The other assize judge was Sir Christopher Yelverton, also a justice on King's Bench. It is apparent from the testimony of Alexander Chokke that both judges presided at the trial. STAC 8/4/10, fol. 18. More commonly, one of the assize judges adjudicated civil cases while the other heard criminal trials.

45. *Id.* fol. 9v. Williams at first denied Gunter's request, leading Gunter to complain that his daughter "could not have that justice which Mr. Throckmorton's children had," a reference to the conviction of three witches from Warboys, Huntingdonshire, for causing the Throckmorton girls' possession in 1593.

46. 1 GEORGE CLARK, A HISTORY OF THE ROYAL COLLEGE OF PHYSICIANS OF LONDON 198 (1964). William Harvey, then a candidate of the College and a friend of one of Anne's examiners, later used this case in his Anatomical Lectures of 1616 to illustrate how a person

Dr. Richard Haddock, a physician in Salisbury, reached a similar conclusion regarding the authenticity of Anne's malady. Acting at the request of Henry Cotton, the bishop of the diocese, Haddock examined Anne and concluded that the pins she vomited up were the same ones that he had secretly marked beforehand.[47]

Anne's fits continued through the summer of 1605, and at the end of August they attracted the attention of King James himself when he visited Oxford.[48] It is not surprising that the king, having already written a treatise on demonology while king of Scotland, would express interest in a case of this sort. James had been highly credulous of witchcraft in that book, an understandable position because he himself had been the alleged victim of a conspiracy of witches from North Berwick who were in league with the treasonous earl of Bothwell. Those witches had purportedly thrown some hexed cats into the North Sea, thereby causing a storm that had delayed the arrival of the king's new bride, Princess Anne of Denmark, in 1590. They also were accused of plotting to kill the king. The king's personal interest in that case had led to one of the most severe witch-hunts in Scottish history.[49] Since that time, however, especially since his arrival in England in 1603, James had become more skeptical regarding witchcraft, and he had already begun to take delight in exposing hoaxes.[50] The Gunter case, therefore, offered him an opportunity to explore one of his long-standing interests as well as to play the role of enlightened monarch.

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could make herself insensitive to pain. THE ANATOMICAL LECTURES OF WILLIAM HARVEY 46-47 (Gweneth Whitteridge ed. & trans., 1964). In Richard A. Hunter & Ida MacAlpine, *A Note on William Harvey's "Nan Gunter" (1616)*, 12 J. OF THE HIST. OF MED. 512 (1957), the authors suggest that Anne may have first drawn Harvey's attention to patients who showed disturbances of sensation accompanying mental illness. Harvey did not, however, claim that Anne was mentally ill. He simply claimed that she made herself insensitive to pain.

47. STAC 8/4/10, fols. 3v, 20v, 23, 100. This Richard Haddock is the same Haddock or Haydock, M.D., of New College, Oxford, who attracted considerable attention in 1605 by allegedly preaching in his sleep. Ironically he, like Anne Gunter, was exposed as a fraud. DIARY OF WALTER YONGE, ESQ., *supra* note 34, at 12; 9 DICTIONARY OF NATIONAL BIOGRAPHY 281 (Leslie Stephen & Sidney Lee eds., 1921-22). On the swallowing of indigestible objects by demoniacs see 3 LEA, *supra* note 4, at 1046-47.

48. STAC 8/4/10, fols. 151v, 163. Brian Gunter brought his daughter to Oxford again at this time with the specific purpose of securing James's interest in the case.

49. Christina Larner, *James VI and Witchcraft*, *in* THE REIGN OF JAMES VI AND I, at 74, 78-80 (Alan G. R. Smith ed., 1973).

50. *See* KITTREDGE, *supra* note 23, at 276-328; HENRY N. PAUL, THE ROYAL PLAY OF MACBETH 90-130 (1950). On James's caution in such matters before he left Scotland, see Stuart Clark, *King James VI's DAEMONOLOGIE*, *in* THE DAMNED ART: ESSAYS IN THE LITERATURE OF WITCHCRAFT 156, 162-64 (Sydney Anglo ed., 1977).

The king interviewed Anne Gunter on at least four separate occasions between August and October 1605 — at Oxford in August, twice at Windsor in October, and one more time at Whitehall.[51] At some point between the first and second interviews the king referred the case to Richard Bancroft, the archbishop of Canterbury. Bancroft in turn placed Anne in the custody of his chaplain and main assistant, Samuel Harsnett. Harsnett, like Bancroft, had a special interest in cases of possession. During the previous ten years Harsnett had spearheaded a clerical campaign to discredit a rash of exorcisms that were being performed both by Jesuit seminary priests like William Weston and by Puritan ministers like John Darrell. The purpose of the Roman Catholic exorcisms was to prove to a heretical English nation that the Catholic Church was the one true church, one of the marks of which was the power to perform miracles. The greatest of these so-called miracles was the casting out of Devils. The Puritans, on the other hand, using only the scripturally warranted methods of prayer and fasting, were conducting their exorcisms to counter the claims of the Papists. The motive of the Anglican clerical establishment was to discredit both groups of exorcists by revealing the fraudulence of their efforts.[52]

The position that Harsnett took in his treatise on the subject, *A Declaration of Egregious Popish Impostures* (London 1603), was that the power of the Devil is greatly limited in this world and that he generally works through natural causes. Appealing in good Protestant fashion to the sovereignty of God, Harsnett asserted that the age of miracles is past. He claimed that Christ and the apostles had performed exorcisms, but there was no longer any need for such signs of divine power.[53] This position could easily lead

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51. The first interview was at Oxford on August 27, while two more took place at Finchingbrooke, near Windsor, on October 9 and 10. The date of the meeting at Whitehall is uncertain. *See* PAUL, *supra* note 50, at 121 (claiming Whitehall meeting occurred in September, at which time the king referred the girl to Edward Jorden); *see also* Thomas Guidott, *Preface to the Third Edition* of EDWARD JORDEN, DISCOURSE OF NATURAL BATHS (London 1669) (reporting meeting without date). Edward Jorden later testified that Anne "came from Court" within a month after being committed to Harsnett's custody, thus suggesting some time in September as the date of the meeting at Whitehall. Anne refers to all these interviews, but without dates, in STAC 8/4/10, fol. 128v. James requested yet another meeting at Ware on October 30, but Dr. Richard Neile claimed that Anne could not be delivered to him at that time. Letter from Richard Neile to the earl of Salisbury (Oct. 30, 1605), *in* 17 CALENDAR OF THE MANUSCRIPTS OF THE MOST HONOURABLE THE MARQUESS OF SALISBURY PRESERVED AT HATFIELD HOUSE 471, 471-72 (M.S. Giuseppi ed., 1938).

52. On this campaign, see MacDonald, *supra* note 6, at xix-xxvi.

53. *See* SAMUEL HARSNETT, A DECLARATION OF EGREGIOUS POPISH IMPOSTURES (London 1603), *reprinted in* F. W. BROWNLOW, SHAKESPEARE, HARSNETT, AND THE DEVILS OF DENHAM 191 (Associated Univ. Presses 1993).