

Witchcraft Law in Early Modern England

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The development of a secular legal code dealing with the crime of witchcraft in England was dependent upon the inheritance of intellectual and judicial trends from the Continent, but was also quite unique in its language and application. Three major laws criminalized witchcraft in the early modern period, at the height of the Reformation, each reflecting the political and intellectual position of the monarch on the English throne. The often turbulent periods surrounding the passage of these laws led to reinterpretations of the legality and punishments appropriate for the various forms of witchcraft and sorcery. Each new law represented an updated English understanding of the crime of witchcraft and the punishments appropriate for such an offense.

Prior to the reign of Henry VIII, witchcraft, sorcery and related crimes were primarily the responsibility of the ecclesiastical courts in England. The secular law and courts were not interested in witchcraft and magic until 1542 when Henry passed a law making the crimes a felony. The statute (33 Hen. VIII, c. 8) declared, “It shall be Felony to practice or cause to be practiced Conjurament, Enchantment, Witchcraft or Sorcery, to get money or to consume any person in his body, members or goods, or to provoke any person to unlawful love...”¹ The language of the law made it clear that the nature of the crime of witchcraft was the malicious intent and effect of the act, not in the diabolical pact with Satan. According to the law, felonious witchcraft or magic (a capital offense) was “...witchcraft, enchantment or sorcery, in order to find treasure; to waste or destroy a person’s body, limbs, or goods; to provoke to unlawful love; to declare what had

¹ Henry Charles Lea, *Materials Toward a History of Witchcraft* (Philadelphia: University of Pennsylvania Press, 1936). 1306.

happened to stolen goods; or ‘for any other unlawful intent or purpose.’”² The anti-social nature of the felonious acts was the focus of the law, not the anti-Christian heretical nature of invoking spirits or making a diabolical pact.

Henry’s witch law and various other statutes passed during his reign were repealed in 1547 by his son and successor, Edward VI. The third section of the bill entitled “An act for the repeal of certain statutes concerning Treasons, felonies, etc.” (1 Edw. VI, c. 12) struck many of the Henrician acts from the law books. It stated “...any act...or statute made since...the first year of the reign of the said late King Henry VIII, making any offence to be felony not being felony before, and all pains and forfeitures concerning...them, shall from henceforth be repealed and utterly void of none effect.”³ Edward’s ascension to the throne marked a period of reform in many sectors of life in England in response to great changes that took place under the previous regime. Some of the major targets of reform were the now independent Church of England and the legal code. Edward’s act in 1547 was not specifically aimed at repealing Henry’s witchcraft law nor did it mention it at all. The repeal was a by-product of Edward’s agenda of reform.⁴

When Edward died in 1553, questions about the legitimacy of his possible successors fueled a dynastic struggle that refocused the attention of the people and the law away from the prosecution of witches. During this period following the death of Henry and the repeal of many of his felony statutes in 1547, there was no witchcraft statute in existence in secular English law. Thus, when situations arose where witchcraft

² Keith Thomas, *Religion and the Decline of Magic* (New York: Charles Scribner’s Sons, 1971). 442.

³ *The statutes of the realm (1225-1713) Printed by command of His Majesty King George the Third* (London: G. Eyre and A. Strahan, 1810-1822), Vol. IV, pt. 1.

⁴ Gregory Durston, *Witchcraft and Witch Trials: A History of English Witchcraft and its Legal Perspectives, 1542 to 1736* (Chichester, England: Barry Rose Law Publishers, 200). 177.

and similar crimes were alleged, because of the lack of jurisdiction of the secular courts, they were dealt with through the ecclesiastical courts.⁵

When Elizabeth ascended the throne in 1558, she inherited a country in disarray, where competing factions of the Reformation threatened to tear English society apart. Elizabeth did not have the religious zeal of her two siblings and predecessors, the deeply Protestant Edward and the fervently Catholic Mary. Instead she sought to eliminate the intense religious unrest through a return to the situation as it was before the attempts at reform were made - a return to the situation as it was under their father, Henry. Part of this agenda aimed at social and political stabilization involved the passage of a new witchcraft law. This was attempted by Elizabeth in the first Parliament of her reign in 1559, but was not successfully made law until the second in 1563.⁶ The need for a witchcraft law felt by Elizabeth is evident in the fact that she attempted to renew such legislation in her first Parliament. She may have been driven to enact the statute by Protestant exiles returning from the Continent with new judicial and intellectual views towards crimes of magic and witchcraft.⁷

The Act of 1563 (5 Eliz. I, c. 16), entitled “An Act against Conjurations Enchantments and Witchcrafts,” updated Henry’s law to include three degrees of the crimes of witchcraft and sorcery and various punishments for each offense. The first section of the statute states:

...that if any person or persons...use practice or exercise any invocations or conjurations of evil and wicked spirits to or for any intent or purpose; or...if any person or persons...shall use practice or exercise any witchcraft enchantment charm or sorcery whereby any person shall happed to be killed or destroyed, that then...being lawfully convicted...shall suffer pains of death as a felon or felons

⁵ Thomas, *Decline of Magic*, 465.

⁶ Kittredge, *Witchcraft in Old and New England* (New York: Russell & Russell, 1929). 257-258.

⁷ Durston, *Witchcraft*, 172-178.

and shall lose the privilege and benefit of sanctuary and clergy.⁸

First degree felonious sorcery under the Elizabethan law was established as dealing with evil spirits for any purpose or using witchcraft that resulted in death. It was punishable by execution without the benefit of clergy, a mechanism built into the English legal system that allowed most literate first time offenders a conviction without penalty of death.⁹

The second section of the statute established the second degree of the crime, stating:

If any person shall use practice or exercise witchcraft enchantment charm or sorcery whereby anyone shall happen to be wasted consumed or lamed in his or her own body or member or whereby any goods or cattle of any person shall be destroyed wasted or impaired, then every such offender, lawfully convicted, shall on his first offence suffer imprisonment by space of one whole year without bail...and once in every quarter of said year...shall stand openly upon the pillory...And if any person or persons being once convicted of the same offences as is aforesaid...does perpetrate and commit the like offence...then every such offender...being of the said offences the second time lawfully convicted...shall suffer pains of death as a felon and shall lose the benefit and privilege of clergy and sanctuary.¹⁰

Thus the second degree crime punished lesser forms of malicious magic in which the victim or his property were impaired or injured. The punishment for the first offense was a year's imprisonment with quarterly appearances in the pillory and for the second offense, death as a felon without benefit of clergy.

The third degree of the felony under the Elizabethan statute was punishable on the first offense by a year's imprisonment with quarterly appearances in the pillory, and for the second offense, imprisonment for life. The punishment and conviction were reserved

⁸ *Statutes of the Realm*, Vol. IV, pt. 1

⁹ Durston, *Witchcraft*, 173-174.

¹⁰ *Statutes of the Realm*, Vol. IV pt. 1.

for the least harmful of the various forms of illegal witchcraft and magic, including “...all who should ‘take upon’ themselves to reveal the whereabouts of hidden treasure or of lost or stolen goods, or should practice witchcraft with intent to provoke unlawful love or to ‘hurt or destroy any person in his or her body, member, or goods.’”¹¹

The 1563 Elizabethan statute was in some ways an extension of the 1542 statute. The focus of the crime was again the maleficent nature of the offender’s deeds, but the new law was more developed than its predecessor. The varying degrees of the crime written into the law allowed for different punishments appropriate for each individual case. The first degree crime, punishable only by death as a felon, was more severe than Henry’s law in that a felony case involved invoking evil spirits for any purpose, not just for unlawful or malicious intents, which were necessary for a conviction under the 1542 statute. In practice though, the English courts under the 1563 law were still concerned primarily with malicious, anti-social witchcraft and sorcery, not with a diabolical pact or with the conjuring of evil spirits.¹² The other degrees of the crime and their lesser punishments show the Elizabethan law to have been less stern than its predecessor and to have allowed for judgments based on individual cases and examples rather than classifying all forms of sorcery as a single crime.

The 1563 law reintroduced the death penalty and secular jurisdiction for the crime of witchcraft and sorcery. The first successful prosecutions under the new law came in 1566 at Chelmsford in Essex Country.¹³ There, three women were tried and convicted of witchcraft - the first to be convicted in England. The surviving confessions of the witches illustrate how a typical conviction was won under the Elizabethan definition of felonious

¹¹ Kittredge, *Witchcraft*, 282.

¹² Thomas, *Decline of Magic*, 444.

¹³ Alan Charles Kors and Edward Peters, *Witchcraft in Europe, 400-1700: A Documentary History* (Philadelphia: University of Pennsylvania Press, 2001). 302-304.

witchcraft. In each of the confessions, various forms of malicious anti-social witchcraft were admitted to by the defendant. On top of the malicious sorcery were other details that built a better picture of the crime, but were not necessary to secure a conviction and condemnation as a felon.

Elizabeth Francis, the first of the witches to be examined, confessed that her grandmother "...counseled her to renounce God and his word and to give her blood to Satan (as she termed it), which she delivered her in the likeness of a white spotted cat..."¹⁴ Elizabeth went on to tell her examiners of the various acts of black magic that she committed through her cat, Satan. She confessed, "And after when this Andrew had thus abused her...she willed Satan to waste his goods, which he forthwith did, and yet not being contented with this, she willed him to touch his body which he forthwith did whereof he died."¹⁵ She went on to admit to using Satan to lame her husband, Francis, then sending the cat to murder her own child. Elizabeth Francis condemned herself to death by her own admission of guilt three years after the new felony witchcraft statute was passed. Had she been tried before the law was passed, she would have received the punishment of the ecclesiastical courts, which had fewer punitive options and lacked the authority of capital punishment independent of the secular courts.¹⁶ She would have been in the same position of being condemned to death, had she been tried under Henry's law from 1542.

The other defendants at Chelmsford also were convicted of murder by witchcraft through admissions of guilt. Agnes Waterhouse, the elderly neighbor of Elizabeth Francis and heir to her diabolical cat, Satan, confessed to Justice Southcote and M. Gerard, the

¹⁴ Kors and Peters, *Witchcraft in Europe*, 304-305

¹⁵ Kors and Peters, *Witchcraft in Europe*, 304-305.

¹⁶ Thomas, *Decline of Magic*, 465-468.

Queen's attorney, "First being demanded whether that she were guilty or not guilty upon arraignment of the murdering of a man, she confessed that she was guilty."¹⁷ She then went on to admit in detail the guilt of her daughter, Joan Waterhouse, condemning her to their shared fate. She said of Joan, "...that she had a white Cat, and willed her Cat that he should destroy many of her neighbors' cattle, and also that he should kill a man, and so he did."¹⁸ Once the admission of murder by witchcraft was made, Elizabeth Francis and Agnes and Joan Waterhouse were all condemned to death as felons, the first witches executed in England under the 1563 statute.

The Elizabethan witchcraft statute remained the law of the land until after Elizabeth's death in 1603 and its repeal by her successor, James I. James replaced her law with a generally sterner version that was no longer focused on the malicious nature of the act, but now on the inherent criminal nature of sorcery. James' background as the Scottish king during one of its great witch persecutions and his authorship of the widely circulated witch treatise, *Daemonologie*, has led historians to argue about whether the more broad and severe law passed in 1604 was the direct result of James' ascension. There is evidence to support the idea that James was very interested in prosecuting witches, but there is also evidence that his ideas and views were very ordinary for the time and place.¹⁹

In any case, the 1604 act (1 Jac. I, c. 12), entitled "An Act against Conjuracion Witchcraft and dealing with evil and wicked spirits," is noticeably more punitive and certainly less forgiving than its predecessor. The statute begins by repealing the Elizabethan statute against conjurations, enchantments, and witchcrafts (5 Eliz. I, c. 16),

¹⁷ Kors and Peters, *Witchcraft in Europe*, 306.

¹⁸ Kors and Peters, *Witchcraft in Europe*, 306.

¹⁹ Kittredge, *Witchcraft*, 276-284.

then continues:

...for the better restraining of said offences and more severe punishing the same, be it further enacted by the authority aforesaid, that if any person or persons...shall use practice or exercise any invocation or conjuration of any evil and spirit, or shall consult covenant with entertain employ feed or reward any evil and wicked spirit to or for any intent or purpose;...or to take...any part of any dead person, to be employed or used in any manner of witchcraft charm sorcery or enchantment whereby any person shall be killed destroyed wasted consumed pined or lamed in his or her body or any part thereof; then every such offender...their aiders abettors and counselors...being lawfully convicted...shall suffer pains of death as felon...and shall lose the privilege and benefit of clergy and sanctuary.²⁰

Like the Elizabethan statute, it punished the crimes of invocation of evil spirits for any purpose and witchcraft that resulted in anyone's death with execution as a felon. It added to this list any witchcraft or sorcery that resulted in injury.

The final section of the 1604 act dealt with the lesser forms of witchcraft and magic. It was aimed at prohibiting all forms of these practices. It listed such crimes as using witchcraft and enchantment for the purposes of locating treasure, procuring unlawful love, attempting to hurt cattle or people but failing, and others. The first conviction was punishable by a year's imprisonment with quarterly appearances in the pillory, like the Elizabethan statute. The second conviction, however, was now punishable by death, not life imprisonment like the previous version of the law.²¹

James' 1604 statute remained in place until its repeal in 1736. The system it created classified witchcraft and sorcery crimes in two different degrees. The first was punishable by death; the second with a year's imprisonment and appearances quarterly in the pillory for the first offense; and for the second offense, death as a felon. The language and intent of the new statute showed a change in how the lawmakers viewed the crime

²⁰ *Statutes of the Realm*, Vol. IV pt. 2.

²¹ *Statutes of the Realm*, Vol. IV pt. 2.

and its prosecution. The new outlook on the crime no longer was focused on the malicious intent of the deed. Instead the criminality of the act was based on the pact with evil spirits and devils. Under the new statute, communion with an evil spirit or familiar, no matter what the purpose, was now technically a felonious crime punishable by death.

The second degree crime included in the 1604 law shows that even under the new legislation, not all forms of magic and witchcraft were considered to be worthy of conviction as a felon. But, the harsher punishment of death for second time offenders shows James' law to be more punitive and less forgiving than its predecessor, the Elizabethan law of 1563.

The Lancashire witch trials of 1612 were the first major example of the new witchcraft law at work. The episode inspired an official pamphlet by Thomas Potts entitled "The Wonderfull Discoverie of Witches in the Countie of Lancaster"²² that chronicled the trial of the nineteen accused witches, eleven of whom were convicted. One of the convicted was found guilty of killing a mare and was sentenced to the pillory; the other ten were condemned to death. Six were sentenced as murderers via witchcraft, an offense punishable by execution under the Elizabethan law as well as the newer statute. The other four were convicted of doing harm to others but not of murder. Under the 1563 law, these four would not have been condemned to death. The Lancashire cases exhibited the difference between the applications of the two statutes: four more witches were executed in 1612 under James' law than likely would have been under the previous Elizabethan law.²³

The language of the three major witchcraft laws enacted in England in the early

²² Thomas Potts, *The Wonderfull Discoverie of Witches in the Countie of Lancaster* (London, 1613).

²³ Kittredge, *Witchcraft*, 285.

modern period showed the evolution of English society's perception of the crime. More importantly it showed how it was viewed by the monarch in power. The first law passed by Henry VIII in 1542 (33 Hen. VIII, c. 8) was focused on the criminality of witchcraft and sorcery that was maliciously anti-social, involving acts of hostility towards members of the community. It was repealed by Edward VI in 1547 (1 Edw. VI, c. 12) before it had much time to take effect. Few records survive of prosecution under Henry's law. In 1563 Elizabeth I ascended the throne, and in her first Parliament reenacted Henry's law in an updated form. The statute (5 Eliz. I, c.16) established three degrees of witchcraft and appropriate punishments for each offense, ranging from murder by witchcraft, punishable by execution; to using magic to find treasure, punishable by a year's imprisonment and quarterly appearances in the pillory for a first time offender. It remained in place until James VI of Scotland became James I of England, and enacted a newer, stricter witchcraft law in his first year on the English throne. James' law (1 Jac. I, c. 12), passed in 1604, was the final witchcraft statute passed in England. It expanded the felonious degree of witchcraft (a capital offense) beyond murder to include witchcraft that resulted in injury, as well as the use of sorcery and invoking of evil spirits for any intent, malicious or not. The statute allowed for a variety of capital crimes and was the law of the land until its repeal marked the end of the prosecution of English witches in 1736. In practice, though, most cases prosecuted that resulted in conviction and execution were cases where malicious intent or murder by witchcraft were found along with a lesser form of sorcery or conjuring.