

## *The English Witchcraft Act of 1563 Revisited\**

In 1584 the Kentish gentleman Reginald Scot published his treatise *The Discoverie of Witchcraft*. Contention over Scot's religious identity began in the invective of the sixteenth century and has continued to the present day, with David Wootton's argument that he was a member of the radical Christian sect, the Family of Love, being resisted by others. But whatever we call him, it should be apparent to any historian who reads his work that he produced the most far-reaching and profound sceptical account concerning witchcraft written in sixteenth-century Europe.<sup>1</sup> He was scathing about those who sought to prosecute what he saw as being, in most respects, an impossible crime. When he came to discuss the law relating to witchcraft in England, it might be expected that his condemnatory tone would continue. It is therefore puzzling that when he turned to the English statutes, he did so in, for him, markedly cautious terms:

It will be objected, that we here in England are not now directed by the popes lawes; and so by consequence our witches not troubled or convented by the inquisitors *Haereticae pravitatis*. I answer, that in times past here in England, as in other nations, this order of discipline hath beene in force and use; although now some part of old rigor be qualified by two severall statutes

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1. D. Wootton, 'Reginald Scot/Abraham Fleming/The Family of Love', in S. Clark, ed., *Languages of Witchcraft: Narrative, Ideology and Meaning in Early Modern Culture* (Basingstoke, 2001), pp. 119–38; D. Wootton, 'Scott [Scot], Reginald (d. 1599)', *Oxford Dictionary of National Biography* [hereafter *ODNB*]. Wootton nicely captures Scot's radicalism, but his identification of him as a Familist has not found widespread support. Cf. P. Almond, *England's First Demonologist: Reginald Scot and 'The Discoverie of Witchcraft'* (London, 2011). A modern scholarly edition of Scot's work, including a discussion of his religious identity in the introduction, has been produced in French: Reginald Scot, *La Sorcellerie Démystifiée*, ed. P. Kapitaniak, tr. P. Kapitaniak and J. Migrenne (Grenoble, 2015), at pp. 50–57. On the reception of Scot, see *A Defence of Witchcraft Belief: A Sixteenth-Century Response to Reginald Scot's 'Discoverie of Witchcraft'*, ed. E. Pudney (Manchester, 2021); S.F. Davies, 'The Reception of Reginald Scot's Discovery of Witchcraft: Witchcraft, Magic, and Radical Religion', *Journal of the History of Ideas*, lxxiv (2013), pp. 381–401. Perhaps the most famous contemporary response was that contained in James VI's *Daemonologie*, most easily accessible in *Witchcraft in Early Modern Scotland: James VI's Demonology and the North Berwick Witches*, ed. L. Normand and G. Roberts (Exeter, 2000), pp. 327–426.

made in the fift of Elizabeth, and xxxiii of Henrie the eight. Nevertheless the estimation of the omnipotencie of their words and charmes seemeth in those statutes to be somewhat mainteined, as a matter hitherto generallie received; and not yet so looked into, as that it is refuted and decided.<sup>2</sup>

The laws passed against witchcraft under Henry VIII and Elizabeth, while they maintained a position that was overly credulous concerning the power of witches, were nonetheless limited in their scope. In simple terms, things could have been worse. The mechanisms for persecution could have been much more severe. Why should Scot, of all people, have made such a concession? Was it just in order to draw the distinction between English procedure and that used elsewhere? Certainly, as he went on to make clear, Scot knew that there were those in England who wanted harsher laws, and more rigorous procedures. Maybe his thoughts on the English statute were inflected by a very specific knowledge that, in fact, things might have been much worse.

The peculiarities of Scot's phrasing invite a reinvestigation of the nature of the Witchcraft Act of 1563 (5 Elizabeth I, c. 16). This 'Act against Conjuracions Inchantmentes and Witchcraftes' made the invocation and conjuration of evil spirits, and killing by witchcraft, felonies and thus punishable by death by hanging. Harming by witchcraft was a lesser offence, punishable in the first instance by a year's imprisonment with quarterly appearances in the pillory. The same punishment applied in the first instance for using witchcraft for a variety of other offences including finding treasure or provoking 'unlawful' love.<sup>3</sup> And it was under this statute, until it was replaced in 1604, that accused witches were prosecuted in England. This Act might usefully be compared with the one passed in Scotland in the same year. As Julian Goodare has suggested, the wording of that act was studiously vague, and its very vagueness allowed for an expansive understanding of what might constitute witchcraft, including maleficent and diabolical action. What is more, in the Scottish case, it is clear that the idea that witchcraft was at heart a diabolical crime, that witches were apostates, underpinned the act. This is demonstrated not only by Goodare's suggestion that the act was particularly intended to appease John Knox, but most simply by the punishment stipulated for Scottish witches. They were to be strangled ('wirrit') and burned. They thus suffered the same end as heretics (as most other witches did throughout Europe).<sup>4</sup> Most elements of this spiritual definition of the crime were absent from the English Act, and its sliding scale of punishment makes

2. Reginald Scot, *The Discoverie of Witchcraft* (London, 1584), p. 16. See also the comments of P. Kapitanianak, 'Reginald Scot and the Circles of Power: Witchcraft, Anti-Catholicism and Faction Politics', in M. Harmes and V. Bladen, eds, *Supernatural and Secular Power in Early Modern England* (Farnham, 2015), p. 66.

3. *Statutes of the Realm*, ed. Alexander Luders et al. (12 vols, 1810–28) [hereafter *SR*], iv, pp. 446–7.

4. J. Goodare, 'The Scottish Witchcraft Act', *Church History*, lxxiv (2005), pp. 39–67.

any attempt to see it as a clear tool in a war against Satanic conspiracy untenable.

This Act is the starting point for most studies of the English witch-hunt, but its origins and passage have in fact been little studied by historians of witchcraft. Two historiographies, one general and one specific, have developed that seek to understand its place on the statute book. The general one might be considered briefly. This places the relatively moderate act within a broader account of English exceptionalism in which it is seen as of a piece with the relatively limited nature of the English hunt. The ‘moderate’ English were not given to the fervid imaginings of their continental and Scottish cousins. In particular, they did not seek to emphasise the idea of a diabolical pact or to define witches as the most dangerous types of apostates. Historians of the continental hunt sought to assess the impact of the redefinition of magical practices, from the fifteenth century onwards, as acts empowered by the diabolical pact—on laws used to prosecute witches, on the thought of magistrates keenly pursuing their victims, and on popular understanding of magic and witchcraft. The moderate Elizabethan statute enshrined no such concept, and much of the historiography assumed that there was little penetration of the notion of the diabolical pact in England.

In certain respects, this English exceptionalism might be said to have its polemical roots in Scot. In modern historiography, such views, sometimes associated with Keith Thomas’s *Religion and the Decline of Magic*, have crumbled during the fifty years since the publication of that book. It has become increasingly clear that the nature of English accusations of witchcraft, and the social contexts in which they might have occurred, were not so different in kind from those found on the continent.<sup>5</sup> Conversely, it has also become clear that the English hunt per head of population was not *that* unusual. Certainly England was not among the societies that saw a very high level of persecution (unlike its neighbour Scotland), but it was not very low either. According to Robin Briggs’s most recent tabulation, it was above France and just below the Northern Netherlands in terms of that ratio, putting it in a group that saw low but not insignificant levels of hunting.<sup>6</sup> None of this is to suggest that the English legal system did not make a difference to the hunt, but that any attempt to explain the

5. This has been the result of a recognition both of the significance of acts of harm to accusations in continental Europe, and of the degree to which diabolism penetrated popular consciousness in England. On the latter point, see C. Holmes, ‘Popular Culture? Witches, Magistrates, and Divines in Early Modern England’, in S.L. Kaplan, ed., *Understanding Popular Culture: Europe from the Middle Ages to the Nineteenth Century* (Berlin, 1984), pp. 85–111; J.A. Sharpe, ‘The Devil in East Anglia: The Matthew Hopkins Trials Reconsidered’, in J. Barry, M. Hester and G. Roberts, eds, *Witchcraft in Early Modern Europe: Studies in Culture and Belief* (Cambridge, 1996), pp. 237–54; C.R. Millar, *Witchcraft, the Devil, and Emotions in Early Modern England* (London, 2017).

6. R. Briggs, *The Witches of Lorraine* (Oxford, 2007), p. 52.

English statute as the result of a broader difference in conceptualising and taking action against witchcraft no longer works.<sup>7</sup>

The more specific mode of explanation for the passage of the statute was pioneered by Norman Jones, and it is this which has found most favour among historians of witchcraft. Jones's focus was not on the precise wording of the Act, but instead on what he saw as the context in which it was produced. In a pithy chapter published in 1998, Jones, demonstrating great ingenuity and detective skills, developed a coherent account of the context for the passage of the Act. According to Jones, the Act 'came into being because a group of Catholics caught using enchantments and witchcraft against the queen could not be punished'.<sup>8</sup> Jones started by tracing the links that could be found between a virulent anti-Catholicism and the language of witchcraft more generally, before focusing in particular on the murky world of Catholic plotting in 1561. The authorities initially became aware of the latter as a result of the capture and interrogation of a priest, John Coxe, and those suspected of involvement extended to the Essex recusant family of the Waldegraves and ultimately the Poles. A plan was in place to ensure a Catholic succession, and, pertinently, magic—specifically, forecasting the date of the death of the queen—had been used as part of the plans.<sup>9</sup> In 2015 this interpretation was taken further, but not challenged, by Michael Devine, who built upon Jones's case to argue that the 1563 Act needed to be placed in the context of Catholic plotting, using magical means, from the point of Elizabeth's accession.<sup>10</sup> For both Jones and Devine, then, the Witchcraft Act was linked to frustration at the highest level that those who had engaged in magical acts, as part of Catholic conspiracy, could not be effectively punished under existing law. For Jones, the Witchcraft Act, as well as the 'Acte for thassurance of the Quenes Majesties Royall power' (5 Elizabeth, 1 c. 1, often referred to as the 'Oath of Supremacy Act') and the 'Act agaynst fond and phantasticall Propheyses' (5 Elizabeth I, c. 15) were to be understood within the

7. That this crumbling of English exceptionalism was an outcome at least partially expected by Thomas is nicely brought out in J. Barry, 'Introduction: Keith Thomas and the Problem of Witchcraft', in Barry, Hester and Roberts, eds, *Witchcraft in Early Modern Europe*, pp. 17–19.

8. N. Jones, 'Defining Superstitions: Treasonous Catholics and the Act Against Witchcraft of 1563', in C. Carlton with R.L. Woods, M.L. Roberston and J.S. Block, eds, *State, Sovereigns and Society in Early Modern England: Essays in Honour of A.J. Slavin* (Stroud, 1998), pp. 187–203, at 187.

9. The plots can be followed in the sequence of interrogations and lists of imprisonments and pardons found in the State Papers: Kew, The National Archives [hereafter TNA], SP 12/16, fos 115r, 117r–118r, 119r–120r, 121r–v, 123r, 124r–125r, 127r, 128r. For an anonymous narrative account of the event, see London, British Library [hereafter BL], Additional [hereafter Add.] MS 48023, fo. 354v. Jones, 'Defining Superstitions'.

10. M. Devine, 'Treasonous Catholic Magic and the 1563 Witchcraft Legislation: The English State's Response to Catholic Conjuring in the Early Years of Elizabeth I's Reign', in Harnes and Bladen, eds, *Supernatural and Secular Power*, pp. 67–94. Earlier historians of witchcraft had made some note of Catholic plotting in these years: W. Notestein, *A History of Witchcraft in England from 1558 to 1718* (1911; Oxford, 2012), pp. 15, 18–19; G.L. Kittredge, *Witchcraft in Old and New England* (Cambridge, MA, 1929), pp. 257–61; R.T. Davies, *Four Centuries of Witch-Beliefs: With Special Reference to the Great Rebellion* (London, 1947), p. 20.

context of these events: 'A natural development in the path that demanded restoration of the Edwardian "settlement", these laws were given point and purpose by all the events surrounding the Waldegrave conspiracy'.<sup>11</sup>

It is this interpretation that we have come to doubt. In what follows we suggest that the Act needs to be understood within a fuller account of the attempts to enact witchcraft legislation in the sixteenth century. After some brief comments on the Henrician witchcraft statute we turn, importantly, to the desire exhibited by divines to prosecute witches that emerged under the militantly protestant regime of Edward VI. We will then trace the immediate pre-history of the Elizabethan statute, before attempting to chart the twisting course it took through the English Parliament. Throughout we aim to show that the Elizabethan statute was the result of a series of paths not taken, that it was not primarily directed against Catholics or brought about in response to their nefarious activities, and that it represented ultimately the defeat of a particular view of witchcraft as a crime that, had it prevailed, would have made the history of English witchcraft look very different.

## I

The first English statute 'Against conjurations & witchcraftes and sorcery and enchantments' (33 Henry VIII, c. 8) was enacted in the Parliament of 1542, alongside an act that condemned the making of false prophecies (33 Henry VIII, c. 14).<sup>12</sup> It is possible that the inspiration for the witchcraft statute, and a raft of other Henrician criminal laws of the 1530s and 1540s, was the *Constitutio Criminalis Carolina* (also known as the *Lex Carolina*), ratified in 1532. This codified body of law, intended to be enacted throughout the Holy Roman Empire, established witchcraft as a capital crime to be punished by secular magistrates (who, unlike the clergy, could inflict bodily punishments), and deserving of execution by fire.<sup>13</sup> The Henrician law was strikingly draconian. As Stanford Lehmberg remarks, the acts against witchcraft and false prophecy and fortune-telling were 'unusually savage because they recognised no graduation of offences': offenders against the witchcraft act and the act against false prophecies were to be

11. Jones, 'Defining Superstitions', p. 200; *SR*, iv, pp. 402–5, 445–6.

12. S.E. Lehmberg, *The Later Reformation Parliaments of Henry VIII* (Cambridge, 1977), pp. 156–7; *SR*, iii, pp. 837, 850.

13. This is not to suggest that the Carolina's witchcraft law provided a direct model for the severe Henrician law, or to engage with arguments about the penetration of Roman law in England. On the limitations of the Carolina in regard to witch-hunting, see W. Behringer, 'Laws on Witchcraft (Early Modern)', in R.M. Golden, ed., *Encyclopedia of Witchcraft: The Western Tradition* (4 vols, Santa Barbara, CA, 2006), iii, pp. 636–7, and the comments of L. Roper, *Witch Craze: Terror and Fantasy in Baroque Germany* (New Haven, CT, 2004), p. 20. For penetrating appraisals of Henrician socio-economic legislation, see C.S.L. Davies, 'The Cromwellian Decade: Authority and Consent', *Transactions of the Royal Historical Society*, 6th ser., vii (1997), pp. 177–95; G.R. Elton, *Policy and Police: The Enforcement of the Reformation in the Age of Thomas Cromwell* (Cambridge, 1972), p. 82 and *passim*.

punished by pain of death and forfeiture of property from the first very offence, while no felon could claim benefit of clergy.<sup>14</sup> The uncommonly savage penalties must be explicable by the spiritual nature of these crimes, more heinous than felonies inspired by earthly motivation. The text of the witchcraft act makes no explicit mention of a diabolical pact between devil and witch, but it does describe practitioners of witchcraft as guilty of a religious affront ‘to the great Offence of Godes lawe ... and losse of the sowles of suche Offenders’.<sup>15</sup>

The statute of 1542 was one of the Henrician felony statutes soon repealed in the first session of the Parliament of 1547, as the new regime of Edward VI hurried to abrogate legislation that could be used to prosecute evangelicals for heresy, treason or other spiritual crimes.<sup>16</sup> Explaining the need to repeal the ‘straight and sore’ laws of King Henry, the text of the ‘Acte for the Repeale of certaine Statutes concerninge Treasons, Felonynes, &c.’ (1 Edward VI, c. 12) conveys a very misleading impression that the Edwardian reign was a brief and enlightened epoch of toleration: ‘as in tempest or winter one course and garment is conveyent, in cawlme or warme weather a more liberall rase or lighter garment ... ought to be followed and used’.<sup>17</sup> But Thomas Cranmer and various magistrates were content to convict and execute radical protestant heretics despite the repeal of the heresy laws, and a new heresy statute was debated in Parliament in April 1552.<sup>18</sup> Meanwhile, leading Edwardian divines who passionately aspired to the edification of church and state certainly viewed the extirpation of witches as necessary for the purification of the godly commonwealth.<sup>19</sup> An understanding of witchcraft as a diabolical crime was also widely held among the evangelical clergy, spread through the writings of William Tyndale, John Bale, Hugh Latimer and Cranmer himself. Witchcraft was a particular concern of John Hooper, bishop of

14. Lehmborg, *Later Reformation Parliaments*, p. 157.

15. *SR*, iii, p. 837.

16. It is difficult to be certain how far this Act was used. Thomas, *Religion and the Decline of Magic*, p. 535, noting C. L’Estrange Ewen, *Witch Hunting and Witch Trials: The Indictments for Witchcraft from the Records of 1373 Assizes Held for the Home Circuit, A.D. 1559–1736* (London, 1929), p. 11, n. 2; C. L’Estrange Ewen, *Witchcraft and Demonianism: A Concise Account Derived from Sworn Depositions and Confessions Obtained in the Courts of England and Wales* (London, 1933), p. 408. Historians have tended to assume that very few, if any, prosecutions were brought under this Act, but the lack of relevant materials from the assizes makes it difficult to be certain.

17. *SR*, iv, pp. 18–22. For the perspective that Edward’s reign was ‘moderate’ and ‘tolerant’, see W.K. Jordan, *Edward VI: The Young King* (London, 1988), pp. 123–66.

18. *Journals of the House of Lords, 1: 1509–1577* (London, 1771) [hereafter *LJ*], p. 420. Heretics burned were Joan Bocher and George à Parris, while other heretics abjured and paid public penance. D. MacCulloch, *Thomas Cranmer* (New Haven, CT, 1996), pp. 422–5, 440, 474–7; I.B. Horst, *Anabaptism and the English Reformation to 1558* (Nieuwkoop, 1979), pp. 97–140; T.S. Freeman, ‘Dissenters from a Dissenting Church: The Challenge of the Freewillers, 1550–1558’, in P. Marshall and A. Ryrie, eds, *The Beginnings of English Protestantism* (Cambridge, 2002), pp. 129–56.

19. The classic work is W. Jones, *The Tudor Commonwealth, 1529–1559* (London, 1970); see also the imaginative analysis of the political thought of evangelical reformers in N. Dauber, *State and Commonwealth: The Theory of the State in Early Modern England, 1549–1640* (Princeton, NJ, 2016), ch. 1.

Gloucester from 1550: 'Those who abuse the name of God that seek help of damned spirits ... [practice] craft of the devil'; spells and prophecies were 'superstitious and devilish incantations', 'the abuse of God's name, through the help of the devil'. In his *Declaration of the Ten Commandments* Hooper extensively cited pagan and Christian laws in ancient Rome, Egypt, Persia and the Christian world to show that both natural and divine law required the punishment of witchcraft by death.<sup>20</sup> Cranmer's and Hooper's Visitation Articles for their dioceses required the detection of all those who used sorcery and magic—'forbidden and damnable crafts'.<sup>21</sup>

The concept of the diabolical pact, where a witch consciously renounces allegiance to God, is more precisely articulated by two 'continental' theologians with seminal influence over the English Reformation.<sup>22</sup> In Heinrich Bullinger's *Decades*, a work described by Torrance Kirby as having 'quasi-canonical status' in Tudor England, witchcraft is explicitly defined as 'leagues and covenants made with the devil'.<sup>23</sup> Even more significant is the considerable space given to the discussion of witchcraft in the *Commonplaces* of Peter Martyr Vermigli, the Italian protestant who was briefly (and unhappily) Regius Professor of Divinity at Oxford University between 1548 and 1553. There is a substantial amount of scholarship on Vermigli, and none of it discusses his striking interest in witches. Describing the duties of Christian magistrates, Vermigli explains that they must extirpate 'sorcerers, witches, and southsaiers'. Crucially, he describes demons as becoming 'Incubi' and 'Succubi', those demons who assume corporeal form to have sexual relations with humans. During the late medieval period, the witch's sex act with the devil had come to be understood as the seal of the diabolical pact in much demonology.<sup>24</sup> Those who succumb to nightly visitations of these devils 'be sathans, that is to saie, the

20. *Early Writings of John Hooper*, ed. Samuel Carr, Parker Society, xx (1843), pp. 308, 326–30.

21. *Later Writings of John Hooper*, ed. Charles Nevinson, Parker Society, xxi (1852), p. 145; *Miscellaneous Writings and Letters of Thomas Cranmer*, ed. John Edmund Cox, Parker Society, xxiv (1856), p. 158.

22. Bullinger was a particular influence on John Hooper. W.J.T. Kirby, *The Zurich Connection and Tudor Political Theology* (Leiden, 2007), is a study of the particular influence of Heinrich Bullinger and Peter Martyr Vermigli in England. See also C.E. Euler, 'Heinrich Bullinger, Marriage, and the English Reformation: *The Christen State of Matrimonye* in England, 1540–53', *Sixteenth Century Journal*, xxxiv (2003), pp. 367–93; A. Raath and S. de Freitas, 'From Heinrich Bullinger to Puritanism: John Hooper's Theology and the Office of Magistracy', *Scottish Journal of Theology*, lvi (2003), pp. 208–30; W.J.T. Kirby, 'Peter Martyr Vermigli's Political Theology and the Elizabethan Church', in P. Ha and P. Collinson, eds, *The Reception of Continental Reformation in Britain* (Oxford, 2010), pp. 82–106; M. Anderson, *Peter Martyr: A Reformer in Exile* (Nieuwkoop, 1979).

23. Kirby, *Zurich Connection*, p. 29; *The Decades of Henry Bullinger*, tr. H.I., ed. Thomas Harding, Parker Society (5 vols in 4, 1849–52), i, pp. 221–2.

24. The key analysis of the emergence of this idea is provided by W. Stephens, *Demon Lovers: Witchcraft, Sex, and the Crisis of Belief* (Chicago, IL, 2002). The most famous exponents of this view remain Heinrich Institoris and Jakob Sprenger, *Malleus Maleficarum*, ed. C.S. Mackay (2 vols, Cambridge, 2006). See also H.P. Broedel, *The Malleus Maleficarum and the Construction of Witchcraft: Theology and Popular Belief* (Manchester, 2003).

adversaries of God. They will have covenants and promises to be made, which cannot otherwise be than against God'.<sup>25</sup>

As well as the general influence and respect that Peter Martyr Vermigli commanded among English divines—John Jewel, the leading Elizabethan bishop, was one of his Oxford ‘familiares’—the significance of his views on witchcraft relates to the role that he played in writing the *Reformatio Legum Ecclesiasticarum*, that great revision of ecclesiastical law that the Edwardian protestant clergy hoped, along with the reformed liturgy and the forty-two articles of doctrine, would be the third pillar of the truly reformed church of their new English Jerusalem. The revision of canon law had been first authorised in statutes of 1534 (25 Henry VIII, c. 19) and 1544 (35 Henry VIII, c. 16), and undertaken in the reign of Edward VI when a new statute of 1550 (3–4 Edward VI, c. 11) confirmed that a commission of thirty-two divines and laymen should revise the ecclesiastical law by 1 February 1553.<sup>26</sup> Despite the size of the official commission, authorised on 12 February 1552, the *Reformatio* was largely drawn up by a smaller drafting committee of eight divines and lawyers. But ultimately the work was primarily the product of the labours of Cranmer and Peter Martyr Vermigli, whose revisions survive (with those of Walter Haddon) on the only surviving manuscript draft of the *Reformatio*, now in the British Library.<sup>27</sup> Cranmer and Vermigli took particular control of the clauses concerning doctrine.<sup>28</sup> A letter from Vermigli to Heinrich Bullinger, dated 8 March 1552, enthused that the project he was engaged in would be enacted in statute: ‘For it is not only necessary to entreat God that pious and holy laws may be framed, but that they may obtain the sanction of Parliament, or else they will not possess any force or authority whatsoever’.<sup>29</sup>

Famously, this optimism was misplaced. While the revised Book of Common Prayer was authorised by Parliament at the end of 1552, the *Reformatio*, the final revisions of which were completed over the winter of 1552 and 1553, was not, and does not even seem to have been presented to Parliament for debate. This is something of a mystery, usually parsed by one very unsatisfactory account from the Imperial ambassador De Scheyfve, who claimed that the Duke of Northumberland had, in a fit of

25. *The Common Places of the Most Famous and Renowned Diuine Doctor Peter Martyr*, tr. and ed. Anthony Marten (London, 1583), pp. 9, 72–91.

26. G. Bray, *Tudor Church Reform: The Henrician Canons of 1535 and the Reformatio Legum Ecclesiasticarum* (Woodbridge, 2000), pp. xli–xlv; SR, iv, pp. 111–12.

27. BL, Harleian MS 426. Gerald Bray convincingly suggests that this manuscript can be dated to mid-October 1552. In 1571, John Foxe published the later revised version of the text, which brought together the Harleian manuscript and a version owned by Archbishop Matthew Parker, now lost, which was presumably the final version of the *Reformatio* endorsed by Cranmer in March 1553. See Bray, *Tudor Church Reform*, pp. liv–lxiv.

28. Bray, *Tudor Church Reform*, pp. xli–liv; J.F. Jackson, ‘The Reformatio Legum Ecclesiasticarum: Politics, Society, and Belief in Mid-Tudor England’ (Univ. of Oxford D.Phil. thesis, 2003).

29. *Original Letters Relative to the English Reformation, Written during the Reigns of King Henry VIII, King Edward VI, and Queen Mary*, Chiefly from the Archives of Zürich, ed. Robinson Hastings, Parker Society, xxxvii, xxxviii (2 vols, 1846–7), ii, pp. 503–4.

spite, sabotaged the proposal that the work be shown to the House of Lords in March 1553, warning Cranmer that the bishops must ‘take good care what they were about’. Scholars usually argue that the *Reformatio* was not enacted in statute law because the duke and the archbishop had fallen out over the former’s appropriation of church lands and proposals to reorganise English bishoprics.<sup>30</sup>

While Cranmer and Northumberland’s relationship was certainly strained at this time, De Scheyfve’s grasp of the minutiae of English politics is frequently faulty, and there may be strong reasons to distrust his account. The authorisation of the *Reformatio* in statute may have been delayed, rather than repudiated, by a regime derailed by more pressing priorities. The Privy Council debated the work of the drafting committee in October 1552 (Bray assumes they saw the version which is now MS Harleian 426), and must have encouraged the work to progress. The Parliament of March 1553 lasted only one month and passed no legislation of great moment. Edward had been ill with the tuberculosis that would kill him since Christmas 1552, and by the following March the Venetian envoy considered him close to death.<sup>31</sup> The political energies of those concerned about the future of the English church were orientated to the question of the succession to the Crown, rather than the thorny problems of the ecclesiastical law. In his preface to the printed edition of the *Reformatio* published in 1571, John Foxe vehemently argued that there was no doubt ‘that these same laws would have been ratified and authorized for public use by the authority of Parliament, if only the king had lived *a little longer*’, suggesting that the *Reformatio* would have been enacted in statute sooner rather than later had Edward’s health not so suddenly declined.<sup>32</sup>

It seems equally plausible that the implications of the *Reformatio*, which would have invested in the church extraordinary powers over the lives of English subjects, caused Northumberland’s reluctance to put the book before Parliament.<sup>33</sup> Had this law code been implemented in any meaningful way, England would have become one of the most closely policed confessional states in Europe. In particular, the heresy laws would have been stringent and very extensive: all central Catholic doctrines, including upholding papal authority, would have been defined as heretical.

30. *Calendar of Letters, Despatches and State Papers Relating to the Negotiations Between England and Spain, Preserved in the Archives at Vienna, Simancas, Besançon and Brussels* (13 vols, 1862–1954), *Edward VI and Mary*, 1553, pp. 32–4; Bray, *Tudor Church Reform*, pp. lxxiv–lxxv; MacCulloch, *Thomas Cranmer*, pp. 533–5.

31. We follow here the classic explanation of Edward’s death by D. Hoak, ‘Edward VI, 1537–1553’, *ODNB*; for an alternative argument that Edward died of renal failure, see J. Loach, *Edward VI*, ed. G.W. Bernard and P. Williams (New Haven, CT, 1999), p. 163.

32. ‘Nec dubium quin parlamentari etiam auctoritati eadem sanctiones istae constabilitae atque in publicum usum consecratae fuissent, si vita regi paulo longior suppetisset’ (emphasis added): Bray, *Tudor Church Reform*, pp. 164–5.

33. It is entirely possible that it was these tensions between ecclesiastical and civil authorities that De Scheyfve’s account points to in a rather imprecise way.

Blasphemy was to be punished with the same penalties as heresy, while adultery, ‘a crime so hateful to God’, deserved the most severe punishments (the biblical precedent of stoning is cited approvingly). Meanwhile, church wardens and rural deans would have enforced consistorial discipline. Given a wide-ranging moral remit, they would have been empowered and encouraged to detect and denounce all spiritual crimes with zeal: heresy, idolatry, bigamy, adultery, prostitution, sodomy, drunkenness, perjury, blasphemy, violations of ecclesiastical injunctions and the practice of magic and sorcery.<sup>34</sup>

The *Reformatio* also contains a striking account of witchcraft:

Magica pactum est vel foedus cum Diabolo percussum et eius ministris, carminibus, precibus, characteribus, vel similibus impietatis instrumentis conflatum, quod vel ad futurorum casuum investigationem referto, vel ad certarum rerum quas expectimus conqu[isi/aes]tionem.

Magic is a pact or treaty with the devil and his servants, which is kindled by incantations, prayers, signs and other similar tools of ungodliness, which deal either with the investigation of future events or with the obtaining of certain things which we want.<sup>35</sup>

This explicit definition of magic as a ‘pactum’ or ‘foedus’—a pact or a treaty (the doubling of the wording giving emphasis)—with the devil defines all forms of witchcraft or magical practices as apostasy. In other words, witchcraft was a crime that would have necessarily entailed the same punishment as that meted out to heretics—death by burning. So here, in this proposed set of new ecclesiastical laws for the Edwardian church, we have the very definition of witchcraft as a diabolical crime that is not meant to have had much purchase on the ‘moderate’ English imagination.

The failure of the *Reformatio* to be enacted in statute, followed soon after by the death of Edward VI, was a climactic in the history and fortunes of the Church of England and the English state, and in the history of English witchcraft.<sup>36</sup> Had the king lived into adulthood it seems highly unlikely that scholars would define the Edwardian church as ‘moderate’; the concept of ‘Anglicanism’ would have had quite a different set of associations. And yet the goals and experiences of the Edwardian divines, and their vision of the godly state, were passed down to the first generation of

34. Bray, *Tudor Church Reform*, pp. 350–53.

35. *Ibid.*, pp. 232–3. We have slightly altered Bray’s translation, which reads: ‘Magic is a pact or alliance forged with the devil and his servants, which is conflated with songs, prayers, signs and other similar tools of ungodliness, which deal either with the investigation of future events or with the obtaining of certain things which we want’.

36. While Bray resists interpretation of the *Reformatio* as a ‘radical’ work because much of its discussion of procedure in the church courts is unchanged from existing canon law, our interpretation agrees with that of J.C. Spalding, who views the code as enshrining a very strict church discipline. See J.C. Spalding, ‘The *Reformatio Legum Ecclesiasticarum* of 1552 and the Furthering of Discipline in England’, *Church History*, xxxix (1970), pp. 162–71; Bray, *Tudor Church Reform*, pp. lxiv–lxxiii.

Elizabethan reformers. The senior personnel in church and state under Elizabeth, and all of her first bench of newly appointed bishops, had come to maturity in the reign of Edward VI.<sup>37</sup> A final point is that the sermons, visitation articles and the *Reformatio* itself treat witchcraft as a form of apostasy that must be rooted out from society. They did not view the punishment of witches as a means to prosecute Catholics, but saw witchcraft as one of the most severe of spiritual crimes, necessitating capital punishment in its own right. While popery was superstitious heresy, witchcraft was a particular form of apostasy which had existed, as Hooper remarked, in all societies across time and space. The sudden death of Edward VI left no framework for the punishment of these severe crimes against God and man.

## II

It was obvious to those who returned from exile after the reign of Mary Tudor that the lack of witchcraft legislation was a pressing issue. Not only was the hunting of witches, on a basic level, required by God, but the situation had been made worse by Mary, who had, at best, been derelict in her duty (preferring to burn evangelicals rather than witches) and, at worst, had encouraged witchcraft to flourish. John Jewel, that acolyte of Peter Martyr, famously wrote to his friend immediately after Elizabeth's accession that, as well as the flourishing of popery and heresy in the realm, 'the number of witches and sorceresses has every where become enormous'.<sup>38</sup> Both the Royal Injunctions and Queen Elizabeth's Visitation Articles of 1559 required enquiry into the 'devilish device' of 'charms, sorceries, enchantments, witchcrafts, soothsaying'.<sup>39</sup> Jewel preached to the new queen that 'witches and sorcerers ... are marvellously increased within your graces realm. ... Wherefore your poor subjects' most humble petition to your highness is, that the laws touching such malefactors may be put in due execution'.<sup>40</sup> The problem facing the bishops was that there were no such laws to prosecute the crime of witchcraft.

37. A point made frequently, but see, in particular, S. Alford, *Kingship and Politics in the Reign of Edward VI* (Cambridge, 2007), ch. 6; N. Jones, *The Birth of the Elizabethan Age: England in the 1560s* (Oxford, 1993), chs 1 and 2.

38. *The Zurich Letters: Comprising the Correspondence of Several English Bishops and Others ... During the Early Part of the Reign of Queen Elizabeth*, ed. Robinson Hastings, Parker Society, I, li (2 vols, 1842), i, pp. 44–5.

39. *Visitation Articles and Injunctions of the Period of the Reformation*, ed. W.H. Frere (3 vols, London, 1910), ii, pp. 5, 20.

40. *The Works of John Jewel*, ed. John Ayre, Parker Society, xxiii–xxvi (4 vols, 1845–1850), ii, pp. 1025–34, at 1028. Some earlier accounts of the passage of the Act of 1563 saw Jewel's intervention as having particular significance. See Notestein, *A History of Witchcraft*, pp. 14, 25–6 n. 22; Davies, *Four Centuries of Witch-Beliefs*, pp. 16–17. Kittredge, however, sought to disprove the significance of the Marian exiles in specifically shaping the Act: Kittredge, *Witchcraft in Old and New England*, pp. 250–64. Kittredge's scepticism chimes with our own argument that the Act, in its final form, did not fulfil the hopes of a number of churchmen who had desired more extreme measures.

Furthermore, by the time the statute was passed in 1563 a number of cases had come to the notice of the authorities that made it clear that an act was required.<sup>41</sup> These included the clearly Catholic case examined by Jones, in which Father John Coxe confessed to using the mass to hallow the conjurations of one Bilson, a prebendary of Sarum and Gloucester, who hoped to procure the love of Lady Carew.<sup>42</sup> Bilson was a member of a network of ‘masse mongers and coniurers’, including Sir Edward Waldegrave, Sir Thomas Wharton and the heir of Geoffrey Pole, who were accused of conjuring to know the length of the queen’s reign, ‘and what should become of Relligion’.<sup>43</sup> Edmund Grindal, bishop of London, was deeply concerned at the lack of a legal framework that could punish such dangerous sorcery. To William Cecil he thundered:

Surelye for this Magicke & Coniuration yo[u]r hono[u]rs of the Counsell muste apoynte some extraordinarie punisshemente for example, my L. cheiffe Justice sayeth the Temporall lawe will nott medle w[i]th them. O[u]r ecclesiasticall punisshemente is to slender for so grevouse offences...<sup>44</sup>

Indeed, seven priests supposed to have ‘conjured’ the date of the queen’s death were sentenced in Star Chamber to be put on the pillory.<sup>45</sup> From this evidence, Jones and Devine argued that the statute enacted in 1563 had a politically anti-papal purpose: the creation of a law specifically to entrap and, ideally, kill Catholic conspirators.<sup>46</sup>

This incident became a test case for the nature of the crime and its relative punishment. The Chief Justice of the Court of Common Pleas, Sir James Dyer, recorded lawyers’ deliberation of the case, noting that there had been ‘great doubt what their punishment should be’. Some common lawyers argued that the culprits ‘should be punished by the spiritual law’, incurring a mere penitential punishment, but it was noted that the crime had been deemed a felony by the repealed legislation of Henry VIII. Grindal’s rage was no doubt further inflamed by the conclusions of a special meeting of common lawyers at Lord Keeper Bacon’s house to

41. In addition to the cases discussed here, it should be noted that cases concerning witchcraft were heard before the Church courts in the medieval period and continued to be heard following the passage of the 1563 statute. See, for example, R.A. Houlbrooke, ‘Magic and Witchcraft in the Diocese of Winchester, 1491–1570’, in D.J.B. Trim and P.J. Balderstone, eds, *Cross, Crown and Community: Religion, Government and Culture in Early Modern England, 1400–1800* (Oxford, 2004), pp. 113–41. It may well be relevant to the present argument that there appears to have been a bulge of cases in the diocese of Canterbury from 1560 to 1562: K. Jones and M. Zell, ‘“The Divels Special Instruments”: Women and Witchcraft before the “Great Witch-Hunt”’, *Social History*, xxx (2005), pp. 45–63, esp. 58–60. On cases occurring before the passage of the Act, see further Kittredge, *Witchcraft in Old and New England*, pp. 257–61.

42. See the second interrogation of John Coxe alias Devon, 17 April 1561: TNA, SP 12/16, fos 119r–120r.

43. BL, Add. MS 48023, fo. 354v.

44. TNA, SP 12/16, fo. 115r, 17 Apr. 1561.

45. BL, Add. MS 48023, fo. 354v.

46. Jones, ‘Defining Superstitions’; Devine, ‘Treasonous Catholic Magic’.

discuss this problematic case, which determined that ‘sorcerers and conjurers might be punished by inditement and fine and imprisonment but not by burning ... because no president ever seen of it’.<sup>47</sup> The implication of Dyer’s wording is that the punishment of burning had been proposed and comprehensively rejected by the common lawyers.

Their deliberations were summarised for Cecil by Chief Justice Robert Catelyn. Catelyn cited a case dating from 1371–2, in the reign of Edward III, when a man from Southwark was apprehended with the head and visage of a dead man (‘ung teste et ung visage dung ho[mm]e morte’), and a book of sorcery in his pack. He was arraigned in King’s Bench, but as there was no indictment against him, he was made to swear that he had never been a sorcerer, was released from prison, and his ghoulish magical paraphernalia was burned.<sup>48</sup> Catelyn also noted that the thirteenth-century treatise known as Britton, the earliest summary of English law in French, *had* included sorcerers in the categories of criminals who should be burned, alongside sodomites, heretics, renegades and arsonists. This maxim, he argued, had been overridden by that later precedent from the reign of Edward III, who ruled around a century after the treatise of Britton was composed.<sup>49</sup> These reasonings are suggestive. The first edition of Britton was easily available to the lawyers in a printed edition of 1533, which appears to have been the text cited by Catelyn.<sup>50</sup> But the yearbooks of Edward III were not at this time available in print; Catelyn, Dyer and the other common lawyers discussing the penalty must have deliberately consulted the manuscript yearbooks to uncover a precedent that would allow them to counsel against burning as a suitable penalty for practitioners of witchcraft. This targeted investigation for precedent indicates a strong reluctance from the lawyers to impose the ‘extraordinary punishment’ desired by Grindal.

The Catholic cases noted by Jones and Devine had thus played their part in intensifying the debate over how to proceed against witchcraft, but other cases suggest that more quotidian threats were also of importance.<sup>51</sup> In the Essex assizes of 1560, Joan Haddon was accused of bewitching Joan Bowltell and Thomas Emerye, and extorting money. She was found not

47. *Reports from the Lost Notebooks of Sir James Dyer*, ed. J. Baker, Selden Society, cix, cx (2 vols, 1994), i, pp. 64–5.

48. TNA, SP 12/16, fo. 136r; the case can be found in *Les Reports del Cases en Ley, Que Furent Argues à Quadragesimo ad Quinquagesimum Annum de Tres Haut et Puissant Prince Roy Edward le Tierce* (London, 1679), Anno xlv. Edwardi III, p. 17. We are indebted to Steven Gunn for discussion of this case.

49. *Britton*, ed. Francis Morgan Nichols (2 vols, Oxford, 1865), i, pp. 41–2. Dyer also noted the passage from Britton: *Reports*, ed. Baker, i, p. 64. For the significance of this passage, see P.R. Cavill, ‘Heresy, Law and the State: Forfeiture in Late Medieval and Early Modern England’, *English Historical Review*, cxxix (2014), pp. 270–95, at 274.

50. The section defining sorcery as punishable by burning is *Britton. Cum Priuilegio Regali* (London, 1533), fo. 16v; this was presumably used by Catelyn, who writes: ‘Et Britton dit fo. 16 q[ue] ceux q[ui] s[er]ont atteyntz de sorcerie seront arsez’: TNA, SP 12/16, fo. 136r.

51. On the Haddon and Samond cases discussed below, see also G.J. Durston, *Crimen Exceptum: The English Witch Prosecution in Context* (Hook, 2019), pp. 97–8.

guilty of witchcraft but guilty of extortion.<sup>52</sup> It is unclear under what statutory authority she was tried, but a different case in the same assize suggests contemporary awareness of the legal muddle that existed. John Samond was indicted for bewitching John Graunte and Bridget Pecocke. The grand jury found that there was a case to answer and he pleaded not guilty, but thereafter the indictment is blank. No petty jury was empanelled, and thus no verdict is recorded. The case was sent to Queen's Bench from where it was sent back to the assize in 1561, on which occasion Samond was found not guilty. It is hard to see any lawyer tolerating this kind of confusion for long.<sup>53</sup> (We might note in passing that Samond was charged again in 1569 for stealing rams, for bewitching humans and animals in 1572 and for killing by witchcraft in the Lent sessions of 1587, finally being found guilty and hanged in the Summer sessions of 1587. Was that, in the eyes of contemporaries, twenty-seven years in which to work malicious magic that had been granted to him by the want of a statute in 1560?)<sup>54</sup> The lack of a statute was a legal problem in a world where maleficent magic was often blamed for a wide range of experiences for which no other rational explanation could be found.

### III

Revisiting the making of the Elizabethan witchcraft statute requires an investigation of the gnomic sources for the least well-documented of Elizabeth's Parliaments, the first of 1559, and the second Parliament, which sat in two sessions, in 1563 and 1566–67. In the absence of the (unofficial) private parliamentary diaries of MPs, examples of which cover proceedings from 1571 onwards, the passage of the statute must be understood from the skeletal information conveyed in the Lords' and the Commons' journals as well as the substance and language of the legislation as it emerged in its final form.<sup>55</sup> Richer, if no less complex, is the documentation of the Convocation of Canterbury, the parallel assembly of the clergy that met during the sitting of Parliament, and whose senior members, the bishops in the Upper House, participated fully in the business of the House of Lords. It is the proceedings of the Convocation of 1563, the

52. L'Estrange Ewen, *Witch Hunting and Witch Trials*, p. 117.

53. *Ibid.*; *Calendar of Assize Records: Essex Indictments, Elizabeth I*, ed. J.S. Cockburn (London, 1978), pp. 14–17; L'Estrange Ewen, *Witchcraft and Demonianism*, pp. 45–6 n. 4. An intriguing figure in this case is the Attorney General Gilbert Gerard, who sat as one of the judges at the assize. Gerard was sitting again in 1566 when the witches whose cases form the basis of the first English witchcraft pamphlet came before him. His questioning during that case reveals his interest in the crime. It is not impossible that he had a hand in drafting the 1563 statute, and that he did so in such a way as to try to avoid the confusion of the Samond case recurring. See *The Examination and Confession of Certain Wytches* (London, 1566).

54. L'Estrange Ewen, *Witch Hunting and Witch Trials*, pp. 117 n. 1, 126, 158–60.

55. For a succinct summary of the sources for Elizabethan parliamentary history, see G.R. Elton, *The Parliament of England, 1559–1585* (Cambridge, 1986), pp. 3–15.

most momentous of Elizabeth's reign, which most amply illuminate the clergy's fervent aspirations for the reform of church, commonwealth and ecclesiastical law.<sup>56</sup>

The most pressing business of Elizabeth's first Parliament of 1559 was the stormy passage of the bills for Supremacy and Uniformity, which were opposed by all of the clergy in the House of Lords, and by the Convocation of Canterbury.<sup>57</sup> And yet, even before the passage of the Acts of Supremacy and Uniformity, the foundational laws of the Church of England, a bill passed in the House of Commons on 17 March to revive the canon law commission. The bill disappeared after one reading in the House of Lords, but it seems likely that the intention was to implement the aborted *Reformatio Legum Ecclesiasticarum*, or at least to use the code as a model for future revision of the laws.<sup>58</sup> Meanwhile, on 15 March the Commons had introduced a bill 'For the Punishment of Sorcery, Witchcraft, and Buggery, for Felony', which passed after three readings, before also disappearing in the Lords.<sup>59</sup> Again, the content of this bill is unknown, but the presumption that the crimes of sorcery, witchcraft and buggery might be dealt with in one single act suggests that the bill merely anticipated the re-enactment of the previous statutes criminalising these spiritual crimes. It is also notable that this bill appeared two years before the discovery of the nest of Marian Catholics who had been hearing mass and conjuring to predict the date of Elizabeth's death. Clearly there was a deeper and more protracted concern about the problem of witches that pre-dated the discovery of this specific set of Catholic plots.<sup>60</sup>

This contention is strengthened if we revisit the passage of the eventual legislation through the Parliament of 1563. At the prospect of this

56. This Convocation was the principal subject of a monograph by W.P. Haugaard, *Elizabeth and the English Reformation* (Cambridge, 1968). That account must be supplemented by the masterful reinterpretation by D. Crankshaw, 'Preparations for the Canterbury Provincial Convocation of 1562–3: A Question of Attribution', in S. Wabuda and C.J. Litzenger, eds, *Belief and Practice in Reformation England: A Tribute to Patrick Collinson from his Students* (Aldershot, 1998), pp. 60–93. Most papers for reform presented to this Convocation are largely contained in London, Inner Temple Library [hereafter ITL], Petyt MS 538/47, and printed rather erratically in John Strype, *Annals of the Reformation and Establishment of Religion* (4 vols, London, 1725–31), i, pt 1, pp. 470–538; Haugaard, *Elizabeth and the English Reformation*, appendix 1. The proceedings of this Convocation are also printed in *Records of the Convocation of Canterbury*, ed. G.L. Bray (10 vols, Woodbridge, 2005–6), iv, pp. 403–61.

57. The unsurpassed interpretation is that of N. Jones, *Faith by Statute: Parliament and the Settlement of Religion, 1559* (London, 1982).

58. The bill appeared on 27 February, and received assent on 17 March after its third reading: *Journal of the House of Commons, 1: 1547–1629* (London, 1802) [hereafter *CJ*], pp. 55, 58. It was introduced and read in the Lords on 20 and 22 March: *LJ*, pp. 565–8.

59. The bill proceeded to judgment on 25 April: *CJ*, pp. 57, 59, 60.

60. Devine rightly notes that in late 1558 a small number of conjurers were arrested. This group included John Prestall, and Anthony Fortescue, who had made use of conjurers' services, was also brought in. Both these men would play a role in the later conspiracy. However, it would be a stretch to see these events as central to the consideration of the 1559 bill and as evidence for its anti-Catholic intent. The Privy Council decided that the bishop of London, Edmund Bonner, should be responsible for any punishment. Devine, 'Treasonous Catholic Magic', pp. 69–71. On this incident, see also Kittredge, *Witchcraft in Old and New England*, p. 255.

assembly, members of the clergy and laity, infused with the spirit of the protestant church militant, seem to have hoped that this first Parliament and Convocation since the religious settlement would bring forth a raft of legislation for the godly edification of church and commonwealth. In an extraordinary sermon opening the Parliament on 12 January, in which he denounced Elizabeth's virginity as a 'plague' on the nation, Alexander Nowell, Dean of St Paul's, relished the prospect of painful new laws imposing the death penalty upon all sorts of sinners in the commonwealth: 'But now will some say, Oh bloody man! ... But the Scripture teacheth us that divers faults ought to be punished by death: and therefore following God's precepts it cannot be accounted cruel'.<sup>61</sup> Nowell was Bishop Grindal's chaplain, and was nominated and duly elected as prolocutor of the Lower House in Parliament by Archbishop Parker.<sup>62</sup> It seems highly likely that his episcopal patrons must have anticipated and approved of his parliamentary sermon. A similar project was enshrined in more moderate language in the opening oration of Lord Keeper Bacon, that supposed doyenne of religious 'mediocrity', and spokesperson for the government's parliamentary agenda, who declared that the decay of religion in the commonwealth must be remedied by severe legislation imposing the 'rodde of ... discipline', while a petition of the Commons urging Elizabeth to marry also commanded that 'penall, sharp and terrible statutes' be enacted to protect the protestant queen and realm.<sup>63</sup> The legislation that eventually emerged from Elizabeth's second Parliament touched on these concerns about the spiritual health of the commonwealth, but not with the radical zeal imagined in these preliminary orations.

The aborted 1559 initiative for the criminalisation of sorcery, witchcraft and buggery reappeared on 8 February 1563 in the House of Commons, again within a single bill 'for Servants robbing their Masters, and Buggery to be Felony, and Punishment for Inchantments, and Prophecies of Badgers [i.e. badges—heraldic devices]'. This composite bill passed the Commons on 11 February and was sent to the Lords.<sup>64</sup> As is clear from the entry in the Lords' Journal for 15 February, this bill was intended simply 'to revive certain Statutes repealed' from the reigns of the previous Tudor monarchs.<sup>65</sup> Henrician and Edwardian laws had existed against false prophecy and buggery, but the witchcraft statute 'repealed' can only have

61. 'Mr. Noel's Sermon at the Parliament Before the Queen's Majestie', in *A Catechism Written in Latin by Alexander Nowell*, ed. G.E. Corrie, Parker Society, xxxiii (Cambridge, 1853), appendix, p. 225.

62. Haugaard, *Elizabeth and the English Reformation*, pp. 55–8.

63. There are two versions of Bacon's speech, the second much fuller than the first, but the sentiment Bacon expressed concerning the need for more severe legislation to remedy religious observance is the same in both; see *Proceedings in the Parliaments of Elizabeth I*, I: 1558–1581, ed. T.E. Hartley (Leicester, 1981), pp. 70, 81–2; the 'Commons' petition, 28 January' is printed at *ibid.*, pp. 90–93, quotation at 93; Jones, *Faith by Statute*, pp. 172–5. For the notion of Bacon as a 'moderate', see P. Collinson, 'Sir Nicholas Bacon and the Elizabethan *via media*', *Historical Journal*, xxiii (1980), pp. 255–73.

64. *CJ*, p. 65.

65. *LJ*, pp. 590–91.

been the Henrician Act of 1542.<sup>66</sup> The bill recriminalising witchcraft was not joined to the major piece of legislation targeting Catholic treason enacted in this Parliament, the ‘Act for thassurance of the Quenes Maties Royall power’ (5 Elizabeth I, c. 1), widely known as the ‘Oath of Supremacy Act’, which tightened penalties for non-conformity to the religious settlement.<sup>67</sup> In the light of the graduated terms of the eventual statute passed against witchcraft in 1563, it is also notable that the Henrician witchcraft statute (as well as the Henrician and Edwardian statutes on buggery) had imposed the death penalty for any and every offence. Had the Henrician statute been re-enacted, as proposed by the composite bill of 8 February, a blunt and more draconian law against witches would have been entered onto the statute books.

If we turn our attention to specifically clerical concerns, a picture of quickly dampened zeal similarly emerges. The Convocation of Canterbury of 1563 famously produced the Thirty-Nine Articles, endorsed Dean Nowell’s catechism, and made no further binding canons. But its members contemplated their own agenda with great ambition as an opportunity to create sweeping reforms over all aspects of the life of the church. In response to the habitual invitation from the Archbishop of Canterbury for proposals to debate, a raft of position papers produced both by bishops and members of the Lower House envisaged root-and-branch transformation of religion—reformation of ceremonial, new measures to discipline clergy and laity, and instruments to police the enforcement of conformity. A proposal to revise the Book of Common Prayer, soon to be the pre-eminent aspiration of puritans, was defeated by a single vote.<sup>68</sup> A flavour of the radicalism of the proposals for reform can be seen from a position paper seemingly endorsed by the bishops which recommended that refusal to take communion be prosecuted as heresy.<sup>69</sup> The deficiencies of ecclesiastical law were a particular concern. Dean Nowell, prolocutor of the Lower House, and thirty-three other protestant clergy subscribed to a tract of seven articles, which demanded that the appointment of a commission to revise the ecclesiastical laws be authorised in the current

66. The act against buggery simply revived the earlier Henrician Act, 25 Hen. VIII, c. 6, which had itself been re-enacted in 1548, as 2 & 3 Edw. VI, c. 29. The act against false prophecy was a revival of 3 & 4 Edw. VI, c. 15: *SR*, iii, p. 441, and iv, pp. 72, 114–15.

67. *SR*, iv, pp. 402–10; L. Ward, ‘The Treason Act of 1563: A Study of the Enforcement of Anti-Catholic Legislation’, *Parliamentary History*, viii (1989), pp. 289–308.

68. The ‘Six Articles’ would have removed the sign of the cross during baptism, kneeling at communion, the surplice and the use of organs: ITL, Petyt MS 538/47, fos 574r–575v; Strype, *Annals*, i, pt 1, pp. 500–503. See Crankshaw, ‘Canterbury Provincial Convocation’, p. 64.

69. This anonymous tract, bearing Grindal’s revisions, is entitled ‘General notes of matters to be moved by the clergy in the next Parliament and synod’: ITL, Petyt MS 538/47, fos 419r–25v and 430r–32r, a fair copy of a draft at 435r–46r. Strype’s transcription is incomplete: Strype, *Annals*, i, pt 1, pp. 473–84—the clause about excommunication is at p. 483. It can be supplemented by corrections in Haugaard, *Elizabeth and the English Reformation*, pp. 346–52. Again, for forensic discussion of the provenance and drafting of the documents, and their attribution to the bishops and the circle around Parker, see Crankshaw, ‘Canterbury Provincial Convocation’, pp. 76–7.

Parliament, after the example of Henry VIII and Edward VI.<sup>70</sup> The only memorandum to mention the problem of witchcraft specifically was by William Alleyn, bishop of Exeter, but the reference is striking. In the section of Alleyn's proposals dealing with the reform of discipline the bishop recommends 'that there be some penal, sharp, yea capital pains for witches, charmers, sorcerers, enchanters and such like'.<sup>71</sup> There is no suggestion that Alleyn was associating witchcraft with popery (a subject he dealt with in another section of the memorandum). Nevertheless, Alleyn clearly thought that all types of witchcraft were a form of spiritual crime necessitating capital punishment.

Not all members of Convocation—especially the representatives of the clergy in the Lower House—were equally zealous. The 'Six Articles' to reform the prayer book, as radical as they might seem, were voted down by a presumably more moderate body of the proctors of the clergy. And in a brilliant article David Crankshaw highlights an anonymous tract written for the Convocation in an 'authoritarian legalist-conservative perspective', warning Parker and the other bishops to shun any proposals that diverted from the statutory framework of the 1559 religious settlement.<sup>72</sup>

Back in Parliament, godly zeal was also tempered by the quotidian process of business—the usual random hail of bills concerning pelts, Welsh juries, mills in Devon, the thickness of caps and hats, etc., which were mixed in with contentious debates over the greatest matters of church and state. Fruitless agitation in the House of Commons for Elizabeth to confirm her intention to marry and/or settle the succession dominated earlier sessions, while the newly minted bench of protestant bishops—all of whom were parliamentary novices—were embarrassed by the need to revive the statutory authority of the Edwardian ordinal, the repeal of which by Mary Tudor seemingly rendered their own consecrations legally invalid. Most significantly for our understanding of the making of the witchcraft statute, the 'Act for thassurance of the Quenes Maties Royall power', the most significant piece of religious legislation of this Parliament, also experienced a turbulent passage, passing between both houses for amendments.<sup>73</sup> The eventual statute, which may have been a much-modified version of the original intended bill, imposed the Oath of Supremacy on all public office-holders, degree-takers and schoolmasters, making a second refusal to swear a treasonous offence, but it was hardly the 'sharp, penall' confessional test to root out Catholics and heretics that 'bloody' Nowell

70. The so-called 'Seven Articles' is ITL, Petyt MS 538/47, fos 576r–577r. They are printed in Strype, *Annals*, i, pt 1, pp. 499–502. The reformation of the ecclesiastical law was also considered a priority by the author of 'General notes': Strype, *Annals*, i, pt 1, p. 474.

71. ITL, Petyt MS 538/47, fos 448r–449r; Strype, *Annals*, i, pt 1, p. 521.

72. ITL, Petyt MS 538/47, fos 564r–568r; Crankshaw, 'Canterbury Provincial Convocation', pp. 77–8.

73. J.E. Neale, *Elizabeth I and her Parliaments, 1559–1581* (London, 1963), pp. 117–21. The authors disagree with Neale's view that the Act was harsher than that initially envisaged by Elizabeth's bishops and statesmen.

and other members of the clergy and laity had anticipated. In two of the few extant speeches from this Parliament, Viscount Montague, in the Lords, and the common lawyer Robert Atkinson, in the Commons, protested against Parliament's authority to pass legislation that would impinge on matters spiritual, and strenuously denied that temporal laws could compel conscience. Their arguments and others of this nature may well have significantly ameliorated the statute against Catholic non-conformity in its final form.<sup>74</sup>

The Lords had set aside the bill reviving a raft of statutes criminalising witchcraft, buggery and false prophecy until March, after they had concluded their revisions to the Oath of Supremacy Act. When they did turn their attention to the composite bill, their response was to disaggregate the whole into three distinct laws, all read and voted on separately between 8 and 13 March in the Lords, and between 12 and 19 March in the Commons.<sup>75</sup> In their final forms, the bills criminalising buggery and false prophecies merely revived and re-enacted the lapsed or repealed Henrician and Edwardian statutes.<sup>76</sup> The statute penalising buggery with death passed after three readings with no objections. The bill criminalising 'fond and false prophecies', however, was opposed in the Lords: Viscount Montague and Lord Dacre, two Catholic nobles who had opposed the Supremacy bill, voted against it.<sup>77</sup> If there was any legislation that targeted Catholics who had been found guilty of speculative conjuring about the Queen's death, as per the accusations against the priest John Coxe, it was this statute.

But the bill prosecuting witchcraft, with its descending scale of punishment applied to differing species of maleficia, was entirely new. We do not know by whom the bill was drafted, or why it was composed in this way, but it may be notable that, at its second reading, the new individual bill 'against Conjurations, Witchcrafts, and Sorceries' was sent for revision to the Chief Justice of the Court of Common Pleas, James Dyer.<sup>78</sup> It is from Dyer's notebooks that the only record of the common lawyers' recent discussion about the punishment of the conjuring priests survives, which had concluded that burning for magical practices had no precedent in English law.

Furthermore, the relatively moderate terms of the statute seem to have provoked immediate concern. A new bill for the punishment of sorcery was introduced in the House of Commons soon after

74. *Proceedings*, ed. Hartley, pp. 96–102; Strype, *Annals*, i, pt 1, pp. 442–6.

75. The three separate bills criminalising sorcery, buggery and false prophecies were given their first reading on 8 and 9 March; judgment was given on the buggery and false prophecies bill on 11 March, and on the witchcraft statute on 13 March: *LJ*, pp. 599–603. All three bills passed apparently without controversy through the Commons between 12 and 19 March: *CJ*, pp. 69–70.

76. *LJ*, p. 601.

77. 'An Act agaynst fonde and phantasticall Propheyses' (5 Eliz. I, c. 15) and 'An Act for the punishment of the Vyse of Sodomye' (5 Eliz. I, c. 17): *SR*, iv, pp. 445–6, 447.

78. *LJ*, p. 601.

Parliament reconvened in the autumn of 1566, which suggests that the terms of the 1563 statute were not deemed adequate.<sup>79</sup> More widely, neither clergy nor hotter protestant members of the laity believed that the case for wholesale reform of the ecclesiastical law was closed. The ill-fated ‘Alphabetical Bills’, fleetingly introduced in the House of Commons on 5 and 6 December 1566, aspired to reform the standards of the clergy and, perhaps, to enforce lay conformity to the Thirty-Nine Articles.<sup>80</sup> Hopes for the enactment of the *Reformatio* persisted at least until the early 1570s. The whole text of the *Reformatio*, printed by John Foxe, was briefly introduced by Thomas Norton in the Commons in 1571, although no bill to implement the code was ever proposed for debate.<sup>81</sup>

That the English law remained limited, and that the full theological definition of the witch proposed under Edward was not implemented, continued to cause outrage in hotter protestant and later in puritan circles. This can particularly be seen in the calls for not only maleficent witches but also those who claimed to use magic for good—the cunning folk—to be prosecuted. Clive Holmes has noted two examples. William Perkins fulminated:

As the killing Witch must die by another Lawe, though he were no Witch: so the healing and harmelesse Witch must die by this Law, though he kill not, onely for covenant made with Satan. For this must alwaies be remembred, as a conclusion, that by Witches we understand not those onely which kill and torment: but all Diviners, Charmers, Juglers, all Wizzards, commonly called wise men and wise women ... All these come under this sentence of *Moses*, because they deny God, and are confederates with Satan.

George Gifford, who was sceptical of the nature of much popular belief in witchcraft, and thought that gross, superstitious nonsense was causing many false accusations, was none the less unwavering on this point. When one character in his dialogue on witchcraft pointed to the limitations in the law (‘If they finde them guilty to have dealt with devils, and cannot say they have murdered men, the law doth not put them to death’), Gifford’s own mouthpiece responded:

It wer to be wished, that the law were more perfect in that respect, even to cut off all such abhominations. These cunning men and women which deale with spirites and charmes seeming to doe good, and draw the people into

79. Parliament reconvened on 30 September, and the bill ‘To avoid Sorcery and Enchantments’ was read on 10 October: *CJ*, p. 74.

80. *Ibid.*, p. 79; Neale, *Elizabeth I and her Parliaments*, I, pp. 165–76.

81. T.S. Freeman, ‘“The Reformation of the Church in this Parliament”’: Thomas Norton, John Foxe and the Parliament of 1571’, *Parliamentary History*, xvi (2008), pp. 131–47.

manifold impieties, with all other which have familiarity with devils, or use conjurations, ought to bee rooted out, that others might see and feare.<sup>82</sup>

#### IV

We have a strong negative conclusion. The Witchcraft Act of 1563 is not best understood within the context of Catholic conspiracy in the early years of Elizabeth's reign. By its terms it was a completely inappropriate instrument to catch 'mass-mongers', and it was never used for this purpose in the English courts.<sup>83</sup> So far as the Catholic conspiracies had an impact on legislation, these concerns were dealt with by the statute on false prophecy of the same Parliament, and not the statute on witchcraft. The Act of 1563 was the product of long-term concerns about the problem of witches within the reformed commonwealth, meshed with the expanding legislative activity of the government over several decades, rather than of immediate and political circumstances. There was desire among the laity and especially among the clergy for a statutory instrument through which to prosecute witches: a statute against witchcraft was perhaps inevitable.

Why, though, was the Act so apparently moderate in its terms? Why was the Henrician act of 1542 not simply re-enacted in 1563, as were the Henrician and Edwardian statutes on buggery and false prophecy? Why did the idea of the diabolical pact—apparently very widely understood as the springboard for magical acts—not frame the Elizabethan statute, as an understanding of it clearly shaped the terms of the Scottish act of the same year? It would seem that the common law viewpoint must have played an important role. Simply put, the Act of 1563 was a working statute that could be implemented in the common law courts—and it was, with significant frequency, particularly in Elizabeth's reign.<sup>84</sup> The removal of a developed diabolical dimension from the statute made the law more likely to be enforceable in the common law courts. These courts did not admit the use of torture, widely used on the Continent to procure witches' confessions that they had succumbed to a diabolical pact; rather, they relied on witness testimony as proof of the tangible crimes perpetrated by alleged witches. The revision of the statute by the seemingly sceptical justice James Dyer may be very important here. The procedures and principles of the English common law and English common lawyers seem to have moderated the scope of the English witch-hunt at its inception. Judicial

82. Holmes, 'Popular Culture?', pp. 87, 106 n. 8; William Perkins, *A Discourse of the Damned Art of Witchcraft* (Cambridge, 1610), pp. 255–6; George Gifford, *A Dialogue Concerning Witches and Witchcraftes* (London, 1593), sigs K3r–v.

83. Devine acknowledges that the laws of 1563 were not then implemented against 'magic used in conspiracies': 'Treasonous Catholic Magic', p. 91.

84. The question of why Elizabeth's reign saw a relatively high amount of witch-hunting is under-explored. The figures are shown in J. Sharpe, *Instruments of Darkness: Witchcraft in England, 1550–1750* (London, 1996), p. 109.

scepticism, centred on legal questions of what might constitute evidence of witchcraft, was part of the English experience of witch-hunting from the beginning. It may also be significant that when the witchcraft statute was revised under James VI and I in 1604—to include a degree of diabolism—the number of cases ending in prosecution actually fell.<sup>85</sup>

A second, broader contention is that the events of the Parliament of 1563 and the Convocation of Canterbury—as mysterious as they are—do indicate that there was great sensitivity about the location of jurisdiction over matters spiritual in the debates over the shape and scope of the Elizabethan religious settlement. In particular, the authority of Parliament to legislate over matters of religious practice and conscience was peculiarly contentious. Where Henry VIII used Parliamentary statute to define heresy, the Elizabethan settlement of 1559 was deliberately vague about how and by whom heresy would be defined, detected and prosecuted.<sup>86</sup> As Catholic polemicists derided the ‘Parliament faith’ of the Elizabethan settlement, the constitution of the English church, the spiritual authority of Parliament, and the more general relationship of the church and the temporal magistrate were being interrogated in greater depth—especially as the Royal Supremacy was enshrined in the body of a woman, who should be ‘silent in church’ and could never be ordained. Stripping the spiritual and supernatural dimension out of the witchcraft statute was another means to avoid these contentious questions.<sup>87</sup>

There may also have been members of the clergy and the laity who were not necessarily Catholics *per se*, but were simply disinclined to accept the implications of the thorough reformation envisaged by members of the Edwardian and Elizabethan clergy, and their godly zeal for holistic reform of the Christian commonwealth. The decision of the common lawyers in 1561 that there was no precedent for burning witches in England should be read in parallel with the ‘conservative-legal’ document critical of the pretensions of the 1563 Convocation, the failed bills for the reform of ecclesiastical law, and the fate of the *Reformatio* itself—treasured by

85. The diabolical component introduced in 1604 proved particularly unstable. The Act made it an offence to ‘feed’ spirits. This was a characterisation of the witch’s crime that drew on an understanding that witches worked through animal familiars. The idea of the familiar clearly had its roots in folkloric belief and always sat uneasily with conceptualisations of witchcraft produced by the clerical and legal elite. The 1604 Act, in codifying this belief in law, only increased the potential for judicial scepticism concerning the accusations of witchcraft brought before the courts. On these issues, and the significance of judicial scepticism in general, see C. Holmes, *Why Did the Prosecution of Witches Cease in England?* (Historical Association pamphlet; London, 2013). On the 1604 Act, see J. Newton and J. Bath, eds, *Witchcraft and the Act of 1604* (Leiden, 2008).

86. The extremely vague and ambitious definition of the detection and policing of heresy is enshrined in the Act of Supremacy (1 Eliz. I, c. 1 § 20): *SR*, iv, p. 354. See C. Russell, ‘Parliament, the Royal Supremacy and the Church’, *Parliamentary History*, xix (2000), pp. 27–37; A. Milton, *England’s Second Reformation: The Battle for the Church of England, 1625–1662* (Cambridge, 2021), pp. 12–33.

87. A comparable set of jurisdictional issues to the ones we trace in this article may also have stymied godly attempts to impose severe forms of sexual regulation. See M. Ingram, *Carnal Knowledge: Regulating Sex in England, 1470–1600* (Cambridge, 2017), ch. 10.

generations of godly clergy and laity, but never debated in any Parliament. Protestant lawyers were not seemingly interested in facilitating the creation of a persecutory church, or reshaping the nature of the common law courts, and the kinds of evidence they considered, to allow the widespread policing of moral and spiritual behaviour.

We want finally to point to the way in which the statute as enacted closed off a series of other possibilities. These were the paths not taken, but recognising their existence reveals much that is startling about sixteenth-century England. Had Edward grown to adulthood it is entirely possible that the English legislation against witchcraft would have enabled a very large hunt, inspired by unbridled religious zealotry and implemented by England's newly empowered church wardens and rural deans. As Reginald Scot recognised, things could have been much worse.

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