

#2. English witchcraft statutes of
1542, 1563 and 1604
from Barbara Rosen (ed),
Witchcraft (BF1581/R6)

Laws and Punishments

Savage as the following Acts may sound, their application was limited and far from uniform—indeed, numerous prefaces to witch-pamphlets make impassioned appeals for the implementation of existing laws and a more aggressive attitude to the problem on the part of the public. There were brief spasms of intense persecution during periods of public anxiety; the last few years of Elizabeth and the first of James were dangerous for witches, and there was a brief and dreadful interlude during the 1640s, when regular courts were suspended and England had a self-appointed Witch-finder General. But on the average, four out of five of those accused were acquitted, or sentenced only to prison and pillory.

Most suspected witches were brought before Justices of the Peace, either at the Quarter Sessions, or informally. Examinations of the accused and testimony of the witnesses were recorded and certified to the travelling Justices of gaol delivery, who acted as judges at the Assizes held four times a year, where juries were sworn in a) to determine whether a case existed and b) to decide on the cases accepted.

Rules of evidence, as we shall see, were startlingly lax; the age of reason was supposed to be fourteen, but much younger children were accepted as key witnesses in these felony trials. Hearsay evidence was allowed, and the word of an honest witness who believed that a certain illness was sent by a certain person as a result of prior disagreement was accepted without question. Visions of witches by the bewitched were treated as circumstantial evidence; so was the account by one witch of what her familiar had told her of the doings of another witch! Enormous importance was attached to confession, and usually it was regarded as an absolute proof of guilt.

The familiar (or pet animal), the unnatural teat at which it was suckled, and the insensible marks given by the Devil were from the beginning regarded as damning physical evidence against the accused. Other indications of guilt which are sometimes used as 'proofs' are: inability to say the Lord's Prayer correctly in English, the swimming test, inability to weep in court, and the behaviour of the bewitched when confronted by the witch.

Most of the judges seem to have been confident that their office protected them from the malice of the arrested witches; Queen Elizabeth showed no personal fear of the magical fifth column. However, members of her government were desperately afraid of magical arts being exercised against her; magic, poisoning and Popish plots were all linked together in their minds as things to be guarded against with the utmost care and the State Papers record many examples of governmental interest in trials which *might* touch on the treasonable use of the black arts. Sometimes particularly important judges were directed to conduct quite minor trials if these seemed likely to deal with image-magic or attempts to foretell the future.

29
7
The penalty for felonious witchcraft or conjuration was hanging, unless these also involved treason (and much Catholic activity was punished as treason, to avoid the appearance of persecuting for religion). For treason the sentence ran '...ye shall be drawn through the open City of London upon hurdles to the place of execution, and there be hanged and let down alive, and your privy parts cut off, and your entrails taken out and burnt in your sight; then your head to be cut off and your body divided into four parts, to be disposed of at her Majesty's pleasure'. For petty treason (the murder of a husband by a wife, or of master or mistress by a servant), the sentence was burning alive, and a very few women who had killed husbands or employers by witchcraft were executed in this way. The memory of the Marian burnings for heresy was very much alive in Elizabeth's reign, and many people still had a confused idea that this was the appropriate penalty for a witch in England, as it was on the Continent.

But the ecclesiastical courts confined themselves to the examination of minor cases of sorcery and witchcraft only, sometimes in an apparent effort to forestall legal complaints which might create a panic. In most of the possession cases the possessed and the exorcisers were examined by bishops, in order to determine whether or not they were shamming, and the witches were left to the secular courts; frauds could be imprisoned and severely disciplined.

The secular punishments of pillory and prison were highly unpleasant and sometimes dangerous. In the pillory a prisoner stood on a raised platform with head and hands thrust through holes in a split board and acted as a kind of 'Aunt Sally' for fairgoers and disgruntled neighbours. Gaol could mean slow starvation if the gaoler was rapacious; not only privileges but necessities had to be bought, or begged from the public. Filth, cold and rats bred all kinds of disease, and

there were frequent epidemics of typhus or 'gaol fever'. Furthermore, delivery from gaol at the end of a sentence was often unreasonably delayed. Without friends in the outside world, a prisoner could literally be forgotten by the law, and several records cease with unanswered petitions from gaol.

The Laws

*A.D. 1542. 33 Hen. VIII, c. 8.*¹

The Bill against conjurations and witchcrafts and sorcery and enchantments.

Where divers and sundry persons unlawfully have devised and practised invocations and conjurations of spirits, pretending by such means to understand and get knowledge for their own lucre in what place treasure of gold and silver should or might be found or had, in the earth or other secret places, and also have used and occupied witchcrafts, enchantments and sorceries to the destruction of their neighbours' persons and goods; And for execution of their said false devises and practices have made or caused to be made divers images and pictures of men, women, children, angels or devils, beasts or fowls, and also have made crowns, sceptres, swords, rings, glasses and other things, and giving faith and credit to such fantastical practices have digged up and pulled down an infinite number of crosses within this realm, and taken upon them to declare and tell where things lost or stolen should be become; which things cannot be used and exercised but to the great offence of God's law, hurt and damage of the King's subjects, and loss of the souls of such offenders, to the great dishonour of God, infamy and disquietness of the realm: FOR REFORMATION whereof be it enacted by the King our sovereign lord with the assent of the Lords spiritual and temporal and the Commons in this present Parliament assembled and by authority of the same, that if any person or persons, after the first day of May next coming, use, devise, practise or exercise, or cause to be used, devised, practised or exercised, any invocations or conjurations of spirits, witchcrafts, enchantments, or sorceries, to the intent to get or find money or treasure, or to waste, consume or destroy any person in his body, members or goods, or to provoke any person to unlawful love, or for any other unlawful intent or purpose, or by occasion or colour of such things or any of them,

¹ *Statutes of the Realm*, Vol. iii, p. 837.

or for despite of Christ, or for lucre of money, dig up or pull down any cross or crosses, or by such invocations or conjurations of spirits, witchcrafts, enchantments, or sorcery, or any of them, take upon them to tell or declare where goods stolen or lost shall become, That then all and every such offence and offences, from the said first day of May next coming, shall be deemed accepted and adjudged felony; And that all and every person and persons offending as is abovesaid, their counsellors, abettors, and procurers, and every of them from the said first day of May shall be deemed, accepted, and adjudged a felon and felons; And the offender and offenders contrary to this Act, being thereof lawfully convict before such as shall have power and authority to hear and determine felonies, shall have and suffer such pains of death, loss and forfeitures of their lands, tenants, goods and chattels, as in cases of felony by the course of the common laws of this realm, And also shall lose privilege of clergy and sanctuary.

This law was repealed in 1547, by I Edw. VI, c. 12. and not replaced for 16 years. The Act of Elizabeth was introduced in 1559 but did not pass in both Houses till 1563.

*A.D. 1563. 5 Eliz., c. 16.*²

An Act against conjurations enchantments and witchcrafts.

Where at this present, there is no ordinary nor condign punishment provided against the practisers of the wicked offences of conjurations and invocations of evil spirits, and of sorceries, enchantments, charms and witchcrafts, the which offences by force of a statute made in the xxxiii year of the reign of the late King Henry the Eighth were made to be felony, and so continued until the said statute was repealed by the Act and Statute of Repeal made in the first year of the reign of the late King Edward the VIth; since the repeal whereof many fantastical and devilish persons have devised and practised invocations and conjurations of evil and wicked spirits, and have used and practised witchcrafts, enchantments, charms and sorceries, to the destruction of the persons and goods of their neighbours and other subjects of this realm, and for other lewd intents and purposes contrary to the laws of Almighty God, to the peril of their own souls, and to the great infamy and disquietness of this realm: FOR REFORMATION whereof be it enacted by the Queen's Majesty with the assent of the Lords spiritual and temporal and the Commons in this present Parliament assembled, and by authority of the same, That if any person or persons after the first

² *Statutes of the Realm*, Vol. iv, pt. 1, p. 446.

day of June next coming, use practise or exercise any invocations or conjurations of evil and wicked spirits, to or for any intent or purpose; or else if any person or persons after the said first day of June shall use practise or exercise any witchcraft, enchantment, charm, or sorcery, whereby any person shall happen to be killed or destroyed, that then as well every such offender or offenders in invocations or conjurations as is aforesaid, their counsellors and aiders, as also every such offender or offenders in witchcraft, enchantment, charm, or sorcery, whereby the death of any person doth ensue, their aiders and counsellors, being of either of the said offences lawfully convicted and attainted, shall suffer pains of death as a felon or felons, and shall lose the privilege and benefit of sanctuary and clergy: Saving to the wife of such person her title of dower, and also to the heir and successor of such person his or their titles of inheritance succession and other rights, as though no such attainer of the ancestor or predecessor had been had or made.

And further be it enacted by the authority aforesaid, That if any person or persons, after the said first day of June next coming, shall use, practise, or exercise any witchcraft, enchantment, charm, or sorcery, whereby any person shall happen to be wasted, consumed, or lamed in his or her body or member, or whereby any goods or chattels of any person shall be destroyed, wasted, or impaired, then every such offender or offenders, their counsellors and aiders, being thereof lawfully convicted, shall for his or their first offence or offences, suffer imprisonment by the space of one whole year, without bail or mainprise,* and once in every quarter of the said year, shall in some market town, upon the market day, or at such time as any fair shall be kept there, stand openly upon the pillory by the space of six hours and there shall openly confess his or her error and offence; and for the second offence, being as is aforesaid lawfully convicted or attainted, shall suffer death as a felon, and shall lose the privilege of clergy and sanctuary: saving to the wife [as above].

Provided always, That if the offender, in any of the cases aforesaid for which the pains of death shall ensue, shall happen to be a peer of this realm, then his trial therein to be had by his peers, as it is used in cases of felony or treason and not otherwise.

And further to the intent that all manner of practice, use, or exercise of witchcraft, enchantment, charm, or sorcery, should be from henceforth utterly avoided, abolished and taken away; Be it enacted by the authority of this present Parliament that if any person or persons shall from and after the said first day of June next coming, take upon him or them, by witchcraft, enchantment, charm, or sorcery,

to tell or declare in what place any treasure of gold or silver should or might be found or had, in the earth or other secret places, or where goods or things lost or stolen should be found or become, or shall use or practise any sorcery, enchantment, charm, or witchcraft, to the intent to provoke any person to unlawful love, or to hurt or destroy any person in his or her body, member or goods; that then every such person or persons so offending, and being thereof lawfully convicted, shall for the said offence suffer imprisonment by the space of one whole year without bail or mainprise, and once in every quarter of the said year shall in some market town, upon the market day, or at such time as any fair shall be kept there, stand openly upon the pillory by the space of six hours, and there shall openly confess his or her error and offence; And if any person or persons, being once convicted of the same offences as is aforesaid, do eftsoons* perpetrate and commit the like offence, that then every such offender being thereof the second time convicted as is aforesaid, shall forfeit unto the Queen's Majesty, her heirs and successors, all his goods and chattels and suffer imprisonment during life.

One application of this Act was developed and rendered explicit in Clause 5 of a later statute, reprinted below.

A.D. 1580-1. 23 Eliz., c. 2.³

An Act against seditious words and rumours uttered against the Queen's most excellent Majesty.

... And for that divers persons wickedly disposed, and forgetting their duty and allegiance, have of late not only wished her Majesty's death, but also by divers means practised and sought to know how long her Highness should live, and who should reign after her decease, and what changes and alterations should thereby happen; To the intent that such mischiefs and inconveniences as may thereby grow in the commonweal, to the great disturbance of the same, may be cut off and prevented; Be it also enacted by the authority aforesaid, That if any person or persons, of what estate, condition, or degree soever he or they be, at any time, after the end of the said forty days, and during the life of our said sovereign lady the Queen's Majesty that now is, either within her Highness's dominions or without, shall by setting or erecting of any figure or figures, or by casting of nativities, or by calculation, or by any prophesying, witchcraft, conjurations, or other like unlawfull means whatsoever, seek to know, and shall set forth by express words, deeds, or writings, how long her Majesty shall live or continue, or who shall

³ *Statutes of the Realm*, Vol. iv, pt. 1, p. 659.

reign as King or Queen of this realm of England after her Highness' decease, or else shall advisedly and with a malicious intent against her Highness, utter any manner of direct prophecies to any such intent or purpose, or shall maliciously by any words, writing, or printing, wish, will, or desire the death or deprivation of our sovereign lady the Queen's Majesty (that now is) or any thing directly to the same effect, That then every such offence shall be felony, and every offender and offenders therein, and also all his or their aiders procurers and abettors in or to the said offences, shall be judged as felons and shall suffer pains of death and [forfeit] as in case of felony is used, without any benefit of clergy or sanctuary.

A general pardon in the same year did *not* include offences of 'invocations conjurations witchcrafts sorceries enchantments and charms'.

A.D. 1604. 1 Jac. I, c. 12.⁴

An Act against conjuration witchcraft and dealing with evil and wicked spirits.

Be it enacted by the King our sovereign Lord the Lords spiritual and temporal and the Commons in this present Parliament assembled, and by the authority of the same, That the Statute made in the fifth year of the reign of our late sovereign lady of most famous and happy memory Queen Elizabeth, intituled An Act against conjurations enchantments and witchcrafts, be from the Feast of St. Michael the Archangel next coming, for and concerning all offences to be committed after the same Feast, utterly repealed.

And for the better restraining the said offences, and more severe punishing the same, be it further enacted by the authority aforesaid, That if any person or persons, after the said Feast of St. Michael the Archangel next coming, shall use practise or exercise any invocation or conjuration of any evil and wicked spirit, or shall consult, covenant with, entertain, employ, feed, or reward any evil and wicked spirit to or for any intent or purpose; or take up any dead man, woman, or child out of his, her, or their grave, or any other place where the dead body resteth, or the skin, bone, or any other part of any dead person, to be employed or used in any manner of witchcraft, sorcery, charm, or enchantment; or shall use, practise, or exercise any witchcraft, enchantment, charm, or sorcery, whereby any person shall be killed, destroyed, wasted, consumed, pined, or lamed in his or her body, or any part thereof; that then every such

⁴ *Statutes of the Realm*, Vol. iv, pt. 2, p. 1028.

offender or offenders, their aiders abettors and counsellors, being of any the said offences duly and lawfully convicted and attainted, shall suffer pains of death as a felon or felons, and shall lose the privilege and benefit of clergy and sanctuary.

And further, to the intent that all manner of practise, use, or exercise of witchcraft, enchantment, charm, or sorcery, should be from henceforth utterly avoided, abolished and taken away, Be it enacted by the authority of this present Parliament, That if any person or persons shall, from and after the said Feast of St. Michael the Archangel next coming, take upon him or them by witchcraft, enchantment, charm, or sorcery, to tell or declare in what place any treasure of gold or silver should or might be found or had, in the earth or other secret places, or where goods or things lost or stolen should be found or become; and to the intent to provoke any person to unlawful love, or where any chattel or goods of any person shall be destroyed wasted or impaired, or to hurt or destroy any person in his or her body, although the same be not effected and done; that then all and every such person and persons so offending, and being thereof lawfully convicted, shall for the said offence suffer imprisonment by the space of one whole year, without bail or mainprise,* and once in every quarter of the said year, shall in some market town, upon the market day, or at such time as any fair shall be kept there, stand openly upon the pillory by the space of six hours, and there shall openly confess his or her error and offence; And if any person or persons being once convicted of the same offence as is aforesaid, do eftsoons* perpetrate and commit the like offence, that then every such offender, being of any the said offences the second time lawfully and duly convicted and attainted as is aforesaid, shall suffer pains of death as a felon or felons, and shall lose the benefit and privilege of clergy and sanctuary: Saving to the wife of such person as shall offend in any thing contrary to this Act, her title of dower; and also to the heir and successor of every such person, his or their titles of inheritance, succession and other rights, as though no such attainder of the ancestor or predecessor had been made; Provided always, That if the offender in any of the cases aforesaid shall happen to be a peer of the realm, then his trial therein to be had by his peers, as it is used in cases of felony or treason and not otherwise.

~~II~~ Early Days

from Keith Thomas,

In England, where most demonological treatises remained locked up in Latin or some other alien language, witchcraft for most men was still an activity – doing harm to others by supernatural means – not a belief or a heresy. This can be seen in the wording of the Acts of Parliament which first made witchcraft a statutory offence. There were three of these Acts – 1542 (repealed 1547), 1563 (repealed 1604), and 1604 (repealed in 1736).² What is striking is that no reference to a diabolical compact was made in either of the first two. In 1542 it was made a felony (and therefore a capital offence) to conjure spirits or to practise 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 happened to stolen goods; or 'for any other unlawful intent or purpose'. Despite some ambiguity of wording (was conjuring an offence in itself or only if performed for an unlawful purpose?), this Act clearly treated the crime of witchcraft as consisting in positive acts of hostility to the community, rather than in relations with the Devil as such. The only possible exception to this rule was the ban on magic to find lost goods, and for that the explanation may well be that the makers of the Act regarded the practice as fraudulent.

33
The second witchcraft statute, passed in 1563 after the failure of an earlier bill in 1559, also laid its emphasis upon the maleficent nature of the witch's activities. It was more severe than its predecessor, in that it made it a felony to invoke *evil* spirits for any purpose whatsoever, whether *maleficium* was involved or not. But it was also more lenient, in that witchcraft, enchantment, charming and sorcery were deemed capital felonies only if they actually resulted in the death of a human victim. Should the attempt prove unsuccessful, or if the victim was only maimed, or if only animals were killed, the witch was to incur the milder penalty of a year's imprisonment, with quarterly appearances in the pillory. After a second offence, however, the action became a felony. A reduced penalty was also prescribed for magic designed to find treasure and lost goods, or to provoke to unlawful love; on the second offence, this did not become felony, but was punished by life imprisonment and forfeiture of goods. Here again, therefore, the gravity of the offence depended upon the degree of the injury suffered by the witch's victims, not on any postulated covenant (save in the case of deliberate invocation of *evil* spirits). This leniency contrasted sharply with the attitude of those theologians who would have liked to see all magicians, black or white, consigned to speedy execution.

Only in the third and final witchcraft statute of 1604 did the full continental

¹ Lea, *Materials*, p. 305; George Lincoln Burr. *Selections from his Writings*, ed. L. O. Gibbons (Ithaca, New York, 1943), p. 364.

² 33 Hen. viii, cap. 8 (repealed by 1 Edw. vi, cap. 12); 5 Eliz., cap. 16 (cf. *Commons Journals*, i, p. 59); 1 Jac. I, c. 12 (repealed by 9 Geo. ii, cap. 5). For 23 Eliz. c. 2, making it a felony to use witchcraft to calculate the Queen's expectation of life, see above, p. 344.

doctrine take effect. Like its Elizabethan predecessor, it asserted the felonious nature of invocations of evil spirits, and of the witchcraft which resulted in anyone's death. It furthermore declared it to be felony if the victim was only injured; and it replaced life imprisonment by death as the penalty for a second offence in the case of lesser kinds of magic, involving treasure, lost goods, unlawful love, destroying cattle or goods, and attempting unsuccessfully to kill a person. The real novelty, however, came in those sections of the Act which, for the first time in English history, made it a felony to take up a dead body in whole or part for magical purposes, and, even more striking, to 'consult, covenant with, entertain, employ, feed, or reward any evil and wicked spirit to or for any intent or purpose'. In this latter clause the influence of the continental doctrine of the diabolical compact was unambiguous, though, by specifically banning *evil* spirits, the Act still left a loophole for those magicians who believed that the spirits with which they dealt were good ones.

Moreover, the clauses imposing a lighter penalty for less harmful types of magic made it clear that even the legislators of 1604 did not subscribe to the continental notion that a diabolical compact was implicit in every act of witchcraft. Otherwise it would have been pointless for them to draw distinctions between degrees of magic, since all would have been equally reprehensible. As it was, the Act implied that it might be possible, say, to destroy a neighbour's cattle by magical means without necessarily having made any diabolical covenant. This was a position which no educated theologian would have accepted.¹

The 1604 statute remained law until 1736, when witchcraft ceased to be a statutory offence. It never satisfied the zealots, who would like to have imposed the death penalty for any type of magical activity whatsoever. But it represented the furthest point to which the English law on witchcraft was adapted to fit continental doctrines. For it meant that evidence of relationship with evil spirits or animal familiars was technically sufficient to secure the judicial condemnation of an accused person, regardless of whether or not he or she had harmed anyone.² Even so, the evidence of the statute-book, taken as a whole, suggests that in England witchcraft was prosecuted primarily as an anti-social crime, rather than as a heresy.

This impression is confirmed by the records of the trials. In practice, most prosecutions were provoked by alleged acts of damage against other persons and seldom drew on allegations of devil-worship.

¹ Cf. Bernard, *Guide*, pp. 216–7.

² It should be added that condemned witches were not burned, but hanged, save for those women convicted of petty treason (i.e. of killing their husbands or masters). But this distinction was not always appreciated by contemporaries any more than it has been by posterity. Cf. *Book of Examinations and Depositions, 1570–94*, ed. G. H. Hamilton & E. R. Aubrey (Southampton Rec. Soc., 1914), pp. 158–9; (E. Topsell), *Times Lamentation* (1599), p. 80.