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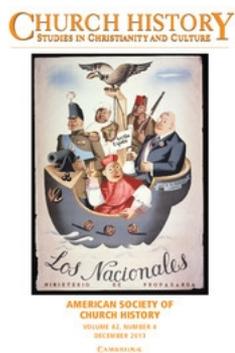
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Julian Goodare

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# *The Scottish Witchcraft Act*

JULIAN GOODARE

Few acts of the Scottish parliament can have had such deadly consequences as the following, passed on June 4, 1563:

Anentis Witchcraftis.

ITEM Forsamekill as the Quenis Majestie and thre Estatis in this present Parliament being informit, that the havy and abominabill superstitioun usit be divers of the liegis of this Realme, be using of Witchcraftis, Sorsarie and Necromancie, and credence gevin thairto in tymes bygane aganis the Law of God: And for avoyding and away putting of all sic vane superstitioun in tymes tocum: ¶ It is statute and ordanit be the Quenis Majestie, and thre Estatis foirsaidis, that na maner of persoun nor persounis, of quhatsumever estate, degre or conditioun thay be of, tak upone hand in ony tymes heirefter, to use ony maner of Witchcraftis, Sorsarie or Necromancie, nor gif thame selfis furth to have ony sic craft or knowlege thair of, thairthrow abusand the pepill: Nor that na persoun seik ony help, response or cōsultatioun at ony sic usaris or abusaris foirsaidis of Witchcraftis, Sorsareis or Necromancie, under the pane of deid, alsweill to be execute aganis the usar, abusar, as the seikar of the response or consultatioun. And this to be put to executioun be the Justice, Schireffis, Stewartis, Baillies, Lordis of Regaliteis and Rialteis, thair Deputis, and uthers Ordinar Jugeis competent within this Realme, with all rigour, having powar to execute the samin.<sup>1</sup>

1. Edward Henryson, ed., *Actis and Constitutionis of the Realme of Scotland* (Edinburgh: Robert Lekprevik, Nov. 1566), fo. clxxiii(r.), ca. viii. Accurately transcribed, but with omission of title and punctuation, in *Acts of the Parliaments of Scotland*, 12 vols., eds. Thomas Thomson and Cosmo Innes (Edinburgh: H. M. General Register House, 1814–75) [henceforth *APS*], 2:539, c. 9. The printed edition of 1566 is the only source for the acts of the 1563 parliament, the manuscript registers having disappeared, Julian Goodare, "The Scottish Parliamentary Records, 1560–1603," *Historical Research* 72 (1999): 247, 255.

Following the publication of the acts in 1566, this act was cited as the act c. 8, June 4, 1563. A new edition of the acts in 1597 adopted a consecutive numbering system by reigns, whereupon the witchcraft act became the act c. 73 of Queen Mary, or of 1563, or of the ninth parliament of Queen Mary. It continued to be cited thus until the publication of *APS*.

Historians, who have always quoted the act in the *APS* edition, have never noted the fact that it originally had a title and punctuation. Some historians have inserted their own punctuation. See in particular Lawrence Normand and Gareth Roberts, eds.,

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The result was the execution of up to two thousand people over the next century and a half.<sup>2</sup> This alone would make the act worthy of close study. Moreover, the making of the act is a story in itself: its authorship and its passage through Scotland's second Protestant parliament amid bitter debate over ecclesiastical politics. A detailed exegesis of it can reveal much about Scottish religious thinking in the early years of the Reformation: the church's ideas about its relationship with Catholicism and about how the common people were to be freed from Catholic superstition. This leads to some remarkable suggestions about the relationship between the "witchcraftis" the act aimed to punish and the actual prosecution of Scottish witches.

### I. ORIGINS

The act originated with the leaders of the new Protestant church. This was far less straightforward than it might seem. The complexities of its origin, and the debates surrounding it, help to explain its eventual nature. An act on witchcraft was a fragment of a much broader program and can be understood only in the context of that program's construction—and (to anticipate) of its destruction.

The epoch-making Reformation Parliament in 1560 had passed into legislation the basics of Protestantism: a Protestant confession of faith, the repeal of acts against Protestantism, the outlawing of Catholic worship, and the abrogation of papal authority. However, that parliament did nothing either to construct a Protestant church organization, or to give that organization statutory authority to enforce its vision of a godly society. This was mainly because of financial difficulties, but the nature of Protestant church discipline was still under development.<sup>3</sup> This work remained to be done when parliament met

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*Witchcraft in Early Modern Scotland: James VI's Demonology and the North Berwick Witches* (Exeter, U.K.: Exeter University Press, 2000), 89, and Peter G. Maxwell-Stuart, *Satan's Conspiracy: Magic and Witchcraft in Sixteenth-Century Scotland* (East Linton, U.K.: Tuckwell, 2001), 35–36, in both of which the omission of a comma between "Justice" and "Schireffis" vitiates the meaning of the final clause. These works do, however, provide helpful discussions of the act.

2. Figures on this contain considerable uncertainty. For an estimate of the leading historian of Scottish witch-hunting, see Christina Lerner, *Enemies of God: the Witch-Hunt in Scotland* (London: Chatto and Windus, 1981), 63. Her figures have been revised upwards by Stuart Macdonald, *The Witches of Fife: Witch-Hunting in a Scottish Shire, 1560–1710* (East Linton, U.K.: Tuckwell, 2002), appendix B, and Julian Goodare, Lauren Martin, Joyce Miller, and Louise Yeoman, "The Survey of Scottish Witchcraft, 1563–1736," [www.arts.ed.ac.uk/witches/](http://www.arts.ed.ac.uk/witches/) (archived Jan. 2003).
3. For the early years of the Reformation, see in general Gordon Donaldson, *The Scottish Reformation* (Cambridge: Cambridge University Press, 1960); Ian B. Cowan, *The Scottish Reformation* (London: Weidenfeld and Nicolson, 1982); and James Kirk, *Patterns of Reform: Continuity and Change in the Reformation Kirk* (Edinburgh: T. and T. Clark, 1989). For church discipline, see Michael F. Graham, *The Uses of Reform: "Godly Discipline" and*

again, this time in the presence of the Catholic Mary Queen of Scots, in 1563.

Moreover, the Reformation Parliament's acts never received the royal assent. The acts mentioned above did receive practical recognition because Mary, on her return to Scotland in 1561, proclaimed that they should do so; but this was explicitly a temporary compromise, and her proclamation contained a promise to make a permanent religious settlement with the advice of parliament. In the view of the Protestant movement, the program of the Reformation Parliament itself needed to be legislated again in its entirety when parliament next met.

The parliament of 1563 had thus been anticipated for a long time, and Protestant hopes for it were high. Indeed, the main reason it took Mary so long to convene her three estates was precisely this: she knew that the Protestants who dominated Scottish politics would press her for a settlement of religion. In the winter of 1562–63 she began to run out of excuses for delay, and the prospect of a parliamentary summons was debated keenly.<sup>4</sup>

The likely origins of the witchcraft act are found in the fifth general assembly of the Protestant church, which met on December 25–31, 1562. The English ambassador Thomas Randolph reported that leading ministers in the assembly were “in consultation what articles they may give in for the establishment of religion” by the parliament.<sup>5</sup> This evidently included the preparation of legislative proposals to confirm the acts of the Reformation Parliament, but it probably went further. The church now had more experience of the issues facing it than it had had in 1560, and the first *Book of Discipline* had been compiled for it in 1561 as an organizational and disciplinary blueprint.<sup>6</sup>

The actual minutes of the general assembly of December 1562 said nothing about the “articles . . . for the establishment of religion,” probably because the minutes recorded only final decisions. In July 1562 the previous assembly had supplicated the queen on a range of topics—not just “that idoll and bastard service of God, the Mess,” but

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*Popular Behavior in Scotland and Beyond, 1560–1610* (Leiden: Brill, 1996), and Margo Todd, *The Culture of Protestantism in Early Modern Scotland* (New Haven, Conn.: Yale University Press, 2002).

4. Julian Goodare, “The First Parliament of Mary Queen of Scots,” *Sixteenth Century Journal* 36 (2005, forthcoming).
5. Randolph to Sir William Cecil, 5 January 1563, *Calendar of the State Papers Relating to Scotland and Mary Queen of Scots, 1547–1603*, eds. Joseph Bain and others (Edinburgh: H. M. General Register House, 1898–1969) [henceforth *CSP Scot.*], 1:677; Thomas Thomson, ed., *Booke of the Universall Kirk: Acts and Proceedings of the General Assemblies of the Kirk of Scotland* (Edinburgh: Bannatyne and Maitland Clubs, 1839–45) [henceforth *BUK*], 1:25–30.
6. James K. Cameron, ed., *The First Book of Discipline* (Edinburgh: St. Andrew Press, 1972).

also ministers' maintenance, poor relief, and "punishment of horibill vices, sick as ar adultery, fornicatioun, oppin horedome, blasphemy, contempt of God, of his Word and Sacraments."<sup>7</sup> This was professedly a list of examples; the omission of witchcraft may be significant, or it may not. The point is that the church regarded legislation on moral discipline as essential to the full establishment of Protestantism.<sup>8</sup> Although there is no conclusive evidence that the general assembly of December 1562 saw the drafting of a witchcraft act, the indications are there, and this is also the scenario that makes the most sense of what followed.

One reason for thinking that a church minister drafted the act is that it was probably not drafted by an officer of state or indeed anyone expert in Scots law. The act said that it was to be enforced by, among others, "Lordis of Regaliteis and Rialteis, thair Deputis, and uthers Ordinar Jugeis." Regality courts were private courts in certain regions, the lords of which possessed jurisdiction over numerous serious crimes. In areas without regalities, sometimes known as the "royalty," the sheriff and baron courts shared the equivalent jurisdiction between them.<sup>9</sup> "Lordis of Rialteis" did not exist. The act's author knew a good deal about the Scottish legal system, but not enough to avoid this telltale drafting error.

So a large slate of proposed legislation was presented to parliament when it met on May 26, 1563. By then, however, Mary had succeeded in splitting the Protestant movement. Its more moderate political leaders—including her half brother and key adviser the earl of Moray—had decided, reluctantly, to acquiesce in her wish to defer a full Protestant legislative settlement. Since the radicals—including John Knox—were committed to such a settlement, the stage was set for furious debate.

The parliament when it met consisted largely of Protestants, and Mary ostentatiously allowed Moray and his friends to control the parliamentary steering committee, the lords of the articles. The estates chose this body from among their own membership to receive legislative proposals and to frame a final legislative program. The lords of the articles met daily during the parliament, debating informally with the remaining members of the estates; on the parliament's final day, the full parliament reassembled to receive and (it was expected) to

7. *BUK*, 1:20–24.

8. Cf. Donaldson, *Scottish Reformation*, 78–79; Graham, *Uses of Reform*, 39.

9. Julian Goodare, *The Government of Scotland, 1560–1625* (Oxford: Oxford University Press, 2004), chap. 8.

endorse the legislation that the lords of the articles presented to it.<sup>10</sup> During the debates, it became clear that parliament would allow no direct legislative commitment to Protestantism. The few religious acts that passed—including the witchcraft act—were the survivors of a rigorous weeding process. To the most committed Protestants, Moray's capitulation to the queen over the articles "for the establishment of religion" came as a betrayal. Knox and Moray clashed hotly during the parliament and would not speak to each other for a year and a half afterward.<sup>11</sup>

## II. AUTHORSHIP AND AMENDMENT

Having established the context in which the witchcraft act was passed, we can now proceed to reconstruct a number of relevant aspects of the act. We can sketch its likely authorship and can say something about the probability that it was amended in its passage through parliament.<sup>12</sup>

Knox's account of the act is essential to elucidate these matters. In his *History*, he summarized the passage of the parliament's religious legislation as follows:

They [that is, Mary's courtiers] began a new shift, to wit, to speak of the punishment of adultery, of witchcraft, and to seek the restitution of the glebes and manses to the ministers of the kirk, and of the reparation of churches: and thereby they thought to have pleased the godly that were highly offended at their slackness.

The Act of Oblivion passed, because some of the lords had interest; but the acts against adultery, and for the manses and glebes, were so modified that no law and such law might stand *in eodem predicamento* [in the same situation]: to speak plain, no law and such acts were both alike. The acts are in print: let wise men read, and then accuse us if without cause we complain.<sup>13</sup>

The witchcraft act was thus among five religious acts that Knox thought relevant to mention.<sup>14</sup> He offered explicit opinions on three:

10. Draft acts were called "acts"; the English term "bill" was not used in Scotland.

11. Goodare, "First Parliament of Mary"; Julian Goodare, "The Scottish Political Community and the Parliament of 1563," *Albion* 35 (2003): 373–97.

12. In what follows, the terms "author, authorship" indicate having an influence on the text, and "drafter, drafting" indicate putting pen to paper. The terms are related, but the point is that a group could exercise "authorship."

13. John Knox, *History of the Reformation in Scotland*, ed. William Croft Dickinson (London: Nelson, 1949) [henceforth Knox, *History*], 2:79–80.

14. "Wise men," and others, may read them at *APS*, 2:535–37, cc. 1–2 (act of oblivion); 539, c. 8 (manses and glebes); 539, c. 9 (witchcraft); 539, c. 10 (adultery); 539–40, c. 12 (repair of churches).

the act of oblivion, adultery, and manses and glebes. These opinions can be used to clarify his attitude to the witchcraft act.

Knox wrote this section of his *History* in the spring of 1566, when the Protestant movement seemed to be reeling from the partial failure of the Riccio murder coup. Several of its political leaders were exiled in England, and Knox himself had leisure to write because he had been forced to take refuge in the west of Scotland. He was in a bitter mood, keen to find fault both with Mary and with his own backsliding political allies.<sup>15</sup> Hence his shrill tone of blame over the acts and his complete omission of praise for them.

Nevertheless, he did not make the *same* criticisms of the act of oblivion as he did of the adultery and manses and glebes acts: he complained that the latter two were "modified." It is worth glancing further at these acts and his criticisms. The act of oblivion covered acts done by the Protestant insurgents in 1559–60, preventing the courts from challenging them. The act for manses and glebes ordained that proprietors of parish benefices should allocate these to Protestant ministers, but Knox wanted the complete expropriation of Catholic and lay benefice holders in the ministers' favor, as the *Book of Discipline* had proposed in 1561 and the general assembly had demanded in 1562.<sup>16</sup> Knox's objection to the "modified" adultery act probably lay in the nonbiblical distinction it drew between "notoure and manifest" adultery and "uther adulterie," with only the former meriting the death penalty, and with no clear statement of how the two were judicially to be distinguished.<sup>17</sup> This ran contrary to the recently expressed view of the general assembly that "the eternall God in his Parliament hes pronounced death to be the punischment for adultery and for blasphemie," and that "Kings ar but his lieutenants, having no power to give lyfe, quhare he commands death."<sup>18</sup> As we shall see, the witchcraft act was probably "modified" too, but in rhetoric rather than in substance.

It is sometimes suggested that Knox was not interested in witchcraft because he made no comment on the witchcraft act. But what kind of

15. Knox, *History*, 1:xcii–xciii; Maurice Lee, Jr., "John Knox and His *History*," *Scottish Historical Review* 45 (1966): 81–85; Julian Goodare, "Queen Mary's Catholic Interlude," in *Mary Stewart: Queen in Three Kingdoms*, ed. Michael Lynch (Oxford: Blackwell, 1988), 163–68; Michael F. Graham, "Knox on Discipline: Conversionary Zeal or Rose-tinted Nostalgia?" in *John Knox and the British Reformations*, ed. Roger A. Mason (Aldershot, U.K.: Ashgate, 1998).

16. *First Book of Discipline*, 156–64. The supplication of 1562 had also demanded manses and glebes, and repair of churches, but these were minor items in its program, *BUK*, 1:22–23.

17. Parliament recognized the latter problem itself in 1581, making an attempt to solve it, which was only partially successful, *APS*, 3:213, c. 7.

18. *BUK*, 1:21.

comment could he offer from the perspective of 1566? Here his comment on the act of oblivion is enlightening. This was a most welcome act to Knox, who had himself played a central part in the Protestant revolution that it helped to legitimize. He was not going to admit this, though, because it would have implied that the detested collaboration between Mary and the moderate Protestants had produced worthwhile legislation. Instead, he sourly impugned the motives of its makers—it “passed, because some of the lords had interest.” If Knox had had any objections to the substance of the witchcraft act, he would have taken the opportunity in this passage to ventilate them. Having nothing to criticize, he fell silent. The witchcraft act could hardly compensate Knox for the destruction of the central elements of the Protestant program—but in itself, it did have his full approval.

This allows posing the question of the act’s authorship. Could Knox’s description of the adultery and witchcraft acts as a “new shift” indicate that these acts originated with Mary’s court? No, because of his statement that the adultery act was “modified”—in other words, the original draft was stronger and more to his liking. It must thus have been drafted and presented to parliament by someone in the church, and then amended by Moray and his colleagues. Clearly, the other religious acts were drafted and lobbied for in a similar way.<sup>19</sup> The church’s role in the adultery act is confirmed by Randolph, who wrote of it as one “which our [Scottish] ministers have wronge owte, *tanquam clavum é manu Herculis* [like the club out of Hercules’ hand].”<sup>20</sup> All this confirms that a leading churchman drafted the witchcraft act.

Can we go further and identify an individual author for the act? The available evidence permits no definitive identification of a single author, and the general impression of the Protestant church’s activities at this time is that it favored collective responsibility for its major texts. Sometimes the general assembly would itself commission particular ministers, one or more, to write documents or to revise what others had written.<sup>21</sup> Committees had drafted both the Confession of

19. For more on this drafting and lobbying process, see Goodare, *Government*, 43–46.

20. Like Knox, he offered no comment on the witchcraft act, perhaps because the ministers who briefed him did not draw it to his attention. Randolph “commune[d] oft” with Knox, and his report may well reflect Knox’s views, Randolph to Cecil, 16 December 1562, 13 June 1563, *CSP Scot.*, 1:673; 2:13.

21. For some examples involving Knox, see John Knox, *Works*, ed. David Laing (Edinburgh: Bannatyne Club, 1846–64), 6:390.

Faith of 1560 and the *Book of Discipline* of 1561, as well as the Genevan translation of the Bible.<sup>22</sup>

Nevertheless, some individual surely played a leading role in drafting the witchcraft act, and also in suggesting its inclusion in the Protestant program. Witchcraft, after all, had been absent from the “horibill vices” listed in July 1562. Three main candidates may be proposed: John Erskine of Dun, superintendent of Angus; John Winram, superintendent of Fife; and John Knox.<sup>23</sup> They were three of the “six Johns” who had drafted the *Book of Discipline*. Knox and Winram had also been on the committee for the Confession of Faith, and Knox had had a hand in the Geneva Bible too. Not only did they have active drafting records, but they were the leading members of the general assembly of December 1562, where the act was probably conceived.

Knox, who moderated the assembly, was probably its most prominent member, as far as one can judge from its records.<sup>24</sup> He received several commissions from it, including one “to make supplication both by word and writ to the Queen’s Majestie” over poor relief.<sup>25</sup> Erskine and Winram were among the members of a weighty commission “to travell [that is, negotiate] with the Lords of Secreit Counsell [that is, the privy council] to know what causes sall come in judgement to the kirk, and what ordour of execution salbe tane therein.”<sup>26</sup> This might well have involved them in discussing witchcraft, a mixed offence with both ecclesiastical and secular aspects.<sup>27</sup> All three were present at the parliament that passed the witchcraft act. Knox was there as minister of Edinburgh (annoying the queen with an inflammatory sermon). Erskine and Winram were actually members of the parliament—Erskine as commissioner from the burgh of Montrose, and Winram as head of a pre-Reformation religious house, the priory of Portmoak. Winram, indeed, was a member of the lords of the articles.

Which of the three would have been capable of drafting an act but including a nonexistent court in the list of local jurisdictions? Winram, a canon lawyer of long experience, was meticulous in his use of the

22. Richard G. Kyle, *The Mind of John Knox* (Lawrence, Kans.: Coronado, 1984), 9, 73.

23. For Erskine’s career, see Frank Bardgett, “John Erskine of Dun: a Theological Reassessment,” *Scottish Journal of Theology* 43 (1990): 59–85. For Winram’s, see Linda J. Dunbar, *Reforming the Scottish Church: John Winram (c. 1492–1582) and the Example of Fife* (Aldershot, U.K.: Ashgate, 2002).

24. *BUK*, 1:25, 30.

25. *BUK*, 1:28–30.

26. *BUK*, 1:29.

27. For the later struggle for jurisdiction over these offences, including witchcraft, see Julian Goodare, *State and Society in Early Modern Scotland* (Oxford: Oxford University Press, 1999), 186–92.

law and would have been unlikely to make such an error.<sup>28</sup> Knox, who had worked as a local notary two decades earlier but who had been largely absent from Scotland between 1547 and 1559, had just the level of expertise in Scots law that the act's drafting displays.<sup>29</sup> Erskine may have studied at Aberdeen University but had no formal legal training. However, he had extensive practical experience of local jurisdictions as a wealthy laird and as provost of Montrose. This discussion cannot be conclusive, but the indications point towards Knox.

Let us glance further at the attitude towards witchcraft of each of the possible authors. Knox has already been shown to have been aware of the witchcraft act and to have approved of it. Winram had been one of the judges in a notable witchcraft trial in St. Andrews in 1542.<sup>30</sup> However, he might merely have been doing his duty in this trial, and there is no other reference to his involvement with witchcraft. The evidence seems insufficient to single him out as a likely author of the act.

Peter Maxwell-Stuart has recently sketched a thought-provoking case for John Erskine of Dun as the act's author. The case, which he emphasizes is just a suggestion, rests on two foundations. He sees the act as attacking magical practices that were perceived to be effectively Catholic—which is a convincing and important insight, as we shall see—and as “as an integral part of the *religious* war against Catholicism”—which is more questionable.<sup>31</sup> Rather than being “integral,” the witchcraft act was peripheral to the Protestant program, the “integral” parts of which parliament rejected. Dr. Maxwell-Stuart cites Erskine as opposing “idolatrie”—the Catholic Mass—in 1562, but this did not necessarily imply magic, let alone witchcraft. Protestant ministers were concerned about idolatry by their very vocation (and whatever Erskine's concern in 1562, it would be hard to find a minister more vehement on the subject at any time than Knox). They could link the three subjects of idolatry, magic, and witchcraft, but they could also separate them. The witchcraft act was not the act that the Protestant church intended to use against idolatry in 1563; the church put forward separate acts against idolatry, which were rejected. There is no specific evidence that Erskine had magic or witchcraft in mind in 1562–63.

28. I am grateful to Rev. Dr. Linda Dunbar for advice on this point.

29. For his notarial training, see J. H. Burns, “Knox: Scholastic and Canonistic Echoes,” in *John Knox*, ed. Mason, 119–21.

30. Maxwell-Stuart, *Satan's Conspiracy*, 31–34.

31. *Ibid.*, 43–44. Emphasis in original. Following Christina Lerner, he rules out Knox on the grounds of his “relative and apparent indifference to the subject” of witchcraft.

The second part of Dr. Maxwell-Stuart's case is that Erskine took part in a major witch-hunt in Angus in 1568–69 and thus displayed an interest in the subject in a way that Knox never did.<sup>32</sup> This is suggestive, but does not necessarily tell us about Erskine's views in 1563. Moreover, the initial Angus witches were probably accused of malefice, and the subsequent witches were probably named by the first ones and made to confess to witchcraft of some kind—either malefice or a pact with the Devil, or both. This was the most likely way in which a regional witch-hunt could originate and spread.<sup>33</sup> One of the crucial things absent from the 1563 statute was malefice. It has not been established that Erskine was concerned about maleficent witchcraft in 1563, but if he was, this would positively suggest that he was *not* the author of the statute.<sup>34</sup>

The evidence is too slight to identify a definite individual author for the 1563 statute. Probably there was some collective responsibility among a number of leading ministers for it and the other acts proposed to parliament. Knox, Winram, and Erskine were all probably members of the informal drafting committee in December 1562. Winram, as one of the lords of the articles in 1563, participated in the decision to allow the act to go through to legislation even though more contentious religious matters were being dropped, though his contribution to the debate is unknown. We are unlikely ever to find out for certain who put pen to paper to draft the act, but for what it is worth, the indications are somewhat stronger for Knox than for anyone else. What can be said with more confidence is that all three probably approved of it wholeheartedly.

The act did not pass unamended, however. As it stands, it contains a grammatical fault in the preamble that strongly suggests that a clause has been struck out. What was said in the preamble was not itself law. The most likely reason for cutting something out of it was to avoid giving offence; the most likely person to be offended was the queen; and the most likely thing to have offended her was a statement linking witchcraft with Catholicism. The act in its final form was not explicitly anti-Catholic, although, as we shall see, Protestants would have read its animadversions on "vane superstition" as containing an anti-Catholic subtext. It may be suggested, therefore, that the deleted clause made the anti-Catholic message explicit.

32. Maxwell-Stuart, *Satan's Conspiracy*, 52–57; Michael Wasser, "Ambition and Failure: Scotland's Unknown Witch-hunt, 1568–1569," unpublished paper.

33. For this point in a better-documented regional panic, see Julian Goodare, "The Aberdeenshire Witchcraft Panic of 1597," *Northern Scotland* 21 (2001): 17–37.

34. Dr. Maxwell-Stuart also cites Erskine as expressing concern about Satan in 1571, but again this was something that all Protestant ministers routinely did.

The following reconstructed preamble shows where the deleted clause probably came and illustrates the kind of thing that it might have said. It will be seen that the syntax is correct only if the clause in *italics*, or something like it, is present; yet this clause is a purely conjectural addition to the text of the final act. For clarity, the preamble has been translated into modern English:

Because the Queen's Majesty and three estates in this present parliament being informed that the heavy and abominable superstition used by several of the subjects of this realm, by using of witchcrafts, sorcery and necromancy, and credence given thereto in times by-gone against the law of God, *derives from the darkness of papistry from which the realm has recently been delivered*; and for preventing and suppressing all such vain superstition in times to come.

This italicized clause is the kind of thing that flowed freely from Protestant pens in the 1560s. But when the lords of the articles read it, someone—perhaps the queen herself, or another Catholic member of the committee—objected to it, and it was struck out. There may of course have been other deletions, no longer detectable, but probably there were none in the main body of the act to weaken it. In its own way it was remarkably all embracing, and if it had been watered down in its substance, then Knox would have said so in gloomy triumph as he did for the adultery and manses and glebes acts. It might be possible to argue that the witchcraft act was not amended at all because if it had been, Knox would have complained about it. However, the amendment was fundamentally different from the most likely amendment to the adultery act: it affected only the style, not the substance. He could not possibly say of the witchcraft act, as he did of the adultery act, that “no law and such acts were both alike.” Knox's silence on the witchcraft act helps to confirm that the lords of the articles did not amend it in its substance.

Why did the Scottish ministers include witchcraft in their program of godly legislation at all? It had not been a detectable concern of theirs before 1563. The *Book of Discipline* had not mentioned witchcraft in its section “On ecclesiastical discipline,” which discussed many other offences. The general assembly in July 1562, as we have seen, had sought statutory punishment of eight biblical offences that did not include witchcraft.<sup>35</sup> What started them off on witchcraft? One possible answer is simply that somebody looked at Exodus 22:18, “Thou shalt not suffre a witche to liue.”<sup>36</sup>

35. *First Book of Discipline*, 165–73; *BUK*, 1:19.

36. Geneva Bible.

Another possibility is that witchcraft was one of the ecclesiastical offences that had fallen into a judicial void following the abrogation of the authority of the pre-Reformation church courts in 1560; it had been these courts that had dealt with witchcraft. Statutory action to fill the void had begun in 1560. However, this was far from systematic. Matrimonial jurisdiction, a far more pressing issue than witchcraft, remained confused until 1564. There was no judicial *necessity* for a witchcraft act in June 1563.<sup>37</sup>

So it is suggestive that the English parliament had passed an act against witchcraft in January 1563.<sup>38</sup> Could this have provided the necessary prompting? The Scots did borrow acts of parliament from England occasionally.<sup>39</sup> The English act's origins and intentions were different; it was an official rather than ecclesiastical measure, put forward by the privy council to provide legal means for prosecuting treasonable sorcery.<sup>40</sup> But a Scottish minister who took an interest in English affairs might have picked up the idea.<sup>41</sup>

The English act was similar to the Scottish one in that it aimed to punish "witchcraftes" that were clearly *acts* of witchcraft rather than the condition or thought-crime of *being* a witch. However, the differences seem more marked than the similarities. The English act was considerably longer—about one thousand words against the two-hundred-odd words of the Scottish act. A number of the key words and phrases of the Scottish act were absent from the English one: "necromancie . . . credence gevin thairto in tymes bygane . . . vane superstition . . . gif thame selfis furth to have ony sic craft or knowlege

37. David B. Smith, "The Spiritual Jurisdiction, 1560–1564," *Records of the Scottish Church History Society* 25 (1993–95): 1–18; Julian Goodare, "Witch-hunting and the Scottish State," in *The Scottish Witch-Hunt in Context*, ed. Julian Goodare (Manchester, U.K.: Manchester University Press, 2002), 125; Goodare, "Scottish Parliamentary Records," 251.

38. The English act was not the first one on the subject. An earlier witchcraft act had been passed in 1542, but in 1547 it had fallen victim to a portmanteau act repealing recent felonies. Texts of the acts of 1542, 1547, and 1563 are conveniently collected in C. L'Estrange Ewen, *Witch Hunting and Witch Trials* (London: Kegan Paul, 1929), 13–18.

39. W. D. H. Sellar, "The Common Law of Scotland and the Common Law of England," in *The British Isles, 1100–1500*, ed. R. R. Davies (Edinburgh: John Donald, 1988), 92, gives examples of English acts of 1535 and 1572, borrowed by the Scots in 1555 and 1575 respectively. An act of 1572 borrowed in 1573 is given by Donaldson, *Scottish Reformation*, 177, 231–33.

40. Norman Jones, "Defining Superstitions: Treasonous Catholics and the Act against Witchcraft of 1563," in *State, Sovereigns and Society*, eds. Charles Carlton and others (Stroud, U.K.: Sutton, 1998).

41. The most likely such minister was Knox, who had served in the English church and who took a continuing interest in it. See Peter Lorimer, *John Knox and the Church of England* (London: King, 1875), and Stephen Alford, "Knox, Cecil and the British Dimension of the Scottish Reformation," in *John Knox*, ed. Mason.

thairof, thairthrow abusand the pepill." The English act too had distinctive phraseology, which one might have expected to be carried over into any adapted version: "conjuracions and invocacions of evill spirites . . . sorceries, enchauntments, charmes and witchecraftes . . . fantastical and devilshe persons." The Scottish act firmly included consulters of witches among those whom it aimed to punish: in England only aiders and counsellors of witches were punished. The English act contained carefully graded punishments: the Scottish act prescribed the death penalty for all Scottish offences. These and other differences of phrasing and substance indicate that the Scottish act was created *ab initio*, not adapted from the English one.

It is possible that the Scots were encouraged to pass their act by the knowledge that the English had just done something similar, but this cannot be proved. The other English acts relating to moral discipline in 1563 were on prophecy, buggery, and gypsies, none of which formed part of the final Scottish legislative program or of the recorded concerns of the Scottish church.<sup>42</sup> So the drafter of the Scottish act is most unlikely to have worked with a copy of the English one before him. The textual autonomy of the Scottish act provides a further slight indication that it was drafted, as argued above, before the English one—at the general assembly of December 1562.

### III. MEANINGS

The act was quite brief and can be summarized even more briefly. Witchcraft and consulting with witches are crimes that the courts should punish by death. However, there were subtleties of phrasing that need to be examined for a full understanding of the act. It offered no explicit definition of witchcraft—something that is notoriously hard to define. One might expect some attempt at definition in a legislative pronouncement that was to be a matter of life or death for those accused; a definition does emerge from a careful reading of the act, but only indirectly and allusively.

We may begin with the statement that witchcraft involves "havy and abominabill superstitioun," also referred to as "vane superstitioun." This is the phraseology that led Christina Lerner to write that the act was "as sceptical in its wording as the Witchcraft Act of 1735 which repealed it."<sup>43</sup> However, others have persuasively criticized this idea.<sup>44</sup> The "vane superstitioun" represented not false and igno-

42. *The Statutes at Large*, vol. 2 (London: Charles Eyre, 1763), contents.

43. Lerner, *Enemies of God*, 66–67 (and cf. 177, 188).

44. Maxwell-Stuart, *Satan's Conspiracy*, 37–38; Normand and Roberts, eds., *Witchcraft in Early Modern Scotland*, 90–91.

rant belief, but false and dangerous belief. If observances were practiced without divine sanction, then that was “superstitious”—and if those observances proved efficacious, if the witchcrafts worked, then the power to effect them could not come from God and must come from the Devil.

Still, although Professor Lerner was wrong to say that the act as a whole was sceptical, it did carry some sense that the procedures being complained of were ineffective. The passage on “credence gevin” to superstition “in tymes bygane” suggested not just that some people were bad because they still believed superstitious things, but that they believed in something inefficacious. If the witches had been working real, effective spells—if, for instance, they had been actually curing diseases, or (in love-magic) really transferring people’s affections towards their clients—then these would have been matters of empirical record. Nobody would have had a choice about whether to give “credence” to such spells and their outcomes. People might have asked whether the events were to be attributed to God or the Devil, but that would have been a different question from that of whether the events actually occurred. By complaining about “credence gevin” to witchcraft, parliament was suggesting that witchcraft was not real.

This suggestion surely arose because the legislators regarded witchcraft as a remnant of Catholic belief. This was superstitious, but it was also in a sense false. To Protestants, the miracle of transubstantiation in the Mass was not real; Catholics were idolaters because they were adoring something that was not God. Although this was “vane” in the sense that their professed hopes would be unrealized, Catholic worship did not lack spiritual meaning and content. Rather, the Devil gave it meaning and content.<sup>45</sup> Witchcraft, to the statute’s authors, was like Catholicism: false because demonic.

Subsequent trial documents often repeated the striking phrase “abusand the pepill.” The statute also called the “abusar” of the people an “abusar” of witchcraft, but the word did not carry the same meaning in both contexts. The “abusar” of witchcraft was a *misuser* of it, in the sense that the witchcraft was being used to a bad end (and the phrase “usaris or abusaris” showed that it could be used to no other end). Since the practitioners of “witchcraftis” were envisaged as presenting themselves as beneficent, the phrase “abusand the pepill”

45. This is not to suggest that Protestants believed that Catholics were *knowingly* worshiping the Devil. Knox made clear that even the Gentiles did not normally do that; rather “they servit thois whome thay judgeit to be Godis, being sa taucht and instructit from thair antecessouris,” though their judgment and teaching were false. Knox, *Works*, 4:231, citing 1 Corinthians 10:20–21.

meant *misleading* them. It supplemented the denunciation of “havy and abominabill superstitioun”: people might think that “witchcraftis” benefited them, but in truth the practice was wrong because it was demonic.

The act, as its title demonstrated, was primarily about “Witchcraftis,” with “Sorsarie and Necromancie” being additional or even subordinate categories.<sup>46</sup> What then did the act mean by “Witchcraftis, Sorsarie and Necromancie?” It is possible that the drafter had Deuteronomy 18:10–11 in mind, since this key demonological passage (in the Geneva translation, which he would probably have used) contained all the necessary ingredients: “Let none be founde among you that maketh his sonne or his daughter to go through the fire, *or* that vseth witchcraft, *or* a regarder of times, or a marker of the flying of foules, or a sorcerer, or a charmer, or that counselleth with spirits, or a sothesayer, or that asketh counsel at the dead.” One “that counselleth with spirits . . . or that asketh counsel at the dead” was evidently a necromancer.<sup>47</sup> So the drafter of the act could simply have started at “witchcraft” in this text and picked out what he thought were the two most relevant categories following it in the list. However, Deuteronomy named the practitioner while the Scottish act named the practice; this indicates that the act’s drafter, if mindful of the Pentateuch, was not seeking to reproduce it precisely.

This is because the act was focused on specific practices. A version of the phrase “Witchcraftis, Sorsarie and Necromancie” occurred three times, and “Witchcraftis” was plural on each occasion. On the third occasion “Sorsareis” was also plural, but “Necromancie” remained singular throughout. “Witchcraftis,” therefore, had to represent specific occasions on which witchcraft was practiced—specific spells or observances. “Necromancie,” being singular, might in theory represent a more general state of being, rather than specific actions; but necromancy meant conjuration with the aid of evil spirits, which had to include specific actions. One might *be* a necromancer, but only by practicing necromancy (“be using of” it, as the statute had it). Necromancy thus represented a distinct and sinister class of magical operations—a point to which we shall return. “Sorsarie” probably meant magical operations generally, though etymologically it was derived from a word meaning divination. Even when singular, it had

46. This is worth emphasizing, since (as pointed out above) the title was omitted from the APS edition of the act and has never been noticed since.

47. As would become explicit in the later Authorised Version. For the significance of the passage, see Stuart Clark, “Protestant Demonology: Sin, Superstition, and Society (c. 1520–c. 1630),” in *Early Modern European Witchcraft*, eds. Bengt Ankarloo and Gustav Henningsen (Oxford: Oxford University Press, 1991), 62–64.

to involve specific spells or observances, as became more explicit when it was pluralized as "Sorsareis." How "Sorsareis" could differ from "Witchcraftis" is not clear; both words seem to refer to illicit magical practices broadly conceived, and this seems to be a case of pleonasm.<sup>48</sup>

By contrast, one word that never occurred in the act was "witch." It did not say, "Anyone who is a witch must be punished," or (in the words of Exodus 22:18) "Thou shalt not suffre a witche to liue." The crime envisaged by the legislators was not the thought-crime of *being* a witch, but the practice of specific *acts* of witchcraft. Moreover, those practicing the "Witchcraftis," plural, were not maleficent workers of secret spells to harm their neighbors. They were self-defined, public practitioners who "gif thame selfis furth to have . . . craft or knowlege thairof." They proclaimed their magical expertise and sought clients.

Who, in sixteenth-century Scotland, proclaimed magical expertise and sought clients? The answer is the charmers.<sup>49</sup> Their business was largely with healing, both of people and of animals (though most specialized in one or the other). Charmers also offered a range of other services, including love-magic (attracting the affections of a desired partner towards the client), counter-magic against bewitchment, and forms of divination such as fortune telling or finding stolen goods. Some charmers were ordinary peasants who happened to know a few

48. This was certainly how James VI would later use these terms, distinguishing "*Magie or Necromancie*" from "*Sorcerie or Witchcraft*," and explaining, "This word of *Sorcerie* is a Latine worde. . . . As to the word of *Witchcraft*, it is nothing but a proper name giuen in our language," James VI, *Daemonologie*, in his *Minor Prose Works*, ed. James Craigie (Edinburgh: Scottish Text Society, 1982), 5, 19, 22 (emphasis in original). The Privy Council, too, sometimes conflated "witchcraft" and "sorcery." The "odious and detestable cryme of witchcraft, inchantment, and sorcerie" clearly involved pleonasm since the "cryme" was singular, John Hill Burton and others, eds., *Register of the Privy Council of Scotland* (Edinburgh: H. M. General Register House, 1877– ) [henceforth *RPC*], 11:104. Some clerks probably used both terms simply because both had appeared in the act. Reference to "suspected witches, and dealers in sorcery, charms, &c." might suggest a separation between the terms, though more explicit evidence would be required to establish the point, *RPC*, 12:734. One might hypothesize that "sorcery" could have meant magical practices not involving healing (which would be "charming") or malefice (which would be "witchcraft"). Dr. Peter Maxwell-Stuart's ongoing research may shed light on this, and I am grateful to him for discussing the issue with me.

49. For what follows on charmers, see Joyce Miller, "Devices and Directions: Folk Healing Aspects of Witchcraft Practice in Seventeenth-century Scotland," in *Scottish Witch-Hunt*, ed. Goodare; and Joyce Miller, "Cantrips and Carlins: Magic, Medicine and Society in the Presbyteries of Haddington and Stirling, 1603–1688" (Ph.D. thesis, University of Stirling, 1999). I am grateful to Dr. Miller for lending me a copy of her thesis and for an illuminating discussion of the subject. "Charmers" was the Scottish term for those often known elsewhere as "cunning folk." Cf. Willem de Blécourt, "Witch Doctors, Soothsayers and Priests: on Cunning Folk in European Historiographical Tradition," *Social History* 19 (1994): 285–303.

spells and used them to help their neighbors, while others were larger scale and more commercial practitioners. The context in which the act discussed “Witchcraftis” and “Sorsarie/Sorsareis” (“Necromancie” is another matter) indicates that its authors were thinking, perhaps vaguely, of charmers.<sup>50</sup>

Charmers do not seem to have worried the authorities before the Reformation. Thereafter they were prosecuted, if at all, by the courts of the church: kirk sessions and their superior courts the presbyteries. However, there was little or no popular support for the punishment of charmers, whose services the community valued—unlike witches, whom peasants thought of as maleficent. Official theology might regard both as demonic on the grounds that if their powers did not come from God, they must come from the Devil; but kirk sessions in practice usually shared or deferred to their congregations’ distinction between charmers—openly practicing and beneficent—and witches—surreptitious and maleficent. Charming came to be treated as a lesser offence, solely ecclesiastical and not criminal, for which the penalty was public penance. In 1646 the general assembly of the church complained that “it is informed to us that the Acts of Parliament ar not expresslie against that sinne” of charming and sought the extension of the witchcraft act to cover it, but nothing was done.<sup>51</sup> Nobody thought that the witchcraft act might already cover charmers. The implementation of that act had led it to be applied to a group regarded as distinct from the charmers—in a word, to witches. Charmers, who were manifestly not witches, could not possibly fall within its scope.

The existence of a line separating charmers and witches is confirmed when we find a small number of charmers crossing it. It was axiomatic that those who could heal could also harm. Most charmers were evidently respected, but some could lose favor and come to be perceived by their clients or neighbors as maleficent. They would then be prosecuted for their maleficent spells like any other witch. Some such charmers might then also be prosecuted for their healing activities. Dittays (indictments) of witches often included numerous individual charges of malefice, and sometimes would also include and describe acts of healing as acts of witchcraft. There were also cases of harming that arose through charmers transferring an illness from their client onto somebody else. But there seem to be few or no cases of people being prosecuted *only* for their healing activities.<sup>52</sup> Finally,

50. “A charmer” featured in Deuteronomy 18:10–11, but it is hard to say whether this increases or reduces the likelihood of this passage having influenced the act.

51. Quoted in Miller, “Devices and Directions,” 91.

52. Miller, “Cantrips and Carlins,” 215.

a few witches (so identified by others, although perhaps not by themselves) seem to have provided maleficent services to others, such as evil spells or poisons. They require more research, but they were not described as charmers and seem to have been distinct from them.<sup>53</sup> And the overwhelming majority of maleficent witches provided no services at all; they were believed to be motivated by personal malice or vengefulness rather than desire for financial gain. So the general separation between the beneficent charmer and the maleficent witch was maintained.<sup>54</sup>

Yet parliament in 1563 intended to punish not just the witch—that is, implicitly, the charmer—but the “seikar of the response or consultatioun.” Parliament would also put to death the charmer’s consulters or clients. A “consultatioun” could presumably involve any kind of magical operation, while a “response” was the answer to a request for information, typically about the future. John Knox had been much concerned about a “response” that the countess of Huntly had received from her “witches” in October 1562, and this incident could be the reason for the appearance of the term in the act.<sup>55</sup>

After 1563, once the courts decided that the act should be applied to maleficent witches, there was no chance of implementing this clause. With rare exceptions, maleficent witches did not have consulters or clients. The people who *were* routinely “consulted,” the charmers, were not themselves being prosecuted, so it was still less likely that their clients would be prosecuted. This emerges clearly from the cases when charmers crossed the line separating them from witches. When a charmer’s relationship with her or his clients deteriorated and the clients came to perceive themselves as harmed by maleficent spells, they complained readily to the courts, and the courts always accepted their self-perception as innocent victims of witchcraft. When they attested pre-trial depositions or appeared in court as witnesses for the prosecution, nobody ever pointed out that the statute called for their execution along with the accused witch.

53. I am grateful to Dr. Lauren Martin for a discussion of this point.

54. A further pattern of healing, distinct from charming, should be mentioned here. Someone reputed to be a maleficent witch would be accused of inflicting a disease on a neighbor after a quarrel, and one party would then approach the other and attempt a reconciliation. A successful reconciliation would be followed by the lifting of the disease. This, often described as “laying on and taking off sickness,” could be included in the witch’s dittay (indictment). It should be recognized as part of a pattern of basically maleficent behavior rather than as the act of a practicing charmer, even on the occasions when similar rituals to the charmers’ were employed, Miller, “Cantrips and Carlins,” 107.

55. Knox, *History*, 2:61. Cf. Julian Goodare, “John Knox on Demonology and Witchcraft,” *Archiv für Reformationsgeschichte* 96 (2005, forthcoming).

The post-Reformation church courts—not the criminal courts with which the witchcraft act was concerned—did periodically prosecute people whom they characterized as consulters of witches. This is an inadequately researched topic, but the “witches” concerned may have been thought to be unusually maleficent and not simply charmers. The courts sometimes undertook the prosecution of the consulter when the actual “witch” was inaccessible. The prosecutions led only to ecclesiastical penances, rather than to execution or other criminal penalties. Some ministers and kirk sessions probably wished that the clause of the statute against consulters of witches should be enforced, but it was not.<sup>56</sup>

All this is truly remarkable, for it implies that the act of 1563 did not directly intend to punish the witches who were actually convicted during the following century and a half of witch-hunting. Scottish witches, as the courts prosecuted them, were not generally self-defined, nor did they have clients. For some, it was their neighbors who called them witches, accusing them of having cast secret, maleficent spells. The spells, being secret, were usually presumed rather than specified, and no need was felt to explain how the malefices had been effected.<sup>57</sup> The focus was on the harm done rather than the specific means employed. The rest were mostly named by confessing witches as accomplices and forced to incriminate themselves—often by confessing to the demonic pact.<sup>58</sup> The person who is by habit and repute a witch, or who casts secret and maleficent spells, or who makes a pact with the Devil to become a witch, became the witch familiar to the criminal courts after 1563; but such a person is not directly visible in the act.

It may seem surprising that malefice was omitted from the act. But it would not have been easy to include malefice in the act as it stood; including it would have required a different act. To précis the act as its author intended it to be understood: “Witchcrafts and related magical practices are abominable and superstitious. Those providing magical services should be punished by death, as should their clients.” Conceptual slippage is detectable here between “practices” and “services,” which betrays a certain carelessness in drafting. So long as the “practices” were regarded as public and ostensibly beneficent, the

. Todd, *Culture of Protestantism*, 144, 151, 158; Julian Goodare, “The Scottish Witchcraft Panic of 1597,” in *Scottish Witch-Hunt*, ed. Goodare, 56–57, 68.

. Defence advocates sometimes attacked this presumption, claiming that their clients ought to be acquitted if specific spells were not proven, but this claim was rarely if ever accepted by the courts.

. Lamer, *Enemies of God*, chaps. 8–9; Julian Goodare, “Women and the Witch-hunt in Scotland,” *Social History* 23 (1998): 300–301.

slippage was small. Adding a condemnation of secret, maleficent witchcraft, however, would have undermined the whole idea that witches were public practitioners of magic.

The authors of the act may have concentrated on the open practicing of magic because they imagined that even maleficent magical operations might be performed openly among a benighted people who had not yet had the pure gospel preached to them. In December 1562 the Protestant church was two years old and had little pastoral experience. The few ministers who had been appointed were struggling with the immediate problems of establishing and financing a basic ecclesiastical structure and imposing its legitimacy on local elites. They would eventually succeed in these tasks, but so far they had had little opportunity to assess the details of their newly acquired parishioners' beliefs beyond the pressing question of how far they would acquiesce in the public transition to Protestantism.<sup>59</sup>

Once the Protestant ministers gained pastoral experience, they would discover that their congregations believed in maleficent witches and had ideas on how to identify them. This would not happen overnight since witchcraft accusations were serious and rare events, but news and ideas about witchcraft beliefs would eventually spread.<sup>60</sup> The ministers would also become more demonologically sophisticated as more works on witchcraft were published or republished in the late sixteenth century. Erskine took up witch-hunting in 1568, and other Protestant ministers were probably similarly disposed to do so if the occasion arose.

The demonic pact too, at least as it developed in the course of regular prosecution of witches, was absent from the act. The witches later convicted in the courts were often assumed to have made a pact with the Devil. Having done so, and thus having *become* witches, they did not need to be shown to "use ony maner of Witchcraftis" to be convicted. However, the act's drafter probably did have some awareness of the demonic pact. Christina Larner's argument that James VI imported the pact from Denmark to Scotland in 1590 has recently been

59. See for example Frank D. Bardgett, *Scotland Reformed: the Reformation in Angus and the Mearns* (Edinburgh: John Donald, 1988), chap. 5; Jane E. A. Dawson, "The Face of Ane Perfytt Reformed Kyrk": St. Andrews and the Early Scottish Reformation," in *Humanism and Reform*, ed. James Kirk (Oxford: Blackwell for the Ecclesiastical History Society, 1991); Michael Lynch, *Edinburgh and the Reformation* (Edinburgh: John Donald, 1981), part 3; Margaret H. B. Sanderson, *Ayrshire and the Reformation: People and Change, 1490-1600* (East Linton, U.K.: Tuckwell, 1997), chaps. 8-9. I am grateful to Dr. Jane Dawson for a helpful discussion of this subject.

60. The average Lowland parish would experience rather less than one witchcraft panic (involving multiple cases) during the entire period of Scottish witch-hunting, Goodare, "Witch-hunting and the Scottish State," 141-42.

criticized, and earlier cases suggesting the pact have been identified. There is some apparent tension between Jenny Wormald's argument that the pact was known before 1590 and Peter Maxwell-Stuart's that it was unimportant even after that date.<sup>61</sup> But these ideas can be reconciled with one another, and even with a modified version of Professor Larner's original theory (for the demonic pact was clearly more important after 1590 than before).<sup>62</sup> It has also been argued that Knox had developed some awareness of the demonic pact as early as 1556, though it was never central to his thinking;<sup>63</sup> this point is particularly significant if Knox was in fact an author of the act. However, a version of the pact was indirectly implicit in the act through its condemnation of necromancy. As we shall see, necromancers' dealings with evil spirits could amount to some kind of pact with the Devil.

#### IV. WITCHCRAFT AND CATHOLICISM

If the act was not about malefice or the demonic pact, this brings us closer to the question of what it *was* about. The answer, it may be suggested, is that it was conceived as a weapon in the struggle against Catholicism.

The act ignored mainstream Christian demonology, in the sense of works written specifically about witchcraft; these focused on malefice and the demonic pact. In its developed form, Stuart Clark has shown that demonology would straddle the confessional divide, with Catholic-Protestant differences merely matters of nuance within a shared body of doctrine.<sup>64</sup> The main witchcraft author cited by seventeenth-century Scots lawyers would not be their own King James VI but

61. Christina Larner, "King James VI and I and Witchcraft," in her *Witchcraft and Religion* (Oxford: Blackwell, 1984); Jenny Wormald, "The Witches, the Devil and the King," in *Freedom and Authority: Scotland, c. 1050–c. 1650*, eds. Terry Brotherstone and David Ditchburn (East Linton, U.K.: Tuckwell, 2000), 170–74; Peter G. Maxwell-Stuart, "The Fear of the King is Death: James VI and the Witches of East Lothian," in *Fear in Early Modern Society*, eds. William G. Naphy and Penny Roberts (Manchester, U.K.: Manchester University Press, 1997), 211–13. Cf. Stuart Macdonald, "In Search of the Devil in Five Witchcraft Cases, 1560–1705," in *Scottish Witch-Hunt*, ed. Goodare.

62. Cf. Arthur H. Williamson, *Scottish National Consciousness in the Age of James VI* (Edinburgh: John Donald, 1979), 55–62. Professor Larner herself quoted a pre-Reformation mention of the demonic pact from 1552, which also incidentally mentioned necromancers, Larner, *Enemies of God*, 163.

63. Goodare, "John Knox on Demonology and Witchcraft." Knox had had an opportunity to acquaint himself with Continental doctrine in Geneva in the 1550s, and the absence of such doctrine from the Scottish act may reduce the tentative case made above for his contribution to its authorship.

64. Clark, "Protestant Demonology"; Stuart Clark, *Thinking with Demons: the Idea of Witchcraft in Early Modern Europe* (Oxford: Oxford University Press, 1997), chap. 35.

Martín Del Rio, a Spanish Jesuit.<sup>65</sup> But by 1563 few Protestants had yet written specifically on witchcraft. Mainstream demonology was an almost entirely Catholic affair, with the *Malleus Maleficarum* still the leading item among a body of works that emphasized the connection of witchcraft with anti-Catholic heresy. Witches and heretics, in these accounts, tended to appear as sects of false believers who included horrifying crimes among their secret ritual practices. It is possible that the early Scottish Reformers were unacquainted with these works. If they did know them, they may have regarded them as tainted by their origins or simply inapplicable to Protestant concerns.

Professor Clark, who has done so much to explain mainstream demonology, has also directed our attention beyond it—to the general religious discourse of the period. Without this, he argues, intellectual witch-beliefs can hardly be understood. He finds two main types of message within Protestant writings discussing witchcraft. First was a pastoral and evangelical message: to wean the common folk away from a reliance on folk healers and diviners, and to bring them to a proper appreciation of God's providential designs. The proper response to misfortune was usually not to blame witchcraft, much less to seek magical counter remedies (which were themselves demonic), but to persevere with orthodox religious devotions in the recognition that the misfortune might well have come from God as a punishment for one's own sins or as a test of one's faith. This message did not necessarily come in the form of specifically demonological works (although it also occurred therein); typically, it was delivered in sermons and pastoral literature. Although the Scottish witchcraft act was distant from demonology, it emphasized a key aspect of this pastoral and evangelical message: people should not seek "superstitious" magical remedies for their problems. In this sense it was a very Protestant act.

The second Protestant message identified by Professor Clark was an anti-Catholic one, polemical rather than pastoral. Witches were in league with the Devil, but so were Catholics. There was a theological sense in which witchcraft and Catholicism were both "superstition"—they both violated the first Commandment. Catholic sacraments,

65. Martín Del Rio, *Investigations into Magic*, ed. Peter G. Maxwell-Stuart (Manchester, U.K.: Manchester University Press, 2000), 1–2 and passim. For the paucity of citation of King James, see James VI, *Daemonologie*, 153–57. Scottish references to Del Rio include: Robert Pitcairn, ed., *Criminal Trials in Scotland, 1488–1624* (Edinburgh: Bannatyne Club, 1833), vol. 3, part 2:514–15, 522–23; Sir George Mackenzie, *Laws and Customes of Scotland in Matters Criminal* (Edinburgh: Thomas Brown, 1678), 89, 91, 93, 97–98, 100, 105; and Sir John Lauder of Fountainhall, *Historical Notices of Scotch Affairs*, ed. David Laing (Edinburgh: Bannatyne Club, 1848), 1:164.

working *ex opere operato*, denied divine omnipotence and drew instead on demonic power. Protestant polemicists elsewhere in Europe often made the link between Catholicism and witchcraft explicit.<sup>66</sup>

In Scotland, in the generation after the witchcraft act, the church authorities rarely if ever bracketed witchcraft and Catholicism in this direct way. They attacked Catholicism vigorously and often, and witchcraft (and consulters of witches) from time to time, but they did not say that Catholicism *was* witchcraft.<sup>67</sup> Arthur Williamson has even argued that Protestant concerns with “Antichrist” (Catholicism) and with “Satan” (witchcraft) were alternatives, with the former declining as the latter rose in the later sixteenth century.<sup>68</sup> Probably this is too schematic—but so is the argument that the two concerns were so linked as to rise and fall together. Rather we should be seeing a more complex and constantly shifting pattern, in which various leading ministers concentrated sometimes on Catholicism alone, at other times (though more rarely) on witchcraft alone, and at yet other times (perhaps more rarely still) on both together.

The main reason for this pattern was that leading ministers tended to react to immediate issues rather than working out carefully determined long-term strategies on Catholicism or witchcraft. For instance, they surely became more worried about the Catholic threat after the massacre of St. Bartholomew in 1572—but this occurred in France, and there was little that Scottish ministers could do about it. By contrast, the murder of the “bonnie earl” of Moray in 1592 by his Catholic rival, the earl of Huntly, led to intense clerical agitation against Huntly.<sup>69</sup> These were national issues, but many local issues were also responses to practical problems. A Jesuit priest discovered in Dumfries or a witch denounced in St. Andrews would be prosecuted at presbytery level and would not necessarily make national headlines. The idea that “the Kirk” was a monolithic entity with a single, centrally determined policy either on Catholicism or on witchcraft should be resisted. Clerical concerns with these two issues were related loosely, but not directly.

66. Clark, *Thinking with Demons*, 532–34, where he points out that the classic exposition of the issues is Keith Thomas, *Religion and the Decline of Magic* (London: Weidenfeld and Nicholson, 1971).

67. Numerous attacks on Catholicism and witchcraft as separate issues are cited in Maxwell-Stuart, *Satan’s Conspiracy*, chaps. 3–4.

68. Williamson, *Scottish National Consciousness*, chap. 2.

69. Maurice Lee, Jr., *John Maitland of Thirlestane and the Foundation of the Stewart Despotism in Scotland* (Princeton, N.J.: Princeton University Press, 1959), chap. 11; Alan R. MacDonald, *The Jacobean Kirk, 1567–1625: Sovereignty, Polity and Liturgy* (Aldershot, U.K.: Ashgate, 1998), 46–47. This was the son-in-law of the earl of Moray in 1563.

The witchcraft act itself, however, displayed more and closer links between the issues of witchcraft and Catholicism. Two of these links have already been discussed: its attack on “superstitioun” was implicitly anti-Catholic, and its original draft may well have contained a clause relating witchcraft directly to Catholicism. Another link appeared in the fact that the act named “Necromancie” among the range of offences that it proposed to punish.

Necromancy was not a necessary component of a Protestant witchcraft act; the English act of 1563 did not mention it. Necromancy was specific and well defined—the summoning of evil spirits for magical purposes. One might say that Catholicism was witchcraft, but one could hardly say that Catholicism was necromancy. And if the act was directed against charmers, as those who practiced magic and provided services to clients, then it should be observed that necromancy was not part of the charmer’s repertoire of techniques either.<sup>70</sup> How did it get into the act, and what did it mean?

“Necromancie” was distinct from the act’s “Witchcraftis” and “Sorserie/Sorsareis.” Witchcraft and sorcery, whether considered jointly or severally, both belonged to what Richard Kieckhefer has called the “common tradition” of medieval magic.<sup>71</sup> He links it to particular magical practitioners, such as priests, barber-surgeons, and folk healers. The commonality of this tradition has been emphasized and extended by Stephen Wilson, who documents a wide range of magical operations, mainly about health and fertility, carried out by the common folk themselves.<sup>72</sup>

Such everyday concerns were less important in necromancy. Although practical rather than idealistic (unlike a third magical tradition, that of the Renaissance magus), its rites included treasure seeking, political power seeking, and other matters beyond the average peasant. It required some Latin-based education; necromantic spells were lengthy, were written down in books, and sometimes required specialized equipment. And necromancers did summon up demons. They usually claimed to be commanding rather than worshiping the demons, but the difference was sometimes hard to detect, and their orthodox critics gave the claim short shrift.<sup>73</sup>

70. Miller, “Cantrips and Carlins,” chap. 11.

71. Richard Kieckhefer, *Magic in the Middle Ages* (Cambridge: Cambridge University Press, 1989), chap. 4.

72. Stephen Wilson, *The Magical Universe: Everyday Ritual and Magic in Pre-Modern Europe* (London: Hambledon and London, 2000).

73. Richard Kieckhefer, ed., *Forbidden Rites: A Necromancer’s Manual of the Fifteenth Century* (Stroud, U.K.: Sutton, 1997).

Now, although one could not say that Catholicism was necromancy, one might say that necromancy was Catholic. It depended on rites of exorcism. The whole basis of necromancy was the formulae and rituals used by the Catholic Church for commanding demons to depart: such formulae were adapted to compel demons to undertake tasks set by the necromancer.<sup>74</sup> In 1563, Protestants had barely begun to develop traditions of exorcism, and when they did, they would use quite different methods (prayer and fasting).<sup>75</sup> They regarded the complex Latin formulae and rituals of the exorcist—and of the necromancer—as part of the unreformed Catholic world that they were repudiating. Continental Catholics, indeed, wielded such exorcisms in the confessional struggle, reporting the Devil as declaring himself in league with the Protestants.<sup>76</sup> The anti-Catholic “King’s Confession” of 1581 in Scotland would later condemn “cungering of spirits” as one of the Catholic practices that Protestants should repudiate.<sup>77</sup> The recent publication of a Protestant antinecromancy pamphlet in England may possibly have influenced the Scottish witchcraft act, though it would be hard to take this suggestion beyond the realms of conjecture.<sup>78</sup>

At least one Scottish minister was definitely worried about necromancy: John Knox. This was partly because his enemies sometimes accused him of it, but he also made it a regular topic of his preaching. He told Mary Queen of Scots in 1561: “Where they slander me of magic, necromancy, or of any other art forbidden by God, I have witnesses (beside my own conscience) all congregations that ever heard me, what I spake both against such arts, and against those that use such impiety.”<sup>79</sup> Knox evidently had a particular motive for having necromancy mentioned in a witchcraft act in 1562–63.<sup>80</sup>

74. Kieckhefer, ed., *Forbidden Rites*, chap. 6.

75. Thomas Freeman, “Demons, Deviance and Defiance: John Darrell and the Politics of Exorcism in Late Elizabethan England,” in *Conformity and Orthodoxy in the English Church, c. 1560–1660*, eds. Peter Lake and Michael Questier (Woodbridge, U.K.: Boydell, 2000).

76. D. P. Walker, *Unclean Spirits: Possession and Exorcism in France and England in the Late Sixteenth and Early Seventeenth Centuries* (London: Scolar, 1981), chap. 2. I am grateful to Dr. Jane Dawson for a discussion of Protestantism and exorcism.

77. Gordon Donaldson, ed., *Scottish Historical Documents* (Edinburgh: Scottish Academic Press, 1970), 152.

78. Francis Coxe, *A Short Treatise Declaringe the Detestable Wickednesse of Magicall Sciences, as Necromancie, Coniurations of Spirites, Curious Astrologie and Suche Lyke* (London: John Alde, 1561). Coxe does not seem to have contributed any phraseology to the Scottish act, but they shared a concern with the necromancer’s vaticinatory role, and Coxe also briefly discussed the demonic pact.

79. Knox, *History*, 2:14–16. Cf. Goodare, “John Knox on Demonology and Witchcraft.”

80. The fact that a leading Protestant minister was accused of necromancy might seem to contradict the case made here for necromancy as Catholic; but the accusations were of course made by Catholics, who would be unlikely to see necromancy in this way.

The demonic pact was implicit in the witchcraft act via its condemnation of necromancy. Various forms of the pact were known, with the main division being between the explicit and tacit pact. When the witchcraft act was written, the fullest available exposition of this was probably by Paulus Grillandus.<sup>81</sup> Scottish courts would come to deal largely with explicit pacts, in which the witches met the Devil personally and made direct promises to abjure their baptism and serve him.<sup>82</sup> But they could enter into a pact by making a promise to another magical practitioner or by having dealings with demons in order to achieve benefits such as foreknowledge. It was through these dealings with demons that necromancers were thought to make a pact with the Devil.<sup>83</sup>

This is not to say that the act intended to punish as witches those people who simply made a pact with the Devil, which was what would happen once witch-hunting got under way. Nor can one tell from the act's one word "Necromancie" just how important the demonic pact was to its author. What one can say is that the more important it was, the less important was the concern with Catholicism. Catholics were not expected to make an individual pact with the Devil; they were enemies of true religion because their faith as a whole was inspired by the Devil. The wording of the act is at least consistent with the idea that the demonic pact was not a fully developed concept in it, and that its drafter saw the collective relationship of the ungodly with the Devil as more important. Here as elsewhere, the act was far removed from the practice of witch-hunting as it grew up in Scotland after 1563.

## V. CONCLUSION

The Scottish witchcraft act was the product of a new and inexperienced Protestant regime. Once the system of kirk sessions was established in Scotland, the church authorities could monitor their parishioners' delinquencies in a minute detail that would have been the envy of English Puritans.<sup>84</sup> But in 1562–63, when the witchcraft act was drafted and passed, leading ministers were still vague about the

81. In his *Tractatus de Hereticis et Sortilegiis* (1536). See Henry C. Lea, *Materials Toward a History of Witchcraft*, ed. Arthur C. Howland (New York: Thomas Yoseloff, 1957), 1:395–97.

82. Although the demonic pact was often described sketchily, if at all, and was not necessarily the focus of concern, Macdonald, "In Search of the Devil."

83. The *Malleus Maleficarum* did not support a tacit pact by necromancers, believing that they all made an explicit pact, *Malleus Maleficarum*, trans. Montague Summers (London: John Rodker, 1928), book 1, question 2. For James VI's complex views, see *Daemonologie*, 5, 11.

84. Todd, *Culture of Protestantism*, 42 and passim.

details of much popular ungodliness, though they were sure that there was a lot of it about. However strongly he was opposed to witchcraft, the act's drafter might have had difficulty explaining exactly what he thought a witch was. His idea that other parishioners routinely consulted witches rested on a fundamental confusion between witches and charmers.

The act was technically inept in including a nonexistent local court. Here it was not alone in religious legislation. The problems in defining "notour" adultery in the act on that subject have already been mentioned.<sup>85</sup> Two linked acts of 1567, on incest and on the forbidden degrees in marriage, left an ambiguity that would have fatal consequences for several couples who thought that they were marrying legally.<sup>86</sup> A church scheme in 1592 for parish commissioners on moral discipline left the commissioners' criminal jurisdiction hanging in midair.<sup>87</sup> The technical flaw in the witchcraft act was inconsequential by comparison.

One aspect of the act did prove problematic or at least embarrassing: its condemnation of consulters of witches. It was evidently decided early on that this could not be implemented. A parliamentary drafting committee in December 1567, including some church ministers (among them Erskine of Dun and Knox), discussed the problem of "how witchecraft salbe puneist and Inquisitioun takin thair of and that the executioun of death may be usit alsweill aganis thame that consultis with the witche seikis hir support mantenis or defendis hir as aganis hir self."<sup>88</sup> Here, the committee was already extending consulters to include supporters, possibly through some dawning recognition that maleficent witches lacked consulters. The use of feminine pronouns also indicated that the committee was thinking of uneducated peasant witches and not necromancers. But parliament took no action. One observer of the North Berwick witchcraft panic of 1590–91 wrote of the 1563 act: "Indeid the municipall law of Scotland beris, That whosoever salbe fundin to consult with sorcerers, witches or suthesayers, thay sall dee the death. Bot this law was never heirtofore put in practise."<sup>89</sup>

85. These problems might have been introduced by those who amended the act, but if so this would illustrate the related point that parliament's own committees were capable of allowing a badly drafted act onto the statute book.

86. W. D. H. Sellar, "Leviticus XVIII, the Forbidden Degrees and the Law of Incest in Scotland," *Jewish Law Annual* 1 (1978): 229–32.

87. Julian Goodare, "The Framework for Scottish Witch-hunting in the 1590s," *Scottish Historical Review* 81 (2002): 244–47.

88. *APS*, 3:44, c. 86.

89. Thomas Thomson, ed., *The Historie and Life of King James the Sext* (Edinburgh: Bannatyne Club, 1825), 242. The mention of "sorcerers, witches or suthesayers," when the act had

The act was a thoroughly Reformed measure. It was not routinely used as an anti-Catholic weapon, if by this is meant the suppression of orthodox Catholic practices; other acts were available for that purpose. Nevertheless, the “superstitioun” of the common people was the target, with the aim being to inculcate a more theologically correct version of Christian belief and practice. Christina Larner called this process “Christianization,” on the grounds that the details of official beliefs now became for the first time a matter for the ordinary peasant to learn.<sup>90</sup>

Scepticism has recently been expressed as to how successful this was—how far the peasantry internalized the Reformed view of witchcraft as a spiritual crime.<sup>91</sup> They continued to consult charmers and to see maleficent witchcraft rather than divine Providence as the cause of their misfortunes. Indeed, the way in which the act was used did not discourage them from doing so. Still, the process of witch-hunting surely did give them some heightened awareness of what the church expected of them—and of what it could do to them if they did not comply. By its simple demonstration of power against unorthodoxy, witch-hunting did much to point people towards orthodoxy. The witchcraft act itself did not specify that this was Protestant orthodoxy, but within the framework of Protestantism, this was very much how it operated.

Until its repeal in 1736, the act of 1563 governed the prosecution of Scottish witches. Judicial dittays accusing them often incorporated much of the act’s text. However, it was used against maleficent or diabolical witches, rather than against the beneficent public practitioners envisaged by the act’s drafter. This worked because the act’s view of witches as beneficent public practitioners was implicit rather than explicit. Its direct statements about witchcraft were sufficiently vague and general to serve a range of purposes. Its English companion, by contrast, came to be perceived as inadequate and was replaced by an updated act in 1604. The Scottish act’s distinctive phraseology came to be used in ways that its drafter did not intend, but which were at least plausible.

From the large corpus of material showing how the act came to be applied, a selected example is illustrative. The assize trying Marabel Cowper in Orkney in 1624, working through her dittay (indictment) point by point, produced the following findings: “Fyllis [that is, convicts] hir in the secund poynt of dittay conforme to the dittay

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specified “Witchcraftis, Sorsarie and Necromancie,” indicates the interchangeability of such terms.

90. Larner, *Enemies of God*, chap. 12.

91. Macdonald, *Witches of Fife*, 178–83.

sworne and that sho gave hir furth to have knowledge in that sho said sho sould lay hir lyff for him. . . . Fyllis anent the last and generall point that sho is ane witche and for using and practising of witchcraft and geving hirself furth to have sick knowledge, abuseing the people and in keiping company and going with the divell, and that they reput and hald hir ane comoun and notorius witche."<sup>92</sup> The assize evidently had the text of the act before them, and took seriously its phrase about witches proclaiming their "knowledge"; but what they understood by it was that Cowper had made statements that indicated that she regarded herself as a witch. She was not "abuseing the people" by deceiving her clients, for she had no clients; she seems to have let it be thought that she had some magical powers, but the acts of witchcraft alleged against her were almost entirely malefices, varied only by an occasional lifting of disease following reconciliation. Cowper was a classic neighborhood witch, developing a reputation through quarrels and curses that were followed by misfortune to her antagonists. The author of the witchcraft act might have recognized her if he had met her, but when he drafted his deadly legislation, he did not actually have her in mind. His concern was with hypothetical practices that Catholicism might have encouraged among the common folk, and his lack of pastoral experience was evident. In the early years, the magical beliefs and practices of the common folk were *terra incognita* to the Scottish Reformers.

92. *RPC*, 2nd ser., 8:359–60.