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# Possession, Witchcraft, and the Law in Jacobean England

Brian P. Levack\*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. *Id.* at 100.

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

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

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

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

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

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

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

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

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

*The Possession of Anne Gunter*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *The Abington Witchcraft Trial*

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *The Investigation of Anne Gunter*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to a denial of the reality of both possession and witchcraft.<sup>54</sup> Indeed, Harsnett was so skeptical on these points that his critics associated him with Reginald Scot, who in 1584 had written an uncompromising criticism of witch-hunting which came close to denying the reality of demonic power.<sup>55</sup> Both Harsnett and Scot were in fact accused of atheism, a common charge against critics of witch-hunting throughout the seventeenth century.<sup>56</sup>

With Anne committed directly to his charge at Lambeth Palace, Harsnett was eventually able to extract from her an admission to the fraud she and her father had perpetrated. She admitted that her father had made her fake many of her alleged symptoms and accuse Gregory and the Pepsells of witchcraft. It has been suggested that Harsnett may have coerced her into making this confession.<sup>57</sup> That is unlikely, however, since Anne made confessions on numerous occasions, not only at Lambeth Palace but also before the king at Finchbrooke and later in the Court of Star Chamber. At the end of October, Harsnett reported to James that the girl had confessed on oath to what she had already admitted voluntarily.<sup>58</sup> Anne had also admitted her trickery to one Asheley, a servant of the archbishop, with whom she had fallen in love while in detention at Lambeth Palace. Harsnett had apparently encouraged this romance in order to obtain Anne's unsuspecting admission to her deceptive behavior.<sup>59</sup>

54. Harsnett referred to those persons who have "their fancies distempered with the imaginations and apprehensions of witches, conjurers, and fairies, and all that lymphatical chumera," and he cited Chaucer's opinion that "all these braimless imaginations of witchings, possessings, house-haunting, and the rest, were the forgeries, cosenages, impostures, and legerdemain of crafty priests and lecherous friars." *Id.* at 309. KITTREDGE, *supra* note 23, at 299, is in error when he claims that Harsnett, Deacon, and Walker "did not attack the witchcraft dogma." Harsnett did not unequivocally deny the possibility of witchcraft, but he ridiculed those who believed in it and challenged its existence in numerable instances. WALKER, *supra* note 17, at 71, argues that Harsnett very strongly implied the denial of witchcraft. See also PAUL, *supra* note 50, at 124.

55. See generally REGINALD SCOT, *THE DISCOVERIE OF WITCHCRAFT* (Dover Publications 1972) (1930). Scot also discussed the cessation of miracles. *Id.* at 89-90. For Harsnett's reliance on Scot, see PAUL H. KOCHER, *SCIENCE AND RELIGION IN ELIZABETHAN ENGLAND* 132 (1953), and PAUL, *supra* note 50, at 100.

56. Darrell, among others, made the charge. See WALKER, *supra* note 17, at 72.

57. EWEN, *supra* note 1, at 36.

58. Letter from Richard Neile to the earl of Salisbury (Oct. 30, 1605), in 17 *CALENDAR OF THE MANUSCRIPTS OF THE MOST HONOURABLE THE MARQUESS OF SALISBURY PRESERVED AT HATFIELD HOUSE* 471, 471-72 (M.S. Giuseppe ed., 1938).

59. Robert Johnston, in his *HISTORIA RERUM BRITANNICARUM* (n.p. 1655), claimed that Harsnett deliberately sued Asheley "to entice the girl into love" and that Anne, "inclined to lust," revealed all of her tricks to him. PAUL, *supra* note 50, at 125-26.

At some point during Anne's stay at Lambeth Place, Harsnett called in a London physician, Dr. Edward Jorden, to examine her.<sup>60</sup> Jorden had also had previous experience with demoniacs, having only three years before testified in court that the fits of another possessed girl, Mary Glover, were the result of hysteria — or what was then referred to as the suffocation of the mother. In that same year Jorden had published a treatise on the subject.<sup>61</sup> Somewhat surprisingly, he did not reach the same conclusion regarding Anne's affliction, possibly because the girl had ceased having fits when he examined her so that he lacked direct evidence of her malady. All Jorden possessed was the information that pins and pieces of glass had been discovered in Anne's stools, leading him to conclude that she had swallowed the objects, perhaps in her fits. There was clearly nothing supernatural about her behavior, but the evidence seemed to point more to fraud than to disease as the cause of Anne's affliction. Indeed, in his testimony Jorden referred to Anne's "sundry feigned fits" while in the custody of Harsnett.<sup>62</sup>

Having interviewed Anne directly and having received reports from Harsnett and others, the king concluded in a letter to the earl of Salisbury on October 10 that the star demoniac of Oxford and Berkshire was "never possessed with any devil, nor bewitched." He based his diagnosis on the fact that she appeared to have been cured by a nonmedicinal potion given her by a physician, either Haddock or Jorden, together with a tablet to be hung around her neck.<sup>63</sup> He also claimed that her vomiting of pins was the result of various pinpranks and that the swelling of her belly was attributable to the disease called suffocation of the mother.<sup>64</sup> Finally, he reported that Anne,

60. PAUL, *supra* note 50, at 120-21, claims that the king referred the girl directly to Jorden in September. Jorden's deposition in Star Chamber, however, refers to examination one month after the girl was committed to Harsnett's custody, and that commitment probably did not take place until early September. STAC 8/4/10, fol. 57

61. EDWARD JORDEN, A BRIEF DISCOURSE OF A DISEASE CALLED SUFFOCATION OF THE MOTHER (London 1603). The treatise is photographically reproduced in WITCHCRAFT AND HYSTERIA IN ELIZABETHAN LONDON (Michael MacDonald ed., 1990).

62. STAC 8/4/10, fol. 57 (recording deposition of Edward Jorden). Jorden's testimony was given *ex parte* Gunter. Jorden reported that the last of Anne's fits took place about two weeks before Michaelmas day 1605, placing it about September 15.

63. Most authors, following Thomas Guidott, assume that Jorden was the physician mentioned in this letter. There is nothing in Jorden's deposition in Star Chamber, however, that would indicate that he gave the girl a potion, much less tied a tablet around her neck. *Id.*

64. Letter from James I to the earl of Salisbury (Oct. 10, 1605), in RICHARD HUNTER & IDA MACALPINE, THREE HUNDRED YEARS OF PSYCHIATRY, 1535-1860, at 76, 76-77 (1963). The authors suggest that this may be the only psychiatric report by a king of England. *Id.* at 76.

who had sought Asheley's "love most importunately and immodestly," was now asking permission to marry him. James's report, therefore, while admitting the possibility of illness, emphasized the girl's deceit. It is even possible that Anne was the "little counterfeit wench" whom James later referred to in an undated letter to his son.<sup>65</sup>

When the king wrote this letter to Salisbury, he already suspected that Anne's counterfeit possession was part of a plot "against one Gregory for some former hatred borne unto her." In a draft of his letter to the earl of Salisbury, he indicated that he was planning to have Agnes Pepwell examined by the archbishop of Canterbury and by certain legal officials in order to press her to confess the truth, claiming that she had previously lied when she had been given the benefit of royal protection. In particular, the king wanted to know what had been admitted to her in a conversation with William Gunter, Anne's brother.<sup>66</sup> The king also had in his possession an incriminating letter from Anne Gunter to her father.<sup>67</sup> As early as October 1605, therefore, the government was contemplating legal action against the Gunters.

#### *Prosecution in Star Chamber*

This prosecution of the Gunters finally commenced in February 1606, when Sir Edward Coke exhibited an information against Brian and Anne Gunter in the Court of Star Chamber. The charge was that the two had conspired "by false and wicked devices to bring [Gregory and the two Pepwells] into infamy and cause them to be reputed and taken for witches and thereupon also to cause them to be indicted and arraigned for witchcraft."<sup>68</sup> It was claimed that Master Gunter, who by now was imprisoned in Lambeth Palace, had put his daughter's head in the smoke of burning brimstone, administered intoxicating drinks to her, forced her to swallow salad oil to

65. Walker, *supra* note 17, at 80-81.

66. Deleted portion of a draft of James's letter to the earl of Salisbury, October 10, 1605, in the hand of Sir Julius Caesar. British Library, Additional MS. 12,497, fols. 197-197v. Pepwell is referred to as "the old Pepwell" in this letter, the name by which she was known in North Moreton. See Berkshire Record Office, D/P 86/1/1, burial of Old Agnes Pepwell, August 2, 1610. Despite their acquittal in March, both Agnes Pepwell and Elizabeth Gregory remained in custody during the entire episode. The reason for their continued custody was apparently the sentence, given at the same time as their trial, for another offense. See STAC 8/4/10, fol. 18 (examination of Alexander Chokke). Anne was eventually brought to London and committed to the custody of William Gwylliam. *Id.* fol. 203.

67. British Library, Additional MS. 12,497, fol. 197v

68. STAC 8/4/10, fol. 75.

make her vomit, beat her, thrust pins into her while she was asleep, and then, as in modern cases of child abuse, sworn her to secrecy<sup>69</sup>

The choice of Star Chamber as the court in which to bring this action made sense from the government's point of view. Star Chamber derived its authority from that of the Privy Council; it was in effect the Council acting in a judicial capacity, meeting in a chamber of the Palace of Westminster whose ceiling was decorated with gold stars. The court acquired a distinct institutional identity in the early sixteenth century, when the judicial and administrative functions of the council were separated.<sup>70</sup> Intended originally to proceed expeditiously against those who violated the king's peace, it developed a jurisdiction over crimes not easily prosecuted in the common-law courts, especially sedition, riot, unlawful assembly, perjury, fraud, libel, and conspiracy. Star Chamber also served to prosecute those who corrupted the legal process, as in this case, in which the charge was conspiracy to indict a person of felony.<sup>71</sup>

This particular set of charges took the form of a written information preferred by Coke, who was then attorney general, the chief law officer of the Crown. Star Chamber was the only secular court in the realm in which prosecution of a serious crime could commence by mere information, without an indictment from a grand jury.<sup>72</sup> An indictment at common law would be necessary if the defendant were to be tried for a felony and thereby risk life or limb, but all crimes triable in Star Chamber were technically misdemeanors, even if they were referred to as "gross misdemeanors" or "high crimes," and the most severe punishments were cutting off the guilty party's ears or slitting his nose.<sup>73</sup> Procedure by information possessed obvious

69. *Id.* fols. 97, 103. For the swearing her to secrecy, see *id.* fols. 104, 124, 128.

70. On the origins and development of the court, see J. A. GUY, *THE COURT OF STAR CHAMBER AND ITS RECORDS TO THE REIGN OF ELIZABETH I*, at 1-17 (1985).

71. For a full list of the offenses prosecuted in Star Chamber, see 1 *LIST AND INDEX TO THE PROCEEDINGS IN STAR CHAMBER FOR THE REIGN OF JAMES I (1603-1625) IN THE PUBLIC RECORD OFFICE, LONDON, CLASS STAC8*, at 34-36 (Thomas G. Barnes et al. eds., 1975).

72. In the Middle Ages, informations could originate only in the Court of King's Bench and were used when a person committed "a gross misdemeanor, either personally against the king or his government, or against the public peace and good order." In those cases the form of trial was by jury. In the sixteenth century, however, jurisdiction in such cases and the authority to initiate them by information passed from King's Bench to Star Chamber. 4 WILLIAM BLACKSTONE, *COMMENTARIES* \*305-06.

73. Other more common punishments were fines or imprisonment. See GUY, *supra* note 70, at 46-47. Occasionally the court tried felonies as misdemeanors and inflicted punishments appropriate to misdemeanors. See Thomas G. Barnes, *Star Chamber Mythology*, 5

attractions to a government when, as in this case, it wished to ensure that a prosecution would take place. The other advantage of trying the case in Star Chamber, at least from the government's point of view, is that it would be decided by the judges of the court, who were members of the Privy Council or justices of the central common-law courts, without having to submit the facts to a trial jury

It might strike one as odd that Coke, the great defender of common-law procedure, especially trial by jury, would participate in the operation of a court that followed this type of inquisitorial procedure and that was associated with arbitrary government. Within forty years of the Gunter case, the Court of Star Chamber would be abolished by statute, mainly because of its enforcement of Charles I's unpopular and allegedly tyrannical religious and financial policies.<sup>74</sup> At the beginning of the seventeenth century, however, few complained about the court's procedure — not even the common lawyers, who were engaged in jurisdictional rivalries with other prerogative or conciliar courts. Private parties initiated most of the litigation in Star Chamber, and the procedure in those suits was similar to that followed in the Court of Chancery and the other courts of equity, with a suit commencing upon an individual's complaint, known as an English bill. Most of the suits heard before the court were in fact civil cases, even if they were technically classified as criminal proceedings.<sup>75</sup> Coke himself had a fairly brisk business representing clients in such suits.<sup>76</sup> The government would initiate genuine criminal prosecutions by information only in special circumstances like this, and Coke does not seem to have been bothered by the occasional operation of such an inquisitorial policy.<sup>77</sup> Indeed, as attorney general it was his responsibility to lay such informations before the court.

In any event, Coke was not the person responsible for the decision to charge the Gunters. Good reason exists to believe that Archbishop Bancroft, who as a member of the Privy Council could serve as a judge in the court,

AM. J. LEG. HIST. 4 (1961).

74. 16 Car., ch. 10 (1640) (Eng.). The statute referred to the proceedings of the court as "the means to introduce an arbitrary power and government." *Id.*

75. During the reign of James I, about 80% of all cases heard in Star Chamber involved real or personal property, even though the civil jurisdiction of the court had been eliminated by 1600. See GUY, *supra* note 70, at 47

76. Barnes, *supra* note 73, at 5.

77. Of 8,228 actions brought in Star Chamber during the reign of James I, only 52 were informations brought on behalf of the king; the attorney general brought some 600 informations, but most of those were not *pro rege* and were indistinguishable from private party bills. Thomas G. Barnes, *Star Chamber Litigants and their Counsel, 1596-1641*, in LEGAL RECORDS AND THE HISTORIAN 7, 9 (J. H. Baker ed., 1978).

took the initiative in this regard and may have even secured the support of the king himself.<sup>78</sup> Nor was Coke the man responsible for directing the prosecution.<sup>79</sup> That duty fell to Bancroft's subordinates, Harsnett and Richard Neile, the dean of Westminster. The role these two men played in the trial became clear when Harsnett, who had been chosen vice-chancellor of the University of Cambridge, was asked to travel to the university to be admitted. Neile protested this absence on the grounds that it would "greatly hinder the prosecution of Anne Gunter's business." The problem was that neither his Majesty's counsel nor the clerks of the Star Chamber could "do anything longer than myself or Mr. Harsnett do ourselves attend them."<sup>80</sup>

No small irony appears in the use of inquisitorial procedure in this case. Inquisitorial procedure, as employed on the European continent, greatly facilitated the prosecution of witches, whereas English criminal procedure at the common law, which prohibited the government from initiating cases by itself and which required conviction by a petty jury, helps to explain the relatively low conviction rates in English witchcraft trials.<sup>81</sup> Now, however, the government was using inquisitorial procedure not to prosecute witches but to prosecute those who had accused them.

Whatever the drawbacks of inquisitorial procedure, it did provide certain protections to the accused that were unavailable at the common law. The defendants could, for example, have counsel, and they could call witnesses on their behalf. Moreover, those witnesses were sworn. Their testimony, therefore, carried more weight than in the common-law courts, in which only crown witnesses were sworn. During the two years this case consumed, more than fifty witnesses were deposed, and their testimony filled more than 450 manuscript pages. This group of witnesses included not only many of the residents of North Moreton and the surrounding area but also a large number of Oxford men, many of whom had come to see Anne when she was staying at Exeter College. Among them were six members of

78. On Bancroft's involvement in this case, see EWEN, *supra* note 1, at 33. On Bancroft's influence on the king's attitudes toward possession and witchcraft after his arrival in England, see MacDonald, *supra* note 6, at xlvi-l. Bancroft had probably commissioned Jordan's pamphlet on Hysteria. *Id.* at xxiii.

79. Coke left his position as attorney general during the period when depositions were being taken. He was appointed chief justice of the Court of Common Pleas on June 30, 1606.

80. Letter from Richard Neile to the earl of Salisbury (1606), in 18 CALENDAR OF THE MANUSCRIPTS OF THE MOST HONOURABLE THE MARQUESS OF SALISBURY PRESERVED AT HATFIELD HOUSE 422, 422-23 (M.S. Giuseppi ed., 1940). On March 1, 1606, Neile received £300 from the Exchequer to distribute to various persons who were involved in the case against the Gunters. EWEN, *supra* note 1, at 14.

81. LEVACK, *supra* note 3, at 64-70, 184.

Exeter college (two of them fellows), the regius professor of physic, and the Hebrew reader for the University. The group also included Dr. Jorden and his wife, the parson of St. Tolles in Oxford, and the chancellor of the diocese of Salisbury. Jorden, it should be mentioned, had been asked to testify in the Elizabeth Jackson case two years before, and he had published his treatise on hysteria at the prompting of Bancroft.

What is interesting about this testimony is that a great majority of it was given *ex parte* Gunter. Admittedly, many of these witnesses, in responding to interrogatories drafted by the prosecution, gave evidence that supported the prosecution's case. Nonetheless, the depositions produced a surprising amount of support for the Gunters. The vicar of North Moreton and many other witnesses claimed that they had seen Anne's clothes perform as described without human aid.<sup>82</sup> Curiously enough, Reverend Bird, despite being the object of one of Anne's charges, declared to the court that he thought her fits were genuine.<sup>83</sup> Apparently, Bird's belief in the reality of possession was more important to him than the prospect of retaliating against Anne by his testimony.

Even more surprising was the testimony of William Gwilyam and his wife, Anne, that Agnes Pepwell, who had been placed in their custody at Westminster toward the end of 1605, had confessed to them that she had in fact been a witch for fourteen years and possessed a black cat as her familiar spirit. According to the Gwilyams, Agnes had admitted that she and Elizabeth Gregory had bewitched Anne by having her spirit blow upon her "to make her sick and to swell"; that she would have also bewitched Brian Gunter but could not, having no power over him; and that Anne had not feigned her torments and pains. Agnes had also expressed sorrow for having bewitched Anne but explained that she could not undo the harm inflicted. She wished that Elizabeth Gregory would also repent yet knew that she could not because "her heart is so hardened."<sup>84</sup>

This remarkable testimony regarding Agnes Pepwell's alleged confession in the presence of the Gwilyams was itself suspect on the same grounds as Anne Gunter's confession to Harsnett: It may have been coerced. Pepwell had, after all, been in Gwilyam's custody when she made her alleged admission of guilt. Moreover, she herself did not testify in the case, raising the further possibility that the Gwilyams might have misrepresented

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82. STAC 8/4/10, fols. 192, 208v

83. *Id.* fol. 208v

84. *Id.* fols. 203-06. An uncoerced admission of witchcraft was not unprecedented, especially when the accused party experienced guilt for hostility to a neighbor or for other sins.

what she had told them. In any event, Pepwell's reported confession was unlikely to serve as a counterweight to Anne's, which she had made before the court in answer to the information against her on February 23 and in her deposition of February 24.<sup>85</sup>

Conspicuous in his absence from this list of witnesses was Anne's brother-in-law, Thomas Holland. Although his wife testified on behalf of her sister, Holland did not. The reason for this is apparently Holland's own skepticism regarding possession. Known for his hostility to Catholicism,<sup>86</sup> he had on at least one occasion preached against the practice of exorcism, castigating those who "go about to show the truth of religion by casting out devils."<sup>87</sup> These actions would seem to identify him with the position of Bancroft and the ecclesiastical establishment regarding the phenomenon of possession.

Unfortunately, we do not have a formal record of the court's decision because most decrees of the court have been lost.<sup>88</sup> It is likely, however, that Brian Gunter was convicted and fined (although not mutilated), while Anne, having confessed to the king and the court, apparently received a royal pardon and a dowry.<sup>89</sup> Much more important than any sentence, however, was the discrediting of a counterfeit possession and the demonstrable proof, so often lacking even in mere acquittals for witchcraft, that an alleged practice of witchcraft had never taken place. The trial of the Gunters in Star Chamber did much more to support the arguments of the witchcraft skeptics such as Reginald Scot than had the acquittal of Elizabeth Gregory and Agnes Pepwell at the Berkshire assizes. It also strengthened the emerging skepticism of the new king of England. Once the scourge of Scottish witches, he took particular delight during the rest of his reign in England in exposing culprits who brought fraudulent charges against witches.<sup>90</sup>

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85. *Id.* fols. 73, 122-29. Anne threw herself on the mercy of the court, appealing to the "weakness of her sex and of her young years." *Id.* fol. 73.

86. See RICHARD KILBIE, *A SERMON PREACHED IN SAINT MARIES CHURCH IN OXFORD, MARCH 26, 1612, AT THE FUNERALL OF THOMAS HOLLAND* (Oxford 1613). On Holland's hostility to Arminianism as a manifestation of popery, see NICHOLAS TYACKE, *ANTI-CALVINISTS* 72 (1987).

87. *THE DIARY OF JOHN MANNINGHAM OF THE MIDDLE TEMPLE 1602-1603*, at 198 (Robert P. Sorlien ed., 1976).

88. GUY, *supra* note 70, at 19.

89. The king allegedly gave Anne a marriage portion after she confessed to him on October 10, 1605. Guidott, *supra* note 51.

90. PAUL, *supra* note 50, argues that James's skepticism began earlier.

### *The Significance of the Trial*

The Gunter trial was the first attempt by an English government, using the one central criminal court in which it could initiate criminal prosecutions, to bring the *accusers* of witches to trial.<sup>91</sup> Previously, the only way such persons could be prosecuted was by a charge of slander, brought by the wronged party, in either an ecclesiastical or a secular court.<sup>92</sup> Now the government itself, represented by members of the Privy Council, was undertaking this task and was using one of the most powerful courts in the realm to achieve its objectives. Ultimately all central governments would take such action, but not until they had first repealed the legislation that had originally facilitated the prosecution of the crime. What is striking about this case is that the process of counteraction began only two years after the passage of a new, more severe witchcraft statute and at a time when that statute was still being enforced.

The Gunter case did not bring an end to witchcraft prosecutions in England. Trials continued to be held for a full century after the Gunters were exposed. The Gunter trial did, however, mark a turning point in the history of English witch-hunting: After 1607 the number of witchcraft executions in England began to decline.<sup>93</sup> Part of the reason for this development was the growing skepticism of those who effectively controlled the judicial process:

91. In February 1603, Star Chamber had sentenced John Darling, the fourteen-year-old boy whom John Darrell had dispossessed, to be whipped and to lose his ears for libeling the vice-chancellor of the University of Oxford, not for falsely accusing individuals of witchcraft. 1 THE LETTERS OF JOHN CHAMBERLAIN 186-87 (Norman E. McClure ed., 1939).

92. On slander charges in the ecclesiastical courts, see generally J. A. Sharpe, *Defamation and Sexual Slander in Early Modern England: The Church Courts at York*, 58 BORTHWICK PAPERS 1 (1980). Slander for calling a person a witch could be actionable in the common-law courts, where the claim that a person had committed a felony was one of the few circumstances in which an action on the case for words was allowed. Occasionally such cases came before quarter sessions. For example, see 4 QUARTER SESSIONS RECORDS 182 (J. C. Atkinson ed., 1886). The common-law courts, however, usually interpreted such defamatory comments strictly, leaving them to be heard before the ecclesiastical courts. For example, see *Markham v Adamson*, 82 Eng. Rep. 883 (K.B. 1681), in which the defendant accused the plaintiff of being a witch. The verdict was for the plaintiff, but judgment was given against him on the grounds that the slanderous words "did not import an accusation of any offence within the statute." *Id.* at 883. In the common-law courts a slandered party could collect damages, but in the ecclesiastical courts the only punishment could be public penance. See J. H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 495-508 (3d ed. 1990).

93. Alfred Soman, *Decriminalizing Witchcraft: Does the French Experience Furnish a European Model?*, 10 CRIM. JUST. HIST. 1, 1-22 (1989); EWEN, *supra* note 12, at 100. The number rose again only for a brief period of time during the 1640s.

the king, the judges, and the clergy. During the 1630s, when men like Chief Justice John Finch dominated the bench, executions for witchcraft became more infrequent than at any time since the accession of Queen Elizabeth. Finch, the judge responsible for cropping William Prynne's ears in Star Chamber as a punishment for libel, was much more sympathetic to those accused of witchcraft. While riding the western circuit in 1630, he assigned four eminent barristers to counsel a poor woman accused of witchcraft on points of law.<sup>94</sup> During the same period of time, when William Laud was archbishop of Canterbury and Harsnett and Neile served on the episcopal bench, the clergy exhibited a comparable skepticism. In 1633, the efforts of John Bridgeman, the bishop of Chester, exposed one of the greatest cases of witchcraft fraud, the Pendle Swindle. Two of the suspects in that case were sent to London, where King Charles I and his physician, William Harvey, who had demonstrated skepticism in 1605 regarding Anne Gunter's calluses, searched in vain for the witches' marks on the suspects' bodies.<sup>95</sup>

The only serious witch-hunting to take place after this time occurred during the English Civil War, when the self-styled witch-hunters Matthew Hopkins and John Stearne conducted a major witch-hunt, resulting in the conviction and execution of more than 100 persons in the southeastern counties of the country. This hunt, the most intense in English history, would not have taken place if central justice had not broken down. Owing to the disruptions of the Civil War, the judges from the central common-law courts were unable to preside at the assizes in 1645, and as a result Hopkins and Stearne, acting with the permission of municipal authorities, were able to use methods of judicial coercion that had been strictly forbidden in previous English witchcraft trials.<sup>96</sup> For example, they subjected witches to the torture of forced sleeplessness — the dreaded *tormentum insomniae* — that had been used to great effect on the Continent to secure confessions that could not otherwise have been elicited.<sup>97</sup> One might also speculate that the

94. See J. S. COCKBURN, *A HISTORY OF ENGLISH ASSIZES 1558-1714*, at 121 (1972).

95. On this episode, see WALLACE NOTESTEIN, *A HISTORY OF WITCHCRAFT IN ENGLAND FROM 1558 TO 1718*, at 146-57 (1911).

96. THOMAS, *supra* note 7, at 458. For a full discussion of this witch-hunt, see generally RICHARD DEACON, *MATTHEW HOPKINS: WITCH FINDER GENERAL* (1976).

97. MATTHEW HOPKINS, *THE DISCOVERY OF WITCHES* (1647), reprinted in *THE DISCOVERY OF WITCHES: A STUDY OF MASTER MATTHEW HOPKINS COMMONLY CALLED WITCH FINDER GENERAL* 49, 54-55 (Montague Summers ed., Cayme Press 1928). Hopkins justified this procedure on the grounds that it was designed to encourage the witches' familiars to appear, since if the witches were awake, they "would be more the active to call their imps in open view the sooner to their help." *Id.* at 54. Hopkins denied that a confession adduced under torture had any validity and that if a witch confessed after being kept awake,

abolition of Star Chamber in 1641 and the elimination of episcopal judicial and political authority at the time of the Civil War removed further impediments to the type of intense witch-hunting that occurred in 1645.

After the Restoration, the number of witchcraft prosecutions and executions continued the downward trend that had developed in the first part of the century. The last execution took place in 1685, while the last conviction, that of Jane Wenham in 1712, was effectively reversed when the skeptical assize judge, Sir John Powell, granted a reprieve. An act of the British Parliament in 1736 finally repealed the witchcraft statute of 1604, together with the Scottish statute of 1563.<sup>98</sup>

Overall, however, the decriminalization of witchcraft in England was a long and complex process. Ironically, it took longer to realize in England than in other European countries, especially those where inquisitorial procedure was employed. In those countries judges exercised tighter control of the judicial process than did their English counterparts, and they also acquired appellate authority in all witchcraft sentences. By exercising those powers they were thereby able to discourage prosecutions unilaterally.<sup>99</sup> In England, on the other hand, juries continued to establish the facts of the case and to make determinations of judicial proof, and there was no system of regular appeals. Judges might try to influence the jury by refusing to admit certain witnesses and by summing up the evidence, but with the law of evidence still in its infancy and with judges still respecting traditions of jury independence, occasional convictions and even executions occurred long after they had been abandoned in other parts of Europe.<sup>100</sup> The conviction and execution of Amy Duny and Rose Cullender at Bury St. Edmunds in 1662 and that of Temperance Lloyd, Susanna Edwards, and Mary Trembles at Exeter in 1682 can be attributed to the determination of juries to convict

the magistrate would examine them after sleep. *Id.* at 57-58.

98. 9 Geo. 2, ch. 5, §§ 1-2 (1736) (Eng.). The law made it an offense to "pretend to exercise or use any kind of witchcraft, sorcery, enchantment or conjuration, or undertake to tell fortunes" on the pain of imprisonment for one year. *Id.* § 4.

99. For example, see generally Soman, *supra* note 93.

100. *Id.* The last execution for witchcraft in England, the hanging of Alice Molland, occurred at Exeter in 1685, while the last conviction, in which Justice Powell reprieved the defendant, Jane Wenham, took place at Hertford in 1712. See THOMAS, *supra* note 7, at 452. By contrast the Netherlands had its last executions during the first decade of the seventeenth century. Marijke Gijswijt-Hofstra, *Six Centuries of Witchcraft in the Netherlands: Themes, Outlines, and Interpretations*, in WITCHCRAFT IN THE NETHERLANDS: FROM THE FOURTEENTH TO THE TWENTIETH CENTURY 1, 27 (Marijke Gijswijt-Hofstra & Willem Frijhoff eds. & Rachel van der Wilden-Fall trans., 1991).

and the reluctance of the judiciary to use their influence to persuade them otherwise.<sup>101</sup>

Although the English government did not succeed in preventing all witchcraft executions after 1604, it did take steps throughout the seventeenth century to discourage certain prosecutions. The tactic used in the Gunter case, of prosecuting those who brought false charges against innocent persons, was only one of the weapons at its disposal, but it was a particularly effective one. It was in fact the tactic employed by the government in one of the last witchcraft cases of the period, that of Richard Hathaway in 1702.

Hathaway, a laborer, had accused one Sarah Morduck, of Southwark, of bewitching him, preventing him from eating, and inflicting on him a number of diseases. As a means of curing himself he scratched Morduck to obtain blood, an action by which he claimed to be cured. In the ensuing trial Morduck was acquitted, and Hathaway was exposed as an impostor and a cheat. Nevertheless, Hathaway continued to claim that he was bewitched, and under his prodding, Morduck continued to be "abused by the rabble."<sup>102</sup> It was claimed that Hathaway had the support of a Surrey magistrate, as well as that of neighbors who took up collections for him. In order to put an end to the harassment of Morduck, the attorney general, Edward Northey, exhibited an information in King's Bench against Hathaway, claiming that he was an impostor and that he had maliciously intended "to bring [her] into the danger of losing her life."<sup>103</sup> Hathaway was convicted at the Surrey assizes. He was also tried and convicted, together with three other accomplices, of assaulting, beating, scratching, and wounding Sarah Morduck.<sup>104</sup>

There are of course numerous similarities between the Gunter and Hathaway trials. In both cases the attorney general filed an information against the defendant for falsely accusing individuals of witchcraft. In both cases the accused were charged with conspiracy to indict as well as with

101. For the trials at Bury St. Edmunds and the role played by Sir Matthew Hale, see generally A TRYAL OF WITCHES, *supra* note 23, and especially *id.* at 55-56. On the prosecutions at Exeter and the failure of Sir Thomas Raymond to instruct the jury regarding the use of confessions as evidence, see ROGER NORTH, THE LIVES OF THE RT. HON. FRANCIS NORTH; THE HON. SIR DUDLEY NORTH; AND THE HON. AND REV. DR. JOHN NORTH 9, 167-68 (London 1890), and see generally A TRUE AND IMPARTIAL RELATION OF THE INFORMATIONS AGAINST THREE WITCHES (London, F Collins 1682), *reprinted in* 8 A COMPLETE COLLECTION OF STATE TRIALS AND PROCEEDINGS FOR HIGH TREASON AND OTHER CRIMES AND MISDEMEANORS FROM THE EARLIEST PERIOD TO THE YEAR 1783, at 1017 (T.B. Howell ed., London, T.C. Hansard 1816) [hereinafter A COMPLETE COLLECTION].

102. 14 A COMPLETE COLLECTION, *supra* note 101, at 644.

103. *Id.* at 640. Hathaway was imprisoned and fined.

104. *Id.* at 689-96.

imposture. The only difference is that the Gunters were tried in Star Chamber, whereas Hathaway and his associates were tried by a jury at the assizes after the information had been exhibited in the Court of King's Bench. The change can be accounted for by the destruction of the Star Chamber in 1641 and the transfer of its jurisdiction to the common-law courts, mainly to King's Bench, where all informations were to originate.<sup>105</sup>

The decline of witch-hunting after 1660, and its virtual termination by the Hathaway prosecution of 1702, can easily lead to the conclusion that the common-law courts, which triumphed over the prerogative courts at the time of the English Revolution, were primarily responsible for the decline and end of witch-hunting. Unquestionably, the Hathaway case, taken together with the refusal of skeptical judges like Sir Thomas Holt and Sir John Powell to countenance prosecutions for witchcraft brought into their courts, contributed significantly to that process.<sup>106</sup> But in discussing the end of witch-hunting in England, we must recognize that the first step in this process, the prosecution of the Gunters in 1606, occurred not in a common-law tribunal but in a prerogative court — a court that followed inquisitorial procedure and that was, for a short period of time, associated with "arbitrary power and government."

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105. See 4 WILLIAM BLACKSTONE, COMMENTARIES \*306-16. The statute abolishing Star Chamber, 16 Car., ch. 10 (1640) (Eng.), actually provided for the disablement of an officer convicted three times "by indictment, information or any other lawful means" for violating the act itself. *Id.* § 4.

106. For the negative effect of Holt on prosecutions for witchcraft, see NOTESTEIN, *supra* note 95, at 320-21.

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# ESSAYS

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