

Grau en Dret
Treball de fi de Grau (21067/22747)
Curs acadèmic 2021-2022

« You shall not suffer a witch to live » (Exodus 22 :18)

AN ANALYSIS ON THE LEGALITY OF THE WITCH-HUNTS IN
16TH AND 17TH CENTURY ENGLAND AND SCOTLAND WITH A
GENDER PERSPECTIVE

Nuria Serra Zamora

217983

Tutor del treball:

Josep Capdeferro Pla



DECLARACIÓ D'AUTORIA I ORIGINALITAT

Jo, *Nuria Serra Zamora*, certifico que el present treball no ha estat presentat per a l'avaluació de cap altra assignatura, ja sigui en part o en la seva totalitat. Certifico també que el seu contingut és original i que en sóc l'únic autor, no incloent cap material anteriorment publicat o escrit per altres persones llevat d'aquells casos indicats al llarg del text.

Com a autor/a de la memòria original d'aquest Treball Fi de Grau autoritzo la UPF a dipositar-la i publicar-la a l'e-Repository: Repositori Digital de la UPF, <http://repositori.upf.edu>, o en qualsevol altra plataforma digital creada per o participada per la Universitat, d'accés obert per Internet. Aquesta autorització té caràcter indefinit, gratuït i no exclusiu, és a dir, sóc lliure de publicar-la en qualsevol altre lloc.

15/5/2022

The hunting of witches was a time of legal and social persecution of women during the sixteenth and seventeenth centuries. England and Scotland used their criminal justice system to punish alleged witches, firstly by the enactment of acts and secondly by holding witchcraft trials. The aim of this work is to examine the impact that the law had on the hunt of “witches” from its legality to its fairness. To achieve this goal, it is going to be examined the influence that gender had in the construction of this offence.

Table of Contents

Introduction	3
Introducing Five Witches	5
Witchcraft and the Law	8
Origins and definition of the crime	8
Witchcrafts Acts in England and Scotland	10
Witchcraft trials	13
Criminal Procedure	13
Evidence	15
Witchcraft and Gender	19
Femininity: Speech and Sexuality	19
Speech	20
Sexuality	20
Feminity	21
Masculinity	22
Scapegoating or the oppression of women	23
Witchcraft and Justice	26
Conclusions	28
Bibliography	30

Introduction

A witch is a person who uses supernatural powers with malice. Surprisingly as it may seem, for centuries, they were thought to be real. People feared their powers, consequently, they had to be chased. Thereof, it started one of the darkest periods of European history, the Witch-Hunts.

The object of this dissertation is the study of the Witch-Hunt in England and Scotland during the 16th and 17th centuries. Both territories used the mechanisms provided by the law to punish the practice of witchcraft. England, which is one of the countries with the longest parliamentary tradition, for more than two centuries enacted acts to criminalise the use of witchcraft. Scotland, on the other hand, was the European land to prosecute more “witches” per person. As a result, it becomes incredibly fascinating to explore how the English and Scottish criminal justice system was adapted to accommodate the persecution of witches. Furthermore, the sixteenth and seventeenth centuries were periods in which the State had established its legal monopoly in the punishment of its citizens. Finally, these centuries stand out for being very convulsive times due to the religious reform brought by Protestantism and the political tensions born from the English Civil War.

The main goal of this dissertation is to discuss the role of the law in the persecution of witches. I am going to try answering the question that arose when I decided to choose this topic. Why did “witches” cause such a stir as to having to be hunted? Why did the State use its criminal system to persecute them? Was this criminal institution based on certain reliable evidence and followed due process? Was there any difference between the laws in England and Scotland? Were witches persecuted differently in each territory? Were all “witches” women or men were involved as well? Was there a gender bias against the accused? Was this witch-hunt based solely on misogynistic preconceptions of what women had to be? Were the accused “witches” fairly treated? If not, do the public institutions owe any sort of reparation to those unjustly convicted?

There are several scholars that have studied this topic. Nevertheless, there are only a few who have delved into the subject of witchcraft with more than the publication of a few works. Even if there are a great number of publications treating the issue of Witch-Hunts, there are only a few that examine the question of gender in it. As a matter of fact, it is not until the 1980s (after the second wave of feminism) that the topic of witchcraft is taken in critique approach. Furthermore, the literature treating the Scottish Witch-Hunt is far larger than the English one. Due to the phenomenon of witchcraft being more widespread in Scotland, the number of authors

specialising in the English Witch-Hunt is very reduced. Moreover, the journalist publications reporting the English/Scottish witch-hunts are not very extensive and it only involves the Scottish press and British left-wing newspapers.

The dissertation starts with the narration of the stories of five people accused of being witches. The choice of these cases is not random, they all include features related to the object of witchcraft which are going to be analysed throughout the paper. The methodology used in this paper consists of the examination of the works of very renowned authors in the field of witchcraft. As for the Scottish side, the dissertation is based on the publications of Julian Goodare (History Professor at the University of Edinburgh), Christina Lerner (Professor of Sociology at the University of Glasgow) and Sierra Dye (Postdoctoral Fellow at the Centre for Scottish Studies at the University of Guelph). Regarding the English side, the research includes primarily the works of Malcolm Gaskill (History Professor at the University of East Anglia). Apart from these authors' publications, the research will be supplemented secondarily by other works which focus on the theme.

On the other hand, the thesis will be divided into four parts which represent the questions I am seeking answers to. The first two blocks will be focused on the legal aspects of how witchcraft was punished. The last two blocks will constitute the analysis of how the persecution of witchcraft affected gender during the modern age and how that may affect in the current times.

Indeed, the first part recollects within which instruments the offence of witchcraft was regulated. This section looks at all the acts that were written to prosecute this crime. Due to the different legislation implemented around the United Kingdom, it is analysed both English and Scottish ones, stressing their differences and similarities. The second part looks at how the witchcraft offence was applied throughout the witch trials. The aim is to outline the process in which offenders were sentenced highlighting the used evidence.

To continue with, the third part will be centred on the gender approach to the witchcraft offence. It is going to be asked about the impact that femininity and masculinity had on the persecution of witchcraft. Finally, in part four, it will be discussed the footprint that this historical phenomenon has left in our society. To conclude, it will be assessed how the legal institutions are trying to correct the wrongdoings of the past regarding "witches".

Introducing Five Witches

The aim of the dissertation will be the study of the Witch Hunt phenomenon in England and Scotland during the sixteenth and seventeenth centuries. In order to do the latter, the paper will start by introducing five cases of condemned “witches” which will present the portrayal of witchcraft in early modern Britain. The anecdotic content of these cases will display an image of the multiple topics related to the persecution of “witches” which are going to be discussed throughout the dissertation.

Geillis Duncan, 1590 (North Berwick): The first Scottish Witch Hunt

Geillis Duncan was a teenage girl condemned of witchcraft in 1591, during the first witch hunt in Scotland¹. Geillis was a servant who was accused by her employer (a local magistrate) to having participated in witches’ meetings². She was tortured by him because of her healer reputation, and she confessed to having taken part in a conspiracy to sink Queen Anne’s ship on Halloween night³. She later named other women who had plotted with her which resulted in the North Berwick trials. Soon after the confession, she retracted it; however, it was too late since it had already emerged the panic in the Scottish Lowlands. The North Berwick trials (1590-1591) were the result of the obsession of King James VI of Scotland with black magic. His belief that witches had plotted with the devil to invoke terrible storms during his and his wife’s journey from Denmark marked the first great witch panic in the territory which led to the conviction of about two hundred people.

John Lowes, 1645 (Suffolk): The Witch Vicar

Reverend John Lowes was an octogenarian man who was a vicar in Brandeston (Suffolk)⁴. Despite his effervescent puritanism, such was the harshness of his teachings and use of authority

¹ National Geographic. 2019. *A royal obsession with black magic started Europe's most brutal witch hunts*. [online] Available at: <<https://www.nationalgeographic.co.uk/history-and-civilisation/2019/10/royal-obsession-black-magic-started-europes-most-brutal-witch>> [Accessed 27 March 2022].

² Wright, Michael. “The Jew’s Harp in the Law, 1590-1825.” *Folk Music Journal*, vol. 9, no. 3, 2008, pp. 349–71.

³ Goodare, J., Martin, L. and Yeoman, L., 2003. *Survey Database, Survey of Scottish Witchcraft, Scottish History, School of History and Classics, The University of Edinburgh, Scotland*. [online] [Witches.shca.ed.ac.uk](http://witches.shca.ed.ac.uk). Available at: <http://witches.shca.ed.ac.uk/index.cfm?fuseaction=home.caserecord&caseref=C%2FEGD%2F110&search_type=searchaccused&search_string=lastname> [Accessed 27 March 2022].

⁴ Gaskill M, 'Masculinity And Witchcraft In Seventeenth-Century England' *Witchcraft and masculinities in early modern Europe* (Palgrave Macmillan 2009) pp.175-181

in the local parish, that he was believed of having invoked the demon to maintain his power. Concerning religion, the community reprehended his “supposed” inclinations to papism (Catholicism). Nevertheless, the witchcraft accusations did not come forward until he sided with an accused woman and after being linked to witchery by the confessions of two suspected witches. He was interrogated and tortured by the infamous English witch-hunter Matthew Hopkins, prosecuted in the Bury St Edmunds trials in 1645 and later, executed. John confessed, under coercion, of having sunk a ship sending diabolical creatures under his mouth. He was thought to be guiding his parishioners to evil.

Isobell Crockett, 1662 (Stirling): A Witch Wearing the Devil’s mark

Isobell (often called Elspeth) Crockett was a servant in a Scottish small village, Alloa⁵. In 1658, Isobell was accused by two other alleged witches (Kathrine Remy and Margaret Talzeor) of participating in witches’ meetings and bearing the devil’s mark. After being intensively questioned about her relationship with the devil and whether she had done a pact with him, Isobell confessed to not knowing if the devil had made a mark on her due to her lack of knowledge of witchcraft. Then, a male witch-pricker⁶ examined her genitalia and consequently confirmed that she had performed sex with the devil. The outcome of Isobell’s trial was her deportation to America. However, due to irregularities in the process, she was tried again later in 1662 in the Stirling Trials. Nevertheless, the outcome of her trial is not known⁷.

Elizabeth Maxwell, 1650 (Dumfries): A Quarrelsome Witch

Elizabeth Maxwell was a middle-aged woman living in the Scottish town Dumfries⁸. In her hometown, she had a reputation for folk-healing and for scolding her neighbours. The former reputation was formed when she was once seen by a local man curing her daughter by touching her head. In 1650, she was accused of witches’ *maleficium* (malice) because of her rows with her neighbours. Indeed, Elizabeth quarrelled with the collector of her daughter’s rent and cursed her. Later on, the collector’s husband became ill. In addition, Elizabeth entered into another dispute with another collector. After Elizabeth had threatened her, the collector became poor. Afterwards, she was arrested and put in custody by the Dumfries’s Bailie⁹ and he became ill.

⁵ Goodare J, 'Women And The Witch-Hunt In Scotland' (1998) 23 Social History pp. 295-303

⁶ A witch-pricker was the man in charge of conducting body examinations of the suspected witches in order to find the devil’s mark.

⁷ Goodare, J., Martin, L. and Yeoman, L., 2003. *Survey Database, Survey of Scottish Witchcraft...*

⁸ Dye S, 'To Converse With The Devil? Speech, Sexuality, And Witchcraft In Early Modern Scotland' (2012) 37 International Review of Scottish Studies pp.15

⁹ A *Bailie* was a municipal officer and a magistrate in Scotland.

She was also witch-pricked¹⁰ and the devil's mark was found on her leg. It consisted of a blue mark, probably produced by her veins¹¹.

Helen Duncan, 1944 (Britain): The last Witch Trial

Helen Duncan was a middle-aged woman who became the last person imprisoned under the Witchcraft Act of 1735¹². She was born in Scotland in 1897 and she worked as a medium and spiritualist¹³. In 1944, she was tried for using witchery powers in the form of bringing the spirits of the deceased under the Witchcraft Act 1735. During the second world war, Helen lived in Portsmouth and during one of her spiritual sessions, she saw a navy officer from the HMS Barham vessel who had just been sunk down by the enemy. However, this information was not revealed to the public until several months after her vision. Following these revelations, the police arrested her, she was prosecuted and sent to prison for nine months. Shortly after her conviction, the eighteenth-century witchcraft act was repealed.

To sum up, these five people all come from very different backgrounds and were condemned for very different actions, nonetheless, what they had in common is that they all were tried under the same process which punished witchcraft. The features presented in every person's case are not chosen randomly but they are carefully selected in order to explain the Witch Hunt phenomenon in England and Scotland. Each of them will be discussed in the following sections of the project.

¹⁰ The consecutive actions that a witch-pricker would do to a witch.

¹¹ Goodare, J., Martin, L. and Yeoman, L., 2003. *Survey Database, Survey of Scottish Witchcraft...*

¹² Gaskill M, 'Witchcraft: A Very Short Introduction' (*Very Short Introductions* ; 228) (Oxford University Press 2010) pp. 109, 120, 113, 114

¹³ 'BBC - History - Scottish History' (*Bbc.co.uk*, 2022)

<https://www.bbc.co.uk/history/scottishhistory/modern/oddities_modern.shtml> accessed 27 March 2022

Witchcraft and the Law

The persecution of witches during the 1500s and 1600s could not have been possible without the use of the instruments provided by the law. The United Kingdom has had one of the largest parliamentary traditions in the world and the rule of law has long been one of the core principles of its legal system. Consequently, the population's panic about witchcraft legitimised the creation of a whole criminal institution by the legislator through the passing of acts. However, the case of Helen Duncan showed that even when there was no public panic, the law was still the main instrument of persecution of witchery acts.

Furthermore, it must be said beforehand, that Scotland and England had independent legal systems condemning witchcraft until 1735. This piece will stress, as well, the similarities and differences of both territories as it is essential to understand the unique persecution of witches in both lands.

Origins and definition of the crime

In order to understand the punishment of witchcraft through the law, it must be learnt the influences and trends of the time that made an impact on the enactment of acts by the Parliament.

King James VI ruled Scotland from 1567 to his death in 1625 and he became King James I of England in 1603¹⁴. His reign comprises a very good deal of time for the creation of laws against witchcraft. Indeed, King James had such an absolute obsession with witchcraft and black magic that he even wrote a treatise on it, *Daemonologie* (1597)¹⁵. This publication was a compendium of the discovery of witches, the partnership with the devil and the punishment of such practices. The monarch's writings were influenced by the German manuscript *Malleus Maleficarum* (1486) which was the most important publication explaining witchcraft and black magic. Even though *Daemonologie* was not a document with legally binding force, it served to demonstrate the King's aversion to "witches" and reinforce the Parliament's aim to punish the crime. In addition, such was the King James's fear of "witches" that he caused the first great nationwide witch hunt in 1590. As a matter of fact and as seen in the case of Geillis Duncan, the first great

¹⁴ 'James VI And I' (*National Museums Scotland*, 2022) <<https://www.nms.ac.uk/explore-our-collections/stories/scottish-history-and-archaeology/james-vi-and-i/>> accessed 30 March 2022

¹⁵ 'British Library' (*Bl.uk*, 2022) <<https://www.bl.uk/collection-items/king-james-vi-and-is-demonology-1597>> accessed 30 March 2022

witch trial (North Berwick Trials) was a direct consequence of the King's belief in the witches' conjuration to kill him and his new bride, Queen Anne, in their trip from Denmark.

Furthermore, in King James's version of the bible (Exodus 22:18) it is said "*Thou shalt not suffer a witch to live*" (in modern English: "You shall not suffer a witch to live".) Nevertheless, in the original text in Hebrew, the word "*kasaph*" appeared instead of "*witch*" and it meant someone able to see the future, a diviner. Therefore, this translation showed once again the King's complete hatred towards "witches"¹⁶.

Not only was the monarch's obsession with fighting the devil that encouraged the development of the law against witchcraft, but a whole society impregnated with the beliefs of a new religious trend, Protestantism.

Protestantism was a Christian doctrine that emerged in the 16th century through the works of Martin Luther that led to religious reform in central Europe¹⁷. The Protestant Reformation advocated for a separation from the Catholic Church whose doctrine based on the indulgent system of forgiveness and privilege was thought to be preventing the worshippers from following the real faith¹⁸. Protestantism arrived in England and Scotland in the 1500s with King Henry VIII's willingness to annul the marriage with his consort and the consequent rejection of the Pope. Protestants demanded the necessity of legislation in the moral discipline in order to establish the current religion. For instance, an example of this effort to reform the moral behaviour of citizens was through the several witchcraft acts, it was also regulated the criminalisation of adultery and fornication¹⁹.

After having mentioned the influences that impacted the enactment of witchcraft acts, it must be regarded what exactly was being punished, that is, what consisted of witchcraft. In no legal document, a precise definition of what is witchcraft can be found, but authors like Goodare²⁰ or Larner²¹ describe what was being punished was the "*vane superstition*" involved in its practices. In other words, these involved a dangerous and false belief that if witchcraft practices worked it was because they came from the Devil and not God. Furthermore, there is no Act (nor English nor Scottish) in which being a witch is specifically defined as a crime but the

¹⁶ Gaskill M, *Witchcraft: A Very Short Introduction*... pp.19

¹⁷ Society N, 'The Protestant Reformation' (*National Geographic Society*, 2022)

<<https://www.nationalgeographic.org/article/protestant-reformation/>> accessed 19 April 2022

¹⁸ Goodare J, 'The Scottish Witchcraft Act' (2005) 74 *Church History* pp.42

¹⁹ Goodare J, 'Women And The Witch-Hunt In Scotland'... pp.294

²⁰ Goodare J, 'The Scottish Witchcraft Act' ... p.51

²¹ Larner C, *Enemies Of God* (Blackwell 1983)

legislator's intention is to penalise the *witchcraftis* (often the term used is also *maleficium* or *maleficia* in order to define the acts involving magic done with malice), that is illicit magical practices that harm the neighbour.

Witchcrafts Acts in England and Scotland

During the witch hunt of the sixteenth and seventeenth century, Scotland and England were still two separate realms and, therefore, different laws regarding witchcraft applied to each territory until the union of both crowns in the early eighteenth century (1707) and, as a result of this union, the enactment of the last witchcraft act was done in 1735. For the first time in the sixteenth century, the acts of witchery were no longer an ecclesiastical matter but a State issue, and through the legal instruments (which the latter had the ultimate monopoly of) it was given the same consideration as any other secular offence with the utilisation of the ordinary criminal procedure.

The first act which regarded witchcraft as a felony and punishable by death was the Witchcraft Act of 1542²², enforced during the reign of Henry VIII in England. Moreover, it defined what constituted witchcraft which was the use of magical invocations with the ultimate goal of hurting someone, punishable by death. Nonetheless, the Act did not prosecute anyone, and it did not last long since it was repealed five years later.

After a few years, the *Act agaynst Conjuracons Inchantments and Withecrafteres* (Witchcraft Act of 1563²³) was created in England during the reign of Elizabeth I. In comparison to the previous act, this one was more merciful since it was only punishable by death when the witchcraft activity had caused the destruction or the death of someone. In the same year of the enactment of this act, the Scottish Witchcraft Act²⁴ was passed. The Scottish Witchcraft Act was significantly harsher than its English counterpart since the punishment of the offence was far more widespread. As a matter of fact, the Act did not only punish with the capital offence those who performed witchcraft with *maleficia*, but also those actions that were less relevant and even the people that consulted “witches”. Nonetheless, the Scottish Act was far shorter and it heavily relied on the role of the different officials in the communities to precise the law. The

²² Gaskill M, *Witchcraft: A Very Short Introduction*...

²³ Magazine S, and Eschner K, 'England's Witch Trials Were Lawful' (*Smithsonian Magazine*, 2017) <<https://www.smithsonianmag.com/smart-news/englands-witch-trials-were-lawful-180964514/>> accessed 19 April 2022

²⁴ Goodare J, 'The Scottish Witchcraft Act' ...

passing of the Scottish Witchcraft Act was followed by the enactment of other laws criminalising adultery, fornication, incest and sodomy in 1567²⁵.

Following King James I accession to the English throne and due to his obsession with the fight against “witches”, the Witchcraft Act of 1563 was broadened creating the Witchcraft Act of 1604 called *An Act against Conjurat[i]on, Witchcraft and dealing with evil and wicked spirits*. This new piece of legislation was incredibly harder on the convicted since it punished with the death penalty, without the benefit of the clergy, the mere invocation of the devil or the communion with familiar spirits, even when it was done without harm.

The last great legislation against witchery was the one implemented in the 18th century, The Witchcraft Act of 1735²⁶. This legislation was the reflection of a change of attitude towards the punishment of witchcraft because it was considered by many jurists as an impossible crime with very circumstantial evidence and very little legal certainty. The end of civil war by the 1640s represented the end of the political tensions in the country provoked by the religious discrepancies and plots against the government. Furthermore, the development of the scientific revolution and the beginning of the industrial revolution flourished the concentration of people in urban areas. As a result, the popular belief in occultism and the possession of magical powers provided by the devil decreased enormously²⁷. The aim of this new law was to punish the false pretence of fortune-telling, witchcraft and sorcery. Because of the unification of the crown of England and Scotland, the new act applied to both territories in the same measure. Under this new legislation, the cases of condemned witches diminished considerably, however, in Scotland, they were still prosecuted but in a lesser number, due to the fact that the Scots were still living in smaller rural communities than their English neighbours. The Witchcraft Act of 1735 remained in force well until the mid-20th century. As seen in the previous section, the last person to be condemned for witchcraft was Helen Duncan in 1944. This last prosecution also called for a change in the law, and just 6 years later, the Fraudulent Mediums Act of 1951 was passed²⁸. The Act prohibited claiming to be a medium or a spiritualist in order to get money

²⁵ Goodare J, 'Women And The Witch-Hunt In Scotland' ... pp.294-297

²⁶ Gaskill M, *Hellish Nell* (Fourth Estate 2001)

²⁷ Gaskill M, 'Masculinity And Witchcraft In Seventeenth-Century England' ...

²⁸ 'Fraudulent Mediums Act 1951' (*Legislation.gov.uk*, 1951) <<https://www.legislation.gov.uk/ukpga/Geo6/14-15/33/enacted>> accessed 19 April 2022

deceptively. Finally, the latter was repealed by The Consumer Protection from Unfair Trading Regulations in 2008²⁹.

In conclusion, the content of the Acts itself was not very extensive. Indeed, the Acts only referred to the description of the felonies and the punishments very vaguely. Consequently, it was the role of the lawgivers, the courts, to develop the law. This role will be explored in the next section when referring to the application of the law.

²⁹ 'The Consumer Protection From Unfair Trading Regulations 2008' (*Legislation.gov.uk*, 2008)
<<https://www.legislation.gov.uk/uksi/2008/1277/contents/made>> accessed 19 April 2022

Witchcraft trials

During the 16th and 17th centuries, witchcraft was a criminal offence due to the enactment of laws, already mentioned in the previous section. Witchcraft became the practice of magic coming from the devil in order to hurt someone. Although, this is the premise of why witchcraft was being punished, it must be acknowledged that what consisted of witchcraft was extended or reduced, depending on the law that applied. The enforcement and punishment of this crime was done by the lawgivers, the courts.

In this section, the role of these lawgivers will be discussed. The importance that is given to the application of the law in this type of offence is that witchcraft has often been considered as a *crimen exceptum*³⁰. That is that the extraordinariness of the nature of the offence made that the traditional and standard rules of prosecution did not often apply. As a result, the study of the criminal procedure becomes intriguing enough to dedicate this part to. Furthermore, the role of evidence used in order to convict a person will be discussed thoroughly, as well, since it varied from the other offences and it will give much food for thought in the following sections of the dissertation.

Criminal Procedure

The process in which witches were tried presented significant features very much worth mentioning. Even though witchcraft could easily be considered a religious crime since its definition was impregnated with Christian words such as “a pact with the devil”, it was prosecuted by secular courts. The reasoning behind is that the term involving witchcraft *maleficia* (the intention of hurting someone), was worth persecuting.

Having already stated the differences in legislation between England and Scotland in the early modern age, it does not come as a surprise that the process in which witchcraft was tried varied slightly. For instance, both territories (contrarily to many of its European neighbours) prosecuted the crime only by secular and non-religious courts. Nonetheless, the influence of the *Kirk* (Scottish word for church) stood out in the Scottish witchcraft trials, whereas, in the English, it was less noteworthy. Secondly, both territories shared an accusatorial trial system, meaning that the plaintiff had to present the evidence in order to condemn the defendant;

³⁰ Levack B, 'Witchcraft And The Law' (2013) pp.7

whereas in an inquisitorial trial system this task would be done by members of the court³¹. Nonetheless, the Scottish criminal process did introduce some characteristics of the latter, making the role of the law officers essential to convict the “witches” in the territory³².

To begin with, the Scottish process began with the meddling of the kirk. The populace would come to their local parish if they wanted to denounce any rumours of witchcraft among their neighbours. However, as they had no power to prosecute anyone with the death penalty, they would reunite the influential men (such as the priest or the lairds) in the community forming the kirk session and they would demand to the Privy Council the organisation of a trial. Their role, therefore, would consist on assembling enough information (a dossier of evidence) of the witchcraft activities and suspected witches so that the Privy Council would agree to grant a commission with the aim of holding a local trial. This commission would be formed by the *lairds* (lords in Scottish) of the community, who would often happen to be sheriffs and justices of the peace in local courts³³. Its task would be the creation of the *ad hoc* trial, selecting a court officer, clerk, dempster and a jury (fifteen men with properties). It would not be rare that one forming the commission would often participate in the trial as a juror or conduct other tasks. All of them would always be men with honourous backgrounds. During the celebration of the trial, each party would present the evidence which could range from witness testimony to body examinations of the defendant made by officers of the court. The accused would rarely have a lawyer since it was not a requirement to conduct the trial³⁴.

The English process was very similar to the Scottish one since both followed the same core principles of common law. It was as well divided into two stages: the examination and recollection of evidence by the Justice of the Peace followed by the approval of the Privy Council to hold a trial. The main difference with the Scottish process is that the English criminal procedure required only the plaintiff to present all the evidence to the jury. Because of the difficulty that resulted in proving to be a witch to convince the jury, accusers would often hire the services of Witch-Finders or often called Witch-Hunters whose role will be explained below. To conclude, the involvement of the English church in the accusation of witches was

³¹ Gaskill M, 'Witchcraft And Evidence In Early Modern England' (2008) 198 Past & Present pp. 51

³² Levack B, 'Witchcraft And The Law' (2013) pp.4

³³ Goodare J, 'Women And The Witch-Hunt In Scotland' (1998) 23 Social History pp. 290

³⁴ Goodare J, 'Men And The Witch-Hunt In Scotland', *Witchcraft and masculinities in early modern Europe* (Palgrave Macmillan 2009) pp. 151-152

lesser, however, it did not mean that it did not exert influence in an informal manner such as in the encouragement of rumours against “witches”³⁵.

At the end of the trial, the defendant would be acquitted or condemned. The sentences could go from prison to execution. Executions were the most probable faith for being guilty of witchcraft and would include hanging followed by the burn of the corpse of the accused.

In conclusion, the establishment of trials for condemning witchcraft was a very informal process due to its spontaneous celebration (*ad hoc* trials) and little independence (the ones who gathered the information were the same ones to decide whether the crime had been committed).

Evidence

The most interesting aspect of the witch trials held not only in England and Scotland but in the rest of the continent, was the recollection and presentation of evidence to prove to the jury the practice of witchcraft. The latter resulted in a process of proving who was a witch as it was commonly understood that being a witch implied practising black magic, therefore, committing a crime.

This part will mention all the means of proof accepted by the early modern age courts. Due to the difficulty to prove who was a witch, the presentation of the evidence resulted in being very circumstantial despite being used to condemn a great number of people.

Firstly, it must be taken into consideration that because of the hazardousness of this process (mentioned above), there were some men that dedicated themselves solely to this task, the witch-finders or witch-hunters, as has been exemplified in the case of the English vicar John Lowes. Witch-hunters used to be elite men with a high preoccupation that witchcraft could harm them, especially even more, when they owned property. Others became so worried about saving society from satanic action that turned into serial witch-hunters. They dedicated themselves to going from town to town where there were rumours of witchcraft to gather evidence and present it to court. Matthew Hopkins was well-known for being the most serial witch-hunter in England, undertaking most of his work in East Anglia (southeast England). This is why, the rate of conviction of witches in this area was significantly higher than in the rest of England. As it has been explained before, the accusatorial trial system of England demanded the plaintiff to collect all the evidence that witch-hunters, like Hopkins, were hired to do in

³⁵ Gaskill M, 'Witchcraft And Evidence In Early Modern England' ... 39-40

exchange for a high sum of pounds. They were in charge of finding evidence through means such as confessions and other testimonies often extracted by torture³⁶. Due to the high cost of this service and the good reputation of these men, the evidence collected by these means was generally accepted by the court. In Scotland, however, the figure of the popular serial witch-hunter was not that singularised in well-known men, but it was the local members of the parish that did the job. This resulted in a higher number of convictions compared to its English neighbours since the number of witch-hunters was significantly higher³⁷.

Firstly, one of the pieces of evidence used not just by the courts but for the populace in order to know whether a woman was a witch was the ordeal. The ordeal was a test that alleged witches were forced to undertake in order to gain acquittal. This test could consist of carrying a hot iron and showing that she had been cured miraculously by god in the next couple of days. Another challenge could be throwing the alleged witch's body in blessed cold water and if she sank, she would be innocent. These tests, among others, portray the obvious impossibility to prove someone was innocent of witchcraft, however, it still left the accused with several injuries and, sometimes, their death³⁸.

Secondly, another very popular means of proof was to extract a confession from the alleged witch. Interrogations would be undertaken before the trial by witch-hunters. In order to get the confession from the alleged witch, there were some methods being used which included torture³⁹. Even though the latter practice was prohibited in England and heavily discouraged in Scotland⁴⁰, other methods (which now are considered to be torture) were used. Sleep deprivation became the one more employed. The interrogators would leave these women three to five nights without sleep which resulted in them having hallucinations and confessing to the crime⁴¹. That is why this was a very effective method to make the accused confess to witchcraft and since it left no physical marks, it was widely accepted by all courts. Finally, other women confessed to the crime of witchcraft with the aim to avoid further torture or receive a lesser sentence.

Thirdly, other pieces of evidence that were not extracted from the accused herself, were used in order to demonstrate witchcraft, such as declaration of testimonies. Many witches were

³⁶ Gaskill M, 'Witchcraft And Evidence In Early Modern England' ... pp. 49-50

³⁷ Goodare J, 'Men And The Witch-Hunt In Scotland',154-155

³⁸ Levack B, 'Witchcraft And The Law' (2013) pp.3

³⁹ Levack B, 'Witchcraft And The Law' (2013) pp. 6

⁴⁰ Goodare J, 'Women And The Witch-Hunt In Scotland' ... pp.302

⁴¹ Dye S, 'To Converse With The Devil? Speech, Sexuality, And Witchcraft ... pp.22

accused of witchcraft by their neighbours who would denounce them to the judicial authorities. The case of Elizabeth Maxwell very well represents one of the main reasons a woman could be accused of being a witch, quarrelling. Women, that had disputes with their neighbours and cursed them and, later, something bad happened to the latter, were thought of having demonic powers. This vision was supported as well by the common law offence of scolding. Scolding was a prosecutable crime in England and Scotland and it involved causing a nuisance to the community by continually disturbing its members⁴². Therefore, the witness' declarations about quarrelsome alleged witches were very much taken into consideration. Furthermore, other testimonial proof was given even more importance than the neighbours' words: "witches" implicating other "witches". Geillis Duncan's story portrays this type of evidence when she named other women as being "witches" during her interrogation. The goal of implicating other women by the alleged witch was to put an end to further torture during the questioning or avoid a harder sentence. In addition, the naming of other witches was fundamental to extract confessions during the interrogations since it was believed that witches did not act alone. As a matter of fact, the belief was that all "witches" belong to covens (a group of witches that acted together)⁴³.

Fourthly, not only was testimonial evidence fundamental to the conviction of "witches", but there was physical evidence as well. Because the crime of witchcraft was constructed under the pretence that witches' magic was coming from the devil through a pact between them, it was thought that the former would leave a mark on the witch. Shown by the story of Isobell Crockett, some specific people were in charge of conducting body examinations with the aim of finding this mark, the *prickers*. In England the task of witch-pricking was only done by women, however, in Scotland, it was essentially done by men⁴⁴. These examinations could be pinning parts of the witch trying to find the insensitive spot which was considered to be the mark. Others would consist of making searches into the intimate parts of these women since it was held that the pact would be formalised by the devil copulating with the witch. Finally, any mark in the body that was abnormal could also be justified as coming from the devil, as portrayed by the case of Elizabeth Maxwell⁴⁵.

⁴² Dye S, 'To Converse With The Devil? Speech, Sexuality, And Witchcraft ... pp.15-18

⁴³ Gaskill M, 'Masculinity And Witchcraft In Seventeenth-Century England' *Witchcraft and masculinities in early modern Europe* (Palgrave Macmillan 2009)

⁴⁴ Goodare J, 'Men And The Witch-Hunt In Scotland', ... pp.152-153

⁴⁵ Goodare J, 'Women And The Witch-Hunt In Scotland' ... pp.302-303

Fifthly, the last piece of evidence that was accepted by courts was concerning spiritualism. Spectral evidence was the claim that the spectre of the alleged witch could be seen. The ambiguity and the difficulty to prove it to a jury left this type of evidence with its inadmissibility by 1662 in English criminal trials⁴⁶.

In conclusion, the recollection of evidence was a very significant part of the criminal procedure to condemn an alleged witch. The range of mechanisms to do the former was very wide, however, they would result in being very arbitral and abusive with a lack of concreteness in order to establish that a woman was guilty without reasonable doubt. Indeed, one of the reasons for the decline of the convictions in the late 1600s was the direct critique from superior courts, justices, lawyers and jurists of the admissibility of this type of evidence⁴⁷.

⁴⁶ Levack B, 'Witchcraft And The Law' (2013) pp.10

⁴⁷ Levack B, 'Witchcraft And The Law' (2013) pp.10

Witchcraft and Gender

During the 16th and 17th centuries, the majority of people prosecuted for witchcraft were women. Only men represented 20% of the convicted in Scotland and in the brief times of panic, they only made up 10% of all cases⁴⁸. As a result, it is to wonder whether the fact that the majority of the accused witches were women was a mere coincidence or a gender issue.

In the first part of this section, the question of what made a witch will be discussed. Following the scholar's Dye essay "To Converse with the Devil", there were two concepts that built the figure of the witch: speech and sexuality. It will be linked to what extent both of these concepts actually constructed the crime of witchcraft and how they acted in the process to punish it.

Furthermore, as being mentioned above, men were also accused and condemned for witchcraft. In this part, it is also going to be analysed the differences between men and women when they were believed to be witches.

Finally, many writers and scholars have discussed the gender question in the phenomenon of witchcraft. Their views range from witchcraft laws as mechanisms to oppress women to women victims of an unstable time for society. In this chapter, these opinions are going to be scrutinised to better understand the thesis of this dissertation.

Femininity: Speech and Sexuality

In order to answer the question of whether gender was a cause that determined if a woman was a witch, it must bore in mind what made a woman be a witch. Even though in none of the acts ever enacted during the sixteenth or seventeenth century being a witch was a crime, it was thought by the community that being a witch involved practising witchcraft (which was indeed an offence). The offence primarily consisted of the use of magical power coming from the devil in order to hurt someone. The definition of the crime is carefully thought out since it underlies the two concepts of speech and sexuality which are going to be explained below.

Professor Goodare and Phd student Dye affirm that these two concepts were essential for a woman to be accused of witchcraft.

⁴⁸ Goodare J, 'Women And The Witch-Hunt In Scotland' ... pp.291

Speech

As seen in the story of Elizabeth Maxwell, one of the reasons a woman could be thought of being a witch was her quarrelsomeness. Women who cursed their neighbours, and the latter suffered any damage, were thought of as having demonic powers.

Cursing others or scolding was a sign of ill-will against the community. As it has been said in the earlier section, scolding was already a crime itself in England and Scotland. Since speech was the only way to express anger, and violence was a field only reserved for men; scolding became a manifestation of power for women⁴⁹. The image of a woman who threatened or insulted her neighbours repeatedly was the opposite of the image desired by the protestant community. Societal norms advocated for the good wife and good mother image⁵⁰. Finally, that quarrelsome conduct built up a reputation which linked to any misfortune would make up the perfect explanation for justifying the existence of witchcraft. As a matter of fact, it was a pivotal piece of evidence the testimony from neighbours having witnessed this cursing nature in order to put together the accusation and posterior conviction of an alleged witch.

Such was the power of these curses, that it became essential to execute witches. For instance, the *Malleus Maleficarum* (the infamous German manuscript from the fifteenth century that treated the subject of witchcraft) popularised the view that a witch could cause a man to lose his potency which ultimately was a threat to all masculinity⁵¹.

Consequently, it became obvious that witches' curses, spells and scolds had to be chased in order to save the community from any damage.

Sexuality

A witch had black magic powers given to her by the devil himself. She, indeed, had done a pact with him sealed through their copulation. At least, this was one of the explanations of the origin of witchery powers by King James VI in his treaty, *Daemonology*. Moreover, in this same publication and following the ideas by the *Malleus Maleficarum*, it was said that witches were hypersexual women with an insatiable sexual appetite⁵². The devil was the only one that could partially satiate these desires; therefore, they had given up god's will and succumbed to the

⁴⁹ Goodare J, 'Women And The Witch-Hunt In Scotland' ... pp.297

⁵⁰ Goodare J, 'Men And The Witch-Hunt In Scotland',... pp.156

⁵¹ Dye S, 'To Converse With The Devil? Speech, Sexuality, And Witchcraft ... pp.15-20

⁵² Dye S, 'To Converse With The Devil? Speech, Sexuality, And Witchcraft ... pp.23

devil's temptations. At the end, Protestantism saw women as weaker to resist the devil's corruption⁵³.

Such was the belief in this theory that during the trial process, it was essential to demonstrate it primarily by the confessions of suspected witches. The case of Isobell Crockett shows how much it was wanted from the interrogators to get a confession of the sexual relationship between the accused and the devil. Goodare emphasises the extent of the pressure inflicted to the interrogated that they were free to make up any sexual encounter with the demon. Witch-hunters and members of kirk sessions were obsessed with it in order to prove the evidence of the "witch's" pact with the devil⁵⁴ in the trial.

After the supposed sex of the witch with the devil, the latter would leave a mark on her. The devil's mark was considered to be a highly scientific piece of evidence in the criminal procedure. The witch-prickers' task of finding that insensitive spot left by the devil through sharp objects often included inspecting women's genitalia. It was thought that after intercourse the devil would have left it there. Although back in the 16th and 17th centuries, this action did not count as torture, to the modern standards this technique would be defined as so and it would even be considered rape.

The link between sexuality, witchcraft and gender could also be seen through the State's will to enact laws to enforce sexual conformity. As it has been shown in the section "Witchcraft and the Law", the Scottish Witchcraft Act of 1563 was as well followed by legislation that prosecuted fornication and adultery. Furthermore, it was also a duty of the kirk sessions to investigate cases of adultery and fornication, apart from the charges against witchcraft. Being women the main suspects of these "offences", it can be concluded that there is a relation between the repression of women's sexuality and witchcraft.

Feminity

After deepening the role that speech and sexuality had in the punishment of witchcraft, it must be drawn some specific conclusions on the matter. What made a witch very much depended on who was looking at it.

⁵³ Anderson A, and Gordon R, 'Witchcraft And The Status Of Women -- The Case Of England' (1978) 29 The British Journal of Sociology

⁵⁴ Goodare J, 'Women And The Witch-Hunt In Scotland' ... pp.294

Dye used these two concepts to explain the witch belief and how she was processed using them. A suspected woman was accused of witchcraft because she had a reputation for quarrelling, slandering and scolding that was making her distrusted by her community. The populace recognised a witch by what she said, leading her to be denounced to the local authorities. In other words, the popular witch belief was defined by the speech. Once the alleged witch was in the justice hands, the factor of sexuality appeared. Because the offence was constructed under the devil's pact, the authorities tried to justify the witchcraft accusations made by the neighbours by introducing the devil's marks or the witch's copulation with the devil. That is to say that the elite witch belief, on the other hand, was predominated by the sexuality concept. The union of both popular and elite belief (speech and sexuality) was what legitimised the punishment of witchcraft.⁵⁵

Speech and sexuality were considered in early modern Britain as feminine traits completely identifiable in the witch's figure. As a result, these traits were considered to be negative and non-desirable for women. Surprisingly as it may seem, Dye also draws a connection between the features associated to the female witch with another figure detested by society from time immemorial, the prostitute or the "loose woman". As she puts it forward: "*...the talkative woman is frequently imagined as synonymous with the sexually available woman...*" (Dye, 2012). The profile of the good woman was the good mother, chaste and silent. Bearing in mind that what made a witch were the same factors that made a prostitute, their criminalisation was deemed to be essential to preserve the morality of society, especially for women⁵⁶.

Masculinity

When introducing this section, it was said that the condemned for witchcraft were not only women. Indeed, there was a small percentage of those prosecuted that were men as it has been portrayed with the story of the English vicar, John Lowes.

Nevertheless, the characteristics that would suspect a woman (quarrelsomeness and excessive sexuality) to be a witch would not apply to a man. Firstly, regarding quarrelling and cursing, men were not attributed with this feature in witchcraft trials, Goodare suggests in his essay *Men and the Witch-Hunt in Scotland*. In multiple trial records, the fact that a suspected male witch had quarrelled with another person having it caused harm was rarely mentioned, even if it was

⁵⁵ Dye S, "To Converse With The Devil? Speech, Sexuality, And Witchcraft ... pp.13-15

⁵⁶ Dye S, "To Converse With The Devil? Speech, Sexuality, And Witchcraft ... pp.29-31

clearly evident that he had done so. Finally, during trial sessions for males, only the harm produced to the neighbour was the matter discussed, not his curses.

Secondly, the sexual feature of a witch was not an issue of concern since the masculine devil's pact would not involve having sex with the devil⁵⁷. Male witches would sometimes confess to having sealed the pact by copulating with the queen of fairies (a sort of demon). In other words, since sodomy was considered an aberration in those times, the only sex a male witch could have with had to be with a female figure of the devil. As a matter of fact, the relationship between the male witch and the devil was one constructed in more equal positions, contrarily to the subordinated status of female witches with the demon.

Thirdly, male witches were also defined with other names such as "*warlock*" or "*charmer*". Although the term of "*witch*" was still used for men, the replacement of it for these names was done in most likelihood to remove the negative features related to speech and sexuality that the former had when it was used for women.

Finally, the reason why the rate of men convicted for witchcraft was significantly lower to women was that holding powers was not always seen suspiciously. Indeed, men who were believed to be healers or cunning folk did not end up with the reputation of using black magic and were very much appreciated by their communities. However, female healers could very easily be thought of being witches whenever there was a misfortune that could be linked to them⁵⁸.

To sum up, the nature of male "witches" was not defined by the same characteristics as one of the female "witches". These differences suggests that the phenomenon of witchcraft was gendered.

Scapegoating or the oppression of women

Many scholars, who have studied the phenomenon of witchcraft and witch-hunting in England and Scotland, have delved into the connection between them and gender. Throughout all their works, they have discussed the question of why witches were women, and whether the society used "witches" as scapegoats for its problems or if there was a will to oppress women.

⁵⁷ Dye S, 'To Converse With The Devil? Speech, Sexuality, And Witchcraft ... pp.24

⁵⁸ Goodare J, 'Men And The Witch-Hunt In Scotland',... pp.156-201

Christina Lerner, one of the first scholars to ever study this topic, concluded that witchcraft was a woman's crime. After analysing all the criminal records of the time, apart from adultery, incest or infanticide crimes, women did not go to court for any other offence to the same extent as men did, neither were men convicted to these crimes. Lerner argues that witchcraft was sex-related and not sex-specific. Women had the potential to be witches since being believed as morally inferior to men, they could be tempted more easily by the devil. However, witch-hunting did not mean that women as a sex were hunted⁵⁹.

Julian Goodare agrees with Lerner about the female nature of witchcraft. He indeed believes Lerner's first part of her thesis: "witchcraft was sex-related". However, he puts forward the view that witch-hunting was sex-specific⁶⁰. The hunting of witches was used to impose through fear certain moral values to women by chasing those who did not live by them. Goodare, after recognising the relationship between sexuality and witchcraft, draws the conclusion that the persecution of this crime was a hunt of women. That is the hunt of the "deviant" woman, the one that represented a threat to society and, ultimately, to all masculinity by her abnegation to male's subordination. The protestant society had created an image of the silent and chaste woman who took responsibility for following God's faith. Because of this responsibility, the "good woman" had to hunt as well the "deviant woman". Therefore, Goodare concludes that the witchcraft and the witch-hunt phenomenon were a demonstration of the patriarchy's willingness to oppress women from following certain non-desirable behaviours⁶¹.

Sierra Dye shares Goodare's vision about the ultimate goal of punishing witchcraft, which was to silence women's voices and control their sexuality. As she expresses in her work, these two characteristics were the ones that conformed the profile of the female witch. Nevertheless, she does not think that witch-hunting was used to oppress women since it punished men as well. Instead, persecuting the practices of witchcraft was a way for the current State to impose their view on morality and silence those who threatened it. Therefore, witches became the scapegoat for the authorities' desire to control the existing manifestations of female power: speech and sexuality⁶².

Malcolm Gaskill is another scholar who has studied in depth the witchcraft phenomenon in England. He shares the belief with his colleagues that witchcraft was sex-related and that the

⁵⁹ Lerner C, *Enemies Of God* (Blackwell 1983) pp. 91-93, 101

⁶⁰ Goodare J, 'Men And The Witch-Hunt In Scotland', ... pp.164-165

⁶¹ Goodare J, 'Women And The Witch-Hunt In Scotland' ... pp.288-289, 306-307

⁶² Dye S, 'To Converse With The Devil? Speech, Sexuality, And Witchcraft ...pp.33-35

connection between it and gender is very strong. He sees that witchcraft was a female crime regardless of the sex of the offender because of the feminine traits that were associated with it. Even when men were believed to be “witches”, it was conceived as they had renounced their masculinity⁶³. Even though he believes in the gendered nature of the construction of the witchcraft offence and process, he argues that it would not have thrived if it had not been for the convulsive political and social times. The spread of Puritanism and Protestantism linked with the political tension before and during the Civil War created the perfect environment to legitimise the persecution of those who did not follow the values assigned to each gender⁶⁴.

As for my understanding of the issue discussed by the authors, witchcraft was a women’s crime. It was sex related because what constituted a witch was formed by the negative traits usually linked to femininity: speech and sexuality. Furthermore, the witch-hunt was sex-specific since the purpose of it was to establish a society where women followed God’s image of the good woman. Then who did not fit this mould of the silent and chaste woman had to be chased as she threatened not only the rest of women but as well all masculinity. Even though men were prosecuted as well for this crime, the few that were accused only served as scapegoats of a mechanism that imposed certain values on women. The hunt against “witches” was a hunt against the only possible demonstration of power for women: their words and their sexuality.

⁶³ Gaskill M, 'Masculinity And Witchcraft In Seventeenth-Century England' ... pp.171-190

⁶⁴ Gaskill M, 'Witchcraft And Neighbourliness In Early Modern England' (*Cambridge Core*, 2013) pp. 211-232

Witchcraft and Justice

The persecution of witchcraft in Britain stands out for being one of the hardest in terms of convictions, specially in Scotland. Since the enactment of the Scottish Witchcraft Act in 1563 until the Witchcraft Act of 1735, it is estimated that 4,000 people were accused only in Scotland and of those accused, 2,500 women were executed. This estimation is very moderate taking into account that not all cases of witchcraft and executions were recorded, therefore, the real amount could be significantly higher. These results come from the Survey of Scottish Witchcraft, the study about Scottish witchcraft conducted by the University of Edinburgh⁶⁵. Furthermore, the data suggests that the number of accusations in Scotland was four times higher than elsewhere in Europe. Nevertheless, due to the lack of a compilation and organisation of trial records, in England, it is very difficult to keep track of the total number of “witches” accused or convicted⁶⁶.

The “witches” in the sixteenth and seventeenth centuries were wrongfully convicted. They were women accused of an offence which was impossible to have been committed. This offence implied the possession of supernatural powers given by a religious creature (the devil) with the intention to hurt someone. Even if the intention existed the possibility of holding these powers was unrealistic. Therefore, because the crime could not be materialised, no one could be convicted for witchcraft. Moreover, taking into account that the evidence used to pass the sentence was not serious and obtained by questionable means (torture) and the accused were not provided with a defence, the trials were not just. Finally, due to the fact that women were convicted to a greater extent than men for witchcraft because of the gendered nature of the crime, the accused “witches” were not treated fairly.

On the other hand, the image left in our society about witchcraft does not improve if the purpose is to gather in our memory the injustice of convicting these women who were tortured, hanged and burnt. In our society, witches either remain these old and bad women that threw spells to harm others or they embrace an idealised image of the woman connected to the practice of

⁶⁵Goodare, J., Martin, L. and Yeoman, L., 2003. Survey Database, Survey of Scottish Witchcraft...

⁶⁶ Sherwood H, 'Early Modern Witch-Hunts 'Left Britain With Collective Wound'' (*the Guardian*, 2022) <<https://www.theguardian.com/society/2022/jan/02/early-modern-witch-hunts-left-britain-with-collective-wound>> accessed 24 April 2022

magical arts⁶⁷. The imaginary cannot be further from reality. “Witches” were women who did not follow the normal patterns established to them by the ultra-religious early modern society. Consequently, it is high time that these wrongdoings are corrected. In the last decade, associations have been created to raise awareness of the miscarriages of justice done to “witches”. The “Witches of Scotland” (WoS)⁶⁸ Campaign was launched on International Women’s Day 2020 by the lawyer Claire Mitchell QC and writer Zoe Venditozzi⁶⁹. The aim of the campaign is for the accused of witchcraft to be granted a legal pardon, an apology and a national monument. They brought these demands to the Scottish Parliament through a petition to legislate on this matter. The petition was passed and a bill is currently being drafted to meet with these demands. As a matter of fact, this bill has the support of the Scottish First Minister, Nicola Sturgeon, who issued a formal apology on behalf of the Scottish Government for the injustices that these women suffered⁷⁰. Another charity is also campaigning for restoring the truth of witchcraft, “Remembering the Accused Witches of Scotland” (RAWS)⁷¹. Their purpose is to seek an apology from the Scottish Church and design educational plans to schools in order to explain the reality of witchcraft in Scotland. Regarding the action taken in English soil to revisit the subject of “witches”, it is being done in a very local and focused on the areas where the witch-hunts took place. For instance, in early January in Lancaster, there was an exposition of the witchcraft trials in Lancashire that served as a memorial as well⁷². In addition, recently, there was launched a petition to request the Monarch’s pardon of those hanged for witchcraft in 1612. However, due to the lack of enough signatures, it was not successful⁷³.

⁶⁷ Howard S, 'Why The Witch-Hunt Victims Of Early Modern Britain Have Come Back To Haunt Us' (*the Guardian*, 2021) <<https://www.theguardian.com/uk-news/2021/oct/24/why-the-witch-hunt-victims-of-early-modern-britain-have-come-back-to-haunt-us>> accessed 24 April 2022

⁶⁸ 'Witches Of Scotland' (*Witches of Scotland*, 2020) <<https://www.witchesofscotland.com/>> accessed 12 May 2022

⁶⁹ Brooks L, 'Calls For Scotland To Pardon Witch-Hunt Victims Gather Pace' (*the Guardian*, 2022) <<https://www.theguardian.com/uk-news/2022/mar/13/calls-scotland-pardon-witch-hunt-victims-gather-pace>> accessed 24 April 2022

⁷⁰ Garton-Crosbie A, 'WATCH: First Minister Issues Posthumous Apology To Those Killed Under Witchcraft Act' (*The National*, 2022) <<https://www.thenational.scot/news/19977837.nicola-sturgeon-gives-formal-apology-killed-witchcraft-act-1563/>> accessed 24 April 2022

⁷¹ 'Remembering The Accused Witches Of Scotland' (*Raws.scot*, 2021) <<https://www.raws.scot/>> accessed 24 April 2022

⁷² Sherwood H, 'Early Modern Witch-Hunts ‘Left Britain With Collective Wound’' (*the Guardian*, 2022) <<https://www.theguardian.com/society/2022/jan/02/early-modern-witch-hunts-left-britain-with-collective-wound>> accessed 24 April 2022

⁷³ 'Petition: Request A Monarch's Pardon For Those Who Were Hanged For Witchcraft In 1612' (*Petitions - UK Government and Parliament*, 2022) <<https://petition.parliament.uk/petitions/598232>> accessed 24 April 2022

Conclusions

The Witch-Hunts represented the culmination of the early modern age society's obsession with fighting against the devil. The collective fear of being harmed by him justified any action taken against his followers on earth, "witches".

During the sixteenth and seventeenth centuries, England and Scotland were at the centre of a religious revolution which brought Protestantism to these lands. The doctrine of this new Christian branch advocated for the establishment of a new morale based on the strict following of God's will. For this purpose, the State participated in the vigilance of its citizens' behaviour throughout the enactment of laws and the punishment of those who did not follow it. In this sense, witchcraft consisted of the practice of black magic with malice after having done a pact with the devil. With the "witches'" intention of harming the neighbour, it became a matter of public security to criminalise it, not just an ecclesiastical issue. This view was also enforced by one of the highest authorities in those times, the monarch (King James VI and I) who heavily studied but at the same time despised witchcraft.

The English and Scottish Parliaments enacted quite a few laws that persecuted the practice of witchcraft which were in force well until the mid-twentieth century. Even if English laws were more detailed than Scottish acts, they both heavily relied on the role of the lawgiver to precise and interpret them. The Witchcraft Trials were an exceptional process due to the extraordinary nature of the offence. They were created ad hoc and the organisers of them tended to be the accusers themselves, leading to the lack of impartiality in the criminal procedure. They depended on highly circumstantial and arbitral evidence that included: confessions extracted by torture (sleep deprivation and witch-pricking), rape, neighbours and other "witches" testimonies, spectral evidence or ordeals for innocence. Moreover, without any legal defence, most of the accused were sentenced to be hanged and burnt.

Contrarily to the popular conception of witches, not only were women convicted for this crime but men as well, however, they only represented about 15% of all the cases. There is a clear connection between gender and the punishment of witchcraft. A woman was thought to be more likely a witch than a man. A witch was built on the most negative factors historically attributed to women: speech and sexuality. In other words, a woman was suspected of being a witch because she quarrelled, scolded and cursed her neighbours, and later, a misfortune happened to them. However, a woman was convicted for practising witchcraft when it had been proven

(either through the demonstration of the devil's mark or confession) that she had copulated with the devil to seal the pact. Finally, when a man was accused of being a witch, it was never for his quarrelsome or hypersexual nature.

The protestant morale enforced the image that a good woman was the good mother: chaste and silent. Because she was thought of as having a weaker nature and being more tempted to be corrupted by the devil, chasing "witches" meant protecting the good woman. Thereof, most authors have considered that "witches" were just the scapegoat of a time when following certain moral values was the legal and social norm. Hunting "witches" was another way of repressing women's words and sexuality, in the same manner that it was the prosecution of scolding, fornication or adultery. The only form of manifestation of power for women (speech and sexuality), was what was taken the most from them. The Law (acts and trials) was used as the main tool to oppress women's power, in this case, throughout the punishment of witchcraft. The fact that men were prosecuted as well for being witches does not invalidate this argument, but it suggests that the few men that were accused were the scapegoats of this willingness to crush women's moral non-conformity.

Due to the fact that the offence was impossible to have been committed, the trials did not follow due process and the crime was gendered, it can be concluded that the accused were unjustly prosecuted. Geillis Duncan, John Lowes, Isobell Crockett, Elizabeth Maxwell and Helen Duncan, among the rest of "witches", were wrongfully convicted. The trials may have been legal, but they were definitely not fair. Whenever there has been a miscarriage of justice, the State owes some sort of reparation. Many associations have demanded the Scottish and English Governments for the granting of a legal pardon, however, it has only been the Scottish one that has started to process this petition. Scotland has formally recognised the past wrongdoings regarding the witch-hunts whereas England has not done it yet.

Witches were not criminals and do not deserve to be recorded in history as so. The same legal system that wrongfully tortured, stigmatised and condemned them must do everything within its hand to properly clear their names and finally, obtain justice.

Bibliography

Anderson A, and Gordon R, 'Witchcraft And The Status Of Women -- The Case Of England' (1978) 29 *The British Journal of Sociology*

'BBC - History - Scottish History' (Bbc.co.uk, 2022)

'British Library' (Bl.uk, 2022)

Brooks L, 'Calls For Scotland To Pardon Witch-Hunt Victims Gather Pace' (the Guardian, 2022)

Davies C, 'Women Executed 300 Years Ago As Witches In Scotland Set To Receive Pardons' (*the Guardian*, 2021) <<https://www.theguardian.com/uk-news/2021/dec/19/executed-witches-scotland-pardons-witchcraft-act>>

Dye S, 'To Converse With The Devil? Speech, Sexuality, And Witchcraft In Early Modern Scotland' (2012) 37 *International Review of Scottish Studies*

'Fraudulent Mediums Act 1951' (Legislation.gov.uk, 1951)

Howard S, 'Why The Witch-Hunt Victims Of Early Modern Britain Have Come Back To Haunt Us' (the Guardian, 2021)

Garton-Crosbie A, 'WATCH: First Minister Issues Posthumous Apology To Those Killed Under Witchcraft Act' (The National, 2022)

Gaskill M, *Hellish Nell* (Fourth Estate 2001)

Gaskill M, 'Masculinity And Witchcraft In Seventeenth-Century England' *Witchcraft and masculinities in early modern Europe* (Palgrave Macmillan 2009)

Gaskill M, 'Witchcraft: A Very Short Introduction' (Very Short Introductions ; 228) (Oxford University Press 2010)

Gaskill M, 'Witchcraft And Evidence In Early Modern England' (2008) 198 *Past & Present*

Gaskill M, 'Witchcraft And Neighbourliness In Early Modern England' (Cambridge Core, 2013)

Goodare, J., Martin, L. and Yeoman, L., 2003. Survey Database, Survey of Scottish Witchcraft, Scottish History, School of History and Classics, The University of Edinburgh, Scotland. [online] Witches.shca.ed.ac.uk.

Goodare J, 'Men And The Witch-Hunt In Scotland', Witchcraft and masculinities in early modern Europe (Palgrave Macmillan 2009)

Goodare J, 'The Scottish Witchcraft Act' (2005) 74 Church History

Goodare J, 'Women And The Witch-Hunt In Scotland' (1998) 23 Social History

Larner C, Enemies Of God (Blackwell 1983)

Levack B, 'Witchcraft And The Law' (2013)

Magazine S, and Eschner K, 'England's Witch Trials Were Lawful' (Smithsonian Magazine, 2017) accessed 19 April 2022

National Geographic. 2019. A royal obsession with black magic started Europe's most brutal witch hunts. [online]

National Museums Scotland, 'James VI And I' (National Museums Scotland, 2022)

'Remembering The Accused Witches Of Scotland' (Raws.scot, 2021)

'Petition: Request A Monarch's Pardon For Those Who Were Hanged For Witchcraft In 1612' (Petitions - UK Government and Parliament, 2022)

Sherwood H, '300 Years On, Will Thousands Of Women Burned As Witches Finally Get Justice?' (*the Guardian*, 2020) <<https://www.theguardian.com/uk-news/2020/sep/13/300-years-on-will-thousands-of-women-burned-as-witches-finally-get-justice>>

Sherwood H, 'Early Modern Witch-Hunts 'Left Britain With Collective Wound'' (the Guardian, 2022)

Society N, 'The Protestant Reformation' (National Geographic Society, 2022)

'The Consumer Protection From Unfair Trading Regulations 2008' (Legislation.gov.uk, 2008) accessed 19 April 2022

'Witches Of Scotland' (Witches of Scotland, 2020)

Wright, Michael. "The Jew's Harp in the Law, 1590-1825." *Folk Music Journal*, vol. 9, no. 3, 2008