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Notes and Comments

THE FRAMEWORK FOR SCOTTISH WITCH-HUNTING IN THE 1590s

Some of Scotland’s most dramatic witchcraft prosecutions occurred in the 1590s. There were nationwide panics on witchcraft in 1590–1 and 1597. The 1590–1 prosecutions included the so-called ‘witches of North Berwick’ who attracted intense attention as the authors of an alleged conspiracy, backed by the earl of Bothwell, to kill James VI. The prosecutions of 1597, which were on a larger scale, also involved the king intimately, and it was then that he published his book Daemonologie. There have recently been several detailed accounts of these trials.¹ This paper supplements them by reviewing the legal and administrative framework within which trials for witchcraft were held. In the process it is hoped to correct some crucial and much-repeated misconceptions, not just about the procedure by which trials were held, but also about the distribution and incidence of the trials.

During the 1590s some witches (notably those of North Berwick) were tried in the Justiciary Court in Edinburgh, but most witchcraft trials were in special local courts held by virtue of commissions of justiciary. What, then, was a commission of justiciary? There has been much loose talk of ‘commissions’, and this question requires a precise answer. A commission of justiciary was a document issued by the Crown, normally

¹ For the North Berwick witches themselves, see L. Normand and G. Roberts (eds.), Witchcraft in Early Modern Scotland: James VI’s ‘Demonology’ and the North Berwick Witches (Exeter, 2000). This valuable and detailed work also includes some discussion of the wider prosecutions of 1590–1, though further research is required on these. A further dimension to the dynamics of the North Berwick hunt is added by L. Yeoman, ‘Hunting the rich witch in Scotland: High-status witchcraft suspects and their persecutors, 1590–1650’, in J. Goodare (ed.), The Scottish Witch-Hunt in Context (Manchester, 2002), 106–21. P. G. Maxwell-Stuart, Satan’s Conspiracy: Magic and Witchcraft in Sixteenth-Century Scotland (East Linton, 2001), chs. 6–7, has relevant material, though it is not primarily concerned with witch-hunting. For the king’s involvement throughout the 1590s, see J. Wormald, ‘The witches, the Devil and the king’, in T. Brotherstone and D. Ditchburn (eds.), Freedom and Authority: Scotland, c.1050-c.1650 (East Linton, 2000), 165–80. For the events of 1597, see J. Goodare, ‘The Scottish witchcraft panic of 1597’, in Goodare, Scottish Witch-Hunt, 51–72; this paper includes some discussion of Wormald’s interpretation of James’s role in that year. For the cases of 1597 for which most detailed evidence survives, see J. Goodare, ‘The Aberdeenshire witchcraft panic of 1597’, Northern Scotland, xxi (2001), 17–37.
under the signet, empowering the recipient or recipients to hold a
criminal trial for a specific crime. This recipient was often a private
individual. Established local judges, such as sheriffs and burgh magis-
trates, also received commissions of justiciary to try crimes – like witch-
craft – that were considered too serious to fall within their regular
jurisdiction.

The commission usually named not just a specific crime but also a spe-
cific suspect or suspects, and so authorised the holding just of a single
trial. There were also a few 'general commissions' for the trial of all cases
of the specified crime within a specified area (such as the commis-
sioner’s lands) and time-limit (often one year). Using his commission,
the commissioner would convene a court, appoint a clerk, officer and
dempster, summon an assize, and preside as judge over the trial. In
witchcraft cases he would probably also have the opportunity to pro-
nounce sentence of death, since the prosecution’s evidence was often
reviewed carefully by the central authorities at the point when the com-
mission was requested. Commissions were normally issued only when
that evidence was (by contemporary judicial standards) compelling; for
this reason, witchcraft trials under commissions of justiciary usually led
to convictions and executions.2

The North Berwick trials of 1590–1 were held, not under commis-
sions of justiciary, but in the central Justiciary Court. But what hap-
pened next? Those seeking to understand this have usually turned to
the seminal works of Christina Larner. Her researches on the Scottish
witch-hunt as a whole are full of brilliant insights and have never been
surpassed. However, on this particular topic Larner is a treacherous
guide. Robin Briggs refers to a singular 'general commission', and
Brian Levack to plural 'standing commissions to local authorities'.3 Yet
these scholars, two of the most influential working in the field of Euro-
pean witch-hunting, both cite Larner. How can this be?

Larner built her account of the 1590s around what she usually called
a 'general commission for trying witches', which she said was estab-
lished on 26 October 1591. She was inconsistent about whether this
‘commission’ was a body of people or a document – a central body of
people in Edinburgh, or an executive order authorising local people to
hold witchcraft trials. Sometimes she seems to have thought that it was
both, in that the central body would authorise local trials.4 But she also
wrote of 'the standing commissions against witchcraft' (plural), and of
a 'general commission to holders of hereditary jurisdictions', under
which 'local landowners had been able to prosecute and execute
accused witches without recourse to the central government'; in the
panic of 1597 'local barons and sheriffs were entitled to make their own

arrangements’. These passages seem incompatible with the idea of a single co-ordinating body in Edinburgh.

Larner went on to argue that the ‘general commission’ or ‘standing commissions’ of 1591, whatever its (or their) nature, continued until 12 August 1597, when the Privy Council revoked it (or them) in order to bring witch-hunting to a halt. She wrote on this: ‘The Order of Council of August 12th specifically restored to the King powers which he had delegated in 1591, with a view to reducing the number of “innocent” persons who were accused and convicted.’ She thus set out a view of the period 1591–7 as distinctive, with special arrangements being made in 1591 and continuing until they were revoked in 1597.

Let us look more closely at the relevant events of 1591. On 26 October, the king and Privy Council commissioned six people to investigate accusations of witchcraft. They were Sir John Cockburn of Ormiston, justice clerk; David MacGill of Nisbet, lord advocate; Robert Bruce, a prominent minister of Edinburgh; John Duncanson, a veteran minister in the royal household; William Little, provost of Edinburgh; and John Arnott, a former (and future) provost of Edinburgh. They were to interrogate various categories of witch or suspected witch: ‘thame quhilkis ar alreddy convict, or utheris quhilkis ar detenit captive and hes confessit, and sum that has not confessit, as alswa all sic utheris as ar dilatit, or that heireftir salbe accused and dilated’. They were to examine them, record their depositions, order torture of those who refused to confess, ‘and the same to reporte to his hienes and his counsale, to the effect thai may be putt to the knawledge of ane assyis, and justice ministerit as effeiris, or sic uthir ordour takin with thame as to his majestie and his said counsall salbe thocht maist meit and convenient.’ The order thus did not empower the committee to hold criminal trials, or to issue commissions of justiciary itself. In requiring the committee to report to king and Council, it assumed instead that it was the latter who would issue any trial commissions – as was of course existing practice.

This was a period at which the Privy Council was experimenting with sub-committees, often containing, like the witchcraft committee, a mixed membership of councillors and non-councillors. In June 1590, such a committee was set up for Border affairs. Planned as a permanent body, it actually lasted six months – an indication of the way in which committees could come and go in this period of administrative flux. The Border committee was given a clerk, a regular financial allowance, and a

6 Larner, Enemies of God, 71.
7 Register of the Privy Council of Scotland [RPC], iv, 680.
8 Normand and Roberts write of ‘the procedure instituted in October 1591, by which a group of privy councillors considered if individual witchcraft cases should go to trial’. This is incorrect in that four of the six commissioners of 1591 were not privy councillors, but marks an advance on Larner in recognising the committee’s powers: Normand and Roberts, Witchcraft in Early Modern Scotland, 96.
requirement to report monthly to king and Council. The witchcraft committee lacked all these. It is thus unlikely to have been planned as a permanent body, and was probably intended solely to carry out a single, immediate task. It was neither ‘standing’ nor ‘general’.

Why was the committee established? It probably had some connection with the North Berwick trials – yet the climax of these had passed in the summer. There had been the trial and acquittal of Barbara Napier (8–10 May); the symbolic prosecution of her assize for wilful error (7 June); and the trial, conviction and execution of Euphemia MacCalzean (9–15, 25 June). Little had happened publicly since then. What was on the mind of the king and Council in October that might have led them to appoint a witchcraft committee?

Two of the leading North Berwick witches were still around: Geillis Duncan and Richard Graham. Geillis Duncan was the servant of David Seton, bailie of Tranent, whose interrogation of her under torture in late 1590 had launched the investigations into treasonable witchcraft. She was repeatedly re-examined up to May 1591, but was not mentioned again until 4 December, when she was led out to execution and asked to make a statement – in which she dramatically repudiated her earlier confessions incriminating MacCalzean and Napier. There seems to have been something of a shift of gear after the climax of May-June. MacCalzean’s kinsfolk lobbied behind the scenes for her property. Two minor North Berwick witches, Donald Robson and Janet Straiton, retracted their testimony against her in July, and at Geillis Duncan’s scaffold recantation she was accompanied by another of the minor witches, Bessie Thomson. The October committee could have been part of this process of reorientation since June, pursuing a new line of questioning that led Duncan and Thomson to change their testimony.

The other prominent North Berwick witch who survived, Richard Graham, had dropped a bombshell in the spring by implicating the earl of Bothwell in the witches’ conspiracy. This was the most pressing political issue at the time of the appointment of the witchcraft committee on 26 October, since on 22 June Bothwell had escaped from his initial imprisonment and was roaming at large. King and Council were making various efforts to capture him. On 20 October one of his alleged accomplices was interrogated before the king and leading councillors – an event which could well have reminded them that Graham was still in custody and might have further information to offer. Graham was

executed on 28 February 1592, and his testimony would form the basis for Bothwell’s own trial on 10 August 1593. Both Duncan and Graham, therefore, were convicted of witchcraft – but for neither do we have any direct information on their trials. They could have been tried and convicted months before, or on the day of their execution. If either was tried after 26 October, the preparation of evidence for the trial could well have been the witchcraft committee’s main task.

With this in mind, let us return to the committee’s remit. It was expected to interrogate five categories of people. The first two categories, ‘thame quhilkis ar alreddy convict, or utheris quhilkis ar detenit captive and hes confessit’, were the only ones that could apply to Duncan and Graham, since both had confessed; this suggests that one but not both of them had been convicted, and that both were to be interviewed. The next two categories of interviewee, ‘sum that has not confessit, as alswa all sic utheris as ar dilatit’, may well be connected with recent developments in Tranent, a centre for the North Berwick witches. The synod of Lothian and Tweeddale was informed on 7 October 1591 that ‘thair be certan persones within the parochin of Tranent quha ar sclanderit and dilatit of witchecraft and as yit nather ar condemnit nor clensit of the samin’. Some of these may have been among the unidentified witches executed along with Richard Graham in February 1592. The final category, those ‘that heireftir salbe accused and dilated’, has been taken as licensing an indiscriminate witch-hunt, but it was merely a necessary additional clause empowering the committee to deal with any accomplices who might be named by the known witches whom it was primarily intended to interrogate.

Until we have a full account of the North Berwick witches, this is as far as we can go in reconstructing the committee’s purpose. We cannot infer anything from records of its activities; no positive evidence survives that it did anything at all. The committee of October 1591 has the potential to reveal much about the North Berwick witches. However, its short-term nature is evident; it could not hold or authorise witchcraft trials; and it had no role in establishing a new framework for witch-hunting. After October 1591 as before, witchcraft trials were held in the same way: by commissions of justiciary from the Crown.

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Lawrence Normand and Gareth Roberts, together with Jenny Wormald, have recently shed light on this from another angle. They have severed Larner’s link between 1591 and 1597 by pointing out a Privy Council order of 8 June 1592, a project to appoint local commissioners to co-operate with the General Assembly’s representatives in pursuing a

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14 Roger Ashton to Bowes, 24 Feb. 1592, CSP Scot., x, 649.
number of offences including witchcraft. This order did not mention the committee of 1591, which had evidently ceased to exist.\footnote{RPC, iv, 753–4.}

Unfortunately these scholars have not realised that Larner’s ‘standing commissions’ were imaginary, and have attempted to shape their interpretations of the 1592 order within the framework of such commissions. In place of Larner’s 1591–1597 link, they have substituted a 1592–1597 link. For Normand and Roberts, 1592 saw a ‘privy council order permitting standing commissions to be issued in localities’, while in 1597 James disbanded ‘all crown-kirk standing commissions to try witchcraft, established in 1592’. For Wormald, the order of 1592 created the ‘machinery for witch-hunting’ that was ‘used to the full in the next great outburst of persecution in 1596–7’.\footnote{Normand and Roberts, \textit{Witchcraft in Early Modern Scotland}, 25, 427–30; Wormald, ‘The witches, the Devil and the king’, 177.} This simply transfers the error from 1591 to 1592, as can be shown in three ways. The powers of the 1592 ‘commissions’ were inappropriate for the holding of witchcraft trials. The 1592 commissions were never implemented, and in that sense were even more imaginary than Larner’s commissions of 1591. And the order of 1597 no more disbanded the 1592 commissions than it did that of 1591.

What judicial powers did the 1592 commissioners have? Again we can ask the question that has been asked above about the committee of 1591: could they hold witchcraft trials themselves, and if not could they issue commissions of justiciary authorising others to do so? The answer is that they could do neither. The relevant passage reads:\footnote{For the full text (not all printed in RPC, from which Normand and Roberts’s text derives), see National Archives of Scotland [NAS], Privy Council Acta, 1591–4, PC1/15, p. 127.}

\begin{quote}
with pouer to thame to Inquire the names suspectit and dilaitit of witchecraft or seikand responssis or help of thame and of all strang vagaboundis and idill beggaris To examinat thame and committ thame to prisone irnis or stikkis [sic] and to caus prisonis irnis and stokkis to be maid to that effect at al placeis neidfull.
\end{quote}

This did not confer the power to try witches, but (as with the 1591 committee) the power to arrest and interrogate them. It additionally mentioned consulters with witches, who had been lumped in with witches themselves as deserving the death penalty according to a clause of the original witchcraft act of 1563. But since this aspect was rarely if ever observed, the mention of it in the commission strengthens the impression of the witchcraft clause as symbolic, rather than practical.\footnote{Acts of the Parliaments of Scotland [APS], ii, 539, c. 9. For contemporary comment on the clause’s non-implementation, see David Calderwood, \textit{History of the Kirk of Scotland}, ed. T. Thomson and D. Laing (Wodrow Society, 1843–9), v, 129.} The crucial point is that if anyone was actually going to be tried for witchcraft after 8 June 1592, a commission of justiciary had still to be issued. And the source of such commissions was still the Crown.
Might it be argued that the appointment of local commissioners to arrest and interrogate witches was still significant? An order to do so at the time of a witchcraft panic would undoubtedly contribute to the panic, though it would not alter the legal and administrative framework for witchcraft trials. However, June 1592 was not a period of witchcraft panic. No concern on witchcraft was being reported. The main thing that the Church and political establishment then feared was Catholic conspiracy, which could be seen as an alternative to a fear of witchcraft conspiracy. Scotland did not lack local bodies to arrest and interrogate witches: they existed already, in the form of kirk sessions and presbyteries. They had no need of royal sanction to carry out these tasks.

The order of 1592 was not primarily about witchcraft. The dozen words quoted above on witches were the only place in the 750-word document where the subject came up. Descriptions of the order as (for example) ‘crown-kirk standing commissions to try witchcraft’ misrepresent not only the commissioners’ judicial powers but also their range of duties. The order was primarily concerned with a daunting range of other tasks: suppression of Catholicism, repair of churches and assignment of ministers’ stipends. Any objective reading of the entire document will reveal that witchcraft, like the poor law, was tacked on as an optional extra.

The commission did say that the commissioners were to hold ‘courte or courtis to the effect abovespecifieit’ and to summon ‘assyiss ane or maa or witnessis of the best and worthiest personis within the boundis limitat to thame’. These were clearly criminal courts, but through poor drafting, it was unclear what crimes they were to try. These passages apparently referred back to the original General Assembly commissioners, to support whose activities was the main responsibility of the royal commissioners with whom the order of 8 June 1592 was concerned. But the General Assembly commissioners had nothing to do with witchcraft. The specific and more limited powers conferred on the royal commissioners concerning witchcraft seem to exclude this crime from their remit. The whole document was so inept from a legal point of view that it is plausible to suggest that it was drafted by a churchman or churchmen seeking practical support for the new religious measures recently enacted by Parliament. If so, the reason king and Council allowed its fumbling imprecision to reach the Council register without revision was probably that they had no intention of going out of their way to implement it.

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19 CSP Scot., x, 677–93; cf. A. Williamson, Scottish National Consciousness in the Age of James VI (Edinburgh, 1979), ch. 2.
20 Poor drafting is also evident in the final clause, that the commissions should last ‘quhill the first day of November nixtrocum and forther quhill the saidis commissionaris be alterit or dischargeit’. If the commissions were to exist until further notice, then why mention 1 November? If the commissions were to terminate on 1 November but could be ‘alterit or dischargeit’ earlier, then why the phrase ‘and forther’?

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And indeed the commission was not implemented. No evidence of its implementation has been cited by Normand and Roberts or Wormald, and there is strong evidence of non-implementation. This was a period of administrative experiment in religious policy, and there were many false starts. An elaborate commission to reform ministers’ stipends, for instance, was established by Parliament at the time of the 1592 order; it was abandoned in favour of a fresh commission in 1593.\(^{21}\) There are also specific initiatives in which the 1592 commissioners would have had to be included if they had existed. In 1593, for instance, a statute was passed ordering the Court of Session to enforce decreets of presbyteries.\(^{22}\) If local commissioners had been appointed as planned by the order of 1592, they would have been the obvious people to carry out this task, with the Court of Session becoming involved only to enforce their decreets. It can reasonably be assumed that Parliament in 1593 did not think that there were any such commissioners. By 1595 the Privy Council had definitively abandoned the entire project of 8 June 1592, producing a fresh scheme for the issue of signet commissions to people nominated by parish ministers. The 1595 commissions did not deal with witchcraft at all.\(^{23}\) We thus have a good deal of positive evidence that the 1592 commission was not implemented, and no evidence that it was. The significance of the order of 1592 for witch-hunting appears to have been non-existent.

* Thus we come to the crucial order revoking witchcraft commissions on 12 August 1597. Larner, as we have seen, said that it referred back ‘specifically’ to the order of 1591; her recent critics have shifted this to make it refer back to 1592. In fact it did neither.

The proclamation began by expressing concern that ‘grite danger may ensew to honest and famous personis gif commissionis grantit to particulair men, beiring particulairis aganis thame, or to ony nowmer of commissionaris conjunctlie and severallie (quhilk in effect gevis pouer to ane or tua of thame to proceid), sall stand and be authorized’. These commissions of justiciary, to commissioners ‘conjunctlie and severallie’, were revoked. (It seems usually to have been assumed that the order revoked all commissions, but this is not so.) The proclamation invited their holders to apply for replacements, which would be granted ‘to thame and sum baronis and ministeris unsuspect, to the noumer of three or foure conjunctlie at the fewest’.\(^{24}\)

This order was evidently a discharge of actual commissions of justiciary, not of a body that might issue commissions of justiciary. That is incompatible with Larner’s link with 1591. The order also assumed that most and perhaps all of these commissions were for the trial of named

\(^{21}\) APS, iii, 553–4, c. 27; iv, 33–4, c. 45.

\(^{22}\) APS, iv, 16–17, c. 7.

\(^{23}\) RPC, v, 200.

\(^{24}\) RPC, v, 409–10.
individuals (‘beiring particulairis aganis thame’), rather than general commissions for the trial of all witches within a specified place and time. That is incompatible with Normand and Roberts’s and Wormald’s link with 1592, since all the commissions of 1592 – if they had been issued – would have been general commissions.

The order was, in fact, just as short-term in its scope as the order of October 1591. Most commissions of justiciary were granted for the trial of specific individuals, and the commissioners are unlikely to have dawdled in holding the trial, if only because they would not keep suspects in prison longer than they needed; three weeks or so would normally be a maximum. Witches to be tried on commissions issued before July 1597 were probably already dead before the order of 12 August came to their rescue. It has been argued elsewhere that the order did not halt witchcraft trials, since trials actually continued into September and even October. Rather it represents an uneasy temporary compromise between witch-hunters and their critics within the government, both of whom agreed that a response was needed to the exposure of some recent miscarriages of justice.25

So the order of August 1597 had no connection with the events of 1591 or 1592, nor did it discharge a ‘general commission’ or ‘standing commissions’. The fundamental problem is that neither Larner nor her critics to date have paid enough attention to the powers of the various ‘commissioners’. Neither in 1591 nor 1592 were the ‘commissioners’ given justiciary powers, enabling them actually to hold witchcraft trials themselves. Throughout the 1590s, the only source of such powers was the Crown. The only long-term change in the way commissions were issued came in mid-1598, when a consensus was reached that requests for commissions should normally go to the Privy Council and not directly to the king.26

It should be added that the requirement to hold a commission of justiciary was not necessarily observed in remote regions. Orkney under Earl Patrick Stewart provided in 1594 one of Scotland’s most frequently-cited witchcraft cases, that of Alison Balfour. It is not clear what court she was tried in but it was apparently under the authority of the earl alone. The tortures that made the case notorious were administered in his castle by his chamberlain. These tortures made Balfour’s case untypical, as did the fact that she was a pawn in a political struggle, between Earl Patrick and his brother John.27 The point to note here is that the earl of Orkney was also unusual in executing a witch without reference to higher authority. The requirement to obtain a commission of justiciary meant that most Scottish witch-hunting was remarkably centralised.

So far this paper has concentrated on the framework for witch-hunting, rather than actual trials. But revision of the framework has implications for the incidence of actual trials. The linkage of the orders of 1591 or 1592 with that of 1597 has led to an assumption that the actual witchcraft panics of 1590–1 and of 1597 were linked. References to a single witch-hunt of ‘1590–7’ are common. In fact Larner’s graph of known cases shows two quite separate and distinct peaks, and known cases for 1592–6 are few and far between. But were there also unknown cases? Normand and Roberts follow Larner in stating: ‘A much larger number of trials [than the North Berwick ones] was also happening in 1590–7, mainly in Fife, the Lothians, and Aberdeenshire, and took place in local courts …. as Larner has noted the records of the local trials have either been lost or not discovered’. Larner called these records ‘lost or contained in family papers’, but cited no evidence. Instead of evidence, the assumption has been made that if central control was relinquished in 1591 or 1592, then there would no longer be central records of local trials. It has been imagined that the apparent drop in trials in 1592–6 was an illusion caused by the disappearance of a class of evidence.

But this paper has aimed to demonstrate that no such class of evidence disappeared in 1591 or 1592; the framework for witch-hunting remained unchanged throughout. If that is accepted, then speculation about unrestricted local witch-hunting in 1592–6 must be held to be unfounded. Moreover, there are no central records of local trials in 1590–1 or 1597 either; a central register of the issue of signet commissions was not established until 1608. The direct evidence for local trials in 1590–1 and 1597 comes from local records. Although 1592–6 was the period when local witch-hunting was allegedly unrestricted, local records yield no evidence of intense witch-hunting. Larner had some cases in the Edinburgh justiciary court for 1592–6, but uncovered...
virtually no local trials; with one exception, her few local cases from that period are either not trials at all or are references to trials at an uncertain earlier date.\textsuperscript{32} Much of the evidence for witch-hunting in 1590–1 and 1597 is indirect, coming from reportage – contemporary correspondence or chronicle accounts – rather than from records of trials. If witch-hunting had been occurring on a similar scale in 1592–6, we would have that reportage for those years too; we do not. There is thus no evidence that the period 1592–6 saw witch-hunting on anything like the known scale of 1590–1 or 1597. Scottish witch-hunting usually occurred in bursts of panic that were both intense and brief.

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\textsuperscript{32} Larner \textit{et al.}, \textit{Source-Book}, nos. 2234–42, and references there cited. The exception is a reference to ‘many witches … taken and burnt in the Merse’: George Nicolson to Bowes, 23 June 1595, \textit{CSP Scot.}, xi, 621 (no. 2236). The authority under which these trials were held is unclear.

No doubt further research will bring to light additional cases not known to Larner, although there is no reason to think that such cases will be clustered in the period 1592–6. A research project to gather information on witchcraft trials, ‘A Survey of Scottish Witchcraft, 1565–1736’, is currently under way in the Department of Scottish History, University of Edinburgh.