



St Andrews  
**Law Journal**  
Institute of Legal and Constitutional Research



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Title: After the Flight: The Legality of the Conferences at York and Westminster

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Source: *St Andrews Law Journal* 2, no. 1 (September 2022): 62-69.

Published by: Institute of Legal and Constitutional Research, University of St Andrews

Stable URL: <http://standrewslawjournal.wp.st-andrews.ac.uk/files/2022/08/After-the-Flight.pdf>

DOI: <https://doi.org/10.15664/stalj.v2i1.2460>

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ISSN 2634-5102

## AFTER THE FLIGHT: THE LEGALITY OF THE CONFERENCES AT YORK AND WESTMINSTER

by Katherine Montana

According to Monsieur Courcelles, the French ambassador to Scotland, King James VI remarked that the situation that his mother was in ‘was the strangest that ever was heard of, the like not to be found in any story of the world’.<sup>1</sup> The year was 1586, and his mother, the former queen of Scotland, had been imprisoned in England for over eighteen years.

In 1567, Mary, Queen of Scots signed her abdication papers in favour of the rule of her son.<sup>2</sup> James, only thirteen months old, officially became the king of Scotland and in return, the twenty-four-year-old former monarch remained captive in Lochleven Castle.<sup>3</sup> Since the gruesome death of her mostly-estranged husband, Henry Darnley, in February of that year, the already-tense situation in her country had devolved into pure chaos.<sup>4</sup> After Mary was kidnapped by the Earl of Bothwell, a noble who was widely suspected to have been a part of the plot that killed her late husband, Mary’s future as the queen of Scotland crumbled.<sup>5</sup> She was brought to Lochleven by those who did not favour Bothwell after the disastrous Battle of Carberry Hill, and as Jane E. A. Dawson notes, a group amongst these nobles took control and forced her to abdicate.<sup>6</sup> It was thus a chaotic and troublesome series of events that led to the premature crowning of James VI in 1567, but this conflict did not end there.

Mary escaped from Lochleven in mid-1568 and gathered an army, but a victory seemed lost when she was defeated in a battle against those in favour of the new regime.<sup>7</sup> She fled south in hopes that her cousin, Queen Elizabeth I of England, could give her refuge.<sup>8</sup> A place to stay was given, yes, but the granting of refuge was much more complicated.

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<sup>1</sup> “Courcellis Third Dispatch to Frenche Kinge. 30<sup>th</sup> November, 1586,” in *Extract from the Despatches of M. Courcelles, French Ambassador at the Court of Scotland. M.D.LXXXVI.-M.D.LXXXVII.* ed. Robert Bell (Edinburgh: The Bannatyne Club), 18.

<sup>2</sup> “Procedure: demission of the crown by Mary queen of Scots,” in *Records of the Parliaments of Scotland to 1707*, University of St Andrews <https://www.rps.ac.uk/mss/1567/7/25/1> [accessed 9 May 2021].

<sup>3</sup> “Procedure: demission of the crown”; “Act for fequefrating the Quenis Maiefties perfon and detening the fame in the hous and place of Lochleven” in *Registrum Honoris de Morton: A Series of Ancient Charters of the Earldom of Morton with Other Original Papers in Two Volumes*, ed. Cosmo Innes, Edinburgh: The Bannatyne Club, 1853), 24-26.

<sup>4</sup> Jane E. A. Dawson, *The Politics of Religion in the Age of Mary, Queen of Scots: The Earl of Argyll and the Struggle for Britain and Ireland* (Cambridge: Cambridge University Press, 2004), 149-150.

<sup>5</sup> Dawson, *The Politics of Religion*, 150-151; Julian Goodare, ‘The Ainslie Bond,’ in *Kings, Lords and Men in Scotland and Britain, 1300-1625: Essays in Honour of Jenny Wormald*, ed. Steve Boardman (Edinburgh: Edinburgh University Press, 2014), 318-320.

<sup>6</sup> Dawson, *The Politics of Religion*, 151-153.

<sup>7</sup> *Ibid.*, 153-155.

<sup>8</sup> *Ibid.*, 155.

As a result of the chaotic nature of the deposition and sporadic flight to England, Elizabeth allowed for a conference to begin in York. This turned into a series of events which initially, according to K. J. Kesselring, were ‘intended to weigh the evidence for Mary’s involvement in Darnley’s murder, and to determine whether Mary should be returned to Scotland’.<sup>9</sup> However, the unprecedented nature of the conference ensured that its legality was shrouded in doubt. Historians are not the only ones who regard the conference as confusing; contemporaries questioned the legality of it as well.<sup>10</sup> Questions were widespread: did this specific body have the power to conduct a trial or determine whether someone was guilty of committing a crime? Furthermore, was Mary even able to be put on trial since, according to her many supporters, she may still be a rightful monarch? To add even more confusion, was an English body even able to rule on a crime committed in Scotland? Finally, if this was, in fact, a fair trial, what were Mary’s rights as a defendant?

This article will analyse Elizabethan legal procedures and question whether typical legal proceedings could even be used in this particular circumstance. I will analyse whether the conferences constituted as a legitimate trial that could, in fact, determine Mary’s complicity in the crime she was accused of. Ultimately, I will present an updated conclusion as to whether these proceedings were, in fact, legal and fair according to early modern standards.

According to J.A. Sharpe, homicide cases in Elizabethan England needed to first be called by ‘the coroner, who had the duty to convene a jury to view the body of those had died under suspicious circumstances’.<sup>11</sup> According to this model, the conference that began at York was peculiar. Firstly, the only person who technically had the power to give a judgement at the conference was Elizabeth, and she, of course, had not been chosen by the coroner who had officially examined Darnley.<sup>12</sup>

Secondly, and most importantly, this conference was not officially considered a legitimate trial at the time of its calling. As Gordon Donaldson notes, Elizabeth was extremely nervous to give precedent to an official trial that determined the guilt of a monarch.<sup>13</sup> If she did, she feared her enemies could also accuse her of a crime and try to have her deposed as well. Therefore, the English queen made sure that the procedure was officially deemed a conference rather than a trial, ensuring that she would not give hint to any notion that she was laying the groundwork for future trials against contested monarchs.

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<sup>9</sup> K. J. Kesselring, “Mary Queen of Scots and the Northern Rebellion of 1569,” in *Leadership and Elizabethan Culture*, ed. Peter Iver Kaufman (New York: Palgrave Macmillan, 2013), 53.

<sup>10</sup> Gordon Donaldson, *The First Trial of Mary Queen of Scots* (London: Batsford, 1969), 123-126.

<sup>11</sup> J.A. Sharpe, “Prosecuting Crime in Early Modern England: Discussion paper,” *IAHCCJ Bulletin* 18 (1993): 41.

<sup>12</sup> Donaldson, *The First Trial*, 125.

<sup>13</sup> *Ibid.*, 125-127.

This can be proven by the fact that according to the session papers composed by the Duke of Norfolk, Elizabeth did in fact desire to ‘reftore the Queen of Scottes to her Realme and Authoritie’.<sup>14</sup> She wanted no part in declaring Mary guilty and legitimising a forced abdication of a monarch. If she determined Mary’s guilt or seemed to publicly approve of the deposition, she would have laid a precedent for her own potential removal. Elizabeth was the daughter of the late King Henry VIII of England, but the fact that she was the product of a Protestant marriage ensured that many viewed her as illegitimate and thus not the rightful monarch of the country.<sup>15</sup> Furthermore, even Henry VIII’s legitimacy had been contested during his own reign; his father was considered by many to be a usurper and not the rightful king of England as well.<sup>16</sup> Mary Stewart, in contrast, had, according to her son, ‘the best bloode in Europe’.<sup>17</sup> She was a direct descendent of Robert the Bruce and, on top of this strong ancestral link, was also the great-granddaughter of King Henry VII of England. If this ‘bloode’ could be deposed, what could this mean for Elizabeth: a queen who was considered by half of England to be a pretender?<sup>18</sup>

Therefore, according to early modern English standards, if the conference at York was meant to be determining the guilt of Mary in the murder of her husband, the deposed queen was not given a fair or unbiased trial. However, this was the point. Elizabeth never intended to grant Mary a fair trial according to contemporary standards, for if she had, she would have laid the groundwork for other monarchs such as herself to be put in the same position. In order to more securely retain her own status as the queen of England, Elizabeth ensured that the conference at York was specifically designed to not be viewed as a trial. In doing so, Elizabeth could not be accused of condoning the deposition of or accusations against a fellow queen.

Furthermore, we must question whether an English body had the right to rule on the guilt of someone accused of committing murder in Scotland. According to Alice Taylor, the *Regiam maiestatem and the Auld Lawes and Constitutions of Scotland* was a well-known determiner of certain Scottish laws to many for years before the conferences took place.<sup>19</sup>

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<sup>14</sup> ‘The Seffion of the 3d Daye beinge the 6<sup>th</sup> of Octobre’ in *A Collection of State Papers, Relating to Affairs in the Reigns of King VIII. King Edward VI. Queen Mary, and Queen Elizabeth, From the Year 1542 to 1570. Transcribed from Original Letters and other Authentick Memorials, Never before Publish’d, Left by William Cecil Lord Burghley, and Now Remaining at Hatfield House, in the Library of the Right Honourable the present Earl of Salisbury*, ed. Samuel Haynes (London: William Bowyer, 1740), 477.

<sup>15</sup> John N. King, “Queen Elizabeth I: Representations of the Virgin Queen,” *Renaissance Quarterly* 43, no. 1 (1990): 30.

<sup>16</sup> Katie Stevenson, “Chivalry, British sovereignty and dynastic politics: undercurrents of antagonism in Tudor-Stewart relations, c. 1490-1513,” *Historical Research* 86, no. 234 (2013): 601-603.

<sup>17</sup> “Instructions by James VI. To the Master of Gray. [17<sup>th</sup> December, 1586]” in *King James’s Secret: Negotiations between Elizabeth and James VI Relating to the Execution of Mary Queen of Scots, from the Warrender Papers*, ed. Robert S. Rait and Annie I. Cameron (London: Nisbet, 1927), 108.

<sup>18</sup> “Instructions by James VI,” 108; Stevenson, “Chivalry, British sovereignty,” 601-603.

<sup>19</sup> Alice Taylor, “What does *Regiam maiestatem* Actually Say (and what Does it Mean)?” in *Common Law, Civil Law, and Colonial Law: Essays in Comparative Legal History from the Twelfth to the Twentieth Centuries*, ed. William Eves, John Hudson, Ingrid Ivarsen and Sarah B. White (Cambridge: Cambridge University Press, 2021), 84-85.

Taylor states that the *Regiam maiestatem* was clear in noting that ‘the [Scottish] king in his kingdom had no superior other than God and the Church, and certainly not, by implication, the king of England’.<sup>20</sup> Therefore, according to widespread Scottish viewpoints, it would have been unprecedented and concerning for an English monarch to be determining the guilt of a Scottish one. To add onto this point, the fact that the murder was committed in Scotland rather than England makes a trial in which an English body determining the outcome even more unusual according to the *Regiam maiestatem*.<sup>21</sup> Therefore, this can help us further understand why Elizabeth did not want the conferences to be viewed as a trial: if she announced that it was one, she would have faced intense backlash as a result of ignoring the *Regiam maiestatem*.<sup>22</sup> Even if she had declared Mary innocent at the end of it, many would protest the validity of the determination of an English body ruling on a Scottish case.

Lastly, we must also question what Mary’s rights were at these conferences. According to John L. McMullan, defendants in early modern England were obliged to attend their own trial unless they bribed their way out of being accused entirely.<sup>23</sup> Therefore, it may initially seem odd that Mary not only was absent at the later Westminster conference but was in fact specifically ordered by Elizabeth not to attend.<sup>24</sup> However, when we remember the fact that Elizabeth did not want these conferences to be viewed as trials, this absence makes more sense. If Mary had appeared as a defendant, the conference would have seemed even more like an official trial, and Elizabeth could not risk any of her enemies viewing it as such.

Thus, the conferences at York and Westminster were not legal or fair trials according to Elizabethan standards, but this was their intention. There was no precedent for a monarch to hold the trial of a foreign, contested and deposed ruler, and Elizabeth wanted to ensure that she did not start a trend that could potentially threaten her own position as queen of England. By calling no jurors, not breaking the *Regiam maiestatem*, and ensuring that Mary would be absent for their entireties, Elizabeth cleverly made sure that these conferences did not resemble a criminal trial for a monarch.

Therefore, the conferences at York and Westminster did not equate to a legal or fair trial according to the Elizabethan standards, but this was their aim. In order to ensure that her own position as a contested queen could not be threatened, Elizabeth was forced to put herself first. Though Mary’s allies continued to fight for her for many years after this series of events was concluded, it was these conferences at York and Westminster that laid the groundwork

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<sup>20</sup> Taylor, “What does *Regiam maiestatem* Actually Say,” 49, 84-85.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> John L. McMullan, “Crime, Law and Order in Early Modern England,” *The British Journal of Criminology* 27, no. 3 (1987): 262.

<sup>24</sup> Donaldson, *The First Trial*, 134-135.

for the fact that she would never live to see Scotland again.<sup>25</sup> Elizabeth's own uncertain future ensured that she could not help Mary have access to a fair trial, for if she conducted one for her, then her own future could be in jeopardy. When Elizabeth refused to rule on Mary's guilt, she condemned her to a life of uncertainty and indecision all whilst being trapped in a limbo of an English prison. When the English queen finally condemned the Scottish one to death, it was arguably not truly out of fear that she was plotting against her, but to be rid of the living reminder of the uncertainty of her own rule. The conferences at York and Westminster predicted the course of Mary's remaining time both in England and on Earth: full of uncertainty and unfairness that ended with her head being placed on a block.

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<sup>25</sup> Gordon Donaldson, *All the Queen's Men: Power and Politics in Mary Stewart's Scotland* (London: Batsford, 1983), 114-116.

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