

Managing Criminal Women in Scotland:
An Assessment of the Scarcity of Female Offenders in the Records of the High Court
of Justiciary, 1524-1542

by

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Abstract

The records of Scotland's High Court of Justiciary that run from 1524 to 1542 contain a remarkably low number of women charged with felonies and pleas of the crown, and reveal the justiciar's reluctance to convict or execute female offenders. Criminal procedure and jurisdiction afforded victims and kin opportunities to deal with deviant women before they attracted the attention of the king and his justiciar. Moreover, in the Borders, remote central governance, minority rulers and feuding encouraged a quasi-legal system of private justice that operated within the organising principal of kindred to maintain order. In Scotland, this manifested in a sorting process that kept women out of the justice court and under the management of local officials and kindred. This thesis examines these documents in order to understand better the experiences of women before the law and the efficacy of centralised governance and private justice in sixteenth-century Scotland.

List of Abbreviations Used

<i>Burgh of Edinburgh, 1528-1557</i>	Marwick, Sir James D. ed., <i>Extracts from the Records of the Burgh of Edinburgh, 1528-1557</i> . Edinburgh: Scottish Burgh Records Society, 1871.
<i>Burgh of Stirling</i>	Renwick, R. ed., <i>Charters and Other Documents Relating to the Royal Burgh of Stirling, 1519-1666. With Appendix, 1295-1666</i> . Glasgow: Printed for the Glasgow Stirlingshire and Sons of the Rock Society, 1887.
<i>Carnwath Court Book</i>	Dickinson, William C., ed. <i>The court book of the barony of Carnwath, 1523-1542</i> . Edinburgh: Scottish History Society, 1937.
<i>Criminal Trials</i>	Pitcairn, Robert, ed. <i>Criminal Trials in Scotland, from A.D. 1488 to A.D. 1624: Embracing the Entire Reigns of James IV, James V, Mary Queen of Scots, and James VI</i> . Edinburgh: Bannatyne Club, 1833.
<i>DSL</i>	Rennie, Susan, ed. <i>Dictionary of the Scots Language/ Dictionar o the Scots Leid</i> . [www.dsl.ac.uk].
<i>Dunfermline Court Book</i>	Webster, James Moir and Archibald A. M. Duncan. <i>Regality of Dunfermline Court Book, 1531-1538</i> . Dunfermline: Carnegie Dunfermline Trust, 1953.
<i>Fife Court Book</i>	Dickinson, William C., ed. <i>The sheriff court book of Fife, 1515-1522</i> . Edinburgh: Scottish Historical Society, 1928.
<i>NRS</i>	JC1/3-5: <i>Court books – old Series</i> . National Records of Scotland.
<i>Perth Kirk Sessions</i>	Todd, Margo. <i>The Perth Kirk Session Books, 1577-1590</i> . Woodbridge: Boydell Press, 2012.
<i>RPS</i>	Keith M. Brown et al, eds. <i>The Records of the Parliaments of Scotland to 1707</i> . St Andrews, 2007-2014. [http://www.rps.ac.uk/].

Dates are given with the year beginning on January 1.

Money is given in £ Scots. Where merks have been converted, the original amount is given in footnotes

Latin sources have been translated into modern English. All other excerpts from printed sources are given as in the original publication in either Middle Scots or modern English.

The spelling of forenames has been standardised. Many surnames have also been standardised, with the exception of obscure names and those that appear in extracts from published primary sources. Place names appear in their modern versions.

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Chapter 1: Introduction

Much of the current work on women and crime in Scotland remains of a recuperative nature, and historians such as Elizabeth Ewan and J. R. D. Falconer loom large in scholarly efforts to provide fundamental information about the legal agency and deviant behaviour of women in late medieval Scotland.¹ The study of witchcraft has dominated the field of legal and gender history for a number of decades, but scholars have recently begun to make use also of kirk sessions and burgh, sheriff and regality court records to reconstruct female patterns of urban crime and ‘changing definitions of criminality’ in specific towns.² The bulk of this research, however, focuses on the period after the Reformation in 1560. In 2002, Yvonne Galloway Brown and Rona Ferguson published *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400* in an attempt to provide the first cohesive view of female deviance and crime in Scotland. Although this was a welcome addition to the rather disparate and thin collection of publications then available on the subject, the section of that book that addresses crime fails to devote careful focus to the medieval period. Instead, it reflects the general state of Scottish women’s studies, which has concentrated on the

¹ Elizabeth Ewan, ‘Crime or Culture? Women and Daily Life in Late-Medieval Scotland’, in *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*, ed. Yvonne Galloway Brown and Rona Ferguson (East Linton: Tuckwell Press, 2002): 117-36; Elizabeth Ewan, ‘Disorderly Damsels? Women and Interpersonal Violence in Pre-Reformation Scotland’, *The Scottish Historical Review* 89, no. 2 (October 2010): 153-171; Elizabeth Ewan, “‘Many Injurious Words’: Defamation and Gender in Late Medieval Scotland”, in *History, Literature and Music in Scotland, 700-1560*, ed. Russell A. McDonald (Toronto: University of Toronto Press, 2002): 163-86; Elizabeth Ewan, ‘Scottish Portias: Women in the Courts in Mediaeval Scottish Towns’, *Journal of the Canadian Historical Association*, n.s., 3 (1992): 27-43; and J. R. D. Falconer, “‘Mony Utheris Divars Odious Crymes’: Women, Petty Crime and Power in Later Sixteenth Century Aberdeen’, *Crime and Misdemeanours: Deviance and the Law in Historical Perspective* 4, no. 1 (2010): 7-36.

² Elizabeth Ewan, ‘A New Trumpet? The History of Women in Scotland 1300-1700’, *History Compass* 7, no. 2 (2009), 436.

seventeenth through the twentieth centuries. There remains much to be uncovered about the perpetration and prosecution of crime in late medieval Scotland.

The records of the High Court of Justiciary have featured in a number of studies that seek to describe the form, structure and administrative role of this tribunal. In the most recent of these, Jackson Armstrong offers a statistical report of the types and outcomes of cases heard at the High Court of Justiciary, as well as an assessment of the relationship of this itinerant court with regality jurisdictions. When the justiciary court proceeded on ayre and sat in a particular town, it automatically assumed superior jurisdiction over any other legally-constituted court. Justices therefore heard cases which were typically under the jurisdiction of local barons' or regality courts, and the occasional appearance of some rather innocuous crimes, such as illegal woodcutting or the hunting of hares, indicates heightened concern on the part of the crown and its agents about the aggravated nature of particular offences in particular places and at particular times.³ The justiciar also passed judgement on men who committed common theft, murder and assault, who would have been dealt with by local authorities between visits from the central justices.

Although the justiciary court assumed responsibility for the pleas of the crown or some or all cases awaiting trial in the regality or barony courts when it appeared in a given area, the only women who appear in the records of these sessions were charged primarily with witchcraft, mobilising rebels, fire-raising (arson) or associating with traitors. Julian Goodare and other scholars of witchcraft in early modern Scotland

³ Jackson W. Armstrong, 'The Justice Ayre in the Border Sheriffdoms, 1493-1498', *The Scottish Historical Review* 192, no. 1 (2013): 17-18. See also Michael B. Wasser, 'Defence Counsel in Early Modern Scotland: A Study Based on the High Court of Justiciary', *Journal of Legal History* 26, no. 2 (2005): 183-201 and Michael B. Wasser, 'Violence and the Central Criminal Courts in Scotland, 1603-1638' (PhD diss. Columbia University, 1995).

have made use of the records of the High Court of Justiciary in their contributions to the prominent body of research that explores the criminalisation of this notoriously female crime in 1563 and the phenomenon of prosecution that followed.⁴ Scholars have not yet, however, undertaken the close study of these documents to uncover information about efforts to control female deviancy more broadly in late medieval Scotland. In an effort to repair this lacuna, this thesis considers the evidence of the justiciary court records, particularly those that record trials from the period 1524 to 1542, which have not yet figured in attempts to reconstruct patterns of female crime.

1.1: Sources and Evidence

Sources that record the criminal actions of women are more plentiful for urban regions such as the burghs of Aberdeen, Edinburgh, Perth and Dundee than they are for the smaller villages dotted throughout the Anglo-Scottish border region that is the geographical focus of this thesis. In these great burghs ecclesiastical, judicial and governmental institutions enrolled the business that came before them in volumes of written records.⁵ In light of this fact, and given the limited availability of printed and digitised materials, this thesis offers only a partial study of criminal cases brought before regality, barony, burgh, justiciar and sheriff courts. The role of the church is also taken into account, but available records from medieval courts are scarce and thus any comment must be limited to the results of a cursory overview of some printed

⁴ See, for example, Christina Lerner, *Enemies of God: The Witch-Hunt in Scotland*, (Baltimore: Johns Hopkins University Press, 1981) and Julian Goodare, Lauren Martin, Joyce Miller and Louise Yeoman eds., *The Survey of Scottish Witchcraft*, [<http://www.shca.ed.ac.uk/witches/>] (accessed 2 February 2014).

⁵ Elizabeth Ewan, 'Alison Rough: A Woman's Life and Death in Sixteenth-Century Edinburgh', *Women's History Magazine* 45 (2003), 4.

materials and a number of secondary studies. The decisions of various editors of these collections have also affected the nature of this thesis. While some collections include full transcripts of a given court through a set period, others were published in order to provide a fuller view of the development of a community over a wider expanse of time and include careful selections of the most interesting or salient case entries. The former make it possible to gather a sense of patterns, while the latter provide a single glimpse of the nature of one particular crime and a community's response to it.

The primary sources of evidence for this thesis are digital photographs of the records of the High Court of Justiciary, held in the National Records of Scotland (*NRS*) repository and classified as JC1/3-5. This collection of records form part of the *Old Series of Court Books*, which run from 1493 through 1697. Although the extant records are patchy, they nevertheless offer an opportunity to explore the most serious sorts of crime committed in this period. The documents classified as JC1/3 record the minutes of the justiciary court in Edinburgh, as well as some entries from ayres that proceeded on West and North circuits between 24 November 1524 and 5 May 1531. The records classified as JC1/4 contain multiple types of entries. Those from 18 June 1526 to 11 October 1531 record fines and hornings issued at Edinburgh. Entries from 23 October 1539 to 20 February 1539/40 and from 20 February 1529/30 to 27 October 1544 include acts of caution undertaken at Stirling and Linlithgow, as well as copies of acts of the justiciary court, recorded from the books of adjournal when it sat in Dumbarton, Renfrew, Dumfries and Edinburgh. The classification JC1/5 contains the acts of caution undertaken in Edinburgh and two sittings of the court at Jedburgh between 28 November 1524 and 27 May 1527. From 15 May 1531 to 29 November

1539 these documents record the minutes of the justiciary court.⁶ Despite some gaps in specific types of records, the overall surviving evidence does allow us to piece together the business of the justiciary court provided by the inhabitants of Edinburgh and the Borders during the personal rule of James V. Throughout the sixteenth century, in fact, border crimes are overrepresented in the documents of central criminal courts and an overwhelming majority of the pledges taken at Edinburgh were related to conflicts in the Borders rather than those in the Highlands or the north east of the kingdom. This imbalance indicates that the crown was troubled both by the proximity of border conflict and by the degree of disorder that it perceived in the region.⁷

The reluctance of scholars to engage with the records of the justiciary court may speak largely to the problematic nature of these sources. At first glance, the composition and condition of the records are discouraging. Writing in the loosely formed and inconsistent secretary hand characteristic of the early sixteenth century, the clerks composed these documents in highly abbreviated Latin and Middle Scots and sometimes switched between the two multiple times in a single entry. Additions in the margins and deleted entries indicate that the clerks completed entries, reconciled ameracements and recorded updates after initial hearings, probably ‘by candle-light at the end of the day while the justiciar dined and entertained nearby’.⁸ These amendments add another layer of difficulty to interpretation. Most entries are decipherable with practice, but occasionally they become illegible from the ‘bad

⁶ Charles Scott, ‘The Archives of the High Court of Justiciary’, *Juridical Review* 3 (1891), 208.

⁷ Groundwater, ‘The chasm between’, 116; Wasser *Violence and the central criminal courts*, 56-58.

⁸ Armstrong, ‘The Justice Ayre’, 4.

character' of the script.⁹ Robert Pitcairn, in the preface to his printed collection of the records, quite aptly calls them 'repulsive materials'.¹⁰

In addition to the style and recordkeeping practices of the clerks, the pages have been subject to the ravages of time and improper storage. Charles Scott marvels that 'it is not so wonderful that some papers should have gone down in the wreck of time, as that so many should have been preserved'.¹¹ The books were not deposited in Register House until 1811. Prior to that, it appears that individual justice clerks held them privately. Scott suggests that this was done for extra security, but remarks that 'it does not well appear how they would be in greater safety in such places, since their frayed and blackened appearance would powerfully recommend them to all energetic housemaids for lighting fires and other useful domestic purposes'.¹² Indeed the edges of the folios have become darkened and tattered with age. In some places, water damage and rough handling have obscured whole entries.

Fortunately, the majority of the pages are still legible, owing to the formulaic nature of the records. This fact affords the reader a degree of certainty when supplying missing words and interpreting otherwise unintelligible scribbles. Armstrong observes two standard forms used to construct most case entries. The first includes a note in the left margin to indicate the outcome of a case (as in '*decollat*'),¹³ identifying information concerning the pannel (accused), a brief description of the crime and the victims, and identification of sureties. The second, and more frequent, appears when a surety failed to fulfil a formal pledge to bring a pannel before the court and was penalised with an

⁹ Scott, 'The Archives of the High Court of Justiciary', 208.

¹⁰ Robert Pitcairn, *Criminal Trials* (Edinburgh: Bannatyne Club, 1833), v.

¹¹ Scott, 'The Archives of the High Court of Justiciary', 198.

¹² *Ibid.*, 197-8.

¹³ *beheaded*

amercement. Such entries offer even less detail than the first, though the left margin does indicate the amount of the amercement, whether it was paid, the name of the amerced surety and the name of the pannel who failed to compear. Some entries do indicate the nature of the crime and the victim, but do not include further detail. These entries end by stating that the pannel remains indicted and that the surety had been amerced and was still obliged to bring the pannel to a later sitting of the court. The failure of sureties to fulfil their pledge to bring a pannel to underly the law was a regular occurrence in this period, and it features throughout this thesis. The records of the justiciary court include no deposition, and no discussion of how the offender's crime was discovered or by which process the matter had been introduced to the court; rarely is there any indication of the identity or swearing in of assize members.¹⁴ Moreover, not every entry lists the charge. Instead, most mention the existence of a dittay or nothing at all. Some, however, do list multiple charges and offer a brief description of events, typically the damages incurred during the commission of a property crime.¹⁵ Although the lack of detail means that the justiciary court records leave many questions unanswered, the evidence they do provide supports the fact that the crown and the private individual who brought the action held joint interest in the case and that the initial complaint was the result of private initiative.¹⁶ Armstrong's observations about the late-fifteenth-century records also hold true for those compiled from 1524 to 1542.

In addition to the photographs of the archived court books, this thesis also makes use of various printed primary sources. In 1833, the Bannatyne Club published

¹⁴ This description of the entries draws heavily on Armstrong, 'The Justice Ayre', 10-11.

¹⁵ *Ibid.*, 22.

¹⁶ *Ibid.*, 11.

Pitcairn's translations of select trials from the judiciary court records in a multi-volume work entitled *Ancient Criminal Trials in Scotland*. Although Pitcairn claimed that his efforts constituted 'a more regular plan' and 'a more extended scale, than [had] hitherto been attempted' in the publication of these records, the collection is not a completely faithful transcription of the court books.¹⁷ Pitcairn offers technical translations of the Latin records, but his selections include only the most fascinating and egregious cases that came before the judiciary court and therefore do not represent accurately all criminal cases heard and pledges taken in this period.¹⁸ Where convenient, this thesis employs some of Pitcairn's descriptions and translations of the cases, but manuscript references are given in addition to those that refer to Pitcairn's work and most of the translations are the author's own.¹⁹

In addition to the evidence of the judiciary court records, sheriff, regality and barony court books that document crime in the Borders and other areas of Scotland during the sixteenth century feature heavily in this study. Among the records available in print are *The Court Book of the Barony of Carnwath, 1523-1542*, *The Sheriff Court Book of Fife, 1515-1522*, the *Records of the Sheriff Court of Aberdeenshire 1: Records Prior to 1600* and the *Regality of Dunfermline Court Book, 1531-1538*. A great deal more survive in the national and local archives, but scholars have not yet produced extensive studies based on their contents or published them in edited collections. This thesis also consults the evidence of sixteenth-century burgh courts in Peebles, Prestwick, Edinburgh, Lanark, Stirling and Selkirk. Finally, *The Perth Kirk Session*

¹⁷ Pitcairn, *Criminal Trials*, vi.

¹⁸ Armstrong, 'The Justice Ayre', 7.

¹⁹ References are given for entries that describe female offenders. Those that describe male offenders for the purpose of comparison have been quoted directly from Pitcairn's edition.

Books, 1577-1590, currently the only collection of printed sixteenth-century church court records available outside the national archives, has offered valuable information about social order and managing misbehaviour some decades after the period under review.²⁰

Although the primary focus of this thesis is an analysis of the women represented in the justiciary court records from 1524 to 1542, it is essential that this thesis consider evidence from within and beyond the period in question in order to situate adequately its conclusions within the current historiography of women and crime. The decision to include materials from beyond the Scottish border region has been made in light of the sparse survival and limited publication of Scottish records for the early sixteenth century and the conclusions that follow thus reflect the influence of central anxiety about general disorder on judicial responses to female offenders throughout the kingdom at this time. It is important to note that the nature of the

²⁰ William Chambers and Robert Renwick, eds., *Charters and Documents Relating to the Burgh of Peebles with Extracts from the Records of the Burgh A.D. 1165-1710*. (Edinburgh: Scottish Burgh Records Society, 1872); William C. Dickinson, ed., *Carnwath Court Book* (Edinburgh: Scottish History Society, 1937); William C. Dickinson, ed., *Fife Court Book* (Edinburgh: Scottish Historical Society, 1928); John Fullarton, ed., *Burgh of Prestwick* (Glasgow: Maitland Club, 1834); John Imrie, Thomas I. Rae, W. D. Ritchie, eds., *The Burgh Court Book of Selkirk, 1503-45*. Part 1 (1503-31). (Edinburgh: Scottish Record Society, 1960); John Imrie, Thomas I. Rae, W. D. Ritchie, eds., *The Burgh Court Book of Selkirk, 1503-45*. Part 2 (1531-41). (Scottish Record Society, 1969); David Littlejohn, ed., *Aberdeen Court Book* (Aberdeen: New Spalding Club, 1904); Teresa Maley and Walter Elliot, eds., *Selkirk Protocol Books, 1511: The Protocol Books of John Chepman, 1511-36 and 1545-47, Sir John Chepman, 1536-43, John and Ninian Brydin and other notaries, 1526-36, and John Brydin, 1530-37* (Edinburgh: Stair Society, 1993); James D. Marwick, ed., *Burgh of Edinburgh, 1403-1528* (Edinburgh: Scottish Burgh Records Society, 1869); James D. Marwick, ed., *Burgh of Edinburgh, 1528-1557* (Edinburgh: Scottish Burgh Records Society, 1871); Robert Renwick, ed., *Extracts from the Records Relating to the Royal Burgh of Lanark, 1150-1722*. (Glasgow: Printed by Carson & Nichol, 1893); Robert Renwick, ed., *Burgh of Stirling* (Glasgow: Printed for the Glasgow Stirlingshire and Sons of the Rock Society, 1887); Margo Todd, *Perth Kirk Sessions* (Woodbridge: Boydell Press, 2012); and James Moir Webster and Archibald A. M. Duncan, eds., *Dunfermline Court Book* (Dunfermline: Carnegie Dunfermline Trust, 1953).

records and the very limited number of women who appear in them require that this study rely on close readings of the cases that do contain detail rather than on a statistical analysis. Where pertinent, however, a basic numerical breakdown of the offences and the number of female offenders represented has been given in order to provide some context to this particular set of records. It must also be acknowledged that the majority of the women who appeared before the justiciary court were of noble status and the findings presented here must be interpreted in light of this fact. Contemporary responses to their crimes nevertheless resonate with the experiences of other women in Scotland and the evidence of the justiciary court records therefore compliments and contributes to current scholarship on the history of crime and gender in pre-modern Britain.

1.2: Women and Crime in Pre-Modern Europe

Historians of female criminality in pre-modern Europe have long known that women committed felonies far less often than did men. Although figures vary across regions and over time, the consensus is that roughly ten to fifteen per cent of felonies committed may be attributed to women. There are a number of reasons why women participated in crime in different ways than did men, and why they often did so to a lesser degree, if not with less frequency overall. Explanations of such discrepancies are typically grounded in the social roles of medieval women, and the opportunities (or lack thereof) and behaviours that accompanied their position and status. Thus, scholars have argued that women engaged in less violent crime or that they exploited personal relationships and contemporary assumptions about gender to minimise the chance of personal encounters turning into violent escalations or discovery. Pre-modern societies

generally disapproved of any situation that involved the ‘gentler sex’ and violence; however, women in late medieval Europe did assault and kill others, with great violence in some cases, and appeared before court officials to account for their actions.²¹ Writing about a trend of low indictments against women for violent crime which continued into the seventeenth and eighteenth centuries, Anne-Marie Kilday calls the discrepancy ‘something of a mystery’.²² Social, regional and cultural contexts, the character of the offender and the options available to those offended surely played a role in the choice to prosecute.

²¹ For the fourteenth and fifteenth centuries, see Jane Laughton, ‘Women in Court: Some Evidence from Fifteenth-Century Chester’, in *England in the Fifteenth Century: Proceedings of the 1992 Harlaxton Symposium*, ed. Nicholas Rogers (Stamford: Paul Watkins, 1994): 89-99; Barbara Hanawalt, ‘The Female Felon in Fourteenth-Century England’, *Viator* 5 (January 1974): 253-268; Barbara Hanawalt, *Of Good and Ill Repute: Gender and Social Control in Medieval England* (New York: Oxford University Press, 1998); Cynthia J. Neville, ‘War, Women and Crime in the Northern English Border Lands in the Later Middle Ages’, in *The Final Argument: The Imprint of Violence of Society in Medieval and Early Modern Europe*, ed. Donald J. Kagay and L. J. Andrew Villalon (Woodbridge: Boydell Press, 1998): 163-75; Richard J. Sims, ‘Secondary Offenders? English Women and Crime c.1220-1348’, in *Victims or Viragos? Victims or Viragos?* ed. Christine Meek and Catherine Lawless (Dublin: Four Courts Press, 2005): 69-88; Trevor Dean, ‘Criminal Justice in Mid-Fifteenth-Century Bologna’ in *Crime, Society and the Law in Renaissance Italy*, ed. Trevor Dean and K. J. P. Lowe (Cambridge: Cambridge University Press, 1994): 16-39; and Trevor Dean, *Crime in Medieval Europe, 1200-1500* (Harlow: Longman, 2001). For the sixteenth century see Ewan, ‘Disorderly damsels?’; Ewan, ‘Many injurious words’; and Malcolm Greenshields, *An Economy of Violence in Early Modern France: Crime and Justice in the Haute Auvergne, 1587-1664* (University Park: Pennsylvania State University Press, 1994), 111. For the seventeenth and eighteenth centuries, see J. M. Beattie, *Crime and the Courts in England, 1660-1800*. (Princeton: Princeton University Press, 1986), 97; J. R. D. Falconer, “‘Mony Utheris Divars Odious Crymes’”; Anne-Marie Kilday, “‘The Lady-Killers’: Homicidal Women in Early Modern Britain’, in *Assaulting the Past: Violence and Civilization in Historical Context*, ed. Katherine Denise Watson (Newcastle-upon-Tyne: Cambridge Scholars, 2007): 203-21; and Anne-Marie Kilday, “‘That Women are but Men’s Shadows’”: Examining Gender, Violence and Criminality in Early Modern Britain’, in *Gender in Late Medieval and Early Modern Europe*, ed. Marianna Murayeva and Raisa Maria Rovio (Oxford: Routledge, 2013): 53-69. For a broad survey of pre-modern Europe see Pieter Spierenburg, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge: Polity, 2008), 117-122.

²² Kilday, “‘The Lady-Killers’”, 215.

For England in the fourteenth century, Barbara Hanawalt has produced a nearly comprehensive picture of female criminal behaviour.²³ The conclusions of her research, in conjunction with the findings of other scholars, indicate that in England the ratio of men to women who appeared in court on felony charges was about nine to one.²⁴ More intriguingly, in the Anglo-Scottish region between 1300 and 1460 the ratio was about fifteen to one. The latter figure suggests that reactions to and perceptions of crime in this region may have been different than in other areas of England where women, Cynthia Neville argues, lived less 'stressful and precarious lives' than those embroiled in all the drama of border existence.²⁵ Of the 3363 entries enrolled in extant justiciary court records from 1524 to 1542, only 131 name women in any role other than that of the victim. These entries account for roughly four per cent of the pleas of the crown and other serious offences heard by this court. Although a wide discrepancy between the number of felonies committed by men and women is typical of this period, four per cent seems low when compared with numbers from elsewhere in Scotland, the Anglo-Scottish border region and late medieval Europe more broadly. The nature of the crimes for which both men and women came before the justiciary court is also unusual. Men appeared regularly on charges of 'common theft' and 'reset of theft', which were typically dealt with in lower, regional courts according to the value of the stolen goods and the manner by which they were taken. The simplest definition of reset is the sheltering, accommodation or receiving of something.²⁶ When the 'something' in question was a bundle of stolen goods, a rebel,

²³ Hanawalt, *Of Good and Ill Repute* and 'The Female Felon'.

²⁴ Laughton, 'Women in Court', 254 and Ewan, 'Disorderly Damsels?', 154.

²⁵ Neville, 'War, Women and Crime', 165-66.

²⁶ Susan Rennie, ed., *DSL* [<http://dsl.ac.uk>], s.v. 'Reset'.

a traitor, or an excommunicate, resetting acquired a criminal dimension. In light of the aggravation caused by turbulence in the border region, it is understandable that communities might take these offences more seriously overall.²⁷ Women, however, appear only for undeniably felonious and treasonable acts, including homicide, mutilation, communicating with enemy English and, in later periods, witchcraft. Equally intriguing is the apparent reluctance of the court to hand down sentences or otherwise address the actions of these women. Men are named in entries that record fines, hornings, replegiations and various sentences (including capital punishment), while the officials of the justiciary court almost exclusively repledged women to local courts or put off to a later court session, after which these persons often disappear from the records.

1.3: Controlling Misbehaviour in Scotland

When it proceeded on ayre, the southern circuit of the justiciar serviced the region south of Forth and sat in towns such as Dumfries, Jedburgh, Lauder, Peebles, Roxburgh and Selkirk. The court, however, conducted the majority of its business in Edinburgh and required that sureties bring pannels from outlying areas to the burgh to answer for their crimes. Scholars of female criminality in England suggest that the more lenient treatment of female offenders occurred in part because there were alternative jurisdictional, procedural and social measures available to communities, none of which involved the cost or time of formal trials. In *Controlling Misbehaviour*

²⁷ Cynthia J. Neville, 'War, Women and Crime in the Northern English Border Lands in the Later Middle Ages', in *The Final Argument: The Imprint of Violence of Society in Medieval and Early Modern Europe*, ed. Donald J. Kagay and L. J. Andrew Villalon (Woodbridge: Boydell Press, 1998): 165-66.

in England, 1350-1600, Marjorie K. McIntosh describes the many options that late medieval and early modern communities navigated when they sought justice against someone who had wronged them. McIntosh argues convincingly that because general misbehaviour was not the subject of frequent legislation, communities were able to choose whether to report the behaviour and pursue formal prosecution, which court they wished to prosecute in and, to some extent, how they wished to classify the offence they had experienced or witnessed. Such decisions were contingent upon the threat the offence posed to the community, the gender and reputation of the offender, the possible costs and benefits of formal prosecution and the perceived effectiveness of formal or informal sanctions. McIntosh focuses on general misbehaviour such as nightwalking and drunkenness rather than the management of capital offenders; however, other scholars suggest that contemporaries believed that criminal legal proceedings were too important to be bogged down with female criminals, whose crimes, within their communities anyway, were downplayed or not considered as 'disruptive or reprehensible' as others.²⁸ The scarcity of women in the sixteenth-century justiciary court records suggests that the decision-making process, which determined what happened to individuals who subverted acceptable forms of behaviour, extended to capital crimes as well. In applying McIntosh's framework to the management of felonious women in Scotland, this research goes beyond recent effort to reconstruct the female patterns of prosecution and offers insight into the social, familial and judicial responses to deviant women in this period.

²⁸ *Ibid.*, 167.

1.4: Themes and Arguments

The strong personal kingship that Jenny Wormald cites as the Scottish crown's source of power and authority was absent during the minority period of James V's rule.²⁹

Thus, the eighteen years under consideration in this thesis offer a rich opportunity to examine the efficacy of the central justiciary court and James' efforts to centralise judicial administration as he came into his personal rule. The first chapter of this thesis explores the overlapping criminal jurisdiction of courts in sixteenth-century Scotland with a view to understanding how administrative officials interpreted and classified the crimes that women committed in this period. Moreover, it attempts to establish which of the many courts that constituted an elaborate and flexible justice system were most likely to hear complaints against female offenders. The strength of regional lordship that Keith Brown has observed in the later sixteenth century is evident in the localised administration of law in the first half of the period as well.³⁰ Although victims and their families did make use of the justiciary court and local officials typically worked toward the same goals as the crown, the variety of judicial privileges afforded these local magnates and their courts offered communities in the Borders (and elsewhere in Scotland) a great deal of choice and allowed them to manage women locally rather than centrally.

The second chapter introduces obligations of kinship as a force that influenced communities to opt for local management of misbehaviour and crime rather than involving central authorities. Specifically, it acknowledges the Borders as a family-centred, highly localised and potentially chaotic region prone to treasonable activity

²⁹ Wormald is writing about a later period, but the notion of personal kingship as the basis of good governance underlies the arguments she makes throughout *Court, Kirk and Community*.

³⁰ Brown, *Noble Power in Scotland*.

where the inhabitants nevertheless managed misbehaviour in a pattern consistent with the one Marjorie McIntosh establishes for England from 1350 to 1600. Moreover, it argues that the kin groups that Wormald claims ‘bedevilled’ all social and political relationships in Scotland governed misbehaviour in much the same way as McIntosh’s village and market centre communities.³¹ Owing to the close geographic distribution of the border surnames, the community element of her thesis remains much the same when applied to the Anglo-Scottish border region. Networks of kinship groups and bonds between women and members of their families influenced the way women committed crimes, with whom they committed them and by whom they were disciplined when they were caught. Ultimately, the obligations of kinship motivated the families of disorderly women to manage them in local jurisdictions where they might receive more appropriate treatment at the hands of their relatives and landlords and thus avoid visiting negative social or political consequences upon the surname.

The conclusions drawn in these chapters apply to both men and women. Border communities attempted to manage the behaviour of all their inhabitants; however, women did experience prosecution somewhat differently than did men owing to contemporary views of female criminals and the roles of women in sixteenth-century society. While contemporaries might agree that murder, mutilation and theft were serious crimes whoever committed them, women nevertheless appear to have experienced lenience and redirection into lower jurisdictions or informal management more often than did men who transgressed the same legal boundaries. The third chapter argues that contemporaries dismissed or diminished the threat of female criminals and only became fearful enough to pursue harsh sanctions when the woman

³¹ Wormald, *Lords and Men in Scotland*, 76-77.

abused political power or subverted gendered social mores as well as the law. In all other instances, the management of female criminals simply did not demand the resources of the judiciary court.

McIntosh's thesis demonstrates that contemporaries who were concerned about wrongdoing made use of a variety of formal and informal methods to establish balance and harmony in their communities. Chief among these was the choice of which court or informal chastisement would best serve their interests according to the punishment and level of publicity they wished to visit upon those who transgressed legal and societal mores. Close study of trial records from the Scottish High Court of Justiciary in the period 1524 to 1542 is remarkable above all for the relative absence of women as perpetrators of serious offences. The scarcity of women in these records confirms McIntosh's claim that the Scots did indeed share in a pan-European method of managing deviance in this period, despite geographical, cultural, procedural and jurisdictional differences. In the Scottish Borders, remote central governance and a culture of feuding produced a quasi-legal system of justice that operated to keep the peace within the organising principals of surnames and kin groups. Scottish criminal procedure and the overlaps between different curial jurisdictions offered kin groups and communities a number of opportunities, at various stages of the legal process, to deal with deviant women long before they attracted the attention of the king and his judiciary court. Although, as McIntosh argues with respect to England, the methods used to curtail the misbehaviour of women in this period did not differ drastically from those used to manage men, gender concerns none the less influenced decisions about how best to manage disorderly people. The crimes that Scottish women committed, their role within kin groups and contemporary assumptions about the nature of women

all provoked gendered responses from their communities and judicial officials. In Scotland, these were made manifest in a sorting process that kept women out of the judiciary court and under the management of local officials and kindred.

1.5: Scotland and the Borders in the Reign of James V

From 1296 and the eruption of the Scottish Wars of Independence down to the sixteenth century, the Anglo-Scottish border was a region of chaos, hostility and general disorder.³² It remained turbulent during the reign of James V (1513-1542), which began and ended in a minority rule, and was characterised by open attempts to manipulate the crown. The reign saw a great deal of anxiety over treason and lawlessness. In 1513, Scotland entered a period of minority rule after the death of James IV at the Battle of Flodden. Seventeen-month-old James V came to the throne in a realm bereft of its leading noblemen, many of whom had perished alongside his father. Those who remained struggled fiercely to control the royal infant.³³ From 1515 to 1524, the regency of John duke of Albany saw the introduction of French influences to the kingdom and the maintenance of an uneasy peace with the English, despite French attempts to turn Scotland against their southern neighbour. Albany had been invited to assume this position as a consequence of anxiety over the queen mother's marriage to Archibald Douglas. Contemporaries feared the potential for political imbalance that might arise from the match, for the Red Douglasses wielded significant power already without having the young king in their clutches. Albany nevertheless held the office of regent and continued his efforts to maintain peace until the twelve-

³² Neville, 'Border Law in Late Medieval England', *Journal of Legal History* 9 (1988), 339.

³³ Ewan, 'Alison Rough', 5.

year-old James began his personal rule. Although James was now in a position to rule (with advice from his counsellors), discord between various factions inspired parliament to agree, in 1525, that the king would be best served by remaining in the presence of certain advisors; thereafter, William Dickinson notes that ‘Douglases filled every office in the household’.³⁴ In 1526, Archibald Douglas earl of Angus, through sheer boldness and with the support of the earls of Argyll and Lennox, took control of the young monarch.³⁵ The situation lasted until 1528 when James V escaped and Angus went into exile in England, where he stayed until the end of James’ reign. Throughout the remainder of the reign, James’ hatred of the Douglases and anyone who supported the English defined his attitude to politics, feuding and treason in the Borders and elsewhere in the kingdom. What was at first understandable animosity toward the man who had effectively kidnapped him and usurped his rule was, by the late 1530s, likened by some contemporaries to an unfair oppression of the entire Douglas kindred.

Throughout the minority and at the start of James’ personal rule, a number of incidents occurred that hint at the tension that was building in Scotland during this period. One infamous street fight of 1520, dubbed ‘Cleanse the Causeway’, between the Hamiltons and Douglases illustrates the tension between two of the leading political families in the Borders. Bad blood in Scotland merely added to disagreements between Scotland and its neighbour to the south. After James V rejected a truce with England, which was supposed to be sealed with a marriage between James and Henry VIII’s daughter Mary, the border region suffered from a number of raids in the spring and

³⁴ William C. Dickinson *Scotland from the Earliest Times to 1603*, ed. Archibald A. M. Duncan (Oxford: Clarendon Press, 1977), 300-304.

³⁵ Jenny Wormald, *Lords and Men in Scotland: Bonds of Manrent, 1442-1603* (Edinburgh: John Donald Publishers Ltd., 1985), 146.

summer of 1523. In the absence of a truce, further disorder disturbed the next five years. At this time, James also began to consider the threat of protestant heresy. The first act against Lutheran literature appeared in 1525, followed three years later by the burning of Scotland's first Protestant martyr, Patrick Hamilton.

The remainder of James V's reign was equally troubled. Although the king was able to negotiate a truce with England in 1528, the Borders were still reeling from the recent lapse of the truce and from lingering tensions rooted in the factional squabbles of his minority rule. The year 1530 saw punitive royal action in the region, including the temporary warding of the Hume, Maxwell, Johnstone, Buccleuch, Bothwell, Douglas of Drumlanrig and Kerr magnates in Edinburgh and the executions of infamous reivers such as Adam Scott of Tushielaw, Cockburn of Henderland and Johnnie Armstrong.³⁶ The year 1535 saw a further act against heretical literature and in 1541 parliament passed yet more legislation that reflected James' staunch Catholic convictions and loyalty to Rome. In 1542, after defeat by the English at Solway Moss, the country entered a nineteen-year minority. The death of the king had left a week-old Mary on the throne. Two years later, the tension that had been mounting between Scotland and England since the end of the life-long truce negotiated in 1536 erupted in the 'Rough Wooing' and the first English devastation of the Scottish border region.³⁷ The

³⁶ Maureen M. Meikle, 'Flodden to the Marian Civil War: 1513-1573', in *Scotland: The Making and Unmaking of the Nation c. 1100-1707*, ed. Bob Harris and Alan R. MacDonald (Dundee: Dundee University Press, 2006), 5. After this demonstration of royal discipline and the display of loyalty shown by the magnates who accompanied him during this purge, James was confident enough in the stability of the realm to leave its administration to vice-regents who handled domestic affairs during the king's sojourn to France in 1536-37.

³⁷ Jenny Wormald, *Court, Kirk and Community: Scotland, 1470-1625* (Toronto: University of Toronto Press, 1981), 204-205; Simon Ollivant, *The Court of the Official in Pre-Reformation Scotland: Based on the Surviving Records of the Officials of St. Andrews and Edinburgh*, (Edinburgh: Stair Society, 1982), 155; Lizanne Henderson, "'Detestable Slaves of the Devil': Changing Ideas about Witchcraft in Sixteenth-Century Scotland", in *A History of Life in Medieval*

instability of minority rule and James' struggle to develop a strong personal kingship after his escape from Douglas are evident in his governance of the kingdom throughout the latter half of his reign.

The Scottish Borders, although not geographically distant from Edinburgh, were isolated from central agents by the narrow, difficult routes that constituted the only access from the centre of the kingdom. Conversely, cross-border access between Scotland and England was relatively open.³⁸ These conditions made it far easier for bands of thieves and reivers to move about between the kingdoms than it was for James' representatives to foray into the Borders in order to dispense justice and exert control over the region. In *State and Society in Early Modern Scotland*, Julian Goodare acknowledges that the crown struggled, somewhat obsessively, to impose order on the Borders for centuries. Unlike the conflicts of the relatively far-flung Highlands, which might be pushed aside to deal with another day, the proximity of the Borders to both Edinburgh and England, together with the political significance of this region, led to heightened sensitivity to crime and disorder in the area. This preoccupation contributed to the crown's 'marked touchiness' toward the unruly behaviour of its inhabitants and those with ties to the region, and it facilitated an increasingly negative and exaggerated perception of their wicked nature.³⁹

Scotland, 1000 to 1600, ed. Edward J. Cowan and Lizanne Henderson (Edinburgh: Edinburgh University Press, 2011), 234; John Sadler, *Border Fury: England and Scotland at War 1296-1568* (Harlow: Pearson Education Limited, 2005), especially chapter seventeen; and Meikle, 'Flodden to the Marian Civil War', 348-349.

³⁸ Thomas I. Rae, *The Administration of the Scottish Frontier: 1513/1603* (Edinburgh: Edinburgh University Press, 1966), 2-3.

³⁹ Julian Goodare, *State and Society in Early Modern Scotland* (Oxford: Oxford University Press, 1999), 257-258 and Wormald, *Court, Kirk and Community*, 39.

Nevertheless, lack of central governance did not impede the practice of justice. Although towards the end of the sixteenth century, the Scottish state was slowly gaining a monopoly over violence, James V relied still on the cooperation of local magnates whose administrative style allowed a quasi-legitimate system of private justice to flourish in the place of close central oversight.⁴⁰ Furthermore, there is no reason to believe that local officials did not concern themselves with the same issues of justice and order that troubled the crown. They shared the same goals as the central administration, but dealt with infractions through feuding and self-contained private justice. In the Borders, as in other areas of the kingdom, justice was peacemaking in whatever form that took, even if the means were not strictly legal in the formal sense of the word.⁴¹

⁴⁰ For a discussion of the centralisation of government in Scotland see Goodare, *State and Society*, chapters 8-9. Keith Brown offers a competing view of the locus and negotiation of power in sixteenth-century Scotland, and the ways in which local resistance of the crown's authority and noble involvement in the culture of feuding complicated and intruded upon the exercise of central government and justice in Keith M. Brown, *Noble Power in Scotland from the Reformation to the Revolution*, (Edinburgh: Edinburgh University Press, 2011). For an assessment of the justiciary court as an extension of royal justice in the Borders in the late fifteenth century, see Armstrong, 'The Justice Ayre', 1-37. Of particular interest is Armstrong's attention to the ways that private vengeance and compensation interacted with and complicated royal justice.

⁴¹ Keith M. Brown, *Bloodfeud in Scotland, 1573-1625: Violence, Justice and Politics in an Early Modern Society* (Edinburgh: John Donald, 2003), chapter 2 and Jenny Wormald, 'Bloodfeud, Kindred and Government in Modern Scotland', *Past and Present* 87 (1980): 54-97.

Chapter 2: Patterns of Prosecution: Women, Crime and the Courts in Sixteenth-Century Scotland

The number of women accused and convicted of felony crimes in extant High Court of Justiciary records from 1524 to 1542, as noted above, is considerably lower than one might expect. Also unusual is the frequency of violent offences compared with the relatively low amount of charges laid relating to property crimes. The evidence of the justiciary court records therefore throws up a number of questions about patterns of perpetration and prosecution in sixteenth-century Scotland. Why do women appear relatively frequently in lower courts, which heard both misdemeanours and felonies, but do not receive proportionate representation in the justiciary court? Did Scottish women simply commit fewer felonies than did their counterparts elsewhere in Britain and Europe? In a recently published chapter in which she summarises the current state of scholarship regarding the nature of female criminality in early modern Britain, Anne-Marie Kilday asserts that lower rates of perpetration among women led to this discrepancy in prosecution. Although Kilday includes the sixteenth century in her assessment of early modern female criminality, the majority of her evidence comes from English records produced from the seventeenth through the nineteenth centuries. While conclusions about earlier periods may be drawn and, indeed, must be drawn from a broader chronology and geography than may be desirable when records are lacking, as is the case for Scotland, the evidence presented in this thesis helps to fill gaps in the sixteenth-century evidence and offer insights into the continuity of the patterns that she asserts.¹ Surveying the records of justiciary court in conjunction with

¹ Anne-Marie Kilday, “‘That Women are but Men’s Shadows’: Examining Gender, Violence and Criminality in Early Modern Britain”, in *Gender in Late Medieval and Early Modern Europe*, ed. Marianna Murayeva and Raisa Maria Rovio (Oxford: Routledge, 2013), 55-56.

those of various burgh, regality, baronial and church courts, as well as some secondary studies of crime in sixteenth-century Scotland, this chapter offers an assessment of the participation of women who committed crimes that the courts interpreted, or may have had cause to interpret, as felonies. In an effort to establish an approximate pattern of prosecution, it also takes note of which courts dealt with these women. The many jurisdictions and the privileges afforded to the officials who administered them created an elaborate and flexible system of justice in Scotland. These conditions facilitated a sorting process that allowed sixteenth-century communities to submit offenders before whichever courts they felt were appropriate and enabled them to manage women locally rather than centrally.

2.1: Women before the High Court of Justiciary

Of the thousands of entries enrolled in the records of the High Court of Justiciary for the period from 1524 to 1542, a mere eighty-seven charge women with a specific offence and list 136 individual crimes between them. Another forty-four summon women to appear at court for unspecified crimes. Of the eighty-seven entries that do list a specific charge, four record replegiations, five record convictions and two indicate that the woman was quit by the assize. Of the five women who were convicted, only two received a capital punishment and the remaining three found surety for their future good behaviour. The remaining 120 entries, which include specific and nonspecific charges, fall into two categories. All summon a woman to appear at a future court, but eighteen describe the amercements of a pledge who had failed to bring her to that sitting while the rest record the initial promise of a male relative or her laird to bring her to her first hearing at a given date and place.

Although these numbers are small, 131 entries is none the less significantly greater than the number that Robert Pitcairn, the antiquarian editor of the court records, indicated in his printed selection of materials. In the manuscript entries under review, the clerks often did not record any crime, but given that women were unable to testify as witnesses or provide sureties, it seems more likely that they were summoned either as suitors or as offenders. A number of women also appear with some frequency as the victims of homicide, oppression (felony damage to property), rape, mutilation, assaults that resulted in lacerations and wounds, and in various other charges involving pleas of the crown.² Cases that name women as victims have been excluded from this body of evidence with the exception of those crimes perpetrated by women against women. As the focus of this thesis is female offenders, attention is given primarily to women who were clearly accused or convicted of a crime.

Of eighty-seven entries involving women that list an offence, thirty-two list more than one. This reflects primarily the nature of particular criminal acts. For example, in order to break into a person's house and assault them (*hamesuckin*), an offender was likely also guilty of oppression and forethought felony. Charges of homicide or slaughter (*crudelis interfectio*, *interfectio* and '*slaughter and murder*'), mutilation and oppression appear most frequently – overall and in entries that name single charges.³ The combination of homicide and mutilation was common and it typically described acts committed upon the deceased and their accomplices in the

² Susan Rennie, ed., *DSL* [<http://dsl.ac.uk>], s.v. 'Oppressioun'.

³ The most appropriate translation of *crudelis interfectio* is slaughter. Homicide and slaughter are thus used interchangeably throughout this thesis to indicate an open killing, while murder indicates a secret killing or one accomplished through subtle means such as by poisoning.

course of a brutal and bloody attack. Similarly, charges of *incendio* and *combustio*, both related to fire-raising, were always laid together.

Attempts to follow the outcomes of the cases that were put off to another date or repledged to a different jurisdiction have been thwarted largely by the recordkeeping methods of contemporary justice clerks and the survival of materials. In her prosopographical study of the life of Alison Rough, Elizabeth Ewan proved the value of such an exercise; however, she also laments the lack of identifying information about these women and their infrequent appearance in the records. She explains, therefore, that historians must ‘piece together whatever scattered references they can find’ in attempts to rebuild the lives of women before the courts in Scotland.⁴ Whether because the woman in question was dealt swift justice, repledged to another court, or simply a casualty of poor record survival, many of the accused female felons in the justiciary court records appear only once. There are a number of exceptions, the most notable of which is Janet Douglas lady Glamis whom the justiciar accused and a jury convicted of plotting against the king’s life. Notes regarding her trial, execution and the related cases that occurred as fallout from her alleged conspiracies with other members of the Douglas clan constitute a number of entries in 1532 and 1537.⁵

Of course, one possible reason for the rare appearances of women in these records relative to men were the legal limitations that women faced in medieval and early modern Britain. While recent scholarship has gone a long way toward establishing the position of women under Scottish law in respect of civil offences, the

⁴ Elizabeth Ewan, ‘Alison Rough: A Woman’s Life and Death in Sixteenth-Century Edinburgh’, *Women’s History Magazine* 45 (2003), 4.

⁵ For entries regarding the alleged conspiracy to murder the king, see manuscript entries beginning at *NRSJC1/5* fo. 236r. For the reference to her use of charms against her husband and for Pitcairn’s summary of her life, crimes and related history see *Criminal Trials*, 158 and 190.

degree of culpability associated with a woman's criminal offence is yet unclear. Certainly, women were not involved in the formal administration of the law and did not participate as members of a jury or assize, and women only very rarely acted as sureties. In civil matters, at least, women at all stages of life were expected to have a male relative or paid professional represent their legal interests whether they were married, single or widowed. They were limited in their ability to act as witnesses and to enter into legal agreements or to sue without the consent of their husbands. In respect of male representatives, Ewan has discovered that a body of laws relevant to the governance of medieval Scottish burghs indicates that 'each married man may answer for his wife and stand in judgement for her'.⁶ She states elsewhere that the law preferred that men accompany their wives to court in order to pay fines or suffer penalties on their behalves,⁷ but emphasises that 'the law does not say that men *must* represent their wives, but only that they *may* represent them'.⁸ In his discussion of the rights of women under the law in Scotland, Robert Houston does not mention the relationship between man and wife in criminal circumstances and indicates only that such responsibility applied to civil matters like contracts, debt and rights to property.⁹ Perhaps this left some flexibility for women whose husbands were not present or in good standing with the community. As was the case in England, it seems that the

⁶ Elizabeth Ewan, 'Scottish Portias: Women in the Courts in Mediaeval Scottish Towns', *Journal of the Canadian Historical Association*, n.s., 3 (1992), 29-30 and Margaret H. B. Sanderson, *A Kindly Place? Living in Sixteenth-Century Scotland* (East Linton: Tuckwell Press, 2001), 99-100.

⁷ Elizabeth Ewan, "'Many Injurious Words': Defamation and Gender in Late Medieval Scotland", in *History, Literature and Music in Scotland, 700-1560*, ed. Russell A. McDonald (Toronto: University of Toronto Press, 2002), 166.

⁸ Ewan, 'Scottish Portias', 30.

⁹ Robert A. Houston, 'Women in the Economy and Society of Scotland, 1500-1800', in *Scottish Society 1500-1800*, ed. Robert A. Houston and Ian D. Whyte (Cambridge: Cambridge University Press, 1989), 129-130.

severity of the crime and the circumstances under which it occurred dictated whether a woman might be held accountable in her own right.¹⁰ The evidence of the records of the justiciary court certainly indicates that the justiciar was not at all reluctant to charge married women with offences defined as pleas of the crown.

A number of cases identify women as the spouse of ‘so and so’, but these references do not suggest that the justices made the connection purely as a record of a husband taking responsibility for his wife’s behaviour. In June 1525, Robert Bully, Janet Bully and Robert Barde were accused of the slaughter of Robert Redpath. The entry identifies Janet Bully as Robert Bully’s wife, but it is clear from the clerk’s entry that all involved were accused of art and part in the slaughter.¹¹ Similarly, in May 1527, John Charteris of Kerfalliny pledged to bring John Henrison, Isobel his wife, John Henrison, Jacob Henrison, Richard Henrison, David Henrison, Elizabeth Henrison and Janet Kerr to underly the law for art and part in the mutilation done to William Grey.¹² The number of Henrisons named in the previous entry suggests that this was a family affair. In most cases like this, where a number of individuals are listed, especially kin groups with shared surnames, men and women alike are identified by their first and last names, as well as family relationships. Thus, in November 1528, the assize quit John Weir of Newton, Adam Weir his brother, and Margaret Carutheris their mother, of the slaughter of William Talliefer.¹³ Another entry from January 1531

¹⁰ Marisha Caswell, ‘Coverture and the Criminal Law in England, 1640–1760’, in *Married Women and the Law: Coverture in England and the Common Law World*, ed. Tim Stretton and Krista J. Kesselring (Montreal: McGill-Queen’s University Press, 2013), 88–89.

¹¹ *NRSJC1/3* fo. 17v. An accusation or conviction of art and part in a crime indicates that the aforementioned parties were held to have been involved in the offence. Individuals as well as groups are implicated of art and part in offences throughout the justiciary court records.

¹² *NRSJC1/3* fo. 56r. The clerks recorded two John Henrisons, but did not provide identifying information for the second.

¹³ *NRSJC1/3* fo. 103r.

names John Wilson, son of John Wilson in Richardton, Andro Wilson his brother, Agnes Wilson, Mariota Wilson daughter of the said John Wilson senior, John Anderson in Priestland Milne, Elizabeth Sawyer spouse of the said John Wilson, and Janet Parker spouse of the said John Anderson, as having taken art and part in the oppression done to Alexander Lockhart.¹⁴ In this and other entries, it is clear that descriptions of family relationships were a practical means of identification rather than an assertion of one person's accountability to or for another.

The overwhelming majority of women named in their own right and enrolled in the records of the justiciary court were summoned to attend a later court or repledged to a different locality. Thus, an entry from July 1531 tells us that Agnes Marshall, Margaret Marshall, Janet Wilson and Janet Miller were summoned to a future court to answer for an unnamed offence although the marginalia suggests that they may not have complied.¹⁵ Another example names forty-three men and women, including Katherine Bower, Elen Simpson, Margaret Heslihope, Cristina C., Janet Dickson, Margaret Heslihope and Mariota Ray, whom John Edmonston pledged to bring before the court at Edinburgh on the eighth day of October.¹⁶ In the latter case, one woman, Janet R., is referred to as the wife of John Heslihope, but the other women are identified solely by their names rather than by their relationship to a male figure. Since these women, like all others at this time, were not able to act as witnesses, they must have been summoned to answer for their actions alongside the rest of the accused.

Taken together, the evidence of the justiciary court records suggests, at least for these

¹⁴ *NRSJC1/3* fo. 179r. The party was convicted but the marginalia does not include a description of either a fine or a sentence.

¹⁵ *NRSJC1/5* fo. 42v.

¹⁶ *NRSJC1/5* fo. 256r. This is the first and last referral to this group in this sample of records.

crimes and before this court, that the law considered these women legally responsible for their actions and that these particular records likely do not obscure the participation of women by leaving their names out of the records.

2.2: Jurisdiction

Justice in sixteenth-century Scotland was meted out through a complex system of law comprised of secular and ecclesiastical courts, the administrators of which managed overlapping regions and jurisdictions.¹⁷ This elaborate, multi-layered system of judicial administration must be taken into account as a factor explaining the scarcity of women in the records of the justiciary court. Much has been written on the subject of Scotland's struggle to enforce centralised authority over vast cultural and geographical divisions, and it is clear that the establishment and refinement of the High Court of Justiciary gave expression to the crown's concerted effort toward a centralised judicial administration.¹⁸ Andrea Knox echoes the work of scholars such as Keith Brown, Julian Goodare and Jackson Armstrong when she states that, as in contemporary England, authority 'was shifting from the localities to central government', albeit more slowly in light of the strength of local influences.¹⁹ The continued existence and operation of various levels of court with overlapping jurisdictions reflect the disorder

¹⁷ Bruce Lenman and Geoffrey Parker, 'Crime and Control in Scotland, 1500-1800', *History Today* (1980), 13.

¹⁸ Jackson W. Armstrong, 'The Justice Ayre in the Border Sheriffdoms, 1493-1498', *The Scottish Historical Review* 192, no. 1 (2013), 34-37.

¹⁹ Andrea Knox, "'Barbarous and Pestiferous Women': Female Criminality, Violence and Aggression in Sixteenth- and Seventeenth-Century Scotland and Ireland", in *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*, ed. Yvonne Galloway Brown and Rona Ferguson (East Linton: Tuckwell Press, 2002), 15. See note 34 in the introduction for publications in which the authors advance a variety of arguments for the shape and form of the centralisation of authority and state building in medieval and early modern Scotland.

that the king and his officials attempted to manage in the midst of war with England, infighting and feuding between Scotland's most powerful families and widespread lawlessness in this period.²⁰ James spent much of his personal rule attempting to develop the strong relationships between the crown and local magnates that was required to overcome the factional imbalances of his minority. It is clear that, at different times and under different circumstances, particular courts, officials and connections were more effective at satisfying injured parties and avoiding the escalation of violence than were others.

From its inception, the justiciary court dealt directly with the most serious criminal acts, known as the pleas of the crown, and with treason. William Dickinson deems these crimes 'too important' for the sheriff, for which reason murderers, rapists, robbers and arsonists were most likely to appear before the justiciar for their offences, although a series of gaps in the development and administration of this court meant that it sometimes fell to other officials to seek justice for these crimes.²¹ Despite the establishment of spring and autumn circuits of the justice ayre prior to 1488, well into the sixteenth century the crown struggled to ensure that regular ayre proceedings were held. The period of James V's minority rule, between Flodden in 1513 and the end of the Albany regency in 1524, has left a gap in the extant records. In the year the records resume, legislation declared that the court should sit permanently in Edinburgh, or that it should proceed on ayre only under the close and personal supervision of the king.

²⁰ J. R. D. Falconer, "Mony Utheris Divars Odious Crymes": Women, Petty Crime and Power in Later Sixteenth Century Aberdeen', *Crime and Misdemeanours: Deviance and the Law in Historical Perspective* 4, no. 1 (2010), 10.

²¹ William C. Dickinson, 'The High Court of Justiciary', in *An Introduction to Scottish Legal History* (Edinburgh: Stair Society, 1958), 409 and Thomas I. Rae, *The Administration of the Scottish Frontier: 1513/1603* (Edinburgh: Edinburgh University Press, 1966), 14-15.

The emphasis on centralised, royal control suggests that an eleven-year hiatus, or at the very least ineffective and spotty administration during this period, had damaged the efficacy of the justiciary court. Further enactments insisted that the ayres proceed as usual, but these appear to have been fruitless for again, both in 1566 and 1567, parliament attempted to reinstate the ayre circuit. Eventually, the crown gave up hope of extending the proceedings of this court beyond Edinburgh and resigned itself to holding the court there exclusively, with the exception of occasional forays into the localities by special commissions and local deputies.²² In light of the inconsistent circuits of the ayre, its relationship with central authorities and problems with compearance, it is not surprising that many of the women who did appear before the court should have been repledged to their locality or summoned to make future appearances.

In most cases, the justiciar did not initiate prosecution and instead responded to dittays provided in advance by sheriffs and prominent men in their jurisdictions. After the sheriffs had collected indictments and forwarded them to the justiciar, the justice-clerk compiled a list of indicted parties and the individual sureties responsible for the compearance of the pannels and witnesses called to the local ayre or to Edinburgh.²³ The categorisation of these crimes, however, and the decision to present an offender to the justiciar varied according to the nature of the offence, the identity of the offender and the circumstances under which the crime occurred. It is well known that medieval and early modern definitions of criminal acts were more fluid than they are today, and this flexibility may have allowed for some discretion in deciding whether a woman

²² Dickinson, 'The High Court of Justiciary', 410-411.

²³ John I. Smith, 'Criminal procedure', in *An Introduction to Scottish Legal History* (Edinburgh: Stair Society, 1958), 429.

should appear before some other court. In addition to the justiciary court, regality, baron, sheriff, burgh and church courts passed judgement on the men and women whose behaviour offended and harmed their communities.

The greatest authority next to the justiciar resided in the lords who possessed grants of judicial power. Prominent members of the nobility coveted these grants owing primarily to the financial benefits they conveyed through forfeitures and fines. According to Ian Rae, a grant of regality was the ‘most complete form of private jurisdiction’ offered by the crown to a private individual.²⁴ Lords of regality retained the right to prosecute all criminal matters that occurred on their lands. In addition to crimes that might be deemed trespass or misdemeanour, and as long as the privilege was specified in the charter that granted it to him, a lord in possession of this power might hear the four pleas of the crown usually reserved to the justiciary court. Treason remained a discretionary matter for the king and his justiciar alone. Beyond his jurisdictional privileges, a lord of regality was also entitled to repledge any person who lived within his lands and might claim the right to remove them from the jurisdiction of any court in order to try them in his own. Beyond the ability to step in after a charge had been laid, a lord of regality also had the right to prevent all other judicial officials and their representatives from acting within his jurisdiction in the first place.²⁵ Barons sometimes also received grants that entitled them to similar, if reduced, jurisdiction. Their criminal jurisdiction, similar to that of a sheriff, was limited to instances of slaughter or theft where the culprit was caught either in the act or in possession of the stolen property. Thus, sheriffs and lords of regality were in a position to try the

²⁴ Rae, *The Administration of the Scottish Frontier*, 14.

²⁵ James Moir Webster and Archibald A. M. Duncan, eds., *Dunfermline Court Book* (Dunfermline: Carnegie Dunfermline Trust, 1953), 3-4.

majority of thefts within their jurisdiction. Barons also presided over ‘quasi-criminal’ offences including breach of arrestment, brawling that resulted in non-fatal bloodshed and deforcement of a messenger.²⁶ These privileges made them exceedingly powerful and prone to abuse their authority, but these consequences will be addressed in a later chapter.

The justiciary court records show that lords who enjoyed regality and baronial jurisdiction regularly made use of their own courts, and a number of women experienced replegiation.²⁷ The earliest example of replegiation in this period occurred in 1525 when Janet Bully, her husband and an associate, Robert Barde, were repledged to the local jurisdiction of Broughton, near Tweeddale and Peebles, to answer for their part in the slaughter of Robert Redpath.²⁸ In March 1533, Edward Crawford, bailie of the regality of Dunfermline, used his privilege to repledge John Colquhoun, Elizabeth Colquhoun, Nicholas Broun and John Morley, who were accused of art and part in forethought felony and the oppression done to William Hill.²⁹ Six years later, another bailie of Dunfermline, Jacob Sinclair, repledged Elizabeth Newton and others to the regality of Dunfermline for art and part in the slaughter of Thom Smith.³⁰ In August 1534, the abbot of the monastery at Kilwinning exercised the community’s grant of regality to repledge Janet Lawson, Margaret Henderson and others to its jurisdiction after they were accused of art and part in the slaughter of Michael Salmond.³¹ An

²⁶ Rae, *The administration of the Scottish frontier*, 15. See also Lenman and Parker, ‘Crime and control in Scotland’, 13-14 and W. David H Sellar, ‘Law, Courts and People’, in *A Tale of Two Towns: A History of Medieval Glasgow*, ed. Neil Baxter (Glasgow: Neil Baxter Associates on behalf of Glasgow City Council. 2007), 33 and 36.

²⁷ Armstrong, ‘The Justice Ayre’, 17.

²⁸ *NRSJC1/3* fo. 17v

²⁹ *NRSJC1/5* fo. 92v

³⁰ *NRSJC1/5* fo. 311r

³¹ *NRSJC1/5* fo. 120v

excerpt from the records of the sheriff court of Fife also demonstrates the replegiation of a defendant, George Sibbald of Scone, to the 'lord of Sanctandros & Regalite of the sammy'.³² No charge was recorded at this stage of the proceedings against him.

Unfortunately, the records for these regalities either do not survive or are unavailable, and the fates of these women and their accomplices must remain unknown for now.³³

Two of the entries above demonstrate that, in addition to private individuals the crown might also confer powers of regality upon representatives of the church.³⁴

Ecclesiastical officials exercised this privilege primarily to repledge a priest charged with homicide or laymen who committed crimes against the church, but they might also assume lay jurisdiction over moral crimes such as heresy, adultery, perjury, defamation and witchcraft. After the Reformation, the kirk sessions brought a wide variety of social and sexual offences under the jurisdiction of the church and, throughout the sixteenth century, the pre- and post-Reformation church courts worked in tandem with secular courts to issue spiritual sanctions to someone already punished by the sheriff or justiciar. The process also worked the other way and the church might refer a case or sentence to a secular court if it fell outside the purview of spiritual jurisdiction.³⁵

Unfortunately, while we know that the church was in part responsible for managing the misbehaviour of women in this period,³⁶ there are very few surviving medieval church

³² William C. Dickinson, ed., *Fife Court Book* (Edinburgh: Scottish Historical Society, 1928), 220.

³³ The marginal notes for each of these entries simply state the parties were repledged and do not offer any further indication of the pannel's fate once they were removed to a different jurisdiction.

³⁴ Sellar, 'Law, Courts and People', 33.

³⁵ Simon Ollivant, *The Court of the Official in Pre-Reformation Scotland: Based on the Surviving Records of the Officials of St. Andrews and Edinburgh* (Edinburgh: Stair Society, 1982), 154-155 and Margo Todd, *Perth Kirk Sessions* (Woodbridge: Boydell Press, 2012), 37-38.

³⁶ Roughly one tenth of the business of pre-Reformation courts dealt with bad behaviour on the part of their parishioners. Lenman and Parker, 'Crime and Control in Scotland', 15-16.

court records, and even fewer are available in print.³⁷ Prior to the Reformation, defamation or slander was the most frequent charge levied against women before the church courts.³⁸ The records of post-Reformation church courts are more accessible than are those of pre-Reformation courts, but the patterns appear largely the same. After the Reformation, cases of minor assault, quarrelling and flyting appear regularly and, although physical assaults appear infrequently in pre-Reformation records, the prevalence of defamation suits may indicate that both secular and spiritual courts dealt with physical assaults accompanied by verbal abuse as the community saw fit.³⁹ Although the competition between the church and other jurisdictions for the right to try civil matters and general misconduct was frequently intense,⁴⁰ beyond cases where the church and its clergy were directly involved, the church possessed a level of criminal jurisdiction that was highly dependent on circumstance.⁴¹ The church courts therefore did not play a major role in the sorting process outlined in this thesis.

Grants of regality conferred on a burgh, however, magnified the existing criminal jurisdiction of these communities. Bailies of a burgh were generally able to hear all civil and criminal matters except the four pleas of the crown. The burgh court books are filled with entries that record assaults, the breaking of community-specific

³⁷ Elizabeth Ewan, 'Disorderly Damsels? Women and Interpersonal Violence in Pre-Reformation Scotland', *The Scottish Historical Review* 89, no. 2 (October 2010), 155n6.

³⁸ Ewan, 'Many Injurious Words', 176 and Ollivant, *Court of the Official in Pre-Reformation Scotland*, 175.

³⁹ Ewan, 'Disorderly Damsels?', 155-56.

⁴⁰ Ollivant, *Court of the official in pre-Reformation Scotland*, 135-37. Sanderson offers a brief discussion of women and the law practice before the church courts in civil matters in *A Kindly Place?*, 100-106.

⁴¹ For a discussion of the efficacy, or inefficacy, of ecclesiastical punishments and the difficulty that post-Reformation church courts encountered when they sought assistance from the civil arm of the law, see Michael Graham, 'The Civil Sword and the Scottish Kirk, 1560-1600', in *Later Calvinism: International Perspectives*, ed. W. Fred Graham (Kirkville: Sixteenth Century Journal, 1994): 237-48.

bylaws and statutes, property crimes such as petty theft and reset, sexual crimes, drunkenness and behaviour that offended the community.⁴² Some burghs, however, enjoyed grants of regality or shrieval powers; those that exercised jurisdiction over slaughter, theft and other crimes usually reserved to the justiciars, regalities, baronies or sheriffs. There were no such regality burghs in the border region in the period under review. Thus, the women who did not appear before the justiciary court must have been dealt with either in the courts of lords who had received grants of barony and regality, regular burgh courts or the sheriff courts. This suggests that communities made conscious decisions about the way they reported and resolved disputes brought about by the offences of women in order that they might divert the case to a local court or pursue private forms of justice.

In the sixteenth century, the sheriff court remained the most basic forum in which to prosecute criminal actions and a royal office held by hereditary right. Rae considers them 'the most powerful and most effective local agents of the Crown', in theory if not always in practice.⁴³ These officials dealt with a wide variety of civil and quasi-criminal matters, from deforcement and bloodwite to cases of theft and homicide where the culprit was caught red-handed or with stolen goods in their possession. Where they deemed it appropriate, sheriffs were also capable of carrying out corporal punishments such as mutilation or execution.⁴⁴ The sheriff was supposed to work in concert with the justiciary court in order to ensure that cases beyond the jurisdiction of

⁴² J. R. D. Falconer, 'A Family Affair: Households, Misbehaving and the Community in Sixteenth-Century Aberdeen', in *Finding the Family in Medieval and Early Modern Scotland*, ed. Elizabeth Ewan and Janay Nugent (Aldershot: Ashgate, 2008), 142.

⁴³ Rae, *The Administration of the Scottish Frontier*, 11-14.

⁴⁴ Sellar, 'Law, courts and people', 32. When persons were caught in possession of stolen goods, they were referred to as having been caught *infangthief* or 'with the fang'. See also *Fife Court Book*, 334-335.

both were referred to the appropriate curial body.⁴⁵ Much like regalities and baronies, the office of sheriff was not immune from indiscretion and whether sheriffs consistently respected the limits of their jurisdiction is doubtful.

Although theoretically divisions between sixteenth-century curial jurisdictions in Scotland were relatively clear, judicial officials did not always respect jurisdictional lines and, in some cases, a number of courts might claim jurisdiction over a particular crime. The offices of the warden and of the warden justiciar, unique to the border region and sometimes held by the same individual, were particularly open to confusion.⁴⁶ In both Scotland and England, officers of the crown presided over regions known as marches. These powerful magnates were charged with defending the border and dealing with offences against march law, a body of international law derived from custom and intended to streamline the management of crime between Scotland and England.⁴⁷ Although the warden was prohibited from interfering with the privileges of the justiciary court, the warden justiciar performed the duties of a warden in addition to the prosecution of the four pleas of the crown, oppression and, later, witchcraft. Unfortunately, few records of this court survive, but there is some indication that the warden justiciar was too often preoccupied with wardenry business to hold court with

⁴⁵ Armstrong, 'The Justice Ayre', 15.

⁴⁶ Rae, *The Administration of the Scottish Frontier*, 61.

⁴⁷ Jackson W. Armstrong, 'The "Fyre of Ire Kindyld" in the Fifteenth-Century Scottish Marches', in *Vengeance in the Middle Ages: Emotion, Religion and Feud*, ed. Susanna A. Throop and Paul R. Hyams (Farnham: Ashgate, 2010), 54. For the development of this international body of law and associated procedures from the English perspective, see Cynthia J. Neville, 'Remembering the Legal Past: Anglo-Scottish Border Law and Practice in the Later Middle Ages', in *North-East England in the Later Middle Ages*, ed. Christian D. Liddy and Richard H. Britnell (Woodbridge: Boydell Press, 2005): 43-56 and Cynthia J. Neville, *Violence, Custom and Law: The Anglo-Scottish Border Lands in the Later Middle Ages* (Edinburgh: Edinburgh University Press, 1998).

any consistency.⁴⁸ Although all men who were harmed or offended in the course of border-related crimes were encouraged to air their complaints to the wardens, the matters that affected local magnates in particular drew the focus of this office.⁴⁹ Altogether, the regality and baron courts were the most powerful and important courts in this region.⁵⁰

In addition to jurisdictional overlap, Scottish legal procedure provided opportunities for women to escape prosecution. One of the stages of the criminal trial in Scotland was known as ‘preliminary pleas’. It was during this stage that the defence tried to prove either that the accused was not guilty or that no action that constituted a crime had in fact occurred.⁵¹ If the pannel, or their defence, was unable to satisfy the court that the charge was irrelevant, the trial would proceed to jury selection. It appears, however, that many alleged offenders were successful in their efforts. John Irvine Smith has found that in the six days during which the justice ayre sat in Jedburgh in 1493, its officials disposed of 193 cases by deeming them irrelevant.⁵² The court heard arguments of relevancy only after it was established that the offence had not been elevated or repledged to another court.⁵³ This offered the accused one last chance to clear their name before the decision lay in the hands of the jury. It also caused a delay during which the accuser might reconsider formal prosecution.

⁴⁸ Rae, *The Administration of the Scottish Frontier*, 60–64 and Anna Groundwater, ‘The Chasm between James VI and I’s Vision of the Orderly “Middle Shires” and the “wicket” Scottish Borderers between 1587 and 1625’, *Canadian Journal of History* 48, no. 1 (2013), 109.

⁴⁹ Cynthia J. Neville, ‘The Law of Treason in the English Border Counties in the Late Middle Ages’, *Law and History Review* 9 (1991), 21.

⁵⁰ Rae, *The Administration of the Scottish Frontier*, 11.

⁵¹ Michael B. Wasser, ‘Defence Counsel in Early Modern Scotland: A Study Based on the High Court of Justiciary’, *Journal of Legal History* 26, no. 2 (2005), 195.

⁵² Smith, ‘Criminal Procedure’, 437.

⁵³ Michael B. Wasser, ‘Violence and the Central Criminal Courts in Scotland, 1603–1638’ (PhD diss. Columbia University, 1995), 80n15.

The criminal justice system in Scotland thus offered a number of options to the wounded and wronged. Overall, the judicial officials of sixteenth-century Scotland were more interested in avoiding bloodfeud and the escalation of violence than they were in disciplining every criminal individually. The abundance of church and secular courts, with varying levels of authority, reflected, rather, a general desire to monitor and respond to all manner of disturbances.⁵⁴ Officials often treated the same crime in a number of ways. Their interpretations might hinge on the identity of the perpetrator, the circumstances under which the crime was committed and the overall perceived threat that the crime posed to the community. The lack of clear legal process may have had a direct effect in shaping two factors that explain the scarcity of women in the justiciary court records. The first is that flexible categorisations of offenders and crimes throughout Scotland, influenced largely by the events of James V's minority rule and anxiety about the Borders, allowed officials to interpret actions as either misdemeanours, felonies or even treasonable offences. The second, directly related to the first, is the possibility that offenders may have been siphoned away from the justiciary court and into other jurisdictions.

2.3: Crime and the Courts in Sixteenth-Century Scotland

The justiciary court had sole discretion to deal with cases of treason, which, in this period, might cover a wide range of offences. Among the treasonable acts enrolled in the records of this court were conspiracy against the king's life, coming in arms against the king, assisting the enemy English, interfering with the duties of a messenger-at-arms and open rebellion. These records also contain numerous examples of individuals

⁵⁴ Falconer, 'Mony Utheris Divars Odious Crymes', 10.

convicted of treasonably associating with rebels and traitors by receiving them, offering them shelter or comfort, speaking with them or giving them some other form of aid. Essentially, any threat to the king's person, his representatives or his attempts to maintain order in the kingdom might be interpreted as treasonable under the right circumstances.

Very few women accused of treason in this period appeared before the justiciary court for committing violent and open rebellion themselves, although there is one entry from 1539 that reads as follows:

William Cumming, Margaret Dowglass, and four others, were denounced Rebels, and put to the horn, for art and part in Convocation of lieges in great number, armed in warlike manner, coming to the place and Tower of Ernside, and breaking up the doors and gates thereof, and entering therein: And for Stouthreif from Alexander Cuming, son and heir apparent, and the curator of Thomas Cuming of Ernside, his father, of all the goods and utensils in the said house: And for detention from him of the said Place and Tower: And for Stouthreif from him furth of the messuage thereof, of one hundred and fifty-six bolls of corn, with the straw, eight oxen, and two horses: And for Common Oppression, &c.⁵⁵

More common in the entries is the act of intercommuning with or assisting rebels and traitors, offences for which Janet Bully, Agnes Dingley and Katherine Rutherford came before the court in 1529, 1532 and 1538, respectively.⁵⁶ The records also reveal the exceptional cases of women treasonably assaulting a messenger of the king,⁵⁷ as well as plotting the murder of the king, felony conspiracy and using charms toward murderous ends.⁵⁸

⁵⁵ Robert Pitcairn, *Criminal Trials* (Edinburgh: Bannatyne Club, 1833), 223 and *NRSJC1/5* fo. 306v. Stouthreif is a Scots term for violent robbery and is discussed in full below.

⁵⁶ *NRSJC1/4* fo. 24r; *NRSJC1/5* fo. 287r; and *NRSJC1/5* fo. 82v.

⁵⁷ *NRSJC1/5* fo. 186v.

⁵⁸ *NRSJC1/5* fo. 236r.

The Scottish parliament did not legislate specific definitions of offences, as did the English parliament. For this reason, the term ‘felony’ is treated here as broadly as possible. An example of one such offence is oppression, a charge for which women appeared before the justiciary court nineteen times between 1524 and 1542. This was the second most frequent charge laid against female offenders who came before this court. Oppression seems to have been a catch-all term for the violent destruction of a person’s property or for ‘tyrannising over or violently molesting another’ and was first recorded, in the context of property crime, in the fifteenth century.⁵⁹ Pitcairn includes in his edited collection numerous examples of actions that constituted oppression.⁶⁰

One such entry, from October 1528, reads:

George Ker of Lyntoune, Mr Thomas Ker of Sounderlandhall, James Ker in Farnylee , and nine others, were [amerced] for not appearing to underly for art and part in the Oppression done to William Cokburne of Ormistoune, coming to [William Cokburne’s] Park of Ormistoune under silence of night, armed with lances and other invasive weapons, breaking up the gates thereof, and with bows and dogs chasing and wounding “his parkit deir”.⁶¹

In another entry recorded in August 1536

Mariota Hume, Countess of Crawford, Patrick Crechtoune of Camnay, and seventeen others, found caution [...] to underly the law before the Justice, on Nov. 24, for art and part in the stouthreif and oppression done to John Moncur of Balluny, in seizing from him of a “wayne”, or waggon, with four oxen and two horses.⁶²

⁵⁹ *DSL* s.v. ‘Oppressioune’ and *RPS*1491/4/9

⁶⁰ Pitcairn, *Criminal Trials*, 24. In one such example from before the period under review, in 1498, a man who rode another man’s horse until it died, hit his cow until she died and then struck his child until he could not stand up.

⁶¹ *Ibid.*, 140.

⁶² *Ibid.*, 178 and *NRSJC*1/5 fo. 188r.

In a rare occurrence – most cases seem to have begun and ended with one entry – this act of oppression generated more than one hearing. The court clerk eventually recorded that Mariota Hume and her associates ‘came into his Majesty’s will, and found Sir John Stirling of Kerr, knight, and John Crichton of Ruthven as cautioners to satisfy the parties’.⁶³ The majority of the judiciary court records that name women as oppressors, however, do not typically provide this level of detail. For example, in 1538 the court convicted John Henderson and Janet Thomson of oppression done to Elizabeth Freland and Cristina Freland, but left out any description of the extent of the offence, the manner by which it was effected or the sentence imposed on John and Janet.⁶⁴ As mentioned above, most of the cases that involved women were delayed or repledged, did not leave a record of sentencing or include a marginal note which states that a fine was levied but nothing more.⁶⁵ Local courts, however, sometimes dealt with civil and quasi-criminal matters that might be considered oppression, and in these cases, the situation is reversed. Although they sometimes include more detail, the precise term of oppression does not regularly appear.

Acts that resemble oppression appear in both sheriff and barony courts around this time. In July 1520, in the sheriff court of Fife, Patrick Sydserf accused Robert Prop and his mother, Elene Cauf, as well as Simon Lauerok of the ‘wraungis occupacione of lands in Ballinbeith’. They denied any wrongdoing, but the court

⁶³ Pitcairn, *Criminal Trials*, 178 and *NRSJC1/5* fo. 203v.

⁶⁴ *NRSJC1/5* fo. 276v

⁶⁵ It should be noted that specific amounts, such as £40, suggest that a fine served a specific purpose as in payment for a remission. In other cases, however, pledges were fined for failing to bring forward a pannel, the accused was put to the horn and the clerk did not record any further information. It must be assumed in such cases that the accused remained rebels or that their return to good favour was recorded elsewhere.

nevertheless ordered them to remove themselves from the land.⁶⁶ Whether this constituted oppression is hard to discern. It was outside the border region and thus might not have caused as much distress. There is also very little detail about the circumstances under which the occupation occurred and what the accused were doing on the land. If this were a matter of simple occupation or a disagreement over contracts, it would not constitute oppression and, thus, would not be tried by the justiciar. Other records suggest that simply working the land to which one did not have title might have qualified as an act of oppression. On multiple occasions in 1527, Marion Vrycht and a number of tenants of Kerswell were called to answer charges laid against them for ‘manwring & lawborin’ of the lord’s land and the ‘harrowin’ and ‘dawin’ of it ‘eftir it was notabile kawn to thaim that it vas under my lordis fens quhilk landis he had rycht to at that tyme’.⁶⁷ Oppression might also describe the refusal to allow a tenant to enjoy all the privileges of their lands and 1516 marked the beginning of a long quarrel between Margaret lady Sinclair and James Scott, burgess of Dysart, over ‘the fruitis of the personage of the kirk’ in that land. Representatives for James Scott brought repeated action against lady Sinclair and accused her and ‘hir complices certane wictualis quhilk scho & thai had intromittit with & takine away wrangusly of the fruitis of the said kirk’.⁶⁸ This was clearly a squabble over church revenues, but the case seems to have been dropped after lady Sinclair went to Orkney, where in 1537, she found herself on the receiving end of similar mistreatment by her tenants.⁶⁹ It is also

⁶⁶ *Fife Court Book*, 180-182.

⁶⁷ William C. Dickinson, ed., *Carnwath Court Book* (Edinburgh: Scottish History Society, 1937), 80-81.

⁶⁸ *Fife Court Book*, 108.

⁶⁹ In June 1537, ‘Barbara Stewart, William, her brother, and eleven others, delated for art and part in the Stouthreif and detention from Margaret Lady Sinclair of the rents of her lands and lordship of Scheitland: And for art and part in Stouthreif from the tenants and inhabitants of the Lordships

possible that the courts viewed differences between felony oppression and civil matters of title and occupation as a matter of violence and aggression.⁷⁰

The evidence of the justiciary court certainly suggests a connection between offences described as oppression and the violent act of hamesuckin, the ‘crime of assaulting a person in his own house or dwelling-place’.⁷¹ Of five entries in which the court required women to find surety to underly the law for committing housebreaking, four simultaneously called them to answer for oppression and forethought felony. In May 1532, Mariota Logan accompanied eleven men during the commission of forethought felony, hamesuckin and the oppression done to Edward Logan.⁷² Later that same year, Elena Campbell and nine men were put to the horn for hamesuckin and the oppression done to John Hamilton.⁷³ Another entry from June 1537 names Egidia Therbrand and Katherine Borg among a group indicted for forethought felony, hamesuckin and the oppression done to Elizabeth Mason. The clerk recorded that they were summoned to appear before the court a week later but they do not appear in later entries.⁷⁴ In April 1539, Elizabeth Freland, Cristina Freland and others found surety to underly the law for hamesuckin and the oppression done to John Henrison and his wife

of Scheitland and Orkney of their marts, hides, swine, sheep, meal, butter, oil, and malt. Ordained to appear on June 23’, upon which date they were ‘Denounced Rebels, and all their goods to be escheated’. Pitcairn, *Criminal Trials*, 182; *NRSJC1/5* fo. 229v.

⁷⁰ Cooper, *The Dark Age of Scottish Legal History, 1350-1650* (Glasgow: Jackson, 1952), 6. Some of the difficulties in interpreting the local court documents is that some shy away from using what we might consider the ‘proper’ names for the offences. Instead, various courts and the clerks that served them tended to use ‘wrangus’ or ‘wrangly’ (wrong/wrongly) to signify that whatever had been done, whether it were the taking of an item or striking someone, had been done ‘in the wrang’ or whether the court found ‘na wrang’.

⁷¹ *DSL*, s.v. ‘Hamesuk(k)in’. The term first appears in legislation from 1476, in a charter in which the crown conferred upon the bishopric of Glasgow a grant of regality. *RPS*, A1476/7/2.

⁷² *NRSJC1/5* fo. 66r.

⁷³ *NRSJC1/5* fo. 81r.

⁷⁴ *NRSJC1/5* fo. 227r.

Janet Thomson. Although the clerk recorded that the pair were summoned to appear at a future sitting of the court, no corresponding entry survives.⁷⁵ This last record may describe actions taken during an ongoing disagreement between the parties involved. Note that the roles of the assailant and victim have been reversed from the entry quoted above in which John and Janet committed oppression against Elizabeth and Cristina.⁷⁶ A survey of a number of printed records from courts in lower jurisdictions suggests that the justiciary court was the only court that dealt with hamesuckin proper although, like oppression, it may have surfaced elsewhere under the guise of simple assault.

In addition to the violent occupation of, or damage to, another person's property, the justiciar also had jurisdiction over the violent removal of property. Stouthreif was defined simply as 'violent theft' or 'robbery',⁷⁷ and parliament passed a number of acts to quell the degree of aggravation it caused between 1515 and 1540.⁷⁸ Although the frequent enactment of such statutes indicates that this was a common problem throughout the realm, the two entries that describe the crimes of Mariota Hume and Margaret Douglas, offer two of only three examples of women who committed this kind of theft in this period.⁷⁹ Contemporaries, however, associated theft in general with women and it appears frequently in the records of lower courts in the Borders and elsewhere.

Although instances of reset of theft committed by women are rare in the justiciary court records, it was a characteristically female crime at this time, as it had

⁷⁵ *NRSJC* /5 fo. 296v.

⁷⁶ *NRSJC1*/5 fo. 276v.

⁷⁷ *DSL*, s.v. 'Stouthreif'.

⁷⁸ *RPS*, A1515/7/3; *RPS*, 1524/11/15; *RPS*, 1535/52; *RPS*, 1540/12/69

⁷⁹ The third was Barbara Stewart who, with others, committed stouthreif in 1537. The details of this incident are given above in note 68.

always been. When women threw insults at each other, the most frequent accusations were sexual jeers and accusations of theft or reset of theft.⁸⁰ An example from the kirk sessions in Perth, entered on October 1578, describes a case of flyting between two women in which ‘Elein callit the said Elein lown and that scho wes the ressater and abuser of hir gudman’.⁸¹ Earlier, in April 1545, the burgh court of Stirling heard a case against Katherine Jak whom Elspeth Mukkart accused of ‘molesting and trubling’ her and ‘calland hir commoun huir and theiff’.⁸² Ewan argues that these women did not choose their words randomly and that their accusations had a ‘basis in reality’.⁸³ Given the independent character of the Borders and the enmity between James V and the representation of certain surnames in the region, it is unsurprising that crimes related to or involving reset appear in our records with abundance.⁸⁴ The lack of women enrolled in these records, however, seems disproportionate if we consider the trends identified in recent scholarship and the evidence of other criminal jurisdictions in this period.

⁸⁰ Barbara Hanawalt, ‘The Female Felon in Fourteenth-Century England’, *Viator* 5 (January 1974), 261; Richard J. Sims, ‘Secondary Offenders? English Women and Crime c.1220-1348’, in *Victims or Viragos? Victims or Viragos?* ed. by Christine Meek and Catherine Lawless (Dublin: Four Courts Press, 2005), 82; Neville, ‘War, Women and Crime’, 167; Martin Ingram, ‘Law, Litigants and the Construction of “Honour”: Slander Suits in Early Modern England’, in *The Moral World of the Law*, ed. Peter R. Coss (Cambridge: Cambridge University Press, 2000), 151; Cordelia Beattie, ‘Gender and Femininity in Medieval England’, in *Writing Medieval History*, ed. Nancy F. Partner (London: Hodder Arnold, 2005), 157; Jane Laughton, ‘Women in Court: Some Evidence from Fifteenth-Century Chester’, in *England in the Fifteenth Century: Proceedings of the 1992 Harlaxton Symposium*, ed. Nicholas Rogers (Stamford: Paul Watkins, 1994), 98; and Garthine Walker, ‘Women, Theft and the World of Stolen Goods’, in *Women, Crime and the Courts in Early Modern England*, ed. Jennifer I. Kermode and Garthine Walker (London: University College, London, 1994), 81.

⁸¹ *Perth Kirk Sessions*, 104.

⁸² Robert Renwick, *Royal Burgh of Stirling* (Glasgow: Printed for the Glasgow Stirlingshire and Sons of the Rock Society, 1887), 40 and 48.

⁸³ Ewan, ‘Many injurious words’, 169 and Ollivant, *Court of the official in pre-Reformation Scotland*, 76.

⁸⁴ A discussion of this evidence follows in chapter three.

In October 1520, the royal burgh of Stirling brought a number of petty thieves before its court for ‘pykry’ (petty theft) and Jenny Murra facilitated these thefts by receiving and selling stolen goods for profit.⁸⁵ She ‘was fundin ane commoun rasettar of pykry’, and is listed alongside the wife of Fargus McCummy, ‘fundin a pykar’, and Will McLellan and his wife, ‘common pycaris’.⁸⁶ Whether the court tried them on the same day by coincidence or whether they routinely worked together is unclear. A decade later in Edinburgh, Margaret Baxter was banished for resetting a person. Katherine Heriot, possibly Margaret’s friend, was a ‘commoun thef’, and Margaret’s hospitality, in the eyes of the court, enabled Katherine’s behaviour. Whether Margaret intended to help Katherine hide or sell the stolen goods is not recorded but it should not be ruled out.⁸⁷ In May 1534, John Brydin, a notary in the burgh of Selkirk, recorded that the sheriff of Selkirk had ‘declared that a certain women in his custody Elizabeth Fawlaw for an act of theft was delivered to him’, and that the sheriff had urged anyone who held a grievance against Elizabeth to compear at her prosecution to offer evidence.⁸⁸ On the same day, John recorded that Elizabeth had also been apprehended in relation to reset of theft. That the sheriff urged members of the community to speak out against Elizabeth suggests that her exploits were widely known

⁸⁵ *Chambers Scots Dictionary*, s.v. ‘pyker’ and ‘pykering’. The former is defined as ‘one charged with petty theft’ and the latter as ‘petty theft’ or ‘pilfering’.

⁸⁶ *Burgh of Stirling*, 5.

⁸⁷ James D. Marwick, ed., *Burgh of Edinburgh, 1528-1557* (Edinburgh: Scottish Burgh Records Society, 1871), 42 and Anna Groundwater, *The Scottish Middle March, 1573-1625: Power, Kinship, Allegiance* (London: Royal Historical Society, 2010), 136. Groundwater has suggested that contemporaries viewed resetting as a form of encouragement, but not as serious as the theft itself. Katherine’s punishment, for example, was much harsher and she was drowned for her crimes.

⁸⁸ Teresa Maley and Walter Elliot, eds., *Selkirk Protocol Books, 1511: The Protocol Books of John Chepman, 1511-36 and 1545-47, Sir John Chepman, 1536-43, John and Ninian Brydin and Other Notaries, 1526-36, and John Brydin, 1530-37* (Edinburgh: Stair Society, 1993), 166.

and that the community was seeking evidence that would build a solid case against her and, perhaps, result in the harshest penalty the sheriff was able to pronounce.

In addition to reset of theft, scholars have also recognised simple theft as a common offence among late medieval and early modern women. Unlike stouthreif, theft was subtle and committed without violence. Any Scottish court holding criminal jurisdiction might prosecute cases of theft undertaken in various circumstances and some even found ways to circumvent these. The sheriff tried most cases of theft and also *spulzie*, meaning ‘to rob, despoil, plunder’ or ‘lay waste’ to a person or place.⁸⁹ Dickinson calls the latter ‘a happy term’ and suspects that individuals manipulated the ambiguity of the term to bring actions forward under *spulzie* that might not amount to criminal theft, such as an item borrowed without permission or held for longer than the lender had agreed.⁹⁰ In April 1516, Janet Rankin did just that and brought Alexander Stirk, his sisters Katherine and Isobel, and his daughter, also called Katherine, to the attention of the sheriff of Fife in order to reclaim the farming equipment they had ‘*spolzeit wrangusly*’ from her.⁹¹ The court ordered them to return the items within a day and to pay a fine. Thus, the sheriff court was able to deal swiftly with women who stole, pilfered or ‘borrowed’ things from their neighbours without permission before the justice ayre arrived and without the need for victims to take their complaints to the court sitting in Edinburgh.

All burghs had some form of jurisdiction over theft, and in September 1535 Marion Lockhart, a confessed thief, was burnt on the cheek and banished from

⁸⁹ *DSL*, s.v. ‘Spulyie’.

⁹⁰ *Fife Court Book*, 326.

⁹¹ *Ibid.*, 26.

Edinburgh.⁹² Meg Scot, who made off violently with the warping vat of James Donaldson in January 1526, was let off easier and the burgh court of Selkirk simply told her to give it back. However, they did advise her that she was not in the bailies' good favour, thus hinting that future theft would be treated less leniently.⁹³ A final example, from Peebles, records the husbands of four women, common petty thieves, who gave surety for the further good behaviour of their wives. All four women were caught by two bailies of Peebles over the course of a few days, presented to the community and threatened with branding, banishment and death if they persisted in their misbehaviour.⁹⁴ In the sixteenth century, barony courts could hear cases of theft and reset under the same circumstances as the sheriff court and, in March 1526, the court of Carnwath recorded that Margaret Anderson had been caught in possession of a pot, a pair of hose, an apron, fabric and some other household goods. Because she was found with the items, the inquest returned that it could not acquit her of common theft and pykry.⁹⁵ Although instances of theft appear to have come before the church courts, perhaps as the event that provoked flyting or defaming, the assembly of the Perth kirk sessions consistently judged that it was not an action 'appertening to the ecclesiastical senat', claiming that they were 'not judgis competent to the same'. They referred the matter to the bailies of the burgh.⁹⁶ More often, theft and reset appear in the church

⁹² *Burgh of Edinburgh, 1528-1557*, 70.

⁹³ John Imrie, Thomas I. Rae and W.D. Ritchie, eds., *The Burgh Court Book of Selkirk, 1503-45. Part 2 (1531-41)* (Edinburgh: Scottish Record Society, 1969), 161.

⁹⁴ William Chambers and Robert Renwick, eds., *Charters and Documents Relating to the Burgh of Peebles with Extracts from the Records of the Burgh A.D. 1165-1710*. 221-222.

⁹⁵ *Carnwath Court Book*, 37. The editors do not indicate whether the court exacted a fine or pronounced a sentence of corporal punishment, only that the jury found her guilty.

⁹⁶ *Perth Kirk Sessions*, 222.

court records when identified in respect of insults thrown about during a brawl or quarrel.⁹⁷

Overwhelmingly, the women who found sureties to appear before the High Court of Justiciary did so owing to their involvement in a homicide. In forty of the eighty-seven entries that listed an offence, the court charged women with '*crudelis interfectio*', '*interfectio*' or 'slaughter and murder'.⁹⁸ Unlike accidental killings, these terms describe the deliberate killing of another person, though in Scotland, as in England, the varying degrees of homicide had not yet been identified clearly by statute.⁹⁹ Various jurisdictions appear to have competed for the right to try this egregious offence. In 1525, Janet Bully, her husband and a third accomplice were repledged to the regality of Broughton to answer for the slaughter of Robert Redpath. In addition to this instance of a lord exercising their right to try a case in their own jurisdiction, there is evidence of the process working in reverse. In January 1522, for example, the sheriff of Fife received a letter demanding that a number of individuals accused of homicide, including a woman by the name of Elen Talzeour and the unnamed wife of Andro Greg, be brought before a justice ayre to take place at Cupar to answer for their crimes. The letter advises that if they failed to compear they would be put to the horn and denounced as rebels.¹⁰⁰ The events that led to the slaughter must

⁹⁷ *Perth Kirk Sessions*, 256.

⁹⁸ The different terms here do not appear to indicate degrees of severity. *Crudelis interfectio* (slaughter) was the standard description for all murders in these records. *Interfectio* (homicide) typically appears in repeat entries, for example, when a number of people were charged with the slaughter of one individual across several entries, subsequent descriptions of the crime typically read 'the said homicide'. Similarly, 'slaughter and murder' is the standard form in all entries composed in Scots rather than Latin.

⁹⁹ John G. Bellamy offers a detailed discussion of the development of English legal vocabulary related to killing in *The Criminal Trial in Later Medieval England: Felony before the Courts from Edward I to the Sixteenth Century*, (Toronto: University of Toronto Press, 1998), 57-62.

¹⁰⁰ *Fife Court Book*, 274.

have been of personal or political interest to the king or justiciar, otherwise the sheriff would have remained in charge of the investigation. Moreover, this was probably not a case of the offenders being caught red handed. A baron, whose criminal jurisdiction was similar, would have found himself in the same position had the death occurred on his lands. Royal burghs and courts of regality, however, were under no obligation to allow murderers to live long enough to attend a justiciary court hearing and in September 1535 the burgh court of Edinburgh sentenced Katherine Mayne ‘to deid for airt and pairt of the slawchter of Alexander Cant hir husband’.¹⁰¹ Other than the justiciary court, only burghs and lords with powers of regality should have heard cases of homicide except in the circumstances described above. The exception, of course, was the church court, which might excommunicate a murderer in addition to whatever corporal punishment the secular authority had prescribed. This is what happened to Thomas Peblis, in 1598, when he murdered the powerful and well-connected Henry Adamson after the latter had conducted an affair with the wife of Thomas’ kinsman Oliver and escaped criminal prosecution.¹⁰²

Not all women succeeded in killing their victims and, indeed, some may have meant to leave them alive and suffering. Mutilation and dismemberment brought individual and groups of women before the justiciary court nine times in the period under review. Both terms described the severe disfigurement done to a person, although demembration specified the loss of a limb.¹⁰³ Among those accused of mutilation in this period were John Henrison, his wife Isobel, John Henrison, Jacob Henrison, Richard Henrison, David Henrison, Elizabeth Henrison and Janet Kerr, who

¹⁰¹ *Burgh of Edinburgh, 1528-1557*, 70.

¹⁰² *Perth Kirk Sessions*, 53n194.

¹⁰³ *DSL*, s.v. ‘Demembration’ and ‘Mutilation’.

were charged art and part in the mutilation of William Grey in May 1527.¹⁰⁴ A case of both mutilation and demembration appears in the record for December 1539, which describes the charges against Thomas Sinclair and Elizabeth Nesbet, his wife, who mutilated and dismembered Robert Henderson.¹⁰⁵ Thus, assaults that resulted in serious injury or dismemberment might have been heard before the justice ayre. Indeed, there exists one example of an assault in which a group of individuals inflicted lesions and wounds but were not charged with mutilation.¹⁰⁶ The courts, of course, recognised various levels of assault, and sheriff, burgh and church court records reveal dozens of cases of women committing physical and verbal attacks against others.

Although it occurred far beyond the Borders, an entry from September 1511 demonstrates that the sheriff of Aberdeen was within his rights to fine Marion Clerk, the spouse of Adam Weir, for failing to compear on charges related to her ‘cruelle hurting and blud dravin of Anny Findelaw’.¹⁰⁷ Closer to Edinburgh, in the barony of Carnwath, women appeared regularly for drawing blood and are named in six entries between 1523 and 1532.¹⁰⁸ Women came before these courts primarily for attacking other women. In December 1524, the court found both Elizabeth Weir and Janet Cook guilty of ‘fylin [the] grund with violent blud’. Janet Cook’s father and Sir William Weir entered lawburrows and became responsible for ensuring that the two women kept the peace going forward.¹⁰⁹ A record from January 1529 describes a similar assault, but

¹⁰⁴ *NRSJC1/3* fo. 56r.

¹⁰⁵ *NRSJC1/4* fo. 95v and Pitcairn, *Criminal Trials*, 253. They were summoned to appear before a future sitting of the court, but successfully obtained a remission.

¹⁰⁶ *NRSJC1/5* fo. 256r.

¹⁰⁷ David Littlejohn, ed., *Aberdeen Court Book* (Aberdeen: New Spalding Club, 1904), 99.

¹⁰⁸ In addition to the two entries below, four other entries describing assault are recorded. See *Carnwath Court Book*, 12, 24, 108 and 144.

¹⁰⁹ *Ibid.*, 31.

Anne Liddale and Jane Fairley avoided penalties by avowing that although they had spilled blood there had been no violence ‘because it was in play & nocht in ernst’.¹¹⁰ Their choice of explanation may have been an attempt to take advantage of contemporary views of violence between women as comical and thus easily dismissed.¹¹¹ This type of quarrelling in the streets typically included verbal insults as well. The Scots term flyte means ‘to wrangle violently’, ‘to employ abusive languages towards others’ or ‘to scold’.¹¹² Discerning precisely what occurred when a record refers to flyting is difficult, but the records show that, throughout the sixteenth century, both church and secular courts dealt with these spats and quarrels. The post-Reformation kirk sessions from Perth include numerous accounts of the ‘shedding of blud’ and struggled for years to devise penalties severe enough to deter women from flyting.¹¹³ In August 1579 the assembly ordained

that sik as are convict of flyting and will not willingly pass to the croce head according to the act passit of befor, that thai sall pay [a] half merk money to be gevin [to the] pair for the croce head besides that uther half mark mentionat in the act of befor.

Margo Todd remarks that this act made it possible for people to pay up rather than submit to the humiliation of being put in the stocks.¹¹⁴ The assembly perhaps felt that such sentences were not effective at altering the behaviour of offenders and later, in July 1581, another act was passed that ordered all flyters to ‘pay a half mark to the pure, stand upon the cross haid, *and* mak thare public repentance for satisfaction of the kyrk

¹¹⁰ *Ibid.*, 108

¹¹¹ Pieter Spierenburg, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge: Polity, 2008), 120.

¹¹² *DSL*, s.v. ‘Flyt’.

¹¹³ *Perth Kirk Sessions*, 228.

¹¹⁴ *Ibid.*, 130 and 130n103

and party'.¹¹⁵ It was certainly a disruptive offence and was enough to elicit complaints from neighbours. In the burgh of Stirling, in February 1524, for example, Jenny Murra and John Murra were amerced for 'trubling of thair nebouris, undir silence of the nycht, throw thair flything and haldin of thair nebouris walkand all the nycht'.¹¹⁶ Edinburgh also suffered from the outbreak of such squabbles and, by October 1548, the burgh was sufficiently concerned that officials there issued a decree chastising the 'wemen within this burgh', but especially the fruit sellers, for flyting with each other and with the officers of the burgh.¹¹⁷ Beyond confirming the image of life in sixteenth-century Scotland as violent and chaotic, the distribution of these charges indicates that officials in all jurisdictions were able to hear cases of assault, with the most severe offences reserved to the judiciary court.

Homicide, oppression, stouthreif and severe bodily harm account for seventy-nine of the 136 individual charges laid against women in these records; there were, however, other offences that brought women to the attention of the justiciar. Parliament passed two acts concerning fire-raising in 1525 and 1526. The first ordains 'that the committers of the crimes of fire-raising [...] be put under surety to the law [...] and in case of the failure to find surety, to denote them rebels', equates fire-raising with 'the crimes of slaughter and mutilation' and complains that 'the burning of corn in barnyards is so great an offence against the common good' that persons convicted of setting fire to 'corn in stacks or barns' should be either executed or banished.¹¹⁸ A year later, the legislation of 1526 suggests that disorder was increasing despite the sanctions

¹¹⁵ *Ibid.*, 193. My italics.

¹¹⁶ *Burgh of Stirling*, 18.

¹¹⁷ *Burgh of Edinburgh, 1528-1557*, 141.

¹¹⁸ *RPS*, 1525/7/52.

set down in the previous act. It stipulates that ‘whoever comes and burns folks in their houses and all burning of houses and corn and wilful fire-raising are treason and crimes of lese-majesty, because such deeds are exorbitant and more against the common good than many other crimes’.¹¹⁹ One of only two women the justiciar put to death in this eighteen-year period was Janet Anderson, ‘convicted of art and part in the fire and burning of a byre of the lord of Rosyth and sixty oxen and eleven cows existing there. And drowned’.¹²⁰ Cattle were unfortunately common casualties, and likely targets, of this particular crime. According to Anna Groundwater, livestock was the most precious commodity among the borderers and theft of this sort ‘struck at the core of society, impeding normal agricultural practices’ and undermining social order.¹²¹ An entry from May 1533 sets out in detail the death of a number of oxen in a fire set by Alison Charteris and three men.¹²² In 1536, more oxen suffered the same fate at the hands of Elizabeth Martin lady Fast Castle and her male accomplices.¹²³ The burning of two separate houses in 1538 appear not to have resulted in any casualties.¹²⁴ Other

¹¹⁹ *RPS*, 1526/11/64. Perhaps paradoxically, it then encourages the burning of houses if the house in question was full of thieves or rebels and states ‘that it shall be lawful to any man to pursue and follow common thieves and rebels to take them, and if they enter in any house, that it shall be lawful to invade, break or destroy the house by fire or otherwise, to the intent and effect of taking or slaying of the said common thieves or rebels, for which there shall follow upon the doers no pain, accusation, crime nor offence, but to be free thereof in all time’.

¹²⁰ *NRSJC1/5* fo. 93r.

¹²¹ Groundwater, *The Scottish Middle March*, 133 and Keith M. Brown, *Bloodfeud in Scotland, 1573-1625: Violence, Justice and Politics in an Early Modern Society* (Edinburgh: John Donald, 2003), 31. Brown indicates that the theft and raiding of cattle ‘was integrated into the local economy’ and that widespread participation actually constituted a sort of economic ‘equilibrium’ in which individuals stole from each other repeatedly to recoup the losses they suffered at each other’s hands.

¹²² *NRSJC1/5* fo. 94r.

¹²³ *NRSJC1/5* fo. 194r. Marginal notes indicate that the group was summoned to compear in Berwick, but there are no further indications of the outcome of this attack.

¹²⁴ *NRSJC1/5* fo. 287v. The two entries are both related on the same page of the manuscript, but name different victims and offenders.

specific offences for which the court indicted and summoned women to the justiciary court, but only once or twice in the period, include general destruction,¹²⁵ theft and reset.¹²⁶ The capital crimes for which women did not come before the courts in this period are hereschip and witchcraft. The absence of witches in these records is probably a matter of chronology since witchcraft was not a capital crime in Scotland until 1563, and the witch craze was still a few decades in the future.¹²⁷ It is less clear why they do not appear accused of hereschip, defined as a ‘predatory raid’ most often ‘for the purpose of carrying off cattle’. As the records demonstrate, women actively engaged in oppression, stouthreif and fire-raising in the company of others, male and female. This may simply be a matter of the clerk’s preference for terminology, or it may indicate that women participated less frequently in attacks of a larger scale. Indeed, women rarely appear in the entries that list more than a handful of offenders.¹²⁸

If one were to analyse only the records of the High Court of Justiciary with the goal of forming a broad opinion about gendered patterns of crime in sixteenth-century Scotland, they might well come away gravely misled. The cases enrolled in these records suggest that homicide or slaughter was the most common crime perpetrated by pre-modern women. Some of them did kill and, in many English counties, homicide was ‘the third most common felony’ among women.¹²⁹ However, while English women were not reluctant to engage in violence when necessary, an overwhelming number of

¹²⁵ *NRSJC1/5* fo. 194r. While this is not a criminal act in and of itself, it was more likely added to emphasise the havoc wreaked as a result of the hamesuckin, oppression, fire-raising and burning listed in this entry.

¹²⁶ *NRSJC1/4* fo. 24r; *NRSJC1/5* fo. 82v; and *NRSJC1/5* fo. 133v.

¹²⁷ *RPS*, A1563/6/9. Witchcraft will be discussed further in chapter three.

¹²⁸ Women did occasionally accompany large groups of offenders, but the only examples that survive in this set of records are *JC1/5* fo. 37v–38r (approximately sixty names), *JC1/5* fo. 256r (approximately thirty names) and *JC1/5* fo. 309v–310r (approximately fifty names).

¹²⁹ Hanawalt, ‘The Female Felon’, 258.

the charges laid against them on the English side of the Anglo-Scottish border were for various versions of theft.¹³⁰ The evidence of the justiciary court records indicates that, in the sixteenth century, the Scottish side of the border was no less a 'violent and turbulent place' and that women did participate in violent attacks on the persons and property of their neighbours.¹³¹ More intriguing is that the pattern of felony behaviour, as represented in these documents, is not consistent with the wider pattern of female crime that has been established in previous studies.

The reasons why women appeared before the courts so infrequently in this period are still under discussion. The three most compelling theories are that women escaped detection and capture, communities preferred to manage them through informal sanctions and that women simply committed crimes less frequently than did men. Kilday finds the first explanation, apprehension, unlikely and this argument accords well with the context of a deeply kin-based society like that of Scotland, in which the king acknowledged the shortcomings and inefficacy of centralised authority and allowed local, private justice to flourish in most regions. Domestic responsibilities and gender stereotypes made it difficult for women to move as freely as men. Furthermore, women who did move about alone would have met with just as much suspicion as did men from the communities through which they passed. That only two women in eighteen years were convicted and executed by the High Court of Justiciary suggests that this court was reluctant to sentence women, but, as Kilday argues, this 'cannot account for why women were tried for serious crime so much less often than men were in the first instance'.¹³²

¹³⁰ Neville, 'War, Women and Crime', 167.

¹³¹ Kilday, "'That Women are but Men's Shadows'", 55.

¹³² *Ibid.*, 55-56.

This chapter has shown that, although women in Scotland committed the very same crimes for which their male counterparts were summoned to the High Court of Justiciary, they do not appear in these records as frequently as might be expected. Women committed fewer felonies than did men; but it is clear that Scottish women committed crimes that lay well within the jurisdiction of the justiciar. The question is not whether women committed fewer felony property crimes than did men, but whether, when they did commit them, they found themselves reporting to a lesser jurisdiction. In Scotland, contemporaries had a variety of legal venues available to them that might allow them to deal with unruly women more swiftly and without needing to take the matter beyond the limits of their communities. The following two chapters explore the role that family networks and assumptions about gender and misbehaviour played when sixteenth-century communities weighed the decision between local and central prosecution.

Chapter 3: The Family that Raids Together: Kindred, Border Crime and the Management of Female Criminals

Family was at the crux of the many webs of social power and administration in the Borders and elsewhere in Scotland. Clans and surnames dictated political, social, administrative and economic relationships well into the sixteenth century, and scholars such as Jackson Armstrong stress the significance of these networks ‘in the generation, pursuit and resolution of conflict’.¹ Such networks also offer what Scott Moir considers ‘a way to situate gender roles and expectations in their societal context, and to see their relationships in action’.² Such views are crucially relevant in the context of criminal behaviour and the administration of systems meant to manage deviant behaviour. As the previous chapter suggests, deviant women typically involved their male relatives as accomplices, but it remains difficult to determine whether these men were held legally responsible for the criminal actions of their sisters, daughters and wives. The vast majority of the women recorded in the High Court of Justiciary manuscripts found members of their family who promised to ensure their appearance at a regional court, Edinburgh or a justiciary court. Examples from other courts indicate that here, too, husbands sometimes guaranteed their wives’ good behaviour or endured their punishment for them; however, the only sentences recorded by the justiciary clerks in this period were capital and affected only the convicted women (with the exception of the fines administered to the men who failed to bring women to court).

¹ Jackson W. Armstrong, ‘The “Fyre of Ire Kindyld” in the Fifteenth-Century Scottish Marches’, in *Vengeance in the Middle Ages: Emotion, Religion and Feud*, ed. Susanna A. Throop and Paul R. Hyams (Farnham: Ashgate, 2010), 53.

² Scott Moir, ‘The Crucible: Witchcraft and the Experience of Family in Early Modern Scotland’, in *Finding the Family in Medieval and Early Modern Scotland*, ed. Elizabeth Ewan and Janay Nugent (Aldershot: Ashgate, 2008), 52.

These records therefore offer a great deal of insight into the role of the family in the commission of a crime.

The women enrolled in these records also represent some of the most influential and powerful families south of Forth, including the Humes, Douglasses, Maxwells, Scots and Johnstones. Their relatives held many local offices and served as members of juries and assizes, wielding their power for the benefit of their surnames.³ It will therefore be pertinent to consider the potential these networks might have held to reward and protect their wives, mothers and daughters. This chapter situates the evidence of female offenders before the High Court of Justiciary within the body of current historiography on juries, kindred, feud and administration in sixteenth-century Scotland. It argues that family relationships and bonds of loyalty contributed to the environment in which women committed crimes and provided them with both accomplices and motives. It also suggests that these networks had the potential to direct women away from central authority and into local jurisdictions where they might receive more condign treatment at the hands of their relatives and landlords.

3.1: Family in Scotland

Alison Cathcart suggests that the tight bonds of kinship that governed relationships in the medieval period relaxed gradually in the sixteenth century. Nonetheless, family remained ‘an organising principle’ well into the sixteenth century’.⁴ The clans of the Scottish highlands are well known for their ‘legendary’ loyalty, and family

³ Thomas I. Rae, *The Administration of the Scottish Frontier: 1513/1603* (Edinburgh: Edinburgh University Press, 1966), 7.

⁴ Alison Cathcart, “‘Inressyng of Kyndnes, and Renewing off Thair Blut’”: The Family, Kinship and Clan Policy in Sixteenth-Century Scottish Gaeldom’, in *Finding the Family in Medieval and Early Modern Scotland*, ed. Elizabeth Ewan and Janay Nugent (Aldershot: Ashgate, 2008), 127.

relationships among the lairds of the lowlands were no different.⁵ In the Borders, landed lords and their families were identified by surnames, which came into use in the fourteenth and fifteenth centuries as a means of identifying English families in the region. The similarities between kindred networks in the highland and border regions were not lost on the crown and, in the sixteenth century, the association between clans and disorder was becoming rapidly applicable to kindreds in the south of Scotland. Ian Rae argues that border families needed to organise owing to the limited influence of centralised justice in this region. Since the fourteenth century, shifting borders, war and regular royal minorities created a ‘social insecurity’ that required more attention than the crown in Edinburgh was able to supply. The geographic distribution of blood relatives and the associates with whom local magnates negotiated bonds of manrent shaped the development of these powerful surname groups. They were thus central to the nature of the Borders where they functioned much like clan organisation in the highlands by fostering equally sophisticated relationships between kin groups in this region.

At various times throughout the sixteenth century, the Halls, Robsons, Ainslies and Olivers dominated the middle march, with the Batisons, Littles, Irvings, Grahams and Bells in the west and the Croziers, Nixons, Hendersons, Armstrongs and Elliots in Liddesdale. When the Douglases fell from favour, other influential border surnames gained even more prominence than they had previously. Among these were the Humes, the Kerrs, the Scotts, the Maxwells and the Johnstones, whose followers were

⁵ Keith M. Brown, *Bloodfeud in Scotland, 1573-1625: Violence, Justice and Politics in an Early Modern Society* (Edinburgh: John Donald, 2003), 18.

unflagging in their loyalty.⁶ Like the kindreds of the highlands, members of the border surnames were not always directly related, yet they acted together as ‘true kinship units’, whether they sought to exact vengeance against a rival family, rally to the defence of an associate or endure the pains of justice when their actions broke the law.⁷ Although women were seldom the most powerful or influential members of these groups, they nevertheless enjoyed or suffered the consequences of the actions of men they considered family.

The wives, widows and daughters who became victims of violence and pawns in peacemaking efforts dominate the story of women in the Borders. Although such women were subject to the same gendered, societal and legal limitations as their counterparts elsewhere in the realm, the constant threat of English invasion, crimes against person and property, shifting alliances and the challenges associated with assisting the kin of a named rebel exacerbated the drama of their lives. Elderly widows and pregnant women were at a physical disadvantage during raids. Moreover, frequent deaths, destruction of property and feuding sparked disagreements and infighting when male landowners perished unexpectedly and left their widows in possession of attractive and lucrative properties. Political marriages and abduction were symptoms of disputes over young, marriageable heiresses either for the land they

⁶ Maureen M. Meikle, ‘The Invisible Divide: The Greater Lairds and the Nobility of Jacobean Scotland’, *The Scottish Historical Review* 71 (1992), 86. Prior to 1590, the distinction between lairds and titled nobility in Scotland was less significant than might be expected. The dominance of the Borders by lairds, owing to the relatively scarce presence of titled nobles, afforded these smaller families great influence and prestige in some cases, and was not a barrier to preferential treatment or patronage by the crown.

⁷ Rae, *The Administration of the Scottish Frontier*, 4–8. See also Anna Groundwater, ‘The Obligations of Kinship and Alliance within Governance in the Scottish Borders 1528–1625’. *Canadian Journal of History* 48, no. 1 (2013), 7 and Jenny Wormald’s discussions of the kin, friends, allies and others who might share in these bonds of obligation in *Lords and Men in Scotland: Bonds of Manrent, 1442–1603* (Edinburgh: John Donald Publishers Ltd., 1985), 76–90.

possessed or the peace they might bring to feuding kindreds through the match.⁸

Although no known female bandit chiefs existed here, women who held positions of political importance or who served as their husbands' deputies out of necessity sometimes had occasion to involve themselves in border conflicts.⁹ Moreover, for all the women who met with misfortune owing to their relationships with prominent surname leaders or rebels, there were others who benefited from war, theft and political manoeuvrings.

3.2: The Family that Raids Together

Throughout Scotland family was the basis of social organisation, and contemporaries viewed it as a force for stability.¹⁰ As family organised economic, political and social life in the Borders, so too did it influence the commission of crimes. Bruce Lenman and Geoffrey Parker describe sixteenth-century Scotland as a realm that, although not lawless, was 'an armed society in which kinship groups were significant and frequently avenged'.¹¹ As they did elsewhere in the kingdom, family links defined the character of the people who lived in this region as well as the conflicts in which they were regularly embroiled. Some of these might last for a number of years, such as the feud between

⁸ Maureen M. Meikle, 'Victims, Viragos and Vamps: Women of the Sixteenth-Century Anglo-Scottish Frontier', in *Government, Religion and Society in Northern England 1000-1700*, ed. John C. Appleby and Paul Dalton (Stroud: Sutton Publishing, 1997), 173-176 and Jenny Wormald, *Court, Kirk and Community: Scotland, 1470-1625* (Toronto: University of Toronto Press, 1981), 27-28.

⁹ Meikle, 'Victims, Viragos and Vamps', 184. See also Keith M. Brown's discussion of noblewomen and politics in the later sixteenth century in *Noble Society in Scotland: Wealth, Family and Culture from the Reformation to the Revolution* (Edinburgh: Edinburgh University Press, 2000), 140-142.

¹⁰ J. R. D. Falconer, 'A Family Affair: Households, Misbehaving and the Community in Sixteenth-Century Aberdeen', in *Finding the Family in Medieval and Early Modern Scotland*, ed. Elizabeth Ewan and Janay Nugent (Aldershot: Ashgate, 2008), 140.

¹¹ Bruce Lenman and Geoffrey Parker, 'Crime and Control in Scotland, 1500-1800', *History Today* (1980), 13.

the Cunninghames and Montgomerys, which dragged on from 1520 until 1536;¹² others, like that between the Douglasses and Hamiltons, coloured the social and political climate of the Borders for the whole of the sixteenth century, and especially when Scotland's rulers were minors.¹³ Such conflicts might also hinder the assumption of a monarch's personal rule and ensure that the first few years of their independent reign was spent dealing with the aftermath of feuding between powerful factions.

Irrespective of the intensity or longevity of these feuds, they were always family affairs. Rae argues that the 'social structure promoted disorder and turbulence in the border area' and that 'the clash between feudal and kinship ideas of landholding' was a key instigating factor in disputes between kinship groups. Many of the violent outbursts recorded in the history of the Borders started when one group claimed customary rights to lands over which a member of another kin group held legal title. The resulting loss of land, revenues and agricultural resources forced whichever side had failed to substantiate its claim to find other means of supporting itself. Typically, this led to vengeance, which took the form of oppression, stouthreif, arson, robbery and raiding. These conflicts deprived kindreds of land and property, and attempts to regain the power and wealth lost in the course of such struggles created an environment of lawlessness.¹⁴

Attempts to resolve such struggles, however, might also take the form of quasi-legitimate justice. The feuds and acts of violence that sometimes erupted from peacemaking or revenge missions were ordinary elements of sixteenth-century Scottish politics. The reach of central government did not extend nearly as far into the Borders

¹² Brown, *Bloodfeud in Scotland*, 85.

¹³ *Ibid.*, 109.

¹⁴ Rae, *The Administration of the Scottish Frontier*, 9.

as it needed to in order to exert regular and constant control; thus, the local courts were integral to law and order. Moreover, frequent periods of minority rule repeatedly hampered the success of efforts to increase the range of centralised supervision of justice in Scotland. Thus, in the localities, family, friends and the bonds between lords and liege governed the application of the law.¹⁵ Despite attempts to increase the influence of centralised administration, local judicial powers remained influential and accommodated expressions of private justice, including feud and the payment of assythment as compensation to the kin of a victim. The two systems worked with the crown, to its frustration, to achieve a balance between formal legal procedure and custom.¹⁶ Although the bonds of kinship might be turned towards positive economic, political and administrative ends, and often served as a form of extrajudicial control, the relationship between lords and their men had ‘a darker side’ that encouraged individuals to commit crimes in the name of kindred and protected them from the law when they were caught. Some examples of these bonds include those between Lord Maxwell and the Armstrongs, and the earl of Bothwell and several border families, including the Wauchopes of Niddrie.¹⁷ Infamous throughout the region were gangs of thieves and raiders organised by family ties, geography or often both. They coalesced around an influential figurehead who led their criminal expeditions and offered them various other social and political benefits.¹⁸

¹⁵ Brown, *Bloodfeud in Scotland*, 65.

¹⁶ Armstrong, ‘The “Fyre of Ire Kindyld”’, 52-53.

¹⁷ Brown, *Bloodfeud in Scotland*, 19-20.

¹⁸ Rae, *The Administration of the Scottish Frontier*, 7; Anthony E. Goodman, ‘The Impact of Warfare on the Scottish Marches, c.1481-c.1513’, in *Conflicts, Consequences and the Crown in the Late Middle Ages*, ed. Linda Clark (Woodbridge: Boydell Press, 2007), 208; and Groundwater, ‘Obligations of Kinship and Alliances within Governance’, 9. We must keep it in mind that not all members of all surnames felt and acted the same way, and that there were always those individuals who prioritised some relationships, privileges or duties over others. The perception that all

The relatively small number of individuals who claimed a particular surname within a given region gave feuding culture in the Borders a less violent, but no less volatile, character than that of highland lore. The number of families involved allowed for shifting alliances and frequent flare-ups that engendered disorder and chaos in this region.¹⁹ In addition to relationships between members of kin groups, a single man or woman might also identify with any number of intersecting identities contingent upon political, economic, kinship, marital and geographic connections. Moreover, each of these connections might hold different weight for different people at different times.²⁰ Kinship networks were nevertheless as much at the centre of feuding culture in the Borders as they were in the Highlands. On the other hand, relationships between and within kin groups were invaluable during peacemaking efforts and provided witnesses, mediators and supporters.²¹ Women, as well as men, shared in the benefits and consequences that membership to particular kin groups afforded them.

Although they were more often the targets of stouthreif, theft and hereschip, women sometimes accompanied large groups of their kinsmen during the commission of these and other crimes. In a few instances, they were the sole malefactors or masterminds behind expressions of open enmity between two surnames, especially if they had been left to manage and protect the estates of husbands who were waging war or exiled. In such situations, most women proved to be equal in skill to their spouses and some exceeded expectations by embroiling themselves in ‘the diplomatic intrigues

Armstrongs, for example, were incorrigible criminals was grounded in the crown’s tendency to generalise and refer to all members of a surname in common.

¹⁹ Brown, *Bloodfeud in Scotland*, 7.

²⁰ Groundwater, ‘Obligations of Kinship’, 8.

²¹ Armstrong, ‘The “Fyre of Ire Kindyld”’, 81.

of their husbands'.²² Keith Brown offers the example of the countess of Errol, who 'was only one of a number when she had to give caution that she would not harm her male neighbour, and of 'two border ladies [who] held a "Course of War", following which they hired a gang of local ruffians to slaughter a number of Douglas of Drumlangrig's sheep'.²³ Of the women represented in the justiciary court records, Margaret Douglas's 'convocation of lieges', her assault on the Tower of Ernside and the stouthreif of 'one hundred and fifty-six bolls of corn, with the straw, eight oxen and two horses' best fits with this category of behaviour.²⁴ Recent scholarship has not emphasised or explored the role of women in parties of raiders or in border conflicts to any great extent, probably because these groups were composed primarily of male members. Nevertheless, the records of the justiciary court show that, while women were in the minority, they did participate regularly in the violent acts of treason, homicide and theft associated with the Anglo-Scottish border in this period.

3.3: The Evidence of the High Court of Justiciary

Although women came before the justiciary court both alone and in the company of other women to whom they may or may not have been related, the majority of the entries enrolled in these records name women alongside their family members. In his study of Aberdonian court records, J. R. D. Falconer found that, in sixty per cent of the references to women, the clerk described them as a mother, wife or sister, rather than by name.²⁵ The justiciary court records, on the other hand, regularly specify the

²² Meikle, 'Victims, Viragos and Vamps', 181-182.

²³ Brown, *Bloodfeud in Scotland*, 69.

²⁴ Robert Pitcairn, *Criminal Trials* (Edinburgh: Bannatyne Club, 1833), 223 and *NRSJC*1/5 fo. 306v.

²⁵ Falconer, 'A Family Affair', 143.

forenames and surnames of women, sometimes independently and sometimes as the wife or daughter of a named man. The clerks deviated from this pattern in just a single entry from this period. In January 1527, in addition to Katherine Bell and Katherine Burny, the justice clerk in Edinburgh referred to the unnamed wives of George Vais, George Lundy, Andro Hamilton, Robert Dickson and William Matheson among the names of a number of people called to appear before the justiciary court for an unspecified crime.²⁶ Each woman is referred to only as the ‘*uxor*’ of a named man. Scholars have argued that contemporary attitudes toward social status and gender influenced individual styles of recordkeeping in this period, and a close examination of these patterns proves promising for establishing the nature of the relationships between women and their accomplices as represented in the records of the justiciary court under review.

It is impossible to know whether the clerks were consistent when they enrolled the names of each entry. They recorded multiple cases each day and some entries list names in excess of seventy individuals: the sight and sound of quills scratching and scribbling furiously to keep up with the announcement of all the names are easy to imagine.²⁷ It is therefore possible that many of the women who appear in the records, but whom the clerks did not identify relation to their accomplices, committed their crimes in the company of family members and that the clerk simply did not include this information. Indeed, several of the women are listed together with those who shared their surname and it is not unreasonable to assume that they probably belonged to the latter’s extended kindred.

²⁶ *NRSJC1/5* fo. 37v-38r.

²⁷ Pitcairn, *Criminal Trials*, 138.

The clerks did, however, take care to identify the nature of the relationships that linked the accomplices and guarantors of these women. The majority of the female offenders enrolled in these records committed crimes in the company of their husbands or found surety through them.²⁸ In 131 entries, the terms ‘*sponsa*’ (spouse) and ‘*uxor*’ (wife) appear forty-six and eight times, respectively.²⁹ The first entry to name a woman in this period, dating to April 1528, describes the replegiation of Robert Bully, his spouse, Janet Bully, and an accomplice by the name of Robert Barde. All were ordered to answer to the regality of Brechin for the slaughter of Robert Redpath.³⁰ Eleven years later, in October 1539, the penultimate entry in this sample describes the conviction, but not the sentencing, of Hugo Maxwell of Teling and Barbara Hering, his spouse, for art and part in the oppression done to William Wood of Bonnington.³¹ In the intervening years, women accompanied their husbands in acts of homicide, mutilation,³² forethought felony and oppression,³³ dememberment,³⁴ hamesuckin,³⁵ mutilating and deforcing a messenger³⁶ and, finally, fire-raising.³⁷ The outcomes of most of these trials remain uncertain either because the clerks did not return to amend the entries with marginal notes or because the notes indicate only the location of a

²⁸ Elizabeth Ewan, ‘Disorderly Damsels? Women and Interpersonal Violence in Pre-Reformation Scotland’, *The Scottish Historical Review* 89, no. 2 (October 2010), 158. Women most often found surety in their husbands or other male relatives, and those who could not appear to have encountered difficulties securing guarantees from unrelated men, even associates of their husbands.

²⁹ *Sponsam* is the feminine accusative form of this noun and distinguishable from the male form which appears throughout the records as *sponsum*.

³⁰ *NRSJC1/3* fo. 17v.

³¹ *NRSJC1/5* fo. 310r.

³² *NRSJC1/3* fo. 56r.

³³ *NRSJC1/3* fo. 174r.

³⁴ *NRSJC1/4* fo. 95v.

³⁵ *NRSJC1/5* fo. 81r.

³⁶ *NRSJC1/5* fo. 186v.

³⁷ *NRSJC1/5* fo. 287v.

future compearance and not a fine or sentence. It is, clear, however, that spouses did not always bear equal responsibility for a crime during which both were present and both participated in some way. Among the few entries that do reveal the outcome of a trial, one records the fates of a husband and wife accused of the slaughter of John Johnson in Bog House, South Lanarkshire. In August 1529, the assize acquitted Janet Darroch, spouse of Archibald Robson, of the offence.³⁸ The court also granted Archibald a respite for the crime. The clerks recorded the details of the two trials separately, but on the same folio. The entries indicate that although the court charged Archibald with theft from the victim during or after the death, they never made this accusation against Janet.³⁹ Perhaps the accuser was a witness who observed Janet fleeing in advance of her husband or waiting elsewhere while he removed valuables from the body. Perhaps they testified that she was present but in no way involved. It is also possible that the jury considered Archibald the primary instigator and concluded that he had pressured Janet into participating in some capacity. The entry does not include any sort of deposition, thus the exact circumstances of the crime and the facts that may have influenced the respite and acquittal must remain unknown.

Sometimes the commission of a crime was a mother-daughter event. In May 1527, John Bruce became surety for and pledged to bring Mariota Bruce and Cristina Malis, Mariota's daughter, before the justiciar in Stirling for the slaughter of Thom Crawford.⁴⁰ In the event they did not compear at the appropriate time, John faced ameracements of approximately £66 for Mariota and £40 for Cristina. Unfortunately,

³⁸ *NRSJC1/3* fo. 132r. The marginal note states simply that she was quit by the assize and does not offer any further detail.

³⁹ *NRSJC1/3* fo. 132r.

⁴⁰ *NRSJC1/3* fo. 56r. The original ameracements are listed as 100 merks and £40.

neither this particular entry, the marginalia or any preceding or subsequent entries indicate whether this killing was an act of revenge or the culmination of an abusive domestic situation. The discrepancy in the penalties for non-compearance does suggest, however, that the court considered Mariota's social status or her role in the slaughter to be more important than that of Cristina. It may also be the case that Cristina was a minor.

Daughters appear in the company of their parents and siblings six times elsewhere in the records. Thus, in June 1528, John Carnochane pledged to bring his wife, Mariota Weddale, his son, William Carnochane and his daughter, Elena Carnochane, to court the following month to answer for their part in the slaughter of Richard Baxter, son of Robert Baxter. A number of other individuals of the surnames Weddale appear in this entry as both pledges and pannels. The only amount indicated as a penalty for the non-compearance of these people was £40 and it seems to have applied to each of the accused men and women.⁴¹ In addition to cases of homicide, the term *filia* also appears in one case of rape,⁴² the mutilation and deforcement of a messenger⁴³ and once instance of forethought felony, hamesuckin and oppression.⁴⁴

⁴¹ *NRSJC1/3* fo. 84v.

⁴² *NRSJC1/5* fo. 4v. The term *raptus* had a number of legal connotations in medieval law, including rape, abduction and theft. In most cases context helps to unravel the meaning of the clerk or author, but these records are unfortunately brief. The entry in question states that John Charteris of Amisfield pledged to bring before a future court Margaret Lynton, her daughter Isobel Boyis, and Margaret's husband, Peter Grierson, the victims, as well as Robert Scott and John Merton, the accused, for art and part in the rape of the said Isobel. That the clerks did not include any description of stolen items in this or any other related entry, it is clear that the object of the *raptus* is 'the said Isabel' and that this is therefore a case of rape. This entry is not included in the sample of 131 because it names no female offender. For a more detailed discussion of the act and terminology of rape in the Middle Ages see Caroline Dunn, *Stolen Women in Medieval England: Rape, Abduction and Adultery, 1100-1500* (Cambridge: Cambridge University Press, 2013). Most of Dunn's arguments are relevant for Scottish law in the same period.

⁴³ *NRSJC1/5* fo. 186v.

⁴⁴ *NRSJC1/5* fo. 227r.

The clerks rarely described men and women as mothers or fathers. The term ‘*mater*’, for example, appears only three times in this sample. The first was in July 1537, when Jacob Crichton pledged to ensure his mother’s appearance before an unspecified future court.⁴⁵ The second occurs in an entry from November 1528, in which John Weir de Newton, his brother Adam Weir and his mother Margaret Carutheris were acquitted of the slaughter of William Talliefer.⁴⁶ The third was in May 1529, when George Haliburton pledged to bring John Crichton of Ruthven and Janet Egson, his mother, before the justiciar of Forfar for art and part in the slaughter of Robert Jameson.⁴⁷ The technical requirements of the Latin-language records rendered it simpler and more efficient for the clerks to explain relationships with reference to aforementioned parties. In the case of Mariota Weddale, above, her husband acted as her guarantor and therefore appears first in the record. That she is then described as his wife is a simple matter of formula rather than a conscious choice on the part of the clerk. The rest of the names in the Latin manuscript, however, are essentially interchangeable with hers, yet the son of John Carnochane and his daughter, in that order, appear after his wife. Such word ordering may reveal something of late medieval attitudes towards family and accountability. A number of studies have attested the significance of the order in which clerks recorded the names of multiple accused.⁴⁸ Ewan supports this view and argues that instances where the clerk recorded a woman’s name earlier in an entry are an indication that ‘she was the more assertive participant in [the] attack’; since women typically appeared after their husbands when

⁴⁵ *NRSJC1/5* fo. 238v.

⁴⁶ *NRSJC1/3* fo. 103r.

⁴⁷ *NRSJC1/3* fo. 122v.

⁴⁸ Cordelia Beattie, *Medieval Single Women: The Politics of Social Classification in Late Medieval England* (Oxford: Oxford University Press, 2007), 5.

they came before the court together.⁴⁹ If we may apply this reasoning to social hierarchies in general, the fact that Mariota Bruce appears in the record ahead of her daughter, and that the fine for her non-compearance is higher, offers insight into the clerk's opinion of their degree of accountability in the slaughter of Thom Crawford. Similarly, the clerk may have felt that Mariota Weddale was somehow more culpable in the slaughter of Richard Baxter than were her children.

The evidence from the judiciary court is consistent with that of other courts in late medieval and early modern Scotland. In her study of the assaults heard by late medieval courts, Ewan finds that it was common for mothers, daughters, extended family members and female friends to gang up on their victims. Since women usually kept their family names, rather than assuming that of their husband, it is challenging to determine the relationship between women and other indicted individuals of different surnames who committed crimes in each other's company. In addition to committing crimes *with* family, Scottish women often broke the law *for* family, and when women instigated assaults on their own, they might have been responding to a previous offence against a family member. There is also ample evidence of men who attacked others at the behest of their wives. Ewan points to an incident from 1537 in which 'Elspeth Gardyne of Aberdeen was convicted for strubling Willie Ingerame through her husband, Willie Speif'.⁵⁰ In light of this recent work, we may conclude that Scottish women acted in the interest of their kin groups.⁵¹ These examples constitute just one

⁴⁹ Ewan, 'Disorderly Damsels?', 160.

⁵⁰ *Ibid.*, 160-61.

⁵¹ Andrea Knox, "'Barbarous and Pestiferous Women': Female Criminality, Violence and Aggression in Sixteenth- and Seventeenth-Century Scotland and Ireland", in *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*, ed. Yvonne Galloway Brown and Rona Ferguson (East Linton: Tuckwell Press, 2002), 27.

segment of a broader and more extensive pattern of familial violence and feuding summarised above.

3.4: Kinship and Justice in Scotland

The ramifications of a felony offence had the potential to affect men of the highest standing in Scottish society, even if they were not personally involved. Any degree of connection between the indicted parties, the victim and a local magnate might afford the latter the occasion to influence the criminal process in a number of ways and for a variety of reasons. Lords seldom passed on the opportunity to repledge a guilty party in order to mete out justice or lenience, and jurors might act in the interest of their surname or out of fear of retribution by a powerful opponent.⁵² Scottish borderers were in a unique position to escape justice and sometimes they had the option to flee to England where they might find support or at least escape Scottish jurisdiction for a time.⁵³ In many cases, however, there was no need for criminals to flee the country. Rae argues that the violence and thieving in the Borders was not solely the work of ‘irresponsible tenants and clansmen’, but that their lords encouraged the destruction and disorder as part of ongoing feuds. Before the crown was able to deal with crime in the Borders, it needed to put a stop to the feuding that generated this activity.⁵⁴ Repeated periods of minority rule, however, made it difficult to limit the power of the surnames who seized power either through regency or in the wake of opposition by

⁵² John G. Bellamy, *The Criminal Trial in Later Medieval England: Felony before the Courts from Edward I to the Sixteenth Century*, (Toronto: University of Toronto Press, 1998), 48.

⁵³ Krista J. Kesselring. “‘Berwick is our England’: Local and National Identities in an Elizabeth Border Town”, in *Local Identities in Late Medieval and Early Modern England*, ed. Norman L. Jones and Daniel Woolf (Basingstoke: Palgrave Macmillan, 2007), 95-96.

⁵⁴ Rae, *The Administration of the Scottish Frontier*, 123.

strong personal kingship. Additionally, the shift from private justice and feud toward a dependence on formal judicial authorities did not begin in earnest until the end of the sixteenth century. Moreover, placating feud was not likely to solve all the administrative problems in a region where local magnates controlled multiple jurisdictions. Thus, while these men played integral roles in peacemaking efforts, they also instigated and enabled criminal behaviour among their followers.⁵⁵

Justice in the Anglo-Scottish border region was primarily self-contained and locally managed. Armstrong has found the late fifteenth-century Scottish government wanting in its ability to claim 'the exclusive use of legitimate violence' and to 'enforce public authority through coercive royal justice'.⁵⁶ Thus, despite some improvement and increased attention to the efficacy of the central courts in the sixteenth century, the crown continued to experience difficulties in the administration of justice in this region. Border magnates did not always welcome the interference of the monarch and Armstrong suggests that after a royal minor reached adulthood it sometimes altered the balance of power in localities and caused friction. The consequences of minority rule, such as occurred during the first half of the reign of James V, might prove far more disruptive owing to the dominance of local lords during these periods. During the absence of James I (1406-24) and the minority of James II (1437-1449), local magnates discovered that their restorative efforts were far more effective at satisfying victims and quelling unchecked retaliation than were those of the crown.⁵⁷ Over time, the crown recognised this and Scottish monarchs after James II began to turn the system to their advantage whenever possible. In addition to calling on surname leaders and their lieges

⁵⁵ Armstrong, 'The "Fyre of Ire Kindyld"', 72.

⁵⁶ *Ibid.*, 82 and Rae, *The Administration of the Scottish Frontier*, 11-12.

⁵⁷ *Ibid.*

to mount an offence or defence against the English, the crown might also seek to harness the power of these men to ensure that, in the swaths of land under their influence, royal ordinances were carried out and troublesome followers controlled through bonds of caution.⁵⁸ It was with this assumption in mind that in 1525 the Estates, then under the regency of Angus,

ordained for the staunching of theft, robbery and other inconvenients on the Borders that letters be directed to command and charge all the headmen and clans of the Merse, Teviotdale, Liddesdale, Ewesdale, Eskdale and Annandale, that they, and every one of them, deliver pledges in Edinburgh to the lords of council for good rule as shall be devised and thought expedient; and whoever fails therein, that provision is to be made thereof so that the lieges of our sovereign lord may live in peace and in rest in time to come.⁵⁹

Although the contents of the letters are unknown and this exhortation appears to have been unsuccessful (James felt that it was necessary to deal personally with the Borders five years later), this statute indicates that parliament believed it possible for the aims of central governance to trickle down to the ‘fissiparous localities’, as Jenny Wormald calls them.⁶⁰ The various criminal jurisdictions and their officeholders explained in chapter one created a bridge between Edinburgh and the Borders across which the crown might direct its attempts to suppress criminal activity.⁶¹ Kin group relations, local interests and the discord in the region, however, coloured their administration.

⁵⁸ Anna Groundwater, *The Scottish Middle March, 1573-1625: Power, Kinship, Allegiance* (London: Royal Historical Society, 2010), 59. Groundwater also provides a detailed comparison of Scottish bonds of caution with the English practice of ‘binding over’, of the differences between private bonds of manrent and the public nature of bonds of caution, in ‘Obligations of Kinship’, 14-15.

⁵⁹ *RPS*, 1525/2/13.

⁶⁰ Wormald, *Lords and Men in Scotland*, 77.

⁶¹ Groundwater, *The Scottish Middle March*, 128.

Among the highest ranks of these powerful men were the barons, sheriffs and regality lords; thus, the records of the judiciary court are filled with men and women who shared the surname of the lords Hume, Maxwell, Ker, Scott, Crichton and Douglas.⁶² These were the families whose heads controlled the hereditary sheriffdoms of Dumfries, Sanquhar, Roxburgh, Selkirk and Peebles in the sixteenth century. Despite the hereditary nature of the office, deputies with years of professional experience performed most of the responsibilities of this office and they brought to their tasks a higher level of competence than might be expected. Nevertheless, the office was not immune to abuse, and obligations to kindred and tenants complicated and sometimes corrupted the exercise of justice. The power of the office made it possible for sheriffs and their deputies to employ vigorous prosecution as a weapon against their enemies, or to offer lenience to their kin, tenants and friends who broke the law. Thus, it was possible for a sheriff to pursue the members of his surname apathetically or to repledge these individuals to his jurisdiction and then drop the proceedings against them. A contemporary understanding of this propensity for bias is evident in the practice of permitting individuals who were involved in feud with the sheriff or his family to request exemption from prosecution by the sheriff in question.⁶³ A case of *spulzie* between two parties in 1520, although the example comes from Fife, illustrates the concept. One of the accused men, Alexander Kynnynmonth 'protestit that he micht hef lauchfull cause & excepcione to oppone & decline the Juge & membris of court because of Inimyte betuix the said schiref & him'.⁶⁴ The court offered him the chance to prove this enmity and the case was delayed. Despite the checks in place to

⁶² Rae, *The Administration of the Scottish Frontier*, 5.

⁶³ *Ibid.*, 11-14.

⁶⁴ *Fife Court Book*, 199.

minimise this sort of abuse, Rae notes that the sheriffs ‘had become scarcely answerable’ to the crown, which in turn paid little attention to the manner in which these officials operated their courts. Finally, in 1599, the crown summoned a number of the border sheriffs to answer for their inadequacies.⁶⁵ The possibility for corruption was closely related to the power of the lords of regality who were able, as long as they were willing present themselves in order to exercise this right, to pluck offenders from the grasp of the justiciar and, thus, afforded them an advantageous position in the region.⁶⁶

These men possessed even more authority than did the sheriffs and used their power towards personal ends. The nature of the legal privileges that lords of regality enjoyed have been explained in chapter one. It bears repeating, however, that lords who presided over regality courts were second only to the king and his justiciar in their ability to try the most serious cases of homicide, rape, arson and robbery in their own courts. The mishandling of these powers might instigate feud and Brown argues that lords of regality ‘certainly manipulated’ their offices according to their own interests.⁶⁷ When the power of multiple jurisdictions was vested in one man, his decisions had the potential to complicate, compromise and limit the overall the ability of central administration to make its presence felt in the Borders.⁶⁸ It was possible for one family to possess large swaths of land and, in turn, for a prominent member of that surname to hold multiple baronies, which might then be ‘incorporated’ under a larger regality.

Although examples of this particular hypothetical situation are difficult to uncover, the

⁶⁵ Rae, *The Administration of the Scottish Frontier*, 14.

⁶⁶ Jackson W. Armstrong, ‘The Justice Ayre in the Border Sheriffdoms, 1493-1498’, *The Scottish Historical Review* 192, no. 1 (2013), 17.

⁶⁷ Brown, *Bloodfeud in Scotland, 1573-1625*, 44.

⁶⁸ Rae, *The Administration of the Scottish Frontier*, 15-18.

potential for a monopoly of justice to exist in a region is apparent in the possession of the hereditary sheriffdom of Dumfries and the barony of Sanquhar by the Crichtons of Sanquhar. Thus, when one surname controlled multiple courts, the result was a territory in which one man and his deputies had nearly limitless power over tenants and kin, and might remove them from a justiciary court in order to try them at his own will. Not only was it possible for him to take charge of virtually any case, he could effectively nullify the influence of all other judicial officials and impede their efforts to perform their duties within his territory.⁶⁹ This abuse of office may account for the absence of women in the records of the justiciary court, owing either to replegiation or because certain officials elected to withhold indictments for specific tenants from the justiciar.

The women who do appear in these records represent a number of the leading families in the Borders in the period throughout the sixteenth century. Although the Humes, Maxwells and Kers served regularly as wardens in this period,⁷⁰ several women who shared their surnames were among those who caused the disorder they were meant to stop. Isobel and Elizabeth Henrison with Janet Kerr and others were summoned to Forfar to appear on charges of mutilation done to William Grey.⁷¹ In December 1530, the justiciar summoned Mariota Maxwell lady Bardelby, to Dumbarton on a charge of intercommuning with Alan of Bardelby and several other traitors.⁷² Six years later, Mariota Hume countess of Crawford, led a number of men to engage in stouthreif and oppression.⁷³ None of these women was executed and there is no extant evidence to

⁶⁹ *Ibid.* The only crime for which he could be refused a request to repledge a tenant or client to his court was that of treason.

⁷⁰ *Ibid.*, 25.

⁷¹ *NRSJC1/3* fo. 56r.

⁷² *NRSJC1/3* fo. 175v.

⁷³ *NRSJC1/5* fo. 188r.

suggest the first two ever made another appearance before the court. An earlier entry records that Mariota Hume failed to appear at a previous court and that the justiciar amerced her sureties for their failure to bring her to underly the law.⁷⁴ Whether her failure to appear was a result of laziness, fear or protection offered to her by her position as the wife of an earl is unclear, but the entry suggests that her sureties needed prodding to fulfil their pledges and bring her to Dumbarton. Eventually, Mariota and her accomplices did find cautioners to satisfy the injured parties and proceedings against them ceased thereafter.⁷⁵

Other surnames noted for their considerable influence in the Borders included the Crichtons of Sanquhar, lairds of the barony of Sanquhar and sheriffs of Dumfries, the Douglasses of Cavers, lairds of the barony of Cavers and sheriffs of Teviotdale, and the Cockburns, Kirkpatricks, Humes, Scotts, Turnbells and Rutherfords, all of whom featured prominently in sixteenth-century politics.⁷⁶ The justiciary records identify Crawfords, Scotts and Rutherfords in some of the most egregious crimes, including mutilation, homicide, treasonable assistance, reset and intercommuning with rebels.⁷⁷ Yet although the court took notice of their actions, their encounter with centralised justice seems not to have been extensive. Their positions within these powerful families may well have influenced either the outcome of further trials (the records of which do not survive), the degree to which the central court overlooked their transgressions, or perhaps a rationalisation of their actions as participants in male-instigated instances of private justice.

⁷⁴ *NRSJC1/5* fo. 187v. The charges are not listed in this entry but we can probably assume that the court was after her for the stouthreif and oppression mentioned in the later entry.

⁷⁵ *JC1/5* fo. 203v.

⁷⁶ Rae, *The Administration of the Scottish Frontier*, 17.

⁷⁷ *NRSJC1/5* fo. 79v; *NRSJC1/5* fo. 176v; *NRSJC1/5* fo. 3r; and *NRSJC1/5* fo. 82v.

The culture of 'clientage, retaining, and service' that John Bellamy has argued was in decline in fifteenth- and sixteenth-century England remained alive and well in Scotland, and the influence of kinship on crime and in the criminal process in the sixteenth century appears to have extended, directly or indirectly, to the jury as well. Even the trial was governed by bonds of blood and loyalty, and pannels from the same region or surname often appeared before the justiciar together to ensure it was as convenient as possible for local magnates to attend and take responsibility for the offences of their kin and tenants.⁷⁸ When the follower or relative of a powerful laird came to trial, the complex networks explored above provided incentive for the magnate either to protect his beneficiary or allow justice to run its course. Bellamy warns that it would be 'foolish' to think that these relationships did not impact trial proceedings and suggests that

[e]ven if a patron should think his servant, tenant, affinity member, or relative of the same, well deserved to hang for his felony, he must often have felt the need to try to intervene in the trial process, not only to protect his own dependants but also to preserve the reputation of his personal potency in local politics. This he would do by pressuring the sheriff to empanel a sympathetic jury or by making sure that the jurors knew of his interest in the particular case and its outcome. Such offstage manoeuvrings and laboring can hardly have failed to come to the notice of the jurors, who must have realized they had much to gain from returning the acquittal, but only danger, personal harassment, or economic hardship if they convicted.⁷⁹

Bellamy's comments about high rates of acquittal relate to early modern England, but the same concerns likely influenced some Scottish officials to hold back certain individuals from the lists of indictments they delivered to the justiciar, and some jurors

⁷⁸ Armstrong, 'The Justice Ayre', 33.

⁷⁹ Bellamy, *The Criminal Trial in Later Medieval England*, 118.

to interpret the evidence in a way that ingratiated them to or protected them from a local magnate.

It has been proposed that the Scottish judicial machinery was less interested in the execution of felons than in the income they might generate through remissions and through the fines they exacted from the lords who failed to make their followers behave.⁸⁰ The legal process in medieval Scotland saw the crown negotiate and delegate administrative and political power among noble families, and Armstrong has shown that the crown often relied on local lairds to manage personally the behaviour of their kin and tenants. When the crown sought to exact justice and restore peace, it was more profitable to target the offender's laird rather than the criminal himself. Most offenders were able to obtain a remission without much trouble but, although the income from forfeitures was an incentive to execute, the fines the justiciar might extort from magnates by passing on the cost of remissions and unlaws, or by amercing them repeatedly for failing to make a tenant or client compear were far more attractive to the crown.⁸¹ If a woman failed to secure either of these options, a sympathetic jury was her last chance to benefit from the connections of her kinship group. Margaret Sanderson has suggested that married woman may have had certain advantages in court. Although her study focuses primarily on tenements holders and civil litigation, Sanderson's arguments may also apply in the context of the criminal law. Thus, a woman accused in a criminal court may have benefited from the 'political, professional and business'

⁸⁰ See Robert Black, 'A Historical Survey of Delictual Liability in Scotland for Personal Injuries and Death', Part One in *Comparative and International Law Journal of Southern Africa* 8, no. 1 (1975): 46-70; Christopher Gane, 'The Effect of a Remission in Scots Law', *Juridical Review* 25, no. 5, (1980): 18-46; and Cynthia J. Neville, 'Royal Mercy in Later Medieval Scotland', *Florilegium* 29 (2012): 1-32. A detailed discussion of remission and assythment follows in chapter three.

⁸¹ Armstrong, 'The Justice Ayre', 34 and Brown, *Bloodfeud in Scotland*, 173.

connections of her husband who might agree to become surety for her, either because the husband was also named in the charge or because he was able to manipulate his connection with a member of the jury.⁸² The presence of an interested party who was able to influence the outcome of a case increased the likelihood of receiving preferential treatment during the trial, if none had been available beforehand.

In the sixteenth century, juries represented the most prosperous, trustworthy and connected members of society. Whether they sat on a travelling assize or in the burgh court, this was not a body of disinterested, impartial and randomly selected individuals. Both in their capacity as jurors and as prominent members of society, and in Scotland as well as England, these men ‘exercised a tangible power over the lives of their own communities’ and that their interests followed them on or off the bench.⁸³ Unfortunately, the justice clerks recorded assize lists inconsistently in this period, and the list of the men who convicted Janet Douglas lady Glamis is the only example from these records that we might consider in any depth.

In 1537, fifteen prominent male figures convicted Janet Douglas of conspiracy to murder the king and of treasonably assisting her brother, the exiled Archibald Douglas. The jurors included the earls of Athol, Buchan and Cassillis, the lords Maxwell and Symple, three knights, William master of Glencairn, Jacob Towris and John Malville, and the leaders of prominent border families, including John Hume of Coldenknows, William Kirkpatrick of Kirkmichael and John Crichton of Ruthven.⁸⁴

⁸² Margaret H. B. Sanderson, *A Kindly Place? Living in Sixteenth-Century Scotland* (East Linton: Tuckwell Press, 2001), 105.

⁸³ P. G. Lawson, ‘Lawless Juries? The Composition and Behavior of Hertfordshire Juries, 1573–1624’, in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200–1800*, ed. James S. Cockburn and Thomas A. Green (Princeton: Princeton University Press, 1988), 137.

⁸⁴ Pitcairn, *Criminal Trials*, 190.

Earlier entries indicate that in 1532, several men had failed to appear to pass judgment on the charge that Janet had killed her husband by means of poison or charms. They may have avoided attending these earlier proceedings for any number of reasons based on their relationship to Janet or the Douglasses, personal knowledge of the crime, or a fear of retribution. The case did come before the justiciar but, unlike her treasonable assistance of Archibald Douglas and alleged conspiracy to kill the king, this allegation involved local persons, local powers and local interests rather than the commonweal of the kingdom. If contemporaries truly believed that Janet had killed her husband by means of magical enchantments or potions, fear of what she might do to them if they convicted her probably outweighed their concern about witchcraft and diabolism. The charges from 1537, however, were an extension of James V's long-held animosity towards the Douglasses. Although it has been argued that the conspiracy charges against Janet Douglas were fabricated in order to punish her for assisting her rebel brother,⁸⁵ it would have been politically and even personally dangerous for these men to fail to appear and possibly deadly if they had acquitted, regardless of their personal feelings toward, or fear of, Janet. The range of social statuses represented in the small number of assizes that appear in records of the justiciary court indicates that burgesses, lairds and guild members, with all the attendant political, economic and social obligations, predominated among jurors in Scotland, as did their social equals elsewhere in Britain.

This influence is, however, difficult to trace in the justiciary court records from this period. At this time, the inclusion of assize lists was spotty and inconsistent. This

⁸⁵ Maureen M. Meikle, 'Flodden to the Marian Civil War: 1513-1573', in *Scotland: The Making and Unmaking of the Nation c. 1100-1707*, ed. Bob Harris and Alan R. MacDonald (Dundee: Dundee University Press, 2006), 5; Jamie Cameron, *James V: The Personal Rule, 1528-1542* (East Linton: Tuckwell Press, 1998), 174-75; and Pitcairn, *Criminal Trials*, 187-90.

court convicted or acquitted only a few women in this period and, with the exception of Janet Douglas, the identities of the members of the assizes who judged them are unknown. It is therefore difficult to determine whether ties of kinship affected the verdicts of the men who judged them. Studies of juries in England indicate that they were anything but impartial, and it is unlikely that the concerns of Scottish lairds and men of property was much different. That the men who sat on Scottish juries, whether in the justiciary court or in the localities, were lairds, burgesses, guild members and wealthy landowners suggests that Bellamy's arguments about the drawbacks of having these prominent figures serve as jurors in England applies to Scotland as well. Contemporaries considered the local knowledge of juries a crucial aspect of their position.⁸⁶ Local knowledge might, however, be a double-edged sword. Although their familiarity with the residents of a particular community afforded jurors a level of expertise that sometimes aided their assessment of evidence, their decision to convict or acquit might be influenced by the indirect consequences of executing one of their most profitable tenants. In England, contemporaries considered it inappropriate that justices of gaol delivery should be landholders in the areas through which they passed on circuit so that they were not tempted to manipulate proceedings to their benefit.⁸⁷ If a member of the jury had reason to protect one of his kin, he might convince the others to interpret the evidence loosely or skirt the bounds of procedure in order to reduce the charges that would otherwise result in the death of the offender and forfeiture of their lands. Conversely, if the offender was a personal enemy, he might convince his fellow

⁸⁶ Keith Wrightson, 'The "Decline of Neighbourliness" Revisited', in *Local Identities in Late Medieval and Early Modern England*, ed. Norman L. Jones and Daniel Woolf (Basingstoke: Palgrave Macmillan, 2007), 24.

⁸⁷ Bellamy, *The Criminal Trial in Later Medieval England*, 12.

jurors to be exceedingly harsh.⁸⁸ Local knowledge and local interest went hand in hand. Just as powerful members of border surnames might use their influence to shield their followers from accusations or remove them to their own jurisdiction, they might also employ ‘overt methods of persuasion’ such as threats, bribes and physical attacks to secure whichever verdict benefited them.⁸⁹

There exists a wealth of evidence to suggest that men in the Borders felt fierce loyalty towards the heads of their kinship groups, followed them on raids and acted at their behest in exchange for protection from the law when necessary. These connections proved to be highly beneficial when the possible outcome of proceedings in a central court was undesirable, or if it was known that the crown viewed an offenders’ surname as problematic. The same bonds of kinship that motivated women to commit crimes and provided them with a ready circle of accomplices also governed their relationships with sureties, jurors and powerful local magnates. There survive no ballads or other popular references of women riding around the countryside in the retinue of a lord who had let them go free rather than arrest them as part of their judicial duties. Moreover, the records of the High Court of Justiciary do not reveal the specific motives of the lords who repledged women of their surname to their own jurisdiction. These women nevertheless belonged to powerful families and these relationships counted for something.

When a community felt that a woman had transgressed the bounds of accepted behaviour, or perhaps believed that she enjoyed too much protection at the hands of

⁸⁸ Cynthia J. Neville, ‘Common Knowledge of the Common Law in Later Medieval England’, *Canadian Journal of History* 29 (1994), 475 and Brown, *Bloodfeud in Scotland*, 44.

⁸⁹ Cynthia J. Neville, ‘Gaul Delivery in the Border Counties, 1439-1459: Some Preliminary Observations’, *Northern History* 19 (1983), 57.

powerful relatives, its members usually brought her activities to the attention of the authorities. If accusers were overly concerned about the lenience that might be provided in a local court owing to connections between kin groups and the woman who had offended them, they might attempt to bypass local authority and enter the charges before the High Court of Justiciary. If family ties were strong enough, however, it was possible for this attempt to be thwarted by replegiation or manipulation of the facts by a sympathetic jury. In this way, women might beseech their husbands or lairds to protect them or at least improve their chances of acquittal. The following chapter considers the extent to which contemporary gendered assumptions about women influenced decisions that communities and kin made when faced with the task of managing female felons.

Chapter 4: Exceptional Offences: Contemporary Responses to Criminal Women

Andrea Knox argues that '[d]eviancy is not a given in any situation: it is relative and dependent upon the society in which it takes place'.¹ Crimes like common theft or resetting were sometimes elevated to felony or treason in the border region because of their frequency, intensity and the threat they posed to the kingdom as a whole. Recent scholarship on female criminality in the medieval and early modern period reveals that women typically committed such crimes more frequently than they did, for example, homicide.² It is puzzling then, that they are so poorly represented in the records of the High Court of Justiciary and only appeared before this court for openly treasonable and felonious acts rather than escalated misdemeanours. As we have seen, cases perpetrated by female offenders appear to have been either put off to another date (multiple times) or repledged to a regional court rather than dealt with by the justiciary court. The frequency with which the delayed cases failed to result in trial is striking. There are a good number of homicides, thefts, intercommunings and other crimes, in entries which indicate that a number of men appeared once, were sentenced and then executed (or otherwise penalised) in the space of one compearance. This was not always the case, but it is notable that such entries are far rarer where women are concerned. From 1524 to 1542, for example, there are only two examples of a woman acquitted rather than repledged or put off to a later date, and only two in which the assize pronounced a corporal punishment: one by drowning and one by burning.

¹ Andrea Knox, "Barbarous and Pestiferous Women": Female Criminality, Violence and Aggression in Sixteenth- and Seventeenth-Century Scotland and Ireland', in *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*, ed. Yvonne Galloway Brown and Rona Ferguson (East Linton: Tuckwell Press, 2002), 27.

² See note 21 in the introduction, above.

A survey of the evidence of the High Court of Justiciary generates a number of questions. Did sixteenth-century Scottish society perceive the crimes of women as less serious, disruptive or noteworthy than those of men? Were women's offences considered more appropriately dealt with by lower orders of the court system where they did not 'waste' the time and resources of royal justices? Scholars of female criminality in England suggest that the more lenient treatment of female offenders occurred in part because there were alternative jurisdictional, procedural and social measures available to communities, none of which involved the cost or time of formal trials and executions. Additionally, contemporaries appear to have believed that criminal legal proceedings were too important to be bogged down with female offenders, whose crimes, within their communities anyway, were downplayed or not considered as 'disruptive or reprehensible' as others.³ The same was true in Scotland.

This chapter offers an interpretation of the patterns laid out in chapters one and two with a view to understanding more clearly how contemporaries interpreted the actions of criminal women and the threat they posed to their communities and the kingdom. It argues that while the severity of some crimes were incontrovertible irrespective of the offender, women whose crimes should have brought them before the justiciary court were more likely to experience lenience, redirection to a lower jurisdiction or alternative forms of justice than were their male counterparts. It argues further that this state of affairs reflects a belief that the actions of women posed a less

³ Cynthia J. Neville, 'War, Women and Crime in the Northern English Border Lands in the Later Middle Ages', in *The Final Argument: The Imprint of Violence of Society in Medieval and Early Modern Europe*, ed. Donald J. Kagay and L. J. Andrew Villalon (Woodbridge: Boydell Press, 1998), 167.

serious threat to the commonweal than did those of men, and thus that they did not warrant the attention of the justiciary court.

4.1: Witchcraft and Arson: Two Case Studies of Treason

An earlier chapter demonstrated that the justiciary court had little experience in dealing with women who committed property crimes, while it prosecuted men for the same without much hesitation. Where female offenders were concerned, it focused instead on those whose crimes were decidedly treasonous or felonious in nature and thus manipulated jurisdictional divisions much less frequently for women than it did for men. The assize sentenced only two women to death in this period, and the executions of Janet Douglas lady Glamis and Janet Anderson define clearly the line a woman needed to cross before contemporaries felt they warranted the attention of this court. The first case study examined here discusses false charges of witchcraft and conspiracy laid against Janet Douglas, designed to add weight to legitimate charges relating to the assistance she gave to her brother, James V's sworn enemy, Archibald Douglas, earl of Angus. This case throws into relief anxiety about women whose actions offended the monarch personally and who employed diabolical methods to achieve their ends. The second study considers the drowning of Janet Anderson for fire-raising and explores the danger posed by women who acted independently of a kin network. Although neither woman lived in the Borders, they were nevertheless affiliated with border families and, in the case of Janet Douglas, held land in the region. Their misbehaviour thus had resonance there too. Both cases highlight contemporary anxieties about disorderly women and bring together the elements of jurisdiction, kinship and gender that underlie this thesis.

In July 1537, Janet Douglas lady Glamis was convicted of art and part in the treasonable conspiracy and the imagined murder, here called ‘destruction’, of the ‘noblest person of our sovereign king’, through the most evil charm of poison. The justiciar charged her further for art and part in the treasonable assistance, supplying and resetting, intercommuning and fortification of Archibald, at that time the earl of Angus and George Douglas, his brother, traitors and rebels, in treasonable manner.⁴ Her punishment for ‘the quhilkis tressonable crimes’ as pronounced by the forespeaker of the assize, William Carwood, was to forfeit ‘hir life, hir landis, gudis movable and vnmovable: And that scho sall be had to Castell hill of Edinburgh, and thair brynt in ane fyre to the deid, as ane Traytour’.⁵ The earl of Angus in question was Janet’s brother and the same Angus who had virtually imprisoned the young king during his minority.⁶ This single case brings together the two crimes, witchcraft and treason, that were most likely to bring women to the attention of justiciary court in the sixteenth century and highlights the royal vendetta against the Douglasses that coloured the personal rule of James V.

⁴ Robert Pitcairn, *Criminal Trials* (Edinburgh: Bannatyne Club, 1833), 190 and *NRS* JC1/5 fo. 236r.

⁵ Pitcairn, *Criminal Trials*, 191 and 199. The charges extended to her son, John seventh lord Glamis, who was found ‘be ane condigne Assise’ to have ‘committit art and part in the tressonable conceling and nocht reueling of the tressonabil conspiratioune and imaginatioune of the destructioun of our lordis maist nobill persoune be poysonne, ymaginat and conspirat be vmquhil Janet lady Glammys, his moder, to quhome he consentit and was art and part with hir thairintill [...] For the quhilk caussis he hes forfaltit to our souerane lord his life, landis and gudis, moveable and vnmovable, and sall be hangit and drawn, and demanyt as ane Traytour’. It seems that John’s youth inspired the assize to spare him his life and he was imprisoned rather than executed.

⁶ *Ibid.*, 187.

Witchcraft, of course, was not a statutory offence until 1563.⁷ However, the concern regarding Janet's use of charms and philtres hints at a mounting anxiety over the danger that this subtle and possibly magical threat posed to the kingdom. This was also not the first time contemporaries had suspected her of crimes similar to witchcraft. In January 1532, she was summoned 'to underly the law for art and part in the [poisoning] of John Lord Glamis, her husband, and of Resetting Patrick Charteris, Rebel, and at the horn'.⁸ Two entries from the following month indicate that the court amerced a number of lairds for failing to appear and for refusing to sit on her assize. Their refusal to pass judgment on her suggests two sentiments on their part. The first is that they felt the charges were trumped up. Robert Pitcairn certainly believed that she was simply an innocent casualty of James V's persecution of the Douglases.⁹ The second interpretation of their absence is that these men believed her to be guilty and were fearful of her power, magical or political, should she turn it against them in retribution. The impression the justiciary court record gives is of a king and court who were troubled by this woman's reputation (real or apparent) for employing suspiciously unnatural methods to achieve her ends.¹⁰ When, three decades later, the Scottish Witchcraft Act of 1563 made the offence a capital crime, the justiciary court would

⁷ Christina Larner, *Enemies of God: The Witch-Hunt in Scotland* (Baltimore: Johns Hopkins University Press, 1981), 9. The Scottish Witchcraft Act prohibited not only the practice of witchcraft but also the solicitation of a witch's services.

⁸ Pitcairn, *Criminal Trials*, 158 and *NRSJC1/3* fo. 150v. Intoxication can be taken to mean harm done by ingesting poison, magical charms, philters or other potions. Aside from one entry that lists the men who failed to attend her assize, *NRSJC1/5* fo. 61v, there are no further references to this offence and it seems the charge was abandoned at some point.

⁹ Pitcairn, *Criminal Trials*, 187-190 and Jamie Cameron, *James V: The Personal Rule, 1528-1542* (East Linton: Tuckwell Press, 1998), 180.

¹⁰ Pitcairn, *Criminal Trials*, 158 and *NRSJC1/3* fo. 150v. Intoxication can be taken to mean harm done by ingesting poison, magical charms, philters or other potions. Aside from one entry that lists the men who failed to attend her assize, *NRSJC1/5* fo. 61v, there are no further references to this offence and it seems the charge was abandoned at some point.

assume responsibility for the judgement and punishment of women accused under the statute.

Historians have indicated that the charges of treasonable conspiracy and the imagined murder of the king laid against Janet Douglas were largely unfounded. More likely it was the second set of charges, the assistance given to her brother and his associates, which drew the ire of James V and the justiciary court.¹¹ In colourful prose, Pitcairn describes how Janet,

[b]eing possessed of a masculine mind, and a large measure of that undaunted courage, which so long characterised the Douglasses, she generously, but imprudently, [and] with the unquenchable fidelity of a sister's love, [...] afforded her brothers and their uncle all the assistance in her power, and speedily drew down upon herself a portion of the implacable vengeance which King James V had sworn against the Douglasses, it being known that he had taken a deep and solemn vow, that while he lived they should never find refuge in Scotland.¹²

Sentimental nineteenth-century flourishes and affectionate characterisation notwithstanding, Janet's allegiance to her kin and the actions it inspired directly contravened James' proclamation that none should associate with or assist the earl of Angus after his condemnation as a traitor. Thus, according to Maureen M. Meikle, 'Lady Glamis's greatest misfortune was to be born a Douglas'.¹³ Even her second marriage to Archibald Campbell earl of Argyll, uncle of James' chief justiciar, was not enough to outweigh the fact that she was a Douglas, although her position in these kinship networks afforded her the dubious honour of being the highest ranking noble

¹¹ Maureen M. Meikle, 'Flodden to the Marian Civil War: 1513-1573', in *Scotland: The Making and Unmaking of the Nation c. 1100-1707*, ed. Bob Harris and Alan R. MacDonald (Dundee: Dundee University Press, 2006), 5. In the same year the earl of Huntly made a similar accusation against John, master of Forbes in order to win a local power struggle.

¹² Pitcairn, *Criminal trails*, 188.

¹³ Meikle, 'Flodden to the Marian Civil War', 5-6.

executed during James' reign.¹⁴ Persecuting Douglasses based only on a shared surname, rather than for crimes against king and country, would have been politically inadvisable; however, James remained aware of their movements, and appears to have welcomed the opportunity to rid the kingdom of another member of the kin group who had abused its power during his minority. Janet's crime was incontrovertibly treasonable and her alleged conspiracy against the king was probably added to the charges to ensure that she did not escape punishment. Treason was neither excusable nor easily explained away, whether committed by a man or woman.¹⁵

The second and only other woman executed in this period was Janet Anderson, drowned in April 1533 for art and part in fire-raising and the burning of a byre of the laird of Rosyth along with sixty oxen and eleven cows. Janet was not the only woman summoned to appear before the court for this offence, but she was the only one to die for it. In May 1533, William Bonar Rossy and Thomas Wynton both pledged to bring Thomas Fothringham of Powrie before the next court at Forfar. The latter Thomas, in turn pledged to bring Alison Charteris, his wife, John Charteris, Jacob Hog and Thomas Henry to underly the law for art and part in the treasonable fire-raising and burning of a number of oxen and some buildings on property belonging to Margaret Cullen lady Powrie. The marginal notes do not indicate that the court levied any fines or imposed penalties related to this case.¹⁶ In October 1536, Elizabeth Martin lady Fast Castle was summoned, together with a number of men who were probably her tenants,

¹⁴ Cameron, *James V*, 172.

¹⁵ Marjorie K. McIntosh, *Controlling Misbehavior in England, 1370-1600* (Cambridge: Cambridge University Press, 1998), 87. Finding another offence to tack on to a charge was advisable in order to come up with a conviction and punishment. McIntosh observed this with respect to general misbehaviour, but there is no reason the same thing could not be accomplished when attempting to secure the conviction of a thorn in the crown's side.

¹⁶ *NRS* JC1/5 fo. 94r.

for art and part in forethought felony and hamesuckin, in the course of which a man died, as well as the fire-raising and burning that destroyed some oxen. Again, the marginalia indicates only a future appearance before the justiciar in Berwick and no penalties. A later entry indicates, however, that Elizabeth's sureties were amerced for her failure to appear in Berwick, but that they were fined only £20 and not the full £330 indicated in the first record of this crime.¹⁷ Finally, in December 1538, Elizabeth Colville and Janet Logan were among a group of individuals summoned to a court in Ayr for art and part in fire-raising and the burning of the house of Thomas Uddart, burgess of Edinburgh. The same day, Margaret Lowes and her husband Patrick Cunninghame were summoned to the same future court for the same incident of arson.¹⁸ Like the majority of the women who appear in these records, none of these women appears to have suffered corporal punishment and the marginal notes do not indicate the imposition of any other penalties.

The court's decision to execute Janet Anderson may indicate that royal officials were uncomfortable with the level of independence she had exhibited when she committed her act. Unlike the other female arsonists in these entries, there is no mention of any accomplices and it appears that Janet set the fire, or was at least apprehended, by herself. By contrast, jurors may have felt that Alison Charteris, who committed arson in the company of her husband and, presumably, a relative who shared her surname, was coerced by her kindred and was therefore somehow less responsible. It follows that they may have felt that her family would be able to manage her thereafter and so allow the crown court to avoid the expense of a trial and

¹⁷ *NRSJC1/5* fo. 194r and *NRSJC1/5* fo. 229v.

¹⁸ *NRSJC1/5* fo. 287v.

execution. Perhaps the same rationale allowed Elizabeth Colville, Janet Logan and Margaret Lowes to avoid appearing before the court in Ayr: there is no evidence in the records of amercements levied on the men who pledged to bring these women to court. This suggests that, for perhaps the same reasons, the crown or the injured parties ceased to prosecute them further.

The circumstances under which a person committed a crime was, of course, central to the rationale behind prosecution. In a part of the kingdom where violence and harassment meant a fragile peace, the court may have deemed certain illegitimate forms of retribution reasonable so long as they maintained equilibrium. In addition to the entry above, Elizabeth Martin, lady Fast Castle, was also fined separately for the non-compearance of Andrew Bogman, who had also taken part in that group initiative.¹⁹ This suggests that the court held her accountable and believed that the men listed after her acted at her behest. At first glance, by mobilising a large group of men, Elizabeth seems to have overstepped her place to a far greater degree than did Janet Anderson. We must bear in mind, however, that feud was a well tried form of justice in this region and that a certain amount of violence and coercion was necessary and appropriate in various situations. There is no evidence that Elizabeth Martin or her band of arsonists appeared again in the following years and the summons recorded here may have been a warning that she was in danger of exceeding the bounds of acceptable behaviour. Janet Anderson, on the other hand, does not appear to have been a woman of much social standing or to have been acting as part of an organised, extra-judicial attempt to restore balance. Lacking any obvious connections to a kin group whose members might rein her in or even vouch for her, and in the absence of a justifiable

¹⁹ *NRSJC1/5* fo. 194r

motive or cause, the community likely felt that there was no alternative recourse to be had and instead sought to manage an unpredictable and uncontrollable woman through the heavy penalties imposed by the justiciar. The following discussion explores the factors that influenced contemporaries to make the decisions that halted or diverted formal prosecution or ensured that criminal women did appear before this court.

4.2: Defining Crime in the Anglo-Scottish Border Region

Anxiety about morality, socio-economic status and social cohesion shaped the response of communities, jurors and law-makers. In Scotland, treason and the ever-present threat of reiving and English incursions across the border added to the general tenor of uncertainty and further intensified reactions to deviant behaviour. English evidence indicates that the level of collusion that occurred in the Borders between Englishmen and Scots increased leading up to the early sixteenth century, and Cynthia Neville argues that there 'is no reason to believe the incidence of cross-border crime decreased dramatically in the years that followed'.²⁰ As late as 1582, contemporaries on the Scottish side of the border shared such anxieties. In his study of the feud in Scotland, Keith Brown offers an excerpt from the records of the privy council that describes how

his Majesties peциable gude subectis ower all his realme hes bene troublit havelie with bludescheid, stowth, reiff, masterfull oppressionis, convocationis and utheris enormities, to thair great hurt and skaith, without redres or puneishment of the offendouris.²¹

²⁰ Cynthia J. Neville, 'The Law of Treason in the English Border Counties in the Late Middle Ages', *Law and History Review* 9 (1991), 20.

²¹ David Masson, ed., *The Register of the Privy Council of Scotland Volume 3: 1578-1585* (Burlington: TannerRitchie Publishing, 2004), 500 quoted in Keith M. Brown, *Bloodfeud in Scotland, 1573-1625: Violence, Justice and Politics in an Early Modern Society* (Edinburgh: John Donald, 2003), 12.

Commentaries like these proliferated until the seventeenth century.²² The reason for the decline of such complaints after the union of the crown in 1603 may be attributed to ‘myth-making’ and efforts to promote James VI to his new English subjects at the end of the sixteenth century. During the reign of James V, constant disorder in the border region together with his intense personal anxiety over treasonous kin groups and his dislike of the Douglasses influenced the definition and severity of crime in the Border and, perhaps, farther afield.²³

A number of offences appear regularly in Jackson Armstrong’s study of the records of the justiciary court (1493 to 1498), my own survey of the records (1524 to 1542) and Pitcairn’s selective edition of the same sources. Among these were resetting people and property (*receptio*), theft (*furto*, *rapina* and *furtiva surreptio*), oppression, hamesuckin, fire-raising (*incensio et combustio*), homicide (*interfectio*, *crudelis interfectio*, and *precogitata felonía*), bringing in of enemy English (*importatio*) and treason (*proditio* and *traditio*). The majority of these crimes fall decidedly under the jurisdiction of justiciary court, which was charged with trying the four pleas of the crown – homicide, arson, rape and robbery – and treason. It is the first two of the listed offences, theft and resetting (of goods and people), that at first appear to be out of place.

The reservation of these crimes to the crown is unremarkable. Prior to 1514, the justiciary court heard all cases that we would now term criminal when it sat throughout the realm. When it became a stationary court in 1524, the central court and the occasional ayres that went out between 1524 and 1542 operated in much the same way, although cases of theft and reset appear in conjunction with pleas of the crown

²² Brown, *Bloodfeud in Scotland*, 12.

²³ Cameron, *James V*, 3 and Jenny Wormald, *Court, Kirk and Community: Scotland, 1470-1625* (Toronto: University of Toronto Press, 1981), 12.

more frequently than they did by themselves. Yet both remarkable and unexpected in the records from the latter period is the absence of women. The majority of the criminal property crimes in these records were attributed to men. A greater proportion of men to women among felony offenders was normal in in this period, but the scope of this discrepancy is unusual. In the evidence taken from 1524 to 1542 there were more women called to court for ‘art and part’ in homicide and slaughter than for resetting, theft, hamesuckin or oppression. This is inconsistent with patterns found in secondary studies of female felons in late medieval Scotland and England. The authors of these works all argue that, although plenty of women committed homicide or murder, they were far more likely to commit a felony property crime than a felony assault on another person.

This scarcity of women is even more remarkable in the context of the border region, where the charge of oppression (the medieval equivalent of an ASBO) served as a catch all for ambiguous offences against property that the crown chose to prosecute as criminal. Of course, in this period, the crown viewed oppression far more seriously than modern governments view graffiti or minor damage, and the consequence for offenders was an appearance in court on the charge of felony oppression or a treasonable act, rather than banishment from a shop.²⁴ Flexible interpretations of the disorderly and disruptive were regular in this region, and Neville has found similar practices on the English side of the border. Here, it was common for juries of

²⁴ The Crime and Disorder Act 1998 c. 37 1.1.1a-b. This act introduced anti-social behaviour orders (ASBOs) as a measure to punish any person over the age of ten who ‘has acted [...] in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress or one or more persons not of the same household as himself; and that such an order is necessary to protect relevant persons from further anti-social acts by him’.
[<http://www.legislation.gov.uk/ukpga/1998/37/section/1>]

presentment to charge individuals with whatever offence they thought might lead to guilty verdict, even if it was necessary to stretch the definition of the crime or apply a particular statute in an unconventional manner.²⁵ In a society constantly under threat of invasion and rife with feuding, anxiety and unease thrived. These connotations caused the inhabitants of these regions to believe that violent and treasonable crimes were far more prevalent than they were in reality, and threatened to rupture communities that were already under considerable strain.²⁶ Anna Groundwater argues that by James VI's time the increasingly negative perception of the people of the Borders 'meant that any crime that did occur [there] was viewed with increasing alarm and condemnation'.²⁷ In these situations, small offences seemed larger and communities responded more harshly to misdemeanours than they might under more peaceful circumstances. In the Borders, definitions of treason and felony were fluid and contingent upon the nature of this chaotic and tenuous region. In respect of the classification of property crimes, then, J. R. D. Falconer's claim that 'cultural and temporally constructed attitudes determined whether contemporaries considered certain activities to be criminal' appears to hold true.²⁸ At least, they did when men committed these offences.

²⁵ Neville, 'The Law of Treason', 17.

²⁶ Claude Gauvard, 'Fear of Crime in Late Medieval France', in *Medieval Crime and Social Control*, ed. Barbara Hanawalt and David Wallace (Minneapolis: University of Minnesota Press, 1999), 1.

²⁷ Anna Groundwater, 'The Chasm between James VI and I's Vision of the Orderly "Middle Shires" and the "wickit" Scottish Borderers between 1587 and 1625', *Canadian Journal of History* 48, no. 1 (2013), 107.

²⁸ J. R. D. Falconer, "'Mony Utheris Divars Odious Crymes": Women, Petty Crime and Power in Later Sixteenth Century Aberdeen', *Crime and Misdemeanours: Deviance and the Law in Historical Perspective* 4, no. 1 (2010), 10.

4.3: Women and the 'Criminal' Justice System

Although the bulk of this chapter discusses gendered assumptions about female deviants, it must first be acknowledged that contemporaries found ways to manipulate criminal procedure whether the offender in question was male or female. In her study of northern English gaol delivery records in the mid-fifteenth century, Neville discovered an unexpectedly low number of 'march-related crimes' and found only twelve instances in a twenty-year period. This figure is astounding given the 'historically turbulent' nature of the border region. There must have been more disorder than the numbers suggest.²⁹ Neville proposes that '[t]here must have existed some other, equally legitimate means of dealing with such criminals',³⁰ and finds that other courts took these offences under their jurisdiction despite a regulation of 1449 that stipulated cross-border crimes were to be tried by courts with special jurisdiction in the marches.³¹ Although this evidence pertains specifically to England, it is known that the wardens of the marches in Scotland were typically too preoccupied with cross-border matters of international importance and days of truce to adequately deal with straightforward felonies, and that other methods of control – the justiciary court, local jurisdictions and informal punishments – were forced to take up their slack.³² The negotiation between and selection of appropriate forms of retribution and compensation therefore occurred whether the culprit was male or female. Yet, as this thesis argues, gender did influence such decisions. Considerations of masculinity and gendered

²⁹ Cynthia J. Neville, 'Border Law in Late Medieval England', *Journal of Legal History* 9 (1988), 337.

³⁰ *Ibid.*, 351.

³¹ *Ibid.*, 340.

³² Thomas I. Rae, *The Administration of the Scottish Frontier: 1513/1603* (Edinburgh: Edinburgh University Press, 1966), 42-73.

assumptions about deviant men do not feature in this discussion, although the conclusions reached in this chapter with respect to women may raise some questions for further research into male deviancy.

Officials might approach the judgment and punishment of a crime according to two factors: the nature of the offence or the character of the offender. Given the evidence discussed in earlier chapters, the private parties and officials who brought accusations to the attention of the judiciary court appear to have assigned greater weight to the latter. In respect of the eighteenth and nineteenth centuries, Anne-Marie Kilday has found that the British legal system treated crime and criminals in a way that ‘was both highly gendered and classed’, and that this cultivated an environment in which ‘most female criminals were considered far less threatening and problematic than men’.³³ Sixteenth-century judicial officials treated female offenders in much the same way, although evidence from cheap print sources and sixteenth-century ballads certainly indicates that these men believed that particularly subversive violence, such as that perpetrated by wives against their husbands, threatened ‘domestic harmony and public order’.³⁴ These pamphlets, however, concerned themselves primarily with homicide, infanticide and witchcraft. The disproportionately low number of entries that charge women for art and part in homicides reflects this anxiety and suggests that Michael Graham is correct in asserting that contemporaries viewed men as ‘more versatile miscreants’ than women and held a narrower view of what society defined as

³³ Anne-Marie Kilday, “‘The Lady-Killers’: Homicidal Women in Early Modern Britain”, in *Assaulting the Past: Violence and Civilization in Historical Context*, ed. Katherine Denise Watson (Newcastle-upon-Tyne: Cambridge Scholars, 2007), 206-7.

³⁴ Kilday, “‘The Lady-Killers’”, 207.

predictable misbehaviour versus extraordinary offences.³⁵ Perhaps, then, if contemporaries viewed reset as a problem for the justiciary court, but only when committed by men, the difference lay in perceptions about the gendered nature of the crime and the context in which it was committed.

Instances of reset that came before the justiciary court in this period did not tend to be isolated events. In November 1532, Katherine Rutherford, Lady Trakware

was denounced Rebel, and all her goods ordained to be escheated, for not appearing [...] to underly the law, for treasonable assistance given to Archibald, formerly Earl of Angus, George and Archibald Douglas, his brother and uncle; and for Resetting, supplying, and Intercommuning with them, and daily conversing with them, within the kingdom of England, and secretly in Scotland.³⁶

This was not a simple case of receiving and selling stolen household goods in order to counteract the punishing conditions of life in the Borders. In committing this crime, Katherine offered shelter to traitors and provided them indirect economic or material support, which they might have in turn directed towards rebellious activities. At the very least, she contravened the intent of the sentences that had originally exiled the Douglas kindred. The charge of resetting, supplying and assisting Archibald earl of Angus and his brother George Douglas, traitors and rebels in treasonable fashion also features in a record relating to Janet Douglas lady Glamis, in addition to charges of treasonable conspiracy and the imagined murder of the king.³⁷ Clearly, reset by women was a concern of the justiciary court, but only when it served treasonable ends.

³⁵ Michael F. Graham, 'Women and the Church Courts in Reformation-era Scotland'. In *Women in Scotland, c.1100-c.1750*, ed. Elizabeth Ewan and Maureen M. Meikle (East Linton: Tuckwell Press, 1999), 194.

³⁶ Pitcairn, *Criminal Trials*, 161 and *NRSJC1/5* fo. 82v.

³⁷ Pitcairn, *Criminal Trials*, 190 and *NRSJC1/5* fo. 236r.

Approaches to reset and theft by men varied, but the overall impression that these records convey is that men who stole, treasonably or not, posed more of a threat than did women. In January 1524, 'John Steill, alias Kempy Steill, Adam and Richard Bell, [were] convicted by an Assise, and Hanged for common Theft and Reset of theft, and of common Murder and Rape'. They were also charged with 'Intercommuning with the English thieves'.³⁸ Here, the charges of murder and rape clearly tainted the alleged offence and perhaps jurisdictional lines made it convenient for the justiciary court to deal with the entire situation given the inclusion of pleas of the crown. Additionally, the charge did amount to some form of treason, as did the crimes of Katherine and Janet above; in this case, although the men did not supply items to or receive the persons of major political traitors, they received stolen goods from English thieves. An entry from May 1529 provides a more clear cut example of the justiciary court entertaining accusations of common theft and reset of theft: 'John Rutherford, son of Edmund Rutherford in Auchincorthe, [was] Convicted by an Assise of common Theft, Resetting of Theft, outputting and inputting, &c. and Hanged'. A man called Thomas Davidson was 'Convicted and Hanged for the same crimes'.³⁹ Here, the record offers no indication that the stolen goods were coming from or going to rebels and traitors.

In the case of the first entry, it is most likely that the jurisdictional considerations of the pleas of the crown brought the three men before the justiciary court. If, however, it was the treasonable aspect of their crime, receiving from English thieves, then it seems strange not to see more women accused of the same offence. In

³⁸ Pitcairn, *Criminal Trials*, 126-127.

³⁹ *Ibid.*, 142.

the Borders, where English and Scots sometimes intermarried and lived alongside one another,⁴⁰ it seems unlikely that women were able to avoid cooperating with English thieves in the course of their illicit dealings. The second entry suggests two scenarios. The first is that the record leaves out details about the circumstances of the crime and it was in fact related to behaviour that was either explicitly treasonable or which might be interpreted as treason. In this region, the government concerned itself with different crimes at different times. Common theft was only common if the victim lived on the English side of the border and if Scotland and England were not currently at odds. Compromising the livelihood of the enemy when the two kingdoms were in a state of truce was less acceptable, but to do the same to a fellow Scot was tantamount to treason, truce or war notwithstanding.⁴¹ The second is that, given that the majority of men accused of theft and reset *were* involved in acts of rebellion, the court assumed that these men posed more of a threat than did simple thieves. The first, a matter of recordkeeping, does not seem likely. By this time, the clerks were using the phrase ‘resetting, supplying and intercommuning with his majesty’s rebels’ (or traitors) to indicate strictly treasonable exchanges between Scots and the enemy English.⁴² Although the entries in these records are notoriously brief, the clerks employed formulae regularly and with few exceptions, and it is highly improbable that they would have missed this one out. An additional record in which a man was hanged for common

⁴⁰ Krista J. Kesselring. “‘Berwick is our England’: Local and National Identities in an Elizabeth Border Town’, in *Local Identities in Late Medieval and Early Modern England*, ed. Norman L. Jones and Daniel Woolf (Basingstoke: Palgrave Macmillan, 2007), 96. Such marriages were illegal and the spouses involved risked being prosecuted for treason.

⁴¹ Groundwater, ‘The Chasm Between’, 117-118.

⁴² This formula was used prolifically in this period and examples of its use in the 1520s may be found in Pitcairn, *Criminal Trials*, 137-138 and 140-141. Its use continued into the 1530s and appear regularly throughout Pitcairn’s edition of the records.

theft and reset of theft alone appears in April of 1531. This was but one offence in a string of many, however, and the named culprits were John Armstrong, alias Black Jok, and his brother Thomas.⁴³

John, or Johnnie, was the brother of Thomas Armstrong laird of Mangerton. His exploits, namely blackmail, theft and arson, and his position at the head of a gang of thieves granted him notoriety throughout the Borders in the 1520s. His bravado was legendary, and Meikle describes him as ‘contemptuous’ of the wardens and of border officials in England. The one warden to whom he did not show disdain was Lord Maxwell, who protected his Armstrong followers and allowed Johnnie to escape capture repeatedly. In the period during which he possessed control of the king’s person, Archibald Douglas earl of Angus outlawed Johnnie and when James assumed personal rule he punished Maxwell, other border officials and some magnates to demonstrate his exasperation at their refusal to fulfil their duty to deal with the Armstrong problem. In the same year, James took it upon himself, with the assistance of various surnames in the Lowlands and Borders, to purge the region of Armstrongs. The king summoned Johnnie and his gang of thieves to Teviotdale, perhaps with the promise of mercy, and it was there that he called for the execution of the bandits and saw it carried out swiftly.⁴⁴ Women do not appear in the records of the justiciary court in this capacity and Meikle’s remark that ‘[t]here were definitely no Calamity Janes on this frontier’

⁴³ *Ibid.*, 154.

⁴⁴ Maureen M. Meikle, ‘Armstrong, John [Johnnie], of Gilnockie (d.1530)’, *Oxford Dictionary of National Biography* (Oxford University Press, 2004) [<http://www.oxforddnb.com/view/article/658>, accessed 20 June 2014]. See also William Edmondstone Aytoun, ed., *The Ballads of Scotland*, Vol 1 (Edinburgh: William Blackwood and Sons, 1870), 79–85. Armstrong eventually became the eponymous subject of a famous border ballad, ‘Johnie Armstrang’.

certainly holds true.⁴⁵ The closest a woman might come to approaching Johnnie Armstrong in her ability to threaten the peace of the kingdom was as an associate of influential traitors or as a witch.

In the latter half of the sixteenth century, witchcraft, like treason, was a crime against the common weal of the kingdom. In addition to stirring up trouble between individuals in local communities, in Scotland it was characterised as more than an instrument of malice or a means to an end; instead, it constituted a diabolical threat to the safety and spiritual health of the whole realm.⁴⁶ A witch embodied the unrest, disorder and turmoil of daily life in the sixteenth century, and her methods were subtle, unseen and mysterious. Just as shifting allegiances and treason were seemingly everyday occurrences in the Borders, the threat that a witch posed to Scottish society in general was persistent and pervasive.⁴⁷ In the justiciary court records under review here, the sole example of a woman accused of a crime similar to witchcraft was Janet Douglas lady Glamis. The witch craze had not yet begun in Scotland. Nevertheless, there is evidence to demonstrate how contemporaries saw a relationship between

⁴⁵ Maureen M. Meikle, 'Victims, Viragos and Vamps: Women of the Sixteenth-Century Anglo-Scottish Frontier', in *Government, Religion and Society in Northern England 1000-1700*, ed. John C. Appleby and Paul Dalton (Stroud: Sutton Publishing, 1997), 184.

⁴⁶ Larner, *Enemies of God*, 201 and Scott Moir, 'The Crucible: Witchcraft and the Experience of Family in Early Modern Scotland', in *Finding the Family in Medieval and Early Modern Scotland*, ed. Elizabeth Ewan and Janay Nugent (Aldershot: Ashgate, 2008), 56. Larner calls Scottish witchcraft 'a middle position' between the instrumental witchcraft of England and the diabolical conspiracy feared on the continent. While the pact with the devil featured more prominently in accusations against Scottish women than it did in England, the role of the heavily ritualised secret meetings of covens of witches that characterised continental witchcraft was vaguer in Scotland than it was on the continent. Moir explains that witchcraft was one of the most serious accusations that one person might levy against another. Such accusations might incite feud and earned women who used the term as slander higher than average fines.

⁴⁷ Lizanne Henderson, "'Detestable Slaves of the Devil': Changing Ideas about Witchcraft in Sixteenth-Century Scotland", in *A History of Life in Medieval Scotland, 1000 to 1600*, ed. Edward J. Cowan and Lizanne Henderson (Edinburgh: Edinburgh University Press, 2011), 227.

witchcraft and treason in late medieval Scotland. This was especially true when the suspect was a member of the aristocracy. In 1479, a number of alleged witches were executed for supposedly taking part in a conspiracy against the life of James III and his brother the earl of Mar. Other cases of treasonable conspiracy with witchcraft at their heart were the North Berwick trials of 1590 to 1591. After the conspiracy against James III, but before the North Berwick trials, a justice ayre sitting in Jedburgh enquired in 1510 'gif thair be ony witchecraft or sossary wysyt in the realme' which belies anxiety about witchcraft in specific regions, notably North Berwick just east of Edinburgh in close proximity to the crown, and Jedburgh in the Borders.⁴⁸ When continental panic about witchcraft did began to influence contemporary beliefs in Scotland and the Scottish Witchcraft Act (1563) was passed, the perceived severity of committing an act of witchcraft or consulting with a witch placed the prosecution of this crime squarely within the jurisdiction of the highest court in the land whether treason was involved or not.

As an overwhelmingly female crime, witchcraft threw into relief the chaos that might erupt when a woman stepped outside the approved, gendered social hierarchy. Lauren Martin argues that '[w]itchcraft beliefs destabilised how people viewed women within this domestic configuration and witchcraft trials tore families, households, communities and lives apart'.⁴⁹ One might insert treason or homicide here as well and have the statement remain true. All such crimes, when perpetrated by a woman, upset the natural order of sixteenth-century society and threw up more anxiety than when the

⁴⁸ *Ibid.*, 239.

⁴⁹ Lauren Martin, 'The Devil and the Domestic: Witchcraft, Quarrels and Women's Work in Scotland', in *The Scottish Witch-Hunt in Context*, ed. Julian Goodare (Manchester: Manchester University Press, 2002), 89.

culprit was a man. The stereotype of the witch elsewhere in Europe was that of a woman on the margins of society, the unmarried and the widowed.⁵⁰ In Scotland, significantly, the majority of the accused were married women. Only twenty per cent were widows and fewer still, two per cent, were unmarried.⁵¹ Martin suggests that the predominance of married women among the accused emphasises ‘conceptual links’ between contemporary beliefs about witches and ‘marriage, household, family and work’.⁵² Although the pattern of prosecution in Scotland does not necessarily fit with the literary trope of uncontrolled and unsupervised women, it nevertheless reflects a degree of anxiety about the women whose husbands failed to control them adequately that must have existed prior to the passage of the act in 1563.

4.4: Family, Hierarchy, Gender and Social Control

Order in the family was the most basic form of control within the social hierarchy of sixteenth-century Europe. It was also the heart of political order and provided a recognisable analogy for the relationship between a king and his people. Susan Amussen argues that ‘family defined the ideals of the gender system, as relations between husband and wife provided a model for all relations between women and men’.⁵³ Within this model, there was no room for resistance or disobedience, and contemporaries relied on the family as an informal unit of control within their

⁵⁰ Robert A. Houston, ‘Women in the Economy and Society of Scotland, 1500-1800’, in *Scottish Society 1500-1800*, ed. Robert A. Houston and Ian D. Whyte (Cambridge: Cambridge University Press, 1989), 145.

⁵¹ Henderson, “‘Detestable Slaves of the Devil’”, 237.

⁵² Martin, ‘The Devil and the Domestic’, 89.

⁵³ Susan Dwyer Amussen, ‘Gender, Family and Social Order, 1560-1725’, in *Order and Disorder in Early Modern England*, ed. Anthony Fletcher and John Stevenson (Cambridge: Cambridge University Press, 1985), 196.

communities.⁵⁴ Multiple families, in well-ordered households, formed the foundation of sixteenth-century villages. When harmony within and between families broke down, communities resorted to various informal and formal solutions to restore balance.⁵⁵

Suspicion of women who moved beyond the bounds of the well-ordered family reveals deeply ingrained anxiety about the many women who were not under the direct control of a male guardian. In the sixteenth century, this suspicion was directed toward women who lived independently of parents and employers. In Scotland, landlords might incur harsh financial penalties if they allowed single women to rent their rooms and suggestions were made to ban them from the town.⁵⁶ The exceptions were widows, 'respectable' singlewomen and their female servants. In a community where the family unit was the most basic unit of social control, women who lived independently of male oversight posed a managerial problem. Should these women fall into a life of immorality, and domestic discipline fall short, efforts to control unwanted behaviour necessarily fell to neighbours and to the courts.⁵⁷

⁵⁴ For a discussion of the intersection between domestic discipline and the regulation of families by post-Reformation church courts, see Melissa Hollander, 'Discipline and Domestic Violence in Edinburgh, 1560-1625', *Studies in Church History* 43 (2007), 310.

⁵⁵ Amussen, 'Gender, Family and Social Order', 198-199 and J. R. D. Falconer, 'A Family Affair: Households, Misbehaving and the Community in Sixteenth-Century Aberdeen', in *Finding the Family in Medieval and Early Modern Scotland*, ed. Elizabeth Ewan and Janay Nugent (Aldershot: Ashgate, 2008), 140.

⁵⁶ Elizabeth Ewan, 'Crime or Culture? Women and Daily Life in Late-Medieval Scotland', in *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*, ed. Yvonne Galloway Brown and Rona Ferguson (East Linton: Tuckwell Press, 2002), 127.

⁵⁷ Gordon DesBrisay, 'Twisted by Definition? Women under Godly Discipline in Seventeenth-Century Scottish Towns', in *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*, ed. by Yvonne Galloway Brown and Rona Ferguson (East Linton: Tuckwell Press, 2002), 139; Margaret H. B. Sanderson, *A Kindly Place? Living in Sixteenth-Century Scotland* (East Linton: Tuckwell Press, 2001), 125; and Bernard Capp, 'Separate Domains? Women and Authority in Early Modern England', in *The Experience of Authority in Early Modern England*, ed. Griffiths, Adam Fox and Steve Hindle (Basingstoke: Macmillan, 1996), 120.

The worst subversion of this order was, of course, for a woman to kill her husband. The proliferation of murderous women on the covers of cheap print was a phenomenon of the late sixteenth and early seventeenth centuries in England, but such anxiety did not develop spontaneously within the few decades that separated late medieval Scotland from the advent of these cheap and salacious materials. The disproportionate representation of husband-killers in print compared with domestic crime statistics and the authors' frequent display of women whose motives constituted an upheaval of institutionalised patriarchy belies a deep-seated fear of women who undermined the family hierarchy through violence.⁵⁸ Contemporary interpretations of husband murder nearly always centred on the contravention of family hierarchy, with special attention given to the woman's return to 'meek subjection and proper womanhood', rather than the good death around which stories of male felons revolved.⁵⁹ It is difficult to confirm whether some of the women who came before the justiciary court on charges of homicide in this period were accused of killing their

⁵⁸ For detailed discussions of the disparity between real crime ratios and those alluded to by the representation of husband-killers in English crime pamphlets, see Frances Elizabeth Dolan, *Dangerous Familiars: Representations of Domestic Crime in England, 1550-1700* (Ithaca: Cornell University Press, 1994), 25. Randall Martin provides some insight into the misogynist assumptions that underlay the writing of such works in *Women and Murder in Early Modern News Pamphlets and Broadside Ballads, 1573-1697* (Aldershot: Ashgate, 2005), xiii. For an explanation of natural and unnatural domestic violence in respect of sex and gender, see Philippa C. Maddern, *Violence and Social Order: East Anglia, 1422-1442* (Oxford: Clarendon Press, 1992), 232. Kilday also offers a relevant discussion of the growing notion of certain female crimes, such as witchcraft and infanticide, as unnatural in the sixteenth-century Scotland in 'Maternal Monsters: Murdering Mothers in South-West Scotland, 1750-1815', in *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*, ed. Yvonne Galloway Brown and Rona Ferguson (East Linton: Tuckwell Press, 2002), 158-159.

⁵⁹ Sandra Clark, *Women and Crime in the Street Literature of Early Modern England* (Basingstoke: Palgrave Macmillan, 2003), 33. See also Katie Barclay's discussion of challenges to patriarchy within marriage in "'And Four Years Space, being Man and Wife, they Loveingly Agreed": Balladry and Early Modern Understandings of Marriage', in *Finding the Family in Medieval and Early Modern England*, ed. Elizabeth Ewan and Janay Nugent (Aldershot: Ashgate, 2008), 30-32.

husbands. No entries in this sample specify that the offender and victim were spouses or describe the offence as petty treason rather than simple homicide. Although in Scotland there does not appear to have been clear legislation regarding the killing of a husband by a wife, the gravity of this offence alone might have ensured that women accused of it were brought before the highest court in the land.

Beyond avoiding their own demise, husbands had incentives to prevent their wives from misbehaving. Contemporary views about appropriate family dynamics and control penetrated the practice of formal justice and the head of the house or kindred were responsible for the actions of the women and minors under their authority. By entering into bond, surety or guarantee, the head of a household or kin group assumed binding legal responsibility for the individual actions of his wife, children and lieges.⁶⁰ As the records of the justiciary court indicate, husbands and lairds had to bring their criminal dependents before the court in Edinburgh on a regular basis to answer for their crimes, or submit to repeated amercements for their non-compearance. In order to avoid the inconvenience and expense of travel and accommodations for his spouse and witnesses, it was in the interest of a husband to chastise his wife and abide by the expectation that he would manage her behaviour within and outside of the home.⁶¹ It was likewise the role of a local laird to keep his followers in line and to ensure that any acts of retribution they participated in were worth the trouble. Masterless men were a

⁶⁰ Falconer, 'A Family Affair', 143.

⁶¹ Elizabeth Ewan, 'Scottish Portias: Women in the Courts in Mediaeval Scottish Towns', *Journal of the Canadian Historical Association*, n.s., 3 (1992), 32 and Keith M. Brown, *Noble Society in Scotland: Wealth, Family and Culture from the Reformation to the Revolution* (Edinburgh: Edinburgh University Press, 2000), 138-139. It was also easier and less expensive to get witnesses to attend a local court rather than a central one, according to Sanderson in *A Kindly Place?*, 104.

problem to be sure, but masterless women were far more problematic in the eyes of contemporaries.⁶²

In England, coverture applied to women in all civil legal matters and in criminal cases where it appeared that her husband had coerced her into committing a misdemeanour or felony, with the exception of murder or treason. Of course, this did not prevent victims or their survivors from bringing a wife's involvement to the attention of the courts.⁶³ Whether married, widowed or single, female offenders were equally culpable for capital offences.⁶⁴ It is doubtful that similar views concerning the accountability of women were different in sixteenth-century Scotland. The records of the justiciary court do not provide any evidence to support the claim that husbands incurred penalties or were held accountable for their wives. Burgh records from our period do show men who elected to suffer various penalties in place of their wives, but such behaviour does not appear to have been mandated.⁶⁵ It is more likely that the degree of the crime and the prescribed punishment, rather than gender, dictated who might be liable for an offence. A local court might seek to exact a fine from or publicly admonish a husband for failing to control his thieving wife. If the goal was simply to

⁶² Elizabeth Ewan, 'A Realm of One's Own? The Place of Medieval and Early Modern Women in Scottish History', in *Gendering Scottish History: An International Approach*, ed. Terry Brotherstone, Deborah Simonton and Oonagh Walsh (Glasgow: Cruithne Press, 1999), 26.

⁶³ Marisha Caswell, 'Coverture and the Criminal Law in England, 1640-1760', in *Married Women and the Law: Coverture in England and the Common Law World*, ed. Tim Stretton and Krista J. Kesselring (Montreal: McGill-Queen's University Press, 2013), 88-89 and 106-107; Cordelia Beattie, "'Living As a Single Person": Marital Status, Performance and the Law in Late Medieval England', *Women's History Review* 17, no. 3 (2008), 336; and Cordelia Beattie, *Medieval Single Women: The Politics of Social Classification in Late Medieval England* (Oxford: Oxford University Press, 2007), 28.

⁶⁴ Kilday, "'The Lady-Killers'", 206.

⁶⁵ Elizabeth Ewan, 'Disorderly Damsels? Women and Interpersonal Violence in Pre-Reformation Scotland', *The Scottish Historical Review* 89, no. 2 (October 2010), 160. Concerning the legal obligations of husbands to suffer in place of their wives, see Ewan, 'Scottish Portias', 30.

advertise the family's offence and shame them into behaving, the identity of the person who suffered the penalty hardly mattered. It was this ideology that allowed James Matheson, George Alan and hundreds of other men from different parts of Edinburgh to become sureties for their wives in November 1530, with the understanding that the court might exact payment from the former if their wives refused to abide by the burgh's brewing statutes in the future.⁶⁶ Executing the husband of a murderess or arsonist, however, only removed a layer of authority from the offending woman, made her harder to control, and sent mixed messages to the community.

The degree of culpability that the law placed on an individual did not always speak to the relationship between women and their husbands, but reflected assumptions about the nature of women themselves. The order in which suspects were listed in indictments (women after men), and the fact that English juries convicted thirty per cent of men for felonies but only sixteen per cent of women, suggests that in England at least, contemporaries believed that women were naturally benign and were reluctant to indict and execute them.⁶⁷ It is also possible that jurors, when faced with ambiguous situations, were more likely to give women the benefit of the doubt. For example, the felonious aspect of larceny lay not only in the value of stolen goods, although this was the chief consideration, but in the intent to thieve. Bellamy has found that if a person entered a house legally and peacefully with the intent to steal something, no crime was committed until they removed an object. However, as long as intent was present, merely picking up a valuable object constituted felony theft.⁶⁸ Thus, women in

⁶⁶ James D. Marwick, ed., *Burgh of Edinburgh, 1528-1557* (Edinburgh: Scottish Burgh Records Society, 1871), 44.

⁶⁷ Barbara Hanawalt, 'The Female Felon in Fourteenth-Century England', *Viator* 5 (January 1974), 266.

⁶⁸ Bellamy, *The Criminal Trial in Later Medieval England*, 78.

Scotland, like those in England, who had cause to be in and around their neighbours' houses might have been able to talk their way out of situations in which they had been caught in the act by offering innocent explanations as to why they were carrying or moving household objects from their rightful places.⁶⁹ Except in cases where they supplied stolen goods to traitors or colluded with the English, such women might also claim ignorance of the provenance of stolen goods. Although jurisdictional divisions and the kin relationships influenced the fates of both men and women, similar assumptions about gender also governed the management of misbehaviour in sixteenth-century Scotland.

4.5: Managing Criminal Women in Scotland

It has been established that a systemic failure to apprehend criminal women is not a sufficient explanation for the infrequent appearance of female offenders in the justiciary court records.⁷⁰ Contemporaries were well aware of the female deviants in their midst and the different treatment of men and women in the courts reflects patterns of perpetration and of prosecution.⁷¹ Although chivalrous prosecutors might have been

⁶⁹ Sanderson, *A Kindly Place?*, 125.

⁷⁰ Margo Todd, *The Culture of Protestantism in Early Modern Scotland* (New Haven: Yale University Press, 2002), 12. This was especially true of post-Reformation communities, whose members were able to make each other aware of travelling fugitives through a network of cooperative parishes that enabled the close supervision of individuals in nearby and far-flung parts of Scotland.

⁷¹ Pieter Spierenburg, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge: Polity, 2008), 128-30. The one exception to this may be in cases of poisoning, which was construed by contemporaries, and by recent scholarship, as a crime typical of women. It has been suggested that this gendered assumption was so widespread that men accused of poisoning their wives would often claim ignorance of poison and its preparation (woman's work) or try to shift blame onto a female servant. In respect of apprehension, when a death appeared natural and the victim had not suffered from excessive vomiting or other suspicious symptoms previously, an examination rarely followed. Even if the cause of death was suspect, it took

hesitant to place women at the mercy of a harsh justice system, such sentiment cannot have been sufficiently widespread to explain the gaps between gendered demographic and crime ratios. Additionally, while Kilday acknowledges that juries required ‘very strong evidence and a very shocking crime’ to pronounce death upon a woman, this does not explain the small number of women who failed to come before the courts for serious offences or whose cases were dropped before a trial.⁷² The discussion below explores these claims in respect of the evidence at the centre of this thesis. Although women did commit fewer crimes than men overall, the discrepancies in the records of the justiciary court are starker. This study also deals with an earlier period than does Kilday’s work, and it considers a specific region under particular stresses, governed by a unique culture of justice. It is therefore pertinent to question whether comparatively low rates of felonious activity by women was the only factor that kept women out of the justiciary court.

The work of scholars investigating women and crime in pre-modern Europe suggests that the use of alternative informal measures and creative applications of formal procedures contributed to what appears to be a record of lenience towards women. The recourse to alternative measures may have occurred in part because informal sanctions and dropped charges did not require the cost or time of full formal trials and executions.⁷³ Moreover, contemporaries appear to have believed that central

considerable skill to be able to ascertain precisely what had happened. See also J. M Beattie, *Crime and the Courts in England, 1660-1800* (Princeton: Princeton University Press, 1986), 101.

⁷² Anne-Marie Kilday, “‘That Women are but Men’s Shadows’: Examining Gender, Violence and Criminality in Early Modern Britain”, in *Gender in Late Medieval and Early Modern Europe*, ed. Marianna Murayeva and Raisa Maria Rovio (Oxford: Routledge, 2013), 56. For a discussion of the detection of illicit activity and the mobility of men and women, with respect to late sixteenth-century kirk sessions, see Margo Todd, *Perth Kirk Sessions* (Woodbridge: Boydell Press, 2012), 45.

⁷³ William C. Dickinson *Scotland from the Earliest Times to 1603*, ed. Archibald A. M. Duncan (Oxford: Clarendon Press, 1977), 296. Executions were expensive. Hangings and burnings

courts were too important to be slowed down by suits against women whose crimes contemporaries either downplayed or considered rather benign.⁷⁴ Barbara Hanawalt, writing on late medieval England, found that contemporaries did not consider the crimes of women as threatening or serious as those of men and that systemic, ‘cultural dominance’ enabled communities to manage women without resorting to official channels.⁷⁵ These factors may account for the consistently low rates of conviction of women in the north of England, including the border region, despite the presence of juries who were rarely willing to employ ‘merciful nullification’ in the face of the aggravated conditions under which the borderers lived.⁷⁶ Likewise, in the villages and burghs on the Scottish side of the border, the local magnates, judicial officials and influential members who governed these communities managed female offenders through similar formal and informal methods of social control. Marjorie McIntosh argues that these methods constituted ‘a complex reticulum’ through which communities settled disputes and curtailed socially unacceptable behaviours.⁷⁷

A major factor explaining insecurities about social control and the management of women was fear of the unexpected and of the unknown. It was not necessary for

required live prisoners, which in turn required that someone feed and ward them until the appointed date. The supplies, rope, scaffolding, kindling and pitch, and burial preparations added even more to the cost.

⁷⁴ Cynthia J. Neville, ‘War, Women and Crime in the Northern English Border Lands in the Later Middle Ages’, in *The Final Argument: The Imprint of Violence of Society in Medieval and Early Modern Europe*, ed. Donald J. Kagay and L. J. Andrew Villalon (Woodbridge: Boydell Press, 1998), 167. Such alternative, informal measures form the basis of Marjorie K. McIntosh’s arguments about social control in pre-modern England as presented in *Controlling Misbehaviour in England, 1350-1600* (Cambridge: Cambridge University Press, 1998).

⁷⁵ Barbara Hanawalt, *Of Good and Ill Repute: Gender and Social Control in Medieval England* (New York: Oxford University Press, 1998), 7.

⁷⁶ Neville, ‘War, Women and Crime’, 173. Bellamy credits Green with coining the term for this principle in *The Criminal Trial in Later Medieval England*, 63.

⁷⁷ McIntosh, *Controlling Misbehavior in England*, 24.

women who were well known in their communities to suffer death or heavy fines to satisfy their neighbours, as long as their offence did not completely upset the social order. McIntosh found that, before the advent of protestantism in the late sixteenth century, penance administered by the parish priest was probably an effective form of private correction for a woman's minor transgressions. Additionally, if a prominent member of her community or kin group chastised her, concern for her reputation within that group might cause her to reconsider committing the offending act in the future.⁷⁸ Similarly, certain penalties enforced by church courts, such as suspension by the kirk session or excommunication, demanded that communities effectively shun the offender. This caused indirect penalties, such as loss of business, and a significant damper on one's social life.⁷⁹ The many bylaws that burgh courts passed in an attempt to order the behaviour of the burgh community dealt with everything from quarrelling and scolding to the behaviour of children in church. They indicate that Scottish communities were as concerned with misbehaviour as were McIntosh's English villagers.⁸⁰ However, while such responses might improve the behaviour of gossips, scolds or riotous children, the consequences of the felony crimes against persons and property under the purview of the justiciar were harder to settle with a harsh word and domestic discipline.

⁷⁸ Ibid. It is also important to note that insults played a role in shaming women into conformity; however, the line between chastisement and slander was thin. See Laura Gowing, 'Women, Status and the Popular Culture of Dishonour', *Transactions of the Royal Historical Society* 6th ser., 6 (1996), 225. For the performance of penance in post-Reformation Scotland and a discussion of the survival of private admonition by the church as a feature of social control well into post-Reformation Scotland see Todd, *The Culture of Protestantism in Early Modern Scotland*, 127-182 and Hollander, 'Discipline and Domestic Violence in Edinburgh', 312.

⁷⁹ Todd, *The Culture of Protestantism in Early Modern Scotland*, 12-13.

⁸⁰ Dickinson, *Scotland from the Earliest Times*, 295-296.

Victims and bystanders knew they were able to pursue options beyond formal prosecution, but they sometimes had good reason to avoid it. In the border region, a combination of administrative and legal conditions made it possible for women to escape formal justice. The accusatorial process, which was still the predominant method of bringing an offender before the court in the early sixteenth century, underlay all of these. Although toward the end of the century judicial officials began to prosecute offenders on their own initiative with increasing frequency, treason remained the only offence for which there was no private accuser other than the king. Until the late sixteenth century, a private accuser might drop a case at any time, even when it had come to the attention of the justiciary court.⁸¹ Whether communities used this feature of criminal procedure to scare women into behaving is unquantifiable, but the possibility suggests that that communities in sixteenth-century Scotland were able to manipulate the formal legal processes available to them to warn, intimidate and punish those women who stirred up trouble.

As was the case in contemporary Europe, the public nature of the legal process and trials might negatively affect the reputation of criminal women.⁸² The terminology of English court records made manifest the reputation of the accused, when they were of bad fame, with descriptors like ‘common thief’.⁸³ Among some women, knowledge that their reputation might be compromised by a public

⁸¹ Bruce Lenman and Geoffrey Parker, ‘Crime and Control in Scotland, 1500–1800’, *History Today* (1980), 15.

⁸² Jason Hardgrave, ‘The Formation of Women’s Legal Identity in Trecento Venice’, *Essays in Medieval Studies* 22 (2005), 43. For a discussion of reputations tarnished by insults, see Daniel R. Lesnick, ‘Insults and Threats in Medieval Todi’, *Journal of Medieval History* 17, no. 1 (1991), 77 and Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford: Oxford University Press, 1988), 98–99.

⁸³ Bellamy, *The Criminal Trial in Later Medieval England*, 104–5.

announcement about their wrongdoing was enough to ensure that they changed their ways.⁸⁴ The inclusion in the records of specific descriptors of offenders and their crimes often reveal the reputation and character of these individuals, as their communities perceived them. In England, terms like ‘common’, ‘notorious’ and ‘secret’, or an indication that the crime had taken place under cover of darkness, suggested official belief that the accused was a repeat offender or that the subtlety of their methods made their crime particularly reprehensible. Such words in turn provided jurors with the hint that the person in question was a known troublemaker and repeatedly inconvenienced and harmed the community with their actions. They might also have swayed the jury toward harsher penalties and decreased the chances of the offender obtaining a remission.⁸⁵ There is good reason to suggest that the same kind of encoding coloured accusations laid in Scottish courts. Although some entries in the justiciary court records describe men as common thieves or include their previous criminal exploits to emphasise the threat they posed, the same does not occur in entries that describe women. A suspect’s appearance before the justiciary court or ayre may have been sufficient to inform the jury that she had a reputation for causing trouble either politically or within the community and that her family, community or a lower jurisdiction had proved unable to manage her adequately.

Once a formal hearing or summons had identified a woman as a common thief, even if she was acquitted, her neighbours might then employ informal methods of social control with clear consciences. Through rumour and gossip, the details of

⁸⁴ Ewan, ‘Crime or Culture?’, 119. Graham provides a brief discussion of the influence a person’s reputation might have on the outcome of a hearing before a local church court in ‘Women and the Church Courts’, 189.

⁸⁵ Bellamy, *The Criminal Trial in Later Medieval England*, 29-30

allegations, or of misbehaviour that was yet unreported, spread throughout a village. According to McIntosh, in England this information ‘shaped the community’s sense of how serious the problem was and how it might best be tackled’.⁸⁶ Women were central to this process and thus helped to bring their communities to a consensus about whether a problematic woman should face the authorities. Even if the issue did lead to formal prosecution, the community might also concede that being called out in front of local officials and the community was sufficient and let things lie while remaining cautious for signs of further bad behaviour.⁸⁷ In Scotland, a society that preferred to settle issues privately through assythment, Bruce Lenman and Geoffrey Parker argue that appearing in court was as good as a conviction and ‘a clear sign that the community was convinced that a serious offence had been committed’.⁸⁸ As discussed above, the outcome of this appearance reflected a number of factors, including the circumstances under which the crime was committed, the character of the offender and disposition of the jury. Communities resorted to informal means of social control when they were offended deeply enough to desire retribution but not to shoulder the time and cost of a trial, when they believed the offender might be warned away from committing future offences or when they felt that the courts had failed.

The readiness of neighbours to report a woman to the authorities was contingent upon her potential to cause disorder as well as her reputation. Equally influential was the reputation of those she offended, especially if her actions

⁸⁶ McIntosh, *Controlling Misbehavior in England*, 24.

⁸⁷ Bernard W. McLane, ‘Juror Attitudes toward Local Disorder’, in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200–1800*, ed. James S. Cockburn and Thomas A. Green (Princeton: Princeton University Press, 1988), 61 and Falconer, ‘Mony Utheris Divars Odious Crymes’, 22.

⁸⁸ Lenman and Parker, ‘Crime and Control in Scotland’, 14.

threatened a male victim's masculinity. A woman's domination of her husband or a male neighbour through physical assault might prove terribly humiliating if she inflicted sufficient injury. In English records at least, it is common to find reports of men assaulted by groups of women or by women in the company of other men. In each situation the victim might claim to have been overwhelmed by sheer numbers and, in the latter, he was able to suggest that the men were primarily responsible for the worst damage. Elizabeth Ewan argues that a majority of the single-person assaults recorded in Scottish town court records 'suggest that female violence was not regarded as quite so threatening to masculinity in Scotland'.⁸⁹ Nevertheless, there might have existed some lingering insecurity that prevented men from bringing such events to a wider audience in jurisdictions outside of their immediate community. Beyond the issue of emasculation, Michael Wasser suggests that sixteenth-century Scottish society viewed some types of violence as normal and acceptable, and reported violent incidents only when they occurred in excess. For example, in his study of the justiciary court and privy council records from 1603 to 1638, he finds only six cases of domestic violence (wife-beating). He argues that these cases came to the attention of these courts owing to the victims' 'gentlemanly status' and the 'rather horrific' and frequent nature of the abuse.⁹⁰ In a society where the crown was not yet able to lay sole claim to the legitimate use of violence, only those episodes that shocked bystanders or violated acceptable uses of force elicited formal complaints.

⁸⁹ Ewan, 'Disorderly Damsels?', 159.

⁹⁰ Michael B. Wasser, 'Violence and the Central Criminal Courts in Scotland, 1603-1638' (PhD diss. Columbia University, 1995), 64 and Derek Neal, 'Masculine Identity in Late Medieval English Society and Culture', in *Writing Medieval History*, ed. Nancy Partner (London: Hodder Arnold, 2005), 182.

The prominence of letters of remission and assythment as features of the justice system in Scotland offers a systemic explanation for the small number of women who appeared before the justiciary court. In the sixteenth century, one of the ‘highest expressions of sovereignty’ was the ability of the king to offer traitors and felons mercy in the form of a remission.⁹¹ Statutes from the late fifteenth and sixteenth centuries that urged greater discretion in the granting of remission suggest that parliament thought the Stewart monarchs were too free with their mercy.⁹² Thus, Margaret lady Sinclair and six others benefitted from James’ clemency in 1538 when they received a remission ‘for their treasonably Abiding from the Army at [Tantallon]: and for Usurping the king’s authority Convocation of lieges’ and for the ‘common Oppression’ that had brought them before the court in 1536.⁹³ Another remission, from October 1539, pardoned Thom Sinclair and his wife, Elizabeth Nesbet, for the mutilation and demembration of Robert Henderson. Although the clerk of the justiciary court shied away from recording the specifics, the records of the privy seal indicate that Thom and Elizabeth were in fact responsible for separating Robert from his testicles.⁹⁴ Perhaps they attacked Robert to avenge Elizabeth or another woman’s honour and the crown granted a remission in light of the circumstances, or perhaps Robert was simply the victim of particularly poor aim and the king exercised his mercy for unknowable reasons. In both cases, the pardoned parties appear to have received their remissions before the matters went to trial.

⁹¹ Cynthia J. Neville, ‘Royal Mercy in Later Medieval Scotland’, *Florilegium* 29 (2012), 2.

⁹² Christopher Gane, ‘The Effect of a Remission in Scots Law’, *Juridical Review* 25, no. 5 (1980), 18-19 and Robert A. Houston, *The Coroners of Northern Britain c. 1300-1700* (Basingstoke: Palgrave Macmillan, 2014), 72.

⁹³ Pitcairn, *Criminal Trials*, 249 and *NRSJC1/5* fo. 183v.

⁹⁴ Pitcairn, *Criminal Trials*, 253 and *NRSJC1/4* fo. 95v.

Letters of remission might be obtained before or after a conviction, as well as at any point during a trial. Wealthy individuals were sometimes able to avoid the legal process altogether by petitioning the crown for a letter of remission in exchange for payment. If successful, the individual simply waited for the chancellor to grant the letters and wipe the slate clean. The option for those who were not so affluent or well connected was to wait until the appointed court date and make a plea to the justiciar or his deputy. The court or ayre sessions began with a call for any persons accused who wished to seek mercy in exchange for an admission of guilt, a surety who could guarantee payment and compensation to the injured parties. Although such individuals still bore the inconvenience of appearing before or travelling to the court, they avoided the bulk of the trial process. If a person was not able to avoid compearing and submitting to a trial, there was still a chance that they might pay a fine in lieu of suffering penalties of life or limb. It was also possible for a person to interrupt the proceedings against them in order to purchase a respite that would temporarily halt the trial so that arrangements might be made for assythment and the issue of a remission. If she was able to purchase letters of remission before her appointed court date, a woman might then send a pledge either to Edinburgh or to the sitting of a local justice ayre to inform the court she had received a remission and was no longer required to compear as long as the victim or their survivors received compensation.⁹⁵

From the fourteenth century to the end of the eighteenth, the obligation to assyth required that offenders supply the victims or their kin with compensation for bloodshed or loss of life or limb, but it also offered them a chance to escape the gallows. Robert Black observes that the specific amount of the assythment was

⁹⁵ Neville, 'Royal Mercy in Later Medieval Scotland', 19-21.

decided by ‘trustworthy men of the court’ according to the status of the deceased, but that the guilty and injured parties might also come to a private agreement without the assistance of the courts. If the assythment was organised through the court, the offender then needed to find a surety who would guarantee its payment. In theory, this should have satisfied all parties and stifled feuds. It is also important to note that, if the guilty party was executed, the victim’s kin received nothing. Victims, or their survivors, were entitled to watch a murderer swing or bleed them dry financially, but not both: most opted for the influx of cash or cattle.⁹⁶ The only party who might then seek to prosecute was the crown or justiciar. It made little sense for the crown to execute a woman and forfeit her land and goods, only a portion of the wealth she shared with her husband, when the justiciar could recommend a remission and charge a wealthier surety the requisite fee.⁹⁷ After all, the injured parties were now satisfied. Thus, Scottish felons rarely suffered a court-mandated death unless they were unable to draw on the protection or influence of their kin and associates.⁹⁸ For the laird or husband who was responsible for delivering a felonious woman to the court, the time, expense and effort otherwise involved in a trial before the justiciar provided an incentive to make immediate arrangements to pay assythment, then to seek a remission in advance of prosecution.

Victims might also choose to drop a case or suppress an accusation for a number of reasons. Thus, one might decline to prosecute a homicide or robbery until decades

⁹⁶ Robert Black, ‘A Historical Survey of Delictual Liability in Scotland for Personal Injuries and Death’, Part One in *Comparative and International Law Journal of Southern Africa* 8, no. 1 (1975), 52-59. For more detail about the persons entitled to assythment and assessment of the damages recoverable and the rationale behind this, see Black, 60-63. Wormald also provides a brief discussion of compensation as a reversal of the harm done in *Court, Kirk and Community*, 37.

⁹⁷ Gane, ‘The Effect of a Remission in Scots Law’, 20.

⁹⁸ Neville, ‘Royal Mercy in Later Medieval Scotland’, 25.

later, when it became politically advantageous or provided justification to commit a crime under the guise of retribution. In the case of a homicide, for example, the parties may have reached a settlement shortly after the offence took place, but a shift in political winds or offence taken at a more recent slight might encourage the injured party to dredge up an old conflict to kindle the fire of feud.⁹⁹ Financial benefits were also a consideration and victims or their families knew that they might be able to exact a sizeable compensation from the culprit. Depending on the parties involved, this may have been preferable to watching a person hang or drown and then to receive none, or comparatively little, of the forfeited lands and goods.¹⁰⁰ In such situations, it was prudent to suppress an accusation until the outcome proved to be more beneficial than it was in the immediate aftermath of a crime. Quite apart from the matter of compensation, it was expensive to bring an offender before the court in the first place; travel, the services of a lawyer or procurator and the bed and board for witnesses and sureties made pursuing justice an expensive endeavour. Lenman and Parker call the whole process 'risk-laden' and indicate that the crown reaped more financial benefits from collecting fines and forfeitures than it did when the courts administered 'even-handed justice'.¹⁰¹ Indeed, although the justiciary court clerks dedicated pages to lists of fines for non-compearances and list detailed records of who had paid and who had outstanding debts, the entries that described slaughter and treason typically consist of little more than six or seven lines of text. Formal prosecution was therefore no guarantee of satisfaction. In sixteenth-century Scotland, a number of factors influenced

⁹⁹ Anna Groundwater, 'The Obligations of Kinship and Alliance within Governance in the Scottish Borders 1528-1625'. *Canadian Journal of History* 48, no. 1 (2013), 26.

¹⁰⁰ Lenman and Parker, 'Crime and Control in Scotland', 15.

¹⁰¹ *Ibid.*, 16

a victim's decision to pursue formal justice or to seek an informal, community-based solution.

Writing about the variety of courts and public institutions in England, McIntosh argues that the variety of formal and informal solutions provided contemporaries with choices about managing misbehaviour.¹⁰² Victims of crime were able to air their grievances before a number of courts. They might also look to heads of households and other members of their community to administer informal sanctions against the offender. Although the Scottish and English judicial systems differed in a number of ways, each offered a similar degree of choice. In Scotland, the jurisdictional overlap allowed victims and officials to exercise a degree of choice as well. Local courts were preferable owing to the local knowledge and sympathies of jurors. Additionally, the availability of local witnesses and the physical convenience of the courts made local trials far less expensive than a trip to Edinburgh. However, some courts, like that of the sheriff, were limited by jurisdiction and the ability to pronounce particularly harsh penalties. Thus, it was sometimes necessary for local officials to submit dittays to a higher court in order to achieve the community's desired result. This might consist of regular summons to the justiciary court or amercements designed to pressure a husband to supervise his wife more closely. It might also mean the permanent elimination of a troublesome woman by burning or drowning. It is, therefore, reasonable to suppose that, before a jury had a chance to pronounce a verdict, the victim had assessed the nature and degree of the harm done in order to decide whether prosecution was in their best interest and, if it was, which court might provide the desired outcome.

¹⁰² McIntosh, *Controlling Misbehavior in England*, 26.

The courts of sixteenth-century Scotland had an arsenal of penalties to hand. Local courts often exacted fines for petty offences and misbehaviour such as a verbal or physical assault. Often, the court required the offending woman to approach her victim in front of the congregation or at the market cross to apologise and beg forgiveness in a ritual of repentance and reconciliation. Moreover, officials sometimes submitted the offender to public humiliation by placing them in the stocks, the pillory or some other contraption unique to the town. Serious crimes against persons or property earned harsher punishments. Burgh courts were able to penalise petty thieves with branding or banishment. The former marked the offending woman as a thief for life and the latter deprived her of the comfort and safety of the burgh, her family and her livelihood: both inflicted psychological and social damage.¹⁰³ It is important to note that the burgh possessed the ability to banish a woman from the community only and not the kingdom. That privilege was reserved to the judiciary court and, later, the privy council. The highest courts in the realm, however, did share power over life and limb with sheriff, regality and some burgh courts. According to their privilege and the circumstances under which the crime occurred, these courts employed capital punishments in cases of murder, rape, robbery, fire-raising, incest and counterfeiting. Thieves who had come before the court once too often might be also be hanged or beheaded. Women convicted of heresy or witchcraft might be burned, although Scottish officials seemed to favour drowning female felons

¹⁰³ Elizabeth Ewan, “‘Hamperit in Ane Hony Came’”: Sights, Sounds and Smells in the Medieval Town’, in *A History of Life in Medieval Scotland, 1000 to 1600*, ed. Edward J. Cowan and Lizanne Henderson (Edinburgh: Edinburgh University Press, 2011), 117. Whether permanent banishment was all that effective is uncertain, and Dickinson has presented numerous examples of a woman being banished ‘like as she was of before’ or ‘because she has been oft banished before’ in *Scotland from the Earliest Times*, 296.

over hanging or burning them. Any one of these punishments might be applied, at the discretion of the judge and jury, when the ultimate goal was to eradicate the person in question. The death of a convicted offender had widespread consequences in addition to the loss of a mother or wife, since this penalty also carried the sentence of forfeiture.¹⁰⁴

For victims and local officials, it was first necessary to decide which crimes and offenders posed the greatest threat to the common good. Status and reputation played a role in a community's decision to pursue the matter or to let it rest. Of course, sometimes this choice was out of the hands of the witnesses or victims, and a sheriff or his deputy who happened upon someone during the commission of a crime was obligated to prosecute.¹⁰⁵ Some local lairds and more powerful magnates exercised preferential treatment and protection in contravention of their duty to the crown. When women did come before the courts, however, there was a variety of options open to the men who passed judgement on them.

Some juries appear to have excused women based on their poverty, perceptions of their physical capabilities as women, or due to a suspicion that a husband or male relative had coerced them into participating in a particular crime. It is also possible that jurors, when faced with ambiguous situations, were more likely to give women the benefit of the doubt. The exceptions to these circumstances were those who, as Cynthia Neville describes, had 'transgressed villages *mores* once too often, for those whose offenses were considered of the gravest sort, or for those who persisted in anti-

¹⁰⁴ John I. Smith, 'Criminal procedure', in *An Introduction to Scottish Legal History* (Edinburgh: Stair Society, 1958), 444-45. Why they preferred to drown women remains unclear and warrants further study.

¹⁰⁵ McIntosh, *Controlling Misbehavior in England*, 27-28.

social behaviour even after repeated attempts by village communities to sanction them'.¹⁰⁶ Those who did not learn their lesson, or find other ways to survive, faced the forfeiture of their land and possessions or, especially in the case of single women with little property, the noose. In both kingdoms, people might have understood and sympathised with a first-time thief who stole for sustenance; but when they identified repeat offenders who posed a threat to the stability and security of the village, they wasted no time removing them.¹⁰⁷ Collaboration with foreign elements was also of great concern on both sides of the border and anxiety over cooperation between Scotsmen and English thieves or raiders is apparent in the justiciary court records.¹⁰⁸ The inclusion of and emphasis on the circumstances under which crimes took place were always important in communities in which juries were willing to tolerate understandable offences motivated by desperation, but who would not abide those which were planned and executed with cunning and intent.

Victims who sought retribution for the crimes committed against them were aware that their suits might not be successful for the myriad reasons set out above. Thus, the management of female offenders sometimes required that the families of both the offender and offended, as well as the communities in which they resided, navigate a variety of alternative options. Typically, irrespective of an offender's gender, it was in everyone's best interest for them to compensate the injured party and the crown, make a show of repentance and suffer any additional penalties that the community believed would restore the order a person had upset through their

¹⁰⁶ Neville, 'War, Women and Crime', 174 and Laughton, 'Women in Court', 99.

¹⁰⁷ Anthony E. Goodman, 'The Impact of Warfare on the Scottish Marches, c.1481-c.1513', in *Conflicts, Consequences and the Crown in the Late Middle Ages*, ed. Linda Clark (Woodbridge: Boydell Press, 2007), 205.

¹⁰⁸ Neville, 'War, Women and Crime', 169.

behaviour.¹⁰⁹ Nevertheless, gender roles, the position of a woman within her family and her community and the threat her actions posed to her community and the kingdom were key factors in determining whether her crime went unreported, or whether she became subject to informal social sanctions and whether she experienced threats of legal action or the full force of the law. The women who appear in the records of the High Court of Justiciary thus represent those women who had proven extremely difficult to rehabilitate or who had transgressed the bounds of both law and gender in order to become political or diabolical threats.

¹⁰⁹ Falconer, 'Mony Utheris Divars Odious Crymes', 30.

Chapter 5: Conclusion

When Peter and William Bisset lost both a kinsman and the family team of oxen in the course of a brutal attack, they probably did not expect that the men who broke into Jacob Bisset's home, slaughtered him and set fire to his most precious commodity were acting on the orders of a woman. In October 1536 the men involved became sureties for each other, and the justiciar required that Elizabeth Martin lady Fast Castle, listed first among them all, find no fewer than three men to vouch for her future appearance under pain of £330.¹ Whether Elizabeth's motives were personal or political is unclear, but the previous chapters have shown that Elizabeth must have known what she was risking when she sent her men on their deadly errand. Murder had been considered one of the pleas of the crown from time immemorial and fire-raising had been a statutory felony for at least ten years prior to this attack: just six years before Elizabeth's escapade, James V had made plain his opinion of lawlessness and feuding in the Borders during his foray into the region. Moreover, as a woman of some social standing, Elizabeth could not have expected to escape the notice of the justiciar or other members of the Scottish nobility for long.

Conversely, an understanding of the strength of local justice, the fate of other women who committed similar crimes and the connections that Elizabeth's status afforded her may have figured into how she weighed her chances to escape conviction. No entry survives to indicate that Elizabeth faced an assize on these charges, nor is there any evidence that her case was repledged. In June 1537, the clerks recorded a series of significantly reduced amercements related to her non-compearance, but this is

¹ *NRSJC1/5* fo. 194r. The original amount is given as 500 merks.

the last the justiciary records have to tell us about Elizabeth Martin and her attack on Jacob Bisset.² The most likely scenario is that Elizabeth made use of her social and political connections to avoid facing justice until she was able to arrange for the purchase of a royal remission and the payment of compensation to Jacob's family. Furthermore, it is probable that local authorities and her guarantors viewed her offences as acceptable in the context of private justice. If her associates were more powerful than those of the Bissets, or if the justiciar was content to continue to collect amercements from her guarantors, it is not surprising that either the charges against her were dropped altogether or that interest in her apprehension eventually waned. The absence of women in the records of Scotland's High Court of Justiciary highlights the political and social conditions that constituted and encouraged a sorting process through which kin, communities and victims managed criminal women in the sixteenth century.

Although Albany's regency technically ended in 1524, from 1513 to 1528 Scotland suffered from a fifteen-year minority during which various factions assumed control of the king's person. When James V finally seized the opportunity to escape the clutches of the Douglasses and assume personal rule, he found himself at the head of a seemingly lawless kingdom that was heavily divided and misgoverned. Despite the immediate ejection of Archibald Douglas earl of Angus, and the rise of Arran and Argyll as James' new councillors, the king struggled for the rest of his life to cultivate the strong personal obligations between himself and local magnates that were necessary to bring private justice in line with the crown's designs for limiting disorder in the

² *NRSJC1/5* fo. 229v

Borders and other remote regions.³ In Scotland, frequent periods of minority rule since 1460 exacerbated the ebb and flow of political power and negatively affected the ability of the crown to establish its authority.⁴ The inability to provide consistent governance and personal kingship over long periods allowed influential kin groups and local magnates to become immensely powerful, both politically and judicially.

The sixteenth century was a period of growth for royal administration in Scotland, although the crown had not yet managed to achieve the authority it needed to eradicate private justice. The satisfaction of a victim and their family was more important than the satisfaction of some abstract concept of justice and this might be achieved without the interference of central authority and royal supervision. In Scotland, the heads of local kin groups directed justice through locally contained feuds and compensation. Although these men often broke the law, the forms of private justice they employed were practical and effective at satisfying injured parties and managing violent retaliation.⁵ The decline of ayres and the centralisation of royal jurisdiction did not encourage local magnates to look to the crown for justice. When the justiciary court took up its permanent seat in Edinburgh and ayres began to make special appearances rather than regular outings, the justiciar became even further removed from the localities. Between the need to wait for the arrival of the ayre in previous decades, and the distance to the court once it had become fixed in the capital, seeking justice in Scotland's highest jurisdiction was time consuming and inconvenient for sureties, witnesses, suitors and the accused. The justiciar might chastise local

³ Jamie Cameron, *James V: The Personal Rule, 1528-1542* (East Linton: Tuckwell Press, 1998), 330.

⁴ Jenny Wormald, *Court, Kirk and Community: Scotland, 1470-1625* (Toronto: University of Toronto Press, 1981), 13.

⁵ *Ibid.*, 37.

leading men, but he was content to let these men go back to their communities and manage their misbehaving associates as long as he was able to collect fines for non-compearance and remissions.

The manner in which such men managed their female kindred, before a woman's actions came to the attention of the justiciary court or once her guarantors had submitted their formal pledge to the court, was deeply influenced by gender. Sixteenth-century assumptions about gender roles and the capabilities of women led to instances of underreporting by male victims, private compensation to avoid embarrassment and an appreciation of a tendency on the part of jurors to acquit the overwhelming majority of female pannels. The chances of a successful suit in this period, and the potential for embarrassment when the details of a case became known, were key considerations of those impacted by the offences of female felons. Thus, it was in the interest of the injured parties and a woman's kin to arrange speedy, local and private solutions. Moreover, the number of courts competent to deal with the crimes that women appear to have committed naturally tended to redirect the bulk of these cases away from central courts.

A more detailed study of church court records and manuscripts from multiple jurisdictions over a longer period is necessary to test further the claims of this research; nevertheless, this thesis begins to reconstruct pre-modern perceptions of felonious women, especially in higher jurisdictions where they appeared far less frequently than did men. This study has contributed new evidence from the hitherto underused justiciary court records that, despite their limitations, offer a great deal of insight into the management of felonious women and the relationship between centralised, royal authority and local, private justice. Moreover, it offers one example of an approach that

might fruitfully be applied to a study of the gendered management of male criminals in the same period.

The research presented here was undertaken in order to gain a better understanding of the collective experience of women before the law in sixteenth-century Scotland, socially, politically and systemically. Ultimately, it seems, women had less reason to fear the wrath of the crown than they did that of their kin and communities. The justiciar had little time for routine theft or homicide if such crimes were committed by people of little status and wealth, if they occurred at a distance from Edinburgh or if they might be dealt with adequately within the jurisdiction of a regality, burgh or sheriff court. Of greater concern were the crimes of the politically powerful: persons who threatened the stability of the realm or the king's rule, who persisted in feuding on a grand scale or those whose crimes, in the context of the border wars, constituted treason.⁶ The limited degree to which women participated in the feuding culture of the Borders enabled them to escape, for the most part, the close attention of the judiciary court. Their experiences indicate that, in Scotland, the punishment was made to fit the criminal and the context, not the crime.

⁶ Michael B. Wasser, 'Violence and the Central Criminal Courts in Scotland, 1603-1638' (PhD diss. Columbia University, 1995), 80.

Appendix A: Calendar of Female Offenders in JC1/3-5

The marginalia relating to each record is given in square brackets following the summary of the entry and an indication is made where the justice clerk did not include marginal comments. With the exception of *sect' pac'*, which may be reckoned somewhat awkwardly as 'breaking of the peace', the marginalia appears in translation.

Edinburgh, 20 January 1525

Robert Bertoune de Over Bernton pledged to bring Margaret Scott, wife of Andro Grey, before the next justice ayre of Perth, to underly the law for art and part in the slaughter of Robert Moncrieff.¹ [calls a pledge]

Perth, 30 May 1525

Margaret Lindsay and others pledged to come before a future court. No charge listed.² [*sect' pac'*]

Edinburgh, 16 June 1525

George Schall repledged to the regality of Brechin to underly the law for art and part in the slaughter of John Schall. Robert Bully, his wife Janet Bully and Robert Barde repledged to the same regality for art and part in the slaughter of Robert Redpath.³ [no marginalia]

Edinburgh, 19 June 1525

Jacob Towris de Inverleith pledged to bring Elizabeth Mowbray lady Inverleith, Matho Wauch, John Moran and John Murdochson before a future court. No charge listed.⁴ [*sect' pac'*]

Edinburgh, 11 July 1525

Patrick Robson pledged to bring John Kilgour and Janet Paterson before a future court under pain of £40. No charge listed.⁵ [*sect' pac'*]

Edinburgh, 11 July 1525

Richard Maxwell pledged for Patrick Robson. And Patrick Robson pledged to bring the said Richard and Janet Paterson to a future court under pain of £40. No charge listed.⁶ [no marginalia]

Edinburgh, 27 July 1525

Alexander Grey of Balerno pledged to bring Janet Patten and nine others to underly the law for the slaughter of Janet Wilson.⁷ [no marginalia]

¹ *NRSJC1/5* fo. 3r.

² *NRSJC1/5* fo. 8r.

³ *NRSJC1/3* fo. 17v.

⁴ *NRSJC1/5* fo. 9v.

⁵ *NRSJC1/5* fo. 16r.

⁶ *NRSJC1/5* fo. 16r.

⁷ *NRSJC1/5* fo. 17r.

Edinburgh, 27 July 1525

Alexander Grey of Balerno became a pledge for Robert Grey, his brother and the said Robert Grey became pledge for Alexander Grey. And both of them pledged together and severally to bring Cristina Boyd, Janet Anderson, Janet Anderson, Elizabeth Anderson, Margaret Anderson and eleven others to a future court for an unspecified crime.⁸ [*sect' pac'*]

Edinburgh, 30 July 1525

George Cook of Barrowston pledged to bring John Watson in Balfour and Beatrice Cook, his wife, Magister George Stirling of Brechin and David Stirling, his son, to a future court for an unspecified crime.⁹ [*sect' pac'*]

Edinburgh, 7 August 1525

Jacob Preston, burgess of Edinburgh, pledged to bring Margaret Quhitehide, widow of the late John Liddale before the justiciar in Edinburgh for art and part in the slaughter of John Johnson.¹⁰ [no marginalia]

Edinburgh, 15 February 1526

William Ramsay of Polton pledged to bring Robert Ramsay, his brother, and Robert Adamson burgess of Edinburgh, and Margaret V. his wife to the court for an unspecified crime.¹¹ [no marginalia]

Edinburgh, 7 August 1526

Jacob Douglas of Drumlangrig pledged to bring Isobel Hunter, wife of Tom Fergusson, Elizabeth Fergusson, their daughter, and Mariota B. before the justiciary at Dumfries to underly the law for art and part in the slaughter of Herbert Edgar, son of Nicholas Edgar of Houston.¹² [pledged to Dumfries]

Edinburgh, 3 October 1526

Jacob Kennedy of Blairquhan pledged to bring Margaret Auchinlok lady Myreton before the justiciar at Edinburgh or the next ayre of Wigton to underly the law for art and part in the slaughter of John Ahern.¹³ [no marginalia]

Edinburgh, 10 January 1527

Robert Logan of Restalrig, knight, pledged to bring the wife of George Vais, the wife of George Lundy, the wife of Andro Hamilton, the wife of Robert Dickson, Katherine Bell, the wife of John Gibson, the wife of William Matheson, Katherine Burny and fifty-eight others before the justiciar at Edinburgh for an unspecified crime.¹⁴ [no marginalia]

⁸ *NRSJC1/5* fo. 17r-17v. The clerks listed Janet Anderson twice, separated by a number of other names. The majority of the eleven other men were also of the Anderson surname.

⁹ *NRSJC1/5* fo. 18r.

¹⁰ *NRSJC1/5* fo. 18v.

¹¹ *NRSJC1/5* fo. 25r.

¹² *NRSJC1/5* fo. 33r.

¹³ *NRSJC1/5* fo. 35r.

¹⁴ *NRSJC1/5* fo. 37v-38r.

Edinburgh, 10 January 1527

George lord Setoun pledged to bring Elen Adeson and thirty-one others before the justiciar in Edinburgh for art and part in the oppression done to Andro Johnston of Elphinstone.¹⁵ [no marginalia]

Edinburgh, 17 March 1527

Archibald Douglas pledged to bring Elizabeth Lyle lady Colinton, Janet Talliefer spouse of William Weir of Stanebyre and eight others to the court for an unspecified crime.¹⁶ [*sect' pac'*]

Stirling, 12 May 1527

John Bruce of Clackinnan pledged to bring Mariota Bruce and Cristina Malis, daughter of the said Mariota before the justiciar at Stirling to underly the law for art and part in the slaughter of Tom Crawford, under pain of £66 for Mariota and £40 for Cristina.¹⁷ [no marginalia]

Stirling, 21 May 1527

John Charteris of Kerfalliny pledged to bring John Henrison and Isobel, his wife, John Henrison, Jacob Henrison, Richard Henrison, David Henrison, David Henrison, Elizabeth Henrison and Janet Kerr before the justiciar of Forfar to underly the law for art and part in the mutilation of William Grey.¹⁸ [no marginalia]

Edinburgh, 4 October 1527

Lady Isabella Wallace lady Lewdoun, accused and called to underly the law for art and part in the slaughter of Gilbert earl Cassillis was proven sick by William Bankhead, her curate, the curate of Lewdoun. She was charged with a number of other individuals in separate entries.¹⁹ [sick]

Edinburgh, 4 October 1527

George Crawford failed to bring Margaret Douglas to underly the law for art and part in slaughter of Gilbert earl Cassillis and was amerced £100. The said Margaret was put to the horn and all her goods escheated.²⁰ [amerced £100; put to the horn]

Edinburgh, 4 October 1527

Margaret Douglas and ten others were proclaimed rebels.²¹ [put to the horn]

¹⁵ *NRSJC1/5* fo. 38v.

¹⁶ *NRSJC1/5* fo. 26r.

¹⁷ *NRSJC1/3* fo. 56r. 100 merks.

¹⁸ *NRSJC1/3* fo. 56r.

¹⁹ *NRSJC1/3* fo. 69v.

²⁰ *NRSJC1/3* fo. 70v.

²¹ *NRSJC1/3* fo. 71r.

Edinburgh, 4 October 1527

George Crawford was amerced for the non-entry of Margaret Douglas to underly the law for art and part in the homicide of Gilbert earl Cassillis. He was amerced £100 and the said Margaret was put to the horn.²² [amerced £100; put to the horn]

Edinburgh, 26 December 1527

William Hay of Talla became a pledge for John lord Hay, Elizabeth Cunninghame lady Belton and Magister George Hay, her son.²³ [*sect' pac'*]

Edinburgh, 26 December 1527

John lord Hay became a pledge for Elizabeth Cunningham lady Belton, master George Hay, her son, and twenty others.²⁴ [*sect' pac'*]

Edinburgh, 28 April 1528

George Towris of Bristo became a pledge for Alexander Evyot, Margaret Somerville, the spouse of Robert Adam, burgess of Edinburgh under pain of £198.²⁵ [*sect' pac'*]

Edinburgh, 16 June 1528

John Carnochane pledged to bring Mariota Weddale, his wife, William Carnochane, his son, Elena Carnochane, his daughter and Janet Liddale before the justiciar in Edinburgh to underly the law for art and part in the slaughter of [blank] Baxter, son of Robert Baxter in Castlelaw.²⁶ [pledged 3 July]

Edinburgh, 16 June 1528

Nicholas Ramsay of Dalhousie became a pledge for John Carnochane who was a pledge for Mariota Weddale, William Carnochane and Elene Carnochane.²⁷ [amerced £100; *sect' pac'*]

Edinburgh, 18 June 1528

John Crawford of Drogane, Margaret Campbell and others called to compear before the justiciar to underly the law for reset and assistance given to Hugo Campbell of Lewdoun.²⁸ [amerced]

Stirling, 15 August 1528

John Stirling, knight, became a pledge for John Stevenson, Janet Todrik, Agnis Pollok and Mariota Colin.²⁹ [*sect' pac'*]

²² *NRSJC1/3* fo. 70v.

²³ *NRSJC1/3* fo. 77v.

²⁴ *NRSJC1/3* fo. 78r.

²⁵ *NRSJC1/3* fo. 81v. 300 merks.

²⁶ *NRSJC1/3* fo. 84v.

²⁷ *NRSJC1/3* fo. 84v.

²⁸ *NRSJC1/3* fo. 85r.

²⁹ *NRSJC1/3* fo. 92v.

Stirling, 16 August 1528

John Stirling, knight, became a pledge for John Stevenson, Janet Todrik, Agnis Pollok and Mariota Colin.³⁰ [*sect' pac*]

Edinburgh, 23 September 1528

John Carmichael, captain of Crawford, and William Baillie of Bagby pledged together and severally to bring John Weir, Adam Weir and Margaret Carutheris before the justiciar in Edinburgh, the twenty-fourth day of November to underly the law for art and part in the slaughter of William Talliefer.³¹ [pledged 23 November]

Edinburgh, 7 October 1528

John Barde of Kelkenzie pledged to bring Egidia Blare before the justiciar at Ayr to underly the law for art and part in the slaughter of Robert Campbell in Lochfergus, Alex Kirkwood and Patrick Wilson.³² [pledged to Ayr]

Edinburgh, 26 November 1528

John Weir of Newton, Adam Weir, his brother, and Margaret Carutheris his mother, quit by the assize of art and part in the slaughter of William Talliefer.³³ [quit by the assize]

Edinburgh, 26 November 1528

William Baillie of Bagby became a pledge for Henry Wilson and Margaret Carutheris for their quit under pain of £66.³⁴ [*sect' pac*]

Edinburgh, 5 December 1528

Jacob Scrimgeour became a pledge for Alexander Scrimgeour, his son, John Scrimgeour, Egidia Blainslie, widow of John] Eremare³⁵ [*sect' pac*]

Edinburgh, 10 December 1528

Alex Scrimgeour son and heir of John Scrimgeour of Myris pledged to bring Eufamia Eremare, his spouse, and Jacob G., Egidia Blynselis, widow of John Eremare to before the justiciar on unspecified charges.³⁶ [*sect' pac*]

Edinburgh, 30 January 1529

Elizabeth Davidson and thirteen others called to compear before the justiciar to underly the law for art and part in the oppression done to John Campbell of Lundy.³⁷ [under penalty of law; amerced]

³⁰ *NRSJC1/3* fo. 92v.

³¹ *NRSJC1/3* fo. 97r.

³² *NRSJC1/3* fo. 100r.

³³ *NRSJC1/3* fo. 103r.

³⁴ *NRSJC1/3* fo. 103v. 100 merks.

³⁵ *NRSJC1/3* fo. 104r.

³⁶ *NRSJC1/3* fo. 105r.

³⁷ *NRSJC1/3* fo. 111r.

Edinburgh, 23 February 1529

Janet Bully lady Leys often called to compear before the justiciar to underly the law for reset of goods and intercommuning with Jacob Gordon, Henry Fechy, the king's rebels and at the horn for art and part in the slaughter of David Gordon of Braktillo. Janet did not compear, was put to the horn and all her goods escheated.³⁸ [no marginalia]

Edinburgh, 23 February 1529

Janet Bully lady Leys often called to compear before the court to underly the law for reset of goods and intercommuning with Jacob Gordon, Henry Fechy, the king's rebels and at the horn for art and part in the slaughter of David Gordon of Braktillo. Janet, often called, did not compear, was put to the horn and all her goods escheated.³⁹ [put to the horn]

Edinburgh, 3 March 1529

Jacob lord Ogilvy and William Strayton in Fechy pledged together and severally to bring Janet Bully lady Leys before the justiciar in Forfar for the reset of goods and intercommuning with Jacob Gordon, Henry Fechy, the king's rebels and at the horn for the homicide of David Gordon of Braktillo. Janet is at the horn.⁴⁰ [pledged to Forfar]

Edinburgh, 14 March 1529

Henry Stewart of Rosyth became a pledge for John Ramsay of Dunbar and Katherine Barclay, widow of Archibald Ramsay of Dunbar.⁴¹ [*sect' pac*]

Edinburgh, 20 March 1529

David Grundison of Kingask pledged to bring Margaret Grundison and Margaret Ross before the justiciar in Fife to underly the law for art and part in the slaughter of William Lawson.⁴² [pledged to Fife]

Edinburgh, 5 May 1529

George Haliburton became a pledge for John Crichton of Ruthven and Janet Egson, his mother. And John Crichton pledged to bring Jacob Simpson before the justiciar of Forfar to underly the law for art and part in the slaughter of Robert Jameson.⁴³ [pledged to Forfar]

Edinburgh, 23 May 1529

David Fechy pledged that Andro Herzell, Jacob Watson, William Rich, John Milne, Richard lord Innermeath and Margaret Lindsay, his wife would keep the peace.⁴⁴ [*sect' pac*]

³⁸ *NRSJC1/3* fo. 113v.

³⁹ *NRSJC1/4* fo. 24r.

⁴⁰ *NRSJC1/3* fo. 115r.

⁴¹ *NRSJC1/3* fo. 116r.

⁴² *NRSJC1/3* fo. 117v.

⁴³ *NRSJC1/3* fo. 122v.

⁴⁴ *NRSJC1/3* fo. 124v.

Hadington, 1 June 1529

David McCulloch pledged to bring Margaret his spouse, before the justiciar of Kirkcudbright to underly the law for art and part in the slaughter of George Langmuir and John Langmuir.⁴⁵ [pledged to Kirkcudbright]

Edinburgh, 22 August 1529

Janet Darroch, wife of Archibald Robson quit of art and part in the said homicide by the assize.⁴⁶ [quit by the assize]

Edinburgh 10 October 1529

William Scott of Baluery, knight, pledged that Richard lord Innermeath and John Guthrie and his wife would keep the peace.⁴⁷ [*sect' pac'*]

Edinburgh, 24 March 1530

Jacob Grey of Pettarn pledged to bring Janet Douglas lady Glamis before the justiciar in Edinburgh to underly the law for art and part in the intoxication [poisoning] of her husband John Glamis, and for resetting, supplying and assisting her brother Archibald Douglas.⁴⁸ [pledged 9 May]

Edinburgh, 9 May 1530

John Haliburton pledged to bring Elizabeth Haliburton, his wife, before the justiciar in Edinburgh to underly the law for art and part in the homicide of George Gill under pain of £40.⁴⁹ [9 May]

Edinburgh, 9 May 1530

Jacob Grey pledged to bring Janet Douglas lady Glamis to underly the law for an unspecified crime.⁵⁰ [20 May]

Edinburgh, 23 July 1530

John Haliburton pledged to bring Elizabeth Haliburton before the justiciar in Edinburgh to underly the law for art and part in the slaughter of George Gill and of the mutilation of George Gill.⁵¹ [pledged to Edinburgh]

⁴⁵ *NRSJC1/3* fo. 128r.

⁴⁶ *NRSJC1/3* fo. 132r.

⁴⁷ *NRSJC1/3* fo. 141v.

⁴⁸ *NRSJC1/3* fo. 150v.

⁴⁹ *NRSJC1/3* fo. 154r.

⁵⁰ *NRSJC1/3* fo. 155v.

⁵¹ *NRSJC1/3* fo. 167v.

Perth, 19 November 1530

David Jameson, Alan Jameson, burgess of Coupar, Margaret Coupar, his spouse, lord Thomas Jameson, Robert Jameson, son of the said Alan, and John MacRae called to compear before the justiciar to underly the law for art and part forethought felony and the oppression done to John Spens of Marston. They did not compear, were in amercement of the court and called to the next ayre in Coupar to underly the law for the said crimes.⁵² [amerced; Fife]

Perth, 5 December 1530

William Stirling of Glorat became a pledge for Patrick Maxwell of Newark. And the said lord of Newark became a pledge for William Stirling of Glorat and Mariota Maxwell lady Bardelby. William Stirling of Glorat became a pledge for Andro Stirling of Bankra. Robert master of Symple became a pledge for Margaret Spreull, John Spreull and Stephen Spreull. Thomas Colquhoun of Kirkton became a pledge for his brother John Colquhoun and John pledged to bring Thomas before the justiciar of Dumbarton to underly the law for intercommuning with Alan Hamilton of Bardleby, Alan Graham and Hugo Grey, the king's rebels, and for the slaughter of Alexander Hamilton junior, lord Auchinholvy and Kestane Williamson.⁵³ [pledged to Dumbarton]

Edinburgh, 10 March 1531

Umfrid Rollok pledged to bring Thomas Colquhoun and Margaret countess Cassillis before a future court to underly the law for an unspecified crime under pain of five hundred merks.⁵⁴ [no marginalia]

Edinburgh, 16 January 1531

John Wilson (son of John Wilson in Richardton), his brother Andro Wilson, Agnes Wilson, Mariota Wilson (daughter of John Wilson senior), John Anderson in Priestland Milne, Elizabeth Sawyer (wife of the said John Wilson), Janet Parker (wife of the said John Anderson): convicted of art and part in the oppression done to Alexander Lockhart.⁵⁵ [convicted]

Edinburgh, 17 January 1531

Hugo lord Somerville pledged to bring John Wilson senior in Richardton, his son John Wilson junior, Agnes Wilson, Mariota Wilson (daughter of the said John Wilson senior), John Anderson in Priestland Milne, Elizabeth Sawyer (wife of the said John Wilson) and Janet Parker (wife of the said John Anderson) before the justiciar in Aberdeen to underly the law for art and part in the forethought felony and oppression done to Alexander Lockhart.⁵⁶ [pledge]

⁵² *NRSJC1/3* fo. 174r.

⁵³ *NRSJC1/3* fo. 175v.

⁵⁴ *NRSJC1/5* fo. 42r.

⁵⁵ *NRSJC1/3* fo. 179r.

⁵⁶ *NRSJC1/3* fo. 179r.

Edinburgh, 17 January 1531

Beatrice Gordon (wife of William Sinclair of Auchinfram), accused of art and part in the slaughter of the late Herbert Maxwell junior lord Conhaith, was proven sick by Robert Lowry, her curate. Jacob Gordon of Lochinker pledged to bring her to underly the law for the said crime.⁵⁷ [infirm]

Edinburgh, 27 April, 1531

Elizabeth Anderson and twenty-six men were called to compear before the justiciar to underly the law for art and part in theft from Alexander Kirkpatrick of Kirkmichael. The men were primarily of the Clerk, Wallace, Corbet and Kirkpatrick surnames.⁵⁸ [amerced £10]

Edinburgh, 21 July 1531

Robert Marshall in the burgh of Edinburgh pledged to bring Agnes Marshall, Margaret Marshall, Janet Wilson, Janet Miller, John Adam, Andro Wilson, John Burn and John Wilson before the justiciar for an unspecified crime.⁵⁹ [*sect' pac'*]

Edinburgh, 20 November 1531

Thomas Crawford junior lord Auchiname called to enter the following persons to underly the law for art and part in the slaughter of the late Alexander Hugh: George Rich in Dupany, Robert Rich of the same, Nicholas Alexander in Milton, Elizabeth Greif, Alexander Alexander in Milton, Alexander Haltonrig in Haltonrig, Pater Haltonrig of the same, Merrick Alexander in Craigfad, his son Robert Morrison in Milton, Andro Smith in Newton, Jacob Lyle, John Ferny in Branchal and Baldwin Greif.⁶⁰ [no marginalia]

Edinburgh, 3 February 1532

Alexander Scrimgeour called to bring Janet Pyott to underly the law for art and part in the slaughter of master George Lindsay and the mutilation of Patrick Lindsay. She did not compear and Alexander was amerced £66. Janet was put to the horn and all her goods escheated.⁶¹ [put to the horn; amerced £66]

The same day the said Janet was denounced a rebel by public proclamation before the burgh of Edinburgh and put to the horn as a fugitive for art and part in the slaughter of master George Lindsay and the mutilation of Patrick Lindsay lord Symple.⁶² [put to the horn]

⁵⁷ *NRSJC1/3* fo. 181r.

⁵⁸ *NRSJC1/4* fo. 38r.

⁵⁹ *NRSJC1/5* fo. 42v.

⁶⁰ *NRSJC1/5* fo. 55r.

⁶¹ *NRSJC1/5* fo. 59v. 100 merks.

⁶² *NRSJC1/5* fo. 59v.

Edinburgh, 5 February 1532

Janet Pyott was denounced a rebel by public proclamation before the burgh of Edinburgh and put to the horn as a fugitive for art and part in the slaughter of master George Lindsay and the mutilation of Patrick Lindsay.⁶³ [put to the horn]

Edinburgh, 26 February 1532

William lord Herys of Jedburgh pledged to bring Richard Herys, his wife Janet Herys and Archibald Cairns before the justiciar for an unspecified crime under pain of £330.⁶⁴ [*sect' pac'*]

Edinburgh, 26 February 1532

Sixteen men are listed as failing to attend the assize to pass judgement on Janet Douglas lady Glamis. This is related to an earlier entry in which she was accused of poisoning her husband and also resetting, assisting and supplying her brother Archibald Douglas, a traitor.⁶⁵ [no marginalia]

Edinburgh, 4 May 1532

Janet Muir, wife of Richard Herys, was proven sick by master Ninian Logan, curate of Cowie, her curate and witness that she was accused of art and part in the slaughter of John Cairns and Patrick Hepburn in the field of Halis. He pledged to bring her before the next justice ayre at Kirkcudbright to underly the law for the said crime.⁶⁶ [infirm; pledge]

Edinburgh, 4 May 1532

Janet Muir, wife of Richard Herys, was proven sick by master Ninian Logan, curate of Cowey, her curate and witness that she was accused of art and part in the slaughter of John Carnys and Patrick Hepburn in the field of Halis. He pledged to bring her before the next justice ayre at Kirkcudbright to underly the law for the said crime.⁶⁷ [no marginalia]

Edinburgh, 18 May 1532

Simon Wallace, Robert Miller, Adam Wallace, Andro Hughson, Mariota Logan, Alexander Hughson, David Paterson, Andro Miller, Thomas Hunter, Bartholomew Wallace, Alexander Wallace and Adam Parker are called by royal letters to compear and underly the law for art and part in forethought felony, hamesuckin and the oppression done to Edward Logan.⁶⁸ [no marginalia]

⁶³ *NRSJC1/5* fo. 60r.

⁶⁴ *NRSJC1/5* fo. 62r. 500 merks.

⁶⁵ *NRSJC1/5* fo. 61v.

⁶⁶ *NRSJC1/5* fo. 64r.

⁶⁷ *NRSJC1/5* fo. 64r. The clerks recorded this entry twice.

⁶⁸ *NRSJC1/5* fo. 66r-66v.

Edinburgh, 29 September 1532

William Crawford junior lord Lefnoris pledged to bring John Crawford of Strand. Robert Crawford (brother of Bartholomew Crawford) pledged to bring his brother Duncan Crawford. And lord Robert pledged to bring John MacClure. And the said Duncan pledged to bring Margaret Crawford, Elizabeth Crawford and John Bard. And the said junior lord Lefnoris pledged to bring lord Robert Crawford before the justiciar in Edinburgh to underly the law for art and part in the mutilation of John Colville.⁶⁹ [pledged 13 November]

Edinburgh, 19 October 1532

Edward Wallace junior lord Sewalton and John Wallace of Melfurd are called to bring Mariota Legot to underly the law for art and part in the mutilation of Edward Legot under pain of £40. She did not compear and they were amerced in this amount, and Mariota was put to the horn and all her goods escheated.⁷⁰ [amerced £40; put to the horn for the slaughter of Janet Legot]

Edinburgh, 19 October 1532

Jacob Wallace, George Wallace (brother of Simon Wallace), Thomas Nichol, John Barde, Elen Campbell (wife of the said Simon Wallace), Adam Wallace, Adam Wallace (brother of John Wallace), John Chalmer (son of Stephen Chalmer) and William Legot were denounced rebels by a public proclamation and put to the horn for art and part in the forethought felony, oppression and hamesuckin done to John Hamilton.⁷¹ [no marginalia]

Edinburgh, 19 October 1532

Mariota Legot was denounced a rebel by public proclamation and put to the horn for art and part in the slaughter of Janet Legot.⁷² [put to the horn]

Edinburgh, 8 November 1532

Katherine Rutherford lady Trakware was denounced a rebel and all her goods escheated for not compearing to underly the law for treasonable assistance given to Archibald, formerly earl Angus, his brother George Douglas and his uncle Archibald Douglas and for resetting, supplying and intercommuning with them and for conversing with them daily both in England and secretly in Scotland.⁷³ [no marginalia]

Edinburgh, 8 November 1532

Katherine Rutherford was denounced a rebel by public proclamation before the burgh of Edinburgh and put to the horn for the said crimes.⁷⁴ [put to the horn]

⁶⁹ *NRSJC1/5* fo. 79v.

⁷⁰ *NRSJC1/5* fo. 80r.

⁷¹ *NRSJC1/5* fo. 81r.

⁷² *NRSJC1/5* fo. 81v.

⁷³ *NRSJC1/5* fo. 82v.

⁷⁴ *NRSJC1/5* fo. 82v.

Edinburgh, 31 January 1533

Alison Matheson, wife of George Lawd, is called to compear before the justiciar to underly the law for art and part in the felony, oppression and hamesuckin done to Thom Lawd, burgess of North Berwick and his wife Janet Peneton. She did not compear and so was denounced a rebel, put to the horn and all her goods escheated.⁷⁵ [amerced]

Edinburgh, 24 March 1533

Edward Crawford bailie in the regality of Dunfermline repledged John Colquhoun, Elizabeth Colquhoun, Nicholas Broun and John Morley, accused of art and part in the forethought felony and oppression done to William Hill.⁷⁶ [repledged]

Edinburgh, 24 March 1533

Master John Hay of Smithsfield became a pledge for John Colquhoun under pain of £198 and both Johns jointly and severally became pledges for John Middlemast and Elizabeth Colquhoun, Nicholas Broun and John Morley, under pain of £198, to bring them before the justiciar.⁷⁷ [*sect' pac'*]

Edinburgh, 26 April 1533

Janet Anderson, convicted of art and part in the fire-raising and burning of a byre of the lord of Rosyth and the sixty oxen and eleven cattle there. Drowned.⁷⁸ [convicted; drowned]

Edinburgh, 16 May 1533

William Bonar Rossy and Thomas Wynton became pledges, jointly and severally, for Thomas Fotheringham of Powrie, under pain of £100. And the said lord of Powrie pledged to bring his wife Alison Charteris, John Charteris, Jacob Hog and Thomas Henry before the justiciar of Forfar to underly the law for art and part in the fire-raising and burning of the oxen of Margaret Cullen lady Powrie.⁷⁹ [pledged to Forfar]

Edinburgh, 16 May 1533

Walter Fotheringham was charged to find surety and lawburrows by the justice clerk in judgement that Thomas Fotheringham of Powrie, Alison Charteris his spouse, John Chartris and James Hog and Thomas Henry or the deputy of Edinburgh should be harmed and skaithless of him and all he might let in time coming but as law will under the pain of £330 and under the pain of being denounced a rebel and the putting of him to the lord's horn.⁸⁰ [no marginalia]

⁷⁵ *NRSJC1/5* fo. 89v.

⁷⁶ *NRSJC1/5* fo. 92v.

⁷⁷ *NRSJC1/5* fo. 92v-93r. £198 is approximately 300 merks.

⁷⁸ *NRSJC1/5* fo. 93r.

⁷⁹ *NRSJC1/5* fo. 94r.

⁸⁰ *NRSJC1/5* fo. 94r. 500 merks.

Edinburgh, 10 June 1533

[blank] Wishart of Logy Wishart pledged to bring Robert Newton, John Newton, his son Alexander Newton and his spouse Janet Carmaig before the justiciar of Forfar to underly the law for art and part in the slaughter of William Adam.⁸¹ [pledged to Forfar]

Edinburgh, 10 June 1533

Ninian Cunninghame of Walterston amerced for the non-entry of his wife Margaret Stewart to underly the law for art and part in the mutilation of Jacob Park. He pledged to bring her before the justiciar under the pain of £66 and Margaret was denounced a rebel, put to the horn and all her goods escheated.⁸² [amerced £66; put to the horn]

Edinburgh, 18 August 1534

William Eskdale, John Wat, John in Weddallside, Andro Wat, Robert Galt junior, Thom Field, Janet Lawson, Margaret Henderson, John Wat in Gartsyde, John Garland, Hugo Matheson and Matho Hog accused of art and part in the slaughter of Michael Salmond. Repledged to the regality of Kilwinning. Jacob Montgomery (brother of Hugo earl Eglinton), Jacob Cunninghame in Montgreenam and David Hearn of Bogside also repledged for the said slaughter.⁸³ [no marginalia]

Edinburgh, 20 July 1535

Jacob Kennedy of Blairquhan became a pledge for John Shall under pain of £100. And the said John pledged to bring William Caldwell, Margaret Smith and two others, under pain of £40, before the justiciar in Ayr to underly the law for art and part in the slaughter of Cuthbert Kirkwood.⁸⁴ [no marginalia]

Edinburgh, 31 July 1535

Patrick Cheyne of Essilmont pledged to bring Andro Farquhar and his wife Elizabeth Morrison before the justiciar in Aberdeen to underly the law for the slaughter of Gilbert Anstyne and the mutilation of master Thom Anstyne.⁸⁵ [pledged to Aberdeen]

Edinburgh, 1 October 1535

Elmer Maxton and John MacRae became pledges for David Murray and Arthur Murray in Dallilly, and Cristina Maxton (wife of the said Arthur). And the said Arthur became a pledge for Katherine Kenzert, Janet Acson, and eleven men. And each one of them pledged for the others and the said John Hog pledged to bring his wife Margaret Wilson before the justiciar in Edinburgh to underly the law for art and part in the oppression done to Henry MacRae and William MacRae in the lands of Kynkell. And for art and part in the forethought felony and oppression done to Patrick MacRae and David MacRae (son of the said Henry MacRae).⁸⁶ [20 November]

⁸¹ *NRSJC1/5* fo. 94v.

⁸² *NRSJC1/5* fo. 95r. 100 merks.

⁸³ *NRSJC1/5* fo. 120v.

⁸⁴ *NRSJC1/5* fo. 132r.

⁸⁵ *NRSJC1/5* fo. 132v.

⁸⁶ *NRSJC1/5* fo. 133v.

Edinburgh, 13 June 1536

Thomas Wardrop in Ballachy called to compear as a pledge for John Bakky in Blair, George Blair, William Emery, David Emery, John Emery, Patrick Drery, John R., Isobel Emery, Isobel Herning, Margaret Bakky, Elizabeth Ramsay, Janet Drery and Janet Towis to bring them to underly the law for art and part in the mutilation of David Baxter.⁸⁷ [amerced]

Edinburgh, 13 June 1536

John Charteris (brother of Robert Charteris of Amisfield) is called to bring Robert Charteris in Auchinfleshill and Mariota Johnston (widow of the late Robert A.) to underly the law for art and part in unspecified crimes under pain of £40.⁸⁸ [amerced £30]

Edinburgh, 19 June 1536

Alexander lord Livingston and master John Hepburn of Benston pledged, together and severally, to bring Margaret lady Sinclair under pain of £330. And the said lord of Livingston, master Hepburn and William Cunninghame pledged, together and severally, to bring seventeen men before the justiciar in Edinburgh to underly the law for unspecified crimes.⁸⁹ [pledge called 13 August]

Edinburgh, 22 July 1536

William Graham of Fintray pledged to bring William Cochrane, David Mill, Thomas Alware, David Moffat, Thomas Moffat, Patrick Moffat and Isobel countess Crawford before a future court for unspecified crimes. The persons listed above were also put to the horn.⁹⁰ [no marginalia]

Edinburgh, 31 July 1536

Jacob Douglas of Drumlanrig and John Grierson of Lig pledged, jointly and severally, to bring John Grier under pain of £198, John Grier (brother of Gilbert Grier in Cragne) under pain of 40£, Katherine Grier (wife of the said John Grier) under pain of £66, his daughter Elizabeth Grier, Nicholas Grier, his brother William Grier and Thomas Brazename before the justiciar of Dumfries for art and part in the slaughter of Fergus [surname obscured].⁹¹ [pledged to Dumfries]

⁸⁷ *NRSJC1/5* fo. 154r.

⁸⁸ *NRSJC1/5* fo. 154r.

⁸⁹ *NRSJC1/5* fo. 156v.

⁹⁰ *NRSJC1/5* fo. 176v.

⁹¹ *NRSJC1/5* fo. 177v. 300 and 100 merks.

Edinburgh, 11 August 1536

John Hume of Coldenknows, William Stewart of Trakware and Thomas Ker are became pledges and sureties, conjunctly and severally for Katherine Rutherford lady Trakware that she shall henceforth observe and keep good rule and in special shall not delay nor send any to the Douglas our sovereign lord's rebel now in England or intercommune with them in any manner. And shall enter her person in wait in whatsoever place it shall please the king's grace or his lord's regents in his absence when she be required thereto upon fifteen days warning under the pane of £2000.⁹² [no marginalia]

Edinburgh, 14 August 1536

Margaret lady Sinclair, Henry Carllis, master William Grete, Thomas Livingston, Stephen Paterson and John Robertson were called to underly the law for art and part in convocation of lieges.⁹³ [no marginalia]

Edinburgh, 23 August 1536

Janet Murdoch (wife of John Crawford), John's daughter Margaret Crawford and others called to underly the law for art and part in assisting the mutilation of Alexander Echt and deforcing a messenger during the execution of his office.⁹⁴ [pledged to Ayr]

Edinburgh, 25 August 1536

Mariota Hume countess Crawford failed to compear on unspecified charges and her sureties were amerced.⁹⁵ [no marginalia]

Edinburgh, 25 August 1536

Mariota Hume, countess of Crawford, Patrick Crichton of Kemnay, and seventeen others, found caution (the Lairds of Kerr and Cranston), to underly the law before the justiciar for art and part in the stouthreif and oppression done to John Moncur of Balluny, in seizing from him a wagon, four oxen and two horses.⁹⁶ [no marginalia]

Edinburgh, 17 October 1536

Robert Logan of Cotfield, Walter Somerville and master George Forester pledged, jointly and severally, to bring Elizabeth Martin lady Fast Castle before the justiciar under pain of £330. There were a large number of other men who became sureties for each other to compear before the justiciar in Berwick for art and part in forethought felony, hamesuckin and slaughter done to Jacob Bisset. And for art and part in the fire-raising, burning and destruction of the oxen there. And Paul Hume, Kentigern Hume, Andro B., William Hume for art and part in forethought felony done to Peter Bisset and William Bisset.⁹⁷ [pledged to Berwick]

⁹² *NRSJC1/5* fo. 180r.

⁹³ *NRSJC1/5* fo. 183v.

⁹⁴ *NRSJC1/5* fo. 186v.

⁹⁵ *NRSJC1/5* fo. 187v.

⁹⁶ *NRSJC1/5* fo. 188r.

⁹⁷ *NRSJC1/5* fo. 194r. 500 merks.

Edinburgh, 17 October 1536

Elen Sinclair and Margaret Mowat convicted of art and part in theft from Thomas Robson in the village of Leith. Banished under pain of death.⁹⁸ [no marginalia]

Edinburgh, 24 November 1536

Walter Pery called to enter his wife Katherine Donald to underly the law for an unspecified crime.⁹⁹ [amerced £40]

Edinburgh, 24 November 1536

Mariota Hume, Patrick Crichton and seventeen others became in his majesty's will and found Sir John Stirling of Kerr, knight, and John Crichton of Ruthven as cautioners to satisfy the parties they had injured during their commission of stouthreif and oppression done to John Moncur of Balluny in August 1536.¹⁰⁰ [no marginalia]

Edinburgh, 4 December 1536

James Wardlaw, son of Sydney lord Corry, Gilbert Balfour suitor of the lord Corry, Archibald Wat and Elizabeth Betoun lady Corry to underly the law for art and part in the siege against William Wardlaw.¹⁰¹ [no marginalia]

Edinburgh, 24 April 1537

Thomas Livingston burgess of Jedburgh and his wife Egidia Douglas were called to compear before the justiciar to underly the law for unspecified crimes.¹⁰² [no marginalia]

Edinburgh, 5 June 1537

William Sym burgess of Edinburgh became a pledge for Robert Borg. And lord Robert Borg and Alexander Spence burgess of Edinburgh pledged, jointly and severally, to bring his wife Egidia Therbrand, his daughter, Katherine Borg, and William Gilmore to underly the law for art and part in forethought felony, hamesuckin and the oppression done to Elizabeth Mason.¹⁰³ [pledged 12 June]

Edinburgh, 15 June 1537

Walter Ogilvy of Dunlugus, knight, amerced for failing to enforce a dittay against John Abbat of Jedburgh and Mariota countess of Crawford for unspecified crimes.¹⁰⁴ [no marginalia]

⁹⁸ *NRSJC1/5* fo. 196v.

⁹⁹ *NRSJC1/5* fo. 203r.

¹⁰⁰ *NRSJC1/5* fo. 203v.

¹⁰¹ *NRSJC1/5* fo. 205v.

¹⁰² *NRSJC1/5* fo. 221v.

¹⁰³ *NRSJC1/5* fo. 227r.

¹⁰⁴ *NRSJC1/5* fo. 231r.

[blank], 15 June 1537

Barbara Stewart, her brother William and eleven accomplices accused of art and part in the stouthreif and detention from Margaret lady Sinclair of the rents of her lands and lordship of Shetland: And for art and part in stouthreif from the tenants and inhabitants of the Lordships of Shetland and Orkney of their marts, hides, swine, sheep, meal, butter, oil, and malt.¹⁰⁵ [no marginalia]

Edinburgh, 23 June 1537

Barbara Stewart, her brother William and their eleven accomplices were denounced rebels and all their goods escheated.¹⁰⁶ [no marginalia]

Edinburgh, 25 June 1537

Elizabeth Martin lady Fast Castle failed to compear and Jacob Cokburne of Langtoun (Kirkcaldy), David Ellen in Renton, John Strich and John Preston burgess of Haddington were amerced £20.¹⁰⁷ [no marginalia]

Edinburgh, 17 July 1537

Janet Douglas lady Glamis convicted of art and part in the treasonable conspiracy and imagined slaughter, here called destruction, of the king by means of poison. And for art and part in the treasonable assistance, supplying and resetting of and intercommuning with her brother Archibald formerly earl Angus and his brother George Douglas, both traitors and rebels. Burned.¹⁰⁸ [convicted; burned]

Edinburgh, 18 July 1537

Thomas Corry of Keldwood, Archibald Hamilton and John Weir (brother of Thom Weir of Blackwood) became pledges together and severally for the said lord of Blackwood under pain of £132. And to bring Jacob Crichton of Cork, his mother Janet Maitland and Jacob MacCourty before a future court for an unspecified crime.¹⁰⁹ [*sect' pac'*]

Edinburgh, 21 July 1537

William Somerville in Newbigging pledged to bring Janet Colpland (wife of William Hughson) to underly the law for art and part in the slaughter of John Spens under pain of £40. She did not compear and he was fined this amount. Janet was denounced a rebel, put to the horn and all her goods escheated.¹¹⁰ [amerced £40; put to the horn]

¹⁰⁵ *NRSJC1/5 fo. 229v.*

¹⁰⁶ *NRSJC1/5 fo. 230v.*

¹⁰⁷ *NRSJC1/5 fo. 229v.*

¹⁰⁸ *NRSJC1/5 fo. 236r.*

¹⁰⁹ *NRSJC1/5 fo. 238v.* 200 merks

¹¹⁰ *NRSJC1/5 fo. 243r.*

Edinburgh, 3 September 1537

John Edmonston pledged to bring Robert Malcolm, Patrick Fairly, Adam Ray, Archibald [obscured], Richard Roger, Thomas Roger, Robert Roger, Thomas Scott, Katherine Bower, Nicholas Inglis, Archibald Heslihope, William Johnson, John Johnston, John Brook, Robert Mark Jacob Mark, Robert Holldume, Adam Ray, Elen Simpson, John Heslihope, his wife Janet R., John Ray, Margaret Heslihope, Cristina C., John S, William Perry, William Dickson, Thomas Bowerhouse, Alexander Ray, William Ray, Janet Dickson, Jacob Malcolm, Alexander Dickson, William Malcolm, Robert A., Berty Donaldson, William Paterson, Margaret Heslihope, Mariota Ray, Thomas Bull, his son Thomas Bull, William T. and Jacob Edmonston before the justiciar in Edinburgh to underly the law for art and part in the oppression done to Gilbert Wauchop.¹¹¹ [pledged to Edinburgh 13 October]

Edinburgh, 13 October 1537

Archibald Ewen in Caikmure, Archibald Wauchop of the same, Isobel Pentland, Adam Person, George Person, Thomas Person, Agnes Sanderson, John Ewen, William Paterson, Jacob Blaky, Agnes Watter, Margaret Robson, Robert Neilson, John Rae, John Cuthbert, Janet Michaelson, Janet Wallace, William Thomson, Cristina Thomson, David Thomson, Adam Thomson, Janet Thomson and Alexander Thomson called to compear to underly the law for art and part in convocation of lieges and for art and part in the lesions and wounds inflicted upon Richard Scott.¹¹² [amerced £10]

Edinburgh, 15 February 1538

Thomas Burnet, Thomas Patre, Janet Baxter, Mariota Thomson, Janet Baxter minor, Thomas Donald, John Wilson, Mariota Robson, Cristina Robson, Margaret Robson, Andro Mylne, Cristina N., Elizabeth Conttio (wife of Andro Spring), Thomas Spring, Andro Gery, William Forbes, Alexander Burnet, Jacob Forbes (son of William Forbes minor), Agnes Davison, Katherine Gardner, Mariota Kyd, Andro Gibbon and Duncan [blank] in Castlehill called to underly the law for unspecified crimes.¹¹³ [no marginalia]

Edinburgh, 23 May 1538

John Henderson and Janet Thomson – convicted of art and part in the oppression done to Elizabeth Freland and Cristina Freland.¹¹⁴ [convicted]

Edinburgh, 31 July 1538

Nicholas D., Mariota Guvane, Roger Scott, Robert Palmer and Alexander Spence, accused of art and part in the slaughter of Thom Hart.¹¹⁵ [repledged to Kelso]

¹¹¹ *NRSJC1/5* fo. 251v.

¹¹² *NRSJC1/5* fo. 256r.

¹¹³ *NRSJC1/5* fo. 270r.

¹¹⁴ *NRSJC1/5* fo. 276v.

¹¹⁵ *NRSJC1/5* fo. 282r.

Edinburgh, 2 October 1538

Martin Leche, Andro Leche, Andro Campbell of Brigend, Alexander Caldwell, Robert Richard, Hugo Campbell, Thomas Campbell of Glesnok, his brother George Campbell, Mariota Lekprewik, Thomas MacCrae, Andro Black in Fordun, Henry Ranald in Glesnok, John Lekprewick and John Lekprewick called before the justiciar to underly the law for art and part in the oppression done to Robert Hamilton.¹¹⁶ [amerced]

Edinburgh, 16 December 1538

Agnes Dinglay came in will for art and part in the treasonable assistance and supplying of Archibald, formerly the earl Angus, and intercommuning with him in a treasonable manner.¹¹⁷ [no marginalia]

Edinburgh, 17 December 1538

The lord of Kerrs Hill pledged to bring Elizabeth Colville, Janet Logan and others before the justiciar in Ayr for art and part in the fire-raising and burning of the house of Thomas Uddart burgess of Edinburgh.¹¹⁸ [pledged to Ayr]

Edinburgh, 17 December 1538

Alexander Dunbar pledged to bring Patrick Cunninghame and his wife Margaret Lowes before the justiciar in Ayr to underly the law for art and part in the fire-raising and burning of the same house under pain of £80.¹¹⁹ [pledged to Ayr]

Edinburgh, 21 April 1539

William Wauchop (son of Gilbert Wauchop of Niddrie-Marshall) pledged to bring Elizabeth Freland, Cristina Freland, [*obscured*] Maxwell, Andro Wauch and Robert Ker before the justiciar in Edinburgh to underly the law for art and part in the oppression done to John Henrison and his wife Janet Thomson in Bristo and for the hamesuckin and forethought felony done to Janet More under pain of £40.¹²⁰ [pledged to Edinburgh]

Edinburgh, 20 June 1539

John Duran and Mariota McIlwraith – convicted of art and part in consulting thieves. Another charge or more detail is listed but some words are partially obscured.¹²¹ [convicted]

¹¹⁶ *NRSJC1/5* fo. 283r.

¹¹⁷ *NRSJC1/5* fo. 287r.

¹¹⁸ *NRSJC1/5* fo. 287v.

¹¹⁹ *NRSJC1/5* fo. 287v.

¹²⁰ *NRSJC1/5* fo. 296v.

¹²¹ *NRSJC1/5* fo. 301v.

Edinburgh, 24 July 1539

William Cumming, Margaret Douglas and four others were denounced rebels and put to the horn for art and part in convocation of lieges and attacking the Tower of Ernside, breaking the doors and gates and entering. And for stouthreif from Alexander Cumming and Thomas Cumming of Ernside all their household goods, 156 bolls of corn, eight oxen and two horses. And for oppression.¹²² [amerced]

Edinburgh, 31 July 1539

Andro Fullarton of Carlton pledged to bring John Eshenam of Park, under pain of £330, Thomas Martin pledged to bring Thomas Eshenam, under pain of £198 and Jacob Gordon of Barskeith pledged to bring Janet Gordon, wife of Cuthbert Eshenam, under pain of £198, before the justiciar in Kirkcudbright to underly the law for art and part in the slaughter of lady Janet Cairns.¹²³ [pledged to Kirkcudbright]

Edinburgh, 3 October 1539

Hugo Douglas pledged to bring Mariota Muir under pain of £132 for art and part in the transferring of certain documents under false pretenses.¹²⁴ [pledged to Edinburgh]

Edinburgh, 3 October 1539

Hugo Maxwell of Teling called to enter Margaret Maxwell, Gresilda Maxwell, Elizabeth Maxell, Janet Short, Elizabeth Gould, Janet May, Elizabeth Sanders, Besse Allan, Elizabeth Gould, Agnes M., Janet Law, Besse T., Janet Gould, Elizabeth Phip, Agnes M., Janet Barbour, Elizabeth T., Cristina Blyt, Agnes Hubert, Bess Burny, Elizabeth Wilson, Mariota Blair, Janet Horn, Egidia Robertson, Margaret Templeton, Elizabeth Mathew, Margaret Patre, Bess Short, Janet Wilson, Cristina Shepherd, Bess Cabill, Agnes Moram, Agnes Robert, Cristina Clerk and twenty-seven men to underly the law for art and part in the oppression done to William Wood of Bonnington.¹²⁵ The majority of the men not listed here belonged to the Maxwell, Gould, Short and Wilson surnames. [no marginalia]

Edinburgh, 3 October 1539

Hugo Maxwell of Teling and his wife Barbara Hering convicted of the oppression done to William Wood of Bonnington.¹²⁶ [no marginalia]

Edinburgh, 4 October 1539

Jacob Bowar, George Forman and Elizabeth Newton, accused of art and part in the slaughter of Thom Smith, repledged to the regality of Dunfermline.¹²⁷ [repledged]

¹²² *NRSJC1/5* fo. 306v.

¹²³ *NRSJC1/5* fo. 307v. 500 merks and 300 merks twice again.

¹²⁴ *NRSJC1/5* fo. 309r. 200 merks.

¹²⁵ *NRSJC1/5* fo. 309v-310r

¹²⁶ *NRSJC1/5* fo. 310r.

¹²⁷ *NRSJC1/5* fo. 311r.

Edinburgh, 22 November 1539

David Wood of Crag pledged to bring John Wood, John Dalziel and his wife Elizabeth Hamilton before the court for an unspecified crime.¹²⁸ [*sect' pac'*]

Edinburgh, 11 December 1539

George Nesbet of Dalziel pledged to enter Thomas Sinclair and Elizabeth Nesbet before the justiciar of Edinburgh for art and part in the mutilation and demembration of Robert Henderson.¹²⁹ [pledged to Edinburgh]

Dundee, 16 December 1539

James Wedderburn elder pledged to bring Henry Burn, brother of the late John Burn, surety of Andrew Prentis and Katherine Matheson, spouse of the late John Burn, to underly the law the third day of the next justice ayre of Forfar for the slaughter and murder of the late John Burn.¹³⁰ [next ayre in Forfar under 15 days warning]

Edinburgh, 14 January 1540

Master Andrew Blackstock burgess of Edinburgh and John Spens pledged to bring Andrew Prentiss and Katherine Matheson to underly the law in the tollbooth of Edinburgh for the slaughter and murder of the late John Burn.¹³¹ [9 March]

¹²⁸ *NRSJC1/4* fo. 95r.

¹²⁹ *NRSJC1/4* fo. 95v.

¹³⁰ *NRSJC1/4* fo. 63v.

¹³¹ *NRSJC1/4* fo. 64v-65r.

Appendix B: List of Relevant Statutes, 1515-1540

All excerpts taken from Keith M. Brown et al, eds. *The Records of the Parliaments of Scotland to 1707*. St Andrews, 2007-2014. [<http://www.RPS.ac.uk/>]

***RPS*, A1515/7/3 (12 July 1515)**

An act concerning the Borders

Item, because the crimes of theft and violent robbery are so commonly used amongst the king's lieges, and for staunching of the same, it is statute and ordained in this present parliament that where any of the king's lieges express a grievance or complain upon a thief that has reived or stolen his gear or his men's, and is in service or submission of any man and shows the same to the man that he is in service with, and would summon him to the law for the same, this man that this thief or reiver is in service with, or finds him with him or under his submission, shall be held and obliged to produce and bring him to the law before the justice, sheriffs or any others that have knowledge to do justice upon such persons, committers of such crimes, at days and places affixed to them to underlie the same, or else shall deliver the said thief or reiver to the complainer, to be brought to the law and execute justice upon as said is; and if his master or sustainer of this thief or reiver refuses to do the same, he shall be held art and partaker of his evil deeds and shall be accused thereof as the principal thief or reiver, and also shall restore and satisfy to the complainer the goods reived or stolen from him; and if this complainer, after he has arrested this thief or delivered him as said is, would make agreement with the said thief and take thift-bute and put him from the law, in that case he shall underlie the law and be accused thereof as principal thief or reiver; and if he arrests and accuses him of the said theft or robbery and is found innocent thereof, the said complainer shall be held and obliged to give to the said man that he slanders innocently £10 to make amends for the said slander.

***RPS*, 1524/11/13 (16 November 1524)**

An act concerning justice

Item, it is devised and statute that there be chosen immediately certain reputable lords and persons of the three estates that are of the best knowledge and experience, who shall sit upon the session and begin the same immediately and thereafter continue and administer justice evenly to all parties, both poor and rich, without hostility, favour or affection, keeping the order of the table, notwithstanding any requests of our sovereign lord or queen's grace in opposition thereof, because they have declared their mind according thereto.

***RPS*, 1524/11/14 (16 November 1524)**

An act concerning the justiciary court

Item, that the justice or his deputy, sufficient and fitting thereof, remain continually in Edinburgh or with the king's grace for the administration of justice in criminal actions as shall occur for the time pertaining to his office.

RPS, 1524/11/15 (16 November 1524)

An act concerning theft

Item, as concerns the staunching of theft throughout all the realm and especially in Liddesdale and upon the borders, it is statute and ordained that all the lords and headmen within the said boundaries be bound for their men, tenants and servants and others within their boundaries for the keeping of good rule as shall be thought expedient by the lords of the articles.

RPS, 1524/11/15 (25 February 1525)

An act concerning the rule of the Borders

Item, it is concluded, statute and ordained for the staunching of theft, robbery and other inconvenients on the borders that letters be directed to command and charge all the headmen and clans of the Merse, Teviotdale, Liddesdale, Ewesdale, Eskdale and Annandale, that they, and every one of them, deliver pledges in Edinburgh to the lords of council for good rule as shall be devised and thought expedient; and whoever fails therein, that provision is to be made thereof so that the lieges of our sovereign lord may live in peace and in rest in time to come.

RPS, 1525/2/13 (3 August 1525)

An act concerning arson and rape

Item, it is statute and ordained that the committers of the crimes of fire-raising and ravishing of women be put under surety to the law, as with the crimes of slaughter and mutilation, and in case of the failure to find surety, to denote them rebels, as with slayers of men. And also because the burning of corn in barnyards is so great an offence against the common good that, therefore, respites or remissions shall never be given at any time to come to any persons who burn corn in stacks or barns, but the committers thereof are to be condemned to the death or banished from the realm for ever.

RPS, 1525/7/52 (3 August 1525)

An act concerning the procession of ayres

Item, it is statute and ordained in this present parliament that, because the process of justice ayres is so long and protracted that in many years parties who are hurt and offended get no justice, trespasses and crimes pass unpunished, which is the occasion of many persons to commit crimes, trusting no hasty punishment or correction, that therefore in time to come the processes of justice ayres and justice courts be imperative at the second ayre or court so that the fugitives not compearing at the second ayre or court should, and shall be, denounced [as] rebels of the king and put to his horn and all their goods his escheat. And also because many persons indicted to justice ayres charged with surety to justice courts customarily absent themselves and flee, and may absent themselves and flee, so that crownars cannot comprehend them personally to arrest them, in that case in all times to come it shall suffice for the crownar to come to the dwelling place of the persons indicted and, there, to give them warning and charge that they compear in the justice ayre next to follow to answer to such accusations of crimes as shall be put to them, and thereafter upon the next Sunday or festival day

following the said charge that the crownar make open and public intimation of his warning, charge and premonition made to the said persons by their names in their parish kirks, which charges, premonitions and intimations shall stand to them for sufficient arrestments, the crownar proving the same by his oath and a witness as is the old custom. And, similarly, the king's officers, making warning to private justice courts of any persons for any crimes not deserving rebellion, in case of failure to find surety, that they keep the same order and process, which shall be held and considered for sufficient finding of surety under the pain of law, the actions not being for slaughter or mutilation; and ordain the justice general upon any manner of crimes, committed or to be committed, to set justice courts, particularly when there is need for the punishment of particular faults and crimes that occur, such as recent slaughter, mutilation, fire, ravishing of women, depredation, masterful theft and all other such crimes, at the discretion of the lords for staunching of trespassers and bringing of the realm to peace and quiet, because general justice ayres cannot be ready at all times and the delay of punishment generates and gives new occasion for trespass.

RPS, 1526/6/42 (21 June 1526)

An act concerning murder and disorder

Item, regarding the article made to provide remedy against the cruelty and falsehood of those who, under trust with deceit, commit cruel slaughters, and against those who, during the night, commit slaughter, the burning of houses, cornyards and corn, and who slay any of the king's council or ambush men in their own houses and slay them, it is statute and ordained by the three estates in this present parliament, for the eschewing of such cruelty in time to come, that no respite or remission shall be given until our sovereign lord's age of 25 years to any manner of person or persons whomsoever who, under trust with deceit, commit slaughter, or to those who, during the night, make slaughter, burn houses, corn, cornyards or slay any of the king's council or ambush men in their own houses and slay them, but all such persons are to be called according to the laws of the realm and extreme justice done upon them with all rigour, so that in case such committers of cruelty might, by circumvention, obtain respites or remissions, the same, if any be given, are to be of no value, force nor effect in time to come.

RPS, 1526/11/59 (24 November 1526)

An act concerning trespassers

Item, it is statute and ordained in this present parliament that justice ayres be held universally through the realm for the staunching of inconvenients and punishing of trespassers so that our sovereign lord's true lieges may live in peace and tranquility in time to come, and to begin in Fife on 14 January next to come, and from there to Dundee, Kincardine, Aberdeen and so north through every shire to Inverness, and thereafter to begin on this side of the water of Forth at such parts as shall be seen most expedient by our sovereign lord and the lords being with him for the time, and to pass through every shire of the realm for the welfare of the same; and presently discharges all commissions of justiciary granted and given to whomsoever persons within the realm for that, all criminal causes which are to be decided before our sovereign's justice having passage before him and his deputies and in no other way; and that our sovereign lord be personally present at the holding of the said justice ayres if it please his grace;

and that [*James Stewart*], earl of Moray be justice general in all the bounds of his lieutenantry and with all profits granted to him in his commission with the advice of the treasurer; and that no justice ayres be held in any part unless our sovereign lord and his justice be present.

RPS, 1526/11/64 (24 November 1526)

An act concerning arson

Item, regarding the article of slaughters, murders and burnings, it is statute and ordained that the acts made thereupon of before and the old laws be kept, with this addition: that whoever comes and burns folks in their houses, and all burning of houses and corn and wilful fire-raising are treason and crimes of lese-majesty, because such deeds are exorbitant and more against the common good than many other crimes; and that particular justice courts or general justice ayres be set thereto as shall please the king's grace, his council and the justice for the time, with their consent, providing that it shall be lawful to any man to pursue and follow common thieves and rebels to take them, and if they enter in any house, that it shall be lawful to invade, break or destroy the said houses by fire or otherwise, to the intent and effect of taking or slaying of the said common thieves or rebels, for which there shall follow upon the doers no pain, accusation, crime nor offence, but to be free thereof in all time.

RPS, 1535/31 (12 June 1535)

An act for building of strengths on the Borders

Item, it is statute and ordained for the safety of men, their goods and gear upon the borders in time of war and all other troublesome times, that every landed man dwelling in the inland or upon the borders having there a hundred pound land of new extent shall build a sufficient barmkin† upon his heritage and lands in the most suitable place, of stone and lime, containing three score foot of the square, one ell thick and six ells high, for the protection and defence of him, his tenants and their goods in troublesome times, with a tower in the same for himself if he thinks it expedient, and that all other landed men of smaller rent and revenue build palisades and great strengths as they please for the safety of themselves, men, tenants and goods, and that all the said strengths, barmkins and palisades be built and completed within two years under the pain.

RPS, 1535/35 (12 June 1535)

An act concerning forestallers

Item, it is statute and ordained that no forestallers be found buying victuals, fish, meat or other stuff, or the same be presented to the market nor yet in to the market or the time of day statute and ordained thereto, under the pain of imprisonment of their persons and escheating of all such goods sold or arled† by them, that is to say, the two parts to the king's grace, the third part to the sheriff or officer of the shire, provost, bailies and burgh officers, or to any others who finds them doing in the contrary hereof.

RPS, 1535/37 (12 June 1535)

An act concerning slaughter with an addition

Item, regarding the execution of the acts of parliament made of before by the progenitors of our sovereign lord upon those who commit slaughter, and for the apprehension of our sovereign lord's rebels and diligence to be made therein by sheriffs and other officers of the realm, both in regality and royalty, it is statute and ordained that the acts made thereupon of before be put to execution in all points, and that all sheriffs, stewarts, bailies and all other officers, both to burgh and to land, as well in regality as in royalty, do their diligence to search and seek all our sovereign lord's rebels and those being at his horn, wherever they may be apprehended with their bailiaris, take and bring them to our sovereign lord's justice to be justified for their demerits under the pain of loss of their offices for three years, if they have the same in heritage, and if they have the same for years, that they shall lose the same forever,† and to be accused upon their diligence in that behalf in the justice ayre or at other particular diets as shall please the king's grace; and that no manner of man within this realm wilfully or knowingly harbour, aid or maintain or do favours to any of our sovereign lord's rebels and those being at his horn within their houses, lands, bounds or bailiaris under the pain of death and confiscation of all their movable goods, and to be called and accused hereupon, either at justice courts or particular diets as is said; and if the officers of the regality be found negligent, they being required hereto, it shall be lawful to the king's sheriffs to put the said acts to execution within the said regality after the form and tenor of the same, and that the justice clerk enquire diligently hereupon and take dittay as appropriate.

RPS, 1535/50 (17 June 1535)

An act concerning procedure: lords of articles' ruling on interpretation of law

On the which day, in the matter referred by the lords of session to the lords three estates of parliament for the interpretation of certain laws of the realm, shown and produced before the said lords of session in an action moved before them and yet depending by James Kennedy of Blairquhan against Thomas MacLellan of Gelston, for the mails and duties of the lands of Castell Cruke and Killemanocht, with the pertinents, lying within the sheriffdom of Wigtown, pertaining to the said Thomas in heritage, held of the said James immediately in chief, and through his being at the horn above a year and a day, the mails and duties of the said lands by the laws of the realm pertain and should pertain to the said James for the said Thomas's lifetime. And because the said laws were variant in themselves and, therefore, were referred to the interpretation of the estates of parliament if the same concerns simple slaughter or not, and should have place in that matter or not, as is contained in the act made thereupon at more length, of the date at Edinburgh, 4 March 1534 [1535], both the said parties being personally present with their procurators and forespeakers, the said laws and other reasons and allegations being heard, seen and understood, the lords of the articles, being fully advised therewith, find that the use in times bygone has been that the mails and duties of the lands of those that have been a year and a day at the horn held of other superiors than the king's grace, a year and a day being past, returns again to the superiors of the said lands for the lifetime of those who sustained such processes of

horning, a year and a day as is said, except crimes of treason and lese-majesty, and find that the said laws should be so interpreted and used in times coming.

RPS, 1535/51 (17 June 1535)

That justice ayres and processes be peremptorily at the second court, and how crownars shall make their arrests, and that great crimes be called at particular diets with the pains of those who complain wrongfully

Item, our sovereign lord, with the advice of his three estates of parliament, ratifies and approves the act and statute made of before in his highness's parliament held at Edinburgh, 10 July 1525, regarding the sitting of justice ayres to the second ayre as ayre and court peremptory and other points contained in the same, with correction and addition as follows after: Item, it is statute and ordained in this present parliament that, because the process of justice ayres is so long and protracted that in many years parties who are hurt and offended get no justice, trespasses and crimes pass unpunished, which is the occasion for many persons to commit crimes, trusting no hasty punishment or correction, that therefore in time to come the process of justice ayres and justice courts be peremptorily at the second ayre or court so that fugitives not compearing at the second ayre or court should be and shall be denounced as the king's rebels and put to his horn and all their goods his escheat. And also because many persons indicted to justice ayres are charged with surety to justice courts and customarily absent themselves and flee, and may absent themselves and flee, so that crownars cannot comprehend them personally to arrest them, in that case in all times to come it shall suffice the crownar to come to the dwelling place of the persons indicted and, there, give them warning and charge that they compear in the justice ayre then next to follow to answer to such accusations of crimes as shall be put to them, and thereafter upon the next Sunday or festival day following the said charge that the crownar make open and public intimation of his warning, charge and premonition made to the said persons by their names in their parish kirks, which charges, premonitions and intimations shall stand to them for sufficient arrestments, the crownar proving the same by his oath and a witness as is the old custom. And likewise the king's officers, making warning to private justice courts of any persons for any crimes not deserving rebellion, in case of failure to find surety, that they keep the same order and process, which shall be held and considered for sufficient finding of surety under the pain of the law, the actions not being for slaughter or mutilation; and ordains the justice general upon any manner of crimes, committed or to be committed, to set justice courts particularly when there is need for punishment of particular faults and crimes that occur, such as recent slaughter, mutilation, fire, ravishing of women, and as for depredations, masterful thefts and spoilation, that particular diets be set thereof at the discretion of the lords, the matter being first civilly decided before them.

And because diverse persons in times bygone have raised suchlike letters to particular diets and have absented both themselves and the letters, and have not come to pursue their actions and, thereby, have abused the justice and brought the country to great expense, for remedy hereof it is ordained that in times coming the keepers of the signet shall answer no letters for calling of any person and parties to such particular diets unless the same is subscribed by the clerk writer to the signet and the justice clerk or his deputy, and that the justice clerk or his deputy shall take certain surety of the parties, purchasers of such letters, that they shall bring the same again to them, or the

day set thereto, duly executed and endorsed under the pains contained in the letters that the party is called upon; and if any persons be called upon mutilation and the same is found to be no mutilation, the party pursuer shall content and pay the fine of £10, less or more, to the party pursued and expenses to the assize at the discretion of the justice and his assizer; and if one party calls any multitude for slaughter, mutilation or other crimes at such particular diets whereby the innocents are put to great trouble, charge and expense, and it is found that the said multitude are innocent of the deed, the party pursuer shall pay a fine of £10, less or more, to the party pursued and expenses to the assize at the sight and discretion of the justice and his assizers as they think cause; and if the purchasers of such letters be not accountable in goods for payment of the said expenses, their persons shall be put in prison and there to remain a year and a day and further enduring the will of his grace the king.

RPS, 1535/52 (17 June 1535)

An act for eschewing of theft, stealing and robbery

Item, because the crimes of theft and violent robbery are so commonly practiced amongst the king's lieges, and for staunching of the same, it is statute and ordained in this present parliament that where any of the king's lieges express a grievance or complains upon a thief that has reived or stolen his gear or his men's, and is in service or in submission to the authority of any man and shows the same to the man that he is in service with, and would accuse him before the law for the same, this man that this thief or reiver is in service with, or finds him with him or under his submission, shall be held and obliged to produce and bring him to the law before the justice, sheriffs or any other that has knowledge to do justice upon such persons, committers of such crimes, at days and places affixed to them to underlie the same, or else shall deliver the said thief or reiver to the complainer to be brought to the law and justified as is said; and if his master or sustainer of this thief or reiver refuses to do the same, he shall be held art and partaker of his evil deeds and shall be accused thereof as the principal thief or reiver, and also shall restore and satisfy to the complainer the goods reived and stolen from him; and if this complainer, after he has arrested this thief or delivered to him as is said, would make agreement with the said thief and take thift-bute[†] and put him from the law, in that case he shall underlie the law and be accused thereof as the principal thief or reiver; and if he arrests and accuses him of the said theft or robbery and is found innocent thereof, the said complainer shall be held and obliged to give to the said man that he slanders innocently £10 for amends of the said slander.

RPS, 1535/53 (17 June 1535)

An act declaring that no man ride but in a sober manner

Item, it is statute and ordained that, because there have been great inconveniences and trouble wrought in the country by great persons through convocation of the king's lieges at courts and gatherings, that therefore that no man take upon hand to ride to such courts or gatherings with more persons than they may daily sustain in household, except that it shall be lawful to sheriffs, stewarts, bailies and others the king's officers to ride with a greater number for the execution of justice and bearing forth of the king's authority; and who so does in the contrary thereof shall be called immediately at our

sovereign lord's instance to be punished thereof in his person and goods at the will of his highness.

RPS, 1540/12/8 (10 December 1540)

Declaration of parliament if the king's grace had action or not against the heirs of those that commit lese-majesty

The which day Master Henry Lauder [*of St Germain's*], advocate to our sovereign lord, expounded in the presence of the king's grace and the three estates of parliament how his grace had raised a summons upon the heirs of the late Robert Leslie, to hear his name and memory deleted and extinct for certain points and crimes of lese-majesty committed and done by him before his death and, therefore, all his goods, movable and immovable, pertaining to him at the time of the committing of the said crime and since then to be discerned to pertain to his grace. And because it is murmured that it is a novelty to raise summons and move such an action against a person that is dead, although the common law directly allows the same, nonetheless, for staunching of such murmurs and that his grace intends in no sort to move or do anything except that which he may do justly by the advice of the three estates, therefore, desired the said three estates to advise thereupon, and that his grace may have the judgement of parliament whether he has an action to pursue such a summons or not. The whole estates spiritual, temporal and commissioners of burghs, all in one voice, without variance or discrepancy, have declared and concluded that his grace has just cause and action to pursue the said summons and all other similar summonses of treason done and committed against his person and commonwealth according to the common law, good, equity and reason, notwithstanding there is no special law, act nor provision of the realm made thereupon of before.

RPS, 1540/12/13 (10 December 1540)

An act declaring that the sheriffs and other officers be personally present at the three head courts

Item, for the maintaining of justice and putting of good order thereto throughout all this realm, it is statute and ordained that all stewarts, bailies and sheriffs hold all their three head courts by themselves in proper person, unless they have a just and lawful excuse through being in the service of his grace the king and to prove the same by his grace's writing, or through sickness that they may not travel. And that the authority of his grace the king be not taken lightly and his lieges left in need of dutiful administration of justice, it is likewise statute and ordained that all barons and freeholders that owe suit and presence in the said courts be there personally and the absentees be fined with all rigour; and whoever owes just suit, that they send their suitors, honest and qualified men able to decide upon any cause according to the said law, and that the said sheriffs, stewarts and bailies admit no others, as he will answer to the king's grace; and whoever comes to the court, that he answer for himself and remain until the same is done and ended, and to pass upon inquests and assize and assist the king's sheriffs, stewarts and bailies in the administration of justice and performing of their offices and service according to their infetments, as they will answer to the king's grace upon their uttermost charge.

RPS, 1540/12/68 (14 March 1541)

An act regarding committers of slaughter, mutilation and harbouring of the king's rebels

Item, regarding the execution of the acts of parliament made of before by our sovereign lord's progenitors upon those who commit slaughter, and for apprehension of our sovereign lord's rebels and diligence to be made therein by sheriffs and other officers of the realm, both in regality and royalty, it is statute and ordained that the acts made thereupon of before be put to execution in all points, and that all sheriffs, stewarts, bailies and all other officers, both to burgh and to land, as well in regality as in royalty, do their diligence to search and seek all our sovereign lord's rebels and those being at his horn, wherever they may be apprehended with their bailiaries, take and bring them to our sovereign lord's justice to be justified for their demerits under the pain of loss of their offices for three years, if they have the same in heritage, and if they have the same for years, that they shall lose the same forever, and to be accused upon their diligence in that behalf in the justice ayre or at other particular diets as shall please the king's grace; and that no manner of man within this realm wilfully or knowingly harbour, aid or maintain or do favours to any of our sovereign lord's rebels and those being at his horn within their houses, lands, bounds or bailiaries under the pain of death and confiscation of all their movable goods, and to be called and accused hereupon, either at justice courts or particular diets as is said; and if the officers of the regality be found negligent, they being required hereto, it shall be lawful to the king's sheriffs to put the said acts to execution within the said regality after the form and tenor of the same, and that the justice clerk enquire diligently hereupon and take dittay as appropriate.

RPS, 1540/12/69 (14 March 1540)

An act for staunching of theft, stealing and robbery

Item, because the crimes of theft, stealing and robbery are so commonly practiced amongst the king's lieges, and for staunching of the same, it is statute and ordained in this present parliament that where any of the king's lieges express a grievance or complain upon a thief that has reived or stolen his gear or his men's, and is in service or in submission to the authority of any man and shows the same to the man that he is in service with, and would accuse him before the law for the same, this man that this thief or reiver is in service with, or finds him with him or under his submission, shall be held and obliged to produce and bring him to the law before the justice, sheriffs or any other that has knowledge to do justice upon such persons, committers of such crimes, at days and places affixed to them to underlie the same, or else shall deliver the said thief or reiver to the complainer to be brought to the law and judged as is said; and if his master or sustainer of this thief or reiver refuses to do the same, he shall be held art and partaker of his evil deeds and shall be accused thereof as the principal thief or reiver, and also shall restore and satisfy to the complainer the goods reived and stolen from him; and if this complainer, after he has arrested this thief or delivered to him as is said, would make agreement with the said thief and take thift-bute[†] and put him from the law, in that case he shall underlie the law and be accused thereof as the principal thief or reiver; and if he arrests and accuses him of the said theft or robbery and is found innocent thereof, the said complainer shall be held and obliged to give to the said man who he slanders innocently £10 for amends of the said slander.

Bibliography

Manuscript Sources

JC1/3-5: *Court books – old Series*. National Records of Scotland, Edinburgh.

Published Primary Sources

Aytoun, William Edmondstone, ed. *The Ballads of Scotland*. Vol 1. 4th ed.
Edinburgh: William Blackwood and Sons, 1870.

Chambers, William and Robert Renwick, eds. *Charters and Documents Relating to the Burgh of Peebles with Extracts from the Records of the Burgh A.D. 1165-1710*. Edinburgh: Scottish Burgh Records Society, 1872.

Dickinson, William C., ed. *The Court Book of the Barony of Carnwath, 1523-1542*.
Edinburgh: Scottish History Society, 1937.

_____. *The Sheriff Court Book of Fife, 1515-1522*. Edinburgh: Scottish Historical Society, 1928.

Fullarton, John, ed. *Records of the Burgh of Prestwick in the Sheriffdom of Ayr, 1470-1782*. Glasgow: Maitland Club, 1834.

Imrie, John, Thomas I. Rae and W. D. Ritchie, eds. *The Burgh Court Book of Selkirk, 1503-45*. Part 1 (1503-31). Edinburgh: Scottish Record Society, 1960.

_____. *The Burgh Court Book of Selkirk, 1503-45*. Part 2 (1531-41). Edinburgh: Scottish Record Society, 1969.

Littlejohn, David, ed. *Records of the Sheriff Court of Aberdeenshire*. Vol 1.
Aberdeen: New Spalding Club, 1904.

Maley, Teresa and Walter Elliot, eds. *Selkirk Protocol Books, 1511: The Protocol Books of John Chepman, 1511-36 and 1545-47, Sir John Chepman, 1536-43, John and Ninian Brydin and Other Notaries, 1526-36, and John Brydin, 1530-37*. Edinburgh: Stair Society, 1993.

Marwick, Sir James D., ed. *Extracts from the Records of the Burgh of Edinburgh, 1403-1528*. Edinburgh: Scottish Burgh Records Society, 1869.

_____. *Extracts from the Records of the Burgh of Edinburgh, 1528-1557*. Edinburgh: Scottish Burgh Records Society, 1871.

Pitcairn, Robert, ed. *Criminal Trials in Scotland, from A.D. 1488 to A.D. 1624: Embracing the Entire Reigns of James IV, James V, Mary Queen of Scots, and James VI*. Edinburgh: Bannatyne Club, 1833.

Renwick, Robert ed., *Extracts from the Records Relating to the Royal Burgh of Lanark, 1150-1722*. Glasgow: Printed by Carson & Nichol, 1893.

_____. *Charters and Other Documents Relating to the Royal Burgh of Stirling, 1519-1666. With Appendix, 1295-1666*. Glasgow: Printed for the Glasgow Stirlingshire and Sons of the Rock Society, 1887.

Todd, Margo. *The Perth Kirk Session Books, 1577-1590*. Woodbridge: Boydell Press, 2012.

Webster, James Moir and Archibald A. M. Duncan. *Regality of Dunfermline Court Book, 1531-1538*. Dunfermline: Carnegie Dunfermline Trust, 1953.

Online Sources

Brown, Keith M., et al, eds. *The Records of the Parliaments of Scotland to 1707*. St Andrews, 2007-2014. [<http://www.rps.ac.uk/>].

Goodare, Julian, Lauren Martin, Joyce Miller and Louise Yeoman, eds. *The Survey of Scottish Witchcraft*. [<http://www.shca.ed.ac.uk/witches/>].

Meikle, Maureen M. 'Armstrong, John [Johnnie], of Gilnockie (d.1530)'. *Oxford Dictionary of National Biography*. Oxford University Press, 2004. [<http://www.oxforddnb.com/view/article/658>].

Rennie, Susan, ed. *Dictionary of the Scots Language/Dictionar o the Scots Leid*. [www.dsl.ac.uk].

Secondary Sources

Amussen, Susan Dwyer. *An Ordered Society: Gender and Class in Early Modern England*. Oxford: Oxford University Press, 1988.

_____. 'Gender, Family and the Social Order, 1560-1725'. In *Order and Disorder in Early Modern England*. Edited by Anthony Fletcher and John Stevenson, 196-217. Cambridge: Cambridge University Press, 1985.

Armstrong, Jackson W. 'The "Fyre of Ire Kyndild" in the Fifteenth-Century Scottish Marches'. In *Vengeance in the Middle Ages: Emotion, Religion and Feud*. Edited by Susanna A. Throop and Paul R. Hyams, 51-84. Farnham: Ashgate, 2010.

_____. 'The Justice Ayre in the Border Sherifffdoms, 1493-1498'. *The Scottish Historical Review* 192, no. 1 (2013): 1-37.

Barclay, Katie. "'And Four Years Space, being Man and Wife, they Loveingly Agreed": Balladry and Early Modern Understandings of Marriage'. In *Finding the Family in Medieval and Early Modern Scotland*. Edited by Elizabeth Ewan and Janay Nugent, 23-34. Aldershot: Ashgate, 2008.

- Beattie, Cordelia. “‘Living As a Single Person’: Marital Status, Performance and the Law in Late Medieval England”. *Women’s History Review* 17, no. 3 (2008): 327-40.
- _____. ‘Gender and Femininity in Medieval England’. In *Writing Medieval History*. Edited by Nancy F. Partner, 153-70. London: Hodder Arnold, 2005.
- _____. ‘Governing Bodies: Law Courts, Male Householders, and Single Women in Late Medieval England’. In *The Medieval Household in Christian Europe, c. 850-c. 1550: Managing Power, Wealth and the Body*. Edited by Cordelia Beattie, Anna Maslakovic and Sarah Rees Jones, 199-220. Turnhout: Brepolis, 2003.
- _____. *Medieval Single Women: The Politics of Social Classification in Late Medieval England*. Oxford: Oxford University Press, 2007.
- Beattie, John M. *Crime and the Courts in England, 1660-1800*. Princeton: Princeton University Press, 1986.
- Bellamy, John G. *The Criminal Trial in Later Medieval England: Felony before the Courts from Edward I to the Sixteenth Century*. Toronto: University of Toronto Press, 1998.
- Black, Robert. ‘A Historical Survey of Delictual Liability in Scotland for Personal Injuries and Death’. Part 1 in *Comparative and International Law Journal of Southern Africa* 8, no. 1 (1975): 46-70.
- Boardman, Stephen and Michael Lynch. ‘The State of Late Medieval and Early Modern Scottish History’. In *Freedom and Authority: Scotland c.1050-c.1650. Historical and Historiographical Essays Presented to Grant G. Simpson*. Edited by Terry Brotherstone and David Ditchburn, 44-59. East Linton: Tuckwell Press, 2000.
- Brown, Keith M. *Bloodfeud in Scotland, 1573-1625: Violence, Justice and Politics in an Early Modern Society*. Edinburgh: John Donald, 2003.
- _____. *Noble Power in Scotland from the Reformation to the Revolution*. Edinburgh: Edinburgh University Press, 2011.
- _____. *Noble Society in Scotland: Wealth, Family and Culture from the Reformation to the Revolution*. Edinburgh: Edinburgh University Press, 2000.
- Cameron, Jamie. *James V: The Personal Rule, 1528-1542*. East Linton: Tuckwell Press, 1998.
- Capp, Bernard. ‘Separate Domains? Women and Authority in Early Modern England’. In *The Experience of Authority in Early Modern England*. Edited by Paul Griffiths, Adam Fox and Steve Hindle, 117-145. Basingstoke: Macmillan, 1996.

- Caswell, Marisha. 'Coverture and the Criminal Law in England, 1640-1760'. In *Married Women and the Law: Coverture in England and the Common Law World*. Edited by Tim Stretton and Krista J. Kesselring, 88-112. Montreal: McGill-Queen's University Press, 2013.
- Cathcart, Alison. "'Inressyng of Kyndnes, and Renewing off Thair Blut": The Family, Kinship and Clan Policy in Sixteenth-Century Scottish Gaeldom'. In *Finding the Family in Medieval and Early Modern Scotland*. Edited by Elizabeth Ewan and Janay Nugent, 127-38. Aldershot: Ashgate, 2008.
- Clark, Sandra. *Women and Crime in the Street Literature of Early Modern England*. Basingstoke: Palgrave Macmillan, 2003.
- Cooper, Thomas M. *The Dark Age of Scottish Legal History, 1350-1650*. Glasgow: Jackson, 1952.
- Dawson, Jane E. A. *Scotland Re-formed, 1488-1587*. Edinburgh: Edinburgh University Press, 2007.
- Dean, Trevor. 'Criminal Justice in Mid-Fifteenth-Century Bologna'. In *Crime, Society and the Law in Renaissance Italy*. Edited by Trevor Dean and K. J. P. Lowe, 16-39. Cambridge: Cambridge University Press, 1994.
- _____. *Crime in Medieval Europe, 1200-1500*. Harlow: Longman, 2001.
- DesBrisay, Gordon. 'Twisted by Definition? Women under Godly Discipline in Seventeenth-Century Scottish Towns'. In *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*. Edited by Yvonne Galloway Brown and Rona Ferguson, 137-55. East Linton: Tuckwell Press, 2002.
- Dickinson, William C. 'The High Court of Justiciary'. In *An Introduction to Scottish Legal History*, 408-12. Edinburgh: Stair Society, 1958.
- _____. *Scotland from the Earliest Times to 1603*. Edited by Archibald A. M. Duncan. Oxford: Clarendon Press, 1977.
- Dolan, Frances Elizabeth. *Dangerous Familiars: Representations of Domestic Crime in England, 1550-1700*. Ithaca: Cornell University Press, 1994.
- Dunn, Caroline. *Stolen Women in Medieval England: Rape, Abduction and Adultery, 1100-1500*. Cambridge: Cambridge University Press, 2013.
- Ewan, Elizabeth. "'Hamperit in Ane Hony Came": Sights, Sounds and Smells in the Medieval Town'. In *A History of Life in Medieval Scotland, 1000 to 1600*. Edited by Edward J. Cowan and Lizanne Henderson, 109-144. Edinburgh: Edinburgh University Press, 2011.

- _____. 'Crime or Culture? Women and Daily Life in Late-Medieval Scotland'. In *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*. Edited by Yvonne Galloway Brown and Rona Ferguson, 117-36. East Linton: Great Britain, 2002.
- _____. 'A Land Fit for Heroines? The Making of *The Biographical Dictionary of Scottish Women*'. *Journal of Scottish Historical Studies* 26, no. 1/2 (2006): 1-10.
- _____. 'A New Trumpet? The History of Women in Scotland 1300-1700'. *History Compass* 7, no. 2 (2009): 431-446.
- _____. 'A Realm of One's Own? The Place of Medieval and Early Modern Women in Scottish History'. In *Gendering Scottish History: An International Approach*. Edited by Terry Brotherstone, Deborah Simonton and Oonagh Walsh, 19-38. Glasgow: Cruithne Press, 1999.
- _____. 'Disorderly Damsels? Women and Interpersonal Violence in Pre-Reformation Scotland'. *The Scottish Historical Review* 89, no. 2 (October 2010): 153-171.
- _____. "'Many Injurious Words": Defamation and Gender in Late Medieval Scotland'. In *History, Literature and Music in Scotland, 700-1560*. Edited by Russell A. McDonald, 163-86. Toronto: University of Toronto Press, 2002.
- _____. 'Scottish Portias: Women in the Courts in Mediaeval Scottish Towns'. *Journal of the Canadian Historical Association*, n.s., 3 (1992): 27-43.
- _____. 'Women's History in Scotland: Towards an Agenda'. *Innes Review* 46, no. 2 (1995): 155-64.
- _____. 'Alison Rough: A Woman's Life and Death in Sixteenth-Century Edinburgh'. *Women's History Magazine* 45 (2003): 4-13.
- Falconer, J. R. D. "'Mony Utheris Divars Odious Crymes": Women, Petty Crime and Power in Later Sixteenth Century Aberdeen'. *Crime and Misdemeanours: Deviance and the Law in Historical Perspective* 4, no. 1 (2010): 7-36.
- _____. 'A Family Affair: Households, Misbehaving and the Community in Sixteenth-Century Aberdeen'. In *Finding the Family in Medieval and Early Modern Scotland*. Edited by Elizabeth Ewan and Janay Nugent, 139-50. Aldershot: Ashgate, 2008.
- Finch, A. J. 'The Nature of Violence in the Middle Ages: An Alternative Perspective'. *Historical Research* 70, no. 173 (1997): 249-268.
- Ferguson, Catherine M. F. 'Law and Order on the Anglo-Scottish Border 1603-1707'. PhD diss. University of St Andrews, 1981.
- Gane, Christopher. 'The Effect of a Remission in Scots Law'. *Juridical Review* 25, no. 5 (1980): 18-46.

- Gauvard, Claude. 'Fear of Crime in Late Medieval France'. In *Medieval Crime and Social Control*. Edited by Barbara Hanawalt and David Wallace, 1-49. Minneapolis: University of Minnesota Press, 1999.
- Goodare, Julian. *State and Society in Early Modern Scotland*. Oxford: Oxford University Press, 1999.
- Goodman, Anthony E. 'The Impact of Warfare on the Scottish Marches, c.1481-c.1513'. In *Conflicts, Consequences and the Crown in the Late Middle Ages*. Edited by Linda Clark, 195-211. Woodbridge: Boydell Press, 2007.
- Gowing, Laura. 'Women, Status and the Popular Culture of Dishonour'. *Transactions of the Royal Historical Society* 6th ser., 6 (1996): 225-34.
- _____. *Domestic Dangers, Women, Words and Sex in Early Modern London*. Oxford: Oxford University Press, 1996.
- _____. 'Language, Power and the Law: Women's Slander Litigation in Early-Modern London. In *Women, Crime and the Courts and Early Modern England*. Edited by Jennifer I. Kermode and Garthine Walker, 26-47. London: University College, London, 1994.
- Graham, Michael F. 'The Civil Sword and the Scottish Kirk'. In *Later Calvinism: International Perspectives*. Edited by Fred W. Graham, 237-48. Kirksville: Sixteenth Century Journal, 1994.
- _____. 'Women and the Church Courts in Reformation-era Scotland'. In *Women in Scotland, c.1100-c.1750*. Edited by Elizabeth Ewan and Maureen M. Meikle, 187-200. East Linton: Tuckwell Press, 1999.
- Greenshields, Malcolm. *An Economy of Violence in Early Modern France: Crime and Justice in the Haute Auvergne, 1587-1664*. University Park: Pennsylvania State University Press, 1994.
- Groundwater, Anna. 'The Chasm between James VI and I's Vision of the Orderly "Middle Shires" and the "Wicket" Scottish Borderers between 1587 and 1625'. *Canadian Journal of History* 48, no. 1 (2013): 1-27.
- _____. 'The Obligations of Kinship and Alliance within Governance in the Scottish Borders 1528-1625'. *Canadian Journal of History* 48, no. 1 (2013): 1-28.
- _____. *The Scottish Middle March, 1573-1625: Power, Kinship, Allegiance*. London: Royal Historical Society, 2010.
- Hanawalt, Barbara. *Of Good and Ill Repute: Gender and Social Control in Medieval England*. New York: Oxford University Press, 1998.
- _____. 'The Female Felon in Fourteenth-Century England'. *Viator* 5 (January 1974): 253-268.

- Hardgrave, Jason. 'The Formation of Women's Legal Identity in Trecento Venice'. *Essays in Medieval Studies* 22 (2005): 41-52.
- Henderson, Lizanne. "'Detestable Slaves of the Devil": Changing Ideas about Witchcraft in Sixteenth-Century Scotland'. In *A History of Life in Medieval Scotland, 1000 to 1600*. Edited by Edward J. Cowan and Lizanne Henderson, 226-256. Edinburgh: Edinburgh University Press, 2011.
- Hollander, Melissa. 'Discipline and Domestic Violence in Edinburgh, 1560-1625'. *Studies in Church History* 43 (2007): 307-16.
- Houston, Robert A. *The Coroners of Northern Britain c. 1300-1700*. Basingstoke: Palgrave Macmillan, 2014.
- _____. 'Women in the Economy and Society of Scotland, 1500-1800'. In *Scottish Society 1500-1800*. Edited by Robert A. Houston and Ian D. Whyte, 118-47. Cambridge: Cambridge University Press, 1989.
- Ingram, Martin. "'Scolding Women Cucked or Washed": A Crisis in Gender Relations in Early Modern England?' In *Women, Crime and the Courts in Early Modern England*. Edited by Jennifer I. Kermode and Garthine Walker, 48-80. London: University College, London, 1994.
- _____. 'Law, Litigants and the Construction of "Honour": Slander Suits in Early Modern England'. In *The Moral World of the Law*. Edited by Peter R. Coss, 134-60. Cambridge: Cambridge University Press, 2000.
- Kesselring, Krista J. "'Berwick is our England": Local and National Identities in an Elizabeth Border Town'. In *Local Identities in Late Medieval and Early Modern England*. Edited by Norman L. Jones and Daniel Woolf, 92-112. Basingstoke: Palgrave Macmillan, 2007.
- Kilday, Anne-Marie. 'Maternal Monsters: Murdering Mothers in South-West Scotland, 1750-1815'. In *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*. Edited by Yvonne Galloway Brown and Rona Ferguson, 156-179. East Linton: Tuckwell Press, 2002.
- _____. "'The Lady-Killers": Homicidal Women in Early Modern Britain'. In *Assaulting the Past: Violence and Civilization in Historical Context*. Edited by Katherine Denise Watson, 203-21. Newcastle-upon-Tyne: Cambridge Scholars, 2007.
- _____. "'That Women are but Men's Shadows": Examining Gender, Violence and Criminality in Early Modern Britain'. In *Gender in Late Medieval and Early Modern Europe*. Edited by Marianna Murayeva and Raisa Maria Rovio, 53-69. Oxford: Routledge, 2013.

- Knox, Andrea. "Barbarous and Pestiferous Women": Female Criminality, Violence and Aggression in Sixteenth- and Seventeenth-Century Scotland and Ireland'. In *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*. Edited by Yvonne Galloway Brown and Rona Ferguson, 13-31. East Linton: Tuckwell Press, 2002.
- Larner, Christina. *Enemies of God: The Witch-Hunt in Scotland*. Baltimore: Johns Hopkins University Press, 1981.
- Laughton, Jane. 'Women in Court: Some Evidence from Fifteenth-Century Chester'. In *England in the Fifteenth Century: Proceedings of the 1992 Harlaxton Symposium*. Edited by Nicholas Rogers, 89-99. Stamford: Paul Watkins, 1994.
- Lawson, P. G. 'Lawless Juries? The Composition and Behavior of Hertfordshire Juries, 1573-1624'. In *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*. Edited by James S. Cockburn and Thomas A. Green, 117-157. Princeton: Princeton University Press, 1988.
- Lenman, Bruce and Geoffrey Parker. 'Crime and Control in Scotland, 1500-1800'. *History Today* (1980): 13-17.
- Lesnick, Daniel R. 'Insults and Threats in Medieval Todi'. *Journal of Medieval History* 17, no. 1 (1991): 71-90.
- MacQueen, Hector L. 'Some Notes on Wrang and Unlaw'. In *Miscellany Five by Various Authors*. Edited by Hector L. MacQueen, 13-26. Edinburgh: Stair Society, 2006.
- Maddern, Philippa C. *Violence and Social Order: East Anglia, 1422-1442*. Oxford: Clarendon Press, 1992.
- Marshall, Rosalind. *Virgins and Viragos: A History of Women in Scotland 1080-1980*. Chicago: Academy Chicago, 1983.
- Martin, Lauren. 'The Devil and the Domestic: Witchcraft, Quarrels and Women's Work in Scotland'. In *The Scottish Witch-Hunt in Context*. Edited by Julian Goodare, 73-89. Manchester: Manchester University Press, 2002.
- Martin, Randall. *Women and Murder in Early Modern News Pamphlets and Broadside Ballads, 1573-1697*. Aldershot: Ashgate, 2005.
- Mayhew, Nicholas. 'Women in Aberdeen at the End of the Middle Ages'. In *Gendering Scottish History: An International Approach*. Edited by Terry Brotherstone, Deborah Simonton and Oonagh Walsh, 142-155. Glasgow: Cruithne Press, 2000.
- McIntosh, Marjorie K. *Controlling Misbehavior in England, 1370-1600*. Cambridge: Cambridge University Press, 1998.

- McLane, Bernard W. 'Juror Attitudes toward Local Disorder'. In *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*. Edited by James S. Cockburn and Thomas A. Green, 36-64. Princeton: Princeton University Press, 1988.
- Meikle, Maureen M. 'The Invisible Divide: The Greater Lairds and the Nobility of Jacobean Scotland'. *The Scottish Historical Review* 71 (1992): 70-87.
- _____. 'Flodden to the Marian Civil War: 1513-1573'. In *Scotland: The Making and Unmaking of the Nation c. 1100-1707*. Edited by Bob Harris and Alan R. MacDonald, 1-17. Dundee: Dundee University Press, 2006.
- _____. 'Victims, Viragos and Vamps: Women of the Sixteenth-Century Anglo-Scottish Frontier'. In *Government, Religion and Society in Northern England 1000-1700*. Edited by John C. Appleby and Paul Dalton, 172-184. Stroud: Sutton Publishing, 1997.
- Miller, Edward. *War in the North: The Anglo-Scottish Wars of the Middle Ages*. The St. John's College, Cambridge, Lecture. Hull: 1960.
- Moir, Scott. 'The Crucible: Witchcraft and the Experience of Family in Early Modern Scotland'. In *Finding the Family in Medieval and Early Modern Scotland*. Edited by Elizabeth Ewan and Janay Nugent, 49-59. Aldershot: Ashgate, 2008.
- Neal, Derek. 'Masculine Identity in Late Medieval English Society and Culture'. In *Writing Medieval History*. Edited by Nancy Partner, 171-188. London: Hodder Arnold, 2005.
- Neville, Cynthia J. 'Remembering the Legal Past: Anglo-Scottish Border Law and Practice in the Later Middle Ages'. In *North-East England in the Later Middle Ages*. Edited by Christian D. Liddy and Richard H. Britnell, 43-56. Woodbridge: Boydell Press, 2005.
- _____. 'Common Knowledge of the Common Law in Later Medieval England'. *Canadian Journal of History* 29 (1994): 461-478.
- _____. 'War, Women and Crime in the Northern English Border Lands in the Later Middle Ages'. In *The Final Argument: The Imprint of Violence of Society in Medieval and Early Modern Europe*. Edited by Donald J. Kagay and L. J. Andrew Villalon, 163-75. Woodbridge: Boydell Press, 1998.
- _____. 'Royal Mercy in Later Medieval Scotland'. *Florilegium* 29 (2012): 1-32.
- _____. 'Border Law in Late Medieval England'. *Journal of Legal History* 9 (1988): 335-56.
- _____. 'Gaul Delivery in the Border Counties, 1439-1459: Some Preliminary Observations'. *Northern History* 19 (1983): 45-60.

- _____. 'The Law of Treason in the English Border Counties in the Late Middle Ages'. *Law and History Review* 9 (1991): 1-30.
- _____. *Violence, Custom and Law: The Anglo-Scottish Border Lands in the Later Middle Ages*. Edinburgh: Edinburgh University Press, 1998.
- Ollivant, Simon. *The Court of the Official in Pre-Reformation Scotland: Based on the Surviving Records of the Officials of St. Andrews and Edinburgh*. Edinburgh: Stair Society, 1982.
- Powell, Edward. 'Jury Trial at Gaol Delivery in the Late Middle Ages: The Midland Circuit, 1400-1429'. In *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*. Edited by James S. Cockburn and Thomas A. Green, 78-116. Princeton: Princeton University Press, 1988.
- Rae, Thomas I. *The Administration of the Scottish Frontier: 1513/1603*. Edinburgh: Edinburgh University Press, 1966.
- Sadler, John. *Border Fury: England and Scotland at War 1296-1568*. Harlow: Pearson Education Limited, 2005.
- Sanderson, Margaret H. B. *A Kindly Place? Living in Sixteenth-Century Scotland*. East Linton: Tuckwell Press, 2001.
- Schilling, Heinz. "'History of Crime" or "History of Sin"? -- Some Reflections on the Social History of Early Modern Church Discipline'. In *Politics and Society in Reformation Europe: Essays for Sir Geoffrey Elton on His Sixty-Fifth Birthday*. Edited by E. I. Kouri and Tom Scott, 289-310. New York: St Martin's Press, 1987.
- Scott, Charles. 'The Archives of the High Court of Justiciary'. *Juridical Review* 3 (1891): 197-212.
- Sellar, W. David H. 'Law, Courts and People'. In *A Tale of Two Towns: A History of Medieval Glasgow*. Edited by Neil Baxter, 30-37. Glasgow: Neil Baxter Associates on behalf of Glasgow City Council. 2007.
- Sims, Richard J. 'Secondary Offenders? English Women and Crime c.1220-1348'. In *Victims or Viragos? Victims or Viragos?* Edited by Christine Meek and Catherine Lawless, 69-88. Dublin: Four Courts Press, 2005.
- Smith, John I. 'Criminal procedure'. In *An Introduction to Scottish Legal History*, 426-449. Edinburgh: Stair Society, 1958.
- Spiereburg, Pieter. *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present*. Cambridge: Polity, 2008.
- Symms, Peter S. M. 'Social Control in a Sixteenth-Century Burgh: A Study of the Burgh Court Book of Selkirk'. PhD diss. University of Edinburgh, 1986.

- Todd, Margo. *The Culture of Protestantism in Early Modern Scotland*. New Haven: Yale University Press, 2002.
- Walker, Garthine. 'Women, Theft and the World of Stolen Goods'. In *Women, Crime and the Courts in Early Modern England*. Edited by Jennifer I. Kermode and Garthine Walker, 48-80. London: University College, London, 1994.
- _____. *Crime, Gender and Social Order in Early Modern England*. Cambridge: Cambridge University Press, 2003.
- Wasser, Michael B. 'Defence Counsel in Early Modern Scotland: A Study Based on the High Court of Justiciary'. *Journal of Legal History* 26, no. 2 (2005): 183-201.
- _____. 'Violence and the Central Criminal Courts in Scotland, 1603-1638'. PhD diss. Columbia University, 1995.
- Wormald, Jenny. 'Bloodfeud, Kindred and Government in Modern Scotland'. *Past and Present* 87 (1980): 54-97.
- _____. *Lords and Men in Scotland: Bonds of Manrent, 1442-1603*. Edinburgh: John Donald Publishers Ltd., 1985.
- _____. *Court, Kirk and Community: Scotland, 1470-1625*. Toronto: University of Toronto Press, 1981.
- Wrightson, Keith. 'The "Decline of Neighbourliness" Revisited'. In *Local Identities in Late Medieval and Early Modern England*. Edited by Norman L. Jones and Daniel Woolf, 19-49. Basingstoke: Palgrave Macmillan, 2007.

Reference Works

- Warrack, Alexander (comp). *Chambers Scots Dictionary*. Edinburgh: W. & R. Chambers, 1979.