

James VI and I and the Fringes of the Enlarged Kingdom

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1. On 3 February 1593 Robert Stewart, first Earl of Orkney and Lord of Shetland died. His relationship with King James had been at times fractious and embroiled in the rivalry between Francis Stewart Earl of Bothwell and James Maitland of Thirlstane. The Earl's son, Patrick, a childhood friend of the King, succeeded him. Patrick seems initially to have been determined to build new alliances by marrying the widow of his father's enemy Sir Lewis Bellenden. Nevertheless, opposition to his government by landholders marked even the early years of his rule, with Lawrence Bruce of Caltmalinde as a principal opponent in the early part of the 1590s. Early in the next decade Bruce claimed that his tenants had been forced to build a new castle at Scalloway for Patrick. The marriage itself was not a success, although the couple had four children; Patrick's wife did not visit the Orkneys and she lived on Canongate in Edinburgh throughout. Patrick and James had been friends in their youth, but even by the 1590s the friendship had cooled, partly because Patrick sided with Queen Anna when she objected to the fostering of Prince Henry with the Earl and Countess of Mar (Goodare and Lynch 2000, 26).
2. Patrick developed expensive tastes and many of the accusations levelled at his government were related to his personal expenditure. Keith Brown suggests that by the middle of the decade Patrick's expenditure far outweighed his massively increased income of £56,313 per annum (Brown 2001, 80). His father Robert's palace at Birsay had been matched by the sumptuous redevelopment of the old bishop's house at Kirkwall, which became the Palace of the Yards. By this time, Patrick was more of an embarrassment to James than anything else, and the estrangement of the two former friends doomed the Earl just as his enemies were gaining in strength and he was sinking into impossible debts.
3. There is a combination of sources which underline the apparent dramatic or cataclysmic state of Orkadian and Shetland government during the seventeenth century. In the latter stages of Patrick's rule, as he languished in prison, James Law, the Bishop of Orkney, took up the full reins of government through the Sheriff's court in the wake of the Privy Council's rescinding of the Norse Laws. In 1612 the court at Kirkwall began to issue a series of acts defining Orkney law. The acts dealt with general crimes, drunkenness, market regulations, sheep stealing, wandering swine, employment regulations, slander, beggars and theft (Barclay 1967, 19-25). Further, the courts again restated a series of acts in 1615 after the death of the Earl and the suppression of the earldom. In August 1615 the courts of Shetland, and then in November those in Orkney, began apparently to reconstruct laws in the Isles, which is useful in identifying the specific features of law that may have been lost with the rescinding of Norse law (which we cannot trace due to the disappearance of the Law Book). This was a major restatement of principle, method and

practice. The Shetlanders and Orkadians were enjoined to reject sin and vice and honour the King. The courts' authority was restated, and false witness condemned. There were injunctions against associating with foreign traders, and staying in other men's homes. Accompanying them was a collection of laws about rustling, stealing, concealing theft and an exhortation to keep 'gude nychtbourheid' (Acts and Statutes, xxxiv-xlii).

4. The clear message from these sources is that there was anarchy in the isles at the beginning of the second decade of the century and it lasted until 1615. From a central perspective the 1615 changes in government drew a new line in Orkadian sands and it could be argued turned the defeat of both Queen Mary and her son's original plans for Orkney into victory. Early that year the Earl and his son were both executed having been at one stage charged with attempting to introduce new laws into the Orkneys at the expense of the 'old law'. Now at one stroke those old laws themselves were declared to be at the root of 'great unquietness, opposition strife' allowing 'disorders and confusions' to arise and fall 'out amongst tenants possessors and inhabitants of the lands Isles and bounds of Orkney and Shetland' (ORO D23/6/119). Yet it may be that this anarchy was contrived, the apparent disorder being at the centre of the scheme to bring the Isles under 'good order' as part of a national programme of centralization. Certainly the northern isles were not as disordered as the borders nor the Stewarts as troublesome as the MacGregors, yet the descriptions of the disorder suggest that the isles were as in need of order as the 'middle shires' or the west highlands. Orkney and Shetland escaped the punitive or colonial measures imposed upon the Hebrides and Ulster. James clearly did not consider the Orkadians or Shetlanders as barbarous, but by 1610-12 he considered that the isles were anarchic, but the problem was an Earl, who although he was Protestant and clearly civilized, was an embarrassment, personally as well as politically (Lenman 2001, 152-154).
5. To develop this idea, it is necessary to explore these three groups of documents alongside the other, earlier surviving court papers. There are not complete books of court papers for the 1590s. From the shrieval and other papers at Kirkwall it is clear that the courts were operating and dealing with a range of issues, from inheritance to squatters. The surviving complete books, cover the years 1602-1603, and then again from 1612 onwards to 1630 and major parts of these have been published. Further, less systematic papers can be found for the intervening years in Kirkwall Record Office.
6. Traditionally the officers of the court consisted of a lawman, by the seventeenth century referred to as the judge, and a foud. A foud was originally a financial officer, but by the sixteenth century the office had assumed legal duties too. In the regime of the Stewarts, the Earls held the foudery of the islands, and appointed a deputy foud to act in their name. By the end of the sixteenth century the term had practically disappeared and the central court, known as the Lawting, was administered by sheriffs and justices, similar to other regions of Scotland. In the eleven districts of Shetland however, the under-foud, and the lawrightman retained old titles. The implication of the modernization of titles is important as it relates to the authority of the Earl. Both Earls were accused of attempting to establish princely powers for themselves; yet the use of Scottish titles is evidence to the contrary as it went hand in hand with remodelling government in a way which James required. Moreover Patrick acknowledged the source of his power in his title 'justice

general and sheriff principal of Orkney and Shetland and baillie principal of the regalities according to his investiture given to him thereof by the King's majesty' (Donaldson 1958, iii). This position was taken seriously: although at times a deputy presided at the courts Earl Patrick often participated in the court personally, as in Shetland during 1604. It could be argued that he was playing the role of a model seigneur and at this point there was little evidence of the Earl's perverting government or law. Traditional udal (odal) holding was still practised and reinforced by the court. Udal holding entailed complete ownership of land and control of inheritance. There were restrictions on sale of property, which entailed the udaller having first to offer to sell the land to relatives (Donaldson 1958, v). Nevertheless, in 1604 the Earl accused some udallers of undertaking traditional divisions of udal land (known as *scheundis* or *schownd*, and *airffis* or *airff*) that usurped the King's authority.

7. The evidence from the courts shows the general mundane humdrum of a county court. At worst, as Gordon Donaldson argued, it may be that Patrick's rule in Shetland was vexatious, rather than despotic. It may not even be this. Court business for the most part appears to be concerned with the usual business of courts – slander, theft and assault. There were rights to wrecked ships and their cargoes, which mark the distinctiveness of the Orkneys and things that do not usually form the business of Scottish secular courts such as inheritance of suicides' property. Generally, however, court business consisted of minor issues, including theft, but also matters such as the ownership of pellocks (porpoises) washed ashore, and the deliberate mis-marking of sheep. Violence was common; men and women committed assault on each other. Cases of *bluid 'above the end'* drawing blood on the upper body or *'below the end'* on the lower body, were common, but considered less serious than theft, which always attracted higher fines or death (Donaldson 1958, 11). Most theft or removal of someone else's goods (*gripstair*) generally attracted a fine (Donaldson 1958, 22, 57). Adultery also attracted a fine. Other offences included suicide, such as the case of Jonet Thomasdochter who drowned herself. Her goods and *geir* were declared *escheat* (Donaldson 1958, 18). This may be one of the cases in which Gordon Donaldson believed the Earl carefully selected between the law systems on offer, opting for the one which brought him property or money. One example of this is the case, held in mid-August 1602, when Patrick succeeded in diverting dues from the northernmost islands of Unst, Fetlar and Yell, being collected by Laurence Bruce and the dues of eastward islands and areas of Whalsay, Nesting, Lunnasting and the Skerries from being paid to the bishopric, and secured them for himself (Donaldson 1958, 58).
8. There are no complete court books for the next eight years. Courts naturally continued in both Shetland and Orkney. There are remaining papers detailing cases and in some cases listing the assize. One of the latter papers, from 1607, has an assize of thirteen men, and an inference of continuity with post-1612 assizes, as there are clearly experienced assizers notable in the later lists. The cases that arise also suggest continuity. In short, business as usual. For the Earl, things were getting more difficult as his enemies had pursued him for debt. More seriously they had succeeded in getting him charged with treason on 1 January 1606. Even though the charges, that he had usurped royal powers in the isles, were dismissed in August, the next complete court books were created in very different circumstances. By 1612, the Earl of Orkney and Lord

of Shetland was a prisoner. He was subject to a series of criminal charges and his debts were mounting. Creditors pursued him in Shetland and Orkney as well as in the capital, where his food bills remained unpaid.

9. Peter Anderson suggests it was a time of 'disorder' in the Orkneys (Anderson 1992, 95). The question is whether this was because of the Earl's rule, or because it was being undermined. To employ modern management perspectives, this looks very like Manzoni and Barsoux's 'Set-up to fail syndrome' – an eight-stage process by which a subordinate is given increasingly impossible tasks, having unwittingly triggered a negative attitude in his superior (Manzoni and Barsoux 1998). In this case the triggering event may well have been Patrick's support for Queen Anna in the 1590s. Even when he was in prison, the Earl's consent was still required for any government action in the isles, even though the rights of the bishopric were being resurrected by the new bishop, James Law, former minister of Kirkliston near Edinburgh, from his appointment in February 1605. By 1607 Law had recovered the Bishopric lands and an annual income of 4000 merks. However, the Earl's retention of powers, despite his imprisonment was, according to Bishop Law, becoming intolerable and he asked the King to remove the Earl from his authority. In the Northern Isles the Earl was still popular and there were determined efforts to frustrate any action of which it was felt he would not approve. In particular this meant that it was still almost impossible for the Bishop to collect any of his lawful rents.
10. On 6 November 1610 Law got what he wanted and government in the isles was effectively put into his hands. Actually government was put into commission, with Law sharing control with Sir John Arnot, Patrick's major creditor and former friend, and the Bishop of St Andrews. The latter was largely an honorific appointment and Arnot did not become involved with administration. Some things were already under way; the Register of Hornings was introduced into the isles four days earlier effectively outlawing Patrick for his debts, but it signalled that the full intrusion of Scottish Law into the Orkneys and Shetland Isles had begun. Just over six months later the Earl's rule was declared at an end and this was proclaimed in the isles in June when the authority of Law and Arnot was affirmed in front of a hostile crowd, including Patrick's son Robert. Both passive and active resistance followed vocal opposition. Law faced opposition in Shetland and fellow JP, James Stewart of Graemsay, found it impossible to work effectively in the Orkneys. In an effort to fan the flames, Patrick appointed his son as his deputy, ignoring completely his own deposition. Robert went to the Orkneys in the spring and began to act as sheriff in his father's stead. He took over the strategic points in Kirkwall, the Castle by the Peedie Sea and the Giral, by the seaward. However the rebellion collapsed quickly when Law persuaded Robert to hand over the castle.
11. It was with this in the background that the courts reopened under Law's control. Despite the clear indications that there was a serious attempt to defy James's deposition of Patrick, the court papers do not show anything of what might be expected in clearing up the aftermath of a rebellion. The courts once again turned to dealing with normal court business. However there was the preliminary need to re-assert the basic requirements of general government. So on 30 July 1612 the court re-stated the day (Saturday) of the market. This may have been one indication of some disruption, for the Market was held between

The Strynd, the cathedral and the Castle. Robert's presence in the castle may have disrupted the markets, as would his seizure of the Girnel.

12. As mentioned above, the court then proceeded to restate a range of orders aimed at creating a civil society from one, which it is suggested, was in a state of anarchy. If there was anarchy then it may have been a temporary 'anarchy', existing only whilst Robert and his father's supporters challenged the imposition of Bishop Law's rule. Ten days later, the court dealt with seemingly minor land disputes and a dispute within a branch of the Sinclair family, but at the next session concern with court orders regarding general issues dominated proceedings. In August the court met on several days, but again dealt with minor cases, of theft, non-payment of dues and taxes (Barclay 1962, 27-29). Bishop Law's courts continued into 1614, with the same kinds of business being pursued (Barclay 1962, 45-46). The court continued through the winter and into the spring with cases of assault (Bluiding), but nothing which might be considered anarchic. In the year following however, rebellion again began.
13. The impetus for this rebellion came from a number of sources, including the Earl's provocations, the residual support he could still command and the administration of the commissioners. At the same time as the Bishop and Arnot began their administration of the laws, they instituted a thorough audit of the wealth of the Northern Isles with the aim of reinstating an equally thorough fiscal policy aimed at recovering lost income and securing a firm basis for future spiritual and secular governance. This element of the reorganization was in the hands of two men in particular, Sir James Stewart of Killeith, who later, as Lord Ochiltree, would benefit from the destruction of the final Earldom and Sir John Finlayson his brother in law, who was made sheriff depute.
14. By November 1613 the survey was over and the income from the new levies began to come in. The valuations, although based on the 1595 rentals, were often doubled. This, and Finlayson's unpopularity, provoked resentment and opposition in the isles. Anderson convincingly argues that this was the principal ground upon which the Stewarts could draw, rather than residual opposition to the eradication of Norse Laws, of which rather oddly Patrick was now seen as the principal defender (Anderson 1992, 100-101). The positive impetus came from Patrick's relationship with Robert. Patrick, held in Dunbarton since the 1613 rebellion, was under pressure to acknowledge the *de facto* destruction of the Earldom. He successfully manoeuvred his way back to the capital with the aim of eventually getting to London to see the King personally. He demanded that the council give him time to seek advice from his supporters and continued to buy time, but in the end there was little possibility of getting to Westminster. In the meantime he met his son and angrily berated him for surrendering the castle to Bishop Law. The apparent challenge to Robert's masculinity seems to have prompted the young man's decision to return to the Orkneys in June 1614, where he launched a new rebellion by seizing the Earl's palace at Birsay. From there he marched on Kirkwall, where he established control of the strongpoints by the end of July.
15. The response from Edinburgh and London was fairly rapid, both government-inspired and through private initiative, as the Earl of Caithness had begun to gather armed forces even before he was given a lieutenancy commission. Caithness had at least a dual interest in taking the commission. He regarded

himself as having a blood feud with the Stewarts, dating back to 1529. He had previously engaged in feud himself having shaved half the hair and beards off two of the Earl's servants (Brown 1986, 24, 27). By 23 August Caithness was in the Orkneys where he was surprised to find high levels of support for Robert and the rebels. It took until late September to force Robert into surrender.

16. The courts resumed sitting in November. The Earl of Caithness by virtue of his lieutenancy commission tried the rebels, captured during the fighting. Some rebels were tried and executed before the siege at the castle was over, but others were tried in October after the fall of the stronghold. Robert was sent to Edinburgh, where early in the following year he and then his father were tried and executed (Anderson 1992, 121-123, 127-133). This meant that when the sheriff's court met, there was no impetus to deal with rebels; instead it was the general consequences of the rebellion, which prompted some of the early actions in the court. Again, as in 1612, it was felt that there was a need to restate the basic principles of the laws in Orkney, but even before that there was a matter relating to the change of management, for the Bishop brought a case to establish his right to South Setter, which was illegally occupied by widow Elizabeth Setter and Alexander Quoyis. The following year there was a case which appears to relate to the change of management, where James Skolly the tacksman of Stronsay brought a case against Malcolm Grot of Aikernes, the fewar of lands in Huip and tacksman of the mill at Stronsay, over the non-payment of dues dating back to 1612, probably stemming from the reassessment of the rating system.
17. Despite evidence to the contrary, the Isles were still presented as anarchic, and restatement of this perception appeared in the court records as late as November 1615 at Kirkwall. At the session held on 7 November at the Palace of the Yards the court passed an act against sin. Sin was the cause of God's 'heavie plaigues and judgentis and the caus of grea[t] desolatioun in kirk and politie'. It was this act which referred to the practice of 'forren and uncouth laws'. They, apparently as much as sin, had caused the 'truble, dissordour, injuries and wrang' in the common wealth of the Orkneys (Barclay 1967, 25). This was immediately followed by a re-statement of the laws beginning with the need to recognise the authority of the King. All manner of persons of whatever quality 'sall honour [their] dreid soverane the kingis majestie and submit tha[me]slfis with all reverence to his autoritie in obeying his law' (Barclay 1967, 26). Yet it seems strange to have to repeat it at that point, in reference to the provision of arms and armour to the King as required. In Shetland the same point had been made in the orders laid down during sessions in the previous August. There were also cases where traditional rights were upheld.
18. There were some striking cases in the court records in the aftermath of the last rebellion, including the cases of the three alleged witches in June 1615 at Kirkwall. Jonet Drever was found guilty of having associated with fairies for some 26 years. For this she was banished for life from the Orkneys. Marioun Lening was accused of witchcraft and consulting 'spirits'. Katherine Bigland was accused of watching in the churchyard at Cross Kirk on Westray with a drawn knife in her hands in the company of her mother and others. She was also accused of making ill and then curing William Bigland of Swartmill her master and Robert Broun a fellow servant, by witchcraft. She was sentenced to

death. Dramatic though these cases are, they are more evidence of wider concerns with witchcraft, and appear to have the characteristics of other witchcraft cases, including the long established ill reputation of Jonet Drever. This was generally a quiet period in Scottish witchcraft history, when suspect numbers dwindled (Larner 1981, 71-72). In 1615 there were only ten instances of witchcraft accusations traced across the country, including Jonet and Katherine. However, perhaps there was a legacy of the misrule for in 1616 there was a (fairly short) spike in the statistics with seventeen cases across the country: but fourteen of these were in the old Earldom; seven women and three men in Orkney and three women and one man in Shetland (Larner and McLaren 1977, 11, 181-184; Black 1938, 31-34). It is difficult to assess whether this is an instance of conflict between civil and religious authority, as at that time the two arms of Orkadian and Shetland government were one.

19. One important document is the contract between James VI and James Law, Bishop of Orkney, dated 1614, but based on advice and consent from Law rendered in 1612. It is to be presumed that the contents derived from the discussions over removing power from Patrick which took place between 1610 and 1612 but the context is clearly that of 1612 and 1614. It stated that there was hitherto disorder in the Orkneys, when it refers to 'great unquietness opposition strife disorders and confusion'. Even more specifically it suggested that there had been 'slaughteris, murtheris, factionis, seditions and tumults[,] Things overrun whereof the lives of the bishops and others his highness loyall and true subjects has been in great danger' (ORO D23/6/119). The whole basis of order was to be re-established, because hitherto there was no certainty of where the bounds of government and administration lay. The contract affirmed that the King was the superior governor with the Bishop under him. The Bishop would receive several and distinct lands, rents and tiends (as he had been granted back on 8 October 1612), with the right to establish a commission to examine the past revenues and dues to establish his perpetual rights. The Bishop was specifically granted the Palace of the Yards, Patrick's magnificent home and the symbol of both his power and his debts.
20. More important in a practical sense was the delineation of the bounds of Shetland and Orkney, and the bishop's power to appoint the civil authorities, sheriffs, baillies and counsellors. However, it was made clear that neither the bishop, nor his successors had any regal right in the isles, the bishop was not a viceroy, and nor was he to hold the power of a lieutenant. Nevertheless, the contract placed significant civil and temporal responsibility in the hands of a spiritual officer. It was a break with traditional government, limited perhaps by the translation of Law to Glasgow within months. Subsequently much of the local power to collect income lay in the hands of Sir James Sinclair, who was now Lord Ochiltree, but the Earldom was never resurrected. James retained earldom powers in his own hands, and Patrick's brother James was compensated with an annual pension of 1,200 Scots pounds (ORO D24/11/8).
21. The original Orkney and Shetland experiment pursued by Mary and later by James had failed, perhaps partly at least due to the personalities of the two Earls, but the final crisis had probably been forced. Patrick's rule was neither tyrannical nor anarchic: manipulation of Norse law and custom may have been heavy-handed, but it did not lead to a breakdown in order within the islands. In order to demonstrate anarchy in the isles, disorder had to be engineered. What happened in the Orkneys and Shetland bore the hallmarks of a pragmatic

progression to a determined end: the tightening of royal control across the British Isles. Within months James used the Earl of Caithness's propensity for engaging in bloodfeuds to bring down the Orkney Stewarts and then to destroy him. When Caithness employed the Gunns to destroy the corn of his rival Lord Forbes in 1615, James not only ensured that the Gunns were punished, but secured Caithness's surrender of hereditary offices of sheriff and judiciary of Caithness. This, coupled with the catastrophic state of the Earl's finances, led to his ruin: just seven years after his victory at Kirkwall and his elevation to the Privy Council, James sided with the creditors of the Earl of Caithness in an act which drove the hammer of rebellion into revolt, damnation and penury. His rival, Sir Richard Gordon, saw it as divine, if not royal, providence (Brown 1986, 283; Brown 2000, 102-104). The consistency of the policy towards the Northern Isles was therefore in the end, not in the method. We must not see either the fall of Orkney or Caithness as part of the destruction of noble power, by James VI and I. Instead, it demonstrates the pragmatic nature of the King's policy of introducing order. He employed one noble to destroy another; Caithness's perception of bloodfeud was probably irrelevant (except that it passed on some of the expense of the counter-rebellion). Caithness's own downfall was due to the decision, nearly two decades earlier, by James and the majority of the nobility, to curtail the culture of blood feud. Employing a client clan to set fire to another man's crops was no longer to be tolerated (Brown 1986, 240-243, 260-261).

22. Another area where there is consistency in the King's policy centres upon the bishopric. The imposition of Bishop Law, and his active role in the Stewarts' downfall, marked the intrusion of episcopal authority into temporal affairs. It was clear that this was part of the strengthening of clerical involvement in civil affairs. Indeed its chief victim, Earl Patrick, had been made to sit through the King's exposition of precisely this point to leading kirkmen, including Andrew Melville, in September 1606 at Hampton Court. It is certain that the imposition of a bishop with civil power and Finlayson as his factotum provoked a fairly acquiescent population into supporting two rebellions on behalf of Earl Patrick, thus ensuring the anarchy needed to justify the dissolution of the Earldom. If this perspective is a reasonable interpretation, then the anarchy had been deliberately induced in furtherance of two grand strategies, at once both Scottish and British ones.

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