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## Franchises North of the Border: Baronies and Regalities in Medieval Scotland

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Scottish franchises<sup>1</sup> – especially the late medieval regalities, equivalent to English palatinates – have not had a good press from past historians. The common attitude is neatly caught in two statements from the 1950s: William Croft Dickinson (author of what is still the main institutional study of the subject)<sup>2</sup> declared in 1952 that in late medieval Scotland ‘franchisal privileges grew, flourished and were assumed unchecked’, while in 1958 Peter McIntyre wrote (in the standard *Introduction to Scottish Legal History*) that the lords of regality ‘used the privileges they wrested from the weak kings of 14th century Scotland to establish an alternative system of government’.<sup>3</sup> But that generation of historians developed their ideas within the crown-focused traditions of pre-1960s medieval English historiography, so it is hardly surprising that they had an anti-franchisal stance worthy (ironically in a Scottish context) of Edward I and his centralising lawyers.<sup>4</sup>

However, at about the same time as Dickinson and McIntyre were writing, Joseph R. Strayer (whose ideas started with France rather than England) was developing a very different line, presented in two seminal, though neglected, essays on feudalism.<sup>5</sup> His basic argument was that the concept of feudalism should be understood ‘to mean a type of government which was conspicuous in Western Europe from about 900 to 1300 and which was marked by the division of political

<sup>1</sup> My warmest thanks to Professor Michael Prestwich for persuading me to revisit a subject that I had not looked at in significant depth since writing my ‘The Higher Nobility in Scotland and their Estates, c.1371–1424’ (Oxford University D.Phil. thesis, 1975), esp. 109–83, 346–97 – and for his forbearance ever since. A list of the abbreviations is provided at the end, in the Appendix.

<sup>2</sup> *Carnwath Court Book*, editor’s introduction.

<sup>3</sup> William Croft Dickinson, ‘The administration of justice in medieval Scotland’, *Aberdeen University Review*, xxiv (1952), 345; Peter McIntyre, ‘Franchise Courts’, in G. Campbell H. Paton (ed.), *An Introduction to Scottish Legal History* (Stair Society, xx, 1958), 380.

<sup>4</sup> Even Geoffrey Barrow and Ranald Nicholson made similar comments: G. W. S. Barrow, *Robert Bruce and the Community of the Realm of Scotland* (1965; 3rd edn, Edinburgh, 1988), 283; Ranald Nicholson, *Scotland: The Later Middle Ages* (Edinburgh, 1974), 112.

<sup>5</sup> Joseph R. Strayer, ‘The two levels of feudalism’ (1967), and ‘The development of feudal institutions’ (1961; original conference paper, 1957): reprinted in his *Medieval Statecraft and the Perspectives of History* (Princeton, 1971), chaps. 6–7.

power among many lords and by the tendency to treat political power as a private possession'.<sup>6</sup> While the issue of feudalism can be set aside here,<sup>7</sup> the main point is that the private exercise of public power by great lords was entirely normal across Western Europe between the tenth and the thirteenth centuries, and indeed was *the* defining feature of political society during that era. This came about because originally,

There was no possibility of establishing a centralized, bureaucratic administration; no ruler had enough money to pay and supervise local officials. Therefore, local administration and justice, which is the essential work of any government, had to be left to the leading men in each district, that is, the lords.<sup>8</sup>

Although this passage refers to the earlier part of Strayer's period, in Scotland the generally low level of crown revenue means that it applies throughout the Middle Ages. Hence, following Strayer, there is no need for the traditional censoriousness about private seigniorial rights of public government (which, technically, survived until the 'Heritable Jurisdictions Act' of 1747); they were always fundamental to how the kingdom was run.

That becomes abundantly clear when we consider the standard judicial system operated through the royal courts<sup>9</sup> – the simplest way of approaching the subject of Scottish baronies and regalities. From the late twelfth century (and probably earlier), the crown employed two types of local court: sheriff courts held frequently in each sheriffdom, and above them twice-yearly justiciar ayres or circuits. The sheriff courts' civil jurisdiction covered disputes over the ownership of land held in chief of the crown, plus appeals from local seigniorial courts; but cases about breaches of the rules of landownership went to the justiciar ayres, and these also heard appeals from the sheriff courts and pleas concerning more than one sheriffdom. As for criminal jurisdiction, the sheriff courts dealt with theft by 'hand-having' thieves caught in possession of stolen goods, and with assault and killing committed openly by 'red-handed' perpetrators; if the theft was serious, or if the killing was not accidental or self-defence but deliberate slaughter, the death penalty was imposed.<sup>10</sup> But the worst crimes, known as the 'pleas of the crown' – murder, rape, arson and robbery – were reserved to the justiciar ayres. Robbery (as opposed to theft), rape and arson all involved deliberate violence, and so were premeditated breaches of the king's peace; but the difference between murder and deliberate slaughter (both of which were

<sup>6</sup> *Ibid.*, 65.

<sup>7</sup> Though I find Strayer's bypassing of the narrow fief/vassal arguments very useful. Remarkably, there is no reference to these essays in Susan Reynolds, *Fiefs and Vassals* (Oxford, 1994).

<sup>8</sup> Strayer, *Medieval Statecraft*, 78.

<sup>9</sup> See, in general, Paton, *Introduction to Scottish Legal History*; Hector L. MacQueen, *Common Law and Feudal Society in Medieval Scotland* (Edinburgh, 1993); *Fife Court Book*, editor's introduction; and G. W. S. Barrow, *The Kingdom of the Scots* (London, 1973), chap. 3 ('The Justiciar').

<sup>10</sup> For homicide, *Reg. Maj.*, I.4, and *Quon. Attach.*, cc.26, 46; also *APS*, i, 598 c.1, 651 c.24, 656 c.42 (alternative editions of these early 14th-century legal texts). For serious theft, *Reg. Maj.*, IV.16 ('no person should be hanged for less than the theft of two sheep worth 16d. each').

premeditated and violent) was that murder was ‘secret’ or hidden, whereas slaughter was public.<sup>11</sup> In addition, the justiciar ayres acted on indictments, or ‘dittays’, when local communities accused individuals of crimes which, again, would have been ‘secret’ – not only murder, but also (and probably chiefly) theft where the accused was not caught in possession.<sup>12</sup>

This was a relatively straightforward and indeed simple system, especially by comparison with that of medieval England. In particular, the courts were distinctly thin on the ground, with never more than between twenty and thirty sheriff courts and normally only two justiciar ayres (operating north and south of the Forth). Admittedly the crown could appoint deputy justiciars to hold extra ayres and nominate justiciars *in hac parte* to deal with specific cases;<sup>13</sup> even so, it is hard to see how such a system on its own could have maintained local justice adequately. Nevertheless it did continue to operate throughout the Middle Ages, and though complaints about judicial problems are not infrequent in the late medieval parliamentary records, no proposals were ever made to increase the number of justiciars or subdivide the sheriffdoms.<sup>14</sup> Thus, remarkably, the actual number of local royal courts appears not to have been an important issue. The explanation must surely be that in practice most of the burden of local justice fell on the barony and regality courts, where ‘private’ jurisdiction was exercised – which, of course, corresponds exactly with Strayer’s fundamental point.

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In later medieval Scotland, the barony was an extremely common franchise. From Robert I’s reign (1306–29), it was increasingly precisely defined as an estate to which specific ‘baronial’ powers were formally attached, while the main definition of ‘baron’ came to be a lord who possessed a barony and held it *in liberam baroniam* – that is, with the right to exercise those powers (it was possible to possess merely the lands of a barony, or part of one, without actually holding *in liberam baroniam*; technically, such a landowner would not be a baron).<sup>15</sup> The baronial powers were those of ‘pit and gallows, sake and soke, toll, team and infangthief’, a formula repeated in countless late medieval and early modern Scottish charters.<sup>16</sup> As in England, whence it came, the terms of the sake-and-soke jingle may have had

<sup>11</sup> Murder is defined as secret killing in *Reg. Maj.*, IV.5 (*APS*, i, 633 c.4). But later 14th-century legislation contrasts ‘murder or forethocht felony’ with killing in ‘chaudemelle’ (hot blood): e.g., *APS*, i, 48 (1373). The latter did not carry the death penalty; yet the principle that ‘all ... who have gallows and pit for theft have one for slaughter’ (*APS*, i, 319 c.13) was clearly not restricted to the justiciars. Thus killing by murder and by ‘forethocht’ were different offences, and the latter fell within the sheriffs’ jurisdiction.

<sup>12</sup> *APS*, i, 403–4, 705–6; Barrow, *Kingdom*, 111–12.

<sup>13</sup> *The Register of Brieves contained in the Ayr MS, the Bute MS and Quoniam Attachiamenta*, ed. Thomas M. Cooper (Stair Society, x, 1946), 37 (Ayr MS, nos. IX, X); for an example from 1392, *Aberdeen Reg.*, i, 187.

<sup>14</sup> E.g. legislation of 1388–9, 1398, 1404, 1424, 1440, 1450, 1457, 1475, 1488: *APS*, i, 556–7, 570–1; ii, 3 c.6; 32 c.2; 35 c.2; 49 c.14; 111 c.2; 176 c.2; 207 c.6; 225 c.10; A. A. M. Duncan, ‘Councils-General, 1404–1423’, *SHR*, xxxv (1956), 135 cc.1–2. See also MacQueen, *Common Law*, 54–65.

<sup>15</sup> *Carnwath Court Book*, pp. xiv–xxxviii; *RRS*, v, 41–4; Grant, ‘Higher Nobility in Scotland’, 132–42.

<sup>16</sup> E.g., ‘in unam integram et liberam baroniam ... cum furca et fossa soc et sak thol et them et infangandthief’: *RRS*, v, no. 67 (dated 1315: the earliest example of the full formula).

individual significances,<sup>17</sup> but in practice they were probably simply lumped together to indicate powers of criminal jurisdiction, and in particular the right to carry out the death penalty and confiscate the criminal's possessions<sup>18</sup> (though *not* to condemn or acquit a criminal, for that was always the responsibility of the suitors of the court, which in the case of baronies would be the leading men of the neighbourhood).<sup>19</sup>

Thus, according to the main digest of medieval Scots law, the early fourteenth-century *Regiam Majestatem*:

Of civil pleas, which are not criminal and do not affect life or limb, some pertain to magistrates of burghs, others to the courts of barons, earls, bishops, abbots and other freeholders who have courts of their own according to the terms of their charters. Some of the foregoing enjoy a criminal jurisdiction, especially those who have a grant of a court with soc and sak, pit and gallows, toll and them, infangthief and outfangthief, but excepting always the pleas of the crown.<sup>20</sup>

While *Regiam* does not explicitly relate criminal jurisdiction to barons, that *is* done by the slightly later *Quoniam Attachiamenta* (the other main lawbook): 'In a lesser court than that of a baron, life and limb cannot be declared forfeit unless the court-holders enjoy the same franchise in the aforesaid matters as a baron, as do certain religious and ecclesiastics'.<sup>21</sup> Also, although the sake-and-soke jingle specifies only jurisdiction over theft, *Assise Regis David* (another fourteenth-century text) states that 'all barons who have gallows and pit for theft shall also have gallows for manslaughter'.<sup>22</sup> And *Quoniam Attachiamenta* records a further baronial power: 'Every baron may clear his lands of evildoers and men of ill repute thrice in the year, by means of an inquest of trustworthy men'.<sup>23</sup> This function (presumably connected with the 'dittays' made to the justiciar ayre) enabled action against alleged evildoers even if public evidence of crime was lacking, and in terms of local law and order would have been almost as significant as the more spectacular right to exact the death penalty. Moreover, a killer who was on good terms with his neighbours might allow himself to be caught red-handed, or, if accused, might agree to trial by the barony's assize, in the confidence of being acquitted on grounds of self-defence or 'chaudemelle' (hot blood); whereas if he thought he would be condemned, he would be more likely to flee, and so would eventually be 'put to the horn' and outlawed. If so, then in practice very few killers would have come before justiciar ayres.

<sup>17</sup> See *Dictionary of the Older Scottish Tongue* (now within the online *Dictionary of the Scots Language*), s.v.

<sup>18</sup> As one legal text put it in the 1360s, 'the baron shall have the escheats of the goods of the said misdoer': *APS*, i, 711 c.9. See also *ibid.*, i, 548.

<sup>19</sup> *Carmwath Court Book*, pp. lxxix–lxxxvi, xci–xcii. This also applied to the sheriff and justiciar courts.

<sup>20</sup> *Reg. Maj.*, 1.4 (*APS*, i, 598 c.2). 'Outfangthief', which is only occasionally included in Scottish charters, meant either the right to pursue thieves outside the baron's property, or to do justice on an outsider who committed a crime within it.

<sup>21</sup> *Quon. Attach.*, c.30 (*APS*, i, 652 c.27).

<sup>22</sup> *APS*, i, 319 c.13; from the second oldest manuscript of Scots law, the Ayr MS of c.1330. See also *Quon. Attach.*, c.16 (*APS*, i, 650 c.14): 'the lord ... who has a court competent to deal with homicide'.

<sup>23</sup> *Quon. Attach.*, c.28 (*APS*, i, 652 c.26).

Be that as it may, in general the barons had essentially the same criminal – and civil – jurisdiction within their lands as the sheriffs had within the sheriffdoms: ‘a Baron has no less power in his own courts than a Sheriff, one later text put it.<sup>24</sup> Scotland’s baronies, indeed, can be regarded as administrative and judicial subdivisions of the sheriffdoms – as *Quoniam Attachiamenta* makes clear by stating that every suitor in a sheriff court ‘represents the person of the baron for whom he performs suit’.<sup>25</sup> Fifteenth-century legislation shows lords of baronies required (*inter alia*) to hold ‘wapinshaws’ for checking the inhabitants’ military equipment and aptitude, encourage archery and ban golf and football, get rid of wolves, maintain fire precautions, deal with ‘masterful beggars’, set prices for craftsmen’s work, and ensure that wheat, peas and beans were sown.<sup>26</sup> But the barons’ main responsibilities were clearly for local law and order, not only in administering justice through their courts, but also in the equally (or more) important police function of making arrests. This is illustrated in letters patent of Edward Balliol (as king) in 1348, stating that he had erected Kirkcandrews and Balmaghie in Galloway into a free barony, with gallows and pit, sake and soke, etc., ‘in order to maintain peace and keep down robbers in the above lands’.<sup>27</sup> Fourteenth- and fifteenth-century legislation stressed that function, and even extended it temporarily.<sup>28</sup> Admittedly, there were provisions for punishing laxity and corruption, but that was to ensure that barons carried out their duties properly; the legislation is never anti-franchisal per se, and the baronies are simply treated as routine elements in the normal judicial machinery.<sup>29</sup> Perhaps most striking are enactments by James I in 1426 that all lords (basically meaning barons) with lands in northern Scotland had to maintain their castles properly, ‘for the gracious governance of their lands by good policing’; and by James IV in 1496 that all barons and substantial freeholders must send their eldest sons to grammar schools and universities, ‘so that they may have knowledge and understanding of the laws, through which Justice may reign universally through all the realm’.<sup>30</sup> The latter echoes *Quoniam Attachiamenta*’s remark that, since the barons were responsible for making the kingdom’s laws, they should also be responsible for administering them.<sup>31</sup>

<sup>24</sup> Sir Robert Spotiswoode, *Practicks of the Lawes of Scotland* (Edinburgh, 1706), 25.

<sup>25</sup> *Quon. Attach.*, c.11 (*APS*, i, 649 c.9).

<sup>26</sup> *APS*, ii, 12 c.23; 13 c.6 (1426); 15–16 cc.3, 5 (1429); 18 c.13 (1430); 36 c.9 (1450); 48 c.6 (1457).

<sup>27</sup> *CDS*, iii, no. 1578. Edward Balliol, David II’s English-backed rival, was temporarily king in the 1330s, and after Neville’s Cross in 1346 exercised power in southern Scotland, especially Galloway, for several years.

<sup>28</sup> Especially in 1373 and 1432: *APS*, i, 548; ii, 21–2 cc.3, 11. See also *ibid.*, i, 570 (1397); ii, 7–8 cc.14, 24 (1425); 9 c.7 (1426); 23 c.1 (1436); 33 c.3 (1440). Note that James I’s much-vaunted law-and-order legislation merely repeated late 14th-century statutes, with minor modifications.

<sup>29</sup> E.g., an act of 1469 concerning failure by ‘sheriffs and other Judges ordinary’, required the injured party to ‘first come to his Judge ordinary of temporal lands’, listed as justiciars, sheriffs, stewards (royal officers running regalities in the crown’s hands), their baillies, barons, and provosts and baillies of burghs; the rest of the statute lumped these together indiscriminately as ‘Judges’: *APS*, ii, 94 c.2.

<sup>30</sup> *Ibid.*, ii, 13 c.7; 238 c.3.

<sup>31</sup> If the barons’ representatives made faulty judgements in the sheriff courts, they should be heavily amerced, because ‘each and every baron by whom the laws are made in the kingdom ought to be more able in taking cognisance of the laws made by them than the common people’: *Quon. Attach.*, c.11 (*APS*, i, 649 c.9).

Of course, since the baronial jurisdiction and other powers applied only to what happened within a particular barony, their general significance for Scottish justice would have depended very much on the actual size of individual baronies: the bigger and more populated they were, the more effective the barons' police and judicial functions would have been. Some baronies were large, or even extremely large: namely the old 'provincial' earldoms and lordships (all held with at least baronial powers), which mostly dated back to the twelfth century and earlier.<sup>32</sup> But the vast majority – the ordinary baronies of medieval Scotland – were much smaller, essentially local, units of land; and that applies also to the Church's baronies, that is, the territories belonging to cathedrals, abbeys and other ecclesiastical institutions.

Unfortunately, it is difficult to go far beyond that broad statement. Precise boundaries are rarely recorded for estates in medieval Scotland, and because so many Scottish records have been lost it is hard to work out even a rough approximation of their extents. On the other hand, medieval Scottish baronies were much less fragmented than English manors. Moreover, various historians going back to Cosmo Innes in the mid nineteenth century have pointed to a close relationship between the twelfth-century knights fees (which mostly became baronies) and the country's parishes.<sup>33</sup> In that case, a way round the problem may be found by thinking in terms of parishes, and hence roughly of local communities – which should be more illuminating than a simple assessment of area, given the great disparity in the quality of land throughout Scotland.

Between the later twelfth century and the Reformation, Scotland contained over 900 parishes;<sup>34</sup> most survived fairly unchanged into modern times,<sup>35</sup> and where they did not, significant pre- and post-Reformation changes are generally known.<sup>36</sup> Therefore, by working back from the nineteenth-century parish maps, a reasonable outline of the medieval parish boundaries has been constructed.<sup>37</sup> After that, a parish-by-parish survey – dealing with 925 in all<sup>38</sup> – has been carried out for the late fourteenth and early fifteenth centuries, to discover whether the whole, most or some of each particular parish can be reckoned to have been held with franchisal

<sup>32</sup> See below, pp. 20–1, 28–31, including Map 3..

<sup>33</sup> *Orig. Paroch.*, i, p. xxvii (editor's introduction). Also, e.g., Ian B. Cowan, 'The development of the parochial system in medieval Scotland', *SHR*, xl (1960), 50; Barrow, *Kingdom*, 294.

<sup>34</sup> See Peter G. B. McNeill and Hector L. MacQueen (eds.), *Atlas of Scottish History to 1707* (Edinburgh, 1996), 347–60 ('Parish churches about 1300', by D. E. R. Watt *et al.*); and Ian B. Cowan, *The Parishes of Medieval Scotland* (Scottish Record Society, 1967).

<sup>35</sup> As shown by the detailed accounts of parishes in *Orig. Paroch.*; unfortunately this important project ceased after having covered only the dioceses of Glasgow (part), Argyll, the Isles, Ross, and Caithness.

<sup>36</sup> Cowan, *Parishes*, gives pre-Reformation changes; post-Reformation changes (including transfers of territory) are noted in the parish entries in F.H. Groome (ed.), *Ordnance Gazetteer of Scotland*, 6 vols. (Edinburgh, 1882–5).

<sup>37</sup> Based particularly on the county maps (showing parish boundaries) given in Groome's *Gazetteer*. The outline map of Scottish parishes used in McNeill and MacQueen, *Atlas*, 383–91, has 18th-century boundaries, and cannot be applied as it stands to the pre-1560 period.

<sup>38</sup> It is impossible to be absolutely precise about the number of parishes at any one time. The total of 925 represents my own judgement, based on a conflation of Watt's and Cowan's lists, and includes a few quasi-parochial 'pendicles'. Parishes in Orkney and Shetland (not Scottish until 1468–9) and Man (not Scottish after 1333) are excluded.

privileges during that period.<sup>39</sup> The survey is not exhaustive, and the answers are often far from absolute; but from it, nevertheless, it has been possible to form a relatively good idea of the parishes, and thus of the local communities, over which baronial powers were entirely or largely exercised. The general picture – shown in Map 1 (below, p. 9) – is striking.<sup>40</sup> In the first decade of the fifteenth century, the territories of 869 of the 925 parishes (94 per cent) were held wholly or mostly with at least baronial powers. Conversely, there were only 19 parishes, usually around royal centres, where no territory was held baronially,<sup>41</sup> and in some 38 others it is uncertain whether or not there was any baronial jurisdiction; but such non-baronial parishes are only a tiny proportion of the whole. Overall, during the later Middle Ages Scotland was overwhelmingly a land of franchises – perhaps more so than anywhere else in Western Europe.

Another major feature of the survey is the vast amount of territory that was still within the old ‘provincial’ earldoms and lordships: in terms of surface area, it was more than two-thirds of the kingdom; in terms of parishes, 425 out of 925, no less than 46 per cent. Some of these earldoms and lordships were much smaller in *c.*1400 than they had once been,<sup>42</sup> but others were still huge, especially Galloway (55 parishes), Moray (46) and the Isles (45). Within the majority of earldoms and lordships that had survived essentially intact since the twelfth century or earlier, the average number of parishes was 19; half contained at least 15; and even most of those with fewer than ten parishes appear distinctly ‘provincial’.<sup>43</sup> In general, nearly

<sup>39</sup> Ideally, account should be taken of every surviving medieval charter, and all places should be identified. I have not done that, but what is presented here is as thorough as I can currently manage. It is based on *RRS*, vols. i–ii, v–vi, and material collected for the forthcoming vols. iii–iv, vii (my thanks to the editors); *RMS*, vols. i–ii; Grant, ‘Higher Nobility in Scotland’, 346–97; *Orig. Paroch.*, vols. i–ii; Cowan, *Parishes*; other collections of Scottish charters, especially those published by Sir William Fraser; and various local histories.

<sup>40</sup> Map 1 shows the likely situation in the first decade of the 15th century. Its parish boundaries are of course intended to be indicative rather than exact – and note that in working them out it was impossible to take account of small detached portions of parishes shown on the 19th-century maps (most likely to be post-medieval). The map’s tenurial categories are self-explanatory, but it must be stressed that ‘Territory held baronially (entirely or mostly)’ does not indicate an exact parish–barony equivalence: some baronies contained more than one parish, some parishes contained more than one barony, and sometimes the baronial tenure may have covered the bulk but not the entirety of a parochial territory. In 33 cases (3.5% per cent of the total), the parochial territory was divided fairly evenly between two categories; hence a small proportion of the totals in each category is made of what have been counted as half-parishes. Because the map is concerned with parishes and tenure, ‘provincial’ earldoms and lordships are not named; but these are identified in Map 2 (below, p. 15; earldoms are capitalised). Note also that Map 1 deals only with land held in chief of the crown; some lay and ecclesiastical estates were held baronially of magnates, but these are not shown.

<sup>41</sup> In these parishes the local landowners were mostly minor lairds, equivalent to subtenants within the baronies; and the role of the local baron was in effect taken by the crown itself, through its agents the sheriffs.

<sup>42</sup> That applies especially to Buchan (only 3 parishes in *c.*1400), and also to Caithness (5½), Nithsdale (3), Eskdale (2) and Liddesdale (2). But Lauderdale (4) was always small and, at best, semi-provincial.

<sup>43</sup> The complete list is: earldoms, Moray (46 parishes), Ross (29), Dunbar or March (20), Strathearn (18½), Fife (17), Mar (17), Lennox (15½), Atholl (11½), Carrick (8), Sutherland (7½), Angus (6), Caithness (5½), Menteith (5½), and Buchan (3); lordships, Galloway (55), The Isles (45), Annandale (29), Renfrew, plus Bute, Arran and Cowal (26), Garioch (12), Kyle Stewart (11), Lorn (10), Strathbogie (8),

all the provincial earls or lords were responsible for local government over numerous communities and broad areas – putting them, indeed, on a par with the sheriffs.<sup>44</sup>

Then there are Church estates, held by cathedrals, abbeys and other ecclesiastical institutions. The number of parishes that they possessed entirely or almost entirely (as shown in Map 1) comes to 93, over 10 per cent of the whole. But that is an underestimate: partly because only those estates held directly from the crown have been counted, not those held of provincial earldoms or lordships;<sup>45</sup> and partly because the ecclesiastical institutions also possessed many minor territories in other parishes. Thus, collectively, their jurisdictions would have extended across considerably more than 10 per cent of the country's parishes and settlements, though the main individual units normally covered just one or a few parishes.

As for the 350 remaining parishes – 38 per cent of the total – their territories lay completely or mostly within the jurisdiction of around three hundred and seventy ordinary local baronies.<sup>46</sup> Moreover, if the Lordship of the Isles and the rest of the region beyond the Great Glen, where provincial earldoms and lordships predominated,<sup>47</sup> are discounted, then in the remainder of the country the number of parishes consisting of ordinary baronies comes to 336 out of 816 (41 per cent), as opposed to 338 parishes inside provincial earldoms and lordships. In the main part of Scotland, therefore, the ordinary baronies accounted for virtually as many parishes, and hence local communities, as the provincial earldoms and lordships; while the balance shifts well away from the latter if the parishes in ecclesiastical possession are added (433 against 338).

Almost two-thirds of these ordinary baronies (at least 64 per cent) had the same names as the parishes containing their head places;<sup>48</sup> and, with some 370 baronies in 350 parishes, the barony–parish ratio is almost exactly one-to-one, so that on average a barony would have contained virtually the same amount of land as a parish. Averages, of course, often mislead; nevertheless, the implication is that there was a high level of correspondence between baronies and parishes. Detailed analysis

Cunningham (7), Badenoch (6), Lauderdale (4), Nithsdale (3), Eskdale (2), and Liddesdale (2). Note that 'provincial' lordships are less easy to recognise than earldoms, and lists of them differ; mine derives from Grant, 'Higher Nobility in Scotland', 17–21, and Alexander Grant, 'The development of the Scottish peerage', *SHR*, lvii (1978), 7–11, but with amendments.

<sup>44</sup> And those with regality powers would have been *above* the sheriffs; see below, pp. 11–13, 31.

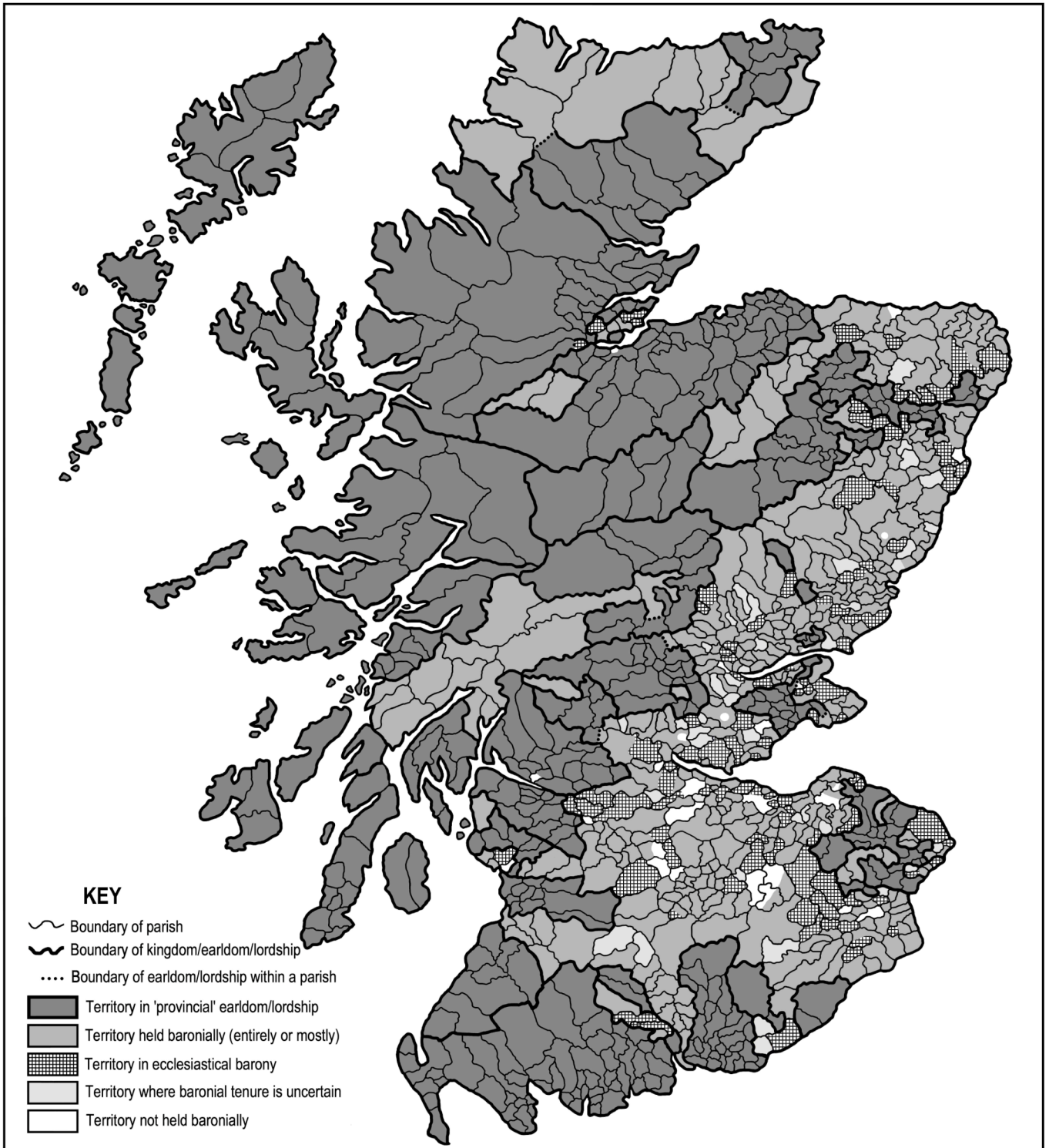
<sup>45</sup> E.g. the lands of Elgin, Dunblane and Dornoch Cathedrals, or Paisley, Inchaffray and Sweetheart Abbeys; such lands were all held with baronial powers.

<sup>46</sup> I listed 350 baronies (1371–1424) held directly of the crown in Grant, 'Higher Nobility in Scotland', 346–97, and 362 (*c.*1405) in McNeill and MacQueen, *Atlas*, 201–5 ('Baronies, lordships and earldoms in the early 15th century'); but as a result of further research I would now add a dozen or so more.

<sup>47</sup> Of the 9 northern parishes outside the earldoms of Caithness and Sutherland, 5½ had formerly been in Caithness, and 3½ in the (possible) lordship of Strathnaver, but both were partitioned in the 14th century: *Orig. Paroch.*, iii, 692–718, 742–7, 756–83. The lords who acquired them would have exercised the equivalent of at least baronial jurisdiction over them, but probably without charters to that effect.

<sup>48</sup> 232 of the 362 baronies in my *Atlas* list (counting only those held of the crown) had the same names as the parishes containing their head places. But I would now add to those totals, and the percentage would rise slightly.





**Map 1.** Parishes, baronies, earldoms and lordships in early 15th-century Scotland

of Lanarkshire shows this could be extremely close:<sup>49</sup> in the early fifteenth century, 25 out of 28 baronies had the same names as the medieval parishes where their centres lay, and in 22 instances the barony lands appear identical to their eponymous parishes; three baronies coincided with two or three parishes each; and three others consisted merely of parts of parishes.<sup>50</sup> But Lanarkshire was probably exceptional, because the equivalence in terms of names (89 per cent) is well above average.<sup>51</sup> Another county analysis, for Roxburghshire, gives a somewhat different picture.<sup>52</sup> It, too, contained 28 ordinary baronies in c.1400, but only 19 (68 per cent, close to the country-wide average) had the same names as parishes. Thirteen baronies (just under half) corresponded exactly or closely to the eponymous parishes,<sup>53</sup> and three others contained more than a single parish;<sup>54</sup> but the remaining 12 were smaller, merely portions of parishes.<sup>55</sup> Here, therefore, the barony–parish correspondence was looser than in Lanarkshire. Yet many Roxburghshire baronies *were* the same as parishes; while the rest were generally substantial parts of relatively large parishes, and indeed were much the same size as the sheriffdom’s smallest parishes.

Now, judging by the work done for the parish survey, it appears that the level of barony–parish correspondence in Roxburghshire is typical of the other sheriffdoms where ordinary baronies predominated, though Lanarkshire shows that even more precise equivalence was possible. Accordingly, the best general conclusions about the geographical extent of late fourteenth- and early fifteenth-century Scottish baronies are that they were as likely as not to have coincided with parishes; that when they did not they were nevertheless roughly parish-sized; and, most significantly, that they would usually have consisted of one or more local communities.

<sup>49</sup> Part of my ongoing research project on medieval Clydesdale. See also Grant, ‘Higher Nobility in Scotland’, 166–73; McNeill and MacQueen, *Atlas*, 205 (but I would now delete Carluke and Pettinain, discount Dennistoun, in the post-1406 sheriffdom of Renfrew, and add Dunsyre barony and parish); and Alexander Grant, ‘Lordship and society in twelfth-century Clydesdale’, in Huw Pryce and John Watts (eds.), *Power and Identity in the Middle Ages: Essays in Memory of Rees Davies* (Oxford, 2007).

<sup>50</sup> Baronies containing more than one parish are: Carnwath (Carnwath, Libberton and Quothquan); Douglas (Douglas and Carmichael); Kilbride (Kilbride and Glassford); Walston (Walston and Dolphin-ton). Baronies that were parts of parishes are: Braidwood (in Carluke); Hartside (in Hartside/Wandel); and Mauldislie (in Carluke). Part of the Clydesdale project involves locating places recorded in pre-1500 charters. Most are identifiable, and, when assigned to individual baronies, turn out to lie either within the relevant medieval parish or, occasionally, just beyond it (the parish boundary has probably changed). Thus, in Machan barony, the 16 so-far identified places (out of 22) are all in Machan parish; in Kilbride barony, which contained Kilbride and Glassford parishes, the 33 identified places (out of 39) are all in those parishes; and none of the unidentified places can plausibly be located elsewhere.

<sup>51</sup> Cf. Grant, ‘Lordship and society in twelfth-century Clydesdale’.

<sup>52</sup> Based on Grant, ‘Higher Nobility in Scotland’, 392–5, *Orig. Paroch.*, i, 277–496, and the primary sources listed in note 39 above.

<sup>53</sup> Bedrule, Cavers, Ednam, Hownam, Linton, Longnewton, Makerston, Maxton, Maxwell, Minto, Smailholm, Wilton, and Yetholm.

<sup>54</sup> Hawick contained both Hawick and Cavers Parva (or Kirktown); Sprouston contained both Sprouston and Lempitlaw; Jedworth, more complicatedly, contained the large upper detached section of Jedburgh parish, part of the lower section, and the whole of Southdean parish.

<sup>55</sup> Hassendean and Chamberlainnewton, in Hassendean parish. Oxnam and Plenderleith, in Oxnam parish. Eckford, Caverton and Cessford, in Eckford parish. Crailing and Nesbit, in the lower section of Jedburgh parish. Fairnington, in Roxburgh parish. Clifton, in Morebattle parish, along with part of the disjointed barony of Riddel/Whitton, the other part of which was several miles away in Lilliesleaf parish.

Thus Cosmo Innes's suggestion does have a general validity. And these conclusions apply also to the main units within the ecclesiastical estates. Outside the provincial earldoms and lordships, therefore, late fourteenth- and early fifteenth-century Scotland would have been almost entirely covered by a network of parish-sized lay and ecclesiastical baronies, in which baronial jurisdiction, though 'parochial' rather than 'provincial', would certainly have operated effectively for the local communities.

But there are two caveats. First, a dozen or so of the new baronies created during the fourteenth century consisted of non-contiguous fermtouns scattered across more than one parish – as many as six, in the case of Kelly in north-east Aberdeenshire.<sup>56</sup> Secondly, the vagaries of inheritance meant that baronies could be partitioned, which might make the jurisdiction lapse (in which case the sheriffs would take over); in c.1400, that probably applied to just over 10 per cent of the baronies.<sup>57</sup> Yet even when those points are taken into account, it remains highly likely that within most of the ordinary baronies (85–90 per cent) local barons *did* exercise their judicial and administrative functions. And when the provincial earldoms and lordships, plus the ecclesiastical estates, are added, it becomes abundantly clear – especially from the map – that the vast majority of late fourteenth- and early fifteenth-century Scotland must have come under seigniorial courts of one kind or another. These, indeed, would have been the courts of first instance for the vast majority of the common people of Scotland – within which, since the men of the neighbourhood made the judgements, community as much as seigniorial justice was being administered.

\* \* \*

While baronies were common, regalities were special. As the term indicates, they were held with quasi-royal powers, like medieval English palatinates. From the fourteenth century onwards, they were created by grants *in liberam regalitatem*, which greatly extended normal baronial powers by adding jurisdiction over the four pleas of the crown plus immunity from interference with the regality or its inhabitants by royal officers. Interestingly, such liberties are not mentioned in *Regiam Majestatem* or *Quoniam Attachiamenta*: presumably the authors did not regard regalities as part of the (essentially thirteenth-century) legal system that they were restating.<sup>58</sup> In 1312, however, Robert I granted that Arbroath Abbey should hold Tarves (Aberdeenshire) 'in pure and perpetual regality', as its other possessions were held; this is the first

<sup>56</sup> For McNeill and MacQueen, *Atlas*, 202–5, I found only 10 scattered baronies; but I would now add a few more. Even so, they are a very small minority. For Kelly and other fragmented baronies that were erected out of the demesne lands of the forfeited earldom of Buchan, see Alan Young, 'The earls and earldom of Buchan in the thirteenth century', in Alexander Grant and Keith J. Stringer (eds.), *Medieval Scotland: Crown, Lordship and Community* (Edinburgh, 1993), 200.

<sup>57</sup> In 1371–1424, 37 of the baronies detailed in Grant, 'Higher Nobility in Scotland', 346–97, had been partitioned: 10.5% of the 350 that were held directly of the crown. What happened in such cases is unclear. Sometimes the jurisdiction was not divided, and the representative of the senior line of descent exercised it over the whole barony; but in other cases it seems to have applied only to the senior line's share of the lands: *Carnwath Court Book*, pp. xxx–xxxvi. This issue needs further research.

<sup>58</sup> *Regiam Majestatem*, indeed, implies that the pleas of the crown were always excluded from seigniorial jurisdictions: *Reg. Maj.*, 1.4 (*APS*, i, 598 c.2).

instance of the term in a royal charter, and appears to represent an institutional innovation by the Chancellor, who was also abbot of Arbroath.<sup>59</sup> A few months later, Robert created a new earldom of Moray for his nephew Thomas Randolph, to be held ‘in free regality with the four pleas belonging to our crown’: the earliest occurrence of the standard formula.<sup>60</sup> Further definition – and evidence that the privileges associated with regalities existed in the thirteenth century after all – comes from 1321, when, after the king bestowed Sprouston barony in Roxburgh on his illegitimate son ‘with all liberties, as the ancestors of the late Sir John de Vescy ... held the said barony’, an inquest found that

the lord de Vescy formerly held the whole tenement of Sprouston regally (*regaliter*), by the same liberties as the Lord Alexander king of Scotland used to hold his other lands of his kingdom ... and ... had his justiciar, chamberlain [in Scotland, chief financial officer], chancellor, coroners, and servants, for maintaining the said lord de Vescy in the manner of the king (*ad modum regis*).<sup>61</sup>

Thus a grant of regality entitled the lord to appoint officers paralleling the crown’s, and, in particular, to conduct his own justiciar ayres through his own justiciar.<sup>62</sup> Moreover, the special powers were not only the pleas of the crown: the lord of regality could deal fully with *all* cases of theft, not just those where the accused was found in possession, and also with ‘dittays’, the accusations against suspected rather than evident criminals.

However, in three charters granting regality status – issued by David II in 1358 for Melrose Abbey’s immediate property, by Robert II in 1378 for three of Sir James Douglas of Dalkeith’s baronies, and by the same king in 1380 for Paisley Abbey’s land in Lennox – the four pleas of the crown were specifically excluded.<sup>63</sup> These charters indicate that tenure *in liberam regalitatem* did not automatically convey jurisdiction over the four pleas; instead, the crucial privilege must have been the immunity (usually reiterated in letters patent directed to all royal officers).<sup>64</sup> But in practice this technical point was probably not hugely important, because in all other known grants of regality both the immunity from crown officers and the four pleas

<sup>59</sup> As argued by A. A. M. Duncan: *RRS*, v, no. 19, and pp. 39–40.

<sup>60</sup> *Ibid.*, v, no. 389.

<sup>61</sup> *RMS*, i, app. II, no. 291; *RRS*, v, no. 172, and p. 41.

<sup>62</sup> E.g. *RMS*, i, nos. 920, 932; HMC, *Fifteenth Report*, App. VIII, 56, no. 110; *Morton Reg.* ii, no. 180. Possessing the same status as the justiciars had civil as well as criminal significance: the regality court (unlike the sheriff’s) could hear such cases as ‘dissasine’ and ‘mortancestor’; while the lord could conduct retours (like English inquisitions post mortem) and issue other administrative brieves.

<sup>63</sup> *RRS*, vi, no. 194; *Morton Reg.*, ii, no. 165; *Paisley Reg.*, 206–8.

<sup>64</sup> E.g. *Morton Reg.*, ii, no. 182; *Arbroath Reg.*, ii, no. 28. The immunity meant that regality jurisdiction minus the four pleas would still have been significantly more than what barons had, giving jurisdiction over *all* theft plus power to deal with ‘dittays’, possessory assizes, and other matters reserved to the justiciars. A. A. M. Duncan, however, has argued differently (*RRS*, v, 40), on the basis of Robert I’s charters to James lord of Douglas (a) of Buittle, with freedom from royal officers, and (b) of jurisdiction over all theft within his estates (*RMS*, i, app. I, nos. 37–8). Since neither grant was in regality, Duncan regards the four pleas as the determining factor. But in these charters, the level of immunity is not so complete as in grants of regality.

were explicitly or implicitly included – and Douglas of Dalkeith and Paisley Abbey did subsequently get the four pleas (what happened with Melrose Abbey is less clear).<sup>65</sup> The two sets of privileges really went together: without immunity from interference by royal officers, the liberty would hardly be regal, yet if the pleas of the crown were excluded, immunity from the justiciar's court would be incomplete.

The effect of the combination is most obvious in the procedure of repledging: the immunity bestowed by tenure *in liberam regalitatem* covered the regality's inhabitants, and so if any of them were prosecuted elsewhere, the lord of regality could 'repledge' them to his own court.<sup>66</sup> In effect, therefore, inhabitants of regalities could not be tried (at least initially) in any of the royal courts, and indeed the king's brieves did not run within them.<sup>67</sup> That has made it easy to see the Scottish regalities as states within the state, as implied both in the use of the terms 'the royalty' and 'the regality' to describe areas that were directly subject to royal officers and those that were not, and in the way that the main offices within regalities mirrored those of the crown (though on a much smaller scale).<sup>68</sup> As was said in the late seventeenth century, 'A Lord of Regality is a *Regulus*, a little King'.<sup>69</sup>

What territories were held in regality in late medieval Scotland? The bulk of the royal creations – recorded in 25 royal grants – date from between 1312 and 1404.<sup>70</sup> They consisted of the earldoms of Moray (1312), Wigtown (1341), Sutherland

<sup>65</sup> *Morton Reg.*, ii, no. 174 (in 1382); *Paisley Reg.*, 73 (in 1452). With Melrose, David II's regality charter (subsequently confirmed by Robert II) included the pleas of the crown, but also withheld 'our four pleas'! Later, however, James I gave Melrose full regality rights over other lands, which suggests that the limitation in David II's charter was not upheld. See *Melrose Lib.*, ii, nos. 476, 497, 508–9.

<sup>66</sup> For repledging, see in general J. Irvine Smith, 'Criminal Procedure', in Paton, *Introduction to Scottish Legal History*, 430–2, and *Fife Court Book*, 344–6. Any lord could repledge, but only in accordance with the competence of his court; so, in criminal cases, only repledging by lords of regalities would have been significant. For examples of the process, see William Fraser, *The Red Book of Grandtully* (Edinburgh, 1868), i, nos. 84\*, 85\*, 87\*. These record John Logie of that ilk repledging men of his regality of Logie in 1392 and 1396 from the justiciar's court, the chamberlain's court (which dealt with offences such as forestalling in burghs), and the Perth sheriff court. Every time, Logie appeared in person, presented charters by David II and Robert II granting and confirming his regality powers, provided pledges, and then withdrew while the court considered the validity of his request. In each case that was granted, and the justiciar, chamberlain-depute, and sheriff duly issued written certificates declaring what had happened.

<sup>67</sup> Though (as discussed below, pp. 17–20) appeals were possible, and the king *could* intervene.

<sup>68</sup> E.g., *APS*, ii, 19 c.21 (1430); 20 c.1 (1432); 32 c.2 (1440); 36 c.13 (1449); 225 c.9 (1491). For justiciars, chamberlains and chapels [i.e. chanceries] in regalities, see, e.g., *RMS*, i, nos. 920, 932; *Aberdeen Reg.*, i, 207, 212; *HMC*, *15th Report*, App. VIII, 56, no. 110; *Morton Reg.*, ii, no. 180; William Fraser, *The Red Book of Menteith*, (Edinburgh, 1880), ii, 292–3; William Fraser, *Memorials of the Earls of Eglinton*, (Edinburgh, 1859), ii, nos. 28–9.

<sup>69</sup> *Carnwath Court Book*, pp. xliii–xliv, from Sir George Mackenzie of Rosehaugh, *Observations on the Acts of Parliament ...* (Edinburgh, 1686).

<sup>70</sup> The 15th-century kings, James I–IV, did not grant regalities nearly so extensively. The only new creations recorded in the extant Register of the Great Seal for their reigns (1424–1513) consist of various creations recorded outwith the original Douglas regality for the 8th earl in 1451 (but that lapsed with the Douglas forfeiture of 1455), land in Carrick for Whithorn priory in 1450, and the southern estates of George Crichton, earl of Caithness (which lapsed when he died in 1454). James I's grant to Melrose (above, note 65), James II's grant to Glasgow Cathedral of regality over the city and barony of Glasgow in 1450, and his extension of St Andrews Cathedral's regality in 1452, can be added, but even so these are far less significant than the 1312–1404 grants. *RMS*, ii, nos. 384, 474, 479, 587; *Glasgow Reg.*, ii, no. 356; *APS*, ii, 73–4.

(1345), Strathearn (1371), Angus (1397) and Atholl (1403); the lordships of Annandale (c.1322), Man (1324) and Badenoch (1371); all the main Douglas estates (1354: including the lordships of Eskdale, Lauderdale and Liddesdale, Douglasdale and 12 other baronies); all the main Stewart estates (1404: including the earldom of Carrick, the lordships of Renfrew, Kyle and Cunningham, with Cowal, Bute and Arran, plus two other baronies); all the Douglas of Dalkeith estates (1378–82: including nine baronies); ten other individual baronies; lands belonging to Melrose and Paisley Abbeys; and territory within the earldom of Lennox. A detailed referenced list, with analysis of the recipients, is given below,<sup>71</sup> and those still held in regality in the early years of the fifteenth century are portrayed in Map 2 (below p. 15).<sup>72</sup>

That list is incomplete, however. Three other lay regalities, for which specific grants do not survive, need to be added: the earldom of Dunbar or March;<sup>73</sup> the earldom of Caithness;<sup>74</sup> and the lordship of Galloway<sup>75</sup> (within which, remarkably, the fourth earl of Douglas in 1407 bestowed regality rights including the pleas of the crown over Buittle, Preston and Borge, on James Douglas of Dalkeith, who already held the territories from him).<sup>76</sup> Furthermore, there are what David II in 1367 called the ‘ancient regalities’ – territories held in regality since before he became king: these would have included not only Moray and Annandale (created by Robert I), but also

<sup>71</sup> At pp. 36–40, including Table 1, ‘Grants of Regality, 1312–1404’.

<sup>72</sup> Map 2 shows the Scottish regalities (lay and ecclesiastical) during the opening decades of the 15th century, when they were probably at their greatest total extent. As well as those listed here, it includes ones for which (as discussed in the following paragraph) specific grants *in liberam regalitatem* do not exist, especially the ‘ancient regalities’; and also some ‘quasi-regalities’ (below, p. 16). It also, for convenience, shows ‘provincial’ earldoms and lordships that were not regalities (earldoms are capitalised). Note that several of the 14th-century regalities had undergone significant changes by the early 15th century: Moray was considerably smaller after 1346 than in Robert I’s original grant; Wigtown’s regality was cancelled in the 1360s, and the earldom was incorporated into the lordship of Galloway in 1372; Sutherland had lapsed in c.1371 (on the death of the 5th earl without heirs of his first marriage, to whom it had been entailed); Man had been lost to England in 1333; and the Douglas estates had been partitioned between the earls of Douglas and Angus in 1389, while six of the baronies in the 1354 charter were no longer in either earl’s possession.

<sup>73</sup> Called a regality by George Dunbar, 10th earl of March in 1425: William Fraser, *The Book of Carliaverock* (Edinburgh, 1873), ii, 428. It might have become a regality as part of the deal by which the 9th earl (who had defected to England in 1401) was brought back in 1407 – perhaps to compensate for the loss of Annandale, which he *had* held in regality.

<sup>74</sup> In 1452 James II ‘annexed and incorporated’ the southern Scottish lands of George Crichton into ‘the earldom of Caithness and the regality of that same earldom’: *RMS*, ii, no. 587. Assuming that the charter is accurate about Caithness’s status, it would presumably have been recognised as a regality under its late 14th-century or early 15th-century earls, who were also earls of the regality of Strathearn.

<sup>75</sup> No charter specifically granting the lordship of Galloway in regality exists. But David II’s charter to Archibald Douglas in 1369 stated he was to hold it not only in barony but also as Robert I’s brother Edward Bruce had possessed it (*RMS*, i, no. 329) – which was no doubt the equivalent of regality. Galloway, moreover, had special laws and liberties, which were recognised on Archibald’s behalf in 1384 (*APS*, i, 551).

<sup>76</sup> *Morton Reg.*, nos. 215–16; also nos. 83, 200–1. This is a most unusual grant, no doubt reflecting the fourth earl’s vast power; but the king had already given James Douglas regality rights over all his other lands, including those held of subject-superiors, so this grant was actually putting Buittle etc. on the same footing, by transferring the earl’s rights.



Map 2. Regalities, earldoms and lordships in early 15th-century Scotland

the thirteenth-century regality of Sprouston. And Arbroath Abbey's estates were another ancient regality: Robert I's charter of Tarves declares that it was to be held in the same way as the abbey has always held all its other lands in regality, by the grant of its founder William I.<sup>77</sup> William I's foundation charter of 1178 actually states that Arbroath's lands are to be held, with sake and soke, etc., 'just as I possess my own lands, saving the defence of my realm and *regali iusticia* if the abbot is negligent about justice in his own court'.<sup>78</sup> Edward I's lawyers would not have accepted that as erecting a liberty, but in medieval Scotland such a formula *was* taken literally. Furthermore, this applies to several other early royal foundations as well: Dunfermline, Scone, St Andrews, Kelso, Holyrood and Cambuskenneth.<sup>79</sup> Also, along with Sprouston there was another lay 'ancient regality', the lordship of Garioch, granted by William I to his brother David earl of Huntingdon in c.1178 'as freely and fully' as William himself had ever held the territory – which in the fourteenth century clearly denoted regality.<sup>80</sup>

How much land did these regalities cover? As Map 2 shows, in the late fourteenth and early fifteenth centuries it was a very large proportion of the whole country – amounting, in terms of parishes, to well over one-third of the total (331 out of 925: 36 per cent). Moreover, what can be thought of as 'quasi-regalities' should be counted as well: the Lordship of the Isles, since, although technically not held *in liberam regalitatem*, in practice it was more independent than any of the actual regalities; the earldom of Fife, in view of the special powers exercised through the 'Law of Clan MacDuff';<sup>81</sup> and the rump of the old lordship of Nithsdale, because in c.1388 the lord of Nithsdale was given the powers of justiciar and chamberlain within the sheriffdom of Dumfries, and thus would have been the equivalent of a lord of regality within his own land there.<sup>82</sup> That brings the total of parishes within regalities or the like to no fewer than 396 – a striking 43 per cent of all Scotland's parishes (and hence, roughly, local communities). Or, to put it another way, less than 60 per cent of Scottish parishes lay within what was known in the fifteenth century as the 'royalty'. Little wonder that the spread of regalities has been so roundly condemned by so many Scottish historians.

Nevertheless, it must be emphasised that the regalities' liberties were not absolute: while crown officers were excluded from them, the crown itself was not. Nor were they quite so separate as the Welsh Marcher lordships.<sup>83</sup> For example,

<sup>77</sup> RRS, v, no. 19.

<sup>78</sup> *Ibid.*, ii, no. 197.

<sup>79</sup> *David I Charters*, nos. 33, 147, 159; RRS, i, no. 243. David II called Scone an 'ancient regality' (*ibid.*, vi, no. 460), and that would also apply to the others. The rest of Scotland's abbeys and cathedrals were not so privileged, however.

<sup>80</sup> RRS, ii, no. 205; and see below, pp. 30–1.

<sup>81</sup> Discussed below, pp. 26–6.

<sup>82</sup> Grant, 'Higher Nobility in Scotland', 59–63, 123–4. Most of this sheriffdom was held in regality, so in practice the lord of Nithsdale's governmental powers were limited almost entirely to the area of Nithsdale itself, within which he himself probably possessed about three parishes.

<sup>83</sup> They could not be called 'virtual "states"' in the way that Rees Davies described the Welsh Marcher lordships: Rees Davies, 'The medieval state: the tyranny of a concept?', *Journal of Historical Sociology*, xvi (2003), 294. The only lordship in Scotland that would fit Davies's description was the anomalous Lordship of the



although medieval Scottish magnates were perfectly capable of indulging in violent feuding, private warfare was never technically acceptable, within or outwith regalities.<sup>84</sup> Next, regalities were not free from national military obligations: their inhabitants had to fight under their lords' banners in defence of the realm.<sup>85</sup> Similarly, when national taxation was (occasionally) imposed, it was levied from regalities as well as from the 'royalty', albeit by the lords' officers.<sup>86</sup> Nor were regalities exempt from the wool customs, though if a regality included a burgh, the lord might get the customs receipts as an extra grant.<sup>87</sup> And, as major tenants-in-chief, lords of regality had to attend parliaments and councils-general (Scottish parliamentary attendance was tenurial); the contrast with Wales is highlighted by Robert I's grant of the Isle of Man to Thomas Randolph in regality, for which personal attendance at the Scottish parliament was required.<sup>88</sup> Most significantly, regalities created by the crown could be cancelled by the crown, as David II showed in 1367 by including 'all regalities and liberties' in a revocation of grants made since his accession in 1329;<sup>89</sup> one consequence was the (temporary) confiscation of Garioch.<sup>90</sup> Also, shortly before the act of revocation, David II 'restored' the earldom of Wigton to Thomas Fleming, to be held as his grandfather had done – except that Thomas's rights of regality were 'for a certain reason to remain suspended'.<sup>91</sup>

What, then, of local justice? Was it undermined by regalities, for instance through the procedure of repledging? In the absence of court records, that is not easy to answer. But repledging did not halt the judicial process, because the accused could only be repledged to a regality court if the lord of regality gave security guaranteeing that the case would be properly heard; if it was not heard, the accuser could complain about default of justice to the king or parliament.<sup>92</sup> On the other

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Isles – and its power was much more alarming to the Scottish crown than any of the regalities ever were.

<sup>84</sup> On his return in 1357, in the aftermath of the Wars of Independence, David II proclaimed a blanket ban on all private warfare, on pain of full forfeiture: *APS*, i, 492. The inhabitants of the North-West Highlands would not have agreed, however, which is why they were seen as such a problem by the rest of the kingdom.

<sup>85</sup> As demonstrated by the bishops of Moray's objections to the obligation that their lands had to provide fighting men to follow the banner of the earl – who held the earldom in regality: *RRS*, v, no. 389; *Moray Reg.*, nos. 154, 163, 169.

<sup>86</sup> *The Exchequer Rolls of Scotland*, ed. G. Burnett *et al.* (Edinburgh, 1878–1908), ii, 36, 425, 427 (Garioch, 1360, 1373; Strathearn, 1373); *APS*, ii, 4 c.10 (1424).

<sup>87</sup> Thomas Randolph, for instance, had all the customs of the Moray burghs, while Melrose Abbey was allowed to export its wool free of custom; but in both cases this was additional to the grant of regality: *RRS*, v, no. 389; vi, no. 195.

<sup>88</sup> *RMS*, i, app. I, no. 32.

<sup>89</sup> *APS*, i, 502: his second revocation. The first, in 1357, applied just to lands and revenues (*ibid.*, 491), so the addition of regalities in 1367 may have been significant. However, the act's purpose was essentially fiscal.

<sup>90</sup> *RRS*, vi, no. 404. Garioch would have counted as an 'ancient regality' exempted from the act. But David had granted it to the earl of Mar in 1358 (*ibid.*, vi, no. 167), and the revocation was presumably of the territory, not the regality powers. Nevertheless this shows that regality did not mean immunity from crown control.

<sup>91</sup> *Ibid.*, vi, no. 368. Earl Malcolm Fleming, for whom the regality had been erected, had died in c.1363.

<sup>92</sup> The point of the 'pledge' was to give a guarantee that justice would be done: see *Reg. Maj.*, supplement, no. 12, and *Quon. Attach.*, c.6 (*APS*, i, 636 c.23; 648 c.4). In 1424 James I enacted that 'the king shall

hand, the accused might be duly tried and acquitted – especially if the ‘good men’ of the regality who formed the jury did not know the facts about a crime committed elsewhere. However, judging by England, acquittal was a fairly normal outcome in homicide cases; juries were notoriously reluctant to enforce the death penalty for killings. Moreover in Scotland, within both ‘royalty’ and regalities, the accuser could demand assythment (compensation) from the killer<sup>93</sup> – and if the lord of regality made that impossible, then, again, the accuser would have recourse to king and parliament. Civil cases heard in regality courts could also, of course, be appealed to parliament, just as from the justiciar ayres.<sup>94</sup>

Admittedly, if a lord of regality did not execute his judicial functions properly – especially if he harboured criminals – there would have been a serious problem, as with major franchises anywhere in Europe. The ‘Laws of Malcolm MacKenneth’, written in the later 1360s by a clerk who disliked the concept of private justice, declared that all magnates who maintained malefactors ‘unjustly against the law of God and the world ... are false and perjured against the king and people of the realm’.<sup>95</sup> He was probably targeting magnates who controlled large areas of the central Highlands, especially Robert Stewart (the future Robert II) and his sons, who were in trouble with David II over law and order there.<sup>96</sup> But there are no indications of problems within Stewart’s extensive southern lordships, so the real issue (despite the writer’s prejudices) was probably not magnate criminality but an inability to control powerful locals.<sup>97</sup> That seems to lie behind David II’s cancellation of the regality of Wigtown, since in 1372 Thomas Fleming sold the earldom’s lands to Archibald Douglas, ‘on account of the great and grave discords and capital enmities that have arisen between me and the leading inhabitants of the said earldom’.<sup>98</sup> In contrast, Douglas had already been granted eastern Galloway in 1369 ‘for his diligent labour and deserving service carried out effectively and devotedly for us’, and he was subsequently applauded by chroniclers for governing the whole of Galloway strongly and justly;<sup>99</sup> he was clearly what that troublesome province needed.

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give strict commandment as well within regalities as outwith under all pains and charges that after may follow, that as well to poor as to rich without fraud or favour they do full law and justice ... And if the judge refuses to do the law evenly as is before said, the party complaining shall have recourse to the king’: *APS*, ii, 7–8 c.14.

<sup>93</sup> See, in general, Jenny Wormald, ‘Bloodfeud, kindred and government in early modern Scotland’, *Past and Present*, no. 87 (1980).

<sup>94</sup> E.g., *APS*, i, 535: an appeal to parliament from the court of the regality of Moray in 1370, along with several appeals from the justiciars’ courts (though there was no earl of Moray in 1370, and the regality was temporarily in crown hands).

<sup>95</sup> A. A. M. Duncan, ‘The “Laws of Malcolm MacKenneth”’, in Grant and Stringer, *Medieval Scotland*, 258–9; printed in *APS*, i, 709–12.

<sup>96</sup> Duncan, ‘“Laws of Malcolm MacKenneth”’, 267–8; *APS*, i, 503, 506–7.

<sup>97</sup> The post-Black Death population fall probably produced a highly unstable situation in the Highlands, exacerbated by dislocations in local lordship which enabled the Stewarts to take over much of the area without having viable power-bases there: Alexander Grant, *Independence and Nationhood* (London, 1985), 203–9; see also below, note 101.

<sup>98</sup> *RMS*, i, no. 507.

<sup>99</sup> *Ibid.*, i, no. 329; *The Original Chronicle of Andrew of Wyntoun*, ed. F. J. Amours, vi (Scottish Text Soc., lvii, 1908), 393; *Scotichronicon* by Walter Bower, ed. D. E. R. Watt, viii (Aberdeen, 1987), 34–5.

Thus if regalities caused problems, it was probably when their lords were insufficiently mighty, not overmighty<sup>100</sup> – as found in England at much the same time with even the greatest magnate of all, John of Gaunt, duke of Lancaster.<sup>101</sup> This is certainly the message of the legislation relating to regalities. Throughout the later fourteenth and earlier fifteenth centuries, they are mentioned in statutes which either required tougher and faster action on crime or tackled the issue of criminals fleeing from one jurisdiction to another. Yet such statutes did not condemn regalities and baronies: instead, they enacted anti-crime blitzes for periods of three or more years at a time, during which much of the justiciars' jurisdiction over killings, robbery and theft were given to sheriffs and barons, making them in effect more like lords of regality. Furthermore, regalities themselves were not highlighted in this legislation; demands that their lords must carry out their functions properly are always paralleled by similar demands on the sheriffs and other crown officers.<sup>102</sup> Two statutes in particular give the general flavour: one, from 1457,

Item as to the Regalities, it is statute and ordained that all privileges and freedoms be kept as they were founded, And if any lord having Regality abuse it in prejudice of the king's laws and breaking of the country, that they be punished by the king and by the law as applies ...<sup>103</sup>

and the other, from 1436,

that neither lord of Regality, sheriff nor baron sell any thief or fine with him of theft done or to be done, under the pain to the lords of Regality doing in the contrary of loss of Regalities, and to barons, Justiciars and sheriffs of life and limb ...<sup>104</sup>

In other words, there was no problem with regalities, so long as they were administered properly; but maladministration by their lords was no worse than that by sheriffs and justiciars – if anything, it was less heinous.

Essentially, indeed, the regalities like the baronies were seen – at least in theory and from the standpoint of central government – as alternative agencies for the maintenance of local government. From an English crown point of view, the fact

<sup>100</sup> To be really overmighty, a lord of regality would have had to have defied crown censure – which in effect was rebellion. Scottish magnates did not do that, except, most strikingly, the 8th earl of Douglas, who had vast territories in regality (cf. Map 2), and probably did regard himself as equal to the king – who eventually killed him in 1452. See Grant, *Independence and Nationhood*, 191–4, and Alexander Grant, 'To the medieval foundations', *SHR*, lxxiii (1994), 10. Michael Brown, *The Black Douglases* (East Linton, 1998), 290–5, also gives a picture of (to my mind) unacceptable behaviour by the 8th earl.

<sup>101</sup> See Simon K. Walker, 'Lordship and lawlessness in the palatinate of Lancaster, 1370–1400', *Journal of British Studies*, xxviii (1989). Within the palatinate, Walker notes 'constant cattle rustling, armed gangs, serious affrays, extortion, oppression, feuding, and several killings', much of which was connected with the ducal retainers; yet 'such incidents were, in themselves, unremarkable – the misdemeanours of the duke's followers could be matched by the crimes of gentlemen all over the north' (p. 330). The problem, Walker shows, was that Gaunt needed his retainers' support, and so could not discipline them as the English parliament expected. That helps to put Scottish parliamentary complaints into perspective.

<sup>102</sup> *APS*, i, 548 (1373), 551–2 (1384), 570–4 (1397–8); ii, 20–2 (1432).

<sup>103</sup> *Ibid.*, ii, 49 c.16.

<sup>104</sup> *APS*, ii, 23 c.1.

that this jurisdiction was a hereditary possession would no doubt have made it appear even more unsatisfactory. But in Scotland, unlike England, there was a much greater acceptance of hereditary jurisdiction, not only with respect to the earls and provincial lords, but also, more strikingly, in the sheriffdoms; the rule that sheriffs could serve only for one year was not known in Scotland, and many medieval Scottish sheriffs held their offices hereditarily<sup>105</sup> – which reduces the contrast indicated by the phrase ‘royalty and regality’. Historians’ condemnation of the Scottish regalities, therefore, is surely anachronistic. Rather than being condemned as states within the state, they should be regarded as an integral part of an overall structure – or, to use modern jargon, as one of the elements in ‘a public–private partnership’, by which administrative and judicial responsibilities for parts of the kingdom were ‘contracted out’ to a number of special lords.

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That brings us back to J. R. Strayer’s emphasis on the general use of local landlords to run local government. It is now time to take his long-term chronology into account. For Strayer, the dislocations of the ninth, tenth and eleventh centuries necessitated private government over regions, provinces and *pagi*,<sup>106</sup> and hence originated the system that characterised Western European political society until at least the end of the thirteenth century, and in many countries well beyond the end of the fifteenth. How applicable is that long-term model to the history of Scottish franchises?

One reaction might be that this history starts with twelfth-century ‘Normanisation’. ‘Barony’ derives from Low Latin and Old French, while the sake-and-soke jingle is Anglo-Saxon; both were in common use in post-1066 England, and from there they came to Scotland under David I and his successors. But nowadays historians are rightly wary about the idea of a new order starting from scratch in twelfth-century Scotland; the current emphasis is on a ‘continuity in aristocratic and noble power that reached across the apparent watershed represented by the appearance of a Frankish nobility in the twelfth century’.<sup>107</sup> Thus, while David I, Malcolm IV and William I brought in many ‘new men’, they maintained plenty of ‘old’ ones – especially the earls, who were direct successors of the provincial rulers known as mormaers.

The earliest mention of a mormaer (Gaelic, *mormaír*) is from 918; the earliest linkage with a specific province (Angus) is from 935.<sup>108</sup> The title appears shortly after the new, unitary, kingdom of Alba (the Gaelic term for Scotland) emerged towards the end of the ninth century, following Scandinavian attacks which had devastated

<sup>105</sup> *Fife Court Book*, pp. xxxiii–xxxvi.

<sup>106</sup> Strayer, *Medieval Statecraft*, 69–71, 78–80.

<sup>107</sup> Steve Boardman and Alasdair Ross (eds.), *The Exercise of Power in Medieval Scotland, c.1200–1500* (Dublin, 2003), 18 (editors’ introduction).

<sup>108</sup> *Early Sources of Scottish History*, ed. A. O. Anderson (Edinburgh, 1922), i, 407, 446. For the general points that follow, see, most recently, Katherine Forsyth, ‘Origins: Scotland to 1100’, in Jenny Wormald (ed.), *Scotland: A History* (Oxford, 2005), 26–37; Thomas Owen Clancy and Barbara E. Crawford, ‘The formation of the Scottish kingdom’, in R. A. Houston and W. W. J. Knox (eds.), *The New Penguin History of Scotland* (London, 2001), 58–90.

the smaller kingships of the previous era. *Mormaír* means ‘great steward’, and, as that implies, mormaers were subordinate magnates rather than independent potentates, exercising government – especially with respect to military leadership<sup>109</sup> – on behalf of the kings of Alba over up to eleven provinces within the area from the Forth–Clyde line to the Moray Firth.<sup>110</sup> Also, in the regions to the south (Strathclyde and Lothian) and north (beyond Moray), which were gradually annexed by Alba/ Scotland in the tenth and eleventh centuries, a basically similar pattern of provincial lordship developed.<sup>111</sup> This tallies well with Strayer’s long-term model.

However, pre-twelfth-century Alba/Scotland did not have a neat structure of large-scale regional lordship; the pattern was much more complex. In addition to mormaers or earls, there were the king’s thanes, responsible for the crown’s own estates (though earls had their thanes, too).<sup>112</sup> The term ‘thane’, like ‘earl’, is probably an eleventh-century borrowing from Anglo-Scandinavian Northumbria, and seems to have replaced the Gaelic word *toísech* (toiseach).<sup>113</sup> The lands run by thanes – which came to be called ‘thanages’ – are examples of the ancient territorial units (found throughout the British mainland) once commonly known as ‘shires’ and, nowadays, as ‘multiple estates’.<sup>114</sup> Strikingly, the king’s thanages occupied substantial portions of each province, hemming the earldoms in and even penetrating them (as with Auchterarder thanage, entirely within the earldom of Strathearn). Thus, in the early twelfth century, none of the mormaers or earls can have possessed all the lands in their provinces; indeed by then Gowrie and Mearns had been taken entirely, and Angus mostly, into the crown’s hands. Hence, as a reference by Malcolm IV to lands in Gowrie ‘both of the earldom and of my regality’ illustrates, Alba and Scotland had a two-part structure, divided between the land of the mormaers or earls (the crown’s

<sup>109</sup> Forsyth, ‘Origins’, 33; G. W. S. Barrow, *The Anglo-Norman Era in Scottish History* (Oxford, 1980), 161–2.

<sup>110</sup> Atholl, Strathearn, Fife, Gowrie, Angus, Mearns, Mar, Buchan and Moray; and also, probably, Menteith and Lennox. From the 10th to the mid 12th centuries, mormaers and earls are recorded in Angus, Mar, Buchan and Moray (in Moray they were also ‘kings’); Atholl had a ‘satrap’ (i.e. a mormaer) and earls; Fife and Strathearn had earls; Gowrie is an earldom; Mearns had a ‘comes’ (in 1094; presumably a mormaer). As for Menteith and Lennox, they were earldoms before 1163 and 1178 respectively.

<sup>111</sup> Though the title ‘mormaer’ is not used there. The obvious example is the kingdom/lordship of Galloway, but the south-west also contained Strathnith/Nithsdale, Carrick (eventually an earldom), and perhaps several other provincial units: G. W. S. Barrow, ‘The pattern of lordship and feudal settlement in Cumbria’, *Journal of Medieval History*, i (1975). In Lothian, the earldom of Dunbar (later March) emerged as ultimate successor to northern Bernicia. It must be added that the essentially independent Western Highlands and Islands are not counted here.

<sup>112</sup> For what follows, see Alexander Grant, ‘The construction of the early Scottish state’, in J. R. Maddicott and D. M. Palliser (eds.), *The Medieval State: Essays presented to James Campbell* (London, 2000); Barrow, *Kingdom*, chap. 1 (‘Pre-feudal Scotland: shires and thanes’); and Alexander Grant, ‘Thanes and thanages’, in Grant and Stringer, *Medieval Scotland*. Sixty-five royal thanages, stretching across east-central Scotland from Dingwall in the north to Haddington in the south, have been definitely identified, and no doubt there were originally many more.

<sup>113</sup> *Toísech* is a more general word for local lord; but since earls, too, had their thanes, the equation is probably reasonably exact.

<sup>114</sup> Barrow, *Kingdom*, 53–68; Steven T. Driscoll, ‘The archaeology of state formation in Scotland’, in W. S. Hanson and E. A. Slater (eds.), *Scottish Archaeology: New Perceptions* (Aberdeen, 1991) (though I would be cautious about the use of the term ‘thanage’).

*provincial* agents) and the land of the king's thanes (the crown's *local* agents).<sup>115</sup>

Furthermore, the distinction between royal land and mormaer land had probably always existed: detailed analysis of pre-twelfth-century Gaelic notes of grants to the old monastery of Deer (north of Aberdeen) shows, in the provinces of Buchan and Mar to which they refer, a clear distinction and no overlap between estates under the mormaers' lordship and estates directly under the king's.<sup>116</sup> What had probably been going on is illustrated by 'cuthill' place-names, which, as Geoffrey Barrow has demonstrated, derived from the Gaelic *comhdhail* ('assembly' or 'tryst'), and almost certainly represent meeting-points for popular courts. Barrow's suggestion 'that a customary court meeting-place might be expected for each shire of the early type, and that some at least of the surviving cuthill names refer to such localities', is certainly valid:<sup>117</sup> of 61 cuthill names,<sup>118</sup> 31 (51 per cent) are within either thanages or shires; and another 16 (26 per cent) are inside earldoms.<sup>119</sup> This indicates that the network of shires, with 'cuthill' courts, was in existence well before the mormaerdoms appeared in the early tenth century.<sup>120</sup> Presumably, therefore, the mormaers had been given or simply acquired lordship, especially the right to exact cain (Gaelic, *cáin*) or tribute, over a number (perhaps the majority) of shires within their provinces; but many shires had been kept in more direct royal possession, and were run by toiseachs or (eventually) king's thanes.<sup>121</sup>

<sup>115</sup> RRS, i, no. 245; Grant, 'Construction of the early Scottish state', 56–63.

<sup>116</sup> Demonstrated most convincingly in a so-far unpublished paper by Dauvit Broun, 'Lordship over land in the property-records in the Book of Deer'; I am extremely grateful to Dr Broun for giving me a copy of this paper and permitting me to cite it.

<sup>117</sup> G. W. S. Barrow, *Scotland and its Neighbours in the Middle Ages* (London, 1992), chap. 11 ('Popular courts'); quotation from p. 227.

<sup>118</sup> Listed *ibid.*, 231–40; they are scattered fairly evenly across eastern Scotland from the Dornoch Firth to the River Tweed, though nos. 1.31 and 2.33 are in Lanarkshire and Ayrshire. The full list totals 64, but three are discounted here: 1.27, a modern name (my thanks to Dr Simon Taylor for that information); 1.12 ('perhaps cot + hill'), because, uniquely, it is in the same parish as another cuthill (2.11); and 2.1, Clach na Comhalaich in Lochbroom (Ullapool), which is purely Gaelic, and in a very different region.

<sup>119</sup> Thanages (in roughly north–south geographical order): Belhelvie (1.10), Aberdeen (1.11), Kincardine O'Neill (2.11), Aboyne (2.9), Birse (2.10), Durris (1.11), Kincardine/Fettercairn (2.12), Inverlunan (1.20), Inverkeillor (1.21), Strathardle (2.19), Coupar Angus (2.22), Longforgan (2.33), Forteviot (2.24), Kinross (1.25), Callendar (2.32): Grant, 'Thanages and Thanages', 72–81, plus Barrow, *Kingdom*, 50, for the very probable thanage of Inverlunan. Definite shires: Kingoldrum (2.16), Arbroath (2.17), Clackmannan (2.28), Stirling (2.31), Dunipace/Herbertshire (1.28): from RRS, ii, nos. 160, 197, and Barrow, *Kingdom*, 38, 54n. Very probable shires (i.e. old, large or significant units of territory): Spynie (2.3), Lenzie (2.4), Deer (2.5), Dunnottar (2.13), Glenesk (2.14), Earl's Ruthven (2.18), Clunie (2.20: see *APS*, i, 374 c.4), Livingston (1.29), Tranent (1.30), Carnwath (1.31), Stobo/Broughton (2.30). Earldoms: Sutherland (1.1, near the burial mound of Earl Sigurd the Mighty of Orkney, d. c.892), Moray (1.2, 1.3, 2.2), Buchan (1.4, 1.5, 1.7), Mar (1.13, 1.14, 1.15, 2.7, 2.8, at its 12th-century extent), Atholl (1.24, 2.21), Strathearn (1.26), Menteith (2.27).

<sup>120</sup> Five of the remaining 14 cuthill names are in 12th-century provincial lordships: Strathbogie (1.6), Garioch (1.8, 1.9, 2.6), Kyle Stewart (2.33). The other 9 are probably all in later baronies: Strachan (1.16), Glenbervie (1.18), Lintrathen (1.19), Kellie (1.22), Logie (2.15), Megginch (2.23), Fowlis Easter (2.26), Caputh (1.23), Aberdour (2.29). How far these also represent older territorial units is unclear.

<sup>121</sup> Also – as postulated by Broun, 'Lordship over land in the property-records in the Book of Deer' (see above, note 116) – some shires, possessed either by heads of important local kindreds or by monasteries, may have been independent (at least with respect to cain) of both mormaers and kings; that might explain why kings' thanes cannot be assigned to every territory outside the earldoms.

The ‘cuthill’ courts, however, were not seigniorial. In 1329, a lease by Arbroath Abbey mentioned ‘the court which is called Couthal for the men residing within the said land, to deal with the countless acts arising amongst themselves only’; and although in the early sixteenth century sessions of the Carnwath barony court were held ‘in the wood of Couthalley’, these were only ‘burlaw’ sessions, dealing with inter-tenant quarrels, not seigniorial justice.<sup>122</sup> Thus in late medieval Scotland cuthill courts were restricted to minor, non-criminal affairs, and such a limitation had probably always been the case. Therefore, did serious – ‘criminal’ – offences in pre-twelfth-century Scotland come under the jurisdiction of mormaers/earls and thanes, as with the later earls and barons? The dearth of sources for early Scottish history makes that an extremely awkward question. By analogy with Anglo-Saxon England, the answer should be yes; but analogies with Gaelic Ireland – which had little or no concept of crime, with all interpersonal offences from murder to theft being handled through the kinship mechanisms of bloodfeud and compensation payments<sup>123</sup> – suggest the opposite, especially since the concepts of the kin and of kinship justice were so significant in medieval Scotland.<sup>124</sup>

One way to tackle the problem is via the mormaers’ and earls’ main governmental function, provincial military leadership. In 1221, an assize of Alexander II stated that ‘no earl or earl’s sergent’ could exact forfeiture for non-attendance at a recent hosting in northern Scotland from those living on lands held directly of the crown;<sup>125</sup> hitherto, presumably, earls *had* been entitled to punish all delinquents within their provinces. Thus the earls’ governance was shrinking from the provinces to their *own* lands. But in the present context the assize’s most interesting feature is the earls’ sergeants. In 1225–6 Glasgow Cathedral was freed from having to feed and accommodate earls’ sergeants on its lands in Carrick and Lennox; while before 1308 the earl of Lennox relieved John of Luss from providing ‘testimony for the earl’s baillies or sergeants’.<sup>126</sup> Such references demonstrate that the old system of sergeants of the peace (that is, with police functions) found in Wales and much of northern England extended into south-west Scotland<sup>127</sup> – and the 1221 assize shows it existing throughout the whole kingdom. It must have been sergeants who had the power of *rannsaich*, to search for and arrest accused malefactors; and a mention of ‘conveth of sergeants’ (*conventum servientum*) implies that the accommodation of sergeants on their searches was obligatory on all who owed their lords the standard hospitality

<sup>122</sup> Barrow, *Scotland and its Neighbours*, 219–20, from *Arbroath Reg.*, ii, no. 2; *Carnwath Court Book*, 13, 67, 101, 149, 152, 155, 165, 190–3, and pp. cxiii–cxvi.

<sup>123</sup> Dáibhí Ó Cróinín, *Early Medieval Ireland, 400–1200* (London, 1995), chap. 5, esp. 114; Katherine Simms, *From Kings to Warlords: The Changing Political Structure of Gaelic Ireland in the Later Middle Ages* (Woodbridge, 1987), 89–91.

<sup>124</sup> Wormald, ‘Bloodfeud, kindred and government’; and see the important, but not absolutely consistent, comments in Cynthia J. Neville, *Native Lordship in Medieval Scotland: The Earldoms of Stratbearn and Lennox, c.1140–1365* (Dublin, 2005), 114–15.

<sup>125</sup> *APS*, i, 398 c.2.

<sup>126</sup> *Glasgow Reg.*, i, nos. 139, 141; *RRS*, v, no. 2.

<sup>127</sup> Barrow, *Scotland and its Neighbours*, 141–2; G. W. S. Barrow, *Anglo-Norman Era*, 159–61; also, more generally, R. Stewart-Brown, *The Serjeants of the Peace in Medieval England and Wales* (Manchester, 1936).

dues known as *conveth* (Gaelic, *coinnmeadh*) or ‘waiting’.<sup>128</sup> The evidence relating to sergeants indicates that, with respect to criminal matters, pre-twelfth-century Scotland was closer to England and Wales than to Ireland.

When a sergeant arrested a malefactor, what then? If a trial was required, it would probably have been in the court of the province, held before the army of the province summoned by its earl or mormaer – judging by the earliest record of a Scottish lawsuit, from 1124×1130.<sup>129</sup> That court, however, was held on the king’s command, and its judgement would have been given by the provinces’ brithems (Gaelic, *breitheamhan*) or *judices*, especially the king’s *judex*.<sup>130</sup> Before c.1200, the brithems were supreme legal experts in each province, and are associated with kings and earls; so it is best to see them as dispensing justice on behalf of the king within provincial courts convened (through quasi-military summons) by the mormaers. Hence, as with leadership of the armies, the pre-twelfth-century mormaers and earls could be regarded as royal provincial officers.

But if malefactors could be tried, then presumably they could be condemned to death: in which case, who would carry out the execution? Several charters from the late twelfth century onwards show earls granting lands in their earldoms to significant recipients (especially ecclesiastical landowners) with ‘baronial’ jurisdiction over life and limb, but the actual executions were almost invariably reserved to their own gallows; thus in that period earls could certainly put convicted criminals to death.<sup>131</sup> Whether they had such powers at an earlier period is less clear. However, unless that is accepted, we must envisage the crown bestowing them *ab initio* on the earls between the 1120s and c.1172 – the date of the first known grant of ‘baronial’ powers by an earl – which seems improbable. That grant was made to his brother Maol-Iosa by Earl Gille-Brigte of Strathearn, who (like his predecessors) was largely aloof from new, ‘Normanising’ ideas; so it is more likely that he was conveying powers which he and his predecessors (along with other earls) always possessed.<sup>132</sup> Two points strengthen that conclusion. First, although Earl Gille-Brigte’s charter appears to have used the sake-and-soke jingle, the powers were further specified by the earliest recorded use of the phrase ‘with gallows and pit’; the earl probably had this added as an explanatory gloss on unfamiliar terminology.<sup>133</sup> Second, a later grant of land in Strathearn (to Coupar Angus Abbey) out of territory which Maol-Iosa had also received from Gille-Brigte reserved to the grantor’s own gallows ‘all sentences

<sup>128</sup> RMS, ii, no. 187; Barrow, *Anglo-Norman Era*, 159–60; Barrow, *Scotland and its Neighbours*, 125; William Fraser, *The Lennox* (Edinburgh, 1874), ii, 401. See also RRS, i, nos. 181 (instructing Earl Duncan of Fife that none of his men ‘shall go in conveth upon the men or lands’ of Dunfermline Abbey), and 248 (no one shall ‘take conveth upon [Scone Abbey’s] men and lands, without permission of the canons’). Both passages imply more than straightforward payments in lieu of the king’s own hospitality rights.

<sup>129</sup> Lawrie, *Early Scottish Charters*, no. 80.

<sup>130</sup> Barrow, *Kingdom*, chap. 2 (‘The *Judex*’).

<sup>131</sup> E.g., RRS, ii, no. 136; *Lennox Cart.*, 28, 57; *Inchaffray Charters*, no. 25; Joseph Anderson, *The Oliphants in Scotland* (Edinburgh, 1879), 2; RMS, ii, no. 187.

<sup>132</sup> RRS, ii, no. 136; Neville, *Native Lordship*, 17–23 and *passim*.

<sup>133</sup> See below, pp. 33–4. The actual document is a royal confirmation, but this almost certainly followed the wording of the earl’s own charter. The unusual transfer of powers of execution may be because the recipient was the earl’s own brother.



... of loss of limb or beheading'; the unusual form of death is surely further testimony of older powers exercised by earls and mormaers.<sup>134</sup> In that case, they would have been responsible for executing malefactors condemned before the brithems.

That said, such powers would not have applied to slaughter and other interpersonal violence. In pre-twelfth-century Scotland, that would have been dealt with through kinship justice, by open or formalised bloodfeud, with *cro* or assythment (Anglo-Saxon *werigild*) being required according to tariffs laid down in the early eleventh-century so-called 'Laws of the Brets and the Scots'.<sup>135</sup> However, it must be remembered that (until female succession was permitted, in the thirteenth century) each earl was head of the kindred of his earldom.<sup>136</sup> Therefore the earls would have had ultimate responsibility for dealing with interpersonal violence relating to their kins, and hence within their earldoms – not only by ensuring that necessary compensation was paid, but also no doubt by taking or permitting vengeance on those who would or could not provide such compensation. The earls' sergeants may have been involved in the process, because absconding killers would have to be found. Thus the earls, as heads of the major kins, must in practice have had a vital role in tackling violence within their earldoms.

Further insight into the powers of pre-twelfth-century earls comes from legislation of 1384, by which (for three years) accused persons who fled were, if caught, to be summarily dispatched as if formally convicted.<sup>137</sup> This explicitly overrode the regalities' right to repledge. But, in addition, two magnates waived special privileges: Archibald Douglas, lord of Galloway, for the laws of Galloway,<sup>138</sup> and Robert Stewart, earl of Fife, 'chief of the law of Clan MacDuff', which applied to the Fife kindred. According to a late sixteenth-century definition, the 'law' meant that if any man-slayer within nine degrees of kinship to the earl reached 'the cross of Clan Macduff' (near Newburgh, on the north-west border of Fife), he would be 'free of the slaughter committed by him' anywhere in Scotland; and it repeats Andrew Wyntoun's early fifteenth-century story, that Malcolm III gave MacDuff of Fife three privileges: enthroning the kings, leading the vanguard of the army, and giving his kindred remission for killings 'in sudden chaudemelle' anywhere in the kingdom on payment of specified assythment.<sup>139</sup> The connection with the earl of Fife's

<sup>134</sup> *Coupar Angus Charters*, i, no. 35; *RRS*, ii, no. 524. The grant was by Maol-Iosa's nephew and heir.

<sup>135</sup> Wormald, 'Bloodfeud, kindred and government', 58–66; *APS*, i, 663–5.

<sup>136</sup> E.g., John Bannerman, 'MacDuff of Fife', and Hector L. MacQueen, 'The kin of Kennedy, "Kenkynno!" and the Common Law', both in Grant and Stringer, *Medieval Scotland*.

<sup>137</sup> *APS*, i, 550–1.

<sup>138</sup> See Hector L. MacQueen, 'The laws of Galloway: a preliminary survey', in Richard D. Oram and Geoffrey P. Stell (eds.), *Galloway: Land and Lordship* (Edinburgh, 1991).

<sup>139</sup> John Skene, *De Verborum Significatione* (Edinburgh, 1597), s.v. CLAN-MAKDUF. Skene cites a charter of David II 'in the Register [of the Great Seal] granting Fife 'cum lege qua vocatur Clan-makduff' to William Ramsay; this (noted in *RMS*, i, app. II, no. 1228, and dating from 1358) was in one of the rolls of the Great Seal Register lost in 1661. Andrew of Wyntoun, *The Orygynale Cronykil of Scotland*, ed. David Laing (Edinburgh, 1872), ii, 140–1; note, however, that Wyntoun implies that the process took place at Cupar. HMC, *3rd Report*, 417, gives two examples of the operation of the 'law': from 1391 (repledging Sir Alexander Murray, accused of the slaughter of William Spalding, from a justiciar court), and 1421 (certificate by the steward of Fife that certain parties had received its benefit, but would fulfil

inauguration right is significant, for that was almost certainly compensation for surrendering claims to royal succession by descendants of the kings Dubh (d. 966) and his son Cinead (d. 1005).<sup>140</sup> That was probably the reason for the law of Clan MacDuff, too: a special privilege for the earls to ensure remission for killings committed by their kinsmen anywhere, overriding the rights of their victims' kins. This is close to a later medieval immunity, and could have been granted only by a king – as head of all the kingdom's kindreds – to a particularly important member of his own kindred. And that was not all the earls of Fife enjoyed. The 1221 assize prohibiting earls from punishing men living on crown land for absence from the host did not apply to the earl, because he was the king's mair (officer) in Fife.<sup>141</sup> Also, in 1153×1162 Earl Duncan and several of his leading men were forbidden to 'go in conveth upon the men and lands' of Dunfermline Abbey – implying the use of sergeants.<sup>142</sup> Thus, normally, the earl of Fife could exercise active government throughout the whole province, not just over his own lands, which then covered only about half of Fife.<sup>143</sup> This seems another special privilege, probably a further aspect of the law of Clan MacDuff. Taken together, such privileges resemble later powers of regality.

However, such privileges were clearly unique to the earls of Fife, and so were *not* enjoyed by other earls. Therefore, the powers of the normal earls and mormaers must have been rather less. They could not give their kin the same potentially automatic and country-wide protection from vengeance, while the powers of their sergeants and other officers would have been limited to their own lands, rather than – military function apart – applying to entire provinces. In other words they had become landlords of defined areas rather than provincial governors. Nevertheless, within their own lands they would still no doubt have wielded formidable powers, which, since they were heads of major kindreds, would in practice have covered what were later defined as pleas of the crown.<sup>144</sup>

But that raises the question of what happened in lands that did not belong to earls. Since the crown had its own brithems or *judices* in the provinces, and also its sergeants, the same general judicial procedures would doubtless have operated.<sup>145</sup> Also, there were the thanes. Since the obligation of conveth is closely associated with thanages, it is likely that royal sergeants and other officers would have been accommodated within them, and would have co-operated with the thanes. But did

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the law as it might be declared, with respect to the death of John Melville). The cross is now 'MacDuff's Cross': OS Grid Reference NO227166.

<sup>140</sup> Bannerman, 'MacDuff of Fife', 21–7; King Dubh was the progenitor of 'Clan MacDuff'.

<sup>141</sup> *APS*, i, 398 c.2.

<sup>142</sup> *RRS*, i, no. 181.

<sup>143</sup> Grant, 'Construction of the early Scottish state', 57, 59.

<sup>144</sup> As illustrated for the earldom of Carrick by MacQueen, 'Kin of Kennedy'.

<sup>145</sup> See, for the south-west, William Croft Dickinson, 'Surdit de Sergaunt', *SHR*, xxxix (1960); for Lothian, *APS*, i, 371 cc.1–2; for Lennox, *RRS*, v, no. 2. In Grant, 'Construction of the early Scottish state', 51 n.19, I was dubious about royal sergeants in Scotland before 1100; but in a brilliant (sadly, unpublished) paper delivered at the Scottish Medievalists Conference in January 2001 Patrick Wormald persuaded me otherwise.

pre-twelfth-century thanes carry out executions? It is even harder to be sure about that than it is for the earls. The fact that the sake-and-soke jingle was closely associated with the king's *thegns* of Anglo-Saxon England does not automatically demonstrate the same for their Scottish counterparts (except, perhaps, in Lothian).<sup>146</sup> Yet, if thanes did not do so, who did? One point suggesting they did have such powers is that during the twelfth century several thanages became sheriffdoms, and their thanes sheriffs. Another is that although most known thanages eventually became baronies, mostly that did not happen until the fourteenth century, and before then thanages and baronies existed side by side; since the latter had 'baronial' powers, it is hard to envisage the thanes not having the equivalent.<sup>147</sup> Thirdly, consider the case of Orm of Abernethy, a prominent native landowner (but not an earl) in Fife, Gowrie and Angus: in 1173×1178 William I confirmed Orm's possession of his hereditary lands, as on the day when King David I died, with sake and soke, etc., but with gallows and pit in only two places, Abernethy for his men of Fife and Gowrie, and Inverarity for the men of his other lands.<sup>148</sup> Such wording indicates that Orm's gallows were already well established, at least at Abernethy; and if he and his predecessors could carry out executions, then it is highly likely that thanes could do so as well. On the other hand, since the thanes would at best have been heads of relatively minor kindreds, their role with respect to violence must have been much less important than that of the mormaers and earls. In the royal territories run by thanes, therefore, oversight (through arbitration and arranged settlement of feud) over the equivalent of the pleas of the crown surely fell chiefly on the shoulders of the king's brithems or *judices*.

The picture that has emerged of local government within those royal territories during the tenth and eleventh centuries, however, does not fit J. R. Strayer's model absolutely. Thanes may have been leading men, but only within their immediate localities; they did not possess the lands of the thanages; and they were probably under fairly close royal supervision.<sup>149</sup> Thus the pre-twelfth-century Scottish crown did maintain a system of royal rather than private local government. But that is only one side of the coin. The other side – the world of mormaerdoms and earldoms – does correspond neatly with Strayer's analysis, particularly in the way the mormaers and earls developed from 'great stewards' into magnate landlords. Within the earldoms, therefore, local government was much more the earls' private responsibility. But the main conclusion of this foray into pre-twelfth-century Scotland must be that *both* sides of the coin are equally significant: as already remarked, they reflect the existence of a two-part structure which, conceptually and practically, survived as the basis of Scottish local government until the fifteenth century.

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<sup>146</sup> As in R. R. Reid, 'Barony and thanage', *English Historical Review*, xxxv (1920). Cf. Barrow, *Kingdom*, 41; RRS, ii, 50; Grant, 'Thanes and thanages', 40.

<sup>147</sup> *Ibid.*, 51–5; and see below, note 172, for 13th-century thanages counting as baronies.

<sup>148</sup> RRS, ii, no. 152.

<sup>149</sup> Grant, 'Thanes and thanages', 40–2, 56–8.

We turn now to the twelfth and thirteenth centuries, which (from the beginning of David I's reign in 1124) have been described as Scotland's 'Anglo-Norman era'. Nowadays the emphasis on continuity makes that description contentious – yet the introduction of militarily dominant knights and reformed churchmen from England and France surely had important consequences. Strayer's model provides a useful way round the issue. From his much wider viewpoint, the importance of the period lies not so much in personnel but in administrative attitudes and practices: there was extensive 'systematization' and 'bureaucratization' of government with respect to both crowns and local landowners, producing significant change yet maintaining the basic underlying principle of local government by private lords. That corresponds well with what was going on in twelfth- and thirteenth-century Scotland.

First of all, the basic principle continued to be strongly exhibited by the old provincial earldoms – shown, for the early thirteenth century, in Map 3 (below, p. 29). Throughout the twelfth century, 'native' Scots (including the Anglian earls of Dunbar) monopolised the earldoms, including the new but distinctly Gaelic Carrick, created before 1190 from north-western Galloway; while in the thirteenth century the appearance of Ross (again Gaelic) and Caithness (Scandinavian: the mainland part of Orkney)<sup>150</sup> outweighed the single creation of an earldom for a man of 'Anglo-Norman' (actually Flemish) stock, William lord of Sutherland, in c.1235. There was no royal effort to 'Normanise' the earldoms, nor to pressurise them politically.<sup>151</sup> Also, there is only one piece of evidence for institutional change within any of the old earldoms: by a charter of David I, Fife came to be held for knight service.<sup>152</sup> But the charter's text does not exist, so we do not know whether it included any confirmation of the earl's original rights, particularly the 'Gaelic' law of Clan MacDuff, which the earl and his successors certainly enjoyed.<sup>153</sup> More generally, recent research on twelfth- and thirteenth-century earldoms shows them still being run much as they probably always had been<sup>154</sup> – except that from the mid twelfth century there is at last strong evidence that earls had jurisdiction of life and limb over the inhabitants of their earldoms and (usually) a monopoly on executions within them, in addition to their head-of-kin function with respect to killing and violence.<sup>155</sup>

<sup>150</sup> Though, strictly speaking, these were not new: an earl of Ross is briefly recorded under David I, while Caithness is the mainland part of the Scandinavian earldom of Orkney.

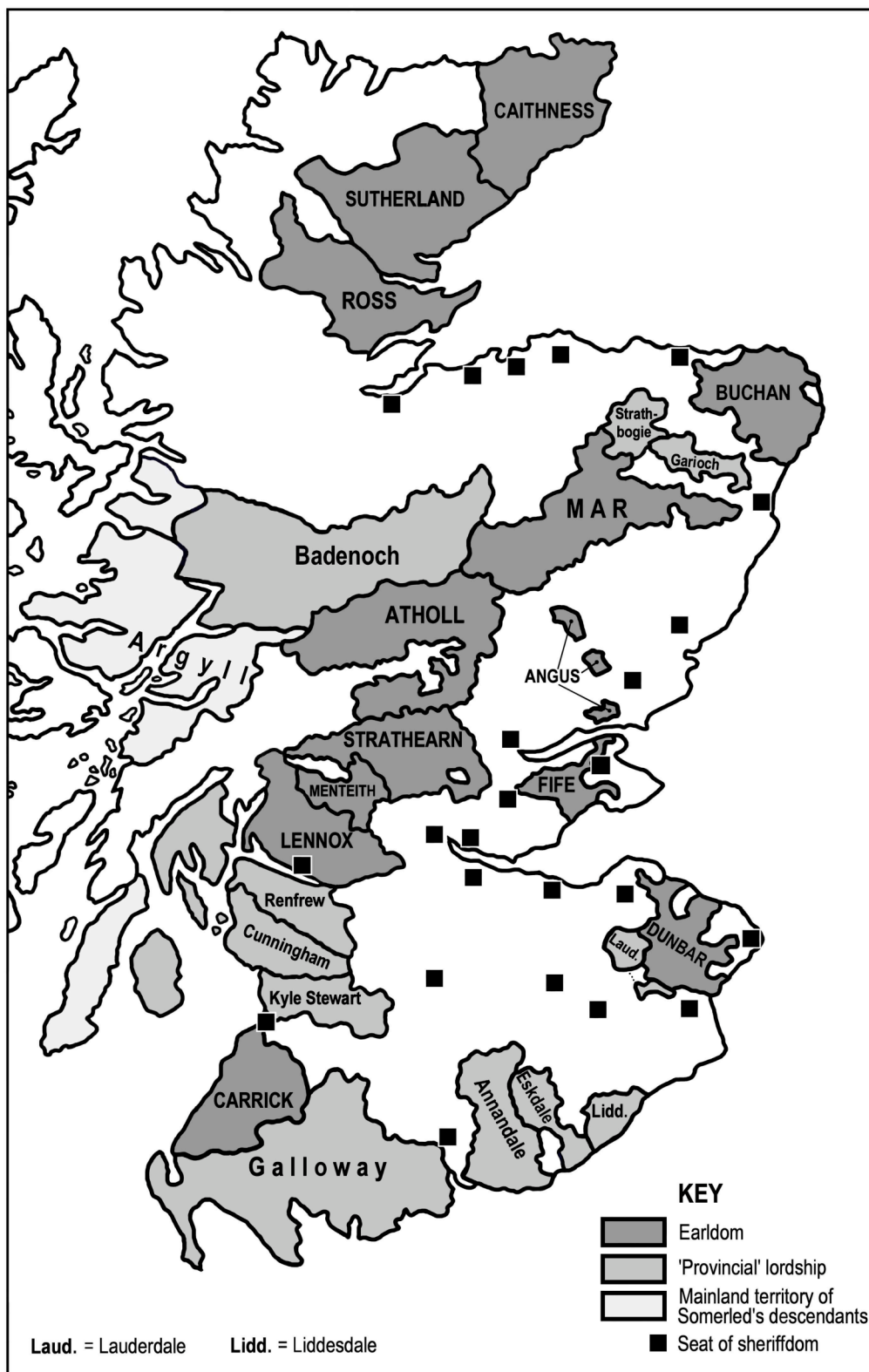
<sup>151</sup> At least not collectively. After rebellion by the earl of Moray in 1130, however, David I suppressed that earldom; and there was long-term trouble in the far north and west and intermittent trouble in Galloway, while six earls briefly revolted in 1160. But that was far less serious than what happened in Anglo-Norman and Angevin England.

<sup>152</sup> *Facsimiles of the National Manuscripts of Scotland* (London, 1867–71), i, no. 50, by which Alexander II confirmed David's charter, without mentioning any details except the knight service.

<sup>153</sup> David II explicitly confirmed the 'Law' in the grant to William Ramsay (above, note 139); and Robert I implicitly did so in his 1315 indenture with the earl of Fife (RRS, v, no. 72: the earl was to keep all franchises).

<sup>154</sup> Neville, *Native Lordship*, esp. chaps. 1, 5 (for Strathearn and Lennox); Richard D. Oram, 'Continuity, adaptation and integration: the earls of Mar, c.1150–c.1300', Michael Brown, 'Earldom and kindred: the Lennox and its earls, 1200–1458', and Alastair J. MacDonald, 'Kings of the wild frontier? The earls of Dunbar or March, c.1070–1435', all in Boardman and Ross, *Exercise of Power in Medieval Scotland*. The only exception, of course, is Moray, which David I suppressed following rebellion in 1130.

<sup>155</sup> See above, pp. 23–6.



Map 3. Earldoms, lordships and sheriffdoms in early 13th-century Scotland

Moreover, while the twelfth-century kings accepted that the earldoms were special and so did not erect any for their Anglo-Norman followers, they did the next best thing by giving them provincial lordships – also depicted in Map 3 – which in terms of territory and function (though not, of course, kinship) were very similar institutions. David I created seven: Annandale for Robert de Brus; Renfrew and Kyle Stewart for Walter son of Alan (first of the Stewarts); Lauderdale and Cunningham for Hugh de Morville; Liddesdale for Ranulf de Sules; and Eskdale for Robert Avenel.<sup>156</sup> Later, under William I, the king's brother David, earl of Huntingdon, was given Garioch; another David, son of the earl of Fife, received Strathbogie, and Hugh, grandson of Freskin (of Duffus in Moray), got Sutherland.<sup>157</sup>

Charters relating to three of these survive. The earliest, David I's grant of Annandale in 1124, did not specify powers of government, but simply said Brus should hold it with 'all those customs which Ranulf Meschin ever had in Carlisle' – which amounted to all-embracing but unspecified control on behalf of the king.<sup>158</sup> Thus Brus (and Meschin) had positions akin to those of old Scottish earls. In 1165–1173, however, William I regranted Annandale to Robert de Brus II, with more defined and limited powers: 'the *regalia* pertaining to my regality, namely treasure trove, murder, premeditated assault, rape of women, arson and plunder' were withheld.<sup>159</sup> But William added that those accused of the serious crimes should be arrested and prosecuted (before royal justices) by a man of Annandale (chosen by the king) – which was taken to mean that, while the king could select and instruct Annandale's 'crown', sheriffs and other royal officers could not operate within the lordship.<sup>160</sup> Something similar may have happened with Renfrew. The wording of David I's (lost) charter to Walter son of Alan was probably vague; then in c.1161 Malcolm IV extended David's grant, and stipulated that all Walter's lands were to be held with sake, soke, toll, team and infangthief, rather less than the Bruces had in Annandale.<sup>161</sup> Conversely, in c.1178 William I was much more generous to his brother Earl David, granting Garioch 'as freely and fully in all things as I myself ever held and possessed those lands' (as with ecclesiastical liberties).<sup>162</sup> That this was taken literally to denote 'regal' powers is proved by the fact that all Garioch's fourteenth-century lords held it in regality,<sup>163</sup> though the grants to them say just that

<sup>156</sup> Barrow, *Kingdom*, 281. All are in the south-west except Lauderdale (Lothian).

<sup>157</sup> *Ibid.*, 299–300; A. A. M. Duncan, *Scotland: The Making of the Kingdom* (Edinburgh, 1975), 188, 197. All are in the north; note that Earl David and David of Fife were natives. Also, in the 13th century, Alexander II gave Badenoch (plus Lochaber) to Walter Comyn (*ibid.*, 529).

<sup>158</sup> *David I Charters*, no. 16; cf. Richard Sharpe, *Norman Rule in Cumbria, 1092–1136* (Cumberland and Westmorland Antiquarian and Archaeological Society, 2006), 52..

<sup>159</sup> RRS, ii, no. 80; i.e. the pleas of the crown, though with a wider definition.

<sup>160</sup> CDS, ii, no. 1588, dated 1304; this was said to be a liberty which the lords had had 'by the title of antiquity' from the time of William I.

<sup>161</sup> RRS, i, no. 184: the first known use of the jingle in a purely Scottish context.

<sup>162</sup> *Ibid.*, ii, no. 205. The charter also granted the earldom of Lennox (temporarily) and various smaller estates. Lennox subsequently reverted to the native line of earls, to whom William I's charter did not apply; while in the 14th century the smaller estates – then in crown hands – were granted as baronies.

<sup>163</sup> Andrew Murray and Christian Bruce under Robert I, Thomas earl of Mar under David II, and Isabella Douglas and Alexander Stewart earl of Mar under Robert III: HMC, *Mar and Kellie Report*, 2–4; HMC,

it should be held as Earl David had done, and do not mention *liberam regalitatem*.<sup>164</sup>

The Annandale and Renfrew charters illustrate Strayer's 'systematization' and 'bureaucratization': powers that were inexact under David I were specified more precisely. But there was no absolute standardisation. Garioch was obviously special, and presumably Robert de Brus II negotiated a compromise when William I downgraded his liberty. Renfrew, however, probably reflects what the later twelfth-century kings considered the norm, since, with one exception, there is no reason to believe that the other lordships were held with more than baronial powers.<sup>165</sup> The exception is Lauderdale, where the Moreville lords had their own sheriffs; in the early fourteenth century it was called a 'constabulary' (probably deriving from the Morvilles' office of constable) and included lands elsewhere in the kingdom, perhaps indicating higher status.<sup>166</sup> Be that as it may, the general point is clear: lords of the new provincial lordships usually did not enjoy jurisdiction over the pleas of the crown. Nevertheless, even without such jurisdiction it is hard to imagine that within the lordships these lords and their officers did not play the leading part in catching those accused of the more serious crimes.

Thus, as already remarked, the provincial lords (like the earls) would have been at least on a par with the sheriffs. But that statement can be reversed: it is better to see the sheriffs as being on a par with the provincial earls and lords. Scotland's sheriffdoms were a twelfth-century innovation, appearing at the same time as the new provincial lordships.<sup>167</sup> Moreover, they were very irregular in size: some were tiny (Kinross and Clackmannan); others were quite large (such as Berwick or Lanark); and some were huge (Perth, Aberdeen and particularly Inverness, which covered the modern counties of Inverness, Ross, Sutherland and Caithness). The explanation is surely that, when the sheriffdoms were created, they were fitted into an already-existing structure of earldoms and lordships. As demonstrated in Map 3, the seats of sheriffdoms slot neatly into the gaps between earldoms and lordships, forming a strikingly uniform pattern.<sup>168</sup> Therefore, although subsequently earldoms and lordships were technically included within the sheriffdoms, in practice the sheriffs' main function must have been to administer the areas outside them. It makes sense, indeed, to regard the twelfth- and thirteenth-century Scottish sheriff as a deputy earl or lord: literally, a *vicecomes*.

The areas administered by the sheriffs correspond, of course, to the 'royal' half

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*Mar and Kellie Suppl. Report*, 14; *Aberdeen Reg.*, i, 207–8, 211–12.

<sup>164</sup> *RMS*, i, app. I, no. 70; *RRS*, vi, no. 167; *Aberdeen-Banff Illustrations*, iv, 167–8.

<sup>165</sup> In the early 14th century, Cunningham, Liddesdale and the component parts of Eskdale were all granted as baronies, while in 1345 Sutherland was erected into a regality; in contrast to Garioch, there is no indication that any of these had previously been held with special powers: *RMS*, i, no. 54; app. I, no. 53; *RRS*, v, nos. 110, 166, 184; v, no. 96. The same probably applies to Strathbogie: *RMS*, i, no. 566.

<sup>166</sup> Barrow, *Kingdom*, 281, 298–9; *RMS*, i, no. 2; and see also *ibid.*, i, app. I, no. 123.

<sup>167</sup> *RRS*, i, 40–50; ii, 39–42.

<sup>168</sup> For details of the sheriffdoms, see Norman H. Reid and G. W. S. Barrow, *The Sheriffs of Scotland: An Interim List to c.1306* (St Andrews, 2002). Map 3 includes Haddington and Linlithgow, which were probably subordinate to Edinburgh (as in the 14th and 15th centuries).

of the pre-twelfth-century two-part governmental structure. North of the Forth, this had previously been run through the thanages, which were downgraded but not swept away after 1124: only a minority were alienated (mostly to 'native' lords connected with the royal kindred), and at least 40 out of 65 identifiable king's thanages were still apparently in existence at the end of the thirteenth century.<sup>169</sup> On the other hand, alongside the surviving thanages there were now numerous 'feudal' estates – held of the crown by barons rather than run for it by thanes – which David I and his successors had given to their 'Anglo-Norman' followers, either out of parts of the thanages (which were thus slimmed down), or out of other territories that had come into crown possession, probably by forfeiture.<sup>170</sup> South of the Forth, too, a great deal of erstwhile crown land had similarly gone to 'Anglo-Normans'.<sup>171</sup> Despite the thanages' survival, the later twelfth and thirteenth centuries saw the 'royal' half of the country, both north and south of the Forth, being largely 'Normanised' and 'feudalised' – and within it, barons and baronies coming to dominate the localities. This is illustrated particularly well by two (rare) examples of thirteenth-century inquests into inheritances in the sheriffdoms of Lanark (1259) and Forfar (1262): they were carried out 'by these baronies' (*per has/istas baronias*), eight for Lanark and 17 for Forfar. Thus the barony's later medieval function as the standard administrative subdivision of the sheriffdom was already thoroughly established – so much so, indeed, that the Forfar list included some thanages as 'baronies'.<sup>172</sup>

The term 'baron' had developed in eleventh- and twelfth-century France, where it came to mean the important man of a major lord, especially the king; one aspect of this status was judicial power, including the right to execute thieves, within the baron's land or 'barony'. That was also the case in post-Conquest England, though there the sake-and-soke jingle (which before 1066 denoted the powers of important thegns) was used to indicate such jurisdiction.<sup>173</sup> In Scotland, the first recorded mention of barons is in David I's charter of Annandale to Robert de Brus at the beginning of his reign;<sup>174</sup> thereafter the term became common. The history of the sake-and-soke jingle is less straightforward. It is not in the Annandale charter, which

<sup>169</sup> Grant, 'Thanes and thanages', 50–7, 72–81.

<sup>170</sup> E.g. territory in Gowrie (in what Malcolm IV called his lands of the earldom), Angus and Mearns (above, p. 21); and also in Moray (forfeited to David I in 1130). A number of estates owned by native landowners can also be found.

<sup>171</sup> See, e.g., Barrow, *Kingdom*, chap. 10 ('The beginnings of military feudalism'); Barrow, *Anglo-Norman Era*, *passim*; and, for Lanarkshire, Grant, 'Lordship and society in twelfth-century Clydesdale'.

<sup>172</sup> *APS*, i, 99–100. The baronies were: Lesmahagow, Robertson, Wiston, Thankerton, Carmichael, Stonehouse, Kilbride, Dalziel (Lanark), Old Montrose, Rossie, Fithie, Kinnell, Inverkeillor, Inverlunan, Kinblathmond, Logie ('Lexyn'), Dun, Brechin, Kinnaber, Little Pert, Melgund, Panmure, Panbride, Turin, Rescobie (Forfar). Those listed for Lanarkshire were all baronies in the following century. That is mostly true of the Forfar list, too, but there are exceptions: Old Montrose and Kinnaber were actually thanages which later became baronies, while Little Pert, Melgund and Rescobie, although distinct estates, are not found as baronies in the 14th and 15th centuries (Melgund and Rescobie may have been part of Aberlemno thanage). Thus, if anything, the mid 13th-century concept of barony may have been wider than in the later Middle Ages.

<sup>173</sup> David Crouch, *The Image of Aristocracy in Britain, 1000–1300* (London, 1992), 107–14; Sir Frank Stenton, *The First Century of English Feudalism* (2nd edn, Oxford, 1961), 100–11.

<sup>174</sup> *David I Charters*, no. 16: addressed to 'Omnibus Baronibus suis Hominibus et Amicis francis et Anglis'.



as we have seen used an imprecise, comparative formulation, giving Brus whatever powers Ranulf Meschin had in Carlisle (much more than sake and soke, etc.). It does occur in other charters under David I and Malcolm IV, but only once in an entirely Scottish context, namely Malcolm's regrant of Renfrew to Walter son of Alan.<sup>175</sup> On the other hand, several of their charters granted territory 'as any of our barons holds his land', and since one was to Walter son of Alan, some form of jurisdiction must have been implied.<sup>176</sup> Thus – apart from with the major lordship of Renfrew, when Malcolm IV probably required a precise definition of the lord's powers<sup>177</sup> – the two kings appear happy to acknowledge 'baronial' powers, yet unsure about the use of the English sake-and-soke jingle (which they must have understood) in a Scottish context. We may doubt, therefore, whether the jingle exactly 'expressed the jurisdiction which a king's thane was expected to possess';<sup>178</sup> there was probably uncertainty about the equivalences. Whatever the case, it is clear that David and Malcolm did not simply transfer the English concept into Scotland.

That changed under William I. Twenty-seven knight-service grants survive from his reign: seven are datable roughly to the 1160s (overall date range 1165×1174); nine to the 1170s (overall date range 1172×1182); and eleven to the years after 1185.<sup>179</sup> Of the '1160s' grants, four were to be held as other barons or knights held their lands, while two included sake, soke, toll team and infangthief as well.<sup>180</sup> Subsequently, the sake and soke jingle appears in every 'later' charter (that is, those which cannot date from before 1172); but in three of the nine '1170s' charters the extra phrase 'with gallows and pit' is added<sup>181</sup> – and this occurs in eight out of the eleven post-1185 ones.<sup>182</sup> Thus, although exact dating is impossible, there was a clear evolution in terminology: first, to include the sake-and-soke jingle in all knight-service grants, probably from c.1170; second, to add the more explicit 'gallows and pit', which emphasises the right to execute criminals. The latter development may

<sup>175</sup> RRS, i, no. 183. The earliest Scottish charter, Duncan II's grant of land in Lothian to Durham in 1094 (Lawrie, *Early Scottish Charters*, no. 12), includes 'saca et soca'; but since it was written in Durham, it is not a *Scottish* use of the terminology: That applies also to the other occurrences of the jingle in 1124–65: *David I Charters*, nos. 31/32 (again granting land in Lothian to Durham, and probably written there, so not entirely Scottish), 73, 82, 83, 84, 107, 144; RRS, i, no. 206 (all involving lands in England).

<sup>176</sup> *David I Charters*, nos. 53, 177; RRS, i, nos. 183 (the grant to Walter), 256.

<sup>177</sup> Renfrew's difference, in having its baronial powers spelled out, might also have applied to the other new provincial lordships; but their charters are lost.

<sup>178</sup> RRS, ii, 50. Caution is also needed over some of the arguments in Reid, 'Barony and thanage'.

<sup>179</sup> Based on lists in RRS, ii, 49, 66 (n.141); but I omit *ibid.*, ii, no. 80 (the revision of the Annandale grant), treat nos. 344 and 345 as a single grant (the same lands are given, by the same terms, to a female and then to her husband), and add no. 258. The first seven are the only charters which *could* date from the 1160s. Most of the next nine *must* be from after 1172, and none can be later than 1182. The remaining eleven date from no earlier than 1185, and mostly no earlier than 1189. This does not include regrants (*ibid.*, ii, nos. 375, 383, 390, 428, 473), confirmations (nos. 136, 524), and grants for money renders which nevertheless conveyed jurisdictional powers (nos. 152, 340); but those all fit the pattern set out here.

<sup>180</sup> RRS, ii, nos. 9 (as barons or knights), 42, 43, 140 (as knights); 116, 125 (with sake and soke, etc.). The seventh, no. 85, gives no indication of any powers; here a smallish piece of land (only 1/5 of a knight's feu) was added to a larger territory, which was later held with sake and soke, etc. (no. 459).

<sup>181</sup> With gallows and pit: nos. 136, 185, 200; without: nos. 135, 137, 147, 171, 204, 205.

<sup>182</sup> With gallows and pit: nos. 302, 334, 335, 350, 405, 418, 473, 524; without: nos. 258, 344/5, 459.

well have been stimulated by the need to clarify the significance of sake and soke, etc. in the context of a Gaelic earldom, since ‘gallows and pit’ first appears in a charter of c.1172 confirming the land grant in Strathearn made by Earl Gille-Brigte to his brother;<sup>183</sup> but from the late 1170s the inclusion of ‘gallows and pit’ is routine, and there is no significant difference in its occurrence north and south of the Forth.<sup>184</sup> That applies also to the charters issued by the thirteenth-century kings, Alexander II (1214–49) and Alexander III (1249–86). Sixteen knight-service charters survive from Alexander II’s reign, and six from Alexander III’s: in every case, the lands are to be held with sake and soke, etc., plus gallows and pit.<sup>185</sup>

Clearly, therefore, by the thirteenth century powers of baronial jurisdiction were routine in every royal land-grant of any significance, including all grants for knight-service (plus some in feu-farm), even though the tenure might be for only a fraction of a knight’s service. Moreover, the surviving charters are only a small proportion of those that must have been issued. Lanarkshire, for instance, contained 28 lay baronies in the early fourteenth century, of which at least 19 dated back to before 1200, yet the only one for which a relevant charter exists is the untypical lordship of Renfrew.<sup>186</sup> Much the same could be said of every sheriffdom; there can, indeed, be little doubt that the great majority of the 350 or so ordinary baronies found in c.1400 had their origins in the twelfth and thirteenth centuries. Also, although before 1300 the terms ‘barony’ and ‘*in liberam baroniam*’ do not occur in charters, the 1259 and 1262 inquests do show ‘barony’ in common use, while in 1244 an act of Alexander II stipulated that ‘all those convicted of theft or homicide before the justiciars shall be handed over to the barons or their baillies to do justice upon them in their free baronies (*in eorum liberis baroniis*)’.<sup>187</sup>

As already demonstrated, those ordinary baronies were essentially parochial, and contrast sharply with Scotland’s first baronies, the provincial lordships of Annandale, Renfrew and so on. The contrast with England, whence the concept came, is equally striking. There, king’s barons were always great men, holding far more than a single (let alone a fractional) knight’s fee and well above ordinary knights; and though the concepts of an earl’s, an honour’s, a county’s and a locality’s barons also existed, those soon died out, so that ‘after the mid-twelfth century we hear little of the “barons” of a shire court, but [much of] its “knights” or its *buzones*’.<sup>188</sup> That remark puts the ordinary Scottish barons into an illuminating

<sup>183</sup> RRS, ii, no. 136; and above, p. 24.

<sup>184</sup> Contrary to arguments in RRS, ii, 49, and Duncan, *Making of the Kingdom*, 207–8.

<sup>185</sup> I am most grateful to Keith Stringer and Cynthia Neville for help over this point. The Alexander II charters are nos. 24, 29, 86, 87, 95, 96, 158, 160, 170, 175, 202, 221, 245, 255, 285, 286, in *Handlist of the Acts of Alexander II, 1214–1249*, comp. James Scoular (typescript, Edinburgh, 1959). The Alexander III ones are nos. 41, 55, 125, 127, 131, in *Handlist of the Acts of Alexander III, the Guardians, John, 1259–1296*, comp. Grant G. Simpson (typescript, Edinburgh, 1960).

<sup>186</sup> Grant, ‘Lordship and society in twelfth-century Clydesdale’, especially Table 1 (though that does not include Renfrew); also, broadly, Barrow, *Kingdom*, chap. 10.

<sup>187</sup> APS, i, 403 c.14: ‘All those convicted of theft or homicide before the justiciars shall be handed over to the barons or their baillies to do justice upon them in their free baronies (*in eorum liberis baroniis*)’.

<sup>188</sup> Crouch, *Image of Aristocracy*, 109–14 (quotation from p. 114).

perspective: their baronies were rarely greater and often less than a single knight's fee, and they themselves were always the sheriff courts' essential suitors. Thus they were equivalent not to English barons, but to the knights of the shire who played such a vital role in medieval England's local government. The same, we have seen, is true of the Scottish barons; but they exercised their roles chiefly over their own parish-sized estates, through their private baronial powers.

Another contrast with English baronies relates to the crown's attitude. Alexander II's 1244 act demonstrates its acceptance of baronial powers in the thirteenth century; there were no great *Quo Warranto* proceedings in Scotland.<sup>189</sup> In the twelfth century, however, William I's attitude might be considered more restrictive. An assize of 1180 laid down that no private courts should be held unless a sheriff or his sergeants were present, or had been summoned; if, when notified, they did not appear, the court could proceed, but 'no baron may hold a court of battle, water or iron unless the sheriff or his sergeants are present'.<sup>190</sup> In practice, however, the final clause was a dead letter, omitted from *Regiam Majestatem's* restatement of this assize;<sup>191</sup> judging by other legislation, the chief concern of the kings (probably including William I) was speedy justice, not supervision by sheriffs – especially since there were too many barony courts in most sheriffdoms for that to be effective. Again, Scottish practice differed from English.

On the other hand, the principle of ultimate royal justice was not ignored. Another assize, attributed to William I, stated that if a thief was put to death and his accuser was then killed in revenge, the king should execute the killer 'as having broken the king's peace', and could not pardon him without permission of the victim's kin, failing which that kin could take vengeance: in other words, the initial killing, though probably justifiable by kinship principles, was a major offence against both crown and kin.<sup>192</sup> Also, in 1197 William required all prelates, earls, barons and thanes to swear not to 'receive nor maintain thieves, man-slayers, murderers nor robbers, but ... bring them to justice ... and take no consideration whereby justice is left undone ... and if any of them is convicted of breaking this assize, he shall lose his court in perpetuity'.<sup>193</sup> What is significant here (in the first of the many enactments requiring lords to uphold justice properly) is the inclusion of murder and robbery (pleas of the crown), which had important implication for kinship justice: henceforth, assythment (a 'consideration' which might prevent justice) was not permitted for such major offences, which were now public crimes. That must have been a significant change to the theory of Scottish justice, and – since according to Wytoun's *Chronicle* the Law of Clan MacDuff operated only with respect to

<sup>189</sup> Except that every Scottish landowner could be required by his overlord (including the king) to 'show his charter' in order to demonstrate why and how he held his land: R. M. Maxtone-Graham, 'Showing the holding', *Juridical Review*, ii (1957); MacQueen, *Common Law*, 37, 120–2.

<sup>190</sup> *APS*, i, 374–5 c.12.

<sup>191</sup> *Reg. Maj.*, supplement, no. 2 (*APS*, i, 634 c.11); *Carmath Court Book*, pp. xxiv–xxv, note.

<sup>192</sup> *APS*, i, 375 c.15; also *Reg. Maj.*, IV.17 (*APS*, i, 634 c.12).

<sup>193</sup> Duncan, *Making of the Kingdom*, 201 (slightly emended): a corrected version of *APS*, i, 377 c.20.

killings done in ‘chaudemelle’<sup>194</sup> – it probably did apply generally in practice.

William I’s assizes, however, did not challenge seigniorial powers of private government as such. It is just that, in accordance with twelfth-century legal principles (reflecting the ‘bureaucratization’ and ‘standardization’ emphasised by Strayer), this concept of public crimes against the king was developed and applied – presumably with serious effects for even the old Gaelic earldoms. Meanwhile they were also affected, indirectly but perhaps even more significantly, by another aspect of the twelfth-century changes: the practice of permitting heiresses to inherit land, which spread across Europe, had major consequences not only for Scotland’s ‘Anglo-Norman’ baronies, but also for the Gaelic earldoms and lordships. In the 1230s, both the new lordships of Lauderdale, Cunningham and Garioch and the native lordship of Galloway were partitioned amongst heiresses and their husbands. As for the earldoms, while these were not divided,<sup>195</sup> during the thirteenth century countesses brought Buchan (c.1214), Menteith (1234 and c.1260), Angus (1243) and Carrick (1271) to ‘Anglo-Norman’ families, destroying the fundamental link between earl and kindred;<sup>196</sup> while in later centuries, the same happened to most of the others. Thus, in relation to local lordship – be it that of the baronies, the provincial lordships, or the earldoms – the changes which can be at least associated with Scotland’s twelfth- and thirteenth-century ‘Normanisation’ perhaps outweigh the continuities after all.

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That said, the ‘Strayer’ principle of private government flourished as much in the twelfth and thirteenth centuries as earlier and later; in this respect, continuity is the paramount theme. And it is now clear that there was nothing particularly new (terminology apart) about the late medieval tenures of *liberam baroniam* and *liberam regalitatem*: they are characteristic of the way Scotland had been run for centuries, and also of how localities were generally governed across the majority of medieval Europe. However, while grants *in liberam baroniam* were common in fourteenth-century Scotland, the grants *in liberam regalitatem* – detailed in Table 1 (below, p. 37) – were special; so, to round this chapter off, they need some analysis.

Fifteen of the 25 recorded grants involved earldoms or lordships in one way or another. The most significant is the first, Robert I’s creation of the huge regality of Moray, stretching across the central Highlands from the Spey to the western seaboard, in 1312.<sup>197</sup> This vast region, previously dominated by Robert’s Comyn rivals,<sup>198</sup> was now entrusted to his highly able nephew Thomas Randolph; but since

<sup>194</sup> Wynthoun, *Orygynale Cronykil*, ed. Laing, ii, 141.

<sup>195</sup> Except Mar, after a complex succession dispute.

<sup>196</sup> *Handbook of British Chronology*, ed. E. B. Fryde *et al.* (3rd edn, London, 1986), 499–515. Atholl, too, went to heiresses, but their relevant husbands were native Scots.

<sup>197</sup> At the start of Robert II’s reign, when temporarily in crown hands, the earldom was slimmed down: Badenoch and Urquhart barony, went to the king’s sons Alexander and David, while Lochaber (possessed by the Lord of the Isles) was detached; nevertheless, the rest, granted to the king’s son-in-law John Dunbar, was still (at 46 parishes) one of the largest earldoms or lordships in the kingdom. *RMS*, i, nos. 382, 389, 405.

<sup>198</sup> Alan Young, *Robert the Bruce’s Rivals: The Comyns, 1212–1314* (East Linton, 1997), 147–52.

**Table 1: Grants of Regality, 1312–1404**

Date	King	Recipient	Regality Lands (with sheriffdoms)
1312	Robert I	Thomas Randolph earl of Moray, king's nephew	Earldom of Moray
c.1322	Robert I	Thomas Randolph earl of Moray, king's nephew	Lordship of Annandale
1324	Robert I	Thomas Randolph earl of Moray, king's nephew	Lordship of Man
1341	David II	Malcolm Fleming, earl of Wigtown	Earldom of Wigtown
1345	David II	William earl of Sutherland, king's brother-in-law	Earldom of Sutherland
1354	David II	William lord (later earl) of Douglas	All his estates: incl. lordships of Eskdale, Lauderdale and Liddesdale; Douglas barony (Lanark); 12 other baronies; and other lands
1358	David II	Melrose Abbey	Land round Melrose
1366	David II	John Logie, king's stepson	Logie barony (Perth)
1367	David II	John Herries	Terregles barony (Dumfries)
1371	Robert II	David Stewart, king's son	Earldom of Strathearn
1371	Robert II	Alexander Stewart, king's son	Lordship of Badenoch (formerly in Moray)
1377	Robert II	James Lindsay, king's nephew	Kirkmichael barony (Dumfries)
1378–86	Robert II	James Douglas of Dalkeith, whose son married heir to the throne's daughter	(a) Dalkeith, Calderclere (Lothian), and Kilbucho (Peebles) baronies (b) The above, plus his other estates, incl. 9 baronies in Fife, Lothian, Berwick, Peebles, Lanark, Dumfries (c) reorganisation into two regalities, of Dalkeith and Morton
1380	Robert II	Paisley Abbey	Kilbride in Lennox
1384	Robert II	Alexander Stewart, king's son	Abernethy barony (Inverness)
1384	Robert II	Walter lord of Lennox	Milndovan and 'Achyndonane', in Lennox
1385	Robert II	Duncan earl of Lennox	Craigroyston and 'MacGilchrist's land', in Lennox
1389	Robert II	Robert earl of Fife, king's son	Strathord barony (Perth)
1391×93	Robert III	James Stewart, king's illeg. son	(East) Kilbride barony (Lanark)
1396	Robert III	Paisley Abbey	All Paisley's lands that were held of the Stewarts
1397	Robert III	George Douglas earl of Angus, king's son-in-law	Earldom of Angus, plus Abernethy (Perth) and Bunkle (Berwick) baronies
1398	Robert III	Thomas Erskine	Alloa (Clackmannan)
1398	Robert III	David Lindsay earl of Crawford, king's brother-in-law	Crawford (Lanark)
1403	Robert III	Robert duke of Albany and earl of Fife, king's brother	Earldom of Atholl
1404	Robert III	James Stewart, king's son and heir	Stewart lands: Earldom of Carrick. Lordships of Renfrew, Kyle and Cunningham, plus Cowal, Bute, Arran and 2 baronies

SOURCES: **Robert I:** RRS, v, no. 389; RMS, i, app. I, nos. 32, 34. **David II:** RRS, vi, nos. 39, 96, 194, 353, 373; RMS, i, app. I, no. 123. **Robert II:** RMS, i, nos. 399, 590; *Moray Reg.*, 472–3; National Archives of Scotland, Maitland Thomson Transcripts, GD212/11/1, s.d. 7.10.1384; *Morton Reg.*, ii, nos. 165–6, 174, 177; *Paisley Reg.*, 206–8; Fraser, *Lennox*, ii, no. 31; *Lennox Cart.*, 7–8; Fraser, *Grandtully*, no. 113\*. **Robert III:** 'Miscellaneous charters, 1315–1401', *SHS Miscellany V*, 40; *Paisley Reg.*, 91–2; RMS, i, app. II, nos. 1754, 1810; Fraser, *Douglas*, iii, no. 302; HMC, *Mar and Kellie Suppl. Report*, 11; National Library of Scotland, MS Advocates 34.6.24, p. 39; HMC, *Mar and Kellie Report*, 7.

Randolph had no connections with the numerous local kindreds, the grant of regality was the sole means of putting him in control. In other words, it was only through regality that an outsider could exert authority comparable to what a traditional earl possessed as head of an earldom's kindreds. This applies also to Randolph's regalities over Man and, in a sense, Annandale;<sup>199</sup> to Malcolm Fleming's grant of Wigtown (west Galloway) in 1341; and, later, to David Stewart's regality in Strathearn (1371) and Robert Stewart's over Atholl (1403). Moreover, Sutherland became a regality in 1345, and Angus in 1397; the lands of the new earldom of Douglas (1358) were held in regality; and when the earldom of Crawford was created in 1398, Crawford barony was raised to regality. In fourteenth-century Scotland, earldoms and regalities seem to go together.

But such a connection was far from absolute. Although Robert duke of Albany was granted Atholl in regality, and also (in 1389) the barony of Strathord,<sup>200</sup> he had no such grant for Fife and Menteith. Nor did his father Robert Stewart (eventually Robert II) for Strathearn; nor his brother John (eventually Robert III) for Carrick or Atholl. Also, Mar was never technically a regality (though Garioch was); nor was Lennox. The implication is that formal grants of regality were unnecessary where the old line of earls survived, and that (with Fife, Menteith and Strathearn) the Stewart earls maintained continuity with the old families.<sup>201</sup> On the other hand, evidence from Lennox counters any neat equation of native earls' powers with those of regality. In 1392, a contract between Duncan earl of Lennox and Robert Stewart earl of Fife stated that, while Fife was justiciar, Earl Duncan would be his deputy for Lennox, and have a third of the profits of justiciar ayres there – so, unlike a regality, Lennox was not immune from justiciars.<sup>202</sup> Also, in 1385, when Duncan was granted the earldom following his parents' resignation (his mother was the previous earl's heiress, and his father, Walter of Faslane 'lord of Lennox', headed the senior cadet branch), it was with sake, soke, toll, team, infangthief and outfangthief; but, in addition, he was given regality over Arrochar ('MacGilchrist's land') and Craigroyston, Highland areas beyond Loch Lomond held respectively by another cadet branch and by his father Walter of Faslane.<sup>203</sup> As well as indicating tension between Duncan and his father,<sup>204</sup> this confirms that regality powers were superior to those traditionally

<sup>199</sup> Since he was not the actual Bruce heir. Here, of course, the grant of regality clarified the previous situation.

<sup>200</sup> Both regalities probably countered the power of a major Atholl kindred, *Clann Donnchaidh* (Robertsons): see Stephen Boardman, *The Early Stewart Kings: Robert II and Robert III, 1371–1406* (East Linton, 1996), 7, 31, 169–7, 259.

<sup>201</sup> In Strathearn, Robert Stewart senior had married the heiress of the old line (from which Strathearn had been confiscated in 1344), and in 1360 he acted as head of the earldom's kindreds: Fraser, *Menteith*, ii, no. 29 (p. 244). His son, Robert Stewart junior, had married the heiress to Menteith, and through her also had a claim to Fife after its heiress Isabella (who resigned the earldom to him); with Fife, he clearly did have a head-of-kin position, because he operated the 'Law of Clan MacDuff'.

<sup>202</sup> Fraser, *Lennox*, ii, no. 33.

<sup>203</sup> *Lennox Cart.*, 2–4, 6–8, 64–5.

<sup>204</sup> Brown, 'Earldom and kindred: the Lennox and its earls', 214–15. Since another issue in charters to Walter and Duncan in 1384–5 was wapinshaws – and hence no doubt leadership of the earldom's army – the outbreak of war with England in 1384 may have been the trigger (Fraser, *Lennox*, ii, no. 31; *Lennox*

exercised by earls within the old earldoms.

The grant of regality over lands in Lennox echoes a slightly earlier grant of the crown property of Milndovan and ‘Achynndonane’ in Lennox, to Walter of Faslane and his assigns *in liberam regalitatem*; the property was in Cardross (bought by Robert I from an earlier earl of Lennox), and the intention was surely to make it independent of the earldom.<sup>205</sup> Both grants, therefore, were political, providing unchallengeable control and freedom from interference. On a far greater scale, that probably applies to the vast Stewart and Douglas regalities as well. In Robert III’s last years his brother the duke of Albany was running the kingdom, and the purpose of creating all the Stewart family lands into a regality for the king’s young heir James was surely to give him a separate principality outside Albany’s influence.<sup>206</sup> Similarly, David II’s erection of the Douglas estates into a regality in 1354, during a temporary return from English captivity, not only confirmed William lord of Douglas’s recently established dominance over much of southern Scotland, but also undermined the influence of David’s hated nephew Robert Stewart, who was guardian in his absence.<sup>207</sup> Much the same happened in 1366: David II made Robert Stewart agree that Logie, the ancestral land of David’s stepson John Logie (whom Stewart detested), should be detached from the earldom of Strathearn, and the king then made it into a regality, thereby cementing its detachment.<sup>208</sup>

Here, Logie’s relationship to David II was vital; the creation of this regality is also an example of royal family patronage.<sup>209</sup> That can be said about most of the grants in Table 1: of 18 lay recipients, 12 belonged to the royal family. With half, their regalities had governmental or political significance;<sup>210</sup> but with the others, there is little reason apart from family links. Thus the regality of Sutherland was granted in 1345 to Earl William in jointure with David II’s sister; the marriage was eventually childless, and technically the regality lapsed on William’s death.<sup>211</sup> More explicitly, when James Douglas of Dalkeith married his eldest son to a daughter of John earl of Carrick, the heir to the throne, in 1378, part of the contract was that Carrick would get his father to make the Dalkeith estates into regalities, and this duly happened (though in stages, indicating royal reluctance).<sup>212</sup> In 1377, James Lindsay of Crawford, Robert II’s nephew, was given regality over his Dumfriesshire barony of Kirkmichael; that is also attributable to Carrick, with whom Lindsay was closely linked.<sup>213</sup> And when Carrick became king, he created regalities for a son-in-law,

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*Cart.*, 8–9).

<sup>205</sup> Fraser, *Lennox*, ii, no. 31 (a better text than *Lennox Cart.*, 4–5); *RMS*, i, no. 90.

<sup>206</sup> HMC, *Mar and Kellie Report*, 7; Boardman, *Early Stewart Kings*, 282.

<sup>207</sup> *RMS*, i, app. I, no. 123; Michael Penman, *David II, 1329–71* (East Linton, 2004), 179.

<sup>208</sup> *RRS*, vi, no. 353; Penman, *David II*, 354.

<sup>209</sup> At the same time, Logie was also granted the lordship and regality of Annandale: *RRS*, vi, no. 354.

<sup>210</sup> I.e. those granted to Randolph, Logie, David Stewart, Alexander Stewart, Robert Stewart, and Prince James.

<sup>211</sup> *RRS*, vi, no. 96.

<sup>212</sup> *Morton Reg.*, ii, nos. 162, 165–6, 174, 177. The deal was not fully completed until 1386, when Carrick himself was running the kingdom.

<sup>213</sup> *RMS*, i, no. 577; Boardman, *Early Stewart Kings*, 55, 81.

George Douglas earl of Angus (1397), a brother-in-law, David Lindsay earl of Crawford (1398), and his own illegitimate son James (1391×1393).<sup>214</sup> While the erection of regalities for connections of the royal family goes back to Sprouston, given to the husband of an illegitimate daughter of William I,<sup>215</sup> it can be particularly associated with Robert III, before and after his accession.

Now, it has been said that in the case of the ‘small country parish’ of Sprouston, regality privileges seem ‘absurd’.<sup>216</sup> The same would apply to several of the later family grants: Logie, Kirkmichael, Crawford and Kilbride were only parish-sized units – and so were Terregles and Alloa, created for the prominent royal councillors John Herries and Thomas Erskine in 1367 and 1398 respectively.<sup>217</sup> None of these was a spectacular liberty; instead, they can all be regarded as superior versions of the ordinary baronies, without any wider significance apart from freedom from external interference and, of course, the special personal status that their lords would have enjoyed.<sup>218</sup> And although combining numerous scattered baronies into one regality would have provided considerable administrative convenience and additional profits of justice for its lord, again such scattered regalities are unlikely to have had a particularly significant effect on government at any level above the parochial. It is, therefore, only the relatively few provincial regalities that really mattered in regional or national terms; the rest may be regarded as essentially honorific.

Thus, over the course of the fourteenth century, grants of regality became less likely to involve major governmental functions (as most obviously with Randolph’s earldom of Moray), and more likely to be simply a matter of prestige. This trend is echoed with respect to the earldoms: of the four new fourteenth-century earldoms, Moray and Wigtown were obviously provincial, but Douglas, which for all its size combined scattered lands, was rather less so, and Crawford was essentially honorific – as was to be the case with most of the earldoms created in the fifteenth century, as well. Furthermore, a similar trend can be seen with the baronies. As has been seen, most fourteenth-century baronies corresponded more or less closely with parishes and local communities, but a dozen or so were created out of scattered, non-contiguous, *fermtouns*.<sup>219</sup> That, again, was to happen more and more frequently during the fifteenth century – and while no fourteenth-century baronies had lands in more than one sheriffdom, many fifteenth-century ones did, because it became increasingly common to combine all a landowner’s estates, no matter where and

<sup>214</sup> RMS, i, app. II, nos. 1754, 1810; William Fraser, *The Douglas Book* (Edinburgh, 1885), iii, no. 302; ‘Miscellaneous charters, 1315–1401’, ed. William Angus, in *Miscellany V* (SHS., xxi, 1933), 40.

<sup>215</sup> Keith J. Stringer, ‘Nobility and identity in medieval Britain and Ireland: the de Vesey family, c.1120–1314’, in Brendan Smith (ed.), *Britain and Ireland 900–1300* (Cambridge, 1999), 204–5.

<sup>216</sup> Barrow, *Robert Bruce*, 283. Actually the original regality was rather larger, but nevertheless not huge: Stringer, ‘Nobility and identity’, 90; William Fraser, *The Scotts of Buccleuch* (Edinburgh, 1878), ii, no. 25.

<sup>217</sup> RRS, vi, no. 373; HMC, *Mar and Kellie Suppl. Report*, 11; Penman, *David II*, 343–4, etc.; Boardman, *Early Stewart Kings*, 204, etc.

<sup>218</sup> Note that while two Lindsay baronies, Kirkmichael and Crawford, became regalities, the rest of the family estates did not, even when the earldom of Crawford was created.

<sup>219</sup> Above, p. 11.



how big they were, into a single barony.<sup>220</sup>

Meanwhile, the great provincial units – earldoms, lordships and big regalities – were breaking up and disappearing. An act of 1401 laid down that if an earldom came into the crown's hands, then any baronies within it were to be detached, so that in future they would be held directly of the crown;<sup>221</sup> that took several baronies out of earldoms in the following century. Next, after 1406 the heir to the throne was never an adult landowner, and therefore, despite the creation of the Stewart regality in 1404, in practice all free tenants in the Stewart properties held their lands directly of the king (albeit under the title 'Steward of Scotland') – so that the earldom of Carrick and the lordships of Renfrew, Kyle and Cunningham in effect disappeared. Much the same happened, too, with the great Douglas regality – but more violently, because all the territories amassed by successive earls of Douglas (including Galloway and Annandale as well as the original lordships and baronies) were forfeited to the crown in 1455. During the reigns of James I and James II, also, most of the other provincial earldoms and lordships came into crown hands through forfeiture or escheat;<sup>222</sup> and although some were subsequently granted out, it was usually in shrunken form.

This transformation of the top levels of land ownership had major consequences for Scotland's franchises. By the late fifteenth century, while the baronies survived, the major liberties – provincial earldoms, lordships and regalities – virtually disappeared, not because of any direct attack but because of political mishaps and genetic failure. As a result, more and more land came under direct crown control, and the old two-part governmental structure faded away. There was still, of course, private government by local landlords, but mostly only at baronial level – and here, too, the parish/community equivalence was also fading. Instead, the rapidly extending crown lands were run by royal officers, stewards and baillies as well as sheriffs. Although these were generally recruited from the landowning classes, they were no longer governing as private landlords. Thus, over the fifteenth century, the system of local government through a private–public partnership between crown and local landlords, by which Scotland had been run for around half a millennium, was transformed. In terms of J. R. Strayer's model, with which this chapter started, it corresponds to his 'medieval origins of the modern state' concept.<sup>223</sup> And for Scotland – in this respect – the fifteenth century can for once be seen as the end of the Middle Ages.

<sup>220</sup> Some random examples are *RMS*, ii, nos. 574, 1178, 1534, 1869, 2106, 2455.

<sup>221</sup> *APS*, i, 576.

<sup>222</sup> Alexander Grant, 'Earls and earldoms in late medieval Scotland (c.1310–1460)', in John Bossy and Peter Jupp (eds.), *Essays presented to Michael Roberts* (Belfast, 1976).

<sup>223</sup> Strayer, *Medieval Statecraft*, 74, 88–9; Joseph R. Strayer, *On the Medieval Origins of the Modern State* (Princeton, 1970).

## Appendix: List of Abbreviations

- Aberdeen-Banff Illustrations* *Illustrations of the Topography and Antiquities of the Shires of Aberdeen and Banff*, ed. Joseph Robertson and George Grub (Spalding Club, xvii, xxix, xxxii, xxxvii, 1847–69)
- Aberdeen Reg.* *Registrum Episcopatus Aberdonensis*, ed. Cosmo Innes (Maitland Club, lxiii, 1845)
- Arbroath Reg.* *Liber S. Thome de Aberbrothoc*, ed. Cosmo Innes and Patrick Chalmers (Bannatyne Club, lxxxvi, 1848–56)
- APS* *The Acts of the Parliaments of Scotland*, ed. Thomas Thomson and Cosmo Innes (Edinburgh, 1814–75)
- Carnwath Court Book* *The Court Book of the Barony of Carnwath, 1523–1542*, ed. William Croft Dickinson (SHS, 3rd series, xxix, 1937)
- CDS* *Calendar of Documents relating to Scotland*, ed. Joseph Bain *et al.* (Edinburgh, 1881–1986)
- Coupar Angus Charters* *Charters of the Abbey of Coupar Angus*, ed. D. E. Easson (SHS, 3rd ser., xl–xli, 1947)
- David I Charters* *The Charters of King David I*, ed. G. W. S. Barrow (Woodbridge, 1999)
- Fife Court Book* *The Sheriff Court Book of Fife, 1515–1522*, ed. William Croft Dickinson (SHS, 3rd ser., xii, 1928)
- Glasgow Reg.* *Registrum Episcopatus Glasguensis*, ed. Cosmo Innes (Bannatyne Club, lxxv, and Maitland Club, lxi, 1843)
- HMC* Historical Manuscripts Commission
- Inchaffray Charters* *Charters ... relating to the Abbey of Inchaffray*, ed. John Dowden *et al.* (SHS, 1st ser., lvi, 1908)
- Lawrie, Early Scottish Charters* Sir Archibald C. Lawrie, *Early Scottish Charters prior to 1153* (Glasgow, 1905)
- Lennox Cart.* *Cartularium Comitatus de Levenax*, ed. James Dennistoun (Maitland Club, xxiv, 1833)
- Melrose Lib.* *Liber Sancte Marie de Melros*, ed. Cosmo Innes (Bannatyne Club, lvi, 1837)
- Moray Reg.* *Registrum Episcopatus Moraviensis*, ed. Cosmo Innes (Bannatyne Club, lviii, 1837)
- Morton Reg.* *Registrum Honoris de Morton*, ed. Cosmo Innes (Bannatyne Club, xciv, 1853)
- Orig. Paroch.* *Origines Parochiales Scotiae: The Antiquities, Ecclesiastical and Territorial, of the Parishes of Scotland*, ed. Cosmo Innes *et al.* (Bannatyne Club, xciv, cii, cx, 1850–5)

<i>Paisley Reg.</i>	<i>Registrum Monasterii de Passelet</i> , ed. C. Innes (Maitland Club, xvii, 1832)
<i>Quon. Att.</i>	<i>Quoniam Attachiamenta</i> , ed. David Fergus (Stair Soc., xlv, 1996)
<i>Reg. Maj.</i>	<i>Regiam Majestatem ... based on the text of Sir John Skene</i> , ed. Thomas M. Cooper (Stair Society, xi, 1947)
RMS	<i>Registrum Magni Sigilli Regum Scotorum</i> , ed. John Maitland Thomson <i>et al.</i> (Edinburgh, 1882–1914).
RRS	<i>Regesta Regum Scotorum</i> , ed. G. W. S. Barrow <i>et al.</i> (Edinburgh, 1960– )
SHR	<i>Scottish Historical Review</i>
SHS	Scottish History Society