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THE EXTENT AND NATURE OF FEUDING IN SCOTLAND,

1573-1625

Volume ii

POLITICS AND THE FEUD :

THE GREAT NORTHERN FEUD

If any feud stands out from among the others of this period as the supreme example of a feuding society then it was that great struggle which convulsed the north and the court during the last decade and a half of the sixteenth century. Its length is not particularly impressive; it began around 1586-87, most of the fighting was over by 1595-96, and it was settled during 1603-04. However, for sheer violence and bloodshed it outstripped all other feuds and it was the most significant in the political life of the entire kingdom. Even on its own it is worthy of study as a fascinating insight into the conduct of magnate politics in the early modern period in what was, in spite of its vitality, something of an Indian Summer for a form of political conduct which had been dominant in the Scottish state for centuries.

What was the feud about? The answer is of course fairly complex. It was about fishing right on the Spey and about the principles upon which the crown ruled the north; it was about the rights to the bishopric of Moray and about plots for a Counter Reformation and a Spanish invasion; it was about control of clan Campbell and control of the king; it was about lordship over the Grants and Mackintoshes and the patronage of chancellor Maitland. It was all these things and many more, a fusion of interests which were both local and national in their implications. It involved relatively unimportant local

landowners and broken highland clans, and it obsessed the greatest magnates of the kingdom and the most powerful politicians of the court. It was also a feud and thus it was about itself, about honour, revenge and power.

A complete survey of the men involved in this struggle and their relative strengths as undertaken in the above Cunningham-Montgomery feud would not be possible here, the number of men involved being far too many. However, some analysis of the principals will be helpful to an understanding of the feud. It had been the basic maxim of Scottish kings for the last hundred and fifty years to secure the government of the north through the aggrandisement and employment of the earls of Huntly and Argyll and their Gordon and Campbell kinsmen, and therefore one must at least have some understanding of the politics of these families to grasp the political context of the north in the 1580's. The Campbell kin in Argyll dominated the north-west of Scotland with a pervasive influence stretching out into the many islands along the west coast. However, the death of the sixth earl of Argyll in 1584 left the earldom in a minority, his son being then only nine years old, and what followed was an intense struggle within the kindred for control of it. The details of this have been well documented already by E.J. Cowan in his study of the politics of Argyll during this minority and of the subsequent rule of Archibald, seventh earl of Argyll, and there is no need to repeat it

here.<sup>1</sup> Cowan's point that during this period the Campbells were "the closest they ever came to fragmentation" underlines the effect of this struggle which developed into a bitter feud between different factions within the Campbell kin, principally between the houses of Cawdor and Ardkinglass.<sup>2</sup> With the Campbells thus engaged in internal feud the western seaboard became even more unstable than usual with a vicious feud between the MacLeans and the MacDonalds running wild, while throughout the north-west any restraining impact an earl of Argyll might have had was withdrawn. Regional instability was thus fairly evident, but the effect of this hiatus in Campbell power was even wider and had implications for the entire government of the north.

On the east the astonishing growth of Gordon power had also suffered a set-back, but earlier, in the 1560's and 1570's. The fourth and fifth earls of Huntly had both ended their lives as political has-beens. The fourth earl died after his rebellion against queen Mary had collapsed and his estates were subsequently forfeited, yet another of the queen's major miscalculations. One of the reasons for Huntly's rebellion had been a quarrel with the queen's half-brother, lord James Stewart, first earl of Moray, over the administration of the earldoms of Mar and Moray

1. Cowan, "Clanship, kinship and the Campbell acquisition of Islay", p 132-157.

2. *ibid.*, p 140.

which had been in Huntly's hands, but which Mary had transferred to lord James.<sup>3</sup> Huntly's failure to get these back was thus the beginning of a diminution of Gordon power in the north-east as the ambitious Moray sought to increase his own influence in the region. Defeat for the fifth earl in the civil war in which Moray was one of his principal enemies further shook the confidence of the Gordons, and while their hold on the region was maintained throughout the war and the peace which followed, Moray's own death removing the greatest threat to them, there had been a loosening of some of the older certainties about their power. The earl's death in 1576 left a son of fourteen to inherit what was still the most powerful earldom in Scotland, but with a number of problems which would have to be resolved if the Gordons were to recover some of the ground they had lost in the previous fifteen years.<sup>4</sup>

George Gordon, sixth earl of Huntly was one of the most enigmatic characters of his time. At the time of, or shortly after his father's death, he was shipped off to France where he completed his education and was sufficiently instructed in the catholic faith to ensure a lifetime devotion to it. He returned in the early 1580's to take some small part in the final stages of the agreement between the Gordons and the Forbes' which had largely been handled by his uncle Auchindoun, and he quickly became one of the bright young

3. Donaldson, James V - James VII, p 111-12.

4. Scots Peerage, iv, p 539-40.

noblemen to grace the court in the post-Morton era. His first known political act was to escape with the king from the Ruthven Raiders and thereafter he identified himself with the conservative Arran regime. However, he escaped any repercussions following Arran's fall and in fact his fortunes rose with him being married to the sister of the young duke of Lennox, the king's cousin, being granted the commendatorship of Dunfermline abbey, and being appointed lord high chamberlain in 1587. Two years later he briefly added the captaincy of the guard to his offices. It is worth pointing out here just how important both these offices were. Too often it is assumed that the chancellor, treasurer, secretary and other offices associated with the privy council were the keys to controlling the government, but in fact these two household offices gave the holder a very great say in deciding access to the king and in deciding who should be around him. With these positions Huntly was able to dominate the chamber with his own friends and thus have a very significant say in helping form the king's opinion. In 1589 control of the guard allowed him to increase this monopoly by appointing his own men to be guards. With his enormous local power and the power invested in him as lieutenant of the north and other lesser local offices, Huntly was between 1587-89 the most powerful man in the kingdom after the king.<sup>5</sup>

5. Scots Peerage, iv, p 541; C.S.P.Scot., x, p 17.

The character of the man is a little more difficult to pin down. He was a man who seemed to inspire extreme reactions in others who either loved him with passionate loyalty or feared and intensely hated him. Certainly at a superficial level he was an attractive and likeable person and after Arran's fall he gradually took the latter's place as the royal favourite. In August 1587 it was noted that he was "indeid ane greit curteour and knawis mair of the Kingis secrettis nor ony man at this present doithe".<sup>6</sup> Six months later, after he had been implicated in treasonable dealings with Spain, Fowler could still write of the king's "extraordinary affection to Huntly" which remained "unremoveable" and through which the earl could "persuade his majesty to any matters to serve his own particular or friends".<sup>7</sup> In fact there was a limit to the king's patience with Huntly, but in 1597 after three major rebellions and innumerable acts of treason, it was still being recorded that "Huntly was never so great nor so much made of both with king and queen".<sup>8</sup> Two years later he was with lord Hamilton raised to the dignity of marquis and the king continued to shower patronage on him even though George Gordon must have been one of the more bitter disappointments of James' life.

6. C.S.P.Scot., ix, p 476.

7. C.S.P.Scot., x, p 3.

8. C.S.P.Scot., xiii, part 1, p 132.

Yet if Huntly was the courtier par excellence among James VI's nobility, there was another side to his nature. The reputation he had for violence even among some very tough company seems to have been well earned. This feud and others in which he participated indicate that Huntly was every bit the archetypal warring magnate who resorted to naked violence almost as his first option. He was constantly surrounded by large bodies of armed men and one observer noted his arrival at court with the words that "He comes (as he always does) strong".<sup>9</sup> He was described while in his mid-twenties as "foolish, hot and hardy", but age did not mellow his confidence in violence and its threat as a solution to his problems.<sup>10</sup> Like Bothwell his enemies feared him, but he was never the swashbuckler that Bothwell was, lacking the other's personal bravado and even indifference to danger, though, he clearly understood how to use violence as a tool to terrify and to oppress, and he had the men to put it into effect.

There is another puzzling side to his character. He was described as "shallow witted" though surrounded by "shrewed counsellors ... whose advice he follows", men like Auchindoun and Gordon of Gight.<sup>11</sup> He was also called "a most simple man and tymorous", while even the king thought him

9. C.S.P.Scot., xiii, p 395.

10. C.S.P.Scot., ix, p 655.

11. C.S.P.Scot., x, p 3.

"but young, merry, disinterested in matters of state". After the 1589 fiasco James said that "he sees himself the nature of the man, easily led to evil or to good. He would never trust so weak a man, or pardon his offences without great pun(ishment)".<sup>12</sup> Of course James did pardon him and did trust him again, and one suspects that, as this was said in the context of the 1589 rebellion, the king and others were reflecting their judgement on what had been a badly handled affair by Huntly, while on the king's part there may even have been some attempt to find excuses for his favourite. One might agree that Huntly was nothing more than a stupid big bully, but one instinctively feels that such a conclusion would be a gross error. Huntly was subtle enough in his political life to play the misled fool when Bothwell did not know when to admit defeat, and in 1589 and whenever he thought it necessary Huntly admitted his wrongs, cut his losses and then returned to his former scheming.

Another commentator observed of him in 1583, that while he was powerful he had not been able to fully recover from the effects of his family's losses under his father and grandfather. Therefore, he was "slowe to engage himself in any faction or quarrel of state, but at the Kinge's pleasure, to whose humor he dothe wholly blende and apply himself".<sup>13</sup> This is a very accurate analysis of Huntly's behaviour for

12. C.S.P.Scot., x, p 84, p 85, ii.

13. Estimate, p 31.

he did remain aloof from court politics until after 1587, devoting his time to gaining the king's confidence and restoring his power in the north. Huntly clearly understood the nature of power for a Scottish magnate; royal favour and local domination. These two axioms of political life he kept at the fore of all his activities throughout his political life, applying them with remarkable success considering the course he mapped out for himself. Like others he made bad mistakes, but his personal knowledge of the king and his grasp of local affairs allowed him to indulge in the most overt opposition to the king, the church and most of his fellow magnates and still emerge from it all largely unscathed.

Those who had benefited most from the difficulties of the Gordons were the Stewart earls of Atholl and Moray. James Stewart, second earl of Moray, was something of an upstart in the eyes of a man like Huntly. A younger son of lord Doune, himself a recent arrival to the nobility, he had acquired the wardship of the regent Moray's daughters and, having married the eldest of these, was created earl of Moray, the earldom being held jointly with his wife.<sup>14</sup> In spite of the romantic image in which he was cast after his death, Moray does not seem to have been a very agreeable sort of man or a very responsible one. He did not get on

14. Scots Peerage, vi, p 316-17; S.R.O., Moray Muniments, N.R.A., 217/3/2/180.

The House of Huntly

George, 5th earl .....Adam of Auchindoun.....Sir Patrick  
 m of Auchindoun  
 Anna Hamilton (Chatelheraut)

⋮  
 George, 6th earl..... Jean.....and others  
 m m  
 Henrietta Stewart (Lennox) George, 5th earl of Caithness

⋮  
 George, 7th earl.....Ann.....and others  
 m m  
 Ann Campbell (Argyll) James, 3rd earl of Moray

The House of Argyll

Colin, 6th earl  
 m  
 Jane Stewart (Methven) - no issue  
 Annas.Keith (Marischal and countess of Moray)

⋮  
 Archibald, 7th earl.....Colin of Lundie.....another  
 m  
 Agnes Douglas (Morton)

⋮  
 Archibald, 8th earl.....Ann.....and others  
 m  
 George, 2nd marquis of Huntly

The House of Moray

James V

⋮

(illegitimate)

⋮

James, 1st earl

m

Annas Keith (Marischal)

⋮

Elizabeth, countess of  
Moray

James, 1st lord Doune

m

Margaret Campbell (d 4th earl of  
Argyll)

⋮

James Stewart, 2nd earl....Henry, lord  
St Colme

m

Jean Stewart  
(Atholl)The House of Bothwell

James V

⋮

(illegitimate)

⋮

Lord John Stewart, prior of Coldingham

m

Jean Hepburn (sister to Bothwell) 2nd m John, master of Caithness

⋮

George, 5th earl of  
Caithness

Francis Stewart, earl of Bothwell m Margaret Douglas (Angus)

well with his wife, he was a gambler who was forever in debt, and both the "Historie" and Sir Robert Gordon speak of his envious attitude with regard to Huntly.<sup>15</sup> He was also "the maist weirlyke man bayth in curage and person, for he was a cumlie personage, of a great stature and strang of bodie lyk a kemp."<sup>16</sup> From the epithet he posthumously acquired as the "Bonnie Earl of Moray" one can assume that he was indeed an attractive man. However, his power was slight, being "not comparable to the uther, as all men knawis".<sup>17</sup> Being only a few years younger than Huntly he appeared at court at much the same time, during the years of Arran's dominance, and in fact he was related to the chancellor and saw some patronage, including his earldom come his way during those years.<sup>18</sup> However, he was never anything more than a courtier when at court and was of no political significance at all outside his own locality.<sup>19</sup>

The rivalry between Huntly and Moray arose over two local issues: land and men. The former centred around

15. S.R.O., Moray Muniments, N.R.A. 217/2/3/168; 217/2/3/260-268; Gordon, Sutherland, p 214; Historie, p 246.

16. Historie, p 246.

17. *ibid.*

18. S.R.O., Moray Muniments, N.R.A. 217/2/3/239, 217/2/3/70.

19. Oddly enough in 1589 he was described as "a paiste and freinde to the Erle of Huntly", quite remarkable for the man who was to die as a protestant martyr at Huntly's hands, C.S.P.Scot., ix, p 666, p 677.

the old quarrel over the Moray earldom. Huntly's grandfather had been granted the earldom in 1548 and as has been already said lost it to lord James some fifteen years later.<sup>20</sup> Closely bound up with the fortunes of the earldom at this time was the old bishopric of Moray and as well as grabbing a hold of the earldom, Moray and his wife had got their hands on certain pensions from the bishopric and were keen to get more.<sup>21</sup> However, in 1584 Huntly drew up a contract with the bishop which amounted to a bond of manrent and maintenance, Huntly offering his protection in return for specified fruits of the benefice.<sup>22</sup> In a sense this marked the beginnings of competition between the two in the locality.

Huntly was not aiming at Moray in making this agreement with the bishop, but was engaged in a deliberate policy of recruiting support throughout the north. In 1583 he had made a bond of friendship with the then chancellor Argyll which indicated their willingness to recognise one another's spheres of influence.<sup>23</sup> The earl's death in 1584 left Huntly unchecked and during 1585-86 he acquired the bonds of Munro of Foulis, MacAngus of Glengarry, Mackenzie of Kintail, MacLeod of Lewis, MacGregor of Glenstray, Drummond of Blair, Robertson of Struan, Dunbar of Cumnock who was also sheriff of Moray, Donald Gorm of Sleat, Grant of Freuchie and Rattray of Craighall who all either confirmed Huntly as their

20. S.R.O., Gordon Castle Muniments, G.D. 44/1/1/3.

21. S.R.O., Moray Muniments, N.R.A. 217/2/3/176.

22. S.R.O., R.D. 1/24/9.

23. Brown, "Bonds of Manrent", appendix, p 545, no 70.

lord or recognised Huntly lordship for the first time.<sup>24</sup>  
 In ranging so far afield for dependants Huntly could be sure that there would be no serious complaints from the Campbells as long as they were divided against themselves, but opposition did come from the earl of Atholl.

Like Huntly and Moray, John Stewart, fifth earl of Atholl was a young man in his early twenties when his quarrel with the Gordons began. His father had been no friend of Huntly's father, but had been a man of political weight whose position in the central highlands put him between Argyll and Huntly and made him the third link in the buffer of earldoms which straddled across Scotland from Argyll in a north-easterly direction up to the Gordon territories. His son lacked the personal qualities of the fourth earl, being described as "a man of lyttle valuer or accompte", but he could still put a lot of men in the field and was to prove a tenacious if not always skilled opponent of Huntly's ambitions in the north.<sup>25</sup> He too had exploited Gordon decline and had attracted the support of Mackintosh of Dunnchattan, an extremely slippery character whose family had moved between the earls of Atholl and Huntly whenever it suited them. Yet Mackintosh's dependancy was only one issue between them for Drummond of Blair had switched from Atholl to Huntly when the former failed to treat him with the same confidence as his father had, and so both lords felt that the other

24. Brown, "Bonds of Manrent", p 467ff.

25. Estimate, p 11, p32.

was stealing his dependants.<sup>26</sup>

In 1587 tension between them broke over some rebels Huntly had outlawed but Atholl was maintaining, and both men levied their forces and set out for a trial of strength. Fortunately they stopped on receipt of an order from the king and agreed to let their dispute be settled by law. Atholl agreed to appear and answer the charges against him and to lift his protection from the men who were raiding the lands of Menzies of Weymes and Drummond of Blair against whom the raids were being conducted to test Huntly's protection. However, Huntly set the tone for his high-handed behaviour in local affairs, refused to give assurances and announced that he would try some of the men he had caught, or intended to catch, in his own courts. Atholl complained to the council which hastily arranged arbitration, the decision being in Huntly's favour.<sup>27</sup> The incident had shown Huntly's willingness to take to the field as soon as his interests were threatened, and while Atholl was keen to avoid a show-down, Huntly was prepared to insist on his rights whatever the consequences. His lordship was always to be exercised in this manner whatever the issue.

During this same period Huntly had also begun proceedings against Moray and his wife. The countess was summoned for the reduction of her titles to the lands of Spynie, a

26. C.S.P.Scot., x, p 276-77; Brown, "Bonds of Manrent", appendix, p 393, no 2.

27. R.P.G., iv, p 121, p 131, p 149-50, p 210; Gordon, Sutherland, p 208, S.R.O., Gordon Castle Muniments, G.D. 44/13/2/1.

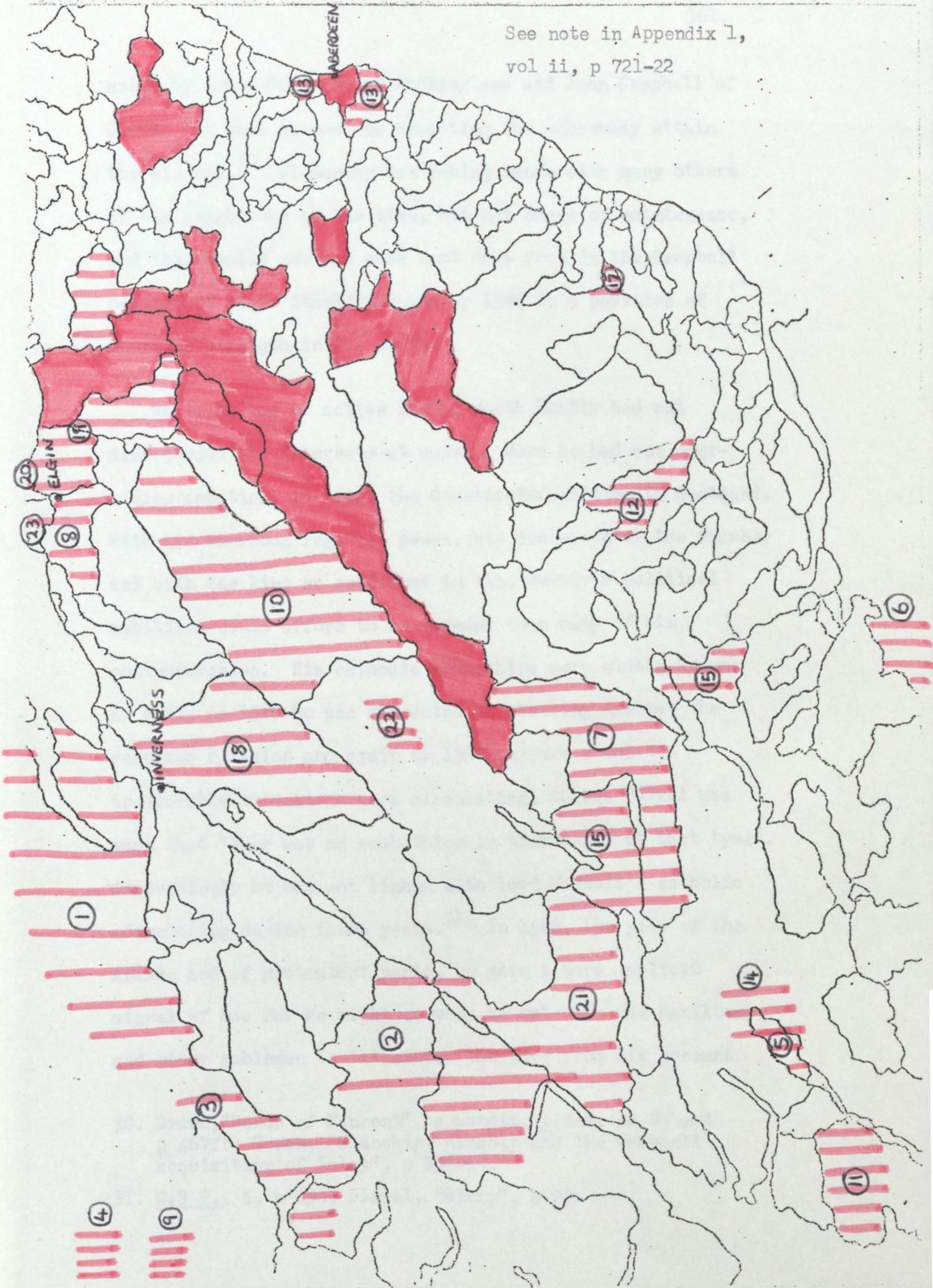
matter in which Huntly met with complete success.<sup>28</sup> This was followed by a more serious clash over fishing rights in the waters of the river Spey which were, like the Spynie lordship, tied up with the lands of the Moray bishopric. The fishing rights had in fact been a running sore since 1570 or before when Moray's mother-in-law first clashed with Huntly's father over them. In 1586 dame Annas Keith had lost none of her vigour, and when her servants were prevented from fishing by the Gordons, she had Huntly charged before the council and made to give caution. Thereafter the matter continued to be debated in the council and the session with each side scoring temporary successes.<sup>29</sup>

These local skirmishes did Huntly no harm and others continued to put their confidence in his lordship. In 1587 the king's uncle, the earl of Orkney, formed a bond of friendship with him, while further bonds of manrent were given by Menzies of Pitfodells, the provost of Aberdeen, Menzies of that Ilk, Scott of Abbotshall and James Beaton, fiar in Malgand. Even more importantly, in April 1587 Archibald Campbell of Lochnell, Argyll's cousin, gave Huntly his bond and in the following year the most powerful of the Campbell cadets, Duncan Campbell of Glenorchy, followed him. Allegiance to Argyll was excepted, but both these men were curators of the young earl and had been pushed

28. S.R.O., Moray Muniments, N.R.A., 217/2/4/24.

29. R.P.C., iv, p 86-87; Moray M.S., H.M.C. vi, p 650. Two of Moray's servants were killed by the Gordons at this time, W.Fraser, The Chiefs of Grant, (Edinburgh, 1883), vol iii, p 176-79.

See note in Appendix 1,  
vol ii, p 721-22



aside by James Campbell of Ardkinglass and John Campbell of Cawdor who were themselves competing for supremacy within the kindred.<sup>30</sup> Glenorchy was making bonds with many others of his neighbours at the time, but not bonds of maintenance, and thus Huntly now had some sort of a foot in the Campbell network of power itself and was by 1588 in a position of enormous strength in the north.

While he was so active in the north Huntly had not disregarded his interests at court. Here he had one overriding ambition, to bring the Counter-Reformation to Scotland. With his enormous regional power, his dominance of the chamber and with the king so confident in him, Huntly's political ambitions could afford to be grander than many of his contemporaries. His catholic sympathies were widely known; as early as 1586 he was suspected of plotting against the reformed religion and again in 1587 rumours about his treasonable intentions were circulating, though Birrel was sure that "ther wes no such thing in ther heids at that tyme". Surprisingly he was not linked with lord Maxwell's catholic adventuring during these years.<sup>31</sup> In 1588, the year of the Armada and of protestant panic, he gave a more explicit signal of how far he might go when he met with the Hamiltons and other noblemen to "liberate" the king from his present

30. Brown, "Bonds of Manrent", appendix, p 548, no 85 and p 467ff; Cowan, "Clanship, Kinship and the Campbell acquisition of Islay", p 136-37.

31. C.B.P., i, p 236; Birrel, "Diary", p 24.

advisors, but the king ordered them to disperse and told Huntly to send home his Jesuit advisors and bring Gordon of Gight to law for the murder of one of the earl Marischal's kinsmen. Huntly ignored both commands and continued to conspire against Maitland and Glamis whom he regarded as the stalwarts of the king's protestant advisors and enemies of the nobility.<sup>32</sup> Then during the summer, a Spanish agent, colonel Semple, landed in Leith and though he was arrested Huntly took him from his captors and helped him escape out of the country. When news of the Armada's sailing reached him he went north to prepare defences against a landing or to facilitate one, whichever would be most politic at the time.<sup>33</sup>

There was little doubt that Huntly was with Erroll, Crawford and lord Maxwell already in receipt of Spanish subsidies by this time, but the extent of his commitment to the Counter Reformation cause remained shrouded in secrecy and confused by rumour.<sup>34</sup> In the beginning of the new year he was even appointed captain of the guard. In a letter which he wrote to the duke of Parma, Huntly explained the implications of this. Firstly, he pointed out that the Armada's failure had made rebellion impossible, but that he remained high in the king's credit and "as he (the king) had broken his former guards, and made him (Huntly)

32. C.B.P., i, p 308-09, p 321-22.

33. C.B.P., i, p 328, p 329.

34. Spottiswoode, History, ii, p 392.

establish others about his person, by whom at all occasions he might ensure himself, and be master of the king and so, when the support promised should arrive, spoil the heretics of his authority, and make sure the catholics' enterprises." Unfortunately this letter along with others from Erroll, Crawford and the already imprisoned Maxwell were discovered en route and Huntly was arrested, deprived of the guard and warded.<sup>35</sup> Incredibly the king chose to take the whole case lightly, freed him after eight days and on the 14th of March reinstated him to the guard captaincy following which Huntly immediately payed the guards and warned them to obey no-one but him.<sup>36</sup> The king's decision was one which must have surprised even Huntly, and one can only assume that Huntly had persuaded him of his loyalty.

However, Huntly was not to be stopped by this setback and wanted to get himself and the king away from chancellor Maitland and his friends as soon as possible. Maitland was furious at the king, but also afraid, and he began to increase his own guards since he had no confidence in the royal ones. Huntly in fact left Edinburgh, equally worried that the chancellor was plotting to kill him and he organised Erroll and Bothwell, who had joined the catholic earls for reasons of his own, to stir up a fracas in the burgh in order to frighten the king into fleeing north with him. Huntly

35. Spottiswoode, History, ii, p 390-91, p 386; C.S.P.Scot., ix, p 682ff, x, p 1.

36. C.S.P.Scot., x, p 4, p 6; C.B.P., i, p 335-36.

still seemed to be under the impression that James was, if not a catholic himself, then a prisoner of a more extreme religious faction than had existed under Arran, but the king was not persuaded by the earl's arguments and after a two hour discussion they agreed to part. Huntly went off to Dunfermline from where he continued to correspond with the king, and while the latter dismissed Huntly's guards, it was said that "the wourld thinkes he is bewitched with him". When it became clear to Huntly that nothing further could be gained he and the other catholic earls retired north, this now being the end of March, and there they came out in open rebellion.<sup>37</sup>

The entire episode is so charged with blunders that one wonders if the king and Huntly were playing some elaborate game of bluff with one another. The king's freeing of the earl after the discovery of his treason was clearly a mistake, but one had also to ask why Huntly did not kidnap the king when he had the opportunity to do so. Each appeared to be pushing the other as far as they could without actually doing anything which would not permanently damage their relationship, and even when Huntly did finally rebel, the evidence seems to suggest that Erroll was pulling him along with him. The rebellion itself can be read about elsewhere, but there too Huntly showed great reluctance to actually do anything more than mount what was nothing more than a

37. C.S.P.Scot., x, p 6, p 8, p 9, p 10, p 11; C.B.P., i, p 335-36.

large protest, and only the more hard-line Erroll was willing to face the king on the field. When it came to a show-down at Brig O'Dee Huntly backed out, and the rebellion, which had never really started anyway, collapsed.<sup>38</sup> As Huntly had written in his letter to Parma, the time was not right for rebellion, and without the king's person it was even less likely to succeed. The 1589 rebellion was nothing more than a testing of the ground and Huntly knew it would fail from the moment he left the king outside Edinburgh.

The problem now was what to do with Huntly and the other rebel earls. The king himself had no wish to shed blood, while most of the loyal nobles were either kinsmen of the earls or were in Huntly's case "affrayde to tacke him in blud" and become embroiled in a feud with the Gordons.<sup>39</sup> Huntly himself simply pled guilty to all the charges against him, thus convincing the king that he had been misled and was truly sorry. James believed him, and after a short ward he was freed along with the other earls. Of the others, Erroll was pardoned and Crawford given a remission, but Bothwell denied all the charges against him and was rapidly gaining a reputation as "a bloodyman infected with all notiryous vyces". However, he too was

38. Lee, John Maitland of Thirlstane, chapter 8, "Huntly's Rebellion"; C.S.P.Scot., x, p 17, 24, 25, 27, 31, 42, 54, 62, 69; R.P.C., iv, p 367, p 371, p 373, p 375; C.B.P., i, p 337; Spottiswoode, History, ii, p 394-95. There is a lot more material on this but these references will give the bare bones of the rebellion.

39. C.S.P.Scot., x, p 54.

freed, but like Huntly without a pardon, "to hold them in awe" for a while.<sup>40</sup> Lord Maxwell was also set at liberty at the same time. Part of the motivation for this lenient treatment of the catholic nobles was thought to be to spite the rampant protestant party who were howling for blood and becoming too assertive. Furthermore, James had one eye on England and was using the earls and the threat of Spain against Elizabeth in order to avoid becoming her client.

The split between Maitland and Glamis had also helped the earls and the former was now in league with his old enemy Bothwell while Glamis had come to some understanding with Huntly. By July, only three months after the rebellion, he was back in favour and worrying the English with his usual practice of surrounding the king with his friends.<sup>41</sup> In the north he and Erroll cemented their political alliance with a bond of friendship while Mackintosh of Dunnchattan and Innes of Innermarkie also gave him bonds of manrent.<sup>42</sup> Failure in the rebellion had thus left Huntly's power at court and in the north unscathed.

One would certainly have expected that during this time Huntly's enemies in the north would have attempted to exploit his difficulties. Both Atholl and Moray remained loyal to the king during the rebellion, but neither appears to have

40. C.S.P.Scot., x, p 83, p 84, p 85; R.P.C., iv, p 821; Spottiswood, History, ii, p 399.

41. C.S.P.Scot., x, p 128; Spottiswoode, History, ii, p 397-99

42. Brown, "Bonds of Manrent", appendix, p 549, no 90, p 470, no 79.

joined the king in his march to Aberdeen in April. Moray had in fact had Huntly horned during his first stay in ward, after the discovery of the letters to Parma, and had presumably hoped to take advantage of Huntly's confinement. As it was, the messenger who pronounced the letters of horning in Banff was lucky to escape with his life, and Moray soon received a letter from one of his own servants in the north telling him that Huntly had given the word for the outlaw bands under his control to be set loose on Moray's lands.<sup>43</sup> This, and Huntly's very quick release, should have caused Moray considerable alarm, but in fact he appears to have done nothing, and while one does not know for certain whether he went north with the king, he was very quickly back at court. There his servants wrote to him in frustration. A James Torvie in Logie wrote that he was unable to pay Moray the 1,000 merks Moray was demanding for the continuation of his tack because he had suffered from heavy raiding and went in daily fear of his life. He included 80 merks and told the earl that it would just have to do since such "limmerers" would not be troubling him if Moray was at home to give his protection.<sup>44</sup> George Dunbar then wrote reminding Moray that he and Rose of Kilravock had already sent a letter informing him that his tenants were being badly oppressed and suffering greatly at the hands of his neighbours. Furthermore, not only Moray

43. S.R.O., Moray Muniments, N.R.A., 217/2/3/230, 217/2/3/227.

44. *ibid.*, N.R.A., 217/2/3/229.

45. *ibid.*, N.R.A., 217/2/3/232.

was absent, but his baillie could not be found and his chamberlain had refused to meddle in these affairs unless his wife and children could be guaranteed security. Moray's affairs in the north were thus a shambles and he clearly had no grasp of the obligations of good lordship. To a court playboy like Moray his earldom was little more than a revenue source and a symbol of status, a sharp contrast to a man like Huntly.

In June, with Huntly's future at court secure, the Gordons moved from undercover attacks by outlaws to a direct attack on Moray. A party of them went to the Spey, broke Moray's fishing cobbles there and chased off his servants. Another of the earl's servants wrote that he feared an attack on Darnaway castle itself, and complained that "The country is masterless at present".<sup>46</sup> Meanwhile, in Edinburgh, Huntly set his friends to work on a legal case against Moray, had him warded for a while in Stirling, and prevented him from returning home to take command of the situation.<sup>47</sup> Moray's power had been exposed for what it was, and his defeat looked inevitable when Bothwell stepped into the affairs of the north.

The combination of Huntly and Bothwell in 1589 had been nothing more than a marriage of convenience, arranged to strike their mutual enemy, Maitland. Throughout the previous

46. S.R.O., Moray Muniments, N.R.A. 217/2/3/217.

47. C.S.P.Scot., x, p 202; S.R.O., Moray Muniments, N.R.A. 217/2/3/280.

year they had been keen rivals and only a month before the discovery of Huntly's first treason they were being described as the leaders of the principal factions at the court, "even to stabbing and shooting one another".<sup>48</sup> Following the failure of the rebellion they very quickly reverted to their positions opposite one another, recriminations over the conduct of the rebellion adding fuel to the fire of their enmity. However, by agreeing with Maitland, Bothwell's reward was that he was entrusted with a large part of the running of the country when the king and his chancellor left for Denmark in the autumn of 1589.<sup>49</sup>

During these months when he and lord Hamilton virtually shared the government of Scotland, Bothwell conducted himself with remarkable restraint. Perhaps having realised his goal he really was capable of responsible government, but responsible or not he was determined to use his position to advantage, no sixteenth century politician could resist that temptation. In terms of men, lands and offices Bothwell was one of the most powerful magnates in Scotland, but his failure to successfully lead his dependants and friends out in rebellion in April had worried him and exposed his vulnerability. For the moment he was secure in his alliance with the chancellor, but he had little faith in Maitland and so he decided that he had to have a kin alliance of his own.

48. C.S.P.Scot., ix, p 538, p 676, p 678. This had been encouraged by Maitland, p 680.

49. Spottiswoode, History, ii, p 404.

Even in his own locality there were few Stewarts to back him, he having been grafted onto the old Hepburn earldom. In his "cousin" Moray he found a man who was a Stewart, a courtier and an enemy of Huntly. Bothwell offered Moray influence at court while through Moray he was able to damage Huntly on his home ground. From the winter of 1589 the Stewarts began to appear as a recognisable kin alliance in the politics of the state.

Previous to this there had been little sign of any relationship between the two Stewart earls. A few years beforehand the countess of Moray and Bothwell had been involved in some transaction over fishing rights on the Tweed, but no other link between them can be found.<sup>50</sup> In November 1589, a month after the king's departure, Bothwell went north to the house of another Stewart earl, to Atholl. Ostensibly he was there to mediate Moray's feud with Huntly, and also the latter's lingering feud with the Forbes', but nothing was achieved. Indeed one wonders whether Bothwell wanted the feud settled at all and whether the real aim of his visit was more likely to have been to bind Moray, Atholl and himself together in an alliance. Huntly was not even in the region, being in the far north extending his influence into the affairs of the earls of Caithness and Sutherland.<sup>51</sup>

50. S.R.O., Moray Muniments, N.R.A. 217/2/3/2, 217/2/3/3.

51. Bothwell's failure prompted Asheby's comment that "the Scottish nature is hardly reconciled". C.S.P.Scot., x, p 184, p 191, p 196; R.P.C., iv, p 493-94; Gordon, Sutherland, p 200.

Such Machiavellian intrigue became more apparent in the spring when Bothwell returned into the north and again made some overtures of peace to Huntly on behalf of Moray, but on being rebuffed he again met with Atholl and Moray to forge an alliance. He was also at work trying to detach Erroll and Montrose from Huntly by reconciling them with Atholl, and thus "to complete the band amongst the Stewarts against Huntly." He was able to settle Atholl and Montrose, but the latter was not interested in his schemes, while in the cases of Huntly and Moray, and Atholl and Erroll, he left the situation "vorse nor he founde it".<sup>52</sup>

By the spring of 1590 Huntly was beginning to feel the effects of this alliance. Moray had revived the issue of the bishopric in which Bothwell himself now "pretendeth some interest".<sup>53</sup> It would appear that Moray's wife had the better rights to the bishopric's lands and resources, but that Huntly had held onto the castle and lordship of Spynie with the Spey fishings. With Bothwell's court influence behind him, Moray now re-opened the case and had Huntly summoned to answer concerning Moray's rights on the Spey. Huntly ignored the summons, and thus letters of horning and then treason were issued against him. When the king returned in May it was expected that he would add his weight to the faction against Huntly and that he

52. C.S.P.Scot., x, p 253, p 259, p 264, p 279.

53. ibid., p 839, p 277.

"proposed to shew Murray - being a Steward - all the favour he can".<sup>54</sup> In fact the king was to be very unsympathetic to this new party formed by his "kinsmen".

Within days of the king's return Huntly obtained a summons against Moray and his wife over the Spey fishings and had their own letters against him suspended.<sup>55</sup> Moray was still at court, but he seemed to be paralysed as to what to do and his wife wrote him telling him to do something as his neglect would be even more damaging. She, meanwhile, had been drumming up some support for him in the north.<sup>56</sup> Another letter arrived from William Stewart of Seiton informing Moray of his enemies' activities and urging him to "strain every nerve for success in this present business" which would either establish his authority or ruin him.<sup>57</sup> He did nothing and it was his wife who launched yet another legal counter-attack on Huntly, trying desperately to prevent him from having the backing of the law for his actions in the locality.<sup>58</sup>

At the court Bothwell was still trying to put together a strong faction of his own, and he even tried to get Maitland to join him and exchange bonds of friendship with

54. C.S.P.Scot., x, p 277; S.R.O., Moray Muniments, N.R.A. 217/2/3/285, 217/2/3/295, 217/2/3/274.

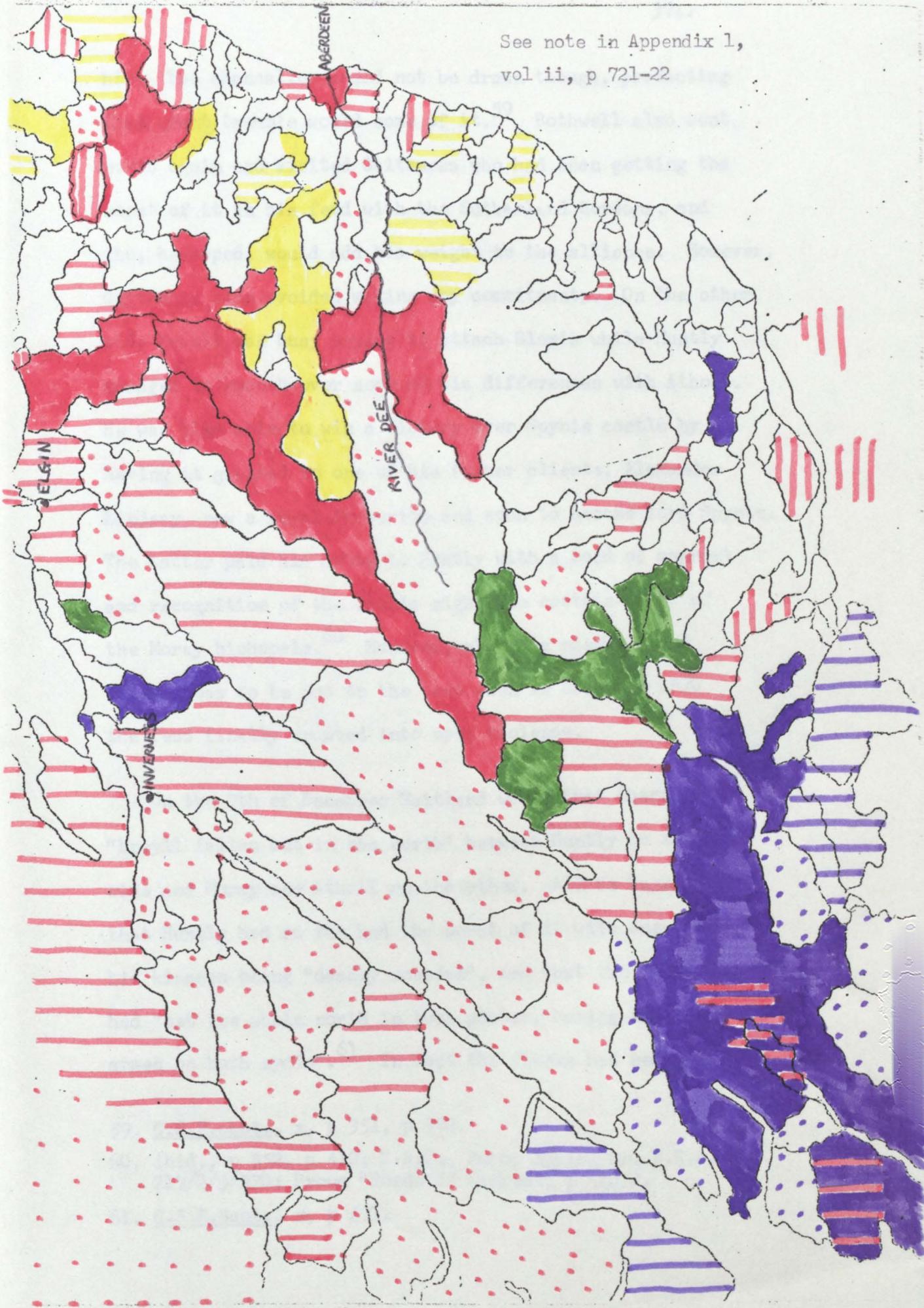
55. S.R.O., Moray Muniments, N.R.A. 217/2/3/257, 217/2/3/287-88; R.P.C., iv, p 496.

56. S.R.O., Moray Muniments, N.R.A., 217/2/3/255.

57. ibid., N.R.A., 217/2/3/304.

58. ibid., N.R.A., 217/2/3/292.

See note in Appendix 1,  
vol ii, p 721-22



him. The chancellor would not be drawn though, predicting that great trouble would come of it.<sup>59</sup> Bothwell also went north again and visited Caithness who had been getting the worst of it in his feud with the Sutherland Gordons, and who, he hoped, would add his weight to the alliance. However, Caithness also avoided making any commitments. On the other side Erroll was busy trying to attach Glamis while Huntly managed to smooth over some of his differences with Atholl. He was also able to win a victory over Spynie castle by having it granted to one of his former clients, Alexander Lindsay, now a royal favourite and soon to become lord Spynie. The latter paid his debts to Huntly with a bond of manrent and recognition of the earl's rights to certain parts of the Moray bishopric.<sup>60</sup> However, all this wheeling and dealing was to be put to the test when in December 1590 the feud finally erupted into open violence.

On the 7th of December Maitland wrote that there was a "broyll fallen out in the north" between Huntly on the one side and Moray and Atholl on the other. All he knew was that Huntly had so far had the worst of it with one of his kinsmen being "deadly wounded", and that the incident had "set the whole north in twoe partes, having taken armes on both sydis".<sup>61</sup> In fact the flames had been lit

59. C.S.P.Scot., x, p 351, p 392.

60. *ibid.*, p 352, p 410; S.R.O., Moray Muniments, N.R.A. 217/2/3/270; Brown "Bonds of Manrent, p 543ff.

61. C.S.P.Scot., x, p 431.

a whole month beforehand. Ill-feeling had existed for some time between the Grant kindred and a number of Gordons over a struggle between John Grant, tutor of Ballindalloch, and the widow of the house who was a Gordon. The latter had been given the protection of the Gordons of Lesmoir and in 1590 had married the brother of Gordon of Cluny. Consequently the Gordons began to increase their attempts to have a greater say in the affairs of Ballindalloch. Tensions increased to such a pitch that one day the tutor killed a servant of one of the Gordons. The latter immediately turned to Huntly for assistance and he had Grant outlawed, while the latter went to John Grant of Freuchy, his own chief, and asked for protection.<sup>62</sup>

The Grants were not dependants of Huntly, but they recognised his leadership of the region and had in the past been considered his friends. However, in the last few years they had become increasingly tired of Gordon interference and worried by the growth of Huntly's power. In 1587 there had been trouble between them when one of Freuchie's kinsmen was killed by these same Lesmoir Gordons and another Grant was murdered, "be hinging of him be the bagstones, binding of his heid and feitt together in the cruik, smuking of him to the deid". This ghastly killing was done by outlaws who worked for Huntly and the earl chose

62. Gordon, Sutherland, p 214.

to leave them unpunished for it.<sup>63</sup> The Grants may have recognised Huntly's political domination of the north, but they were not prepared to accept either this kind of treatment or the interference by the Gordons in what they considered to be their spheres of influence. If this was to be the price of dependence or clientage to Huntly, then they considered it to be too high. Huntly had become a "bad lord" and an alternative was a welcome opportunity.

Their neighbours, the Mackintoshes were in a similar situation. During the civil war Mackintosh of Dunnchattan had played a clever game of remaining loyal to the king's party, picking up a lot of patronage in the north and then taking Huntly's side against the Forbes, hence avoiding a complete break with his former overlord.<sup>64</sup> In 1580 he switched over to Atholl's lordship and in 1581 was again being gifted patronage which might normally have gone to the Gordons. However, the Mackintoshes lost favour in Edinburgh because of their ravaging of the surrounding countryside, and in 1583 Moray was given a commission against them.<sup>65</sup> In 1586 Mackintosh decided to return to

63. Gordon, Sutherland, p 214; Fraser, Chiefs of Grent, iii, p 178.

64. Mar gifted him lands from the Moray bishopric, S.R.O., Fraser-Mackintosh Collection, G.D. 128/32/2/15; Morton granted him the barony of Dunnchattan directly from the crown rather than indirectly from Huntly, S.R.O., Mackintosh of Mackintosh Muniments, G.D. 176/104; against the Forbes, S.R.O., Moray Muniments, N.R.A. 217/2/3/65.

65. Brown, "Bonds of Manrent", appendix, p 393, no 2; he also bonded with Campbell of Cawdor in 1581, p 544, no 68; granted the ward and non-entry of Huntly's lands, S.R.O. Mackintosh Muniments, G.D., 176/123; his raids and Moray's commission, Spalding Miscellany, ii, p 83-84; G.D. 176/129.

the Gordon fold, probably because Huntly would protect him against Moray, but he was clearly not happy at this,<sup>66</sup> In 1589 he joined the king against Huntly and was having a tussle with the earl over the building of a castle in Badenoch which would establish Gordon power too close to the heart of his own operations. He was thus obstructive and did all he could to slow down the building, refusing to fulfil terms of vassalage in supplying men and materials.<sup>67</sup> Like Grant he too was uncomfortable with the power structure in the north since Huntly had begun to revive and extend his power throughout the region.

One other of Huntly's neighbours deserves some attention at this point. John Campbell of Cawdor has been much maligned by some of the narrative sources for stirring up unrest in the region against Huntly, but there is little evidence for it. By the spring of 1590 he had displaced Ardkinglass and Lochnell as the earl of Argyll's chief advisor and was effectively in charge of the young earl. Not only was he the bitter enemy of these other Campbell lairds, but he was reputedly a client of Maitland's "from whome he received instructions to ingender differences of warrs betuein Huntley and Murray".<sup>68</sup> Certainly Huntly had been supporting

66. Brown, "Bonds of Manrent", p 470 no 78.

67. Gordon, Sutherland, p 214.

68. Historie, p 246-47; Gordon, Sutherland, p 214.

the other Campbell lairds against him and he had a motive for wishing to cause trouble for Huntly in return, but that is all one has to go on and his plotting must remain unproven. Similarly, with his patron Maitland there is no evidence to show that the chancellor was working against Huntly in the north, he had after all refused to co-operate with Bothwell.<sup>69</sup> On the other hand he too had good reason to fear Huntly and wish him tied up in the north.

These three relatively powerful lairds thus agreed that the Ballindalloch incident and Huntly's response to it was the last straw and they decided on collective action against the earl. Huntly had acted with his usual speed and firmness in such affairs, obtaining a commission against them and attempting to arrest the killers of the Gordon slain at Ballindalloch at Grant's own house of Freuchie. Frightened by this they hastily arranged a meeting with Moray and Atholl at Foresse and were joined by some Dunbar lairds and others who were dissatisfied by Huntly's overawing rule. The three lairds urged the earls to make themselves stronger in the north, they "haveing at this tyme so great a partie, and being so weil freinded at court", by which was meant Bothwell and Maitland. It was an opportunity they could not afford to let pass though there was some opposition from the Dunbar lairds who advised against it "shewing how hard a matter it was for any faction

69. Historie, p 246-47; Gordon, Sutherland, p 214; C.S.P. Scot., x, p 462.

in these partis to resist Huntley ..."70. A bond was thus drawn up on the fifth of November at Ballacastle providing for mutual protection against any neighbour and it was signed by Atholl, Moray, lord Fraser, Grant of Freuchie, Campbell of Cawdor, Stewart of Grandtully, Grant of Rochemurcus, Sutherland of Duffus and Grant of Belliston, though not by any of the Dunbars or oddly enough by Mackintosh who was certainly involved at this stage.71 Atholl and Moray thus found themselves at the head of a very powerful alliance which offered a realistic alternative to Gordon hegemony in the north.

Huntly also grasped the implications of the rebellion against him. He attempted to capture his rivals at Baweny, but they were warned and fled to Moray's castle at Darnaway.72 Huntly gathered another two hundred men en route to Darnaway, sent others on to Elgin to fortify the cathedral there, and arrived at Moray's castle on the 24th of November.73 The Gordons approached the castle with a great deal of noisy shouting and shooting which prompted someone to order the defenders to return fire and in the short exchange which followed, Cluny's brother was fatally wounded, "shot in the mouthe throw the craig".74 Without the men or equipment to

70. Gordon, Sutherland, p 215.

71. Brown, "Bonds of Manrent", appendix, p 549, no 92.

72. C.S.P.Scot., x, p 425.

73. *ibid.*, p 428; S.R.O., Moray Muniments, N.R.A. 217/2/3/296.

74. Moysie, Memoirs, p 85.

take the castle Huntly retired, recrossed the Spey and then had to move further south into his own territories as he was followed by the Stewart earls, their allies and some two thousand men whom they had raised.<sup>75</sup> For Huntly it looked as though his power had dramatically set into decline.

By December the government had reports of sporadic fighting throughout the north-east and the king was determined to have it stopped. Both sides were sent orders telling them to discharge their forces and Huntly's commission to arrest John Grant was discharged.<sup>76</sup> Huntly was then ordered to ward in St Andrews and the others had to ward in St Johnstone though Huntly was in fact already on his way to court.<sup>77</sup> These things had in fact been changing to Huntly's advantage for Maitland had quarrelled with the king and was looking for an accommodation with Huntly to ensure that the earl did not add his voice to the many others clamouring for his removal. As he needed some assistance within the government Huntly was only too willing to listen, and an alliance between them looked certain.<sup>78</sup>

Being aware of Huntly's enormous pull at court, the Stewart earls followed him south and both sides were in Edinburgh for Christmas. An attempt by the king to get a

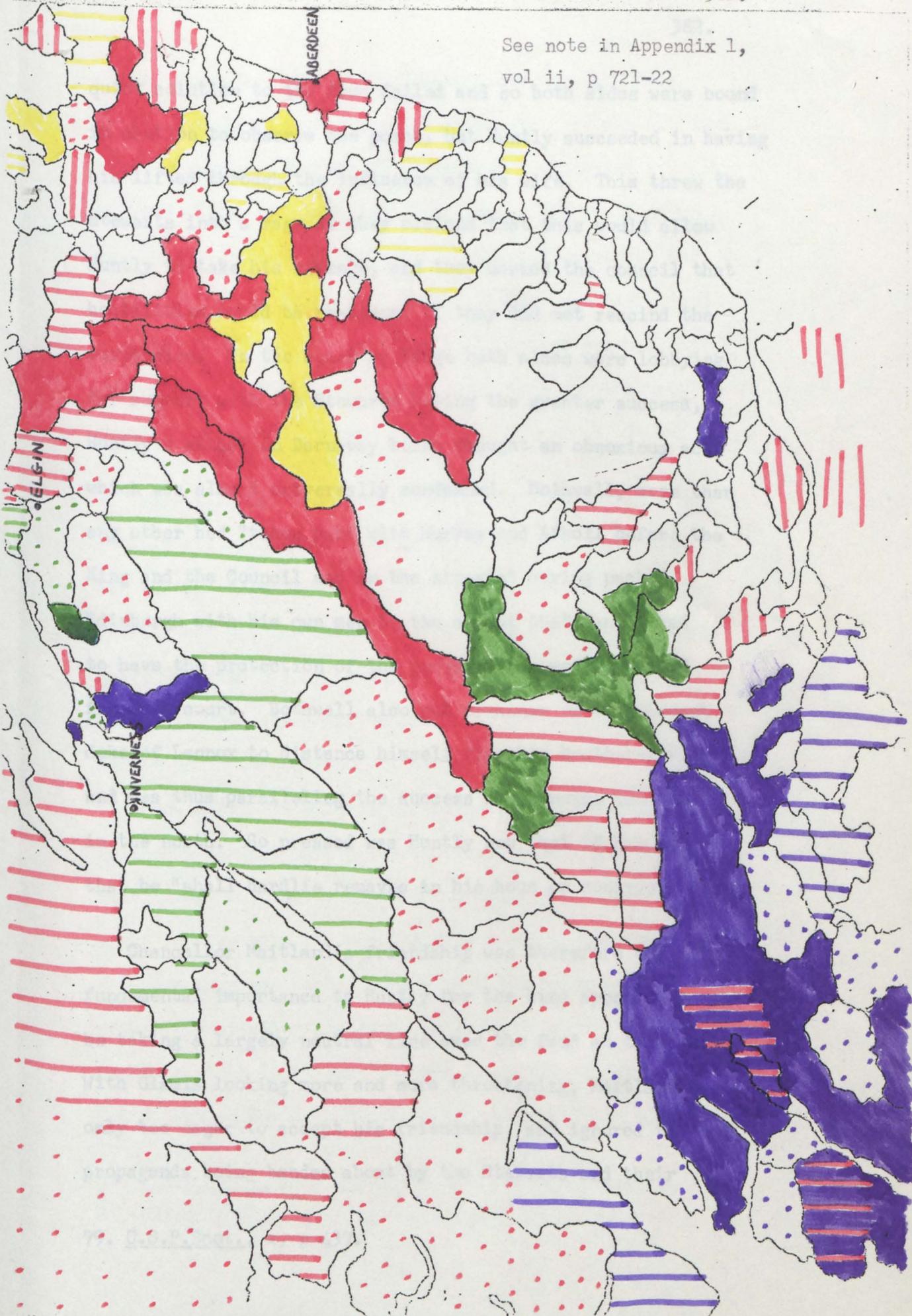
75. C.S.P.Scot., x, p 428, p 433, p 462; Melville, Memoirs, p 406; Historie, p 246-47; Gordon, Sutherland, p 215.

76. R.P.C., iv, p 548.

77. C.S.P.Scot., x, p 428-29, p 431.

78. ibid., p 354-55, p 423-24, p 434.

See note in Appendix 1,  
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quick solution to the feud failed and so both sides were bound in caution to observe the peace, but Huntly succeeded in having his lifted through the influence of his wife. This threw the Stewarts into a rage as they claimed that this would allow Huntly to take his revenge, and they warned the council that hostilities would be re-opened if they did not rescind the suspension. In the court at large both sides were lobbying for support with the Stewarts having the greater success, Huntly's attack on Darnaway being thought an obnoxious act which was almost universally condemned. Bothwell, more than any other had "taken part with Murray and Atholl before the King and the Council and in the streets" having packed Edinburgh with his own men to the extent that Huntly had to have the protection of the provost when moving to and from the court. Bothwell also put pressure on the Stewart duke of Lennox to distance himself from his brother-in-law and was thus paralleling the success his kinsmen had had in the north. So pressed was Huntly now that it was said that he "shall hardlie remayne in his hous or contrye".<sup>79</sup>

Chancellor Maitland's friendship was therefore of fundamental importance to Huntly for the king appeared to be taking a largely neutral line over the feud at this stage. With Glamis looking more and more threatening, Maitland was only too eager to accept his friendship, and ignored the propaganda being banded about by the Stewarts and their

79. C.S.P.Scot., x, p 437.

allies among the English representatives at court that Huntly was plotting another catholic coup. It was all done very quickly with Huntly first getting a remission for his treason of the previous year, and then, with the king's assistance, he and Maitland sunk their differences. The king was thus again flanked by his favourite minister and magnate. Maitland had headed off Glamis and dropped his association with Bothwell, and Huntly "had great court, and all doune at his plesour".<sup>80</sup>

With his position at court again secure, Huntly could exploit his influence there to reverse his fortunes in the north. After fierce debate his friends in the privy council won him the concession of being allowed to return home, Maitland having "promysed to the said erle that advantage upon his enemy" while Moray and Atholl had to linger on in the south. It was a fairly blatant ploy to allow Huntly to enforce his authority in the north while his enemies were prevented from properly defending themselves, but Huntly was now too strong for even Bothwell's large faction with its backing from queen Elizabeth herself.<sup>81</sup> The advantage was pushed home with Moray being summoned to answer for creating disorder, while an investigation into Huntly's right to attempt to make an arrest at Darnaway found that as Huntly had not been informed of the suspension

80. C.S.P.Scot., x, p 442-43, p 439; Moysie, Memoirs, p 85.

81. Melville, Memoirs, p 406-07; C.S.P.Scot., x, p 447.

of his commission until after the event, then he was in the right, and the officer who carried out the suspension, a James Stewart, was deposed from his post.<sup>82</sup> Justified by these findings, and armed with various commissions, Huntly could leave his friends to tie up any loose ends at court and head north to deal with his enemies.

The Stewarts' fears about Huntly's intentions when he returned home were fully justified. A councillor who had witnessed the debate on whether to allow him to go, wrote

"Sa schone an the Erle of Huntly was at hame in the north, and wanting his competitour, tryumphed and tok sindre advantages upon the Erle of Murrays dominions, geving the Erle of Murray occasioun to complain, bot getting na redress ..."<sup>83</sup>

Bowes was still confident that Atholl and Moray were "strone enough to encounter Huntly in his own bounds without the aid of the King", but even if they ever had been, and that is doubtful, Huntly had not wasted his time and had added to his friends in the north.<sup>84</sup> Both Caithness and Sutherland had assured him of their support, as had lords Elphingstone, Drummond and Inchaffrey, while Cameron of Lochiel had given him his bond and he had met with Montrose and other northern lords. Furthermore, lord Spynie and Innes of Innermarky now had their own quarrel with Moray

82. Fraser, Chiefs of Grant, iii, p 176-79; R.P.C., iv, p 569-70; S.R.O., Moray Muniments, N.R.A. 217/2/3/361, 217/2/3/330.

83. Melville, Memoirs, p 407.

84. C.S.P.Scot., x, p 462.

after the earl's servants gave one of their friends a whipping for shooting at the countess's attendants.<sup>85</sup> Huntly gathered his forces at Spynie castle and at Elgin from where they spread out in all directions to ravage the lands of their enemies, while the Camerons had been specifically enlisted to attack Grant and Mackintosh from the west. At this point Atholl and Moray were finally able to get away from the court themselves and come north to try and hold together their threatened alliance.<sup>86</sup>

Before coming north the two earls had tried to recover some ground at court during Huntly's absence. In fact the Gordon earl's friends thought that they could get on better without him, since his very presence made the protestants and the English nervous, and they advised him to stay away as long as was possible. However, Atholl and Moray were not even permitted to see the king and they eventually went to Bothwell's house at Kelso to see if he could work out something for them. Even Lennox, who had been bullied by Bothwell into supporting them, had deserted their cause though the king wished the duke to act as an intermediary, something for which he had "greater desire than power".<sup>87</sup> One problem of mediation was that the

85. C.S.P.Scot., x, p 452, p 454, p 462; Brown, "Bonds of Manrent", appendix, p 470, no 81; S.R.O., Moray Muniments, N.R.A. 217/2/3/309. It was these two families Huntly wanted to deal with first, R.P.C., iv, p 832; Fraser, Chiefs of Grant, iii, p 179, no 158.

86. C.S.P.Scot., x, p 469; C.B.P., i, p 376.

87. C.S.P.Scot., x, p 456, p 462.

Stewarts had no confidence in the king, being convinced that he was on Huntly's side, and their distrust was increased when in February 1591 the privy council finally declared that the raid on Darnaway had been in the king's service.<sup>88</sup> Disgusted with this treatment they thus went north, but while Moray managed to add Dunbar of Boighall to his dependants, they were scarcely there before Moray was summoned south again.<sup>89</sup>

The king had clearly wished Huntly to restore his authority in the region, but he had no wish for the fighting to get out of hand. Thus when he felt that that objective had been attained, he cancelled Huntly's commission and asked him to come south too, so that another attempt could be made to negotiate.<sup>90</sup> His reasoning was probably that Huntly would be more willing to compromise from a position of strength, but he was in fact still determined on criminal prosecution of the killers of Gordon of Bismoir at Darnaway. Moray and his friends were all charged to attend trial before the justice, but in the middle of April the Stewarts were further shattered when Bothwell's association with the Berwick witches became known.<sup>91</sup>

88. C.S.P.Scot., x, p 460, p 469.

89. S.R.O., Moray Muniments, N.R.A., 217/2/3/330; C.S.P.Scot., x, p 497.

90. N.R.A., 217/2/3/272; R.P.C., iv, p 597; Huntly's letters against Grant were also suspended, R.P.C., iv, p 626.

91. N.R.A., 217/2/3/323, 217/2/3/346, 217/2/3/314; R.P.C. iv, p 626.

Bothwell had once again turned to his main rivalry with the chancellor, but he was still very much involved in the affairs of Atholl and Moray.<sup>92</sup> That he was framed in the matter of the witches seems likely, after all few men had so many enemies, for apart from his feuds with the Humes and lord Ochiltree, he could name the king, the chancellor and Huntly among them. On the other hand there is no reason to believe that Bothwell was not involved in some sort of sorcery. Whatever the explanation, Bothwell was ruined by the affair.<sup>93</sup> Initially he was fairly confident that he would be cleared and wrote to his "good Lord and brother", Moray, asking him to be there at his trial when he would prove his innocence. Moray replied that he had other urgent business, but would come if Bothwell thought it really necessary implying either that he too did not take the affair seriously or that he wanted to keep his distance from Bothwell.<sup>94</sup> On the 21st of June Maitland tried to persuade Bothwell to go into exile, thus suggesting that the crown was doubtful about its case, and the earl said he would consider the matter. That night he escaped from Edinburgh castle with suspicious ease. The king was now

92. C.S.P.Scot., x, p 456, p 482.

93. Again a fuller explanation and discussion of this can be found elsewhere, e.g. Lee, John Maitland of Thirlstane, p 230-31. Entries concerning this episode can however be found in C.S.P.Scot., x, p 501ff; Melville, Memoirs, p 395-97; R.P.C., iv, p 609-10.

94. S.R.O., Moray Muniments, N.R.A. 217/2/3/251-252, 217/2/3/254.

convinced of his guilt and invoked the 1589 sentence of treason still hanging over Bothwell. For the Stewarts it signalled the end of their party at court or of any influence at all there.<sup>95</sup>

The full implications of this were not immediately manifest, after all other men had recovered from similar positions in the past. At the time of Bothwell's escape both Atholl and Moray were in fact in Edinburgh where they were dealing with business related to the feud. Only days after Bothwell's escape Moray struck one of Huntly's servants in the tolbooth before the council, and in fact Grant of Freuchie was able to get more of Huntly's letters against him suspended and registered a complaint about the earl's oppressions.<sup>96</sup> However, while the Stewart earls were confined to Edinburgh, Huntly was again loose in the north where he carried out a further attack on Moray's fishing cobbles.<sup>97</sup> Again and again one finds this swing between advantage at court and loss in the locality to disadvantage at court and gain in the locality.

For Huntly the problem was less acute as he had good subordinates and advisors both in the north and at court, and he listened to them. Moray was less in control of his affairs. In June one of his servants, John Leslie, wrote to him saying that his men had captured two of lord Spynie's

95. As note 93.

96. G.S.P.Scot., x, p 452; R.P.C., iv, p 646-47.

97. C.S.P.Scot., x, p 541; S.R.O., Moray Muniments, N.R.A. 217/2/3/155.

servants who had been oppressing Moray's tenants, but that requests had been made for their release on caution. He stressed to Moray the need to oppose this, and, in a thinly disguised criticism of his lord, told him that if he had left behind an appropriate commission anyway the two men would already have been executed. He also reminded Moray that the earl was slow in writing and that it was little wonder he was ill-served. Leslie then imparted some information about the activities of Moray's neighbours and asked the earl to send up some more hagbutts as they were short of guns.<sup>98</sup> Moray was clearly a poor manager of his interests and other letters confirm this, but it is also an insight into the problems created by the necessity of being in two places at the same time in an age of poor communications. Perhaps too in John Leslie one had the frustration of that whole class of hard working but anonymous servants with the behaviour of their masters.

Huntly returned to court in July, fresh from further attacks on Moray's property. As usual he arrived in strength and immediately began proceedings to overturn some of the decisions the laird of Grant had been able to get in his favour. By August Grant's complaint had been adjudged to be improperly obtained and Huntly's lawyers were able to begin preparations for prosecuting him.<sup>99</sup> He also set about

98. S.R.O., Moray Muniments, N.R.A. 217/2/3/327.

99. C.S.P.Scot., x, p 541, p 454, p 547; R.P.C., iv, p 663-64.

trying to get back his lieutenancy of the north which had been taken away in 1589, but in this the king was more sensitive. In spite of being "a very great courtier" and in spite of his offer to track down Bothwell the king continued to postpone a decision on this.<sup>100</sup> However, the fortunes of his enemies continued to slide with Atholl being warded after he was discovered to have sheltered Bothwell in his home.<sup>101</sup> The problem facing Atholl and Moray was that they were politically dependant upon Bothwell and needed him if they were to have any chance at court even if after July 1591 he had become a liability.

Having spent a successful summer at court, Huntly returned north for the traditional autumn raiding season. Once there he unleashed the full force of his power so that it was said that "Blood is drawn dailly in the north ...". In September the feud reached its most vicious levels yet with Cameron of Lochiel leading bloody forays into the lands of the Grants and Mackintoshes and throughout Badenoch. Bowes wrote that "More blood will be drawn unless the king prevent it", but the association of Huntly's enemies with Bothwell had finally prompted the king to give Huntly his lieutenancy back and James made no effort to stop the earl reimposing his authority.<sup>102</sup> Moray had also gone north where he gathered the Grants and Mackintoshes around him and tried to conduct retaliatory

100. C.S.P.Scot., x, p 547, p 557.

101. *ibid.*, p 557, p 569, p 571-72.

102. *ibid.*, p 572.

raids in which close to a hundred of Huntly's people were said to have been slain. Wild tales were soon flying about concerning the numbers of dead and the brutality of each side, but though some were exaggerated one is able to get a fairly accurate idea of the level of violence from later claims by the victims for damages. Again like insurance claims they would be inflated, but they are an indicator. Thus one of the September raids, led by Huntly's dependant Allan MacDonnell Dow of Lochaber, resulted in thirty of Mackintosh's men being slaughtered, the theft of five hundred cows, a thousand sheep and goats and a hundred pair of horses and mares with the destruction of all the houses in the settlement. The estimated cost of the damage was ten thousand merks.<sup>103</sup> This was being repeated throughout the north-east by the Gordons themselves and by their allies while Moray was doing his best to strike back with equal ferocity so that the entire region was effectively involved in a civil war.

There was more to this than mindless destruction. Huntly's raids were conducted principally against his former dependants, Grant and Mackintosh, and by the middle of October they had had enough. Huntly's savage war against them had been a lesson in lordship as it had become clear that neither Moray, with his small kindred in the north, nor the imprisoned Atholl could offer

103. C.S.P.Scot., x, p 574; S.R.O., Moray Muniments, N.R.A. 217/2/4/180.

sufficient protection. On the 22nd of the month their rebellion against their lord ended with a bond in which Huntly accepted them in friendship "as thai war befoir", and in return he called off the raids by Cameron and MacRanald.<sup>104</sup> During the following month Sutherland of Duffus, Dunbar of Blair and five other lesser men all scurried back to the Gordon fold.<sup>105</sup> By the end of the year it was all over and the war for control of the north had been won. With Bothwell on the run, Atholl in disgrace and Moray shattered, the Stewart alliance had been smashed and a commentator could say with confidence that "Huntly rules all in the north, and over Moray ...".<sup>106</sup>

For the Stewarts matters became even worse when on the 27th of December Bothwell attempted a poorly executed coup at Holyrood thus confirming the king's determination to crush him and all who stood with him.<sup>107</sup> With the normally loyal Lennox implicated in the plot, the Stewarts as a whole came under suspicion and Moray's name was soon being mentioned as one of those present with Bothwell.<sup>108</sup> One cannot be certain of Moray's involvement, but a successful

104. Fraser, Chiefs of Grant, iii, p 159; C.S.P.Scot., x, p 593.

105. Brown, "Bonds of Manrent", appendix, p 470, no 83. Atholl made a belated attempt to maintain these men by taking up their case before the council but by then they had already made their peace with Huntly, S.R.O. Moray Muniments, N.R.A. 217/2/3/347.

106. C.S.P.Scot., x, p 601.

107. Lee, John Maitland of Thirlstane, p 235.

108. C.S.P.Scot., x, p 611, p 617; C.B.P., i, p 390-91.

coup by Bothwell seemed to be the only way he could recover from the complete defeat Huntly had inflicted on him, and his movements were so secretive during this time that not even his own servants knew where to find him.<sup>109</sup> At the very least he was suspected of resetting Bothwell and was put to the horn for it in January 1592. Broken by the feud, and now on the point of being dragged even further down with Bothwell, Moray decided to throw in the towel, and when lord Ochiltree, another Stewart, approached him with a proposal to make his peace with the king and Huntly, Moray agreed.<sup>110</sup>

The initiative for this had come from the court. Huntly had returned there in triumph and was in as high a favour as ever. Chancellor Maitland, who had been badly shaken by Bothwell's raid, clung to the great magnate as his only security in a court in which he saw enemies at every turn. Thus, when Huntly asked him to persuade the king to have Moray brought south for a mediation of their feud, Maitland agreed, and talked the king into sending lord Ochiltree to him. Moray then came as far as his house at Donibristle on the north side of the Forth where he awaited further instructions from the king.<sup>111</sup> At the same time Huntly acquired a commission from the king to hunt down Bothwell

109. S.R.O., Moray Muniments, N.R.A. 217/2/3/356.

110. Spottiswoode, History, ii, p 419.

111. C.S.P.Scot., x, p 619; Historie, p 247; Gordon, Sutherland, p 216; Moysie, Memoirs, p 88; Melville, Memoirs, p 407.

and his supporters, and at the end of January he and Lennox, who had been cleared and so went along to keep an eye on Huntly's treatment of his kinsmen, were away fulfilling this task.<sup>112</sup> Meanwhile, Maitland suggested to the king that all the ferries on the Forth should be ordered to remain on the south side of the estuary.<sup>113</sup> The exact reasoning for this order is unknown, it could have been to prevent Bothwell's friends in the north joining him or to stop Moray from coming across to the king or to facilitate Huntly's plans on his return from the raid against Bothwell.

During the first week of February Huntly returned to court. On the 7th the king set out early in the morning to go hunting, but Huntly declined to go with him, saying that one of Bothwell's supporters was on the other side of the Forth and he was going to take him. According to one version he even told the king that he was going to Donibristle where Moray was said to have been sheltering Bothwell.<sup>114</sup> The king warned Huntly not to start any unnecessary trouble, making sure that the English ambassador heard him, and set out on his hunt.<sup>115</sup> Huntly left shortly afterwards, heading for Leith and then turned off to Queensferry and to the awaiting

112. C.S.P.Scot., x, p 632.

113. Historie, p 247-48, which also says that they were laid up in preparation for the seventh of February. R.P.C., iv, p 718.

114. Moysie, Memoirs, p 88-89; C.S.P.Scot., x, p 635; Gordon, Sutherland, p 216.

115. C.S.P.Scot., x, p 635.

ferries which he was able to appropriate by showing his commission from the king.<sup>116</sup> Once over the firth he headed straight for Donibristle and laid siege to the house. The defenders refused to surrender and shot captain John Gordon, Gordon of Gight's brother, as he approached the house. Huntly's men then began firing back and a long exchange of fire followed. Finally, Huntly ordered that the house be set on fire, thus smoking out the defenders. Patrick Dunbar, sheriff of Moray, and five others were cut down as they emerged, but they acted as a decoy for Moray who escaped to the water's edge and hid. After a search he was discovered and brutally done to death, Huntly supposedly being asked to give the coup de grace by his servants in order to fully implicate him in the killing along with them. So ended the career of the "Bonnie Earl of Moray".<sup>117</sup>

While all this was taking place, lord Ochiltree had become worried about Huntly's movements and the goings on at court since he had arrived back with Moray. He had tried to follow Huntly across the Forth but was refused permission

116. Moysie, Memoirs, p 88. The whole question of whether there was a commission is debatable and Huntly may simply have forced his passage.
117. Versions on the attack differ. Only Gordon says that Huntly asked for a surrender and that captain Gordon was shot first and he also relates that the house was fired and then stormed and the earl killed by Gight and Cluny in revenge for the death of their brothers. Moray's mother was also in the house and her kinsmen later claimed that he experience killed her and she did indeed die a few months later. Gordon, Sutherland, p 216; Moysie, Memoirs, p 88-89; Historie, p 247-48; Pitcairn, Criminal Trials, i, part 2, p 357-58; C.S.P.Scot., x, p 633, p 635; Birrel "Diary", p 26-27; Spottiswoode, History, ii, p 419; The Chronicle of Aberdeen, Spalding Miscellany, ii, p 66; S.R.O., Moray Muniments, N.R.A.217/2/4/58.

because of the order restricting passage. He therefore gathered his men and set out after the king, joining in with the hunt. At some point during the day the smoke from the burning of Donibristle was sighted but the king refused Ochiltree permission to go over and investigate.<sup>118</sup> Later that night when the rumours began to circulate in Edinburgh of what had occurred, Ochiltree prepared his men to go out and investigate what had happened, but the king closed the town gates and the stables, and after an argument with Ochiltree had him confined to his lodgings.<sup>119</sup> That the king knew perfectly well what had happened and was giving Huntly as much time as possible seems fairly obvious. However, Ochiltree was to have some satisfaction for Huntly sent Gordon of Buckie to inform the king of what had happened, and as soon as Ochiltree heard he was in town, he broke his ward, gathered his men and chased him through the Cannongate and out of town. He then gathered some more men belonging to Mar and Lennox and set out in pursuit, this time presumably forcing a passage across the Forth and chasing Buckie to Inversheathing. On hearing of his immanent arrival, Huntly retired, leaving behind the wounded captain Gordon who was taken prisoner.<sup>120</sup>

News of the murder now spread rapidly around Edinburgh. The king was said to be "highly offended", a predictable

118. C.S.P.Scot., x, p 635-36, p 639-40; Moysie, Memoirs, p 88-89.

119. Moysie, Memoirs, p 89.

120. C.S.P.Scot., x, p 641.

attitude to adopt, but the people were soon in the streets "crying out for justice".<sup>121</sup> This took the king by complete surprise, but the people were already afraid of Huntly and now the menace of the great catholic earl from the north filled their imagination while their preachers added to the fire and stirred the whole burgh and court into a cauldron of anger. Within forty-eight hours of Moray's death news had arrived that Campbell of Cawdor had been "slain in the north by the practice of Huntly ...", thus adding to the panic.<sup>122</sup> Stories of conspiracy and plotting flew about, noblemen cried out for vengeance, and "the clamours of the people" directed themselves against the chancellor who was seen as having been Huntly's co-plotter king James suddenly found that he had a crisis on his hands.<sup>123</sup>

A full discussion of why Moray was murdered is not possible here, but one cannot avoid it altogether. Clearly Huntly killed him out of vengeance, and all that has been said about the feud so far should be enough to convince one that even though Huntly had won his feud the taste of revenge was better than a victorious settlement. Furthermore, it was a political statement by the earl that he was not to be tampered with. George Gordon was king of the north and no-one else should question that if they valued their property and their lives. More confusing is his part in the killing

121. C.S.P.Scot., x, p 633-34, p 636.

122. ibid., p 633-34.

123. Spottiswoode, History, ii, p 420.

of Cawdor. The later investigation by Argyll into the murder revealed a very murky tale of plotting and double dealing, most of which had to do with the internal feud between Ardkinglass and Cawdor, but Huntly's name kept coming up like some threatening shadow and in the end Argyll believed that the Gordon earl was implicated. At its widest, the plot was supposed to have also involved Maitland, with Argyll and his younger brother being intended victims of it, thus allowing the succession to fall to Lochnell, Huntly's dependant. It all seems a little far fetched and the confessions and counter-confessions stretch the credibility of some of the principal witnesses, but on the other hand in the context of Huntly's Counter Reformation ambitions it would be very much to his advantage to keep Argyll in a forment, for with the earl approaching adulthood his freedom of manoeuvre in the north was threatened. The later suppression by the crown of what took place at Ardkinglass's trial also suggests that there was more going on here than simple clan politics.<sup>124</sup>

Evaluating the king's and Maitland's role is even more complex. Good reasons why Maitland was not involved in the plot have been proposed by Lee, but it is hard to accept that he knew nothing of what was going on. Given the chancellor's skill in weaving webs of intrigue one can find many motives for him wanting Moray brought south and

124. See below vol ii, p 606.

sacrificed to Huntly. He could have wanted to hit out at one of Bothwell's friends, especially so soon after the Holyrood raid, he may have wanted Huntly to take enough rope to hang himself, though this seems unlikely given his need for the earl's protection at the time, and he may even have genuinely sought to pacify the feud and thus detach Moray from Bothwell. Certainly he was involved in bringing Moray to Donibristle, and he must have known about Huntly's commission, the closing of the ferries, and probably about the earl's movements on the 7th. On the other hand it seems highly unlikely that he could have been involved in the wider plot which clearly had implications for the catholic Counter Reformation.

The evidence for the king's involvement in plotting Moray's death is even more damning, for not only did he facilitate it, but he also tried to protect Huntly from any real recriminations after it. Like Maitland, James was a good intriguer, and while he may never have given any positive assent to Huntly, he knew very well what the earl was manoeuvring for and he allowed it to happen. Like Maitland, his principal motive was the Bothwell factor, and like his chancellor he too could have known nothing about the wider ramifications about what Huntly had planned. As was pointed out in the previous chapter, as long as the political system was so enmeshed with feuds then to work successfully within it one had to exploit feuding, even if in the long term

one's objective was, as the king's most certainly was, to change the system.<sup>125</sup>

The crown's reaction to the murder was one of official outrage at Huntly's act, and, on the king's part, private lack of sympathy for the Stewarts. Thus while all of Huntly's commissions including his lieutenancy were cancelled, and a muster proclaimed to go after him, at the same time James refused to see Moray's mother or allow the dead earl's corpse to be led in procession through Edinburgh to him. Lady Doune had to satisfy herself with having a gruesome painting done of Moray with all his wounds graphically displayed, but this too the king refused to see. Moray's corpse was embalmed and left unburied until he could be revenged and it was not until 1598 that the burial took place at the order of the privy council.<sup>126</sup> The Stewarts had some immediate satisfaction when lord Ochiltree, who was desperately trying to vindicate his own part in having been duped into bringing Moray south, wrested the dying captain Gordon and two of his attendants from the protection of

125. Warrender Papers, ii, S.H.S. Third Series, no 19, (Edinburgh, 1932), p 246-51; Highland Papers, i, S.H.S. Second Series, no 5 (Edinburgh, 1914), p 189ff; Historie, p 248; Balfour "Annales", i, p 390, suggests that Moray had some sort of relationship with the queen of which James was jealous. See also Lee, John Maitland of Thirlstane, p 237-42; Gregory, History of the Western Highlands and Islands, p 244-59; D.H. Wilson, King James VI and I, (London, 1956), p 107-08.

126. R.P.C., iv, p 725; Moysie, p 90-91; Historie, p 248; Calderwood, History, v, p 146; C.S.P.Scot., x, p 641; R.P.C., v, p 444-45.

lord Spynie and had them hastily executed.<sup>127</sup> Their deaths were no compensation for Moray's, and as Aston recorded, "all men are bent on revenge of this cruel murder ...", including not only other Stewart lords like Atholl, Ochiltree and even Lennox, but also Morton, Mar and Argyll who was already beginning to put together the pieces of the conspiracy.<sup>128</sup> However, Huntly's version of events was by now being broadcast by his friends who were openly saying that he had killed Moray in the king's service and under the authority of the commission the king and his chancellor had given him. Both James and Maitland denied this, but then added to the growing suspicion that it was true when the muster against Huntly was postponed on the grounds that capturing Bothwell was of more immediate concern.<sup>129</sup>

The resentment and fear which had been fermenting in Edinburgh now became a much louder cry against the king and his ministers. The earls of Argyll and Atholl announced that their forces were ready to move, thus implying that the king had no excuse for not at least giving them a commission, and Lennox, Mar and Morton all registered their complaints with the king, as did deputations from the ministry of the burgh and its magistrates. There was also popular unrest, so much so that James decided to leave Edinburgh; an announcement which only caused many of the craftsmen of

127. Moysie, Memoirs, p 90-91.

128. C.S.P.Scot., x, p 636.

129. ibid., p 637-38; Moysie, Memoirs, p 91.

the burgh to take to the streets and shout their disapproval of chancellor Maitland "for not haiffing sick regaird to the punischment of that murthour ...". Even the royal guard appeared to be on the point of mutiny when they exploited the situation to try and get pay that was owing to them. Meanwhile, lord Ochiltree took the dangerous step of publicly announcing that only he, Maitland and the king had known about Moray's arrival at Donibristle, which was as good as accusing one or both of the other two of complicity in the murder.<sup>130</sup>

The king was determined to leave all this behind and he left for Linlithgow and then went west to Glasgow and Dumbarton. Around this time he wrote to Huntly,

"Since your passing heirfra, I have beene in suche perrell of my life, as since I was borne I was never in the like, partlie by the grudging and tumults of the people, and partlie by the exclamatioun of the ministrie, wherby I was moved to dissemble. Alwise, I sall remaine constant. When yee come heere, come not by the ferreis; and if yee do, accompanie yourself, as yee respect your owne preservatioun. Yee sall write to the principall ministers that are heere, for therby their anger will be greatlie pacified."<sup>131</sup>

The king's confidence in his favourite earl thus remained unshaken and he clearly continued to see Huntly as one of his principal supporters against not only Bothwell, but the more extreme elements in the church. However, for the moment James could not have Huntly with him and had to answer the

130. Moysie, Memoirs, p 91; Calderwood, History, v, p 146; C.S.P.Scot., x, p 637.

131. Calderwood, History, v, p 146-47.

rumours that he had plotted with the earl to have Moray murdered. One of Bothwell's captured servants was threatened with torture to force him to confess that Moray had been at the Holyrood raid so that he could be condemned as a traitor and Huntly's killing of him declared in the king's service, but nothing came of the plan.<sup>132</sup> Presumably it was decided that such transparent duplicity would only inflame the king's critics.

Of those thirsting for revenge, lord Ochiltree was the most vehement. Previously he had been a loyal servant of the king, but he clearly felt that he had been used and that his honour had been compromised. It was said that at some point during Huntly's attack on Donibristle, Moray had told his sister, who was also present, that if he was killed she was to see that Ochiltree would revenge him, and Ochiltree had now sworn to receive "the like end" as Moray or "yield the like reward to some of them".<sup>133</sup> Having been so blatantly frustrated by the king in all his attempts to press for action against Huntly, Ochiltree himself went north when the king left Edinburgh. There he met with Atholl, Montrose and the lairds of Grant, Mackintosh, Weymes and others of Atholl's friends, and they all agreed to a band which bound them to

132. C.S.P.Scot., x, p 641. Calderwood, History, v, p 147.

133. In the same spirit lady Doune, Moray's mother, was said to have taken three bullets from her son's body and given them to certain friends to bestow in the bodies of his murderers, C.S.P.Scot., x, p 641.

revenge Moray's death, since "this murthour was be law neglectit". The inclusion of Grant and Mackintosh was very significant since it showed that while they had been defeated by Huntly in the previous year they were still dissatisfied with his lordship and were keen to find a way out of it. Ochiltree then took the band back to the court where he had Moray's friends there sign it. However, his activities were disapproved of by the king who summoned him to explain his actions. Ochiltree apparently explained himself a little too frankly with "rough language" in which he told the king that he would "embrace and refuse no freindship that wald assist and tak pairt in the revendge of that murthour", a thinly disguised reference to Bothwell. Offended by his words and his innuendoes, James had Ochiltree warded again until his temper cooled off.<sup>134</sup>

On the 22nd of February the king returned to Edinburgh. Finding that tempers were still running high he called three of the principal ministers of the burgh, Bruce, Rollock and Lindsay, before him, but it was he who ended up doing most of the listening. They told him that there was nothing he could do or say which would justify Huntly and he was cornered into promising justice.<sup>135</sup> Just to ensure that he meant it Bruce and Rollock accompanied him when he left the burgh again two days later by which time even the queen's voice was added to those ranged against James. Edinburgh was in

134. C.S.P.Scot., x, p 661, p 639-42; Moysie, Memoirs, p 92-93.

135. Calderwood, History, v, p 147.

fact no less volatile than it had been before with "Many spiteful libels ..." being "cast in the streets ... where sundry banished men are now bold to lodge, and most men arm themselves ready for troubles. "However, it was Maitland who was now the principal target for this anger and there was even talk of the chancellor leaving the country. With so many enemies even before this crisis Maitland's position looked precarious, but the king remained loyal to him and the chancellor simply shunned any publicity for a while and remained in the background.<sup>136</sup>

Not surprisingly Bothwell took his opportunity to exploit the chancellor's difficulties. In spite of the king's fanatical hunt for him he had remained elusive and had a great deal of sympathy from among the nobility, the church and the people to whom he was beginning to appear as a protestant martyr whose treatment contrasted startlingly with that of Huntly, the arch-catholic. Thus, Bowes wrote

"The discontent of the people here is such, and chiefly for this last murder committed by Huntly, that I fear he (Bothwell) may go where he pleases, for no man will 'stir' him. By this last deed he has got more favourers than he had 'if the dorst otter there myndes'. But the fact he committed was so odious that none dare speak of him."<sup>137</sup>

Bothwell himself took up the pen in his own defence and wrote to "his loving brethern, the ministry and eldership of Edinburgh", setting out before them a list of Maitland's

136. C.S.P.Scot., x, p 645.

137. ibid., p 648.

treasonable crimes, among which he included this latest plot against Moray who, like him, was a loyal protestant nobleman ensnared by the chancellor and his catholic friends.<sup>138</sup> It was a clever piece of propaganda and one which found ready ears.

With the crisis still escalating the king decided that something would have to be done to defuse it. Once again a number of bizarre schemes were discussed to see if there was any way of making the murder appear as a legitimate slaughter, but none could be found.<sup>139</sup> Huntly himself had sent a message to James offering to stand trial before the session or the justice general, but with the king's commission being the central fact in Huntly's defence, James was keen to avoid such publicity. With the Stewarts and their friends demanding a trial not only of Huntly and his friends at court, but also of Bothwell so that he could clear his name, the king agreed to let the former go ahead. The 3rd of March was set as the date thus allowing the muster on the 10th to

138. Calderwood, History, v, p 150-56.

139. It was suggested that Moray might be forfeited since he was at the horn for civil matters, but this was rejected as it would establish a very dangerous precedent. Even more hair-brained was the scheme to forfeit the regent Moray, dead for over twenty years, for his treason against queen Mary and thus disinherit his children and with them Moray, C.S.P.Scot., x, p 643.

be abandoned.<sup>140</sup> However, the arrangements continued to be altered. The trial was postponed and Huntly was ordered to ward himself while the other killers would be pursued. Then this was changed to that of allowing Huntly to come in to ward only if he brought the others with him for trial, and finally he was warned that he had until the 7th of March to ward himself or the king would conduct a raid into the north.<sup>141</sup> Clearly James was increasingly giving in to pressure and it served to prevent the Lothian presbytery from going ahead with its threat to excommunicate Huntly, something which they had refused to do to Bothwell even when the king had asked them. In the meantime Huntly was engaging in yet another bout of brinkmanship and on the 8th of March he had still not warded himself in Blackness. Then on the 9th or 10th he thundered into St Johnstone at the head of three hundred men, claiming that he was on his way to face

140. C.S.P.Scot., x, p 643. It may have been at this time that James wrote to Huntly about his forthcoming trial, telling him that what he had done had been done without his permission, but to say what he had told him to at the trial. He reminded Huntly that he loved the protestant religion though he hated the seditious behaviour of its ministers and looked forward to when "by your services thaireftir the tirranie of thir mutins may be repressit." He also told the earl that "gif of my favoure to you ye doubt, ye are the onlie man in Scotlande, that doubtis thairof, sen all your enemies will needis bind it on my bake." Alternatively this could have been written in 1589 before the treason trial and it may have been James's advice that Huntly play the political novice, Gordon Letters, Spalding Miscellany, iii, p 213.

141. C.S.P.Scot., x, p 650-51, p 652; Calderwood, History, v, p 148.

trial.<sup>142</sup> This arrogant show of strength was meant as a clear threat to the king who did not want a trial, but when Maitland led the council in advising a stronger hand be taken with the earl the king agreed, and he was delivered a firm warning to ward immediately. This time Huntly sensed the tone of the order and obeyed, but he took so many of his own men with him that he and not his jailors was in control of Blackness castle. After a few days rest there he sent word to the council that he would find caution for his behaviour, and left "expres aganis all justice and equitie, and in particular aganis the common lawis of Scotland". From Blackness he went to the house of his catholic ally, Crawford, where he kept up the pretence of being in open ward.<sup>143</sup> In effect he had shown the privy council that he was far from overawed by their authority.

The duke of Lennox, who was a Stewart but also Huntly's brother-in-law, was working on a compromise agreement. He let it be known that he had the ward of Moray's young son and would be satisfied with the heads of lesser men than Huntly himself. Some sort of reply came from Huntly to the effect that the actual killing had been done by Cluny, Gight and Innes of Innermarky who all had particular blood-feuds with Moray, but that he was willing to stand trial to prove his innocence. Huntly was throughout his life far from

142. Calderwood, History, v, p 148, C.S.P., x, p 652, p 653; Moysie, Memoirs, p 92.

143. C.S.P.Scot., x, p 653, p 655; Calderwood, History, p 149; Moysie, Memoirs, p 92; Historie, p 240.

disloyal to his friends and one can assume that his objective would be to have himself cleared so that he could return to court and use his influence in their interests there. However, Lennox's efforts came to nothing "so it is not known what to do with Huntly".<sup>144</sup>

Having been embarrassed by its attempts to constrain Huntly the crown again switched back to what was in effect co-operation with him. A proclamation was thus issued saying that Moray's kinsmen should not pursue Huntly since he had done nothing "bot by hes Maistes Commissions, and sua wes nather airt nor pairt of the Murthour."<sup>145</sup> It was a clear admission by the king that Huntly did have sufficient commissions to attempt to arrest Moray, but there was also an inference that Huntly might be separated from his men who had gone further than he had intended them to, as he himself had suggested. Yet, when a party of commissioners was sent to the earl to have him write down under oath the contents of the commission, Huntly refused, and was said to have denied that one even existed. Most of the evidence so far has suggested that there was a commission and the only explanation for this refusal was either that Huntly was protecting the king, just as James was protecting him, or that the commission was an open-ended one whose interpretation was questionable. As for a trial, it was proving impossible

144. C.S.P.Scot., x, p 654, p 655.

145. Pitcairn, Criminal Trials, i, part 2, p 358.

to find a jury which included the requisite eight earls not related to either party. Any pretence that Huntly would be brought to trial or in any way suffer for the murder seemed to be fading away, and with his friends in the chamber, men like Spynie and George Hume, beginning to re-emerge after a period of low profile, his influence at court was again looking unassailable.<sup>146</sup>

The Stewarts were thus becoming increasingly impatient. Already one of the late earl of Moray's servants had attacked some of Huntly's servants while en route to Blackness, fatally wounding the man and stealing Huntly's trunk with 6,000 merks in it. The man had also tried to assassinate Huntly himself, but had been discovered and prevented from doing so.<sup>147</sup>

Atholl and Ochiltree had each gone to raise their forces and consequently had been ordered to remain within their own bounds.<sup>148</sup> Further angered by this Ochiltree had even opened

up negotiations with Bothwell, the man who had slain his uncle, and he had let the king know that he would go as far as to band with Bothwell if it would get him revenge on

Huntly.<sup>149</sup> In the government the council still had a majority

146. C.S.P.Scot., x, p 658. Thus lord Spynie had already initiated proceedings against Moray's young heir over the old question of the bishopric and was very soon at feud with his family in his own right, S.R.O., Moray Muniments, N.R.A. 217/2/3/349, 217/2/4/13.

147. C.S.P.Scot., x, p 654, p 657; C.B.P., i, p 391. This Robert Stewart, a younger son of lord Innermeith and thus a kinsman of Moray's had sworn revenge against Huntly.

148. C.S.P.Scot., x, p 644, p 655-56, p 657.

149. ibid., p 664.

against Huntly, and on the 22nd of March these men finally succeeded in having him denounced, but the chamber was able to block Mar's suggestion that a convention of the nobility be held to discuss the whole question of how to punish such offenders.<sup>150</sup> Seeing the continuous see-sawing between the council and the chamber, and the king's general sympathy for the latter and for Huntly, Ochiltree met with Atholl, Argyll and others at Dunkeld to plot their own revenge. Unfortunately, this only angered the king who ordered Atholl, at whose house the meeting took place, to appear before him. The earl refused, but when James threatened to come after him he gave in after some persuasion from Mar, and was warded in Stirling. Again Huntly's enemies could only see that they were being treated more toughly than the great catholic murderer was and their sense of injustice and resentment remained as strong as ever.<sup>151</sup> Huntly meanwhile had gone home where he tightened his alliances with Erroll and Crawford and reminded Grant and Mackintosh of his presence.<sup>152</sup>

The four months after Moray's murder had been intensely difficult ones for the king, but by the end of May the storm had been weathered. The general assembly was still planning to petition for punishment, lady Doune had died cursing the

150. R.P.C., iv, p 734-35; C.S.P.Scot., x, p 663, p 666.

151. C.S.P.Scot., x, p 668, p 670, he remained in ward for two weeks, p 674.

152. *ibid.*, p 679, p 686.

king, the English presence at court was trying to get James to give his backing to the Stewarts, and even Maitland was coming around to disagreeing with the king.<sup>153</sup> The chancellor had virtually been forced into semi-retirement during the crisis, a sacrifice to popular feelings, but when Maitland returned to court he did so determined to recover his position and to shift any suspicion of his association with Huntly elsewhere. From the spring of 1592 he thus became one of Huntly's fiercest critics.<sup>154</sup> The king himself simply wished the matter pushed into the background and at the June 1592 parliament had far more pressing business to attend to than the supplication presented to the estates on behalf of young Moray.<sup>155</sup> Whatever his private feelings may have been, James's official stance was that Huntly just could not be tried since it was impossible to find an assize unrelated to him or his enemies and there was no alternative means of prosecuting him.<sup>156</sup> Means could have been found, but the king did not want them to be, as he desperately needed Huntly at court to frighten off the Bothwell sympathisers and the presbyterian influence which was so restricting his freedom in the church. In the light of political necessities Moray's death was insignificant; as for justice James was of the opinion that as a probable participant in the Holyrood raid and as a friend of Bothwell's

153. C.S.P.Scot., x, p 679, p 681, p 684; Calderwood, History, v, p 149.

154. Lee, John Maitland of Thirlstane, p 248ff; C.S.P.Scot., x, p 697.

155. S.R.O., Moray Muniments, N.R.A. 217/2/4/58.

156. C.S.P.Scot., x, p 693.

then justice had been done already. To destroy Huntly would not only have wrecked havoc with the government of the north and instigated the effective civil war which followed in 1593-94, but it would also have destabilised the king's foreign policy in which Huntly and his friends were an important check to the strong English lobby, free the presbyterians from any restraint, and make the king dependant upon the support of the Stewarts and their friends, men who were keen to have Bothwell restored. Furthermore, Huntly was still the king's personal friend. Even if the king had himself had no part in the plot against Moray, or even if Huntly had exceeded his instructions James could still not afford to sacrifice him to the baying of the Stewarts, the presbyterians and the English.

Unfortunately there had to be a price and the 1592 "Golden Act" was part of it. Less well known, but potentially just as damaging, was the Stewarts' resolve to act on their own. On the 27th of June Bothwell launched another desperate attempt at a coup against the king at Falkland, but as yet the alliance between Bothwell and his other Stewart kinsmen had not quite re-emerged as the force it had been during 1589-91, and without inside help the raid was another expensive failure. While none of the Stewarts and their friends could be connected with the raid the king was convinced of their complicity, and its effect was only to further convince him of the need for Huntly's presence. Bothwell may have

suffered another set-back, but in propoganda terms his fortunes continued to rise and he let it be known that were he to return, then Huntly would be dealt with and justice would be upheld; an ironic banner for Bothwell to pose under.<sup>157</sup>

In the north, Huntly continued to act as though there was no government in Edinburgh at all. Though his commission had been revoked he had not stopped acting as the king's lieutenant and was levying more men with his now suspended commissions.<sup>158</sup> Another bond reinforced his lordship over the Camerons while Dunbar of Blair and Colquhoun of Luss were added to his list of dependants.<sup>159</sup> However, he had local problems of his own when Cluny, Gight and Innermarky confronted him over his policy of throwing most of the blame onto them. Clearly they did not appreciate the finer points of Huntly's politics and wanted an assurance that their lord would protect them. In this spirit of rebellion they threatened that if he did not get them relaxed from the horn, they would get help from elsewhere, meaning Spain, and would choose Auchindoun as their chief should he fail to uphold them in everything. It is a striking comment on the mutuality of lordship for even a magnate as powerful as Huntly to be coerced in this way by his dependants and kinsmen. Nor did his suggestion that he

157. C.S.P.Scot., x, p 697, p 707ff, p 775-76; Spottiswoode, History, ii, p 421,22; Ochiltree was certainly involved in plotting the raid, Melville, Memoirs, p 407; see also C.B.P. for this period and Lee, John Maitland of Thirlstane, p 252-53.

158. C.S.P.Scot., x, p 701.

159. Brown, "Bonds of Manrent", appendix, p 467ff.

might go into exile for a while and thus give the appearance of being punished go down well for that would have left the door open for someone else to obtain his lieutenancy and to persecute his friends. The Stewarts were equally unimpressed with this offer since, as they pointed out, it meant nothing more than that Huntly was going to take a holiday.<sup>160</sup> In the end he stayed and his dependants were satisfied with his leadership, but it was a useful reminder to him of the corporate nature of even the greatest of kin-lordship alliances.

By August the ground was being laid for Huntly to return to court. The king was by then openly criticising his enemies and defended the earl before an impressive array of representatives of the burghs and the church. With angry sarcasm he asked the ministers why it was that they and the people were so concerned with revenge for Moray, who was, he added with some degree of snobbery, nothing more than the son of the "Abbot of St Colme" (lord Doune), himself but the brother of lord Innermeith and far below the degree of a man like the earl of Eglinton whose murder had failed to arouse such a high concern for justice among them.<sup>161</sup> However, this was the high point in the king's support for Huntly as within the month the rumours of Huntly's catholicism had given way to firm reports that he had heard the mass. This was more than even the king could bear of Huntly, and just as he had

160. C.S.P.Scot., x, p 719-20, p 729-30, p 705, p 741, p 742, p 748.

161. *ibid.*, p 745-46.

cracked down on lord Maxwell in 1586-87 when he had tried to establish local autonomy in religion, so his support for Huntly cooled as evidence of this latest outrage filtered south. Killing Moray was tolerable as it "was done for a particular feud", but if he was encouraging apostasy in the north then for once the king was in agreement with the earl's protestant critics.<sup>162</sup> By this time though it was autumn and as in the past two years the goings on at court had little effect on the local resolution of the feud.

Huntly had in fact unleashed his men in early August, and once again the clan Chattan were their principal targets in what was another rough wooing. Parties of Camerons, MacDonalds and the broken men dependant on Huntly skirmished and raided across Badenoch slaughtering some fifty Mackintoshes in one attack and eighteen Grants in another. The clan Chattan retaliated with a daring raid which led them up Strathbogie, Strathspey and Glenmuck where they committed equally cruel slaughters and killed a number of Gordon lairds.<sup>163</sup> It went on with each side ravaging the other in bloody raids until a very large part of the north-east was gripped in some of the worst feuding seen in Scotland in this period. The barony of Pettie, held by the Mackintoshes of Moray, was

162. C.S.P.Scot., x, p 782, p 792.

163. Gordon, Sutherland, p 217-18; Moysie, Memoirs, p 161; Spottiswoode, History, ii, p 424-25; Huntly was thought to have influenced Caithness into executing two of Mackintoshes younger sons during the summer, C.S.P. Scot., x, p 645.

devastated in a raid of quite savage ferocity in which Auchindoun led a small army of some twelve hundred Gordons with their highland friends and slaughtered around forty people, devastated crops and buildings, and stripped the country of its livestock. The damage was later estimated at two hundred thousand merks.<sup>164</sup> Once again the Mackintoshes and Grants could not hope to hold out against Huntly and they approached the Stewarts again asking for help if they were to continue fighting. Atholl responded by going to the king and asking for a commission which, in the light of Huntly's recent indiscretions in religious matters, the king gave him to oversee and protect Moray's lands. Atholl immediately came north and gathered his men, but was prevented from getting through to Darnaway and was almost captured by the Gordons. On a second attempt with lords Ochiltree and Lovat and Mackintosh of Dunnachattan he entered Moray's territory and began to prepare its defence.<sup>165</sup>

Worried at the extent of the fighting, the king sent the earl of Angus north with a commission of lieutenancy and judiciary over the warring clans, though not over the Gordons or any of the lowland kindreds, and to mediate between the

164. S.R.O., Moray Muniments, N.R.A. 217/2/4/180; S.R.O. Mackintosh Muniments, G.D. 176/240; R.P.C., x, p 466.

165. C.S.P.Scot., x, p 801-02; Moysie, Memoirs, p 98. Lord Forbes was also trying to get in on the act by intervening in the Aberdeen burgh elections but Huntly himself arrived with three hundred men to ensure his candidate was elected provost, C.S.P.Scot., x, p 784, p 801.

opposing sides. Angus was a choice hardly likely to inspire confidence in Huntly's enemies, being himself a catholic and friendly to Huntly's cause.<sup>166</sup> James also wrote to men like the laird of Grant, asking them to help Angus settle the feuding since he had not the power himself in the north to do anything about it.<sup>167</sup> Unfortunately, Grant, like so many others in the region, had been caught up in the fighting with Huntly during the two months before the king's letter reached him. Angus was thus little more than a helpless onlooker of an ever escalating situation. Atholl's intervention had already staved off immediate military defeat for the clans now fighting Huntly, when news arrived that Argyll had finally left court and that his men were already moving into Lochaber, thus relieving pressure on the west of clan Chattan by attacking the Camerons and MacDonells on their home territory. The threat posed by Argyll was enough to convince Huntly that while he could go on fighting, it was time to play the politician again.<sup>168</sup>

Huntly approached Angus and told him that he would gladly make peace, but that his enemies were oppressing him and that he had to defend himself, a report which Angus passed onto the king. Huntly was asked to remain in open ward in Aberdeen,

166. R.P.C., v, p 19-20; some actually thought that Angus had been suggested by Huntly himself, C.S.P.Scot., x, p 815; Historie, p 259.

167. Fraser, Chiefs of Grant, ii, p 3-4.

168. Moysie, Memoirs, p 98, p 161; C.S.P.Scot., x, p 811-12, p 815, p 817.

a burgh he largely controlled, while all his friends, including Moray's murderers, were relaxed from the horn after he had given caution for them.<sup>169</sup> Seeing that peace could only be restored in the north with Huntly's co-operation, and no doubt hoping that in having given Atholl his backing he had persuaded Huntly to behave himself, the king wrote to Angus telling him to get Huntly's help in suppressing the disorders of the clan Chattan and to deputise him before he returned south.<sup>170</sup> In effect the king was putting his confidence back in Huntly as long as he did not overstep the mark in matters of religion. The king's shrewd exploitation of the feud at this time had reminded Huntly that he was not independent of royal authority, and Huntly himself admitted shortly afterwards that he had been stung by the commission given to Atholl and Mackintosh, an "honour that nevir was don to nain of his forbears ...".<sup>171</sup> A second letter to Angus followed after discussion with the privy council who advised that assurances be sent up and signed by both sides "to draw on fast a conference, and in the end, a finall aggrement", and indeed, after some reluctance on the part of Atholl, assurances were exchanged.<sup>172</sup> However, Mackintosh was left out of them, whether on his own request or not one does not know. Thus, while the fighting continued between the clans dependant

169. C.S.P.Scot., x, p 820.

170. Fraser, The Douglas Book: Memoirs of the House of Douglas and Angus, (Edinburgh, 1885), iv, p 37, p 31.

171. "The Straloch Papers", Spalding Miscellany, i, p 5.

172. Fraser, The Douglas Book, iv, p 37-38, no 32.

upon the earls, at least their main forces had been disengaged.<sup>173</sup> Huntly wrote his own version of events to the king in early January, just before the Spanish Blanks scandal rocked the kingdom, and while one finds his concern for the "puir pepill" who were suffering "the war with sik extraordinar crualtie", a thing which should not be heard of in "ane civil contry" less convincing, his basic analysis of why the feuding was taking place was accurate enough. What was causing all this instability and violence was, in Huntly's opinion, dependants switching lords so that there was a situation of "sik man sik maister". Huntly was powerful and thus did not want the status quo upset, at least not where it upset him, but he was also right in that ever since Mackintosh and the other dissident lairds had tried to overthrow his lordship in 1590 there had been civil war in the north-east. Stability in lord-dependant relationships was necessary if social and political anarchy was to be avoided, for Huntly was clearly not going to allow his vassals to diminish his power in such an arbitrary manner and he used all his force to quell them into obedience, a point already touched upon in a previous chapter. Lordship was a good means of governing local society, but the tendency for dependants to search the market for better lords and for lords to similarly try and attach other men's

173. C.S.P.Scot., x, p 820; though the murderers of Moray were exempt from the assurance which was to be nullified if Huntly sheltered or protected them, something he continued to do, C.S.P.Scot., x, p 822. The level of the fighting still remained very fierce, C.S.P.Scot., x, p 821, p 824.

clients engendered competition and all too often feud.<sup>174</sup>

In the first week of January 1593 correspondence from Huntly, Auchindoun, Erroll and Angus to Spain was discovered implicating them in a plot to land a Spanish army in Scotland and overthrow the protestant regime. Angus was arrested on his return to court, while in the north Atholl was made the king's commissioner throughout Elgin, Forres, Inverness, Cromarty and all north of the Spey.<sup>175</sup> Huntly, Auchindoun and Erroll met at Aberdeen to decide on a course of action and Erroll argued strongly for immediate armed rebellion as he had in 1589, but again Huntly was reluctant to clash with the king and refused. Erroll called Huntly "feeble" and left in anger, but Erroll was always the most militant of the Scottish catholic lords and in this instance, as in 1589, Huntly was probably right. He did not want to become another Bothwell, and as long as he could get his way with the king by other means he was determined to avoid war with him.<sup>176</sup> However, he went along with Erroll in refusing to ward himself and so at the beginning of February, almost to within a day of Moray's murder, the two earls and Auchindoun were denounced for treason.<sup>177</sup>

174. "The Straloch Papers", Spalding Miscellany, i, p 5-6.

175. C.S.P.Scot., x, p 828-29, p 830; xi, p 15-19 and following; R.P.C., v, p 33-36; Moysie, Memoirs, p 101.

176. C.S.P.Scot., xi, p 34-35.

177. ibid., p 37, p 40-41; R.P.C., v, p 42.

Though it had taken over a month to take this decision, once taken the king acted quickly.<sup>178</sup> Just over a week later the king was in Aberdeen holding a justice court and receiving assurances of loyalty from most of the surrounding lords and lairds. Huntly retired into Caithness with the more notorious of his followers, and without him Erroll had no choice but to flee also. Others of Huntly's friends also refused to come to Aberdeen on the grounds that the Stewarts were there, and indeed it was Atholl who was the chief beneficiary of the forfeitures, he and the earl Marischal being given commissions to govern the north between them. They were ordered to arrest the catholic rebels, apprehend Huntly for Moray's murder, and restore order to the region. An impressive array of deputies were commissioned along with them, including many of Huntly's enemies, men like Grant, Mackintosh and lord Forbes being among them. On paper the king had had a very swift and easy victory, but the cracks in it became apparent almost as soon as he turned south.<sup>179</sup>

The 1593 raid on Aberdeen was little more than a show of strength, yet another turn in the screw in the brinkmanship which the king and Huntly had been playing at since 1588. James had even tried to prevent the English ambassador from accompanying him on the raid so that he would not see just

178. Angus had been allowed to escape, having been given an assurance by the king that he would be unharmed if he did not rejoin Huntly and Erroll, Fraser, The Douglas Book, iv, p 188-89; C.S.P.Scot., xi, p 489.

179. R.P.C., v, p 43-44, p 46-47, p 49-50, p 51; C.S.P.Scot., xi, p 66-67, p 68, p 72-73.

how lenient he was being.<sup>180</sup> Only a few of Huntly's cautioners from 1592 were arrested for the non-payment of their surety and the rest had been nothing more than a publicity stunt to remind the north who was king.<sup>181</sup> A month later the rebel earls were even relaxed from the horn, while in the north Marischal was pleading to be relieved of his job as he had no wish to become entangled in a feud with Huntly, and was already being accused of lenience towards him. Only Atholl really gained from his new authority which provided him with an opportunity to strike harder at Huntly and continue the feud through the king's offices.<sup>182</sup>

The raid had not weakened Huntly unduly, but as was his usual tactic he tried to make peace in the locality until he could recover some influence at court. He sent messages with overtures of peace to Bothwell and made concrete offers to Atholl suggesting that his eldest son could marry Atholl's daughter as amends for Moray's murder. However, Atholl was now playing for far higher stakes and was trying to persuade the king to transfer Lochaber and other Huntly lands in the north to him, and in effect to replace Gordon power with the Stewarts.<sup>183</sup> An association with Bothwell was a very dangerous move and suggests that Huntly was now much closer to rebellion and much less confident of his ability

180. C.S.P.Scot., xi, p 48.

181. ibid., p 77-78.

182. R.P.C., c, p 53-54; C.S.P.Scot., xi, p 80-81, p 82-83.

183. C.S.P.Scot., xi, p 82-83, p 89.

to yet again win back the king's confidence. James, meanwhile, was every bit as determined to have Bothwell's head or drive him from the country, and in May 1593 he joined many of his nobles in a new band against the earl, obtaining a promise from them that they would be as earnest in their pursuit of him as they were in their own feuds.<sup>184</sup> How serious Huntly was about Bothwell at this stage one cannot know, and he may only have been feeling the ground, but he was certainly pursuing every possible option, and his friends at court were again at work in the chamber and popular support was being canvassed among the Edinburgh crafts.<sup>185</sup> By the spring he was once again feeling safe enough in his home territory to resume the fighting with Atholl. Once more the Spey fishings were the pretext for the hostilities beginning and Atholl began further ruinous raids on Huntly's lands while the latter captured one of Atholl's servants and reputedly had him hanged, "and afterwards his head, arms and legs to be cut off in his own presence at Strathbogy and to be set on poles".<sup>186</sup> The Spanish Blanks affair had thus been nothing more than a short interlude in the feud and had had no real or lasting impact upon local politics.

Enemies of Huntly still hoped that he would be forfeited by parliament which was to meet in July, but when the time came

184. R.P.C., v, p 72.

185. C.S.P.Scot., xi, p 91.

186. C.B.P., i, p 462; C.S.P.Scot., xi, p 91.

the king himself was busy lobbying on Huntly's behalf trying to arrange terms which would satisfy himself, Huntly and the church. Some minor figures were forfeited for the burning of Donibristle and the slaughter of Moray,<sup>187</sup> but it was not enough to satisfy the Stewarts and the more extreme protestants. Atholl's refusal to ride with the king to the opening of parliament should have been a sign to him of just how angry he and "the noblemen and gentilmen of the Stewartis" were, since "thair blude was split without redres, and Bothuell lang baneist without any originall caus ...". Thus on the 24th of July, Lennox, who was having his own private feud with Maitland, led them in a dramatic palace coup in which they brought Bothwell back to court. In part it was an anti-Maitland coup and there was even talk of bringing back captain James Stewart to complete the Stewarts control of the court and government. They packed the court with their friends, had the charge of witchcraft against Bothwell quashed, and began to rally support for an onslaught on their enemies, Maitland, Glamis, the Humes and the northern earls.<sup>188</sup>

However, their new regime was short-lived and the king's forced acceptance of Bothwell could not last unless he was kept a prisoner. The more insecure Bothwell felt, the more demands he made on the king, such as trying to surround him with guards under Ochiltree, and thus the more he played into

187. Moysie, Memoirs, p 102; A.P.S., iv, p 15.

188. Moysie, Memoirs, p 102; Historie, p 270; C.S.P.Scot., xi, p 130ff, p 145; C.B.P., i, p 477-81; Spottiswoode, ii, p 433-34; Lee, John Maitland of Thirlstane, p 261-65, has a fuller account of the details of the coup.

James' hands as a man bent on ruling his king. By degrees he and his friends were gradually distanced from the king who called on the support of the Hamiltons, negotiated with Huntly, and finally detached Lennox from the others. Without Lennox the Stewart faction lost its respectability, Bothwell once again had to become an outlaw, and the rest of the Stewarts had to slip back to their homes. Having politically compromised themselves they could expect no further favours from the king who now more than ever was convinced by the coup of his need for Huntly's protection.<sup>189</sup>

If the wider political context had altered in Huntly's favour the more decided intervention of the earl of Argyll on the side of his enemies was a bitter blow to his local interests. Argyll was still only eighteen in 1593 and his leadership of the powerful Campbell kindred was still very hesitant. Having had his principal advisor murdered in 1592, and with all sorts of rumours about treachery flying around in Argyll, the earl decided that his first concern had to be putting his own house in order. When he and his kinsmen met in June 1592 to inquire into Cawdor's murder he had Ardinglass, Glenorchy and MacLean of Dowart all under suspicion, but the investigations he conducted gradually pointed more and more towards Ardinglass. In the fighting in the north-east during the autumn and winter of 1592 he had lent support to Atholl against Huntly, whom he also suspected of having

189. R.P.C., v, p 100-01; C.B.P., i, p 488-90; Spottiswoode, History, ii, p 435-37.

plotted Cawdor's and his own death, but it was a proxy feud and as yet he held back his forces until he was more sure of whom he could trust. In the following spring an attempt was made to assassinate Ardkinglass, but a servant was mistaken for him and brutally done to death while the laird himself escaped. After this Ardkinglass fled to lord Hamilton and begged for his protection. Argyll let him be for the moment, but he had signalled to his kinsmen that he was in charge and just to stress the point he arrested his most powerful Campbell dependant, Glenorchy, holding him for a while on suspicion of plotting against him. However, the cohesion of the Campbell kindred remained strained and Argyll continued to be obsessed with his security, but at least the minority was over and with Ardkinglass having been identified as the principal plotter against Argyll, the earl could more confidently turn to external enemies.<sup>190</sup>

In the autumn of 1593 the fighting again flared up, but this time with Argyll lending his significant support to the Stewarts. The dead were numbered in their hundreds with Argyll and Huntly themselves taking part in very large scale operations throughout the north-east and there being "daillie spilling of much bloode".<sup>191</sup> Huntly's brutality

190. C.S.P.Scot., x, p 684, p 705, xi, p 99-100, p 102-03, p 170; R.P.C., iv, p 756, v, p 68-69; Moysie, Memoirs, p 162; Argyll also had Colquhoun of Luss killed for bonding with Huntly, Fraser, The Chiefs of Colquhoun, (Edinburgh, 1869), vol 1, p 156-57; Cowan, "Clanship, kinship and the Campbell acquisition of Islay", p 141. Cowan also has a wider discussion of what was going on in Argyll at this time.

191. C.S.P.Scot., xi, p 137, p 139, p 143, p 151, p 152-53; C.B.P., i, p 494; Huntly also tried to have Mackintosh slain at a tryst or so it was said, C.B.P., i, p 165.

continued to be the subject of tales circulating in Edinburgh, and in one he was reported to have captured two of Atholl's cooks and "burnt them both, sending the Earl's word that he had left two roasts for them".<sup>192</sup> Even the burghs were not immune from the fighting. Aberdeen barely escaped a riot when a proclamation was read saying that Moray's murderers would not be prevented from entering the town, a flagrant abuse of authority by Huntly which inflamed the growing unrest with his power there.<sup>193</sup> In Inverness MacRanald of Keppoch drove Mackintosh out of the burgh in Huntly's name, but was then in turn defeated with the loss of one of his sons and an officer who were taken and hung. Mackintosh then made the burgh sign a bond with him agreeing to resist Huntly or "accept the deadly feud of the said Lachlan". Following the loss of Inverness Huntly spread the fighting yet further afield by stirring up trouble between Mackintosh and the Macpherson clan to his south.<sup>194</sup> Effectively there was a minor war now raging in the north which was far more savage than the fighting done there during the civil war twenty years before.

At court all Huntly's indiscretions of the previous winter had been forgotten, and even the chancellor was keen to see him back to counter the threat of yet another Bothwell coup.<sup>195</sup>

192. C.S.P.Scot., xi, p 165-66.

193. ibid., p 179.

194. Gregory, History of the Western Highlands, p 254; G.R.O., Mackintosh Muniments, G.D. 176/162.

195. C.B.P., i, p 498.

The synod of Fife had gone ahead and excommunicated the catholic earls against the king's wishes, thus making his job more difficult and convincing him of the urgency of having Huntly there to prevent such arrogance from the church.<sup>196</sup> In October the king made his first move towards restoring Huntly when he tried to capture Atholl in a raid from Stirling, but while Montrose and Gowrie gave themselves up, Atholl fled.<sup>197</sup> Arrangements were then made to hold a packed assize which would clear Huntly and the others of the charges of treason made against them, and a strong pro-Huntly lobby was encouraged to form around lord Hume at court.<sup>198</sup> On October the 12th the three earls made a staged submission to the king and following this a convention of estates met and set terms for Huntly's reinstatement, none of which referred to Moray's murder. In short, the Spanish Blanks would be forgotten about if the earls took an oath of loyalty to the established religion, they being given until the 1st of January 1594 to agree to this, and another month after than in which to get rid of their Jesuit priests and catholic kinsmen or go into voluntary exile.<sup>199</sup>

The king was thus doing all in his power to bring Huntly back to his side, and it was soon being said that he "will

196. Spottiswoode, History, ii, p 437-40.

197. C.S.P.Scot., xi, p 191, p 193.

198. ibid., p 192, p 194, p 199, p 217. The king also hoped to arrange some sort of reconciliation with Moray's kin, p 188-90.

199. R.P.C., v, p101-04, p 108-09; Calderwood, History, v, p 277-88; Moysie, Memoirs, p 105-09.

not only get courte againe, but also be greater than ever he was, and be made Lieutenant generall in the norths."<sup>200</sup> .  
 Certainly his enemies thought that yet again Huntly had outflanked them at court and Argyll wrote a sharp letter to Mar blaming him for allowing this to happen. Mackintosh . also feared the worst and transferred his allegiance to Argyll who gave him support for the fighting which was still going on in Lochaber.<sup>201</sup> Yet it was not to be Huntly's enemies who would wreck this promising return to court, for Huntly, Erroll and Angus had all decided that their conscience could now allow them to give their loyalty to the protestant church. They would obey the king where possible, and in particular Huntly had always sought to maintain at least the appearance of obedience to James, but the oath of loyalty was to be his Rubicon and in the new year of 1594 he crossed it.<sup>202</sup>

As a small part of the Counter-Reformation in Europe, Huntly's rebellion in 1594 was probably less significant than lord Maxwell's in 1587. Huntly was far more powerful than Maxwell and had greater catholic support in the region, but while he was still receiving Spanish subsidies, was in communication with Spanish agents in the Netherlands and possibly with Spain itself, there was no likelihood of foreign

200. C.B.P., i, p 497.

201. C.S.P.Scot., xi, p 250, p 245, p 251, p 261; Brown, "Bonds of Manrent", appendix, p 389, no 66.

202. C.S.P.Scot., xi, p 260; A.P.S., iv, p 52-53; R.P.C., v, p 116, p 130.

intervention in 1594. Huntly and Erroll - Angus did not take up arms - were thus not really fighting to restore catholicism to Scotland in 1594, but for local autonomy in religion and their own right to liberty of conscience.<sup>203</sup> The most they could have hoped for would be that they could manoeuvre the king into a better bargaining position, for the Counter-Reformation had been lost in Scotland in 1585-89 when Huntly and Erroll had failed to agree on a united effort with Maxwell and the catholics of the south-west.

Huntly's action shattered the king's hopes for his return to court, but this time he could no longer tolerate him so easily and the Stewarts and their allies were quick to exploit the advantages. Forfeiture did not come until March, but even before then they were escalating the war in the north after the lull at the beginning of the year. Mackintosh was again at the fore of the campaign against Huntly and was besieging Ruthven castle in Badenoch which was being held for Huntly by the Macphersons who were now on his side. MacAngus of Glengarry and clan Mackie also joined in while Atholl, Argyll and even Gowrie were busy raising their forces for a more substantial campaign than the guerrilla warfare largely seen so far.<sup>204</sup> Cecil dismissed reports that the Scottish lords were preparing to overthrow the king and wrote that they were simply doing what "is usual amongst them", but the scale of operations was continuing to widen

203. C.B.P., i, p 470, for the subsidy.

204. R.P.C., v, p 134; C.S.P.Scot., xi, p 282, p 288-94, p 277.

at an alarming rate.<sup>205</sup> In the south too Bothwell was preparing his last and most daring plan yet. He toyed with the idea of throwing in his lot with Huntly and marching north to join him, but opted for a joint attack on Edinburgh by his own forces coming up from the borders and the Stewart lords descending upon the burgh from the north. What made the plan more acceptable was that in doing this Bothwell would keep the friendship of England and the church. With the king in his hands he intended to be much more ruthless than he had been in 1593, and he intended to make an attack on Huntly one of the first of his priorities once back in control of the court. However, it was not to be, and in spite of the daring tactical defeat he inflicted on the royal army, Bothwell had to flee back to the borders, disappointed that his Stewart kinsmen had failed to turn up and support him.<sup>206</sup> When their association with Bothwell's attack became known the Stewarts found themselves in almost as much trouble as Huntly. Thus at the same time as a muster was being proclaimed for a campaign into the north, Atholl, Ochiltree and a number of others of their friends were denounced on the grounds of failing to answer for their relations with Bothwell.<sup>207</sup> However, James was still willing to forgive if they would cut their ties with Bothwell and even went so far as to offer Atholl Coupar Angus abbey if

205. C.S.P.Scot., xi, p 299.

206. Spottiswoode, History, ii, p 448; C.B.P., i, p 530, Moysie, Memoirs, p 113-16; Historie, p 301-02; C.S.P.Scot., xi, p 304-06.

207. R.P.C., v, p 140-41, p 143, p 144. Bothwell was almost captured at this time after a tryst with Atholl and Ochiltree, C.B.P., i, p 537.

he would do so.<sup>208</sup>

Even more than before it was Argyll who was now taking over as the leading figure in the feud against Huntly. His enthusiasm for attacking Huntly as early as possible irritated the king who was far from happy about the oncoming campaign, and he sent Mar to prevent the young earl from setting out prematurely.<sup>209</sup> Argyll agreed and spent the intervening time going over new evidence which had come to light in the Cawdor murder case. In May he interrogated one of the killers, John Oig, who now revealed the details of Ardkinglass's plot, and the role of not only the Campbell lairds of Glenorchy, Lochnell and Lawers, but also confirmed that Huntly did know of it. A bond subscribed by the plotters was said to have been recovered by Argyll, and Cawdor's murder was explained as necessary if Huntly was to get away with killing Moray, which to some extent was how events turned out.<sup>210</sup> Oig was executed, but Argyll had still not finished. He raided the home of MacAulay of Ardincaple, another suspect, but while he got away Ardkinglass was not so lucky and was dragged in for another interview with Argyll.<sup>211</sup> He confirmed Oig's story, but added the details of a wider conspiracy involving Maitland

208. C.S.P.Scot., xi, p 344, p 374; Atholl had made his peace by July but Ochiltree held out for a while longer.

209. *ibid.*, p 331.

210. Warrender Papers, ii, p 246-51; C.S.P.Scot., xi, p 338, "it is commonly said that Huntly durst not have slain Moray in the life of Calder ...".

211. C.S.P.Scot., xi, p 344.

and in which Argyll and his brother were also to be slain. According to Ardkinglass it was Glenorchy who was the principal mover of this scheme, but when examined Glenorchy simply denied everything and offered to stand trial. Argyll had opened a real hornets nest and it looked as though a lot of people were about to be stung, but then four days after his first interrogation, Ardkinglass was examined a second time and withdrew his accusations about a great plot. Within a fortnight Glenorchy was freed, two more of Ardkinglass's men who knew about or had taken part in the murder plot were put to death, and while he himself continued to be Argyll's prisoner it was said that "The band for Argyll's death has been smothered as it concerns too many significant persons". A few years later, and in a quite different case, a defendant's lawyers drew attention to Ardkinglass's trial in order to appeal to certain precedents laid down in it, but was told that the evidence of the trial was classified and not available. Whether there was a great contract arranged to kill Argyll or not one will never know, but the manner in which the evidence and some of the defendants were treated points to some sort of closing of the ranks by the Campbells, Argyll and those in the government implicated in it.<sup>212</sup>

By mid-summer the king's campaign had still not got under way. After a last ditch offer to go into exile if his friends

212. Highland Papers, i, p 175-90; C.S.P.Scot., xi, p 370, p 376. It should be remembered that Argyll was hereditary justice general of Scotland.

would be safe was turned down. Huntly threw his energies into preparing for war with the king. He, Erroll, and their dependants told their tenants that they had to provide a mounted and armed horseman for six months or a footman for a year, or alternatively enough money to pay for one. The earls were clearly preparing for a long campaign and had apart from these mounted levies a large contingent of clansmen at their command.<sup>213</sup> In mid July Argyll, Atholl and lord Forbes were finally issued with their commissions against the enemies of the king.<sup>214</sup> The terms of the commissions allowed them to either act immediately and independently or to wait for the king who was preparing for the baptism of his son, a sign that James was perhaps still hoping that the rebellion could be settled without fighting. Certainly there were suspicions that the campaign would be nothing more than a propaganda exercise as in 1593 and the English were pressing for the rebels to be dealt with "without regard to feuds", something which was impossible in the Scottish political environment.<sup>215</sup> Last minute doubts by Argyll about whether he could trust his kinsmen, and diversionary attacks on his territories by Huntly's dependant, Donald Gorm, almost wrecked the entire plan, thus confirming such suspicions, and it took a great deal of persuasion from

213. C.S.P.Scot., xi, p 364, p 385. Huntly also received another payment of Spanish gold to help finance his rebellion and a number of Jesuits arrived in Aberdeen, Spottiswoode, History, ii, p 458; Fraser, The Douglas Book, iv, p 374, no 334.

214. H.M.C., iv, p 488, no 292; R.P.C., v, p 157.

215. C.S.P.Scot., xi, p 389-90, p 398, p 408, p 417.

the king, the church and other noblemen to get Argyll to march. Finally, at the end of September his army of between four and eight thousand men, the great majority of whom were unmounted clansmen, marched out of Argyll with the nervous young earl at their head.<sup>216</sup>

The final plan arrived at by the king and his advisors was for a two pronged move by Argyll coming from the west and lord Forbes and presumably Atholl marching from the south. Argyll would bring the bulk of the force of highland footmen and hopefully meet up with Forbes who was to gather the horse, but now that he had decided to march Argyll was in a hurry to come to grips with his enemy. After a slight delay when he failed to take Ruthven castle, which was still holding out for Huntly, he marched out of Badenoch and into the Gordon lands well ahead of lord Forbes. Huntly had initially intended a scorched earth campaign and had already stripped his lands and houses, leaving the latter unattended, but on hearing of Argyll's arrival he and Erroll quickly gathered a force of some fifteen hundred horsemen followed by a company bringing light ordinance, and rode out to meet him. Sweeping aside Argyll's reconnaissance they came upon him largely unprepared at Glenlivet, and in spite of Argyll's large superiority in numbers, his position on the high ground, and the large number of hagbutters he had, the earls decided to attack immediately. Erroll led a near suicidal charge of some three hundred gentlemen

216. C.S.P.Scot., xi, p 400, p 419, p 422, p 432; Spottiswoode, History, ii, p 458.

and Huntly's own guards straight uphill into the face of heavy fire from Argyll's front ranks, and in spite of heavy losses, including Auchindoun who was killed and Erroll himself who received a number of wounds, they broke through. A similar attack by Huntly with the remainder of the force repeated the success and the catholic earls had won a victory which owed more to daring and sheer courage than to tactical planning or execution. Argyll's force was only just saved from a complete rout by a fine rearguard action from MacLean of Dowart and by the lack of infantry among the rebel army to pursue them in the rough terrain, but he had lost some five hundred or more men and was led weeping from the field. Huntly's losses were less, but they were concentrated among the best of the rebel cavalry and included a large number of wounded gentlemen. It was a victory, but it brought no real strategic advantages.<sup>217</sup>

Nothing was changed by Glenlivet, and with lord Forbes approaching with the king and another large royal army Huntly and the badly wounded Erroll again fell out over whether to fight James or not. As he had most of the men Huntly had the last word and he once again opted for scorched earth so that for the third time in their partnership Erroll left in disgust. One wonders whether the history of the Counter Reformation in

217. For the campaign and battle see Pitcairn, Criminal Trials, i, part 2, p 361; C.S.P.Scot., xi, p 449-52, p 453, p 456-60; Calderwood, History, v, p 348-54; Moysie, Memoirs, p 119-21; Historie, p 338-43; Gordon, Sutherland, p 226-29; R.P.C., v, p 176-77; Spottiswoode, History, ii, p 458-60; Balfour, Annales, i, p 396-97; Birrel, "Diary", p 33.

Scotland would have been quite different had Erroll had the power that Huntly had available to him? Again Huntly was probably right since the best part of his army had been badly crippled. Furthermore, he had clearly not been able to raise as many of his lowland supporters as he would have expected while his highland clansmen had been forced to remain on their own territories to protect them from Argyll's army. More importantly, while Argyll had fought under the king's royal standard the battle had really been an extension of the feud between Huntly and the Stewarts and their friends; fighting the king himself was quite a different prospect. Huntly thus slipped off into the hills and his army scattered while the earl's lands were overrun and his houses and castles destroyed by his enemies who were at last able to strike back at him with a vengeance.<sup>218</sup>

Once again the king failed or refused to deliver the crushing blow which would have ended Huntly's domination of the north. Submissions were received from the landowners of the north-east, but none of the real rebels were captured and the king soon left for home, satisfied that he had at least shown Huntly what to expect if he was bent on rebellion. Lennox, Huntly's brother-in-law, was left in charge of further cleaning up operations and Gordon of Pitlurg, who had failed to follow his chief against the king, was left in possession of his property. The choice of these men was symbolic of just how far the king was prepared to go in punishing

218. C.S.P.Scot., xi, p 460-61, p 464, p 466; Gordon, Sutherland, p 230.

Huntly.<sup>219</sup> However, what further influenced the low key nature of the king's campaign was the state of his own army. Argyll was in disgrace after his defeat and was again arguing with his dependants and kinsmen about treachery on the battle-field. Furthermore, when Argyll's reassembled forces had finally rendezvoused with lord Forbes and the king there had been fighting between them and the prospect of a feud loomed up between the two armies.<sup>220</sup> Whether the king could have done much more even if he had wanted to was thus somewhat problematic, but at least he had convinced the English that he was no longer "partial to the papists".<sup>221</sup>

No sooner had the king gone south than Huntly re-emerged from his hiding and as in 1593 began to regain the initiative. For some completely unknown reason he succeeded in persuading Atholl to change sides, but the motive may have lain in the king's treatment of Atholl during the previous two years and in particular the way he had been virtually by-passed in the late campaign. There may also have been trouble between him and young Moray who was fast approaching adulthood and was beginning to resent his tutorship. Whatever the reason for this abrupt turn about by one of Huntly's oldest enemies, it signalled the beginning of Huntly's recovery. Moray fled from his tutor and Argyll responded by sending

220. C.S.P.Scot., xi, p 476, p 486-87; Spottiswoode, History, ii, p 460; Gordon, Sutherland, p 229-30.

221. C.B.P., i, p 551.

his men to make savage reprisal raids on his erstwhile ally Atholl.<sup>222</sup> Argyll's forces were also continuing to operate right across the north east against any of Huntly's friends and tenants, but his men were not too discriminate and were soon ravaging as far afield as the more settled lowland regions of Angus and the Mearns where men quickly remembered that this had never happened during all the time that Huntly had ruled in the north. Opinion was thus swinging around to wishing for Huntly's return, even among those who had no love for him, while Lennox's army was rapidly deserting him, leaving Huntly to return unopposed by the beginning of 1595.<sup>223</sup>

Yet while recovery in his own domains looked certain, Huntly's position with regard to the king was to sink even lower in 1595. In February Huntly's enemies were able to present the king with firm evidence that he had, along with Angus, Erroll and Caithness, signed what came to be known as the Menmuir band with Bothwell, under which they all agreed to support one another until they were all fully restored. Huntly and Bothwell also assured one another until Moray was seventeen when the former would make an offer of compensation which, if refused by Moray, would allow Bothwell to "refus to tak his pairt in persewing that slaughter". The earls had also planned to capture the king and hold him in Blackness castle, while they dealt with their enemies, the

222. C.S.P.Scot., xi, p 486, p 500, p 501.

223. *ibid.*, p 506, p 509, p 512. Lennox was actually protecting the Gordons and appeared to have the king's permission to do so, C.B.P., ii, p 15; R.P.C., v, p 207-08.

captain of the fortress being a client of Bothwell's, a sin for which he paid with his life, but the discovery of the bond, and its publication by the king, destroyed for ever Bothwell's carefully cultivated image as the champion of the protestants and it tarnished Huntly in the king's eyes much more than his plots with Spain had.<sup>224</sup> As a result of this lord Ochiltree, who had turned down a large bribe from Huntly and Bothwell to join them, finally broke from the latter and made his peace with the king, telling him that he had only associated himself with the earl to have revenge on Huntly.<sup>225</sup> Ironically then, at the same time as Huntly was so distanced from the king the Stewart party or alliance had been shattered and only Argyll was able to keep up the feud with him in the north.

It was not the end of the feud, but after 1595 it became less and less of a dominant issue in Scottish politics. That year Innes of Innermarky was captured by Moray's kinsman, lord St Colme, and was executed along with his servant for his part in killing the earl.<sup>226</sup> Also that year Argyll reopened his investigations into Cawdor's murder and had Ardkinglass tried, but the events of "the grittast pannell that was in our dayis" were never revealed and while Ardkinglass continued to suffer harassment from his chief,

224. R.P.C., v, p 205; C.S.P.Scot., xi, p 525; Moysie, Memoirs, p 163; Spottiswoode, History, ii, p 457.

225. C.B.P., i, 496, p 510; Moysie, Memoirs, p 121; Bothwell was now "little herd of, as a man able to doe nothings", C.B.P., i, p 549.

226. Historie, p 347-48; C.S.P.Scot., xi, p 643; S.R.O.Moray Muniments, N.R.A., 217/2/4/93.

he enjoyed the protection of lord Hamilton and escaped any punishment.<sup>227</sup> Huntly and Erroll went into exile separately, but both were disappointed in the reception they found on the continent and returned home in 1596 to an outcry from the church which wanted them gone forever. However, by then the king was much more in control of his overmighty ministers and dismissed Robert Bruce's claim that while Erroll and Angus could be tolerated, Huntly was "so hated of the subjects" that he could never be restored.<sup>228</sup> Huntly was still "the man of greatest power, and one that could stand him (the King) in most stead".<sup>229</sup> James thus wrote to Huntly, reminding him of "how often I have incurred skaith and hazard for your cause", and ordering him to satisfy the church's requirements, or "if your conscience be so kittle as it cannot accept permit you" then his family, lands and titles would be safe, but "look never to be a Scottishman again".<sup>230</sup> It was to be the king's last offer and Huntly recognised it as such. Nevertheless he did not miss the opportunity to lecture James, telling him that his offence had not been so very great anyway, and that "the prins pairt to his subiectis, suld be, as the father to the children,

227. Ardkinglass's third confession, Highland Papers, i, p 190-94, confession of John Oig's wife, Highland Papers, i, p 159-71; trial arrangements, Pitcairn, Criminal Trials, i, part 2, p 363, p 391-92; C.S.P.Scot., xii, p 168; Highland Papers, i, p 152-59; comment in 1617, Pitcairn, Criminal Trials, iii, p 423; continuing problems within Campbells, C.S.P.Scot., xii, p 161-62; R.P.C., v, p 322-23.

228. R.P.C., v, p 328-31; Spottiswoode, History, iii, p 3; the ministers were also warned not to bother him, Birrel, "Diary", p 42.

229. Spottiswoode, History, iii, p 8.

230. *ibid.*, p 47-48.

not be rigour to seik thair utter ruin, (albeit racleslie thay have faillit,) bot be humiliatioun, to accept their ammandment."<sup>231</sup> Fortunately for Huntly the king agreed with his analogy, and with Huntly showed a degree of tolerance and patience few magnates could have enjoyed from their king. Negotiations with the church took some time, but by the summer of 1597 the sentence of excommunication had been lifted - though Huntly continued to be a catholic to his death - and in December he was fully restored by parliament and was once again dominating the court though he never again had the same political influence with James.<sup>232</sup> It was a remarkable recovery for a man who had spent almost a decade rebelling against the king and for all the political explanations that can be found one can only satisfactorily understand it in the light of the friendship which endured between them in spite of their religious and political differences.

The settlement of the feud took place when it had acquired far less political significance and does not really belong with this discussion and so the following is only a very brief summary of what happened between 1596-1603. The murder in 1597 of the laird of Moncoffer, another of Moray's killers, was the

231. Amlecta Scotica, (ed.) J.Maidment, (Edinburgh, 1834-37), i, p 102-03.

232. The church's conditions included repentance for Moray's murder, but it is not clear if Huntly agreed to this part of their demands, R.P.C., v, p 328; "The Straloch Papers" Spalding Miscellany, i, p 10; B.U.K., iii, p 892, p 922; C.S.P.Scot., xii, p 429, p 500, xiii, part 1, p 56; for parliament, C.S.P.Scot., xiii, part 1, p 132.

last recorded act of violence in the feud, and while both sides continued to be hostile to one another the feud was much less notorious than it had been.<sup>233</sup> Atholl had died in 1595 and his successor, the last Stewart earl of Atholl, was never any threat to Huntly, while without Bothwell the Stewarts never again achieved any degree of cohesion as a kin alliance of any great political significance. They continued to work with young Moray in his negotiations with the king and Huntly to end the feud, but beyond that they effectively went their own ways. In the north the clans and families of the north-east and central highlands flocked back to Huntly's protection and lordship, the Grants and the clan Chattan being among them.<sup>234</sup> Writing during this time about his rule in the north, Huntly complained of the instability caused by the lack of his firm hand during the years when he had been fighting so many enemies, saying that

"we craif ne thing bot our awin plaice and sik as hes bein in all tymis past the custoum of our predicessouris, and that because nane in thir partis mair or vill presum to minister iustois aganis ony spetiall heland clanis heir bot ve."<sup>235</sup>

It was the closest to a statement of policy that Huntly ever made and right until his death almost three decades later he

233. Moncoffer's murder re-opened old sores with lord Spynie who was still feuding with Moray over the bishopric, C.S.P.Scot., xii, p 453, p 466; S.R.O., Moray Muniments, N.R.A., 217/2/4/13.
234. Gordon, Sutherland, p 230; Brown, "Bonds of Manrent", appendix, p 471-73, no 87-96. However, Machintosh bonded with both Huntly and Moray, p 551, no 104.
235. Warrender Papers, ii, p 353-56.

continued to govern the north with this same jealous pride and commitment.

The settlement of the feud largely took place between 1601-04. The king made a number of attempts to achieve a settlement, but found young Moray and Argyll intransigent. However, with the succession to the English throne looming up on the horizon, the king became even more urgent about pacifying this feud. Thus, he told Huntly and Argyll "how can ye two being two peers of my land, either do me good service or do your nation credit, being ready to cut one another's throat. For ye must know ... that in the conquest of my inheritance (if they denied me) I will need both your helps and will make you both Dukes." While some English observers could appreciate that James "had reason of his own policy" for settling the feud, and could never assemble a sizable army as long as these two and their friends refused to co-operate with one another, a more sober assessment was that "some wise fool" had suggested to the king that he would have to fight for England and that "If I should write all the foolish speeches with the King of this purpose it would make your Honour think he had neither wit nor judgement."<sup>236</sup> Whether the king's analysis of the situation was correct or not, one result of it was that he constantly badgered Moray, Argyll and Huntly, applying almost relentless pressure on them throughout 1602-03.

236. C.S.P.Scot., xiii, part 2, p 961, p 978.

The final terms of the feud settlement were never made public and in spite of a search for them in government and private records they remain a secret. However, fairly detailed records of the mediation have survived and while they cannot be discussed here one can put together enough about the settlement to have an idea about the form it took. Thus in spite of the highly political nature of the feud all political questions were ignored and only the private questions of the feud relating to compensation and reconciliation were dealt with. Marriage formed the basis of the agreement with Moray marrying Huntly's daughter and being given a sizable portion, while Argyll's daughter was to marry Huntly's eldest son and heir. Both these marriages went ahead. No homage was ever done by either side, and in spite of a claim from Moray for close to a million pounds in damages, and one does not know what the others were claiming, it would appear that no compensation was paid either, each side finally agreeing to accept their losses and sink their differences.<sup>237</sup>

Considering the ferocity and bloodiness of the feud the peace was remarkably successful and the only occasion on which it re-emerged was in a case between dependants of either side in 1616.<sup>238</sup> Though the great struggle between the houses of

237. The details of the mediation can be traced through the Calendar of State Papers and Privy Council Register for 1601-04; other sources are S.R.O., Forbes Collection, G.D. 52/70; S.R.O., Moray Muniments, G.D. 217/2/4/179-180; S.R.O., Gordon Castle Muniments, G.D. 44/33/2, 44/13/2/6, 7/208; Balfour, "Annales", i, p 411; Birrel, "Diary", p 58; Calderwood, History, vi, p 205. In 1619 Ardkinglass was also given a bond by the Campbell lairds exonerating him from Cawdor's murder, Brown, "Bonds of Manrent", appendix, p 551, no 107.

238. R.P.C., x, p 466, p 660.

Gordon and Campbell were not yet over, and was to be re-opened in the mid seventeenth century, the feud between Huntly and the Stewart kindred was laid to rest before the privy council on the 3rd of May 1604.<sup>239</sup>

Can one say that anyone won this feud? In local terms there is little doubt that Huntly came out of it best, having crushed an attempt by the Stewarts and some of his own dependants to unseat him from his dominance in the north. In that he reversed the trend set in 1562 by queen Mary, Huntly had achieved the first maxim of magnatial politics, that is to preserve the inheritance of the lineage. In his wider regional ambitions of expansion westwards at the expense of Argyll he met with failure in spite of the shambles into which clan Campbell had fallen. Argyll also held his ground and did succeed in westward expansion himself, but that is another feud. On the political front Huntly almost certainly sacrificed an easy local victory for the much greater stakes he was playing for in the realm of Counter Reformation politics, though it can equally be said that he set back the latter by, for example, the slaughter of Moray. In this context Huntly failed and failed badly. He was too late in his bid for a Counter-Reformation and he completely misread the king in thinking that James would allow local religious autonomy. In the end he recognised his defeat with typical realism. That he had the choice to do so when Bothwell did not is a

239. R.P.C., viii, p 3.

comment on just how important personalities were in politics of this kind, for there can be little doubt that it was his personal relationship with the king which saved him from the fate of his old rival and co-conspirator. If much of this has been about Huntly then it is because he was both the hero and the villain of the piece. This was above all his feud, fought to attain his ambitions in his locality or region, and inextricably tied up with it were the politics of the kingdom in which he played such a dominant role for a decade from 1586-96. Huntly made many mistakes both at court and in the locality, but whatever reservations one may have about his character, he was a supreme example of a sixteenth century magnate-politician at his best.

However, this is not just the study of a few years in the life of one man's very long public career. Above all it is a study of power and how it worked in early modern society. In the Jacobean state power was not centralised in the king or in the organs of his government, though the aggregate of power at the centre was commonly greater than any one local corporate interest. Only in exceptional circumstances did the localities find sufficient common interests to impose their will on the centre, but the Glenlivet campaign shows something of how limited royal power was without local co-operation. Most men in public life could exert power either in the locality or in the centre; thus Moray was one of the former and chancellor Maitland one of the latter. For these two to operate outside

of these areas Moray had to ally himself with a court operator like Bothwell and Maitland with a local magnate like Huntly. Only a very few like Bothwell, Huntly, Argyll and Hamilton could bestride both with a network of kin, clients, land and office, and to a large extent this feud was about the clash between Bothwell and Huntly who emerged in the post 1585 period as the most powerful and influential magnates in Scotland. Moray was very much a pawn caught up in the struggle between them. Chancellor Maitland, though a very clever manipulator, was only fortunate in that these two were so intensely competing with one another, for there was little doubt that the king preferred Huntly and his friends in the chamber to Maitland, Glamis and their connections. A great deal has been made of Maitland's achievements in smashing the magnates and in introducing a modern style of government, but Maitland's achievements were in the realm of personal, factional politics where he outplayed Bothwell and Huntly, and, because he happened to be the chancellor rather than lord chamberlain, established an accidental balance of power which favoured the privy council over the chamber. There was nothing revolutionary or reforming about it.

In politics, which is largely about the exercise of power, the period was not one of change but of continuity, a continuity which would have made this world and the operation of politics within it recognisable to the magnates, officials and kings of earlier centuries. That this world disappeared during the

seventeenth century should not allow one to think that politics of this kind were already anachronistic in the sixteenth century. The actors of this great feud from the king down to John Oig had no concept of "kicking against the pricks" like some latter day cowboys trying to retain the ideals of the wild west. Feud and politics were not distinguishable to them whether they were settling the affairs of the kingdom or deciding who could fish on the Spey. Thus, in the court intrigue, in the parties of armed men stalking the streets of Edinburgh, in the overawing of burgh councils, in the apparently petty squabbles for place and patronage, in the web of kinship and maintenance and in the burning villages and slaughtered men and women of this age, one is not looking at a picture of chaos and anarchy, but at an active political system which may be vastly different from our own, but which imposed a recognisable order upon the world which its best exponents sought to control.

THE BORDERS:

GOVERNMENT, DIPLOMACY AND FEUD

Boundaries between states like boundaries between private persons are almost inevitably places of tension. Historical awareness, immediate realpolitik and future aspirations all too often clash in their most bitter forms at these junctures of nations and cultures. The border between Scotland and its vastly more powerful English neighbour was by the sixteenth century one of the more enduring political divisions on the map of Europe, but centuries of intermittent war and not so intermittent raiding made it an environment in which violence was clearly no stranger. Both international politics and local politics were at work here, often in co-operation and at times in conflict as local landlords and chiefs made their own wars and peace regardless of the dictates of London and Edinburgh.

The borders then were a special case with their own set of problems and difficulties for sixteenth century governments to solve. There may not have been open warfare between Scotland and England since the 1550's, but along the marches the fighting and raiding continued with a ferocity which was largely unaffected by the new found detente between the two protestant powers of the British Isles. For Elizabeth I's government, though the borders were a nuisance in which she and most of her ministers had little real interest. Geography, communications and the social and cultural contrasts between the Home Counties and the north were a problem even in the sixteenth century.

The principal aim of the English government was maintaining the quiet and security of the borders at the minimum cost to its purse. Elizabeth had no ambitions in Scotland and simply wanted to ensure a government there which would not be a threat to her own security. At the most then the borders were the base for satellite diplomacy. On the English side the region had been politically castrated after the crushing of the 1569 Northern Rebellion and there were thus no significant magnate politics operating there, the region being nothing more than yet another battle ground for rival court factions to squabble over and establish their clientele in.

Unlike Elizabeth, James VI and many of his closest officials knew the borders well. The king understood march law, he personally took part in the administration of the borders from both the centre and by being seen in the region, he knew the men who filled the major offices there, and he had many border men close to him at court. Local military superiority on the borders also gave James a powerful leverage over Elizabeth which did not cost him a penny; both border administration and defence being in private hands. On the other hand that very devolution of power was a threat, allowing Scottish magnates and officials to indulge in policy making of their own and making the crown at times dependant upon them. Thus, while the Scottish king could exploit the military and political weakness of the English borders with the threat of allowing his magnates a free hand,

so English manipulation among those men could be turned against him and his government. The feuds of those men was thus a matter of vital interest to both governments and indeed to any other power which wished to destabilise the region and with it relations between Scotland and England.

Ever since Scott's "Minstrelay", however, there has been a tendency to see the Scottish borders as not only distinct in the sense that its politics were different from the rest of the kingdom, but also as somehow socially different. The borders did pose unique questions for James VI just as Catalonia did for Philip II, but too often border feuding is put in a context of an essentially non-feuding society and the contrast with the remainder of the country is exaggerated. London society and the English court did contrast sharply with life on the Welsh Marches, but this is much less true for Edinburgh and the Scottish borders. Thus, books like Fraser's "The Steel Bonnets" while being highly interesting and informative tend towards a sensationalising of the region while others by Rae, Lee and Hewitt suggest a one-way stream of enlightened traffic from court to country and again over-emphasise this differentiation. One hopes that the point has been sufficiently made by now that feud was a social and political phenomenon throughout Scotland and that it certainly was not in this respect that the borders were in any way distinct. Quite simply their distinction rested

upon their being borders and on the political content of some of their feuding which crossed international lines or became caught up in the higher politics of states and ideologies. Neither the presence of feuding nor its degree ever raised any comment from King James or his officials, whatever the already quoted English administrator may have thought about the geographic distribution of feuding.<sup>1</sup>

Feud was of course a phenomena found both north and south of the border, but there was little doubt that by the late sixteenth century its roots were much deeper on the Scottish side. In 1586 it was recorded that "the alliances and feuds prove of great advantage to the Scots" and ten years later Carey informed Burghley that the Scots were complete masters of the country.<sup>2</sup> Most English border officials exaggerated the extent of their difficulties in order to maintain their extraordinary powers and privileges and also so that they could make more of their subsequent achievements, but nevertheless there was a good deal of truth in the assertion. Carey cites the case of Sir Cuthbert Collingwood whose men slew a Scottish raider as they pursued his party back across the borders, but who had since had seventeen of his servants and tenants murdered in the feud he had incurred with the man's kin. Disparingly he wrote that "I see none other than revenge for revenge and blood for blood ..." since it was "... the onlye way to breake

1. C.B.P., ii, p 163, quoted above, vol 1, p 20.

2. C.S.P.Scot., ix, p 147; C.B.P., ii, p 189.

the necke of this evill custome."<sup>3</sup> Lord Eure drew attention to this same problem, writing that "on the smallest theft from a Scot, he threatens blood revenge from his clan".<sup>4</sup> Lacking the population and the same degree of adherence to the feud throughout English border society, defence against the vengeance of the Scots had to be sought from the crown officials, but they were kept underpaid and undermanned, and while an agreement was reached with the Scottish government in 1597, English officials were soon expressing doubts about whether it could work as long as the feud remained so entrenched among the Scottish border families.<sup>5</sup>

What further irritated English administrators was the greater private power and patronage available to the Scottish wardens and officials. Tudor governments had progressively eroded the power of the traditional leaders of northern society, and by appointing men of lesser significance had secured an administration dependant upon the crown, or at least upon court factions and brokers, not on Percies, Nevilles and Dacres. This had had a detrimental effect upon the locality itself in that the cohesion provided by good lordship and strong kinship was being displaced without satisfactory compensation in the shoe-string administration of the new wardens. However,

3. C.B.P., ii, p 189-90.

4. *ibid.*, p 48 and see also p 188, p 291.

5. *ibid.*, p 316; C.S.P.Scot., xiii, part 1, p 293.

in Scotland the old system survived along with the old names. Hence the English complained of the injustices caused by the Scottish practice of appointing as wardens native borderers who are "extraordinarily adicted in parcialities, favour of theire blood, tenants and followers".<sup>6</sup> In fact English officials could be just as partial and Sir John Forster was eventually removed from office for that very reason. The difference was in the enormous residual power which men like lord Hume, lord Maxwell and Bothwell all had. Power on the English borders depended upon favour at court, but in Scotland men like lord Maxwell could raise their fingers to the court and still remain powerful whether they had an office or not. In 1602 Sir Robert Cecil advised King James on how to govern his borders, pointing out "the abuses in the Wardens government in pursuing particular quarrels in blood to the disturbance of the quiet of the Borders", and the practice of "working a dependancy of such persons as will the rather at any time follow their Warden's in all their private quarrels, when they are winked at in their own disorders". Such things, he went on, rarely occurred in England because "'foeds' here are unusual", officials were well paid, and thus satisfied, and were commonly outsiders so that they were "not accompanied with those particular respects of blood and kindred" found in Scotland.<sup>7</sup> It was a piece of typical Elizabethan arrogance, men like Carey would have winced at the idea of officials like

6. C.B.P., ii, p 163.

7. C.S.P.Scot., xiii, part 2, p 1020.

him being satisfactorily paid, while lord Eure completely failed in his job because he was an outsider. As for feuds, they were not common, but lord Huntingdon complained to lord Scrope in 1593 that "feedes" had become established on the English marches and were terrorising even the gentlemen of the locality.<sup>8</sup> As on the Welsh borders, the English side of the Scottish border was less ordered than Elizabethan officials at times pretended and lord Eure's comment, like that of Carey above, that a quarrel between a John Brown and the Scottish warden Cessford was outside his jurisdiction because "yt would not end without blood", was expressing a sentiment which lay just below the superficial coating of Tudor order.<sup>9</sup>

Yet if the English side of the borders was more acquainted with feud and violence than is often assumed, there is no doubt that the sheer scale of feuding in Scotland was much greater. While Scottish governments never singled out the borders as particularly notorious for feuding, the region did have a reputation for disorder, and while the integration of border society with Scottish society as a whole must be emphasised, it would be foolish not to recognise to some extent that it was one of the most difficult regions of the country to govern and that feuding had something to

8. C.B.P., p 501. There was both cross-border feuding and feuding within the English community, e.g. the Grays and Selbies and the Charletons and Bells. C.B.P., ii, p250ff, p 267ff.

9. C.B.P., ii, p 477. For the English borders see James, Family, Lineage and Society, Watt, From Border to Middle Shire, for Wales see P.Williams, "The Welsh Borderland" p 21, p 24ff, p 27ff.

do with this. Cross-border feuds, feuding among the officials who governed the region, and the local feuding found elsewhere in Scotland all compounded the problems of endemic outlawry, cattle raiding and the inaccessibility of the region to royal government. Furthermore, it was a region important to English interests and thus one in which external influences were brought to bear in a way that was often to the advantage of that power and not at all in the interests of either the Scottish government or the local border administration. As a region vital to English interests it was also one important to Spanish strategy and hence for a while the local feuds of the region became a tiny part of the great Counter Reformation struggle of the entire European continent.

This struggle was at its most intense on the Scottish west wardenry. Encompassed within this area was Annandale, Eskdale, Ewisdale, Nithdale, Galloway and very probably Wigtonshire, Dumfriesshire and Kirkcudbrightshire also fell under the jurisdiction of the warden in one way or another. Within the wardenry there were many other jurisdictions; sheriffdoms, regalities, stewardships, bailleries, baronies and burghs and to some extent they retained their powers and could not be bypassed by the warden. However, the office of warden was a powerful one, the most powerful regional office in the kingdom after the lieutenancies - details of which can be obtained from Rae<sup>10</sup> - and in the south-west of

10. T.I.Rae, The Administration of the Scottish Frontier 1513-1603, (Edinburgh, 1966), p 77-78.

Scotland it was certainly the office of greatest prestige and influence. Possession of the wardenry did not make a man the greatest figure in the locality, but it went a long way towards it, particularly if he already had a private base on which to build. The politics and thus the feuding of the south-west was about a struggle for control of that office between the established Maxwell family and the emerging Johnstone kindred, and it is within that struggle that one can see at work the various layers of conflict between local, national and international interests.

John, eighth lord Maxwell succeeded his brother in 1553 when he was only a two year old child. His inheritance made him one of the greater Scottish magnates in spite of his family not having yet aspired to the rank of an earldom. He was hereditary steward of Annandale and Kirkcudbright, he held the barony of Caerlaverock with its great castle in Dumfriesshire, the barony of Granane in Kirkcudbright, the bailleryship of the ecclesiastical regalities and baronies of the abbeys of Dundrennan, Tunland, Sweetheart and Holyrood, the provostry of Lincluden, the preceptory of Trailtrow, effective control of the burghs of Dumfries and Annan and customary possession of the West wardenry. He also held the tower of Langholm, had the keepership of Lochmaben castle and had a town house in Dumfries.<sup>11</sup> Nor was his power simply measured in land and office for he

11. Rae, The Administration of the Scottish Frontier, p 12, p 26.

was also chief of the largest kindred in the south-west which included among it lord Herries with his followers and a number of Maxwell families who had settled in Renfrewshire. Furthermore, Maxwell also had the obedience of a great number of lesser border families who sought his protection and even among the greater families like the Douglasses, Stewarts, Gordons and Johnstones there was a recognition of his pre-eminence. Well might the 1577 "Estimate" describe the Maxwells as a family of whom "Their power and livinge is greate."<sup>12</sup>

Like so many of his contemporaries, lord Maxwell's character eludes too close an examination, but he is more accessible than most. He never knew his father who had been a man of some significance in the first half of the century, a survivor of Flodden, a close confidant of James V, an early convert to the protestant religion and a collaborator with Somerset at the time of his death in 1552 before John Maxwell was born. The sixth lord Maxwell was succeeded by his eldest son who died a year later and thus it was as an infant that John inherited the Maxwell lordship. Leadership of the kin effectively passed into the hands of lord Herries, an ardent catholic and supporter of Mary, who led the family into reversing his cousin's pro-protestant stance. However, in spite of defeat Herries and the young lord Maxwell, who shared his kinsman's catholicism and conservatism, emerged

12. Estimate, p 19.

from the civil war unscathed. Lord Maxwell thus made his peace with the new order, but his catholic faith remained firmly entrenched and was to be a guiding principle in his political life for the next twenty years. He was also a man of action and violence. This violence and his tendency to be very indulgent of the violence of his followers made him greatly distrusted by English border officials and by the government in Edinburgh, one commentator describing him as a man of "No greate gouernment or iujement".<sup>13</sup> However, he was also a nobleman of refinement and taste, with many friends, and who could inspire admiration even in the protestant archbishop Spottiswoode.<sup>14</sup>

The government of the west march, which the Maxwell lords had come to recognise as theirs by right, was, however, about to be challenged by the laird of Johnstone who was able, like so many others, to cash in on the mid-century upheavals in local power balances. Sir John Johnstone of that ilk was also a minor when he succeeded his grandfather in 1567 and, like the Maxwells, his family supported the queen during the civil war, chiefly because of their connections with the Hamiltons. His lands, principally in Annandale, were not as extensive as Maxwell's, but they were still substantial enough to make him, along with Douglas of Drumlangrig, one of the three greatest land-owners in the south-west, and with

13. Estimate, p 34.

14. Spottiswoode, History, iii, p 447; see also Scots Peerage, vi, p 482-84.

his tightly bound and sizable kindred made him a man of considerable local power. Unlike the Maxwells, the Johnstones were chiefly a protestant family.<sup>15</sup>

Thus, while there had been confrontations between the two kindreds before the reign of James VI, both families fought side by side during the war and lord Maxwell's dominant position in the locality remained unchallenged. This dominance was underlined in 1573 when the regent Morton appointed Maxwell to the west wardenry, the previous occupant, Sir James Douglas of Drumlangrig, having found it impossible to fulfil the job without Maxwell's co-operation. However, Maxwell was also served warning that the regent did not intend to allow him to treat the wardenry as a private domain, and a year later included him in a list of border barons who had to give pledges for their good behaviour.<sup>16</sup> The laird of Johnstone was not long in making the usual complaints that he was being victimised by Maxwell and decided to test his authority by openly disobeying him. The privy council backed Maxwell completely and the laird soon found himself in prison. The incident was nothing more than a testing by Johnstone of how things stood in the locality, but both sides had gone as far as to cut one another's corns and Morton thought it wise to have them put their complaints to arbitration. This seems to have put an end to any further difficulties

15. Scots Peerage, i, p 248-52; Brown, "Bonds of Manrent", appendix, p 480, no 314; Fraser, Annandale, i, p 35-36, p 37-38.

16. R.P.C., ii, p 369.

between them for a few years, though in 1577 Johnstone again complained that Maxwell was treating him unfairly.<sup>17</sup> What one has here is nothing more than the fairly typical attempt by one landowner to free himself from the commission of another, in this case the warden, but Maxwell's power and authority remained intact and it is doubtful that he would even have considered Johnstone as a rival at this stage.

In 1577 Maxwell suddenly resigned from his office and was replaced by Morton's close kinsman, the earl of Angus, who was already lieutenant of the whole borders.<sup>18</sup> Maxwell's resignation followed a bitter row he had had with Morton who for years had been pressing him to give up the claims he had to two-thirds of the Morton earldom, a claim which the regent knew was a good one.<sup>19</sup> Morton seems to have been able to force Maxwell into his resignation and immediately imprisoned him in Blackness on the pretext that Maxwell was planning some unrest on the borders.<sup>20</sup> Maxwell was soon freed after finding caution, but the arbitrary treatment he had suffered from Morton had angered him, and not surprisingly he joined Atholl and Argyll in the Stirling coup a few months later.<sup>21</sup> As a reward for his support Maxwell was reinstated

17. Fraser, Annandale, ii, p 25, no 35; R.P.C., ii, p 421-22, 593.

18. C.S.P.Scot., v, p 227; R.P.C., ii, p 613.

19. W.Fraser, The Book of Carlaverock, (Edinburgh, 1873), i, p 221-33.

20. C.S.P.Scot., v, p 232; R.P.C. ii, p 631; Fraser, Pollok, ii, p 142, no 136.

21. Spottiswoode, History, ii, p 206.

as warden and Angus was relieved of his post.<sup>22</sup> As one has already seen happen so often it was local politics which defined Maxwell's and even Atholl's and Argyll's opposition to the central government, their alienation having been caused by what they considered to be undue interference in their local interests.

The coalition of interests which emerged to form the government of 1578-80 was reflected in the government of the west wardenry. With Argyll being appointed chancellor, Maxwell, as one of his faction, was able to hang on to the wardenry, but Morton's pre-eminence in the government meant that he had to accept lord Ruthven as a lieutenant on the borders and thus as his superior. Therefore, when Ruthven led a judicial raid on the borders in the winter of 1578 he reported back that Maxwell was negligent in his office, a criticism which could have been levelled at almost any Jacobean official.<sup>23</sup> Maxwell answered the criticism by arguing that "he had only the title of warden, and that the limitations of his charge and the exemptions granted to the gentlemen of the country, made the office needless and contemptable." He then told the council that if they wished him to continue with the job they would have to increase his powers. Faced with this ultimatum the council asked lord Herries his advice and though reluctant to fall out

22. R.P.C., ii, p 678-79.

23. R.P.C., iii, p 38, p 41, p 46.

with his chief, the elderly Herries offered some impartial proposals which he felt would provide for better government on the west borders. Lord Maxwell was very critical of these, especially the suggestion that Lochmaben castle should be considered the warden's headquarters, something he opposed on the grounds that the castle was his and not transferrable with the office. He also objected to the idea of some degree of power sharing with the Johnstones. However, the council opted for Herries' advice and when Maxwell refused to accept this, even after some concessions to his own demands, Herries was appointed in his place.<sup>24</sup>

Though Maxwell's removal was in part due to party faction at court there were serious grounds for the criticisms made against him. A John Bek complained that he had been held in Caerlaverock castle and tortured in order to force him to renounce a lease he held, while Alexander Carlisle complained that though he and another man had both been taken prisoner for fighting in Dumfries, the other, a dependant of Maxwells, had been freed while he had been held for almost six months.<sup>25</sup> John Smeaton of that Ilk wrote to Maxwell of Pollok about an issue between them, warning that "I will persew na thing befoir the Warden, becais they men ar his Lordschippis servandis, and I knaw he will be a parsiall judge".<sup>26</sup> The

24. R.P.C., iii, p 73-74, p 75-76, p 77-86; Spottiswoode, History, ii, p 259.

25. R.P.C., iii, p 40, p 24.

26. Fraser, Pollok, ii, p 146, no 142; p 147, no 143.

effect of all this had been, as Maxwell rightly identified, that he was being by-passed as men sought exceptions from his commissions from the government. Chief among those local critics had been the Johnstones who in 1578 had bound themselves closer together in an alliance providing for them governing themselves without outside interference.<sup>27</sup> It was their leadership of dissent in the south-west which prompted Herries to suggest that they be included as junior partners in administering the wardenry. Lord Maxwell, however, would never accept any diminution of his power and was in effect daring the government to try and rule the region without him.

Maxwell was soon to find that his friends in Edinburgh lacked the influence or the will to give him any political protection and in the months which followed Morton continued to tighten the screw against him. On the whole Maxwell cooperated with the stream of orders for him to find caution and the like, but he refused to give up Lochmaben castle when ordered to do so.<sup>28</sup> In January 1579 his tack for the castle was revoked and he was ordered to surrender it, but Maxwell simply ignored the order and when lord Herries went to collect the rent from the castle's tenants they refused to pay them to anyone but lord Maxwell.<sup>29</sup> By April though, he had relented on the castle itself, Herries was after all

27. Fraser, Annandale, i, p 35-36.

28. R.P.C., iij, p 84, p 168, p 767.

29. ibid., p 89, p 94, p 133-34, p 170.

his kinsman and dependant, but on the tack he would not compromise and was eventually ordered to ward in Dundee. From there he was again moved to Blackness and then freed to open ward, firstly to Inverness and then to Edinburgh under pain of £20,000.<sup>30</sup>

Unable to handle this strain between his chief and the government, Herries himself resigned at the end of August. Now Morton had a much clearer opportunity to impose his own man and he picked on the ambitious Johnstone who was only too glad to accept the patronage of such a powerful court politician.<sup>31</sup> Suspicions that the whole affair had been cleverly manipulated in order to manoeuvre the Maxwells out of the government of the west wardenry were soon being expressed, and almost immediately trouble erupted between lord Maxwell and the new warden.<sup>32</sup> Maxwell's Lochmaben tenants resisted Johnstone's demands on them as they had Herries, and early in 1580 there was a fight between members of the two kindreds in Dumfries in which a number of men were hurt. Both sides were ordered to assure one another in what was the first official recognition that a feud existed between them.<sup>32</sup> Three months later Maxwell was accused of trying to break the assurance by convocating his men to oppose the warden and by withholding documents relating to the warden's office.<sup>33</sup> This obstructionism by

30. R.P.C., iii, p 195, p 232, p 240, p 245, p 267, p 273.

31. ibid., p 207; Fraser, Annandale, i, p 40-41.

32. R.P.C., iii, p 216, p 265.

33. ibid., p 286-87.

Maxwell continued unabated throughout the spring of 1580, but while he was able to wring some concessions from the council, they continued to back Johnstone against him and in the summer he decided to go to court himself.<sup>34</sup>

His arrival coincided with that of Esme Stewart who very quickly gained the king's attentions and favour. There he attracted the attention of Argyll who had continued to hover menacingly in Morton's shadows and had been quick to recognise the Frenchman's political value. Maxwell also saw his opportunity and drew close to Stewart thus continuing his political alignment with Argyll and Morton's other opponents. Thus, when Esme Stewart was appointed high chamberlain it was no surprise that one of the first to be appointed as an extraordinary gentleman of the chamber was Maxwell.<sup>35</sup> Then at the end of the year, when Esme Stewart, captain James Stewart and Argyll finally moved against Morton, Maxwell gave them his full backing just as he had in 1578. Now he was finally able to settle his account with Morton and was granted the title of earl of Morton as a reward for his services to the new rulers of Scotland,<sup>36</sup> chief of whom was Esme Stewart, now duke of Lennox, with whom Maxwell partitioned the lands of the Morton earldom.<sup>37</sup>

34. R.P.C., iii, p 288, p 289, p 297-98, p 298-99, p 302, p 304-05.

35. Spottiswoode, History, ii, p 269.

36. ibid., p 280; Fraser, Carlaverock, ii, p 490, no 111.

37. Fraser, Carlaverock, ii, p 490, no 111.

Not surprisingly Johnstone's position soon became untenable without the support of Morton and in April he was stripped of his office in spite of having been a fairly assiduous warden during the time he held it.<sup>38</sup> A week later Maxwell was reappointed and within days Johnstone had been outlawed and charged with various acts of negligence, just as Maxwell had been in 1579.<sup>39</sup> Maxwell himself quickly re-established himself in the wardenry, appointing Robert Maxwell of Cowhill as his deputy and Herbert Maxwell of Cavens as captain of Langholm tower.<sup>40</sup>

The politics of the locality had thus been sucked into the factional struggles of the court, but with Morton's execution any hope for Johnstone seemed to evaporate and the real disparity of power between him and Maxwell was again exposed. Furthermore, Maxwell was now firmly locked into the fortunes of the new court favourite, Lennox, thus hopefully securing himself from being undermined from Edinburgh as he had constantly been under Morton. The price of this of course was that when Lennox fell Maxwell went with him, and in August 1582, at the time of Lennox's fall, he wrote to Pollok that he must know that "sindrie tynis I haiff bene mekill detbund" to Lennox for "divers and sindrie plesouris schawin unto me quhen I had to do". Therefore, when Lennox was ousted by the Ruthven coup that summer Maxwell was one

38. R.P.C., iii, p 374 and see also p 352.

39. ibid., p 376.

40. C.B.P., i, p 71-72. Cowhill had recently reaffirmed his allegiance to Maxwell, Brown, "Bonds of Manrent", appendix, p 504, no 32.

of those who tried to rally support for him, but his efforts were in vain and both fled to France where Lennox died after which Maxwell returned home.<sup>41</sup> With Gowrie (lord Ruthven, earl of Gowrie) being the man who had opened the case against Maxwell in 1578, it must have been no surprise to find himself once again dismissed in the new round of purges initiated by Ruthven and his rebel conspirators.<sup>42</sup>

With Lennox's fall Maxwell was thrown back onto his own considerable resources. He was not dismissed immediately, but was ordered to appear before a convention of the nobility and answer for his conduct as warden over the previous year and a half. Maxwell certainly considered going, but finally his suspicions got the better of him, he refused to attend, was denounced, and a week later was deprived of his office.<sup>43</sup> His enemies quickly added their own complaints and further denunciations on other charges followed, while in December Johnstone was appointed warden for the second time, having latched onto the Ruthven faction much as Maxwell had to Lennox in 1580.<sup>44</sup> Johnstone had been lying low during the previous eighteen months having spent a time in ward after undergoing investigation.<sup>45</sup> He and Maxwell had exchanged

41. Fraser, Pollok, ii, p 149, no 146; see also Papiers D'État Relatifs A L'Histoire De L'Écosse, ed., A. Teulet, (Paris, 1831), ii, p 499-500, p 563.

42. Spottiswoode, History, ii, p 298-99.

43. Fraser, Pollok, ii, p 150, no 147; R.P.C., iii, p 527-28, p 531.

44. R.P.C., iii, p 534, p 539.

45. Fraser, Annandale, ii, p7, no 9; R.P.C., iii, p 396, p 409, 434.

bonds of assurance, but litigation between them had continued until it was once again interrupted by the wider political context.<sup>46</sup> On accepting office this time Johnstone added the condition that he would not be held responsible for the mess Maxwell had allowed the wardenry to fall into, a criticism which though highly suspect may again have had a degree of truth in it.<sup>47</sup> However, Gowrie and his friends were much less secure than Morton had been and Johnstone was to find his second term of office even more trying than the first.

Once again Maxwell's best weapon was non-co-operation and blatant obstruction of the warden. At the beginning of the new year he called a meeting of his friends at Dalkeith "for assisting of us be zour counsell, as ze salbe requyritt in our effares presentlie ado in court".<sup>48</sup> The result of this was a fairly widespread attempt to make the wardenry ungovernable. Maxwell again held onto Lochmaben and to the wardenry records for as long as was possible, and in February 1583 Johnstone wrote to lord Scrope, his English opposite number, telling him that Maxwell had ordered his servants and dependants to avoid co-operating with him, though he added that the king had granted him an additional fifty men to get his job done.<sup>49</sup> Scrope in fact had no preference at this time and thought that both men were ill

46. R.P.C., iii, p 466, p 487.

47. ibid., p 539.

48. Fraser, Pollok, ii, p 150, no 148.

49. R.P.C., iii, p 539-40; C.B.P., i, p 95.

affected towards England. He was also of the opinion that Maxwell was not interested in good government of the wardenry, and while Johnstone had a better record on this he had not the power to act as he might wish to. Furthermore, Johnstone found himself tied up in a feud with Drumlangrig who, no more than Maxwell, liked the idea of him being warden and was working in concert with Maxwell to wreck the government of the wardenry.<sup>50</sup> Thus, by the autumn of 1583 it was being reported by English observers that Johnstone's authority on the west march was being held in open contempt.<sup>51</sup>

Maxwell had thus taught the government a lesson in the exercise of power. Any early modern government could only effectively govern away from its centre if it had either the sufficient military muscle to impose its will on a locality or sufficient co-operation from the local power within it. Sending fifty soldiers to Johnstone did not give the Ruthven regime the former, and on his own against Maxwell, Johnstone could not supply the latter. Control of the south-west therefore remained in Maxwell's hands, whatever Edinburgh may have decreed. Like Morton before him and Arran after him, Gowrie misunderstood the balance of power between localities and central government and sought to impose the will of the latter on the former without the means to do so. His failure was both inevitable and complete.

50. C.B.P., i, p 106; R.P.C., iii, p 607-08.

51. R.P.C., iii, p 567-68; C.B.P., i, p 110.

The replacement of Gowrie and his friends by Arran in the summer of 1583 did not result in a change of warden. Initially Arran seems to have decided to leave Johnstone in his office while seeking to woo both him and Maxwell with even handed treatment. Thus, the privy council backed complaints by Maxwell's clients on the Dumfries town council against Johnstone and also ordered the latter to hand back Langholm to lord Maxwell, while at the same time Johnstone was benefitting from patronage from Arran. In 1584 an order to John, earl of Morton (Maxwell) principal steward of Annandale and John Johnstone of that ilk, warden of the west marches to jointly deal with certain business reflected this compromising approach.<sup>52</sup>

However, events took yet another turn in the spring of that year when Mar and the master of Glamis attempted a coup against Arran and both Maxwell and Johnstone were sent for by the king to help him suppress it. The coup failed, but only a few hundred men from the western marches turned up to support the king and all of these were Johnstones. The warden had an obvious stake in the continuation of Arran's government, but while Maxwell did not actually oppose him, he was waiting to see how the wind would blow, since a new regime might get him back his wardenry. As soon as news of the collapse of the coup became known Maxwell sent his excuses, but he, with Herries and Gordon of Lochinvar, had

52. R.P.C., iii, p 567, p 590-91, p 595-96, p 598; C.B.F., i, p 110; Fraser, Annandale, ii, p 9, no 11; p 8, no 10.

offended the king and let Arran know whom he could really depend upon in the region. From that point onwards Arran made Johnstone his sole client in the locality, and the laird increasingly found himself tied to the fortunes of the regime in Edinburgh, just as he had been under Morton.<sup>53</sup>

This political rift between Arran and Maxwell was not the only difference between them and only made their growing estrangement more apparent. Arran had for some time been putting pressure on Maxwell to get him to exchange some of his lands in Renfrewshire with himself so that he could consolidate his own possessions there, but Maxwell had consistently refused and had thus angered the chancellor. When this was followed by Maxwell's failure to support him in 1584, Arran decided to undermine Maxwell within his own locality and replace him with the laird of Johnstone. His first step in doing this was to persuade the king that Johnstone would make a better provost of Dumfries than lord Maxwell and he thus instructed the burgh to elect Johnstone to that office as the king's candidate.<sup>54</sup> Furthermore, Johnstone's powers were enhanced when he was promoted to lieutenant of the west march, Nithsdale and Galloway, giving him powers which, on paper at least, "never any warden had before him".<sup>55</sup> The sun appeared to

53. Fraser, Pollok, ii, p 155, no 153; C.B.P., i, p 134-35; Maxwell did finally take measures against the rebels, but only after they had fled to England, C.B.P., i, p 135; Teulet, Papiers D'Etat, iii, p 409, p 410.

54. Spottiswoode, History, ii, p 325-26; Historie, p 209.

55. C.B.P., i, p 150.

have set upon Maxwell dominance of the south-west, but lord Maxwell was not prepared to accept this interference in his locality by Edinburgh and stepped up his wrecking tactics to outright opposition to Johnstone. The Dumfries provostry had been "in the disposition and choise of the Lorde Maxwell, with thassent of the burgesses", and was thus a prize he would not give up easily.<sup>56</sup> He therefore packed the burgh with his own men so that the warden was unable to enter. Johnstone turned back, some of his friends in the town were set upon by the Maxwells and the provost continued to be a Maxwell nominee.<sup>57</sup> It was yet another defeat for the warden and even more seriously an exposure of just how ineffective the king's will was in the area.

The credibility of the regime was now being tested in the south-west. Though he had to face an inquiry about his conduct as warden, Johnstone was relieved to find that Arran had not lost any of his determination to undercut Maxwell's position in the locality.<sup>58</sup> On his return to court he was rewarded with the teinds of Lochmaben castle and the old Douglas lands of Parkhead, thus increasing his dependancy upon Arran. In the middle of February 1585 the council issued a proclamation for the fencibles on the west march to prepare for actions against rebels in the Debatable Lands and against

56. C.B.P., i, p 151.

57. Historie, p 209; R.P.C., iii, p 767-68.

58. C.B.P., i, p 164; Johnstone was also having difficulties with the middle march warden, Cessford, C.B.P., i, p 167.

lord Maxwell who was, at the end of the month, denounced, ordered to ward, hand over his castles and have his men appear before Johnstone.<sup>59</sup> The full authority of the king was being thrown into the struggle in the locality which was rapidly taking on the appearance of a test case between Arran and his opponents in the localities. As one might expect, Maxwell ignored the royal orders and even freed some prisoners that the warden had taken. Johnstone may have had plenty of backing in Edinburgh, but as lord Scrope observed, his power on the borders was insignificant, he being "hardelie hable to susteyn without speedye relieff from the King".<sup>60</sup>

At the beginning of April Maxwell showed just how true this was. With Johnstone still at court trying to get money for a campaign against Maxwell, the latter's brother, Robert Maxwell, went with a party of four hundred men, and "have ridden upon the Johnstone owne landes tenants and speciall freindis, even at and about his cheiff house called the Loughwoode...". The Maxwells thus fully exposed Johnstone's weakness, burning his principal castle, despoiling his lands and those of his friends and dependants and slaughtering a number of his tenants. Maxwell's message to the men of the locality was that only his protection was adequate, while to the king he was rubbing in the point that only he had the power to govern in the wardenry.<sup>61</sup> However,

59. Fraser, Annandale, ii, p 49-50, no 52; p 11, no 13; R.P.C., iii, p 721-22, p 725.

60. C.B.P., i, p 174.

61. ibid., p 175, p 178, p 179; Moysie, Memoirs, p 52.

the king and Arran were only further incensed by what was now appearing to be open rebellion and issued a proclamation against communicating with lord Maxwell and revoked his grant of the Morton earldom. Preparations for a muster were again announced but as yet nothing more concrete had been done and Maxwell was free to act as he wished.<sup>62</sup> Robert Maxwell continued to lead devastating raids on the Johnstones, burning another twenty houses and leading off vast quantities of cattle and spoil while lord Maxwell himself led his forces against strongholds in the region which were not secured by his men or those of his friends. The largely Johnstone town of Lockerbie was attacked and the houses there were stormed, the Johnstones in them being either hung or taken away to Dumfries.<sup>63</sup> When Johnstone's son attempted to rally his men in a retaliatory raid on a Maxwell village, lord Maxwell rode there and drove him out, killing one man, taking many prisoners and then going on "with a good nombre both of horsemen and footmen, with dromme, and banners displayed" to burn a number of Johnstone villages while his brother carried out a similar foray along the course of the river Dryfe.<sup>64</sup> The Johnstones later evaluated their losses on the 15th and 16th of May at over 100,000 merks as well as many dead and wounded.<sup>65</sup> More importantly Maxwell had inflicted a crushing defeat on the king and Arran's regime and what had begun as a feud for

62. R.P.C., iii, p 733-36.

63. C.B.P., i, p 180-81.

64. *ibid.*, p 181.

65. Fraser, Annandale, ii, p 54-55, no 57.

local hegemony had become a clash between the crown and a local magnate.

The failure to act more decisively against Maxwell in the spring had cost Arran and Johnstone dearly, but they now became more urgent in their response to his latest outrages. The privy council ordered that £20,000 be found to fund a campaign against him, but the presence of plague in Edinburgh and other towns prevented an army being raised and once again military operations were postponed.<sup>66</sup> More clandestinely Arran tried to detach some of Maxwell's friends from his side, issuing a proclamation which declared lord Herries' (now the fifth lord) innocence in Maxwell's treason and persuading Stewart of Garleis to serve against Maxwell.<sup>67</sup> Colonel Stewart was sent down to visit Cessford and see if he could raise support on the middle march, but the latter was warned off by Maxwell who threatened him with feud if he interfered.<sup>68</sup> Johnstone was able to get 200 men armed with guns and a further 100 horsemen from the king, but when he approached lord Scrope and asked for his co-operation he found the English warden evasive and unhelpful. Scrope had in fact already been in communication with Maxwell whom the English government was beginning to look upon with some sympathy. At this stage, they had little confidence in his success and offered him refuge should he be driven

66. R.P.C., iii, p 741.

67. ibid., p 742, p 745.

68. C.B.P., i, p 179.

out of the country,<sup>69</sup> but Maxwell had little thought of retreat and held a meeting with his friends, including Herries and Garleis, at which they decided to continue the offensive against the warden. Breaking up their conference Maxwell led a small army of some seventeen hundred men to the Johnstone town of Moffet, captured it and used it as a base for further raids before marching on to Lochmaben which was being held by Johnstone's son, laid siege to it and awaited the arrival of the laird to relieve it.<sup>70</sup>

After months of trying to raise support from the king, Johnstone was finally able to get nothing more than enough to pay for one hundred armed men. With these and a number of commissions ordering the barons of the middle and west wards to obey him, he set out for Annandale going on ahead himself and leaving the royal soldiers to follow.<sup>71</sup> However, lord Maxwell's intelligence was well informed and he sent his brother to intercept the soldiers, killing both their captains with many of their men and sending the rest in flight back to Edinburgh.<sup>72</sup> At the same time Maxwell himself finally captured Lochmaben, though young Johnstone appeared to have escaped, and followed this up with the taking of Boneshaw castle, Annan, Kirkconnel and the capture of the warden himself.<sup>73</sup>

69. C.B.P., i, p 182.

70. ibid., p 183.

71. ibid., p 183; R.P.C., iii, p 745-46; Fraser, Annandale, ii, p 11..

72. Spottiswoode, History, ii, p 325-26; Historie, p 209-10.

73. C.B.P., i, p 184, p 187; Spottiswoode, History, ii, p 326; C.S.P.Scot., viii, p 7.

Maxwell's victory had been both spectacular and total. With almost contemptuous ease he had swept aside the Johnstone challenge to his authority in the locality and completely laid bare the inability of the Arran regime to enforce royal authority in a locality where the local magnate was willing to oppose it. In effect Maxwell had placed himself beyond royal authority. The king could not afford to raise an army of his own to fight Maxwell and a great many of the nobility would not support him because they too were unhappy with Arran. Others like the Hamiltons, Douglasses, Mar and Glamis who were in exile, saw in Maxwell's successful resistance the inspiration for their own return to Scotland. For Maxwell himself the victory in the locality had its own momentum, drawing him on to a wider rebellion against the faction which had tried to use Johnstone against him.

In England too, Maxwell was growing in favour with those who distrusted Arran's guidance of the young king. By late May Selby had begun to suspect that Maxwell might be starting something bigger than even he imagined if other localities followed his example in rejecting royal authority.<sup>74</sup> Thus, while Scrope continued to appear friendly to Johnstone, he refused to give him any help, waiting to see how matters would develop.<sup>75</sup> When Maxwell finally defeated the warden in July and began to put out feelers to Arran to see what terms he would offer him, the English actively campaigned to prevent

74. C.B.P., i, p 183.

75. ibid., p 184.

it, for, as Wotton told Walsingham, Maxwell was more use to them as a rebel in league with the exiled lords already in England.<sup>76</sup> Of these the Hamilton brothers had by this time been in contact with Maxwell while the earl of Bothwell, who had fallen out with Arran, was also in communication with him. Scrope and Forster were also doing all they could to encourage the Scottish border lords to break with Arran.<sup>77</sup> Then on the 29th of July, lord Russell was killed in an incident which embarrassed Arran and brought the English more fully to a commitment to oust the chancellor. Maxwell swayed for a short time between negotiating with Arran and rebellion and finally decided to stick with the latter, and to "persiste in this couse begonne".<sup>78</sup>

For the laird of Johnstone it was the end of his dreams. He was sent to the dungeons at Caerlaverock while a gibbet was built in Dumfries and Maxwell threatened to hang him on it if his friends did not surrender the few remaining strongholds on the west march not under his authority.<sup>79</sup> He was finally freed on the condition that he accede to all Maxwell's demands, dying shortly afterwards "for grieff of the great victorie, that his enemie had obtenit over him".<sup>80</sup>

76. C.S.P.Scot., viii, p 7.

77. C.B.P., i, p 187.

78. *ibid.*, p 190, p 192.

79. *ibid.*, p 191, p 193.

80. Historie, p 210; Fraser, Annandale, ii, p 48-49, no 51; an abortive attempt was made to free Johnstone in which Robert Maxwell was for some reason implicated and as a consequence was exiled by his brother to Galloway, C.B.P., i, p 197.

A letter from the master of Gray to Johnstone just before his death expressed regret that he had decided to agree with Maxwell, telling him that it would be much more in his interests to serve the king.<sup>81</sup> It must have seemed a little ironic to Johnstone who had been broken because he had allowed himself to be manipulated by politicians like Arran and Gray who had failed to deliver their end of the bargain. Johnstone died a broken man, but his political masters were not long in following him.

The surrender of Lochmabell castle to Maxwell signalled the end of all resistance on the march. After garrisoning the castle Maxwell held court there and set about raising more men, being joined by lord Herries who now came out in open opposition to Arran and the king.<sup>82</sup> Paralysed and isolated Arran could only watch while Maxwell and other border lords like Bothwell, Hume and Cessford acted as a screen behind which the exiled lords were given English assistance in launching a coup. Finally in late October they marched on Stirling, and after some fighting took the town, forcing the king to negotiate a surrender.<sup>83</sup> Arran fled and a reshuffle took place among the king's ministers with Maxwell being rewarded with the return of the west wardenry and the custody of colonel Stewart.<sup>84</sup>

81. C.S.P.Scot., viii, p 92-93.

82. C.B.P., i, p 194, p 196.

83. *ibid.*, p 201, p 208, p 210; Historie, p 214.

84. C.B.P., i, p 211-12; C.S.P.Scot., viii, p 174-75; A.P.S., iii, p 398-99.

To argue that Arran fell from power because of his greed for Maxwell's Renfrewshire baronies would be to grossly oversimplify the many factors which were brought into play in 1585, but there is some truth in it. It was Morton's meddling in local affairs which brought him down in 1578, and in the same way Arran's contempt for local interests and his over-estimation of the extent of royal authority cost him his power. With Morton in 1578 and Arran in 1585, Maxwell reacted violently to any undue interference in his affairs. He accepted the king's right to appoint wardens, but not to interfere in what he regarded as his private interests, Lochmaben castle, the Dumfries provostry and the overlordship of most of the men of the locality. Johnstone could be warden if he wanted, but Maxwell showed that he was not able to carry that load unless the crown did interfere in the balance of power within the locality. For a man of his power Maxwell had little interest in the goings on of the court and cared little who ruled there. In foreign policy and in religion he was closer to Arran than to the faction which replaced him, but the latter had a very high ideal of royal authority, moreso than his client Maitland, and it was here that the two clashed. The initial disagreement between them may have been over the exchange of lands and Arran's refusal to reinstate Maxwell as warden, but the chancellor's methods of putting pressure on Maxwell elevated the struggle to one of royal authority against

local power, and with the failure of the former, the way was paved for a relatively easy rebellion.

Up until this point Maxwell was acting as the political conservative against the interference of central government, but his success in 1585 inspired him to seek even greater independence from the king and adopt a radical stance himself. Even as decentralised a state as Scotland was could not allow local magnates to be in control of religion and foreign policy, and when Maxwell overstepped the bounds in these issues he quickly found himself being disciplined by a more united political concensus of king and nobility. This rapid transformation in Maxwell's fortunes from being one of the chief architects of the new administration to being regarded as a common enemy arose from his religious convictions. In fact those convictions had led Maxwell to involvement in Counter Reformation politics at least three years before he took his stand in 1586. Since 1582 he had been the subject of interest in France where his support for the duke of Lennox had been approvingly noted. On Lennox's fall, Maxwell had accompanied him to France and it may have been then that he formed a relationship with the duke of Guise which led to James VI entrusting him with business between himself and the leader of the French catholics a year later. Certainly Maxwell was by 1583 at the centre of a plot to raise a rebellion on both sides of the borders while a Spanish army invaded England,

and in the context of this plot he was known to Guise, to agents of Philip II and was being discussed in Rome.<sup>85</sup>

In the winter of 1585-86 Maxwell decided to make a more public display of his commitment and claimed that in return for his help in ousting Arran, the king had agreed to allow him a measure of religious freedom. Whether this was a trap set by the king or permission for him to practice his catholicism in private one does not know, but it certainly was not what Maxwell interpreted it to be. Thus, in the new year of 1586, it was reported that he, with Herries and many of the gentlemen of the south-west, had "assembled at a Masse in publique manner at the Colleidge aboute a myle from Dumfreis".<sup>86</sup> A second mass followed at Maxwell's house in the burgh, the protestant minister was forbidden to preach and "yt is said that this infecton spreadeth yt selfe into divers other places in Galloway".<sup>87</sup> Furthermore, Maxwell had retained a sizable body of paid horsemen and foot in arms to protect what was in effect an attempt to establish the Counter Reformation in south-west Scotland.

Rumours of similar activities among Huntly and the northern lords, of French subsidies, and of the multiplication of masses, were soon spreading and causing nervousness in Scotland and among the English border administration. However, the king

85. Teulet, Papiers, ii, p 499-500, p 563; iii, p 362, p 364, p 366-67, p 669-70.

86. C.B.P., i, p 216.

87. ibid., p 217.

acted decisively and ordered Maxwell to appear in Edinburgh to answer the charges against him. After an initial excuse, Maxwell obeyed the order and was held in ward in the castle to which he had to be conveyed in darkness because of the popular anger against him.<sup>88</sup> His name was soon being linked with a Jesuit agent, "a verie greate man with Maxwell", who "doth draw him on in this matter of the masse", and the vultures began to gather in the expectation that an example would be made of him.<sup>89</sup> Angus demanded the restoration of the Morton earldom to the Douglas family and for the second time Maxwell was stripped of the title, while the new laird of Johnstone turned up at court and attached himself to Angus, hoping for some restoration of his family's fortunes in the wake of Maxwell's fall.<sup>90</sup> The king, however, was reluctant to do more than remind Maxwell that there was a limit to his power and that in the sphere of religion he would tolerate no divergence from the faith of the established church. At the end of March French pressure resulted in him being freed to open ward,<sup>91</sup> the threat of an assize was lifted, and Johnstone was sent for with the intention of reconciling him with Maxwell and ending the feud.<sup>92</sup>

88. Calderwood, History, iv, p 489; C.B.P., i, p 218.

89. C.B.P., i, p 220.

90. ibid., p 218; C.S.P.Scot., viii, p 216.

91. Teulet, Papiers, ii, p 768; a few months later Maxwell along with Huntly, Montrose, lord Claud Hamilton and Crawford gave assurances to the French of their determination to work for a restoration of French influence in Scotland, Teulet, Papiers, ii, p 780, p 783.

92. C.B.P., i, p 221, p 222; C.S.P.Scot., viii, p 282.

Maxwell's fall had allowed the young laird to recover some of what had been lost during the previous year and to extract some revenge from the Maxwells. From his prison in Edinburgh Maxwell had in fact continued to direct operations against the Johnstones, but in one of these the latter finally had some success of their own, ambushing a company of royal soldiers stationed on the march under Maxwell's command and killing or capturing most of them.<sup>93</sup> Johnstone followed up this success with raids of his own, burning the house of Maxwell's dependant, Jardine of Applegarth, and ravaging a dozen Maxwell villages, "to the great impoverishment of the poor commons".<sup>94</sup> Though still restricted in his movements, Maxwell acted where he was and had Johnstone denounced for the slaughter of his men, claiming that the laird had "maist barbarouslie cuttit the throttis of the deid personis with braig knyveis; and utheris, eftir they were takin prisonaris, be sum of thame wer murdrest and slane tua houris eftir thair taking".<sup>95</sup> While he was determined to exploit Maxwell's temporary weakness as much as possible, Johnstone knew that he could not afford to flout the king's authority himself, and after trying the royal patience for over a month he came in at the end of April, both men signed assurances and he too was held prisoner.<sup>96</sup> By now the Maxwells had recovered some

93. R.P.C., iv, p 55.

94. C.B.P., i, p 222-23.

95. R.P.C., iv, p 55; C.S.P.Scot., viii, p 308.

96. Moysie, Memoirs, p 57; C.S.P.Scot., viii, p 364.

of their confidence and though lord Maxwell continued to be held in Edinburgh, Herries, Robert Maxwell and Douglas of Drumlangrig once again unleashed all his power against the Johnstones and their allies, even striking into England against the Grahams who were dependant upon the laird of Johnstone.<sup>97</sup> Thus, in spite of the holding of both chiefs the feud continued to rage, the only consolation being that it had lost the deeper political implications of the year before. Both men were therefore forced to agree to participate with the king in a planned judicial raid on the march where there was now no government of any sort in evidence.<sup>98</sup>

In fact the raid did not take place until November, the more immediate question being was who to appoint as warden, an office from which Maxwell had again been removed at his fall earlier in the year. Johnstone's behaviour during the months which had followed had shown that he was no more to be trusted to restore order than Maxwell, and besides, like his father, he had not the power to the job properly anyway. Thus, as in so many other localities the king was forced to turn back to the powerful magnate and ask him to resume his duties. To Scrope's dismay Maxwell played hard to get so that "every laird, gentleman and borderer rides against the other", a much worse condition than having to put up with Maxwell's own disorders and religious inclinations.<sup>99</sup> However, in

97. C.B.P., i, p 224, p 225, p 227.

98. R.P.C., iv, p 76-77, p 84-85, p 89, p 92.

99. C.B.P., i, p 229.

August he finally accepted and almost immediately returned to his usual malpractices on the west march, leaving behind a much more secure court position which rested upon a marriage alliance between his eldest son and a daughter of lord Hamilton, the man he had helped restore to power in 1585.<sup>100</sup>

Yet while Scrope may have been gratified that Maxwell was better than anarchy, Walsingham was less easily satisfied. Maxwell's overt catholicism in 1586 had made him the subject of close English scrutiny as Walsingham sought to uncover the international Counter Reformation conspiracy which he believed must lie behind it. In March Scrope wrote to him apologising because he had been unable to identify any connections between lord Maxwell and the Jesuits but that he would follow up whatever leads he had.<sup>101</sup> In fact throughout 1586 Maxwell had continued to plot with the other catholic magnates to 'free' the king from his protestant advisors. Again it was the duke of Guise who was in communication with Maxwell, lord Claud Hamilton and Huntly, the leading catholic nobles in Scotland, but by now Philip II himself had shown some interest in the scheme.<sup>102</sup> However, it was Maxwell who was singled out by Mendoza, the Spanish ambassador in France from 1584, for having stressed that while strong native

100. C.B.P., i, p 230, p 232; R.P.C., iv, p 109; Moysie, Memoirs, p 58.

101. C.B.P., i, p 223.

102. Teulet, Papiers, iii, p 412-13, p 414-15, p 416-17.

catholic support could be expected, Scotland would not return to the catholic fold without outside intervention. Mendoza was therefore busy trying to get the one hundred and fifty thousand écus promised by Guise to pay for an expedition.<sup>103</sup> Philip II had by this time received the letters from Maxwell, Hamilton and Huntly assuring him of their support for his interests and the king had himself written to Guise about it, suggesting that he discuss its feasibility with Parma.<sup>104</sup>

Both England and Spain were therefore taking Maxwell very seriously indeed by the autumn of 1586. By October Scrope had evidence that he was in communication with the Jesuits and was continuing to hear the mass in private, but he was still unable to dig any deeper.<sup>105</sup> Some attempt to rather clumsily buy Maxwell and the others with a pension had meanwhile been turned down and Elizabeth switched to a more aggressive policy, trying to get James VI to banish these catholic lords.<sup>106</sup> James, however, ignored the English pressure and in November Mendoza was able to report more conversions by the Jesuits in Scotland among some highly placed men at the court.<sup>107</sup> One of these was in fact the captain of the guard, colonel Stewart, a man who had been both prisoner and jailor to Maxwell during the previous

103. Teulet, Papiers, iii, p 431-33.

104. *ibid.*, p 471-72.

105. C.B.P., i, p 235.

106. Teulet, Papiers, iii, p 502-03.

107. *ibid.*

year.<sup>108</sup> In December the colonel turned up in Paris, presumably on some business of the king's, though also to pass on messages to Mendoza from the Scottish catholic lords. Given the king's subtlety in his dealings with Elizabeth it is even possible that he too was well aware of what colonel Stewart's real business was and he may have been allowing the catholic lords to open up indirect channels with Philip II for a projected invasion of England. Certainly the Scottish lords themselves were convinced that James would in time approve of their plans, and as late as 1589 Huntly was to be genuinely surprised by the king's refusal to join him in a revolt against his own officials and the protestant establishment. However, in 1586 colonel Stewart told Mendoza that their aims were firstly to wrest the king away from his present advisors, recover their own freedom of conscience, and in time re-establish the catholic faith throughout Scotland.<sup>109</sup>

In spite of all this international intrigue and of having a spy "in such favour with Maxwell and Herries as he had never had before in Scotland", Scrope had nothing more concrete to report on Maxwell than his involvement in some illegal cross-border traffic by Englishmen and the fact that he was pacifying most of his local feuds as though in preparation for something on a wider scale.<sup>110</sup> Early in 1587 more important information came to light when it became known to England that Maxwell had

108. Stewart had also added his voice to the French in getting Maxwell freed, C.B.P., i, p 221.

109. Teulet, Papiers, iii, p 510-24. For 1589 see above vol ii, p 361-66.

110. C.B.P., i, p 235, p 236.

a catalogue of the names of all the important catholics in England and kept in contact with them through a network of Jesuits who often slipped across the border to take advantage of his protection.<sup>111</sup> Maxwell was thus coming to represent a fairly sinister figure in the eyes of Walsingham and his colleagues, even though they were far from knowing the full extent of his activities. What was also unknown to them was that Parma had virtually vetoed the elaborate plan which the Scottish lords, Guise, Mendoza and even Philip II had been concocting during the previous three years on the grounds that his resources were already over-stretched without opening up yet another front. In spite of Mendoza's detailed arguments and even Maxwell's guarantee that the Spanish could land an army at a port in Kirkcudbright, Parma's diplomatic, strategic and logistical objections won the day and the plan was shelved.<sup>112</sup>

In the autumn of 1586 though, Maxwell was still the warden of the west march and supreme in that region. In November some check on his power was made when Angus was appointed lieutenant of the entire borders, and was given a small force to assist him in his duties.<sup>113</sup> It was a move designed to make the wardens more accountable, and in the vigorously protestant Angus the king had a man with the will and the power to keep Maxwell, who appears to have been relieved of

111. C.B.P., i, p 241.

112. Teulet, Papiers, iii, p 510-24.

113. R.P.C., iv, p 111; C.B.P., i, p 239.

his office, under some degree of restraint. The two men managed to achieve a fairly frictionless working relationship, and with Maxwell and Johnstone also having agreed to allow matters between them to cool for a period at least, the wardenry was quieter than it had been for some years.<sup>114</sup> Satisfied with his success, and probably disenchanted with the job anyway, Angus resigned his office in the New Year and was succeeded by Maxwell's great ally, lord Hamilton.

Hamilton was by then one of the elder statesmen of Scotland, a man of great political and administrative experience, but he was too close to Maxwell to be anything but partisan in his government of the borders. When Hamilton went to Dumfries in January he was thus persuaded to follow Maxwell's advice on how to conduct his new office, prompting Scrope to write, "I fear if his advice is followed, outrages will break out again".<sup>115</sup> In fact Hamilton stayed on the march for no more than a few weeks during which time he executed twelve men dependant upon Johnstone or his friends, took the laird as a prisoner away with him, and put a number of his friends in irons in Dumfries while Maxwell's servants were all set free. It was soon being said that Hamilton "left matters on the borders worse than he found them".<sup>116</sup> The blame for the continued disorder of the west marches did not fall on either Hamilton or Maxwell though, but on

114. R.P.C., iv, p 114, p 124, p 132; C.S.P.Scot., ix, p 156.

115. C.B.P., i, p 241. Hamilton's brother was also involved in Maxwell's plotting.

116. *ibid.* p 243.

the Johnstones whom Hamilton wanted lord Scrope to outlaw. Hamilton was able to recommend that Maxwell be once again reinstated and at the same time tried to bring pressure to bear on lord Scrope to take his ally's side against the pro-English Johnstones at the very time when his investigations against Maxwell were beginning to bring results.<sup>117</sup>

The enormous influence which Hamilton was able to wield in Maxwell favour was increased with Mary's execution, the Hamilton brothers having been among her staunchest supporters during the civil war. With the unrest this caused along the borders it also made Maxwell more necessary to the king and the latter less susceptible to English pressure than before. By April James had accepted Hamilton's recommendation and Maxwell was once again warden, having been leading savage reprisals into England ever since he heard of Mary's death.<sup>118</sup> However, the fluidity of the political situation continued to be tortuous with Angus once again taking over as lieutenant from Hamilton and chancellor Maitland uncovering a plot by Maxwell and certain others to murder him.<sup>119</sup> With Hamilton less able to shield him, Maitland after his blood, and the king increasingly irritated by the reports of his lax regime, English intelligence about his catholic activities would have been well

117. C.B.P., i, p 244.

118. ibid., p 245, p 248, p 256; Teulet, Papiers, iii, p 567.

119. Lee was wrong to say that after Hamilton Maitland prevented any other magnate from exercising such authority on the borders, John Maitland of Thirlstane, p 99; R.P.C., iv, p 156; Spottiswoode, History, ii, p 372; Historie, p 223-24.

received and the king decided that once again this magnate needed to have his wings clipped.

With uncharacteristic speed and resolve the king suddenly acted. Taking his lieutenant, Angus, and some five hundred men he rode south to Annandale, where he joined up with Johnstone and other border barons, and from there rode into Dumfries on the 2nd of April. Caught unawares, and being unwilling to resist the king, Maxwell took advantage of the short warning he was given and fled the town. The contrast with Arran's attempts to deal with Maxwell two years before are stunning and reflect the power the crown did have available to it if it had the support of a majority of the nobility and if the king himself took to the field. James set up court in Dumfries, dealt with some judicial business, received the surrender of Maxwell's castles and returned home, having let the people of the south-west see that they had a king again. Maxwell, meanwhile, sailed for Ayr where he briefly rendezvoused with his old enemy, Arran and then, seeing that he could do nothing but accept the king's terms, found surety for his good behaviour and left for Spain, the spear-head of the Counter-Reformation.<sup>120</sup>

To Johnstone's disappointment Maxwell's fall did not mean that he would benefit; the king was too conservative to appoint a mere laird to do a job which required the authority of a magnate. Nor had Maxwell's disgrace meant

120. C.B.P., i, p 253-54, p 271; Moysie, Memoirs, p 62; R.P.C., iv, p 158-59.

ruin for his family for it was Herries who succeeded him as warden.<sup>121</sup> Though of a quite different temperament than his chief, Herries was still a Maxwell and a catholic, so that James had done nothing more than effect a minor change in the politics of the locality by sending Maxwell into temporary exile. However, as a warden he did a far more satisfactory job than his chief and this was recognised by the privy council which saw that he was rewarded.<sup>122</sup> He also tried to some extent to heal the breach between his own kinsmen and the Johnstones, and at the end of the year a marriage took place between his sister and the laird of Johnstone himself, a marriage which it was thought would "cut off all the feuds" between the two families. Lord Maxwell strongly disapproved of this reconciliation, but Herries had the backing of a number of the Maxwell lairds who were glad of the chance of peace in their neighbourhood and Herries exploited his cousin's absence to push through a change in the kindred's policy which he had for long advocated.<sup>123</sup> So close did Herries and Johnstone become that in the winter of 1588 they were acting as political allies and narrowly escaped more than a horning for attempting

121. R.P.C., iv, p 188.

122. ibid., p 196, p 209, p221-22. Though like most other noblemen he had feuds of his own, his own brother being slaughtered in one with the Irvines at this very time, C.B.P., i, p 299, p 476-77; ii, p 467.

123. C.S.P.Scot., ix, p 533. See also his friendly letter to the previous laird of Johnstone in 1585 at the height of the fighting between Maxwell and the latter. Fraser, Annandale, ii, p 274, no 361.

to join Huntly in a coup.<sup>124</sup> Herries also succeeded in avoiding charges of holding open masses and ejecting the protestant ministers from Dumfries and had his warden's office confirmed in March 1588 for his good service to the king.<sup>125</sup>

Herries' careful cultivation of the king and the ruling court faction was, however, to be wrecked at the end of April when lord Maxwell returned from Spain without permission. While in Spain he had seen the great preparations for the Armada, was enthusiastically received by Philip II and given five thousand écus to aid his return to Lisbon and then Scotland where he promised he would serve Philip's interests and prepare for a Spanish landing.<sup>126</sup> He arrived back at Dundee, presumably having gone by way of the Spanish Netherlands, and made his way across the country, "wrapped in a plaid like a wayfaring man", until he reached his home ground.<sup>127</sup> Once there, his loyal servants and dependants and the broken men of the country who had prospered under his slack rule flocked to him and he very quickly established himself in control of his locality again. News of this return reached the court fairly quickly and an act against

124. C.B.P., i, p 308-09; R.P.C., iv, p 250.

125. Spottiswoode, History, ii, p 381-82; R.P.C., iv, p 257, p 258-59; among other things he arrested Robert Maxwell, C.B.P., i, p 315, p 319. He was however temporarily relieved of his post in February 1588, R.P.C., iv, p 247-48.

126. Spottiswoode, History, ii, p 383; Teulet, Papiers, iii, p 582, p 586.

127. C.S.P.Scot, ix, p 558.

resetting him was proclaimed.<sup>128</sup> The Hamiltons did what they could to calm the king's anger and initially there was no immediate connection made between his movements and those of the Armada, his mission being secret until after the Spanish had landed and until some clearer co-operation could be established with Huntly and the northern lords. Herries, however, became suspicious and may even have been jealous of his chief and informed the king of what he thought was afoot. Maxwell was charged to appear and answer for his activities, but he ignored the summons and continued to levy companies of horse and foot and to fortify his castles.<sup>129</sup> This time the Hamiltons were unable to protect their ally and by now the king was fully convinced of his intentions. He was denounced on the 8th of May and three weeks later the king once again led a surprise raid against him, arriving on the west march before Maxwell had had time to complete his own military preparations or make any firm agreement with the northern lords.<sup>130</sup> More importantly, from the king's point of view, Maxwell was crushed before the Spanish Armada set sail, thus preventing them from making a landing in what would have been the most vulnerable region of his kingdom. Unable to resist this royal invasion, Maxwell once again took to flight.

128. R.P.C., iv, p 275.

129. C.S.P.Scot., ix, p 558; Spottiswoode, History, ii, p 383.

130. R.P.C., iv, p 278.

On this occasion the campaign was more prolonged. All Maxwell's castles were ordered to surrender, a proclamation was issued forbidding resetting him or his adherents, his cautioners of the previous year were ordered to pay the sureties they had promised, a number of Maxwells were denounced and Robert Maxwell of Castlemilk had a price of a £1,000 put on his head for his part in instigating the rebellion.<sup>131</sup> However, the Maxwell garrisons refused to surrender, believing either that lord Maxwell and his catholic friends would relieve them, or that the Spanish would land in time to save them. The king's presence was enough to convince most of them that resistance would cost them their lives, but at Lochmaben the captain, David Maxwell, refused to surrender even to the king, and a request for ordinance was sent to Berwick, this duly arriving with a company of English soldiers. A bombardment began, but Sir William Stewart, the brother of Arran, who was in command of the king's forces, persuaded David Maxwell to march out with his men on the promise that their lives would be spared. Having done so, Maxwell discovered that Stewart had no permission to make such an agreement and he with five of his men was hung. Though Stewart's action brought him almost universal criticism the king was pleased and put him in charge of the search for lord Maxwell who was lying sick in a small bark awaiting the arrival of a larger vessel to take him back to Spain. Hearing of this Stewart sent a message to his

131. R.P.C., iv, p 286-91.

nephew, lord Ochiltree, asking him to bring a ship from Ayr and with this he was able to track lord Maxwell down, capturing him after a short sea chase.<sup>132</sup>

In escaping execution lord Maxwell was much luckier than he deserved to be. The defeat of the Spanish Armada a month later must have been a bitter disappointment to him, perhaps even moreso that his own, and it certainly ended any immediate prospect of a Spanish led Counter Reformation in Scotland in 1588. James may have kept him alive just in case Philip II did defeat England, but it was more likely that the king's own reluctance to kill his noblemen, and the network of friends and kinsmen lobbying in his interests accounted for his rather fortunate survival. With friends like lord Hamilton, Huntly and probably young Lennox, there was really little chance that his rebellion would cost him his life.

How realistic though was Maxwell in his plans for a Counter Reformation in Scotland? The whole question of Counter Reform in Scotland is unfortunately much too under-researched to be at all certain, but one can postulate a few possibilities which bring it much closer than is often imagined. Thus, had Maxwell been able to keep his plans secret for just three months longer,

132. Spottiswoode, History, ii, p 383; Moysie, Memoirs, p 67; Melville, Memoirs, p 360; Gordon, Sutherland, p 209-10; Calderwood, History, iv, p 678-79; R.P.C., iv, p 292; C.B.P., i, p 326. Stewart was killed by Bothwell within the year "to the comfort of many people, wha allegit that God did the same for his betraying Mr David Maxwell and his company in Lochmaben", H.E. Maxwell, A History of Dumfries and Galloway, (Edinburgh, 1896), p 211.

had Medina Siddonia not been so desperately unlucky in the Channel and had Huntly decided to strike in 1588 and not a year later, then the position of the catholics in Scotland could have been very much stronger. What prevented their success was communications and bad luck. Timing an operation which embraced Spain, the Netherlands, England and Scotland was in itself an enormous undertaking and was made even more hazardous in Scotland by the geographic distribution of the leading Scottish catholics. However, when writing to Parma of Maxwell's position among the Scottish catholic community, a priest of his household said he was

"no more in danger of his life by way of justice, it not being possible for his enemies to prove against him anything which they had supposed in his accusation; as also the King's affection not so far alienated from him as it hath been heretofore; and in case they would annoy him, or that it were presently requisite for the weel of our cause to deliver him, we have ever, moyen to get him out of prison, and abide nought in the meanetime, but the King's will towards his libertie; only to avoid all persute, that they would make, if we delivered him extraordinarilie. When they offered him, in the King's name, his libertie, if he would subscribe the Confession of the Heretick's Faith, he answered he would not do it for the King's crown, nor for an hundreth thousand lives, if he had them to lose; and hath offered to confound the ministers by publict disputation. I shall solicit the lords his friends to procure of the King his libertie very soon; for he importeth the well of our cause more than any of the rest, by reason of his forces which are neer to England, and the principal town of Scotland, and the ordinar residence of our King, as also he is the lord most resolute, constant, and of greatest execution, of any of the Catholicks."<sup>133</sup>

This commitment to the cause of catholicism, so apparent here in Maxwell and in the previous chapter in Huntly and Erroll,

133. Calderwood, History, v, p 24.

really deserves much closer scrutiny if one is to avoid the rather simplistic notion that Scotland was irrevocably a protestant country after 1560 or 1573. Contemporaries were far more aware of the fragility of the protestant regime and took rebellions like Maxwell's in 1588 more seriously than most subsequent historians. Maxwell never came close to success in 1588, nor did Huntly in the years following, but success was not beyond their reach and their ambitions deserve serious study.<sup>134</sup>

Yet while too little has been made of the wider international implications of the 1588 rebellion, too much has been made of its effects upon border administration. Thus Lee has argued that while the area continued to be turbulent and lawless, "the palmy days when a Maxwell or a Johnstone could defy the central government with impunity were over". He has also claimed that the appointment of Carmichael as warden in September 1588 was a "turning point in the history of the west march", and the control the crown now effected over it was "the government's greatest administrative success".<sup>135</sup> This, however, shows a typical neglect of local history which continued to be dominated by the Maxwell-Johnstone feud and its relationship with wider political interests. Carmichael's appointment was no more a break with tradition than Johnstone's father's had

134. One recent exception to this is Jenny Wormald's article "The 'Princes' and the Regions in the Scottish Reformation" which will be published some time in 1983 by John Donald in a book of essays edited by N.McDougall.

135. Lee, John Maitland of Thirstane, p 165.

been a decade before. Johnstone was a lesser local landowner and chief whose clientage was bought by Morton and then Arran in an attempt to undermine Maxwell; Carmichael was simply a client of Maitland's. He was more of an outsider in that his lands lay further to the north, but so was lord Hamilton an outsider to the immediate politics of the south-west. Carmichael was not a king's man in any sense of being somehow above local politics, he was Maitland's client, put there to serve the chancellor's own personal political interests.

As in 1587 the laird of Johnstone had been by-passed and it was obvious that unlike his father he had failed to attach himself to any court faction which could deliver him the local patronage he wanted. He was granted the keepership of Lochmaben, but the appointment of Carmichael must have been galling for him even if the new warden was a man of greater age and experience.<sup>136</sup> As though in emulation of Maxwell's earlier tactics against his father, Johnstone very quickly became Carmichael's biggest problem as he and James Douglas of Drumlangrig fought out a bloody feud. The two were brought to an assurance, but Johnstone had other quarrels with Gordon of Lochinvar and with Baillie of Littlegill whose house he attacked, burning it, murdering the laird and his daughter and going on to commit further bloody deeds and add to his by now notorious reputation for violence and blood-lust.<sup>137</sup> Nothing had changed on the march and the

136. Fraser, Annandale, ii, p 12, no 15.

137. R.P.C., iv, p 106, p 109, p 110; Fraser, Annandale, ii, p 53, no 56; p 52-53, no 55; Pitcairn, Criminal Trials, i, part 2, p 184.

removal of Maxwell, and the temporary hiatus in Maxwell power may even have destabilised the region as the more powerful lairds fought to establish a new status quo while the largely ineffectual warden looked on unable to intervene with any meaningful authority.

In 1589 external politics once again intervened in the affairs of these local disputes. Just as one saw Bothwell casting his net into the affairs of the north in search of clients during 1589, so he was also on the search for followers along the borders where he already had considerable power as keeper of Liddisdale. In the spring of 1589 Bothwell was laying his plans for what was to become the ignominious Brig O'Dee conspiracy, and, being a little concerned about his support in Teviotdale, he began to sound out opinion further west, inviting Herries, Johnstone, Buccleuch and Robert Maxwell to Peebles to discuss his plans for Maitland's overthrow.<sup>138</sup> None of them were willing to agree to the earl's schemes and the rebellion collapsed, but Bothwell's invitation remained open and was to have implications for the future of both Johnstone and lord Maxwell.

The latter had been in prison since July 1588 and during that time had been implicated with Huntly and the other catholic earls in letters sent to Parma but discovered by the king's agents. In these Maxwell had expressed regret

138. C.B.P., i, p 337.

at the failure of the Armada and was as has already been seen still considered to be the most likely leader of the catholic cause in Scotland.<sup>139</sup> English intelligence had also connected him with the catholics in Ireland with a view to his supplying troops for the rebel cause there so that in spite of defeat at home and in Europe, Maxwell had by no means lost heart in his catholic enterprises.<sup>140</sup> In spite of this the king decided to free him in the autumn of 1589 along with the Brig O'Dee rebels, though he demanded £ 100,000 caution for Maxwell's good behaviour. The king's reasons were, as explained above, to check the power of the presbyterians, and given Maxwell's well known commitment, it was a considerable gamble. More immediately Maxwell was concerned to recover his family's power in the south-west.<sup>141</sup>

Now a man in his thirty-sixth year, Maxwell brought all his great experience to bear on setting back the decline of the previous three years. Lord Herries was ordered to return his castles to him, and having recovered his military base, Maxwell set about undermining what little authority Carmichael had on the west march.<sup>142</sup> He wrote to Scrope telling him that

139. Spottiswoode, History, ii, p 391. Even the king appears to have given some recognition to the fact that Maxwell was the leader of the Scottish catholic community, H.M.C. Laing, i, p 80-81. This letter is more likely to be dated circa 1588 than 1592.

140. C.B.P., i, p 346. Maxwell was also fairly intimately connected with the exiled Scottish catholic community on the continent and had deposited his gold and silver plate in France with the former archbishop of St Andrews, James Beaton, H.M.C. 'Laing', i, p 84.

141. Spottiswoode, History, ii, p 399; R.P.C., iv, p 412; C.B.P., p 340.

142. Fraser, Carlaverock, ii, p 495, no 116.

Carmichael was not on the march, that it was his concern that this should not cause disorder and therefore he was inviting the English warden to discuss with him how they might best cooperate. The letter contained an implied threat that Maxwell was quite capable of ensuring trouble if Scrope did not meet him. Scrope knew that Maxwell was right, but his suspicions of a man who was an enemy of England, both in his religion and in plots against Elizabeth, and as a protector of border raiders, was given added confirmation in a letter he received from the king warning him not to trust Maxwell and to look to his defences. Scrope decided to pass the matter on and wrote asking Walsingham for instructions in how to progress in this matter.<sup>143</sup>

Maxwell's political revival continued with lord Hamilton's appointment along with Bothwell as caretakers of the government while the king was in Denmark, Hamilton being responsible for the southern half of the country and in particular for the borders. In November Hamilton made a progression through the borders which led to a meeting with Maxwell at Peebles on the first of December when he effectively recognised Maxwell's de facto control of the west wardenry, the latter promising Hamilton that he would be responsible to him for the governance of the march. Maxwell also took the opportunity to lodge a complaint against Johnstone who he claimed was illegally holding courts in Annandale to the prejudice of

143. C.B.P., i, p 341.

his rights as steward of Annandale. Three days later Johnstone himself complained to the privy council about letters Maxwell had received, presumably from Hamilton, and while these were suspended on technicalities, Johnstone's own commissions were also suspended.<sup>144</sup> There was now no doubt that Maxwell's alliance with Hamilton had made him the effective ruler of the west march in spite of Johnstone's complaints and the fact that Carmichael still held the office of warden.<sup>145</sup>

The king's return once again altered the ever shifting balance of power. Carmichael was confirmed in his office, Hamilton's influence was removed from the borders and Johnstone was increasingly coming to see the advantages of tying his interests in with the power of the earl of Bothwell. For the next two years the feud between Maxwell and Johnstone continued to reflect the vagaries of court life, but to a lesser extent than had previously been the case, thus allowing the participants to continue their struggle in the locality itself. In February 1590 the council had to discharge an intended combat between a Johnstone and a servant of Maxwell, and then in April it was being reported that the feud had been put to mediation.<sup>146</sup> In June the king gave Johnstone a commission as justiciar and baillie throughout Annandale and Nithdale while Maxwell was soon to find himself in trouble for the behaviour

144. R.P.C., iv, p 436-37, p 826-27; Fraser, Annandale, ii, p 26, no 32; R.P.C., iv, p 442-43.

145. Maxwell was also busy making bonds in the locality, Brown, "Bonds of Manrent", appendix, p 504, no 33.

146. C.S.P.Scot., x, p 850, p 286.

of his men and for protecting outlaws.<sup>147</sup> On the other hand Langolm castle was delivered back into his keeping.<sup>148</sup>

A further reduction of Carmichael's power took place in the following year. The barons and freeholders of Nithdale, largely Maxwell country, compiled a protest about him, complaining that he was ineffectual in protecting them from raiders, that the impositions and expenses he laid on them were too high, and that his powers were excessive. These extraordinary powers had been granted to Carmichael largely because of his personal weakness, and similarly his expenses were incurred, or demanded, because unlike Maxwell he could not afford to continue in office without them. However, the complaint succeeded and the warden's authority was yet further reduced.<sup>149</sup> Without any power comparable to Maxwell or even Johnstone, the warden could do nothing to check the feud which received impetus in May 1591 when Maxwell hung two Johnstones on the strength of his own commissions, commissions which Johnstone claimed he was executing with "all extremitie".<sup>150</sup> The laird also warned the government that he would organise his own defences and in fact carried out a number of raids against various local targets in the following months so that the region was quickly sliding back

147. Fraser, Annandale, ii, p 55, no 58; Fraser, Pollok, i, p 320, no 163; R.P.C., iv, p 794.

148. R.P.C., iv, p 801-02.

149. *ibid.*, p 580.

150. C.S.P.Scot., x, p 458; R.P.C., iv, p 623.

into the state of civil war which had been seen there in 1584-85.<sup>151</sup>

The summer of 1591 was, however, dominated by the fall of Bothwell and not by anything on the west march. Reckoning with many others that Bothwell's eclipse was probably only temporary, and that he was the best means by which Maxwell and his Hamilton friends could be checked, Johnstone decided to identify himself even more closely with the earl's fortunes. Maxwell also considered joining Bothwell as a means of ousting the chancellor and furthering catholic interests and his surprising truce with Johnstone in June 1592 was certainly seen as a prelude to raising the west march in support of Bothwell.<sup>152</sup> The earl himself fled to this region on his escape and there he took and garrisoned Lochmabell castle which became his headquarters for the present.<sup>153</sup> Fearing that Maxwell and Johnstone would go over to Bothwell, the king summoned them both to attend court, but each refused and a rebellion appeared immanent. Maxwell and Herries both negotiated terms with Bothwell, but at the last moment decided that their interests could be better served by remaining aloof from his activities. Johnstones on the other hand decided to participate in the Falkland raid and on its failure fled back

151. One of these targets was the burgh of Annan where one of the burgesses was slain. Shortly afterwards the burgh ratified their bond of manrent with Maxwell, Brown, "Bonds of Manrent", appendix, p 504, no 34; R.P.C., iv, p 806, p 705.

152. C.S.P.Scot., x, p 686.

153. C.B.P., i, p 397.

to the marches as a fugitive. Maxwell's calculations had proved accurate and all he needed to do now was wait on the rewards of his loyalty.<sup>154</sup>

He did not have long to wait. Hamilton and Angus (now the tenth earl and a staunch catholic) pursued Bothwell down to the borders where they were met by Maxwell and a thousand of his horsemen with which they rode on to Johnstone's house of Lochwood. The laird was persuaded to surrender himself to the king when he arrived on the march, and this he did three days later at Dumfries, on condition that their lives and lands would be safe, and that Johnstone would not "be pitted or in a closs prison", a fate which had cost his father his life.<sup>155</sup> The next day an act was passed by the privy council, declaring that whoever was warden would not be allowed to prejudice Maxwell's rights to the stewardry of Kirkcudbright and Annandale, or the lordship of Maxwell, or any other of Maxwell's jurisdictions. Furthermore, Carmichael was sacked, Maxwell was appointed warden and was reinstated as earl of Morton (thus creating something of an anomaly since there were now two earls of Morton who were incidentally feuding over the title).<sup>156</sup> The defeats and disgrace of 1586-89 were now well in the past and Maxwell once again dominated the west march. As in the north and

154. C.B.P., i, p 397; Spottiswoode, History, ii, p 422; Historie, p 250.

155. C.B.P., i, p 399-401.

156. R.P.C., iv, p 767.

elsewhere the king continued to favour the great magnate whose enormous private power could be bolstered up with royal office to the lesser man whose office would be weakened by his lack of private authority.

Maxwell's success in recovering the wardenry was directly linked to Bothwell as were the fortunes of so many others at this time. Chancellor Maitland also discovered a new found friendship with Maxwell, just as he did with Huntly, and it was he who urged the king into the appointment of his one time enemy.<sup>157</sup> Carmichael reported at the time that Maxwell had the "steir" of the country, with specific instructions to hunt down Bothwellites and their reseters, and not surprisingly, when Bothwell made his brief recovery in July 1593, Maxwell was described as one of his chief enemies and a "friend" of the chancellor.<sup>158</sup> Politically Maxwell was at one with the ruling court faction, something which had only really occurred on three brief occasions in the past: in the weeks between Morton's loss of the regency and his recovery later in 1578, during Lennox's ascendancy and for a few months in 1585 after the Stirling coup.

The English border officials were, however, far from happy with Maxwell's apparent orthodoxy. On hearing of Maxwell's appointment and the removal of the reliable Carmichael, reliable from an English point of view, Lowther

157. Historie, p 263; C.B.P., i, p 481.

158. C.B.P., i, p 413, p 481.

immediately predicted that matters would be "far different to us" than they had been.<sup>159</sup> After a few months in office his disillusionment with the new Scottish warden became more pronounced and he wrote to Burghley, "For what justice is to be expected from Lord Maxwell, your lordship may see from my last (report)", and he expressed the wish that he "will not long continewe warden".<sup>160</sup> In the spring Lowther and his superior, lord Scrope, met with Maxwell and like many others the latter was impressed by his personable nature and vocal commitment to good government.<sup>161</sup> The impression did not last though and Maxwell was soon back to the old ways of partial and exploitive management of the marches. Now it was Scrope who was bemoaning Maxwell's attempts to overturn the 1587 treaty between Scotland and England, and he wrote of his "shiftinges to put of justice", of his "negligence", and after a raid into England by his men, wrote that "I expect the like while Maxwell is officer here".<sup>162</sup> The persistence of these sort of criticisms throughout Maxwell's life strongly suggest that Scrope was not playing at politics here and that he genuinely found the over-powerful Scottish warden impossible to work with.

Nor was this the only criticism lord Scrope could level against Maxwell, for like his father before him, he too was

159. C.B.P., i, p 401.

160. ibid., p 429.

161. ibid., p 432, p 458.

162. ibid., p 468, p 470.

suspicious of Maxwell's catholic fervour and his international connections. In spite of the defeat of the Armada, England was no more secure than it had been in 1587-88, and with the situation in Ireland and the Netherlands still so unstable, the prospect of another front in Scotland remained a scenario which Elizabeth was determined to avoid. Maxwell thus found himself once again the object of close English scrutiny when he re-emerged as the most powerful magnate on the Scottish border in 1591. Scrope told Burghley that Maxwell was refortifying Caerlaverock where "he setteth 200 men to work dailie". He was also being unnaturally friendly towards Johnstone as though in preparation for some greater plot. In his opinion Maxwell was "an unmeete man for that office or a comune commander of many men so neare us", for behind such preparations could lie only one hand, that of Philip II of Spain. Maxwell was seen as "the King of Spain's treasurer for Scotland, either to keep or dispose of it at his own pleasure".<sup>163</sup> How true all this was one does not know, and may never know unless the Spanish archives hold as yet undiscovered information on the activities of Scottish catholics at the time, but it would be consistent with his earlier career to expect Maxwell to still be shceming for the Counter Reformation he had already given so much for. However, the light of Catholic Reform had by the 1590's passed to the north and to Huntly with whom Maxwell seems to have had remarkably little contact.

163. C.B.P., i, p 465.

Whatever international machinations Maxwell was planning, his more immediate concerns were local. His rebellion in 1587 and his misfortunes throughout 1586-89 had not been without effect upon his power in the region. The great man of the locality had been humbled and visibly so. Others had looked on and seen the potential for self-aggrandisement in a march without lord Maxwell and his overbearing exercise of power and were disappointed to see his return. Furthermore, this particular locality was the centre of even more tortuous local politics than usual, and was a hotch-potch of rival political and religious factions with an abundance of strong, independently minded lairds and a shortage of noblemen. There were no other nobles in the south-west, the nearest being Cassillis further west and Angus north and east of the march while men like Johnstone, Drumlangrig and Lochinvar were as powerful as many noblemen in Scotland. Maxwell may still have had enormous reserves of power over these men, but when in 1592 he was granted virtual vice-regal authority, they and others with them vigorously protested their objections.<sup>164</sup> Maxwell, however, was determined to set the clock back and to not only re-establish his power in the south-west, but enhance it. The king had, among other things, granted him half the wards and casualties of the entire region, but Maxwell was able to claim the king's half to repair and modernise the defences of the royal castles he held and use his own half to similarly strengthen his own military base.<sup>165</sup> In effect he

164. Historie, p 263.

165. C.B.P., i, p 403.

was creating the same sort of power base that Huntly and Argyll had in the north, and like them he was to find that while the king might acquiesce in his intent, his neighbours were less than enthusiastic about the direction of his policy.

Confrontation was very soon in sight. By September of 1592 it was reported that the local barons were "carringe no frendly affectiones towardes him".<sup>166</sup> He fell out with Drumlangrig, a previous ally against Johnstone; Lochinvar complained to the council that his lands had been attacked while he was in Edinburgh to press the case for the reduction of Maxwell's commission; the lairds of Bombie, Lagg, Closeburn, Hemsfield and Kirkemighell added their own protests; and after a short truce, Johnstone added his voice to the criticisms on the grounds that Maxwell was protecting killers of two of his men.<sup>167</sup> After much persuasion the king agreed to suspend the offending aspects of the commission until the privy council had had time to discuss the whole affair properly. Naturally this infuriated Maxwell who threatened Drumlangrig with blood-feud for the slaughter of the Maxwell laird of Cowhill, broke off relations with the English warden to attend to his own affairs, and continued to strengthen his forces in preparation for a widening conflict.<sup>168</sup>

166. C.B.P., i, p 409.

167. C.S.P.Scot., x, p 777; R.P.C., v, p 751-52; C.B.P., i, p 412, p 414, p 416.

168. C.B.P., i, p 419, p 420, p 421. One can also trace in more detail his quarrel with the laird of Closeburn, R.P.C., v, p 53, p 74, p 88-89.

Maxwell had more strings to his bow than force though and he decided to end this sniping at his authority by talking to his critics. Maxwell persuaded the other barons of the region that they really needed him for their own security and that he was willing to work out some sort of policy of co-operation with them. By March 1593 an agreement was imminent, a bond was signed between Maxwell and Lochinvar while Johnstone's friends arranged a truce which "war infalliblie keapit for a whyle", so that "incredible peax was concludit among thayme evin besyd all menis expectatioun that thay met face to face to-gether and thair band up freyndship be worde and writt, never to be broken, under the payne of perjurie to the failter."<sup>169</sup> With Lochinvar on Maxwell's side, Johnstone forced into friendship because of his unpopularity with the king, and Drumlangrig isolated, the smaller lairds were deprived of the leadership they required to erode Maxwell's power. Maxwell even went so far as to try and convince the English that he had reformed himself, asking Lowther to try and get Burghley to assure the queen of his devotion. As far as his future political aspirations were concerned, he promised that he was prepared to "wholly run Lord Hamilton's course in Scotland", Hamilton being considered a man of largely pro-English and reliable political opinions.<sup>170</sup> Whether this was all a sham to disguise other intents, or a genuine decision on Maxwell's part to settle for a quieter middle age

169. C.B.P., i, p 432-33; Fraser, Annandale, ii, p 58, no 61; S.R.O., R.D. 1/44/110; Historie, p 297.

170. C.B.P., i, p 433.

one cannot know, but if it was the former it largely succeeded in that Maxwell's popularity rose both with his neighbours and in England, it already being very high with the king.

Conversely, the laird of Johnstone's fortunes were dropping to even lower levels as his patron's chance of recovery grew more and more remote and his enemy's power grew. Johnstone had disassociated himself from Bothwell and had received a remission for his crimes before the autumn of 1592, but six months later he was again at the horn for his turbulent behaviour on the march.<sup>171</sup> He was also involved in a number of feuds besides that with the Maxwells, one of these being an internal feud within the Johnstone kindred itself.<sup>172</sup> In June 1593 he was warded in Edinburgh castle for failing to be answerable for his men, but escaped and returned to the borders as a rebel and a fugitive, dependant upon the good will of the warden, lord Maxwell, for his continued safety and freedom.<sup>173</sup> The days when it had seemed that his father would replace Maxwell as the dominant family on the west march must have seemed very remote indeed.

Unlike Maxwell though, Johnstone did not temper his behaviour to win himself friends or favour, but instead went on the rampage as soon as he was back on the march. He invaded

171. C.B.P., i, p 412; R.P.C., v, p 55.

172. Fraser, Annandale, iii, p 27; Fraser, Memoirs of the House of Douglas, iv, p 243, no 230.

173. C.S.P.Scot., xi, p 99; R.P.C., v, p 87.

the lands of lord Sanquhar, Drumlangrig, Lagg and Closeburn along the river Nith, taking away vast quantities of booty and slaying between fifteen and eighteen men. These slaughters prompted the dead men's women to take their bloody sarks to Edinburgh and demand justice from the king. Though angered by this public demonstration of his subjects' discontent, James agreed that something had to be done and told Maxwell to see that Johnstone was dealt with. Maxwell, however, was on good terms with the laird, the two having formed an agreement of sorts, and he was in no hurry to break it. The other lairds of the locality who had suffered in these raids were even afraid to take revenge on Johnstone because they feared that Maxwell would join his side against them.<sup>174</sup> After discussing their problem together they decided that lord Maxwell "loved above all things to be followed,"<sup>175</sup> an insight which his history certainly bears out. They agreed to come to terms with him and offer him their bonds of manrent and whatever else "as mycht allure him to thair favour and factioun", but on the condition that he break with Johnstone. Furthermore, they approached the king and asked for a commission to be made out empowering Maxwell to pursue Johnstone and his kinsmen for his crimes, among which they stressed his favour to Bothwell.<sup>176</sup> Such Machiavellian plotting secured its aim, but what is also of great interest is that it was required

174. Historie, p 296-97; Spottiswoode, History, ii, p 445-46; Calderwood, History, v, p 256.

175. Spottiswoode, History, ii, p 445-46.

176. Historie, p 296-97

at all, Johnstone being Maxwell's hereditary enemy. The point to be made from it is that this shows yet again how a feud could be ended even between two such hostile families, and that the settlement between them was one to be respected. What revived the feud was not, in this case old and bitter memories, but a new set of local political problems and alignments which brought them into renewed conflict.

Now, just as he was poised to rise to even greater heights of power in the south-west, lord Maxwell's luck which had been running good for him seemed to evaporate. The bond he had made with the barons of the locality was lost or stolen and came into the hands of Johnstone. The latter sent one of his gentlemen to find out if the bond was genuine and though Maxwell initially stalled he was finally forced to admit that he had signed it, though he excused himself on the grounds that he only did so at the king's command. Once again one can quite clearly see the great importance that was attached to a bond and to a man's word and as a consequence of this breaking of the agreement "ane great truble fell out betuix the Lord Maxwell and the laird of Johnstoun".<sup>177</sup> Both men began to raise support throughout the march with Johnstone being able to augment his smaller kindred with the support of the Grahams from across the border and some of the clans like the Elliots who had ridden with Bothwell. Maxwell meanwhile strengthened his garrisons and it was at one of these, at Lochmaben kirk, that fighting began

177. Spottiswoode, History, ii, p 445-46; Historie, p 296-97; Moysie, Memoirs, p 107.

when Johnstone attacked it and put the men there to the sword.<sup>178</sup> Now the border war was about to recommence in earnest.

Lord Maxwell gathered his large forces and those of his allies and marched for Annandale, heading for Lochwood with the intention of taking it as his brother had in 1585. Opposed to Maxwell's two thousand or more men, Johnstone had a mere three or four hundred and the laird knew he could not win an open battle but would have to force Maxwell into a battle of his choosing or else flee. Johnstone chose the former, and when Maxwell's army came into sight on the 6th of December he sent out a small party of mounted skirmishers to probe the warden's army and flee if they were approached by the Maxwells. Seeing them, Maxwell's own vanguard gave chase and were led into a trap set by Johnstone's main force. Surprised and outnumbered, they turned and fled back to the rest of the army where their panic quickly spread, Maxwell's allies deserted, and finally the warden's own men disintegrated and left the field in disorder. Lord Maxwell himself was forced to turn and flee, but was overtaken by the jubilant Johnstones who struck him from his horse and mercilessly slaughtered him, mutilating his body and putting his head on the end of a spear. Many other Maxwells were slain with him, being driven onto Dryfe Sands and drowned while many more were wounded in the flight. For the Johnstones,

178. Historie, p 299.

the humiliations of 1585 were at last revenged, and for their Maxwell enemies the battle of Dryfe Sands was a devastating defeat which signalled the beginning of the end of their family's hegemony on the west march.<sup>179</sup>

Taken in its widest context the battle of Dryfe Sands shows the glaring short-comings of an early modern government in a kingdom where power was not yet centralised. Three times within a year a royal army was to be defeated by private rebel armies, for the defeat and slaying of the king's warden in December 1593 was followed by Bothwell's tactical victory over the lieutenant of the borders, lord Hume, in the spring, and by Huntly's defeat of Argyll, another lieutenant, in October 1594 at Glenlivet. In each case an inferior rebel army sent the king's forces running from the battle-field and while in each case the victory gained was a short term tactical one with little political impact upon the king or his government, such conflicts highlight the enormous problems facing James VI as he tried to impose his royal will upon local magnates, and in this case even on an untitled laird. As far as the south-west was concerned, it was the second time in a decade that the king and his warden had been defeated, Maxwell having crushed Johnstone's father while he was in office in 1585. In 1585 the political consequences had been far more serious,

179. Moysie, Memoirs, p 109-10; C.B.P., i, p 514; Calderwood, History, v, p 290; Pitcairn, Criminal Trials, i, part 2, p 360; Historie, p 299; Spottiswoode, History, ii, p 446-47; R.P.C., v, p 112-13.

but Dryfe Sands seemed to be emphasising the ungovernable nature of the region, though in fact by crushing so completely the greatest magnate in the south-west, Johnstone was unconsciously paving the way for the growth of royal power in the locality in the next decade. In 1593 no-one knew that and the immediate result was further chaos, bloodshed and feud.

To John, earl of Morton, and eighth lord Maxwell the defeat was obviously total. Twice in the troubled politics of his life he had achieved a dominance of his locality which was equalled by only a few like Huntly, Argyll or Cassillis. In 1587 he lost that mastery because of his religion and his international conspiracies, and in 1593 he lost it again, and his life with it, in a feud which he was reluctantly manoeuvred into reviving. As with Huntly in the previous chapter, one sees local, national and international affairs entwined in a web of interests and ambitions which can never properly be understood by studying only one part of the whole. As a Counter Reformation nobleman Maxwell had a fierce commitment to his faith, though again like Huntly, and unlike Erroll, he was prepared to temporise when necessary. In the end he only succeeded in preserving his private faith, the dreams of Spanish aid and a catholic revival having been dashed in the English Channel and by the king's swift action in 1587 and 1588. Whether he would have gone on hoping, or whether like Huntly he would in the end

have decided to accept defeat, one cannot know. One can only wonder why the two men never attempted, as far as we know, to work together.

Apart from his bearing on religion and local affairs, Maxwell had no real interest in the court. This does not mean that he did not know what was going on there or try to exploit his connections there, for in attaching himself to Lennox and then to Hamilton he found two very useful allies, and as the Bothwell affair showed, he was quite capable of making the right political decision at the right time. However, he had no interest in power at the centre of government, either in the privy council or in the chamber, and he made no attempt to establish any court brokerage or faction of his own. Lord Maxwell only wanted to rule in the south-west, on the west march. Therefore his career again demonstrates the extent to which Scottish nobles were interested in their localities and not the court; any interest in the latter being inspired by the hope that they could extend or maintain their control of their localities.

At a personal level one is just able to approach John Maxwell. He was obviously autocratic and immensely proud of his nobility and his kindred. He was violent, but he never acquired the reputation for brutality and callousness that Caithness, Bothwell or Huntly did. He was a man who inspired loyalty and loved to lead others, whose word was considered honourable and who was himself loyal to those who served him

or helped him. His intrigues and plots seemed to avoid the odiousness that surrounded other more devious schemers. He was brave and a good soldier, capable of more than the usual dash and bash of the Scottish nobles, but he was a poor administrator and a lax law enforcer. As a family man one only knows that he remained married to Elizabeth Douglas all his life and that she bore him three sons and four daughters who grew to adulthood and that he had another natural son.<sup>180</sup> From some of his private letters one also discovers a man for whom family and friendship were regarded highly, not simply as means to power, but as bonds of real moral and social responsibility.<sup>181</sup> When writing of lord Maxwell in his history, Archbishop Spottiswoode said of him "He was a nobleman of great spirit, humane, courteous, and more learned than noblemen commonly are; but aspiring and ambitious of rule. His fall was pitied of many, for that he was not known to have done much wrong in his time, and was rather hurtful to himself than others."<sup>182</sup> It seems to be a fair epitaph for one of the more attractive members of the Jacobean nobility.

The feud between the Maxwell and the Johnstone families was to remain unsettled until June 1623, thirty years after Dryfe Sands. A full account of those years is not possible

180. Scots Peerage, vi, p 483-84

181. See e.g. Fraser, Pollok, ii, p 168, no 176 and others in this volume.

182. Spottiswoode, History, ii, p 447.

here, but some discussion of them is necessary if one is to see how the changes taking place in legislation, social attitudes and international co-operation affected the borders, and in particular feud on the border. Thus the immediate effect of Maxwell's death was both private and public. The Maxwell kindred were shattered both militarily and politically, and as Maxwell's son was only a young boy a struggle developed between his wife and lord Herries for leadership of the kindred, or at least for control of the Maxwell heritage.<sup>183</sup> On the public front, the king was said to have taken the news "hardly", but he was far too busy with Huntly and Bothwell to turn his attention to the south-west.<sup>184</sup> A proclamation was issued ordering that neither Johnstone or his patron Bothwell be reset, and government of the region was divided between Herries and other local barons whose immediate concern was to contain Johnstone's men then on the rampage.<sup>185</sup> Government by committee was, however, no more than a short term measure and when the government had had time to think about the matter Herries was asked to take over as warden. Herries refused unless queen Elizabeth would express her confidence in him as he feared that his catholicism would influence her to instruct Scrope to be unco-operative. She refused, and Herries continued to dither between accepting and refusing, so that between this

183. The Maxwells met at the end of the month to consider their response, Fraser, Pollok, ii, p 170, no 176. For the countess, Pollok, ii, p 172ff, no 176, 177, 179, 181, 183, 184, 186.

184. Spottiswoode, History, ii, p 447.

185. Birrel, "Diary", p 32; R.P.C., v, p 112.

and the loss of confidence within the Maxwell kindred, the best opportunity was lost to strike back at the rebel laird of Johnstone.<sup>186</sup>

The king's concern for Maxwell's death was very limited and his obsession with Bothwell continued to be the dominant issue of the day. At the same time as Herries was being offered the wardenry Johnstone had been approached and offered a way back into the king's favour if he dropped his association with Bothwell once and for all. Johnstone leapt at the opportunity, refused Bothwell his help on the Leith raid, and was rewarded with yet another remission.<sup>187</sup> Lord Hamilton tried to obstruct his progress back into royal favour, especially when in July he was appointed lieutenant of the west marches in an attempt to fill the vacuum caused by Herries' uncertainty, but the Bothwell yardstick was the only one the king would recognise and in December, a year after Maxwell's slaughter, the laird received a remission for it.<sup>188</sup> Shortly afterwards he and his men were excused their other depredations on the march, the council having declared that they would not be prosecuted for any act of "deidlie feid or suddane tuilyeis", but only for acts committed against those with whom there was no feud.<sup>189</sup>

186. C.B.P., i, p 523, p 530, p 539; ii, p 52, p 55.

187. Moysie, Memoirs, p 114.

188. Calderwood, History, v, p 336; C.S.P.Scot., xi, p 395; p 545; Fraser, Annandale, ii, p 62, no 65; Fraser, Carlaverock, ii, p 497, no 118.

189. R.P.C., v, p 197.

In effect Maxwell's death was to be conveniently forgotten about, by the king at least.

Having gained the advantage of now being on the right side of the law, Johnstone was determined to maintain the initiative. He wrote to the Maxwells, pointing out that the feud between him and lord Maxwell had been at an end; "God knawis I had dispensit and buryit thai materis in my hart", and that it had been the league against him which caused the "breking of the Borderis" in which Maxwell died. Johnstone thus asked for the peace to be renewed and submitted a number of specific proposals with the warning that if the Maxwells refused, then he would submit a copy to the king and the church to show that he at least was willing to make peace.<sup>190</sup> As one might expect the Maxwells were unrespondent, but Johnstone's propaganda did its work, and in May 1595 Herries and the other barons were ordered to make their peace with Johnstone and to keep the young lord Maxwell "who now begins to haunt the fields" from any mischief.<sup>191</sup> If the king was taken in by this good will, others, including Scrope, Drumlangrig and Herries, were all unhappy with the laird's persistant resort to violence, and Herries finally gave in to the war party among his kinsmen

190. Fraser, Annandale, ii, p 61-62, no 64.

191. C.S.P.Scot., xi, p 599. Both the king and the queen to whom Johnstone attached himself during her quarrel with Mar were putting pressure on Johnstone to settle, C.S.P.Scot., xii, p 10. An attempt was also made to get a number of nobles to mediate, C.B.P., ii, p 59; C.S.P.Scot., xii, p 48.

and struck back.<sup>192</sup> The raid on Lockerbie was, like Dryfe Sands two years before, yet another Maxwell disaster. In the slaughter which took place in the streets of the small town a score of Maxwells were slain, lord Maxwell's old friend, the laird of Pollok, being among them, and many others were hurt or captured, "to the Lord Herreis great disgraice".<sup>193</sup> For those Maxwells who had thought that the implications of the defeat at Dryfe Sands could be wiped out by a retaliatory victory, Lockerbie ended their hopes, and thereafter Herries was able to persuade his kinsmen that peace with the Johnstones and a recognition that they could no longer dominate the locality was unavoidable.

By 1595 the king was also beginning to turn from his preoccupation with baronial politics to providing better government for his kingdom. As a result of this latest action he therefore imprisoned Herries, Johnstone and Drumlangrig.<sup>194</sup> However, to govern the south-west he had to appoint one of these three, or Lochinvar or Carmichael, and by December 1595 Herries, Lochinvar and Drumlangrig had all refused a job which had seemed more bother than it was worth. Carmichael was then approached but again asked for excessive powers and was still

192. C.S.P.Scot., xii, p 39-40 for Scrope's misgivings. For Drumlangrig, C.S.P.Scot., xi, p 672; xii, p 45, p 47; Historie, p 356.

193. Spottiswoode, History, ii, p 465; Calderwood, History, v, p 385; C.B.F., ii, p 68; Moysie, Memoirs, p 110, p 124-25; C.S.P.Scot., xii, p 54, p 56.

194. C.S.P.Scot., xii, p 53, p 59, p 65, p 76, p 79, p 89.

unpopular with the other border barons.<sup>195</sup> In May 1596 Sanquhar, Lochinvar and Garleis turned down a joint commission even though they were threatened with horning if they did not accept, and two months later the Maxwell lairds, with Herries and Sir Robert Kerr, all refused to attend a meeting with the king to discuss the governance of the west march.<sup>196</sup>

Clearly there had been a complete loss of confidence on the march in the king's administration of the wardenry and a feeling among the leading men that if the office could destroy a lord Maxwell with all his resources then they were unwilling to risk themselves and their possessions in accepting it.

In July the king finally took the unavoidable step of appointing Johnstone to the task. For the laird it was the fulfilment of an ambition he had pursued since his father's term of office had been so cruelly ended in 1585. An agreement with Herries had made any objections from the Maxwells less likely and even Lochmaben castle was transferred without any great difficulty, and with an understanding that lord Maxwell's claim to the castle and its lands would not be prejudiced by the move.<sup>197</sup> The laird's reputation for violence raised some misgivings on both sides of the border, Bowes expressing concern that he was "guilty of no less than 20 murders" of

195. C.S.P.Scot., xii, p 97.

196. ibid., p 113, p 237; R.P.C. v, p 292, p 300.

197. For the agreement with Herries, C.S.P.Scot., xii, p 102, p 136, p 416; R.P.C., v, p 280, p 302. Johnstone's appointment, R.P.C., v, p 304; Fraser, Annandale, ii, p 64-66, no 67. Lochmaben, R.P.C., v, p 304.

Scotsmen alone.<sup>198</sup> However, he quickly ingratiated himself with lord Scrope with whom he was soon "in kindness", strengthened his standing at court by continuing to back the queen against Mar, and began to enforce a degree of justice not seen on the west march for some time.<sup>199</sup> Like the proverbial leopard though, Johnstone had not changed his spots and his feuds with the Maxwells and the Drumlangrig Douglasses continued with the latter in particular reaching new heights of barbarity and blood-letting.<sup>200</sup> This, and the laird's refusal to discipline his own men, finally persuaded the king to remove Johnstone towards the close of 1597 and replace him with lord Ochiltree who was given a commission of lieutenantry, the laird being imprisoned and later adjudged guilty of having broken his word of honour to Drumlangrig. On receiving his freedom Johnstone returned to the march and the fighting and mutual raiding continued unabated.<sup>201</sup>

Change, however, was on the way, and in 1598 the latest lieutenant, Angus began to enforce the new policy of pacifying feuds, a policy which was continued under Carmichael when he was reappointed warden in 1599.<sup>202</sup> The details of how this was achieved and of the feuding between 1596 and 1600 cannot be discussed here, but by the early months of 1600 an agreement

198. C.B.P., ii, p 243.

199. ibid., p 166, p 174, p 242, p 255; R.P.C., v, p 308, p 360, p 366.

200. For this see the appropriate volumes of R.P.C., C.S.P.Scot., C.B.P., as well as other sources.

201. As above.

202. R.P.C., vi, p 33, p 63.

of sorts had been hammered out between the warden and the two families, and assurances were exchanged with the Maxwells reserving their "dewtie of blude and freindship to the Lord Maxwell" who was not at all pleased about having this peace foisted on him.<sup>203</sup> Maxwell's determination to have some sort of revenge or redress for his father's death was in fact becoming the major obstacle to peace on the west march and led to him being effectively isolated from both his kinsmen and their allies. Carmichael's murder by a party of Armstrongs a few months later once again raised the question of the government of the wardenry, and when Johnstone and Drumlangrig declared their willingness to accept Herries as warden that isolation was increased. It was observed that as a result of this, Herries and "his cheefe the Lord Maxwell ... be at great disliking, and small hope of their furthfull attonments, yet he and his brother in law, the larde of Johnston, are nows very fyrme frendes, leaving Maxwell to choose, either of assurance with the Johnstons, or otherwise (for a tyme) for to take travell into some other realme".<sup>204</sup> In fact within months Maxwell had been denounced for refusing to answer for the good behaviour of himself and his men, while Johnstone had all the charges against himself removed, and on Herries' resignation in August 1600, was reappointed warden of the

203. For Carmichael's work in 1600, Fraser, Annandale, ii, p 67, no 70; p 69, no 72; R.P.C., vi, p 65, p 83-84, p 91, p 105; C.B.P., ii, p 638, p 644, p 647.

204. Carmichael's death, R.P.C., vi, p 117-18; C.S.P.Scot., xiii, part 2, p 658. On Herries and Maxwell, C.B.P., ii, p 667.

west march.<sup>205</sup>

The failure of his first term of office seems to have taught Johnstone something of a lesson about how to govern the marches and this time he was less blatantly exploitive of his position. However, Scrope was as suspicious as ever, dismissing Johnstone's offers to co-operate as "fair pretences". In time he became more tolerant and suggested that Nicolson had been unfair in his criticism of the Scottish warden, who "hath more honor than to utter such untruth" and who "makes a great show of justice". Like other preceptive nobles and landowners Johnstone was beginning to realise that there was more to be won in serving the interests of the king than in being constantly at odds with him.<sup>206</sup> His behaviour certainly contrasted with young lord Maxwell who ignored the government's repeated efforts to get him to settle with the Johnstones on a permanent basis, allowed his assurance to lapse, and for two or three months in the winter of 1601-02 went on the rampage, murdered two Johnstones and did "schaik louse the haille estait of the west Bordour".<sup>207</sup> The king was angry, but still willing to be lenient, banished Maxwell from the locality and put him under the supervision of his father-in-law, lord Hamilton. However, he refused to allow Maxwell to have his men absolved from Johnstone's jurisdiction, and

205. R.P.C., vi, p 121-23, p 152; Birrel, "Diary", p 49; Fraser, Annandale, ii, p 69, no 73; p 70-71, no 74; C.S.P.Scot., xiii, part 2, p 661; C.B.P., ii, p 667.

206. C.B.P., ii, p683, p 685-86, p 692, p 798, p 814.

207. R.P.C., vi, p 197, p 240, p 317, p 351-52; C.S.P. Scot., xiii, part 2, p 939, p 947.

when Maxwell continued to refuse to negotiate, he had him thrown into Edinburgh castle. For six months Maxwell lingered there before escaping into the countryside, a crime which was treasonable, but which lord Hamilton persuaded the king to ignore.<sup>208</sup>

The more efficient government of the west marches which had been characteristic of the region from 1597 was accelerated by the Union of the Crowns in 1603. How that event changed the borders is not the subject of this study, but the office of warden was abolished on both sides of the border and the region lost its political significance and some of its distinctiveness.<sup>209</sup>

When trouble did break out in 1605 between the Johnstones of Newbie and Herries, the government's response was swift, with the lieutenant of the guard being sent to take possession of the property in dispute, banish the opposing sides from its immediate locality, and have the affair brought to the justice court and the session in Edinburgh.<sup>210</sup> Times were changing and even the hot-headed lord Maxwell seems to have glimpsed some understanding of this when on the 18th of April 1605 he finally took Johnstone's hand before the privy council. Three months later the two men again appeared before that body and

208. R.P.C., vi, p 347, p 355, p 356-57, p 419, p 492, p 830-31; C.S.P., xiii, part 2, p 959, p 1003, p 1029, p 1109; Spottiswoode, History, iii, p 99.

209. Donaldson, James V-VII, p 227-28 gives a useful summary of these changes.

210. Lord Hume became lieutenant of the whole march in 1603, R.P.C., vi, p 833. For the affair over Newbie house, R.P.C., vii, p 24-25, p 26-27, p 29-30, p 48; Birrel, "Diary", p 63; Pitcairn, Criminal Trials, ii, p 464-72.

shook hands, having "remitted all rancour, hatred and malice", and on the 25th of June Maxwell gave Johnstone a letter of slains for his father's death. A few outstanding matters remained to be settled, but in effect the great Maxwell-Johnstone feud had been laid to rest.<sup>211</sup>

Lord Maxwell, however, had no liking for the changes which were taking place around him, and like a less attractive Don Quixote, felt a loyalty to an older set of ideals than those now being propagated by the Jacobean state. By 1607 the king had had enough of his "youthfull ryott and insolence", he having quarrelled with Johnstone again, with lord Hamilton over his failing marriage, and with the earl of Morton whom he challenged to a duel over the rights to that title. Consequently he was again imprisoned in Edinburgh.<sup>212</sup> Escape from that fortress was commonplace and for the second time Maxwell and one of his kinsmen broke out. This time lord Hamilton would not or could not extend his protection and a proclamation was issued against his resett, 3000 merks were offered for his capture, and a warrant was issued for his arrest on tax evasion until the crown could decide on whether to invoke the charge of treason which his escape demanded.<sup>213</sup>

211. R.P.C., vii, p 38, p 58, p 64-65; Fraser, Annandale, ii, p 77, no 82; Spottiswoode, History, iii, p 165. Matters outstanding or uprising, R.P.C., vii, p 78, p 103, p 132, p 188, p 203, p 206; Fraser, Annandale, ii, p 79-80, no 83, 84.

212. R.P.C., vii, p 435, p 539, p 542; McDowell, History of the Burgh of Dumfries, p 279.

213. R.P.C., viii, p 17-18, p 19, p 20-21, p 24, p 765-66.

At the king's insistence more stringent measures soon followed. Maxwell's castles were all occupied, the provostships of Dumfries and Annan were taken out of his hands, his goods were arrested, his kinsmen forced to find caution, and on the 12th of January his estates forfeited.<sup>214</sup> The privy council was uneasy about such extreme actions and wrote to the king telling him that there were those in Edinburgh arguing that it was acting illegally in charging Maxwell with treason, a criticism with which the council itself clearly had some sympathy. The lord advocate, Sir Thomas Hamilton, conducted some research into Maxwell's career and had failed to find anything treasonable there which had not since been implicitly forgiven, and thus as a last resort it passed the buck to the king.<sup>215</sup> James, however, had already insisted upon the treason charge and ignored the request for clarification, simply instructing the council to get on with the business of capturing Maxwell and the band of young hooligans he had gathered around him, but the council continued to drag its feet over the case and did not share the king's urgency over Maxwell.<sup>216</sup> The difference probably arose over feeling in the council that what Maxwell had done was no worse than the antics of other noblemen and did not deserve such harsh treatment. Furthermore, there was a genuine uncertainty about the legality of the actions it had taken, actions which could establish a

214. R.P.C., viii, p 29, p 33, p 36, p 487, p 488, p 491.

215. Melrose, i, p 38; Pitcairn, Criminal Trials, iii, p 49, where this reference is repeated.

216. R.P.C., viii, p 45, p 48, p 492.

precedent for other noblemen. That, and the influence Maxwell and his friends had with certain councillors, made them less cooperative with the king who was urging harsh responses from his less sensitive seat in London.

It was lord Maxwell himself who prevented any further debate on the subject. Having secured the loyalty of a younger brother of Maxwell of Kirkhouse, Charlie Maxwell, he sent word to Sir Robert Maxwell of Spotts and after some persuasion persuaded him to arrange a meeting with Johnstone with whom he wished to clear up some misunderstandings. Johnstone was very responsive to the idea and Spotts arranged a time and a place for their rendezvous. The meeting took place on the 9th of April 1608, with Spotts, the two principals and two attendants present. When each side had sworn to observe Spotts' conditions, he and the two chiefs rode off to discuss their business, leaving Charlie Maxwell and William Johnstone of Lockerby alone. After some goading by Charlie a quarrel broke out between them, Maxwell drew a concealed gun and shot Lockerbie, wounding him. Hearing the shot Spotts rode over to break up the fighting and as Johnstone turned his horse to follow, lord Maxwell drew his own pistol and shot the laird in the back, killing him. Thirteen years after Dryfe Sands the Maxwells at last had their revenge.<sup>217</sup>

217. Pitcairn, Criminal Trials, iii, p 43-47; Calderwood, History, vi, p 704; Sir Walter Scott, Minstrelsy of the Scottish Border, (Edinburgh, 1932), ii, p 173-74.

Johnstone's life had been one of bloodshed and it is perhaps no surprise that he met a violent end, even if the exact circumstances of his death were a little tragic. At a moral level there was little difference between him and his killer, both shared the same passion for the revenge of their fathers' deaths, and when Maxwell's age, Johnstone had been equally unruly and violent. The difference was not in the men themselves, but in the times, for the 1580's and 1590's were much less stable years than those of the first decade of the seventeenth century. As a politician Johnstone was of very little significance outside his own locality, being a client of Bothwell and then Lennox, both Stewarts and opponents of the Hamilton faction to which the Maxwell were affiliated. Within his region though, he was a formidable operator, noted less for his subtlety than his endurance and courage, but with the skill to surmount the problems caused by his father's utter ruin, his own miscalculation in siding with Bothwell, the enmity of the eighth lord Maxwell and the botching up of his first term as warden of the west march. He was a fitting opponent of the elder lord Maxwell and was described as a man "full of wisdom and courage, and every way well inclined, and to have been by his too much confidence in this sort treachorously cut off ...".<sup>218</sup>

There could now be no debate over Maxwell's future. The guard was given another commission for his arrest and a

proclamation was issued for his capture dead or alive.<sup>219</sup>

This time there was some local resistance with the guard being mobbed twice in Dumfries. However, this was the limit of opposition and the crown proceeded with the arrest of Maxwell's resisters, the examination of the shocked Spotts and the wounded Locherbie, banished a number of Maxwell lairds from the locality, and fined the burgh of Dumfries for sheltering Maxwell after the murder.<sup>220</sup> Proceeding with the forfeiture, however, still raised some scruples. The king had no doubts about "The late filthie murthour ...", but the council was more cautious and decided to charge Maxwell with house burning and murder committed against some Johnstones in 1602. It also issued a summons of forfeiture to be executed upon sixty days warning, time enough to allow Maxwell to flee the country.<sup>221</sup> The full process of doom and forfeiture was not completed until June 1609, and even this was passed along with a separate "Act in favour of the Lord Maxwells vassells", clearing any of his kinsmen or dependants of any part in his crime and guaranteeing them against punishment. Maxwell was also found guilty of having intentionally ruined his estates as soon as he realised that they were likely to fall to the crown, but parliament agreed to recognise all outstanding securities and infeftments of the Maxwell estates and had clearly decided against a repeat of the Bothwell

219. R.P.C., viii, p 70, p 83.

220. ibid., p. 86, p 90, p 97-98, p 119, p 125, p 152, p 169, p 230, p 500, p 537; Pitcairn, Criminal Trials, ii, p 557; iii, p 43-46, p 46-47.

221. Fraser, Annandale, ii, p 13, no 18; Melrose, i, p 59.

forfeiture when his lands were broken up among supporters of the king. The Scottish nobles were clearly not going to allow one of the pre-eminent families of the realm to be completely broken over a murder, and advocate Hamilton informed the king that "sum of the Lordis of Articles kything more scrupulous and precise in sindrie poyntis of that proces, nor we did forsie or suspect".<sup>222</sup> It is a comment on the limits of the king's power and on the independence and conservatism of the Edinburgh government. A few minor related matters remained to be dealt with, but everyone hoped that Maxwell's forfeiture and exile would be the end of the case and that peace between Maxwells and Johnstones could be restored.<sup>223</sup>

Unfortunately lord Maxwell found himself unable to stay away from his home country for long, and in 1612 he slipped back into the country. When word of his return reached the government orders for his arrest were issued and a number of his resisters were taken and hung. Seeing that time had not mellowed the king's determination to punish him, Maxwell fled north to Caithness from where he intended to take a ship to Sweden, but the earl of Caithness saw in Maxwell an opportunity to ingratiate himself with the king, tricked Maxwell into putting his trust in him, and abused that trust to have him captured and

222. A.P.S., iv, p 411-2, p 413, p 450; Melrose, 1, p 67.

223. Further investigations of the murder were carried out, R.P.C., viii, p 300, 805-07. Maxwell was tried in his absence, Pitcairn, Criminal Trials, iii, p 32-41. Further actions taken against other Maxwells, R.P.C., viii, p 346, p 348. Execution of Maxwell's friend Douglas of Lincluden, Pitcairn, Criminal Trials, iii, p 90-95.

taken as a prisoner to Edinburgh.<sup>224</sup>

His presence there caused the government a major embarrassment, for while Maxwell stood under sentence of death, no Scottish nobleman had been executed in Scotland since 1584, and that for conspiring against the tough earl of Arran who was then chancellor. To execute Maxwell for murder would be to take a step which the Scottish nobility were scarcely likely to sanction and so the privy council approached the Johnstone family and asked them if they would accept assythment or some other punishment. Unfortunately the young laird, his mother and kinsmen were adamant that they wanted Maxwell's head.<sup>225</sup> Disappointed by this, the council wrote to the king, asking what his will in the matter was and including with their own letter a petition from Maxwell's brother expressing the former lord Maxwell's repentance and his willingness to make amends.<sup>226</sup> The offer was a very reasonable one, and even in 1613 others were still avoiding criminal prosecution in just such a way, but the king's response was simply to write and express his surprise that Maxwell was still alive.<sup>227</sup> There was to be no reprieve, and on the 18th of May 1613 the privy council gave up the fight to save Maxwell's life, issuing a warrant to the provost

224. R.P.C., ix, p 359-60, p 363, p 378; Pitcairn, Criminal Trials, iii, p 223-24; Gordon, Sutherland, p 287-89.

225. R.P.C., x, p 29.

226. Pitcairn, Criminal Trials, iii, p 50-52.

227. R.P.C., x, p 44.

and baillies of Edinburgh to "tak the lait Lord Maxwell to thair mercat croce upon xxj of this instant, and thair to caus strik his head from his body".<sup>228</sup> In the remaining three days the council and ministry of the burgh sought only to save his soul, but while Maxwell had many talks with the latter, like his father he professed "not to be of thair religioun, but ane Catholik Romane". To everyone's relief he agreed not to make his scaffold speech an occasion for catholic propaganda, but plead with the king to restore his brother to his title, asked forgiveness of the Johnstone's, while holding to the story that he did not kill Johnstone in cold blood but in the heat of the moment, and finally asked forgiveness of his friends upon whom he had brought hardship and dishonour. After this declaration before the magistrates and assembled friends he was taken out to the scaffold where he died with perhaps more dignity than he had lived.<sup>229</sup>

In some respects lord Maxwell's execution does not belong in this chapter, but somewhere in the following two where the uprooting of the feud is discussed. His death was after all not occasioned by the fact that he committed murder, but by the fact that he deliberately rekindled a feud after the king and his councillors had, with some effort, laid it to rest.<sup>230</sup>

228. W. MacDowell, History of the Burgh of Dumfries, p 292.

229. *ibid.*, p 292; Pitcairn, Criminal Trials, iii, p 52; Balfour, "Annales", ii, p 42.

230. Perhaps Maxwell would have benefitted from the advice Njal gave to Gunnar in the twelfth century saga called after his name, thus, he said "Never kill more than once in the same family; and never break any settlement which good men have made between you and others.", Njal's Saga, p 135.

To some his death has come to symbolise a victory for the Scottish crown over the magnates, and there is some truth in that assertion. One can make too much of the incident though, and it remains an isolated case and as such cannot really be brought into any king v nobles equation. After all James V had executed the master of Forbes for similar behaviour in the early sixteenth century and few would argue that his death symbolised any great victory for the crown. As it was James was forced to compromise on the issue, being initially forced to accept a rather belated forfeiture, and then, after Maxwell's unlucky capture, found his privy council consistently opposed to the execution. If there had been a revolution in government, it had not extended to the extreme punishment of noblemen and the crown officials of 1613 proved themselves to be more conservative in this question than Arran had been thirty years before. Maxwell died because he was messing up the king's image as the ruler who had put an end to feuding in Scotland, an image which was well tarnished anyway, but which could not afford the embarrassment of the re-opening of one of the major feuds of the kingdom, especially on the English border. Scots had a bad enough reputation in London at this time; lord Sanquhar having been executed there in June 1612. Maxwell's death was an example, not to the Scottish nobility in Scotland, but to James' critics in London. To the government in Edinburgh the whole affair was one which they would have gladly washed their hands of, and it had nothing at all to do with their exercise of power or the conduct

of their administration. Maxwell himself was no better or worse than his contemporaries, but while they had come to recognise the Indian Summer of the feud and to acquiesce in its demise, he failed to perceive that while feuds continued and the values of the feud were still held by many, court society, and the king in particular, would no longer tolerate such blatant flouting of legislation passed to extinguish feuding.<sup>231</sup>

However, this is perhaps to digress too much into the theme of the next two chapters. Ten years after Maxwell's death the laird of Johnstone and the former's brother, by then restored to his titles as earl of Nithsdale, finally ended their feud. The feud had lasted close to fifty years, having been born in lord Maxwell's appointment to the wardenry in 1573, and being settled in 1623. Some of the issues raised by a discussion of this great feud are repetitions of points made earlier, the importance of the locality, the interplay of local and national politics, the formation of faction and the politics of feud, have all been dealt with already, and this chapter has reinforced much of what has already been said with evidence from another of the three important regions of Scotland, the borders.

231. The poem "Lord Maxwell's Goodnight" was ostensibly written by him some time between 1608-13 and certainly epitomises his thinking. Thus "Though I have slain the Lord Johnstone,/ What care I for their feid?/My noble mind their wrath disdains:/He was my father's deid./Both night and day I laboured oft/Of him avenged to be:/But now I've got what lang I sought,/And I may not stay with thee." Minstrely, ii, p 177.

Hopefully the integration of border politics and border values with those of the remainder of the country will be more apparent from the study of this feud. Furthermore, while less has been made of it than one might, the pacification of the Maxwell-Johnstone feud was well under way between 1597-1603, and while the Union of the Crowns perhaps hastened the process, too much has been made of the civilising effect of that event. The Union facilitated what was already in progress, it did not in itself initiate any great change on the border where feud was concerned.

More specifically the feud had a greater international edge to it than most. Border politics was played out in the context of Maxwell and Johnstone, of Hamilton and Stewart, and of Spain or England, catholic or protestant. Feud on the Scottish marches was not only of concern to the government in Edinburgh, but also in London. Asheby might smugly write that "a riot in England has a greater fine than high treason here", but the English government was keen to exploit such a state of affairs and encouraged feuding.<sup>232</sup> Thus, when in 1600 the feuds of the west march were largely pacified by Angus and Carmichael, Lowther reported that "their private quarrels assured, there is more danger to our border", while another commentator gleefully described the Maxwell-Johnstone feud as a "weakeninge of Scotlande and a strength to England".<sup>233</sup>

232. C.S.P.Scot., x, p 137.

233. C.B.P., ii, p 647; i, p 394.

However, it was not only on the borders that England had an interest in the factious divisions of Scottish society. Cecil was advised that "It were the best service that ever was that the rebels and the Islanders could be brought to blood and feuds and it would do her Majesty more pleasure against the rebels than the employment of 10,000 men."<sup>234</sup> English security in Ireland could thus be strengthened by opening up feuds between the rebel clans of north-west Ireland and the Scottish islands. The king's reforms and attempts to reconcile feuding were thus often against English interests as the Elizabethan privy council observed in 1600 in its instructions to Nicolson

"... yet if by any late agreements or compositions of feuds any old enmities be reconciled you can well judge that in such a case her Majesty may be abused and no service done. For prevention wherof it belongs to you more than any other to be useful, because you are in the place where you may learn particulars which are to us unknown."<sup>235</sup>

Such meddling could, as Bowes pointed out, be highly dangerous. During his interference in Bothwell's affairs he thought "the feud is like to fall on me ..." <sup>236</sup>, but dangerous or not, it was certainly a useful tool of English diplomacy. Obviously it could be just as useful when used to reconcile "well affected" noblemen whose friendship would further the interests of England. In 1580 Hunsdon was told to establish a pro-English party by compounding the feuds of those who would be useful converts to that cause, and in 1583 cross-border feuds

234. C.S.P.Scot., xiii, part 2, p 625.

235. ibid., p 724.

236. ibid, x, p 732.

were ordered to be dealt with since they were dangerous to the peace between the two realms.<sup>237</sup>

Security was of course at the basis of such interference. At the most fundamental level the English marches themselves were safer as long as the Scots were more concerned with killing one another, but there were obviously wider strategic issues at stake. The connection between Ireland and the north-west coast was clearly one area of primary concern and the other was the Scottish border from which England itself could be threatened. Hence the great English interest in lord Maxwell during the years of his most intense involvement with Spain, years when Philip II also appreciated the value of a powerful catholic nobleman on the very edge of English soil. What difference to the struggle between England and Spain it would have made if Parma had accepted Maxwell's plans in 1586 is pure conjecture, but this picture of a Scottish catholic nobleman thinking in the grandest of European terms should not be obscured by his failure. While Arran was more dangerous than Maxwell, the latter proved a useful ally and hence the satellite diplomacy of 1585, but when he himself became the major threat to England, support for him was dropped and one can assume that English intelligence was filtered back to James VI and had some part in his swift action against Maxwell.

The feud between Maxwell and Johnstone contained enough heat for it to have raged without external help from

international powers or court politicians, but the interference was still there. Spain was financing much of Maxwell's military preparations, and as a friend of Bothwell and opponent of Maxwell's, the younger of the Johnstone lairds was given English protection while an outlaw and it was well known that the English Grahams rode with him. Feuding societies are much more at the mercy of outside exploitation than other societies. Thus one family split another by setting its parts against one another in intra-kin feuds, one noble divided a neighbour against his dependants, the king ruled a region by playing on the competition of its leading noblemen, and, not surprisingly, an external power has available to it a great deal of leverage through the opportunities these divisions offer for skilled diplomats and statesmen. In the great struggle between Spain and England, the politics of the Scottish west march were of minor significance, but they were related. The defeat of lord Maxwell was, however small, a blow to Spain, and having a Johnstone as Scottish warden was an advantage to England. Whether the opposing factions and the blood-feuds in Scottish society were between Comyns and Bruces in the fourteenth century, Hamiltons and Douglasses in the early sixteenth century or Maxwells and Johnstones in the latter half of the century, the fissures they opened up were opportunities to be grasped by England just as James II so astutely exploited the English Wars of the Roses in the fifteenth century. Asheby's comment that "These feuds make them poor and divided"<sup>238</sup> was known to

238. C.S.P.Scot., x, p 122.

be true by the Scottish king and was, as James VI himself pointed out, yet another reason why he had set himself the task of eradicating the feuds for ever.<sup>239</sup>

239. See above vol ii, p 445.

UPROOTING THE FEUD 1:  
LEGISLATION AND EXECUTION

Sixteenth century governments were not interventionist in the way one has come to expect governments to be today and even fairly centralised states left the greater part of their peoples' lives to be worked out in the localities. During the reign of James VI, however, one does begin to find an increasing amount of legislation concerned with law and order, one of the fundamental concerns of any organised state, and at the same time an enhanced ability to enforce that legislation. One can make much too much of this, and some have, but while the reign of James VI certainly did not see a revolution taking place in government and in its role in society, it did see change on a scale which contrasted with earlier periods.

Legislation dealing with feuds and the feud environment was itself substantial. James VI himself appreciated that one could not simply pass laws against feuding, but had to deal with related matters like gun control, duelling, retaining, outlawry and other factors which were contributory to the feuding environment and thus, while there are only three acts specifically concerned with feud, there is a vast amount of legislation which was directly or indirectly related to it. This is not to say that the king and his officials had a blue-print for the eradication of feuding, far from it. Their legislative programme was evolutionary, progressing in fits and starts, and the corpus of new laws created often had to live side by side with customs and practices they were designed to replace. In its attitude to feuding, as in so

many other aspects of society, one finds in the early modern government that overlapping of medieval and modern which is its most recognisable characteristic.

The first attempt by a Scottish government of the period to do anything positive about feuding was during 1578-81 when parliament interfered in the Gordon-Forbes feud. The political reasons for why this feud was so important have already been discussed, but some of the principles established there were to become the foundations upon which later legislation rested. In 1578 parliament appointed a commission of eight men to act as arbitrators in settling the differences between the two feuding families and this principle was maintained in 1579 when parliament approved of some alternative among the personnel of the commission. Six months later, and with nothing apparently decided, the privy council permitted the Gordons and Forbes to name their own arbitrators with the proviso that if they had failed to come up with an acceptable solution, approved by a majority of the arbitrators, then the king would appoint a committee of privy councillors to do the job. The feud had by then been passed through three parliaments and onto the privy council which had handed it back to the families involved for a limited period only. In 1581 this point about the king acting as oversman was ratified by parliament and on this basis those aspects of the feud which had a bearing on the civil war settlement were decided.<sup>1</sup>

1. A.P.S., iii, p 112-14, p 164-65, p 230-31; R.P.C., iii, p 278.

While this was a completely isolated case which had arisen because of its political context, this idea of private arbitration followed by the king acting as oversman when arbitration failed, was to later be embodied in the feud legislation of 1595, 1598 and 1604.

While personnel is dealt with more specifically in the following chapter, one cannot avoid the observation that this arrangement, ad hoc though it was, came about during a period of factious noble rule. Furthermore, the much criticised Scottish nobility were concerned with law and order at a more general level. In 1582 the privy council, then dominated by the Lennox-Argyll factions, expressed its concern for the state of the realm, wracked by bloodshed, oppression and violence, and established special justiciary courts to be held throughout the kingdom. The council also drew particular attention to feuding in the west of Scotland, stating that "becaus of sindre deidlie feidis, grudgeis and displeasures standing betuix sindre gret personis, thair freindis and partakers, throw bloodsheid and uther inconvenientis happinit amangis thame", all sorts of disorder had resulted. The participants of eight separate feuds were thus ordered to give mutual assurances before a certain date. As far as is known no-one paid any heed to the order and it may even have been the cause of some of the parties subject to it joining Gowrie in his coup shortly afterwards.<sup>2</sup> However, the new government maintained some of the momentum

2. R.P.C., iii, p 500-03.

of this initiative. A convention in February 1583 drew up a band in which the nobles agreed to

"assure eache one others, to be unhurt, unharmed, molested, persued, or in anie wise invaded, ather for old feed or new, otherwise than by ordinar course of law and justice; nather sall we, nor anie that we may lett, make provocatioun of trouble, displeasure, or tumult, in word, deid or countenance..."

They all promised moreover that they would within forty days submit their feuds to the king who with the advice of his privy council, would appoint arbitrators to mediate the feud. Any party which refused to submit to this process, or accept the findings of the arbitration, would be ostracised by all the others.<sup>3</sup> Royal interference in private feuds was again being tacitly acknowledged, though no sooner was the ink of the bond dry than it was forgotten about. Essentially the 1583 bond was a political device by the Ruthven administration to have the new status quo accepted by binding the nobility not to tolerate any further in-fighting and to break all other political bonds they had.

Yet, while politics may have been the dominant motivation of the minority governments, they were by no means impervious to their responsibilities. Concern for the violent environment had prompted the 1567 government to pass an act making dismemberment the punishment for fire-arms offences and in 1574 it was recognised that this law had never been implemented, possibly because it had been too severe. Amputations were thus

3. Calderwood, History, iii, p 700-02.

reserved only for those who shot at someone, whether they hit them or not; death being the penalty if they killed them, lesser punishments of imprisonment and fines being imposed for the illegal wearing of guns.<sup>4</sup> On the whole the law was again ignored, particularly during the unsettled period of 1578-79 when a number of proclamations were issued against the widespread use of fire-arms.<sup>5</sup> In 1579 parliament again discussed the issue and decided that it was still the harshness of the law which was the cause for so few prosecutions and the act was amended to give magistrates greater discretionary powers in its implementation. There were some prosecutions under the terms of this legislation, but on the whole it had little effect on the gun-toting nobility and their armed followers who continued to give little respect to the proclamations issued to enforce legislation they themselves had been instrumental in making law.<sup>6</sup>

Other related matters were also given some consideration by the minority governments. In 1580 it was pointed out that while private combats were still legal where "na uther triall is to be had" they continued to be practised for lesser causes. The council, therefore, outlawed the sending of "ony infamous libellis or utheris, or to appoint or keip trystis for the combat" unless a royal licence had been obtained.<sup>7</sup> Convocations

4. A.P.S., iii, p 84-85.

5. R.P.C., ii, p 681-83; iii, p 105, p 175.

6. A.P.S., iii, p 146; R.P.C., iii, p 327; for prosecutions see Pitcairn, Criminal Trials, i, part 2, p 98-100.

7. R.P.C., iii, p 333.

also came under scrutiny and a new measure was introduced in 1579 to combat the evils of attending court with large armed bands of followers and this was repeated in 1581.<sup>8</sup> The effectiveness of horning was also looked at and in 1573 local sheriffs were instructed in how to co-operate better with the treasurer by having lists of horned men in their areas published. In 1579 parliament repeated the complaint that letters of horning received scant regard, rather like parking tickets today. Further efforts were made to oil the wheels of the bureaucracy that dealt with them, with the main thrust of the reform being the enhanced supervisory powers of central government departments like the treasurer's over local officers.<sup>9</sup> Efforts were similarly made to cut down the abuses within the patronage system and in 1582 all commissions granted since 1578 were nullified as too many privy ones had been issued by the young king without proper regard being given to their merit.<sup>10</sup>

The majority of this legislation passed during the minority years was completely ineffective, but it was passed and it says something about the responsible way in which minority government, so often castigated, could act. However factious their politics might be, when in "office" the Scottish noblemen were conscious of their role in the community as men with a mandate to govern in the interests not only of their kindred and faction, but of the whole community. However, if one remembers the graph in

8. R.P.C., iii, p 173, p 487.

9. R.P.C., ii, p 304-05; A.P.S., iii, p 142-43.

10. R.P.C., iii, p 326, p 510-11.

the introduction, feuding was on the increase during these years and even when the king began to take a more commanding role in the affairs of his realm he was to find that his early legislation was equally disregarded. This was certainly true of his rather naive and theatrical attempt to reconcile his feuding nobles in 1587 in an agreement similar to that of 1583. Discussion of the problem of the feuds came to the fore in the spring of that year when it was proposed that "gif parteis having discension not eslie to be reconcelit will not subject thame selfis and kynnisfolk commandit to obey the chargeis of tua newtrall persones ...", but this was far too extreme a suggestion and the king was in no position to force the issue in 1587, having to await another eight years before he was able to have it incorporated in any legislation.<sup>11</sup>

What finally emerged in 1587 then, was a grand banquet of the nobility at which they renounced their feuds with one another amidst a setting of pageantry and symbolism.

"Upon the xv day of Mai, the King maid the banchet to all his nobiletie, at ewin in Halyroudhouse, quhair the King maid thame, efter drinking of many scolis ane to ane uther, and made thame efter supper, quho utherwayis had beine at great fead, tak twa and twa be handis, and pas from Halyroudhouse to the merket croce of Edinburgh, quhair the provost and baillies had prepared ane table and desert for his Majestie, at the quhilk there was great mirthe and joy, with sik ane great number of pepill as the lyke had not beine seine of befoir."<sup>12</sup>

As one might expect, this temporal communion had no effect

11. C.S.P.Scot., ix, p 398.

12. Moysie, Memoirs, p 63. See also, Balfour, Annales, i, p 385; Birrel "Diary", p 24; Calderwood, History, iv, p 613-14.

at all on the hard-headed Scottish nobility, apart no doubt from a few hangovers the next day. Two months later parliament tried to give more substance to such theatricals with an "Act for Universal Concord Among the King's Lieges", but this innocuous piece of legislation did no more than state that the quarrels among the nobility had proceeded from "the comoun trublis and civile wairis quhairwith this cuntrie hes bene havelie plagit", and proclaimed that the privy council would make friends of those who were enemies and inflict "scharpe justice" on thos who refused to conform.<sup>13</sup> It was all simply blowing in the wind and no-one had the slightest idea how to implement such proposals. Like the burst of interest in 1582-83, that of 1587 passed with the number of feuds and the level of violence in the country increasing each year.

Between 1587-95 the king was too engrossed in the struggle with Bothwell and Huntly and feuds became too necessary as a tool to control rival factions for it to have been even possible to think much about abolishing them. Law and order was not abandoned however, and an act was passed in 1588 to provide for better administration of justice, while general bands in 1589 and 1591 were implemented to try and force landowners to keep better control of their men by making them responsible for their acts.<sup>14</sup> It was only scratching at what seemed to be an ever expanding surface and in 1591 the

13. A.P.S., iii, p 458.

14. C.S.P.Scot., ix, p 629-34; R.P.C., iv, p 448. For the 1591 band see R.P.C., for Nov-Dec 1591 and C.S.P.Scot., x, p 585.

council almost despairingly wrote of the "multitude of deidlie feidis" in which opposing parties "tak their privat revenge and advantage of utheris, disdainig to seik remeid be the ordinair forme of law and justice, without fear of God or reverance of his autoritie".<sup>15</sup> Yet, as one shall see in the following chapter, in its apparent impotence to do anything about feuding the council had, in its reference to God, the king and the law, hit upon the ideological basis for the crown's attack upon feud which was to gain eratic momentum after 1595.

The catalyst for the king's activity in 1595 was an external threat. Towards the end of that year there was a real or contrived fear of a Spanish invasion which it was felt could not be repelled unless the nobility healed their feuds and united to meet the common foe. At a convention of the nobility in November - feuding was to be consistently dealt with at conventions, not parliaments, presumably because they were more manageable - it was decreed that because feuding had reached such awful proportions that the king would set himself the task of mediating the more significant ones and that those who refused to accept his mediation would be imprisoned. It was in effect a repeat of the proposal which had failed in 1587 and was only passed in the midst of a panic, being "provided upon the resisting of foreign enemies". Lesser feuds were to be compounded by sheriffs in co-operation with local barons and presbyteries. This act, passed "to the

15. R.P.C., iv, p 686.

advancement of his Majesties authoritie and service", and "to the withstanding of the publict and foreyne inemy", was the first major step along a road which would lead to the eventual outlawing of feud altogether. As such it was a fairly moderate beginning, having the dubious status of an emergency measure and lacking any real means of enforcement. At most it was a recognition of the king's right to act as an overlord over his feuding nobles just as those same men did when their own dependants were at feud. As such it was dependant upon the king's inclination to get on with the job. The privy council did summon the principals of seven feuds, including four of the major feuds of the country, to appear on specified days to exchange assurances and to submit their feuds to arbitration, but the order was either boycotted or circumscribed and the act became another dead letter. Some minor progress was made in bringing parties to sign limited assurances and a committee was formed of two nobles, two councillors and two ministers to administer the work, but as long as they lacked any meaningful enforcement powers they were nothing more than a moribund quango.<sup>16</sup>

The act of 1598 was much more substantial and more clearly thought out. In May that year it was observed, probably with some exaggeration, that "almost all feuds in Scotland are renewed so dangerously as this country was not under such appearance of trouble these 20 years". In other words nothing had been achieved by the 1595 act. However, it was already

16. C.S.P.Scot., xii, p 73, p 87; R.P.C., v, p 248-49.

known that the impending convention intended to make law and order one of the major issues under discussion with the feuds in particular being given yet another examination. The nobles were informed in advance that their feuds were going to be discussed and many of the royal officials had warned the king that matters were getting completely out of hand and that if he wanted them to do anything about the lawlessness of the kingdom, then he would have to be more determined to back up any legislation with his authority. The king's commitment to the removal of feuding was unquestionable, but his tendency to be easily distracted and to be remarkably tolerant of his nobles had contributed to undermining his own legislation in 1595, but this strike threat from his officials was sufficient to inspire him to one of those frenzies of work of which he was highly capable.<sup>17</sup>

The convention was held in Edinburgh and was relatively well attended by the nobility. The burgh had to make all the usual preparations to avoid an outbreak of violence for there were many like lords Hamilton and Livingston who ignored the restrictions on retinues and rode into town with four hundred men at their backs instead of the twelve stipulated. It was thus in an atmosphere of tension, amidst the cramped living conditions of the burgh, in the middle of summer and with feuding nobles living on top of one another and going through all the ritual of brinkmanship, that the

17. C.S.P.Scot., xii, part 1, p 214. This contrasts sharply with the news in 1595 that all feuds had been 'compounded', C.S.P.Scot., xi, p 511.

convention met. Behind the scenes the king was showing a great deal of interest in the organising of the convention's business, putting final touches to the act and working to reconcile some of the feuding nobles who were present in the burgh at the time. One had here a revealing picture of the Scottish monarchy with the king and his advisors going over the details of a legislative programme at one moment and then James spending a few hours with the likes of Mar and Livingston, trying to persuade them to accept mediation. Bureaucracy and lordship were fused in the functions of the crown.

The act did not, however, have an easy passage and some analysis of the composition of the convention is necessary. Attendance at a convention was not by right, as parliament was, but by invitation of the king and thus what one has was already a rather carefully managed affair with a preponderance of men on whom the king could count, as well as the presence of those too powerful to be ignored. There were, therefore, nine government officials present, the representatives of five burghs, three bishops, and five men who had been rewarded with the temporalities of pre-Reformation abbacies for service to the king. These twenty-two would almost certainly have backed any crown initiated legislation which was essentially why they were there in the first place. The remaining twenty-five, the duke of Lennox, lord Hamilton, seven earls, nine lords and seven lairds, had to be persuaded, and as men deeply involved in feuds at every level they were difficult

to convince. Of the nobles Lennox, Hamilton, Angus, Erroll, Marischall, Cassillis, Glencairn, Mar, Sutherland, Maxwell, Livingston, Spynie and Ochiltree were all either at that time or in the very recent past engaged in feuds of their own in which they were bound to resent any royal interference. Of the remaining nobles, Fleming, Seton, Fyvie (the future chancellor Dunfermline), Newbattle and Elphingstone, none of them were at feud and all of them had made, and continued to make, a career out of royal service. Finally, of the seven lairds, Tracquhair, Edzell and Sir George Home (the future Dunbar), were again all men committed to the crown; Tullibardine, Dudope and Roisling were men of little importance, and though the powerful Mackenzie of Kintail had more feuds than most, he too made his fortune by at least appearing to work for his royal master. Clearly, then, the king had a majority, probably being guaranteed at least thirty or more of the forty-seven votes in the convention. The opposition was led by the king's friend Mar, one of his most loyal and hard-working nobles, but a man who saw the act as a means to get him to settle his feud with the Livingstones and Bruces and he was able to rally the conservatism of the great nobles, an action which contributed to the chancellorship going to Montrose six months later. The king knew very well that the co-operation of his nobles was more important than a majority vote in the convention and "made many long and pithy harangues for persuading agreements amongst them all to regaird his services and good", but Mar had shown his stubbornness before then, and with his friends forced a division, so that "by plurality of votes it passed". It

was not the unanimous reception the king had hoped for, but the "Act Anent Removing and Extinguishing of Deidlie Feuds" had become law.<sup>18</sup>

From an analysis of the convention one must turn to the text of the act itself. Those parties at feud were to be charged to appear before the king and his council where they had to submit their feud to two or three friends on either side (they could on occasion make a written submission). In the submission they would, as was customary, list their grievances and claims against the other party. The arbitrators would then be named by the parties themselves, not by the crown, and the practice of naming an excess number from whom the other side chose those it found acceptable also continued. This arbitration committee then had thirty days in which to make a decision or they could alternatively elect one of their number to act as an oversman and decide on the issues himself, but again within thirty days. If neither a settlement nor an oversman could be agreed upon then it was the duty of the arbitration committee to set out in writing their points of disagreement and submit these to the king who at this point became oversman himself. If the arbitrators failed to make this submission and simply abandoned or dragged out their task then they were each to be fined a thousand pounds. A

18. A.P.S., iv, p 158-59; C.S.P.Scot., xiii, part 1, p 228-29. It is also of some significance who was not at the convention, i.e. men like Huntly, Argyll, Atholl, Montrose, Caithness, Crawford, Hume, Ogilvy, Forbes, Glamis and Drummond being the more important among them.

settlement of the feud would then be dictated by the king himself, or by a committee of councillors appointed by him. This would be delivered to the parties as a decret arbitral against which there was no appeal as was also the case if the settlement was reached by arbitration. The decret would then be registered by the government and given the status of a privy council act. In its form the act was thus very conservative and introduced no new means of arriving at a feud settlement. The difference with what had happened before was that the king's powers to pressurise parties into an agreement were increased. Where possible the feud was to be left in private hands and only as a last resort did it fall to the crown to intervene in the settlement procedures, but at each stage, from the summons to submit to a decret arbitral, the process was being hurried along by the crown in an effort to ensure that the feud was put to rest.

The act then went on to define the terms of reference for invoking it. Feud was divided into three categories: where there had been no slaughter, where there had been slaughter on both sides and where there had only been slaughter on one side. In the first case the act was to be implemented in full, in the hope that such arbitration would prevent the feud escalating into something worse than it already was. Similarly, in the second case, in spite of the fact that slaughters had been committed and the criminal law thus seriously broken, the act would still be operational. This

was an enormous concession to custom since it recognised the trial and punishment of killers by private justice rather than before the king's justice courts. In both the above cases other crimes, like theft, destruction of crops and property and mutilation, were also left in private hands. Only where slaughter had been on one side did the crown reserve for itself the right to intervene, being unable to "refuis in resoun to submit in maner foirsaid all querrell he can beir to ony persoun Innocent". The offended party was specifically refused permission to take revenge on the innocent kinsmen or servants of the murderer and the party pursued at law for such crimes was only to defend itself at law and not in any other manner. When the offender was finally punished by the law the quarrel was to cease, though even in this category room was left for the parties to come to a private agreement before the affair reached that stage. Anyone with a capital offence was given forty days from the publication of the act in the head burgh of their shire to execute letters against their enemies and insist on pursuit by law, failure to do so resulting in their opportunity to do so being lost for all time and their having to submit their quarrel to the terms of the act above. Even here one had a very modest assertion of the place of the third party in the establishment of justice. The aim of this clause was not to increase the role of the justice court, but to prevent the taking of revenge. More significant in this respect was the clause which asserted that if the private party failed to take the case to law or decided to settle for arbitration,

then the king reserved the right to pursue in his own action. While this was again not new, it did emphasise the king's right to do so and increasingly in the years which followed lord advocate Hamilton exploited this avenue to increase the amount of crime being subjected to royal justice. Finally, the act allowed the injured party to demand a trial even after a settlement had been reached if new evidence had subsequently been uncovered. Guidelines were established for the conduct of the trial with warnings about limiting attendants, specifications on sanctions to be imposed on those who failed to appear and strictures not to treat the trial as a means of acquiring vengeance. On its passage the nobles present swore to uphold the act and the king swore not to grant respites or remissions which could undermine the working of much of this last section.<sup>19</sup>

This act formed the main thrust of the crown's campaign against feuding. The most striking point about it is clearly its conservatism, for while the door was left open for royal prosecutions in the last category of feuds, the basis of the act was to encourage private mediation or private prosecution. Furthermore, the majority of existing feuds were those involving slaughter on both sides and there were obvious loopholes such as an injured party going out and killing in revenge and thus making a feud of the third category into one of mutual slaughter. Why, after all, should anyone

19. A.P.S., iv, p 158-59.

whose kinsman had been killed be satisfied with judicial punishment when private revenge was more satisfying and probably more efficient? The king might try to prosecute both parties for their crime, but that would not end the feud, which was precisely why feuds with mutual killings were left to arbitration. Furthermore, in such a case an execution might satisfy the injured party, but there was no guarantee that the criminal's kin would accept that that was the end of the matter and they might still insist on revenge of their own whatever the consequences. However, in spite of these and other weaknesses the act was an important piece of legislation, and its emphasis on persuasion rather than coercion and the flexibility with which it was implemented were to ultimately make it a success. A more assertive piece of legislation would, apart from having even greater difficulty in getting passed, very probably have failed completely because of hostility to it. As it was the act left private rights intact and invoked the king's authority largely to increase the efficiency of the settlement procedure and to prevent the growth of new feuds, not to establish any interference in existing ones.

Application of the act from 1598-1603 was fairly intense, the act having been given a further reading before parliament in 1600 and thus becoming statute law.<sup>20</sup> In 1604, by which time a great many of the feuds of noblemen had been settled,

20. A.P.S., iv, p 233-35. There was no opposition to the act in 1600, its passage being managed by the lords of the articles.

the king felt confident enough to extend his powers over the settlement procedure and on the 5th of January the privy council passed a third act concerned with feuds. The 1604 act resulted from criticisms that the king himself levelled against the privy council and the 1598 process. James instructed the council to compile a list of outstanding feuds and have the parties involved appear before it to conform to the 1598 act, but, he added, he considered that the taking of assurances was "rather ane fosterar nor removear of the same", on the grounds that an assurance implied a "grant and confessioun of ane feid and querrell". What James was saying now was that in allowing this practice to continue the crown was recognising the legitimacy of feud, causing "privat presumptioun" and "derogating" the king's authority and the protection of his subjects which was his duty

"as gif the law did (not) astrict ony man to keip his Majesties peice, bot the respect and regaird of their awin particular band of assurance, sould move thame thairto, and as gif, at the ische and expyring thairof, full libertie and licence wer grantit unto thame without controlment of reposses to do quhat they list."

In future, therefore, when a party felt it had a grievance against another it would bring its complaint to the council which would, as it always had, adjudge whether it was legitimate or not. The council would then warn the offended party not to try and exact private revenge and would bind it, or both parties where possible, to keep the peace, taking sureties as it thought necessary. In return, the council would be responsible for guaranteeing that the accused party would be

pursued by the crown and that the king would not under any condition grant a respite or remission. The offended party would be asked if they bore "ony querrell grudge or inimitie againis the kin, freindis or surname of the offendour being innocent and saikles of the deid committit". If any of them, or any of the other party which had also been summoned, failed to satisfy the council that they would not seek revenge, they could be imprisoned and fined "greit and huge sowmes". Any indication of such behaviour was to be considered an insult to the king and "maist baistlie and detaistable, and incredible to be in the persone of ane ressonable man"<sup>21</sup>.

Here the crown was taking up a much more hostile attitude to feuding than it had in 1598 and, while it was still making prevention of new feuds the main area of its concern, there had been a fairly important shift in its position over the intervening six years. The point that the king and his councillors were trying to drive home was that while existing feuds would continue to be dealt with under 1598 legislation, in future there would be no feuds, only crimes, criminals and victims, the status of which would be decided by royal justice. The third party, the state, had finally seized the initiative and taken the offensive. This did not mean an immediate change in 1604, the crown itself continued to sponsor private arbitrations long after that date, even in

21. R.P.C., vi, p 594-96. The very fact that this act was passed by the privy council and not by a convention or parliament is an indication of there now being less noble opposition than in 1598.

cases where slaughter was involved, but the act marked an irrevocable stance against the ideology and practice of the feud and together with the 1598 act the beginning of the triumph of the justice of the state over the justice of the kindred and the lord.

It would be a gross misrepresentation of events to imagine that the passing of this legislation produced immediate change either in the amount of feuding or in the means by which peace was brought to the feud. If the legislation was conservative, its implementation was even moreso. After 1598 one finds more frequent charges to parties to assure one another and the instances of the renewal of assurances at the end of the year suggest that records were being kept in the advocate's or treasurer's offices of progress in the peace making procedure. However, cases like that of lord Maxwell and John Crichton of Crawfordston, who renewed their assurances periodically between 1599 and 1607, suggest that there was little urgency about moving from this stage to mediation.<sup>22</sup> The 1604 act did of course lay greater emphasis on keeping the peace, and one does find more of this, particularly after the commissioning of justices of the peace in 1609. Thus in 1618, John Dalglish of Durchair and the sons of Scott of Infaseuch were ordered to keep the peace in respect of the hatred between them, but in spite of the success of this as a preventative measure, the privy council continued to use assurances widely for

22. R.P.C., vi, p 44; vii, p 295-96, p 738.

most cases which had reached the stage of feud.<sup>23</sup>

Presumably the feeling was that while the 1604 act had made important advances for royal authority in theory, as long as men put more faith in their private word of honour than obedience to the king's law, then in the interests of achieving the best results it was best to continue with assurances. Even on its own terms it was a system which was far from foolproof and one continued to get complaints about the behaviour of one or other party, or complications over interpretation, but it remained the best that Jacobean Scotland could offer and most of the time it did work.<sup>24</sup> Those like Gordon of Lochinvar and his enemies, Vaus of Longcastle and Stewart of Dunduff, whose assurance broke down because the former killed George Stewart of Dunduff while under assurance, could be pressurised by the more efficient horning system, the royal guards and the combination of privy council, treasurer and advocate to renew their assurances after only a few years.<sup>25</sup> What allowed these pressures to work so much better was, apart from the reform outlined below, the removal of opposition from the nobility who were on the whole convinced, cajoled, bribed and forced into co-operation with the king. Exceptions remained, but the nobles' acquiescence allowed the crown to put more

23. R.P.C., xi, p 417, p 452.

24. For example see the cases in R.P.C., v, p 467, p 555-56; p 266-67.

25. R.P.C., vi, p 307-08, p 365; viii, p 61.

emphasis on lesser men and any refusal to co-operate with the crown at any stage in the pacification procedure was likely to bring about automatic denunciation by the privy council and, for most of the country, an enforcement of the terms of that denunciation.<sup>26</sup>

Submission of the feud was thus not as immediate as the feud legislation might suggest, but during the decade after the 1598 act it became the norm for most feuds. As the 1598 act had stated, arbitration remained largely in private hands, though it was fairly common to see a number of councillors or session judges being asked to represent private parties on such committees. Some like John Lundy of that ilk and Andrew Murray of Balvaird did make a direct submission to the king who in this instance named arbitrators who were not government officials, but local men, thus handing the feud back to the locality on the understanding that they were doing the king's business.<sup>27</sup> Again it was a sensible, pragmatic decision, made on the basis of the local men's greater understanding of the issues at stake than some Edinburgh lawyer or official might have. This is not to say that the crown could not be assertive, and those like Andrew Haitlie who refused to participate in a submission made by the rest of his kinsmen were denounced and isolated from them until

26. For examples of such denunciations see Leslie of Wardes in 1596, R.P.C., v, p 272 and Innes of Crombie in 1622, R.P.C., xiii, p 477.

27. R.P.C., vi, p 83.

they conformed.<sup>28</sup> The government's philosophy was one of taking each case individually and treating it according to the political implications involved or on the basis of whether they thought gradual persuasion would be more effective than rigorous application of law. On the whole it was a policy which worked, bringing the feuding parties by one road or another to the clasping of hands "in perfyte freindship and reconciliatioune".<sup>29</sup>

In the decreets which resulted from such settlements one again sees the enormous conservatism of the government at work. In its settlement of the feud between Lekkie of that Ilk and the lairds of Dunrod and Calderwood during which the former's father had been killed, the council decided that certain lands should be transferred to Lekkie as assythment and that his daughter should be married to Calderwood's nearest male heir.<sup>30</sup> The settlement was very typical of those described elsewhere, but what is interesting about it is that it was arranged by the privy council in 1622, a time when one has been led to believe all vestiges of custom had been clean swept away by the absolutist reformers of the Jacobean state. Such simplistic notions fail completely to appreciate the subtlety of the changes being effected and the flexibility which operated freely within an environment in which custom and new laws which often embraced both traditional and

28. R.P.C., vii, p 391-92.

29. ibid., p 183.

30. R.P.C., xiii, p 112-14.

absolutist ideals lived side by side. This attitude is found underlying many incidents at the time. Thus in 1620, the Maxwell laird of Gararie and his son were accused of murder, but in spite of their being insufficient evidence to send them to trial, the Maxwells insisted upon one to clear their name. Surprisingly, the assize found them guilty and they were sentenced to death. On the scaffold father and son continued to protest their innocence, doing so even during their last prayer "under the aix". Such was their sincerity that their pursuers agreed with the magistrates to allow a stay of execution and "in effect ar agreit with thame". The privy council informed the king of this and asked for his permission to recognise their agreement and overrule the decision of the assize and he consented.<sup>31</sup> In 1609 an Andrew Henderson was found guilty of mutilating the hand of another Edinburgh burgess in a fight, but later offered him compensation for the injury. The injured man refused and insisted on pursuing Henderson for his life before the law, but the friends of Henderson succeeded in bringing his story to the ears of the king who condemned the victim's "malicious and revengefull heate" and ordered the council to exile Henderson for whom execution was too severe and who had already been ruined by the affair. Once again the law was interpreted in a manner which was thought to be most socially

31. Melrose, i, p 353-55, p 357-58.

harmonious.<sup>32</sup>

As the king himself wrote to the council, what they were doing was implementing a legislative programme, but there was a considerable amount of freedom in how it was done.<sup>33</sup> Too much stress has been laid on the idea of centralisation of government, of government by pen and on early absolutism when discussing Scotland after 1603, or in the case of some after 1585. There clearly were changes, and more of these will be discussed below, but there was no transformation and no wholesale rejection of what had gone before. Good lordship remained an essential ingredient of local government, a point the king reminded Huntly and Erroll of when their followers opened up a new feud in 1616-17. It was still their business as good lords to keep the peace between their followers, even if the details of settling the feud were no longer their responsibility.<sup>34</sup> Kinship also continued to have a recognised place so that in 1606 when lord Roxburgh and Ker of Ancrum ended their feud in reconciliation, Ancrum's younger brothers reserved the right to pursue Roxburgh for their own satisfaction and that of any other member of the kindred who still felt

32. Pitcairn, Criminal Trials, iii, p 58-60; R.P.C., viii, p 621. There were many other similar cases, e.g. Sinclair of Longformaus and Spottiswoode of that Ilk in 1611, R.P.C., viii, p 602-03, p 622. Furthermore the courts continued to recognise old remissions, e.g. in 1611 Forbes of Monymusk escaped almost certain execution when he produced a remission he had for the murder of Alexander Menzies in 1580, Pitcairn, Criminal Trials, iii, p 204-06; Spalding Miscellany, ii, p 52.

33. See Longformaus-Spottiswoode note 32 above.

34. R.P.C., xi, p 206.

aggrieved. Ancrum may have been happy with the settlement he was offered for his father's death, but the rights of the whole kindred had also to be recognised.<sup>35</sup> Such fundamental bonds did not simply disappear overnight or even over a few years, but took decades to be eroded.

Feud settlements continued to resemble those discussed earlier when looking at the first half of the king's reign.<sup>36</sup> Compensation was, therefore, still regarded as more satisfactory than punishment. In 1616 the two branches of the Lindsay family finally patched up the feud which had cost the life of lord Spynie with a contract of assythment in which the laird of Edzell swore that the slaying of Spynie in 1607 had not been deliberate, "but most unhappilie upone mere accident and suddantie as sall ansuer to God in ye great and fearful day of Judgement", (he had in fact been trying to kill the earl of Crawford, Spynie's nephew and his own chief). Edzell agreed to pay 8000 merks to Spynie's heir and to sell him some land, while Spynie promised Edzell his forgiveness, a letter of slains and received Edzell into his "amity and freindship".<sup>37</sup> Nor was it just the compensatory aspects of assythment which survived. In 1602 the king and council

35. R.P.C., vii, p 272.

36. This was also true in Schleswig at the same time where in spite of government opposition to the feud compensation was much preferred to punishment. There, reforming acts were passed in 1558 and 1636 which were designed to take the jurisdiction of slaughters away from the kindreds to the courts, but they were largely ignored and compensation payments were still being made in 1700, Philpotts, Kindred and Clan, p 104ff, p 124-25.

37. S.R.O. Inventory of Scottish Muniments at Haigh, i, box D, 6/Nov/1616.

decided that John Neilson, a tailor burghess of Dumfries, had not offered sufficient assythment to two burgh officers at whom he had shot while they were performing their duties, and as well as ordering him to increase the compensation he had offered, they told him to make public amends at the burgh market cross by craving pardon, offering the sword by the point and doing homage while barefoot and wearing nothing but his sark.<sup>38</sup>

Fourteen years later the council was still recommending this ceremony in a feud between two men, the victim having renounced financial compensation from the other in place of this.<sup>39</sup>

Others were less impressed by such symbolism and the laird of Lekky scoffed at such an offer which he said was little use to a family ruined by feud.<sup>40</sup> Satisfaction of the parties in conflict rather than a rigorous enforcement of the rights of the king continued to be the main guideline upon which Jacobean governments worked. This was the point the council agreed upon in their resolution of a bloody feud between the Kings of Barracht and the laird of Meldrum. They decided that

"it will be more agreeable to the contentment of the pairtye, and will procure more assured peace to the said James and his freindis, that your maiestie sall grant ane pardoun for the slaughter, nor that the mater salbe broght to publict contestatioun and audience at the counsail table."<sup>41</sup>

The king and his council were simply recognising that the feud

38. R.P.C., vi, p 472.

39. R.P.C., x, p 425.

40. R.P.C., xiii, p 745-46.

41. Melrose, i, p 326-27.

had imposed its own cruel justice and that they would be best to avoid further bureaucratic meddling.

One obvious conclusion to be made from this is that if central government was acting in such a conservative manner then the localities must have been even slower in giving up long established traditions. Evidence there is much more fragmentary, but one can find in the letters of local lords and lairds a persistence of customary terminology and values. A letter in 1618 from Sir Robert Gordon to lord Elphinstone asking him to attend a diet between himself and other northern barons to discuss a number of local issues could easily have been written half a century before, and a series of correspondence between the Camerons of Lochiel and their neighbours in 1623 reflects the same customary ideals and methods.<sup>42</sup> Gordon's letter contains all the old inferences about friendship among lords, private mediation, loyalty and honour and in a sense Gordon himself was symbolic of the co-existence of two worlds which continued to influence Scottish society, he being a highland landlord at home amidst the wild, broken men of Caithness and Sutherland, a clever operator amidst the tangles of the governmental and legal offices of Edinburgh, a mildly favoured courtier in London and a man of letters into the bargain. None of these was as yet exclusive of the others,

One also finds that while the government had tightened up

42. Gordon, Sutherland, p 344-45; Fraser-Mackintosh M.S. S.R.O., G.D. 128/6/6/8; Fraser, Chiefs of Grant, ii, p 42.

on its efficiency, settlements continued to break down for much the same reasons as before. There were still men like John Stewart, son of the laird of Tynniss, whose brother had been killed by the Murrays of Philiphaugh and who tried to prevent a settlement because he wanted vengeance.<sup>43</sup> There were also those like Robert Colquhoun who in 1618 tried to stir up the old hatreds between his kinsmen and the Macfarlane clan.<sup>44</sup> Minorities were another unsettling factor which continued to delay settlements or upset ones made during the minority.<sup>45</sup> However, there were less and less of such instances as the crown's ability to enforce its will grew. Thus in 1604, the earl of Dunbar was granted a warrant to arrest Hector Turnbull of Barnhill and Hector Turnbull of Stanelege for failing to pay 2000 merks to Helen Gamislaw as her part of the compensation they owed for the notorious slaughter of all eight of her brothers.<sup>46</sup> In another case between the Leiths of Harthill and Leslie of Auldcreig it was discovered that the former were unable to pay the full amount of compensation they had been ordered to pay, but this time the council took all the relevant matters into consideration and decided that if the Leiths could find 2500 merks before a certain date they would be absolved from paying the outstanding 1000 merks and this compromise proved acceptable to both sides.<sup>47</sup> Intelligent flexibility was very

43. R.P.C., xi, p 337-38.

44. ibid., p 385.

45. e.g. ibid., p 171-72.

46. Airlie Muniments, iii, S.R.O., G.D. 16/683/41/127.

47. R.P.C., xi, p 193-94, p 248.

much the hallmark of the omniscient privy council.

The result was a real and lasting reduction in feuding in Scotland. After 1603 the amount of feuding had dropped to some forty to fifty feuds a year from the high point of sixty to seventy during the 1590's, but it was not until 1608 that the numbers began to fall more dramatically. Thereafter, except for a mild plateauing in 1614-17, the fall was fairly regular, dropping to under ten in 1625. Of all the feuds in Scotland over the entire period over 75% of them were at one point or another handled by the government with just under half of these requiring attention in more than one year. This does not actually measure the amount of government business involved as one feud might have required one warning or order while others, like some of the greater feuds discussed above, were constantly needing attention year after year. In any one year the government, by which one means the king acting in a personal capacity, the privy council or the crown in court, dealt with as many as thirty-two feuds in 1608 to as few as one in 1575 and 1625. During the period when the war against feud was at its most intense, from 1595-1609, the crown was involved with an average of around twenty feuds a year, by no means a vast number, and except for the years 1603-04 when the Union caused some dislocation in government, its activity was fairly constant. This is not to say that the crown was responsible for the removal of all these feuds, a quarter of all feuds were finally resolved without any government interference at all, but the pressure it applied

with varying degrees was the catalyst required to push a great many of them towards peace. As was shown in the early stages of this discussion, the government was directly involved, either as an oversman or in pushing private parties into talking, in half of the feuds whose settlement procedures can be identified. As this figure includes all the pre-1595 feuds as well, its activity is probably somewhat under-represented.<sup>48</sup>

Such a degree of central government interference in local politics and justice marks a fairly profound change in the relationship between the two. An enormous degree of power continued to reside in the localities, but the decisive tilting of the scales towards the crown took place in these years. The shift was not sudden or even particularly noticeable at the time, but in the attack on feuding the crown stripped away the rights of local lords and lairds to conduct their politics without reference to the king's privy council or the civil and criminal courts. More than ever before, local power was dependent upon royal patronage and royal justice. Exceptions existed in the western isles and parts of the highlands where feud survived on a reduced scale for at least another century and the local power of grandees like Argyll in the seventeenth and even eighteenth century should be a warning to those who write off the nobility too soon. Yet even these great nobles had lost much of the political independence which the feud and its environment allowed them, and the expulsion of feud from the court and government

48. See above vol 1, p 31 and p 106.

itself effectively castrated magnate politics of much of its vitality and set it on the road to the decadent courtier machinations of the late seventeenth century.

This change was quite clearly not just caused by the three acts concerned with feuding. The wider legislative programme was directly related to the crown's attitude to feuding and cannot really be separated from it. Thus firearms control continued to be legislated for alongside concern about feuding. The problem with controlling guns and other arms was that the crown wanted an armed population since the armed followers of the nobility were its only defence. One finds in 1574, 1584, 1596, 1598 and 1599 various measures related to the holding of wapinschaws at which landed men were expected to turn up at musters in arms with their requisite number of armed followers. In 1574 it was suggested that too many men were avoiding their responsibilities by borrowing arms from their neighbours and they were thus given eight months in which to buy the necessary gear. In 1584 wapinschaws were revived after a long relapse, but they continued to be unpopular and in 1596 it was still being pointed out that attendances were low and that there was a "sluggishness and cairlessness" in men's attitudes towards them, caused by "the not exercise of armour this lang tyme begane". In 1599 the privy council finally decided to abandon the wapinschaws arranged for that year simply because they were a complete waste of time.<sup>49</sup>

49. R.P.C., iii, p 91-92, p 676-77; v, p 266-67, p 446-47, p 551. Permission not to attend was given if men had deadly feuds, R.P.C., v, p 282.

This short look at wapinschaws is necessary only to allow one to remember that the crown did not want to disarm the population, but to educate it in the use of arms. Further progress was not made until 1591, twelve years after the amendments to the 1574 act had been made. In that year the council declared that the law was being openly flouted and, therefore, so as to increase the detection of the crime, powers were granted to any liege to make a form of citizen's arrest of any person they saw wearing, bearing or firing guns illegally.<sup>50</sup> It was a typical piece of Scottish legislation, putting the onus of enforcement in private hands, but it was no more successful than previous acts and in 1593 the council complained that

"wicked men, holden in deidlie feid and malice, for their privat revenge, sall, be shuiting of hagbutis or pistollettis, touking outrageous countenance or reprochefull speichis, do quhat lysis in thame to entir noblemen or gentlemen in blude ...".

In response to this threat, which was scarcely new, the government issued yet another warning and gave orders for a search of Edinburgh to be made for any illegal arms.<sup>51</sup> As one might expect, warnings meant little and publicised searches even less.

In 1595 a new act was passed to complement that concerning feuding. Effectively it was a revival of the 1567 act which had made the cutting off of the right hand the punishment for

50. R.P.C., iv, p 597.

51. R.P.C., v, p 204.

any fire-arms offence, even for illegally wearing guns. A ten pound fine, imprisonment and confiscation of the goods was to accompany this mutilation which was revived because "the murthour committit in Scotland was sa far owt of all measure and mearcie, be the treasonable use of pistols and small gunnis ...". To show his determination to enforce this law the king ordered that three men taken wearing guns in Edinburgh within hours of the privy council approving the act be so punished. However, after letting them sweat it out before the executioner for a while James relented of his harshness and since they had been ignorant of the law he had them freed.<sup>52</sup> Later in the year the category of those who could suffer mutilation was extended.<sup>53</sup>

In 1596 a slightly new angle of approach was considered, one which would put more emphasis on prevention. More condemnations of the gun as an instrument of "revenge of particulair quarrellis and privat grudgeis" was followed by a declaration that the crown intended to abolish hand-guns altogether. Such an ambition was somewhat unrealistic, but a limit was put on the size of pistols to prevent them being concealed so easily and craftsmen who made them any larger were to be put to death.<sup>54</sup> This attempt to cut off the supply of guns was perhaps more intelligent, but there are no signs that it was any more successful and in the

52. Historie, p. 355.

53. R.P.C., v, p 247.

54. R.P.C., vi, p 274-75.

autumn of that year further proclamations had to be repeated.<sup>55</sup>

The difficulty was in enforcing such legislation.<sup>56</sup> Some cases did reach the courts or the council. In 1597 a William Hamilton was arrested along with Alexander Mowbray for wearing guns in Edinburgh and when given the choice of an assize or the king's will they chose the latter and were lucky to be sentenced to life banishment.<sup>57</sup> Considering that the men were only wearing guns and had not used them, it was a fairly stiff sentence and reflects a determination to make a few firm examples of those who so openly disregarded the law. In that same year all the burgh magistrates of Perth were summoned to "byde tryal" when David Edmonstone of the Wowmet was shot dead in their town, the implication being that if they had been doing their job properly and enforcing the law such events would not take place.<sup>58</sup> On occasion such enforcement could be swift and savage as in the case of George Porteous who shot dead Adam Boswell and on the next day was beheaded after having first suffered the agony of his hand being cut off.<sup>59</sup>

Just as the 1595 act on feuding was accompanied by one on gun control, so the same combination took place in 1598

55. R.P.C., vi, p 322.

56. This was not just true in Scotland, see Penry Williams comments on England in The Tudor Regime, p 236-37.

57. Pitcairn, Criminal Trials, ii, p 22-23.

58. Birrel, "Diary", p 41.

59. ibid., p 51.

with another gun law being passed at the same convention which passed the "Act Anent Feuds". Earlier in the year further limits had been imposed on the size of guns which were to be "an elne in the rotche" at least. Pistols and dags were completely outlawed, as was even the repair of existing ones.<sup>60</sup> At the convention these two types of guns received further disapproval and the nobility promised to enforce the law among their followers and within their jurisdictions.<sup>61</sup> At the 1600 parliament which confirmed the act on feuding, yet another gun law was passed. The preface to the act pointed out that previous legislation had been outwitted by clever legal trickery which had prevented there being many convictions. In future the pursuit of those guilty of breaking the gun laws would be the responsibility of the treasurer or advocate, with the provision that if they were tried by the privy council and found guilty then they would be warded, have their movables escheated and be fined as the council thought fit, but that if they were taken before the justice then the existing legislation would be implemented. Finally, all gun licences were to be cancelled and new ones only issued by the king and his privy council.<sup>62</sup> The act was an attempt to introduce a measure of flexibility into the crown's response to infringements of the law and to ensure more prosecutions by letting lesser offences be handled by

60. R.P.C., v, p 437-38.

61. A.P.S., iv, p 164.

62. *ibid.*, p 228. For an example of a sixteenth century gun licence see that given to lord Ruthven, the treasurer, in 1580, Pitcairn, Criminal Trials, i, part 2, p 91.

the privy council. It was also a money making device opening up for the treasurer yet another new source of income.

While further proclamations and minor acts followed, it was the 1600 act which remained the basis for future dealings with fire-arms offences. Six months after the 1600 act was passed, the council proclaimed that it would not be slow to use dismemberment if necessary; in 1601 the making of petards, a light and mobile cannon, was outlawed, and in 1603 sheriffs were threatened with the pains of the law themselves if they did not enforce the gun laws.<sup>63</sup> A proclamation in 1608 only concerned itself with offences in the north where the law continued to be flouted, thus implying that further south the government was beginning to have some success with its campaign.<sup>64</sup> Offences continued, however, with a Robert Johnstone being sentenced to lose his right hand in 1609, "to the terrour of all utheris to offend in the lyke soirt", and as late as 1625 one can still detect offences in the lowlands - in the highlands guns and other weapons continued to be part of the life-style until after the 1745 rebellion -, but one no longer reads of large scale shoot-outs and even less spectacular incidents involving guns were much less common.<sup>65</sup>

The success of this campaign cannot be separated from that aimed at feuding. If men were not at feud they did not need to carry guns around with them, a gentleman was after

63. R.P.C., vi, p 258, p 491, p 585-86.

64. R.P.C., viii, p 37.

65. ibid., p 602-03; xiii, p 711-12.

all permitted to carry his sword. Guns had become such a problem in Scotland because of feuding which did not require the more rigorous ritual of killing of the duel and thus when men became safe from feud they were more inclined to leave their guns at home. Conversely, the lethal nature of the handgun at close quarters and its ability to equalise combat made every man who carried one a potential killer and made it an instrument which all too often turned a brawl into a fatal encounter and subsequently into a feud. The king and his government clearly understood this and hence legislation on feuding was often accompanied by new or modified gun laws.

Equally related to the pacification of the feud was the outlawing of duels, or as they were more commonly called in Scotland private combats. One is unable to discuss in any depth here the duel in Scotland, but a few brief comments are perhaps necessary. Duelling was never very common in Scotland where the feud predominated over all other forms of conflict and one never finds the excesses experienced in France during this period, but essentially it took two forms. The first was the private combat or duel which in form incorporated both the formalised Italian duel and elements of the joust. Thus one finds evidence of the sending of cartels for alleged or imagined offences to personal honour, of arranged fencing matches and also cases like the earl of Bothwell and his servant meeting up with Cessford and his man on the road to Edinburgh, "quheare meiting two for two, thay focht allong

tyme on horseback", the combat ending when Cessford retired with his wounded servant.<sup>66</sup> The second form of combat was the judicial combat, where one man accused another of a crime and there was no evidence but his word to prove it. The two men could then apply for permission to justify their claims in combat, or on occasion the king would himself insist that they fight it out. Many men did apply for such licences, particularly in treason cases, and a number were granted. Again these state approved combats could take varying forms from charging at one another on horseback with levelled spears to duels fought in a circus like atmosphere. The last of these took place in 1597 with another in 1600 only being avoided when late evidence made an appeal to combat unnecessary, the accused being guilty of his treason.<sup>67</sup>

In theory both forms of combat were illegal without a licence, but in spite of the 1580 act and earlier legislation the private combat continued to flourish. In April 1600 the crown decided to be more severe on those who continued to fight such duels without permission and heavily criticised them as combats resorted to "upoun everie licht occassioun, quhairupoun mony deidlie feidis and utheris inconvenientis hes oft fallin oute".<sup>68</sup> In November parliament ratified this act which had made the death penalty the punishment for

66. Moysie, Memoirs, p 111; Birrel, "Diary", p 31.

67. Birrel, "Diary", p 40, p 42; Chambers, Domestic Annals, i, p 286; Calderwood, History, vi, p 194; Spottiswoode, History, iii, p 114; C.S.P.Scot., xiii, part 2, p 1057.

68. R.P.C., vi, p 97-98.

duelling.<sup>69</sup> It was a penalty which the king was determined to have carried out and indeed even before the privy council had passed the act, an Edinburgh burgess had been executed in April for slaying a fellow burgess in a duel. Later in the same year a John Wilson killed two brothers in a private combat and "being tane with het bluid, was execute at the flesh stocks where he had slain the man, the night before".<sup>70</sup> Prevention was also taken seriously and in 1602 the duke of Lennox and earl of Argyll were committed to their chambers for challenging one another, while in 1608 the master of Caithness and the commendator of Melrose with their seconds were warded for arranging a duel and were subsequently reconciled by the council.<sup>71</sup>

Another feature of violent conflict in sixteenth century Scotland were tuilyeis, happenings which in modern Glaswegian might be described as a "rammy" or spontaneous free-for-all. Fear of these fights breaking out was strong, especially in burghs where large gatherings of nobles and their followers took place. Thus when, for example, parliament met, it was common for the privy council to order that no-one "tak upoun hand to invaid molest or persew utheris, or gif provocatioun or displeasour be word, deid or countenance, owther for auld feid or new ...".<sup>72</sup> In 1573 it had been declared a treasonable offence to do otherwise, but the peace of parliament continued

69. A.P.S., iv, p 230.

70. Pitcairn, Criminal Trials, ii, p 112-24; Birrel, "Diary", p 49.

71. C.S.P.Scot., xiii, part 2, p 961; R.P.C., viii, p 128, p 131.

72. R.P.C., ii, p 222.

to be interrupted and violent incidents were not unusual in the ante-rooms of the privy council or of the courts as rival parties bumped into one another before or after hearings. In 1593 parliament tried to tighten up on such incidents with an act which declared it to be treasonable and a crime of lese-majeste to hurt, strike or slay anyone in the parliament house, in the session, before the king or in the council house while it was in session. Even if the incident took place before the king's deputies or any senior officials a hundred pound fine was to be imposed, while striking a judge was to incur the death penalty.<sup>73</sup> The act had been passed in the context of an affair the previous day when two lords of the articles had had blows with one another thus disturbing the peace of parliament, but it represented more than just a response to one incident and apart from being part of the campaign against violence it also reflected the increasingly assertive mood of the crown under James VI as he sought to give it more dignity.<sup>74</sup>

That same day parliament also passed an act which gave the Edinburgh magistrates greater powers to enforce policing within the burgh.<sup>75</sup> However, making the burgh streets safe from this sort of violence continued to be a problem and in 1597 the inhabitants of all burghs were ordered to assist their magistrates in "redding and stoppin all tullyeis" as there were far too many cases of men escaping any punishment because

73. A.P.S., iv, p 22.

74. C.S.P.Scot., xi, p 129.

75. A.P.S., iv, p 28-29.

they could not be apprehended.<sup>76</sup> In 1600 the council again drew attention to the "frequent tuilyeis" in Edinburgh and the Cannongate which were simply means by which men tried to "revenge thair particular querrelis". The principal concern of this act was the king's personal security and all arms were banned within a mile of wherever the king happened to be, in the hope that this would both make the king more secure and reduce fighting among courtiers and officials.<sup>77</sup>

Enforcement of this legislation was on the whole strict. In 1601 John Dundas of Newliston was charged with having struck another gentleman in the rooms next to where the king was sitting in session with the lords of council and session. Dundas was lucky to be excused the assize, the king being satisfied with a fine.<sup>78</sup> Lesser men were treated with more severity, having little to make a fine worth while and in 1603 a Walter Graham was found guilty of having struck a minister close to the tolbooth while the council was sitting. He was punished by being scourged from the castle hill to the Nether Boll, having his hand cut off and being banished for life.<sup>79</sup> Even with the great the king could be hard and in 1611, when the earl of Lothian became involved in an affray, the king wrote to his council telling them that an earl and a councillor ought to know better and to fine him ten thousand merks. Shocked by this the earl's colleagues on the council asked

76. R.P.C., v, p 403.

77. R.P.C., vi, p 77-78.

78. Pitcairn, Criminal Trials, ii, p 358-59.

79. ibid., p 416-17.

the king to mitigate the fine and he agreed, telling them they were too soft.<sup>80</sup> Such enforcement certainly distanced the king and his officials from the sort of violence they had been continually exposed to during the 1590's and before, and in doing so enhanced the authority of the king. It did not stop men from having the occasional punch-up, but these were less serious than they once had been and with the discouragement of carrying guns combined to greatly reduce the sort of violence which had so often been a prelude to feud.

What had so often made such confrontations dangerous was the practice of going about in large armed bands of men for protection and to make an impression. These retinues, by which was meant the friends, servants and retainers who were with a lord wherever he went, or convocations, that is the lord's own local host, were themselves thus objects for royal control. In 1583 it was ordained that retinues be reduced to sixteen for an earl, eight for a lord and six for a baron or knight and in 1590 this was further cut to twelve, eight and five, all of whom were to be unarmed.<sup>81</sup> This 1590 act was, however, highly unpopular and was ignored in spite of being repeated and in an effort to be more realistic the numbers were increased in 1591 to twenty-four, sixteen and ten. It was again stipulated that such retinues should go about unarmed, that a licence be sought before bringing them to Edinburgh and that lords would be responsible for any crime their men

80. R.P.C., ix, p 606-07, p 609, p 610-11.

81. C.S.P.Scot., vi, p 515; Calderwood, History, iii, p 750; A.P.S., iii, p 301.

committed.<sup>82</sup> The main thrust of such legislation was to prevent the habit of turning up in court with great numbers of men in an effort to overawe either the judges or the assize.

Convocations and retaining also came in for some criticism. In 1587 it was declared illegal to raise companies of mercenaries, ostensibly for service abroad, but in fact for domestic use "to assist some subjects of this realme in thair particular querrelis aganis utheris, to the rasing and intertenying of civile seditioun, insurrectioun and uproare within the cuntrey".<sup>83</sup> As one has already seen, men like Huntly and lord Maxwell were certainly known to have persisted with the practice for some years after the passing of this act and at one point in his career chancellor Maitland was reported to "keep a great train to save his life from his enemies".<sup>84</sup> More common were the clashes in the localities, "chiefly for leding of teinds this present seasoun of the yeir quhairupoun hes followit and dalie is liklie to follow sindry deidlie feidis and utheris greit inconfenientis". Various penalties were threatened, but to little effect and this 1590 act had to be repeated in 1591 and 1595.<sup>85</sup>

After almost a decade of failure trying to impose the 1591 retinue restrictions the crown made another onslaught in 1600. The numbers were again reduced to twelve, eight and four, a

82. R.P.C., iv, p 572.

83. ibid., p 211-12.

84. C.S.P.Scot., x, p 19.

85. R.P.C., iv, p 513-14, p 660; v, p 229.

loophole was closed under which a lord had been able to bring along eight knights each with their four servants and thus multiply his retinue without breaking the letter of the law, and in future if a baron was in attendance upon a lord he was only permitted one page to accompany him.<sup>86</sup> In 1606 the council decided to take further steps to prevent men coming before it with excessive numbers and announced that if the pursuer offended in this way he would automatically lose his case, while if it was the defender who did it then he would be denounced and all his friends would be arrested.<sup>87</sup> Failure to enforce this resulted in the persistence of the custom and in 1610 the king wrote to the council that "it wald seame rather that thair apperance war not so muche ether for obedience or cleiring thameselvis ... as on the uther pairt to imprint in thair waik hairtit adversarie some feir of thair parteis grite freindship and upoun terrour to enforce him to relinquische his just persute". The king's advice was that the 1579 act's postponing technique was the best form of encouragement and as in so many other instances the council responded with another act encapsulating the royal will. This, in conjunction with earlier legislation, seems to have had effect, as no doubt would the fact that in the more peaceful environment then emerging such forms of applying pressure were becoming less meaningful.<sup>88</sup> On convocations the last word on the issue was a privy council act of 1612 which extended the

86. R.P.C., vi, p 169.

87. R.P.C., vii, p 288.

88. R.P.C., viii, p 622-23, p 450.

punishments reserved for unlawful assemblies and convocations applicable to situations where the convocation had not met but had only been planned.<sup>89</sup> Such royal confidence was a far cry from the days when the massed bands of armed followers of lords had held sway over localities and the court alike.

As with guns, the need for large retinues and convocations declined with the feud. If men had no need for protection, or no intention of attacking others, the only need for such displays of power was to show it off, not to use it. Ostentation continued to demand that lords have retinues, but in such inflationary times noblemen were willing to make cuts in services which no longer had any functional rationale. Again, as with arms, the converse of this was true and without the prevalence of such martial followings feuds were less likely to be initiated, it having been these followers who were often responsible for dragging their lords into clashes with rivals and escalating quarrels.

During the 1590's the general band remained a basis upon which the crown built. As a long established and traditional means of forcing lords to control their men it had proved itself useful in the past and continued to do so, especially in the highlands, for years to come.<sup>90</sup> However, it had its critics.

89. R.P.C., ix, p 370.

90. The Elizabethan government used a similar system in Ireland in which the chief was responsible for the behaviour of his men, Berloth, The Twilight Lords, p 46. In a similar context parliament passed an act in 1585 "Against Leagues and Bands" to discourage banding among noblemen, but Scottish politics rested upon such alliances and the Act was ignored, A.P.S., iii, p 376-77.

Independently minded lairds like Forbes of Tolquhane objected to being lumped together with all men of his surname and being made responsible for broken men over whom he had no control and for whom he denied any responsibility. It was, he said, peaceful men like himself who ended up paying fines for the crimes of these outlaws and he poured out scorn on this "maist pernicious and dangerous practique". Other landlords also complained, but the alternative was a crown police force paid for in taxes and on the whole it was tolerated.<sup>91</sup> Efforts were made to tighten up the supervision and enforcement of the band, but it continued to be too dependant upon the good will of the men on whom it imposed responsibilities to be really effective. If those men removed their co-operation the worst that could be done was to horn them and it therefore became necessary for the crown's own officials and processes of enforcement to receive something of an overhaul.<sup>92</sup>

One area of its own back yard which the crown desperately had to clean up was the old thorn of respites and remissions. As a form of fine there was some merit in them, but in a feuding society they became an easy price to pay for the death of one's enemy and, depending upon the king, they were all too easily abused. In 1584 parliament passed an act against the

91. R.P.C., iv, p 356.

92. For critics, R.P.C., v, p 249-50, p 260-61, p 279-80, p 283-84. For bands, R.P.C., iv, p 787-89; vi, p 45-46; A.P.S., iv, p 41, p 140.

granting of respites and remissions for capital offences for three years since it was thought to encourage men to risk committing slaughters. Those already held were nullified unless a letter of slains had been received from the injured party.<sup>93</sup> As usual good intent was not enough and everyone from the king and his courts to anyone who could get his hands on a remission carried on exploiting the system, even though a further act was passed in 1587.<sup>94</sup> The problems this could create in a feuding society were highlighted in a complaint made to the king by Hay of Gourdie whose son had been murdered by a man who then received a seven year respite. Hay pointed out that this was not only breaking the law, but that

"gif thay salbe frustrat of justice undir pretens of the said pretendit respekt purchest of his Majestie privatlie, and be suppressing of the treuth aganis a publict law, and his Majestie solempne vow and promeis, it sall discourage all men to seik redres be way of justice heirefter, bot rather to seik thair privat revenge at thair maist advantage, quhen thai sall find it mekle mair easie to gett ane respekt nor to summond and mak a voyage to Edinburgh."<sup>95</sup>

Apart from some fairly candid criticism of the king, the complaint is a good example of the frustration the remission system caused and while many respites were granted in order to give men time to arrange a settlement with the offended kin, receive a letter of slains and subsequently a remission, the question the Hays were asking was a good one. Why not go

93. A.P.S., iii, p 298, repeated two years later, R.P.C., iv, p 103-04.

94. A.P.S., iii, p 457.

95. R.P.C., iv, p 680-82.

out and extract blood justice?

Two months after receiving this complaint from the Hays, the privy council responded with a new reform. It was decreed that all who held respites or remissions would be called to account and to give caution, but that their lives would continue to be guaranteed by the crown. Having given caution they would then be obliged to "mak assythment and satisfioun to the saidis kin and freindis" under the council's supervision. The council would also decide whether the king had an interest in the case, imposing a fine or imprisonment as was thought appropriate.<sup>96</sup> This 1591 act was recognising respites and remissions which had been obtained illegally, but it was a compromise measure designed to bring peace between the parties and not to impose punishments, for while the king's rights were being invoked, it was the private satisfaction of the offended party which remained of dominant importance. Parliament ratified the act six months later and instructed the treasurer, advocate and justice clerk to compile a list of those holding respites or remissions and review their position in the light of the new legislation.<sup>97</sup> This act, which was repeated in 1593, was specifically aimed at feuding, put its main emphasis on reconciliation and was to become the basis upon which the crown dealt with the problem over the next three decades.<sup>98</sup>

96. R.P.C., iv, p 695.

97. A.P.S., iii, p 575.

98. A.P.S., iv, p 18-19.

Both remissions and respites continued to slip through these safeguards, but the act was enforced and over the following years it gradually wore down an abuse which had existed for centuries. In 1605 James Gledstones was brought before the justice for a murder he had committed forty-four years before, in 1561, and having produced his respite was ordered to give caution as a guarantee that he would satisfy the injured kindred and get a letter of slains from him.<sup>99</sup> In 1612 a William Murray turned up at his trial for slaughter with a remission he had obtained earlier in the year, but which had been passed under the privy seal. The justice declared the remission null, but since Murray was also able to display a letter of slains from the dead man's kin, the justice ordered him to satisfy two younger sons who had been left out of the assythment and to get the remission passed under the great seal and thus legalise it.<sup>100</sup> Also in 1612, the privy council itself overruled the parliamentary act when it granted a remission to an Alexander Scott for the slaughter of a collier on the grounds that the dead man's kin had accepted assythment and given him a letter of slains, and in the council's view this was far more acceptable to the family than punishing Scott.<sup>101</sup> In 1608 the council responded in a similar way to a petition from both the family of a murdered man and from the murderer in which they plead for a remission for the latter on the grounds that

99. Pitcairn, Criminal Trials, ii, p 472.

100. *ibid.*, iii, p 234-35.

101. R.P.C., ix, p 337-38.

assuagement was of more use to both parties than punishment.<sup>102</sup> Again one is finding that flexible mixture of increased efficiency and enforcement of law with a practical respect for the values of traditional practice. Here one finds the privy council waiving aside the letter of the law in the interests of social harmony, coming down hard on the abuse of the remissions system and at the same time continuing to recognise its value.

A related matter where the government itself had been vulnerable to criticism was in the granting of commissions. These, as one saw earlier, were very often at the heart of local feuds and the means by which many of them were obtained were notoriously corrupt. Both officials and the king himself were open to bribery and pressure to grant commissions to parties lobbying for them and as early as 1579 the council had told the young king not to write to them "in furtherance or hinderance of any particular personis actionis and causis ... bot suffer thame to do justice in all actionis privilegit to be decydit be thame ...".<sup>103</sup> A year later it was ordered that no-one should apply for grants, offices or pensions belonging to any living person since this was exploiting the king's age and putting the lives of others at risk.<sup>104</sup> In 1582 a number of commissions of justiciary were cancelled as they had been illegally obtained, though this may have been a political

102. Pitcairn, Criminal Trials, ii, p 539, see also note 3 on that page.

103. R.P.C., iii, p 98.

104. ibid., p 286.

decision, and in 1585 attention was focussed on letters of summons being obtained by privy means.<sup>105</sup> These letters, which contained pains of treason, were to be regarded as invalid even if they contained the signatures of the king or privy councillors unless the signatures of at least four officers of state, one of whom had to be the chancellor, the treasurer or the secretary.<sup>106</sup> Such a move was clearly designed not only to reduce the abuse of privy letters, but also to establish some sort of pre-eminence of the privy council over the chamber and to channel what political leverage and corruption there was available through the hands of the men in government office. It was a reform, but it should also be seen in the context of council against chamber, a conflict in which the latter had most frequently had the king's ear.

This determination by successive councils to have a monopoly of the patronage available to the crown continued to initiate further "reforms" after 1585. Shortly after Arran's fall, parliament ratified the act passed by his council criticising those who had been "making a cloak of his highnesses name and authority indirectly to colour their private revenge", and steps were also taken to prevent junior officials by-passing their bosses and slipping papers before the king for his unwitting signature.<sup>107</sup> It was an attempt to correct corruption, but again it was also a move by department heads to prevent

105. R.P.C., iii, p 510-11.

106. ibid., p 750.

107. A.P.S., iii, p 377.

their assistants undercutting their own slice of the cake. The same motivation inspired their criticism of the chamber, "the consaill complenyng that the chamber were the devysers of every wrang that was done be causing his majestie subscriuwe sindre hurtfull signatours and commissions; and gat past for them selves and ther frendis, the best and maist profitable casualties".<sup>108</sup> What was so galling to the concillors was not the corruption of the chamber, but the fact that the gentlemen of the chamber were making more out of the favours racket than they were. Similarly, the 1590 act to investigate commissions of justiciary which had been granted "for thair awne particulair proffeit and using of revengement upoun personis aganis quhome thai proessit evill will and inimitie, as planelie appeiris be the deidlie feidis and quarrellis that heirupoun hes fallin oute amangis sindre noblemen and utheris",<sup>109</sup> was inspired as much by faction as by a concern for justice. The point of this "reform" was simply to replace one group of factious commissions with another, the rest was mere propaganda.

Corruption was not satisfactorily dealt with by the Jacobean government, but it was to some extent tempered. The privy council continued to squabble with courtiers and the move of the court to London put it at some disadvantage, but it had won the right to control the flow of sensitive patronage like commissions of justiciary or those for other local government offices. There were exceptions, but the king himself had

108. Melville, Memoirs, p 375.

109. R.P.C. iv, p 552.

largely agreed with his councillors on the need for a tightening up of what had been a very sloppy procedure, while their jealousy of their office ensured that they maintained that control. This does not mean that they did not distribute patronage corruptly, or to suit faction, but as councillors with an interest in enforcing royal policy they were not going to wreck their own work by encouraging feuds with an indiscriminate exploitation of their position. In a sense the system was cleaned up, but only as a by-product of the struggle with the chamber which the council was better placed to win.

Yet if the crown had problems with its process of appointing men to enforce the law, it was even more in confusion over its procedures for dealing with those who broke it. Outlaws for criminal or civil offences were so common that the status had virtually no meaning and even councillors were at times at the horn while still performing their duties. The confusion over the issue was highlighted in the trial of Robert Auchmowtie in 1600 for the slaughter of a fellow burgess in a private combat. The charge against Auchmowtie was that he provoked Wauchope into an unlicensed combat and killed him, but Auchmowtie's lawyer claimed that Wauchope had been a rebel at the horn and that the slaughter of a rebel, particularly in single combat, could not be tried by an assize. Taking up the prosecution the lord advocate replied that the horning had been null in the first place and had been declared so some weeks after the killing. The defence rejected this claim on the grounds that

the session court had no jurisdiction in deciding the status of a horning and that only the privy council could judge such a matter. They also objected to the hearing on Wauchope's horning having taken place while Auchmowtie was in prison and unable to make any objections. Besides he argued, it was well known that the horning had only been reduced by the process of retourit so that Wauchope's heirs could inherit from him, a rebels goods and lands being forfeited by the king. With what would appear to be unchallengable logic the defence also argued that the reduction was irrelevant anyway, since when Wauchope had been killed he had been a rebel and it was his status at that time which mattered. He then went on to prove from various authorities why it was perfectly acceptable to kill an outlaw and rebel without any redress. If the lord advocate's arguments were accepted then no one would risk killing such men for fear that the horning would be later reduced and their lives put at risk. Finally, the defence pointed out, since Wauchope was a rebel he was not a liege and therefore no licence was required to fight him. It would appear to be a cast iron defence, but advocate Hamilton could never be underestimated and he exploited to the full the jumble of law which surrounded the status of horning.

Hamilton was quite determined to get a conviction so that Auchmowtie could be used as an example to discourage others from duelling. On the session's competence he claimed that the justice was not competent to give a ruling and he dismissed the argument about the retourit process as irrelevant since a

horning could only be reduced if it was wrong in the first place. There was, he said, no reason for Auchmowtie to be at the inquiry and he disposed on the authorities cited by the defence as also irrelevant since they all referred to the treatment of rebels and Wauchope had not been a rebel, his letters of horning having not been properly stamped by the messenger who delivered them, a piece of negligence which rendered them invalid. As to the establishing of bad precedents, it had never been the case that rebels could be slaughtered at will in Scotland and it would be highly dangerous if that were the case. Here Hamilton was only half right because it tended to depend on who the rebels were and thus, for example, outlaws of the Magregor kindred could be slain by anyone without redress. However, the defence was not finished and came back at the lord advocate, accusing him of trying to have a man executed because a messenger had failed to stamp a letter properly. Hamilton replied that everyone knew that Wauchope was wrongly at the horn since he freely went about his business in Edinburgh, a claim that was meaningless since so few outlaws paid any attention to their status anyway, and that he was killed for private reasons and not because he was a rebel, a point which was much closer to the truth.

Having exhausted these arguments each side then concentrated on precedence. The defence brought forward a number of authorities on the subject and insisted that a rebel

remained a rebel until his reduction was registered. Hamilton then cited the Ardkinglass trial where Ardkinglass was tried even though Cawdor had been at the horn at his murder. At this the defence demanded to see the papers from that trial to check the lord advocate's assertions and the trial was adjourned while the question was considered. When they returned two days later Hamilton announced that the crown could not release the papers, his excuses failing to disguise the fact that they were being concealed because of their political sensitivity. Both sides then criticised the other for trying to appeal to custom anyway and they agreed to say no more that day. Three days later the trial continued and the prosecution produced a warrant from the king expressing his anger at the "verry frivolous subterfugeis" being emplyed by the defence and demanding that they get on with producing a verdict. The justice delivered an interlocutor against the defendant's case and ordered the assize to get on with their job. Seeing that he would not be saved on technicalities, Auchmowtie asked to be taken into the king's will, but Hamilton already had a warrant refusing this and, anticipating the worst, Auchmowtie declared that none of his friends had had anything to do with what had happened, was found guilty and executed later that same day.<sup>110</sup>

The Auchmowtie case is a rare insight into the drama and debate of a Jacobean court case, but even more importantly it

110. Pitcairn, Criminal Trials, ii, p 112-24.

reveals the hopeless confusion over horning. In the end the king had simply overruled any further debate and Auchmowtie was too insignificant a man to be able to stop it, but the arguments his defence had put were never really answered in full. In 1611 the son and heir of the powerful laird of Drumlangrig found himself in a similar situation, though he had not killed anyone. He too used the rebel status of his victim and pursuer as his defence, but in this instance the crown arranged a private agreement and let young Drumlangrig off on condition that the records of his defence would not be filed, "being so dangerous" and likely to set a precedent the crown wanted to avoid.<sup>111</sup> Clearly something would have to be done about the entire horning process if such embarrassments were to be avoided.

Even long before the Auchmowtie case such an attempt to rationalise the system had been under way. After the 1579 act mentioned above three related acts were all passed in 1584. The first "Anent slaughter and troubling made by parties in persute and defence of their actions" was intended to revive a short term law of 1555. Under this, a defender who slew or wounded his pursuer could by an irreducible horning be pursued by the wounded man or his kindred without probation of the original pursuit, while if the defender was slain then his kin and heir were to be absolved of the original crime and the matter was never to be raised again.<sup>112</sup> According to

111. Pitcairn, Criminal Trials, iii, p 212-18.

112. A.P.S., iii, p 299-300.

this 1584 act it was permissible to kill a rebel, though probably on the condition that one held the letters or commissions which had caused his horning. This act was given a trial period of seven years, lapsed between 1591-94 and was then in 1594 given perpetual status.<sup>113</sup> The 1584 parliament also passed a law for "The better execution of decreets" and another explaining some aspects of the 1579 act.<sup>114</sup>

Two years later the council turned to the less drastic but more profitable question of the confiscations arising from hornings. The act clarified the point that all of a rebel's property and goods were to be seized, they were to be warded and if they held any offices then they were to have all authority stripped from them.<sup>115</sup> In 1587 it was declared that all escheats were to fall to the crown and not to private persons as had been happening, and later in the year it was declared illegal to defraud the crown of this right by making over property and goods to kinsmen.<sup>116</sup> In 1588, 1590, 1591 and 1593 further attempts were made to improve on the 1579 act which provided for the more efficient arrest and prosecution of rebels.<sup>117</sup> In 1592 Bothwell's rebellion inspired the act "For punishment of resettars of traitors and rebells" which was aimed at those who made life easy for outlaws by sheltering

113. A.P.S., iv, p 69.

114. A.P.S., iii, p 300, p 303.

115. R.P.C., iv, p 70-71.

116. ibid., p 219-20, p 235.

117. A.P.S., iii, p 524-25; iv, p 42; R.P.C., iv, p 490, p 590-91.

and provisioning them and in 1595 it was ordered that a list of reseters be compiled so that energies could be concentrated on punishing them.<sup>118</sup> As the king had discovered with Bothwell, this was to prove a highly successful tactic and began to make the term outlaw a little more meaningful. Also in that year sheriffs and their deputies were ordered to compile lists of horned men so that a central registry could be maintained and private persons were also asked to contribute to it names of those they knew to be at the horn.<sup>119</sup> Further legislation in 1597 and 1600 continued this drive for efficiency,<sup>120</sup> though as usual the implementation of the legislation was far from rigorous.<sup>121</sup> Officials themselves were also to be more diligent, with sheriffs and stewards coming in for heavy criticism from the privy council and in particular from the treasurer, Hume of Spott, who was a man "very strict in his office for the King" and both in 1598 and 1601 they were warned to tighten up their performances.<sup>122</sup> Revenue was probably as much an issue as law and order, though clearly local officials did not share the treasurer's enthusiasm and while improvements had been made, the system was still far from satisfactory with many rebels continuing to enjoy greater freedom than their status implied.

118. A.P.S., iii, p 574-75; R.P.C., v, p 247.

119. R.P.C., v, p 234.

120. A.P.S., iv, p 139-40, p 230-31.

121. One result of this tidying up was that long forgotten about hornings could be revived to the great concern of the supposed outlaws, but where possible the council applied the law with discernment, R.P.C., ix, p 442.

122. R.P.C., v, p 440; vi, p 329; C.S.P.Scot., xiii, part 2, p 916.

While the process of horning was for men who had, or who were thought to have committed a crime, that of lawburrows was intended to prevent them committing or repeating a crime. In 1579 parliament divided the pains of lawburrows or caution between the offended party and the crown in an attempt to recoup something out of the system by encouraging the private party to collect what was owing them.<sup>123</sup> Two years later the scope of the law was widened to cover not only bodily harm, but also intended or threatened bodily harm on the principal, his kindred and servants etc by the other principal and his.<sup>124</sup> It was a measure which was widely popular with those who feared that their neighbours were a threat to them and it was also less genuinely used as a nuisance tactic by others against their neighbours in an attempt to enmesh them in royal restrictions and liabilities. It was this 1581 act which was in part responsible for the phenomenal growth of cautions in the privy council records over the next decade. In 1593 parliament increased the minimum amount of caution to be found because the very small size being demanded was so paltry as to be meaningless and a year later money was again the issue when it was declared that too many people were coming to private agreements and defrauding the crown out of its half of the pains. The clerk register was therefore ordered to hand in a monthly list of cautions to the treasurer and advocate so that they could enforce the penalties, and in 1597 another loophole in the financial

123. A.P.S., iii, p 144.

124. ibid. p 222-23.

arrangements was closed by parliament.<sup>125</sup> Like a number of these reforms, a tightening up on law and order went hand in hand with the crown's desperate need to look for money wherever it was possible to squeeze any out of the resources open to it.

The major headache, however, remained enforcement. Getting the nobility to obey the king on political matters was hard enough, while in criminal affairs the crown had virtually to tolerate their excesses as long as they did not become too scandalous. Even at the end of this period it was still on these men that the crown relied for the enforcement of the greater part of the law. Quite simply, without their co-operation nothing could have been achieved at all. However, there were also some minor developments in giving the king a greater degree of independence from his nobility in enforcement and policing. One of these was the formal creation of a royal guard in 1584. Parliament created this guard (there had of course always been guards around the king) which was to be staffed by forty men paid at £200 per annum drawn from the fruits of small vacant benefices.<sup>126</sup> It was not much, but the guard captaincy soon became a much sought after position in the chamber since it not only gave the holder access and the power to prevent access to the king, but patronage for forty men. The numbers were often swollen by more money if it was available or from among the captain's own followers as

125. A.P.S., iv, p 18, p 140; R.P.C., v, p 130.

126. A.P.S., iii, p 298.

Huntly did when he held the position. However, whether they actually did much good during this period is doubtful. Shortly before they received this formal recognition the guards had been warned not to "taikis pairt with divers his Majesties subjectis ... quhilk ar under deidlie feid and querrell with utheris", while in 1592 they mutinied over their pay and seized the chancellor's goods in recompense.<sup>127</sup>

It was between 1603 and 1611 that they exercised a more important role. After 1603 there was no need to guard the king, but money was made available to transform the guard into a mobile police unit which would enforce the king's will wherever they were required. The numbers were still only forty men and Sir David Murray was given the captain's commission.<sup>128</sup> Under Murray, or lord Scone as he is better known, the guard was employed on all sorts of missions involving police work, such as when they were sent to arrest a couple of the notorious Elliot clan who they brought to Edinburgh for execution after losing one of their men in the process.<sup>129</sup> In spite of the implications of an order from the council telling the guard to stop sitting around and to get on with earning their money, they were fairly active in dealing with less powerful criminal elements and were in fact so successful that in 1611 they were prematurely disbanded, it being thought that there was no more need for them.<sup>130</sup> Later in the year some of them were re-

127. R.P.C., iii, p 549; C.S.P.Scot., x, p 642.

128. R.P.C., vi, p 581-82

129. Pitcairn, Criminal Trials, ii, p 559-60.

130. R.P.C., ix, p 161.

employed as debt collectors, a far cry from their original job.<sup>131</sup> In fact it was a pity they were disbanded so soon, there still being plenty of work for them, but the motivation for the move was financial and had not been carried out with law and order in mind.

The guard were, however, an elite at the top of the administrative iceberg. In 1585 it was reported that there was widespread corruption among the king's officers, with the execution of false letters being a common offence for which many had been caught and deprived of their office. It was therefore decided that another list be drawn up, this one of legitimately commissioned officers, and that this be delivered to the ubiquitous treasurer with the names of their sponsors and that all sheriffs, stewards, baillies etc also compile lists of their officers and that the officers then report to their superiors to be checked off against the lists. All complaints about corrupt officers were to be handed in to the council which would investigate them and would also see that the legitimate officers were properly paid so as to remove any need for them to accept bribes.<sup>132</sup> Two years later further efforts were made to raise the standards of royal officers and in 1592 parliament passed an act against deforcement of officers, thus coupling demands for better work from them while at the same time trying to enhance the dignity of their responsibilities.<sup>132</sup> Those who continued to follow wayward

131. R.P.C., ix, p 213.

132. R.P.C., iii, p 720-21.

133. A.P.S., iii, p 449-50, p 577-78.

paths could be severely punished as was William Strachan, a royal messenger who forged and executed letters in the king's name and was lucky to escape with a flogging and the loss of his job.<sup>134</sup>

This shake up of lower officials was repeated higher up. In 1600 a commission was established to investigate whether sheriffs and other magistrates might be helped to better execute their offices and the sheriffs themselves were ordered to attend a convention of the nobility to discuss the problems they encountered and to offer their advice.<sup>135</sup> A year later the council complained of the corruption and negligence of the junior officials at justice ayres and warned them that "the doing and ministring of justice is the speciall grund quhairupoun his Hienes croun standis and dependis".<sup>136</sup> In 1603 the sheriffs were again the target of attack and they were told to make use of the guard if necessary, but there was really nothing the council could do about these and other hereditary offices except to complain and cajole.<sup>137</sup>

One way around this was to impose a new administrative level on local society and in 1609 steps were taken towards doing this with the creation of the commissioners and justices of the peace. One of the principal reasons for their creation was "the slouth of magistratis in not suppressing the first feidis" which had

134. Pitcairn, Criminal Trials, ii, p 455.

135. R.P.C., vi, p 68-69.

136. ibid., p 233-34.

137. ibid., p 584, p 590-92. Though see R.P.C., x, p 20-21 for some attempt to replace hereditary sheriffs in 1613.

been allowed to develop from small beginnings. The government consistently adopted this line that feuds had come into being during the king's minority and it was, as was seen above, a point with a fair degree of truth in it. The preamble expanded on this.

"To extirpate the ungodlie barbarous and brutall custome of deidlie feadis whilk by the Inveterat abuse of mony bibast ages was become sa frequent in this Realme As the subjectis of greatest rank and qualitie upoun everie nauchtie occassioun of base and unworthie Contraversies of neighbourheid for turves foldykes furris or marches of landis foolische wordis or drunken discordis betwene thair meaneest servandis and dependaris and ony uther of the countrey did so readilie Imbrace the protectioun of thair Iniust and unneccessarie quarrellis as did mony tymes involve thame selffis and thair haill freindschip in maist malice and Crueltie As to the extreme perrell of thair amin saulis Infamie of their memoriall and overthrow of thair awin and thair adversareir houses did distract the kingdome on opposite factiounis And mony tymes furnessit mater of maist pernicious seditioun and civill warris ..."<sup>138</sup>

The language of this legislation is clearly much more hostile than that of 1598 or even 1604 and reflects the gradual shift from embracing the peace of the feud in government legislation to outright opposition, in theory, to any form of the feud. The same was true of a proclamation also published in 1609 which declared that justice

"is in nothing more wronged than by the presumption of any private subject to tak revenge of injuries done to thame at thair awne handis, as gif the autoritie of a magistrat wer to no purpos so in that detestable monster deidlie feid ..."<sup>139</sup>

In fact the language was, as has been seen, ahead of government

138. A.P.S., iv, p 434-35.

139. R.P.C., viii, p 343-44.

practices where compromise continued to be the norm for some time. Nevertheless there had been a marked change in thinking within the legislators. To some extent this was propagandist and in fact the crown was mistakingly claiming in 1609 that "the haill knawin feadis within the kingdome being now removed",<sup>140</sup> as though to convince people that the bad old days were over before they actually were. However, as shall be shown in the following chapter, it also reflected deeper thinking which had within the lifetime of the feud come to believe that it was barbaric, unjust and against God and king.

Returning to the justices of the peace, they were brought into being to prevent the outgrowth of further feuds in the future and to "prevent all sic occasionis as may breid truble and violence amangis his mateis subiectis ...". These men were to be crown appointees with commissions to deal with breaches of the peace, disorderly gatherings, weapons offences and such things as might create a feud.<sup>141</sup> Thus in 1611, the justices of the peace of the sheriffdom of Fife brought Sir David Carhegy of Kynnaird and Bruce of Earlsall before the council "upoun suspitioun of some contraversie betuix thame". It was largely at this preventative stage that most of their work was done.<sup>142</sup> Their powers were more clearly defined over the next few years and in 1623 their position was renewed, but while they had some success in fulfilling their function one ought not to overestimate

140. R.P.C., viii, p 343-44.

141. A.P.S., iv, p 434.

142. R.P.C., ix, p 206.

their effect.<sup>143</sup> The worst of the feuding was over before 1609 and what remained was on the whole outside of their ability to deal with except where very insignificant men were involved. Whether feuding would have revived without them one cannot know, but the rapid decline before 1609 and the changes in thinking about feud probably meant that the sun had set anyway. At best they were part of the whole tightening up of law and order during the previous two decades and to isolate them from it is to give them more significance than is warranted.

In spite of all this impressive legislation, the change from a society which fought its battles in the field and not in court, and resolved its disputes in private and not according to the law of the state, was neither sudden or complete. As one has seen, the privy council and the king continued to use customary measures to settle feuds where such an approach was more likely to bring results. The government's attitude to feud may have become one of total theoretical opposition, but its practice was far more pragmatic. As late as 1623-24 the crown pushed the settlement of a feud between the Buchanan and Macfarlane clans out of the justice court into the hands of private mediators and supervised the pacification of a feud rather than the enforcement of strict legal justice.<sup>144</sup> Times were changing, however, as the earl Marischal complained to

143. R.P.C., ix, p 220-26, p 409-11, p 525-26.

144. R.P.C., xi, p 634, p 635, p 550, p 552-55; xiii, p 375-76, p 377, p 386, p 423-24, p 441, p 493, p 801-03; Pitcairn, Criminal Trials, iii, p 545-52; Fraser, Chiefs of Grant, ii, p 42; Mar and Kellie Muniments, S.R.O., G.D. 124/6/64.

Erroll in 1600, asking him to settle their affairs by friends and "nocht be the law or truble quhilk is the cummour custome of the cuntrie in maiteris of less wecht".<sup>145</sup> Ten years earlier Marischal would not have had to make this point since private arbitration would have been taken for granted. The law was encroaching itself upon his and his contemporaries world. Sir Robert Gordon observed the same transformation, writing of the affairs of one clan, "Thus doe the tryb of Clanheinzie become greit in these pairts, still incroaching upon thir nighbours, who are unacquented with the lawes of this kingdome".<sup>146</sup> The implication was that the best weapon in family rivalry now was the exploitation of the law and the Edinburgh legal establishment, something which Gordon himself applied with great success against the more conservative earl of Caithness who became a victim of the changing order.

Caithness's fate is a telling example of just how much the situation had changed during these years. His difficulties really began when he ordered the burning of lord Forbes's corns at Sanset in 1614. While the burning of standing corn was a treasonable offence it had been a fairly common one and one unlikely to be of concern to the far away government in Edinburgh. Lord Forbes and his ally, Sir Robert Gordon, were, however, determined to curb Caithness's excesses and prepared to take the case to law. Seeing that he could not avoid criminal prosecution, in spite of attempting a very murky

145. "Erroll Papers", Spalding Miscellany, ii, p 286.

146. Gordon, Sutherland, p 248.

cover up, Caithness agreed to come to terms with Forbes and settle out of court. The resulting assythment was a very favourable one for Forbes and his friends and in return he dropped all charges against the earl, no one appearing on the day of the trial to accuse him. However, shortly afterwards, the king wrote to the privy council and told them to press ahead with the case against Caithness and his son, lord Berridale, and prevent the pursuers from dropping the charges. On receiving the letter the council had Berridale immediately arrested and his father outlawed. Berridale turned to Sir Robert Gordon for help, telling him that he had never had any part in his father's feuds with him, but that "from their infancies they had bein bred in jarrs and contentions, the one against the other, which did overballance that deutie and freindship wherunto they were naturally bound". Berridale's friendship with Sir Robert and his innocence made the king's case difficult because Caithness had already made over all his lands to his son and it was thus pointless forfeiting the earl. However, Caithness and Berridale could not avoid royal disfavour altogether and in return for the king not pushing ahead with the case, they had to agree to satisfy their many creditors, resign in perpetuity the sheriffdom and justiciary of Caithness, hand over the burners of Sanset for execution and hand over the house of Strabister and 2000 merks worth of land to the bishop of Caithness to augment his livings. Even though they accepted these harsh terms Berridale spent another five years in prison for his family's debt, until Huntly's son freed him in 1621. The agreement with the king was strictly

speaking still an out of court one, but it was the threat of legal sanctions which had forced Caithness to accept it. Thus, even though he had made a private settlement with his enemies the king had insisted on his own claims being satisfied and had demonstrably succeeded in making good his claim.<sup>147</sup>

In the hey-day of the feud the crown could never have achieved such a success. There were others like it which proved quite clearly that there had been a change in the crown's attitude to feud and its environment, and in its ability to do something about it. Thus in 1614, the bastard son of the famous master of Glamis was sentenced to perpetual banishment for simply threatening to kill his cousin, the earl of Kinghorn.<sup>148</sup> In 1608 Sir Robert Gordon of Lochinvar was pursued by the privy council for killing his own page; John Muir of Auchindrain and his son were executed for their part in the vengeful killing of Kennedy of Culzean and a young messenger who was an unwitting witness to their plot; and in 1618 the son and heir of Stewart of Kilpatrick was executed for a feud killing in spite of having influential support on the privy council.<sup>149</sup> The whole question of private revenge was in fact brought into question in an important trial in 1617 when Gordon of Gight was

147. Gordon, Sutherland, p 329-40; R.P.C., x, p 844.

148. Balfour, Annales, ii, p 52. The sentence was however relaxed.

149. R.P.C., viii, p 87; Balfour, Annales, ii, p 26-27; Pitcairn, Criminal Trials, iii, p 440-41. For the Muirs see Pitcairn, Criminal Trials, ii and iii, see references throughout and in R.P.C., viii and ix.

charged with the slaughter of a Hay in what had been a judicial murder. The records of the trial are lengthy with the Gordons arguing for the rights of blood justice and the lord advocate pressing the claims of the crown for a monopoly of jurisdiction in the pursuit and punishment of criminals. In the end the advocate had the best of the argument, though the way was left open for the Gordons to appeal to the king to personally mediate between Huntly and Erroll.<sup>150</sup> It was the last time that the feud would ever stand up against the criminal law in court.

The feud was thus broken by a combination of direct assaults upon it and the dismantling of the environment it bred in. Feud itself was gradually forced into a position where it had, in theory, ceased to exist. Violent acts of feud simply became crimes, and while feud settlements continued to take traditional forms for some time, there were less each year as the crown tried to make good its claim that feuds no longer existed. Meanwhile, the prohibition of private combats, the restrictions on the carrying of weapons and on the size of retinues, the reform of government officers and methods of enforcement, all made feuds less likely to begin and more easy to suppress if they did. All this was, of course, taking place against a background of intellectual and social change, some of which is discussed below, which further removed many of the foundations in which the feud rested.

150. Pitcairn, Criminal Trials, iii, p 399-401, p 402, p 418-28.

An improving government machine and a flurry of intelligent legislative reforms<sup>151</sup> virtually extinguished the feud from most of Scotland within a generation.<sup>152</sup> What allowed this change to take place were the years of peace, the long reign by a highly competent adult king and the change in thinking about the feud by the king and the governing class of Scottish society during this period. After 1595 the crown was able at last to turn away from baronial struggles and for the first time since the days of the king's grandfather, really concentrate on other issues besides rebellions, religious divisions and external threats. Only a peaceful and secure society can afford the luxury of attending to the quality of life of its members and Jacobean Scotland ended the turbulent and violent sixteenth century both at peace and secure.

What took place was not a revolution in government. Scotland continued to be governed by a system in which men meant more than offices or administrative structures, where kinship and patronage were still enormously important, where the politics of the chamber could still frustrate the policies of the council, where power was still very much in noble hands and the crown was dependent upon noble support. However, the Jacobean legislators had initiated change. They had made the violent world of the feud impossible in the future they anticipated, a future where the rule of law would predominate and where the writ of the

151. For a summary of this legislation see Appendix two.

152. The exception of course was the highlands, see D.Stevenson, Alastair MacColla and the Highland Problem in the Seventeenth Century, (Edinburgh, 1980), especially chapter 1.

king would command respect and obedience. Theirs was a conservative programme, at times halting and uncertain, always the victim of pragmatism and self-interest, and in no sense was victory inevitable. However, the laws they passed and enforced, hesitant, repetitive and contradictory though they sometimes were, represent a faith in the power of law and the legal process to improve society which was not misplaced.

UPROOTING THE FEUDS II:

THE PERSONNEL

The eradication of the feud from all but the Gaelic culture of the western islands and highlands within a generation was a remarkable achievement considering the deep-rooted nature of the "barbarous" custom and reflects a profound and permanent change in the values and practices of Scottish society. Having seen the deeply held convictions about the moral responsibilities of feud and the social and political environment in which it flourished, it should be clear that the feud did not decline and simply fade away. Thus the intentional use of the king's own metaphor of uprooting. The feud had far too much momentum to disappear passively, but had to be positively removed by those who had come to believe in its ethical and political degeneracy. The disappearance of the feud was essentially due to the intervention of government, which, with the co-operation of a sizable proportion of the ruling class, was convinced that the feud was a blemish in its society and thus persuaded, cajoled, threatened, punished and resorted to violence in order to remove it. Who these opponents of the feud were is the subject of this last chapter.

Responsibility for this achievement has been claimed for various men and groups of men. Maurice Lee concluded that chancellor Maitland was the man who crushed the nobility and created the framework in which government could easily dispose of private quarrels and the like, but Lee never really understood the feud and its place in Scottish politics, including the politics of his own subject. He did, however, recognise that putting an end to feuds was James VI's "favourite project",

an observation which ought to have drawn him to a quite different conclusion. Jenny Wormald has on the other hand looked to a later date and to the lawyers as the architects of real change. Thus, she argues

"Their influence, not that of the crown, was decisive; the final decline of the blood-feud came in the century after James VI's departure from Scotland in 1603, when Scottish monarchy was absentee monarchy, and effective control passed to a privy council dominated by lawyer-administrators."

This argument can be more persuasive than Lee's, but it fails to take account of the pre-1603 reforms, neglects the king's very detailed involvement in the handling of feuds after that date and is an inaccurate assessment of the composition of the privy council. Others like Donaldson, Dickinson and Duncan have all put the emphasis on the king, but without sufficient evidence to ward off the challenges of either chancellor Maitland or the lawyer-administrators.<sup>1</sup>

This claim on behalf of James VI requires more substantiation if it is to be made good. One major difficulty in accepting that this could be true is caused by the king's bad press both from contemporaries, mostly English, and subsequently from historians. At worst he has been cast as an imbecile, bewildered by his violent nobility; at best he was a coward whose terror of violence persuaded him to try and keep it at a distance from himself. Thus fire-arms legislation has been seen to reflect

1. Lee, John Maitland of Thirlstane, p 295; Wormald, "Bloodfeud, Kindred and Government in Early Modern Scotland", p 96; Donaldson, James V-VII, p 222; W.C.Dickinson and A.A.M.Duncan, Scotland from the Earliest Times to 1603, (Oxford, 1977), p 387-88.

the king's fear of loud bangs. Reports speak of "his careless guiding and government" which caused "such murders and havoc amongst his subjects who should be preserved under his protection".<sup>2</sup> A Scottish writer was equally critical, pointing out that "when negligence has so overcum him, he lousis the brydill to all mischeif in his cuntrie".<sup>3</sup> Others complained of the intrigues he encouraged so that "that which is one day condemned is another day cleared and approved, such is the time and the government here"; a typical piece of Elizabethan arrogance considering the machinations of the English court.<sup>4</sup> The problem with such violence is that much of it dates from the period 1589-94 when the affairs of the kingdom were at their worst and is thus unrepresentative of James's management of his whole reign. It was at this time that the king had himself to submit to the politics of feud to survive.

More serious criticism can be levelled by pointing out the king's encouragement of feud procedures in pacification and his abuse of the remissions system. The first half of this is easily dealt with. The king was conservative in his reforms and saw no reason to do anything more than was necessary to pacify the feuds and abolish them forever. Like the privy council he was pragmatic, but his objective, once decided upon, was always the same, the extinction of what he quite clearly thought was an intolerable practice. That he did abuse the

2. C.S.P.Scot., x, p 573.

3. Historie, p 246.

4. C.S.P.Scot., xiii, part 2, p 667. This is from a later date.

remissions system in order to get cash is indefensible. There were many prosecutions for slaughter which broke down on the production of a privy remission and as late as 1621 the council was trying to persuade the king of "our humble opinionis concerning thir remissionis" in an effort to prevent him granting yet more.<sup>5</sup> Money was the cause of it and while there is no evidence to suggest that James was any worse than previous kings, it was a habit which undercut some of his own aims in other fields like abolishing the feud. However, it should also be pointed out that many of these respites and remissions were granted so that the holder of them could negotiate a letter of slains from the offended kin and this was, as has been seen, the condition the privy council demanded if they were to be passed through the great seal. Besides, the council itself was not opposed to remissions on principle. In 1623 they wrote to the king telling him of how some gentlemen of Moray had slain certain thugs who had been holding prisoner a servant of the earl of Moray in revenge for the execution of one of their friends. Now these men and their friends were pursuing the gentlemen for slaughter and the council was advising the king to grant them remissions in order to prevent this.<sup>6</sup> Such a practice was consistent with the king's own ideas, if not always his practice, on remissions.

5. Melrose, ii, p 402. For other examples of remissions which the king gave see Pitcairn, Criminal Trials, i, part 2, p 171; ii, p 461; Melrose, i, p 97.

6. Melrose, ii, p 535-37.

"Use justice, but with some moderation, as it turne not in Tyrannie: otherwaies summum Ius, is summa iniuria. As for example: if a man of a knowen honest life, be invaded by brigands or theeves for his purse, and in his owne defence slay one of them, they being both more in number, and also knownen to be deboshed and insolent livers; where by the contrarie, hee was single alone, beeing a man of sound reputation: yet because they were not at the horne, or there was no eye-witnesse present that could verifiye their first invading of him, shall hee therefore lose his head?... Surely no: for lawes are ordained as rules of vertuous and sociall living, and not to be snares to trap your good subjects: and therefore the law must be interpreted according to the meaning, and not the literall sense therof: Nam ratio est anima legis.<sup>7</sup>

There was, then, a perfectly correct justification for remissions, and while the king may have erred on the side of leniency, particularly with noblemen and their friends during his earlier years, it was a fault which was never excessive and of which James himself was aware.

When he wrote "Basilikon Doron" in 1599 the king was able to look back on the earlier years of his reign with more self criticism than most other monarchs would ever display in public.

"And when you have by the severitie of Justice once settled your countries, and made them know that ye can strike, then may ye therafter all the daies of your life mixe Justice with Mercie, punishing or sparing, as ye shall finde the crime to have bene wilfully or rashly committed, and according to the by-past behaviour of the committer. For if otherwise ye kyth your clemencie at the first, the offencies would soone come to such heapes, and contempt of you grow so great, that when ye would fall to punish, the number of them to be punished, would exceed the innocent; and ye would be troubled to resolve whom-at to begin; and against your nature would be compelled then to wracke many, whom the chastisement of few in the beginning might have preserved. But in this, my overdeare bought experience may serve you a sufficient lesson: For I confesse, where I thought (by being gracious

7. "Basilikon Doron" in Political Works, (ed.) MacIlwaine, p 37-38.

at the beginning) to win all mens hearts to a loving and willing obedience, I by the contrary found, the disorder of the countrie, and the losse of my thankes to be all my reward."<sup>8</sup>

James thus admitted responsibility in part at least for the mess the kingdom got into between 1585-95, when feuding reached its peak, when the number of horned men became too great to handle, when whole regions were engulfed in civil war and the king's own authority was very low indeed. This is not to say that James caused the situation, or that having allowed it to develop he was not determined to restore peace and order and to extinguish the worst malady of the age, the feud.

The king's views on violence, revenge and the feud have been preserved both in his writings and his works. Thus, when venting his anger against those who had ill-treated his mother and continued to show her disrespect, he advised that they should not be tolerated, but "... without using any persuasion of revenge". He admitted that "I have ever thought it the dewtie of a worthie Prince, rather with a pike, than a penne to write his just revenge" but had avoided doing so, "...wishing all men to juge of my future projects, according to my by-past actions".<sup>9</sup> In other words he was determined, where possible, to set a good example. To James, revenge was like a deadly sin "see that yee sute no unlawfull things, as revenge, lust or suche like".<sup>10</sup> He was scathing of murder and oppression, criticising "the ouer common use of it in this nation, as if

8. "Basilikon Doron" in Political Works, (ed.) MacIlwaine, p 20.

9. *ibid.*, p 9.

10. *ibid.*, p 15.

it were a vertue, especially by the greatest ranks of subjects in the land".<sup>11</sup> Perhaps with more optimism than was their due, James wrote "the most part of your people will ever naturally favour justice", which "is not there ye should reward your friends, or seeke to crosse your enemies", or "for satisfying any particular passions of yours, under colour therof. "Otherwise", he argued, "how justly that ever the offender deserve it, ye are guiltie of murther before God: For ye must consider, that God ever looketh to your inward intention in all your actions."<sup>12</sup> Of course what James was expounding here was his beliefs which were, as is the case with most men, not always in accord with his actions, but one should not underestimate his moral and Christian conviction because of that.

The king diagnosed the principal source of many of his problems to be the nobility.

"The naturall sicknesse that I have percieved this estate subject to in my time, hath beene, a fectlesse arrogant conceit of their greatnes and power; drinking in with their very nourish-milk, that their honour stood in committing three points of iniquitie: to thrall by oppression, the meaner sort that dwelleth neere them: to maintaine their servants and dependars in any wrong, although they be not answerable to the lawes, (for any body will maintain his man in a right cause) and for anie displeasure, that they apprehend to be done unto them by their neighbours, to tak up a plaine feid against him, and (without respect to God, King or commonweale) to bang it out bravely, hee and all his kinne, against him and all his: yea they will thinke the King farre in their common, in-case they agree to grant an assurance to a short day, for keeping of the peace: where, by their naturall dewtie, they are obliged to obey the law, and keepe the peace all the daies of their life, upon the perill of their verie craigges."<sup>13</sup>

11. "Basilikon Doron" in Political Works, (ed.) MacIlwaine, p 21.

12. *ibid.*, p 20, p 22.

13. *ibid.*, p 24-25.

James was clearly antagonistic towards the feud which he saw as an aberration, a sickness which required curing. One can also see here his irritation with the assurance system which he was not able to take steps against until 1604 by which time he had developed his arguments against it. He did, however, go on to outline his policy up until that time in that passage from which a quotation was drawn at the beginning of this study. He wrote

"And for the barbarous feidis, put the lawes to due execution made by mee thereanent; beginning ever ratherest at him that yee love best, and is most oblished unto you; to make him an example to the rest. For yee shall make all your reformations to beginne at your elbow, and so by degrees to flow to the extremities of the land. And rest not, untill you roote out these barbarous feidis; that their effects may be as well smoared down, as their barbarous name is unknowen to anie other nation: For if this Treatise were written in French or Latin, I could not get them named unto you but by circumlocution. And for your easier abolishing of them, put sharplie to execution my lawes made againt Gunnes and traiterous Pistolets; thinking in your heart, tearing in your speech, and using in your punishments, all such as weare and use them, as brigands and cut-throates."<sup>14</sup>

As one has already seen, the legislation against fire-arms was very closely allied to the passing of the major feud laws and the king was also accurate in pointing out the need to concentrate on the feuds of those closest to him, for it was to the feuds of the great nobles like Huntly, Montrose,

14. "Basilikon Doron" in Political Works, (ed.) MacIlwaine, p 25. James VI was not the only European monarch to be concerned with eradicating feuding as his brother-in-law Christian IV of Denmark shared his passion. Christian III had also been set against feuding and in 1537 had called feuds "a general plague in the kingdom", a metaphor which has echoes in James's "sickness". It was in fact Philpotts who first suggested that the Danish connection may have helped to formulate the Scottish crown's policies for dealing with feuds, Philpotts, Kindred and Clan, p 82-84, p 101.

Mar, Lennox or Hamilton that he devoted much of his personal attention in the early years of the campaign.

Nor was James any more sympathetic of the duel or private combat, though he gave his licence for a few judicial duels to be fought. To him it was fundamentally unlawful "committing the quarrel, as it were, to a lot; wherof there is no warrant in the Scripture, since the abrogating of the olde law". Not surprisingly he was horrified at the thought of a sovereign submitting himself to the duel, thus submitting "the safetie or wracke of the whole common-weale" to the outcome.<sup>15</sup> He returned to the theme in 1613 when trying to outlaw duelling in England. He bitterly complained of those who "challenge any man into the Field, towards whom they cary grudge or malice in their minds under the pretext of satisfaction to pretended wrongs without imploring aide either of the Lawes or Civil Magistrates". What, asked the king, was the point in God and society having laws if men were to be free to "rate the quality of the wrong supposed, or the satisfaction that belongs to it". He poured scorn on the enchantment of a mistaken concept of honour which transformed "consideration into passion, reason into appetite, and men into beasts", and on young men who "as soone as they can hold a Sword in their hand" set out to prove themselves in the field. This should be unnecessary in a state where there was a law provided for every contingency and it showed a contempt for justice which was aroused by "their

15. "Basilikon Doron" in Political Works, (ed.) MacIlwaine, p 28.

old Paradox, supposing no satisfaction to be sufficient, besides that which the partie that hath bene offended taketh with his owne hande, and by the sword". Such behaviour was nothing more than the antics of "Cavillers" who employed themselves in "pleasing of the vulgar taste" and had nothing whatsoever to do with honour.<sup>16</sup> It was a complete reversal of the code of honour discussed above and the replacement of it by one which respected and upheld the laws of God and the state.

James also wished to see a demilitarisation of society as a means of reducing the likelihood of fatal encounters and removing the emphasis from martial prowess. Armour should not be permitted at court, but only those accoutrements which were "knightly and honourable", by which "I meane rapier-swordes, and daggers". Other weapons, "tullyesome weapons", at court, "betokens confusion in the countrey". He wanted to banish both offensive and defensive weapons.

"For besides that the wearers therof, may be presupposed to have a secret evil intention, they want both the uses that defensive armour is ordained for; which is, to be able to hold oute violence, and by their outward glaunsing in their enemies eyes, to strike terrour in their hearts: Where by the contrary, they can serve for neither, being not onely unable to resist, but dangerous for shots, and giving no outward shoue against the enemy; being onely ordained, for betraying under trust, wherof honest men should be ashamed to beare the outward badge, not resembling the thing they are not. And for answere against these arguements, I knowe none but the olde Scots fashion; which if it be wrong, is no more to be allowed for ancientnesse, then the olde Masse is, which

16. J.F.Larkin and P.L.Hughes, Stewart Royal Proclamations James I, (Oxford, 1973), p 302-08. This proclamation was in part composed by Southampton.

also our forefathers used."<sup>17</sup>

In short the uniforms of aggression were to be done away with.

James also drew attention to the dangers of being served by factious officials.

"Suffer none about you to meddle in any men's particulars, but like the Turkes Janisares, let them know no father but you, nor particular but yours. And if any will medde in their kinne or friends quarrels, give them their leave: for since ye must be of no surname nor kinne, but equall to all honest men: it becommeth you not to bee followed with partiall or factious servents."<sup>18</sup>

Unfortunately, unless the king was willing to follow Turkish practices to the letter this was beyond his powers to control. Royal officials continued to be as factious and court parties continued to be formed around alliances of friends and kinsmen, but at least the idea was there, reflecting an unease with the system and perhaps acting as a brake upon it. On this same subject of officers the king turned to hereditary sheriffdoms and regalities, "the greatest hinderance to the execution of our lawes in this cuntrie". He clearly wanted to establish "the laudable custome of England" and J.P's were in part a fulfillment of that desire, but James had to admit that "I know no present remedie, but by taking the sharper account of them in their Offices; using all punishment against the slouthfull, that the Law will permit: and ever as they vaike, for any offences committed of them, dispone of them never heritably againe."<sup>19</sup> As one saw from the legislation which

17. "Basilikón Doron" in Political Works, (ed.) MacIlwaine, p 46.

18. *ibid.*, p 33.

19. *ibid.*, p 26.

arose from these ideas, the crown was very limited in what it could do and there were very few like the earl of Caithness who lost their hereditary offices.

"Basilikon Doron" is thus something of a royal manifesto, outlining some of the king's achievements and his aspirations. In it James declared that there were times for the use of the sword, "given you by God not onely to revenge you upon youre owne subjectis, the wrongs committed amongst themselves ..."<sup>20</sup>, but on the whole his philosophy was one of creating an environment by persuasion and legislation in which feud and its attendant forms of violence could not exist. One has to beware of reading too much into James's writings, but they are deeply infused with his high sense of kingship, his respect for law and his Christian faith which made it impossible to tolerate the feud in the kind of society which he believed God had given him to rule. James was a man of conservative instincts, but here one finds him attacking reactionaries who opposed reform in the name of being custodians of the past, and throwing out the values of the honour society as it had been understood by most men at the beginning of his reign. He objected to violence, to the excessive abuse of privilege, to the corruption of kinship and to the whole realm of revenge. For a Calvinist he had a remarkable faith in men's innate goodness which could be harnessed by wise rule and good laws to create a better, more harmonious and peaceful society, held together by adherence to the ethics of the Christian church and the authority of the

20. "Basilikon Doron" in Political Works, (ed.) MacIlwaine, p 28.

temporal ruler who was the king.

Yet James was a man with the unique opportunity of being able to implement his ideas and it is in his actions that one can test his commitment to such reforms. Beginning in 1585 with the overthrow of the Arran regime, before which one can still effectively talk of a minority situation, one finds that following the success of the rebel lords James immediately pleaded with them not to pursue their feuds with those who had been about him during the preceding years. A year later Randolph wrote of his "readiness to compose matters that might trouble his peace"<sup>21</sup> and in 1587 this desire for peace was given expression in the great banquet he devised to reconcile his nobles. The idea was naive and expressed the king's own youthful optimism about the ease of the problem facing him, but it was still his conception.

"At the conventioun the King maid ane harang to his nobellitie and estaites, declairing, that seing he was now come to his perfect aiege of twentie ane yeiris compleit, hafing mony wechtie effaires to be advysit, thocht it best first to reconceill his nobelletie, quhairin his Majestie had teane no small travell, and to suche poynt as all sould tend to the pleasour of God, his Majesties standing, the weill of the countrie, and thair awin ease and tranquillitie; protesting befoir God that he loved nothing so mikle as ane perfyt unoun and reconciliatioun amangis his nobilletie in hairtes and gif ony sould seime obstinat, that the remnant of his nobilletie sould hald hand to the repressing of thame, and the first brekkaris of that happie unoun persewit be all extremitie."<sup>22</sup>

Of course as has been already pointed out the whole incident smacked more of the circus than serious government and was a

21. Spottiswoode, History, ii, p 333; Estimate, p 48.

22. Moysie, Memoirs, p 63-64.

total failure. It was to be eight years before James could return to the feuds during which time experience may have brushed off some of the simple idealism of that day in 1587, but it also confirmed him in his resolve to be rid of the feuds with more realistic and workable methods.

The 1595 initiative also appears to have come from the king himself. Thus "The King understanding the great revengeis to lurk in the hartis of men, be reason of auld debaittis" summoned all the feuding nobles to Edinburgh and attempted to either reconcile them or put them under assurances.<sup>23</sup> Another commentator also gave the credit to the king.

"Our estate presently is thus occupied. During the life of the late Chancellor his Majesty thought all well governed. Now he begins to think other ways, minding by using of his laws to make great profit to himself and contentment to his people; which order if it be prosecuted shall "effectuat" both."<sup>24</sup>

This is a complete reversal of Lee's argument that Maitland handed the king over a well ordered state primed for absolutism. Instead one sees James realising that his late chancellor had handled affairs less well than had been thought and deciding to do something about it. The result was the 1595 act and a period of hard work by James during the winter of 1595-96 when it was observed that "The King is so resolute to all agreement of feuds against this time as they adventure to excuse but not deny their coming ... As to the horners the King is severe therin and begins to reign and rule like himself."<sup>25</sup> However, James was as always

23. Historie, p 356.

24. C.S.P.Scot., xii, p 99.

25. ibid., p 136.

prone to fits and starts and by the spring had run out of steam and without the king's hand in the operation the whole campaign collapsed. Shortly before the 1598 convention of the nobility, when James's officials were threatening to strike if he did not give them greater backing, it was reported that since the arrival of the duke of Holstein "... by reason that the King to accompany him and his hounds neglected the staying of these matters".<sup>26</sup>

It was not quite that simple, but there can be few better examples of how medieval the government still was. Clearly there was no well trained staff there to carry on with the faceless implementation of royal policy through the channels of a well oiled absolutist state machine. The king went hunting and one policy at least ground to a halt.

In the summer of 1598 James returned to the feuds with new energies inspired perhaps by the threatened strike, by Holstein's account of how they dealt with feuds in Denmark or by his renewed anger at the continuing high levels of feuding; one does not really know which. The 1598 act clearly drew on past experiences and in particular parliament's settlement of the Gordon-Forbes feud, but the specific authorship of the act was the king's. During the convention "The King the last week had his Council with him to advise on what should be trusted in this Convention and in the end drew articles himself of the matters ...".<sup>27</sup> The privy council later recognised this, drawing attention to the king's particular determination to

26. C.S.P.Scot., xiii, part 1, p 214-15.

27. ibid., p 228.

eradicate "all sic cuustomis, faschiouns and behaviouris as did in ony wayis smell of barbaritie and revenges ... amangis the quhilkis enormities as nane wer maie barbarous and detestable than the usual conuetud of deidlie feidis". The king was therefore "moveit to abhore and detaist the same and to tak resolutioun for the utter abolishing and extinguishing of sic a devilische forme", which proved to be "altogeder difficile, yea maiest impossibill at the forst". In order to make a more effective impact it was therefore decided to legislate against fire-arms and

"thairafter in ane Generall Conventioun of the Estaites of that his Hienes realme, certane articles pennit be his Majesties awin self for removing of the saidis feidis being consentit and accordit unto, the same wes thairefter past and allowit for ane publict law in the nixt Parliament ...".<sup>28</sup>

Obviously there is an element of flattery in this, written in the preamble to the 1604 act, but it is a description which is consistent with other evidence and besides if it was nothing more than flattery then why was the king not given the credit for other legislation during his reign? The case for James himself having at the very least drafted the terms of the 1598 act after some consultation with his advisors seems to be unanswerable unless evidence to the contrary can be uncovered. Nor did James end his interest with the passing of the act and in the following months it was regularly reported that "The King hastens all agreement of feuds", "The King is hastening to agree all other feuds by all possible means or at least to get them

28. R.P.C., vi, p 594-96.

under assurance.", and "The King labours these agreements at all hands."<sup>29</sup> The result was that by 1603 while the number of feuds was still very high, most of the great noble feuds had been either laid to rest or had been assured, an achievement which was to a very large extent a personal one for James.

However, the king's involvement did not end in 1603. The 1604 act also bore his personal stamp with the incorporation of his ideas on assurances first expressed in 1599 in "Basilikon Doron". Both Spottiswoode and the council's own records relate that the king wrote to them and ordered them to clean up the feuds, and in particular to put less emphasis on the assurance system because it implied recognition of the legitimate rights of parties to feud. Thus they wrote, "his Majesteis awin experience movis him to consider that the taking of assuranceis betuix parteis hes bene rather an fosterar nor removear of the same ...". The king's ideas were duly enacted.<sup>30</sup> The same happened in 1609 when James wrote to the council about some recent feuds and told them to stop using assurances altogether, for instead of providing peace they "retene the memorie of that monster itself, and makis you by accepting any suche conditioun to seame to gif allowance thairto". He then went on to chastise the council for laxity in allowing "the new budding oute of that mischevous weid of deidlie feid". The king warned them that "we resolve heirefter to blamyne nane

29. C.S.P.Scot., xiii, part 1, p 419, p 422, p 579. Spottiswoode also agrees with this interpretation, Spottiswoode, History, iii, p 91.

30. R.P.C., vi, p 595; Spottiswoode, History, iii, p 164-65.

utheris bot you for the same, since ye haif authoritie and power in your handis to committ disobeyaris, and to do every thing els that is requisite and expedient for seting and keeping oure peace thair." The letter was written on the 29th of July and on the 6th of August the privy council published a new proclamation against feuding which basically reiterated the king's words to them.<sup>31</sup> Elsewhere this role of the king as a motivator of his council is substantiated. Spottiswoode saying that he "was ever seriously commending to the council the removing of the barbarous feuds".<sup>32</sup>

The king's commitment was even more specific than simply to legislate and he showed himself willing to get involved in the implementation of that legislation. His part in some of the great feuds already discussed has been touched on and needs no repetition, but there were many others which received his personal attention. In 1589 he composed a feud between Huntly and Marischal, in 1591 he intervned in the internal squabbles of the Kerr family, in 1599 he brought Drumlangrig and Johnstone to an agreement and on a number of occasions he took a hand in the affairs of the hopelessly divided Kennedy kindred.<sup>33</sup> At the 1602 convention of the nobility he persuaded Ochiltree and Loudon to submit a feud and at the same time took up the outstanding issues between Lennox and Argyll which they

31. R.P.C., viii, p 591-92.

32. Spottiswoode, History, iii, p 190.

33. C.S.P.Scot., x, p 6, p 544, p 588-89; xiii, part 1, p 579; Pitcairn, Kennedy, p 27-28, p 41-43.

agreed to submit to him as their oversman, thus causing him to be employed on their business right through from February to May in which month he spent two whole days on this feud alone. The reconciliation he finally achieved broke down after only a few months and the whole process had to begin again, though with a slightly heavier hand behind it.<sup>34</sup> Here James was acting as a good overlord putting into practice the good lordship he expected of his own nobles, pacifying those closest to him as he had suggested in "Basilikon Doron". The picture is very much one of the feudal or medieval lord living and working among his vassals and servants and being involved with them in their disputes both great and small. It was the kind of government to which the Scottish nobles best responded and which James did best.<sup>35</sup>

To some extent this all ended in 1603 when James left for London and many of the great nobles and courtiers left with him. Yet while James no longer needed to fulfil quite the same role as an overlord he kept very much in touch with what was going on in Scotland. In 1605 he wrote to the council telling them that he had heard that Douglas of Torthorwald was in Edinburgh and had not been arrested for the murder of the former chancellor Arran. He demanded an explanation and got one from lord advocate Hamilton who detailed the arrangements that were being taken to pacify this particular feud and promised that the "name and

34. C.S.P.Scot., xiii, part 2, p 940, p 962, p 977.

35. The king showed remarkably detailed interest in even minor feuds as in 1590 when he intervened in one between the laird of Abercairny and a John Gibson, H.M.C., iii, p 419.

memorie of deidlie feidis", would be abolished.<sup>36</sup> When Torthorwald was murdered three years later the king was again busy writing, demanding explanations and offering criticisms.<sup>37</sup> In 1606 James gave specific instructions regarding a Gilbert Gray of Bandirrane who had slaughtered the master of Oliphant and in 1607 he wrote his instructions for the council in its dealings in the feud between Mar and his Macfarlane dependants on the one side and Colquhoun of Luss on the other.<sup>38</sup> That same year he expressed his anger at the murder by the laird of Lochinvar of one of his own servants and shortly afterwards the laird was chaged with the crime.<sup>39</sup> In 1608 his orders for the treatment of a feud between the Forbes family and Irvine of Drum were acted upon immediately after his letter was received and the council even picked up some of his phraseology in the process.<sup>40</sup> A year later he told the council that they were to ensure that no feud broke out between Scott of Tuschelaw and Scott of Thirlstane as he had had a letter from the former telling him that Thirlstane had threatened to kill him.<sup>41</sup> In 1609 it was he who insisted on the execution of lord Doune's son for murdering a man with whom he was at feud while the council was very reluctant to go through with it.<sup>42</sup> A feud

36. Melrose, i, p 7.

37. R.P.C., viii, p 543, p 809.

38. Pitcairn, Criminal Trials, ii, p 514-15; R.P.C., vii, p 528.

39. R.P.C., vii, p 435, p 540-41.

40. R.P.C., viii, p 530.

41. *ibid.*, p 598-99.

42. *ibid.*, p 602, p 610; Pitcairn, Criminal Trials, iii, p 74-76.

between Elphinstone of Blythswood and Bruce of Airth received his attention in 1610 and he again took the opportunity to remind the council of his hatred of feuding "so odious to God and reprotchfull to that natioun".<sup>43</sup>

The Union therefore did not end the king's very particular concern for the "uprooting" of the deadly weed. After 1610 his interest becomes less intense, probably because the feuds really were on decline after 1608-09 and the council was by then sufficiently confident of its role to deal with the remainder without the king's constant advice. Absentee kingship did not mean that the king handed affairs over to his officials and let them get on with the job. In the treatment of the feuds one repeatedly finds the privy council referring matters to the king and the king constantly reminding them of their duties and advising them on courses open to them. Even when James came north in 1617 he found himself deeply involved in the negotiations between Huntly, Erroll and his councillors to pacify a feud which had erupted between the two old allies the year before. In the end the king decreed a compromise which showed the same pragmatism and flexibility seen elsewhere and justice was seen to be done without the letter of the law being invoked. The feud was settled with the customary hand-shaking, forgiveness and toasting one another which the king had participated in in settlements made before 1603.<sup>44</sup> Whether in this rather isolated case or in the flow of letters between him and the

43. R.P.C., viii, p 611-12, p 621-23.

44. Gordon, Sutherland, p 340-42; Balfour, Annales, ii, p 68; R.P.C., x, p 594-95.

council in the Crawford-Edzell feud or in his insistence on the execution of lord Maxwell one finds a king determined to maintain an interest in the details of what was for him a very important policy, one which he had shown enormous interest in over the years and which he oversaw from its conception to its successful culmination.

Yet as James VI himself wrote, kings were not tyrants and nor were they supermen. The king could not have legislated against feuds and conducted a campaign against them without co-operation from other bodies in the state, the most important of whom were his nobility. It would have been quite impossible for James to have pursued this policy in the face of a defiant nobility. This is not the place to discuss the nobility of early modern Europe or even of Scotland, but the weight of opinion at the moment appears to be very much on the side of a powerfully resurgent nobility which was far from being in retreat before the united forces of crown and gentry, noblesse de robe, lairds or whatever terminology is used to describe the top layers of the middle classes for this period.<sup>45</sup> As Wormald has already pointed out, the problem facing James was not keeping his nobles out of government and thus undermining them, but persuading them to participate in the

45. For a general discussion of this see Anderson, Lineages of the Absolutist State, esp. ch. 2; the revival of the Spanish nobility is stressed by Lynch, Spain under the Hapsburgs, vol II, p 140-48; for France J. Dewald, The Formation of a Provincial Nobility, The Magistrates of the Parlement of Rouen, 1499-1610, (Princeton, 1980), see the conclusion for a summary; and James makes the point that even the Tudor monarchy was dependant upon the nobility, English Politics and the Concept of Honour, p 2.

government.<sup>46</sup> Thus "noblemen forbear Court and Council, unless for their own particulars, when the occasions force them".<sup>47</sup> James was very conservative when it came to appointing his officers and showed a distinct bias towards his nobles which was only partially tempered by Lee's observation that it was only those who were not at feud or who agreed to the king's mediation of their feuds who received favour.<sup>48</sup> Certainly Mar lost the chancellorship over his refusal to settle a feud, but if the king had employed this condition too rigorously even during the first decade of the seventeenth century he would have been hard pressed to find many nobles on whom he could bestow his favour. The nobility were very much a part of the Jacobean government, both at the centre where they continued to hold office and dominate the chamber and in the localities where they still monopolised the vast powers which made their co-operation in the execution of the law crucial.

As was shown in the previous chapter, the noble dominated minority period passed legislation which was designed to reduce violence and lawlessness, while the 1578-82 settlement of the Gordon-Forbes feud and the 1582-83 moves against feuding all took place within this period. While the Gordon-Forbes settlement was perhaps more political than anything else, the initiative in July 1582 against feuds was more clearly a general measure and the men who passed that measure are worth some

46. Wormald, Court, Kirk and Community, p 51-52; Brown, "Scottish Politics, 1567-1625" in The Reign of James VI and I, ed. Smith, p 26.

47. C.S.P.Scot., xiii, part 2, p 618.

48. Lee, Government By Pen, p 9.

analysis. Of the nobles present, Lennox and Arran were the dominant figures. Lennox was a Frenchman who had come from an environment little different from Scotland and Arran, though not a noble by inheritance, was the son of a nobleman and of a noble family. Without any kindred Lennox was very vulnerable and was driven from the country within months of this proclamation being passed, but Arran knew his way through the webs of Scottish politics, was already deeply involved in a blood-feud with the Douglasses and was eventually to die at their hands. Of the other nobles present, Crawford, Glencairn, Eglinton, Montrose, Maxwell and Ogilvy all had feuds of their own, Glencairn and Eglinton with one another, while lords Doune, Cathcart and Rothes had, as far as is known, no feuds to contend with. In other words the majority of the men who decided to press for the pacification of a number of feuds in the west of Scotland were themselves at feud.<sup>49</sup>

Where the idea came for this attempt to pacify feuds in 1582 is difficult to identify. Calderwood suggested that it was the fifteen year old king who expressed a desire to see his nobles at peace and he may be right.<sup>50</sup> The fact that the feuds all lay in the west of Scotland points strongly to Arran and Lennox having had a significant say in directing the policy and when one considers Arran's tough approach elsewhere and the very similar ideas he and the king had on a number of issues,

49. R.P.C., iii, p 503. The sederunt is not recorded for that day, but the above had all been attending council meetings in the preceding weeks.

50. Calderwood, History, iii, p 700.

he emerges as the best candidate for pushing the matter further. Certainly none of the others showed any inclination to give support for such a policy in the future, the exception being Montrose, but not until the later 1590's. However, one has to remain a little suspicious of the measure which may have had more to do with attempting to build up Arran's and Lennox's influence in the west of Scotland, in Ayrshire and Renfrewshire, where most of the feuds it was addressed to were located.

When the king returned to tackling the feuds in 1595 noblemen continued to be associated with royal policy. One nobleman who was very closely involved with the court and the government was John Erskine, earl of Mar. Having been raised with the king in Stirling Mar first made his mark in 1578 when he aided Morton in his recovery of power, he being then only sixteen. Between 1578-84 he remained a regular attendant at court, but drifted increasingly apart from the king and into enmity with Arran from whom he had to flee in 1584 after a plot against the chancellor collapsed. He returned with the exiled lords in 1585 and during the next ten years he survived all the hectic strife and faction to emerge as the most respected nobleman of the court, popular with the king, the English and with most of his contemporaries. However, he was suddenly projected into the last great political feud of the century and his refusal to co-operate with the king in settling it outside of the law lost him some favour. Mar had prior to this been present in 1587 at the great attempted reconciliation of the nobility and he was attending the council meetings fairly

regularly at the time of the 1595 act and so he knew the king's commitment to ending feuds. However, his determination not to settle with lord Livingston caused him to oppose the passing of the 1598 act and to refuse to obey its terms in the months which followed. In time he did settle, but his obstinance had cost him the chancellorship, though not the king's favour. Evidence that his opposition on the 1598 act was on personal grounds and not in principle comes from his behaviour thereafter. In spite of his own tardiness in obeying the king in this matter he sat on twenty-five of the thirty-eight recorded council meetings during the winter of 1598-99 when the act was being implemented fairly intensely, he continued to be a regular in attendance up until 1603 when he went to London and he was one of the lords of the articles who saw that the 1598 act received parliamentary approval in 1600. He remained with the king in London as one of his close friends until 1617 when he returned to Scotland as lord high treasurer, an important office in implementing much of the above legislation. He held the office until his death in 1630. Clearly Mar was a nobleman at home at the council table enforcing government policy against feuds and also in his locality fighting his own feuds there.<sup>51</sup>

This dual role was also to be found in John Graham, third

51. Scots Peerage, v, p 615-21; R.P.C., v, vi, sederunts. In each of the brief biographies which follow only the basic references are given as to include all references to each case would be tedious. Many of the points made about these men are simply gleaned from an overall reading of the sources for the period, but apart from those references given I also found W.Anderson, The Scottish Nation; or the Surnames, Families, Literature and Honours and Biographical History of the People of Scotland, (Edinburgh, 1867) useful.

earl of Montrose, the man who beat Mar to the chancellorship in 1599. An older man than Mar, Montrose first joined the privy council in 1571 having from the start of the civil war supported the king's party. In 1573, at the Pacification of Perth, he was appointed to oversee any complaints arising from breaches of the agreement north of the Forth, but he gradually shifted away from Morton and in 1578 joined Argyll and Atholl against him. Thereafter he was firmly with Argyll and Arran being given the position of chancellor of the assize which found Morton guilty of treason and also sitting on that which convicted Gowrie three years later. Arran rewarded his loyalty in 1584 by appointing him an extraordinary lord of session and to the post of lord treasurer which had been held by Gowrie. However, Arran's fall saw him retreat into the background where he was troubled with feuds which had their origins in his activities while in power between 1581-85 and any likelihood of him making a return seemed to be jeopardised by him being implicated in the rebellions of 1589 and 1593. In spite of this he was able to work his way back into royal favour during the next few years and earned the reputation of being a fairly reliable and hard working man willing to cooperate with the king. This reputation was enhanced when he distanced himself from the worst incidents of his family's feud with the Sandilands kindred and showed that he was eager to submit the feud and have it pacified. In 1599, at the age of fifty-one, he was appointed chancellor, an office he filled quietly, lacking the subtlety and intelligence of his predecessor and successor. From 1599-1604 he thus presided over a period

of intense anti-feud activity and in particular over the pacification of many of the feuds of his fellow noblemen. Like Mar he had had his own feuds, but was sympathetic to royal policy and oversaw its implementation. No doubt he realised that this was the quickest road to favour, but as his earlier career showed he was no sycophant and his conversion to co-operation with the crown should not be underestimated.<sup>52</sup>

Though these two were the most prominent noblemen working within the central government administration, there were others. Lord Fleming was a former Marian who was restored in 1579 and entered the royal household where he was appointed usher in 1583. In 1590 he joined the privy council and was sent as ambassador to Denmark. He was present at the 1587 convention and at the passing of the 1598 act, being present at about half the council meetings during its implementation during the months which followed. In 1606 he was rewarded with the title of earl of Wigton and in 1609 played a major part in overseeing the final stages of the reconciliation between Glencairn and Eglinton. He was also asked to investigate the activities of the unruly earl of Orkney and filled a number of other quango type posts during his career.<sup>53</sup> Lord Seton was also present in 1587 and 1590, was one of the lords of the articles in 1600 and was involved in the privy

52. Scots Peerage, vi, p 231-37; G.Brunton, An Historical Account of the Senators of the College of Justice from the Institution in MDXXXII, (Edinburgh, 1832), p 188-91; R.P.C., v, vi, sederunts.

53. Scots Peerage, viii, p 545-47; R.P.C., v-viii, sederunts.

council's work until his death in 1603.<sup>54</sup> Lord Newbattle's involvement can be traced back to the time of the 1595 act when he was active on the council, he was at the 1590 convention, sat on the articles in 1600 and continued to serve the crown until his own death in 1609 by which time he had been created earl of Lothian.<sup>55</sup> Lord Spynie, who had received his title through the favour he had gained in the chamber, was also there in 1598 and on the articles two years later, but he was less involved in the affairs of the privy council and lord Livingston followed a similar course.<sup>56</sup> Lord Ochiltree was at the 1598 convention and participated in the government during the period immediately following it, being appointed to a number of jobs, the most important of which was lieutenant of the Western Isles in 1608.<sup>57</sup> The earl of Cassillis was also at the 1598 convention, took part in the government during the months following and served for a short time as treasurer.<sup>58</sup> Finally, the master of Elphingstone was present when the 1598 act was passed, became treasurer in 1599, a post he held until 1601, was appointed an ordinary lord of session in 1599 and was a regular attender at privy council meetings.<sup>59</sup>

Of these men, Wigton, Lothian, Ochiltree and Elphingstone were present when the council issued the 1609 proclamation

54. Scots Peerage, viii, p 590-91; R.P.C., v, vi, sederunts.

55. Scots Peerage, v, p 455-57; R.P.C., v-viii, sederunts.

56. Scots Peerage, viii, p 95-101; R.P.C., v, vi, sederunts.  
Scots Peerage, v, p 443-45; R.P.C., v, vi, sederunts.

57. Scots Peerage, vi, p 516-17; R.P.C., v, vi, sederunts.

58. Scots Peerage, ii, p 475-77; R.P.C., v, vi, sederunts.

59. Scots Peerage, iii, p 336-38; Brunton, Senators, p 242-43; R.P.C., v, vi, sederunts.

against feuds, the last specific measure concerned with the subject and one which marked the end of the period of intense anti-feud activity.<sup>60</sup> They had thus served throughout the entire campaign to end feuding in Scotland and, with Mar and Montrose, they cast doubt on the non-noble nature of the administration. They, and the others with shorter careers, were not without their own feuds; Spynie was killed in a feud, Mar and Livingston were at feud with one another, Ochiltree had his feud with Bothwell when he was younger and Cassillis was embroiled in feuding, but this did not prevent them from getting on with implementing royal policy. One has also to remember that in the localities one had men like the eighth earl of Angus who filled a number of border offices and was described as "a lover of justice, peacable ...", but who unfortunately died in 1588 while only thirty-three.<sup>61</sup> Others like Argyll, Lennox and Hume were less attractive, but they still got on with the job of crushing rebel clans and border kindreds or in mediating between friends and thus bringing peace of a kind. Much of this was simply good lordship and no different from how their ancestors had behaved, but they were also enforcing the new legislation of the 1590's.

One cannot argue that the destruction of the feud was the result of a change of heart among the nobility; that would be to go too far. Yet far too much emphasis is put on noble opposition to royal reform. At the end of the Jacobean age

60. R.P.C., viii, p 343-44.

61. Scots Peerage, i, p 194-97.

real power still lay in the collective will of the nobility, however much the means by which they displayed that power may have altered. To imagine that the crown could have legislated, and more importantly, executed the measures described above without noble co-operation is vastly to overestimate the power of the king and the importance of central government. Many nobles were difficult and had to be managed through a variety of persuasive or coercive options to accept the changes which were taking place, but quite clearly others not only accepted reform but actively encouraged it. Why should it be so impossible to believe that noblemen could, along with lawyers, officials or ministers, see the advantages in a more peaceful society and understand the political and religious justification for the attack on the feud? Of course self-interest was also at work, most of these men were rewarded with office and entitlement, but one has to avoid the assumption that all men serve only for the gain they see at the end of the tunnel. Some of these nobles may have been motivated by the prospect of reward, but others may have come to believe that the feud was an affront to the crown or to God. Certainly one cannot leave the nobility out of the reckoning and this picture of noble co-operation is enhanced when one comes to examine the other administrators of royal government.

Something of a myth has grown up about the "lawyer-administrators" of the Jacobean government. Lee writes of "a sort of noblesse de robe" formed from among the lesser gentry. These men were employed and subsequently rewarded by

the crown, so that "in this way the loyalty of these classes to the government would be fostered and encouraged". Wormald similarly writes of "the speed with which James' council, dominated by these 'new men', tightened up and extended legislation against feud after the king's departure to England".<sup>62</sup> As has already been shown, the most productive legislative period was before James went south and even from there he continued to direct affairs with considerable attention to detail. Furthermore, the question of "new men" or "noblesse de robe" has not really been substantiated and it is to the men who have been granted this dubious distinction that one must now turn.

They can be divided broadly into two chronological groups; those who served in the administration during the 1560's and roughly up until the end of Maitland's chancellorship and those who were predominant during the post 1595 period. Of the first group chancellor Maitland and treasurer Glamis were the most important, but they have already been discussed in some depth and one can only repeat that neither of them showed any interest in ending feuds but were dependant upon the political environment of feud and faction for their own success at court. Quite possibly they would have participated in the drive to extinguish feuding had they been involved in the government after 1595, but Maitland's death and Glamis's fall from favour prevented this and it is as court brokers

62. Lee, John Maitland of Thirlstane, p 143; Wormald, Court, Kirk and Community, p 156.

and intriguers that they are best remembered.

There were, however, six others who played important parts in the administration of these years. All of them were from lairdly families, all became session judges and half of them were younger sons. Robert Pitcairn, commendator of Dunfermline, was a protégé of the regent Moray and thus a beneficiary of noble patronage. He was educated for the church, but changed his career plans at the reformation to a future in the legal profession and by a combination of his own talent and Moray's influence acquired the Dunfermline commendatorship in 1561, became an extraordinary member of the privy council in 1565, a lord of the articles in 1567, was promoted to the bench as an ordinary lord of the session in 1568 and in 1570 became secretary of state. He continued in that office after Moray's death and survived various changes of government until 1584 when he fell foul of Arran for siding with the Ruthven raiders. He died shortly after his dismissal.<sup>63</sup> Mark Kerr had been abbot of Newbattle before the reformation but renounced his catholicism and was allowed to hold onto his lands as commendator of Newbattle. Like Pitcairn his clerical education stood him in good stead and in 1569 he was appointed an extraordinary lord of session, was invited to join the privy council and remained in government service until his death, also in 1584.<sup>64</sup> Sir Lewis Bellenden of Auchinoul inherited the job of justice clerk from his father in 1578, joined the privy council a year

63. Brunton, Senators, p 139-40.

64. *ibid.*, p 147.

later and, in spite of siding with the Ruthven raiders, was at Maitland's instigation appointed a lord of session in 1584. He died in 1591 having been a firm ally of chancellor Maitland.<sup>65</sup> Adam Bothwell, bishop of Orkney, was chiefly famous for marrying queen Mary to Bothwell, but he had also been a session lord since 1564 and by joining the king's party in 1567 remained in the government throughout the next two decades.<sup>66</sup> Alexander Hay of Easter Kennet was another friend of the Maitland family, being nominated by him as clerk to the privy council. Like the others he survived the various changes in politics, became director of chancery in 1577, clerk register and a session lord in 1579 and filled a number of committee positions between then and his death in 1594.<sup>67</sup> Finally, Alexander Colville, commendator of Culross, was appointed to the session by Morton in 1575, joined the privy council in 1579 and remained in the government until 1597 when he died.<sup>68</sup>

These six men were the more important of the government officials who were largely unaffected by political change during the period. They were therefore involved in the important Gordon-Forbes settlement, in the 1582 initiative against feuds and the other less important legislation of these years. Pitcairn, Culross and Newbattle were all in fact arbitrators

65. Brunton, Senators, p 194-96.

66. *ibid.*, p 119-22.

67. *ibid.*, p 175-76.

68. *ibid.*, p 160-62. The importance of these officials can also be assessed from their fairly regular attendance at council meetings during the 1570's and 1580's, see R.P.C., ii-iv, sederunts.

at one stage or another in the Gordon-Forbes settlement.<sup>69</sup> Yet while these men were lawyers, one finds nothing to distinguish them from previous royal administrators. Without the reformation possibly four of them would have still served the crown, but as churchmen in the manner that church-trained lawyers had served the crown for centuries. Two of them had noble patrons, two owed their advancement to the Maitlands and of these Bellenden had his father before him to ease the road to the top. One could very probably find similar career paths in the officials of James V's administration. Furthermore, there is no evidence to suggest that any of these men influenced the direction of royal policy in any particular way during the 1580's because of the class of men they were. For these years at least there is certainly no justification for speaking of new men.

This is perhaps not entirely surprising since the measures of the 1580's were also lacking in any real impact. The years after 1595 were quite different and here one might expect a slightly different picture. Of the eleven men who formed the core at the top levels of the royal administration in this later period all but two of them were recruited during the 1580's and while nine of them were to become session judges they were not all by any means predominantly lawyers from lesser gentry families.

69. A.P.S., iii, p 112-14, p 164-65, p 230-31; R.P.C., iii, p 278.

Sir George Home of Spott was a lesser laird, dependant upon lord Hume who brought him to court in the early 1580's and succeeded in getting his man appointed a gentleman of the bedchamber. His family's involvement in the feud with Bothwell in which his brother was slain worked to his advantage and he became a client of chancellor Maitland's and a favourite of the king's. In 1590 he was knighted and had the office of master of the wardrobe bestowed upon him. While he remained close to the king and achieved some notoriety for his opposition to the Octavians in 1596, he remained very much a chamber figure throughout most of the decade, only becoming more prominent in the affairs of the privy council after 1601 when he became lord treasurer. He had, however, been sitting on the council for some years before that and was on the council at the time of the 1595 act and present at the 1598 convention. He was regular in his attendance at council meetings and after 1601 only Montrose sat at more meetings than he did. In 1603 he went with the king to England and while he became the most powerful man in the Scottish administration between 1604 and his death in 1611, his frequent absence in London meant that he was less involved in the practical implementation of policy than he had been between 1601-03 when he had been a very active treasurer. In 1605 he became earl of Dunbar and a year later led a raid against border kindreds which confirmed his image as a tough and uncompromising figure in the administration. Given his closeness to the king it seems likely that Dunbar had some part in influencing royal policy in the matter of

feuds, and certainly as treasurer he earned a reputation as a man willing to put legislation to effect. This, and his hawk-like attitude to opponents of the crown, makes him, in spite of his long absences in London, a fairly crucial figure in the crack-drown on feuding. Yet he was clearly no noblesse de robe. He had no legal training, was involved in feuds himself, owed his advancement to the patronage of his lord and then to Maitland, began his royal service in the chamber, was successful principally as a courtier and even after 1603 spent more time at court than in Edinburgh with the privy council.<sup>70</sup>

David Murray joined the royal household at much the same time as Dunbar. He became the king's cup-bearer and then master of the stables, but did not take any active part in politics until 1596 when like others in the household he joined the clamour against the Octavians who were trying to make spending cuts. In 1598 he was knighted and a year later was appointed comptroller and steward of Fife and asked to join the privy council. In 1600 his part in helping frustrate the Gowrie conspiracy brought him more favours and in 1603 he was appointed captain of the newly formed horse guards, being created lord Scone a year later. It was in this capacity that he did most of his work in relation to the feuds, acting as something of a government hatchet man, suppressing disorder with his force of mobile police. By some he was regarded as a rather ignorant man, but he "got business affactuated", his most notable business

70. Scots Peerage, iii, p 286-88; R.P.C., vi-viii, sederunts.

probably being when he received the submission of the west highland chiefs. Like Dunbar, Murray was a household servant who made his way up through the rungs of the chamber offices, just as royal servants had been doing for centuries.<sup>71</sup>

Another product of the chamber was Walter Stewart, prior of Blantyre. He was, along with Murray, brought up at court and was educated alongside the king by George Buchanan. In 1580 he became a gentleman of the bedchamber and two years later joined the privy council, was appointed lord privy seal and a lord of the session. He was thus involved in the government during the 1580's along with those mentioned above, while politically he gravitated towards his Stewart kinsmen, though it was to the more moderate Lennox rather than Bothwell to whom he was attached. In 1595-96 he was one of the Octavian government and it was reported that "with the good Prior of Blantyre's advice" the king began "to put in practice the good laws". He was a member of the 1595 council which passed the first feuding act, was present at the 1598 convention and was lord treasurer during the months when the act was first being executed. After a temporary disgrace in which he lost all his offices he quickly returned to favour, was a lord of the articles at the 1600 parliament, was created lord Blantyre in 1609 and got his job back on the session in 1610.<sup>72</sup>

The other man whose career embraced both generations of royal officials was Robert Melville of Murdocairny. A younger

71. Scots Peerage, viii, p 191-96.

72. Scots Peerage, ii, p 81-83; Brunton, Senators, p 225-26; R.P.C., v-vi, sederunts.

son of Melville of Raith - another of whose younger sons was Melville of Halhill - he left Scotland in his youth to take up service with Henry II of France. However, in 1559 he returned and was immediately employed by the lords of the Congregation as their ambassador in England. In 1562 he joined the privy council and was employed by Mary on another mission to England, deciding in 1567 to stick with the queen and only surrendering with Lethington in 1573. His life was saved by English intervention and he spent the next six years in retirement before having the benefits of the Pacification of Perth extended to him in 1579 and in 1580 being recalled and knighted at Lennox's instigation. His great talents were quickly put to use again and lord Ruthven had him appointed as his deputy in the lord treasurer's office, but in 1583 Melville betrayed his boss by helping the king to escape from the hands of the Ruthven faction. His loyalty was rewarded when he was again asked to join the privy council and Arran sent him on various missions to England. In 1589 he became vice-chancellor for the duration of the king and Maitland's visit to Denmark, in 1593 he was once again sent to England to negotiate with Elizabeth and a year later he became an extraordinary lord of the session. Melville was thus a member of the government at the time of the various measures attempted during the 1580's and by the time of the 1595 act he was one of the most regular in attendance at council meetings. On the appointment of the Octavians he resigned his job in the treasurer's department, but received it back in 1598 when he returned to the government. He was present at the convention

that year and continued to be regular in attendance at council until 1600 when a bad illness reduced his activity. He continued to serve as best as he could, however, and in 1616 was given the long overdue title of lord Melville, dying five years later at the grand old age of ninety-one. Though more of a career official than the other three discussed above, Melville was not primarily a lawyer even if he held a judicial position. Clearly his loyalties to the crown, first to Mary and then to James, were strong, but again one can detect nothing new about the type of servant he was and he falls into the category of all those men who served their lords well, even though this lord was the king.<sup>73</sup>

Of the other seven men four were important members of the Octavian government while the non-Octavians can be dealt with more quickly. Edward Bruce, commendator of Kinloss since 1583, made a name for himself as an accomplished lawyer in the Edinburgh commissary court and was appointed deputy to the justice-general of Scotland, the justice being the earl of Argyll who held the office in hereditary. He too was employed on diplomatic service in 1594 and in 1597 he was appointed to the session. He was present at the passing of the 1598 act and his presence at council meetings in the period which immediately followed was exceeded only by Montrose. His prominence in the council continued until 1603 when he left with the king for England where he took up office in the English administration

73. Scots Peerage, vi, p 96-99; Brunton, Senators, p 227-30; R.P.C., v, vi, sederunts.

and became a naturalised Englishman.<sup>74</sup> Sir John Cockburn of Ormiston was also a lawyer and in 1588 he succeeded his father as an extraordinary lord of session and having been appointed to the council, was in 1591 appointed lord justice clerk, becoming an ordinary lord of session two years later. He was the most regular councillor at the time of the 1595 act, attended the 1598 convention and remained prominent in the council until 1603.<sup>75</sup> The third man was Sir Richard Cockburn of Clerkington, another Maitland client and a lawyer, who became secretary of state in 1591 when Maitland resigned that position. He was also appointed to the session that year and in 1596 gave up the secretaryship in return for the lesser post of lord privy seal in a government reshuffle that year. He continued in these offices until 1626 and was thus a member of the privy council from the time of the 1595 act right through the period of intense legislation and anti-feud activity.<sup>76</sup> These three men do then fit into the category of lawyer-administrators, with the two Cockburns in particular being identified with crown policy during the period when feuds received so much attention. As they were principally administrators and not politicians one knows little more about them and measuring their significance is thus impossible, but one can assume that their long service was a sign of the confidence the king had in them to enforce, if not to shape his policies.

74. Scots Peerage, iii, p 474-76; Brunton, Senators, p 238-40; R.P.C., v, vi, sederunts.

75. Brunton, Senators, p 216-17; R.P.C., v, vi, sederunts.

76. Brunton, Senators, p 219-20; R.P.C., v-viii, sederunts.

Sir John Skene of Curriehill also comes quite comfortably into this category. The sixth son of an Aberdeenshire laird, he was educated in the burgh and at king's college before moving on to St Andrews where he took his M.A. During 1564-65, while still in his early twenties, he served on the university teaching staff and then went off to Scandinavia and Paris to continue his study of law. Returning in 1575 he was admitted as an advocate and his talents were quickly recognised by the regent Morton who commissioned him to write a digest of Scottish law along with Sir James Balfour. This project was abandoned at Morton's fall, but over the next ten years Skene continued to serve on a number of government and church committees where his legal expertise was required. In 1589 he became joint lord advocate but spent the next two years in the Netherlands as ambassador to the states-general, a duty which probably brought him his knighthood in 1592. In 1594 he became clerk register to the council and an ordinary lord of the session, and a year later was one of those who composed the Octavian administration. He continued to serve as clerk register until 1611 when he died, having published a number of books, the most famous of which were his editions of "Regiam Majestatem" and "Quoniam Attachiamenta".<sup>77</sup>

Also a lawyer, but of greater importance, was Sir Thomas Hamilton. He too was the younger son of a small lairdly family who was educated at the local school, this time

77. Brunton, Senators, p 230-34; R.P.C., v-viii, sederunts.

Edinburgh High, and who then went on to study law in Paris. He was admitted as an advocate in 1587 and within five years his brilliance had earned him a place among the session lords. In 1593 his abilities came to the notice of the king and he was asked to become a privy councillor. Three years later he became lord advocate in the Octavian government and he continued to hold this office for the next forty years. He attended the 1598 convention when the "Act Anent Feuding" was passed, delineating his powers as lord advocate in the prosecution of crimes committed in feuds. He was very active throughout Montrose's administration and increasingly brought pressure to bear on parties at feud to settle by threatening, and sometimes insisting, on the king's rights to prosecute crimes which had taken place in the course of feuds. More than any other man it was he who executed crown policy against feuding and it seems almost impossible to imagine that he, and possibly Skene too, did not influence the king in directing that policy and in providing much of the legal justification for the king's case. Certainly he was highly valued by James and was knighted in 1603, became lord clerk register which he exchanged for secretary of state in 1612, was created lord Bining in 1613 and earl of Melrose in 1619, exchanging this title for that of earl of Haddington in 1627. In spite of being less trusted by Charles I, he continued to add to his offices and dignities during the remaining ten years of his life. He was thus a crucially important figure in the government and politics of his time and in particular he was, after the king, the most

important enemy the feud in Scotland had.<sup>78</sup>

The remaining two men are less easy to categorise. James Elphingstone was the third son of lord Elphingstone and as such was clearly no "new man". Though appointed a session lord in 1586 it was his expertise as a linguist which attracted the crown's interest, and prior to the Octavian administration he was employed on a part-time basis to advise the privy council in matters where the use of French or Latin was required. He was also used by the king to conduct some private affairs and this familiarity with James made him a target of the 1596 riots when it was feared that his being a Roman catholic would be a bad influence on the king. The latter, however, was unimpressed by the objections levelled against him and Elphingstone was appointed secretary of state in 1598, created lord Balmerino in 1603 and became president of the court of session in 1605. Three years later his career was cut short by a scandal implicating him in treasonable correspondence with Rome and, though condemned to death, the sentence was never carried out and he lived on confined to his own estates until his death in 1612. Though an important political figure and one who was deeply involved in the government of the period it is unlikely that he was much involved in the campaign against feuding, his interests and duties lying elsewhere.<sup>79</sup>

78. Scots Peerage, iv, p 309-34; Brunton, Senators, p 221-25; R.P.C., v-viii, sederunts.

79. Scots Peerage, i, p 554-62; Brunton, Senators, p 206-12; R.P.C., v-viii, sederunts.

Finally, Alexander Seton was also from a noble family, being the second son of lord Seton and brother of the above mentioned earl of Winton who also made his career in government service. Seton was intended for a future in the catholic church and studied at the Jesuit college in Rome, making an impression on the Pope in 1571 with a notable oration. However, the reformation changed his mind about his future and he too moved to France to study civil law before coming to the Scottish bar in 1577. It was to be eight years though before he was asked to sit on the privy council and another two before he reached the bench of the session, first as an extraordinary and then as an ordinary lord. Six years later he became president of the session and was also given an post in the queen's household as baillie of her estates at Dunfermline. So good was his handling of her affairs, and in particular her finances, that he was asked by the king to be one of the principal figures of what came to be known as the Octavian government. He was present at the 1598 convention and sat as one of the lords of the articles in 1600, was after chancellor Montrose the most regular in attendance at council meetings between 1598-1604 and on his resignation that year was himself appointed chancellor and created earl of Dunfermline two years later. From then until his death in 1622 he was in effect the head of the king's administration in Scotland, though until 1611 he showed a degree of deference to Dunbar when he was present. He thus presided over the work of the privy council during the years when the feud was almost squeezed out of existence.

As president of the session he was able to combine enormous executive power with judicial influence at a time when the crown was trying to persuade men to take their business to the session before it ever became necessary for the criminal law to be invoked. Legal thinking was clearly important to Dunfermline, but like Balmerino he was of a noble family in which service to the crown was held in high regard, the elder brothers of both men also having pursued careers in the royal administration. One explanation for this may be that both families were catholic and realised that in a hostile environment their best hopes of success lay in becoming clients of the king. One certainly cannot point to these men as examples of a new and rising class. Rather they belonged to the old ruling class, many of whose members were, as has already been argued, quite in sympathy with the direction of royal policies.<sup>80</sup>

From the analysis of the men who served James VI during his reign it should be clear that one cannot be too general in one's distinctions. The attitudes adopted by these men was on the whole to oppose the feud in their role as government employees, but just as one found that men like Mar, Montrose and Ochiltree had their own feuds and continued to participate in customary feud settlements, so in the officials one finds a similar overlapping of practice and principle. Thus in 1611, justice clerk Ormiston was ordered to appear before the privy council to arrange a settlement of his feud with the earl of

80. Scots Peerage, iii, p 369-72; Brunton, Senators, p 198-202; R.P.C., v-viii, sederunts.

Linlithgow and some months later a traditional reconciliation took place between the two in the presence of the council.<sup>81</sup> Two years after this lord Scone and lord Burley found themselves in trouble for exchanging challenges and in 1615 William Kerr of Grange, the lieutenant of the border guard was ordered to compose his differences with Rutherford of Hunthill. In 1609 chancellor Dunfermline "who loved the Dumbar intirelie" personally intervened in a feud among the Dumbar family and arranged a compensation agreement to end it.<sup>82</sup> The gradual change in legislation, the way in which the privy council compromised in its implementation of that legislation and the varied composition of the council all point to change which was slow and in which men showed varying shades of respect for the old and the new, but without any being either too black or too white.

Government personnel was thus composed of neither rearguard reactionary nobles or revolutionary lawyers of a lower social status; it was a mix. As had already been pointed out, the nobility retained a sizable influence in government and were by no means ousted during the reign of James VI. Household servants also continued to hold important offices in government and, while these men may have been from lesser families, their relationship to the king was essentially one of "lord" and "man". Such a maintenance relationship was far from new and Dunbar,

81. R.P.C., ix, p 240, p 262.

82. R.P.C., x, p 60-61, p 61-62, p 76-77, p 92-93, p 395; Gordon, Sutherland, p 261.

Scone, Blantyre and even Melville are simply examples of household servants who made it to the top by means no different from previous generations of such men. Their achievement was personal not representative and their loyalty was entirely to the crown and not to the aspirations of any class or profession, though in their opposition to the stringent Octavian administration the household did show some semblance of solidarity. As for Dunfermline and Balmerino, Scotland may have followed the English example in only conferring nobility on the eldest sons of nobles, but the social attitudes of these men was likely to be closer to members of that class than petty gentry. Certainly their education may have altered their perception of society, but if anything they are a bridge between noble administrators like Mar and ennobled lawyers like lord advocate Hamilton. Of the five who were clearly lawyers, Hamilton, Skene, Kinloss and the two Cockburns, they did not have the political weight to dominate the privy council, important men though they may have been. They were lawyers and one must assume that they did exert a strong influence in the interests of the legal establishment in Edinburgh and that their views would be shaped by the principles of the law which they practised, but they were only one shade of opinion on the council and besides their opposition to the feud was not total.<sup>83</sup> Whatever prejudices and beliefs all these men had, whatever their background, their one common experience was that they served the crown and it was primarily

83. See the above discussion on privy council settlements during this period, vol ii, p 569-77.

this service which shaped and influenced their thinking. There were other factors like early training for the catholic church, studying law in Paris, spending a lifetime with the king, being younger sons, their religion, service in the treasurer's department, but while all these brought varying degrees of commitment to or against a cause, it was government employment which help it all together; it was the catalyst which directed their actions.

Condemnation of the feud, however, was not a monopoly of the king and his servants. An equally vehement critic was the reformed church of Scotland. The fact that the feud disappeared in Scotland during the period when the protestant reformation was firmly established appears to point towards a direct link between the two, to the conclusion that the feud was a casualty of Scottish Calvinism. However, that would be a little simplistic. Throughout its history the church had made peace making one of its responsibilities. Thus, "... the parish was not conceived by the church as a homogeneous unit, but as an assemblage of actually or potentially hostile entities among whom its function was to maintain a precarious peace".<sup>84</sup> This peace-making role was found both in the mediating capacity of the parish priest, but also in the ritual of the church where the peace of the community took on a sacramental form.<sup>85</sup>

84. J. Bossy, "Blood and Baptism", p 142. This role continued long after the reformation, p 139.

85. *ibid.*, p 141-42.

Particular peace movements at times during the middle ages had, of course, given emphasis to this aspect of Christian living together, with attempts to pacify feuds or limit their destructiveness in measures such as the prohibition against feuding on Sundays.<sup>86</sup> Thus, Bossy has argued, "the rituals of social peace had acquired in the common understanding an intrinsic holiness", a holiness which was recognised not only by it being an effect of the presence of the sacraments, but also because it was not the normal state of relations between men.<sup>87</sup>

With the reformation came a new upsurge in religion, a revitalising of faith, but a revitalisation which was not exclusive to those who found it necessary to leave the catholic church. The council of Trent, for example, legislated against duelling, but it could be argued that the greatest difficulty facing the Tridentine reformers was not "individual backsliding or Protestant resistance but the internal articulations of a society in which kinship was a more important social bond and feud, in however conventionalised a form, a flourishing social activity". As an example Bossy cites evidence of the difficulties the church had in persuading whole parishes to attend communion

86. Bloch, Feudal Society, p 412-20, for a discussion of "The Peace and Truce of God" and Duby, The Chivalrous Society, ch.8 "Laity and the Peace of God". The Russian Orthodox church was also an opponent of the feud and had an important effect on legislation which curbed the right to blood-vengeance in that country, D.H.Kaiser, The Growth of the Law in Medieval Russia, (Princeton, 1980), p 16.

87. Bossy, "Blood and Baptism", p 132-33; Bossy, "Holiness and Society", Past and Present, vol 75 (1977), p 132-33.

because of feuds. Thus Alessandro Sauli was sent from Borromeo's Milan as bishop of Corsica and found it impossible to impose Tridentine reforms until he had initiated confraternities devoted to eliminating the feuds.<sup>88</sup> Such a function was a common one for confraternities like the Nome di Dio in Bologna begun in 1566-67 to compose differences between conflicting parties and settle their law suits before they came to court.<sup>89</sup> Whether this was the same as the pre-reformation peace movements is doubtful. The emphasis was not on the social advantages and necessity of imposing Christian ethics, but on religious observance, of the need to attend the mass and to submit to confession. Both of these were impossible in a feuding environment, the first because two hostile groups would not meet together and the latter because it implied what Bossy called "unilateral disarmament".<sup>90</sup> However, while the reformation may have thrust new divisions into societies already structured on lines of division, and may have destroyed the old ideals of "the covenant of peace", so prevalent throughout the medieval period, it did inspire the church, both catholic and protestant, towards new efforts to pacify their communities.<sup>91</sup>

88. Bossy, "The Counter Reformation and the People of Catholic Europe", Past and Present, vol. 47 (1970), p 55-56.

89. Paoli Prodi, Il Cardinale Gabriele Poleotti, (Rome, 1959, 1967), vol ii, p 189-91. My thanks to Mr. Chris Black of the University of Glasgow, Department of Modern History, for this reference.

90. Bossy, "The Counter Reformation and the People of Catholic Europe", p 56.

91. Bossy, "Holiness and Society", p 134.

The protestant church was equally concerned with its responsibility to encourage men to participate in the sacraments and to create a Godly society; indeed the church claimed to be society. In Scotland the church followed closely the teaching of Calvin and what he had to say on revenge and kinship was uncompromising. He recognised that "the condition of humanity requires that there be more duties in common between those who are more nearly connected by the ties of relationship, or friendship or neighbourhood", but "the whole human race, without exception are to be embraced with one feeling of charity".<sup>92</sup> Calvin was critical of those who excused themselves from such an extreme view on the grounds that such a code of conduct was not for the whole Christian community but for monks and those under special vows.<sup>93</sup> In his comments on the sixth commandment he stressed the sanctity of human life, arguing elsewhere that the taking of a life was not to be avenged by the taking of another.<sup>94</sup> The pride which is common in all men was to Calvin a "disease" which "begets in all men a furious passion for revenge, whenever they are in the least troubled". Justice was not the prerogative of the private man, but was for God to deal out; "Vengeance is mine; I will repay, saith the Lord". Consequently, to take revenge oneself was to deprive God of his right to do so, it was to usurp the place of God. "Hence, as it is not lawful to usurp the office of God, it is not lawful to revenge; for we thus anticipate the judgement of God

92. Calvin, Institutes of the Christian Religion (tr.) by Henry Beverbridge, (Edinburgh, 1863), i, p 359, 2/8/55.

93. *ibid.*, p 359-60, 2/8/56.

94. *ibid.*, p 346-47, 2/3/39.

who will have this office reserved for himself." Nor was it right to even look for a vacarious kind of vengeance from the magistracy, for it is "superflous to make a distinction here between public and private revenge, both he who, with a malevolent mind and desirous of revenge, seeks the help of a magistrate, has no more excuse than when he devises means for self revenge." One should not even ask God to satisfy our desire for vengeance, since in doing so "we do not make God so much our judge as the executioner of our depraved passion". With regard to God, one was simply to await his judgement in his own time and pray for one's enemies.<sup>95</sup> However, to earthly magistrates was assigned the duty to punish, as "to avenge the afflictions of the pious at the command of God, is neither to afflict nor hurt".<sup>96</sup> Calvin, therefore, was insisting that the civil magistracy had the exclusive right to enforce justice, a justice which was ultimately God's. The argument was by no means new or unique, but in a society like late sixteenth century Scotland where such reasoning was eagerly appreciated by the faithful, it provided a powerful ally for a magistracy

95. J. Calvin, Commentaries on the Epistle of Paul the Apostle to the Romans, (tr.) by J. Owen, (Edinburgh, 1849), p 473-74.

96. Calvin, Institutes, ii, p 659-60, 4/20/10. For other relevant passages see Romans, p 471-77; Institutes, ii, p 667, 4/20/20; Commentaries on the Book of Genesis, (tr.) J. King, (Edinburgh, 1847), i, p 206-08.

which was equally militant in asserting its rights.<sup>97</sup> That the king and many of his ministers were themselves Calvinists served to both convert them to this line of thinking and to reinforce prejudices they may already have had. The divine mandate given to the crown to extinguish the feud was perhaps the most potent weapon in its arsenal.

An end to violence and feud was thus something on which the king and the clergy could, and on the whole did, agree upon. Few ministers would have appreciated the stoic attitude of the old laird of Kilravock who lived amongst the feuds of the north-east and when asked by the king how he could continue to live there, answered that "They were the best neighbours he could have, for they made him thrice a day to go to God on his knees, when perhaps otherwise he would not have gone once."<sup>98</sup> Kilravock may have been jesting with the king,

97. For example Bullinger wanted to see magistrates who "swerves from the path of justice neither because of partiality, fear nor bribes" and concluded that public vengeance executed by the magistrate "was by no means prohibited by God in the church of Christ", Heinrich Bullinger and the Covenant: The Other Reformed Tradition, J. Wayne Baker, (Ohio, 1980), p 117-18. Flandrin, Families in Former Times, quotes the puritan William Gouge who excepted children from obeying their parents when they made them promise to avenge them on their death-beds. For some further discussion see also, Stone, Crisis, p 21; James, Politics and Honour, p 45ff; Macfarlane, The Origins of English Individualism, p 50-51, in which he agrees with Weber's argument that protestantism in particular undermined kinship and replaced it with a "community of faith"; however, J. Samaha in Law and Order in Historical Perspective: The case of Elizabethan Essex, (London, 1974), p 69, argues that the enforcement of justice was no better under protestant J.P.'s than catholic ones.

98. Chambers, Domestic Annals, i, p 287.

but in 1576 the general assembly had been in a less jocular mood when it discussed feuding, resolving to take the initiative since, in confirmation of what one had already seen, the regent Morton had no policy at all for the problem. The assembly complained that the kingdom was "miserably divided in factions and deedly feed", and went on to draw attention to the same problem identified in catholic societies. Feud was so bad, they complained, that

"... the parishioners, for fear and suspicioun which they have of others, dar not resort to their parish kirks, to hear the word of unity preached, nor to recieve the sacraments and seals of their salvation; quherof riseth a shamefull and insufferable slander to the Kirk of God, and his true religion within this realme ...".

The essence of their complaint was not at an ethical level, but like the Tridentine reformers it was that feud was interrupting the business of the church, the giving of the sacraments and the preaching of God's word. This is not to say that they had no ethical objections, Calvin after all had made it plain that the Christian attitude was to regard all men as brothers, not as kinsmen, friends or enemies; but it was at this other level that the church was most offended. To deal with this problem the general assembly thus resolved to commission the visitors of the various localities, men who essentially executed the assemblies decisions, to "endeavour themselves, and travell with parties, to reduce them to a Christian unitye and brotherly concord, as becometh the brethern and members of Jesus Christ". The church was, therefore, determining to fulfil its long established role as a peace-maker in local society. Peace,

the church argued, was a matter which had a bearing on salvation and required the church's blessing, but here the stress was on the individual's salvation not on the peace of the community. Justification may be by faith, but the fruit of faith included peace and men who spurned peace denied the power of the Holy Spirit to work, they repudiated their own salvation. For the sake of the individual who had to be saved from his own folly, and for the sake of the church whose own claim to be the body of Christ was cast in doubt by wars within it, feud had to be eradicated.<sup>99</sup>

One might then argue that the first voice to be raised against the feud in Scotland was that of the church, at least it is the first recorded voice to object to it. Earlier complaints in the privy council records criticised the events of particular feuds or the general violence resulting from feuding, but this resolution of the general assembly's in 1576 was the beginning of a more fundamental opposition which was later to be taken over by the crown and in particular by the king. Unfortunately one knows nothing about what these visitors did, if anything, and certainly they had no effect on the general level of feuding which continued to rise after this date. Five years later the assembly again brought up the problem. Committees of local barons, gentlemen and ministers had been established to oversee parish reorganisation but were being hampered by "deidit feidis, grudgeis, variances and

99. B.U.K., 1, p 216-17.

occasiouns of displeasours amangis thame ...", that is among the parish community. On this occasion the church was to co-operate with local officials in ensuring that assurances were exchanged between contending parties.<sup>100</sup> Then in October of 1581 the general assembly ordained that William Christeson go to the king and inform him of "the great division, and deadly feeds in all quarters of the realme, to the great hinderance not only of religion, but of the common wealth; desiring his Grace to authorise some Commissioners of the kirk, as they shall direct, for repairing therof".<sup>101</sup> The same assembly also directed Mr David Lindsay and John Durie to tell the king about "the great feeds and disorders in all the countrie, and to desire order to be put therto; as alsua concurrence of some of his Commissioners with such of the Assembly will deut on their part, to treat amity and reconciliations betwixt parties".<sup>102</sup>

While some effort was made to deal with feuding in the summer of 1582, the government largely ignored the church's offer. Whether the Lennox regime just did not take the problem seriously, or whether there was strong lay objections to the church trying to formalise its role as a public mediator is not certain, there may have been a bit of both. In 1594 it was reported of some of the ministry that "In pulpits they

100. B.U.K., ii, p 520-21. Only one example of the effect of this problem was found in Stirling Presbytery Records 1581-1587, S.H.S., (Edinburgh, 1981), (ed.) G. Kirk, when one party was excused from attending his trial for adultery before the presbytery court because of the danger to him of feud, p 246.

101. B.U.K., ii, p 530.

102. ibid., p 544.

earnestly persuade the noblemen to cast of their "particulars" and band their forces against the common enemies", they being the catholic nobility and in particular the northern earls.<sup>103</sup> Perhaps the nobility just did not like this sort of interference in their private affairs and were determined to keep the church out of them?

Certainly it was a subject on which the ministers put great emphasis, adopting a militant and aggressive attitude which cut through the very basis of magnate politics and even power. No doubt the average parish minister kept his mouth shut, after all it was very likely that it was the local magnate who was feeding him. However, men like Robert Bruce could from the security of his Edinburgh pulpit pour out his protests and those of the church on an audience of nobles, government officials, lawyers, burgesses and the king himself. In 1588 Bruce severely criticised the crown for failing to curb the excesses of the nobility.

"There is no example or proclamation of judgement that will make them leave off from burning, slaying, and murder. This is not looked to by the Counsell, and he should punish this overseeth it. Ane thay that are inferior magistrates overseeth it, so that this land is overwhelmed with sin that it cannot be discharged until the great God himself do it."<sup>104</sup>

From offering to co-operate with the crown, the church, or some of its more vocal ministers, had moved to taking issue with the king and his officials themselves for laxity in

103. C.S.P.Scot., xi, p 488.

104. Sermons by the Rev. Robert Bruce, (ed), W.Cunningham, Wodrow Society vol 6, (Edinburgh, 1841), "The Second Sermon Upon Psalm LXXVI", p 321-22.

enforcing law and order. Bruce was, of course, quite right, apart from some legislative tinkering and the 1587 band the crown had just not been taking the problem seriously and had ignored the church's efforts in 1576 and 1581 to lobby for some sort of response to what had clearly become a situation of endemic disorder. Significantly, Bruce's criticisms were to a greater extent than before more ethical and perhaps even more political than those of 1581 or 1576. In 1576 the church had complained that it could not carry out its function properly because of feud and warned that men were risking their souls, while in 1581 it had pleaded for reconciliation not punishment. Bruce, however, was drawing attention to behaviour in the nobility, sanctioned by the crown, which was offensive to God. He was telling the nobility that they could not behave as they wished and the crown that it had a God-given responsibility to ensure that their behaviour was restricted. Bruce did not stress the individual sin which would bring the loss of salvation, but the collective sin of the community which was the product of bad government and irresponsible behaviour among those privileged to rule.

Bruce had more to say about the nobility in a sermon on the sacraments a year later. "We have many things to lament", he preached, "We have the estate of this cuntrey to lament ... For I see the maist part of our great men of this countrey running headlong to banish the spark of life that is left in them".<sup>105</sup> In 1591, while preaching from Isaiah, he continued on this theme of the degeneracy of the "great men", saying

105. Bruce, Sermons, "The Fourth Upon the Sacraments", p 108.

that "surely this country is heavily diseased ... so long as thir floods of iniquitie quhilk flows from the great men remains ..."<sup>106</sup> Again Bruce drew attention to the fact that their wrongs would affect all society, that "there is a heavy judgement hanging over this country". Still on Isaiah Bruce continued with his attack.

"There is no great man but whatsoever liketh him, he thinketh it leisum; and not only in this in this part of the land, but in all uther parts of this nation gross iniquities are committed, and the kirk is made a prairie to all men."<sup>107</sup>

More important than the lack of protection the church may have been experiencing in what seemed like a siege situation was the divine judgement which would fall on the nation just as it had on Israel when its kings and rulers had sinned.

"To come to the particular, the Lord is not risen as yet in this countrey, suppose he hath sitten long. And why hath he sitten but to see gif his enemies will repent? And hath this taken effect? No; for he hath not greater enemies in no part than the great men in this country, where the Word is so clearly uttered. So that the greater the knowlege be the greater is the contempt, and the greater the contempt be the heavier must be the judgement that abideth them. Now, in all this time of the Lord's sitting what are they doing? They are burning and scalding, slaying and murdering, and using all kinds of oppression, and raging so as there were not a king in Israel."<sup>108</sup>

Again the nobility suffered most from Bruce's tongue, but his real target here was the king. It was "as though there were not a king". In other words, for all the good he was doing there might as well not be a king in Scotland. If judgement

106. Bruce, Sermons, "The First Sermon Upon Isaiah", p 171.

107. *ibid.*

108. Bruce, Sermons, "The Fourth Sermon Upon Isaiah", p 313-14.

fell then it would be because the king had not acted to enforce God's law, to fulfil the role of the Godly magistrate assigned to him. It was a little unfair of Bruce to make this attack in 1591 when it was by no means the king's fault that magnate politics were so destructive; James himself was only just keeping his head above water. Yet it had been four years since the 1587 band when the king had last tried to do anything and to ministers like Bruce it was their responsibility to warn, to prophecy God's judgement on a disobedient people and their rulers.

Bruce may have been trying to shame James into action, but his real anger was still reserved for the nobles. In 1589 he had lectured them on their responsibilities, inviting them to self examination; to make a moral assessment of their behaviour.

"Be ye in the rank of great men, ye ought to take tent to your consciences; specialle, in respect that the Lord has placed you in ane great calling. Ye have many things quheirin ye ought to controle your consciences; ye ought to crave the advice of your conscience or ever ye put your hand to onie work, in respect ye are bound to manifold duties to God and to your inferiors; and na doubt, gif some of our great men had advised weill, these dissolutions had not fallen out into their awin bodies."<sup>109</sup>

Like the king and the ministers themselves the nobility had a calling which demanded more of them than the serving of their own and their kinsmen's interests. It was their bad council which was largely to blame for the state of the country and their failure to ask themselves moral questions in which right and wrong was determined by God in his law and not by any other obligations which to were to blame for their individual sinfulness.

109. Bruce, Sermons, "The Fifth Upon The Sacraments", p 143.

The result was "Thir oppressions of the poor, thir deadlie feidis with their awin companions ...", which "... would not burst out in sick and high maesure, gif they had advised weill their consciences". Consequently, God

"spoiles them of faith and of the hope of mercie; and out of question ye sall see their end miserable; ye sall see them spectacles of the judgements of God; they that has eyes to behold it sall see the God of heaven make thir men, quha gais sa dissolutely to work, spectacles of his judgements of the world; for the Lord leaves not sic men unpunished."

Hopefully lesser men would then notice this judgement of their betters and look to their own consciences.<sup>110</sup> In a profoundly religious age one has to realise that such a threat would for many men be a real one. How much such appeals to the heart and the mind affected the behaviour of the Scottish nobility and their followers one cannot know, but ideas do change people, as does faith, and one cannot ignore conversion or repentance in altering attitudes to the feud.

Bruce, like the good Calvinist he was, was not optimistic about the chances of bringing about such a call to good works. Their very lack of reform prompted him to say that "... it is no marvail, for their is no words will move them; yea it is impossible for the bloody man or oppressor to refrain, fra time once they be given over to sin ...".<sup>111</sup> If men would not repent themselves then they would have to be forced to by God's representative on earth by the king. The church

110. Bruce, Sermons, "The Fifth Upon The Sacraments", p 143.

111. Bruce, Sermons, "The Second Upon Isaiah", p 188.

had to pray that the king "may be touched with the sense and feeling of the misery of his subjects" and the only way this could be done was for it "to be knocked in his ears" by those noblemen who were aware of their responsibilities. Bruce was, however, a little too confident of the ease with which the problem could be dealt, thinking it would be as easy to "remedy the oppression of his subjects, as it is to take his repast when he is hungry". To him all that was lacking was "a good will and a stirring up, which would be done by you, my lords, who are about him". The problem was that in 1591 most of those who were about him were steeped in feuds themselves, both at court and in their localities. On the assumption that he could persuade the better nobles to unite with the ministry Bruce called for them all to rally around the king and "stir up the motion which God has given him in some measure", a recognition that James had shown at least some interest in the subject before then. They had to realise that those who broke the law challenged both God and the king, which was "but folly". He called for a royal crusade with

"God striking a man inwardly in his conscience with the feeling of his guiltiness, and the prince striking him upon the craig with the sword outwardly, there can be no opposition; and this is not the work of nature; it is the work of his calling; and walking in his calling, he must ever prosper ...".

The charge to act according to their calling was thus essential to the nobles, as magistrates and advisors, to the king as the prince put there to rule by God, and to the minister's, called to preach God's word. It was a duty and responsibility

of kingship and nobility to fight crime and violence, to enforce God's law and punish evil-doers, to "purge" the country.

"What, shall murder never cease? Shall never this ravishing cease? Shall never these oppressions cease? But shall the ears of the judges, magistrates and pastors, perpetually be grieved? Therefore I say, let him go forward in that work which he has already begun; and I pray God give it a good success, and let him be spirited up and there shall be no such thing as rebellion or laese mageste, as every man to oppres his subjects."<sup>112</sup>

Bruce went even further than this. Like Calvin he condemned revenge. "Their is nothing quhereunto nature bends the self mair nor to rankour and envie; and their is nothing quheirin nature places her honour mair gluckedly nor in private revengement."<sup>113</sup> It was not just crime which was an abcess in Scottish society, but also the system of blood-vengeance which masqueraded as justice. Again, like Calvin, he argued that men should forgive one another and leave vengeance to God.<sup>114</sup> Nor in a Christian society was there any room for bonds of blood, only spiritual bonds which united all God's people together. Not surprisingly Bruce launched an attack on the web of kinship and alliances which sustained the feud while preaching on the Lord's Supper. Quoting from the gospels he pointed out how lightly Jesus himself "esteemed the carnal band" when he said "These are my mother and brethern quha heares the word of God and dois it",

"... as gif he would say, It is not that carnall band that I esteeme of, it is not that carnall conjunction

112. Bruce, Sermons, "A Sermon Upon Heb Xll, v 1", p 395-96.

113. Bruce, Sermons, "The Fifth Upon The Sacraments", p 146.

114. Birrel, "Diary", p 32.

that I reverence: it is the spirituall conjunction, be the participation of the Halie Spirit, quhereby we are moved to hear the word of God, to give reverence to it and obey it. This carnall band was never profitable, as that same Luke vlll dois plainly testifie."<sup>115</sup>

Here was a clear alternative to the fabric of social relationships which then existed in Scotland. Bruce, and no doubt other ministers who thought like him, were by no means trying to undermine what they would have regarded as the legitimate claims of kinship and lordship, but they were invoking Christ's command to give Ceasar his due only if it did not contradict one's obligations to God. The "band of blood, running throwe ea race" was "never esteemed by Christ" and could not therefore be recognised by the church, at least not in the way it was then understood. How could men slaughter one another on the grounds of kinship when those same men claimed to all be bound together in Christ? For

"... our saull cannot be joyned nor bound with the flesh of Christ, nor the flesh of Christ cannot be joyned with our saull, but by ane spirituall band; not by ane carnall band of blood or allya, nor be the twiching of his flesh with our flesh: But he is conjoyned with us be ane spirituall band, that is be the power and vertue of his Halie Spirit."<sup>116</sup>

Banding was by no means ended by the reformation, but the nature of the band was changing to reflect a unity based on faith, not kinship, and to take its ultimate form in the Covenant and its theology.<sup>117</sup> Obligations to one's faith,

115. Bruce, Sermons, "Upon The Lord's Supper In Particular", p 67.

116. *ibid.*, p 66.

117. I.B.Gowan, The Scottish Reformation, (London, 1982), p 182-83.

whether catholic or protestant, episcopalian or presbyterian, were in time to replace those to kinsmen and lords, fracturing old allegiances and creating new ones which were to clash in their own wars and religious feuds of the seventeenth century.

On discussing lordship Bruce was equally revolutionary, demanding a complete reversal of the practices and attitudes which had constituted good lordship until the reformation. In November 1589 the earl of Bothwell had to do public penance for his part in the Brig O'Dee rebellion and Bruce was asked to preach at the service. Though his words were addressed to Bothwell he again took the opportunity to lecture to the nobility as a whole on their responsibilities as good lords. Bothwell was instructed to "cast away your affections", to "bury them under your feet" and "let justice strike indifferently where it should strike". Bruce was asking the Scottish lords to do in the name of justice what they regarded to be a betrayal of their own understanding of their calling.

"let no community of name, ally, proximity of blood, or whatsoever it be, move you to pervert justice, but let every man be answered according to the merit of his cause. Except these affections that accompany great men be removed, no question, ye must pervert that place. Let no thief pass because he is your servant, nor the murderer because he is your kinsman, nor the oppressor because he is your dependar: Therefore in time lay them aside, and let the execution declare that no man is spared for feed or favor."<sup>118</sup>

Bothwell was being commissioned to take over much of the government while the king was in Denmark and Bruce's words had a particular context, but he was also trying to persuade

118. Bruce, Sermons, "A Sermon on 2Tim 11, v22", p 355.

noblemen to adopt a new attitude to their role in society. He wanted them to unite with the king and the church in a bond against those who threatened the peace of the Christian community either through heresy or crime.

How widespread such thinking was within the ministry is unknown, but the influence of Bruce and those colleagues who thought like him was great. Mr Robert Rollok, "otherwise a mylde and meeke man", became quite worked up on the subject of remissions and prayed to God to grant the king one for all those he had sold.<sup>119</sup> In 1601 Mr Henry Blyth, the minister of the Cannongate kirk, openly criticised the king for granting a remission to lord Glamis after he had murdered one of his servants and as a consequence of his outspokenness was examined by James.<sup>120</sup> A year later after a service in Holyroodhouse kirk some Lindsays slew one Ogilvy and wounded another in the sight of a number of high ranking government officials and courtiers and that afternoon Blyth preached a stern sermon against their laxity for which he was, after repeated warnings to stop his protesting, briefly imprisoned.<sup>121</sup> James Melville also concentrated on the nobility's failure to fulfil their calling as men with public responsibilities, "but rather as private men, thinking it enough to keepe that which their fathers have left them, and tak their pastyme or pleasure, or to conqueis more to their childrein ...", by playing

119. Calderwood, History, v, p 359.

120. C.S.P.Scot., xiii, part 2, p 884; Birrel, "Diary", p 56.

121. C.S.P.Scot., xiii, part 2, p 1028-29.

"... the oppressors and bangsters".<sup>122</sup> Melville was leading to the more subtle point that by withdrawing so much from any public responsibility the nobility was allowing the crown to increase its jurisdiction and power and become absolute, but his basic objections to their behaviour was the same. Calderwood was in his writing just as censorious as Bruce in his pulpit. He drew a picture of

"muche blood shed, and manie horrible murthers committed: the sonne slaying the father, the one brother the other, and brother sonnes killing eache other, theeves spoiling and oppressing, and men daylie ravishing women; but no execution of justice, ather by the king or by the inferior magistrates. Yea it was an easie thing to obteane a remission from the king for blood."<sup>123</sup>

Calderwood's concentration on infra-kin feuds may have been more for effect than accuracy, but he too was voicing the revulsion of the church at the blood-feud and his anger at the crown's slowness in doing anything about it.<sup>124</sup>

While the crown had shown no initial interest in the church's complaints and while the king himself was slow to respond for largely political reasons, James was on the whole willing to co-operate. What tensions there were tended not to be on whether feuds and other forms of violence ought

122. Quoted in A.H. Williamson, Scottish National Consciousness in the Age of James VI, p 72. Williamson also has many interesting ideas on some of the subjects discussed above though from a different perspective.

123. Calderwood, History, p 359.

124. Not all ministers were against feud or even totally against it. Thus, archbishop Spottiswoode when writing about the Cunningham-Montgomery feud let slip that Eglinton's murder was "honourably revenged, Spottiswoode, History, ii, p 346.

to be eliminated, but on the question of jurisdiction between church and state. James welcomed the church's interest, it may even have been such preaching which convinced him of the need to eradicate feuding and supplied him with much of his propaganda, but he did not like to be told what to do or to have the church acting unilaterally. Hence he was angry in 1598 when Haddington presbytery excommunicated lord Hume for the murder of William Lawther because it complicated the assythment process and "the Kirk must be satisfied also towards Lord Home".<sup>125</sup>

Similarly James had opposed the excommunication of Huntly for Moray's murder, or that of Livingston of Dunipace and Bruce of Airth for the murder of Mar's servant.<sup>126</sup> It was not that the king approved necessarily of these killings, though he did in the case of Moray, but that feuds involving such important men were of too great political importance to allow the church to act without his express authority. In the same way Blyth was arrested because his outbursts simply were not helpful, the king and his ministers were acting to pacify the Lindsay-Ogilvy feud and Blyth's attack only served to undermine the authority of both.<sup>127</sup>

Co-operation was, however, the more normal relationship between the two. In 1591 the ministry approached the king with a petition asking for the better administration of justice and were rewarded with various regulations shortly afterwards.<sup>128</sup>

125. C.S.P.Scot., xiii, p 214.

126. See above chapters 4 and 5.

127. C.S.P.Scot., xiii, part 2, p 1028-29.

128. C.S.P.Scot., x, p 585 and for 1591 legislation appendix two.

On another occasion the king agreed to "a commission to be made to some ministers and others, for taking up of deidlie feeds among professors ...", an idea which be considered by some universities today.<sup>129</sup> In 1596 the general assembly again complained about feuding, but while relations between that body and the king were even more strained than usual that year, James exempted from the restrictions imposed on ministers gathering together, those meetings for "taking up of deadly feuds, and the like, which has not found fault with his majesty".<sup>130</sup> In 1598 the same convention which passed the "Act Anent Feuding" legislated against those who failed to turn up for communion throughout a year because of "allegance of feuds".<sup>131</sup> The government imposed a fine for such an evasion and two years later the general assembly ordered all ministers to compile a list of those not attending communion for feuds or other reasons and have them summoned before the local presbytery for disciplining.<sup>132</sup> The details of how the church went about its role as a local peace-maker are not known but the bishop of Aberdeen and the ministers of his locality were accredited with mediating and putting under assurance many of the minor feuds of that region, those involving the likes of Huntly being left to the king to deal with.<sup>133</sup> In Aberdeenshire there may have been an attempt by the church

129. Calderwood, History, v, p 178.

130. B.U.K., iii, p 874-75; Spottiswoode, History, iii, p 53.

131. C.S.P.Scot., xiii, p 322.

132. B.U.K., iii, p 951.

133. Spottiswoode, History, iii, p 62.

to associate feuding with catholicism and this is certainly the implication of the Synod of Aberdeen's letter to the king in 1606. Clearly those who did not obey the church and crown in matters of religion were not expected to obey in other matters either and by identifying the two so closely the offenders were doubly damned. It was also a useful tactic to employ in persuading the king to act against catholics.<sup>134</sup>

Like the king and his officials one appears to have the same mixture of total condemnation of the feud and appropriation of the pacification procedures of feud in order to lay it to rest. One certainly does not yet find the rejection of assyhtment that Philpotts found in Denmark because "... the Lord God has ordained, that every man who fights with the sword shall also fall by the sword" and that while "... we do not condemn thee, but thine own deeds, and the holy law".<sup>135</sup> Such uncompromising retribution was never characteristic of the Jacobean period though it would be characteristic of the century which followed.

Thus, while others may have legislated and acted to uproot feuding, the initial and the most sustained protest against it came from the church. As one has seen peace-making had always been a practice the church had tried to fulfil, but too often in the past the pre-reformed clergy had been themselves interwoven into the fabric of a feuding society. While they may have objected to particular acts of violence, there was no

134. "The Wodrow Manuscripts", Spalding Miscellany, ii, p 151-52.

135. Philpotts, Kindred and Clan, p 110. See also Wormald, "Bloodfeud, Kindred and Government in Early Modern Scotland", p 93-94.

condemnation of feud itself and the social structures on which it was built. The re-awakening of Christianity in the sixteenth century in both catholic and protestant countries altered that. From Trent and from Geneva came an increasing clamour against a form of justice which was neither approved of by the church nor biblical, but was in fact contrary to Christian ethics. In Scotland the renewal of faith which had swept away the old church and caused religious leaders to examine a whole host of social and ethical questions from poor relief to witchcraft, also turned the new light of scripture on the feud and found it wanting. However, for all its confidence the church of Scotland was still dependant on the power of crown and nobility to execute its reforms. Some, like witchcraft, were taken up with zeal, others like universal education and an advanced system of poor relief were left on the drawing board. Feud fell somewhere in between. Acting as the conscience of the community, the church found an ally in the king who was almost as good a Calvinist as he was a ruler. James's only condition was that he remained in control of the campaign and while there was occasional tension, the king and the ministers found that on the whole co-operation on this basis worked. The church was never slow to point out James's faults, particularly in granting remissions, and there was clearly impatience with his slowness in taking up the issue, but once he had one significantly hears little more of the subject from the church which could be well satisfied that it had fulfilled its task of reminding magistrates of their calling, identifying sin, warning sinners to repent and bringing Christ's peace among men.

To the church's argument that the feud created violence and was a usurpation of God's own right to divine vengeance, the king added his own that the feud was an affront to the authority of the crown. How important religion was in making up James's mind for him remains a matter for conjecture only. He was a religious man and shared most of the doctrinal beliefs of the clergy. Moreover, one can be sure that he would take seriously the allegation that he was not doing his job properly, for the king had a strong sense of the "calling" Bruce was so keen to inspire in men. For political reasons and because of the naivety and youthful carelessness which James himself later admitted to, he was not really able to get down to dealing with the feud problem until 1595, almost twenty years after the church first drew attention to it. Even then James was rarely doctrinaire about what he was doing and continued to make a political use of feuds, to sell some remissions and to trade the letter of his own laws for the advantages of an agreement between private parties who were willing to settle. Though he made much of the crown's dignity and authority in outward ways the king was a pragmatic politician who was essentially concerned with results. James wanted his subjects to obey his laws and live at peace and he used patronage, persuasion, legislation or the gibbet to get his way. Like everyone else the king was part of the system and he could only fight it from within, with the weapons it provided. Yet there can be no doubt about his commitment to the uprooting of feuding in Scotland. Like the democratic socialist in a

capitalist society, the king tolerated the feud far longer than he wished to, but he shared the vision of the churchmen who would be rid of it. In his writing he showed a consistent loathing of feud and its attendant forms of violence and exploitation, he initiated and detailed much of the legislative programme against it and he participated in the settlement of a great many particular feuds, showing a minute knowledge of them whether he was there on the spot or writing from London. Eradicating the feuds was something which was important to James VI and something in which he showed a degree of pride which was perhaps displayed a little prematurely, but which was ultimately justified. As the last king of Scotland to really understand the good lordship which was an essential ingredient of medieval kingship and as the first to lay claim to, though not to exercise the substance of, the absolutism of the monarchy of the future, it was a role for which he was admirably cast.

Of course the king did not do the job by himself. The church were one important ally who provided an enormous propaganda outlet for what began as a protest by them and became royal policy. Another was the nobility. Whatever their private feelings and practices a good number of the nobility were persuaded by a combination of religion, royal service and self-interest to make it possible for royal policy to evolve and be enforced. The nobility and other kindred chiefs certainly remained the most opposed group in society to replacing blood justice with royal justice,

and even among the more co-operative nobles their conservatism continued to have a restraining effect on whatever the king or his more radical servants tried to do. As the principal law enforcers of the country, however, it would be absurd to imagine that a threadbare royal administration could have abolished feuding and reduced local violence without their help, or at least without their opposition. Even at the end of this period of change their local and their collective national power remained enormous. Abolishing feuding may have altered their habits, but it did not necessarily reduce their power and those who realised that participated in the reform process. More fundamentally, why should one assume then one had to be of the "middling classes" to oppose violence and want justice? During James VI's minority both these issues had received limited attention from noble politicians and after 1585 noblemen continued, along with those others who were concerned, to bring peace in however halting and imperfect a manner to their society. In a sense the nobles were like drivers who approve of seat-belts but dislike being told that they have to wear them. Most of them had feuds and most bloodied their hands at least once in their lives, but that does not mean that they would not have had it otherwise. What irritated them was when the crown tried to interfere in their localities. There and elsewhere the feud was primarily a vehicle for their politics and as such it was expendable, what was not were the issues themselves, and the majority of these and most of the families who fought over them remained to struggle on under the new

rules. Even at an ideological level there were compensations as revenge, in spite of Calvin's plea, lived on in the punishments of the state and the fortunes of providence.

As in the case of the nobility, it is inaccurate to speak of government officials and servants as though they were some clearly identifiable and closed class whose aspirations were those of their class. At the top level the men who ran the central government apparatus were a mixture from different backgrounds, with varying educations, experiences and ambitions, and they cannot be lumped together into an identifiable group except that of being crown officials. Those who were lawyers, particularly lord advocate Hamilton and chancellor Dunfermline, did bring very keen legal minds to their jobs, but even if they had wished to accelerate the reform process even further, and there is no evidence that they did, they did not dominate the privy council or the means of enforcement sufficiently to do so. Besides, what evidence there is points to the king being the one who was impatient with their hesitancy and conservatism. There was thus no revolution in the royal administration but a continuity with the royal servants of the past. The nobles and the courtiers remained and the church trained canon lawyers were replaced by a number of civil lawyers, some of whom had in fact been trained initially for a career in the pre-reformed church. It was then as men accustomed to thinking in the interests of the crown and as men who would also be exposed to the church's condemnation of feud that they acted. This is not to say that they were faceless administrators,

far from it, but their future wealth and entitlement was dependant upon the extent to which they served the king's interests.

All these men, king, ministers, nobles, courtiers and lawyers were living in a society which was changing. It was changing in terms of religious ideas, it had changed politically in that it became part of a united monarchy, and it was in the early stages of the social revolution of the seventeenth century. The dismantling of the feud was in fact one of the pre-requisites for that social revolution though it was not appreciated at the time. Its immediate effect was to make Scotland a more peaceful place to live, at least until the mid century wars erupted, but that was a violence of a quite different kind. In the long term its removal made the crown more independent of the magnates, loosened the bonds of lordship and lessened the need for strong ties of kinship. In 1625, however, Scotland was still a society dominated by powerful lords and woven through with kindreds, a society where men like the earl of Mar could look back over almost fifty years of public life and still recognise the landscape of his youth. It was a change which had been conservative and minimal rather than a transformation from darkness into light. Even that metaphor may be inaccurate since the feud was far from all bad. At a fundamental level Scottish society was little different from what it had been in 1573 with the basic political and economic order having survived untouched. There may have been shifts here and there of power and wealth, but most men had not been affected.

and the relationships between social classes was unaltered. The reforms which had uprooted the feud had, however, brought to Scottish society a level of domestic peace and a reduction of violence never seen before and that was a change which touched most men. The man who was perhaps most responsible for implementing the details of those reforms, lord advocate Hamilton, certainly recognised that change and its benefits. In 1617 Hamilton had to convince a convention of the Scottish nobility of the need to raise money for the king's visit that year. Later he wrote to James telling him what he had said and the accuracy of his words are not diminished by his desire to cast the king personally in the best light possible.

"I schaw that the blessingis of justice and peace and fruttis arysing thair of, did so obleis euerie one of us, as no thing in owre power could equall it, desyring that it might be remembered, that whairas the Islander oppressed the Hielandmen, the Hielandir tirroranisid ouer thair Lowland nighbours; the powerfull and violent in the in-cuntrie domineered ouer the lyues and goodes of thair weak nighbours; the bordouraris triumphed in the impunitie of thair violences to the pairtis of Edinburgh; that treasons, murthours, burningis, thiftis, reiffis, nearschippis, hocking of oxin, distroyeing of growand cornis, and barbaraties of all sortis, wer exerced in all pairtis of the cuntrie, no place nor person being exemed or inviolable, Edinburgh being the ordinarie place of butcherlie revenge and daylie fightis; the paroches churches and churches-yairdis being more frequented upon the Sondag for advancement of nighbourlie malice and mischeif, nor for God's service; nobilmen, barronis, gentilmen, and people of all sortis, being slaughtered, at it wer, in publict and uncontrollable hostilities; merchandes robbed, and left for dead on day light, going on thair mercats and faires of Montrois, Wigton and Berwick; ministers being dirked in Stirling, buried quick in Cliddisdaill, and murthoured in Galloway; merchandis of Edinburgh being waited in their passage to Leith to be maid prisoners and ransomed, and all uther abominations which setled be inveterat custume and impunitie appeired to be of desperat remeid, had bene so repressed, puneissid, and aboleissid be your maistes wisdom, caire, power, and expensis, as no nation on earth could now compaire with our

prosperities; whairby we wer band to retribute to your maiestie, if it wer the verie half of oure hairt bloud."<sup>136</sup>

Whether James himself deserved quite so much of the credit or not it was an achievement of which the Scottish crown and church could be proud. Furthermore, it was a demonstration, in spite of what modern commentators might think, that, as the king himself wrote in 1623 "For our pairt, as we haif found one reule infallible, whiche is that the mater of feadis is not eternall, bot may be removed and not transmitted to posteritie."<sup>137</sup>

136. Melrose, i, p 273.

137. R.P.C., xiii, p 262.

CONCLUSION

On the 26th of September 1982 an article appeared in the "Observer" newspaper in which was included the following comment: "Justifying the invasion of West Beirut, the Israeli Ambassador to Paris declared last week: 'In the Orient there is blood vengeance'". The implications of that statement are enormous and in understanding it one can appreciate much more meaningfully the politics of the Middle East. What the Israeli ambassador was trying to say was that because there was blood-feud in the Lebanon, the Israeli army would, like the Scottish crown, have to act as something of a mutual peace-keeping force between the vengeful factions. The rôle was certainly one on which the Arab writer of this article cast some doubt, describing Israel as "a State which has just exacted thousands of eyes for an eye". He then pointedly asked "Is revenge, then, the monopoly of the Orientals?"

It is an interesting and important question and one which deserves an answer. What, one wonders, did western journalists or readers make of it? Certainly the question, and the Israeli statement which preceded it, would fail to arouse the same immediate response from them that it would in an Arab or early modern Scottish audience. To most westerners, particularly those whose cultural roots are not in the Mediterranean, vengeance, vendetta and blood-feud are all concepts which they associate with the Orient, the Wild West, the Mafia, or the darker recesses of their own civilisation's history. Unfortunately, historians have on the whole reinforced the idea that the blood-feud has nothing

to do with our society or its past and it only creeps into written history as something which progress has abolished. Consequently, the greater part of what we know of the feud has arisen from research undertaken by social scientists studying the blood-feud as they find it to-day in places like the Lebanon. Thus one has models of the feud as it exists at fixed times in societies which are primitive or under-developed in comparison to western Europe, but very little by way of a linear history of feud. What historical knowledge of feud we have tends to be confined to the dark ages and the early medieval periods. Thereafter, and possibly even in these centuries, the interest of historians has focused on central government and its struggle to get rid of feuding, and the blood-feud itself has generally been given limited recognition for its own sake. The history of the blood-feud in Europe has, therefore, never really been written.

In drawing attention to the Scottish blood-feud one hopes, therefore, to be able to contribute to the growing debate of what feud actually is. Sociologists and anthropologists may approach the subject from a different perspective, and even with a different end in view, but the historical evidence which is readily available in Scotland is important and ought to be taken account of in any conceptual discussion of feud. Thus, social scientists may find some comparative value in the Scottish feud, particularly in the debate over peace and violence in the feud. Perhaps more importantly, they might

find in the uprooting of the feud in Scotland some prophetic insight into the future course of feud in the societies they are investigating. One hesitates to suggest more and one certainly wishes to avoid trying to establish yet another definitive definition of feud and would ask only that those working with the feud, whether as historians or social scientists, would tread more cautiously in this whole area of what is feud. It may well be that the final answer will remain elusive, or that the most we will have will be a number of parallel definitions based on the varied experience of blood-feud in those societies, past and present, which can be studied.

Returning to the European experience, Scotland is, of course, a very small part of the overall picture, but Scotland was in the sixteenth century still sufficiently European for its history to be contributory to the wider canvass. Here one must again walk with caution and the most one has to offer are questions, not answers. Thus, one would like to know how widespread the blood-feud was in early modern Europe and just how typical the Scottish experience was. English commentators certainly refer to the Scottish blood-feud in such a way as to suggest that it was unique, but one suspects that the continental evidence might point to England as being a less typical example of European culture. One also needs to know more about the ideology and form of the feud elsewhere, or about the extent to which feuds dominated local politics and impinged on the political issues and structures of the centre. Why, one wonders,

did feuding disappear so quickly from England but outlast this period in the Balkans and throughout Mediterranean society? Was it because the feud was less dominated by strong lordship there, or because central government was never so evolved, or because the catholic church was less effective in countering the ideology of feud than their protestant counterparts? The answers to these and other questions would, of course, require both specialised studies of other regions and an attempt to develop some of the themes raised here in a European context. That the work ought to be done seems obvious if Scotland is fairly typical. In Scotland the blood-feud was so integral to political life and social relationships that without it one cannot sufficiently understand either. Should feuding prove to have been as common elsewhere, and in some areas it undoubtedly was, then however much one examines the institutions and policies of central government, and if one is dismissive of the feud as simply aristocratic quarrels, then one is not only ignoring a very large part of social history, but is creating an incomplete picture of political life, how it worked and what the priorities within it were. The growing emergence of a recognition of the importance of local history, and a renewed respect for narrative history which maintains a conceptual perspective can only benefit the feud and will, hopefully, rescue it from its exile amongst the mythology of the Sicilian mafia.

Within the narrower confines of Scottish history there are also a number of questions which arise from studying the blood-

feud during the reign of James VI. The most fundamental of these arises from recent revisionary histories of the fifteenth century. If such research is right in leading to the conclusion that Scottish kings were essentially strong and powerful while their nobility were largely co-operative, then one needs to know more about what happened between James V's death in 1542 and the re-emergence of effective royal power in the 1590's. It would appear that Scotland suffered an even longer and more harrowing mid-century crisis than the better known mid-Tudor crisis in England. What occurred in Scottish royal government during this half century to so reduce its authority over the localities is a vitally important issue for sixteenth century historians to tackle. Clearly two long minorities interrupted only by Mary's weak rule, the upheavals of the Reformation and the effects of high inflation and harsh economic conditions were central to this erosion of royal power and the increase in local autonomy and instability, but there were other factors too which have to be identified and the mechanics of their combined effect has to be worked out. A concentration on religious history and on personalities during this period is understandable, but it has been at the cost of sufficient attention being paid to royal government, its effectiveness in the localities and the state of law and order there.

Of course, the idea that there was a mid-century crisis is dependant upon acceptance of the general thesis of fifteenth century stability. Perhaps one can, therefore, be forgiven for feeling a little uneasy about a canvass which has the supposed

anarchy of the early Stuarts at one end and the apparently rampant disorder of the latter half of the sixteenth century at the other. In the hundred and eighteen years in between, from 1424 to 1542, Scottish kings, in spite of repeated minorities and political difficulties, appear to have been little troubled with feuding and to have effectively imposed royal justice throughout most of the lowlands. Fifteenth century royal justice may simply have approved of the feud as a mechanism which imposed its own order and, subsequently, there may have been no real concern to abolish it, but both James III's and James IV's parliaments brought feuding to the attention of the government, thus reflecting an underlying unease about its existence. That unease may never have become more than that because feuding was less wide-scale and less destructive in the fifteenth century, something which could be established by local studies, or, alternatively, Scottish kings may have lacked the power to intervene as extensively and effectively in the localities, however successful they may have been in crushing individual areas of resistance to royal authority. One can argue that law and order in the localities was not the crown's business anyway, but that of the local lord, and there is a great deal of truth in this even in the later sixteenth century. Yet it is difficult to believe that previous Stewart kings did not desire to enforce their laws on society and, without more evidence, it is even more difficult to accept that the peace mechanisms of the feud were somehow more successful in the fifteenth century than they were in that

following. Hence if the stability of the fifteenth century and the earlier part of the sixteenth century is to be more convincing one will need to know a great deal more about the local politics of individual localities and regions. The results of such research may simply reinforce our new perception of this period, but until one has such local evidence one can only continue to suspect that the power of Scottish kings was less impressive than has been recently argued.

Certainly in the Jacobean period there is little doubt that the blood-feud was and was seen to be both a cause and an effect of weak royal government, instability and disorder. Yet for all its publicised violence and bloodiness, the feud was not simply the product of anarchic and criminal behaviour, though it encompassed both of these. Its violence was controlled and ordered by a coherent ideology, by the obligations and organisation of kinship and lordship and by the issues of political conflict, both locally and at a higher level. That it was not anarchic is not really very surprising; lords and their men had no conscious interest in incessant and mindless destruction and both church and state had always imposed some degree of restraint. Peace in the feud did exist, whether as a result of local agreements, or, less commonly, of externally imposed pacifications. However, it was the very limited extent of the latter and the inherent instability of the feud's own peace mechanisms which ensured that the blood-feud remained both widespread and violent. The obligations which its own

ideology imposed, and the structure of social and political organisations, made the competitive relationship the dominant one outside of the kinship-lordship interest group, and as one has seen, even within it there could be intense competition. Not all competition resulted in conflict, but a great deal of it did and hence the widely spread and numerous blood-feuds in Scottish society. One is not arguing that Scotland was wracked by ever present violence; it was not, but the feud was a problem, not a solution.

The violence of the feud seems to be beyond dispute, but the violence of Scottish society is not. The level of violence in the feud varied greatly, but it was always there and one has tried to reflect something of that variety which embraced the murderous fratricide of the MacLeods and the calculated restraint of the Montgomeries. Both of these feuds were very different, but in each violent conflict was the essential currency of exchange and the same is true for almost every other feud. Having established that one would like to know more about the environment of violence. Was it something which was basically political in that the feud was political, or had it much deeper social roots and did it characterise other social relationships such as those in the home or between servants and their masters? Some comment has been made on this above, but it is far from satisfactory, except as an introduction to a discussion of the feud, and one would like to see the sort of social analysis of human relationships in Scotland that is currently taking place in England. Given the violence which still characterises

our own society, one suspects that research of this nature would not only be of historical value.

In stressing the violence rather than the peace of the blood-feud one could be accused of reinforcing those prejudices which for so long made it a subject not worthy of study. The disapproving contempt of Calvinism and the dismissive arrogance of a tradition which can be traced through the Enlightenment and the Whig view of history to modern humanism have combined to consign the feud to a murky and unworthy past with, until comparatively recently, considerable success. In the more sober twentieth century we are, however, a little more critical of humanity and a little less optimistic about man's future. The cruel logic of the blood-feud thus makes more sense, or at least is more sympathetically understood, in a world in which peace appears to rest on the assured vengeance of the nuclear powers. With even greater certainty than our sixteenth century ancestors we can promise our enemies an eye for an eye on a scale which would annihilate them and all their kinsmen. Perhaps then we can see that early modern man was not so very different from ourselves as he struggled with whatever tools and organisms available to him and sought with equal ignorance and anxiety to cope with the legacies history had left him with. As king James pointed out, most men probably did want peace, just as they do to-day, but for them the best way to achieve that peace appeared to lie in the guarantee that they could and would unleash bloody violence in limited or not so limited doses on their enemies. The result was a continual state of tension or conflict - again

something with which we are not unfamiliar at an international level - but it was a tension which ensured peace for those who lived within its limits of tolerance, as well as war for those who overstepped them. Here one can agree completely with the view that the fear of blood-feud held many men back from plunging into conflict and thus did bring peace. Yet the fear had to be there, and it could only be there when men were able to point across to a neighbouring glen or to the next parish and warn their sons and servants that the destruction and killing taking place there could and should be avoided, though without loss of honour: any deterrence needs its example.

Scottish society in the early modern period was primarily local in its structure and in the issues which most affected the majority of its members, even among the elite political classes. The concern of historians to debate the form and the policies of central government is understandable; most of the records left to us are from the archives of the crown and the agencies of central government. Apart from these practicalities it is also right that one begins with the centre and tries to understand it, for institutions like the crown and the church formed the skeleton on which the Scottish kingdom hung. One can also appreciate the extent to which questions like Anglo-Scottish relations, the Reformation and James VI's personal achievements as a king have dominated the historical debate in this period. However, just as in recent research on the Reformation Scottish historians have emphasised the need for an understanding

of the locality, so must those whose concern is to examine the politics of James VI's reign begin to dig below the skin of court factions. At a first glance disputes over the possession of peat turfs in Galloway or teind sheaves in Lothian may appear of little interest, but as issues of importance to local society they form an essential aspect of local social history and tell one just what was important to the average lord, landowner or even those on a lower social scale. Here too a great deal more work needs to be done if we are to understand how local society functioned and one hopes that recent works on local rural economies, politics and religion will only be the beginning of more emphasis being placed on this area of early modern life.

Furthermore, these disputes matter at another level, at that which binds local kinship and local conflict in a complex web of relationships with the alliances and feuds of great magnates and politicians. The dominance of local issues even for these men should not be neglected for what we regard as the big issues of the day. Men like the earl of Huntly and lord Maxwell showed a passionate concern for the Spey fishing rights or the Dumfries provostship which was often lacking in their opposition to chancellor Maitland or chancellor Arran or in the pursuit of Counter Reformation politics. Only by trying to appreciate that passion for the locality and its issues, and by understanding the complexities which bound up power there with power at the court and in government, can one hope to see the machinery of Scottish politics and the questions of political debate and conflict as they were seen at the time

by contemporaries. For this one requires to know much more about the Scottish nobility and the nature of their power. That power was essentially local and it was the defence and extension of that power base in the locality which dominated their politics; controlling the crown or its offices was for the overwhelming majority of them only a means towards this end. Being a successful nobleman was a full time job and those like Huntly who appreciated that fact were very busy men with quite enough to do as it was without trying to do the king's job as well. Absenteeism and the growth of the court and of central government would alter that emphasis during the seventeenth century, and the origins of that shift can be seen taking place during this period under discussion. However, before the Jacobean reforms and before the union of 1603 the balance of power still lay with the localities, and even individual localities could in themselves be difficult to control from the court and could pose a real threat to central government. Apart from its own intrinsic value then, the politics of the Scottish localities formed constituent parts of the wider political history of Scotland during the early modern period and thus ought to receive more attention from future researchers in this field.

In including local politics in one's overall view of Jacobean politics one has to recognise that politics were not only about affairs of state or the church, but were also social in their nature. Thus relationships of kindred, lordship and blood-feud were as important as the apparently more

ideological issues of religion or the principles of good government. One is not arguing that the ideology of the blood-feud took precedence over other issues, but for its place alongside them, for a recognition of the great problems catholic lords had in pursuing the ideals of their faith and fulfilling their obligations in local and court feuds, or that men like Mar had in serving the king as best he could while opposing him vigorously in the question of his private quarrels. Sometimes the issue or the context was such as would permit the feud to be laid aside, but all too often it could not and political alignments had to take account of who a lord's friends and enemies were. The subtleties of faction and feud were an integral part of Scottish political life and the complexity they created ought to be untangled. Scottish politics were not simply about the rise and fall of favourites and of particular families in the pursuit of personal ambition and self-interest, though none of these can be excluded from one's analysis. What one also has here is a complete political system with its own rules of conduct, machinery, support, leadership and issues. Hopefully future discussion of the politics of this period will avoid repetitions of the old cliches about what are very loosely labelled "magnate politics" and concentrate on examining the anatomy of that system.

Yet for all the vitality of that system and of the blood-feud which formed such a large part of it, the latter was pushed out from its place at the centre of political life and was confined to the geographic fringes of the kingdom during the

second half of James VI's reign. With its demise came a change in the conduct of politics and in the system through which politics were conducted. That, of course, has long been suspected if not known. What is perhaps more open to debate is how it was done and who did it. Here one has tried to demonstrate that it was not simply a matter of the crown deciding to get tough with the feud and with local disorder, but that the change went much deeper and involved a change of mind within the ruling classes themselves. This change was the product of pressure from the church whose ministers heavily criticised the violence of the feud and the glaring injustices of its ideology and the social organisation which sustained it. The crown, and James VI in particular, added to this moral onslaught its own, based on traditional crown aspirations and a more militant absolutist trend which James did so much to popularise with his Divine Right principles. The servants of the crown shared these opinions whether they were based on a perception of a Godly society, or a civil one, or both, but those servants were not simply the supposed group of middling lawyers, lairds and burgesses who historians repeatedly assume were the decent, hardworking backbone of any civilised society. Those elements were there, though members of that same class can be found pursuing their feuds with a determination that any noblemen would have done well to have excelled, but so too were those powerful nobles, lairds and even clan chiefs who had been persuaded, not forced, to bring about these changes. To repeat a point made in the last chapter, changes of this nature could not have taken place without the substantial co-operation of the nobility and their

dependants. As one might expect, changes which were taking place with the support of a wide variety of interests, including those most likely to lose by them, and which were being presided over by a king who was in every way conservative in his attitudes, could never be radical and immediate. There was thus no break with the past, and no "New Monarchy" enforcing its will on a crushed nobility by allying itself with the middle classes. What change there was evolved with the co-operation of the ruling classes, it was not a revolution carried out in spite of them.

That is not to say that the long term consequences of these "reforms" were not significant; they were, but the significance was never consciously anticipated. The uprooting of the Scottish feud did make Scotland a more peaceful country to live in, it took private violence out of political life, it altered the balance of power in the kingdom between the localities and the centre and between the nobility and the crown, it loosened the influence of magnates in the localities and consequently politicians' need for them at court, and it undermined the strength of kinship. Obviously the uprooting of the feud did not do all this alone and, for example, the decline in the value attached to kinship was also caused by the bonds of religious loyalties which were to cut across kindreds and divide lords from former dependants. All this, however, took place over a fairly long period; the crown was not thrust forward into the "absolutist age", the power of the nobility did not collapse and the removal of feuding probably

only made the minimum of impact upon peoples' lives. Kinsmen and lords continued to matter, and for most the harshness of life would be such that its quality was imperceptively improved by the uprooting of the blood-feud. That is not to say that getting rid of feuds did not matter, but one has to put it in perspective. Feuds had been a problem in Scottish society since records began and their removal was a great achievement, representing a major step forward in the ordering and civilising of society. One would like to know much more about whether there was a reduction in other forms of crime and in particular whether violent crime was actually reduced or simply depoliticised, but that is part of a much wider law and order debate which will have to be argued elsewhere. In suppressing the feuds at least, James VI and the political classes in church and state showed a genuine concern for peaceful social living which deserves both recognition and even admiration.

The blood-feud had not disappeared from Scotland by 1625. Towards the end of his life, in the early 1630's, the earl of Huntly was still defending his power with much the same tools and tactics that he had used to such good effect in the 1580's, while during the mid-century civil war many of the highland feuds came to occupy a prominent place in the calculations of rival politicians seeking to win supporters. In spite of this the feud was in irreversible retreat and to-day the blood-feud, as it is historically understood in Scotland, has completely disappeared. Yet dark reflections of it still haunt us in the deep religious divisions, in the hate filled

chanting of rival football supporters, in the violence of the gang, be it the territorial gang in Glasgow or the new cultural gangs or tribes exhibiting their musical and fashion values, and even perhaps in the political violence of extremists.

Less spectacularly there are still the quarrelling neighbours who have fallen out over the use of a dustbin or a washing line, and the families tragically fractured by parent-child confrontations or the settlement of a will. Most of us do not settle our "feuds" by killing our enemies or rivals, though we may cut ourselves off from them, insult them openly or behind their backs, take them to court and possibly even damage their property or try to hurt their person: some of us unfortunately do kill them. That we are more restrained than our ancestors may be due to our better education and the higher value we place on human life, but it might equally be due to a heightened sense of self-preservation and a well placed fear of the state whose powers to detect, arrest and punish would be the envy of any early modern ruler. However we express our opposition to one another, and in football hooliganism, racial rioting and political violence we all too often see it expressed in the worst sorts of ways, our competition for resources, support, acceptance or power can easily lead us into conflict. Yet the determination to get enemies and rivals to talk to one another, and thus to understand one another, was and is the basis for peace, in blood-feuds, religious divisions, industrial disputes, political issues and in diplomacy. The recognition of that principle was inherent in the blood-feud itself and its formalisation in law

by the Jacobean state ensured that, when enforced with conviction, it was one which even the most bitter of divisions could not resist.

APPENDIX 1Notes on the Maps in Chapter Five

The above shown maps are based on the "Scotland of Old" map by Sir Ian Moncreiffe which is not entirely accurate. To have made an accurate map would have taken as much research as the text itself and so one should see the maps as conveying a broad impression of the spread of power at any one time. Again one should remember that the amount of land owned does not mean that a man had necessarily more followers and wealth than a neighbour whose lands were smaller. Much of the area shown is mountain-country where neither man nor beast lived. The map also fails to show the many lairds of the country who held their lands from another and may have remained aloof from the feud. Finally, the maps primarily show political independence and not simply economic relationships so that, for example, Mackintosh may have held lands from Moray, but he was Huntly's "man" by the terms of his bond. However, if one bears this in mind and sees the maps as aids in understanding the changing situation in the north and not as accurate portrayals of what was happening then they will have served their purpose.

Key to the Maps

|                    |   |
|--------------------|---|
| Red                | Huntly and Gordons                                |
| Red bars           | Erroll and Hays                                   |
| Red lines          | Bondsmen of Huntly                                |
| Red dots           | Dependants of Huntly but no surviving bond        |
| Green              | Atholl, Moray and Stewarts                        |
| Blue               | Argyll and Campbells                              |
| Green/blue stripes | Stewart/Campbell bondsmen                         |
| Green/blue dots    | Stewart/Campbell dependants but no surviving bond |
| Yellow             | Forbes  |
| Yellow lines       | Marischall and Keiths                             |

1. The Re-establishment of Huntly Power, 1585-91

This map simply shows the bonds made by Huntly between 1585 and the crisis during the winter of 1590-91, including those at the end of the year. The bonds were as follows:

1. Munro of Foulis, 1585
2. MacAngus of Glengarry, 1585
3. Mackenzie of Kintail, 1585-86
4. MacLeod, fiar of Lewis, 1585
5. MacGregor of Glenstray, 1585
6. Drummond of Blair, 1585
7. Robertson of Struan, 1586
8. Dunbar of Cumnock, 1586
9. Gorm of Sleat, 1586
10. Grant of Freuchy, 1586

11. Campbell of Lochnell, 1587
12. Rattray of Craighall, 1587
13. Menzies of Pitfodells, 1588
14. Campbell of Glenorchy, 1588
15. Menzies of That Ilk, 1588
16. Scott of Abbotshall, 1589
17. Beaton, fiar of Malgund, 1589
18. Mackintosh of Dunnachatan, 1589
19. Innes of Invermarky, 1589
20. Lord Spynie, 1590
21. Cameron of Lochiel, 1591
22. A number of Macphersons, 1591
23. Sutherland of Duffus, 1591

A summary of the details of these bonds can be found in "Bonds of Manrent", J. Brown.

## 2. Distribution of Power in the North up to November 1590

On Huntly one can fairly confidently say that everyone above the line of the river Dee had little choice but to recognise Huntly's authority in one way or another, even without his lieutenancy. Only a few like lord Forbes, and the earl Marischal could retain some degree of independence. The other magnates in the region were Erroll who was a close ally to Huntly while further north both Caithness and Sutherland and even Orkney courted his friendship. South of the Dee, in Angus and the Mearns, Huntly's influence was much less apparent and here it was Crawford, Glamis and Ogilvy who fought for predominance. Moray's lands in the north-east are obviously insignificant, but one suspects that they must have been a little more extensive than is shown in the map and he certainly appears to have had land in the Spey valley, around Spynie and in the territory assigned to Mackintosh. Atholl's supporters may also have been more numerous than is shown, for while he was never anything like as strong as Huntly and Argyll, he was nevertheless of greater account than other northern landowners. Argyll's influence is not clearly shown in that his arm reached far out to the west and even south of what is shown, but such areas bore no real relation to this feud.

## 3. The Clan Chattan's Revolt, winter 1590-91

Possibly the Brodies joined in on this (between Moray and Calder) and what the Chisolms' attitude was is not known. There may also have been some sort of negative revolt in the Elgin, Banff and Nairn areas. Mackenzie obtained relaxation from Huntly's commissions, but remained his dependant.

APPENDIX 2GOVERNMENT LEGISLATION

- 1573: Pacification of Perth  
Act Anent Horning
- 1574: Act Anent Fire-arms
- 1578: Proclamation Against Fire-arms
- 1579: Act Anent Fire-arms  
Act Anent Lawburrows  
Act Anent Gordon-Forbes Feud  
Act Anent Horning  
Proclamation Against the King's interference in  
Council and Session business
- 1580: Council Act Against Private Combats  
Proclamation Against Fire-arms  
Proclamation Against Private Lobbying For Patronage
- 1581: Act Anent Lawburrows  
Act Anent Gordon-Forbes Feud
- 1582: Proclamations and Council Acts on Feud, Justice  
Commissions and other related matters
- 1583: Band by the King and Nobles for better Justice and Amity  
Council Act Anent Retinues
- 1584: Act Creating a Royal Guard  
Act Anent Respites and Remissions  
Act Anent Slaughters at the Horn  
Act Anent Horners  
Act Anent Better Execution of Decrees
- 1585: Act Against Leagues and Bands  
Council Act Against Privy Letters  
Council Act Anent Royal Officers
- 1587: Act Anent Murder Under Trust  
Band Reconciling the Nobility  
Council Act Anent Escheats  
Act Anent Reform of Royal Officers  
Proclamation Against Raising of Mercenaries
- 1588: Act Anent Horning
- 1589: Pacification of the Nobility
- 1590: General Band  
Council Act Anent Convocations  
Commissions of Justiciary Reviewed

- 1591: Council Act Anent Retinues  
Council Act Anent Respites and Remissions  
Proclamation Against Fire-arms
- 1592: Act Anent Respites and Remissions  
Act Anent Resetting  
Act Anent Deforcement
- 1593: Act Anent Maintenance  
Act Anent Horners  
Act Anent Lawburrows  
Act in favour of Edinburgh Concerning Tumults  
Act Anent Troublers of Parliament and the Courts  
Proclamation Against Fire-arms
- 1594: Commissions of Justiciary Reviewed
- 1595: Act Anent Feuding  
Council Act Anent Fire-arms  
Council Act Against Resetters  
Proclamation Against Horners
- 1596: Council Act Anent Application For Commissions  
Proclamation Against Fire-arms
- 1597: Act Anent General Band  
Act Anent Horning  
Act Anent Lawburrows  
Council Act Anent Tuilyeis in Burghs
- 1598: Act Anent Feuding  
Act Anent Fire-arms  
Council Act Anent Fire-arms  
Proclamation Concerning Horning
- 1599: Council Act Anent General Band
- 1600: Act Anent Feuding (ratification of 1598 act)  
Act Anent Fire-arms  
Council Act Anent Retinues  
Proclamation Against Private Combats
- 1601: Proclamation For Better Administration of Justice  
Proclamation Against Fire-arms
- 1603: Proclamation Creating Mobile Guard  
Proclamation Against Fire-arms  
Proclamation Against Tuilyeis
- 1604: Council Act Anent Feuding
- 1606: Proclamation Against Convocations
- 1608: Proclamation Against Fire-arms.

- 1609: Proclamation Against Feuding  
Act Anent the Commissioners and Justices of the Peace
- 1610: Council Act Against Convocations
- 1611: Council Act of Directions and Regulations of J.P.'s powers  
Disbandment of the Guard
- 1612: Council Act Against Convocations  
Council Act Anent J.P.'s
- 1613: Council Act Anent J.P.'s

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