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PhD thesis

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The Scottish Commission of the Peace, 1707-1760.

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in the University of Glasgow

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Abstract

The study proposes to analyse the patronage control exercised by the Lord Chancellor of Great Britain in respect of his power to appoint and dismiss justices of the peace in Scotland in the fifty years after the Act of Union. The commission of the peace was one significant route by which changes in central policy or power could be effectively transmitted to the localities and the question of whether the Lord Chancellor's patronage was employed to secure political advantage through these commissions is of particular interest, at a time when it was being attempted to merge the Scottish political system with its English counterpart. Such a study necessitates the consideration of how widespread regulations of commissions of the peace were, how extensive or otherwise changes were within individual counties and how often such changes occurred. The source material for this analysis is to be found in the records of Chancery. This information will provide the framework for the necessary assessment relating to political content in an effort to establish whether, for instance, changes in the Scottish commissions of the peace originated from changes at the centre eg. with a change of ministry, or, alternatively, had consequences at the centre eg. in the outcome of general elections. It will also be essential to evaluate the timing and content of regulations of commissions of the peace in the context of significant political events such as the advent of a Tory administration in 1710 or the outbreak of major rebellions in 1715 and 1745, in an attempt to determine any possible underlying relationship. The source material for this political

addition to the basic numerical framework is to be found in the papers of various Lord Chancellors, Secretaries of State, Lords - Lieutenant and local magnates together with certain records of central government such as the State Papers Domestic and Privy Council Registers. The main emphasis of the study will be on the political background to the choice of justices of the peace rather than their activity in the framework of the county community in an administrative or technical sense and is therefore clearly, a political analysis of the operation of a field of government patronage at a local level in the context of the central politics of the period. It is also however essentially concerned with the problems of Scottish politics in the post - Union period and seeks to relate the above-mentioned political concepts to the disillusion, disaffection and rebellion experienced in Scotland under Queen Anne and the first two Georges.

Prior to the reformation of the Calendar in 1752,
dates are recorded in Old
Style the year commencing
on January 1.

Abbreviations.

<u>A.P.S.</u>	<u>Acts of the Parliament of Scotland</u>
B.M.	British Museum
<u>Bull. Inst. Hist. Res.</u>	<u>Bulletin of the Institute of Historical Research</u>
<u>Eng. Hist. Rev.</u>	<u>English Historical Review</u>
G.R.H.	General Register House
Herts. R.O.	Hertfordshire County Record Office
Hist. Mss. Comm.	Historical Manuscripts Commission
H.L.R.O.	House of Lords Record Office
<u>L.J.</u>	<u>Journals of the House of Lords</u>
N.L.S.	National Library of Scotland
P.R.O.	Public Record Office
<u>R.P.C.</u>	<u>Register of the Privy Council of Scotland</u>
<u>Scot. Hist. Rev.</u>	<u>Scottish Historical Review</u>
W.R.H.	West Register House

1. Introduction

1. The History of Local Government Administration in Scotland.

Institutions of local government are derived from the inability of the monarch, the ultimate source of justice, to realise that function effectively over a large geographical area. The roots of such institutions are clearly judicial and it might be anticipated, therefore, that development would be sporadic, reflecting changing political and social conditions.

By the end of the twelfth century, machinery existed in Scotland whereby the King dispensed justice in curia regis with 'justiciars' exercising the vital function of maintaining contact with the localities in the Sheriff, baronial and burgh courts which formed the base of the judicial pyramid. In spite of the foundation of a supreme court in the College of Justice, or Court of Session in 1532, these small courts continued to exercise overlapping and not clearly defined jurisdictions, and it was not until the reign of James VI that the first serious attempts were made at modifying what Lord Cooper has called:

... the persistent policy of confiding the judicial function to an unpaid, part-time, lay magistracy, masquerading as judges and engaging casually in the discharge of judicial duties in intervals snatched from their major preoccupations as territorial magnates, or statesmen, or ecclesiastical dignitaries.

¹ Lord Cooper, The Dark Age of Scottish Legal History, (Glasgow University Publications, XCII, 1952), pp.16-17.

James' aversion to the heritable jurisdictions of these local courts of Sheriff, barony and regality was made clear in Basilikon Doron,¹ and by 1587 legislation had been enacted both to reform these ancient institutions and introduce new machinery to combat increasing lawlessness and violence.

The Sheriff, as the royal official responsible to the King for the conduct of local government, exercised extensive control in the fields of administration, finance, defence and justice. In England, careful government control had enabled the establishment of an efficient institution. In Scotland, however, royal policy had been directed towards absorbing the feudal power of the local barons, with the result that the latter, on being appointed Sheriffs, were able to extend their power base until by 1747 twenty of the thirty-three Sheriffdoms in Scotland were heritable.²

Increased corruption led James to take action in 1597 with legislation instructing that Sheriffs were to be prohibited from collecting taxation and other dues (except 40/- from each £1 land held).³ Collectors were appointed,⁴ and cases of failure to account for royal dues were to be reported and punished.⁵ In 1599 the

¹Basilikon Doron, (1616 edn.), book II, 163.

²I. Milne, 'The Sheriff Court before the Sixteenth Century', in An Introduction to Scottish Legal History, (Stair Society Publications, XX, 1958), 350-5. Several essays in the collection (hereafter cited as S.S.P., XX) were relevant to this study.

³A.P.S., iv, 143.

⁴A.P.S., iv, 145.

⁵R.P.C., v, 440.

Sheriffs of Roxburghshire, Selkirkshire, Peebles-shire and Berwickshire were apprehended for allowing rebels to remain untried in their jurisdictions but the Privy Council deferred sentence¹ and consequently James appointed a committee to revise and amend unsatisfactory sentences imposed by Sheriffs and report on cases of failure to act.² In 1613 James appointed three Sheriffs for the shires of Edinburgh, Haddington and Linlithgow and directed the Privy Council that:

... because divers and great abuses haif bene committit in most of all the hereditary jurisdictions, it is our pleasour that ye maturlie consult and advise upon the best and fittest means how the same may be reformat and befor the admission of these new intrants to their office that ye particularlie informe them of the same.³

In 1614 the appointment of Sheriffs was made on an annual basis⁴ and in 1617 James appointed a committee of four to investigate the cost of compensation required for the total abolition of heritable Sheriffdoms.⁵ Lack of finance prevented the realisation of this desirable objective, but certain heritable Sheriffs were forced to surrender their offices which were renewed on a one year tenure if the incumbent could pay the Kings dues.

¹ R.P.C., vi, 56-9.

² R.P.C., vi, 68.

³ R.P.C., x, 20-1.

⁴ R.P.C., x, 215.

⁵ R.P.C., xi, 196n.

James' reforming policy and his attempts to re-assert powers which had been persistently slipping from central to local control, were continued by his successors. Charles I, for instance, demanded payment by the Sheriff depute from his own resources if he was unable to coerce the debtors to payment but this led to a considerable number of resignations and a dearth of candidates for the office.¹ Consequently heritable Sheriffs continued under the formal cloak of annual renewal.² The Restoration saw further efforts at control when in 1661, an Act was introduced whereby Sheriffs could be punished if convicted of acquitting guilty delinquents,³ and in 1662 Sheriffs were required to suppress thefts and robberies.⁴ In spite of successive attempts at reform, and increasing supervision by the Lords of Justiciary and Lords of Session, heritable Sheriffdoms continued to exist, protected by the vested interests of the magnates who formed the political, military and judicial elite in their localities. It was not until the abolition of heritable jurisdictions in 1747⁵ that the Sheriff-depute and his substitute were chosen from the legal profession by the Crown on an annual

¹ R.P.C., Second Series, ii, 52, 65.

² R.P.C., Second Series, vi, 111, 316, 317.

³ A.P.S., vii, 307.

⁴ A.P.S., vii, 383.

⁵ 20 Geo C.43.

tenure, and the office of Sheriff came to represent the Crown in the localities rather than subvert it.

The origins of the courts of barony and regality in Scotland as organs of local administration are found where lands were granted by the King in liberam baroniam and the charters included certain rights pertaining to public justice. The regality was a barony with more extensive rights of jurisdiction and administration as indicated in the charter of erection.¹ Although these courts constituted the existence of a separate legal unit within the Kingdom, James and his successors seem to have taken no action, either by way of reform or rationalization as had been the case with the Sheriff courts. It would be possible to argue that this inactivity was directly due to the jurisdiction being essentially of a very limited nature,² but it could also be inferred that the lack of action on James' part, was due to the fact that the vested interests involved were insurmountable. These jurisdictions were effectively abolished (with the exception of the barons court which had a jurisdiction which was limited to small crimes where the fine was less than 20/- and for civil actions of less than 40/-), in the Heritable Jurisdictions (Scotland) Act of 1747.³

¹ D. Walker, The Scottish Legal System, (Edinburgh, 1969), passim.

² P. McIntyre, 'The Franchise Courts' S.S.P., xx, 374-83.

³ 20 Geo C.43; P. McIntyre, The Franchise Courts, S.S.P., xx, 374-83.

The burgh courts exercised a limited local jurisdiction similar to that of the courts of Sheriff, barony and regality.¹ James, in 1593, endeavoured to strengthen burgh jurisdiction in civil and petty criminal cases² but again, like the former courts, authority was eroded by the superior organization of rival judicatures.

In all these spheres of local government administration, therefore, James initiated a policy of rationalization and modernization, but it was in his innovations in local control, rather than his reforms, that his drive to combat lawlessness was most evident.

From the twelfth century, justiciars had moved from Sherifffdom to Sherifffdom 'on ayre' holding court at the caput or head township of each. In 1503 there is the first mention of a 'justice-general for the whole kingdom',³ and by 1524 the justice-general or his depute were required to remain in a centralized court in Edinburgh for the hearing of criminal actions.⁴ James decided to act in order to reimpose some measure of central government control

¹ G. Pryde, 'The Burgh Courts and Allied Jurisdictions' S.S.P., xx, 384-95;
M.R. McLarty (ed), A Source Book and History of Administrative Law in Scotland, (Edinburgh, 1956), passim.

² A.P.S., iv, 28.

³ A.P.S., ii, 273.

⁴ A.P.S., ii, 286.

in the localities and in 1587 reinstituted the Circuit Courts or justice ayres under justice-deputes.¹ The Kingdom was divided into four with two justice-deputes for each quarter. Justice ayres were required to be held twice yearly. The 1587 act is of particular interest to this study because it proposed to supplement this regulation of procedure in the localities by introducing the justice of the peace into the Scottish legal system. It was not however until 1609 that the Crown ^cacquired the right to appoint justices annually for each shire from among 'the godlie, wise and vertuous gentilmen of good quality, moyer and report.'² Jurisdiction to try breaches of the peace was not conferred till the promulgation of royal articles in 1611.³ The justice's remit was essentially concerned with the preservation of law and order and the Instructions which were issued in 1610⁴ together with the Articles of 1611, dealt with riots, unauthorized wearing of arms and treatment of vagabonds. The justices were required to supervise the maintenance of highways, bridges and ferries and the 1611 Articles also empowered them to provide prisons, fix wage rates for certain grades of craftsmen and

¹A.P.S., iii, 458.

²A.P.S., iv, 434.

³R.P.C., ix, 220-6.

⁴R.P.C., ix, 696-7.

and labourers, confirm that a contract was adhered to by both employer and employee, and ensure that legislation regarding weights and measures was being correctly observed. To give judicial substance to their enactments the justices were required to hold Quarter Sessions four times a year in May, August, November and February. In each shire a Keeper of the Rolls was appointed from the justices and he was required to nominate a clerk.¹ The instructions of the justices were to be carried out by constables, two of which were to be appointed for each parish. The justices were required to take an oath de fideli administratione and were then able to act in their official capacity and hold Quarter Sessions to deal with business arising from their jurisdiction.

The motivation behind James' action lay in his desire to emulate the English practice of providing officials responsible to the Crown, specifically in Scotland to keep check on heritable jurisdictions and to attempt to curb the accelerating trend of lawlessness by dealing with it promptly and effectively at its source.² The number of clarifying and explanatory articles and instructions which followed the original act of 1609 suggests a failure to realise that the English legal system could not easily

¹ R.P.C., Second Series, viii, 298.

² J. Irvine Smith 'The Transition to the Modern Law,' S.S.P., xx, 25-43.

be exported to Scotland, and also possibly, a lack of comprehensiveness in the initial concept.

The reasons for this are fairly clear. The content of the justices' lists of duties suggests a considerable juridical overlap with those of existing Sheriffs, magistrates and lords of barony and regality. The curia burgalis for instance, exercised a jurisdiction which covered boundary disputes, failure to use standard weights and measures, fighting, resisting arrest and offences against "gude nychtburheid,"¹ a remit which could easily be transferred to the new justices. It was, moreover, always made clear that existing jurisdictions were to remain inviolable. A subsequent act of 1685 for instance stated that:

... It is always declared that Sheriffs, Stuarts and Baillies of Bailliarys, Regalitys and Baronys, are to remain in the possession and exercise of their former rights according to the laws of the Kingdom...²

The entrenched jurisdictions retained their traditional superiority.

It is not surprising therefore to find animosity and antipathy between the ancient offices of the heritable jurisdictions and the 'new' justices of the peace. In 1611 the Archbishop of St. Andrews remarked that the Commission of the Peace was:

... very recent, without warrant of law, and it was na reason that that commission, as ane son, suld overshadow and obscure all the uther jurisdictions of the Kingdom.³

¹ M.R. McLarty (ed), A Source Book and History of Administrative Law in Scotland.

² A.P.S., viii, 472.

³ R.P.C., xiv, 621.

There were, arguably, other reasons for failure to command respect. The J.P.s' numerical strength bore no relation to the magnitude of the task they were expected to perform, and the deficiency inevitably led to maladministration. They were also restricted by inadequate sanctioning powers, being forbidden to exercise their jurisdiction, for instance, over 'landit gentlemen,' the nobility, prelates, senators of the College of Justice or heritable Sheriffs, Stewards or bailies, who had to be reported direct to the Privy Council.¹ The basic problem seems however to have been one of conflicting jurisdictions, which resulted in consequent lack of respect and a general reluctance to serve. In 1617 James apparently recognized the problem and blamed both the justices themselves for failing to act and also the greater barons for failing to co-operate. The subsequent act of 1617² was followed by further revitalizing attempts by Charles in 1630³ and 1633⁴ but with no success, and from 1641-55, justices of the peace were not mentioned in either Scottish law or administration. The system was temporarily revived however under Cromwell in 1655.

¹ The Minutes of the Justices of the Peace for Lanarkshire, 1707-1723, ed. C.A. Malcolm (Scottish History Society, Third Series, XVI, 1931), xiii.

² A.P.S., iv, 535-41.

³ A.P.S., v, 42, 219.

⁴ R.P.C., Second Series, iii 223.

In the September of that year, Broghill wrote to Thurloe,

... We have bin this afternoon considering of establishing J.Ps. throughout this nation, and constables, with the power such ministers and officers have in England. I finde that even by an Act of Parliament heere they have bin instituted heere; but the great lords who were Sheriffs by inheritance finding these diminished their power, let them soon fall again; but even by that Act the King's Council were empowered to give the said justices such further instructions as they should think fit, which additional instructions were to be of as much force as if enacted by Parliament.¹

Clearly even in 1655, the reason for the justices' early demise was recognized. 'Instructions for the Justices of the Peace in Scotland' were, however, subsequently issued by the Council, and the system successfully operated for three years. Further attempts to maintain the institution were made at the Restoration in 1661, this act being the one on which the modern office is based,² but there seemed to be no success in emulating the English precedent and by 1683 the Privy Council threatened to punish those who refused to serve.³ In 1685 a further act was passed relating to conventicling⁴ and in 1701 the final pre-Union attempt at revitalizing the by then almost defunct institution was made.

Previously appointed by the Privy Council, justices were in future to be appointed by the sovereign⁵ and their appointment

¹ A.P.S., vi (2), 892; A.P.S., vi (2), 833.

² A.P.S., vii, 306.

³ R.P.C., Third Series, viii, 170.

⁴ A.P.S., viii, 472.

⁵ A.P.S., x, 294^b, App. 102.

remained in being on the sovereign's death.¹

Each successive act, however, was, in essence, a ratification of previous legislation and the preamble to the 1685 act is typical of that found throughout the period:

... Our Sovereigne Lord, considering the many advantages which His Leigis might have had if the Justices of the Peace had exercised their function with that diligence which the law required...²

James' version of an efficient local administration remained an illusion, thwarted by the closed ranks of hereditary privilege united in opposition to any incipient usurper.

To this failure in local innovation was added the inability to revive the Circuit Courts under justice deputes which had led in 1672 to an act³ which abolished the justice-depute system and substituted a centralized High Court of Justiciary consisting of the Justice-General, the Lord Justice Clerk and five Lords of Session. Circuit Courts were to be held annually by two judges in certain towns specified in the Act but by 1685 this practice had again become defunct and from 1685 to 1708 no Circuit Courts were held.

In 1707, therefore, Scottish local administration could reasonably be described as a labyrinth of conflicting jurisdictions,

¹ A.P.S., x, 274.^b

² A.P.S., viii, 472.

³ A.P.S., viii, 80.

a phenomenon which the Union did little to alleviate, since not only the Scottish legal system but the whole structure of heritable jurisdictions remained intact.

It has been persuasively argued¹ that the Scottish nobility acted altruistically in its pursuit of union with England by accepting terms which ensured that it was doubly disfranchised, firstly by being eligible to send only sixteen elected representatives to the Lords and secondly by being excluded, together with their eldest sons, from the Commons.² Clearly, however, it would be reasonable to point out that the retention of heritable jurisdictions ensured a continuing power base in Scotland. It would also be possible to argue that the Scottish Lords failed to appreciate the change in the political centre of gravity which the Union ensured and to suggest that their 'unselfishness' was due to naivety rather than altruism. Whatever the motivation, the effect remained unchanged. The Scottish aristocracy retained a judicial control in the localities undreamed of in the eighteenth century by its southern counterpart, a judicial control which, translated into influence, ensured that the import of an alternative legal structure would meet formidable obstacles.

¹ G.S. Pryde, The Treaty of Union of Scotland and England, (London, 1950), passim.

² 5 Anne C.8.

In spite of this however, two significant alterations were imposed on the post-Union legal framework in Scotland relating to the revitalization of the institutions of commissions of the peace and Circuit Courts. Absorbing the Scottish administration into the English system, necessitated the establishment of Customs and Excise departments, with justices of the peace empowered to take similar action to their English counterparts with respect to collection of revenue.¹ Hence the 'Act for rendering the two Kingdoms more intire and complete',² not only reiterated the Scottish act of 1661, but also extended the jurisdiction of the Scottish justices to a level comparable with the English, including the supervision of revenue. It has been suggested that the objective here was not merely administrative and judicial necessity but also an attempt to elevate the status of the Scottish justice and thus enable him to act as a counterweight to the powerful holders of heritable jurisdictions.³ James had made a similar effort in 1612⁴ when he had given the justices of the peace powers of supervision over the heritable Sheriffs and lords of barony and regality but the combined effect of this attempt had been negative. The net result

¹ P.W.J. Riley The English Ministers and Scotland 1707-1727 (London, 1964) pp. 67-8.

² 6 Anne C.6.

³ The Minutes of the Justices of the Peace for Lanarkshire, 1707-1723. ed. C.A. Malcolm, xxvi.

⁴ R.P.C., ix 569.

of the Union legislation in this context, therefore, was to give the Scottish justice of the peace a theoretical parity with his English counterpart. It failed, however, to give him practical parity, and the continued existence of heritable jurisdictions prevented the realization of this objective at least until 1747.

This study is centred on the implications, at central and local levels, of the integration of the Scottish justices into the English politico - administrative system. Dr. Lionel K. J. Glassey has analysed the role of the commission of the peace in English politics in the period 1675 - 1720 and has concluded that the patronage exercised by the Lord Chancellor in appointing or dismissing justices of the peace had a political dimension.¹

This study is concerned with the commission of the peace in Scottish politics in the fifty years after the Union. It seeks to establish whether, as Dr. Glassey found for England and Wales, a political relationship existed between central and local government via the patronage exercised by the Lord Chancellor in the manipulation of commissions of the peace. It also seeks to determine the contribution of peculiarly Scottish phenomena, (the loss of political identity, the profound and new psychological experience of lack of government and the consequent hankering after the exiled Stuarts which culminated in outright rebellion in 1715 and 1745), to the

¹ L.K.J. Glassey, 'The Commission of the Peace, 1675-1720', (Oxford D. Phil. thesis, 1972).

integration of this aspect of the Scottish system with its English counterpart. By analysing the patronage exercised in the appointment and dismissal of justices of the peace, the study will contribute to the general evaluation of the role of patronage in Scottish politics in the period following the Act of Union, as well as adding a further dimension to the understanding of that function in the British politics of the period.

ii. The Commission of the Peace, analysis and interpretation.

The first commissions of the peace for Scotland after the Act of Union were engrossed in the Proclamation and Commission of August 1707, on the warrant of the Scottish Privy Council.¹ The abolition of the Council on the 1 May 1708 necessitated a change of procedure, and from this date successive commissions were issued by the Clerk of the Crown in Chancery on the authority of the Lord Chancellor of Great Britain.²

The process involved the receipt of proposed changes in the commissions for individual counties by the Chancellor, who referred them to his Secretary of Commissions for character investigation. After reporting the results of his findings to the Chancellor, the changes to be made were agreed and the Secretary sent an instruction to the Clerk of the Crown in Chancery to renew the commission for the county concerned. This instruction was known as the fiat. The Clerk then made the necessary changes in the previous commission by referring to an entry book and a record of the order to use the Great Seal was entered in the Crown Office Docquet Book.

Initially the docquet book entries recorded at least some of the names to be included in or omitted from the new commission

¹ N.L.S., Ms. 125a.

² 6 Anne C.6.

but from 1712 onwards for the English and Welsh counties, the entry was merely in the form of a dated statement of renewal with no additional information.¹ The entries relating to Scotland, dating from May 1709, record only the dated statement of renewal with no indication of content. The commission thus engrossed was then sent to the county concerned and delivered to the Clerk of the Peace by the Sheriff.² In conjunction with each commission, there was issued a writ of dedimus potestatem which authorized several named senior justices to administer the oath de fideli administratione to other members of the commission. Each commission contained a detailed account of the duties and powers of its members. Certain powers could be enacted only in the presence of justices who were 'of the quorum' and the fiat indicated justices so designated. By the eighteenth century, the great majority of justices were in the quorum with few exceptions.³

Although the fiats clearly give the most comprehensive tabulation of the names of justices there are other sources of information, the commissions themselves being the most obvious.

¹ L.K.J. Glassey and N. Landau, 'The Commission of the Peace in the Eighteenth Century: A New Source', Bull. Inst. Hist. Res., XLV, 247-8.

² The Minutes of the Justices of the Peace for Lanarkshire, 1707-1723, ed. C.A. Malcolm, xxxiii-iv.

³ P.R.O., C.234/45-77, /114, the fiats for the Scottish counties arranged in bundles by county.

Unfortunately in the case of Scotland very few original commissions have been traced, those for Peeblesshire for 1716, 1739 and 1757 being the only ones relevant to this study.¹ Comparison of these three commissions with their corresponding fiats shows identical lists of local gentry for the relative dates. In every case however, the commission is directed firstly to the Privy Councillors listed individually, in contrast to the fiat where the listing is collective, and also to the Scottish Law Lords representing both the crown and the judiciary. In an English commission the latter category would be occupied by the Assize Judges. A further distinction between English and Scottish commissions of the peace is the fact that in the former the name of the Custos Rotulorum appears as the last entry in the commission. In the Scottish commissions this is omitted although Custodes were appointed for the Scottish, as the English counties. As expected the 1716 commission differs from its 1739 and 1757 counterparts in that it is, prior to the Anglicization of such documents, in Latin script.

A further source of information for the names of justices is to be found in Quarter Session records. The minute book for the stewartry of Kirkcudbright from 1728 to 1791 lists the justices in attendance at Quarter Sessions, as does that for

¹W.R.H., JP 3/1/1, /2, /3, commissions of the peace for Peeblesshire 1716, 1738, 1757.

Dunbartonshire from 1728 to 1757.¹ Such a source was used by Malcolm for the county of Lanark in editing the 'Minutes of the Justices of the Peace for Lanarkshire, 1707-1723.' Again however, the picture is essentially incomplete since a considerable proportion of justices failed to qualify and were therefore not eligible to attend Quarter Sessions. In Roxburghshire for instance, of the 43 non-noble justices of the commission engrossed for that county in 1728, only 44% had qualified and acted prior to the engrossing of a new commission on 5 August 1743.² It would also be reasonable to assume that yet a further percentage of justices would qualify but fail to attend Quarter Sessions, again contributing to the unreliability of this source for any numerical analysis.

Yet another source, however, is to be found in the existence of unofficial lists compiled for the transmission of information and surviving among certain family and government papers. In some cases such lists were drawn up by government representatives and sent to local magnates for approval and additional nominations. This occurred in 1739, for instance, when William Grant, Solicitor-General in Scotland, compiled lists of the

¹ W.R.H., JP 1/2/1, Quarter Session Minute Books, Kirkcudbright, 1728-91; JP 6/2/1, Quarter Session Minute Books, Dunbartonshire, 1728-57.

² P.R.O., C.234/72, Roxburghshire, 7 February 1728; G.R.H., GD6/1117b, 'List of such J.P.s for Roxburgh as have qualified and acted.'

justices in the commission for Aberdeenshire for perusal and consideration by Lord Braco.¹ Conversely local dignitaries themselves compiled lists which they forwarded to Westminster complete with explanatory annotations of the death or incapacity of various justices. Sir John Dalrymple sent such lists for the county of Edinburgh in 1728 and for Berwickshire in 1732.² Similar lists exist for Haddingtonshire and Kinross-shire for 1742, and it is also clear that M.P.s made requests for composite lists of justices. John Baird, M.P. for Edinburgh from 1715-22, for instance, wrote to John Clerk of Penicuik in 1716 asking for a 'list of persons nominated to be J.P.s' for that county.³ In 1747, the Lord Justice Clerk Lord Milton, wrote to the Clerks of the Peace of many of the Scottish counties, requesting accurate transcriptions of the last commission of the peace for individual counties. Lord Milton had been allotted the task of co-ordinating this information by a

¹G.R.H., GD 36/194, 'List of J.P.s contained in the new commission for Aberdeenshire, 15 December 1739.'

²N.L.S., Ms. 5161, Lists of J.P.s in the commissions for Edinburgh 1728 and Berwickshire, 30 May 1732.

³G.R.H., GD 6/1118, 'List of J.P.s in Haddington, 28 July 1742;' B.M., Add. Mss. 35446, f.33, Andrew Mitchell to Hardwicke, 4 August 1742; G.R.H., GD 18/5814, Clerk of Penicuik Muniments, John Baird to John Clerk of Penicuik, 5 January 1716.

central government seeking to eradicate Jacobitism from the various organs of Scottish administration in the wake of the rebellion of 1745 and an extensive representative cross-section of the returns are to be found among the papers of the Fletchers of Saltoun.¹ Comparison of these lists with their fiat counterparts shows a high degree of accuracy and therefore the use of these lists as source material for the names of justices in certain pre-1747 commissions, would prove eminently reliable. In general, all such lists prove accurate when compared with their corresponding fiats but since their incidence is relatively small in relation to the number of commissions engrossed in the period, their importance as a source for the names of justices is comparatively diminished. In the absence of detailed docket book entries after 1709 and the limited survival of original commissions and miscellaneous lists the most reliable and comprehensive source material available for the compilation of the names of justices of the peace in individual commissions, is the fiats. Clearly however surviving alternatives provide an important cross-reference when available.

The membership of the commissions of the peace from 1708 onwards included not only local dignitaries whose role ought to have been an active one, but also the heir to the throne, the Archbishop of Canterbury, the English Law Lords and the Privy

¹ N.L.S., Fletcher of Saltoun Mss., Box 324.

Councillors. On 10 May 1708, the Privy Council approved the inclusion in the Scottish commissions of the peace from that time on of Her Majesty's Privy Councillors and the Law Lords together with the principal magistrate of every county at the date of issue of the commission, provided he was not a brewer, a disqualification related to the justices' new excise duties.¹ In most of the fiats the Privy Councillors were cited collectively but occasionally they were named individually as in the commissions themselves, in Latin in a preface to the acting justices as in the case, for instance, of Aberdeenshire in 1715.² Also in all commissions in an ex-officio capacity was the Scottish legal hierarchy as represented by the Lord President and Lords of Session, the Lord Justice Clerk and Lords of Justiciary, together with the legal representatives of the government, the Lord Advocate and the Solicitor General of Scotland.³

It was to the acting justices however, that the patronage of the Lord Chancellor was principally directed since it was these members of the commission rather than Privy Councillors or English and Scottish Law Lords who could be appointed or dismissed, not only as reward or punishment, but also for political

¹ P.R.O., P.C. 2/82, 10 May 1708.

² ib., C.234/45, Aberdeenshire, 13 September 1715.

³ ib., /45-77, /114.

advantage. The desirability of utilizing this facility, however, was often thwarted by certain integral anomalies of the system. The Secretary of Commissions, for instance, was a personal appointee of the Lord Chancellor and, therefore, at a time when a new Chancellor may have been anxious to make certain changes in the commissions, he was restricted by the limitation of a Secretary still learning the rudiments of his own role. Also the Chancellor depended on the co-operation of the Clerk of the Crown in Chancery and if this co-operation was not forthcoming, then no new commission could be issued.¹

Further complications arose because it was difficult to keep accurate accounts of the composition of the bench and extensive markings on certain fiats in 1725 (for the Scottish counties), suggest that they began to be used as working lists to which information was added as it was received in the Chancellor's office.² The Secretary of Commissions furthermore could be expected to be unfamiliar with the complexity of Scottish names and compilation of the lists therefore a much more mechanical process than normal. In 1748, for instance, Seafield wrote to Newcastle on the omission of one Alexander Munro of Culcain and Alexander MacKenzie of Dachman from the commission for the county of Ross, when they were clearly included in that commission as

¹ L.K.J. Glassy, 'The Commission of the Peace, 1675-1720,' p.11.

² ib., pp. 13-16.

Alexander Munro of Kilrean and Alexander MacKenzie of Baohmalnaek.¹ There also existed the problem of the reliability of local recommendation. Since it was impossible for the Chancellor to have personal knowledge of the suitability of individual nominees, he depended on the Lord-Lieutenant or member of parliament for the county concerned to provide him with a trustworthy list of candidates.² It would seem reasonable to assume that the operation of such a system would perpetrate errors of judgement due to unavoidable breakdowns in communication as well as conflicts of political opinion. Since the greatest interest for this study however, is the composition of the commissions themselves, the fiats are of special concern. The Proclamation and Commission of August 1707 provides the initial list of justices;³ thereafter this function is fulfilled by the fiats⁴ which are arranged in bundles by county, the earliest being for Kincardineshire⁵ and Renfrewshire⁶ for 12 May 1709. The uniform regulation undertaken by Cowper in 1708 on the demise of the Scottish Privy Council is recorded in the Crown Office Docquet Book but the fiats for all

¹ B.M., Add. Mss. 35446, f.280, Seafield to Newcastle, 2 June 1748.

² L.K.J. Glassey, 'The Commission of the Peace. 1675-1720,' pp. 16-19.

³ N.L.S., Ms. 125a.

⁴ P.R.O. C.234/45-77, /114.

⁵ ib.,/60, Kincardineshire.

⁶ ib.,/69, Renfrewshire.

the Scottish counties for this date are missing from the Public Record Office. Lists of the names of the justices in all Scottish commissions of the peace however are to be found in the House of Lords Record Office dated 11 March 1709.¹ It would appear that the fiats were initially removed from Chancery to transcribe lists of justices of the peace in Scotland for a Lords' debate on the state of the Union. On 3 March 1709, Sunderland informed Lord Chancellor Cowper that the House of Lords required a list of justices of the peace for all Scottish counties and that the Queen had ordered that such a list should be prepared for them.² The requested list was received from the Lord Chancellor on the 11 March,³ and since the docquet book contains no entries for any Scottish county between 9 May 1708 and 12 May 1709 it seems reasonable to conclude that the said list was a reputable transcript of the commissions of the peace for the Scottish counties engrossed by Cowper on the former date. There are certain problems of interpretation with respect to the fiats.

The series, for instance, is clearly incomplete. The first fiat for Lanarkshire is for 1788⁴ and while Linlithgowshire had a commission issued in 1728,⁵ the next in the series is dated 1810.

¹ H.L.R.O., Main Papers, List of Justices of the Peace in North Britain, 11 March 1709.

² P.R.O., S.P. 44/108, f.33, Sunderland to the Lord Chancellor, 3 March 1709. (I am indebted to Dr. Glassey for the S.P.44/ references.)

³ L.J., XVIII, 662.

⁴ P.R.O. C.234/63, Lanarkshire.

⁵ ib., /76, Linlithgowshire.

In 1725, George Lockhart referred to the fact that 'new commissions of the peace were about this time sent to all the Shires in Scotland.'¹ Fiats are in existence for twenty-seven of the thirty three Scottish Shires and stewartries for 1725. Of the remaining six, two are the aforementioned Lanarkshire and Linlithgowshire, while no fiats seem to exist for Argyllshire, Bute, Haddingtonshire and Sutherland² in 1725. It would seem reasonable to assume that commissions were issued for these six shires in common with the others in 1725, and that the respective fiats have since been lost or destroyed. This is confirmed by referring to the Crown Office Docquet Book which registers the use of the Great Seal.³ Entries exist for Lanarkshire, Linlithgowshire, Argyllshire, Haddingtonshire and Sutherland. There is no entry for Bute in 1725, but this confirms the general impression that the fiats alone give an incomplete picture of the commissions of the peace issued in the period.

The fiats themselves came in two forms. The first type was the complete list of all justices in each shire in receipt of a commission. Lord Chancellor Cowper compiled such commissions on the accession of George I, as did King in 1725 and Hardwicke when he issued nineteen commissions for the Scottish counties in 1751.

¹The Lockhart Papers, ed. A. Aufrere, (London, 1817), ii, 167.

²P.R.O. C.234/47,/51,/56,/75.

³ib., C.231/9-11, the Crown Office Docquet Books.

The second type of fiat merely listed gentlemen to be 'put in' to, or 'left out' of, a given commission, and the alteration was made to the previous commission by the Clerk of the Crown in Chancery. Normally, however, this presents no problems, since the numbers of persons involved were relatively few and the commissions commenced for instance, with:

... Let the Commission of the Peace for the shire of Berwick be renewed, and add thereto the following names.¹

It is clear therefore, that the new commission retained the gentlemen listed on the previous one together with any alterations contained in its successor.

A further problem exists in relation to interpreting the structure of the fiats. Lord Chancellor Cowper issued a commission for Aberdeenshire on 8 February 1715 followed by a second commission for the same shire on 13 September 1715.² There were 141 justices in the February commission and 106 in the September commission, excluding the peerage in both cases. Comparative analysis of both commissions indicates that in September 1715, 24 new names appeared on the list, while 59 gentlemen had been left out. No indication is given, however, of why these gentlemen were omitted. It is possible that they could have been omitted inadvertently, they could have died in the intervening period, or

¹ib., C.234/50, Berwickshire, 8 February 1739.

²ib., /45, Aberdeenshire, 8 February 1715; 13 September 1715.

they could have been removed from the roll of justices for some other reason which is not clarified on the fiat itself. King followed the same procedure in 1725 when he issued commissions for all the Scottish counties, except Bute and Peebles-shire, but when he issued the new commissions in 1728 to mark the accession of George II, the procedure used was that of adjusting the previous commission by advising that certain gentlemen should be put in or left out. In this case, however, a distinction was clearly made between those who had been omitted because they were dead and those who had been removed for other unspecified reasons. This can be seen, for example, in the case of Caithness in 1728, where fifteen justices were put into the commission, three were left out because they were dead, and three left out with no reason given.¹ Lord King seems to be the first Chancellor to so designate reasons for removal and the procedure would seem to have been adopted in England and Wales as well as Scotland, with additions and removals often written on scraps of paper and pinned to the previous fiat.² Hardwicke issued commissions for 18 Scottish counties in 1739, and the fiat in every case was a 'put in', 'leave out' addition to King's 1725/28 Lists, in which the reason for removal was clearly given. The Nairnshire fiat for 1739 showed an addition of 15 names and a

¹ib., /52, Caithness, 7 February 1728.

²L.K.J. Glassey and N. Landau, 'The Commission of the Peace in the Eighteenth Century; A New Source', Bull. Inst. Hist. Res., XLV, 250

removal of 12 from the commission.¹ Of the 12, 6 were headed 'Leave out (Dead)' while the remaining 6 were omitted on the instruction 'Leave out' only. Yet when Hardwicke issued commissions for 19 Scottish counties in 1751, they were in the form of complete lists, and gentlemen who had been in a previous given commission were merely omitted in 1751. This can also be seen by comparing the fiats for Stirlingshire for 1739 and 1751.² Clearly this innovation of procedure initiated by Lord Chancellor King was not incorporated into the system as an operative mechanism, and it is therefore not always easy to establish why certain gentlemen were left out of commissions.

One final problem regarding the validity of deductions from the fiats should be stated. It has been noted that the fiats were occasionally used as working lists. The fiat for Edinburghshire for 1725 is typical of most of those issued in that year, in that it is extensively marked.³ Names have been scored out and marked 'dead', insertions made, changes in designation noted, all in different handwriting at different times. The above-mentioned fiat carried two dates, 25 June 1725, and 7 February 1728 and ended with a list which was identical with the first 18 of the 34 new members, excluding the nobility, of a commission issued by Hardwicke on

¹ P.R.O., C.234/65, Nairnshire, 8 June 1739.

² ib., /74, Stirlingshire, 27 October 1739; 10 August 1751.

³ ib., /64, Edinburghshire, 25 June 1725.

14 May 1740. The three new members of the peerage in 1740 had been inserted along with the peerage in 1725. It would seem that Hardwicke used King's 1725 commissions as working lists and this is substantiated by the fact that the list of dead in the 1740 commission corresponded to those marked dead in the fiat dated 1725. This clearly is not a problem of interpretation but rather a problem arising from the messy physical appearance of the fiat 250 years after its original compilation. It does, however, complicate the process of analysis since it is not always exactly clear when certain adjustments were made.

These examples illustrate certain difficulties which arise in interpreting the fiats. It seems reasonable to assume that many of these difficulties arise from the fact that the Secretary of Commissions, for instance, was not a permanent appointment. In addition to frequent changes of personnel, successive Secretaries would be expected to practice different techniques in handling commissions of the peace and it could be anticipated that this would be reflected in the structure of the fiats. It is necessary, therefore, to exercise caution in interpreting the fiats in attempting to evaluate the extent and scale of the Lord Chancellor's patronage in local administration. The source material for evaluating the timing and political assessment of the Scottish commissions of the peace pose no particular problems of interpretation other than those normally encountered in the scrutiny of eighteenth century manuscripts. The papers of the various Lord Chancellors throughout the period, together with those

of local magnates and the State Papers Domestic and Privy Council Registers of central government can be analysed normally. The fiats, however, forming as they do the source material necessary for an evaluation of the extent and frequency of the issue of new commissions, present certain problems of interpretation which render results deduced from them less than scientifically conclusive.

iii The English Comparison.

The commission of the peace in England had preceded its Scottish counterpart by almost three centuries. It had been instituted however, in response to circumstances similar to those faced by James VI in 1587 - increasing lawlessness and violence. The motivation behind the recruitment of the county gentry to maintain law and order in their localities, therefore, was broadly similar in both countries.

From an initial position of weakness, however, in which the English justices could only initiate proceedings, not determine them and investigate offences, not punish them, they gradually built up an impenetrable empire, to become an unpaid, self-perpetuating bureaucracy successfully operating the judicial and administrative county machinery.¹ The functions performed by the English justices were comparable with those allocated to the Scots in the seventeenth century. The former exercised their judicial function in Quarter Sessions four times a year to settle civil and criminal cases. Their administrative duties spanned the repairing of roads, highways and bridges, the maintenance of prisons, the fixing of wage rates and prices and the issue of various licences.²

Clearly, however, the jurisdictions exercised by English and Scottish justices of the peace would not be synonymous, since

¹ Esther Moir, The Justice of the Peace, (Suffolk, 1969), pp. 15-19.

² Sidney and Beatrice Webb, English Local Government from the Revolution to the Municipal Corporations Act: The Parish and the County, (London 1906), pp. 296-7.

the former executed legislation enacted specifically for England. English justices, for instance, enjoyed certain powers relating to excise duties. The terms of the Treaty of Union demanded a uniform system of revenue collection and since the English practice had been to empower justices of the peace to intervene in cases of non-payment of dues, post-Union legislation was required to extend that remit to the Scots who had had no precedent of involvement in that area of judicial administration.¹ A comparable example was the operation of the Poor Law. J.P.s in England, unlike Scotland, were legally required to meet to appoint overseers of the poor, to sanction the 'poor rate' for individual parishes and issue orders for the removal of paupers to 'poor houses.'² Although the systems were comparable therefore, there were areas where, even after the passage of the Bill equalizing the powers of justices of the peace in both countries,³ English J.P.s administered specifically English legislation.

The distinct separateness of the two systems is further emphasized by the non-appearance of justices from the counties of northern England in the commissions of the peace for the Scottish Border shires. It was not an uncommon practice in Scotland for a

¹ Riley, The English Ministers and Scotland, p.61.

² Webb, The Parish and the County, p.299; Esther Moir, The Justice of the Peace, pp. 33-9.

³ 6 Anne C.6.

distinguished country gentleman to appear on the benches of two or more neighbouring counties. James Brodie of Brodie, for instance, was to be found in the commission of the peace for both Elginshire and Nairnshire in 1715.¹ Comparison of the fiats for Berwickshire, Roxburghshire and Dumfries-shire in Scotland however, and Northumberland and Cumberland in England from 1707 to 1720 shows no overlap of personnel between the Scottish and English commissions of the peace although the counties share mutual boundaries.² It seems reasonable to infer that if there was no dual representation at the outset, there would be none throughout the period. It might have been anticipated that the vast experience of the English justices, whose powers had developed organically over centuries, would have been employed to bolster the traditionally troubled Scottish institution. Such utilization of trained personnel had been employed in the Scottish Commission of Customs where, of the five commissioners appointed, three were experienced English officers.³ Similarly in the case of the Excise Commission a shortage of trained commissioners in Scotland necessitated the appointment of English recruits.⁴ The history of the justice of the peace in Scottish local government suggests a

¹ P.R.O., C. 234/57, Elginshire; /65, Nairnshire, 5 January 1715.

² *ib.*, /50 Berwickshire; /72, Roxburghshire; /114, Dumfries-shire; /28, Northumberland; /7, Cumberland. I am grateful to Dr. Glassey for copies of the fiats for Northumberland and Cumberland for the relevant dates.

³ Riley, The English Ministers and Scotland, p.42.

⁴ *ib.*, p.60.

comparative lack of expertise and the absence of English justices on the benches of the Border counties further emphasises the distinctiveness of the adjoining systems.

Although certain powers could not be implemented, therefore, and the Scottish justices failed to benefit from the extensive experience of their southern neighbours, surviving evidence suggests that they did meet in Quarter Sessions to transact business during the period under review. It would appear, however, that much of their activity was administrative, rather than judicial, dealing with roads and bridges, vagrancy, recruiting and the licencing of alehouses for instance.¹ In the early eighteenth century little distinction was made between the administrative and judicial functions of justices acting in Quarter or Petty Sessions. The theoretical obligations were identical in both classes of case. In practice, however, J.P.s felt more free to exercise their discretion over administrative issues like vagrancy than over criminal proceedings² and in this respect the Scottish justices were possibly not unrepresentative of normal Session practice.

Nonmatter how reservedly or indeed inefficiently, therefore, Scots J.P.s met to act, their position still conveyed some local power and it seems reasonable to infer that county gentlemen would prefer to be named in the commission of the peace for that county rather than not named. Inclusion of the local hierarchy was normal

¹W.R.H., JP 1/2/1, Quarter Session Minute Books, Kirkcudbright, 1728-91; JP6/2/1, Quarter Session Minute Books, Dunbartonshire, 1728-57.

²Webb, The Parish and the County, pp.281-2.

practice and exclusion legitimately construed as a firm rebuff from central government. This is firmly in the tradition of the English experience where the status associated with a seat on the bench was the lynch-pin which rendered the machinery of local government operable.¹ That membership of any one commission of the peace in Scotland was of itself valuable, is central to the argument herein presented, namely that the patronage involved in appointment to or dismissal from commissions of the peace was a meaningful tool in the hands of an adept Lord Chancellor.

¹L.K.J. Glassey, 'The Commission of the Peace, 1675-1720,' passim.

2. The Commission of the Peace under Lord Cowper, 1707-10.

Forasmuch as the appointing of Justices of the Peace in that part of our Kingdom of Great Britain, called Scotland, will contribute to the peace, quiet and good government thereof, and to the speedy and impartial execution of Law and Justice to all persons subjected to their power and jurisdiction, therefore, and for the furtherance of these ends, we, with the advice of the Lords of our Privy Council in Scotland, do hereby nominat, constitute and appoint the persons after set-down, for the respective shires and burghs after-mentioned, to be Justices of the Peace....¹

This Proclamation of 15 August 1707 was followed by a list of the Commissions of the Peace for every shire and stewartry in Scotland with what, it has been suggested, were the wishes of the English commissioners for Union - that by re-invigorating the institution of justice of the peace in Scotland, it might serve to balance, or even subvert, the power exercised by the holders of heritable jurisdictions, whose continued existence they had been forced to accept as a condition of Union.² Accompanying this Commission and Proclamation with its list of justices, was a document headed 'For the Town of Edinburgh' setting out the duties and jurisdictions of the justices and applicable to every shire and stewartry for which a commission was issued. It included such additions to the act of

¹W.L.S., Ms. 125a.

²The Minutes of the Justices of the Peace for Lanarkshire, 1707-1723.
ed. C.A. Malcolm, xxvi.

1661 as the extension of the power and jurisdiction of the justices to 'all matters of our Excise' and this inclusion suggests the alternative possibility that the reintroduction of the justice of the peace into the Scottish system was the result of a purely administrative decision based on the necessity of implementing the terms of the act of Union with respect to the collection of revenue. The judicial nature of this decision, however, is borne out by the warrant sent to the Scottish Privy Council to appoint justices of the peace to exercise authority in accordance with Scottish Law and with English Law where necessary, especially with respect to Customs and Excise.¹ The powers and duties of the justices were further extended as a result of 'An Act for rendring the Union of the Two Kingdoms more intire and complete,'² which decreed that from 1 May 1708 the Privy Council of Scotland would cease to exist, the powers of Scottish justices would become identical with their English counterparts and Circuit Courts would be reintroduced. This was not unexpected, as it had been foreshadowed in Article XIX of the Act of Union, but it had been preceded by considerable political manoeuvring which sheds some light on the extension of the powers of justices of the peace in Scotland and on the procedure and patronage involved in their appointment.

¹ P.R.O., T. 17/1 ff.99-102; S.P. 57/27, ff.51-3.

² 6 Anne C.6.

The ministry which had eventually negotiated the Treaty of Union had been operating under increasing Whig pressure. The Lord Treasurer, Godolphin, had become progressively aware that successful prosecution of the war with France and union with Scotland, necessitated the support of Whig votes in Parliament and the reward of office to the Whig Junto. Accordingly the Earl of Sunderland joined Harley as the second Secretary of State on 3 December 1706.¹ Harley himself, as the advocate of moderate, non-party government, opposed such accommodation with any faction, Whig or Tory. Prior to his dismissal in February 1708, he had been involved in an attempt at remodelling the Cabinet in the interests of the Tories, as an alternative to relying on the more cohesive and aggressive Junto lords. In spite of his eventual protestations to the contrary, it seems certain that Harley planned to divide the duumvirs by dropping Godolphin while retaining Marlborough, whose continued presence in the ministry was necessary for the prosecution of the war. The scheme failed due to Marlborough's fear that increasing Tory influence in the Cabinet would interfere with the war effort and consequently Harley was dismissed in February 1708.² It was in this crisis situation that the 'Act for rendering the Union of the Two Kingdoms more intire and complete' became law in spite of strong

¹G.M. Trevelyan, England under Queen Anne (London, 1948), ii, 170-1; G.S. Holmes, British Politics in the Age of Anne (London, 1967), pp. 110, 368; A. McInnes, Robert Harley, Puritan Politician (London, 1970), pp 95-6.

²G.S. Holmes and W.A. Speck, 'The Fall of Harley in 1708 Reconsidered,' Eng. Hist. Rev., LXX (1965), pp. 684-9.

government opposition. Indeed Lord Somers was 'persuaded the carrying of the Bill for taking away the Scottish Privy Council was no little ingredient towards making the changes which have since happened' (the dismissal of Harley)¹ Godolphin had been reluctant to abolish the Scottish Privy Council on the grounds that it fulfilled a significant function as a focal point for the Court party in Scotland and therefore an important means of exerting collective influence when that proved necessary.² It has been suggested that Harley's dismissal was one consequence of the successful passage of the above bill through the Commons in January and the Lords in February, in that the Whigs, in alliance with the High Tories, and having forced this issue with the Government, had to be appeased and accommodated with minimum disruption. In pursuing the desired objective of abolition, the Whigs found willing allies in the Scottish Squadrone Volante members who were prepared to press for the disbanding of an institution they could never hope to control. A committee of the whole House considering Scottish affairs, accepted the proposal of abolition from a Squadrone Volante member. John Haldane of Gleneagles, for the Squadrone, then proposed that justices of the peace in Scotland should have the same powers as their English counterparts and that Circuit Courts should be reinstituted.³ These recommendations were subsequently

¹ Quoted in Holmes and Speck, op. cit., p.674 n.

² Riley, The English Ministers and Scotland, p.90.

³ Riley, The English Ministers and Scotland, p.93.

accepted by the Commons in the 'Act for Rendering the Union of the Two Kingdoms more intire and compleat.' James Vernon disclosed to the Duke of Shrewsbury that the inclusion of the justices' new powers in this bill, together with the reintroduction of Circuit Courts, was a concession to those who feared that the abolition of the Council would lead to power being in the hands of anti-Unionists and those who were against the Revolution. It would consequently be necessary to strengthen the judicial power in Scotland to counterbalance the demise of the Privy Council¹ Defoe suggested the possibility of this motivation when, in discussing the Union, he claimed:

... this method of governing by justices, however useful in its kind, yet as having been negligently or arbitrarily made use of in former times, was laid aside and the government of Scotland lay, as it had usually done, too much in the absolute disposition of the heritable magistrates such as Sheriffs of counties...²

He further implied however that with the settling of the Customs and Excise it became necessary to empower justices to collect duty and determine cases in dispute; hence the Proclamation and Commission of August 1707. With the abolition of the Scottish Privy Council, however, their warrant for acting ceased.³

¹ Letters Illustrative of the Reign of William III. From 1696 to 1708. Addressed to the Duke of Shrewsbury by James Vernon, ed. G.P.R. James (1841), iii, 288, Vernon to Shrewsbury, 9 December 1707.

² Daniel Defoe, A History of the Union, (London, 1786), Appendix, Part I, p.593.

³ ib., p.583.

That legislation regarding justices, therefore, should be introduced in the same bill as that providing for the abolition of the Scottish Privy Council is not unduly surprising. Although the Proclamation of August 1707 emanated from the sovereign, the warrant for acting, i.e. the commission itself, had been issued by the Scottish Privy Council from which its legitimacy was therefore derived. The abolition of the issuing body necessitated an alternative procedure, and from 1 May 1708 successive commissions were issued by the Clerk of the Crown in Chancery on the authority of the Lord Chancellor. An understanding of the motivation for this legislation is therefore crucial to any further analysis of the commission of the peace in Scottish politics.

An administrative necessity would conceivably suggest an a-political selection of justices in 1708, although this would not necessarily be true for the whole of the period. There is the possibility that any political advantage involved in the transfer of patronage from the Scottish Privy Council to the Lord Chancellor, might only have been recognised after a purely administrative decision had been taken.

The alternative hypothesis would be that the motivation behind the abolition of the Scottish Privy Council and the elevation of the magistracy was essentially political rather than administrative. The end of the Scottish Parliament in 1707 signalled the end of an era of patronage under exclusively Scottish control. Since it is arguable that the purpose of patronage is

primarily political in that it is aimed at securing future service rather than rewarding past loyalty, and that this comprised the accepted framework in which eighteenth century government and politics operated, then some alternative source would have to be quickly found to satisfy the ambitions of the Scottish political nation. The operation of a particular aspect of this necessary patronage, for instance, is evident in the emergence of the Scottish Commission of Customs which came into being to partner the English Commission on the demise of the Scottish Parliament.¹

On 1 May 1708 the Lord Chancellor, on the dissolution of the Scottish Privy Council, gained access to another potential source of patronage through control of the membership of commissions of the peace. The credibility of this hypothesis is open to doubt however due to the existence of intense ministerial opposition to the bill at every stage of its passage through Parliament.²

The movement to abolish the Council was initiated by the Whigs and Scottish M.P.s of the Squadrone Volante party. During the committee stage of the bill, the ministry argued that granting parity of power to Scottish justices was not consistent with the terms of Article XX of the Treaty of Union on the preservation of heritable jurisdictions. Those who argued for increasing justices'

¹ Riley, The English Ministers and Scotland, p.51.

² Trevelyan, England Under Queen Anne, ii, 336; Riley, The English Ministers and Scotland, p.94.

powers maintained that heritors rights were not infringed, since the Privy Council had previously exercised powers which were merely being transferred to justices.¹ The ministry continued to argue that the Council's power had been de facto rather than de jure and that heritors would regard it as an infringement. 'Transmitting power to single and inferior men, 'they argued, 'would be of little use towards preserving the peace.'² The Earl of Mar wrote to his brother, James Erskine, questioning the effect of an equalization of powers on the system of heritable jurisdictions,³ while the ministry continued to press the point that Squadrone member George Baillie of Jerviswood was

... a zealous promoter of reducing all to conformity with England, supposing everything practicable and perhaps not enough considering how consistent his schemes may be with rights and privileges reserved and made sacred by the articles of the treaty.⁴

As early as December 1707 it had been clear that the Squadrone were mounting a cohesive attack on the Scottish Privy Council in an effort to disband it.⁵ It is therefore clear that though the resultant gain of patronage control would have been an added advantage to the

¹ G. Burnet, History of His Own Time, (London, 1838), ii, 823.

² Vernon Correspondence, iii, 286.

³ Hist Mss. Comm., Mar and Kellie Mss., p.424, Mar to Erskine, undated.

⁴ Vernon Correspondence, iii, 286.

⁵ Seafield Correspondence 1685-1708, ed. James Grant, (Scottish History Society, Second Series, 1812), p.437, Patrick Ogilvie to the Earl of Findlater, 27 December 1707.

ministry, it was the Squadrone Volante who were consistently pressing for the legislation which would give effect to it. The objective of the Squadrone members may have been the negative one of ousting the Queensberry Court group from their established base,¹ but there is the possibility that the Whig Junto saw abolition and the consequent extension of patronage as part of a grander scheme. The period 1707-8 was dominated by constant harrying of the ministry by the Junto, culminating in the dismissal of Harley in February 1708.² As the Whig leaders successfully forced themselves on the reluctant duumvirs and an even more reluctant Queen, they may have viewed the opening of this area of patronage as a convenient method of extending their accelerating control at the centre to the localities. Even after the committee agreed that Scottish justices should have the same powers as their English counterparts,³ Seafield wrote to Godolphin that the

... Junto continues as ill disposed towards us as ever. I presume to think that some time before Parliament it will be necessary either to adjust matters with them or to have a sufficient party established to support her Majesty and servants in all just concerns.⁴

¹G.S. Holmes, British Politics in the Age of Anne, p.243; Riley, The English Ministers and Scotland, p.91.

²A. McInnes, Robert Harley, Puritan Politician, pp.96-7; G.S. Holmes, British Politics in the Age of Anne, p.110.

³N. Luttrell, A Brief Relation of State Affairs from September 1678 to April 1714, (Oxford, 1857), pp. 243-4.

⁴Letters Relating to Scotland in the Reign of Queen Anne by James Ogilvy, First Earl of Seafield and others, ed. P. Hume - Brown, (Scottish History Society, second Series, XI, 1915), pp. 109-10, Seafield to Godolphin, 5 August 1708.

The concept of such a positive political objective on the part of the Squadrone is reinforced since the Lord Chancellor and controller of the patronage concerned was, at this time, the Whig Lord Cowper who would be consequently expected to operate it in the Whig interest. It therefore seems possible that the motivation behind the abolition of the Privy Council and legislation with respect to justices of the peace and Circuit Courts was, at least as far as the Whigs were concerned, primarily political and in this context the operation of the resultant patronage by Lord Cowper is of particular interest.

William Cowper was born in Hertford in 1664 into a distinguished Whig household. He made his reputation in the legal profession and subsequently entered parliament for Hertford in 1695 on the Whig interest of his father Sir William Cowper.¹ He succeeded Nathan Wright as Keeper of the Great Seal on 11 October 1705 as one of the more moderate Whigs acceptable, albeit with protestation, to Queen Anne.² He was created a peer in 1706 and became the first Lord Chancellor of Great Britain on 4 May 1707.³

Although the responsibility for the first commissions of the peace for the 33 counties and stewartries of Scotland had lain with the Scottish Privy Council, Lord Cowper, on attaining authority to warrant all future commissions on 1 May 1708, allegedly accepted the original recommendations with only minor alterations. George Lockhart in a letter to Harley (by then Earl of Oxford) in 1712,

¹ Lord Campbell, Lives of the Chancellors (London, 1846), iv, 258-60, 268-9.

²ib., p.290-2.

³ib., p.313-14.

stated that the commissions issued by Lord Cowper in 1708, were identical with those issued by the Scottish Privy Council in August 1707.¹ Lord Cowper however made much greater changes either than Lockhart knew about or was prepared to divulge and on 10 May 1708 the Privy Council of Great Britain approved these additions to the commissions of the peace in Scotland.² Only three counties, Kinross-shire, Ross-shire and Sutherland, were in receipt of commissions engrossed the previous day which were identical with those issued by the Scottish Privy Council in 1707.³ Admittedly in a number of counties the changes were very slight. Comparison of the 1707 and 1708 lists for Lanarkshire, for instance, reveals 34 justices in the commission in 1707 and 32 in 1708, two additions and four omissions.⁴ Again, in Caithness, one justice was added, David Sinclair of Frizewick, and two left out, the Earl of Breadalbine and Robert Sinclair of Frizewick. Clearly either Robert Sinclair had died and was being replaced by his son, or there had been an initial mistake made by the Scottish Privy Council over the gentleman's Christian name. Similarly in the case of Haddingtonshire, two justices were removed from a commission which had originally included fifty, while in Orkney and Shetland, two were added

¹ Hist. Mss. Comm., Portland Mss., v, 252.

² P.R.O., P.C. 2/82, P.72, 10 May 1708.

³ ib., C.231/9 H.L.R.O. Main Papers: List of Justices of the Peace in North Britain, 11 March 1709. All information regarding the first Scottish commissions of the peace engrossed by the Lord Chancellor of Great Britain, is taken from this list.

⁴ N.L.S. Ms. 125a, Lanarkshire; The Minutes of the Justices of the Peace for Lanarkshire, 1707-1723, ed. C.A. Malcolm, pp. 42-3.

to an original commission of forty-six. In Nairnshire two justices were added to the commission, in Kincardineshire four were added and two omitted, creating negligible increases in both counties. In Ayrshire three justices were added to an original commission of sixty-seven effectively augmenting it by 4.47%, while in Banffshire two justices were added and four left out and in Forfarshire two were added and five left out decreasing the size of the commissions by 4.34% and 10% respectively.

In some counties, however, changes were more extensive and numerically small increases represented significant percentage variations. In Dunbartonshire, for instance, an addition of four justices to the bench effected an increase of 21%, while in Selkirkshire the addition of four justices and omission of one represented an increase of 15%. In several counties, therefore, the numerical increases were small and represented minimal impact on the counties concerned, but this was by no means a uniform pattern. Lord Cowper added a total of 185 gentlemen to the Scottish commissions at this time, and omitted 52, effectively increasing the number of justices on the bench by 133, a net increase of 13.03%. Such an increase nullifies Lockhart's claim that Cowper renewed the commissions in the form in which he had received them. In some counties, moreover, the commissions of the peace were significantly augmented. In Perthshire, the increase was 25.7%, in Wigtownshire 29.16%, in Stirlingshire 28%, in Dute

30% and in Berwickshire and Roxburghshire 33.3%.¹ In Clackmannanshire the size of the bench increased by 41.6%, while in Kirkcudbright and Dumfries-shire, the increases were dramatic. In the former, 16 justices were added to an original commission of 14, and in the latter, 18 justices to an original commission of 15,² effective increases of 114.2% and 120% respectively. Even where there was no marked change in size of a commission, there were cases of significant structural alteration. In Fifeshire, for instance, 10 justices were added to and 7 omitted from an original commission of 86, while in Edinburghshire 6 justices were added to and 4 left out of a 1707 commission which had contained 62 gentlemen. It seems reasonable to assume that changes on such a scale, reflected a specific objective on the part of the ministry. There is, however, no evidence to support the hypothesis that Lord Cowper was exercising his control of the patronage inherent in the transfer of the warranty for the issue of Scottish Commissions of the peace, purely in the interests of his own party. Whigs may have been, and indeed were, added to the benches of Scottish counties in this regulation. Sir William Gordon of Afton, a revolutionary Whig in 1688,³ and Sir James Cunningham of Milncraig, were put into the commission for Ayrshire. Hugh Rose of Kilravock was added to the bench in

¹ N.L.S., Ms. 125a; H.L.R.O., Main Papers: List of Justices of the Peace in North Britain, 11 March 1709.

² ib.

³ G.E. Cockayne, Complete Baronetage, (Exeter, 1900), iv, 439, (hereafter referred to G.E.C., Baronetage).

Elginshire and Inverness-shire, while John Forbes of Culloden was put in for Inverness-shire and Nairnshire where George Brodie of Brodie was also included for the first time. Sir Philip Anstruther was put in for Fifeshire, Alexander Burnett of Leyes for Kincardineshire, Patrick Heron of Heron for Kirkcudbright and the Honorable Francis Montgomery of Giffen for Perthshire, all gentlemen of proven Whig proclivities.¹ A further indication of Whig bias in the justices put in by Cowper in 1708, would be the extent to which they were removed by Tory Lord Chancellor Harcourt for reasons other than death, when he remodelled the benches of several Scottish counties in June and July 1713. In Fifeshire, for instance, Walter Boswell of Balberton and Walter Scot of Edshead were put into the commission by Cowper in 1708, put out by Harcourt in 1713 and readmitted by Cowper in 1715.² In Stirlingshire, John Dow, Baillie of Stirling, Goodlet of Abbotshall, John Christie of Chamberlains and John Buchanan of Craig of Lara, were added to the commission by Cowper in 1708 only to be left out by Harcourt in 1713.³ Similarly in Dumfries-shire William Johnston of Bearholme, James Carruthers of Roberthill, Archibald Douglas of Flingland, George Bell of Blackhallhouse and Alexander Fergusson of Craigdarroch, were put into the commission of the peace for the first time by Cowper in 1708,

¹ Sedgwick, The House of Commons, 1715-1754. i. 598, 417; 11, 392, 45, 132.

² P.R.O., C.234/58, Fifeshire, 23 July 1713; 24 January 1715; H.L.R.O., Main Papers: List of Justices of the Peace in North Britain, 11 March 1709.

³ ib.; P.R.O., C.234/74, Stirlingshire, 3 July 1713; 31 December 1714.

omitted by Harcourt in 1713 and readmitted by Cowper during his second period as Lord Chancellor of Great Britain.¹ It seems reasonable to assume, therefore, that many, if not all of these gentlemen were known for their Whiggery and possible to conclude that a significant proportion of Cowper's inclusions of 1708 were consequently of that persuasion.

Counterbalancing this Whig influx, however, were new entrants whose Tory loyalties were equally renowned. The Cummings of Culter, father and son, were put into the commission for Aberdeenshire,² while Irvine of Drum, Frazer of Frazerdale and Sir Robert Grierson of Lagg, whose Jacobite sympathies were not unknown, were put in for Aberdeenshire, Inverness-shire and Kirkcudbright respectively. In Perthshire, Nairn of Dunsinann, John Erskine of Balgone, Robert Taylor of Mansfield, Stewart of Innernitty, Oliphant of Carpon, Blair of Inshyra, Grant of Bonhard and Nairn of Sagaden were put into the commission of the peace by Cowper in 1708.³ All were retained by Harcourt in 1713 and subsequently omitted by Cowper himself in 1715,⁴ suggesting that a possible error had been made in accepting these nominations in the first instance. It is potentially interesting to note that the Custos Rotulorum in Perthshire in 1708 was Viscount Dupplin, who

¹ib.,/114 Dumfries-shire, 3 July 1713; 7 February 1715; H.L.R.O., Main Papers: List of Justices of the Peace in North Britain, 11 March 1709.

²Sedgwick, The House of Commons, 1715-1754, i, 597.

³H.L.R.O., Main Papers: List of Justices of the Peace in North Britain, 11 March 1709.

⁴P.R.O., 234/68, Perthshire, 14 July 1713, 25 February 1715.

married Harley's daughter, and it may be possible to suggest, as will be elaborated later, that the most convenient initial source for recommendations at that time would be the Custos of the shire, whom, in the particular case of Perthshire, would be expected to prefer Tories. Clearly, therefore, since Cowper was putting in, such Tories, his sole motivation could not simply have been that of packing the bench with Whigs.

Analysis of the justices put out of the commissions at this time however suggests the main directional force of the regulation. Of the 52 justices put out by Cowper, 43 were members of the Scottish nobility suspected of involvement in the French invasion attempt of 1708. On 9 March 1708, prior to the abolition of the Scottish Privy Council and the subsequent transference of appointment of justices to Cowper, a French expedition set out from Dunkirk with the objective of restoring James VIII and III to his Kingdom. Charles Fleming, a brother of the Earl of Wigtown, conspired with the Scots who promised a substantial support force. The expedition was a failure and the French Squadron returned to Dunkirk after being harried by its English counterpart under Sir George Byng.¹ Although there was a distinct lack of evidence of complicity, suspects were rounded up and imprisoned. The Duke of Atholl, the Earls of Aberdeen,

¹ G.H. Jones, The Main Stream of Jacobitism, (Cambridge, Massachusetts, 1954), pp.78-82; Sir Charles Petrie, The Jacobite Movement, (London, 1959), pp. 163-5.

Breadalbine, Errol, Marischal and Strathmore, Viscount Stormount and Lord Saltoun, were required to provide substantial surrender bonds.¹ Lord James Murray, aged seventeen at the time, and Cameron of Lochell were among those imprisoned and required to deposit security, and the Lord Advocate had to vouch personally for Lords Balmerino and Belhaven.² Such intervention was not sufficient to preserve their position as justices, however, for the above-mentioned gentlemen were uniformly removed by Cowper in May 1708 from any commission in which they had appeared. Also excluded at this time were the Duke of Hamilton, the Earls of Linlithgow, Murray and Southesk, Viscounts Kenmure and Kilsyth and Lords Nairn and Sinclair, while Sir Donald McDonald of Sclait from Inverness-shire and Gordon of Buckie from Banffshire, joined their peers in the general elimination of those suspected of disaffection, a trait clearly deemed inconsistent with a place on the bench. It therefore seems probable that Cowper used the opportunity presented by the demise of the Scottish Privy Council, to root out any justices whose future loyalty to the House of Hanover might be suspect.

Awareness by government of a potentially volatile situation in Scotland, is also clearly reflected in the counties selected for greater than average reinforcement. In Aberdeenshire, for instance, 13 justices were added to the bench, 9 were added in

¹ Petrie, The Jacobite Movement, p.167.

² ib.

Inverness-shire, 25 in Perthshire and 12 in Stirlingshire, a distribution which suggests a marked pattern to Cowper's initial involvement with the Scottish commissions of the peace. Clearly, suspected Jacobites were put out, especially where the suspicion was strong. The nobility would be peculiarly vulnerable in this situation since their loyalties would be more widely known. Lesser gentlemen would have found it easier to remain undetected and consequently remain in their commissions, while some, like Irvine of Drum and Frazer of Frazerdale were even inexplicably put in for the first time. The anonymity of the lesser gentry thus enabled a hard core of potentially subversive justices to administer, or indeed fail to administer, the legal enactments of government in their localities, a factor which was not insignificant in Scottish politics in the next fifty years.

Although Whigs were put into the Scottish commissions of the peace in significant numbers during this first regulation, there is therefore no indication that this was an attempt by a Whig Chancellor to remodel the Scottish bench in the Whig interest. Rather any manipulation which did take place was concentrated on removing Jacobites and incidentally replacing them with gentlemen many of whom seemed to have a Whig bias. It could be considered significant, however, that some of the greatest numerical additions to the commissions of the peace occurred in the Border counties where the Squadrone Volante interest was strongest, hence implying that

the original support that that party had given to the abolition of the Scottish Privy Council, was being timely rewarded by the intrusion of nominees of the Squadrone hierarchy into local benches. In Berwickshire, for instance, 10 justices were added, while in Roxburghshire, Kirkcudbright and Dumfries-shire, the number of gentlemen added to the commissions was 11, 17 and 19 respectively. In the case of Kirkcudbright and Dumfries-shire, however, the Custos Rotulorum was the Duke of Queensberry, and although there is no proven link between any change of scale in the composition of a commission and the personality of its Custos, it could perhaps equally be suggested that Queensberry's role in effecting the Union was being rewarded with the promise of the implementation of any feasible proposals he put forward in his own interest.

It is significant that the changes which were effected at this time, seemed to take no cognizance of the immediate criticism which followed the original Proclamation and Commission of 1707. On 19 August 1707 Daniel Defoe, sent to Scotland by the English government to promote Union, wrote to Robert Harley, then Secretary of State, on the composition of the new commissions.¹ In this letter he complained that the gentlemen responsible for nominating the justices had laid too much emphasis on whether they had been for or against the Union. Consequently 'superior' county gentlemen, opposed to Union, had been passed over in favour of those of lower calibre who

¹ Hist. Mss. Comm., Portland Mss., iv, 436.

had been supporters of Union. George Lockhart of Carnwath, M.P. for Edinburgh, made the same claim in the aforementioned letter to Harley in December 1712.¹ He argued that the Scottish Privy Council appointed justices of the peace in every shire '... according to the rule that no person should be employed who had voted or spoken against the Union.' Many of the nobility and gentry had therefore been omitted and local power hence rested with rigid Presbyterians, members of the Squadrone Volante and the lesser gentry — 'even small time lawyers and servants.' It is possible to suggest that Defoe's criticism of political selection associated with pro or anti Union sentiments, did not require to be met because no such bias existed. Comparison of the peerage component of the fiats for certain counties in 1707 and 1708 supports this claim. In Dunbartonshire, for instance, there were five noble members of the commission of the peace in 1707.² Of these five, two, the Dukes of Argyll and Montrose, were strongly pro-Union, while a further two, the Earl of Wigtown and Lord Blantyre were equally renowned for their anti Union sentiments.³ All were returned by Cowper in 1708.⁴ The

¹ib., v, 252-3.

²N.L.S., Ms 125a, Dunbartonshire.

³G.E. Cockayne, The Complete Peerage, (London, 1910-59), hereafter cited as G.E.C., Peerage, i, ix, xiii, ii.

⁴H.L.R.O., Main Papers: List of Justices of the Peace in North Britain, 11 March 1709.

1707 commission for Dumfries-shire was headed by the Duke of Queensberry and the Marquis of Annandale, the former supporting Union, the latter opposing and both remaining in the commission in 1708.¹

While it would be true to say that the normal pattern was one in which the majority of the nobility were in favour of Union - All nineteen peers in the Edinburghshire commission for instance supported the Act. — there is no convincing evidence to suggest that a prominent local aristocrat would be left out of the commission of the peace for his shire because of his anti-Union sentiments.

Lockhart's criticism was not stated as such until 1712, but it seems reasonable to assume that it would be widely known from 1707 onwards. It has been suggested in this study, that the larger number of new entrants into the commissions of the Border counties in the regulation of 1708, could have reflected a reinforcement of the Squadrone interest at its base in return for Whig orientated support over the abolition of the Scottish Privy Council. A concomitant hypothesis would be one which postulated that no extensive additions to the bench were effected by Cowper in 1708, because the Squadrone bias was sufficiently in evidence in 1707. Although it is impossible to disprove this hypothesis conclusively, it is possible to argue that it is highly unlikely. The Squadrone Volonte was a relatively small group in Scottish politics and was geographically restricted.

¹ G.E.C., Peerage, x, i; N.L.S., Ms. 125a, Dumfries-shire, H.L.R.O., Main Papers, List of Justices of the Peace in North Britain, 11 March 1709.

It is impossible to conceive of a systematic permeation of the commissions of the peace by such a numerically small sector and this, coupled with Lockhart's widely known Jacobite bias, would be enough to cast grave doubts on his claim. The intrusion of the 'lesser gentry,' another object of his wrath, was not restricted to Scotland and therefore not a direct result of political considerations influencing nominations to the bench at this time. In England in the post-Revolutionary period, political manipulation of the English commissions of the peace eliminated so many gentlemen eligible for a place on the bench either because of their pro-Stuart proclivities or alternatively because of their support for the Revolution, that 'lesser' justices had to be co-opted to supplement the diminished ranks.¹

Lord Cowper's policy in 1708 seems therefore to have been quite clear. He adopted the Scottish Privy Council's lists as the basis for the new commissions. He left out those who had been imprisoned for their suspected involvement in the French invasion scare of 1708, and added a sufficient number of gentlemen to compensate for the reduction, many, but not all of whom were known for their support of the Whigs. The structure of the commissions changed more significantly than a strictly numerical comparison of additions and omissions would suggest, however, since the justices

¹ L.K.J. Glassey, 'The Commission of the Peace, 1675-1720' p.23; Webb, The Parish and the County, pp. 321-6.

who were left out were almost wholly from the Scottish nobility, while those put in were totally from the gentry or lesser gentry. Cowper, moreover, restricted his omissions to the limited scale of those rounded up by the government as potential troublemakers in 1708. The Earls of Airlie, Bute, Caithness and Panmure together with Lord Gray had been classified as 'Protestant Malignants' or supporters of the House of Stuart in 1705,¹ yet all remained in the commissions in which they appeared in 1708. The aim in 1708 was, therefore, the modest one of elimination of potentially subversive justices. There is no evidence to suggest that Cowper gleefully grasped the opportunity presented by the acquisition of this new found patronage to extend Whig success at the centre to the far reaches of North Britain by packing the county benches with local Whig worthies. It must also be assumed that since the method of communication between the Chancellor's office and the localities was in its infancy, changes in the commissions of the peace would not have been expected to have been on an extensive scale, and in this context a numerical increase of 13.03% reflects a reasoned handling of a new area of patronage.

Between 9 May 1708 and the end of his first Chancellorship in 1710, Cowper only tinkered with the Scottish commissions, with one major exception to be discussed later, that of the county of

¹Hist. Mss. Comm., Portland Mss., viii, 205.

Ross. In 1709, new commissions were engrossed for five Scottish shires,¹ and in 1710 for six.² The fiats are mainly of the 'put in' type and the increase in size of the resultant commissions ranged between 4% in the case of Haddingtonshire, to almost 50% in that of Stirlingshire.³ With three minor exceptions,⁴ the alterations in the commissions involved only additions. Edinburghshire and Peebles-shire each had one justice 'left out' with no reason given, while Roxburghshire had two justices to be left out marked 'Dead.'

A possible explanation for omission in the case of the former shires is the loss of property qualification on the part of the justice. James Geddes of Kirkend, for instance, put out of the commission for Peebles-shire on 24 May 1709, had, also in 1709, married Henrietta Lockhart of Carnwath, daughter of Sir William Lockhart of Carnwath, and had resigned his lands as part of the marriage contract.⁵ On 7 May 1709, however, Sunderland expressed to the Lord Chancellor the Queen's displeasure with the behaviour of

¹Haddingtonshire, Kincardineshire, Edinburghshire, Peebles-shire and Renfrewshire.

²Argyllshire, Edinburghshire, Peebles-shire, Ross-shire, Stirlingshire and Roxburghshire (2).

³P.R.O., C.234/56, Haddingtonshire, 2 June 1709; /74, Stirlingshire, 7 April 1710.

⁴*ib.*, /64, Edinburghshire, 27 June 1710; /67, Peebles-shire, 24 May 1709; /72, Roxburghshire, 10 June 1710.

⁵Buchan and Paton (ed.), A History of Peebles-shire, (Glasgow, 1927), iii, 192.

certain commissioners for raising recruits in Peebles-shire. At a commissioner's meeting, the said gentlemen had refused to qualify themselves and the Queen wished to signify to Cowper that if any of the recalcitrant commissioners were in the commission of the peace, they should be put out.¹ The new commission for Peebles-shire, engrossed on 24 May 1709, involved only one alteration, namely the omission of James Geddes and it seems reasonable to conclude that he was likely to have been the single errant commissioner who was also a justice of the peace rather than a relation by marriage to the Lockharts of Carnwath who had compounded the felony by giving up his lands as part of the marriage contract.

In this minimal involvement there is a parallel with the Whig handling of the commissions of the peace in England at this time,² but coming in the wake of a 100% regulation, it is possible that the changes represent suggestions which failed to reach Cowper before 9 May 1708. In the case of Kincardineshire, for instance, it seems likely that the member for that shire appealed to Cowper for a modification to the May commission. Writing to the Chancellor on 26 May 1709, he began thus,

... I give your Lordship my most hearty thanks
for being pleased to mind the list of J.P.s for
the shire of Kincardine³

¹ P.R.O., S.P. 44/108, f.68, Sunderland to Lord Chancellor, 7 May 1709.

² L.K.J. Glassey, 'The Commission of the Peace, 1675-1720,' p.275.

³ Herts R.O., Cowper (Pannshanger) MSS., D/EP F.156, David Ramsay to the Lord Chancellor, 26 May 1709.

The commission had been engrossed on 12 May 1709 and was in the form of a complete list.¹ It included six new entrants in a previous commission of twenty-one, Sir Alexander Bannerman of Elsieke and his son, Hercules Scott of Comistoun, James Barclay of Balmakeran, Robert Douglas of Bridgford and Robert Turnbull of Netherwoodston, and it seems possible that they were Ramsay's nominees who would be expected to strengthen his interest in the shire in the same way as would his simultaneous request for appointment as Custos Rotulorum. This latter request was not granted however and Viscount Arbuthnot secured the coveted position. The considerable attention paid to Roxburghshire — three commissions between 9 May 1708 and 10 June 1710 — again suggests additional peripheral pressure. The 1707 commission was increased from its original thirty-one members by 33% on 9 May 1708, by 25% on 17 May 1710 and a further 6% on 10 June 1710.² It is impossible to ascertain to which interest the various new entrants were linked but it is possible to identify two opposing interests in the shire, that of the hereditary Sheriff, Archibald Douglas of Cavers and that of the Squadrone Duke of Roxburgh.³ Although, as has been stated before, no positive link exists between the nominees

¹ P.R.O., C.234/60, Kincardineshire, 12 May 1709.

² N.L.S., Ms 125a, Roxburghshire; H.L.R.O., Main Papers: List of J.P.s in Roxburghshire, 11 March 1709; P.R.O., C.234/72, Roxburghshire, 17 May 1710 and 10 June 1710.

³ Sedgwick, The House of Commons, 1715-1754, i, 616.

of Cowper's first regulation and the person named as Custos, it could be suggested that Cavers' role of Custos was as influential in that regulation as that, possibly, of Queensberry in Dumfries-shire and Kirkcudbright. In that situation, Cowper may have found himself in receipt of supplementary requests from the Squadrone Duke, which, in the face of the active political support the Junto had had from that source in recent times, he felt obliged to sustain. In the additional regulations in Kincardineshire and Roxburghshire, therefore, in 1709 and 1710, it is possible to postulate the existence of additional local pressure. This will also be shown to be the case in Edinburghshire and Ross-shire.

There was, however, continued fears on the extent of Jacobitism in Scotland in the wake of the French invasion scare, fears which Cowper did little or nothing to extirpate. Daniel Defoe wrote to Robert Harley on 18 November 1710 that in his estimation, 'Tory' in Scottish terminology, was synonymous with 'Jacobite'.¹ On 25 November 1710, after four professed Jacobites had been returned for the new parliament, he warned that 'to let in the Tory party ... into the military command, is to put the Pretender into the actual possession of part of this island.'² It is nevertheless difficult to find any ruthless attempt to contain this continuing Jacobite threat in Cowper's handling of the Scottish

¹Hist. Mss. Comm., Portland Mss, iv, 630.

²ib., p.634.

commissions of the peace. In April 1709 George Lockhart, Tory M.P. for Edinburgh, wrote to the Lord Chancellor requesting alterations in the commission in favour of 'such gentlemen as were men of estates, interest and of a good character' and omitting 'such as wanted these qualifications'. Cowper's reply was delayed until August due to a misunderstanding about delivery arrangements but essentially gave Lockhart what he wanted in spite of his own misgivings,

... it being unusual to make so great an addition at once and in some respects more convenient to do it by degrees: but rather than loose more time, since I find them (the proposed justices), recommended to me by so worthy a gentleman chosen to represent the county ...¹

On 25 September 1709 a commission of the peace was engrossed for the shire of Edinburgh which increased its size by 38%.² The significance of this event is that George Lockhart was a known Jacobite and although he professed a lack of partiality in his selection it would not be unreasonable to assume an anti-Whig, if not decidedly Jacobite bias. Cowper indeed, seemed to have discovered his error fairly quickly. When he succeeded Lord Harcourt as Chancellor for a second time in 1714, he left out Jasper Wood of Warieston, James Dean of Woodhouseslie, James Oliphant of Lantoun and Alexander Brand of Castlebrand in his first regulation of the Edinburghshire commission. They were not marked 'dead' as

¹Herts. R.O., Cowper (Panshanger) Mss., D/EP F.156, Lockhart to Cowper, 16 April 1709 and Cowper to Lockhart, 16 August 1709.

²P.R.O., C.234/64, Edinburghshire, 25 September 1709.

were others omitted at this time and it seems reasonable to conclude that time had proved them politically unacceptable.¹ All had been put in by Cowper in September 1709, presumably on the recommendation of Lockhart.

It is necessary, therefore, to find some explanation for Cowpers general reluctance to eliminate Jacobite elements from commissions at a time when political agitation in Scotland was markedly on the increase. The possibility continued to exist that no action was taken because no action required to be taken. If the commissions were weighted in favour of pro-Union Squadrone supporters as Defoe and Lockhart claimed then this would be the anticipated reaction of a Whig Chancellor in a Whig ministry. There would be no need to remodel the bench as a protection against Jacobitism when that protection already existed. This seems a remote possibility, however, for reasons previously suggested. Cowper, moreover, acquiesced in Lockharts request for changes in spite of the known fact of his political inclinations. Sir John Gordon of Park, Sir James Abercrombie of Birkenboig, Duff of Braco and Hay of Raness were all in the commission of the peace for Banffshire in 1707.² The commissions of these gentlemen were all renewed by Cowper in 1708.³ All 'went out' for the House of Stuart in 1715 and all

¹ib.

²N.L.S., Ms. 125a, Banffshire.

³H.L.R.O., Main Papers: List of J.P.s in Banffshire, 11 March 1709.

remained in the commission till that time. Moreover on 1 April 1708, immediately after the French fleet had been turned back in March, Lord Justice Clerk Cockburn could complain to the Duke of Montrose of the ineffectiveness of putting oaths to suspected persons since so many of the justices were themselves Jacobites.¹ On 29 March 1708, the Earl of Mar, also contemplating the post-invasion threat, wrote to his brother Lord Grange, 'after the Parliament all the Scots affairs are to be adjusted'.² The opportunity for action passed with minimum fuss, however, when the warranty for the issue of Scottish commissions of the peace passed from the Scottish Privy Council to the Lord Chancellor. The opportunity for the complete elimination of Jacobitism from the bench in a 100% regulation, of itself a legal necessity, was missed. The crucial question, however, was whether it was ever possible. Subversion, by definition, is not a readily identifiable trait. Local administration as effected by justices of the peace, therefore, was adjusted to the most limited degree, and the policy decisions of central government apparently continued to be enacted, if enacted at all, by many gentlemen whose loyalty was suspect.

This general lack of activity raises the question of the importance attached to the commission of the peace in Scotland as a political instrument. In England and Wales in the period 1706-1710,

¹Hist. Mss. Comm., Third Report, Appendix, Montrose Muniments, p.371.

²Hist. Mss. Comm., Mar and Kellie Mss., p.435.

Cowper sealed an average of 38.6 commissions per year.¹ In Scotland from 1708-1710 he sealed a total of 13, apart from the initial transference of warranty from the Scottish Privy Council to the Lord Chancellor's office.² It has been suggested that as far as England and Wales were concerned Cowper responded to requests for alterations to commissions but did not initiate them.³ It is possible that he applied the same technique in dealing with the Scottish commissions although neglect at a time of increased Jacobite activity could have had more serious consequences. With a uniform regulation being effected in May 1708, however, no further response from the centre would be expected in the remaining period of Cowper's Chancellorship. The initiative came from the localities themselves as has been seen in the cases of Kincardineshire, Roxburghshire and Edinburghshire and will be seen in Ross-shire. If no initiative materialized, Jacobites clearly remained in their commissions. More seriously for law and order in Scotland, even when an initiative did materialize, Jacobite nominees were accepted from a Jacobite sponsor. The importance of the justice of the peace in the Scottish legal framework is clearly open to question.

There is, however, evidence that the Scots themselves viewed

¹L.K.J. Glassey, 'The Commission of the Peace, 1675-1720,' p.24.

²P.R.O. C.234/45-77, /114.

³L.K.J. Glassey, 'The Commission of the Peace, 1675-1720,' p.276.

the commission of the peace as an institution of some political consequence. This can be seen in the prolonged exchanges involving Lord Ross and the Earl of Cromarty over the political composition of the commission of the peace for the county of Ross between 1708 and 1709, which suggests that although superficially Cowper played down the commissions, they were certainly in the forefront of politics in the substratum of the localities. In a 'Memorial to Her Majesty by the Earl of Cromarty at the pressing desire of the Justices of the Peace and the Sheriff about the imbalance of the commission for Ross,'¹ Cromarty stated the facts of the case from his point of view. It appears that certain justices for the county of Ross were accused of 'fellonious and treasonable practices against the government' and that this information was passed by Lord Ross to one of the Secretaries of State who passed it to the Queen. The accused were summoned to Edinburgh by the Lord Advocate to answer the claim and a commission of inquiry set up by the Queen. In spite of the fact that the accusations had had no foundation of truth the accused had had neither reparation nor redress and the Earl of Cromarty had been asked to put their case before the Queen. It appears however that this was merely the surface ripples of a much more deeply rooted problem. Cromarty went on to elaborate in the Memorial that the accusers represented a considerable proportion of

¹Herts. R.O., Cowper (Panshanger) Mss., D/EP F156, undated C.1706-10.

the justices of the peace in the commission and that this proportion was grossly in excess of that due to them by their numerical balance in the shire. He claimed, moreover, that this faction was about to be extended. The balance of interests in the county to which the Earl of Cromarty referred had been the subject of a previous request from Lord Ross in 1708 for an alteration in the commission of the peace.¹ In this document Lord Ross analysed the composition of the commission by party. He listed 22 Tory justices, 8 'newtralls but managed by Tory influence' and 14 Whig justices. He claimed that the Earl of Cromarty, Lord Macleod, Sir Kenneth Mackenzie of Ferneze Sir James Mackenzie of Royston, Alexander Mackenzie of Bellsan and Mackenzie of Delaine (all Tory justices) had no interest in the shire of Ross and only a few superiorities belonging to Cromarty. There then followed a list headed 'Gentlemen of good estates and of approven loyalty neglected out of the commission of the peace', which consisted of 17 names. It was presumably to this proposed list of 17 that the Earl of Cromarty referred when he talked of the possibility of the number of justices in the Ross faction being extended. The case of the Cromarty faction rested entirely on the number of justices for each interest in relation to the acreage of land held in the shire. The clan structure in Ross revolved round the Mackenzies, the Rosses and the Monros, the Mackenzies owning

¹ Herts. R.O., Cowper (Panshanger) Mss., D/EP F156, 'True Representation of the Justices of the Peace of Ross, 1708.'

four fifths of the land. The claim was that if Lord Ross's proposed addition of 17 was implemented then the proportion of the quota of justices for his fifth part of the shire would be four times what it should be.¹ It was also therein claimed that the discrepancy had initially arisen out of an overestimate of the number of justices required for a shire with total valued rents of £7000. Whereas 30 justices should have been sufficient for such a quota, the M.P.s nominated 42 in an endeavour to please all the relevant interests. At a much later date however the Earl of Seafield was to justify the relatively large number of justices in the county on the grounds of excessive disaffection.² Several conclusions can be drawn from this interchange which resulted in a commission of the peace being engrossed for the county of Ross on 7 February 1710 which added 7 gentlemen, 6 of whom were recommended by Lord Ross.³

The extent of the interchange and the intensity with which it was conducted suggests an explicit awareness of the institution of the commission of the peace in the political life of the locality. Conducted at ministerial level with two of the key members of the Scottish political nation, it implies that the status of the leading protagonists was reflected in the composition of the bench. The magistrates were classified not only along the national lines of

¹Herts. R.O., Cowper (Fanshanger) Mss., D/BP F156, 'State and Case of the Shire of Ross and the Clan arrangements pertaining to it.'

²D.M., Add. Mss. 35446, f280, Seafield to Newcastle, 2 June 1748.

³P.R.O., C.234/70, Ross-shire, 7 February 1710.

party but also along the local lines of 'interest' and it was on this latter aspect that Cromarty placed greatest emphasis. The list of justices proposed by Cromarty would be the quota necessary to readjust the balance of the commission in relation to the land held by the opposing interests. Care was taken to establish the eligibility of those proposed in comparison with the 17 nominations of Lord Ross of whom, with the exception of Balnagoun, Westerton, Colin Robertson and Ross of Aldie, the writer thought

... it would be greater kindness to give each of them a crown a week to support their families and more suitable to them than jurisdictions and offices, for there's eight or nine of them that hath not two crowns of real estate weekly that's visible to us poor mortals and there is few of the other additional list which hath not twice as much.¹

It was claimed that Ross-shire, (at least four-fifths of it), abhorred the restoring of any influence to Lord Ross which had been justly forfeited a hundred years previously for rebellion and oppression. Animosity and antipathy to any increase in the Ross interest was evident in the assertion that Ross-shire was peaceful till Lord Ross 'was calld (on) to be a presumptive heir in it'² and Cromarty's displeasure was recounted at length in a letter to Lord Cowper.³ It seems reasonable to conclude that the

¹Herts. R.O., Cowper (Panshanger) Mss., D/EP F.156, 'State and Case of the Shire of Ross and the Clan Arrangements pertaining to it'.

²ib.

³Sir W. Fraser, The Earls of Cromarty & their kindred, Country and Correspondence (Edinburgh 1876), II, 89, Earl of Cromarty to Lord Cowper, 19 May 1709.

commission of the peace had a political importance in the locality and the time taken by Cowper in considering the issue, together with his eventual selection of additional justices, suggests a corresponding political dimension at the centre. Although the correspondence passed back and forward throughout 1708 there was no attempt on Cowper's part to rush through a partial regulation in May of that year.

Ross-shire was one of the few counties in which there was no change from the Privy Council list of 1707. This is in marked contrast to the Edinburghshire experience where Lockhart's recommendations were accepted with little scrutiny in order to save time.

Furthermore in Ross-shire the Secretary of State was also involved in the dispute and seeking information from Lord Chief Baron Smith. Sunderland wrote to Smith in June 1709 complaining that the Queen's service was being hampered by the fact that the justices of the peace in the shire of Ross were split up into parties and factions. It was indicated that the Queen wished to remedy this by countenancing and encouraging loyal J.Rs and discouraging and removing their disaffected counterparts who were disloyal to Church or State or both and Smith was instructed to report on the state of their differences.¹ That the case of the Ross-shire justices should have been an issue not just for the Chancellor but for the Secretary of State and indeed for the Queen herself suggests that it was a matter of some import for central government, and the final selection of

¹P.R.O., S.P. 44/108, f.96, Sunderland to Smith, 21 June 1709.

justices for the new commission seems to bear this out. Of the 17 gentlemen proposed by Lord Ross, 6 appeared in the commission of February 1710 and all 7 new members of that commission were surnamed either Ross or Munro. It would seem that Cowper accepted the reasoning of Lord Ross in addition to meeting the desires of the Queen herself, and set out to balance a previous Tory domination of the commission. Inclusion of all 17 recommendations together with the 14 existing Whig justices would have been just sufficient to tip the balance in favour of the Whigs (assuming that all 17 were of that political persuasion) with 31 justices, to the Tory and Tory-influenced group of 30.¹ The initial impact of the fact that only Ross nominees were included in 1710, is almost outweighed, however, by that of the fact that numerically it was much less than that desired by Lord Ross and also by the fact that the group of 7 contained at least one Tory. Although Lord Ross was certainly Whig in his politics,² his brother Lieutenant General Charles Ross of Balnagoun, was the M.P. for Ross-shire from 1709 when the election of Hugh Rose of Kilravock was declared void and the evidence suggests that at this time he was a decided Tory.³ Cowper's remodelling of the commission of the peace for Ross-shire, therefore,

¹Herts. R.O., Cowper (Panshanger) Mss., D/BP, F.156, 'True Representation of the Justices of the Peace of Ross, 1708'.

²G.B.C., Peerage, XI.

³Sedgwick, The House of Commons, 1715-1754, ii, 392. The Earl of Cromarty in a letter to Godolphin relates how Lord Ross, aiming for the Earldom of Ross, first tried to get his nominations accepted as M.P.s (Cromartie Correspondence, ii, ⁴⁹Earl of Cromarty to Lord Treasurer Godolphin, 6 October 1709).

appears increasingly less dramatic and it becomes pertinent to examine possible explanations for his failure to act to any appreciable extent in the broader spectrum of the Scottish commissions in the wake of Jacobite intrigue.

It could be assumed for instance that although neither the Chancellor himself nor his Secretary of Commissions were novices in 1708, it would take some time to establish a pattern of communication and recommendation in dealing with Scottish commissions. However the fact that Cowper was able to add 185 gentlemen to the Scottish bench nine days after the abolition of the Scottish Privy Council suggests that information was most certainly filtering through from the localities. There is, however, the more conclusive evidence of the English experience that Cowper was much less radical than many of his predecessors in purging the bench in the interests of party.¹ He seemed singularly unprepared to remove a justice purely on the grounds of his political beliefs unless there was evidence of dereliction of duty.² This objective was clearly stated and defended in a memorandum for George I in which Cowper replied to accusations of improper appointment and dismissal of magistrates.³ It seems clear that

¹L.K.J. Glassey, 'The Commission of the Peace, 1675-1720', pp.276, 290.

²*ib.*, p.282.

³Herts. R.O. Cowper (Panshanger) Mss., D/EP F.152; paper endorsed 'About the disposal of the Commissions for Justices of the Peace', to be translated into French for George I. No date but c. July 1715.

... Very few, if any, were displaced without cause assign'd and prov'd, because it was justly thought to be an injurious disgrace on any Gentlⁿ in his Country to be turn'd out after He had serv'd his King and Country without reward, unless for some known or evident reason.

Gentlemen were not turned out 'on the private whispers of persons' nor for political disaffection unless

they who solicited their Removal, would give in writing some particular instance or objection to their conduct, and either prove it or at least subscribe to their Knowledge or belief in it.¹

It also seems clear that the limited involvement in the Scottish commissions of the peace did not reflect a central lack of interest in their composition. On 25 February 1709 the House of Lords declared its intention to consider papers relating to the French invasion scare of 1708 and '... to take into consideration the present state of the Union.'² Consequently it requested an account of the number of troops in Scotland at that time, a list of general officers and their commissions together with a list of stores housed in the various Scottish castles and fortifications, an account of the revenue in Scotland since the Union together with a current statement on the Equivalent and the outstanding debt and also the request

... that Her Majesty would be pleased to give order that a List of the Justices of the Peace of North Britain be laid before the House.³

¹ ib.

² L.J., XVIII, 648.

³ L.J., XVIII, 651, 1 March 1709.

This was duly ordered,¹ and on 11 March 1709 'the Earl of Sunderland ... delivered several papers relating to that part of North Britain called Scotland,'² which included a list of J.P.s. received from the Lord Chancellor. The lists would seem to be copies of the fiats for the Scottish counties engrossed on 9 May 1708 and would explain their removal from the Public Record Office where the other existing fiats are deposited. The Lords' objective in scrutinizing the lists of Scottish justices together with the remaining requested lists and accounts, was the provision of information considered necessary in order that amendments could be tabled with respect to a proposed 'Act for improving the Union of the Two Kingdoms' at that time being debated in Committee.³ The Lords' concern with the infamous Treason Act⁴ was that it would have the reverse effect to that intended and alienate the Scottish populace further through its interference with the distinctive legal system preserved intact by the Union. The vigorous analysis of Scotland and its vulnerable institutions in the wake of the French invasion scare, suggests a political involvement at the centre with peripheral judicial and administrative bodies. Before the Treason Bill became law, the justification for it was clearly examined and debated and the composition of the Scottish

¹ ib., p. 652, 2 March 1709.

² ib., p. 662, 11 March 1709.

³ ib., p. 689.

⁴ 7 Anne C.21.

commissions of the peace scrutinized. This suggests that the nature of such a composition was of considerable importance to the future security of Britain and therefore that the political bias of the members of the commissions was relevant to such security.

Parliament, therefore, clearly considered the composition of the bench politically significant, and before dismissing the hypothesis that the Junto Lords had viewed the abolition of the Scottish Privy Council and the subsequent accretion of patronage by the Lord Chancellor as an instrument with which to extend their hard-won central power to the localities, it would be as well to consider the possibility that this indeed had been their objective but that their chosen instrument for effecting it had had principles of his own. Cowper's memorandum to George I eventually made his position quite plain. Political manipulation of commissions of the peace was, in his opinion, unnecessary, even when the threat posed was subversive.

By the summer of 1710 Lord Cowper's first period as Chancellor was nearing its end. The political impeachment of Dr. Sacheverell in February and March 1710 backfired and the Whigs found themselves unable either to co-ordinate a viable ministry or muster the necessary support in Parliament. This situation was effectively precipitated by Robert Harley in an unprecedented attempt to put pressure on the Crown through the wave of euphoria and High Church zeal which swept the country in the wake of Sacheverell's

embarrassingly light sentence and his subsequent triumphant tour through the English counties.¹ In January 1710 the Queen, without seeking the advice of Marlborough, had appointed Earl Rivers Lord Lieutenant of the Tower, and in April the Duke of Shrewsbury became Lord Chamberlain. Both recent converts from the Junto cause, Rivers had been particularly courted by Harley in a systematic attempt to prey on Whig disillusion. The role of the Scottish peers at this critical juncture is, moreover, of some significance. In his endeavours to mould a 'moderate' ministry of men of all parties, Harley sought to utilize the increasing disillusion of the unpredictable Duke of Argyll and his brother the Earl of Islay. Such was his success that Argyll, though voting Sacheverell guilty as tried, proposed a punishment of one year's suspension from preaching, thus reflecting the increasing anti-Whig feeling engendered by the trial.² In June Sunderland was dismissed followed by Godolphin in August, and although Harley, the key figure in the reshuffle, had tried to persuade some leading Whigs, including Lord Chancellor Cowper, to remain in office in yet another attempt at forming his moderate ministry free from the factiousness of party conflict, the remaining Whigs exhibited their expected solidarity and resigned. Harley proceeded to reconstruct the ministry in anticipation of the

¹G.S. Holmes, The Trial of Doctor Sacheverell, (London, 1973), pp.238-9.

²ib., pp. 228-9; Riley, The English Ministers and Scotland, pp.146-7.

expected election later in the year. Dartmouth and St. John became Secretaries of State, Rochester Lord President, and Poulet Lord Treasurer.¹ Harley failed in his Herculean efforts to retain Cowper in the ministry and he resigned on 23 September 1710, the Great Seal being put into commission until a suitable successor could be found. Between 1708 and 1710 he had not distinguished himself by his alacrity in regulating the Scottish commissions of the peace in the interest of his Whig colleagues. He had added, apart from his uniform regulation of 1708, a net total of 35 gentlemen to commissions for only 9 shires out of the possible 33 in spite of the fact that it had been a time of high political sensitivity following the attempted Jacobite invasion in 1708.² The tenor of the deliberations over the shire of Ross, however, suggests that the patronage involved in the appointment and dismissal of justices was a responsibility which was not treated quite as superficially as it would appear. At a later date Cowper was to remind George I that on surrendering the Great Seal the first time the commissions of the peace were 'in a very good state, with a

¹ Trevelyan, England under Queen Anne, iii chapter iv; McInnes, Robert Harley, Puritan Politician, p.124; G.S. Holmes, British Politics in the Age of Anne, p.112; K. Peiling, A History of the Tory Party 1640-1714, (Oxford, 1950), pp. 417-23.

2P.R.O., C234/47, /56, /60, /64, /67, /69, /70, /72, /74.

a sufficient balance in favour of the honest interests.'¹ The accuracy of this claim is perhaps best judged by examining the activities of his successor.

¹Herts. R.O., Cowper (Panshanger) Mss., D/LF P.152, 'Memorandum for George I.

3. The Commission of the Peace under Lord Harcourt, 1710-14.

Sir Simon Harcourt who became Lord Keeper on 19 October 1710 was born in 1660 into a distinguished Oxfordshire family. Called to the bar in 1676, he rapidly rose to the top of his profession and was returned as the member for Abingdon in 1690. He established himself as a Tory spokesman of merit in such momentous cases as the impeachment of Somers, but it was while he was out of parliament, having resigned from his post as Attorney-General along with Harley in 1708, that he distinguished himself as leading defence counsel in the trial of Dr. Sacheverell.¹ There is little doubt that the intellectual skill of Harcourt's reasoned defence coupled with his polished and articulate delivery was instrumental in sowing the seeds of doubt regarding the inviolability of the Whig managers' case for the prosecution. There was, moreover, the added advantage for the Tories in that Sir Simon was untainted by High Church fanaticism, having progressively imbibed the political philosophy of Robert Harley whose pragmatic moderation had enabled him to combine loyal support and allegiance both to the principles of the Revolution and the tenets of the Anglican Church.² In spite of his impressive introduction for the defence, however, Harcourt took no further part in the trial after

¹ Lord Campbell, Lives of the Chancellors, iv, 430-56.

² G.S. Holmes, The Trial of Doctor Sacheverell, pp. 180-1.

6 March. Success in the Cardigan by-election had enabled him to re-enter Parliament and had therefore simultaneously deprived Sacheverell of his most persuasive defence, although the return had been delayed for a full twelve days in order that the latter's case might be effectively established.¹ Taking his seat on 7 March, he was therefore eligible to be persuaded, albeit reluctantly, to accept the Great Seal when Cowper's resignation in September had forced Harley to seek a successor from the sparse ranks of Tory lawyers.

The advent of a Tory administration in 1710 led to widespread hopes of changes in the management of Scotland at both central and local levels.² Godolphin had refused to reward the Squadrone with the appointment of Montrose as third Secretary of State in 1708 and the subsequent elevation of Queensberry to that position had thwarted any further hopes that the Junto would be willing or able to bombard the Scottish ministry with its Squadrone associates. Their dream of subsequent administrative reform, therefore, had remained an illusion.³ The dismissal of Queensberry would have been indicative of a purge of the existing Scottish ministry, but this failed to materialise. Islay reminded Harley that the 'new men' had a right to expect places,⁴ a reminder

¹ib., p.192.

²Riley, The English Ministers and Scotland, p.158.

³ib., pp.116-17.

⁴Hist. Mss. Comm., Portland Mss., iv, 645-6, Islay to Harley, 14 December 1710.

not unjustified in the light of Harley's assiduous courting of the dissatisfied in Scotland, (particularly Argyll and Islay), and the implicit promise and assumption of reward.

By 1712, George Lockhart was forced to point out that the commissions of the peace had been little altered since their inception and called for a 'redress of this grievance'.¹ This, moreover, was not an example of local apathy, since Lockhart went on to claim that immediately after the last election (in 1710), members of parliament had applied to the Lord Keeper with lists of proposed changes for their shires but nothing had been done. This reported lack of activity is borne out by the lack of changes in commissions of the peace for the Scottish counties in the 1710-14 period. There is no indication that the existence of a Tory ministry at Westminster led to a purge of the 'rigid Presbyterians and Squadrone creatures' believed by Lockhart to constitute the membership of the commissions of the peace or of their replacement by Tory gentlemen.

Parliament was dissolved on 21 September and with Harcourt's appointment as Chancellor effective from 19 October there was clearly no time to remodel the Scottish bench prior to the elections. In retrospect this may have proved desirable since the ministry could only depend on the support of between twenty-three and twenty-five Commons members out of the Scottish total of

¹ib., v, 252-3, George Lockhart to Earl of Oxford, 23 December 1712.

forty-five.¹ Arguably, if remodelling had been possible there would have been a clear indication in the localities of where influence at the centre lay, a factor not insignificant in a Scotland which was apparently untouched by post Sacheverell euphoria. It would, however, have been unusual for a ministry to embark on a radical reorganization while the Great Seal was in commission and impossible to collect and collate proposed changes both in the time available and during a period when Harley was scurrying around in search of a successor to Cowper. The aforementioned claim of Lockhart to Oxford, that after the 1710 election M.P.s forwarded lists of omissions and additions to commissions of the peace but nothing was done, suggests that there was no immediate rush even after the election to remove Whigs from their local positions of power in order that they might be replaced with trusted Tories. It might be suggested that Lockhart's extremism may have led him to make extravagant claims regarding the desire in the localities for new commissions of the peace, claims not substantiated in fact. This, however, is not the case. Robert Harley would seem to have been in receipt of several claims for restructuring which reflected an obvious desire for a change of emphasis and direction on the part of the counties concerned.

¹Riley, The English Ministers and Scotland, p.157.

In March 1711 for instance, Sir John Maclean forwarded a list of proposed changes in the commission of the peace for the shire of Inverness.¹ Indeed the appeal was headed more strongly as 'A New Commission of the Peace prayed for the shire of Inverness.' It was suggested that 13 justices should be added to and 12 omitted from the existing commission of 38. There is no doubt that the structural changes proposed, entailed a radical intrusion of Tories, indeed Jacobites, at the expense of Whig predecessors. Sir Donald MacDonald of Sclait, put out by Cowper in 1708 in the wake of the French invasion scare, Cameron of Lochell the younger, whose father had been put out at the same time and for similar reasons and Captain Allan Cameron, son of Sir Ewen Cameron of Lochell were among the 13 suggested newcomers to the Inverness-shire bench. There was no doubt about the unwavering support any of the three would give to the exiled Stuarts, and their inclusion was to be at the expense of Whigs like the Squadrone supporting Roses of Kilravock and Major General Maitland, governor of Fort William, whose loyalty to the Act of Settlement was equally dependable.

In Stirlingshire, similar suggestions were made in 1712, for the inclusion of nineteen new justices in the commission of the peace and the exclusion of five.² In this case the reason

¹ B.M., Loan 29/29, Harley's Scottish Papers, 12 March 1711, [unpaginated].

² ib.

given for the removal of the five was that they had little or no estate in the county but the urgency of the request was reflected in the composition of the additions as well as the addendum to the headed list, 'Given to the Lord Keeper by the Earl of Mar who begs it may be dispatched soon.' The list included such well known Jacobites as Sir Hugh Paterson of Bannockburn and several gentlemen, Hugh Wallace of Ingliston, Charles Bennet of Linelands, John Wright of Kersey, Ralph Dundas of Manner, William Govan of Drumquhassel and John Bowie of Saltcoats, who, although put in by Harcourt when he eventually engrossed a new commission for Stirlingshire in July 1713, were promptly put out again by Cowper in December 1714.¹ Also included in the list were the Earl of Linlithgow and Viscount Kilsyth, left out in 1708 on suspicion of complicity in the invasion scare but, as in the case of Inverness-shire, no action was taken to give effect to these requests.

The Tory William Cochran of Kilmar^cno^xck submitted a list of proposed justices for a new commission for Renfrewshire on behalf of its Whig member of parliament Sir Robert Pollok of Pollok. As in the case of Stirlingshire there seems to have been no suggestion of removal on the grounds of extreme Whiggery. The four gentlemen in this category were to be left out for perfectly

¹ P.R.O., C.234/74, Stirlingshire, 3 July 1713; 18 December 1714.

justifiable reasons; John Leckie of Newlands had died, Fairlie of Caldwell had no estate in the county and the eldest baillies of Paisley and Greenock had been erroneously assumed to represent Royal Burghs. Again the 22 proposed additions would seem to have contained several extremists. Sir Archibald Steuart of Blackhall was a member of the Renfrewshire family which had been classified as 'Protestant Malignant' in 1705.¹ Of the 22, moreover, only 14 were put into the new commission when it was engrossed by Harcourt in July 1713 and all of the 14 were retained by Cowper in December 1714,² again suggesting that fanatical Tories like Steuart of Blackhall had been originally included in the list but subsequently excluded from the commission.

Two 'lists of J.P.s for the shire of Ross' are to be found among Harley's Scottish papers. The first proposed to add 11 justices to the bench and omit 29 and the guiding hand is clearly that of the Earl of Cromarty. Lord Ross and his son (omitted from both lists), Sir Robert Munro of Foulis, Sir William Gordon of Dalphollie and the Squadrone Roses of Kilravock (also omitted from both lists) were clearly to be left out and the bench supplemented with Mackenzies. The second list clearly included a greater number of Rosses and Munros but added a further seven gentlemen guaranteed to support the Mackenzie interest in the shire, including Sir Donald Bain of Tulloch. One significant

¹ Hist. Mss. Comm., Portland Mss., viii, 202.

² P.R.O. C.234/69, Renfrewshire, 14 July 1713; 18 December 1714.

omission from both lists is John Mackenzie of Delvine. Mackenzie had conspired with Sir Robert Munro of Foulis, as indeed had Bain of Tulloch, over the question of elections to the burgh of Dingwall, and this must not have been considered commensurate with the Mackenzie interest. The proposed changes in the commission of the peace for Edinburghshire were, not surprisingly, recommended by the Jacobite member for the shire George Lockhart of Carnwath. He suggested the addition of 28 justices to and the omission of 13 from the existing commission. 5 of the 13 to be left out would appear to have been ineligible for inclusion. William Scott of Thirlstane, Mr James Anderson and William Douglas had no estates in the county and Walter Cheisley of Bonniton and Sir Robert Forbes of Auchinboove had been declared bankrupt. It is potentially interesting to note that since no new commission was engrossed for Edinburghshire at this time, these bankrupts must have continued on the bench, and possibly have acted, until the next regulation in 1713. Also to be excluded however was a further group of eight justices to whom the objection to inclusion would seem to be purely political, Sir Alexander Gilmour of Craigmillar, Sir John Inglis of Cramond, Sir James Maclurg of Vogrie, Killoch of Stoneyflatt, George Warrender of 'Brunsfeld', Sir Patrick Nisbet, Sir Thomas Gibson and Henry Nisbet of Dean. Clearly George Lockhart was not contented with the lengthy list of additions to the bench procured under duress

from Cowper,¹ for he went on to suggest the inclusion of a further 28 to boost the ranks of Tory justices in the shire.

The final proposed list of amendments dealt with Dumfries-shire where it was suggested by Mr. Murray that 16 gentlemen should be left out of the new commission. The reasons for omission were varied and as in the examples previously cited provoked no immediate response. Sir John Johnston of Westerhall was dead while Sir Patrick Maxwell, John Maxwell of Middlebie and William Douglas of Dornock were non-jurors. John Dalrymple of Waterside, William Fergusson of Caitlock, William Johnston of Bearholme, John Bell of Crowdienow, George Bell of Blackethouse, Maitland of Eccles and James Menzies of Enoch were men who had no estates in the county and were not qualified to discharge the office of justice of the peace. With the exception of the latter two, William Johnston of Bearholme and the non-juror William Douglas of Dornock, all were put out by Cowper himself in 1715. John Sharp of Hoclan and Mr William Alves were to be put out of the commission because they were 'attorneys and men of very bad character'. Since no regulation occurred as a result of this request these men of bad character remained on the bench and that the opinion may indeed have been biased is suggested by the fact that Cowper retained the latter in the commission in 1715.² The reason for the projected removal of John Melvill, James Carruthers of

¹Herts. R.O., Cowper (Panshanger) Mss., D/EP F.156.

²P.R.O., C.234/114, Dumfries-shire, 7 February 1715.

Roberthill and Archibald Douglas of Fingland was the intriguing one of 'Stuarts to the Duke of Queensberry and the Duchess of Buccleugh.'¹ It is not immediately clear what this reason implies but it is possible that the three gentlemen concerned had acted as informers or intermediaries between Stuart supporters and the Queensberry Court party. This hypothesis could be partially substantiated by the retention of the latter two in the commission of the peace by Cowper in 1715.² Alternatively it could be suggested that 'Stuart' in this particular case was meant to be 'Steward' and that the three gentlemen were to be removed from the commission because they were Queensberry's bailiffs.

The burden of this evidence has clearly shown that there was no lack of interest on the part of the localities to the composition of the bench. The proposed changes in the size of the various commissions was considerable; Edinburghshire, Stirlingshire and Renfrewshire to be increased by 17.04%, 25% and 64.28% respectively while Ross-shire and Dumfries-shire showed suggested decreases of 36% and 48.48%. Even where there was no appreciable alteration in size, there were significant structural changes, Inverness-shire taking out 12 justices and putting in 13 to an original commission of 34. There clearly was a widely expressed

¹B.M., Loan 29/29, Harley's Scottish papers.

²P.R.O., C.234/114, Dumfries-shire, 7 February 1715.

desire in Scotland for an assertion of Tory dominance at the local level to partner that at the centre yet these expressions went unheeded and it was only after the ministry had been in power for three years that the changes which eventually did take place in the commissions of the peace were executed by Harcourt as Chancellor in June and July 1713. During these months 13 commissions were issued for 11 Scottish counties. Aberdeenshire, Dumfries-shire, Fifeshire, Forfarshire, Lanarkshire, Linlithgowshire, Perthshire, Renfrewshire, Stirlingshire and Wigtownshire were each in receipt of one commission in July 1713, while Edinburghshire received three, the major change coming in June 1713 followed by two further amendments in July and August.¹ Since the flats for Lanarkshire and Linlithgowshire are missing, there is no indication of the scale of changes effected in these counties which are therefore excluded from subsequent numerical analysis.

With only 11 of the 33 Scottish counties involved and at only one particular time, there was clearly no dramatic or extensive regulation of the Scottish commissions of the peace under the Tories. In all known cases cited above, however, the size of the individual commission increased, the scale of changes ranging from

¹ib., C.234/45, Aberdeenshire, 23 July 1713; /114, Dumfries-shire, 3 July 1713; /58, Fifeshire, 23 July 1713; /46, Forfarshire, 14 July 1713; /68, Perthshire, 14 July 1713; /69, Renfrewshire, 14 July 1713; /74, Stirlingshire, 3 July 1713; /77, Wigtownshire, 14 July 1713; /64, Edinburghshire, 22 June 1713, 23 July 1713, 15 August 1713. C.231/9, Lanarkshire, 14 July 1713, Linlithgowshire, 3 July 1713.

an increase of 7.95% in the case of Berthshire where only 7 justices were added to an original commission of 88, to 71.26% in that of Aberdeenshire where 70 were added to and 8 omitted from an existing bench of 87. In Forfarshire the addition of 11 new justices increased the size of the commission by 44.4%, while in Dumfries-shire the addition of 23 and the omission of 8, augmented the bench by 45.45% and in Renfrewshire the inclusion of 15 new justices effectively increased the size of the commission by 44.11%. Even in cases where there was no marked increase in size, the structural alterations were often considerable. In Stirlingshire for instance, 19 justices were put into the commission for the first time while 13 were left out. Although the size of the commission increased by only 10.71%, therefore, the structural alteration was significant.

The fiats for the new commissions come in the form of a list of gentlemen to be added to the existing commission followed by a list of those to be left out, thus facilitating further analysis. Harcourt had also clearly indicated where the reason for omission was death. It is clear from a study of the new commissions that many of the justices put in had Tory, if not even Jacobite sympathies, while a corresponding proportion of those left out were hard core Whigs. In Aberdeenshire, for instance, Sir George Innes of Coxton, Farquharson of Invercauld and Moir of Stoneywood were all known to have Jacobite sympathies. Sir John Preston of Prestonhall was put

into the Fifeshire commission in 1713, Alexander Mackenzie of Frazerdale into the Edinburgh commission, Sir Hugh Paterson of Bannockburn into the Stirlingshire commission and Sir David Thriepland of Fingaskie into the Perthshire commission. All of these gentlemen supported the House of Stuart in 1715, all were attainted and their estates forfeited.¹ The Earl of Linlithgow and Viscount Kilsyth, both left out of the commission for Stirlingshire in 1708 on account of their suspected involvement in the French invasion scare, were readmitted in 1713. Similarly in Aberdeenshire the Earls of Errol, Marischal and Aberdeen and Lord Saltoun, excluded by Cowper in 1708 because of suspected Jacobitism, were readmitted by Harcourt in 1713 and in Fifeshire the Duke of Atholl, the Earls of Murray and Southesk and Lord Balgonie regained their seats on the bench. Grierson of Lagg was classified as a supporter of the House of Stuart in 1705² yet he appeared in the Dumfries-shire commission in 1713.³ Basil Hamilton of Baldoon was put into the commission of the peace for Wigtownshire by Harcourt in 1713. He was to join the English Jacobites under Thomas Foster in 1715 and was taken prisoner at Preston.⁴ Clearly a broad spectrum of the Tory gentry seem to have been put into the commissions of the peace by Harcourt in

¹I Geo. I 76.

²Hist. Mss. Comm., Portland Mss., viii, 202.

³P.R.O., C.234/114, Dumfries-shire, 3 July 1713.

⁴Sedgwick, The House of Commons, 1715-1754, ii, 99.

this regulation, while a corresponding cross-section of Whig justices would seem to have been left out. This is clearly discernible from a comparison of the recommendations received by Harley and Harcourt during 1711 and 1712 and the fiats for the respective counties as they emerged in 1713. Of the six counties whose representatives tabled requests for alterations in their commissions in order that they might more accurately reflect the political direction of the centre, two, Inverness-shire and Ross-shire, received no commission in Harcourt's sole regulation in 1713. Sir Donald MacDonald of Sclait, Cameron of Lochell the younger and Captain Allan Cameron remained out of the Inverness-shire commission as did the proposed Mackenzie contingent from its Ross-shire counterpart. This is initially surprising but it may have been decided that the Tory or even Jacobite bias on the Inverness-shire bench was impressive enough by any standard and the correspondence over the Ross-shire commission during 1708 and 1709 had shown that Mackenzie representation in that shire's commission of the peace more than matched their numerical representation in the shire.

Comparison of the four remaining counties yields interesting information regarding the alterations actually effected from the centre and those desired at the periphery. Clearly Tories were put into the commissions and Whigs left out, but the demands

of the pressure groups were never fully met. In Stirling-shire, for instance, 19 justices were added to the bench and 14 omitted compared to the 19 additions and 5 omissions proposed in 1712. The justices put in for the first time were broadly comparable with the request which came from the county with only four named in that list, William Bell of Maxwellfowels, Henry Cunningham of Boquhan, John Wordie of Cambusbarrow and Edmonstoun of Duntreath failing to appear. The Tory proclivities of the 19 admissions could be gauged from the fact that the Earl of Linlithgow and Viscount Kilsyth were attainted and their estates forfeited in 1716 as a result of their involvement in the rebellion, while a further six, Hugh Wallace of Ingliston, Charles Bennet of Linelands, John Wright of Kersey, Ralph Dundas of Manner, William Govan of Drumquhassel and John Bowie of Saltcoats, having been put in by Harcourt in 1713, were promptly put out again by Cowper eighteen months later. The greater discrepancy occurs between the 14 actually left out and the 5 proposed to be excluded since they had little or no estate in the county. The 14 omissions included 5 marked 'dead', while there was no reason given for the remaining 9. Of this 9, however, 5, the number of omissions proposed due to failure to meet the property qualification, were not reinstated when Cowper regained the Great Seal, while the remaining 4, John Cunningham of Ballendalloch, William Cunningham of Boquhan, David Forrester of Dinnyan and

John Buchanan of Craig of Lara were so reinstated,¹ a factor which strongly suggests that they were initially excluded by Harcourt on account of their Whiggery. The above comparative analysis suggests therefore that the locality was basically concerned with adding local Tory worthies to the bench, a process the politicians at the centre were prepared to support while at the same time adding their own dimension to the regulation by eliminating a certain proportion of justices on the grounds of their political opinions.

In the shire of Edinburgh, the re-emphasis was the reverse of the Stirlingshire experience. It had been proposed by George Lockhart in 1712 that 28 justices should be added to and 13 left out of the next commission of the peace. When the regulation did occur in June 1713, 43 justices were put in for the first time and 20 were omitted, followed by the omission of a further 4 in July. The new intake included 22 of the 28 proposed by Lockhart but considerably supplemented the recommendation with additional nominees. Of those proposed to be left out presumably for political reasons, however, only two, Sir James Machurg of Vogrie and Killoch of Stoneyflatt were actually omitted. They were joined by Whigs John Dalrymple of Killoch and Sir James Elphinstone, but 12 of the omissions were due to death while a further 2, those of Walter

¹ P.R.O., C.234/74, Stirlingshire, 3 July 1713; 31 December 1714.

Cheisley of Bonniton and Sir Robert Forbes of Auchinboove, were due to bankruptcy. A similar situation pertained in Dumfries-shire where the proposals of Mr. Murray had centred solely on the omission of 16 justices. When Harcourt engrossed the new commission for the shire in July 1713, 23 justices were added to and only 8 omitted from the bench, an increase of 45.45% as opposed to the proposed decrease of 48.48%. Seven of the eight left out of the commission had been so proposed by Murray of Broughton but it is interesting to note that the non-jurors, 'the attorneys and men of very bad character,' John Sharp of Hodan and Mr. William Alves and the politically undesirable John Melvill, remained on the bench. Even the dead Sir John Johnston of Westerhall 'continued in the commission,' the majority of the removals being categorized as having no estate in the county. Clearly some justices were omitted from the commission because their whiggery was aggressive. Alexander Fergusson of Craigdarroch for instance became the whig member for Dumfries Burghs in 1715 and also was the recipient of the Duke of Argyll's letter authorizing mobilization for the defence of Dumfries in the same year.¹ The aforementioned William Johnston of Bearholme also seems to have been of a particularly active disposition. In June 1709, as one of the Collectors of Her Majesties Customs, he had been instrumental in seizing twenty-four packs of smuggled tobacco at Annandale.² Johnston's alacrity in

¹ Sedgwick, The House of Commons, 1715-1754, ii, 29.

² An Introduction to the History of Dumfries, ed. R.C. Reid, (Dumfries, 1915), p.235-6.

detecting fraudulent documentation overlooked by Robert Douglas, the Collector at Glasgow, arguably supports a concomitant thesis of particular alacrity in his practice of Whiggism.

It does, however, become increasingly pertinent to question the degree to which the recommendations received by the ministry influenced the final composition of the various commissions of the peace. The above analysis suggests a limited extent and the Renfrewshire experience substantiates this view. William Cochran of Kilmarxhock recommended the inclusion of 22 new justices in and the removal of 4 from the existing commission. In July 1713, Harcourt added 14 justices to the bench and left out none. All 14 had appeared on Cochran's list but that they were the most moderate of Tories, if indeed Tories at all, is suggested by the fact that they were unanimously returned to the bench by Harcourt's Whig successor in 1715.¹ Jacobites like Sir Archibald Steuart of Blackhall were carefully overlooked. Certain factors, however, cast doubt on the question of whether Cochran's instruction had been, in effect, the guiding document. All 4 proposed removals were ignored. John Leckie of Newlands marked dead, Fairlie of Caldwell with no estate and the eldest baillies of Paisley and Greenock which were not Royal Burghs, all remained in the commission. The order in which the names to be included in the fiat occur moreover is completely

¹P.R.O., C.234/69, Renfrewshire, 14 July 1713, 18 December 1714.

different from that on Cochran's list, again suggesting an alternative source of information.

It is possible that central government was less than enchanted with the prospect of promoting the interests of fanatical Scottish Tories (an issue which will be returned to later), and consequently had found it necessary to moderate the claims received. In the Edinburghshire commission of June 1713, for instance, the last justice to be put in by Harcourt was one Chartres esquire. On 22 July 1713 Harcourt wrote to Oxford who had enquired whether the said gentleman was in the commission. Replying in the affirmative, he went on to suggest that if Oxford thought fit he would '... turn him out tomorrow morning, tho' I shall never be forgiven for it...'¹ True to his word, on 23 July the Lord Keeper explicitly removed Chartres from the Edinburghshire commission² and on 6 August again wrote to Oxford asking him to mention to Lord Bolingbroke that Chartres was 'in commission' in Edinburgh.³ It is possible to surmise that this triangular correspondence involving Chartres represented the problem of the recommendation of extreme Tories, in this case from Bolingbroke. Although there is no specific reference to the latter being the gentleman unable to forgive Harcourt for

¹B.M., Loan 29/138, Harcourt to Oxford, 22 July 1713. [unpaginated]

²P.R.O., C.234/64, Edinburghshire, 23 July 1713.

³B.M., Loan 29/138, Harcourt to Oxford, 6 August 1713.

putting the former out of the commission, Bolingbroke, as previously suggested, had become more extreme in his Toryism by 1713 and might have been expected therefore to initiate wild recommendations for inclusion, recommendations unable to be met by the ministry. This moderation of claims would only seem to be partially true however. Significant numbers from among the Tory gentry including many known Jacobites were put on to the Scottish bench for the first time in 1713. Equally significant numbers of Whigs were apparently removed. In Fifeshire, of the 15 justices put out by Harcourt who were not dead in 1713, 6, Bruce of Blackhall, Douglas of Kinglassie, Robert Wemyss of Grangemuir, Colvill of Blair, Robert Wallwood of Garrock and John Durie of Lethen were readmitted by Cowper in 1715.¹ Another justice, John Barclay of Collairnie had died in 1709.²

A further indication of the political affiliations of the Harcourt additions would be the extent to which they were retained or dismissed by his Whig successor in 1715. In the case of Forfarshire, of the 11 justices put into the commission by Harcourt in 1713, only 5 reappeared under Cowper in 1715.³ In Fifeshire the difference was even more spectacular. Of the 48 gentlemen put in in 1713, only 8 reappeared in 1715.⁴ In Edinburghshire in 1713

¹P.R.O., C.234/58, Fifeshire, 23 July 1713; 24 January 1715.

²A.H. Miller, Fife; Pictorial and Historical, (Edinburgh, 1895), 11, 345.

³P.R.O., C.234/46, Forfarshire, 14 July 1713; 13 September 1715.

⁴ib., /58, Fifeshire, 23 July 1713, 24 January 1715.

Harcourt made 40 additions to the commission, but only 17 reappeared in 1715.¹ This would suggest that the gentlemen put in by Harcourt in 1713 but omitted by Cowper in 1714/15 had either died in the interim period or were politically unacceptable, and the numbers involved in the relatively short time of 18 months suggests that the latter is more probable.

It would seem unlikely, however, that these changes would have satisfied all Tories since they did not even meet minimum routine adjustments. On 22 July 1713 Bolingbroke wrote to the Lord Chancellor advising that since the Scottish commissions of the peace contained the names of the 'Commissioners of the Justiciary' according to the Privy Council order of 1708, there would have to be broad changes in all commissions reflecting the death or removal of members of the judicature. He enclosed a list of 'the present establishment of that Judicature', (presumably the senior law officers in Scotland), and submitted that the commissions should be altered accordingly.² Such broad reappraisals did not take place however with only 11 of the 33 Scottish counties involved in regulations at this time and although certain changes in the legal composition of the commissions of these 11 counties were effected, it must be presumed that that component remained unaltered in the other 22.

¹ib., /64, Edinburghshire, 22 June 1713, 7 September 1715.

²ib., S.P. 44/114, Bolingbroke to Lord Chancellor, 22 July 1713.
[unpaginated]

It would seem even more unlikely that the changes would have satisfied Tory supporters in Scotland. Regulations of the commissions were not extensive with only 11 counties involved. Although the scale of the changes within these counties, averaging a 48% increase, was more impressive, there is no evidence to suggest that all of the Harcourt additions were hard-line Tories or even Jacobites. Some undoubtedly were, but the fact that a considerable number remained in Lord Cowper's commissions in 1715, suggests that many were not. Harcourt added 70 supposedly Tory gentlemen to the Aberdeenshire commission in 1713. Cowper left out only 5 of these justices when he engrossed a new commission after the accession of George I.¹ A similar situation occurred in Renfrewshire, where all of the 15 justices appointed by Harcourt in 1713, reappeared in Cowper's first commission after the accession.² There is furthermore the probability that a gentleman who was politically unacceptable to a Tory ministry in 1713, would have been equally unacceptable in 1712 or 1711 and the conclusion justifiably drawn that for the first three years of its duration that ministry and its parliament, elected on the crest of the Sacheverell wave, was represented in the localities by the nominees of its Whig predecessors. It is little wonder that there was dissatisfaction at the grass roots since it would seem that Harcourt had made as few changes as late as possible. It is also possible however that Harcourt was restricted in any efforts he may

¹ P.R.O. C.234/45, Aberdeenshire, 23 July 1713; 8 February 1715.

² ib., /69, Renfrewshire, 14 July 1713, 18 December 1714.

have desired to make to gratify local Tories, by the intervention of Oxford himself. Pressurized by the more aggressive elements of his party such as Bolingbroke to put the Whigs to the sword, Oxford had great difficulty in following a moderate restrained course. As reluctant to be dominated by the High Church Zealots as the Junto lords, he was constantly in danger of being consumed by both.¹ There seems to be no alternative explanation for the studied refusal to recommend to the Chancellor the requests for changes in the commissions of the peace emanating from the various Scottish counties. Arguably also however, the view Oxford had of Scotland was that instilled by Daniel Defoe with the identity the latter observed between Toryism and Jacobitism in that country. Defoe certainly warned Harley of the dangers of promoting Jacobite peers for the election as a management technique to ensure a compliant group in the Lords.² He further advised against the appointment of a successor to Queensberry, who died in July 1711, on the grounds that such an appointment would create opposition from unsuccessful aspirants and suggested that Oxford should act himself as Scottish manager.³ He further suggested in a long letter on Scottish administration, the importance of keeping power out of the hands of

¹A. McInnes, 'The Political Ideas of Robert Harley', History, 1, (1965), passim.

²Hist. Mss. Comm., Portland Mss., iv, 436, Defoe to Harley 18 November 1710.

³ib., v, 45-7, Defoe to Harley, 13 July 1711.

the Jacobites as well as the Squadrone Volante and of showing favour to the moderate centre.¹ Oxford seems to have taken this advice rather than listen to the pleas of George Lockhart that power in Scotland was being misused and that the court interests could not obtain justice. The threat was further made by Lockhart that the Tories in Scotland had hoped for more and that though they had served the Queen faithfully to date this would undoubtedly change due to lack of encouragement.² Sir Alexander Maxwell of Monreith also complained of the weakness of the administration in Scotland because the commission of the peace was in the hands of the disaffected, and he too called for new nominations to strengthen the government.³

It is in this context that the timing of such commissions as were issued by Harcourt becomes significant. With a general election due in the autumn of 1713, it became increasingly important to ensure that the Tory interest continued to be well supported. This was especially necessary, since at this point the rivalry between Oxford and Bolingbroke was particularly intense, and Oxford's awareness of this is clear from his replacement of Dartmouth as Secretary of State with Bromley, in order to retain the support of the High Church Tories which otherwise might be directed to Bolingbroke.⁴

¹ib., 82, Defoe to Harley, 3 September 1711.

²ib., 252-3, Lockhart to Oxford, 23 December 1712.

³Hist. Mss. Comm. Portland Mss., x, ⁴⁴⁰ Alexander Maxwell to Lord High Treasurer, 1712.

⁴Riley, The English Ministers and Scotland, p246.

Wyndham and Gwynn, both regarded as Bolingbroke's men, became respectively Chancellor of the Exchequer and Secretary at War.

The failure of the Commission of Chamberlainry and Trade,¹ which Oxford had hoped would help to satisfy the patronage requirements of the Scots in the wake of the abolition of the Scottish Privy Council, together with the general feeling of lack of government experienced by the Scots as a result of Oxford's attempt to be sole manager, a fact which had led directly to a bill to dissolve the Union, meant that some intervention was going to be necessary in Scotland to ensure the result of the 1713 election for the Tories. The office of third Secretary of State was therefore revived and given to Mar while Findlater was made Lord Chancellor of Scotland. The appointment of Mar again made it quite plain to the Scots where the channel to favour lay. A new Customs Commission was issued in September 1713.² Lists of peers eligible for pensions and rewards were drawn up and circulated.³ Dr. Riley has concluded that this sudden burst of activity was directly related to the fact that an election was imminent and suggests that changes were probably also made in the shires, since, for instance, the office of Sheriff depute had to be purged on the accession of George I.⁴

¹ P.R.O., S.P. 54/4, ff. 123-8, 15 November 1711.

² ib., T.17/2, f.455, 19 September 1713.

³ Hist. Mss. Comm. Portland Mss., v, 313-14 July 1713.

⁴ Riley, The English Ministers and Scotland p.249.

The timing of the Harcourt commissions in June and July 1713 assumes a certain significance in this context, and it would seem reasonable to assume that the changes made at local level at this time were expected to produce some concrete political result in the return of Tory members for the shires concerned. The return of members of parliament for the 11 counties involved show a predominance of Tories. Of the 11, only 3, Sir Robert Pollok of Pollok for Renfrewshire, John Stewart of Sorbie for Wigtownshire and Sir William Johnston of Westerhall for Dumfries-shire were Whigs.¹ Sir Alexander Cumming of Culter for Aberdeenshire was a Tory,² as was Sir James Hamilton of Rosehall for Lanarkshire, while George Lockhart returned for the shire of Edinburgh was a renowned Jacobite. Master James Donnally returned for Perthshire was the Tory Duke of Atholl's brother, Sir Alexander Areskine of Cambo for Fifeshire was imprisoned after being summoned to appear at Edinburgh on a charge of suspected Jacobitism in August 1715,³ Sir Hugh Paterson of Bannockburn for Stirlingshire was attainted and his estates forfeited in 1716,⁴ and John Carnegie of Boysack, returned for Forfarshire, was expelled the House in 1716 for his part in the rebellion. The Scottish counties which received commissions in June/July 1713, therefore, were predominantly counties for which a

¹ Sedgwick, The House of Commons, 1715-1754, ii, 360; 448; 181.

² ib., i. 597.

³ I. Geo I 40.

⁴ I. Geo I 76.

Tory member was returned in the 1713 election. This is in marked contrast to the counties which did not receive a commission. Of the 34 counties and districts in this category, 23 returned such distinguished Whigs as Sir James Campbell of Ardkinglass for Argyllshire, John Cockburn of Ormiston for Haddingtonshire, Sir Gilbert Elliot of Stobs for Roxburghshire and Captain Robert Munro of Foulis for Tain Burghs. Only two were Tories, Lieutenant General Charles Ross of Balnagowan for Ross-shire and the Jacobite Master James Murray for Elgin Burghs.¹ In the case of these two, moreover, Charles Ross would have been expected to succeed in Rossshire on the interest of his brother Lord Ross while James Murray would have been expected similar success in Elgin Burghs as second son of Viscount Stormount. If regulation of commissions of the peace played any part in the 1713 election it would seem that the effort was concentrated on probable Tory seats. A similar situation existed in England where the relationship was not between commissions sealed and Tory returns, but rather between commissions sealed and the counties which had the greatest number of seats.² It is difficult to relate renewal of commissions with election prospects, however, since only six prospective M.P.s. were added and in only four cases, Sir William Johnston of Westerhall for Dumfries-shire, Sir Hugh Patterson of Bannockburn for Stirlingshire, Sir Alexander Maxwell of Monreith

¹ Sedgwick, The House of Commons, 1715-54, i, 531, 521, 562; ii, 9, 282, 393, 283.

² L.K.J. Glassey, 'The Commission of the Peace, 1675-1720,' p.322.

for Wigtown Burghs and George Yeoman of Murie for Perth Burghs, for the shire concerned. The link is tenuous but is the only feasible explanation for the long-awaited ministerial involvement in the Scottish commissions of the peace. Delay could not have been the result of lack of information or indeed knowledge of local dissatisfaction. Nor could it have been the consequence of a total lack of political judgment with respect to the affairs of Scotland, to the extent that the latter failed even to reach the planning stage. In February 1711 'some overtures for the better preserving the peace of North Britain and the more impartial and effectual administration of justice', had been discussed.¹ The government proposed to instate ten or twelve peers, ostensibly nominated by the Queen, with powers requisite for the task. The ministry was aware of the disreputable record of the Scottish commissions of the peace and

... because justices of the peace are found to be very negligent in executing of the laws many of them also being ignorant of the new powers given by the late Acts of Parliament...²

decided to devolve considerable power both of appointment and jurisdiction to the proposed new Commissioners. It was to be considered whether or not these Commissioners would have the power to review, and if they saw cause, to reduce the decreats of the justices but there was no doubt that

¹B.M., Loan 29/29, 17 February 1711.

²ib.

... they may, and ought to have, the power yearly to name the justices in all the shires of Scotland and to enquire exactly into their behaviour and diligence in the impartial execution of the Laws.¹

The political implications for the subject of this study are immediately obvious. It would seem reasonable to assume that recommendations for inclusion in a commission of the peace reached the Lord Chancellor from a variety of sources. This proposition will be reinforced as the study progresses. It was clearly recognized by the ministry that this proposal would delegate considerable powers of patronage to the Commissioners through their 'great influence upon the shires by their naming of the justices of the peace.'² It may reasonably be argued that the patronage enjoyed by the Chancellor through his appointment and dismissal of justices of the peace was, especially in the case of Scotland, largely spurious, depending as it did on local nomination and susceptible therefore to the exigencies of local intrigue. To put such nomination into the provenance of ministerial puppets, beneficiaries of the initial patronage picnic opened up by the proposed commission, would, however, have removed from government control the very flexibility they were to operate so successfully regarding the composition of the commissions of the peace. Bombarded by claims and counter claims from the counties, they could and did ignore

¹ ib.

² ib.

them until they judged the timing right in the build-up to the 1713 election. The political dimension of the proposal, rather than any administrative advantages for Scotland was the key factor.

Political motivation, moreover, was explicit and the opinion expressed that

... this seems to be the plainest and surest way to bring the Elections both of Peers and Commoners to depend on the Queen and to lessen the power of a few great men who would make themselves necessary by pretending to have direction of the Elections.¹

The above claim not only admits the future possibility of political influencing of elections through the careful primary nomination of Commissioners, compounded with their secondary dispersal of favours and places at their disposal, but also suggests that a modification of that thesis already operated. The only difference between present and future was that in the former case, power rested with 'a few great men' whereas in the latter it was to rest with a few government sponsored, if regally nominated, great men. It would seem reasonable to conclude therefore that the commission of the peace in Scotland was susceptible to political manipulation. The proposal to legitimize this manipulation by devolving control of the composition of the commissions to a fixed body of men failed because the Commission of Chamberlainry and Trade itself failed, but the proposals illustrate the fact that Harley himself was not averse to manipulating the bench for

¹ib.

political advantage. It may therefore also be possible to suggest that the long delay in engrossing new commissions for the Scottish counties was due not just to Harley's dislike of local extremism but also as a direct result of anticipated alterations in procedure. That this is only part of the explanation, however, is clearly discernable from the fact that the Commission had failed by the end of 1711 whereas new commissions of the peace were not engrossed for Scotland until July 1713.

The rivalry between Oxford and Bolingbroke for the spiritual leadership of the Tory party came to a head in July 1714. Oxford's policy of moderate courses at all times and his consequent refusal to assume a purely party political role led to his dismissal. Before the Queen died, however, she gave the white staff to Shrewsbury rather than Bolingbroke and the Tories braced themselves for a period of political insignificance.¹

Harcourt's handling of the Scottish commissions of the peace from 1710-1714 was not overtly dramatic. There was no ruthless purge of Whig incumbents, indeed there was no alteration in any commission until 1713. The extent of the changes was minimal with only 11 of the 33 counties being involved and although the scale of changes within the counties was more impressive with an average increase of 48%, this still left Tory ambitions unsatisfied. This is particularly significant in the case

¹ Riley, The English Ministers and Scotland, pp.253-5; A McInnes, Robert Harley, Puritan Politician, pp.164-5.

of Scotland since Harcourt was the first Tory Chancellor involved in appointing justices to the bench. One conclusion which could be drawn is that the Scottish commissions were already sufficiently permeated with Tory if not Jacobite support, a claim which had been made in the aftermath of the attempted French invasion of 1708. There is, however, the probably more acceptable hypothesis that Harcourt's minimal remodelling reflected Harley's moderate approach to consensus politics, although such an interpretation would of necessity require qualification since by 1713 Harcourt had opted for the Pretender rather than the Hanoverians¹ and might therefore have been tempted, at a time when Bolingbroke's star was increasingly on the ascendant, to make a bid to pack the benches throughout the country with the respectable gentlemen from the Tory ranks. Such a policy would moreover have been consistent with Bolingbroke's anti-Whig vendetta. It is significant, however, that the surviving correspondence regarding Scottish commissions had been sent to Harley rather than Lord Chancellor Harcourt. The Harcourt papers, however, either have not survived or are inaccessible and therefore it is impossible to state conclusively that Harcourt reacted solely to the prompting of Harley. Shire representatives, nevertheless, were calling for action from Harley at the same time as Defoe was urging moderation in Scottish politics and it was only when

¹ Lord Campbell, Lives of the Chancellors, iv., . 470-1.

a general election was imminent that such action was eventually taken. Even then, the extent of the changes suggests that the composition of the commissions of the peace was not fundamental in ensuring political loyalty. It seems reasonable to assume therefore that Harley took Defoe's advice as opposed to Lockhart's and resisted the latter's extremism in Scotland as he had resisted Bolingbroke in England.

The political crisis which culminated in the death of Queen Anne on 1 August 1714 had seen the dismissal of Oxford, the fall of Bolingbroke and the anticipated decline of rampant Toryism. Lord Harcourt as Lord Chancellor was a Lord Justice under the Regency Act of 1706 but George I on his arrival in England showed no inclination to retain a suspected Jacobite as Chancellor and Harcourt therefore was dismissed on 21 September.¹ His successor might have been expected to do more for the Whigs in the localities than he had done for the Tories.

¹ Lord Campbell, Lives of the Chancellors, iv., 482-3; W. Michael, England under George I: The Beginnings of the Hanoverian Dynasty, (London, 1936), pp. 92-3.

4. The Commission of the Peace under Lord Cowper 1714-18.

The political bias of the eighteen Lords Justices nominated by George I in accordance with the Regency Act of 1706, indicated that the new ministry would be predominantly Whig. The administration announced a few days after the King's arrival in England subsequently included two of the new generation of Whigs, Townshend and Stanhope, as Secretaries of State. Somers was in the Cabinet though he held no official position, Sunderland became Lord-Lieutenant of Ireland, Wharton Lord Privy Seal, Orford First Lord of the Admiralty and Cowper Lord Chancellor. Shrewsbury remained as Lord Treasurer for a few weeks but the Treasury was subsequently put into commission with Halifax as First Lord. Robert Walpole became Paymaster General and leader of the House of Commons.¹ The Scottish ministry saw the interests of the Squadrone Volante enhanced with the appointment of Montrose as Secretary of State and Roxburgh as Lord Privy Seal,² but the influence of Argyll was of fundamental importance in Scottish politics and he remained Commander-in-Chief in Scotland with Islay Justice General and Lord Register and Sir David Dalrymple Lord Advocate.³

¹Basil Williams, The Whig Supremacy 1714-1760, (Oxford, 1939), pp. 146-8. Wolfgang Michael, The Beginnings of the Hanoverian Dynasty, pp 92-102.

²ib., p.103.

³Riley, The English Ministers and Scotland, pp. 257-8.

Parliament was dissolved on 5 January 1715 and the elections took place during January and February. It would seem that changes were made in local administration as a timely indicator of where ministerial influence lay and Lord Cowper began the anticipated adjustment of commissions of the peace in Scotland as early as December 1714.¹ The pre-election changes affected 20 of the 33 Scottish counties including Orkney and Shetland for which a fiat exists with no corresponding docquet book entry, and Linlithgowshire and Berwickshire for which there are docquet book entries but no fiats.² Cowper engrossed a further five commissions in March and three in April and this completed the first phase of the 1715 amendments. It might have been expected that changes would have been effected in a greater number of shires in an attempt to assure the return of a Whig member wherever possible. Time however, was short. The reorganization of the English commissions had begun immediately after Cowper's appointment and had continued apace until the elections.³ In spite of the fact that both Cowper and his Secretary of Commissions Richard Woollaston had previous experience of the workings of the Crown Office, it would

¹ P.R.O., C.234/69, Renfrewshire, 18 December 1714; /74, Stirlingshire, 18 December 1714.

² ib., /66, Orkney and Shetland, 14 January 1715; ib., C.231/9, Linlithgowshire, 24 January 1715; /9, Berwickshire, 29 January 1715.

³ L.K.J. Glassey, 'The Commission of the Peace 1675-1720,' p.351.

have been an impossible task to acquire and collate recommendations and subsequently issue commissions for all the counties of England, Wales and Scotland in the period from October 1714 to February 1715. It is significant, however, that of the 20 counties involved in pre-election adjustments, 9 had been altered by Harcourt in 1713. Of the 11 Scottish counties in receipt of Harcourt's Tory amendments of July 1713, only 2, Edinburghshire and Lanarkshire, did not receive a commission before the 1715 election.¹ The pre-election changes, therefore, though not affecting every county, did include all but two of those which might have been subject to undue Tory interference.

The scale of the changes in the bench varied from a decrease of 36.58% in the case of Wigtownshire where 4 justices were admitted to the commission of the peace and 19 left out, to an increase of 56.52% in that of Dunbartonshire where 17 justices were put in and 4 left out.² This, coupled with the extent of the changes, suggests a much more radical alteration than Cowper had previously undertaken. In Orkney and Shetland for instance, although there is no accompanying docket book entry, the size of the commission was decreased by 58%.³ Certainly there seems to have been a longstanding grievance regarding the commission of the peace

¹ P.R.O., C.234/45, /46, /114, /58, /68, /69, /74, /77, /56; ib., C.231/9, Lanarkshire and Linlithgowshire.

² ib., C.234/77, Wigtownshire, 7 February 1715: /55, Dunbartonshire, 7 February 1715.

³ ib., /66, Orkney and Shetland, 14 January 1715.

in this particular case. In 1712 the Lord Advocate Sir James Steuart had written to Oxford reporting a major disagreement between the justices and the local ministers.¹ The magistrates had accused the ministers of theft and the ministers had subsequently raised criminal letters against them before the Court of Justiciary. The justices then raised letters of recrimination against four of the ministers for immorality and slander. Sir James Steuart's sympathies seemed to lie with the ministers and after accusing the justices of high handed behavior, he called for the removal of justices of the peace from Orkney and Shetland, the precedent for this being that their presence had been an innovation of 1707, previously baillies appointed by the monarch's Steward keeping order in this remote territory. Failing this he requested a review of the commission hoping that the Lord-Lieutenant, the Earl of Morton, would concur. The justices themselves had presented a Memorial to Secretary of State St. John in 1712 voicing their complaint that they were obliged to be put to a greater inconvenience than their counterparts in the other Scottish counties because of the remoteness and the scattered geography of the islands. They also complained bitterly about the aforementioned 'tyranny' of the Presbyterian Ministers.² Such was their concern that they presented a similar address to the Queen and on 3 July 1712

¹ Hist. Mss. Comm., Portland Mss., x, 272, Sir James Steuart to the Earl of Oxford, 7 June 1712.

² P.R.O., S.P. 44/114, ff. 36-8.

St. John forwarded copies of both appeals to the Lord Keeper.¹

No review had taken place at that time, but the considerable diminution in the size of the commission could possibly be a result of Cowper becoming the recipient of appeals originally intended for Harcourt.

Although Orkney and Shetland may have been a particular case, the overall scale of changes indicates a considerable remodelling of commissions of the peace, potentially in the Whig interest. Between December 1714 and February 1715, 248 justices were added to the commissions of the 18 counties for which the flats remain, Linlithgowshire and Berwickshire being missing. In Dunbartonshire, Daniel Campbell of Shawfield was put into the commission for the first time,² while in Kincardineshire, James Scott of Comiston,³ the member of parliament for the county, was included and in Nairnshire, James Brodie of Brodie,⁴ the member for Elginshire was also newly admitted. All were gentlemen with impeccable Whig records. In Elginshire itself, Hugh Rose the younger of Kilravock and Colonel William Grant, again well known

¹ib., ff. 39-41.

²P.R.O. C.234/55, Dunbartonshire, 7 February 1715.

³ib., /60, Kincardineshire, 5 January 1715.

⁴ib., /65, Nairnshire, 5 January 1715.

Whigs, were put into the commission of the peace¹ while in Stirlingshire John Cunningham of Ballendalloch, William Cunningham of Boquhan, David Forrester of Dunwan and John Buchanan of Craig of Lara were readmitted after having been left out by Harcourt in 1713.² Similarly in Dumfries-shire John Dalrymple of Waterside, William Johnstone of Bearholme, James Carruthers of Roberthill, John Bell of Crowdieknowe and Alexander Fergusson of Craigdarroch were put in again by Cowper after omission by Harcourt in 1713.³ In both cases, since the gentlemen concerned had obviously not died in the interim period and in the light of aforementioned character sketches of William Johnstone of Bearholme and Alexander Fergusson of Craigdarroch, it seems reasonable to conclude that they had been excluded by Harcourt on account of their Whig proclivities. In Ross-shire Robert Munro of Foulis, William Ross of Aldie, Andrew Ross of Shandwick, David Ross of Littledean, Thomas Ross of Culrossie, George Munro of Sinclair and Hugh Ross of Folly were put into the commission for the first time. All had been recommended by Lord Ross in 1708 as Whig gentlemen suitable for inclusion in the commission of the peace.⁴

¹ib., /57, Elginshire, 3 January 1715.

²ib., /74, Stirlingshire, 3 July 1713; 31 December 1714.

³ib., /114, Dumfries-shire, 3 July 1713; 7 February 1715.

⁴ib., /70, Ross-shire, 24 January 1715; Herts R.O., Cowper (Panshanger) Mss., D/EP F.156.

It seems clear, therefore, that a considerable number of the justices put in for the first time by Cowper in December 1714 and January and February 1715, were, as would be expected, Whigs. Correspondingly, it might be expected that many of the 306 justices omitted at this time might be Tories, and in many instances this seemed to be the case. A significant proportion of Harcourt's 1713 additions the majority of whom would have been expected to be Tories, were left out by Cowper in 1715. In Fifeshire, 41 out of 54 such additions were omitted.¹ Clearly some were routine exclusions. Although for instance, Sir James Sharp of Strathlyzum had sold his estates in 1712, he had been inadvertently put in by Harcourt in 1713 and had to be omitted by Cowper in 1715. Jacobitism was also, however, an instrumental factor in removal. Balfour of Farney for instance subsequently participated in the rebellion in 1715, was attainted and his estates forfeited. Even association with the disaffected was considered sufficient grounds for removal; Alexander Erskine of Canbo, whose father took part in the rebellion, being put out along with James Balfour of Randestoun who was linked by marriage to the Earl of Errol. David Scot of Scotstarvit and his son were also omitted from the new commission. The former, though

¹ P.R.O., C.234/58, Fifeshire, 23 July 1713; 24 January 1715.

... a man of great sagacity, prudence and economy who recovered and improved the paternal estate which was much encumbered by the loyalty of his father and grand-father and their firm adherence to the interest of the Royal Family....

had in addition, married a daughter of the Jacobite Grierson of Lagg. His daughter in turn was the mother of Viscount Stormount.¹ Clearly such a pedigree was not consistent with a place on the bench. In Dumfries-shire, 13 of Harcourt's 23 additions of 1713 failed to appear in 1715 including the aforementioned Jacobite Sir Robert Grierson of Lagg.² Similarly in Wigtownshire, of the 12 Harcourt inclusions of 1713, 7 were omitted by Cowper in 1715.³ Of the 252 justices put in by Harcourt in 1713, however, only 101 were dropped by his Whig successor in 1715, and this opens the question of what percentage of the Scottish commissions remained Tory after Cowper's succession to the Chancellorship in 1714.

In Renfrewshire, for instance, all of the justices put in by Harcourt, the majority of whom would be expected to be Tory, were included by Cowper in 1714 and this is also the case in Forfarshire where the 12 Harcourt additions of 1713 reappeared in 1715, and where a similar situation would be expected to pertain.⁴ In Aberdeenshire, of the 70 gentlemen added to the commission of the peace in 1713, only 5 were omitted by Cowper in 1715.⁵ The 65 who remained included

¹ A.H. Miller, Life: Pictorial and Historical, ii, 276; 347; i, 367; 368; i, 155-6.

² P.R.O., C.234/114 Dumfries-shire, 3 July 1713; 7 February 1715.

³ ib., /77, Wigtownshire, 14 July 1713; 7 February 1715.

⁴ ib., /69, Renfrewshire, 14 July 1713, 18 December 1714; /46, Forfarshire, 14 July 1713, 5 January 1715.

⁵ ib., /45, Aberdeenshire, 23 July 1713, 8 February 1715.

such prominent Jacobites as Sir George Innes of Corton, William Farquarson of Invercauld, James Moir of Stoneywood and William Moir of Invernety as well as the Earls of Errol, Marischal and Aberdeen and Lord Saltoun who had been imprisoned as suspected Jacobites in 1708. Cowper, moreover, was not only failing to put out such justices, whose political sympathies were known and disapproved of, but he was also putting well-known Jacobites in for the first time.

In Kincardineshire, James Burnett, a staunch Jacobite, challenged James Scott of Comiston, an equally staunch Hanoverian Whig, to represent the county in the 1715 election.¹ James Scott duly reappeared in the Kincardineshire commission of the peace of 5 January 1715, amazingly accompanied by James Burnett, put in by Cowper for the first time.² It seems difficult to avoid the conclusion that if the Chancellor is not to be considered negligent in disposing of the patronage at his disposal, there must have been a serious doubt about the reliability of his sources of information, at least as far as Kincardineshire was concerned. In Renfrewshire again the Tory William Cochran of Kilmar^cno^xck was put into the Commission for the first time by Cowper while in Elginshire the prominent Jacobite Sir Robert Gordon of Gordonstoun shared a similar distinction.³ In Fifeshire the

¹Sedgwick, The House of Commons, 1715-1754, i, 387.

²P.R.O., C.234/60, Kincardineshire, 5 January 1715.

³ib., /57, Elginshire, 5 January 1715.

Marquess of Tullibardine and in Stirlingshire the Earl of Linlithgow and Viscount Kilsyth, all under suspicion for their suspected Jacobitism in 1708 were put into their respective commissions of the peace by Cowper in 1715.¹ The commission for the county of Cromarty in 1715 included Alexander Urquhart of Newhall, member for that county from 1715 to 1722. Urquhart voted consistently against the administration in all recorded divisions and was strongly sympathetic to the Stuart cause.² In Perthshire, Lawrence Mercer of Aldie, renowned for his Jacobitism, was put into the commission for the first time,³ while Sir James Stuart of Burray, who attended a meeting at Wick to proclaim the Pretender in January 1716, had been put into the commission for Orkney and Shetland for the first time in January 1715.⁴ With 60% of Harcourt's basically Tory nominees remaining in their places, it is indeed surprising that the political bias of Cowper's new inclusions was not more assuredly Whig. It would seem indeed grossly negligent of a Whig Chancellor to promote such a large number of justices of the opposing political persuasion at a time of doubtful political stability.

This impression of lack of judgment for the Whig interest

¹ib., /58, Fifeshire, 24 January 1715; /74, Stirlingshire, 31 December 1714.

²ib., /54, Cromarty, 9 February 1715; Sedgwick, The House of Commons, 1715-1754, ii, 490.

³P.R.O., C.234/68, Perthshire, 25 February 1715.

⁴ib., /66, Orkney and Shetland, 14 January 1715; ib., SP. 54/11, f116, 15 February 1716.

can however be partially counterbalanced. In November 1714, for instance, the commission of the peace for Inverness-shire was assessed and Alexander Grant of Grant, the Whig member for Elgin and Forres wrote to John Forbes of Culloden:

... I hope the list of justices of the peace will please you; I have put in your brother (Duncan Forbes), Muirtune (Sir Thomas Calder of Muirton (Moray) Chives (Scheriz of Muirton) (Inverness) and several others.¹

This indicates some manipulation of county offices at the ministry's disposal in the interests of its representation in parliament and this is reinforced by the arrival of the staunch Whig John Forbes, at Westminster having successfully ousted that equally staunch Jacobite Master Alexander Mackenzie of Fraserdale for the shire of Inverness in the 1715 election. There is moreover a further suggestion that some meaningful investigation into the character of those proposed for commissions was carried out by the Secretary of Commissions. Though Sir Thomas Calder of Muirtoun was proposed by Alexander Grant of Grant, he did not appear in the February commission for Inverness.² Sir Thomas succeeded to the baronetcy, but not the estates of Muirtoun on the death of his father James in 1711. The estates had been sold in 1710. Sir Thomas was implicated in the 1715 rebellion and though he escaped being attainted in 1716, was certainly Jacobite in his political sympathies.³ Further

¹ More Culloden Papers, ed. D. Warrand, (Inverness, 1925-30), ii, 48. Alexander Grant of Grant to John Forbes of Culloden, 20 November 1714.

² P.R.O., C.234/59, Inverness-shire 28 February 1715.

³ G.E.C., Baronetage, iv, 348.

evidence of Jacobite exclusion can be deduced from the fiat of February 1715 for Inverness-shire. This fiat is a 'put in', 'leave out' type which distinguishes those left out because they were dead, and those merely left out with no reason given. There are three in this latter category for Inverness-shire on this occasion, Keillochy, Mackinnon and Fraser of Rehit junior. Mackinnon was attainted in 1716,¹ and Fraser of Rehit junior is probably identical with the Fraser of Relig who was a prominent Jacobite, subsequently attainted in 1745, and whose political leanings might well have been suspect. The Perthshire fiat for 1715 which is of the same type suggests that a similar situation existed there where 6 gentlemen were left out because they were dead and 17 were left out with no reason given.² It seems unlikely that all 17 could have committed some misdemeanour which would have warranted their removal from the commission and it therefore seems reasonable to assume that in Perthshire as in Inverness-shire gentlemen were left out for political reasons. This procedure, however, seems neither to have been thorough nor uniform. MacPherson of Cluny, Mackenzie of Fraserdale and Ross of Clava all remained in the commission for Inverness-shire and all were attainted in 1716. It would seem highly probable, however, that Lord Cowper would have found it difficult to gather the necessary information on the nominees for

¹I. Geo I, 76.

²P.R.O., C.234/68, Perthshire, 25 February 1715.

the commissions of the peace. At the foot of the fiat for Bute in 1715 there is a short note stating, 'after inquiry I cannot discover whether these marked 'x' are dead or alive.'¹ If it was impossible to ascertain whether a man was dead or alive, it could reasonably be expected in many cases to be even more impossible to determine whether or not he was a Jacobite, a political affiliation he would be unlikely to advertise. It is interesting to note, however, that Cowper's doubts led to him omitting the three gentlemen thus marked, Robert Stewart, bailliff of Rothesay, Robert McNeal of Kilmory and Archibald McCaw of North Garachty, from the next commission, whereas suspicion of Jacobitism did not necessary lead to a similar exclusion.

This dichotomy between reassertion of the new administrations interest by adding Whigs and reinforcement of the old by ignoring Tories whose loyalty was suspect or indeed by adding Tories or even Jacobites for the first time, was particularly evident in the case of Ross-shire which had been the subject of the bitter controversy over its commission of the peace in 1708-09.² Of the 15 justices put in by Cowper in January 1715, 6 had been recommended by Lord Ross as acceptable to the Whig interest in 1708 but had not been included in the commission of 7 February 1709.³ Furthermore in this

¹ ib., /51, Bute, 3 August 1715.

² Herts, R.O., Cowper (Panshanger) Mss., D/EP F.156.

³ ib., 'True Representation of the Justices of the Peace of Ross 1708'; P.R.O., c 234/70 Ross-shire, 7 February 1709; 24 January 1715.

group, 10 were surnamed either Ross or Munro and although Lord Ross himself was significantly omitted from the 1715 list, this proportion, in comparison with the single Cromarty nominee admitted at the same time, Colin Mackenzie of Dachpollie,¹ suggests an increasing dominance of the Ross interest in the shire at the expense of that of the Earl of Cromarty. Although the 16 justices left out in 1715 included 8 Mackenzies, however, the commission still contained Sir John Mackenzie of Coull and Alexander Mackenzie of Applecross both of whom were attainted in 1716.² This would seem to run contrary to the protestations of loyalty made by Cromarty on behalf of the Mackenzie clan,³ and reflect a certain lack of political judgment on the part of Cowper, who seemed to adhere to the principle which he was to reiterate to George I, namely that unless disaffection could be legally proved, a justice would remain in the commission⁴ albeit under suspicion. Inevitably, therefore, nomatter how many Whig justices may have been put in in the interests of party, a considerable proportion of the Tory landed gentry were left in in the interests of principle and it was this hard core which led to

¹Herts. R.O., Cowper (Panshanger) Mss., D/EP F.156, 'State and Case of the Shire of Ross'.

²I. Geo. I, 76.

³Herts. R.O., Cowper (Panshanger) Mss., D/EP F.156, 'Memorial to Her Majesty by the Earl of Cromarty.'

⁴Lord Campbell, Lives of the Chancellors, iv, 'Memorandum to George I,' pp. 374-5.

subsequent criticisms of Cowper's handling of commissions later in 1715.¹

It becomes pertinent to ask, in view of this rather contradictory remodelling, if there was any relation between the choice of counties receiving a commission early in 1715 and the outcome of the general election. Of the 20 counties involved, 12 returned the same member as they had in 1713, 6 changed, and Nairnshire and Cromarty interchanged representation in accordance with the terms of the Treaty of Union. Of the 6 counties involved in changes, all but Orkney and Shetland (which replaced Colonel George Douglas who transferred to Linlithgow Burghs with the Administration Whig Sir James Moody of Melsitter), replaced Tory sitting members with Whigs.² In Linlithgowshire John Houston esquire was replaced by Whig Sir James Cunningham of Milnecraig. Perthshire replaced Tory Sir James Murray of Donnally with Lord James Murray of Gairth, who, although nominally a Tory, voted consistently with the Whigs. The remaining three counties replaced well-known Jacobites with Whigs or their accomplices, Squadrone Volante Haldane of Gleneagles taking Stirlingshire from Sir Hugh Patterson of Bannockburn, John Anstruther of Anstruther taking Fifeshire from Sir Alexander Erskine of Cambo and John Forbes of Culloden succeeding Alexander Mackenzie of Fraserdale in Inverness-shire.

¹ib., p. 373.

²Sedgwick, The House of Commons, 1715-54, ii. Biographical details of members of parliament from 1715 are taken from Sedgwick's 2 volume work.

Of the 12 counties in which there was no change, 9 returned Whig members, Sir Robert Pollok of Pollok in Renfrewshire, Colonel James Scott of Comistoun in Kincardineshire, Alexander of Grant in Elginshire, Sir James Campbell of Ardkinglass in Argyllshire, John Campbell in Dunbartonshire, Sir William Johnston of Westerhall in Dumfries-shire, John Pringle of Haining in Selkirkshire, Brigadier General John Stewart of Sorbie in Wigtownshire and the Squadrone Volante George Baillie of Jerviswood in Berwickshire. The remaining 3 returned sitting Tory members, Lieutenant General Charles Ross of Balnagown for Ross-shire, Sir Alexander Cumming of Culter for Aberdeenshire and the Jacobite John Carnegie of Boysack for Forfarshire. It is possible that reorganization of the commissions of the peace in the Whig interest indicated ministerial favour which would be hopefully reflected in the outcome of the elections, and assuming this motivation, intervention would have been considered more than successful since Sir Alexander Cumming of Culter, though nominally a Tory, voted consistently with the administration thereby reducing the failure rate to two. Alternatively, however, Cowper could merely have been systematically working his way through the Scottish counties without any particular motive in mind with respect to the elections. By April 1715, for instance, he was to have completed 27 of the 33 counties and a further 2, Banffshire and Bute were adjusted in August. Similar statistical conclusions moreover could be deduced from analysis of election returns for the counties which did not receive a new commission prior to the election. Of the 12 counties in this

category, 6 returned the sitting Whig member and Caithness and Kinross-shire unrepresented in 1713, returned Whigs, though Sir Robert Gordon of Gordonstoun who sat for Caithness supported the House of Stuart in 1715 and was only pardoned through the influence of the Duke of Argyll. Of the remaining 4 seats which changed hands, 2 returned Whig members while Lanarkshire replaced Tory Sir James Hamilton of Rosehall with Whig James Lockhart of Ley and Edinburghshire the Jacobite George Lockhart of Carnwath with John Baird of Newbyth. While it is therefore true that two sitting Tories were defeated without the help of any remodelling of the bench, the weighting of the evidence seems to indicate some relative connection, at least in intention, between the Whigs conclusive electoral victory and the issue of new commissions.

This hypothesis is reinforced by the fact that 8 of the Whigs returned in 1715 for counties which had received pre-election commissions were returned on the Argyll interest. This is in marked contrast to the 12 counties which were not in receipt of such commissions where only one of the Whigs, William Douglas of Cavers, returned for Roxburghshire was classified as an 'Argyll Whig'. This suggests that Argyll may have been particularly active in making recommendations to a Chancellor to whom, it has been suggested, representation had to be made before action would be taken.¹ It also emphasizes the underlying rivalry in Scotland between the

¹L.K.J. Glassey, 'The Commission of the Peace, 1675-1720,' p. 276.

Squadron and the Argyll interests and suggests that Argyll was possibly attempting to undermine what he thought was an undue Squadron influence in the Scottish ministry by weakening it at the grass roots. If this supposition is correct then the vital factor in Scottish politics could at this time be not so much party per se (for both the Squadron and the Argyll groups could be relied upon to support the administration in Parliament), but rather interest, and this adds a further dimension to the manipulation of local government office in the hands of the ministry.

Cowper's handling of the pre-election commissions, therefore, was not inconspicuous. During the period, 60.60% of the Scottish counties had been involved and experienced changes on a relatively large scale. There seems to have been the intention of reinforcing the Whig interest in the localities in the wake of success at the centre but this activity was counterbalanced by the desire on Cowper's part not to dispense with the services of reputable country gentlemen merely on account of their political inclinations. Subsequently justices whose disaffection may have been suspected but could not be proved, remained in the commissions and it is therefore erroneous to talk of a radical purge or exhaustive remodelling of shire officials in the context of the magistracy.¹ Cowper, as he had done during his first period as Chancellor, seems to have followed

¹W.A. Speck, Tory and Whig: The Struggle in the Constituencies 1701-1715, (London, 1970), p.82.

a comparable policy of moderation, for although the extent and scale of the changes increased considerably, there was also a much greater necessity for action. Cowper had screened the Scottish lists in 1708 and there would have been little likelihood of significant alterations being necessary between that date and his resignation in 1710. There had, moreover, by 1715, been the intervention of a Tory ministry with remodelling plans of its own which necessarily required adjustment with the return of the Whigs. There was, however, no comprehensive purge of justices prior to the election of 1715. 248 justices were added to the Scottish commissions of the peace compared to 306 who were left out. Many of the 306 however had died in the interim period from the issue of the last commission and although many Tory justices lost their places, many retained them. Cowper seems to have followed similar policy to that favoured in England where he was

... more often content to add names in just sufficient numbers to balance the gentlemen added by Harcourt who remained in the commission,¹

although in the case of Scotland, where the threat was subversive Jacobitism as opposed to Toryism, such additions would require to be supplemented by an accompanying moderate purge.

This first phase of Cowper's Chancellorship was completed two months later. In March commissions were sealed for Ayrshire,

¹ L.K.J. Glassey, 'The Commission of the Peace, 1675-1720' p.355.

Edinburghshire, Caithness, Kirkcudbright, and Lanarkshire for which no fiats exist till 1788.¹ In April commissions were engrossed for Clackmannanshire, Kinross-shire and Sutherland.² The scale of changes varied from a decrease of 29.41% in the size of the commission for Clackmannanshire where one justice was added and six omitted, to an increase of 86% in Kinross-shire where eight justices were added to the bench and two removed.. Even in cases where there was no appreciable alteration in the size of a commission, the structural changes were often significant. In Edinburghshire, for instance, 19 justices were added and 14 omitted, while in Kirkcudbright 13 were put into the commission for the first time and 11 were left out. As before, the regulation seems to have evolved around a predetermined policy of removing Jacobites and counterbalancing this removal with the inclusion of whigs. Also, as before, this objective seems to be thwarted with the inexplicable inclusion of many disaffected gentlemen. In Sutherland for instance, Whigs George Munro of Newmore and George Munro of Culcaine were put in for the first time as was Tory Lieutenant Charles Ross of Balnagown. If the latter's loyalty could be depended upon, however, that of Sir Robert Gordon of Gordonstoun, also put in for Sutherland

¹ P.R.O., C234/48, Ayrshire, 6 March 1715; /64, Edinburghshire, 14 March 1715; /52, Caithness, 15 March 1715; /62, Kirkcudbright, 3 March 1715; ib., C.231/9, Lanarkshire, 16 March 1715.

² ib., C.234/53, Clackmannanshire, 21 April 1715; /61, Kinross, 21 April 1715, /75, Sutherland, 30 April 1715.

for the first time in 1715, could not and by December 1715 he was writing to the Earl of Sutherland,

... I came here to submit myself to the government and depend upon the King's clemency for pardon of what crimes I have been guilty of ..., in obedience to my Lord Duke of Argyll's commands whose friendship I have reason to expect...¹

It was indeed this friendship which saved Sir Robert from being attainted and his estates forfeited. In Kinross-shire, the exclusion of Lord Burghlie, suspected of complicity in 1708 and attainted in 1716 because of his involvement in the Stuart interest in 1715, was nullified by the inclusion of Sir Lawrence Mercer of Aldie who 'went out' in 1715 and was subsequently attainted. Indeed it is possible that Lord Burghlie's exclusion in 1715 was not on account of his Jacobite proclivities, but rather because he had, in 1710, been tried and convicted for murder, though he had subsequently escaped.² In Edinburghshire, where the fiat is a 'put in', 'leave out' type, prominent Whigs like Sir David Dalrymple of Hailes and William Nisbet of Dirleton were put in, while the ten left out for reasons other than death included Hugh Wallace of Ingliston, put in by Harcourt in 1713, and Jasper Wood of Warriston, James Dean of Woodhouslie, James Oliphant of Lantoun and Alexander Brand of Castlebrand put in by Cowper himself in 1709, probably on

¹ib., S.P. 54/11, f72, Sir Robert Gordon to the Earl of Sutherland, 17 December 1715.

²G.E.C., Peerage, i.

the recommendation of George Lockhart of Carnwath, the Jacobite member for Edinburghshire at that time, when he wrote to the Chancellor requesting a new commission of the peace.¹ It is possible, but unlikely, that James Deans of Woodhouseslie, and by inference others in the group, were omitted because of failure to meet the property qualification. Deans had effected, in 1713, a deed of renunciation of part of his property in Edinburgh in favour of his daughter.² It is more probable, however, that the Lockhart connection was instrumental in the removal.

It would seem reasonable to assume that a significant proportion of the 19 gentlemen added to the bench in Edinburghshire would be Whigs and the exclusions listed above Tories, on the basis of the political bias of their nominees. It is however surprising that none of the 7 justices put out by Harcourt in 1713, presumably on account of their Whig sympathies, were reintroduced by Cowper in 1715 to strengthen the Whig contingent in the commission. In Clackmannanshire there was the potentially interesting removal of the Earl of Mar and his brother Erskine of Grange from the commission but it is doubtful if this indicated a suspicion of Mar's prospective volte face since he remained in many other commissions in which he appeared at this time. By far the most

¹Herts. R.O., Cowper (Panshanger) Mss., D/EP F.156, George Lockhart to the Lord Chancellor, 16 April 1709.

²Sir Daniel Wilson, Memorials of Edinburgh in the Olden Time, (Edinburgh, 1891), ii, 26.

significant example of erroneous inclusion in commissions of the peace, however, was to be found in Caithness. 'A List of Gentlemen present at proclaiming of the Pretender at Wick, the 26 day of January 1716,'¹ included no less than eight of the twenty-six justices included in the commission for Caithness of March 1715. Of this eight, four, Sir James Sinclair of Dunbeath, Sir Robert Dunbar of Northfields, Francis Sinclair of Stirock and John Sinclair of Rathie, were renewals from the previous commission while the remaining four, Charles Sinclair of Bilbster, James Murray of Clairdon, James Sinclair, younger, of May and George Manson of Bridgend, had been put into the commission for the first time. It seems unlikely that political naivety was responsible for the presence of all of the eight gentlemen at this event, and reasonable therefore to conclude that a scrutiny of nominees, which allowed 30.76% potentially disaffected justices through without detection, was open to improvement.

Cowper's completion of the first revision of Scottish commissions of the peace was characterized, therefore, by uncertainty. 345 justices were added to the bench and 374 left out, a net decrease of 29, only 2.05% and not, therefore, unduly significant. Structurally however there seemed to be some confusion, for although

¹P.R.O., S.P. 54/11, f.116.

the intention clearly was the removal of the potentially subversive coupled with reinforcement by loyal Whigs, some known Jacobites escaped detection and acted on the Scottish benches to the future detriment of the security of the realm. This regulation was followed by a period of inactivity. It is possible that Cowper aimed at completing as many counties as he thought necessary before the May Quarter Sessions and that thereafter the pace slackened until the new burst of activity in August and September. The timing of this second phase of reorganization is significant in relation to the level of political activity throughout the summer. In August 1715 Stanhope wrote to the Lord Justice Clerk Lord Cockburn informing him that the King had dismissed Montrose as third Secretary and had put the business of his office in the hands of himself (Stanhope), and Townshend, 'being determined not to have a third Secretary.'¹ The Hanoverian dynasty, moreover, though peacefully acclaimed, became increasingly unpopular and Jacobitism correspondingly an increasingly attractive alternative. The government was aware of growing disaffection as disturbances spread. In July an address was voted by the House of Commons requesting the removal of justices from their commissions where leniency to rioters and neglect of duty could be shown. This was in response to the belief that many Tory justices in the provinces had been left on the bench in order not to alienate the landed gentry.² Cowper was also

¹ P.R.O., S.P. 44/117, ff. 215-16, Stanhope to Lord Justice Clerk, 6 August 1715.

² Michael, The Beginnings of the Hanoverian Dynasty, pp 130-2; Petrie, The Jacobite Movement, p.212

under fire in July on the charge of mishandling appointments to and dismissals from the magistracy. The memorandum to George I, in which he refuted the claim that he had been less than active in promoting the interests of the Whigs through the bench is undated, but a postscript referred to a motion made by the Tories requesting a list to be put before the House of all justices put out of the commissions of the peace since the accession. This debate took place on 16 July 1715 and this makes the dating of the document reasonably accurate.¹ There seems to have been a considered body of opinion increasingly critical of Cowper's performance as manager of an important field of government patronage at a time of political discontent. In Scotland, William Carstares, an influential churchman of Whig sympathies, wrote to the Duke of Montrose that great complaints were current about the nomination of non-loyal justices of the peace especially in Clydesdale.² Throughout July and August extensive rioting took place throughout England and Wales, the scale indicating that a rising in the interest of the Stuarts was imminent.³ In Scotland, Cowper's recent restructuring of the commissions of the peace lacked impact where it mattered most. Absenteeism was rife and acting justices

¹L.K.J. Glassey, 'The Commission of the Peace, 1675-1720', p.7, n.3.

²Hist. Mss. Comm., Third Report, Appendix, Montrose Muniments p.370, Carstares to Montrose, 7 July 1715.

³Petrie, The Jacobite Movement, p.213.

endeavoured themselves to enforce attendance at Quarter Sessions.

The Banffshire Sederunt Book recorded

... The justices present excuses the Remnant Justices of Peace of the said Shyre who are absent from this meeting in respect of the excuses made for ther said Absence but does Statute and enact that whoever of the Justices shall absent themselves from any subsequent Quarter Sessions without sending relevent excuses therefor shall be fyned contonn to,¹ Law and the samen extorted without favour.

There seemed moreover to have been some confusion over which justices were qualified to act. The Lord Advocate wrote to the Duke of Montrose claiming that competition between old and new J.P.s would be likely to create disturbances between those who were

... in possession and acted under commission in the Queen's time and those who were not but pretend to act under later commissions never intimated or made public till after her death and under which consequently nobody qualified acted.²

Cowper's reorganization had only partially solved such problems. In August 1715, at the height of the rioting in England and the general disaffection and disillusion with the Union in Scotland, the Lord Justice Clerk entreated the ministry with the plea,

¹ G.R.H., GD 36/191, Sederunt Book of Banffshire Quarter Sessions, 2 March 1715.

² Hist. Mss. Comm., Third Report, Appendix, Montrose Muniments, p.375, Lord Advocate to Duke of Montrose, 7 December 1714.

'the greatest need here is for J.P.s'.¹ The greatest difficulty, and a difficulty of which Cowper was frequently informed, was the twofold one of encouraging a sufficient number of justices to qualify to act and alternatively of recruiting an adequate proportion who were well affected. Adam Cockburn of Ormiston, the Lord Justice Clerk, claimed that the people in Scotland were hearty and zealous (perhaps rather an optimistic view), but in need of ammunition and arms. Some were known to be disaffected or papist and were encouraged because there were no J.P.s in most shires and where there were commissions, the nominations were not of the best affected. He argued that it would be much to His Majesty's Service that there be a right choice of justices of the peace throughout the country and referred to the fact that when the last commission had come down for Aberdeenshire, advertisement was made at all parish churches for the relevant justices to meet and qualify. 'A good number', he claimed, 'met the day before the meeting, and agreed not to qualify at this time.'² In a memorial on North Britain, he further informed the ministry that J.P.s in Angus had neglected to qualify and that the two who were appointed to administer the oaths to the rest had stayed away so that the small number who were well affected could not qualify.³ Forfarshire had been a

¹ P.R.O., S.P. 54/7, f164, 15 August 1715.

² ib., f.84, 11 August 1715.

³ ib., f.174. 19 August, 1715.

notorious trouble spot in the past. In 1708 Adam Cockburn had denounced its J.P.s as bad executors of the law¹ and in 1712 William Carstares complained to the Earl of Oxford that in a dispute between the ministers of Angus and Mearns and the justices, the justices failed to meet in their Quarter Sessions on the appointed day.² As late as the day before Mar raised the Stuart standard at Braemar, the Duke of Atholl, on being appointed Lord-Lieutenant of Perthshire, wrote to Stanhope informing him that he was only going to employ the well-affected but that 'though this is the largest shire in Scotland, there are not ten that have qualified as J.P.s'.³ Clearly the situation for the government was critical although not uniformly so. Mr Graham, Sheriff depute for Dunbartonshire wrote to Montrose, the Scottish Secretary, that Quarter Sessions were to be held at which justices could qualify and that a loyal address was to be composed and communicated by one of the justices to him.⁴ The belated 'Act for encouraging loyalty in Scotland'⁵ eventually became law on 30 August 1715 and a warrant attached to that act summoned a list of those whose loyalty was suspect to appear at Edinburgh. Only two of the sixty two summoned obeyed and were

¹ Hist. Mss. Comm., Third Report, Appendix, Montrose Muniments, p.371, Lord Justice Clerk to Duke of Montrose, 29 January 1708.

² Hist. Mss. Comm., Portland Mss., x, 282, Rev. William Carstares to the Earl of Oxford, 30 October 1712.

³ P.R.O. S.P. 54/8, F.70, Atholl to Stanhope, 5 September 1715.

⁴ ib., /7, f.23, Graham to Montrose, 2 August 1715.

⁵ I Geo I C.8.

subsequently imprisoned. George Lockhart, one of those imprisoned in Edinburgh Castle, vociferously complained and protested his innocence.¹ On 6 September 1715 Mar raised the Standard of the Pretender at Braemar.² The timing of Cowper's second attempt at modifying the commissions of the peace for Scotland becomes significant therefore in the context of increasing government activity to quash resurgent Jacobitism.

In July a commission for Ayrshire was issued but since the fiat is missing, there is no further evidence of what changes if any were incorporated.³ In August commissions were engrossed for 3 counties, Banffshire, Bute and Dumfries-shire and in September for a further 12, Aberdeenshire, Forfarshire, Clackmannanshire, Kincardineshire, Edinburghshire, Renfrewshire, Stirlingshire, Haddingtonshire, Perthshire, Roxburghshire, Lanarkshire and Linlithgowshire, no fiats remaining for the latter 2.⁴ Of the 16

¹ib., f.175, 18 August 1715.

²Michael, The Beginnings of the Hanoverian Dynasty, p.155.

³P.R.O., C.231/9, Ayrshire, 11 July 1715.

⁴ib., C.234/49, Banffshire, 25 August 1715;/51, Bute, 3 August 1715;/114, Dumfries-shire, 25 August 1715;/45, Aberdeenshire, 13 September 1715;/46, Forfarshire, 13 September 1715;/53, Clackmannanshire, 13 September 1715;/60, Kincardineshire, September 1715;/64, Edinburghshire, 7 September 1715;/69, Renfrewshire, 9 September 1715;/74, Stirlingshire, 7 September 1715;/56, Haddingtonshire, 5 September 1715;/68, Perthshire, 7 September 1715;/72, Roxburghshire, 5 September 1715; P.R.O., C231/9, Lanarkshire, 12 September 1715, Linlithgowshire, 7 September 1715.

shires in receipt of commissions only 4, Banffshire, Bute, Roxburghshire, and Haddingtonshire had had no previous regulation by Cowper since September 1714. The review of the remaining 12 therefore could be possibly assumed to have taken place in the light of the mounting anti-Jacobite activity and criticism of the time, and indeed the counties involved in the September regulations were areas which tended to have large disaffected minorities, Aberdeenshire, Forfarshire, Clackmannanshire and Kincardineshire in the North East and East Coasts, Perthshire and Stirlingshire in the central Highlands and Renfrewshire and Lanarkshire recently the subject of William Carstares concern over the nomination of non-loyal justices of the peace. By September 1715 only one Scottish county, Peebles-shire, had not experienced a regulation of its commission since the death of the Queen.

Aberdeenshire and Banffshire seemed to be the victims of particularly savage purges of 34% and 36.36% respectively but in view of the nature of political loyalties in these areas this is perhaps not surprising. Renfrewshire had the number of justices in its commission reduced by 31% again possibly reflecting Carstares concern at the appointment of non-loyal justices in Clydesdale. In Forfarshire, 12 gentlemen who were in the commission in January 1715 were omitted in September. The seven additions to the commission however included the Tory Earl of Northesk and Lord Gray, classified as a 'Protestant Malignant' in 1705. The fiat for Aberdeenshire for September 1715 is an extensive document naming

all the members of the Privy Council in Latin. Listed separately were the acting members of the commission excluding the peerage. Since there is no accompanying record of the peerage component and since it must be assumed that such a list must have existed (it being unlikely that all the noble justices would be omitted simultaneously), the peerage is excluded from statistical analysis of the fiats of 8 February and 13 September 1715. The purge of 34% therefore is exclusive of any changes which may have taken place with respect to the nobility. 22 justices were added and 57 left out of the September commission. The magnitude of this number suggests that a considerable proportion would probably have been dismissed on grounds other than death especially since the previous commission had been issued only seven months earlier. By far the greatest percentage of the omissions come from the lower end of the preceding commission and this suggests that they were politically less significant. There was, however, a considerable number of known Jacobites left in, Jacobites of the calibre of Sir George Innes of Coxton, Robert Bissett of Iessendrum, John Gordon of Glenbucket, Alexander Irvine of Drum and James Moir of Stoneywood. Not only were known Jacobites left in the commission, but incumbents were joined by Alexander Gordon of Clunie, Alexander Hay of Rannestoun and Duff of Braco, put in for the first time and equally renowned for their Jacobitism. It seems surprising that the increased momentum of Jacobite activity throughout the summer of

1715 should not have alerted Cowper to the danger of leaving such disaffected gentlemen with any legal or administrative duties no-matter how minimal.

The oversight which kept in Jacobites such as those listed above and put out Whigs who voted consistently with the administration on the Argyll interest like John Middleton of Old Aberdeen, M.P. for Aberdeen Burghs in 1715, was not compounded in Banffshire. Although the commission of August 1715 included the Jacobite William Duff of Braco, it had been purged of equally famous Stuart supporters, Sir John Gordon of Park, Sir James Abercrombie of Birkenboig, George Gordon of Carnousie and Hay of Ranes. It is not immediately clear why the Jacobites of Banffshire should be so thoroughly decimated while their compatriots of Aberdeenshire should continue to enjoy the status of the bench. Cowper would probably however have been the recipient of recommendations of varying intensity. Alexander Grant of Grant was a powerful Argyll Whig, M.P. for Elgin and Forres and Lord-Lieutenant of Banffshire. His objectives may have been more positive with regard to the composition of the commission of the peace than the more negative approach of Tory Sir Alexander Cuming of Culter, M.P. for Aberdeenshire and the Lord-Lieutenant of Aberdeenshire Lord Forbes who, although a Whig, did not carry the political weight of Alexander Grant. The 36.36% purge in Banffshire could have been said to have reflected just such political weight, and explained why so many Jacobites, subsequently attainted in 1716 were left in

the commission for Aberdeenshire in September 1715. Bute was another county which experienced a significant diminution in the size of its commission of the peace. Two justices were added in August 1715 and seven omitted effectively reducing membership of the commission by 29.41%. The Earl of Bute was himself suspected of complicity in 1708 but created Lord-Lieutenant of the shire in 1715 and was included in its commission as was the new Duke of Hamilton who had succeeded his father, killed in a duel in 1712. Duke James however, was of strong Tory persuasion and intrigued with the exiled Stuarts,¹ a political aberration not, apparently, in this case considered inconsistent with a place on the bench. The commission for Renfrewshire which was slashed by 31% had 5 justices admitted and 20 left out, including the Tory William Cochran of Kilmarnock,² who had been so instrumental in making recommendations to Harley in 1712 in the name of Sir Robert Pollok, member for the shire.²

In other shires, however, significantly smaller changes in total size of commissions occurred although often accompanied by considerable structural changes. In Stirlingshire, for instance, where the decrease was noticable at 11% but not as remarkable as either Aberdeenshire or Banffshire, fourteen names were added to the list of justices and twenty left out, including the Earls of Mar and Linlithgow, Viscount Kilsyth and Sir Hugh Paterson of Bannockburn

¹G.E.C., Peerage, vi.

²B.M., Loan 29/29, 'Justices of the Peace for the Shire of Renfrew'.

all of whom were attainted in 1716. In Edinburghshire a much more dramatic realignment took place with 41 justices added and 48 omitted from the commission in September 1715. Of the 48 left out 22 had been put in by Harcourt in 1713. Whigs like John Lauder, junior of Fountainhall and William Nisbet of Dirleton were left in while Jacobites like Alexander Mackenzie of Fraserdale were put out. Reliable Whigs such as Sir George Warrender of Lochend, M.P. for Edinburgh City and Sir James Macklurg of Vogrie who had been put out by Harcourt in 1713 were either put in for the first time or readmitted. William Martin of Harwood, who had been inexplicably put out by Cowper in 1710, reappeared in September 1715. John Dalrymple of Hailes and William Morrison of Prestongrange, junior, together with Robert Dundas of Arniston were added by Cowper for the first time, suggesting that the Whig interest in Edinburghshire was being substantially increased at a time of extreme Jacobite unrest. This is not surprising in view of the political importance of the city of Edinburgh and the presence of nine advocates on the bench is a further indication of the importance attached to maintaining law and order in the capital. There would also be, in 1715, the heritage of George Lockhart of Carnwath to eradicate. It would seem reasonable to assume, and the evidence has indeed suggested, that Lockhart used his influence as M.P. for the shire to promote the interests of his party on the bench, and the arrival at Westminster of John Baird of Newbyth, a Dalrymple Whig, in 1715, might have been expected to lead to

significant changes in the commission of the peace for the shire. A similar structural realignment occurred in Perthshire where 41 justices were added and 39 omitted in a reorganization in which the intention also seemed to be to put out Jacobites and reinforce the commission with Whigs. The Earl of Mar was left out as were all seven justices put in by Harcourt in 1713 and therefore probably nominally Tory, including Sir David Thriepland of Fingaskie who was attainted in 1716. The peerage component of the commission was reinforced with formidable Whigs of the calibre of Islay, Roxburgh, Findlater, Stair, Sutherland and Annandale noticably balancing Argyll and Squadrone Volante interests. The Whig element was augmented with gentlemen like John Campbell of Mamore and Francis Montgomery of Giffen and William Cochran of Ochiltree, dropped by Cowper in February was readmitted in September. In Roxburghshire where 7 justices were added to and 8 left out of the commission, the Whig element was augmented with Sir William Johnston of Westerhall, William Douglas of Cavers, junior, and Gilbert Elliot of Minto, junior, while in Haddingtonshire a similar result was effected by adding Sir John Sinclair of Stevenson, Sir George Warrender of Lochend, John Lauder of Fountainhall, the younger and William Morrison of Prestongrange the younger as an important Whig contingent in a net increase of 36% resulting from the addition of forty justices to and the omission of twenty-two from the commission of the peace.

Certain anomalies appear however which suggest that even at this late date, when the warrant attached to the Act for encouraging loyalty in Scotland had already summoned certain prominent members of the political nation to Edinburgh on charges of suspected Jacobitism, Cowper was overlooking important dissidents. In Haddingtonshire the Earl of Winton and Viscount Kingston remained in the commission though both were attainted and their estates forfeited in 1716. In Perthshire the Marquess of Tullibardine, attainted, and the Earl of Kinnoull, Viscount Strathallan and Lord Rollo suspected and summoned to Edinburgh in September 1715 all remained in the commission. Sir Patrick Murray was one of the two summoned who obeyed the warrant. He was imprisoned at Edinburgh Castle and eventually allowed out on bail. He remained in the commission throughout this time.

During the months of August and September when Jacobitism was rampant in Scotland, Cowper called 198 justices to the bench and withdrew 261, a net decrease of 63 or 4.56%. The evidence suggests that the removal of conspicuously disaffected Tories was being balanced by the inclusion of loyal Whigs in the counties experiencing the most violent upsurges of Jacobite discontent. Nevertheless the retention of Sir Patrick Murray of Ochtertyre in the commission for Perthshire in spite of the fact that the ministry

saw him as a sufficiently potential threat to the security of the realm to lock him up, suggests that any manipulation of the bench in the interests of the Whigs was less than comprehensive. Inevitably therefore there were disaffected justices whose interpretation and implementation of the law would be found wanting. In June 1715 William Cockburn wrote to the Duke of Montrose about the magistrates of Dundee being disaffected.¹ Cockburn himself had been the subject of a recommendation by Montrose for inclusion in a commission of the peace and this is recorded in Cowper's diary.² He failed however to appear and it is possible that Montrose's resignation from his position as Secretary on 19 August 1715 weakened his bargaining power with the Chancellor.³ The Earl of Morton wrote several letters to the Duke during 1715 reporting the setting up of an Association by disaffected justices of the peace and customs officers in Orkney and Shetland. Under the circumstances he recommended new appointments.⁴ There is no clear indication however of whether this recommendation was implemented. There is a fiat for Orkney and Shetland dated 14 January 1715 indicating a substantial purge of 58%.⁵ There is no docquet book

¹Hist. Mss. Comm., Third Report, Appendix, Montrose Muniments, p.373,

²Herts. R.O. Cowper (Panshanger) Mss., D/EP F.76, Lord Cowper's Diary.

³P.R.O., S.P. 57/29.

⁴Hist. Mss. Comm., Third Report, Appendix, Montrose Muniments, p.378, Earl of Morton to the Duke of Montrose.

⁵P.R.O., C.234/66, Orkney and Shetland, 14 January 1715.

entry for this date but there is one dated 14 April 1715 for which there is no accompanying fiat.¹ Since the letters were sent during 1715 it may be possible to surmise that the fiat was drawn up on the previous records of disaffection received from Orkney and Shetland in 1712², further recommendations were made from the Duke of Montrose, subsequent investigations carried out and the commission finally engrossed on 14 April 1715. This would add substance to the reason for the ferocity of the 58% purge.

Certainly, however, Stuart sympathizers remained in the commissions and it therefore can be deduced that many instructions, such as those issued by the Duke of Argyll to Sheriffs and J.P.s regarding deserters³ and by the Duke of Atholl giving orders to justices, Lords-Lieutenant and magistrates to seize rebels and the disaffected,⁴ would not be implemented. The administration at the centre responded to the challenge by reinforcing existing anti-Catholic legislation and, more importantly, by pushing the Septennial Act through Parliament. By extending its maximum life from three to seven years, the Whigs ensured their own political survival and interest till 1722.⁵ In Scotland, however, response to the aftermath of rebellion was retarded by the rampant animosity between the

¹ib., C.231/9, Orkney and Shetland, 14 April 1715.

²Hist. Mss. Comm., Portland Mss., x, 272, Sir James Steuart to the Earl of Oxford, 7 June 1712.

³Hist. Mss. Comm., Seventh Report, Appendix, Argyll Mss., p.731, 24 January 1716.

⁴Hist. Mss. Comm., Atholl Mss., p.71, Duke of Atholl to General Carpenter, 4 June 1717.

⁵Michael, The Beginnings of the Hanoverian Dynasty, p.214.

Squadron and the Argyll factions. The resignation of Montrose as Secretary over the insistence of Argyll that he should be made Lord-Lieutenant of Dunbartonshire as well as Argyllshire when the former should have gone to Montrose as Sheriff, heralded the renewal of a struggle for power in Scotland which was only temporarily terminated with the eclipse of Argyll due to his association with the Prince of Wales and the subsequent removal of Townshend and Walpole from their places in April 1717.¹ Although the Argyll faction had impressively stalled the Squadron and their ally General Cadogan over the issue of the treatment of rebels and had successfully manipulated the burgh elections in the autumn of 1716, the Scottish ministerial changes suggested that the influence of Argyll was being considerably undermined. Roxburgh became Secretary and Montrose took the Great Seal, reflecting Squadron ascendancy in the context of the central politics of the day.² There is no clear indication that this struggle for power in Scotland led to a delay in purging the commissions of the peace of Jacobites. The suggestion however that local offices were scrutinized during the rebellion³ and that Townshend wrote that 'the Commissions of the Peace will be put into such hands as the government can depend on',⁴ fails to correspond to the fact that there were no

¹Riley, The English Ministers and Scotland, pp. 262-5.

²ib., p.265.

³J.H. Plumb, The Growth of Political Stability in England 1675-1725. (London, 1967), p.167.

⁴Quoted in L.K.J. Glassey, 'The Commission of the Peace 1675-1720,' p.364.

commissions issued for Scotland between September 1715 and November 1716. It is significant too, that post rebellion alterations took place in England and Wales in the spring and summer of 1716,¹ while many main protagonists remained on the bench in Scotland until the November of that year.

There was, moreover, no evidence of local apathy or lack of concern for the future of local government in Scotland in the wake of the rebellion. As early as January 1716 the hierarchy of the legal establishment in Edinburgh were

... desiring that necessary directions might be given how the town of Perth and other towns the other side of the₂ Tay might be furnished with a magistracy.²

In February, the Lord Justice Clerk reiterated his fears and again requested an opinion on the

... method they shall judge most proper to be taken in re-establishing the magistrates in₃ several towns on the North side of Perth.³

His concern extended to Aberdeen and Dundee which, like Perth he argued, had honest magistrates before they were replaced by rebels. Adam Cockburn of Ormiston did not mince words. Claiming that his requested instructions

... required the greatest dispatch for at present by reason of the want of magistrates, the Rebels walk confidently on the streets,

¹ib., pp. 376-7.

²P.R.O., S.P. 54/11, f64, Lord Justice Clerk to Townshend, 28 January 1716.

³ib., f.113, Lord Justice Clerk to Townshend, 14 February 1716.

he went on to refer to the area under consideration as the 'nursery of Jacobitism' and suggest that although the rebellion had been quelled

... owing to Mr. Cadogan's indefatigable pains and care, yet if it is not plucked up by the roots it may spring up again sooner than we are aware of.

These dire warnings from responsible members of the Scottish political nation went unheeded by the ministry in London. The Lord Justice Clerk kept up the pressure during February and March,² and was joined by James Steuart³ and the Provost of Edinburgh who extended the request for guidance in their endeavours

... towards the settling and establishing the magistracy of these towns in the hands of persons well⁴ affected to His Majesty and His Government.

The ministry had, however, initiated a temporary reorganization ostensibly in response to certain action taken by the Duke of Argyll. In February 1716, Townshend wrote to the latter approving the appointment of some persons at Dundee to take care of the Town 'till the magistrates can be settled.' He went on to claim that this would be effected as soon as the ministry was in receipt of opinions on the matter from the Lord Advocate and other legal representatives in Edinburgh.⁵ On the same day he wrote to the Lord Justice Clerk

¹ib.

²ib., f.121, 16 February 1716; f.168, 3 March 1716; Lord Justice Clerk to Townshend.

³ib. f 122, 16 February 1716, James Steuart to Townshend.

⁴ib., f.187, 20 March 1716, Provost of Edinburgh to Townshend.

⁵ib., S.P. 55/5, ff 101-2, Townshend to Argyll, 10 February 1716.

instructing him to consult with the Lord Advocate and the Solicitor General on the issue and report directly to the ministry.¹ Lord Cockburn's replies, if indeed they were replies, seemed to impress upon the Secretary of State the urgency of the situation without providing the requested information on 'the most proper way' of reorganizing the magistracy.² In spite of this obstacle, however, the Lord Advocate was informed a month later that

... His Majesty thought fit today in Council to direct enclosed orders for Perth, Dundee and Aberdeen ...³

enclosing with the necessary directions for the execution of the order a request for a list of any other towns for which such a reorganization might be desirable. The burgh elections were eventually held in the autumn of 1716, successfully manipulated by the Argyll faction,⁴ and it may be suggested that the correspondence between the ministry and Argyll reflected a recognition of the latter's influence in the Scottish legal establishment. Clearly the eclipse of Argyll's influence at the centre was not being extended to the periphery, and the delay in implementing the new arrangements for the election of magistrates merely reflected the difficulties of co-ordination and communication. It is also possible that the delay reflected the power struggle at the centre between the Stanhope-

¹ib., f 103, Townshend to Lord Justice Clerk, 10 February 1716.

²ib., ff.101-2, Townshend to Argyll, 10 February 1716.

³ib., f.125, Stanhope to the Lord Advocate, 10 March 1716.

⁴Riley, The English Ministers and Scotland, p.265.

Sunderland group and that of Townshend-Walpole. The latter were destined for a period in the political wilderness and in February Townshend was forced to give up the influential post of Secretary of State, for the Lord-Lieutenantship of Ireland. From this point in time the Lord Justice Clerk's correspondence with the ministry was directed to Stanhope rather than Townshend.

Assuming that this is correct for elected magistrates it would seem reasonable to extend the hypothesis to include the commissions of the peace. The Lord Justice Clerk first made his concern about the composition of the commissions known to Stanhope in March 1716. In a lengthy directive he informed the ministry that disaffection was so widespread in the county and town of Aberdeen that it could not be expected to be relieved 'of a session'.¹ He impressed upon the government the need to make a careful choice of Sheriffs and justices of the peace. His apprehension regarding the calibre of the nominees is graphically descriptive.

... I have seen a much longer list of persons to be offered to be justices of His Majesty's peace than I thought could have been found altogether free of the Rebellion, and though they be, I dare say, they are not all fit persons, yea the best of them have hitherto shown a great remissness in executing the laws especially in the Highland parts of that county against the growth of popery.²

Clearly Cockburn's belief in the loyalty and efficiency of the

¹ P.R.O., S.P. 54/11, f 194, Lord Justice Clerk to Stanhope, 23 March 1716.

² ib.

pre-rebellion magistracy did not extend to the justices on the bench and his hopes for the future of the institution in Scotland, were consequently more limited,^{and} geared to the view that

... a few well chosen (and that without private views) may exert themselves better for the future when they shall be protected against insults by having the King's forces quartered in proper places..

The performance of the justices in the disaffected north had clearly not met expectations and the only hope was that close scrutiny of the lists, coupled with the additional support of troops, would create the minimum efficiency necessary to provide a functional and viable bench.

The ministry clearly did not feel pressurized into taking immediate action. The pressure initiated by the Provost of Edinburgh with respect to elected magistrates diversified to include the justices. John Baird, the post-Lockhart member for Edinburghshire from 1715 to 1722,² wrote to John Clerk of Penicuik asking him, and 'the other gentlemen of the comitty [sic] appointed to correspond with me', to send a list of persons nominated to be justices of the peace.³ The information subsequently gained was clearly utilized by Baird in agitating for a new commission in June 1716. He expressed to the Secretary of State, the dissatisfaction felt by the 'gentlemen

¹ ib.

² Sedgwick, The House of Commons, 1715-1754, i, 428.

³ G.R.H., GD 18/5814, Clerk of Penicuik: Muniments, John Baird to John Clerk, 5 January 1716.

heritor's of the shire at the absence of such a commission and enclosed a suitable list of nominees,¹ but by this time the ministry had initiated the process by which the commissions would be regulated in the aftermath of rebellion. In June 1716 Stanhope wrote to Argyll requesting a list of those in the commissions of the peace in the respective counties for which he was Lord-Lieutenant.² In a footnote to this letter there was an instruction that a copy should be sent to every Lord-Lieutenant in Scotland, those in town receiving them by messenger and those in Scotland by flying packet. The Duke of Atholl forwarded such a list to Stanhope on 27 June in response to that request.³ The Earl of Hopetoun, Lord-Lieutenant of Linlithgowshire, performed the same service⁴ as did Alexander Grant of Grant for Inverness-shire and Banffshire.⁵ James Hall, one of the Deputy-Lieutenants of Berwickshire was in receipt of a letter from Marchmont enclosing one from Stanhope to the Lord-Lieutenant Lord Polwarth requesting provision of a 'list of the last commission for Berwickshire which was in January 1715'.⁶

¹ P.R.O., S.P. 54/12, f.41, Mr Baird to Secretary Stanhope, 26 June 1716.

² ib., S.P. 55/5, f.180, Stanhope to Argyll, 15 June 1716.

³ ib., S.P. 54/12, f.42, Atholl to Stanhope, 27 June 1716.

⁴ ib., f. 44, Hopetoun to Stanhope, 29 June 1716.

⁵ ib., f. 73, Brigadier Grant to Stanhope, 17 July 1716.

⁶ ib., f. 53, James Hall to Stanhope, 5 July 1716.

It is initially surprising that Stanhope went to the extent of corresponding with the Lords-Lieutenant when the names of justices in the various commissions could have been gleaned from the records in Chancery. Clearly however, the Secretary was seeking fuller documentation than a mere list of justices. James Hall, in forwarding the relevant information for Berwickshire added

... I send you also a list concerted by Cunninghame of most of the gentlemen of the shire which they wish may be in the new nomination.

Brigadier Grant, on compiling the list for Inverness-shire

... extinguished the dead and disaffected from those who have continued in their duty to the King...²

Hopetoun sent two lists for Linlithgowshire with the bizarre explanation that

... there were so many named in the last commission that were disaffected that my Lord Torphichen and some others of us never would meet and the most not qualifying, there has been no J.P.s that official [sic] in the King's reign.

He went on to claim that a great many in both commissions were now dead, others had sold their estates and left the county, others engaged in the rebellion and some just failed to qualify. A further intriguing fact emerges when the Lord-Lieutenant of the shire went on to confess

¹ib., f.53, James Hall to Stanhope, 5 July 1716.

²ib., f.73, Brigadier Grant to Stanhope, 17 July 1716.

... I have been told that there was another commission granted in the last year of Queen Anne's reign but that never came to the Clerk's hands, so we know nothing about it.¹

The contents of this letter suggest interesting problems relating to the Scottish commissions of the peace. The commission referred to by the Earl of Hopetoun was that engrossed by Cowper on 24 January 1715.² That this commission was considered unacceptable by the local hierarchy on account of its Jacobite membership, in spite of the fact that Harcourt's Tory changes of 1713³ had not been implemented, either raises grave doubts about Cowper's judgement or reflects a more serious degree of disaffection in the localities than had previously been contemplated. Unfortunately, since the fiats for Linlithgowshire are missing, there is no means of effecting comparison of the composition of different commissions. Nevertheless it seems reasonable to conclude that Cowper's sources for prospective lists of justices in this particular case had been unreliable and if this was true in one shire then it was possibly true in many. In this situation the ministry may have felt it necessary, especially in the aftermath of a rebellion, to deal directly with the Lords-Lieutenant in an effort to establish the exact nature of the various commissions of the peace in the counties. It would be expected that

¹ib., f.45, Hopetoun to Stanhope, 29 June 1716.

²ib., C.231/9, Linlithgowshire, 24 January 1715.

³ib., 3 July 1713.

the Lords-Lieutenant, appointed in 1715 in direct response to the crisis, would be in the best position to judge the political bias of the local magistracy. The suggestion, moreover, that Cowper had been less than thorough in his scrutiny of nominees, might have been influential in prompting the ministry to co-ordinate proposed changes itself. Clearly, as far as the Scottish legal establishment was concerned, the key concern was the removal of disaffected justices and their replacement by gentlemen loyal to King George. This desire was expressed, as was that regarding the elected magistracy, to the Secretary of State, rather than, in the case of the former, to the Lord Chancellor. The move to regulate the Scottish bench was therefore initiated from the top and may have reflected the criticism of Cowper's handling of patronage in the Whig interest which had emerged during the summer of 1715.

Clearly it would appear that the ministry itself found difficulty in dealing with its chosen instrument of communication. In certain cases, Lords-Lieutenant failed to provide acceptable lists of nominees for the commissions of the peace. In October 1716 Methuen wrote back to the Earl of Hopetoun suggesting that

... some of the persons contained in this list transmitted by your Lordship in pursuance of His Majesty's pleasure signified to you by Mr. Secretary Stanhope, should be left out and that others should be added¹

¹ib., S.P. 55/6, f.24, Methuen to Hopetoun, 23 October 1716.

It was further requested that a fresh list of gentlemen best qualified to be inserted into the new commission should be forwarded without delay and copies of the letter were sent to the Earls of Selkirk and Loudon as Lords-Lieutenant of Lanarkshire and Ayrshire respectively.¹ On the same day, Methuen sent by flying packet similarly drafted letters requesting the additional information of those to be added to and left out of commissions of the peace to the Lords-Lieutenant of Wigtownshire, Bute, Stirlingshire, Clackmannanshire, Fifeshire, Kinross-shire, Aberdeenshire, Haddingtonshire, Ross-shire, Cromarty, Forfarshire, Renfrewshire, Argyllshire, Dunbartonshire, Banffshire and Kincardineshire. The response to the October instruction was more positive than that to its June predecessor. Rothes forwarded the requisite lists for Fifeshire and Kinross-shire together with required information regarding those to be admitted or left out due to death or disaffection.² The Earl of Hopetoun enclosed yet another list for a new commission of the peace for Linlithgowshire explaining that

... all of them that was in this county at the time of the late unnatural rebellion concurred in raising the militia and supporting them and so far as I can judge are persons well affected to His Majesty King George.³

¹ ib.

² ib., S.P. 54/12, f.230, Rothes to Stanhope, 3 November 1716.

³ ib., f.239, Hopetoun to Stanhope, 13 November 1716.

The Deputy-Lieutenant forwarded a list of justices of the peace in Wigtownshire¹ and Rothes, as Lord-Lieutenant performed the same function for Aberdeenshire.² Rothes' explanation for the time lag between his forwarding of the lists for Fifeshire and Kinross-shire and that for Aberdeenshire, illustrates some of the problems encountered by the Lords-Lieutenant in the compilation of recommendations. Clearly part of the difficulty arose from the fact that he was 'much a stranger there' and was dependent on the 'best affected gentlemen in that county' to as great an extent as the ministry was dependent on him. The problem of unfamiliarity with the shire was also experienced by Lord Ross as Lord-Lieutenant of Renfrewshire. In forwarding his list of justices at that time in the commission he added:

... As to any observations I have taken advice
of the King's friends in this shire³

The Earl of Rothes however highlighted an even greater problem when, by way of explaining the small number of justices proposed to be added he wrote

... I am sorry that in so large a county
where the King has honoured me to be His
Lord-Lieutenant there should be so few
honest men.⁴

¹ib., f.245, 16 November 1716.

²ib., f.247, Rothes to Stanhope, 18 November 1716.

³ib., f.231, Lord Ross to Stanhope, 5 November 1716.

⁴ib., f.247, Rothes to Stanhope, 18 November 1716.

Sir Peter Frazer of Doors, Lord-Lieutenant of Kincardineshire, explained that he had been required to delay his reply because of the difficulty he had experienced in gathering information of the conduct of the justices during the rebellion.¹ Clearly even local officials could not be relied upon at this time to provide accurate information. In a letter from Frazer to Douglas of Cavers in 1717 it was suggested that the former had been in London when the lists were requested for the new commissions of the peace and therefore could not have known who were fit to be justices of the peace,

... the defection having been very great among them so that it was impossible for me to send any orders that they would comply with...²

The Earl of Buchan highlighted a similar lack of co-operation from the localities in response to Stanhope's June directive. This he had received when he was in London, ^{He} had written directly to Scotland for the required lists but had never received them.³ The decimation of the Kincardineshire commission of the peace engrossed by Cowper on 21 January 1717⁴ was preceded by Sir Peter's explanation that

... these few I think I can be answerable for as being well affected to His Majesty's interests; this county being not very large, six can do all the services, as many more in it for whom I can say little in respect to their behaviour in the late commotions...⁵

¹ ib., f.144, Sir Peter Frazer of Doors to Stanhope, 30 November 1716.

² ib., S.P. 54/13, f.28, Sir Peter Frazer to Mr. Douglas of Cavers, 15 February 1717.

³ ib., S.P. 54/12, f.241, Buchan to Secretary of State, 13 November 1716.

⁴ ib., c.234/60, Kincardineshire, 21 January 1716.

⁵ ib., S.P.54/12, f.144, Sir Peter Frazer of Doors to Stanhope, 30 November 1716.

No matter how small the shire, a purge of 77%, leaving out twenty-six justices would inevitably create administrative problems. The 1717 commission in fact contained seven justices as one Sir David Ogilvie of Barres appears at the foot of the list of six supposedly proposed by Sir Peter Frazer, but it seems unlikely that seven gentlemen would be able to carry out the work of thirty. Frazer's claim that 'the rancour and heat of the rebellious spirit is not quite allayed' and that this led to a paucity of recruits for the office of justice of the peace seems less than tenable when he seems to have taken the unusual step of not only removing himself from the commission but also staunch Whigs of the calibre of Sir Alexander Burnett of Leyes. It would, therefore, seem reasonable to claim that certain Lords-Lieutenant were slow in fulfilling the requirements demanded of them by the ministry and that this was largely due to the fact that disaffection was still rampant in many counties. The Duke of Douglas for instance delayed replying until December because, he claimed,

... my house is so remote and the disaffection
of the gentlemen of that county so great, I
have not been able to make an earlier return.¹

Clearly this problem was more symptomatic of the more disaffected northern and eastern shires. It is noteworthy that the commissions of the peace of the counties whose disloyalty was particularly bemoaned by their Lords-Lieutenant, Aberdeenshire, Kincardineshire and

¹ib., f.152, Duke of Douglas to Stanhope, 6 December 1716.

Forfarshire, experienced purges of 31%, 77% and 54% respectively,¹ suggesting a thorough elimination of the Jacobite component.

Loudon and Selkirk as Lords-Lieutenant of Ayrshire and Lanarkshire respectively could forward the requested lists of suggestions for inclusion in the new commissions for these shires without expressing any preoccupation with the problem of disaffection.²

Clearly, however, there was considerable delay on the part of the ministry in expediting new commissions of the peace. These delays arose partly out of the dilatoriness of the Lords-Lieutenant in forwarding sufficient information for the formulation of a new bench, a delay which, in the northern and eastern shires in particular, arose from the difficulty they in turn had experienced in attracting loyal nominees. They also clearly arose out of a communications breakdown. On 23 October 1716, John Cockburn of Ormiston sent

... a list of the last named justices for the shire of Haddington from the Earl of Haddington who so desires this to be done according to the direct orders from your office.³

On 23 October Stanhope, probably exasperated by the sluggish response to his June directive, requested the necessary information in a further instruction.⁴ It was not therefore until 20 November that a meeting of well affected gentlemen in Haddingtonshire was convened, their

¹ *ib.*, c.234/45, Aberdeenshire, 29 November 1716; /60, Kincardineshire, 21 January 1717; /46, Forfarshire, 4 January 1717.

² *ib.*, S.P. 54/12, ff. 140, 139, 24 November 1716.

³ *ib.*, f.223, John Cockburn to Stanhope, 23 October 1716.

⁴ *ib.*, S.P. 55/6, ff.25-6, 23 October 1716.

advice sought and a list of those 'best fitted who have either taken or will take the oaths and will keep them afterwards,' forwarded to Whitehall.¹

Inexplicable delays also arose however. On 17 July Alexander Grant of Grant, in receipt of Stanhope's June directive to transmit lists of those named in the commissions of the peace for the shires in which he was Lord-Lieutenant, forwarded such lists with information on the dead and disaffected.² On 10 September 1716 Alexander Abercrombie of Glassaugh, the member of parliament for Banffshire, wrote to Stanhope by order of the barons of that shire.³ He complained that Brigadier Grant had given the list of justices to the secretary, Mr Methuen before he, (Abercrombie), had left London, but that no more had been heard of it. He further explained that since there were no regular troops nearer than Aberdeen and Inverness (except for a small detachment at Elgin) participants in the rebellion had been encouraged to stay in the county especially since neighbours and friends were unwilling to disclose their whereabouts unless they were specifically so directed. Alexander Abercrombie begged for a new commission for Banffshire, the necessary preliminary information having been sent, yet the Lord-

¹ib., S.P. 54/12, f.252, 20 November 1716.

²ib., f.73, Brigadier Grant to Stanhope, 17 July 1716.

³ib., f.168, Alexander Abercrombie to Stanhope, 10 September 1716.

Lieutenant was sent a further letter by Stanhope on 23 October 1716, seeking exactly the same information.¹ Clearly the sense of urgency felt at the periphery was not appreciated at the centre since Banffshire did not receive its new commission until 29 November 1716 in spite of the fact that a series of presumably crucial commissions had been engrossed on 5 November.²

It is clear however, that the ~~Lords~~-Lieutenant played a fundamental role in the regulation of the Scottish commissions which followed the rebellion of 1715. Although their suggestions may have been questioned, as they were in the case of Hopetoun for instance,³ they would seem to have been in an extremely powerful position in the context of ensuring the inclusion of their own nominees on the new bench. In receipt of the Earl of Buchan's reply to the October request for information on the commissions of the peace for Stirlingshire and Clackmannanshire, Methuen advised that a list of

... those your Lordship would have left out or added to the new commissions which I am hopeful will, in a very few days, be given out as your Lordship desires...⁴

This influential position enjoyed by the Lords-Lieutenant in relation to the commissions of the peace for their counties extended, moreover, to the nomination of Clerks of the Peace, positions enjoying greater

¹ib., S.P. 55/6, ff.25-6, 23 October 1716.

²ib., c.234/49, Banffshire, 29 November 1716.

³ib., S.P. 55/6, f.24, Methuen to Hopetoun, 23 October 1716.

⁴ib., f.31, Methuen to Buchan, 20 November 1716.

administrative power than a mere seat on the bench. In replying to Stanhope's instruction of the 23 October 1716, Buchan had forwarded the information referred to by under-secretary Methuen for the new commissions of the peace for Stirlingshire and Clackmannanshire.¹ It is difficult to see how the recommendations for Stirlingshire, however, could have been implemented in the new commission, since Buchan's letter was sent on 13 November 1716 while the commission itself was engrossed on 5 November.² Lord Ross also sent the list for Renfrewshire on 5 November with Cowper engrossing the commission on the same day³ and the Deputy-Lieutenant for Wigtownshire performed the same service on 16 November while the commission for that shire was also engrossed on the 5 November 1716.⁴ In the case of Stirlingshire, however, although the docquet book entry is dated 5 November 1716, the fiat itself bears the date 24 November 1716.⁵ It would seem possible therefore that the new commission had been sent to the Clerk of the Crown in Chancery to be engrossed on 5 November and had been returned to the Chancellor's office on receipt of Buchan's recommendations to be sent out on 24 November. Since the fiats for Renfrewshire and Wigtownshire are missing for 1716 it is not possible

¹ib., S.P. 54/12, f.241, Buchan to Stanhope, 13 November 1716.

²ib., c.231/9, Stirlingshire, 5 November 1716.

³ib., S.P. 54/12, f.231, Ross to Stanhope, 5 November 1716; C.231/9, Renfrewshire, 5 November 1716.

⁴ib., S.P. 54/12, f.245, 16 November 1716; c.231/9, Wigtownshire, 5 November 1716.

⁵ib., c.234/74, Stirlingshire, 24 November 1716.

to establish any discrepancy between the docket book entry date of 5 November and the date on the fiat. Such confusion may explain however why so many fiats for 1716 are missing. If the ministry indulged in some inspired guesswork as regards the composition of the commission of the peace for Stirlingshire, or rescued it from Chancery to incorporate subsequent amendments, or was in receipt of alternative sources of recommendation, it did not ignore the Earl of Buchan's more specific requests. With respect to the Clerks of the Peace for the counties, in both cases, Buchan argued that those serving at that time were

... of such characters that I have reason ... to give it as my humble opinion that it will be for His Majesty's Service that they be laid aside, such clerks having commonly great influence on many of the members and being capable when not well disposed, of doing much mischief.

He then went on to suggest that John Don, Clerk of the Peace for Stirlingshire, should be replaced by Gabriel Napier of Craiggarret and Robert Rollo, Clerk for Clackmannanshire by James Burn of Gateside. Since the 1716 fiat for the latter shire is missing there is no indication whether the recommendation was effected. There is no John Don in the fiat for Stirlingshire in 1716 however (though he may have been included in the category 'eldest magistrate of Stirling'), while the last name on the list is that of Gabriel Napier

¹ib., f.241, Buchan to Stanhope, 13 November 1716.

of Craigarret, put in for the first time.¹ It would seem reasonable to assume however that the Earl's wishes were acknowledged in both cases since the secretary Methuen went on to suggest to Buchan that he would take the first opportunity to acquaint Lord Townshend.

... with what your Lordship proposes about the Clerks of the Peace for the counties, that we may concur in giving our commissions to the two gentlemen your Lordship mentions...²

Two significant factors, therefore, emerge from the manoeuvring which subsequently resulted in the post-rebellion commissions of the peace in Scotland. Firstly there is the heavily weighted bias in favour of the recommendations of the newly appointed Lords-Lieutenant. This in itself is not surprising since these nobles had been specifically chosen for their proven loyalty to the House of Hanover. Secondly, however, there was the dominant role adopted by the ministry throughout the proceedings. Not only was this regulation masterminded from the centre, it was masterminded by the Secretaries of State apparently to the total exclusion of Cowper and the Lord Chancellor's Office. It is possible that Stanhope merely initiated the process since he had been the recipient of appeals from the Lord Justice Clerk, and that subsequently he had forwarded the lists of recommendations for scrutiny by Cowper's Secretary of Commissions in the normal manner. Alternatively, as has been suggested,

¹ ib., C.234/74, Stirlingshire, 24 November 1716.

² ib., S.P. 55/6, f.31 Methuen to Buchan, 20 November 1716.

a closer watch was being kept on the Lord Chancellor in the wake of the patronage criticism, and the fact that many of the fiats for the commissions issued by Cowper between November 1716 and January 1717 are missing, may suggest that they had been referred back to the Secretary for final perusal and were subsequently mislaid. That overall control of the regulation remained firmly in the hands of the Secretaries however is further suggested in Buchan's appeal for the selection of his own nominees for the Clerkship of the Peace in Stirlingshire and Clackmannanshire. The gentlemen proposed were

... well qualified for these trusts
which by the usage of Scotland, depend
entirely on the Secretary of State and
are disposable at their pleasure.

The belief that the Secretaries controlled the patronage involved in the appointment to and dismissal from the commissions of the peace may have been erroneous but may help to explain why a large percentage of the correspondence affecting the Scottish bench was, especially in the early part of this study, directed to these ministers rather than the Lord Chancellor.

In the subsequent regulation, commissions were engrossed for 24 Scottish counties, 72.72% of the total. The first nine commissions, for Edinburghshire, Roxburghshire, Peebles-shire, Berwickshire, Perthshire, Renfrewshire, Dumfries-shire, Kirkcudbright and Inverness-shire were expedited on 29 November 1716, although in

¹ib., S.P. 54/12, f.241, Buchan to Secretary of State, 13 November 1716.

all cases the docquet book entry date is 5 November, and were to be followed by the others at regular intervals until the regulation was complete.¹ It is, however, only possible to construct a partial analysis of the nature of the changes within each individual shire since the fiats for Berwickshire, Clackmannanshire, Dumfries-shire, Edinburghshire, Haddingtonshire, Kinross-shire, Kirkcudbright, Lanarkshire, Linlithgowshire, Renfrewshire and Wigtownshire, are missing. The only evidence that commissions were issued for these counties is in the records of the Crown Office Docquet Book which gives no indication of specific alterations,² together with references to the issue in the State Papers Domestic. For the shires for which fiats do remain, the scale of changes ranged from a purge of 77% in the case of Kincardineshire where 3 justices were added to and 26 omitted from an original commission of 30, to an increase of 39% in that of Banffshire,³ where 22 justices were added and 11 omitted. Cowper still seems to have retained his policy of balance with respect to readjustment, although since the role of the Chancellor in this regulation has appeared miniscule it seems irrelevant to talk of 'Cowper's policy'. The policy was clearly directed by the Secretaries of State at the instigation of the Scottish legal establishment and with the connivance of the Lords-Lieutenant of the

¹ ib., S.P. 55/6, f.43, Robert Pringle to Sir James Steuart, 29 November 1716.

² ib., c.231/9.

³ ib., c.234/60, Kincardineshire 21 January 1717, /49, Banffshire, 29 November 1716.

various counties.

The 17 justices put in for Argyllshire, increasing the size of the commission by 34%, were predominantly Campbells while in Ayrshire Whigs like Sir Robert Montgomerie of Skelmorlie and Sir Thomas Wallace of Craigie who seemed to have been inadvertently missed in 1715, were readmitted.¹ In Banffshire 11 gentlemen were omitted and 20 admitted² including 4 who had been apparently overlooked in 1715, the Innes' of Edingight elder and younger, Patrick Gordon of Ardmellie and James Ogilvie of Logie. Also omitted was Alexander Abercrombie of Skeith whose son, George Abercrombie of Skeith the younger, was among those listed as 'Banffshire Prisoners' in 1716,³ as was Archibald Ogilvie of Rothiemay who surrendered at Banff also in 1716.⁴ This emphasis on putting in Whigs in Banffshire as opposed to leaving out Jacobites was a clear counterbalance to the 1715 experience where a conspicuous purge of 36.36% took place with no comparable addendum of Whigs. It was also in marked contrast to the shires of Aberdeen and Inverness for instance where there were significant purges of 31% and 50% respectively in 1716⁵ on top of similar decreases of 23% and 16% in September and February 1715. The crucial difference was that a considerable proportion of known Jacobites remained in the

¹ ib., /48, Ayrshire, 8 December 1716.

² ib., /49, Banffshire, 29 November 1716.

³ ib., S.P. 54/12, f.165.

⁴ ib., f.137, Brigadier Grant to Secretary of State, 23 November 1716.

⁵ P.R.O., C.234/45, Aberdeenshire, 29 November 1716; /59, Inverness-shire 5 November 1716.

commissions for these counties even after 1715 and consequently had to be dropped in 1716. Sir John Johnstone of Caskieben, Sir George Innes of Coxton, the Setons of Pitmeddan, John Gordon of Glenbucket, Irvine of Drum, John Farquarson of Invercauld, Duff of Braco, James Moir of Stoneywood and Gordon of Cluny failed to appear in the list for Aberdeenshire in 1716. Similarly the Inverness-shire list omitted MacPherson of Cluny, Alexander MacKenzie of Frazerdale and Hugh Ross of Clava all of whom were attainted in 1716. Also in the case of Aberdeenshire, and possibly, by implication in other north-eastern shires, there existed the problem articulated by Rothes, of insufficient reserves of potentially loyal justices.¹ In many instances it would be very much easier to purge commissions of Jacobites than reinforce them with Whigs. John Carnegie of Boysack, M.P. for Forfarshire, was put out of the commission for the shire in January 1717 after having been expelled the House in 1716 on being attainted. Forfarshire experienced a particularly savage purge of 54% with 5 justices being added to and 23 omitted from a commission which had been previously cut by 11% in September 1715 and in which Tories the Earl of Northesk and the Lord and Master of Gray were also put out.² In Perthshire 56 justices were omitted in the 50% purge of 1716 including the attainted Marquess of Tullibardine

¹ ib., S.P. 54/12, f.247, Rothes to Secretary of State, 17 November 1716.

² ib., c.234/46, Forfarshire, 4 January 1717.

and Viscount Strathallan and Lord Rollo both listed as suspected Jacobites in 1715.¹ Inexplicably put into the commission for the first time, however, was Sir Lawrence Mercer of Aldie who together with his son, also Lawrence, was a supporter of the House of Stuart in 1715. Another surprising inclusion in the Perthshire commission was James Oliphant of Gask. Although it was Lawrence Oliphant of Gask and his son who were the key members of the family allied to the Stuarts there is little doubt that ^{that} family as a whole was the mainspring of the Jacobite movement in Perthshire.² By far the most ruthless and savage purge however took place in the aforementioned shire of Kincardine. Of the 30 justices of the commission of September 1715, only 4 were reappointed in 1716. Prominent Jacobites such as Earl Marischal and Irvine of Drum were put out but Whigs of such local stature as Sir Alexander Burnett of Lyes and Sir Peter Frazer of Doors, who had succeeded Lord Forbes as Lord-Lieutenant of Kincardine in 1716, were also inexplicably dropped. This, as has been previously suggested, seems particularly strange in view of the fact that it was the Lords-Lieutenant who played the crucial role in the 1716 regulation. Sir Peter Frazer was in receipt of a letter requesting a list of nominees for the new commission together with recommendations for omission. Since there is no doubt that the fiat is a complete list of all the justices to be included, the heading

¹ ib., /68, Perthshire, 5 November 1716; I Geo. I.40.

² E. Maxlone Graham, The Oliphants of Gask: Records of a Jacobite Family, (London, 1910), passim.

bearing the instruction that 'the commission of the peace for the shire of Kincardine be renewed and filled up with the persons following ...,' it seems that the only explanation, bizarre as it appears is that offered by Sir Peter himself, namely that disaffection was so rife in the shire that it was impossible to recruit justices and that in any case it was such a small shire that six could easily do the work.¹ It is arguable however that disaffection would necessitate a greater number of justices, and if this was impossible in practice, certainly not the exclusion of two of the county's most loyal Whigs, one of whom was the Lord-Lieutenant. It is, moreover, interesting to note that Cowper himself was unwilling or unable to balance this commission with a requisite number of reliable Whigs and it seems doubtful that 7 justices would be able to perform legal and administrative duties previously borne by 30, even assuming a certain proportion did not act, at a time when apprehending Jacobites would have been a regular occurrence.

Significant omissions occur in the 1716 regulations, moreover, which are difficult to relate to the apparent comprehensiveness of ministerial involvement with the Scottish commissions of the peace. In March 1716, Sir Robert Munro of Foulis sent to Townshend 'a list of gentlemen of the name of Mackenzie that were most instrumental in carrying out the rebellion.'² Three of those named, Sir John

¹ See above pp. 165-6.

² ib., S.P. 54/11, f.205, Sir Robert Munro to Townshend, 31 March 1716.

Mackenzie of Coull, Alexander Mackenzie of Applecross and Mackenzie of Belmaduthy were in the last commission for Ross-shire dated 24 January 1715,¹ yet there was no new commission engrossed for the shire at this time. Subsequently all three gentlemen remained on the bench until the successive regulation in 1725, in spite of the fact that the former two were attainted in 1716. If gentlemen were attainted, however, there would clearly be no danger that they would actually act as J.P.s. Their names might well remain in the commission of the peace but it would be known that this was a rather absurd anomaly and it would seem reasonable to conclude that the issue of an attainder was as effective a means of dismissing a justice as engrossing a new commission. Similarly, in spite of the energies expended by the Earl of Rothes in making detailed recommendations for the commission of the peace for Fifeshire in November 1716,² no new commission was engrossed for that county until March 1722.³ Even in cases where commissions had been engrossed there could be delay in forwarding the lists to the counties. In February 1717, Sir Peter Frazer of Doors again complained to Methuen about the absence of the new commission for Kincardineshire.⁴ He claimed that Mr Pringle, Townshend's secretary, had informed him that his

¹ib., C.234/70, Ross-shire, 24 January 1715.

²ib., S.P. 54/12, f.230, Rothes to Secretary of State, 3 November 1716.

³ib., c.231/10, Fifeshire, 12 March 1722.

⁴ib., S.P. 54/13, f.29, Sir Peter Frazer to Mr. Methuen, 15 February 1717.

list of gentlemen fit to be J.P.s had been delivered to the Lord Chancellor in order that a commission could be expedited. Frazer assumed that this had been 'neglected at the Duke of Roxburghe's office' and wished that his Lordship would issue directions concerning it because the course of justice was 'much interrupted.' The commission for Kincardineshire had in fact been expedited on 21 January 1717 although the docket book entry is dated 4 January.¹

One of the reasons for this confusion could possibly have been a lack of communication between the secretaries, Robert Pringle and Paul Methuen, and the Secretaries of State. Lists would seem to have been sent to both with little discrimination and this may have resulted in a breakdown in communications which would have been less likely to occur under the Lord Chancellor's single Secretary of Commissions. It would clearly be wrong however to suggest that the ministry was totally lacking in vigilance where local administration was concerned. Rothes for instance had erred badly in compiling the list of nominees for Fifeshire by including Lord Balmerino and Viscount Stormount. He would seem to have had his faux pas swiftly pointed out to him by the Secretary and was forced to excuse himself by claiming that he had intended to keep out both the noble lords from the list because neither was well affected to His Majesty's

¹ib., C.234/60, Kincardineshire, 21 January 1717; C.231/9, Kincardineshire, 4 January 1717.

government but that there had been a mistake in the transcription.¹ Indeed it would almost seem from this interchange that the Lords-Lieutenant were less than vigilant rather than the ministers at the centre, for Rothes went on to claim that they had certainly done well to keep out Stormount, and that the inclusion of Lord Balmerino was of 'no great harm' because he 'did not make any public appearance against the government' in the late rebellion. The debate on this issue proved, of course, sterile, as no commission of the peace was issued for Fifeshire until March 1722 and Balmerino and Stormount remained on the bench for the shire at least until that date. Since the fiat is missing it is not certain whether they were removed then or in 1725. It would appear to be remiss of government to overlook such anomalies in the composition of the commissions of the peace since one essential condition of escaping attainder was surrender to one or more justices.² Implicit loyalty to the House of Hanover was clearly fundamental and men like Balmerino and Stormount certainly could not be guaranteed to provide it.

In spite of these qualifications, revisions of the commissions of the peace on this scale was the nearest Cowper had got to the 'ruthless purges' suggested by various historians.³ In

¹ib., S.P. 54/12, f.247, Rothes to the Secretary of State, 17 November 1716.

²ib., f.220, Commissioners of Enquiry to Townshend, 5 October 1716.

³W.A. Speck, Tory and Whig, p.82; Plumb, The Growth of Political Stability, p.167; Riley, The English Ministers and Scotland, p.258.

spite of the fact that 12 fiats are missing, the existing 12 suggest a comprehensive decimation on a scale not previously contemplated. It seems unlikely however that this represented a change of policy on Cowper's part. Some omissions were purely routine. In Peebles-shire, for instance, Alexander Horsburgh and Alexander Murray of Cringletie were removed from the commission for the shire in 1716.¹ The former, a writer in Edinburgh, had owned with one Gavin Thomson, one half of the estates of Foulage and Mailingsland in Peebles. Horsburgh fell into debt and his portion of the estate was sold off in 1713 to one Adam Little.² Murray of Cringletie was a more colourful character. Involved in a land rights dispute with the Town Council, he had 'beaten an intruder on the head and face with a cane' on 31 May 1714. On 7 July a Committee of the Convention of Royal Burghs was appointed to meet with Murray in an unsuccessful attempt to resolve the dispute. As a result, one James Wyllie was dangerously wounded by the Laird while defending his lands.³ The action was decided in favour of Murray and against the Council on 18 January 1717 but this was too late to have prevented his removal from the commission of the peace for Peebles-shire in 1716.⁴ Rather than a change of policy, therefore, Cowper's action was more in the context of a necessary response to

¹P.R.O., c.234/67, Peebles-shire, 5 November 1716.

²Buchan and Paton (ed.) A History of Peebles-shire, ii, 326-7.

³ib., 247-8.

⁴P.R.O., C.234/67, Peebles-shire, 5 November 1716.

a particular circumstance, in which the motivating force was the Secretaries of State rather than the Lord Chancellor. Even if Cowper had played a larger role in the selection of new justices than the records suggest, the 1716 regulation would not necessarily have been inconsistent. The rebellion of 1715 had brought Jacobites, previously only suspected of disaffection, into the open and produced the conclusive evidence of guilt demanded by the Chancellor in his defensive memorandum to the King. Cowper would therefore merely have been removing justices who had proved subversive regarding the security of the state. This would in no way prove a marked alteration in policy. This is borne out by the fact that between January 1717 and his resignation in April 1718, Cowper engrossed a mere two commissions for Scottish counties, Aberdeenshire and Roxburghshire in December 1717.¹ Neither the extent of these adjustments within 33 counties nor the scale, 12 gentlemen omitted in Aberdeenshire, 10 admitted in Roxburghshire and neither significant in terms of percentages, suggest any deviation from Cowper's moderate approach to political manipulation of local government patronage.

It is possible that this reversion to minimal tinkering with the Scottish Commissions reinforces the hypothesis previously postulated with respect to the role of interest in political manipulation of the bench as opposed to that of party. During 1717

¹ib., /45, Aberdeenshire, 18 December 1717; /72, Roxburghshire, 18 December 1717.

the influence of Stanhope and Sunderland was in the ascendant, while that of Townshend and Walpole was in decline. Associated with this realignment of the centre was the increasing power allotted to the Squadrone in Scotland and the corresponding waning of that of Argyll as the political ally of Townshend and Walpole. The subsequent dismissal of Townshend from the Lord-Lieutenancy of Ireland and the resignation of Walpole in April 1717, signified the continued eclipse of the Argyll faction which had commenced with the dismissal of Argyll and Islay over their supposed influence on the Prince of Wales. The Squadrone gained from the clearance which subsequently took place in Scottish politics as 'Argyll men' were ousted from influential positions.¹ If it is accepted that the frequency of the issue of commissions of the peace for the Scottish counties is possibly connected with the activity of the Duke of Argyll in influencing recommendations to a Chancellor who responded to such requests, then it may be possible to surmise that the diminutive degree of revision during 1717 reflected the political demise of Cowper's most active prompter. Certainly the ascendancy of Squadrone power had no noticable effect on the composition of the bench. The 'clearance' previously discussed did not reach the magistracy.

¹Riley, The English Ministers and Scotland, pp. 264-6.

Alexander Grant of Grant lost his regiment, his Sheriffship of Inverness and his Lieutenancy of Banffshire¹ but he still retained his place as a justice of the peace in the commissions of both these counties. Political realignment may not indeed have led to revisions of commissions of the peace but to a contrasting lack of activity. There is however the alternative possibility that the marked lack of activity with respect to commissions was due to the dismissal of Cowper's Secretary of Commissions Richard Woollaston on the grounds of improper claims made by him about certain Middlesex justices.² His successor was John Hughes whose inexperience in the office was compounded by poor health. Cowper himself resigned in April 1718. He also had been in ill health for some time and, moreover, seemed to have been in political sympathy with the Prince of Wales against the King,³ a political fact not guaranteed to secure his future. His tenure as Chancellor was characterized by the attitude he adopted to those suspected but not proved disaffected:

... I must confess it was and is my opinion that so very partial and unjust a proceeding must have done more harm than good to your Majesty's government, and that the true way to mend the Commissions is first to persuade those honest men to act who are put in....⁴

This, Cowper did, and he only acted contrarily when forced by circumstances to alter his tactics if not his principles.

¹Riley, The English Ministers and Scotland, p.267.

²L.K.J. Glassey 'The Commission of the Peace 1675-1720', p.378.

³Lord Campbell, Lives of the Chancellors, iv, 380-1.

⁴Herts. R.O., Cowper (Panshanger) Mss., D/EP F.156.

5. The Commission of the Peace under Lord Macclesfield, 1718-25.

Following the resignation of Lord Cowper in April 1718, the Great Seal was put into commission until the appointment of Lord Chief Justice Parker as Lord Chancellor on 12 May. Thomas Parker, created Earl of Macclesfield in 1721, was born in 1666. Son of a Staffordshire lawyer, he was admitted to the Inner Temple in 1684, called to the bar in 1691 and returned as the member for Derby in 1705, having established himself there in his attorney days. His reputation as a distinguished judge has been marred, however, by his dismissal and subsequent impeachment in 1725 for conniving at fraudulent practices of the Masters in the Court of Chancery. Found guilty, he was imprisoned in the Tower, subsequently released and lived in retirement until his death in 1732.¹ As Chancellor, however, he contributed to the refinement of Crown Office procedure, by sending 'instructions' for names to be added to the last commission of the peace, thereby negating the necessity for a complete new commission.² He also resurrected the practice of removing justices from commissions by issuing writs of supersedeas, again saving the effort of issuing a new commission.³

¹ Lord Campbell, Lives of the Chancellors, iv, 501-60.

² L.K.J. Glassey, 'The Commission of the Peace, 1675-1720', p.26.

³ ib., p.27.

Since there is some suggestion that there was a marked difference of approach between Lords Cowper and Macclesfield, and indeed that the latter's opinion favouring the King's authority over the education and marriage of his grandchildren, indirectly led to Lord Cowper's resignation,¹ some distinctive handling of the commissions of the peace might be anticipated. Such a proposition would be impossible to prove with respect to Scotland, however, since for the 20 commissions engrossed by Macclesfield during his tenure as Chancellor only 2 fiats remain. This limited insight into structural changes within individual commissions, necessarily implies that only tentative conclusions can be drawn regarding the Chancellor's handling of the magistracy.

The accusation levelled at Lord Cowper of relative inactivity with respect to manipulation of commissions of the peace in the Whig interest,² might suggest that a critical successor would embark on a brisk period of remodelling. This, however, did not occur. Although installed as Lord Chancellor in May 1718, Macclesfield did not issue his first Scottish commission until June 1719. The extent of the changes under Macclesfield, moreover, was minimal in comparison to that effected by Cowper. During his second Chancellorship from September 1714 to April 1718, Cowper engrossed 71 commissions

¹ Lord Campbell, Lives of the Chancellors, iv, 519-22 (misprinted 552).

² Lord Campbell, Lives of the Chancellors, iv, 373.

for Scottish counties,¹ an average of 20.28 per year. The comparable figure for Macclesfield from April 1718 to January 1725 is 20, an average of 2.96.² There can be no suggestion therefore that Cowper's resignation opened the door to a complete reappraisal of the commission of the peace as an instrument of government policy.

The timing of such commissions as were issued and the absence of commissions when they might have been expected, further substantiates this hypothesis. Commissions were engrossed for 14 Scottish counties in June 1719 — Aberdeenshire, Argyllshire, Banffshire, Cromarty, Dunbartonshire, Elginshire, Forfarshire, Inverness-shire, Kincardineshire, Nairnshire, Perthshire, Ross-shire, Stirlingshire and Sutherland.³ Thereafter commissions followed sporadically for Argyllshire in March 1720, Haddingtonshire in August 1720, Perthshire in November 1720, Fifeshire in March 1722, Lanarkshire in April, 1722, Renfrewshire in October 1723 and Dumfries-shire in May 1724. The burst of activity in June 1719 possibly reflected increasing government anxiety about Jacobite activity abroad which had gained momentum during 1718-19. Spain had provided, in the framework of the broader international diplomacy of the period, a squadron for an attempted invasion of England coupled with a small expedition of Jacobites to invade

¹ P.R.O. c.231/9.

² ib.

³ ib.

Scotland.¹ Although the Jacobite entourage was easily defeated at Glenshiel, and the attempt seemed to pose no serious threat to the security of the realm, the cluster of commissions issued at this time suggests some reinforcing of the Whig interest. This becomes more apparent when it is observed that with the exception of Argyllshire and Dunbartonshire all the counties involved are in the Highlands, particularly the North-East with its tradition of Jacobite activity. This is borne out in Thomas Scott's letter to Lord Advocate Robert Dundas of Arniston

... you will receive herewith enclosed fourteen new commissions of the peace for the several Northern counties...²

There is moreover a parallel with the English situation where there was a similar burst of activity in the spring and summer of 1719,³ suggesting government concern at the role of Jacobite intrigue in the international sphere. If this was the case, however, Macclesfield seems to have been remarkably slow at turning his attentions to Scotland, arguably the seat of Jacobite activity in the Kingdom.

It is however impossible to reach a firm conclusion about Macclesfield's performance as Chancellor since the greatest percentage of the fiats are missing and the scale of the changes he effected therefore remains unknown. The existing fiats, for Perthshire in June

¹G.H. Jones, The Main Stream of Jacobitism, pp. 140-2; Petrie, The Jacobite Movement, pp. 290-6.

²P.R.O., S.P. 55/8, f.245, Thomas Scott to Dundas, 30 July 1719.

³L.K.J. Glassey, 'The Commission of the Peace 1675-1720', pp.381-3.

1719 and Haddingtonshire in August 1720,¹ give little basis on which to formulate a generalization. The Haddingtonshire fiat merely added one justice, George Burham esq., to the commission. In Perthshire 12 justices were added and 1 left out, increasing the size of the commission by 20%. Included were the governor and deputy governor of Fort William Sir Robert Pollok of Pollok and Major James Cunningham and the deputy governor of Stirling Castle, Colonel John Blackader, again suggesting the motivation of reinforcement in the face of Jacobite intrigue. William Stirling of Herbertshire, a staunch Whig, was put into the commission as was Sir Patrick Strachan of Glenkindie who seemed to have lived down his Jacobite reputation. By far the most significant feature of the commission however could be the omission of the Duke of Argyll. The changes in the Scottish Administration during 1717-1718 resulting in the entrenchment of the Squadrone at the expense of the Argyll interest continued until 1720 when Sir David Dalrymple, a staunch Argyll man lost his position as Lord Advocate to Squadrone member Robert Dundas.² On poor terms with Walpole and Townshend, Argyll returned to Sunderland's ministry which was anxiously seeking support in the face of factious opposition. Although Steward of the Household, he was excluded from all dealings with Scotland and his break with the Prince of Wales was not sufficient to ingratiate himself with the King.³ Removal from the

¹P.R.O., c.234/68, Perthshire, 17 June 1719; /56, Haddingtonshire, 9 August 1720.

²Riley, The English Ministers and Scotland, p.270.

³ib., p.268; A.S. Foord, His Majesty's Opposition, pp. 60-1.

Perthshire commission in June 1719 may therefore reflect the trend of political intrigue at the centre though the limited nature of the evidence necessitates cautious interpretation. Collectively however, the structural changes described may be an indicator of the nature of the changes enacted by Macclesfield in areas of previous Jacobite activity at this particular time. In the case of Perthshire, Jacobites were clearly not being removed from the commission but there is the possibility that the bench was being actively strengthened in the Whig interest to enable it to cope with any local increase in disaffection.

The most surprising aspect of Macclesfield's handling of the commissions of the peace, however, and a possible indicator of their declining importance as a political tool of some significance, was their absence in the period immediately prior to the general election of 1722. It has been suggested that both in 1713 and 1715 reorganization of the bench gave some indication of favour within the ministry and therefore provided a pointer in voting tactics.¹ In 1722, the elections commenced in March, yet the only commissions engrossed at this time were for Fifeshire in March and Lanarkshire in April 1722.² In Fifeshire there was no contest and the Squadrone member, Sir John Anstruther, was returned unopposed.³ In Lanarkshire however there was an active contest between the Tory

¹See above pp. 107, 131.

²P.R.O., c.231/9, Fifeshire; Lanarkshire.

³Sedgwick, The House of Commons, 1715-1754, i, 385.

Lord Archibald Hamilton and the Whig Sir James Steuart.¹ Hamilton was returned but there is the possibility that the issue of an isolated commission at this time was related to the Whig challenge. There were, moreover, counties where the absence of a regulation suggests an equally possible political motivation. Sir Robert Munro of Fowlis and his brother George Munro of Culcainne, were prominent Whigs whose corrupt practices in burgh elections in 1721 led to their being fined £200 each at Inverness Circuit Court.² In spite of proven corruption, the brothers remained in the commission of the peace for Ross-shire and Sir Robert was subsequently re-elected member of parliament for "tain Burghs in the general election of 1722."³ The perennial Ross-shire problem of balancing the numerically superior but potentially disaffected Mackenzies with the loyal but numerically inferior Rosses and Munros in the commissions of the peace, clearly necessitated the government overlooking the corrupt malpractices of proven Hanoverians. While one of the commissions engrossed in 1722 therefore may have been positively indicative of political manoeuvring, the absence of another could negatively suggest a similar political motivation.

Although no fiats remain to indicate the scale of changes effected, the number of counties involved suggests that there was no conscious policy of remodelling for political ends. This is

¹ *ib.*, p. 389.

² W. Ferguson, 'Dingwall Burgh Politics and the Parliamentary Franchise in the Eighteenth Century', *Scot. Hist. Rev.*, XXXVIII, 1959, pp. 91-2; A Mackenzie, *The Munros of Fowlis*, (Inverness 1898), pp. 121-7.

³ Sedgwick, *The House of Commons, 1715-1754*, i, 392.

particularly surprising in view of the nature of the contest. There is every indication that extensive preparations were made at a time of complex in-fighting among the Whig hierarchy in the wake of the South Sea collapse.¹ Stanhope and Sunderland had been forced to broaden their base by taking in Walpole and Townshend in April 1720, and the latter were striving for predominance in 1722. The Jacobites also were trying to establish a wedge with Sunderland. In 1721 George Lockhart and Shippen had tried to gain Sunderland's co-operation in joint opposition to Walpole and Townshend.² Argyll at this point seemed to be caught in a cleft stick. He was involved in Sunderland's intrigue with Shippen and Lockhart but Walpole, faced with the entrenched position of the Squadrone in the Scottish establishment began to see the advantage of a reunion with the alternative interest. Consequently Argyll became Master of the Household and Islay Keeper of the Scottish Privy Seal when Annandale died in 1721.³ The complexity of politics at the centre could have been expected to have had some repercussions at the periphery. Macclesfield, however, made no effort to influence the 1722 elections in Scotland through the bench and the possibility begins to emerge

¹ J.H. Plumb, Sir Robert Walpole, The Making of a Statesman, (London, 1956), p.377; Riley, The English Ministers and Scotland, p.272.

² A.S. Foord, His Majesty's Opposition, p.88; Riley, The English Ministers and Scotland, p.272.

³ ib., W. Ferguson, Scotland: 1689 to the Present, (Edinburgh, 1968), p.141, (hereafter referred to as Scotland).

that though party differences played some part in political manipulation of commissions of the peace, inter-Whig rivalry did not. Alternatively the role of Argyll in 1722 may have been crucial. It has been suggested that the influence of Argyll in the localities remained strong in spite of his éclipse at the centre.¹ Furthermore there is the possibility that Argyll and his associates were particularly active in recommending changes in the bench and that Cowper had been responsive to such recommendations while seemingly reluctant to initiate proceedings.² It is therefore probable that there already was strong enough bias in favour of 'Argyll men' in the commissions of the peace and that this bias, coupled with Walpole's desired reunion with Argyll negated any necessity for action.

In the three remaining years of his tenure as Chancellor, Macclesfield sealed only two further commissions for Scotland, one for Renfrewshire in October 1723 and another for Dumfries-shire in May 1724.³ Again no fiats remain to give any indication of the scale of changes effected but the infrequency of Macclesfield's involvement is a relatively sufficient indicator of his inauspicious handling of this aspect of the patronage at his disposal. Clearly there was only a minimal degree of pre-election activity at a time when political

¹Riley, The English Ministers and Scotland, p.271.

²See above, p.131.

³P.R.O., c.231/9.

manoeuvring at the centre was dynamic. Such activity as there was seems to have centred on the aftermath of Alberoni's attempted invasion of 1719 and the absence of eighteen of the twenty fiats in this period may suggest their removal for some form of post rebellion analysis prior to the major regulation of 1725. By the time of Macclesfield's dismissal in January 1725, Walpole was firmly in control and Argyll's influence continuously on the increase in Scotland. The malt tax crisis in the summer of 1725 secured that influence and when Peter King succeeded Macclesfield on 1 June 1725, the scene was set for the long ascendancy of the Argyll interest in Scotland albeit firmly under Walpole's control.

6. The Commission of the Peace under Lords King and Talbot, 1725-37.

Lord Macclesfield's successor Peter King, was born at Glastonbury in Somerset in 1669. A nephew of John Locke, he was sent by him to study at the University of Leyden. He was called to the bar in 1698 and returned as a Whig for the borough of Bere Alston in 1700, successfully establishing himself in the Commons and earning promotion to Lord Chief Justice of the Common Pleas in 1714 on the recommendation of Lord Cowper.¹ The situation which he inherited as Chancellor in the summer of 1725 was potentially volatile with respect to Scotland. Walpole was in the midst of redefining the Scottish administration, having re-enlisted Argyll and Islay in 1721 as a counterbalance to the dominant Squadrone influence.² Lockhart remarked that at the end of May 1725 'a great many of the Squadrone were turned out of their employments', because of their opposition to the malt tax, thus upsetting the previous balance between Squadrone and Argyll interests.³ The abolition of the Scottish Customs Board following a House of Commons inquiry into fraudulence and negligence had opened the way to ridding the administration of many recipients of Squadrone patronage.⁴ In spite of this reorganization under a single Board, Scottish revenue continued to give rise for concern and it was decided to

¹ Lord Campbell, Lives of the Chancellors, iv, 567-92.

² Riley, The English Ministers and Scotland, pp. 271-2.

³ The Lockhart Papers, ii, 156.

⁴ Plumb, The Growth of Political Stability, pp. 180-1;
Riley, The English Ministers and Scotland, pp. 278-9.

enforce the collection of the 3d per bushel malt tax which had been vigorously opposed by the Scots as being contrary to the terms of the Treaty of Union when it was introduced in 1713.¹ Riots broke out in Glasgow on 24 June 1725 and this was followed by Edinburgh brewers refusing to brew until the act was repealed. The regulation of the Scottish commissions of the peace in July 1725 is therefore potentially interesting as an example of government's reaction to an immediate crisis. The ministry had had previous warning that trouble was imminent. The Lord Advocate, Duncan Forbes, wrote to Charles Delafaye, Secretary to the Lords Justices, calling for new commissions of the peace 'because they will be necessary.'² He also wrote to John Scrope, Secretary to the Treasury and formerly a Baron of the Exchequer in Scotland, that commissions of the peace were urgent to ensure public order.³ Commissions were promptly expedited to all Scottish counties, with the exception of Peebles-shire and Bute, on 2 July 1725. It would seem that the regulation had been intended to reach all Scottish counties. Indeed a fiat exists for Peebles-shire dated 2 July 1725⁴ and on the back of the corresponding Ayrshire fiat is a note, 'I did not receive back from Lord Islay the list for Peebles and Bute.'⁵ This virtual 100%

¹ ib., p.283; Basil Williams, The Whig Supremacy, p. 262.

² More Culloden Papers, ii, 244, Lord Advocate to Charles Delafaye 17 June 1725.

³ ib., ii, Lord Advocate to John Scrope, 24 June 1725.

⁴ P.R.O. C.234/67, Peebles-shire, 2 July 1725.

⁵ ib., /48, Ayrshire, 2 July 1725

regulation was the most extensive affecting Scotland since 1708 and was accompanied by a corresponding alteration in the scale of individual commissions ranging from a decrease of 56% in the case of Ayrshire where 9 justices were added to and 57 omitted from an original commission of 87, to an increase of 340% in that of Kincardineshire¹ where 24 justices were added to Sir Peter Frazer of Doors' decimated commission of 7. It is possible that some alterations in size were effected to redress previous adjustments which had resulted in an imbalanced commission with respect to the size or population of the county concerned. Forfarshire for instance, had 22 justices added to its commission and 8 left out, an increase of 100% following a 1717 purge of 54%. Renfrewshire had 38 justices admitted to its commission and 12 omitted, an increase of 84% following a decrease of 31% in 1715. Inverness-shire had 23 justices added and 9 omitted, a 100% increase after a purge of 42% in November 1716 and 24 gentlemen were added to the Kincardineshire commission effecting a massive increase of 340% after the significant purge of 77% in 1717. Clearly Sir Peter Frazer's expectations that 6 justices could adequately perform the necessary administrative and judicial duties in such a small shire, had proved to be over optimistic.² Alternatively Kinross-shire had its commission slashed by 50% in 1725 after a considerable increase of 86% in 1715. Such figures can,

¹Details of changes in the scale and composition of the commissions of the peace are taken from the fiats for the Scottish counties, P.R.O., c.234/45-77, /114, 2 July 1725.

²P.R.O. S.P. 54/12, f.144, Sir Peter Frazer to Secretary of State, 30 November 1716.

however, be misleading since, of necessity, they are based on the last known fiat. Intervening fiats for Forfarshire and Inverness-shire for June 1719 are missing as are two for Renfrewshire for November 1716 and October 1723 and that for Kinross-shire for November 1716. Although statistically, the scale of alterations seems significant there is the possibility that previous intervention had partially or completely readjusted any anomaly in relation to size. The combined extent and scale of the changes does however suggest a dramatic response to a particular crisis and this is substantiated by a significant structural alteration in the composition of the bench.

The fiats for the Scottish counties for 2 July 1725 are all in the form of complete lists which simplifies subsequent analysis. A dominant feature of the lists for the Highland shires, is the inclusion of a considerable military contingent at the end of the fiats, often written in a different hand from the other names.¹ This military component consisted of George Wade, Major General Sibourg, Jasper Clayton, Alexander Spotswood, Joshua Guest, William Grant, Lord Lovat, Sir Duncan Campbell, John Campbell of Carrick, Colin Campbell of Skipnish, George Munro of Culcaine, Brigadier Groves and Edmund Burt. General Wade arrived in Scotland in the summer of 1725 to inspect the regular troops in the Highlands, Joshua Guest,

¹ The shires involved are Aberdeenshire, Forfarshire Banffshire, Caithness, Cromarty, Dunbartonshire, Elginshire, Inverness-shire, Kincardineshire, Nairnshire, Perthshire, Ross-shire, Stirlingshire and Sutherland.

who had been created Brevet Colonel in 1713 and had served under Argyll in 1715, was barracks manager for Scotland¹ and General Sibourg governor of Fort William². Lord Lovat, Sir Duncan Campbell, Campbell of Carrick, Campbell of Skipnish, William Grant and Munro of Culcaine captained the six independant companies formed from the loyal Highland clans in 1725.³ Jasper Clayton had a military career, being promoted to Colonel of the 14th Regiment of Foot on 15 June 1715⁴ and according to Newcastle was in the Highlands after the Disarming Act of 1716 implementing that legislation. In 1725 he had been appointed governor of the castle and fort of Inverness.⁵ Alexander Spotswood likewise became a captain in the 10th Regiment of Foot and Edmund Burt had a military career which had taken him to the Western Highlands in the summer of 1725. The presence of Burt on the bench is a little surprising, for not only had he been stigmatized as 'the hated tax gatherer at Inverness' who treated the Highlanders with brutal contempt but his administration of the area was also described as that of a 'haughty, keen and unsupportable government,' which the people of Inverness found impossible to bear. If this was not sufficient grounds for doubting the wisdom of

¹ John Baynes, The Jacobite Rising of 1715, (London, 1970), p.207.

² B.M., Add. Mss. 33049, f.253, 'Memorial touching the Bill now depending for Disarming the Highlands'.

³ ib., J.W. Fortescue, A History of the British Army, (London, 1899), ii, 49; Frank Adam, The Clans, Septs and Regiments of the Scottish Highlands, (Edinburgh and London, 1955), p.284.

⁴ Charles Dalton (ed)., English Army Lists and Commission Registers, (London, 1960), iv, 130; Baynes, The Jacobite Rising of 1715, p.206

⁵ B.M., Add. Mss. 33049, f.270, Bill for renewing the Highland bill 1725; P.R.O., S.P. 54/18, f.128.

including the said Burt in the commission of the peace for the shire, it could be added that he had 'damned the law of Scotland' openly in the city and might therefore not have been the likeliest gentleman to enforce it.¹ The inclusion of this considerable military contingent in the Highland commissions of the peace raises the question of the initial motivation for the total regulation embarked upon at this time.

There seems little doubt that the impetus to action, as previously suggested, was the disorder anticipated on the imposition of the malt tax in 1725. Existing justices and magistrates in the principal towns had openly expressed opposition and there was therefore no certainty that the law would be enforced.² It would seem unlikely however that such a large military contingent would have been necessary for this purpose, and had it been, it would have been expected to appear in the commission for Edinburghshire where the brewers were in strong opposition to the act and where the Glasgow magistrates had been taken after their complicity in the rioting which had culminated in the attack on Campbell of Shawfield's house in the belief that he had initiated the Bill.³ It was in Edinburgh that these trials took place and Walpole congratulated Islay on his initiative in qualifying himself to act to meet this contingency.⁴

¹Adam, The Clans, Septs and Regiments of the Scottish Highlands, p.64.

²William Coxe, Memoirs of the Life and Administration of Sir Robert Walpole, Earl of Orford, (London, 1798), i, 233, hereafter cited as Walpole.

³Riley The English Ministers and Scotland p.283.

⁴Coxe, Walpole, ii, 453, Sir Robert Walpole to the Earl of Islay, 26 August 1725; The Lockhart Papers, ii, 167.

He also referred to the summoning of the brewers before the J.P.s as the correct action and also to the importance of the punishment of the Glasgow magistrates since it was essential that they should realise that their role was to uphold the law rather than subvert it. The urgency with which the new commission of the peace was awaited in Edinburgh is, moreover, underlined by the fact that the justices met to qualify on 8 July 1725 although the commission itself had only been engrossed on 2 July.¹ The military however do not appear in the Edinburghshire commission, and if their inclusion had been designed to accommodate the increased burden at a time of civil disorder then their failure to appear is significant.

There is, furthermore, the factor of the speed with which the commissions were expedited. Appeals for new commissions were reaching the ministry in June in anticipation of trouble when the act was implemented. Commissions were simultaneously engrossed for all the Scottish counties except Bute and Peebles-shire on 2 July 1725.² Since King had not received the Seals until 1 June, it would have been impossible for him to complete a total regulation in such a brief period. It would seem therefore that there was a longer term motivation behind the remodelling, and the fact that lists were ready for this crisis, purely coincidental. As early as 15 June, King had received an instruction from Walpole that he should

¹W.R.H., J.P. 4/2/1, Midlothian Quarter Sessions Sederunt Book 1720-1733, 8 July 1725.

²P.R.O., c.231/10.

... expedite commissions of the peace for the several shires of Scotland, which commissions had been settled by Lord Townshend before he went away, and sent to the late Commissioner of the Seal ...¹

The Deputy Clerk of the Crown, Pynsent, produced new lists for the Scottish counties but claimed that he had never received orders to make out new commissions. The Master of the Rolls said he had received new lists from Lord Townshend without any letter or order and since this happened a few days before he 'closed up the Seals' he had done nothing about it apart from sending them to the Crown Office.² It would seem therefore that the motivation behind regulation was more long standing than the anticipated disorder ensuing from enforcing the malt tax and that the latter event merely accelerated the process rather than initiated it.

It would seem that the essential catalyst had been an increasing government fear of resurgent Jacobitism associated with minor plots and rumours of plots. Lord Townshend approached Lord Grange for his opinion on the lack of stability in the Highlands and an extensive report was sent to London.³ Lord Lovat, a Hanoverian and active Whig at this point in his checkered career, also forwarded a memorandum in 1724 in which he catalogued the reasons for the failure of government policy. In Lovat's opinion, the Disarming Act which had followed the rebellion of 1715 had not been enforced due to the disbanding of the independant Highland Companies.

¹ Lord King, Notes on Domestic and Foreign Affairs, p.437-8.

² ib., p. 438.

³ Hist. Mss. Comm., Mar and Kellie Mss., 1, 528.

Deputy Lieutenants and justices of the peace were known Jacobites and some justices completely failed to meet the property qualification. The commission of the peace, in Lovat's opinion, was failing to exercise adequate control over fundamental issues of law and order and proposals were made for refounding the companies, scrutinizing local government offices and establishing a network of roads throughout the Highlands to facilitate the maintenance of security.¹ General Wade was subsequently commissioned to investigate the state of the Highlands, evaluating the necessity for companies, equipment, roads and disarmament and also the viability of the Lieutenancies and commissions of the peace in their existing form.² The timing of such an exercise was propitious. English Jacobites had been exposed to a Walpolean witch-hunt in the wake of the Atterbury plot in 1722, and from 1724 had operated under the increasing handicap of failed restoration attempts and government persecution.³ With Jacobite morale at a particularly low ebb, this would clearly be the time to extend the purge to Scotland. During the aftermath of the 1715 rebellion local lairds had been prepared to supervise the surrender of weapons on a strictly formal basis but consistently failed to carry out the necessary search operations on their

¹ P.R.O., S.P. 54/18, f.220.

² *ib.*, /14, f.326, 'Private Instructions to General Wade,' 1724.

³ Paul Fritz, The English Ministers and Jacobitism between the Rebellions of 1715 and 1745, (Toronto, 1975), pp. 106-7.

neighbours' territory which would have been commensurate with total disarmament.¹ The extension of pacification efforts to include communications, the military, Lieutenancies and commissions of the peace indicated a marked change of gear in government policy.

Wade's commission however, coincided with the malt tax riots and his report, which was read to a meeting of the Regency, Council on 1 July suggested that

... if commissions for justices of the peace had been sent down, it might have been of use to them on this occasion.²

Lord King went on to claim that on receiving the Seals he had found thirty one lists for commissions of the peace for Scottish shires and recalled information he had received from William Stewart, M.P. for Ayr Burghs and a staunch Argyll man, that the lists had been drawn up by the Earl of Islay under the direction of Lord Townshend and that Islay's remit had been to

... settle proper and fit lists for justices of the peace in Scotland it being now proper both for levying the Malt Tax and disarming the Highlanders.³

It would seem therefore that the motivating force behind the regulation of 1725 was initially government fear of resurgent Jacobitism, and the malt tax riots in Glasgow the possible extension of deep dissatisfaction with the Union which accelerated

¹ Baynes, The Jacobite Rising of 1715, p.202.

² Lord King, Notes on Domestic and Foreign Affairs, p. 439, 1 July 1725.

³ ib.

the process. Fines could have been imposed on all Highlanders using or possessing arms after 1 November 1716. It seems however that the emphasis in Scotland after the rebellion was on leniency as opposed to oppression. This emphasis had been made explicit by Duncan Forbes who, in a letter to Walpole, had suggested that punishment should go no further than that necessary for the security of the government.¹ General Wade reported that fines were neither being levied nor paid and Newcastle noted that none but friends of the government had delivered their arms other than those taken by Brigadier Clayton.² The Disarming Act of 1725 had overcome the hoarding of arms in houses by giving justices powers of search and authority to confiscate any concealed arms found.³ The fact that the commissions of the peace of the Highland shires contained a military contingent is therefore not surprising. George Lockhart correctly observed that

... a great many officers of the army were named in the commissions of the north side of the river of Forth (for the better executing of the disarming act as well as levying the malt tax).⁴

George Lockhart was not apparently aware that it was disarmament which had provided that initial motivation for action and that ten years after the first Jacobite rebellion, the government of the day

¹ Culloden Papers, ed. H. Duff, (London, 1815), p.61, Duncan Forbes to Robert Walpole, August 1716.

² B.M., Add. Mss. 33049, f.270.

³ 11 Geo I C.26.

⁴ The Lockhart Papers, ii, 167.

was still seeking a coherent policy for Scotland in the light of inherent disaffection.

An important aspect of the remodelling undertaken at this time is the relative inactivity of the previous Chancellor Lord Macclesfield. The motivating force seems clearly again to have been Lord Townshend with Islay as the key agent. Reporting his activities to the Regency Council, Islay claimed that he had consulted with the relevant M.P.s in compiling the lists and that 'those who were dead or had never acted or had no estates in the county', had been left out. He assured the Council that he had 'added men of estates and character in the respective counties' and that the whole task had taken three months since it was done with 'great exactness and regard to gentlemen'.¹ The ministry therefore played a crucial role in the restructuring and this point was not lost on George Lockhart, who claimed that

... the new commissions of the peace (which) were about this time sent to all the shires in Scotland were crammed full of people that the ministry knew would be useful tools...²

This is in marked contrast to Islay's claim of impartiality and suggests a political dimension to ministerial manoeuvring. The military component itself constituted a significant, though not necessarily political, intrusion, in many cases dominating the commission. In

¹ Lord King, Notes on Domestic and Foreign Affairs, p.439, 1 July 1725.

² The Lockhart Papers, ii, 167.

Cromarty for instance, 50% of the justices were military men and a similar situation existed in Inverness-shire and Nairnshire.¹ In many cases however changes reflected the maxims propounded by Islay. In Ayrshire Sir William Cunningham of Cunninghamhead was omitted in 1725. He had become Lord Ruthven in 1722. Sir William Gordon of Afton had died in 1718, Sir Hugh Cathcart in 1723.² They did not appear in 1725. Francis Montgomery of Giffen failed to appear in 1725 although he was still M.P. for Ayrshire. He had, however, sold his estate to Sir John Anstruther in 1725 because of financial difficulties.³ In Dunbartonshire, Humphrey Colquhoun of Luss, John Haldane of Gleneagles, Nicolas Buntine of Ardock, William Campbell of Succoth and Walter Graham of Galingad were all presumably dead since in 1725 they were replaced by their sons. The disappearance of the prominent family of Houston of Houston from the commission can be explained by the fact that the father's death in 1717 was followed by the sons in 1722.⁴ Many Jacobites who had lingered on in commissions seem finally to have been omitted in 1725. In Aberdeenshire, Bissett of Lessendrum was left out, while in Dumfries-shire Viscount Stormount and Grierson of Lagg were omitted. In the former case, however, the previous fiat for 17 June 1719 is missing and in the latter the previous two fiats for 5 November 1716

¹ P.R.O., c.234/54, Cromarty, /59, Inverness-shire, /65, Nairnshire, 2 July 1725.

² G.E.C. Baronetage, ii, 325; iv, 327; iv, 419.

³ Sedgwick, The House of Commons, 1715-54, ii, 270.

⁴ G.E.C. Baronetage, iv, 268.

and 20 May 1724 are lost so it is possible that these omissions occurred at an earlier date.

Certain anomalies arise however suggesting lack of communication rather than political manipulation. Sir James Dunbar of Hempriggs was left out of the Caithness commission in 1725 and a William Dunbar of Hempriggs put in. Sir William died in 1711, his brother Robert succeeding to the baronetcy but not the estates which passed to his daughter. Sir Robert Dunbar owned the Northfield estates and was succeeded by his son Patrick. There is no record of Sir James Dunbar of Hempriggs or Northfield or of a William Dunbar living in 1725.¹ There seems also to have been a certain leniency shown towards repentant Jacobites and the families of Jacobites. Hugh Ross of Clava, whose father was attainted and his estates forfeited in 1716, appeared in the commission for Nairnshire. Although the son may never have had Jacobite sympathies the government may have been tempted, in view of the motivation behind the current regulation, to avoid appointing justices whose families had been active Jacobites in the rebellion. Sir Patrick Strachan of Glenkindie was in the Perthshire commission, while a William Duff of Braco appeared in for Banffshire in 1725.² The Jacobite William Duff, however, committed suicide in 1718 and although he had appeared in all Banffshire commissions until then, he could have been put out in June 1719, the

¹ P.R.O., C.234/52, Caithness, 2 July 1725; G.E.C. Baronetage, iv, 390.

² P.R.O., C.234/65, Nairnshire/68, Perthshire, /49, Banffshire, 2 July 1725.

fiat for this commission being missing. His estates reverted to his uncle, William Duff of Dipple, father of the first Lord Fife and it is possibly to this gentleman that the 1725 commission was directed, this branch of the family having no Stuart proclivities.¹ The aforementioned Sir William Gordon of Park was attainted in 1745 and Alexander Urquhart of Newhall, in the Cromarty commission in 1725 had been commissioned as Lieutenant-Colonel by the Pretender in 1722.²

There would also seem to be clear evidence of the government failing to take first hand and reliable information. In 1725 General Wade forwarded a list of 'Gentlemen inhabiting the Highlands of the shire of Inverness, said to be proper persons for executing the office of justice of the peace.'³ Seven gentlemen were recommended together with one Alexander Frazer of Cutluthill who was 'at present in the commission of the peace'. Of the seven, one, Grant of Rothemurchus was, apparently unknown to Wade, in the commission already. Of the remaining six, only two, James Frazer of Foyers and Donald MacLeod of Falaskie were included in the commission of July 1725. The remaining five, John MacPherson of Inverness, Hugh Frazer of Struy, Hugh Frazer of Errogie, William McLeod of Hamber and Alexander McLeod of Drynoch, failed to appear.⁴ It would seem that

¹ A. and H. Tayler, Book of the Duffs, (Edinburgh, 1914).

² P.R.O., C.234/54, Cromarty, 2 July 1725; Sedgwick, House of Commons, 1715-1754, ii, 490.

³ P.R.O., S.P. 54/14, f.288, General Wade's Proposal, 1725.

⁴ ib., C.234/59, Inverness-shire, 2 July 1725.

although the ministry was prepared to listen to Wade's generalizations regarding the Scottish commission of the peace, it was not prepared to accept his specific recommendations.

There is however, little evidence of the type of incident related by George Lockhart to the Pretender of the address of the Barons of Edinburgh, complaining of the abuse of naming people J.P.s in shires where they had no estates and also of the inclusion of army officers. To overcome this anomaly, it was proposed to move for a bill extending the qualification to £200 (Scots) of valued rent in the shire where he was named.¹ Such a qualification would have prevented the inclusion of the military in the Highland commissions in 1725 and Newcastle noted the point, justifying it on the grounds of necessity and claiming only the anomaly of the said justices being qualified to act in shires other than their own.² Included in this restriction would have been Duncan Forbes, preventing his acting as a Lanarkshire J.P. and attempting to judge the local magistracy after the Glasgow riots.³ There seems to be little justification, therefore, for the charge of political jobbery levelled at the ministry by Lockhart. Changes appear to be largely routine — the removal of deceased justices, the replacement of fathers by their sons and the maintainance of the numerical strength of the commissions by adding a sufficient proportion of newcomers to balance omissions.

¹The Lockhart Papers, ii, 239, George Lockhart to 'King' James, 31 January 1726.

²B.M., Add. Mss. 33049, f253, 'Memorial touching the bill now depending for Disarming the Highlands'.

³The Lockhart Papers, ii, 160.

Lingering Jacobites were finally removed (though they may have been omitted in previous missing fiats), but the trend, if anything, seems to have been conciliatory to errant disaffected and the 'useful tools' seem to consist solely of army officers engaged in implementing the Disarmament Act and therefore an anathema to the Jacobite Lockhart. Indeed it could be argued that the 1725 lists sought to readjust a balance disturbed by an overzealous Cowper reacting to the extensive disaffection of the post-rebellion years of 1716-17. The commissions for Aberdeenshire which were successively purged by 34%, 31% and 16% in September 1715, November 1716 and December 1717 respectively, maintained the latter size in 1725, but the order in which the names appear suggests that the list was compiled by renaming all those who had appeared in 1717 and continued to be politically acceptable, following this procedure with a scrutiny of the 1716 and 1715 lists in order to readmit any gentleman who may have been unnecessarily excluded at that time. Sir Alexander Burnett of Lyes, Sir Alexander Cumming of Culter and Mr. Arthur Forbes of Shieves were omitted in 1717 but reappear in 1725, the former two not placed among the baronets and knights at the beginning of the commission but after the run of 1717 renewals. Sir William Seton of Pitmedden, Mr John Horn of Westhall and Colonel John Middleton appear further down the list having been omitted both in 1716 and 1717.¹ This would not only

¹P.R.O. C.234/45, Aberdeenshire, 2 July 1725, 18 December 1717, 29 November 1716, 13 September 1715.

suggest a significant reappraisal but also a speedy one in view of the placing of the readmitted baronets. This method of restructuring is also obvious in the case of Forfarshire where the 1717 renewals were followed by James Scott the younger, of Logie, Colonel Reid, Robert Taylor of Barrowfield and Colonel Charles Stratton of Old Montrose all of whom were omitted at that time and also in Kincardineshire where the purged list of 1717 was followed by Sir Peter Frazer of Doors, John Arbuthnot of Fordoun, Sir John Carnegie of Pittarrow, Sir Alexander Burnett of Leyes and James Allerdice of Allerdice who reappeared after a ten year absence.¹

It is difficult to trace any obvious political manipulation of the commissions even in the case of Edinburgh, the shire on which Lockhart had based his charges.² The commission in this case was significantly purged by 22%, 40 justices being added and 66 omitted. Islay's grounds for removal, death and failure to meet the property qualification, clearly figured in the readjustment. Sir David Dalrymple of Hailes died in 1721, followed by Sir John Clerk of Penicuik in 1722. The estates of Sir George Wishart of Cliftonhall were entailed in 1718. John Baird of Newbyth who had been M.P. for Edinburgh in 1715 but was unseated by Robert Dundas of Arniston in 1722, was omitted from the commission in 1725. Over

¹ib., /46, Forfarshire 2 July 1725, 4 January 1717, 13 September 1715, 5 January 1715.

²ib., /64, Edinburghshire 2 July 1725.

a period of ten years routine adjustments would be inevitable and no political motivation necessarily need be inferred from this scale of change.

The Squadrone-Argyll contest for supremacy in Scottish politics does not seem to have made a dominant contribution to this readjustment. Walpole, from 1721 onwards, aimed at balancing the overweighted Squadrone influence by increasingly showing favour to the Argyll interest.¹ The malt tax crisis allowed this process to reach its natural conclusion. Squadrone Secretary of State Roxburgh counteracted and delayed government orders for dealing with the disorder and spread the rumour that the incumbent ministry was about to fall, the beneficiaries being himself and Pulteney. It was 'from this period (that) Lord Ilay became the person in whom Walpole implicitly confided for the management of Scottish affairs'.² Roxburgh resigned on 24 August and Scottish business was handed over to Newcastle and Townshend. The Argyll interest was once again on the ascendant though no Secretary for Scotland was appointed. The administrative influence previously enjoyed by the Third Secretary reverted to the ministry, but the channel to patronage was clearly through Argyll and Islay.³ It might have been expected that this

¹ See above, p.193.

² Coxe, Walpole, i, 234; Riley, The English Ministers and Scotland, p.284.

³ Riley, The English Ministers and Scotland, pp. 285-6; C.B. Realey, The Early Opposition to Sir Robert Walpole, (Kansas, 1931), p.141.

readjustment at the centre would have been reflected in the localities. With Islay coordinating the new lists for the commissions of the peace called for by Townshend, a remodelling in the Argyll interest at the expense of the Squadrone might have been anticipated. Although extensive changes did occur, there is no conclusive evidence of a purge of Squadrone supporters. Sir William Gordon of Dalpholly, Squadrone member for Sutherland until 1727 was left out of the commission for Cromarty in 1725¹ but since the fiat for Sutherland for 1725 is missing it is not known whether he was removed from that county as well because of his political bias. It seems unlikely however, since Robert Dundas of Arniston, arch Squadrone member and recently dismissed from his post as Lord Advocate because of his opposition to the reform of the Scottish Customs, remained in the commission of the peace for Edinburghshire in spite of his vociferous support of the rioters throughout the latter part of June and July 1725.² Argyll influence is evident — Sir Robert Gordon of Gordonstoun, an Argyll man who 'went out' in 1715 and surrendered in 1716, never seems to have been out of the commission for Elginshire. Although influence was evident however it was not pervasive, and it would seem reasonable to conclude that gentlemen were put into the commissions of the peace because of their social standing in their

¹ P.R.O., C.234/54, Cromarty, 2 July 1725.

² ib., /64, Edinburghshire 2 July 1725.

shires and that the intricacies of political in-fighting did not extend to the composition of the bench. The blanket control of Islay in 1725 would have been essentially different from the particular influence of Argyll during Cowper's second period as Chancellor when he responded to specific requests and recommendations and Argyll was active in coming forward with specific proposals in areas in which he had an interest.

The remodelling of 1725, therefore, though extensive and far reaching, seems to take little account of political wheeling and dealing between the dominant groups struggling for control of Scottish affairs. The initiative lay firmly with Walpole who worked through Argyll and Islay but retained Montrose as Keeper of the Great Seal and the Earl of Marchmont as Lord Register as a reminding counterbalance.¹ The Squadrone themselves believed their eclipse only temporary. Sir William Bennett of Grubbett wrote to the Countess of Roxburgh, 'Mr Dundas ... is at present the idol of the populace ... I am perswaded that this cloud will blow over who lives to see it,'² The reorganization seems to have been spurred, not in an effort to reinforce ministerial influence in the localities as Lockhart presumed, but rather by a desire to quash Jacobitism once and for all. Walpole had been personally involved in an almost fanatical

¹Riley, The English Ministers and Scotland, p.286.

²Hist. Mss. Comm., Roxburghe Mss., p.54, Sir William Bennett to the Countess of Roxburgh, 10, August 1725.

witch-hunt of suspected Jacobites at the time of the Atterbury plot in 1722.¹ The Disarmament Act of 1725 can clearly be seen as an extension of this policy to Scotland and the regulation of the commissions of the peace a concomitant to that policy. In this sense, the malt tax riots provided the impetus to implement a policy decision already taken, and Lockhart made subtle inferences on Argyll's usefulness to the government in this context.² That would seem, however, to be the extent of his role, and the political dimension to the remodelling of the bench therefore limited to ensuring that the justices entrusted with that commission could be relied upon to implement it against the disaffected. To realise this objective a strong military contingent was added to the Highland commissions, a contingent of notable Campbell composition. The objective remained however central to government policy. Argyll was the mentor of the Whig clans which formed the nucleus of the Highland Companies raised to implement disarmament. In this sense the bench could be said to reflect his influence. In the personal rivalry between himself and the opposing Squadron interest, it could not.

This hypothesis is strengthened by the absence of new commissions prior to the elections which followed the death of

¹ Basil Williams, The Whig Supremacy, pp. 174-6; A.S. Foord, His Majesty's Opposition, pp. 65-6.

² The Lockhart Papers, ii, 160.

King George I in 1727. Parliament was dissolved on 17 July 1727 and recalled on 28 November 1727. The commissions of the peace for the Scottish counties necessitated by the accession of George II bear the teste date 8 February 1728. 17 of the 45 Scottish seats changed hands in 1727¹ but they did so without the help of a remodelled bench. Any remodelling which did take place in 1728 was minimal. The fiats for this regulation are in the form of a 'put in, leave out' type and the scale of changes envisaged were obviously low key. In Kinrossshire the addition of 4 justices increased the commission by 57%, while in Peebles-shire a net addition of 6 led to an increase of 33%². In Caithness the net addition of 9 justices increased the size of the commission by 38%. Generally however single figure additions and removals were most common with the only dramatic exception to this pattern being the case of Ayrshire where the fiat is in the form of a complete list and the size of the commission was increased by 110% with the addition of 46 justices and the omission of 5³. The probable explanation for this diversion from the norm is the fact that in 1725 the Ayrshire commission had been cut by 56% at a time when the general trend in the size of commissions was upward. Of the 46 justices put in in 1728, 22 had been in prior to 1725 but inadvertently or otherwise omitted from Islay's list at the latter date. It had obviously seemed necessary to King in 1728 to rectify this anomaly. Otherwise the changes of 1728 were not spectacular. Uniformly, Jasper Clayton, Alexander Spotswood and Brigadier Groves

¹ Sedwick, The House of Commons, 1715-1754, i, 381-404.

² P.R.O., C.234/61, Kinrossshire, 7 February 1728; /67, Peebles-shire, 7 February 1728.

³ ib., /48, Ayrshire, 7 February 1728.

were removed from all commissions in which they appeared. On the Banffshire fiat the explanation was given, 'these all removed, not in Scotland'.¹ Although this applied to all of the military contingent, it would seem that only the above-mentioned three were involved in 1728, the remainder being removed by Hardwicke in the late 1730's for the same reason. Hardwicke's use of the 1725 fiats as working lists, together with the fact that the 1728 and subsequent amendments were often added on at the foot of the list in the same handwriting with the 2 July 1725 scored out and the 7 February 1728 substituted, can confuse comparisons but even with this qualification, the nature of the 1728 amendments do not seem to be of profound significance. This would seem to be broadly in line with the English experience. George II's association with the Tories when he was Prince of Wales led to his endeavours to persuade Lord King to put certain of their number into the English commissions of the peace after his accession.² There was no strong conviction on the King's part, however, and when Grafton protested that some of the men recommended by Hammer for inclusion in the Suffolk commission were jesuits, the issue was quietly dropped. It would seem reasonable to infer that by the time Lord King turned his attention to regulation of the Scottish commissions, the decision would have been taken and the changes enacted tend to be interesting rather than overtly political.

¹ib., /49, Banffshire, 7 February 1728.

²B.W. Hill, The Growth of Parliamentary Parties 1689-1742, (London, 1976), p.197.

In Wigtownshire for instance, Andrew Ross of Balscarrosh was put out of the commission of the peace in 1728 having been succeeded by his son Charles.¹ Thomas Stewart of Fintalloch was an illustrative omission. Finding himself in increasingly reduced circumstances, he 'borrowed' money from the Kirk Session of his local church. This money had belonged to the poor of the parish and subsequently amounted to £250 Scots. On 10, February 1726, the Laird of Dalreagle took on the debt and settled it.² This was not enough to clear the name of Stewart of Fintalloch however and he was removed from the commission of the peace for Wigtownshire on 7 February 1728.³ There were, however, other interesting features. In Ross-shire, Kenneth Bayne of Tulloch was one of the three gentlemen added to the commission for the first time. Bayne was a prominent local landowner with a large interest in the burgh of Dingwall who had formed an unofficial compact with Sir Robert Munro of Foulis to promote the political ambitions of the latter at local and national levels.⁴ His inclusion at this juncture strongly suggests the influence of Sir Robert, M.P. for Tain Burghs from 1710 to 1741, in the recommendations for inclusion in the commission of the peace and further suggests that it may have been standard

¹ P.H. McKerlie, A History of the Lands and their Owners in Galloway, (Paisley, 1906), i, 415.

² ib., ii, 121.

³ P.R.O., C.234/77, Wigtownshire, 7 February 1728.

⁴ N.L.S., Ms. 1392, Delvine Papers, f.170, Copy of a letter from Sir Robert Munro to Bayne of Tulloch.

practice for interested parties, especially members of parliament, to forward suggestions to the Lord Chancellor when new Commissions were legally required. In Aberdeenshire Sir Arthur Forbes of Craigievar was put into the commission in 1728, and succeeded Sir Archibald Grant of Monymusk as M.P. for that county after the latter's expulsion from the House in May 1732 on being indicted on fraud charges.¹ Sir Archibald Grant however remained in the commission for Aberdeenshire even after his expulsion and continued in it even under Hardwicke in 1751. There seems no obvious explanation for this. There is no note on the fiat of his expulsion, in marked contrast to John Carnegie of Boysack, expelled the House in 1716 because of his Jacobitism. Possibly the latter crime was considered incompatible with the security of the realm whereas illegal business dealings were not. Alexander Urquhart of Newhall, however, M.P. for Ross-shire until 1727, was scored off the fiat for Cromarty with the explanation, 'Bankrupt, defends his house by force against officers of the law',² If neither Jacobitism nor bankruptcy were tolerated in justices of the peace, it seems unlikely that fraud would be viewed more favourably and it therefore seems likely that the misdemeanours of Sir Archibald Grant were somehow overlooked.

The remainder of Lord King's tenure of office was one of relative inactivity with respect to the Scottish commissions of the peace. In the five and a half year period which remained, he sealed

¹ Sedgwick, The House of Commons, 1715-1754, ii, 77; P.R.O., C.234/45, Aberdeenshire, 7 February 1728.

² P.R.O., C.234/54, Cromarty, 2 July 1725.

only eight commissions, for Renfrewshire, Lanarkshire and Linlithgowshire in May 1728, Berwickshire in May 1731, Renfrewshire and Clackmannanshire in August 1731, Berwickshire in May 1732 and Wigtownshire in 1733.¹ Neither the extent nor the scale of these changes is significant, although the fiats for Lanarkshire and Linlithgowshire are missing. In Berwickshire and Renfrewshire there was no appreciable change in the size of the commissions but in Clackmannanshire, although only a net 4 justices were added this represented an increase of 33% and in Wigtownshire the increase was similarly 33% with 17 justices added to the commission and 9 omitted. In Renfrewshire and Clackmannanshire the additions were listed at the end of the 1725/28 fiats with the date altered accordingly whereas in the case of Berwickshire and Wigtownshire they were in the form of complete lists.²

The simultaneous issue of commissions for Renfrewshire and Clackmannanshire on 11 August 1731 gives a clue to the nature of the recommendations which prompted them. This is apparent from the fact that the 1731 list for Clackmannanshire appeared at the foot of the 1725/28 Renfrewshire fiat and had subsequently been scored out when the error was realised. The unifying factor in these cases was Sir John Shaw of Greenock, M.P. for Clackmannanshire from 1722-27 and

¹ib., C.231/10.

²ib., c.234/50, Berwickshire; /53, Clackmannanshire; /69, Renfrewshire; /77, Wigtownshire.

for Renfrewshire from 1727-34. Sir John was a staunch Argyll Whig who would have been expected to make recommendations compatible with the Argyll interest. He had been active on behalf of the government during the malt tax riots in 1725 when the Glasgow magistrates had taken sides with the mob and refused to act. The Lord Advocate had written to him at this time with a plea to transport qualified gentlemen from Greenock to accept office. Enclosed was a 'list of your brethern' deemed suitable by Duncan Forbes to act as justices in that emergency.¹ It seems reasonable to conclude that the impetus to the issuing of commissions for Renfrewshire and Clackmannanshire in 1731 came from the former shire's M.P. who still retained influence and interest in the latter, which was one of the Scottish shires unrepresented in the 1727 Parliament. The contest in Clackmannanshire in 1734 was particularly significant for the government for here the sitting member Sir John Shaw, the possible instigator of the 1731 commission for the shire, was defeated by the Earl of Mar's brother James Erskine of Alloa.² Erskine had combined with the Squadrone and the Dalrymples to oust the government candidate and it is interesting that in 1731, the Honourable John Dalrymple, Colonel William Dalrymple and the Honourable James Dalrymple, were put into the Clackmannanshire commission for the first time. The success of the opposition Erskines, however, was eventually

¹ More Culloden Papers, ii, 253, Lord Advocate to Sir John Shaw of Greenock, 5 July 1725.

² Sedgwick, The House of Commons, 1715-1754, i, 383.

recognized by Hardwicke with the inclusion of James and Charles Erskine of Alloa at the next regulation in 1740.¹

The Clackmannanshire and Renfrewshire fiats for 1731 contain a further item which leads to speculation about the relationship of the politics of the centre with those of the periphery. The fiats, which were of the 'put in, leave out' type, specifically omit William Pulteney and since Pulteney could only have been in these commissions in his capacity as a Privy Councillor, implying his inclusion in every other Scottish commission from which he was not omitted in 1731, this specific recommendation by Sir John Shaw is intriguing.

William Pulteney's role in politics from 1726 had been increasingly that of the nucleus of the beginnings of formed opposition. Utilizing the political acumen of Bolingbroke, recently returned from exile, he systematically built up the basis of an opposition which was to harry Walpole until his fall in 1742.² Walpole's tactic for dealing with this threat was to continue to identify formed opposition with Jacobitism, a claim which Pulteney vociferously refuted in 1731.³ The early 1730's therefore can be singled out as a time when opposition attitudes hardened and attacks on the ministry intensified, and Pulteney's key role in this process could have thereby constituted such an aberration that Sir John Shaw

¹ P.R.O., C.234/53, Clackmannanshire, 11 August 1731; 14 May 1740.

² Basil Williams, The Whig Supremacy, p.194; A.S. Foord, His Majesty's Opposition, pp. 119-20; C.B. Realey, The Early Opposition to Sir Robert Walpole, p.193.

³ A.S. Foord, His Majesty's Opposition, p.130.

believed it necessary that he should be removed from any position of power in local politics. This almost seems tantamount to stretching evidence but William Pulteney was removed from two commissions in 1731; there was no 'William Pulteney' mentioned by name in either previous commission; William Pulteney was in active and awkward opposition to the ministry in 1731 and this opposition was increasing and intensifying. It could therefore be possible that Sir John, a staunch Argyll man at a time when Argyll was not identified with opposition to Walpole, believed it necessary to remove any possibility of Pulteney recruiting to the opposition through influence at local level and though this does not explain why, for instance, King let the recommendation pass, or did not investigate more wide ranging removal, it presents one explanation for the removal of William Pulteney from the commissions of the peace for Clackmannanshire and Renfrewshire.

It is a hypothesis which can be partially substantiated moreover, by the fact that one of the other Scottish counties in receipt of Lord King's rather sparse attentions at this time, was Berwickshire, seat of influence of the Earl of Marchmont. Commissions were engrossed on 18 May 1731 and 30 May 1732 at a time when Marchmont was being increasingly identified with opposition to Walpole through a joint anti-Argyll pact with the Squadrone.¹ This group included Stair, Montrose and Tweeddale and their activities

¹ ib., p.119.

culminated in opposition to the Excise Bill in 1733 when Montrose was deprived of the Great Seal, Marchmont lost his place as Lord Register and Stair was removed from the Vice-Admiralty.¹ It is therefore possible that the Berwickshire bench was augmented to ensure the primacy of ministerial interests. Marchmont played an active part in local politics. In 1737 for instance he expressed concern at a movement within the county to change the Burgh town from Greenlaw to Duns. He wrote to his son Lord Polwarth, that Greenlaw was nearer the centre of Berwickshire and therefore nearer the homes of 'those that attend the courts and without which the appearance of a judicature would not be kept up ...'² In a later letter, Marchmont reminded Polwarth that 'our interest in that county has been secured and supported by friendly measurers,'³ and emphasized that that influence must continue. Sir John Hall of Dunglas, a Berwickshire justice, offered the same advice.⁴ There is therefore ample evidence that the Earl of Marchmont involved himself actively with the intricate manoeuvrings of local politics and his movement into opposition to the ministry could have prompted a response to ensure that ministry's representation at local level. This hypothesis is more than borne out by subsequent events. In 1734 Alexander Hume Campbell was returned in Berwickshire after having been challenged in

¹Riley, The English Ministers and Scotland, p.288.

²Hist. Mss. Comm., Polwarth Mss., ^{p.130} \ Earl of Marchmont to Lord Polwarth, 2 February 1737.

³ib., p.133.

⁴ib., p.132.

the Marchmont stronghold by Sir James Sinclair, a government supporter.¹ The latter petitioned against the outcome and in 1735 Ninian Home, representing the opposing major interest in the shire, wrote to Lord Milton regarding the petition to unseat Hume-Campbell, explicitly claiming political manipulation in the county. The claim is worthy of quoting in full.

... the Earl of Marchmont is more intent than ever in getting the Commissioners of Supplie and Justices of the Peace so named, that he may have the Direction of all the affairs of the shire, for which end he has I hear, sent up a List of gentlemen for a new commission of the peace altogether in his own interest, and if your Lordships concerned in the administration prevent not such partial nominations, your friends and those of the government and the ministry will be run down and become fewer every day for it is not credited what a majority of justices and commissioners of supply being of their side has upon the smaller freeholders of which there is a greater number in this than in most other shires.²

This letter strongly suggests a continuing interest in the composition of the commission of the peace in the localities in marked contrast to the more apathetic attitude at the centre.

On 19 November 1733, Lord King resigned the Great Seal on the grounds of ill-health, dying less than a year later at Ockham where he had planned to spend his retirement.³ His handling of the commissions of the peace for Scotland had not been conspicuous. The

¹ Sedgwick, The House of Commons, 1715-1754, i, 382.

² G.R.H., GD 267/14/19 Home of Wedderburn Mss., Ninian Home to Lord Milton, October 1735.

³ Lord Campbell, Lives of the Chancellors, iv, 644.

regulation of 1725 had been extensive, affecting 31 of the 33 counties, and also wide ranging, involving profound structural changes. It did not however, reflect a zeal on Lord King's part since the lists had been drawn up by Islay on the instructions of Lord Townshend. He was, himself, concerned at his lack of involvement and made it plain to the Regency committee that

... though in England the Great Seal would be a little more consulted in matters of this nature, yet considering the urgency of affairs, if their Excellencies would order me to pass those commissions of the peace as now settled, I would do it....¹

The extent of Islay's role in this reorganization is evident in discussions involving the two missing lists for Peebles-shire and Bute. King ordered the thirty one commissions to be engrossed, along with the two others if the originals could be recovered or Islay remember who was in them.² On the back of the Ayrshire fiat for 2 July 1725 is the aforementioned note, 'I did not receive back from Lord Islay the list for Peebles and Bute.'³ Peebles-shire and Bute were the only shires in Scotland which did not receive a commission in 1725 and since no regulation took place between that date and 1728, King had obviously made no effort to remedy that situation. More surprising was the lack of activity prior to the election in 1727 after the death of George I. The contest seems to

¹ Lord King, Notes on Domestic and Foreign Affairs, p.439.

² ib.

³ See above, p.197.

have been lively, with a record number of seats being contested by various challengers, particularly in Scotland where Duncan Forbes could see no reliable technique to employ to ensure the outcome.¹ Yet the benches of the Scottish counties remained as they had been in 1725 with no effort to manipulate them in the interest of the ministry. Regulation did not come until February 1728 when 189 justices were added to and 99 left out of the Scottish commissions. This was mere tinkering in comparison to previous regulations and suggests a relative down-grading in the role of the commission of the peace as a political tool of much significance. It cannot however be assumed that a decrease in the number of commissions issued, especially in the period immediately preceeding general elections, necessarily implied that the patronage exercised by the Chancellor in this sphere ceased to have a political dimension. In an attempt to intrude this patronage, George II informed Lord King that he had heard that he had acted prudently in his fathers' time regarding the commissions of the peace and that he should continue to put in

... all gentlemen of rank and quality in the several counties unless they were in direct opposition to his government; but still keep a majority of those who were known to be most firmly in his interest, and he would have me declare the former as his sentiment...²

Lord Campbell has described this system as 'very amusing',³ but there is

¹C.B. Realey, The Early Opposition to Sir Robert Walpole, p.227; More Culloden Papers, iii, 25-6.

²Lord King, Notes on Domestic and Foreign Affairs, p. 454, 16 July 1727.

³Lord Campbell, Lives of the Chancellors, iv, 627.

no indication that King in any way disagreed with it as an operative maxim or that he used any other principle in exercising the patronage he enjoyed. Indeed his minimal regulation between 1728 and 1733 suggests that the two complete regulations of the early years had been sufficient to ensure that the interests of the ministry had been preserved as far as its Scottish policy had been concerned.

Lord King's successor as Chancellor was Charles Talbot, born in 1684, educated at Oriel College Oxford, called to the bar in 1711 and returned to parliament for Tregany in 1714.¹ He was appointed Solicitor General to the Prince of Wales in 1717 and subsequently to the King in 1726. He was a strong supporter of Walpole during the Excise crisis and although Philip Yorke, then Attorney General, should have been given the Great Seal in 1733, it was delivered to Talbot on 29 November, Yorke becoming Chief Justice of the King's Bench with a peerage comparable with Talbot's.² Talbot's Chancellorship is of interest to this study in the purely negative sense that he did not seal a single commission of the peace for Scotland during his tenure of office which lasted until his death on 14 February 1737. Neither the election of 1734 nor the Porteous Riots of 1736 prompted any response from the centre to the vagaries of local politics. Walpole may have felt secure, even after the Excise crisis, in the knowledge that Argyll and Islay would

¹Lord Campbell, Lives of the Chancellors, iv, 648-52.

²ib., pp. 654-8.

continue to manage the elections in the interests of the ministry¹ but in the wake of the Porteous Riots there was no guarantee that Argyll would continue this unswerving support. The opposition which had intensified in the early 1730's, crystallized in 1736. Talbot energetically embarked on the prosecution of the rioters who had taken the law into their own hands in hanging Captain Porteous for ordering his troops to fire on the mob during the execution of a smuggler arrested for robbing a collector of customs.² The magistracy of Edinburgh which refused to recognize Queen Caroline's reprieve, stood by while the sentence was carried out and the ministry was therefore forced to embark on the punishment of Scotland's capital. This was effected against strong opposition from the Argyll interest and from this point Argyll increasingly moved his stance until he officially joined the ranks of the opposition in 1737.³ The absence of pre-election regulations of the commissions of the peace in 1734 is noteworthy but not without precedent since the general elections of 1722 and 1727 had witnessed the same occurrence. The absence of regulations in the wake of the Porteous Riots is frankly amazing. There is little doubt that these disturbances were but a continuation of the dissatisfaction the Scots had felt since the Union and which had manifested itself in violence in support of the Pretender in 1715 and

¹A.S. Foord, His Majesty's Opposition, p.203.

²Basil Williams, The Whig Supremacy, p.263; Lord Campbell, Lives of the Chancellors, iv, 678-9.

³Riley, The English Ministers and Scotland, p.288; W. Ferguson, Scotland, pp. 144-5.

against the ministry in 1725. Certainly they illustrated that the rebellious potential was still alive.¹ It is possible that by the late 1730's the system of implementing the legislation of central government through local justices, had broken down completely and that the total disregard for the law exhibited by the Glasgow magistrates in 1725 and their Edinburgh counterparts in 1737 were merely indubitable assertions of this fact. If this hypothesis is correct then the government would have little interest in who was in the various Scottish commissions and who was not.

Alternatively Talbot's inactivity in the light of the complicity of the Edinburgh magistracy may have been explicable in terms of his untimely death, but since Edinburgh received no commissions between 1728 and May 1740² his successor Lord Chancellor Hardwicke obviously felt under no immediate obligation to take action in the light of previous events. It may therefore be concluded that if King's manipulation of the commissions of the peace had been inconspicuous, Talbot's was non existent and this total lack of activity opens up the possibility that the decline of party politics and the waning of Jacobitism as an imminently serious threat to the security of the realm, had proscribed the regulation of these commissions to the backwoods of political patronage.

¹G.H. Jones, The Main Stream of Jacobitism p.198; Petrie, The Jacobite Movement, p.327.

²P.R.O., C.231/10.

7. The Commission of the Peace under Lord Hardwicke and Lord Keeper Henley, 1737-60.

Philip Yorke, Earl of Hardwicke, was born at Dover in 1690 son of a local attorney. He was apprenticed as a clerk to a London attorney in 1704, became law tutor to Lord Chief Justice Parker's son and was eventually called to the bar in 1715. Parker took a continuing interest in him and when he became Lord Chancellor determined that Philip Yorke should become a law officer of the Crown. Consequently he was returned for the borough of Lewes in 1719 and became Attorney General in 1723. On the resignation of Lord King in 1733 he bowed to Talbot's appointment as his successor, accepting the important role of Lord Chief Justice of the Kings Bench, together with a peerage as Baron Hardwicke of Hardwicke in Gloucester. Having witnessed the impeachment of his first political mentor Lord Macclesfield, he proceeded to ingratiate himself with the Duke of Newcastle, on whose interest he had been elected to Lewes, and he proceeded to build up his reputation as a loyal supporter of Walpole's ministry, speaking out strongly for instance for the proposed Excise Bill in 1733. He was rewarded with the Great Seal on Lord Talbot's death, becoming Lord Chancellor on 21 February 1737.¹

Regulations of Scottish commissions of the peace from Lord Hardwicke's elevation to the Woolsack in 1737 until his resignation twenty years later, were centred on two specific periods, 1739/40 and 1750/51. In May and June 1739, 16 commissions were engrossed.

¹ Lord Campbell, Lives of the Chancellors, v, 1-40.

This was followed by a further 6 in October and November, 2 in January 1740 and 6 in May and June 1740. By June 1740, 25 of the 33 Scottish counties had received a commission from the new Chancellor. Of the 25% which were not included in this initial regulation, Kinross-shire had a commission engrossed in 1742, three counties, Cromarty, Dunbartonshire and Roxburghshire, received commissions in 1743, a further two counties, Renfrewshire and Selkirkshire, in 1744, while only two, Bute and Orkney and Shetland, were overlooked completely at this time. It would seem therefore, that with 75% of the Scottish counties in receipt of new commissions during 1739 and 1740 and 75% of the remainder attended to between 1742 and 1744, Hardwicke had embarked on an extensive regulation of the bench. There is little doubt that exhaustive coverage was necessary. Apart from minor tinkering by Lord King with the commissions of Berwickshire, Clackmannanshire, Renfrewshire and Wigtownshire between 1731 and 1733, there had been no broad reappraisal since the accession of George II in 1727.

Readjustment was therefore necessary and Hardwicke matched the extent of his initial alterations with a marked change of scale. Commissions engrossed during this first phase were either neutral in terms of total size or exhibited marked increases ranging from a moderate 10% in the case of Kincardineshire where 12 justices were added to the commission and 9 omitted in October 1739, to a

spectacular 300% in that of Selkirkshire where 36 were put into and 6 left out of the commission in July 1744.¹ Net increases in the order of 40% for Perthshire (68 justices added and 30 omitted), Fifeshire (71 added and 34 omitted), Ross-shire (49 added and 30 omitted) and Wigtownshire (19 added and 6 omitted), 54% for Berwickshire where 41 were added and 14 omitted, 80% for Aberdeenshire with 83 added and 25 omitted and 158% for Forfarshire where 43 justices were added and only 6 omitted, suggests a totally new conception of the optimum size for any one Scottish commission of the peace. The increases moreover, cannot always be interpreted, as is possible in the case of Aberdeenshire for instance, purely in terms of response to post rebellion Jacobite purges. Kincardineshire's commission was increased 10% in October 1739 in spite of the fact that it had previously been increased 340% in July 1725, more than balancing the 77% purge of January 1717. Roxburghshire similarly increased 58% in August 1743 though it had been compensated by a 50% augmentation in July 1725 after a 40% purge in December 1717. The spectacular 300% increase in Selkirkshire is only comprehensible in terms of a marked change of scale, since immediately preceding commissions in February 1715, July 1725 and February 1728 had been completely neutral in terms of size. Although the extent of the changes therefore can be simply explained in terms of the time factor, there is no immediately

¹P.R.O., C.234/60, Kincardineshire, 27 October 1739; /73, Selkirkshire, 2 July 1744.

obvious explanation for the increased scale of changes in individual shires, or for the nature of the structural alterations effected at this time.

It is possible to hypothesise that the extensive remodelling of 1739 and 1740 was directly related to the forthcoming general election of 1741. Walpole's control of the Commons had been under increasing pressure since the Excise Crisis of 1733. The opposition, though fragmented, contained considerable parliamentary debating talent which was used to the full to topple the ministry. Mishandling of the war with Spain gave the 'patriots' an additional weapon of attack and the 1741 elections were obviously crucial in Walpole's drive to retain control.¹ The situation in Scotland was particularly critical for the ministry. Walpole's management technique, progressively developed during his early days at the Treasury and substantiated in the outcome of the malt tax riots, operated through the influence of Argyll and Islay. They were the channels through which political patronage was sought and administered and on this principle, Scotland was kept in allegiance to the ministry. Elections were managed by the Campbell interest to ensure this outcome in the Commons and the sixteen Scottish representative peers consisted of a solid block of government nominees in the Lords. The threat to the continuation of this desirable situation came from the defection

¹Basil Williams, The Whig Supremacy, pp. 194-6, 200; A.S. Foord, His Majesty's Opposition, pp. 157-8; John B. Owen, The Rise of the Pelhams, (London, 1957), p.34.

of the Duke of Argyll. Disillusioned by the ministry's treatment of Edinburgh in the wake of the Porteous Riots, Argyll moved into active opposition in 1737 and was finally dismissed from all his posts in 1740.¹ The crucial factor for the ministry was the effect this would have on the 1741 parliamentary returns and it might therefore have been anticipated that the regulation of commissions immediately prior to the elections would reflect the inclinations of the ministry with respect to the outcome of that event, especially in its endeavour to thwart any upset planned by Argyll.

This, however, does not seem to have been attempted and indeed the reverse could be argued to have occurred. It has been estimated that Argyll was successful in returning about twenty members to the Parliament of 1741,² and a significant number of successful Argyll challengers had either been put into the commissions for their shires in 1739 or 1740 or were allowed to remain in them up to and after the elections. James Stuart for instance, returned for Wigtownshire in 1741 on the Argyll interest, had been put into the commission for that shire in June 1739.³ Norman Macleod, similarly returned for Inverness-shire was also put in for his shire in June

¹ A.S. Foord, His Majesty's Opposition, pp. 124, 142; Riley, The English Ministers and Scotland, p. 288; Wm Ferguson, Scotland, p.145.

² J.B. Owen, The Rise of the Pelhams, pp. 82-3.

³ P.R.O. c.234/77, Wigtownshire, 1 June 1739; Sedgwick, The House of Commons, 1715-1754, ii, 448.

1739,¹ Patrick Crawford for Ayrshire put in in June 1740² and Lord George Graham, returned for Stirlingshire in 1741, was added to the bench in that shire in October 1739.³ It is interesting to note that Ayrshire received a further regulation of its commission of the peace on 18 August 1742, the fiat being in the form of a complete list rather than a series of additions.⁴ It is possible to surmise that the successful Argyll backed Patrick Crawford may have attempted to wield his new found local power by creating a bench which was more to his liking than that engineered by Hardwicke and the government backed opponent of 1740, James Campbell. Further extrapolation of this theory could explain the motivation behind the regulation of the Renfrewshire commission in 1744 which followed William Mure's success in a by-election in 1742 against Sir Michael Stewart of Blackhall, a nominee of Sir John Shaw of Greenock.⁵ In Dumfries-shire, Sir John Douglas of Kelhead returned for the shire and John Johnston, returned for the Burghs on the Argyll interest were both put into the commission in June 1739.⁶ There seems to have been no attempt on

¹ P.R.O., C.234/59, Inverness-shire, 8 June 1739; Sedgwick, The House of Commons, 1715-1754, ii, 237.

² P.R.O., C.234/48, Ayrshire, 1 June 1740; Sedgwick, The House of Commons 1715-54, i, 592.

³ P.R.O. C.234/74, Stirlingshire, 27 October 1739; Sedgwick, The House of Commons, 1715-1754, ii, 75.

⁴ P.R.O., C.234/48, Ayrshire, 18 August 1742.

⁵ ib., /69, Renfrewshire, 2 July 1744; Sedgwick, The House of Commons, 1715-1754, i, 392.

⁶ P.R.O., C.234/77, Wigtownshire, 1 June 1739; Sedgwick, The House of Commons, 1715-54, i, 618; ii, 181.

the part of the ministry therefore, to block recommendations of potential Argyll nominees nor did there seem to have been any effort to remove from the commissions any anti-Walpole candidates already there. David Scot of Scotstarvet successfully returned for Fifeshire, Sir William Gordon of Invergordon similarly returned for Cromarty, Basil Hamilton of Baldoon for Kirkcudbright and Sir Arthur Forbes of Craigievar for Aberdeenshire all remained in their commissions throughout the period in spite of the fact that they were challenging the ministry and possibly putting its majority in the Commons under severe strain.¹

Recommendations for inclusion in or exclusion from commissions seem moreover to have come from more than one source, so that even if Argyll had been successful in promoting certain gentlemen in his own interest, an alternative evaluation was often available. William Grant, Solicitor-General in Scotland, directed to compile a list of persons 'fit to be proposed for a new commission of justices of peace for Aberdeenshire,' wrote to Lord Braco in September 1739 for his opinions on an enclosed list.² By 1739 Duff of Braco was a government supporter,³ yet he would seem to have made no effort to have Sir Arthur Forbes of Craigievar, M.P. for Aberdeenshire and a strong Argyll man, removed from the commission.

¹ P.R.O., C.234/58, Fifeshire, 13 June 1739, /54, Cromarty, 5 August 1743, /62, Kirkcudbright, 6 June 1739/45, Aberdeenshire, 27 October 1739; Sedgwick, The House of Commons 1715-1754, ii, 411; ii, 69; ii, 99; ii, 42.

² G.R.H., GD 36/192, William Grant to Lord Braco, 26 September 1739.

³ Sedgwick, The House of Commons, 1715-1754, i, 625.

Sir John Dalrymple, an adherent of Lord Stair who had been in opposition to Walpole since 1733, submitted lists of justices for Edinburghshire and Berwickshire of those members of the 1728 and 1732 commissions respectively still alive, together with lists of 'such as ought to be added to the commission(s)'.¹ Comparison of these lists with the fiats for Edinburghshire and Berwickshire for May 1740 and October 1739 respectively show that many of these opposition nominees were accepted for inclusion in the commissions, but also the order in which the names appear on the fiat, coupled with a considerable numerical increase over Dalrymple's nominations, suggests alternative sources of recommendation.

Ministerial victors in 1741 also appear however as new entrants in 1739 and 1740. Sir James Carnegie of Pittarrow, strongly loyal to Islay,² who did not, like his brother, defect to the opposition, was put into the commission for Kincardineshire in October 1739 and returned for that shire in 1741. Similarly Charles Ross was put in for Ross-shire in June 1739 and subsequently returned for the shire,³ as was Ludovic Grant of Grant for Elginshire.⁴ Sir Alexander Murray of Blackbarrony, who voted consistently with the government during his membership of the Commons was put into the

¹ N.L.S., Ms. 5161.

² Sedgwick, The House of Commons, 1715-1754, i, 530, 531; P.R.O., C.234/60, Kincardineshire, 27 October 1739.

³ Sedgwick, The House of Commons, 1715-1754, ii, 393; P.R.O., C.234/70, Ross-shire, 6 June 1739.

⁴ Sedgwick, The House of Commons, 1715-1754, ii, 79; P.R.O., C.234/57, Elginshire 23 June 1739.

commission for Peebles-shire in June 1739 and subsequently was returned for the shire in 1741.¹ It would seem therefore that both ministerial and opposition Commons aspirants were included in the pre-election regulation of commissions and that no obvious attempt was made by government to exclude potentially dangerous opponents. Indeed there is no indication that a place on the bench was vital or even necessary for an aspiring member of parliament. Robert Douglas of St. Olla who succeeded his father as M.P. for Orkney and Shetland when the latter was called to the Lords as the Earl of Morton in 1730, failed to appear in any commission in the period up to his death in 1747.² Similarly James Abercrombie of Glasshaugh, M.P. for Banffshire from 1734-1754 did not appear in the commission for that shire until 1751. This omission is of particular interest since Abercrombie replaced William Duff of Braco as his representative when the latter moved from a position of opposition to support of the ministry in 1734. Asked by William Grant to declare his interests for the Banffshire commission in 1739, it must be concluded that Abercrombie's omission from the fiat of the June of that year, implies either an oversight on the part of Lord Braco or a conscious decision taken in the belief that inclusion was not fundamental to his nominee's future in the shire.³ Even violent opposition to Walpole

¹Sedgwick, The House of Commons, 1715-54, ii, 283; P.R.O., C.234/67, Peebles-shire, 6 June 1739.

²Sedgwick, The House of Commons, 1715-54, i, 390.

³G.R.H., GD 36/192, William Grant to Lord Braco, 26 September 1739.

was no deterrent to inclusion in the commission. Alexander Hume Campbell, twin brother to the Earl of Marchmont and M.P., for Berwickshire was vociferously hostile to the prime minister and all that he stood for yet he remained on the bench for his shire throughout the period.¹

From this evidence it is possible to conclude that conflicts at the centre of the political arena were not necessarily reflected at the periphery. Polarization into opposition and supporters camps, which accelerated between 1739 and Walpole's eventual resignation after defeat over the Chippenham petition in 1742,² is not discernable from scrutinizing the flats. It is moreover possible to make a further conclusion, namely that influence and interest in a shire was more important in terms of local power politics than was support of or opposition to the ministry. In an era when party had ceased to be a meaningful distinction and the critical element of opposition to the Court and Treasury Party lay in the percentage of the Independent members who could be persuaded to join forces with any of the disparate opposition groups,³ politics in the localities and the political patronage exercised therein, tended to revolve around the importance of a magnate or baronet in his shire. Although the Dalrymples did not have the predominant interest in either Edinburghshire or Berwickshire for instance, (these being held by the Dundases and

¹ Sedgwick, The House of Commons, 1715-54, ii, 159.

² A.S. Foord, His Majesty's Opposition, p213; J.B. Owen, The Rise of the Pelhams, p.33.

³ ib., p.41.

Hume Campbells respectively), Sir John Dalrymple's recommendations, for inclusion in the commission carried considerable weight. All 23 of his nominees listed appear in the commission for Berwickshire in October 1739.¹ Of the 56 proposed for Edinburghshire, 4 were already included in the 1728 list, 19 were put into the commission of May 1740, 12 were omitted in 1740 but included in July 1742 while the remaining 21 did not appear either in 1740 or 1742.² The powerful interest of the Munros of Foulis in Ross-shire is a further example of pervasive influence at local and national levels. On 30 September 1740, Sir Robert Munro, on believing his interests to be threatened in the forthcoming Dingwall Burgh elections, invaded the house of one Alexander MacKenzie with a band of armed men and deported ten opposition councillors to Tain where he held them in jail until the elections were over. In the confusion which ensued, the armed retainers killed one woman and wounded five more women and two boys.³ The Mackenzie chiefs, Cromarty and Fortrose, were clearly enraged and criminal letters were raised by Mackenzie of Delvine on their behalf.⁴ The government position was quite clear however. The problem was the perennial one of local factiousness between the Munros and the Mackenzies. The former were a good loyal family but

¹N.L.S., Ms. 5161, 'List of Justices proposed for the shire of Berwick.'

²ib., 'List of Justices proposed for the shire of Edinburgh'

³N.L.S., Ms. 1392, Delvine Papers.

⁴ib.

numerically inferior in the county. They enjoyed government support but in this particular case would inevitably be found guilty if tried. It was therefore proposed that the Munros should seek a friendly solution out of court and Sir Robert eventually agreed to accomodate the MacKenzie's with compensation amounting to £700.¹ Government support was insufficient to enable Munro to outlive such notoriety and he lost his seat for Tain Burghs in the parliamentary election in 1742.² He did not, however, lose his place on the bench and remained a justice until his death at the battle of Falkirk in 1746. Nor, must it be assumed, did he lose his influence, for his criminal record in no way forced the government to remove him from his powerful local position. In an area of such political sensitivity, loyalty was more important than legality. In the case of Aberdeenshire, the power of local interest is even more explicit. William Grant wrote to Lord Braco about the composition of the list drawn up by himself, Lord Strichen, Alexander Gourden of Troup and Patrick Duff of Premnay (all loyal government supporters),

I was particularly attentive to ommit none of your lordships friends whom I knew or could get notice of ——— but lest through ignorance any should be wanting whom your lordship would incline to have in ——— I have given you the trouble to send enclosed a full copy of the list, to the end that if you have any amendments or additions to propose I may use my endeavours to have your commands obeyed...³

¹ N.L.S. Fletcher of Saltoun Mss, Box 324.

² Sedgwick, The House of Commons, 1715-1754, i, 403.

³ G.R.H., GD 36/192, William Grant to Lord Braco, 26 September 1739.

It was also suggested that though Grant himself had no direct concern in the lists for 'Murray and Banffshire', Lord Braco should forward the names of any he would 'propose to be inserted in the Commissions for these counties.....'¹ The inclusion of Banffshire is the least surprising since the Duffs of Braco were the dominant influence in the shire, nominating and returning its members of parliament from 1727 onwards.² 'Elginshire (Murray), is more unexpected. The chief interest there was that of the Grants of Grant and when Lord Braco had tried to intervene on behalf of the sitting member, Alexander Brodie of Brodie, prior to the 1741 election, he was informed by Sir James Grant of Grant, the member for Inverness-shire, that the Duff's sphere of influence was Banffshire not Elginshire.'³ Ludovic Grant of Grant was subsequently returned in 1741. The limited nature of Lord Braco's immediate influence in Elginshire is subsequently reflected in the 'additional list of persons proposed to be justices of the peace of the county of Murray' compiled in response to William Grant's request.⁴ Only six gentlemen were suggested, the last two named, Alexander Leslie of Findrassie and John Duff of Thomshill being omitted from the list of thirty in the fiat of June 1739 for Elginshire.⁵ A footnote to the list suggests that only those not previously included by the Lord Lyon should be added, again

¹ib.

²Sedgwick, The House of Commons, 1715-1754, i, 382.

³ib., i, 385.

⁴G.R.H., GD 36/195.

⁵P.R.O., C.234/57, Elginshire, 23 June 1739.

suggesting limited direct influence. The central appeal in Grant's letter however was Aberdeenshire, again a county in which Braco did not have an overriding influence and it is possible to detect here the possibility of more subtle government intervention. The main interest in Aberdeenshire at this time was that of the family of Forbes, the sitting member being Sir Arthur Forbes, a strong Argyll man. It is possible that the ministry was attempting to weaken the Forbes (and implicitly the Argyll) interest by infiltrating local government politics via a place on the bench. The list enclosed by Grant (identical to the fiat for Aberdeenshire dated October 1739 except for the omission of one Chalmers of Belnairraig) had an additional list, written separately and headed by James Abercrombie of Glassaugh, M.P. for Banffshire in the Duff of Braco interest.¹ It seems likely that this list of nine persons, which, together with a further six who did not appear on the Grant or Braco lists, was added to the commission for Aberdeenshire in a later fiat dated 30 November 1739², was the response to William Grants request. James Abercrombie was Braco's son-in-law. Other inclusions, Alexander Duff of Hatton and Andrew Hay of Mountblairry, collector of cess for Banffshire were obvious Braco nominees. It is therefore possible that the government was trying to build up support in constituencies where the dominant interest was hostile and that one method of doing this was rewarding

¹G.R.H., GD 36/193, 'List of persons proposed to be Justices of the Peace for the County of Aberdeen together with an Additional List.'

²P.R.O., C.234/45, Aberdeenshire, 30 November 1739.

the nominees of friendly interests with the fruits of patronage.

Members of parliament themselves, obviously had a considerable say in the composition of the bench. Hardwicke received a list of nominees for the county of Kinross from Andrew Mitchell of Thainston, private secretary to the new Scottish Secretary Tweeddale, in August 1742.¹ In 1743, Sir John Gordon of Invergordon was put into the commission for Cromarty.² His father had represented the county till his death in 1742 when, by some unethical manoeuvring, he was succeeded by Sir John in the December of that year.³ It seems reasonable to conclude, that as member for Cromarty, he would have been in an admirable position to ensure his inclusion in the next commission. Indeed the transfer of the seat from father to son may provide the reason for the engrossing of a new commission at that time, for although the number of justices neither increased nor decreased to any considerable extent, the commission was totally restructured. Fourteen gentlemen were added and fifteen omitted suggesting that the new member for Cromarty was actively engaged in ensuring the inclusion of his own men. It has been suggested that Sir John Gordon was a well-known place-hunter,⁴ and in this context an active interest in the patronage involved in inclusion on the bench would not be uncharacteristic. The sources of recommendation therefore seem

¹B.M. Add. Ms. 954, 35446, f. 33; August 1743.
²P.R.O., C:234/54, Cromarty, 5 August 1743.

³Sedgwick, The House of Commons, 1715-1754, ii, 68; J.M. Bulloch, The Families of Invergordon, p.27 et seq.

⁴W. Ferguson, 'Dingwall Burgh Politics', (Scot. Hist. Rev., XXXVIII), 98, n.1.

to have been diverse and there is little evidence in this initial regulation of Hardwicke's that serious efforts were made at political manipulation of the commissions in spite of the fact that a critical election was forthcoming. Justices whose political opinions were decidedly anti-Walpole seem to have been put in as often as potential supporters thus suggesting that local influence was more important than political creed. The same seems to have been true of removals from the commissions where the reasons seldom, if ever at this particular time, seem to have been political in the context of opposition to Walpole. The initiative for change in the 1739/40 regulations possibly came from the localities as opposed to the centre. Certain prominent local magnates such as Dalrymple and Braco seemed to believe that the composition of the commission of the peace was worth taking trouble over. Elsewhere however the commissions had receded into the background as the government ignored them as a political tool of any significance.

The fiats themselves give a reasonably clear indication of the background to omissions since they are of the 'put in, leave out' type. This means that the justices to be left out were clearly divided into those left out because they were dead and those left out with no reason given. Clearly the numbers involved in the former category were particularly large due to the time lag from the last commission — more than eleven years in most cases. In many of the northern shires, the justices left out for reasons other than death were the captains of the six independent companies commissioned

in 1725. With the exception of General Wade the military contingent was removed, the Banffshire fiat for 1725/28 indicating 'these all removed — not in Scotland.' Removal of non military justices is also evident in the case of Fifeshire for instance where Robert Bruce of Grange, Robert Hay of Haughton, William Douglas, John Moncrieff, Robert Cleland of Cambee, William Jeffrey of Kirkaldie and David Robertson of Gladnie were specifically left out for this reason.¹

In June 1739 Alexander Gordon of Ardoch was left out of the commission for Nairnshire because he had removed.² Reasons for omission other than death or removal also seem to be essentially non-political. Selling an estate and thereby failing to meet the property qualification was common. Sir John Dalrymple listed the 1728 commissions for the shires of Edinburgh and Berwick with descriptive annotations alongside various names.³ John Fairholme of Balbertoun for instance had 'sold out' but he was not removed from the commission for Edinburghshire until July 1742 although there was an alteration made to the commission by the fiat of May 1740. Similarly four other justices on the Berwickshire list were variously marked, John Edgar of Wedderlie ('sold his estate and moved from the shire'), George Home of Kello ('sold off'), John Scot the Younger of Ancrum ('not in shire') and John Hog the elder of Ladykirk ('sold out of shire'). They were not omitted however in the fiat for Berwickshire of 27 October 1739 and therefore must have continued therein until the succeeding commission was engrossed on 2 August 1751 in spite of these disqualifications.⁴

¹ P.R.O., C.234/58, Fifeshire, 13 June 1739.

² ib., /65, Nairnshire 8 June 1739.

³ N.L.S., Ms. 5161, 'Lists of J.P.s in the commissions of the peace for Edinburgh and Berwickshire in 1728.'

⁴ P.R.O., C.234/50, Berwickshire, 27 October 1739.

This is in marked contrast to those Dalrymple has designated as dead who were specifically removed in 1739 and also to William Murray of Spittlehaugh explicitly removed from the commission for Peebles-shire in 1739.¹ Murray had sold his estate in 1738 to one Charles Hamilton and thereby failed to meet the property qualification.² A further inconsistency occurred in the case of George Cranston of Dewar, referred to in Dalrymple's Edinburghshire list as an old man who never attended, but who was not left out of the commission until July 1742, in spite of the intervening amendment. A more intriguing case in the same commission was that of Andrew Houston of Calderhall, marked 'uncapable' on Dalrymple's list but renewed in the commission of July 1742. A further indication of reason for removal is to be found in the list sent to Hardwicke by Andrew Mitchell of Thainstoun for the shire of Kinross. Beside the name James Robertson of Dowhill is written 'no estate and of a bad character. Sir John Bruce says he will not act if he be in the commission.'³ Whether this implied either that James Robertson would fail to act or that Sir John Bruce would refuse to act if the former was included, James Robertson did not appear in the Kinross-shire commission of 5 August 1742.

While it seems reasonable, however, to conclude that the divisions of party and inter-party strife had given way completely to

¹ib., /67, Peebles-shire, 6 June 1739.

²Buchan and Paton (ed.), A History of Peebles-shire, iii, 170.

³B.M., Add. Mss. 35446, f.33, Andrew Mitchell to Lord Hardwicke, 4 August 1742.

local power and interest in influencing the composition of the bench and while it would also be reasonable to claim that justices were only left out of commissions because of death, removal, selling of estates or grave misdemeanour, the spectre of Jacobitism was one that continued to haunt government both at central and local levels and was the one political aberration considered inconsistent with the role of justice of the peace. Charles Edward Stuart landed in Scotland on 25 July 1745 and by the beginning of December had reached Derby.¹ The government was unprepared for this eventuality. The King was in Hanover, and instability had characterized the attempted formation of successive administrations following the resignation of Walpole in 1742. Pulteney's first attempts at construction with minimum resources, the successive efforts to 'broaden the bottom' of the administration by incorporating various sectors of the opposition, the pre-eminence of Carteret as the royal favourite and the struggle of the Old Corps Whigs, Newcastle, Pelham and Hardwicke against this pre-eminence, dominated the politics of central government with a complexity which culminated in the resignation of Granville (as Carteret had become), on 24 November 1744.² Throughout 1745 however the struggles within the ministry continued. The King's reluctance to accept Newcastle and Pelham and his refusal to countenance the

¹ G.H. Jones, The Main Stream of Jacobitism, p.233; Petrie, The Jacobite Movement, p.351.

² ib., pp.226-7, 237; A.S. Foord, His Majesty's Opposition, pp. 223-31, 239-40, 246-56.

admission of William Pitt (still harassing from the outside), to the ministry, even on the Pelhams' advice, pushed the latter to the verge of resignation.¹ Internal instability and external war in Europe, coupled with the refusal of Tweeddale, created third Secretary in 1742, to recognize the potential seriousness of the Jacobite rebellion, led to a disjointed and chaotic response,² a response which was emphatically sluggish in percolating through to the grass roots of local politics. Sir John Clerk of Pentlands noted that 'there was little or no care taken to provide against the impending storm', and that no Lords-Lieutenant were appointed because 'by the contentions of two factions in Scotland, and even amongst the ministry it could not be agreed who could be entrusted with the Lieutenancies.'³

The years which witnessed the permanent eradication of Jacobitism as a political force through the successful disarming of the Highland clans and the final abolition of the heritable jurisdictions which had perpetuated the exigencies of a clan structure, saw no immediate corresponding attempt to root out the disaffected from positions of local power. Between July 1744 and May 1750 no commission of the peace was sealed for any Scottish county. The commencement of Hardwicke's second phase of regulation began slowly with

¹ ib., p. 258.

² J.B. Owen, The Rise of the Pelhams, p.278; Rosalind Mitchison, 'The Government and the Highlands 1707-1745', pp. 37-8 in N.T. Phillipson and Rosalind Mitchison (ed)., Scotland in the Age of Improvement; Essays in Scottish History in the Eighteenth Century, (Edinburgh, 1970).

³ Memoirs of the Life of Sir John Clerk of Pentlands, (London, 1895), p.181.

Dumfries-shire in May, Bute in June and Perthshire in August 1750, followed by Aberdeenshire, Argyllshire, Ayrshire, Edinburghshire and Perthshire again in July 1751 and a further 16 Scottish counties in August 1751. By this date 23 of the 33 shires were in receipt of a new commission, the inference being that for the remaining 10, the piecemeal assortment of the commissions engrossed 25 years previously together with the adjustments of 1728 and 1739-40 was the warrant under which local magistracies endeavoured to guide the populace through the upheavals of post rebellion political and social life.

If the changes when they did come were not as extensive as might have been expected, the structural amendments were considerable. Net alteration in size ranged from a decrease of 40% in the case of Banffshire with 17 justices added and 42 left out of the commission of the peace, to an increase of 59% in that of Inverness-shire with 48 additions and 23 omissions, in August 1751. This statistic is less dramatic than in previous regulations however, affecting only 6 counties to any considerable extent.¹ The greatest interest lies in the restructuring of the commissions in the wake of the second active rebellion to restore the Stuart monarchy since the inception of the Hanoverian dynasty, and also in the motivation which lay behind that restructuring. A certain proportion would clearly reflect routine amendments necessitated by the considerable time lag from the issue

¹ Perthshire, August 1750 (+23%), Aberdeenshire, July 1751 (-34%), Banffshire (-40%), Dunbartonshire (-31%), Inverness-shire, (+59%) and Ross-shire (-21%), August 1751.

of the previous commission. Sir James Hamilton of Rosehall for instance, put out of the commissions of the peace of both Dunbartonshire and Renfrewshire in 1751, had died in 1750.¹ Sir Roderick MacKenzie of Scatwell similarly put off the bench for Ross-shire in 1751, had also died in 1750.²

There is little doubt however that considerable efforts were eventually taken to root out Jacobites from the Scottish commissions of the peace. James Moir of Stoneywood the younger, whose father had been active in the Stuart interest in 1715, 'went out' in 1745. Eventually escaping to Sweden, he was removed from the commission for Aberdeenshire on 25 July 1751.³ Similarly omitted from that commission in 1751 were Alexander Thomson of Faichfield, excepted from the Act of Indemnity of 1747, Arthur Gordon of Camoussie who was also excepted and who eventually escaped to France, George Forbes of Skellater, a prominent Jacobite commissioned as Lieutenant-Colonel in the Pretenders' army, and William Baird of Auchmeddan, Deputy-Lieutenant and Governor of Banffshire under Lord Lewis Gordon. Sir William Gordon of Park who was attainted, Andrew Hay of Rannes the younger, excepted from the Act of Indemnity and escaping abroad, George Gordon of Buckie, George Gordon of Camoussie the younger and John Innes

¹G.E.C., Baronetage, iv, 415; P.R.O., C.234/55, Dunbartonshire, /69, Renfrewshire, 10 August 1751.

²G.E.C. Baronetage, iv, 408; P.R.O., C.234/70, Ross-shire, 10 August 1751.

³A and H. Tayler, Jacobites of Aberdeenshire and Banffshire in the Forty-Five, (Aberdeen, 1928), pp. 356; Earl of Roseberry, A List of Persons concerned in the Rebellion Transmitted to the Commissioners of Excise by the Several Supervisors in Scotland in Obedience to a General Letter of 7 May 1746, (Scottish History Society, First Series, VIII, 1890), pp. 14, 300, 364; P.R.O., C.234/45, Aberdeenshire, 25 July 1751.

of Edengight the younger whose loyal father publicly disowned him, were all removed from the Banffshire bench on 12 August 1751.¹ Exclusion was not only restricted to active Jacobites. John Farquarson of Invercauld, a rebel in 1715 but loyal in 1745 was left out of the commission for Aberdeenshire in 1751; his estate had recently been managed by his nephew Francis Farquarson of Monaltrie, a prominent Jacobite. Thomas Erskine of Pitlodrie, Uncle of Moir of Stoneywood and a known Jacobite 'Wellwisher', Sir Alexander Guthrie of Ludquham a non-juror whose three sisters all married prominent Jacobites, James Bisseth of Lessendrum, a Jacobite 'sympathizer', and Roderick Forbes of Brux whose second son Jonathan was active were all put of the Aberdeenshire commission of July 1751.² Sir James Ramsay of Banff, was put out of the commission for Perthshire in 1750 in spite of the fact that he was 'a man remarkable for his piety, honesty and integrity'. He was, however, a non-juror, and as such a distinct security risk. He was therefore removed.³ John Wedderburn of Blackness was left out in Forfarshire in 1751. He had been a Collector of Excise for the rebels in Perthshire during the rebellion and was subsequently attainted. Thomas Anderson of Whiteburgh was left out in Haddingtonshire in 1751. His son had joined the rebels. Alexander Frazer of Relick's son was

¹Biographical details of Jacobites in Aberdeenshire and Banffshire continue to be taken from A. and H. Tayler's aforementioned book and for other shires from the Earl of Roseberry's List of Jacobites; P.R.O., C.234/49, Banffshire, 12 August 1751.

²P.R.O., C.234/45, Aberdeenshire, 25 July 1751.

³ib., /68, Perthshire, 8 August 1750; G.B.C., Baronetage, iv, 259.

a captain in the rebel army. He was omitted from the commission for Inverness-shire in 1751. Donald Cameron of Lochiel, a colonel in the rebel army, was attainted and therefore omitted from the same commission in 1751. Sir Alexander Bannerman of Elsie, who acted Lord Lieutenant for the Mearns district under the rebels, was left out of the commission for Kincardineshire in 1751, while in Perthshire, Sir Lawrence Mercer of Aldie and Patrick Murray of Dollary, were left out of the commission for their shire in 1751. Murray indeed had been clerk of the peace until imprisoned in February 1746 and was officially in the position of forwarding lists of nominees for the new commission of the peace to the Lord Justice Clerk in Edinburgh.¹ Sir James Kinloch of Kinloch, a colonel in the rebel army, David Carmichael of Balmeadie, a Collector of Cess who collected land tax for the rebels, Robert Mercer of Aldie and Antony Murray of East Grange, officers in the rebel army, were also left out. In Ross-shire the Earl of Cromarty, who served in the rebel army and was subsequently attainted, was removed in 1751 as was Alexander Ross of Pitcalnie whose son deserted and who was himself, strongly suspected. The scrutiny was not merely restricted to counties with a heritage of Jacobite intrigue, William Cochran of Ferguslie, an active rebel in 1745, being omitted from the commission for Renfrewshire in 1751.² There is therefore

¹ ib., S.P. 54/35, ii, f.135, Extract of a letter from Perthshire to Lord Albemarle, 3 February 1747.

² Biographical details continue to be taken from the Earl of Roseberry's List of Jacobites; P.R.O. C.234/46, Forfarshire 10 August 1751, /56, Haddingtonshire 10 August 1751, /59, Inverness-shire, 2 August 1751, /60, Kincardineshire 10 August 1751, /68, Perthshire, 8 August 1750, /70, Ross-shire, 10 August 1751, /69, Renfrewshire, 10 August 1751.

ample evidence to support the hypothesis that the government eventually made extensive efforts to purge the magistracy of disaffected justices during the aftermath of the major rebellion in the autumn of 1745.

It would seem however that active Jacobites remained on the bench throughout the interim period between the inception of the rising and Hardwicke's second phase of reconstruction in 1751. It has been suggested that certain justices were 'crossed off the lists' of justices of the peace as rebels in 1747, the supposition being that they could no longer act. Charles Cumming of Kininmonth for instance who was excepted from the Act of Indemnity has been classified as 'crossed off the list of J.P.s of Aberdeenshire in 1747 as a rebel.' There is however no such marking on the relevant flats for Aberdeenshire and no separate instruction warranting this omission.¹ A further claim that Sir Alexander Bannerman of Elsick 'had been a J.P. for Aberdeenshire but is crossed off the list for 1747 as a rebel,'² is equally suspect. Sir Alexander Bannerman did not appear in the commission for Aberdeenshire at this time. He was in the commission for Kincardineshire in May 1741 and was removed from that of August 1751 but there is no marking against his name in the fiat nor is there any writ of supersedeas effecting his removal prior to that date.³ The docket book entries show that no commissions were engrossed for Aberdeenshire between 15 December 1739 and 25 July 1751,⁴ and no writ

¹ Tayler, Aberdeenshire and Banffshire Jacobites, p.137, P.R.O., C.234/45, Aberdeenshire.

² ib., pp.128-9.

³ P.R.O., C.234/60, Kincardineshire, May 1741 and 10 August 1751.

⁴ ib., C.231/10, /11.

of supersedeas appears enclosed with the fiats. The assumption must therefore be that although considerable activity was being undertaken with respect to remodelling the bench and purging it of its disaffected justices, no effective action was taken until the cluster of new commissions were engrossed in 1750/51, and Jacobites concomitantly remained legitimate, if not active, justices until that date.

Although this four or five year time lag had elapsed since the final extinction of the Jacobite cause on the field of Culloden on 16 April 1746, remodelling plans for commissions of the peace had been initiated with relative speed. On the 24 January 1747 the Duke of Newcastle requested copies of the commissions of the peace for the several counties of Scotland from the Lord Justice Clerk.¹ The military dimension any post-rebellion regulation would inevitably involve, was evident in the accompanying letter to the Earl of Albemarle, commander-in-chief of the King's forces in Scotland informing him of the orders issued to the Lord Justice Clerk and requesting that

... if your Lordship should have anything to suggest relating to any of them the commissions, you will be pleased to let me know that I may lay it before the King.²

Clearly it was believed that the Army's commander-in-chief would be admirably placed to comment on the internal political situation in the localities. Newcastle's instructions were immediately effected by the

¹ib., S.P. 54/35, i, f.60, Newcastle to the Lord Justice Clerk, 24 January 1747.

²ib., f.58, Newcastle to the Earl of Albemarle, 24 January 1747.

Lord Justice Clerk Lord Milton. On 7 February Andrew Fletcher wrote to Newcastle to inform him that although his father, Lord Milton, was seriously ill, he had written and dispatched circular letters to the clerks of the peace of all thirty three shires in Scotland requesting them to transmit lists of the present justices of the peace duly certified by them, lists which would, in turn, be forwarded to Whitehall.¹ By the end of March, all clerks of the peace, with the exception of the gentleman from Bute, had complied with the requisition. The Lord Justice Clerk forwarded an alphabetical list of the thirty-three Scottish counties and enclosed the lists of justices in each shire.² The greatest speed had been observed. The sheriff-clerk of Cromarty for instance, had written to Lord Milton informing him that owing to his absence he had just seen the letter addressed to the clerk of the peace about the justices and that since he, the sheriff-clerk, had the last commission in his possession, he was enclosing an attested copy. He concluded the letter by suggesting that

... if the above list will not answer your Lordship's purpose, Mr. John Baillie, as principle clerk of the peace may attest it formally....³

It was clear from the outset however that the post-rebellion regulation would be fraught with difficulty. Lord Milton himself, in

¹ib., f.111, Andrew Fletcher to Newcastle, 7 February 1747.

²ib., S.P. 54/35, ii, f.223, Lord Justice Clerk to Newcastle, 22 March 1747.

³N.L.S., Fletcher of Saltoun Mss., Box 324, Sheriff Clerk of Cromarty to the Lord Justice Clerk, 24 February 1747.

transmitting the lists of justices in the commissions of the peace of all the Scottish counties with the exception of Bute, sent additional lists of J.P.s for Aberdeenshire, Dumfries-shire and Perthshire with accompanying remarks and a denotation of those suspected of disaffection which he thought might be of use to Newcastle.¹

Albemarle responded positively to the latter's request for suggestions by assuring Newcastle that the Lord Justice Clerk, although very ill, had sent to the counties for copies of the last commissions of the peace and adding,

... I have nothing to suggest relating to them but to beg that they may be narrowly looked into for I have reason to assert that very few North of the Tay in that Civil Employment desire to be continued.²

It was not merely however a question of certain gentlemen desiring the termination of their commissions. In discussing the inherent disaffection of many of the local sheriffs, Albemarle had gone on to claim that the justices of the peace were mostly 'a low set of people and chiefly of the same stamp.'³ Albemarle had himself been the recipient of a recent letter 'from Perthshire'. The writer had come to hear that the clerk of the peace for Perthshire had been instructed by the Lord Justice Clerk, on the orders of His Majesty, to forward a

¹ P.R.O., S.P. 54/35, ii, f.223, Lord Justice Clerk to Newcastle, 22 March 1747.

² ib., f.122, Albemarle to Newcastle, 2 February 1747.

³ ib., i, f.113, Albemarle to Newcastle, (private), 7 February 1747.

list of the justices of the peace for the shire to him for transmission to Newcastle's office in London.¹ He added,

... This looks as if some due regard will be paid to your Lordship's representations concerning the disaffections of many, especially of the inferior judges and magistrates of Scotland. But if the Ministry of London shall concert with the Scots M.P.s as to the justices to be now put into the commission, I am positive that matters will be as bad if not worse than formerly.²

The writer's fears arose from the fact that the aforementioned Patrick Murray of Mollary, clerk of the peace and principal sheriff of Perthshire, had been imprisoned for treasonable practices in February 1746. He had, however, been granted bail and it was surmised that the report now demanded would

... no doubt be signed by him so that we are not in good hands here....³

Clearly such deep rooted disaffection complicated the reliable accumulation of evidence. It would seem moreover that Perthshire was not an isolated case. In Kincardineshire in 1744, the sitting member, Sir James Carnegie of Pittarrow, had been unsuccessfully challenged in a by-election by the Jacobite Sir Alexander Bannerman of Elsick. It was claimed that the Jacobite party actively conspired against Sir James and subsequently that the Earl of Albemarle had been sent up

¹ ib., ii, f.135, Extract of a letter from Perthshire to Lord Albemarle, 3 February 1747.

² ib.

³ ib.

... a list of many justices of the peace in Kincardine whose principles and practices make them unworthy of that office.¹

Unreliability of the local source of information would inevitably have delayed co-ordination of the lists of justices of the peace for the Scottish counties at Edinburgh, yet this difficulty would seem to have played little part in the subsequent delay since lists of justices had been received from all counties except Bute by March 1747. By October 1747, Lord Milton was again forced to reiterate to Newcastle the urgency of the Scottish situation. He argued that

... in order to enforce the law and bring to punishment all those who are concerned in treasonable or illegal practices, it will be necessary that we have new commissions of the peace excluding all Jacobites and their adherents and even all low little persons who render that useful and honourable office contemptible and often hinders the people of greatest character and best quality from acting...²

The Lord Justice Clerk went on to emphasize the anticipated difficulty of finding an adequate loyal representation for Inverness-shire and other disaffected counties and suggested that it might prove necessary to appoint a certain number of army officers as justices of the peace. Newcastle's reply to this request suggests that the initiative embarked upon earlier in the year had been inexplicably forgotten.

¹ib., S.P. 54/35, 1, ff.88-93, 'Memorial of Several Facts relating to the Earl of Panmure, Mr. Maule his brother and Sir James Carnegie'.

²ib., S.P.54/37, 1, f.23, Lord Justice Clerk to Newcastle, 20 October 1747.

Emphasizing His Majesty's agreement on Lord Milton's collective proposals, he requested transmission of the lists of justices of the peace as they stood at that time together with observations on the conduct and character of the members and recommendations on those who should be added and those who should be left out of the new commissions.¹ He was also instructed to concert with Lieutenant-General Bland regarding the military contingent in the various commissions.² The parallel between the initial and subsequent instructions was not lost on the Lord Justice Clerk who replied,

... some time ago in obedience to Your Grace's commands I sent in one bundle, cypys of all commissions of the peace as they now stand which it took me above a month in collecting from the several counties...³

He went on to request the return of the lists in order that he could more quickly add the additional requested information but even with this assistance it was not until 15 December 1747 that the first annotated lists were forwarded to Whitehall. There is little doubt that Lord Milton found the task of co-ordinating the information onerous. He was anxious to get 'this laborious work finished'⁴ and consequently brooked no delay. Stating that he had found great difficulty in making 'proper observations' on the lists of justices of

¹ ib., f.33, Newcastle to the Lord Justice Clerk, 30 October 1747.

² ib.

³ ib., f.57, Lord Justice Clerk to Newcastle, 3 November 1747.

⁴ ib., ii, f.176, Lord Justice Clerk to Newcastle, 15 December 1747.

the peace, he had started with the counties at the receiving end of the Disarmament Act and was enclosing annotated lists for Inverness-shire and Aberdeenshire. He had marked with an 'S' those who were reputed to be Jacobites although they had taken the oaths, while those marked 'I' were 'too low and mean for the office of justice of the peace.'¹ 'L' classified a loyal subject, 'R' a rebel and 'N.J.' a non jurant Jacobite and the lists for Inverness-shire and Aberdeenshire of 15 December were quickly followed by those for Perthshire and Sutherland on 17 December, Elginshire and Cromarty on 19 December, Ross-shire and Nairnshire on 22 December, Stirlingshire and Caithness on 24 December and finally Forfarshire and Kincardineshire on 31 December 1747.²

Lord Milton's annotated advice provides an accurate indicator of the political affiliations and monarchical preferences of the justices in the commissions of the key counties at that time and suggests that disaffection if not endemic, was certainly pervasive.

The number of justices actively involved in the rebellion and classified as such in Lord Milton's lists would seem roughly comparable with the number suggested in the Earl of Rosebery's averaging at around 5% of the justices in the Perthshire commission, 6% in Aberdeenshire and 7% in Forfarshire. By far the greatest incidence of active rebellion involvement was in Inverness-shire where 25% of the justices in the last commission of the peace were

¹ ib..

² N.I.S., Fletcher of Saltoun Mss., Box 324, 'Lists of Justices of the Peace for the Several Counties in Scotland sent to London with observations, the time being when (sic)'

classified as rebels and were uniformly removed from the new commission which was engrossed on 2 August 1751.¹ This group included, in addition to those who appeared in Rosebery's list, Lord Lovat, beheaded in 1747, James Frazer of Foyers, Norman McLeod of Drainoch, John MacDonald of Glengarry, Patrick Grant of Glenmorison and Alexander Grant of Corimonie. In Aberdeenshire Lords Lovat and Pitsligo were omitted in 1751 as was Alexander Irvine of Crimond, again in addition to those previously listed. In Caithness, John Sinclair of Scottscadel similarly lost his place on the bench while in Forfarshire James Carnegie of Lour, David Hunter of Burnside and James Stormount of Pitskellie were put out of the commission for their shire. In Perthshire Lord George Murray, Spalding of Ashentully and Alexander Maldane of Lanerk lost their places on the bench.² With the inexplicable exception of one Graham of Airth who, although attainted, was not removed from the new commission for Stirlingshire,³ there would seem to have been a uniform removal of justices from their commissions if they had been known to have taken an active part in the rebellion.

This procedure was not extended however to those merely suspected of disloyalty. The number of justices in this category would

¹ P.R.O., C.234/59, Inverness-shire, 2 August 1751.

² ib., /45, Aberdeenshire, 25 July 1751; /522 Caithness, 3 August 1751;

³ /46, Forfarshire, 10 August 1751; /68, Perthshire, 8 August 1750.

⁴ ib., /74, Stirlingshire, 10 August 1751.

be expected to be greater and correspondingly ranged from one or two individuals in many counties, to 6% of the justices in the commission in Aberdeenshire, 14% in Perthshire, 20% in Forfarshire and 80% in the case of Kincardineshire. The composition of the Kincardineshire list however is somewhat mysterious since it contains 14 names only 7 of which appear in the list for the last relevant commission of 34 justices. John Fullarton of Gallery, John Young of Stank, Lord Halkerton, Viscount Arbuthnot, James Forbes of Balfour, Barclay of Murphy, Barclay of Johnstone and John Steuart of Reidmire all appear in the 'list of persons supposed to be J.P.s in Kincardine.'¹ All, with the exception of John Stank, were suspects and none actually appeared in the last commission for the shire.¹ The situation in the county seems to have been particularly confused however with an aggressive Jacobite opposition intriguing against the sitting member Sir James Carnegie of Pittarrow. It was claimed for instance that the guard at Fettercairn which had been loyal to the government, had been discharged by a packed meeting of justices of the peace.² The said justices had been reprimanded by His Majesty and the guard replaced. The discharge had been imputed to Sir James whereas it was claimed that the Jacobite Sir Alexander Ramsay of Balmaine had procured a meeting of some J.P.s for the purpose. It is possible that 'the list of many J.P.'s in Kincardine whose principles and practices make them unworthy of that office' sent up by the Earl of Albemarle³ was identical with the

¹ N.L.S., Fletcher of Saltoun Mss., Box 324; P.R.O., C.234/60, Kincardineshire, 2 May 1741.

² P.R.O., S.P. 54/35, ff. 88-93.

³ ib.

'list of persons supposed to be justices of the peace in Kincardine' received by Lord Milton¹ and further possible that the gentlemen on the list but not in the commission were additional 'packing' effected by Sir Alexander Ramsay to facilitate the discharging of the guard at Fettercairn.

In Stirlingshire, of a list of 15 'justices' forwarded to Lord Milton marked 'doubtful', only 6, William Govan of Drumquhaslie, John MacLeod of Neuck, Archibald Steuart of Steuarthill, John Dundas of Manner, William Graham of Airth and Sir Hugh Paterson of Bannockburn appeared in the last commission for the shire.² Again, it can only be surmised that dual recommendations from unreliable sources was leading to multiple discrepancies. There would seem therefore to be some confusion in the counties themselves about the membership of the various commissions, a confusion which was clearly not an altogether new feature of local administration. 'A list of justices of the peace in the Forfarshire commission' named 90 gentlemen qualified and unqualified from an 'old list'.³ Although this compilation is undated it immediately preceeds a 'List of J.P.s for Forfar, 1739',⁴ and it seems reasonable to conclude that the former was a list of the justices believed to be in the Forfarshire commission of the peace prior to the

¹N.L.S., Fletcher of Saltoun Mss., Box 324.

²ib., P.R.O., C.234/74, Stirlingshire, 27 October 1739.

³G.R.H., GD 45/12/33, 'List of justices of the peace in the Forfarshire commission.' (undated).

⁴ib., GD 45/12/35, 'List of J.P.s for Forfar, 1739.'

Hardwicke amendment of that year since that amendment is identical with the second list.¹ The commission which preceded Hardwicke's regulation however was that engrossed by Lord King in 1728 and the fiat for this commission lists only 25 justices only 11 of whom appear in the 'old list'.² It is not clear whether or not any of this mythical group of magistrates endeavoured to act, but the fact that they were believed to be in the county commission sheds grave doubts about the efficacy of the institution. Lord Hardwicke took immediate steps to clarify the situation by putting 37 of the 79 gentlemen believed to be on the Forfarshire bench in for the first time in 1739, but there is no indication of how such inexplicable confusion arose.

In a post rebellion situation moreover this kind of confusion could only be exacerbated by the type of situation which emerged in Aberdeenshire where the clerk of the peace, George Turner had to forward a copy based on the Records of Court since the original commission had been

... carried off by the now deceased Francis Gordon of Miln of Kincardine, formerly Clerk Deputy to the Peace ... upon his entering into the late wicked and unnatural rebellion...³

The reliability of evidence relating to those merely suspected of

¹ P.R.O., C.234/46, Forfarshire, 25 May 1739.

² ib., 7 February 1728.

³ N.L.S. Fletcher of Saltoun Mss., Box 324, footnote to a list of J.P.'s for Aberdeenshire named in the last commission dated 5 December 1739.

disaffection was therefore crucial in determining the future of individual justices. Many suspects were omitted from the subsequent commissions for their shires. David Cuthbert of Rosehall, Thomas Burnett of Kirkhill, Arbuthnot of Brodlie, Alexander Stewart of Edenglassie and William Gordon of Rothney in Aberdeenshire, John Dempster of Dunichen, Sir William Nairn of Dunsinnan, David Wedderburn of Wedderburn, John Carnegie of Boysack and David Skinner of Canaside in Forfarshire, John Sinclair of Assary in Caithness and James Miln of Milnfield, David Blair of Crunan, Alexander Nairn of Drummie and James Yeoman of Muiry in Perthshire, all shared the similar fate of omission from the new commissions.¹ In Kincardineshire Hercules Scott of Brotherton, Sir Alexander Ramsay of Balmaine, John Barclay of Balmequhan and John Arbuthnot of Forden were omitted from the new commission for the shire, while in Berwickshire John Hogg of Ladykirk was 'denuded of a place in the commission.' This was not, however, uniform practice. In Inverness-shire Alexander Frazer of Fairfield and William Frazer of Kilbokie both classified as suspects remained in the commission in 1751. In Stirlingshire 16 justices were listed as 'doubtful' but 4, Graham of Airth, William Govan of Drumquhastle, Archibald Stewart of Stewarthill, John Dundas of Manner, were included in the subsequent commission. In Forfarshire more than 50% of those suspected remained in the subsequent commission and in

¹ P.R.O., C.234/45, Aberdeenshire, 25 July 1751; /46, Forfarshire, 10 August 1751; /52, Caithness, 3 August 1751; /68, Perthshire, 8 August 1750; /60, Kincardineshire, 10 August 1751; /50, Berwickshire, 2 August 1751; N.L.S., Fletcher of Saltoun Mss., Box 324.

Perthshire the relevant percentage was 76 and included James Ure of Shirgarton and Stewart of Foss, both of whom had the additional marking 'unknown' against their names.¹

Non-jurant Jacobites seem to have been uniformly removed from their commissions whether or not they were active in the rebellion. In Aberdeenshire 4% of those listed were classified as non-jurors and all were removed from the subsequent commission. In Perthshire 6% of the justices were in this category and similarly removed in 1750 including one Thomas Graeme of Balgowan junior, who had been designated 'N.J. but man of good estate and will never disturb government.' One exception to this rule was Roderick McLeod of Cadboll who did not 'qualify by taking the oath to the government but good estate and peaceable man.' He remained in the 1751 commission for Ross-shire but since Cromarty, where he was also a justice, was not in receipt of a new commission at that time, there is no indication of his future role in that shire.²

Limited supply was clearly instrumental in ensuring the inclusion of many suspects in the new commissions. In compiling the list for Ross-shire for instance in 1747, the Lord Justice Clerk had instructed Newcastle that

... the Mackenzies (except Kilbokie in the additional list and Scatwell who married a Whig Lady), though they take all oaths, are greatly suspected by the Whigs. Most had very near relatives actually engaged in the rebellion.³

¹ P.R.O., C.234/59, Inverness-shire, 2 August 1751; /46, Forfarshire, 10 August 1751; /45, Aberdeenshire, 25 July 1751.

² *ib.*, /45, Aberdeenshire, 25 July 1751; /68, Perthshire, 8 August 1750; /70, Ross-shire, 10 August 1751.

³ *ib.*, S.P.54/37, ii, f.207, Lord Justice Clerk to Newcastle, 22 December 1747.

The commission engrossed for the shire on 10 August 1751, however, put in fifteen Mackenzies, including Sir Lewis Mackenzie of Scatswell and Colin Mackenzie of Kilbokie, twelve of whom had been in the previous commission of June 1739.¹ Clearly the Mackenzies were numerically necessary after the rebellion although the attainder on their leaders after 1745 combined with the warnings of the Lord Justice Clerk must have rendered their services to the commission of the peace suspect. It seems all the more inexplicable therefore that Thomas Graeme of Balgowan the younger should be left out for Perthshire for although a non-juror, he had been classified as 'a man of good estate and will never disturb government.'² especially when Benjamin Williamson of Banniskirke although 'unknown' was put into the new commission for Caithness,³ and George Cuthbert of Castlehill into the commission for Inverness-shire though he had been declared bankrupt.⁴

Although there was clearly a difficulty in recruiting a sufficient number of loyal gentlemen to act as local justices, the ministry did not accept every nominee vetted by the Lord Justice Clerk. In the new commission for Aberdeenshire for instance, of the 14 recommended additions forwarded by Lord Milton, only 3, Robert Burnett of Leyes the younger, William Dingwall of Brughly and Patrick Duff of Whitehill, were subsequently admitted. Only 4 gentlemen, George Milton

¹ib., C.234/70, Ross-shire, 6 June 1739, 10 August 1751.

²ib., /68, Perthshire, 8 August 1750.

³ib., /52, Caithness, 3 August 1751.

⁴ib., /59, Inverness-shire, 2 August 1751.

of Seaton and Fettercairn, Mill of Halltoun, Barclay of Urie and Burnett of Craigie, from a list of 9 possible additions to the commission for Kincardineshire appeared in the 1751 commission, while in a 'list of persons that may be put in the new commission for Forfar', numbering 19 gentlemen only 1, Guthrie of Guthrie the younger, was considered eligible for the position.¹ This practice was not uniform since Inverness-shire had all 6 proposed justices, Sir Kenneth Mackenzie of Seaforth, Bryce Campbell of Calder, Patrick Grant of Rothiemurchus, James Grant of Clunie, John Grant of Balliemore and Hugh Rose the younger of Kilravock, accepted for inclusion in the new commission. Similarly in Caithness, both nominees, Alexander Brodie of Brodie and Sinclair of Freswick, were appointed, while in Stirlingshire only 1 of the 19 gentlemen recommended, one Alexander Buchanan of Crawmenan, was omitted.² The clear fact emerges however, that there was no automatic inclusion in the Scottish commissions from a recommendation from the Lord Justice Clerk.

Although it may initially appear therefore, that the power of patronage was being devolved from London to Edinburgh, the ministry clearly continued to exert final control in theory and in practice. Faced with formidable shortages of qualified personnel to man the

¹ N.L.S., Fletcher of Saltoun Mss., Box 324; P.R.O., C.234/45, Aberdeenshire, 25 July 1751; /60, Kincardineshire, 10 August 1751; /46, Forfarshire, 10 August 1751.

² N.L.S., Fletcher of Saltoun Mss., Box 324; P.R.O., C.234/59, Inverness-shire, 2 August 1751; /52, Caithness, 3 August 1751; /74, Stirlingshire, 10 August 1751.

commissions of the peace in Scotland, the ministry continued to reject the potentially disaffected. This shortage was particularly acute in the north and north-eastern shires where, in turn, a reliable magistracy was imperative if law and order was ever to reign in that area. To compensate for this vacuum, Lord Milton's suggestion of recruiting military justices in the counties affected by the Disarmament Act, was implemented. It was proposed therefore that Lieutenant-Generals Humphrey Bland and George Churchill, Lieutenant-Colonel David Watson, Major William Caulfield, Captains Alexander Campbell, Duncan Campbell of Inverraw, Sir Harry Munro of Foulis and George Mackay, Lieutenant John Forbes of New and Ensign James Stewart should be put on to the bench of the said counties.¹ There was a clear precedent for this procedure in the appointment of military justices in 1725 and Newcastle had vindicated it then by arguing that it was impossible to implement a Disarmament Act when there were 'no justices above 200 miles in the North' that were not Jacobites.²

It would seem therefore that during 1747 considerable energy had been expended by the Lord Justice Clerk in amassing detailed portfolios on the magistracy in the various Scottish counties, with particular emphasis on those which had a consistent record of

¹ P.R.O., S.P. 54/37, ii, f.185, 'Army Officers Proposed to be Justices of the Peace'.

² B.M., Add. Mss. 33049, f.270.

disaffection. It also would seem, however, frankly amazing that it should take three years to begin to implement the proposals. A tentative explanation of the delay could be constructed around the two-fold problem of marshalling a sufficient body of well affected gentlemen willing to act combined with the incidence of particular confusion at the centre. This had reached a climax at the height of the rebellion, when the Pelhams inability to persuade the King to take in William Pitt as Secretary at War had culminated in their joint resignations on 10/11 February 1746. The chosen successors however, Bath and Granville, were unable to form an administration whereupon George II was forced to turn back to the Old Corps. The beginnings of political stability returned as the Pelhams imposed their terms on the thwarted monarch demanding the full confidence of the King with no continuing intrigue with Bath and Granville, acceptance of the Pelhams foreign policy and the inclusion of Pitt in the ministry.¹ With the political manoeuvring at the centre decelerating, the Scottish ministry underwent consequent surgery. The Marquis of Tweeddale resigned as Scottish Secretary in the wake of his incompetence in dealing with the early stages of the rebellion but there is little doubt that he would have been dismissed by the Pelhams in 1746 in any case since he was a strong Granville supporter. No successor was appointed and the Scottish administration was eclipsed, control of the post rebellion situation increasingly being adopted by Newcastle. The

¹ Basil Williams, The Whig Supremacy, pp. 244-5; A.S. Foord, His Majesty's Opposition, pp. 258-9; J.B. Owen, The Rise of the Pelhams, pp. 293-7.

abolition of heritable jurisdictions,¹ the appointment of new sheriffs on an annual basis and the extension of Circuit Courts dominated the immediate post rebellion period. The justices of the peace, unlike the Sheriffs, were not directly affected by the resumption of noble and clan jurisdictions to the Crown and it is not therefore surprising that when political stability had returned to the centre, their commissions should be among the last to be regulated.

There was however the additional problem of acquiring the requisite number of potentially loyal justices. On 2 June 1748 the Earl of Seafield wrote to Newcastle enclosing 'requested memoranda relating to nominations of J.Ps. in Scotland.'² This document related the difficulties involved in making nominations for the northern shires, where a considerable percentage of the population were disaffected, compared to the southern shires where the majority of those nominated would probably be well affected. The point was made that a sufficient number of justices were necessary to assist excise officers and control riots and breaches of the peace and that this was best done by

... well affected low people, as many of the more considerable either do not reside or will not take the trouble.

The memorandum emphasized that no acting justice should be omitted unless he had promoted and aided the rebellion or was 'notoriously

¹20 Geo. II C.43.

²B.M., Add. Mss. 35446, f.280, Seafield to Newcastle, 2 June 1748.

known as disaffected.' The inference from this advice would therefore seem to be that the evidence against the 50% suspected justices in Forfarshire and the 76% in Perthshire was insufficient to debar them from the bench.¹

Apparently however, the advice was not uniformly accepted. John Gray of Balblair, in the pre-rebellion commissions for both Ross-shire and Cromarty was designated in the Lord Justice Clerk's list as

... low, (but) a sensible man being a₂
Whig and always resides in the county²

This testimonial was insufficient to ensure his re-nomination since he was omitted from the commission for Ross-shire in August 1751.³ The Lord Justice Clerk had, in 1747, been in favour of removing justices of low social standing on the grounds that they demeaned the office, a sentiment totally opposed to that expressed by Seafield. It seems that the former objective in general prevailed. John Sutherland of Pitgrudie, Robert Mackay and Robert McAlaster of Golspie Tower were classified as 'low but useful' in the proposed list for Sutherland but since the 1751 fiat is missing it is not known whether they were included in or excluded from the next commission. William Fordyce of Calph and James Shaw of Deldownie, however, listed as 'low' gentlemen

¹ N.L.S. Fletcher of Saltoun Mss., Box 324.

² ib.

³ P.R.O., C.234/70, Ross-shire, 10 August 1751.

in Lord Milton's annotations for Aberdeenshire were omitted from the commission for the shire in 1751. Clearly pressure of supply could lead to a reverse decision since similarly annotated William Robertson of Duffyes was put in for Inverness-shire.¹ In Forfarshire the problem of omitting 'low' justices, was compounded by ignoring a list of five considered by the Lord Justice Clerk to be 'good'. The list of justices in Forfarshire together with a proposed additional list sent to London in December 1747 by Lord Milton had appended the note 'except the five marked the rest are people of very little property and very inconsiderable.' Only two, Guthrie of Guthrie and William Miln of Balvillon (a gentleman not apparently worthy of the accolade of 'good'), appeared in the subsequent commission. Clearly there was no fixed and immutable policy for dealing with 'low' justices, a phenomenon typical of all categories with the exception of the outright rebellious.

The difficulty of enrolling a sufficient number of well-affected justices is also mirrored in the inclusion in the commission of those unable to meet the property qualification. This is particularly true of the northern counties Seafield mentioned to Newcastle.² In Perthshire for instance Spittal of Leuchat was classified as having no estate in the Lord Justice Clerk's London list

¹N.L.S., Fletcher of Saltoun Mss., Box 324; P.R.O., C.234/45, Aberdeenshire, 25 July 1751; /59, Inverness-shire, 2 August 1751.

²B.M., Add. Mss., 35446, f.280, Seafield to Newcastle, 2 June 1748.

yet he appeared in the subsequent commission, as did John MacLaughlan of Auchindoir in Stirlingshire.¹ In Ross-shire John Davison of Rynie who had sold out together with John Mackenzie ('does not qualify'), George Ross of Pilkenny ('does not reside in county') and Benjamin Williamson of Banniskirke ('unknown') all appeared in the 1751 commission. In Dumbartonshire however where disaffection was not the inherent problem it was in the north 20% of the justices were classified as property less and the majority eliminated from the subsequent commission. Mungo Graham of Gorthie, David Graham of Ochill, Graham of Killearn and John Graham of Dougalston however collectively described as having 'no property — put in when the Duke of Montrose made them Barons in 1722 but they are denuded of their qualifications', were included in 1751 while John Wilson with a trifling property, not fitted to be a justice', was left out.² There were obviously limits below which the government could not go. Patrick Grant of Dunlugs, marked 'an idiot' in the Lord Justice Clerk's list for Aberdeenshire and David McCulloch of Filton similarly marked for Ross-shire, failed to appear in 1751. The exigencies of a 25% rebellious classification in Inverness-shire however must have forced the inclusion of one Robertson of Inches in spite of the fact that he was 'a fool'.³

¹ N.L.S., Fletcher of Saltoun Mss., Box 324; P.R.O., C.234/68, Perthshire 8 August 1750; /74, Stirlingshire 10 August 1751.

² N.L.S., Fletcher of Saltoun Mss., Box 324; P.R.O., C.234/70, Ross-shire, 10 August 1751; /55, Dumbartonshire, 10 August 1751.

³ N.L.S. Fletcher of Saltoun Mss., Box 324; P.R.O., C.234/45, Aberdeenshire 25 July 1751; /70, Ross-shire 10 August 1751; /59, Inverness-shire, 2 August 1751.

The manning of the commissions, moreover, remained a continuing problem. In 1751 Seafield suggested to Hardwicke that if all those suspected were left out in Banffshire it would certainly give offence.¹ It is unnecessary to reiterate the importance of politically loyal justices to the government. Newcastle emphasized that since Disarmament Acts had to be executed by local J.P.s, it was improper to lodge such powers with Highland gentlemen who had themselves been in open rebellion and whose tenants were to be disarmed. There were 'none fit to be entrusted with such powers within any reasonable distance of the remote Highlands'.² This problem moreover, was not restricted to the Highlands. When the Pretender was proclaimed at Duns in Berwickshire, the acting justices had refused to apprehend the offenders.³ In Aberdeenshire it was emphasized that all those included in the proposed list were not equally zealous for the government because there were not so many such gentlemen in the north. It was therefore proposed to leave in and indeed to add some 'low zealous people' to the Aberdeenshire commission.⁴ The same was true of the county of Ross where the number of J.P.s was excessive since 'many gentry are notoriously known as disaffected' though they did not join the rebels. The Earl of Morton wrote to Hardwicke about the new list proposed for Orkney and Shetland and

¹ B.M. Add. Mss. 35447, f.170, Seafield to Hardwicke, 2 August 1751.

² B.M. Add. Mss. 33049, f.253, 'Memorial touching the Bill now depending for Disarming the Highlands.'

³ Selection from the Papers of the Earls of Marchmont, G.M. Rose (ed.) (London, 1831), i, 100, Extract from the diary of Hugh, Earl of Marchmont, 20 September 1745.

⁴ B.M., Add. Mss. 35446, f.280.

returned it with marks against those 'not of the best disposition'.¹ It would seem that the delay in engrossing new post rebellion commissions arose not merely from political distractions at the centre and the repercussions of ministerial changes on the Scottish establishment but also out of the fact that remodelling of the bench was not a priority for a government endeavouring to restructure an important aspect of Scottish law to bring it into line with its English counterpart. Furthermore when the ministry eventually did decide to settle the commissions its Scottish liaison officers found that the problem of recruiting loyal nominees was formidable.

In this situation two decisions appear to have been taken, the first centring on the inclusion of low status groups. The employment of such justices had been a long standing complaint. Daniel Defoe complained of low status pro-Union justices at the expense of 'superior' anti-Union gentlemen in 1707.² George Lockhart made a similar complaint in 1712.³ In 1732 a motion was put before Parliament calling for the regulation of qualifications for J.Ps. because of their general low status, education and financial standing.⁴ In 1744 the Earl of Orford recommended a nominee to Hardwicke who refused to accept it on the grounds that the gentleman was of 'low employment' and this would be resented by fellow members of the

¹ B.M. Add. Mss. 35447, f.176, Morton to Hardwicke, 5 August 1751.

² Hist. Mss. Comm. Portland Mss., iv, 436, Defoe to Harley, 19 August 1707.

³ ib., v, 252-253, Lockhart to Oxford, 23 December 1712.

⁴ Hist. Mss. Comm., Esmond Diary, i, 222.

commission.¹ As recently as 1747 Lord Milton had advised the exclusion of all 'low little persons' who had rendered 'that useful and honourable office contemptible' and had prevented more properly qualified gentlemen from accepting a place on the bench.² It would seem however that sheer necessity drove the government not to amend but rather extend this policy, and it is possible that it brought with it some inherent advantages. One of the problems facing any administration of post Union Britain was the meagre sources of patronage available to meet the needs of avaricious and needy Scots. In this strained situation, the potentially disaffected would receive no consideration, whereas it has been suggested³ that with a little judicious administration of financial incentives in appropriate quarters, there might have been less dissatisfaction for rebellion to breed upon. Although a justice made no financial gain from his position on the bench, indeed his qualifying fee was often a source of hardship as John Baird of Newbyth had pointed out on behalf of the Edinburgh justices in 1716,⁴ it might be possible to conclude that extension of the privilege of a place in the commission to lower ranks in society, would have contributed to the engendering of stronger and more marked proclivities towards the House of Hanover and less towards the exiled Stuarts.

¹ Coxe, Walpole, iii, 601.

² See above, p. 262

³ Rosalind Mitchison, 'The Government and the Highlands, 1707-1745', pp. 43-5 in Scotland in the Age of Improvement.

⁴ P.R.O., S.P. 54/12, f.41, Mr Baird to Stanhope, 26 June 1716.

The government compensated secondly for scarce resources by including a strong military component in the commissions of certain counties. In Inverness-shire for instance in 1751, the commission included William Crawford, Lieutenant Governor and Humphrey Colquhoun, Fort Major of Fort George, Lieutenant General Humphrey Bland, governor, and George Douglas, storekeeper and marshall of Fort William and George Collingwood, Deputy Governor of Fort Augustus.¹ In the 1750 commission for Perthshire, Humphrey Bland, George Douglas and George Collingwood again appeared together with Robert Turnbull Lieutenant Governor, and Archibald McCorchill Ensign of Dunbarton Castle, Richard Coren Deputy Governor and John Robertson major of Edinburgh Castle and William Canfield Lieutenant Governor of Fort George.² Lord Dupplin, writing to Hardwicke in 1750 about the new commission being prepared for Perthshire suggested that 'the King's friends are scarcely a majority in that county,'³ implying that the bench required strengthening by some process other than the obvious recommendations of the Duke of Atholl. Newcastle, realising the objections which would be raised over the appointment of military justices as a counterweight to their disaffected colleagues, justified it by claiming that there were 'no justices for above two hundred miles in the North that are not Jacobites'.⁴ Edinburghshire nevertheless, was particularly resentful at the inclusion of Richard Caren and John Robertson, Deputy Governor

¹ ib., C.234/59, Inverness-shire, 2 August 1751.

² ib., /68, Perthshire, 8 August 1750.

³ B.M., Add. Mss 35447, f.123, Lord Dupplin to Hardwicke, 6 September 1750.

⁴ See above p.272.

and major at Edinburgh Castle. Robert Dundas, Lord President of the Court of Session wrote to Hardwicke informing him that the gentlemen of the shire were displeased with the military nominations in the commission, and proposing that these were not necessary in an area where there was little disaffection.¹ Hardwicke promptly replied that he was not responsible for judgments on the character of nominees and if some gentlemen nominated were refusing to act because of the inclusion of others then he pointed out

... nobody knows better than your Lordship that it is their duty to do so and that a particular dislike to two or three persons who happen to be put into a commission consisting of great numbers, is no excuse for not executing a public trust.....²

There is little doubt therefore that the military component of the commissions of the peace was resented as much in 1750 as it had been in 1725.

It is possible that a further source of delay was the difficulty of co-ordinating references from a wide variety of sources in the confusion of the post rebellion period. Stair wrote to Hardwicke in 1749 enclosing a list of gentlemen recommended for the commission of the peace for Wigtownshire, assuring him that they were 'the most considerable freeholders of the county and very well qualified to be J.Ps.'³ Queensberry forwarded a list for Dumfries-shire⁴ and Lord

¹B.M., Add. Mss. 35447, f.188, Robert Dundas to Hardwicke, 12 September 1751; P.R.O., C.234/64, 24 July 1751.

²P. Yorke, Life of Lord Chancellor Hardwicke, i, 619, Lord Chancellor to Robert Dundas, 22 September 1751.

³B.M., Add. Mss. 35446, f.40 Stair to Hardwicke, 12 March 1749.

⁴ib., Add. Mss. 35447, f.13.

Dupplin, having been informed that a new commission was being prepared for Perthshire sought to put forward a list of his own for that county. He emphasized that most of the people on his list would probably have been recommended from another source but anticipated that there would be many that 'the Duke of Atholl would not recommend and yet are true friends to the present Establishment.'¹ Lothian wrote directly to Hardwicke requesting that the Baillie of Jedburgh be named an ex-officio justice, an honour previously given to the first magistrate of the town.² Clearly recommendations were coming directly to Hardwicke from a series of sources other than through the official channel of the Lord Justice Clerk, and if the latter had difficulty in ascertaining the character of nominees, this would obviously as he had previously stated, have been an impossibility for the Chancellor. The Earl of Seafield agreed that the Banffshire list was the best that could be done 'with the Lord Justice Clerk's knowledge.' Having seen the previous list (prior to the proposed changes) when he was last in London, Seafield had marked a cross against three people who were 'of small property, not in open rebellion in 1745, but useful to the cause.' He also marked 'D' against those of doubtful loyalty and recommended that Lieutenant Nicholas Dunbar of Foskan be added to the commission, 'having no property but being no favourite of the Jacobites'.³ Nicholas Dunbar duly appeared last in the commission for Banffshire

¹ib., f.123, Lord Dupplin to Hardwicke, 6 September 1750.

²ib., f.161, Lothian to Hardwicke, 8 June 1751.

³ib., f.170, Seafield to Hardwicke, 2 August 1751.

dated 12 August 1751.¹ Seafield had previously directed Newcastle that Gordon of Knockespock should be left out of the commission for Aberdeenshire since that gentleman was known by the name Gordon of St. Christophers. The latter he requested included because he was well affected.² Gordon of Knockespock had been recommended in a list sent by William Grant to Lord Braco for approval in 1739³ but was not included in the commissions on 27 October or 30 November of that year. He did appear however, still under the title Gordon of Knockespock, on 25 July 1751. Similar confusion over names is evident when Seafield wrote to Newcastle about the omission of Alexander Munro of Culcairn from the commission for Ross-shire.⁴ This gentleman was not included in the next commission in August 1751 but, as previously suggested, one Alexander Munro of Kilrean is,⁵ and this would seem to be a confusion of nomenclature. Again Alexander Mackenzie of Dachman whom, Seafield claimed 'was not bankrupt and was useful to the government during the rebellion', seems to be synonymous with the Alexander Mackenzie of Dachmalnake of 6 June 1739 and Alexander Mackenzie of Dachmalnack of 10 August 1751.⁶

¹ P.R.O., C.234/49, Banffshire, 12 August 1751.

² B.M., Add. Ms. 35446, f.280, Seafield to Newcastle, 2 June 1748.

³ G.R.H., GD 36/193, List of Persons proposed to be Justices of the Peace for the County of Aberdeen.

⁴ B.M., Add. Mss. 35446, f.280, Seafield to Newcastle, 2 June 1748.

⁵ see above, pp. 24-5.

⁶ ib.

The reasoned inference from this evidence is simply that since there was no single procedure of recommendation and since there were obvious difficulties in transcribing and correlating names, delays would ensue as references were checked out. In the period immediately prior to the 1750/51 regulation the eminences of the Scottish political nation were in correspondence with Hardwicke, with Newcastle and with the Lord Justice Clerk. It is possibly in the person of the Lord Justice Clerk, however, that the key to the excessive delay in engrossing the post-rebellion commissions lay. In 1748 Lord Milton was succeeded in that office by Charles Areskine. It had been expected that Areskine, as the candidate of the Duke of Argyll, would succeed Duncan Forbes as Lord President of the Court of Session after the latter's death in 1747, but on the intervention of Lord Chesterfield Robert Dundas of Arniston succeeded on his merit as the more able lawyer in spite of his Squadrone affiliations. To compensate for this disappointment, Areskine was made Lord Justice Clerk and Lord Milton in turn compensated with the post of auditor general of Scotland for his son.¹ Lord Milton had completed the first phase of the regulation, sending the completed lists for 12 counties to London during December 1747.² In June 1748 Seafield forwarded to Newcastle a requested memorandum with a few remarks on the list for Ross-shire by the 'late' Lord Justice Clerk.³ The recommendation

¹ Sedgwick, The House of Commons, 1715-1754, i, 420.

² N.L.S., Fletcher of Saltoun Mss., Box 324.

³ B.M., Add. Mss. 35446, f.280, Seafield to Newcastle, 2 June 1748.

that Alexander Mackenzie of Dachman should be included because he was 'not bankrupt and was useful to the government during the rebellion'.¹ suggests that the reference base was the copy of the commission of the peace for Ross-shire sent to the former Lord Justice Clerk where this particular gentleman was classified as 'bankrupt', and therefore it seems reasonable to assume that the restructuring process was automatically transferred from Lord Milton to Lord Areskine. In July 1751, Areskine wrote to Argyll saying that the lists had taken longer than anticipated but were now finished and were being transmitted by parcels.² He further remarked that they had been compiled with 'fidelity and all diligence in enquiring into the character of the men,' and that if there were errors, they arose because he had been dependent on others for information. There was therefore an administrative problem of a transposition of Lords Justice Clerk supposedly co-ordinating the regulation for the ministry, while Hardwicke was also in receipt of special requests for inclusion in or exclusion from commissions from other sources.

The main time consuming feature was, however, the transposition of Lords Justices which would seem to have radically altered the proposed composition of the new commissions. In some cases all of the nominations proposed by Lord Milton were automatically accepted. This occurred in Inverness-shire where all 7 nominees appear

¹B.M., Add. Mss. 35446, f.280; N.L.S. Fletcher of Saltoun Mss., Box 324.

²B.M., Add. Mss. 35447, f.165, Areskine to Argyll, 6 July 1751.

in the 1751 commission and also in Perthshire where the 20 gentlemen suggested for the new commission on the London list appeared in 1750. In Aberdeenshire however only 40% of those proposed were put into the subsequent commission, while in Dunbartonshire and Forfarshire none of those suggested appeared on the relevant benches in 1751 in spite of the fact that in the proposed list for the latter county 5 of the 16 gentlemen proposed had been marked 'good'. It is moreover obvious that additional block recommendations had been received by the Lord Chancellor. In the case of Stirlingshire, for instance, of the 46 proposed in Lord Milton's London list, only 40 were included in a 1751 commission consisting of 97 justices. It is clear therefore that the resignation of Lord Milton created problems both for his successor and the Lord Chancellor and consequently it can be safely assumed that the task of remodelling the Scottish commissions of the peace was an onerous one.¹

The process moreover was not completed in 1751 and the character investigations into certain members of the Inverness-shire commission for instance lasted until 1756. A memorial for Lord Findlater claimed that it was 'absolutely necessary' that James Fraser of Relig be scored out of the commission for that shire on the grounds of a warrant he issued to his constables to use force against the King's troops for collecting rent. It was warned that Fraser would be

¹ N.L.S. Fletcher of Saltoun Mss., Box 324; P.R.O., C.234/59, Inverness-shire, 2 August 1751; /68, Perthshire, 8 August 1750; /45, Aberdeenshire, 25 July 1751; /55, Dunbartonshire, 10 August 1751; /46, Forfarshire 10 August 1751 /74, Stirlingshire, 10 August 1751.

troublesome as a result of his success in getting a certain James Grant turned out and because he had considerable support from other inhabitants. The question posed was the desirability of a new commission for the county to prevent 'so troublesome a man having any power in future'.¹ The Lord Justice Clerk seems to have inquired into the suggestions and discovered that the case had gone before the Barons.² The main accusation against Fraser however seems to have been that of Jacobitism and the outcome of the investigation is a significant insight into the government's continuing fear of subversion even after an unsuccessful rebellion, the abolition of heritable jurisdictions, the appointment of new non heritable sheriffs from the legal profession, the extension of Circuit Courts to fill the judicial vacuum and the considerable remodelling of the local magistracy. The Lord Justice Clerk expressed concern about the charges since Fraser was a good jury man who had never been suspected of disaffection.³ During July 1753 letters of support for Fraser were received from leading Scottish Whigs. John Munro of Culcain, disbelieving the accusations wrote 'your principles are the very reverse of Jacobitism.'⁴ Hugh Rose of Kilravock suggested

¹B.M., Add. Mss. 35447, f.346.

²ib., ff.348, 353 Lord Justice Clerk to Hardwicke, 22 June 1753 and 30 June 1753.

³ib.

⁴B.M., Add. Mss. 35448, f.4, 3 July 1753.

... your principles have been grossly misrepresented in London: this need not alarm you much if you'll but consider that it has been a common practice of late years for any man that hates another to call him a Jacobite.¹

The pejorative nature of the accusation and the rapidity of the Chancellor's response in spite of further letters of support from Whigs of the calibre of Sir Harry Monro and John Forbes of Culloeden² is indicative of a possible paranoia. Hardwicke himself wrote to the Lord Justice Clerk on his deliberations on Fraser of Relig and Hugh Fraser of Dunballoch, who had been in the rebellion but surrendered and witnessed against Lovat and also on the behaviour of Mr James Grant, deputy factor on the Lovat estates. He concluded that

... those two gentlemen appear to have been guilty of a great misdemeanour in the execution of their offices by granting the warrant dated 11 August 1752 and what was done in consequence of it; they did in a very extraordinary manner assume a power not within their jurisdictions... I have ordered writs of Supersedeas to be issued under the Great Seal to remove them out of the commission of the peace which will be transmitted to your Lordship herewith and I hope that you will take care that they are served on the two gentlemen ...³

Both gentlemen were accordingly marked 'suspended' on the fiat for Inverness dated 7 August 1754 as were Hugh Fraser the Younger of Dunballoch and George Douglas, storekeeper and marshal at Fort William.⁴

¹ib., f.5, 6 July 1753.

²ib., f.7, 9 July 1753; f.8, 12 July 1753.

³ib., f.15, Hardwicke to Lord Justice Clerk 21 August 1753.

⁴P.R.O., C.234/59, Inverness-shire, 7 August 1754.

Hardwicke made no reference to Jacobitism in his judgment, merely suspending on a technicality, but the correspondence during the investigation is more than sufficient to imply that it was the fear of political disaffection which was the root of the removal. The inclusion of Captain John Forbes and Ensign James Small, factors on forfeited estates and Allan MacDonald of Knock, Captain of the Guides to the Troops in North Britain was a further indicator of the efforts which were continuing, to be undertaken to root out disaffection.¹ Such suspicions continued to be entertained more than ten years after rebellion. The Lord Justice Clerk wrote to Hardwicke suggesting that one Thomas Frazer of Struy was a 'man of little consequence' but was disagreeable and should be left out of the next commission.² A further memorandum on the commission of the peace for Inverness-shire claimed that Thomas Frazer was 'disaffected and is a great obstructor of the measures of government.' It was further suggested that

... the list contains many who may labour under suspicion of disaffection but there does not seem to occur any such objection as should be of force sufficient to strike them out of the list.....³

The implication herein is that although justices could not be dismissed on suspicion alone, any minor misdemeanour on their part was likely to result in suspension. Consequently although all that could be said about Frazer of Struy was that he had been involved in a dispute over a bond with the late Lord Lovat and that with respect to the rebellion he had appeared among the Frazers at their first muster but thereafter 'went home and lived quietly,' he was suspended from the Inverness-shire

¹ P.R.O., C.234/59, Inverness-shire, 7 August 1754.
² P.M., Add. Mss. 35449, f.19 Areskine to Hardwicke, 23 March 1756.
³ ib., f.22,

commission in 1756.¹

It would however be inaccurate to claim that omissions were made purely on the grounds of disaffection or indeed that the Lord Justice Clerk's suggestions were inevitably accepted. On 27 July 1756, Lord Cathcart gave the Lord Justice Clerk a list of persons thought proper to be added to the new commission of the peace for Clackmannanshire. After discussing the list with the 'gentlemen of the county who had greatest interest and were thoroughly well affected', it was agreed that the list was acceptable except that Adam Smith, Collector of Customs at the port of Alloa should not be included.² This interesting exception had to be made on the grounds that although Smith was of a good character, he had no interest in the county and being a collector of revenue he would be an interested party in any such case coming before the bench. This objection went unheeded however and Adam Smith appeared in the commission for Clackmannanshire on 9 September 1756,³ the precedent having been set by the inclusion of one Gilbert Gordon of Mirniedean, Collector of Excise at Dumfries, in the commission of the peace for Kirkcudbright in 1754.⁴ A second objection was made to the Earl of Dumfries' and Lord Cathcart's proposals that the overseers of their coal works should be J.Ps. The argument here was that such an appointment would be unconstitutional because in effect

¹ib., f.23, 'Memo for Lord Justice Clerk concerning Thomas Frazer of Struy'; P.R.O., c.234/59, Inverness-shire, 1756.

²B.M., Add. Mss. 35449, f.39, 'Memorial by Lord Justice Clerk in relation to certain officers and persons proposed to be added in a new commission of the peace for Clackmannan, 27 July 1756.

³P.R.O., C.234/53, Clackmannanshire, 9 September 1756.

⁴ib.,/62, Kirkcudbright, 29 October 1754.

it was granting power to two members of the nobility to nominate justices as often as they dismissed overseers and that this was a prerogative of the Crown which could not be delegated. The low rank of such proposed justices was criticised and the memorandum visualized a meeting which 'might generally consist of a quorum of coal-grievs'.¹ This proposition was dropped but Cathcart then proposed that his present overseer, Buchanan, be included. Areskine firmly rejected this in a letter to Hardwicke² and Buchanan did not appear in the Clackmannanshire commission of 9 September 1756.³ It would therefore seem that there continued to be a limit to the inclusion of low status groups acceptable to the Scottish legal hierarchy but, perhaps more importantly, this incident illustrates the reluctance of the Justice Clerk to countenance the explicit right of appointment which this proposal would entail while continuing to recognize the implicit right of appointment inherent in the proposer's social standing in his locality.

Apart from the abovementioned amendments relating to Jacobites and other potentially biased groups, Hardwicke sealed only two Scottish commissions between the relatively comprehensive reconstruction of 1751 and his resignation in 1756. In August and October 1754 commissions were engrossed for Roxburghshire and

¹ib.

²ib., f.41, Lord Justice Clerk to Hardwicke, 3 August 1756.

³P.R.O., C.234/53, Clackmannanshire, 9 September 1756

Kirkcudbright, the former being increased by 20%, the latter decreased 14%.¹ Areskine wrote to Hardwicke in July that he had forwarded a list of justices proposed for Roxburghshire where a new commission was 'extremely much wanted'.² Consultations had taken place with the M.P. for the shire, Walter Scott of Harden, with Lord Minto whose estate was in the county and the list had been subsequently approved by Argyll. The influence of the Argyll interest therefore obviously continued throughout the period under consideration. The death of the temperamental second duke in 1743 after an unsuccessful attempt at 'broadening the bottom' of the first post-Walpolean administration by including his Tory associates Gower and Chetwynd, ensured a continued stability in Scottish politics when the Pelhams eventually succeeded in establishing their claim as Sir Robert's political heirs. The reason for this favourable outcome was the succession of Islay, a loyal and continuing supporter initially of Walpole and latterly of the Old Corps Whigs, as third duke on his brother's death. There is little doubt therefore that the Argyll interest continued to play a preponderant role in Scottish politics especially after the resignation of Tweeddale in 1746. Argyll's involvement in individual commissions is, however, open to question. Correspondence prior to the post-rebellion regulations suggests that he was 'apprehensive that the last commission had not been put into execution' and that enquiries were being made.³ It is established that the last commission

¹ *ib.*, /72, Roxburghshire 3 August 1754; /62, Kirkcudbright 29 October 1754.

² B.M., Add. Mss. 35448, f.126, Areskine to Hardwicke, July 1754.

³ B.M., Add. Mss. 35447, f.19, Argyll to Hardwicke, 9 August 1749.

for Argyllshire was dated 7 February 1728 and that though some had heard of a commission in 1747 it had never arrived.¹ The specific conclusion herein is that the most considerable influence in Scottish politics since the advent of Walpole in the early 1720's, had made no effort to ascertain whether his nominees were acting as instructed in his own family territory, hence raising a considerable question mark over the importance of the commission of the peace in local as well as central politics. A more general and indeed more tentative hypothesis could also be suggested regarding the post rebellion adjustments to the bench, namely that in the light of the Argyllshire experiences, the eradication of 1747 quoted by the Taylers were merely proposed, never enacted. The Duke of Argyll claimed that Lord Milton, at that time Lord Justice Clerk, had been directed since the rebellion by Newcastle, to make up lists for new commissions.² There were however no commissions sealed for Scotland between 1744 and 1750 and the post rebellion regulations previously discussed seem to have been undertaken by the Lord Justice Clerk, Lord Areskine, for Lord Chancellor Hardwicke in 1750 and 1751. It would seem probable therefore that lists were certainly drawn up by Lord Milton in response to Newcastle's request in or around 1747 but that these were never engrossed as commissions, that event only being successfully accomplished in 1750-51 as a result of the efforts of Lord Areskine.

¹ib., f.27, Argyll to Hardwicke, 24 August 1749.

²ib.

These activities marked the end of Hardwicke's tenure of the Great Seal. The death of Henry Pelham in 1754 opened yet another fissure in central politics which Newcastle, though he succeeded his brother at the Treasury, was unable to heal. Forced to admit the impossibility of managing the Commons without the cooperation of one of its two ablest debaters, William Pitt or Henry Fox, and faced with the resignation of the latter from the ministry as Secretary at War and the refusal of the former to serve with him in a revamped administration, Newcastle resigned on 26 October 1756. Long associated with the Pelhams as a founder member of the Old Corps Whigs and instigator of the last attempt to accom^modate Pitt, Hardwicke's resignation quickly followed.¹

His record as Chancellor was not inconspicuous with respect to commissions of the peace for the Scottish counties. During his twenty year tenure he sealed only 71 commissions but the structure altered considerably, 1587 justices being added and 1171 omitted during the period. Hardwicke, unlike his predecessors Cowper and King, never seems to have expressed a personal philosophy relating to his handling of the patronage involved in this aspect of his office. The timing of the major regulations gives no immediate indication of motivation. The initial readjustment of 1739-40 may have indicated a ministerial preparation for the forthcoming election of 1742 but the evidence of inclusions and exclusions suggests that as many potential

¹Basil Williams, The Whig Supremacy, pp. 325-6, 331-2; A.S. Foord, His Majesty's Opposition, pp. 280-8; Lord Campbell, Lives of the Chancellors, v, 129-38.

opposition candidates were put in as prospective supporters and no inherently dangerous parliamentarian was left out. The general election of 1747 was unrecognized at the level of local politics in spite of its critical timing in relation to the aftermath of rebellion and that of 1754 preceded only by the second extensive regulation of 1750-1751 which did not seem to have any direct bearing on electioneering. As before, success at the polls did not require as a prerequisite, a position on the bench. John Dickson, elected for Peebles-shire in 1747 did not appear in the commission for that shire until 1757.¹ Andrew Mitchell of Thainston, returned for Aberdeenshire in 1747, was not put into the commission until 1751.² In Kirkcudbright, John Mackye of Palgowan, an opposition Whig, defeated the sitting member John Maxwell in 1747 on the combined interest of Lord Milton, Lord Justice Clerk, Queensberry and Selkirk. Mackye, unlike his opponent, was not put into the commission until 1754 and complained that Argyll had not given him enough support.³ He did nevertheless, win the seat without his place on the bench. It is possible that some intervention resulted from the attempt by the Dalrymple family to unseat the sitting member for Wigtownshire in 1747. John Stewart, brother of the Earl of Galloway, was challenged by one Andrew MacDoual but retained the seat.⁴ The MacDoual family was sponsored by the

¹Sedgwick, The House of Commons, 1715-1754, i, 611; P.R.O., C.234/67, Peebles-shire 22 June 1757.

²Sedgwick, The House of Commons, 1715-1754, ii, 261; P.R.O., C.234/45, Aberdeenshire, 10 August 1751.

³Sedgwick, The House of Commons, 1715-1754, ii, 237; P.R.O., C.234/62, Kirkcudbright, 24 October 1754.

⁴Sedgwick, The House of Commons, 1715-1754, i, 395.

Dalrymples and it is interesting to note that although its principal^a representative, the Earl of Stair, forwarded a 'list of gentlemen recommended to the commission of the peace for Wigtown' in 1750,¹ no further commission was engrossed within the period of this study. In August 1752 however, a writ of supersedeas was issued against John Macdoul, authorizing his removal from the commission of the peace for Wigtownshire.² Andrew Macdoul was not on the bench at this time and there is therefore the possibility that this action was an attempt by the Old Corps Whigs to remove any representative of his family from the commission, hence discrediting the name of any future Dalrymple nominee who might be put up in opposition to the Galloway interest in 1754. It would seem reasonable to assume however that the commissions of the peace had a decreasing effect on the outcome of general elections and correspondingly failed to change with any reorganization at the centre. The criteria for nomination to the bench were clearly non-party. In a memorial to the King in April 1745 Hardwicke asserted that

when any new commissions of the peace shall be issued, all proper regard shall be had to gentlemen of figure and fortune, well affected to His Majesty's government without distinction of parties.³

Admittedly this was an attempt, as there were many attempts, to win

¹B.M., Add. Mss. 35446, f.40, Stair to Hardwicke, 12 March 1750.

²P.R.O., C.234/77, Wigtownshire, 11 August 1752.

³B.M., Add. Mss. 35602, f.50, 'Memorial from the Lord Chancellor and Others to the King', 5 April 1745.

Tory support for a prospective administration, but clearly the dichotomy of party had ceased to be the disruptive political force it had been in the reign of Queen Anne and if the manipulation of the patronage enjoyed by the Chancellor had any political dimension, then it tended to be that associated with interest groups supporting or opposing central government. The evidence clearly suggests that the preeminence of a gentleman in his shire was the fundamental criterion for inclusion in the commission or in making recommendations for inclusion. Schism within the Whig party seemed to be reflected less than schism between parties in the turbulence of local politics. This decided movement from the political to the social was also attended by a more rigorous coordination of recommendations. During Hardwicke's Chancellorship, as it was during Comper's, it was accepted practice for the Lord Justice Clerk to compile the lists of proposed justices, Lord Milton fulfilling this task until 1748 when he was succeeded by Lord Areskine.

There remained, however, in the wake of this rationalization one particular political anathema inconsistent with a place on the bench — Jacobitism. The evidence clearly shows that while many of those suspected of disaffection but not proved, remained in their commissions, any conclusive evidence against them would result in dismissal. In the early period of this study, it could clearly be seen that justices were put into or taken out of commissions according to their Tory proclivities, albeit to a limited degree. By the end of the period, the only political reason for removal would seem to be the

stigma of Jacobitism. Hardwicke's tenure as Chancellor ended, not with excessive purges of the disaffected but rather with the unspecified removal of the worst offenders coupled with the rooting out of an isolated remnant as was the case in Inverness-shire in 1754 and 1756.¹ Allied with this was the acceptance of the fact that many justices, especially in the Highland counties, were politically disaffected but that there was no sure method of eradicating such a considerable proportion of the northern political nation from local positions of power. The only steps which could be taken were those of amelioration, namely the appointment of military justices during periods of particular unrest,² or ensuring that the number of justices in a commission was statistically large enough for the well-affected to compensate for the disaffected as was the case in Ross-shire.³ It seems reasonable to conclude therefore that Hardwicke introduced a more rigorous discipline into the exercise of the patronage involved in appointment and dismissal of justices of the peace, taking advice from the eminences of the Scottish political nation through the medium of the Lord Justice Clerk and limiting his activity in this particular sphere in marked contrast to his predecessors at the beginning of the period of this study. The fact that Hardwicke only considered a major regulation of the Scottish commissions necessary

¹ P.R.O., C.234/59, Inverness-shire, 1754 and 1756.

² B.M., Add. Mss. 33049, f.270.

³ ib., Add. Mss. 35446, f.280.

on two occasions during his twenty year tenure and that the second took place six full years after a major political rebellion suggests that the role of the commission of the peace in central and local politics was gradually casting its political mantle in favour of a social one.

William Pitt's first ministry was formed in November 1756 with Devonshire taking Newcastle's place at the Treasury and the latter's nominee, Holderness, taking the Secretary for the North. Pitt himself became Secretary for the South.¹ Lord Hardwicke's resignation on 19 November led to the Great Seal being put into commission. One rather unusual feature in the commissions of the peace throughout the period, occurs at this point. On 22 June 1757 a commission was sealed for Peebles-shire, the warranty for acting being the authority of two of the Lords Commissioners, Smythe and Wilmot.² The fiat is in the form of a complete list and the size significantly increased by 54%, 28 justices being added and 17 omitted. The combination of the engrossing of a new commission by the Lords Commissioners together with the scale of changes within the county suggests the possibility of extraneous circumstances. Examination of the record of Peebles-shire with respect to the issue of new commissions suggests that this was not necessarily the case. The last amendment had been carried out by Hardwicke on 6 June 1739 when 8 justices were added to the commission and 8 omitted.³ The last complete

¹ Basil Williams, The Whig Supremacy, p.333.

² P.R.O., C.234/67, Peebles-shire, 22 June 1757.

³ ib., 6 June 1739.

list had been drawn up in 1725 and, probably because of Peebles-shire's apparently negligible record of Jacobitism, it had been left out of the 1750/51 regulation. There was moreover, no change in the member of parliament around this time which would suggest motivation for a change. John Dickson of Kilbucho had been elected in 1747 on the interest of the Earl of March and continued to represent the shire until his death in 1767.¹ It would seem that the fundamental reason for a regulation at this time was the extensive time interval from its predecessor. Possibly the initiative for change came from the county itself, the completed list merely requiring sanctioning by the Lords Commissioners.

Certainly June 1757 was the beginning of a period of stability at the centre. Pitt's first ministry, formed against the King's wishes, had been short lived, eventually being dismissed on 6 April 1757. Not for the first time in his life, George II found himself unable to effect a replacement and on 29 June, Pitt was again at the centre of the political arena, this time sharing that position with Newcastle.² The key to the success of this unlikely coalition was that Pitt was left to deal with the war, while Newcastle exercised his manifold talents on the manipulation of patronage. It was during

¹Sedgwick, The House of Commons, 1715-1754, i, 611

²Basil Williams, The Whig Supremacy, p.334.

this long period of political wheeling and dealing that the successor to Lord Hardwicke eventually emerged.

Robert Henley was born in 1708, son of a distinguished Whig member of parliament. He was educated at Westminster School, entered the Inner Temple in 1728, was called to the bar in 1732 and subsequently went on the Western Circuit. He became the member for Bath in 1747 and was a strong supporter of the Prince of Wales' party, becoming Solicitor General to Frederick's son after the former's death in 1751. The ministerial changes of 1756 enabled him to succeed Murray as Attorney General and when great difficulty was experienced in recruiting a successor to Hardwicke acceptable to Pitt, Henley found himself in a position of being the only lawyer with the necessary qualifications acceptable to both parties. He accepted the Great Seal and was sworn in as Lord Keeper on 30 June 1757.¹

Henley's contribution to this study is limited by the fact that he sealed only one commission for Scotland prior to the death of George II. In July 1758, Fifeshire received its first commission in nineteen years, its predecessor having been engrossed by Hardwicke in 1739.² Although the size of the commission did not alter appreciably, there were considerable structural changes, 53 justices being added and 59 omitted. The fiat is in the form of a complete list and therefore no reasons are given for omission but the time lag

¹ Lord Campbell, Lives of the Chancellors, v, 174-86.

² P.R.O., C.234/58, Fifeshire, 3 July 1758.

from the previous commission suggests that there would be many deaths in the interim period. Sir John Arnot of Arnot for instance, removed from the commission in 1758, had died in 1750.¹ As in the case of Peebles-shire, it would seem probable that the initiative came from the county rather than the centre, again possibly because Hardwicke had overlooked Fifeshire in the 1750/51 regulation. Henley's political weight in the government was insignificant as he was regarded as a loyal supporter of Leicester House and therefore it is unlikely that he would have embarked on any debatable reconstruction albeit of only one Scottish commission of the peace. The accession of George III on 25 October 1760 did change his political fortunes and he was elevated to Lord Chancellor on 16 January 1761, being subsequently created Earl of Northington and appointed Lord Lieutenant of the county of Southampton.² His handling of the patronage at his disposal in the wake of his increased political stature is beyond the scope of the present study. There is little reason to suggest however that the regulation which followed the accession of George III, would reflect any dramatic change of approach on the part of the Chancellor or, more significantly, on that of the government. The evidence examined in this study, suggests that the political impetus which had prompted a Chancellor like Harcourt to make significant alterations in

¹G.E.C., Baronetage, ii, 365.

²Lord Campbell, Lives of the Chancellors, v, 199.

several commissions in the Tory interest, had been successively eroded until the only remaining anathema regarded as inconsistent with a place on the bench was proven Jacobitism. By 1760 practical Jacobitism was dead. Numerous failures, the abolition of heritable jurisdictions, the fact that the incumbent Hanoverian was more English than the Stuart Pretender, all conspired to nullify any serious pretensions for change. The government stamped out political disaffection after the Forty Five, but there is little doubt that that phenomenon would have been self-eradicating as Scotland eventually began to reap the material benefits from Union. As Jacobitism waned, so too did the need to purge it from local government, until by 1760 it could be fairly said when a commission of the peace was regulated it was regulated automatically to reflect changes due to natural wastage and replacement. In this sense, there was no underlying political motivation and the patronage enjoyed by the Lord Chancellor became increasingly fictitious. By 1760, the composition of the bench truly reflected influence in the localities rather than power at the centre.

8. Conclusion - The Scottish Commission of the Peace, 1707-1760.

The critical analysis of the extent, scale and timing of regulations of Scottish commissions of the peace together with the related evaluation of the political circumstances of the period should enable certain general conclusions to be drawn. A purely numerical comparison of the activities of successive Chancellors with regard to the Scottish commissions yields valuable statistical information.

The number of counties involved in a regulation of any one time varied from Chancellor to Chancellor. At certain periods counties were subject to simultaneous renewal, this being true for instance, after the accession of a new monarch. Lord Cowper issued commissions for all thirty-three Scottish counties during 1715 after the accession of George I, as did Lord King on 7 February 1728 when the former was succeeded by his son, George II.¹ In the former case the regulations ranged over a twelve month period whereas in the latter instance the fiats all bear the same teste date. Similar regulations involving all the Scottish counties occurred in 1708 when, on the abolition of the Scottish Privy Council, the warrant to act was transferred from that body to the Lord Chancellor of Great Britain.² In 1725 a virtual 100% regulation took place (the counties not in receipt of a new commission at this time being Bute and Peeblesshire whose lists were mislaid),³ when the government took a specific

¹ P.R.O., C.231/9.

² H.L.R.O., Main Papers, List of Justices of the Peace in North Britain, 11 March 1709.

³ See above p.197.

decision to engross commissions for all Scottish counties in response to particular circumstances.¹ Excluding such uniform regulations, Chancellors responded diversely to the need for new commissions. During 1709 and 1710, 33.3% of the Scottish counties were in receipt of commissions from Cowper. 33.3% were also involved in regulations by Harcourt during his tenure as Chancellor from 1710 to 1714. Between 1716 and 1718, Cowper engrossed commissions for 75.7% of the Scottish counties, while the comparable figure for Lord Macclesfield from 1718 to 1725, was 57.5%. Excluding the uniform regulations of 1725 and 1728, as the widespread regulations of 1708 and 1715 were excluded from the Cowper calculations, King turned his attention to only 21.2% of the Scottish counties with respect to their commissions of the peace. Talbot failed to issue a single commission between 1733 and 1737 while Hardwicke in his first regulation of 1739/40 engrossed commissions for 75.7% of the Scottish counties, this being followed by a further 30.3% between 1741 and 1744 and 69.6% in the 1750/51 regulation.² The figures give some indication of the intensity of activity and in conjunction with the timing of the regulations and the nature of the changes involved within individual counties, should enable useful propositions to be made. At this stage it is possible to conclude that some Chancellors were notably less involved in the intricacies of local politics than others. Talbot clearly came into

¹ P.R.O., C.231/10

² ib., /9, /10, /11.

this category as, more surprisingly, did Harcourt. Macclesfield, like Harcourt, excluded a significant proportion of the counties from his attentions as, to a much lesser extent, did Hardwicke, who failed to engross commissions for Bute and Orkney and Shetland until 1750 and 1751 respectively,¹ though he became Chancellor in 1737. Although King embarked on 100% regulations in 1725 and 1728, he was not actively involved in the former, and the changes were minimal in the latter, perhaps indicating that his personal involvement in local politics was more accurately indicated by the 21.2% of the Scottish counties in receipt of commissions from him, in his eight year tenure as Chancellor from 1725 to 1733.

The scale of changes both in terms of total size and structurally, within individual commissions adds a further dimension to numerical analysis. The number of justices in commissions of the peace in the Scottish counties, rose appreciably between 1707 and 1760. In 1707, 1020 gentlemen were nominated by the Scottish Privy Council to be justices of the peace for the 33 counties.² By 1760 this had risen to 1886,³ excluding the counties of Lanark and Linlithgow for which there are no fiats, an increase of 77.74%. It has been suggested that this considerable increase was, in the case of England and Wales, basically due to the vast increase in the volume of work expected of the justices.⁴ Clearly this would be equally applicable to

¹ib., C.234/51, Bute, 12 June 1750; /66, Orkney and Shetland, 14 August 1751.

²N.L.S., Ms. 125a.

³P.R.O., C.234/45-77, /114.

⁴Webb, The Parish and the County, pp. 480-2.

Scotland, but is possibly only a partial explanation. The distribution of the increase, for instance, is by no means uniform. The alteration in the size of the commissions of the peace, ranges from a reduction in the number of justices from 46 in 1707, to 33 in 1760, in the case of Orkney and Shetland, a decrease of 28.26%, to an increase from 14 to 59 justices for Kirkcudbright in the same period, an effective increase of 321.42%. There is no immediately obvious pattern to the range of changes in size, such as county activity, or lack of it, in the Jacobite rebellions. In Aberdeenshire and Banffshire, both areas with a high proportion of disaffected in their populations, there is an increase of 5.12% and a decrease of 8.6% respectively in the size of their commissions of the peace between 1707 and 1760, whereas for Wigtownshire and Dumfriesshire, with minimal disaffected minorities, there are increases of 120.83% and 313.3% respectively over the same period. It is possible to suggest an alternative hypothesis, however, namely that the increasing size of a county's commission of the peace was directly related to the political interest and activity of the magnate or laird who nominated its justices. In Sutherland, Fifeshire, Kinross-shire and Kincardineshire the percentage increases in the number of justices in the commissions of the peace between 1707 and 1760 are 25%, 48.83%, 57.14%, and 63.15% respectively. These may seem not unreasonable but when balanced against Argyllshire and Dunbartonshire, where the Campbell interest was overpowering, they assume a less significant

appearance. In these counties the number of justices increased from 27 to 61 and 19 to 54, effective increases of 125% and 184.2% respectively. Similarly in Inverness-shire and Nairnshire where the Grants of Grant and Campbells of Cawdor exercised extensive local control in the Argyll interest, the commissions of the peace were increased in size by 115.62% and 107.69% respectively. The Squadrone Hume Campbells was another Scottish family which played an important role in local politics and in its home county, Berwickshire, the commission of the peace was augmented by 41 justices between 1707 and 1760, an increase of 132%. The aforementioned Dumfries-shire, with its increase of 313.3% between 1707 and 1760 was the centre of the interest of the Dukes of Queensberry. In the immediate post-Union period the incumbent Duke, as Scottish Secretary was a profoundly influential member of the Court Party and it was at this particular time that the size of the Dumfries-shire commission increased by its most significant percentage, 120%.¹ Although the evidence does not support a dogmatic assertion of a conclusive relationship between the increase in size of the commission of the peace and the political importance of those nominating the justices, there would seem to be some grounds for relating particularly large increases in counties where the Argyll, Queensberry and Marchmont interests were particularly strong and a correlation therefore between the two factors under consideration.

¹H.L.R.O., Main Papers; List of Justices of the Peace in North Britain, 11 March 1709.

The Chancellors themselves varied considerably in the number of justices they added to or removed from the bench. Cowper added 274 gentlemen to the Scottish commissions of the peace, and left out only 57 during his first period of office, including his 100% regulation following the demise of the Scottish Privy Council in May 1708. From 1714 to 1718, however, he put in 704 justices and omitted 955, a net decrease of 224, a purge reflecting the aftermath of the 1715 rebellion. King added 848 and left out 579, a net increase of 269, while Hardwicke augmented the bench by 416 justices during his period of office. Harcourt's contribution was less significant than might have been expected, adding 250 justices and omitting 79. In relative terms Hardwicke augmented the bench to the greatest extent increasing the number of justices by 28.92% while Cowper was the only Chancellor in the period to reduce it, effectively by 15.9%. Clearly extraneous factors influenced the extent of these amendments, whether, for instance, a total regulation was required within a Chancellor's term of office as was the case with Cowper in 1708 and 1715 and King in 1725 and 1728. Clearly also the time scale in which the changes operated was important. It would be expected that Hardwicke, during a nineteen year term of office would put in or remove a significantly larger number of justices than would Harcourt in four years.

Although the increase in the number of justices in the Scottish commissions is important and the performance of the various Chancellors in contributing to this increase¹⁵ a valuable pointer in assessing their political activity in the localities, a more

comprehensive picture can be gained by incorporating some evaluation of the structural changes effected by individual Chancellors. Even when a commission neither increased nor decreased in size, significant alterations could be carried out, totally changing the complexion of the bench. In 1715 for instance, 44 justices were added to an Edinburghshire commission of 107, and 48 omitted. In Ross-shire in 1725, 23 gentlemen were put into the commission of 49 while the same number were put out, again reflecting the profound structural changes which could be effected while maintaining an identical size. In Sutherland in 1739, 25 justices were added to, and 28 omitted from a commission which had contained 31 justices in 1715, though the fiat for 1725 is missing and this makes an accurate comparison impossible.¹ An intrinsically important factor in the extent of structural changes within individual commissions is the time between that commission and its predecessor. The longer the time lag, clearly the greater the alterations would of necessity be, even if only allowing for natural wastage.

Between 1707 and 1760 the frequency with which commissions of the peace were issued declined considerably, until towards the end of the period, it is possible to find counties which experienced no regulation between that enacted by King in 1728 and Hardwicke's post-rebellion regulations of 1750/51.² Peebles-shire received no new commissions over an eighteen year period between 6 June 1739 and

¹ P.R.O., C.234/64, Edinburghshire 7 September 1715; /70, Ross-shire, 2 July 1725; /75, Sutherland, 8 June 1739.

² *ib.*, /51 Bute, 7 February 1728, 12 June 1751; /66, Orkney and Shetland, 7 February 1728, 14 August 1751.

22 June 1757.¹ Although not statistically meaningful the average number of commissions engrossed by individual Chancellors suggests the same process of declining frequency. For Cowper, the relevant averages were 19.3 and 20.2 in each of his periods as Chancellor. For Harcourt and Macclesfield, the average number of commissions sealed in any one year was a mere 3.2 and 2.96 respectively, while for King and Hardwicke the figures are only mildly more impressive at 8.58 and 5.60, the former including two regulations, (1725 and 1728), which affected all the Scottish counties.

In terms of the extent, scale and frequency of the issue of new commissions, therefore, the evidence seems to point to a declining relevance. Numerical analysis can however create false impressions and its most vital function lies in its provision of a framework in which further considerations can be made. An arithmetical study of frequency for individual Chancellors for instance, gives no indication of whether the timing of the issue was significant per se. It has been suggested in this study that the issuing of new commissions by Harcourt in 1713, by Cowper in 1715 and by Hardwicke in 1739 and 1740, was not unrelated to the general elections which succeeded them. Not only would reorganization indicate where favour lay with respect to any recent Ministerial changes, but it could also contribute more positively to the outcome of the election by

¹ib., /67, Peebles-shire, 6 June 1739; 22 June 1757.

encouraging an undecided voter with the timely fruits of patronage. Even in this case, however, the number of general elections which were not preceded by regulation of the county commissions of the peace, is markedly in excess of those which were, and again the hypothesis of declining importance becomes tenable.

It may be possible to surmise that this apparent demotion of the importance of the role of the justice of the peace was a peculiarly Scottish experience. Although there is little doubt that influential lairds would prefer to have been named in the commissions for their shires rather than omitted, and that, by inference, a place on the bench was a perquisite to be valued rather than disdained,¹ it would appear that the institution of effecting local administration through justices of the peace, acting individually or collectively in Quarter Sessions, never excited the enthusiasm in Scotland which it obviously enjoyed in England. It may well have 'been regarded by Continental writers as amongst the most unique and distinctive features of the English constitution',² but it was an aspect of the English constitution which the Scots steadily and increasingly resented, firstly prior to 1707, by ignoring it completely for long periods of time and latterly by continually railing against its encroachment on the ancient heritable jurisdictions. The Reverend William Carstares, notable for his efforts to secure the union of the Kingdoms, and

¹See above, p. 36.

²Webb, The Parish and the County, p. 294.

therefore potentially amenable to the merging of respective institutions, expressed profound antipathy to certain actions of the justices of the peace. He claimed that in Angus and Hearn, where there was considerable tension between the J.P.s and the Church regarding fasts ordained by Synod, the former had acted provocatively by publicly burning the requisite Act of the Church judicature at the Cross in Montrose. This, he argued, was stretching their authority too far and that action should have been delayed until sanctioned by a higher court.¹ Sir James Steuart, the Lord Advocate, seconded this opinion arguing that the J.P.s had over-reached themselves and should neither attempt to judge in ecclesiastical matters, nor dare to censure ministers.² Opposition from the hierarchy of the Scottish legal profession is particularly surprising for although Scots law had been preserved intact by the Act of Union, lawyers themselves in the eighteenth century, sought a greater uniformity between the two systems.³ Averse to the maintenance of the heritable jurisdictions in 1707, it might have been expected that they would have given unwavering support to the reinforcement of the Scottish lay magistracy as an institution which would have reflected a significant step towards just such uniformity. That they did not suggests the possibility that the animosity to the concept was traditional and deep. At the outset it had represented the whim of a King lost to England

¹ Hist. Mss. Comm., Portland Mss., x, 278, William Carstares to the Earl of Oxford, 23 August 1712.

² Ib., p.280, Sir James Steuart to the Earl of Oxford, 26 August 1712.

³ Rosalind Mitchison, 'The Government and the Highlands, 1707-1745,' p.27, in Scotland in the Age of Improvement.

and enamoured by everything he found there. It had moreover represented a further supplanting of the heritable jurisdictions which James VI had been patiently attempting to subvert since 1587. It was clearly the non-sequitur of Scottish politics and administration, and that the church and the law should encompass the institutions most vociferously opposed to its incursion is of particular interest in the broader context of Scottish political and cultural life after the Act of Union. It is possible that these joint pillars of national identity which had remained intact, over-reacted to any impending threat of subtle erosion of the particular 'Scottishness' of the resultant system as it operated north of the Border, and could therefore, be construed as an emotional response rather than having any foundation in reason.

There were, however, certain anomalies in the system itself which mitigated against the justices acting after 1707. John Baird of Newbyth succinctly expressed a particular grievance to Stanhope in 1716. As member of parliament for the shire of Edinburgh, he firstly emphasized the importance of justices to the community with respect to the maintenance of highways and bridges and the collection of revenue when frauds by brewers had been perpetrated. He went on to claim,

... you know very well where this matter stands and that there were promises made that these commissions should be paid for without burdening the gentlemen, who are positively resolved not to consent to be at any charges for the expending this commissions [sic]¹

¹P.R.O., S.P. 54/12, f.41, Mr. Baird to Stanhope, 26 June 1716.

The complaint was centred on the fact that before the Union justices were not required to pay a fee before they were fully qualified to act. The political and administrative significance of the charge is to be found in the claim that

... the office of a justice of the peace here, instead of being a place of profit as it is in some other places, is a considerable expense to the gentlemen that do attend ...¹

Clearly the government treated this grievance with due seriousness for Methuen was directed to inform the Lords of the Treasury that the Prince of Wales, George I being in Hanover, had instructed that fees were not to be paid by the Scottish justices on taking up the commissions engrossed in November 1716.² The suggestion that a place on the bench brought some financial reward, albeit indirectly, in addition to the less lucrative attribute of enhanced status, makes it possible to view the associated dispensation of patronage in a more positive framework. The political value of any post associated with monetary perquisites was arguably greater for a ministry dependent to a considerable extent on patronage to ensure a reasonably compliant House. The absence of the expected profits had clearly rankled the Edinburgh gentry, and ministerial alacrity in remedying the grievance probably reflected the anxiety of a government attempting to restore sanity and order in the aftermath of a major rebellion rather than an immediate desire to ameliorate the complaints of the provincial magistracy. Pragmatism ensured a temporary solution but since the

¹ ib.

² ib., S.P. 44/117, f.97, Methuen to Lords of the Treasury, 20 December 1716.

Treasury was required to recompense the Crown Officers for the unpaid fees, the system continued to operate in jeopardy.¹

The nature of this problem moreover ensured that it would have administrative repercussions. Failure to qualify led directly to a failure to act and a concomitant failure to administer the county in the interests of central government. Suggestions that the qualifying fees could lead to considerable hardship had been made by Sir Alexander Maxwell in 1712. He had informed Harley that the required sum of twenty or thirty guineas was excessive and directly contributed to the difficulties involved in effecting any new commission of the peace. Private gentlemen, he argued, could not give this sum for public service.² Reluctance to serve on the part of the local lairds could only lead to the appointment of lesser gentry anxious to aspire to the status of local office and therefore prepared to pay the required fee. In the short term, government may have found this an acceptable alternative but longer term resentment would have increased the antipathy to the institution of the commission of the peace. The calibre of nominees to the Scottish bench was a running sore which haunted successive ministries in their efforts to establish a workable political system in Scotland. Immediately after the Act of Union Defoe contrasted the Scottish nomination of 'inferior' pro-Union justices over their anti-Union superiors, with the English institution, where the appointment of suitably qualified gentlemen ensured the

¹ ib.

² Hist. Mss. Comm., Portland Mss., X, 440, Sir Alexander Maxwell to the Lord High Treasurer, 1712.

observance of law and justice.¹ In 1731 the low status, education and financial standing of justices of the peace was still an issue, resulting in a motion calling for the regulation of their qualifications.² In 1747, during the aftermath of rebellion, the Lord Justice Clerk Lord Milton expressed his concern over the composition of the Scottish commissions of the peace to Newcastle. The range of his concern significantly reached beyond the continuing presence of the disaffected in the commissions, to include the 'low little persons' who rendered dis^service to the institution by preventing better qualified gentlemen from acting.³ It is clear therefore that the political utility of the patronage involved in inclusion in any Scottish commission of the peace was at times undermined by the twofold problem of financial hardship and the resultant employment of justices with a lesser standing in society. The combination of the two in a reinforcing downward spiral ensured that the institution of the commission of the peace, resented from its inception, would never operate effectively in Scotland. It seems reasonable to reiterate however that financial hardship and low status were peripheral issues. The fundamental stumbling block was the clash of jurisdictions between the justices and the holders of heritable offices in Scotland. In 1709 for instance, there were disruptive conflicts between the magistrates of the city of Edinburgh and the justices of the county of

¹ Hist. Mss. Comm., Portland Mss., iv, 436 Defoe to Harley, 19 August 1707.

² ib., Egmont Diary, i, 222.

³ See above p. 262.

Midlothian (Edinburgh), 'anent the extent of their jurisdictions'.¹ The government in this situation could do little but appeal for co-operation. On 20 March 1709, Sunderland wrote to the justices of the shire and the city expressing regret at the disputes and hoping that in future they would act in concert to promote, rather than undermine, the Recruitment Act.² In 1709, the justices of the peace for Inverness-shire wrote to the Lord Chancellor, complaining that they were finding difficulty in exercising their commission because the cases before them were consistently being referred to higher courts.³ Writing to the Chancellor on the dispute over the commission of the peace for Ross-shire, the Earl of Cromarty remarked that 'the exercises of the J.P.s have been little practiced here and is little known.'⁴ Clearly, although there may not have been a conspiracy against the institution of justices of the peace in Scotland after 1707, there was a marked apathy, if not an active antipathy to it and this was clearly linked to its appearance as an imposition on the Scottish legal system which had been preserved intact by an Act of Union which had also ensured the continued existence of the heritable jurisdictions. A typical example of the resulting overlap of

¹ Ewart Library, Dumfries, Burgh Records 13/67, John Sibbald to William Copland, 6 January 1709.

² P.R.O., S.P. 44/108, f.37, Sunderland to the J.P.s of Edinburgh, shire and city, 20 March 1709.

³ Herts. R.O., Cowper (Panshanger) Mss., D/EP F.156, Inverness justices to the Lord Chancellor, 14 January 1709.

⁴ ib., D/EP F.55, Earl of Cromarty to the Lord Chancellor, 29 May 1709.

jurisdictions is evident in the comparative role of the authority exercised by the Sheriff in England and Scotland. In the case of the former, an Act of 1461 ensured the supremacy of the jurisdiction of the justice of the peace over the Sheriff by enacting that his previous summary jurisdiction over breaches of the peace should in future be carried out by the J.P.s in their Sessions. From that point the English justices proceeded to install themselves as the lynch pins of English local government.¹ In Scotland, the reverse situation occurred. In spite of the marathon efforts of the early and later Stuarts to impose increasing restrictions on the heritable Sheriffs, the ancient jurisdictions always remained superior to those of the 'new' justices of the peace.² The position is concisely illustrated by noting that in England, the Sheriff was legally prevented from sitting on the bench, whereas in Scotland, the Sheriff appeared in every commission of the peace in order to protect his interests. It is clear that the abolition of heritable offices would inevitably clear the way for increased participation by justices in legal enactments but to suggest that after the Act of Union, J.P.s came not only to play an increasingly important part in the administration of Scotland but also become accepted,³ is open to question.

¹ Esther Moir, The Justice of the Peace, p.19.

² See above, p. 9.

³ W. Ferguson, Scotland, pp. 156-7.

The precariousness of the success, or indeed the survival of this institution in Scotland is emphasized by the meagre attendance at Quarter Sessions. At two such Sessions for Kirkcudbright on 4 August 1730 and 1 August 1732, five justices were present on each occasion out of a total of fifty-three.¹ At the Edinburghshire Quarter Sessions on 25 October 1720, six justices from a commission of one hundred and nine attended,² while the Dunbartonshire meeting in Quarter Sessions on 6 August 1728 brought out eight justices from a possible sixty-two.³ Although such lack of attendance suggests a corresponding lack of concern with the office among the justices themselves, too much cannot be read into this evidence. In England where the commission of the peace was the main prop of the county administration, attendance at Quarter Sessions was equally remiss.⁴ What can be reasonably assumed, is that this lack of attention to the central activity of the justice's jurisdiction, combined with the general apathy, or even outright hostility towards the institution as such, may tend to corroborate the impression of decreasing importance deduced from the statistical evidence of the limited number of counties in receipt of commissions at other than periods of uniform regulation, the declining involvement of Chancellors

¹ W.R.H., JP 1/2/1, Kirkcudbright Quarter Sessions Minute Book, 1728-91, ff 26, 37.

² ib., JP 4/2/1, Midlothian Quarter Sessions Sederunt Book, 1720-33, fl.

³ ib., JP 6/2/1, Dunbartonshire Quarter Sessions Minute Book, 1728-57, 6 August 1728.

⁴ Webb, The Parish and the County, p422.

in commissions of the peace in relation to time and a corresponding decline in frequency of issue of commissions over the period. Such corroboration would suggest a link between declining effectiveness and declining activity, but not necessarily, however, declining political involvement. The fact remains that the justices had a crucially important role in the implementation of civil administration in the counties. Apart from their civil and criminal jurisdictions enacted at Quarter Sessions which comprised the judicial aspect of their function, the day to day administration of highways, vagrancy, prisons, wages and licensing fell increasingly within their remit. The justices may have been resented but they continued to be necessary as local administrators as well as being inherently important parts of the process by which the legal enactments of central government were transmitted to the localities.

In appointing justices, therefore, the fundamental criterion was loyalty, and the structural changes incorporated into block issues of commissions at times of increasing fears of Jacobite activity and in the wake of rebellion, indicates a government awareness of the dangers of potential and actual subversion at the level ^{of} local government as well as central. Cowper's purges of 1716 and 1717 in counties with high disaffected populations like Aberdeenshire, Inverness-shire, Perthshire, Forfarshire and Kincardineshire, reached record levels of 31%, 42%, 50%, 54% and 77% respectively.¹

¹ P.R.O., C.234/45, Aberdeenshire, 29 November 1716; /59, Inverness-shire, 5 November 1716; /68, Perthshire, 5 November 1716; /46, Forfarshire, 4 January 1717; /60, Kincardineshire, 4 January 1717.

The technique of purging the commissions of disaffected justices without effecting any accompanying influx of newcomers to rebalance the bench, was never repeated to the same degree. In 1725, when the state of the Highlands was giving the government cause for concern, the resulting regulation of the commissions carried out by Islay and engrossed by the new Chancellor, Lord King, on 2 July, tended to increase the size of the commissions rather than merely purge them of suspects. The structural changes indicate the removal of 464 justices, who were either dead or had proved unsuitable, and the addition of 618,¹ a readjustment which leads to the possibility of surmising that the government may have decided that Cowper's post rebellion purges had exposed a weakness in the commissions of the peace which had allowed the disaffected an unacceptable degree of freedom and which had contributed to the general malaise of the Highland region. Similarly Hardwicke, in 1750/51, omitted many justices who had been involved, or were strongly suspected of having been involved, in the 1745^{rebellion} but care was taken to compensate for the resulting deficiency. In these cases, it seems reasonable to conclude that there was a direct political interest in the composition of the bench, and that this interest expressed itself in the removal of Jacobites wherever possible from local positions of power. This is in marked contradiction to the Webbs' claim that justices ceased to be removed from commissions of the peace for political reasons early in the eighteenth century. The claim is worth citing in full.

¹ib., C.234/45-77, 114, 2 July 1725.

In regard to Justices there ensued at first a period of courtly manipulation of Commissions of the Peace throughout the country. This manipulation, which consisted of spasmodic removals from and additions to the ranks of the Justices according as they were disaffected or subservient, had no reference to local government..... A few years after the accession of George I this courtly manipulation gradually ceased. The power of removal was silently disused. After the first quarter of the eighteenth century, it became extremely rare for any Justice to be removed from the Commission, or to have his name omitted on the issue of a new Commission.¹

Since the removal of justices for their political beliefs extends to the suspension of Hugh Frazer of Dumballoch and Frazer of Relig, followed by that of Frazer of Struy from the Inverness-shire commissions in 1754 and 1756,² this is a doubtful claim, their removal moreover, being in the face of extensive supports of loyalty from many eminent Whigs.³ The number of counties involved, the scale of the changes within individual counties and the timing of the issue of the new commissions, all suggest political motivation of a type distinctly differing in degree from either the minimal pre-election regulations effected throughout the period, or the changes effected by a Tory Lord Chancellor between 1710 and 1714. The net increase of 171 justices accomplished by Harcourt represents a total increase of only 13.82%. Although Tory, and even Jacobite

¹Webb, The Parish and the County, p.380.

²P.R.O., C.234/59, Inverness-shire, 7 August 1754; 15 March 1756.

³B.M., Add. Mss. 35448, several letters dated July 1753.

justices were put in for the first time a comparable number of Whigs were not dropped, and it seems impossible that this exercise was not necessary because of any Tory domination existing at the time. George Lockhart complained continuously to Oxford about the exclusion of Tory justices from the bench.¹ The Webbs' contention for England that

... with the exception of the members of the old Whig families of the governing class who could not decently have been kept out, the justices were exclusively Tory in politics,²

is manifestly untrue in the case of Scotland. The bench nominated by the Scottish Privy Council and generally accepted by Cowper in 1708, was dominated by those who supported the Union. Daniel Defoe warned Harley that 'superior' county gentlemen, (presumably Tories), were being passed over because they had been anti-Union, with the result that lesser gentry were ascending the bench. Law and justice would therefore be obstructed he argued, because inferior gentlemen dare not act against, or even without authority from, their superiors.³ It has been suggested that the claims of Lockhart and Defoe were exaggerated, and that no ostensibly loyal country gentleman was excluded from his local commission on the grounds of his political beliefs in normal times. The early eighteenth century however, was not 'normal times'. Two near successes, 1708 and 1719, and two full scale rebellions in 1715 and 1745 meant that governments had to be vigilant in detecting disaffection. Rooting it out from the bench in Scotland was not a continuous exercise but when a crisis arose, the scale of structural

¹ Hist. Mss. Comm., Portland Mss., v, 252-3, George Lockhart to the Earl of Oxford, 23 December 1712.

² Webb, The Parish and the County, p.386.

³ See above, p. 56-7.

change was extensive, and even at periods when the government was lulled into a false sense of security, it is unlikely that the commissions of the peace would be permeated with Tories in a part of the British Isles where 'Tory' and 'Jacobite' were synonymous.

At the fundamental level of disloyalty to the state therefore, the commission of the peace had a political dimension. The staunchest supporters of the Hanoverians were the Whigs, and Whig gentlemen were put in as reinforcements whenever the occasion demanded, just as subversive elements were removed when disaffection had been proved. This could not be classed as a series of 'ruthless purges', the pace being less frenetic. In the aftermath of the 1745 rebellion, Hardwicke did not remodel the bench until 1750/51. There was however, a process of inclusion and exclusion which reflected clearly a marked political bias. In this process, local and loyal Whigs were rewarded with limited status of a seat on the bench while disloyal Jacobites were stigmatized with the disgrace of removal. This hypothesis is borne out by the relationship between the timing of certain wideranging regulations and the level of Jacobite activity and shows clearly the the initiative for regulation of certain periods was government sponsored. In 1715, 1716/17, 1719, 1725, 1728 and 1750/51, the issuing of new commissions was either the necessary response to the accession of a new monarch, or the response to the fear or result of Jacobite activity. In the 1739/40 regulations it is possible to detect some influence on the general election of 1742, but this is so

marginal as to suggest that the initiative in the cases concerned came from the localities rather than the centre. In 1713, although only 33.3% of the Scottish counties were involved, the evidence clearly suggests that Harcourt was responding to pressures which had originated at the periphery as well as the centre, to pack the bench with Tory justices.¹ His response was muted but selective as were the responses of other Chancellors to other appeals.

While emphasizing that much central involvement with the Scottish commissions of the peace was the instinctive response to fears of a Jacobite resurgence, it is possible that certain ministerial attitudes reflected a degree of political duplicity. Clearly government's responsibility for internal security called for action in the wake of major rebellion but it is possible that resultant witch-hunts were over-exaggerated. It has been persuasively argued that certain political gains were made by the systematic exploitation of the fear of Jacobitism. In 1717, for instance, Stanhope and Sunderland ensured the strengthening of the army and the furtherance of George I's northern policy by playing on the expectation of an imminent Jacobite invasion from Sweden.² Securing their pre-eminence within the ministry in 1717, they went on in 1719 on the fear of a Spanish invasion attempt, to extend an already sophisticated intelligence system effectively used to detect conspiracy.³

¹ See above, chapter 3, passim.

² Fritz, The English Ministers and Jacobitism between the Rebellions of 1715 and 1745, pp. 39-40.

³ ib., p.41.

Walpole's exposure of the main protagonists in the Atterbury plot in 1721 reflected a full-scale detection service of intervention, scrutiny, examination and interrogation utterly ruthless in its scope.¹ This was arguably a reflection not merely of his obsession with the phenomena of Jacobitism, but also an example of his determination to abstract every ounce of political gain from the exercise. In 1717 and 1719 Stanhope and Sunderland had shown a degree of constraint in their pursuit of the plotters. In 1721 Walpole aggressively voiced and acted upon his fears of Jacobitism in a well-orchestrated propaganda exercise.² He subsequently identified any disorder or discontent with that emotion³ and the label became pejorative. For Walpole himself there was the political pay-off of indispensability associated with the reinforced oligarchical Whiggery of the Hanoverian dynasty.

The implications of Fritz' analysis for this study are noteworthy. The purges in the Scottish commissions of the peace which followed the rebellions of 1715 and 1745 were the necessary response to incipient revolution and while it would be possible to assume that the uniform regulation of 1725 had been an equally necessary response to an ineffective Disarmament Act, it might also seem reasonable to conclude a comparative political gain. If Walpole's pre-eminence was enhanced by the rigours of the 1722-23 witch-hunt in England, then his political

¹ib., p. 81 et seq.

²ib., pp. 99-100.

³ib., p. 107.

control would be similarly enhanced by a comparable exercise in Scotland. Jacobitism may not have been quite the bogey it was presented to be in Scotland and while there were clearly many disaffected sitting on local benches throughout the period, it would seem reasonable to conclude ~~that this was due to influence and~~ exaggerated in an effort to prove quite conclusively that power rested at the centre.

Although central control was pervasive however, liaison with the periphery was essential and it has been suggested that the political importance of a local magnate at the centre was crucial in influencing Chancellors in proposed adjustments to commissions of the peace. The Scottish nobility undoubtedly adopted a prominent role in the local political scenario. Arguably this stance was related to the exclusion of the Scottish peers en masse from the House of Lords and the consequent election of sixteen from their ranks as compliant representatives. Influence at the centre was only possible if accompanied by influence in the locality, and absence of this latter quality nullified a considerable degree of ministerial usefulness. Harley clearly recognized the power exercised by the aristocracy in influencing the Scottish representation in the Lords and Commons. The proposed supplanting of these 'great men' with government nominees, albeit from their own ranks, as Commissioners¹ imperceptibly controlling the myriad avenues of Scottish politics and administration, effectively

¹ See above, p. 109.

failed because the vested interests were impenetrable.

The central role played by the nobility in local politics is further illustrated by the speedy removal of its members from commissions of the peace on the grounds of suspected complicity in the French invasion scare of 1708. Local influence coupled with a place on the bench was clearly inconsistent with subversive tendencies. In 1715 the Scottish nobility was well represented in the ranks of Stuart supporters. There was indeed a marked urgency among Hanoverian Scots to minimise the degree of involvement of the upper echelons of Scottish society in the rebellion. Duncan Forbes' 'boys will be boys' attitude prevailed over harsher ministerial councils and the loyal remainder promptly monopolised the Lord-Lieutenancies, directly and immediately involving themselves in the minutae of post rebellion reconstruction. The commissions of the peace reflected the intricacies of local politics as the nominees of the Lords-Lieutenant took their places on the bench. This noble dominance was in marked contrast to the 1745 experience when relatively few peers rallied to the Stuart standard and post-rebellion regulation of commissions of the peace reflected the local observations of the clerks of the peace, co-ordinated by the Scottish legal hierarchy in Edinburgh. It would seem however that the influence of the local magnate was pervasive and reasonable to postulate that the most eminent families of a given shire would sit on its bench through successive generations. This can be seen not just in cases of aristocratic inclusion but also in that of

prominant non-noble families such as the Grants of Grant, the Clerks of Penicuik, the Anstruthers of Anstruther and the Pollocks of Pollok who were consistently represented on the benches of Inverness-shire, Edinburghshire, Fifeshire and Renfrewshire respectively, throughout the period. Adherence to a political magnate provided essential leverage for those who otherwise may have failed to become justices, especially if that magnate's interest was influential at the centre. This has clearly been shown in the case of Argyll and it seems reasonable to conclude from the evidence presented that Argyll actively involved himself in co-ordinating and forwarding nominations for commissions of the peace from his numerous henchmen, even if he did not always check that his instructions had been carried out.¹ More importantly these initiatives were acted upon by central government, a fact which reflected the particular importance of the Campbells from 1707 to 1739 and from 1743 to 1760 when Islay became the third Duke. Their control over local politics was pervasive as also was that of the Hume Campbells, representing the rival Squadrone interest. This has been clearly shown in the letter from Ninian Home to Lord Milton complaining of the Earl of Marchmont's attempt at packing the bench.² It can also be seen in the concern expressed by the family at the proposal to change the burgh town to Duns, which would be less convenient to those who attended the local courts.³ Marchmont's

¹ See above, p. 293.

² G.R.H., GD 267/14/19, Home of Wedderburn Mss., Home to Lord Milton, October 1735.

³ Hist. Mss. Comm., Various Collections V, Hay of Duns Castle Mss., p.43; 1b., Polwarth Mss., pp. 130-3.

extensive interest in the role of justices of the peace in the local community can also be deduced from his concern regarding insults committed on certain of their number at Greenlaw, that the offenders should be punished in order to give satisfaction and status to the J.Ps.¹ He then wrote to a Lieutenant Buckley, informing him that the justices were going to dine with him at Redbraes.² Clearly Marchmont's involvement in local politics was considerable and the government's recognition of this fact was reflected in their extensive issue of new commissions of the peace for Berwickshire in the early 1730's, when Marchmont headed considerable Squadron based opposition to Walpole's ministry.³ The power exercised by the Scottish nobility in local appointments was therefore typified by the aforementioned uniform appeal to the Lords-Lieutenant of the counties in 1716 for recommendations for inclusion in and exclusion from the new commissions of the peace. It was also typified by Harley's desire to empower his Commissioners of Chamberlainry and Trade, nomination of whom would be a ministerial perquisite, to appoint the justices of the peace for all Scottish shires annually. By this process, he proposed to divert control in Scotland from a 'few great men' and entrust it to his own nominees. The Scottish nobility clearly exercised considerable political control in Scotland particularly during the earlier period

¹ ib., p.11, Marchmont to the Commanding Officer at Duns, 22 June 1728.

² ib., Marchmont to Buckley, same date.

³ See above, p. 225.

of this study.

Influence was not only critical at the aristocratic heights of the Scottish political nation. Grant of Grant composed his own list of J.P.s for Inverness-shire and hoped Duncan Forbes would find it acceptable.¹ The Munros of Foulis continuously exerted their influence in Ross-shire, executing a bribe by rewarding one of their nominees, one Andrew Robertson, Town Clerk of Dingwall with the position of clerk of the peace.² Lord Braco's opinion was consulted for Aberdeenshire, Elginshire and Banffshire.³ Influence was crucial, and the bench not an insignificant instrument in the political system. Sir David Ramsay of Balmain, M.P. for Kincardineshire, wrote to Cowper,

... if the office of Custos Rotulorum is appointed in Scotland, I presume on your Lordship's civilities to me that perhaps you mind me for Custos Rotulorum for Kincardine, it would strengthen my interest in the county.⁴

Another important centre of activity with respect to the composition of the commissions of the peace, was the Scottish legal system, the concomitant inference here being the secondary control of Argyll. The process by which Scotland was governed in the eighteenth century mushroomed from the legal base in Edinburgh. At various times during the period of this study, the Scottish legal

¹ More Culloden Papers, II, 48, Alex Grant of Grant to Duncan Forbes, 20 November 1714.

² W. Ferguson, 'Dingwall Burgh Politics', Scot. Hist. Rev., XXXVIII, 100.

³ G.R.H., GD 36/192, William Grant to Lord Braco, 26 September 1739.

⁴ Herts. R.O., Cowper (Panshanger) Mss., D/EP F.156, David Ramsay to the Lord Chancellor, 26 May 1709.

hierarchy can be seen to be actively involved either in suggesting that new commissions were necessary, or in co-ordinating information from the localities to forward to Westminster at the government's request. In 1715, prior to the outbreak of the rebellion, the Lord Justice Clerk Sir Adam Cockburn of Ormiston wrote numerous letters begging new commissions.¹ In 1725 Islay, Lord Justice General, co-ordinated the recommendations from the counties and sent the lists up to London.² In 1739, the Solicitor General for Scotland William Grant was to be found writing to Lord Braco for nominations and mentioned the possible limiting influence of the Lord Advocate.³ In 1747 during the aftermath of the rebellion, the Lord Justice Clerk Lord Milton co-ordinated the information collected from the clerks of the peace regarding the composition and political affiliations of the members of the county's last commission of the peace.⁴ As far as major regulations were concerned, therefore, the system seems to have operated by an initiative from the centre resulting in an appeal to the Scottish legal establishment in Edinburgh. Thereafter the Lord Justice Clerk or another comparable legal figure co-ordinated information from the localities through influential Lords-Lieutenant, local magnates, M.Ps or clerks of the peace. The lists were scrutinized and sent to the

¹ P.R.O., S.P. 54/7, ff. 84, 164, 174.

² Lord King, Notes on Domestic and Foreign Affairs, p.438.

³ See above, p.239.

⁴ See above, p.259.

Lord Chancellor in their final form. It would seem in this type of situation the Secretary of Commission's investigating role would be minimal and the Chancellor's seal of approval merely a rubber stamp. It is possible moreover that such dependence would lead to an in-built Argyll bias in recommendations for addition to or omission from, Scottish commissions of the peace. The link between the Clan Campbell and the Scottish Judiciary was more than tenuous during the period under consideration. The Lord President Duncan Forbes acted as estate adviser and agent to the second Duke, while the Lord Justice Clerk Lord Milton performed the same function for Islay when he succeeded to the Dukedom.¹ It has been suggested that these legal dignitaries acted as sous-ministres in Scotland for their Campbell masters who were more often resident in England² and it is possible to suggest that this influence permeated their involvement with the Scottish commissions of the peace. There is no indication however that this process of legal involvement was uniform, indeed it seems to have developed steadily throughout the period from no clearly defined base. There would seem to have been distinctive procedures depending on whether the initiative for regulation of the commissions of the peace originated from the centre or the periphery. The isolated engrossment would appear, in many instances, to be the direct result of appeals to the Lord Chancellor from the localities, in which

¹ Rosalind Mitchison, 'The Government and the Highlands, 1707-1745', p.26 in Scotland in the Age of Improvement.

² John Sinson, 'Who Steered the Gravy Train, 1707-1766', p.66 in Scotland in the Age of Improvement.

case the legal establishment in Edinburgh did not act as intermediary. Requests arrived from a variety of sources, generally comparable with those whose opinion was sought at a time of general regulation. In 1709 for instance George Lockhart, as the member for Edinburghshire succeeded in pressing Cowper to issue a commission for the county augmented with a list of the former's nominees.¹ Similarly the correspondence over the composition of the commission of the peace for Ross-shire during 1708 and 1709 resulted in a new commission in February 1710.² In 1742 Andrew Mitchell of Thainston forwarded recommendations compiled by Sir John Bruce for a new commission for the shire of Kinross³ which was subsequently engrossed in August of that year.⁴

Individual local requests led, in many cases to the issue of new commissions but the more significant regulations clearly originated at the centre as opposed to the periphery. This situation pertained not only when the regulation was the result of legal necessity, as at the accession of George I and George II in 1715 and 1728 respectively, but also when rebellion had eroded the supposedly loyal administration of justice in the localities. Prior to the regulations of 1716 and 1750/51 influential sectors of Scottish society were consulted on proposed amendments to commissions

¹Herts. R.O., Cowper (Panshanger) Mss., D/EP P.156, Lockhart to Cowper, 16 April 1709.

²P.R.O., C.234/70, Ross-shire, 7 February 1710.

³B.M., Add. Mss. 35446, f.33, Andrew Mitchell to Hardwicke, 4 August 1742.

⁴P.R.O., C.234/61, Kinross-shire, 5 August 1742.

of the peace. In the aftermath of the 1715 rebellion, the Lords-Lieutenant were advised to recommend gentlemen fit to sit on the Scottish bench and to suggest those who should be removed.¹ In 1747 the clerks of the peace were given similar advice and again the local hierarchy was intimately involved in the submission of recommendations.² In 1724 when the Disarmament Act was proving to be inoperable, local dignitaries were consulted for their opinions on viable structural alterations in local administration, while in 1739 the Solicitor General William Grant was to be found seeking information from Lord Bracco on the composition of various North-Eastern commissions of the peace.³ When the initiative originated at the centre however, the recommendations would seem to have been co-ordinated by the Scottish legal establishment at Edinburgh, rather than forwarded directly to Westminster. This procedure clearly took time to develop. Recommendations for change from the Lords-Lieutenant in 1716 were sent by flying packet to London but, by 1724, Islay as Lord Justice General was co-ordinating diverse information from the various counties⁴ and in 1747 the Lord Justice Clerk Lord Milton was performing a similar function in the aftermath of the Forty-Five.⁵ This clearly gave the legal hierarchy a key role in the selection

¹ P.R.O., S.P. 55/4, ff. 25-6, 23 October 1716.

² ib., S.P. 54/35, f.111, Andrew Fletcher to Newcastle, 7 February 1747.

³ G.R.H., GD 36/192, William Grant to Lord Bracco, 26 September 1739.

⁴ Lord King, Notes on Domestic and Foreign Affairs, p.439.

⁵ P.R.O., S.P. 54/37, passim.

process, a role therefore implicitly transferable to the Argyll faction in Scottish politics. It could therefore be postulated that the influence of Argyll in local appointments was not restricted to the counties in which he either had direct control as in Argyllshire and Dunbartonshire where he was Lord-Lieutenant, or had put up a supporter as member of parliament as was the case with John Forbes of Culloiden in Inverness-shire, but also that this influence, through his patronage control of the Scottish Judiciary, pervaded the shires in which he had no direct interest at least as far as a place in a commission of the peace was concerned. Clearly, throughout the period, influence, both at local and national levels, was crucial in determining the success of political manipulation. Argyll enjoyed this influence at the centre and Islay as third Duke augmented, under the Pelhams, the managerial role instigated by Walpole. Combined with this was the powerful back-up of influence in the localities controlled by the legal hierarchy in Edinburgh. Such pervasive influence ensured that a rival Scottish faction such as the Squadrone, would find it virtually impossible to break into the charmed circle of local government as far as commissions of the peace were concerned, other than in Squadrone strongholds like Berwickshire.

Although the struggle for the counties was factional therefore, concerned, as was the politics of the centre, with interest rather than party, the battle was one-sided. The Campbells dominated an interest backed by the hierarchy of the legal establishment and consequently the commissions of the peace failed to reflect the vagaries of Argyll fortunes at the centre. In or out of favour, their

pervasive control over the judiciary ensured their supremacy in local administration including the magistracy. This hypothesis is substantiated by the fact that the extensive regulations of the period other than those following the accessions of George I and II, centred on the response to the spectre of Jacobitism rather than the aforementioned factional strife. In 1708, although regulation was necessary due to the abolition of the Scottish Privy Council, the occasion was taken to purge the Scottish bench of the nobility suspected of complicity at the time of the French invasion scare.¹ In 1716 and 1717 the commissions of the peace of all of the disaffected Northern shires were purged of their Jacobite justices by Lord Chancellor Cowper,² while Macclesfield would seem to have taken similar action with the same group of shires in June 1719.³ In 1725 King engrossed commissions for all the Scottish counties with the exception of Bute and Peebles-shire in an attempt to rectify a deteriorating situation with respect to the implementation of the Disarmament Act⁴ and in 1747 the government set Lord Justice Clerk Milton the task of co-ordinating recommendations from the localities for Lord Chancellor Hardwicke's post rebellion regulation of 1750/51.⁵

¹H.L.R.O., Main Papers: List of Justices of the Peace in North Britain, 11 March 1709.

²P.R.O., C.234/45-77, /114.

³ib.

⁴ib.

⁵ib., S.P. 54/37, passim.

The regulations which were more extensive therefore were initiated from the centre and distinguished themselves further from their locally orientated counterparts by being masterminded by the Secretaries of State rather than the Lord Chancellor. In 1716 Secretary of State Townshend initiated reorganization proceedings, to be succeeded by Stanhope when Townshend and Walpole's influence faded in 1717.¹ In 1725 although Islay clearly controlled the Scottish compilation, Townshend again was the motivating force.² In 1747 the case is less clearcut but Newcastle's Scottish Papers suggest that he played a significant role, although clearly Hardwicke himself was a figure of considerable stature representing as he did the Old Corps Whigs. As early as 1712, active pressure for changes in certain Scottish commissions of the peace was apparently communicated to Lord Treasurer Oxford as the leading minister in the government, rather than Lord Keeper Harcourt. It therefore becomes pertinent to ask just how meaningful the patronage at the disposal of the Lord Chancellor was, with respect to commissions of the peace. Clearly when regulation was initiated from the centre, the ministry itself played a fundamental role in the scrutiny. It was indeed Methuen who wrote on behalf of the Secretary of State Townshend to the Earl of Hopetoun in 1716 advising him that his proposed list for the new commission for Linlithgowshire was

¹ ib., S.P. 55/6, ff. 25-6, 23 October 1716.

² Lord King, Notes on Domestic and Foreign Affairs, p.438.

unacceptable.¹ If it was common practice for the Chancellor's Secretary of Commissions to accept, in such circumstances, the nominations submitted from the Secretary of State, then any supposed power associated with this patronage was an illusion. Clearly however such procedure would be an oversimplification. Chancellors were in receipt of specific claims for favour to be shown to certain local gentlemen. Cowper and Hardwicke in particular received such correspondence, though the former would seem to have shown a greater willingness in accomodating specific requests. The ultimate sanctioning power moreover rested with the Chancellor and though general recommendations for inclusion in or exclusion from a commission of the peace could, at times of extreme political unrest, come through the ministry, the Great Seal was the final arbiter. The centres of influence with respect to the Scottish commissions of the peace would seem to be the Lord Chancellor and Secretary of State at the centre and the local magnates and members of parliament operating through the Scottish law lords at the periphery. The figure of Argyll straddled the latter area and the Squadrone Volante, although successful in ousting him from sole occupancy of Scottish representation at the centre, conspicuously failed in any effort, if indeed it ever tried, to overshadow his dominance of local politics.

The position of the commission of the peace in this structure is anomalous. The numerical evidence suggests a marked

¹See above, p.162.

decline in the extent, scale and timing of the issue of new commissions and the consequent downgrading of a place on the bench as one of the fruits of political patronage. Fewer counties were involved in regulations other than at times of general reappraisal. There was a marked decline in the frequency with which commissions were issued. Their absence prior to important political events like general elections and after extreme expressions of political unrest like the Porteous Riots and the inclusion of a considerable percentage of disaffected justices in many commissions of the peace who apparently remained there from 1745 to 1750/51 all suggest a role of diminishing significance. The sheer decline in momentum suggests a negative conclusion to the inquiry. There was, however, a continuing awareness of the status associated with being a justice. Duncan Forbes of Culloden for instance talked about the honour of being put on the bench in Inverness-shire.¹ There was among contemporaries moreover the belief that manipulation of the commissions of the peace was employed for political ends. Gilbert Burnet related that in discussing a bill in the Lords, which would empower J.P.s to take idlers and layabouts to army officers for compulsory recruitment, the objection was made that justices were put into and taken out of commissions 'in such a strange manner', that they did not deserve such powers.² Men of good estates who were strongly for the Revolution were, he argued,

¹G. Menary, The Life and Letters of Duncan Forbes of Culloden (London, 1936), p.20; P.R.O., C.234/59, Inverness-shire, 28 February 1715.

²G. Burnet, History of His Own Time, (London, 1838), II, 750-1.

being consistently supplanted by men of neither worth nor estates who were against the Protestant succession. An alternative conclusion might emerge therefore if the numerical analysis is used to provide a framework for further study. It would then be possible to construct a threefold structure of political involvement which suggests a more positive result. Firstly at the subversive level there is the intolerance of proven Jacobitism as antipathetic to the security of the realm. Not only were justices removed from their commissions in 1716/17 and again in 1750/51, but even a significant proportion of general Harcourt inclusions, were dropped by Cowper in 1715 presumably on account of their Toryism if not potential Jacobitism. In this sense it can be claimed that Tories and Jacobites were removed after 1715 and Whigs put in, in what can only be classed as political manipulation. The absence of party dynamism after the proscription of the Tories from central politics in 1714, should not lead to the false conclusion that political rivalry was dead. Internal party strife however did not seem to be reflected in the composition of the bench and the alternating ascendancy of the Argyll or Squadrone groups at the centre was never accompanied by readjusting the Scottish commissions of the peace. Jacobitism was, nevertheless, very much alive until 1745 and it was the continuing government fear of this phenomenon which gave the Scottish commissions of the peace a political complexion throughout the period.

Secondly, at the level of interest, there emerges a pecking order not unrelated to political manoeuvring in the local power base.

Argyll's control throughout the legal arena in Scotland extended to the grass roots of local government. There is little doubt that it was this depth of control that Marchmont sought to emulate. To achieve a position on the bench, a gentleman did not necessarily have to be a Whig — the MacKenzies of Ross-shire were living proof of that — but he had to ingratiate himself with the local magnate who made the recommendations. More importantly, he had to ensure that that magnate had access to political influence — at the centre. He may have been a pawn, but he had to be a politically important pawn. This infiltration of interest into the composition of the commission of the peace and the regularity with which a county was in receipt of such a commission, reflects the political organization of the time and is clearly a second level of political involvement pertaining to commissions of the peace.

Thirdly there is the place of the bench in the post-Union patronage structure in Scotland. Places were urgently needed to ensure the loyalty of the Scots members at Westminster. It has been forcibly and convincingly argued that if central government had been more generous in its dispensation of rewards there would have been less likelihood of outright rebellion.¹ Clearly there was some ministerial recognition of the necessity for such rewards. In 1707 the Commissioners of Customs went out of their way to allocate places in the Scottish Customs Commission in recognition of family or

¹ Rosalind Mitchison, 'The Government and the Highlands, 1707-1745', in Scotland and the Age of Improvement.

political claims. The size of the Commission of the Exchequer was determined by the desire to gratify the greatest number possible of those who had supported the Union. Oxford's main reason for re-settling the Customs Commissions in 1713 was to find places for the many gentlemen who had been recommended to him as Lord Treasurer.¹ Clearly a place on the bench would not acquire a value equivalent to a post with a monetary remuneration, but equally clearly appointment assured recognition, and recognition the possibility of a more lucrative reward in the long term. Refusal to serve would have jeopardized this possibility and dismissal from the commission of the peace ruin any future chances of preferment from the party in power at the time. Patronage was the eighteenth century equivalent of the modern party and the commission of the peace played its full part in extending that mechanism to Scotland. Whether or not it was a sufficiently extensive mechanism is beyond the scope of this study, but several significant indicators emerge in the broader context.

The study has been centred on the political background to the selection of Scottish justices of the peace. It has, therefore, to a considerable extent, been the analysis of the operation of one particular area of government patronage, that concerned with patronage at a local level in the context of the central politics of the period. The Scottish experience at this time was that of intense

¹Riley, The English Ministers and Scotland, pp. 53-4, 76, 200.

dissatisfaction with the Union coupled with the distinctive nostalgia for the exiled Stuarts which culminated in two full scale rebellions and numerous unsuccessful attempts. Membership of commissions of the peace, as recipients of government patronage, did not figure as prominently in these rebellions as it had in the heyday it had enjoyed for instance between 1685 and 1688, but it would be wrong to discard it into the backwoods of political manipulation. In Scotland it had never enjoyed the prestige attributed to its English counterpart in spite of the fact that the Scottish legal establishment had consistently worked towards the Scottish equivalents of English institutions and against heritable jurisdictions. But the fact that the ministries from 1707 to 1760 deemed it necessary to remove Jacobites from and add Whigs to the Scottish commissions of the peace suggests that it had a political dimension. Manipulation for party gain had gone, but since the Hanoverian dynasty was the lynch-pin of Whiggery, Jacobitism was an anathema that oligarchy could not tolerate. The political scenario of the first half of the eighteenth century therefore, demanded a vigilance which included manipulation of the Scottish commissions of the peace when such manipulation proved necessary.

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