

**THE OPERATION OF LAY PATRONAGE IN THE
CHURCH OF SCOTLAND FROM THE ACT OF 1712
UNTIL 1746 : WITH PARTICULAR REFERENCE
TO THE PRESBYTERIES OF DUNS, EDINBURGH
AND BRECHIN**

Laurence Arthur Brown Whitley

A Thesis Submitted for the Degree of PhD
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THE OPERATION OF LAY PATRONAGE IN THE CHURCH OF
SCOTLAND FROM THE ACT OF 1712 UNTIL 1746, WITH PARTICULAR
REFERENCE TO THE PRESBYTERIES OF DUNS, EDINBURGH AND
BRECHIN.

A Dissertation
Presented to
the Faculty of Divinity
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In Partial Fulfilment
of the Requirements for the Degree
Doctor of Philosophy

by

Laurence Arthur Brown Whitley

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I certify that Laurence Arthur Brown Whitley has fulfilled the conditions of the Resolution of the University Court, 1967, No. 1 (as amended), and is qualified to submit this thesis in application for the Degree of Doctor of Philosophy.

Signature of supervisor

I was admitted as a research student under Ordinance 350 (General No.12) on 1st. October 1986 and as a candidate for the Degree of Ph.D under Resolution of the University Court, 1967, No. 1 (as amended) on 1st. October 1986.

The following thesis is based on the results of research carried out by myself, is my own composition, and has not previously been presented for a higher degree. The research was carried out in the University of St. Andrews under the supervision of Dr. Deryck W. Lovegrove.

Signature of candidate

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ABSTRACT

Although lay patronage was abolished in 1690, the study emphasises the importance of linking that Act with the one restoring it in 1712, since there was a difference between the landed interest and the Church in their perception of both pieces of legislation. This divergence, together with the 1690 Act's placement of the heritor class into the process of ministerial election, and the vexations caused by the Abjuration Oath, combined to create the complications which undermined the Church's ability to throw off patronage.

The study questions the idea that few patronage disputes arose in the first period after the Act, and goes on to examine how the intensification of Squadrone/Argathelian rivalry in the post-Union scramble for influence drew church vacancy matters inexorably into the web of politics. The most successful manipulators of patronage were Lord Ilay and Lord Milton, and a general comparison is made between their administration and that of the Marquis of Tweeddale.

Skilful management of the Church's senior courts, along with a judicious preferment of ministerial loyalists, made concerted opposition to even the worst excesses of patronage, overwhelmingly difficult. The study however draws attention to one period, between 1734 and 1736, when forces antipathetic to the abuses of patronage appeared to achieve an effective unity.

Finally, the study looks beyond the influence of simple party politics, to examine what local factors may have impinged upon settlements by presentation, and to this end examines the peculiar circumstances which obtained in the Presbyteries of Edinburgh, Duns and Brechin.

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The undertaking of this study was the suggestion of my wife, Catherine, and almost all of the sacrifice involved in bringing it to fruition has been hers. If it should happen to contain anything of merit, it is she who is ultimately responsible.

Finally, I must thank Dr. F.R. Stevenson, formerly of the Department of Architecture, University of Edinburgh. Without his tutelage and example, the pleasure of undertaking this study would have been missed.

ABBREVIATIONS

- '15....the Jacobite Rising of 1715
'45....The Jacobite Rising of 1745
APS....*Acts of the Parliament of Scotland*
AUP....Aberdeen University Press
BL....British Library
DNB....*Dictionary of National Biography*
EUP....Edinburgh University Press
FES....Fasti Ecclesiae Scoticae
GA....General Assembly
GAC....General Assembly Commission
HMC....Historic Manuscripts Commission
LA....Lord Advocate
LHC....Lord High Commissioner
LUP....London University Press
NLS....National Library of Scotland
OUP....Oxford University Press
RSCHS....*Records of the Scottish Church History Society*
SAP....Scottish Academic Press
SAPL....Select Anti-Patronage Library
StAP....St. Andrew Press
SHR....*Scottish Historical Review*
SHS....Scottish History Society
SRO....Scottish Record Office
WRH....West Register House

GLOSSARY

- Argathelians**....members and supporters of the house of Argyll
- edict**....a legally authoritative public intimation (eg., of a vacancy)
- extract**....a part taken from the minutes of a court by the authorised official
- General Assembly Commission**....a body specially commissioned at the end of each Assembly to meet (usually four times) and act in its name until the following Assembly. Originally elected without reference to the membership of Assembly, from 1705 Presbyteries were to be proportionally represented on it; from 1719, only Assembly commissioners were to be included as members; from 1736, the proportion between ministers and elders was to be the same as for the Assembly. The Commission was properly only empowered to conduct such business as the Assembly had given it authority to handle, but where such a line could be drawn was a subject of intense controversy.
- heads of families**....the representatives of the ordinary parishioners
- heritors**....the owners of heritable property in a parish
- High Presbyterian**....pertaining to the stricter traditions of Covenanting Presbyterianism
- homing, letters of**....a warrant used to cite a defender to appear or pay a debt
- jus devolutum***a right devolved on a party because of its not having been exercised within the appointed time by those having priority
- libel**....the formal indictment by which a minister or probationer is charged with misconduct or heresy
- Lord High Commissioner**....the Crown's official representative at meetings of Assembly
- Marrowmen**....evangelicals, like Thomas Boston, who approved of the English Puritan book, *The Marrow of Modern Divinity*, published by Edward Fisher of Oxford in 1646.
- moderate men**....pro-establishment, pro-learning and pro-moderation churchmen who eschewed what they regarded as the vulgar and disruptive tendencies of the evangelicals (see Ch. V.)
- moderating a call**....the Presbytery's representative convenes a meeting of the parish's electors and attempts to guide them into centring harmoniously upon a candidate. If he is successful, a call is signed by the electors. He then attests it and submits it to Presbytery for concurrence
- planting a church**....filling a vacancy
- Popular Party** (also, wild, narrow, zealous, warm, hot men)....the evangelical, anti-prelatic, anti-patronage wing of the Church. Espoused a heart-warming style of preaching as opposed to the cold, learned expositions of their pro-moderation counterparts.
- Praying Societies**....groups of devout evangelicals, originating in the mid-Seventeenth century, which met, usually outside the compass of the Established Church, for prayer and Bible study.

probationer (also, expectant, preacher, entrant)....a candidate for the ministry after receiving his licence.

pro hac vice....for this turn or occasion

qualified according to law....having taken the appropriate Oaths

rabbling....mobbing of a clergyman, either evicting him from his charge or resisting his admission

Reduction....in civil law the annulling of a sentence or deed

serving an edict....proclaiming it in the appointed manner, time and place

simony....where a candidate forms an mercenary agreement (or "paction") with another in order to gain an ecclesiastical preferment

sist....where an appeal to a higher court suspends the operation of the lower court's sentence

Squadrone....known before the Union as the New Party; earned nickname of Squadrone Volante through avoidance of permanent alliances. Family ties were strong between the Montrose, Tweeddale, Rothes, Haddington, Hopetoun, Findlater, Dundas, and Roxburghe families. Later associated with English opponents of Walpole, known as the Patriots.

tanquam jure devoluto....as by devolved right

teinds....or tithes: the tenth part of the fruits and profits of a parish, to be paid to its minister

transportation (or translation)....the loosing of a minister's relation to one charge and the making up of it to another. The vacant charge prosecutes its call before the Presbytery of the minister it seeks, giving in reasons to show that the move would be for the greater good of the Church. The filled parish is invited to submit answers, and the Presbytery judges accordingly.

trials for licence....after completing his studies, a candidate for the ministry is "tried" by his presbytery, and if deemed suitable, issued with a licence to preach.

trials for ordination....similar to above, and conducted by the Presbytery within whose bounds his future parish lies.

CONTENTS

Chapter I	
The Background to the Patronage Act of 1712: the Abolition of 1690 and its Results.....	P.1
Chapter II	
The Approach to 1712: the Passage and Legality of the Bill.....	P.30
Chapter III	
The Situation in the Parishes Before and Immediately After the Act.....	P.45
Chapter IV	
The Episcopal/Jacobite Dimension up to the '15.....	P.70
Chapter V	
Patronage and the Church, 1715-1725 with Particular Reference to the Borders/Duns Area.....	P.85
Chapter VI	
The Reality of the Church's Resistance to Patronage, 1724-1730...P.111	
Chapter VII	
Ecclesiastical Patronage and the City of Edinburgh.....	P.140
Chapter VIII	
The Regime of Milton and Ilay: Establishing Authority.....	P.166
Chapter IX	
The Regime of Milton and Ilay: The Resistance of 1734-36.....	P.189
Chapter X	
The Regime of Milton and Ilay: The Flow and Ebb of Power.....	P.213
Chapter XI	
The Regime of Tweeddale.....	P.230
Chapter XII	
Local Issues: Duns and Angus After the '15.....	P.249
Chapter XIII	
Conclusion.....	P.265
Appendices and Bibliography	

The Background to the Patronage Act of 1712:the Abolition of 1690 and its Results

"Whether the hand of the misguided Sovereign shook when affixing the sign manual, has not been recorded; but certainly at that moment, she put her hand to a deed by which her right to reign was virtually rescinded, the Revolution Settlement overturned, and the Treaty of Union repealed..."¹. The use of such melodramatic language in connection with Queen Anne's Patronage Act of 1712, was commonplace among nineteenth century church historians. Indeed, to read from that era any random selection of the indignant speeches, pamphlets and books concerning "This infamous Bill"², it might easily be assumed that in its passing, all the Kirk's enemies had combined to violate "the deep-seated, ineradicable feelings of the people of Scotland"³ - feelings which the 1690 abolition of patronage had, by contrast, triumphantly expressed.

The complete picture, however, is rather more complicated, especially when it is remembered that within the brief timespan of 1688-1715, Scotland experienced four different sovereigns, the constitutional upheaval of the Revolution Settlement, a Parliamentary Union, an attempted invasion and a Rebellion. In other words, patronage was removed and re-established within a period that - quite apart from its ecclesiastical controversies - was as volatile and uncertain as it was politically complex. An intricate tangle of circumstances brought about both pieces of

¹ W.M. Hetherington, *History of the Church of Scotland*, 7th. Edn. (1848), p 601

² G.N.M. Collins, *The Heritage of our Fathers*, Knox Press, Edin. [1974]. p 40.

³ *Patronage, Presbyterian Union and Home Work of the Church of Scotland: A Chronicle of the General Assembly of 1870*, Wm. Blackwood. Edin. [1870]. Speech by Dr Smith of Leith, p 163

legislation, and it was the continued presence of these beyond 1712 which, as much as patronage itself, brought about the strains and crises which were to torment parish settlements in the following decades. To understand Scottish lay patronage in the early 18th. century therefore, is always to see it first in the context of the eventful years subsequent to William's landing at Torbay in November 1688.

From the introduction which follows, it will be seen that despite the volatility of the times, there were several factors which consistently had an effect upon church affairs. These were, the accident of chance, increasing jealousy for property rights on the part of landowners, the convoluted intrigues of the Jacobite interest, anxiety by all crown officers to "manage" the church into quiescence, and above all, political opportunism⁴.

The Political Background to the 1690 Act

Crucial to the circumstances out of which patronage came to be abolished was the emergence in Scotland of a coherent Parliamentary opposition. As the time approached for the meeting of the first Parliament on 5th June 1689, motivation for this opposition stemmed from dismay at William's initial appointments to office, especially concerning the Privy Council. Anxiety was expressed that the king had shown little inclination to omit those tainted by the

⁴ On the cynical self-interest of the nobility, see Tristram Clarke, "The Williamite Episcopalians and the Glorious Revolution in Scotland", *RSCHS*, vol xxiv (1990), p 37. On the King's failure to understand this, see PWJ Riley, *King William and the Scottish Politicians*, John Donald [Edin] 1979. passim, eg: p. 10: "The idea that he was facing a struggle between opposing religious principles was one of William's major delusions."

old regime⁵, and particular dislike was levelled against the advancement of the Dalrymples, whereby Sir John became Lord Advocate and, later, Sir James, his father and Master of Stair, was reappointed Lord President of the Court of Session⁶. The Earl of Melville was appointed 1st Secretary, and although he and Stair were soon to fall out⁷, his nexus with the Dalrymples attracted disapproval⁸.

A further catalyst was provided by fear that William would drag his feet over the grievances originally laid before him as a condition of his being accepted as King, and there would appear to be grounds for such concern⁹. Since these grievances included ecclesiastical ones, it is not surprising that when the General Assembly met in August, it chose to "run the same course"¹⁰ as this opposition group, which, under the name of "The Club", had by this time established a highly organised and effective role for itself¹¹. However, if the following year did bring success for the High Presbyterian interest, it was not through its tagging onto the Club's parliamentary strength until a satisfactory ecclesiastical programme was

⁵ *Leven and Melville Papers*, Bannatyne Club. Edin. vol 77.[1843] p 23: "Opinion, supposed by Sir James Stewart, LA - 24 May 1689"

⁶ E.J.G. MacKay, *Memoir of Sir James Dalrymple, 1st Viscount Stair*, Edin. Edmonston and Douglas [1873]. p 218

⁷ E.J.G. MacKay, *Stair*, p 238.

⁸ *Melville Papers*, p 23

⁹ See *Melville Papers*, Sir John Dalrymple to Melville, 20 June 1689. p 67: "They now plainly pretend that the King is obliged to redress all their grievances....whereas the King said only he would redress everything that was justly grievous, whereof they are not sole judges."

¹⁰ *Melville Papers*, John Dalrymple to Melville, 8 August 1689, p 245-6

¹¹ *Melville Papers*, Dalrymple to Melville, 25 June 1689, p 81-5

realised. Even supposing a much stronger Presbyterian presence within its ranks¹², the Club was not a body to be so easily recruited.

The truth was, The Club was in essence an association of interests united by a desire to harass those who had advanced in royal preferment¹³. For the key figures in its membership, the primary aim was always to preserve opportunities for self advancement - something which was not necessarily served by reaching specific goals, but rather by maintaining pressure upon the administration. Such harassment of the King's ministers created the climate in which concessions could be wrought. Obviously enough, with every success achieved, there was less reason to harass. Thus, if anything, the **religious** question was possibly the last issue the Club's leaders would have been keen to take up, since, as James Halliday argues¹⁴ this was "the point upon which compromise between William and the Club was most attainable".

In the event, it was the Court which moved first towards a settlement for the church. In accord with William's hopes for a moderate establishment, proposals modelled on the 1592 constitution for the church were mooted. The leader of the parliamentary High Presbyterians, the Earl of Crawford, at once saw in the package dire consequences for his wing of the church. He wrote fearfully to

¹² see Riley, p 32 for discussion of its diminutive size

¹³ It was "a quite exceptionally turbulent, factious opposition party...formed out of an unexpected alliance of crypto-Jacobites and extreme presbyterians. The Club was, for a variety of divergent reasons, prepared to go to almost any lengths to prevent those to whom William had entrusted Scottish government from actually exercising it." - Lionel Glassey, "William II and the Settlement of Religion in Scotland, 1688-1690.", *RCHS*, Vol.XXIII, Pt.3, [1989], p 326.

¹⁴ James Halliday, "The Club and the Revolution in Scotland 1689-90". *SHR.*, vol. 45. p. 147

Melville that if first the church were not purged, "then the conform clergy will be six to one, and would readily depose them of the presbyterian way"¹⁵.

Furthermore, the 1592 constitution would not remove patronage, with the result that "though those that daily pray for the late King were laid aside, many in this nation would present to churches such as were not of our partie."

Fortuitously the Club membership remained in no mind to humour the administration. Despite their divergent church affiliations, they not only attacked the proposals, but countered with a series of High Presbyterian ones of their own, including the abolition of patronage. It is needless to add that, far from being intended for enactment, these were almost certainly floated with the sole purpose of keeping pressure upon the administration¹⁶.

Of course, had the king's Commissioner to Parliament, the Duke of Hamilton, been more astute, he could have fractured the Club's unity at this point by granting royal assent to at least some of their proposals, and in particular, the repeal of the 1669 Act of Supremacy. His response however, resolved nothing. It was merely to approve the abolition of Episcopacy¹⁷ and then to adjourn Parliament on the 2nd August. Hamilton's successor, Melville, was however of a more adventurous disposition. On the 25th April 1690, he went ahead and gave

¹⁵ *Melville Papers*, p 172. 16 July 1689

¹⁶ See, on this parliamentary session, PWJ Riley, "*William*", p 25: "..it was plain that...much of the demand for a presbyterian settlement was in origin quite irreligious.", or, J Halliday, "*The Club*", p 154: "..it has to be realised that political requirements not presbyterian zeal dictated the handling of the religious issue by the Club leaders.", or, *Melville Papers*, Sir John Dalrymple to Melville, 25 June 1689, p 84: [if Club animosities cannot be bought off] "..you may consider...whether there be more that pretend to be presbyterians than these who [are] truly des[ir]ing it."

¹⁷ 22 July 1689. *Acts of the Parliament of Scotland*. p 130

the royal assent both to the repeal of the Act of Supremacy and to an Act Restoring the clergy who had been outed in 1661¹⁸, whereupon the unity of the Club, already weakened by royal recruitments¹⁹ began to fragment.

Dividing opposition votes however, was not the same as gaining them for one's own side, and if Melville hoped to continue in power he needed to find a way of doing so. Gratifying the Presbyterian interest seemed the expedient choice to make, especially as the king had already declared himself resigned to such a settlement in private instructions on the 25th February, 1690²⁰. Nonetheless, by choosing this course, Melville was starting to stray into awkward territory.

The Private Instructions did indeed permit him even to go as far as abolishing patronage "if the Parliament shall desire the same", yet if William had ever felt comfortable about such a move, it was not long before he was having second thoughts. Two months later, Sir William Lockhart wrote from London to say, "The King, as to the settlement of Presbyterie, seems only to stick at the Patronadges; he says it's the interest of the crown, and the taking of men's propertie."²¹ Nor did William like the wording of the proposed Act for Settling Church Government, where it sought to make absence of congregational consent a justification for declaring vacant those parishes which had outed their minister at the Revolution. As far as he was concerned, the Act was suggesting that the entire concept of patronage as a system was irregular. He would have none of

¹⁸ *APS*, ix, 111

¹⁹ see J Halliday, "The Club", p 157

²⁰ *Melville Papers*, p 414

²¹ *Melville Papers*, p 430 . 29 April 1690.

that²².

What is ironic, is that the opposition, still with only a small High Presbyterian interest, almost certainly had as little enthusiasm for demolishing patronage as the king, yet it continued to press for its abolition as warmly as before. The contradiction is nonetheless explicable if, once again, self-interest is brought into consideration. In personal political terms, the opposition had much to gain by pursuing a vigorous Presbyterian tack, indeed, it had little to lose, for if the Administration resisted, then it could be kept profitably under pressure; alternatively, if it gave way, then William's annoyance with Melville would probably mean the Commissioner's days were numbered - a development from which also something advantageous might be scavenged.

Chance, however, suddenly turned the initiative in the other direction and gave it to Melville. In June and July, an ongoing conspiracy to restore King James finally percolated to the surface. It concerned those who had felt themselves cheated of advancement under the current regime, chief among whom was Sir James Montgomerie of Skelmorlie. This, along with the news of a French fleet's approach to the English coast²³, and the King's absence in Ireland, gave Melville an ideal opportunity to seize the advantage in Parliament. He knew that in the climate of fear created by a plot uncovered, opposition would necessarily become muted. At the same time, the Court could hardly complain if its commissioner acted decisively to undermine antagonists and promote the cause of loyalists.

²² Ibid., p 438. "His Majesty's Remarques upon the settling of Church Government in Scotland". 22 May 1690

²³ The battle off Beachyhead was on the 30th June 1690, (and was won by the French).

Accordingly, Melville wrote to the queen, "I doubt not but your majestie is convinced how difficult a province I have, considering the unsettled condition of this nation, and a multitude of disguised enemies, who only wait an opportunity to show themselves; all which oblige me to go a greater length than otherwise I would have done in satisfying those here who are only to be relied on, without which I could not anywise answer for the safety of the country; and I must humbly beg that your majesty will be pleased to put a favourable construction upon my actions; for I doubt not but that I shall be able to make it appear, whatever be the issue, that I have taken the methods that were most proper, in present circumstances, for preserving and advancing your majesties interest in this kingdom."²⁴ Two weeks later, on the 19th July, he passed the Act abolishing patronage.

It was a disastrous moment for the Club: not only had they collapsed as a coherent force, but in the process had been instrumental in bringing about a measure which few of them had ever desired²⁵. Melville, of course, was a casualty as well. From 1689, the Scottish Episcopalians had already been pressurising William from south of the border by lobbying their Church of England counterparts²⁶. Now with the July church settlement pushed through, "a new cycle of complaints" came up to Court, prompting William from December

²⁴ *Melville Papers*. Earl of Melville to the Queen. 2 July 1690. p 456

²⁵ PWJ Riley, *King William*, p 42

²⁶ *Melville Papers*. Melville to Crawford, 1st December 1689: "I hear the Convocation here flies high; their pretence is the rigour used against those of their persuasion in Scotland, which they say, if not redressed, they will show the less favour to the Nonconformists here." [p 336].

1690 to make a show of responding to at least some Presbyterian excesses²⁷. In January 1691 he neutralised Melville's influence by appointing Sir John Dalrymple, who was pro-Episcopalian and a rival, as his joint Secretary of State.²⁸ By the end of the year, Melville had been appointed to the "comparatively insignificant office"²⁹ of Keeper of the Privy Seal. His influence was largely over.

It will be seen therefore, that any notion that the removal of patronage came about at the insistence of some popular will, is unsustainable. Chance, political miscalculation and the desire of a King's Minister to buy parliamentary peace for the Court at a critical juncture³⁰ remains the stark reality.

The Character of 1690 Act

Turning to the Act itself, the main part was drafted by Sir James Stewart of Coltness, and introduced into Parliament by his brother Thomas, the MP for North Berwick³¹. Wodrow's fulsome praise for Stewart on his death on the 1st. May

²⁷ Tristram Clarke, "Williamites" p 46-7.

²⁸ PWJ Riley, *King William*. p 60-1. Riley says the appointment was almost certainly made "with no other motive than that of placating Scottish and English episcopalian interests or, at least, of giving them less ground for complaint."

²⁹ *Melville Papers*. xxvii.

³⁰ Melville wrote a memo to the King the following year, defending his actions: "As to the taking away of Patronages, tho it was frequently and earnestly desired of me by the Presbyterians, yet I did still forbear to do anything in that matter, till the French fleet was upon the english coast, and a dangerous conspiracy against your majesty's government was discovered, and I having reason to think that affairs in England were in a dangerous posture,...did conceive it was for your Majesty's service to dismiss the Parliament of Scotland with as little discontent as might be, and to gratify the Presbyterians in the business of patronage, in the way that might be the least offensive." *Melville Papers*. Melville to King William, prob. 1691. p xxiv.

³¹ GWT Omond, *The Lord Advocates of Scotland*, vol 1. Edin. David Douglas. [1883] p 256

1713 celebrates him as a Presbyterian hero³², and certainly his support for the covenanting side during the post-Restoration troubles, would affirm it³³. Yet again, however, it is possible that even with so virtuous a champion of the Presbyterian cause, motives may not have been entirely unmixed. Thanks to a strange episode whereby in 1687 he forsook exile in Holland and returned to London and rapprochement with King James, Stewart was under some suspicion with the Presbyterian interest. His involvement with the Act, therefore, was the perfect opportunity to dispel the "cloud" left behind by his apparent trimming³⁴. Interestingly, Sir William Hamilton of Whitelaw, who added the clause compensating the patrons, had also ground to make up through being implicated in the Montgomerie of Skelmorlie plot³⁵.

Hamilton's declared intention was to give the church the security of seeing the patrons bought out, since "...what this Parliament abolishes, another Parliament may establish"³⁶. The prophecy was of course entirely correct, except that only four parishes came to show any interest in availing themselves of the opportunity thus provided. Why this was so, will be returned to below, but first it is necessary to look at the important implications of the Act.

Within the terms of the 1690 abolition there is an unexpected development. The

³² Robert Wodrow, *Analecta*, vol.2. Maitland Club, vol 60. [1842], p 202, "Upon the first day of this month, this Church sustained a very inexpressible loss by the death of that great man, and extraordinary Christian..." [p205]: "...a great Christian, an able statesman, one of the greatest lawyers ever Scotland bred..."

³³ Omond, p 243 ff; *The Coltness Collections*, 1608-1840, [Glasgow 1842], p 90 ff

³⁴ *Coltness Collections*, p 365

³⁵ *Melville Papers*, "A Full and Faithful account of the Conspiracie..." p 509

³⁶ Wodrow, *Analecta*, vol 1. p 275

pattern of the last abolition in 1649, whereby the choosing of pastors was placed in the hands of the elders, was changed so that now they were to share election with the local heritors. This was unlikely to have been an innovation of which the veteran "wise and reverend fathers in the church"³⁷ who reputedly advised Stewart would have been enamoured³⁸. Clearly, however, they felt it would

³⁷ *Coltness Collections*, p 94. They were Gabriel Cunningham, Hugh Kennedy and Gilbert Rule. see Wodrow's *Analecta*, vol 1, p 275

³⁸ An idea of their thinking can perhaps be caught from the wording of a draft petition for William of Orange, drawn up in 1688 by a party of presbyterian "ministers and gentlemen". Wodrow quotes it in his *History of the Sufferings of the Church of Scotland*, Glasgow [1830], vol IV, p481. In it they simply call for the abolition of laic patronages "as was done in the Parliament of 1649". Because William arrived in England before the petition was finished, Wodrow doubts that it was ever sent. (The petition of grievances that the presbyterians eventually submitted in January 1689 makes no mention of patronage. Its absence was almost certainly a precaution against appearing to ask too much too soon - see, for example, Melville to Crawford, 23 July [prob.] 1689, HMC., vol XV. pt 9. [1897])

A further useful insight can also be had from a pro-presbyterian pamphlet dated 1690, but published before the Act. Despite maintaining that election of ministers should be ordered by the eldership, under the inspection of the presbytery, nevertheless the writer is clearly sensitive to the complaint that local men of standing cannot simply be ignored, whatever may have been the case previously. He reminds the reader that among the elders..."it is to be supposed that heritors and men of interest will be, if they be tolerably qualified for, and will undertake, such an office, and then they have a special hand in the election and cannot complain of being imposed upon." If that is still not enough, they should remember that on the one hand, when it comes to any vote great men can usually influence those under them, and on the other, when patronage was previously abolished it was the "constant practice" of the church to give deference to men of interest so that they were generally satisfied. This will still happen.

(from: "A True Representation of Presbyterian Government, wherein a short and clear Account is given of the Principles of them that owne it. The Common Objections against it answered, and some other things Opened that concern it in the Present Circumstances - by A Friend to that Interest". Edin.[1690]. licensed, 18 April 1690.)

It should perhaps be added here that there is no obvious evidence among anti-patronage presbyterians of a desire for elections to be wholly by ordinary parishioners. For them, it would seem that "Popular Election" meant rather the elders choosing in the people's name, with the safeguard of the congregation having the right to reject that choice, eg., "[election] is not to be left to the confused rabble (tho' the meanest adult male member of the church hath a right to assent or dissent)" [from above pamphlet].

It is easy to be confused, since pro-Episcopal propagandists like John Sage [see pamphlet cited below, also his "Fundamental Charter of Presbytery as it hath lately been established in the Kingdom of Scotland, Examined and Disproved" London.[1695], in Spottiswoode Society Publications (1844)] repeatedly referred disparagingly to presbyterian claims for a *Jus Divinum* in favour of "popular election". However, what they are essentially

have been unwise to jeopardise the whole by sticking too much upon detail. Nevertheless, the heritors' inclusion remains a matter of curiosity. What can be said is that it does suggest two things. First, it corroborates the truth of Moncrieff Wellwood's dictum that: "It was not thought expedient to give the clergy the influence, which, in whatever form it was exercised, they really possessed before the usurpation of Cromwell, and still less to place any power in the great body of the people."³⁹ Secondly, the heritors' presence is a strong indication of the growth of their status within Scottish society during the 17th. Century.

To take first the matter of clerical influence, to suggest that confining the election of a minister to the kirk session actually increases clerical dominance might superficially appear paradoxical. However, if reference is made back to the situation obtaining at the time of the 1649 abolition, it is possible to detect there the fruits of a distinct drive not so much to elevate the role of the eldership or people, but to set the Presbytery in a stronger position against the king and patrons. In 1642, for example, the Assembly in its "Act anent the Order for Making lists to His Majesty and other Patrons for Presentations; The order of tryal of expectants, etc", not only upbraided the king for improperly gifting patronages, and allowing subjects to receive "Bishop kirks, which are declared to belong to Presbyteries", but also laid out a system whereby for every vacancy, the king or lay patron would now be confined to a choice from 6 names, to be sent to

concerned about is the principle of patronless election, rather than the mechanics of how it is applied.

³⁹ Henry Moncrieff Wellwood, *Account of the Life and Writings of John Erskine*, Edin. [1818]. Appendix, p 431.

him, along with a blank presentation, from the relative Presbytery⁴⁰. Thus when Parliament⁴¹ commissioned the 1649 Assembly to draw up its preferred procedure for filling vacancies without patronage, the Presbytery-controlled leet system might certainly have been expected to be the result. However, despite Principal Robert Baillie's conviction that the mind of most in the Assembly was indeed as the formula went: "the direction [is] the presbytery's, the election the Kirk Session's, and the consent the people's" (in other words, retaining the choice of the leet in the Presbytery's hands), such was the ferocity of the debate, the system ultimately agreed upon was both fudged and confused. As Baillie wrote to his cousin of it: "We had the greatest debate for an Act of election of ministers", where several draughts were proposed and rejected, until finally: "...for avoiding debate, a general confused draught (avoiding indeed, the present question, but leading us onto so many questions thereafter as any pleased to make) passed..."

⁴². Sensing that few better opportunities might arise for unequivocally establishing the principle of Presbyterian leeting, its supporters, led by David Calderwood, vehemently opposed the final resolution. In this regard, their

⁴⁰ GA Act Sess. VII, 3 August 1642. The leet of 6 was to receive the consent of the majority of the congregation before going to the patron.

⁴¹ Parliament abolished Patronage on the 9th March, 1649, devolving to the next GA to devise a vacancy-filling procedure. The GA's Directory for the Election of Ministers was passed on the 4th August.

⁴² A. Peterkin, *Records of the Kirk of Scotland*. vol 1. Edin. [1838] p 565. Rbt Baillie to Wm Spang, 14 Sept 1649.

The wording of the Directory was that the Presbytery's representative would inform the vacant parish that "...the Presbytery, out of their care of that flock, will send unto them preachers, whom they may hear; and if they have a desire to hear any other, they will endeavour to procure them a hearing...upon the suit of the elders.." Thos. Pitcairn, *Acts of the General Assembly of the Church of Scotland, 1638-1842*. Church Law Society. Edin. [1843]. 4th August 1649. p 212.

anxieties turned out to be justified. Leet-men like Baillie had remained optimistic that the implication still was that Presbytery would normally choose the pool from which the Session would elect its preference: "But I find it the design now of leading brethren that the presbyteries shall not meddle at all with any recommendations, but leave that wholly to any particular busy man of the presbytery to whisper in the ear of some leading man of the parish to get voices to any young man though never heard in privy exercise, that he, by desires of the people to the presbytery may be put on trials for such a church. This I find will be the way of our elections, which I think not orderly."⁴³

On the other hand, for all their open-endedness, the 1649 directions did contain a potential bias in favour of clergy sitting in Presbytery that was at least sufficient to make Parliament wary of injecting them into the ecclesiastical situation of 1690. The crucial factor was that the bias was most effective in vacancies where the Kirk Session was in disarray or non-existent, as indeed many were at the time of the Revolution⁴⁴. In such a case, the standard procedure was that the Presbytery were to summon the indigenous heads of families with a view to their nominating new candidates; but if these refused or failed to appear, it then fell to the clergy to choose whomever they wished⁴⁵. Again, in the (not unlikely) event of an

⁴³ Ibid.

⁴⁴ eg., the Presbytery of Perth, whose minute for 30th July 1690 speaks of "...the desolate condition of the congregations within our bounds, with respect not only to the want of ministers, but also of a settled eldership..". Even where there was an eldership, if its members were part of a "prelatic Session", then Presbytery resolved it should be disowned and replaced. [cited in J. Cunningham's *Church History of Scotland*, Edin. [1859], vol 2. p 288, note]

⁴⁵ Walter Steuart of Pardovan, "Collections and Observations Methodized, Concerning the Worship, Discipline and Government of the Church of Scotland". [c. 1709]. Title VII, 'Of Ruling Elders', #2. - Published in *A Copious and Comprehensive Summary of the Laws and*

eldership failing to agree on its choice for a vacancy, it fell to the Presbytery to intervene and choose as they saw fit. It would therefore seem likely that the heritor's inclusion in the process was intended as a leavening exercise. If so, however, it failed to impress the anti-Presbyterian pamphleteer, Bishop John Sage, who considered the intention to have been the opposite. Nonetheless, since he admits in the first place to being unsure what the point of the clause about the heritors was, and then offers no support for his subsequent claim, it is possible he was simply indulging in polemical exaggeration⁴⁶.

The second reason why the presence of the heritor in the 1690 Act is illuminating, is that it is symptomatic of a particular socio-political change that had been taking place in Scottish society through the 17th. Century. In effect, what had emerged was a new social presence - a laird class - whose status was that of property status, as opposed to feudal superiority. The watershed for the transition was Charles the First's teind legislation of 1633 (see below). In short, its achievement was to allow what were formerly "vassals" to carve out for themselves an independence through property ownership, enhanced by the rights and privileges which property purchase now brought. In tandem to this development, and possibly as a result of it, there was a flowering of interest and respect for forensic matters. In other words, if the escape from feudalism meant that those who had previously laboured under the thumb of a great noble or clan

Regulations of the Church of Scotland from 1560-1850, Aberdeen. G and R King.[1850] p 209

⁴⁶ "An Account of the Late Establishment of Presbyterian Government by the Parliament of Scotland, Anno 1690, together with the Methods by which it was settled..." Anon., but considered to be Bishop John Sage. pub. Jos Hindmarsh, London.[1693]

chief, were now only answerable to the law, then the status and integrity of the law became of paramount importance. Thus, for example, the publication of Stair's acclaimed tract "Philosophia Nova Experimentales" in the 1680s was, at least in part, an expression of this thrust.

As the century progressed, further power also came to this grouping as Commissioners of Supply and JPs⁴⁷. By 1690, they were, in effect, a land-owning, Scottish middle-class, relentlessly pushing for greater influence in justice, in commerce, in civil administration and, inevitably, in the affairs of the Church. It would have been hard enough to exclude them from ecclesiastical settlements for the reasons just stated, but such was their key role now in the matter of teinds, it was no longer possible for their presence to be ignored. Enacted within the 1633 legislation was the provision whereby the teinds, having been valued and commuted to a fixed sum, could be bought outright by the proprietor. The problem for the Church was that since the valuation had been fixed, the stipend to be appropriated from it became fixed as well, and by the end of the 1640s prices had risen sharply. Augmentations of stipend did occur, but as Roland Foster has pointed out in his work on the "Constant Platt" (ie., "common plan" for ministerial support), it "did not mean that a minister would automatically receive that augmentation"⁴⁸.

⁴⁷ The office of JP had been established in Scotland by James VI in 1609. Its impact upon the community was not great, although attempts were made to enhance it after the Union [see below]. JPs' main responsibilities were criminal law, maintaining highways and care of the poor. [see, A.E. Whetstone, *Scottish County Government in the 18th. and 19th. Centuries*, John Donald [1981], Ch. II, passim.]

⁴⁸ W Roland Foster, "A Constant Platt Achieved: Provision for the Ministry, 1600-1638", in *Reformation and Revolution: Essays presented to the Very Rev Hugh Watt*. Ed. Duncan Shaw, St Andrew Press [1967], p 135

The difficulties of the situation surface in the preamble to the Parliamentary Act of 1649 anent stipend, glebes and manses⁴⁹. It is there complained that the ministers lack sufficient maintenance, they lack security and they lack timeous and thankful payment of stipend. The Church was vulnerable to being squeezed by the heritors. The reply the Act provided was that those who delayed making stipend payments were to be fined a fifth of the stipend plus legal expenses. Ministers were even given powers of poinding (impounding). However, any advantage gained by the 1649 Act was of course erased by the Restoration and the King's Act Rescissory. From this point on, according to Cormack in his standard work on teinds, "...confusion becomes worse confounded...once more the claims of the ministers were pushed into the background, and bishops and landowners were all powerful in the matter of teinds"⁵⁰. Clearly, the issue of finance for the Revolution Church required to be negotiated. Once again, the Church could hardly expect favourable terms from the heritor while resolutely refusing to award him a fitting place in the new settlement.

The heritors' position thus established, the 1690s continued with a crucial series of measures which both consolidated and advanced their influence in the local community. The legislation concerned schooling, the poor, teinds and the care of churches, manses and churchyards. To take the administration and disposal of the poor's provision, for example, this had been placed by the statutes of 1597, c.272, and 1600, c.19, entirely in the hands of the Kirk Session, working under the supervision of the Presbytery. However, by the acts of Parliament of 1695, 1696

⁴⁹ APS vi (ii)

⁵⁰ A. A. Cormack, *Teinds and Agriculture - An Historical Survey*. OUP, [1930]. p 116.

and 1698, jurisdiction was now conferred jointly upon heritors and Kirk Session, with no supervisory power of control granted to any court. Indeed, provided the meeting was properly constituted, there was no need for the Kirk Session to be represented at all.⁵¹ Again, in the matter of teinds, the Act of 1690, c.23, compensated patrons for their loss of presentation rights by awarding them all non-heritably disposable teinds which might be left over after deduction of stipend. However, the Act of 1693, c.25, deftly turned the advantage further towards the patron by giving him the whole tithes to start with, on the understanding that stipend would then be deducted. This meant that a vacancy presented a golden opportunity to the patron to treat the stipend money as his own, although technically he was obliged to discharge it for "pious uses"⁵² within the parish. Occasionally, disgruntled co-heritors challenged their patron's conduct, as with the case of Roxburgh manse in 1706. Faced with the cost of repairing its dilapidated condition, the heritors, led by George Rutherford of Harrington, brought a Bill of Suspension against the Earl of Roxburghe over the fate of the vacant stipend between 1700 and 1702. However, such attempts appear rarely to have met with success, with the notable exception of the heritors of Kirkbane (or Kirkbean, Presbytery of Dumfries). In 1699, they actually managed to prove that the Laird of Cairnmont had misappropriated the stipend money and so had forfeited his right to administer it.⁵³

⁵¹ see Alex. Dunlop, *Parochial Law*, 3rd Ed., [Blackwood. 1841], ch.8, p.445ff.

⁵² for definition of these, see J.M. Duncan, *Treatise on the Parochial and Ecclesiastical Law of Scotland*, [Edin. 1869], p. 326 ff.

⁵³ *Cairnmont v. Heritors of Kirkbane*, 1699, (*Morison's Dictionary of Decisions*, 9947)

Nonetheless, victories of a similar nature were few and far between. With or without lay patronage, the fact was, the manner in which the church was now financed meant it was vulnerable in a way that vitiated the democratic advantages many presbyterians hoped had been gained by the 1690 Act. A prime example of this may be seen with the parish of Rathven (Presbytery of Fordyce). From the time of the Revolution, the Catholic and Episcopalian heritors there combined to nullify any effective Presbyterian ministry by starving both incumbent and fabric of funding, while at the same time financing an episcopal rival. In his work on Scotland's teinds, Cormack writes about the case: "Even in 1720 the local presbytery reported that the fabric of the church was still ruinous and that the lapsed stipends were still unpaid. Mr. Gordon, the minister, had got no decret of locality, and was still gathering his stipend so far as he could, according to use and wont."⁵⁴

Other legislative landmarks of the 1690s involved agricultural reform, and here too the heritor was advantaged. Two Acts in particular stand out. The first was the 1695, cap.23, Act anent Lands lying Run-rig. This allowed landowners to apply to have their property re-divided "according to their respective interests", and in a way "as shall be most commodious to their respective Mansion houses". The other was the Act 1695, cap. 38, Concerning the Dividing of Commonties. This allowed heritors to petition the Court of Session for a dividing up in their favour of any commonty land (except that belonging to the Crown or a Royal burgh) which lay adjacent to their property. Not unexpectedly, as interest in estate improvement increased, so also did alarm and resentment among those affected cottars and

⁵⁴ A.A. Cormack, *Teinds and Agriculture: An Historical Survey*, p. 119.

small tenants who viewed such developments as encroachments upon their traditional rights. Such was the disturbance in the South West, for example, that in 1724 the Presbytery of Kirkcudbright had a paper read from its pulpits criticising both levellers and enclosers, and calling for peace.⁵⁵ That such feelings found a means of retaliatory expression in opposition to a patron's presentation of a minister is highly likely. One patron who encountered repeated resistance to his presentees, most notably at Morebattle in Kelso Presbytery (1723),⁵⁶ and Bowden in Selkirk Presbytery (1739), was the first Duke of Roxburghe, and it is perhaps indicative to find among the Roxburghe muniments a petition, dated 1729, from some disgruntled tenants of Roxburgh parish (Kelso Presbytery), complaining bitterly of the grievous harm done to them by the Duke's enclosure of the local Muir.⁵⁷

The Act in Practice

As can frequently happen, amendments made in the passage of a Bill can lead to unlooked for consequences. The fact about the 1690 Act was, it left too many loose threads behind. If the intention of Sir William Hamilton's late addition of the clause recompensing patrons for the renouncing of their right was to fortify

⁵⁵ Wodrow: *Correspondence*, 3 vols., ed Thos. McCrie, Wodrow Society, (Edin. 1843), vol 111., p.125. 16 May 1724

⁵⁶ The editor of Wodrow's *Correspondence* claims that this was the year in which enclosing began in earnest. [Vol III, p 125]

⁵⁷ Roxburghe Muniments. TD87/9/1277 SRO. "Petition of the Tenants of Nether Roxburgh to His Grace the Duke." 1729. Interestingly, there was no obvious resistance to the next incumbent there, on his presentation in 1735, although this may well have had something to do with the work of the previous minister, the conservative John Pollock. There was nonetheless a rebellion against the Duke among his fellow heritors in 1739, over his refusal to allow them to draw divots from the muir for the church roof. see memo in TD87/9/1277, 4 Oct. 1739.

the abolishing of patronage, it in practice had the opposite result. The addendum meant that, technically, patronage was not abolished; it was conditionally abolished, that is, it disappeared for all time provided the local heritors and life-renters paid the fixed sum of 600 merks.⁵⁸ If the patron did not receive the money, it might seem reasonable for him to consider that effectively his right was merely in suspense. Sir James Stewart tried to argue to Wodrow 20 years later that the right had been abolished⁵⁹, and that something different - nomination and proposal to the congregation - put in its place, but while that may have been his intention, so long as the payment and renunciation remained outstanding, the validity of such a claim had to be questionable. Indeed, Stewart admits that the common view even among the clergy was that the old right had merely been transferred to the heritors and elders. In which case, it would take little to argue that a right could hardly be transferred until it had been renounced. If it is

⁵⁸ J.S. More, *Lectures on the Law of Scotland*, Edin.[1864], Vol.II, section XVII, p 78, is adamant: "No mistake can be greater than the popular opinion, that by this statute patronage was abolished; it was only conditionally transferred to the heritors and elders." (He is wrong, however, to include the session in those liable to pay the money.)

See also Wodrow's *Analecta* vol.1. p.275, where he explains how the 600 merk sale was in fact tacked on to the bill at the end as an afterthought, and thus thwarted the intentions of the bill's framers.

The preamble of the 1712 Patronage Act claims that the 600 merks (£33 6/8d sterling) was "a small and inconsiderable sum of money", yet it was the salary of a University Professor in the 1690s (see, J Coutts, *History of Glasgow University*, Glasgow [1909], p 169)

⁵⁹ *Analecta*, vol 1. p 275. Another perspective was adopted by Sir Francis Grant, afterwards the Court of Justiciary Judge, Lord Cullen, in a pamphlet published in 1703. His view was that the right of presentation had always been a public right, and therefore incapable of possession by private individuals. Thus the 1690 Act was "...partly declaratory of the patrons' not having...this particle of their right, and its being truely the church's; partly statutory, cassing and annulling the same as to them, upon its being abused...And consequently, translatory of the jus praesentandi to the heritors and others in parishes; or rather reviving, jure postliminii, their primogenial right, which had been kept dormant from exercise for so long a time, by servitude, usurpation and violence." In other words, the 1690 Act did not in reality "abolish" any right so much as restore it. (See "Reasons in Defence of the Standing Laws about the Right of Presentation in Patronages" by Sir Francis Grant, published in Select Anti-Patronage Library. Edin. [1842])

further remembered that the patron meanwhile not only retained his actual title, but saw his other privileges enhanced⁶⁰, it is easy to detect an incentive for him to wait and see how national affairs unfolded, while in the interim ensuring his fellow-heritors made no attempt to buy him out. Several sources suggest that this was almost certainly why very few parishes secured their freedom from patronage through the Act's provision. First, an Advocates Opinion for government use, dated 7 July 1710, noted: "Scarce any subject patron that I know has thought fit to insist on the 600 merks lest the taking payment of that sum may prejudice them if they should seek redress in Parliament of the Act [1690]"⁶¹. Secondly, a 1770 pamphlet appears to take it for granted that: "[the patrons] prudently concluded that it was more eligible to lie in wait for a proper opportunity of procuring the revival of the old statutes."⁶² Again, Sir David Dalrymple, in his pamphlet on patronage of 1711, implies that the tiny response was by design rather than default: "..if this execution [ie. the compensation] has not been made use of by the patrons, 'tis their own fault"⁶³.

Which parishes, then, did buy out the patron? Among the papers of the Rev. Robert Wallace, who was ecclesiastical adviser to the Marquis of Tweeddale in the

⁶⁰ with regard to possession of teinds

⁶¹ HMC. Portland MSS, vol. X, Advocate's Opinion concerning the Patronage Acts, 7 July 1710. p 220. The Opinion is signed by David Dalrymple.

⁶² British Library, *Tracts Concerning Patronage by Some Eminent Hands*, [1354 e.1], Edin.W. Gray,[1770]: "A Candid Enquiry into the Constitution of the Church of Scotland in Relation to the Settlement of Ministers", p 51,n.

⁶³ Sir David Dalrymple, "An Account of Lay Patronages in Scotland, and of the Fatal Differences they have occasioned Betwixt the Church and lay patrons; with observations on the arguments for Restoring them in 1711". Printed in the Select Anti-Patronage Library. Edin. [1842]

1740s, a memo states that the College of Glasgow sold their right for the parishes of Cadder (or Calder, Glasgow Presbytery) and Old and New Monkland (Hamilton Presbytery) "at the price appointed by law"⁶⁴. It would appear that lack of money was a strong motivation for the sale. According to Coutts' history⁶⁵, the college anticipated that the turmoil of the period subsequent to 1689 would inevitably produce widespread vacancies, with the result that the college could rely upon income accruing from the vacant stipends of the charges where it was patron. Consequently, the masters proceeded with a programme of fabric repairs, before discovering that their confidence had been misplaced, and that no funds could in fact be relied upon from that source. Meanwhile a debt of almost £1000 had been amassed. The sale of patronages became an obvious choice for fundraising. In the case of Cadder, however, a problem later arose in that although the 600 merks was paid⁶⁶ before the deadline of the 1712 Act restoring patronage, the formal renunciation was not given until 1725. Eventually, as a result of litigation before the Court of Session, it was decided in 1840⁶⁷ that both the payment and the renunciation required to be before the required date, and so the sale was invalidated.

⁶⁴ Laing MSS in Edinburgh University Library : LA II.620.29. Wallace Papers, p 10. The University was also patron of Govan. It is not clear why the patronage was not sold, although this may be connected to the fact that, from 1621, it had the right of presentation only, and lost access to the teinds (see *Fasti Ecclesiae Scoticae*, 7 vols., [Edin. 1915], vol. 3, p 409), or it may simply be related to the importance of the charge and its proximity to the University.

⁶⁵ J. Coutts, *History of Glasgow University*, p 174-5.

⁶⁶ Coutts says that in 1696 the University received 1200 merks for the loss of patronage of Monklands Old and Cadder. He does not mention New Monklands.

⁶⁷ *Cullen v. Sprott*, 17 November 1840, 3 D. 70.

A very different problem arose with regard to the parish of Strathblane, in the Presbytery of Dumbarton. Here, a Mr. Enterkin was given a life interest in the patronage by the liferentrix, the Duchess of Lennox. Spying an opportunity for financial gain, he proceeded actually to charge the heritors, who included the Duke of Montrose, for the 600 merks in exchange for the patronage, claiming he had right to do so, under the Act. In this he was successful, but the Duke, now stirred to action, bought out all the patronage privileges from Queen Anne, had himself declared the only valid patron, then obtained a reduction of the renunciation.⁶⁸

Post-1690 Disputed Settlements

As well as avoiding any permanent end to their right of presentation, it is not unlikely that some patrons would have felt tempted to undermine the post-1690 regimen by actively encouraging heats and divisions, thus making it easier for Parliament to restore patrons to their full privileges at a later date. Interestingly, Wodrow, when later reflecting on the period up to 1712, had no doubt who to blame for controversial settlements: "...only 4 or 5 cases..bred..difficulty - Cramond, Crawfordjohn, Bothwell etc, and the occasion of the noise was real differences among the heritors themselves, who biased others, and made the splutter."⁶⁹ On the other hand, it has to be said that any attempt to enumerate disputed settlements during the period of abolition is fraught with difficulty. Thomas Chalmers, for example insisted that "...in opposition to the lying preamble of

⁶⁸ Duke of Montrose v. Heritors of Strathblane, 1747. See JM Duncan, *Parochial and Ecclesiastical Law of Scotland*, 2nd Ed. Edin. [1869]. p 91-92; also A. Dunlop, *Parochial Law*. Edin. [1841], p 203,note; also Elchies, "Patronage", no. 2.

⁶⁹ *Letters*, vol 2. 11 February 1717. p 233.

Queen Anne's Act for the restoration of patronage, there had only occurred 14 disputed cases"⁷⁰, while the Rev George Cook, in his evidence to the Parliamentary Commission on Patronage in 1834, claimed he could count more than 100 cases involving transportations during the period which came before the church courts. Moreover, between 1703 and 1712, he counted 20-30 competing calls.⁷¹ The issue properly turns upon whether a particular controverted settlement can be said to have arisen from the supposedly defective post-1690 constitution, or would have occurred in any case. In practical terms, it is hard to see what criteria could be established as would consistently discriminate between the two. Nevertheless, is it possible to detect some ways in which the 1690 Act did indeed sow the seeds of disharmony?

The Act's Deficiencies

A system of transporting whereby a minister is removed from one people and settled upon another has inevitably the potential for contention if the minister's previous parish does not wish to be rendered vacant. The Presbytery's task is to judge the one charge's reasons for the move against the other one's grounds for resistance. Whoever did not like the judgement simply began a process of appeal. The "misorder of transportations" was nothing new. In 1648 Baillie wrote despairingly of them that "most are packed businesses, little for the credit either for the transporters or the transported"⁷². What could be said for presentations

⁷⁰ "Correspondence" with Lord Aberdeen, p 42: cited in John Warrick, *The Moderators of the Church of Scotland, 1690-1740*, Edin. [1913]. p 11.

⁷¹ Parliamentary Papers, "Parliamentary Commission on Patronage, 1834", para. 2219.

⁷² Peterkin, p 529

was that unless accompanied by a letter of acceptance (the Act of 1719 made it compulsory) no further action could properly be instigated.

The Act also lacked practical guidelines which would have smoothed its operation. The formal combination of heritors and elders in ministerial elections was a new and untried procedure, with the potential for dispute in that there was no provision for the precise way in which the Kirk Session and heritors were to meet and determine. As seen above with the measures concerning the parish's provision for the poor, co-operation between the two bodies could be very minimal. Indeed, in 1709, actual soul-searching over the equality in status of each type of elector clearly surfaced in Paisley Presbytery when it considered the call from Inchinnan parish to Matthew Crawford, probationer⁷³. The sticking point was that of the 11 votes cast in favour of his call at the moderation, only 2 were elders while 9 were heritors. Meanwhile, of the 10 cast against him, 7 were elders and 3 were heritors. Eventually, on the 28 November 1709 the Presbytery declared the vote valid, but as will be seen below, the dispute festered on.

The "peremptoryness" of the chief heritor, the Duke of Montrose, made life difficult for the Presbytery over Inchinnan, but it would be wrong to think that such conduct might only arise where a pro-Episcopalian heritor desired to embarrass Presbyterian settlements. Given Rosalind Mitchison's observation that the property-owning emphasis of the age was such as to "encourage the belief of landowners that all money and property on an estate was at their disposal"⁷⁴ it can be imagined how any heritor might regard having to share his ministerial

⁷³ Wodrow, *Analecta*. vol 1. p 213.

⁷⁴ Rosalind Mitchison, *Lordship to Patronage*, Arnold [1983], p 147

preferences with his inferiors. A particular example of this distaste occurred at Channelkirk, in the Presbytery of Earlston (later Lauder) in 1697. The chief heritor there was the 1st. Earl of Marchmont, Scotland's Lord High Chancellor, and a "leading presbyterian"⁷⁵. His unbending determination to oppose the Kirk Session's choice and advance the cause of his former chaplain, Charles Lindsay, ensured a strife-torn continuation of the vacancy for five years.⁷⁶

Another uncertainty was also whether proxies might be allowable. The Assembly then added to the confusion in 1705, by recommending in its directory for Proceedings in Presbyteries that at the election, "though a plurality of heritors and elders will always be thought to be the voice of the meeting, ...yet it is most desirable to have the universal consent of the heads of families, and this ought to be endeavoured."⁷⁷ There was also the matter of the role of the Call. As Duncan points out in his *Parochial and Ecclesiastical Law of Scotland*,⁷⁸ the Act c. 39 of 1649 abolishing patronage appears to give a legal recognition of it. However, the Act would have been rescinded after the Restoration. Thus, although both the 1690 Act and the 1695 Act c. 22, Against Intrusion use phrases such as "calling and entry", "calling and choice", and "an orderly call from the heritors and eldership", there is no specification that this was something which might be required in addition to the actual election. Aware of this weakness, after the restoration of patronage in 1712, the Episcopalian party made an attempt to set

⁷⁵ WL.Mathieson, *Scotland and the Union*, (Glasgow 1905), p 124

⁷⁶ see Archibald Allan, *History of Channelkirk*, (Edin. 1900).

⁷⁷ *Acts of the General Assembly*, p. 351

⁷⁸ p.149

a precedent for a call being dispensed with altogether in the filling of a vacancy. The advantage of such a coup was that if, as was rumoured⁷⁹, Parliament decided to allow patrons to present juring Episcopalian clergy, then any difficulty in obtaining a call for them would be rendered unimportant. The opportunity came at Kilsyth (Glasgow Presbytery) in 1713, when, having made the presentation, the patron then forbade his tenants to sign the call. None did. He then demanded that the Presbytery proceed simply upon the presentation.

Finally, the 1690 Act opened the door to heat and division in its inattention to the definition of a heritor. According to one of the Act's framers, Sir James Stewart of Goodtrees,⁸⁰ when the addendum about the 600 merks was inserted, it was considered logical that it should be paid by those on the cess-roll, but it was "never dreamed" that the cess-roll might be taken as the definition of voter status in the nomination of a minister. Thus, the protracted dispute at Cramond came to a head in 1710, when one side simply started to create new heritors in order to increase its strength⁸¹. A development which caused Wodrow to remark: "We

⁷⁹ Rev John Hart's letter to Wodrow, 7 Feb. 1713. Wodrow, *Letters*, vol.1.

⁸⁰ quoted by Wodrow in *Analecta*. vol. 1., p.275-6

⁸¹ The "patron" was the Earl of Ruglen, who wanted to please his friend Sir Gilbert Elliot of Minto by having his chaplain and nephew, Robert Lithgow, settled in the charge. Elliot was Whig in tendency, eventually ending up in the Ilay interest. In opposition to projected call to Lithgow was Charles Kerr, 2nd son of the Marquis of Lothian, who, along with Adam Cockburn of Ormiston, the Lord Justice Clerk, promoted the cause of the Rev James Smith of Moreham. Smith had been tutor to Robert Dundas of Arniston, who was related to Cockburn's wife. Both Susanna Cockburn and the Dundases were of the Squadrone interest. As well as turning feuars into heritors three days before the moderating of the call, Ruglen's supporters were also accused of bribery and intimidation. The GA ordered presbytery to begin again and a third choice was made of Robert Mutter, probationer, but it would appear he was pressurised into giving up the call. Eventually, it was Smith who was finally called and settled on 16 January 1712, after a vacancy of 2 years, 3 months. SOURCES: SRO, Edinburgh Presbytery Minutes, CH2/121/8, 7 September 1709-6 August 1711; NLS, MSS 3517, Lee Papers, Notebook on settlements,

are like to be in very sad circumstances from the power of heritors in calling; and the same way of chusing of ministers is like to come in that was used in choicing members of Parliament."⁸² Wodrow does not add, however, that kirk sessions were not above attempting the same manoeuvre, as at Channelkirk, when they threatened to resolve the five-year dispute by flooding the session with new elders.⁸³ At Inchinnan in 1710, a variation of the tactic was tried when elders threatened to resign en masse, should the candidate they were resisting be settled. Synod countered the move by simply instructing Paisley Presbytery to refuse to accept their demissions. The candidate was duly ordained.⁸⁴

presumably in Lee's hand; Warrick, *Moderators of the C of S*, p 273; *Fasti*.

⁸² *Analecta* . vol. 1. p.260

⁸³ Archibald Allan, *History of Channelkirk*, passim. It is interesting that the Synod subsequently tried to persuade the 1712 GA to ban parishes from electing new elders while they were vacant, but the move was rejected. [Wodrow, *Letters*, vol I, 12 My 1712, p 293]. Another instance of the ploy was at Haddington, when the 1st charge became vacant in December 1702: "...the pretended episcopal eldershys met and added to their own number and drew up and subscribed a call to one Mr. Alexander Herriot, deposed by the Synod of Lothian...". [HMC Portland MSS, vol. X, memo by GA to the Govt., c.1714. p 261]

⁸⁴ Synod of Glasgow and Ayr Minutes. SRO. CH2/294/7.

CHAPTER II.

The Approach to 1712:the Passage and Legality of the Bill.

As has been shown above, the history of patronage was profoundly affected by the development of property-status and the concomitant belief that such authority should include a controlling interest in parish affairs. That is not to forget that politics and propaganda had also an important contribution to make. In this regard, the accession of Queen Anne in 1702 was a notable landmark, in that it marked an upturn in Episcopalian/pro-Jacobite fortunes, and a downturn in the way the Kirk was perceived from London. An unsigned instruction from Episcopalian nobility in Scotland to their commissioner in London reveals how much attention was being devoted at the time to canvassing support at Parliament, the Palace and among the Bishops, and in broadcasting the grievances of "our poor, distressed churchand especially the subjecting of our pastors to the jurisdiction of those who are their professed enemies and refusing to allow into parishes such ministers as they desired and called, but thrusting in others upon them contrary to their inclinations together with the many evils that have followed therefrom."¹ Presbyterian prospects in Scotland were further clouded by the Queen's appointment in November 1702 of George Mackenzie, Viscount Tarbat, as Secretary. He was pro-Episcopalian, and pro-toleration². Shortly afterwards, eminent Presbyterians among the administration were dismissed from

¹ "Instructions Given by undersubscribing Noblemen to their Commissioner" [circa 1702] SRO. CH8/184

² PWJ Riley, "The Formation of the Scottish Ministry of 1703". *SHR*, vol. 44, p 117.

office: Marchmont, Melville, Leven, Adam Cockburn of Ormiston, Sir John Maxwell of Pollok.³ After that, in order to buy Parliamentary support from the Cavalier (pro-Episcopal) party, Tarbat began more to encourage hopes of a toleration being passed. Such a move was also rumoured to include a restoration of patronage. When the Assembly Commission heard about it on the 12 May 1703, they at once appointed a committee to draw up an Address to the Parliamentary Commissioner. Interestingly, among the arguments produced by the committee in favour of the status quo, the presence of the heritor among the electors was turned to advantage. The propriety was questioned of a situation where the disenfranchised might be more "eminent and considerable" than the patron himself⁴. Sir Francis Grant, later Lord Cullen, supported the Address with a published pamphlet.⁵ However, James Douglas, the 2nd. Duke of Queensberry, who was High Commissioner, was lukewarm about a Cavalier alliance based on a toleration⁶, and the rumoured project came to nothing.

Meanwhile the Church's difficulties in filling vacancies continued, especially in its attempts to fill some of the many vacant charges north of the Tay. Dealing with the reluctance of probationers and clergy to be sent to northern charges was a regular and embarrassing drain on the time of the Assembly Commission, of which a letter of complaint from the Presbytery of Moray regarding the non-

³ NLS MS 7021, #68, Bruce to Tweeddale, 11 March 1703

⁴ General Assembly Commission Registers. SRO. CH1/3/6. 20 May 1703.

⁵ Sir Francis Grant, "Reasons in Defence of the Standing Laws about the Right of Presentation in Patronages". [1703] Reprinted in Anti-patronage Library Edin. [1842].

⁶ PWJ Riley, "Ministry of 1703", p 131

appearance of four candidates, is a typical example⁷. Probationers' willingness to honour such appointments was not encouraged by the hostile reception often awaiting them. An effort to curtail the worst excesses was made by Parliament in July 1698, with an Act for Preventing Disorders in the supplying and Planting of Vacant Churches⁸. The aim was to hold the heritors and liferenters responsible for any disorders and obstructing of the lawful minister, by fining them £100. However, since complaints under the Act were to be pursued through the Privy Council, the abolition of the latter in 1708 was a major blow to the effective use of the legislation⁹. It must be admitted, however, that Parliament's compensatory extension in 1708 of the authority of Scotland's JPs, did contain some assistance for the Church. Indeed, in the case of Fetteresso (Fordoun Presbytery), the veteran intruder Gideon Guthrie, who had already seen off one attempt to replace him in 1705¹⁰, was finally dislodged by virtue of the JPs' intervention in 1709, and the charge given to David Burn¹¹. Also in 1709, the Lord Advocate advised using the JPs to gain access to the manse of Crawfordjohn (Lanark Presbytery), after the chief heritor had thwarted the new minister by changing the locks.¹² Again, when a major riot greeted Presbytery's attempt, in 1711, to settle John Gordon in

⁷ Register of Assembly Commission, 1701-1706, CH1/3/6. 6 June 1701

⁸ APS., 19 July 1698, cap. 2.

⁹ see PWJ Riley, *The English Ministers and Scotland, 1707-1727*, London, [1964]. p 96. The law remained but the facility to invoke it was hindered.

¹⁰ see Minutes of the Presbytery of Brechin, SRO CH2/40/5, 6 July 1709, where the case is cited in respect of Aberlemno, where the heritors followed Guthrie's example by claiming that the Presbytery could not settle anyone in a charge by their *jus devolutum* until the intruding clergyman had been deprived by the Lords of Justiciary. The Assembly rejected the plea.

¹¹ JB. Burnet, *The Kirks of Cowie and Fetteresso*, [1933] p 47

¹² Hew Scott, *Fasti Ecclesiae Scoticae*, Edin. W. Paterson, the 1868 edition, vol II, part I. p 322

Old Deer, Aberdeenshire, the fact that a JP and his officers were attacked with them, made much easier the legal proceedings which eventually brought the desired result.¹³ Despite these successes, however, before long it became obvious that significant assistance for Presbyteries from JPs was not going to materialise¹⁴. To begin with, there still remained large areas, such as the Earl of Breadalbane's estates, where not one Presbyterian clergyman was permitted a foothold¹⁵. Moreover, if the Kirk did initially receive encouraging support from JPs after 1708, it was hardly likely to remain sustainable at the same level, if, as some protested, the roll of JP appointments in some areas was unrepresentative, and dominated by those of a pro-Presbyterian inclination¹⁶. Finally it should be added that both sides could of course take recourse to the courts, as did the Episcopal minister of the second charge at Brechin, Rev. John Skinner, in 1709. After being deposed for heterodoxy and intrusion, he initiated an "unprecedented" appeal to the House of Lords, to which Wodrow alleged he was encouraged not only by the local gentry, but by sources within the government.¹⁷

¹³ Wodrow, *Analecta*, Vol.1, p 328; also, *Letters*. vol. 1. p 226. 17 May 1711. When Lord Grange, the Lord Justice Clerk intervened and threatened letters of horning against them, the heritors at once gave way. The terms were that they would receive Gordon peaceably, pay legal expenses, oblige the leading rabblers to stand security for the others.

¹⁴ eg., SRO., SP 54/7/29, Hew Dalrymple, President of the Court of Session, to Duke of Montrose, 13 August, 1715: "...the Justices of the Peace are altogether Ineffectual in this Countrey...". For an assessment of the effectiveness of Scottish JPs, see, Ann E. Whetstone, *Scottish County Government*, Chapter 2.

¹⁵ Jean Gassion [alias Ogilvie] to Robert Harley, 16 September, 1707. HMC., Portland MSS., 15th Report, Appendix, part IV, [1897]. p 447.

¹⁶ 23 December 1712. George Lockhart of Carnwath to the Earl of Oxford. HMC. Portland MSS, Vol. V, p 252. Lockhart complained that all who had shown themselves to be anti-Union were excluded from appointment, thus leaving it to "rigid presbyterians, the creatures of the Squadrone and the inferior sort of gentry."

¹⁷ Rev. Hugh Maxwell of Tealing to Wodrow. *Wodrow Letters*. Vol. 1. 7 Nov.1709. pp.81-2. Since Skinner was his cousin, Wodrow tended to be ambivalent in his opinion of him.

Not surprisingly, by the end of 1709, Wodrow was writing despairingly: "We are daily threatened with attempts to restore patronages; and our heritors, unless they get all their will in planting parishes, talk very loud to this tune."¹⁸ After the general election of a few months later, it must have appeared to Wodrow such a prospect was now imminent.

South of the Border, a Tory ministry was formed under the leadership of Lord Treasurer Harley (he became Earl of Oxford in May 1711). Meanwhile the Scottish Jacobites, who had made it one of their stated aims to procure an Episcopal toleration, increased their representation in the Commons fourfold to approximately 16 out of the 45 seats. However, as Daniel Szechi has shown in his book on Jacobitism and Tory Politics between 1710 and 1714, Harley had no wish to antagonise Scots Presbyterian sensibilities¹⁹, and so it was not at all certain that their worst fears and the Episcopalians' best hopes were inevitably to be realised. On the other hand, Harley's difficulty was that in the House of Lords his working majority was vulnerable enough to give groups like the Scots there an inflated potential influence. The pro-Episcopal interest was well aware of the advantage and after deft presentation of their persecution by the Presbyterians, ready support began to be mustered among the Tory Lords, both Jacobite and Hanoverian, as well as the Bishops.

The catalyst for what was to bring success came in the form of the famous Greenshields case. This Episcopal clergyman had been inhibited from using the English liturgy in Edinburgh by the Presbytery, and in this they were supported

¹⁸ *Letters*. vol 1. 23 November 1709. to Hugh Maxwell.

¹⁹ D. Szechi, *Jacobitism and Tory Politics, 1710-1714*, John Donald [1984]. p 87

by the Town Council. The Council were then upheld by a judgement from the Court of Session, but on the 29th. December 1709, Greenshields took the case to the Lords, as an advertisement of the plight of those wishing to use the Anglican rite. Since the affair's publication came at a time when public opinion in London was already incensed by the prosecution of forty episcopal clergymen in May of that year²⁰, the eventual decision was perhaps unsurprising. In March 1711, the Lords found in his favour. Immediately, the Scots Jacobites were exultant, with their leader in the Lords, Lord Balmerino, declaring: "We have it in our hand to get presently a Tolleration, or the Act against Baptising rescinded, or patronages restored."²¹.

Harley, who had already tried to stop the appeal continuing²², moved quickly to head off the trouble. The Earl of Mar was "persuaded" to hang fire²³.

Meanwhile, the Queen was prevailed upon personally to intercede with the leading Scots agitators, Balmerino, George Lockhart of Carnwath and Sir Alexander Erskine of Cambo, the Lord Lyon king-at-arms. She succeeded in persuading them to desist from pursuing their intentions at least until the next

²⁰ HMC., Mar and Kellie MSS., London [1904]. p 482: Papers relating to the prosecution of 40 of the Episcopal clergy before the Judges of the Northern Circuit in May 1709. See also p 481, 12 March 1709, Earl of Mar to Lord Grange, where he says that in London the prosecution of the Episcopal clergy makes much noise.

²¹ Dalhousie MSS 14/352. 8 March 1711. [cited in W. Ferguson, *Scotland, 1689 to the Present*, (Oliver and Boyd. 1968), p 59]

²² J McCormick, *State Papers and Letters addressed to Wm Carstares*, [1774] p 79

²³ 15 March 1711. Mar, at London, to his brother, the Justice Clerk. HMC., Mar and Kellie MSS. p 489. The wording of this letter really only becomes intelligible if he had been bullied or bought off in some way: "A great many of our commoners here, with some of our lords, have had meetings where it was proposed to restore the patronage in Scotland. I must acknowledge that I think it is very reasonable that they were restored but I cannot think this is a seasonable time for doing it, therefore I have done all I cou'd to divert it at this time, tho' in a private way, and I'm not sure if I will succeed, but I hope I will."

parliamentary session, but at the same time committed the government to giving its assistance, should they choose to go ahead with the project after that²⁴. The Queen's arrangement would scarcely have been to Harley's liking, but it had bought him valuable time, and cover enough to allow him to write unblushingly to Principal Carstares with assurances that "there will be no attention given to any proposals which may justly alarme your friends, and particularly as to that affair of patronages. It was never entertaind and was really an invention suggested to two rash persons with a design to create jealousies, but it never was movd nor in the least countenanced or entertaind".²⁵ His Scotch Secretary, Queensberry, wrote similarly about patronage to Edinburgh Presbytery: "I can inform you that there is good reason to believe that no such thing will be attempted in either of the Houses of Parliament."²⁶ Carstares passed Harley's letter on to his colleagues in Edinburgh and they wrote back to the Treasurer that they were much comforted²⁷. Nevertheless, the same blandishments could not be repeated indefinitely. Later on that year, Carstares again circulated a letter, this time from Lord Dartmouth, the Secretary of State, expressing reassurances from the Queen herself. However, the credibility of the veteran churchman/statesman was not now what it had been. There was suspicion that his favoured position in London circles was compromising his attachment to the interests of the Church - or worse: "This letter, it's thought, was procured by Mr Carstares....He is this summer in

²⁴ *Letters of George Lockhart of Carnwath, 1698-1732*. SHS., Edin. [1989]. Editor, D. Szechi, p xxiv.

²⁵ 8 May 1711, Rbt. Harley to Principal Carstares. HMC., Laing MSS., vol II, p 161.

²⁶ Edinburgh Presbytery Minutes, 25 April 1711, SRO, CH2/121/8

²⁷ 22 May 1711. Thos. Blackwell to Rbt Harley. HMC Portland MSS. XV, part 4, p 695

London, and they say he is very bigg with the Treasurer. I hear he has a desing [design] to get his nephew, Mr Alexander Dunlop, made Professor of Ecclesiastical History at Glasgow, and a set salary for that out of the Bishops' Rents, and to send down a Presentation from the Queen."²⁸

Thus it was, that rather than be persuaded to wait passively, the Autumn Assembly Commission commissioned Carstares, Professor Thomas Blackwell of Aberdeen and Rev Robert Baillie of Inverness to take up residence in London and be ready, as events unfolded, to use every means at their disposal to lobby all who would receive them, on the Kirk's behalf²⁹.

The Passage of the Patronage Bill

Meanwhile, Harley (now Earl of Oxford) was faced with increasing problems at Westminster. Affronted by Parliament's refusal to allow the Duke of Hamilton to sit in the Lords under the patent of Duke of Brandon, the Scots peers had organised a boycott in protest. Oxford, despite his recent creation of twelve more peers, was being harassed by the Whigs over his peace negotiations with France, and needed the Scots lords if his administration was to keep going. Somehow the boycott had to be broken. Shortly afterwards, it did indeed collapse. The contemporary historian, Gilbert Burnet, had no doubt that this was achieved through bribery³⁰. Mar tried to defend himself and his fellow defectors by

²⁸ Wodrow, *Analecta*, Oct/Nov. 1711, vol.I.p 370. On the Bishops' Rents threat, see Szechi, *Jacobitism and Tory Politics*, pp 111-2, 158.

²⁹ Blackwell's correspondence from London can be found in the Miscellany of the Spalding Club, vol.I, Aberdeen [1841], pp 197-223.

³⁰ Gilbert Burnet, *History of his Own Time*. London. (Reeves and Turner. 1883). p 881

claiming that if they had not returned to the House, the chance for a toleration might have been lost for ever³¹. Whatever was the truth behind their motivation, the Scots' presence nevertheless ensured the legislation did at last become law (receiving the Royal Assent on the 3rd March 1712³²) and the government continued to survive for a further period.

To mention motivation here is also to focus on an important reason why the Scottish Jacobite element at Westminster did not consider halting their legislative ambitions at this point. According to Burnet, the principle of a Scottish Toleration Act was by most English perceptions entirely reasonable. However, the subsequent proposal that inroads should continue to be made into the Scottish Church establishment tended to be met with more circumspection. Indeed, in the Lords vote on the Patronage Bill, five Bishops voted against it, almost certainly through anxiety that by going too far, they might trigger a backlash against the Church of England in any future Whig government³³. That the Scots were nevertheless still determined to press for more, was due to a secondary campaign they were conducting. This was to heighten Presbyterian dissatisfaction with the Union³⁴, and thereby, through making out that he would dissolve it, enhance the Pretender's appeal. This is confirmed from Lockhart's writings: "...I pressed the

³¹ HMC. Mar and Kellie MSS., Mar to his brother, the Justice Clerk. 14 February 1712. p 497

³² MSS. of the House of Lords. Vol. IX, p 196. No. 2858, Episcopal Communion (Scotland) Act. On how the Act was problematical for both communions in Scotland, see Szechi, "*Jacobitism*", p 111-2.

³³ W. Cobbett, *Parliamentary History of England*, London [1806-1812], p 371. On probable motivation, see the Earl of Rochester's (alleged) views, Wodrow, *Analecta*, Vol 1, pp 321 and 322

³⁴ Burnet, *History*, p 882. As well as the Patronage Act there was the Yule Vacance Act [Ann.10, Anne Reg. p 563, vol.2, Session II]. It received the royal assent on the same day as the Patronage Act. These, Burnet says, were intended "only to irritate". Another plan was to have the Bishops' Rents, which since 1689 had been mostly diverted to the Kirk, resumed by the crown. [see above].

Toleration and Patronage Acts more earnestly, that I thought the Presbyterian Clergy would be from thence convinced that the establishment of their Kirk would, in time, be overturned, as it was obvious that the security thereof was not so thoroughly established by the Union as they imagined."³⁵

On the 13th March, permission to bring in a Bill for "Restoring Patrons Rights to Presentations in Scotland"³⁶ was granted by 152 votes to 82. Its proposers were the MP for Dumfriesshire, the Hon. James Murray, who eventually became, in exile, the Old Pretender's Secretary of State; the MP for Forfarshire, John Carnegie of Boysack, who came out in the '15, and the MP for Inverness Burghs, George Mackenzie of Inchculter, who was a Jacobite sympathiser³⁷. From this point the Bill's passage was swift, probably in order to be complete before the Assembly in May³⁸: on the 20th March, it was read for the first time; four days later its second reading was passed by 198 votes to 80; on the 3rd April it went to committee; on the 7th April, the third reading was passed by 173 votes to 76, and the Bill went to

³⁵ Lockhart Papers. Vol. I, pp 417-8; also Vol. II, p 20, where he underlines the need to convince Presbyterians that the best hope of dissolution was through King James.

³⁶ It is not clear who was responsible for the drafting of the Bill. GWT Omond, in his *Lord Advocates*, vol 1, pp 298-9, says that although he was not Lord Advocate at the time, Sir David Dalrymple was consulted about it by the government. This would seem likely, as they had already commissioned an "Advocate's Opinion Concerning the Patronage Acts" from him in 1710 [HMC. Portland MSS. vol.X, 7 July 1710. p 220]. Omond is also confident that Dalrymple was responsible for at least the clause limiting the time allowable for presenting to 6 months. This may have been designed as a means of helping the Church, but it was hardly a daring innovation.

Dalrymple was a pro-Union Court Whig, and in 1711, as well as his famous anti-patronage pamphlet, wrote several letters in the September to Dartmouth asking sympathy and understanding for the Kirk [SRO, State Papers, SP.54, Series II, no.4. RH2/4/300]. However, at the same time, his underlying motivations concerning patronage remain enigmatic. At the conclusion of his Advocate's Opinion on the subject [see above] he advised the government not to take the 600 merks compensation lest this caused complications in any subsequent restoration. The following year he published his anti-patronage pamphlet.

³⁷ D Szechi, *Lockhart Letters*, p 85, n.

³⁸ GWT Omond, *The Lord Advocates of Scotland*, Vol.I, p 299.

the Lords. Meanwhile, the Assembly Commission had been wrong-footed by the speed of the Bill's passage, and its three petitions on the subject (one each for Queen, Commons and Lords) only reached the London representatives on the 2nd April³⁹. The one for the Queen was at once dispatched, but as she had already told the three ministers on the 18th March⁴⁰ that, as far as she was concerned, it was purely a parliamentary matter, perhaps not unexpectedly she gave no response beyond a vague and generalised reassurance to the May Assembly of her protection. Since it was too late to present the Commons petition, the one to the Lords was lodged on the 11th April, only to be refused for being incorrectly addressed to the "Peers of Great Britain", instead of to the "Lords Spiritual and Temporal". Swallowing their scruples, the representatives changed the wording and resubmitted it the next day⁴¹.

In the debate, Gilbert Burnet, who sat as Bishop of Salisbury, opposed the Bill as strongly as he could. He had perceived the Jacobite ulterior motive, and as a staunch Hanoverian, was genuinely apprehensive of its implications⁴². However, his hybrid Presbyterian/Episcopalian background, studied moderatism and pedantic manner was out of sympathy with the mood of the House, and notwithstanding the Church's petition, the Bill passed by 51 votes to 29⁴³ before

³⁹ Thos Blackwell to Provost Ross, 3 April 1712. *Spalding Club Misc.* p 216

⁴⁰ *Ibid.*, p 215

⁴¹ Cobbett, *Parliamentary Debates*, p 370-1. On the representatives' discomfort, see Wodrow, *Analecta*, Vol II, p 48.

⁴² Wodrow *Analecta*, vol, p 174

⁴³ 15 April 1712, Sir Hugh Paterson, Whitehall, to the Justice Clerk, HMC., Mar and Kellie, p 498. He says the Bill was "...carried by near two to one, tho' they had gott the whole W[hig]s convinced to oppose it. The Bishop of Salisbury was one of the greatest sticklers against it, which I believe made it not goe the worse." On Burnet's character, see Introduction to his *History*, passim,

being returned to the Commons, where it was accepted as slightly amended⁴⁴, and sent to the sovereign. The Queen waited until the Assembly was over, then gave the royal assent on the 22 May. The Act had become law.

The Constitutional Position of the Act

The Assembly Commission's address to the Lords against patronage⁴⁵ made much of the argument that its restoration would be a clear violation of the Treaty of Union. Since the Act's passing, the same assertion as to its illegality has been repeated with a frequency too large to enumerate. It must be said, however, that detailed examination of the Parliamentary legislation settling the Church in 1690 and 1707, suggests there are grounds for taking a different view.

The Kirk's argument as to why the restoration was an infringement of the Union, is most clearly summarised in the petition to the Queen which the Assembly Commission also dispatched to its London representatives (see above) in April 1712: "...and though the Act of Parliament 1690, resettling Presbyterian Church government, was founded upon the Act of Parliament 1592, which bears a relation to patronages, yet the said Act of Parliament 1690, doth expressly except that part of the old Act, and refer patronages to be thereafter considered, which accordingly followed in the same Parliament 1690: whereby your Majesty may plainly

and J MacVeigh's *Scottish Family History*, Dumfries [1891]. vol I, p 492

⁴⁴ J. Cunningham in his *Church History of Scotland*, Edin. [1859] p 362, says that through intervention by the Duke of Argyll, the Lords amended the Bill so that the presentee should not just be "qualified", but Presbyterian. (See also RH. Story, *William Carstares*, [1874], p 341). The MSS of the House of Lords, vol IX, p 235, confirms that the amendment was agreed by both houses, but reproductions of the Act usually retain the original wording, "qualified".

⁴⁵ Quoted in full in RH Story's *Carstares*, pp 338-340, and summarised in HMC., MSS. of the House of Lords, Vol IX, p 235.

perceive, that the abolition of patronages was made a part of our church constitution, enacted by the Act 1690: and that this Act 1690, with all other acts relative thereto, being expressly ratified, and for ever confirmed, by the Act securing the Protestant religion and Presbyterian church government, and engrossed as an essential condition of the ratifications of the Treaty of Union,...; the said Act abolishing patronages must be understood to be part of our Presbyterian constitution, secured to us by the Treaty of Union for ever."⁴⁶

The weakness in the Kirk's case (and the above implies that they were indeed aware of it) was that the 1707 Act based itself on the Church settlement as contained in the APS 1690 c.5, which revived the 1592 Church establishment, "except that part of it relating to patronages, which is hereafter to be taken into consideration". That "consideration" eventually materialised as the Act of abolition entitled APS 1690 c.23. The crucial point, however, was that the 1707 Act did not specifically mention the 23rd. Act, only the 5th. one. The Kirk was therefore left to base its claim on the clause which stated that the 5th. Act was confirmed, "with the hail other Acts of Parliament relating thereto, in prosecution of the declaration of the Estates of this kingdom, containing the Claim of Right".⁴⁷ Certainly, this phraseology provided a case to argue, but it does raise the question whether such vagueness could ever establish unassailably the abolition of patronage as part of the Kirk's "Presbyterian constitution".

⁴⁶ Re-printed in Select Anti-Patronage Library, Edin.[1842]. "A Collection of Important Acts etc." p 25

⁴⁷ Twenty-five years later, the Kirk was still claiming that this clause "appears evidently to comprehend the said 23rd. Act 1690." - see the "Resolution of the General Assembly of the Church of Scotland, upon the report of their commissioners sent to London, to endeavour the repeal of the Act 10, Anne, reimposing patronages", 22 May 1736. [quoted in Anti-patronage Library, A Collection of Important Acts etc.,p 30]

In 1957, Professor T.B. Smith gave an assessment of the 1707 Treaty from a legal perspective. In his view, there are indeed grounds for maintaining that legislation such as the Toleration and Patronage Acts are reconcilable "with the letter if not with the spirit of the Union", and gave as his reason for the latter that: "The Act for Securing the Protestant Religion (which formed part of the Union agreement) referred to the Act 1690, c.5, but not to c.23, which had dealt separately with patronage."⁴⁸

Clearly, it is not possible to be conclusive on either side of the debate, since it does seem to hang upon the issue of interpretation.⁴⁹ It can only be stated with certainty that whether or not the substance of the 1712 Act infringed the Union constitution, the principle that the UK parliament was able to legislate thus on Scottish Church affairs remains undeniable. That this truth did not go unnoticed at the time of the Union negotiations, is well illustrated by the note of satisfaction struck by the Earl of Stair in a letter written to Harley, : "This day we have finished our Act for the security of our church, without making any alterations for [i.e., as a result of] the Address from the Commission of the Kirk to which they were ill advised, though that doth give them full assurance of the continuance of their government after the Union, yet there is no insinuation of Divine right to check the Church of England, nor is there direct exemption from the power of the

⁴⁸ TB. Smith, "The Union of 1707", (Stevens, London), article reprinted from *Public Law*, Summer 1957, p 112.

⁴⁹ The 1711 pamphlet, "An Account of Lay Patronages in Scotland etc.", supposedly by Sir David Dalrymple, says of the Treaty of Union: "Is it suitable to the fair execution of that Treaty, that.....things are interpreted in the strictest manner to the prejudice of [the C of S]?" p 12

Parliament of Britain in which we found you very nice?"⁵⁰.

⁵⁰ 12 November 1706. Earl of Stair, Edinburgh, to Rbt Harley. HMC. Portland MSS. Vol. XV, pt. 4, p 348. It is of interest to compare Stair's complacency with Wodrow's regrets of 4 years later: "But I well remember that, in the Union commission, that sat in time of Parliaments that concluded it, we applied again and again for a solid security against a toleration, patronages, and the English service; but in vain. Our friends in the house were enraged with us, because we could not get our light brought up to believe their act for security was fully sufficient, and not a clause in it would they alter...". (*Letters*. Vol I, Wodrow to Rev Hugh Maxwell, 26 October 1711. p 249.)

CHAPTER III.

The Situation in the Parishes Before and Immediately After the Act.

It must not be forgotten that, apart from its value as a political pawn, there were more personal motivations which consistently attracted landowners into favouring a return of patronage. These personal sensibilities are succinctly expressed in the Diaries of the Rev. William Mitchell, who was sent by the Assembly Commission to London in 1717 to lobby for a redress of the Kirk's grievances. On the 18th February, he dined with Roxburghe, Montrose, Rothes and Jerviswood, and put to them the Assembly Commission's objections to patronage. Their defence against its repeal was, "...that many would think it was a giving the church too much power, which she had not well used in setting elders against their masters".¹ In other words, the factors of fear and personal offence had a strong bearing on the perceptions of the gentry and nobility. For several reasons, it is probably true to say that there was some justification for such an attitude.

In some areas (most notably the south and west) a hardline popular belligerence, had repeatedly surfaced since the Revolution, and frequently to the detriment of the Church's authority. Thus, when Cameronian partisans like John Hepburn of Urr (1705) or John MacMillan of Balmaghie (1703) were deposed from their charges, their congregations' support enabled them to flout the Church's sentences. In the case of Balmaghie (Kirkcudbright Presbytery), not only did MacMillan's successor, William McKie (he was also the patron's chaplain), find

¹ *Diary of the Rev. William Mitchell, Minister at Edinburgh, 1717*, in *Miscellany of the Spalding Club*, Vol I, Abdeen. [1841]. p 228.

himself denied access to church, manse and stipend, but he was subject to repeated violence and abuse. Only MacMillan's voluntary retirement eventually alleviated the situation. Again, antipathy towards the Abjuration Oath² and those who signed it (or who simply consorted with those who had), so inflamed popular sentiment that clergymen had to think carefully before standing against the tide: "I find in the West and South part many of the ministers would take the oath, but the people are so enraged at them that they dare not..."³. When clergy like Robert Black of Lesmahagow 2nd. Charge, or John Scott of Carluke (both Lanark Presbytery) did subscribe, elders and people together boycotted their ordinances⁴. It was not, of course, the case that the Kirk had ever promoted the idea of ministerial election purely by the generality of the congregation. Nevertheless, such displays of intimidatory power by congregations, coupled with the Church's frequent weakness and vacillation in responding to them, hardly served as an inducement to landowners to prefer the 1690 election system to one which both discouraged popular debate and emphasised their own status and authority within a community.

It was not, however, on the purely rational level that most patrons ultimately decided their stance on the patronage issue. The visceral conviction that the rights and privileges of property ownership should extend uninterruptedly through a

² The Toleration Act of 1712 had added to it a clause requiring subscription to the Oath of Abjuration. This was intolerable to some Presbyterians in that it was itself linked to the English Act of Settlement of 1701, which required the monarch always to be a member of the prelatial Church of England.

³ October 1712, HMC Portland MSS, vol V, Daniel De Foe to the Earl of Oxford, p242. See also Wodrow, *Analecta*, vol. II, pp 109-113; and *Letters*, vol. I, 328-9.

⁴ Wodrow, *Letters*, vol II, p 69 n.; *Analecta*, vol.II, p 121; *Fasti*.

local magnate's sphere of influence has already been discussed above. It was seen how the status of the heritor, which had been growing through the 17th Century, was consolidated by the legislation of the 1690s. According to T.C. Smout, the turn of the century did not halt the process: "At the start of the 18th Century the claims of the landed leadership seemed rather strengthened than diminished by recent events [the Revolution and Union]...the Patronage Act of 1712 confirmed the ministers of the Church of Scotland as creatures of the heritor."⁵

Whether or not the local magnate wanted the parish incumbent to be his creature, it is not difficult to find settlement cases from the final years before 1712, which show he at least considered the disregard of his ministerial predilections to be a personal affront. An outstanding example was the settlement of Crawfordjohn, where the Earl of Selkirk was chief heritor. Robert Lang, for whom the Earl had "a particular distaste"⁶, had been ordained to the parish, *jure devoluto*, on the 9th March 1709. Since then, the Earl had denied him access to the manse and refused to pay the stipend. The case came before that year's Assembly. The visiting English dissenter, Dr Calamy⁷, gives an account of how he joined in the lobbying of Assembly commissioners not to "disgust their nobility", when, by having the settlement rescinded, they were able to gratify them. At some other time, the Assembly might well have succumbed to the pressure to back down, but for the Assembly of 1709, the matter of the church's

⁵ T.C. Smout, *A History of the Scottish People, 1560-1830*, Collins, London, [1969]. p 280

⁶ Edmund Calamy, *An Historical Account of my own Life*, London [1829]. vol 2. p 153

⁷ The *DNB* says of Edmund Calamy (1671-1732) that, "his journey to Scotland in 1709, on the invitation of his friend Principal Carstares...gave him an opportunity for preaching moderation in the leading pulpits of the North."

intrinsic power was too contentious an issue to allow such an outcome: "That which they [the younger members of the Assembly] seemed to agree in was a formed resolution to put it to the trial, whether their Presbyteries had in reality any power. They said it was evident (whatever might be pretended) they had no power at all, if a nobleman was at liberty to control them at his pleasure. I told them, I thought they might easily strain that string until it cracked; but there was no moving them."⁸ The Assembly attempted some kind of compromise by continuing Lang at Crawfordjohn, yet declaring him transportable (ie., eligible to leave as soon as he received a call). Nonetheless, although he was quietly transported to Newburgh (Cupar Presbytery) two years later, such offence was taken amongst the nobility, that the case was later considered by some to have been the catalyst for the attempt to restore patronage later in the year.⁹

For the Duke of Queensberry, the proposed settlement of Closeburn (Penpont Presbytery) was not only a source of offence but severe embarrassment. Described by Thomas Boston as the home of "Old Dissenters principles",¹⁰ the parishioners attempted to call a minister of compatible views, George Mair of Culross 2nd. Charge (Dunfermline Presbytery), when the charge became vacant in 1710. Although the Duke was not the patron, yet given the proximity of the parish to his Drumlanrig estate, the fact that Mair's wing of the Church regarded the Union as anathema whilst he the Duke had been one of its prime movers and was now Scottish Secretary of State, the impropriety of the situation was obvious.

⁸ Calamy, p 154

⁹ Wodrow, *Letters*. vol. I, 21 May 1711, p 235

¹⁰ *Memoirs of the Life, Time, and Writings of Thomas Boston, AM.*, Ed. GH. Morrison, Edin. [1899], pp 228 and 341

However, the Duke could only resist the settlement on the spurious argument that the callers should first have taken the Oaths. The case raged at great length before all the Church courts, provoking in Wodrow's eyes the worst chicanery he had ever seen, at the 1711 Assembly¹¹. The Duke's death in July 1711 spared him the indignity of being associated with the dispute all the way to its final conclusion in September 1712.¹²

Again, if former patrons could no longer enjoy the uninhibited right of having their choice settled by a Presbytery, it was not uncommon for them to assert their position by some other means, albeit more petty, regardless of whether the Presbytery had attempted to accommodate the settlement to their preferences. In the vacancy at Inchinnan [see also above] for example, even though the Presbytery of Paisley punctiliously courted his opinions, the Duke of Montrose adopted a manner of studied intractability, saying he would think over "who should be the man", then refusing to provide a name for three months, while the Presbytery fretted. Then, when his choice, Matthew Crawford, was rejected by the great majority of the elders and heads of families, he refused all appeals to refrain from insisting on the call. Eventually, after a year of trying to find some accommodation, the Synod finally decided to favour Montrose, and Crawford was duly ordained on the 11 May 1710.¹³ Wodrow later said of the case: "The

¹¹ *Letters*, 21 May 1711, vol. I, p 234-5

¹² The call was ultimately defeated basically through the reluctance of Mair's future colleagues in the Presbytery to have him in their midst. [Wodrow, *Analecta*, Vol. II, p 91]. The charge was eventually filled in 1718 by John Lawson.

¹³ SRO, Paisley Presbytery Minutes, CH2/294/7, 4 August 1708-10 May 1710; Synod of Glasgow and Ayr Minutes, CH2/464/2, April 1709-May 1710. Matthew Crawford later became Professor of Church History at Edinburgh University.

blunder in settling him over the belly of the people of Inshinnan was an error of the first concoction"¹⁴.

It had been a similar situation at Duddingston (Edinburgh Presbytery) in 1704, involving the dowager Duchess of Argyll. When Edinburgh Presbytery's representative went to moderate the call to David Malcolm, probationer, he produced the standard draft of a call¹⁵ only to be presented with one already drawn up and signed by the Duchess. This was the only one the callers would subscribe. When Presbytery considered this call at their meeting of the 12 July 1704, they found that the Duchess had omitted the phrases which promised subjection to the incumbent's ministry as well as all due encouragement and maintenance. When Presbytery approached her to have them inserted, she sent them packing. Matters were aggravated by Presbytery then delaying its next step, since this gave an opportunity to the Squadrone interest among the heritors, headed by Sir Patrick Hume, to create embarrassment by organising a protest against the legality of the call. This effectively finished the chances of the Argyll family backing down, despite Presbytery's despairing appeals. The Duke wrote to the August meeting that he had no wish to fall out with them, but since his mother insisted upon the call, he hoped they would not put the Argyll family "in the balance with any that now appears against it, but grant their concurrence." Meanwhile, a mediator sent to the Duchess reported she was still deeply offended and had said that it was "needless to discourse her" until Presbytery gave way. At

¹⁴ *Letters*, vol. II, Wodrow to Rev Wm. Wright, Kilmarnock, 31 [sic] September 1718, p 390.

¹⁵ For the text of a standard call, see Steuart of Pardovan's "Collections", Book I, p 183

this Presbytery's nerve expired and the call was sustained.¹⁶

The above examples show how strongly, if not actually irrationally, landed proprietors could feel about the planting of parishes on their estates. As long as the selection process was outwith their direct control, there was always the possibility of some affront to their dignity being effected. It is probable that the Church was not unaware of its vulnerability in this respect. When a comparison is made of the different Overtures concerning the planting of vacant churches which the Assembly sent down to Presbyteries first in 1705 and then in 1711, it can be seen that in the latter, a greater space and attention was given to the role of the heritor¹⁷. Given such a trend continuing, it is probable that a regularising of the election procedure in such a way as to mollify most heritors would eventually have evolved. However, by 1711, the time had passed for such possibilities to be of use.

The Reaction of the Church to the Act:

As the time of the 1712 Assembly approached, Oxford wrote anxiously to Carstares, asking what could be done to keep it from excessive unrest.¹⁸ Between them they arranged for Atholl to be Lord High Commissioner, and he in turn managed to have the moderate William Hamilton, Professor of Divinity at Edinburgh University, elected Moderator.¹⁹ In the event, the Assembly was

¹⁶ SRO., Edinburgh Presbytery Minutes, CH2/121/5, 11 August 1704. Presbytery decided the defective clauses could be made up by the people's consent at the ordination.

¹⁷ SRO, Assembly Papers, CH8/191 and CH1/9/10.

¹⁸ Story, *Carstares*, p 350.

¹⁹ HMC, Portland MSS, vol. V, p 172, Atholl to Oxford, 2 May 1712

intimidated by the way the tide was running, and favouring caution, transferred to the Assembly Commission the responsibility of deciding what to do about the grievances of Toleration and Patronage.

Convening immediately after the Assembly, the Assembly Commission also found itself unable to make up its mind what was the best course and so stalled until its July meeting. Meanwhile, the anxiety being felt in the parishes made itself known. The Synod of Angus and Mearns wrote urging the Commission to make sure that this time it took the issue of presentations into its "serious consideration and give as full and plain advice as possibly you can...how to behave when the patrons offer their presentations".²⁰ Aberdeen Synod wrote nine days later expressing their distress and confusion. Some of their number argued for presentations being simply ignored, while others stood for popular consent. There was therefore need of "very particular and serious advice from the Commission in this matter"²¹. The Commission could not ignore the letters, but, as Wodrow reported, there was wide divergence as to what advice could be given. A way out began to emerge when it was suggested that it was properly the task of the Assembly to make general rules for the Kirk, and not the Commission, and that its wisest course was therefore to wait and see. The resulting decision was that in the meantime advice would be given in individual cases, if sought, but otherwise judicatories should keep out of trouble with patrons, and hold fast to all other Assembly Acts since the Revolution: "Further than this it was not thought

²⁰ SRO, General Assembly Papers, CH1/2/32, Pt. 2, ff 167-8, 2 July 1712.

²¹ Ibid. ff. 174, 11 July 1712, Synod of Aberdeen to Carstares.

safe to goe"²².

There were two reasons for this circumspection. First, the Abjuration clause in the Toleration Act had put the Presbyterian and Episcopal communions in the same balance. If the Kirk's clergy both refused the Oath and furthermore renounced Parliament's authority in relation to its Act on Patronage, an enormous advantage would then be handed to their rivals, who would then certainly qualify en masse, and attempt to show themselves as the loyalists to state and crown²³. The door would then be opened for patrons to fill vacancies with Episcopal incumbents.²⁴ Secondly, if the Assembly Commission handed down rules which were subsequently suppressed by a Church or even civil court, then the damage to the Kirk's authority and standing would be much greater than if it were left to individual presbyteries to hazard their own regulations.

Although the Commission's reasoning was entirely defensible, nevertheless its leaving Presbyteries each to work out their own response, was to expose the church to considerable risk. Given the diversity of opinion within the Church on which course was advisable, any Presbytery, by overreaching itself in either

²² *Analecta*, Vol.II, p 71

²³ HMC, Portland MSS, Vol. V, p 230, Alexander Cunningham to Oxford, 3 October 1712: "The commission of the Kirk has done nothing, therefore, my Lord, they have done no ill, which their enemies wait for. The Episcopalian clergy will take the abjuration if the others refuse it in any number..."

²⁴ In areas where there were numerous vacancies, the reversal of fortunes would have been dramatic (although it can hardly be assumed that enough Episcopal candidates would have been readily available to fill them). The Presbytery of Sutherland, for example had only one Presbyterian minister active. Dingwall was little better. [SRO, GA Papers, CH1/2/32. Pt. 2, ff. 165, Letter from Presbytery of Tain to the Assembly Commission, 10 September 1712.]

compliance or resistance, could well make matters worse.²⁵

Much therefore depended on the manner and extent to which patrons would use their restored rights in the wake of the Act.

The First Presentations:

According to R.H. Story in his life of Carstares, "The restoration of patronage was indeed fated to work much mischief in the future; but its immediate results were insignificant."²⁶ Assuming that by "immediate" Story is referring to the first two or three years after 1712, then it must be said that his conclusion is a surprising one. Of the controversial issues which came before the Church courts during the period, some of the most important were thrown up by settlement disputes.

Whereas it may be possible to argue against their long-term significance, what invests them with particular interest is that they happened at a time when the Kirk was profoundly insecure and uncertain, yet because of them it was stimulated into making up its mind over several matters which, if they had been left unresolved, would have done it a disservice. Of these disputes, two were outstanding: the Crown presentation of William Duguid to Burntisland, and the Duke of Atholl's presentation of Patrick Stewart to Dull, both in the Autumn of 1712.

The issues raised by the two cases were, in the first, the fundamental one of whether or not the Church had the right to accept or reject a presentee on the

²⁵ Wodrow to Rev John Williamson, Musselburgh, 12 January 1712; *Letters*, Vol. I, p 370: "I humbly think it is the lesser evil for parishes to lie desolate for a little till either Assembly or Synod, to whom giving rules in this case are competent, shall determine, than for Presbyteries to run into what may bind this burden upon us for ever."

²⁶ p 351

basis of his moral fitness; in the second, it was over how far the Assembly's Lord High Commissioner could be trusted to serve the Kirk's interest when it came to the administration of Crown presentations.

Despite his being, to say the least, a colourful character, the origins of William Duguid, the presentee to Burntisland, are obscure. However, it would appear that after converting from Catholicism, he became a protege of the evangelical James Webster of the Tolbooth Church in Edinburgh. Webster soon began to harbour doubts about Duguid's probity, yet before he was able to alert the Church to his fears, Duguid became embroiled in a competition of calls for the vacancy at Burntisland, he being the candidate of the strong Jacobite element in the burgh.²⁷ When the affair came before Kirkcaldy Presbytery, they proposed to resolve matters by setting aside both calls. The Jacobite interest however, appealed to the April Synod. When Synod upheld the Presbytery, that decision, too, was appealed to the Assembly.

It was while the Assembly Committee for Bills, References and Appeals was considering the case that aspersions against Duguid's character first began to be voiced publicly²⁸. The matter was passed to the Assembly Commission for examination, but since at their meeting of the 16th May, no one appeared to give

²⁷ Wodrow, *Analecta*, Vol. II, p 199. The calls came before the Presbytery of Kirkcaldy on the 22 January 1712. The other candidate was the evangelical Ebenezer Erskine of Portmoak.

²⁸ On the Burntisland case as a whole, see: SRO, Assembly Papers, CH1/2/32, Pt. 3, ff. 230ff; Edinburgh Presbytery Minutes, CH2/121/9, 4 November 1713; NLS, RY.1.5.59-68, "A Vindication of the Church of Scotland from the Groundless Aspersions of Mr William Dugud", pamphlet by Andrew Lowe [1714]. By the end of the case, the charges accumulated by Duguid included: repeated drunkenness and vomiting, "dancing thro' the floor", playing the bagpipe, sexual assault, financial impropriety, attempted rape, indecent exposure, urinating in public and French kissing. Witnesses also claimed he swore while playing bowls, drank the health of the Duke of Bervie [the Pretender] and said it was lawful to take money from the devil.

evidence against him, nothing could be done but to send it all back to Kirkcaldy Presbytery in the hope that something could be resolved there.

At their meeting of the 14th. August 1712, however, the Presbytery unexpectedly found themselves confronted with what must have seemed the ideal opportunity to be rid of what had become an awkward situation. Duguid appeared before them and offered to leave the area in return for a character testimonial and extract of licence. The chance was too good to miss, and despite listening to more evidence of improper conduct against him, the Presbytery granted the testimonial on the 11th September, although they did accompany it with a caution as to future behaviour.

Kirkcaldy Presbytery's action was a naive and costly mistake. Duguid, who had no intention of leaving, reappeared on the 27th November armed now with a Royal presentation to Burntisland. This had been obtained by Sir Alexander Erskine, the Jacobite MP for Fifeshire [see above], who had frightened Oxford into supporting it by reminding him how he had lost several Town Councils, and that if the presentation were not sent quickly, "...the putting in a minister there falls jure devoluto in the presbytery's hands, and if that be you may be assured from me you will infallibly lose that town likewise."²⁹

Meanwhile Duguid's reappearance had put the Presbytery in an extremely awkward position, for by granting his testimonial of fitness, they had undermined their best means of stopping the presentation at his ordination trials, namely, that he was morally unfit. The Presbyters' next step however, was to compound their

²⁹ HMC, Portland MSS, vol. V, Alexander Erskine, Lord Lyon, to the Earl of Oxford, 20 October, 1712. p 238.

first error by making another. According to the practice of the Church, before taking a candidate on ordination trials, a Presbytery should first notify its neighbouring judicatories, and then wait for six to eight weeks before proceeding, lest any objections be received. However, being now fearful of what their neighbours' replies might reveal, Kirkcaldy went ahead with Duguid's trials immediately. They passed him on two of his trials³⁰, and then tried to stall for time. Duguid, sensing this, lodged an appeal with the Synod, who, on receiving it, were aghast to discover what Kirkcaldy had done. After issuing a severe rebuke to its inferior court, Synod then turned its attentions to Duguid, about whom further disturbing reports had meanwhile been received.

Duguid's argument before the Synod was that anything less than a formal libel against him was irregular, and therefore the Church's continuing to act against him in the way it did, could only be motivated by antipathy to his legal presentation. Here, and to the conclusion of the case, the Jacobite interest made much of the claim that by impugning Duguid's character unjustly (after all, he had a testimonial), the Kirk was in reality striking at presentations. In reply, the Church insisted that its concern was exclusively to do with discipline - in which their proceedings had been entirely regular - and countered that it was Duguid who had shown disrespect for presentations by his scandalous behaviour after, as well as before, the issuing of his own. In particular, they referred to the deposition by his landlady, that following an indecent assault upon her, she had said to him he must have given up all thought of the ministry, since he acted the way he did,

³⁰ Presbytery pointedly gave him as one of his trials an exegesis "de jure patronatus in Ecclesia Dei". GA Registers, St Andrews University Library, 7 May 1713.

whereupon he had answered: "I laugh at all these things for now I have the Queen's letter." ³¹

The case continued, amidst some uncomfortable publicity for the Church³², until the 28th September 1713, when Duguid finally deserted it³³.

Given the volume and range of the evidence against him, it is remarkable that the Church could not dispose of Duguid more swiftly than it did. That he was able to spin out the process for so long can only be partially ascribed, however, to his own tenacity and the ineptitude of Kirkcaldy Presbytery. In the Kirk's response to the case there is a detectable sense of insecurity and caution: a fear of bringing more harm upon itself through one ill-perceived decision. Wodrow's description of the Assembly Commission of the 3rd. December 1712, and how it laboured over the Burntisland case, illuminates this disarray. Through a desire to play safe, the Assembly Commission had previously adopted a policy of avoiding general statements about settling parishes and of restricting itself to giving advice only on individual cases [see above]; it now took fright at doing even that, lest such guidance be taken as a general rule, and therefore an insult by them against the source of the presentation, which in this case was the Queen³⁴.

On the other hand, however, it must be said that for all the Church's internal

³¹ Edinburgh Presbytery Minutes, SRO, CH2/121/9, 4 November 1713

³² Duguid's supporters also petitioned Parliament and the Queen. see Assembly Papers, CH1/2/32, ff 230 ff. The 1713 GA sought to publicise its own version of the case by giving a report of it to the LHC, with the request that he disseminate it as best he could. [*Analecta*, vol. II, p 200]

³³ He had previously been deprived of his licence by the Assembly on the 9th May 1713, mainly for his "insolent carriage to the supreme Judicatory of this church". - GA Registers, St Andrews University Library, 9 May 1713.

³⁴ *Analecta*, vol.II, p 120

divisions, at no time did any court show it was prepared to weaken on the principle of whether it had the right to investigate and judge Duguid's character. On this issue a firm stand was taken, and by doing so, it is arguable that the Kirk established an important point, for although it cannot be denied that the presentee for Burntisland was an exceptional individual, nonetheless it is significant that no candidate after him imitated his attempt to use a presentation as a means of constricting the Church's examination privileges.

As already portrayed by Wodrow in his report of the chaotic December Assembly Commission, the church by the end of 1712 was undergoing a crisis of confidence.³⁵ At the same time, however, there did exist a glimmer of hope that some machinery might yet be created for exerting a restraining influence on patrons. On the 28th June Carstares had written to Oxford warmly commending an idea that the Treasurer had once expressed to him that a Special Commission might be set up to supervise presentations to ministers for vacancies in the Crown's gift³⁶. Since Oxford appeared to be in no hurry to pursue the project, Carstares wrote again two months later, suggesting that in the meantime the government could always exercise some "connivance" and let its patronage fall to Presbyteries, *jure devoluto*.³⁷ However, Oxford, was too astute to tie his hands

³⁵ "Others in the heat of debate, alleged some were soe cold and indifferent, that if a collation were sent to a Bishoprick, Ministers would not declare against it, because contrary to lau!" [ibid.]

³⁶ HMC., Portland MSS, vol. X, p 276. Sir James Steuart carried the idea further by suggesting that since some patrons had dubious entitlement to their patronage, the Queen should be considered "Universal Patron", and that no one else could present unless they were first approved and "instructed". [Ibid. Sir James Steuart to the Earl of Oxford, 28 March 1713, p 289]

³⁷ Ibid., 19 August 1712, p 277

in either manner - especially during what was a delicate period for him, politically. Instead, he ignored Carstares and proceeded to issue a series of Crown presentations, first, to Duguid, on the 17th November 1712. The second was for James Braidfoot, chaplain to the Earl of Hyndford, to Dunsyre in the Presbytery of Biggar, (20 November 1712), and the third, for John Meldrum, to Kettle in Cupar Presbytery (22 January 1713).³⁸

However, the Treasurer at the same time skilfully did nothing to discourage the hope that some kind of Special Commission, probably comprising four or five well-disposed nobles and officers of state³⁹, might yet be created.

Understandably, many in the Kirk saw the Lord High Commissioner as the obvious centrepiece to such a body - including the Lord High Commissioner himself, the Duke of Atholl⁴⁰. Superficially, there was every reason for a man like the Duke (who held the position in 1712, 1713 and 1714) to command the confidence of the Kirk. He had opposed the Union⁴¹. He had also voted against the Patronage Act, and indeed affected to be so distressed by its passage that he was, he claimed, uneasy at accepting the Commissionership. However, there can be little doubt that, whatever was his public posturing, Atholl's personal motivation never deviated from that of self-interest. His vote against patronage was of course meaningless - Ilay for example had done the same, although

³⁸ These are recorded in the "Register of the Privy Seal", SRO., PS.3./7.

³⁹ Wodrow to Linning, 2 November 1714, *Letters*, vol.I, p 608.

⁴⁰ HMC., Portland MSS, vol. V., Duke of Atholl to Oxford, 12 May 1713. p 291.

⁴¹ Carstares reported that this gave him "great influence upon some of the warmest ministers". Portland MSS., vol. X, Carstares to Oxford, 15 May 1712, p 433.

privately declaring he was in favour of it⁴². Moreover Atholl's ostentatious scruples against taking the Assembly appointment did not distract him from a keen interest in the financial and other rewards he expected to receive from it⁴³. Most of all, his behaviour over the settling of the vacancy at Dull on his estates, revealed the extent of the church's misplaced trust that he would put its welfare before his own.

The dispute over Dull hinged upon the bitter offence felt by the Duke at those who had taken advantage of his absence from Scotland to organise a call for the parish on its becoming vacant in the Spring of 1711. Atholl considered this action to be an insult to his authority and, allied with the Earl of Breadalbane, he set about undermining it. The ringleaders of the opposition were the Laird of Grandtully and the agents for the underage Sir Robert Menzies, Lady Menzies (his mother) and Captain James Menzies (his tutor)⁴⁴. The candidate was a relative of the Menzies family, Thomas Menzies.

Atholl's immediate response was to dispute the call before the Synod of Perth and Stirling, while in the interim investigating who had the right of presentation for the parish. On discovering that it was in fact himself, in the Autumn of 1712 he deserted his appeal and instead presented the Rev. Patrick Stewart of Auchtergaven, who was the brother of Stewart of Bonskeid, one of Atholl's

⁴² C. Jones and G.S. Holmes, *The London Diaries of Wm. Nicolson, 1702-18*. OUP, [1985], 5 March 1711, p 555

⁴³ Wodrow, *Letters*, Vol. I, p 274, Letters from the Assembly to his Wife, 1, 30 April 1712; HMC. Portland MSS, vol. V, Atholl to Oxford, 2 June 1712, p 179; the following year it was the same: "...he will not accept of the post of Commissioner again, if your Lordship do not obtain his being gratified either as to former or new demands...", HMC, Portland MSS, vol. X, Carstares to Oxford, 28 March 1713, p 290.

⁴⁴ John, 7th Duke of Atholl, *Chronicles of the Atholl and Tullibardine Families*, Edin. [1908], p 142-3

vassals. However, Stewart, like the Duke's previous candidate⁴⁵ refused to agree to the move, whereupon Atholl was constrained to return once more to his appeal, although he continued to insist that no one could be settled without his presentation. The Dunkeld Presbytery of October 1712, however, took the opposite opinion, and decided that with the refusal, the way was now clear for them to continue the settlement of Menzies.

Admittedly Dull was a charge of some size and status, yet it is illuminating to observe how personally a landowner like the Duke took the matter of being thwarted as to its planting. On receiving the Presbytery's sentence, he told Breadalbane that he had immediately applied to the Lord Advocate for advice, so that "there shall be nothing wanting on my part to hinder our indiscreet neighbours and ministers from insulting us". In the same letter, he identified the Rev. Archibald Campbell of Weem as their chief enemy in Presbytery, asked if any rumours of impropriety could be proved against him, and concluded, "I doubt not we shall fall on a way to get him out of that parish, and I shall concert with your Lordship at our next meeting not to pay him any stipend..."⁴⁶. Again, even though shortly afterwards, the callers of Menzies had a change of heart and offered to drop their design, he announced it was too late: he would not only insist on his rights, but lock up the church and apply the vacant stipend to building a new one in another part of the parish.⁴⁷

Atholl's trump card, however, was the Assembly. Dunkeld Presbytery set the

⁴⁵ The Rev. Adam Ferguson of Crathie. The claim in the Assembly Registers for 5 May 1713 is incorrect in stating that he was presented after Stewart.

⁴⁶ SRO., Breadalbane MSS., GD 112/39/267/1/1. Atholl to Breadalbane, 3 October 1712

⁴⁷ SRO. [GD 112/39/267/6/1]. 10 October 1712.

date of Menzies' admission for the 7th. May 1713, but on the 5th., the Duke's commissioners appeared at the Assembly and lodged a petition for a sist of the settlement. Despite some sarcasm from Menzies' supporters as to the contradiction between the Lord High Commissioner's gracious speech from the throne and his activities over Dull, the Assembly granted the sist and referred the cause to the Assembly Commission. "Great folk have great power", Wodrow later remarked in disgust.⁴⁸

Dunkeld Presbytery nevertheless refused to receive the sist and, despite being locked out of the church, proceeded to settle Menzies. When the issue came to the Assembly Commission following the Assembly, the members dodged making a decision, to Wodrow's further dismay: "...a great deal of, I doe not say partiality, but a considerable biasse, appeared to[wards] her Majesty's Commissioner"⁴⁹. By this stage, political rivalry between the Atholl/Breadalbane nexus and the Duke of Argyll had also begun to colour the affair⁵⁰. The result was a titanic struggle at the August Assembly Commission, where, after a debate of nearly three days, it was decided to confirm Menzies' settlement, although Presbytery was to be rebuked for its conduct. Atholl's response was to appeal to the House of Lords, which, although the project finally came to nothing, was hardly fitting conduct for a Lord High Commissioner of the Assembly. After this, the Duke was reappointed Lord High Commissioner for another year, but his actions effectively killed off the idea of a Special Commission, built around the office of Lord High Commissioner,

⁴⁸ *Letters*, Vol.I, To his wife from the GA, 5 May 1713, p 452.

⁴⁹ *Analecta*, vol.II, p 201.

⁵⁰ *ibid.*; for the antagonism between Argyll and Breadalbane, see HMC Portland MSS., vol. XV, pt 4, Jean Gassion [alias Ogilvie] to Harley, 16 September 1707, p 447.

being erected.

It must however be added that, regardless of Atholl's behaviour, it is difficult to envisage that the Special Commission would ever have been established. Oxford had by this juncture learned the vital importance of maintaining a coherent and visible channel of political patronage in Scotland. It was the only effective way of keeping a grasp on Scottish politics, and after the death of the last Scotch Secretary, Queensberry, in July 1711, there had been a noticeable slackening of control when another was not appointed⁵¹. Oxford had used the Earl of Mar as a go-between on an informal basis, but it was not until his formal appointment as Secretary on the 23rd September 1713, that Mar was able to do the job the Treasurer required. Either way, the lessons learned from a loosening of political control inevitably meant that, realistically, there could be little likelihood of the matter of Crown presentations being handed over to an outside body. This was particularly so after the ascendance of Mar, as he from the start had taken a keen interest in ecclesiastical affairs similar to the one he exercised in political ones. Conscious, for example, of the precedent likely to be set by the first presentations, he took great care over their tone and wording⁵². Then later, after his appointment as Secretary, he wrote to every Scottish Sheriff, desiring an accurate account of all parishes in the Queen's gift and the value of their stipend. They

⁵¹ "Is it more than coincidence that the two great Scottish crises in Oxford's ministry occurred at a time of interregnum in the office of Scottish secretary?" Clyve Jones, "The Scheme Lords, the Necessitous Lords, and the Scots Lords": The Earl of Oxford's Management and the 'Party of the Crown' in the House of Lords, 1711-1714", Article 5 in *Party and Management in Parliament, 1660-1784*, Ed. Clyve Jones. LUP.[1984]. p 133.

⁵² Baron Scrope of the Exchequer who advised him on the presentation to Dunsyre, favoured a distinctly brusque style. State Papers, Scotland. (SP.54), Series II, No. 4, 1711-1712, SRO., [RH.2/4/300], Baron Scrope to the Earl of Mar, 25 October 1712.

were also to inform him when and how these become vacant, and - an important matter from the point of view of favours - who were the principal heritors⁵³.

Before he was able however to build up a systematised web of influence in church affairs, the Queen died and Mar fell from favour. Shortly afterwards he joined the Rising of 1715.

If a way of softening the impact of patronage's restoration could not be found from within the system, by government connivance, it may be asked if any within the Church took the alternative path of concerted resistance to it. As seen above, the Church's superior courts consistently declined to take any lead in such a direction. The reluctance was conditioned by two factors. First, the Church was in a vulnerable position through so many of its clergy refusing to take the Oath contained in the Toleration Act. While this had handed an opportunity to Episcopalians to harass non-juring Presbyterians, since both sides were at risk from the ploy the practical result had been an "armed truce"⁵⁴. Understandably, therefore, many in the Kirk felt it was no time to embark upon any offensive which might destabilise that truce.

Secondly, unlike Presbyteries and Synods, it was easier for the government's friends to manage the higher courts into quiescence. This was especially so in the Assembly Commission, where attendance, especially by those distant from

⁵³ State Papers, Scotland, (SP.55). Vol.I, Sept.1713 - Sept.1714, SRO.,[RH.2/4/390]. From the Earl of Mar, Whitehall, Circular to the Sheriffs of Scotland in Relation to the Churches in the Queen's Presentation - 13 March 1714.

⁵⁴ D. Szechi, "The Politics of 'Persecution': Scots Episcopalian Toleration and the Harley Ministry, 1710-12", article in *Toleration and Persecution, Studies in Church History*, vol.xci, [1984]. WJ. Sheils (Ed.), p 285: "Only about half of the Presbyterian clergy would take the oath, and then with an illegal preamble. Only fifteen of the Episcopalian clergy had taken it by November 1712."

Edinburgh, could be highly erratic⁵⁵. Influencing the Assembly also did not provide too much challenge, provided one had the right resources, as Harley's agent at Edinburgh, Daniel Defoe, reported at the time of the Union: "I am spending your money a little freer than ordinary on this occasion of the Assembly, but 'tis from my sense of the danger if it miscarries, and I have some engines at work among the ministers. In short money will do anything here."⁵⁶ For the government's supporters, the period following the Patronage Act was naturally an important one in which to keep the Church restrained, and in this they were highly successful. At the September Commission of 1712, the meeting was persuaded to drop a projected application to Queen and Parliament against the Toleration and Patronage, after that, the 1713 Assembly was so arranged that contention there was successfully avoided, and replaced by that which would make things "easy" for the government⁵⁷. Again, after Queen Anne died in 1714, and a deputation was sent to London to lobby the new King on the Kirk's behalf, the November Assembly Commission was managed into stopping the representatives from including any complaint against the 1712 Acts⁵⁸.

Nevertheless, there was some attempt at resistance. At the end of the December 1712 Commission, several non-jurors met and resolved, in their Presbyteries, "not to consent to plant upon a bare presentation without the people's consent; not to concur...where there is anything like simony.., and [not] to yield to recording

⁵⁵ eg., the Assembly Commission of July 1703 failed 12 times to find a quorum.

⁵⁶ Daniel Defoe to Robert Harley, 3 April 1707, HMC Portland MSS, vol.XV, pt 4, p 398.

⁵⁷ Wodrow, *Analecta*, vol II, p 94-5 and 194-95.

⁵⁸ Wodrow, *Letters*, vol. I, p 621, n.; *Analecta*, vol. II, pp 294-5

presentations in their records"⁵⁹. In practical terms, however, the disruptive effects of this protest did not turn out to be particularly great, for the primary reason that Presbyteries were already disconcerted by the absence of any standard code of practice on dealing with presentations. In the resulting procedural confusion, displays of opposition were too disparate and diffuse to produce any telling impact at national level. Indeed, to Wodrow, not only did this lack of "general concert"⁶⁰ enfeeble resistance, it also provided an incitement to patrons to take advantage of a Presbytery's procedural uncertainty, through the use of lawyers, instruments and generally aggressive tactics. The strategy certainly worked with the presentation of James Robb (or Robe) to Kilsyth in 1713 [see above]. There the Jacobite/Episcopalian Viscount of Kilsyth began by sabotaging the Presbytery's attempt at a call by successfully forbidding his tenants to sign it, then went on to threaten Presbyters that the case would be taken straight to Parliament if they did not proceed to settle Robb solely on the presentation. They duly obliged⁶¹. Again, in the planting of the 2nd. charge at St Andrews in August 1712, not only were the Presbytery eccentric in their procedure, but also offered no resistance when the magistrates, who were the patrons, ordered the minister whom Presbytery had sent to moderate a call, to desist from doing so, "otherwise they would lay him fast". The purpose behind the magistrates' delay was to allow themselves time to draw up a presentation in favour of the Dean of Guild's son, Laurence Watson. It was produced on the 14th. August, and Watson

⁵⁹ Wodrow, *Analecta*, Vol.II, p 129

⁶⁰ *Analecta*, vol. II, p 133.

⁶¹ Wodrow, *Letters*, vol.I, pp 384, 397, 404.

was ordained on the 4th. September.⁶²

Despite the foregoing, it should not be thought that the Church's opposition to the early presentations was wholly ineffectual. Whereas most Presbyteries contented themselves with a minute of protest in their registers and/or a declaration of intent always to obtain a congregational call⁶³, some, like the Presbytery of Paisley, were of a bolder disposition. While they were in the process of moderating a call to Henry Hunter to the parish of Mearns in 1713, having been petitioned by the Session to do so, the patron intervened with a presentation in Hunter's favour. Presbytery's response was to ignore the presentation and on the 28th April 1713, they settled him on the basis of the call alone. The patron, John Stewart of Blackhall, backed down. A more crude tactic was for a Presbytery continually to postpone taking action on the presentation, as Fordoun did in respect of Arbuthnott parish, spinning out the vacancy there for over three years⁶⁴.

The most successful counter attack by the Kirk during this difficult early period, however, was also its most startling, in that, instead of opposing patronage, it found itself actually defending it. The incident arose in 1713 out of the situation which obtained at Old Machar in Aberdeen. For some time an Episcopal intruder had been ensconced there, to the detriment of the "legal" congregation. In an apparent move to remedy the impasse, the Masters of Kings College, who were

⁶² Wodrow, *Analecta*, vol.II, p 99; *Fasti*, vol.V, p 240. Wodrow adds that it was the first presentation, to his knowledge, since the Revolution.

⁶³ eg., Registers of the Presbytery of Brechin, SRO., CH2/40/6, 4 February 1713.

⁶⁴ General Assembly Registers, 14 May 1714: Appeal to Assembly by the Patron, James Ferguson [of Pitfour], Advocate.

patrons, presented the Rev Alexander Mitchell of Belhelvie to the 1st. Charge in May 1713. The Presbytery of Aberdeen approved the design and translated Mitchell. The Presbytery clearly saw the merit of the idea: if one variety of legal action had failed to supplant the intruder, it was logical to use what other remedies the law offered. The only problem was that Mitchell's parish opposed the loss of their minister and commenced a series of appeals. As these progressed through the church courts, the Assembly of 1714 had the experience of hearing Aberdeen Presbytery's approval of the presentation defended by Professor Thomas Blackwell of Marischall College - one of those who two years earlier had been in London arguing the Kirk's case against patronage before the Queen and Parliament. The appeals delayed the settlement for a year, but Mitchell was ultimately admitted to the charge on the 31st August 1714⁶⁵.

Whether or not there were no "significant" presentations in the first years after 1712, there would certainly be few more remarkable ones than Mitchell's.

⁶⁵ General Assembly Registers, 10 May 1714; *Fasti*, vol.6, p 20. On the finely-balanced power struggle between the Presbyterian/Whig and Jacobite/Episcopalian factions among the Masters of King's at this time, see: R.L. Emerson, *Professors, Patronage and Politics - The Aberdeen Universities in the 18th. Century*, AUP. [1992], pp 25-6.

CHAPTER IV.

The Episcopal/Jacobite Dimension up to the '15.

By the end of Queen Anne's reign, Presbyterian commentators like Wodrow were becoming profoundly depressed: "[Our affairs] are very dark, and every month darker. Our Papists, Highlanders, Jacobites, and English Service Men, are mightily aloft...And we, on the other hand, [are] a poor, declining, broken, and spiritless people"¹. Since the Revolution Settlement, the Presbyterian hope had been that the main areas of Episcopal strength would be progressively diluted as each incumbent died and his charge filled by a churchman of the Established communion. These areas, generally identified², compassed most of the Highlands and Islands (excluding South and Mid Argyll) and the Northeast, including Angus. They are here described as Episcopal areas (the comparatively small Catholic population, around 5400, being concentrated in a "narrow strip of country stretching from the Duke of Gordon's lands in the east to the southern Hebrides"³), but MacInnes argues that the wide spread of opposition to the Kirk which materialised as pro-Episcopalianism, was in reality more rooted in antipathy to the Revolution Settlement and its "whig" religion, than pure religious conviction; thus, he points out: "Even in Argyll, Moray, Easter Ross and Strathnaver (Sutherland), where there had been a Covenanting and Puritan

¹ Wodrow, *Letters*, vol. I, to Alexander McCracken, 10 Feb 1714, p 543.

² see John MacInnes, *The Evangelical Movement in the Highlands of Scotland, 1688-1800*, AUP.,[1951], pp 10-41.

³ *ibid.* p 11

tradition, there was no popular enthusiasm for the new order."⁴

The Kirk's take-over plan was naturally much damaged by the Toleration and Patronage Acts, but it should be remembered that by the time of their passing, there were already other hindrances working against the hoped-for success.

First, there was the continuing dearth of candidates to fill the vacancies in the presbyteries strategically most in need of them. In 1713, the Presbyteries of Meigle, Arbroath, Fordoun, Alford, Garioch, Aberlour, Abernethy, Elgin, Shetland, Dunoon, and Skye had no probationers at all under their supervision⁵. Moreover, although there were in the same year 204 students in the process of divinity training, only 25 of these were Gaelic speakers, thus presenting an obvious handicap for any Kirk advance into the North and Highlands⁶.

Secondly, whereas, in the period immediately subsequent to 1708, there had been some optimism that JPs might assist presbyteries in their attempts to settle vacancies in hostile localities [see above], as Tory and Jacobite fortunes continued to advance, support of any kind from that source became increasingly unreliable, thus weakening Presbyterian confidence in the protection of the law. In 1712, for example, the Kirk was shocked to learn that on the 9th. July, a fast-day appointed by the Synod of Angus and Mearns, three JPs (Scott of Logie, Colonel Stratoun and Provost Milne of Montrose) had actually burnt the Synod's edict at the mercat cross of Montrose. They had furthermore prevailed upon the rest of the Angus Justices to resolve to do the same at the door of every church which observed the

⁴ *ibid.* p 12

⁵ GRH. Miscellaneous MSS., CH8\195

⁶ GRH. CH8\195

fast, and charge its minister with sedition.⁷ Meanwhile, the Rev. James Sands of Birsay and several of his colleagues were enduring such "hellish malice" from the disaffected JPs of Orkney, that the neighbouring Presbytery of Caithness felt impelled to petition the Assembly to do more to help their neighbours "...who groan under the unprecedented tyranny of these justices who do in effect suppress religion and piety, encourage all profanity and immorality by claiming the sole power of judging in cases of scandal and wresting all power of discipline out of the church's hands."⁸

At the same time as Presbyterian spirits ebbed, Episcopal partisans became emboldened by the ineffectiveness and/or unwillingness of local functionaries to enforce the law, and resistance to presbyterial settlements in sensitive areas stiffened. After two particularly violent "rabblings" (forced evictions) at Gairloch (Lochcarron Presbytery) and Knockbain (Chanonry Presbytery) in 1711⁹, the Lord Advocate, Sir James Steuart wrote heatedly to Oxford suggesting "a better set" of JPs be appointed¹⁰. The problem was of course considerably more deep-seated than such solutions could remedy, as was lamented later, in 1716, by the Presbytery of Brechin, who, notwithstanding the failure of the Rebellion, complained that not only were many magistrates and JPs still disaffected, but so also were the Sheriff Depute, the Sheriff Clerk and the "whole town of Forfar,

⁷ HMC. Portland MSS., Vol. X, Carstares to _____, 23 August 1712, p 278; Sir James Stuart to the Earl of Oxford, 26 August 1712, p 280.

⁸ HMC Portland MSS, Vol.X, Presbytery of Caithness to the General Assembly, 19 September 1710, p 344.

⁹ For a full account of both, see *FES.*, vol. 7; Robert Bain, *History of Ross, Dingwall* [1899], p 249-250.

¹⁰ HMC Portland MSS, vol.X, 3 November 1711, p 401-2

where the Sheriff Court meets"¹¹.

Thirdly, the Kirk remained frustrated by the resolve of many landowners to resist presbyterial interference in their parishes regardless of all other loyalties, whether religious or political. Thus, the first Duke of Atholl, who was ostensibly pro-Hanoverian and Presbyterian¹², persistently protected his Episcopal incumbents, regardless of whether or not they even took the Oaths: "I have...thought it just and reasonable to preserve the Episcopal ministers who are good men in the Churches they possess."¹³ Again, although the patron of Fraserburgh, William Fraser, 11th. Lord Saltoun and Philorth, was a dedicated Hanoverian, he forcefully led the Episcopal/Jacobite resistance to Deer Presbytery's attempts to settle the charge with any other than their chosen (Episcopalian) candidate, Alexander Moore, son of the previous minister. The bitter and litigious struggle began in 1703, and even continued well beyond 1707, when the admission of the Presbytery's candidate, Alexander Auchenleck, was finally achieved¹⁴.

The enervating experiences of Deer Presbytery over Fraserburgh were characteristic of how, in the period up to the '15, vacancy struggles in "sensitive areas" could fester on interminably without being fully resolved. Repeatedly, what in fact developed was a war of attrition, whereby one side would attempt to

¹¹ Minutes of Presbytery of Brechin, SRO. CH2\40\6, 25 April 1716.

¹² Leah Leneman, *Living in Atholl, 1685-1785*, EUP., [1986], pp 4 & 89. The Duke and his second son, James, stayed out of the '15, while the eldest, William, Marquis of Tullibardine along with Lord George, Lord Charles and their uncle, Lord Nairne joined.

¹³ Mar and Kellie Papers, SRO., GD124\15\410, Atholl to the Earl of Mar, 31 May 1706.

¹⁴ see *The Scottish Chronicle*, series of articles entitled "A Ten Years' Conflict", 15 June 1906 - 16 November 1906; John Cranna, *Fraserburgh: Past and Present*, Aberdeen [1914], pp 95-7.

grind down the conviction of the other by delaying or spoiling tactics. A classic example was provided by the parish of Rathven (Fordyce Presbytery), where, in a conflict which at times bordered on the bizarre, the charge was effectively devoid of Presbyterian ministry for most¹⁵ of 26 years. Despite almost desperate attempts to settle the parish, as early as February 1699, the Presbytery felt moved to speak of its "so great and many" disappointments, and "very afflicting" discouragements. By March 1713, the Presbytery was recording "how much they have been baffled by the Heritors" at Rathven¹⁶. A lasting ministry was eventually established in 1715, although it was rarely free from involvement in litigation, first against rabblers, then against the intruding George Hay, and finally against the heritors, who had embezzled all the vacant stipends.

An illuminating example of the grappling which went on between Presbytery and the Jacobite and/or Episcopal interest, and how it intensified after the latter's success in the General Election of September 1710¹⁷, can be found by looking at the Angus/Kincardine area. When on the 6th. December, the Presbytery of Fordoun decided to use the *jus devolutum* (the right of planting which fell to the court when a patron had failed to present) to impose William Trail upon the charge of Benholm, Hercules Scott of Brotherton - a JP - and John Burnett of Monboddo galvanised their retainers into offering such sanguinary resistance (they

¹⁵ William Chalmers was induced to accept the charge in 1700, but as well as being violently assaulted, he found his access to the church was regularly denied, the manse was in disrepair, there was no kirk session, and that attendance at worship was minimal. He was allowed to leave within four years.

¹⁶ Extracts from the minute books of the Presbytery of Fordyce, contained in W. Cramond, *The Church and Churchyard of Rathven, Banff* [1885], pp 33 & 38

¹⁷ For analysis of the Scottish Election returns, see: D. Szechi, "Some Insights on the Scottish MPs and Peers Returned in the 1710 Election", *SHR.*, LX,1: No.169: April 1981, pp 61-68

were heard swearing "if any ministers came they would cut their throats and...make minced meat of them"¹⁸), that the ordination was required to take place in the Laird of Benholm's house¹⁹. Having helped to organise so shocking an incident, the Presbytery had no doubt Scott would then get his cousin, James Scott of Logie, MP for Forfarshire, to twist round the true cause of the riot "that so he may make use of it against the Established Church in order to get patronages restored (which will infallibly ruin the interest of the gospel in this corner, where we have none but disaffected gentlemen especially such who pretend to be patrons)..."²⁰.

Most especially, the time of the 1710 election and after was a difficult period for the Presbytery of Brechin. It was plagued by Episcopal ministries, at Montrose (William Dunbar and Robert Ochterlonie), Kinnaird (Francis Rait), Careston (Alexander Lindsay), Aberlemno (John Ochterlonie) and Oathlaw (John Grubb); the local heritors had successfully obstructed all attempts to fill the vacancies at Edzell, Careston and Kinnaird, and when they had looked to the church's higher courts for support, they had received a pusillanimous letter from the Assembly Commission advising them to avoid any "strict procedures" against the meeting house preachers and intruding schoolmasters, "because of the present juncture"²¹.

Notwithstanding its discouragements, however, the Presbytery decided to make

¹⁸ NLS., Lee MSS., 3430, #164; Rev. David Archer, Fordoun Presbytery, to the General Assembly, 7 December 1710.

¹⁹ The *Fasti* mistakenly claims it was in the Old Tower of Brechin [Cathedral]

²⁰ Archer's letter. According to MS. 3430, #188-190, Presbytery subsequently invoked an Act of James VI concerning assault on ministers of the Kirk successfully to pursue Brotherton, Monboddo and their retainers before the Court of Justiciary.

²¹ Minutes of Brechin Presbytery, SRO., CH2\40\6, 11 October 1710.

a fight of things, believing that many more parishioners within the bounds would attend Presbyterian worship if they could be protected from their heritors. In a display of defiance, they began by appointing a public fast against, among other objects, the "spiritual turrany and oppression" by some people of distinction, in "lording it over some Christians' faith and consciences, by compelling them to attend their new, invented worship"²². Then, when the first presentation (for Edzell) was received later that year, they made declaration of their resolve never to settle a charge "without using all necessary means to obtain the free and unanimous consent and call of the congregation"²³. Not surprisingly, however, the Presbytery's opponents in its three most intractable vacancies continued undeterred in their tactics of obstruction and delay.

The first charge, Edzell, had been ministered to by the Episcopal Robert Lindsay since 1701. On the 20th October 1708, Presbytery received and read the Queen's proclamation regarding intruders, and on the strength of its provisions, the charge was declared vacant. Inevitably, Lindsay ignored this, until ordered to give up the charge by the Lords of Justiciary. He ostensibly complied with the order on the 6th. June 1710, although in fact he continued to intrude until 1716. Having won this moral victory, Presbytery was in reality little advantaged. Although it was entitled to use the *jus devolutum* to fill the charge, it was naturally aware of the damaging propaganda which would result from its being portrayed as the arbitrary imposer of a minister upon an unwilling population. On the other hand, since the heritors were almost uniformly hostile, and the pro-Episcopal laird,

²² *ibid.* 9 January 1712

²³ *ibid.*, 4 February 1713. The presentation was lodged on the 31 December 1712

David Lindsay (died 1744), dominated what Kirk Session did exist²⁴, clearly there was little chance of a regular call coming to fruition.

The Presbyters' response was to consider the expedient of using their privileges to elect a phalanx of pro-establishment elders for Edzell, but, eventually thinking better of it, they resolved simply to send a leet of suitable probationers to the laird, inviting him to choose one, or else they would²⁵. The laird considered this to be an idle threat and ignored it, thus leaving the members of Brechin Presbytery with the uncomfortable prospect of losing face, since they knew no probationer would consent to accepting a parish so charged with antagonism. In the event, Presbytery resorted to the extraordinary device of bullying a probationer, Robert Lyon, into going through the show of being taken on trials for Edzell, even though he made plain he would under no circumstances agree to go there²⁶.

Ironically, a shift in Presbytery's favour over the impasse at Edzell came with the lodging of a presentation for the parish²⁷. The church had for some years been kept permanently locked (the intruding Robert Lindsay took services in the hall of the castle). The Presbytery therefore argued that it was hardly tenable for a presentation to be made for a church to which access was denied by the presenter:

²⁴ A. Jervise, *History and Traditions of the Land of the Lindsays*, Edin. [1882], p 55. Apparently, the Laird liked to be styled in the Session minutes "the principal and chief elder". The Session meetings, chaired by the intruding Mr Lindsay, were furthermore held in Edzell Castle. It does not appear that the Laird and Mr Lindsay were closely related.

²⁵ CH2/40/6. 12 September 1711

²⁶ CH2\40\6. 28 November 1711

²⁷ It was dated 10 November 1712, and in favour of the Rev. John Johnstone of Brechin, 2nd charge. It was made by Peter Forbes of Balfour, who claimed he'd taken over the right of patronage from Lindsay. Presbytery ultimately refused to countenance the transfer.

either the church had to be opened at once to the Presbytery, or any presentation would have to be seen as a "mere shift and pretence"²⁸. Presbytery further pressed home their advantage by resolving to start a legal process for an augmentation of the stipend, and since the laird was experiencing financial difficulties at the time, it is not hard to see how the move commended itself to them. The decisive moment, however, came in the aftermath to Presbytery's eventual settlement of the charge with the Rev. Robert Gray of Cabrach [Presbytery of Alford] on the 26th. August 1714. On the 30th. October following²⁹, the laird reportedly plied his supporters with drink and money at his house, then sent them off in violent pursuit of Mr Gray, who finally was able to escape only by plunging into the West Water³⁰. This time Presbytery received full support from the rest of the church in favour of firm action, and thus encouraged by offers of financial help, they raised criminal letters against the laird and the rabblers on the 1st December 1714. For Lindsay, now facing bankruptcy, it was the end of the road, and he came to terms: Presbytery were to have their costs refunded and Gray allowed to minister in peace³¹.

As with the impasse at Edzell, the passing of the Patronage Act brought an unexpected advantage to Brechin Presbytery, this time in respect of the vacancy at Kinnaird. There, one of the delaying tactics employed by the patron, the Earl of

²⁸ *ibid.* 7 October 1713.

²⁹ The *Fasti*, vol. 5, p 390, wrongly implies that the riot took place at the time of the settlement.

³⁰ A. Jervise, *Land of the Lindsays*, p 10-11.

³¹ CH2\40\6. 21 February 1715. See also, Lord Lindsay, *Lives of the Lindsays*, London.[1858]. vol.II, p 259: The laird's property included Edzell, Lochlee, Lethnot and Navar; on going bankrupt, he sold out to the Earl of Panmure. After the '15, Panmure had his property forfeit, and Edzell was sold to the York Building Company.

Southesk, was a continuing insistence that the church was not in fact vacant, and that Presbytery had no right to declare it so. However, as soon as a presentation was lodged - as happened on the 13 January 1715 - presbytery seized upon this as a homologation of the charge being vacant³². The advantage thus gained was enough to enable Presbytery at last to have Kinnaird settled on the 5th. April 1716, after being effectively thwarted since the time of the Revolution.

In a pattern that was again like Edzell, Presbytery's position regarding the vacancy at Careston was much enhanced by the patron's apparent association with a violent assault. When a David Lyall was attacked when going to hear the Presbytery's locum preach, the ensuing court case obliged the patron, Sir John Stewart of Grandtully and Murthly (he had bought the estate from the Carnegies in 1707) to pay compensation and desist harassing any who attended.

Above all, however, it was the failure of the '15 which began to turn the tide for Presbyterian judicatories in areas like Angus. The presbytery of Brechin first met again in the February after the rebellion, and, striking while the chance was available, deposed the following in quick succession: Rev Andrew Geddie, Farnell (22 Feb. 1716); Rev Robert Thomson, Lochlee and Lethnot (7 March); Montrose teachers, Robert Spence and Dr. Sim (14 March); and, on the 3rd October, intruders William Dunbar and Robert Ochterlonie (Montrose), William Simpson (Dun), James Watson (Fern), John Davie (Strathcathro), Robert Lindsay (Edzell) and Gideon Guthrie (Brechin). It should be stressed, however, that concerted opposition did not disappear. The backlash from the rebellion greatly facilitated

³² CH2\40\6. 13 January 1715. It was a sham presentation, since the presentee had already refused it.

the removal of intruders and the opening up of churches, but, as will be seen in Chapter XII, not only did Jacobite resistance continue, but the new, pro-Hanoverian landowners saw little reason either why presbyterial will in a vacancy should command their compliance.

There was one regard, however, in which the '15 (and later, the abortive attempt of 1719) handed a clear advantage to the Kirk. As seen above, despite the Church's repeated appeals that it should receive greater support from the officers of the law, especially in settlement disputes, government response had been desultory. The rebellion awoke politicians to their neglect. Since this inattention had its most deleterious effects in the conduct of officers at shire level³³, the result for the Church had been the constant necessity of raising expensive processes before higher courts. Indeed, just how parlous a condition the Kirk had come to, by the eve of the '15, can be seen from a circular to presbyteries from the Moderator of the Assembly. In an appeal for money, the letter says that litigation has exhausted the Church's income for two years to come, and that its debts are "very considerable, counting here only those for defraying the expenses of sending preachers to the North, processes before the Parliament against Professor Anderson at Aberdeen, Mr. Currie at Haddington, Mr Logan at St. Ninians, rabblers against the Presbytery of Aberlour, and brethren of the Presbyteries of Kirkcaldy, Brechin, Aberdeen, Fordyce, Ellon, intruders into the churches of Burntisland, Old Aberdeen, Slaines, Raffin and others, processes for relief of oppressed brethren in the Presbyteries of Orkney, Caithness, Skye, Ross and other

³³ eg., Lord President Hew Dalrymple to the Duke of Montrose, 13 August 1715: "...the Justices of the Peace are altogether ineffectual in this country...". SRO., SP 54\7\29.

places....and there is now no fund for carrying on processes for removing of intruders, and prosecuting such as insult our church and constitution thereof..."³⁴. It was something of a desperate picture, particularly as the Kirk's opponents appeared to be, by contrast, financially organised to meet whatever consequences might ensue from their actions³⁵. However, once it had been perceived how the Scottish Presbyterian clergy had remained loyal to the Hanoverian establishment throughout the rebellion, government attitudes towards the role of the Kirk in disaffected areas assumed a more beneficent complexion, and some changes of which the Kirk could take advantage began to be made³⁶.

Before moving on from the fortunes of the Presbyterians in the Angus area in the period to the '15, it is worth noting two local developments.

First, throughout the 1690-1715 period, whenever Brechin Presbytery endeavoured to bring parties together to elect a minister (or, if that proved impossible, when they wrote and requested them at least to state a preference), it was always to the heritors and elders³⁷ that they addressed themselves. Yet, on

³⁴ Engrossed in Minutes of Edinburgh Presbytery, 27 July 1715; SRO, CH2\121\9.

³⁵ See the circular to Presbyteries from the General Assembly Commission, dated 2nd. June 1714, which complained that, underpinning all the intrusions and rabblings, there seemed to be "a general combination by enemies to run us down by force, contrary to law, and we have grounds to think that they do contribute money for supporting their party in those illegal practices...". (The circular is engrossed in the Minutes of Edinburgh Presbytery, SRO. CH2\121\9, 23 June 1714)

³⁶ eg., JP appointments were now to pass first through the Lord Justice Clerk. Both A.E. Whetstone (*Scottish County Government*, p 36) and J. MacInnes (*The Evangelical Movement in the Highlands*, p 36) make the point that government enthusiasm for reform was strongest immediately after the '15 and '45, but tended to wane thereafter.

³⁷ If the vacancy was in a Burgh, the Council were also canvassed, as happened with Montrose in 1708.

the first occasion when the *jus devolutum* fell to them after the '15³⁸, it was the heads of families that Presbytery invited to select a candidate. Such a step was not indeed illegal, since the Act restoring patronage, having arguably repealed the franchise provisions of the 1690 c.23 Act, left presbyteries to use whatever election or consultation methods they the chose (or none at all), once the *jus* had come to them. Nevertheless, Brechin Presbytery's move was still a striking departure from established practice. As seen above, it had, in common with many presbyteries, responded to the Patronage Act with a reiteration of their determination to settle vacancies only with the call and consent of the people. What this meant was that the people were to concur with, or disapprove of, candidates already selected by Presbytery or the heritors and elders. The people's opinions were important, but they were essentially advisory. It is hard to find evidence anywhere to suggest that the actual privilege of election was ever put exclusively into the people's hands - or, indeed, that popular franchise was anywhere an issue of public contention or debate at this stage.

It may therefore be speculated why Brechin suddenly adopted such a course. Clearly, on the one hand, it was still necessary for the Presbytery to avoid accusations of high-handedness, and to do so by employing some kind of consultation/selection procedure. Nonetheless, the idea of canvassing heritors (there were few Kirk Sessions in operation) who, by the failure of the rebellion were likely to be even more hostile than before, would naturally be unalluring. There would therefore have been much to attract presbyters about a course which would have enabled them to bypass a group which had been almost uniformly

³⁸ The vacancy was at Farnell

obstructive, and appeal directly to those whom the Presbytery consistently believed were of a more favourable disposition - if only they could be given the opportunity to exercise their true preferences.

Unfortunately for the Presbytery, however, whatever were the private inclinations of the parishioners of Farnell, they nonetheless opted for the acknowledged preference of their landlords - the Rev. John Ogilvie of Cortachy. Having thus boxed themselves into an embarrassing situation, the Presbytery were then reduced to the slightly dubious expedient of declaring the people not in a fit temper for calling a minister, since they refused to consider Presbytery's advice and recommendation³⁹. Abandoning the experiment, Presbytery proceeded to call and settle their own candidate, David Ferguson on the 4th. October 1716.

The other incident of particular interest arose from the vacancy at Kirriemuir, which was created by the death of the Episcopally-inclined incumbent, Silvester Lyon, on the 1st May 1713. Here the Presbytery actually managed to be successful in outmanoeuvring their opponents. With Lyon's death, it could be expected that the pattern which would then have unfolded, would have been for the Earl of Panmure⁴⁰ to have prolonged the vacancy by making unsustainable presentations, whilst in the meantime giving the stipend to the Episcopal intruder, James Rait, who was also Lyon's son-in-law. Forfar Presbytery, however, moved too fast for the Earl. At the same time as they continually shifted the dates of their meetings so that, according to Panmure, they could avoid having to receive his

³⁹ CH2\40\6. 22 August 1716

⁴⁰ According A. Jervise in *Land of the Lindsays*, p 145 (where he quotes from Crawford's *Peerage*), Panmure had the right of presentation to the churches of Arbroath and 32 others. All were forfeit in 1716.

presentation, they received and sustained a presentation from the pro-Hanoverian Duke of Douglas, who also had interest in the area. The Duke's presentee, the Rev. George Ogilvie of Benvie, was admitted, amidst furious opposition, on the 17th September 1713. Not unexpectedly, the Earl retaliated by denying Ogilvie access to glebe, stipend and church keys.

In 1715, Ogilvie raised an action before the Court of Session in pursuit of the rights. The thrust of his argument was that any dispute as to the identity of the patron was of no concern to him, but rather that, as legally admitted minister, he was being denied the proper fruits of his benefice. He rejected the Earl's defence that his admission was invalid, on the grounds that it was not competent for any Presbytery to make itself judge between two contending patrons. Forfar had acted correctly in that it had accepted the first presentation, then proceeded "bona fide, at least upon probable reasons". The Lords of Session agreed⁴¹. It should be noted that the judgement did not, however, discourage presbyteries in later years from using doubt over patronage ownership as a means of delaying a presentation, as will be seen below.

The Kirriemuir incident is also of interest in that it showed, as with the translation of Alexander Mitchell from Belhelvie to Old Machar [see above], that presbyteries were not above using presentations to gain an advantage in the pre-rebellion war of attrition.

⁴¹ Sir Hew Dalrymple, *Decisions of the Court of Session, 1698-1718*. Edin. [1792]; Case CXLVIII (p 203): "Mr George Ogilvie, Minister of Kirriemuir, v. the Heritors of said parish, Earl of Panmure, John Lumsden and others": 25 June 1715.

CHAPTER V.

Patronage and the Church, 1715-1725,with particular reference to the Borders/Duns area.

It might be thought that the Kirk should have emerged from the '15 Rising stronger than it did. On the one hand, the Episcopalians' challenge to the Kirk's authority, intense and effective up to that juncture, was severely damaged by their complicity in the rebellion, while by contrast, the Presbyterians' steadfast adherence to the Hanoverian cause had been noted and appreciated¹. Yet, four years later, commentators like Wodrow were still writing of a church which to them was depressingly divided and demoralised².

That any robust resurgence in the Church's fortunes had not taken place was undoubtedly owing to two important factors.

The first was the problem of Presbyterian non-jurancy³. In London, this continued to arouse suspicion and weaken the Church's position however much unqualified Presbyterians tried to distinguish themselves from their Jacobite counterparts. It is, of course, entirely likely that government circles were deliberate in what became their persistent inability to appreciate the difference between the two species of non-jurants, since in doing so they had an ideal excuse for avoiding the issue of grievances such as patronage. Thus when the Assembly of 1715 sent a memorial to the King "Concerning the Grievances of this Church, from Toleration,

¹ According to Rev James Hart, the Earl of Ilay emphasised their record of allegiance to Government ministers in June 1716. (Wodrow, *Letters*, vol. II, 15 June 1716)

² e.g., *Analecta*, vol.II, 30 March 1719, p 333.

³ As already mentioned, the Toleration Act of 1712 had added to it a clause requiring subscription to the Oath of Abjuration. This was linked to the English Act of Settlement of 1701, which required the monarch always to be a member of the Church of England.

Patronages, etc." ⁴, the Secretary of State, the Duke of Montrose, wrote back to say that the first priority was to find a remedy for the difficulties raised by the Oath. As for the other matters, the Assembly would surely understand that they " ...do in their nature require a more thorough deliberation than the present circumstances of other weighty affairs depending can easily admit of at this juncture."⁵ It was the same pattern two years later, when the Assembly Commission sent its representatives to lobby both politicians and royal family regarding the grievances. They were told that "...the great spring and cause of our complaints and disorders, was the difference about the Abjuration; that whatever grievances were spoken of, the Abjuration was at the bottom, and that there was a necessity of taking an effectual course as to that."⁶

Again, when Wodrow conversed with the Lord High Commissioner, the Earl of Rothes, at the end of the 1716 Assembly, he was astonished to find how preoccupied establishment figures were to make non-jurors the culprits for any displeasing outcome or conduct at the Assembly. As far as Rothes was concerned, the non-jurors were the trouble-makers, and there could be no redress of

⁴ General Assembly Papers, SRO., CH1\1\26. pp 15-17, 14 May 1715, Sess. 10.

The language of the memorial is noteworthy in the light of the commonly-held notion that in the early years after the Patronage Act patrons restrained themselves from making use of it. Cunningham's *Church History* states, for example: "For nearly twenty years the act restoring patronage remained almost a dead letter in the statute-book. It was very seldom acted upon."

Yet the memorial complains of Simoniacal Pactions and the abuses of "disaffected patrons putting their power in other hands, who as effectually serve their purposes; by patrons competing for the right of presentation in the same parish: and by frequently presenting ministers settled in eminent posts, to mean and small parishes, to elude the planting thereof: by all which parishes are often kept long vacant, to the great hinderance of the progress of the gospel."

⁵ Home Office Correspondence, SRO, RH2\4\391; Montrose to Carstares. undated, c 1715.

⁶ *Diary of the Rev William Mitchell*, Miscellany of the Spalding Club. Aberdeen. [1841]. Vol. I, p 228, 18 February 1717. The petition did reach Parliament, but consideration was delayed for a month, during which time Parliament rose. [Select Anti-Patronage Library, Edin. 1842, p 27]

grievances until all were made to conform. Wodrow, who was non-jurant, concluded nervously: "In short...the greatest hardships are threatened against us, and everything is said to flow from us, though I am persuaded there is no ground for it."⁷.

The second problem with which the church had to wrestle, was the nature of the political situation. With the eclipse of the Tories in 1715 Election, the field was left to the Squadrone and Argathelians⁸, who, until 1724-5 and the twenty-year dominance of Ilay, were to engage in fierce competition for supremacy at every level of influence⁹. This was highly damaging for the church, since any successful campaign for relief from grievances naturally required it to speak and act as much as possible with one, united voice. Party rivalry within the church courts, however, consistently undermined the possibility. This was to such an extent, that Wodrow was soon complaining: "...it's lamentably evident that statesmen and persons of rank and quality have of a long time been essaying to involve this church and .. judicatories...in their parties and designs, and make tools of ministers to carry on their secular purposes. Anybody who has made any observations upon our Assemblys, Assembly Commissions and synods...cannot but see..sidings of great men mixing themselves in every case almost", their aim being to "recommend themselves to the govt. by their influence on church judicatories,

⁷ see Wodrow, *Letters*, vol 2, p 204-5, 24 May 1716; Rothés was convinced, despite Wodrow's cogent protests that "the warm temper of the non-jurants hath carried everything in this GA".

⁸ *Argathelians*: supporters of the Argyll family interest. *Squadrone Volante*: "They were a small group of Scottish Country Whigs who were distinguished by family traditions of opposition to the Stuart monarchy and a close network of matrimonial alliances." - see A. Murdoch, *The People Above*, John Donald, [1980], p 28.

⁹ For a list of leading figures in both parties, see Appendix I.

and being able to carry the ministry to their side, and to manage the church as they speak."¹⁰ The lengths to which each side would go to gain a moral advantage - or alternatively cause a slight to the other faction - were amply demonstrated at the 1716 Assembly, where, in the reply to the King's letter, the mere mention of the Duke of Argyll's part in the crushing of the Rebellion provoked over two days of bitter wrangling.¹¹

It was, then, a frustrating time for the church. Instead of adopting a confident and self-assertive stance, it rather felt compelled to follow a cautious policy in relation to grievances such as patronage. There were three reasons for this, first, the fear of a stricter application of the oaths¹². Secondly, since the political situation meant that Scottish administration was "...ramshackle and confused in structure, improvised and halting in execution"¹³, it was often hard for churchmen to know which interest to support when decisions in judicatories became political¹⁴. Thirdly, among some sections, there was always the hope that if the church retained a subdued and conciliatory demeanour then government would be more disposed to grant concessions.

For such reasons the church's higher courts tended to hold back from direct confrontation with the fact of patronage. Sometimes this could be achieved by reversion to legal technicalities, as with the presentation made by Major Henry

¹⁰ *Letters*, vol 2, 28 Sept 1717. p 323-4

¹¹ *Ibid.* pp 200-202

¹² See Rev James Hart to Wodrow, 15 June 1716. *Wodrow Letters*, vol. II, p 205-7

¹³ NT Phillipson and Rosalind Mitchison, *Scotland in the Age of Improvement*, [EUP 1970]. p 24

¹⁴ In his article "The Structure of Scottish Politics and the Union of 1707", PWJ Riley describes the general uncertainty of which interest to back, and how "bets were placed accordingly". See *The Union of 1707: Its impact on Scotland*, Ed. Rae, p 22

Balfour of Dunbog of John Hay to the parish of Dalgety [Dunfermline Presbytery] in June 1715. After stalling for time, the presbytery had refused to settle Hay solely on a presentation. Balfour called on the Assembly to support his right. The Assembly extricated itself from the difficulty by deciding that although the Synod, to which Balfour had appealed, had met in the midst of the Rebellion, it had still been orderly. Therefore, by not appearing at the meeting (Balfour claimed the troubles prevented his attendance), the patron had technically deserted his appeal¹⁵.

When there was no such escape, the Assembly nonetheless rarely felt inclined to resist the patron, even where it was someone of the stamp of the pro-Jacobite George Lockhart, whose presentation of Patrick Scott to Carnwath was, understandably, doggedly opposed by Lanark Presbytery. The 1718 Assembly unanimously ordered presbytery to proceed with Scott's settlement, which failing, the Assembly Commission were to do it¹⁶. Not surprisingly, Wodrow was in despair at the way the church seemed to have lost the stomach to resist. He bemoaned to his friend, Col Erskine, "the strange indolence and negligence fallen in among us in judicatories these several years" concerning patronage. "In a word, we all complain of our hazard, and yet will not effectually set ourselves to the proper measures for relieving ourselves and this church and posterity. Patronages are complained of once a year in our Assemblies; and patrons, and those who favour them, begin to be easy, and let us complain on"¹⁷.

¹⁵ Assembly Registers 10 May 1716

¹⁶ Assembly Registers 21 May 1718

¹⁷ 28 September 1717. Letters vol 2. p 324

There was one notable hiccup, however, in the case of the Royal presentation of John Meldrum to Kettle in Fife, and it well illustrates how bodies like the Assembly were vulnerable to political manipulation. Cupar Presbytery had declined, merely on the presentation, to take Meldrum on trials. The Synod had ordered Presbytery to proceed, but the latter, considering the width of the opposition among the parishioners, still refused to move. The Synod had then referred it to the Assembly, who gave it to the Assembly Commission to determine finally. Although the Assembly Commission ordered presbytery to obey the Synod, nothing happened, so the pro-Meldrum heritors complained back to the Assembly.

The heritors' petition exposed a delicate point: Could the Assembly even discuss a decision by the Assembly Commission if it had given it power to determine finally? Given this added dimension to the debate, it became virtually unthinkable that the Assembly should do other than uphold the Assembly Commission's sentence. Yet, remarkably, the vote went the other way, and for reasons that had little to do with ecclesiology. The fact was, leading Squadrone figures like Robert Dundas of Arniston and the Lord High Commissioner himself, Rothes, had put their weight behind Meldrum's settlement. For their Argathelian rivals, the opportunity to arrange for them to be disappointed was too good to miss.¹⁸ Rothes realised, however, that the Assembly had now put itself in a constitutional strait, since its decision appeared to undermine the Assembly Commission, so he used his powers to extend the Assembly by an extra day, thus

¹⁸ "This was a new tash [affront] put on the Commissioner, as was thought, for he has interested himself in that settlement of Mr Meldrum." Wodrow, *Letters*, Vol. II, 16 May 1716, p 191.

allowing it the chance to extricate itself from the difficulty. It did so by devising a vote which said it had not considered the validity of the Assembly Commission's Act, but "in regard of the difficulties that had occurred in the execution thereof, they do now recommend to the Synod of Fife to take all prudent methods to remove the same."¹⁹ This was still not ordering the presentee's settlement, nor yet was it a refusal to order it, so both sides let it pass. In the event, it was someone else, a James Munro, who finally was ordained to Kettle.

His alarming experience of the 1716 Assembly was not lost on the Lord High Commissioner, and he saw to it that the moderator's chair was the following year placed in the hands of the reliably-disposed William Mitchell of St Giles²⁰. Rothes certainly required to have a tight hold on that year's business, since one of the prominent cases was that of John Hay, the Earl of March's presentee for the town of Peebles. Hay was very much of the Squadron camp, being formerly chaplain to the Marquis of Tweeddale, as well as a protegee of Rothes' aunt, Lady Mure. Any defeat would therefore have been highly embarrassing. Despite Mitchell having to vacate the chair, being a party to the case, the vote comfortably went the Commissioner's way, and the reluctant Presbytery of Peebles was told to obey the Synod's order to proceed with Hay's settlement. Opposition to Hay nonetheless was deeply entrenched, both in the town and the presbytery, to the extent that an Act of Assembly required to be organised, appointing seven ministers of the Presbytery of Edinburgh to join with any concurring members of

¹⁹ Assembly Registers 16 May 1716

²⁰ It had been he who had moved the (defeated) overture to order the Presbytery to obey the Synod in the Kettle case.

Peebles Presbytery in order to effect the ordination.²¹ It was the first appearance of a higher court appointing a "Riding Committee" to impose an unpopular settlement.²²

On the Peebles case alone, it is hard to see justification for assertions like that of Dunlop in his "Parochial Law", that, "For nearly 20 years after the passing of the Act of Queen Anne, no instance occurred of a presentee being settled against the will of the congregation."²³ On the other hand, it is certainly possible to detect a note of restraint on the part of patrons in the pursuit of their rights in the initial period after 1712. However, the common assumption that this can be ascribed to a sense of altruism towards the church or a deference to its sensibilities, is also naive. The fact was, the phraseology of the Patronage Act left behind an awkward ambivalence. Clause I enacted that presbyteries were to settle presentees in the way "the persons or ministers presented before the making of this Act ought to have been admitted." It was therefore possible to argue that the method implied by the clause was not the one which obtained before the 1690 Act, but, as the text said, "before the making of this Act". In other words, the provisions of the 1690 Act whereby congregations did have the right to disapprove of the nominee, for valid reasons, could still be claimed to apply.

Since the issue hinged on a matter of interpretation, it might be imagined that the sponsor of an unpopular presentation would have nothing to lose by pressing his rights through the church courts. However, this was not always something he

²¹ Assembly Registers, 11 May 1717; Hetherington, p 204; A. Williamson, *Glimpses of Peebles, or Forgotten Chapters in its History*, Selkirk [1895], p 25.

²² Warrick, *Moderators of the C of S*, p 232.

²³ p 294

could afford to do with insouciance. He had to consider the possible consequences of pursuing the cause up to the public arena of the General Assembly, and not being able to marshall the necessary support from the right quarters. Roxburghe decided not to risk embarrassment over Bowden in 1714²⁴, while Rothes declared himself over Kettle in 1716, and, as seen above, lived to regret it.

In short, the patron had to calculate how much his position locally might be affected by not pursuing his right, and then balance that against the uncertainties of a process through the church's judicatories. Not surprisingly, therefore, it was frequently the more attractive option for the patron to turn to his influence with the local heritors (and thus, indirectly, their tenants), elders and presbytery, so that some form of accommodation could be arrived at whereby his position was maintained. Where such an understanding had been reached, the patron might lodge a presentation but also ensure there was sufficient popular support for the presbytery to claim it was proceeding solely upon the call. Sometimes he waived his right to present, sometimes the presbytery did not trouble over the niceties of a call - what mattered to the patron was that his preferred candidate should be seen to be successful. An illuminating insight into the nature of such a "trade-off" between patron and presbytery can be seen in the case of Longformacus, in Duns Presbytery, in 1714. The bargain offered to the presbytery by the patron, Sir Robert Sinclair, was that he would co-operate in paying off the episcopal incumbent, Robert Smith, and rebuild the "entirely ruinous" manse, in return for which, Presbytery would refrain from taking up the *jus devolutum* without

²⁴ He had presented James Davidson to be joint minister with Archibald Deans. Selkirk Presbytery, supported by Synod refused, on the grounds of the divisions within the parish. See, *Memoirs of Boston*, Ed. GH Morrison, p 280

informing him and allow him six months after their declaration of intent to fill the charge. He further undertook to do everything to plant a minister who would be agreeable to them.²⁵ Presbytery agreed. On the 7th. December, Sir Robert presented his relative, Daniel Sinclair, probationer, and formerly schoolmaster at Thurso. After trying the inclinations of the people and receiving no objections, presbytery commended the presentation to Sinclair [4 January 1715]. Sinclair accepted it, and, after trials, was ordained to the charge on the 29th. April.

It is possible that this improvised approach to planting parishes might have, in time, settled into some regularised system, acceptable to both sides. Indeed, it is instructive to find in the diary of William Mitchell, sent by the Assembly Commission to lobby for the abolition of grievances like patronage in 1717, a hint of the kind of compromise which might have ensued. Although Mitchell and his colleagues were only empowered to express personal opinions to MPs on any measure short of abolition, it is clear from these that an advanced role for the heritor was the area of common ground which both sides seemed prepared to build on: "...as private ministers, we adventured to say...we did not deny inconveniences in the former settlement [ie., 1690-1712]; let them remedy these, and take care of the just right of heritors."²⁶ Taking them at their word, two Squadrone MPs, Patrick Haldane of Gleneagles and George Baillie of Jerviswood, proposed to put before Parliament an amendment of the Patronage Act, whereby "no presentation by a patron, or appointment by a presbytrie on their devolved right, shall have effect in law, without the consent and concurrence of the majority

²⁵ Duns Presbytery Minutes. SRO. CH2/113/4. Letter, received 1 June 1714.

²⁶ *Diary of the Rev Wm. Mitchell*, Misc. of the Spalding Club, Vol.I. [1841], p 232

of heritors in the parish; and the kirk session is to name one of their number who is [to] be reckoned as one heritor".²⁷ Although naturally preferring a repeal of the Act, the church commissioners' obvious approval of these "kind" proposals is revealing, especially as it might be thought they would wish to oppose what was a diminution of the role of the eldership. Clearly, it was their belief that if tension over settlements were to be defused, the crucial need was to reduce among landowners any sense of threat to their authority which they might feel from the way a choice of a minister might be effected, other than by pure patronage. It therefore may have seemed sensible to acquiesce in tipping the balance further towards the heritor, rather than attempt to defend a return simpliciter to the post-1690 regime.

In the event, Argathelian/Squadron in-fighting sabotaged Haldane's proposals²⁸, but this missed opportunity did not of itself cut short the evolution of a mutually agreeable practice for presbyteries and patrons. By the start of the

²⁷ *ibid.* p 240

²⁸ Sir James Campbell of Ardkinglass led the spoiling action. *ibid.* pp 243 & 247.

The legislation which did finally reach the statute book was the "Act for Making more Effectual the laws Appointing the Oaths for Security of the Government to be taken by Ministers and Preachers in Churches and Meeting Houses in Scotland." [Ann 5 Geo R vol 4 sess 4 parl 5 p 370]. Its provisions altered the Oath so that it became immediately acceptable to all but 30-40 ministers.

As for patronage, it regulated the 1712 Act by declaring that patrons who are unqualified or who make absurd presentations cannot thereby interrupt the time for presenting "but the *jus devolutum* is to take place as if no such presentation had been offered."

Further, any patron who presents after 1 June 1719 "any who shall not be qualified by taking the oath", or shall present one "who shall not accept or declare his willingness to accept of the presentation", or "a person who is then or shall be minister of any other parish", such "presentation shall not be accounted any interruption of the course of time allowed to the patron for presenting." (It should perhaps be clarified that the last limitation does not exclude the presentation of an already settled minister, but rather intends that if his settlement does not take place within the six months, then the presbytery is entitled to present *jure devoluto*.- See Dunlop, *Parochial Law*, p 268)

By 1724 the Assembly was expressing concern as to what to do about those who "show a willingness" to accept presentations. The next year, George Blaikie was deprived of his licence by Haddington Presbytery for having had the "assurance" to accept a presentation. [see 1843. Report vol 5]

1720s, the growing belligerence of the evangelical movement, with its concomitant populist tendencies, began to sow apprehension among landowning groups. The opportunity for patronage possibly to have merged, through time, into the ecclesiastical landscape had gone.

As mentioned above, in connection with Brechin Presbytery's unprecedented conduct after the '15, it is hard to find evidence in Scotland, before this period, of an unrestricted choice and call of a minister ever being in the hands of ordinary parishioners. Thus it is, for example, that nowhere in Robert Park's exhaustive and influential pamphlet of the Revolution era, "The Rights and Liberties of the Church Asserted and Vindicated against the Pretended Right and Usurping of Patronage"²⁹, is the notion even hinted at. As already noted [see above, Chapter I], it is referred to in another anti-patronage pamphlet of the same period, but only so that the author can assure his readers that the idea of the masses overruling their superiors is unthinkable: "[Election] is not to be left to the management of the confused rabble (though the meanest adult male member of the Church has a right to assent or dissent) but it is to be ordered by the eldership and that under the inspection of the Presbytery, in the number of which elders it is to be supposed that heretors and men of interest in the parish will be...". This will give the heritors "a special hand in the Election and [so they] cannot complain of being imposed upon."³⁰ The writer further emphasises that when patronage was

²⁹ pub. 1689. Park is still being quoted as a respected authority 50 years later, eg., by John Currie, in his "Jus Populi Divinum" of 1740.

³⁰ Anonymous Pamphlet, "A True Representation of Presbyterian Government wherein a short and clear Account is given of the Principles of them that owne it: the Common Objections against it Answered, and some other things opened that concern it in the Present Circumstances - by a Friend to that Interest". Edin. [1690]. (licensed: 18 April 1690). pp 12-14

previously abolished, it was the "constant practice" of the church to give deference to men of interest, so that they were generally satisfied with the results. This would still happen.

It would appear that mainstream opinion on the subject remained thus for most of the ensuing thirty years. Indeed, it is of interest to note how Ralph Erskine, later one of the leaders of the Original Secession, was still content to approve the established franchise parameters, apparently as late as 1718. The case in question was the disputed settlement of the second charge at Dunfermline, made vacant by Erskine's own translation to the first charge on the 1st May 1716. The Assembly Commission of that year was petitioned by the magistrates, heritors and elders of the town to set aside the presentee, and to allow them instead to elect one of four named candidates. The petition was accompanied by a unanimous concurrence from the Presbytery. Although nowhere in the petition was there the suggestion that the ordinary people of the parish might in some way be involved in the selection, it is significant that Erskine registered no dissent from the decision of either the session or the Presbytery, of which courts he was, of course, a member.³¹ A sharp contrast to the tone of the foregoing, however, can be found appearing as little as three years later. In a letter to Lord Grange, the Rev. John Wylie of Clackmannan wrote: "Your asserting that no heritor had any right to vote in calling a minister as an heritor, but only as a member of the congregation...was solid and joyfull to me; for the Apostles themselves, tho extraordinary, even officers, would not take upon them the chuseing of...one...in Judas place, nor

³¹ Sir Henry Moncrieff-Wellwood, *An Account of the Life and Writings of John Erskine*, Edin. [1818]. Appendix, p 436, n.

would they chuse so much as a deacon (the lowest officer), but referred both to the people, Act: 1,15, etc., Act 6.2,3, which two texts, to me, give to the people a divine right of chuseing their own officers in the House of God."³²

It might be asked whether the kind of revolutionary sentiments about which Wylie and Grange were in accord, can be said to have been kindled at any specific moment, or by any particular development or incident. An indication can probably be detected in the following paragraph of Wylie's letter, where the writer implores Grange to "go on as ye have don in strengthening the hands of the zealous orthodox ministers in opposing noveltie in doctrine and discipline, which has been endeavouring very much to set up its head by some new schemers for errours in both."

As the letter implies, both men were on the high-flying or evangelical wing of church theology³³, and for the adherents of that persuasion, there had been some momentous occurrences taking place since the '15.

It began with the doctrinal disputes concerning Professor Simpson [1715;1716-17], which left behind a sense of dismay and anxiety among evangelicals, that the church was disowning its proper concern for promoting piety and preserving purity of doctrine. This feeling continued to intensify with the Assembly's attitudes over the Auchterarder Creed [1717], and the Marrow controversy [1718]. The implications of these particular controversies are clearly wide-ranging, and

³² HMC., Mar and Kellie MSS. 8 May 1721. p 521

³³ See RM. Sunter, *Patronage and Politics in Scotland, 1707-1832*, John Donald, [1986], p 213; A. Carlyle, *Autobiography of Dr Alexander Carlyle of Inveresk. 1722-1805*, TN Foulis. Edin. 1910, p 10; James Erskine, Lord Grange, *Diary of a Senator of the College of Justice*, Edin. [1843], Introduction, *passim*.

may be studied at length elsewhere. However, what is of relevance here, is that, inextricably linked with purely theological principles, was the fact that the evangelicals also drew much of their support and origins from a popular pietism. As feelings hardened, it did not require much of a leap to equate a blow against popular piety as a blow against the people themselves - and their rights: "The lamentable condition of the Church of Scotland at that time is almost incredible....The people asked "bread", they received a "stone". The gospel, in its freeness and purity, was denied them. Their rights were torn from them, and their petitions for redress were either scorned as the ravings of a weak fanaticism, or scowled upon as the proofs of political disaffection. The General Assembly upheld patronage and condemned the "Marrow" with the same sturdy vehemence....no wonder that resistance on the part of the early Seceders was so popular. Thousands were prepared to leave a church, which openly stigmatized the "doctrines of grace", and branded its members with a degrading vassalage."³⁴

Although the evangelicals' dismay was directed primarily towards their hostile colleagues within the Church, it was not long before this extended to a questioning of the privileged role of the heritor in the election of a minister, regardless of whether the right of presentation was exercised or not. The catalyst was, ironically, the 1719 Act, which was designed to curb the worst excesses of patronage. Since the Act would inevitably increase the frequency of a Presbytery's exercise of the *jus devolutum*, the Assembly of that year decided to look again at measures it had drawn up on the subject for consideration by Presbyteries in 1711.

³⁴ J. Eadie, "The Life and Times of the Rev William Wilson, AM.", contained in *Lives of Erskine, Wilson and Gillespie, Fathers of the U.P. Church*, by J. Harper, J. Eadie and W. Lindsay. Edin. [1849]. p 114.

Because of the passage of the Patronage Act, the debate on these had fallen into suspense. It was now revived. Except for a greater emphasis on the heritors being "well-affected", the Overtures sent down in 1719, contained the same deference to their opinions as the earlier version. On the basis of returns received, the 1720 Assembly did add amendments, but when the proposals went down once more to presbyteries, the text still contained no suggestion of there being a popular franchise, except when there was no Kirk Session to join with the heritors.³⁵

The effect of the Overtures was naturally to stimulate argument and reflection, not all of it constructive: "[I see] A great deal of party humour, heats, and senseless debates about the overtures promotted with unaccountable violence, more than any thing ever I have been witnes unto, since I came to observe things"³⁶. When the Synod of Merse and Teviotdale appointed the evangelical Rev. Thomas Boston of Ettrick (Presbytery of Selkirk) to comment upon them, although heats were avoided, it would appear they received more than they wished for: "...having been almost ever since my entering into the ministry, dissatisfied with several things in our constitution, especially the manner of admitting to the Lord's table, and planting of churches, I embraced that opportunity to endeavour to get such things rectified:". When the Synod proceeded to ignore Boston's comments, the Presbytery sent them to the Assembly Commission, "But the matter was dropped; and, for anything I know, no more insisted on since that time. And I apprehend the malady will be incurable, till the present constitution be violently thrown

³⁵ Assembly Registers, 21 May 1719; T. Pitcairn, *Printed Acts of the General Assembly*, 23 May 1711 (p 458), 23 May 1720 (p 539).

³⁶ Wodrow, *Analecta*, vol. II, January 1720, p 339

down."³⁷

An illuminating insight into the kind of thinking and discussing that was already in progress at the time of the 1719 Assembly's action, can be found in a miscellaneous item of correspondence³⁸ concerning Whitburn (Linlithgow Presbytery). The exchange of letters, in April 1719, was between William Wardrobe, an apothecary in Edinburgh's Grassmarket³⁹, and James Erskine of Grange. The subject was a bond, currently being circulated, whose object was to erect, out of Livingstone parish, a church at Whitburn. The avowed intention of the originators of the enterprise was to establish a congregation free from the burden of patronage, and within the text of the bond is a suggested method for the election of the ministers. In his letter of the 3rd. April, Wardrobe complains that the call is given to heritors, elders, liferenters and deacons, but not to the people, who are only to be concurrers and consenters. The franchise, he argues, should be vested solely in the people, that is, the active members who live in the parish. He wonders why the proposed arrangement is so thirled to the Act of 1690, when that Act had much about it in need of improvement. Yet, ironically, he notes the Act's wording was still superior to the bond's provisions, since it declared the heritors and elders were only to "propose" a candidate to the people, whereas the bond did not. Furthermore, the Act comprehended the whole congregation in the consenting, and, unlike the bond, not merely the heads of

³⁷ Thomas Boston, *Memoirs*, p 338. At the Assembly of 1721, it was reported that the majority of Presbyteries who had voted on the Overtures, were against. They accordingly fell.

³⁸ SRO., GD 124 15\1186\1

³⁹ Wardrobe is mentioned several times in Boston's *Memoirs* as a supporter and host for Evangelicals. He was instrumental in encouraging Boston to publish his introduction to the *Marrow*. (p 379)

families.

In his reply of the 24th., Grange stated that Wardrobe's concerns confirmed his own conviction that unless the anti-patronage interest started giving precisely that kind of consideration to what they wished to see in place of presentations, "we cry out against patronages in vain". He also enclosed his own thoughts on how to give the widest franchise to resident, worshipping parishioners, at the same time raising the practical difficulties of what yardstick could be used to establish "residence", and what was to be decided about those temporarily resident?⁴⁰

Unhappily for the promoters of the Whitburn experiment, the law did not look benevolently upon their investment. As was uncovered previously at Port-Glasgow (Greenock Presbytery) in 1712 [see below], and repeated later at Culross (Dunfermline Presbytery) in 1749, the legal position was that even if a patron were to contribute nothing to the erection of a new charge within his parish, he nonetheless retained the right of presentation to it⁴¹. Thus, when Whitburn was formally erected as a parish in its own right by the Commissioners of Teinds on the 23rd. June 1731, the patron, Sir James Cunninghame of Milncraig, was free to step in and exercise his right. That the presentee, Alexander Wardrobe, was a relative of Grange's correspondent, probably explains why Cunninghame could do so with no apparent opposition. When Wardrobe died in 1759, however, the late

⁴⁰ Opponents of popular election continued to point to these questions as an insurmountable difficulty, eg., in his pamphlet of 1732, "A Modest and Humble Enquiry Concerning the Right and Power of Electing and Calling Ministers to Vacant Churches", the Rev. George Logan of Edinburgh Trinity claimed that popular election would be impracticable in parishes where there was a high turnover of tenants, or none at all after enclosing, and he cited Simprin, where "there are no parishioners but the heritor's labouring servants" Edin.[1732] [p.39]

⁴¹ JM. Duncan, *Parochial Law*, p 98

incumbent's kinsfolk did resort to the courts, and were successful in persuading the Court of Session that the deed of erection had judicially excluded the patron⁴². Cunninghame's response was to appeal to the House of Lords, where he got the judgement reversed.⁴³ According to one witness to the 1834 Parliamentary Commission on Church Patronage, the result of their failure to throw off the patron was that after that time, no new churches were endowed through such means again.⁴⁴

As might be expected, in an atmosphere of continuing polarisation⁴⁵, it was not only the evangelicals who experienced a hardening of attitude. In the Church courts, there is little doubt that those who looked upon the "high-flyers" or "hot brethren" as inimical to the peace of the Church, exercised their authority as they could to exclude them from their bounds. The most celebrated individual example of this was the machinations over the translation of the Rev. John Hepburn from Torryburn (Presbytery of Dunfermline) to New Greyfriars, in the city of Edinburgh. The fear was that once he had departed, the presbytery of Dunfermline would be vulnerable to domination by "Marrow-men", who would then be well placed to license probationers and settle charges with candidates of

⁴² 26 February 1762, M. 9933

⁴³ *Cunninghame v. Wardrobe*, 1762, 6 Pat.734. See also, *Baron David Hume's Lectures, 1786-1822*, Ed. GCH Paton, Stair Society Publications, Vol.VI, Edin. [1958], p 269

⁴⁴ 1834 Parliamentary Papers, vol. V, p 20

⁴⁵ "Our settlements are turning extremely vexatious, and too much by our differences among ourselves, and [by] some striking in with patrons." Wodrow, *Letters*, 8 February 1723, Vol. III, p 14.

their own inclination⁴⁶. To answer the anxiety, the Assembly's unprecedented solution was to declare that no future planting of Torryburn by the presbytery should take place, except with the advice and direction of the Synod of Fife.⁴⁷

On the wider scale, however, probably the sharpest demarcation between colleagues manifested itself in the Synod of Merse and Teviotdale [Duns, Chirnside, Kelso, Jedburgh, Earlston and Selkirk Presbyteries]. The popular pietist movement of the "Praying Societies" had always been strong in the area, and although figures like Boston were strongly against any kind of divisive confrontation, the hardline nature of popular sentiment made it difficult for ministers not to be drawn into it.⁴⁸ By the 1720s, a distinct gap can be seen to have opened up between the clergy of the Synod. On the one hand, there were the pro-establishment, pro-status quo, "moderate men"⁴⁹, while on the other, there

⁴⁶ The fears were not without foundation. Eadie writes in his biography of William Wilson, that when Glasgow Presbytery refused to license Wilson on account of his evangelical disposition, Dunfermline stepped in and did so on the 23rd. September 1713. (pp 105-6)

⁴⁷ Assembly Registers, 18 May 1723; Wodrow, *Letters*, vol.III, pp 50-1, and n.

⁴⁸ Particular indignation was aroused at the large number of ministers who had decided to accept the reframed oath of 1719: "Great was the stumbling and offence of the people in the Forest and Teviotdale, on account of the oath..." Boston, *Memoirs*, p 341

⁴⁹ I have here used this awkward phrase in deference to RB. Sher, who argues forcibly that the term "Moderates" should only be applied to "the party of Scottish Presbyterian churchmen that emerged shortly after 1750 under the leadership of William Robertson and his friends" [*Church and University in the Scottish Enlightenment*, EUP 1985. p 16. see also, IDL. Clark, "Moderatism and the Moderate Party in the Church of Scotland, 1752-1805", CU Phd. Thesis, 1964]. However, such phrases as "person of moderation" [NLS. MS.16548, William Baillie to Milton, 15 June 1732], "men of moderate principles" [SRO., GD 157/1392, Memorandum of early 1730s], and "upon the moderate side" [NLS. MS.16550, William Hamilton to Milton, 13 May 1732] were in general currency by the early 1730s, and clearly were intended to denote an adherence to pro-establishment, anti-popular sentiments. It is in this context that I have continued to use the term, but with a lowercase "m".

See also HR. Sefton on the use of the term "Old Moderates", as distinct from the later "New Moderates", in "The Early Development of Moderatism in the Church of Scotland", Glasgow University Phd. Thesis, 1962, esp. p 2. Also, Morren, pp 318-21.

were the evangelical, anti-patronage "popular" men⁵⁰. How notorious the split had become at a national level can be seen, for example, in the settlement dispute at Fogo [Duns Presbytery] in 1721. When the people there resisted the Royal presentation of William Home on the grounds that he had "a weak gift for preaching", the Lord Advocate wrote to Presbytery with the accusation that if there was opposition against him, it was only because some of the ministers had been stirring it up.⁵¹ The charge was denied.

The Fogo case also revealed a characteristic particularly pertaining to the Borders area. This was, that despite the fact that the presentee was related to one of the leading Squadrone families [Marchmont/Polwarth], the main thrust of the opposition was always doctrinal rather than party political⁵² - or even personal. The presentee was opposed because his preaching was not considered satisfactorily "edifying", but then, rather than see the congregation continue its drift to the meeting houses, the family leading the resistance was prepared to countenance his settlement - always provided a call was made the sole means of procedure, and the presentation was dropped.⁵³ In the event, like the planting of

⁵⁰ By the mid-1720s, members of the groupings included:

Evangelicals: James Noble, Eckford [Jedburgh]; Thomas Boston, Ettrick [Selkirk]; William Hunter, Lilliesleaf [Selkirk]; Gabriel Wilson, Maxton [Selkirk]; Henry Davidson, Galashiels [Selkirk]; Walter Hart, Bonkill [Duns]; William Gusthart, Crailing [Jedburgh] (trans. to Edinburgh in 1721).
Moderates: James Ramsay, Kelso; John Glen, Stitchell [Kelso]; Robert Colville, Yetholm [Kelso]; Walter Douglas, Linton [Kelso]; William Baxter, Ednam then Sprouston [Kelso]; John Pollock, Roxburgh [Kelso].

⁵¹ Duns Presbytery Minutes, SRO, CH2/113/5. 2 January 1722.

⁵² The Fogo case was muddled by the opposition being joined by Andrew Hog of Harcus, whose motivation was political in that he was an Episcopalian Jacobite and disaffected to the government, but in this context, it is not considered "party" political.

⁵³ *Ibid.* The family was the Trotters of Catchelraw. One of them, Thomas, embraced evangelical opinions while a youthful contemporary of Boston. [see *Memoirs*, p 11]

Ednam [Kelso Presbytery] the following year, the parishioners appealed against the settlement up to the Assembly and thence to the Assembly Commission, but to no avail. Popular disapprobation of the presentee was considered insufficient reason to set aside the presentations.

Thus, by 1723, it is perhaps not surprising if the ecclesiastical scene was building up for some form of confrontation. The catalyst was the vacancy at Morebattle [Kelso Presbytery], caused by the death of the "zealous and popular preacher"⁵⁴, John Simson, in March of that year. On the 3rd. September, 1723⁵⁵, the Duke of Roxburghe presented the Rev. James Christie of Simprin [Chirnside Presbytery]. After sustaining the presentation, the Presbytery met with the congregation in the following October and found that although the heritors were for Christie, the rest of the parish were overwhelmingly against. Finding the people "very mobbish and irregular"⁵⁶, Presbytery decided upon a indefinite delay to allow passions to subside. In October 1724, the Presbytery approached the parish again, but finding them still, according to Wodrow, "impressed by the Marrow people from many places about", the meeting closed in "noise and confusion". However, on the 1st December 1724, it was resolved to press on with Christie's settlement. The edict was served amidst tumultuous proceedings, to be followed at the induction on the 4th. March 1725, with a riot of near-spectacular violence. The admission was eventually conducted in nearby Linton church. The incident and its aftermath left

⁵⁴ Boston, *Memoirs*, p 162

⁵⁵ The entire Registers of Kelso Presbytery appear to be lost. This date, and other details quoted, is given by J. Tait in his *Border Church Life*, Vol.I, [1911], p 30ff. Since he clearly had the presbytery records in his possession at time of publication, it may be assumed that the information is largely reliable.

⁵⁶ Wodrow, *Letters*, vol.III, 19 May 1725, p 204.

local landowners deeply shaken: "Never was there such a spirit of rebellion against all order and government as rages universally in this country and I really believe...the military must be the measure at last. They threaten from all quarters to visit the Synod on Tuesday in such numbers and so prepared as if they have not what they demand, they will oblige them to remove their quarters, and are so insolent to menace the ensuing circuit [court] should they offer to proceed against the Morebattle Rioters."⁵⁷

In the event, the rioters were let off with a warning, but the Morebattle case was important for other reasons besides the shock it engendered by its violence.

First, it starkly exposed the church's inconsistency in the way it was now resolving settlement disputes. Formally in 1715, and thereafter by implication, the Assembly had emphasised the need for presbyteries to obtain the consent of the people when planting charges, yet it had not itself felt constrained by the absence of any call when deciding the cases of Fogo and Morebattle⁵⁸. Affairs were reaching the point, as Wodrow perceived, that, "cases are so various about settlements, that scarce one rule can be laid down".⁵⁹ The absence of consistency was undoubtedly highly damaging to popular perceptions of the church, especially as it appeared (the cases of Fogo and Morebattle were again examples) that once a settlement had taken place, the Assembly was more reluctant to

⁵⁷ HMC., Vol. XIV. Sir William Bennet of Grubet to the Countess of Roxburghe, 18 April 1725, p 54-5.

⁵⁸ Compare with Cunningham's assertion: "Between 1712 and 1730...no case is known of a settlement without a call." [*History*, p 422]

⁵⁹ *Letters*, Vol. III, 19 May 1725, p 206. See also, *Analecta*, Vol. III, May 1725, p 195: "...if Patronages continou, the church will of necessity be oblided to lay down rules which they have not yet done to ridd marches [define boundaries] as to such are callers."

rescind it, even if wrong procedure had been followed. It is illuminating to note how an expression of the dismay felt on all sides in the Synod of Merse surfaced in the form of a petition to the 1725 Assembly. It was signed by the most part of four hundred elders from the presbyteries of Jedburgh, Selkirk and Earliston, and craved, in the light of the Synod's arbitrary conduct over Morebattle, that proper measures be taken for the tightening and defining of planting procedures, and that such regulations be honourably adhered to, regardless of precipitant settlements. They believed the fault for the mutual alienation and "decay of Christian charity" in the Synod was not simply patronage itself, but could be directed to those clergy who indulged in the "detestable practice of solliciting in order to obtain presentations from patrons and [in their] undue manner of patching up and sustaining pretended calls from the people, by virtue whereof...parishes are woefully set at variance among themselves, [and] very bad impressions made upon the minds of many others of their neighbourhood about, concerning their pastors..."⁶⁰. The petition once more underlines how in the Borders, popular resentment over controversial settlements was as much directed against the clergy as against patrons. Thus in the trial of the Morebattle rioters, there is no aversion on their part to laying the blame on the ministers for being "the first aggressors". Even Bennet of Grubet, writing after the trial, appears satisfied that it was the church itself which provoked the trouble by its conduct: "I believe all will be henceforth quiet unless they [the people] are again blown up to madness by something from the General Assembly"⁶¹. This focus for resentment naturally

⁶⁰ General Assembly Registers, 17 May 1725.

⁶¹ HMC., vol. XIV, 13 May 1725, to Countess of Roxburghe, p 55.

facilitated the exodus of parishioners to the meeting houses. As early as August 1725, the elders of Morebattle were being investigated for refusing to do their duties, and by April 1727 their application to demit office and go elsewhere had been accepted.⁶²

Secondly, the Morebattle case demonstrated conclusively that the provisions of the 1719 Act were not to be the means of liberating the Church from patronage. Although Christie had given only a "qualified acceptance" of his presentation, that is, one dependent upon its confirmation by a popular call, it still, as Lord Grange complained in the Assembly debate on Morebattle,⁶³ undermined the hope that through a universal refusal by candidates to accept presentations, the *jus devolutum* would eventually apply in each vacancy. Although Grange waxed bitter against the church for backing away from the opportunity it now had to stand firm, it is difficult to see what grounds it could have employed for disciplining those who gave acceptances. Thus although the 1724 Assembly did request the Assembly Commission to propose an Overture suggesting what might be "proper to be done as to ministers and probationers who show a willingness to accept of presentations"⁶⁴ nothing formal ever came of it. A petition reminding the Assembly of the order was presented in 1732, but it was not until the Presbytery of Auchterarder decided to take matters into its own hands, over the conduct of George Blaikie in the mid 1730s, that the issue came back into

⁶² J. Tait, *Border Church Life*, [1911] vol.I, p 57. They were initially deposed by the Presbytery, on 3 May 1726, but the Synod on appeal recommended the deposition be removed and the elders be allowed to demit. Presbytery complied on the 19 April 1727.

⁶³ Wodrow, *Letters*, vol. III, 19 May 1725, p 203-4.

⁶⁴ Assembly Registers, 26 May 1724

prominence - as will be seen below.

In conclusion, it must be added that a diminishing of flexibility also appeared among the patrons and heritors. This was partly an instinctive recoiling in the face of what they perceived as the evangelical movement's dangerously radical and populist leanings. It was also a likely consequence of the way the political atmosphere intensified in the early 1720s. Up to this point, with Roxburghe as Scottish Secretary, the years after the '15 had seen the Squadrone become the dominant force on the Scottish political scene. However, in April 1721, Walpole rose to become First Lord of the Treasury and Chancellor of the Exchequer. Walpole's regard for the Argyll interest was not high, but it was even less so for the Squadrone⁶⁵. He accordingly set about a lessening of the latter's influence, with the general strategy that, by creating a balance between the two factions, he would thereby make Scotland more dependent upon himself. Not unexpectedly, the result was that relations between the two parties proceeded to deteriorate to a level that made the General Election of March/April 1722 the most bitterly contested of the whole of the 18th. Century⁶⁶. With the election going badly for the Squadrone, they thereafter fought to retain their remaining influence through every means at their disposal. In such a climate, there was little likelihood of much being surrendered in any settlement contest involving either side. Nevertheless, it is probable that few expected to witness the tenacity of the warring factions as they fought out the extraordinary settlement disputes of Lochmaben and Aberdeen.

⁶⁵ PWJ Riley, "The Structure of Scottish Politics and the Union of 1707", p.22

⁶⁶ See, RH. Scott, Phd. Thesis, "The Politics and Administration of Scotland, 1725-48". E.U. [1982]. p 313.

The Reality of the Church's Resistance to Patronage, 1724-1730.

Because of the tortuous convolutions of the Lochmaben case, confident conclusions about its conduct or resolution certainly require caution. A favoured opinion among historians would appear to be that the Assembly's actions were illustrative of the church's lingering determination to defend the validity of a popular call¹. Although exhaustive investigation is restricted by limitations in the source material², nonetheless, it is extremely hard to avoid the judgment that less honourable motivations were rather in operation.

The parish became vacant in August 1722. At the request of a large section of the parishioners, the Scottish Secretary Roxburghe was prevailed upon to procure a royal presentation for the Rev. William Carlyle of Cummertrees (then in Lochmaben Presbytery; it was transferred to Annan Presbytery, along with Ruthwell Parish, in 1743). Although his family had previously inclined towards the Squadrone interest, James, the 2nd. Marquis of Annandale was at this juncture "in no good terms with the Ministry"³. Accordingly, as a spoiling manoeuvre, he presented another candidate, the Rev. Alexander Shanks. Seeing an opportunity for increasing the administration's embarrassment, David Murray, the 5th.

¹ eg., Henry Moncrieff-Wellwood, *John Erskine*, Appendix, p 438; J. Cunningham's *Church History*, p 422.

² The Assembly ordered both Synod and Presbytery to minimise their records of the dispute, "that all memory of the differences that had arisen might be utterly extinguished." [*Fasti*, vol.2, p 214]. Lochmaben Presbytery minutes also appear to be defective.

³ Wodrow, *Analecta*, vol. II, November 1723, p 385

Viscount Stormont⁴, intervened with a third presentation, to the Rev. George Hall of Abbotrule in Jedburgh Presbytery.

The Marquis of Annandale was extremely influential in the area - not only was he consistently elected Provost of Lochmaben, but he at one stage, in 1721, was Provost of Annan at the same time⁵. Moreover, Wodrow reports that he went out of his way to support the authority of the local clergy⁶. It was not especially surprising, therefore, that the Presbytery of Lochmaben leaned in favour of his presentation when it came to consider the situation. However, since the Marquis had the weakest claim of the three putative patrons, the best the court could do was to employ delaying tactics. The Carlyle camp duly appealed to the Synod of Dumfries. Annandale did not, of course, possess the same support in the wider constituency of the Synod, and so when it met in October 1722, he could do little to prevent it ordering the Presbytery to settle Carlyle forthwith.

By the time the case came up on appeal to the Assembly, on the 20th. May 1723, personal sensibilities had already reached such a pitch, that the petitions were not read out, on account of the "indecent expressions" they contained⁷. This, added to the uncomfortable fact that Annandale was also the brother-in-law of the Lord High Commissioner, the Earl of Hopetoun, enabled the affair to be shuffled off to the less public arena of the Assembly Commission. The solution of the May

⁴ His allegiance to the Hanoverians was sufficiently suspect for him to have been temporarily interned at the outset of the '15. (J. MacVeigh, *The Scottish Family History*, Dumfries, [1891], vol. III, p 525.)

⁵ RM. Sunter, *Patronage and Politics*", p 169.

⁶ *Analecta*, Vol. II, p 385

⁷ Assembly Registers, 20 May 1723.

Assembly Commission was that Lochmaben Presbytery should try the inclinations of the people on all three candidates and report back to them at their August meeting. Since it was obvious that the parish was overwhelmingly for Carlyle, this should have concluded the matter. However, Annandale and Stormont devised the ploy of dropping both their candidates and combining to support another one, Edward Buncle, probationer. The Presbytery accordingly used this as an excuse for staying away from the Assembly Commission. Then, despite an order from the Assembly Commission to refrain from doing so, they moderated a call to Buncle on the 27th. August 1723⁸, and ordained him to the parish on the 27th September, having put him through his trials with unprecedented haste. Synod referred the matter back to the Assembly Commission, who, on the 13th. November, declared the settlement null and void and ordered the Presbytery to admit Carlyle, which failing, it was to be effected by a committee of Synod. Carlyle was duly admitted on the 10th. March 1724.

The Marquis, however, had not finished. The Town Council and Presbytery appealed against the conduct of the Assembly Commission to the 1724 Assembly, where the ensuing debate took up three days. Eventually, the decisions reached were that the Commission had exceeded its powers, that both calls and settlements be set aside and a new call moderated, and that Lochmaben Presbytery be admonished for their "irregular and precipitant" conduct. Thus, on the 25th May, the affair was finally concluded, and Patrick Cuming was translated from Kirkmahoe, in Dumfriesshire, to fill the charge the following

⁸ The Town Council were, not unexpectedly, unanimously for him. See, Lochmaben Town Council Minutes, 27 August 1723.

March.

If reflection is made on the case, particularly as conducted in the 1724 Assembly, two considerations stand out.

First, the large scale confusion that marred the conduct of business, as, for example, over who should be excluded as "parties", showed how settlement disputes were by this stage putting cases of such complexity before church courts that the majority of members were simply not equipped to identify correct procedure. This not only gave full rein to the skills of advocates and solicitors, but also placed an extra authority and influence into the hands of senior members of these courts, as Wodrow implies: "And I never saw such confusion as this day, and the reason was, because the Commission being out as parties, the remaining members did not well know the usages of the Assembly"⁹.

Secondly, both parties in the debates did not hesitate to recruit into their argument the cause of the "choice of the people"¹⁰. It is thus possible that its frequent mention has contributed to the belief that fundamental to the Assembly's conduct at this time was the desire by all sides to protect the people's inclinations against the overreaching ambition of patronage¹¹. However, a less simplistic explanation must properly be looked for. To this end, much valuable insight can be derived from a miscellaneous memorandum to be found among the papers of Scott of Harden, later Baron Polwarth. The paper is anonymous and has no date,

⁹ Wodrow, *Letters*, Vol. III, 22 May 1724, p 131-2.

¹⁰ The supporters of the presentation could, in this instance, afford to take up the refrain, since any popular vote would have favoured their candidate.

¹¹ Thus Cunningham, *History*, p 422, makes the remarkable assertion: "...the people were not satisfied with the presentee; and when two competing calls came up before the Assembly, it was thought most judicious to set both aside..."

but would appear to have been written in the early 1730s. The author has little doubt that most of the pious talk about defending the voice of the people, was nothing more than a cynical device taken up by the Argathelians with the aim of embarrassing the administration. The actions of the 1724 Assembly, he thinks, were orchestrated: "...merely in odium of the Duke of Ro[xburg]h and the then ministry, by these very persons with whom the management of our kirk affairs is now entrusted [ie., Ilay and Milton] who at that time humoured the zealous brethren in all their whims and violently bore down all the men of moderate principles, for serving the above named purpose. For some time after this, those who were generally called My Lord I__y's party in Scotland joined in all matters with the Hot clergy and took every opportunity to embarrass such measures as those of a different character were engaged in...."¹². Naturally, the memorandum is decidedly of a pro-Squadrone temper, yet all its material assertions appear to be accurate, while an underpinning of its general contention appears in the writings of the neutral Wodrow, as with: "This affair.....seems to be what is insisted on by one side, to give a thrust to [ie., against] the present set of people in office, under the King."¹³.

The unlikely alliance with the evangelicals lasted two or three years. Before following it farther, however, a moment should first be taken to consider how the church's judicial system had meanwhile been faring under the added strain it had been required to withstand through the continuing succession of patronage-

¹² SRO. GD157/1392. "A Short Memorandum relating to the Situation and Management of Church Affairs in Scotland at least so far as The King's Ministry or those employed by them seem to have been Concerned."

¹³ *Letters*, Vol. III, 22 May 1724, p 130.

inspired disputes. Given the truism that pressure exposes the weakest point in a structure, in the church's polity this was undoubtedly revealed as the Assembly Commission, a body which had been pushed into greater prominence with each passing year.

General Assembly Commissions

Under the Kirk's constitutional settlement at the Revolution, it was the Lord High Commissioner who called and dissolved Assemblies, which traditionally lasted 10 days. The church did reserve to itself an intrinsic right to meet without the calling of the Lord High Commissioner, and had asserted that in a falling out with the Earl of Lothian in 1692¹⁴. However, in the less secure period for the church which followed King William's death, rather than risk confrontation over the matter, the Assembly resorted with increasing frequency to its Assembly Commission, frequently empowering it to "determine finally".

Historically, the existence of a body to act in the Assembly's name between sittings, occurs as early as 1593¹⁵, but there is no mention of it being given the same statutory status as other courts. It had ceased to meet after 1653, but was revived by a special Act of Parliament in 1690 [c.5], to try and purge out all insufficient and scandalous ministers. Although the Assembly of that year appears to recognise that such Commissions (there were two established) were

¹⁴ see Pardovan's Collections. Bk 1, title XV. p 244

¹⁵ *The Booke of the Universall Kirk of Scotland: Wherein the Headis and Conclusions devysit be the Ministers and Commissionaris of the Particular Kirks thereof, are specially Expressed and Contained*, Ed., A. Peterkin, Edin. [1839], 28 April 1593, p388

only ad hunc effectum, et pro praesenti ecclesiae statu¹⁶, yet it is possible that one or both merged with a committee which the Assembly itself also erected that year "to sit after the Assembly is over, for discussing of references and appeals, which would have been too tedious for the Assembly to have done"¹⁷. Either way, as time passed, the use and remit of the body was extended until it became a matter of uncertainty how absolute were its powers.

It was the Kettle case of 1716 [see above] which eventually exposed the fundamental problem: how far was the Commission an actual court of the church? In effect, this question was never properly resolved.¹⁸ What did become obvious at this juncture, however, was that if the Kirk allowed the Commission to be regarded as something less than a valid judicatory, then that would leave it unable to make decisions on the Assembly's behalf. This in turn would oblige the Assembly to decide all its own cases, which, given the volume of settlement work, would be an impossible task in the time available. For its administration to continue, therefore, the church knew it had no choice but to uphold the Assembly Commission. Accordingly, its legitimacy was defended with such arguments as: "the Sovereign had owned Commissions as lawful courts, by receiving addresses and sending answers, and giving the civil sanctions to their acts; and that, by the Union act, our privileges, as well as judicatories that we had at that time, are secured by law to us, and under privileges and judicatories the Commission....is

¹⁶ Acts of Assembly 1690 sess. XV art. 8 and 9

¹⁷ *Leven and Melville Papers*, Lord Carmichael to the Earl of Melville, 1st November 1690, p 563

¹⁸ It was still arousing controversy at the time of the patronage debates in the 19th. Century - see R.H. Story's *History of the Church of Scotland*, vol 4, p 35, and his especial reference to the Culsamond case.

comprehended."¹⁹

In practical terms, there was, however, one problem about Assembly Commissions - their vulnerability to manipulation. The main reason for this was poor attendance, especially of those residing any distance from Edinburgh. In 1703, for example, the Commission had inordinate difficulty in reaching a quorum²⁰, even though this was set as low as 21²¹ - an eighth of the membership of some of the Synods from whom an appeal might have come. It was raised in 1711 to 31 (21 had to be clergy), but if a moderator had enough friends, it was still a simple matter whereby "...he might signify to some members to come up, and so get the Commission to vote what he pleased"²².

There was also the crucial matter of selecting the membership of the Commission²³. The 6th. Act of the 1705 General Assembly established a system whereby each Presbytery's representatives at an Assembly would meet with their colleagues from the other presbyteries in their synod and name two or three of their number to serve on a committee. This committee would nominate members of the Commission, using leets provided by synods. In the 1731 Assembly minutes, it is mentioned that the committee numbered 34 ministers and 7 elders (of whom two were to be the Lord Provost of Edinburgh and the Solicitor General). The circuitousness of the selection system was designed to avoid any

¹⁹ Wodrow, *Letters*, vol.III, 26 May 1724, p 136

²⁰ Assembly Commission Registers, SRO. CH1\3\6

²¹ Of which 15 must be ministers. Pardovan p 238.

²² *Letters*, vol. 1 p 233

²³ For a note on the membership of the Assembly itself, see Appendix II.

appearance of presbyteries simply creating another Assembly. It is possible the procedure was also intended to promote an element of fairness, if so, how far it was successful in this can be judged from the remarkable incident which came to light at the 1718 Assembly, when the synod of Merse representatives discovered that one influential churchman they had left off their list, the Squadrone-leaning James Ramsay of Kelso (who had been on the Assembly Commission for 15 years), had suddenly been included, while a person they had selected had been left out. When the Lord High Commissioner intervened, drawing attention to the fact that Ramsay was a King's chaplain, a way was found to keep him in, and the scandal was smoothed over.²⁴ The Argathelians, however, had noted the incident and awaited their opportunity to try it themselves.

The chance came in the anger generated, particularly among the evangelicals, by the Assembly Commission's conduct over the Lochmaben affair. Argyll's leading manager at the 1724 Assembly, George Drummond, used the case to raise a hue and cry against the Commission, ostensibly in relation to its powers, but in reality with the aim of manipulating its nomination. Drummond had every reason to feel aggrieved in that the Squadrone Lord Advocate, Robert Dundas, had seen to it that the previous Commission had omitted Drummond and other major Ilay men, while "The Bishops of Edinburgh" - Squadrone clerics like James Smith, Andrew Mitchell and William Hamilton, dominated. The tables were now turned. Dundas was thrown off the nominations committee and replaced by Hugh Dalrymple, resulting, to Wodrow's dismay, in "the best modelled Commission for one side

²⁴ *Letters*. vol 2 p 382 27 May 1718

that I have almost ever seen"²⁵. This Argathelian coup even extended to the ejection from the Commission of the 1723 Assembly's moderator, James Smith - an unheard of precedent. It was a high point in Drummond's career: "In the Assembly everything was managed, nay the very minutes were dictated to the Clerk by George Drummond, Provost of Edinburgh, who was for some time after usually styled the Moderator of the Lochmaben Assembly"²⁶.

From this point, Argathelian interest in the Church continued to grow, aided by the behind-the-scenes involvement of Andrew Fletcher, who rose to prominence as Ilay's agent in Edinburgh after his elevation to the bench as Lord Milton in May 1724. It was, however, still far from being secure, and further work was required to weaken Squadrone influence. The opportunity soon appeared in the form of the "Norland Lochmaben", the settlement of Aberdeen East, and once again the espousing of the "popular" cause paid dividends.

Aberdeen Town Council had been predominantly Squadrone since the '15, thus, when in 1724 they and nine elders called²⁷ the Rev. James Chalmers of Dyke (Forres Presbytery) to the town, it seemed the ideal opportunity to embarrass them by setting up a rival candidate. Accordingly, the Argathelian MP for Aberdeen Burghs, Col. John Middleton of Seton, rallied the "meeting house people...[and]..struck in with the inclinations of some of the meaner sort of people...for Mr Ogilvy of Footdee [or St. Clements, Aberdeen Presbytery], who has

²⁵ *Letters*, vol.III, 25 May 1724, p 139.

²⁶ Memorandum, SRO., GD 157/1392

²⁷ It does not appear to have been an actual presentation.

a very taking gift"²⁸. Ogilvie had the support of eleven elders, but three were of doubtful status. When the matter reached the 1725 Assembly, Lord Grange led the attack on Chalmers' call with the argument that since the 1712 Act repealed the 1690 Act, the right of calling was no longer the prerogative of heritors/Town Councils and elders, but rather belonged solely with the Session, since the provisions of the 1649 Assembly Act became valid by default. Although that particular controversy was not resolved, the evangelical and Argyll factions combined sufficiently to obtain an order to Aberdeen Presbytery to try the inclinations of the people and moderate a new call. According to Wodrow, Chalmers clearly enjoyed the support of the majority of the freemen burgesses and ordinary communicants, as well as the Council and most elders. Middleton's "meaner sort" made up the majority of the heads of families who voted against him.²⁹ Presbytery thus found themselves in a quandary, and attempted to escape from the problem by claiming an impasse over the fact that three of their members were subscribers to his call. The matter came back to the Commission, who sustained the call to Chalmers and ordered Forres Presbytery to proceed, at the same time appointing them to suspend their apparent scruples about the lack of a concurrence from Aberdeen Presbytery.³⁰ Forres however took their

²⁸ *Analecta*, Vol. III, p 282. Wodrow meant that Ogilvy's evangelical preaching was appealing to the popular wing.

²⁹ Milton set about countering such aspersions on the quality of Ogilvie's supporters, by telling an ally on the Council to put it about that the Magistrates themselves had been recruiting "a meaner sort of burger" and making such persons subservient to their designs "especially now in the calling of a minister contrary to the inclinations of the people." He was also to claim that public-spirited persons "found it their duty to oppose the magistrates' proceedings, especially seeing the character and good name of hundreds of the honest inhabitants have been injuriously attacked in that affair." NLS., Saltoun MS. 16531. Milton to Provost William Forbes of Aberdeen, 10 September 1725.

³⁰ Lee MSS. NLS., 3431, #4, Moderator of Forres Presbytery to the General Assembly, May 1726

"directions"³¹ from Milton in Edinburgh, and so, intending a further delay, referred the issue back to the Commission for advice.

The conduct of the Assembly Commission which met on the 30th. March 1726 showed how Argathelian management of church courts still required much work. Drummond and the new Lord Advocate³² were in London, and party loyalists could not be got up in any strength. In addition Middleton's candidate, Ogilvie, had meanwhile been settled elsewhere. All objections were accordingly swept aside, and the members of the Commission in the Synod of Aberdeen and the Presbytery of Fordoun were commanded to join with Aberdeen Presbytery in seeing that the settlement was carried out on the 21st. April 1726, which it was.

There was, however, still the General Assembly to come. Here the anti-Chalmers side played the populist card of demanding the Commission's decision be recalled because it had not considered the views of the heads of families in the parish, as opposed to simply the Council, Session and "communicants"³³. What decided the Assembly however, was the fact that the Commission had been appointed to determine finally in the Aberdeen case. Its conduct therefore could indeed be disapproved by the Assembly (which it was³⁴), but to reverse its decision would be to nullify its function and reburden the Assembly with more work than it could deal with. Thus Chalmers remained.

³¹ *Analecta*, Vol. III, p 285

³² The Squadrone Robert Dundas had been replaced by the safe Ilay-man, Duncan Forbes, in August 1725.

³³ Wodrow, *Letters*, Vol. III, p 250. These would tend to be of a higher social status.

³⁴ Because it had not paid due regard to the inclinations of the people, and because it had shown "too great precipitancy in proceeding to a sentence". General Assembly Registers, 15 May 1726.

"I perceive the levites have been very ridiculous about the Aberdeen affair," Ilay wrote afterwards to Milton, "but it's of no great consequence that I can see."³⁵ However genuine his unconcern may have been, nonetheless Ilay was also keenly aware of the necessity of showing, at an early stage, his power to reward or blight churchmen who became involved in his designs: "Professor Hamilton will soon pay the price of his impertinence, I...will take care to serve Mr Alston your friend whom I have a great opinion of."³⁶ He was as good as his word, and the Squadrone Hamilton along with James Ramsay were shortly afterwards removed from their Royal chaplaincies and replaced with the loyal Hart and Alston.

Before dispensing with the Aberdeen case of 1726, it is perhaps worth emphasising that for all the oratory of evangelicals like Lord Grange, fundamental to the condemning of Chalmers' settlement was not a sudden ascendancy of populist sentiment within the Assembly, so much as the fact that it suited the Argathelian managers to ally with that particular cause in order to achieve a goal which happened to be identical. Several writers have read into the decision something more than this, namely that it was a high-water mark in the Kirk's concern for the rights of ordinary parishioners³⁷. Cunningham, for example, equates the case with that of Twynholm (Kirkcudbright Presbytery), saying that the same Assembly "disregarded" the patron's presentation for the parish, and that "the man who had the voice of the people [was] inducted in preference". In fact,

³⁵ NLS., Saltoun MS., 16533. 22 May 1726

³⁶ Saltoun MSS. MS.16533. Ilay to Milton. 14 May 1726.

³⁷ eg., Introduction to *The Life and Writings of John Willison*, Aberdeen [1817], p.vi; John Currie, "Jus Populi Divinum: or, the People's Right to Elect their Pastors", Edin. [1740], p 40; Hetherington, *History*, pp 208-9; Cunningham, *History*, pp 422-3.

the Assembly asked the patron, Lady Mary Hamilton (acting with her son Basil), to drop her presentation in favour of the preference of the parish, Andrew Boyd. Since she agreed to do so, it is hardly accurate to suggest that she was "disregarded"³⁸.

During the Aberdeen debates, certainly much support was expressed by both sides in favour of the "call of the people", but it is wise to be cautious before extrapolating from that any firm conclusions about the true mind of the 1726 Assembly. First, there was undoubtedly discomfort over the question as to which people in the dispute represented the authentic voice of the congregation, the "ordinary communicants" or the heterogeneous "heads of families", and, as seen above, Wodrow had no doubt that it did not properly belong with the latter. Secondly, beneath the ecclesiastical polemics, the real agenda was the battle for political dominance in Aberdeen. In the event, the garbled nature of the result meant that virtually everyone could claim some kind of victory, but it should be remembered that despite appearances, in reality the least substantial triumph belonged to the evangelicals³⁹.

If the settlement of Aberdeen East was a volatile mix of motivations and interests, even more so was the disputed planting of Old Machar, which followed shortly after.

Milton found Aberdeen to be consistently hard terrain in which to advance Ilay's

³⁸ General Assembly Registers, 15 May 1726

³⁹ On how they were used, see Scott of Harden Memorandum: "My Lord Ilay's party in Scotland joined in all matters with the Hot Clergy, and....[threw] affronts upon their [opponents'] persons, in which endeavours they frequently succeeded, as particularly in condemning the settlement of Mr James Chambers at Aberdeen...". See also Wodrow, *passim*, in *Letters*, vol.III, and *Analecta*, vol.III.

cause. Although Middleton had been MP for the district of burghs since 1715, in both that and the 1722 elections, he had in fact been rejected by the electors, and only was returned after petitioning Parliament. When George I died on the 22 June 1727, and a general election became inevitable, it became therefore imperative to intensify the advance of Argathelian influence. On the 31st. July, Patrick Duff of Premnay, Rector of Marischal College from 1726 to 1729 and Milton's chief adviser on Aberdeen matters, wrote to tell Milton that the college Principal, Thomas Blackwell, was coming to Edinburgh, and willing to meet with him: "...I dare not promise what effect it will have, but no opportunity should be lost, he has much to say with many of our Council and I believe is not unwilling to be of our side if his friends would come along with him."⁴⁰ Like many of his contacts on the Town Council, the Squadrone-inclined Blackwell remained ambivalent in his dealings with the Argathelians. However, he did lend his support when the election came round on the 9th. September, and Middleton was returned⁴¹. This is not to suggest that the Council could then be relied upon by Milton any more than before: "Indeed, throughout 1727-8 a town council faction composed of Fordyce [Blackwell's son-in-law], Baillie William Cruden and Provosts William Cruikshank and William Chalmers opposed Ilay's choices for jobs in the Aberdeen universities and the kirks"⁴² It was perhaps surprising for Milton, therefore, when, after Principal Blackwell died in February 1728, he received a most respectful letter from the magistrates, inviting him to fill the crown appointment

⁴⁰ NLS. Saltoun MSS. 16536. 31 July 1727.

⁴¹ R.L. Emerson, *Professors, Patronage and Politics*, p 55

⁴² R.L. Emerson, *Professors, Patronage and Politics*, p 51

with someone "agreable to your friends in this city". Since the salary was so small they ventured to suggest a minister of the town as an appropriate solution, and in particular they recommended the Rev. James Chalmers, "all former differences anent his settlement being now vanished"⁴³. Patrick Duff was deeply suspicious of the sincerity of both the magistrates and Chalmers, and wrote to Milton suggesting Ilay should play safe and choose the more reliable John Osborne of the North or Third Charge of Aberdeen.⁴⁴ On hearing the news of Osborne's selection, the magistrates retaliated by presenting Chalmers to the vacant Chair of Divinity at Marischal College on the 8th August⁴⁵. It was a suitably punitive counter, in that Chalmers "turned out to be, and to remain, an enemy", and caused several problems later.⁴⁶

Worse almost followed when Argyll loyalist Colin Campbell of St. Nicholas' (or West) Church died on the 27th. August 1728, and the Council tried to have a candidate of their preference called before Duff or Milton could stop them⁴⁷. In the end, however, they were made to perform the doubtless humiliating task of calling to the charge Chalmers' adversary of two years' before, James Ogilvie of Footdee (later of Inchtute in Dundee Presbytery).

Milton and Duff won a more significant victory with the September Council elections, when having isolated their main enemies - Provosts George Fordyce and

⁴³ NLS. Saltoun MSS.16538. 20 February 1728

⁴⁴ NLS. Saltoun MSS. 16538. 28 February 1728.

⁴⁵ The post was to be held conjunctly with the charge of Greyfriars, to which they had also presented him on the 18th. June 1728. Both appointments were in the Council's gift.

⁴⁶ R.L. Emerson, p 57

⁴⁷ NLS. Saltoun MSS.16538. Duff to Milton, 11 September 1728.

Robert Stewart - they replaced them with the more malleable Baillie William Cruikshank.⁴⁸ Nevertheless, Milton was still unable to rest easy about his interests among the magistrates: "They are such rogues, " he later complained to Ilay, "there's no believing their promises."⁴⁹ Clearly, he needed to use some early opportunity to make a show of strength and demonstrate Argathelian authority over the magistrates. The chance presented itself in the form of the settlement of the first charge at Old Machar (or St. Machar's), which had been vacant since Alexander Mitchell's death on the 19th. January 1728.

Milton's favoured candidate for the vacancy was surprising in that Principal George Chalmers of King's College had previously been affiliated to the Squadrone. However, Wodrow noted that Chalmers was now "entirely in" with the Duke of Argyll's party⁵⁰. Apart from the value of having an ally in such an influential position at King's, Milton knew a college Principal was also a useful recruit in that such figures were permanent members of the Assembly.

Early on in what was to be a protracted dispute, King's College had assured the Presbytery of Aberdeen that any use by them of a presentation would only be according to the principles of the church, in other words, only after a call had been moderated⁵¹. At the moderation on the 18th. June, however, although Chalmers won the vote against the rival candidate, the Rev. James Howe of Newhills (Aberdeen Presbytery), by 210 votes to 182, his opponents made clear

⁴⁸ JS. Shaw describes the process in *The Management of Scottish Society, 1707-1764*, (John Donald. 1983), pp 110-111

⁴⁹ Saltoun MSS.16540. 24 February 1729

⁵⁰ *Analecta*, vol.IV, October 1728, p 15

⁵¹ Aberdeen Presbytery Minutes, SRO., CH2\1\7. 25 April 1728

their intention to delay the process beyond the six months allowed for presenting, by questioning the validity of those who claimed to be voters. Fearful of losing their opportunity, the College immediately lodged a presentation in Chalmers' favour. Howe's proponents, now led by Baillie John Robertson, expressed outrage at the College's high-handed action as well as challenging their claim to be patrons in any case. At the following meeting, Chalmers in his acceptance tried to calm some of the passion now being generated, by conceding that patronage was "justly reckoned a grievance and not agreeable to the constitution of our church", but a presentation was necessary in law to make the settlement effectual⁵², and since also the support for him was "attended with so affectionate a call of the most considerable part of the parish, I think it my duty to signify...my gratitude to the said patrons for the honour they have done me" by accepting⁵³. Since Chalmers was ignoring the fact that he was unwanted by the Council of a town in which St. Machar's was the premier charge, and that as Principal of the College he had in effect presented himself, his professions of respect for Presbyterian principles did not appear especially convincing⁵⁴. Perhaps unsurprisingly, on the 31st. July, Presbytery resolved to disregard the presentation, on the grounds that (1), the College had not abided by their promise, having acted before Presbytery had judged which call was to be sustained; (2), a presentation was a matter of a civil

⁵² Unless, of course, as Chalmers omitted to say, the patron waived his right, or allowed the six months to expire.

⁵³ CH2\1\7. 10 July 1728

⁵⁴ "...his plain explicit letter of acceptance of the presentation from the College or rather presenting himself made...much noise and give great umbrage to thinking men, tho' he had the Magistrates, Town Council, most of...the Trades, 12 elders and most of the heads of families against him." - NLS., Letters to Wodrow (1728-9), Quarto XVIII, James Brown, Aberdeen, to Wodrow, 4 March 1729.

right, and they were not competent to judge its validity; and (3), patronage is a grievance to the church, and so much weight was put on that presentation.

While the Presbytery got ready to give the call to Howe, King's College appealed to Synod. At their meeting on the 2nd. October, the Synod (which Wodrow's correspondent, James Brown, regarded as corrupt and unscrupulous) reversed the Presbytery's sentence and bluntly ordered it to install Chalmers. The Principal was duly installed in March 1729, but the case went to the Assembly on appeal. Since both the Moderator of that Assembly, James Alston of Dirleton (Presbytery of Haddington) and the Lord High Commissioner, the Earl of Buchan, were allied to Ilay, gaining the result should not have involved excessive difficulty. However, through an unfortunate misreading of signals, Ilay's troops proceeded to march in the wrong direction. Through a private quarrel with Chalmers, Buchan's daughter, Lady Katherine Fraser, had formed an aversion to the Principal and had persuaded her father to use his influence to oppose it⁵⁵. On seeing the "very open way" in which the Commissioner opposed the settlement, many assumed this was the official policy, and so, anxious to please, fell in with it⁵⁶. The result was that the settlement was rescinded and a new moderation ordered⁵⁷.

To be thus routed by "the caprices of our viceroy"⁵⁸ came as a shock and embarrassment to the Milton/Chalmers axis, and plans were hurriedly set in

⁵⁵ *Analecta*, Vol. IV, p 55

⁵⁶ Memorandum on Church Affairs. The author describes how all the "zealous chaplains" followed Buchan in "this false step".

⁵⁷ General Assembly Registers. 15 May 1729

⁵⁸ Saltoun MSS.16541. James Innes to Milton, 7 May 1729

motion to have Chalmers re-elected at the moderation⁵⁹. In the apparent absence of firm leadership from Cruikshank, the magistrates, however, felt free to set about frustrating these⁶⁰. A struggle of remarkable ferocity ensued. Chalmers was ultimately re-elected on the 23rd. September and re-admitted by a special committee of Synod shortly after, but the opposers brought the case back to the Assembly on the 18 May 1730, amidst a welter of objections and accusations. This time, however, Chalmers's settlement was affirmed.

The underlying influences beneath the surface of the Old Machar case are important, in that the affair has, like that of Aberdeen East, been alluded to as an example of the Assembly making, in its initial handling of the matter, "a clear affirmation of the principle that the opposition of the people was, in the estimation of the Church, more powerful to prevent than a presentation could be to secure a settlement"⁶¹. As has been seen, the reality of the situation was somewhat different. On the other hand, however, it must be allowed that the fact of the settlement's reversal at the 1730 Assembly - regardless of the reasons behind it - was naturally too good an opportunity for the evangelicals not to use as a rallying cry to their supporters. Years later, Ilay was still deeply annoyed about the debacle. Writing from Edinburgh in the aftermath of the 1733 Secession, he fumed to Secretary of State Newcastle: "We have had lately some disturbance in Church matters...four ministers who behaved themselves very insolently in regard to the laws concerning the settlement of ministers are suspended; it seems plainly to me

⁵⁹ Saltoun MSS. 16540. Sub-Principal Fraser of King's College to Milton, 30 May 1729.

⁶⁰ Saltoun MSS. 16541. James Innes, Fochabers, to Milton, 24 June 1729.

⁶¹ W.M. Hetherington, *History*, p 209

to be the fruit of that seed which was sowed in the Earl of Buchan's Assembly, I believe your Grace has often heard me complain of the proceedings at that time."⁶²

In view of the grip party interests had on most settlement issues, it might be asked if non-political resistance to a presentee was able to make any significant impact during this period? In other words, were those who opposed patronage on principle able to make some effective expression of their resistance, or were they entirely marginalised by the party men? Perhaps all that can definitely be said is that, whatever its immediate effect, the evangelical response to the outcome of the Hutton case had, before long, powerful consequences.

Hutton (Chirnside Presbytery) became vacant on the 3rd. September 1727, and was of immediate personal interest to Milton. The reason for this was that the previous year he had set about procuring a presentation to the vacant charge of Gordon (Earlston Presbytery) for the chaplain to his father-in-law, Sir Francis Kinloch of Gilmerton. He had had to give up the project, however, when his advisers warned that it would be highly damaging to alienate the larger heritors there by pursuing it⁶³. Hutton was therefore the next suitable vacancy in the area, and Milton would have felt morally obliged to earmark it for the disappointed chaplain, Robert Waugh. The patronage of the church was held jointly by the Crown and the Earldom of Home. Since the curators of the under-age 8th. Earl included another relative of Milton's, Ninian Home of Billie, there

⁶² BL., Newcastle MSS.32688. Ilay to the Duke of Newcastle, 8 September 1733

⁶³ Saltoun MSS. 16534. Alexander Hay to Milton, 11 May 1726; James Home of Eccles to Milton, 30 August 1726.

was little difficulty in having the presentations drafted and lodged with the Presbytery on the 30th. January 1728.

Milton's action provoked the Squadron Marchmont into concerting largescale opposition, centred around a rival call to his own minister, the Rev, John Hume of Polwarth. Growing alarmed, Waugh's legal representative complained to the Presbytery that: "the call in favour of Mr Home is brought about merely by influence, whereas if the heritors were left to their own free choice, no such call would have been given."⁶⁴ Later, the other side were to claim that, on the contrary, "many threatenings" were used by Waugh's sponsors to deter them from their real choice⁶⁵. Seeing the way passions were developing, the perplexed Presbytery decided the wisest course was to refer the matter to the Synod, from whom it passed to the Assembly, thence to the August Assembly Commission.

Although the Commission accepted that Hume had by far the larger number of names on his call, noticing that "many of those names being written with the same hand, neither is it attested by the Presbytery"⁶⁶, they declared themselves unable to accept it. Then, after delaying until November, they finally decided to order that Waugh should be settled.

Through a series of delays, brought about by unsupported allegations of scandal⁶⁷ and by both the Presbytery and the 1729 Assembly entertaining an apparent reluctance to settle Waugh in the face of the opposition to him, the affair

⁶⁴ Chirnside Presbytery Minutes, SRO., CH2\316\3. 27 February 1728.

⁶⁵ General Assembly Registers, 22 May 1730.

⁶⁶ Engrossed in Chirnside Presbytery Minutes, 24 September 1728

⁶⁷ *Ibid.*, 29 April, 27 May and 29 May, 1729

came back to the Assembly on the 22nd. May 1730, when Waugh's opponents petitioned for the Commission's sentence to be rescinded. The appellants argued that their request had already in effect been partially realised due to the fact that the 1729 Assembly had, in attesting the Commission's minute book, refused to approve its conduct regarding Hutton. They further claimed that the Assembly were burdened with an easier task than had been the case over Aberdeen, since, unlike that situation, no settlement had actually taken place. Nonetheless, the Assembly was persuaded that as the Commission had originally been appointed to determine finally, it would be dangerous to interfere. The vote was a manipulative triumph on the part of the Moderator, William Hamilton, Professor of Divinity at Edinburgh University. Hamilton, it should be said, had by this time been won over to the Argyll interest by the gift of a royal chaplaincy⁶⁸. When it came to the vote, the Commission, who should have been excluded as parties, were allowed to stay by the Moderator on the grounds that their division of opinion was so balanced as to make no difference to the outcome. In the event, the result was decided by four votes. When the losers later studied the sederunt, they discovered a "cheat [had been] put on them, and they would have gained more than the four votes, by which Not Reverse carried."⁶⁹

The result also left the evangelical wing of the Assembly outraged. Having elected to ignore the political undercurrents to the dispute, they had made the issue purely one of the church ignoring its own principles in allowing the wishes of the people to be put under threat from the tyranny of patronage. The day after

⁶⁸ JS. Shaw, *Management of Scottish Society*, p 101.

⁶⁹ *Analecta*, vol.IV, p 128

the Hutton vote, around a dozen attempted to register dissent at the decision, but the Assembly, considering that to allow such an action might disturb the peace of the church, refused to record the dissents⁷⁰. Understandably, this heightened the group's indignation, and determined them to publish and circulate nationally their reasons of dissent⁷¹, along with an invitation for sympathisers to join with them.

Seeing that the incident was not to be forgotten, the Assembly became fearful that the use of dissents might be turned into a damaging weapon if the practice were allowed to be used unchecked. Accordingly, two days later, it passed an Act, appointing that, "reasons of dissent against the determination of Church judicatories...shall not be entered in the register, but be kept in retentis, to be laid before the superior judicatories."⁷²

Clearly, few things could be more alienating for a group that made much of scruples of conscience than to be denied means of expressing them, and the Assembly's Act appears to have been something of a watershed for the evangelicals.⁷³ Indeed, given the events of the following two years involving the most prominent of the dissenters, culminating in the 1733 Secession, it is probably

⁷⁰ Assembly Registers, 23 May 1730.

⁷¹ These were (1), that the Commission should have been excluded from voting, and (2), that the settlement was contrary to the principles of the church, which were that no one should be admitted to a charge solely on a presentation without the consent of the people. According to Wodrow, the seminal group of dissenters were: "Mr James Hog, Mr Ebenezer Erskin, Mr A. Darling, Mr Moncreife of Kilfergie, Mr Henry Erskin, Mr J. Forbes, and some others from the North; Mr H. Hunter, Mr Allan Logan, Coll Erskin, Mr Ch. Erskin of Edenhead, and others". (*Analecta*, Vol. IV, p 128)

⁷² T. Pitcairn, *Assembly Acts*, Sess. 15, May 25, 1730. (p.612)

⁷³ "This Act contains evidently the essence of ecclesiastical despotism, and is contrary to the very spirit of a church court, which being essentially a court of conscience,...it never can with propriety refuse to its members the right of exonerating their own conscience..." (Hetherington, p 209)

true to say that the Hutton case brought much festering anger about patronage - as well as mounting disillusion with the integrity of the Kirk - to a head. Milton had won the Hutton affair, but his success was not without its repercussions.

It would be remiss to close this section without reference to three other important cases at the end of the 1720s. Although only one of the three properly constituted a successful resistance to an unpopular settlement, the other two were nonetheless important in that they directed a clear warning to patrons that caution on their part continued to be necessary, for there were still bounds beyond which the courts of the church would not go in accommodating their wishes.

When the parish of Old (or West) Kilpatrick (Presbytery of Dumbarton) became vacant on the 11th. December 1726, Milton decided not to interfere in the settlement⁷⁴. The patron, the Earl of Dundonald, was a key figure in what was a marginal constituency⁷⁵, and to allow him an unhindered choice would have been sound policy, particularly as the presentee was a close relation of the largest heritor - and he had already declared his expectation of Milton's support⁷⁶. However, a problem arose. The presentee, a Mr. Maitland, had given, as was becoming more prevalent, a "qualified" acceptance, that is, he would go to the charge only if the parish signified willingness to have him. As 1727 continued, it became obvious that the parish were not willing to accept Maitland, and that he would have to withdraw. As a replacement, Dundonald had the choice of John

⁷⁴ MSS.16749. Milton to unknown recipient, March/April 1727. Later, he did in fact start to promote the brother-in-law of Dumbarton's Town Clerk, but abandoned the idea.

⁷⁵ Renfrew. See, MSS.17532, Milton's Letter Books, on Parliamentary Elections, 1727-54.

⁷⁶ MSS. 16535. William Campbell, at Succoth, to Milton, 20 June 1727.

Millar, probationer, or John Pinkerton, the chaplain of his friend Sir James Maxwell of Pollok. In order to avoid the same nuisance occurring again, the patron insisted that this time any presentee was to give an acceptance that was full and unreserved. When Pinkerton scrupled to do so, Millar drew up a form of words which satisfied Dundonald and thus it was he who was presented⁷⁷.

Presbytery would not, however, countenance the acceptance. Eventually, Millar was obliged to apologise and give assurance the acceptance was not to be taken as absolute. Only then could the settlement proceed⁷⁸.

The departure of Neil Campbell to Glasgow University on the 17th. January 1728 left a vacancy in the important charge of Renfrew. The Argathelian Colin Campbell of Blythswood, with the confidence of one who had long dominated the Council there, obtained a royal presentation in respect of the minister of Ayr 2nd charge, John MacDermit. Since the heritors and heads of families were adamant they wished to call someone else, the Rev. Robert Wodrow of Eastwood (the historian), Presbytery delayed making a decision. By appeal the case eventually came before the August Commission of 1729, where the timing of the debate was unblushingly managed so as to allow Ilay himself to attend with a following of elders. The result was, not surprisingly, in favour of MacDermit⁷⁹. Paisley Presbytery however continued to withhold their concurrence with his call, which in turn dissuaded the Presbytery of Ayr from granting the translation.

By the time the affair came before the Assembly of 1730, Ilay and Milton had

⁷⁷ *Analecta*, vol.III, pp 478-9

⁷⁸ *Ibid.* p 494

⁷⁹ *Analecta*, Vol.IV, pp 73-4

committed themselves to having the settlement pushed through⁸⁰. Milton's chief manager, William Hamilton, assured him that "no pains is spared by your friends to carry it", although he had also to admit that MacDermid's avowed reluctance to be transported was highly damaging to the project⁸¹. In the event, Hamilton was correct in his apprehensions, and despite the strength of the Argathelian campaign⁸² MacDermid was continued at Ayr. The result was "a very remarkable disappointment"⁸³ to the Argyll interest, but Milton quickly used the opportunity to show favour to another supporter.

The minister of the second charge at Haddington, the Rev. Robert Paton, had been of great service to the cause in that burgh, which was held by the Squadrone⁸⁴. A move to the much richer benefice of Renfrew would be a fitting reward. The problem was, however, that the MacDermid debacle had shown that Argathelian authority could be challenged. In response to the suggestion that he promote Paton's candidature, Colin Campbell of Blythswood wrote to Milton to say he now could do little for him: "the manner of obtaining the last presentation...has so much wounded my interest in that town and parish, that I have little more to say than [any] heretor and...if another presentation is sent

⁸⁰ "...it was thought the Court, and my Lord Isla in particular, were more set on this affair than any cause before us" - *Analecta*, vol. IV, p 127

⁸¹ MS.16543, Hamilton to Milton, 16 May 1730

⁸² Archibald Campbell wrote from Inverary on the 25th. April telling Milton he had "written in the most pressing terms to every one of our Presbyteries, to send up their Commissioners; and advised them to direct the Commissioners to wait of My Lord Provost of Edinburgh and Professor Hamilton, from whom they might safely receive directions". MS. 16542.

⁸³ *Analecta*, Vol.IV, p 127

⁸⁴ See Milton's notes on Parliamentary Elections, 1727-54, in MS. 17532. Also, on Paton: MS. 16540, Hew Dalrymple, Lord Drummore, at North Berwick, to Milton, 9 September 1729.

down without...the people some way pleased, there will not so much as one man be got [for him]"⁸⁵.

Despite a keen desire to have the living, Paton agreed with Blythswood's recommendation of caution. If the Presbytery were forced, through the hasty issue of a royal presentation, to consider moderating a call exclusively to the presentee, he suspected that they would now probably refuse "and give new trouble, which your Lop. knows Blythswood would by all means avoid."⁸⁶ In the end it was decided wise to withhold the presentation, and since the parish were happy to have him, Paton was settled on the call alone⁸⁷.

Probably the most successful resistance to a patron's wishes took place at Cambuslang (Hamilton Presbytery) after the death of the minister, the Rev. Archibald Hamilton, in 1724. The Duke of Hamilton set his mind on having the son of his minister at the first charge of Hamilton, the Rev. Alexander Findlater. The parishioners, who had centred upon William McCulloch, the chaplain to the Hamilton of Aitkenhead family, decided to resist the presentee with every means at their disposal. The Presbytery assisted them in their recalcitrance by refusing to co-operate with any of the committees sent by higher courts⁸⁸. Six years later, the Duke finally gave way, and after having Findlater presented to West Linton (Peebles Presbytery), allowed the parish to have McCulloch⁸⁹. He was admitted

⁸⁵ MS.16542. 29 May 1730

⁸⁶ MS. 16544. Paton to Milton, 31 August 1730.

⁸⁷ The *Fasti* appears to be inaccurate on this point.

⁸⁸ *Analecta*, Vol.IV, p 5

⁸⁹ JTT. Brown, *Cambuslang and its Ministers*, Glasgow [1884], pp 38-40; *Analecta*, Vol.IV, pp 5, 83 and 189.

the 29th. April 1731.

The Cambuslang case was certainly a notable victory for popular choice and consequently deserves recognition. On the other hand, it must be wondered how different the outcome would have been, had the Duke been of another political hue, and thus able to enjoy the full weight of Ilay's power and influence behind him?

CHAPTER VII.

Ecclesiastical Patronage and the City of Edinburgh

Although its status as the seat of Parliament disappeared in 1707, Edinburgh remained a centre of great prestige and importance through the eighteenth century. The great weight of legal, political or ecclesiastical business still was conducted by way of the capital. The Council themselves were the holders of considerable privileges. As well as a wide civil and criminal jurisdiction, they enjoyed the right to present to all offices of trust or emolument, the right to elect the MP, and were patrons of the University.¹ They also enjoyed a special understanding with the ascendant political figures of the day, usually the Dukes of Argyll².

This latter relationship was clearly highly important in terms of political and commercial patronage, yet it is valuable to remember that "this did not always reduce the leading politicians in Edinburgh to ciphers. They were pragmatic men, open to influence, yet not devoid of objectives, which usually involved the narrow interests of the city of Edinburgh"³. They were used to influence and power, and jealous of the privileges which had accrued to them since the constitution or "Sett" of the burgh in 1583⁴. Thus when the matter of ecclesiastical appointments arose,

¹ See Hugo Arnot, *History of Edinburgh*, Edin.[1788], Book II, Ch. 3, for detailed specification

² See "Memorandum of the Present State of the Political Differences in the City of Edinburgh - July 1763", contained in *Selections from the Caldwell Papers*, Part II, Vol.I, Maitland Club Publications, Glasgow [1854], pp 182-187. The memo is anonymous, but considered to have been by Provost Drummond or one of the Coutts.

³ Alexander Murdoch, "The Importance of Being Edinburgh: Management and Opposition in Edinburgh Politics, 1746-1784", in *SHR*, Vol.LXII, 1: No.173: April 1983, p 4.

⁴ In theory, James VI's Act - the Decreet Arbitral - was supposed to make the reins of power more widely accessible, particularly by emancipating the crafts from their disadvantaged position; in reality, it merely confirmed the government of the city by privileged oligarchies. See further,

it was perhaps inevitable that at some point there would be tensions between the interests involved - not least through the fact that the Edinburgh charges were considered the most important and influential in the church.

In order to appreciate the nature of the relationship between the council and the city charges, it is of prime importance first to look back to the events of the previous century.

In early 1625, King James VI, seeking to promote support for his attempts to gain more acceptance for the Articles of Perth, came to an arrangement with the town which left it with some remarkable advantages. For the King, his repeated wish for a proper regularising of the parish boundary question was to be met⁵: there would be four parishes with two ministers each, and each minister would live in his own parish, not at the town centre. Also parishioners were to be forbidden from attending the ministrations of clergy outwith their own parish, without a licence.

For the council, the gains were, that, with the four sessions now established, each would be made up of two ministers, six elders, six deacons, and the magistrates, and moreover that the elders would be elected yearly by the council and the respective parish ministers. The session clerk, reader and other offices would also be chosen by the burgh. In vacancies, the new minister would be elected

Michael Lynch, *Edinburgh and the Reformation*, John Donald [1981], especially pp 63-64.

⁵ Since 1584, the council had been proposing to divide the town into separate parishes for the purposes of establishing good order and discipline. The initial plan was for four parishes. Then on the 10th. November 1592, it was decided to divide the town into eight parts. Still nothing was done until the near-mobbing of the King on the 17th December 1596. Since James considered the ministers of Edinburgh to be the instigators of the disorder, he threatened retaliation against the town unless, amongst other conditions, the parochial division was swiftly carried out. The Council's solution was to propose "...aucht parochins and four Kirkis and aucht ministeris apointit thairto...". Yet, again, nothing came of it. (See: "Extracts from the Records of the Burgh of Edinburgh, 1589-1603", Scottish Burgh Records Society Edin.[1875 ->], vol.IV, p 269)

exclusively by the Provost, Baillies and council, and presented to the Archbishop of St. Andrews for collation and admission. Any candidate favoured by the council would be obliged to come and be heard, and if called, be unable to refuse. If the High Kirk should fall vacant, the magistrates would be free to choose which minister from the burgh should be locum. Similarly, if a High Kirk minister became infirm, they would be able to meet the problem by having the Archbishop swap around the town ministers according to their pleasure; indeed, from then on, the magistrates were to have the right to decide on the parish distribution of all the clergy coming to the city churches. As a final bonus, the council asked that no session should be allowed to pass an act without it first being approved by them.

These terms were drafted on the 2nd March, 1625, but unfortunately for the council, James died later in the month, before giving his formal approval. However, not only was King Charles willing to ratify them, but the magistrates were even able to expand them further, giving themselves, for example, the right to move a town minister to St. Giles whenever it became vacant. They also added the warning that kirk sessions were not to meddle in any civil affair, nor inflict any censure but an ecclesiastical one.⁶

For any preferring a relationship between burgh and church wherein the latter's authority and status had to be inviolable, the settlement was a major reversal: "The bargain of 1625 united Crown, church and burgh against them and they were

⁶ Extracts of Edinburgh Records. 16th. Nov. 1625. vol.v p. 286; Also, John Connell, *Treatise on the Law of Scotland Respecting Erection, etc. of Parishes*, Edin., [1818]; and William Maitland, *History of Edinburgh*, Edin. [1753].

defeated."⁷. On the other hand neither was it a resounding triumph for the town, in that despite the strictures of the 1625 Act, the majority of the ministers subsequently called by the council continued to refuse to accept, and the town churches remained severely understrength until after the conflict of 1637-8.

Another difficulty for the town was the King's continued insistence that the level of stipends be raised. It is clear from his national policy on teinds' reform, that Charles' laudable intention was to set the ministry everywhere on a secure financial footing. However, in the case of the capital, it is not improbable that he had the additional motive of seeking to dispense with the magistrates' annual subsidy to ministers from the Common Good Fund, something which doubtless added extra weight to their hold over their clergy⁸. The eventual outcome was an Annuity Tax on all burgh inhabitants (authorised by the Privy Council on the 18th. March, 1634), but since it did not prove sufficient either, the object was not achieved. Nonetheless, the first crack in the magistrates' solid grip on Edinburgh's ministers did stem partially from the measure, for resentment against this and other like taxes added fuel to the hostility that culminated in the Bishops' Wars. Then in the harsh and increasingly polarised climate of opinion left behind by the latter, relations between the church and the "good town" began to sour.

The General Assembly interfered increasingly in settlements, as in the calls of William Bennet in 1640 and George Gillespie in 1641. Presbytery also added to the magistrates' annoyance by translating John Oswald from the Tolbooth Church

⁷ Walter Makey, *The Church of the Covenant (1637-1651)*, [John Donald. 1979]. p.159. Chapter 12 of this book provides a fulsome background to the relationship between burgh and church during this period.

⁸ R.K. Hannay and G.P.H. Watson : "The Building of the Parliament House." in *The Book of the Old Edinburgh Club*, vol. XIII [1924]. p.28-9.

(which the council had only just built) to Prestonpans, "without the Counsell's consent and agains thair will..."⁹. The deficiency in clergy was further aggravated when it was decided to raise the number of parishes to six (with two clergy for each), on the 24th. December, 1641. Significantly, the list of ministers then mentioned in the minute comprised only seven names¹⁰. Relations reached a nadir in 1648, when the council opted to support the Engagement in the face of trenchant opposition from the Presbytery. Principal Robert Baillie wrote despairingly to his cousin: "The discord betwixt their magistrates and ministers was much more than I desired to see. Their spleen against one or two of their ministers was great....one of their [ie., the magistrates] great cares has been to keep their kirks vacant rather than to plant them with any whom they liked not."¹¹

Up to this point, the procedure which appears to have evolved for attempting to fill the vacancies in the town, was that the council and deacons of crafts would summon the ministers and six sessions together, inform them whom they were proposing to present to the Presbytery, then hear their opinion on it.¹² For their part, the magistrates saw the act of consultation as nothing more than a courtesy, and so responded in some alarm when the ministers and sessions began to seek it as a matter of right: not only did they refuse to see why, any more than other laic patrons, the council should feel obliged to canvass the sessions's opinions, but also

⁹ Extracts. 10th. July, 1648. vol. 1642-55. p. 157

¹⁰ Extracts. vol. vi. p. 254, where only seven names appear. In her introduction, however, Marguerite Wood says the number is eight (p. xlii).

¹¹ Principal Robert Baillie to Rev. William Spang, letter, dated 23 August 1648, concerning meeting of General Assembly, 14 July 1648, in, A. Peterkin, *Records of the Kirk of Scotland*, Vol. I, pp 526-7

¹² Extracts. 13 July, 1647. vol. 1642-55. p. 128

"they na wayis acknowledge any power or jurisdiction in the meittings of the sex sessiouns as ane ecclesiasticall judicatorie..."¹³.

The latter statement was a move of considerable significance. The Council's clear intention was to splinter opposition by refusing to recognise that when the several Sessions met as a single body - known as the "Great" or "General" Session - it exercised any valid authority. It would thus be easier for the magistrates to manipulate calls to candidates of their liking, since, if it had to go through a "Particular" session, there would be less effort required to influence the outcome¹⁴. The move was challenged before the Assembly: "In choosing of ministers...they [the magistrates] took a new way...They were content to propone the men elected to the [particular] Session of that church where they were to serve, but to no other." The Assembly ruled that "the ministers, whom as patrons, they name in the Council shall have the consent of the six sessions before they be presented to the presbytery."¹⁵

If the Council entertained designs of resisting the decision, any chance of doing so evaporated when, on the 17th. August, the Engagers' expedition ended in humiliating failure at Preston. The church was left in a commanding position. Four months later, the magistrates meekly ratified the lists of instructions handed to them by "the great Sessioun" of the city churches. By the time of the Parliamentary debate on the abolition of lay patronage in the following March, their submission was complete, and, seeing the way the tide was running, they

¹³ Ibid. 10th July, 1648

¹⁴ A.I. Dunlop, "The General Session: A Controversy of 1720", in *RSCHS.*, Vol.13, (1957-59), p 234.

¹⁵ Baillie to Spang, *ibid.*

resignedly instructed their commissioners to "goe alongs with the Parliament...if they cannot doe utherways."¹⁶ From then on, the council had to be careful to consult the Sessions in the choosing of a minister, and take one of their number with them, when they went to prevail upon a candidate to come. At the same time, the Assembly Commission's close vetting of every proposed translation extinguished any lingering hope that the capital's status might entitle it to call whomsoever it chose¹⁷.

The tide, however, was soon to turn yet again. The debacles at Dunbar and Worcester savaged the church's credibility and ushered in the Cromwellian protectorate. In 1653, the Assembly was dissolved and forbidden to meet again. Meanwhile, the relationship between the council and the church was deteriorating, and continued to the Restoration under a cloud of intermittent bickering. Nevertheless, the former still continued to abide by the same general principles for the filling of vacancies. In March 1660, still it was arranged to have full consultation with the burgh ministers not only over the selection of two new ministers, but also over which parishes they were to occupy.

Although King Charles II's ecclesiastical policies went on to bring major change over the following two years, it need not be assumed that the Council eagerly seized the advantages handed to it by the restoration of patronage and the rescinding of all legislation since the Bishops' Wars. However, by October 1662, the dearth of ministers available to serve the capital had become acute, owing to the deposition of all but one of the city clergy, and the ongoing refusal of

¹⁶ Ibid. 8th. March, 1649.

¹⁷ for examples, see Extracts, vol. 1642-55; the minutes for 7th. November, 1648, and 9th. January, 1650, and the respective footnotes.

ministers from other areas to accept calls there. The Council resolved, therefore, to insist upon their previous privilege of having the right to compel whomsoever they chose to come, and at the same time, "because the present necessities of the Counsell cannot admitt of the tediousnes of former formalities", they ordered presentations to be immediately drawn up and delivered to their most recent selections without further ceremony¹⁸. Interestingly, however, when they had achieved their aim of procuring a workable complement of clergy, they scrupled to be the sole appointers of where they should be fixed, deciding instead that the "easiest and safest way" would be to draw lots¹⁹. On the other hand, as time went by, the council did not hesitate to assert their rights, whether by fighting off an attempt by the College of Justice to have the High Kirk delivered into its private care²⁰, or by ordering the clergy to celebrate communion on the dates of their choosing²¹. Yet it was probably a sign of municipal goodwill that even before Presbyterianism was established, they were ready, in July 1689, to plant the city churches with some of the ministers popularly called to Edinburgh meeting-

¹⁸ Extracts. (1655-65). 6th. October, 1662. p. 306-7. The magistrates continued to fill vacancies in the same manner, up to the Revolution. They also effected transportations within the city charges as they saw fit; on the 2nd. of June, 1662, it was apparently merely by the council's resolution. The next translation within the city was on the 24th. March 1682, but for it, a presentation was drawn up.

The privilege of compelling candidates to come to the capital appears to have disappeared at the Revolution - see the case of William Mitchell, 10th. April, 1691.

¹⁹ Extracts. (1655-65). 26th. January, 1663. p.315. It had been decided during the Protectorate to increase the number of parishes to 10. Then it was reduced to 4, on the 12th. September, 1662. By this date, however, the number had been raised again, to 6. Of the two ministers for each charge, one was known as the Principal and the other the Second minister.

²⁰ see Sir John Lauder of Fountainhall, *Historical Notices of Scottish Affairs*, The Bannatyne Club.[1848]. Vol.I. 20 Novembris 1678. pp.205-215. The council maintained that the right of patronage to the city churches was entirely theirs, and could not possibly be qualified.

²¹ Extracts. 17th April, 1678. p.338. This formed a reversal of the situation during the Protectorate, when the council had to plead with the ministers to set a date for celebrating the sacrament.

houses, following James' Indulgence in 1687.²²

At the start of the reign of William and Mary, the signs were set fair for a new era of co-operation between the Council and the churches for which it had responsibility. The ministers received full backing with regard to moral discipline and the enforcement of Sunday observance within their parishes. If there was municipal dismay at the abolition of patronage in 1690, it does not appear in the Council records, indeed, the magistrates express every willingness to renounce their right to present to the landward parish of Currie (13 August, 1690), and appear actually to have done so with regard to Wemyss (21st. November, 1690).

There was reason for them to be content as far as the city charges were affected. On the one hand, unlike the 1649 arrangement, the Magistrates were specifically guaranteed a role as joint electors in a vacancy²³. Secondly, they continued unchallenged in their right to move ministers from one town parish to another, and to erect parishes as they saw fit²⁴.

There was a measure of variety in the precise procedure followed by council and the General Session in filling a vacancy. The variations included:

- a). the council made a choice and presented the names to the Great Session for approval (1st October, 1690);
- b). the council proposed a list of names, the individual sessions considered it and

²² Extracts. (1689-1701). 24. July, 1689. p.12-13. The minute takes care to emphasise that the council's call should not be seen as infringing their rights as patrons.

²³ "...this act shall be but prejudice of the calling of ministers to Royal Burghs by the Magistrates, Town Council and Kirk Session of the burgh.....and where there is a considerable part of the parish in landward, that the call shall be by Magistrates, Town Council, Kirk Session and the Heritors...". APS.1690., c.23, Act concerning Patronages.

²⁴ see Extracts. vol.1689-1701, 23rd January, 1691 (p.57), and especially, 5th. and 12th. August, 1691 (p. 71-2). Also, 17th August, 1692 (p.98); & concerning the New North Kirk, 25th March, 1698 (p.227) and 20th December, 1699 (p.257).

added more, then the General Session voted on the successful candidates (11th and 13th January, 1692);

c). the council considered the leet drawn up by the General Session and indicated a short-leet from which it would be most suitable to make a final selection (21st November,1692);

d). the Provost "...acquainted the Session ...that the Rev. Mr. George Hamilton, minister, and principal of the College and Parish of St. Leonards in St. Andrews, may probably be obtained if called....The Session calls him." (21st September,1696);

e). the council and General Session convene, and at the same meeting a leet is drawn up and a selection made (28th March,1699)²⁵.

The different procedures were a demonstration of the flexibility made possible by the good relations that obtained between the council and the congregations of the town during the two decades following the Revolution. The spirit of co-operation included the placing of ministers, whose call was to the city as a whole, in individual parishes. Thus, after the Rev James Hart was called to the city from Ratho, and his admission fixed for the third Sunday of September 1702, the Council's representatives came to Edinburgh Presbytery on the 9th. September and declared their inclination that he be planted in the South West (Old Greyfriars) Parish. Presbytery duly "agreed with the desire"²⁶.

It was in 1706 that friction started to arise. The trigger was grumbling by the

²⁵ a).: Extracts. 1st October,1690.vol.1689-1701.p.48.

b).to e).: from "The Registers of the General Kirk-Session of Edinburgh", reprinted in *The Scottish Antiquary, or, Northern Notes and Queries*. vol.13. [1898]

²⁶ Edinburgh Presbytery Minutes, SRO., CH2\121\4. 9 September 1702.

presbytery over items such as the Council's taking it upon themselves to choose offices like that of Kirk Treasurer as well as the parish precentors and beadles. According to Presbytery's researches, that right had belonged to the General and individual sessions up until the Restoration²⁷. A year later it was further complained that since the Council would only agree to one Clerk (also appointed by them) for what was now eight Sessions, the registers were woefully ill-kept. Presbytery felt it was time the magistrates began the consideration of reforms in these and other matters²⁸.

Possibly to underline their dissatisfaction, the Presbytery took the opportunity, later that month, to drag their feet over the magistrates' declaration that they intended to move Principal William Carstares from the South West Parish to the New Kirk. Presbytery insisted that he could not be moved without the formalities of a call, reasons for it given and answered, and an act, by them, of transportation. The magistrates replied that "the whole city is but one parish, and ministers are not called to one congregation therein, but to be one of the ministers of the said city, and it has been the constant practice of the presbytery, upon the desire of the Council to settle ministers in churches, and it's not to be doubted that they may be removed from one church to another in that same way"²⁹. In the end, appreciating that a church with so distinguished a congregation³⁰ as the New Kirk would be as well to have someone of the calibre of Carstares, the presbytery

²⁷ Presbytery Minutes, CH2\121\5. 14 August 1706

²⁸ CH2\121\6. 10 December 1707.

²⁹ *ibid.*, 17 December 1707.

³⁰ "...the nobilitie, Lords of Session and others of the best qualitie doe frequent the said Kirk...". Extracts, [1701-1718], 10 December 1707, p 144.

relented and the Principal was transported.

Matters settled for a further two years until the Presbytery revived its former complaints about the appointment of church officials. They accepted the present Council was ready only to choose candidates acceptable to them, but "if persons not friendly came to the government, it may be very inconvenient to allow them that privilege"³¹. The court also aired several other grievances, and requested consultation "to adjust these matters to the satisfaction of all concerned". Before this could take place, tensions were raised by the Council, as patrons of the College of Edinburgh, presenting the Rev William Hamilton of Cramond to the Chair of Divinity. At the meeting of the 21st. September 1709, four ministers complained that though the Council professed to have taken their advice, as required of them by the Royal Charter of 1566, they had disregarded the list of names the four had submitted. They therefore petitioned Presbytery to uphold their rights. The complaint was added to the growing list of matters needing to be "adjusted" between the two bodies.

Little seems have come of any discussions between Council and clergy. There was a sporadic interchange of letters, particularly concerning the matter of the Council's right of moving ministers within the city³², but both sides appear to have preferred to perpetuate a state of truce for the next five years.

The peace might well have continued longer had it not been for the aversion of the Rev. James Hart, one of the ministers of Greyfriars, to losing his colleague, Matthew Wood. When in 1714, the Council declared to the Presbytery their desire

³¹ CH2\121\7. 13 July 1709

³² For example, the Synod launched an investigation into the issue in 1711 - see Minutes of Synod of Lothian, SRO., CH2\252\8. 1 May 1711.

to have Wood moved to the Tron Kirk, Hart resisted, complaining that he, the Elders and congregation should be allowed to have their reasons against the move heard, as was proper procedure³³. In response, the Council insisted on their desire, saying it had been their privilege, since the Reformation, to transfer clergy as they saw fit. Presbytery eventually agreed. Hart accordingly appealed to Synod, chiefly on the grounds that there had been no process, call or citation of his parish, and that the Act of Council was a gross encroachment upon the Church's jurisdiction since it amounted to an act of transportation, whereby the magistrates "claim it as their right *ad libitum* to dispose of the town ministers, and challenge the Presbytery's concurrence as due, nay instruct their commissioners to the Presbytery but simply to acquaint the Presbytery with their Act."³⁴ At the Synod of Lothian, which met on the 4th. November, the Council's representatives made the point that the same practice had been followed since the Reformation, yet this was the first appeal against it. The Synod agreed, and rejected the appeal³⁵.

Hart's actions almost certainly were a watershed in the Council's dealings with the Presbytery over ministerial appointments. They had stated to the General Assembly in 1714 that they prided themselves in not making use of the 1712 Patronage Act to plant the city's vacancies, but "had continued the old way of

³³ CH2\121\9. 18 August 1714.

³⁴ *Ibid.* 22 September 1714

³⁵ SRO., CH2\252\8.

calling³⁶. However, it would seem they had now had enough.

The landward parish of Currie became vacant on the death of the Rev. Mungo Clarkson on the 28th October 1717. Some months later the Moderator of Presbytery reported he had been served with a "thing...new and unprecedented", namely, a presentation from the Council, in respect of the minister of Uphall, the Rev. John Wilkie. The meeting at once sent representatives to the magistrates "to show that patronage being a grievance to this church, it was not expected that the Town Council of Edinburgh being presbyterians should have been the first society in Scotland that made use thereof"³⁷. The council were nonetheless unyielding. The Presbytery thereupon decided the presentation constrained them from continuing, and accordingly referred the case to the Synod. The Synod made its decision on the 6th. November 1718, which was that both the Council's presentations (the Moderator had refused to accept the first) were to be disregarded as invalid and that the *jus devolutum* had therefore fallen to the Presbytery³⁸. A call was eventually moderated to John Spark, probationer, and he was admitted on the 11th. August 1719. At the ordination the Council's representatives joined in the right hand of fellowship, but not before pointedly stating that they did so as patrons of the church.

Meanwhile, the whole issue of how the Edinburgh city charges were to be supplied with clergy had boiled over into what was to be a long and acrimonious

³⁶ Assembly Registers, 14 May 1714. The "old way" involved the Particular Sessions presenting leets to the General Session, who, together with the Council, voted on the names. See, *The Scottish Antiquary or Northern Notes and Queries*, The Registers of the General Kirk-Session of Edinburgh, vol.13, p 82; the minute book itself is in: SRO., CH2\131\2.

³⁷ CH2\121\9. 23 April 1718

³⁸ Synod of Lothian Minutes, SRO., CH2\252\8.

feud. As early as December 1716, the Presbytery had been complaining to the Council about the delay in filling the town's two vacancies. As referred to above [footnote 36], the traditional way of filling vacancies was that each Particular Session (usually consisting of six elders and six deacons³⁹) submitted their recommendations (up to three per charge) to a specially-convened meeting of the General Sessions. Then the Sessions and Council together made the final choice, after which, without having to go back to the Presbytery to approve the election⁴⁰, the call(s) were dispatched. An important element in the system, however, was that although, from 1708, quarterly meetings of the Great Sessions continued to be held, these were for general business only. Vacancy matters were dealt with at special meetings - and the calling of these was the prerogative of the Council.⁴¹

Around the beginning of 1717, leets had been submitted by the Particular Sessions for the city's two vacancies, but after that, nothing had happened. When, in the summer of 1718, the Presbytery sent some of their members to ask the Council why, the reception they encountered was less than effusive. The representatives reported that the magistrates had said that they were glad to see any of the members of Presbytery "but did not know what concern the Presbytery

³⁹ DEACON: "His Business is to collect the Offerings for the Poor at the Church Doors...to enquire into the Necessities of the Parishioners, to visit and take an Account of the Condition of poor sick People...to distribute to them as the Kirk Session shall appoint...to assist at the Communion...In Kirk Sessions he has no Vote, only may give his Advice if asked, except in Matters relating to the Poor: Nor has he any Stipend from the Parish." See John Chamberlayne's *Present State of Great Britain*, London [1755], Ch.III, p 67.

⁴⁰ This was affirmed after being challenged in 1711 by Lanark Presbytery, when they received a call from Edinburgh to Rev. John MacLaren of Carstairs. See, Lanark Presbytery Minutes, SRO., CH2\234\5, 18 April 1711.

⁴¹ *The Scottish Antiquary or Northern Notes and Queries*, vol. 13, p 82

had in the vacancies of the town, and that they had Reverend and worthy ministers of their own with whom they could converse with on that subject⁴².

The magistrates did, however, reveal to the representatives that the cause of their inaction was that some of the Particular Sessions had leeted two sets of recommendations for one charge. This had caused offence, first, because it was unprecedented and done without consultation (the town ministers hotly denied the latter); secondly, it was bound to cause stipend difficulties eventually; and thirdly, because the recommendations involve the Professors of Divinity and Church History, the design is clearly to settle them in the New Church, with its distinguished congregation. This last would be an encroachment upon their own right to decide where the ministers should go. They therefore had no intention of proceeding until new leets were submitted.⁴³

While the Presbytery was reflecting on the situation, the Council followed up their declaration with a move that was clearly designed to spoil the plan for planting the two Professors in the New Kirk. On the 20th. August 1718, they intimated to the Presbytery that they had transported the Rev. William Mitchell from the Old Kirk to the New Kirk, and that "the reasons for their so doing were so weighty that they expected the Presbytery's concurrence and Mr. Mitchell's compliance, and that the expedience of this translation was so obvious, that they judged it needless to trouble the Presbytery with the reasons thereof"⁴⁴.

Presbytery took deep offence at the wording, as did Mitchell over his being used

⁴² CH2\121\9. 6 August 1718

⁴³ Extracts, [1701-1718], 23 July 1718, p 356.

⁴⁴ CH2\121\9

as a device to undermine the leets. It was further pointed out that none of the parties involved had previously been apprised of the move. When invited to respond, the Council's representatives, in a tone approaching blackmail, delivered the dark warning that: "the not compliance with this translation might occasion undesirable effects, whereas the granting thereof would have a happy tendency to the removing of differences". Presbytery nonetheless declined to back down and voted not to grant the transportation "in regard of the unusual terms in which the Town Council had applied to the Presbytery in this affair, whereby they plainly claimed a power inconsistent with the presbyterian constitution of this church".

The Council appealed to the next Synod, where the issues were contended with a fulsomeness that required almost fifty pages of the Presbytery minute book to report. In practical terms, the essence of the pleadings was that the Council appealed to custom, while the Presbytery stood on the principle of presbyterian authority. In the latter case, presbytery argued that the Council's actions were worse than naked patronage, in that at least patrons accepted that "presbytery alone by their authority could settle the presentee and fix him in a parish", but the Council's conduct meant that "a power equivalent both to that of electing and calling, and also the authoritative fixing the minister in his parish was grabbed at by the magistrates"⁴⁵. Synod's response was to delay any action pending discussions with both parties.

The Synod considered a breakthrough had been achieved when it was reported at the meeting of the 6th. May 1719, that in the interests of peace the Magistrates had dropped their appeal. However, the Presbytery insisted on Synod pursuing

⁴⁵ CH2\121\10. 29 October 1718

the matter until some satisfactory arrangement was established. A committee was appointed, but when unceremoniously warned by the Council not to interfere, kept its distance⁴⁶. This left matters unresolved until the following year, when an attempt was made to do something about the vacancies in the city. Against Presbytery's advice, a meeting of the General Sessions was called on the 30 August 1720, and although two ministers were elected, the proceedings caused Presbytery some misgivings, and they delayed approving the election.

Since at this point it looked as if the dispute was about to wind back to its original beginning, both sides recognised that some jointly agreed regulations were long overdue. A meeting was held on the 2nd. November, out of which a code for filling vacancies was established. This was that, in future, when the Particular Sessions submitted their leets, the Council would then lay them before the Presbytery with the request to appoint a date, place and moderator for a meeting of the General Sessions. For their part, the Council would undertake to ensure that no city vacancies would be long unfilled, and that if leets are not lodged with the Presbytery within two months of their preparation, the Presbytery can still proceed to call a meeting of the General Sessions. Also, in future, all ministers called to Edinburgh would be settled by a service of admission, to be held in the New Kirk. Moreover, when the magistrates desired someone to be translated from one parish to another, they would first discuss it with the city ministers, obtain the consent of the parish to which he is to go, and acquaint the Session of the minister's current parish. Thereafter they would approach the

⁴⁶ CH2\252\8. 6th. and 7th. May 1719.

Presbytery and ask them to make the translation effectual.⁴⁷

The regulations of 1720 were an instant success. Both sides were clearly anxious to begin afresh, and for the next decade and a half, calls and translations were for the most part conducted in a spirit of harmony and co-operation.

It was a letter sent to Lord Milton on the 4th. September 1736 which led - eventually - to the regulations' demise.

The Rev. George Wishart of the Tron Kirk, a staunch Ilay loyalist, wrote to Milton saying that his brother William, currently serving a dissenting congregation in London, wanted to return to Edinburgh. His brother would "cheerfully embrace" the Principal's chair along with a city charge, although would not be willing to take one without the other. Wishart heartily commended the idea to Milton, suggesting he use his influence with the Council, although he accepted it might prove a difficult manoeuvre in face of the growing strength of the evangelical faction in the town.⁴⁸ Wishart refrained from adding that the latter had particular dislike for his own conduct and principles⁴⁹, and therefore would harbour little inclination to favour his brother. Milton, however, pressed ahead with the plan.

On the 10th. November 1736, the Council elected William Wishart to the Principalship of the University, and then set about the other task of his call to one or other of the two vacancies then in the city. At the meeting of the General

⁴⁷ Edinburgh City Archives, Edinburgh Town Council Minutes, vol.48, 2 November 1720; also, CH2\121\10, 2 November 1720.

⁴⁸ Saltoun MSS.16568

⁴⁹ See JS. Shaw, p 103, and the threatening letter which called Wishart and his colleagues "soule sellers".

Sessions, called for the 6th. January 1737, the plan of the Council was to have the candidates for the two charges elected separately, thus making it easier to scrutinise waverers and manipulate their voting. To their anger, the Presbytery however insisted that it would be "not so liable to a suspicion of partiality" if each voter were to be called upon only once, at which moment he would register his choice for both vacancies.⁵⁰ Milton later wrote disgustedly to Ilay about the difficulties the method of voting had caused him: "The uproar the mad people made against Principal Wishart being a minister of Edinburgh has given us employment enough for some time, and if those who have their bread from your Lop. had not opposed us we might have got both Wishart and another Moderate man which would have casten the balance in the Presbytery on the Moderate side." As it was, Milton had to arrange a deal with the "mad people" so that in return for his having Wishart elected, they would have "their favourite Mr Webster" returned as the other candidate.⁵¹

It was at this point that particular problems began to arise. Already that year, the Council had, again to please Milton, set about calling the Rev. Robert Hamilton of Cramond to Edinburgh. The Kirk Session of the vacant parish, Lady Yester's (or South South East Kirk), probably for political reasons⁵², had vociferously opposed the settlement, obliging the magistrates to resort to "extraordinary means"⁵³ to get

⁵⁰ Edin. Council Minutes, vol. 57; CH2\121\13. 5 January 1737

⁵¹ Saltoun MSS. 16569. Letter copies, Milton to Ilay, January and February 1737

⁵² Although the reason given out was that he could not be heard.

⁵³ BL., 4175 aaa78, "Memorial concerning the Call of Ministers to Parochial charges: drawn up and published for general use but specially calculated for the city of Edinburgh, and therefore addressed to the Lord Provost, Magistrates, Counsellors and Elders who now are or shall at any time hereafter be in Office. - by a citizen and Native who is an elder and Heritor", Edin. [1736]

it pushed through. Now both Council and Presbytery had to face the fact that, of the two churches now vacant, the New North Kirk (or West St. Giles or Haddo's Hold/Hole) and the Tolbooth (or Northwest Kirk), the latter was firmly of an evangelical disposition and had already made clear its disinclination to receive any "declaimer or mere morality teacher"⁵⁴, of which variety they had reason to believe Wishart was⁵⁵. Not wishing to become so soon embroiled in another settlement controversy, the Presbytery accordingly delayed sustaining the calls, pending investigation. At their subsequent meeting on the 23rd February 1737, it was revealed that the New North Kirk was also averse to accepting Wishart. The Council's response was that his call should nonetheless proceed, and if the resistance still continued there were other ways of settling him in the city. The Presbytery were wary about such a plan, since all transportations had properly to be justified with reasons for their being allowed, and plainly this could not be done if no parish was actually desirous of having the candidate concerned. Accordingly, it was decided to consider the calls separately, and since the Rev. Alexander Webster, currently at Culross, was unanimously wanted at the Tolbooth where his father had previously ministered, Presbytery sustained his. Wishart's call continued to be held in suspense, particularly as allegations as to his orthodoxy were now being made⁵⁶.

The Wishart affair remained undetermined for another year until the 22nd May 1738, when the General Assembly vindicated him of the allegations and ordered

⁵⁴ Ibid.

⁵⁵ Nathaniel Morren, in his *Annals of the General Assembly of the Church of Scotland*, 2 Vols., [Edin. 1838-40], Appendix, p 311, says that he tended to confine himself to moral illustration.

⁵⁶ CH2\121\13. 23 February 1737

Presbytery to proceed to his admission to Edinburgh forthwith. Presbytery complied by admitting him as a minister of the city on the 13th. July 1738. The Council, however, had only achieved half of what they had hoped.

In the meantime, on the 28th. June 1738, in a move designed to pre-empt Wishart's arrival, the New North Kirk had petitioned Presbytery, saying they had applied to the magistrates for their concurrence in their desire to have the Rev. Robert Wallace translated from New Greyfriars. They moreover asked Presbytery to do what they could to further the desire and in the meantime repel attempts to settle their church in any other way. Presbytery unanimously agreed, and sent some of their members to converse with the parties concerned.

The committee returned and reported that the Council were willing to co-operate provided another charge could be found for Wishart, but that unfortunately New Greyfriars, on becoming vacant, were not willing to have him - on account of his "low voice"⁵⁷. The Council accordingly withdrew their offer and once more pressed for Wishart's settlement at the New North Kirk, yet Presbytery, at their meeting on the 30th. August, decided that they would nevertheless translate Wallace there regardless of the Council's lack of approval⁵⁸.

On the 1st. September 1738, the Council met in a state of rage at the "manifest violation"⁵⁹ of the 1720 regulations, and instructed their lawyers to seek from the Court of Session, a suspension of the Presbytery's sentence, a reduction of the

⁵⁷ CH2\121\13. 26 July 1738

⁵⁸ According to Morren, in the Appendix to his *Annals*, pp 303-4, the underlying cause of the Magistrates' antipathy to Wallace's translation was his prominent part in the campaign to resist the reading of the Act for apprehending those involved in the Porteous murder (see below). This had been further aggravated by his criticisms of Walpole's administration.

⁵⁹ Edin. Council Minutes, vol. 59

1720 regulations and "a declarator of all the town's rights and privileges of presenting, calling and translating". Presbytery's reply was to label the magistrates' act of applying to the civil courts "the most daring blow given to the constitution of the church since the Reformation"⁶⁰, and appointed the Procurator of the church to represent them. In response, the Council decided that it was time the seats in the New North Kirk were repaired, and had it announced that the church would be closed until further notice.⁶¹ Wallace nonetheless went and lodged his extract of transportation with the Session, who received him as one of their ministers.

The confrontation was escalating sharply by the time the Presbytery met on the 27th. September. The meeting was a stormy one, since, as one of Milton's agents informed him, "There is a party in the Presbytery [ie., the evangelicals] averse to peace and do increase the flame". Nonetheless, a "pacifick committee" was appointed to meet with the Council in the hope of finding a remedy to the points under contention⁶².

At the initial meeting of both sides' representatives, the Council offered to drop their suspension and let the issue be decided by an ecclesiastical court provided the presbytery in the meanwhile withheld Wallace's translation. Presbytery's committee replied that it was now too late to do so, and besides, there was no mention of the Council's dropping their Reduction and Declarator. The full Presbytery met on the 4th. October and in another heated debate considered

⁶⁰ *Caledonian Mercury*, 12 September 1738

⁶¹ *Ibid.* 18 September 1738.

⁶² Saltoun MSS. 16574. George Irving, Town Clerk, Edinburgh to Milton, 29 September 1738

whether the magistrates had given them grounds to suppose it was worth continuing negotiations. It was successfully moved that there were no such grounds - unless, as one member argued, the presbytery was prepared to read the magistrates' supposed concessions backwards "in which case they might have an affinity with the boatmen of North Leith who while they looked one way tugged another."⁶³ At this, the Council duly pressed ahead with their Bill of Suspension before the Court of Session.

While the case was pending, the Council continued its sporadic warfare with the Presbytery. On the 31st. January 1739, they handed in to Presbytery a paper saying they had resolved that the Rev. William Wishart be settled in New Greyfriars, and that they desired the Presbytery would put their wish into effect. At the same time they declared that this should not be seen as any prejudice to their right of patronage to all the churches of Edinburgh⁶⁴. Presbytery once again took deep offence at the wording, and the application was withdrawn, to be resubmitted on the 7th February, more acceptably phrased and this time with the concurrence and petition of New Greyfriars. Presbytery acceded to the request, although not without one member complaining that the magistrates had "led the presbytery a dance"⁶⁵. Wishart was finally admitted on the 13th. July 1739.

Meanwhile, although the Council had dropped the Bill of Suspension, the Lords

⁶³ *Caledonian Mercury*, 5 October 1738

⁶⁴ The Council's persistent argument was that the right of patronage had always been their inalienable possession since 1636, and that whereas, as in 1720, they could voluntarily restrain themselves in their exercise of it, it still remained open to them to make settlements by presentations, by the regulations, or by both. See: "Memorial for the Magistrates, Council and Community of the City of Edinburgh - 1738". Edin. City Archives, "Miscellaneous Mss."

⁶⁵ *Caledonian Mercury*, 8 February 1739.

of Session were still to give their judgement regarding the Declarator and the Reduction. On the 12th. February, they unanimously found for the complainers. The 1720 regulations were reduced and "the magistrates were restored to their ancient right of patronage"⁶⁶.

Their point won, the Council do not then appear, however, to have felt disposed to press their rights to any noticeable extent. Over the following two decades, apart from Presbytery's perennial sensitivity over the wording of the Council's petitions⁶⁷, any friction over calls to the city tended to be concerned with Presbytery's reluctance for anyone to be moved from one charge to another before a specific replacement for him be brought to the town, as with the proposed translation of Principal Wishart from New Greyfriars to the Tron in 1744, and the Rev. James Stevenson from New to Old Greyfriars in 1747. The clear aim was to keep as tight a rein as possible on the Council's freedom of manoeuvre, yet by 1754 Presbytery was showing it was prepared to be flexible on the issue, by moving John Jardine (Lady Yester's) and George Kay (New Greyfriars) from single to double charges (the Tron and Old Greyfriars) prior to the arrival of new clergy to the town⁶⁸.

In short, a state of truce obtained between the Presbytery and the Council throughout the 1740s and 1750s. Where ill-feeling and suspicion did in fact appear was increasingly between the Council and the General Sessions, as evidenced by the intrigue and misinformation surrounding the settlement arrangements of April

⁶⁶ *The Scots Magazine*, vol.I, February 1739

⁶⁷ eg., CH2\121\15. 25 July 1745 and 22 April 1747.

⁶⁸ CH2\121\17. 30 January 1754. The Council traditionally preferred to settle newcomers in single charges first - see Morren, *Annals*, Appendix, p 311

1758⁶⁹. Matters came to a head on the death of Ilay, now Duke of Argyll, in 1761: "Now that Argyll was gone, the Town Council in disrepute, and large numbers of citizens anxious to reclaim their 'liberty', there was every reason to believe that the pious elders, deacons, and Popular party ministers who constituted the bulk of the General Sessions would band together at the first opportunity to demonstrate their independence from Drummond and his bosses. But that opportunity never came. Rather than let the election of new Edinburgh ministers fall permanently into the hands of 'wild people'...it was decided to have the Town Council reassert its legal right to present a minister without consulting the General Sessions."⁷⁰

For all that had gone before, the method of providing Edinburgh with ministers had still not been settled.

⁶⁹ See the paper on the subject in the Laing MSS. (Edinburgh University Muniments), II. 18/12, 21 April 1758; also, Milton's Letter Books, Saltoun MSS.17601, "Church and Ministers", Memorandum, May 1758.

⁷⁰ RB. Sher, "Moderates, Managers and Popular Politics in Mid-Eighteenth Century Edinburgh: The Drysdale 'Bustle' of the 1760s", in *New Perspectives on the Politics and Culture of Early Modern Scotland*, ed., J. Dwyer et al, [John Donald], p 184

CHAPTER VIII.

The Regime of Milton and Ilay:

Establishing Authority.

The Background

At the time of the Union in 1707, Scotland had two secretaries of state, the Earls of Loudoun and Mar. For convenience's sake, it was considered expedient to invite them to continue to operate the machinery of state for a time. Loudoun did so until 1708, Mar until 1709, when it was decided to abolish their offices. Instead, there were now to be three Principal Secretaries of State for Great Britain (previously there were two) - Sunderland, Boyle and the Duke of Queensberry. Although all three were intended to share equally the business of British domestic affairs, in practice, Scottish business was handled almost exclusively by Queensberry. When the Duke died in July 1711, however, this Secretaryship was abolished, and the administration of Scotland given to Bolingbroke.

It is probable that Lord Treasurer Oxford made the decision on the basis of recommendations to him by Daniel Defoe. Among Defoe's reasons for abolishing the office were: that "A Scotch Secretary...would have a crowd of dependents and would naturally seek to make himself the head of a powerful faction in Scotland. Opposed to this there would be other factions and between them the country would be divided. The Scotch Secretary again would be the channel through which all Scotch business must pass before it could reach the sovereign; this would make the Secretary as it were the ruler of Scotland."¹ It is ironic that this

¹ MA. Thomson, *Secretaries of State, 1681-1782*, [OUP.1932], p 32

perceptive prophecy did indeed come to complete fulfilment, but under the regime of Ilay when no Secretary was in office. It is also interesting to note how Oxford's dispensing with a Scottish Secretary in order to make Scotland more directly dependent on himself, simply did not work. On the one hand the volume of work required was too great on him, while on the other, it became clear that an acknowledged intermediary on the spot in Scotland was preferred by supplicants, and that the absence of one caused a lack of direction in Scottish affairs. As PWJ Riley says in his book on *The English Ministers and Scotland*, "Under Oxford's system [the Scots] did not know where they stood when obvious control was given to no one. The normal working of the political system was disturbed. Confidence was destroyed."²

Pressure began to build for the return of a Scottish Secretaryship, although what settled the issue was Oxford's concern over the burgeoning power of Bolingbroke. One way of checking it would be to revive the Scottish post, and this he did in September 1713. However he gave it to fellow Tory, the Earl of Mar. Patronage was able to flow once more through a single channel - "But Mar was a Court servant only, not a manager with a big political interest."³ Thus when Queen Anne was succeeded in 1714 by George I, there was little incentive to retain him, and while he went off to join the Rising of 1715, the government turned to the Squadrone and the Duke of Montrose.

Argyll's successful role in defeating the rebels aroused sufficient kudos to bring down Montrose in less than a year, but the Squadrone countered with a

² PWJ Riley, *English Ministers*. p 238

³ *Ibid.* p 254

slandering campaign which ended in 1716 with Ilay and Argyll dismissed from their posts and the Scotch Secretaryship going to Roxburghe.

"Politics," Ilay wrote during the war of attrition which then ensued between the two parties, "is a continual petty war and game, and as at other games, we will sometimes win and sometimes lose, and he that plays best and has the best stock has the best chance."⁴ As the family with indeed the best stock, the Campbells used this period to build up a power base that would ultimately make their position if not unassailable, then at least an inescapable fixture on the political landscape.

Their chance came when in April 1721, Robert Walpole was made 1st Lord of the Treasury and Chancellor of the Exchequer. Since Roxburghe and the Squadrone opted to align with Carteret, Walpole turned to the Campbells. Ilay became Scottish Privy Seal, and Argyll Master of the Household. Although the brothers worked loosely in tandem until Duke John's death in October 1743, it was an uneasy alliance⁵, and became increasingly strained as the latter descended into mental illness towards the end of his life. Nevertheless, they undoubtedly needed each other to uphold the strength of Campbell influence, and much of the slippage which opened the way for the rise of Tweeddale in 1742 can probably be traced to when the two split in 1739.

In raising the position of Ilay to his manager of Scottish affairs, Walpole nevertheless was cautious enough not to endue him with too sweeping an authority. The Scottish secretaryship was abolished once more, and although he

⁴ HMC Bute MSS p 618

⁵ see A. Murdoch, p 30

provided the main channel for patronage, Ilay had still to work through the two English Secretaries of State, especially the Duke of Newcastle. He was enormously powerful, but at the end of the day, he was still a supplicant of patronage, not a dispenser. Despite such limitations, that the set-up came to work well was undoubtedly due in part to the shared aptitude both Newcastle and Ilay had for the business of management. It has been said of Newcastle that he had: ".an inborn taste for the intrigues and shifts of electioneering contests...Above all he realized that success for the party depended not merely on the results of elections, but on the constant refreshment of elected members by a judicious distribution of favours."⁶ Ilay was of the same cast [to quote *The Patriot* of 1740]: "All the electors attend his levee, his generosity is unbounded, as is his power. The private commissions he has to execute will make you wallow in riches...and preferment, besides a pension, will be your reward."⁷

More pertinently, Newcastle had a particular concern for ecclesiastical appointments, seeing the church as a "bulwark for the Hanoverian succession or in other words the Whig government"⁸. Again, this corresponded with a cause dear to Ilay, as borne out by Wodrow's despairing remarks in 1730: "[the Campbell brothers] take much pains to have some interest in all the various societies in Scotland, and to have some throughly engaged to their side everywhere. Everybody sees it in the Members of Parliament, the Lords of Session, the settlements of ministers and particular presbyteries in the General

⁶ Basil Williams, *Carteret and Newcastle*, [Cass.1966], p 30

⁷ *The Patriot*, no 7, 25 July 1740. 132

⁸ Basil Williams, p 41

Assemblies...thus universally carefull are they to spread and secure their influence"⁹. Although it is true Ilay had not Newcastle's privilege of grooming clergymen who one day could provide votes for him in the Lords, nonetheless, the settlement of ministers as chaplains, teachers and parochial clergy was of primary importance in his game plan. Clerical appointments were valuable not just in insinuating right-minded candidates, but also provided a currency for obliging friends and discountenancing enemies. As the Argathelians sought to advance their presence in University, local government, and elections to both upper and lower houses, in repeated instances, as will be seen, a judicious use of clerical patronage provided real advantages.

With Roxburghe's fall and the favour of Walpole secure, from 1725 the Argyll interest was able to turn the full vigour of its party machine upon Scottish society.

As mentioned above, from just before this time, Ilay increasingly came to use the talent of a young advocate called Andrew Fletcher of Saltoun. Fletcher was not from a promising background, in that his uncle was the famous anti-union republican, but he readily gave assurances as to the correctness of his own thinking¹⁰. He came to Ilay's notice after marriage to the Earl's cousin¹¹. A year after meeting Ilay, Fletcher was made a judge [1724] taking the title Lord Milton; two years later in 1726 he was appointed a Lord of Justiciary, became Lord Justice

⁹ Wodrow, *Analecta*, vol IV, p191-2

¹⁰ NLS Saltoun MSS. 16529, passim. It is interesting to note his anglophile tendencies in 16571, no.155, where his son's teacher at Winchester school writes: "...he has not lost all his scotch yet, but is much improved in his language". [13 Nov 1737]

¹¹ Elizabeth Kinloch. see JS Shaw, p 64

Clerk in 1734, then Keeper of the Signet in 1746 until his death in 1766. From the start, Milton shared his patron's interest in the correct handling of church affairs, and after watching the conduct of the Lochmaben case at the Assembly of 1724, quickly came to the conclusion that the priority requirement was proper organisation of support within the church's supreme court: "..had it been organise[d]," he wrote to Ilay, "many weak brethren would [have] been stumbled. And therefore in order to maintain your interest in our questions, I could wish you had Mr Alston, Minister of Dirrleton..."¹² brought to Edinburgh.

The Importance of Influential Churchmen.

It might be wondered in what way so large a body as the Assembly could be affected by the careful shuffling of a individuals from one place to another within the church, especially as the great majority of commissioners changed each year. Writing in 1725, Wodrow himself says that there were not above five or six that year who were present the Assembly before. However, he also provides an understanding as to how influential those few could be: "..this [change in commissioners] gives...the greater superiority to the few that ordinarily are chosen, because they, and they only, almost, are acquaint with the thread of affairs and methods of procedure; and the bulk of members this way are much strangers to the churches affairs till they come up, and [this] lays a good many members open to be wrought upon by a particular set of persons."¹³ The set of persons who thus could find themselves regularly chosen tended to be University Principals,

¹² Saltoun MSS, 16529. 23 May 1724

¹³ *Analecta*, III. p 200

Royal Chaplains, former moderators, and senior figures from the country's capital city. Work thereupon began to bring as many as possible of Argyll/Ilay men into such positions.

Alston was not in fact brought to Edinburgh, but he was set up as Moderator in 1725, making so formidable an alliance with Ilay's other agent, George Drummond, that Wodrow complained afterwards: "...till within this two or three years...our Assemblies were entirely in the management of ministers...but now particularly in the last Assembly the Moderator and the matters of the Assembly were entirely managed by such as were of one side and one person"¹⁴.

It was also necessary to encourage loyalties through the careful dispensing of what Milton called "confections"¹⁵. Thus in 1726, the Squadrone Professor William Hamilton and Rev. James Ramsay of Kelso were removed as royal chaplains and replaced by Alston and James Hart (Edinburgh)¹⁶. Although William Mitchell of Edinburgh had been of the Squadrone, fear of losing his lucrative chaplaincy¹⁷ kept his conduct well in check until his death in 1727. With Mitchell's demise, Ilay took the opportunity to increase the largesse at his command by using the sizeable stipend (£210¹⁸) to create three chaplaincies instead of one. The beneficiaries were the Rev. Thomas Linning of Lesmahagow, Professor David Anderson, King's College, Aberdeen and the Rev. William Millar

¹⁴ Ibid.

¹⁵ MSS.16529. Milton to Ilay, 11 April 1724.

¹⁶ Strictly speaking, Hart became King's Almoner

¹⁷ *Analecta*, III, p 289.

¹⁸ SRO., GD157/1392

of Edinburgh. At the same time the death of Principal Stirling of Glasgow University opened the way for the placement of a Campbell (Rev. Neil Campbell of Renfrew) in the heart of a Squadrone establishment.¹⁹ The Rev. William Gusthart of Edinburgh received Stirling's chaplaincy. The fact that Gusthart, Hart and Linning were prominent evangelicals made the purchase of their allegiance a useful piece of diplomacy, although for non-jurants like Linning, some moral adjustment on their part became necessary: "...one thing about him very remarkable is that having been appointed one in a Royal Commission for visiting the College of Glasgow...Linnen positively refused to qualify to the government...but...very soon after got a chaplainry with a salary of £70 which effectually gave him new light and then for the first time he swallowed the unclean morsel which he used to say had so much defiled his brethren"²⁰. It is perhaps not surprising that Wodrow's summation of the 1727-8 appointments was cynical in tone: "We see, nou, that the two brothers [Ilay and Argyll] cary all before them...And what a poor pass we are at, when six Chaplains and an Almoner shall byas persons to act for partys in Church Judicatorys!"²¹

Self-interest naturally encouraged other conversions besides that of Linning and Mitchell. Another leading light among the Squadrone's so-called "Bishops of Edinburgh" was Professor William Hamilton. That he had his price also is revealed in a letter from Ilay to Milton on the 1st April 1727²², where he relates

¹⁹ Saltoun MSS. 16535. Ilay to Milton, 26 October 1727.

²⁰ Memo, SRO., GD157/1392

²¹ *Analecta*, vol.III, 8 November 1727, p 454-5

²² Saltoun MSS 16535, 1 Apr. 1727

how he persuaded Walpole to create another chaplaincy especially to gratify "our new friend, Professor Hamilton"²³. Hamilton was further rewarded with the chair of the 1727 Assembly. The next Assembly, the moderatorship went to another Edinburgh Argyll man, Principal William Wishart. In 1729, it was James Alston once more. In 1730, it was back to the capital, and Professor William Hamilton again. The 1731 Moderator was another converted Bishop of Edinburgh, the Rev. James Smith of Cramond.

In Smith's case, the moderator's chair was a token of Ilay's "pardon..for ..bygones", but Milton, in a report²⁴ of his visit to buy his allegiance before the Assembly, still considered him to be only on trials, and could not recommend a move to the Capital itself until he had served his time. He would require to prove himself by his attitude to future settlements intended by the Earl. After all, there was nothing to stop Smith claiming that any advancement had come from Squadrone connections. What clinched Milton's decision to go on with Smith was realising that without him he would not succeed in bringing to Edinburgh another desired agent, the Rev. John Goudie of Earlston. The opposition of Smith's friends centred round their suspicion that the ill-regarded Goudie was designated for the chair of Divinity. With Smith neutralised, Provost Lindsay's path was clear to issue the assurance to Goudie's opponents that he had not designed him for professor, "but only he should ...be at Lady Yester's, and allowed them to say that in his opinion, he was for Mr Smith being Professor. Upon this they yielded to

²³ MSS. 16749, March/April 1727 (Milton to Ilay).

²⁴ Saltoun MSS, undated except for 1731, Milton to Ilay.

Mr Goudie's call.²⁵ Smith was made Divinity Professor, but less than three years later succeeded Hamilton as Principal, leaving Goudie to gain the chair after all. Hamilton was meanwhile obliged by having his son Robert fixed at Cramond.

Settlements.

Meanwhile, settlements constituted the bread and butter work of managing the church, and Milton made sure that there were few vacancies in which he did not take an interest²⁶. By and large, his interventions were skilled and effective, however, there were certainly occasions when the unexpected caused him discomfort, and of these it is beyond doubt that the planting of the first charge at Edinburgh's West Church (or St. Cuthbert's) was the most irksome.

The parish became vacant after the departure of George Wishart to the Tron in July 1730. The other minister of the collegiate charge was Neil MacVicar. Since Milton felt mildly obliged to MacVicar for being unable to reward his loyalty with a chaplaincy back in 1727²⁷, it was decided to humour him in his desire that the people should have their own choice of a minister, unmolested by any presentation, or at least, not until after the moderation of the call²⁸. As well as being ill-disposed towards patronage, MacVicar leant towards the evangelical

²⁵ 1730. see *Analecta*, IV, p 139

²⁶ On how, nationally, the rights of patronage were divided, see Appendix III.

²⁷ "I only regret that poor Neil MacVicar had not a benefit ticket...It was Neil MacVicar who made Mr. Tho. Linning our friend." - MS. 16750. Milton to Ilay, ___ 1727. Again, in 1729, Milton wrote to Ilay about MacVicar's "constant and zealous attachment to your family and I hope encourages others to follow his examples." - MS. 16541. It had also been planned to elevate him to one of the city charges (which the West Kirk was not) but his poor health clearly prevented it. - MS.16544. 14 August 1730, MacVicar to Milton.

²⁸ MS.16544. MacVicar to Milton, 28 August 1730. The right of patronage belonged to the Crown.

wing of the church, and so was delighted that the parish, except for the larger heritors, appeared to be decisively in favour of the Rev. Robert Jardine of Glencairn (Penpont Presbytery), who was also of that disposition.

It was at this point that Milton made three probable errors of judgement. First, he overruled the strong aversion that loyalists like Hamilton and Smith had to bringing someone like Jardine to Edinburgh²⁹, and as the case opened out, damaging rifts began to appear. Secondly, in order to protect the King's patronage right, the proper procedure should have been for Milton to insist on the six months expiring before any moderation of a call took place. However, since he wanted to spare MacVicar the stress of ministering single-handedly for so long a period, he suggested to Ilay that a statement be made that the King had resolved not to present for that occasion³⁰. Ilay agreed³¹. Thirdly, instead of allowing him to clinch Jardine's election while the time was propitious, he ordered MacVicar to drag out the process in order to afford more time for Milton's friends to win round the more prestigious opposers. Accordingly, at the meeting to moderate a call on the 21st. October 1730, MacVicar pushed through a delay of a further month. He was, however, uncomfortable about what he had done, and in his report of the meeting to Milton, expressed a strong sense that the opposition was gathering pace³².

²⁹ MS. 16544. Milton to Ilay, October 1730. Interestingly, Milton in the same letter reveals that he did harbour doubts about Jardine: "If he prove troublesome as I fear he may, poor MacVicar will be the first who will feel it."

³⁰ *Ibid.*

³¹ MS.16544. MacVicar to Milton, 8 October 1730

³² MS. 16544. 21 October 1730

MacVicar was entirely correct in his foreboding. At the moderation on the 24th. November, everything was initially as expected: all but three elders and the vast majority of the petty heritors favoured Jardine, while the great heritors, and those of the Town Council who had a franchise, were for the Rev. Patrick Wotherspoon (or Wedderspoon), a minister without charge. However, the meeting was then thrown into confusion when the great heritors strenuously objected to some of the small heritors' votes. With the result now in doubt, Presbytery had no choice but to delay further.

What happened next altered the entire situation.

At the end of November, Ilay had written saying he was happy to keep his distance over the West Kirk affair and let matters take their course³³. However, in early December he was outraged to receive a copy of a "very malicious" anti-patronage leaflet which was being circulated in Edinburgh. In it he found that he and his brother, as well as Newcastle and Hamilton were "thrashed". The Earl had no doubt that MacVicar's patronage of the populist faction in the West Kirk affair had served to encourage such boldness³⁴, and he wrote him a long letter of complaint "which", he told Milton, "I believe will startle him". Ilay clearly felt that the original decision to be accommodating over the settlement had only served to foster such unruly conduct. His attitude therefore hardened and he resolved to cut short further niceties by issuing a presentation - which he certainly intended would not be for Jardine.

However, Ilay did require to be careful. Obviously, there was little point in

³³ MS.16542. Ilay to Milton. 26 November 1730

³⁴ cf., Scott of Harden Memo, GD157/1392: "ever since his preferment [MacVicar] has been at the head of a mob in his parish against the authority both of church and state."

handing a propaganda coup to the authors of the pamphlet by promptly responding to it with a presentation. Accordingly, he wrote to Milton: "I incline to think that if a letter were writ to the Duke of Newcastle signed by all the considerable parishioners who are for Mr. Wetherspoon desiring a presentation for him I may prudently enough advise the Duke to comply with it, and his compliance may be imputed to the impertinent pamphlet"³⁵. In other words, the Earl could avoid any opprobrium caused by the presentation by publicly claiming he had not been party to it.

The petition was duly dispatched³⁶, and the presentation issued on the 1st. January 1731. The subterfuge of Ilay's guiltlessness was even given added credence by Ilay ordering his supporters to act as though he was much annoyed at being bypassed: "The conduct of Ld. Milton and his friends in this affair was generally ascribed to their patron's being disobliged that the D. of Newcastle had been applied to [for] the presentation and had given it without his advice - Nay, I was told by Principal Hamilton that this was the sole cause of it"³⁷.

Ilay's plan was successful, but at the same time he did not emerge unscathed. The fact that an assurance had been given and then reneged upon, did not throw his administration into a good light, and much was made of such perfidy by his critics. In addition, Milton was having difficulty in restraining MacVicar and his associates from making a "bustle"³⁸. Worse still, he warned, "if some method be

³⁵ MS. 16542, letters to Milton from Ilay, 8 December, 29 December, __ December, 1730.

³⁶ Saltoun Miscellaneous Papers (Eccl.) NLS., MS.17601

³⁷ Scott of Harden Memo, GD157/1392. The writer says he knew the truth was in fact the opposite.

³⁸ MS.16545. Milton to Ilay, __ April 1731

not fastened on to quiet this matter there will be a great[?] complaint from the elders of the Kirk of Scotland to the Assembly about patronages..."³⁹.

In the event, the pro-Jardine faction brought the West Kirk case up to the 1731 Assembly. For all his influence, Milton knew there was "no absolute answering for what an Assembly may do", so it would have been of some relief to him when, on the 13th. May, the case was referred for decision to the Commission "where they are more in our power"⁴⁰. The November Commission ordered Wotherspoon to be settled, but when the sentence came to Edinburgh Presbytery for execution, there was a reluctance to put into effect what was so passionately opposed. Presbytery accordingly delayed the settlement, which left it to the Commission which met on the 8th. March 1732, to decide how to respond.

By this time, Milton was thoroughly disgusted with the whole affair, believing of Jardine's side that "Any tenderness they have met with has only served to make them more obstinate"⁴¹. On the other hand, for Ilay's sake, it mattered that his followers (the most important of whom represented Edinburgh Presbytery) should not be seen to push the presentation too openly. The result was a somewhat tortuous representation on their part whereby they argued that because of the prejudice against the presentee it was for his own good that the Presbytery had withheld its concurrence. Nevertheless, they felt compelled to add that they did not wish to "impose their light upon such who had clearness [to concur], but left

³⁹ MS. 16545 8 April 1731

⁴⁰ MS.16545. __April 1731

⁴¹ MS.16548. Milton to Alston. __ February 1732

them to do therein as they see cause"⁴². In other words, they were leaving it to the Commission to decide what to do.

After a debate which continued all day until 11pm., the desired result was finally obtained and Wotherspoon was to be settled by a special committee. Nonetheless, this, too, was an unsatisfactory victory for Ilay and Milton in that for a time it clouded their relationship with some of their leading loyalists, who were far from happy at the way the affair had been handled. Some of them registered their distaste in their contribution to the debate at the March Commission, to the disapproval of one of Milton's observers: "three of our chaplains...laboured the point [against the presentation] with more keenness than I thought became them"⁴³. Then Alston, who was admittedly an erratic ally⁴⁴, went so far as to abstain at the vote. He afterwards wrote to Milton explaining, with some awkwardness, how he could not put aside his scruples over the "extraordinary steps" which had been taken in the management of the affair. His concluding argument was, that in any case, although he was a King's Chaplain, if he appeared in the Church courts merely as a "puppet", what regard would his words ever command in the King's service?⁴⁵. Alston's patrons were, however, unimpressed, and no further preferment was ever given to him. It was a displeasure which was underlined at the following Assembly, when, having put

⁴² Laing MSS., (Edin. Univ. Library), Vol.II, 18/3, Report of meeting of the Assembly Commission on 8 March 1732

⁴³ MS. 16548, Colin Campbell to Milton, 9 March 1732.

⁴⁴ "...tho' unquestionably a very clever man, [he] is one of these politicians who by endeavouring to appear sometimes on one side and sometimes on another, seldom fail to render themselves odious to all parties" Memo, GD157/1392

⁴⁵ MS. 16548., 9 March 1732

himself forward as a candidate for moderator, Alston found that Ilay had sent orders that Principal Neil Campbell was to be elected instead - which he was⁴⁶.

Good relations with the Royal Chaplains were further strained when three out of the four who belonged to Edinburgh Presbytery refused to join with the Commission's special committee to settle Wotherspoon. Following Alston's example, Millar and Gusthart also wrote afterwards to explain that their conduct had been on grounds of conscience, and that the Earl could still be assured of their loyalty⁴⁷. Their attempts at rapprochement did not deter Ilay from toying with the possibility of retribution⁴⁸. In the end, however, he restrained himself.

Meanwhile, the vexations surrounding the West Kirk affair were still far from over. When the Rev. James Dawson of Langton (Duns Presbytery) went to the church on the 12th. March 1732, to read the edict for Wotherspoon's settlement, a riot of such violence ensued that the Town Guard opened fire, killing one and wounding four⁴⁹. The news of the affray caused widespread shock, and the immediate effect was to deepen the divisions within public opinion as well as harden each side's resolve. The Town Clerk of Edinburgh, George Irving of Newton, typified the establishment side's sterner attitude by declaring the necessity now was "for going thorough stitch" in asserting the authority of the

⁴⁶ See, JS. Shaw, *Management of Scottish Society*, p 104

⁴⁷ MS.16549. 2 May 1732

⁴⁸ "...it was generally given out by his friends at Edinburgh, and was told to myself in particular by Mr. Vaughan [a Customs Commissioner and close friend of Ilay] that Ilay was much disobliged with the Chaplains and that some of them would be turned out" - Memo, GD157/1392

⁴⁹ MS. 16547. Gwynne Vaughan to Milton, 14 March 1732 [NB: the letter has been wrongly included in a bundle of letters for 1731]

law⁵⁰. In London, the reaction was equally belligerent. Vaughan wrote some weeks later speaking of the "great scandal" caused there by the reports of the Kirk's "impertinent way of dealing with the King's presentations", and warning that "some of the sub-ministers had infused such notions and such stories as made most people here think a short bill necessary for ascertaining and [?]securing both the King and the subjects' undoubted right of patronage"⁵¹.

On the other side, support began to be rallied for what Hamilton predicted⁵² would be "a violent push" at the Assembly to "unhinge" the settlement - which had eventually been effected on the 30th. March. Immediately, the Master of Ross, one of Milton's leading managers at the 1732 Assembly, began working furiously to gain the co-operation of both the recalcitrant chaplains and the evangelicals, warning them that good behaviour would "tend much to free them from any great inconveniences by the patronages for the future, and to preserve to them the esteem and favour of their friends above". He reported that his words did seem to have some restraining effect, but he was "much plagued with the North Country ministers who are all zeal and fire about the West Kirk."⁵³ Some of them were "as wild as bucks"⁵⁴. His spirits were not raised at the opening of the Assembly when he saw that there were "four Erskines at the Assembly, two lay and two clergy, more than enough to raise fire in any society whatever. Buchan's brother

⁵⁰ MS.16550. Irving to Milton, 14 March 1732.

⁵¹ MS.16547. 8 May 1732 [NB: incorrectly filed under 1731 correspondence]

⁵² MS.16550. William Hamilton to Milton, 27 April 1732

⁵³ MS.16551. Master of Ross to Milton, 2 May 1732.

⁵⁴ MS.16551. 11 May 1732

[an Erskine] seems as mad as any man I have seen out of Bedlam". Nevertheless, his calculations suggested the attack on the settlement would be rebuffed, and, for the evangelicals, "after a little fire vomited up the sickness will end"⁵⁵.

Ross still knew the West Kirk debate was likely to be bitterly contested, and the voting consequently liable to changes. It would therefore have been of some succour to him when Providence intervened, at the last instant, and settled the issue. Affected, according to the *Fasti*, by the opprobrium he had attracted through the affair, Wotherspoon took ill and suddenly died on the 12th. May, causing the case to be abandoned. Although doubtless highly relieved at the news, Milton moved swiftly to head off any repeat of former difficulties. The Commissioner, the Marquis of Lothian, was duly sent to speak "very home" with MacVicar, "that he may no ways concern himself in any future colleague"⁵⁶. However, MacVicar was only too glad to retreat from what had become an uncomfortable position for him, and he had already written to say he now only wanted peace.⁵⁷ Consequently, the great heritors were allowed a free hand to make a choice, and they settled upon the James Dawson who had served the Edict at the riot. He was admitted the 15 February 1734, on a call, the six months having been allowed to expire.

Meanwhile, Wotherspoon's demise also brought elation to the evangelical camp. According to Ross, they regarded the development as "a signal providence of God

⁵⁵ MS.16551. 6 May 1732

⁵⁶ MS.16551. Ross to Milton, 13 May 1732

⁵⁷ MS.16550. Neil MacVicar to Milton at London, 12 May 1732

in their favour to spirit up the people to, what they call, their Christian liberty"⁵⁸. However, with the West Kirk case now finished for the immediate future, a major rallying-point had disappeared. For many, it was to reappear almost immediately in the Act Anent the Method of Planting Vacant Churches. This had been sent down for consideration by Presbyteries by the 1731 Assembly. Its essential thrust was that where a vacancy was to be filled by a call instead of a presentation, the vote should be restricted, as in 1690, to the heritors and elders, and, in burghs, to the Council and the elders⁵⁹. Unabashedly looking to the Overture as a means "to take the power out of the people's hands", Ross, Hamilton and the Commissioner led the drive to have it passed.⁶⁰

Since the questionable voting procedures which brought the Overture into an Act, and the subsequent developments which led to the forming of the Associate Presbytery are already well documented in church history texts, it would not perhaps be of great value to rehearse the story here. Moreover, it must be added that, strictly speaking, the repeated point of contention surrounding the debate in that controversy does not appear to have been the issue of patronage *per se*, so much as the denial of the rights of the people in the matter of calling⁶¹. The

⁵⁸ MS.16551. Ross to Milton, 13 May 1732

⁵⁹ The legislation started at the 1731 Assembly, Sess. 9, May 14, as the Act and Overture concerning the Method of Planting Vacant Churches. After consideration by Presbyteries it returned to be amended and passed as the Act Anent the Method of Planting Vacant Churches, Sess. 11, May 15, 1732. See, Pitcairn, pp 614 & 620

⁶⁰ MS.16551, Ross to Milton, 13 May 1732; MS.16550, William Hamilton to Milton, 13 May 1732.

⁶¹ Thus it is not entirely clear why Dr. William Ferguson says that the Act Anent Calls "made nonsense of the assembly's protest against the act of Parliament of 1712" [*Scotland: 1689 to the Present*, p 122]. The Commission's annual protest against the grievance of patronage did not specify any method of calling.

distinction is worth noting, for, as the conduct of the Royal chaplains during and after the West Kirk case showed, it was, of course, entirely possible to be opposed to vesting a franchise in the populace, yet also regard an unfettered use of patronage as unacceptable. Even the Squadrone author of the Scott of Harden Memorandum concedes that the motivations of leading Argathelian churchmen may not have been exclusively self-serving, and that probably several of them fell in with the practice of presentations in the genuine belief that once landowners were shown that the church could act responsibly, and would not allow ochlocracy, it would be a much easier task to persuade them to abandon patronage altogether⁶². The chaplains' problem, however, was that by 1733, they had become too deeply involved in the system: "they are really now obliged to persist because they have gone so far that they find it impossible to retreat"⁶³.

The philosophy, however, that the best way to ease the burden of patronage was to co-operate with it⁶⁴, caused deep resentment among those who took the opposite view. Thus it is of interest to note that Ross' dialogue with the evangelicals, during the 1732 Assembly, revealed that the ardour of their bitterness over the misuse of royal presentations was directed not against government ministers, but against the leading clergy, especially those within Edinburgh

⁶² By 1731 Wodrow had also decided this was the best policy: "it might have a good deal of influence on subject Patrons, providing Ministers would abide by the plan 1690". *Analecta*, Vol. IV, p 253

⁶³ Memo, GD157/1392

⁶⁴ William Grant, "Remarks on the State of the Church of Scotland with Respect to Patronages and with Reference to a Bill now Depending before Parliament", 1736. (In *Select Anti-Patronage Library*, 1841), p 7: "hopes were given by the politicians to the moderate party, that by a little compliance with regal presentations and those of men in power, contrary to the old rules of the Presbyterians, they would get the patronages abolished altogether."

Presbytery. What made their defections particularly reprehensible in their eyes, was that "during the late [Squadrone] ministry, there was no such bad use made of the King's presentations...and now when their friends were in power they had been expecting still better"⁶⁵.

The question nevertheless remained, as to what could be done? Instead of providing a spur to similar action, the 1733 Secession had in fact provoked a muted response⁶⁶. There were probably four reasons for this.

First, Erskine and his colleagues had, in the end, been disciplined for manifest disobedience to the courts of the church, rather than as martyrs against patronage. Secondly, the unrelenting disparagement of the Seceders by senior figures like Ilay did little to enhance their status in public estimation. When, for example, Erskine appeared before the Assembly Commission of August 1733, Ilay "attended all the diets and run down Erskine prodigiously". After deriding Erskine for his "hypocritical zeal" and labelling his followers "a vile rabble", he concluded with the warning, doubtless for general consumption, that "the practice of presbyterian ministers ever since the Revolution had gone so much in that way of courting the mob that if the Union had not saved them he did not doubt in a very little time he would have seen the Presbyterian Government of the Church abolished"⁶⁷.

⁶⁵ MS.16551, to Milton, 13 May 1732. That the family of Argyll were widely believed to be true friends to the Kirk, was both a result of their Covenanting antecedents and the consummate skill with which they cultivated the image of themselves as staunch upholders of the Kirk's rights. The prime example of this was, of course, their alliance with the evangelicals towards the end of Roxburghe's administration. [see above, Ch.V]

⁶⁶ Morren speaks of it having a paralysing effect on the Popular party - *Annals of the General Assembly of the Church of Scotland from 1739-52*, [1838], Introduction, pp iv-v.

⁶⁷ Central Region Archives, GD189 2/132, Unsigned letter [?Alexander Bayne] to William Murray of Polmaise, 10 August 1733.

Thirdly, as evidenced by Lord Grange's contributions to the 1733 Commission debate⁶⁸, it was one thing to be in accord with the Seceders' views on patronage, but the idea of schism was still deeply repellant to many.

Fourthly, morale among evangelicals was certainly damaged by desertions from within their own ranks. The minister of Bothkennar (Stirling Presbytery), the Rev. Henry Lindsay, had been a vociferous opponent of patronage in general, and the presentation of Wotherspoon in particular, yet was also ambitious⁶⁹. Ilay, sensing he might be won over, gave him a royal presentation for the desirable charge of Falkirk in 1732. Lindsay then started to hedge, giving an ambivalent acceptance, and waiting to see if he might make it simply on a call instead. However, the fact that he showed willingness to have any dealings with a presentation soured his popularity within the area, and the charge was eventually given to another. Lindsay later tried to claim that he had always refused the presentation, but his reputation remained tarnished.⁷⁰ Even more startling was the conduct of Robert Jardine, the candidate of MacVicar and his party for the West Kirk: "[he] got the Royal presentation to Lochmaben, one of the best settlements in the Kingdom, tho' a poor despicable burgh, because he was thought a fit person to serve the Sollicitor [Charles Arskine of Tinwald, close ally of Milton, appointed King's

⁶⁸ Ibid. It must be mentioned that Grange's "artful" declarations were not untainted by his own electoral ambitions in Stirling Burghs. He required both to appease the large evangelical contingent in the constituency and yet avoid alienating the landowners, many of whom were Episcopalian. His position on the Secession attempted to juggle both interests. - See, A.T.N. Muirhead, "Religion, Politics and Society in Stirling during the Ministry of Ebenezer Erskine, 1731-54", unpublished M.Litt. Thesis, Stirling University, (1983), pp 18-20.

⁶⁹ Wodrow says he stirred up trouble for the presentee to Airth (Stirling Presbytery) in 1727, only because he desired the charge himself. *Analecta*, Vol.III, p 408.

⁷⁰ G.I. Murray, *Records of Falkirk Parish*, Vol.II, Falkirk [1888], pp 139-142; MS.16551, Rev. James Smith to Milton, 29 April 1732; MS.16553, Lord Elchies to Milton, 16 May 1733; Memo, GD157/1392.

Sollicitor in 1727], who wanted to secure that vote in the ensuing elections. And the worthy Mr. Jardine having, to the great stumbling of the Godly (as they call themselves) accepted the presentation, he is now Minister [admitted 26 October 1732] and the Sollicitor the Provost of Lochmaben"⁷¹.

The evangelicals did not attract the numerical support they might have wished for, but that was not to say that they were alone in their dismay at the growing venality of the Kirk. Even for non-aligned clergy, like Wodrow, the manner in which settlements were coming to be conducted was the source of profound despair: "Thus, in our present unhappy partyes and struggles, and shameful subjection to great men, Kirkes and Ministers a[re] couped [ie., bartered] like horses..."⁷².

⁷¹ Memo, GD157/1392; J. Wilson, *The Churches of Lochmaben*. Dumfries [1971], p 41.

⁷² *Analecta*, Vol.IV, November 1731, p 296

CHAPTER IX.

The Regime of Milton and Ilay:The Resistance of 1734-36

As has been seen, the organising of concerted resistance to patronage was fraught with almost insurmountable difficulty. In the early 1730s, however, there was a series of disputes involving presentations which provoked such particular alarm and distaste, that for a short period a counter-offensive took place, raising hopes that this time a renewed campaign to have patronage removed would meet with success.

Crucial Patronage Controversies, 1730-35:

The parish of Balfron (Dumbarton Presbytery) became vacant in May, 1729. Milton obtained a presentation for a George Sinclair, who appears to have given a qualified acceptance¹. However, at the moderation of the call, Sinclair clearly enjoyed by far the least support of the three candidates, having not even one elder for him, and so the call was given to another. Nevertheless, the August Commission of 1730 set aside that call and ordered Presbytery to install Sinclair. Believing the action they were being asked to perform was contrary to the principles of the Church, Dumbarton Presbytery unanimously refused to obey and requested the Synod of Glasgow and Ayr to give advice. The Synod declared itself in agreement with the Presbytery, but nonetheless resolved merely to ask the Commission to sist the case until the next General Assembly. The Commission,

¹ MS.16544, John Napier of Kilcrugh to Milton, 27 March 1730

meeting again in November, threw out the Synod's request and set about appointing a special committee to join with the Presbytery in admitting Sinclair as soon as possible. Speed was of course required, if the settlement were to be completed before the May Assembly could intervene.

As the day of the ordination approached, the Rev. Robert Paton, staunchly loyal to Milton through gratitude for his obtaining Renfrew, tried hard to rally support. However, he could only find two members of Synod willing to go along with the project². Meanwhile, one of Paton's few allies in the affair, Principal Neil Campbell, was writing to Milton saying he was glad of the knowledge that Milton had been so determined to have the settlement go the way he wished, since "I own [it] helped me to bear the frowns we are under in this country for appearing for it."³ According to the *Fasti*, when the admission took place on the 23rd. April 1731, only one member of Presbytery joined the committee, and military protection was deemed necessary⁴. It so happened that the following Assembly did scrutinise the Balfron affair, but although it disapproved of "some steps" of the Commission's conduct, including its unseemly haste, to widespread dismay it shrank from taking any action⁵.

The planting of the parish of Eccles (Duns Presbytery), which became vacant in July 1729, was characterised by the overbearing and unscrupulous conduct of James Home, the Laird of Eccles. A friend of Milton's, Home wrote to him on the

² MS.16547. Paton to Milton, 7 April 1731.

³ MS.16545. 12 April 1731

⁴ Vol.3, p 329; MS.16546, Alexander Hamilton [to Milton], __ 1731: "there was a great crowd of people, and tho' there was a disposition to mutiny all ended peaceably"

⁵ Assembly Registers, 17 May 1731.

6th. July and requested that a crown presentation be made out for his niece's husband, Matthew Dysart, who was a probationer⁶. When the presentation was issued, Eccles then took the extraordinary step of reinforcing it with another from the Earl of Home, for whom he acted as a curator. He lodged both at the Presbytery meeting of the 4th. November, further supported by a signed petition in his favour (2nd. December) and Mr Dysart's qualified acceptance (5th. January 1730)⁷. A bemused Presbytery rejected the Earl's presentation and, proceeding on the royal one, arranged a meeting to try the inclinations of the people. This was convened on the 3rd. March 1730, when Eccles arrived armed with a large number of proxy votes from other heritors, commissioning him to vote for Dysart. As a result, Eccles managed to achieve a majority of heritors' votes for Dysart (16 to 14), but in the Session it was even (3 to 3), while the heads of Families were strongly against (156 to 44).

Over the next two meetings, the opposers of Dysart, led by the Homes of Kames, challenged Eccles on the honesty of his tactics. First, they queried two of the elders' votes, in that one was "an aged blind man" who had retired twelve years before, and the other had already been required to quit the Session after being declared a fraudulent bankrupt.⁸ Secondly, he had used his influence to induce reluctant supporters to stay away from the election altogether. To which Eccles

⁶ MS.16541, James Home to Milton, 6 July 1729

⁷ Duns Presbytery Minutes, SRO., CH2/113/6.

⁸ They not only believed that Eccles had used undue influence on these to obtain their votes, but that when a fellow elder had challenged him upon it, Eccles had called him "a blockhead...a liar, a malicious man and a base villain", and that with "fierce countenance and indecent gestures" he had "stared him in the face". Presbytery subsequently obliged Eccles to apologise and submit to censure by the Moderator. (7 April 1730)

admitted that he had given the advice that it was wiser "to [be] absent than to fly in the face of His Majesty's right".⁹

Finally, they were especially suspicious of the commissions he had produced at the vote, and after inspecting them, claimed: "most of them were granted before it could be possibly known who was to be presented. They are dated long before the Earl of Home's presentation was made public and 'tis thought before it was signed". Making no express denial¹⁰, Eccles responded by complaining that it was idle to argue over the validity of votes, for if such things mattered, "then of what import is the Patronage Act?".

Wholly dissatisfied with Eccles' carriage and apparent misconduct, and moreover taking account of the considerable opposition to Dysart, Presbytery referred the matter to the Synod of Merse and Teviotdale, which met on the 21st. April. During the course of their two-day debate on the affair, it emerged that a printed circular had been distributed to members of the court, casting ignoble aspersions upon some of the prominent anti-Dysart heritors. Eccles admitted to being the author.¹¹

Finding themselves unable to make a decision, the Synod referred the matter to the 1730 Assembly. It was then that matters turned sharply in Dysart's favour, for the Assembly then remitted the case to the Commission, the Church court in

⁹ Ibid. 14 April 1730

¹⁰ Eccles appears to be at least partially guilty. As early as the 10th. October 1729, he sent a mandate in favour of Dysart to Milton, and asked him to use his influence to induce a new heritor, based in London, to sign it. - MS.16541.

¹¹ Synod Minutes, SRO., CH2\265\2. Eccles appears to have escaped censure for the offence.

which, of course, Milton's party machine was at its most effective¹². With a striking disregard for the facts, the August Commission decided that, owing to the numbers that appeared to be for him, Duns Presbytery should be instructed to proceed at once to settle Dysart on the call already signed.

The Commission's sentence was an absurdity. Not only was the majority of the parish against Dysart, but the Court was attempting to classify the petition lodged, on the 2nd. December, in favour of Dysart, as a call. It had no title to the status of a call, since it had neither been signed before the Presbytery, nor attested by them. It had even been lodged before the presentation had been accepted. Presbytery, finding itself in considerable difficulty, attempted a series of delays. However, at a pro re nata meeting called for the 18th. December 1730, Presbytery heard that Eccles had returned to the Commission and procured an extract stating that a special committee had now been appointed by them to join with willing members of Duns Presbytery, for the purpose of taking Dysart on trials and admitting him by the following March. Presbytery now knew it had no other option than to proceed. Resistance in the parish continued, but Dysart was finally installed by the "conjunct meeting" on the 4th. February 1731. Only one elder appeared from the Session.

The Commission's ability to arrive at a preselected verdict did not always necessitate the adoption of such a cavalier attitude towards the evidence. Sometimes the need for such conduct could be removed by the application, in

¹² According to Wodrow, this success actually served to discourage Ilay's ecclesiastical managers from supporting an earlier introduction of the 1731 Overture Anent Calls: "...the directors of affairs...it seems, inclined to have this pouer of calling left loose, that it might really be in the Commission's hand to settle according as partys would have it; and so no rule was agreed to." *Analecta*, vol.IV, p 255.

advance, of some judicious "persuasion", as in the case of John Burgh (or Brugh). In 1730, Burgh was presented to Foulis Wester (Auchterarder Presbytery). When he gave in a plain, unqualified acceptance of the presentation, the scandalised Presbytery referred the matter to the Synod of Perth and Stirling, who, according to the evidence heard by Wodrow at the Commission, promptly suspended him for the offence. When the case came on appeal to that Commission of May 1731, it was already clear to many that, for the sake of good order, the Synod's conduct could hardly be allowed. A fortuitous way out of the difficulty presented itself when it was pointed out that, originally, Auchterarder Presbytery had only referred the issue to Synod for advice, not a decision. Accordingly, the Commission felt clear to declare the suspension null, which it did¹³.

The truth behind the Burgh case appears, however, to have been considerably different from that which was suggested by the evidence led before the Commission. Nine years later, when writing to the Rev. James Bannatine (Edinburgh Trinity Church; Moderator of Assembly, 1739) about another matter, the man who had been Moderator of the Synod at the time, Thomas Finlayson (Dunbarney, Perth Presbytery), gave his version of events. According to Finlayson - and his contentions are reinforced by letters from two colleagues - Synod originally appointed a committee to suggest to Burgh that he withdraw his acceptance. He thereupon "declared himself sorry for his acting contrary to the principles of the Church of Scotland and to his own principles, and when the committee made their report to the Synod, he declared the same thing as before the committee; but the question being put to him whether he was now willing to

¹³ Wodrow, *Letters*, To Charles Masterton, Vol. III, 2 June 1731, p 489

withdraw his acceptance, he declined it, upon which many members of the synod were exceedingly offended at his prevarication and juggling". He was also charged with lying to the Court, since he had professed repentance, "yet the penitent rolls the sweet morsel under his tongue". Finlayson was adamant: "It was on this ground, and not for his simple acceptance of a presentation that he was deprived of his licence."¹⁴

This naturally put a different complexion on the case. Whereas it could legitimately be argued that the Synod were not in order to remove Burgh's licence, having only been asked for their advice, it was entirely competent for them to discipline him on grounds of his contumacy while appearing before them. It therefore may be wondered how the Commission were able to construct a case which enabled them to reach their verdict of May 1731.

The answer appears in another letter written, again in March 1740, to Bannatine about the case. The Rev. James Mackie (Minister of Forteviot, Perth Presbytery, at the time of the Synod) wrote to say that in the Synod's Minute book (extracts of which the Commission would have used), the record of the sentence on Burgh had been worded in an unclear and "lame" manner. He maintained the Clerk had cast it in that form, after being subjected to pressure by someone "who was concerned for the patron". As the Clerk had already been suspended for previous wrong clerking, this further offence should properly have rendered him liable for deposition. However, possibly out of compassion for him, all proceedings were stifled, which meant that the ambiguity in the register was left untouched, and the

¹⁴ SRO., Miscellaneous General Assembly Papers, CH1\2\78, Finlayson to Bannatine, 21 March 1740; also, Rev. Lachlan MacIntosh (Errol, Perth Presbytery) to Bannatine, 6 March 1740.

way thereby left clear for Burgh to be reponed by the Commission¹⁵.

The parish of Port-Glasgow became vacant in November 1730 when the Rev. John Anderson was translated to Glasgow. Port-Glasgow was set in an area of strategic importance for Ilay. The (nominally¹⁶) Argathelian MP for Glasgow Burghs, Daniel Campbell, was intensely disliked, especially in Renfrew and Glasgow - the latter declaring at the 1727 Election that they'd "lay out £1000" to keep him out¹⁷. Moreover, Campbell had in fact been defeated at the Election, and, despite protests from all four burghs, had got the seat only by petitioning the Commons¹⁸. Accordingly, Robert Paton of Renfrew, himself barely settled in his charge wrote to Milton to press the importance of the situation, especially as any new minister's affiliations would decide the political balance within the presbytery.¹⁹ His main concern was that, the Magistrates of Glasgow, who had the right of presenting²⁰, were favouring David Brown, who had an "inviolable connexion" with the Squadrone. Brown (who had been the main rival to Sinclair for Balfron) was also the overwhelming choice of the parish and Session, which meant that it was crucial that the normally hostile Magistrates of Glasgow were

¹⁵ Ibid. 12 March 1740. Burgh eventually abandoned the presentation - *Fasti*, vol.4, p 272

¹⁶ His loyalties could be erratic.

¹⁷ Milton's Letter Books, Parliamentary Elections (1727-54), MS. 17532. The seat was made up of Renfrew, Glasgow, Dumbarton and Rutherglen.

¹⁸ 28 March 1728. See RH. Scott, "Politics and Administration of Scotland", p 374

¹⁹ MS.16547. 8 March 1731.

²⁰ In 1696 the Council had the parish disjoined from that of Kilmacolm. They then built the church and provided the stipend. However, in 1712, the patron of Kilmacolm, the Earl of Glencairn, claimed the right of presenting [Paisley Presbytery Minutes, SRO., CH2/294/7, 8 October 1712]. Since the Council had imagined it was theirs, a protracted dispute broke out, which was only resolved when on the 5th. March 1717, the Council agreed to pay 600 merks to the Earl for the renunciation of his right. - "Extracts from the Records of the Burgh of Glasgow", JD. Marwick, [ed.] [Glasgow 1878 ->], vol. 1691-1717, p 608. (cf., above, on Whitburn.)

somehow won round.

The task of inducing the Magistrates to support the Argathelian candidate did not in fact prove too arduous. A serious case of fraud over the export of tobacco from Port-Glasgow had gone to court the year before, and was threatening the city's merchants with dire consequences. By offering to ameliorate their difficulties, Milton put himself in a position he could now exploit: "The political benefit was that the town of Glasgow could see the value of being part of Ilay's interest."²¹ This benefit naturally extended to ecclesiastical matters, and so after the provost had received a persuasive visit from one of Milton's agents on the 31st. March, the Town Clerk duly wrote and said the Council were ready to present whomsoever Milton wished²². Milton's choice of William Moodie, the tutor to the children of Lord Boyle, Earl of Glasgow, had much to recommend it, in that since the Union, the Boyle family had reached an extremely influential position in most of the west coast ports²³. It would do Ilay no harm to have so important an interest in his debt.

On the 20th. April, despite a protest from the parish that they had been promised a free choice by the magistrates in return for not resisting Glasgow's call to their former minister, the Council voted to present Moodie. However, when the Presbytery convened the people in June to record their inclinations it was once

²¹ JS. Shaw, *Management of Scottish Society*, pp 91-92, where he also gives a n account of the case.

²² MS.16546. Richard Graham to Milton, 31 March 1731; Alexander Finlayson to Milton, 7 April 1731.

²³ See, PWJ. Riley, *English Ministers*, p 53, where he cites a memo to the Lord Treasurer of 14 May 1714: "there is none of the ports in the west of Scotland whereat he [Glasgow] has not several under officers of his own putting in".

more clear that support for Moodie was minuscule in contrast to that for Brown. Since Brown also was highly regarded in Presbytery and Synod circles, the Council's insistence on doggedly pressing their choice began to generate "a good deal of discontent"²⁴. By July Paton came to the conclusion that the cause was useless and told Milton it would be best to promote somebody else instead²⁵. Milton was not one however to give up so quickly, so when at its August meeting, the Presbytery declined to moderate a call exclusively to the presentee, the Magistrates suddenly produced a ruling from the Court of Session, sisting further action²⁶. The Presbytery took umbrage at the development and unanimously resolved to resist such an encroachment upon their jurisdiction. When the case came to the Synod in October, the Town Clerk was obliged finally to submit the document for inspection. The Clerk's inexplicable reluctance to produce the sist on earlier occasions, suddenly became apparent when the preamble was found to contain a declaration by the Lords that the Council were not in fact sole patrons, but joint callers with the feuars and tenants. It had been a clumsy attempt at deceit, and only served to harden the Synod's attitude: "Little was said, only that the Magistrates had either not knouen their paper, or had misrepresented it when the[y] asserted they wer sole callers, and [had] given us too much trouble"²⁷. Presbytery's conduct was therefore unanimously approved, and a large complement came to show their approval when Brown was duly

²⁴ MS.16546. Unsigned letter to Neil MacVicar, 28 June 1731. Brown was the son of Thomas Brown of Paisley and nephew of David Brown of Glasgow, both of whom were widely admired.

²⁵ MS.16547. 26 July 1731

²⁶ *Analecta*, vol. IV, p 275

²⁷ *Analecta*, Vol.IV, p 291

admitted on the 28th. October 1731²⁸.

From whatever viewpoint it is perceived, the Port-Glasgow affair was not an exercise in good public relations for Milton. As with the planting of the West Kirk, he ignored advice because he thought his wishes could be bulldozed through. His then failing, however, simply diminished his standing in the eyes of both his supporters and his enemies, as well as unnecessarily provoking outrage among the non-aligned. Paton wrote later about the case to Milton, regretting how the affair had turned out, and especially that his benefactor had been "much abused in it"²⁹. He blamed "treachery" for the outcome, but privately, he must have had little doubt where the basic fault lay. To round off the misfortune, the Earl of Glasgow ungratefully sided with the opposition at the 1734 Elections³⁰.

Milton should also have taken more care to follow another piece of advice that Paton gave him, this time concerning a potential vacancy at Troqueer (Dumfries Presbytery), since few cases were to cause as much anger as it came to do. The minister of Troqueer, John Bowie, declared an intention, in 1730, to demit his charge, on grounds of ill-health. Paton warned Milton not to make any initiative until Bowie's demission "so often promised, is actually lodged"³¹. Milton however did not trouble to check this had taken place, and proceeded shortly afterwards to issue a crown presentation to James Purcell, assistant to Paton's

²⁸ Ibid. p 293

²⁹ MS.16547. 17 November 1731.

³⁰ RH. Scott, p 382

³¹ MS.16544. 12 October 1730

father at St. Michael's Dumfries, and also someone recommended by Professor Hamilton³².

Why Milton should have been cautious, was that the great majority of the parish had already formed a liking for James Ritchie, who had for some time been serving as assistant to the ailing Mr. Bowie. Accordingly, when the news of the presentation came through, Bowie, out of solidarity with the parishioners, withheld his demission and continued in the charge for the next two years. When Bowie finally died in March 1732, Milton's friend Vaughan strongly advised him that since passions had been fermenting for some time, it would be best to avoid further trouble and present Ritchie, especially as he was an acceptable substitute for Purcell³³, but Milton decided to persevere with his original choice and so presented Purcell for a second time on the 5th. September 1732. Since the incident of Bowie's withheld demission had given a clear indication of the congregation's feelings, Milton's action was certainly provocative. The Presbytery visited the parish in April 1733 to sound the inclinations of the people, and found such a depth of opposition that they decided to refer the matter to the ensuing Assembly³⁴. Purcell's supporters also appealed on the grounds that the Presbytery were simply ignoring the presentation. The Assembly's decision was to refer the case to the Commission to determine³⁵, which made the outcome, as had happened frequently before, a forgone conclusion in favour of Milton's

³² Ibid. Milton to Ilay, October 1730.

³³ MS.16551. 15 April 1732

³⁴ MS. 16553. Provost Thos. Edgar, Dumfries, to Milton, 24 April 1733

³⁵ Assembly Registers, 11 May 1733.

protege.

The August Commission ordered the Presbytery to proceed forthwith to Purcell's settlement, and when at the March Commission it was found that the order had still to be obeyed, a special committee was sent to perform the task, which they duly executed on the 19th. April 1734 - a move which merely intensified a bitterness which continued unabated until Purcell's death in 1742. In September 1735, the manse offices and stackyard were set alight in an arson attack, then in November the following year, Purcell was violently mobbed while trying to perform his parochial duties. Meanwhile, the elders unanimously refused to meet with him, and, despite the orders of the General Assembly, by 1736 both Presbytery and Synod were still declining to admit him to the roll of their meetings³⁶.

As long as Milton could be sure of carrying most of his wishes in the Assembly Commission, and at the same time know that the Assembly, through fear of undermining its constitutional position, would rarely overturn the Commission's sentences, the temptation to overconfidence on his part must have been strong. However, it was during the Assembly of 1734, which followed close after the forcible settlement of Troqueer, that there appeared indications that a change of mood was taking place - of a time having come to make a stand against the more offensive excesses of patronage. What most clearly showed the change in attitude was the Assembly's judgement in the case of the settlement of Auchtermuchty.

When the parish became vacant on the death of the previous minister on the 1st.

³⁶ J.L. Mangles, *Troqueer Parish Church, Dumfries*, Dumfries [1971], pp 26-8; *Assembly Registers*, 16 May 1735, 24 May 1736; *Fasti*, vol.2, p 303.

January 1733, George Moncrieff of Reidie and Lady Newark jointly presented a Matthew Moncrieff, probationer. The Presbytery of Cupar responded by demanding proof that either or both had any right of presenting. When no documentary evidence was produced, the Court thereupon proceeded to moderate a call at large, to which Reidie consented, provided the presentee was included in the leet. This was agreed, but the vote, on the 17th. July 1733, was overwhelmingly for another probationer, Patrick Maxton. Far from being discountenanced, however, Reidie had already planned his next move.

Doubtless on the advice of Milton, whose wife was the niece of Lady Newark, Reidie had had the foresight to get the 1733 Assembly to declare that the Commission should determine finally in any appeal which might arise from the Auchtermuchty vacancy³⁷. Reidie accordingly appealed to the November Commission, where, for the first time, Lady Newark produced credentials in respect of her patronage. Fixing upon these, the Commission predictably set aside Maxton's call and decided in favour of Moncrieff. When Presbytery refused to proceed on the sentence, the March 1734 Commission, again predictably, ordered his settlement to be effected by a special committee. This was then carried out on the 19th. April 1734 (the same day as the Troqueer settlement) with none from either Synod or Presbytery in attendance, except one elder and one minister³⁸. Doggedly continuing the struggle, Presbytery appealed to the 1734 Assembly.

At this point, however, instead of the by now familiar pattern of resistance to the

³⁷ MS.17543. Milton Letter Books, "Legal Cases": [copy of] "Memo for the Presbytery of Cupar. 1734". The memo says the ploy of getting the Commission to determine finally is something that "has been too frequently practised".

³⁸ *Fasti*, vol.5, p 126; Cupar Presbytery Memo.

Commission's irregularities coming to naught at the Assembly, there was a significant change. Certainly the Presbytery had a strong case - that Lady Newark's documentary submission had constituted new evidence, and therefore was inadmissible - but the Commission's apologists countered with their customary catch-all defence that whatever the plaintiffs claimed, "the Commission did not act in the capacity of a committee but as a sovereign judicatory, having all power delegated on them, so that it was unprecedented, even incompetent to reverse their judgements"³⁹. It was this argument which previously had repeatedly swayed the Assembly into stopping short of cancelling even incompetent judgements by the Commission. This time, however, the Assembly was of another mind, and the Commission's decision was not only disapproved, but Moncrieff's settlement was overturned⁴⁰.

The 1734 Assembly showed its inclination to depart from former habits in other ways beside the Auchtermuchty affair. Both the 1730 Act Discharging the Recording of Reason of Dissents, and the 1732 Act anent the Method of Planting Vacant Churches, were annulled, and the Synod of Perth and Stirling were given authority to bring Erskine and the other three Seceders back in to the Church. It was further declared that in future when a Presbytery felt it could not comply with a Commission's sentence, the case should lie over until the Assembly following, and not go to the next Commission⁴¹. An Overture was even

³⁹ *The Caledonian Mercury*, 13 May 1734.

⁴⁰ Assembly Registers, 10 May 1734. Maxton was admitted on the 16th. July.

⁴¹ *Caledonian Mercury*, 20 May 1734. This was expanded two years later into Act XII, Sess. 10, 24 May 1736, which further stated that the Commission should desist from appointing special or "riding" committees, but leave the matter to the following Assembly. [SRO., CH1/9/11]

introduced which proposed to regulate the conduct of Commissions, but this was not proceeded upon⁴². Finally, acting on a suggestion from the Synod of Perth and Stirling⁴³, an instruction was given to the Commission to petition the King and Parliament with a view to the abolition of Patronage.

Before continuing to look at the petition and its aftermath, it would first be useful to consider possible reasons why there was a change in outlook at the Assembly at this time. The change is commonly ascribed to shock at the Secession and a desire to "make amends"⁴⁴ for it, yet although this was certainly true, there were additional factors.

First, there had already been a mounting distaste for the manner in which presentations had latterly come to be employed. On this point, a useful summary can be found in a pamphlet of 1736, written by William Grant (later Lord Prestongrange). By way of introduction he identifies three groupings within the Church, the Warm and Moderate Parties, and one other interest, which he calls the Political Clergy: "[they] are not actuated by any regards to religion or their country, but influenced by little mean hopes of being made king's chaplains...or, being in possession of such places, must, in order to maintain them, act whatever part they are commanded by men in power"⁴⁵. He considers these to have been

⁴² Assembly Registers, 14 May 1734

⁴³ Cunningham, p 439, n.

⁴⁴ JHS. Burleigh, *A Church History of Scotland*, Edin. [1960], p 281. Also, Hetherington, p 211; Cunningham, p 440.

⁴⁵ William Grant, "Remarks on the State of the Church of Scotland with respect to Patronages, and with reference to a Bill now depending before Parliament". [1736], p 7. Reproduced in *Select Anti-Patronage Library*, 1842.

responsible for the recent pushing on of presentations without any semblance of parochial concurrence, and for the undermining of Presbyteries' authority.

However, by 1734, "these considerations roused many of the moderate party, and all the warmer brethren: the kirk-sessions were in a flame: the political party-men opposite to the court joined them: warm elders were returned for Synods and Assemblies; and thus, in the two last Assemblies, every thing has been determined against the presentations which they could venture to determine."⁴⁶

Secondly, in the extract just quoted, Grant seems to suggest that a conscious effort was made to have more men of an evangelical stamp chosen as representatives to the higher courts of the Church. Support for this does appear in an account from the 1734 Assembly, whereby in an article entitled "A Case without Precedent", the *Caledonian Mercury* reports on the bitter infighting which occurred when Perth Presbytery elected its Assembly commissioners. James Mercer of Aberdalgie, who had taken a leading part in the proceedings against Ebenezer Erskine, had "artfully stolen a march upon the majority of Presbytery" by getting himself and three colleagues elected by seven brethren "at an unexpected hour", but the anti-patronage members had countered by electing another four, headed by Lauchlan MacIntosh of Errol. The Assembly preferred the latter⁴⁷.

Lastly, it is highly likely that the problems Ilay was experiencing in the political arena from early 1733 would have an emboldening effect on those considering a challenge to his hegemony in ecclesiastical matters. As the 1734 General Election approached, anti-Ilay agitation had been growing, and particularly so among the

⁴⁶ *Ibid.* p 8.

⁴⁷ *Caledonian Mercury*, 7 May 1734.

peers, within whose circle "subservience to the Ministry's wishes broke down" for a time⁴⁸. A committee of discontented peers even published a declaration attacking Ilay's disreputable conduct, and claiming evidence of: "...money given to many, promised to more; offers of pensions, places, civil and military preferments, acts of grace, reversals of attainders" - all for "supporting what he was pleased to call the King's list".⁴⁹ In the event, the Squadrone alliance of Hamilton, Tweeddale, Aberdeen, Marchmont, Strathmore, Queensberry, Montrose and Roxburghe failed to inflict much damage on Ilay, but it was a difficult time for the regime, not least when, after the Election, the dissident peers proceeded to lodge a petition with Parliament that it be declared void. They protested that Ilay "..had sent an agent down with money to corrupt the electors; [and] that the 16...were chosen entirely by that undue influence, and consequently had no right to sit."⁵⁰ The House of Lords dismissed the petition in 1735, but Lord Hervy in his *Memoirs* noted that the embarrassment and "apprehensions" caused at Court by the whole episode were extensive.⁵¹ The Argathelians were also to experience intense pressure in the Commons elections, and it is instructive that in the Dunfermline Burghs in particular, Tweeddale was able to make spectacular inroads for the Squadrone (or Patriots) largely through playing a tacit role as defender of the Evangelicals rights against bullying and interference by Ilay in the church's courts. The evangelical James Erskine, Lord Grange, who also encouraged

⁴⁸ Sir James Fergusson of Kilkerran, *The 16 Peers of Scotland, 1707-1959*, [OUP.1960] p 77

⁴⁹ Marchmont, "A selection from the papers of the Earls of Marchmont", ed. G. Rose, [London 1831], ii. 4-9

⁵⁰ John, Lord Hervy, *Memoirs of the reign of King George II*, [King's, London 1931] Vol I, p 295

⁵¹ *Ibid.* Vol II, p 434-5

the Popular Party by defecting at this juncture from Ilay to the opposition⁵², told Tweeddale that to win the seat, it was not necessary for him even "to declare for these people's sentiments, but only to speak against the violent measure that they seem to be threatened with"⁵³. Encouraged by rumours that Tweeddale would lead the Assembly into reinstating Ebenezer Erskine, a local hero, the voters enabled his candidate to take three of the five burghs. Only by resorting to a false return did Ilay manage to reverse the outcome, and have his own man elected⁵⁴.

To return to the petition, the Commission considered the project on the 14th. August 1734. Led by Milton's deputy as Keeper of the Signet, Alexander MacMillan of Dunmore, a fierce resistance to the address was staged, especially as it also contained a request for the crown to waive its right of presentation even if patronage were not repealed⁵⁵. The familiar arguments that such presumption would only antagonise Parliamentary opinion against the Kirk were used, but the Commission nonetheless voted to proceed with the plan, and James Gordon of Alford, Lauchlan MacIntosh of Errol and John Willison of Perth were appointed to take the address to London. They arrived in London in January 1735, and although meeting with little encouragement, were able to present the petition to the Commons on the 11th. April⁵⁶. It is of interest to note that in order not to

⁵² RH. Scott describes it as a "major blow" to Ilay. (p 386)

⁵³ NLS Yester MSS 7044. Jas Erskine of Grange to Tweeddale. 26 Aug 1733

⁵⁴ A full description of the election and the religious dimension to it, can be found in Ronald Sunter, *Patronage and Politics in Scotland, 1707-1832*, [John Donald.1986], Ch. 12, pp 211-230.

⁵⁵ *Caledonian Mercury*, 15 August and 19 August 1734.

⁵⁶ Assembly Registers, 15 May 1735; *Caledonian Mercury*, 12 April 1735.

alarm landowners, the Church's proposed Bill confined itself solely to the calling and entry of ministers - there was no mention of teinds or vacant stipends.

Moreover, not only was there to be no extension to the heritor/elder franchise enshrined in the 1690 abolition, but it was further proposed that the number of elders voting at any call should never be allowed to exceed the number of heritors. Heritors for their part were to produce a certificate of eligibility to vote, yet this was to be based simply on the extent of property ownership - there was, remarkably, no reference to denominational affiliation.⁵⁷

The franchise provisions inevitably provoked widespread debate on what should be the best electoral system. Grant's pamphlet supported the Bill as it stood. The distinguished Professor of Moral Philosophy at Glasgow University, Francis Hutcheson, not only supported it but published a clarion call to all heritors to appreciate how important it was for them to take interest in the issue. There was still time to stop a slide into unrestrained patronage: "the Presbyteries and some heritors are not yet tame enough to quit their rights altogether; settlements upon presentations are often retarded and sometimes defeated; the presentations are not yet saleable goods; a silly, vitious or grossly-impudent presentee may be defeated". If heritors were therefore to rouse themselves to support the Bill, they would keep power of election out of the hands of the populace, while at the same time enlarge their own influence in a parish and make the ministry attractive to their own sons. Even patrons would still retain much influence, except it would be

⁵⁷ *Caledonian Mercury*, 29 April 1735. Hetherington says that the author of the Bill was Duncan Forbes of Culloden (p 211).

"of a more neighbourly and gainly sort"⁵⁸. For those who favoured the status quo, it was answered that "the best method of preventing all inconveniences at present" was simply to allow all who objected to a presentee's settlement to go elsewhere⁵⁹.

Meanwhile, the Bill having achieved no progress by the start of the 1735 Assembly, the court decided to draw up another address to the King and send it with a different team of representatives, Principal Alexander Anderson of St. Andrews, James Gordon of Alford and Colonel John Erskine of Carnock. In their report to the next year's Assembly, they related that they had called on all the most important people relative to Scottish affairs, but that they received "no encouragement, countenance or concurrence...but on the contrary". Their attempts to meet with the King were constantly obstructed by Ilay or Argyll⁶⁰, and particularly by Newcastle, who claimed he had shown the King the petition, but that he had answered "that he did not meddle in such affairs but left them to his Parliament". After their continuing to insist on seeing the monarch, an audience was granted, but it was amidst a "throng", and they were forbidden either to read the address or speak anything about it. Later, Newcastle sent word that the King's answer was the same as before⁶¹. At this, the representatives decided to discontinue their efforts and come home. The threat to the 1712 Act had passed.

⁵⁸ Francis Hutcheson, "Considerations on Patronages Addressed to the Gentlemen of Scotland, etc." [1735]. (Printed in *Theological Pamphlets*, ?1841)

⁵⁹ Anon., "A Letter to a Scots Clergyman, lately ordained, Concerning his behaviour in the Judicatories of the Church", Edin. [1735].

⁶⁰ "The most proper person, considering his influence in Scots affairs" - the reference is probably to Ilay.

⁶¹ Assembly Registers, 20 May 1736.

The 1736 Assembly nonetheless continued to set its face against abuses, and began by adopting a resolution testifying to the ills wrought by patronage on the Church, with the aim that this should be held in readiness for such a time when it was considered advantageous to renew the campaign against the 1712 Act⁶². At the same time, an instruction was given to the Commission to seize every opportunity for obtaining redress from the grievance of patronage. The instruction was subsequently repeated by every Assembly until 1784. Other enactments included a stricter regulation of the process by which Presbyteries elected commissioners to the Assembly, and also how members of the Commission were to be appointed⁶³.

Most interesting of all, however, was the Act against Intrusion of Ministers into vacant Congregations. This quoted the Acts of Assembly of 1575, 1638, 1715 and the Second Book of Discipline, all of which, it was averred, showed that it was a principle of the Church that "no minister be intruded into any parish contrary to the will of the congregation". It was therefore recommended to all judicatories to have "due regard" for the principle, and yet to try to promote harmony and avoid whatever might excite "unreasonable exceptions" against an otherwise worthy candidate⁶⁴. It is hard to determine what practical effects could have been expected to follow from such an Act, unless it was intended purely as window-

⁶² *Caledonian Mercury*, 27 May 1736.

⁶³ 21 May, "Act for Regulating of Elections to Members of Assembly", (this was appointed to be sent down to Presbyteries, but in the interim to be obeyed. It was ratified 23 May 1738); 24 May, Sess. 10, "Act anent the manner of Electing members of the Commission and Concerning their Powers" (this included the abolition of the use of "Riding Committees").

⁶⁴ SRO., CH1/1/26. "Act against Intrusion of Ministers into Vacant Congregations and Recommendation to Presbyteries concerning Settlements" - 25 May 1736.

dressing in order to attract the Seceders back to the Church (which it did not do). At best, a possible result was that, for a time, "the sentences of Assemblies, in the settlement of ministers, are expressed in a more guarded and softened tone, than had been usual for some of the preceding years."⁶⁵, but in real terms, nothing came of this, or indeed of any of the attempts to curtail patronage between 1734 and 1736.

For a brief period there had been what looked like a window of opportunity for anti-patronage forces within the Kirk to unite and bring at least some change in the law. Although the majority of clergy⁶⁶ had consistently wished to be rid of patronage, up until this point fear for the Kirk's constitutional position, ambition for self-advancement, optimism that good behaviour would be rewarded with measures (like the 1719 Act) which would ease the burden, and, profound disagreement as to what kind of electoral system should take the place of presentations, had all combined to prevent the Church working in unity against the grievance. Distaste at the conduct of vacancy disputes during the early 1730s, along with the appearance of weaknesses in the solidity of Ilay's political machine, brought the various interests into coalition. However, it was not to last.

Certainly, a highly damaging blow had been the rebuff of the Kirk's representatives at London, as it served to confirm the belief among many that, since nothing could be won from the executive by confrontation, the only suitable response, therefore, was either conciliation or secession.

⁶⁵ Moncrieff, *Life of Erskine*, Appendix, p 449.

⁶⁶ Although there is no indication of the criteria employed for arriving at his calculation, and that some measure of exaggeration may be involved, nonetheless, Grant's claim is still worth noting: "But whoever knows anything of the Scotch clergy, knows that there is not one in forty who is not most heartily solicitous to have patronages removed". - "Remarks", p 8.

At the same time, however, Milton and Ilay saw to it that there were other reasons why the confidence of the 1734-6 resistance movement ebbed away.

CHAPTER X.

The Regime of Milton and Ilay:

the Flow and Ebb of Power

From around 1734, the senior courts of the Church made a concerted effort to make inroads against patronage, but the alliance was shortlived. The main discouragement was certainly the immovable firmness of Parliament's refusal to consider repeal or reform. There were also, however, other factors which would have contributed to the movement's loss of momentum.

In the first place, it would have become clear that the intransigence of the senior courts did not provide much more than a moderate obstruction to Milton and Ilay's continuing strategy of promoting their own clergy to benefices and generally frustrating the aspirations of their opponents. Their skills enabled them to employ other means to effect their wishes during the period.

One avenue which remained open to them, for example, was that of recourse to the Civil Courts, and they did not hesitate to use it in the aftermath of the Auchtermuchty debacle.

The loss of face occasioned by defeat in the Auchtermuchty case clearly rankled with Ilay, and a swift counter-attack through litigation seemed an attractive response: "I am of opinion that a judicial determination well founded, will at present be the best way to restrain the mad people, at least it will be a good experiment. It seems to me that if a presbytery can settle a minister so far as to give him right to the stipend and glebe contrary to the right of a patron, then, the

patron has a civil right...but has no remedy when his right is invaded."¹

Accordingly, Reidie, the joint patron at Auchtermuchty, was encouraged to take his case to the Court of Session. In the end, the advantage to Reidie personally was slight, in that his sole accomplishment was the gaining of the vacant stipend for the period up to Maxton's admission. On the other hand, for Ilay's purposes, the judgement was highly significant, since it affirmed that, in order for a minister to have the legal right to stipend and glebe, he had to be duly collated. That is to say, "It is not enough that he be presented to the living by the patron, or that he has been instituted to the spiritual charge by the Presbytery"². It had to be both. With the verdict of the Moncrieff v. Maxton litigation, it was therefore established that if a presbytery chooses to refuse a valid presentation, then whoever is subsequently inducted has no right to the stipend, and it may be retained by the patron as if the charge were vacant³. The implications of the judgement naturally caused Presbyteries some anxiety⁴.

A second tactic adopted by Milton and Ilay was to keep disputes, as much as possible, out of the hands of senior Church courts, while at the same time using the full weight of their influence at local level. This was the strategy underpinning their approach to the settlement of Kilmaurs (Irvine Presbytery) which became

¹ MS. 16555. Ilay to Milton, 5 Dec 1734.

² JM. Duncan, *Parochial Law*, p 318.

³ WM. Morrison, *Decisions of the Court of Session*, Edin. (Bell and Bradfute) [1805], vol. XXIII, Moncrieff v. Maxton, 15 February 1735.

⁴ Referring to the case, the Synod of Dumfries instructed its commissioners to the 1735 Assembly to do what they could "for obtaining relief from the grievances that may follow on the late decision [in] the Courts of Session." - MS.16562. James McEwen, Moffat, to Milton, 14 April 1735. Further comments on the case's implications can be found in R.H. Story, *Church of Scotland - Past and Present*, Vol.IV, pp 74-75.

vacant in 1735.

Milton owed a favour to the Laird of Dunlop, who had previously been promised that his chaplain, William Coatts, would be provided for, and yet had been disappointed over the vacancies at both Dunlop and Kilbirnie. Since the Laird was becoming incensed, it was therefore important that Kilmaurs be secured for his protege without mishap. Accordingly, having prevailed upon the curators of the under-age Earl of Eglinton to present Coatts, Milton took care over his next moves. First, the presentation was held back until just before the expiry of the six months on the 11th. October 1735. Then it was lodged with the Moderator⁵, with instructions that it be kept secret until the next Presbytery meeting on the 15th. October. Meanwhile, a Presbytery committee was sent to the parish to suggest to them that Coatts would be an eminently worthy person to have as their minister⁶.

Milton's plan, however, backfired. When news of the presentation's existence emerged, the parish said they would have accepted Presbytery's recommendation and chosen Coatts if they'd been allowed a free election, but they could not now have someone who had accepted a presentation⁷. Milton's response was to place the burden of responsibility on the Presbytery: whereas he undertook not to impose the presentation against the will of the people⁸, he nonetheless made clear he expected them to take whatever steps were necessary to bring about Coatts'

⁵ This was valid procedure, since under the Act of 1567, c.7, the Moderator took the place of the Superintendent - see Duncan, *Parochial Law*, p 124.

⁶ MS.16561. Alexander Ferguson, Irvine, to Dunlop of Dunlop, 10 September 1735.

⁷ MS.16565. Dunlop of Dunlop to Milton, 22 May 1736.

⁸ MS.16567. Rev. William Reid, Moderator of Irvine Presbytery, to Milton, 8 June 1736.

settlement. Anxious to comply, the Presbytery refused all applications from the parish for a hearing of any but Coatts, while the parishioners - "a cursed obstinate pack"⁹ - countered with a petition to the Presbytery containing a thinly-veiled attack on Milton. The petition complained of certain outsiders, who "by interfering betwixt us and the Patron...have protracted our settlement which otherwise...would have been carried on before now to the mutual satisfaction of both Patron and parish". It was moreover suggested that Milton was engaging in bribery/simony: "we are much afraid the temporalities of this parish goes a great length with many, even the presentee himself"¹⁰. Interestingly, it would appear that the allegation was not without some foundation¹¹. By June 1737, Milton was being warned that the Presbytery were wearying of the criticism they were receiving from the parish, and so were likely before long to move to a decision. This would inevitably bring the case up to the superior courts, which was what he, of course, wished to avoid¹². In the event, Presbytery did bow to local pressure and resolved not to concur with the presentation on the grounds of the opposition within the parish. Coatts appealed to the Synod of Glasgow and Ayr (on the grounds that the majority of heritors and elders were for him), who found in his favour. The losing parishioners appealed to the 1738 Assembly¹³, who

⁹ Quentin Crawford to Milton, ___ 1736. Crawford was the Earl of Eglinton's Baillie.

¹⁰ MS.16571. "Dunlop's Chaplain's Case": Copy of Petition to Irvine Presbytery against William Coatts. February 1737.

¹¹ "I shall advise Lord Eglinton to insist upon the presentation's taking effect with the limitation only that he be at no expense other than what may [?fully] be laid out of the vacant stipend" - MS.16570. Milton to Dunlop, ___ 1737.

¹² MS.16570. Quentin Crawford to Milton, 24 June 1737.

¹³ MS.16573. Crawford to Milton, 9 March 1738; Dunlop to Milton, 20 April 1738.

remitted it back to the Presbytery "to consider the present and future state of the said parish", and report to the October Synod, who were to judge, subject to any necessary arbitration by the November Commission¹⁴.

Since the Assembly's sentence was unusual, it is reasonable to assume that Milton's managers were its instigators, particularly as, next to an outright decision for Coatts, it could not have been more advantageous, given Milton's influence in Irvine Presbytery. Nevertheless, he knew he had still to consider carefully his strategy for bringing the desired result at the finish. The dilemma was, once the report came to the Synod, would it be wise to press for a decision there, or have it immediately referred to the Commission? The advantage of the latter course was that the Synod (the majority of whom were "friends") would thereby still retain their ability to vote, not being parties¹⁵.

In the event, Milton sent Principal Campbell of Glasgow to direct manoeuvres at the Synod, which he proceeded to do with consummate skill. His first move was to have Irvine Presbytery declared ineligible to vote. This, to their delight, relieved them of the impossible task of both pleasing Milton and escaping the vituperation of their respective parishioners. He then marshalled Coatts' supporters to push for a decision at the Synod, since, by his calculation, a reference might be interpreted by the Commission as a sign that the case was fraught with great difficulties, and therefore required to be set aside and started afresh¹⁶. The Synod duly

¹⁴ Assembly Registers, 21 May 1738.

¹⁵ MS.16572. Hugh Baillie to James Boyle, 17 September 1738. Baillie was instrumental in ensuring that the Presbytery's report was favourable to Coatts' cause; MS.16573. Quentin Crawford to Milton, 14 September 1738.

¹⁶ MS.16572. Hugh Baillie to Milton, 6 October 1738; MS.16573. Quentin Crawford to Milton, 9 October 1738.

supported the presentee by 31 votes to 14, upon which, as expected, the other side appealed to the Commission. Campbell's gamble nevertheless paid off, and the Commission, finding for Coatts, ordered his settlement to be effected by the Presbytery "or such of them as shall be willing"¹⁷.

The only flaw in what remained of the project, was that Coatts' opponents within the Presbytery tried to have his admission (which had been on the 3rd. May 1739) reversed at the Assembly. Crawford wrote to Milton that since the case would get the "finishing stroak" there, then "great care must be taken of it". Milton, however, was confident that the Assembly's period of recalcitrance was past, and told him not to worry¹⁸. He was not mistaken. The Assembly's decision was to disapprove the Commission's conduct, but nonetheless to let the settlement stand¹⁹. Suddenly, affairs in the church's superior courts seemed back to normal.

A **third** contribution to the break-up of the anti-patronage coalition was the fall-out from the Porteous Affair of 1736. In April of that year, Captain Porteous, of the Edinburgh Town Guard, had fired on the crowd during the execution of a smuggler who also commanded much local popularity. The Court of Justiciary condemned Porteous to death, but Queen Caroline, acting as regent, ordered a stay of execution. The incensed mob thereupon dragged the Captain from prison and executed him themselves - an act which provoked great outrage in London. The incident might reasonably be expected to have been entirely secular in

¹⁷ *Caledonian Mercury*, 13 November 1738

¹⁸ MS.16577. Crawford to Milton, 28 March 1739; Milton to Crawford, __ April 1739.

¹⁹ Assembly Registers, 21 May 1739.

significance, but Ilay saw a means of turning it to ecclesiastical advantage. On the 10 October 1736, having repaired to Edinburgh to take charge of the crisis, Ilay wrote to Walpole : "The most shocking circumstance is, that it plainly appears the High Flyers of our Scottish church have made this infamous murder a point of conscience...All the lower rank of the people..speak of this murder as the hand of God doing justice; and my endeavours to punish murderers are called grievous prosecutions..and I have observed that none of those who are of the High Party will call any crime the mob can commit by its proper name."²⁰ In his autobiography, Alexander Carlyle of Inveresk says that Ilay saw here a chance to capitalise on the intense indignation in Parliament aroused by the affair, and harness the penalty of the law to remove the more offensive of the "warm" clergy from their charges²¹. There would then of course be the added bonus of a chance to replace them with those of a more agreeable stamp.

Accordingly, on the 25th May 1737, Ilay presented a Bill to the Lords "For the more Effectually bringing to Justice any persons concerned in the barbarous murder of Capt. John Porteous etc." Included in it was a clause ordaining that, for a year (from 7 August 1737), all ministers had to read the Act from their pulpits on the first Sunday of each month, immediately after the sermon. If this was refused, the penalty for the first offence was disqualification from voting in church courts; for the second, it was deposition. According to George Drummond, the Act was transparently "a contrivance" whereby those who scrupled to read the Act

²⁰ quoted in William Roughead, *The Trial of Captain Porteous*. Series, Notable Scottish Trials. [Wm Hodge. 1909]

²¹ *The Autobiography of Dr Alexander Carlyle of Inveresk, 1722-1805*, [TN Foulis. 1905] p 45

would be "caught in the trap My Lord Ilay has set for them."²² Certainly, Ilay well knew that the evangelical clergy would dislike references to "Lords Spiritual" in the wording of the Act, as well as the sanguinary tone of its provisions. He also knew they would take offence at being instructed when to insert so profane a text into divine worship. Above all, there would be deep unhappiness at the Erastian implications contained in the penalties, since discipline of ministers was considered to be the exclusive domain of the Church's courts²³.

What Ilay did not anticipate, however, was that large numbers of both moderate men and evangelicals would find the order abhorrent. Carlyle claimed that as many as half the clergy refused to read the Act; the Solicitor-General wrote to the Duke of Newcastle on the 5th November 1737 and said it was one third²⁴. George Drummond's information for the first Sunday after the 7th. August, was that of the 466 whose actions were known, 118 had read the Act, 366 had not²⁵.

Whatever the true figures, Ilay had undoubtedly made a miscalculation, and it was obvious even to him that the full rigours of the Act could not be applied to so many. Nevertheless, the exercise was not been a complete failure, in that, the foreboding as to what retribution would be exacted by the Government both created anxiety, and distracted many clergy from other concerns, such as the anti-patronage issue. Sensing this, Ilay tried to maintain the atmosphere of

²² Edinburgh University Muniments, [DC.1.82/3], "The Private Diary of George Drummond." (1736-38), 19 July 1737 and 13 July 1737.

²³ For a summary of the scruples felt by clergy, see anon. pamphlet, "The Lawfulness and necessity of ministers, their reading the Act. of Parliament for bringing to justice the murderers of Capt. John Porteous" [1737].

²⁴ Roughead, p 139

²⁵ "Diary", 11 August 1737.

apprehension by writing to Milton on the 29th. September 1737, and telling him to select two or three ministers, and make an example of them²⁶. In the end, nothing actually happened. The whole matter of clerical retribution was handed to the Duke of Newcastle to consider, and although the uncertainty continued for a period, the threat eventually died away²⁷.

The fourth factor which contributed to change after 1736, was very probably the death in that year of Principal Smith of Edinburgh University, for, from then onwards, it was the Rev. Patrick Cuming of the Old Kirk who was "intrusted with the direction of the Assembly" by Ilay²⁸. This was significant, in that, according to Henry Sefton's article on him²⁹, Cuming took a tougher, more confrontational stance on the enforcement of presentations than had previously been the case. At a time when Ilay's interest in the Church needed to fight back strongly, yet avoid causing violent breaches, Cuming was the ideal candidate for leadership, since, combined with his strictness, he possessed a persuasive talent which helped to contain hostility among disaffected parishioners. He was to work closely with Milton³⁰, and remained Ilay's chief ecclesiastical manager throughout the periods his patron was in power.

²⁶ MS.16569.

²⁷ "As to the clergy being in danger I know nothing of it, sometime ago I heard that notice would be taken of those who did not read the Act, but nothing as yet has been mentioned in our House in relation to them." - MS.16572, Capt. Charles Campbell, London, to Milton, 14 March 1738.

²⁸ J. Ramsay, *Scotland and Scotsmen in the Eighteenth Century*, Edin. [1888], vol.I, p 233

²⁹ H.R. Sefton, "Lord Ilay and Patrick Cuming: A Study in Eighteenth-Century Ecclesiastical Management." *RSCHS*, Vol.xix, 1977, pp 203-216,

³⁰ Their intimacy - he apparently had constant access to Milton's town house "by the political back door" (J.S. Shaw, p 105) - may explain the baffling dearth of correspondence between them to be found amidst the otherwise voluminous Saltoun Papers.

So, then, by a combination of skill and good fortune, Ilay and Milton negotiated the difficult period from 1734 to 1736/37 without sustaining much lasting harm to their machinery for influencing the settlement of Church vacancies. In the field of politics, on the other hand, the consequences of incidents like the Porteous Affair were much more serious, and, as will be seen below, Ilay was to be out of office in less than four years. In the meantime, however, Milton set about managing the Church as before, only, things were not to be exactly as they had been. The difference was that the post-1736 Church was one in which schism was rapidly becoming a fact (finally occurring in 1740), and the example and constant declamations of the Seceders heightened passions within the Church's courts, which in turn made their proceedings more volatile and difficult to manage. In short, whereas most of the cases in which Milton became involved went well, the management of them occasionally bears a distinctly ragged appearance.

The handling of the presentations of George Blaikie to Kinnaird (Dundee Presbytery) and Madderty (Auchterarder Presbytery) was a case in point. Blaikie had received a crown presentation on the 27th. April 1734, which, on the strength of evidence given to him of his being agreeable to the parish, he had accepted. When the Presbytery found otherwise, and refused to admit him, the Commission decided that the best course would be to petition the King to withdraw the presentation³¹. When nothing came of it, the Assembly of 1736 studied the case. Blaikie argued that his acceptance had not been unconditional, since he had first been assured that the people were for him. The Assembly's response was to fix

³¹ It was taken by the Church's representatives on their journey to London in 1736, when it was sought to have patronage repealed. (Assembly Registers, 20 May 1736)

upon the terms of what qualifications Blaikie had given with his acceptance, namely that he would always submit to the rulings of the Church's courts. They felt this entitled them to decide that, since he had no support in the parish, the Church could validly set him aside³². It was an outcome which not only left Ilay looking inept to Westminster eyes³³, but made further intervention in the vacancy practically impossible³⁴.

Almost at once, in what was most likely a face-saving exercise, Ilay had Blaikie presented again, this time to Madderty (23rd. September 1736, by Thomas, Viscount Dupplin). When Auchterarder Presbytery received the presentation on the 7th. December, they decided to question Blaikie's conduct and "qualifications according to law and Acts of Assembly", and asked Perth Presbytery to investigate³⁵. The eventual result was that, on the 27th. April 1737, Blaikie had his licence removed by the Synod of Perth and Stirling "on account of his views on Church patronage"³⁶. This was not, in fact, the reason for his deposition, although the belief that the Synod had stood firm in the face of his "boldness" in accepting the presentation, was widespread³⁷. He had in reality been suspended

³² *Caledonian Mercury*, 24 May 1736; Assembly Registers, 20th. and 21st. May 1736.

³³ "The Assembly's refusing Blaikie's presentation appears very harsh here; Those wild gentlemen will find themselves in as wrong a bore as the patriots [Squadrone] in their politics." - MS.16562. Ilay to Milton, 10 June 1736.

³⁴ Milton's chief adviser over the vacancy, Colonel Patrick Ogilvie of Inchmartin, warned him: "I most beg your Lop. in the most earnest manner to prevent any presentation being given in to that parish, for it will engage us in new difficulties for I am heartily weary of Church war." - MS.16568. 1st. July 1736.

³⁵ Presbytery Minutes, quoted in Cunningham, p 421

³⁶ *Fasti*, vol. 4, p 277.

³⁷ British Library, [1354.e1], "A Candid Enquiry into the Constitution of the Church of Scotland in Relation to the Settlement of Ministers", in *Tracts Concerning Patronage*, Edin., W. Gray, [1770]; see also "Select Committee on Church Patronage, Scotland", vol. V, [1834], #634.

because he had used "several indecent expressions and reflections against the judicatories and ministers of this Church...which together with his behaviour before the Synod gave offence"³⁸.

It was therefore not unreasonable for the 1737 Assembly, having heard Blaikie's appeal, to decide to rebuke and reinstate him. However, such was the public perception of the nature of the dispute, the decision was greeted by anti-patronage factions with an anger and dismay³⁹ which kept the affair festering for another three years. As seen above, if Milton did have a failing, it was that he, at times, did not know when to abandon his ambitions for a settlement. If Blaikie had been generally acknowledged as being unexceptionable, it might have been worth the concern, yet as long as he was perceived irredeemably as one who sought only "to fleece than feed the flock"⁴⁰, then prolonging the conflict only served to heighten the notoriety of the case and draw more obloquy onto the presentee's supporters. Although the Commission of August 1739 was persuaded to order Blaikie's settlement, by May 1740 Blaikie himself had decided it was preferable to give up the struggle and go overseas⁴¹.

Another instance of Milton's inability to have the business of the superior courts managed as smoothly as before, occurred over the vacancy at Kingsbarns (St. Andrews Presbytery). Since the patron, the Earl of Crawford, was insolvent, the

³⁸ Assembly Registers, 23 May 1737. c.f., the case of John Burgh, above.

³⁹ 23 elders dissented at the Assembly; see also "Diary of George Drummond", "RB" to Drummond, 24 May 1737: "I view the ruin of this poor church as begun, and hastening on"; Drummond thought the return of the licence would make "a thorough rent in this poor church" - 23 May.

⁴⁰ *Caledonian Mercury*, 28 May 1739

⁴¹ *Caledonian Mercury*, 9 August 1739; Assembly Registers, 15 May 1740.

right of patronage was exercised by his creditors. Accordingly, acting in the name of the creditors, Milton's father-in-law, Sir Francis Kinloch⁴² presented William Villant, probationer, on the 7th. March 1738. The parish fought the settlement through the Church courts, but Milton, anxious to avoid embarrassment to a near relative, ensured the Commission and Assembly of 1739 found for Villant⁴³. However, he again miscalculated the extent of his influence, by attempting to have all attempts to register dissent over the settlement refused at the March Commission. The reason given out was that such dissents "had often been found tinctured with the alloy of conceit, vanity and pride."⁴⁴ Not surprisingly, a furore of such intensity followed, that the Commission had eventually "for peace's sake" to back down.

Perhaps the best example of the turbulence of the post-1736 period, however, was the disputed settlement of Currie (Edinburgh Presbytery). In what Moncrieff calls a "remarkable decision", the 1740 Assembly "set aside a presentee, to whose life or doctrine no objection whatever could be stated"⁴⁵. Ilay had always made it clear that he was "set upon allowing no minister to come to Edinburgh who is of

⁴² see *Caledonian Mercury*, 13 November 1738.

⁴³ MS.16574. 16 November 1738 (Milton is congratulated by George Logan, on his success over Kingsbarns at the Commission)

It is worth noting how at the Assembly, the parish argued that Villant's admission on the 3rd. January 1739 had been in defiance of the Act of Assembly concerning the intrusion of ministers against the will of the people. To this it was successfully countered that the will of the people did not mean their "mere will, or obstinate will, without assigning a reason for their will". The Act meant there had to be reasons, which the Church would then judge.

⁴⁴ *Caledonian Mercury*, 15 March 1739

⁴⁵ *Life of Erskine*, Appendix, p 450. Moncrieff adds, in a footnote, that the decision appeared "to have been, in a considerable degree, influenced by the state of the country, and by the Secession from the Church". The state of the country was the groundswell of opposition to Walpole, and by association, Ilay (see below).

the warm stamp"⁴⁶, but when the Council and heritors of Currie decided between them⁴⁷ to fix on the Rev. James Mercer of Aberdalgie (Perth Presbytery), their desire to please possibly led them too far in the opposite direction.

Described as a "hot, violent man, a plague to the Presbytery of Perth, and most active always in a bad cause"⁴⁸, Mercer had incurred considerable notoriety through his prominent role in the proceedings against Ebenezer Erskine in 1732⁴⁹. Thus, when the Presbytery received the Council's presentation of him, and they proceeded to moderate a call on the strength of it, they were furiously opposed by the elders and heads of families⁵⁰. The Presbytery had possibly not expected the intensity of the criticism directed against them⁵¹, and consequently sent representatives to the Council to investigate ways of containing the discontent. The elders however rejected any suggestion of compromise, maintaining that only a call at large would be acceptable. Presbytery's reply was to refer the matter to the Synod of Lothian, which considered it on the 30th. April 1740. After considering all the submissions, which "were long and expressed a peculiar

⁴⁶ George Drummond, "Diary", 20 October 1736.

⁴⁷ The Council offered a list of four suggestions to the heritors, who, in a private meeting, proceeded to elect Mercer by a majority. - SRO., Assembly Papers, CH1/2/78. Petition to Edinburgh Presbytery by several Heritors, 27 February 1740.

⁴⁸ from the Memoirs of William Wilson of Perth (one of the Seceders), quoted in *Dunning*, by John Wilson, Crieff [1906], p 140

⁴⁹ "He was in the highest degree obnoxious, from that circumstance, to every order of the people" - Moncrieff, p 450, n.

⁵⁰ Edinburgh Presbytery Minutes, SRO., CH2/121/13, 30 January 1740; *Caledonian Mercury*, 27 December 1739.

⁵¹ They later produced a defence of their actions, declaring that the "discouraging reception" given to the "recent remonstrances" put before the King and Parliament in London, had made clear that intransigence on the Kirk's part would cause Parliament to make the yoke of patronage harder by returning to the old practice of issuing letters of horning [ie., prosecuting] to those who refused to effect settlements. - Assembly Papers, CH1/2/78, "Answers to Reasons of Dissent", 1740.

virulence"⁵², the Synod took the surprisingly uncompromising decision of setting aside the call to Mercer, as opposed to the more usual declaring themselves unable to concur⁵³. When the Council then appealed to the Assembly, it was then that the "remarkable" decision was made to confirm the setting aside of Mercer's call, owing to the "difficulties" surrounding it⁵⁴.

It would be wrong, however, to assume that the Assembly's sentence was a clear defeat for moderate forces within the Church courts, and an affront to the (Argathelian) Council. The full text of the decision instead reveals that the Magistrates had in fact negotiated quite a favourable arrangement. This was that they were to submit a leet of six candidates to be transmitted to the heritors and elders, with the one chosen then being presented. If this plan did not receive the co-operation of the heritors and elders, then the Magistrates were free to present whomever they desired, the Presbytery having no option but to settle their choice. In other words, as those who dissented from the Assembly's sentence pointed out⁵⁵, the patrons were still coming out of the case with several advantages. First, they were effectively being allowed an extension to their time of presenting, and secondly, they were destined at least to have someone they favoured being settled (possibly even Mercer, who was to be one of the leet), whereas the parish could expect no such privilege. In July 1740 the elders reluctantly joined in the voting,

⁵² *Caledonian Mercury*, 1 May 1740.

⁵³ Synod of Lothian Minutes, SRO., CH2/252/11. Many complained strongly of the wording of the vote, since they were thus obliged to choose to sustain (which they did not wish to), or to "fly in the face of a plain law". In the end, the majority either took the latter course or abstained. - *Caledonian Mercury*, 1 May 1740.

⁵⁴ Assembly Registers, 17 May 1740.

⁵⁵ Assembly Papers, CH1/2/78. 17 May 1740.

and David Moubray, probationer, was selected. The Council presented him, and he was admitted on the 25th. September 1740.

The Currie expedient did not usher in a period of similar compromises being used to resolve disputed presentations. In Morren's view, a Council like Edinburgh, which was already used to leets, was always more likely to co-operate with the idea than any single patron⁵⁶. In any event, even if Milton entertained any thoughts of making it a regular part of his strategy, there was no opportunity to develop them, for, to judge from his correspondence, the concerns of the developing political situation came, from this time on, to dominate his attentions.

There was no doubt that the Porteous Affair was highly damaging to Ilay's authority, not only in Scotland, but also in London, where it was perceived as a dereliction of his primary duty to keep Scotland quiescent: "[the affair] has laid such a foundation of disunity between my Lord Ilay and some of the ministry as will not easily be made up"⁵⁷. The other serious problem was the departure from Walpole's ministry of the Duke of Argyll in 1739. Not only did the Duke's absence greatly reduce the resources which Ilay could then draw upon, but his presence among the disaffected greatly encouraged the morale of the opposition⁵⁸. Milton did what he could to serve his patron's interest, but the tide against him was now too strong, and when the General Election came in May/June 1741, twenty-seven of the forty-five Scottish members ultimately returned were opposed to Walpole's administration. Walpole clung to power for

⁵⁶ *Annals*, p 19ff

⁵⁷ NLS., Yester MSS., MS.14420, Carteret to Tweeddale, 7 May 1737.

⁵⁸ A. Murdoch, *The People Above*, p 32

another six months, but the Patriots/Squadron sensed their opportunity had come and increased their pressure on the ministry.

Finally, Ilay wrote to Milton on the 4th. February 1742 with the news: "You will hear from all hands this post that the political game is over...how soon I may be out I don't know and I believe Lord Tweeddale will succeed me"⁵⁹. It turned out that he was correct, and on the 15th. February 1742, John Hay, the fourth Marquis of Tweeddale, was appointed His Majesty's Scotch Secretary. Ilay's immediate inclination was not to throw himself into enthusiastic opposition. By the end of 1743 he was writing to Milton: "I am now too old...to wish to set myself up again as a cock to be thrown at..."⁶⁰. Ilay and Milton did not, however, proceed to disappear slowly from the political scene. The fortuitous occurrence of the Rising of 1745 ensured a second term of office still awaited.

⁵⁹ Ms.16587.

⁶⁰ MS.16591, Ilay [now 3rd Duke of Argyll] to Milton, 26 November 1743.

CHAPTER XI.

The Regime of Tweeddale

There is little doubt that Tweeddale's administration, which commenced in February 1742, never properly established itself. Although, unlike Ilay, he had the advantage of enjoying the official status of Scotch Secretary, he was not able to use his position to any great effect. R.H. Scott summarises the reasons: "Tweeddale had been appointed Secretary of State not because of any political strength in Scotland but simply because he was the political ally of Carteret¹. He had no influence in the Cabinet, little support in Scotland and no group of Scots members with which to bargain with the Ministry. Carteret wanted Scotland kept quiet in order to concentrate on the struggle against Pelham...he had no intention of allowing Tweeddale to create an unnecessary diversion by dismantling the Argathelian hegemony in Scotland. Most people in Scotland quickly realised this and saw little point in switching their allegiance from Ilay..."².

It is also clear from Tweeddale's correspondence that he was indecisive, dilatory and, given the fact that he only visited Scotland once during the tenure of his office, made the fatal mistake of not having a sub-minister of the calibre of Milton to handle affairs in Scotland. It is therefore more accurate to say that it was not so much his inept handling of the '45 itself which dislodged him, but rather that, in a devastating way, it "served to expose Tweeddale's administrative shortcomings to

¹ John Carteret, 1st. Earl Granville (1690-1763), was appointed Secretary of State in February 1742.

² R.H. Scott, "The Politics and Administration of Scotland, 1725-48", EU. Phd. Thesis, 1982, pp 493-4

the full"³.

It was also to the Kirk's singular misfortune that the Marquis failed to get to grips with the exigencies of political management, for in his approach to the filling of Church vacancies there was an open-mindedness which contrasted sharply with the Argathelian view of their being merely another range of weaponry for use in the campaign of self-aggrandisement. Indeed, it is illuminating to detect in Tweeddale's private correspondence of a decade later, a somewhat distant, even bemused, regard for a Church with which neither he nor his premier Scottish adviser, Thomas Hay, had before then been intimately associated. In 1754 he wrote to Lord Hardwicke recommending Hay's appointment as a Lord of Session: "During the time Mr. Hay was in office under me, he was employed by me to transact matters with the ministers of the Church of Scotland whom I consulted about presentations and other matters related to that Church". He was not sure, but he thought Hay used to incline to the Episcopal persuasion " - as I myself was educated in the same principles in England". Nonetheless, he could assure Hardwicke that Hay agreed with him that it was the Presbyterian establishment which required to be supported⁴.

It is perhaps not surprising, therefore, that Tweeddale decided it would be wise to form his policy concerning Scottish Church affairs on the basis of information and recommendations canvassed from his advisers there. It would appear that the advice he received from Robert Dundas, Lord Arniston, made a strong impression: "...one great occasion of heats and disturbances," he wrote on 15 April 1742, "that

³ J.M. Simpson, "Who Steered the Gravy Train?", in *Scotland in the Age of Improvement*, p 58

⁴ British Library, MS.35448, Tweeddale to Hardwicke, 1 November 1754

have arisen in Church judicatories and parishes about planting kirks hath proceeded from the very bad use that hath been made of the crown's patronages: presentations given sometimes as rewards of corruption to a Baillie or Councillor's brother, and sometimes given to anybody named by a voter or a great man without the least regard either to heretors of a parish or people. I wish that may not go on, that no presentation may be given without your knowing the inclinations of the parish as far as may be, but at least of the heretors. And I believe, tho' not anything of that kind can well be said in a letter or speech, yet if the Commissioner were by his instructions allowed to give any assurances among the clergy that if they would come to more temper and quietness in the matter of settlements, that they might expect care would be taken to dispose of Royal presentations so as might best suit the inclinations of the parishes...it might be setting out with a good grace and have a good effect..⁵. Tweeddale liked Arniston's suggestions, but on the advice of Hay, stopped short of allowing Leven, the Commissioner, to give out any assurances at the 1742 Assembly about the easing of Royal presentations. Hay thought that any consultative scheme would quickly "sink" crown patronages, and that, in any case, "Novelties are not to be tried at this time"⁶. Tweeddale accordingly took no action.

This left Leven, however, with nothing in the way of a manifesto to offer that year's commissioners, despite the fact that they would have come up to the Assembly expecting to see what the new regime had in its "shop window". Worse still, Leven appears to have been given very little policy instruction of any kind

⁵ NLS Yester MSS 7046 15 apr 1742

⁶ Yester MS.7046, Hay to Tweeddale, 30 April 1742

concerning his handling of the Assembly. Robert Craigie, Tweeddale's Lord Advocate, had recommended Principal Tullideph of St Leonard's College, St Andrews, as a man of "integrity and real merit"⁷, so Leven arranged his election as Moderator⁸, but after that there is an appearance of uncertainty and drift. A particular example of this was the debate on the disputed settlement of Bowden (Selkirk Presbytery). Although the patron, the Duke of Roxburghe, was not directly involved in politics, nonetheless the Roxburghes had always been renowned as Squadrone men. It would have been of inestimable value to Tweeddale at such a juncture to have demonstrated the power of his patronage by championing the cause of the Duke's presentee, James Hume. In the absence of orders, Leven took no action. The result was a confused and emotionally-charged debate, lasting nine hours, and which was only decided, amidst much acrimony, on the difference of one vote⁹.

The experiences of the Assembly made it abundantly clear that a Church luminary would need to be found, both to act as a leader around which an interest could cluster, but also as one who could garner information helpful to the regime. In other words, a Squadrone equivalent of Patrick Cuming. Arniston was enthusiastic that this should be the Rev. Robert Wallace of Edinburgh. Craigie argued against him on the grounds that, nationally, all the ministers of Edinburgh were currently ill-regarded, and that there was much jealousy against Wallace, not to mention suspicion over the orthodoxy of some pamphlets he had written. There

⁷ Yester MSS 7045 17 March 1742

⁸ MS.7047, Leven to Tweeddale, 12 May 1742

⁹ *Caledonian Mercury*, 19 and 21 May 1742; Morren, pp 352-4; MS.7047, Leven to Tweeddale, 18 May 1742; Assembly Registers, 14-20 May 1742.

was also the matter of his friendship with Principal Wishart, who was attached to "another patron"¹⁰. Although Thomas Hay agreed with Craigie's assessment, Tweeddale did not like to cross Arniston and so decided to compromise and employ both clergymen, who were to pass on their information and ideas directly to the Lord Advocate. Although Tullideph was to be the chief adviser, the Marquis later admitted that it was Wallace "in whom I had the principal confidence"¹¹.

As can be seen from Henry Sefton's profile of him¹², Wallace was something of a multi-hued character. He was of moderate principles, yet, as seen above, was a leading figure in the resistance to the reading of the Porteous Act. He also, "knowing the settlement of a minister to be matter purely spiritual" had no scruple about ignoring the Court of Session's objection to his translation to the New North Kirk¹³ [see above]. On patronage, although he considered it a "grievance", it was still one that was "remediless" in his view, and that it was "in vain to endeavour to have the law repealed"¹⁴. As for a method of choosing a minister, he inclined to feel that the more people involved in the election, the less chance would there be for corruption, yet he could see no place for a divine right of popular election.

It would seem that Wallace initially harboured reservations when approached by

¹⁰ Yester MSS 7049 Thos Hay to Tweeddale 7 Aug 1742

¹¹ BL, MS. 35448. Tweeddale to Hardwicke, 1 November 1754

¹² H.R. Sefton, "Robert Wallace: An Early Moderate", *RSCHS*, Vol. 16, 1966-68,

¹³ Morren, *Annals*, Appendix, p 303

¹⁴ from "Some good Hints with respect to Patronages of Churches", a pamphlet written by Wallace c.1734, and quoted in "Clerical Corridors of Power: Extracts from Letters concerning Robert Wallace's Involvement in Ecclesiastical Politics, 1742-43", Norah Smith, in *Notes and Queries*, vol.218, June 1973, p 216

Tweeddale's administration, but that on hearing of its good intentions regarding settlements, decided it was an opportunity for him to do good, especially concerning crown presentations¹⁵.

The first necessity was to establish an information network, so that notice of a vacancy could be received in sufficient time to arrange a suitable presentee. Hay complained to Tweeddale that many opportunities had been lost: "Either the six months is up, or there's no time to consult the heritors, or no time to examine the qualifications of the person who applies for the presentation". What, understandably, irked Hay most of all, was that presentation requests were often not sent to him at all, even though "Everybody knows I correspond with your Lop.". The fact was, Hay had not the stature of Milton, nor had Tweeddale entrusted him with sufficient authority to be his equivalent. Thus, in order to get to the source of patronage quickly, supplicants had been bypassing him and instead writing to their friends in London, requesting them to approach Tweeddale directly¹⁶. The only solution was an early warning network of correspondents, encompassing all Presbyteries, and so, encouraged by Hay, Wallace duly set about the task.

An alphabetical list among Wallace's papers¹⁷ reveals how over the following year he wrote nearly two hundred letters around the country. The information he asked for included the name of each minister, the value of his parish, and whether it was in the King's gift. In another circular, he not only sought timely notice of

¹⁵ Sefton, "Wallace", p 7.

¹⁶ MS.7047, Hay to Tweeddale, 18 and 20 May 1742.

¹⁷ Laing MSS. II, 620.29(5)

any vacancy where the crown had interest, but also "the inclinations of those whose interest is likely to have the greatest weight in bringing about comfortable and peaceable settlements". This was to include the opinion of the congregation as well as that of the principal heritors¹⁸. In the meantime, Hay was trying to ascertain the identity of each parish's patron, but finding it a taxing responsibility. When he started his investigations, the best he could uncover was a book index in the SPCK Hall¹⁹. Later, Tweeddale's London agent sent him a list, as did the Agent for the Church, but both turned out to be inaccurate and defective²⁰. There was nothing else for it but to rely on Wallace's letter-writing²¹.

It was, of course, most important to have prompt and accurate information, but there still remained the matter of the use to which it was put. Here again, Tweeddale's management was ineffective. To begin with, three of his major advisers, Craigie, Arniston and Robert Dundas Junior (the Solicitor General) formed "an unhappy group, torn by mutual distrust and jealousy"²². Thus Craigie was deeply unhappy about Arniston's whole attitude to church affairs, and complained to Tweeddale that Arniston wanted to "govern the church", whereas he thought it "easier to superintend their governing themselves in a peaceable way"²³. Typically, the Marquis' reply was an unrealistic compromise.

¹⁸ Laing MSS. 620.29(6) and 620.29(7)

¹⁹ MS.7047, 1 June 1742

²⁰ MS.7053, 1 February 1743

²¹ MS.7053, 17 February 1743. Hay mentions here that the Clerk of the Teinds has offered to make up a list from his information, but it was still to be finished.

²² R.H. Scott, p 457

²³ Yester MSS 7050. 17 Aug 1742

It was indeed better to let the church govern itself, but always provided the right men were at the head²⁴. It did not seem to occur to Tweeddale that the right men could only be put there by his appointment, yet he had done nothing to dismantle anything of Ilay's hierarchy of Royal Chaplains, despite Hay's repeated appeals to do so²⁵.

Tweeddale's thinking was even more flaccid in the matter of presentations: although they were to wait for the disclosure of the parish's inclinations before intervening in a vacancy, the King's right had "to be as little neglected as possible"²⁶. Thomas Hay had already warned him that this could only be a very general plan - after all, what if the heritors and people disagreed? Secondly, the employment of the Royal patronage could be most useful in building up an interest in the country, especially in the burghs. Most of all, always to arrange the agreement of the parish beforehand could actually undermine the King's right, since ministers generally preferred to eschew presentations, and would increasingly feel encouraged to shun them if they believed it was permissible to take a parish without one²⁷. In this connection he alluded to the situation in the vacancy at Stranraer (Wigton Presbytery), where a crown presentation had been procured, but was being kept in reserve as a precaution. It was a policy which caused Hay grave misgivings, and, as the Stranraer affair went on to demonstrate, these were not without justification.

²⁴ MS.7075, Tweeddale to Craigie, 26 August 1742

²⁵ e.g., MS.7047, 1 May 1742 and 18 May 1742

²⁶ Yester MSS 7075 26 Aug 1742

²⁷ Yester MSS 7049 Thos Hay to Tweeddale 7 Aug 1742

The settlement was supervised by Hew Dalrymple, Lord Drummore, who was looking after the affairs of Lord Stair, then absent. Since Stair was the Provost and biggest landowner, Drummore suggested to Tweeddale that he gratify him by giving a crown presentation to his favoured candidate, George Blair²⁸. The presentation was duly granted, but not lodged with the Presbytery, while in the meantime Drummore set about promoting the agreement of the parish. When November came, and it was obvious that Drummore was having difficulties winning support, Hay contacted him to be told that he was about to produce the presentation and use it to bluff the parishioners into favouring Blair's admission. Then when the settlement was over, he would simply burn it. Hay was aghast at Drummore's cavalier attitude, and pointed out that the policy of the administration was not to force presentations, but on the other hand it was not agreeable to neglect them, particularly after they had been made public²⁹. At this juncture the affair degenerated into fiasco as Hay discovered, from another source, that Drummore had in fact changed his mind about Stranraer, and was secretly planning to have Blair settled at Monkton (Ayr Presbytery)³⁰. A shocked Hay dispatched his brother to confront Drummore with the evidence, whereupon Drummore backed down and promised that the presentation for Blair to Stranraer would at once be taken out and he would have it recorded in the Presbytery minute book. The prospect brought no cheer to Hay as he reflected on the possibility that if the presentation were not acted upon by the Presbytery

²⁸ MS.7047, 27 May 1742.

²⁹ MS.7051, Hay to Tweeddale, 6 November 1742

³⁰ *Ibid.*, 16 November 1742.

before its expiry date, its record in the minutes would "only serve to show that Mr. Blair had the King's presentation but had not thought proper to use it"³¹.

Another embarrassing loss of face had meanwhile been taking place over the vacancy at Stichill and Hume (Kelso Presbytery). Hay's uncle wrote with the news of the previous minister's death and commended George Bell, the son of one of the heritors as the ideal choice³². Hay spent the next month diligently pursuing the project, only to be told by his uncle that Bell had since learned that the major landowner in the area, the Earl of Home, had two years before promised the Duke of Argyll that he'd give the first vacant living in his gift to George Ridpath, probationer. In view of that information, even though Stichill was not in the Home's gift (at least not for that occasion), Bell had decided that he preferred to drop his aspirations rather than disoblige the Earl³³. Tweeddale shortly afterwards gave the presentation to Ridpath. He did so without any apparent rancour, but for the Marquis to have had the patronage in his hands, and yet still see an Argyll candidate have the prize, can hardly have been the result he would most have wished.

It is perhaps typical that the one occasion when Tweeddale did score an obvious triumph over Ilay, it was by accident rather than design. Indeed, his intention had been entirely otherwise. When the parish of Kilmodan, or Glendaruel, (Dunoon Presbytery) became vacant in December 1742, Hay was informed of the opportunity to gratify one of Tweeddale's supporters in the area by issuing a

³¹ Ibid. 30 November 1742

³² MS.7047, Hay to Tweeddale, 29 May 1742

³³ Ibid., 1 July 1742

crown presentation to the Rev. Peter Campbell of North Knapdale³⁴. However, when he heard shortly afterwards that Sir James Campbell of Ardkinglass also was seeking a presentation to the charge for a James Forbes, probationer, Hay dutifully complied with the administration's policy of seeking consensus by ordering Wallace to canvass opinion and inform him who enjoyed the greater support. Since Ardkinglass had previously been MP for Argyllshire and had much local influence, it was perhaps only to be expected that Wallace found the tide of opinion to be for Forbes. Doubtless imagining he was rendering another service to the House of Argyll, Tweeddale accordingly presented Forbes on the 14th. March 1743³⁵. It transpired, however, that Ardkinglass had in fact been pursuing a clandestine scheme of his own concerning the vacancy at Kilmodan, and that Ilay knew nothing of it³⁶. When the news of the presentation came to Ilay he was outraged, and wrote acidly to Milton, telling him to find out "from whence this recommendation came, and to whom I owe the favour of furnishing Argyllshire with a minister."³⁷ On discovering that the malefactor was Ardkinglass, Ilay however decided to take no stronger action than a protest to the Presbytery³⁸. To see a minister settled in Campbell territory without his

³⁴ MS.7053, Hay to Tweeddale, 6 January 1743

³⁵ *Ibid.*, 11 January 1743, 25 January 1743; *Fasti*, vol.4, p 31.

³⁶ Hay later told Tweeddale he had tried to consult the Duke about the presentation through Argyll's legal agent, Ronald Dunbar, but had met with little interest. - MS.7059, Hay to Tweeddale, 10 November 1743.

³⁷ Saltoun MSS., MS.16591, 5 November 1743

³⁸ Saltoun MSS., MS.16591, 5 November 1743 (twice), ___ November 1743, 14 November 1743. The Duke of Argyll was arguably the patron instead of the Crown, but it would appear that Ardkinglass and the Duke's legal agent, Robert Dunbar, attempted to profit by the Duke's mental decline (he finally died on the 4th. October 1743) by discretely promoting a settlement of their own choosing, through the Crown's claim to the patronage.

supervision was nonetheless an acute embarrassment for Hay, and he found it hard to swallow.

Notwithstanding Tweeddale's unintended coup at Kilmodan, it remained true that under the particular guidance of Wallace, the Marquis' administration tried genuinely to act fairly and irenically in its dealings with Royal presentations. It was also highly successful in the attainment of such objectives: "all the time he [Wallace] was employed...government was not embarrassed, in a single instance, either in obtaining judgement from the spiritual courts in favour of His Majesty's presentees, or in effecting the execution of settlements ordered to be made by the Church."³⁹ However, as Hay had noted at the beginning, the regime's aim of using its presentation privileges to promote only harmonious settlements was certainly worthy, but it was also naive to suppose that such results could be achieved without the frequent sacrifice of political advantage.

For the most part, the administration was content to abide by the policy, but in the case of the vacancy at Rayne (Garioch Presbytery), the temptation to apostatize from the code proved too overpowering. There were two reasons for the aberration, one political and the other personal to Hay.

The parish of Rayne became vacant on the 3rd. January 1743, on the death of the previous incumbent. On the 12th. February, the Earl of Aberdeen wrote to

The motivation for Hay's attitude regarding Ardinglass's conduct is not entirely clear: "I see plainly now that I have no reason to blame anybody about the patronage but Ardinglass, which he must never know." [___ November 1743]

³⁹ Biographical sketch of Wallace by his son, quoted in full in Morren, *Annals*, Appendix, pp 300-306. Henry Sefton suggests that Wallace's one failure was the riot at Kettins (Meikle Presbytery) on the 22 January 1746.

Tweeddale and requested a crown presentation for the Rev. John Mair of Forbes Parish (Presbytery of Alford), who required a bigger living in order to support his family. Aberdeen went on to point out that Mair was the relative of the highly influential brothers, Alexander and John Robertson⁴⁰, former Provosts of Aberdeen: "As those gentlemen have great interest in Aberdeen and are on all occasions ready to do what service is in their power...it will be well judged in your Lop. to gratify them in this demand"⁴¹. Meanwhile Hay, still smarting from the Stranraer debacle, was incensed to discover that Lord Drummore had had the effrontery to petition Tweeddale for a presentation to the charge, on behalf of Rayne's assistant minister, James McWilliam. Hay's exasperation that Drummore did not "think shame after his behaviour about Stranraer"⁴², dovetailed with Tweeddale's concern about the political implications of not gratifying his Aberdeen supporters, and together they dropped any idea of settling Rayne by consensus and set about the wholehearted promotion of Mair. Nor was their determination diminished by initially unpromising canvass returns. Wallace reported that of the thirteen heritors whose inclinations he knew about, none had declared for Mair⁴³. Moreover, Mair would not be particularly pleasing to Rayne since it was notorious that he did not "attend his charge" as he should, and that he was often absent from it.

Clearly, Rayne was not going to be the kind of "peaceable settlement" envisaged

⁴⁰ see R.L. Emerson, *Professors*, pp 65 and 83.

⁴¹ MS.7053, 12 February 1743. The Earl added that John Robertson had "the best estate of any merchant I know in Aberdeen."

⁴² MS.7053, Hay to Tweeddale, 15 January 1743

⁴³ MS. 7053, Hay to Tweeddale, 17 February 1743

by the administration's strategy, yet Wallace's information did not deter Hay or Tweeddale from their project. For Hay, if achieving success meant inducing the heritors to change their minds, then so much the better, "for I should be glad to see Drummore baulked"⁴⁴. In the event, a presentation was issued for Mair on the 14th. March 1743, but the Presbytery, seeing the reluctance in the parish to have Mair, decided to resist his settlement on the grounds that, as he was a settled minister, his transportation was an infraction of the 1719 "Act for making more Effectual the Laws appointing the Oaths for security of the Government, etc." [see above]. Whether or not the Presbytery's misunderstanding of the relevant clause was intentional, it was certainly "a very liberal interpretation" of it⁴⁵. The superior courts of the Church agreed that the Presbytery were mistaken, and although a sizeable body of parishioners remained trenchantly opposed to Mair, it was his candidature which was upheld⁴⁶. It is illuminating that for all the regime's intention to avoid the undue practices of the previous administration, when the pressure against their candidate was at its height, one of their number (Tullideph) undertook to find out who had concurred with the presentation, so that, as he darkly promised: "means may be taken to quash the opposition"⁴⁷. Suddenly, the words and sentiments were little different from those of their predecessors.

⁴⁴ Ibid. 22 February 1743

⁴⁵ H. Sefton, "Wallace", p 12

⁴⁶ Morren, p 359; MS.7062, 18 May 1744, where the votes in the moderation of calls is given as: MAIR - 5 heritors, 3 elders, 45 heads of families; McWILLIAM - 3 heritors, 3 elders, 65 heads of families.

⁴⁷ MS.7058, Hay to Tweeddale, 1 October 1743

One important question which here presents itself concerns the conduct of Milton and Ilay - did they remain inactive throughout Tweeddale's ministry, or was the temptation to meddle surreptitiously in settlements too strong?

A first answer to the question must of necessity be that Tweeddale persistently did not require Ilay's intervention in order to make things difficult for himself. Men like Drummore had been trusted, when, as Hay was later to remark to the Marquis, it was obvious that he was "your constant enemy"⁴⁸. Again, there was a naive expectation of goodwill from those who had lost their office as a result of the change of ministry. Thus when, early on in the administration, it was decided to gratify Lord Maule by giving a crown presentation for the Rev. James Murison of Edzell (Breachin Presbytery) to Kinnell (Arbroath Presbytery), Tweeddale and Craigie simply assumed that William Grant, former Solicitor General and heritor in the parish, would remain quiescent. He in fact created as much trouble as he could⁴⁹. Later, a chastened Craigie reported on the case's perilous progress before the 1743 Assembly: "Mr. Grant refused all accommodation tho' [it was] proposed by his old friends. He was so idle as to say he hoped to see his successors foiled in their first attempt. However, we carried it today by a small majority....I hope we shall be careful not to run such risks in time coming."⁵⁰

Above all, there was Tweeddale's unaccountable reluctance to replace Ilay's Royal chaplains with his own appointees. Craigie, for once in full agreement with

⁴⁸ MS.7055, 12 May 1743. Not only did he oppose Tweeddale's choice for Moderator of the 1743 Assembly, but Hay discovered that the leader of the opposition to Mair at Rayne "at bottom cared not a pin what way any Church was settled", but had been stirred up by Drummore - Ms.7058, 8 October 1743.

⁴⁹ MS.7055, Craigie to Tweeddale, 19 May 1743

⁵⁰ Ibid. 20 May 1743

Arniston, wrote advising the removal of the most nefarious⁵¹, first on the 30th. July 1743, then again on the 11th. August, warning that it was now absolutely necessary to act, since they brought "disrepute upon the administration". On the 3rd. September, Robert Dundas Junior also wrote with the same recommendation⁵². All were ignored. By the Assembly of 1744, the Commissioner, the Earl of Leven, was complaining that the previous year one of the King's chaplains had "had the assurance" to vote against his choice for Moderator [Wallace], and that since he'd still retained his office, now another chaplain had felt encouraged to do the same⁵³. Only then did the Marquis act, and in June 1744, Wallace, Principal Neil Campbell of Glasgow University and William Gusthart of Edinburgh Tolbooth were given the offices⁵⁴.

As for the matter of Argathelian interference in settlements, little appears in the Saltoun Papers that is suggestive of much active intrigue before the end of 1743. It is at this point that a quickening of pace can be detected. The reason was that, despite his protestations that he was getting old [see above], when Ilay inherited his brother's title and interest in October of that year, he clearly judged the time was opportune to rally Argathelian support - as one of Tweeddale's advisers despondently observed: "I find the old ministry people and those in opposition very closely corresponding together at this place [Edinburgh] at this time as I find

⁵¹ Professor John Goudie of Edinburgh University, John Mathieson of St. Giles, and Robert Bell of Crailing (Jedburgh Presbytery). Hay calculated that the total number of clerical offices at their disposal was, 2 Chaplains, 1 almoner, the revenues of the Chapel Royal divided among three and their collector. - MS.7047, Hay to Tweeddale, 18 May 1742.

⁵² MS.7057, 30 July and 11 August; MS.14423, 3 September.

⁵³ MS.7062 10 May 1744

⁵⁴ Morren, p 304.

all the dependants of the present D. of Argyll in high spirits⁵⁵. More importantly, it was clear that Tweeddale was increasingly perceived as having lost his grip: "My Lord Carteret's interest and your Lordships must every day diminish in Scotland except something is done to show you have power and exert it for I'm told they make no secret to assert it will soon be at an end⁵⁶. Thus, whether Ilay [now Duke Archibald] sought it or not, supplicants for patronage favours began directing their requests primarily to him or Milton and only in a nominal way to Tweeddale. The most striking example occurs with the settlement of Fern (Brechin Presbytery) which had become vacant on the 4th. October 1744⁵⁷. Sir James Carnegie, on behalf of himself and the other major heritor, the Laird of Skene, wrote to Tweeddale and requested a presentation for their cousin, the Rev. George Tytler of Premnay (Garioch Presbytery). The Marquis consulted Wallace⁵⁸, and promptly agreed, expressing the hope that there would be no opposition. In doing so, however, Tweeddale was wholly unaware that the real work of cutting out rival requests and promoting Tytler's cause at Court was being effected through the Argathelian network: "I shall entirely depend upon your Lop.'s friendship and activity in this matter, as Troup is having nothing undone in his power to bring about his purpose for one of his name, a tenant's son⁵⁹. Carnegie felt the presentation was secure, he told Milton, when he heard

⁵⁵ MS.7059, Arbuthnot to Tweeddale, 3 November 1743

⁵⁶ MS.7060, Sir John Inglis to Tweeddale, 18 January 1744

⁵⁷ SRO., Brechin Presbytery Minutes, CH2/40/10

⁵⁸ H. Sefton, "Wallace", p 9

⁵⁹ Saltoun MSS., MS. 16602, George Skene to Milton, 21 September 1744

from "our friend H.P. [Henry Pelham]" that he would commend it to the King.

The nadir of Tweeddale's fortunes came in the Autumn of 1744. When the Argathelian Charles Areskine was appointed a Judge, on the 15th. November, without the Marquis' even knowing, it was obvious his control was gone: "The appointment of Areskine coupled...with the resignation of Carteret just over a month later, destroyed any remaining authority Tweeddale had both within the Ministry and in Scotland and effectively ended his administration of Scotland, although he remained in office for a further year."⁶⁰

To judge from the dearth of correspondence after this time, a similar watershed appears to have taken place in ecclesiastical affairs. In what was probably the unkindest cut of all against the regime's policy of settlement by consensus, Tweeddale received a public humiliation in connection with a vacancy at Dalrymple (Ayr Presbytery). While the parish was in the act of centring upon a candidate, and while the Crown presentation was being held back pending the outcome, Sir James Dalrymple (who had no connection with the parish) suddenly produced a presentation for his chaplain, signed by the Prince of Wales⁶¹. This was doubly damaging to Tweeddale in that, not only did it appear to be derisive of the King's rights - of which he was custodian - but it also implied that he had no knowledge of what actually was taking place at Court.

Although the administration of Tweeddale is celebrated for its ineptitude⁶², it

⁶⁰ R.H. Scott, p 492

⁶¹ MS.7063, Cassillis' [?]secretary to Tweeddale, 3 July 1744

⁶² J.M. Simpson, "Who Steered etc.", p 58

would be churlish to be unappreciative of its benevolent intentions for the Kirk, which were sincerely, if naively motivated. It should certainly not be forgotten that it was under this administration that the scheme for the benefit of ministers' widows was established⁶³. The fact was, however, the noble experiment of his "peaceable" settlement policy was borne down by the political realities of how Scotland required to be governed in the post-Union period. It was not enough to aspire to rule by use of laws and agreed conventions, it was even more important to be able to rule by management and influence. Tweeddale had not the personal or material resources to do either. This meant that much of Scottish society was left the latitude to follow its own wishes and loyalties. This in turn meant that the co-operation required to operate the regime's settlement strategy, was frequently withheld by those men of interest who saw no advantage in being altruistic for its own sake.

The stark truth that the idealism of the settlement plan had been doomed by the realities of the times, was tacitly acknowledged by Craigie when, in the aftermath of the Dalrymple fiasco, he wrote what in effect was its epitaph: "I am very sensible of the bad use that hath upon some occasions been made of His Majesty's gentleness in his exercise of his right of Patronage and that this abuse ought to be rectified, but the proper remedy I cannot at present suggest"⁶⁴.

⁶³ see Morren, p 303

⁶⁴ MS.7063, Craigie to Tweeddale, 7 July 1744.

CHAPTER XII.

Local Issues:

Duns and Angus after the '15

It has been seen through this study that many settlement disputes were coloured by party political rivalry. It would be wrong, however, not to remember that, inevitably, there was also an incalculable number where the main undercurrents of dissension were stirred by purely local considerations.

Naturally the source for a large proportion would have been simple, personal antipathy between participants, and for the purposes of this study, disputes based merely on personality differences have not been included except where the reverberations were extensive, or the full character of the case has not generally been appreciated¹. This is not to say that, occasionally, the same issue of personality could not impinge upon an actual series of disputes. In this regard, for example, it is illuminating to note from a 1742 memo for Tweeddale on the state of the Church, that the author mentions that there had lately been violent settlements involving the Duke of Roxburghe, "which might be prevented for the future, if the Noble Lord concerned would please to put the direction of these

¹ Although occurring outwith the period covered by this study, a prime example of a dispute coloured by unrecognised animosities was that concerning the presentation of Adam Dickson to Duns in 1748. Whereas the affair is often celebrated as a Presbytery's heroic attempt to resist a non-juring patron corruptly using an intermediary to present his own choice for the charge, it is revealing to find among the muniments at Duns Castle a note bearing the words: "A key to the case of the settlement of Duns and source of the opposition made thereto". The note is attached to a letter sent at the start of the vacancy by James Laurie, Minister of Langton, to the patron, asking for the presentation. The disappointed Laurie was subsequently the leader of the opposition within Duns Presbytery to Dickson's settlement. - Hay Muniments at Duns Castle, Bundle 85. See also, BL., Hardwicke MSS.35891, Bundle 78, unsigned memo: "Note Relative to Collusive Presentations in Scotland" [undated, presumed 1753-60]

affairs into other and better hands"². Here, the writer was probably referring in particular to the Duke's aggressive and provocative style, which he combined with an almost obsessive desire not to be deprived of the smallest privilege nor be rendered liable for any unnecessary parochial due³.

However, if consideration is given to settlement controversies in the South of Scotland at this time, a more significant contribution to unrest than that of personalities comes quickly to the fore. This was the changes which had been taking place in agricultural practices - loosely describable as "improvements".

These, especially enclosing, had already been causing sporadic outbreaks of disquiet, with that of the Kirkcudbrightshire riots of 1723-24 being the most celebrated⁴. Since it would, in itself, be a major study to attempt any widespread investigation into the relationship between a landlord's habits of improving, and the behaviour of his tenants and fellow heritors in event of a change of minister, it is proposed here simply to use one example of how the latter could indeed be affected by the former, that of the presentation of Roger Moodie to Duns in 1737. Looking at the case will be of double value, in that it was also was an occasion where the Church attempted to stretch to the limit what statutory rights of veto it did possess over a presentee in order to balk his admission.

² Yester MSS., MS. 7051, Rev. James Witherspoon of Yester, to Tweeddale, 1 November 1742. (Roxburgh is not specifically named, but it is clear about whom the reference is made)

³ For the an example of the Duke's partiality for litigation in pursuing his parochial rights, see Floors Castle muniments, especially the period 1736 to 1742, WRH., TD87/9/1277.

See also, R.A. Dodgshon, "Farming in Roxburghshire and Berwickshire on the eve of Improvement", *SHR.*, Vol.54 [1975]

⁴ It is of interest to note that many ministers associated with the grievances of their parishioners: "a fast being appointed by the presbytery...it was permitted to each minister to [?]seek parochial reasons, and most of the ministers of the presbytery added as a parochial reason, the great devastations made of Christian people by enclosures...". - Saltoun MSS., MS.16529, Milton to Ilay, 30 May 1724.

Ill-feeling had been going on between the patron of Duns, Alexander Hay of Drumelzier and Duns Castle, and sections of the townsfolk since 1729, although to be precise, his factors were the actual agents of the acts complained of. The Duns Castle Muniments reveal⁵ an unfolding story of bitterness, particularly involving the trades of the town, who had not only seen their privileges eroded, "Yea, and further, none of the said incorporations can emitt so much as a wrong or misplaced word but immediately the same is carped at and they are instantly arraigned, fined...and incarcerated till payment."⁶ The Skinners were the worst affected, losing their traditional water privileges in 1729, then their right of access to the meadow at Clockmilne in February 1730 was removed - an action which caused the factor's officers to be mobbed. On the 17th. March 1730, the Skinners "and generally the whole inhabitants of Duns" petitioned the JPs, complaining that the town common had now been enclosed. Again, on the 7th. August 1733, Hay and two of his neighbours started proceedings to shut off "an unnecessary great road running thro' a good part of their several grounds - a hindrance to their enclosing and improving the said lands"⁷.

These were the undercurrents within the community when Duns church became vacant in September 1736, although to be fair Hay had by then relaxed his strictures on at least one "old sore"⁸. Nonetheless, the presentation of Roger

⁵ The information used here comes partly from the papers stored in Duns Castle, partly from documents viewable at WRH., under classification TD86/44/402, and the rest from the Commissioners for Historic Manuscripts, Var. Col. vol. V.

⁶ Petition by the Deacons of Duns to the JPs, 27 May 1729 (vol. V)

⁷ Ibid.

⁸ Duns Presbytery Minutes, SRO., CH2/113/6, 1 March 1737. It was probably the grievance of the water rights.

Moodie, probationer, on the 24th. February 1737⁹ was strongly opposed by elders and parishioners, and they petitioned against his settlement on the grounds of insufficiency and moral laxity. The charges were found disproven by the Presbytery on the 15th. March, but when they moderated his subsequent call, on finding it to be poorly supported¹⁰, the matter was referred to the Synod of Merse and Teviotdale, "by reason of the importance of the charge"¹¹. Since the presentation itself was not challenged, the Synod, which met in April 1737, had little legal choice but to order the Presbytery to take Moodie on trials and admit him, if found suitably qualified. At this point, it might have been expected that the issue was as good as over, but the objectors to Moodie's settlement were suddenly to find themselves with a powerful ally.

Writing later to Milton¹², Hay explained that the Rev. John Hume of Greenlaw (Duns Presbytery), having originally supported the plan to settle Moodie, suddenly took umbrage against Hay¹³, and from then on had fomented

⁹ TD86/44/402. Hay did not in fact present, being a non-juror on account of his Jacobite inclinations. What he did was to dispen, on the 19th. February 1737, the right of patronage to his brother-in-law, Robert, the 7th. Lord Blantyre. It was he who issued the presentation. - see TD86/44/402, "Decreet of Declarator of the Right of Patronage of the Kirk and Parish of Duns, etc.", 16 December 1749. Also, on Hay's relationship with Blantyre: JW. Buchan and H. Paton, *History of Peebleshire*, Glasgow [1927], pp 432-3.

¹⁰ 5 out of 14 heritors, 2 out of 4 elders. Duns Presbytery Minutes, 31 March 1737. To this was later added, amidst accusations of "concussion", ie., forced signing, the concurrence of 12 out of 19 cess payers and 145 out of 388 feuars [12 April 1737].

¹¹ According to the Rev. James Laurie of Langton, the stipend was a third more than that of his own charge. - Duns Papers, Bundle 85.

¹² Saltoun MSS., MS.16574, 17 April 1738.

¹³ Hay said the cause was "our unlucky petition for the removal of the Courts". I have not uncovered what precisely was the petition in question, but according to the *Imperial Gazetteer* (vol.I, see under Greenlaw), it had been a bone of contention in the area that, in 1696, Greenlaw had been made the county town of Berwickshire, when Duns was considered more appropriate. It was highly probable that Hay attempted to have privileges such as Greenlaw's Baillie Court moved to Duns.

opposition amongst other ministers in the area, most notably the Rev. John Goudie of Earlston, who in turn had recruited his father, the Professor of Divinity at Edinburgh University. It is not apparent who was the instigator of the idea, but the plan was now put into effect, that the Synod be asked to send a committee to join with Presbytery in conducting Moodie's trials, so that fairness could be seen by all to have been used¹⁴. The real intention of the move was as much as possible to discountenance Moodie, who, it had been noticed, was of a nervous disposition. The presence of an extra twelve inquisitors would naturally "make the Trial more formidable to the Candidate"¹⁵. Furthermore, when the time came [7th. June 1737] for the first section of Moodie's trials¹⁶, clearly some kind of summons had been put about, for, "there was a great Confluence of People from all Corners, as if they were to see some very extraordinary Event, and the Church was crowded with a Mob; so that the Committee was obliged once and again to change the Place of their Meeting, and the People were very disorderly on the Streets; and severals of them...called out against Mr. Moodie". Over the unusually lengthy period of three hours, Moodie was plied with between three and four hundred questions, amongst which, those of "a more abstruse Nature, were chiefly insisted upon", and "when he seemed to fail in answering any Question, some of the Members showed by their Smiles, how agreeable that was to them."

Not surprisingly, Moodie was in the end adjudged to have failed the first part of

¹⁴ SRO., CH1/2/76. Assembly Papers, "Answers to the Reasons of Appeal taken by Mr. Roger Moodie against a sentence of the Synod of Merse and Teviotdale etc", p 2.

¹⁵ SRO., CH1/2/76, Assembly Papers, Reasons of Appeal by Mr Roger Moodie, p 4.

¹⁶ For a note on the various procedures and steps involved in entering the ministry, see Appendix IV.

his trials. He then appealed to the Synod, and when that Court upheld the Presbytery, he appealed to the 1738 Assembly. With someone of the seniority of Goudie against the settlement, Hay knew that he could not afford to be too optimistic about the Assembly's decision. He accordingly wrote to Milton on the 17th. April 1738 and asked him to speak to the Professor. Ever anxious to widen the number of his debtors, Milton duly wrote to Goudie, speaking of Hay as his "very good friend", and adding with a slightly menacing air: "Mr. Hay's friends have been told that you are their declared enemy, which I told them could not be true because I knew your humanity to be such as to be incapable of being a declared enemy to any mortal and much less to a person who by his being once believed as having sufficient knowledge and now told he cannot have a kirk because he has no knowledge, is thereby brought into a most deplorable situation and consequently I believe you will think ought to meet with all possible tenderness..."¹⁷. With Goudie thus dealt with, the Assembly upheld Moodie's appeal on the 15th. May 1738, on the grounds that the trials had been unfairly conducted, and ordered Presbytery to try him again, this time allowing him to submit his answers in writing¹⁸.

Despite a final attempt on Hume of Greenlaw's part to sabotage the presentee by misleading him over the date of the new trials¹⁹, Moodie was finally approved by

¹⁷ Saltoun MSS., MS.16575, _____1738. Milton is referring to the fact that Moodie had satisfactorily passed his trials for licence in 1724.

¹⁸ Assembly Registers, 15 May 1738

¹⁹ Claiming he was representing the mind of the Presbytery, Hume told Moodie after the Assembly decision, that the main parts of his trials would not be called until the first Tuesday of September. They were in fact called on the 15th. August 1738. After Moodie complained, Presbytery postponed them until October. - SRO., CH2/113/6, Duns Presbytery Minutes, 15 August and 22 August 1738.

the Presbytery and ordained to Duns, "under protection of a military force"²⁰ on the 15th. March 1739.

By contrast to the Borders, the area encompassed by the Presbytery of Brechin provided a different range of local issues, yet these also proved impossible to exclude from the business of settling parishes. Undoubtedly the major problem for Angus was Jacobitism and disaffection to the Established Church, which, as Presbytery complained to the Assembly in 1721, "prevails in this corner more now than ever"²¹. It would therefore be of some value to consider how this Presbytery responded to the peculiar vexations which confronted them in the years between the 1715 and 1745 Risings.

First, it must be said that in the Presbytery's representations to the Assembly throughout the period, it is possible to detect that the court frequently felt it was being ill-supported in its difficulties, by the Kirk's senior judicatories. One particular annoyance was the permissiveness with which the Church seemed prepared to licence or repon probationers of doubtful loyalty. Where this became a situation of real awkwardness for the Presbytery was when, as in the vacancy at Maryton in 1724 [see below], having summoned a congregation in order to moderate a call, they were suddenly faced with the demand to put on the leet one of whom they strongly disapproved. In the case of Maryton, the proposed addition was actually an ordained minister, the Rev. Archibald Muir. Presbytery knew he had been deposed only five years before, for drunkenness "and saying

²⁰ *Fasti*, vol. 2, p 10

²¹ Brechin Presbytery Minutes, SRO., CH2/40/7, 3 May 1721.

the King had no more right to the throne than the moorcock²², yet, to their discomfort, he was able to produce an Act of the Assembly Commission saying that he had since been reponed to the ministry²³. Naturally, Muir's certificate of eligibility made the task of resisting the designs of Maryton's strongly Jacobite heritors much the harder²⁴.

Since no one could be sure if a candidate like Muir was not going to be pitchforked suddenly into any settlement process, the matter of the Kirk's lack of solicitude in its admission of probationers continued to irk Brechin Presbytery throughout the period to the end of the '45. In 1729, it submitted to the Assembly, through its commissioners, that the number of probationers in circulation nationally was "far beyond what the Church has need for"²⁵. In 1732, it complained that "we find from lamentable experience, that, let Presbyteries use all the caution they can in licensing probationers, there will not be wanting preachers who will judge it their interest to comply too much with the humour and inclination of these [disaffected] heretors, and we have instances of their seeking thro' the nation for such preachers as they know would be most unacceptable to the professing people."²⁶ Again, in 1736, its submission was that "the greatest danger of this church arises from young students and probationers", so that none should be entered on trials without the greatest caution. They also

²² *Fasti*, vol. 1, p 363. He had been minister of Garvald and Bara (Haddington Presbytery).

²³ SRO., CH2/40/8, 8 September 1724.

²⁴ Presbytery summarised their feelings on the matter: "this country being generally disaffected, we cannot but judge his settlement in that parish would be utterly inconvenient and very prejudicial to the common interest in this corner." - 20 October 1724.

²⁵ *Ibid.*, 15 April 1729

²⁶ CH2/40/9, 1 March 1732.

craved a tightening of procedures which enabled the Church to know who and where its probationers were, as well as a renewal of the Assembly's regulatory Act Concerning Probationers etc., of 1711²⁷.

Another source of disappointment to the Presbytery was that the Assembly did not seem to appreciate the trouble caused by the unregulated employment of tutors and/or chaplains by disaffected families. The problem was that Assembly members from the Lowland areas would tend to regard the practice as being a regular source of worthy candidates for the ministry, since, indeed, many had themselves come into the ministry under such sponsorship. Among the gentry of counties like Angus, however, the situation was different. Brechin Presbytery had no doubt that these "pedagogues" were "most violently set on propagating Jacobitism not only in their families but the neighbourhood". Nor was there anything to stop them holding what could be construed as actual, rival services, under the guise of "family worship". It frustrated the Presbytery that the Assembly showed little concern for their plea that such teachers should be obliged to qualify to the government²⁸, and indeed, the disinterest seemed to confirm the feeling among members that neither the Assembly nor the Commission truly appreciated the nature of the political/ecclesiastical situation in localities like their own. Thus in 1735, in another submission to the Assembly through their commissioners, they suggest that the Assembly Commission should be encouraged to meet not just in Edinburgh, but in other cities around the country, in order to facilitate the hearing

²⁷ CH2/40/9, 5 May 1736; the 1711 Act can be found in Assembly Papers, SRO., CH1/9/10, p 14, 22 May 1711.

²⁸ *Ibid.*, 3 May 1724.

of cases close to such centres²⁹.

Given the strength of the Jacobite/Episcopalian opposition aligned against it, clearly Brechin Presbytery was always likely to find the filling of vacant parishes a difficult and enervating process. What stands out with ineluctable clarity, however, is that Presbytery had, from an early stage, determined that it would not at any time relax its staunch resistance to the very idea of settling charges by presentations, and that always (even if this entailed disobedience to the Law Courts) it would set itself the aim of using only the process of admission by election and call. Precisely who was to be entrusted with the right of franchise was not something in which the members were always consistent, but, as was seen in the case of Farnell, in 1716 [see above, Chapter IV], their difficulty was that no one section of the parishioners could be relied upon to be unbiased or well-affected. The case of Maryton, for example, was like Farnell, in that it would seem that the Presbytery had entertained hopes that it might be filled through their by-passing the "disaffected, non-hearing heritors" and building a call on the inclinations of the ordinary parishioners, who in private conversation had declared themselves content with the Presbytery's suggested leet. It eventually became obvious, however, that the people there were "under undue influence", and that unless a minister was imposed by the Presbytery, the heritors would continue to protract the vacancy, they having "no other design but to teaze us"³⁰.

Perhaps the greatest test of the Presbytery's resolve to resist patronage, was over the first and second charges at Montrose. After the Rev. William Arrot of the first

²⁹ CH2/40/9, 1 May 1735.

³⁰ CH2/40/8, 5 January and 13 April 1726. The charge was vacant from the 8 March 1724 until 14 September 1726. There was no presentation offered, the patron being unqualified.

charge died on the 15th. August 1730, a representative of the Council appeared at the next Presbytery and lodged a Royal presentation for the minister of the second charge, the Rev. John Cowper, to be Arro't's successor³¹. On Presbytery's refusing to accept it, the Council appealed to the Synod of Angus and Mearns. Although the Synod had still to issue its sentence, the Council then returned to the Presbytery in the following March and lodged a carefully-worded "petition", desiring the Presbytery to invite William Hopper, probationer, to preach for the anticipated vacancy in the second charge. The Magistrates themselves had the patronage of the second charge, and Presbytery became uncomfortable not only at the implications of the petition, but also that the high-handed demands it contained brought it very close to being a plain presentation. They accordingly responded by recording a declaration that presentations were a "great grievance" to the Church, and that they would "think upon some proper method for remedying that grievance and for discouraging it within their bounds"³².

Becoming alarmed at the way the affair was escalating, the Synod sent a committee to negotiate an agreement. The resulting compromise of the 21st. April, was that the Presbytery would agree to Arro't's translation provided the Council would drop all its appeals and protests and allow the parish the free choice of a minister for the second charge.

The election was duly called for the 17 June 1731, and at once the Presbytery found itself in difficulty over the other major complication with which it was commonly required to wrestle at each vacancy, namely, how much weight should

³¹ CH2/40/9, 25 November 1730

³² Ibid., 10 March and 7 April 1731.

be given to the vote of a heritor or councillor who was Episcopalian? Adhering to its policy of resisting all encroachments on what it saw was the Kirk's proper rights and privileges, the Presbytery decided to reject the votes of John Fullerton of Kinaber, Robert Taylor of Borrowfield and Councillor John Skinner on the grounds that they were non-hearers (although Skinner claimed he had heard Hopper say grace). The result of the decision was that Hopper lost the election, by one vote, to George Aitken, probationer.

Immediately, the Magistrates retaliated by producing a presentation, made out for Hopper. This Presbytery nonetheless rejected, on the grounds that when, as a result of the agreement, the Council invited Presbytery to conduct a free election, this had been tantamount to their waiving "their right of presenting at this time, if they had any, which is unknown to the Presbytery". Presbytery thereupon decided to continue on the basis that Aitken had been duly elected, from which sentence Hopper's supporters appealed to the Synod. Customarily, this should have sisted proceedings, but Presbytery judged the appeal "unreasonable", and carried on. After a break (it was now 6.00am. the following day), the inclinations of the people were sounded, and having been considered favourable, a call to Aitken was drawn up.

The Magistrates, however, had no intention of giving up, and on the 6th. July, Presbytery were told that a sist on their proceeding further had been obtained from the Court of Session. The Presbytery's answer was that since they were a Court of Christ, they were "not liable to any civil court for their managements in ecclesiastical matters", and so they would continue, while, in the meantime, sending representatives to Edinburgh to enlist the Procurator of the Church and

rally support. As the weeks went by, it became clear that the Procurator was less than comfortable about the belligerence of the Presbytery's posture. Letters were sent from the capital, advising them to take no action until the next Synod. The advice was ignored. Only when Aitken himself lost his nerve and asked for a delay did the next stage of the settlement come to a halt³³.

The sentence of the Synod, when it came to Presbytery on the 20th. October, was uncompromising. The votes of the Episcopalian Taylor, Fullerton and Skinner were declared competent³⁴, and a special committee was appointed to join with any willing Presbyters in order to settle Hopper, on the strength of both presentation and a majority call. His admission took place on the 7th. December 1731, with none from the Presbytery taking part.

When shortly after, on the 1st. March 1732, the Presbytery was required to submit its views on the Overture Concerning the Method of Planting Vacant Churches, it used the opportunity to declare at length its indignation that the Kirk did not appear interested in the particular problems which they were required to confront through so many of their heritors being of another communion. That such persons should have a place in the election of a minister, they considered "absurd and unique among Europe's reformed churches".

Through the next decade the Presbytery continued to do its best to avoid any action which might suggest that it would ever countenance patronage as an

³³ Ibid., 20 July, 18 August and 1 September 1731.

³⁴ Under the terms of the 1690 Act, this was of course entirely correct, since the Act only stipulated that heritors (which presumably included Councillors) had to be protestant. On the other hand, it was often argued - with validity - that the provisions of the 1690 Act had been rescinded by those of the 1712 one. This arguably left the 1649 legislation as a guide, but it did not ascribe any special role to heritors, and, as every Presbytery knew, it was too late to hope that heritors would now be willing to relinquish what status they had gained.

acceptable way of filling charges. By the time of the vacancies at Brechin and Menmuir in 1744, however, it would appear that the patrons of both parishes were as set on not tolerating opposition as the Presbytery was on offering it.

At its meeting on the 19th. September 1744, Presbytery heard that the Brechin Magistrates had obtained a crown presentation to the second charge for James Fordyce, probationer, and were demanding a call be moderated to him. Supported by the Session and the Rev. David Blair of the first charge, who complained that most of the Magistrates were Episcopalian, Presbytery decided that it would only agree to moderating a call "at large", but would include Fordyce in the leet. This moderation was held on the 4th. October, but due to the intensity of the resistance put up by both sides, the meeting ended, after a twenty-six hour sitting, with Presbytery simply referring the affair to the Synod. On the 2nd. January 1745, it was reported that although Synod had ordered Fordyce's settlement, Blair had appealed to the Assembly, so Presbytery decided to delay further proceedings.

As with Brechin, when the patron, David Erskine of Dun, handed in a presentation³⁵ to the vacant parish of Menmuir, Presbytery responded by agreeing only to the moderation of a call at large. Since Erskine was a Senator of the College of Justice, the Presbyters resolved to be careful to provide justification for their attempts to thwart his design. Thus over the ensuing weeks, they devised a variety of reasons to vindicate their conduct, including, a.), that a petition for a moderation at large had been lodged before the presentation had, b.), that to consider the presentee, the Rev. George Ogilvie of Cortachy, would be to contravene the 1719 Act for Making More Effectual, etc., since he was already

³⁵ CH2/40/10, 2 January 1745.

settled³⁶, and c.), to consider Ogilvie would be to contravene the 1694 Act of Assembly Regulating Transportations of Ministers. Then, as warrant for their excluding from the ensuing moderation all belonging to the Episcopal communion, they declared that the stipulation that heritors required merely to be protestant in order to vote was effectively rescinded by the Act of 1712³⁷, and therefore the Church Courts were at liberty to do as they saw fit.

Although they knew they were likely only to succeed in triggering a series of appeals, the Presbytery then attempted finally to finish the Menmuir case by awarding a call to the Rev. George Blair, Rector of Dundee Grammar School.

As they awaited the Assembly's response, it is not difficult to uncover in the Presbytery's registers a note of foreboding about how supportive they felt the higher courts of the Church would probably be concerning their attempts to stand firm in the face of all their trials: "the Church of late years has by her practice given but too much encouragement to Heretors of other persuasions to dip in Kirk settlements...and the Presbytery humbly hope that the superior judicatories of this Church will be so far from finding fault with them [the Presbytery]...that they will approve of this step of their conduct, sensible that at last there is a necessity of remedying an evil which is very much at the bottom of the unhappy divisions which at this day prevail in this Church"³⁸.

In the event, the Presbytery's pessimism turned out to be justified. On the 14th. and 17th. May 1745, the Assembly considered both the Brechin and Menmuir

³⁶ cf., the case of John Mair and the parish of Rayne in 1743.

³⁷ Ibid., 30 January 1745

³⁸ Ibid.

disputes, and, without even the necessity of a vote, dismissed all the Presbytery's arguments, and ordered them to settle the presentees without delay³⁹. Although half-expected, the Assembly's decision was still a crushing disappointment to the Presbytery. Throughout the years from 1715, they had constantly lobbied the Assembly about the damage the Kirk was sustaining in areas like Angus through insufficient resistance to presentations and/or Episcopal participation in settlements. Only weeks before, they had pledged that they "resolve to contribute all they can" to assist the Church fight back against such encroachments⁴⁰. However, they now found themselves burdened with a sentence which nearly all found "grievous"⁴¹.

On the 22nd. and 28th. August 1745, Ogilvie and Fordyce were admitted to Menmuir and Brechin. At this turn of events, it is probable that most Presbyters felt acutely disappointed that their years of resistance had brought so little return. However, a few days previously, on the 19th. August, the Stuart standard had been raised at Glenfinnan, and, one way or another, affairs in the Highlands were never to be quite the same again.

³⁹ Recognising the depth of Blair's feelings on the issue, the Assembly, after its sentence on Brechin, appointed a special committee of senior churchmen to smooth him over, and "remove any difficulties he may be under with relation to the settlement of Mr. Fordyce." It apparently succeeded. - Assembly Registers, 17 May 1745.

⁴⁰ CH2/40/10, 10 April 1745.

⁴¹ Not everyone was of this opinion. The newly-admitted minister of Fern, George Tytler, was a staunch upholder of patronage, and when a despondent Presbytery met on the 5th. June, he demanded that the Assembly's decisions be read out in full. The Rev. David Blair of Brechin criticised him for wanting only to hear Presbytery declare its opponents victors - "a thing which all who are well acquaint with human nature will own not to be extremely pleasant, nay a severity which a generous enemy would scarce put upon his vanquished foe".

CHAPTER XIII.

CONCLUSION

It is common in standard histories of the Church of Scotland to find explanatory comments which begin, "The Church felt...", or, "The mind of the Church was..". The problem with such phraseology is that it makes it difficult, on occasions, to understand why the Kirk apparently underwent sudden and unaccountable changes of sentiment - at least as expressed by the decisions of its senior courts. The timespan of this study was one period where the Church appeared particularly susceptible to this inconsistency, and, as has been continually suggested above, that party political interference was in some way responsible, is rarely difficult to prove. The anonymous author of the Scott of Harden memorandum, writing in the early 1730s when such political manipulation was at its height, found the phenomenon both astonishing and unedifying: "But what seems most surprising is that those chiefly entrusted in this country...are at no pains to preserve in the Kirk one, regular and uniform way of acting, but are zealous and remiss in causes perfectly parallel, only as idle party views and the serving of particular persons influence them."¹

Clearly, the existence of lay patronage facilitated the business of political manipulation in ecclesiastical affairs, but there is also a danger of seeing it as the source of every malaise or unsavoury element about the Church for the next century and a half. Patronage did not, for example, create the conditions by

¹ SRO., GD157/1392

which parish settlements became invested with political significance, nor did it by itself commonly provoke schism and secession.

Above all, it was not the single, rogue element which prevented what would otherwise have been a smoothly unfolding story of the Church of Scotland in the 18th. Century. In other words, much more than simply the absence of Queen Anne's Patronage Act would have been required to bring an entirely different character to the history of the Kirk in the years following 1712, and this study has sought to highlight two particular reasons for such a contention.

First, there was the nature of the 1690 Church settlement, about which the Kirk seemed later to deceive itself. As seen in Chapter I, it was not established by popular acclaim, but through political expedient, thus creating "a religious tension consistently and blatantly exploited for political ends"². As for the actual abolition of patronage, despite the frequent belief that "The feeling in Scotland was so unanimous against patronage, that it could not be resisted"³, the truth of the Act's passage was quite different: "They [the Presbyterians] owed their coveted settlement, in fact, to a combination of other people's ambition, ignorance and miscalculation."⁴ To summarise it differently, the Presbyterian body of believers had won no debate on the most fitting mode of ministerial election. Nor had they triumphed by virtue of moral or political superiority. They had instead been largely the beneficiaries of a political misadventure. In later years, the Kirk simply

² PWJ. Riley, *King William*, p .4

³ James Begg, "History of the Act of Queen Anne 1711", pamphlet, c.1840, p 5, reproduced in Select Anti-Patronage Library, Edin. [1842].

⁴ Riley, p 42.

ignored this point, and sought to represent the reimposition of patronage as an attempt to sabotage a right which, in response to popular desire, it had been justly awarded⁵. That this was a historical perception which the landed interest simply did not share, is most apparent in their almost unanimous rejection of the opportunity to sell their right of presenting for the 600 merks. If, as it would seem, they were persuaded that their right had been lost through no stronger force than careless mischance, then, it is not hard to understand how they might believe that, as soon as the time was right, the error would quickly be made good, and that therefore to sell out would be folly. Certainly, hopes of restoration were high as early as 1703⁶.

Again, once patronage had been restored, it is illuminating to see the resolutely disinterested response from virtually all those canvassed by the Rev. William Mitchell and his colleagues on their mission to London in 1717 [see Chapter III]⁷. The fact that none of the Kirk's arguments then or later - particularly that of the 1712 Act being a politically-inspired aberration, imposed by crypto-Jacobites

⁵ See for example, the 1736 Assembly Resolution upon the report of their commissioners to London, seeking the repeal of the Patronage Act: "...[the 1690 Act] shows evidently that patronages were not understood to be consistent or agreeable with that constitution [of 1592]...which the legislature were about to establish, in pursuance of the Claim of Right, and [that abolition was] in compliance with the inclinations and principles of the generality of the people in Scotland".

⁶ Wodrow suggests there was an attempt to restore patronage in that year [*Letters*, vol 2., to Col Erskine, 28 Sept 1717, p. 325]. That the rumour was indeed current is confirmed by Sir Francis Grant (afterwards Lord Cullen, and father of Lord Prestongrange) in his leaflet: "Reasons in Defence of the Standing Laws about the right of Presentation in Patronages" [1703] (quoted in *Select Anti-Patronage Lib.* [1841], paper 7)

⁷ *Diary of The Rev. William Mitchell, Minister of Edinburgh, 1717, Spalding Club Miscellany, Vol.I, [1841]*

taking revenge on pro-Hanoverian Presbyterians⁸ - made any impression, could well indicate that however Presbyterian propaganda might portray the abolition of 1690, for the property-owning section of Scottish society, it was that Act and not the one of 1712, which was the real, politically-conditioned aberration⁹.

The second way in which the Revolution settlement left its mark, was in its establishment of the role of the heritor in Church settlements. Again, it should be remembered that whereas patronage may well have affected this presence, it did not create it. The heritors' inclusion in the legislation was the culmination of a process which had begun earlier in the century, as Rosalind Mitchison has described: "The two strands of landowner, 'barons'... and lairds...combined in the new definition of heritors, proprietors of land on whom was placed the burden and privilege of maintaining the ministry and the church. This change was not only the promotion of a class, but the bringing forward of the concept of property as against feudal superiority....In their new status it was clear that property had become the basis of power."¹⁰

It might have seemed to many that the inclusion of this new social presence was, if not advantageous to the Kirk, then at least fair to the heritors, given the fact that it was they who financed the local Church's work and ministry. However, if

⁸ "...the zeal of the Established Church of Scotland for, and their steady adherence to, the protestant succession, did expose them to the resentments of the disaffected party." - General Assembly's Testimony against Patronages, 14 May 1715.

⁹ After the '45, among the government investigations into disaffection in Scotland, there appears a memo acknowledging that "The clergy in Scotland behaved themselves...to the satisfaction of all true-hearted Britains" during the unrest. Yet when it goes on to warn that unqualified patrons "are like to bear hard upon them", it is not so much as contemplated that the practice of patronage might be improper and worthy of discontinuation. - BL., Hardwicke Papers, MS.35891, Unsigned Memo, 1753-1760.

¹⁰ *Lordship to Patronage*, p 67.

another development of the period is brought into the equation, namely the burgeoning importance of the law¹¹, it is possible to see why the formal establishment of the heritors' place in Church affairs from the start contained the potential for friction. What the 1690 abolition did was to ingraft into the selection process a grouping whose rights and essential status were based on property ownership, protected by the civil law. As soon, therefore, as the Church attempted to emphasise its independence of the state (its "intrinsic power"), or the separate authority of its own courts, a divergence in attitude and loyalties became immediately exposed. In short, the interests and priorities of Church and heritors were sufficiently unsynchronised as to make substantial success for the 1690 system always an elusive achievement.

Another problem was that the equal division of franchise between Session and heritors meant that the price of such balance was that any confrontation could rarely be resolved without long and tiresome proceedings¹². The hard fact was, that if the system were to run more smoothly, it was in need of some adjustment which would tip the balance in one direction. From the tone of the Assembly's Overture of 1711, Concerning the Planting of Vacant churches, it would appear that it did recognise the problem, but lacked the initiative to solve it, other than by stressing the importance of the heritors' views¹³. When in later decades,

¹¹ eg., "The Treaty of Union of 1707 merely boosted an existing situation in which the Law and its practitioners in Scotland were beginning to thrive. There are five ways in which the centrality of the Law to 18th. Century Scottish life can be seen - agricultural improvement, political management, the importance of property, commercial development and the relationship in law with England." - A. Chitnis, *The Scottish Enlightenment*, London [1976], p 81

¹² As was seen with the disputes at Channelkirk, Cramond and Inchinnan, the logical solution for some was to break the deadlock by artificially creating more of their own number.

¹³ Assembly Papers, SRO., CH1/9/10, 23 May 1711.

pamphleteers like Lord Prestongrange argued for the repeal of the 1712 Act, they recognised this inadequacy about the 1690 system, and, rather than advocate a simple return to it, proposed giving the advantage to the heritors¹⁴. Even without the restoration of patronage in 1712, at some stage, the Kirk would have required to confront the conflict of interests engendered by the inclusion of heritors in the vacancy-filling process. It was its misfortune that it did not recognise the situation earlier, or, if it did, have the courage to effect a remedy.

What is here argued, then, is that the nature of Scottish government after the union, combined with the presence of the landed interest in religious life, meant that some system for filling vacancies would eventually have required to be worked out, which did two things. On the one hand, it would have needed at least to recognise that the Church existed in a society which was itself administered by a system grounded on patronage. Secondly, such a system could not hope to avoid showing some genuine deference to the wishes of landowners.

Of course, however much or little these points were recognised at the time by any significant number within the Church, it is still true that patronage's restoration remained consistently unwelcome to virtually all within the Church throughout the period of study. The one question which therefore repeatedly presents itself is: why did the Kirk did not take stronger action to resist the injustice it believed had been done to it?

The answer is that there were several reasons. In the short term, there was the

¹⁴ William Grant, Lord Prestongrange, "Remarks, etc.", Edin. [1736], p 14: "...it is just to make some restriction upon the numbers of elders who should be admitted to vote." See also in Chapter V, the approval given by William Mitchell and his colleagues to the "kind" proposals of Haldane and Baillie during the mission to London in 1717.

misfortune of the Abjuration Oath. It was tagged onto the Toleration Act almost as an afterthought, yet as a means of constricting the Church's actions, it was highly effective. So long as a large proportion of ministers scrupled to take it, the Kirk's moral position was severely weakened. Violation of the Patronage Act as well as the Toleration Act would have given an opportunity to the Episcopalians to reinstate themselves by first subscribing, then affecting the role of loyal citizens. Moreover, since the government's chief desire was to see the Church quiescent, by playing upon this defection, as well as hinting at the possibility of worse afflictions, it knew it could stifle much Presbyterian intransigence [see Chapter V.].

Secondly, for the Church to take on the ruling establishment and be successful - as it was over the reading of the Act for apprehending Porteous' murderers, and during the 1734 and 1735 Assemblies - it needed to find at least some degree of unity within its superior courts. However, from the end of the '15 onwards, the task proved increasingly difficult. Primarily, there was the discord created by Squadrone/Argathelian rivalry, but there was also the distraction and division caused by the doctrinal controversies of 1715 to 1718¹⁵, which in turn accentuated the divergence in preaching and churchmanship between what were to be called moderate men and Evangelical/Popular Party adherents. On the matter of patronage itself, there were those who favoured a conciliatory approach in order to convince government that the Church could be trusted to be responsible in its behaviour and respectful of landowners' privileges; there were those who

¹⁵ ie., The Simpson cases, The Auchterarder Creed and the Marrow Controversy.

favoured compliance because it was the law¹⁶, and by contrast, there were those, like Wodrow and Brechin Presbytery, who believed that anything other than firm resistance would be interpreted as weakness. Finally, unanimity was not helped by procedural uncertainty within Church judicatories as they struggled to cope with settlement disputes, the resolution of which was made harder by both the growing presence of legal representatives and the reluctance of the senior courts to lay down legislative guidelines.

The factor of uncertainty also made the decisions of the Church's courts more vulnerable to manipulation, since it vested added authority in senior churchmen, and in particular those having the prestige of a Professorship, Chaplaincy or superior charge (especially one within the city of Edinburgh). Since the current administration would have the patronage of many of these preferments, it is easy to see how the situation could be worked to advantage. Above all, it was uncertainty as to the constitutional status of the Assembly Commission which handed Church managers their most successful aid. Since the smaller and more erratically-attended Commission was easier to control than the Assembly, its decisions could usually be relied upon to go the desired way. Nevertheless, if the Commission's judgement was revealed as manifestly unjust, the danger was that Assembly might reverse it. On the other hand, however, since it was considered undesirable to do anything which might suggest that the Commission was not a valid judicatory, in practice the Assembly consistently recoiled from rescinding the

¹⁶ Their argument was that since the Kirk was established and protected by law, it was in its own best interest to uphold its enactments. Understandably, the strongest proponents of the argument tended to be the proteges of political luminaries.

Commission's sentences¹⁷.

The next question to be asked must be, why was the partnership of Ilay and Milton so successful in managing the Church? First, since the regime had so much general patronage at its disposal, it could afford to work on the principle that - as was seen in Chapter VIII with figures like Hamilton, Smith, Goudie, Linning and Mitchell - most men had their price. If preferment was desired, there was simply nowhere else for such men to go. Secondly, there was a determination on the part of many to believe that the House of Argyll was by history and tradition¹⁸ the friend of the Kirk, and should continue to be trusted. Thirdly, unlike Tweeddale, the regime was able to profit greatly from the network of contacts and information provided by so large and powerful a family as the Campbells were. Fourthly, Milton and Ilay, unlike Tweeddale, were not handicapped by any visionary desire to assist the Church in some way, but rather saw settlements as simply a tool to be used to strengthen the regime.

The regime could, however, make mistakes. One was to believe that the loyalty of its agents could be stretched indefinitely, which, as the rebellion over the West Kirk case showed, was not always true, even among those more reliable than Alston. Again, if Milton himself had a flaw, it was a reluctance to disengage from a cause in which he had concerned himself. The forcing through of the Hutton case [Chapter VI] followed by the suppressing of dissent against the decision, had a crudity and heedlessness for the consequences which contrasted with his

¹⁷ Except for the 1734-36 period - see Chapter IX.

¹⁸ eg., see Chapter VIII, note 65. It was also recalled that Ilay had voted against the Patronage Act.

customary acumen. Again, the revulsion caused by the conduct of the cases concerning Balfron, Eccles, Port-Glasgow and Troqueer, as well as the John Burgh affair, together showed that, however venal the Church might become, something more subtle was required for its management than blatant corruption.

The Tweeddale regime, by contrast, seemed to believe that there was a possibility that the Kirk could be administered by appealing to the finer instincts of those associated with it. He was to be disappointed. His reluctance to replace Argathelian appointees, along with a naive trust in the goodwill of figures like Drummore and the former Solicitor General, were simply taken by observers as confirmation of a lack of authority and competence. In an earlier age, it might have been feasible to implement Craigie's strategy "to superintend their [the Church's] governing themselves in a peaceable way", but the time was certainly past. Whereas it must be admitted that Tweeddale and Wallace did manage to avoid the occurrence of notorious settlement disputes, yet it is hard to avoid the impression that such a situation was unlikely to have continued indefinitely. Whatever Wallace's personal merits, confidence in him was indissolubly linked to confidence in the Marquis, and the fact was that by the end of the second year of Tweeddale's administration, confidence in him had evaporated, and increasingly the Church turned back to the Argathelian interest for the direction and general patronage, which, by this stage, it seemed uncomfortable without.

Naturally, national issues of party did not have a bearing upon every settlement by patronage. In Edinburgh, the desire to protect the rights of the Council against any encroachment involved them in patronage disputes, mainly with the

Presbytery, which consistently transcended matters connected with the influences of party politics. In the South of the country, the pietist traditions of the praying societies along with the profound changes brought by the process of improvement, ensured that the settlement process was coloured by a range of characteristics which frequently superseded all else. The same was true of the areas typified by the Presbytery of Brechin, where the overshadowing source of contention remained the existence of widespread disaffection both to Presbyterianism and the Hanoverian succession. Given the advantage theoretically handed to their Episcopalian opponents (provided they qualified) by the restoration of patronage, it is of interest to observe how much it was possible for a Presbytery to achieve by a resolute determination to resist the depredations of presentations - even if it meant disobeying the weight of the law. Admittedly, the Presbytery was facilitated by having much less to distract it in the form of Squadrone/Argathelian warfare than many other areas. However, that it was able to lose so little ground to the work of patronage until immediately before the '45, despite a continuing lack of interest from the senior courts of the Church¹⁹, demonstrates what could be accomplished when any court was able to present a unified front.

It was perhaps to the Kirk's misfortune that this was a feat the Assembly and Commission only felt capable of achieving, from 1734, for one, brief period. If, twenty years earlier, the accident of chance had been more benevolent, and the Kirk had not been burdened with the Abjuration Oath, a similar unity might conceivably have seen it emerge from the '15 with the Patronage Act removed

¹⁹ Even the petition to Parliament of 1736 took no interest in addressing the need to remedy the problem of Episcopal interference in Presbyterian vacancies. - see Chapter IX, note 56.

from the statute book.

On the other hand, it is difficult to speculate what might then have become the replacement system for settling vacant parishes. A direct return to the flawed formula of the 1690 legislation would probably not have commended itself widely, but at the same time, to amend its provisions, particularly in connection with voting rights, would also have been problematical. Landowners, for example, would hardly, without a strong fight, have allowed greater influence to be handed over to the eldership or Presbytery. If anything, the men of property would most likely have been the beneficiaries of any adjustment.

Given that scenario, it may be wondered, how substantially different would the history of the Kirk have been during the 18th. Century, had the 1712 Act been swiftly reversed? It is possible that it would have been markedly altered. On the other hand, however, the more the landed interest established itself in the process of ministerial election, the more likely it is that a powerful political machine like Ilay's would still have found a way to manipulate the outcome of most settlements. Indeed, even if it were to be supposed that the Church had suddenly been granted full liberty to devise its own system to displace the planting of parishes by patronage, certainly the ingenuity required to keep it free from the long shadow of that influence, would have been considerable, if not impossible.

APPENDIX II.

COMMISSIONERS TO THE ASSEMBLY:

In its Act anent the Representation of Presbyteries in the General Assemblies, the 1694 Assembly decided, on the 2nd. April, Act V, that the allocation for each Presbytery should be:

Presbyteries with 12 parishes or less could send 2 ministers and 1 elder;

Presbyteries with 18 parishes or less could send 3 ministers and 1 elder;

Presbyteries with 24 parishes or less could send 4 ministers and 2 elders;

Presbyteries with over 24 parishes could send 5 ministers and 2 elders.

In 1712, the Assembly, by Act VI of the 8th. May, added the allowance that Presbyteries with more than 30 parishes could send 6 ministers and 3 elders.

Collegiate charges could be counted as 2 parishes.

(There were 84 Presbyteries).

APPENDIX III.

In his pamphlet of 1769*, Andrew Crosbie, Advocate, calculated that the rights of presentation in Scotland were divided as follows:

CROWN	334
NOBILITY	309
LANDED GENTLEMEN	233
BURGHES	45
COLLEGES	18
BURGHES OF BARONY	2
IN HANDS OF ELDERS & HERITORS	3
TOTAL	944

(In the Burghs, more than half the rights of patronage belonged to Edinburgh and Glasgow)

* NLS, 3.2563, "Thoughts of a layman concerning patronage and presentations", (Edin. 1769). His calculations appear to be accurate.

Among the Colleges, the Masters of St. Andrews University held the patronage of by far the largest number of parishes:

The Provost of the Old College:	Cults (Cupar Presbytery)
All the Masters of the Old College:	Kilmany (Cupar Presbytery)
	Dunino (St. Andrews Presbytery)
	Kemback (St. Andrews Presbytery)
The Principal of St. Leonards:	Skene (Aberdeen Presbytery)
	Kinellar (Aberdeen Presbytery)
	Dyce (Aberdeen Presbytery)
	Kemnay (Garioch Presbytery)
	Kintore (Garioch Presbytery)
	Kinkell (Garioch Presbytery)
	Drumblade (Strathbogie Presbytery)
The Masters of the New College:	Tynninghame (Dunbar Presbytery)
	Logie Pert (Brechin Presbytery)
	Tannadice (Forfar Presbytery)

(This information was collected by the Rev. Robert Wallace during the Tweeddale administration, 1742-6 - see Laing MSS in EU Library, LAII.620.29)

APPENDIX IV.

ENTERING THE MINISTRY

1.) EDUCATION:

Training for the ministry was of a long duration. The Assembly's "Act concerning Probationers and settling Ministers; with Questions to be proposed to and Engagements to be taken of them" of 22nd May 1711 (SRO. CH1/9/10), stipulated "That none be admitted to Trials in order to be licensed, but such as have attended the Profession of Divinity for six years...after they have passed their course of Philosophy at the College".

When Moncrieff described the requirements a century later, in 1818, clearly little had changed: "A young man, intended for the Church, after completing his education at grammar school, is required, before he enters on the study of theology, to attend a university for at least four years. During that time he is supposed to complete his studies in the Greek and humanity classes, and afterwards to apply to the study of logic, moral philosophy and natural philosophy...He is then placed in the divinity college...This course of study in theology requires an attendance of four years; and till it is completed he cannot be received on probationary trials or receive a licence to preach." [Moncrieff's Life of Erskine, "Note CC, p 410", p 526]

2.) PRELIMINARIES TO TRIALS FOR LICENCE:

Before a candidate could be considered for licence by a Presbytery, he should have resided within the bounds for at least six years, or be able to produce equivalent testimonials and a request from another Presbytery that he be licensed. The Presbytery then appointed a committee to conduct a private examination of the candidate to make sure of "his Orthodoxy, Knowledge in Divinity, particularly the modern Controversies...and what Sense and Impressions he has of Religion upon his own Soul" [1711 Act]. If satisfied thus far, the Presbytery then circularised the other Presbyteries in the Synod, intimating their intention to take him on trials.

3.) THE TRIALS:

Walter Steuart of Pardovan ("Collections and Observations Methodized, etc.", Book I, p 201) describes the proceedings as they were conducted c.1709:

"1. The Homily, which is a discourse upon some text of Holy Scripture assigned unto him by the presbytery, and delivered before them in private.

2. The Exegesis, which is a discourse in Latin upon some common head appointed him by the presbytery and delivered before them, at which time also he gives in the substance of his discourse, comprised in a short thesis or doctrinal proposition in paper, which he is to defend, at the presbytery's next meeting, against two or three ministers who are appointed to impugn his thesis.

3. The Presbyterial Exercise and Addition, the exercise gives the coherence of the text and context, the logical division, and explanation of the words, clearing hard and unusual phrases, if any be, with their true and proper meaning according to

the original language, and other parallel places of Scripture, proposing and answering any textual questions that occur, and then a plain and short paraphrase upon the text: This is ordinarily the work of one half hour. The addition gives the doctrinal propositions or truths, which, without straining, may be deduced from the text so explained, with reasons, applications and pertinent improvement and application, as the other half hour will allow.

4. A Lecture, or exposition of a large portion of Scripture, ordinarily a whole chapter.

5. A Popular Sermon. These three pieces of exercise, viz. Presbyterial exercise, lecture and popular sermon, are to be in the pulpit before the people.

6. He is to be tried in his knowledge of the original languages, by interpreting a portion of the Greek New Testament *ad aperturam libri*, and reading and expounding a portion of some Psalm in Hebrew. Of his knowledge of sacred chronology, ecclesiastic history, especially of our own church, answering extemporary questions, of the meaning of the hard places of Scripture, on heads of divinity, polemic or practical, on cases of conscience, on church government and discipline [he is to be tried], and is likewise to be tried as to his piety, prudence, and former Godly conversation..."

4.) THE CALL:

Once a probationer received a call to a vacant charge (see Glossary, "moderating a call"), and the call was approved, the vacancy's Presbytery put him on trials for ordination. These were largely identical to the trials for licence.

Since the Church regarded presentations as a grievance, there was no legislative standard set for the time or manner of their receipt. Presbyteries accordingly followed their own inclinations. A common practice was for the Presbytery to treat a presentation as equivalent to a petition from a section of the parish, craving a hearing of a candidate and/or requesting a moderation of a call to him. The crucial point was then whether the Presbytery staged an election with the named person as the sole candidate, or whether it proceeded on the basis of a leet. It was the latter course which naturally aroused patrons' anger.

For the wording of a specimen call, see Pardovan, Book I, p 183.

For an example of the wording of a presentation, see Floors Castle Muniments, WRH, TD 87/9/1275, Tutors to Robert, Earl of Roxburghe presenting to Lilliesleaf, Sprouston and Bowden, 1690.

5.) ORDINATION:

The call and ordination trials having been sustained, a representative from the Presbytery served an edict upon the vacant parish, intimating the ordination, and inviting any with objections as to the candidate's life or doctrine to submit them to the next meeting of Presbytery. If no valid objections were lodged, the Presbytery proceeded to the ordination, usually within ten days.

6.) CARLYLE'S EXAMPLE:

A useful example of a Divinity student's progress to the ministry during the 1740s, can be found in the *Autobiography of Dr Alexander Carlyle of Inveresk, 1722-1805*, [TN Foulis. Edin. 1910].

The taking of a position as a tutor/chaplain was a practice commonly adopted by students as a means of supporting themselves:

[p 62] "My father had sometimes expressed a wish that I should allow myself to be recommended to take charge of a pupil, as that was the most likely way to obtain a church in Scotland; but he did not press me upon this subject, for as he had been four years in that station himself, tho' he was very fortunate in his pupils, he felt how degrading it was. By that time I had been acquainted with a few preceptors, had observed how they were treated, and had contracted an abhorrence of the employment - insomuch that, when I consented to follow out the clerical profession, it was on condition I should never be urged to go into a family, as it was called, engaging at the same time to make my expenses as moderate as possible."

Carlyle mentions [p 69] how his father had hopes of getting a bursary to put him through Glasgow Divinity College. The one hoped for (through the Duke of Hamilton) was for two years at College, then one year abroad. If the bursary could not be procured, then college along with live-in tutoring had to become the main alternative. (p70) Carlyle's dislike of the idea was strong: "We thought we had observed that all tutors had contracted a certain obsequiousness or basseuse, which alarmed us [ie., he and his friends Robertson, John Home and Logan] for ourselves. A little experience corrected this prejudice, for I knew many afterwards who had passed through that station, and yet had retained a manly independency both in mind and manner" (p70)

However, the bursary was apparently obtained. After returning from university abroad, Carlyle says he was obliged "...to spend a part of this summer, 1744, in visiting the clergy of the Presbytery of Haddington, as the forms required that I should perform that duty before I was admitted to trials." (p 100) The idea was that the ministers would be able to examine him personally.

When he passed trials in summer 1746, he was, in the October presented by John Hay of Spot to Cockburnspath. Hay had known Carlyle's father when he had been tutor to the family in 1714-15. Carlyle did not want to go to so obscure a charge, but his father and grandfather were against "resisting Providence" [ie., they had the same providential view of presentations as calls]. Then in early 1747, a friend of his father, Andrew Gray (later at Abernethy), heard that the minister of Inveresk, Frederick Carmichael, was being promoted by Lord President Forbes for a church in Edinburgh. Carlyle Senior was encouraged to try and arrange Inveresk for his son. He therefore used his friendship with Lord Drummore to induce him to write to the patron, Francis, 2nd Duke of Buccleuch, as well as his brother-in-law, the Duke of Queensberry. Both returned favourable replies to Drummore. Extra leverage was obtained with Queensberry through Carlyle's kinsman, Provost Bell of Dumfries, who was very close to the Duke. Carlyle withdrew his acceptance to Cockburnspath in January\February 1747, and was ordained in August 1748. [pp 211-18]

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