

COMMUNITY AND PUBLIC AUTHORITY IN
LATER FIFTEENTH-CENTURY SCOTLAND

Claire Hawes

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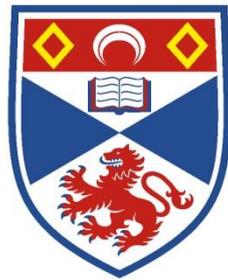
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Community and Public Authority in
Later Fifteenth-Century Scotland



University of
St Andrews

Claire Hawes

Abstract

This thesis offers a reassessment of the political culture of Scotland in the later fifteenth century, from c. 1440 to c. 1490, through an examination of communitarian discourses and practices. It argues that the current understanding of political relations is limited by too great a focus upon personal relationships. While these were undoubtedly important, it is necessary also to consider the structures of law and governance which framed political interactions, and the common principles and values which underpinned action, in order to gain a fuller picture.

In particular, it is argued that the current model, which assumes a more or less oppositional relationship between crown and 'political community', ought to be replaced with a public domain in which claims to authority were asserted and contested. This approach allows the familiar political narrative to be firmly connected to the ideas expressed in contemporary advice literature, while also situating political authority spatially, by asking how it was experienced as well as how it was projected. The focus upon language and space allows for clear parallels to be drawn between different local political cultures, and allows connections and contrasts to be made between those cultures and the norms of kingship and lordship.

It argues that reforms to civil justice made during James III's reign have played a far more important part in the turbulent politics of the time than has been appreciated, that both royal and aristocratic authority could be presented as acting both for the common good and for the interests of the crown, and that Scotland's towns not only had a vibrant political culture of their own, but were an important part of the politics of the realm.

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I, Claire Hawes hereby certify that this thesis, which is approximately 80,000 words in length, has been written by me, and that it is the record of work carried out by me, or principally by myself in collaboration with others as acknowledged, and that it has not been submitted in any previous application for a higher degree.

I was admitted as a research student in September 2011 and as a candidate for the degree of Doctor of Philosophy in September 2011; the higher study for which this is a record was carried out in the University of St Andrews between 2011 and 2015.

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Abbreviations and Conventions

<i>Abbotsford Misc</i>	<i>Miscellany of the Abbotsford Club</i> (Edinburgh, Abbotsford Club, 1873).
<i>Abdn Banff Ill.</i>	<i>Illustrations of the Topography and Antiquities of the Shires of Aberdeen and Banff</i> (Aberdeen, Spalding Club, 1847-69).
<i>Abdn Banff Coll.</i>	<i>Collections for a History of the Shires of Aberdeen and Banff</i> , ed. J Robertson (Aberdeen, Spalding Club, 1843).
<i>Abdn Counc.</i>	<i>Extracts from the Council Register of the Burgh of Aberdeen</i> , ed. J. Stuart (2 vols.) (Edinburgh, Scottish Burgh Records Society, 1871-72).
<i>Abdn Guild Recs</i>	<i>Aberdeen Guild Court Records, 1437-1468</i> , ed. E. Gemmill (Edinburgh, 2005).
ACA	Aberdeen City and Aberdeenshire Archives
ADC	<i>Acts of the Lords of Council in Civil Causes vol. 2, AD 1496-1501</i> , ed. G. Neilson and H. Paton (Edinburgh, 1918).
<i>Ancient Burgh Laws</i>	<i>Ancient Laws and Customs of the Burghs of Scotland</i> , ed. R. Renwick, (2 vols.) (Edinburgh, 1868-1910).
APS	<i>The Acts of the Parliaments of Scotland</i> , ed. T. Thomson and C. Innes (12 vols.) (Edinburgh, 1814-44).
<i>Banff Annals</i>	<i>The Annals of Banff</i> , ed. W. Cramond (Aberdeen, Spalding Club, 1891-93).
<i>Bannatyne Misc.</i>	<i>The Bannatyne Miscellany</i> , ed. D. Laing (Edinburgh, Bannatyne Club, 1827-55).
<i>Cal. Docs Scot.</i>	<i>Calendar of Documents Relating to Scotland</i> , ed. J. Bain (Edinburgh, 1881-1986).
<i>Carnwath Ct Bk</i>	<i>The Court Book of the Barony of Carnwath, 1523-1542</i> , ed. W. C. Dickinson (Edinburgh, Scottish History Society, 1937).
<i>Cawdor Bk</i>	<i>The Book of the Thanes of Cawdor</i> , ed. C. Innes (Edinburgh, Spalding Club, 1859).
<i>Chron. Auchinleck</i>	'The Auchinleck Chronicle', ed. C. McGladdery in James II (Edinburgh, 1990).
<i>Chron. Bower</i>	Walter Bower, <i>Scotichronicon</i> , ed. D. E. R. Watt et al. (9 vols.) (Aberdeen, 1989-98).
<i>Chron. Pluscarden</i>	<i>Liber Pluscardensis</i> , ed. F. J. H. Skene (2 vols.) (Edinburgh, 1877-80).

<i>Chron. Wyntoun</i>	<i>The Original Chronicle of Andrew of Wyntoun</i> , ed. F. J. Amours (6 vols.) (Edinburgh and London, 1903-1914).
<i>Collectanea</i>	<i>Collectanea de Rebus Albanicis</i> , ed. D. Gregory and W. F. Skene (Edinburgh, 1847).
<i>DSL</i>	<i>The Dictionary of the Scots Language</i> , ed. V. Skretcowicz et al. (Dundee and Edinburgh, 2003-2015), www.dsl.ac.uk
<i>Dunfermline Gild Bk</i>	<i>The Gild Court Book of Dunfermline, 1433-1597</i> , ed. E. P. D. Torrie (Edinburgh, Scottish Records Society, 1986).
<i>ECA</i>	Edinburgh City Archives
<i>Edin. Chrs</i>	<i>Charters and Other Documents Relating to the City of Edinburgh, A.D. 1143-1540</i> , ed. J. D. Marwick (Edinburgh, Scottish Burgh Records Society, 1871).
<i>Edin. Recs</i>	<i>Extracts from the Records of the Burgh of Edinburgh</i> , ed. J. D. Marwick (4 vols.) (Edinburgh, Scottish Burgh Records Society, 1869-82).
<i>ER</i>	<i>The Exchequer Rolls of Scotland</i> , ed. J. Stuart and G. Burnett (23 vols.) (Edinburgh, 1878-1908).
<i>Family of Rose</i>	<i>A Genealogical Deduction of the Family of Rose of Kilravock</i> , ed. C Innes (Edinburgh, Spalding Club, 1848).
<i>Fife Ct Bk</i>	<i>The Sheriff Court Book of Fife, 1515-1522</i> , ed. W. C. Dickinson (Edinburgh, Scottish History Society, 1928).
<i>Fraser, Annandale</i>	<i>The Annandale Family Book of the Johnstones, Earls and Marquises of Annandale</i> , ed. W. Fraser (2 vols.) (Edinburgh, 1894).
<i>Fraser, Buccleuch</i>	<i>The Scotts of Buccleuch</i> , ed. W. Fraser (2 vols.), (Edinburgh, 1978).
<i>Fraser, Caerlaverock</i>	<i>The Book of Caerlaverock</i> , ed. W. Fraser (2 vols.) (Edinburgh, 1873).
<i>Fraser, Douglas</i>	<i>The Douglas Book</i> , ed. W. Fraser (4 vols.) (Edinburgh, 1885).
<i>Fraser, Grant</i>	<i>The Chiefs of Grant</i> , ed. W. Fraser (3 vols.) (Edinburgh, 1883).
<i>Fraser, Lennox</i>	<i>The Lennox</i> , ed. W. Fraser (2 vols.) (Edinburgh, 1874).
<i>Fraser, Melville</i>	<i>The Melvilles, Earls of Melville and the Leslies, Earls of Leven</i> , ed. W Fraser (3 vols.) (Edinburgh, 1890).
<i>Fraser, Southesk</i>	<i>History of the Carnegies, Earls of Southesk and of their Kindred</i> , ed. W. Fraser (2 vols.) (Edinburgh, 1867).
<i>Fraser, Wemyss</i>	<i>Memorials of the Family of Wemyss of Wemyss</i> , ed. W. Fraser (3 vols.) (Edinburgh, 1888).

Hay, <i>Gouvernaunce</i>	<i>Gilbert Hay's Prose Works III</i> , ed. J. A. Glenn (Edinburgh, 1993), pp. 53-127. [The Buke of the Gouvernaunce of Princis]
Hay, <i>Knychthede</i>	<i>Gilbert Hay's Prose Works III</i> , ed. J. A. Glenn (Edinburgh, 1993), pp. 1-53. [The Buke of the Ordre of Knychthede]
IR	<i>Innes Review</i>
Ireland, <i>Meroure</i>	John Ireland, <i>The Meroure of Wyssdome</i> , Volume III, ed. C. McDonald (Aberdeen, 1990).
JR	<i>Juridical Review</i>
Morton <i>Registrum</i>	<i>Registrum Honoris de Morton</i> , ed. T. Thomson (2 vols.) (Edinburgh, Bannatyne Club, 1853).
NLS	National Library of Scotland
NRS	National Records of Scotland
OED	<i>Oxford English Dictionary Online</i> , ed. J. Pearsall et al. (Oxford, 2015), www.oed.com
<i>Oliphants</i>	<i>The Oliphants in Scotland</i> , ed. J. A. Anderson (Edinburgh, 1879).
<i>Perth Guild Bk</i>	<i>The Perth Guildry Book, 1452-1601</i> , ed. M. Stavert (Edinburgh, Scottish Record Society, 1993).
RCAHMS	Royal Commission on the Ancient and Historical Monuments of Scotland
RMS	<i>The Register of the Great Seal of Scotland</i> , ed. J. M. Thompson (11 vols.) (Edinburgh, 1882-1914).
RPS	<i>The Records of the Parliaments of Scotland to 1707</i> , ed. K. M. Brown et al. (St Andrews, 2007-15), www.rps.ac.uk
SHR	<i>Scottish Historical Review</i>
SLJ	<i>Scottish Literary Journal</i>
<i>Spalding Misc.</i>	<i>The Miscellany of the Spalding Club</i> , ed. J. Stuart (5 vols.) (Aberdeen, Spalding Club, 1841-52).
SSL	<i>Studies in Scottish Literature</i>
StAUL	St Andrews University Library
TA	<i>Accounts of the Lord High Treasurer of Scotland</i> , ed. T. Dickson et al. (13 vols.) (Edinburgh, 1877-1978).

Unless otherwise stated all references to websites have been checked and are correct as of 1 August 2015. Original spelling has been retained, with the exception of the substitutions of 'u', 'v' and 'w' where appropriate and the substitution of 'j' for initial 'i'. Punctuation has been added where it significantly aids understanding.

Introduction

It is an exciting time to be making a study of political legitimacy and consent in Scotland, and the later fifteenth century, from c. 1440 to c. 1490, is a particularly fruitful period in which to explore such questions. Roughly spanning the reigns of James II (1437-1460) and James III (1460-1488), this period saw a renegotiation of political authority as the Stewart kings sought to expand the royal demesne, prompting an alteration in the relationship of the crown to the nobility. Furthermore, it is now forty-three years since the 'new orthodoxy' in late medieval history burst into life with Jenny Wormald's article 'Taming the Magnates?', which upended previous assumptions about fifteenth-century Scotland as a wild and lawless place with a weak crown powerless to stop the predations of the nobility.¹ Since that article was written historical scholarship on this period has flourished. Wormald and Alexander Grant developed an overview of late medieval politics, highlighting the close degree of co-operation between crown and nobility necessary for the successful governance of a relatively decentralised polity such as Scotland.² Crown governance, they argued, was less important than the authority of the local lord, which was bolstered with ties of kinship and bonds of manrent and maintenance.³ The king therefore had to rely heavily upon his magnates in order to advance his political aims, ensuring that the realm was relatively stable, especially compared to England.⁴ This broad-brush method was later complemented by the work of Norman Macdougall and his students, whose forensic approach to the

¹ The article was written as Jennifer M. Brown in 1972, and reprinted in 1985 as J. Wormald, 'Taming the Magnates?', in K. Stringer (ed.), *Essays on the Nobility of Medieval Scotland* (Edinburgh, 1985), pp. 270-80.

² J. M. Brown (later Wormald), 'The Exercise of Power', in J. M. Brown (ed.), *Scottish Society in the Fifteenth Century* (London, 1977), pp. 33-65; J. Wormald, *Court, Kirk and Community: Scotland 1470-1625* (Edinburgh, 1983); A. Grant, 'Crown and Nobility in Late Medieval Britain', in R. Mason (ed.), *Scotland and England, 1286-1815* (Edinburgh, 1987), pp. 34-59; A. Grant, *Independence and Nationhood* (Edinburgh, 1984).

³ Grant's work has ranged widely over the nature and evolution of lordship and landholding in the late medieval period, for example: 'Earls and Earldoms in Late Medieval Scotland (c.1310-1460)', in J. Bossy and P. Jupp (eds), *Essays Presented to Michael Roberts* (Belfast, 1976), pp. 24-40; 'The Development of the Scottish Peerage', *SHR*, 57 (1978), pp. 1-27; 'Extinction of Direct Male Lines Among the Scottish Noble Families in the Fourteenth and Fifteenth Centuries' in Stringer (ed.), *Essays on the Nobility*, pp. 210-31; 'Franchises North of the Border: Baronies and Regalities in Medieval Scotland', in M. Prestwich (ed.), *Liberties and Identities in the Medieval British Isles* (Woodbridge, 1993), pp. 155-99; 'Service and Tenure in Late Medieval Scotland', in A. Curry and E. Matthew (eds), *Concepts and Patterns of Service in the Later Middle Ages* (Woodbridge, 2000), pp. 145-79. The definitive study of bonding practices is J. Wormald, *Lords and Men in Scotland: Bonds of Manrent 1442-1603* (Edinburgh, 1985).

⁴ This argument is stated most clearly in Grant, 'Crown and Nobility', *passim*.

political narrative resulted in detailed studies of the reigns of the Scottish kings from David II to James V.⁵ These monographs explored in depth the relationship between each king and his subjects, focusing upon the interpersonal connections within and between the nobility and higher clergy, and highlighted the element of competition inherent in the assertion and defence of medieval political authority.⁶ Since then Michael Brown in particular has written extensively on fifteenth-century lordship and kingship, drawing upon a wide range of source material in order to uncover the important personal relationships so central to medieval governance, and situate them within a broader political framework.⁷ In 1994 Brown offered an explicit challenge to the narrative of co-operation which the new orthodoxy espoused, arguing that the relationship between crown and nobility was far less mutually obliging than had been allowed by Grant and Wormald, and that the famous political crises, which often resulted in the death of at least one of the protagonists, did not occur in isolation.⁸ This followed on from Steve Boardman's 1989 thesis, which had demonstrated that the professions of love and kinship found within bonds of manrent were often made in connection with the settlement of feuds, rather than in order to add to the affinities of lords, again placing the emphasis upon confrontation rather than co-operation.⁹

Running parallel to this scholarship has been an interest in the intellectual milieu of this period. Roger Mason has written on ideas of counsel, consent, empire and resistance in the fifteenth century, highlighting what he sees as an 'ideology of patriotic conservatism' which

⁵ M. Penman, *David II, 1329-71* (Edinburgh, 2005); S. Boardman, *The Early Stewart Kings: Robert II and Robert III* (East Linton, 1996); M. Brown, *James I* (East Linton, 2000); C. McGladdery, *James II* (East Linton, 1990); N. Macdougall, *James III* (2nd ed.) (Edinburgh, 2009); N. Macdougall, *James IV* (East Linton, 1997); J. Cameron, *James V: The Personal Rule*, ed. N. Macdougall (East Linton, 1998).

⁶ This dynamic was also highlighted explicitly in N. Macdougall, 'Crown Versus Nobility: The Struggle for the Priory of Coldingham, 1472-1488', in Stringer (ed.), *Essays on the Nobility*, pp. 254-69.

⁷ M. Brown, *The Black Douglases: War and Lordship in Late Medieval Scotland, 1300-1455* (East Linton, 1998); "'That Old Serpent and Ancient of Evil Days': Walter, Earl of Atholl and the Death of James I', *SHR*, 71 (1992), pp. 23-45; "'I Have Thus Slain a Tyrant": The Dethe of the Kyng of Scotis and the Right to Resist in Early Fifteenth-Century Scotland', *IR*, 47 (1996), pp. 24-44; "'Rejoice to Hear of Douglas": The House of Douglas and the Presentation of Magnate Power in Late Medieval Scotland', *SHR*, 76 (1997), pp. 161-84; "'Vile Times": Walter Bower's Last Book and the Minority of James II', *SHR*, 74 (2000), pp. 165-88; 'Public Authority and Factional Conflict: Crown, Parliament and Polity', in K. Brown and R. Tanner (eds), *The History of the Scottish Parliament Volume 1: Parliament and Politics in Scotland, 1235-1560* (Edinburgh, 2004), pp. 123-44; 'Introduction', in M. Brown and R. Tanner (eds), *Scottish Kingship 1306-1542: Essays in Honour of Norman Macdougall* (Edinburgh, 2008), pp. 1-19; 'The Great Rupture: Lordship and Politics in North-East Scotland (1435-1452)', *Northern Scotland*, 5 (2014) pp. 1-25.

⁸ M. Brown, 'Scotland Tamed? Kings and Magnates in Late Medieval Scotland: A Review of Recent Work', *IR*, 45 (1994), pp. 120-46.

⁹ S. Boardman, 'Politics and the Feud in Late Medieval Scotland', (Unpublished Ph.D. thesis, University of St Andrews, 1989).

prevented the nobility from formulating theories of resistance in response to the predations of the crown.¹⁰ Isla Woodman has recently made a study of the Scottish universities in the fifteenth century, demonstrating that the clergy were fully involved in the debates which shaped European political thought in the period.¹¹ Sally Mapstone's 1986 thesis looked at the Advice to Princes tradition in Scottish literature, situating various pieces within their literary and intellectual context and arguing for a distinctively Scottish inflection of the genre which combines an 'essentially pragmatic' idea of kingship with a focus upon the 'practice, institutions, and conceptual basis' of the law.¹² Understanding the importance of the law, and of the legal changes instituted in this period, has been made considerably easier by the work of Hector MacQueen and Mark Godfrey, who have each contributed significantly to legal scholarship on the fifteenth century, while Jackson Armstrong's work is exploring the ways in which politics and the law interacted.¹³

Over the last twenty years there have been two further major developments in political history. The first is Roland Tanner's work on the medieval parliament.¹⁴ This drew heavily upon Macdougall's approach, focusing upon how the personal connections of the nobility affected the decisions made in parliament. Tanner thoroughly overturned the earlier claims made by Robert Rait, that the Scottish parliament was a weak and ineffective institution

¹⁰ R. Mason, 'Kingship, Tyranny and the Right to Resist in Fifteenth-Century Scotland', in R. Mason (ed.), *Kingship and the Commonwealth: Political Thought in Renaissance and Reformation Scotland* (East Linton, 1998), pp. 8-35; 'This Realm of Scotland is an Empire? Imperial Ideas and Iconography in Early Renaissance Scotland', in B. E. Crawford (ed.), *Church, Chronicle and Learning in Medieval and Early Renaissance Scotland* (Edinburgh, 1999), pp. 73-91; 'Beyond the Declaration of Arbroath: Kingship, Counsel and Consent in Late Medieval and Early Modern Scotland', in S. Boardman and J. Goodare (eds), *Kings, Lords and Men in Scotland and Britain, 1300-1625: Essays in Honour of Jenny Wormald* (Edinburgh, 2014), pp. 265-82.

¹¹ I. Woodman, 'Education and Episcopacy: The Universities of Scotland in the Fifteenth Century', (Unpublished Ph.D. thesis, University of St Andrews, 2010).

¹² S. Mapstone, 'The Advice to Princes Tradition in Scottish Literature, 1450-1500', (Unpublished D.Phil. thesis, University of Oxford, 1986), p. 5.

¹³ MacQueen has published widely on Scottish legal history. See in particular his *Common Law and Feudal Society in Medieval Scotland* (Edinburgh, 1998). A. M. Godfrey, *Civil Justice in Renaissance Scotland: The Origins of a Central Court* (Leiden, 2009); 'The Assumption of Jurisdiction: Parliament, the King's Council and the College of Justice in Sixteenth-Century Scotland', *Journal of Legal History*, 22 (2001), pp. 21-36; J. W. Armstrong, 'The Justice Ayre in the Border Sheriffdoms, 1493-1498', *SHR*, 92 (2013), pp. 1-37; 'The "Fyre of Ire Kyndild" in the Fifteenth-Century Scottish Marches', in S. A. Throop and P. A. Hyams (eds), *Vengeance in the Middle Ages: Emotion, Religion and Feud* (Farnham, 2010), pp. 51-84.

¹⁴ R. Tanner, *The Late Medieval Scottish Parliament: Politics and the Three Estates, 1424-1488* (East Linton, 2000); 'Outside the Acts: Perceptions of the Scottish Parliament in Literary Sources before 1500', *Scottish Archives*, 6 (2000), pp. 57-70; "'I Arest You, Sir, in the Name of the Three Astates in Perlement': The Scottish Parliament and Resistance to the Crown in the Fifteenth Century', in T. Thornton (ed.), *Social Attitudes and Political Structures in the Fifteenth Century* (Stroud, 2000), pp. 101-17; 'The Lords of the Articles before 1540: A Reassessment', *SHR*, 79 (2000), pp. 189-212.

which was 'subservient' to the king.¹⁵ The second development, exemplified by the work of Katie Stevenson, has seen a shift in emphasis from the political narrative to the means through which politics were shaped by cultural factors, looking in particular at chivalric practices, royal iconography and court culture.¹⁶ Due to the available records scholarship on the fifteenth-century court, and the royal demesne more generally, has traditionally been situated in the field of administrative history, although William Hepburn's recent thesis has made use of the greater range of material available for James IV's reign to make a much-welcome study of that king's household.¹⁷

With such a wealth of scholarship now available on the political culture of the fifteenth century the time is ripe for a new explanatory framework. This was in fact advocated some time ago by Grant who, in 1994, called for a 'new constitutional history of medieval Scotland' to investigate the 'underlying mechanisms and principles' which informed high politics.¹⁸ Grant's appeal was inspired by a movement already well underway in the historiography of late medieval England, which has since gathered considerable momentum. Beginning with Edward Powell in 1989, the 'new constitutional history' sought to restore institutions, ideologies and structures to the study of political history, replacing a model which he saw as being overly reliant upon 'pragmatism, patronage and personality' for its explanatory power.¹⁹ In order to counteract the assumption being made, that the nobility were motivated only by 'economic rationalism expressed in the scramble for place and profit', Powell argued that historians had to understand both the conceptual basis of

¹⁵ R. Rait, *The Scottish Parliament* (London, 1925), p. 47.

¹⁶ K. Stevenson, *Chivalry and Knighthood in Scotland, 1424-1513* (Woodbridge, 2006); 'The Unicorn, St Andrew and the Thistle: Was There an Order of Chivalry in Late Medieval Scotland?', *SHR*, 83 (2004), pp. 3-22; 'Contesting Chivalry: James II and the Control of Chivalric Culture in the 1450s', *Journal of Medieval History*, 32 (2007), pp. 197-214; 'Chivalry, British Sovereignty and Dynastic Politics: Undercurrents of Antagonism in Tudor-Stewart Relations, c.1490-c.1513', *Historical Research*, 86 (2013), pp. 601-18. See also in particular Lucinda Dean's recent thesis 'Crowns, Wedding Rings, and Processions: Continuity and Change in the Representations of Scottish Royal Authority in State Ceremony, c. 1214 - c. 1603', (Unpublished Ph.D. thesis, University of Stirling, 2013) and A. Thomas, *Glory and Honour: The Renaissance in Scotland* (Edinburgh, 2013).

¹⁷ A. R. Borthwick, 'The King, Council and Councillors in Scotland, c.1430-1460', (Unpublished Ph.D. thesis, University of Edinburgh, 1989); T. M. Chalmers, 'The King's Council, Patronage and the Governance of Scotland', (Unpublished Ph.D. thesis, University of Aberdeen, 1982); C. Madden, 'The Finances of the Scottish Crown in the Later Middle Ages', (Unpublished Ph.D. thesis, University of Glasgow, 1975); A. L. Murray, 'The Exchequer and Crown Revenue of Scotland, 1437-1542', (Unpublished Ph.D. thesis, University of Edinburgh, 1961); W. Hepburn, 'The Household of James IV, 1488-1513', (Unpublished Ph.D. thesis, University of Glasgow, 2013).

¹⁸ A. Grant, 'To the Medieval Foundations', *SHR*, 73 (1994), pp. 4-24.

¹⁹ E. Powell, *Kingship, Law and Society* (Oxford, 1989), p. 4; 'After "After McFarlane": the Poverty of Patronage and the Case for Constitutional History', in D. J. Clayton, R. J. Davies and P. McNiven (eds), *Trade, Devotion and Governance: Papers in Later Medieval History* (Stroud, 1994), pp. 1-16.

kingship and the administrative processes through which the crown exercised authority.²⁰ This call was taken up by Christine Carpenter and John Watts in particular, who have each argued explicitly for a more rounded political history imbued with ideas, values and principles.²¹

Such thinking has yet to penetrate the study of late medieval Scotland, and there are several reasons why this is the case. The first relates to the sources which do not, at first glance, suggest that the politics of the fifteenth century were overly infused with principles of any sort. This is in part due to the fact that the material is very patchy, particularly for the period under discussion. There survives no original, full-length chronicle between the completion of Walter Bower's *Scotichronicon* in the 1440s, and John Mair's *History of Greater Britain*, written in 1521.²² The full parliamentary register is extant only from 1466, although much material survives from before this date, and there are no records of the King's Council prior to its constitution as a formal judicial body, and then only in fragmentary form between 1478 and 1496.²³ The Treasurer's Accounts survive only for six short months in 1473-4 before the run begins in earnest in 1488, the Exchequer Rolls are voluminous, although not comprehensive, and the same can be said for the Register of the Great Seal, which was never intended as a complete record.²⁴ These sources have been used extensively and creatively by historians both to reconstruct the political narrative and to excavate information on royal expenditure, facilitating much of the scholarship outlined above. They do not, however, tend to contain explicit statements regarding the values which underpinned royal governance, instead being concerned solely with the day-to-day running of the realm.

The second reason is that the political culture of Scotland and England are very different in this period. It is worth stating this point quite baldly, as Scotland has often been characterised as 'relatively undeveloped' compared to her southern neighbour.²⁵ This is due

²⁰ Powell, *Kingship, Law and Society*, pp. 5-6.

²¹ C. Carpenter, *The Wars of the Roses: Politics and the Constitution in England, c. 1437-1509* (Cambridge, 1997); 'Political and Constitutional History: Before and After McFarlane', in R. H. Britnell and A. J. Pollard (eds), *The McFarlane Legacy: Studies in Late Medieval Politics and Society* (New York, 1995), pp. 175-98; 'Introduction: Political Culture, Politics and Cultural History', in L. Clark and C. Carpenter (eds), *Political Culture in Late Medieval Britain* (Woodbridge, 2004), pp. 1-19; J. Watts, *Henry VI and the Politics of Kingship* (Cambridge, 1996); 'Ideas, Principles and Politics' in A. J. Pollard (ed.), *The Wars of the Roses* (Basingstoke, 1995), pp. 110-33; *The Making of Polities: Europe, 1300-1500* (Cambridge, 2009).

²² *Chron. Bower*; John Mair, *A History of Greater Britain*, ed. and trans. A. Constable (Edinburgh, 1892).

²³ RPS. See the editorial introduction by G. H. Mackintosh, A. J. Mann and R. J. Tanner. *ADC*, ii.

²⁴ *TA*, i; *ER*, v-x; *RMS*, i-ii.

²⁵ There are many examples of this thinking. Rait's study of the Scottish parliament, n. 15, is predicated upon them, and see R. L. C. Hunter's comments on Scottish ideas of incorporation, below,

to the fact that discussions of medieval law and governance tend, unsurprisingly, to be heavily inflected with the discourse of legal history, which is still framed with more or less teleological narratives about the development of institutions. When these narratives are coupled with the clear discrepancy in the volume of scholarship relating to each medieval kingdom it is easy, although not acceptable, to make the assumption that where gaps exist in our knowledge of Scotland the practices in question were probably similar to those in England, but less refined. If this is presupposed the search for political principle becomes slightly absurd. Unsurprisingly the present work rejects all such inferences, starting from the position that if certain practices were adopted there was probably a good reason for it, and that the kings of Scotland were more concerned with governing their own polity successfully than with fretting over the extent to which they were perceived as inferior to the kings of England, or indeed any others.

The third reason is that Scottish political history more generally has, for many years now, been preoccupied with questions of national identity. In the medieval context this has been particularly evident in discussions of the Wars of Independence in the late thirteenth and early fourteenth centuries.²⁶ While the emergence and shaping of Scotland as a political entity is certainly an important subject identity is not a straightforward analytical tool, particularly when applied to the pre-modern world.²⁷ For the fifteenth century the formation of national identity appears to be somewhat less pressing a concern, but it nevertheless underpins two important subjects. The first of these relates to the medieval historiographical

p. 51. More recent statements derive from Brown, 'The Exercise of Power', p. 33, in which the entire first paragraph of the essay is devoted to underlining this point. To this can be added, for example, D. M. Walker, *A Legal History of Scotland* (3 vols.) (Edinburgh, 1990), ii, p. 12, which states that 'Whichever view is accepted, Scotland was a long way behind England in development and had by 1286 reached a stage of development reached by England roughly a century earlier' and S. Reynolds, *Kingdoms and Communities in Western Europe, 900-1300* (Oxford, 1984), p. 273, which argues that 'Intermittent pressure from England [upon Scotland] probably helped to explain the regnal solidarity which, despite a relatively weak and undeveloped central government, had begun to grow even before Edward I mounted his great attack at the end of the thirteenth century.'

²⁶ The foundational work is G. W. S. Barrow, *Robert Bruce and the Community of the Realm of Scotland* (4th edition) (Edinburgh, 2005), although see also, for example, G. W. S. Barrow, *Robert Bruce and the Scottish Identity* (Edinburgh, 1984); B. Webster, *Medieval Scotland: The Making of an Identity* (Basingstoke, 1997); D. Broun, R. J. Finlay and M. Lynch (eds), *Image and Identity: The Making and Remaking of Scotland Through the Ages* (Edinburgh, 1998); E. J. Cowan, *For Freedom Alone: The Declaration of Arbroath, 1320* (East Linton, 2003); W. Ferguson, *The Identity of the Scottish Nation: An Historic Quest* (Edinburgh, 1998); M. P. Bruce and K. H. Terrell (eds), *The Anglo-Scottish Border and the Shaping of Identity, 1300-1600* (Basingstoke, 2012).

²⁷ R. Brubaker and F. Cooper, 'Beyond "Identity"', *Theory and Society*, 29 (2000), pp. 1-47 explores the many ways in which the term is employed in analysis, arguing that this lack of specificity renders it unable to do the work for which it is used. This problem is not considered by historians nearly as often as it ought to be.

tradition which developed, in part, as a response to the claims of overlordship periodically revived by the English crown, and offered a distinctively Scottish origin myth that was drawn upon throughout the middle ages.²⁸ These narratives were undoubtedly important, yet they speak more to the king's duty to defend the realm than his equally crucial duty to ensure justice within it. A focus upon such traditions necessarily gives primacy to the very potent ideas which mediated the relationship with England, obscuring those which underpinned political relationships within Scotland. The second issue is both more problematic and more complex, and concerns the current model of fifteenth-century governance in which the 'political community' is assumed to have acted as a counterbalance to the worst excesses of the crown.²⁹ This political community draws part of its appeal from the highly influential Barrovian model of the 'Community of the Realm of Scotland', which supported Robert I in his struggles to unite the kingdom against the threat of English overlordship in the early fourteenth century, and draws the other part from its ability to seamlessly dovetail with the Aristotelian ideas of the common good which formed an integral part of political discourse by the 1440s.³⁰ In his response to Grant's 1994 paper, Macdougall highlighted in passing the dangers of attributing agency to this community and allowing it to 'take on the character of a hugely influential organ of government', and yet the term remains in regular use by historians of this period.³¹ Much of what follows explores the problems which this situation presents, and posits an alternative model which owes a significant debt to the new constitutional historians of medieval England.³²

²⁸ R. J. Goldstein, *The Matter of Scotland: Historical Narrative in Medieval Scotland* (Lincoln, 1993); M. P. McDiarmid, 'The Kingship of the Scots in their Writers', *SLJ*, 6 (1979), pp. 5-18; S. Boardman, 'Late Medieval Scotland and the Matter of Britain', in E. J. Cowan and R. J. Finlay (eds), *Scottish History: The Power of the Past* (Edinburgh, 2002), pp. 47-72; R. Mason, 'Chivalry and Citizenship: Aspects of National Identity in Renaissance Scotland', in *Kingship and the Commonwealth*, pp. 78-103; J. Wormald, 'National Pride, Decentralised Nation: The Political Culture of Fifteenth-Century Scotland', in Clark and Carpenter (eds), *Political Culture*, pp. 181-94. On this tradition more broadly, S. Reynolds, 'Medieval *Origines Gentium* and the Community of the Realm', *History*, 68 (1983), pp. 375-90.

²⁹ K. Stevenson, *Power and Propaganda: Scotland 1306-1488* (Edinburgh, 2014), p. 53; Grant, *Independence and Nationhood* p. 147; Macdougall, 'Crown Versus Nobility', p. 254. The term 'political community' has also been employed by K. Hunt, 'The Governorship of the Duke of Albany (1406-1424)', p. 135; C. McGladdery, 'James II', p. 179; F. Downie, 'Queenship in Late Medieval Scotland', p. 234 and R. Mason, 'Renaissance Monarchy? Stewart Kingship (1469-1542)', p. 265, all in Brown and Tanner (eds), *Scottish Kingship*. Both Brown and Tanner themselves also use it, albeit within inverted commas, at pp. 3, 213.

³⁰ Barrow, *Robert Bruce*, *passim*. On the latter, A. Black, *Political Thought in Europe, 1250-1450* (Cambridge, 1992), pp. 14-41.

³¹ N. Macdougall, 'At the Medieval Bedrock', *SHR*, 73 (1994), pp. 25-29, at p. 26.

³² J. Watts, 'The Pressure of the Public on Later Medieval Politics', in L. Clark and C. Carpenter (eds.), *Political Culture in Late Medieval Britain* (Woodbridge, 2004), pp. 159-79 and 'Public or Plebs: The Changing Meaning of "The Commons", 1381-1549', in H. Pryce and J. Watts (eds), *Power and Identity*

In place of the political community the first chapter argues for a new model of political relations based around the public domain, giving primacy to the generation and application of common knowledge. Chapter two examines the discourses of community which permeated urban political culture, suggesting that the town could be positioned as a physical location, a group of people or a legal corporation, allowing for a great degree of flexibility in the legitimisation of authority. The third chapter offers a reinterpretation of the relationship between the king and his lords, both by questioning the terms in which it is currently discussed and by prioritising some important structural changes which recent historiography has minimised. It also highlights similarities between the customary ideas which underpinned aristocratic bonding practices and those used by guilds, suggesting a shared political vocabulary. Chapter four argues that more attention ought to be given to the crown, rather than simply the king, when thinking about the growth of royal authority and offers a reconsideration of the relationship between crown and parliament, which is currently construed as highly oppositional. The final chapter contextualises some of these arguments within the much-discussed periods of crisis which punctuated the politics of fifteenth-century Scotland, highlighting the role of the public domain, discourses of counsel and consent, and urban political spaces in each. Finally, in addition to considering the broader points arising, the conclusion will briefly explore the implications of this research for the ways in which political poetry is currently discussed.

Problems of Community

In 1994 Christine Carpenter opened an article on 'Gentry and Community in Medieval England' by stating that 'There is now a strong case for banning the word "community" from all academic writing and an even stronger one for banning it from the vocabulary of politics.'³³ She argued, very convincingly, that the 'sense of belonging' which the term

in the Middle Ages: Essays in Memory of Rees Davies (Oxford, 2007), pp. 242-60 have been particularly influential in formulating many of the questions posed.

³³ C. Carpenter, 'Gentry and Community in Medieval England', *Journal of British Studies*, 33 (1994), pp. 340-80, at p. 340. The literature on community is vast, although very little of it relates to Scotland specifically. Much of it can be found cited in Carpenter's article, and the bibliographies of Reynolds, *Kingdoms and Communities* and P. Withington, 'Introduction', in P. Withington and A. Shepard (eds), *Communities in Early Modern England: Network, Place, Rhetoric* (Manchester, 2000), pp. 1-14. A. P. Cohen, *The Symbolic Construction of Community* (London, 1985) was particularly useful in thinking through some of the big questions of this thesis, as were some lively discussions with modernist colleagues on the relationship of B. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London, 1991) to medieval Scotland. B. Kümin, *The Communal Age in Western*

conjures had been used, consciously or otherwise, to posit a common identity within English counties which had never been subjected to proper scrutiny.³⁴ This intersection of community and identity is indeed problematic. If we designate a group of people as a community then almost by default we must argue that its members identified with the group, and that actions of individuals were therefore motivated by common interests. This argument becomes circular rather quickly, however; if it is decided that these people had common interests there is a convincing case for grouping them together as a community. Better, as Carpenter suggests, not to use the term at all.³⁵ That is not to say that the study of community should be abandoned completely. The work of Susan Reynolds has clearly demonstrated that communal ideas and collective action were central to medieval life across a wide range of contexts, and much of what follows here builds upon her arguments.³⁶ It is telling that Reynolds avoids the idea of identity completely, preferring the more straightforward 'solidarity' to describe the feeling generated by common endeavour.³⁷ While it is acknowledged that such feelings were, and still are, an important part of any action undertaken collectively, they are more than a little resistant to rigorous historical analysis, particularly when using the source material available to a historian of late medieval Scotland. As Phil Withington has argued, however, the significance of the term 'community' is in its 'polyvalence, appropriability and capacity for synonymy' rather than any particular set of values.³⁸ Instead of asking how people related to the communities to which we assume they felt that they belonged, therefore, this thesis proposes to investigate how the idea itself was formulated in Scottish political discourse, and how it was put to use in practical politics, shifting the focus firmly from identity to utility.

Discourses of community have been investigated by several other late medieval and early modern historians. Mason has explored the change in the vocabulary of Scottish political thought over the fifteenth and sixteenth centuries, from medieval conceptions of the common good to early modern notions of the commonweal.³⁹ Watts has examined how the idea of 'the commons' developed over the late medieval period in England, how the

Europe, c.1100-1800 (Basingstoke, 2013) offers an accessible introduction to the topic, and another large bibliography.

³⁴ Carpenter, 'Gentry and Community', p. 341.

³⁵ Carpenter instead advocates social network analysis as a tool to explore local relationships, and argues for a focus upon the investigation of identities, 'Gentry and Community', p. 365-80.

³⁶ Reynolds, *Kingdoms and Communities*, *passim*.

³⁷ See her collection of essays, S. Reynolds, *Ideas and Solidarities of the Medieval Laity: England and Western Europe* (Aldershot, 1995).

³⁸ Withington, 'Introduction', p. 2.

³⁹ R. Mason, *Kingship and the Commonweal*, *passim*.

discourse of the 'community of the realm' could be appropriated to support the popular uprisings of the fourteenth and fifteenth centuries, and how Ciceronian ideas of *res publica* structured the change in the political vocabulary of renaissance England, from 'common weal' to 'commonwealth'.⁴⁰ The Early Modern Research Group, comprising historians of late medieval and early modern England, and headed by Mark Knights, has also explored changes in the concept of commonwealth through an examination of the contexts in which it is found.⁴¹ This focus upon language and its uses is ultimately derived from intellectual history.⁴² Such methodologies have also been applied very productively to urban settings, where discourses of community are often particularly prevalent. Withington, writing on early modern England, and Jan Dumolyn and Jelle Haemers, writing on late medieval Flanders, have all made important connections between political rhetoric and urban spaces, providing another source of inspiration for the current work.⁴³

⁴⁰ Watts, 'Public or Plebs', pp. 242-60; 'The Pressure of the Public', p. 170; "'Commonweal" and "Commonwealth": England's Monarchical Republic in the Making, c.1450-1530', in A. Gamberini, J.-Ph. Genet and A. Zorzi (eds), *The Languages of Political Society: Western Europe, 14th-17th Centuries* (Milan, 2011), pp. 147-63. On late medieval England, see also C. Fletcher, 'De la Communauté du Royaume au Common Weal: Les Requêtes et Leurs Stratégies au XIV^e Siècle', *Revue Française d'Histoire des Idées Politiques*, 32 (2010), pp. 359-72.

⁴¹ M. Knights, 'Towards a Social and Cultural History of Keywords and Concepts by the Early Modern Research Group', *History of Political Thought*, 31 (2010), pp. 427-48; G. Burgess and M. Knights, et al., 'Commonwealth: The Social, Cultural, and Conceptual Contexts of an Early Modern Keyword', *The Historical Journal*, 54 (2011), pp. 659-87.

⁴² There is a large literature on this subject, and the following gives only an overview. The work of the Cambridge School has influenced several of the arguments advanced in this thesis. See Q. Skinner (ed.), *Visions of Politics Volume 1: Regarding Method* (Cambridge, 2002) and J. G. A. Pocock, 'The Concept of a Language and the Metier d'Historien: Some Considerations on Practice', in A. Pagden (ed.), *The Languages of Political Theory in Early Modern Europe* (Cambridge, 1987), pp. 19-38. For a discussion of political languages in the context of medieval Europe, see A. Black, 'Political Languages in Later Medieval Europe', in D. Wood (ed.), *The Church and Sovereignty c. 590-1918: Essays in Honour of Michael Wilks* (Oxford, 1991), pp. 313-28. Jan Dumolyn's approach to political language, which is drawn upon in various places here, owes much to the discourse analysis technique of the social sciences, as advanced in N. Fairclough, *Analysing Discourse: Textual Analysis for Social Research* (London, 2003). R. Williams, *Keywords* (London, 1976) informed many later approaches. For the school of conceptual history the classic work is R. Koselleck, *The Practice of Conceptual History: Timing History, Spacing Concepts* (Stanford, 2002), but see also M. Richter, *The History of Political and Social Concepts: A Critical Introduction* (New York, 1995).

⁴³ P. Withington, *The Politics of Commonwealth: Citizens and Freemen in Early Modern England* (Cambridge, 2005); 'Public Discourse, Corporate Citizenship and State Formation in Early Modern England', *The American Historical Review*, 112 (2007), pp. 1016-38; 'Citizens, Community and Political Culture in Restoration England', in Withington and Shepard (eds), *Communities in Early Modern England*, pp. 134-55. For an explicit discussion of Dumolyn's linguistic methodology see his 'Urban Ideologies in Later Medieval Flanders: Towards a Methodological Framework', in Gamberini, Genet and Zorzi (eds), *The Languages of Political Society*, pp. 69-96; J. Dumolyn, 'Privileges and Novelties: the Political Discourse of the Flemish Cities and Rural Districts in their Negotiations with the Dukes of Burgundy (1384-1506)', *Urban History*, 35 (2008), pp. 5-23; J. Dumolyn and J. Haemers, "'A Bad Chicken was Brooding": Subversive Speech in Late Medieval Flanders', *Past and Present*, 214 (2002),

That communitarian ideas were prevalent in later fifteenth-century Scotland is therefore not in doubt; the problem is one of excavation. In thinking about the sources of such ideas, and their circulation, it has been helpful to make use of the five 'political languages' which Antony Black argues can be found permeating late medieval political thought.⁴⁴ These are: Roman law, or jurisprudence; 'customary' law, which expressed ideas relating to oaths, lordship, contracts and privileges; 'theological' language, drawn from the Bible and the church Fathers; the language of Aristotelian thought; and the Ciceronian language of the humanists.⁴⁵ Ideas of community were nuanced by each of these in the later fifteenth century, the emphasis shifting with time, place and contingencies.⁴⁶ This thesis makes no claim to be a work either of intellectual or legal history, and in particular will not attempt to trace each language through the records; the extent to which they overlap and influence each other would render such an attempt futile. The fact that ideas of community were drawn from these different languages, however, means that it is possible to discern rhetorical, legal, spatial and institutional aspects of the concept of community which interacted in various ways, and which could be used in different circumstances. It is these interactions, and their implications for everyday politics, which is the main concern of this work.⁴⁷ To further complicate matters, as will become evident, the concepts and practices which were employed to promote communal ideas and facilitate collective action were not exclusively denoted by the term community.⁴⁸ This work therefore moves between community as 'a group of people', and community as 'that which people had in common' in

pp. 45-86; 'Patterns of Urban Rebellion in Medieval Flanders', *Journal of Medieval History*, 31 (2005), pp. 369-93.

⁴⁴ Black, 'Political Languages', pp. 317-18.

⁴⁵ *Ibid.*, pp. 317-18.

⁴⁶ The subject of community in political thought is an expansive one. In thinking about how the idea can be put to use I have drawn in particular upon: J. Quillet, 'Community, Counsel and Representation', in J. H. Burns (ed.), *The Cambridge History of Medieval Political Thought, c. 350-c. 1450* (Cambridge, 1988), pp. 520-72; A. Black, 'Political Thought', *passim*; A. Black, *Guilds and Civil Society in European Political Thought from the Twelfth Century to the Present* (London, 1984); J. P. Canning, 'Law, Sovereignty and Corporation Theory', in Burns (ed.), *Medieval Political Thought*, pp. 454-76; E. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, 1957); B. Tierney, *Religion, Law and the Growth of Constitutional Thought* (Cambridge, 1982); M. S. Kempshall, *The Common Good in Late Medieval Political Thought* (Oxford, 1999).

⁴⁷ This relates very closely to the arguments expressed in Withington, 'Introduction', pp. 1-14.

⁴⁸ The flexibility of medieval language in relation to collectivities is noted by almost all who study them, for example Quillet, 'Community', pp. 521-22; Black, 'Political Thought', p. 14; J. Canning, 'The Corporation in the Political Thought of the Italian Jurists of the Thirteenth and Fourteenth Centuries', *History of Political Thought*, 1 (1980), pp. 9-32, at p. 9.

order to assess as full a range as possible of the political activity to which these ideas applied.⁴⁹

There are two insights, gained from the work of Quentin Skinner, which underpin much of the argument which follows. The first concerns the relationship between the ideas which were used to legitimise political actions and the range of political actions which could be considered legitimate. As Skinner argues, 'To recover the nature of the normative vocabulary available to us for the description and appraisal of our conduct is at the same time to identify one of the constraints on our conduct itself'.⁵⁰ Anyone claiming to rule for the benefit of the governed must be able to demonstrate, over time, that they are in fact doing this in order for the claims to remain relevant and credible. If such claims cease to be relevant or credible there is no longer any point in making them. This is not the same as suggesting that every political action to which such concepts are attached is necessarily altruistic; quite the reverse. The language of the common good, for example, can be used to justify an extremely broad range of actions, as will be discussed in detail in later chapters.⁵¹ Instead it suggests that such concepts were not merely acting as lip service to the prevailing norms of the time, 'tacked on' to the real business of government, but that they shaped practical politics at a basic level. The second insight concerns the intention of authors.⁵² Skinner argues that we should be concerned to understand not only what an author is saying, but what he is doing in saying it, for which an appreciation of the linguistic context in which he is writing is essential.⁵³ This has a particular relevance for the work of authors such as John Ireland, who is known to have lifted whole passages verbatim from other scholarly works and inserted them into his *Meroure of Wyssdome*, or Sir Gilbert Hay, who copied the *Buke of the Gouvernaunce of Princis* from a French manuscript, interspersing it with unknown quantities of his own material, or indeed for the legal treatise *Regiam majestatem*, in circulation from the fourteenth century, which was compiled in large part from English

⁴⁹ OED community, n. II.

⁵⁰ Q. Skinner, 'The Idea of a Cultural Lexicon', in Skinner (ed.), *Visions of Politics*, pp. 158-74, at p. 174.

⁵¹ This argument is laid out in detail in 'The Principles and Practice of Opposition: The Case of Bolingbroke vs. Walpole', in N. McKendrick (ed.), *Historical Perspectives: Studies in English Thought and Society in Honour of J. H. Plumb* (London, 1974), pp. 93-128. John Watts makes the same case, in the context of fifteenth-century politics, in 'Ideas, Principles and Politics', p. 117. I am very grateful to Prof. Watts for drawing my attention to Skinner's article.

⁵² Skinner's arguments concern the illocutionary force of language, which was first described in J. Austin, *How to Do Things with Words* (Oxford, 1975).

⁵³ Q. Skinner, 'Meaning and Understanding in the History of Ideas', in *Visions of Politics*, pp. 57-89, at p. 82 and *passim*. See also 'Motives, Intentions and Interpretations', pp. 90-102 and 'Interpretation and the Understanding of Speech Acts', pp. 103-127 in the same volume.

texts. Such practices may render these works of little value for those concerned with originality of thought.⁵⁴ If, however, it is assumed that the authors were doing something specific in composing their material in this way - that is, drawing from the work of others in order to advise, persuade, educate and assist those who governed the realm - then we can study the texts for their contributions to Scottish political culture without being overly concerned about their contributions to European political thought.

The Sources

This thesis draws its evidence from six broad groups of sources. The first is the Records of the Parliaments of Scotland.⁵⁵ The Scottish Parliament project, completed at the University of St Andrews in 2007, collated, transcribed and translated all records relating to the institution until its dissolution in 1707, and made them available online in a searchable database. This has greatly aided research into political discourse, not only by making it possible to search the records for key words and phrases but also by substantially reducing the amount of time necessary for a researcher to become familiar with the acts themselves. The pre-1466 material is, by necessity, a collation by the editors of surviving versions of the acts from different manuscripts, although this presents very few difficulties in practice.

The second group is the urban records. The most important of these is the run of burgh council registers from Aberdeen, which cover the period between 1440 and 1490 in five full volumes.⁵⁶ These registers comprise the burgh council minutes, records of the guild court and records of the bailie court. Edinburgh is the only other burgh with council records from the period, in later copies, although the seals of cause of the Edinburgh craft guilds, which proliferate from the early 1470s, are also extremely valuable for studying ideas of community.⁵⁷ There are two other sets of guild records which fall within the period: the

⁵⁴ Mason, 'Kingship, Tyranny and the Right to Resist', p. 12.

⁵⁵ *The Records of the Parliaments of Scotland to 1707*, ed. K. M. Brown et al. (St Andrews, 2007-15), www.rps.ac.uk.

⁵⁶ A project recently undertaken between Aberdeen City and Aberdeenshire Archives and the University of Aberdeen has led to the digitisation of the pre-Reformation council register and the manuscripts covering the period up to 1511 can now be found online at <http://www.scotlandspplaces.gov.uk/digital-volumes/burgh-records/aberdeen-burgh-registers>, accessed 26/5/2014. Some of the records for this period can be found in *Abdn Counc.*, i; *Abdn Guild Recs.*

⁵⁷ *Edin. Recs.*, pp. 26-34, 47-49, 54-58; *Edin. Chrs.*

Gild Book of Dunfermline, the earliest such book extant, and the Perth Guildry Book.⁵⁸ While by later standards this selection is still fairly small, nevertheless the Aberdeen records are voluminous enough that a fifty year period yields well over two thousand manuscript pages. Use has therefore been made of the various edited extracts, which have been checked against the original volumes. With the material from the other burghs this provides more than enough to begin a discussion on urban political discourse.

The third group of sources is what might be termed 'political literature', and consists of: Walter Bower's *Scotichronicon* (c.1440) and the anonymous *Liber Pluscardensis* (c. 1461) which both adds to and abridges Bower's work; Sir Gilbert Hay's translation of the *Secreta Secretorum*, known as the *Buke of the Gouvernaunce of Princes* (1456) and the 'Regiment off Princis' within Hay's *Buik of Alexander the Conquerour* (c. 1460); the 'Auchinleck chronicle', a narrative fragment which covers the years 1428-1461; and John Ireland's *Meroure of Wyssdome* (1490), in particular Book VII.⁵⁹ Some of these texts are chronicles, and others are usually placed within the Advice to Princes genre, although the offering of counsel to the king is certainly not confined to the latter. *Regiam majestatem* and *Quoniam attachimenta*, while not political in the same sense, could be added to this group as they also had a formal didactic function related to governance and were still being copied and used in the later fifteenth century.⁶⁰ The chronological scope of the thesis, which is broadly focused upon the period between 1440 and 1490 was, in part, dictated by this range of texts, with the decision being made to rely upon earlier or later works as little as possible. Many of the manuscripts containing these works were copied in the later part of this period. The *Scotichronicon* had been copied four times in full and twice in abbreviated form before James IV's reign.⁶¹ The three earliest surviving copies of the *Liber Pluscardensis* date from the period 1478-1500.⁶² The sole surviving copy of Hay's prose works, written for William Sinclair, earl of Orkney, was made for his son, Sir Oliver Sinclair, probably c. 1485-90.⁶³ Ireland's *Meroure*, although

⁵⁸ *Dunfermline Gild Bk; Perth Guild Bk.*

⁵⁹ *Chron. Bower; Chron. Pluscarden; Hay, Gouvernaunce; Hay, Knychthede; Sir Gilbert Hay, The Buik of King Alexander the Conquerour*, ed. J. Cartwright (Aberdeen, 1990), pp. 6-33; 'The Auchinleck Chronicle' in C. McGladdery, *James II*, pp. 160-73; Ireland, *Meroure*.

⁶⁰ *Regiam Majestatem and Quoniam Attachimenta*, ed. Lord Cooper (Edinburgh, 1947).

⁶¹ *Chron. Bower*, xi, pp. 186-98; S. Mapstone, 'The *Scotichronicon's* First Readers', in Crawford (ed.), *Church, Chronicle and Learning*, pp. 31-55.

⁶² *Chron. Pluscarden*, i, pp. x-xviii; R. J. Lyall, 'Books and Book Owners in Fifteenth-Century Scotland', in J. Griffiths and D Pearsall (eds), *Book Production and Publishing in Britain, 1375-1475* (Cambridge, 1989), pp. 239-56, at p. 247.

⁶³ Mapstone, 'Advice to Princes', p. 47. On Hay's use of the *Scotichronicon*, see Mapstone, 'The *Scotichronicon's* First Readers', pp. 32-35.

written for James III, was presented to his son instead, in 1490, and also survives in a single copy.⁶⁴

The fourth group of sources is closely related to the third, and could be termed 'political poetry'. It encompasses: Richard Holland's *Buke of the Howlat* (1440s); some of Robert Henryson's work (fl. 1470s and 1480s); an anonymous advice poem known as 'The Harp', attached to certain copies of the *Liber Pluscardensis* and recently dated to the mid-1470s; *The Thre Prestis of Peblis* and *Lancelot of the Laik* which are also anonymous, and *The Wallace* by 'Blind Hary', the latter three all being dated to the 1470s, some more confidently than others.⁶⁵ These sources, some of which also contain some advisory elements, have been grouped separately on the basis of their genre, which necessitates that questions of audience, purpose and authorial intention be considered rather differently.

The fifth group of sources comprises the indentures and bonds of manrent extant for the fifteenth century. Wormald's study has made tracking down these documents very straightforward, and this has been aided by the fact that so many of them have been included in printed collections. A small selection of legal sources, such as petitions, summonses and charters, has also been drawn upon, although constraints of time have not allowed an exhaustive study of all such documents.

The final source group is a small but important selection of royal letters. These survive mostly as copies in other records, and often deal only with routine business, but they occasionally shed important light upon the employment of communitarian discourse by the crown.

This choice of source material means that this work is concerned mainly with the secular sphere. This may seem rather arbitrary, particularly given the importance not only of Christian theology to the idea of community, but also of the Conciliarist debates to the political culture of the fifteenth century, and the limitations which such exclusions place

⁶⁴ Johannes de Irlandia, *The Meroure of Wyssdome*, vol. I, ed. C. MacPherson (Edinburgh and London, 1926), pp. ix, xi; Mapstone, 'Advice to Princes', p. 357; J. H. Burns, 'John Ireland and the "Meroure of Wyssdome"', *IR*, 6 (1955), pp. 77-98; 'John Ireland: Theology and Public Affairs in the Late Fifteenth Century', *IR*, 41 (1990), pp. 151-81.

⁶⁵ Richard Holland, *The Buke of the Howlat*, ed. R. Hanna (Woodbridge, 2014); *The Poems of Robert Henryson*, ed. D. Fox (Oxford, 1981); 'The Harp' in *Chron. Pluscarden*, i, pp. 392-400; *The Thre Prestis of Peblis: How Thai Tald Thar Talis*, ed. T. D. Robb (Edinburgh, 1920); *Lancelot of the Laik*, ed. M. M. Gray (Edinburgh, 1912); Blind Harry, *The Wallace*, ed. A. McKim (Edinburgh, 2003).

upon the arguments here are fully acknowledged.⁶⁶ There is no question that a scholarly study of the ecclesiastical politics of fifteenth-century Scotland would make an extremely important contribution to our understanding of the politics of the realm. This would require an engagement both with theology and with the structures of church governance which would increase the scope of this work beyond that which is manageable, however, while the lack of explicit discussion of Conciliarism within most of the sources stated above means that its inclusion would also require an adaptation of the methodology used throughout. It is instead hoped that this thesis might prove to be a useful starting point for such a study in the future. Ecclesiastical politics aside, the sources chosen allow this research to make three connections which have not yet been explored for fifteenth-century Scotland. It enables the political theory which underpinned discussions of kingship in chronicles and advice texts to be linked very directly to political practice as evidenced in the record sources.⁶⁷ While it uses linguistic analysis to trace discourses across different contexts it also situates them spatially, within local political cultures. Finally, it argues for Scotland's towns to be considered not exclusively in terms of their social and economic importance, but as inherently political entities with an important place in the governance of the kingdom.

⁶⁶ There is a large literature on Conciliarism. For an introduction see A. Black, *Council and Commune: The Conciliar Movement and the Fifteenth-Century Heritage* (London, 1979) and A. Black, 'The Conciliar Movement', in Burns (ed.), *Medieval Political Thought*, pp. 573-87. For Scotland, see J. H. Burns, *Scottish Churchmen and the Council of Basle* (Glasgow, 1962); 'The Conciliarist Tradition in Scotland', *SHR*, 42 (1963), pp. 89-104; Mason, 'Kingship, Counsel and Consent', pp. 268-72; Woodman, 'Education and Episcopacy', pp. 64-75.

⁶⁷ As advocated in Watts, *Henry VI*, p. 15.

Chapter One: Common Knowledge and the Public Domain

Any political culture without mass literacy must rely heavily upon that which people know about each other in order to function.¹ Lay literacy certainly became more common in Scotland during the fifteenth century. From the start of James I's personal rule, in 1424, much government business was recorded in the vernacular. Bonds and indentures between laymen, also written in Scots, proliferate from the 1440s, while by 1496 the Education Act had enshrined in law the need for noblemen to educate formally their eldest sons 'sua that thai may have knowlege and understanding of the lawis, throw the quhilkis justice may reigne universalie throw all the realme'.² Add to this the recent scholarly focus upon the growth of a distinctively Scottish Renaissance literary culture and it is easy to overlook the centrality of common knowledge to the functioning of politics in this period.³ In order for any law to have been effective, whether drawn from local custom or dictated from above, people would have had to have understood what was required of them if they were to conform, and to have understood the consequences if they did not. As John Ireland put it, 'gif you spere [ask] at me, *quid est lex*, quhat is law, I say that it is a tekyn [token] be the quhilk a man may knaw the thing that his lord and souverane oblis him to.'⁴ Conversely, ensuring that justice was carried out in accordance with legal norms was of the utmost importance to any monarch wishing to avoid accusations of tyranny. As Michael Brown has noted, Walter Bower was particularly concerned with the *jura publica* which he saw as an integral part of royal authority constituted for the protection of the poor and the weak.⁵ The idea that the king must ensure justice in the realm was a staple of the Advice to Princes genre, but it was no mere commonplace; a monarch who failed to staunch feuds, deal with rebellious subjects or ensure that his people received fair treatment from local judges would

¹ On literacy in late medieval Scotland, see Stevenson, *Power and Propaganda*, pp. 149-51; Grant, *Independence and Nationhood*, pp. 103-6; Wormald, *Court, Kirk and Community*, pp. 68-71; S. Mapstone, 'Was there a Court Literature in Fifteenth-Century Scotland?', *SSL*, 26 (1991), pp. 410-22, at p. 413; R. J. Lyall, 'Books and Book Owners', pp. 239-56; S. Mapstone, 'The *Scotichronicon's* First Readers', pp. 31-56; J. Durkan and A. Ross, 'Early Scottish Libraries', *IR*, 9 (1958), pp. 5-167; J. Higgit, *Scottish Libraries* (London, 2006).

² Wormald, *Lords and Men*, *passim.*; RPS A1496/6/4.

³ Chris Wickham's discussions of the construction, attributes and importance of common knowledge, and of the role of gossip in political resistance, have been very helpful in formulating the arguments in this chapter. See C. Wickham, 'Fama and the Law in Twelfth-Century Tuscany', in T. Fenster and D. Lord Smail (eds), *Fama: The Politics of Talk and Reputation in Medieval Europe* (Ithaca, 2003), pp. 15-26; 'Gossip and Resistance Among the Medieval Peasantry', *Past and Present*, 160 (1998), pp. 3-24.

⁴ Ireland, *Meroure*, p. 107.

⁵ Brown, 'Public Authority', p. 138.

find himself open to criticism, as James III discovered to his cost. The means by which the crown demonstrated that justice had been done was therefore integral both to theoretical notions of good kingship and to the peace and prosperity which such kingship purported to ensure for the people living within the realm. Expectations had to be clear, decisions had to be publicised and sanctions had to be consistently applied.

A monarch did not govern well simply by ensuring the rule of law, however; he also had to act in accordance with virtue. Given the very limited options available to subjects who wished legitimately to challenge the king's rule, it was imperative that his political choices benefited the whole realm and not merely himself.⁶ How this worked in practice was, of course, a highly complex and contested matter, and much of the rest of this thesis engages with questions related to it. As far as the writers of the mirrors were concerned, however, one of the best ways to ensure that the king acted for the common good was to instil within him the appropriate virtues, after which he would naturally be inclined to put the interests of others before his own.⁷ They therefore devoted a large amount of their time to describing what those virtues were, and to providing examples of virtuous rulers from history and from classical literature, as exemplars.⁸ The extent to which a king lived up to these high expectations was not simply a matter of personal pride but of general interest, and it was through knowledge of a king's reputation that others were able to judge the extent to which he accomplished this.

As will become clear from what follows, it was not only kings who had to maintain a good reputation and ensure that justice was done. These concerns were central to politics at all levels, whether those of a great lord, lesser baron, burgh council or guild. In each case it was the generation of common knowledge which allowed both reputation and justice to work as political processes. In thinking about the ways in which common knowledge was generated, and how it interacted with political authority, it has been helpful to draw upon scholarship on the public sphere. This construct was posited by sociologist Jürgen Habermas, who argued that the public sphere first 'emerged' in later seventeenth-century England, describing it as 'a forum in which the private people, come together to form a public,

⁶ Watts, *Henry VI*, p. 22. On the debate regarding the legitimacy of resistance to monarchy see Brown, 'I Have Thus Slain a Tyrant'; Mason, 'Kingship, Tyranny and the Right to Resist'; Tanner, 'I Arest You'.

⁷ Watts, *Henry VI*, p. 25.

⁸ Gilbert Hay's *Buik of King Alexander the Conquerour* is an obvious example, discussed in Mapstone, 'Advice to Princes', pp. 101-142.

readied themselves to compel public authority to legitimate itself before public opinion'.⁹ This 'public opinion', he argued, was formed through the medium of rational-critical debate, which developed in literary salons before broadening out to other locations of sociability, such as coffee houses, where engagement with political questions occurred.¹⁰ New forms of commodity exchange were crucial to the emergence of the public sphere, as was the rapid growth of print culture, which allowed the flow of ideas at a level and volume which could influence government policy.¹¹ Because the ability to participate in the discussions which shaped public opinion was decided only by one's ability to take part in rational debate, rather than one's social rank, the public sphere was, in theory, accessible to anyone.¹² Habermas's agenda was not that of the historian, however. His aim was to critique what he saw as the degraded public discourse of the time in which he was writing, the 1960s, by using an ideal model which he located in a specific time and place.¹³ As various scholars have acknowledged, Habermas was greatly influenced by Marxist theory, and his public sphere is bourgeois in character, providing a means through which that particular class gained political power.¹⁴ Nevertheless, it has been extremely influential. For historians, this is in part because it creates a space in which political and social practices can be considered together, connecting, for example, reading, voting, domesticity, ritual, rumour, humour and commerce.¹⁵ As a result, Habermas's model has been modified in a number of important ways by scholars who wish to harness its benefits for their own period and purposes.¹⁶

Some critics have pointed out that Habermas's ideal of universal access is incompatible with the realities of contemporary politics; being literate, having access to certain locations and by implication owning property were all *de facto* conditions for participation in the bourgeois

⁹ J. Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Cambridge, 1989), pp. 25-26. C. Calhoun, 'Introduction', in C. Calhoun (ed.), *Habermas and the Public Sphere* (London, 1992), pp. 1-50 provides a useful overview.

¹⁰ Habermas, *Structural Transformation*, pp. 51-56.

¹¹ *Ibid.*, pp. 14-26.

¹² *Ibid.*, p. 85.

¹³ See A. Raffe, *The Culture of Controversy: Religious Arguments in Scotland, 1660-1714* (Woodbridge, 2012), pp. 3-12 for a very helpful overview of some of the problems in using the Habermasian public sphere as a point of departure. Raffe also highlights the numerous difficulties for a student of Scotland in drawing upon scholarship which relates solely to England. K. Bowie, *Scottish Public Opinion and the Anglo-Scottish Union, 1699-1707* (Woodbridge, 2007), argues for a public sphere in early eighteenth-century Scotland.

¹⁴ J. V. H. Melton, *The Rise of the Public in Enlightenment Europe* (Cambridge, 2001), p. 12; J. A. Downie, 'Public and Private: The Myth of the Bourgeois Public Sphere', in C. Wall (ed.), *A Concise Companion to the Restoration and Eighteenth Century* (Malden, 2006), pp. 58-79, at pp. 65-68.

¹⁵ Melton, *Rise of the Public*, p. 10.

¹⁶ For an overview of its use by historians of early modern England see Withington, 'Public Discourse', pp. 1021-22.

public sphere.¹⁷ Others have suggested that the rational-critical nature of the debate which characterised the public sphere was never a historical reality.¹⁸ Others still have pointed out that the nobility were just as likely as the bourgeoisie to engage in such debates and shape public opinion, increasing the distance between the bourgeoisie and the rest of the population rather than liberating everyone to engage in political discourse.¹⁹ Many of these modifications and criticisms have been concerned with who was able to use the public sphere and where it could be found. Modernist historians and theorists have argued that a number of different 'subaltern counter-publics' are necessary to accommodate the greater political participation which characterises their period.²⁰ By detaching the public sphere from public opinion, Natalie Mears has argued both for situated public spheres and an unsituated political discourse, which characterised political relations in the reign of Elizabeth I.²¹ More recently, it has been argued that in England there existed the potential for episodic, post-Reformation public spheres, in which publics could be mobilised both by those who opposed the regime of Elizabeth I, and by the regime itself.²²

Central to all of these arguments is the relationship between the state as public authority, and the groups of private individuals with which it interacted.²³ Habermas argued that in the Middle Ages this relationship was qualitatively different, due to the fact that there was no distinction between the public and private spheres. Instead, kings and lords publicly represented their authority to their people, through ritual, display and repertoire, while the people passively observed it.²⁴ While this 'representative publicness' certainly was an important feature of political authority in fifteenth-century Scotland Habermas's model does not give a complete picture. Although the distinction made between public and private

¹⁷ E.g. Downie, 'Public and Private', pp. 69-70; M. P. Ryan, 'Gender and Public Access: Women's Politics in Nineteenth-Century America', in Calhoun (ed.), *Habermas and the Public Sphere*, pp. 259-88.

¹⁸ E.g. S. Susen, 'Critical Notes on Habermas's Theory of the Public Sphere', *Sociological Analysis*, 5 (2011), pp. 37-62, at p. 54; Melton, *Rise of the Public*, pp. 8-9; Downie, 'Public and Private', p. 73.

¹⁹ Melton, *Rise of the Public*, p. 11.

²⁰ The phrase is Nancy Fraser's, in 'Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy', in Calhoun (ed.), *Habermas and the Public Sphere*, pp. 109-142, at p. 123. See also G. Eley, 'Nations, Publics and Political Cultures: Placing Habermas in the Nineteenth Century', pp. 289-339, in the same volume.

²¹ N. Mears, *Queenship and Political Discourse in the Elizabethan Realms* (Cambridge, 2005), p. 10-11, pp. 181-203.

²² P. Lake and S. Pincus, 'Rethinking the Public Sphere in Early Modern England', in P. Lake and S. Pincus (ed.), *The Politics of the Public Sphere in Early Modern England* (Manchester, 2007), pp. 1-30, at pp. 3-9.

²³ Some of these arguments are helpfully laid out in Susen, 'Critical Notes', pp. 37-62.

²⁴ Habermas, *Structural Transformation*, pp. 5-14.

authority is indeed problematic, the imperative to exercise authority for the common profit meant that a dialogue with the governed was inevitable.²⁵

Harold Mah, writing on the eighteenth century, has highlighted an aspect of the public sphere which he suggests has not been given enough attention by historians: its function.²⁶ He argues that historians have 'rhetorically spatialized' the public sphere, thinking of it as a 'domain of free expression and argument that is accessible to any social group'.²⁷ Instead, he suggests, its purpose was 'to fuse persons into a unitary, collective subject: no longer a 'public' sphere, but now 'the public'.²⁸ It was this public which had political authority, rather than any particular group who expressed themselves within the public sphere. In fact, Mah argues, the public sphere functioned by rendering the particularity of a group invisible, allowing it to construe itself as abstract, and hence universal.²⁹ This was why an idealised rational-critical debate was necessary; it allowed the 'abstract universality' of those who participated to supersede personal interests.³⁰ The public sphere was not a location or an institution, therefore, but a fiction. Emphasising group particularity through public participation in politics would, by necessity, cause that group to appear as a 'special interest', rather than 'the public' itself.³¹ The problem facing historians, as Mah sees it, is 'to work out how certain groups are able to render their social particularity invisible and therefore make viable claims to universality, while others are consigned to public performances which end up proclaiming their social particularity.'³² If representative publicness was a state which could co-exist with the public sphere in the modern period, as Mah suggests, it seems reasonable to ask whether this was also true in the later fifteenth century.

Claiming any such thing is rendered immediately rash by the fact that the word 'public', as a noun, does not enter the Scots language until well into the seventeenth century.³³ No group, therefore, could possibly have aspired to construe itself as 'the public' even before

²⁵ Watts, 'Pressure of the Public', p. 172, which argues that 'a government which subjected everyone to its supposedly communitarian rule...would in return have to deal with a community comprising everyone.'

²⁶ H. Mah, 'Phantasies of the Public Sphere: Rethinking the Habermas of Historians', *Journal of Modern History*, 72 (2000), pp. 153-82.

²⁷ *Ibid.*, p. 154. Mah connects this to an interest in the politics of identity.

²⁸ *Ibid.*, p. 155.

²⁹ *Ibid.*, p. 168.

³⁰ Habermas, *Structural Transformation*, p. 54; Mah, 'Phantasies of the Public Sphere', p. 168.

³¹ Mah, 'Phantasies of the Public Sphere', p. 166.

³² *Ibid.*, p. 168.

³³ *DSL*, public, n.

capitalism, coffee houses or the rise of the nation-state are considered. Nevertheless, as is well known to scholars working on the later Middle Ages, claims to universality were far from absent; in fact they were ubiquitous.³⁴ Two are particularly important in the context of the current work. The first is the equivalence between the king counselled, the crown, the kingdom and the people.³⁵ In Scotland, as in England, this was given a particular inflection by the relationship of the king to parliament, although this was certainly not the only important dynamic. The second is the relationship between the urban *communitas*, the council and officers who ran it, and the members who comprised it.³⁶ Both of these were underpinned by ideas from Roman law, customary law and Aristotelian thought. They also overlapped and interacted with each other. The rest of the thesis will set out these arguments in detail. Here it is important to note that ‘the crown’ and ‘the realm’, or in the urban context ‘the community’, were used in much the same way as was ‘the public’ in later periods. These concepts were imbued with political authority in their respective contexts, could be appropriated by particular groups seeking to construe themselves as universal, and could not be successfully claimed by those who did not already have a fairly large amount of political power. While the ideal of rational debate was essential for the Habermasian public sphere, its function was to generate consensus. Consensus was already the medieval ideal, and so political arguments centred not on ‘public opinion’, but on who could most convincingly act for the common good of the group.³⁷ The prevailing political circumstances and the social status of the participants were undoubtedly very different in each case, but the underlying mechanism arguably remained the same; it allowed a group of individuals to act as the whole political body. While this argument should logically lead to a regnal sphere relating to the kingdom, and a corporate sphere relating to the towns, this quickly becomes needlessly convoluted, particularly once the relationship between town and crown is considered. Instead it is better to think in terms of a public domain which comprised both mechanisms. This is in keeping with a political discourse which did not draw a distinction between the public and private realms and which could, on occasion, employ the *res publica*

³⁴ Withington, ‘Public Discourse’, pp. 1020-27, makes the case that ‘medieval ideas of political corporeality’ survived into the seventeenth century in England, and were integral to the development of public discourse.

³⁵ This relationship is explored in detail in Kantorowicz, *King's Two Bodies*.

³⁶ A third is certainly the relationship of pope, council and church which formed the subject of the Conciliarist debates in the earlier part of the fifteenth century, but those arguments fall outside the scope of the current work.

³⁷ This is not to say that medieval people were any less rational than modern people in practice. In a world where weapons were omnipresent and legal restraints relatively limited placing consensus at the heart of politics was rational indeed.

as a structure complementary to the kingdom. While this designation risks increasing the level of rhetorical spatialization highlighted by Mah, it is suggested that such spatialization is less inappropriate to the fifteenth century, when representative publicness was still a central feature of political authority, than would be the case in later periods, and will work well as long as the function of the public domain is borne in mind.

Common Knowledge and the Law

As in the modern period political authority relied upon the generation of common knowledge in order to function effectively. There were two different ways in which common knowledge could be generated in fifteenth-century Scotland, and while the distinction will not be dwelt upon overmuch throughout the thesis it is helpful to make it here. The first was the 'performance' of politics.³⁸ This encompasses ritual, ceremony and other political actions undertaken as part of the process of legitimising political authority, and relates closely to the Habermasian idea of representative publicness.³⁹ The use of space was central to these actions, and their meaning and audience will shortly be discussed.⁴⁰ The second way common knowledge could be generated was discursively, through that which people communicated to each other.⁴¹ This is, of course, trickier to track through the available sources, but it was nevertheless absolutely central to the smooth running of politics in the

³⁸ A related, and very interesting, discussion on the 'public scene' can be found in J. McGavin, *Theatricality and Narrative in Medieval and Early Modern Scotland* (Aldershot, 2007), pp. 15-40. It is discussed further below, p. 167.

³⁹ Ritual has long been an important subject for the study of medieval political culture, for example G. Koziol, *Begging Pardon and Favour: Ritual and Political Order in Early Medieval France* (Ithaca, 1992); P. Arnade, 'City, State and Public Ritual in the Late-Medieval Burgundian Netherlands', *Comparative Studies in Society and History*, 39 (1997), pp. 300-19; D. Ditchburn, 'Ritual, Space and the Marriage of James II and Mary of Guelders, 1449', in F. Andrews (ed.), *Ritual and Space in the Middle Ages* (Donington, 2011), pp. 179-96. Very little attention is given here to royal ceremonies, which are the subject of Lucinda Dean's recent thesis, 'Crowns, Wedding Rings and Processions'.

⁴⁰ The theory of space as an analytical tool can be found in M. De Certeau, *The Practice of Everyday Life* (Berkeley, 1984). In thinking about its use I have found helpful S. Gunn, 'The Spatial Turn: Changing Histories of Space and Place', in S. J. Gunn and R. J. Morris (eds), *Identities in Space: Contested Terrains in the Western City since 1850* (Aldershot, 2001), pp. 1-14. L. O. Fradenburg, *City, Marriage, Tournament: Arts of Rule in Late Medieval Scotland* (Madison, 1991) emphasises space, and foregrounds theoretical perspectives.

⁴¹ Relating to the discursive dimension of publics see, for example, G. A. Hauser, *Vernacular Voices: The Rhetoric of Publics and Public Spheres* (Columbia, 1999); G. Baldwin, 'The Public as a Rhetorical Community in Early Modern England', in Withington and Shepard (eds), *Communities in Early Modern England*, pp. 199-215; J. Coleman, *Public Reading and the Reading Public in Late Medieval England and France* (Cambridge, 1996), which outlines the very helpful idea of medieval auralty, discussed below, p. 168.

later fifteenth century. These two methods were not discrete, but interacted in a number of different ways.

It first must be established that common knowledge was indeed an idea with utility in the political practice of later fifteenth-century Scotland, and this can be done through examination of three key words found within the records of parliament and the records of Aberdeen Burgh Council: 'notourlie', 'opinly' and 'public'. The first of these is an adverb meaning 'openly, publicly, as a matter of common knowledge'.⁴² It can also be found in the adjectives 'notour' and 'notorious' which describe that which is commonly known, but with stronger connotations of wrongdoing.⁴³ 'Opinly' is an adverb describing that which is done 'in public; without concealment or secrecy' or that which is known to all.⁴⁴ It is worth taking some time to note some of the different senses of the word 'public' as an adjective.⁴⁵ The first is 'Of, pertaining or belonging to, or a charge on, the community or nation as a whole'. Closely related is 'Of a functionary: Authorized by, serving, or representing the community as a whole'. Notaries public are an obvious example of this, and their importance is discussed below. A second definition suggests a spatial dimension to the word: 'Open to the attendance, access or use of the community as a whole; generally accessible, visible or available; also, publicly frequented', while another pair of ideas can be found in the following definitions: 'Of writings, records, edicts, and the like: Accessible to public knowledge, by publication or official promulgation' and 'Of announcements, readings or the like: Delivered to or before the whole community or in public'. Finally, 'Of misconduct or misfortune: That which is done or happens without concealment or that is generally known; 'open' or notorious'. These definitions all suggest a group of people, or an entity, to which the adjective 'public' applies, providing an alternative notional entity to the early modern 'public'. The composition and boundaries of any such entity would, in concrete terms, have varied with the circumstances, and in most of the following examples it is implied rather than stated. Together these definitions show, however, that 'that which was commonly known', or common knowledge, was a construct central to fifteenth-century justice, and therefore to the exercise of legitimate authority.

There are many references within the records of parliament to ideas of notoriety. In 1443 it was decided that 'na persone the quhilk is notour spulyear, distrubillar or invasar of haly

⁴² *DSL*, *notorly*, *adv.*

⁴³ *DSL*, *notour*, *adj.*, *notorious*, *adj.*

⁴⁴ *DSL*, *opin*, *adv.*

⁴⁵ All following definitions from *DSL*, *public*, *adj.*

kirk, no nane agaynis quhom process beis led of cursing, be ressaifit in the kingis castellis nor placis nor in his presence, no admittit to consal or parliament', suggesting that the fact the previous behaviour was known was enough to forbid entry.⁴⁶ Likewise, in 1458, an act of parliament decreed that

gif ony of [the king's] officiaris as schirefis, maris, bailyeis, crownaris, serjandis, provestis of burowis and thar ministeris, baith to lande ande burghe, be fundyn negligent or fautyce in the execucione of thar office, and it may be lauchfully provit on him or notourly kende, gif the saide office pertenyys to him in fee and heritage he sall tyne his office and the profettis tharof for ane yer and a day, ande be punyst be the king in his persone and gudis efir the quantite of his trespass...⁴⁷

It can be inferred from this example that a formal legal process was not necessary to establish the guilt of the accused if the argument could be successfully made that his misdeeds were common knowledge. This holds true for an example in Aberdeen in 1484. In resolving a dispute between Sir Andrew Gray and Walter Young, a chaplain, 'anent the debate movit apone the alterage of Sanct Michale', the council decided that Young was to be made secure in a chaplaincy worth 'ten merkis or above' and, listing other conditions, stipulated that he was to

Remain and mak service in the quere daily...and sall nocht absent himself thairfra without ane lachful or sufficient excusacion that salbe sene resonable to the alderman and consale of the toun. And gif he at ony tyme wilfully absentis himself fra his service, as said is, without license of the toun and resonabil excusacion that be notourlie knawin be the toun, than the said pensiounis sal vaik and be at the disposicion of the giffaris.⁴⁸

Again, it was required that any reason given for Young's absence should be a matter of common knowledge within the town, and in particular, one suspects, known to those who comprised the council, rather than taking him at his word.

In 1455 a raft of legislation was enacted in advance of James II's English campaign. Much of it was intended to establish the actions that would be considered treasonous, and the consequences which would follow, and so the acts unsurprisingly invoke the idea of common knowledge in much of their business:

Item gif ony Scottis man dois ony tresone, that is to say warnys of the riding of ane hoist or ony Scottis man to do harme in Inglande or to Inglismen and it may be

⁴⁶ RPS 1443/11/2.

⁴⁷ RPS 1458/3/24.

⁴⁸ *Abdn Counc.*, i, p. 40.

opinly knawyne apon him, he sall furthwithe haif the common law ande be hangyt and drawyn and his gudis eschet.⁴⁹

Item gif ony persone or personis be sklandirit or suspect of tresone thai salbe tane and remane in firmance and thar gudis undir sikkir borowis quhill the tyme that he haif sufferyt law or maide ane assise quyt or foule.⁵⁰

Item it is ordanyt that quhaso ony radis ar maide in Inglande that thir saide statutis be delivryt to the hedis men and at opinly thai ger thame be maide knawin till all thame that passis with thame that nane of thame excuse or assonye th[rough] necligensse, etc.⁵¹

In the first example it is stated that if it is openly known that a man commits treason this is sufficient grounds for punishment and execution, raising some interesting questions about how this knowledge is produced and verified. This was intended to have a deterrent effect in order to maintain order in the ranks, but it also shows the importance of ensuring that well-known misdeeds did not remain unpunished. The second example demonstrates the difference between common knowledge and slander. While common knowledge was sufficient for action to be taken, slander here suggests the accusation of a very small number of people, possibly just one, and the matter would therefore require further investigation before it could be settled. The final act gives responsibility to the 'hedis men' of the raiding parties to ensure that all of their soldiers were aware of the statutes, by making them publicly known, so that no treason laws would be broken through ignorance. By implication, the legislation also safeguarded against raiders claiming ignorance if caught in the act. Together these acts show how important it was for the men concerned to be aware of what was expected, and for royal commands to become established as common knowledge, so that action could be taken against individuals who were found to have broken them.

The need for openness is also evident in burgh politics. In 1448, when John Voket, bailie of Aberdeen 'avisetly oute of courte yheide [went as the leader] to the merkate corsse and opynly proclamyt the land that quhilun Roger Williamson dwelt in...to be sald as movable gude til ony that wald by [it]...and this was done before the hale multitude in the merkate as for the first dai of this processe.'⁵² This is again a legal process, and was required to be made public for two reasons; firstly in order to transmit the information regarding Williamson's property to the burgh inhabitants, but also, and just as importantly, to make the legal process legitimate. The act of proclamation was integral to the legality of the action, and the

⁴⁹ RPS 1455/10/3.

⁵⁰ RPS 1455/10/4.

⁵¹ RPS 1455/10/13.

⁵² *Abdn Counc.*, i, p. 17.

location in which it was carried out was an important constituent part. The legitimacy of Voket's action rested not only on his authority as bailie, but also on the fact that he exercised that authority in a way which conformed to common expectations of what a bailie ought to do. There would be no point in leading people to the back of a burgage plot in order to make the proclamation; even though the information given would be exactly the same, and Voket himself would retain all the authority of his office, the location of the market cross bestowed legitimacy upon the announcement in a way that was lacking from other locations. While the dissemination of the legislative content of public proclamations was certainly the reason that they were made, they just as certainly contained a symbolic element which was arguably equally important. It was the use of the market cross which allowed the content of a proclamation to be recognised as common knowledge, and this claim could not be made without the ritual having taken place, and having taken place in that location.

Legitimate authority and its public enactment were therefore inextricably linked. Contemporary ideas of good governance stated that rulers should not exercise their authority arbitrarily, and those who did so left themselves open to accusations of tyranny.⁵³ The enactment of authority through public performance can be clearly seen in the legal process of forfeiture, recorded in the parliament records. There are many examples to be found in the fifteenth-century records, but arguably one of the most politically important, and dramatic, was the attempted forfeiture, by James III, of his brother Alexander, duke of Albany in 1479.⁵⁴ Albany was hostile towards the king's policy of alliance with England, and he became something of a focus for resistance to James's deeply unpopular kingship throughout the 1470s.⁵⁵ This culminated in a failed coup in 1482, led by Albany.⁵⁶ In March 1479, after Albany failed to attend parliament, James took the field and besieged the castle of Dunbar which Albany was holding against him. At some point during the siege Albany escaped and fled to France. In October 1479 parliament was called and Albany indicted there for treason. Although the process of forfeiture was carried out, the estates would not agree to sanction the decision, and the business was continued until the following January.⁵⁷ It is the process itself that is relevant here.

⁵³ Mason, 'Kingship, Tyranny and the Right to Resist', pp. 17-18.

⁵⁴ *RPS* 1479/10/7.

⁵⁵ Macdougall, *James III*, p. 159-60.

⁵⁶ *Ibid.*, pp. 191-93.

⁵⁷ *Ibid.*, pp. 160-64. In fact Albany was not forfeited until 1483. *RPS* 1483/6/13.

The record is in seven parts. It begins by noting that 'oure said souveraine lord enterit in his tolbuthe of Edinburghe, sitting in his estate riale and his thre estatis gaderit and assemilit...Hector of Meldru[m], masare, schiref of Edinburghe, Berwic and Dru[m]fres present and gert reide in jugement lettres of summondis under the testimoniale of oure souveraine lordis gret sele'. The mace-bearer, or macer, was an officer of arms who delivered royal commands and summonses and uttered public proclamations.⁵⁸ The letter itself follows. In it, Albany is accused of various treasonable activities carried out 'against our majesty and royal authority' and 'against the public good [*res publica*] of the realm', linking the two together.⁵⁹ The officers of arms are instructed to summon Albany to appear before parliament 'by apprehending him personally if you are able to come upon him, otherwise at the castle of Dunbar and the castle of Lochmaben by public proclamation [and] at our burghs of Edinburgh, Dunbar, Berwick and Dumfries, so that this summons can likely come to his notice'.⁶⁰ This is particularly interesting because Albany was known to have been in France at the time of the summons, and so there could have been no expectation, in this instance, that the enactment of the legal process was going to have the stated effect. It is also relevant that there are so many locations in which the proclamation was to be performed; part of the purpose of the proclamation was to make public the fact that Albany had been summoned, presumably to deter any who sought to aid his cause. The summons is carried out both in front of the duke's residence, Dunbar castle, and at Dunbar market cross, in the administrative centre of his regality jurisdiction. It is difficult to imagine, however, that the only way Albany's allies might have been made aware of the forfeiture proceedings brought against him was by royal proclamation; a development of this magnitude would undoubtedly have become common knowledge through men discussing it with each other. It is suggested that this was not the main purpose of making such a process public in this way. Instead, once the proclamations had been made correctly, the crown could claim that the action was common knowledge, and could therefore implement sanctions if individuals, in this case Albany or his supporters, refused to comply with the law. The letter continues by listing Albany's offences and warning that if he does not compear, the king will 'nevertheless proceed with the administration of justice in the aforesaid matters', showing

⁵⁸ *DSL*, Macer, n. For the officers of arms see K. Stevenson, 'Jurisdiction, Authority and Professionalisation: The Officers of Arms of Late Medieval Scotland', in K. Stevenson (ed.), *The Herald in Late Medieval Europe* (Woodbridge, 2009), pp. 41-66.

⁵⁹ *RPS* 1479/10/7, *contra nostram maiestatem et auctoritatem regiam; contra rem publicam regni nostri*.

⁶⁰ *RPS* 1479/10/7.

that Albany's presence was not necessary for any part of the legal process.⁶¹ Finally, the officers are instructed to return with evidence of having carried out their duties.

This evidence takes the form of a statement by Meldrum. On the twenty-fifth day of May Meldrum rode to the castle of Dunbar

and thar at the yettis of the sammyn, and at the market croice of Dunbar the sammyn day, and at the market croice of Edinburghe and Southberwik the xxiiijth day and the xxvjth day be oppin proclamacioune, I summonde peremptourly Alexander Steuart, duk of Albany...to comperre personaly at Edinburghe in [the] parliament...before thar witnessis Schir William of Knollis, commandoure of Torfichin, Johne Steuart of Cragy, James of Crechtone of Felde, Ross herrald, Alexander Bonkle, Thomas Swift, Robert Vaus, Thomas Hannay and Andro Harwod', notare, with uthir divise, and for the maire witnessis I haf affixt my sele.⁶²

A similar statement by Unicorn Pursuivant confirms that the same procedure took place in Lochmaben and Dumfries. This is followed by three public instruments, made by the notaries named, attesting to the fact that they witnessed the proclamations. The third instrument begins thus:

By this present public instrument let it be plainly known to all that in the year from the Lord's incarnation 1479...on 24 May...in the presence of me, a notary public, and the subscribed witnesses, personally appeared a provident man, Unicorn, our aforementioned supreme lord the king's pursuivant and sheriff of Dumfries...at the market cross of the burgh of Lochmaben, and similarly at the castle of Lochmaben, and there, by virtue and tenor of a certain royal letter of summons...at the market cross of the said burgh, by public proclamation, and similarly beneath the gates of the said castle, publicly, in a loud and intelligible voice, lawfully and peremptorily summoned an illustrious and distinguished man Alexander Stewart, duke of Albany... - granted it was not possible to obtain his presence - to compear in person at Edinburgh before our aforesaid supreme lord the king in his next parliament.⁶³

It concludes by stating the place, date and time of the proclamation, and listing the witnesses, and is followed by the subscription of the notary, which confirms that he

was present in person...[and] saw, understood and heard all and sundry the aforesaid things to happen, and took down a note of them, and from it I have drawn up the present public instrument, written by my own hand, [and,] as requested, I have signed with my usual and customary sign and name, in faith and witness to all and sundry the aforesaid things.⁶⁴

⁶¹ RPS 1479/10/7.

⁶² RPS 1479/10/7.

⁶³ RPS 1479/10/7.

⁶⁴ RPS 1479/10/7.

Finally, it is recorded that since Albany had been summoned but had not appeared James, 'with full consent of his thre estatis and at the gret raquest, instance and supplicacioune of thame', continued the proceedings until January next.

Quite clearly, it was not enough for the officers simply to read out the proclamation. They had to confirm their actions in writing, and the proclamations had to be both witnessed and documented independently by notaries public. Conversely, it was also insufficient simply to record a private recitation of the charges. The public performance of the summons was integral to the legitimacy of the forfeiture process, and it was the enactment of the process which allowed the crown to claim that knowledge of the summons could have been expected from everyone henceforth.

In fact, it appears that it was not necessary, from a legal point of view, to ensure that the lord being forfeited had knowledge of the summons. In 1475 James III forfeited John MacDonald, lord of the Isles, depriving him of the earldom of Ross.⁶⁵ The process is almost identical to that enacted for Albany, with the difference that MacDonald was indeed forfeited by parliament and this final part of the procedure is also recorded.⁶⁶ There was also an important difference in one other respect; MacDonald had not fled the king's wrath, but was firmly ensconced in his castle at Dingwall, at the heart of the earldom. As a result, the letter of summons instructing Unicorn pursuivant is phrased somewhat differently to that which ordered Albany's summons:

We commission you and order that you summon lawfully, and peremptorily, before witnesses, John, earl of Ross and lord of the Isles - by apprehending him personally if you are able to come upon him, or by public proclamation at the castle of Dingwall, if a safe approach to him may be made, otherwise at the cross and marketplace of our burgh of Inverness, so that this summons can likely come to his notice.⁶⁷

Presumably the summons would be much more likely to come to MacDonald's notice if it were made in front of his castle. Dingwall and Inverness are over fourteen miles apart, and so summoning the lord at the latter could hardly be claimed to have the same effect in practical terms. Symbolically, however, it was almost identical and this letter represents a tacit acknowledgement that the proclamation of the Unicorn pursuivant was not likely to be the method by which a lord had first knowledge of the instigation of forfeiture proceedings against him. As long as it was enacted correctly at a market cross or outside a castle it could

⁶⁵ Macdougall, *James III*, pp. 129-30.

⁶⁶ *RPS* 1475/26-30, parliamentary forfeiture at 1475/30.

⁶⁷ *RPS* 1475/26.

be considered common knowledge for legal purposes, and the action was legitimate. As it happened, the proclamation was made outside Dingwall castle, although interestingly Unicorn's statement and the notary's instrument differ as to which of them actually read it out.⁶⁸

For the purposes of substantiating crown claims to common knowledge it was the notarial instruments which provided the vital evidence. In the unlikely event that either magnate should have chosen to contest his summons on the basis that he had no knowledge of it, the crown would presumably produce the relevant instrument and refute his claim, based on the record of the proclamation. This is surely the reasoning behind the oft-quoted statute of 1469, passed in the first parliament of James III's majority, which stated that

it is thocht expedient that, sen oure soverane lord has ful jurisdictione and fre impire within his realme, that his hienes may mak notaris and tabellionis, quhais instrumentis sal have ful faith in all contractis civile within the realme. And in tyme cummyn that na notaris maid nor tobe maid be the imperouris autorite have faith in contractis civile within the realme les than he be examinyt be the ordinare and appreivit be the kingis hienes....And atoure [further] that the notaris tobe maid be oure soverane lorde be examinit before thair ordinaris bischopis and have certificatioune of thame that thai ar of faith, gude fame, science and lawte according for the said office.⁶⁹

As Mason has argued this claim to 'fre impire' was one of several measures undertaken by the crown in the early part of James III's majority as part of a political strategy to enhance the Scottish kingship with ideas of imperial authority.⁷⁰ This strategy has been much discussed by historians in the context of the tense relations between James III and his nobility, but less so in the context of the legislation itself.⁷¹ One reason why it was so important for the crown to remove imperial authority from notaries public was that their legal instruments represented the final word in claiming political legitimacy in the public domain, and this was an integral part of asserting the authority of the crown. Allowing the notaries who produced these instruments within the kingdom to be subject to a higher temporal authority than the king would be wholly incompatible with claims to imperial kingship and even if, on a practical level, the work of the notaries remained broadly similar

⁶⁸ RPS 1475/27.

⁶⁹ RPS 1469/20.

⁷⁰ Mason, 'This Realm of Scotland is an Empire?', pp. 73-91.

⁷¹ Macdougall, *James III*, pp. 88-89; Tanner, 'James III', in Brown and Tanner (eds), *Scottish Kingship*, pp. 209-231, at pp. 213-15; cf. L. MacFarlane, *William Elphinstone and the Kingdom of Scotland 1431-1514: The Struggle for Order* (Aberdeen, 1995), pp. 302-03, which highlights the increasing number of lay notaries in the later fifteenth century.

after the enactment of the legislation, control of the public domain would now rest with the crown.⁷² The act is recognition by the crown that legal jurisdiction over that which was common knowledge was essential for political authority, particularly that with imperial pretensions. This appears to be borne out by the only prosecution attempted as a result of the legislation. In 1478 Alexander Rait was

summond and callit till answeere to ouer souveraine lorde the king for the tresonable usurpacioune uppone his hienes in the pretendit legittinacioune of James Egir, bastarde, in the name and autorite of the emperoure, contrare to oure souverain lordis croune and majeste riale...⁷³

The rhetoric of usurpation of royal authority will be discussed further in chapter four, but it is clear that an action such as 'pretendit legittinacioune' could be regarded as a direct affront to the crown. This is further reinforced by another statute regarding false notaries, from 1504. It purported to address the 'diverse and greit complentis maid be oure soverane lordis liegis that thair is sa mony fals notaris in the realme that it is dred throu thair falsset [deceit] that trew men sall nocht be sicker of thair heretage nor clerkis of thair benifices'.⁷⁴ The solution presented was that

all bischopis and ordinaris mak all the notaris within thair dioceis tobe callit at a convenient day and place befor thame and mak thame be examynate upoune thair suffiencie and knowlege, and als tak inquisitioune how thai have demanit [conducted] thame and of thair fame; and the personis that thai find culpable that thai deprive thame of thair offices and punyse thame for thair faltis according to thar demeritis, and the personis that thai find acceptable that thai send thame with thair writtingis to the kingis hienes, quhilk sall depute certane personis to examyn thame, and gif thai be ganand [suitable] to mak thame regale, gif thai be nocht maid regale of befor.⁷⁵

The importance of the public documents of the notaries to the smooth functioning of political relations is evident. On the one hand, there were very practical reasons why notaries should be of sufficient knowledge and of good reputation to carry out their duties. On the other, both James III and James IV saw fit to tie the work of the notaries to royal authority as closely as possible, whether by embedding a proclamation of royalist ideology within a statute governing their activity, or by granting 'regale' status to those found to be

⁷² For one of the earliest surviving notarial books see *The Protocol Book of James Young, 1485-1515*, ed. G. Donaldson (Edinburgh, 1952).

⁷³ RPS 1478/4/4.

⁷⁴ RPS A1504/3/108.

⁷⁵ RPS A1504/3/108.

acceptable. In this way, the crown had an administrative interest in the documents by which common knowledge of transactions regarding 'heretage' or 'benifices' was proven.

Another particularly important example of how the public domain could be used to structure common knowledge can be found in the practice of horning. According to the *Ordo Justiciarie*, which rehearses the process for putting to the horn those who do not compear at the justice ayre,

The justice sall at the market cross gare blaw out on him thris with a blawing horne and tharefter say We do you to wit that A de B is at oure soverane lord the kingis horne and at his landis and gudis ar eschaet to the king les than he cum within xl dayis etc.⁷⁶

In 1450, legislation regarding 'oppyne reffis and spulyeis', or violent robberies and theft committed publicly, specified that if the guilty parties, having been tracked down by the sheriff, refused to make restitution, the sheriff would 'blaw out on thaim the kingis horne as rebellouris and punice thaim as sic rebellouris opinly to the lord luftennande'.⁷⁷ The act further records that 'giff sic trespassouris put to the kingis horne makis na restitutioun na fulfilling of the actis...that fra thyne furthe thay persounis be notourly cryit rebellouris to the kinge be the officiaris and as sic men suld be demanyt [dealt with harshly as a rebel]'.⁷⁸ This process has obvious parallels with that of forfeiture, in effect changing the status of the guilty party in relation to the king's authority, and ensuring that common knowledge of this change can be claimed by the crown. A similar piece of legislation, this time addressing slaughter, states that if the guilty party flees, the sheriff will 'putt his gudis under arrest, and than pas or send his deputt to the hede burgh of the schire quhar the slauchter is committit and be oppin proclamatioune at the market croce warne and charge the slaar, ane or ma as thai be, that thai cum to him within vj dais nixt tharefter'.⁷⁹ If this produces no result, the sheriff is to 'putt thaim to the horne ande denunce thaim the kingis rebellis and tak and eschete thare gudis, and mak warning to the nixt schireffis that sic persounis ar putt to the horne be him and charge thaim in oure soveran lordis name to do the samyn or ellis to tak and arrest thare personis, gif thai ma be apprehendit, and bring thaim to the law'.⁸⁰ While making public the search for a known murderer has evident utility in increasing the chances of tracking him down, the parallel benefit of proclamation, for the crown, is ensuring the

⁷⁶ APS, i, p. 708.

⁷⁷ RPS 1450/1/9.

⁷⁸ RPS 1450/1/9.

⁷⁹ RPS 1487/10/9.

⁸⁰ RPS 1487/10/9.

legitimacy of the action through the symbolism of the horning ritual. Only then can the sheriff take the goods of the accused. The process is recorded from the other side, in 1491, when the 'crewele slauchter of Robert Malysoun' was committed by four men of Edinburgh. As they could not be apprehended, the sheriffs

denunceit the said persouns our Soverane Lordis rebellis at the mercat croce of the said burgh and putt thame to the horne because thai ar fugitive fra his lawes for the said cryme, and chargeit thairfore all and sundry our Soverane Lordis lieges that nane of thame suld howse, herbery [harbour], resset, supple or internet with the saidis persounes under the payne of deid.⁸¹

Having carried out the process, the sheriffs knew that all had been warned - even those who were not there to hear the proclamation - and so punishments could be legitimately enacted upon anyone who harboured the fugitives.

While it was certainly important for the wider population to be aware of fugitives, it was just as important that people who had committed certain offences be allowed to atone for them, and this also had to be done in public. There are several examples, within the Aberdeen council register, of this kind of ritual penance. In 1463 Davy Patrikson was remanded in the tolbooth 'for rebellione done be him to the altherman', and then, on the following Sunday he was obliged to 'cum bar fute, with his gowne louse, and a candill of a punde of wax in his hande, to Saint Nicholace kirk in the tyme of the hee messe, and offir that candill thar to the altar and aske the altherman and his consaile forgifnes.'⁸² The record then states that he had to give a pint of wine to the kirk every week for a year and swear an oath that he would do no such rebellion again.⁸³ This ritual not only acted as a deterrent to others, but allowed the transgressor's repentance and punishment to be publicly acknowledged, so that the episode could be brought to an end. A similar enactment is recorded in 1467 when, after 'debatis and strublanche betuix William Vokat and Thomas Quelp', Quelp was ordered to 'syt done on his kne and tak the nakit knyff that he hurt the said William with in his hande, and opynly knaw that he has offendit til him, and deliver him the said kynf to do with it that he will.'⁸⁴ It was the insistence on Quelp's public

⁸¹ *Edin. Recs.*, p. 60.

⁸² *Abdn Counc.*, i, p. 24.

⁸³ *Abdn Counc.*, i, p. 24.

⁸⁴ *Abdn Counc.*, i, p. 27. The submission of Alexander MacDonald, Lord of the Isles, to James I in 1429, at which MacDonald, 'clad only in shirt and drawers' was obliged to offer a 'naked sword' to the king at the High Altar of Holyrood, has clear parallels to both of the above. *Chron. Bower*, vol. vii, p. 263; Brown, *James I*, p. 103; G. Neilson, 'The Submission of the Lord of the Isles to James I: Its Feudal Symbolism', *The Scottish Antiquary, or, Northern Notes and Queries*, 15 (1901), pp. 113-22.

acknowledgement of his crime which, along with several other conditions of restitution, allowed the matter to be resolved. While the actions of these men were highly symbolic, the community itself was not; it was the inhabitants of the burgh assembled in the church. This reflected the personal nature of the wrongdoing, and the need for the repentance and resolution to become common knowledge within the town.

All of these examples suggest that the power to generate common knowledge regarding justice was, unsurprisingly, the preserve of those in authority, whether at the level of burgh or realm. This right, to carry out matters of justice and to publicise decisions relating to it, was one of the most important components of political authority. The very fact that such performances required to be discussed, shared and repeated in order to be effective, however, created a space in which common knowledge could be generated and modified by others. Such knowledge was therefore not simply a symbolic construct, performed by those in authority to claim legitimacy, but had an active role in shaping the range of legitimate actions available. Asserting power over what became common knowledge was therefore not always a straightforward matter.

Reputation and Slander

Given the lack of both chronicle evidence and petitions for the later fifteenth century it is unfortunately very rare that speech acts are reported directly. The notable exception is the anonymous fragments found within the Asloan manuscript, known as the Auchinleck chronicle, which has an immediacy of tone and a familiarity with contemporary events which has led scholars to argue that it was written by someone with first-hand knowledge of the events it describes.⁸⁵ The chronicle will be discussed more fully in the final chapter, but there are two ways in which the chronicler draws upon common knowledge in his work. The first is by citing 'what men say'. In 1450, for example, a preserved corpse was found hidden within a wall in Dunfermline, along with a stone chest and silk clothes.⁸⁶ Having related the details, the chronicler adds that 'men demyt that it was a barne or cosing of sanct margaretis' due to the fact that the wall seemed to be older than the corpse.⁸⁷ The second

⁸⁵ It is printed as *Chron. Auchinleck*, and discussed in McGladdery, *James II*, pp. 116-24. I am very grateful to Dr McGladdery for sharing with me the edition of the chronicle to be included within her updated biography of James II, forthcoming.

⁸⁶ McGladdery, *James II*, p. 172.

⁸⁷ *Ibid.*, p. 172.

way the chronicler engages with common knowledge is by commenting on the reputation of various men. He states that Alexander, earl of Crawford 'was callit a rigorous man and ane felloun', while Sir Willam Keith 'was callit ane gentill knyght and a vertuos'.⁸⁸ Reputation was of almost unparalleled significance in the fifteenth century, in terms of practical politics, and is worth exploring in some detail.

Gilbert Hay, in the *Buke of the Gouvernaunce of Princis*, outlines several reasons why the maintenance of a good reputation is important to a king. On the subject of reputation in general, Hay states that 'there is na richness that may be comperit to gude fame and gude renoune, the quhilk quhen a king or prince has tynt [lost] throu mys-gouvernaunce he may nocht by it agayne for na richness.'⁸⁹ Princes ought to 'sett all thair besy cure and travail thaim to wyn honour and gude renoune in this warld' because 'gude renoune and gude fame is the beginning of wisdome and of understanding of gude wit', which leads to good government.⁹⁰ Having established the importance of reputation, Hay goes on to suggest two contexts in which a prince ought to be particularly proactive. 'It efferis to grete princis and grete lordis that thair gude renoune be wyde sawin and publist our all realmes and quhair thai ar knawin, sa that thai be lovit and prisit with all men to be of hie witt and of grete sapience', Hay advises.⁹¹ One method by which this might occur is also later suggested:

all noble princis, kingis and lordis [should] nuris marchandis and labouris and men of craftis, for that is the ryching of all realmes, and then bere thai the princis name evin as heraulds our all contreis of the warlde, quhilkis makis princis to have outhir gude los [renown] and honour or lak and dishonoure efter thair desertis.⁹²

These examples suggest not only that a good reputation could be advantageous in dealing with royal counterparts in other realms, but also that word was definitely capable of getting around. The second context in which Hay sees reputation as vital to a prince is closer to home:

It efferis nocht till a prince and namely till a king to be our [over] familiare na have our mekle hantying [association] na communication with his lauly subiectis and namely of villaine [low-born] na dispisand men that sone wald copy his maneris and fynd lak to him in his comunicacioun and speke thar of till otheris that war nocht

⁸⁸ McGladdery, *James II*, p. 163.

⁸⁹ Hay, *Gouvernaunce*, p. 69.

⁹⁰ *Ibid.*, p. 65.

⁹¹ *Ibid.*, p. 67.

⁹² *Ibid.*, p. 72.

spedefull, for our mekle syk hamelynes engenderis lichtlynes [arrogance toward] and vilipensioun [contempt] of princis.⁹³

While emphasising what the prince ought to do, Hay reveals the public domain in action, through which subjects can comment upon royal authority, thereby subtly altering it. The only solution to the problem of lowborn gossip, Hay advises, perhaps somewhat unrealistically, lies in the conduct of the king himself:

Understande wele that peple will speke lightly of lytill evyn [subject matter], and tharfore kepe the wele that thou mak na caus that suld geve thame mater na occasioun to speke agaynis the ony thing. And sa may thai say rycht [truthfully] nocht that may greve thy magestee, na yit nocht wirk na do agaynis the quhen there is na caus.⁹⁴

While Hay is undoubtedly discussing an ideal, and one which has been established long enough to be considered a commonplace, it presumably remains both of these things precisely because a good reputation was so important. It does not require a very great leap of the imagination to believe that merchants would boast or complain about their king while abroad, or that 'lauly' subjects were happy to gossip to each other about any perceived shortcomings in their monarch, and Hay implies that such things could have very real consequences. This is suggested by an act of parliament from 1425, regarding 'learis [liars] and tellaris of thaim', which ordered that 'all tayltellaris and lesingmakaris and tellaris of thaim the quhilk may engennyng dyscorcord be tuix the kyng and his pepill, quhar evir thai may be gottin, sall be challengit be thaim that poware hass and tyne lyff and gudis to the kyng'.⁹⁵ A lesing-makar was one who uttered false or slanderous accusations with the specific intent to prejudice the relationship between the sovereign and his lieges.⁹⁶

John Ireland, writing in 1490, takes a rather more scholarly approach to advising the king than does Hay, yet also maintains the importance of reputation. He argues that the king ought to 'gar wisly tak tent to thi heritage and to thi realme and lyf honourably thar upone, that this name, vertu and glori may be knawin and magnifiit in thi realme and in all partis'.⁹⁷ Ireland goes on to state another reason why good renown reflects well on a king:

The king and prince suld be vertuus to governe his awne persoune for an he can nocht do that he is nocht lik that he can vertuislie, eftir his office, governe a gret

⁹³ Hay, *Gouvernaunce*, p. 71.

⁹⁴ *Ibid.*, p. 76.

⁹⁵ RPS 1425/3/23.

⁹⁶ DSL, lesing-makar, n.

⁹⁷ Ireland, *Meroure*, pp. 134-5.

multitud and the hail peple...[he] suld be of sa honest conversacioun [conduct] that he suld be reput worthi to be preferrit to the laif [rest] of the peple.⁹⁸

By this account the people have a vested interest in the reputation of their king; it is one of the ways in which his suitability to govern can be assessed. While the options open to the 'gret multitud' for addressing the problem of a king who does not value his reputation are undoubtedly limited, the idea that the king's conduct has a real effect on the lives of the governed makes their propensity to comment upon it all the more understandable.

James III was a king who might justifiably be said to have had difficulties in maintaining a good reputation, and in 1473 the estates attempted to convince the king not to go on campaign by arguing that self-restraint would enhance his good renown.⁹⁹ In one of several advisements, the prelates argue that the king should

tak part of labour apone his persone and travel throw his realme and put sic justice and polycy in his awne realme, that the brute [report] and the fame of him mycht pas in uthiris contreis and that he mycht optene the name of sa just a prince and sa vertewsis and sa wele reuland his awne realm in justice, policy and peax, that uthiris princis mycht tak exemple of him and gif him credence in sic thingis as he sulde schew to thame tuiching the reuling and governing of thare realmz in peax and policy in the samyne, throw the quhilk name he mycht be grace of God be callit to gretare thingis thane is yit expresmit [expressed].¹⁰⁰

Such advice could only be presented as a plausible alternative to the king's wishes if two things are assumed. Firstly, that ensuring justice within his realm would earn the king a good reputation abroad, and secondly that such a reputation would give the king more influence in his dealings with other monarchs. While following such advice may have yielded little in practice, it is clearly not so implausible that it could not be used by the first estate of the realm, in parliament, in a matter of such importance.¹⁰¹ The extent to which the prelates expected their argument to affect their aims is another matter, although in the end James did not, in fact go on campaign.¹⁰² What is important here is that the rhetoric of

⁹⁸ Ireland, *Meroure*, pp. 135.

⁹⁹ RPS 1474/7/4-13. These acts, and their political context, will be discussed in greater depth in chapter four.

¹⁰⁰ RPS 1473/7/9.

¹⁰¹ Brendan Bradshaw argues that a concern for 'civil affairs, not foreign wars of aggrandisement' was one characteristic attributable to the prince more familiar to humanist discourse, who represented 'an embodiment of the values of Utopian *respublica*'. B. Bradshaw, 'Transalpine Humanism', in J. H. Burns (ed.), with M. Goldie, *The Cambridge History of Political Thought* (Cambridge, 2008), pp. 126-27.

¹⁰² James III's foreign policy in this period was multifarious and complex. See Macdougall, *James III*, p. 110-119, which argues that it was likely never the king's intention to see through his plans for invasion.

reputation was not simply a device of the mirrors but an idea with real utility, which had real consequences for the practice of politics.

This could also be said of the high level of importance placed upon reputation within chivalric culture. Katie Stevenson goes as far as to suggest that ‘the most important possession a knight could have was a good reputation’, and provides examples throughout Scottish literature from the fourteenth century to the sixteenth.¹⁰³ Within the period under discussion, the most prominent author is again Gilbert Hay, whose translation of Ramon Llull’s work he entitled *The Buke of the Ordre of Knychthede*.¹⁰⁴ Although a large amount of this work is taken up with discussion of knightly reputation, much of it is done so implicitly, by reference to virtues and good conduct. Hay does, however, give the example of Alexander the Great, who despised avarice and covetousness, ‘throu the quhilk renoune of fredome the souldiouris of his inymyes that ware avaricious and covatous come fra thame till hym and gert his company grow’, showing how a good reputation could, in an ideal world, have real practical advantages.¹⁰⁵ Hay is also at pains to prevent knights from attempting to mar the reputation of others, stating that

thai that ar thus envious takis fra othir men the gude that is nocht, na may nocht be, thairis, for thai wald pres thame [attempt] to reve thame thair honoure quhilk, quhen thai had gert them tyne, throu murmuracioune and envious langage of bakbyting [slander], that honour that thai tak fra thame may nocht cum to thame self. And by syk envy he dois mony thingis that ar discordaunt til his ordre.¹⁰⁶

Of the fifteenth-century chroniclers, it is Andrew Wyntoun whom Stevenson identifies as being most concerned with matters of chivalry, evident in his praising of knightly attributes and deeds of valour, Walter Bower being more attuned to his clerical audience.¹⁰⁷ Nevertheless, Stevenson notes that Bower did consider reputation to be crucial to those engaged in chivalric pursuits, and he recorded this in relation to several knights, such as Sir David Lindsay and Sir John Gordon.¹⁰⁸ Bower even noted that Patrick Hepburn of Hailes ‘desired an extension of the [fame of his name]’, although Bower attributes this to his being a ‘man of lofty spirit’.¹⁰⁹ This, if anything, underlines even more strongly how important such

¹⁰³ Stevenson, *Chivalry and Knighthood*, pp. 131-69, at p. 137.

¹⁰⁴ *Ibid.*, p. 145.

¹⁰⁵ Hay, *Knychthede*, p. 44.

¹⁰⁶ *Ibid.*, p. 47.

¹⁰⁷ For example Wyntoun’s description of Sir Andrew Murray. *Chron. Wyntoun*, vi, p. 97; Stevenson, *Chivalry and Knighthood*, pp. 135-40.

¹⁰⁸ *Chron. Bower*, viii, p. 4, pp. 37-8; Stevenson, *Chivalry and Knighthood*, p. 140.

¹⁰⁹ *Chron. Bower*, viii, p. 43; Stevenson, *Chivalry and Knighthood*, p. 140.

a reputation was to contemporary chivalric culture; the prouder the knight the greater the value placed by him upon his own renown. This is reflected in the Auchinleck chronicler's careful recording of reputation for posterity.

Reputation was not only important to kings and noblemen. As has been shown, the 1469 legislation on notaries public specified the importance of 'faith, gude fame, science and lawte' for those approved for the position. While this was in part due to their importance for crown authority, in most cases reputation was the only guarantee contemporaries had that a person was suitable to undertake a particular task or duty. In 1488, in order to attempt to address the ongoing problem of the coinage, an act of parliament decreed that the king 'deput a persoune that his hienes traistis be of lawte ande knowlage to be maister of his monye and bere the hale charge thareof, ande als that his hienes deput a trew wiseman of gude fame to be wardane of his cunye'.¹¹⁰ Selecting on the basis of reputation not only meant that the most suitable man filled the position, it also ensured a means of redress if the duties were not discharged adequately. In 1458 it was decided in parliament, regarding sailor merchants, that 'thar sail na persounis bot hable and of gud fame and at he haif at the lest thre serplaris of his awne gudis or ellis committyt till him or the awaill tharof, and at the saylaris in merchandice be fre men of burowis, induellaris within the burghe'.¹¹¹ This again underlines Hay's advice, suggesting that merchants were a real conduit for the transmission of information between countries, in this case by reflecting the king's reputation through their own conduct, rather than speaking of him to others. The condition of burgess status again provided both a likelihood of good conduct, and a means of redress by the crown if that conduct fell short of expectations.

This approach can be seen throughout burgh politics also, when councils had to choose men for positions of particular responsibility.¹¹² In Aberdeen, in 1441, the burgh council decided that there should be chosen 'twa men of gude cunnyng [skill] and knowledge [as] masteres of the commoune werk of the toun'.¹¹³ This was a position of some responsibility, involving the overseeing of men and control of a budget.¹¹⁴ In 1442, the council ordained that 'four discrete persounes' should be chosen 'to falk [deduct] the tax of men that has tholit skaith

¹¹⁰ RPS 1488/1/17.

¹¹¹ RPS 1458/3/11.

¹¹² This argument, and a related discussion in chapter three, has some parallels with Ian Forrest's work on trustworthiness, which I heard about when I attended a conference at which he spoke in March 2013.

¹¹³ *Abdn Counc.*, i, p. 7.

¹¹⁴ *Ibid.*, p. 7.

[endured financial loss] oft, as thai think speidful', something that might require more sensitivity than skill.¹¹⁵ And in 1452 it was decided that the alderman would choose 'certane weel set [appropriately serious] persounes to passe with him aboute the toune and devise quhat maner of stryngning sal be made [to the fortifications of the town], and in quhat places, and how the coste sal be tane and made'.¹¹⁶ It can be seen that different qualities were required for different positions, and that reputation would be the primary method of making judgments about who might be most appropriate for each. The merchant guild of Perth likewise decided, in 1483, that David Elder, because he ruined the goods he obtained for William Ker before Ker took possession of them, 'throw his negligens and sleuth', had to 'refund and recompense the said William thairof the scaith of the said gudis at the seich [sight] of lele, trew and unsuspect merchand men.'¹¹⁷ This again shows how positions of responsibility were only entrusted to those who were known to be worthy of them. While it could be argued that the status which these positions presumably conferred would make them more likely to be given out to friends and family of the burgh or guild officers, it is equally as likely that there would have been a genuine desire on the part of the council in question to ensure these tasks were undertaken effectively, and so getting the right man for the job would have taken priority.

For different reasons again, reputation was perhaps most important to members of the craft guilds. A reputation for quality products was essential not only for guilds to charge the maximum amount for their goods, but also to sell them abroad. Generating and protecting this reputation was therefore one of the reasons for their existence.¹¹⁸ This is discussed further in chapter two, but here it is sufficient to note that when the Edinburgh craft guilds began to proliferate, in the 1470s and '80s, the importance of maintaining the guild's reputation was often mentioned in the crafts' seals of cause, the documents of incorporation which granted rights and privileges to the guilds. The Edinburgh Hammermen, for example, petitioned for the right to have 'tua or thre of the worthiest maisters and maist of knowledge of the saidis craftis, quhilk sall haif powar, with an officiar with thame, to pas, serch and se all mennis work of the saidis craftis, gif it be sufficient in stuff and workmanschip, gude worth and hable work to serve the kingis lieges with.'¹¹⁹ Only the worthiest masters would

¹¹⁵ *Abdn Counc.*, i, p. 8.

¹¹⁶ *Ibid.*, p. 20.

¹¹⁷ *Perth Guild Bk*, p. 70.

¹¹⁸ G. Richardson, 'Craft Guilds and Christianity in Late Medieval England: A Rational Choice Analysis', *Rationality and Society*, 17 (2005), pp. 139-89, at pp. 143-44.

¹¹⁹ *Edin. Recs*, p. 48.

be in a position to undertake this responsibility, and presumably only they could command enough respect from the craftsmen for their judgments to carry weight. This level of oversight would ensure that the craft's reputation for quality remained intact.

The public domain was therefore of vital importance across a variety of legal and political contexts. Contemporaries relied upon the common knowledge generated within it for persuading kings, choosing officers, demonstrating knightly virtue and promoting both group and individual interests. Indeed, these things would have been impossible to achieve without such a space, in which the value of an individual's reputation could be gauged according to past actions. It stands to reason, therefore, that any attempt to tarnish one's reputation had to be addressed quickly, robustly and publicly. The Gild Book of Dunfermline gives many examples of the regulation of speech, although it is sometimes difficult to tell from the record whether the speech would be considered slanderous. In 1435 it is recorded that 'Thom Bray [was] in amerciament for wrang saying betuyx hym and John Yung' and that 'ilke day John Yung [was] in amerciment for wrang spech betuyx him and Thom of Bra.'¹²⁰ 'Wrangwys spekyn' is recorded again in 1436, this time coupled with 'wrangwys strykyn'.¹²¹ In 1446, Andro Hog and Johne Wricht's wife were each put in amerciament 'for thar ill langage ilkan till othir', with it being further recorded that Hog's punishment was also for 'his strublyn of John Wricht be word.'¹²² 'Foule spech' was punished by the guild court, with examples in 1435, 1454 and 1479, although this may not necessarily have been directed at an individual.¹²³ The merchants of Perth were no less susceptible to such behaviour. In 1460 William West was 'amerced in court ½ mk. for slander at the order of the dean', and in the same year Robert Barbour and Murdo Henrisoune were each escheated for slandering the other.¹²⁴ Back in Aberdeen, in 1490, it was decided that Christane Lilburne should 'cum in presence of the alderman, balyeis and the haile court and on her kneis ask Schir John Streweling forgifnes for the strubulance of him under silence of nycht, openly glammerand him, saiand scho sald ger banys the said Schir John oute of this toune'.¹²⁵ While strubulance 'under silence of nycht' suggests Christian attempting to be furtive, 'openly glammerand' is describing very public defamation, and the record even notes the gist of what she said. Like Davy Patrikson above, Lilburne is ordered

¹²⁰ *Dunfermline Gild Bk*, p. 3.

¹²¹ *Ibid.*, p. 4.

¹²² *Ibid.*, p. 12.

¹²³ *Ibid.*, pp. 3, 15, 23.

¹²⁴ *Perth Guild Bk*, p. 28.

¹²⁵ *Abdn Counc.*, i, p. 46.

to present a wax candle to Sir John at the high altar of St Nicholas' kirk 'in presons of the haill pepill'.¹²⁶ She is further warned that if she repeats her offence with Sir John 'or of ony utheris famouse personis', that is, persons of good repute, she will also be fined. It was essential that slander be answered publicly, so that common knowledge of the person's status as 'famouse' could be retained.

Having forfeited John MacDonald of the earldom of Ross in 1475, James III restored him to the king's peace, although not the earldom, in 1476:

notwithstanding certain processes and judgements of forfeiture on and against our cousin John of Islay, formerly earl of Ross and lord of the Isles...for his treasonable crimes, demerits and offences perpetrated and committed against our royal majesty and our realm - we have nevertheless granted, decreed...[and] by our special grace restored...our cousin to his worldly honours and dignities, and the good repute of his person, thoroughly removing from him all repute of infamy which occurred on account of the aforesaid things.¹²⁷

The importance of restoring reputation as well as 'worldly honours and dignities' is apparent, and it was also conducted within the public forum of parliament, where the assembled estates could bear witness to the change of status in relation to the king's authority. Concern for the reputation of the Lords of the Isles was not restricted to the reign of James III. A letter written to the earl of Ross from Aberdeen burgh council in 1444 shows a similar preoccupation, with Alexander MacDonald, John's father. The earl had taken English prisoners, and James II had ordered him to deliver them to Aberdeen, which he was apparently refusing to do. The council had therefore written to the earl in order to persuade him to act according to the king's wishes:

we counsaile and beseikis humeli yhour lordschip with al instance that, for the worschipe of the king and the gud of the realme, yhe witsaufe to louse and deliver frely the said Inglismen, for and [if] ye suld nocht deliver thame at the kingis instance and charge, it war great lak and sclaudre to the king and the realme, and lessing of yhour worship, the quhile God averte...God forbid that yhe suld, for a litil monee that thir Inglismen has promissit yhou, warpiss your gude name, and the reward and thank that yhe have deservide and wonnyn of the king.¹²⁸

Several things are assumed by the burgh in this attempt to persuade the earl of Ross, in much the same way that parliament attempted to persuade James III in the earlier example. 'Lak and sclaudre to the king and the realme and lessing of yhour worship' would be the

¹²⁶ *Abdn Counc.*, i, p. 46.

¹²⁷ *RPS A1476/7/1*.

¹²⁸ *Abdn Counc.*, i, pp. 10-11.

result of failing to take the appropriate action, here presented not only as an undesirable consequence, but an unarguable fact. The suggestion is that the actions of the nobility have repercussions beyond personal interest, that there was a public dimension to the earl's behaviour, and that his actions would certainly become common knowledge. In fact, there is a danger that the earl could 'warpiss' his good name, this again presented as something to be avoided at all costs. Whether or not this persuasion technique actually worked on the earl is secondary to the fact that concern for one's reputation was clearly thought to be something with which a man of such status ought to concern himself, if he were to do his duty effectively.

This was undoubtedly the case for Alexander Cunningham, lord of Kilmaurs who, in 1464, presented himself to parliament which had been 'publicly gathered for the utility of the kingdom and the *res publica*'.¹²⁹ His spokesman Robert, lord Lyle, 'dolefully relating', explained how the same Alexander, lord Kilmaurs, by several of his enemies, and also by diverse others, 'ha[d] by envious rumour been reproached of giving assistance and favour to the traitor James de Douglas', despite having a letter from the king which exonerated him of all wrongdoing.¹³⁰ This letter is copied into the record, and states that

Notwithstanding the rumour and voice occurring...it is clear to us that the said Alexander Cunningham, lord Kilmaurs, is innocent of, and free and exempt from, the aforesaid treasonable charges...Wherefore we strictly order and command all and sundry our lieges and subjects whom it concerns or may concern that no-one murmur about or reproach the said Alexander on account of the aforesaid things in whatever time to come, under all pains than may be appropriate in this respect.¹³¹

After which, 'to avoid the infamy of the said rumour circulating', Kilmaurs offered three separate purgations: 'firstly, an assise of unsuspect lords, his peers, to submit to the king's will; secondly, a purgation to provide a hundred knights and esquires; thirdly, to defend himself against the said charge according to the laws of arms with his own hands against whomsoever challenges him'.¹³² The lords of parliament deliberated on the matter, and decided that 'they hold the said declaration sufficient to exonerate the said Alexander, lord Kilmaurs of the said allegation and rumour'.¹³³

¹²⁹ RPS 1464/1/2, *pro utilitate Regni et Rei publice congregatorum*.

¹³⁰ RPS 1464/1/2.

¹³¹ RPS 1464/1/2.

¹³² RPS 1464/1/2.

¹³³ RPS 1464/1/2.

The power of such rumours can be inferred from the extent of the measures taken to counteract them. Having a letter of exoneration from the king was of no value if the rumours persisted; it was imperative to Kilmaurs that his name be cleared within the public domain. The preservation of his good reputation was important enough that he was prepared to present himself to parliament to have the decision publicly confirmed, in the hope that he would no longer be held, by common knowledge, to be complicit in Douglas's treachery. Hay was apparently quite correct in his assertion that 'the renoune that [men] get first in thaire begynnyng is ever full hard to get away quhill thai lyve in this warlde'.¹³⁴

Conclusion

Common knowledge was essential to the exercise of political authority. It could be used to limit privileges based on previous behaviour, work as a mechanism for verifying the claims of individuals and act as an alternative to legal process in certain situations. Legislation had to be made common knowledge and known wrongdoing had to be punished publicly in order to ensure that justice was not only done, but seen to be done. Common knowledge could be generated in two ways. Political authority was asserted through due legal process, which required to be enacted publicly. As long as the action was performed in the correct spaces common knowledge could be attached to it, allowing the status of an individual to be changed in relation to crown authority. This meant appropriate sanctions could be legitimately enforced, where necessary. This process was essential if accusations of tyranny were to be avoided, and so use of the public domain separated legitimate sanctions from arbitrary ones. Because it was not essential to inform people directly, notarial instruments were used in order to confirm that the enactment of the proclamation (for example) had been carried out correctly and in accordance with the procedure which bestowed legitimacy. Where this was not appropriate, such as in matters of personal repentance for wrongdoing, common knowledge was generated by ensuring that the whole community actually was physically present, in the parish church.

Common knowledge could also be generated by people talking to each other, and it was by this method that reputations were made and lost. It was a commonplace of political literature that a good reputation was essential to good governance, but it can be shown that

¹³⁴ Hay, *Gouvernaunce*, pp. 66-67.

such concerns also structured practical politics in several important ways. The king's character was thought to reflect his ability to govern others, and so was a worthy subject of discussion, heightening the need for the king to ensure his good name was maintained. The nobility were expected to be concerned with their own 'renoun', and this was a central concern of the chivalric ideal. For commercial reasons, a good reputation was also important to those in the burghs who wished to sell goods. It is unsurprising that men of good character would be preferred for positions of responsibility generally, and reputation was one of the few ways in which this could be determined. Maintenance of good reputation was therefore essential for political authority, and those who found themselves slandered were forced to clear their names in an appropriate public forum.

Chapter Two: Incorporation and the Urban Community¹

Having established the public domain as essential for the exercise of political authority in general, the following investigates how communitarian language was used to legitimise the authority of urban elites in particular. In 1982 Susan Reynolds argued that urban historians ought to be concerned with political thought as a matter of course, in order to understand the ideas and values which infused the social and economic activity of town inhabitants.² There has so far been very little discussion of the Scottish medieval burgh as a political entity, with even Roland Tanner's groundbreaking study of the Scottish parliament arguing that the burgesses were the 'least obviously political' estate of the three.³ In the late nineteenth and early twentieth centuries the work of historical societies such as the Spalding Club and the Scottish Burgh Records Society provided edited collections of numerous town records from across Scotland, generating work with a focus upon constitutional and administrative history. More recently, scholars have explored Scottish burghs by interrogating not only their records, but also a rich variety of material evidence, giving fresh insights into the economic and social history of town life, as well as the relationships cultivated by burghs both within Scotland and without.⁴ While work by Boardman and Booton has gone some way to positioning the burgh of Aberdeen within the broader politics of the realm, the political culture of Scotland's towns remains an under-researched area.⁵

Such a culture is difficult to discern for Scotland's early towns. It is known that King David I (1124-53) was instrumental in the creation of the burghs.⁶ His policy of bringing settlers from

¹ Sections of this chapter have been submitted for publication in an article as part of a research project on The Burgh in the North, c. 1400-c. 1800, at the University of Aberdeen.

² S. Reynolds, 'Medieval Urban History and the History of Political Thought', *Urban History Yearbook*, 9 (1982), pp. 14-23.

³ Tanner, *Scottish Parliament*, p. 268.

⁴ An excellent starting point is M. Lynch, M. Spearman and G. Stell (eds), *The Scottish Medieval Town* (Edinburgh, 1988). See also the work of Elizabeth Ewan, in particular *Townlife in Fourteenth-Century Scotland* (Edinburgh, 1990); E. J. Cowan and L. Henderson, *A History of Everyday Life in Medieval Scotland, 1000-1600* (Edinburgh, 2010); RCAHMS, *Tolbooths and Town-Houses: Civic Architecture in Scotland to 1833* (Edinburgh, 1996); E. P. Dennison, D. Ditchburn and M. Lynch (eds), *Aberdeen Before 1800: A New History* (East Linton, 2002); D. Ditchburn, *Scotland and Europe: the Medieval Kingdom and its Contacts with Christendom, 1215-1545, vol. 1: Religion, Commerce and Culture, c.1215-1545* (East Linton, 2001).

⁵ S. Boardman, 'The Burgh and the Realm', in Dennison, Ditchburn and Lynch (eds), *Aberdeen Before 1800*, pp. 203-23; H. Booton, 'Burgesses and Landed Men in North-East Scotland in the Later Middle Ages: A Study in Social Interaction', (Unpublished Ph.D. thesis, University of Aberdeen, 1987).

⁶ David began this process even before he took the throne. R. Oram, *David I: The King who Made Scotland* (Stroud, 2004), p. 265.

Flanders to assist in planning the towns, establishing the crafts within them and creating trading links unleashed the economic potential of many pre-existing settlements.⁷ The earliest charters granting burgh privileges date from the reign of William I (1165-1214), however, and only from the late fourteenth century does the earliest burgh council register survive, that of Aberdeen.⁸ While this important twelfth-century phase of urban expansion was therefore certainly part of the broader European pattern outlined by Reynolds, in which collective action gradually became more institutionalised, in Scotland this process was from the beginning directed by the crown.⁹ 'Burgh' and 'burgess' were essentially legal concepts, with privileges which were enforceable in law, and the towns were subject to royal legislation which applied equally to all of them.¹⁰ This is not to suggest that Scotland was in any way a special case. The *Leges Burgorum*, which probably dates from the end of the thirteenth century, articulates a framework of customary ideas which formed the basis of contemporary urban administration across Europe, and in fact was probably an augmented version of a similar custom produced for Newcastle in the mid twelfth century.¹¹ The surviving evidence does not permit us to discover whether such customs arrived with the Flemish settlers, were an elaboration of English traditions or were shaped by the norms of Scottish lordship - most likely all three were influential - but they were, by the later fifteenth century, firmly integrated into Scottish urban political culture. By then burghs were not exclusively royal foundations, with many ecclesiastical burghs and burghs of barony having been granted privileges also.

The relationship between town and crown also underwent an alteration during the late medieval period.¹² Whereas the administration of royal burghs had come under the jurisdiction of the sheriff, and the crown had retained the right to appoint officers within the town, this had given way, by the fourteenth century, to a process of election whereby the burgesses chose an alderman or provost and (usually) four bailies from their own ranks.¹³ The fifteenth-century burgh council therefore enjoyed a relatively higher degree of autonomy than its predecessors, although this was far from absolute. The king could, and

⁷ Oram, *David I*, pp. 265-94.

⁸ *Ancient Burgh Laws*, i, p. xxxv.

⁹ Reynolds, *Kingdoms and Communities*, pp. 155-218 discusses the urban context specifically.

¹⁰ H. L. MacQueen and W. J. Windram, 'Laws and Courts in the Burgh', in Lynch, Spearman and Stell (eds), *The Scottish Medieval Town*, pp. 208-27, at p. 208-9.

¹¹ *Ibid.*, pp. 209-11. The *Leges Burgorum* can be found in *Ancient Burgh Laws*, i, pp. 4-58.

¹² For a recent study of this relationship in England see E. Hartrich, 'Town, Crown and Urban System: The Position of Towns in the English Polity, 1413-71', (Unpublished D.Phil. thesis, University of Oxford, 2014).

¹³ On town governance see Ewan, *Townlife*, pp. 40-63.

did, make his feelings clear on particular matters if moved, or indeed invited, to do so. Even so, as long as the burghs continued to generate revenue royal oversight appears to have been limited, and the crown took little interest in the day-to-day affairs of the council. The exception was the Chamberlain ayre, probably introduced to compensate for the diminished influence of the sheriffs, at which each town's officers presented their accounts to the crown.¹⁴ From early in their history burghs were entitled to hold their own courts, headed by the bailies, and a burgess could be 'repledged' from a court with parallel jurisdiction in order to be tried by a jury of his peers.¹⁵ Decisions could be appealed to the court of the chamberlain, and from there to the court of the Four Burghs in a jurisdictional hierarchy that closely paralleled that of sheriff, justiciar and parliament pertaining outside the burghs. It is likely that this court naturally grew from the practice of burgh councils consulting with each other on points of law, and it was formally constituted as the Convention of Royal Burghs in 1487.¹⁶ As well as being a judicial body, the Four Burghs provided a forum in which the burghs could discuss matters of common concern, and formulate counsel to give to the king.¹⁷

Within many towns the burgesses formed a guild.¹⁸ This process was independent of the crown. The *Statuta Gilde*, which originally related to Berwick, have been dated to the thirteenth century, and at least thirteen towns had such guilds by 1400.¹⁹ It is not until the later fifteenth century that a clear distinction between merchant and craft guilds emerged in Scotland, however, and then only in certain burghs.²⁰ As with guilds across Europe, Scottish guilds were not merely mercantile associations. Their activities encompassed religious observance and patronage, various forms of pageantry, sociability and display, and what might be termed 'social security' for their members, such as looking after the injured, or widows and orphans, or meeting funeral costs and praying for the souls of the dead.²¹ Given the high level of collective activity which characterised late medieval urban politics it is not

¹⁴ MacQueen and Windram, 'Laws and Courts', p. 214.

¹⁵ *Ibid.*, p. 215.

¹⁶ RPS 1487/10/21; Ewan, *Townlife*, p. 146; MacQueen and Windram, 'Laws and Courts', p. 219, n. 85.

¹⁷ Ewan, *Townlife*, p. 147.

¹⁸ The three surviving fifteenth-century guild books have been edited. *Dunfermline Guild Bk; Perth Guild Bk; Abdn Guild Recs*. The introductions to these volumes provide the best overview of the topic. See also E. Torrie, 'The Guild in Fifteenth-Century Dunfermline', in *The Scottish Medieval Town*, pp. 245-60. Some material also survives for Stirling and Ayr. See Torrie, 'The Guild in Dunfermline', p. 246, n. 8.

¹⁹ Ewan, *Townlife*, p. 58.

²⁰ *Ibid.*, pp. 58-63. Elizabeth Torrie highlights social diversity in 'The Guild in Dunfermline', pp. 247-48.

²¹ Torrie, 'The Guild in Dunfermline', p. 245; Richardson, 'Craft Guilds and Christianity', pp. 139-89.

surprising to find the idea of community at the heart of political discourse. The following will examine how this discourse was used.

The Urban Community

Historians have differed as to the nature of the urban community in Scotland. In her earlier work Elizabeth Ewan argued for a sense of community within the burghs which was characteristic of medieval life, enhanced by the exercise of communal rights and privileges and which remained unaffected by social inequality.²² Whilst acknowledging that towns were clearly physically demarcated from their surrounding countryside, and that the overlap with the spiritual communities of the parishes would have done much to aid a sense of 'oneness', Patricia Dennison has instead chosen to emphasise exclusion, and argues that medieval society was too stratified and hierarchical for any true communal feeling to take hold across social groups.²³ Rather than asking who was part of the community, the following will investigate how the idea could be employed, by drawing upon the council minutes from Aberdeen and Edinburgh. It will be argued that the burgh community could be thought of as a legal concept, a physical location and a group of people, so that the overlap between these aspects created a conceptual space which could be appropriated by those in authority in order to legitimise political decisions and actions.

The Latin term *communitas* was one of several words which, by the later middle ages, could be used to designate a legal corporation which held particular rights and privileges.²⁴ This idea took its power from the fact that a corporation, such as a burgh, could simultaneously be both a legal entity distinct from its members and the group of men who comprised it.²⁵ This legal entity, as an abstraction, could not give consent; this had to be done by those who comprised it on any given occasion. The corporeal aspect of the *communitas* was therefore only 'apparent and operative' after the members had come together in congregation, hence the need for the burgh council to consent to decisions affecting the whole community.²⁶ The importance of the distinction between the burgesses themselves and the *communitas* can be

²² Ewan, *Townlife*, pp. 136-40.

²³ E. P. Dennison, 'Power to the People? The Myth of the Medieval Burgh Community', in S. Foster, A. MacInnes and R. MacInnes (eds), *Scottish Power Centres* (Glasgow, 1998), pp. 100-31.

²⁴ Canning, 'The Corporation', p. 9; Black, *Political Thought in Europe*, pp. 14-41. Canning lists *corpus*, *respublica*, *populus*, *civitas*, *collegium*, *societas* and *universitas* as possible alternatives.

²⁵ Canning, 'The Corporation', pp. 10-14.

²⁶ *Ibid.*, p. 14.

seen in the charter evidence from Edinburgh. The standard formula used by the crown in its grants to the burgh, from the reign of David II onwards, was, as in a charter of 1364, 'Sciatis nos dedisse concessisse et hac presenti carta nostra confirmasse Burgensibus et Communitati Burgi de Edynburgh...'.²⁷ The clear distinction made by the crown between burgesses and community recognises the town both as a group of men and as a legal entity. In effect, the king is granting land to the town as embodied by the particular burgesses who constitute it at any given time. He grants both to the men who are presently there to receive it and to those who will make up the *communitas* in the future. A charter from 1367, which prohibits fairs being held in Newbattle, draws a similar distinction in referring to 'preiudicium ac grauamen Burgi nostri de Edynburgh ac Burgensium nostrorum eiusdem loci', instead placing the emphasis on the burgh as a physical location and as a group of men.²⁸

R. L. C. Hunter, in one of the very few pieces of work which directly addresses the idea of legal incorporation in relation to the Scottish burghs, suggests that this developed very differently in Scotland to England.²⁹ He argues that in England, by the mid-fifteenth century, the law relating to corporate personality had 'crystallised' into the five 'classic incidents' of incorporation, which could only be granted explicitly by royal charter.³⁰ In contrast, Hunter argues, a high degree of imprecision characterised the language of the Scottish records, which he attributes to a 'lack of legal refinement'.³¹ Hunter's observations on the fluidity of nomenclature in relation to the town and its representatives are undoubtedly correct, and yet the rigidity of terminology which he argues characterised England was not typical of medieval towns generally.³² The imprecision of the language in which it was expressed was one factor which allowed collective governance to be reproduced across Europe and, as Reynolds argues, by the thirteenth century the various words which described these entities

²⁷ *Edin. Chrs*, p. 25. 'Know ye that we have given, granted and by this our present charter have confirmed to the Burgesses and Community of the Burgh of Edinburgh...'

²⁸ *Edin. Chrs*, pp. 26-7. 'the prejudice and hurt of our Burgh of Edinburgh and of our Burgesses of the same place...'

²⁹ R. L. C. Hunter, 'Corporate Personality and the Scottish Burgh: An Historical Note', in G. W. S. Barrow (ed.), *The Scottish Tradition: Essays in Honour of Ronald Gordon Cant* (Edinburgh, 1974), pp. 223-42, at p. 232.

³⁰ *Ibid.*, p. 231; p. 237. These incidents are listed as 'the power to sue and liability to be sued as a body...[the] power to hold landed property, the privilege of using and the power legally to act by a common seal, perpetual succession...and the power to make by-laws.'

³¹ *Ibid.*, p. 232.

³² As noted by Canning, above, n. 24. See also Black, *Political Thought*, pp. 118-21. Cf. S. Reynolds, 'The History of the Idea of Incorporation or Legal Personality: A Case of Fallacious Teleology', in Reynolds (ed.), *Ideas and Solidarities*, pp. 1-20 which, although it does not cite Hunter's work, argues that this approach is based on modern assumptions about legal incorporation which cannot be applied to the medieval period.

could be used in reference to 'the whole community of government and people together, or just the government, or just the community of people whom the government governed'.³³ If this still pertained in Scotland by the later fifteenth century it is surely because, as in other places, it still worked very well. Rather than a judgment on the degree of legal 'sophistication' relative to England, what is required is a closer analysis of the linguistic and political contexts and circumstances in which such variations appear, in order to assess the utility of a particular choice of term.

One of the most noticeable attributes of communitarian terminology found within the minutes of the burgh councils of Aberdeen and Edinburgh is its diversity. Even when simply discussing the burgh as a group of men, there is a range of possible terms which can be employed. 'Burgesis' is the clearest, as it denotes those men who have been admitted to burgess-ship.³⁴ An 'outeburgis' was a burgess who lived outside the town boundary, drawing a clear spatial distinction. Another collective term is 'nyghbouris', which often suggests the burgesses as a group, as it is commonly found within decisions which concern either trading privileges or burgess obligations. Occasionally, the word 'commons' can be found performing the same functions as community, also eliding the distinction between the burgesses and the whole population of the town. 'Indwellaris' or 'inhabitantis', can both usually be taken to mean those non-burgesses who live within the geographical area of the burgh. These terms had the advantage of being easily contrastable with 'outdwellaris', who could be invoked in order to underline the importance of performing designated duties. An act of 1484, in Aberdeen, ordered that

all nichtburis and inhabitantis of this burgh sal...haf thare wauppins...redy beside thaim in thair buthis and houssis and cum with thaim to the alderman, bailies or seriands incontinent quhen thai see or heris thaim...myster [in need of] helpe or supple in thare office, doing for the attaching and correctioun of tresspassouris, and [they will] abstrach thaim not fra thair nichtburis quhen thai se thaim...in point of suppression and namely be out duellaris [of] the burgh.³⁵

The language makes very clear what is expected from members of the burgh community, and positions them directly against those who are not members. The fact that such a measure had to be enacted at all suggests that the danger from 'outdwellaris' was not imminent enough for people to keep their weapons ready as a matter of course, and so this language was perhaps employed to reinforce the plea for people to assist the officers and

³³ Reynolds, *Kingdoms and Communities*, p. 182. See also Watts, *The Making of Politics*, pp. 98-99.

³⁴ For the conditions and processes which relate to this see Ewan, *Townlife*, *passim*.

³⁵ ACA CA/1/1/6, pp. 824-5; *Abdn Counc.*, i, p. 40.

each other. It could, in fact, have arisen from a single incident which the council wished to avoid being replicated. Another Aberdeen act, from 1479, records a grant to Sandy Cowtis of a penny from each house in the town, for mending streets and gates, stating that he should collect 'fra each fyre house [house with a fireplace] a penny and of al utheris, outeburges and inburgessis and indwellaris havand chaumer or house a penny', showing that one did not necessarily have to belong to the exclusive group of burgesses in order to be asked to contribute to an enterprise one was likely to benefit from.³⁶

A letter from James III to the 'Burges and Communitie of Edinburgh' in 1472 underlines how intertwined was membership of the community with the status and nature of property ownership. The letter is a licence to fortify the town 'in case our ald ennemyis of England address thaim to invade'.³⁷ The king charges 'al and sindry the burges nyctbouris and indwellaris the said toune and also thaim that has landis annuellis or possessiouns withyn it' to contribute to the cost of the fortifications 'and that alswele the outeburges and occupiaris of the fredome of the said Burgh and personis having landis or annuellis within it contribut as indwellaris and inhabitantis thareof'.³⁸ The freedom of the burgh was the area over which its privileges extended and there is a clear sense that those who had something to protect had to contribute towards the cost of protecting it, regardless of their status in relation to the community. This demonstrates how the idea of community could expand to include people beyond the physical boundaries of the town when the situation required. The distinction made between burgesses and community would, in this instance, have worked to ensure that any 'occupiaris of the fredome' who might have disagreed with the idea that they were part of the community would nevertheless have had to make a contribution.

The burgesses could also be described as 'fremen' which again could be contrasted with 'unfremen'. The idea of urban freedom in medieval Scotland is also capable of encompassing the spatial, the legal and the rhetorical and would certainly repay further exploration. Here it is sufficient to note that it could also be used to frame the community in a way appropriate to the circumstances.³⁹ In Aberdeen, in 1442, it was ordained that 'al the comunytee alsweile unfree as free men be sworne to rise with the alderman in the defence of the toune and of the

³⁶ ACA CA/1/1/6, p. 599; *Abdn Counc.*, i, p. 37.

³⁷ *Edin. Chrs*, p. 134.

³⁸ *Ibid.*, pp. 134-5.

³⁹ For its use in early modern England see J. Barry, 'Civility and Civic Culture in Early Modern England: The Meanings of Urban Freedom', in P. Burke, B. Harrison and P. Slack (eds), *Civil Histories: Essays Presented to Sir Keith Thomas* (Oxford, 2000), pp. 181-96. I am very grateful to Professor Phil Withington for this reference.

nichtboure of the toune and quhasa will nocht riise and absentis him wilfully he sal tyne [lose] his fredome and be bannysit oute of the ton', indicating that the unfree could be included within the community if it was thought necessary by the council.⁴⁰ Freedom could also be employed to reinforce the boundaries of the community through the inclusion or exclusion of particular individuals. In Aberdeen being accepted into the freedom of the burgh was part of the standard formulation in the recording of the admission of all new guild members, and this phrase undoubtedly evoked both the conceptual and jurisdictional senses of the word.⁴¹ In 1447, the 'haile counsaile' of Aberdeen granted 'license and fredome to Johne the Vaus burges of this burgh for his gude meritis done in tyme bigane', while in Dunfermline, in 1434, John Wilson 'tretit witht the nychtbouris for fredome to by hides utuith [outwith] the fredome for j yer' nicely exemplifying both the dual meaning of the term, and its importance in the maintenance of privileges.⁴²

Aberdeen burgh council met to enact all manner of legislation for the good of the town, from dealing with rent arrears to the defence of the burgh, to matters of trade and commerce. Gaining the consent of the community was an integral part of the proceedings of such meetings, and this was very often recorded in the council register. At first glance this appears to be merely formulaic; an unthinking use of standard contemporary terminology. A closer look reveals the fact that the formulations used for recording this consent varied considerably, reflecting subtle, but clearly relevant, differences in the composition of the community present on any given occasion. In 1479 the 'alderman, consal and communitie' granted payment for mending the pavements of the town.⁴³ In 1452 'the maste parte of the hale communitie of this burgh deliverit and consentit all with ane assent' that the town should be fortified with ditches due to 'perile apparand'.⁴⁴ In 1475 'the alderman and certane persons of counsaile' decided that offerings from the altar should be divided equally, while in 1480 it was 'concludit and ordanit be the consale and diuerse of the comunitie' that the cost of ditches was to be borne by those who refused to help dig them.⁴⁵ These distinctions, while imprecise, do suggest that the number in attendance was not irrelevant. The extent to

⁴⁰ *Abdn Guild Recs*, p. 67.

⁴¹ E.g. *Abdn Guild Recs*, p. 72. The standard formulation was '*receptus fuit in liberum burgensem et confratrem gilde*'.

⁴² *Abdn Guild Recs*, p. 115; *Dunfermline Guild Bk*, p. 2.

⁴³ ACA CA/1/1/6, p. 599; *Abdn Counc.*, i, p. 37.

⁴⁴ ACA CA/1/1/5(2), p. 766; *Abdn Counc.*, p. 19. The 'perile' in question was likely that which resulted in the Battle of Brechin, between the earls of Huntly and Crawford, around a month later. See Brown, *The Black Douglasses*, p. 296.

⁴⁵ ACA CA/1/1/6, p. 361; *Abdn Counc.*, i, pp. 33, 37.

which the burgh council could legitimately speak for the entire community of burgesses, or indeed the whole town, must have been a question central to the effective functioning of urban politics, not to mention the maintenance of civic harmony. There is also the implicit idea that if a member of the community did not take part then he could not reasonably expect to have a say in the matter being decided. Attendance of the whole community, however defined, was not necessary to legitimise all decisions.

Once taken, such decisions of the council had to be publicised, and it was the town bellman who served this function. In 1490 Edinburgh's council recorded that they would 'caus the bellman with the handbell pas throw the towne wairnand all the nichtbouris that sic vittallis and tymmer ar to sell of sic a pryce', and in 1479 the bellman was ordered to 'warne all the nichtbouris thairto in the tolbuith and in na uther place' to notify them of goods coming into the city via the port of Leith.⁴⁶ In 1481 a new bellman was appointed by the burgh council in Aberdeen:

because that the office of belmanschip of this burgh was vacand, the alderman gerd Johne Sclater pas with the bel throu the towne to charge the comunite to cum to the tolbuthe for the chesing of a belman that war maist habit and proffitable for the toune. And with the consent of the alderman, balzeis, consail and comunite of the toune that war present in the tyme efter the passing of the bel, Androw Murray, masowne, com in presence of thaim al and profferit to gif for that office of belmanschip, for his tyme, yerly, to the common profit of the toune, fyve markis, and to do all uthir deuties and service to the toune that ony uthir belman did of before; the alderman in the tyme inquirand gif ony uthir man wald gif mare, and fand na ma that wald gif samekil. And furthwith, that beand done, the alderman in the name of the toune and of the comunite deliuerit til the said Andro the bel and chesit him for all the daies of his life common belman, with the consent of the balyeis, consale and comunite, beand present for the tyme as saidis.⁴⁷

The entry is replete with the language of community and consent, and records in detail both the process by which the community is summoned to choose the bellman, and the process necessary for the office to be conferred upon Murray. It is clear that the tolbooth is the correct location for this to occur, and that convening the council there is necessary for the legitimate bestowal of authority. It is twice recorded that the alderman, bailies, council and community consented to the appointment, although the scribe is careful to record that, in this instance, the community comprised those who were present after being summoned. This public appointment to the office of 'bellmanschip' has the sense of a purely ceremonial occasion. Perhaps, as no-one else came forward for the position, Murray's acceptance was

⁴⁶ NLS Adv.MS.31.4.9, p. 132; *Edin. Recs*, p. 59, p. 37.

⁴⁷ ACA CA/1/1/7, pp. 724-5; *Abdn Counc.*, i, pp. 30-1, which erroneously dates this entry to 1471.

something of a foregone conclusion. While the summoning of the community adds legitimacy, and possibly a festive air, to the proceedings, it may be that the number of people who actually attended was not particularly relevant to the business at hand. Although the consent of the community was required for the appointment to be official, this could potentially be achieved with any number of people physically present. It was, after all, the alderman in the name of the community who had the authority to appoint Murray to the position.

This example can be usefully contrasted with another, from 1487, when James III wrote to 'the consaile and communitie' of Aberdeen regarding a complaint made against the alderman, Sir John Rutherford of Terlane, by Gilbert Menzies.⁴⁸ The letter is long and is copied into the record in full, again preceded by a description of the bellman passing through the town, 'chargeand the haile consale and communitie to comper within thair tolbutht to heir our soverane lordis letteris and gif ther ansuer theirupon'.⁴⁹ In the letter, the king relates how Menzies complained to him 'on behalf of...the haile body of the toune' that Rutherford, described by the king as 'our lovet fameliar servitour', was being a 'masterfull oppressour' of the king's lieges, that due to Rutherford's oppression 'nay marcheante may live within [the] said burgh' and that 'he has nocht the said office with [the burgesses'] consent, bot be electioun of a few simpill personis, his kynnismen'.⁵⁰

In response, the king commands the burgesses to

Pass togidder to your tolbutht and avisitly havande E [eye] to the commone profit of oure said burgh, consider and tak knowledge of the saide informacioune maide apon oure said servitoure your alderman, with utheris informaciounis as salbe schawin be him to you, [and decide] gif thai be maid of verite and of your mynd and will, or nocht, and thereftir send your mynde til us... Be informatione maid til us be our servitour an knicht forsaide, upone diverse thingis that are done contrar the commone profit of oure said burgh, we will mak the samyn to be reformit...and in the mene tyme ye and ilk ane of you answer and obey to oure said servitour as your alderman in all thingis...⁵¹

While James is ostensibly commanding the burgh council to investigate the matter themselves it is perfectly clear that he expects them to exonerate Rutherford of any wrongdoing. He makes his personal connection to the knight explicit in his repeated uses of

⁴⁸ ACA CA/1/1/7, pp. 34-36; *Abdn Counc.*, i, pp. 42-43. For a very brief discussion of Rutherford's career see Booton, 'Burgesses and Landed Men', p. 305.

⁴⁹ ACA CA/1/1/7, p. 34; *Abdn Counc.*, i, p. 42.

⁵⁰ ACA CA/1/1/7, p. 35; *Abdn Counc.*, i, pp. 42-43.

⁵¹ ACA CA/1/1/7, p. 35; *Abdn Counc.*, i, p. 43.

the word 'servitour', and calls him 'your alderman' on two occasions. If there were any doubt remaining, the letter carries the implicit threat that the king will be asking Rutherford directly about what has been happening, and that if he finds it to be 'contrar to the commone profit', by which he almost certainly means his own wishes, then he will take measures to 'mak the same be reformit'. It is recorded underneath the letter that after it was 'oppinly red, herde, seyne and understandyne', the undersigned members of the council

avisitly deliverit...that thai gaf nevere power, command, nor commissione to David Menzies, na to nane utheris, to gif ony bill of complaint, nor to mak sic senister informatioun in thair name til our soverane lord...apone the said Schir Jhone Ruderfurde, declarand the said relatione nocht trew. And attour [moreover] thai declarit and schew that the said Schir Johne maid nane oppression within the said burghe apone nay man.⁵²

There are ninety-nine names attached to this declaration.

Although the burgh community is summoned in the same way to the same location, this dispute is evidently an entirely different matter to the election of a bellman. Whatever the events which led to Menzies's accusation, and however the king had become involved, a swift and united reaction was called for from the burgesses. A great many members of the community not only came to the tolbooth to attest to Rutherford's version of the story, but were understandably keen that they should have been recorded as having done so. In this instance, the consent of the community was granted not simply symbolically, through the alderman, but by a very large proportion indeed of the actual persons who comprised it.⁵³ The community was, in effect, represented by whoever was present in the tolbooth when a particular decision was taken.

The town itself could also function in this way, as a clearly-defined space in which the *communitas* existed. In 1461, an Aberdeen statute recorded that

ony man, quhat ever he be, of state heyar or lawer, duelland within this burch at payis nocht his male [rent]...quarthrocht it may ryn to hendryng or preiudice to the toune; at that man, of quhatsumever degree he be, he sal not...be chosin in tyme to cum to beir ony offices within this burch quhill the time at he freith hym self and

⁵² ACA CA/1/1/7, pp. 35-36; *Abdn Counc.*, i, p. 44.

⁵³ For an estimate of the burgess population, see M. Lynch and H. M. Dingwall, 'Elite Society in Town and Country', in Dennison, Ditchburn and Lynch (eds), *Aberdeen Before 1800*, pp. 181-200, at p. 185, which equates burgesses to taxpayers and suggests an average of 320 between the years 1448 and 1468.

kepe the toune unscathit anentis the kyng and all other men of all dettis and chargis acht [owed] be hym.⁵⁴

Here can be seen the association of the actual town with the collective financial interests of the men within it. It is prejudice to the town which was to be avoided and the town which was to remain in the king's good graces by ensuring that people paid their dues. It can be inferred from the penalty of loss of office that those who were considered to comprise the town were burgesses only, as it was only they who were entitled to hold office within the burgh. As it was likely to be the other burgesses who had to make up any shortfall to avoid royal displeasure, attaching the payment of rent to the good of the town demonstrates not only the deft employment of communitarian language to reinforce the decision, but also the need to be seen to place a high value on the communal defence of shared interests, and to attach importance to participation in the governance of the burgh. An even more strident example of this requirement can be found in an Aberdeen statute of 1444. It states that

for the commoune gude and quiete of this toune, and for the stancheing of trespassours and rebellours agayne the law, all the indwellaris and inhabitantes of this burgh sall assist to the alderman and officiaris of this burgh to manteigne the law and punyce trespassouris but favour and quhasa dois the contrar sall be haldin rebell agayne the toune and that the gudemen of the toun sal write to the king under the commoune seell to be punyst be him, and all sic rebellours sal be excludit fra al takes, profites, office and worschip of this toun.⁵⁵

The idea of the burgh as a legal entity was one which had a high degree of utility in this context; detrimental actions could be cast as rebellion against the town itself, rather than as contrary to the interests of particular individuals. The role and exercise of royal authority within the burghs remains an underexplored area, but the threat of punishment by the king is unusual, and is suggestive of an ability on the part of the burgh community to appeal directly to the king's judgment. That the language of rebellion is harnessed to this purpose is perhaps not accidental.

The Common Good

The urban community could also find expression in the notion of the common good.⁵⁶ Jan Dumolyn has argued that legal and theological concepts from princely discourse 'trickled

⁵⁴ ACA CA/1/1/5(2), p. 824; *Abdn Counc.*, i, p. 22.

⁵⁵ ACA CA/1/1/5(2), p. 691; *Abdn Counc.*, i, p. 12.

⁵⁶ This is a point made in Dumolyn, 'Urban Ideologies', pp. 84-89. The following draws upon his approach.

down' into the late medieval Flemish towns, shaping what he calls a 'practical theory of political action', and informing contemporary ideologies which were then used by 'lay actors' in urban politics.⁵⁷ Eliza Hartrich has argued that in mid-fifteenth-century England the merchants were 'a well-connected and highly educated group, on the forefront of political language', who adopted the humanist discourse of common weal and *res publica* both as an indicator of their social cohesion, and of their contribution to the realm as a whole.⁵⁸ Again, it is difficult to trace such developments in any detail for Scotland. The *bonum commune* certainly permeated Scottish princely discourse, although the concept of 'commonweal' would not be assimilated until the sixteenth century.⁵⁹ As will be discussed in later chapters, however, the idea of community evolved rather differently in Scotland to England; by the later fifteenth century the term *communitas* appears to have been applied regularly to the burghs, and very rarely indeed to the kingdom as a whole. In England, as Watts has shown, the discourse of 'the commons', which was closely related to the idea of the *communitas regni*, was used to support the popular uprisings of the fourteenth and mid-fifteenth centuries.⁶⁰ There is no evidence that such uprisings occurred in Scotland. While the absence of revolt means that such ideas were differently inflected in Scotland to either England or Flanders, the Scottish burghs maintained close links to both throughout the medieval period. As with the customary practices noted above, therefore, it is likely that the discourses of the common good employed in Scotland's towns were reinforced from multiple directions.

As elsewhere, this ubiquitous political idea proved to be easily adaptable to the requirements of urban politics, and in particular guild politics.⁶¹ In a culture which relied for its status upon economic success, and in which that success was achieved through collective action, a concept which conveyed both the Aristotelian sense of group benefit or advantage and the sense of financial profit could be used to position a variety of political actions within the context of the good of the community, and gave a particular legitimacy to those that generated revenue for the community concerned. This dual sense can be found conveyed by a range of keywords based around good, profit, utility and welfare, and connected to the common financial resources of the town, although 'profit' is by far the most frequently used. In Dunfermline, in 1464, the guild court stated that 'for plesaur of God Allmichti and

⁵⁷ Dumolyn, 'Urban Ideologies', pp. 69-96.

⁵⁸ Hartrich, 'Town, Crown and Urban System', p. 132-34.

⁵⁹ Mason, 'Chivalry and Citizenship', pp. 91-92.

⁶⁰ Watts, 'Public or Plebs?', p. 248.

⁶¹ See Kempshall, *The Common Good*, for its development.

commone profit of the said burgh that in tym cumming for evir mare thar mercate day to be on Settirday and that na marcate be haldin within the said burgh upone Sonday na yet on na festvalle day'.⁶² This parallels a similar statute in Perth, from 1462, which stated that 'in the honoure of God, oure Lady and St John and for the welfaire of merchandis that na merchandman nor uthir man by woll, hid nor skyn upone the Sunday'.⁶³ While these examples clearly suggest a preoccupation with the spiritual welfare of the guild members the decisions were made, at least in part, to prevent some of them from profiting at the expense of others by trading illegally. An Edinburgh statute from 1490 states that the council's decision to order the 'thesaurer of the towne' to buy victuals and timber coming into the harbour is, on the one hand 'for the commoun proffeitt of the towne and inhabiteris therirof' and, on the other, 'for the behuif, utility and proffeitt of the nichtbouris of the towne', suggesting that these things were considered to be closely aligned.⁶⁴

A raft of measures to protect the concerns of the burgh can be found in the Aberdeen guild records of 1441. For the 'commoune profite' of the town it was 'ordanit and decretit...be the aldermane...and the hale commoune counsaile that might be gottyn present in the toune' that no 'gentil men of the cuntreth' were to have 'watterez or takis' [income from the rental of fishings or property] of the town unless they 'cum to duel within the burgh'.⁶⁵ The same year, another entry recorded that

be the avise of the hale counsaile for the commoune gude of the hale communyte of this burgh, it is statute concludit and ordanit that na fleschewaris na nane other man nyghbor nor unfreman by ony maner of fische quhill thai cum to the merkat and at naman by to tap agayne at a derth to the commownys ony maner of fische quhill the light of the dai be passit under the payne of viij s unforgiffin and eschete of the fische but [without] favour.⁶⁶

To 'tap agayne' was to re-sell, a proscribed activity which the council had to deal with regularly.⁶⁷ Highlighting the 'derth to the commownys', whether this is taken to mean the burgess community or the whole population, puts transgressors firmly outside the group. In each example the common good is being used to reinforce the importance of the economic measures enacted, and renders the interests of the council as synonymous with the interests

⁶² *Dunfermline Guild Bk*, p. 19.

⁶³ *Perth Guild Bk*, p. 32.

⁶⁴ ECA SL1/1, p. 35; *Edin. Recs.*, p. 59.

⁶⁵ *Abdn Guild Recs*, p. 63.

⁶⁶ ACA CA/1/1/4, p. 252.

⁶⁷ Ewan, *Townlife*, p. 66.

of the burgesses, or even the town, as a whole. The jurisdiction of the council extended over everyone within the burgh, whether unfreemen, inhabitants, neighbours or noblemen.

A further example, from Edinburgh in 1478, shows that the common good could also refer to the burgh's financial resources. The statute states that 'all the persouns that hes any of the common guid in their handis...cum to the tolbuith on Tysday nixttocum in presens of the hail toun...and heir the compt of the towne'.⁶⁸ Another example can be found in 1445, when Aberdeen guild members were warned that 'give [if] ony freemen of this ton sellis to...men of Dundee or of Perth...thai sal pay xl s unforgiffin to the commoune profite of this ton'.⁶⁹ Both Aberdeen and Edinburgh had (and still have) a Common Good fund, which is referred to throughout the records, and in the contexts in which it is mentioned the distinction between the money itself and the welfare of the town can become blurred. The subsequent entry in the Edinburgh records states that 'the same tyme, it is fund quhair the provest, the greitt dusane [council] of the towne and dyvers uther nichtbouris, all with ane consent thinkis it speidfull for the common proffeitt of the hail town that the burrow mail be ungadderit of the nichtbouris, considering it is payet to the chakker of the common purs'.⁷⁰ Here, the use of 'common proffeit', while indistinguishable from the many similar examples invoking the good of the community, could easily be taken to refer to the town's finances. In Aberdeen, in 1444, it was ordained by the council and many of the guild that three men were to have 'ful poware to by to the commoune profite of this [burgh] al maner of gudez of aventure that cummys be see to this burgh and til dispone thaim to the nyghborez of the ton as afferis'.⁷¹ While this reference is invoking the benefit of the town, it is firmly within the context of commerce that it does so, demonstrating from the opposite perspective the utility of linking the two.

The communal nature of the town's resources comes through strongly throughout the Aberdeen council minutes, where references can be found to the common rental, common work and common purse, as well as the common good and common profit.⁷² Designating funds as communal was useful when managing the assets of a corporation, as it allowed the council to claim legitimate action very easily indeed, and to pursue debts with the moral force of the community behind them. These examples represent only a small selection of the

⁶⁸ NLS Adv.MS.31.4.9, p. 94; *Edin. Recs.*, p. 36.

⁶⁹ *Abdn Guild Recs.*, p. 100.

⁷⁰ NLS Adv.MS.31.4.9, p. 94; *Edin. Recs.*, p. 36.

⁷¹ *Abdn Guild Recs.*, p. 86.

⁷² For example *Abdn Guild Recs.*, p. 64 (werk), p. 65 (purs), p. 70 (rentaile).

contexts in which such language can be found, but it is clear that the idea of the common good was malleable enough to be used for connecting trading sanctions to Christian practice, in the defence of burgh privileges, as justification for the enforcement of penalties for wrongdoers within the burgh and as a description of the town's communal funds. In each instance the good of the whole community is invoked regardless of the extent to which everyone in the town would benefit from the suggested measures and they could, in fact, be reinforcing the privileges of a very few.

An interesting final example can be found in St Andrews. In 1485 the archbishop and 'citiners' of the town were obliged to defend the burgh's privileges from a challenge by the bailies and community of Crail, who had obtained a letter of suspension from James III to prevent the St Andrews burgesses from trading with neighbouring towns.⁷³ In their petition, they argue that the privileges which the citizens have long held are for 'the augmentatione of thar common gud', and that they should enjoy 'lyik fredome to the saidis citineris as uther burgessis and gild brether hes and joysis within the kynryk of Scotland', suggesting a uniformity of basic privileges which was both commonly known and understood.⁷⁴ To reinforce their argument, they state that they have the power to choose their own officers every year to 'conforme to the lawis of this realme for administracione of and weyll public with power of the officiaris thane chosyn to cognosche and minister justice in all actionis civill eftir the tenor and forme of the burgh lawis'.⁷⁵ This is the sole use of the phrase 'weyll public' to be found within the material considered for this thesis, and may tentatively be aligned with a slight but important shift in political discourse, discussed further below, which increasingly saw the realm being explicitly connected to ideas of public authority from the 1470s onwards.

Guilds: Incorporation, Reputation and Brotherhood

It is perhaps the guild which is most characteristic of medieval collective endeavour. Guilds were a very old form of association, which came to include 'any group bound together by ties of rite and friendship, offering mutual support to its members on payment of an entry

⁷³ StAUL B65/23/102c (Letter of suspension) and B65/23/103c (Document protesting privileges). I am very grateful to Prof. Elizabeth Ewan for drawing my attention to these documents.

⁷⁴ StAUL B65/23/103c.

⁷⁵ StAUL B65/23/103c.

fee (*geld*).⁷⁶ These guilds had a religious character from the beginning, being firmly Christian by the tenth century, and expressed their solidarity in feasting, drinking and pageantry.⁷⁷ Reynolds defines guilds as 'essentially...a voluntary association of people who were not blood relations but who used the analogy of brotherhood to express their solidarity'.⁷⁸ These associations were found to be particularly helpful to merchants, who were able to distribute risk amongst the group and defend their interests collectively.⁷⁹ From the twelfth century it became common for craftsmen to form guilds of their own, which drew upon the same model of collective action in order to support manufacturing interests and policies.⁸⁰

Tine De Moor argues that the emergence of guilds was part of a 'silent revolution' of 'corporate collective action'.⁸¹ She suggests that guilds were a very effective way of resolving the 'social dilemma', a sociological thought experiment which suggests that an individual within a group can profit from self-interested behaviour unless everyone in the group chooses to act in the same way, in which case everyone loses out on the benefits of group membership.⁸² According to De Moor the need to publicly swear an oath tied guild members to the group, an explicitly stated set of rules prevented 'free riding' - the temptation of individuals to put in less effort than their colleagues in an attempt to reap the same rewards - while the security from the vagaries of the market which guild membership bestowed encouraged a high degree of self-regulation and ensured a willingness to co-operate.⁸³ These strategies enabled both risk-sharing and economies of scale, and ensured that the skills and knowledge upon which guild members relied did not become common knowledge.⁸⁴ De Moor concludes that, given the right conditions, the pursuit of joint welfare by collective action was 'frequently preferred'.⁸⁵

⁷⁶ Black, *Guilds and Civil Society*, p. 3.

⁷⁷ Reynolds, *Kingdoms and Communities*, pp. 67-68.

⁷⁸ *Ibid.*, p. 67. This discourse of brotherhood is discussed Dumolyn, 'Privileges and Novelties', pp. 12-13.

⁷⁹ Black, *Guilds and Civil Society*, p. 6.

⁸⁰ *Ibid.*, p. 8.

⁸¹ T. De Moor, 'The Silent Revolution: A New Perspective on the Emergence of Commons, Guilds, and Other Forms of Corporate Collective Action in Western Europe', *International Review of Social History*, 53 (2008), pp. 179-212.

⁸² *Ibid.*, pp. 184, 210.

⁸³ *Ibid.*, pp. 193-94, 197-98.

⁸⁴ *Ibid.*, p. 205.

⁸⁵ *Ibid.*, p. 211.

Focusing upon medieval craft guilds, Gary Richardson offers further insight into the benefits of membership, by looking at their Christian ethos.⁸⁶ He argues that the 'bundling together' of commercial and religious practices in craft guilds strengthened both endeavours for a variety of reasons. The reputation of a guild for high quality merchandise was what allowed it to maximise profits, by selling to people who did not personally know the craftsmen. In order to ensure a reputation for quality craftsmen had to work collectively to high standards, and severe sanctions had to be in place for any guild member who was found to be putting the reputation of the guild in jeopardy by producing inferior goods.⁸⁷ As the most severe punishment a guild could implement was expulsion, this had to be a sufficient deterrent. There were certainly harsh economic disadvantages to being a craftsman without a guild, but the attachment of Christianity to guilds ensured a wide range of spiritual and social benefits which would have made expulsion even less desirable. Expellees lost 'their church...and the network of individuals who promised them a proper burial, a respectable funeral and prayers for their soul...friends, colleagues and access to their guild's social services...[they] no longer had feasts to attend, friendly neighbours working in the same industry or someone to talk to about the state of trade'.⁸⁸ As membership of the guild brought both economic and spiritual advantages, the fates of guild members were linked together in both spheres, and it was this mechanism which worked to limit 'free riding'.⁸⁹

Many of the above features are apparent in the guild court book of Dunfermline, which provides a helpful case study for looking at these ideas. Around one third of all burgesses belonged to the guild in Dunfermline, meaning that men of different social standing were included: merchants and craftsmen but also churchmen, clerks and many others.⁹⁰ It also meant that burgh and guild were closely related, and there was not always a clear distinction between the business of each, although the dean of gild did not usually hold office within the burgh.⁹¹ Dunfermline was an ecclesiastical burgh and an important cultural centre, if a small town.⁹² It had a grammar school, where the poet Robert Henryson likely taught, and Ian Campbell has argued that it was one of four ecclesiastical centres in which a resurgent Scottish identity was expressed in this period through a revival of Romanesque

⁸⁶ Richardson, 'Craft Guilds and Christianity', pp. 139-89.

⁸⁷ *Ibid.*, pp. 143-5.

⁸⁸ *Ibid.*, p. 162.

⁸⁹ *Ibid.*, p. 163.

⁹⁰ Torrie, 'The Guild in Dunfermline', p. 248.

⁹¹ *Ibid.*, p. 246.

⁹² *Ibid.*, p. 246.

architecture, a strong interest in Scottish saints, in this case St Margaret, and a connection to the 'principal Scottish historians', this taking the form of the Pluscarden chronicle, which was written for abbot Richard Bothwell, superior of the burgh from 1445 to his death c. 1470.⁹³ These relatively highbrow endeavours co-existed with more traditional amusements; there are many instances where the gild entry payment of wine was 'dronkyn...at the nichtburis will' at the end of the meeting, while a Robin Hood play was held well into the sixteenth century.⁹⁴ Although the abbots allowed the burgh a fairly high degree of independence, the association of gild with Christian practice must have been strong indeed, and Torrie suggests that membership demanded only 'support for the church and active fellowship' which are both strongly evidenced in the record.⁹⁵

The discourse of brotherhood and friendship is immediately apparent, as is the importance placed upon conforming to the rules of the gild. In 1440 it was recorded that 'the gildbrethir with hall common consent statut that thair suld nan be resavit na mad gildbrothir in thair fraternite but or evir he swer the ath to that fraternite to be laid down xl s or ellis frely to be gyffin hym as tyll a gildbrotheris ayr'.⁹⁶ In 1482 Robyn Scharp was entered 'to the fraternite and to the fredome for xl s', while in 1479, Johne Wrycht 'was convickit in amerciament for his contumasy for the hale brethir'.⁹⁷ There are many instances of the gild court resolving disputes between brothers, or between brothers and others, with the result that people were 'put in friendship' with each other. In 1456, two bailies were 'put in frendschip anent the discordis and debatis betwixt them and for the strublanche of the toun', for which each paid 12 pence.⁹⁸ It was further recorded that if they did not keep their friendship, whichever of them was found to be at fault 'by the sicht of the brethir' would pay half a mark. In 1449 the gild court stepped in to resolve what was apparently a disagreement between two families. John Chapman was 'put in to frenschip' with Tom of Brais and his son.⁹⁹ Once the resultant fines had been paid, Tom of Brais's wife and John Chapman's wife were also put in friendship, 'in presens of John Wricht aldirman Schir Johne Wylyhamsone den witht the laff

⁹³ Torrie, 'The Guild in Dunfermline', p. 254; I. Campbell, 'A Romanesque Revival and the Early Renaissance in Scotland', *Journal of the Society of Architectural Historians*, 54 (1995), pp. 302-25, at pp. 307-8; *Chron. Pluscarden*, i, x.

⁹⁴ *Dunfermline Guild Bk*, pp. 7-8, 84.

⁹⁵ Torrie, 'The Guild in Dunfermline', pp. 249, 255.

⁹⁶ *Dunfermline Guild Bk*, p. 7.

⁹⁷ *Ibid.*, pp. 25, 24.

⁹⁸ *Ibid.*, p. 16.

⁹⁹ *Ibid.*, pp. 13-14.

[rest] of the consalle of the ton'.¹⁰⁰ As discussed in the previous chapter, it was important that the whole community knew of the result of such agreements, in part so that harmony was restored and in part to prevent the problem from resurfacing.

In 1438 Will of Gelland was made gildbrother after paying 40 shillings in silver and giving the traditional gift of wine, but the brothers gave him back ten shillings 'for hys gud dedis doand till the makyn of a cawsay betuyx the Lim kill and our ton of Dunfermlyn', highlighting the benefits of mutual co-operation and the willingness to reward it.¹⁰¹ In 1459 it was 'ackit and consentit with the hale fraternite of the gilde' that whenever a gild brother died, the sergeant of the gild would 'warne all the gild brethir on the nycht befor to pass with that corsse [corpse] to the erde'.¹⁰² Each brother was to make sure a mass was said for the soul in question within eight days, and any who failed to do so 'sall rasse on him xij d without remissione and giff it for the saulle', tying gild obligations firmly to the afterlife.¹⁰³

In 1441 the following was recorded:

In the presens of the aldirman and Wilyam of Kyrcauld deyn of the gild it was fundyn be the nychburis that Alan Lytstar had brokyn thar stutut of sellyn of gild merchandis tyl unfremen of this burgh quarfor the nychburis decretyt tha the said Alan sal be excludyt of al gild fredoum quyl he opteynyt [it] again at the aldirman the deyn and the brethir and pay xls to the brethir. Thir ar the namis of thaim that war thar...¹⁰⁴

Enforcing the rules with expulsion increased the likelihood of their being followed by others and, as with the reading of James III's letter in Aberdeen, the book records the names of the men who were present in order to establish the decision as truly representative of wishes of the gild brothers. In a final example, from 1487, Andro Gerwes was accused of 'strublangis of the aldirman and the dene and the hale court in ful [foul] langagis spekyng to Davy Litstar balye' for which he was charged 'throw the vertu of his aith and tinsel [loss] of his fredome' to ask forgiveness from everyone assembled.¹⁰⁵ Gerwes 'denyit to ask the said David forgyffnes' and thereafter 'for his dissobeyng', he was 'chargit to remayne in the tolbutht ondir the payne and chargis foirsaide'. Instead, he 'contemmandly passit furtht of the tolbutht but licens of the aldirman and dene'.¹⁰⁶ Unfortunately any repercussions which may have resulted from Gerwes's actions remain unrecorded, but it demonstrates that no matter

¹⁰⁰ *Dunfermline Guild Bk*, p. 14.

¹⁰¹ *Ibid.*, p. 6.

¹⁰² *Ibid.*, p. 16.

¹⁰³ *Ibid.*, p. 16.

¹⁰⁴ *Ibid.*, p. 8.

¹⁰⁵ *Ibid.*, p. 31.

¹⁰⁶ *Ibid.*, p. 31.

how heavily the discourses underpinning the gild were weighted towards co-operation and harmony it was always possible to break from the constraints if one was prepared to lose the attendant privileges.

In thinking about how ideas of incorporation could be used by guilds in day-to-day politics it is also illuminating to examine the seals of cause of the Edinburgh craft guilds, which survive from the end of the fifteenth century.¹⁰⁷ Edinburgh was a large and prosperous burgh, and by that time the *de facto* capital of Scotland, with a greater social demarcation between merchants and craftsmen than was the case in Dunfermline. The seals of cause are documents of incorporation, granted by the provost, bailies and council of the town to the body in question, and there are seven altogether, ranging in date from 1473 to 1489. These belong to the Hatmakers, Skinners, Wrights and Masons, Websters, Hammermen, Fleshers and Coopers. Very little work indeed has been done on Scottish craft guilds in this period, and so what follows is in some respects more general than could be wished. There is no doubt that these documents do, however, give an excellent insight into the nature of incorporation in Scotland, how it was conceptualised by contemporaries and how communitarian ideas were employed in the legitimisation of incorporated bodies.

Each seal of cause is different in formulation, but there are some broad similarities. Each begins with a greeting clause, and an oath from the council that the document is a true record of their judgment upon the 'bill of supplicatioun desyring of us our license consent and assent of certane statutis and reullis maid amangis tham self' presented to them by the craftsmen.¹⁰⁸ The reasons for applying for incorporation are enumerated, often at length, before the consent of the council is recorded as having been granted. It is often only then that the privileges sought are stated explicitly, whether in the first person as a record of what the craftsmen actually requested in person in the tolbooth, or whether as an itemised list as reported to and recorded by the clerk. Finally, a clause is added which records that the council found the request of the craftsmen to be 'consonand to reason', and official confirmation is granted with the appending of the seal of cause. In several of the examples, the council addresses the newly-formed guild as 'your universiteis', reflecting its incorporated status.

¹⁰⁷ *Edin. Recs*, pp. 26-34, 47-49, 54-58.

¹⁰⁸ *Ibid.*, p. 31. This example is from the Wrights and Masons' Seal of Cause, but others have broadly similar formulations.

With the exception of the Hatmakers' guild, the reasons given for requiring incorporation are invariably framed with comments upon the difficulties facing the craftsmen, and how the town would benefit from these difficulties being alleviated. The Skinners, for example, in 1474, claimed that through the problems which the craftsmen were bringing to the council's attention

the tone had a sclander and lak, the craft sustentit gret scaith and hurt and the commounis dissavit, and als that divine service and sufferage of Sant Cristoforis alter is mynist and reparatioun of the said alter nocht beildit nor helpit...and als anentis the disobeying of thair dekin in the cumming and gadding befor hym and the craft quhen thai ar warnit and for the comonning and avising for the gude of the hale craft and for the stanching of deformaris and babillars of the werk baith in kirkis and in tone and for the reformation to be had of thir thingis and divers utheris concerning and rying to the hale craft.¹⁰⁹

In the Hammermen's 1483 Seal of Cause, it is recorded that the craftsmen were

rycht haveily hurt and put to greit poverty throw the doun cumming of the blak money...and in lyik wayis...be the dayly mercat maid throu the hie streitt in cramis [stalls], and on the baksyde [of] the toun in bachling [discrediting] of hammermenis werk pertaining to thame of their craft, in greit dishonour to the burgh...and upoun uther skaithis that thay sustentit in default of reformatioun.¹¹⁰

Finally, the Fleshers make the case for incorporation, in 1488, by

considering the grit trubill and vexatioun that officeris haid of before tyme be the evill reull [of] multitude of dyverssis persouns unhabill [incompetent] contenit in the burgh, [who] sclander and blaspheme men of the toun and the hail craft throw evill payment and uther wrangous iniuris and deidis usit amangis the craft, in grit hurt and preiudice of the toun and common profeit, that sic thingis micht be retreitit and reformeit be the provest, bailieis and counsall of the toun.¹¹¹

While each petition has been formulated to reflect the particular concerns of the craft in question, the arguments also appear to be highly formulaic. The desire for a good reputation is given practical expression in the 'stanching of deformaris and babillars of the werk', the need to ensure quality is articulated in 'the evill reull' of the incompetent craftsmen, and the Skinners explicitly link the difficulties faced by the craftsmen with the diminishing of 'divine service and sufferage of Sant Cristoforis alter'. As a case had to be presented by the craftsmen before the council in order to be granted their seal of cause, each craft marshalled what it considered to be suitable evidence, and presented it within the expected framework. This framework required that great difficulties had been encountered by the craftsmen,

¹⁰⁹ *Edin. Recs*, p. 29.

¹¹⁰ *Ibid.*, p. 47.

¹¹¹ *Ibid.*, p. 54.

which were hindering not only their work, but the good of the whole town. Although the arguments put forward by the craftsmen clearly are based upon the perceived advantages of incorporation, it is debatable, without further research, to what extent each craft actually experienced these difficulties in fifteenth-century Edinburgh. It is possible that there were also broader political issues in play.

In 1469 the Scottish parliament passed legislation which fundamentally altered the structures of authority within the burghs:

because of gret truble and contensione yeirly for the chesing of the [burgh officers] throw multitud and clamor of commonis sympil personis, it is thocht expedient that...the chesing of the new officiaris be in this wise that is to say that the aulde counsail of the toune sall cheise the new counsail in sic noumyr as accordis to the toune, and the new counsail and the aulde of the yeir before sall cheise all officiaris pertenying to the toune as alderman, bailyis, dene of gild and uthiris officiaris, and that ilka craft sall cheise a persone of the sammyn craft that sall have voce in the said electioun of the officiaris for that tyme in like wise yeir be yeir.¹¹²

As Michael Lynch argues, this had the effect of ‘concentrating power in the hands of merchant-dominated councils now able to re-elect themselves to office with impunity’.¹¹³ Although craftsmen were to have a ‘voce’ in the election of officers, the council would remain firmly in the hands of the merchants. Lynch suggests that, due to the decline in overseas exports, the later fifteenth century saw a ‘flowering of commercial jealousies’ between merchants and craftsmen.¹¹⁴ It is perhaps unsurprising that the craftsmen would, as a consequence of the 1469 legislation, wish to have a greater degree of control over their own affairs. It was, of course, also in the interests of the merchants that the goods produced by the craftsmen were of high quality and good reputation, and so it can be argued that the council would also see incorporation as a way of better achieving these ends. The seals of cause employ a mode of discourse which idealises and standardises the political relationship, in order to achieve that which is mutually beneficial for both groups.

This is why appeals to the good of the town or the common profit are also peppered throughout the petitions. The justification for incorporation rests on the argument that it will be of benefit to more than simply the craftsmen concerned. The Hatmakers invoked the ‘honour worschepe and common proffeit of our Soverane Lord his Heines realm and ledgis and for the hail craft’, while the Wrights and Masons, in 1475, argued that their

¹¹² RPS 1469/19.

¹¹³ M. Lynch, ‘The Social and Economic Structure of the Larger Towns, 1450-1600’, in Lynch, Stell and Spearman (eds), *The Scottish Medieval Town*, pp. 261-86, at p. 264.

¹¹⁴ *Ibid.*, p. 266.

incorporation would promote 'the honour and worschip of Sanct Johne in augmentatioun of devyne service, and richt sa for reuling governyng of the saidis twa craftis and honour and worschip of the towne' and that they should 'have power, quhatsumevir utheris actis statutis or ordinancis, that thai think mast convenient for the utilite and proffet of the gud towne.'¹¹⁵ The Websters perhaps come closest to covering all bases, in 1476, when they argue for their incorporation for 'the governance of thare werks and labour and gude reule baithe fore worschip of the realme, commone profite and laute of craftismen and for uther divers and mony causes of gude motive.'¹¹⁶ The good of the guild is linked with the good of the town, and on occasion even the good of the realm itself.

In his discussion of incorporation, Hunter mentions in passing that 'it is in the petitions by craftsmen for formal approval of their societies and for the grant of power to regulate their several crafts that English styles seem to be influential', with which he is contrasting the lack of an explicit grant of *communitas* in the Scottish royal charters, as opposed to the English.¹¹⁷ It can be argued, however, that by the later fifteenth century there was a well-established, if less explicit, idea of Scottish incorporation which could be drawn upon by the crafts in presenting their petitions. As has been shown, the pool of communitarian ideas available in the urban context to those wishing to frame or legitimise their authority was rich and varied, and while it cannot be argued from a range of examples that each idea applied in all places at all times, it does not seem unreasonable to suggest that those living in Edinburgh in the 1470s and 1480s would have had better access than most.¹¹⁸ The seals of cause show a firm grasp of the legal concepts and political language which could be attached to a *communitas*, and similarities with the arguments earlier put forward by Aberdeen burgh council, such as the Fleshers' citation of 'grit hurt and preiudice of the toun and common profeit', are apparent.

Conclusion

Even allowing for the limited geographical spread represented here the first and most obvious conclusion which can be drawn from this evidence is that the burghs had a vibrant

¹¹⁵ *Edin Recs*, pp. 31-32.

¹¹⁶ *Ibid.*, p. 33.

¹¹⁷ Hunter, 'Corporate Personality', p. 232.

¹¹⁸ On the growing importance of Edinburgh as the home of the nascent legal profession see below, p. 101.

political culture of their own which has been overlooked by political historians. It has not been possible here to explore in any detail the principles and structures which underpinned the relationship between the crown and these towns, but it is an area in urgent need of further research. The implications of the current findings for the contribution of burgh representatives to parliamentary decision-making, whilst very difficult to investigate on available evidence, also needs to be given greater attention.

Collective action in the burghs was framed using customary ideas, corporation theory and Aristotelian ideas of the common good. The flexibility which this overlap gave to discourses of community allowed the burgh council to position the town as a legal entity, a physical location or a group of people, thereby legitimising a wide variety of decisions and actions by claiming to be acting for the good of the whole town. The community referred to was often that denoted by *communitas* in the charters – the burgesses – yet it could nevertheless be applied much more broadly in certain circumstances. Conversely, community was not the only word which identified the burgesses as a group. Other collective terms, such as neighbours, freemen or commons could be used, and conflating the interests of the burgesses with those of the town itself was also not unusual. Given that the burgh was an important source of revenue for the crown, and that the town's prosperity relied upon commercial activity, the good of the burgesses was in fact synonymous with the good of the burgh in many, quite tangible, respects, and the communal defence of their interests necessary to its survival. Whether or not the council actually had the greater good in mind when taking decisions, communitarian rhetoric provided a very powerful way in which the council could legitimise its authority.

Because the burgesses as a group were taken to be the default community, the particular men who sat on the council at any given moment could claim to be acting in the interests of all the burgesses; the *communitas*. Sometimes the council members may in fact have been attempting to do this and sometimes they may not, but the language could be used to justify either possibility, and lent a certain weight to the actions of the council which would otherwise have been lacking. The flexibility of the terminology allowed the burgh council to include within or exclude from the community unfreemen, outdwellers, outburgesses or potentially anyone else as seemed appropriate, and outdwellers in particular could be used in order to justify actions, often in regard to law and order. To this extent the idea worked in a very similar way to the Habermasian public; it allowed a particular group of men to

construe itself as 'the community', and make a claim to universality which would not have been possible otherwise.

The discourse of brotherhood and friendship which permeated the guilds not only bonded them together but provided a means of dispute resolution which was frequently drawn upon. The swearing of an oath in the presence of the brothers was recorded in the guild book, ensuring that the whole guild could hold each member accountable for adhering to the rules. To the economic benefits of guild membership were added a range of religious and social benefits. As these could be withdrawn if a brother was expelled, they acted to lessen the temptation for individuals to attempt to make an inferior contribution. Maintenance of reputation was essential to the craft guilds, in order to be able to sell their products, and the power to control this was one of the central arguments put forward for incorporated status in Edinburgh, where the craftsmen were able to draw upon a sophisticated range of communitarian concepts and language in their petitions in order to make their case.

Chapter Three: Public or Private? Lordship, Kingship and Justice

The settlement of disputes, whether in the burghs or otherwise, was integral to the exercise of political authority, and Jenny Wormald's work has been central to our understanding of these processes as they pertain to lordship.¹ In making the argument for a new approach to political history Wormald was reacting to the ingrained assumptions of previous historians, from the late sixteenth century onwards, who had argued that Scottish kings were weak and Scottish magnates were 'overmighty'.² These assumptions were problematic because they were teleological, taking as read an implicit desire on the part of medieval elites to modernise political institutions and practices, praising 'good' kings who managed to take steps towards creating a strong, central government and bemoaning the perceived backwardness of Scottish governmental structures, which gave the aristocracy the power to flout royal commands. Such an interpretation was in need of significant revision, and Wormald's alternative framework of close co-operation between crown and nobility provided just that. It has rightly been hugely influential. It is fair to say, however, that between the Wormaldian emphasis upon co-operation and bonding, and the focus upon interpersonal ties underpinning the work of the Macdougall school, that the study of the structures of royal government has become rather unfashionable in recent years.³ In 1952 William Croft Dickinson published a short article entitled 'The Administration of Justice in Medieval Scotland'.⁴ It bears all the hallmarks of the earlier historiography, arguing that 'feudalism' could still operate 'when the central authority is weak and unable to control the localities'.⁵ Then, he continues, 'the strong magnate seizes control in the outlying parts, and obtains...confirmation of powers which that authority is itself too weak to exercise.'⁶ Such assertions about strength and weakness have undoubtedly obscured both the importance of

¹ In particular her *Lords and Men* and 'Bloodfeud, Kindred and Government in Early Modern Scotland', *Past and Present* 87 (1980), pp. 54-97.

² Wormald, 'Taming the Magnates?', p. 271. For the older historiography see the 'Bibliographical Note', at pp. 279-80.

³ The exception to this is MacFarlane, *William Elphinstone*, which explores in depth the workings of royal government, eschewing the focus on personality adopted elsewhere, but retaining the analytical framework of strength and weakness adopted by earlier historians. It sees James III's reign as a 'struggle for order'. See pp. 154-55 for an explicit statement of his approach. For a brief critique see Tanner, 'James III', pp. 210-11.

⁴ W. C. Dickinson, 'The Administration of Justice in Medieval Scotland', *Aberdeen University Review*, 34 (1952), pp. 338-51.

⁵ *Ibid.*, p. 339.

⁶ *Ibid.*, p. 339.

Dickinson's subject matter and the value of some of his insights.⁷ While prioritising the explanatory power of administrative systems over that of personal relationships is certainly problematic in studying medieval governance, the same can surely be said when the positions are reversed.⁸ Unless the structures within which people were operating are fully understood there is a risk of ascribing to those people certain attributes based upon a reading of their actions, and then explaining their actions with reference to the ascribed attributes. While in some cases this will work well, in others it could potentially be rather misleading. A renewed focus upon the administration of justice in the localities can add substantially to our current understanding of lordship and kingship. By examining both discourses and practices this chapter will argue that the framework in which discussions of justice are currently placed needs to be substantially reconsidered.

Franchisal Courts and Private Justice

The generation of common knowledge was as important in local courts as it was to the crown. Outwith the burghs, franchisal courts were held by lords granted jurisdiction by the king, either *in liberam baroniam* or *in liberam regalitatem*.⁹ The sheriff, as an officer of the crown, also held his own court, while the justiciars, the highest crown judges, drove peripatetic justice ayres around the kingdom, in the same way as did the chamberlain. Both the 'performance' of justice through ritual and a reliance upon reputation can be traced throughout the sources, and were often mutually reinforcing. Cynthia Neville has highlighted the importance of ritual to the barony courts in the period between 1150 and 1400.¹⁰ Emphasising the court as a social space and physical setting for expressions of power, she argues that formalised speech acts fulfilled a 'crucial mnemonic function among audiences' and that the linking of aural and visual cues is 'readily observable in Scottish courtrooms in a host of contexts across the length and breadth of the kingdom'.¹¹ The precise form these rituals took varied with the period, geographical area and purpose. Due to the

⁷ On the problems of strength and weakness as analytical tools see Watts, *Henry VI*, pp. 14-15.

⁸ Powell, 'After "After McFarlane"', p. 12.

⁹ The term franchisal is here preferred to feudal as being more appropriate to the fifteenth century while still encompassing both barony and regality courts. The earliest baron court book which survives dates from the sixteenth century, *The Court Book of the Barony of Carnwath, 1523-1542*, ed. W. C. Dickinson (Edinburgh, 1937). This is also true of the earliest sheriff court book, *The Sheriff Court Book of Fife, 1515-1522*, ed. W. C. Dickinson (Edinburgh, 1928).

¹⁰ C. Neville, *Land, Law and People in Medieval Scotland* (Edinburgh, 2010), pp. 24-30.

¹¹ *Ibid.*, pp. 27-28.

actual and symbolic elevation they provided, hills were sometimes used as spaces for courts. In Annandale, for example, in 1456, an instrument of sasine was given by the king's serjeant to the brother of the laird of Johnston 'at the hill of Hutoune', while the Lords of the Isles are known to have convened their courts and councils on Eilean na Comhairle [Council Isle], part of their stronghold at Finlaggan.¹² Likewise, the touching of the 'holy evangel's' in front of witnesses during the swearing of an oath remained a central practice in many Scottish courtrooms throughout the medieval period.¹³ However inspiring or expected each act may have been, these performances were carefully staged in order to assert and legitimise authority, and to ensure that the events which transpired within the court became common knowledge. This was particularly important in matters relating to landholding. The public ceremony by which the witnesses heard the donor utter the words of the grant and saw him make the transfer by symbolic object remained an integral part of the exchange, even as written documents became an increasingly important part of the legal landscape.¹⁴

Central to the functioning of all medieval justice was the obligation of those who held land within the court's jurisdiction to perform suit of court.¹⁵ Suitors were expected to attend the three head courts each year and were responsible for returning the verdict of the court.¹⁶ Once a court was called it was formally 'fenced', marking 'its bounds and the limits of its peace'.¹⁷ In fencing the sheriff court the suits were announced formally from a roll. As each suitor was called he answered and entered the court to take up his place.¹⁸ In the barony court a similar system was in operation.¹⁹ After the preliminary statements had been heard and the oaths of the witnesses sworn before the whole court, the jury would hear the evidence and make their decision.²⁰ Once the matter had been decided the dempster

¹² NRS GD150/121; J. Munro and R. W. Munro (eds), *Acts of the Lords of the Isles, 1336-1493* (Edinburgh, 1986), p. xlix.

¹³ Neville, *Land, Law and People*, pp. 26-8; *Regiam majestatem*, p. 78.

¹⁴ M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (3rd edition) (Oxford, 2013), pp. 254-56. For an example in St Andrews in 1434 see *Copiale Sancti Andree: The Letter-Book of James Haldenstone, Prior of St Andrews (1418-1443)*, ed. J. H. Baxter (London, 1930), no. 62.

¹⁵ J. W. Cairns, 'Historical Introduction', in R. Zimmermann and K. Reid (eds), *A History of Private Law in Scotland* (Oxford, 2000), pp. 14-184, at p. 25; I. D. Willock, *The Origins and Development of the Jury in Scotland* (Edinburgh, 1966), pp. 75-76 and pp. 89-90. For examples of this stipulation see Fraser, *Buccleuch*, ii, pp. 30, 44, 48; Fraser, *Douglas*, iii, pp. 76, 86, 104.

¹⁶ Cairns, 'Historical Introduction', p. 26.

¹⁷ *Ibid.*, p. 26. See P. J. Hamilton-Grierson, 'Fencing the Court', *SHR*, 21 (1923), pp. 54-62, at p. 55, nn. 5-10 and p. 56, nn. 1-4 for a list of examples for courts of various jurisdictions.

¹⁸ *Sheriff Ct Bk.*, lxxxv and Appendix I, p. 406.

¹⁹ *Carnwath Ct Bk*, lxxxv, for example p. 3, 'sectis vocatis curia firmata absentes patent per rotulum'.

²⁰ *Ibid.*, xcii, for example pp. 69-70, 'of the quhilk deliverance the bailye gart gyf dome in dew fourme as efferit'.

publicly announced the judgement, or doom.²¹ In 1413, for example, it is recorded by the assizers in the court of the earl of Lennox that they ‘saw and harde that D. J. a soytture of the foirsaid courte, with the counsel and assent of all the soyttouris of it gafe for dome, that...’.²² The justice ayre was an equally public occasion. MacQueen notes the extensive amount of preparation which would have been necessary to host the ayre in each sherifffdom it visited.²³ The ayre was proclaimed forty days in advance to allow for the summoning of the suitors and litigants.²⁴ The justiciar moved around the kingdom with ‘pomp and display’, and a sizeable retinue, many of whom had official functions to perform in relation to the ayre. It could therefore be an ‘impressive display of the king’s power and authority in the localities’.²⁵ Borthwick and MacQueen have collated three notarial instruments which record the outcomes of cases heard in the court of the justiciar, in 1430, 1455 and 1465.²⁶ They provide a very helpful insight into court procedure and the authors note that there seems to have existed a distinction between ‘the court, as the judge of the law and the assize as the judge of the facts’, presumably because the facts would have had to have been judged by local men who knew the people involved in the disputes.²⁷ The importance of local knowledge is reinforced by the second case, which had proven difficult to resolve because the assizers were unaware that one of the litigants had been granted papal legitimation thirty years before.²⁸

The generation of common knowledge through reputation was also essential to the workings of the courts. *Regiam majestatem* states that

Any person who...perjures himself upon the Evangel or any sacred emblem, so as to condemn an innocent man through fear or favour, shall be excluded from the comfort and society of all Christian men...Thereafter he shall never be allowed to give evidence or to swear an oath, and shall be deemed unworthy of credit.²⁹

²¹ Cairns, ‘Historical Introduction’, p. 25. *Quoniam attachiamenta*, p. 322, states ‘What persons may give Doom’ in the sheriff court. The actual words of a doom against James Douglas, earl of Angus for rebellion, given in parliament by David Dempster, are recorded in *RPS* 1445/8.

²² P. J. Hamilton-Grierson (ed.), *Habakkuk Bisset’s Rolment of Courtis* (3 vols.) (Edinburgh, 1920-26), i, p. 314-15.

²³ MacQueen, *Common Law*, p. 63.

²⁴ For example *TA*, i, pp. 173, 182; MacQueen, *Common Law*, p. 63, n. 210.

²⁵ MacQueen, *Common Law*, pp. 63-4. On the circuit of the justice ayres in the 1490s, see Armstrong, ‘Justice Ayre’, pp. 7-8.

²⁶ A. R. Borthwick and H. L. MacQueen, ‘Three Fifteenth-Century Cases’, *Juridical Review* (1986), pp. 123-51.

²⁷ *Ibid.*, pp. 148-49.

²⁸ *Ibid.*, p. 133.

²⁹ *Regiam majestatem*, p. 273.

The link between oath-taking and honour is well understood, but it is worth underlining that the oath was taken publicly, in front of the court, so that everyone knew what an individual had promised, and could hold him to his oath if necessary.³⁰ As with the guilds, discussed in the previous chapter, expulsion from the group was the worst punishment which could be meted out; the group in this case being those who were trustworthy enough to influence local affairs by sitting upon juries. Walter Bower notes that ‘very many people both when serving on juries and when bearing witness take little or no care over making their oaths void...[E]very perjurer is a traitor by his disloyalty as far as God is concerned, causes harm by his deceit as regards his neighbour, and is destructive by his wickedness as regards himself.’³¹ While undoubtedly not always effective, therefore, the oath was performing an important function, acting to limit the extent to which people would pursue their own interests at the expense of others. The penalty for oath-breaking was social exclusion through the withdrawal of ‘credit’, or good reputation.

In both franchisal courts and crown courts members of the jury were drawn from the suitors. Juries were in use by the thirteenth century, although the earliest court books which survive date from the sixteenth century.³² The members of the sheriff’s court juries were ‘representative local men’, who almost certainly would have had some particular knowledge of the facts of the case.³³ In civil cases the jury was chosen by the sheriff acting in consultation with the parties concerned, and was likely to be composed of ‘near kinsmen, friends and neighbours’.³⁴ These men were required to swear to their knowledge of the truth of the matter, or step down from the jury, although partiality or nearness of kin could be grounds for exception.³⁵ *Regiam majestatem* provides plentiful evidence of the importance of reputation to the workings of local justice:

Each of the jurors should take an oath that in relation to the matter remitted to them they will not knowingly conceal the truth nor declare that which is false...it is necessary that they should be acquainted with the matter either from what they have personally seen or heard, or from the declarations of their fathers, or from other sources as much entitled to credit as if falling within their own personal knowledge.³⁶

³⁰ On the role of oaths in peacemaking more broadly, see J. Bentham, *Peacemaking in the Middle Ages* (Manchester, 2011), pp. 145-55.

³¹ *Chron. Bower*, iii, p. 383.

³² MacQueen, *Common Law*, p. 50. *Sheriff Ct Bk*; *Carnwath Ct Bk*.

³³ *Sheriff Ct Bk*, p. lxxxviii. P. J. Hamilton-Grierson, ‘The Suitors of the Sheriff Court’, *SHR*, 14 (1916), pp. 1-18, at p. 16.

³⁴ *Sheriff Ct Bk*, p. xci.

³⁵ *Ibid.*, pp. xcii, xcvi.

³⁶ *Regiam majestatem*, p. 79.

Every baron may purge his lands of malefactors and men of evil fame thrice annually by an assise of faithful men.³⁷

Where a person...avens his loss is inestimable and claims a larger sum than is due by law...the defender need not answer to any such inflated claim, but the loss sustained by the claimant by the death of his relative shall be assessed at a reasonable sum by trustworthy men of the court...³⁸

If any man has made it known that his money has been stolen from him, then finds it in some township...he may not at his own hand recover it, but must deposit it in the custody of honest men...³⁹

Parallels with the evidence from the burghs are clear. The entire system hinged upon being able to rely upon men of good local standing to carry out important duties, and to have reliable testimony either from witnesses to the crime or from those who could speak to the characters of the parties involved. Armstrong also notes that during the justice ayre accusations could be levelled 'for commone' - as in common theft - which he characterises as 'a general accusation which must have depended upon fame and reputation, appealing to communal sentiment against persistent wrongdoers who threatened "public" order or the common good.'⁴⁰ Such crimes could carry the death penalty, although mercy was common.⁴¹

The centrality of common knowledge both to crown courts and to franchisal courts raises questions as to the utility of the usual designation of royal authority as public and aristocratic authority as private. The public/private division, while long established, was underlined by Wormald in her pivotal article 'Bloodfeud, Kindred and Government in Early Modern Scotland', in which she argued that royal justice, or formal litigation in court, and kin justice, or arbitration and the resultant compensation, were not in conflict, as had previously been assumed, but interacted in a number of important ways.⁴² She stated explicitly that she intended to use the phrase 'private justice' to refer to the justice of the feud.⁴³ This was in keeping with Wormald's analysis of greater co-operation between crown and nobility but the term 'private' has since been adopted to mean the justice, and by implication authority, of the aristocracy in general terms. This has led to several recent

³⁷ *Regiam majestatem*, p. 336.

³⁸ *Ibid.*, p. 364.

³⁹ *Ibid.*, p. 284-85.

⁴⁰ Armstrong, 'Justice Ayre', p. 11.

⁴¹ *Ibid.*, p. 29.

⁴² Wormald, 'Bloodfeud', pp. 54-97.

⁴³ *Ibid.*, p. 57, n. 13.

analyses which stress the interaction between public and private justice.⁴⁴ The apparent readiness of the two to co-exist can, in part, be attributed to the characteristics ascribed, consciously or otherwise, to each term. Public authority is royal authority.⁴⁵ Justiciars, sheriffs and other crown officers are considered to exercise public authority but lords are not, unless they also hold office directly of the crown.⁴⁶ Public authority is also formal.⁴⁷ It is connected to parliamentary statute and to a royal court of appeal whether this is parliament or the king's council.⁴⁸ This authority has the capacity to centralise, even if this process was not always straightforward, and this articulates with an increasing 'professionalisation' of the law.⁴⁹ Public justice is carried out in the courts of the officers to whom royal authority is delegated,⁵⁰ and closely interacts with contemporary notions of ideal kingship.⁵¹ Private authority, in contrast, is aristocratic.⁵² It is exercised by a lord within his lordship. Standing in opposition to public authority, and to the embryonic legal profession, it is informal, local and even 'amateur'.⁵³ It is related to customary practices and structures of kinship, whether these are authentic or simulated by bonding, and relies heavily upon the aptitude of the lord for negotiating personal relationships, honour codes and the dynamics of feud for its efficacy.⁵⁴ Private justice is concerned with matters outwith the jurisdiction of the crown, of which local political considerations and alliances are likely to be integral components.⁵⁵

These sketches are, of course, overly simplistic. Nevertheless, they do help to highlight the conceptual confusion which renders the categories public and private so problematic for the

⁴⁴ In particular A. M. Godfrey, 'Rethinking the Justice of the Feud in Sixteenth-Century Scotland', in Boardman and Goodare (eds), *Kings, Lords and Men*, pp. 136-54, which raises several questions which have informed the following arguments, but see also A. Grant, 'Murder Will Out: Kingship, Kinship and Killing in Medieval Scotland', in Boardman and Goodare (eds), *Kings, Lords and Men*, pp. 193-226 and M. Brown, 'The Lanark Bond', in Boardman and Goodare (eds), *Kings, Lords and Men*, pp. 227-45, although cf. Susan Reynolds, who suggests that the terms 'public' and 'private' are too 'culture-bound and slippery' to be of use to medieval historians. 'The Historiography of the Medieval State', in M. Bentley (ed.), *Companion to Historiography* (London, 1997), pp. 117-38, at p. 125.

⁴⁵ Wormald, 'Bloodfeud', *passim*.

⁴⁶ Neville, *Land, Law and People*, p. 16.

⁴⁷ Wormald, 'Bloodfeud', p. 91.

⁴⁸ Godfrey, *Civil Justice*, pp. 7-93.

⁴⁹ Wormald, 'Bloodfeud', p. 91; pp. 95-6; Wormald, *Court, Kirk and Community*, pp. 23-25; J. Finlay, *Men of Law in Pre-Reformation Scotland* (East Linton, 2000); R. Mason, 'Laicisation and the Law: The Reception of Humanism in Early Renaissance Scotland', in L. A. J. R. Houwen, A. A. MacDonald and S. L. Mapstone (eds), *A Palace in the Wild: Essays on Vernacular Culture and Humanism in Late-Medieval and Renaissance Scotland* (Leuven, 2000), pp. 1-25.

⁵⁰ P. J. Hamilton-Grierson, 'Falsing the Doom', *SHR*, 24 (1926), pp. 1-18.

⁵¹ Mapstone, 'Advice to Princes', pp. 56, 97.

⁵² A. Grant, 'Franchises', p. 157; Brown, 'Lanark Bond', *passim*.

⁵³ Wormald, 'Bloodfeud', pp. 87, 91; *Court, Kirk and Community*, p. 24.

⁵⁴ Wormald, 'Bloodfeud', pp. 71-72, 75.

⁵⁵ Boardman, 'Politics and the Feud', pp. 92-97.

analysis of political authority in the medieval period; many lords would have been involved in both sets of activities.⁵⁶ Separating public and private authority requires that a lord exercise one variety when he holds a sheriff court and another when he holds a baron court, when in fact one of the most striking features of local justice as outlined above is the similarity of processes and procedures between jurisdictions. Both the civil and criminal jurisdiction of free barony closely paralleled that of the sheriff.⁵⁷ The much more comprehensive jurisdiction of free regality additionally covered the pleas of the crown: murder, rape, arson and robbery, providing a jurisdiction parallel to that of the justiciar. The crown provided the hierarchy of courts of appeal from all franchisal courts, so that all dooms could eventually be falsed to parliament.⁵⁸ Furthermore the process on brieves, by which many matters relating to freehold were obliged to be raised, ensured the crown's involvement in a dispute from the beginning, even as the matter was heard in the barony court.⁵⁹ Crown judges were drawn from the ranks of the upper nobility, and so held franchisal jurisdictions in their own right. The earl of Crawford, for example, was sheriff of Forfar between 1466 and 1488, a jurisdiction which encompassed several baronies which he himself held, such as Clova, Finavon and Inverarity.⁶⁰ Grant characterises the authority of franchisal courts as 'the private exercise of public power', while MacQueen also argues that the 'antithesis' between royal and franchisal justice has been overdrawn for Scotland, as the 'private courts' of magnates were instrumental in the maintenance of good governance.⁶¹

It may still be argued that the authority a lord exercised over feuding parties was something qualitatively different to that which he exercised during a sitting of his franchisal court. If this is assumed it makes the designation of both as 'private' more problematic, rather than less. The distinction was not one which was made in the fifteenth century. That the concept of public authority existed is suggested by the scattered references to *res publica*, which are occasionally contrasted with *regnum*.⁶² The former tends to be translated as 'state', which is not without its own attendant difficulties in this period, or as 'public good', as the context

⁵⁶ For a study of exactly this phenomenon in the sixteenth century see A. Groundwater, "'We Bund and Obleiss Us Never More to Querrell": Bonds, Private Obligations and Public Justice in the Reign of James VI', in Boardman and Goodare (eds), *Kings, Lords and Men*, pp. 173-92.

⁵⁷ MacQueen, *Common Law*, p. 57.

⁵⁸ Godfrey, *Civil Justice*, p. 21; Hamilton-Grierson, 'Falsing the Doom', pp. 1-2; *Quoniam attachiamenta*, p. 322.

⁵⁹ MacQueen, *Common Law*, p. 3.

⁶⁰ *RMS*, ii, 886, 1420, 1938, 1943.

⁶¹ Grant, 'Franchises', p. 156; MacQueen, *Common Law*, p. 33.

⁶² For example *Chron. Pluscarden*, pp. 83, 118, 226, 391; *RMS*, ii, 1910, 2093; *RPS* 1450/1/37, 1467/10/2, 1483/3/7.

demands.⁶³ When royal authority is discussed in the vernacular, however, whether in literature or in records of government, it is styled as the 'croun', the 'dignitee riale' or simply as 'majeste', without explicit reference to a public element. As discussed in the first chapter the word 'public' described actions or spaces rather than people or authority, and this did not begin to change until the very end of the period under discussion. There are some instances of the adjective 'privat', but they are very rare. Like 'public', its use appears to increase from c. 1490 onwards, becoming more common in the sixteenth century.⁶⁴

While there is no question, therefore, that the authority of a king was different to that of a lord, it is suggested that the difference was one of degree, rather than type. Use of the term 'private' to describe aristocratic authority elides two quite separate senses of the word which would have been covered by different concepts in the fifteenth century. The first of these is 'private' as in 'personal'. Personal relationships were the basis of medieval politics, and scholars have used 'private' in this sense quite freely, to encompass discussion of kinship ties, bonding, marriage contracts and a host of other activities central to lordship which took place outwith the purview of the crown. Contemporaries, however, thought in terms of 'allegeance', 'manrent', 'friendship', 'luf', 'kindnes' or, if an adjective is required, a 'speciale' relationship.⁶⁵ The second sense is perhaps the more straightforward, that of actions done 'in private'. Such actions were most often identified by the adjective 'secret', which was a far broader term in the fifteenth century than now. It encompassed not only the familiar sense of the clandestine but also acted as an antonym to 'opin'.⁶⁶ It could even pass into a sense of being confidential, hence, from the later fourteenth century, the office of Royal Secretary.⁶⁷ Furthermore, these two quite separate senses - the personal and the secret - each combine very easily with ideas of self-interest, complicating the matter still further. Items explicitly connected to self-interest were described as 'particular', 'singular' or 'parciale' during this period, rather than private, so although in any given situation these

⁶³ For a lively introduction to this debate see R. R. Davies, 'The Medieval State: The Tyranny of a Concept?', *Journal of Historical Sociology*, 16 (2003), pp. 280-300 and S. Reynolds, 'There Were States in Medieval Europe: A Response to Rees Davies' in the same volume, pp. 550-555. See also A. Grant, 'The Construction of the Early Scottish State', in J. R. Madicott and D. M. Palliser (eds), *The Medieval State: Essays Presented to James Campbell* (London, 2000), pp. 47-72 and K. Stringer, 'States, Liberties and Communities in Medieval Britain and Ireland (c. 1100-1400)', in M. Prestwich (ed.), *Liberties and Identities in the Medieval British Isles* (Woodbridge, 2008), pp. 5-36; J. Watts, 'Looking for the State in Later Medieval England', in P. Coss and M. Kean (eds), *Heraldry, Pageantry and Social Display in Medieval England* (Woodbridge, 2000), pp. 243-67.

⁶⁴ DSL, *privat*, *adj.*

⁶⁵ DSL, *special*, *adj.* Wormald discusses many of these concepts in *Lords and Men*.

⁶⁶ DSL, *secret*, *adj.*

⁶⁷ DSL, *secretar*, *n.*

different aspects of privacy may have been interacting in important ways and to varying degrees, this cannot be adequately assessed or described by using a single term for all three circumstances. In particular, leaving 'personal' and 'secret' intertwined within the description 'private' means that both are placed in opposition to 'public' which, if the latter is taken to mean 'royal', results in two assumptions which require to be considered much more closely: that there was no public dimension to the exercise of aristocratic authority, and that the king was unable to act both 'privately' and legitimately at the same time.

As has been shown, the first of these assumptions is demonstrably false; the public domain was as essential to the justice of franchisal courts as it was to royal justice. The second assumption has fairly significant implications for the current political narrative. While a king was certainly supposed to work towards the common profit rather than his own, singular profit, personal motivations were a standard, and assumed, component of all political behaviour. The commonplaces of advice literature which advocated moulding the king's character towards virtue remained relevant precisely because the king was fully entitled to act upon his personal inclinations.⁶⁸ In practice, of course, this was not always possible in fifteenth-century Scotland.⁶⁹ While the myth of the overmighty magnate may have been well and truly laid to rest, the ultimate fate of both James I and James III demonstrated that Scottish monarchs could rely upon theories of kingship only so far before political expediency, rather abruptly, took over.⁷⁰ Nevertheless, Scottish politics were certainly not devoid of political principle. If it is accepted, following the advice writers, that the purpose of a fifteenth-century king was to ensure 'justice, peace and policy' in the realm, and yet personal political motivations are placed in opposition to public authority because they are 'private' and therefore self-interested, the paradox is instantly created that a king's political objectives could not possibly have aligned with a desire to improve his kingdom.⁷¹ The advice offered to him on this subject by the mirrors for princes is therefore bound to appear conventional and derivative, because it cannot be taken to have any real resonance if the

⁶⁸ Watts, *Henry VI*, p. 17. On the balance between the will of the king and his need to be accountable as expressed in Hay see Mapstone, 'Advice to Princes', p. 132.

⁶⁹ Brown, 'Scotland Tamed?', pp. 128-33.

⁷⁰ Mason, 'Kingship, Tyranny and the Right to Resist', p. 10.

⁷¹ For example Wormald, 'Bloodfeud', p. 79, which states that the kings of late medieval Scotland were not 'lofty and high-minded creatures thinking of ideals' but instead 'used justice for their own ends'.

person receiving the advice is assumed always to be motivated by his 'private' interests.⁷² To set the monarch in opposition to the realm in this way would have been wholly alien to contemporary political thought.⁷³ While the extant evidence does not suggest a great preoccupation in late medieval Scotland with constitutional theory it is perhaps going too far to suggest that such considerations did not apply at all; the concern with both the Stewart lineage and the Scottish origin myths evidenced in the chronicles would suggest precisely the opposite.⁷⁴ Designating the personal relationships between individual lords as 'private' also removes the need to assign to them any higher motives, because their authority is not conceived of as 'public authority'.⁷⁵ It is argued here, therefore, that 'public' and 'secret' usually described modes of action through which authority could be exercised; that lords, just as much as kings, were obliged to exercise their authority publicly, and that secrecy, far from having negative connotations, was essential in structuring one of the most important components of both royal and aristocratic governance: the taking of counsel. None of these assertions is incompatible with the idea that political authority in the fifteenth century was exercised primarily through the cultivation of a strong network of personal relationships, and it is here suggested that this was just as important, and legitimate, a *modus operandi* for a king as for a lord.⁷⁶

Common Knowledge and the Justice of the Feud

It is the justice of the feud, or dispute resolution through arbitration, which Wormald originally classed as 'private', in order to show the complex ways in which it both drew upon and fed into royal, or public, justice. In adopting this terminology she was following

⁷² For example Mason, 'Kingship, Tyranny and the Right to Resist', pp. 11-12, which states that 'even at one's most charitable it is hard to describe this kind of political moralising as anything other than jejune.' See also Macdougall, *James IV*, p. 86. Both are referring to John Ireland's *Meroure of Wyssdome*.

⁷³ Watts, *Henry VI*, pp. 17-18; Black, *Political Thought*, p. 18. Mason, 'Renaissance Monarchy?', p. 259 notes that by the 1530s the Stewart dynasty and the integrity of the kingdom 'had become inseparable'.

⁷⁴ See above, p. 7, n. 28. See also M. Penman, 'Difficione Successionis ad Regnum Scottorum: Royal Succession in Scotland in the Later Middle Ages', in F. Lachaud and M. A. Penman (eds), *Making and Breaking the Rules: Succession in Medieval Europe, c. 1000-c.1600* (Turnhout, 2008), pp. 43-59.

⁷⁵ For example Boardman, 'Politics and the Feud', pp. 430-31, which argues that 'territorial acquisition and the successful expansion of the family patrimony were the real yardsticks by which the worth of a noble was judged' and the 'dressing up of baronial self-interest in the rhetoric of loyalty to the King' did not change this.

⁷⁶ See J. Firnhaber-Baker, 'Seigneurial War and Royal Power in Later Medieval Sothern France', *Past and Present*, 208 (2010), pp. 37-76, which also makes the case that sovereignty and aristocracy can be complementary rather than oppositional.

accepted practice, and wished to argue against the clear demarcation between government and kindred which had characterised previous work.⁷⁷ Yet the acceptance of public and private as categories to describe the authority of royal government and of the kindred respectively has entrenched the belief that these were essentially different types of authority which happened to share certain important attributes or applications, and which could be adopted interchangeably in particular circumstances as the need arose. According to Wormald, bonds of manrent were used 'quite explicitly' as the most effective way of adding to a lord's kin group, thereby imposing kinship obligations upon those who were not related by blood.⁷⁸ Although the social function of this kin group was mutual help and support, it was not a cohesive entity whose members acted on 'theoretical obligations'.⁷⁹ Instead, bonding was the way in which a lord could gain a more effective hold over men who were not otherwise within his sphere of influence.⁸⁰ He might have kin, friends, tenants, or members of his household amongst his adherents; bonding was the means by which other men of lesser rank entered into a personal relationship with him, becoming a part of his affinity. As these relationships often overlapped with ties of marriage and kinship, the dividing lines between kin, friends and men was often blurred.⁸¹ Wormald therefore highlights the prominence of the language of kinship within bonds. Although the inclusion of explicit references to each kin group, rather than simply the individual men in question, is not common in the fifteenth century it becomes so in the sixteenth, and Wormald argues that it is likely that the earlier bonds do not reflect the situation as it was, attributing the omission to 'a tendency in this period not to spell out the obvious.'⁸²

From the examination of fifty-eight fifteenth-century bonds, it is clear that the language of kinship is far more likely to be found within what Wormald terms 'contracts and bonds of friendship', which tend to be made between men of similar rank.⁸³ In 1466, for example, the

⁷⁷ Wormald, 'Bloodfeud', p. 56.

⁷⁸ Wormald, *Lords and Men*, p. 76.

⁷⁹ *Ibid.*, p. 83.

⁸⁰ *Ibid.*, p. 90.

⁸¹ *Ibid.*, p. 90.

⁸² *Ibid.*, p. 54.

⁸³ The total number of bonds examined represents around three quarters of those listed in Wormald's appendix for the period up to 1490. Wormald, *Lords and Men*, pp. 374-77. They can be found in the following volumes: *Abdn Banff Ill.*, ii, pp. 353-54; *Abdn Banff Ill.*, iii, pp. 338-40; *Abdn Banff Ill.*, iv, pp. 402-03; *Abbotsford Misc.*, i, pp. 5-7; *Banff Annals*, i, pp. 20-21; *Cawdor Bk*, pp. 59-62, pp. 69-71; *Collectanea*, pp. 83-86; *Family of Rose*, pp. 144-48; Fraser, *Carlaverock*, ii, pp. 446-48; Fraser, *Douglas*, iii, pp. 78-79; Fraser, *Grant*, iii, pp. 35-36; Fraser, *Melville*, iii, pp. 44-45; Fraser, *Southesk*, p. 251; Fraser, *Wemyss*, ii, pp. 109-10; *Morton Registrum*, ii, pp. 221-22, pp. 245-47; *Oliphants*, pp. 12-21, p. 28; *Spalding*

earl of Erroll made a bond with George Lord Gordon, son of the earl of Huntly, in which he promised to be 'for hym and with hym, his kynne, friendis ande ther querallis in consale, help, supple, mantenans ande defens...in the strattast fourme of bande of kyndnas'.⁸⁴ In 1467, a bond between William lord Forbes, Alexander Forbes of Pitsligo, Alexander Forbes of Tolquhon, Arthur of Forbes and John Forbes of Brachouse 'on a pairt' and Duncan Mackintosh, captain of Clanchattan, Huchon Rose of Kilravock, and Duncan's brothers Alan and Lauchlan 'on the tother pairt', bound the men 'baith for thairselffis and all and sundrie thair kine, men, pairtie and inheritouris that wil inherit to thaim, to keip hartly friendschipe, kinrente, lufe and kindness.'⁸⁵ In a particularly strong formulation, an indenture between William Thane of Cawdor and Huchon Rose of Kilravock, from 1476, records that Rose

is becummyne sone for all the days of his lyff to the said Wilyame Thayne of Caldor and takyn hyme as fadir, ande the saide Wilyame...ys becummyne to hym as luffyt fadir and takyn hym as sone and ilk ane of thaim sal help, supple, and defend utheris in all actionez, causis, ande querelis as sone aucht to do to fadyr and fadir to sone...⁸⁶

If it is the case that these bonds make explicit that which the contemporary bonds of manrent left unsaid, it is clear that the ideal of kinship was extremely important indeed in reinforcing the personal relationships through which political authority was mediated.

This language has clear parallels with the discourse of fraternity which, as discussed in chapter two, characterised the political relationship of guild members to their corporation.⁸⁷ Admission to the brotherhood of the guild was only possible after the swearing of an oath, in front of the other members, and payment of the fee.⁸⁸ An example of 'the entire oath of a burgess and a brother of the guild' survives from the reign of Robert I.⁸⁹ The man had to swear

That he will be leel and feel to our Lord the King, and to the community of that burgh in which he is made burgess. And that he will give to the King, faithfully, rent for the land which he defends. And that he will be obedient in things lawful to the provost and bailies. And that he will keep the secret counsel of the community. And if any thing to their prejudice shall come to his knowledge he will forewarn them or apply a

Misc., ii, pp. 251-60; *Spalding Misc.*, iv, pp. 179-88; *Spalding Misc.*, v, p. 288; *Wormald, Lords and Men*, p. 413.

⁸⁴ *Spalding Misc.*, ii, p. 251.

⁸⁵ *Collectanea*, pp. 80-81.

⁸⁶ *Cawdor Bk*, p. 60-61.

⁸⁷ Above, p. 65. The similarities between 'bonds of friendship' and 'co-operative unions' are also noted in G. Althoff, *Friends and Followers: Political and Social Bonds in Early Medieval Europe* (Cambridge, 2004), pp. 66-67.

⁸⁸ For example *Dunfermline Guild Bk*, pp. 13, 22; *Abdn Guild Recs*, pp. 65, 72; *Perth Guild Bk*, pp. 10-11.

⁸⁹ *Ancient Burgh Laws*, i, pp. 127-28.

remedy if he can. And that as often as he shall be asked he shall give them faithful counsel and assistance in common matters to his power. And that he will maintain the liberties, laws and customs of the said burgh during his life according to his burgh. And the oath being made in this manner, he ought to kiss the provost and the brethren.⁹⁰

While there are important differences between this oath and the language of bonding, there are also some striking similarities. Wormald provides an example of a typical bond of manrent, that between George Turnbull of Bedrule and George earl of Angus in 1456, in which Turnbull bound himself

lely and treuly to be with [Angus], serfe him & afald part tak with him at al my gudely power, bath in wer and pes in al his richtwys accionis causis and querelis for al the dais of my lyfe aganis & befor al thaim that lef may and de may, myne allegiance til our soverane lord the king alanerly outan [only excepted] & als oft as he askis me ony consel I sale gif him the best I can & gif he schewis me his consel I sale kep it & hed it as afferis at al tymis & nowyr her his skath nor se it bot lat it or warn him at my power, and thir thyngis forsaidis to do & fulfil I bynd me...⁹¹

In each case loyalty, fidelity and obedience is sworn, the authority of the king is granted primacy, and explicit promises are made regarding both the giving and receiving of counsel, and the forewarning of 'prejudice' or 'skath'. The most important difference is of course the individual nature of the oath given to a lord, versus the oath sworn to the community of the burgh or guild; these bonds were not multilateral and in no sense was a lord creating any sort of corporation by accepting bonds of manrent from lesser men. Nevertheless, the clear relationship of the customary practices in each case requires some further explanation.

Boardman, in his doctoral thesis, offered a different interpretation of bonding to that suggested by Wormald.⁹² He demonstrated an important connection between the making of bonds and the settlement of particular disputes, and highlighted the role of bonds of friendship in that process.⁹³ Boardman argued that these bonds 'formalised and guaranteed' the cessation of hostilities, secured the adherence of both parties to the settlement, and precluded further action by either.⁹⁴ This can be seen for each of the bonds of friendship discussed above. The Forbes-Mackintosh bond includes a promise that neither party will 'cum na gang to mak herschyp slawchter or dystrowbelans one tother in ony tyme to cum'.⁹⁵ Whoever did these things was to be 'haldin infamous, mansuorne, and renounce the fath of

⁹⁰ *Ancient Burgh Laws*, i, pp. 127-28.

⁹¹ Wormald, *Lords and Men*, p. 413.

⁹² Boardman, 'Politics and the Feud'.

⁹³ *Ibid.*, pp. 55-102.

⁹⁴ *Ibid.*, p. 55.

⁹⁵ *Abdn Banff Ill.*, iv, p. 403.

Chryst, and nevir to be hard in prufe na witnes, na ly in kyrke na Cristin beris.⁹⁶ The Errol-Huntly bond states that 'giff ony contraversyis happynis betwixt the saide lordis, thar kynne or freindis thai sall be decidit and decernit be thre of thair weil set consaell on athir syde, deput and chosin therto'.⁹⁷ Finally, the Cawdor-Rose bond records that Cawdor has 'remyttit and hartfullie forgevyn the rancour of his hart all sclauchteris harmez scathis ande injuris done to hyme his brethir, kyne, men ande party be the said Huchowne' and that 'athir of the saide parties has takyn ande gevyn utherlie the kys of pece'.⁹⁸

Practices which parallel each of these examples can be found within the guild records. It has already been noted how important the connection of Christianity was to the craft guilds, ensuring that sanctions applied in both the commercial and religious spheres, reinforcing adherence to the rules of the guild from two directions. A similar process would appear to be at work in the first bond, between Forbes and Mackintosh, which includes the withholding of Christian burial as one of the penalties for breaking the bond. The other penalty is the threat of loss of reputation, and of the right to act as a witness or offer proof, again similar those we have seen in local courts, urban or otherwise. One of the *Statuta Gilde* stipulates that 'giff ony of the brethir stryk ane uther with his nef [knife] he sall amend it with half a mark, and efter the will of the Alderman and the Den and the layff of the brether he sall mak asyth to the perty'.⁹⁹ This conciliar approach to dispute resolution finds a parallel in the Errol-Huntly bond, above. The inclusion of the 'kys of pece' between Cawdor and Rose recalls the requirement, cited in the oath, that a new burgess kiss the provost and the brethren on being admitted into the brotherhood.

Just as bonds drew upon the same customary language and practices as did guilds, so guilds, like bonds, had an important role in resolving conflict between members. As discussed above, the discourse of friendship found throughout the Dunfermline gild book is most prominent when brothers are being 'put in friendship' with one another, that is, when a dispute is being settled. As with the bonds above, the language of kinship acts to bring the parties together - even where the true feelings are less than brotherly - while the penalties were designed to prevent further discord. While applying the idea of the social dilemma and its attendant danger of 'free riding' to bonding practices may be rather unappealing, at root the mechanism is arguably the same as that which allowed the guilds to function so

⁹⁶ *Abdn Banff Ill.*, iv, p. 403.

⁹⁷ *Spalding Misc.*, ii, p. 251.

⁹⁸ *Cawdor Bk*, p. 61; Boardman, 'Politics and the Feud', pp. 72-74.

⁹⁹ *Ancient Burgh Laws*, i, p. 67.

effectively. It amounts to a commonly-known set of principles by which everyone agrees to abide, in order to prevent individuals from profiting by taking independent action, in this case in the form of violence. Such a model goes some way to bridging the gap between Wormald's analysis which stressed peace in the feud and that of Boardman, which stressed competition.¹⁰⁰ The more likely 'free riding' was to occur, whether this took the form of proscribed economic activity or of unilateral acts of violence, the more important it was to ensure that the language and practices which structured relations between group members acted to promote consensus and harmony.

It follows that, on certain occasions at least, bonding could be used to further joint aims, rather than simply acting to restrain violence, just as guilds did not simply settle disputes between members. In 1470, for example, Archibald, fifth earl of Angus made an indenture with George Hume of Wedderburn and his brother Patrick for the express purpose of assisting Patrick Hume in a legal dispute in which he was engaged with William Sinclair of Herdmanstone.¹⁰¹ The dispute was over the lands of Kimmerghame, which John Sinclair had given to his surviving son William, in 1463, after the death of his eldest son, also John. Despite this, an inquest held in the sheriff court in 1467 found that Marion Sinclair, daughter of John Sinclair junior, was the lawful heir of half the lands.¹⁰² Marion was Patrick Hume's wife, and her sister Margaret was married to George Hume, and Boardman argues that the women, backed by their husbands, were attempting to ignore or invalidate the wishes of their grandfather by arguing that the lands should come to them as joint heiresses.¹⁰³ The indenture states that Angus promised to 'help, supple, maneteine and defende, at all his gudely power, the saidis George and Patrik, in the brouking and pesable joising of the landis of Kymbirgeame' giving detailed specifics of the manner of assistance that Angus would offer, and in return the Humes would 'giff, content and pay to the said lorde erle the soume of ane hundredth markis of usuale mone of Scotland'.¹⁰⁴ This was reinforced by the statement that the Humes

lelely becummys men to the said Archibald erle of Angus, for all the dais of their liffis, to be with him in all his actiouns, causis and querrellis, movit or to be movit before and aganis all thaim that liff or de may, thair allegiance till our souverane Lord the King alanerly outtane, of the quhilkis thai sall gif thair lettris of manrent in the

¹⁰⁰ Wormald, 'Bloodfeud', p. 55.

¹⁰¹ Fraser, *Douglas*, iii, pp. 99-101; Boardman, 'Politics and the Feud', pp. 123-29.

¹⁰² Boardman, 'Politics and the Feud', p. 124.

¹⁰³ *Ibid.*, p. 124.

¹⁰⁴ Fraser, *Douglas*, iii, pp. 99-100.

best wys, and the said lord erle giffand agane to thaim his lettris of maneteinance in the best forme...¹⁰⁵

Angus and the Humes appear to have been using the particular circumstances of the legal dispute to form an alliance of sorts, which included both the payment of a fee for legal assistance and the exchange of manrent and maintenance. This alliance was to have important implications, discussed further below.

To what extent, then, can such practices be considered private? Bonding was not informal. If anything, it constituted the formalisation of personal agreements which would otherwise have been verbal.¹⁰⁶ Wormald discusses the scant evidence there is for the bonding ceremony itself, noting that both parties were present, that they swore their oaths upon the 'holy evangels' and that they did so in the presence of witnesses, just as happened in a court.¹⁰⁷ Bonds could be produced as evidence in a crown court to prevent claims being pursued there in defiance of the decision reached at arbitration.¹⁰⁸ They thus provided 'documentary proof' that an agreement had been reached and the matter was settled.¹⁰⁹ In 1492, for example, the feud between John, lord Drummond and Laurence, lord Oliphant, Sir William Murray of Tullibardine and John Haldane of Gleneagles was arbitrated by William Elphinstone, bishop of Aberdeen, Colin Campbell, earl of Argyll and Chancellor, and Robert lord Lyle, the justiciar, during the justice ayre.¹¹⁰ As part of the settlement, the arbiters stipulated that neither party should 'persew nor follow utheris civily or crimnally in tyme to cum for ony manner of accionis...movit betwixt thaim'.¹¹¹ A further example can be found from 1491, when a feud between the Lennox and Sempill families was brought to a conclusion at the justice ayre.¹¹² Given that each bond of manrent also begins with the phrase 'Be it kend til all men', it is very difficult not to regard the practice as having a public dimension.¹¹³ This is perhaps best demonstrated by a bond made between John, Lord Maxwell and Cuthbert Murray of Cockpool, in 1486, in which it was specified that in order

¹⁰⁵ Fraser, *Douglas*, iii, p. 101.

¹⁰⁶ *Ibid.*, p. 83.

¹⁰⁷ Wormald, *Lords and Men*, pp. 20-21.

¹⁰⁸ *Ibid.*, p. 77.

¹⁰⁹ *Ibid.*, p. 77. Wormald also notes that they could be 'produced as evidence of...the allegiance and source of dependents', *Lords and Men*, p. 73.

¹¹⁰ Boardman, 'Politics and the Feud', p. 76.

¹¹¹ Atholl Muniments, Blair Castle, Blair Atholl, Box 1/Parcel 1/No. 22, cited in Boardman, 'Politics and the Feud', p. 76.

¹¹² Boardman, 'Politics and the Feud', p. 267; Armstrong, 'Justice Ayre', p. 2.

¹¹³ This was a rendering into the vernacular of the Latin *sciatis*, which was used in formal documents throughout the later medieval period. H. MacQueen, *Laws and Languages: Some Historical Notes from Scotland*, *Electronic Journal of Comparative Law*, 6 (2002), p. 1.

to make amends for the 'handlyng of lord Maxwellis persone and slauchter of his eme [uncle]', Murray and his party had to present themselves at the Market Cross of Edinburgh or Dumfries 'or quhat uther place at plessis the said Lord best' and 'in thair lynnyng clathis, in the maist lawly wis thai can...ask the said lord, his kin and frendis forgiveness of the rancor of thair hertis'.¹¹⁴ Part of the compensation required by lord Maxwell in order to resolve the matter was a public display of contrition very similar to those performed by offenders in Aberdeen.¹¹⁵ In fact, as Wormald argues, the act of publicising the agreements which resulted from arbitration was an essential part of the process.¹¹⁶ Again, justice had to be seen to be done, and if it was important that the men involved understood that hostilities had ceased, then it was also true that those who lived locally had to be informed about the peace in order for it to remain effective.¹¹⁷ Crown courts, franchisal courts and the parties involved in personal arbitration all shared an imperative to publicise the results of justice, whatever form that justice took. As Godfrey argues, it was in fact the methods of conflict resolution – litigation versus arbitration - which were qualitatively different, rather than the justice itself or the nature of the political authority which underpinned it, and the parties involved, no doubt with a great degree of guidance from the lord to whom they took their grievance, could choose how best to resolve a dispute in any given circumstance.¹¹⁸ Jackson Armstrong has argued that this form of arbitration was very effective in promoting peace through compromise, by 'building new, positive relationships, transforming the structures which generated conflict' and limiting the desire for revenge, and the language of kinship was well-placed to facilitate such ends.¹¹⁹ While it was certainly a very different method of dispute resolution to litigation pursued in the courts, therefore, the similarity of personnel and practices, the common need for publicity and the interaction between litigation and arbitration within a given case all argue against classifying arbitration as somehow being in opposition to authority as exercised in the courts. As Grant concludes, there was 'no dichotomy' between the justice of the feud and that of the 'state'.¹²⁰

¹¹⁴ Fraser, *Carlaverock*, ii, p. 446.

¹¹⁵ Above, p. 34.

¹¹⁶ Wormald, 'Bloodfeud', pp. 76-77.

¹¹⁷ *Ibid.*, p. 77.

¹¹⁸ Godfrey, 'Justice of the Feud', pp. 149-54. Cf. Boardman, 'Politics and the Feud', p. 55, which draws the same distinction, between 'luf' and 'law'. Wormald hints at this also when she argues that, for those who implemented justice, there was 'no difference' between that which was public and that which was private. 'Bloodfeud', p. 83.

¹¹⁹ Armstrong, 'The Fyre of Ire Kyndild', p. 72.

¹²⁰ Grant, 'Murder Will Out', p. 226.

Although a lord may have exercised very extensive judicial powers, therefore, this authority was never fully independent of the crown.¹²¹ While in practice the king doubtless often had no choice but to grant franchisal jurisdictions, and indeed recognise pre-existing ones, nevertheless they were always theoretically subject to 'royal correction and control'.¹²² Indeed Grant has described the regality as a 'private-public partnership'.¹²³ It is perhaps better to characterise such jurisdictions as personal, having been granted by the king to each man individually, to exercise freely within the law. As Brown has demonstrated, the Douglas propaganda of the 1440s, in particular Richard Holland's *Buke of the Howlat*, chose to highlight the fact that many of that family's lands were originally won in war, but they were still, technically, held of the king.¹²⁴ Indeed these competing narratives likely did nothing to alleviate the tensions which would later arise between the eighth earl and James II. None of this is to argue for the political authority of the nobility as being in any way diminished, simply that it was not of a type which can readily be set in opposition to that of the king. As Gilbert Hay argued in the *Buke of the Ordre of Knychthede*:

as kingis and princis has dominacioun and seignoury here upon al knyghtis – sa suld knyghtis have dominacioun and seignourye subordinate of the princis and lordis behalve, be semblance of syk like figure upon the small peple to governe reugle and defend thame in all thair necessities...¹²⁵

Kingship, Lordship and Counsel

If political authority had to be exercised publicly it was equally important that it was exercised personally, and this was as true of royal as aristocratic authority. It was for this reason that counsel had such a central place in the political culture of this period. Because the king was able to direct policy according to his personal wishes his advisers had both a duty and a right to ensure that this was done for the good of the realm.¹²⁶ Clearly, this was a far more complex process in practice than in theory; the prevailing political circumstances,

¹²¹ It is described as 'a right and duty to hold courts to exercise a delegated royal authority' over tenants in Cairns, 'Historical Introduction', p. 22.

¹²² MacQueen, *Common Law*, p. 66.

¹²³ Grant, 'Franchises', p. 199.

¹²⁴ Brown 'Rejoice to Hear of Douglas', p. 167.

¹²⁵ Hay, *Knychthede*, p. 1.

¹²⁶ A full discussion of the dimensions, both theoretical and practical, of political counsel can be found in the introduction to J. Rose (ed.), *The Politics of Counsel in England and Scotland, 1286-1707* (forthcoming). I am very grateful to Dr Rose for allowing me to see an advance copy. See also Mason, 'Kingship, Counsel and Consent', pp. 278-80. For a discussion of the conceptual framework of counsel in fifteenth-century England, Watts, *Henry VI*, pp. 13-80.

the conventions attached to the giving of advice and the forum in which it was offered, the different objectives of the king and of his advisers, and the personalities of those involved must all have had a bearing upon the outcome of any particular act of counsel.¹²⁷ These variables are extremely difficult to investigate for a variety of reasons, not least the fact that counsel given personally was often secret counsel, of which no records were kept. This element of secrecy stands in sharp contradistinction to the publicness which characterised the exercise of political authority in almost all other contexts.¹²⁸ It is therefore very difficult to ascertain the extent to which such advice was offered in an institutional setting, or as part of a less 'formal' discourse of counsel. It is possible that such a distinction may have been lost on contemporaries when it came to advising an autonomous, adult king.¹²⁹

Giving and receiving counsel was not only essential for the smooth running of a kingdom; lords were also required to listen to the counsel of their men.¹³⁰ The stipulations regarding counsel within bonds of manrent were very common during the fifteenth century, even if no standard format existed for their expression.¹³¹ In 1477 William Scheves, then co-adjutor of St Andrews, promised to give to William, earl of Erroll 'the best counsale we can quhen he askis at us And concele the counsal that he schewes to us And revele it to na person with oute his awin avise'.¹³² In the same year Hugh of Douglas swore to the Lord of Morton that 'I sal gyf hym and his ayris the best counsale I cane and heile [hide] thair counsale gyf thai ony schaw me', while in 1489 Alexander Cummings gave his bond to the Master of Huntly, and agreed that 'I sall gif him best and trewast counsale I can, gif it be requirit therewitht, and gif he schawis me ony of his counsale I sall keip it secret'.¹³³ A clear parallel to all of these oaths can be found in those sworn to James II by the prelates and barons at the 1445 parliament, suggesting that counsel had a similar function whether oaths were sworn to a king or to a lord.¹³⁴ Each required reliable sources of information in order to make sound

¹²⁷ Rose, 'Introduction', forthcoming.

¹²⁸ The obvious exception is diplomacy. See RPS 1471/5/2 regarding an embassy to France and Burgundy, which states that 'the materis mon be secret and nocht be opynnit in plane befor al the parlyment'.

¹²⁹ On the importance of councils during periods when the personal authority of the king was less than robust, see M. Brown, "'Lele Consail for the Commoun Profite": Kings, Guardians and Councils in the Scottish Kingdom, c.1250-1450', in Rose (ed.), *The Politics of Counsel*, forthcoming. I am very grateful to Professor Brown for allowing me to see an advance copy.

¹³⁰ Mason, 'Kingship, Counsel and Consent', p. 280.

¹³¹ Wormald, *Lords and Men*, pp. 67-68.

¹³² *Spalding Misc.*, ii, pp. 252-53.

¹³³ *Morton Registrum*, ii, p. 221; *Spalding Misc.*, ii, p. 185.

¹³⁴ For the oaths themselves, and a discussion of their significance for parliamentary authority, see below, pp. 123-24.

decisions and judgements, and each had to be able to share plans with his men individually, without the plans becoming common knowledge. In parliament, where it was possible that the interests of individual lords were not always in alignment with those of the king, such an oath was especially important; the act of receiving counsel provided a means by which the king could effectively bind men to his own interests, in theory at least.

Whereas the king's great council, parliament, has left plentiful records, evidence that magnates convened similar councils is very patchy. The Lords of the Isles are perhaps the exception to this. There exist charters, issued at Dingwall castle between 1463 and 1467 by John MacDonald as earl of Ross, which explicitly state that the grants were made 'with the consent and assent and mature deliberation of our whole council'.¹³⁵ The degree of institutional formality which characterised these meetings must remain unknown, but the references are suggestive of a body of men which regularly gave advice to the MacDonald lords. A few further references to aristocratic councils survive. The Register of the Great Seal provides evidence of the councils of Alexander, lord Gordon, from 1440, Archibald, earl of Moray, from 1447 and David, earl of Crawford, from 1471.¹³⁶ A notarial instrument, from 1446, records a dispute which was settled by William Hay, the constable of Scotland, and his council, while another, from 1403, records the settling of a dispute by lord William Keith, marischal, and his council.¹³⁷ In both instances the instruments were drawn up by Imperial notaries.

Two further examples form part of the documentation created by the claims of Robert, lord Erskine to the earldom of Mar during the minority of James II.¹³⁸ One is an 'appoyntement' between Erskine, calling himself lord of Mar, and the lord of Forbes and his sons, from 1439, and states that Forbes agreed to submit himself 'to my Lorde of Mar forsayde ande to his consale upon al unkindnes wrangkis ande iniurris don be him or his sonnys' and that Erskine shall 'refowrme at the sycht of the sayde consale of al unkendnes wrangkis ande iniurris don be thame to the sayde Lorde of Forbes or his sonnys forsayde'.¹³⁹ Eight men are

¹³⁵ Munro and Munro (eds), *Acts of the Lords of the Isles*, nos. 76, 78, 80, 82, 91, *de consensu et assensu et matura deliberatione totius nostri concilii*.

¹³⁶ RMS, ii, nos: 370, '*de avisamento et deliberatione consilii sui*'; 301, 'the said decrete and declaratioun of the said lord Earle of Douglass and his consale...', cited in Wormald, *Lords and Men*, p. 431. Also no. 1038, 'we saidly avisit with our counsale undirwritin...'

¹³⁷ *Abdn Banff Coll.*, pp. 484-85, '*per dictum Dominium Constabularium et suum consilium adjudicata*'; p. 501, '*Domini Willelmi Keth Marescalli Scocie et consilii sui*', Munro and Munro (eds), *Acts of the Lords of the Isles*, p. xlvii, n. 111.

¹³⁸ Discussed in McGladdery, *James II*, pp. 19-22.

¹³⁹ *Abdn. Banff Ill.*, iv, pp. 189-90.

then named as counsellors, before the stipulation is made that men of the Forbes party will be added to Erskine's council once the indenture has been fulfilled.¹⁴⁰ The second document is an indenture between Erskine and James II, from 1440.¹⁴¹ It states that

it is accordit be way of amiable composicioun betuex oure Sovereyne Lord the King and his counsaile underwrittin on the taapart, and ane noble lord Schir Robert lord of Erskyne with deliverance of his counsaile on the tothire part, in maner and fourme as effir folowis, that is to say that for the gude and the quiete of the land oure forsaid Sovereyne Lord will, withe avice of his said counsaile, gerre deliver the castel of Kildrummy [in the earldom of Mar] to the said Lord of Erskyne...to be kepit...to the Kingis behuve and age and than to be deliverit to the King but [without]obstacle...¹⁴²

In return Erskine was to surrender the castle of Dumbarton to the crown.¹⁴³ Although magnate councils could serve different functions to their royal counterparts, therefore, it is clear that a conciliar approach to governance and justice could structure and enhance the authority both of the king and of his greatest subjects.

While the advice writers, without exception, emphasise the importance of wise counsel and urge the king to heed it, only Gilbert Hay offers any practical advice on how this ought to be done:

ever halde in thy hert thy secret thingis that thou thinkis to do and schwa it never to nane of thame [the counsellors], na lete nocht that thou wald ask counsaile at thame, na lat thame never have a fele in quham thou fyes [trust] the maist, na quhais counsaile of thame thou wald ertest [first] traist in and follow to do, for and thou do that the lave [rest] sall pris the the lesse.¹⁴⁴

ask thair opyniouns and here gladly ilkane of thame be thame self severaly and trete in to thy hert and cast all thair counsailis ilkane till other in thy mynde and wey thame as thou thinkis the cause requeris with thair jugementis and opyniouns. And syne ches be thyne awn wit the best or at the leste the lykliest for thy prouffit and the common prouffit of the realme.¹⁴⁵

quhen thou askis at thy counsailouris thair opyniouns it is loving that thou here thame diligently and severalie ilkane efter other in thy presence and melle nocht thair sawis [reports] togeder na let nane other persone cum amang thame in the tyme bot anerly thame self...And syne thou sall assemble thame agayn quhen thou art avisit

¹⁴⁰ *Abdn. Banff Ill.*, iv, p. 190.

¹⁴¹ *Ibid.*, pp. 192-93.

¹⁴² *Ibid.*, p. 192.

¹⁴³ It appears that Erskine did no such thing, and the dispute continued. McGladdery, *James II*, p. 21-22.

¹⁴⁴ Hay, *Gouvernaunce*, p. 113.

¹⁴⁵ *Ibid.*, p. 113.

and geve out thy conclusioun. Ande thus sall thy wit be commendit And thou lovit and doubtit.¹⁴⁶

It is nocht spedefull that thou ask the counsaile at us all togeder bot spere at ilkane be him self, for mony man will say in secrete to the allane it that he wald nocht say in the presence of all thy counsaile.¹⁴⁷

What stands out most strikingly is the importance placed upon interacting with counsellors individually. The king has to retain control over the information he uses to inform his decisions, and so secrecy is vital if he is to avoid any loss of authority. This is suggestive of a broader desire on the part of the crown to deal separately with its greatest subjects, other than in parliament. While there are undoubted dangers in arguing from negative evidence, it is interesting to note that the advice writers in this period studiously avoid portraying the kingdom as a community. Bower uses a variety of terms in relation to the realm: *gens*, *nacio*, *res publica*, *communitas* and *civilitas*; it is therefore not always straightforward to ascertain if he drew any meaningful distinctions between them.¹⁴⁸ Regarding his use of *communitas*, however, two points can be made; it is used to denote the towns, although not exclusively, and it is not used to describe the kingdom during his discussion of the fifteenth century. The Pluscarden chronicle follows this lead, employing *communitas* rarely, and solely in the earlier period.¹⁴⁹ Hay's *Gouvernaunce* uses the term 'communittee' only once, in connection to the Roman legal maxim *quod omnes tangit*.¹⁵⁰ It is found only twice within Ireland's final book of the *Meroure of Wyssdome*, while Holland's *Buke of the Howlat*, with its avian parliament, avoids the word completely.¹⁵¹ While all of these texts have very different origins, sources and indeed purposes, they were all written in the political milieu of the later fifteenth century, suggesting that the concept of community was not one which was widely applied to the realm in this period.¹⁵²

The same conclusion can be drawn from the parliament records.¹⁵³ The concept of the *communitas regni* had been instrumental in countering English claims to overlordship during the Wars of Independence. From the reign of David II parliament is referred to throughout

¹⁴⁶ Hay, *Gouvernaunce*, pp. 113-14.

¹⁴⁷ *Ibid.*, p. 117.

¹⁴⁸ For a particularly diverse selection see *Chron. Bower*, ii, pp. 422-25, where he discusses the duties of a king. Reynolds, *Kingdoms and Communities*, pp. 254-56.

¹⁴⁹ *Chron. Pluscarden*, ii, p. 280. This is the only reference to *communitas* to be found in book xii of the chronicle, and relates to the towns.

¹⁵⁰ Hay, *Gouvernaunce*, p. 117, discussed below, p. 122.

¹⁵¹ Ireland, *Meroure*, pp. 111, 115; Holland, *Howlat*.

¹⁵² A discussion of many of these elements can be found in Mapstone, 'Advice to Princes'.

¹⁵³ For example RPS 1444/2, 1469/14, 1487/10/7.

the fourteenth century as the 'three communities', and this begins to overlap with 'three estates' from the reign of Robert II.¹⁵⁴ A particularly nice example, the ordinance entailing the crown in 1373, states that 'from the deliberation of council and with the consent and assent of the prelates, earls and barons, and the rest of the leading men and nobles and all others of the three estates or communities of the whole kingdom assembled in the same place...', suggesting that as both terms were in current use, each was included to avoid any ambiguity.¹⁵⁵ The decisive shift came, perhaps unsurprisingly, with the accession of James I, after which time parliament is invariably comprised of three estates, and the word 'community' is reserved for the towns.¹⁵⁶ While the standardisation was doubtless partly prompted by the policy of recording legislation in the vernacular, this alone does not account for choosing one term over the other. There is only one piece of pre-1424 vernacular legislation, from 1397, which uses the older nomenclature: 'it is statutit and ordanyt with assent of the thre communatez...'.¹⁵⁷ This suggests that both terms - communities and estates - were in use in the vernacular, and that James I's government made a conscious decision to use the latter over the former. While any conclusions drawn from this must, by necessity, be rather circumspect, it does not seem entirely implausible that a desire to decouple meetings of parliament from ingrained notions of corporate action could be attributed to James I or, for that matter, his successors. The rhetoric of both the chronicles and the parliament records certainly stands in sharp contradistinction to that of the burgh records outlined in chapter two, where it can be seen that the invocation of community was integral to the exercise of political authority.

The idea that the crown preferred to deal with the members of the nobility as individuals is also given support from the existence of the clause inserted into all bonds of manrent which stated that the parties' allegiance to the king should be excepted from the agreement. The royal absences and minorities of the fifteenth century ensured that the Stewart kings were very familiar with the idea that a group of magnates could wield royal authority for the good of the realm, and it was presumably not something that they wished to encourage during their personal rule. In 1425 parliament enacted a statute which stated that

¹⁵⁴ RPS 1389/3/1.

¹⁵⁵ *omnium aliorum de tribus statibus sive communitatibus totius regni*

¹⁵⁶ See J. Goodare, 'The Estates in the Scottish Parliament, 1286-1707', *Parliamentary History*, 15 (1996), pp. 11-17, for a discussion of the development of the medieval idea of the three estates, but note that he elides *communitates* and *stati*, translating them both as 'estates', at p. 13.

¹⁵⁷ RPS 1397/1.

it is decretyt and throu the halle perlyament consentyt and be the kyng forboddin in all the realme till his legis that ony lygis or bandis be mayd among thaim owthir to conffeir again the kyng or agayn ony of his legis in parcialete. And gif that ony has bene mayd in tym bygain and thai be nocht keptit nor haldin in tym to cum.¹⁵⁸

While this act was certainly prompted by the particular political circumstances which pertained at that time, it clearly articulates a concern to prevent any sort of collective action which might be considered detrimental to the interests of the crown.¹⁵⁹

Rather than a *communitas*, therefore, the fifteenth-century kingdom could be conceptualised as a network of personal relationships which the king both encompassed, via the delegation of personal authority to the localities, and directed, via the distribution of patronage.¹⁶⁰ It was his right to shape this network as he chose, as long as it was done for the common good, and this required secrecy in order to minimise the difficulties which must undoubtedly have arisen as one man came to be preferred over another. From the perspective of the king this model was infinitely preferable to the existence of a cohesive community whose interests could be set in opposition to his own, and so he took advice from his tenants-in-chief separately and secretly, as well as together in parliament. Secrecy was therefore a legitimate mode of governance without which the mechanism of counsel would have been completely ineffective. This situation was not without difficulties, however. The trope of the 'evil counsellors', common across Europe and used to great effect to justify the overthrow of James III in 1488, was so effective precisely because counsel was taken secretly and so could be fairly easily framed as malign by the disaffected, given the right circumstances.¹⁶¹ This trope was surely bolstered by the negative attributes in law of secret behaviour, and it is perhaps no coincidence that evil counsel was strongly associated with low birth and unworthiness.¹⁶²

The king, like the lord, had the right to form personal relationships, take advice and reward his supporters in any way that he chose, without having publicly to justify his choices. Providing that he did this in accordance with the norms of good kingship no difficulties arose. Only when crown authority was less than robust was it necessary to formalise these

¹⁵⁸ RPS 1425/3/6.

¹⁵⁹ This was the destruction of the Albany Stewart family by James I. Brown, *James I*, pp. 40-71.

¹⁶⁰ On patronage see Chalmers, 'King's Council', which also emphasises that there was 'no distinction in the medieval mind between private and public spheres of operation', at p. 14.

¹⁶¹ J. Rosenthal, 'The King's "Wicked Advisers" and Medieval Baronial Rebellions', *Political Science Quarterly*, 82 (1967), pp. 595-618; Watts, *Making of Politics*, pp. 5, 147.

¹⁶² For discussion of the idea of secrecy in criminal matters see e.g. Grant, 'Murder Will Out', p. 222; Armstrong, 'Justice Ayre', pp. 24-25.

relationships and to publicise them. This was particularly true for minority governments which, despite having possession of the person of the king, could not exercise anything close to the same degree of personal authority as an adult monarch ruling in his own name, and could not command either loyalty or obedience as a matter of right. Brown gives many examples of this process in action, arguing that 'since 1437 (and before 1424) royal governments had repeatedly regulated their relationships via essentially private arrangements', and it is certainly the case that the 'appoyntements' and indentures made by the crown during this period were performing the same regulatory function as has been demonstrated above in relation to lordship and to the guilds.¹⁶³ As with other bonds, however, it was necessary that such agreements became common knowledge, so that they could be successfully implemented. The 1439 'appoyntement' between Queen Joan and Alexander Livingston of Callendar and others, which gave James II into Livingston's custody, was witnessed by ten men who are explicitly referred to as representing each of the three estates, thereby ensuring that the accord, such as it was, was legitimised publicly.¹⁶⁴ The personal nature of such agreements, far from being in opposition to royal authority, was entirely in keeping with it; it would have been very difficult indeed for minority regimes to claim legitimacy whilst making indentures if this were not the case. Instead, it was the need to formalise such relationships which indicated that the full force of royal authority was lacking. This was both expected and accepted from a minority government.¹⁶⁵ It became unusual when an adult king had to resort to such measures. It was very rare indeed for a king to find himself in direct competition with one of his subjects to the extent that regulation was required of the type that bonding provided; any such 'free riding' on the part of a lord would ordinarily be considered treasonous. The acrimonious personal relationship of James II to the 9th earl of Douglas had been established in circumstances in which the legitimacy of the king's authority had been called into question.¹⁶⁶ In such conditions any agreements made had to be both formalised and publicised, and the 'appoyntement' between James II and Douglas, of August 1452, and the Lanark bond of the following year, can both be seen in this light. Indeed in the latter Douglas swore to come to 'ye said nixt generalle counsall' in order to bind himself formally to the king.¹⁶⁷ As Brown notes, no treason charges were brought against Douglas in the parliament of July 1452, and this is

¹⁶³ Brown, 'The Lanark Bond', pp. 231-34, 244.

¹⁶⁴ RPS 1439/9/1.

¹⁶⁵ Brown, 'Lanark Bond', p. 234.

¹⁶⁶ These events are considered in detail in the final chapter.

¹⁶⁷ Brown, 'Lanark Bond', p. 245.

surely indicative of the extent to which James II's authority had been diminished by his action against the 8th earl.¹⁶⁸ The other famous, or indeed infamous, royal bond of the period – the indenture of 1483 between James III and his brother Alexander, duke of Albany – was made in similarly fraught circumstances following the Lauder rebellion of the previous year, and Norman MacDougall notes that its stipulation that the terms should be endorsed by parliament was included to generate 'the widest possible publicity' for the agreement.¹⁶⁹ As Gilbert Hay cautioned, 'Quhen ryall maiestie is oure comoun The autairetie is degradit of the croun'.¹⁷⁰

Legal Reform in the Later Fifteenth Century

The period between the rise of the written bond, in the 1440s, and the foundation of the College of Justice in 1532 was characterised by profound changes in both political and legal culture in Scotland. This is particularly true for the period under consideration, and yet the conclusions of political historians have tended to be considered separately to those of legal historians. While constraints of space prevent a full assessment, it is instructive to consider both here and in the following chapter some important legal reforms made by James III's government and their implications for the current narrative.

The period from James I's return to Scotland until the end of James III's reign saw a substantial restructuring of the nobility in Scotland. Grant has described the processes by which, between 1350 and 1450, a Scottish peerage was created through the fragmentation of the great territorial earldoms and the transformation of both the provincial lords and the greater barons into lords of parliament.¹⁷¹ These men came to derive status from administrative privileges, rather than from strong ties to a particular locality, and received a personal summons to parliament which distinguished them from the lesser nobility.¹⁷² There were probably twenty-one lordships of parliament by 1445, and more were created by James II during his personal rule after his victory over the Douglas family resulted in the break-up of the last of the great earldoms.¹⁷³ At the same time, between 1437 and 1445, the number of earls in Scotland had become depleted so that the greater barons assumed a more important

¹⁶⁸ Brown, 'Lanark Bond', p. 235.

¹⁶⁹ NRS SP13/19, RH1/1/3; Macdougall, *James III*, p. 222.

¹⁷⁰ Hay, 'Regiment', p. 20. The indenture is discussed further below, pp. 148-49.

¹⁷¹ Grant, 'Development of the Scottish Peerage', pp. 1-12.

¹⁷² *Ibid.*, pp. 2-3.

¹⁷³ *Ibid.*, p. 14.

role in the governance of the kingdom than had been the case previously.¹⁷⁴ Wormald associates these changes with the rise of bonding, suggesting that the link between lordship and landholding became less strong due to land becoming a 'saleable commodity', and that the new comital families had concerns about status that were 'partly attributable to economic stress and the redistribution of wealth'.¹⁷⁵

The period between 1450 and 1500 was therefore one in which political authority was being redistributed on a basis which made its holders more directly answerable to the crown, and in which the crown was adapting the legal system so that justice was more firmly under its control. In his 1952 article, Dickinson highlighted several linked measures during James III's reign which, he argued, acted to 'break the feudal bond which tied the tenant to the court of his lord'.¹⁷⁶ Whether or not we agree with his characterisation, the measures he discusses were important indeed, as they essentially allowed litigants with a legitimate complaint to appeal directly to the King's Council, thereby avoiding the time-consuming process of falsing the doom to parliament.¹⁷⁷ An act of 1469 allowed that a litigant who did not receive justice from his local judge could complain to the council and have the judge summoned before them:

gif the juge ordinaire failyis [the complainant] and wil nocht minstir to him justice, he sal cum to the king and his consail, tak lettres and summond his partii. And in like wise his juge ordinaire, quhat ever he be of temperale landis. And gif the juge be fundin culpable and wald nocht minstir justice, he salbe punyst and put fra his office for certane tyme eftir the discrecioune of oure soverane lorde and his consail, and pay the expensis of the partii conplenyande. And oure soverane lorde sal ger minstir justice to the said partii conplenyande in that case, and gif the juge ordinaire minsteris him partiale justice and dois him wrang in the adminstracioune of justice, in like wise the partii conplenyande sal summond him befor the king and his consail. And gif before thame he be fundin culpable or partiale in the adminstratioune of justice, be it a schiref, bailye or uthir officiare of fee, he salbe put fra his office for thre yeris.¹⁷⁸

This procedure was augmented by a further statute in May 1471:

for the eschewyn of maneswering [perjury] of inquestis and assisis in gret hurtyng of oure soverane lordis leigis, and specialy be the inquestis in thar heretage, it is statut and ordanit that in tym cummyne quhar a party findis him grevit be ony assise or inquestis be partial, malice or ignorance of the assise or the inquest...it salbe leful to the said partii grevit to cum to oure soverane lorde or his consal and tak a

¹⁷⁴ Grant, 'Development of the Scottish Peerage', pp. 26-27.

¹⁷⁵ Wormald, *Lords and Men*, pp. 47, 99.

¹⁷⁶ Dickinson, 'Administration of Justice', p. 349.

¹⁷⁷ Godfrey, *Civil Justice*, pp. 231-2; Dickinson, 'Administration of Justice', p. 349.

¹⁷⁸ RPS 1469/16; Dickinson, 'Administration of Justice', p. 349.

summondis of the said inquest to compeir befor thaim a certane day and place perempturly, and thar produce his avidentis of the ignorance or falste of the said inquest.¹⁷⁹

This allowed the litigant to summon the whole assize before the council and present evidence of the offence.¹⁸⁰ There were significant restrictions upon these jurisdictions, but it allowed the council to hear complaints against local officers who failed to do justice properly.¹⁸¹ Because James III chose to remain in Edinburgh, instead of driving justice ayres around the kingdom, his council was therefore also static. This meant that civil causes could be heard by the Council, in Edinburgh, all year round, instead of waiting for a sitting of parliament. Godfrey describes this new situation as ‘an innovation not in terms of function or jurisdiction so much as breadth of access’.¹⁸² It is worth noting because it sheds a rather different light upon the accepted view of James III as reclusive and unwilling to do justice. Although Macdougall acknowledges that James III’s record in civil justice is ‘generally a positive one’, and that the switch from parliamentary auditors to council was popular, he suggests that this was less important than the king’s failure to personally drive the justice ayres in the localities.¹⁸³ It is arguable which of these may have been considered most important at the time, but the detachment of this court from parliament undoubtedly allowed for more cases to be heard, and facilitated the establishment of a permanent home for the embryonic legal profession, in Edinburgh.

Altering the law to ensure local justice was unlikely to have been universally popular, however. The alliance between the earl of Angus and the Humes, discussed above, provides an important example. While the indenture appears to be a straightforward transaction, in which a family appeals to a great lord for help in a legal dispute, in fact Angus was superior of the lands of Kimmerghame, and was therefore to act as judge ordinary in the case.¹⁸⁴ Boardman has shown that the lands were in Angus’s hands following the death of John Sinclair, and that in May 1470 he granted a charter to the Humes, giving them possession of the lands.¹⁸⁵ By May of the following year the dispute had been brought before the Lords

¹⁷⁹ RPS 1471/5/9. For a particularly important, and controversial, example of this practice see below, pp. 116-17.

¹⁸⁰ Godfrey, *Civil Justice*, p. 232. Dickinson, ‘Administration of Justice’, p. 349.

¹⁸¹ Godfrey, *Civil Justice*, p. 232.

¹⁸² *Ibid.*, p. 64.

¹⁸³ Macdougall, *James III*, pp. 363-64.

¹⁸⁴ Boardman, ‘Politics and the Feud’, p. 123.

¹⁸⁵ *Ibid.*, p. 125.

Auditors in parliament, William Sinclair having brought an action against the Humes.¹⁸⁶ The Humes, keen to ensure that Angus would be able to render the services for which they had paid him, argued that the case ought to be determined by the judge ordinary because it concerned fee and heritage.¹⁸⁷ The case was continued until August 'because thar is diverse of the lordis auditouris allegit be baith the partiis to be suspect to thaim, and the remanent is to wayke [too weak] to determyne the saide materis'.¹⁸⁸ On 13 August the auditors decided that

the erle of Angus, quhilk is juge ordinaire to him [Sinclair] and his partii in the said actioun, is partiale to him and suspect of the law, that tharefore the kingis hienes ger call the erle of Angus and baith the said partiis before him and his counesaile the ferde day of October next tocum.¹⁸⁹

Rather than simply an 'ad hoc response to a specific complaint' this must surely be viewed in relation to the legislation of 1469 on corrupt judges.¹⁹⁰ Angus was probably allowed to judge the dispute, subject to the presence of royal officers in his court, although the next time the case is found in the records it had been decided in favour of Sinclair before the Lords Auditors sometime between May 1472 and August 1473.¹⁹¹ The Humes continued to make trouble, however, and in a separate document of March 1475 James III promised to support Sinclair's claim against the family 'in safere [so far] as we may be law and justis of oure realme'.¹⁹² Boardman characterises the episode as 'a powerful clash of interests in and around the royal court', and suggests that the king and Angus were 'thoroughly committed' to opposing sides.¹⁹³ The legislation of 1469 and the outcome of the Kimmerghame dispute can be seen as part of a broader programme of reform by the crown, to limit the ability of corrupt and powerful judges ordinary to interfere with due process in local disputes. This will be investigated further in the following chapter.

Conclusion

It is unlikely that the justice of the feud had ever been completely separate from the franchisal courts, as judgments reached in one would almost certainly have affected

¹⁸⁶ RPS 1471/5/48.

¹⁸⁷ Boardman, 'Politics and the Feud', p. 125.

¹⁸⁸ RPS 1471/5/48.

¹⁸⁹ RPS 1471/8/24.

¹⁹⁰ Boardman, 'Politics and the Feud', p. 127.

¹⁹¹ *Ibid.*, pp. 127-28.

¹⁹² NRS RH1/1/3.

¹⁹³ Boardman, 'Politics and the Feud', pp. 128-30.

treatment in the other.¹⁹⁴ The dual role of the local lord, if nothing else, would have made this a natural state of affairs. The agreements reached by personal arbitration may originally have been verbal, but they would have been none the less binding for that, and were publicised so that they became common knowledge. Likewise, the dooms of the franchisal courts were announced publicly in order to make them legitimate. By these methods the reputations of men, or indeed women, for honest and trustworthy conduct would have been made or lost, which in turn would have informed judgements on matters such as common theft. In fact this entire system relied upon common knowledge to be effective, and this is one reason why the jurors of the franchisal courts, rather than the lord himself, made the judgements; they were the most likely to have the detailed knowledge of the events and of the characters of those involved necessary to settle the matter fairly. On the other hand there was an omnipresent danger of prejudice on the part of the franchisal courts because judge and jury were likely to have some personal interest in the case. A tighter control of justice by the crown was partly a response to complaints about the lack of fair litigation in the localities.¹⁹⁵ The changes in procedure in 1469 and 1471 would have been significant. They may not be best viewed as the breaking of feudal bonds, but they certainly represented an important step taken away from common knowledge and towards learned law in medieval courts. Cases which found their way to the parliamentary auditors would have been falsed through the court of the sheriff and the justiciar first, each of which relied, to an extent, upon the judgements of men who knew the litigants. In contrast, the king's councillors may have had no personal knowledge at all of the people they were judging and certainly could not have integrated verbal agreements made after arbitration into their decision-making processes. From the middle of the fifteenth century, therefore, as the system of courts underwent a transformation, agreements reached after personal arbitration required to be written down in order to continue being effectively integrated with the processes of litigation, as they likely always had been.¹⁹⁶

¹⁹⁴ Godfrey, 'Justice of the Feud', pp. 149-50, which argues that the 'categorical distinction' between the justice of the feud and that of the courts risks failing to acknowledge an 'unavoidable connection between them in practice and a deeper common basis for both'.

¹⁹⁵ Cairns, 'Historical Introduction', p. 60; Godfrey, *Civil Justice*, p. 445.

¹⁹⁶ Cf. Wormald, 'Bloodfeud', pp. 77-79, which again contrasts royal and franchisal justice. For a brief example of such integration in practice in the sixteenth century see Finlay, *Men of Law*, pp. 155-56.

Cairns argues that by 1532 the 'system of process on briefs was dead', and instead the College of Justice adopted a 'variation of the Romano-canonical procedure of the Church'.¹⁹⁷ This he describes as follows:

The lack of a jury or inquest meant that testimony was presented before the Lords either in written form or by examination of witnesses in front of them. In the latter case, a small committee of the Lords would examine the witnesses in private with neither the parties nor their lawyers present, although the parties could submit interrogatories. Their depositions would be reduced to writing and then sealed, to be opened later.¹⁹⁸

Further research is required in order to draw any firm conclusions, but it is surely possible that such changes in procedure and personnel made an important contribution to the growing importance of the idea of privacy within the legal system in the late fifteenth and sixteenth centuries. For the period between 1440 and 1490, however, the concept of privacy is singularly unhelpful in framing discussions of politics or law. If the term is to have any meaning at all it must be something distinct from public authority, and given the role of the nobility in governing the realm, whether as crown officers or through personal franchisal jurisdictions, it is difficult to argue that this was the case.

Characterising both royal and aristocratic authority as personal and public does not imply that kings and lords were the same. Instead it emphasises that the important difference was the degree of authority exercised by each rather than the type. In a rigidly hierarchical political framework this surely makes sense, as authority required to be delegated from the crown and, unlike their English and French counterparts, Scottish monarchs never laid claim to the sacral element of kingship which might have enhanced their authority through a firmer association with the divine.¹⁹⁹ In addition, the important distinction between litigation and arbitration was not one which only affected the aristocracy; as has been shown members of the King's Council could also act as arbiters, so that both legal procedures were used by the crown and by the nobility to resolve the disputes of their men. There were, of course, tensions between the exercise of royal authority as practiced by James III, for example, and the understandable desire of certain members of the aristocracy to retain as much autonomy as possible, but they occurred within a framework of shared expectations and structures. The terminology of 'public' and 'private' therefore acts to obscure not only the extent to which both kings and lords legitimised their authority through common

¹⁹⁷ Cairns, 'Historical Introduction', p. 63.

¹⁹⁸ *Ibid.*, pp. 63-64.

¹⁹⁹ Wormald, *Court, Kirk and Community*, p. 18.

knowledge and reinforced it with secret counsel, but also the extent to which the crown was the source of that authority in both cases. This suggests that any model which places either crown or king in opposition to the 'political community' needs to be substantially revised.

Chapter Four: Crown, Parliament and the 'Common Profit'

The crown-magnate debate outlined in the introduction has both taken as read and greatly contributed to a model of medieval politics which is highly oppositional; whether crown and 'political community' are taken to be co-operating or not, they are taken to be separate entities with competing interests. Tanner, although he avoids the term 'political community', has focused upon the ability of parliament to limit the authority of the king, arguing that the roots of a Scottish 'radical tradition' can be found within the acts of 'legitimate resistance' by the estates.¹ Mason, on the other hand, has emphasised the 'patriotic conservatism' of the political community, noting the lack of any explicit theories of 'resistance, deposition and tyrannicide' and the contemporary association of kingship with the *bonum commune*.² The relationship between crown and parliament is an important one, and will be discussed further in the second part of this chapter. So far it has been argued that the difference between royal and aristocratic authority was one of degree, rather than type. It was the crown which conferred this greater, royal authority upon the person of the king.³ Particular kings may have felt it necessary to suppress perceived threats from individuals, or groups of individuals, but the crown itself was the source of authority from which the nobility derived its own. It therefore embodied an inclusive aspect which is not always taken into account in discussions of crown-magnate relations. The following will consider in more detail the changes which the Scottish crown underwent during the period under discussion, and the effect this had upon how it was perceived.

The Growth of the Scottish Crown

In the current historiography, the Scottish crown tends to be discussed either as an entity interchangeable with the person of the king, or as an ideological abstract. In his rebuttal to the framework of co-operation between crown and nobility put forward by Grant and Wormald, Brown argued that the personal hostility of the king to alternate sources of

¹ Tanner, 'Outside the Acts', p. 70.

² Mason, 'Kingship, Tyranny and the Right to Resist', pp. 9, 33.

³ On the concept of the crown see Kantorowicz, *King's Two Bodies*, pp. 336-82 and *passim*; Watts, *Making of Politics*, p. 75; J. Dunbabin, 'Government', in Burns (ed.), *Medieval Political Thought*, pp. 477-519, at pp. 498-501; Black, *Political Thought*, pp. 189-91.

authority within the realm was the decisive factor in the growth of crown authority.⁴ Brown describes the first four Kings James as variously 'demanding', 'aggressive', 'predatory' and 'unscrupulous' and states that 'during periods of active royal rule, it was the crown which acted antagonistically, rather than magnates individually or in groups'.⁵ While the personality traits of individual kings were undoubtedly of the utmost importance to contemporary governance the king and crown were not synonymous. Even when particular monarchs pursued unpopular policies, finding themselves in opposition to certain members of the nobility as a result, the authority of the crown was never questioned. Mason has argued that this predatory Stewart kingship was supported, from the reign of James III onwards, by the adoption of a royalist ideology based upon the Roman legal maxim *rex in regno suo est imperator*; the king is emperor in his own kingdom, which found its way to Scotland from Italy via the French jurists.⁶ This was expressed not only in the claim, discussed above, that James III had 'ful jurisdictione and fre impyre' in his realm, but also in a scheme of royal iconography, the earliest example of which saw James III portrayed upon a silver groat of c. 1485, wearing a closed imperial crown.⁷ In an extension to this argument, Tanner has suggested that the 1469 parliament also saw a reformulation of the charge of *lèse majesté*, or harm to the crown, a legal concept used to prosecute infringements of royal authority throughout the later middle ages.⁸ This parliament forfeited Robert lord Boyd and his son Thomas, who had had custody of the king during his minority.⁹ Rather than simply hurt majesty, the charge levelled was 'treasonable disparagement and degradation of our royal authority and majesty'.¹⁰ Tanner argues that this charge was effectively an augmentation of royal authority which paralleled James III's assertion of imperial kingship.¹¹ In a letter to the duke of Burgundy, in 1471, James III requested that the duke desist from harbouring the Boyds, due to their 'degradation of the royal name', and in 1475 the earl of Ross was forfeited for the 'treasonable usurpation of our authority and

⁴ Brown, 'Scotland Tamed?', *passim*.

⁵ *Ibid.*, pp. 136-37, p. 141.

⁶ Mason, 'This Realm of Scotland', p. 76.

⁷ *Ibid.*, p. 77; RPS 1469/20. As Mason argues, the iconography of the imperial crown would be employed further by both James IV and James V.

⁸ RPS A1469/2; R. Tanner, 'James III', p. 215; *Regiam majestatem*, p. 59.

⁹ Tanner, 'James III', p. 214.

¹⁰ RPS A1469/2, *proditoria vituperacione et degradacione autoritatis et maiestatis nostre regie*.

¹¹ RPS 1469/20; Tanner, 'James III', p. 215. On the use of imperial rhetoric see Mason, 'This Realm of Scotland', p. 7. For another example of this rhetoric see above, p. 32.

crown', adding weight to the suggestion of a deliberate innovation.¹² Tanner attributes this change in the terminology to a 'cohesive group of theologically and politically like-minded men' which dominated James III's court around 1469, and which was strongly influenced by Albertist theology.¹³ While it is certainly important to acknowledge the direct influence of European political thought in Scottish politics, and the development of ideology as a contributor to royal authority, neither this view nor the focus upon the king's personality takes into account the significant structural changes which were also taking place within Scotland over the same period. Such changes were closely related to those identified by Brown, Mason and Tanner, but a picture which does not explicitly include them is incomplete. What follows draws primarily from secondary research the significance of which, it will be argued, has not been fully appreciated, providing a new perspective upon the growth of crown authority in the later fifteenth century.

According to Kantorowicz, the 'invisible' crown, in essence denoting royal authority in the abstract, represented 'the sovereignty of the whole collective body of the realm'.¹⁴ The king wielded the rights and powers inherent within it for the good of the people, but the people were also an integral part of the 'invisible' crown.¹⁵ Mention of the crown in this sense is rare within contemporary Scottish literature, perhaps explaining its absence from much of the political narrative, and the places where it is not discussed are almost as revealing as the places where it is.¹⁶ In keeping with his emphasis upon law and order, Bower suggests that 'all just men on earth ought to rejoice at the justice of the king, which is denoted in the crown.'¹⁷ In the twelve chapters he devotes to James I's accomplishments, however, the crown is not mentioned at all.¹⁸ Discussion of the contractual elements of kingship is kept to a minimum in the *Scotichronicon*, and as Mapstone notes, Bower 'places more worth on rule founded on personal prudence than on the advice of counsellors'.¹⁹ Rather than praising

¹² 'A Letter of James III to the Duke of Burgundy', ed. C. A. J. Armstrong, in *Miscellany of the Scottish History Society* vol. 8 (Edinburgh, 1951), pp. 19-32, at p. 31; RPS 1475/26 ...*pro proditoria usurpacione super nostra regia auctoritate et corona regia...*

¹³ Tanner, 'James III', p. 215.

¹⁴ Kantorowicz, *King's Two Bodies*, p. 384.

¹⁵ *Ibid.*, pp. 363-64.

¹⁶ An exception to this is the advice poem known as 'The Harp', which mentions the authority of the crown frequently, but given its satirical tone there are difficulties with including these references in this discussion. On 'The Harp' as satire, see C. Hawes, 'Rebellion, Satire and the Politics of Advice in Fifteenth-Century Scotland', in J. Rose (ed.), *The Politics of Counsel in England and Scotland, 1286-1707*, forthcoming.

¹⁷ *Chron. Bower*, v, p. 311 ...*que notatur in corona*.

¹⁸ *Ibid.*, vii, p. 301-25.

¹⁹ Mapstone, 'Bower on Kingship', p. 337.

James I for bringing honour to the Scottish crown, therefore, Bower instead rehearses the king's 'good qualities', and emphasises his achievement in bringing 'perfect tranquillity and peace to the kingdom'.²⁰ Hay, on the other hand, offers a different perspective. In the only reference to the crown in the *Gouernaunce*, at the very end of the work, he states that

...thy peple and thy barouns, thy bachelers and thy commouns ar the stuf and the multiplicacioun and furnyssing of thy realme. And be thame mon thou be crownyt, and thy crone uphaldyn and mayntenyt. And be thai nocht, throu the, manetenyt and sustenyt in thair rychtis and richness, thai will nocht lufe the na honoure the na thi court, na help to sustene thyne estate.²¹

As has been noted by several scholars, Hay's work places a particular emphasis upon the idea of the common profit of the realm.²² Mason argues that this discourse 'not only set a high premium on loyalty to the crown, but viewed the *bonum commune* in essentially Aristotelian terms as the true end of government'.²³ If the purpose of the crown was to maintain and sustain the rights and riches of the people, it would not be unreasonable to expect loyalty to the crown in return. This, after all, was the essence of the contract. References to this 'invisible' form of the crown within the records of government, therefore, occur most often where royal authority is perceived to have been challenged, in particular during the process of forfeiture and in legislation regarding the right of appointment to vacant benefices.²⁴

Craig Madden's work has outlined the changes which the royal demesne underwent in the late medieval period.²⁵ Madden argues that before James I returned from captivity in England, in 1424, there was no royal demesne as such.²⁶ Instead, land which came into

²⁰ On James I's good qualities: *Chron. Bower*, viii, pp. 303-16; on peace and tranquillity: pp. 319-25. See Brown, 'Vile Times', for a discussion which situates Bower's arguments within the political context of James II's minority.

²¹ Hay, *Gouernaunce*, p. 127.

²² Mason, 'Chivalry and Citizenship', p. 91. See also Tanner, 'Outside the Acts', p. 62 and Mapstone, 'Advice to Princes', pp. 88, 114-6, which describes the common profit as Hay's 'keystone to kingship', at p. 114.

²³ Mason, 'Chivalry and Citizenship', p. 91.

²⁴ The former is discussed in various places in this thesis. See also, for example, the forfeiture of the Douglases RPS 1455/6/6, which cites 'harm to the royal crown'. The latter was a contentious and recurring issue in the later fifteenth century, which arose in many parliaments. RPS 1462/10/1, 1481/4/10, 1485/5/23, 1488/1/20-21, 1488/10/55. For discussion see D. E. R. Watt, 'The Papacy and Scotland in the Fifteenth Century', in B. Dobson (ed.), *The Church, Politics and Patronage in the Fifteenth Century* (Gloucester, 1984), pp. 115-30; L. Macfarlane, 'The Primacy of the Scottish Church, 1472-1521', *IR*, 20 (1969), pp. 111-29, at p. 112; Finlay, 'James Henryson', pp. 35-36.

²⁵ Madden 'Finances of the Scottish Crown'. See also C. Madden, 'Royal Treatment of Feudal Casualties in Late Medieval Scotland', *SHR*, 55 (1976), pp. 172-94 and C. Madden, 'The Royal Demesne in Northern Scotland during the Later Middle Ages', *Northern Scotland*, 3 (1977), pp. 1-24.

²⁶ Madden, 'Finances of the Scottish Crown', p. 54.

possession of the crown during the reigns of Robert II and Robert III tended to be re-granted in patronage, in particular to the extended royal Stewart family.²⁷ In 1425 James I's forfeiture of the Albany Stewarts brought the earldoms of Lennox, Fife and Menteith to the crown, and he acquired the earldoms of Mar and March in separate circumstances, forming 'the foundation of a permanent royal demesne'.²⁸ This was followed in 1437 by the forfeiture of those responsible for James I's assassination, adding the earldoms of Atholl and Strathearn, as well as several lordships.²⁹ The lordship of Annandale came to the crown after the 'Black Dinner' in 1440, and in 1455 the Douglas family were forfeited for treason. The lordship of Ettrick Forest, the lordship of Galloway and the earldom of Wigton, as well as the lands of Stewarton, lordship of Annandale and the earldoms of Moray and Ormond, all came into royal possession.³⁰ Following the crown's absorption of the Douglas lands the new royal demesne was formalised by the Act of Annexation, passed by the Estates in 1455. It began thus:

In the first, forsamekill [forasmuch] as the povertie of the crowne is oftymis the cause of the povertie of the realme, and that mony uthir inconvenientis the quhilk war lang to expreyme [relate], be the awyse and full consale of the parliament it is statuyt and ordanyt that in ilk part of the realme for the kingis residence, quhar it sall happyn him to be, thar be certane lordschippis and castellys annext to the crowne perpetually to remane, the quhilk may nocht be giffyn away, nothir in fee nor in frangtenement, till ony persone of quhat estate or degre that evir he be but avyse delivirance and decret of the thre estatis and of the hail parliament ande for gret, seande [appropriate] and resonable cause of the realme...³¹

This act has been cited as evidence of the ability of the estates to limit royal action.³² James I's acquisition of lands for the crown, occasionally by extra-legal means, had certainly been a contributory factor to his assassination in 1437, as had his demands for extraordinary taxation.³³ The estates therefore fully understood the value of a clearly-defined group of royal lands which could support the expenses of the royal family, and took the opportunity

²⁷ Madden, 'Finances of the Scottish Crown', p. 51-52. On the reigns of these kings see Boardman, *Early Stewart Kings*, *passim*.

²⁸ Madden, 'Finances of the Scottish Crown', p. 63-70. Madden provides a list of lands acquired by the crown during this period in a very helpful appendix to his thesis: Appendix B/2 (j). The pages are not numbered.

²⁹ *Ibid.*, pp. 77.

³⁰ *Ibid.*, pp. 83-84; A. L. Murray, 'The Procedure of the Scottish Exchequer in the Early Sixteenth Century', *SHR*, 40 (1961), pp. 89-117, at p. 99.

³¹ *RPS* 1455/8/2.

³² Tanner, *Scottish Parliament*, p. 151.

³³ The destruction of the Albany Stewart family caused particular concern, but so did the king's reforms to the collection of crown revenues. See Brown, *James I*, pp. 72-4, 148-49 and *passim*. On taxation see Brown, *James I*, pp. 139-40; A. A. M. Duncan, *James I: King of Scots, 1424-1437* (Glasgow, 1984).

presented by the forfeiture of the Douglasses to ensure that James II could provide for himself from the lands of the crown.³⁴ It was to the advantage of the king's subjects that the crown be as fiscally strong as possible, and Atholl Murray has argued that the act did not represent a 'constitutional or legal restraint' upon the king's ability to dispose of his property, instead affording 'a sure ground for subsequent challenge'.³⁵ As Tanner suggests, therefore, the act was, in effect, 'a contract between king and Estates from which both stood to gain', and the king was free to grant lands to whomever he chose without further hindrance, as long as such grants were unlikely to be opposed by a significant proportion of the estates.³⁶ The real significance of the act is arguably that it created a commonly-acknowledged fiscal entity over which the king had *de facto* control, in contrast to the earlier situation, in which no royal demesne as such existed.

James III's reign was punctuated by forfeitures and attempted forfeitures, from the Boyd faction in 1469 to the duke of Albany and his allies in the 1470s and 1480s.³⁷ A further act of annexation was included in the forfeiture of the Boyds, which stated that the new lands

will be united, incorporated and annexed to us the kings of Scotland and the right of our crown in perpetuity...and thus it will not be permissible for us, or any of our successors, the kings of Scotland, or eldest princes as aforesaid, to give or grant or in any way alienate the lordships, lands, castles, or any part of them...away from the right and property of the royal crown and the eldest prince, unless the same gift or alienation be with the advice, mature deliberation and decree of the three estates of the parliament of our realm, and also for the evident profit and manifest utility of us and our successors.³⁸

Tanner highlights the similarity to the 1455 legislation, with parliamentary oversight of the king's ability to alienate his estates forming the core of the act, and notes that while the first act was 'broadly obeyed' over the long term, the latter was not.³⁹ This, he argues, suggests that parliament 'still relied to a large degree on the co-operation of the king to see acts implemented.'⁴⁰ The question of the relationship between the king and parliament is one to which we shall return shortly, as it certainly requires closer investigation. It is interesting to note the contrast, however, between the condition subsequent to that of the estates' consent in each case; while in 1455 the requirement for the advice of the estates was followed by the

³⁴ McGladdery, 'James II', in Brown and Tanner (eds), *Scottish Kingship*, p. 197.

³⁵ Murray, 'Exchequer and Crown Revenue', p. 355.

³⁶ Tanner, *Scottish Parliament*, p. 151.

³⁷ Madden, 'Finances of the Scottish Crown', pp. 85-87. The Lord of the Isles was forfeited in 1475, but many of his lands were returned the following year.

³⁸ RPS A1469/2.

³⁹ Tanner, *Scottish Parliament*, p. 193.

⁴⁰ *Ibid.*, p. 193.

stipulation that any alienation be for the 'gret, seande and resonable cause of the realme', in 1469 it had to meet the criterion of 'the evident profit and manifest utility of us [James III] and our successors', which is rather different. When the duke of Albany was eventually forfeited, in 1483, the crown gained the earldom of March and the lordship of Annandale as well as the earldoms of Mar and Garioch which had been granted to him the previous year.⁴¹

In addition to the fruits of forfeiture, the royal demesne was augmented through inheritance, exchanges of property and, especially, the marriage of James III to Margaret of Denmark, which brought Orkney and Shetland to the Scottish crown in 1469.⁴² Using the figures obtainable from the accounts of the *Ballivi ad Extra*, and with important caveats about the limitations of the evidence, Madden suggests that the average annual gross farm, or rents from crown lands, charged between 1450 and 1454 was £3,270.⁴³ By 1487 this amount had increased to £6,659.⁴⁴ Other than the lands gained by the forfeiture of the Lord of the Isles in 1493, which brought 'little financial benefit', the reign of James IV saw no 'appreciable extension of property'.⁴⁵ In the forty-five years between 1424 and 1469, then, the number of people who found themselves to be holding land directly of the king increased significantly. While one result of this change was greatly augmented revenues for the crown, another was a surge in both litigation and feuding, and the attendant complaints regarding the lack of justice in the realm, which led to the restructuring of the system of courts throughout the period.⁴⁶ It is therefore possible to see the adoption by the crown of an ideology of enhanced royal authority as part of an attempt to manage these changes, rather than simply as a quest for personal aggrandisement on the part of James III.⁴⁷ The machinery of government required to be significantly altered, and this process was aided by the

⁴¹ Madden, 'Finances of the Scottish Crown', p. 89.

⁴² *Ibid.*, pp. 97-100, at p. 98. For the political negotiations which accompanied this transfer, see B. Crawford, *The Northern Earldoms: Orkney and Caithness from AD 870 to 1470* (Edinburgh, 2013), pp. 365-70.

⁴³ Madden, 'Finances of the Scottish Crown', p. 106. This figure 'represented the gross rent and other levies due from these estates and in no way corresponded to either the actual cash handled by the local *Ballivi ad Extra* or the actual or real income handed over to the comptroller. Such values are useful for comparing the theoretical value of various properties to the crown during the later Middle Ages but since they represented only the returns for which the *Ballivi ad Extra* was [sic] responsible and not the actual cash which passed through their hands, these figures were, in a sense, fictional.'

⁴⁴ *Ibid.*, p. 106. See *ER*, ix, pp. 561-656 for the actual lands involved.

⁴⁵ Madden, 'Finances of the Scottish Crown', pp. 93, 107.

⁴⁶ For example *Chron. Pluscarden*, ii, p. 291; *RPS* 1473/7/10, 1485/5/10.

⁴⁷ For another argument which expresses doubts as to the extent to which James III's personality alone can explain his difficulties, see Macfarlane, *William Elphinstone*, pp. 154-55.

projection of imperial ideas which heightened the authority of the crown in both its visible and invisible senses.⁴⁸

Gareth Prosser, writing on fifteenth-century France, offers a timely reminder that 'the machinery of government was not machinery: it was persons, each with kinship and personal connections, career strategies and collective interests.'⁴⁹ Questions of morality and loyalty within governmental structures have recently been addressed by many scholars of late medieval Europe.⁵⁰ The limitations of the Scottish evidence make the adoption of this approach problematic until the sixteenth century, although work has been done on the offices themselves, if not the backgrounds or motivations of the men who held them.⁵¹ In 1982 Trevor Chalmers made a study of the royal council in the reigns of James III and James IV, with a focus upon the administration of crown business, both financial and judicial.⁵² Chalmers's work, while often cited, has yet to be fully integrated into the political narrative. His doctoral research investigated the different roles and groupings of the King's Council during the reigns of James III and James IV, and traced the administrative changes which took place over that period. Using the witness lists of royal charters, he identified a variable

⁴⁸ Cf. Carpenter, *Wars of the Roses*, p. 43, which argues that there has been 'a failure to understand that the cake of power does not stay the same size in the later middle ages but is growing'.

⁴⁹ G. Prosser, "'Decayed Feudalism" and "Royal Clienteles": Royal Office and Magnate Service in the Fifteenth Century', in C. Allemand (ed.), *War, Government and Power in Late Medieval France* (Liverpool, 2000), pp. 175-89, at p. 186.

⁵⁰ See, for example, K. Daly, 'Private Vice, Public Service? Civil Service and *Chose Publique* in Fifteenth-Century France', in Curry and Matthew (eds), *Concepts and Patterns of Service*, pp. 99-118; J. Dumolyn, 'Justice, Equity and the Common Good: The State Ideology of the Councillors of the Burgundian Dukes', in D'A. J. D. Boulton and J. A. Veenstra (eds), *The Ideology of Burgundy: The Promotion of a National Consciousness, 1364-1565* (Leiden, 2006), pp. 1-20; C. Fletcher, 'Morality and Office in Late Medieval England and France', in N. Saul (ed.), *Fourteenth Century England V* (Woodbridge, 2008), pp. 178-90; D. Grummitt, 'Household, Politics and Political Morality in the Reign of Henry VII', *Historical Research*, 81 (2009), pp. 393-411; F. Lachaud, 'Ethics and Office in England in the Thirteenth Century', in B. Weiler (ed.), *Thirteenth Century England XI* (Woodbridge, 2007), pp. 16-30.

⁵¹ The notable exception is A. R. Borthwick and H. L. MacQueen, "'Rare Creatures for their Age": Alexander and David Guthrie, Graduate Lairds and Royal Servants', in Crawford (ed.), *Church, Chronicle and Learning*, pp. 227-39. See also G. W. S. Barrow, *The Kingdom of the Scots: Government, Church and Society from the Eleventh to the Fourteenth Century* (2nd ed.) (Edinburgh, 2003); A. Murray, 'The Comptroller', *SHR*, 52 (1973), pp. 1-29; 'The Lord Clerk Register', *SHR*, 53 (1974), pp. 124-56; J. Finlay, 'James Henryson and the Origins of the Office of King's Advocate in Scotland', *SHR*, 79 (2000), pp. 17-38; Stevenson, 'Jurisdiction, Authority and Professionalisation', pp. 41-66.

⁵² Chalmers, 'King's Council'. Such an approach had earlier been advocated in A. L. Brown, 'The Scottish "Establishment" in the Later Fifteenth Century', *Juridical Review*, 23 (1978), pp. 88-105.

but cohesive group of lords and prelates, with no formal designation, which could be found regularly in the presence of the king. This group he named the 'daily' council.⁵³

Chalmers draws a distinction between this 'daily' council and the king's secret council which, he argues, was a 'large, fluctuating body of lords sworn to give true counsel' and which dealt with matters of high politics.⁵⁴ This distinction has not always been noted in the historiography, and it is worth exploring the implications. According to Chalmers the role of the 'daily' council was the day-to-day running of the realm, and in particular the administration of royal finance and justice; 'daily' councillors had access to the necessary facts and figures which required to be produced in the event of disputes or challenges, and so acted as 'information officers' rather than straightforwardly 'political' advisers.⁵⁵ This distinction is problematic. Royal servants acting as 'information officers' would certainly have offered advice within their area of expertise, which may have had very real implications for practical politics, and those who were 'daily' councillors would often, in any case, have been entitled to offer 'political' advice by virtue of their social status. Nevertheless the fact that a 'daily' council can be identified is helpful for three reasons. Firstly, it stresses the fact that this body of men held particular positions, rather than being counsellors in the general sense, and ran their various 'departments' independently for the king. Secondly, it throws into relief those members of the clergy and aristocracy who would have been entitled to counsel the king when in his presence, but who nevertheless probably only did so during sittings of parliament. In 1476, for example, John MacDonald, Lord of the Isles was restored to his lands, in parliament, after being forfeited the previous year.⁵⁶ Chalmers' list of royal charter witnesses for that year is considerably larger than usual, therefore, as the charter granting these lands to MacDonald was witnessed by a great many more men than most royal business.⁵⁷ It was not witnessed by all the men listed in the parliamentary sederunt, however, suggesting that only particular advisers were asked to witness the document.⁵⁸

⁵³ Chalmers, 'Kings Council', p. 86-92. He explains the designation thus: 'To this regular, inner circle of the secret council, the style 'daily council' has been applied in this thesis. This is partly to avoid confusion with the larger body, and partly to recognize the evident regularity of its personnel, and its probable day-to-day administrative function. The use of the term (which was not contemporary), and the addition of inverted commas, is intended to act as a reminder that the grouping has a second-hand, almost unreal quality, due to the questionable nature of the source.', p. 91.

⁵⁴ Chalmers, 'King's Council', p. 18. On the right of the nobility to counsel the king, see Mason, 'Kingship, Counsel and Consent', pp. 278-80.

⁵⁵ Chalmers, 'King's Council', p. 18.

⁵⁶ *RPS* A1476/7/1. He was not restored to the earldom of Ross, which remained with the crown.

⁵⁷ *RMS*, ii, 1246; Chalmers, 'King's Council', p. 426.

⁵⁸ *RPS* 1476/7/2.

While many of the 'daily' councillors acted as witnesses to this charter - William Tulloch, Keeper of the Privy Seal, Andrew, lord Avandale, Chancellor, Colin Campbell, earl of Argyll and Master of the King's Household, Archibald Crawford, Treasurer - many others were men who would have been entitled by their status to counsel the king, but who are not found witnessing any other royal charters that year. These include the earls of Angus, Huntly, Morton and Atholl and the bishops of Ross, Argyll, Galloway and the Isles.⁵⁹ That these men were not regular witnesses in 1476 reflects a complex mixture of factors that is very difficult to unpick: the degree of royal favour which they enjoyed at that moment, the urgency of matters to be dealt with in their own localities and the ease with which they could travel to court surely all influenced how much time they spent in physical proximity to the king in any particular period. It is also important to note, as Chalmers does, that witnessing charters is not the same as having the king's ear. Nevertheless, rather than membership of the 'daily' council it was the calling of parliament which afforded these men the opportunity to offer advice on the important matters of the day. They were able to counsel the king not only within that 'formal' forum, but also by virtue of the fact that they were potentially in his presence at less formal moments as well. It is perhaps the case that the king's secret council comprised the 'daily' councillors and whichever other great men the king chose to take advice from at any given moment.

The third reason that the identification of the 'daily' council is helpful, is that it allows the structural changes made to that council to be mapped onto the political narrative. Two periods of administrative change are particularly important. The first comprises a group of reforms in the mid-1470s which were likely intended to alleviate the pressure of business which the newly-augmented crown generated. In either 1476 or 1477 James III revived the position of Director of Chancery, which was given to Master Alexander Murray.⁶⁰ By this date the office of Chancellor had become detached from everyday administrative concerns, so that while its incumbent was entitled to advise the king he was not conversant with the workings of the chancery itself. The Director of Chancery therefore acted as a liaison between the chancery and the king's advisers.⁶¹ Chalmers suggests that the directorship was

⁵⁹ Chalmers, 'King's Council', p. 426.

⁶⁰ RMS, ii, 1280; Chalmers, 'King's Council', pp. 35-36; A. L. Murray, 'The Scottish Chancery in the Fourteenth and Fifteenth Centuries', in K. Fianu and D. J. Guth (eds), *Écrit et Pouvoir dans les Chancelleries Médiévales: Espace Français, Espace Anglais* (Turnhout, 1997), pp. 133-51, at pp. 150-51. Master Richard Craig had held the title for around a month in late 1440.

⁶¹ Chalmers, 'King's Council', p. 41. In 1496, for example, it is recorded in the Acts of the Lords of Council that 'letters be written to the Directour and clerkis of the Chancellary chargeing thame to

intended to 'add depth to the lines of communication' between the administrative departments of chancery and exchequer and the policy-makers in council.⁶² This change coincided with another. Before 1476 matters which related to royal patronage, and which involved a third party, could be brought to the attention of the Lords of Council by purchasing a chancery breve, under the Quarter-Seal.⁶³ From 1476 Chalmers detects a 'slight shift in emphasis' from established practice, in that it became more common to use letters under the Signet in order to issue summonses. This he attributes to the need to manage the general increase in litigation, which by then provided work for two writing offices.⁶⁴ It also had the effect, however, of potentially allowing greater oversight of the process by the king and his advisers. Chalmers rightly warns against 'confident generalizations' given the limited evidence, but it is interesting to note that Norman Macdougall identifies 1476 as the year in which William Scheves achieved his 'most striking career breakthrough', when he was appointed as co-adjutor of the vacant see of St Andrews, and became a member of the 'daily' council.⁶⁵ From that year onwards Scheves' signature can be found upon numerous royal letters, and Macdougall suggests that he 'usurped the functions' of William Tulloch, Keeper of the Privy Seal and Archibald Whitelaw, Royal Secretary, the latter of whom ought to have had custody of the Signet.⁶⁶ Not only, then, was the communication between chancery and council improved, but the authority of the council was also enhanced relative to that of the chancery, potentially bringing a variety of crown business far more closely under the scrutiny of the king than had been the case before. This was no doubt necessary given the increase in traffic, but James III's decision to hand much of this newfound authority to Scheves, who until very recently had been his physician, would prove to be extremely unpopular.⁶⁷

It is likely that these changes were not wholly unrelated to another political upheaval which occurred at the same time. Between 1474 and 1476 a legal dispute occurred over the lands of

deliver the copy of the sade retour awtentikly to the saidis Wilzeame, lord Ruthven', *ADC*, ii, pp. 25-26.

⁶² Chalmers, 'King's Council', p. 37.

⁶³ *Ibid.*, pp. 23-24.

⁶⁴ *Ibid.*, p. 24.

⁶⁵ *Ibid.*, p. 24; Macdougall, *James III*, pp. 147-48.

⁶⁶ The signet letters can be found in *Spalding Misc.*, iv, p. 133 [discussed further below]; Fraser, *Annandale*, i, pp. 13-14; *Edin. Chrs.*, p. 140; *Bannatyne Misc.*, iii, p. 431. For the other letters, see *Spalding Misc.*, iv, p. 134; *Cal. Docs. Scot.*, iv, no. 1448; *Morton Registrum*, ii, p. 243; *Cal. Docs. Scot.*, iv, App 1, no. 30. Macdougall suggests that these probably amount to 'only a fraction' of those that Scheves actually countersigned. Macdougall, *James III*, p. 149.

⁶⁷ *Scottish Formularies*, ed. A. A. M. Duncan (Edinburgh, 2011), p. 241.

Cranshaws, involving Laurence Lord Oliphant and Sir John Swinton of that ilk.⁶⁸ The case was heard in the regality court of the duke of Albany, and his steward found in favour of Oliphant. Albany then claimed the thirty years' worth of non-entry fees which became due as a result of the judgement, despite the fact that the money was due to the crown. In March 1476 James III issued a summons to the jury to answer to the Lords Auditors of Causes and Complaints for their 'unjust answer' to the brieve procured by Albany.⁶⁹ The result of this appeal, made at the July parliament, was inconclusive and so the king, using the 1471 legislation against partial assizes highlighted in the previous chapter, summoned the entire committee of Lords Auditors before the Lords of Council to answer for their failure to reach a judgement.⁷⁰ The records of the council unfortunately do not survive before 1478, but Albany was apparently successful in his aims.⁷¹ It is hard to see the episode as anything other than a deliberate attempt by Albany to undermine the authority of the king, and the credibility of his reforms to civil justice, for personal gain. A desire to prevent such a situation from arising again may give weight to the suggestion that the king brought the entire process of crown administration much more firmly under his direct control from August 1476, just a month after the Lords Auditors failed to provide justice, and that he might have preferred an unquestionably loyal man to oversee it on his behalf.

The second period of administrative change followed the battle of Sauchieburn in 1488, when James III's government was replaced overnight by that of his son. James IV has always been viewed as a far more successful monarch than his father, and on any particular criterion for good kingship it is difficult to disagree.⁷² The changes made to the 'machinery' of government between 1488 and 1492, however, suggest that James IV's administration in fact reaped some of the rewards generated by James III's unpopular decisions. The main transformation was in the composition and authority of the 'daily' council. In 1488 John Hepburn, prior of St Andrews, was granted custody of the Privy Seal, reaching 'a height of personal influence and control over the administration of patronage unrivalled by either his predecessors or his successors.'⁷³ All administration of crown resources was routed through the Privy Seal office, effectively suspending the Signet and bypassing the authority of

⁶⁸ NRS GD12/49-51. Discussed in Macdougall, *James III*, pp. 157-58; Tanner, *Scottish Parliament*, pp. 21-12; Chalmers, 'King's Council', p. 23.

⁶⁹ Tanner, *Scottish Parliament*, p. 211.

⁷⁰ NRS GD12/52; Tanner, *Scottish Parliament*, pp. 211-12. For the legislation see above, pp. 100-1.

⁷¹ Tanner, *Scottish Parliament*, p. 212.

⁷² For his reign see Macdougall, *James IV*.

⁷³ Chalmers, 'King's Council', p. 50.

Secretary Whitelaw who was one of the few of James III's 'daily' councillors who remained in post. The Privy Seal in effect became the seal of the ruling council, allowing the Hepburn faction to use crown assets to reward their supporters at the expense of those who had remained loyal to James III.⁷⁴ There were simultaneous changes in respect of the exchequer and attendant crown land commissions, headed by the comptroller, which leased the king's lands and oversaw the collection of rents and other duties, essentially distributing patronage at a local level.⁷⁵ In 1469 the commissions were staffed by 'fairly humble personnel', chancery clerks and financial administrators, with minimal supervision from the council.⁷⁶ There were some gradual changes during James III's reign, but after Sauchieburn the commissions were brought immediately and firmly under the control of the council, with twelve named members being granted 'full power and special mandiment' to set all vacant crown lands within the realm.⁷⁷ This meant not only that royal councillors were much more likely to act as crown land commissioners, personally making grants in the localities, but the administrators who had been performing this function were accorded far greater status than was the case before.⁷⁸ Chalmers suggests that the comptroller's court went from being 'an outreach of chancery' in 1460 to being 'an ad-hoc local sitting of the king's council' by 1500.⁷⁹ In effect, as new powers and heightened status accrued to the 'daily' council it became the body through which political influence was truly wielded.⁸⁰ During the reign of James III the royal demesne had grown to the extent that the administration of crown lands became a greater, more politically important and therefore far more prestigious undertaking than had been the case before. After 1488 both the exchequer and the chancery were brought under the direct control of the council, which was now composed of men who actively wished to use this authority for political ends, rather than men whose remit was primarily administrative. This adjustment of apparatus allowed the council to grant crown lands in accordance with its own inclinations, which it did to the detriment of James III's supporters

⁷⁴ RMS, ii, 1731-34, 1737, 1741-42, 1745, 1754, 1757, 1763, 1773-74, 1781, 1784; Macdougall, *James IV*, p. 54.

⁷⁵ Chalmers, 'King's Council', p. 107.

⁷⁶ *Ibid.*, p. 145.

⁷⁷ ER, x, pp. 629-30. Chalmers, 'King's Council', p. 145. There was a substantial overlap between the lords in this group and those charged by parliament shortly afterwards to 'serche and seik' trespassers and bring them to justice. These extensive powers allowed the pursuit of personal grievances backed by parliamentary authority, and contributed to the rebellions of the following year. RPS 1488/10/45. Macdougall, *James IV*, p. 60; Boardman, 'Politics and the Feud', pp. 169-71. The events of 1488 and 1489 are discussed further in the final chapter.

⁷⁸ Chalmers, 'King's Council', p. 146.

⁷⁹ *Ibid.*, p. 146.

⁸⁰ *Ibid.*, p. 101.

in 1488.⁸¹ In order to maintain political stability, therefore, it became necessary that the council became far more representative. After 1492, the crown having weathered two rebellions in the interim, the council gradually came to include a broader cross-section of allegiances, with some of James III's supporters being given important positions. Henry Arnot, abbot of Cambuskenneth became treasurer, while Bishop Elphinstone became Keeper of the Privy Seal.⁸² Conversely, Andrew, lord Gray, a 'bitter opponent' of the late king, was appointed Master of the King's Household, while the earl of Angus became chancellor.⁸³ By the end of James IV's reign the council displayed a 'much broader territorial, family, and banded [tied by bonding] representation', allowing more equitable access to crown favour and patronage.⁸⁴

This is a startling transformation, and one which has perhaps not been fully appreciated. The rapid growth of the royal demesne during James III's reign meant not only that litigation increased to an extent which the courts found difficult to manage, but also that the structures which had ensured that the king's 'natural' counsellors could be consulted were, quite suddenly, completely inadequate to the task. As long as the status of the nobility was closely tied to local spheres of influence, and the royal demesne was mostly granted out in acts of patronage, parliament was an efficient and effective way for the requirement of consultation to be met. Once the large territorial lordships of the Albany Stewarts and Douglases had been annexed to the royal demesne the crown found itself with many more tenants than before, and the administration of crown lands took on a significance which it had never before enjoyed. This administration therefore became an important route to political influence. It seems likely that such appointments, which were previously the preserve of chancery clerks, became more attractive to the nobility, whose personal relationship to the king and position on the council would come to have a stronger bearing on their political influence than had been the case before.⁸⁵ This goes some way to explaining both James III's 'evil counsellors' who, with their growing administrative and judicial power, no doubt appeared that way to men such as the duke of Albany or the earl of Angus,

⁸¹ For example 'the almost total eclipse of Sir William Murray of Tullibardine and his kin as renters of crown lands within the earldom of Strathearn', Boardman, 'Politics and the Feud', p. 169.

⁸² Macdougall, *James IV*, pp. 96-97.

⁸³ *Ibid.*, p. 97.

⁸⁴ Chalmers, 'King's Council', p. 103.

⁸⁵ This is a point made in Macfarlane, *William Elphinstone*, p. 406, although it emphasises James III's failure to distribute patronage evenly.

and James IV's ability to govern in a much more consensual style than his father, relying on his council to provide counsel and consent, and almost dispensing with parliaments.⁸⁶

While the personality of a king undoubtedly had a profound bearing on how well he managed the challenging circumstances in which he found himself, therefore, it does not, by itself, provide an explanation for his approach to kingship. This is particularly true of James III, whose personality has come under severe criticism.⁸⁷ Likewise, if ideology is given primacy at the expense of structural changes it will always support the contention that the king held a 'dangerously exalted' view of his role. Currently, the estates are praised for limiting the extent to which royal lands could be alienated, while the king is simultaneously criticised for his reluctance to distribute patronage; it is acknowledged that James III had to govern a hugely augmented royal demesne, with shifting power structures and expectations, yet his attempts at a parallel augmentation of crown authority in order to do so are condemned; the high frequency and great size of the parliaments during his reign are noted, but it is argued that he failed to seek the counsel of the great men of the realm, instead relying on lowborn favourites.⁸⁸ James III may well have been greedy, mercurial, inept and belligerent but this cannot be assumed until we take account of the governmental structures within which he was operating, and the profound political changes which occurred in his lifetime. By 1490 John Ireland was able to put forward a rather different idea of kingship to that expressed by Hay thirty-four years earlier:

The rial dignite is a hie and public honour and requires for the honour of god and profit of the peple a digne [exceptional], abill and wourthi persoune to governe the pepil and realme...the king resavis a croune of gold that signifyis his gret excellens and dignite our all his pepil. He is anoyntit to signifye and declar that the dignite riall he haldis of the hevinly king jhesus...⁸⁹

Even allowing for the natural divergences of emphasis between a scholar-cleric and a university-educated knight, the characterisation of the royal dignity as a 'hie and public honour' is suggestive of a shift in the *zeitgeist*. This is something different to Bower's

⁸⁶ N. Macdougall, 'The Estates in Eclipse? Politics and Parliaments in the Reign of James IV', in Brown and Tanner (eds), *Parliament and Politics in Scotland*, pp. 145-60. Finlay links this development with the more efficient collection of crown revenues, 'Office of King's Advocate', p. 28. The replacement of parliament by council as the final court of appeal must also have played a substantial part, above, p. 100.

⁸⁷ The most damning criticism can be found in Tanner, 'James III', which states that James III was 'a bad king, no more, no less', at p. 228.

⁸⁸ Tanner, 'Outside the Acts', p. 69; Macfarlane, *William Elphinstone*, p. 408; Madden, 'Finances of the Scottish Crown', Appendix B/2 (j); Macdougall, 'The Estates in Eclipse?', p. 146; Tanner, 'James III', p. 221.

⁸⁹ Ireland, *Meroure*, pp. 149, 159.

advocacy of 'strong' kingship, with justice as the first concern of the crown, and Mapstone suggests that this section is the closest Ireland comes to 'attributing to the monarch a quasi-divine, almost mystical status'.⁹⁰ Equally, however, it can be seen as an acceptance of the heightened royal authority necessary to govern directly a far greater number of subjects than before. While this certainly remains compatible with the view that the king ought to govern for the common good it is not a characterisation of royal authority which would have fitted well into the political milieu of the 1440s or 1450s. As political influence shifted from the franchises to the court of the king, so began a reinterpretation of public authority in which the crown, comprising both the king and his noble counsellor-administrators, was to have a far greater role in the lives of the governed.

Parliament and Political Discourse

Our understanding of the medieval institution of parliament has been revolutionised by the work of Roland Tanner. Tanner's main concern was to underline the importance of the personal relationships and political aims of those who attended meetings of the estates and to demonstrate parliament's resistance to royal control. In particular, he argued for the autonomy of the Lords of the Articles, the body which drafted legislation and which Rait had argued was little more than a tool of the king.⁹¹ Tanner has clearly demonstrated that Rait was mistaken in these views, and yet in placing parliamentary resistance at the centre of his argument he posits a highly oppositional model in which a 'strong' parliament was synonymous with the ability to modify royal policy.⁹² While there is no doubt that the late medieval Scottish parliament could deny taxation to the king, limit his ability to alienate his own lands and prevent him from going on campaign abroad this was not its purpose nor, necessarily, its aim. It was, essentially, the king's great council; a formal advisory body. In theoretical terms it provided the mechanism through which the consent of the governed could be granted in order for the king to rule legitimately. Its practical function was to ensure that the realm actually was governed in accordance with the contemporary norms of good rule. Those who wished to advance their personal interests in parliament - whether this was the king, his counsellors or a group of individuals within the estates - had to represent those interests as being for the good of the realm as a whole in order for them to be

⁹⁰ Mapstone, 'Advice to Princes', p. 446.

⁹¹ Tanner, *Scottish Parliament*, pp. 2-3; 'Lords of the Articles', *passim*; Rait, *Scottish Parliament*, p. 10.

⁹² For a brief summary see his conclusion in *Scottish Parliament*, pp. 265-278.

implemented. The ease with which this could be achieved did, of course, vary considerably with the prevailing political circumstances, but the need to reach a consensus, or even the appearance of consensus, meant that parliament tended to place an upper limit upon the worst excesses of individual ambition. The purpose of parliament was not to oppose the king *per se*, but to provide a forum in which claims to be acting for the good of the realm could be made and contested. Such arguments could take different forms, some of which will be discussed below, but once decisions were taken they were proclaimed throughout the kingdom by sheriffs, constables and bailies, thereby ensuring that they became common knowledge.

Parliament's ability to grant consent was underpinned by the Roman legal maxim *quod omnes tangit ab omnibus approbetur* – that which touches all ought to be approved by all – which was employed from the thirteenth century onwards in both the secular and ecclesiastical spheres to assert the authority of representative assemblies.⁹³ It can be found, restated in somewhat more practical terms, in Hay's *Buke of the Gouvernaunce of Princis*:

In some case it is nocht spedefull to ger thame [counsellors] opinly depone [declare] their consal in presence of all, bot quhilom [sometimes] it is gude to be done. In sic case may it be, for sumquhile all must be semblit, for general points of the communitie and other points of commoun profit, and than sall thou bath be better lufit and mare doubtit [feared].⁹⁴

This is in contrast to Hay's advice, noted in the previous chapter, that counsel be taken from each adviser separately, and shows the unique status of parliament both as a forum for debate and as the one in which questions pertaining to the kingdom as a whole ought to be addressed. This is Hay's only use of the term 'community' to describe the kingdom, and it is possible that he is here deliberately attaching contemporary ideas of incorporation to the realm in order to make his point. Meetings of parliament undoubtedly provided the means by which a group of disparate individuals with competing interests could be transformed into a single political entity; indeed this was essential in order for parliament to fulfil its function. This entity did not, however, have any legal status independent of the crown. There was no mechanism which could have accommodated such a situation even if it were desirable, and it was not. As Brown argues, the emphasis upon the effectiveness of the estates as a 'communal element' in Scottish politics should not obscure the 'principal

⁹³ For an introduction to the complex subject of the relationship between political thought and ecclesiology see Tierney, *Religion, Law and the Growth of Constitutional Thought*. *Quod omnes tangit* is discussed at pp. 24-25. See also Watts, 'Making of Polities', p. 76.

⁹⁴ Hay, *Gouvernaunce*, p. 117.

character of parliament as a royal institution, summoned, headed and largely directed by the crown.⁹⁵ The rights and privileges which pertained to its members were those of counselling the king and of assisting him in doing justice. Parliament may have imbued its members with some of the features of a *communitas*, most clearly the ability of a group of individuals to construe themselves as the realm as a whole, but it was a *communitas* which contained the king, rather than opposed him. He was the head of the body politic.⁹⁶

Nowhere is this more apparent than in the oaths recorded in the 1445 parliament:

Forma juramenti regis suis tribus statibus, etc.

I sall be lele and trew to God and halykirk, and to the thre estatis of my realm, and ilk estate kepe, defende and governe in thar awne fredome and privilege, at my gudly power, eftir the lawis and custumis of the realm; the law, custume and statutis of the realm neyther to eik nor to myniss without the consent of the thre estatis, and na thing to wirk na use tuiching the commoun proffit of the realm bot consent of the thre estatis; the law and statutis maid be my forbearis keip and use in all punctis, at all my power, till all my leigis in all things, sa that thai repung nocht agane the faith. Sa help me God and this halydome, etc.⁹⁷

Forma fidelitatis prelatorum

I sall be lele and trew to you, my liege lord, Schir James king of Scottis, and sall nocht heir your scaith, or se it, but I sall lat it at all my power, and warn you therof; your consell heil that ye schaw me; the best consale I can gif to you, quhen ye charge me *in verbo Dei*. And als help me God and haly ewangelis, etc.⁹⁸

Juramentum baronum, et ipsorum homagii juramentum

I, B., becumis your man as my king, in land, lif, licht and lym, and warldlis honour, fewtie and lawtie, aganis all that leif and dee may; your consale celand that ye schaw to me; the best consale gevand, geif you charge me; your scaith nor dishonour to heir, nor se, bot I sall lat it at all my gudlie power and warn yow therof. Sa help me God etc.⁹⁹

Forma fidelitatis juramenti regi

I sall be lele and trew to yow, my liege lord, Schir James king of Scotland; I sall nother heir your scaith nor se it bot I sall lat it at my power, and warn you therof; your

⁹⁵ Brown, 'Public Authority', p. 128.

⁹⁶ On the theory of organological kingship see A. Black, 'The Individual and Society', in Burns (ed.), *Medieval Political Thought*, pp. 588-606, at pp. 592-93; Kantorowicz, *King's Two Bodies*, *passim*; Black, *Political Thought*, pp. 14-18. A Scottish example can be found in Hay, 'Regiment', pp. 10-11.

⁹⁷ RPS 1445/3.

⁹⁸ RPS 1445/4.

⁹⁹ RPS 1445/5.

consell schewin to me I sall conseille; the best consall I can I sall gif youw, quhen ye charge me therwith. Sa help me God, etc.¹⁰⁰

Much emphasis has been placed upon the evidence that the first oath provides of the estates' power to limit royal authority, and given their appearance during a period of minority government, in which the earl of Douglas dominated the council, this may be an accurate assessment.¹⁰¹ Those magnates who had experienced James I's robust style of government were perhaps keen to ensure his son adopted a rather more consensual approach. The important promises made by the king, however, amount to agreeing that he would not change the laws, statutes or customs of the realm without the consent of parliament, and that he would take no decisions regarding the common profit of the realm without the consent of parliament. It is difficult to imagine how the king could, in practice, go about altering the laws of the realm without the agreement of the estates; an alternative mechanism for the dissemination of royal commands, which did not require the co-operation of the political elites, would have had to be found.¹⁰²

Furthermore, the idea of the common profit, as we have seen in the burghs, was a highly malleable one which could be appropriated by different groups in order to advance their particular aims. There existed a common understanding that contentious political actions ought not to be undertaken for personal gain; they had to be necessary for the greater good. In practice, of course, this sometimes meant using conventional rhetoric to justify some rather heinous actions *ex post facto*, and this will be explored further in the final chapter. Nevertheless, the ideal of the common profit provided an important way in which the worst excesses of individual men could be limited, by ensuring that actions sanctioned by parliament fell within a range which could be agreed to be good for all. It is by no means certain that such individual men were always the king, and the extant parliamentary register, which records decisions but not debates, undoubtedly obscures the extent to which many of the more *outré* propositions made by certain members of the estates were immediately shouted down by the others.¹⁰³ It follows that this mechanism certainly did, in principle, allow the estates to defy the king outright, although it is notable that the only occasion in the fifteenth century when this allegedly occurred, in 1436, was resoundingly

¹⁰⁰ RPS 1445/6.

¹⁰¹ Tanner, 'Outside the Acts', p. 69, which argues that they are indicative of 'a powerfully independent parliamentary authority'.

¹⁰² Tanner, *Scottish Parliament*, pp. 7-30.

¹⁰³ Bower describes a 'wrangle' [altercatus] over the matter of peace with England which occurred in a general council of 1433. *Chron. Bower*, viii, p. 289.

unsuccessful.¹⁰⁴ Despite the collective political authority that parliament embodied, being the king would have conferred a considerable advantage over other members in deciding what was best for the realm. It must also not be forgotten that the oaths of 1445 were reciprocal. In particular, the promises made by the prelates and barons to offer counsel when asked clearly draw from the same body of customary, contractual ideas as those discussed in the previous chapters, in relation to bonding and to guilds. Their use in 1445 may suggest that parliament was the forum in which the king's tenants-in-chief were expected to proffer most of their advice, and it is possible that the taking of this oath separated those who were entitled to counsel the king from those who were not, allowing them personally to offer advice when they were alone in the king's presence or otherwise invited to do so. Circumscribing the power of the king to enact his own wishes did not, in and of itself, lead to good rule, and while there is no doubt that Tanner's research shows just how much political conflict was embedded within meetings of the estates, and how often parliament was able to modify royal policy, its importance was as the location within the public domain in which king and estates came together to govern the realm. It was pursuit of the common profit, acknowledged by all as the best way to govern, which allowed political conflict to be successfully managed.

The idea of the common profit was, of course, strongly connected to the rule of law, and this was ultimately the responsibility of the crown. The king was able to demonstrate a commitment to the common good in a highly practical way, by making tangible improvements to the lives of the governed. As discussed in the first chapter, Walter Bower's concern for the *jura publica* was just as integral to good kingship as were the Aristotelian notions of the common profit which so concerned Hay.¹⁰⁵ As Bower advises James II

...you will have the power, when we are troubled by daily acts of tyranny or oppressed by robberies or pillaging, to relieve us from the distress that weighs us down, to draw up laws, to exercise justice, so that you may free the poor man from the powerful man...And you will remember that you have responsibility for the law, so that you may restrain the thief and check the robber. If you fail in this you cannot rule properly, you cannot be a lawmaker, but will confirm lawlessness.¹⁰⁶

¹⁰⁴ This was the alleged attempt of Robert Graham of Kinpult to arrest James I in parliament 'in the name of the three estates'. The only source for the incident is an English chronicle. For a discussion see M. Connolly, 'The Death of the King of Scots: A New Edition', *SHR*, 71 (1992), pp. 46-69; Brown, 'I Have Thus Slain a Tyrant'; Tanner, 'I Arrest You'.

¹⁰⁵ *Chron. Bower*, viii, pp. 16-9. See also S. Mapstone, 'Bower on Kingship', in *Chron. Bower*, ix, pp. 321-338.

¹⁰⁶ *Chron. Bower*, viii, p. 217.

Or, as the Pluscarden chronicler has it, in slightly more succinct manner, 'A ruler is so-called from *ruling* well; for where there is no rule there is no ruler'.¹⁰⁷ Just as parliament could claim legitimacy for its actions on the basis of the common good, so it could invoke contemporary ideas of justice, couched in terms of care for the common people.¹⁰⁸ Perhaps unsurprisingly, such language is most often found used within parliaments when political authority is being forcefully asserted.

In 1450, as Brown and Tanner both note, the holding of parliament symbolised 'the renewal of active kingship' after James II's turbulent minority.¹⁰⁹ One act states that 'general pece be proclamyt ande kepit oute throu the realme that al man may travel surely and sickirly in marchandice ande uthir wayis in al placis throu the lande swa that na man nede til have assouerans of uthir bot the kingis pece be souer til al man' before going on to recommend that 'juste men be maid justecez [that] kennys and minister evinly justice alsweill of the grete als of the smal'.¹¹⁰ Shortly afterwards, an act is recorded 'for the saueritie and favor of the pure pupil that laubouris the grunde' which forbids lords to increase mails following acquisition of new lands, instead requiring that the terms of a pre-existing lease should be honoured.¹¹¹ A final statute from the same parliament orders that 'justicez, chaumirlanis, crownaris and uthir officiaris that makis course throu the lande ryde bot competent and esy nowmir to eschew grevans and hurting of the puple', again invoking the good of the common people as a reason to curb the excesses of the nobility.¹¹² The extent to which these acts created a demonstrable improvement in the circumstances of the commons, or indeed the extent to which they were actually expected to, is secondary, in this context, to the fact that the good of the people was used as justification for action. If a king wished forcefully to assert his authority, this rhetoric allowed him to do so.

Nowhere is this clearer than in 1469, the year in which James III began his personal rule.¹¹³ As has been noted, it was in this parliament that his kingship was proclaimed as imperial and that the Boyds were forfeited under reformulated treason charges. This augmentation of

¹⁰⁷ *Chron. Pluscarden*, i, p. 112, italics in original. 'Rex enim a bene regendo dicitur; quia ubi non est lex, ibi non est rex.'

¹⁰⁸ This strategy was certainly not confined to the Scottish parliament. See, for example, J. Dumolyn, 'Le Poivre Peuple Estoit Moult Opprimé: Elite Discourses on "the People" in the Burgundian Netherlands (Fourteenth to Fifteenth Centuries)', *French History*, 23 (2009), pp. 171-92.

¹⁰⁹ Brown, 'Public Authority', p. 135; Tanner, *Scottish Parliament*, p. 122.

¹¹⁰ RPS 1450/1/12.

¹¹¹ RPS 1450/1/14.

¹¹² RPS 1450/1/16.

¹¹³ Macdougall, *James III*, pp. 82-9; Tanner, *Scottish Parliament*, p. 191-3.

royal authority was accompanied by a series of statutes, the purpose of which was to give the crown a greater degree of control over justice in the localities.¹¹⁴ These claims were again justified by invoking the plight of the poor commons. The first act, discussed in the previous chapter, stated that anyone who did not receive justice from his judge ordinary, whether 'justice, schireff, steward, bailye, barone, provost or bailyis of burowis', could appeal directly to the King's Council.¹¹⁵ This was done to counteract judges 'quhilkis wil nocht execut thare office and minstir justice to the pure pepil' and the earl of Angus fell foul of the law in 1471.¹¹⁶ As noted in the second chapter a further statute, relating to the election of burgh officers, dictated that the outgoing council was to choose the incoming council, and that no captain or constable of the king's castles should have office in adjacent burghs 'because of gret trubler and contensione yeirly for the chesing of the [officers] throw multitud and clamor of commonis sympil personis'.¹¹⁷ A third piece of legislation was directed towards the problem of constables, sheriffs and bailies who, during fairs, parliament and general councils, 'takis gret extorsionis of the kingis pure liegiis quhilk thai call thair dewitis and feis that is nocht aucht to thame'.¹¹⁸ It ordered that 'na sic extorsionis be takin of the kingis liegiis under the payn of punycioun of thair personis at the kingis will and to be put fra the executione of thair office for a yeir'. And finally, in order to

eschow the gret herschip and distructiones of the kingis commonis malaris and inhabitaris [of] lordis landis throw the force of the brefe of distress, quhare ony soumes ar optenit be virtu of the said brefe upoune the lorde awnare of the ground, that the gudis and catal of the pure mennis inhabitaris of the ground ar takin and distrenyeit for the lordis dettis, quhare the malis extendis nocht to the avail of the det, it is avisit and ordanit in this present parliament that fra hyne furth the pure tenandis sal nocht be distrenyeit for the lordis dettis forthir than his termes mail extendis.¹¹⁹

In essence, this statute forbade the practice of seizing tenants' goods in payment for the debts of their lords.¹²⁰ If the value of the debt exceeded the value of the tenants' rental, then the officer executing the brief could claim from the lord's goods held elsewhere. Most importantly, however, 'quhare the dettoure has na moveble gudis bot his lande, the schireff before quham the said soume is recoverit be the brefe of distres sall ger sell the landis to the avail of the det and pay the creditour sua that the inhabitantis of the said landis be nocht

¹¹⁴ The connection is noted in Woodman, 'Education and Episcopacy', pp. 74-5.

¹¹⁵ RPS 1469/16. Above, p. 100.

¹¹⁶ RPS 1469/16.

¹¹⁷ RPS 1469/19. Above, p. 69.

¹¹⁸ RPS 1469/23.

¹¹⁹ RPS 1469/26.

¹²⁰ The act is highlighted in Macfarlane, *William Elphinstone*, p. 108.

hurt nor grevit for thair lordis dettis.¹²¹ Even allowing for the fact that debtors were permitted to redeem their debts within seven years, this would have been a dramatic change of policy.¹²² The earl of Angus was again amongst those who felt the effects of this legislation when, in 1486, land worth £155 12s 8d was appraised and sold by the sheriff of Forfar to settle a debt to Thomas Fotheringham, placing the earl in opposition to James III's reforms yet again.¹²³ In all of these examples royal authority was exercised and changes were implemented with the justification of acting for the good of the governed. The 'poor commons' are here acting as a rhetorical device in order to justify James III's legislative programme, but this would have been ineffective if there had not been a fairly high level of dissatisfaction with the execution of justice in the localities.

This formulation of the common profit, as justice for the governed, was not only employed to assert the authority of the crown. In 1458 two parallel acts dealt with royal authority in the localities. In the first it was 'sene speidfull' that 'justice ayris be haldin and continewyt yerly out throu the realme for gude of the commownys', while the second stated that because 'all the estatis and specialy pure commownis ar sairly grevyt' by the reformation of the chamberlain ayre, 'the lordis in the name of the thre estatis exhortis oure soverane lorde that it plese him...to haif piete and consideracioun of the mony and gret inconvenientis that fallys on his pure liegis thar throu, and of his grace to provyde and remeide for reformacione tharof'.¹²⁴ In fact, James II had been involved in a 'costly war' in England and Man, and the estates took the opportunity provided by a meeting of the estates to advise the king that he ought to turn his attention back to his kingdom:¹²⁵

sene Gode of his grace has send our soverane lorde sik progress and prosperite that all his rebellys and breikaris of his justice ar removit of his realme, and na maistirfull men nor party remanande that may cause ony breking in his realme, sa that his hieness be inclinyt in himself and his ministeris to the quiet and commowne profett of his realme, justice [to] be kept amang his liegis, his thre estatis with all humilite exhortis ande requiris his hieness to be inclynit with sik diligence to the execucione of thir statutis and actis abwne writyng that God may be emplesit of him and all his liegis spirituale and temporale may be sa content of him that thai haif cause to pray

¹²¹ RPS 1469/26.

¹²² RPS 1469/26.

¹²³ RMS, ii, no. 1664; R. Nicholson, 'Feudal Developments in Late Medieval Scotland', *Juridical Review*, 18 (1973), pp. 1-21, at p. 12. The dispute over these lands was long and protracted. See NRS GD121/3/19-20.

¹²⁴ RPS 1458/3/15, 1458/3/21.

¹²⁵ Tanner, *Scottish Parliament*, p. 163.

allmychtthy Gode for his prosperite and gif hertly thankyng to Gode that sende thame sik a prince to thar governour and defendour, etc.¹²⁶

The estates are 'speaking' directly to the king, using the language of justice and the common profit in order to frame their advice, and this is followed by a suggestion that attending to such business will earn him the prayers of all his lieges. As Tanner argues, the statute contains both a 'conventional plea' that the king maintain justice, and a more specific plea for stability after the disruption of the Douglas conflict in the early 1450s.¹²⁷ It is not necessary to see these pleas as separate, however. The estates here are drawing upon the commonplaces of political advice literature in order to couch their rather forthright counsel in language to which the king could respond without difficulty.

This can be seen again in 1473, when the estates were forced to respond to James III's proposal to lead personally an army to 'retake' the duchy of Brittany from the French.¹²⁸ This rather unlikely idea was an integral part of the king's foreign policy objectives, or at least his diplomatic manoeuvring, and so the reaction of the estates must have been unwelcome in the extreme. Tanner characterises the resulting advisements as 'some of the most detailed and manifest evidence of parliament resisting and modifying royal policy available in the fifteenth century.'¹²⁹ The eight acts which address the question of 'the passing of the king' begin with the statement that 'the lordis cane nocht in na wise gif thare counsale to his passage of his realme' and continue with the observation that 'his hienes may not in na wisis dispone him for his worschip to pas in this sesone, considering that he is unprovidit or furnyst of his expensis'.¹³⁰ This last reveals that the grant of taxation to which the estates agreed in 1472 in order to fund the expedition remained uncollected, presumably due to the king's intention to go abroad in person.¹³¹ The next advisement states that

gif his hienes stande uterly deteremyt to pas in uthir contreis, the lordis findis na causis honorable nor acceptable for the sammyne, bot alanerly gif his hienes walde tak the labour on him tobe mediatour be his vertew, cure and diligence to trete, unite, concorde and frendeschip betuix his derrest bruther the king of France on the tapart, and his dere cousing and alia the duke of Burgunye on the tother, that to the eschewing of the gret effusioune of Cristin blude, distructionis of citeis, wallit tounis, justice and policy committit ymangis thaim of tyme bigain and hable to be committit in tyme cumming, to the resisting of the gret enemy of Cristin faithe, the gret Turk,

¹²⁶ RPS 1458/3/41.

¹²⁷ Tanner, *Scottish Parliament*, p. 163.

¹²⁸ Macdougall, *James III*, pp. 110-25; above, pp. 38-39.

¹²⁹ Tanner, *Scottish Parliament*, p. 202.

¹³⁰ RPS 1473/7/5.

¹³¹ Macdougall, *James III*, p. 114; Tanner, *Scottish Parliament*, p. 202.

sene throw the contencioune being betuix the said princis, the gretast part of Cristindome is trublit; and couthe this mater be tretit, concordit and appointit be the kingis gret gret nobilite, vertew and wisdom, it may redound in gret plesure to God, proffit to the maist part of Cristindome, gret honour and worschip to his croune, and habile to bringe him thairthrow to his richt nocht alanerly to the counte of Xancton [Saintonge], bot als of the duchery of Gillir [Gueldres].¹³²

If the king was determined to involve himself in European politics the estates felt that he should do so as a mediator between the duke of Burgundy and the king of France, rather than at the head of a Scottish army. By reconciling them, and perhaps even uniting them on crusade, James would demonstrate his statesmanship, and would thereby be able to secure the duchy of Gueldres and the county of Saintonge. The idea that this strategy might have been effective was, for several reasons, very much at odds with contemporary *realpolitik*; there was virtually no chance of James being given either territory, regardless of his skills as a mediator.¹³³ The crux of the matter was that the estates were denying the king the means to fund his expedition, and many of the following advisements can be seen as a way of limiting further royal objections by proposing an alternative method by which his foreign policy ambitions could be achieved, no matter how unrealistic. Realism was not the goal; it was arguably to offer advice to the king in a way which would allow him graciously to accept the rather severe limitations that the estates were placing upon his plans. In order to achieve this, the estates again borrowed heavily from the tropes of advice to princes literature.

In the *Gouernaunce* Hay states that ‘mortall bataillis ar caus of destructioun of realms and citeis’ and ‘destructioun of realmes and citeis is caus of destructioun of the lawis bathe of nature and of man’.¹³⁴ He returns to the idea later in the book, with an assertion that men ought not to break promises or oaths because ‘be the faith and leautee of men all congregaciouns of men and unioun of citeis and wallit townis is manetenyt and uphaldyn’.¹³⁵ References to ‘justice and policy’, can also be easily found, such as the following in his ‘Regiment of Princes’:

...in gud faith all justice was first foundit
And in justice all gudlynes was groundit
All governance and all gud polycie
And all gud workis are nurisit halelie.¹³⁶

¹³² RPS 1473/7/6.

¹³³ Tanner, ‘James III’, p. 221; Macdougall, *James III*, p. 119.

¹³⁴ Hay, *Gouernaunce*, p. 66.

¹³⁵ *Ibid.*, p. 79.

¹³⁶ Hay, ‘Regiment’, p. 15.

The estates' reference to the destruction of cities, walled towns, justice and policy can be seen as a conscious decision to position their advice very firmly within the framework of ideal kingship. Adding references to the king's virtue and wisdom, the common profit and the honour and worship of the crown cemented this impression even further, and put the kingdom at the heart of their concerns. Bower advises that

In the matter of taxes and tallages and similar exactions...a king or any lord should seek from their subjects only that which their predecessors have received honestly, without deception or compulsion... Also, if a lord wishes to go on an expedition called by a church or a prince against heretics or pagans, and he does not have the means without serious loss, but lacks the wherewithal for the cost, he can ask for moderate help from those under him.¹³⁷

This perhaps explains why the estates chose to recast the king's venture as a crusade rather than a quest for personal glory.¹³⁸ By employing the easily-recognisable language of the mirrors for princes genre, the estates positioned their rather unwelcome 'advice' within a framework which conferred legitimacy, while also enhancing the arguments through an association with ideal kingship and, perhaps not least, depersonalising the counsel due to the conventional nature of the advice tropes. As in 1458, the good of the people can also be found invoked in the statutes of 1473 which followed the advisements. It was decided that no English cloth should come into the realm, 'quhilk is gret hurt and skaithe to hienes in his custume and to his liegis that ar bare of money', and that a warden and a deacon of craft were to oversee the work of the goldsmiths because 'the pupill is oure gretly scaithit and dissavit tharthrow'.¹³⁹ The good of all was again used as justification for legislation on the matter of the bullion, when it was ordained that 'the actis and statutis maid apone the keeping of money within the realme be deuly keipit, and sic sercheouris and inquisitouris set tharupone that will execut the said actis without corrupcioune or dissimulation for the commoune proffit of the realme.'¹⁴⁰ As has been noted in the burghs, this formulation of the common profit shades well into actual fiscal profit; such discourse was just as useful for governing the kingdom as for running the towns.

As might be expected, cognates of the 'common profit' often accompany the more divisive royal actions to which the estates consented. Large parliaments were often prompted by

¹³⁷ *Chron. Bower*, p. 253.

¹³⁸ Macdougall argues that James proposed in 1471 that he should act as mediator between France and Burgundy, so that the estates were merely borrowing his suggestion, but the parliament records for that year mention only an embassy, not a personal voyage by the king. Macdougall, *James III*, p. 119; *RPS* 1471/5/2.

¹³⁹ *RPS* 1473/7/18, 1473/7/20.

¹⁴⁰ *RPS* 1473/7/14.

demands for taxation, and this is perhaps best exemplified by the parliament of March 1479, in which the forfeiture of the duke of Albany was attempted and which, with a sederunt of at least 104, was the best attended of any in the late medieval period.¹⁴¹ The parliament had been called by James III to gain consent to a grant of taxation to fund the expenses for the marriage of his sister Margaret to Anthony earl Rivers, and the sum agreed – 10,000 merks Scots – was ‘the largest taxation of James III’s reign and probably the second largest of the fifteenth century’.¹⁴² This was granted ‘with unanimous consent and assent’.¹⁴³ Consent was also explicitly granted to an act concerning the diocese of St Andrews, which was ‘primarily designed as a declaration of support’ for William Scheves, newly-appointed as the Archbishop of St Andrews.¹⁴⁴ Scheves’s meteoric rise from minor household official via king’s physician to archbishop was not well-received by the Scottish clergy, and the favour bestowed upon him by the king was resented in many quarters; a letter sent from James III to the pope in 1483, the midst of the Lauder crisis, stated that the bishops ‘refuse to obey a man not of illustrious birth’.¹⁴⁵ In particular, the act restated the right of the Archbishop of St Andrews to confirm the nominations of prior and abbots in the diocese.¹⁴⁶ This privilege was stated not only to be ‘rycht honorable in the selve’, but to tend to the ‘comoune profit of the realme and oure souverane lordis liegis’.¹⁴⁷ Each abbey and priory within the diocese was to be given a copy of the act under the king’s great seal ‘to perpetuale memour of the said constitucione, act and deliverans of parliament in the conservacione and keping of the commoune gud of oure souveraine lordis realme and liegis’.¹⁴⁸ The less likely it was that individual members of the estates would approve of a royal decision, the more important it was that the king gained the approval of parliament as a whole.

In fact, it is within the contexts of royal finance and ecclesiastical appointments that the common profit is most likely to be found as a justification for action, mirroring the references to the crown noted above. In 1471, for example, there are three such acts. The first regards the purchasing of benefices at Rome by the clergy, in contravention of the king’s

¹⁴¹ RPS 1479/3/2; Tanner characterises it as ‘a phenomenal turnout’, *Scottish Parliament*, p. 219.

¹⁴² Tanner, *Scottish Parliament*, p. 220.

¹⁴³ RPS 1479/3/14, *unanimi consensu et assensu*.

¹⁴⁴ RPS 1479/3/20; Tanner, *Scottish Parliament*, p. 222.

¹⁴⁵ Macdougall, *James III*, pp. 146-50; *Scottish Formularies*, ed. Duncan, p. 241. See also Sir J. Herkless, *The Archbishops of St Andrews* (Edinburgh, 1915).

¹⁴⁶ RPS 1479/3/20. In the parliament of October that year Scheves would also be given regality jurisdiction over a large swath of Fife in a confirmation of the ‘Golden Charter’ originally granted to bishop James Kennedy in 1452. RPS 1479/10/9-12.

¹⁴⁷ RPS 1479/3/20.

¹⁴⁸ RPS 1479/3/20.

rights of appointment, which is characterised as ‘in heirchip and distrucione of the religiousis placis and agayne the comone gud of the realme’.¹⁴⁹ Another states that ‘the lordis that sal have the powar in al uther materis for the comoune profet of the realme at that tym to avise determyn and conclude apoune the said mater of the mone’.¹⁵⁰ Finally, it was decided that more fishing boats ought to be acquired ‘for the comone gud of the realme and the gret encreasis of riches to be brocht within the realme of uthir cuntreis’.¹⁵¹ The problem of money was ongoing in this period, and, as in the burghs, the rhetoric of the common good provided an inclusive framework within which to position financial decisions. In 1455 an act was passed in which it was ‘ordanyt that thar pass ane ambaxat to our haly fadir the pape for the obedience to be maide and certane privilegis to be purchest for the common gude of the realme.’¹⁵² As embassies also required to be paid for from extraordinary taxation, it is not unusual to find them linked to the good of the whole realm in this way.¹⁵³ In this instance, ‘thar expensis and instructiouns [were] referryt to our soverane lordis secret consale’.¹⁵⁴ Another can be found in 1476, when an embassy was sent to negotiate the marriage of James III’s sister, and ‘alsa to common apoune uthiris gret materis gif ony hapins to occure in the tim, and gif neid be to conclude thareapoune or to refferre again to the next parliament or generale consail as sal be thocht speidful be thaim for the common profit of the land’.¹⁵⁵ A third was agreed in 1485, when it was ‘requirit thatoure soveran lord sal sende his honorable ambassat tooure haly fader the paip for the making of his obedience and for the desiring of sic honorable and proffitable privilegez and faculteis for the king and the commoune gude of the realme.’¹⁵⁶ In this case William Scheves offered to finance the trip at his own expense, ensuring that ‘tharefor he is maist convenient and maist honorable persoune that can be sende’.¹⁵⁷ Scheves’s plans came to fruition in 1487 when he was made primate of Scotland, having petitioned the pope for the honour the previous year while he was in Rome, much to the consternation of the bishop of Glasgow.¹⁵⁸ In the first parliament of James IV’s reign, in 1488, an act can be found which addresses both issues simultaneously:

¹⁴⁹ RPS 1471/5/4.

¹⁵⁰ RPS 1471/5/8.

¹⁵¹ RPS 1471/5/10.

¹⁵² RPS 1455/8/11.

¹⁵³ For example, RPS 1468/1/2, 1471/5/2, 1485/5/8, 1488/1/10.

¹⁵⁴ RPS 1455/8/11.

¹⁵⁵ RPS 1476/7/10.

¹⁵⁶ RPS 1485/5/11.

¹⁵⁷ RPS 1485/5/11.

¹⁵⁸ Macdougall, *James III*, pp. 296-7; Macfarlane, ‘Primacy of the Scottish Church’, p. 117.

as to the article of gret dampnagis and scaithis dayly done to all the realme be clerkis, religiousis and seclaris, quhilkis purchessis abbacyis and utheris beneficis in the court of Rome, quhilkis wes never tharat of befor...and takis apoune thayme to raise hevy and gret taxaciouns of prelatiis and clerkiis...and unit to bischoprikiis or uthir in herschip and distrucione of the religiousis placis and agane the commoune gud of the realm, quhilkis thingis cause unestimable dampnages and scathit, considering the innomerabill riches that is had furthe of the realm tharthrow...the lordis thinkis expedient that na sic abbacyis nor uthir beneficis quhilkis wes newer at the court of Rome of befor be purchest be na seculere nor religiouse persouns...¹⁵⁹

The way in which these decisions are justified by reference to the good of all has clear parallels with the way such language was used in the burghs. This is in part due to the financial nature of the subject matter of many of the acts, but also because there is often reference to an outside entity, whether a trading partner, a potential ally through marriage or indeed the papacy. From the perspective of the crown, the rhetoric around the common profit of the realm became particularly effective if it could be used to position the king and the estates as a single entity, and this was more straightforward when a third party was involved, against which the crown and realm could be contrasted simultaneously. This is also suggested by three further examples from the records of parliament. The first two relate to the problems of the devalued currency, through which 'his hienese and the hail body of the realme gretumly hurt and skathit', while the third comes from the parliament which met shortly before Edward IV sent his army north in 1482, and states that if the English king chose to lead his army in person, he would be 'resistit be oure soverane lord in proper persoune and withe the hale body of the realme to leyf and dee with his hienes in his defence'.¹⁶⁰ In the event things turned out rather differently in 1482, but these few examples are suggestive of a preference on the part of the king, when attempting to galvanise his subjects, for the image of the realm as body with the king at its head, over that of the kingdom as a community.¹⁶¹

Although the term *res publica* can be found in Latin sources from the start of the period under discussion, it appears to enter the vernacular as the 'public good', and cognates, from around the 1470s. Given the limitations of the evidence firm conclusions are difficult to draw, but there are no instances of vernacular terms attaching 'publicness' to the realm during James II's reign in the sources examined for this thesis. Two examples can be found in the records of parliament. The first, from 1484, records that

¹⁵⁹ RPS 1488/10/49.

¹⁶⁰ RPS A1467/10/10, 1471/5/8, 1482/3/44.

¹⁶¹ The Lauder crisis of 1482 is discussed further below, pp. 148-49.

anent the estatis and lordis that ar nocht cumin to this parlment to gif thare consale to the welefair and gude public of the realme, the lordis understandis that thai have faltit and sulde be blamyt and referris the blame of thaim to the kingis hienes.¹⁶²

This nicely underlines the centrality of the consent of the estates to growing ideas of public authority and suggests that even in 1484 structures of counsel were such that non-attendance at parliament could have negative consequences for the legitimisation of authority. A second statute, from 1490, records the decision that

tuiching the renewing and confirmatioune to be maid of the confideratioune and aliancez of France and leikwise with Denmark and Espanye, it is thocht expedient be the saidis lordis of the articlis that thai desire to purches and optene sic frendschapis, liberteis and fredommez to the gude public of this realme and proffit of course of merchandise and sic thingis as salbe sene proffitable be the lords of the kingis secrett consale, that tharefore the body of the parliament has committ power to the chancellare and secrett consale to mak the instructiouns and avise sic desires as thai sall think expedient for the gude of the king, his realme and liegis, quhilk sall be done be the king and in the name of the hale body of his parliament.¹⁶³

This again provides evidence of James IV's council accruing authority to itself, this time from the estates, and of the good of the realm being linked once more with its finances. In both instances, the idea of the public good is attached to matters which address directly the exercise of political authority. Use of such language was not confined to parliament. The few of James III's letters that survive occasionally provide glimpses into the utility of these ideas when the king was dealing with individuals more directly, and in this context they are often used to underline crown authority in difficult negotiations. In 1476 the earl of Huntly received two letters from James III, countersigned by William Scheves.¹⁶⁴ Each had regard to Huntly's recent capture of Dingwall castle from the earl of Ross. The first was a signet letter, written in March, and is at pains to explain why the castle is being given to John Stewart instead of Huntly, suggesting that 'had it saa bene that ye at our last being with us had dissirit the keeping of our castell we suld have preferrit you therein befor all utheris', before going on to exhort the earl to the 'gude perseverance and continuance in the invasioun of our said rebellis, and to the augmentatioun of the gude of oure croune and bene publick and comoun proffit of oure realme'.¹⁶⁵ The second letter was sent under the privy seal, and recompenses the earl with 'a hunder merkis worth of land liand in competent placis in the

¹⁶² RPS 1484/2/36.

¹⁶³ RPS 1490/2/10.

¹⁶⁴ *Spalding Misc.*, iv, pp. 133-34.

¹⁶⁵ *Ibid.*, p. 133.

north partis of oure realme', and is notable for its highly business-like tone.¹⁶⁶ The king has no hesitation in equating the crown both with the public good and the common profit, and this appears to be functioning as a reminder to the earl of his duty to the realm despite the king's inability to reward him with Dingwall castle. Once a suitable substitute was decided upon, there was no longer a need to frame the correspondence in this way, and the less personal style of the privy seal became more appropriate. Another letter, to the earl of Northumberland in 1475, addresses the breaking of the truce between Scotland and England by Scottish raiding parties.¹⁶⁷ The king raises the fact that English raiding parties have also been coming into Scotland, and that Edward IV still refuses to hand over Robert, lord Boyd, 'oure rebell and traitoure', who is known to be sheltering in the earl's lands of Alnwick. The letter ends with the observation that 'nane effect can folow tharuppoun according to the trewis, quhilk we sall mak for oure part to be observit to the gud publik of baith the realmes'.¹⁶⁸ The truce with England was a contentious policy during this period, and the king was here reinforcing its importance to the Scottish crown. The public good, expressed only rarely before the 1490s, can be seen as part of the vocabulary of enhanced royal authority which developed during James III's reign.

Conclusion

Although king and crown were not separable they were also not synonymous, and nor were parliament and 'community'. Communitarian language could be harnessed and deployed in support of royal aims, just as the crown was understood to encompass the realm as a whole. The expansion of the royal demesne in the later fifteenth century altered contemporary understandings of royal rights and jurisdiction, not least by making many more subjects than before direct tenants of the crown, and central to this process was an accrual of administrative authority to the King's Council, which grew to oversee procedures which had previously operated under the auspices of the chancery or exchequer. This complemented the augmented judicial functions of the council, discussed in the previous chapter. These changes were not universally popular, and the rhetoric of the common profit, employed both within parliament and without, provided an important means by which authority was negotiated. In the medium term some of these tensions would be resolved, to

¹⁶⁶ *Spalding Misc.*, iv, p. 134.

¹⁶⁷ *Cal. Scot. Docs*, iv, p. 408.

¹⁶⁸ *Ibid.*, p. 408.

an extent, by the political manoeuvrings which followed the battle of Sauchieburn. These allowed a new administration to reconfigure the personnel of the royal council in line with the expectations of political influence held by the Scottish magnates.

As Jacqueline Rose has argued, discussion of counsel was not simply 'unthinking reiteration of moral commonplaces by those too intellectually unadventurous or politically timeserving to dream up resistance theory'.¹⁶⁹ While the estates certainly modified the actions of particular kings, and reminded them of their duties, such advice was always very carefully phrased, and the crown itself was never impugned. The nobility derived their political authority wholly from the crown, and had a personal interest in maintaining its privileges. This is not to suggest that king and estates never disagreed, but the framework of principles within which they operated dictated that disagreements had to be confined to the good of the realm. Ideas of the common profit were used to bolster the arguments of each, and this discourse overlaid and facilitated the considerable amount of disagreement which must have characterised meetings. The underlying purpose of parliament was to convert many views into one – to allow a group of individuals to construe itself as the realm – and it must not be forgotten that for all the conflict detectable in the records agreement and consent resulted every time, however superficial this may have been on any given occasion. This shared framework of ideas and practices, rather than any corporate will on the part of the 'political community', accounts for the sense that fifteenth-century politics were based upon co-operation. Given the potential for confrontation and violence, which were not always held in check, the veneration of consensus is understandable.

Explicit theories of resistance would therefore have been entirely counter-productive, and it is perhaps better to think in terms of theories of accountability. The good of the realm was used by the estates in attempting to limit the less palatable ambitions of the Stewart kings, and by the kings themselves to assert their personal authority. There is no need to attribute altruism to any party simply because they employ such rhetoric, but we should not be in any more of a rush to assume cynicism. As in the burghs, the language of the 'common profit' could be wielded in a variety of situations, and its flexibility was the reason it retained its utility for the entire late medieval period. For most of the time this mechanism acted to keep political relations reasonably stable. The final chapter examines how the 'common profit' and the public domain were used during periods of crisis.

¹⁶⁹ Rose, 'Introduction', forthcoming.

Chapter Five: Protest and Rebellion in Fifteenth-Century Scotland

Any attempt to define who might have been a member of the 'political community' in fifteenth-century Scotland runs instantly into difficulties.¹ It is usually understood to include those who would have had a direct say in the politics of the realm, such as the great lords spiritual and temporal. It would be natural to assume that all members of the nobility were part of this community, and yet the nobility of late medieval Scotland was a heterogeneous group, in terms of political interests but also in terms of the amount of personal authority each was able to wield.² Likewise, it might seem reasonable to include all members of the three estates, whose participation in governance was essential, yet discussions of the 'political community' almost never include burgesses, who are assumed only to have had interest in or influence over matters of extraordinary taxation.³ Within contemporary political discourse the term 'community' was used almost solely in relation to the burghs, suggesting that incorporated status was an integral component of the concept. The 'political community' is therefore simply a convenient shorthand which most scholars of the period have used, in order to frame discussions of politics; indeed it has been adopted so enthusiastically precisely because it is so flexible. Ultimately, however, this community amounts to a group of unspecified individuals whom we then oblige to act corporately, obscuring both the complexity of the interpersonal relationships so essential to medieval political practice and the adaptability of communitarian ideas within political discourse. In particular, the positive attributes which tend to be associated with the idea of community – co-operation, an inclination towards the common good, and group solidarity – become attached to the nobility by default. If the 'political community' is instead replaced by the public domain, it is possible to restore the agency of individuals and groups. This allows for an exploration of the role of common knowledge in the negotiation of political authority, while analysis of the rhetorics of counsel and the common profit can focus upon who was able to harness them, why they did so and how successful they were in their aims.

¹ This was highlighted by Brown, 'Scotland Tamed?', pp. 137-40 and Macdougall, 'At the Medieval Bedrock', p. 26, which suggested that the term amounted to no more than 'the establishment of the day, or, in time of crisis, any faction temporarily in power'.

² Brown, 'Scotland Tamed?', p. 140; J. Wormald, 'Lords and Lairds in Fifteenth-Century Scotland: Nobles and Gentry?', in M. Jones and R. L. Storey (eds), *Gentry and Lesser Nobility in Late Medieval Europe* (Gloucester, 1986), pp. 181-200, at p. 187.

³ Tanner, *Scottish Parliament*, pp. 268-69.

In order to rule legitimately those in authority had to ensure that their actions became common knowledge. Courts and councils - from guild courts to parliament - provided an important means of doing this. The decisions made by these bodies might have been influenced by a wide variety of factors: custom, law, vested interests, local knowledge, petitions from individuals, political pragmatism or even idealism. Once proclaimed, however, the decisions made applied across the jurisdiction in question. One way in which a case could be made for a particular position to be adopted as policy or given as verdict was by demonstrating personal credibility, in the form of one's good reputation, or indeed by highlighting the bad reputation, and therefore lack of credibility, of one's opponent. Another way to make such a case was by invoking the good of the governed. As has been shown, there were a variety of methods of doing this, and an even greater variety of political circumstances to which such rhetoric could be applied. Using this language to frame political action circumscribed, over the longer term, the range of actions which could legitimately be taken. If one was obliged to claim to be acting for the common profit one's actions had to fit within a range which would demonstrate this claim. This, of course, left plenty of room for interpretation, and was more or less easy to manipulate in any given set of circumstances, but the imperative to use the rhetoric placed a powerful upper limit upon the worst excesses of individual ambition, and provided a framework within which individuals who transgressed could be held to account.

The acceptance of these norms meant that royal authority could not legitimately be challenged other than through a public demonstration that the king was failing to govern in accordance with such norms. Common knowledge of the king's deficiencies had to be generated in order for a challenge to be successful, otherwise the challenger left himself open to accusations of treason or conspiracy. In practice this must have had the effect of requiring that any challenger was fairly sure either of the rightness of his cause or of a reasonable degree of support before taking action, and ideally both. The costs of standing alone publicly would have been very high, while the employment of communitarian rhetoric would have sounded very hollow if the opinion being voiced was known to be held only by the challenger. Likewise, a king who was commonly acknowledged to be flouting the norms of good kingship was taking a very great risk, by creating a space in which a successful challenge might be mounted against him.

The following offers a reassessment of some of the political crises of the fifteenth century which have traditionally been considered as conflicts between crown and community, by

highlighting the use of the public domain in each. Particular attention will be given to the following elements: the role of parliament in generating common knowledge about political events, the burghs as an alternative space in which common knowledge could be generated, the denigration and defence of reputation within the public domain, and how claims to be upholding justice, the common profit and the crown itself could be made by different parties.

Rebellion, Reputation and Slander: 1402, 1452 and 1482-83

In 1452 James II stabbed the 8th earl of Douglas to death in Stirling castle.⁴ Much of our knowledge of the event comes from the Auchinleck chronicle, a short, incomplete vernacular narrative which discusses events between 1424 and 1455.⁵ Although the author remains anonymous he was clearly politically aware, and writes in order to convey his personal knowledge and experience rather than from a desire to educate or advise, as did Bower and Ireland. The author is interested in 'what men say'.⁶ He gives the impression that he has personally taken part in discussions about the matters to which he refers, and is consequently drawing upon opinions other than his own. He is concerned primarily with local matters, and notes the reputation of many of those he discusses. Where Bower and Ireland draw upon classical or biblical references in order to reinforce their narratives, the Auchinleck chronicler draws heavily upon common knowledge. Overall, the work suggests that those who were politically active in the localities discussed such matters amongst themselves as a matter of course, and were well aware of the importance of the public domain for the exercise of political authority.

By 1452 relations between the king and the earl of Douglas had been strained for some time, due to an ongoing dispute over the earldom of Wigton. The men had reached an agreement the previous year and, according to the Auchinleck chronicler, 'all gud scottismen war rycht blyth [glad] of that accordance', suggesting that people had been taking a close interest in how the situation developed.⁷ Despite the accord the earl had requested a safe conduct in order to meet the king at Stirling, a move which spoke volumes

⁴ For discussion of the background and detail of these events see Brown, *Black Douglases*, pp. 283-311; McGladdery, *James II*, pp. 55-74; 'James II', pp. 189-95; Stevenson, *Power and Propaganda*, pp. 78-81.

⁵ For a discussion of the chronicle and its strengths and limitations as a source for the reign see McGladdery, *James II*, pp. 116-24.

⁶ Above, p. 35.

⁷ *Chron. Auchinleck*, p. 165.

about their strained relations, and according to Auchinleck the king's men had also promised to intervene if James II attempted to break this agreement.⁸ James II's greatest concern, however, was the formation of a bond between Douglas and the earls of Crawford and Ross, each of whom were also causing him political difficulties in this period.⁹ As discussed in chapter three it was not in the interests of the crown to allow groups of magnates to form bonds which might threaten the king's authority, and the king presumably felt justified in confronting Douglas about the matter. The Auchinleck chronicle relates the circumstances of the earl's death:

[Douglas] passit to the castell and spak with the king that tuke richt wele with him be apperans...and he come and dynit and sowpit, and thai said thair was a band betuix the said erll of dowglas and the erll of ross and the erll of craufurd and efter supper, at sevyne houris, the king than beand in the inner chalmer and the said erll, he chargit him to breke the forsaid band. He said he mycht nocht nor wald nocht, than the king said 'fals tratour sen thow will nocht I sall', and stert sodanly till him with ane knyf, and straik him in at the colere and down in the body. And thai said that patrik gray straik him nixt the king with ane poll ax on the hed and strak out his harnes [brains], and syne [then] the gentillis that war with the king gaf thaim Ilkane [each one] a straik or twa with knyffis...¹⁰

The hot-blooded killing of a magnate of Douglas's stature, by the king himself, under safe conduct would have been as controversial an action of which it was possible to conceive by the political norms of the time. The immediacy of the account suggests that it was related by someone who knew exactly what had occurred in the king's 'inner chalmer', and the chronicler resists any temptation to draw moral lessons from the incident. It is interesting to note, in relation to the chronicler's observation that the king was joined in his violence by Patrick Gray and others, that only four years after the incident occurred Gilbert Hay asserted that

Thare is gevin [to a knight] a maisse, that is to say pollax, in takenyng [token] that he is officer ryale and that gif ony man disobeyis till his wand that he lay that maisse on thame to hald the kingis rychtis on fut.¹¹

⁸ *Chron. Auchinleck.*, p. 165.

⁹ *Ibid.*, p. 163, which describes Crawford as 'richt inobedient to the king'. For an example of the earl of Ross attempting to obstruct the truce with England in 1444 see above, pp. 43-44.

¹⁰ *Ibid.*, p. 165.

¹¹ Hay, *Knychthede*, p. 35. To 'hald on fut' is not a common expression, but appears to have the sense of 'stand up for'. *DSL*, fut, *n*.

Mapstone suggests that the poleaxe is an addition by Hay to the list of armour given in the French *Lancelot do Lak*, with which he was probably familiar.¹²

The king's actions had severe repercussions. On 26 March James Douglas, William's brother and now the ninth earl, came to Stirling, where the king had been only a few days before. According to Auchinleck, he

blew out xxiiij hornis attanis [together] apon the king, and apon all the lordis that war with him that tyme, for the foule slauchter of his brother, And schewe all thair seles, at the corss, on ane letter with thair handis subscrivit, and tuke the letter and band it on ane burd [bound it on a board] and cuplit it till ane hors tale [horse's tail] and gart draw it throu the towne, spekand richt sclanderfully of the king and all that war with him that tyme, and spulyeit all the toune and brint It.¹³

This highly public protest was carefully staged in order to denounce the king's actions. The significance of the market cross as a site for the generation of common knowledge was established in the first chapter, as was the method by which the horning ritual changed the status of wrongdoers in relation to the king's authority.¹⁴ Douglas was making use of both of these circumstances to cast the king in the role of the wrongdoer while simultaneously highlighting his inability to adhere to his own laws. That the king should commit such a crime was doubly offensive, because it was he who was supposed to ensure justice in the realm. Not only was the earl protesting against his brother's slaughter, therefore, his actions constituted an implicit accusation of hypocrisy. This complemented the explicit accusation of hypocrisy, which took the form of the ritual destruction of the safe conduct and, presumably, the 'slandorous' words uttered about the king. Douglas intended both his actions and his speech to become common knowledge, in order to challenge the king directly, and if there were any doubt that his use of the market cross would have ensured this, his burning of the town would certainly have had the desired effect.

This presented James II with a difficulty. He could not possibly allow such slander to stand - he was obliged to protect his reputation in order for his authority to carry any weight at all - and yet the earl's accusations were true. As king, James did not need to rely upon the market cross to generate common knowledge of the event, however. He had at his disposal the best mechanism possible, and he duly summoned a parliament, which met on 12 June. The resultant declaration is a remarkable document:

¹² Mapstone, 'Advice to Princes', p. 161.

¹³ *Chron. Auchinleck*, p. 165.

¹⁴ Above, pp. 26-27, 33.

[It has come to James II's] notice that some of his enemies and rebels outwith and within his realm denigrate his good reputation and rashly dare to slander him, unjustly attempting to assert that [he] slaughtered the late earl of Douglas while he was under special respite and certain other sureties.

Which slander troubling our same serene lord the king...he urgently requested that, in order to declare his innocence, [the three estates] inquire concerning the truth of the foregoing...and furthermore they shall be willing to compose express declarations for the future memory of the matter under authentic document.

So the aforesaid three estates, attending to the request of an examination of the lord king, in order that justice and a better impression and a good reputation may be enjoyed concerning which are facts and which fictitious slanders...clearly established and proved that the aforementioned late William earl of Douglas, if he had any respites or other sureties from the said most excellent king on the day preceding his death, [they] were expressly renounced before a multitude of barons, magnates, knights and nobles.

Furthermore, from...other clear deductions and proofs, it is openly established concerning the bonds and conspiracies made and initiated by the said earl with certain great magnates of the realm, in oppression and offence of the most serene royal majesty, and the public rebellions frequently perpetrated by him, his brothers and accomplices...and also after many flattering persuasions made both by the king and by various barons and nobles for agreeing and assisting the king against his rebels to the said Earl William on the day of his death...he is considered to have procured and produced the occasion of his death.¹⁵

The concern for the king's reputation stands out immediately, as does the absence of any specific details regarding 'the truth of the forgoing'.¹⁶ The multitude of noblemen before whom Douglas supposedly renounced his safe conduct remain stubbornly anonymous; the 'clear deduction and proofs' remain unspecified, and even in its entirety the last paragraph is deliberately obfuscatory. Although the vagueness is certainly intentional, and unavoidable given the circumstances, detail was not required for the declaration to serve its purpose, which was to publicly counter Douglas's claims against the king and to ensure that the king's version of events became common knowledge. Once parliament had exonerated James II it would have been almost impossible for any individual to gainsay the result, and this was why the king chose to 'submit' to the judgement of the estates.

The matter did not end there. The Auchinleck chronicler continues his narrative, noting that

in that samyn parliament thar was put on the nycht, on the parliament hous dure, ane letter under Sir Iames of douglas sele, and the sele of the erll of Ormond, and Sir James hammiltonnis, declynand fra the king Sayand that thai held nocht of him nor

¹⁵ RPS 1452/6/1.

¹⁶ Tanner is correct when he suggests that its function was not simply to exonerate the king, but to address the 'whispering campaign' of the Douglases, although their actions could perhaps be characterised as somewhat louder than this. Tanner, *Scottish Parliament*, p. 137.

wald nocht hald with him, with mony uther sclanderous wordis, calland tham tratouris that war his secret counsall...¹⁷

Denied the opportunity to participate in the parliamentary 'debate', and denied justice by its result, the Douglasses were forced to resort to an alternative method of making their case within the public domain. Bill casting was one way of doing this, and the letter nailed to the door of the tolbooth announced their renunciation of allegiance as publicly as any formal method could.¹⁸ Even in these circumstances Douglas's words are characterised as 'slanderous' to the king, perhaps reflecting the fact that the matter had been decided in parliament, and was therefore considered settled. It is also possible that the chronicler was writing after 1455, when the struggle between James II and the Douglasses was finally resolved in favour of the former. Douglas presumably considered the king's secret council to be treacherous due to their promise to prevent the king from breaking the terms of the safe conduct and instead joining in the violent attack on the eighth earl.¹⁹ Evidence for the practice of bill casting during this period is scant, but there are two further examples. In 1445 parliament recorded a transumpt of two papal bulls, and it is noted in the record that the bishop of Brechin and the official of St Andrews 'extended summonses earlier to all and singular whom the said bulls concern by our letters, which [they] caused to be fastened publicly to the doors of the parish church of St Giles of Edinburgh'.²⁰ This clearly constituted part of the process of ensuring that the summons became common knowledge. The second example also concerns the church. In 1476 William Cameron, prior of St Andrews, alleged that Walter Monipenne and Henry Stag, canons of the same church, 'composed a public libel in regard to his [Cameron's] evil rule, or knew who had composed it', and that they had 'assigned it to James king of Scotland and patron of the said church'.²¹ While it is possible that this libel may have been circulated rather than posted the defamatory effect was very similar, as was the reaction provoked by the public besmirching of reputation. Cameron ordered the canons to be 'publicly denounced as excommunicate', against the instructions of William Scheves, by then co-adjutor of St Andrews.²² A petition directly to the pope by Monipenne and Stag resulted in an order that the matter be settled by the abbot of

¹⁷ *Chron. Auchinleck*, p. 166.

¹⁸ For the practice of bill casting in late medieval England see C. Liddy, 'Bill Casting and Political Communication: A Public Sphere in Late Medieval English Towns?', in J. A. S. Telechea and B. A. Bolumburu (eds), *La Gobernanza de la Ciudad Europea en la Edad Media* (Logroño, 2011), pp. 447-61. I am very grateful to Dr David Grummitt for supplying me with a copy of this article.

¹⁹ *Chron. Auchinleck*, p. 165.

²⁰ RPS 1445/9.

²¹ *Calendar of Papal Registers*, xiii: i, ed. W. H. Bliss et al. (London, 1896), p. 225-26.

²² *Ibid.*, p. 226.

Balmerino instead.²³ With regard to the events of 1452, it is clear that Douglas's rebellion was predicated upon a belief in the righteousness of his cause, and equally clear that he failed to convince others to side with him against the king. It is more than likely that some members of the estates felt deeply uneasy about condoning the king's actions, and yet James II's masterful manipulation of the public domain meant that refusing to do so would have involved questioning not only the king's judgement, but also his word. Even though the 'truth' of the matter was also common knowledge, the king's reputation remained intact, for the time being.²⁴

This was less true of David, duke of Rothesay, who died in suspicious circumstances in 1402.²⁵ Rothesay was heir to the throne and had been acting as lieutenant for his father, Robert III. This was approved in a meeting of general council, in 1399:

sen it is welesene et kennyt that our lorde the kynge for seknes of his persoun may nocht travail to governe the realme na restreygne trespassours and rebellours, it is sene to the consail maste expedient that the duc of Rothesay be the kyngis lieutenande generally throch al the kynrike for the terme of thre yhere...[and] he be oblygit be his lettres and suorne til governe his person and the office til hym committit with the consail general, and in the absence of thaim with the consail of wyse men and lele...the quhilkis consail general and special sal be obligit be thair lettres and sworne til gife hym lele consail for the comoun profite nocht hafande ee to fede na freydschyp...²⁶

The authority of the king was bestowed upon Rothesay in order that justice would be done in the realm. To ensure this, he was to take the advice of a special council of wise men, who are named in the original, who would steer him towards the common profit.²⁷ This council was led by the duke of Albany, who was both chamberlain and Rothesay's uncle. Boardman argues that Rothesay rejected the constraints placed upon him by the council, and began to act as if he were already the king.²⁸ Albany and the earl of Douglas therefore decided that he was 'simply too dangerous to be allowed to live'.²⁹

²³ *Calendar of Papal Registers*, p. 226.

²⁴ This is a slightly different emphasis to Tanner, who suggests that 'Even if the outcome of the inquest was a foregone conclusion...James II had submitted himself to the judgement of the Three Estates, and it was the authority of the Estates, and no other, that declared him innocent', *Scottish Parliament*, p. 138.

²⁵ The events surrounding this episode are grossly oversimplified here. For a full discussion see Boardman, *Early Stewart Kings*, pp. 223-54 and Brown, 'I Have Thus Slain a Tyrant', pp. 41-43.

²⁶ RPS 1399/1/3.

²⁷ This council is discussed further in Brown, 'Lele Consail', forthcoming.

²⁸ Boardman, *Early Stewart Kings*, p. 235.

²⁹ *Ibid.*, p. 244.

In late 1401 Rothesay was arrested and imprisoned by Albany's supporters. He was later taken to Falkland castle, where he eventually died sometime between 25 and 27 March 1402.³⁰ Two later accounts survive of his death. The first, written by an English scribe, John Shirley, forms part of the *Dethe of the Kynge of Scotis*, which narrates the assassination of Rothesay's younger brother, James I, in 1437, and was probably written around 1440.³¹ It states that Rothesay 'began unlauffully to take uppoun him the roialle governaunce' and that he was 'fulle viceous in his living, as in depucellyng and deffouling of yong maydeyns, and in brekyng th'order of wedlock, be his foule ambycious lust of aduoutrie'.³² The lords and nobles of the realm, who are not specified, therefore dreaded that Rothesay might become king after his father 'by cause of hys lyf soo opnly knowen vicious', and so Albany and Douglas arranged for his capture.³³ The *Dethe* relates that, in captivity, Rothesay, 'by dures of famyn...eete his own hands, and died in grete distress and myserie, the wheche was ageinst Goddes lawe and mannes lawe and pitte to thinke that suche unrightwisse malisce schulde be doon to any prince, what soo evyr he bee.'³⁴ The second account is rather more moderate, and can be found in the *Scotichronicon*.³⁵ Bower states that 'the lord king in council appointed certain counsellors (powerful barons and knights) under oath to control and advise Sir David Stewart duke of Rothesay...because it appeared to the king and council that he engaged too often in unruly games and trivial sports' but that Rothesay 'hoped to free himself and, spurning his council of honourable men, gave himself up wholly once more to his previous frivolity'.³⁶ According to Bower, Robert III ordered Albany to arrest Rothesay, so that 'after punishment by the rod of discipline, he should know himself better.'³⁷ The chronicle then states that Rothesay was arrested by the king's messengers, and removed to Falkland by Albany, before adding that 'after languishing with dysentery or (as some will have it) with hunger, he died'.³⁸

As Boardman argues, the fact that these two independent accounts share many of the same details suggests that the portrayal of Rothesay as a 'moral degenerate' was 'widely

³⁰ Boardman, *Early Stewart Kings*, p. 244.

³¹ Connolly, '*Dethe of the Kynge of Scotis*'.

³² *Ibid.*, p. 49.

³³ *Ibid.*, p. 49.

³⁴ *Ibid.*, p. 49.

³⁵ *Chron. Bower*, viii, pp. 37-41.

³⁶ *Ibid.*, p. 39.

³⁷ *Ibid.*, p. 39.

³⁸ *Ibid.*, p. 39.

circulated' within Scotland.³⁹ Given that he died at the hands of two powerful rivals the fact that the account became common knowledge should, in itself, raise questions as to its veracity. As lieutenant and heir to the throne Rothesay can hardly be said to have taken royal governance upon himself unlawfully, and even the *Dethe* suggests that his fate was unduly harsh regardless. The element of the account that was verifiable by contemporaries, that Rothesay dispensed with the advice of his council, was enhanced with tales of his depravity in an attempt to posthumously tarnish his reputation, and to provide a reason for his ill treatment. This moulding of the narrative began far earlier than 1440, as is shown by the results of a parliamentary inquest into Rothesay's death in 1402:

Whereas recently [Albany and Douglas] caused our very beloved firstborn son the late David, duke of Rothesay ... to be captured and personally arrested, and ... to be detained in keeping at Falkland, where, by divine providence and not otherwise, it is discerned that he departed from this life; they ... set out in our presence the very causes that moved them to this action, which, as they asserted, constrained them [to act] for the public good⁴⁰ which we considered should not be imputed as a crime to the present persons ... we consider as excused the aforementioned [Albany and Douglas] and anyone who took part in this affair with them ... and in our said council we openly and publicly...declare, pronounce, and by this definitive sentence judge them and each of them to be innocent ... Wherefore we strictly order and command all and singular our subjects, of whatever standing or condition they be, that they do not slander the said [Albany and Douglas] and their participants, accomplices or adherents in this deed, as aforesaid, by word or action, nor murmur against them in any way whereby their good reputation is hurt or any prejudice is generated, under all penalty which may be applicable hereafter in any way by law...⁴¹

It is nowhere stated that Rothesay was dissolute, and yet it is clear that the actions of Albany and Douglas were deemed to be reasonable, that it was agreed they acted for the public good and that Rothesay deserved his fate. This inquest was certainly performing the same function as the declaration of 1452, which was to ensure that the perpetrators gained control of common knowledge about their crime, and the fact that it was the king's words – however weak he was in practice – would have given the verdict a weight which would have been difficult to counterbalance. Just as in the later document, the concern with rumour and reputation is articulated explicitly. Moral degeneracy on its own was not reason enough

³⁹ Boardman, *Early Stewart Kings*, p. 242. A third, and very brief, French account does not mention the duke's character at all, suggesting only that a 'major dispute' arose between Rothesay and his father, and that Albany 'exceeded his instructions' in putting the duke to death. It nevertheless indicates interest in the incident beyond Scotland. 'La Vraie Cronique d'Escoce', in D. Embree, E. D. Kennedy and K. Daly (eds), *Short Scottish Prose Chronicles* (Woodbridge, 2012), pp. 107-8.

⁴⁰ *pro publica utilitate*.

⁴¹ RPS 1402/5/1. Boardman characterises this inquest as 'Albany and Douglas propaganda', *Early Stewart Kings*, p. 243.

to imprison and starve the heir to the throne, and had it been this would undoubtedly have found its way into the public justification of the action. Rumours of Rothesay's depravity instead served to provide an alternative narrative, and given the reach of Albany's power after 1406, when he became governor of Scotland, it was unlikely to be challenged. As Boardman argues, the story also provided a rather convincing verification of the assertion, common within political advice, that a vicious prince inevitably brought ruin upon himself and his kingdom, which likely did nothing to hinder its circulation.⁴²

In 1482 James III mustered the royal host at Lauder Bridge to await the arrival of an English force led by the duke of Gloucester and the king's brother Alexander, duke of Albany.⁴³ Instead of engaging in battle, however, the king was seized by a group of rebel noblemen including the earl of Angus and Andrew Stewart, the bishop-elect of Moray, who was also one of the king's three half-uncles. Albany's subsequent attempt to act as lieutenant for his brother had failed by early 1483, and the duke and the king were forced to make peace. This took the form of an indenture, dated 1483.⁴⁴ It is a long document and provides ample evidence of the breakdown of the personal relationship between the two men. Two excerpts demonstrate both the extent of the animosity and the concern of the king to ensure that the reconciliation did nothing to harm his reputation:

becaus ther is sclandir and murmir rising in the cuntre that the said noble and mighty prince the duc of Albany wes posonit [poisoned] in oure soverane lordis presens and palace the said Alexander sall in plane parliament be his letter and sele declare and mak manifest the verite that he was never posonit, nor his deid be na maner of way imaginitt, be oure said soverane lord nor be nane uthir persone or personis be counsaile command wit or consent of his hienez...⁴⁵

because the duc of Albany forsaid has arestit and takin Alexander Heume and certane of hys emes [uncles] and kynnysmen and kepis thame in ward be informacioune maid that thai suld have tane or slayne hym at the command of oure soverane lord, the quhilk his hienes has declarit untrew, the duc of Albany tharfor sal delyverit and put thame to fredome within xxxj dais...⁴⁶

Whether or not the king had in fact made two separate attempts upon his brother's life it was necessary to prevent the circulation of any slanderous rumours to that effect, by ensuring that Albany agreed to appear in parliament and confirm the terms of the indenture. Albany's transgressions are also rehearsed within the document. As in 1452, the importance

⁴² Boardman, *Early Stewart Kings*, pp. 242-43.

⁴³ For these events, which are far from clear, see Macdougall, *James III*, pp. 187-202.

⁴⁴ NRS SP13/19, printed in *APS*, xii, pp. 31-33. Discussed above, p. 99.

⁴⁵ *APS*, xii, p. 32.

⁴⁶ *Ibid.*, p. 32.

to the king of ensuring that magnates could not make bonds in contravention of royal authority is clear:

[Albany] maid and causit to be maid certane unlauchfull and treasonable ligis and bandis contractis and appoyntmentis with the king of ingland and also with uthir persons baith within the realme of ingland and scotland contrar to oure souerane lord his realme and lieges in breking of his allegiance. He sal tharfore now...renunce discharge and gif oure forevir al the ligis and bandis forsaid and mak aith and faith nevir to make siclike in tyme tocum...⁴⁷

In the end Albany declined to appear in parliament, and was finally forfeited by the estates in July 1483.⁴⁸

All three incidents clearly show that the maintenance of reputation, and by extension credibility, was absolutely central to each of these disputes. If slander or murmuring about the party in question was known to be occurring within the kingdom steps had to be taken to counteract it. This usually took the form of exoneration in parliament, from where the results of the 'debate' could become common knowledge, and formed a rebuttal to any complaint made by ritual protest, bill casting and even possibly *diffidatio*, using urban political space in order to generate common knowledge of the counter-narrative. It is noteworthy that in 1402 and in 1452 the perpetrator of the violence in both instances was able to gain control of common knowledge after the event. Perhaps because the kingdom was so divided in 1482, and both parties were still very much alive, a genuine compromise, rather than a 'whitewash', was required in order to resolve the dispute. Unfortunately, this resolution was to be fairly short-lived.

Evil Counsel, the Common Good and the Crown: 1488-89

In 1488 James III was killed in battle by a rebel army led by his eldest son James, duke of Rothesay.⁴⁹ As Macdougall so effectively demonstrated, the circumstances of the 1488 rebellion, and the later appointment of the duke of Albany's son to the governorship of Scotland, served to encourage a highly negative and much embellished narrative of James III's reign by sixteenth-century chroniclers.⁵⁰ Central to this legend is a group of 'lowborn

⁴⁷ APS, xii, p. 32.

⁴⁸ RPS 1483/6/5-13.

⁴⁹ On the battle see Macdougall, *James III*, pp. 319-51 and *James IV*, pp. 1-44.

⁵⁰ N. Macdougall, 'The Sources: A Reappraisal of the Legend', in Brown (ed.), *Scottish Society*, pp. 10-32.

favourites' who influenced the king to the detriment of his 'natural' counsellors. The trope of the 'wicked advisers' was used repeatedly in late medieval political culture to justify actions against kings, and many elements of these later legends have now been thoroughly debunked.⁵¹ As argued in previous chapters, the reforms to civil justice during James III's reign meant that crown administrators gained considerably more power and influence than had been the case before and it was likely this, along with the king's willingness to promote and support Archbishop Scheves, which allowed the trope of the 'lowborn favourites' to be so successfully applied to his reign. In fact Andrew Stewart, having been elected bishop of Moray in April 1482 and having gained the keepership of the Privy Seal thereby, used the Lauder rebellion to force the king to provide him to the archbishopric of St Andrews in place of Scheves, who was made to resign.⁵² Stewart's ambitions were thwarted by the failure of the rebellion, and Scheves was restored to the archbishopric by January 1483, after Albany explicitly promised to desist from any 'vexacioun or distrublanche' of the archbishop's person or benefice.⁵³

The first parliament of James IV's reign, in October 1488, was carefully staged in order to bring to life the narrative of the evil counsellors which survived into the twentieth century. No matter how unpopular James III had been his killing amounted to regicide. As with the examples in 1402 and 1452, however, the new regime had to ensure that its actions were commonly acknowledged as being legitimate. One way to do this was to attack the late king's supporters. John Ramsay, lord Bothwell became one of the main scapegoats, having held a number of administrative positions within James III's government throughout the last years of the reign.⁵⁴ He was forfeited *in absentia*, for a variety of misdeeds, including conspiring with the earl of Buchan but also

for treasonably leading astray and misleading the late James king of Scots, our deceased prince, against the common good, the public interest and our realm,⁵⁵ causing him to oppress his prelates, barons, burgesses and lieges by common selling and buying of justice to their ultimate ruin, by the force of which thing foreign merchants coming to our kingdom were utterly ruined and plundered ... [and for]

⁵¹ Macdougall, 'The Sources'. See also N. Macdougall, "'It is I, the Earle of Mar': In Search of Thomas Cochrane', in R. Mason and N. Macdougall (eds), *People and Power in Scotland: Essays in Honour of T. C. Smout* (Edinburgh, 1992), pp. 28-49. On the phenomenon of the lowborn favourites see Rosenthal, 'The King's "Wicked Advisers"', pp. 595-618, and Watts, *Making of Politics*, pp. 5, 147.

⁵² *Scottish Formularies*, ed. Duncan, pp. 237, 238, 241, 242; Macdougall, *James III*, pp. 210-11.

⁵³ *APS*, xii, p. 33; Macdougall, *James III*, p. 211.

⁵⁴ For Ramsay's career see Macdougall, *James III*, pp. 298-301. For his forfeiture, Macdougall, *James IV*, p. 59.

⁵⁵ *contra commune bonum, rem publicam et regni nostri*

causing our said late father to break various agreements and concords promised to us, at that time the prince, subscribed with our late father's sign manual, for the common peace and tranquillity of the realm, and to repudiate those things which were at various times promised, and [which] were broken...[and for] advising our aforesaid late father to go forth from Edinburgh Castle with arms and an abundance of men, after diverse agreements made by him at Blackness and elsewhere were broken, in order to attack us, his son, at that time the prince, at Stirling...⁵⁶

This is the trope of the evil counsellor in action, and the extent to which it was consciously used to delegitimise James III's government can be inferred from the fact that Ramsay was pardoned a few years later.⁵⁷ In a direct, public and symbolic substitution, Patrick Hepburn, lord Hailes was elevated to Bothwell in place of Ramsay, which was newly created as an earldom. The rhetoric leaves no room for doubt that the new king would be taking advice from men whose rank befitted the honour:

our same supreme lord the king in the same parliament, in the presence of the three estates, and with their consent, approval and counsel - his royal majesty recognising that, by divine will, he has by right of inheritance taken on the loftiest and pre-eminent [duties] of the realm, and therefore accepts that he should exalt the noble men who were commonly accustomed to be of the first rank for their honour and the dignity of the state, and to raise them to higher dignities, so that his other subjects, imitating their exemplary virtue, may prepare themselves for like things, and by [their] service may reap the reward - therefore his sacred royal majesty, wishing [those] royal qualities, the virtues of royal munificence, liberality and nobility, to shine out to [all] men - has made and erected the lordship of Bothwell into a free earldom...⁵⁸

This is certainly intended to draw as stark a contrast as possible between the new king and his father while also emphasising his 'right of inheritance', but it is also designed to bestow upon James IV's supporters the attributes associated with good governance, restoring them to their 'accustomed' place, if not even higher. As was argued in the previous chapter, the Hepburn family took advantage of the crisis of 1488 to bring the chancery and exchequer much more closely within the purview of the royal council, and in particular under the Privy Seal, held by John Hepburn. This rearrangement of the administration was facilitated in no small part by the argument above, that James IV was now only prepared to 'exalt' his natural counsellors, the true nobility, who would set a shining example for others in the realm. The implication, of course, was that James III did the opposite, and that this led to his ruin. Small wonder that James IV chose to be crowned by Bishop Blacader of Glasgow in

⁵⁶ RPS 1488/10/14.

⁵⁷ Macdougall, *James IV*, p. 59. The exact date of the pardon is unknown.

⁵⁸ RPS 1488/10/36.

place of Archbishop Scheves.⁵⁹ This conscious and public elevation of king and courtiers would tend to support the argument, made in the previous chapter, that the Scottish crown had undergone something of an ideological transformation by the time John Ireland presented his *Meroure of Wyssdome* to James IV in 1490.

The document which did most to discredit James III is known as the Articles of Aberdeen. Signed by the late king, these articles amounted to terms agreed by the opposing forces in advance of the battle of Sauchieburn, and which James III promptly broke very shortly after making them by riding south with his army.⁶⁰ The original does not survive, but lord Glamis appears to have had possession of a copy, and stepped forward at the start of the inquiry into the battle, held on the eleventh day of the parliament. He had a personal interest in doing so, as he had been one of those who had refused to take part in the battle after the articles were signed, and he presumably wished this to be publicly acknowledged. The parliament record duly states that

the erle of Huntlie, the erle of Erole, the Erle Marschell, the said Lord Glammys and utheris diverse baronis and utheris the kingis trew liegis left him [James III] and his dissaitful and perverst counsale and anherdit [adhered] to oure soverane lord that now is and his trew opynyone for the commone gud of the realme.⁶¹

It was then agreed that ‘the saidis articlis wes diverse tymes grantit to and brokyne be the perverst counsale of diverse persouns’, that ‘the slauchteris committ and done in the feild of [Stirling], quhar oure soverane lordis faider happinnit to be slane...wes aluterly [entirely] in thar defalt and colourit dyssate [deceit] done be him and his perverst counsale’, and that James IV and his ‘trew lordis and barouns’ were ‘innocent, quhyt and fre of the saidis slauchteris feilde and all persute [pursuit] of the occasioun and cause of the samyne’.⁶² Several statutes which followed again emphasised the consultative nature of James IV’s government, while enacting some deeply divisive measures. One act, for example, stated that

oure soverane lord, movit of piete, withe the counsall of his lordis, has avisit that all the gudis movabill belonging to the pure unlandit folkis be restorit and deliverit agane. And be cause thar wes diverse one his opinyeone reft be the persounis of the uthir opynyone, that tharfor his hienes gef command to tak of the gret men being in

⁵⁹ Macdougall, *James IV*, pp. 51-52.

⁶⁰ Macdougall, *James III*, p. 336-38.

⁶¹ RPS 1488/10/51.

⁶² RPS 1488/10/51.

his contrar, sic as lordis of parliament and baronis, that thay gudis sene they wer takyne in sic tyme of trubile be nocht restorit.⁶³

The fiction of the 'perverst counsale', therefore, was not used simply to tarnish James III's reputation, although this was clearly essential, but to demarcate James IV's supporters from his enemies. Those who stood against him had aided the downfall of his father through their wicked advice, and were therefore guilty of treason and could be punished appropriately. A second act specified that all officers who stood against the king in battle, 'contrar the commone gud of the realme and destruccioun of the sammyne', were to be 'secludit and suspendit fra the saidis officis for the space of thre yeris nixt to cum'.⁶⁴ This included 'wardanis, justicis, schirreffis, stewartis, bailyeis, lieutenandis and all uthire officiaris quhilkis has the samyne in heritage'.⁶⁵ In a fairly transparent piece of manoeuvring both the death of James III and the destruction of the realm were blamed upon those who had supported him against the rebels, allowing the offices to be dispensed as patronage to the adherents of the new king.⁶⁶ Instead of the fiction of evil counsel, most appropriate to those who would have been advising the king personally, this act was framed in terms of loyalty to the realm, an egregious and blatant misuse of the concept.

Presumably the fiction of 'perverst counsale' would also have been intended to stifle any accusations of regicide, or at least of partisanship, which might have been levelled by men such as Archbishop Scheves, Secretary Whitelaw and Bishop Elphinstone - all counsellors of James III and all present in parliament.⁶⁷ Macdougall argues that this parliament was largely controlled by the Hepburn family, as James IV's supporters, and suggests that 'either because they wished to lay the ghost of the late king once and for all, or because it was forced on them, the Hepburn regime allowed the reasons for the late king's demise to be debated by the entire parliament on its final day'.⁶⁸ In fact, they could hardly do otherwise. Parliament was the forum in which common knowledge of the outcome of the battle was decided, and from which that knowledge was disseminated. As has been shown, James II and James III each understandably wished to mark the beginning of his personal rule by making strong statements of royal authority within parliament, using the language of the common good and invoking justice for the 'poor lieges' in order to legitimise them. James

⁶³ RPS 1488/10/40.

⁶⁴ RPS 1488/10/42.

⁶⁵ RPS 1488/10/42.

⁶⁶ Macdougall, *James IV*, p. 60.

⁶⁷ *Ibid.*, p. 58.

⁶⁸ *Ibid.*, p. 59.

IV's first priority was rather different; he had to square the circle of asserting legitimate royal authority for the good of the whole realm, while being deeply opposed by a great many of the subjects within it. If the new regime wished to claim the authority which belonged to the crown they had to demonstrate publicly that their actions were done for the benefit of all, hence the rhetoric of the common good and public interest of the realm. This rhetoric was not infinitely elastic, however, and any regime which made such claims while failing to take any parallel practical measures would soon find that the rhetoric became wholly ineffective, or even that it could be appropriated by other groups. This is precisely what happened in 1489. As Steve Boardman has shown, the victory at Sauchieburn was used by the new government to 'ruthlessly undermine' political rivals and to validate acts of 'political spite' through the machinery of royal government.⁶⁹ In particular, long-running feuds, which contributed significantly to the tensions of James III's reign, were played out upon a far larger stage than would otherwise have been the case, and while that king's supporters were punished, the new government shielded themselves and their allies from any repercussions.⁷⁰ In addition, James III had left large amounts of money with his supporters, in the form of treasure, before going into battle, and even brought £4000 in gold onto the field itself.⁷¹ This was gradually handed in, under duress, by those who had possession of it; according to the Treasurer's Accounts £24,000 was eventually recouped.⁷² The attempts by the victors to reclaim it would turn out to be highly contentious, however, and to increase the feeling of injustice even further. Under such circumstances it is hardly a surprise that formal protests should have occurred, and this took the form of two linked rebellions against James IV's government, in the north east and south west of Scotland.

The exact sequence of events leading up to the 1489 rebellions is difficult to ascertain.⁷³ That James IV's regime had chosen to settle old scores using the resources of the crown caused deep divisions within the realm, and made good governance almost impossible. During April 1489 a messenger was sent to the north-east, with letters regarding the raising of a tax.⁷⁴ According to George Buchanan's sixteenth-century history, this imposition was too

⁶⁹ Boardman, 'Politics and the Feud', pp. 165, 187.

⁷⁰ *Ibid.*, pp. 159-92.

⁷¹ *TA*, i, p. lxxi; Macdougall, *James IV*, p. 43.

⁷² Macdougall, *James IV*, p. 51.

⁷³ They are discussed in Macdougall, *James IV*, pp. 61-76 and Boardman, 'Politics and the Feud', pp. 201-51.

⁷⁴ Macdougall, *James IV*, pp. 63-64.

much for Alexander, lord Forbes, who had been a committed supporter of James III, and who took to the streets of Aberdeen to protest:

Alexander Forbes, chief of a noble family, carried [James III's] shirt upon a spear (all over bloody and torn, with the marks of the wounds he received), through Aberdeen, and all the chief towns of the adjacent country; and, as if it had been by publick proclamation, he excited all men, by the voice of an herald, to rise in arms to avenge so nefarious a fact [the slaying of the king in battle].⁷⁵

No contemporary account of this protest exists but given the parallels with events in the west of Scotland, discussed below, and the supporting documentation for each rebellion it is worth including Buchanan's account here. Forbes's actions, if such they were, constitute a conscious use of the public domain in order to generate common knowledge of his dissent. The parallels with the action of the ninth earl of Douglas are clear; Forbes, denied the opportunity to influence proceedings legitimately, took to the streets of the burgh as an alternative method of making his point. The repetition of the protest in 'all the adjacent towns' suggests that he wished knowledge of his actions to become as widespread as possible, in order to gain support. Macdougall notes the proximity of the protest to Easter, suggesting that Forbes was deliberately making a reference to Christ's Passion, and that a poem by Robert Henryson, entitled 'The Bludy Serk', which makes the same reference, may have been inspired by the protest itself.⁷⁶ In September of that year, a list of 'artikilis and opinionis' relating to the demands of the rebels were copied into the Aberdeen burgh council register. It contains four demands in relation to the governance of the realm:

In the first, quhar our soverane lorde was slayne, and nay punicion maide tharfor apone the treasonabile vile personis that putt thair handis violentlie on his maist nobile persoune, quhais saule God assolze, to be for punicioun of thay tresonabile personis committaris of the saide slauchter.

Secundly, for the reformacione of the misgoverance of our souerane lordis tresour and disposition of his heritage, menesand [diminishing] his auctorite and croune, and als for the remeide and souerte of our soverane lordis maist nobile persone, and of our lordis his brether, and inlikwase his tresour, strincates, and artalzery, to be put in souer and comptabile mennys handis, to the utilite and profit of our souerane lord and his successouris, be the avise and consal of the thre estatis.

Asua, that all ransomis tane be ony maner of mane of ony of the kingis lieges, spirituale or temporale, be restorit and gevin agane.

⁷⁵ *The History of Scotland Written in Latin by George Buchanan. Faithfully rendered into English*, (London, 1690), xiii, p. 3, *Early English Books Online*, www.eebo.chadwyck.com.

⁷⁶ Macdougall, *James IV*, p. 64. The poem can be found in *The Poems of Henryson*, ed. D. Fox, pp. 158-62. It is not impossible that the protest could have been inspired by the poem. See below, p. 176.

And asua that his lawis and justice be ministerit throu his realme to all his lieges equally, according to the plesance of Gode, commone profit of the realme and lieges, and grantit thar commone sele thairapone.⁷⁷

Although the authors of the 'artikilis and opinionis' are anonymous, they constitute a clear and robust statement of support by the burgesses of Aberdeen for the northern rebels. The demands are articulated in terms of the defence of the king, crown and realm against the 'treasonable personis', who killed the rightful king and have yet to be brought to justice. They sought to restore balance in the kingdom by taking the royal treasure out of the hands of the traitors and allowing parliament to oversee its use, returning ransoms paid by James III's supporters, and ensuring justice was done equally throughout the realm.

By 23 April another insurrection had begun, in the west.⁷⁸ This was led by Robert, lord Lyle and John Stewart, earl of Lennox who, up until then, had been supporters of James IV, and had been 'blatantly abusing' their shrieval jurisdiction to attack those who had supported James III.⁷⁹ Macdougall argues that the new government had to be seen to be able to respond to the predations of these men, or risk rebellion on a much larger scale.⁸⁰ According to Bishop Leslie's history, written in 1561:

the Erle of Lennox and Lord Lylle, with utheris thair assistaris, nochtwithstanding that thay had bene with [James IV] at the slauchter of his fader, mofeit throch invy that the King wes mare governit be utheris of the faction nor be thame, convenit ane greit company, and raisit the kingis bludy sark for thair baner; and command fordward to Striveling to invaid the King and his company, wer ourthrawin at the moss...⁸¹

Macdougall suggests that this use of the 'bludy sark' as a banner was due either to the 'early collusion' of the two groups, or to the western rebels adopting the tactics of the northern group in order to 'lend respectability' to their cause.⁸² It is, of course, possible that only one account is accurate and the other is mistaken, but by the autumn the two sets of rebels were working together. A second document, known as the Lennox Apologia, was sent to James IV by the western rebels, after their defeat at the battle of Gartloaning (which Leslie

⁷⁷ ACA CA1/1/7, p. 137; *Abdn Counc.*, i, pp. 45-46.

⁷⁸ Macdougall, *James IV*, p. 64.

⁷⁹ *Ibid.*, p. 67.

⁸⁰ *Ibid.*, p. 67.

⁸¹ John Leslie, *The History of Scotland from the Death of King James I in the Year 1436 to the year 1561*, ed. Bannatyne Club (Edinburgh, 1830), pp. 59-60.

⁸² Macdougall, *James IV*, p. 67.

calls 'the moss') in October 1489.⁸³ This appears to be a much-expanded version of the Aberdeen demands, and although it is not clear which set of articles was formulated first, Boardman argues convincingly that the earlier Aberdeen articles had 'formed the basis of a call to rebellion against the government', while the Lennox Apologia was being presented 'as a petition of complaint directly to the King and (it was envisaged) his three estates in parliament'.⁸⁴ According to Boardman 'convincing, specific reasons' for the western rebellion remain to be found, but it was composed of members of the new regime who were either dissatisfied with their rewards or 'alarmed by the behaviour of certain of their former allies'.⁸⁵ Macdougall suggests that the Lennox Apologia is, at one level, 'simply the complaint of a faction excluded from real power against those who had it', but that the charges that it makes are also 'broadly justified'.⁸⁶ Notwithstanding the fact that the four articles may not have been the invention of the western rebels themselves, it is surely at least possible that they articulate the true reasons for the rebellion. The actions of James IV's government openly contradicted the accepted norms of good rule, and the rebels were therefore well within their rights to bring this to the attention of their new king. There is a world of difference between the structured resistance to and modification of royal policy possible by a large group within a well-attended parliament, and the calculated use of the full powers of the crown to exploit those outwith the king's inner circle for personal gain. Just as the king ultimately had the right to act upon his own wishes, the nobility had the right to be consulted by him and to advise upon those actions.⁸⁷ Completely excluding certain groups from power in such a way rendered the actions of the new regime illegitimate, in practice as well as in theory, and the vocabulary and concepts of good governance provided the means by which such abuses could be rectified.

As in Aberdeen, the rebels articulate these problems very clearly indeed. At the centre of their grievances is the matter of who killed James III. The verdict of the 1488 inquest, that the king 'happenit to be slane' was wholly unsatisfactory, particularly as the accusations of treason by the new regime were being simultaneously levied against those men who supposedly led James III astray with their counsel and those who were responsible for his death. According to the Lennox Apologia, the reason that James III's killers were still at

⁸³ NRS GD220/2/1/85, printed in Fraser, *Lennox*, ii, pp. 128-31; Boardman, 'Politics and the Feud', p. 206; Macdougall, *James IV*, p. 70-72.

⁸⁴ Boardman, 'Politics and the Feud', p. 235.

⁸⁵ *Ibid.*, p. 206-7.

⁸⁶ Macdougall, *James IV*, p. 71.

⁸⁷ Mason, 'Kingship, Counsel and Consent', p. 278.

large was due to the influence of ‘parciall personis’, who worked to the ‘perpetuall defamacioune’ of James IV and his realm.⁸⁸ Moreover, it asserts that a group of ‘weill avisit lordis’, who signed an agreement before the battle of Sauchieburn promising not to harm the king, ought to be able to be ‘purgit of the said maist cruell slachter’, that is, publicly exonerated.⁸⁹ Once justice had been done in this way, all men would ‘tak exemple’ from the treasonable killers ‘nocht to commyt sic hewy crymes, or to put violent handis on ony Cristyn prince’.⁹⁰ This is clearly an attempt to cast the rebels in the role of defenders of the crown, to restore their tarnished reputations and to remove the ability of the new regime to use the death of the king to their advantage. Implicit within the ‘instructionis’ is the suggestion that as long as justice was not done the new regime was tacitly condoning James III’s slaughter. The matter of the king’s death would continue to be an embarrassment, and an act of 1492 went as far as offering a reward of 100 merks worth of land to anyone who could ‘schew to the king and mak it suthfastly knawin of veray verite quhat persone or persounis wer the slaaris of his faider withe thare handis’.⁹¹ This was done ‘for the eschewin and cessing of the hevvy murmour and voce of the peple of the ded and slauchter of umquhile oure soverane lordis faider’.⁹²

The western rebels were very careful to make a clear distinction between the men around James IV who were ‘parciall personis’ and those who were ‘trew, weill avisit lordis’, and Scheves, whom the former had ‘schapin [planned] now of late without tytill or colour of richt to depryve and distroy’ is cited as one of the latter.⁹³ Perhaps most importantly of all, the former are named.⁹⁴ In sharp contrast to 1488 the disaffected are not employing the trope of the wicked advisers in order to justify action against the king. Instead, the rebels are stating a legitimate grievance against a group of individuals who have ‘greppit and applyit to thaim and to thair assistaris the haile autorite and strinthts of this realme’, for their ‘singular availe and profite’.⁹⁵ This was demonstrably true, and must have been common knowledge at the time. In order to address this problem, the rebels frame the articles with references to the good of the king and of the realm itself, emphasising that they are not making a challenge to royal authority, but attempting to redress a wrong. Key to this, as in

⁸⁸ Fraser, *Lennox*, ii, p. 128.

⁸⁹ *Ibid.*, p. 129.

⁹⁰ *Ibid.*, p. 129.

⁹¹ RPS 1492/2/9.

⁹² RPS 1492/2/9.

⁹³ Fraser, *Lennox*, ii, p. 129, p. 130.

⁹⁴ *Ibid.*, p. 130.

⁹⁵ *Ibid.*, p. 130.

Aberdeen, is their insistence upon involving parliament. The estates are to oversee the administration of the royal treasure, and to advise upon the admission of the proposed articles. Most importantly, the rebels articulate a willingness to be judged by the king and estates 'except the parcial personis forsaidis', if they were thought to have done anything 'contrar to his Hienes and the common profite of his realme'.⁹⁶ The impression given is of men confident that right is on their side.

The integrity of the realm was put forward as the central concern of the rebels. The 'parcial personis' represent 'hevy and greit danger and distruction apparand to his Heines and realme', while the rebels have at heart 'the honour and weilfair of his croune and realme'.⁹⁷ The 'trew baronis' have been 'disherist and destroyed... under colour of our soverane Lordis autoritie' by these men, who wish to 'ring [reign] in this puyr realme, to the uter distructioun of the samyn'.⁹⁸ It is very easy to see such assertions as a conventional framing device for the promotion of personal interests; this is exactly the kind of rhetoric which would be used if the rebels were concerned solely with manoeuvring their way back into a position of influence. It would be a mistake, however, to assume that the desire of Lennox and Lyle to regain their position, however self-interested, was incompatible with a sincere desire to avert the destruction of the realm. As discussed in chapter three the personal interests of the nobility were inextricably linked to the governance of the kingdom, and this was dramatically underlined in 1489 when the distribution of authority within it became skewed to the point of rebellion. The actions of the government after Sauchieburn could hardly have been more destabilising, and the way to restore order was to ensure that authority was redistributed as fairly as possible. In fact this is eventually what happened. By early 1490, although the 'parcial personis' were not removed, both Lyle and Lennox were pardoned and brought into the government, while many other changes of personnel at court meant that further rebellion was averted.⁹⁹

The final paragraph of the Lennox Apologia is also instructive with regard to the importance of the public domain for such protests. The rebels state that if the 'parcial personis' contrive to prevent the articles being accepted by the king 'we man mak thir articils to be schawin to al Cristin Princis, sua that our innocence may be understande and seyne, and the manifest iniuris and wrangis...be publist and maid knawin throw al the world'. This certainly has

⁹⁶ Fraser, *Lennox*, ii, pp. 129-30.

⁹⁷ *Ibid.*, p. 130.

⁹⁸ *Ibid.*, p. 130.

⁹⁹ Macdougall, *James IV*, p. 82; above, p. 118-19.

similarities to the arguments employed in parliament in 1473 to prevent James III from going on campaign, albeit they are rather different in tone, and is yet again suggestive of the importance placed by those in authority upon one's reputation abroad. It also speaks to the capacity of the public domain to potentially limit the worst excesses of individuals, by forcing them to self-regulate through the threat of social censure. If the arguments within the Lennox Apologia were insufficient to prompt action, the threat of condemnation abroad could be brought to bear against those who flouted the norms of good governance. It is perhaps this, more than anything, which suggests that the rhetoric of the defence of the realm was, in this case, fairly closely aligned with the reality.

Conclusion

From the evidence presented above it is clear that the concepts relating to good governance – justice, the common profit, the public good and the crown itself – could be put to use in a wide variety of circumstances in order to legitimise political actions; indeed they formed an integral part of the process by which political authority was negotiated and contested. This process was, by necessity, a public one. Common knowledge of the personal credibility of the participants informed judgments made by others upon the claims being put forward, and such knowledge therefore had to be established within the public domain. There were different ways of doing this. Sanction by parliament was the most effective, but this was in practice only open to those with royal or quasi-royal authority, such as James II in 1452, the duke of Albany in 1402 or James IV's regime in 1488, who could relatively easily construe their personal actions as being for the good of the realm. For those unable to claim parliamentary authority carefully-staged public protests were most effective. Whether protesting against the actions of the king, as in 1452, or acting in defence of the crown, as in 1489, these demonstrations were heavy with symbolism, and used the same rhetoric of good governance and personal credibility, or lack thereof, in order to achieve their ends.

It is significant that such rhetoric was the means by which authority was critiqued as well as asserted. The common good was not simply a phrase which could be inserted into political negotiations in order to supply a veneer of sincerity. Instead, it represented the ideal of medieval governance. Rulers, or perhaps more often their counsellors, could be held to this standard if necessary. It was certainly possible for a faction with enough power to use such rhetoric to justify actions which benefited only themselves, but it is telling that in such

situations use of the common good was considered, if anything, even more important. The need to act for the common good, as with the need to maintain a good reputation, ensured that even during the most severe political crises the rules, principles and values enumerated so extensively within the mirrors for princes were acknowledged by all.

Conclusions: The Public Domain in Early Renaissance Scotland

The clearest conclusion to emerge from this work is the importance of the public domain for the exercise of political authority. Rituals such as the swearing of oaths and the proclamation of decisions were not simply functional but symbolic, allowing common knowledge of the actions to be generated and disseminated. Such rituals took place as part of urban conciliar government, whether in burgh or guild, as part of local courts and aristocratic councils and as part of the exercise of royal and parliamentary authority. Their correct enactment was closely tied to contemporary ideas of good governance which, by necessity, relied upon people understanding the decisions which had been made. Only once such knowledge had been generated could people be held accountable for any transgressions, and penalties which involved a change in the status of the wrongdoer, such as horning or forfeiture, were enacted publicly in order to apprise people of the new circumstances. There was also a discursive element to the public domain which structured the way authority was legitimised, and reputation was an important element of this. That which was commonly known about others decided their worthiness to participate in politics, and this was true at all levels. Even the king was forced to defend his reputation should the occasion arise. Common knowledge of a person's character and previous actions was integral to the procedures of local courts, and was closely related to chivalric ideas of honour and renown.

Discourses of community, counsel and the common profit operated within the public domain. In order to make a successful claim to be acting in the interests of all it was necessary to be able to demonstrate this claim over time. The closer an individual or group was to embodying the realm the easier this was to achieve, so that kings, lieutenants, those who governed during royal minorities and the very closest counsellors of the king had an advantage over other individuals in attempting to do this. Burgh councils could very easily construe themselves as the whole community in order to legitimise their decisions, because burghs were simultaneously a physical space, a group of people and a legal entity. While this was also true of the realm as a whole the interests of all members were far less closely aligned than in the towns, and the rhetoric of the common profit was most effective when positioned against an external entity. This was fairly straightforward in relation to the burghs; explicit references to community are consequently found very infrequently in relation to the realm. It would be interesting to make a study of this language in diplomatic

sources, where Scotland would be discussed in relation to other polities. Rather than acting to create a shared identity, therefore, the language of the common profit acted to remind elites that their personal interests had to align with the good of the realm and that loyalty to the crown was expected from all.

Although the three estates certainly had the power to limit the actions of the king this was not the purpose of parliament. The rhetoric of the common profit could be harnessed in support of royal proposals or in situations where such proposals were being modified by the estates, and was equally effective for each. This provided a framework within which political authority could be asserted and contested, placing an upper limit upon the ability of individuals to act without gaining consensus. In periods of crisis this consensus was often gained after the fact, underlining its importance still further. The oaths and customary practices which structured both bonding and guilds also acted to promote harmony, framing the extreme competition which characterised both milieux. Their use in these contexts suggests that placing communitarian ideas of friendship and brotherhood in a separate category to aristocratic ideas of service and loyalty may be rather misleading. Bonding also relied upon the public domain, in that the agreements which settled feuds had to become common knowledge in order to be effective, and this knowledge was used in both crown courts and franchisal courts. These courts were so similar in terms of procedure, personnel and jurisdiction that to characterise them as public and private respectively creates an unhelpful and artificial distinction.

While the public domain has taken centre stage in this work secrecy also played an important part in governance, particularly in the structuring of political counsel. Outside parliament the king was free to consult with whomever he chose, and was advised to do so with each man separately in order to receive the best counsel. Good advice was as valuable to the nobility as it was to the king, and the oaths taken in parliament and those found within bonds all emphasise the importance of keeping counsel secret. This secrecy could be problematic, however, creating a space within which the repertoire of the evil counsellors could be activated, given the right political circumstances. These arose during the reign of James III, when the king altered the system of courts in a way which granted greater authority to the Lords of Council, giving litigants a means of redress when their local judges engaged in corrupt practices. This redress was not always easily achieved, particularly when the judge in question was a politically powerful figure such as the duke of Albany or the earl of Angus. It is possible that resistance to these reforms prompted James III to restructure his

'daily' council also, by promoting William Scheves and allowing him to direct a significant proportion of crown business, a move which contributed to the Lauder rebellion of 1482. The changes to the structures of royal governance throughout this period, from the Act of Annexation in 1455 to the reorganisation of the King's Council in 1488-92, co-incide with what appears to be an increase in the employment of ideas of public authority by the crown. Tracing this discourse throughout the reigns of James IV and James V would shed more light upon this question. It would certainly seem to be the case that the resistance faced by James III throughout his reign was in part due to the unpopularity of his policies, rather than simply his deficiencies of personality.

The later fifteenth century was a period of rapid change in Scotland. This work has focused upon the ways in which the principles evident in contemporary literature structured political practice as discerned from the records of governance. There is, however, a broader narrative which has been implicit in much of the above, and that is the growth of humanism in Scotland.¹ Roger Mason has highlighted what he terms the 'laicisation' of Scottish culture in the period between 1460 and 1560, arguing that the spread of literacy, the 'new learning' of the humanists and the employment of imperial ideology by the crown were inter-linked, through the education and legal training of the lay elite.² It has already been argued here that the adoption by the crown of imperial ideas and iconography from 1469 was closely related to the growth of the royal demesne and the resultant need to address the problems with justice in the localities. The latter was done in part by altering the judicial system and in part by centring the royal court in Edinburgh, giving litigants swifter access to a court of appeal. Although resistance by certain powerful members of the nobility was one outcome it seems likely that the need to conform to the new legislation may have been just as significant.³ If the judgement of one's court could be relatively easily subjected to the scrutiny of the Lords of Council, who were able to draw upon a wealth of experience and a swiftly-evolving professional infrastructure to assist them in their own judgements, it would be little surprise if the landed aristocracy also began to feel a more pressing need, from the 1470s onwards, to acquire a greater working knowledge of the law.

¹ On humanism in Scotland see, for example, R. Mason, '*Regnum et Imperium: Humanism and the Political Culture of Early Renaissance Scotland*', in Mason (ed.), *Kingship and the Commonwealth*, pp. 104-138; J. Durkan, '*The Beginnings of Humanism in Scotland*', *IR*, 4 (1953), pp. 5-24; J. MacQueen, '*Some Aspects of the Early Renaissance in Scotland*', *Forum for Modern Language Studies*, 3 (1967), pp. 201-22; J. MacQueen (ed.), *Humanism in Renaissance Scotland* (Edinburgh, 1990); Houwen, MacDonald and Mapstone (eds), *A Palace in the Wild*.

² Mason, '*Regnum et Imperium*', pp. 106-8.

³ *Ibid.*, p. 114.

Mason has also identified a shift in political vocabulary, which took hold in the 1530s and 1540s, from the 'common profit' and cognates to the 'commonweal', the latter of which he characterises as a 'highly effective rhetorical shorthand both for the community's sense of collective identity and the public responsibilities of its members.'⁴ Two points from the fifteenth-century evidence are interesting to note in relation to this change. The first is that 'commonweal', like *communitas regni* in the fourteenth century, can be construed as a political entity in a way that the 'common profit' and cognates cannot. 'Commonweal' can denote a physical space – the kingdom itself – or the governed as a collective body, giving those who wielded it the flexibility to deploy it in various different ways.⁵ That both terms should surface during periods of intense political turmoil is perhaps worthy of note, suggesting that concepts with this attribute are particularly useful in such situations. As each of these periods falls outwith the scope of this thesis, however, no further comment will be offered here. Instead it is suggested that the various phrases related to the *bonum commune* found within later fifteenth-century political discourse were performing a function other than creating, strengthening and reflecting collective identity. They should therefore not be seen as less fully-formed or less sophisticated than their earlier or later counterparts but rather as fulfilling a different requirement, that of encouraging harmony and consensus between members of the group, whether successfully or otherwise. It may also be significant that political language which promoted the realm as a corporate entity fell out of favour during the period when the Conciliarist agenda was posing a challenge to monarchical authority across Europe. The second point relates to the public domain itself. Further work is needed, but given its importance for the exercise of authority in the fifteenth century it seems reasonable to suggest that the public domain, where political institutions, processes, principles and personnel interacted, had an important role in promoting the civic ideals so central to humanist thinking. That these ideals were often couched in terms of public duty suggests that this is an area ripe for further exploration.

Poetry and Political Commentary

⁴ Mason, 'Chivalry and Citizenship', pp. 91-92.

⁵ For a discussion of this flexibility see R. Mason, 'Kingship and the Commonweal: Political Thought and Ideology in Reformation Scotland', (Unpublished Ph.D. thesis, University of Edinburgh, 1983), pp. 67-72.

Political change, growing lay literacy and humanist influences converged in the later fifteenth century to allow one further use of the public domain; as a discursive space in which comment could be made upon contemporary governance. Further investigation of this space is rendered problematic by the absence of sources which might shed light upon how political authority was experienced, and how people responded to it. Chronicles, sermons, petitions and court records tend to be where such evidence is found, and all are extremely scarce for this period. Nevertheless, a notable feature of the later fifteenth century is an increase in political poetry. An early example is provided by the *Buke of the Howlat*, written in the late 1440s by Richard Holland, secretary to Archibald Douglas, earl of Moray and brother to the eighth and ninth earls of Douglas.⁶ Many other works are thought to date from later in the century. These include: *Lancelot of the Laik*, an anonymous romance which includes a lengthy piece of advice to Arthur and which survives in a single copy dated c. 1489-90; Robert Henryson's *Moral Fables*, written in the Aesopic tradition in the 1480s; *The Thre Prestis of Peblis*, another anonymous work which has the theme of good counsel at its heart; 'The Harp', an advice work which has been recently related to the reign of James III and Blind Hary's epic *The Wallace*, written in the 1470s.⁷

The public performance of fifteenth-century poetry has not been a notable feature of literary scholarship to date. This is, again, because many of the works survive only in a very few manuscripts, and are often later copies, so that questions relating to their audience, reception and transmission are exceedingly difficult to grapple with.⁸ That plays and games were performed publicly as part of festivals is well known. The earliest exempla of the 'Christis Kirk' tradition date from the later fifteenth century, and testify both to the colour and excitement of such festivals and to the familiarity of the experience to those who enjoyed the poetry.⁹ These poems gently satirised widespread folk festivities and remained popular for over five hundred years.¹⁰ Anna Mill's study of such 'plays' notes the popularity of these festivities, along with minstrelsy and what she terms 'municipal plays', the earliest reference

⁶ Holland, *The Howlat*; Brown, 'Rejoice to Hear of Douglas', p. 164.

⁷ *Lancelot of the Laik*, ed. M. M. Gray (Edinburgh, 1912); *The Poems of Henryson*, ed. Fox, pp. 3-110; *The Thre Prestis of Peblis*, ed. T. D. Robb; *Chron. Pluscarden*, i, pp. 392-400; Blind Harry, *The Wallace*, ed. McKim. On the dating of *Lancelot of the Laik* see Mapstone, 'Advice to Princes', p. 145. On the dating of Henryson's *Fables* see Lyall, 'Politics and Poetry', p. 6.

⁸ The editions above should be consulted for the manuscript context of each poem. Many important works of Older Scots literature can be found in *The Asloan Manuscript*, ed. W. A. Craigie (2 vols.) (Edinburgh, 1923-25); *The Bannatyne Manuscript*, ed. W. T. Ritchie (4 vols.) (Edinburgh, 1928-34); *Ratis Raving and Other Early Scots Poems on Morals*, ed. R. Girvan (Edinburgh, 1939).

⁹ *The Christis Kirk Tradition: Scots Poems of Folk Festivity*, ed. A. H. MacLaine (Glasgow, 1996), pp. v-viii.

¹⁰ *The Christis Kirk Tradition*, ed. MacLaine, p. vi.

to which can be found in the Aberdeen council records in 1440, where a Corpus Christi Passion play is mentioned.¹¹ The Aberdeen craft guilds also engaged in pageantry at Candlemas which, Mill argues, comprised 'a preliminary riding or procession with a dramatic ceremony in the church'.¹² Such festivities were also an important component of the May game, which provided another popular occasion for processions, pageantry, dancing and the traditional mock king, often known as the Abbot of Unreason, or in Aberdeen the Abbot of Bon Accord.¹³ That such games could cross the line into actual disorder is suggested by an entry in that burgh's council register, from 1445, which states that 'for letting and stanching of diverse enormyteis done in tyme bygane be the abbotis of this burgh, callit of bone acorde, that in time to cum [the council] will give na fies to na sic abbotis'.¹⁴

These events are one part of what John McGavin describes as the 'realm of social performativity', in which witnesses play a crucial role in affecting the creation of 'communal memory'.¹⁵ He calls the 'stage' upon which such performances occur the public scene, and makes some interesting arguments, from sixteenth-century examples, about the ability of people to manipulate the 'parts' that they were expected to play during a variety of public occasions, such as trials, by subverting the expectations of their audience.¹⁶ While there is no evidence that political poetry was directly connected to this public scene several points can be made. There was a thriving culture of public festivals which encompassed both merrymaking and political display and these were an integral part of life in the burghs which, as has been argued, were also important spaces for the generation of common knowledge regarding the exercise of political authority. McGavin's public scene and the public domain argued for here are clearly two sides of the same coin. Also, there could be a subversive element to such occasions. The May game in particular encouraged this, with its

¹¹ ACA CA/1/1/4, p. 203; *Abdn Guild Recs*, p. 104; A. Mill, *Mediaeval Plays in Scotland* (Edinburgh and London, 1927), pp. 61, 115.

¹² Mill, *Mediaeval Plays*, p. 67. The register for 1442 lists the contribution each craft was expected to make to the Candlemas celebrations, ACA CA/1/1/5/ii, p. 66; *Abdn Guild Recs*, p. 68.

¹³ Mill, *Mediaeval Plays*, pp. 19-35.

¹⁴ ACA CA/1/1/5/ii, p. 701; *Abdn Guild Recs*, p. 99.

¹⁵ McGavin, *Theatricality and Narrative*, pp. 15-16. There is an emerging scholarly interest in collective memory. See, for example, J. Fentress and C. Wickham, *Social Memory* (Oxford, 1992), particularly the chapter on 'Medieval Memories', pp. 144-72; Z. Eviatar, *Time Maps: Collective Memory and the Social Shape of the Past* (Chicago, 2003); J. Haemers, 'Social Memory and Rebellion in Fifteenth-Century Ghent', *Social History*, 36 (2011), pp. 443-63.

¹⁶ A particularly good example given is that of Sandie Furrou's ability to manipulate his interrogation for heresy, as described by John Knox. McGavin, *Theatricality and Narrative*, pp. 20-24.

traditional inversion of status personified by the mock king.¹⁷ In addition, while the medieval evidence is insufficient to investigate many specific cases, such as those outlined by McGavin, it seems certain that people in the fifteenth century would have been just as well able to subvert performative expectations in a variety of settings as they were in the sixteenth. This, after all, is precisely what happened at the market cross in Stirling in 1452.

This is important because while dating and authorship remain problematic, Sally Mapstone has convincingly argued that very little of the extant political poetry of the later fifteenth century emanated from the royal court.¹⁸ She suggests that a reading public existed, that levels of lay literacy have been underestimated and that patrons in this period were more likely to be either clerics or members of the nobility than the crown.¹⁹ She further notes that two of the most important writers of James III's reign, Blind Hary and Robert Henryson, were 'definitely composing outside the king's court', and that other fifteenth-century works – *Lancelot of the Laik* and *The Thre Prestis of Peblis* included – were written for a 'literate audience' which was 'quite removed from the royal court'.²⁰ This suggests that poetry could well have had a role within the same local political cultures in which the legitimisation of authority, political festivities and acts of protest all took place. Joyce Coleman has argued for a greater focus upon medieval aurality, or public reading.²¹ She suggests that the traditional division between orality and literacy – where unsophisticated, public recitation from memory gives way to private reading and contemplation by a newly-literate elite – is far too stark, and that people gathered in groups to read aloud and be read to throughout the middle ages.²² Burns makes the same argument, in relation to Ireland's *Meroure of Wyssdome*, which he characterises as a work of 'popular theology'.²³ While Burns acknowledges that Ireland's reading public would be 'restricted', he nevertheless suggests that it wouldn't be limited to the literate class, citing examples where Ireland clearly assumes that his work would be read aloud.²⁴ The households of the nobility would seem the most likely places to find both the levels of literacy and of wealth necessary for purchasing books and reading them aloud, and yet wealthy burgesses would surely have been able to enjoy the same

¹⁷ Mill, *Mediaeval Plays*, p. 16.

¹⁸ Mapstone, 'Was there a Court Literature?', pp. 410-22. Cf. R. J. Lyall, 'The Court as a Cultural Centre', *History Today*, 34 (1984), pp. 27-33, which takes a different view.

¹⁹ Mapstone, 'Was there a Court Literature?', pp. 414-17.

²⁰ *Ibid.*, pp. 419-20.

²¹ J. Coleman, 'Interactive Parchment: The Theory and Practice of Medieval English Aurality', *The Yearbook of English Studies*, 25 (1995), pp. 63-79. See also Coleman, *Public Reading and the Reading Public*.

²² Coleman, 'Interactive Parchment', p. 64 and *passim*.

²³ Burns, 'John Ireland and "The Meroure"', p. 90.

²⁴ *Ibid.*, p. 90, n. 111.

pastime, if they so chose. Michael Brown has recently highlighted the literate lay audience in Fife for whom copies of Barbour's *Bruce* were made in 1488 and 1489, arguing that such activity must be seen in relation to the public activities of the men concerned and to the political upheaval of the period.²⁵ Given the interest in political literature in that period, as evidenced by either the writing or copying of many of the works under discussion in this thesis, such questions would likely bear interesting fruit if applied more broadly. As concerns political poetry, the little evidence on audience and reception as can be gleaned from the extant manuscripts can be supplemented by placing the works within the public domain.

In the 1970s a debate arose concerning the extent to which the poetry of the later fifteenth century could be shown to contain references to contemporary political events. Ranald Nicholson argued that within Robert Henryson's *Moral Fables* could be found topical allusions, suggesting that the fable of the Lion and the Mouse offered a 'precise allegory' of the Lauder rebellion of 1482.²⁶ His reasoning was rejected by literary scholars R. J. Lyall and Steven McKenna on the basis of two observations: firstly, that Nicholson gained his understanding of the events in question from sixteenth-century chronicles, which were written for their own purposes and could not, therefore, provide a reliable or detailed source of information, and secondly, that Henryson's intention in writing the Fables was to address 'man's place in the universe' so that in drawing upon his political milieu he turned the local and particular into 'universal moral themes', rather than the other way around.²⁷ While these criticisms were justified, historical scholarship on the fifteenth century has advanced considerably since this debate was conducted, providing greater insight into the politics of the period.

As has been shown, Scottish political culture underwent significant changes in the later fifteenth century in the restructuring of the nobility, the strengthening of royal authority and the reconfiguration of the system of courts, and it is certainly possible that the proliferation of political poetry was connected to this process. As John MacQueen argued as long ago as 1967, it might be expected that the adoption of humanist thinking would 'find a natural

²⁵ M. Brown, 'Barbour's *Bruce* in the 1480s: Literature and Locality', in S. Boardman and S. Foran (eds), *Barbour's Bruce and its Cultural Contexts* (Cambridge, 2015), pp. 213-32.

²⁶ R. Nicholson, *Scotland: The Later Middle Ages* (Edinburgh, 1974), p. 509. See also p. 500 and p. 520.

²⁷ Lyall, 'Politics and Poetry', p. 6; S. R. McKenna, 'Legends of James III and the Problem of Henryson's Topicality', *SLJ*, 17 (1990), pp. 5-20, at p. 14. R. L. Kindrick, 'Politics and Poetry at the Court of James III', *SSL*, 19 (1984), pp. 40-55, takes a view more sympathetic to Nicholson.

literary expression in social and political satire'.²⁸ Satire relies upon a shared understanding of politics for its effectiveness, and it has been argued so far that such an understanding was essential for politics to operate at all. The discursive space in which reputations were constructed and modified, and which allowed charges such as 'common theft' to exist, was also appropriable by the disaffected for the purposes of commentary in much the same way that public spaces could be appropriated for protest.²⁹ While it is therefore unwise to read direct allegories of specific events into works which cannot be dated with great accuracy, such poems ought not to be distanced too much from their political context either. Lyall's argument rests in part on his categorisation of many fifteenth-century authors as 'court poets' who wished to offer conventional advice to the monarch and contribute to 'long-standing medieval literary and philosophical traditions' in the process.³⁰ If much of this poetry was not in fact part of the courtly milieu its articulation of universal themes may be viewed rather differently; it is possible that the writers had genuine concerns which they actively wished to make public, however universal these may have been. Like the protesters and rebels in chapter five, who chose to generate common knowledge about abuses of authority through public performances in the burghs, the poets were able to draw upon the same vocabulary of good governance in order to offer a critique of contemporary kingship, counsel and justice. The importance of such poems surely lies not in the information they can provide about the events to which they may or may not have referred, but in the fact that they were written at all.

It is unfortunately almost impossible to investigate any further from surviving evidence the effect that political poetry may have had upon its audience. It is, however, worth citing a brief example from Henryson's work in order to illustrate the type of material to which this argument refers. Henryson lived in Dunfermline where, as has been noted, both the abbey and the guild exercised political authority, providing opportunities for public festivities, ceremonies and rituals, and encouraging the copying and, presumably, the reading of (and listening to) literature.³¹ Henryson is thought to have been both a schoolmaster and a notary

²⁸ MacQueen, 'Some Aspects of the Early Renaissance', p. 202.

²⁹ There is an extensive literature covering the relationship between political protest and commentary in medieval Europe. See J. Dumolyn et al. (eds), *The Voices of the People in Late Medieval Europe: Communication and Popular Politics* (Turnhout, 2014); J. Watts, 'Polemic and Politics in the 1450s', in M. Kekewich (ed.), *The Politics of Fifteenth-Century England: John Vale's Book* (Stroud, 1995), pp. 3-42; J. Haemers, *For the Common Good: State Power and Urban Revolts in the Reign of Mary of Burgundy, (1477-1482)* (Turnhout, 2009).

³⁰ Lyall, 'The Court as a Cultural Centre', pp. 27-33; 'Politics and Poetry', pp. 5, 25.

³¹ See above, p. 64.

public, and from his work it is clear that he had some legal training, or at least a close familiarity with the workings of the legal system.³² He would therefore have been a prominent local figure. His *Fables* are certainly informed by his knowledge of the law. In particular, the *Tale of the Sheep and the Dog* demonstrates a strong command of the *ars notaria*, and Fox suggests that his intention was to mount a 'general attack on contemporary justice'.³³ The *moralitas* offered at the end of the poem bears this out. The Sheep has been denied justice by a rigged court, and is lamenting his misfortune. Addressing God directly, he cries:

Se how this cursit syn of covetice
Exylit hes baith lufe, lawtie and law
Now few or nane will execute justice
In falt of quhome the pure man is overthraw
The veritie, suppois the jugis knaw
Thay ar so blindit with affectioun [partiality]
But dreid, for meid [bribes], thay thoill the richt go doun.³⁴

Henryson is not here referring to a particular court, case or judge, but to the state of justice in the realm, which he knew to be deficient. There would be little point in choosing for a moral exemplar a situation which would be familiar only to a few people in Dunfermline. Henryson is able to address universal themes because his subject matter resonates widely, and his audience can identify with the Sheep because they understand his experience in court. This clearly connects with the rhetoric around justice for the 'poor commons' embedded in the acts of parliament discussed above. Henryson was writing during the period in which James III's reforms to civil justice were being enacted and assimilated, and it is surely not stretching the evidence too far to suggest that the two are related. If the experience of William Sinclair of Herdmanstone, who found himself at the mercy of the earl of Angus, was representative of the ways in which powerful judges ordinary could manipulate verdicts it is no surprise either that people would have wished to draw attention to such abuses or that the king would have wished to intervene in order to address them.³⁵ While it is impossible to ascertain the extent to which any particular piece of poetry itself became common knowledge, therefore, situating it within the public domain allows for the possibility that it would have been performed and discussed. Growing literacy, medieval

³² On Henryson's life see *The Poems of Henryson*, ed. Fox, pp. xiii-xxv.

³³ *The Poems of Henryson*, ed. Fox, p. 252. The Fable can be found at pp. 47-54. On Henryson's use of the *ars notaria* see R. L. Kindrick, *Robert Henryson and the Medieval Arts of Rhetoric* (New York, 1993), pp. 169-75.

³⁴ *The Poems of Henryson*, ed. Fox, p. 53.

³⁵ Above, pp. 88, 101.

aurality and political change all converged in the later fifteenth century to produce a set of circumstances in which poetry, and indeed other forms of literature, could potentially contribute to common knowledge of contemporary politics.

It is possible to take the argument further in certain cases. Brown has argued that the *Buke of the Howlat* may have been intended as 'propaganda which spread impressions of the power and prestige of the [Douglas] family well beyond the confines of Moray's household', while it has also been suggested that Blind Hary's *Wallace* contains a thinly-veiled criticism of James III's English alliance, pursued in the first half of the 1470s.³⁶ It has also recently been argued that 'The Harp' is in fact a satire of James III's reign.³⁷ Written in the troubled political milieu of the 1470s, and finding a newly receptive audience in 1488, the poem subverts the conventional tropes of advice which had been so stridently offered to the defeated king, for the amusement of the new regime. It references Angus's misadventures, including the Herdmanstone case and his debt to Thomas Fotheringham, collected under the 1469 legislation, as well as the late king's dispute with Albany over Cranshaws.³⁸ The implication is that regardless of James III's reforms to civil justice, his enemies managed to have the last laugh.

Lyall has warned against the 'circular argument' that because James III was a bad king all political poetry must be critiquing events during his reign, further supporting the idea that he was a bad king.³⁹ This is important to bear in mind, and yet the later fifteenth century was a period of rapid growth for the crown. James III claimed heightened royal authority through ideas of imperial kingship, and by James IV's reign the crown was being positioned as a public entity in a way that had not occurred before. Neither Hary's *Wallace* or 'The Harp' are allegorical, instead offering satire and political criticism. Given the opportunity which the public domain provided for the governed to modify common knowledge about political authority, and given that newly-literate laymen were being taught to take an interest in matters of law and governance, it would perhaps be stranger if such commentary had not begun to flourish. The greater the number of people who experienced crown governance directly, the greater the number who would have had first-hand experience of its

³⁶ Brown, 'Rejoice to Hear of Douglas', p. 164; M. McDiarmid, 'The Date of The "Wallace"', *SHR*, 34 (1955), pp. 26-31, at p. 31.

³⁷ Hawes, 'Perverst Counsale?', forthcoming.

³⁸ See above, pp. 101, 128, 117.

³⁹ Lyall, 'Politics and Poetry', p. 25.

inadequacies. It is certainly possible that knowledge of these deficiencies may have been turned into verse and publicly performed for the purposes of entertainment.

The Exercise of Authority

To conclude it may be helpful to state some broader points in relation to the historiography with which this work began. The removal of the political community, the introduction of the public domain and the substitution of the personal for the private as advocated here may appear to amount to a significant shift away from the current model. Yet this is only partly the case. The co-operation detected by Grant and Wormald is very much still in evidence, but has been relocated from the level of day-to-day politics to that of political principle. It was the shared values, structures and assumptions, until now granted limited attention in the historiography, which allowed the kingdom to function successfully as a political unit. Likewise, the conflict for which Brown, Boardman and Tanner have argued remains an integral part of political life, but not simply as a competition for resources in which strength of personality decided the outcome. Instead, disputes between kings, lords and men were both framed and legitimised using discourses of counsel and the common good, a knowledge of individual reputations, and an understanding of the law. It is this insight which will allow the burghs to be more fully integrated into the political history of the period, as they operated on exactly the same principles.

This model necessarily questions the current emphasis upon the exercise of authority for its own sake, and instead asks why it may have been considered important that authority was asserted, and what the most effective means of doing so would have been, in any given set of circumstances. It also highlights the problems inherent in focusing discussions of authority around points of crisis; arguments which treat James I and James III together, as kings who were unsuccessful due to their respective styles of governance, mask the significant differences in political culture between the 1430s and the 1480s. Finally, moving the focus away from personality and co-operation and onto structures and principles brings questions of political agency to the fore. Instead of a static 'political community' at the heart of fifteenth-century politics this thesis offers an array of political tools, a conceptual space in which they were used and an almost limitless number of questions to be asked about what people did with them.

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