

Thesis for the Degree of Ph. D.

The Scottish Privy Council 1603 - 1625

Its Composition and its Work

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## C O N T E N T S

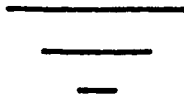
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## Abbreviations

A.D.C.	:	Acts of the Lords of Council
A.P.S.	:	Acts of Parliament (Scotland)
Brunton	:	Brunton and Haig Senators of the College of Justice
Cald	:	Calderwood History of the Kirk of Scotland
Compt	:	Comptroller's Accounts (MS)
Cunningham	:	Cunningham The Loyal Clans
Den MSS	:	Scottish State Papers (Denmylne MSS)
Fraser	:	Fraser The Earls of Haddington
Gregory	:	Gregory History of the Western Highlands
Hannay	:	College of Justice
Mackie	:	Mackie Cavalier and Puritan
Malcolm	:	Malcolm Minutes of the Justices of the Peace
Mel	:	Melros Papers
Orig Letters	:	Letters relating to the Ecclesiastical Affairs in Scotland
R.M.S.	:	Register of the Great Seal
R.P.C.	:	Register of the Privy Council
R.P.S.	:	Register of the Privy Seal
Rait	:	Rait The Parliaments of Scotland
Ross	:	Lectures on the Practice of the Law of Scotland
Spott	:	Spottiswood History of the Church of Scotland
Stair	:	Institutes of the Law of Scotland
Terry	:	The Scottish Parliament 1603 - 1707
Treas	:	Treasurer's Accounts

The Privy Council in 1603.

When James VI told the English parliament in 1607, "This I must say for Scotland, and may truly vaunt it; here I sit and govern it with my pen; I write and it is done; and by a Clerk of the Council I govern Scotland now, which others could not do by the sword," it was no rhetorical turn of phrase. It was a statement of fact. He had succeeded in organising the government of Scotland in such a way as to make it one of the most perfect examples of autocratic control in Europe - a circumstance rendered all the more remarkable in that it was operated by a system of remote control. Policy was formulated and directed by the king in England, and carried out by his Privy Council in Scotland. To delegate such a function to parliament would have been impossible. Any such body would, of necessity, have had to be in session for the greater part of the year, and in any case, parliamentary machinery would have been too cumbersome, nor would parliament have been such a flexible instrument in the king's hands. From his point of view, it was essential to have an amenable body of men bound to his service by gratitude for honours, awards, and estates received, and prepared to carry on their devoted service in the hope that the royal bounty would continue. Furthermore, the Privy Council was a body which a strong king could control completely. Although at times of weakness of the monarchy, the Privy Council might be influenced and appointed by other than royal commands, there were precedents for the monarchy in its strength regarding and treating it as a body totally dependent on the royal will and pleasure. Therefore, on the fourth of April, 1603, the king's arrangements for the government of Scotland in his absence, were incorporated verbatim in an "Act anent nominatioun of the Counsall." (1)

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(1) R.P.C. vi 558-59

Right at the start, James set the tone for so many of his future enactments. "We have electit, nominat, and chosin...our hail auld Counsall to be our ordinar Previe Counsall, to quhome or ony sevin of thame, we have committit...the full administratioun (and) governament...and with als greit power as ever ony commissionis hes bene grantit heirtofoir..." The choice and appointment were by the king, while the commission was as sweeping as it was vague. The Privy Council was to sit in Edinburgh or any other convenient place. Its days of meeting were to be the same as those in the Privy Council Act of 1598 - Tuesdays for state affairs, and Thursdays for actions. (1) In time of emergency or vacation, a quorum was to be five instead of seven, for "small actiouns pertening to the Counsall," but all matters of greater importance were to be remitted to a "mair frequent and ordinar nowmer." This loophole was on occasion used by the Council if they were playing for time, or were unwilling to take responsibility. They were empowered to get from the Treasurer whatever monies were required for the government of the country, and if necessary, were to appoint a lieutenant to enforce their jurisdiction. They were to appoint annual auditors of the exchequer. They were also to receive resignations of lands and other holdings in the king's name. Law days were to be fixed "upoun sic ressonable causis as thay sall think expedient..." They were to grant licences for leaving the country. Finally, the lieges were charged to "reverence, acknowledge, and obey our said Counsall in all thingis under pane of tressoun." Only two days after this proclamation, James, from Berwick-on-Tweed, put the care of "baith the merches of England and Scotland" in the hands of the Scottish Privy Council. (2)

In the few weeks which followed, the Privy Council proceeded to clarify the position in which they had been left. It was deemed necessary

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(1) R.P.C. v 499 (see also Mel i 22)

(2) ib. vi 560

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to point out to those who thought that the "present estate of this realme of Scotland is left without any government at all..." (1), that such government had in fact been vested in the Privy Council by the king, and that all jurisdictions in the country must continue just as if the king were still in Scotland. (2) Warning to the task, the Council went on to remind the lieges of a statutory death penalty for anyone spreading false rumours about the king or Privy Council, and that any "tulzies" within a mile of where the Privy Council was sitting would be punished with the same penalty as that which would have been enforced had the king been present. (3) Then, further to implement their commission, the king authorised Comptroller Murray (later Lord Scone) to raise a mobile guard of forty horsemen to be at the service of the Council. Such were the arrangements made by James for the conduct of affairs in Scotland during his stay in England.

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(1) R.P.C. vi 561      (2) ib. 568      (3) ib. 581

## The King's Mails.

For the smooth working of a system of government by remote control, with the king in England and his executive in Scotland, an adequate communication organisation was essential. It is, therefore, not surprising that as early as the fifth of May, 1603, the Privy Council issued a proclamation for the speedy conveyance of official mails, and for the establishment of postmasters in Edinburgh, Haddington, Cockburnspath, and Berwick. (1) These postmasters were paid, and were "bund under greit paines" (one thousand pounds Scots) (2) to see to the carriage of letters by day and night. Their duties were set forth in meticulous detail. (3) John Kelloch, postmaster of the Canongate, bound himself before the Privy Council to have always in readiness "twa abill and sufficient post hors...for the service of his Majesties pakattis onlie." He was to have "ane peper buik to enter the pakattis in" with the hour, day, and month of receipt, "twa baggis of ledder weill lynit" in which to carry the packets, and "twa hornes to sound as oft as he meittis cumpanie, or at the leist thrie times in everie myle." All couriers were to be given the right of way by other travellers. The king's mail must be despatched within a quarter of an hour of its receipt, and the rate of progress of couriers was fixed at six miles in the hour in Summer, and five miles in the hour in Winter. Should the horses "werie or tyre" by the way, the courier was empowered to commandeer the first horse he could find, and to recompense the owner at the rate of two shillings a mile. It was also stipulated that anyone going or coming on Privy Council business between Edinburgh and London, was to be provided by the postmasters with horses if available; otherwise, horses were again to be commandeered from the surrounding district. Bands similar to that given by John Kelloch were also given by William

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(1) R.P.C. vi 567-568 (2) Unless otherwise stated, all sums of money are in Scottish currency. At this time, the pound Sterling was equal to twelve pounds Scots. (3) R.P.C. vi 566

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Arnott of Cockburnspath on the seventeenth of May, and by Alexander Simpson of Haddington on the twenty second of June, 1605.

There is no doubt that the postal service was taken very seriously. Whatever pension or fee might be held over or delayed by the Comptroller or Treasurer, the four postmasters were always paid with great regularity, from the Treasurer's accounts until 1617, and thereafter from the Comptroller's accounts. (1) The Canongate postmaster received in 1603 a pension of one hundred and fifty pounds a year, rising to six hundred after 1610. The Haddington postmaster started at two hundred and fifty pounds a year, rising to six hundred. At Cockburnspath, the postmaster's pension rose from three hundred pounds a year to eight hundred. He was also given in November of 1606, a gift of fishings, and a customs impost on all goods coming in by sea or land, to help him to keep the harbour and other posting facilities in a state of good repair. (2) The pension of the Berwick postmaster rose from two hundred and thirty merks in 1603 to eight hundred merks in 1610. In all, a sum of over forty two thousand pounds was disbursed between 1603 and 1625 from the Treasurer's and Comptroller's accounts on the salaries of the postmasters for the service between Edinburgh and Berwick.

In 1616, this all important line of communication was given greater coordination by the appointment of Sir William Seyton as superintendent of postal services, after a Privy Council commission appointed in the previous year had made a preliminary investigation. (3) For his duties, Seyton received a regular pension of five hundred pounds a year. (4)

Apart from one or two instances, the postal system worked efficiently and quietly. Its efficiency is emphasised by the fewness of complaints against it. From a comparison of the dates of despatch and receipt of letters, it has been calculated that the average time between the two capitals was seven days, which would involve about ten hours a day actual

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(1) Treas & Compt 1603-25 (MS)      (2) R.P.S. LXXV f.227 (MS)  
(3) R.P.C. x 832      (4) Treas & Compt 1616-25 (MS)

travelling time for a courier at the Summer rate of progress. In Winter, times of eight to eleven days were encountered as exceptions rather than the rule. In August, 1614, the Archbishop of St. Andrews complained that he had not yet had a reply to a packet sent to John Murray in London twenty days before, thereby implying that the "turn round" of mail was very much quicker.

(1) There is, however, evidence of some slackness in 1619, when the Privy Council summoned the postmasters of Canongate, Haddington, and Cockburnspath to appear before them for the "reforming of some abuses and oversychts in thair offices and services." (2) In due course they appeared along with Sir William Seyton, who said that there had been a "verrie greit defect of dewtie" - that their registers were either badly kept, or else not kept at all, and that they had not enough horses, which led to an abuse of their right to commandeer their neighbours' horses. (3) The case was remitted by the Council to Sir William Seyton as superintendent for corrective action, and they recommended that each postmaster should have three horses for the carrying of the king's mail; despatch and receipt books were to be carefully kept; and postmasters were to use a "greite discretioun and modestie" in the matter of impressing neighbours' horses.

In the Winter of 1623, another complaint was made, this time by the Earl of Melrose in a letter to Viscount Annand, against the "abuse of the posts of whose slownesse I have many times compleaned." (4) He was referring in this instance to a packet sent from Newmarket at eight o'clock on the evening of the twenty first of February, and not delivered to him until six o'clock on the evening of the first of March. In fact, private letters both by land and sea had arrived two days earlier on this occasion. However, in a previous letter, written in January of the same year, the Earl made an allegation which is not borne out by documentary evidence - "...when I compleane of the postes faults, I am forced to desist, when I

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(1) Orig Letters ii 363 (2) R.P.C. xii 69 (3) ib. 82 In R.P.C. xi 187 the Privy Council in 1617 upheld a claim against the Canongate postmaster for the abduction and non-return of a horse, ordering him either to return the horse or to pay the owner fifty pounds. (4) Mel ii 506

heare that, wanting there pay, and not having meanes of there awne, there povertie must be accepted for excuse." (1) The Treasurer's and Comptroller's accounts show that, far from "wanting there pay," the postmasters were paid a very comfortable fee with great regularity. Lord Melrose's spleen on this occasion was obviously and understandably caused by the fact that private information about the failure of the Spanish marriage negotiations had reached Edinburgh before the official courier. It is significant to note that there was never a word of complaint about the postal service from the king. Had there been serious delays, James would certainly have been the first to take the Privy Council to task for their bad organisation. In the absence of any expression of royal displeasure, it is evident that the king was satisfied with the working of this all important line of communication between Edinburgh and London. It must be remembered that while private services might easily be hastened by special efforts or by rewards to the courier, the service of the king's mails was proceeding regularly and carrying many hundreds of letters every year at an average rate of seven days each way. The success of James's control of Scotland from London may be taken as a measure of its efficiency.

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(1) Mel ii 494

## The Composition and Membership of the Privy Council.

The Privy Council which James left behind on his departure to England was that which had been appointed by the Convention of Estates in December, 1598, half of the members being royal nominees. Between 1603 and 1625, the sole means of admission to the Privy Council was by royal nomination. New members were appointed by the king without reference to any other authority. No qualification other than a royal letter and warrant was deemed necessary. Although the size of the Privy Council had been fixed at thirty one in 1598, the king had admitted so many members after going to London, that it had grown to the unwieldy total of almost eighty by 1610, of whom, however, only about forty were really effective members attending with any regularity, and among whom the most faithful attenders were the officers of state and the Lords of Session. (1) Heading the list of regular attenders was a group of eight, who were both officers of state and Lords of Session - the Earl of Dunfermline, Sir Thomas Hamilton, Preston of Fentonbarns, Lord Balmerino, Cockburn of Clerkington, Skene of Curriehill, Cockburn of Ormiston, and the Earl of Lothian. The only two regular attenders who were not Lords of Session were Sir John Arnot, the Treasurer Depute, and Lord Scone, who for a time was Comptroller. Senators in regular attendance who were not officers of state, were Lord Holyroodhouse, Peter Rollock, Douglas of Whittinghame, the Master of Elphinstone, Hay of Fosterseat, and Melville of Burntisland. The only two regular attenders who were neither officers nor senators, were Lord Ochiltree and Lindsay, Bishop of Ross. It is, then, reasonable to infer that the execution of the royal will in Scotland was, on the whole, in the hands of this group of regular attenders.

James, however, decided in 1610 to remodel his Privy Council, to cut away the deadwood and to appoint a new body of thirty five with a quorum of seven. (2) The names of the new Privy Council were given in the king's

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(1) See Appendix "A"

(2) R.P.C. viii 816

letter, and the whole incorporated in an act of the Privy Council of the thirteenth of February, 1610. (1) In a letter to a number of earls, the Chancellor and Secretary gave as a reason for the step that the king, "considering the grite abuse and misordour quhilk of lait years hes bene in the Privey Counsall of this kingdome by the confusit number of persones claiming vote and access within the same (had resolved) to reduce this extraordinar and confusit number to a certane few number of thoise personis selectit be his majestie upoun whome his majestie hes repoisit the trust and charge of his affaires heir." (2) To this, Spottiswood added, "...that they should convene twice in the week; once every Tuesday for matters of state, and once on the Thursday for actions (and) that four days' absence of any counsellor in the time of sitting, without licence from the rest, should infer the loss of his place." (3)

The list of members of the reformed Privy Council is interesting enough to warrant quotation in full: the earls of Dunfermline, Dunbar, Argyle, Marischal, Mar, Montrose, Cassilis, Glencairn, Linlithgow, Wigton, Kinghorn, Abercorn, and Lothian; lords Roxburgh, Scone, Blantyre, and Burley; the archbishops of St. Andrews and Glasgow, and the bishop of Ross; Cockburn of Clerkington, Sir Alexander Hay, Sir James Hay, Preston of Fentonbarns, Skene of Curriehill, Cockburn of Ormiston, Sir Thomas Hamilton, Sir Peter Young, Sir John Arnot, the Master of Elphinstone, Melville of Murdocairny, Melville of Burntisland, Livingstone of Kilsyth, and George Young. The Earl of Perth was added later. These thirty five men were obviously those whom James trusted above all others in Scotland to offer least resistance to his will. Of the twelve officers of state on the list, seven were senators and would, therefore, be resident in Edinburgh for most of the year. The church representation of three was fair in proportion to the size of the ecclesiastical estate. The nobility, excluding those who were officials,

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(1) R.P.C. viii 413 (2) ib. 616 (3) Spott iii 212

were represented by ten earls and four lords, of whom the only regular attenders were Scone and Blantyre, both king's men. Of the barons, Kilsyth, Burntisland, and Murdocairny, all senators, were in regular attendance, and were king's men, as were Elphinstone, an Extra-ordinary Lord of Session, and George Young. In other words, of this body, sixteen were either officers of state or senators, and seven were both. Therefore, as the others attended comparatively rarely, there was normally an assured majority of king's men on the Council.

This was a very reasonable reorganisation of the Privy Council, but in a comparatively short time, the king was once more appointing members in excess of his own declared maximum, until by 1616, the Council was again over fifty in number, at which level it remained until the king's death. (1) Of these, the most regular attenders were, as usual, the "officer judges" - Dunfermline, Preston, and Sir Gideon Murray (appointed shortly after the reorganisation) until their deaths, Sir Thomas Hamilton, the two Cockburns, Oliphant of Newton (admitted 1612), Sir Alexander Hay, Sir George Hay (admitted 1616), and Sir John Hamilton, with in addition, two non-judges, the Earl of Mar, and Sir William Alexander, Treasurer and Master of Requests, respectively.

At the end of 1621, James again decided that, "whereas by the exceiding grite number of Privie Counsellouris in that oure kingdome oure service may fortune sometymes to be rather hinderit nor advanced, becaus some of thame may haif occasion to repair thethir rather for the furtherance of thair friendis or thair awne particulair then the publict good of the realme..." (2), another change was necessary. In a letter addressed to Dunfermline, Melrose, Mar, Sir George Hay, and Oliphant of Newton, he ordered them to co-opt the Archbishop of Glasgow, the Earls of Morton, Nithsdale, and Roxburgh, Viscount. Lauderdale, and Lord Carnegie - "...it is oure speciall pleasour that yow call

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(1) See Appendix "B"

(2) R.P.C. xii 604

thame and tye thame, or at leist the most pairt of thame, whose affairis without grite disturbance may permitt it, to a more strict attendance, that in all materis concerning oure service...thay with yow, and yow with thame, may consult of the best course to be takine. With this speciall caveat, that yow conclude nothing in ony mater of consequence whilk in youre judgement may require oure directioun till ye haif adverteist us of the circomstanceis and of youre awne opinioun, and had oure resolutioun thairin." In effect, this body consisted of five official members, five of the (new) nobility, and one churchman. In the Register of the Privy Council, the churchman is given as the Archbishop of Glasgow, but in a letter from this "cabinet" to the king giving thanks for their appointment, the only ecclesiastical signature to appear was that of Spottiswood, and it must be confessed that he appears to be the more likely choice. (1) Spottiswood was very much in favour, and in addition, it would have been a slight to St. Andrews to have given preference to Glasgow in a matter like this. However, the king could not even keep to the number on this small body. In 1622, Lord Gordon was admitted, thus upsetting the non-official to official balance, a balance further disturbed by the death of Dunfermline, but partly restored by the appointment of Cockburn of Clerkington as an official member in 1624. The appointment of this "cabinet council" was an action fraught with infinite possibilities, but though there is a record of their appointment and of their acknowledgment of it, there is no record of any subsequent meetings or decisions. Business was transacted as usual at the normal sederunts of the Privy Council attended both by members of this cabinet and by non-members. It may be that in common with later cabinet proceedure, they met in private and kept no account of transactions, but even if that were so, there is no record of their having advised or recommended anything either to the king or to the Privy Council as a whole. The only reference to the cabinet council,

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(1) Mel ii 437

strangely enough, was made by Calderwood during the 1621 parliament (in July-August) four months before the king's letter by which it was constituted!

"The cabinet counsel met daylie in the Abbaye by six in the morning and satt till nyne, to dresse matters that were to be treated amongst the Lords of the Articles." (1) The Earl of Melrose gave corroboration to the fact that there may have been a select unofficial body at this time, which Calderwood in exile might have taken to be the official cabinet. In a letter of the third of August, Melrose wrote to the king, "...your commissioner at five a clok in the morning, began his consultation with the Archbishop of Santandrois, Lord Carnegie, Clerk of Register (Hay), Deane of Winchester and me..." (2) The inference seems to be that Calderwood mistook this informal meeting for the later cabinet council of November; while the king, realising that some good work was done by this small official though informal body, may have decided to give it permanent recognition. But as there was no parliament again before his death, the machinery was never used.

Of those who were members of the Privy Council during this time, there was a small nucleus which remained in office from 1603 until the end of the reign - Sir Thomas Hamilton (later Earl of Melrose), Cockburn of Clerkington, Lord Scone (later Viscount Stormont), Sir Peter Young, Archbishop Spottiswood, Melville of Burntisland, Peter Rollock, the Earl of Huntly, and the Master (later Earl) of Montrose. The most effective members and most regular attenders over the whole period were Hamilton, Scone, Spottiswood, and Clerkington. In addition to these four, there were others who were equally prominent and regular in attendance during their lifetime - the Earl of Dunfermline, Cockburn of Ormiston, Preston of Fentonbarns, Sir Gideon Murray, Oliphant of Newton, the Earl of Mar, Sir George Hay, Sir John Arnot, and in the last few years of the reign, Lords Gordon and Erskine, and Napier of Merchiston. Two other names must not be forgotten, though their residence

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(1) Cald vii 491

(2) Mel ii 425

was in England after 1603 - the Earl of Dunbar, and John Murray (later Earl of Annandale). One of the most significant points arising from this list is the lack of representation of the old nobility as regular attenders at the Privy Council. Titles, offices, lands, money were all used by the king to build up a new official nobility, and none of the king's gifts was bestowed either to no purpose or without ulterior motive. Every recipient of the royal favour had already merited recognition, or was about to be required to do something. During his sojourn in England, James created no fewer than fifteen earls and nine lords in Scotland - the earls of Dunfermline, Dunbar, Lothian, Annandale, Melrose, Winton, Roxburgh, Buccleuch, Nithsdale, Home, Lauderdale, Galloway, Wigton, Abercorn, and Kinghorn; Lords Scone (Viscount Stormont), Balmerino, Holyroodhouse, Melville, Blantyre, Carnegie, Balfour of Burley, Cranston, and Viscount Fenton (later Earl of Kellie). Every one of these new nobles worked in one way or another for his title; but the bestowing of titles was not the only way by which the king encouraged or rewarded service, as the following analysis of the king's chief servants in Scotland will show. (1)

Alexander Seton, by the time James went to England, was already Lord Fyvie, and Lord President of the College of Justice. In 1604, the king made him Chancellor, with an annual pension of one thousand pounds. He held this office until his death in 1622. The year 1605 saw him raised to the peerage as Earl of Dunfermline. He was the king's commissioner to parliament in 1612, and was appointed to the cabinet council of 1621. He was on the Committee of Articles for every parliament, sat on numerous commissions, and was a member of the Court of High Commission. Position, rank, importance, of these Dunfermline had more than his share, but in addition, he had other encouragements to serve the king faithfully - fishing rights on the Spey and the Moray Firth, (2), two gifts of escheat, (3), three gifts of ward and

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(1) See Appendix "C" for principal officers of state. (2) R.N.S. 1607 p.702, and 1621 p.62 (3) R.P.S. LXXIV ff.255-256 (MS)

non-entry (1), and in 1616, a sum of twelve thousand pounds for outstanding expenses. (2) His long tenure of office and long list of favours show to what extent the king trusted him and valued his services. The Earl of Dunfermline was one of the king's chief instruments in the conduct of Scottish affairs.

Thomas Hamilton, the most assiduous attender at the Privy Council during the whole of this period, had a record of fidelity to his royal master unsurpassed by any of his generation, and was suitably rewarded by a duly grateful prince. By 1593, he was already a Senator and a Privy Councillor, and in 1596 became Lord Advocate and one of the Octavians. He was knighted in 1603, and was made a commissioner for the projected union of the two countries. He was a Lord of the Articles in every parliament, sat on every important commission during the period, and was a member of the High Commission Court. He was Master of the King's Metals, a Treasury Assessor, and a member of the Exchequer Court. In 1612, he gave up his post as Lord Advocate to become Lord Clerk Register, a position which he exchanged in a few months for that of Secretary of State, which he held until the death of the king. His services were rewarded by his elevation to the peerage as Lord Binning in 1613. In 1616, he became President of the College of Justice, and in 1619, was further raised in rank when he was created Earl of Melrose. In 1621, he became a member of the cabinet council. This remarkable man, despite his many official duties, found time not only to be the greatest antiquarian of his age, but also to write with great regularity to the king three, four, or even six closely written folios, giving the news of the day in Scotland, and interspersed with a flattery even more fulsome than the custom of the age demanded. He was, without doubt, the greatest upholder of the conception of royal prerogative in Scotland, and a man to whom the king's merest word was complete law in all

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(1) R.P.S. LXXVI ff.59 & 71, and LXXVIII f.10 (2) Compt Lib 18 f.33

matters of church and state - who said to Spottiswood that his office "was ane warrand to (him) to menteane his Majesties prerogative." (1) His standpoint was further emphasised in the course of an argument with the Chancellor, Dunfermline - "My lord ye must not frame the question so. It must be framed in these terms 'Whether will ye give obedience to the King's letter or not?'" (2) As far as he was concerned, the merits of the case did not matter; the important thing was that obedience should be given to the king. This blind obedience to the royal will made Lord Melrose one of the few laymen in the country whole-heartedly behind the king's church policy, and drew from one so hard to please as Archbishop Gledstones, a word of commendation, "...my good Lord Secretare, the fourteenth Bischope of this kingdom..." (3)

As has been seen, titles, position, and importance were the rewards of this faithful servant, but the monies which he received from the king were negligible compared with those given to others less deserving. Apart from travelling expenses to London (4), he received one hundred pounds sterling a year from the English Treasury after 1613. He had no pension as Lord Advocate, apart from a fee of forty pounds a year, though his successor, Oliphant of Newton, had a pension of a thousand pounds a year; nor is there any record of his receiving any pension as Secretary. He did, however, receive four gifts of escheat. (5) Gifts of land were unimportant and small. The numerous references found in the Acts of Parliament of Scotland, and in the Great Seal Register, are all writs of novodamus and confirmation of lands already bought. Most of the land which he acquired was by purchase. Indeed, he protested to Charles I that he had no erections except those which he had purchased "at dear rates." (6) Yet so much did he buy, and so rich did he become in the king's service, that his rent roll has been estimated at nearly seventy thousand pounds a year, while after his

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(1) R.P.C, xiv 621 (2) Cald vii 439 (3) Orig Letters i 294 (4) Compt Lib 11 f.54 & Lib 13 f.24 (MS) (5) R.P.S. LXXIII ff.177,193,205, and LXXV f.252 (MS) (6) Fraser ii 296

death his personal estate was forty three thousand pounds, and his family silver was worth another twenty thousand pounds. (1) If only the Earl of Melrose had been a Lord of Election, he would have been the most completely representative type of a post-Reformation statesman.

When the Earl of Dunfermline died, Lord Melrose was the obvious choice as Chancellor. There seems to be no doubt that the offer was made, or at any rate that anticipatory feelers were put out. But even before Dunfermline was dead, Melrose wrote to John Murray in London, "By my first (letter) upon this subject, ye know that I was so farre from blind ambition, as I wished his maiestie might understand by yow, how unable I was to susteane the burding I will beare during the vacancie of that place...and therefore I humblie wish, that, if my lord Chancelars disease overcome him...his maiestie may make choice of any whom he...judges most fit for that great place, to whom I may give my faithful and readie concurrence..." (2) His unwillingness to accept the office was the subject of a letter at the same time from Spottiswood to John Murray, in which he wrote that he had "talked thairof with my Lord Melrose himself, who is wel peremptorie in his refuse and declyning that charge..." (3) And so the Earl of Melrose missed the honour of being the king's chief minister in Scotland by his own lack of desire for it. In fact, but for the added glory, what had he to gain? He was already the king's most trusted servant in Scotland, and as Secretary, had direct access to his master. He found an outlet for his legal acumen as President of the College of Justice. He was a peer of Scotland, and so had assured his social position. Now the highest honour of all was within his grasp, but he refused it. Maybe it was because he felt that he had climbed high enough. Maybe he was wise enough to realise that he was essentially a servant, and that he lacked the supreme quality of leadership. Maybe his motive was lower altogether - that he did not want to hold a position in which he might have

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(1) Fraser i 166 (2) Mel ii 455 (3) Orig Letters ii 690

to take a lead in opposing some aspect of royal policy not entirely in the interests of the country. In a conflict of loyalties between king or country, Tam o' the Cowgate would have supported the king.

John Spottiswood was one of those whose promotion dated from the king's accession to the English throne. In 1603, he succeeded Bethune as archbishop of Glasgow, and was made a Privy Councillor. In 1604, and at every succeeding parliament he was on the Committee of Articles, and in 1610, he was made an Extra-ordinary Lord of Session. The death of Gledstones in 1615 saw his translation to St. Andrews as Primate. In the reign of Charles I, his career was crowned by the addition of the Chancellorship, making him leader in church and state. During the years 1603 to 1625, Spottiswood, along with the Earls of Dunbar and Melrose, was one of the king's chief agents in the establishment of episcopacy. Although the estimate that during this time he made fifty journeys to Court is an exaggeration, there is no doubt that he went once a year to England to confer with the king on matters of church and state. Spottiswood, as Primate of Scotland, was not disposed to go as far as the king in assimilating the church of Scotland completely to the church of England. Once diocesan episcopacy had been re-established, he would have been content to leave it at that. The enforcement of the Five Articles of Perth was always distasteful to him - a circumstance of which the king was well aware, and which prompted him to get reports on the observance of the Five Articles from the faithful Melrose. But Spottiswood was a constant worker for the fuller restitution of the estates of the bishops, which made both him and the bishops objects of distrust with all those who had benefitted by the acquisition of church lands. His elevation from the ranks of the ministry to the Primacy of Scotland was excellent promotion for any man, and the even greater reward of the chancellorship was to come in the following reign. In 1609,

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Spottiswood was given a pension of two thousand pounds a year payable by the Treasurer (1), but of this there is extant only one payment of one thousand pounds for one term in 1610. (2) In the same year, he received two thousand pounds for presiding over the Exchequer Court (3), and between 1606 and 1610, he got seven thousand four hundred pounds by the king's "direction and warrant", no other reason being given. In 1606, he received twelve hundred pounds for one of his many journeys to London.

Sir Gideon Murray of Elibank won his way into the central administration by his work in the Borders. In 1605, he was knighted, and in 1610, was made a Privy Councillor, and awarded a pension of twelve hundred pounds a year (4), which was paid regularly until 1617, when it was doubled. (5) In 1613, he was made Treasurer-Depute and Comptroller-Depute at an annual salary of fifteen hundred pounds. (6) At the same time he was admitted as an Ordinary Lord of Session. During his tenure of office, he made at least one journey a year to Court, for which he received each time a grant of two thousand four hundred pounds as expenses. (7) As a Border Commissioner, he got another five hundred a year (8), and from 1615 onwards, he had the import of thirty tuns of wine a year duty free, bringing in another nine hundred and seventy two pounds. (9) In addition, he got in 1616, six thousand pounds "for his own use", and in the following year, four thousand for his help in repairing bridges for the king's visit to Scotland, while various sums were awarded to his sons during their father's lifetime. It is a remarkable fact that at his maximum, Sir Gideon was receiving over eight thousand pounds a year from the Treasury (taking into account his share of the quots of the testaments as a Lord of Session. (10)) In all, between 1603 and 1625, Sir Gideon Murray received nearly eighty thousand

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(1) R.P.S. LXXVIII f.143 (MS) (2) Treas vol.1610-11 f.33 (MS) (3) Compt Lib 13 f.22 (MS) (4) ib. 1610 seq., also Treas 1610-15 (5) A.P.S. iv 567 (6) Compt 1612 seq. (7) ib. 1613 seq. (8) ib. 1609-16 (9) ib. 1615 seq. also Treas 1616-18 (10) See below p.41

pounds in money from the Treasurer and Comptroller. In 1617, he had all his lands incorporated in the free barony of Ballincrief. (1) He was a Lord of the Articles in 1612 and 1617, and was a member of the High Commission. This competent financier, very much a king's man, as, indeed, he had good cause to be, nevertheless died under royal displeasure, as a result of backstairs intrigue.

David Murray in 1603 was already a knight, a Privy Councillor, and Comptroller, an office which he held until 1608. Having been one of those present at the Gowrie affair, he was regarded with special favour by the king, and in turn, served his master well. He went South with James in 1603, but soon returned and was made Captain of the Guard. Although he did not attend the Privy Council with the frequency of a Melrose or a Dunfermline, his attendance was consistent during the whole period, and he was a Lord of the Articles in every parliament. He was also a member of the High Commission. In 1604, he was one of the commissioners for the projected union, and in 1606, he was confirmed by act of parliament in the erection of the abbacy of Scone into a temporal lordship, and given the title of Lord Scone. (2) He was one of the revised Privy Council in 1610, and from then onwards, was active in helping to promote the king's church policy, for which he was rewarded with several grants of lands, of which the most important was the priory of Elcho, in 1610, (3), and with the title of Viscount Stormont in 1621. Lord Scone was one of those in whom the king could and did place implicit trust. As Comptroller, he received a pension of a thousand pounds a year (4), which was continued after he demitted office, and in 1611, increased to sixteen hundred, and paid regularly until 1625. (5) In 1606, he was awarded twenty chalders of victual a year from the priory of St. Andrews (6), and in 1612, a pension of three hundred merks sterling a year (7) He became Steward and Constable of Holyroodhouse in 1603, and Steward of Fife

(1) R.M.S. 1609-20 p.602 (2) A.P.S. iv 326 (3) R.M.S. 1609-20 p.248

(4) Treas 1604-08 (5) Compt 1611-24 (6) R.P.S. LXXV f.113

(7) ib. LXXXII f.26

in 1614. Between 1603 and 1607, he received nearly seven thousand pounds as travelling expenses (1), and in 1610, a payment of twenty one thousand pounds as superexpenses incurred during the tenure of his office as Comptroller. (2) It is estimated that between 1603 and 1625, over ninety five thousand pounds from royal grants and pensions, excluding his lands and other perquisites, were paid to him. In view of such munificence, it is only to be expected that David Murray identified himself closely with any expression of the king's will.

George Home, because of his residence at Court, was not a regular attender at sederunts of the Scottish Privy Council. During his stay in England, he was the king's chief adviser on Scottish affairs - especially in the establishment of the episcopalian church - and the king's chief emissary for smoothing out any difficulties which arose in Scotland. (3) Honours were rained on him without stint. He was knighted and made Lord High Treasurer of Scotland. In 1603, he became a member of the English Privy Council (as well as of the Scottish), and was made Keeper of the Great Wardrobe. By 1605, he was Earl of Dunbar, and had a ratification of all his lands in 1606. (4) Between then and his death in 1611, he got additional lands in Broxmouth, Smailholm, and Lochmaben (5), and was made Keeper of the Palace of Holyroodhouse. In fees and expenses as Treasurer and Comptroller between 1603 and 1611, he received sums amounting to over fifty three thousand pounds. (6) During his lifetime, there was no-one in whom the king placed greater trust than the Earl of Dunbar, while Dunbar for his part, did nothing to make it seem as if the trust were misplaced. To him more than to anyone, apart from James himself, was due the success of the king's church policy in the earlier part of the period - a circumstance which made him a persona grata with the bishops. His versatility was such that he was equally at home in examining the credentials of future bishops, or in

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(1) Compt 1603-07 (2) ib. Lib 13 f.1 (3) See Chap.12 (4) A.P.S. iv 292  
 (5) R.M.S. 1609-20 pp.32,81,82. (6) Compt 1603-11

hanging Border ruffians. Nor had he an equal in the delicate task of "managing" parliaments and General Assemblies. It is hardly surprising that Spottiswood, whose church owed so much to the earl, should have given him this obituary - "A man of deep wit, few words, and in his Majesty's service no less faithful than fortunate: the most difficult affairs he compassed without any noise, and never returned when he was employed without the work performed that he was sent to do." (1)

John Murray, the other Scot in London who greatly influenced Scottish affairs, was not a Privy Councillor. A gentleman of the Bedchamber, who originally seemed to have been the unofficial agent for the Scottish bishops in London, he became, after the death of Dunbar, the king's chief adviser on Scottish affairs. Murray's influence was considerable, as he was the natural channel through which all correspondence flowed to and from the king. There was scarcely a politician in Scotland during the period who did not write in most affectionate and flattering terms to John Murray. The secretariat of which he was head was undoubtedly efficient. The correspondence was voluminous and seems to have been handled most expeditiously. (2) Even so, the king's appreciation of his services came late. In 1622, he was created Viscount Annan, and in 1624, Earl of Annandale. Though he had properties in Fife, East Lothian, and Ireland, his main estates were in Dumfries and Galloway, where, in 1606, Dundrennan was erected into a temporal lordship for him. (3) The barony of Lochmaben, which had formerly belonged to Dunbar, was added in 1612 (4), while in 1618, he was given the lands of Holywood Abbey. (5) Although he was not a Scottish Privy Councillor, John Murray was in other respects a typical "lord of erection", both by the manner in which he acquired his lands, and by the service which he gave to the king in return for them.

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(1) Spott iii 214      (2) See above Chap.2      (3) A.P.S. iv 326

(4) R.M.S. 1609-20 p.253      (5) ib. p.658

Other prominent members of the Privy Council in Scotland were, Sir John Arnot, Sir Richard Cockburn of Clerkington, Sir John Cockburn of Ormiston, the Earl of Mar, Sir George Hay of Netherliff, Sir John Preston of Fentonbarns, Sir William Oliphant of Newton, Lords Erskine and Gordon, and Sir Archibald Napier of Merchiston, all of whom are more fully discussed in Appendix "D".

It must now be evident that those to whom James entrusted the carrying out of his orders were men who owed everything to the king, and in this, the Tudor example is strikingly paralleled - the creation of a new official nobility ready and willing to carry out the royal commands, bound to the king by past favours, and ever on the lookout for future advancement. The absence of the "old nobility" from the day to day government of the country should hardly cause surprise. By inclination and background they were unsuited for routine administrative work. They were territorial magnates of considerable importance in their own lands, and there was no longer the magnet of a Court in Edinburgh to draw them thither. They neither needed nor wanted to jostle with busy lawyers and lairds for a few scraps of praise - or blame - scribbled by a busy secretary on behalf of a king four hundred miles away. They were men whose families had been "made" for generations; they could afford to hold aloof. In this respect, they knew their royal master. Nothing of fundamental importance was done during these years without summoning a Convention or Parliament, and on such occasions, the old nobility turned out in reasonable numbers. The king, indeed, far from forgetting his old nobles, employed his favourite and flattering device of writing them personal letters asking them to support his policy in certain matters. In Volume 1 of the Balfour Papers there is a whole series of letters from old nobles, obviously in reply to one from the king, in which they promise him their services in "such things as ar to be treated off in

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this nyxt parliament (1606)." (1) Less discreet than the others, the Earl of Angus promised to support the act "anent the estait of bischoppis", and so it emerges that James must have been soliciting support for his church policy. The king, it seems, was quite prepared to have his day to day routine affairs of state carried out by his small band of personal adherents, but he was wise enough not to try to foist any major measure on the country purely through the medium of this official bureaucratic oligarchy. Major matters of policy were always referred to the estates assembled in parliament or convention. However, it must be obvious that the king's faithful few had more than a little influence, both in the preparation for such meetings, and by being members of the Committee of Articles, which gave them what was virtually a deciding voice. (2) But the fact remains, that whatever amount of preliminary spadework might be done by the king himself, and by his Privy Council by way of preparation, on any fundamental issue the final step was never taken without the ratification, either prior or subsequent, of the estates of the realm.

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(1) Den MSS i 53,54,56,61,62,69,70.

(2) See next Chap.

The Privy Council and the Lords of the Articles (1)

The control of affairs by committees and commissions, which was such a feature of Scottish government, found parliamentary expression in the Committee of Articles. Like so many institutions, the Articles, which started as a convenience, became an established piece of constitutional machinery, and "there is nothing to prove, indeed there is nothing to suggest that before the middle of the seventeenth century, the committee which virtually reduced parliament to the position of a Court of Registration, was regarded as incongruous, or otherwise than with placid acquiescence." (2) It was certain that James, with his ideas on divine despotism, would want to retain a system which made it so easy for him to control his Scottish parliament whenever he summoned it. In addition, the king would want to ensure that the Committee when it did meet would be a body of men loyal to his wishes. As such a body already existed in the Privy Council, it is necessary to examine the relations and connexions between the two bodies.

It is evident from correspondence that the king himself played a not inconspicuous part in the choosing of the Lords of the Articles, and it is obvious that a king who kept such a firm grip on the details of government as to have his own nominees elected even to presbyteries, would make an even greater effort to ensure favourable representation on such a body as the Articles. The 1604 parliament was one which had already been summoned, but which had been "continued". It was held by some that there should be a new election of the Lords of the Articles, but James refused to countenance any such change, "...we...declair unto you that our will is that the free electioun whiche wes alreddy maid of the Lordis of Articles in the beginning of that our Parliament sall continew untill the finall end of the same." (3)

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(1) See Appendices "A", "B", & "E". (2) Terry 107 (3) R.P.C. vii 459

In the 1606 parliament, it is evident from a letter to the king signed by Dunbar, Scone, and Sir Thomas Hamilton, that the Lords of the Articles were nominated by the king, and elected without question by parliament - "...the lordis of Articlis wer chosin according to your maiesties letter, send for that effect to the estaites, and the roll of names presented to thame in your maiesties name, withowt change of any ane, of the hail number recommended to thame be your maiestie, or contrare vote of any of all the estaites." (1) This is corroborated by the actual letter from the king read by the Commissioner, the Earl of Montrose, to parliament on the third of July. (2)

That the king continued to nominate the Articles is further seen from a royal letter to the Council after the 1612 parliament, in which James gave as his reason for dismissing Burley from the Privy Council, that he "did by his evill-beseeming speech to the noblemen urge thame to withstand our desyre in choosing suche Lordis of Articles as we haid nominated, willing thame to stand upoun thair liberties and prerogatives in that pairt." (3) Much is implicit in these few lines - that James was still nominating the Lords of the Articles, and that royal nomination was an innovation, though not necessarily a recent one; that in parliament, the Articles were elected by the Lords Spiritual and Temporal, and not by the whole body of parliament (4); and that in the choosing of the Articles, certain definite "liberties and prerogatives" were being over-ridden by royal autocratic action.

A much more detailed account of the 1612 election of the Lords of the Articles is given by the newly appointed Secretary, Sir Thomas Hamilton, in his "Urdour and Progress of the Parlement October 1612." (5) The Commissioner "desyred the prelates and noblemen to retire thame to chaise the Lords of Articles." Then the Commissioner retired with the nobles, followed

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(1) Den MSS i 66 (2) A.P.S. iv 279-80 (3) R.P.C. ix 505 (4) In 1525, it is clear that the Lords Temporal elected the Lords Spiritual (A.P.S. ii 289 b), and in 1563, Randolph, the English agent, was quite definite that the "Lords spiritual chuse temporal, and the temporal the spiritual, and the burgesses their own."

(5) Mait Club Misc iii 112-118.

by the Secretary with the king's "missive roll of suche prelatts as he recommended to be chosin be thame upon the Articles." But the nobles, no doubt to his chagrin, made him withdraw, "saying thay wald be clerkis to thame selfs." Sir Thomas then delivered a similar missive to the bishops, with the names of the nobles whom the king wanted on the Articles, "whilk thay presentlie obeyed be thair electioun." The nobles, however, were not so obedient, and "debated the mater verie preciselie," and after talking at great length on maintaining their privileges and liberty, (a discussion in which Burley seems to have played a prominent part), decided by a majority to change "so many of the roll of prelats as thay had men to mak chainge of." The nobles and prelates then joined forces, but it is not made clear whether the whole body of nobles and prelates joined, or just the newly elected members of the Articles, and the Secretary gave them the king's list of nominees of representatives of the barons and burghs. After the barons and the burgh members had withdrawn, the Lords and Prelates, in the presence of only the Lord Clerk Register and the Lord Justice Clerk, "debaited contentiously the rollis, and maid sum chainge of both so far as the noble men could." The chosen body was then ordered to meet daily in the Inner Tolbooth from ten in the morning until four in the afternoon. From this account, it is obvious that the temporal lords chose the spiritual lords, and the spiritual the temporal, while both together chose the members from the other two estates. It is also evident that the king meant their choice to be restricted to the names which he suggested; that he met with no opposition from the bishops, who owed their reinstatement as Lords of Parliament to the king, and who thus showed their gratitude; but that there was considerable opposition from the nobles, who displayed a spirited jealousy of what they regarded as their rights as Lords of Parliament.

The parliament of 1617 saw another battle on the subject of the election

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of the Committee of Articles. Spottiswood relates that "whosoever were by the king recommended as fit persons, were passed by as men suspected, and others named who stood worse affected to his Majesty's service." (1) On the other hand, Calderwood records with some satisfaction, that the Articles were eventually chosen "not altogether to the King and Bischops' contentment." (2) The king's presence on this occasion had little effect on making the Lords more amenable, indeed, it probably aggravated the situation. The main controversy, which prolonged the session until ten in the evening, raged around the inclusion of the officers of state, who sat on the Articles without election, the Lords "refusing," according to Spottiswood, "to admit any but the chancellor, treasurer, secretary, and clerk of the rolls." (3) The king first had to fight against the inclusion of only four of his faithful servants, and having gained that point, had to fight even harder to have the number increased. Eventually it was agreed to fix the number at eight. "His sacred Majestie...wes graciously pleasit to declare in this and all parliaments heireftir thair suld be na mae of the saidis officers of Estate quha suld sitt and have place and wait in parliament and articlis bot onlie Eight sett down and thair successours in thair placis." (4) Both sides won a point. The king had established the right to have his officers on the Articles; the magnates had succeeded in curtailing the number to eight.

Of the election of the Lords of the Articles for the 1621 parliament, Secretary Melrose wrote with obvious satisfaction to the king, "...the Lordis of Articlis wer chosen with such dexteritie, that no man wes elected (one onlie excepted), but those who, by a privat rolle, wer selected as best affected to your maiesties service..." (5) There seems little doubt that this "dexteritie" referred to the method of election described by Calderwood - "The Bischops choosed eight of the nobilitie...These choosed eight Bischops..."

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(1) Spott iii 240 (2) Cald vii 250 (3) Spott iii 240 (4) A.P.S. iv 526  
 (5) Mel ii 416

and these together choosed eight barons and eight burgesses. The Officers of State...men readie to serve the king's humour, for the benefite they had by their offices, and hopes of greater preferments, satt and voted with them, howbeit not chosen." (1) By putting the initiative into the hands of the bishops, the king and his advisers were on safe ground, because the bishops were necessarily all king's men. The main task of the king's officers was then to brief the bishops to choose the eight nobles likely to be most affected to the royal service, and the rest was plain sailing. Whoever invented this simple but ingenious method of choosing the Committee of Articles had every reason to be proud of his creation as a practical means of controlling the legislative assembly by a body of men who would be unlikely to oppose the will of the king.

A measure of the king's success in "packing" the Committee of Articles may be estimated by comparing the number of Privy Councillors present as Lords of the Articles at each parliament. On each occasion, the Commissioner was a member of the Privy Council. In 1604, all the eight nobles, and the six officers of state on the Articles were Privy Councillors, six of the eight bishops, and two of the eight barons. No burgh member during this time was a Privy Councillor. In all, in a committee numbering forty, twenty three were Privy Councillors. In 1606, the eight nobles and ten officers of state were on the Privy Council, along with six of the eight bishops, and one of the eight barons, giving a total of twenty six out of forty four. The 1607 Committee of Articles had all nine nobles and six officers of state, with seven out of nine bishops, and one out of eight barons, as members of the Council - a total of twenty four out of forty two. In 1609, the eight nobles, seven officers of state, six of eight bishops, and four of eight barons, gave a total of twenty six Councillors out of forty one. So far, there had been an overall majority of Privy Councillors on the Committee of

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(1) Cald vii 490

Articles. Then, in 1610, James appointed the new and much smaller Privy Council of thirty five members, and for the remaining three parliaments of his reign, the Privy Council was in a distinct minority on the Articles. It is significant that the elections of 1612 and 1617 were those which gave most trouble to the king, before the "dexterous" solution of 1621 removed all cause for anxiety. In 1612, only fifteen of the Articles were Councillors, and of these, seven were officers of state, with the addition of three nobles, three bishops, and one baron. In 1617, sixteen Privy Councillors were elected - five nobles, two bishops, and the eight officers of state, about whom there had been such controversy. The 1621 Committee had nineteen out of forty on the Council, seven nobles, four bishops, and seven officers of state. By this time, the king had enlarged the Privy Council far beyond the limit of thirty five fixed in 1610, and as the Council grew larger, its representation on the Articles increased so as almost to give it a majority once more. A step taken to gain administrative efficiency in 1610, had lessened legislative control. By 1621, whether by accident or design, the king had gone far towards redressing the balance.

In the seven parliaments between 1603 and 1625, there was a remarkable uniformity in membership of the Committee of Articles. During this time, only sixteen bishops sat as members. The officers of state and the burghs had twenty three representatives, the nobles thirty, and the barons as many as forty one. Eight men sat on the Committee of Articles in every parliament - the Earl of Dunfermline, the Earl of Melrose, Sir Richard Cockburn of Clerkington, and Sir John Cockburn of Ormiston, all of whom were officers of state, Spottiswood, first as Archbishop of Glasgow and later as Archbishop of St. Andrews, the Earl of Mar and Lord Scone both as nobles and officials, and Wedderburne representing the burgh of Dundee. All except the last were members of the Privy Council. The burghs of Edinburgh and

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Dundee, the latter by the same man, were represented on every occasion, while Glasgow, Aberdeen, and Perth missed only one attendance. Only ten burghs in all were represented on the Committee of Articles - Edinburgh, Dundee, Aberdeen, Glasgow, Perth, St. Andrews, Ayr, Culross, Stirling, and Burntisland. But perhaps the most striking fact about membership of the Committee of Articles is that here, as on the Privy Council, the same names stand out as regular members - Dunfermline, "Tam o' the Cowgate", the two Cockburns, Spottiswood, Mar, and Scone - a solid nucleus of king's men, all of them important, accustomed to lead, and having a very natural influence over those who are more used to be led, especially when it is remembered that reports on the actions of any individual were liable to be sent back to the king, if, indeed, not actually asked for by him.

By the seventeenth century, the Committee of Articles was the sole channel through which business could be introduced into parliament, "and their appointment was, therefore...the most important act of the whole house." (1) But when consideration is given to the large number of acts presented by the Articles to parliament after a comparatively short time for discussion, the conclusion must be drawn that a lot of preliminary work must have been done. In 1609, between the nineteenth and twenty fourth of June, the Lords of the Articles produced no fewer than sixty four acts; in 1617, between the seventeenth and the twenty eighth of June, the total was sixty two; and in 1621, between the twenty fifth of July and the fourth of August, the total was one hundred and fourteen. Even though many of these bills were of a more or less private nature, it would have meant a phenomenal amount of work for such a short time of session. Provision, however, had been made in 1594, for a preliminary sifting of material for consideration by the Lords of the Articles. A committee of four from each estate was to meet twenty days before the assembly of parliament, by which

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(1) Rait 8

time, any matter for discussion should have been lodged in the hands of the Lord Clerk Register. (1) This committee was to reject all "impertinent, frivolous, and improper matter," and to present to the Articles at the time of parliament, their choice of material for discussion. This little committee must have been quite a powerful body, considering that it could withhold any private bill on the grounds that it was "impertinent, frivolous, or improper." Whether or not this body met before every parliament is not clear, but proclamations were issued by the Privy Council in 1617 (2), and 1621 (3), that all supplications for the coming parliament should be in the hands of the Lord Clerk Register twenty days before the date of Parliament's assembly. The second of these proclamations announced that such supplications were for consideration by a committee of the Privy Council. If this was so, it was significant, but hardly surprising. On this point, Professor Rait, quoting Maitland of Lethington that the "function of the Lords of the Articles was to advise and consult upon all articles preferred unto the Estates," was of the opinion that this phrase suggested "that the topics of discussion were remitted to the committee, not selected by it." (4) From an earlier period (1518), indeed, there comes definite proof of the Privy Council acting as a preparatory committee. A series of articles "to be avisit apoun betwix and the nixt parliament to be concludit in the samin", was debated at length by the Lords of Council, and an agenda drawn up for the next parliament. (5)

In 1606, a further piece of evidence in support of the Privy Council as a "vetting" committee for the Articles may be adduced. During the time of parliament, the king sent a letter addressed to the Lords of the Articles on a matter concerning Dumbarton, the reply to which was sent by the Privy Council. (6) A much stronger piece of evidence comes from the same parliament. On the sixth of July, that is, during the time of parliament,

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(1) A.P.S. iv 69 (2) R.P.C. xi 109 (3) ib. xii 475 (4) Rait 373  
 (5) A.D.C. iii 111-112 (6) R.P.C. vii 497

to a Privy Council sederunt of fourteen, nine of whom were Lords of the Articles, Sir Thomas Hamilton presented an act signed by the king, giving commission to certain bishops and privy councillors to draw up a reasonable scale of stipends for ministers, and asked the opinion of the sederunt "gif he suld present the said Act to the Lords of the Articlis." (1) He was advised not to present it, as there would be too great opposition. There is no mention of the election of, or summons to such a body as that laid down by the 1594 Act - but what body was more likely to perform such a task as the Privy Council and the Officers of State who were meeting and working together daily on the king's affairs in Edinburgh, and of whom the Lord Clerk Register was, in any case, a Member? The significance of this cannot be over-rated. If the preparatory committee were a committee of the resident Privy Council, as it certainly was in 1621, it would mean that the Privy Council would thus control the flow of business to be dealt with by the Lords of the Articles, and thence by parliament. It is obvious, and definite in two cases, that some preliminary vetting must have been done before every parliament, to enable the Lords of the Articles to get through the number of acts which they did in such a short time; and it is definite that in 1621, this highly important task was performed by the omniscient Privy Council.

It would seem in such circumstances that the Committee of Articles must have been a very docile and easily led body. But this was not so. In 1606, the act cited above was not presented to the Articles, because of the opposition which it might arouse. Although the Lords of the Articles were royal nominees, there were some things which they were unlikely to tolerate, and one of these was an encroachment on their pockets, as such an act might possibly entail. They were quite prepared to allow the king full scope in the founding of his new church - provided that they were not to

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(1) R.P.C. vii 222

suffer in the paying for it. The church, indeed, caused a great deal of controversy in this 1606 session of the Articles. (1) The Act for the Restitution of the Estate of the Bishops, was according to a letter from Dunbar, Scone, and Sir Thomas Hamilton to the king, "curiously reasoned by many of the principals in rank and learning of the lordis of Articlis," and was at length, "so concludit as be the most pairt of lordis of Articlis... (and)...allowed with verie few tolerabill exceptionis." (2) In other words, the act was altered by the Articles and passed by only a majority. Indeed, the writers went on, "we may without vanterie or untrewthe, affirme to your maiestie, that gif continuall caire, and exceiding paynis had not bene tane to conqueis and conserve all honest mens affections to the advancement of that important service...the hope...of gude success...had bene turned to greatest grief...we had the resoluet opposition, curiously imprented be the busie policie of sum malicious brethern, in the myndes of mony unfriendis to purge, and the wilfulnes of uthers foreseing thair own lossis in the proceeding of this act to ouercum..." The letter ended by praising the "wisdome and greate dexteritie" of Dunfermline, and the "pithie and persuasive reasoning" of Balmerino in assuring success to the measure. To find all this opposition in an assembly chosen by the king, and containing no fewer than twenty six privy councillors out of a total of forty four, gives food for thought. There was obviously suspicion that the king's church policy was going to affect the pockets and positions of the lords of erection, and all who had benefitted from the re-allocation of the church wealth. It serves to emphasise why the king was so keen on choosing the Lords of the Articles. If such opposition had to be faced in a picked committee, what might happen in a freely elected assembly? (3)

In 1609, there seems to have been a great deal of divided opinion among the Articles on the subject of the forfeitures of Lord Maxwell and

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(1) That it was a "drouthy" session is evident from the expenditure of ten pounds three and fourpence on wine for the Lords of the Articles. (Compt Lib 13 f.24 (MS)) (2) Den MSS i 66 (3) cf. Rait 62

the Laird of Restalrig, until Dunbar "did Travell so earnestlie with the noblemen and hail remanent Lordis of Articlis," that in the end, they agreed unanimously to the forfeitures. (1)

The contention over the election of the Lords of the Articles in 1612 persisted over the amount of the tax to be voted to the king. After a two day debate in committee, in addition to private meetings of the estates in the evenings, a tax of four hundred thousand merks was eventually passed by a majority of four or five - the main opposition coming from the nobles. So strong was the opposition of the nobles, that the Articles did not meet at all on the twentieth of October. Instead, a small committee of four from each estate met and argued all day without getting anywhere. On the following day, the Marquis of Hamilton saved the situation by proposing a tax of three hundred and sixty thousand merks, to which all agreed with relief at the ending of the deadlock.

In 1617, according to Calderwood, "the Lords of Articles satt everie day except the Lord's day, and the King himself was ever present." (2) After the initial dispute about the officers of state (3), the king succeeded in getting all his measures passed, at the expense of dropping an act to make any step taken by the king with the advice of the archbishops and bishops have the force of ecclesiastical law. (4) The bill was reworded and approved by the Articles, but when James saw the opposition in Edinburgh at the hint of such an act, he dropped it, rather than jeopardise the rest of the legislation.

The 1621 Committee of Articles, chosen in the "dexterous" fashion above-mentioned, had the task of ratifying the Five Articles of Perth, and the voting of a tax. The Commissioner, the Marquis of Hamilton, opened the session by announcing that it would be his duty to report to the king the conduct of every member, and on that note of warning, the Articles went on

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(1) Mel i 67 (2) Cald vii 250 (3) See above p.27 (4) R.P.C. xi 155

to debate the taxation. (1) In a report to the king, the Earl of Melrose wrote that Spottiswood set the ball rolling by proposing a tax of three hundred thousand merks, which was immediately topped by Lord Scone (soon to be Viscount Stormont!), who said that as he owed his "honor, estate and whole fortune" to the king, he would rather consider a million merks a "competent sowme" - well knowing that a much less sum was bound to be agreed upon. In fact, the sum of four hundred thousand pounds was agreed upon, to be paid over three years. Most opposition came from the burghs, whose members objected strenuously to a new method of taxation of annual rents. "The church articles," continued Melrose in a subsequent letter, "wer allowed by the Lords of Articles with good uniformitie." (2) Once these measures had been agreed, the Lords of the Articles had several anxious debates on how to get the church articles and the new annual rent tax through parliament. On the second of August, the Commissioner, Melrose, Spottiswood, Lord Carnegie, the Lord Clerk Register, and the Dean of Winchester met at five in the morning for a private discussion, and then went on to sit on the Articles from ten until eight in the evening, while a further special meeting of the Articles was called for seven on the morning of the third of August. (3) It is significant that in this final parliament of the king's reign, there was but little opposition in the Committee of Articles to such a controversial measure as the Five Articles, and that a generous tax was voted with very little debate. The Lords of the Articles had been well and dexterously chosen.

It must, then, be obvious that with the exception of the 1621 Committee of Articles, the previous committees, by whatever means they were chosen or elected, were by no means bodies merely acquiescent to the royal commands. Had there not been all the careful preliminary selection by the king and his council, there is no saying what might have happened to all the

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(1) Mel ii 421

(2) ib. 423

(3) ib. 425

king's schemes. It seems that a Scottish parliament meeting as free and untrammelled as the English parliament, would have shown as much independence and initiative as did its Southern counterpart. As it was, many of the king's most precious measures received but a bare majority, even after a careful preparation of the ground by the faithful nucleus of officers of state.

Though it is tempting to regard the Lords of the Articles as a committee of the Privy Council, to which has been added the lairds and the burgesses, there is no evidence to prove that this was so. Though the Privy Council was chosen during this period by the king, and the Articles too on occasion, nevertheless, in function they remained separate and distinct bodies, the Privy Council as the royal executive, and the Lords of the Articles as a committee of parliament for the preparation of legislative material. But on one occasion, and by inference on others, the Privy Council acted as a preparatory committee in sorting out material to be dealt with by the Articles. As the Privy Council was the body with which the king was in regular communication, and as it was in continuous being, it was the obvious and natural link between the king in London, and the legislative committee of his parliament in Scotland. It seems obvious too, that as many of the same men served both as Privy Councillors and as Lords of the Articles, there must have been at least informal discussions among them as councillors, as to future lines of action to be taken as Lords of the Articles. The Privy Council and the Articles were not the same body, but they both had the same hard core of men willing to act as the agents of royal autocracy, and the men who with such fidelity performed acts of the executive, with equal fidelity turned their hands to acts of legislation. As Privy Councillors, this band of ultra-royalists acted on the king's commands and bore his rebukes without a word of self assertion; as Lords of the Articles they were prepared to put out a maximum effort to make parliament a mere court for recording the acts and policy of royal despotism. (1)

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(1) cf. Rait 390

"The Lords of Council and Session." (1)

The name "Lords of Council and Session" was given, according to Stair, to the College of Justice by James V at its foundation, the implication being that the College had all the powers and authority of the Session of James I, and of the Daily Council of James III and James IV. (2) During the period from 1603 to 1625, the College consisted of a President, fourteen Ordinary Lords, and four, (for a time five), Extra-Ordinary Lords of Session. The Chancellor, when he attended, presided as the king's representative, but was not a member of court.

The connexion between the College of Justice and the Privy Council was as close as the name, "Lords of Council and Session," suggests. Indeed, Professor Hannay thought that the "retention of the Chancellor's presidency in the Session enabled the king to treat the senators of the College as lords 'of counsale' as well as 'of session.'" (3) As we shall see, of the forty six men who were senators between 1603 and 1625, all were automatically made Privy Councillors, twenty one had also served once or oftener on the Committee of Articles, and twelve were officers of state. It is, therefore, obvious that the senators of the College of Justice played no small part in the government of Scotland during these years, and that the king made "effective use...of the men who were present, ostensibly as lords of Session." (4) Much of the routine work of government was carried out by these men, who by virtue of their office as judges, had to spend most of their time in Edinburgh, and who, in consequence, found no inconvenience in attending Privy Council meetings twice a week. It is hardly surprising that the most assiduous attenders at sederunts of the Council were the Lords of Session - Dunfermline (as Lord President before he was Chancellor),

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(1) See Appendix "E" (2) Stair iv 612 (3) A.D.C. iii intro.xliii

(4) ib. xliv

Balmerino, the Cockburns, Sir Thomas Hamilton, Preston of Fentonbarns, Sir Gideon Murray, Oliphant of Newton, Hay of Netherliff, Napier of Merchiston, Lord Carnegie, Lauderdale, Spottiswood, Lord Erskine, Drummond of Medhope, and Livingstone of Kilsyth. It is also found that at least half, and often two thirds to three quarters of each normal sederunt of the Privy Council was composed of Lords of Session. (1)

So close was the connexion between the Council and College, that on many occasions, (until 1608, after which there is a gap in the Books of Sederunt until 1626), the Lords of Session were recorded as being present at sederunts of the College of Justice on the same day as that on which they were recorded as being present at sederunts of the Privy Council. This seems to bear out the claim of Livingstone, that so close was the connexion between them, that a sitting of one body "was occasionally resolved into a meeting of the other." (2) Nor would this have been a matter of great difficulty, as they both had the same clerks and officers, and were physically located only a few yards from each other. Walter Ross has written on this subject that, "The civil business of the nation was often too much blended with the political government; and, therefore, though the king has united his chancellor with the College of Justice, yet he retained a personal jurisdiction for himself and his Privy Council, which clashed with that of the civil judges...So long as the Privy Council of Scotland and their powers lasted, a constant collision in point of jurisdiction took place between them and the Court of Session." (3) But there could scarcely be such a collision if the same men were members of both institutions. There is no evidence of disagreement during these years between the Privy Council and the College of Justice on any point of disputed jurisdiction. There was complete harmony between the two bodies. There had never been any hard and fast distinction between the judicial functions of the College

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(1) R.P.C. and Books of Sederunt (2) Livingstone 81 (3) Ross i 363

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and the Privy Council. Stair claimed, "There is no question the Lords of Session may exceed their authority, and there is no other judicature that can control the same, or warrantably judge therein, save only the parliament."

(1) But, he continued, "The Privy Council hath also its proper jurisdiction as to matters of state, and preserving of the public peace, and determining and punishing all riots and violent encroachments upon lawful possession." (2) In such a case, a conflict of interests between the two bodies might well be anticipated, but with the members of one being also members of the other, this was not so.

The confusion of political and judicial business became so marked that more than once, James had occasion to reprimand the Privy Council for spending too much time on judicial work, and to insist that one day a week must be reserved for state business, a ruling which, on the whole, was reasonably well obeyed. On the other side, the senators, so that there should not be a total lapse of justice on the days on which they exercised their function as Privy Councillors, instituted a "duty officer" system by leaving behind two judges in the Outer House to deal with any urgent business which might be required to be settled. Of the work of the College, Hannay wrote, "...there were constant interruptions owing to other functions which the councillors had to discharge, and...the court was often 'continuit' to the disappointment of the lieges and the delay of civil justice." (3) This harmonious confusion, so typically Scottish, was to be rudely shattered by Charles I in 1626, who saw with remarkable acumen that "power was concentrated too much "in the hands of a few, who contrived to engross all state affairs and reach 'great credit and means.'" (4) It was, therefore, decreed that no noble or officer of state would be eligible for the bench. The College was to be returned "as neir as it can conveniently be done to that estait wherein it wes settled at the first institution."

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(1) Stair iv 608 (2) ib. 620 (3) Hannay 92 (4) ib. 126

The qualification for membership of the College of Justice was the possession of an annual income of a thousand merks or twenty chalders of victual, and to be over twenty five years of age. (1) Since 1593, it had been ordained that there should be no resignations "in favorem", though in 1622, Spottiswood resigned in favour of his son. His case, however, was somewhat different, as he was an Extra-Ordinary Lord, and as such, not necessarily bound by regulations concerning Ordinary Lords. It was also enacted at the same time, that the Crown should not fill a vacancy among the Ordinary Lords for twenty days, and then should present a leet of three from whom the College should choose the most suitable. In 1605, a further decree was published, that those fitted to be senators were advocates, principal clerks of session with ten years' service, peers of parliament or their sons, and knights with a free revenue of two thousand pounds a year. A form of examination was also laid down for aspiring senators. But despite all this, there was no doubt that in the College of Justice as in the other institutions in Scotland, the king had the final word. Whether or not there was a leet drawn up, it was the man who was known to have the king's favour who was elected to a vacancy. For instance, Lewis Craig in 1605, Sir Thomas Hamilton's father and brother Andrew in 1607 and 1608 respectively, and Oliphant of Newton in 1611 were elected as royal nominees without any leet. In 1622, the Earl of Melrose procured the elevation of yet another brother to the bench; and yet the same man wrote to the king in 1619 in reference to the vacancy caused by the death of Drummond of Medhope, that what was needed was "the election of a man learned in the lawes and prattik, no age having sene so few in that senate endowed with these qualities as this time," (2) with an added request that James should choose "the most qualified, to that importunitie, which manie, owt of respect of privat friendship will use for procuring the advancement of

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(1) Brunton xli

(2) Mel i 335

suche as they affect..." It is evident, then, that the College of Justice had its personnel controlled by royal nomination, with or without the good offices of a friend in court.

The Extra-Ordinary Lords, between whom and the Ordinary Lords there was little distinction except in the matter of emoluments, normally numbering four, were royal nominees without even the pretence of election, such appointments probably originally being made to allow the landed nobility to retain an official position on the judicature. The College itself was particularly watchful of the number, four. In a letter to the king in 1617, the Lords of Session petitioned the king that the number of Extra-Ordinary Lords should not exceed four; that the recent number of five had been due to exception being made in the case of Peter Rollock and Lord Blantyre; and now that the latter was dead, they would prefer the king not to fill the vacancy. (1) Those who sat as Extra-Ordinary Lords between 1603 and 1625 were, the Earl of Lothian, Lord Blantyre, Peter Rollock, the Master of Elphinstone, the Master of Livingstone, Melville of Burntisland, Archbishop Spottiswood and his son, and Lord Erskine. It is probable, though not definite, that the Extra-Ordinary Lords, like the Ordinary Lords, were freed from all public taxation, which, of course, in the case of a big landowner, was no small benefit.

The main reason why anyone should want to be a Lord of Session must have been a desire for power, prestige, and position, because the emoluments were scarcely in keeping with the importance of the office. "Sentence silver" was payable to the College by the losing party in a suit at the rate of a shilling in the pound, while part of the "quottis of the testamentis" was devoted to the payment of the senators' salaries. In 1609, the bishops received back the quots, and in return, the College was given ten thousand pounds a year payable from the Treasury. This sum was paid

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(1) Mel i 278

without fail every year, but when it was divided between fifteen judges, it left each with a salary not much greater than that of the postmasters. (1) In comparison with the importance of the position, the official recompense was niggardly.

The matter of the quot silver was a special bone of contention between the bishops and the College, as can be seen from the correspondence between the bishops and the king in 1609. Spottiswood recorded in a memorial taken to Court by the Bishop of Galloway, "...our greatest hindrance is found to be in the Session, of whom the most part are ever in heart opposite unto us and forbear not to kyth it when they have occasion." (2) This point was further emphasised in a letter from the two archbishops and the Bishop of Orkney to the king, saying that they would like the help of the Earl of Dunbar in the matter of their commissariats "because in this business we are not lyk to have contradicent saif the Lordis of Session for thair privat interesse." In April of that year, a joint conference was held under the chairmanship of Dunbar, at which the Lords of Session put forward so many cogent arguments that the bishops felt that parliament would be on their side, until, after days of argument, a compromise was reached.

In pre-Reformation days, the College had been composed of equal numbers of laymen and churchmen, and during the period 1603 to 1625, the newly formed episcopal church tried hard to persuade the king to increase church representation, but with only moderate success. James, though regarding episcopacy as one of the mainstays of absolutism, was very reluctant to permit any overflowing of church authority into the temporal sphere. He had seen too much of that in the presbyterian kirk before he had left Scotland. In 1610, Gledstones, Archbishop of St. Andrews, pressed hard for vacancies in the College for churchmen, and it may have been due to his

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(1) Treas and Compt 1609 seq. (MS)

(2) Orig Letters i 187-197

pressure that Spottiswood was appointed an Extra-Ordinary Lord in that year, though it is more probable that the king, realising Spottiswood's value, made the appointment on other grounds. (1) In 1611, Gledstanes, by now probably jealous of Spottiswood's position, asked the king to allow him to attend the Inner House of Session once a week, to call his own actions, and any concerning the ministers; a proposal to which the king gave no reply. (2) Disappointed in this, the indefatigable archbishop, in the following year, tried to get a place in the College for his son-in-law, Wemyss of Craigton, "professor" of canon law in St. Andrews. There was no vacancy at the time, but Gledstanes claimed that Lord Tunghland was prepared to vacate his place "in favorem"; but once more, the king turned a deaf ear to the scheme. Though Craigton was admitted in later years, the College of Justice remained predominantly a lay body in which the church had little more than purely nominal representation.

The College of Justice, referred to by Dunfermline as "...the special sponk off light, and fondament off your maiesties estait, and now the only ornament off this land," (3), played an important part in the government of Scotland during the period of the king's residence in England, but the importance belonged rather to the members as individuals than to the College as an institution, and perhaps to the fact that the king used its existence both as a convenience in his system of government, and to ensure that his chosen servitors were always ready on call in Edinburgh. So much, indeed, were the senators employed on non-judicial work, that the Secretary recommended a complete suspension of the Court of Session during the meeting of the General Assembly of the kirk in 1617, as no fewer than seven senators were holding official positions - Lords Binning (later Melrose) and Carnegie as joint commissioners, and Cockburn of Clerkington, Hay of Netherliff, Livingstone of Kilsyth, Oliphant of Newton, and Sir Gideon

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(1) Orig Letters i 230 (2) ib. 276 (3) letters and State Papers 56

Murray as assessors. (1) Further, all the senators, either before or after appointment, were also made Privy Councillors, while certain of the royal officials - the Lord Advocate, Lord Clerk Register, Lord Privy Seal, Lord Justice Clerk, Secretary, and Treasurer-Depute (after Sir Gideon Murray's appointment) - were always members of the College. So it happened that there was a close inter-connexion between the administration of civil affairs and the administration of the law in Scotland, both through a lack of definition of scope and function of two royally appointed institutions, and also, above all, by an identification of personnel too uniform to be fortuitous. By assimilating the members of his chief organ of government and of his judicial senate, James obviated a conflict of jurisdictions which might well have broken out in the king's absence in England. When he went to London, James wanted to control the country as easily as possible, and to make sure that his instructions, when passed to Scotland, would be received in a central clearing house, the Privy Council, which containing as it did all the senators (and the church leaders), would remove the necessity of duplicating correspondence, and incidentally relieve pressure on John Murray and his hard-worked secretariat in London. The similarity between members of the Privy Council and the College of Justice was too striking to be mere coincidence. It cannot be doubted that it was a deliberate policy to facilitate the working of the remote control system, to avoid conflict for supremacy between two bodies which might, in the sovereign's absence, vie with each other for paramountcy, and to ensure that all positions in Scotland were occupied by that small body of men who could be entrusted implicitly by the king to do his will in all things whether political or juridical.

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(1) Orig Letters ii 519

The Privy Council and Conventions.

One of the characteristic features of the Scottish constitution was the meeting of the estates, less formal than parliament, known as a Convention, of which there were four during the years from 1603 to 1625. By the beginning of the seventeenth century, conventions were approximating in personnel to parliaments, a process helped "by the successful assertion in 1567, of the right of the burgesses to be consulted, (and) by the electoral clauses of the County Franchise Act of 1587." (1) But the tradition that a convention was merely an enlarged version of the Privy Council died hard, and sederunts were given just as if they were ordinary meetings of the Council. The king, of course, had a leaning towards conventions, as in them he was less liable to be thwarted than in parliaments. (2) Summons which was by letter and not by writ, was at much shorter notice than to parliament, and was selective, though the burghs were given a statutory right to be summoned to consult on weighty affairs of the realm in 1567. (3) The right of summons was in the king's hands, though it seems that James was prepared to accept the advice of his Councillors as to the most suitable people to be summoned. "Conventions varied much in size, as the discretion of the Crown and Privy Council was still dominant." (4) In 1605, Secretary Balmerino wrote, "These of the Counsaill, Bishoppis, and Commissionaris...ar to meit the morne to resolve anent the Conventioun and the names of thame that sall be wrettin for." (5) In 1609, a letter from the Council reported that a convention was "most solemnelie keipit be the nobilmen an others selectit be your maiestie for that purpose." (6)

(1) Rait 163 (2) cf. Rait 163 (3) A.P.S. iii 42. In 1563 it had been enacted that no convention was to decide on peace or war or on a general taxation without consulting and summoning "fyve or sax of the principallis Prouestis, Aldermen, and Baillies of this Realme." A.P.S. ii 543 c.20

(4) Hannay. S.H.R. xx 106 (5) Den MSS i 24 (6) ib. iii 1

Again, in 1616, the Council, in a letter to the king advising the calling of a convention for the following March, sent him "ane list of these, whome, we think mete to be written for to this Conventioun." (1) All of which proves that the king either chose members of convention himself, or else gave his approval to a list drawn up by the Privy Council.

However, the convention of 1617 stood up for its rights in a manner which must have disconcerted the king considerably. Up to this time, it seems that as a matter of course, members of the Privy Council had attended conventions without special summons, and had been received in tacit agreement as members. Indeed, in 1608, there had been eight such members specially designated as "counsallouris" in the sederunt. But the convention of 1617 took a stand on this point, and carried the day. The matter was raised on the main business which was financial, the convention having been convened to vote a sum for the king's journey to Scotland. A vote for three hundred thousand merks had been carried over a vote for two hundred thousand by a majority of only four or five. The minority, reported Lord Binning, then raised "ane new question...upoun the power of counsallouris votes, not being officers of estate, the nobilitie, barrons, and burgessis, contending that suche counsallours had no vote in conventioun; and so thair votes being abstracted, these who restricted the sowme to two hundred thousand merks sould prevaile...they said that thair wes no warrand for the vote of such counsallours in conventiouns," (2), and though they professed to hold that James would never take advantage of such a situation, "eftir-cuming princes counsalled be strangers might appoint so many counsallours, as thair number might oversway the estates if thay had vote." Then they pressed the Chancellor for a vote, but to try to gain time, he got Lord Binning to address them. Binning pointed out in his speech that in all previous conventions in the present reign, the councillours had voted.

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(1) Mel i 266

(2) ib. 270-278

However, the opposition was continued by all the estates except the church, and the demand for a new vote without the councillors was renewed. Seeing that the convention would neither be brow-beaten nor cajoled, and not wanting to go so far as to have an adverse vote taken on the subject, the royal officers decided that it would be best for the non-official councillors to absent themselves on the next day - even Sir Gideon Murray, the Treasurer-Depute, though Binning vainly cited the cases of Melville and Arnot, two previous Treasurers-Depute, who had attended and voted in conventions. So the estates won their point. The only consolation to the king and his officers was that they had avoided having a formal vote taken on the subject. When the money vote was taken on the morrow, the purged assembly passed the two hundred thousand merk tax! Here, then, was the case of a hand-picked assembly standing up for its rights, and winning its point; which emphasises that in fact a convention was a meeting of the estates and not just an augmented convocation of royal officials. Of course, it should not be forgotten that there was a sum of one hundred thousand merks at stake...

The business dealt with by the conventions was varied, "...for fourteen years after the Union of the Crowns, James VI, although he summoned Conventions in 1605, 1608, and 1609, employed them only for executive purposes and not for finance." (1) In 1605, acts were passed on such subjects as cloth manufactures, fishing, the export of leather, the prices of boots and shoes, weights and measures, meat for consumption by horses, beggars, and the exemption of noblemen's wine from the new impost. The 1608 convention met for only one day, and covered only the two subjects directed by the king - the supplying of a force for the reduction of the isles, and the setting up of a commission to regulate the internal prices of boots and shoes. The king had wanted to prohibit the export of leather

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(1) Rait 155

and hides, but the Privy Council reported in a letter that these were the "only stapill wairis of this kingdome previlegeit be all your Majesties predicessouris to be transportit, and whair of your Majesteis customes hes grite increase." (1) No doubt expecting that the latter part of the statement would mollify the king, they reported that the convention had decided to meet the case by regulating internal prices. However, the king had his way with the convention of 1609, which did prohibit the export of leather and coal, and which in other respects followed the royal programme, to abrogate the Secretary's Register, and to forbid the making of iron with charcoal to try to conserve wood stocks, "the haill cuntrey being almost naiked, and mony years ago spoyled of all the tymmer within the same." (2) During this convention, the bishops took the opportunity of being together to meet privately and send the Bishop of Galloway with a "Memoriall" to be "proponed to his most Excellent Majesty," written by Spottiswood, and beginning, "You sall relate the proceedings of the late Convention, and what affection some that were present kythed therein, that his Majestie may be foreseene with men's dispositiouns, for the better choice of these to whom the affaires sall be concredited." (3) It was, in fact, a document severely criticising the Privy Council's conduct of affairs in Scotland, and is all the more interesting because, on the other side, Dunfermline, Binning, and others were giving the king confidential information on church affairs. The 1617 convention was the only one called for purposes of taxation, and which after so much discussion, voted two hundred thousand merks for the king's journey.

Apart from the 1608 convention, which was attended by only fifty seven, the sederunts of the other three were between seventy and eighty. There was a remarkably high consistency in membership of all estates and officers; a consistency in both numbers and personnel. Until 1617, the

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(1) R.P.C. viii 506 (2) Mel i 62 (3) Orig Letters i 187-190

number of burgh members was only half that of the other estates, but in that year, no doubt as it was a matter of taxation, they achieved parity with the others. Roughly half of each sederunt consisted of Privy Councillors - all the officers of state, and a majority of the earls and lords. Fifteen Lords of Session were on the 1605 convention. In 1608, there were fourteen, and in 1609 and 1617, there were eight. In 1605, thirty one out of seventy had sat as Lords of the Articles; in 1608, twenty two out of fifty seven; in 1609, thirty three out of seventy six; and in 1617, twenty eight out of seventy five.

It is obvious that most of what opposition there was, and it was mainly in 1617, must have come from the slight preponderance of members who were not on the Privy Council, Committee of Articles, or in the College of Justice. This, no doubt, accounted for the trouble in 1617. Once more it was emphasised that but for careful preparation and selection, the king would have had considerable trouble from even a hand picked body like a convention. Of course, the king was handicapped in that a convention was a meeting which deliberated and functioned as a whole. There was no Committee of Articles to do the work as there was in parliament. That was probably one reason why only four conventions met during the period. Apart from the fact that an act of parliament had greater authority than an act of convention, the king possibly thought that it was easier to control the Committee of Articles than a body almost twice its size, even though he chose the members himself. The opposition in the 1617 convention showed too, that there was a considerable body of opinion in Scotland prepared to stand up for what it regarded as its constitutional rights, even against such an autocrat as James. Although no voting data is available, it is a fairly safe assumption that the king's side was taken by the bishops (that is a known fact), and his new official aristocracy. The old nobles, and

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those of the lairds and burgesses who had no irons in the fire, would take the role of the opposition. But it must be remembered that the measure which led to the opposition was one of taxation. It is more than possible that many were more concerned about the extra hundred thousand merks than the constitutional question at issue. Whatever the motive, the fact remains that James encountered successful opposition in what was, after all, a pre-selected assembly.

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The Privy Council and the Government of Scotland.

There were few tasks of government which were not entrusted by the king to the Privy Council. The vagueness of his original instruction was undoubtedly deliberate, as it restrained the Council from independent action under the fear of royal displeasure, and engendered in them the habit of doing nothing until they had received the royal command. James was fully aware of the efficiency of conciliar rule in Tudor England, a system by which the royal will was put into effect by a body of men completely loyal to the Crown, and which made the calling of parliament an occasional luxury, normally to give statutory recognition to an item of policy already worked out by the king and council. After James went to England, there were, in fact, only seven meetings of parliament and four conventions in twenty two years - a frequency of sessions which bears a remarkable resemblance to the frequency of Elizabethan parliaments. The king's absolutism, like that of the Tudors, was always tempered by his seeking constitutional recognition of his actions by parliament, and at the same time by taking what precautions he could, that members were as acquiescent as possible. James's task was easier because of the Lords of the Articles, who between 1603 and 1625, were largely the king's men, and whose personnel corresponded very closely with that of the Privy Council. (1) This infrequency of meeting, and short duration of parliaments, made the regular attendance of at least a quorum of the Privy Council members in Edinburgh a necessity, which was an onerous burden on any whose estates were not a reasonable distance from the capital. Now that the Court had gone from Scotland, there was not the same incentive for members of the old nobility to spend a lengthy period in Edinburgh. It was, therefore, fairly natural that the most regular

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(1) See above Chap 4.



attenders at Privy Council sederunts were either those who lived near Edinburgh, or those who had to be there in any case for other business - the Lords of Session. (1) It accorded well with the king's economic instincts that virtually one set of men should perform two tasks, judicial and political.

The control exercised by the king over the Privy Council was complete. "The Privy Council became a mere agent to execute, the Parliament a mere instrument to ratify the decisions taken at Whitehall." (2) The king's commands were seldom even questioned, and in most cases, royal letters were incorporated verbatim as Acts of the Privy Council, "to be insert and registrat in the Buikis of Secreit Counsall, to haive the strength of ane Act of Counsall." (3) "I write and it is done..." The sins of the Privy Council, so bound were they to the king, were normally those of omission rather than of commission. Frequently they were rebuked by James as if they were a class of schoolboys for not having done something - "...we haif just cause to wearye to continew thus still a tutor unto you to remember so often oure directionis, as tutoris are accustomat to repeate thair lessonis to thair childrene." (4) When they showed initiative and did something without awaiting the royal command, they were rebuked for not having consulted the king first. When, for instance, in 1606, they warded the ringleaders of a tumult in Glasgow, a royal letter overturned their arrangements, ordering one of the miscreants to be fined "greate soumes", and the rest to be freed under "greate pecunnial" caution. (5) Even in the matter of ceremonial robes, the Council could not please the king. They ordered the nobles to wear velvet for the parliament of 1606, only to have the instruction countermanded by James on the grounds that velvet should be worn only for a coronation. (6) On the other hand, when they referred the

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(1) See above Chap 5. (2) Mackie 228 (3) R.P.C. vi 589 (4) ib. vii 512  
 (5) ib. 501 (6) ib. 208

sentence on a noble's son convicted of murder to the king, he rebuked them for not getting on with the administration of justice. (1) The king allowed his Privy Council little latitude, and in 1608, even demanded that in future, he should be given a list showing how each member of the Council had voted. By such methods, and from long and frequent "news letters" especially from the Earls of Dunfermline and Melrose, the king was able to keep well up to date with the march of events North of the Border, and to grant his favours according to deserts. The time was to come, however, when the constant catechising of the Council was to dull the blade of royal wrath. In the closing years of James's reign, the Privy Council did not rush to obey the king's most violent fulminations, but tried either gently to reason with him, or to keep postponing action indefinitely. But at any time during the period, most action by the Privy Council was negative. Seldom did they take the initiative. They were at the receiving end all the time. There is no doubt that it was through his Privy Council that James ruled Scotland, and it is equally certain that the Privy Council functioned merely as the executive agent for the king's commands - "they were the agents of the policy; but the policy itself emanated directly and wholly from the absent king." (2) Never did the Privy Council act against the royal will. It may on occasion have ignored or postponed, but it never directly opposed.

The function of the Privy Council was to carry out the day to day government of the country, and to see that the king's commands were effectively translated into appropriate action. Important changes in policy were always the subject of an act of parliament, but routine matters were published as acts of council, no further sanction being deemed necessary. "The summons of parliament was so infrequent, and its session so short that, during considerable periods, the Privy Council actually did almost

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(1) R.P.C. viii 610

(2) ib. vii Intro xxiv

everything that could have been done by parliament." (1) Such acts normally took the form of royal letters quoted verbatim, and given the authority of an act of the Privy Council. There was nothing abnormal in such procedure. The royal warrant was honoured by the Privy Council in the king's absence with as much authority as if he had been present, the only difference being the time lag of a week taken by the message to reach Edinburgh. It may, indeed, be said that the king's absence facilitated rather than hindered the daily government by acts of the executive. James was not there in person to indulge in endless arguments. He stated his wishes from afar, and the Privy Council in most cases realised that undue recalcitrance on their part could easily be met by their dismissal, and replacement by others, who would be only too pleased to have their positions and perquisites. Besides all this, James VI of Scotland had grown in stature since 1603. He was now James I of England, with all the might and importance of the powerful Southern country behind him. The very physical distance lent enchantment to, and magnified his newly donned greatness. "The king was virtually absolute, and the reason is plain. In Scotland the royal power had been limited, less by constitutional tradition than by the ability of great subjects to coerce or even capture the king. From the security of Whitehall James could laugh at kidnappers, and assert, not without justice, that he governed Scotland by his pen alone, and governed well." (2) He was no longer "God's sillie vassal," as, indeed, he proved conclusively in his treatment of the presbyterian kirk. There was, too, among the Scots a certain pride about their relationship with James. He was, after all, their king long before he was king of England, and it would have been most unseemly for his own people to have shown him less loyalty and to have been less trustworthy than his new subjects; especially as it was well known that the average Englishman had a pretty poor opinion of the

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(1) Rait 11

(2) Mackie 82

average Scotsman, whom he frequently regarded as lacking in many of the normal attributes of civilisation.

There were, however, occasions on which the Privy Council either protested to the king against an action, or sought to give him advice. Resident as it was in Scotland, it had its finger much more on the pulse of the country than the king in London could possibly have. It is gratifying to note that vigorous protests were made on matters concerning the honour of Scotland. A strong complaint was sent to the king in 1607 about slanderous speeches made in the English parliament against Scotland. Later in the same year, they thanked James for having put up such a well reasoned case to the English parliament for the proposed union, though they hinted that they were tired of the protracted negotiations. This, incidentally, was the speech in which James boasted, "Here I sit and govern (Scotland) with my pen..." But not a voice was raised against that by the Privy Council. In the following year, a strong and successful protest was made in favour of four Scots summoned before the English Privy Council. The Scottish Privy Council found it a "novaltie of a dangerous preparative, importing prejudice to the haill estate, and thairfoir findis it meit and expedient that the saidis petitionaris sall not obey the said charge." (1) Accordingly, they asked the king to see that there would be no repetition of the incident. In fact, the English Privy Council apologised for the mistake. But it is possible that in the absence of a protest, the "mistake" might have occurred again. It was quite refreshing in 1615, to find the Council actually taking the king to task over the correct procedure for granting lands. They told James that if he wanted to give land to anyone, it would be much better for all concerned if he would consult the Privy Council as to the correct form, otherwise, if he kept on making mistakes like that which he had made on a recent charter to Sir John Lindsay, it

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(1) R.P.C. viii 34

would lead to endless trouble and confusion!

A protest on which the Privy Council got no satisfaction, was in the matter of the Marquis of Huntly by-passing the Council when summoned before them, and going straight to the king. It was, of course, understandable for a noble of Huntly's standing to take such an action and ignore the body of "new" men carrying on the government of Scotland. The lack of vigour in the Privy Council's protest, showed that they had little hope of redress against one in Huntly's position - at any rate as long as Huntly was of use to the king. Their letter to James was merely a "face saver." They "humelie intreate your Maiestie to latt us know what course your Hienes will haif to be tane with him, and outhers, who in the lyke degree sall offend." (1) However, by 1622, their attitude had stiffened to the extent of asking the king not to receive petitions from anyone trying to side-track the Court of Session, but to refer them back to the ordinary course of justice. (2) Protests and advice came more frequently from the Council to the king towards the end of his reign. In 1617, the Privy Council returned an act to the king who had proposed the death penalty for anyone interceding on behalf of a forfeited traitor, on the grounds that there was no act of parliament covering it. (3) Again, in 1618, when the king wanted the Privy Council to stop the Dutch fishing in Scottish territorial waters, they pointed out to him that in their "simple and waik" opinions, the correct way to set about it was for representations to be made by the ambassador to the Dutch; no more was heard of the affair. (4) The most energetic action of the whole period was taken in 1621, during the meeting of the parliament which was to ratify the Five Articles of Perth, when without any prompting from anyone, they cleared all turbulent spirits out of Edinburgh, lest they should further interfere with the passage of the Five Articles. This energetic and independent action was taken by a

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(1) R.P.C. vii 516 (2) Mel ii 274 (3) ib. i 293 (4) ib. i 306

sederunt larger than the usual, because of the numbers in Edinburgh for the meeting of parliament - a sederunt containing a majority of non-official and "non-resident" members, and so not tied down by that lack of initiative so characteristic of bureaucratic rule.

Among the more important subjects dealt with by the Privy Council, were matters of trade and commerce. In 1604, it appointed two Scottish merchants to confer with two English merchants on trading privileges with France. In consultation with the burghs, they reorganised the system of weights and measures, and fixed new standards which were authorised for general use in 1618. (1) They made an interesting departure from the normal economic principles of the day, when after a careful sifting of the evidence, they decided that since the Baltic trade was so valuable, it might be carried to Scotland in foreign ships, because their freight charges were less than those of Scottish ships. (2) There was some correspondence with France on this point, to clear up a misunderstanding which had arisen from the interpretation of an English act forbidding the carrying of goods in "foriegn bottomes." (3) The Scots were at pains to point out that this did not apply to Scotland, where foreign ships would be welcomed as long as they brought the goods. Measures were instituted, but with no greater success than in most countries, against smuggling. (4) A watchful eye, too, was kept on Scottish farming interests. In years of good harvest, a duty was put on foreign wheat to keep up its price. (5) In January 1625, the preceding harvest had been so good that the Privy Council removed restrictions on the export of foodstuffs. (6) Of course, being landowners themselves, the Privy Councillors had a lively interest in such matters. In 1608, for instance, the king had ordered a proclamation against the export of timber. The Council pointed out the unwisdom of such an act, because timber had never been exported in living memory. The king was

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(1) R.P.C. ix 379 (2) ib. xii 107 (3) Den MSS vi 16,17,18. (4) R.P.C. xii 198 (5) Twenty shillings a boll in 1619 (R.P.C. xii 94)  
 (6) ib. viii 674

urged to reconsider his order, because if other countries were to follow suit, it would be to the detriment of Scotland, as we got most of our timber from overseas. (1) 1623 saw the institution of the Commission of Grievances to enquire into economic affairs. (2) This body was a committee of the Privy Council, and for its first meeting there were on the agenda such matters as monopolies on soap and tobacco, restrictions on foreign imports, the control of tanning, the export of coal, and higher customs dues on foreign foodstuffs. Until 1625, there was plenty of talk and deliberation, but like so many of the activities of the Privy Council, there was little action, apart from the removal of the soap monopoly for a year. The Commission on Grievances was a committee of the Privy Council, but the Commission anent Manufactures, set up about the same time, was rather a committee of the estates, whose sixty nine members voted as estates. They were empowered to call before them anyone whose advice they wanted, and their task was to consider especially the manufacture of wool, taking into consideration the number of skilled craftsmen available, and which would be the best districts for the establishment of woollen manufactures. They were proceeding slowly with this task in 1625. (3)

The king's plantation schemes and the Thirty Years' War received attention from the Privy Council. It was the Council which examined credentials and enrolled names in 1609 for the Plantation of Ulster (4), and in 1624, James told the Privy Council that he was going to institute an order of baronets in Scotland in connexion with the new plantation of Nova Scotia. (5) When, however, he asked their advice about this, the Council replied that he would get better advice from the "Englysche who ar best acquainted with such forreyn enterpreises." (6) Though they showed little interest in the Nova Scotia project, it was probably with some relief that they signed an order permitting one, James Spence, to levy

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(1) Mel i 60-62. In 1608, the "hail cuntry being almost naiked and mony years ago spoyled of all the tymmer within the same." (2) R.P.C. xiii 219  
 (3) ib. 291 (4) ib. viii 300 (5) ib. xiii 634 (6) For Scottish plantation schemes, see below, Chap. 11.

twelve hundred men for service with Gustavus Adolphus, no doubt thinking that the country could well spare those who went on such expeditions. (1)

Among miscellaneous enactments, was one for which the Privy Council needed no prompting - an act for cleaning up Edinburgh! (2) It was directed particularly against tanners, and candle makers boiling tallow; both were ordered to remove their places of work and noxious effluvia from the centre of the city to the suburbs. Then there was an act for the establishment of parish registers for recording vital statistics, and another to the effect that bishops should establish an English school in every parish. (3) Although these two acts were not fully implemented, they at least show the Privy Council to be anticipating later legislation.

One of the main tasks of any government is to preserve conditions of peace and order within the bounds of its jurisdiction, and its success may well be judged by its efficiency in this task. As far as the Lowlands were concerned - from the Moray Firth by the coast to South of Edinburgh - this was a comparatively easy matter. The major part of the population of Scotland was a normal law-abiding body of citizens with no more of its share of rogues than any other country. But there were other parts of the kingdom, the Borders, and the Highlands and Islands, in which the publishing of an act or decree was as often ignored as obeyed. As will be seen, different methods were employed to try to bring these districts under control.

The normal machinery of government of the Lowlands was left substantially unaltered in 1603, except that James decided to make an increased use of fining as a penalty. (4) In November of 1603, in response to a letter from the king dated October, the Privy Council found it "meit

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(1) R.P.C. xiii 478 (2) ib. xi 310 (3) ib. x 669 (4) This is a fact noted by Masson, editor of the volumes of the Register of the Privy Council from 1603 to 1625, as taking place after 1613. This was due to the fact that at the time when he was working on the Privy Council, the Book of Fines dated 1603-1613 was not available for consultation, and was not seen by Masson. In fact, there was an increase in fining from 1603 onwards.

and expedient for the weill and quietness of the country...that the contentis and effect of the said missive be followit entier be thame in all tyme comeing..." (1) Accordingly, they ordained that the said missive be registered in the books of the Council, to have the force of an act of Council, with the title, "Ane act and warrand for fynning of offendaris." Special emphasis was laid on the fining according to rank and condition, of all guilty of oppression, riot, or other commotion. There was, of course, nothing new in fining, but now the king had made up his mind that as far as was possible, fining should be the main method of dealing with law breakers, no doubt with an eye to the resulting increase in his revenue.

It is obvious from frequent repetitions that many of the precepts of the Privy Council were not obeyed. From the beginning to the end of the period, there is a regular repetition of proclamations against the carrying of firearms. There were some prosecutions, but they seem to have had little effect, especially in the Highlands and on the Borders. Another matter which met with little success was the king's attempt to forbid the import of tobacco. (2) The first proclamation was made in 1616, but was followed by so many prosecutions for dealing in tobacco, that in 1618, another proclamation was issued to the effect that total prohibition had never really been meant, and that from then onwards, a custom of twenty shillings on the pound of tobacco would be levied, thus making capital out of what it had been found impossible to forbid. (3) Nor was it found possible to banish gypsies from Scotland, despite even an act of parliament to this effect. The Privy Council itself was not at all happy about persecuting the gypsies, who were regarded with sympathy by most of the population. In fact, no action was taken even when, in 1624, the Edinburgh mob rescued a gypsy from the gallows. (4) But there is no doubt that the bulk of the population in the Lowlands obeyed the government as it

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(1) Register of Fines 1603-13 f.1 (MS) (2) R.P.C. x 458 (3) ib. xi 508  
 (4) ib. xiii 312

had always done. To the ordinary man, the presence or absence of the king made no difference.

The lack of adequate force with which to back up the Council's decisions was never felt or emphasised so much as in 1623, when two Dutch ships pursued a Dunkirker into Leith roads. The Privy Council ordered the Dutch not to attack, because of the friendship which the king was trying to cultivate with Spain. The lack of a warship left them powerless to help the Dunkirker, and the lack of a police force left them unable to keep the population of Edinburgh and Leith from helping the Dutch and plundering the Dunkirker. The Earl of Melrose found arms and volunteers to guard the Dunkirker, only to find that in the night the men had disappeared, leaving their weapons unattended by their posts. The upshot was that the populace was treated to the bizarre and undignified spectacle of the Privy Council itself mounting guard on the shore at Leith for two days and nights. As soon as they dismounted through fatigue and lack of sleep, the good citizens abandoned the role of interested and amused onlookers, and plundered the now deserted Dunkirker. (1) Though the incident was fully reported to the king, nothing was done to implement the Council's authority by the sanction of force. This lack of power to enforce their decisions must always be considered in any assessment of the efficacy of Privy Council rule in Scotland. After the first few years, the activities of the King's Guard were confined more and more to the Borders, and by 1623, when even this force had been disbanded, the Privy Council was quite powerless to cope with an emergency such as the Dunkirker incident. On the other hand, the fact that the Privy Council did govern Scotland with so few incidents, illustrates the remarkable advance which the country had made towards being a land of law abiding citizens. The incidence of serious crime was much less than it had been in 1603. Though everyone knew that there were

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(1) Mel ii 513

chinks in the Council's armour, no-one forgot that the king was now James 1 of England, a fact which was shrewdly summed up by Spottiswood as, "...the present strengthe of your Majesties arme, God having put the fear of your Majestie upon all men in thir parts. Sir, it is not the leist part of a Kingdomes happines to haif the king riche and wealthie; it gifis authoritie in peace..." (1)

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(1) Orig Letters i 174

The King's Guard.

To assist the Privy Council in the maintenance of law and order in Scotland, there was passed on the 11th. of August, 1603, an act of council, "...for uplifting of fourtie horsemen, quha ar to be reddie at all occasiones to execut the will and directiounes of the Lords of Sessioun and Privie Counsall, and for repressing of all disordourlie and disobedient subjectis..." (1) This body, known as the King's Guard, was to consist of a captain, cornet, and forty horsemen. The original commission of captaincy was given to Sir David Murray, later Lord Scone, the Comptroller, who was to exercise his powers as from the fifteenth of September. Payment was to be at the rate of one hundred pounds a month for the captain, fifty for the cornet, and twenty four for each of the men. Although payments for individual months were sometimes delayed, the yearly totals, from the Comptroller's accounts, show that the Guard during every year of its existence received the full amount due. Indeed, it was decreed in 1607, that a certain payment of superexpenses to Arnot, the Treasurer-Depute, should have precedence over all other creditors on the Comptroller's list, "saif onlie his Majesteis Guardis." (2) Until the final disbandment of the force in 1621, its maintenance cost the Treasury close on two hundred thousand pounds all told, and there is no doubt that it was this matter of expense which led to the final disbandment. In 1605, it was enacted that any member of the Guard stationed in a rebel's house, was to get twenty shillings a day, in addition to his pay, chargeable to the rebel on whom he was billeted. (3) In May of the same year, the Council ordered such a payment from the wife of a rebel in whose house eight of the Guard had been stationed, only to rescind their order when the good lady, on appeal, proved

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(1) R.P.C. vi 581 (2) ib. vii 340 (3) ib. 26

that the Guard had been so well looked after by her that they had incurred no personal expense! (1)

In April of 1611, a royal letter embodied in an act of council disbanded the Guard, except for Scone and his lieutenant, saying that the king found no "grite use or necessitie" for retaining it. The real reason appeared a few lines later - "specially oure cofferis...at this present being not so weele stoired as we wishe." Two months later, Scone was authorised to retain nine of the Guard for arresting people at the horn for the non-payment of taxes. (2) However, despite these enactments, the captain, cornet, and forty horsemen continued to receive the full scale of payment until 1621. (3) What seems to have happened was that the King's Guard was merged with another force, the Border Garrison, round about this time; that Scone resigned his commission sometime in 1612; that the Border Garrison was disbanded - or that each was in part disbanded; and that the new force, under the command of Sir Robert Ker of Ancrum, now fulfilled the dual role of King's Guard and Border Garrison. In the absence of direct proof, such deductions are based on the fact that payments continued from the Comptroller's accounts without any alteration in wording, from November, 1612, to Ker of Ancrum and forty men, until November, 1614, after which, payment was made to Ker of Oxnam. This change of personnel is supported by a Privy Council minute of November, 1613 - "Sir Robert Ker of Ancrum compeirand personally before the counsall nominate Sir Andrew Ker of Oxnam to suplie that charge formarlle possesst be him as captane of his maiesties gairde..." (4) That the title "King's Guard" was still used, is evident from the continued mention of it in the Register of the Privy Council, while the fact that it was employed on the Borders is evident from a commission to the Captain of the Guard to enforce the acts about the carrying of arms in that region. (5)

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(1) R.P.C. viii 50      (2) ib. ix 189-190      (3) Compt 1611-1621  
 (4) Den MSS iv 50      (5) R.P.C. xi 543

The King's Guard finally came to an end and payments stopped in November, 1621, when it was discharged in accordance with a royal letter which said that the country was now in such an orderly state that the expense of the upkeep of the Guard was no longer warrantable. (1) At the same time, Sir Andrew Ker's services were noted with approbation, and he was given an exoneration from all actions undertaken by him during his captaincy. It is evident that the deciding factor in the disbanding of the Guard was not so much the state of the country as the cost of its upkeep. One consequence of its dismissal was a series of complaints about the less efficient execution of decrees of caption; while early in 1622, a meeting of Border lairds recommended the reconstitution of the Guard, as there had been a deterioration of good order since it had been disbanded. Nevertheless, no action was taken. The King's Guard had come to an end.

During its existence, the King's Guard was not only in constant employment, but performed useful services to the state. Its most constant task was probably the rounding up of "horners" from lists prepared by the sheriffs, stewards, and baillies. (2) Indeed, so many people were at the horn, mainly for debt, that this alone might have kept them in steady employment. A commentary on the steady utilisation of the Guard emerges in a Privy Council order of 1607. Since the king "bestowis grite chairgis and expenssis upoun the interteynment of a Gaird...and the...Lordis finding it nawyse reasonable that they sould be idillie interteyned...bot that they sould be haldin in continewal imploymnt and service in everie quarter of the cuntrey..." (3), the Privy Council ordained that in the approaching vacation, detachments should be sent to different parts of the country to see that the decrees of the Council were being carried out, and to give assistance to the sheriffs. Another task given to the Guard was the

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(1) R.P.C. xii 582-584 (2) ib. vi 584 (3) ib. vii 329

enforcement of the various enactments of the Privy Council on the carrying of firearms, in which task, they were to be given every assistance by the nobles and lairds. (1) Then, as neither the king nor the Council placed much reliance on bands and cautions as a deterrent from feuds, an "Act anent deidlie feidis" was published, wherein the parties to a feud were to be arrested by the Guard, imprisoned, and fined "greit and huge sowmes." (2) The burghs were ordered to assist the Guard in the performance of their duties by relieving them of arrested "horners" and lodging them in the burgh tolbooths. (3) As the Guard between 1616 and 1619 executed one hundred and forty two letters of caption against "horners", it is hardly surprising that some of the burghs, Dunfermline and Kirkcaldy in particular, protested that too many prisoners were being dumped into their tolbooths, where they had to be maintained at the burgh's expense. (4) The Guard was also used by the Privy Council for the arrest and escort of important people - Balmerino after his disgrace, Lord Colville of Culross, the Earl of Crawford, Lord Maxwell, the Master of Glammis, sundry sheriffs and sheriff clerks who had defaulted in tax gathering, and ministers who opposed the king's church policy.

That the Guard had to stand a certain amount of opposition, mainly on the Borders, is evident from sundry summonses to Maxwells and Armstrongs in particular, to appear before the Privy Council to answer for assaults on the Guard, and resisting them in the performance of their duty. (5) In the year 1618, a story of a rebellion of the Guard was solemnly recorded in the records of the Council. Three members of the Guard had arrested a debtor, whom they "keipit in thair company that haill day, passing over the time with him in ghames and uther sociall pastymes that space." Then, "verie undewtifullie set the said rebell at libertie...in plane mokage of all law and justice." The Privy Council made the punishment fit the crime;

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(1) R.P.C. vi 585-586 (2) ib. 594-596 (3) ib. x 580 (4) ib. xi 458  
 (5) ib. vii 16, 19, 46, 189, 585, 618.

either the Guardsmen re-arrested the rebel, or became liable themselves for the sum owed! (1)

The main task of the Guard was the enforcement of acts of the Council in civil affairs, and its value to the Council is indicated by the priority given to it in the payment of salaries. The King's Guard acted as a civil police force rather than as the armed representatives of an autocratic government. It was used for the enforcement of law, and for the benefit of the community - the Privy Council would, and did, listen to complaints against them - not for the enforcement of conciliar rule on the country. Being only forty strong, they could not be everywhere at once, but they were made to work for their money even during vacation time. There is no doubt that the Guard cut down the number of civil offences and feuds by their presence, and that the king and Council by founding and maintaining it, conferred a salutary benefit on Scotland. .

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(1) R.P.C. xi 597

The Justices of the Peace.

More numerous, much less costly, but also less efficient than the King's Guard, Justices of the Peace were called into existence in 1611, to assist in preserving law and order. An act of 1587, for the institution of such a body had remained a dead letter. (1) But James, reaping the fruits of such a system in England, all the more commendable to him as by tradition it was voluntary, decided to try it out in Scotland. An act was passed by the parliament of 1609, to "exterminate that abominable pest of deadlie feedis" by appointing Justices of the Peace, "godlie, wise, and vertuous gentilmen of gude qualitie, moyen, and report...to keep his majesteis peace." (2) They were to be appointed every year by the king and Privy Council. In May, 1610, a letter from the king to Dunfermline and Dunbar appointed them jointly to choose suitable men as Justices from all the shires. (3) This list appeared at the end of the year, but the system does not seem really to have got under way until the middle of 1611. This list contained four hundred and twenty names, but many were duplicated - the Archbishop of St. Andrews, for instance, was a Justice of the Peace for no fewer than fifteen shires. (4) These Justices had power to bind over anyone to keep the peace, on a sworn complaint from anyone that he dreaded injury from him. A Justice of the Peace was also empowered to arrest anyone below the rank of "landit gentilman" who refused to appear before him. Quarter Sessions were to be held, at which anyone under landed rank could be fined or otherwise punished for riot; laws were to be enforced against masterful beggars, poachers, forestallers and regraters; provision was to be made for the maintenance and repair of highways; the supervision of alehouses was undertaken; the quality of malt was to be examined, and

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(1) A.P.S. iii 459 (2) ib. iv 434 (3) R.P.C. viii 624 (4) ib. ix 222-26

weights and measures were to be regulated; wage control was to be operated for agricultural labourers and manual workers; sanitary measures were to be put in force to cope with the plague and infectious diseases; a sufficient number of gaols was to be provided, and rates levied for their upkeep. All capital offences, and all people of rank were to be reserved for action by the Privy Council, and the Justices were to be careful to avoid interference with existing jurisdictions. This last injunction was going to be no mean task. From the money derived from fines, all Justices of the Peace who were not nobles, prelates, privy councillors, or senators, were to get forty shillings a day up to three days, for attendance at the Quarter Sessions. At least two constables for each parish, and sworn for six months, were to be appointed for the collection of information for the Justices, and for the bringing of wrongdoers before them. These constables, according to Doctor Malcolm, "were of very little use in reporting infringements...acting under compulsion for six months (they) had little interest in their duties." (1) A special order from the Council a month later ordered the Justices to choose their constables forthwith (2), which seems to point to some reluctance on the part of the Justices to get the scheme going. In fact, the whole idea was at no time very popular in Scotland, and shortly after its inception, there was a letter from the Justices of the Peace of Selkirkshire, complaining that they were hampered in their work by local opposition. (3) The Justice of the Peace system in England had grown up as part of the life and social background of the people. In Scotland, it was always a foreign system foisted on the people from above, and threatening old established local and hereditary jurisdictions, which the king described in "Basilikon Doron" as the "great hindrance to the execution of our laws." (4)

A year after the start of the system, a document submitted by the

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(1) Malcolm xlvi (2) R.P.C. ix 238 (3) ib. 714 (4) Malcolm x

Justices for Aberdeen to the Privy Council showed some of the things which they had been up against. They pointed out that people "unlawit be the Justiceis of the Peace will not willinglie mak payment of the fynis and unlawis," and asked that sentences by the Justices should be followed up by letters of horning and poinding to make them effective. They recommended that clerks should be suitably remunerated out of the fines, and that the Justices themselves ought to have half of the fines in order to build a jail in every presbytery. (1) Before the end of 1612, the Privy Council had ordered Justices and their clerks to receive forty pounds a year, and that the constables were to get the sheriff's fee for every act of poinding which they carried out. (2) The Justices themselves were to be fined forty shillings for every day's absence from the Sessions. About the same time as the Aberdeen letter, the Privy Council issued a series of "Articles anent the Justiceis of the Peace," which showed that the Aberdeen difficulties were not isolated. (3) No person or body was to have any jurisdiction over any matter ordained to be within the jurisdiction of the Justices - obviously directed against conflicting claims by other jurisdictions. The type of person subject to the Justiceis of the Peace was defined more accurately as anyone with an income of less than a thousand merks. Some must have been finding the term "landit gentilman" a convenient loophole. The payment of fines had been evaded by a sufficient number to draw a warning from the Privy Council that the non-payment of fines would result in the offenders being put to the horn. The articles concluded by emphasising the power in the hands of the constables. It would have been idiotic to have imagined that there would be no friction between the Justices and existing jurisdictions, and the Council, firm in supporting the new system, took strong action against anyone guilty of contempt of the Justiceis of the

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(1) Letters and State Papers 300 (2) R.P.C. ix 496 (3) ib. 409-11

Peace. (1) At the beginning of 1613, a joint conference between the Privy Council, the Justices of the Peace, and the burghs resulted in a better definition of the position of the Justices and burghs in relation to each other. A committee of five of the Privy Council was to decide in matters of dispute between the landward Justices and the burgh Justices.

In later years, other tasks were given to the Justices of the Peace. At the time of the king's visit to Scotland, they were made responsible for the conveyance of the king's baggage from one shire to another. (2) In 1623, they were given charge of the poor relief in every parish. (3) They were also to report to the Privy Council every November, on the amount of victual within their bounds. (4) In Annandale, in 1625, they were given the impossible task of suppressing the use of firearms - a task in which everyone else had failed.

The Justices of the Peace, like so many other officials in Scotland, were royal nominees. The first batch was appointed by Dunfermline and Dunbar, who were empowered to choose the most suitable people from each county. (5) Thereafter, the annual appointment - in most cases just a renewal of commission - was in the hands of the Privy Council, subject to royal approval. It also transpired that in 1622, from the list of Justices drawn up, the Council asked the king to choose sheriffs, as the time was due for such appointments. (6) The possibility of such promotion must have been an incentive to the Justices to carry out their work with greater enthusiasm and efficiency.

It is doubtful if the Justices of the Peace were a popular institution in Scotland at this time. They were "new fangled", and as such were objects of suspicion. Probably the general opinion of the Justices was best expressed by Gledstones in a Privy Council debate in 1611, "...the institution of the Commissionaris of the Peace was verie recent, without

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(1) R.P.C. ix 447,460,518 (2) ib. xiii 257-60 (3) ib. 304 (4) ib. 680  
 (5) ib. viii 624 (6) Mel ii 466

any warrant of law, and it was na resoun that that Commissioun as ane sone sould over-schadow and obscure all other jurisdictions of the kingdome, and that the realme had many hundreth yeires bene weill governed without Justices of Peace..." (1) Their institution in Scotland did not fit in well with existing and private jurisdictions. They had no control over the landed or wealthier elements of the community, from whom they received little support, and there was no executive power to back them. They met with frequent defiance and contempt in their earlier years, as is evident from action taken by the Privy Council against the perpetrators of such deeds. However, by the end of the Period, there were but few such cases recorded. The Justices had come to be accepted in the judicial structure of the kingdom. Although never of the stature of their English counterparts, the Justices of the Peace in Scotland performed a useful enough function as the nominees of the king and council in every district. As early as 1613, the Bishop of Moray wrote of them, "The Commissionaris of Peace has done your Majesty goode service within the boundis of Murraye, and may do goode service giff thay keipit thair meetingis. Thay ar becum sumquhat more cauld and more cairles..." (2) Though their actual powers were narrow and circumscribed, and though without the weight of the Privy Council behind them they could have done nothing, they had possibilities as the eyes and ears of the Council throughout the country, particularly in economic problems. (3) Nevertheless, no one, not even the king, regarded the Justices of the Peace as a smooth working institution. During his visit to Scotland in 1617, the king showed his disappointment. He had placed, he said, "Justices of the Peace and Constables for preserving the peace and keeping of the laws...which he understood were much neglected; and how that was due partly to the refusal of those whom he had nominated as Justices of the Peace, and partly to the opposition of the greater barons...Those who

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(1) R.P.C. xiv 621 (2) Orig Letters i 305 (3) cf. Malcolm xix

should show themselves hinderers thereof should be accounted enemies of the Crown..." (1) But there was little improvement by the end of the reign. There was no great liking for the system; nor was it hated - it was not strong enough to warrant hatred or fear. Once its opponents had realised its inherent weaknesses, they ignored it, and nothing is more injurious to the healthy growth of an institution than indifference. In fact, it was foreign to Scots law, and exotic plants seldom flourish in Scotland. Yet, despite an inauspicious start, the Justices of the Peace had come to stay, and it is interesting to note that Doctor Malcolm, writing of their position in 1707, claims that by then they were "tenacious of their rights as judges and, far from allowing rival courts to infringe on their jurisdictions, were occasionally apt to encroach on the jurisdiction of other tribunals...they had overcome the opposition of the rival lords of regalities, heritable sheriffs, and barons of baronies, who in many instances, were themselves, Justices...In the opinion of Wodrow, who was a contemporary, they had too much power." (2) This was a position which not even the most sanguine supporter of the Justices would have dared to hope for in 1625.

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(1) Spott iii 243 (2) Malcolm lxxvii

The Borders

It is now necessary to consider the efficacy of the methods adopted by the king and Privy Council to bring under better control the more unruly parts of the country, the Borders, and the Highlands and Islands.

However much James might say that after 1603, the Borders were now the "verie hart of the cuntrey," the character of that region showed little if any change, and the more fractious elements treated the king's law with as scant respect as their ancestors had done. Control over the Borders, which the king now wished to be known as the Middle Shires, was vested by James in his Scottish Privy Council, a charge which was to cause them more trouble than the doubtful honour was worth. (1) It was obvious from the start that the Borders could not be treated as an ordinary law-abiding part of the realm, and that special measures would be necessary.

The first attempt at control was a commission of lieutenancy to Lord Home in July, 1603. (2) By a division of responsibilities very agreeable to the Scots, he was to receive his instructions from the Scottish Privy Council, and his salary of one thousand merks sterling from the English treasury. His powers were to include the right to hold courts; to amerce and imprison, applying the fines to his own use "withowt any accompt thairfoir to use to be yielded" - a concession not at all usual by the king; to have the power of life or death over anyone within the limit of the laws; to frame local by-laws as long as they were not at variance with the law of the land; to appoint deputes and other officials; and to force those at feud to make bands. He himself was to have in advance a complete exoneration from any deaths and damage to property resulting from any actions of his in the performance of his duty. In fact, he was given a

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(1) R.P.C. vi 560-61 (2) ib. 833

virtual "carte blanche" to restore order in the Borders. By the end of 1604, he had appointed a deputy, Sir William Cranston, on whose shoulders was to fall the bulk of the work in the administration of justice for the next few years.

It is evident, however, that the king was not entirely satisfied with this scheme, because in March, 1605, he put in charge of the Borders, a body of ten commissioners, half English and half Scots. (1) Under orders of the commissioners were to be two chiefs of police, one English and one Scottish, each with twenty five horsemen, at a salary of one hundred merks a month for the commander, and twenty five for each of his horsemen. The commissioners were to receive four hundred merks a year from the Comptroller, a sum which was increased four months later to twelve hundred. (2) Each lot of commissioners was to report to its respective Privy Council every two months. This was done fairly regularly, and there are numerous records of the commissioners asking the Privy Council for advice and a ruling on points of doubtful legality. Some of the ordinances imposed were of the utmost severity, such as the death penalty for any Scot stealing an article over the value of twelve pence from an Englishman, and vice versa. (3) In May, 1606, the commissioners submitted what looks very much like an annual report on their activities. They had, it transpired, executed thirty two, banished fifteen, and proclaimed about a hundred and forty rebels, (i.e. those who had not attended the courts of the commissioners on the appointed days.) By the end of 1606, another fifteen had been executed, and the number of rebels had risen to two hundred and sixty. The Privy Council ordered an intensive search to be made for these rebels. The record of the commissioners was impressive - forty seven executions - but two hundred and sixty had got away. It is obvious from these figures that the Border country

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(1) R.P.C. vii 702-04 (2) ib. 714 (3) ib. 717

was in a most disorderly state.

That James was dissatisfied with the general control over the Borders is obvious from his appointment of the Earl of Dunbar to a commission of justiciary over the region in 1607, with the help of four commissioners, among whom were Sir William Cranston and Sir Gideon Murray of Elibank. The Secretary, Lord Balmerino, writing to the king at this time, voiced the Privy Council's appreciation of Dunbar's work, "What furtherance it is to your maiesties service sometymes to spair the Erll of Dunbar to be with us... and what terrour to malefactours and steidfast hoop of peace and justice to all goode men that duelle ather within the boundis of the late marches or cuntreyis nixt adiacent unto thame..." (1) The operation of the new commission was little different from that of its predecessor. It started on the enforcement of a Privy Council act to the effect that iron gates on the houses of broken clans and common people should be removed and made into ploughshares. (2) Certain lairds were removed and warded far from the Borders, (3), while the garrison force started a drive for the collection of taxes, mainly from the Maxwells, who had made no payments since 1597. (4) The system of operation seems to have been that Cranston and the other commissioners made arrests and held the men until Dunbar came along to hold an assize - in July, 1609, Dunbar held a court in Dumfries and hanged a number of thieves previously arrested by Cranston. (5) Just after this, Spottiswood was commissioned to go to the Borders, see to the repair of the churches, and to plant them with ministers. (6) In 1610, Cranston's services were recognised when he was created Lord Cranston of Crailing. (7)

The king and Privy Council seem to have been quite well satisfied with the progress of events on the Borders, which must have been carried out with the usual measure of violence, considering the number of exonerations given to Dunbar, Cranston, Gideon Murray, and others. But

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(1) Den MSS ii 2    (2) R.P.C. vii 271    (3) ib. viii 8    (4) ib. 163  
 (5) Cald vii 48    (6) R.P.C. viii 266    (7) ib. 471

the state of that unsettled region was given a different complexion in an undated, unsigned petition to the king from the "Inhabitants of the laith Borders" - a quaint document, curiously interlarded with Latin tags, appearing, probably correctly, in the volume of State Papers of 1609-11. (1) In it, the writers declare that despite the king's officers, the wilder elements "ar so far from doing of thair dewtie to God, and your Hienes, that all reverence and feare of punisement set sayd, they ar returnit (ut canis ad vomitum) to thair auld accostomet insolences and wicket lyf...so that... those that ar of the most peacebill and obedient sort of subjectis in these parts leifs at this hour in as greit feare of oure lyfs and goods as ever we did at any tyme heertofoir." The Earl of Dunbar, as commissioner, had done good work, but since his departure, the insolence of unruly elements had known no bounds. "...The Erle of Dumbar...and his deput commissioners will not intermedle with ony maters, bot onlie withe new thifts..." Even so, "wyld incests, adulteries, convocations of the lieges, schutting and wearing of hagbuts, pistolets, and lances, dayly bludscheds nather ar nor hes bene puneischt." Nor was there any redress through getting a judgment, because no one would put it into execution. "As for hornyng, thair is no more accompt maid of going to the horne than to the aillhou; for quhen commission is obtenit to the gaird to tak the rebellis (quhilk is our last refuge) Sir William Cranstoun refuses to execute the samyn becaus it belangs not to his commission...my Lord of Scone comes seildome to counsell with his gaird, for ather thay ar dispersit throw the contrie, and said to be imployet in uther commissions, or ellis the hail soume contenit in the commission will not content my Lord for his gudewill and the gaird for thair expensis, or otherwayis thay ar attending upon his Lo. and his privat affairis..." The Guard would execute no commission until Cranston had seen it, and if he had to proceed against any of his friends, he

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(1) Den MSS iii 21

"advertised" the fact beforehand, so that his friend would be warned. "Sir, lat no man dissave your majesty and say that the cuntrey is brocht to quietnes and guid ordour, as the Lord leeves, thair was not sik appearance of unquietnes, sik bludshed nor sik stealing, synce your Hienes happie going in Ingland." It was not the execution of a few simple and poor men - as was done recently in Galloway and Liddesdale - that would bring peace to t the country, but the bringing to justice of "blodie mouthet hundis," the leaders of companies of broken men, the servants and dependants of the deputy commissioners, and such as were under the protection of the big landowners. Therefore, the king was petitioned to do something about establishing the rule of law on the Borders. There was no subscription to this remarkable document, apart from "Your majesties most humble and obedient subjectis the inhabitants of the lait bordors of Scotland." It should be borne in mind that this letter was not written by a politician wanting to catch the king's eye, so nothing was glossed over. But even if allowance is made for exaggeration, it would seem that the state of the Borders at this time was as bad as it had ever been, and that attempts to restore law and order were either regarded with derision by the lawless, or rendered worthless by the discrimination and corruption of those in authority. There is a very great discrepancy between this petition and the story normally told to the king by the Privy Council.

It would seem that this petition was never presented to the king, because Cranston continued to have the confidence of king and council. On the death of Dunbar, he succeeded him as chief commissioner for the Borders, to be joined by another three, including Sir Gideon Murray, and Beton, the Postmaster, at an annual pension of five hundred pounds. (1) However, two months later, in August, 1611, Cranston resigned his commissionership and captaincy of the garrison, and was admitted to the Privy Council with

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(1) R.P.C. ix 194-196

a full exoneration for all his deeds. (1) The new captain, Ker of Ancrum, a cousin of the royal favourite, was empowered to increase the garrison by the addition of a cornet and ten men. So ended the administration of the Borders by Dunbar and Cranston, from which Dunbar seems to have emerged with credit from his few active appearances, and in which Cranston seems to have convinced the king that he had done a good job - an opinion not borne out by the local inhabitants. In fairness to Cranston, it remains to be added that his resources seemed too slender for the work on hand. The task of making the turbulent marches a law-abiding district was too big a venture for a garrison of only twenty five men.

The report presented to the Privy Council on the courts held in Jedburgh and Dumfries in July, 1611, further gave the lie to the contention that the Borders had been reduced to a peaceful condition. (2) In Jedburgh, eighteen were hanged, and fifty declared rebels. In Dumfries, twenty were hanged, and one hundred and twenty denounced as rebels.

In 1613, the Border commission was remodelled. (3) Cranston returned. Sir Gideon Murray and Seton remained, and Ker of Oxnam, shortly to succeed Ker of Ancrum as captain of the combined guard and garrison, was appointed. The salary remained at five hundred pounds a year.

At last, in 1616, the king seems to have concluded that all was not well on the Borders. In a letter to the Privy Council, he complained that recent thefts on the Borders seemed to imply slackness on the part of the commissioners, and ordered the Council to call them up to report on their activities once a month. (4) In January, 1617, the Privy Council convened the commissioners to answer for disorders and thefts perpetrated without redress, to his "maiesties greit offence in respect of greit chairges that his maiestie was at by sustening of a garrison and commissionaris..." (5) They were reprimanded by the Privy Council, told to go about their work with

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(1) R.P.C. ix 289-90 (2) ib. 287 (3) ib. x 168 (4) ib. 847

(5) Den MSS viii 2

greater diligence, and to report back to the Council on the first day of sederunt after the Convention in March. The Privy Council had obviously taken alarm that a system which they had perhaps allowed to slide for the sake of avoiding trouble, should be exposed on the eve of the king's visit to Scotland. The Privy Council had not supervised Border administration adequately, either having been deceived by the commissioners, or else having deliberately shut their eyes to a laxness in the conduct of affairs.

From 1617 onwards, the character of the control over the Borders began to change. The royal reprimand of 1616, and their own subsequent investigations, convinced the Privy Council that the existing system of control by the commissioners was not successful. The commissioners were retained, but in August, there was a reversion to the old policy of making the landowners themselves responsible for law and order. (1) Certain Border lairds gave bands, making themselves responsible for everyone within their territories. Others gave bands in the following months, until what in effect took place, was a revival of the "General Band" of 1602, in which every Border landowner appeared personally, and gave assurances for the good conduct of his tenants. At the same time, the king instructed the Privy Council that landowners who arrested criminals should be allowed to try them.

The Privy Council, in May, 1618, reported that the new system - the commissioners, plus the guard, plus the active co-operation of the landowners - was working well. (2) But already, they had under consideration a scheme prepared, with the king's blessing, by the English Privy Council. It was, as might be expected for anything having the king's approval, a much more elaborate scheme than any of the others. There was to be a joint commission of thirty Scots and thirty English - with a quorum of only five! The old Scottish commissioners were not to be superseded,

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(1) Den MSS viii 26 & 34

(2) ib. 47

but the new commission was to have more extensive powers, and was to symbolise the closer union between the two countries so dear to the king. The Privy Council protested that a clause to the effect that the worst offenders be sent to Virginia, or "sum remote pairtes" was unnecessarily severe, only to receive by return a homily from the king on the necessity for such a measure. Dutifully the Council withdrew its objection. By August, the scheme was ready to be put into action, and the king ordered the Council to have all the rules and ordinances connected with it displayed in all the Border towns. Most of the laws were old ones recapitulated, and already known to all; but there was a new ordinance to curtail the number of public houses, as these were meeting places for undesirable characters; nor were landlords to allow dicing, card playing, or excessive drinking on their premises. (1) The king's hand is visible in this law, pinpricking in effect, and unworkable in practice. At the beginning of 1619, the Privy Council suggested that when transportation was ordered for wrong-doers, their advice and opinion should be sought, but there is no record of the king's reply.

After the disbandment of the guard, there was an inevitable increase in theft and lawlessness. The Privy Council consulted a meeting of Border landowners as to a remedy, only to be told that the guard should be re-appointed. Failing that, the lairds suggested a special commission. This advice was sent to the king, who appointed the Earls of Nithsdale and Buccleugh, and John Murray, his secretary in London, and now a considerable landowner. (2) This new commission was not to supersede that which already existed, but was to act along with it. Each of the commissioners was to nominate ten gentlemen to employ as agents, and who should have the powers of fire, sword, and siege. In other words, the king re-instituted a guard thirty strong at no expense to the public funds! There is no evidence in

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(1) R.P.C. xi 506

(2) ib. xii 675-79

the commission, or elsewhere, of expenses or emoluments of any kind either being granted or taken, nor have there been found complaints by local inhabitants about any oppressions of this kind having occurred. However, such a commission without perquisites would have been unique. There can be little doubt that the commissioners must have received at least their expenses from the proceeds of the administration of justice.

It is interesting to note that the Johnstones protested against being put under the jurisdiction of the Earl of Nithsdale, with whom, as a Maxwell, they had a blood feud, in case revenge should influence the administration of justice. The Privy Council, no doubt remembering the activities of Argyle in the Highlands, granted the necessary exemption. (1) This exemption was abrogated by the king's command in June of 1623, after lasting for just over a year. (2)

In a short time, Buccleugh got permission to increase his force by six men, and in due course, the others increased theirs by five each. (3) In 1623, the number of the old commissioners was increased from four to seven, (4), and in 1624, to nine. (5) As was inevitable, there was conflict in jurisdiction between the various sets of commissioners and the landowners who had taken bands for the good conduct of their tenants. Despite, or maybe because of all the measures taken, the king got the Privy Council in 1624 to call a meeting of the commissioners to discuss means of tightening up control, as there were still too many guns and pistols in evidence. The story ends on a note of discord between the Earl of Buccleugh and the burgh of Jedburgh, the town complaining of the expense of having to keep in prison the culprits arrested by Buccleugh, and the earl complaining that the burgh refused to take his prisoners unless he paid for their keep. By the end of the king's reign, as Nithsdale had gone abroad, and John Murray, now Earl of Annandale, was in constant residence in London, the Earl

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(1) R.P.C. xii 673 (2) ib. xiii 261-62 (3) ib. 17-18 (4) ib. 155-57  
 (5) ib. 542-43

of Buccleugh was virtual controller of the Borders. Once more, control of a region had been vested in a powerful local magnate.

It cannot be claimed that the administration of the Borders by the Privy Council was a success, though the control exercised was probably as effective, if not more effective, as at any time before. But their policy lacked definition. There was too much changing of systems and not enough continuity. The garrison and guard certainly kept down lawlessness, but by no means exterminated it. As late as 1622, twenty two men were hanged in August, in Jedburgh, and twenty three proclaimed rebels for not appearing at the assize. In the following April, nineteen were hanged, and twenty seven proclaimed fugitives.(1) The Privy Council did not at any time exercise careful supervision over the Border commissioners, and it was obvious that the commissioners had only occasional fits of energy. Of course, a stronger line of action would have required a much bigger guard, and would have meant a greater drain on the exchequer; and there is no doubt that James grudged even the upkeep costs of the guard as it stood. The policy of the Privy Council for the Borders was adequate for the prevention of major disturbances, but it lacked the drive and energy necessary to convert the Borders into a completely law-abiding part of the country.

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(1) R.P.C. xiv. 691 & 713

The Highlands and Islands

Another part of Scotland which required special treatment was the district North of the Highland line, and a clearer picture will be had if the special problems arising are treated under separate heads: the Macgregors; the Western Isles; and Orkney and Shetland. Though the Privy Council frequently assured the king that the Highlands were quiet and peaceful, this was seldom so. The king's law was obeyed by the clans only when it suited them, or when they were momentarily coerced. No provision was made for a permanent guard or garrison in the Highlands. In any case, the force required would have been too large and too costly. The method of control was by giving commissions of lieutenancy to noblemen to deal with any particular trouble which might have arisen in some district - that is, to deal with the trouble after it had arisen, rather than to prevent it from arising at all. This was a negative rather than a positive policy, and was, in consequence, limited in its success.

The Macgregors

The problem of the Macgregors was not of recent origin, and there is much truth in the opinion that they "were lawless because their scanty feudal rights were not commensurate with the needs of a people so numerous and so warlike." (1) Successive confiscations of lands had made the

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(1) Cunningham 131

Macgregors a clan without roots, casting envious and nostalgic eyes on the territories which had once been theirs. Those who lived as tenants on some of their former lands had little security, as the landlords were prepared to throw them out on any excuse to make room for their own clansmen. The Macgregors who were thus dispossessed, and deprived of their means of livelihood, could hardly be blamed for developing anti-social tendencies. The chief, himself landless, could not be held responsible for the activities of his landless clan. Nor did sixteenth century legislation help the position of the Macgregors, especially the act sanctioning reprisals against any Macgregor if the actual culprit could not be found. (1) This meant in practice that the most readily accessible were not the broken men, but those who were settled as tenants - and when they took up arms in self defence, they were evicted by their landlords, and went to swell the ranks of the broken men of their clan. The Macgregors cannot be held blameless for the treatment they received, but on the other hand, the measures adopted against them were seldom wise or statesmanlike.

One of the worst features of the problem was that of the Highland landlords using the Macgregors to fight their clan feuds for them, which was neither to the credit of the chiefs nor to the benefit of the Macgregors. The greatest sinner in this respect was the Earl of Argyle, who made use of the Macgregors in the feud between the Campbells and the Colquhouns of Luss, which resulted in the slaughter of the Colquhouns at Glenfruin. It was this action of the Macgregors which led to the organised campaign by the king and Privy Council for the extermination of the clan. In April, 1603, an act of council was passed proscribing the clan and abolishing the name; (2) while at the beginning of 1604, the chief and eleven of his kinsmen and retainers were hanged and quartered. After a period of comparative quietness, partly due to Argyle's preoccupation with Kintyre, (3), which he

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(1) A.P.S. iii 218-19 (2) R.P.C. vi 558 (3) Cunningham 157

had received in 1607, the activities of the clan reached such a pitch that in 1610, a commission of fire and sword was issued to twenty eight nobles and lairds in surrounding districts to proceed against the Macgregors. (1) By this means, the king and council hoped to get rid of the Macgregors at no personal cost. But the commission lacked efficiency. Even when a band of Macgregors turned at bay on an island in Loch Katrine, their pursuers found it impossible to come to grips, and they escaped. In fact, it is obvious that the hunted clan was receiving both sympathy and help from many of its neighbours, who disapproved of the severe policy of the government. Warnings against such help were issued by the Privy Council, but they seem to have received scant attention.

At the beginning of 1611, the campaign was intensified by the offer of a thousand pounds to anyone slaying one of six named Macgregors; a hundred merks for the head of any lesser Macgregor; while any Macgregor himself could earn a pardon by bringing in the head of a fellow clansman. This was the start of a singularly brutal and cold-blooded campaign against the Macgregors, planned by the Privy Council, to be executed by the willing agency of Argyle and the Campbells. "By justice and the sword," they were to "ruit oute and extirpat all of that race...that solbe found rebellious and disobedient." As a reward, Argyle was to get the escheat of the movables of the rebels forfeited to the crown. Argyle and the Privy Council decided that the best thing to do with the wives and children of the clan was to brand the wives, and then send both to other parts of the country. No mercy was to be shown to a male Macgregor unless he brought in a better head than his own, and no mercy to a leader, unless he "bring in at least halff a dusone of thair headis." A commission was appointed to name all those who had helped the Macgregors, and to value their estates so that they might be suitably fined. This policy of cynical brutality was carried

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(1) R.P.C. ix 46-49

through in 1611 and 1612, at no cost - indeed at some gain - to the state, but without succeeding in extirpating the rebels. The Macgregors were crafty foemen, and Argyle was lacking in drive. Indeed, a new act of the Privy Council of January, 1613, declared that the Macgregors, "takand new braith and courage unto thame...haif begun to flock togidder in companyis, armed with swords...", and enacted that they should carry no weapon except "ane pointles knyfe to cut thair meate, under the pane of dead." In March of the same year, Argyle reported to the king that only about two dozen Macgregors were still at large. The rest had been hanged, shot, or redistributed under changed names. Of these, the largest category was undoubtedly the last. Indeed, it was very doubtful if there was still such a small number using the forbidden name. James, who seemed to doubt Argyle's rather facile estimate, told the Privy Council that Argyle's work must go on until there were no more than a dozen Macgregors at large, and that all who had been convicted of resetting the rebels should be fined at the rate of one fifth of their means.

The main interest of the Council now centered on the lucrative business of fining those who had helped the rebels. Resetting the Macgregors had been a better protection against the "outlaws themselves than any afforded by the government...There was the convenience of having desperate men at hand for hazardous enterprises, and for purposes of defence from others." (1) So, in April, 1613, a special commission was set up to assess and exact the fines. (2) The money was to go to Argyle for the trouble of his lieutenancy. Curious to relate, without any evidence of pressure, Argyle freely offered in July, twenty two and a half per cent of all such fine money to the king; an offer which, needless to say, was accepted. (3) The commission for the next year toured Scotland from Wenteith to Inverness and Moray, fining all resetters, till by the time

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(1) Cunningham 159 (2) R.P.C. x 31-32 (3) Den MSS iv 40

they had finished, they had fined nine hundred people sums ranging from four thousand pounds to ten merks, resulting in a grand total of over one hundred thousand pounds. Only one discordant note was intruded into this orgy of money making, when Colquhoun, talking from bitter experience, accused Argyle himself of being the resetter in chief of the Macgregors. (1) The silence which greeted this accusation in official circles was more eloquent than any attempted denial - and it is a fact that many of the Macgregors had adopted the name of Campbell. Argyle had taken over much of the former Macgregor territory, and in common with other landlords who had done likewise, was exempted from any payments for it to the king, on condition of undertaking the upbringing of the Macgregor children and orphans.

There is no doubt that the Macgregors, by 1614, were not in a state to stir up any trouble, nor is there any doubt that in every part of the Highlands, many members of the dispersed clan were living under different names, aided by fellow Celts against the severity of the government policy. But the main cohesive strength of the clan had been broken, and future outbursts were sporadic and on a small scale. In 1617, and 1621, all the old acts were reissued as a warning to a "new breede and generatioun" of Macgregors which was beginning to stir, and, in particular, against six who were running wild in Lennox. Even as late as March, 1625, the Privy Council was offering full protection to any Macgregor who would appear and find caution for his good behaviour.

In the Macgregor policy, the Privy Council merely enacted the will of the king, who, in turn, put into operation the old plan of using a great landowner to carry out royal policy in his own way, and to take his own reward at the expense of the victims. It was cheap as a short term policy, but dear as a long term one. It increased the already great strength of

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(1) R.P.C. x 162

the Campbells, and increased the fear and distrust their neighbours felt for them. The Macgregors, though dispersed and landless, were not extirpated. The Privy Council had dutifully translated the king's letters into actions. The faults were the king's, not theirs.

### The Western Isles

The most consistently troublesome district of the Highlands was undoubtedly the Western Isles. Not long before going South, James tried an interesting experiment. He believed that "if he could plant lowland settlers...they would maintain orderly government, and enrich themselves and the country by their industry and enterprise." (1) He had an act of parliament passed in 1597, for the plantation of burghs in Kintyre, Lewis, and Lochaber. (2) Of this scheme, only the plantation in Kintyre was to meet with any measure of success in the king's lifetime. Nothing was done until after the Earl of Argyle had received a charter to the lands of Kintyre in 1607. Two years later, he was released from the payment of the feu duties of his Kintyre estates, on condition that he set up within five years, a burgh to be inhabited by lowlanders. Without further delay, the earl set about establishing the burgh which was to be known as Campbelltown. Mr. McKerral, in his "Kintyre in the 17th. Century," points out that although Argyle was given permission to evict large numbers of tenants in Kintyre to make way for the incoming lowlanders, there were, in fact, no wholesale evictions, and that by the end of the century, the old inhabitants, and incoming Campbells and lowlanders were living side by side. Although the main plantation was to take place in the middle of the century, a

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(1) Cunningham 171 (2) A.P.S. iv 139

successful, if very small beginning was made by Argyle in 1609.

In contrast to the Kintyre scheme, the attempted plantation of the Fife Adventurers in Lewis was an unmitigated failure. The three attempts which were made in this venture before it was abandoned in 1609, were defeated not only by the strong antagonism of the local inhabitants, but also by "the obstacles secretly but perseveringly thrown in their way by the three great Northern chiefs, Macleod of Harris, Macdonald of Sleat, and Mackenzie of Kintail." (1) In addition, the Adventurers had no experience in colonisation, nor were they Gaelic-speaking; and they fell into the "fatal error of other pioneers among primitive people that it is folly to keep faith with the faithless." (2) It was a failure due as much to the faults of the settlers as to local opposition.

In 1605, while these plantation schemes were in the air, Lord Scone, Captain of the Guard, and Hepburn, his lieutenant, were released from their official duties to lead an expedition with a commission of fire and sword, for the restoration of law and order in the turbulent islands. (3) The men and necessary sailors were to be supplied by the West Country, and provisioned for forty days, which drew a protest from the landowners of the West, who thought the expedition unnecessary. (4) In fact, nothing of importance seems to have resulted, though Scone received six thousand pounds as expenses. Submissions were received from some of the chiefs of the Southern isles, but Scone was not "able either to compel the attendance of the more distant chiefs, or to punish them for their contumacy." (5)

After this, the king toyed with the idea of having the isles subdued by a big landowner at his own expense, but with, of course, recompense of his own finding for his trouble. The noble in question was Huntly. The terms submitted by the earl were put by James before the Privy Council for their comments, and they at once, and rightly, picked holes in them,

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(1) Gregory 280 (2) Cunningham 177 (3) R.P.C. vii 60,70 (4) ib. 92  
 (5) Gregory 308

advising the king that they were far too much in favour of the earl. The Council, in turn, drew up counter proposals for the king to submit to Huntly, and so, 1606 and 1607 passed in a rather unseemly haggling match between the king and one of his greatest subjects, with the Privy Council as a sort of biased umpire. Luckily, the king allowed Huntly to fall into the clutches of the kirk, in the matter of his Roman Catholicism, which resulted in the earl being confined to the vicinity of Elgin. One of the main points of the scheme - to which, it must be remembered, the king gave most careful consideration - had been the extirpation of the local population. It is unfortunate for the king's reputation that he even considered such a plan, which stands out in such violent contrast to his earlier plantation scheme.

At the same time, Argyle, as a reward for services against the Macgregors, was given a charter of lands in Kintyre and Jura forfeited from Angus Macdonald of Dunivaig, (1), which caused the clan to "despair of obtaining any favourable terms from the government," (2), and a commission of lieutenancy for six months over the Southern isles. (3) However, not feeling strong enough to take action at the time, he did nothing. During the negotiations with Huntly and Argyle, the king found time to rebuke the Privy Council for not having done anything themselves to reduce the isles to order! Indeed, a series of proclamations had been issued dealing particularly with the Lewis, where the plantation scheme was making heavy weather, but which no one had obeyed. The Privy Council, in fact, seemed quite happy about the state of affairs in the Highlands. Twice within a month, in December, 1606, and in January, 1607, they reported to the king that "the hielandis are in fit ordour and obedience..." (4)

However, it was obvious that all was not well, because in May, 1608, the Council wrote to the king asking him to appoint a lieutenant to reduce the isles to obedience. (5) They had already made a levy of five hundred

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(1) A.P.S. iv 379 (2) Gregory 312 (3) Hist MSS Comm iv 489

(4) Den MSS i 73, ii 3 (5) ib. ii 61

men, and ten thousand merks for the first month's pay and transport, and expressed a belief that fines for absence from the levy would be enough to cover the second month's pay. Lord Ochiltree was appointed to command the expedition, with Bishop Knox of the Isles as second in command. This expedition succeeded in pacifying Islay and Mull, and in enticing nine local chiefs on board ship, to bring them all captive to Ayr, an accomplishment which was regarded by the Privy Council with great satisfaction.

At the end of 1608, there were indications that the king had not abandoned his plans for a peaceful settlement of the West Highlands. A commission of seventeen Privy Councillors was set up, with Spottiswood as convener, and containing all the usual names - Dunfermline, Dunbar, Mar, Cockburn of Ormiston, Sir Thomas Hamilton, Preston of Fentonbarns, and the others, but not Argyle. The object of the commission was to pacify the Highlands, not by fire and the sword, but by introducing "civilising" influences - by which was meant lowland culture, the founding of towns and seaports, and the transportation only of those who resisted and refused to take up industrious pursuits. There were to be no large confiscations of lands or evictions of natives. It was "the first attempt for many years to give the highlands the advantages rather than to inflict the terror of law and civilisation." (1) But nothing was to be done without the king's approval. Nothing was, in fact, done until Bishop Knox returned from a visit to the king in June, 1609, with definite instructions for an expedition to the isles under command of the bishop himself, with Hay, the Comptroller, as second in command. "The Bishop of the Isles and Sir Andrew Hay...expressed very strong criticism of the old methods, and the authority committed to the Bishop was almost an act of hostility to Argyll." (2) Knox was to make a survey of the land, its owners and tenants, and was to try to negotiate with the chiefs. Only as a last resort was he

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(1) Cunningham 205 (2) ib. 198

to use force. The expedition set out in July, and at the end of September, the bishop presented his report to the Privy Council. What he brought back with him was the document known as the Band and Statutes of Icolmkill. At a court held in August, he induced nine chiefs to bind themselves to future obedience to the king and the laws of Scotland, and to agree to nine statutes drawn up by the bishop. The chiefs promised to establish a regular parish ministry; to set up inns in the islands; to clear out vagabonds, and put down begging and sorning; wines and strong liquor were to be imported only for the chiefs' own consumption; the act prohibiting the carrying of firearms was to be strictly enforced; the chiefs were to arrest all wrongdoers found in their lands, and hand them over to the king's judges; and every gentleman "worth" more than sixty cattle was to send his eldest son to school in the Lowlands, where he would learn to speak English. The Band and Statutes were regarded as a big step towards bringing the islands more completely under royal jurisdiction, with the exception of Lewis, where the chief, Neil Macleod, was in a state of more or less permanent revolt. Certainly, if obeyed, the Statutes of Icolmkill offered a possibility of a settled and ordered society in the islands for the first time. The signatory chiefs were ordered to report annually to the Privy Council in Edinburgh on their behaviour, and this was obeyed regularly. But, of course, the statutes were not subscribed by all the chiefs of the isles. The statutes were not promulgated until 1610, and at the same time, Bishop Knox was made "Steward of all the Isles" with his headquarters at Dunivaig castle in Islay. This was a step in the right direction, as the bishop "was not open to the suspicion of using his authority to forward feudal ambitions of his own." (1)

For four years, there was peace in the islands, "except the Lewis and the Ile of Barra." (2) However, even these two became peaceful after the

capture and hanging of Neil Macleod of Lewis in Spring, 1613. Knox's stewardship seemed to have given peace to a turbulent region, when without any warning, in March, 1614, the Macdonalds captured Dunivaig Castle. The Privy Council order to give up the castle was ignored, and Knox allowed himself to be trapped on Islay by the rebels. To secure his own release, the bishop had to agree to giving them Dunivaig, a free pardon for all their crimes, and to leave his son and nephew as hostages. After reference to the king, the Privy Council decided on an armed expedition under Sir John Campbell of Caddell, reinforced by two hundred men and six cannon from the Lord Deputy of Ireland, to reduce the rebels. Miss Cunningham's claim, that the "Statutes of Icolmkill struck out a new line of highland policy," (1) is an over-sanguine assessment. As soon as the trouble started, the government resorted to the old methods. The Laird of Caddell was a Campbell, and an interested party in any action against the Macdonalds. Meanwhile, the Council had secured the release of the hostages, but not the surrender of the castle. In January, 1615, Caddell captured Dunivaig and executed twenty Macdonalds, another six being executed in Edinburgh in July. In May, however, Sir James Macdonald, who had been imprisoned in Edinburgh Castle for twelve years - since 1609 under the sentence of death - made a spectacular escape, and had no difficulty in raising a force of three hundred men to recapture Dunivaig in early Summer. A letter of the thirtieth of June, 1615, from the Privy Council to the king, contains an illuminating comment on the situation, "...the giving of thair landis, over thair headis, to the earl of Argyle, and his friendis, is pretendit be thame (the rebels) to be the caus (of the trouble)..." (2) This opinion was, indeed, heartily endorsed by Bishop Knox, who had been long enough in the isles to be able to make a pretty reasonable appreciation of the situation - "It is nather good nor profitabill to his Maiestie or this cuntrie to mak

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(1) Cunningham 205 (2) Den MSS vi 39

that name (Campbell) grither in the Lylles nor thay ar alreadie, nor yit to rut out one pestiferous Clan and plant in one lytill bettir." (1) There was probably a great deal of truth in these statements. The troubles were caused not so much by any antagonism between the Macdonalds and the king's government, but rather by the fear and jealousy felt by the clans for the over-powerful Campbells, whose clever chiefs, by posing as supporters of the extension of royal jurisdiction, now, as at other times in Scottish history, were putting themselves and their clan in a position not merely of power, but of paramountcy in the South-Western Highlands. The king and Privy Council would have done the royal cause more service by employing as their agent a lowlander, rather than any member of the clan Campbell, none of whom was "persona grata" to the islanders. However, the Privy Council, on instructions from the king, gave a commission of lieutenancy to Argyle himself, (2), fresh from his activities against the Macgregors, in August, 1615. He was to have a force of four hundred, in addition to whatever local levies he could raise, and was to get the fines and escheats of all convicted of countenancing the rebels in any way. By the time that Argyle reached Islay, Sir James Macdonald was reputed to have a thousand men under command. However, he was out-maneuvered by Argyle, and forced to flee to Ireland. Dunivaig was recaptured, and twenty unimportant rebels were hanged. The ringleaders had escaped, and the general impression was that Argyle might have done more, and, indeed, might have cleared up the situation in the islands for good. The sequel to this came in 1617, after Argyle had gone to the Spanish Netherlands and embraced the Roman Catholic faith. He was then openly accused of what had been hinted at earlier - double dealing with Sir James Macdonald, and connivance at his escape. When Colquhoun's accusation against him, of reset of the Macgregors, is

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(1) Orig Letters ii 393 (2) This was Argyle's third commission of lieutenancy for the Western Isles since 1603, but he had taken no active steps to implement the previous two, in 1603, and 1607. (Hist MSS Comm iv 489).

considered along with this later accusation of a similar activity, Argyle emerges with little credit.

There was no further major disturbance in the islands up to the end of the king's reign, though there was a constant tale of petty feuds and minor, but irritating acts of lawlessness, such as might be expected from any unpoliced region. The islands, like the Borders, were no worse in 1625 than they had been in 1603. The watch kept by the Privy Council over the chiefs of the Icolmkill agreement was useful as far as it went, the idea of plantations had interesting possibilities, but the money-saving expedient of employing one local magnate to check the others was not successful. Argyle and the Campbells were too much disliked to be employed with any equity as royal agents. Once more the hands of the Privy Council were tied by their inability to maintain a regular police force in the islands. In any case, the policy carried out by the Privy Council for the islands, as for everything else in Scotland, was dictated from England. Even so, the Privy Council did not produce a policy of its own, or, if it had a policy, it was never made known.

#### Orkney and Shetland.

Another part of the king's Northern territories which had very special troubles was Orkney and Shetland. The earl, Patrick Stewart, who was the king's half cousin, had misgoverned and oppressed the region to such an extent that he was confined in Edinburgh Castle, and Law, the Bishop of Orkney, was given the task of trying to restore law and order, in the hope that he would be as successful as Bishop Knox had seemed to be in the West.

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In November, 1610, the Bishop and Sir John Arnot were appointed principal Justices of the Peace for Orkney and Shetland. (1) The king and council then proceeded with the task of bringing the Northern isles under the king's law. In May of 1611, an act of the Privy Council proclaimed the abolition of all foreign laws in Orkney and Shetland, and ordered that only the laws of Scotland should be observed. (2) In the following month, Bishop Law and Sir John Arnot were appointed sheriffs and commissioners for the islands, with a very wide scope for bringing the region under royal rule. (3) Not only were they to deal with all riots and oppressions, but they were, in particular, to sit on cases of ejection from lands, because of the expense involved in litigants having to come to Edinburgh. They were, in fact, to dispense justice as if they were the Court of Session.

In Autumn of the same year, Earl Patrick, whose imprisonment was not too rigorous, sent a commission of justiciary to his natural son, Robert, who proclaimed himself sheriff in defiance of the king and council. In 1612, the earl was transferred to Dumbarton to be under closer surveillance, and in October, the parliament of that year passed an act annexing anew the "landis of Orkney to the crowne," to facilitate which, Sir John Arnot sold his lands in Orkney to the king for three hundred thousand pounds. (4) Bishop Law was appointed supreme commissioner for the crown estates, (5), and Robert gave an oath to the Privy Council never to return to Orkney without a royal licence. Earl Patrick was brought back to Edinburgh and given more freedom.

However, in Spring of 1614, Robert reappeared in Orkney, and started to fortify the castle and kirk of Kirkwall. His father was at once taken back to Dumbarton, and as this was obviously open defiance, a commission was given to the Earl of Caithness, the nearest big landowner, to stamp out the rebellion. He was joined by Bishop Law. After a siege lasting for a

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(1) R.P.C. ix 79-80 (2) ib. 181 (3) ib. 185-186 (4) Only sixty thousand was paid. See Appendix "D". (5) R.P.C. 479-81

month, the kirk and castle were taken, a number of the garrison hanged on the spot, and Robert and others taken to Edinburgh, where they were hanged at the beginning of 1615. Earl Patrick was beheaded for having incited the rebellion. The policy of the king and Privy Council was the same here as in the Western isles - to use in addition to the bishop a big landowner when trouble started - this time with conspicuous success, but at greater expense. Caithness received nearly eleven thousand pounds as expenses, but that was probably much cheaper, and less troublesome for the future, than to give him choice pickings from his conquests.

The treatment of Orkney and Shetland was in line with the king's policy of extending royal jurisdiction over every part of the country, and there is no doubt that the activities of the Earl Patrick and his family furnished James with an excellent excuse for the erection of the islands into a sheriffdom, the establishment of commissary courts, and the introduction of Scots law and administration. (1) The main credit for this work, and for the fact that there was no more trouble from Orkney and Shetland for the rest of the king's reign, must go to Bishop Law, who was entrusted with the task. The policy of making use of non-hereditary bishops like Knox and Law, shows that the government was fully alive to the dangers of letting loose hereditary territorial magnates to work their will on a district. The unfortunate feature was that when trouble started; the government's executive power was too weak to deal with it, and a reversion to the old policy was necessary.

The rest of the Highlands were moderately quiet with sporadic outbursts of unrest rather than serious trouble. The Earl of Caithness, who had been employed to put down the Orkney rebellion, had been ordered by

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(1) Mait. Club Misc. ii Pt.1 157 seq.

the Privy Council only a few years before to find caution of twenty thousand merks for the "incivile and barbarous" behaviour of his kinsmen and subjects. From 1613 onwards, the king, Privy Council, Argyle, Huntly, and everyone else who took a hand, were all cleverly deceived and played off against each other by Cameron of Locheil. Locheil was in dispute with Argyle and Huntly over the ownership of some lands in Lochaber. The Privy Council offered a reward of a thousand pounds for his capture, and gave Huntly a commission of fire and sword against him, but Locheil cleverly played off Huntly against Argyle, who did not want the powerful Northern noble near his territory. Later, a similar commission was given to the laird of Mackintosh, but that ended in a quarrel between him and Huntly, and so, once more, Locheil escaped. The doughty Cameron maintained his position against all, until he voluntarily appeared in 1624, before the Privy Council, and had everything settled in his favour.

That the state of the Highlands was not all that it might have been is obvious from an action taken by the Privy Council in March, 1625. A summons was issued to a number of Highland landowners to meet the Privy Council and consult as to the best way of suppressing crime and ensuring peace. Accordingly, thirty six Highland lairds met a committee of twenty one of the Privy Council. The proposals which were adopted are interesting, though limited in scope, and were obviously influenced by the methods used on the Borders. There was to be a mounted police force of two companies of twenty each and a captain. Each company was to be responsible for a well defined district - the first, Strathearn, Menteith, and Lennox; the second, Atholl, Dunkeld, Glenshee, Strathardle, Strathtay, Strabrane, Breadalbane, and the Braes of Angus. The Captains were James Stewart, Depute Steward of Menteith, and the Laird of Balliachan. Nothing, it seems, was to be done beyond the central Highlands, in a broad arc from Loch Lomond to Drumochter,

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on to Glenshee, and then down into Angus. But it was a point in favour of the Privy Council that they were at least broadening their conception of what area of the country ought to be under effective control, and a "standing force of any kind, serving for fixed pay, under officers holding a permanent commission from the king, was an entirely different thing from the haphazard issuing of letters of fire and sword, or commissions of lieutenancy to the enemies of the offenders, with a prospect of reward from the spoils when vengeance had been taken." (1) There were, however, vast tracts of land over which there was to be no control except by commissions of fire and sword once trouble had broken out. But there is little doubt that finance was the limiting consideration. A force of at least two hundred would have been needed, which would have strained the country's resources to the breaking point.

The powers of the Privy Council over the turbulent Borders and Highlands were limited by the permissible expenditure. The obvious remedy was a preventive and deterrent to crime and disorder - a police force large enough to be seen, and to make its presence felt in every area. The attempts made in this direction were inadequate, and the employment of local men on such work, though having some advantages, had more disadvantages, and carried with it the danger of accusations of a lack of impartiality. The forces which did exist at various times were quite inadequate for the prevention of trouble, though competent enough to deal with it once it had arisen. Without the sanction of a permanent force, the efficiency of the Privy Council was circumscribed. The continued policy of giving control of punitive expeditions to local magnates on the understanding that they should make what they could out of them was weak and futile, dictated by lack of money, and with little to commend it from either the theoretical or from the practical angle. A man like Argyle did the cause of the government more

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(1) Cunningham 168

harm than good, though a man like Bishop Knox, given better support might have achieved much more, and would have been a real strength to the Council. The control of the Lowlands presented no trouble of any note, partly because of a greater tradition of lawful obedience to authority, and partly because in the early years at any rate, the people were conscious of the presence of the King's Guard. The Privy Council had the Scottish Lowlands well under control as far as acts of violence and law breaking were concerned. The Borders were as well under control as they had ever been, but the number of hangings points to the fact that there was still much lawlessness. In the Highlands and Islands, Bishops Law and Knox made a solid contribution towards extending royal jurisdiction over two remote and turbulent regions, but lacking executive power, they could not prevent rebellions, though the participants in such uprisings could be, and were, punished by the Privy Council after the event. The Privy Council went as far as it was allowed within the expenditure permitted by the king. Beyond that, they could not go, nor, it must be confessed, did they show any likelihood of so-doing, even if they had been given a free hand.

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The Privy Council and the Kirk (1)

No course of action by the king was more important either in operation or in consequences than the overthrow of the presbyterian kirk and the introduction of episcopacy. Before he went to England, James had had many experiences which convinced him that the presbyterian kirk was incompatible with his conception of autocratic rule by Divine Right. He had also wanted the churches of England and Scotland to be akin, feeling that it would make easier his path to the English throne. Once established in England, James had told the puritans, "No Bishop, no King," and that principle was to be applicable to Scotland as well. A church with royally appointed bishops was a necessary prop for the throne, and James, using every instrument in his power, left no stone unturned until he had achieved his object. Obviously his Privy Council in Scotland was to play a large part in carrying out and enforcing the king's policy. Not that the king allowed them to formulate policy - their task was merely to act as agents of the royal will, on the formula, "our will is heirfore, and we straitlie charge you and command...."

1603 and 1604 saw little major activity. The king's main concern was to put a brake on any undue pressure being brought to bear on Huntly and the catholic earls by over zealous presbyteries. In this matter, the Privy Council merely passed on the royal commands without comment to the presbyteries concerned. James decreed that if the nobles in question could satisfy a presbytery on most points of doctrine, then he must on no account be excommunicated, and the Privy Council must "interpose (its) authoritie . . . to discharge the ministrie of suche proceeding till we be first adverteissit..." (2)

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(1) See Appendix "F"

(2) R.P.C. vii 467

The first major crisis arose over the matter of the illegal Assembly in Aberdeen in July, 1605. Since going to England, the king had contrived to end the regular annual meeting of General Assemblies which had been going on since 1560. By an act of 1592, it was laid down that the next meeting of the General Assembly should be appointed by the Royal Commissioner, but nothing was said as to what should be done if the Royal Commissioner omitted to name the day. And in 1603, the Royal Commissioner omitted this step. The kirk was told in 1604, that the General Assembly was postponed, and it was evident that the kirk, having been outmanoevered by the king, would be taking action contrary to the letter of the law if it endeavoured to call a General Assembly. An Assembly was, however, convened by the kirk to meet in Aberdeen in 1605. It was forbidden to meet by the Privy Council on the king's command, "under the paine of rebellion and putting them (the clergy) to the horne." (1) At the same time, the Privy Council, knowing that it would have to deal with any trouble arising from disobedience, sent a letter to the clergy advising them not to proceed with their plans: "We haif thairfoir, thoghte mete heirby to advyse you to consيدر of this mater...and wyselie to foirse what prejudice suche rashe and unadvisit proceedingis may draw upoun your Estate. For we ar perswadit that his Hienes will very hardly degeist that mater." (2) It was a very fair warning, and a genuine attempt by the Privy Council to avoid trouble. The warning was, however, not taken by some of the clergy, who "thought it a most necessar duetie oughtand to Christ and his kirk, to conveene in their Generall Assemblies yeerely," (3), and the Council had no alternative but to denounce as rebels the eighteen ministers who convened in Aberdeen, and put them to the horn. (4) The king, of course, wrote in fury to Balmerino that it "savoured nothing else bot of seditioun and plane contempt of us and our autoritie...we will rather mak chois to caus proceid with rigour and

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(1) R.P.C. vii 62 (2) ib. 471 (3) Cald vi 265 (4) R.P.C. vii 82

extremitie aganes (them)...and thairfoir eftir you haif consultit with our  
 Advocat, you sall aggravat to cure Counsell the haynousnes of thir crymes,  
 and thaireftir adverties us how far they haif come within the compas of the  
 law." (1) On receipt of this, the Council acted with alacrity. The  
 letter was signed by James on the nineteenth of July, and by the twenty  
 fifth of the same month, Forbes, the Moderator of the unlawful Assembly was  
 in ward in Blackness. Welsh, one of the other ministers, was warded on the  
 following day. "The Counsell," wrote Calderwood, "was convened betuixt  
 six and seven in the morning, to eshew the oppositioun of the nobilitie;  
 who meeting at the ordinarie houre of counsell, reasouned honestlie for the  
 brethrein." (2) A week later, the Fife ministers, Durie, Strachan, Duncan,  
 and Sharp were also committed to ward in Blackness for their participation.  
 Shortly afterwards, acting on their own initiative, but spurred by the  
 knowledge that the king was taking more than his usual notice of events, the  
 Council issued a proclamation against justification by speech or by any  
 other means of the late unlawful Assembly in Aberdeen. (3) In September,  
 the Privy Council wrote to the king, "...albeit we could wishe this few  
 nomber that hes attempted this enormitie to acknowledge thair errour...yitt,  
 if it pleis your Majestie, who best knowis quahat remedyis ar fittest for  
 suche desperat diseasis, whereof your royall Majestie hes curit verie monie,  
 to prescryve the forme, we sall prosequete the same without respect of  
 persone." (4) It is obvious that the Privy Council was reluctant to have  
 to carry out an extreme policy which would be unpopular with many in the  
 country. By October, fourteen ministers still held the Assembly to have  
 been perfectly legal, and declined to accept the jurisdiction of the Privy  
 Council in the matter. Such a declinator worsened their position, and made  
 them liable to a charge of treason, for which the penalty could be death.

The trial of the six ministers originally warded, on a charge of

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(1) R.P.C. vii 474 (2) Cald vi 286 (3) R.P.C. vii 113 (4) ib. 475

treason for declining the jurisdiction of the Privy Council, was held in Linlithgow in January, 1606, under the watchful eye of the Earl of Dunbar, who, along with Bancroft, Archbishop of Canterbury until 1610, was named by Calderwood as the king's chief agent in the establishment of episcopacy. The prosecution was conducted by the Lord Advocate, Sir Thomas Hamilton, before a packed jury, which was plainly told before the trial that if it did not convict the accused, it would be answerable to the king. Even so, the jury, after an absence of six hours, returned a verdict of guilty by a majority of only nine to six. The Council, having secured a conviction, wisely deferred sentence to the king's pleasure, and sent the ministers back to ward. The manner in which the trial was "managed" is evident from independent accounts sent to the king by the Advocate and by Balmerino. Both agreed that without Dunbar, success would have been impossible. "Yf," wrote the Secretary, "the Erll of Dunbar had not bene with us, and pairtlie by his dexteritie in advysing what was fittest to be done in everie thing, and pairtlie by the authoritie he had over his friendis, of whom a greate many past upoun the assize, and pairtlie for that some stood in aw of his presence, knawing that he would mak fidell relatioun to your Majestie of everie man's part, the turne had not passed so well as, blessit be God, it hes." (1) The same story came from the pen of the Advocate, who added that Dunbar made secret choice of the time and place of the trial, and then, "brocht with him to this towne, ane very great number of his kindred and friendschip...he was compelled to cause his awin particular and privat kinsmen and friendis to mak the moist pairt of the assyse." (2) Had this not been done, "that haill pourpose had failed, to oure infinite greif and your maiesteis over great preiudice." It is significant that from such a steadfast king's man as Sir Thomas Hamilton, should come a concluding sentence, which, no doubt, summed up the collective opinion and reaction of

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(1) R.P.C. viii 478

(2) Mel i 10-12

the Privy Council, "I ever pray (God) and your maiestie, to put us to als few essayis in the lyke caissis, as may possiblief stand with the weill of your maiesties service..." The king's decision as to sentence was not given until 1606. It was banishment for life.

The king, however, was not finished with the matter. There were still another eight ministers in ward, and by the end of January, he had written to the Privy Council, "as to thair other bretherne that ar not yitt convicted, it is absolutelie oure will that with all convenient speede thay be putt to the lyke tryale." (1) But the Privy Council took one of their very few stands against the king. It was obvious that they had secured the conviction of the first six ministers by straining their efforts to the limit. Politely but firmly, they refused to go any further. They pointed out the state of feeling in the country, and recommended mercy on the ground that "the terrour of this conviction will hing abone the headis of all that professioun to kepe thame in obedyence." (2) It is significant that James, realising the gravity of his Council's stand, took their advice and did not press the point any further. Later in the year, these eight ministers were released and banished to remote parts of Scotland. The king contented himself with ordering the Privy Council to make a proclamation dealing with slanderous speeches against the proceedings of "his Majesties Council and Justice," and especially empowering magistrates to arrest any ministers whom they should hear using seditious language from the pulpit. (3) The Privy Council were to make it their special task to see that all such punishments were rigorously carried out, "that so oure commandimentis sent to you be not used as naikit shewis or scarecrowis for affraying of men and no forder." (4) At the same time, James postponed the promised General Assembly until 1607, and summoned Andrew Melville and seven other leading ministers to confer with him in London, where they were forced to listen to

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(1) R.P.C. vii 483 (2) ib. (3) ib. 179 (4) ib. 500

sermons in which prominent English preachers "joyned Pope and presbyterie together...as enemeis to the King's supremacie." (1) Gradually but surely the king was getting rid of the presbyterian leaders. Once, indeed, he had this last lot safe in London without possibility of return unless at the king's pleasure, he gave orders for a convention of ministers to meet at Linlithgow in December. Still not too sure of his ground, James would not call it a General Assembly in case it did not agree to his proposals. The Earl of Dunbar, as usual, was sent to cope with the situation. So well did he succeed, that the Commissioner, the Earl of Montrose could write, "never (was) les contrariete in votes or opiniounes." (2) Balfour and others claimed that this unanimity was due to bribery, which "came to light by the view of the Lord Thesaurer Dunbar his compts." (3) In fact, there is a sum in the Comptroller's Accounts of 1606-07 listed as "expenses" and amounting to over eleven thousand pounds. Such evidence is not conclusive, as many sums were listed in an equally vague fashion, but it is significant.

The "Assembly" was indeed "packed". James, on this, as on subsequent occasions, used the personal approach by writing to presbyteries, and telling them who were the most acceptable to send as delegates. The Moderator was chosen from a leet of four submitted by the king. The result was that one hundred and twenty five out of one hundred and thirty clergy voted for the king's proposals. The Linlithgow "Assembly" was an affair in which the Privy Council had been virtually by-passed. The king wrote to the presbyteries, and Dunbar arranged the rest. In fact, the Linlithgow "Assembly" marked another step forward in the establishment of episcopacy in Scotland. Under the guise of promoting easier methods of rooting out Roman Catholicism, it was suggested by the king that there should be

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(1) Cald vi 571. It is interesting to note that the expenses of the eight ministers were paid by the king. An entry in the Treasurer's Accounts for July, 1606, shows a sum of four thousand merks for their journey to London.

(2) Orig Letters i 69

(3) Annals ii 18

Constant Moderators for presbyteries and synods. An Assembly, lacking so many of its leaders, "corrupted with hope, fear, honour, money," (1), and under the watchful eye of Dunbar and the twenty five other noblemen who attended, did dutifully as it was told, and Constant Moderators were thrust on an unwilling church, with many threats in case of trouble.

In the parliament of 1606, an act had been passed "Anent the Restitution of the Estate of Bischoppis," which repealed the act of 1587, annexing all the temporalities to the crown, and enacted that the bishops were to have their "ancient and accustomed honour, dignities, prerogatives, privilegis, levingis, landis, teyndis, rentis, thriddis, and estait..." It was an act which greatly increased the importance and position of the existing titular bishops. Calderwood alleged a "quid pro quo" - that the bishops consented in the erection of prelacies into temporal lordships, while the lords agreed to the elevation of the bishops to their old dignities and estates. He commented too on the suspicion with which the nobles looked on the bishops, "fearing that they were sett up to cast them down." (2) Presumably he was referring to the lords of erection, who would naturally watch such developments with interest. But the Lords need not have been perturbed. Though the king's autocratic policy needed an episcopal church as one of the mainstays of the throne, it was equally important for him to have a contented and obedient nobility. Obviously, James, while doing all in his power to "sett up" the bishops, would do nothing to imperil his relations with either the old or the new nobility.

In the matter of the acceptance of Constant Moderators by the presbyteries, the standpoint of the Council was interesting. In a letter to the Archbishop of St. Andrews, Sir Thomas Hamilton, writing on behalf of the Privy Council, claimed that, "The Lordis will not mell with maters of

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(1) Cald vi 608

(2) ib. vi 494

the Generall Assemblie without the kingis expres direction." (1) The decision was wise, but the Council's "middle course" of trying to placate all parties by acting as a buffer between all extreme proposals, laid them open to criticism by all. The Privy Council abhorred extremism, and did its best to curb the over-exuberance of the king, and the over-zealousness of the presbyters. There were, of course, some on the Council, whom Calderwood dubbed the king's "new sworne creatures" (2), Dunfermline, Scone, Hamilton, and Balmerino, who either from conviction or self interest, were complete advocates of the king's policy whatever it might be. Nevertheless, even they looked more favourably on a course of action which would not lead to trouble.

The temporising policy of the Privy Council drew many rebukes from the king for what he could see only as slackness. "We cannot," he wrote, "think ourselff servit according to oure expectatioun or your dewtie, unles your diligence and severitie in tryale and punishment...deface the blote of your oversight..." (3) However much the Council would have liked to have kept out of embroilment in the religious controversies of the time, they were dragged into the fray neck and crop by the king as the instrument to enforce his policy. He followed up this rebuke with an order to make the presbyteries and synods accept the Constant Moderators chosen at Linlithgow "under pane of rebellion." The Linlithgow "Assembly" had agreed to the appointment of Constant Moderators over presbyteries, but by Spring of 1607, the king was interpreting this as meaning that there should be Constant Moderators over synods as well; and the obvious choice as Constant Moderator of a synod was a bishop. (4) So, willy-nilly, the Privy Council had to appoint commissioners to supervise the forthcoming meetings of synods and presbyteries. Lord Scone, attending the Perth synod in that capacity, was given a very rough passage. The king's nominees were not

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(1) R.P.C. xiv 597 (2) Cald vi 367 (3) R.P.C. vii 502 (4) cf. Mackie 231, and Cald vi 609

chosen, and the Privy Council had to forbid the synod to meet again until they had given the king satisfaction. On this occasion, the Council had pleasure of being commended by the king for their prompt action! Throughout 1607, the Council had its hands full, either forbidding synods to meet, or postponing their meetings on one pretext or another. Some of the Perth ministers were warded in Blackness, and others from Duns followed. Such was the unrest, that James postponed a promised meeting of the General Assembly until the following year. Prosecutions and wardings for the acceptance of moderatorships in place of those nominated by the Linlithgow "Assembly" continued. The Privy Council, driven hard by the king, showed greater zeal in this uncongenial task than in anything else they had done.

The prevention of meetings of synods went on into 1608, and then, one, John Murray, made a treasonable sermon. Playing for safety, the Privy Council examined him, and then asked the king what he would like them to do. It must have been a very obvious case of sedition, as interpreted by the king at that time, because his reply was the severest rebuke which the Council had yet received: "...in the punisheing of ony Puritane preachour, howsoevir manifest his offence be...oure pleasour in that mater must be at least some half dusane severall tymes socht, and the same signifiet to you befor we can haif ony of oure directions in these materis executed...you ar to returne to us with speede some advertisement of the punisheing of the said Mr. Johnne Murray, or ellis we will tak some speedie ordour for the punisheing of him for his commission and you for your omissioun." (1) Thus goaded, the Privy Council warded Murray, but protested that they had "done als greate examplair punishment thir foure or fyve yeiris as evir was done within this cuntrey." (2) Calderwood's bias is obvious from his comment on this incident, that, "some of the counsellors, namlie, the advocat, Mr. Thomas Hammiltoun, furthered willinglie his (the king's) intentioun for

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(1) R.P.C. viii 69

(2) ib. 500

their owne preferment." (1) Evidence of the royal rebuke shows that the Council had been most reluctant to take action.

In 1609, the long postponed General Assembly met at Linlithgow, but most of the time was spent in discussing anti-papal measures, so that the more controversial topics were given only a short and inadequate time. Law, Bishop of Orkney, was elected Moderator, and once again, the Earl of Dunbar was present. If, as Calderwood claimed, he had his money bags with him, there is no record in the Comptroller's Accounts, and the Treasurer's Accounts for that year are missing. As a sop to presbyterian feeling, Huntly was at long last excommunicated, but the bishops remained as Constant Moderators of the synods. Again the handling of this Assembly was by the king and Dunbar, and the Privy Council was by-passed. There is evidence of the usual circular letter from the king, asking, in the quoted instance, the Provost of Glasgow to be present, "knowing that your presence there may doe much good...ye sall also thairwith gaine oure speciall thanks...as yow will learne more particularlie from...the Earle of Dombarr..." (2) In a letter to the Assembly, James left no one in any doubt as to what he expected, "(Dunbar) will make to Us a true report of every man his carriage in the premisses..." (3)

In the same year, parliament passed the Act of the Commissariats, so hotly contested by the Lords of Session (4), and requiring Dunbar's most skilful mediation to enable a settlement to be reached - an act which restored to the bishops the power hitherto vested in the Lords of Session, of setting up courts for judgment on wills, divorce, and all "spirituall and ecclesiasticall causes." (5)

Later in the same year, the king appointed five of the Privy Council to a commission for examining the state of "delapidation" of the bishoprics, consisting of Scone, Holyroodhouse, Preston of Fentonbarns, Skene of

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(1) Cald vi 701 (2) Orig Letters i 142 (3) ib. 143 (4) See above, 42  
 (5) ib.

Curriehill, and Cockburn of Ormiston. The arrangement was clever - the Council, at any rate those who were also Lords of Session, had just been in dispute with the bishops over the Act of Commissariats, so the king would get a clear picture! Gledstanes, Archbishop of St. Andrews, protested at having to give an account of his stewardship before such a tribunal. Unfortunately, his letter must have fallen into wrong hands in London, because it was endorsed on the back with one word - "seditious"! However, no more was heard of the matter.(1)

The king's next step was the setting up of the High Commission in Scotland, consisting of two courts, one for St. Andrews, and one for Glasgow, "to the great discontent of those that ruled the estate; for they took it to be a restraint of their authority in matters ecclesiastical, nor did they like to see clergymen invested with such a power." (2) These were, of course, prerogative courts instituted by an act of the executive. Much as their foundation caused fluttering in the presbyterian dovecots, they were rather damp squibs in Scotland, and did not have anything like the influence they had in England. About fifty were nominated as members for St. Andrews, and about half of that number for Glasgow. Many of the members were privy councillors and nobles, in addition to the bishops and certain selected ministers. A quorum was five, of whom the Archbishop of the province must always be one. The courts were given spiritual jurisdiction over private lives, and the power not only to command the ministers, but to punish them for disobedience to their commands. They were given the sanction not only of spiritual penalties, but also of fine and imprisonment. Cases of the non-payment of fines, and the non-appearance of witnesses were to be handed over to the Privy Council for punishment. Thus the Council was to give assistance to a body about which it could hardly be described as enthusiastic. The High Commission was the logical

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(1) Orig Letters i 215

(2) Spott iii 212

outcome of the king's episcopal policy. It was a court entirely separate from the Privy Council or Session, and was in no way a committee of either. In practice, it became almost a church monopoly, as the lay members seldom appeared. In 1611, the king ordained that the St. Andrews court should meet in Edinburgh, "especiallie that some of his Majesteis Privy Council be present thairat." (1) To this, the Privy Council, in their proclamation, added the very human touch, "Intimation heirof to be made to George, Archbishop of Sanct Androis, to the effect that he pretend no ignorance of the same." To try to give the High Commission greater cohesion and efficiency, and to make it easier for laymen, privy councillors in particular, to attend, the king united the two courts with forty one members, twenty two clergy and nineteen laymen, to meet always in Edinburgh, with either Archbishop as president.

The postponed Assembly of 1610 was suddenly called at only a fortnight's notice, to be held in Glasgow. Once more, royal letters went out to the presbyteries, in which the king remarked that he had given the bishop of each diocese a "speciall note of the names of suche as We desyre to be at the said meeting...it is Oure pleasour that you conforme yourself thereto, and mak chois of the persones that We take to be fittest for giving advice in all maters." (2) Thirty four laymen, all royal nominees, and one hundred and thirty eight clergy, most of whom were also royal nominees, had no hesitation in electing Archbishop Spottiswood as Moderator, with only five dissenting votes. This Assembly saw the further establishment of episcopacy - there was to be no General Assembly unless it was called by the king; the bishops were to be moderators of the synods; all presentations to vacant livings were to be by the bishops only; and all ministers were to take an oath, regarding the king as the "supreme governor of this realme as well in things temporal as in the conservation and

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(1) R.P.C. xi 481

(2) Orig Letters ii 236-238

purgation of religion." The word "presbytery" was not even used during this Assembly, as being obnoxious to the king. The Earl of Dunbar was once more known to have money with him, ostensibly for the payment of the Constant Moderators who had been appointed at the Linlithgow "Assembly". All the acts of this Assembly were ratified by an act of the parliament of 1612. Though the Privy Council as a body had nothing to do with the provisions of the Glasgow Assembly, it issued an act that everyone, and especially the ministers, must accept the terms and acts of this General Assembly without question, and under penalties for disobedience. In the following year, the establishment of episcopacy was regarded as complete by the apostolic consecration of the bishops in London.

Taking advantage of the fact that no general Assembly could now meet without the king's summons, James called none until 1616. Indeed, the years between the two Assemblies were the quietest in the period. As usual, the king wrote to those whose presence he desired, and in August, 1616, the Assembly met in Aberdeen. (1) The Earl of Montrose was Commissioner, Lords Binning and Carnegie were his Assessors, and Spottiswood took the Moderator's chair without election, as the prerogative of the Archbishop of St. Andrews. The usual red herring of popery was dragged across the trail, after which, such controversial subjects as a Confession of Faith, a New Catechism, and a Liturgy, were referred to committees. Spottiswood strongly advised the king against producing what were to become known as the Five Articles of Perth, and James took his advice, as he was coming to Scotland himself the following year.

The 1617 parliament passed acts concerning the election of bishops, the restitution of certain glebes and rents, and an "Act anent the Plant-atioun of Kirkis," which set up a commission to consider ways and means of giving Scotland a complete parish ministry with a fixed annual stipend.

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(1) Orig Letters ii 481

Later in the year, in November, a General Assembly was called to meet at St. Andrews, for the passing of the Five Articles. Lords Binning and Scone were Commissioners, with Lord Carnegie, Livingstone of Kilsyth, Oliphant of Newton, and Sir Gideon Murray as Assessors. But despite a large attendance of the king's faithful followers, and despite the fact that Binning "plyit the part of a good president," (1), the general feeling was that more time was needed to think it over, and nothing was done. The king, of course, was furious at having his scheme flouted, and in a letter under his own hand to the archbishops, he promised that the ministers "shall now find what it is to draw the anger of a king upon them." (2) It made him all the more determined to have his way, though he knew that the great majority of the ministry opposed it, and that even the bishops were but lukewarm supporters. "For the sake of these wretched Articles, the establishment of which he was said to desire more than all the gold of India, James imperilled the results of more than twenty years' labour in ecclesiastical reform." (3)

James at once ordered the Privy Council to publish an act for the observance of five church holidays, and hinted darkly at the non-payment of stipends of all who opposed him, and the abolition of General Assemblies, and all kinds of church meetings. (4) As for the obligatory attendance at Easter communion which he had ordained, the Bishop of Galloway, as chaplain of the Chapel Royal, was able to report that the only attenders were the Earl of Dunfermline, Lord Binning, Oliphant of Newton, and Sir Gideon Murray, with their followers. (5) The other Lords of Council and Session all happened to be out of town - a silent commentary on what the Lords thought of this aspect of the king's church policy.

In August of 1618, another General Assembly was called for Perth. The Commissioners were Lords Scone, Binning, and Carnegie, and the Assessors

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(1) Orig Letters ii 523 (2) ib. 524 (3) Law Mathieson i 317

(4) R.P.C. xi 296 (5) Orig Letters ii 562

were, Sir Gideon Murray, Cockburn of Clerkington, Livingstone of Kilsyth, Sir George Hay of Netherliff, and Oliphant of Newton. Special letters were sent to selected nobles and lairds requesting their attendance. The ministers were hand picked by the bishops. The king warned the Privy Council to "gif order to the Capitane of Oure guaird with all his horsemen, to attend Oure said Commissionaris during all tyme of the saide Assemblie."<sup>(1)</sup> Spottiswood, as before, was Moderator. More complete preparations could hardly have been made. The controversial Five Articles were discussed by a select committee of this select assembly, and then submitted to the meeting for the recording of one of three things - no other comment was allowed - "Aye", "No", or "Non liquet". The result was, of course, the acceptance of the Five Articles. On the Assembly, Binning, who from now onwards wrote regularly to the king on church affairs, reported, "My Lord of Scone antiquum obtinet, and will never aberrare a via regia." (2) Praise was also given to the two archbishops, the Bishops of Galloway and Aberdeen, and Lords Lothian, Sanquhar, Ochiltree, and Boyd, in addition to the Assessors. It was praise rather strangely bestowed in one case - Lord Ochiltree was the only noble who voted against the Articles!

The Five Articles having been passed by the General Assembly, James spent his remaining years in trying to make an unwilling Privy Council, and a not too willing episcopate enforce them. The Council wanted to avoid trouble of any kind at all costs, and the bishops were annoyed at the king for stirring up the anti-episcopal elements in the country. They felt that the cause of episcopacy could best be served by letting sleeping dogs lie, and by proceeding slowly and cautiously. The sparse attendance at Easter and Christmas services, and the open flouting of others of the Five Articles, led to a reconstitution of the High Commission in the Summer of 1619, to deal more strictly with the offenders. A special point was made of

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(1) Orig Letters ii 568

(2) ib. 576

discharging the "Lords of his Hienes Privie Council and Session of all advocacion from all ecclesiastical judicatories." (1) They were, however, reminded that they were obliged to put to the horn anyone mentioned in a writ to them signed by a quorum of the High Commission. The Earl of Melrose, formerly Lord Binning, wrote regularly to the king at this time, keeping him informed of all church business - particularly of attendance at the special services, and even giving notes on the sermons preached. James continued to make threats. At the end of 1619, he told Spottiswood to throw out all ministers not conforming to the Five Articles, and "if there be not a sufficient number remaining to fill their places, I will send you Ministers out of England." (2) But there is no record of the archbishop having taken any action. The High Commission, normally under the presidency of Spottiswood, had to deal with a steady stream of offenders against the Five Articles, and invariably treated them with sympathy and leniency, usually giving them time to reconsider their position. Even when three in Glasgow gave in a declinator of the jurisdiction of the court, Archbishop Law merely continued the case. (3) Indeed, it seemed that until the end of the reign, the Privy Council and the bishops organised a sort of passive resistance to the king's policy. The king's desire to enforce the Five Articles seemed to draw the Council and the bishops much closer together. When six laymen were ordered by the king to be banished without even a pretence at a trial, an appeal was made to Spottiswood, who got the Chancellor and Secretary to stay the execution of the sentence. The special days of worship were attended only by those who wanted to stand well with the king. Shops remained open during the hours of service, and no action was taken against the offenders.

Then it seemed that the king started to give the Privy Council more

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(1) Cald vii 388 (2) Orig Letters ii 620 (3) R.P.C. xii 240

of a share in church discipline. Maybe he felt that he was being let down by the High Commission. Whatever the cause, many cases, obviously within the jurisdiction of the High Commission, were referred by the king to the Privy Council. In some of the cases, notably that of Robert Rigg, the Edinburgh magistrate who had impugned the doctrine of Doctor Forbes, one of the episcopal ministers, the Privy Council really defied the king, be it ever so politely. They seemed to be playing for time. They found one excuse for not fining him, and another for not warding him. Then the king wrote to tell them to root out conventicles. They replied that every privy councillor and every Edinburgh town councillor denied on oath all knowledge of the existence of any such things. Next, the king threatened that if communion were not taken kneeling, he would remove the Session and other courts from Edinburgh. (1) But now, the Council produced any sort of excuse to avoid acting on the king's orders - there was a small attendance at a service because it was in vacation time; or there was a visitation of the plague in Edinburgh; or they did not want to take action against a certain man because his wife was pregnant... It seems that this stubborn temporising policy of disobedience on the part of the Privy Council did at length have some effect on the king. It may be that the weight of years was undermining his fixity of purpose, or that that deep instinct of his, which told him when he was going too far, came to his rescue. At any rate, just before Christmas, 1624, he extricated himself from an untenable position of enforcing kneeling at communion, by saying that he had decided to postpone it until Easter. It was, in fact, a major defeat for the king's policy, and it would have been interesting to have seen how he would have countered it. As it was, this and many other cases were still pending when the king died in 1625.

It is evident that the part played by the Privy Council in the king's

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(1) R.P.C. xiii 577

church policy was negative, not positive. As a body, the Privy Council did nothing. The establishment of episcopacy was carried out by the king and certain individuals, who, though on the whole members of the Council, acted always in a private and not in a corporate capacity. The only action which the Privy Council was called upon to take was to give assistance in the enforcement of laws and policies of which they barely approved. It is, therefore, hardly surprising that the action which they took was often half-hearted and dilatory. Some members were known to support the king's policy whole-heartedly - Lord Melrose and Preston of Fentonbarns were specially mentioned; Lord Scone and Oliphant of Newton were not far behind; and, of course, there was the Earl of Dunbar, who did more than anyone apart from the king himself to establish episcopacy in Scotland. (1) It was easy for the king sitting in London to issue orders for the overthrow of the presbyterian kirk, and the establishment of episcopacy. It was not so easy for the men on the spot to put them into operation. Some of the orders were impossible to carry out, and would have made the Privy Council look ridiculous had they seriously tried. To enforce kneeling at communion would have required a firing squad in every church. As it was, the Council must have writhed at having to publish so many edicts and proclamations which were so manifestly impossible to enforce. Eventually, they just published the royal commands, and made little or no attempt to enforce them. Such a thing, of course, was not in the interests of good government, but the Council knew both as individuals and as a body, that if they did not give at least lip service to the king, they could be easily replaced by others who would be prepared to do anything to stand well in the royal favour. On many occasions, they tried to put a brake on what must have seemed to them merely royal caprice, with, until the closing years of the reign, indifferent success. Responsibility for church policy

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(1) Orig letters i 265

could be laid at the feet of one man only - the king. Nothing that the Privy Council or any other body could have done would have moved him from what was to him a fundamental part of the structure of royal autocracy. "No Bishop, No King," James had said at Hampton Court, and, "Monarchy agreeth as well with presbytery as God and devil." That was the king's inflexible standpoint. If the Privy Council wanted to remain in office, there was nothing to do but to float with the current.

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### Conclusion

The system of government in Scotland between 1603 and 1625 was little different from that which had been in existence before, with the exception that the king no longer resided in the country. The machinery remained unchanged - parliament, council, session, conventions, all functioned normally, but there was one novel feature, the hand which held all the strings of government was four hundred miles away. It is a remarkable fact that James was much more king of Scotland after he went to England than he had ever been before. While making all due allowance for the fact that he now had the might of the larger country, England, to lend weight to his authority, a fact appreciated by contemporary Scottish statesmen, full credit must be given to the king's persistent cleverness in establishing and maintaining such an effective control from afar. His postal service brought him within seven days of Edinburgh, and there were few things happening in Scotland of which the king was not aware. It is, indeed, conspicuously evident that when the king made his one visit to Scotland in 1617, he was much less able to have his way than when he was in England, as the disputes in the Convention and in the Committee of Articles prove. (1) At close quarters the king was much less formidable than when clothed in the distant splendour of the English monarchy.

James's control over Scotland was autocratic in a very real sense. Whatever agents might be employed to carry on the government of the country, they had no word in the formulation of policy. The king allowed no interference in that. Policy was formulated in London, and transmitted to Edinburgh, to give the Privy Council the task of translating autocratic commands into a form of conciliar government. The Privy Council was the

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(1) See above, Chaps 4 and 6

link between the king and the country. Its members, now nominated by James, were bound to him by ties of a very material nature. They were mostly men who had been raised by him to high office by the gift of estates, and by the grant of titles. In every respect they were king's men, who realised to the full that what the king gave, he could also take away. James himself had said after the death of Maitland of Thirlestane, that he would no longer use "great men as Chancellors in his affairs, but only such as he could correct and were hangable." (1) Such men could not afford to take the initiative, and developed the habit of referring everything to London for decision. The Scottish Privy Council, during these years, was no place for a man of action and independent thought, and luckily for the peace of the country, there was none such on the Council. The old nobles held aloof from the Council. A courtless Edinburgh had no attraction for them, and constant residence in Edinburgh would, for most of them, have been both irksome and impossible, because of their territorial interests. The carrying out of royal policy was, then, in the hands of comparatively new men, able in many cases, but perhaps lacking that breadth of vision which so often is characteristic of those who have behind them a tradition in the art of ruling. However, James did not neglect his old nobles. He flattered them by letters asking for their advice and support, and never embarked on a major project without consulting them, assembled either in parliament or in convention.

The king always tempered his autocracy with parliamentary ratification. By using constitutional forms, he preserved appearances without sacrificing any of his power. Naturally, parliament had to be prepared to accept the king's policy, and this was achieved by his control of the Lords of the Articles, the body which drafted, prepared, and presented all bills to parliament for registration. The inter-relation between the Lords of the

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(1) R.P.C. v Intro. xxxvi

Articles and the Council has been shown. Both bodies not only had the same nucleus of king's men, but the Council acted also as a preparatory committee for the Articles, so that, in fact, nothing came before the Lords of the Articles without the sanction of the Privy Council. But if the Council had doubts about any matter, they consulted the king, so that ultimately, nothing came before parliament of which the king did not approve.

Not only were the executive and legislative functions in the hands of one set of men, but also the judicial. The very name, "Lords of Council and Session," shows clearly the close connexion between the College of Justice and the government. All the senators were Privy Councillors, and their official duties, keeping them in Edinburgh, made them the most regular attenders at Privy Council sederunts. So ill defined were the bounds between Council and College, that the senators made no attempt to arrive at a definition. Why should they? By the addition of a few men, and sometimes without even that, the College could become the Council, without even leaving the chairs they were sitting in. Sometimes, indeed, they were inclined to forget that they were also statesmen, and spent too long on judicial matters, until the king made them restore the balance. It was a convenient system, but one which, though functioning without friction, was not ideal. The Lords of Council and Session were lawyers first, and statesmen second.

The government of Scotland by James through his Council was probably more efficient than any government had been in the country up to this time. It must always be remembered that the Privy Council was responsible only for carrying out directives which came to them from London - directives with which, even though they were king's men, they were not always in entire agreement. This lack of agreement was especially evident when the Council was given the almost impossible task of enforcing obedience to the king's

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religious innovations. There were very few people in Scotland who were as whole-heartedly episcopalian as the king, and the establishment of episcopacy was largely due to the king's personal efforts. The Council's task was to enforce, not to formulate, policy.

Enforcement of either religious or civil policy was not easy because the Privy Council lacked the necessary force behind them to make the king's commands fully effective. There was, of course, the King's Guard, numbering forty, but it was hopelessly inadequate for the task, and for the greater part of its existence, it was employed in keeping law and order in the Borders. The deciding factor in this, as in other things, was money. Scotland was not wealthy enough to support an adequate police force, even if such an organisation had been visualised. The Lowlands were quiet and free from serious trouble, but by the constant repetition of commands and ordinances, it is obvious that laws must have been frequently broken, or at least disregarded. James sought to increase civil control by the institution of Justices of the Peace based on the English model. Though these Justices were to become an accepted part of Scottish legal machinery, they did not, during James's lifetime meet with the success which he had anticipated. They conflicted with existing jurisdictions, and lacked the necessary force with which to back up their decisions. Their most useful function at this time was to act as the eyes and ears of the Privy Council in the districts in which they were established.

Despite a certain amount of complacency in Edinburgh, control was weak over the farther parts of the country, both North and South. Inadequate supervision was exercised by the Council over the various expedients for keeping the Borders in order, and it must be admitted that in this case, the king's reign ended on what was tantamount to a note of failure, with the disbanding of the Guard and Garrison, and the handing over

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of control to the big landowners. The central government, finding the task beyond their powers, had to delegate the duties. This using of big landowners to carry out by means of commissions what should really have been the task of the government, was not only a confession of weakness, but a very mistaken policy, which was operated to an even greater degree in the Highlands and Islands, though in extenuation, it should be remembered that one of the biggest difficulties was the lack of communications. Until the middle of the eighteenth century, the Highlands were virtually cut off from all normal intercourse with the Lowlands, which added immeasurably to the government's task. The employment of local magnates to do the work of the government, and allowing them to compensate themselves at the expense of their victims, was so short sighted as to be little removed from criminal folly. The one bright gleam in the darkness was the mission of Bishop Knox, whose Statutes of Icolmkill were a statesmanlike approach to the problem of the South Western Isles. But after the disbanding of his original expeditionary force, the bishop had no backing, and as soon as the inevitable trouble started, the king and council took refuge in the old method of a commission to the Campbells. To say, as the Privy Council did, that the Highlands were "as quiet and peaceful as they had ever been," was quite true in a relative sense, but it did not mean that all was well. It remains, however, to add that there was a greater degree of success in Orkney and Shetland, where Bishop Law abolished the old laws and customs, and brought the islands under the king's jurisdiction.

Nevertheless, despite its faults and shortcomings, the government of Scotland during the years from 1603 to 1625, kept the country free from major troubles. The king had good reason to feel satisfied. He had got his own way in most of the things he had attempted, and had the Scottish government completely under his thumb. In comparison with the governments

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of other countries at this time, the Scottish Privy Council does not suffer unduly. They stood between a king who was not easy to please, and a people not always willing to obey. Their task was, indeed, more difficult than that of the king. He made his plans far from the scene in which they were to operate, but the Privy Council lived in the midst of the people for whom the plans were made, and were, in consequence, more sensible of the difficulties than was the king. That they had the confidence of both the king and his subjects, proves that they did not labour in vain. The king was, in fact, an easier man to deal with at a distance than face to face, and the Privy Council learned early the kind of answer to turn away wrath. No prominent councillor was dismissed by the king during the period - nor was any chased through the streets of Edinburgh. Yet, during these years, James set up episcopacy in a presbyterian country, and once established, it was maintained by him with the help of the Privy Council. No government can be perfect, and the Scottish Privy Council had many faults, mainly of omission. But despite these faults, it made a better show of governing a country noted for its turbulence than might have been expected after the departure of the king to London. Though James and his "pen" made the plans, it was the Privy Council which had to put them into action, and when the autocratic temper of the king, and the stubborn nature of his people are taken into consideration, it was no easy task. It was not a task which called for outstanding brilliance, but rather for hard and often thankless work, which the Privy Council, suited for such things by its nature and composition, performed with a good measure of success.

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Appendix "A"The Effective Members of the Privy Council in 1607 in Order of Regular Attendance

"S" denotes "Lord of Session" in 1607

"7" etc. denotes number of times on the Committee of Articles

Earl of Dunfermline	Chancellor	S	7
Sir Thomas Hamilton	Advocate	S	7
Preston of Fentonbarns	Collector	S	4
Lord Balmerino	Secretary	S	2
Cockburn of Clerkington	Privy Seal	S	7
Sir John Arnot	Treasurer-Depute	-	1
Commendator of Holyroodhouse		S	4
Peter Rollock		S	3
Skene of Curriehill	Clerk Register	S	1
Earl of Lothian	Master of Requests	S	2
Douglas of Whittinghame		S	1
Master of Elphinstone		S	2
Lord Ochiltree		-	-
Cockburn of Ormiston	Justice Clerk	S	7
Earl of Montrose	Commissioner	S (1)	1
Bishop of Ross		-	3
Hay of Fosterseat		S	-
Melville of Burntisland		S	-
Lord Blantyre		- (2)	3
Lord Scone	Comptroller	-	4
Earl of Angus		-	3
Archbishop Spottiswood		- (3)	7
Melville of Murdocairney		- (4)	-
Constable of Dundee		-	4
Lord Elphinstone		-	2
Livingstone of Kilsyth		- (5)	2
Earl of Mar		-	7
Earl of Kinghorn		-	4
Lord Roxburgh		-	3
Earl of Linlithgow		-	2
Earl of Cassilis		-	-

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(1) Retired 1605 (2) Lord of Session 1610-17 (3) Lord of Session 1610  
 (4) Lord of Session retired 1601 (5) Lord of Session 1609

Earl Marischal	-	2
Master of Lothian	-	3
Sir George Douglas	-	-
Sir James Hay	-	1
Laird of Mackenzie	-	1
Lord Abercorn	-	1
Sir Peter Young	Eleemosynar	-
Earl of Errol	-	2
MacGill of Cranston-Riddel	S	-
Archbishop Gledstanes	-	4

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Appendix "B"The Effective Members of the Privy Council in 1616 in Order of Regular Attendance

"S" denotes "Lord of Session" in 1616

"7" etc. denotes number of times on the Committee of Articles

Earl of Dunfermline	Chancellor	S	7
Preston of Fentonbarns	President	S	4
Lord Binning (Melrose)	Secretary	S	7
Sir Gideon Murray	Treasurer-Depute	S	2
Sir Alexander Hay	Clerk Register	S	-
Cockburn of Clerkington	Privy Seal	S	7
Cockburn of Ormiston	Justice Clerk	S	7
Oliphant of Newton	Advocate	S	2
Livingstone of Kilsyth		S	2
Drummond of Medhope		S	-
Master of Elphinstone		S	2
Sir John Arnot		-	1
Archbishop Spottiswood		S	7
Melville of Burntisland		S	-
Earl of Lothian		-	3
Peter Rollock		S	3
Bishop of Ross		-	-
Archbishop Gledstanes (d.1615)		-	4
Bishop of Caithness		-	4
Archbishop Law		-	5
Lord Blantyre		S	3
James Skene of Curriehill		S	-
Hamilton of Reidhouse		S	-
Ker of Oxnam		-	-
Sir Peter Young	Eleemosynar	-	-
George Young		-	-
Earl of Cassilis		-	-
Lord Cranston		-	-

Among the irregular attenders at this time were the Earl of Mar and Lord Scone. Sir George Hay of Netherliff had been too recently appointed Clerk Register in succession to Sir Alexander Hay to appear on the list, but was to become one of the most regular attenders.

Appendix "C"The Principal Officers of State 1603-25Chancellor

1598-1604 Earl of Montrose  
 1604-1622 Earl of Dunfermline  
 1622-1633 Sir George Hay of Netherliff

Treasurer

1601-1611 Earl of Dunbar  
 1612-1616 Sir Robert Ker (Earl of Somerset)  
 1616-1634 Earl of Mar

Treasurer-Depute

1604-1611 Sir John Arnot  
 1613-1621 Sir Gideon Murray  
 1621-1630 Sir Archibald Napier of Merchiston

Secretary of State

1598-1608 Sir James Elphinstone (Lord Balmerino)  
 1608-1612 Sir Alexander Hay of Newton  
 1612-1625 Sir Thomas Hamilton (Earl of Melrose)

Lord Clerk Register

1594-1612 Sir John Skene of Curriehill  
 1612 (May-Oct) Sir Thomas Hamilton  
 1612-1616 Sir Alexander Hay of Newton  
 1616-1622 Sir George Hay of Netherliff  
 1622-1632 Sir John Hamilton of Magdalens (brother of Lord Melrose)

Lord Advocate

1596-1612 Sir Thomas Hamilton  
 1612-1626 Sir William Oliphant of Newton

Lord Privy Seal

1595-1626 Sir Richard Cockburn of Clerkington

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Appendix "D"Other Prominent Privy Councillors

Sir John Arnot of Birswick became a Privy Councillor in 1604, and was Treasurer-Depute during the Treasurership of the Earl of Dunbar, between 1604 and 1611. In 1612, he was on the Committee of Articles, and was for several years Provost of Edinburgh. From 1604 until his death, he had an impost on thirty tuns of wine, bringing him until 1610, six hundred and thirty pounds a year, and thereafter, nine hundred and seventy two. (1) From 1610 until his death in 1616, he received a pension of a thousand merks a year. (2) Between 1612 and 1614, he got over fourteen thousand pounds in payment of superexpenses incurred while he was in office as Treasurer-Depute. (3) In addition, there was a payment of sixty thousand pounds, listed as part of three hundred thousand owed him by the king for giving up his title to the earldom of Orkney. (4) There is no record of the balance having been paid. From 1603 until his death, Sir John Arnot received just under a hundred thousand pounds in cash from the treasury. It is hardly surprising that he was a loyal supporter of the king, not only on the Privy Council, but also in the much more difficult task of controlling Edinburgh as its Provost.

Sir Richard Cockburn of Clerkington, a nephew of Maitland of Thirlestane, was one of the most regular and most unobtrusive of the king's supporters. He became a Privy Councillor and Lord of Session in 1591. Five years later, he became Lord Privy Seal, a post which he held all during the period from 1603 to 1625, and was given a place on the "cabinet" in 1622 as a mark of honour for his services. He was a Lord of the Articles in every parliament, and a member of the High Commission. His rewards, apart from

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(1) Compt 1604-15 (MS) (2) Treas 1610-15 (MS) (3) Compt xiv f.38, and xv ff.39,40 (4) ib. xvi f.25

the offices already mentioned were few - charters of ratification and novodamus, (1), and a gift of ward and non-entry. (2) There is no recorded payment of any fee or pension as Lord Privy Seal.

Sir John Cockburn of Ormiston by 1603, was already a Privy Councillor, a Lord of Session, and Lord Justice Clerk. From 1603 onwards, he was on the Committee of Articles in every parliament. Every year, he had a regular fee of twenty six pounds, thirteen and fourpence as Lord Justice Clerk, and from 1610, without any legislation in his favour, he received a fee of one thousand pounds a year until his death in 1623. (3) Like his namesake, Clerkington, he owned part of the lands of the Abbey of Kelso. (4) Ormiston, like Clerkington, was a steady if unspectacular supporter of the king, obviously contented with a position of prominence and power.

John, Earl of Mar was always a favourite of the king. One of the select band which had shared the king's boyhood hours, he became a Privy Councillor in 1585, at the age of twenty three. After becoming a Knight of the Garter in 1603, he was not at all prominent in state affairs until his appointment as Treasurer in 1616, after which, he was one of the chosen few on whom the king depended for the furtherance of his Scottish policy. His, however, seems to have been a singularly negative personality. He seems to have originated nothing, and to have kept himself well clear of controversial matters. Mar's main estates were the church lands of Dryburgh, Inchmahome, and Cambuskenneth, inherited from his father, and of which he had a gift of novodamus in 1606. (5) He was on the Committee of Articles in every parliament, was a member of the High Commission, and of numerous other commissions. From the date of his appointment as Treasurer, he received regularly every year a pension of four thousand pounds, (6), and in 1621,

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(1) A.P.S. iv 492,661, and R.M.S. 1609-20 p.81 (2) R.P.S. lxxxii f.287 (MS)  
 (3) Compt & Treas 1604 seq. (4) A.P.S. iv 399 (5) ib 343  
 (6) Compt 1617 seq.

was conceded the right to import thirty tuns of wine a year duty free, which brought him another nine hundred and seventy two pounds. (1) From 1621 onwards, the Countess of Mar received a pension of two thousand four hundred pounds a year, for which no reason was given - nor, perhaps, was thought necessary by a king paying a belated debt of gratitude. In 1618, Mar was made Captain and Governor of Edinburgh Castle. (2) He was reported to have received twenty thousand pounds after the royal visit to Scotland in 1617, but no trace of it is to be found in the public records. Not counting this sum, the earl and his wife received in money from the king over forty six thousand pounds during the years from 1603 to 1625. It is hardly surprising that the Earl of Mar, both by inclination and encouragement, was a staunch supporter of the king's policy.

George Hay had been in royal favour before 1603 to the extent of having got the lands of the Charterhouse of Perth in 1599, and Netherliff in 1600, ratified in 1606, from the forfeited Gowrie estates. (3) Thereafter, until 1616, he took little part in public life, but showed great activity in commercial affairs, especially in the manufacture of ironwork and glass, (4), and was one of the undertakers for the plantation of Lewis. He was knighted in 1610. Then, all at once, as if the king had been saving it up, he became a Privy Councillor, Lord of Session, and Lord Clerk Register in 1616; and to show that he was still interested in commerce, he was given a twenty one year concession for the export of coal. (5) He became a member of the "cabinet" in 1621, but the second surprise which James sprang on Scotland was the elevation of Hay to the chancellorship after the death of Dunfermline. Many had been thought of, but Netherliff was scarcely regarded as being in the running. He was a Lord of the Articles in 1617 and in 1621. Financially, he did not benefit much from public moneys.

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(1) R.P.S. 92 f.138, and Compt 1621 seq. (2) ib. 87 f.134 (3) A.P.S. iv 314 (4) ib. 514 (5) R.M.S. 1609-20 p.524

His fee as Lord Clerk Register came to only three hundred and twenty three pounds a year, and his pension as Chancellor was one thousand, while he got the tack of Orkney and Shetland, amounting to five thousand merks. (1) Sir George Hay, however, probably made very much more out of the concessions given him for his many commercial enterprises - and it is easy to think of the king being attracted to a successful business man, and promoting him to work for the state. After taking public office, his business interests expanded. In 1616, he secured, no doubt as an experiment, though hardly as a commercial proposition, a monopoly of whale fishing round the Scottish coasts. (2) In 1621, he was given a licence to sell iron in any country, (3), and in 1625, he became a commissioner for the plantation of Nova Scotia. In addition to the lands already mentioned, he got lands in Lewis, Skye, and Glenelg, in 1607; (4) the kirklands of Melginch in 1613; (5) a charter for an annual rent of two thousand merks from Inverkeillour; and in 1620, Pitsindie and Kinfauns. (6) In 1620, he was appointed hereditary keeper of the Tay, which entitled him to one salmon a year from each boat fishing. George Hay was hardly the sort of man one would have expected to have been a lawyer, Privy Councillor, and Chancellor. But once more, it may be said that James was not mistaken in his man. Hay repaid his phenomenal promotion by serving the king faithfully, and by bringing to bear on state affairs his proved business acumen.

John Preston of Fentonbarns, said to have been the son of an Edinburgh baker, was prominent until his death in 1616. By 1603, he was already a Privy Councillor, a Lord of Session, and Collector General - an established servant of the king. After the fall of Balmerino, he was chosen by the College of Justice, not without some prompting from Dunbar, as President, which office he held until his death. He was a member of the reconstituted

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(1) Compt 25 f.36 (2) Den MSS vii 35 (3) A.P.S. iv 662 (4) R.M.S. 1609-20 p.61 (5) ib. 322 (6) A.P.S. iv 662

Privy Council of 1610, was a Lord of the Articles in every parliament up to 1609, and was a member of the High Commission. His pecuniary rewards were not as great as those of some of his colleagues. In 1606, he was awarded twenty four bolls of meal a year from the feu duties of certain abbeys. (1) In 1611, he was given a pension of a thousand pounds a year, (2), but there is no record of any payment being made, though his sons got a pension of five hundred pounds every year from 1611 to 1625. (3) Between 1604 and 1607, he received seven thousand pounds as expenses for four journeys to London. Although there is no record of any salary as Collector and President, there is no doubt that like the Cockburns, Preston was in a very comfortable and honourable position, and all this he owed to the king.

Sir William Oliphant of Newton in 1604, was appointed Advocate-Depute to Sir Thomas Hamilton. In 1611, he was knighted and admitted as an Ordinary Lord of Session. In the following year, he became a Privy Councillor, and Lord Advocate, a post which he held until 1626. Oliphant was on the Committee of Articles in 1612 and 1617, and was a member of the High Commission. In 1611, he was given a pension of a thousand pounds, which was paid regularly every year, (4), and from 1612, had the Advocate's fee of forty pounds a year. The trust reposed in him by the king is reflected in his appointment as one of the official members of the "cabinet" in 1621. Sir William Oliphant, as was perhaps natural for one who had been understudy to Sir Thomas Hamilton, served the king faithfully, and at the same time retained the respect of his colleagues.

Towards the end of the king's reign, three new faces appeared at the council board, Lords Gordon and Erskine, and Napier of Merchiston.

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(1) A.P.S. iv 388 (2) R.P.S. 80 f.10 (3) Compt 1611-25  
 (4) A.P.S. iv 491, and Treas & Compt 1611-25

Lord Erskine, son of the Earl of Mar, and of a family of proved loyalty to the crown, was a Privy Councillor as early as 1615, and became an Extra-Ordinary Lord of Session in 1620. For no apparent reason, he received a pension of eighteen hundred pounds in 1619 and 1620, which was doubled for the next two years, and which, in 1623, was no less than five thousand four hundred pounds. (1) In six years, he received almost twenty thousand pounds.

Lord Gordon, the son of Huntly, was made a Knight of the Bath in 1610, a Privy Councillor in 1616, and a member of the "cabinet" in 1622. Between 1618 and 1622, he got no less than twenty one thousand pounds in pensions from public moneys, before going to France to command the Scots men-at-arms, (2) As far as these two men are concerned, the king's policy was obviously to make loyalty to the crown an attractive proposition for sons who would in due course succeed to large estates and possess considerable territorial influence.

Sir Archibald Napier of Merchiston, the able son of an able father, went South with James, but soon returned to Scotland. In 1615, he was admitted to the Privy Council, became Treasurer-Depute in 1622, and in the following year was admitted to the College of Justice as Lord Justice Clerk. He gave this up, however, in 1624, but remained Treasurer-Depute. In four short years, Napier amassed twenty six thousand pounds - pension as Treasurer-Depute, fifteen hundred a year (1); a pension of two thousand four hundred pounds a year (1); the impost on thirty tuns of wine, worth nine hundred and seventy two pounds a year (1); the salt duty of Orkney, which produced thirteen thousand pounds in 1624 (1); and in 1625, the right to export two thousand pounds' worth of tallow for seven years. (3) Such lavish generosity was not really too much to pay for the services to the crown of such an able man as Napier of Merchiston.

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(1) Compt 1619-24 (2) ib. 1618-22 (3) R.P.C. xiii 673

Appendix "E"The Lords of Session 1603-25

1. The dates of appointment are given in all cases; the dates of death or retirement only if between 1603 and 1625.
2. The figure after the dates indicates the number of times the Senator sat on the Committee of Articles.
3. All were members of the Privy Council.

Mark Ker, Earl of Lothian	1584-1609	2	
Alexander Seton, Earl of Dunfermline	1586-1622	7	Chancellor
James Elphinstone, Lord Balmerino	1587-1609	2	Pres & Secy
William Melville, Commendator of Tunland	1587-1613	3	
John Cockburn of Ormiston	1588-1623	7	Justice Clk
Douglas of Whittinghame	1590-1618	1	
Earl of Montrose	1591-1605	1	Chancellor
Richard Cockburn of Clerkington	1591-	7	Privy Seal
Wemyss of Myrecairney	1591-1617	-	
Thomas Hamilton, Earl of Melrose	1592-	7	Adv Pres Secy
Lyon of Auldbar	1593-1608	-	
Walter Stewart, Commendator of Blantyre	1593-1599 (1)	3	
John Bothwell, Commendator of Holyrood	1593-1610	4	
Melville of Murdocairney	1594-1601	-	
Skene of Curriehill	1594-1612	1	Clk Register
Preston of Fentonbarns	1595-1616	4	President
Peter Rollock, Bishop of Dunkeld	1596-1620	3	
MacGill of Cranston-Riddel	1597-1607	-	
Edward Bruce, Commendator of Kinloss	1597-1605	-	
Lindsay of Edzell	1598-1611	-	
Master of Elphinstone	1599-	2	
Melville of Burntisland	1601-	-	
Hay of Fosterseat	1605-	-	
Craig of Wrightslands	1605-1622	-	
Hamilton of Priestfield	1607-	-	
Hamilton of Reidhouse	1608-	-	
Drummond of Medhope	1608-19	2	

(Cont.)

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(1) Also 1610-1617

Livingstone of Kilsyth	1609-	2	
Master of Livingstone	1609-	-	
John Spottiswood, Abp. of Glasgow	1610-1622	7	
Alexander Hay of Newton	1610-1616	-	
William Oliphant of Newton	1611-	2	Advocate
James Skene of Curriehill	1612-	-	
Gideon Murray of Elibank	1613-1621	1	Treas-Depute
George Hay of Netherliff	1616-	2	Clk Reg & Chan
Lord Carnegie	1616-	1	
Erskine of Innerteil	1617-	-	
Viscount Lauderdale	1618-	-	
Wemyss of Craigton	1619-1623	-	
Lord Erskine	1620-	-	
Gibson of Durie	1621-	-	
Henderson of Chesters	1622-	-	
Robert Spottiswood	1622-	-	
John Hamilton of Magdalens	1622-	-	
Archibald Napier of Merchiston	1623-	-	Treas-Depute
Fletcher of Innerpeffer	1623-	-	

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Appendix "F"Archbishops and Bishops 1603-25St. Andrews

1604-1615 George Gledstanes  
 1615-1638 John Spottiswood

Glasgow

1603-1615 John Spottiswood  
 1615-1632 James Law

Aberdeen

1600-1616 Peter Blackburn  
 1616-1617 Alexander Forbes  
 1618-1635 Patrick Forbes

Argyle

1608-1612 John Campbell  
 1613-1636 Andrew Boyd

Brechin

1607-1619 Andrew Lamb  
 1619-1638 David Lindsay

Caithness

1600-1604 George Gledstanes  
 1604-1616 Alexander Forbes  
 1616-1638 John Abernethy

Dunblane

1603-1615 George Grahame  
 1615-1635 Adam Bellenden

Dunkeld

1585-1606 Peter Rollock  
 1606-1607 James Nicolson  
 1607-1638 Alexander Lindesay

Galloway

1605-1612 Gavin Hamilton  
1612-1619 William Cowper  
1619-1634 Andrew Lamb

Moray

1602-1623 Alexander Douglas  
1623-1638 John Guthrie

Orkney

1605-1615 James Law  
1615-1638 George Grahame

Ross

1600-1613 David Lindesay  
1613-1633 Patrick Lindesay

The Isles

1605-1619 Andrew Knox  
1619-1628 Thomas Knox (son)

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