

The Middle March of the Scottish Borders
1573 to 1625
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Abstract

The Middle March of the Scottish Borders, 1573 to 1625

Katherine Anne Groundwater

The period from 1573 to 1625 spanned a watershed in the history of the Scottish Middle March. In 1573, reports of disorder there greatly concerned the regent Morton's government. By 1625, such reports had lessened considerably. In a region, neighbouring the frontier, it was inevitable that any change in Anglo-Scottish relations would have an immediate effect. James's impending succession to the English throne and the Union of 1603 were to influence central government's policy in the Borders. However, border-specific affairs were not the only factors determining the experience of the Middle March: it was also subject to the political developments taking place throughout Scotland during a period of increasing crown intrusion into the localities. Therefore, though this study is primarily the history of a region, the underlying aim is to place the Middle March within the wider context of national political and diplomatic circumstances.

Chapter one outlines the socio-political framework of the Middle March on which local authority was based and which central government was to utilise in implementing policy in the region. In chapters two and three, local office-holding and the inclusion of borderers in national government are considered as well as the extra layer of border-specific office-holding. Chapter four assesses the report of crime and violence in the march. Central government's fluctuating response to this crime is placed within the context of crown suppression of feud. The last two chapters set a narrative history of the march, including an account of the pacification from 1605 to 1625, against the evolving political background in Scotland and within changing Anglo-Scottish relations.

Historiographically, the Middle March has suffered from an Anglocentric analysis which, by dwelling on the violence in the region, has undervalued its framework of local authority. T. I. Rae did much to redress the balance in his portrayal of the administration of the Borders. However, in the light of more recent studies of government, feud and kinship, it has been possible to re-evaluate the framework available for use by government, when it chose

to. In doing so, it is hoped to challenge the traditional perception of a turbulent Middle March outside government control.

Declaration

I declare that this thesis is wholly and entirely my own work and that no part of it has been published in the form in which it is now submitted.

March 2007

Acknowledgements

This writing of this thesis would not have been contemplated without the help and vision of a number of people to whom I owe endless thanks. After a long time away from university, I needed substantial encouragement to get back into the disciplines of academic research and writing and to formulate vague ideas into a realistic proposal. Of primary importance in this have been my two supervisors and I would like to offer them my heartfelt thanks.

My principal supervisor, Professor Michael Lynch, was responsible for inspiring my original ideas and helping me fashion them into a subject worthy of research. His breadth of vision and alternative ways at looking at events have enabled me to see what was there before me and gave me a framework within which to proceed. Once I was writing, he spent endless hours re-reading my first attempts and making invaluable suggestions. And finally, but of paramount significance to me, was his constant encouragement to keep going when problems seemed to be insurmountable; this thesis would never have been finished but for this.

My secondary supervisor, Dr Julian Goodare, was of no less importance. His encyclopaedic bibliographic knowledge has broadened the scope of my studies considerably, whilst his own works have introduced concepts of government to me that I would have never formulated on my own. His theories on state formation have given invaluable context to my original musings on government in the Middle March and suggested a framework within which to develop my thoughts further. One of my largest debts, however, to him is for his meticulous criticism of my text. Such rigorous discipline has limited my slips into imprecision. Any errors that remain are my entire responsibility.

There are a number of others I would like to acknowledge. When I decided to return to university, my original tutor at university, Professor John Morrill, was enormously encouraging and put me in touch with the University of Edinburgh. At Edinburgh, I have benefited hugely from the

support of the Scottish History department and the sense of community there. In particular, the department allowed me to tutor and this has been hugely important in widening the perspective of my own work. I also would like to thank both Professor Lynch and Dr Steve Boardman for some very entertaining paleography lessons which gave me the skills for perhaps the most enjoyable aspect of my research. Many happy days have been spent in the archives.

This brings me to the thanks that I would like to make to the patient staff of the National Archives of Scotland and the National Library in Edinburgh. I would also like to thank the staff at the Borders Archives in Hawick and Selkirk and Mr Walter Elliot for spending a day on the floor in Selkirk looking through the Walter Mason papers. It was good to talk to someone who shared my enthusiasm for the Borders. Thanks are also due to Michael Wasser who very kindly let me borrow his dissertation on the pacification and to Jared Sizer, with whom I have had some illuminating discussions, who lent me his thesis and gave me a copy of his article on the earl of Dunbar. The maps in Volume Two were drawn up by Ray Harris, the cartographer at the University of Edinburgh, and I would like to thank him for his fast solutions to complicated problems.

And finally, on a more personal note, I would like to recognise the huge part my parents have played in encouraging a love of history throughout my life and thank Bob Younger for having had to live with the constant presence of the Middle March for the last five years.

Conventions and Abbreviations

Conventions

The Borders: where the term 'the Borders' is used, this refers to the Scottish Borders, unless otherwise stated; the 'whole of the Borders' refers to the cross-border region and includes the English Borders.

Dates: these are given with the year beginning on 1 January

Money: all sums are in pounds (£s) Scots unless otherwise stated

Names: the spelling of all territorial designations, such as 'of Cessford', have been modernised, as far as it is possible, except where they appear in quotations. Where there is no modern equivalent, the old Scots has been modernised - for example 'Quhit' is transcribed as 'Whit'. There is some difficulty with the spelling of surnames, such as Alesone, which appears variously spelt and does not directly equate with the modern Allanson. In such cases the spelling has been left unchanged. Otherwise spellings have been standardised in line with GF Black *The surnames of Scotland* (New York 1946). A few names changed during the period of this study: the most potentially confusing example of this is Scott of Branxholme, who by the 1590s was increasingly known as Scott of Buccleuch, and who was ennobled in 1606 as Lord Buccleuch. This study refers to him as Branxholme or Buccleuch, until 1606 when he became exclusively designated Buccleuch, in line with how he was referred to at the time of the specific events recounted.

Abbreviations

Adv MS	Advocates' MS (NLS)
ADCP	<i>Acts of the Lord of Council in Public Affairs 1501-1554</i> ed. RK Hannay (Edin. 1932)
APC	<i>Acts of the Privy Council of England</i> ed. JR Dasent (London 1890-95)
APS	<i>The Acts of the Parliaments of Scotland</i> 12 vols eds. T Thomson and C Innes (Edinburgh 1814-75)

<i>Atlas of Scottish History</i>	<i>Atlas of Scottish History to 1707</i> eds. PGB McNeill and HL MacQueen (Edinburgh 1996)
<i>Balfour Practicks</i>	Sir James Balfour of Pittendreich <i>Practicks</i> 2 vols ed. PGB McNeill (Stair Society 1962-63)
BUK	<i>Booke of the Universall Kirk: Acts and Proceedings of the General Assembly of the Kirk of Scotland</i> 3 vols ed. T Thomson (Bannatyne Club 1839-45)
<i>Brown Bloodfeud</i>	Keith Brown <i>Bloodfeud in Scotland, 1573-1625</i> (Edinburgh 1986)
<i>Calderwood History</i>	David Calderwood <i>History of the Kirk of Scotland</i> 8 vols eds. T Thomson and D Laing (Wodrow Society 1842-49)
<i>Carey Memoirs</i>	<i>Memoirs of Robert Carey</i> ed. FH Mares (Oxford 1872)
CBP	<i>Calendar of Letters and Papers Relating to the Affairs of the Borders of England and Scotland, 1560-1603</i> 2 vols ed. J Bain (London 1894-96)
CSP Dom	<i>Calendar of State Papers: Domestic Series, of the reign of James I</i> ed. MAE Green (London 1857)
CSP Scot	<i>Calendar of State Papers relating to Scotland and Mary, Queen of Scots, 1547-1603</i> 13 vols (eds) J Bain et al (1898-1969)
<i>Documents Peebles</i>	<i>Charters and Documents relating to the Burgh of Peebles</i> ed. W. Chambers (Edin. 1872)
ER	<i>The Exchequer Rolls of Scotland</i> 23 vols eds. J Stuart et al (Edinburgh 1878-)
HMC	Historical Manuscripts Commission
<i>HMC Mar and Kellie</i>	<i>HMC Report on the Manuscripts of the Earl of Mar and Kellie</i> 2 vols ed. H Paton (London 1904-30)
<i>HMC Muncaster</i>	<i>HMC Tenth Report, App pt iv, The Manuscripts of Lord Muncaster</i> ed. HM Maxwell Lyte (London 1885)
<i>HMC Salisbury</i>	<i>HMC Calendar of the Manuscripts of the Marquis of Salisbury</i> 24 vols ed. SR Bird et al (London 1883-1976)
<i>James Letters</i>	<i>Letters of King James VI and I</i> ed. GPV Akrigg (Berkeley, Calif. 1984)
<i>James VI and I Political Writings</i>	<i>James VI and I Political Writings</i> ed. JP Sommerville (Cambridge 1994)
NAS	National Archives of Scotland, Edinburgh

NLS	National Library of Scotland, Edinburgh
NH	<i>Northern History</i>
Pitcairn <i>Trials</i>	<i>Criminal Trials in Scotland, 1488-1624</i> 3 vols ed. R Pitcairn (Edinburgh 1833)
Rae	<i>The Administration of the Scottish Frontier, 1513-1603</i> (Edinburgh 1966)
<i>Regality of Melrose</i>	<i>The Records of the Regality of Melrose 1605-1661</i> ed. Charles S Romanes (Edin. 1914-17) 3 vols.
RMS	<i>Registrum Magni Sigilli Regum Scotorum (Register of the Great Seal of Scotland)</i> 11 vols eds. JM Thomson <i>et al</i> (Edinburgh 1882-)
RPC	<i>Register of the Privy Council of Scotland</i> 38 vols eds. JH Burton <i>et al</i> (Edinburgh 1877-). All first series unless otherwise stated.
<i>Scots Peerage</i>	<i>The Scots Peerage</i> 9 vols ed. J Balfour Paul (Edinburgh 1904-14)
SHR	<i>Scottish Historical Review</i>
SHS	Scottish History Society
Sizer 'Middle Shires'	Sizer, J, 'Law and Disorder in the "Middle Shires" of Great Britain, 1603-1625' (PhD., Cambridge 2001)
Spottiswoode <i>History</i>	John Spottiswoode <i>History of the Church of Scotland</i> 3 vols eds. M Russell and M Napier (Spottiswoode Society 1847-51)
SRS	Scottish Records Society
STS	Scottish Text Society
TA	<i>Accounts of the (Lord High) Treasurer of Scotland</i> 13 vols eds. T Dickson <i>et al</i> (Edinburgh 1877-)
Tough	<i>The Last Years of a Frontier: a History of the Borders during the reign of Elizabeth</i> (Oxford 1928)
<i>Dumfriesshire Trans.</i>	<i>Transactions of the Dumfriesshire and Galloway Natural History and Archeological Society</i>
TRHS	<i>Transactions of the Royal Historical Society</i>
WM	Walter Mason Trust Papers held at Borders Archives, Selkirk
Wasser 'Pacification'	MB Wasser 'The Pacification of the Scottish Borders, 1598-1612' (MA diss. Montreal 1986)

- Wasser 'Violence' Michael B Wasser 'Violence and the Central Criminal
Courts in Scotland, 1603-1638' PhD thesis (Columbia
1995)
- Yester Writs* *Calendar of writs preserved at Yester House 1166-1625*, eds.
CC Harvey & J Macleod (SRS 1930)

Introduction

The Middle March encompassed the shires of Roxburgh, Peebles and Selkirk and included the lordship of Liddesdale. The period 1573 to 1625 spanned a watershed in the history of the march. In the late sixteenth century, the region was defined by its position on the border with England, a separate nation to which there was enduring hostility. It was inevitable that any change in Anglo-Scottish relations would have an immediate effect in the region. In 1603, the succession of James VI to the English throne marked the ending of the march as an official entity. The designation 'the Middle March' was subsumed into the wider cross-border entity 'the Middle Shires'. Government policy in the region, however, remained inextricably linked with what had gone before: it generally used the same people, similar mechanisms and nearly identical administrative regions. So it seems appropriate to make use of the history of the region before 1603 to help to explain what happened after it. Border-specific affairs were not the only factors, however, determining the experience of the Middle March: it was also subject to the political developments taking place throughout Scotland during a period of increasing crown intrusion into the localities. Therefore, though this study is primarily a history of the region, the underlying aim is to place the Middle March within the wider context of national political and diplomatic circumstances.

There are a small number of histories of the region until 1603. Ian Rae's definitive book covering the whole Scottish Borders, *The Administration of the Scottish Frontier, 1523-1603*, would be difficult to surpass in its analysis of the framework of administration and crown interest in the region, but of necessity could not deal with the intricacies of one march alone. Similarly circumscribed is DLW Tough's *The Last Years of a Frontier: A history of the Borders during the reign of Elizabeth I* which covers the Borders region in its entirety on both sides of the frontier, concentrating on cross-border relations and March law.¹ Both these studies were published some time ago, in 1966 and 1928 respectively; as a result they do not encompass more recent re-evaluation of Scottish government in the localities or debate over the nature of frontier societies. A more recent study is by Maureen Meikle of an area

¹ T I Rae *The Administration of the Scottish Frontier, 1513-1603* (1966); DLW Tough *The Last Years of a Frontier: A history of the Borders during the reign of Elizabeth I* (1928)

she designates the Eastern Borders, *A British Frontier? Lairds and Gentlemen in the Eastern Borders, 1540-1603*. This provides a comprehensive socio-economic historical analysis of the lairds and gentry of this region, in which she also included the English East March and the eastern part of the Scottish Middle March.² Such an approach has not yet been applied to the West March, nor to the majority of the Middle.

The aim, in concentrating on the Middle March alone, is to provide a socio-political framework for an administrative region defined as such by contemporary government and given physical form by its geographic boundaries. The region has been notable for its reported levels of crime, and whilst this will be addressed, this is not primarily a study of crime in the region. Instead it is about the response of government to such report and its changing priorities in the region. Conversely, this study includes an assessment of the involvement of borderers in national government. Whilst such inclusion could be interpreted as a deliberate policy on the part of the government to bring people from an area of concern into line, it could equally show the active participation of such people within the general political structure of the kingdom. Previous analysis of the region has tended to emphasise its location on the periphery of the kingdom and the isolating effect this had on its inhabitants.³ In contrast, it is intended to show that these people were not alienated from their country's centre of power: they were part of it. Some of the conclusions of this thesis may be applicable to the other marches but it is exclusively from the Middle March that such premises will be drawn.

Chapter one outlines the socio-political framework of the Middle March on which local authority was based. The fundamental importance of kinship and alliance in society will be demonstrated. Kinship and alliance determined the ties of obligation, service and responsibility and the chapter will show how central government was able to utilise these links in implementing policy in the region. Chapter two looks at local office-holding, including the extra layer of border-specific office, and the continuity of the same families in

² The lairds of Meikle's study lived in Berwickshire and the eastern parts of Roxburghshire and Selkirkshire. Maureen M Meikle *A British Frontier? Lairds and Gentlemen in the Eastern Borders, 1540-1603* (2004)

³ 'The administrative problem in the borders arose from the isolation of the region and the turbulent character of its inhabitants'. Rae 1

office. It considers how central government was able to affect or intrude into the local governmental framework. The third chapter illustrates the inclusion of prominent local figures into central government, showing their involvement in national political life, in particular on the privy council and within the royal households. Chapter four assesses the report of crime and violence in the Middle March, analysing central government's changing response to such crime. Government policy in the march is placed within the context of increasing crown monopolisation of the judicial system, including the suppression of feud, and fluctuating Anglo-Scottish relations. The last two chapters set a narrative history of the region against an evolving political background in Scotland and changing Anglo-Scottish relations. They illustrate the effect on government policy in a region of concern over James's impending succession to the English throne. The last chapter provides an account of moves towards a pacification of the region from 1597 to 1605 and the pacification itself from 1605 to 1625. It considers what the experience of the Middle March after Union demonstrated of the problems that James was to encounter in his pursuit of full political union.

The main problem with attempting any balanced assessment of the Middle March is the pervasive influence, over several hundred years, of the stereotypical images of a borderer and the Borders on the histories of the region. In order to understand the effect of this characterisation on subsequent histories it will be necessary to look at the historiography of the region. Then this study will attempt to strip away the legend and concentrate instead on the contemporary records of government and events in the region. It will also re-evaluate the events in the Middle March in the context of more recent studies on the late sixteenth century government in Scotland as a whole. Only then will it be possible to draw a new picture of the Middle March, at a definitive moment in its history in order to provide a more representative portrait of the region and not another caricature.

The border, the Borders and the marches

The general delineation of the Anglo-Scottish border can be dated from the loss in 1157 of the counties of Northumberland, Cumberland and Westmorland by William the Lion to the English King Henry II. The frontier

line thus created stretched from the Solway Firth along the ridge of the border hills to the Cheviot, and from there along the River Tweed to Berwick. In 1237 this line was confirmed when Alexander II remitted and quitclaimed the three counties to Henry III in the treaty of York.⁴ Where this study uses the term 'the Borders' it is referring exclusively to the region to the north of this borderline, the Scottish Borders, unless otherwise stated.

Local demarcation disputes, however, rumbled on, such as at Carham in 1245 when 'the true and ancient marches' between the two kingdoms were still at issue, and Berwick continued to change hands until it was finally lost to the English in 1482. During and after the Wars of Independence, the English were able to establish a pale of influence in the border region. This was largely retaken by the late fourteenth century, as was Jedburgh in 1409, though Roxburgh had to wait until 1460 for its recapture. The border line itself remained principally unchallenged throughout the fifteenth century, as evidenced by the proposed Anglo-Scottish treaty of 1433, in which the English offered to surrender Berwick and Roxburgh in order to secure a lasting peace.⁵

By the sixteenth century any remaining contention lay not so much in the border line itself, but in a small number of areas straddling the border whose troublesome ownership was variously claimed or disavowed by governments anxious to lay the responsibility for their apparent lawlessness elsewhere. The main area of dispute was the 'Debateable Land' in the West March, estimated at around 7,403 acres between the rivers of the Esk and Sark, and including the barony of Canonbie. A dividing line through it was agreed by English and Scottish commissioners in 1552 and though English march wardens continued to refer to it as a problematic area, the line of demarcation was not further discussed.⁶ A couple of other much smaller areas remained in the East and Middle Marches, the occasion of some minor dispute over the rights of pasturage. The division of these was still unsettled at Union, when the diplomatic significance of the line disappeared. A dispute in 1622 by Sir David Home of Wedderburn with Lord Howard of Walden

⁴ ELG Stones *Anglo-Scottish Relations, 1174-1328* (Oxford 1965) xxiii,39-53

⁵ A Goodman 'The Anglo-Scottish Marches in the Fifteenth Century: A Frontier Society?' in RA Mason ed. *Scotland and England 1286-1815* (1987)

⁶ W Mackay MacKenzie 'The Debateable Land' *SHR* xxx (1951)110; *HP* nos. 104, 105; *Tough* xvi, 23, 127, 168; *CBP* ii no. 598; Rae 22

over fishing rights on the Tweed, which was referred to the border commissioners, was more of a dispute over property boundaries between two private landholders than an international dispute over a frontier line.⁷

In contemporary administrative terms, which are used to define the area covered in this work, the Borders were divided into three sections. These included the area which stretched back some miles from the frontier line itself, thus forming the administrative regions of the East, Middle and West Marches.⁸ There was a similar framework to the south of the border which formed the English East, Middle and West Marches, though their boundaries did not meet their Scottish counterparts at the same points on the frontier. The Scottish Middle March's national frontier coincided with half of that of the English East March and all of the English Middle March; the last eight miles of the Scottish Middle March and all of its West March adjoined the English West March. Thus the Scottish Middle March's stretch of frontier was the longest and involved its officials in interaction with their counterparts in all three English Marches.⁹

The physical geography of the region and its medieval administrative areas, the sheriffdoms, determined the internal divisions between each Scottish march. The Middle March was geographically defined by the Moorfoot Hills in the north, to the west by the hills of the Southern Uplands and to the east by the outer edge of the Merse. It was defined contemporarily by the privy council to comprise the sheriffdoms of Roxburgh, Selkirk and Peebles, and also Liddesdale, a valley linked physically with the West March.¹⁰ The topographical nature of the land, particularly the moor covered uplands of the western half of the march, lent itself to an image of remote wasteland.¹¹ However the rivers that dissected this land were of crucial importance in

⁷ *CBP* i no. 76; Tough 23-4, 114, 197; Rae 21-2; *RPC* xii 746

⁸ Jared Sizer estimates the population in the late sixteenth century of the Scottish Borders at around 50,000 and the English Borders at over 100,000. J Sizer 'Law and Disorder in the "Middle Shires" of Great Britain, 1603-1625' PhD thesis (Cambridge 2001). The population of Peebles was around 800. T Devine and SGE Lythe 'The Economy of Scotland under James VI; a revision article' *SHR* vol.50 (1971) 95. Selkirk's population was estimated at around 800. PSM Symms 'Social Control in a Sixteenth Century Burgh: A Study of the Burgh Court of Selkirk, 1503-1545' PhD thesis (Edin. 1987) 14

⁹ Tough 19

¹⁰ *RPC* iii 344

¹¹ Cosmo Innes's description of 'the surface of the parish Ettrick is wholly mountainous' was typical of the way in which the region has been perceived. *OPS* i 260

providing corridors of communication: the valleys of upper Tweeddale and Teviotdale and the rivers Jed, Ettrick and Yarrow facilitated communications within the region, whilst those of the Leader and Gala rivers gave access northwards to Edinburgh. Its principal towns were Jedburgh, Selkirk and Peebles, the administrative centres of its sheriffdoms, and also Kelso to the east, Melrose towards the north and Hawick in the south.¹²

The East March comprised the sheriffdom of Berwick, including the geographical area known as the 'Merse', which was the wide valley basin at the lower end of the river Tweed and bounded to the south by Tweed. Lauderdale formed its western extremity. Following the loss of Berwick to the English, the march did not have any sizeable towns, though Duns, Lauder, Coldingham and Hume were of some significance.¹³ The Lowther and Cairnsmuir Hills formed the northern boundary of the West March, which was divided from the Middle by the Southern Upland Hills. Contemporary official descriptions of the West March defined it as comprising the sheriffdom of Dumfries and the stewartries of Kirkcudbright and Annandale; Rae has convincingly argued that in practice this also included Wigtownshire in its entirety. This was mainly an upland region, dissected by the dales of Annan, Ewe, Nith and Esk, descending to the coastal flatlands of the Solway Firth.¹⁴ Though the Middle March is the focal point for this study, inevitably the other two will make their appearance frequently.

The day-to-day administration in the marches was by its local officials; in the Middle March these were the sheriffs of the three shires of Roxburgh, Selkirk and Peebles and the keeper of Liddesdale. The march also had an extra layer of officialdom, the warden, which was peculiar to the Borders. The way in which authority was exercised in the region was based on the administrative districts of the shires and the march and built on the socio-political

¹² Blaeu's Atlas of the 1650s, much of which are based on Timothy Pont's maps of the 1590s, show Selkirk as a sizeable walled town. They also reveal a plethora of stone tower houses following the lines of the rivers which contrast with the descriptions of the poorly settled wastelands by English officials of their own Borders. IC Cunningham ed. *The Nation Survey'd: Timothy Pont's Maps of Scotland* (2001) 9-13. Julian Goodare notes that Pont was mapping a 'landscape of power' in the prominence he gave to the lairds' houses. In which case, Blaeu's maps indicated a considerable network of powerful figures in the Middle March. J Goodare *State and Society in early modern Scotland* (Oxford 1999) 251

¹³ Rae 23

¹⁴ Rae 2, 23-4

framework provided by local kindreds. Whilst inevitably there was interaction with the other marches, and to some extent blurred margins and overlapping jurisdictions between them, the Middle March was in itself a coherent entity.¹⁵

In 1573, the beginning of this study, the Middle March was recovering from the Marian civil wars, which exacerbated the divisions between some of its inhabitants. In 1570, Scott of Buccleuch's house and lands at Branxholme and the town of Hawick were burnt in a raid by the English earl of Sussex, which suspiciously bypassed the lands of Buccleuch's enemy, Ker of Cessford. Cessford's support for the King's party was directly in opposition to his cousin Ker of Ferniehirst's devotion to Mary. The ending of the siege of Edinburgh castle, following English intervention in 1573, and the death of Kirkcaldy of Grange, Ferniehirst's father-in-law, forced Ferniehirst into exile for the next few years. Instead, the affiliates of the new regent, James Douglas earl of Morton were to prosper from his ascendancy through to 1578. He divided the wardenry of the Middle March, leaving the east part in the hands of Cessford, but appointing his kinsman, George Douglas of Bonjedburgh, to the part west of Dere Street. Over the next few years, his attempts to solidify amicable relations with England led to a number of judicial raids to the Borders. This severity was not to outlast his regency. In 1584, Ferniehirst became warden under the earl of Arran's regime but was ousted at his fall in 1585. He was replaced by the Kers of Cessford, in whose hands the wardenry remained until 1603.

The distinct entities of the three marches came to an end with the regnal Union of 1603, when the diplomatic significance of the frontier disappeared overnight. King James abolished the term 'the Borders' and replaced it with that of 'the Middle Shires' which was to include counties and sheriffdoms both sides of the frontier. Subsequently, the separate marches were not used as official designations of administrative or descriptive areas in the former Borders region. Instead, official proclamations referred either to the Middle Shires or to the individual sheriffdoms of Berwick, Roxburgh, Selkirk, Peebles and Dumfries and the Stewartries of Kirkcudbright and Annan - and

¹⁵ Meikle notes the artificial nature of administrative boundaries and that in the Eastern Borders there were 'communities of lairds' which overlapped shire boundaries. Meikle *A British Frontier?* 10

in England the counties of Northumberland, Durham, Westmorland and Cumberland. As the framework of the marches faded, an attempt was made by James's government to treat the entire region, both north and south of the border, as one entity - or at least, one entity with two subdivisions, Scottish and English. In 1603, the office of march warden ceased and, in 1605, was replaced by a body of border commissioners whose jurisdiction extended to the whole of their side of the border.

On a local level within the former march, the administrative districts continued to be much as before, based on the ancient sheriffdoms. Where additional appointments were made, they were fitted within the existing outline of local administration and authority; the area of jurisdiction of the Justices of the Peace commissioned in 1610 was identical to that of the sheriffdoms. Thus though the administrative entity of the Middle March may have disappeared, its former outline remained in that of the sheriffdoms of Roxburgh, Selkirk and Peebles. Often contemporarily referred to in one breath, their grouping continued to be relevant as a basis for this study throughout the years of the pacification of the former Borders. James's death in 1625 marks the end of this work, as it did the end of significant crown interest in the region.

Sources

Any analysis of contemporary sources has to be made with an appreciation of the wider context surrounding the events recorded. The study of any contemporary histories must therefore question how representative they were of the situation 'on the ground'. In the sixteenth century, report of the Borders was profoundly influenced by an increasing disdain for the 'wicked' borderers.¹⁶ Furthermore, most reports were confined to that concerning disturbance, with very little record of any outbreak of peace. In addition, descriptions of event in one part of the Borders may not necessarily have been applicable to another part: for instance, crime in the West March may have been more prevalent at a particular time than in the Middle or East Marches but it could affect the way government viewed the whole region.

¹⁶ J Goodare and M Lynch 'The Scottish state and its Borderlands, 1567-1625' in Goodare and Lynch eds. *The Reign of James VI* (1999) 187-88

When such weighted reports were received by a late sixteenth century government, attempting to exert its authority in its localities, they helped to create a perception of the stereotypical Borderer and an 'out-countray' in which the law held no remit. This perception has exercised an enduring influence on the way historians have viewed the region.

A further problem is the survival, or rather the lack, of official Scottish papers, in comparison with that of the English. The principal source of papers that deals specifically with the Borders from 1560 to 1603, published in the *Calendar of Border Papers*, is an extensive collection of correspondence between mainly English wardens, agents in Scotland and Elizabeth I's government. Inevitably these were usually concerned with reports of disturbances, especially those perpetrated by the Scots, and often included complaints about insufficient action by the Scottish wardens to control or redress such activity. Sadly, such a wealth of record has not survived, if it ever existed, from the Scottish side. The letters included in the *Calendar of Border Papers* from the Scottish wardens to their English counterparts are frustratingly few, as are examples of correspondence between Scottish Border officials and their central government in Edinburgh. As a result, the main source of report on the Borders in this period is dominated by that deriving from the English. This imbalance is partly redressed by the greater amount of Scottish correspondence published in the *Calendar of State Papers relating to Scotland*. However, again, this collection was created by the English government and cannot be taken to represent accurately the Scottish government's relations with its localities. This is not necessarily to deny that the disorder described took place, but to caution against an acceptance of the representative nature of such material.

Following James's departure for England in 1603, the *Calendar of Border Papers* ceases. However, reports from English border officials continued to be preserved in several private collections now calendared by the Historical Manuscripts Commission. The *Manuscripts of Lord Muncaster* contain English privy council directives to the Border Commission from 1605 to 1607, correspondence between the English commissioners and with London, and a few revealing letters from an increasingly irate Sir William Cranstoun, captain of the Scottish border guard, to the English commissioners.

Correspondence between the latter and Salisbury from 1605 to 1611, and that between the earl of Salisbury and the supra-border commissioner the earl of Dunbar until his death in 1611 are contained in *HMC Salisbury*. It is instructive to note that border related subjects cease in *HMC Salisbury* from 1612, with the exception of some correspondence over James's visit to Scotland in 1618. However, whilst they indicate the general method of pacification being implemented north of the border, and some of Dunbar's correspondence refers to Scottish events, they remain essentially an English record.¹⁷

The letters and ordinances printed in the *Register of the Privy Council of Scotland* covering almost the entire period provide a crucial counterbalance to the overly English provenance of surviving papers. For this present work the *RPC* is often as useful as the *Calendar of Border Papers*. Whilst privy council papers too reflect concern over the Borders, rather than an appreciation of any stability or effective local government there, they do provide an indication of *Scottish* government policy in the Borders and the changing prioritisation of it. The priority given to the Borders dramatically increased in the 1590s when from 1590 'Acts and Ordinances relating to the Borders and the North' were registered in a separate section.¹⁸ There are also periods when border business disappears from view. This could have been a reflection of lessened tension in the area, decreased English complaints, real reduction in levels of crime there or government preoccupation with other affairs. Determining what government policy was during this period is complex: its inspiration and motives were not always obvious. However, crucial for this study is what the *RPC* reveals about the involvement of Middle March inhabitants in central government.¹⁹

James's move to London in 1603 necessitated an increased correspondence between him and his agents in Scotland. The volume of material in *RPC* significantly increased in this period. In addition, the wealth of letters between James, members of his household in England and his Scottish privy councillors contained in the Denmilne Manuscripts at the National Library of Scotland provide a more personal background to the government action

¹⁷ *HMC Muncaster* 232, 242, 246, 247, 250-1, 260; *HMC Salisbury* vols xv-xxii

¹⁸ The published separate Borders section ceased for records after 1606. *RPC* iv 781-814; v 731-48; vi 823-864; vii 701-29

¹⁹ See App. O. Middle March borderer attendance at privy council meetings 1580-1625

calendared in the *RPC*. Individual relationships emerge between senior courtiers and James, as do James's preoccupations.²⁰

Trying to assess levels of 'disorder' in the Borders is as tricky as discerning government policy towards it. The prosecutions published in Pitcairn's *Ancient Criminal Trials* provide interesting examples of cases. However, Pitcairn's selection of cases was representative of his own interests and do not tell the complete story.²¹ The extensive records of the Court of Session and the high court of justice are held at the NAS but they have been outside the scope of this study.²² Michael Wasser's thesis in which he has assessed seven one-year samples of records of violent crime appearing before the privy council and the high court, for the period from 1603 to 1638, has been invaluable.²³ The courts held in the Middle March were at Peebles, Selkirk and Jedburgh. Sporadically proceedings of justiciary courts at Jedburgh appear in *RPC* but too infrequently to build a full picture. One instance of this is the proceedings of the justiciary courts at Dumfries and Jedburgh in 1622-23.²⁴ The registering of acts of caution from 1592 in *RPC* provides good evidence of alliances and feuds within the Middle March, listing as they do the cautioners for those involved in each dispute.

At a local level there are some judicial records from the period that give some evidence of local preoccupations. Of the three sheriffdoms that cover the area, only the records of the sheriff court of Roxburghshire held at Jedburgh for this period still exist. The relevant ones here are SC62/2/3-7 covering 25 years of the period 1565-1615, being particularly complete from 1598. However, whilst providing a comprehensive record of which sheriff or deputy was presiding, evidence of the regularity of the court's sitting and frequent lists of the juries, the records are dominated by non-criminal business, enforcement of payments and proving of inheritances. Criminal business may have been recorded separately. Nothing is available for Peeblesshire before 1636 and the *Handlist of Records for the study of Crime* does

²⁰ NLS Denmilne Adv MS 33.1.1 vols. 1-11; 33.3.12; 33.1.3; 33.1.7

²¹ Pitcairn *Trials* vols. i-iii

²² Court of Session records in CS7 and high court papers in JC2. A six month sample of CS7/216 undertaken for June 1605 to March 1606 showed the difficulties in making a representative survey of the 325 volumes for the period 1575 to 1624. See also p.169

²³ MB Wasser 'Violence and the central criminal courts in Scotland, 1603 to 1610' PhD thesis (Columbia 1995)

²⁴ *RPC* xiv add. 667-714

not list anything at all for Selkirkshire. There are no records of courts held by the justices of the peace for Roxburgh and Peebles until 1656.²⁵

The Walter Mason papers held in the Borders Archive at Selkirk form an invaluable body of evidence of life in Selkirk in the sixteenth century.²⁶ The collection includes the protocol books of seven Selkirk notaries between 1511 and 1631 and two Selkirk burgh court books from 1503 to 1545 and 1557 to 1575. The protocol books are principally a register of notarial instruments confirming transfers of lands: they provide evidence of landholding and the social structure of the area but little to do with crime. The rest of the papers is a miscellaneous collection of decreets by the lords of council, kirk session and burgh court and actions taken there concerning local Selkirk disputes: some of these give an idea of the violence involved. However, the judgements made were to resolve the ownership of the land, rather than to punish the violence.²⁷

Some burgh records for Peebles survive from throughout the sixteenth century. Most of these have been published providing a glimpse of burgh life and concerns.²⁸ For Melrose, the regality bailie court book has been transcribed from the original manuscript at NAS for 1605-9. It shows the workings of the bailie's courts, principally concerned with territorial issues, held by Lord Buccleuch or his deputy as bailie for Melrose. Interestingly it records the aggressive approach taken by one of the main figures of the pacification, Sir Gideon Murray of Elibank, in his newly acquired lands in the regality.²⁹

Church records for the period occasionally provide glimpses of crime,

²⁵ CMF Ferguson estimated 95 percent were civil cases from 1610-1615. Ferguson 'Law and Order on the Anglo-Scottish Border, 1603-1707' PhD thesis (St Andrews 1981); P Rayner, B Lenman, G Parker eds. *Handlist of Records for the study of Crime in early modern Scotland* (List and Index Society 1982)

²⁶ The papers held by the Walter Mason Trust number over 2,000 manuscripts. They were discovered in the local bank's storeroom during the Second World War and rescued by Walter Mason.

²⁷ Teresa Maley and Walter Elliot eds. *Selkirk Protocol Books 1511-1547* (Stair Soc 1993); J Imrie ed. *The Burgh Court Book of Selkirk 1503-45* (SRS 1960); Symms 'Social Control in a Sixteenth-century burgh: A study of the Burgh Court Book of Selkirk'; NAS B68/7/1

²⁸ Burgh of Peebles - B58/8/3 for 1565-73 and 1585; B58/13/1 for 1604-52; *Charters and Documents relating to the Burgh of Peebles : with extracts from the records of the Burgh, AD1165-1710* (1872)

²⁹ *Records of the Regality of Melrose ,1547-1706* vol ii (SHS 1917)

particularly slaughter, but are generally confined to judgements on religious and moral misdemeanours, administration of the local kirks and the appointment of ministers. In this they reveal much of the local way of life, social structure and dispute over powers of nomination of ministers between prominent local figures and the presbytery. Sentences for offences were limited to ecclesiastical sanctions such as excommunication and public repentance. Synodal records are available at NAS for Lothian and Tweeddale, the ones relevant to this period from 1589 to 1596 having been printed, but nothing is available for the synod of Merse and Teviotdale until 1708. Presbytery records exist for Jedburgh and Kelso from 1601 to 1621, and for Selkirk, 1607 to 1619.³⁰

The larger collections of private papers amassed by the prominent families of the period in the Middle March include those of Scott of Buccleuch, Ker of Cessford in the Roxburgh Papers, the Kers of Ferniehirst and Lothian in the Lothian Papers and Hay of Yester in the Tweeddale Papers. With the wonderful exception of the Lothian papers, these collections contain frustratingly little personal correspondence, but provide a wealth of evidence about landholding, which in turn shows much about local alliance and dispute, and something about office-holding. The multitudinous folders of writs are evidence of these families' preoccupation with establishing their ownership of and rights over land including the nomination of ministers - and to have a legal record of it. A complex picture of landholding, with different layers of rights over the land, emerges from the thousands of writs. By 1625, this picture appears to have been undergoing a process of consolidation as principal heads of surname amalgamated landholdings under one umbrella by the erection of baronies.³¹

The smaller collections of the less prominent surnames of the Middle March are similarly dominated by land writs: these include those of the Murrays of Elibank, Rutherfords of that Ilk, Hunthill and Hundalee, Douglasses of Cavers, Pringles of Torwoodlee and Scotts of Harden. The limited size of

³⁰ NAS CH2/252/1; printed in *The Records of the Synod of Lothian and Tweeddale, 1589-96, 1640-49* ed. James Kirk (Stair Soc 1977); CH2/198/1 Jedburgh and Kelso Presbytery Records; CH2/327/1 Selkirk Presbytery Records

³¹ NAS GD224 Buccleuch Papers; GD40 Lothian Muniments; GD28 Tweeddale Papers; NRAS1275 Buccleuch and Queensberry Papers; NRAS1100, 3524 Roxburgh Papers. See App. B

these collections facilitates the charting of these families' changing fortunes throughout the century, their disputes and alliances and appointment to local office, without being overwhelmed by a complex structure of landholdings. Inevitably, these lesser families interacted with that complex structure, particularly in disputes over superiority: the evidence provided by the names of their witnesses, those from whom they hold land and those they are in dispute with, showed these families to have been actively involved in the disputes, alliances and structures of landholding of the greater surnames.³²

Any use of papers from the Middle March needs to be put into a national context. Contemporary histories provided that context: moreover, their sporadic coverage of border events showed evidence of the changing attitudes to the Borders. Inevitably, these histories were influenced by the worsening perception of the Borders. Churchmen were predominant amongst these historians. Bishop Leslie's *Historie of Scotland* included his assertion that descriptions of 'Scottis to eit menis flesche...can to na uther be attrubetet..bot only to thame of Anandale', distancing their 'alde crueltie' from the behaviour of 'the hail Scottis natione'. This was not indicative of an unbiased approach. Borderers, he wrote, were 'persuadet that all the gudes of al men in tyme of necessitie, be the lawe of nature, ar commoune to thame and utheris'. Two histories of the Church of Scotland by clerics gave snippets of border events some prominence: John Spottiswoode, archbishop of Glasgow from 1605 and of St Andrews from 1615, provided a different view from that of the Presbyterian Mr David Calderwood, himself minister at Crailing near Jedburgh. Curiously, Spottiswoode failed to mention his own part in the pacification of the Borders after 1608, an omission that Calderwood corrected.³³

More personal evidence for the period abounds in the private diaries of a number of lesser figures in and around the court at Edinburgh. These include that of David Moysie, occasional clerk to the privy council in Edinburgh in the 1580s and 1590s, Sir James Melville of Halhill (1569-1613), a

³² NAS GD32 Elibank Papers; GD157 Scott of Harden; NLS Acc. 7676A, 7676C, 7750 Rutherford papers; Acc. 6803, 6991 Douglas of Cavers; NRAS 482 Pringles of Torwoodlee

³³ EG Cody and W Murison eds. *The Historie of Scotland by John Leslie, Bishop of Ross*. Translated by Father James Dalrymple in 1596. (1895) 2 vols, 10-11, 99-101; John Lesley *History of Scotland* (Bann. Club, 1830); John Spottiswoode *History of the Church of Scotland* (1851) 3 vols.; David Calderwood *History of the Kirk of Scotland* 8 vols. (Wodrow Society 1842-49) 751-64, 768, 771-5

courtier, and Robert Birrel (1532-1605), a burghess of Edinburgh. These diaries illustrate the popular perception of the Borders at that time.³⁴ The only diary by someone who actually lived in the Borders, though on the English side, was that of Robert Carey, younger son of Lord Hunsdon and warden of the English Middle March in its final years. Though his nationality coloured his reporting, the diary gives an interesting first hand account of border affairs at a time when James's concerns over his succession to the English crown had begun to influence his policy in the Borders.³⁵

As a source of evidence for the period all these diaries inevitably suffer from some prejudice as a result of the way in which borderers were perceived. Birrel writing about the 'Tumult of Edinburgh' of December 1596 saw no need to further explain the terror caused by the 'grate rumour and word among the tounesmen, that the Kings Majestie sould send in Will Kinmond the comone thieff, and so many Southland men, as sould spulzie the toune of Edinburghe'. The fear inspired by mention of a borderer was implicit, the image of the violent and lawless borderer generally understood.³⁶

There are echoes of this image in contemporary poetry. Richard Maitland's complaint *Aganis the Theivis of Liddisdail* of the 1560s warned of the 'commoun thevis' of Liddesdale, who guided by the 'mekle deill' and having harried their neighbours in Ettrick Forest and Lauderdale, were making inroads on Lothian. The thief in Sir David Lindsay's *Ane Satyre of the Thrie Estaitis* in the 1550s rode with the notorious border surnames, Nicksons and Bells, Scotts of Ewesdale and Grahams. There 'was nocht ane in all Lidsdail, / That ky mair craftelie culd stail'. The image of the border bandit prevailed, an easily identifiable caricature which, like most caricatures, was unrepresentative of all borderers.³⁷

There is some evidence of how borderers saw themselves in the reports in the *CBP*; the English warden Scrope continually bemoaned the pride of Scott of Buccleuch. But one indigenous body of evidence is the border (primarily

³⁴ David Moysie *Memoirs of the Affairs of Scotland 1578-1603* ed. James Dennistoun (Edin 1830) xiii; Sir James Melville of Halhill *Memoirs of his own life* ed. T. Thomson (Bann. 1827); 'The Diary of Robert Birrel' in *Fragments of Scottish History* by Sir John Graham Dalyell (1798)

³⁵ *The Memoirs of Robert Carey* ed. FH Mares (1972)

³⁶ *Birrel Diary* 41

³⁷ *The Maitland Folio Manuscript* ed. WA Craigie (STS 1919) i, 301-3; *The Works of Sir David Lindsay of the Mount 1490-1555* ed. Douglas Hamer (STS 1931-6) ii, 359, 371

Scottish) ballads.³⁸ Though the veracity of events described in the ballads cannot be relied upon and the dating of each ballad's conception remains inconclusive, there is evidence that some are old enough to reflect what the borderer felt about himself during this period. For instance, Goodman notes of the ballads about the battle of Otterburn (1388) that 'the social context in which the Otterburn ballads place the battle...[was] probably based on contemporary local perceptions'. There appears to be agreement that the Otterburn ballads originated soon after the event.³⁹

The border ballads have often been used to show evidence of a cross-border frontier mentality. In them Goodman has found a 'recognition of shared martial qualities'. However, Grant writing on the Scottish perspective of Otterburn notes the evident heroism of the patriotism; the battle was not just about Douglas/Percy rivalry, but also about being a Scotsman fighting an Englishman and winning.⁴⁰

The doughty Douglas bound him to ride
Into England, to drive a prey...
And he has burn'd the dales of Tyne
And part of Bambrough shire;
And three good towers on Reidswire fells
He left them all on fire.

The notorious Johnnie Armstrong, laird of Gilnockie, hung with many of his surname in 1529 on a judicial raid by James V, is mourned in the ballad of his name

But Scotland's heart was ne'er sae wae
To see sae mony brave men die -
Because they saved their country deir
Frae Englishmen!

Armstrong appealed to James for clemency, citing his patriotism.

Wist England's King that I was ta'en

³⁸ Collections of ballads include that by Sir Walter Scott and a subsequent one by Francis Child. Sir Walter Scott *Minstrelsy of the Scottish Border* ed. TF Henderson (1902) 4 vols; Francis James Child *English and Scottish Popular Ballads* (1882-98) 5 vols. Meikle notes that the ballads mostly originated in the West and Middle Marches attributing this to the more civilised and peaceful demeanour of the East March laird. Meikle *A British Frontier?* 184-85

³⁹ Anthony Goodman 'Introduction' in A Goodman and A Tuck eds. *War and Border Societies in the Middle Ages* (1992) 7-8; James Reed 'The ballad and its Source' *ibid* 100-1; Alexander Grant 'The Otterburn War from the Scottish Point of View' *ibid.* 32, 34, 53; Edward J Cowan 'Introduction' and 'Sex and Violence in the Scottish Ballads' in Cowan ed. *The Ballad in Scottish History* (2000)95-115

⁴⁰ Goodman 'Introduction' 7-8; Alexander Grant 'The Otterburn War'; Kaye McAlpine 'Proude Armstrongs and Border Rogues: History in "Kinmont Willie", "Jock o the Side" and "Archie of Cawfield"' in *The Ballad in Scottish History* 73-94

O gin a blythe man he wald be!⁴¹

By themselves these ballads cannot conclusively prove the existence of a national identity. What they do show however is an understanding of the existence of a frontier line. Such a conclusion questions the thesis of a 'shared mentality' between the inhabitants either side of the border and is discussed further below.⁴² The ballads have influenced much of the subsequent analysis of the region, whether it was the misleading romanticism of Sir Walter Scott or the condemnation of the barbaric borderer apparent in Tough.⁴³

Historiography

The historiography of the Borders illustrates some of the underlying difficulties in attempting any analysis of the area. Foremost amongst these is the effect that national bias has had on the evaluation of government and order there. Historical analysis of the Borders has until quite recently been dominated by that from an anglocentric stance. This lauded the development of the English state and government, regretting the apparent lack of a similar development in Scotland. Thus, the benefits to Scotland of a seemingly inevitable union were upheld. However, more recent work has begun a re-evaluation of the Scottish monarchy and government, which is beginning to result in a more positive appreciation of Scottish government in the late sixteenth century. Bias of course was not merely on a national basis. It affected the writing by Scots of contemporary histories in the later sixteenth and early seventeenth centuries which, in turn, have influenced subsequent histories.

After James VI's progress to London in 1603, there was little more on the Borders until the publication in 1688 of Walter Scott of Satchells's *Metrical History* of the Scott and Elliot families in the shires of Roxburgh and Selkirk. Loyalty limited its contribution to a balanced evaluation of history. Satchells was a grandson of Sir Robert Scott of Thirlestane, a prominent Middle March man. A laudatory description of the 'valiant earl of Buccleuch', son of the

⁴¹ Sir Walter Scott *Minstrelsy* 283, 286, 356-58

⁴² Goodman 'The Anglo-Scottish Marches' 30

⁴³ Tough 175

'bold Buckleuch' serving in Holland in 1606 is symptomatic of the volume's tone.⁴⁴

More scholarly works on the whole Borders began to appear from the latter half of the eighteenth century. Tough's excellent 'Bibliographical Introduction' summarised most of the main works published by the time of his own book in 1928. The first of these, *Leges Marchiarum* by William Nicolson, published in 1747, collated the Anglo-Scottish treaties up to 1597 and detailed the march laws that arose from these deliberations by the border commissioners. It was largely based on a manuscript 'Memoriall of the late dissolved treatises of truce and Lawes of Marches' by Richard Bell, a clerk to the English West March wardens until 1603. This provided the foundation for further study of the region and was not superseded until Tough's own collation of march laws.⁴⁵ The first attempt to provide a history of the whole Borders region was by George Ridpath in 1776. He provided a relatively balanced narrative history up to 1603, informed by extensive use of contemporary documents. His view, however, of Union that 'every unprejudiced mind must be sensible of the unspeakable advantages of this great event', limited any positive analysis of events before the Union.⁴⁶

Histories of the Scottish Borders are dominated by histories of border families; an exception to this for the Middle March was *The History of Selkirkshire, or Chronicles of Ettrick Forest* by Thomas Craig-Brown, a meticulously researched account of the shire, its families and the burgh of Selkirk, published in 1886.⁴⁷ Prominent amongst the histories of families from the Middle March was the *History of Liddesdale* by RB Armstrong which includes a history of the notorious Armstrong family. This covered events until 1555, but an unpublished manuscript compiled by Armstrong from original documents for a second volume is preserved in the NLS. Another Liddesdale family, the Elliots, was covered by GFS Elliot.⁴⁸ Other family

⁴⁴ Capt Walter Scott of Satchells *Metrical History of the Honourable Families of the Name of Scott and Elliot in the shires of Roxburgh and Selkirk. 1688* (reprinted 1892) 4-5, 10

⁴⁵ Tough xi-xx; W Nicolson *Leges Marchiarum* (1747)

⁴⁶ Tough xvi; George Ridpath *The Border History of England and Scotland* (1746, republished 1979) 484, 445-484

⁴⁷ T Craig-Brown *The History of Selkirkshire* (1886)

⁴⁸ RB Armstrong *The History of Liddesdale, Eskdale, Ewesdale, Wauchopedale and the Debateable Land* (1883); NLS MS 6110-20; GLS Elliot *History of the Border Elliots* (1897)

histories included *Upper Teviotdale and the Scotts of Buccleuch*, an entertaining mixture of legend and fact; *The Rutherfurds of that Ilk*, a comprehensive history of all of the branches of a border family prominent in local affairs and another on the similarly prominent Pringles.⁴⁹ The most grandiose of the Victorian genre of family histories were those by Sir William Fraser which provided a historical background to his collections of family documents. From the Middle March the most relevant were those of Buccleuch and Douglas.⁵⁰ Since these recounted the histories of the 'greater' families of the region, they inevitably included record of dealings with the crown and central government and are helpful in attempting to build a picture of crown policy in the marches. All these histories, however, were far from impartial and provided little analysis of the events they detailed, particularly in relation to the wider national context.

The twentieth century saw the widening of accounts of the Borders region as a whole. The most entertaining of these is *The Steel Bonnets* by George MacDonald Fraser in which he paints a vivid portrayal of the reivers, their customs, apparel and raiding.⁵¹ His research was based on the reports in *CBP*: however, he does not apply much contextual historical analysis to these reports. As his subtitle suggests, the book is more of a 'story' than an academic history. Whilst he does not flinch from describing the violence involved, there is an underlying romanticism to his approach which bears similarity to that of Sir Walter Scott.

Tough's study of both sides of the border could not have been more different. It was based almost exclusively on original documents, in particular the Bell MS. He placed the development of march law and administration within a broader national context and against a background of cross-border relations. However, though Tough could not be accused of romanticism, the book certainly came from an anglocentric perspective. His comparison of English border officials with those such as Buccleuch and Cessford in Scotland concluded that 'it is clear that we are dealing with two

⁴⁹ JR Oliver *Upper Teviotdale and the Scotts of Buccleuch* (1887); TH Cockburn-Hood *Rutherfurds of that Ilk and their Cadets* (1884); A Pringle *The Records of the Pringles or Hoppringills* (1933)

⁵⁰ Sir William Fraser *The Scotts of Buccleuch* (1878) and *The Douglas Book* (1885)

⁵¹ G MacDonald Fraser *The Steel Bonnets: the story of the Anglo-Scottish border reivers* (1971)

different stages of civilization'. Given the recent re-evaluation of the effectiveness of the Scottish crown in the fifteenth and sixteenth centuries, it would be difficult to write in such a vein now.⁵²

Such debate is particularly relevant to the marches since its effect has been to re-evaluate how the crown was able to impose its will in the localities. The traditional view, that weak kingship exacerbated by frequent minorities had resulted in rampant magnates operating semi-autonomously within their own regions, has been systematically revised. The work in particular of Jenny Wormald and Michael Brown has shown that despite the minorities, magnates generally found that it was in their own interest to co-operate with the crown, and that the crown was thus able to exercise some degree of authority in the localities.⁵³ Michael Brown has convincingly illustrated this balance of power, using the example of the Douglases in the Middle March in the late fourteenth and fifteenth centuries; it was only when the balance became upset by the increasing wealth and power of the Douglases in the 1450s that James II was forced to retaliate. The affiliated families that had previously formed the local framework of Douglas power then filled the vacuum that the Douglas demise had left. They too found that it was beneficial to co-operate with the crown.⁵⁴

In a similar vein, Keith Brown's study of bloodfeud concludes that, far from resisting crown suppression of feud from the 1590s, the nobility found it to their advantage to work with James VI. Of specific relevance to the Middle March, Brown's analysis of the geographical spread of feud throughout Scotland found a more even distribution of it than the traditional notoriety ascribed to feud in the Borders suggested. Feuding 'was a Scottish experience, and not one which was a product of highland tribalism, or border lawlessness'. Tough, like many English border officials, ascribed much of the violence in the Borders to feuding. However, more recent studies of crime, such as that by Michael Wasser, have accepted that levels of

⁵² Tough 175

⁵³ JM Wormald 'Taming the Magnates?' in KJ Stringer ed. *Essays on the Nobility of Medieval Scotland* (1985); JM Wormald *Court, Kirk and Community: Scotland 1470-1625* (1981) 3, 9-14, 16-17, 192; JM Wormald *Lords and Men in Scotland: Bonds of Manrent, 1442-1603* (1985) 5; MH Brown 'The Magnates Tamed? Kings and Magnates in Late Medieval Scotland' *Innes Review* xlv (1994)

⁵⁴ MH Brown *The Black Douglases: War and Lordship in the Late Medieval Scotland 1300-1455* (1998) 1-6, 69-71, 283-6, 290-1, 293-5, 308

violence are difficult to quantify. As a result, the traditional interpretation of the turbulent nature of late medieval Scottish society is open to re-assessment.⁵⁵

Alexander Grant's warning against too direct a comparison between English and Scottish forms of government is useful here: 'Medieval governments should be judged by their results, not by their machinery.' Grant makes the point that the power held by the magnates was in fact a force for stability in their locality; magnates could provide good lordship which included the settling of local disputes.⁵⁶ What this means for the Middle March is that though local administration and formal links with central government may have been less developed than the corresponding English system, this did not mean that the crown was not able to effect its will in the locality. It was generally in the interest of the greater lairds to co-operate since links with the crown enhanced their ability to provide maintenance for their adherents. This perhaps contrasts with the situation across the border. ME James in his valuable studies of the county of Durham and the nobility of the north has identified the destabilising effect of the development of the Tudor state which was achieved at the expense of the 'overmighty subjects' in the north. This had 'the effect of destabilizing the accepted local balance of interest and power, producing reactions of violence and revolt'. The traditional view of the English Borders has influenced the way in which government in the Scottish Borders has been evaluated. A typical description of the Scottish Borders is by RT Spence as 'a near autonomous region' with 'endemic violence' perpetrated by 'numerous and unruly clans'. However, ME James further notes the 'good qualities' of the 'old order', that is good lordship and the 'protective and integrative influence of kinship', which were not recognised by a Tudor government intent on extending its own authority in the north.⁵⁷ Such recognition of the good things about kinship and strong local leaders needs to be applied to the north of the border.

⁵⁵ KM Brown *Bloodfeud in Scotland 1573-1625* (1986) 6-7, 241-3, 269, 277 App. 1; Michael Wasser 'Violence' 5-7, 13-14, 18, 38. See also Jenny Wormald Wormald, JM, 'Bloodfeud, Kindred and Government in Modern Scotland' in *Past and Present* 87 (1980) 54-97

⁵⁶ A Grant 'Crown and Nobility in Late Medieval Britain' in RA Mason ed. *Scotland and England* 38-39, 49-50

⁵⁷ ME James *Society, Politics and Culture: Studies in early modern England* (1986) 3; RT Spence 'The Pacification of the Cumberland Borders 1593-1628' *Northern History* (1977) 59-160

It would have been interesting to see whether Ian Rae would have revised some of his seminal work on the administration of the Scottish frontier from 1513 to 1603 in the light of these subsequent studies: his book was published in 1966, twenty years before most of those mentioned above. His balanced approach and immaculate research allowed him to build an intricate picture of a framework of authority in the Borders: he showed that central government was able to an extent to impose its will in the locality, when it had the desire to do so. Rae concluded that the intrusion of other political and diplomatic factors, such as royal minorities or war with England, on a national and local level, often limited the government's ability to use the existing machinery of local authority.⁵⁸ It is in his assessment of the weaknesses of central government and a crown bedevilled by overpowerful magnates, that he and the revisionists would diverge. As a result, Rae perhaps underestimated the effectiveness of the crown. He arrived at a conclusion which, though immeasurably more balanced than Tough's, remained influenced by the view that Scottish government was hampered by 'the nobility with their important semi-private jurisdictions and their tradition of independence and revolt'.⁵⁹

Grant and Michael Brown were writing principally on the fifteenth century, but their findings generally concur with what Keith Brown and Jenny Wormald have found through to 1625. For the later fourteenth century, Alistair Macdonald's *Border Bloodshed* provides a local example for the relationship between crown and local magnates, demonstrating that events in the Borders were more closely linked to government policy than have been appreciated. He shows how Robert II and James earl of Douglas were involved in a mutually-beneficial relationship in the 1380s in which Douglas was rewarded for pursuing Robert's war against the English in the Borders. The successful implementation of crown policy dovetailed with Douglas's own landed interests in the region.⁶⁰ Macdonald suggests an explanation of why such co-operation has not been acknowledged before:

As regards the late medieval Anglo-Scottish border there has been a relative abundance of recent work, although its focus has mainly been on northern England ... it has been assumed rather than demonstrated that

⁵⁸ Rae 12, 16-18, 28, 95-96, 156-7, 177, 180-81, 209, 215, 218-9, 221-2

⁵⁹ Rae 206

⁶⁰ Alastair J Macdonald *Border Bloodshed: Scotland and England at War, 1369-1403* (2000) 62-63

the Scottish side of the Border displayed similar characteristics.⁶¹ As an example of the difference, Macdonald notes the absence of the destabilising 'alienation' of Scottish borderers from their crown, in contrast to the English. He concludes that the assessment of political circumstances in the Scottish Borders, primarily from an English perspective, has resulted in the sweeping generalisation of a 'strongly entrenched orthodoxy'.⁶²

Many of the conclusions that Macdonald arrives at concur with the findings of this thesis for the later sixteenth century: for instance, the relationship between the crown and the Douglases in the fourteenth century was to a great extent replicated in that between James VI and Ker of Cessford and Scott of Buccleuch. Similarly, much of the analysis of the period of this study has been from an English perspective; it has been based on an assumption of similarity either side of the border, which ignores very real differences in political and social circumstances of English and Scottish Borderers. This assumption has been to the detriment of balanced assessment of the Scottish situation and led to the underestimation of the efficacy of crown-locality relations. This has resulted in a misreading of crown policy in the region. Where Macdonald and this study would diverge is over his assumption that the situation in the Scottish Borders in the later sixteenth century was similar to that experienced in England.⁶³ He has convincingly demonstrated the problems of such a negative analysis for his period. However the bases for his criticism of Anglocentric analysis of the Border region continue to apply for the later period, at least until 1625. A traditional view of the sixteenth century 'Border problem' continues to colour Macdonald's otherwise balanced assessment.

For the period leading up to the Union of Crowns in 1603, there are a number of general studies which include an assessment of government policy towards the Borders. George Hewitt's study of *Scotland under Morton* includes a chapter specifically on the administration of the Borders. He details a defining characteristic of Morton's regency, the repeated judicial raids that he made into the Borders, and connects this with Morton's pursuit

⁶¹ Ibid. 200

⁶² Ibid. quote on p.5, 6-7, 241

⁶³ Macdonald *Border Bloodshed* 6-7; cf my review of Macdonald's book *Innes Review* (Spring 2004)

of an English alliance.⁶⁴ The effect of moves towards such an alliance are neatly illustrated by the evidence Julian Goodare provides of the English pension paid to James VI from 1586. His conclusion, that James's 'poverty affected his relations with England ... [so] that Elizabeth was able to buy him cheap', gives a good background to any changes in James's policy in the Borders in the 1590s.⁶⁵

Changes in central government approach to the Borders were influenced not only by varying relations with England: government in the Borders should be viewed in context with, or indeed as part of, a wider development of government in Scotland in this period. Changes within the thinking that inspired much of this development would affect the Borders as much as anywhere else. Julian Goodare and Michael Lynch's article 'The Scottish State and its Borderlands' identifies a shift in government perception of its Borders, which in legislation of 1587 begins to equate them with the troublesome and barbaric Highlands. They note that 'perceptions - from the centre - were more significant than reality' in Scotland's borderlands.⁶⁶ This theme is amplified in Julian Goodare's study of the structure of state authority, *State and Society in Early Modern Scotland*: his chapter on the evolving attitude of the state to its localities and of its inhabitants to the evolving state provides the context for his analysis of the extension of state power into the Borders. He notes that 'although the Borders and Highlands were two distinct regions, it was very much the same general policy for them both'.⁶⁷

However, as he usefully observes, there was a distinction between the two areas: the Borders, unlike the Highlands, were subject to 'over-government'. 'The lack of local nerve-ends of government in the Highlands meant that the Crown was relatively insensitive to unauthorized violence. By contrast, it displayed a marked touchiness towards similar events in the Borders'.⁶⁸ As he notes in a more recent study, the Borders 'were still part of the structure of the state in a way that the Highlands hardly were'. A further distinction was that the Scottish Borders were 'an incomplete concept without their

⁶⁴ George R Hewitt *Scotland under Morton 1572-1580* (1982) 130-6, 168-84, 206

⁶⁵ Julian Goodare 'James VI's English Subsidy' in *The Reign of James VI* 115, 125

⁶⁶ Goodare and Lynch 'Scottish State and its Borderlands' 187-8, 195-7, 201-5, 207

⁶⁷ Julian Goodare *State and Society* 255

⁶⁸ Goodare *State and Society* 257-58

inescapable corollary - the English Borders'. This cross-border region he describes as 'a single homogeneous zone'. In this he would have the qualified agreement of Maureen Meikle.⁶⁹

Maureen Meikle's *A British Frontier?* applies much of the recent re-evaluation of Scottish government and society to her study of the socio-economic circumstance of the lairds of the Eastern Borders, bringing the analysis of one part of the Border region up-to-date. Her delineation the 'Eastern Borders', comprehending the English and Scottish East Marches and the eastern part of the Scottish Middle March, overlaps with the administrative region of the Middle March that is the basis for this study. She describes her work as a 'thematic, comparative micro history of landed society' focusing 'on the social structures of landed communities on both sides of the Border, their politics, wealth, education and culture'. In contrast, this more politically focused thesis will deal less with the socio-economic standing of the lairds of the Middle March. Meikle's study of those lairds who resided in the eastern part of this March cannot be surpassed. Instead this study will concentrate on the relationship between central government and the lairds of the eastern part of the Middle March whom she has enumerated, and those of the western part whom she has not.

Her principal premise is that, given the degree of socio-economic connections and cultural similarity between the Eastern borderers on either side of the frontier, any frontier line could almost be redrawn on a north-south axis, separating the more civilised Easterner from his reiving Western counterpart. She concludes that the reputation of the Easterner has been unfairly sullied by this proximity, anglocentric prejudice colouring any attempt at a balanced evaluation of the Borders. In doing so she hopes to 'revise previously held opinion about this frontier'. However, in laying to rest the fallacy of the accepted orthodoxy of the barbarian borderer in the east, she risks creating another in her approach to the rest of the Borders.⁷⁰

⁶⁹ Julian Goodare *The Government of Scotland, 1560-1625* (2004) 174; Goodare *State and Society* 218

⁷⁰ Meikle *A British Frontier?* 1-2,3. Other useful articles by Meikle include 'The Invisible Divide: The Greater Lairds and the Nobility of Jacobean Scotland' *SHR* lxxi (1992) 70-87, in which she perceptively notes the blurring of the divide between the nobility and 'greater lairds'. Also relevant here her article 'A Godly Rogue; The Career of Sir John Forster, an Elizabethan Border Warden' *NH* xxviii (1992), 126-63

James VI's succession to the throne of England in 1603 inevitably affected the Middle March. A policy of 'pacification' was implemented consistently from 1605 in order to bring the Middle Shires into conformity with the rest of the united kingdoms. At present there is no published work on the pacification of the Scottish Borders specifically. There are two regional studies of the pacification in England: SJ Watts's *From Border to Middle Shire: Northumberland 1586-1625* and RT Spence on Cumberland, provide invaluable context for any evaluation of the northern side of the frontier. In particular Watts's analysis of the effect of factionalism within Northumberland on the exaggerated or underplayed portrayal of disorder there, has direct relevance to the Scottish government's perception of its Borders. Some of the mechanisms of pacification, for which Watts and Spence provide a systematic account in their regions, were also attempted in Scotland. However, the situation in the English Borders cannot be directly equated with that in the Scottish, particularly in relation to Scottish borderer connections with Scottish central government. As a short paper by Penry Williams on the English Borders under the early Stuarts emphasises, 'in spite of some superficial likenesses the English and Scottish systems were in many ways very different'.⁷¹

This is something that Jared Sizer would concur with. In researching his meticulous history of the pacification, 1603 to 1625, he attempted to treat the whole Borders, the region on both sides of the frontier, as 'one administrative entity', 'a single geographic, legal and religious entity'. He found that 'this was what they were not'. Both sides of the border continued to be administered under two separate commissions. This division was symptomatic of the failure of James's vision of a united 'Middle Shires' and ultimately of his vision of Union. In contrast to Meikle, Sizer concludes that 'Borderers themselves were rarely unified and seldom if ever conceived of themselves as a unified people'.⁷²

Sizer draws extensively on *HMC Muncaster* and *Salisbury, RPC* and the *Vetera Indictamenta* which record the Quarter Sessions in Northumberland. In this he extends the work of Michael Wasser, *The Pacification of the Scottish Borders*,

⁷¹ SJ Watts *From Border to Middle Shire: Northumberland 1586-1625* (1975); RT Spence 'The Pacification of the Cumberland Borders'; Penry Williams 'The Northern Borderland under the Early Stuarts' *Historical Essays 1600-1750: presented to David Ogg* eds. HE Bell and RL Ollard (1963) 2, 1-17

⁷² Sizer 'Middle Shires' 3, 5, 15, 284, Conclusion

1598-1612, which was the first such methodical analysis of the Scottish Borders. This is an invaluable base for any further study, but inevitably is limited by Wasser's use of printed records only. Subsequent re-evaluation of the apparent 'disorder' of the period might temper Wasser's conclusion that 'in a savage age the government must sometimes also be savage - but its victory was the only hope for ending the cycle of barbarism'.⁷³

Inevitably given the predominantly English origins of the printed records, and the dearth of such Scottish material, Sizer's thesis leans more to an account of events in England. One of the most fruitful aspects of Sizer's work is the picture he builds of the earl of Dunbar, listing eighty-one surviving letters from James's redoubtable agent. He has subsequently published an article on Dunbar's career from 1603 to his death in 1611.⁷⁴ Whilst this present study accords, in general, with Sizer's findings on the qualified success of the pacification, it diverges significantly over Sizer's analysis of the Borders as 'separated' from the 'typical Lowland experience' and backward due to its isolation.⁷⁵ This study particularly disagrees with his analysis of power vacuum in the Scottish Borders in the early seventeenth century as a result of the decline of the Douglas earls of Angus and a lack of local resident nobility in 'an area where central authority held little sway and even less meaning'.⁷⁶ This is to underestimate the authority that prominent local figures exercised through kinship and alliance and the way in which central government was able to harness that power.

Sizer's thesis finishes at 1625, but a thesis by Catherine Ferguson, 'Law and Order on the Anglo-Scottish Borders' puts the pacification into a broader seventeenth century context by extending the period from 1603 to 1707; she analyses the slow process by which the Middle Shires evolved from their conception at the regnal Union to their full realisation at political Union. She does this by tracing the development of 'the whole range of law courts

⁷³ *HMC Muncaster* (1885); *HMC Salisbury* (1930); *Vetera Indictamenta: Criminal Records of the General Gaol Delivery and General Quarter Sessions for the Peace of Northumberland, 1594-1630* Northumberland Record Office; Michael Wasser 'The Pacification of the Scottish Borders, 1598-1612' MA diss. McGill University, Montreal (1986) 189

⁷⁴ Jared RM Sizer 'The Good of this Service Consists in Absolute Secrecy: The Earl of Dunbar, Scotland and the Border (1603-1611) in *Canadian Journal of History* xxxvi no. 2 (2001) List of surviving correspondence 232 n. 7, 229-257

⁷⁵ Sizer 'Middle Shires' 20

⁷⁶ *Ibid.* 29

operating in the area - from the central courts in London and Edinburgh, to the border commissions and down to local burgh, franchise and ecclesiastical courts'.⁷⁷

She, like Sizer, attempted to treat the cross-border region as one entity: she notes of Union that 'once the man-made divisions were disregarded, the Borders were a single unit' since 'the inhabitants of that area regarded themselves as part of either or neither as the whim suited them'. The inherent problem with this approach is illustrated by the very structure of her thesis: every section on each judicial court described is prefixed by either 'Scottish' or 'English', except for the chapter on the Border Commission. Even where the legal systems appeared to be similar, such as the Justices of the Peace, the chapter on them has to be split similarly. The legal processes in each country remained separate throughout, even at full political union in 1707. The border commissions themselves in the period to 1625 were effectively two separate commissions, commissioners having jurisdiction only within their own country. 'Man-made' divisions continued to demarcate the area.⁷⁸

The problems James faced in his pursuit of full Union explain much about the problems he faced in the Borders - particularly with relation to the enduring distinct legal systems. Brian Levack's *Formation of the British State* places James's Border policy within the whole programme for the unification of a 'Great Britain'. He notes that 'what appeared necessary ... was the co-ordination, if not the union, of the judicial forces of the two states in this troubled area'. He notes however that 'Scotland in the seventeenth century was a free, independent kingdom, a sovereign state in its own right, possessing its own laws'. In a chapter on the failure of the 'Union of Laws' and attempts to standardise legal procedures in the whole Borders, he sets the difficulties of resolving the cross-border remanding issue within its full legal context and broader fears of loss of sovereignty. Levack's conclusions on the 'modified' version of the 1707 Union, in which legal systems remained independent, suggest an explanation of the failure to achieve uniformity of such systems in the Borders to 1625.⁷⁹

⁷⁷ Ferguson 'Law and Order' abstract, x

⁷⁸ Ferguson 'Law and Order' xi

⁷⁹ The remanding issue is discussed in Chapter six. Brian P Levack *The Formation of the British State: England, Scotland, and the Union 1603-1707* (1987) 6, 24, 62, 75, 86-7

The roots of this failure are demonstrated by the intricacies of the Union debate. These have been meticulously charted by Bruce Galloway, from the proposals drawn up by the initial Union commission of 1604 to the prolonged discussion of them in the English parliaments of 1604 and 1606-7. His section on parliamentary debate of hostile and border laws in 1607, including the remand issue, noted discussions taking place 'against a background of mutual distrust'. Galloway demonstrated that any attempt to look at James's policy in the whole Borders should place the Borders within not only his hopes for Union, but also his ideas of kingship. He noted that border administration in 1605-6 was an area where 'it is difficult to separate action taken to advance the Union from the simple continuation of longstanding policy'; the pacification 'reflected James's emphasis on the extension of centralised authority throughout his dominions'.⁸⁰

Other more general studies of this period put the experience of the Borders into a wider national context. Maurice Lee's masterful study of James's absentee government *Government by Pen* includes lengthy sections on James's border policy 1605-1611, his use of Dunbar and the revival of his interest in the area in 1618. Lee views the Borders from the traditional 'Border Problem' perspective, emphasising 'the tendency to lawlessness' in the days 'when the border constituted a separate, almost independent element in the Scottish state'; it was to take the 'exemplary severity' of the pacification to remedy this situation.⁸¹ Though in broad agreement with much of Lee's description of the pacification, this present study will reassess the pre-Union background to such measures and thus re-evaluate their implementation.

Specifically Borders context to the Middle March is provided in the work done by Sharon Adams on how royal authority functioned in the Scottish south-west after 1603: this area includes the former West March. Noting the continued importance of the 'existing leadership of society' in the locality within James's new appointments such as the JPs, she also acknowledges the creation of a new nobility, their loyalty to James ensured by their elevation. She draws parallels here between the advancement of the Maxwells in the

⁸⁰ Bruce Galloway *The Union of England and Scotland 1603-1608* (1986) 65-8, 84-6, 120-7

⁸¹ Maurice Lee Jr *Government by Pen: Scotland under James VI and I* (1980) 12, 46, 74, 45-74, 116-124, 206-9

West with the Kers and Scotts in the Middle March, commenting on their new loyalty to and inclusion in government. This thesis, however, would note the existing loyalty and service of those Middle March families to the crown in the period before 1603. This was undoubtedly a factor of the closer proximity to Edinburgh of the Middle March in contrast to the West: the West, Adams notes, had more to do with northern England, Argyll and Ulster. As a result those in the West did not have the tradition of involvement within central government that this study has found for those in the Middle March.⁸²

The Borders should also be seen within a British context. There have been several recent works which have underlined how developments in separate regions of the British archipelago have formed part of a wider 'British History'. Steven Ellis has exhaustively covered the Tudor government's attempts to impose its authority in its various borderlands within Great Britain.⁸³ His comparative study of the English northern border region and the English pale in Ulster under the Tudors usefully identifies the similarities between these two peripheral regions, which provides some context for the situation in the Scottish Borders. Early Tudor government, he found, needed a strong magnate on whom to rely in all its borderlands. He notes 'marcher society' characteristics of 'clans and captaincies, joint responsibility and co-ownership of land' in both England and Ulster, which conflicted with increasing demands of 'civil society' and Tudor government. This situation changed following the English Reformation, when Henry VIII was forced to pre-empt any rebellion by disaffected magnates such as Lord Dacre in the English north and the earl of Kildare in Ulster. For Ellis the advantage of this 'collective approach' to history was that it informed any analysis of the development of Tudor government and the formation of the British state. Ellis draws conclusions from this which he says marked the steps to

⁸² Sharon Adams 'James VI and the Politics of South-West Scotland, 1603-1625' in Goodare and Lynch eds. *The Reign of James VI* 228-40, 229,232,234. Also S Adams 'A Regional Road to Revolution: Religion, Politics and Society in South-West Scotland 1600 to 1650' PhD thesis (Edin. 2002)

⁸³ Steven G Ellis 'Introduction: the concept of British history' and 'Tudor State Formation and the shaping of the British Isles' in SG Ellis and S Barber eds. *Conquest and Union: fashioning a British state, 1485-1726* (1995); J Morrill 'The British Problem, c. 1534-1707' in B Bradshaw and J Morrill eds. *The British Problem, 1534-1707* (1996). MJ Braddick *State Formation in Early Modern England c.1550-1700* (2000). A Macinnes and J Ohlmeyer eds. *The Stuart Kingdoms in the Seventeenth Century: Awkward Neighbours* (2002) 'British History' is discussed further in the Conclusion.

unification.⁸⁴

Whilst his analysis of the Tudor north conclusively shows the problems Tudor governments had with England's peripheries, it should be emphasised that Ellis's concentration is on the English government: his works inevitably cannot cover the Scottish situation. Moreover, as Maureen Meikle also notes, Ellis's conclusions are based largely on an account of an English West March family which ends in 1535, thus leaving a long gap between that and the events after Union.⁸⁵ This Meikle felt limited the relevance that Ellis's findings had for her study of the Eastern Borders to 1603; they are similarly limited in relation to this study of the Scottish Middle March to 1625. It has to be recognised that there was a very different situation north of the border, where those in the Middle March were not alienated from central government: increasingly they were involved within it. This differing situation continued after Union where the privy council in Edinburgh continued to govern on a day-to-day basis: policy was affected by English considerations but directed by a Scottish privy council, through Scots in the localities within a Scottish governmental framework. Ellis's model for the English Borders should not be applied wholesale to those in Scotland: to do so would be to underestimate the effectiveness of royal authority in the Scottish Borders and links between centre and periphery, both before and after Union.

From an English perspective, Diana Newton has recently included small sections on James's policy in the Borders in 1603 to 1605 within her account of *The Making of the Jacobean Regime*. Her qualified but positive conclusions about the nature of James's leadership, along the lines of his having 'hit the ground running', extend to an appreciation of the priority he gave to pacifying the Borders, in particular with regard to removing any hostile laws which might threaten his plans for Union in the Parliament of 1604. Like Galloway she links border policy into James's wider ambitions. Noting James's instructions in the spring of 1605 'for invigorating the government of the realm', which 'were to be transmitted down the chain of command to the localities', she finds that 'it can have been no coincidence that this was also

⁸⁴ Steven G Ellis *Tudor Frontiers and Noble Power: the making of the British state* (1995) 253-54, 257-58, 263-64, 267

⁸⁵ Meikle *A British Frontier?* 2

the time that the borders received increased attention'.⁸⁶

Definition of terms

The way in which a government described a section of the country mattered: it affected the formation of policy towards that area and has influenced the way in which subsequent historians have approached analysis of the region. When James's government, as it frequently did, used the terminology 'disorderit' to describe the borderers, it unwittingly formed the basis for future assumption that this was indeed the way most borderers were. However evidence of 'disorder' came from the government's concern over it, rather than a methodical quantitative enumeration of any such 'disorder'. When the term 'disorderit' was then linked with that of the 'wicked' nature of the borderers, as in 'the wicked inclinatioun of the disorderit subjectis', it acquired a further level of meaning. Disorder was equated with wickedness, thus any use of the term disorder, inherently carried the meaning 'wicked'.⁸⁷

Disorder to James increasingly represented a threat to the stability of his kingdom and crucially a challenge to his kingship. Given that James viewed his appointment as divine, such a personal challenge meant that it was ungodly, obviously 'wicked'. After 1603, he viewed any 'disorder' in the Borders as threatening to the establishment of full Union. The term disorder had thus become more a reflection of James's government's concern over it rather than an accurate portrayal: its use of it should therefore be treated as a qualitative rather than a quantitative description of disorder. Where the term 'disorder' is used here, it is with this same caveat.

The term 'disorder' throws up another problem here: what exactly was this disorder and, intrinsic to an understanding of this, why was it occurring? At its most basic level, disorder in the Borders was described by government typically as 'reiff thift or ressett of thift, depradationis opin and avowit fyre

⁸⁶ Diana Newton *The Making of the Jacobean Regime: James VI and I and the Government of England, 1603-1605* (RHS 2005) 4, 37, 98-102, 107-8, 127-9, 134-5, 146; two forthcoming works of relevance by Newton are *North-eastern elites, 1569-1625* and 'The impact of James I's accession on the north east of England' in Robert Colls and Bill Lancaster (eds) *A new history of Northumbria*

⁸⁷ Preamble to act 'Anent the Highlands and Borders' APS iii 461-7; Goodare *State and Society* 254-5; Goodare and Lynch 'Scottish State and its Borderlands' 204

raising upoun deidlie feidis'.⁸⁸ Complaints from the English wardens echo these and also equate the disorder with the inherently wicked borderers. But there is a problem with assuming that all these offences were motivated by the 'wicked' borderer: there is evidence that such 'disorder' was consciously condoned by the Scottish government. As late as 1597, the English ambassador Robert Bowes, saw 'too little sinceritie' in James's public protestations of his intentions to impose 'order' in the Borders. This could be interpreted as diplomatic paranoia but, given the long-term favour shown by James in the 1590s to the borderers the English complained about, the English could be forgiven their scepticism. Governments may publicly announce intention, whilst privately doing something completely different. Should disorder that was effectively state-sanctioned be viewed as disorder at all?⁸⁹

Another term requiring some discussion here is what is understood by the border, the Borders area and a borderer. For Patricia Bradley the Borders area was a single entity straddling both sides of the border, a 'distinct area extending well back from the actual frontier'. 'No distinction must or, indeed, can be made between the men who claimed allegiance to England and those who were Scottish subjects...these men had far more in common with each other than with anyone else' sharing 'a similar economy, a similar dialect, and similar dislike of outside authority'.⁹⁰ Maureen Meikle and Catherine Ferguson would probably agree with much of this. Julian Goodare has observed that the 'people living in this zone knew about the frontier, but did not let it dominate their lives'.⁹¹

The notion of the Borders as a separate entity has an appealing romanticism. It has the effect of downplaying the significance of the borderline itself. Bradley prefers to view the border as a 'distinct area ... rather than as a line drawn on a map'. Bradley and others refer to the ambiguity of the frontier line noting that it was still not completely defined in the mid-sixteenth century. However, the overall line of the frontier was set in the mid

⁸⁸ *APS* iii 461

⁸⁹ Discussion of this is in Chapters Four and Five; *CBP* i no. 241

⁹⁰ Patricia Bradley 'Social Banditry on the Anglo-Scottish Border during the Late Middle Ages' *Scotia* 12 (1988) 30, 31

⁹¹ Bradley 'Social Banditry' 30, 31; Meikle *A British Frontier?* 3; Ferguson 'Law and Order' xi; Sizer 'Middle Shires' 14-15; Goodare *State and Society* 218, 219

thirteenth century and had been unchallenged since the fifteenth. Anthony Goodman notes the strength of feeling about the 'immutability' of this line. A general understanding existed of where the frontier line was and of its antiquity. Borderers may have chosen to ignore it when pasturing their livestock, but that does not mean that they were unaware of its existence.⁹²

Moreover, no matter how pedestrian this may sound, administrative boundaries applied by both Scottish and English governments demarcated the entire region. The laws that affected the Scottish side of the border were those formed by a Scottish government. An inhabitant of this region may have been a borderer, but in terms of the law and government of his physical locality, he was a Scottish borderer. A march warden from one side of the border was not allowed by law to prosecute an offender from the other. The resistance after 1603 to the remanding of borderers to the country of their offence, when the frontier had supposedly dissolved, demonstrated an enduring understanding of its significance. The frontier was institutionalised within the framework of each country's law and administration.

What did all this mean to how the borderer thought of himself? Meikle's conclusion is that the similarities between the Eastern borderers manifested in a borderer's identity in which 'lairds and gentlemen tended to be Borderers first and foremost and Scots or English second'.⁹³ As a result of cross-border fraternisation and acculturation a borderer might identify more closely with his counterpart across the border than a fellow countryman from elsewhere. Also, there has been some work recently into a 'frontier mentality' which has found, particularly on a hostile frontier, the development of a militarized society with its own border-specific institutions and laws. For the sixteenth century, Macdonald has noted that the borderer, living on the periphery of his kingdom, was affected by a growing sense of alienation from his centre of government. However, such arguments need to be balanced against a re-evaluated appreciation of the significance of the frontier line and the ties that bound those on the periphery to the centre.⁹⁴ Perhaps the most compelling evidence for the existence of a *Scottish* borderer

⁹² Bradley 'Social Banditry' 29,30; Antony Goodman 'The Anglo-Scottish Marches'

⁹³ Meikle *A British Frontier?* 3

⁹⁴ Goodman 'The Anglo-Scottish Marches' 19, 22-3, 29; Macdonald *Border Bloodshed* 201-2, 241

identity is what happened in the Borders after the Union of Crowns had supposedly removed the significance of the border. The mutual suspicion (if not outright hostility) that the remaining dispute shows between officials on either side of this border was that of one countryman against another. James's hopes that all inhabitants of his joined kingdoms would embrace the idea of a 'Great Britain' would not be realised within his lifetime. Jane Dawson noting the effects of long-term 'warfare and hostile propaganda' on the attitude of one national to another, asked how James could have hoped 'to eradicate the long-standing enmity...and so transform their deep-rooted hatred into an enduring amity'. If this was the case on a kingdom-wide basis, how more so would it be in an area which had suffered most from that historical enmity?⁹⁵

Within the marches themselves, there appears to have been a differing degree of 'Bordererdom'. Several of the records of the burgh of Peebles mention the burgesses' fear of 'bordouris theivis and revaris' and the 'deidlie feid of the towne with the bordour'. What may be applicable generally to some borderers would not have applied to certain people and to some areas: though some borderers were involved in an active relationship to central government, there were others who acted with apparent independence or indifference to the Scottish crown. Alistair Macdonald has noted the differing degree to which elements of his arguments apply to the various social strata of the borderers, observing the greater cross-border fraternization of the 'lesser' sort. In contrast, Goodman notes of the lairds of the Borders that their political connections with the crown 'reinforced the tendencies among the border elites in the fifteenth century to make economic and financial ties away from the frontier, in and through the interiors of their realms'.⁹⁶ In this thesis, a reference to a borderer means a *Scottish* borderer, and someone who would have understood himself as such.

⁹⁵ Jane Dawson 'Anglo-Scottish protestant culture and integration in sixteenth-century Britain' *Conquest and Union* 91

⁹⁶ Documents *Peebles* 342, 356; Macdonald *Border Bloodshed* 237; Goodman 'Introduction' 9

Conclusion

The Middle March's experience from 1573 to 1625 was defined by its physical location on the border with England. This clearly affected central government's approach to the region and the evolution of some of the mechanisms within it. However, it is also important to understand that no matter how much this was the case, events in the Middle March were influenced by the evolving government of James VI and by a wider national re-evaluation and development of central government's policy towards its larger kingdom. From 1597, however, the increasing likelihood of James's succession to the throne of England prompted significant changes in his attitude to the Borders. No longer was disturbance there of use as leverage in negotiations with the English; instead it had come to be seen as a barrier. This inevitably affected the way in which the crown attempted to assert its authority in the region. From 1605, this took the form of a consistent and severely prosecuted pacification.

However, it is important to separate the way in which borderers had been tacitly allowed to behave in the years before 1597 from the impression their subsequent treatment has given. Similar caution should be applied to the terminology applied to the borderers throughout the sixteenth century, which suggested a tradition of violence in a region out of the control of central government. The image of the wicked borderers should not blind us to their involvement in government both in the locality and at national level. To ignore this involvement would be to underestimate the mechanisms of government in place in the region. When government chose to exert its authority in the Borders, the mechanisms already existed there for it to utilise.

Sadly, for a balanced assessment of the Borders, the imagery associated with an anarchic region has coloured most histories of the region. Both the romanticism of Sir Walter Scott and the condemnation of anglocentric historians have hindered a fuller understanding of the Borders in the late sixteenth century. TI Rae's study did much to provide a more balanced assessment of the administration of the Borders. However the more recent works of Jenny Wormald, Keith Brown and Michael Brown have gone a long way to re-assessing late medieval and early modern government in Scotland

as a whole. Alastair Macdonald has done much to re-habilitate the reputation of the borderers in the fourteenth century. Maureen Meikle has proved convincingly that the Eastern Borderers were not a bunch of illiterate bandits. This study hopes to provide a case-study of a region that will substantiate much of what Wormald, Keith Brown and Michael Brown have found and extend the socio-political parts of Meikle's work westwards. This work is above all intended to challenge the barbarous stereotypes of the Borders and its inhabitants and thus to re-evaluate the traditional histories of the Middle March.

Chapter One: The Social Structure provided by the surnames of the Middle March

Introduction

In a period when government at both local and national levels was conducted through personal contact, any attempt to evaluate political authority in the locality necessitates an analysis of who exercised authority there, and the social framework within which they operated. More than this, the social structure was itself part of the machinery of government. The power of prominent local figures was dependent on the support of those below them and legitimised by those above them. Local society was stratified on a socio-economic basis into nobles, greater lairds, lesser lairds, bonnet lairds and those below.

Cutting through these levels was the grouping formed by kinship, whereby one social grouping could contain members of all socio-economic levels from noble to the poorest tenant. Kinships formed the basis of the structure of society; kinship was fundamental to that society. Wormald has noted the 'fundamental bonds of society were forged not through land but through kinship and personal lordship'; though weakened, these ties of obligation survived into the seventeenth century.⁹⁷ Michael Brown notes that the prominence of the Douglasses in the Borders during the fourteenth and fifteenth centuries was based on the 'kindred, men and adherents' which they attracted to their allegiance through the exercise of their 'good lordship'.⁹⁸ Both Jenny Wormald and Brown link kinship and lordship; Wormald observes 'lordship was seen in terms of kinship, and involved the same obligations'. Ties of lordship provided the machinery for the exercise of government in the locality. By the sixteenth century this kinship grouping was identified by its surname, the word 'surname' becoming 'synonymous with "kindred"'.⁹⁹

The experience of the Douglas kindred in the fifteenth century had a direct bearing on the situation in the Middle March in the later sixteenth century and provides a useful comparison with the situation in the West March. In

⁹⁷ Wormald *Court, Kirk and Community* 29, 40

⁹⁸ Brown *The Black Douglasses* 38, 167, 179

⁹⁹ Wormald *Court, Kirk and Community* 30

1455 the earls of Douglas were forfeited by James II.¹⁰⁰ In the West March their huge spread of landholdings reverted to crown ownership to be later dealt out to a disparate group of local lairds in which no one kindred dominated. In the Middle March the picture was much less fractured: the Douglas earls of Angus managed to take over the principal Douglas lands of Jedforest and continued to maintain significant authority in the region. In the sixteenth century the Douglasses of Cavers were the hereditary sheriffs of Roxburghshire and the Douglasses of Drumlanrig continued to hold power in and around Hawick. At the same time, the crown retained the loyalty of the other local kinship groups such as the Scotts, Kers, Murrays and Rutherfords, investing them in land and local offices from the forfeited forest of Ettrick where they were already resident. The power vacuum following the Douglas forfeiture identified for the West March simply did not happen in the Middle where broadly the same kindreds continued to hold land and local authority. The Middle March presented a more cohesive picture of society at the start of the sixteenth century than was evident in the West, and the same kindreds were still in place in the later sixteenth century.

Maureen Meikle's study of the lairds of the Eastern Borders, in which she included some of the Middle March, also notes the 'strength of kinship' which blurred the divisions between social stratas, particularly that between the nobility and the greater lairds such as Scott of Buccleuch and Ker of Cessford.¹⁰¹ She also has identified a greater degree of continuity of landholding and office in the Eastern Borders than their more troubled Western neighbours. However, the dominance of the Home kindred in the East March (which forms the major part of the region of her study) was in direct contrast to the more even distribution of office and landholding amongst the various kindreds in the Middle March. Perhaps because of the relative lack of competing kindreds in the East March, the structure of Meikle's analysis is based on the various stratas of the lairds from greater, to lesser and below. Whilst she acknowledges the importance of kinship, it is one kindred, the Homes, whose authority prevails in the East March. Thus, the framework of power in the East March differed significantly to that in the Middle where a more evenly spread picture will emerge.

¹⁰⁰ Map of landholdings of the earls of Douglas in 1452. *Atlas of Scottish History* 111

¹⁰¹ Meikle *A British Frontier?* 25, 45; Meikle designates these greater laird Borderers 'surname-chiefs'. Meikle 'The indivisible divide' 70, 75

The surnames

In the Borders in particular the word 'surname' was applied to the kinship groups that existed there; this social organization had points of similarity with those of the kindreds of lowland Scotland and the Highland clans. Thus, the term 'surname' had a wider meaning than simply one person's designation: it indicated the kinship group of which that person was member and to which he was bound by links of loyalty and obligation. In this study, the term 'surname' describes such a kinship grouping, as an entity, specific to the Borders. As with other parts of Scotland, these kinship groupings formed the basic unit of society in the locality, overriding or overlapping economic social stratification as the dynamic for social interaction and social order. The existence of the surname had wider implications for the practice of lordship in the region, acting as part of the machinery of local government and of a broader structure linking those in the locality to the centre. Goodare notes the 'local exercise of political power through militarized kinship groups', the surnames, in the Borders and the involvement of the 'political elite' of the Borders within politics at a national level.¹⁰² Thus it is important to examine the 'surnames' to determine their impact on the workings of political authority in the Middle March.

The first contemporary use of 'surname' to describe the kindreds of the Borders has been traced by Rae to 1498.¹⁰³ It was not exclusively used however: an assurance by Ker of Cessford and Scott of Branxholme in 1545 referred to 'thair kyn'; in 1577 a subsequent Cessford referred to a band of assurance made by Walter Scott of Goldielands on behalf of Branxholme and 'the rest of the name'.¹⁰⁴ But in the latter half of the sixteenth century it was a widely used term whose meaning was usually understood. In 1582, Sir John Forster the English Middle March warden referred to 'the surnames of the Borders of Scotland' without feeling any need for further explanation.¹⁰⁵

However, the term 'surname' was not apparently always understood either by the English, or by the crown. An English report on the 'gentlemen and surnames' of the marches distinguished between the two in England, but

¹⁰² Goodare *State and Society* 257

¹⁰³ Rae 5-6. This was a description of English border groups.

¹⁰⁴ *RPC* i 22; ii 643-44

¹⁰⁵ *CBP* i no. 120

termed the Scottish surnames 'gentlemen' as if Scottish gentlemen were not part of the surnames.¹⁰⁶ Central government showed some confusion between clans and surnames in an act of 1587, 'for the quieting and keeping in obedience of the disorderit...of the bordoris hielandis and Ilis', which was addressed to the 'capitanes cheiffis and chiftanes of all clanis alsweill on the hielands as on the bordouris...the principallis of the brancheis of the saidis clanis'. The terming of the surnames as 'clans' was revealing for it was this act that equated the Highlands and the Borders within legislation for the first time. As the sixteenth century progressed, the centre's perception of its peripheries worsened. Increasingly, the border surnames were bracketed with clans. As a result, the government's association of clans with disorder was extended to the surnames.¹⁰⁷

Border surnames were not only associated with clans, but also with the looser confederations of 'riders and ill doers',¹⁰⁸ 'clannis of theiffis', operating mainly in the outlying areas of the marches, and more accurately termed 'gangs' by Rae. Each of these units may have been dominated by one surname, such as the notorious Armstrongs or Elliots, but not exclusively so. Ridpath described the 'gang' of mainly Armstrongs attacked by Sir Robert Carey in 1598 as 'a tribe of banditti'.¹⁰⁹ This was to the detriment of the perception of the surnames, both contemporarily and in subsequent histories. There was an inherent correlation between surnames and disorder in a report of 1582 by Sir John Forster, the English Middle March warden: 'there is greate feedes and slawghters risen amonge the surnames of the Borders of Scotlande, which cawseth great disobedience there'.¹¹⁰

Rae himself used the word 'clansmen' to describe lesser members of Borders surnames who had no written claim to their lands, in contrast to the surname leaders who held charters for theirs. He thought that this 'landlessness bred lawlessness'.¹¹¹ However, not all of those perceived as especially troublesome were landless. Certain surnames in certain areas were specifically targeted by government. The band of 1569 by Teviotdale men to

¹⁰⁶ *CBP* i no. 166

¹⁰⁷ *APS* iii 461-7; Goodare and Lynch 'Scottish state and its Borderlands' 204ff.

¹⁰⁸ Thomas Musgrave to Lord Burghley in 1583. *CBP* i no.197

¹⁰⁹ Ridpath *Border History* 478

¹¹⁰ *CBP* i no. 120

¹¹¹ Rae 9

aid the regent Moray in suppressing the 'rebellious people' inhabiting Liddesdale, Eskdale, Ewesdale and Annandale referred 'in speciall to all personis of the surnames of Armestrang, Elliot, Niksoun, Crosar, Littill, Batesoun, Thomsoun, Irwing, Bell, Johnnestoun, Glendonyng, Routlage, Hendersoun, and Scottis of Ewisdaill, and uther notorious thevis'.¹¹² Of the dales only Liddesdale falls administratively within the Middle March (though strictly speaking it had a keeper; this was usually a landholder in the Middle March), but other Armstrongs, Elliots and Scotts lived elsewhere within the Middle March. A rental roll of 1541 for the lands of the lordship of Liddesdale included the names of Armstrong, Elliot, Nickson, Henderson, Crosier and Forester. Though paying minimal rents, the average annual payment being fifteen to twenty shillings, these tenants could not be described as landless. In addition, some of the tenures were held 'in hereditate' indicating a longevity of occupation by the same families.¹¹³

The main surnames of the Middle March, and the principal areas they inhabited, were the Kers, Rutherfords, Douglasses and Turnbells in Roxburghshire, the Scotts, Pringles and Murrays in Selkirkshire, the Stewarts, Hays, Veitchs and Tweedies in Peebleshire and the Armstrongs and Elliots in Liddesdale.¹¹⁴ These locations were not exclusive, thus some Murrays lived in Peebleshire and some Scotts in Roxburghshire. Within surnames there were several branches of those that had descended from the original families. These widened both the base of the membership of the larger surnames and the area of each surname's landholdings. The branches remained interlinked with each other partly through proximity but also through ties of kinship and links of obligation to the leaders of their surnames.¹¹⁵

Surname leaders and the implications of kinship

An act of 1587 listing the leaders of the surnames in the Middle March included the earls of Bothwell and Angus and the lairds Ker of Ferniehirst,

¹¹² *RPC* i 651-53

¹¹³ The largest annual payment was £3 7s by three Armstrongs. Fraser *Buccleuch* ii no. 159

¹¹⁴ See Map Three

¹¹⁵ See App. A Lairds of the Middle March - which indicates the various branches of each surname

Scott of Buccleuch, Turnbells of Bedrule and Hallrule, Scott of Howpasley, Ker of Littledean and Douglas of Cavers, the sheriff of Teviotdale.¹¹⁶ Though representative, this list was not comprehensive: other prominent surname leaders would include the Hays of Yester, Stewarts of Traquair, Kers of Cessford, the Rutherfords of Hunthill and Hundalee, the Pringles of Torwoodlee and Galashiels, the Murrays of Blackbarony and Falahill and the Scotts of Harden, Haining and Goldielands.¹¹⁷

Rae observed that these leaders utilised 'the ties both of landholding and kinship to build a large highly-organised unit of social and political power'.¹¹⁸ Surname leaders were invariably lairds, the authority of the heads of surnames deriving partly from their family's landholding and the loyalty of the dependants that such landholding brought them. A surname leader could also expect the loyalty of those of his name who did not hold land from him. In this study, these dependants will also be termed 'adherents', 'affiliates' or those 'in his allegiance'. Leaders were usually determined according to primogeniture, particularly in the case of the more powerful surnames, where the family held more extensive lands. These heads were generally of a greater laird status. There were lesser or cadet branches of some of the larger surnames, which also had their own heads. Over time, whilst some lesser branches were absorbed into the greater surname, others began to act independently. The Kers of Ferniehurst, originally descended in the late fifteenth century from the Kers of Cessford, were a separate landholding entity and taking responsibility for their branch of the Ker surname by the 1560s. By the beginning of the seventeenth century, leadership of almost all the surnames had settled in a specific family.

A surname leader could expect allegiance and service from those of his surname. Rae noted the strength of 'family feeling' and the respect accorded to the surname head which exceeded 'the cold feudal allegiance of a vassal'.¹¹⁹ A kinsman's service could take the form of armed attendance on the leader, either in his private dispute, or on behalf of the surname, or as part of a national muster. A kinsman would be expected to provide support to his surname leader in any time of difficulty. For instance, in 1621, when Lord

¹¹⁶ *APS* iii 465

¹¹⁷ See App. A

¹¹⁸ Rae 7

¹¹⁹ Rae 7-8

Bucleuch had severe financial problems, Walter Scott of Harden intervened with seventeen of Bucleuch's creditors giving 'his personall bond for their releif'. Harden subsequently was entrusted with the running of Bucleuch's estates during his absence abroad. On his death, in 1633, Bucleuch 'was so confident of [the Scotts of Harden's] affection to his family, that he made the three Harden brothers curators to his children.'¹²⁰

In return for this service, the surname leader was meant to provide 'good lordship' to the rest of his surname. In practice this meant interceding on a dependant's behalf in any form of dispute, either in court, or privately with the contender. In 1597, William Bowes noted to Burghley that both Cessford and Bucleuch 'have got great reputation with the inland lords and gentlemen, for their valorous defence of their charges'. In protecting his surname, a leader might intervene in a criminal case initiated by the crown. Thus, in 1606, Scott of Bucleuch used his association with Sir Gideon Murray of Elibank to attempt at privy council level to overturn a death sentence on Andrew Scott, 'ane commoun rydar' convicted of horsestealing.¹²¹ A surname leader would also arbitrate in an internal dispute within his surname. In 1528 Scott of Branxholme was the 'ovirman' in a private arbitration of a dispute between John Scott of Borthwick and his brother Walter. The list of 'arbiteris and amicable compositoris' chosen by each of the brothers were all of the Scott surname; all of them promised to abide by Branxholme's decision.¹²²

The surname leader was also expected to provide protection to those of his name: Walter Scott of Synton, who died prematurely of illness in 1608, in his will nominated his 'werie guid lord and cheif' Lord Bucleuch as 'protector and defendar of my wyfe and bairnis that they incur na wrang'.¹²³ In 1602, an English report claimed that the actions of the Scottish wardens were limited by their need 'to maintain their private greatness by working a dependency of such persons as will the rather at any time follow their Wardens in all their private quarrels'.¹²⁴ In English eyes, Bucleuch's rescue of his adherent Armstrong of Kinmont from Carlisle castle in 1596 was the most notorious

¹²⁰ GD157/3071

¹²¹ *CBP* ii no. 595; *RPC* vii 714-7

¹²² GD157/162

¹²³ CC8/8/45/150-53

¹²⁴ *CSP Scot* xiii pt. ii no. 885

example of this. Buccleuch, however, would have felt that he was fulfilling his duty to protect an adherent. The surname as a whole could act as a unit of protection, often allying in the pursuit or defence of a common dispute, providing armed support as needed. In 1597, Robert Scott of Thirlestane attempted to bar the burgh of Peebles from the disputed lands of Cademuir; in this 'open oppression' he was assisted by Sym Scott of Bonnington, John Scott of Hundleshope and his brother Thomas, William Scott in the Glack and Walter Scott in Bowhill 'with braid aixis and swerdis...in hostile and weirlyke maner'.¹²⁵

Central government could benefit from the structure that the obligations of kinship provided. If it wanted to raise an army, on an unpaid forty-day basis, it could oblige the surname leader to bring those in his allegiance to a muster. This was particularly pertinent to the Borders, since such retinues formed the basis of defence against English incursions. In addition, if the crown wished to implement an ordinance within a locality, it could call on the leader to ensure that it was carried out within his surname or to mobilise his surname to assist him in its implementation. Increasingly, the responsibility of a surname leader for his adherents and his obligations to assist the crown were formalised in the subscription of a 'general band'.¹²⁶ Both Rae and Goodare, whilst uncertain over the band's exact provenance, concur on its existence from the early sixteenth century and the prevalence of its usage in the government of the Borders.¹²⁷ A band of 1524 was drawn up for the Borders. In 1540, Walter Scott of Buccleuch, in an offer to the privy council to keep good rule on the Border in return for his release from ward, promised to uphold the 'band maid of befoir at Jedburgh' and that 'the samin have als grete effect now as of befoir'. The use of such bands was not confined, however, to the Borders. One for the Borders in 1576 was registered on the same day as a similar one subscribed by the gentlemen of Aberdeenshire, including the earl of Huntly.¹²⁸

By signing such a band, a surname leader was obliged to take responsibility for the actions of those in his allegiance, or risk a fine or forfeiture. This

¹²⁵ *RPC* v 373-74

¹²⁶ Balfour recorded a typical form of general band. Balfour *Practicks* ii 574-76. List of general bands subscribed for the Middle March in App. C. Bonds of obligation

¹²⁷ Goodare *State and Society* 258-60; Rae 62, 116-19

¹²⁸ Fraser *Buccleuch* ii no. 158; *RPC* ii 549-50. See App. C

could mean that he had to find surety to produce offenders from his adherents when called to do so. The band could also oblige him and his surname to assist the crown specifically against offenders throughout the Borders, against English thieves raiding or against overt English hostility in wartime.¹²⁹ The list of those signing a band by the 'baronis, landit men, gentilmen, inhabitantis of the sherefdom of Berwik, Roxburgh, Selkirk, Peblis' at Kelso in April 1569 was a roll-call of the local surname leaders of the Middle March. The wording of this band was typical of its kind: the undersigned found themselves 'bundin and obleist ... to the Kingis Majestie our Soverane Lord' and to swear themselves to be 'obedient subjectis ... and professit inymeis to all thevis'. If they failed in this 'or revelis nocht the contravenaris of this band gif we know thame, we ar content to be puneist thairfoir according to the generall band and panis contenit thairin'. In this endeavour, they promised that they 'specialie sall assist the Laird of Bukcleuch and utheris Lairds'. The band was 'invoilabillie to induir, to ... effect a perpetuall and perfyte ordour anent the repressing of the saidis thevis'.¹³⁰ A similar list of heads of surnames signed the 'Band of Roxburgh' in 1573 'conforme to the generall Band'. This and a similar band made at Roxburgh in 1552 was inserted in the council register in 1576. Bands in this period were made at a time of apparent peace with England; rather than calling for assistance against England, the band of 1569 was followed by a statute promoting 'the peace and amytye' by criminalising Scottish cross-border raiding.¹³¹

In order to enforce the compliance of surnames with government policy or judicial decisions, the crown and march wardens could use the pledge system.¹³² This was not specific to the Borders, but it had been frequently used there, both internally and cross-border. A human pledge was surrendered by the surname, often its leader, either to the crown or to the opposing warden, to ensure the good behaviour of specific surname members. They were also pledged to ensure that offenders turned up at cross-border days of truce and at Scottish internal judicial courts. If those they were pledged for did not appear, in theory the pledge would be subject

¹²⁹ Balfour *Practicks* ii 574-76

¹³⁰ *RPC* i 651-3. Subscribers are listed in App. C

¹³¹ *RPC* i 653; ii 548-49, 549-52.

¹³² Examples of pledges and instructions to their warders in App. C

to the penalties that would have been applied to the offender.¹³³ There were several problems with this system, not the least being that the onus was on the pledge to surrender himself to the place of custody. In the 1570s, regent Morton attempted to tighten up the system, with a series of ordinances on the transport and keeping of pledges.¹³⁴ This was not overwhelmingly successful and, from the 1580s, acts of caution were introduced in an attempt to enforce the compliance of a specific surname or individual. By subscribing these acts, individuals became obliged to their cautioners, who could incur a monetary penalty for the non-compliance of the principal to the agreement.¹³⁵

Leaders as a result were forced to assume responsibility for good behaviour of their surname. When Buccleuch surrendered himself to English custody in October 1597, it was ostensibly due to the non-appearance at a day of truce of those of his surname. James VI noted that Buccleuch 'being a gentleman, entered only for his pledges' and that he needed to be released to apprehend the fugitives, who were 'unable to be trapped for delivery but by himself'.¹³⁶ In 1599, Buccleuch was absolved from acting as cautioner and chief of the Scott surname in a civil case against Walter Scott of Harden, since the general band only referred to criminal offences. During Buccleuch's absence abroad, in 1602, Robert Scot of Haining acted as his 'governor', assuming the burdensome responsibility for the Scott surname. As a result he was summoned before the privy council for an attack by the Scotts of Hundleshope and Gamescleuch on Adam Veitch in Fechane; for a raid by Scott of Whithope on Traquair's lands at Blackhouse; for the non-payment of mails by various Scotts of Etrick Forest and for the non-appearance of Robert Scott of Thirlestane to answer an English charge.¹³⁷ In the same year, 1602, Ker of Cessford, now Lord Roxburgh, was pursued for the offences of

¹³³ *RPC* ii 306-7, 370-73. In 1579 the English reported of the Liddesdale surnames that their 'sureties are like to hang, for so the King has commanded' for their non-compliance. *CSP Scot* v no. 446

¹³⁴ *RPC* ii 266-73, 282, 367-70, 477-78; iv 12-13, 69-70, 77, 82, 87. A standard form of missive sent to the keepers of pledges of 1577 is in GD149/265 fos. 12 and 13. See App. C. Goodare *State and Society* 260. James also tried to enforce the pledge system in the act anent pledges of 1598. *APS* iv 179

¹³⁵ These acts of caution were not a border-specific device, being subscribed by men from all over Scotland. They should therefore be seen also as part of a general policy by James to enforce the accountability of a laird for his kin or tenants. *RPC* v 561-730, 731-48. See examples in App. C

¹³⁶ *CSP Scot* xiii pt. i nos. 86, 88, 89

¹³⁷ *RPC* vi 65-66, 372-73, 376-77, 395, 408

the Kers in Morebattle and Heughhead. Similarly, Sir Andrew Ker of Ferniehirst was pursued for his man Andrew Ker resetting thieves and also for a raid by the Kers of Oxnam on a house in Jedburgh in 1601.¹³⁸

Increasingly, from the 1570s, assurances were used to stem the escalation of feud. The surnames, like kinship groupings throughout Scotland, were involved in feuding. A leader of a surname would be expected to organise retaliation within a feud, and he would expect the active, often armed, support of his surname in the pursuit of a feud. Similarly, he would be expected to negotiate any resolution of a feud on behalf of his surname and then enforce the agreement within it. A statute against the resumption of the Scott-Ker feud in 1577 recalled the contract of 1565 between Sir Walter Scott of Buccleuch and Sir Walter Ker of Cessford. In this both, 'on behalf of his surname', had promised to reconcile. Surnames and their leaders could provide the framework for bloodfeud; they could equally provide the mechanism for its resolution.¹³⁹

Rae thought that friction resulted from a 'clash between feudal and kinship ideas of landholding' and that the existence of surnames 'was often a serious obstruction to the central authority in its struggle to impose law and order'. The complexity of 'this social structure [the surnames] promoted disorder and turbulence'.¹⁴⁰ However, his description of the feudal nature of landholding, and the feudal relationship between the lesser man and his lord, is open to re-evaluation following work by such as Wormald. For Wormald, the kinship and lordship elements were more significant in any relationship between dependant and feudal superior. Kinship was a force for stability underwriting 'good lordship' within the locality.¹⁴¹ Furthermore, when feud did occur, the obligations of kinship could enforce the resolution of a feud.¹⁴² Thus Rae's view of the troublesome nature of the surnames could now be held to underestimate the stability that could be fostered by kinship links and the use by central government of the structure of kinship to implement its policies.

¹³⁸ *RPC* vi 387, 396, 406-7

¹³⁹ *RPC* ii 544, 591, 643-4. Section below explores feud more fully.

¹⁴⁰ Rae 8-9

¹⁴¹ Wormald *Lords and Men in Scotland* 1-2, 5, 9-10, 13, 33, 77, 160

¹⁴² Wormald *Court Kirk and Community* 36

The effect of kinship on the socio-political structure of the region had further implications for the status of those that led the surnames, and those that adhered to them. Meikle has identified a type of Borders laird she names 'dependent laird' since 'they were linked to greater lairds by bonds of kinship or through the political bond of manrent'. This provided the 'surname chiefs of Home, Ker and Pringle ... [with] a wide power base that made them the elite of the Scottish lairds'.¹⁴³ Within the surnames, there were various branches begun by successful younger sons; these extended the power base of the surname leader in the locality. From the lowest member of a surname, to his immediate family head, the head of that branch of that surname to the surname leader himself, all were involved in a mutually beneficial and mutually burdensome relationship.

It is ironic, given the government's increasingly tainted view of the surnames, that this was the mechanism that government continued to use in the imposition of its authority on the region. The act of 1587 called for the principals of the clans or surnames to assume responsibility for the good behaviour of the rest of their name.¹⁴⁴ In the 1580s it was still the ties of obligation through kinship that government relied on in the locality. The surname structure thus formed part of the base of the framework of national government.

Alliances and marriages¹⁴⁵

The surnames provided the most significant social structure in the Middle March in this period. However, the entity of the surname was further defined by its interaction with others. This could take the form of alliance, often through marriage, which was consolidated either by leasing of lands, lending of money or the taking of responsibility for others' behaviour. This last was often occasioned by the disturbance caused by the inevitable corollary of alliance - enmity. Enmity was the catalyst for the formation of rival surname alliances. The persistence of some feuds in the Middle March throughout the sixteenth century might give an impression of a static

¹⁴³ Meikle *A British Frontier?* 17, 19

¹⁴⁴ *APS* iii 261-67

¹⁴⁵ See alliances in App. A

framework of alliance and enmity. However, feud could be resolved and alliance result. The enmity between the Scotts and the Elliots of the 1560s evolved into alliance in the 1590s.¹⁴⁶ Thus any analysis of the social framework provided by the ties within and between surnames will inevitably involve some discussion of the divisions caused by dispute within or between surnames. A fuller survey of enmity and feud appears in the next section: this section will concentrate on the frameworks of alliances and the implications of these for government in the locality.

An overview of the alliances within and between surnames can be made from a map of the Middle March. A pattern emerges in which those of the same surname, and often of those in alliance, hold lands in proximity to each other. Conversely, where two rival surnames' lands adjoined each other, the map illustrates the possible areas and reasons for friction between them.¹⁴⁷ Broadly speaking, the map shows that the Kers and their alliances predominated in the eastern part of the region, particularly in Roxburghshire, and surrounding the towns of Jedburgh, Kelso and Melrose. The Scotts dominated the middle and south of the region, particularly Selkirkshire, and the areas around the towns of Selkirk and Hawick; through their links with the Murrays this area extended north into Peeblesshire. The Stewarts of Traquair and the Hays of Yester were the most prominent landholders in the west of the region, principally Peeblesshire, where they had their own affiliates. Significantly, the position of Tinnis near Selkirk and Buckholm near Galashiels on the blurred frontline of the lands of the Kers, Scotts, Pringles, Murrays and Stewarts led to much dispute. Similarly, whilst the lands near Jedburgh of the allied Kers of Ancrum and Ferniehurst and Rutherfords of Hunthill and Hundalee adjoined each other, they were surrounded by the lands of their enemy, the Kers of Cessford.

Evidence of the alliances within or between surnames and the ties of obligation that held them together can be found in a number of areas. The protection that the leader was supposed to provide for his adherents was evidenced by his intervention in court cases on their behalf or by the patronage that he could secure for them. The responsibility a leader would

¹⁴⁶ Fraser *Buccleuch* i 142-45

¹⁴⁷ Territorial disputes were frequently the cause of feuds and most feuds remained within in the locality in which they began. Brown *Bloodfeud* 7. See Map 3 of distribution of landholding amongst the surnames. See also App. A Lairds of the Middle March

have to assume for the good behaviour of his surname, or a specific individual within it, was demonstrated in pledges, acts of caution and privy council ordinances. The physical support that the surname members gave to their leaders appeared in prosecutions against them, remissions given to them, diaries and English warden reports. Finally, marriage contracts and records of the leasing of lands provide evidence of connections within and between surnames.

The family papers, in particular the huge volumes of writs associated with land, provide extensive evidence of connections within a surname. These writs show not only who the land was held by and from whom, but also the witnesses to these agreements. The Scott surname was one of the largest, holding extensive lands by 1625 in Selkirkshire, Roxburghshire and Liddesdale. The heads of the more senior branches of the surname were in a position to grant lands and loans to surname members. In 1500, Walter Scott of Branxholme stood surety for money owed by his tenant Robert Scott of Allanhaugh, with the lands of Whitcheater in the barony of Branxholme to be regranted to the said Robert on payment of the loan. In 1569, Walter Scott of Branxholme discharged Robert Scott of Allanhaugh from being his tutor on his reaching majority and granted him the nonentries of Whitcheater. In 1585, a subsequent Branxholme signed an agreement with another Robert Scott of Allanhaugh, both taking the burden for their kin and friends, to end a feud between them following the 'accidental' slaughter of an Allanhaugh Scott. Allanhaugh promised to 'serve, manteine, and defend my said cheif' whilst Branxholme promised to 'fortifie, manteine and defend' Allanhaugh and his kin 'as ane cheif aucht to do to his surname [?] and freindis'. In 1593, Allanhaugh felt obliged to obtain letters of ejection and lawburrows against his tenants there because they 'daylie trubillis and oppressis him...sua that it is nicht possibil to inhabite his awin landis'; all the tenants named were Scotts. In 1599, Allanhaugh entered another Scott in possession of the lands of Southfield there. Control of the lands was kept within the Scott surname, whilst the ties of obligation between the surname members and their leader, Branxholme, were maintained.¹⁴⁸

The Ker surname was another extensive landholder, with numerous

¹⁴⁸ GD224/918/27/2; 224/887/5; Fraser *Buccleuch* ii nos. 194, 195, 202



branches in the Middle March. The principal branch throughout the sixteenth century was that of Cessford, the heir being known as Caverton. In 1600 Cessford was ennobled and in 1616 created earl of Roxburgh. Meikle notes that the Cessfords 'were obsessive about their lands remaining in their kinsmen's hands' making repeated entailments to the other Ker branches of Newbattle, Faldonside, Littledean, Primsideloch, Mersington, Linton and Gatheshaw.¹⁴⁹ However, as the sixteenth century progressed these branches, connected to or descended from the Cessfords, gradually emerged, assuming the leadership of their surname. The success of these cadet branches established the Kers as the most prominent kinship in the eastern half of the Middle March. Foremost amongst these branches were the Kers of Ferniehirst and Newbattle (subsequently Lothian). These continued to be inter-connected with the Cessfords and each other through marriage. Thomas Ker, known as 'first' of Ferniehirst (d. before 1484), was the third son of a Cessford. His granddaughter, Isabel, married Sir Walter Ker of Cessford (d.1581), whilst his grandson, Sir John Ker of Ferniehurst (d. 1562) married Catherine, daughter of Sir Andrew Ker of Cessford. Their son, Sir Thomas, had fallen out with the Cessfords by the 1560s: a contract by the Kers with the Scotts of Buccleuch specifically excluded the Ferniehirsts from the agreement. From then onwards the Ferniehirsts appeared to be acting independently of the Cessfords.¹⁵⁰

The other prominent Ker, Mark, commendator of Newbottle, was the second son of Sir Andrew Ker of Cessford (d. 1526) and an influential privy councillor. His son, Mark, was also a councillor, and created first earl of Lothian in 1606. In 1614, his daughter, Margaret, married Andrew, eldest son of Sir Andrew of Ferniehirst. In 1631, the second earl of Lothian's daughter Anna, countess of Lothian, married the head of another important branch, Sir William Ker of Ancrum, and the title of Lothian stayed in that branch. William was the son of Robert first earl of Ancrum, who was descended from Sir Andrew Ker of Ferniehirst (d. 1545). Subsequently, the titles and lands associated with Lothian, Ferniehirst and Ancrum were consolidated in one family following the failure of the male line in the Lothian and Ferniehirst families and intermarriage between the branches.¹⁵¹

¹⁴⁹ Meikle *A British Frontier?* 27

¹⁵⁰ *CBP* ii 714; Fraser *Buccleuch* i 139

¹⁵¹ *Scots Peerage* vol. v 546, 459

Other major Ker branches spread the network of Ker influence and landholding throughout Roxburghshire. For some time, the Kers of Littledean, descended from a younger son of Cessford, were of significance in the locality, a descendant Sir John styling himself to opprobrium as Lord Jedburgh.

The network of alliances provided within the surname broadened through its connections with other surnames, frequently through marriage.¹⁵² Appendix D details a number of marriages which reflected or cemented alliances. They were sometimes contracted as part of a resolution of a feud.¹⁵³ Marriages were usually contracted between people within the same locality and sometimes within different branches of the same surname. Feverish report by English wardens of cross-border marriages had led, in 1556, to their prohibition by a border commission. This was recommended again in 1583.¹⁵⁴ In 1583, a report on the 'riders' of the Borders listed a number of marriages between Scottish Elliots and Armstrongs and English Grahams and Fosters.¹⁵⁵ However, these marriages occurred within the lesser socio-economic levels for which no marriage contracts exist. Reports of them were partly a result of English scaremongering and often adjoined to worries over the cross-border pasturing of livestock.¹⁵⁶ The only marriage contracts that survive for specific marriages are at the level of the lairds and their families. This study has found no examples amongst these contracts, before 1614, of anyone from the Middle March marrying an English person.¹⁵⁷ However, from the late sixteenth century, the greater lairds were beginning to marry outside the Borders and into the nobility.¹⁵⁸ In 1580, Sir John Forster, noting the marriage of Margaret, sister of William Ker of Cessford, to Lord Home and the marriage of a daughter of that union to the Earl Marischal's son,

¹⁵² Meikle observes that 'kinship links through marriage [should not] be underestimated as they could lead to interesting patterns of friendship or alliance'. Meikle *A British Frontier?* 25

¹⁵³ Such marriages did not always end the feud. For example that between Walter Scott of Branxholme and Robert Ker of Cessford's sister, in 1586, did little to resolve the Scott-Ker feud. See next section on enmity.

¹⁵⁴ Such marriages were blamed as the 'greatest occasion of the spoils and robberies on the Borders'. *CBP* i nos. 6, 165

¹⁵⁵ *CBP* i no.197

¹⁵⁶ The regulations of 1556 also included a ban on cross-border pasturing. *CBP* i no. 6

¹⁵⁷ In 1614, Robert Ker, earl of Somerset, married Frances Howard, daughter of the earl of Suffolk and in the 1620s, Robert Ker of Ancrum married the daughter of the countess of Derby. These cross-border marriages were still unusual in the first quarter of the seventeenth century.

¹⁵⁸ Meikle 'The invisible divide' 75-76

observed how these links had strengthened the Cessford's position in the march.¹⁵⁹ When Robert Ker of Cessford, Lord Roxburgh married for the second time, in 1614, it was to the sister of the earl of Perth. Similarly, the marriages of his children, from 1613, were mostly into the non-borderer nobility.¹⁶⁰

The close relationships between the Murrays and the Scotts were a good example of the advantages that marriage and alliance between surnames could bring.¹⁶¹ In 1551, a marriage was agreed between Andrew Murray of Blackbarony in Peeblesshire and Grisel Beaton, widow of William Scott of Kirkurd, in which Walter Scott of Branxholme, her father-in-law, promised to pay a tocher of 1,200 merks and Patrick Murray of Falahill acted as witness.¹⁶² This joined the Murray branch of Blackbarony in an enduring alliance between them and the Scotts. Grisel and Andrew went on to have at least three sons, one of whom was Sir Gideon Murray of Elibank. Elibank was, therefore, a half-brother of Walter Scott of Branxholme, who died young in 1574, and uncle to Walter Scott of Branxholme, afterwards Lord Buccleuch. In a charter to Kirkurd's son, Walter Scott of Branxholme, Blackbarony appeared as Branxholme's curator.¹⁶³ In 1573, Scott of Branxholme, acting as curator, agreed to a contract of marriage for John Murray of Blackbarony, son to the late Andrew; Andrew's co-curators included Patrick Murray of Falahill. In 1590 Blackbarony agreed, on behalf of Branxholme, the resolution of a dispute with Sir Andrew Ker of Ferniehirst.¹⁶⁴ The Murrays of Falahill (subsequently Philiphaugh), the hereditary sheriffs of Selkirkshire, were cousins of the Murrays of Blackbarony and often acted as witnesses and curators to them. In 1585, Blackbarony stood caution for Elibank for £5,000.¹⁶⁵ Around 1580 these links were consolidated further by the marriage of Agnes, Blackbarony's sister to Patrick Murray of Falahill.¹⁶⁶ She was the mother of John Murray of Philiphaugh - thus Murray of Elibank was also an uncle to Philiphaugh and Philiphaugh was a first cousin to Scott of Branxholme, first Lord Buccleuch. These links cemented the alliance between

¹⁵⁹ *CBP* i no. 70

¹⁶⁰ See App. D

¹⁶¹ See App. E Marriage links between the Scotts, Murrays and Kers

¹⁶² GD32/2/2

¹⁶³ *RMS* iv 2351

¹⁶⁴ GD32/2/3;40/2/9/81

¹⁶⁵ *RPC* iii 728

¹⁶⁶ RD1/xx/383

both branches of the Murrays and the Scotts of Branxholme.

Gideon Murray of Glenpoint (afterwards Elibank) was the third son of Andrew Murray of Blackbarony. He and his nephew Buccleuch were involved with each other in a series of contracts in the 1590s with Buccleuch acting as principal on behalf of Gideon and his elder brother John. In 1591, Elibank agreed to the reversion of the lands of Eldhinghope to Buccleuch; in 1597 he promised to pay Buccleuch the profits from lands he was renting from Hay of Yester; subsequently Buccleuch borrowed 800 merks from Elibank.¹⁶⁷ As Elibank's career progressed, they were both able to help each other. In 1606 at Buccleuch's 'ernest sute', Elibank, as a Middle Shires commissioner, attempted to intervene in a case against a thief named Scott.¹⁶⁸ Buccleuch showed his appreciation consenting, in 1608, to a tack by the vicar of Hawick of the teinds and kirk to Elibank for his lifetime. In 1617, the second Lord Buccleuch acted as cautioner to Elibank, now treasurer depute, and principal for a 40,000 merk loan from an Edinburgh burgess.¹⁶⁹

Buccleuch was not the only Scott with whom Elibank had close connections. In 1592, Elibank received a commission to destroy the fortalices of Harden and Dryhope belonging to Walter Scott of Harden.¹⁷⁰ He does not seem to have fulfilled his duty, apparently using the commission to protect the buildings on behalf of his friend. Then in 1599, Elibank and Harden received together a remission under the great seal for the burning of houses in Liddesdale.¹⁷¹ In 1611, Elibank married his daughter Agnes to William, apparent of Harden.¹⁷² In 1619 Elibank interceded with James VI on behalf of William's father Walter in his feud with Scott of Bonnington.¹⁷³ Also, in 1616, Elibank had secured a pardon from James VI for another Scott, John of Tushielaw for the slaughter of a brother of Robert Scott of Thirlestane.¹⁷⁴

The Murrays and the Scotts were also tied in with the Kers of Ferniehirst

¹⁶⁷ GD224/887/8/2; 224/906/25/1, 2, 4, 5; 224/341/1; 224/930/39/3. AC Murray described Elibank as Buccleuch's chamberlain in the 1590s *Memorial of Sir Gideon Murray of Elibank and his times, 1560-1621* (1932) 35-36

¹⁶⁸ *RPC* vii 714-17

¹⁶⁹ GD32/20/19; GD224/918/27/4-5; GD124/10/151.

¹⁷⁰ *RPC* iv 769

¹⁷¹ GD157/1419

¹⁷² Agnes was the 'muckle-mou'ed Meg' of Borders legend. GD32/2/7; GD157/1544

¹⁷³ GD124/15/29/14; *RPC* ix 54

¹⁷⁴ GD32/1/8

through the marriage of Janet Scott, daughter of William Scott of Kirkurd and Blackbarony's and Elibank's half-sister, to Sir Thomas Ker of Ferniehirst. She was the mother of Robert Ker, the future earl of Somerset. Thus, Elibank was an uncle and Scott of Buccleuch was a cousin to Somerset, James's court favourite from around 1608 to 1614. Elibank acted as Somerset's agent in Scotland and was to receive substantial grants of land from him.¹⁷⁵ Links between the Murrays and Kers of Ferniehirst, were strengthened further when Robert Ker of Ancrum, a close cousin of the Ferniehirsts, married Elizabeth daughter of John Murray of Blackbarony; in 1607, Blackbarony acted for Ancrum in his absence abroad.¹⁷⁶ Elibank was an example of a younger son in a cadet branch, in this case of the Murrays of Blackbarony, who successfully established himself and his successors as heads of their own name, as the lairds of Elibank. He had achieved this through service as a border commissioner from 1605, privy councillor from 1610 and treasurer depute from 1613.¹⁷⁷ Crucially, in these offices he had had the support of Murray, Scott and Ker of Ferniehirst surnames in the locality and that of Buccleuch and Ker of Oxnam (Ferniehirst's heir) on the privy council. Alliance could provide additional support for a surname and its leader whilst extending to the alliance the protection and patronage that a surname leader could provide.¹⁷⁸

Marriage and kinship were not the only ways to cement an alliance. Alliances could be between a surname leader and those of a different surname in a lesser socio-economic level. The ties were sometimes formalised within a 'bond of manrent' in which the dependant was 'bund and oblissit' to provide the leader with his service and loyalty to the exclusion of any other, excepting the king. In return, the leader was obliged to protect and 'maintain' the dependant.¹⁷⁹ A typical bond was subscribed, in 1574, by Sir Thomas Turnbull of Bedrule with the Turnbells of Hallrule, Barnhills and Minto to Archibald eighth earl of Angus. Bedrule, noting that his forbears 'of a langtyme hes servit and dependit upon the hous and erlis of Angus, as oure kyndlie gude lordis', promised to 'trewlie serve the said

¹⁷⁵ *RPC* ix 232; *RMS* viii 754

¹⁷⁶ GD40/2/13/1

¹⁷⁷ For details of Elibank's career see Chap. Three.

¹⁷⁸ For an account of patronage see Chap. Three.

¹⁷⁹ See App. C. From the Middle March, for the period from 1573, Wormald lists bonds of manrent to Ker of Ferniehirst, Scott of Branxholme and the earls of Angus. Wormald *Lords and Men in Scotland* App. A 323-24, 354-55; Goodare *State and Society* 300.

erll, ryd and gang, and tak anfald, trew and plane part with him'. The named Turnbolls subscribed this 'oure band and faithfull promise' on behalf of 'our selffis, oure kin and freindis of oure surnames'.¹⁸⁰ Wormald notes that a bond of manrent was made by those who wanted to 'become as kinsmen to one another.' Thus such a bond would not have been made between a leader and one of his own surname, since the obligations of kinship would have precluded its necessity. Sometimes, bonds included agreement over a tenancy of land, but not usually. However, such ties were often implicit; the dependants involved were often tenants.¹⁸¹

The ties of obligation through landholding which did not predominate at the beginning of the period, slowly strengthened in direct balance to the weakening ties of kinship. Overlapping spheres of obligation had existed for some time. The government recognised this in the clause of 1587 that called for the surname leaders to assume responsibility for those tenants who 'dependis upoun the directionis the saidis capitaneis cheiffis and chiftaines (be pretensis of blude or place thair duelling) althocht aganis the will oftymes of the lord the grund'. The act listed the 'clans' in the Middle March who depended on their 'chiftanes ... oftymes aganis the willis of thair landislordis': these included the Elliots, Armstrongs, Nicksons and Crosiers. However, though their landlords may not have been of the same surname and they had their own surname leaders, tenants could be allied with another surname.¹⁸² For instance, in 1591 Scott of Buccleuch rented land to Gilbert Elliot 'his friend and servitor', brother of Robert Elliot of Redheugh in Liddesdale and, in 1599, Buccleuch was the arbiter in a dispute between Redheugh and a Martin Elliot, son of the late Sym Elliot. As landlord, Buccleuch, though of a different surname to the Elliots, was fulfilling the obligations of an allied surname leader.¹⁸³

Thus, the leaders of surnames who rented lands to adherents of a different name increasingly incurred a responsibility for the behaviour of tenants outside their kindred. In addition, surname leaders also acted as cautioners, lent and borrowed money and interceded in judicial processes on behalf of

¹⁸⁰ Fraser *Douglas* iii no. 214

¹⁸¹ Wormald estimates that only ten per cent of bonds included a reference to land. 53-54, 66, quote on p.76

¹⁸² *APS* iii 461-67

¹⁸³ GD224 /1059/1; 224/906/68/4

those in their allegiance. This allegiance was widened further by ties of marriage. Leaders of surnames were regularly ordered to assume responsibility not just for those of their surname, but also for those 'freindis, men, tennentes, allia, and part takaris'.¹⁸⁴ The 1587 act called for landlords and baillies to assume responsibility for 'thair men, servandis and induellaris within thair bailleries'. Another of 1594 called for them to find surety for the good behaviour of their men.¹⁸⁵

The adherence of troublesome surnames could be, therefore, a burden to a landlord or surname leader. Sometimes the leader tried to protect himself against such responsibility. In 1594, Scott of Buccleuch was granted the lands of Liddesdale from those forfeited by the earl of Bothwell. This brought him the responsibility for his tenants such as the Elliots of Redheugh, Braidley and Gorrumberrie. In 1599, as 'the principillis of oure brenche', these Elliots signed a bond promising to relieve Buccleuch of his responsibility any of their offences.¹⁸⁶ A similar bond by Lancie Armstrong of Whithaugh and Sym Armstrong of Mangerton in Liddesdale agreeing to relieve Buccleuch for any of their offences since Buccleuch 'be vertew of the generale band, hes fund caution and bund and oblist him that the haill inhabitantis of the boundis of Liddisdail...sall be ansuerable to the Kings Maiestie and his lawis'.¹⁸⁷ In 1600, the crown proceeded against Buccleuch for raids between 1598 and 1600 by Mangerton and Whithaugh since they 'hes gevin thair bandis to him, com[ing] ... under his standart and baner'.¹⁸⁸ Robert Scott of Haining, tutor to Buccleuch, was forced to assume responsibility for the troublesome Armstrongs when, in 1602, he was pursued by Lord Home for a raid by Whithaugh.¹⁸⁹ Buccleuch also took responsibility for those in his alliance who were not his tenants. In 1607, Buccleuch, 'ane nobill and potent lord' took the 'burding upone him for all his kin ... in speciall for Charles Geddes of Rauchane and haill surname of Geddes thair kin freindis assistaris pairtie and partakeris' in a contract with Sir Alexander Jardine of Applegarth

¹⁸⁴ *RPC* i 22

¹⁸⁵ *APS* iii 461-67; iv 71-73

¹⁸⁶ GD224/906/5. There are at least nine such bands made to Buccleuch by the inhabitants (mainly Elliots) of Liddesdale in 1599, which were witnessed by Robert Scott of Haining. In 1602, Elliot of Redheugh 'as chief of the Ellots within Liddisdail' was declared by the privy council to be answerable for Will Elliot of Fiddiltoun 'conforme to the general band'. *RPC* vi 476

¹⁸⁷ Fraser *Buccleuch* ii no. 216

¹⁸⁸ *RPC* vi 179-80

¹⁸⁹ *RPC* vi 494-95

on behalf of his 'hail surname', to resolve the murder of two Jardines by the Geddes's.¹⁹⁰

The alliances between surnames could extend further with alliance to political factions which meant that political rivalry had ramifications in the Middle March. For instance, Scott of Branxholme's mother, widowed in 1574, was the sister of the earl of Angus and thus allied Douglas and Scott interests in the Middle March. From 1572, Angus's uncle, James Douglas earl of Morton was regent and he made Angus lieutenant in the Middle March. Angus's and Morton's close relation John Carmichael of that ilk was made keeper in Liddesdale. This alliance was counterbalanced in the march by that made by the Kers and the Homes with the earl of Argyll and subsequently the earl of Lennox. Such alliances could heighten existing dispute in the march. In 1579 the English reported on 'the heat borne and hatred betwixt the Earl of Morton and the Carrs and Humes, who depend on Argyll'. The English also noted 'the particular quarrels' between Carmichael and Ker of Cessford, Morton's enemy.¹⁹¹ In 1580, Bowes wrote to Burghley warning that 'Lennox is already at Edinburgh strongly accompanied with sundry noblemen, the Carrs and Humes...the flame of the fire likely to kindle' and 'come to hazard troubles on the Borders'.¹⁹² In 1581, following the decline of the Douglas position at court, the privy council found it necessary to discharge the bonds of manrent made by a number of Middle March families to Angus (including one by Scott of Goldielands acting for the young Branxholme).¹⁹³ Alliance and dispute at local level could replicate that at court and assume a more overtly political significance.¹⁹⁴

Thus the social structure of a locality, founded on kinship and adherence, was part of a wider political and governmental framework. Alliance between a surname and a prominent figure could bring benefits to that surname in the locality. In the fifteenth century, Michael Brown found, with particular relevance to the Middle March, that

the scale of Douglas patronage and indirect support altered the balance of

¹⁹⁰ GD224/906/60/3

¹⁹¹ *CSP Scot* v nos. 432, 446

¹⁹² *CSP Scot* v nos. 471, 584

¹⁹³ *RPC* iii 368

¹⁹⁴ Keith Brown puts more emphasis on the effect of 'local alliances and animosities' in 'shaping court politics' though he also notes 'the reverse was often just as true'. Brown *Bloodfeud* 108

political society in many parts of the south. The rise of families like the Humes, Kerrs, Scotts and Maitlands to positions of local importance can be traced back to their promotion in Douglas service. Grants of land and, more importantly, of offices to these families were exploited by men who, in the absence of the earl ... became accustomed to the exercise of local justice and government ... such service was indispensable to the earls.¹⁹⁵

The person receiving such patronage was then in a position to support his superior in the locality. During his regency, Morton needed to contain the power of the incumbent warden of the Middle March, William Ker of Cessford, which threatened his authority there. To do this, he split the wardenry between Cessford and his appointee and kinsman William Douglas of Bonjedburgh, who became warden 'bewest the strete' (Dere Street). This arrangement ended with the decline in Morton's position from 1578.¹⁹⁶ Subsequently, following the earl of Lennox's rise to power, his ally, Cessford, was re-appointed to the full wardenry in 1581.¹⁹⁷

Apart from political alliances, the connections between the Scotts, the Murrays and the Kers of Ferniehirst typified many alliances within the Middle March which were predominantly formed within the locality. When alliances were formed outside the locality, these were generally in an eastwards direction. The ease of communication between the East and Middle Marches provided by the Tweed basin meant that it was probably inevitable that the Kers would have looked eastwards to the Homes for support. The physical barrier of the hills and dales of Eskdale westwards precluded much alliance in that direction and the Scotts of Branxholme's alliance principally came from within Roxburghshire and Selkirkshire. However, the marriage of Branxholme's sister Margaret, in 1571, to Sir John Johnstone of that ilk in Annandale brought them the alliance of that prominent West March family. This was not without its disadvantages, for with the Johnstone friendship came the enmity of their rivals, the Maxwells and, in 1593, the Scotts accompanied Johnstone at the battle of Dryfe Sands against the Maxwells.¹⁹⁸ Kinship and alliance could bring huge benefits to a surname and was useful to the government in enforcing the responsibility of the surname leaders for their men's behaviour. Alliance however inevitably brought with it dispute.

¹⁹⁵ Brown *The Black Douglases* 179

¹⁹⁶ *CSP Scot* v nos. 284, 315; *Fraser Douglas* iv 215-16

¹⁹⁷ *RPC* iii 344-46

¹⁹⁸ *Fraser Buccleuch* i 139, 152-5, 177; ii no. 192

Enmity and feud¹⁹⁹

There was much report of dispute in the Middle March. Given the importance of kinship within the social structure of the region, dispute was often conducted by opposing kindreds. Dispute often arose over territorial boundaries and it could achieve a degree of enmity, that could escalate into violence. Where the dispute became violent, it could be termed a feud and Wormald has noted of the significance of kinship within a feud.²⁰⁰ Where dispute remained in the hands of the lawyers, it was more difficult to classify. The limited evidence is a problem here: when violence occurred it is sometimes mentioned in privy council ordinances, kirk session deliberations, English warden reports and written settlements between surnames. However, where the dispute was apparent only through written territorial settlements, it is impossible to determine whether or not violence had occurred. Dispute therefore may or may not have escalated to feud, if feud is classified as necessarily violent. In the Middle March there was certainly much dispute, but the blurring of the line between dispute and feud means that it is difficult to classify. The act anent feuding of 1598 recognised this, describing feud as where 'thair is ather na slauchter upon nather syde/ or slauchter upon ane syde/ or ells slauchter upoun bath sydis'.²⁰¹

Keith Brown, too, observes that 'a clear definition of feud is still not really possible' and finds it almost as difficult to describe a 'typical' feud. At best any definition could only be an 'external outline'.²⁰² His description of the problems in assessing the average duration of a feud identifies a similar problem in any fuller assessment of a feud: record of a feud often only occurred during the time that it was being resolved and that time was usually fairly short. Therefore whilst contemporary report of a feud might continue past ten years, when feuds were identified by processes to resolve them (before the privy council for instance), the feuds appear over within five years.²⁰³ But as Brown acknowledges 'revenge had a long memory'.²⁰⁴ The example of the Scott-Ker feud in the Middle March, record of which existed

¹⁹⁹ This section deals with the enmities evident in feud. The government's suppression of feuding is addressed in Chap. Four.

²⁰⁰ Wormald 'Bloodfeud' 66-68

²⁰¹ Brown *Bloodfeud* 3-5; *APS* iv 158-9

²⁰² Brown *Bloodfeud* 7

²⁰³ *Ibid.* 277

²⁰⁴ *Ibid.* 27

from 1526 to at least 1597, would challenge any definition of feud as a fairly short-term phenomenon.

Feud was contemporarily seen as prevalent in the Borders and Tough, Rae and others have made much of it. Certainly, the numerous feuds in the Middle March, listed in Appendix F, give an impression of their frequency. However, Keith Brown's enumeration of feuds suggests that feuding was spread more evenly than might have been expected throughout Scotland. Nor was feud merely an upland phenomenon: lowland feuds accounted for their fair share. Of the feuds he has identified, twenty-three per cent were from the Borders in comparison to forty per cent from the Lowlands.²⁰⁵ Only two of the feuds in need of arbitration listed by the privy council in 1595 were from the Middle March.²⁰⁶ This study has found that between 1604 and 1610, 1,965 acts of caution were registered by the privy council, predominantly in relation to feud. Around 330, about seventeen per cent, were from the Borders: of these just over a third were from the Middle March. Over a half of the acts by borderers originated in West March, whilst the East March had the fewest.²⁰⁷ The preponderance of feuds from the West March in the figures for the Borders was largely accounted for by the persistence of the Johnstone-Maxwell feud. However, violent crime was taking place throughout Scotland. A list of feuds registered by the privy council in 1595 was prompted by James's concern that 'the estate of the commounweill, [was] altogidder disordourit and shaikin louse be ressoun of the deidlie feidis and contraverseis standing amangis his Hienes subjects of all degreis'.²⁰⁸ When James' government decided to outlaw feuding in 1598, it was with the whole country in mind. The measures used to suppress feud in the Middle March were those used elsewhere in the country: feud was not a border-specific characteristic, nor was its suppression.

Feud in the Borders was seen contemporarily as one of the main causes of instability in the region. The English wardens repeatedly attributed crime in the area to the 'greate feedes' among the Scottish Borders surnames 'which

²⁰⁵ Brown *Bloodfeud* 6-7, 277 Table 2: The Distribution of Feuding

²⁰⁶ *RPC* v 248-9

²⁰⁷ *RPC* vii 545-697; viii 629-733

²⁰⁸ See App. G showing incidence of cases of violent crime registered by the privy council.

cawseth greate disobedience there'.²⁰⁹ Following a meeting with the English Middle March warden Sir Robert Carey in 1602, Sir Robert Cecil wrote of 'the disorders alleged to arise from the abuses in the Wardens government in pursuing particular quarrels in blood', whilst the use of outsiders as English wardens meant that the English Borders were free of 'those particular respects of blood and kindred'.²¹⁰ The English marches were no stranger to feud, however; Forster's criticism of Scottish feuding ignored his own involvement, with the Widdringtons, in a feud against Lord Eure in Northumberland.²¹¹ English reports of feud should be put into context: the wardens' proximity to, and primary interest in, the Scottish Borders meant that their reports did not take into account the situation in the rest of Scotland. Similarly, Scottish government concern over feud's destabilising effect in the Borders ignored the occurrence of feud elsewhere in Scotland. Furthermore, concern over feuding should be viewed within the light of Wormald's analysis of the framework of feuding. This, she has shown, provided an inherent and understood set of mechanisms, including compensation and reconciliation, which were 'a force for peace'.²¹²

An analysis of some of the Middle March's feuds demonstrates the ways in which feud operated and how the kindreds, on which feuding was based, provided one of the mechanisms for its ending. The most notorious of the Middle March feuds was that between the Scotts and the Kers. It has been endlessly recounted, romanticised and vilified, and above all presented as an indictment of the destabilising effect of feud in the Borders. It has also been used to represent the inability of the crown generally to control its greater lairds in their own localities, but in particular the crown's impotence in the Borders.²¹³ However, in many ways, the gradual disappearance of the violence associated with this feud exemplified the way in which James VI suppressed feud throughout Scotland. Crucial to James's success in this was the co-operation of the nobles and lairds who had been involved in feuding.²¹⁴ As such, it could therefore demonstrate the crown's ability to

²⁰⁹ Sir John Forster, the English Middle March warden, to Francis Walsingham in 1582. *CBP* i no. 120

²¹⁰ *CSP Scot* xiii pt. 2 no. 828

²¹¹ *CBP* ii no. 432; Meikle 'A godly rogue: the career of Sir John Forster' 126-63

²¹² Wormald *Court, Kirk and Community* 36-37; Wormald 'Bloodfeud' 66-71

²¹³ Rae 75-6, 91, 126, 160, 221

²¹⁴ Keith Brown notes the acquiescence of nobles in the suppression of feud as one of the reasons for James's success. Brown *Bloodfeud* 269-70

impose its authority on a region, historiographically held to be effectively outwith the government's control.

A summary of the Scott-Ker dispute through the sixteenth century illustrates some of the complexity of relationships involved. In 1526, Sir Andrew Ker of Cessford was killed by James Elliot, an adherent of Sir Walter Scott of Branxholme, as the Scotts attempted to rescue the young James V from the earl of Angus and his allies who included the Kers at Melrose. In 1529, as part of a settlement of the feud that resulted, Branxholme (himself a grandson of a Ker of Cessford) married Janet Ker of Ferniehirst, cousin to the slain man.²¹⁵ However, the feud did not cease, resurfacing during the Rough Wooing of 1543 to 1548. In 1548, Elizabeth, a Ker of Cessford, widow of Walter Scott of Branxholme (d.1504), was killed in an attack by the Kers on the Scott-owned Catslack tower. In 1549, the Scotts complained to the privy council that the Kers had broken an agreement to resist the English, assisting the earl of Sussex in the burning of Scott lands in Teviotdale. Mary de Guise recognised Branxholme's support, in 1543 appointing him to the captaincy of the crown-owned castle of Newark in Ettrick, an appointment reconfirmed in 1545. In 1550, she appointed Branxholme as warden of the Middle March, a post traditionally held by the Kers of Cessford and from which, in 1544, Cessford had been discharged. In retaliation, Branxholme was killed by Ker of Cessford and Ferniehirst affiliates in Edinburgh in 1552.²¹⁶

An attempt to resolve this was made in 1565 when Cessford agreed to ask Branxholme's forgiveness in public at St Giles' in Edinburgh: the agreement was to be consolidated through the proposed marriages of Branxholme's daughter Janet to George son of Ker of Faldonside and his granddaughter Elizabeth Scott to Thomas Ker of Ferniehirst. Neither of these marriages took place, but another of the granddaughters, Janet, did marry Ferniehirst in 1569. The feud rumbled on next appearing in official records in 1577; the privy council complained that 'the said feid is newlie gevin up ... deidlie hatrent and grudge proclomit, quhairupoun forder inconvenient is liklie to follow'. Cessford and the Scott representative, Walter Scott of Goldielands, were summoned to appear on behalf of their names at a privy council

²¹⁵ In a contract of 1530 both sides agreed to go on four pilgrimages and daily Masses were to be said for each family. *Wormald Lords and Men* 128

²¹⁶ GD40/2/16/Add 1; Fraser *Buccleuch* i 152-5; ii nos. 151, 162, 163, 164, 166, 169, 173, 176, 181, 182, 185, 191

arbitration of the dispute. The Cessfords were forced to pay £1,000 in compensation to the Janet whose marriage had not been fulfilled. This probably reflected Cessford's weakened position during Morton's regency and the Scotts' ties with the Douglases.²¹⁷

In the 1590s, the feud seemed as strong as ever despite the marriage, in 1586, of the murdered Branxholme's great-grandson Walter Scott of Branxholme to Margaret, sister of Robert Ker of Cessford. In 1596, there were reports of Cessford challenging Buccleuch to a combat.²¹⁸ Buccleuch's initial support of his step-father the rebel earl of Bothwell would have exacerbated their personal enmity. In 1597, as Buccleuch lay in captivity in Berwick, letters between them spoke their enmity, Buccleuch signing himself 'Your brother in na termes'. He was angered that Cessford had not, as promised, surrendered himself to the English. He accused Cessford of continuing to plot an attempt against him.²¹⁹ However, increasing crown efforts during the 1590s to suppress feuding throughout Scotland resulted, in 1598, in the act anent feuding. This criminalised feuding, bringing the adjudication of dispute within the crown's remit. At the same time, both Buccleuch's and Cessford's favour at court had slipped as James sought to persuade the English of his suitability for the succession by insisting on their surrender to the English. Subsequently, both appear to have come into line behind James. Their personal feud never troubled the privy council again: their co-operation with the crown was recognised, both being ennobled by James shortly afterwards.²²⁰

This feud of course had wider ramifications than a personal dispute between Cessford and Buccleuch: as heads of their surnames, members of that name usually followed them in dispute. The head of Cessford's cadet branch, John Ker of Ferniehirst, was named by Branxholme in his case against the Kers in 1549, and again in the indictment for the murder of Branxholme in 1552. Other Kers accused with Cessford included those of Hirsell, Primsideloch, Caverton and Lyntoun. In 1565, however, Sir Thomas Ker of Ferniehirst was excluded from the protection of the contract to redress the murder,

²¹⁷ *CBP* i no. 139; ii nos. 192; *RPC* ii 643-44, 665

²¹⁸ GD224/1059/17; *CSP Scot* xii nos. 197, 224

²¹⁹ Fraser *Buccleuch* ii no. 204; *CBP* ii nos. 265, 842

²²⁰ *RPC* vi 65-6, 136-7; Fraser *Buccleuch* ii no. 219. For a detailed discussion of the crown's suppression of feuding see Chap. Four.

because he refused to sign it with Sir Walter Ker of Cessford. He was again excluded from another Ker settlement with Branxholme of 1569, but later that year agreed to marry Janet, Branxholme's sister. Ferniehurst and Branxholme were allied through the Marian wars, and both retained the support of the Kers of Littledean and Cavers. However, the Ferniehursts were back in dispute with the Scotts in 1591 when two of Ferniehurst's servants were killed in a brawl in Edinburgh with Branxholme's adherents. The dispute was over the teinds of Innerleithen; both sides acted quickly to contain further escalation of the dispute, subscribing bonds of assurance not to harm each other. In 1596, Ferniehurst confirmed the resolution of the dispute on Branxholme's assignation of the teinds to Ferniehurst's heir, Andrew Ker of Oxnam.²²¹ Whilst Buccleuch and Cessford may have not been overtly at feud from the late 1590s, the disputes of their affiliates were not so quickly resolved. In 1608, Sir Andrew Ker of Greenhead successfully pursued Robert Scott younger of Haining for an armed attack on the Ker-owned mill of Selkirk, the rights to which Haining disputed.²²²

The framework of feuding in the Middle March was further complicated by feuds amongst branches of a surname. The Kers of Ferniehurst and Cessford are a particular example of this. Meikle attributes their enmity to each attempting to assert its ascendancy over the other throughout the sixteenth century. In 1590 they clashed over the right to nominate the provost of Jedburgh.²²³ In 1602, fearful for the stability of the border, James VI instructed Ferniehurst to sign a bond of assurance with Cessford, now Lord Roxburgh.²²⁴ In the same year, Ferniehurst wrote to his son, Oxnam, to ensure that Roxburgh's erection of the barony of Kelso did not include Ferniehurst's title to the kirks of Innerleithen and Little Newton.²²⁵ Both branches then attempted to reconcile: in 1613 Roxburgh wrote to Ferniehurst inviting him to his daughter's wedding to the earl of Perth, thanking him for his attendance at his mother's burial. The teinds of Little Newton remained contentious however and in 1616 an attempt by Roxburgh to divert them, to the prejudice of Ferniehurst, was suspended by the privy council. But when in 1619 a fight occurred between their affiliates, in which a Ferniehurst man

²²¹ Fraser *Buccleuch* i 139, 152-55, 171; ii nos. 173, 185; GD40/2/9/80, 83, 84, 86

²²² *RPC* viii 134

²²³ Meikle *A British Frontier?* 37, 60-62, 69, 71, 75, 77, 80-81

²²⁴ GD40/9/3

²²⁵ GD40/2/12/4

was injured, Roxburgh wrote to Ferniehurst offering to take such measures as Ferniehurst desired 'to teach them to live more civilly and quietly'. By this time, both Roxburgh and Ferniehurst were keen to assist in the suppression of feud between their surnames: Roxburgh was a prominent member of the privy council and Ferniehurst was shortly afterwards created Lord Jedburgh.²²⁶

The Scott surname could be similarly divided. In 1609 the privy council registered an act of caution, 'a variance having lately fallen out', for a mutual assurance between Sir Robert Scott of Thirlestane, his brothers and bairns and Scott of Tushielaw. By March this list had lengthened to include in Thirlestane's alliance the Scotts of Goldielands, Whitslaid, Headshaw and Hundleshope and the Stewarts of Tinnis, when they were all asked to subscribe the assurance. Things had not been resolved by 1610 when the Scotts of Thirlestane were accused of bearing 'deadly hatred and malice against Walter Scott of Tushielaw and his sons, and intend to pursue them for their lives'. Thirlestane and Tushielaw were forced to subscribe another assurance. The Scotts of Headshaw and Whitslaid were cautioners for Thirlestane and also stood surety for each other, whilst Robert Scott apparent of Tushielaw stood surety for his father Walter.²²⁷ This did not stop the feud for in 1616 Tushielaw was granted a pardon for the slaughter of Thirlestane's brother.²²⁸ The Scotts of Bonnington and Harden were also at feud, probably over the lands of Erniscleugh in Etrick Forest. Harden's ally Elibank interceded on his behalf in 1617 and 1619. Bonnington appears to have lost the dispute, since William Scott, apparent of Harden, was granted in 1617 a great seal charter of the grant of Erniscleugh, formerly held by the Bonnington family, from the Kers of Cessford.²²⁹

The enmity between the Scotts and Kers was not confined to those of their immediate surnames. The links of alliance with other surnames drew them into the orbit of the Scott-Ker dispute. Differences within surnames and local territorial disputes meant that the Scotts or the Kers would not inevitably have had the backing of specified allied surnames. However, a loose framework can be made of alliance and feud in the Middle March. In general

²²⁶ GD40/2/12/44,46,50

²²⁷ *RPC* viii 246, 255-6, 271, 435, 695-6, 724-5

²²⁸ GD32/1/8

²²⁹ GD157/189, 190; 157/1246; GD124/15/29/14. There is more on this feud in Chap. Six

the Kers had the affiliation of the Rutherfurds, Pringles and Hays of Yester, whilst the Scotts normally had the support of the Stewarts of Traquair, Turnbulls, Murrays and Douglasses and latterly the Elliots and Armstrongs. In return, surname heads supported adherents in their disputes: thus Buccleuch supported the Turnbulls in 1595 in their action against Cessford. The feud between Yester and Traquair fitted into this framework, as did the Traquair-Rutherford dispute over the lands of Edgerston.²³⁰ But it was not set in stone. In the 1560s, the Elliots would have been more likely to side with the Kers, but by the 1590s they were sworn adherents of Buccleuch. Douglas of Cavers was indicted for the murder of Branxholme in 1552, but Douglas of Bonjedburgh was allied with Branxholme during the Morton regency.²³¹

The feud between Yester and Traquair was brought before the privy council several times in 1586 and 1587.²³² Map Three shows how their lands adjoined each other dominating the upper reaches of the Tweed indicating where dispute might have arisen. Yester's jurisdiction as sheriff of Tweeddale probably exacerbated the friction between him and Traquair. This feud was widened by a notorious one between their affiliates, respectively the Tweedies (Yester) and the Veitchs (Traquair), who held lands south-west of Peebles. This feud extended further since the Tweedies had the support of the Murrays and in 1605 Tweedie of Drumelzier stood surety for Murray of Eddleston (Blackbarony) not to harm Andrew Veitch portioner of Stewarttoun.²³³

Traquair was also in dispute with the Pringles over the lands of Buckholm which lay on the outer edges of both surnames' lands. In 1606, George Pringle of Torwoodlee was cautioner for John Pringle of Buckholm and his adherents not to molest Sir Robert Stewart of Shillinglaw, Sir William Stewart of Traquair's tutor and uncle, whilst the Stewarts of Shillinglaw and Tinnis promised not to harm the Pringles of Buckholm.²³⁴ The lands of Tinnis, lying on the same line of friction, were equally contentious. Stewart of Tinnis was a 'cadet of the house of Traquair' and was murdered by a Pringle of Tinnis, at

²³⁰ Rutherford papers, NLS Acc.7676A Bundle iv

²³¹ Fraser *Buccleuch* ii nos.185, 209, 217

²³² *RPC* iv 68, 186, 210

²³³ *RPC* vii 601

²³⁴ *RPC* vii 631-32, 655-56, 669

which a brother of Murray of Philiphaugh had been present. Though both Shillinglaw, on behalf of Traquair, and Philiphaugh tried to prevent any escalation of the dispute by making assurances in 1601 and 1604, the matter was still unresolved in 1618 when Shillinglaw complained that the murdered man's son was obstructing the issue of a letter of slains. Shillinglaw complained that Traquair's old friendship with the Murrays was threatened by the continuation of the Pringle-Stewart of Tinnis feud.²³⁵ The threat of the escalation of feud could instigate its resolution.

Some surnames were involved in feuds with local burghs: these disputes were predominantly about territorial rights, particularly over common land and mills. Attempts to resolve them showed the increasing involvement of the crown in forcing an arbitration and settlement.²³⁶ Rights over the common lands of the burgh of Selkirk were particularly contentious. Robert Scott of Haining, variously designated provost or provost depute of Selkirk in the 1590s and early 1600s, was from around 1606 involved in a dispute with the burgh over the ownership of the mill and the lands of Haining. In 1607 this led to Mr Patrick Shaw, the minister of Selkirk, and the burgesses obtaining a letter of lawburrows against Haining, to protect themselves against him. In 1608, Haining was summoned to appear before the privy council and ordered to remove himself from another mill on the lands of Heatherlee Green. The ownership of the mill was still contentious in 1610, when Haining had a letter of inhibition against Lord Buccleuch.²³⁷

The Kers of Yair were another family in dispute over the common lands of Selkirk. The actions brought against them indicate a level of physical violence involved, and the potentially incendiary nature of the yearly march ridings of the common lands of the Middle March burghs. In 1602, Andrew Ker of Yair and his four sons were ordered to desist from encroaching on the common lands at Cribs, Yair and the mill of Yair. In 1606, the burgh obtained a letter of lawburrows against Yair affiliates including Andrew Ker of Linton. The same year, both Yair and the provost and bailies of the burgh

²³⁵ GD40/5/6; *RPC* vii 556; xi 337. In 1604, Robert Scott of Thirlestane stood surety for the Murrays of Elibank and Philiphaugh not to harm the Stewarts of Traquair, Shillinglaw and Tinnis.

²³⁶ KM Brown 'Burghs, Lords and Feuds in Jacobean Scotland' in M Lynch (ed) *The Early Modern Town* (1987) 102-24

²³⁷ Borders Archives SC/S/12/33/1; WM4/20/1; 11/61, 79; 12/7, 65, 88

found assurance not to harm each other. In July 1611, Yair brought an action against the burgh for unlawfully 'tilling, sowing, shearing and winning of corn on the lands of Yair...casting winning and taking away divots and heather from the same', accusing the provost and baillies of driving horses and mares onto his lands at Cribs. Both parties were summoned to appear before the privy council. In 1612, James wrote to the provost and bailies, understanding that 'trouble was likely', and ordered them to 'forbear the riding of the marches ... [whilst] Andrew Ker should forbear pasturing his beasts' on the disputed common land. This order was repeated in 1613 and Yair was ordered not to cut divots before the council had decided ownership. Yair wrote to the burgh hoping that 'ye sall not be overt strait with me in this my sempill suit [before the council] for the awld freindschips hes being amang us'.²³⁸

Often the battle lines of the dispute within a burgh correlated with enmity between surnames from outside it. This was the case in Jedburgh where the right to nominate the provost was the subject of dispute between the Kers of Ferniehirst and Cessford in the 1580s and 1590s. In 1581, when Ferniehirst was briefly provost, the English noted as a result he and Cessford were 'at point of falling furth, and great enmytie is like to growe betwixt them'.²³⁹ The provost was often from the Rutherford kindred who were allied to the Kers of Ferniehirst. In 1590, the burgesses elected a Rutherford to the provostship in defiance of a ruling by James in favour of Cessford who was at feud with Ferniehirst.²⁴⁰ In contrast, the Turnbills of Minto and Stanyledge, were at feud with Jedburgh and the Kers of Ferniehirst. In 1601 Thomas Turnbull killed Ferniehirst's brother Thomas of Crailing and his servant in Jedburgh. When in 1603 another Turnbull was tried for a number of offences of murder and cattle-theft, James Waddell, a burgher of Jedburgh, was not allowed on the assize because 'thair is deidlie feid standand betuix the haill name of Trumbill, on the ane pairt, and the Laird of Pharniherst, the haill Kerris, and the haill inhabitantis of the toune of Jedburghe, on the uther pairt, for the slauchter of Thomas Ker, brother to ... Pharniherst'.²⁴¹

Violence occasionally broke out in Peebles, when the adherents of the Hays

²³⁸ WM3/11,12; 4/16; 11/99; 12/44, 75, 79; RPC vii 647, 651; ix 453, 457-58; x 127, 134-35

²³⁹ CBP i no. 111

²⁴⁰ Brown 'Burghs, Lords and Feuds' 108-9; Meikle *A British Frontier?* 60-1

²⁴¹ Pitcairn *Trials* ii pt. ii 370-77, 419-21, 445; RPC vii 44, 162, 185

(the Tweedies and the Horsburghs) in the burgh were in dispute with those of the Hays's enemy, the Stewarts of Traquair (the Veitchs). In 1590, the feud between the Tweedies of Drumelzier and Dreva and William Veitch of Dawick appeared before the privy council four times following the slaughter in Peebles of Patrick son of William Veitch of Dawick.²⁴² The Tweedies were allied to the Yesters; Elizabeth, Yester's daughter was married to James Tweedie of Drumelzier.²⁴³ In 1604, the Tweedies found surety with the burgh of Peebles not to harm Stewart of Shillinglaw, Traquair's eldest son and in 1605, Tweedie of Drumelzier found caution for Murray of Eddleston, then at feud with Traquair, not to harm Andrew Veitch, a Traquair adherent.²⁴⁴ Peebles was also involved in a less specific feud with the 'bordouraris', which in 1573 led them to seek for assurance from the regent that they would 'incure na danger heirefter in cace thai tak addres with the saidis bordouraris, for eschewing of deidlie feiddis'. In 1578, the burgesses of Peebles met to agree a tax to be raised there 'for the agrrement of thair deidlie feid of the town with the bordour'.²⁴⁵

Feuds also existed with English surnames across the border. In 1579, it was reported that there were 'private quarrels between Herons [of Tynedale] and Carres involving other houses, who would rather overthrow each other than face the enemy'.²⁴⁶ A report by Sir John Carey in 1595 detailed that between the Kers of Cessford and the Storeys, and between the Scotts and the Charltons. In the course of the latter, Buccleuch was reported to have made 'a great rode' with an estimated 300 men into Tynedale and Redesdale 'wherein they took up the whole country, and did very near beggar them for ever'. In retaliation the Charltons 'did not only take their owne goodes agayne, but also hartned ...their neyghbors to take theirs, and not be afraide, which hath ever synce stuck in Bucclughe's stomach'. Carey traced the roots of this feud back to a 'long time synce, in a warr tyme' when the men of Tynedale men attacked Buccleuch's lands and 'tooke away hys grandfather's

²⁴² *RPC* iv 495, 496, 514, 551

²⁴³ *Yester Writs* 327

²⁴⁴ *RPC* iv 68, 186, 210; vii 568, 601

²⁴⁵ These borderers were not named. They were probably the targets of the judicial raid to Peebles in 1573 for the pursuit of 'thevis and disorderit people'. The entry was ordered of several men from southern Selkirkshire including Scotts and Liddells. Documents *Peebles* 353, 356; *RPC* ii 242-43, 306-7

²⁴⁶ *CBP* i no. 41

sworde, and would never lett him have yt synce'.²⁴⁷

Feuding within the Middle March had implications at national level. In 1587 Robert Ker of Cessford married Margaret Maitland, niece of the chancellor, Sir John Maitland of Thirlestane: this tied them in a mutually beneficial relationship providing patronage at court for the Kers, and Ker support for Maitland in the East and Middle Marches. However, Maitland's arch-enemy, the earl of Bothwell, married Walter Scott of Branxholme's widow, Margaret Douglas, a daughter of the earl of Angus. Thus, when Bothwell was pursued by Maitland and James VI, he was supported in 1591 by the Scotts of Buccleuch, Harden and Whitslaid. This alliance mirrored the local feud between Buccleuch and Cessford.²⁴⁸

Conclusion

Dispute happened, feud happened and lines of alliance and enmity were drawn in the Middle March as they were in the rest of Scotland. These all involved a social interaction in which the influence of kinship predominated. Kinship was the glue of many an alliance whilst the kindred formed the social structure on which much interaction was based. In the Middle March the kindreds were also termed the surnames: this could be taken to indicate that Middle March kindreds were somehow different to the other kindreds of Scotland. However, the implications of the kinship element of the surnames were the same for the Middle March as they were for elsewhere in Scotland. The protection expected by a member of the Scott surname from his surname leader, Scott of Buccleuch, in Selkirkshire was the same as that expected by those of the Maule surname from Maule of Panmure in Angus. Similarly the support expected by Buccleuch from an allied surname, such as the Elliots in the 1590s, was the same as that expected by Panmure from the Strathaquhins of Balwysse.²⁴⁹ In the same way, though kinship could provide the framework for dispute, it could also provide the mechanisms for the resolution of feud.

²⁴⁷ Fraser *Buccleuch* i 212-13; *CBP* ii nos. 77,80

²⁴⁸ Fraser *Buccleuch* i 171; ii no. 209; Rae 206-7, 209-10, 213-14

²⁴⁹ Bonds of manrent by the Strathaquhins to Maule of Panmure in 1570 and 1602. *Wormald Lords and Men* App. A 332

The importance of kinship for this study is that it provided some of the main mechanisms of government in the Middle March as elsewhere in Scotland. At a basic level, the surnames provided the manpower which local officials used to fulfill their duties, their deputies almost always coming from their own surnames or kindred. More than this, however, the kindreds formed a social structure in the localities, and a framework of obligation and accountability, which the government used when it exerted its authority in the region. The surname was the unit for which the government held the surname leader responsible under the general band and acts of caution. The relationships involved within kinship were one of the dynamics of a system of government in which personal contact was crucial. Furthermore, alliances within and between surnames provided a network of obligations which members of a surname could use in their own interaction with government at both local and national levels. Kinship and alliances were thus part of the framework of government throughout Scotland. And when James's government decided to change its policies, such as in the suppression of feuding, it used the same approach in the Middle March as elsewhere. Significantly, the framework of kinship continued to be used as the basic mechanism for effecting the new policy.

The crown's use of kinship as a mechanism of government in the Middle March presupposes a defined network of kinship and alliance within the locality. This there clearly was. Crucially, however, for the successful implementation of government policies, there had to be an underlying stability in the framework of obligations of kinship and alliance. What is remarkable about the Middle March is the social continuity evident in the lasting importance of the region's main surnames throughout the period from 1573 to 1625. Indeed, this continuity can be detected as far back as the late fifteenth century. Furthermore, the only significant forfeiture in the Middle March in the late sixteenth century, that of the earl of Bothwell, did not cause a significant upheaval in the patterns of landholding and alliance. The Scotts of Branxholme and the Kers of Cessford, already two of the most significant surnames in the march, merely consolidated their position by

acquiring Bothwell's lands.²⁵⁰ A similar social continuity existed in the East March but the picture in the West March is more confused. Here the instability caused by the continuing Maxwell-Johnstone feud, the forfeiture of the ninth Lord Maxwell in 1609 and his execution in 1613 was evident in the number of acts of caution registered after 1603. Repeated reports of disorder in the West March, enduring into the 1620s, outlasted government concern over the Middle March.

²⁵⁰ Sizer describes a 'power vacuum' in the Borders in the late sixteenth century ascribing it to the decline of the Douglasses of Angus and the lack of any nobles in the locality to replace them. However, this is to underestimate the authority held by a wider pool of greater lairds or surname leaders. Meikle's identification of the 'invisible divide' between greater lairds and the nobility is particularly helpful here. Sizer 'Middle Shires' 23-24; Meikle 'The invisible divide'.

Chapter Two: The administrative structure of the Middle March: local office-holding

Introduction

Kindreds or surnames provided the framework and the dynamic for exercise of authority at a local level in the Middle March, as elsewhere. However the march was subject to other influences which were changing through this period: predominant amongst these was the government of James VI, from 1586 onwards, which was consciously to develop the structure of government throughout Scotland. The 'fitted carpet' of territorial state authority was to include not just the 'lawlands' of the centre, but also Scotland's periphery, the 'outcuntrey'.²⁵¹ The mechanisms that James was to use were similar to, or an extension of, those that had been in existence before and so were the people involved. This is not perhaps surprising: the personnel available to effect government came from a limited group of prominent figures with sufficient authority in the locality. However they did have to operate in a changed environment by the end of the period. Perhaps the surprising thing is that very few office-holders in the Middle March fell by the wayside.

The prominent local figures of the Middle March were the surname leaders and landlords, all of lairdly status. For the Eastern Borders, Maureen Meikle has identified the lairds as the 'backbone of local administration', their involvement reflected 'their power, status and allies'.²⁵² The holding of local office was closely tied to status which, in turn, largely depended on a person's framework of allegiance. At the same time, local office-holding provided the surname leaders and landlords of the Middle March with the power associated with the specific office and the ability to reward or protect adherents. Such authority was often derived from the crown, through its granting of local office such as that of the march warden, the sheriff and the keepership of Liddesdale and appointments to office in crown lands such as the captaincy of Newark castle in Ettrick Forest.²⁵³ The surname leaders'

²⁵¹ Goodare and Lynch 'Scottish State and its Borderlands' 187, 201; Goodare *State and Society* 214-15, 239.

²⁵² Meikle *A British Frontier?* 53

²⁵³ Though the office of sheriff was hereditary in the late sixteenth century, it was originally a crown grant and the crown used the sheriff as one of its principal agents in the localities for the administration of justice and the enforcement of council ordinances.

authority also came from their holding of private jurisdictions, in baronies and regalities, and as bailies for greater absentee lords. Surname leaders also had either the formal right or the effective power to nominate provosts in the burghs of Peebles, Jedburgh and Selkirk, influence over nomination of ministers to parishes and the power to appoint bailies to their lands. In this period, these powers were indirectly augmented in the Middle March, as elsewhere in Scotland, by the formalised admission of lairds to parliament in 1587, attendance at the privy council in the 1590s and the creation of the Justices of the Peace in 1609. In addition, some borderers benefited from their appointment as commissioners for the Middle Shires from 1605.²⁵⁴

The increasing centralisation of government in Edinburgh involved an attempt to bring a number of facets of life under the control of the state. Such centralisation was an on-going process in which the evolving government structures included a widening group of men whose interests were identified with those of central government. Michael Braddick makes a similar point about the co-operation of local elites within the growth of state authority in England, as a result of the 'mutuality of interests' between the local elites and central government.²⁵⁵ Similarly, the crown's increasing monopolisation of the resolution of dispute was effected by involving the nobles and lairds within the process of the suppression of feuding without, generally, having to coerce them.²⁵⁶ In this way the crown was able to retain their support in the locality and utilise them within the evolving government framework. At a local level, this meant that the responsibility which the surname leader or landlord had for his kinship and tenants slowly transformed to a responsibility for his locality. Local office-holding was simultaneously a mechanism for authority and recompense for loyal support.²⁵⁷

Locally appointed office-holders and local private jurisdictions

Prominent local figures either held office themselves, relied on others to do

²⁵⁴ Goodare *State and Society* 64, 74, 290; APS iii 509-10; iv 434

²⁵⁵ Goodare *State and Society* 100-101, 257-58; Braddick *State Formation in Early Modern England* 337-40

²⁵⁶ Brown *Bloodfeud* 269-70

²⁵⁷ The inclusion of borderers within central government is looked at in Chap. Three.

their work, or were able through their office or landholding to make appointments within the structure of local authority. This was not confined to positions within the public sphere, but also to positions within the private jurisdictions. Sometimes public and private jurisdictions overlapped. Though this did occasionally lead to friction, it also meant that a prominent local figure in control of a public office or jurisdiction might have his authority augmented by the powers associated with a private jurisdiction. In addition, he often would have the effective power to nominate his own candidate to local office.

This regularly meant that any alliance locally between surnames was reflected in those appointed to office in the local burghs. Evidence of this lies in the names of local officials in the burghs of Jedburgh, Selkirk and Peebles and the town of Hawick. Whilst ostensibly these were elected by the burgesses, their names indicate links with families living outside the town but holding lands in its vicinity. The provostship reflected the status of both the man himself and also the strength of his connections. This was furthered by additional office, sometimes temporary, such as sheriff depute or commissioner for the burgh in parliament. In Jedburgh, the Rutherfords often appear as provost, Robert Rutherford appearing as provost there in 1552, Richard Rutherford from 1569 to 1581 and William Rutherford as provost in 1592.²⁵⁸ They were closely related to the Rutherfords of Hunthill who held lands just outside the town and were allied with the Kers of Ferniehirst and the Douglasses of Cavers: Mr John Rutherford, provost of Jedburgh, often acted for Cavers as sheriff depute of Roxburghshire from 1610 until at least 1615.²⁵⁹

In Selkirk, the Scotts of Haining traditionally held the post of provost; they held lands just outside Selkirk, but also had the ownership of the mill there and tenements within the burgh.²⁶⁰ Robert Scott of Haining was allied to the Scotts of Branxholme, major landholders in Selkirkshire. Thomas Scott of Haining was elected provost in 1561; Robert Scott of Haining appeared as provost from the 1590s and was still so in 1614 despite his continuing dispute with the burgh. Scott of Branxholme appeared as provost occasionally and

²⁵⁸ *RMS* vi 1803; *RPC* iii 368, 600; v 13

²⁵⁹ *SC62/2/6-7*; *RPC* xi 156

²⁶⁰ *WM3/21*; 4/20/1

in 1598 Haining was listed as deputy provost.²⁶¹ As a man of substance locally, Haining occasionally received commissions as sheriff 'in hac parte', to deal with specific matters, as he was in 1604 when he granted sasine to James Veitch of lands in Ettrick Forest, in the sheriffdom of Selkirk. His authority was augmented further when he acted for the Scott surname on behalf of Buccleuch during the latter's absence in 1602.²⁶² Unsurprisingly, the names of the bailies also reflected the influence of the local surnames: in 1608 a James Scott was bailie in Selkirk and another James Scott was bailie in Hawick.²⁶³

The situation was slightly different in Peebles, where the hereditary sheriffs of Peeblesshire, the Hays of Yester, were provosts in the burgh too in the 1570s. They stepped down in the 1590s but retained their influence as councillors. They did not treat this office as a nominal position, appearing at the burgh head courts in the tolbooth, and using it to intervene in Peebles's affairs.²⁶⁴ This was not necessarily to the detriment of the burgh since they repeatedly lobbied on the burgh's behalf at central courts.²⁶⁵ There were bailies to carry out the day-to-day work of burgh officials. Burgesses on record included kin of the surnames holding lands near the burgh, the Veitchs, Tweedies and Horsburghs. Gilbert Tweedie was burgh treasurer in 1575 when he witnessed a sasine with Adam Tweedie of Dreva and Walter Tweedie, reader at Broughton.²⁶⁶ By the end of the period, the bailies had taken over the provostship, probably following the legislation of 1609 inhibiting nobles from holding local office.²⁶⁷ These bailies also represented Peebles at parliament.²⁶⁸

It was difficult to hold office in the burgh without the support of the local landholders. Where burghs did try to elect their own officials in the face of opposition from outside the town, conflict sometimes occurred. This was

²⁶¹ *RPC* v 450; x 793; WM11/61, 79; 12/7, 65, 88; SC/S/12/33/1; Symms 'Social Control in a sixteenth-century burgh' 66

²⁶² NRAS 482/31/10; *RPC* vi 372-73

²⁶³ *RPC* v 450; vii 669-70; xi 156; WM3/12

²⁶⁴ A convention in 1590 protested against crown endorsement of nobles in burgh office. M Lynch 'Introduction' in M Lynch ed. *Early Modern Town* 20-21 and M Lynch 'The Crown and the Burghs' in *ibid.* 55-80 at pp64,65; Documents *Peebles* 329-30, 345, 356

²⁶⁵ Keith Brown notes 'many burghs were content with the security a powerful local lord could guarantee them'. Brown 'Burghs, Lords and Feuds' 103

²⁶⁶ *Yester Writs* 218

²⁶⁷ *APS* iv 435

²⁶⁸ Documents *Peebles* 342, 361, 364; *RPC* x 686; xi 156; xii 352; See App. K

particularly the case in Jedburgh which was surrounded by the lands of the Kers of Ferniehirst and Cessford and the Rutherfords of Hunthill.²⁶⁹

Throughout the second half of the sixteenth century, the provostship was under pressure from all three powerful families. In 1581, Ferniehirst was briefly made provost, which antagonised Cessford, and in 1590 the burgesses elected a Rutherford in defiance of a ruling by James in favour of Cessford's nomination.²⁷⁰ Both Maureen Meikle and Keith Brown detail the intricacies of the friction (though not completely in agreement) and it is not necessary to repeat them here.²⁷¹ The disputes which they recount continued after 1603 when the Kers of Cessford and Ferniehirst disputed the right to nominate the provost of Jedburgh. In 1603, Sir Thomas Ker of Ancrum was appointed provost of Jedburgh. His family was at feud with Cessford over the murder of William Ker of Ancrum but had the support of Cessford's enemy, Sir Andrew Ker of Ferniehirst.²⁷² In 1617, the bailies and council of Jedburgh charged Ferniehirst to appear concerning complaints over a recent election of town magistrates.²⁷³ In an attempt to resolve this, in 1619, James ordered that the provost of Jedburgh should be chosen with the advice of Ferniehirst and his son, Sir Andrew Ker of Oxnam, an ordinance which was repeated in 1622. This decision reflected the enhancement of Ferniehirst's position following Oxnam's success as a privy councillor and captain of the border guard.²⁷⁴

Prominent local landholders also had private jurisdiction over their own lands, either through the courts of their own regalities or burghs of baronies, or as bailies on behalf of superiors, both lay and temporal, within their lands. This gave them powers over the rental of regality lands and to arbitrate in local territorial disputes.²⁷⁵ The earls of Angus held the regality of Jedforest which covered a large area around Jedburgh. In 1515, Angus appointed the Kers of Ferniehirst bailies there, an appointment which later became hereditary.²⁷⁶ However, a dispute arose between the two families over the

²⁶⁹ See Map Three

²⁷⁰ *CBP* i no. 111

²⁷¹ Meikle *A British Frontier?* 60-61; Brown 'Burghs, Lords and Feuds' 108-9

²⁷² GD40/13/34; 40/2/11/55, 56; *RPC* v 273; Pitcairn *Trials* ii pt. ii 378-81

²⁷³ GD40/13/47

²⁷⁴ GD40/13/39, 56. This order was despite the legislation of 1609. *APS* iv 435

²⁷⁵ Goodare *State and Society* 289

²⁷⁶ Papers relating to the regality courts of the earls of Angus including for Jedforest, 1579-1620, GD111/1/7; GD40/7/1. Angus's regality of Jedforest was confirmed in a charter of 1602, held for one red rose. *RMS* vi 1283.

extent of their jurisdictions and the rights to hold bailie courts in Jedforest.²⁷⁷ From 1601, Angus repeatedly tried to use his rights of repledging cases appearing before the sheriff court at Jedburgh to his regality court, including a failed attempt to get Ferniehirst brought under his jurisdiction.²⁷⁸ In 1612, the dispute escalated, Angus and Ferniehirst both making 'great convocation of the lieges in arms for holding courts at Lintellie in the Lordship of Jedburgh Forest', where 'both parties were resolved to hold the same'. Ferniehirst and his heir were temporarily warded but released following a letter from James to the privy council. Both parties made a reconciliation in front of the council who decided in Angus's favour.²⁷⁹

The erection of baronies was to give the holders new powers of jurisdiction within these consolidations of landholdings. The numbers of these erections increased in the late sixteenth century, as vigorously pursued in the Borders as elsewhere.²⁸⁰ Baron courts dealt with all tenancy matters, could settle civil disputes and try cases of slaughter and theft: though some of these powers were assumed by the central Court of Session in this period, those with baron's jurisdiction, like Angus, continued to assert these rights into the seventeenth century. Typical amongst these erections was that by Scott of Branxholme: in 1577 the lands at the heart of Buccleuch territory were described as the barony of Branxholme, to which were added lands in the lordship of Ettrick forest and the barony of Minto; in 1599, a *de novo* erection called Branxholme consolidated his older landholdings with his more recent acquisitions, in particular those resulting from the forfeiture of the earl of Bothwell.²⁸¹ Within these baronies some holders held the superior jurisdiction associated with burghs of barony. Burghs of barony erected in this period in the Middle March included that of Maxton, in 1588, held by Ker of Littledean; of Galashiels in 1599 by Pringle of Galashiels; of Melrose in 1609 by Viscount Haddington; of Eddleston in 1607 by Murray of Darnhall and of

²⁷⁷ This dispute was despite the marriage between Ferniehirst's eldest son Andrew of Oxnam to Angus's daughter in 1600. GD111/1/26

²⁷⁸ Pitcairn *Trials* ii pt. ii 378-81, 509-11

²⁷⁹ Angus had appeared with three or four hundred armed supporters. *RPC* ix 372-74, 394, 398, 400; GD40/13/ 41

²⁸⁰ GS Pryde *The Burghs of Scotland* (1965) 61, 63, 64, 65. Though holders of burghs of barony did not have the superior rights of jurisdiction associated with regalities, the erection of baronial burghs concentrated burgh privileges and trading rights in the hands of the baron. GS Pryde ed. *Court Book of Kirkintilloch 1658-1694* (SHS 1963) xlii, lviii-lix

²⁸¹ GD224/479/1; 224/918/12; *RMS* vi 956

Kelso in 1614 on behalf of Lord Roxburgh.²⁸²

Church-related but non-ecclesiastical office-holding

The church was involved in a framework of office-holding and patronage in the Middle March, both as the employer of the ministers in the parishes, but also as a major landholder within the abbacies of Dryburgh, Kelso, Jedburgh and Melrose. As a landholder with associated rights of jurisdiction, it had the power to appoint bailies to hold courts within its regalities. These bailiaries tended to become hereditary within a family. In addition, as a result of the gradual feuing of ecclesiastical lands, many of the church's teinds and rights of nomination to vicarages and parsonages had been alienated, usually falling into the hands of local lairds and nobles. The Ferniehirsts were a good example of a local family's involvement in church-related office: they held the bailiary of the abbacy of Jedburgh from 1528, with power to hold courts within it, repledge cases and appoint deputies, for which they were paid £10 a year from the fermes of Newbigging. Following the Reformation, the abbacy passed into the hands of the Lords Home, but the Ferniehirsts' position as bailie was confirmed in 1616.²⁸³

Similarly, the Scotts of Branxholme were made hereditary 'baillie principall' for the regality of the abbacy of Melrose in 1519. Letters of bailiary by Robert, abbot of Melrose, detail the duties undertaken and the rights awarded to Branxholme: he was granted 'full and playne power' to hold courts within the regality's lands, to appoint officers such as clerks and had 'justice to minister, trespassouris to pwynis, ward and dome to gif in' and the 'malis...and otheris our deweteis to lift.'²⁸⁴ The Scotts were responsible for the defence of abbacy lands, Branxholme swearing that 'I sal supplie, mantein and defende quhatsumeuer rewil, ordinance, or constitution maide...be the saidis abbot'.²⁸⁵ Branxholme also promised not to destroy the regality's woods or fish its waters without licence, and to ensure the same of his 'men and frendis'. The benefits of the bailiary were considerable. A charter of

²⁸² Rae listed the Roxburghshire baronies in his thesis. List of baronies in this period in App. B

²⁸³ GD40/7/4, 33

²⁸⁴ Fraser *Buccleuch* ii no. 126

²⁸⁵ Fraser *Buccleuch* ii no. 127

confirmation of 1524 made clear the extensive lands involved, for not only were they those around Melrose, but lands at the heart of Buccleuch territory at Ettrickhead, Rodonoland and Eskdalemuir amongst others; in granting the bailiary, the abbot was recognising what was to some extent already in effect the case.²⁸⁶

It was a profitable arrangement: there were several instances of the Scotts receiving the tack of regality revenue, such as a grant in 1588 of the tack of teinds of the parishes, towns and kirks of Hassendean and Cavers by James, commendator of Melrose to Scott of Buccleuch and his heirs for nineteen years.²⁸⁷ Buccleuch was also able to distribute lands from the regality to his kindred. In 1615, he assented to a sasine in favour of a son of Sir Robert Scott of Thirlestane of lands in Eskdalemuir.²⁸⁸ Buccleuch did attend regality court sessions but usually had his nominated deputies to act for him. They were usually from his kindred. In 1568 Thomas Scott of Haining procured a precept of sasine for the new commendator of Melrose and in 1608 one of the deputy bailies was Walter Chisholme of that ilk 'descendant from the said hous of Bukcleugh'.²⁸⁹

Buccleuch's bailiary powers could be of advantage to his allies. In 1608 the privy council remitted an action by Murray of Elibank against a portioner at Blainslie in the regality to the bailie court there; fortuitously Elibank was a Scott affiliate. The procurator acting for the occupiers of Blainslie, protesting against Elibank's advantage, said there could be

na proces in respect of the consanguinate standing betuix the nobill and potent lord...Bukcleugh, and the said Sir Jedeane, beand full sister and brother bairnes, and also betuix the said Sir Jedeane and Walter Chisholme of that ilk, principall bailie deput.²⁹⁰

The court found in favour of Elibank in this case and again in a similar one against the occupiers of Elibank's lands at Langshaw.²⁹¹ In 1618, the regality of Melrose was included in the erection of the barony of Binning granted to Thomas Hamilton, the future earl of Melrose: one of the exclusions was lands held by Elibank at Langshaw in the regality.²⁹² Buccleuch resigned the

²⁸⁶ Fraser *Buccleuch* ii no. 131; papal confirmation of bailiary in 1525, no. 132.

²⁸⁷ GD224/930/43/2

²⁸⁸ GD430/208

²⁸⁹ RMS iv 1819; *Regality of Melrose* xlix, 12, 32, 41

²⁹⁰ *Regality of Melrose* 41

²⁹¹ *Regality of Melrose* 41-42, 56-57, 62-63; GD86/379; GD1111/1/27

²⁹² RMS vii 1915

heritable bailiary in favour of the earl of Melrose in 1621, but reserved that office in his lands of Rodonoland, Ettrickhead and Eskdalemuir. Buccleuch's connections with the bailiary continued however: in 1524, his adherent, James Pringle of Buckholm, was bailie-depute of the regality, receiving a commission to try two thieves there.²⁹³

As a result of the gradual alienation of church lands throughout the sixteenth century, prominent landholders such as the Scotts of Buccleuch and the Kers of Cessford and Ferniehirst had accumulated numerous tacks of teinds, feus of the lands associated with the parish kirks and thus influence over nomination to these parishes. Not only did the Branxholmes have the tack of the teinds of Hassindean and Cavers from Melrose, but also those of Lessudden from Dryburgh from 1553.²⁹⁴ The advantages of connections through surnames was evident: in 1590, and again in 1603, William Scott the chanter of the Chapel Royal of Stirling granted the tack of the teinds of the parish of St Marie kirk of the Lowes (near Buccleuch) to Branxholme.²⁹⁵ In 1608, Buccleuch granted the vicarage of St Marie of the Lowes to Mr James Scott, minister there. Buccleuch seems to have assiduously pursued his rights of nomination in the heart of his landholdings: in 1607, Scott of Haining appeared for Buccleuch before the presbytery of Jedburgh, in discussions over the nomination of the minister of the kirk of Liddesdale asserting 'my Lord Buccleuch's present is anterior to any uther thairin', and that he had nominated Mr William Clerk by 'ane frie presentation' to the kirk there.²⁹⁶ Buccleuch also had the patronage of the parsonage of Hawick when, in 1608, he agreed to the tack of the kirk and teinds by the parson of Hawick to Buccleuch's old friend, Elibank.²⁹⁷

Where valuable rights of nomination and the assignation of teinds were involved, inevitably there was dispute. The Ferniehirsts guarded their holding of the teinds of the kirks of Innerleithen and Little Newton. In 1586, these teinds had been the subject of a complaint by the commendator of Melrose abbey, who claimed them as part of Melrose: Ferniehirst and Rutherford of Hunthill were denounced rebel for armed interference with

²⁹³ GD224/930/41/11; *RPC* xiii 549

²⁹⁴ GD224/930/43/1

²⁹⁵ GD224/930/43/4, 8; 224/930/38/15

²⁹⁶ *RMS* vii 270; CH2/198/1/33.

²⁹⁷ GD224/918/27/4-5

the teinds.²⁹⁸ In 1596, Buccleuch, who had presumably controlled the teinds as bailie of Melrose, assigned the teinds of Innerleithen to Ferniehirst's heir, Ker of Oxnam, in settlement of a fatal brawl between Ferniehirst and Buccleuch adherents.²⁹⁹ In 1602, Ferniehirst wrote to his son to ensure that their enemy Lord Roxburgh, did not include these rights in the erection of his barony of Roxburgh. The dispute still existed as late as 1616 when the privy council was charged to suspend a claim by Roxburgh on the teinds of Little Newton which would have been to the prejudice of Ferniehirst.³⁰⁰

The restructuring of the church after the Reformation brought changes in its administration at a local level. From 1581 presbyteries were gradually established to oversee the parishes within their areas and were accountable to regional synods.³⁰¹ In the 1590s, in the Middle March the presbytery of Peebles was supervised by the synod of Lothian and Tweeddale, and those of Selkirk and Jedburgh by the synod of Merse and Teviotdale. From the 1590s, presbytery meetings appear to have been held regularly on a weekly basis. In 1613, the General Assembly formed the presbytery of Lauder and Earlston which included some parishes previously part of the presbytery of Selkirk.³⁰²

Membership of a presbytery mostly consisted of the relevant local ministers. They were however subject to external pressures, both lay and those of their ecclesiastical superiors. In 1606 the presbytery of Jedburgh numbered around fifteen local ministers including Mr John Abirnethie of Jedburgh and Mr David Calderwood of Crailing (the historian).³⁰³ Abirnethie was an ally of the Kers of Ancrum and Ferniehirst and in 1607 Ferniehirst supported his

²⁹⁸ *RPC* iv 115

²⁹⁹ GD40/2/9/86

³⁰⁰ GD40/2/12/4, 44

³⁰¹ In 1581, when 13 model presbyteries were set up, the list did not include any from the Middle March. Calderwood recorded that, in 1582, the presbytery of Teviotdale could not be erected due to the lack of qualified ministers. However a proposal in 1583 to merge the presbyteries of Melrose and Peebles with those of Dunbar and Chirnside in the East March suggests that these presbyteries had in fact been set up. *BUK* ii 482-87, 636; Calderwood *History* iii 521-22, 680-1

³⁰² Presbytery records exist for Peebles from 1596, Jedburgh from 1606 and Selkirk from 1607. *Fasti* ii 146-168, 187; CH2/295/1; CH2/198/1; CH2/327/1; CH2/118. The seat of Selkirk presbytery was at Melrose until it was transferred to Selkirk in 1640.

³⁰³ CH2/198/1/7, 9

nomination as constant moderator of the presbytery.³⁰⁴ However, Calderwood and the presbytery resisted his nomination and then refused to accept the visitation of the bishop of Orkney. In 1608, Calderwood and others were deprived of their ministries. Abirnethie was finally accepted as moderator in 1610.³⁰⁵

At Selkirk presbytery too, in 1607, there appears to have been some resistance to interference in the nomination of the constant moderator: Lord Roxburgh appeared several times at its meetings from March to May 'charging the burcht be vertew of his commissioun to guid thereupoun...to the constant moderator's admissioun'. He nominated Mr John Knox, minister of Melrose, but the presbytery attempted to appoint Mr Allan Justice instead. However, in May, Archibald Ker produced a letter from Roxburgh at the presbytery meeting 'requyring us to admit Mr John Knox our moderator for a tyme' as charged by the king and the presbytery finally acquiesced.³⁰⁶ Roxburgh's power over the presbytery had received the king's backing.

Crown-appointed local officials

The appointment of local officials by central government was influenced and underwritten by the framework of power exercised within the local surnames and the distribution of landholding. At the beginning of this period in 1573, the structure of local office-holding was broadly the same as it had been for centuries and concentrated in the hands of the same families over several generations. However, the extension of crown authority into the localities had, by 1625, broadened the numbers of those in local office by introducing new institutions, such as the office of JP, alongside the traditional offices.³⁰⁷ But, as Sharon Adams also notes of the south-west of Scotland, those appointed to the new offices in the Middle March were those who already held authority in the locality.³⁰⁸

³⁰⁴ Abirnethie was subsequently the bishop of Caithness and still asking for Ancrum's favour in 1623 over the bishopric of Moray. GD40/2/13/1, 32

³⁰⁵ Calderwood *History* vi 706-10. Further context for this is in Chap. Six.

³⁰⁶ CH2/327/1/3, 4, 5, 8

³⁰⁷ Goodare estimates that public administrators increased by over 400 per cent from 1560 to 1625. *Government of Scotland* 216-19; *Goodare State and Society* 286, 292-3

³⁰⁸ Adams 'Road to Revolution' 56

Sheriffs³⁰⁹

The sheriffs were the main local judicial and civil administrators and acted as the crown's agents in the locality. They held regular sheriff courts and were responsible for the collection of taxes and the implementation of privy council ordinances in their shire.³¹⁰ A sheriff was supported in the carrying out of his office by deputies appointed by him and connected to him by ties of kinship and allegiance. The three sheriffdoms of the Middle March were that of Peeblesshire, Selkirkshire and Roxburghshire. At the beginning of this period, all of these were heritable appointments, and had been in the same families for several generations. Throughout James VI's reign such jurisdictions were subject to criticisms of inefficiency and partiality and their hereditary nature was increasingly viewed as an obstacle to the effective imposition of law in the locality. James made various attempts throughout his reign to regulate the activities of the sheriffs.³¹¹ From 1610 onwards, these efforts were concentrated on persuading, with limited success, specific sheriffs to surrender their heritable offices in return for compensation.³¹² In 1617 a commission looking into heritable office recognised the difficulty of these efforts and recommended that sheriffs should be encouraged by 'ane competent satisfioun in honoure and utherwayis to be gevin to thame'. At the same time, some of the sheriff's powers of jurisdiction were replicated in the commissions for the Justice of the Peace made to other prominent local figures.³¹³

The sheriffdom of Roxburghshire was hereditary in the family of Douglas of Cavers following a grant by James I in 1412 of the barony of Cavers and the sheriffdom. Sir William Douglas, sheriff from 1558 to 1589, was the sixth Cavers to have inherited the office in a direct line of descent. His son Sir James appeared as sheriff principal at the sheriff courts held in Jedburgh from 1590 to 1612, though his son William, feuar of Cavers took over

³⁰⁹ See App. H(a) Sheriffs of the Middle March

³¹⁰ In 1596, James Douglas of Cavers, in his capacity as sheriff, was summoned by the Lords of the Exchequer to account for the taxes owing from Roxburghshire. Douglas of Cavers papers at NLS Acc. 6803, Box 9, fo. 2

³¹¹ Meikle *A British Frontier?* 53-55; *RPC* vi 68-69

³¹² Eight sheriffships were surrendered by 1625, including that of Dumfries, Selkirk and Berwick in the Borders. Goodare *Government of Scotland* 187-190; *RPC* 2nd series i 659

³¹³ Goodare *Government of Scotland* 203-6; *APS* iv 434, 549-50

officially in 1610.³¹⁴ Despite negotiations with William by James VI and Elibank in 1620 over the payment of £20,000 Scots for the surrender of this office, an Archibald Douglas of Cavers was still recorded in 1711 in an action as the 'Heretable Sherriff of Tiviotdale'.³¹⁵

Of the three Middle March sheriffdoms, Roxburghshire is the only one with relatively comprehensive records available for this period.³¹⁶ Throughout the period, Roxburghshire sheriff court sat regularly, generally weekly, meeting on average at least thirty times a year. The Cavers sometimes used their sons as deputies but also relied on the provosts and bailies of Jedburgh, often Turnbills and Rutherfords who were relations of powerful local families, to preside over the sheriff courts. James Douglas, sheriff from 1590, was not as diligent as his father had been.³¹⁷ In January 1598 he appointed as deputy the brother of his ally Walter Turnbull of Bedrule and rarely appeared at courts after that. William Douglas, a burgess and bailie in Jedburgh, was deputy in 1601, as was a James Douglas in Cavers in 1602. From May 1603, William Douglas younger of Cavers increasingly took over the role of depute. From late 1606, William shared the responsibility with John Alensone, another burgess, who was replaced in 1610 by Mr John Rutherford, burgess, sometime provost of Jedburgh and younger brother of Rutherford of Hunthill. From this time also, William officially took over from his father James.³¹⁸ He seems to have split his responsibility with Rutherford who was still sheriff depute in 1620.³¹⁹ The Cavers had managed to retain their authority despite James's efforts and were continuing to use those in their alliance to support them in office.

It is not possible to be so detailed about the sheriffdoms of Selkirkshire and Peeblesshire since sheriff court records are not available until 1636 for Peebles and 1652 for Selkirk.³²⁰ The sheriffdom of Peeblesshire (sometimes also known as Tweeddale) was held on a hereditary basis by the Hays of

³¹⁴ *RSS* v 577

³¹⁵ *RPC* xii 289-90; NLS Acc. 6803, box 9, fo. 2 and Acc. 6991. Catherine Ferguson noted, erroneously, that Cavers surrendered his sheriffdom in 1620. Ferguson 'Law and Order' 212. William was described still as sheriff in 1624. *RMS* viii 592.

³¹⁶ SC62/3-7. See App. H(b) for enumeration of the sheriff's holding of courts in Jedburgh and those of his deputies.

³¹⁷ In 1599 he was censured for failing in his duty. See below. *RPC* vi 4, 56-58, 68

³¹⁸ *RSS* v 577

³¹⁹ *RPC* xii 222

³²⁰ SC42; SC63

Yester, who were also sometimes provosts of Peebles, and substantial landholders around Peebles.³²¹ The fifth Lord Yester was sheriff from 1556 until his death in 1586, when William Murray of Romannos sheriff-depute of Peebles granted sasine to William sixth Lord Yester of his father's lands with the office of sheriff. Murray of Romano was deputy from 1574. William was succeeded in the office by his brother James seventh Lord Yester until his death in 1609. He was succeeded by his son John, the future first earl of Tweeddale as sheriff.³²²

The Murrays of Falahill were the hereditary sheriffs of Selkirkshire. This encompassed the jurisdiction of the crown-owned Ettrick Forest, in which they had held the Forestership from the 1460s. In 1509 James confirmed Falahill in the office of sheriff of Selkirk and the Forest.³²³ The Murrays held lands at Falahill in the north of the march but also at Philiphaugh near Selkirk. Patrick Murray of Falahill was sheriff from 1543 until his death in 1578, his son Patrick from then until 1601. He was succeeded by Sir John Murray of Falahill, subsequently known as Philiphaugh.³²⁴ Occasionally there was dispute between the burgh of Selkirk and the sheriff over shrieval jurisdiction in the burgh and in 1540 the burgh was allowed by James to elect their own provost as sheriff.³²⁵

The Murrays, like the Douglasses of Cavers, were involved in discussions with the crown over the surrender of their heritable office: in 1615 Lord Binning wrote to James VI that he (with Murray of Elibank) had 'with difficultie' persuaded Murray of Philiphaugh to resign his office in return for 20,000 merks. Cunningly, payment was arranged in the conversion of a yearly fee of £500 that he was already receiving, as a commissioner for the Middle Shires, into a liferent pension: the crown thus retained Philiphaugh's services 'in all tyme cuming', whilst the 'ease of his pryce might be ane argument to bring others who might be herefter delt with for renunciation of the lyke offices'.³²⁶ Philiphaugh finally resigned in 1619 but he continued as a commissioner for the Middle Shires and was appointed under the Great

³²¹ Rae App. 1, 235

³²² *Yester Writs* 235; *RPC* ii342-43; iv 25; *RSS* iv 3126; *RMS* v 1830, 1872; *ER* xxi 114; *RPC* xii 650, 671; xiii 285

³²³ Rae App. 1, 235; Craig-Brown *Selkirkshire* 338

³²⁴ *RPC* ix 55, 205; *RMS* vi 1461; NRAS482/31/12,14

³²⁵ *RMS* iii 2207; Symms 'Social Control in a Sixteenth Century Burgh' 23-24

³²⁶ NLS Adv. MS 33.1.1 vol 6, no. 22

Seal to hold courts of Justiciary in Selkirkshire in 1622.³²⁷ Subsequently, the crown appointed the sheriffs of Selkirkshire on a yearly basis. However, since local support was essential for a sheriff to be effective, the crown necessarily had to appoint the sheriff from a limited pool of those with authority in the locality. As a result, the list of those appointed over the following years was dominated by the Murrays of Philiphaugh and their allies. Pringle of Torwoodlee was sheriff in 1620. Sir Walter Scott of Harden gave his oath as sheriff in August 1621 but, a month later, following a letter sent to James VI about his 'insufficiencie' for the office, Sir Robert Scott of Thirlestane was sworn in instead. Sir James Pringle of Galashiels was sheriff in 1622 and Pringle of Torwoodlee in 1624.³²⁸ Philiphaugh was reappointed in 1623 and 1625. A Philiphaugh was sheriff of Selkirk in 1690.³²⁹ The Murrays may have surrendered their hereditary office but they retained their power in Selkirkshire.

Sheriffs were increasingly subject to complaint by the privy council that they were 'falteis or negligent in the executioun of thair offices'.³³⁰ In December 1599, the sheriffs of Roxburghshire, Selkirkshire and Peebleshire (and that of Berwickshire) were castigated by the council for being 'altogeddir cairles and unmyndful of the dewtifull discharge of thair officeis', in failing to apprehend long lists of offenders. Murray of Falahill was criticised for his failure to hold any head courts in Selkirk from 1586 to 1599. All were summoned before the council in January to answer these complaints.³³¹ The sheriffs of the Middle March, however, were not the only ones targeted by the government: in the same month, a commission was formed to consider ways to make sheriffs more effective throughout Scotland.³³² The accusations against the Middle March sheriffs should be seen within the context of a more general governmental attempt to improve systems of justice. A charge of December 1601 to all sheriffs to post a list of offenders unrelaxed from horning from 1596 mentioned most of northern, eastern and central Scotland, but did not include any from the Middle March.³³³

³²⁷ *RPC* xi 586-87; xiii 333; Craig-Brown *Selkirkshire* 342

³²⁸ *RPC* xii 105-6, 322, 567, 570, 575; xiii 43, 333, 592, 789-90

³²⁹ WM11/102

³³⁰ *RPC* vi 57

³³¹ *RPC* vi 56-59

³³² *RPC* vi 68-69

³³³ *RPC* vi 329

There were a number of difficulties facing any sheriff. In particular, he had to carry out his duties in the face of complicated alliances and enemies in the locality. In 1586, letters of horning were issued by William Ker of Woodhead against William Douglas of Cavers, as sheriff of Teviotdale, for his failure to get Ker admitted to the lands of Bedrule forfeited by the Turnbells who were Douglas allies. This was a matter which the privy council had decided should be resolved by the sheriff and not by the bailies of Jedburgh who had complained to the council that 'be ressoun of the...deidlie feidis standing unreconsilit [in Jedburgh, they]...can nawayes gif obedience to the said charge without the perrell and dangear of thair lyveis': that is they were unable to help Ker in his occupation of his lands.³³⁴ Cavers appealed to the council for relief from the horning. A month later, Cavers stood surety of 5,000 merks for Sir Thomas Turnbull of Bedrule and his sons on their release from Edinburgh castle and, in June 1587, Cavers was ordered to find caution with the earl of Angus that he would submit himself, and those for whom he was bound, to justice by the English warden.³³⁵ Thus in addition to his responsibilities as sheriff, he had further responsibility for those allied to him.

The Hays of Yester as sheriffs of Peeblesshire were compromised by their long-term feud with the other major local landholder, the Stewarts of Traquair, and other related feuds. In 1586 William master of Yester was denounced rebel for not subscribing a mutual band of assurance with Traquair. In the same year, there was a privy council order for those holding office, such as sheriff, not to be obeyed until they had settled their affairs.³³⁶ In May 1587 a justice court was held at Peebles for the sheriffdoms of Peebles and Selkirk. The following month, William, now Lord Yester and sheriff, was warded in Edinburgh for refusing to resolve his feud with Traquair.³³⁷ In 1599, Yester was accused by the council of not apprehending Drumelzier, one of his adherents. He was also criticised for failing to apprehend his relation John Hay of Smithfield, denounced by Mr Archibald Douglas, who was at feud with the Horsburghs, allies of Yester.³³⁸ In the 1580s Yester was also involved in a feud with Scott of Branxholme.³³⁹ In 1602, Branxholme's

³³⁴ *RPC* iv 57-58

³³⁵ *RPC* iv 63-64, 82, 189, 191

³³⁶ *RPC* iv 68, 70, 71

³³⁷ *RPC* iv 156-57, 186, 210

³³⁸ *RPC* vi 58

³³⁹ *RPC* iv 98

affiliate, Sir John Murray of Eddleston, made a complaint against Yester, as sheriff, for the over-taxation of his lands in the sheriffdom, which was upheld by the privy council.³⁴⁰ The office of sheriff which could provide protection to his allegiance also had to bear the enmities of that allegiance.

Offices in crown-owned property

The crown not only appointed local government officials but also men to manage or protect its properties in the locality. The two most significant of these in the Middle March were Ettrick Forest and the castle of Newark which lay within it. Appointments to the posts of forest ranger or currouns, bailie of the forest and the captaincy of Newark very much reflected the existing status of those prominent local figures who had authority through their surname and landholding. This status was reinforced by the powers that the offices held over the distribution of tacks of the lands involved, the related jurisdiction and the patronage of the offices of their deputies. The captain also had residence in the castle.

Ettrick Forest was in crown hands following the forfeiture of the Douglasses in 1455 and it was part of Margaret Tudor's settlement on her marriage to James IV. Prominent local families had historically dominated the offices related to the forest. In the fifteenth century, the Pringles, Homes and Murrays were currouns in the Tweed and Yarrow wards of the forest whilst JM Gilbert noted that the Scotts had 'something of a stranglehold' in the Ettrick ward.³⁴¹ Despite the feuing of Ettrick from 1506, the crown remained superior into our period. Craig Madden, tracing the amassing of lands within the forest by prominent locals, notes that they 'were attracted to these royal feus as a means of extending their territorial influence and prestige within their particular locality'. In 1514, Queen Margaret's grant of extensive lands to James Murray of Falahill included those of Philiphaugh. In 1541 the Scotts held the feu of twenty-four and a half steadings in the forest, whilst ten were held by the Kers of Cessford, Linton, Greenhead and Ferniehurst.³⁴²

³⁴⁰ *RPC* vi 333-34

³⁴¹ JM Gilbert *Hunting and Hunting Reserves in Medieval Scotland* 136-39, 149

³⁴² Craig Madden 'The Feuing of Ettrick Forest', *Innes Review* (1976) xxvii vol 1, 70-84, 80, 82; Craig-Brown *Selkirkshire* 338.

In 1543, the crown appointed Walter Scott of Branxholme to the captaincy of Newark castle 'with power to make deputies and constables'. This office was combined with the duties of bailie and chamberlain of the lordship of Ettrick Forest.³⁴³ Although it was not technically a hereditary office, it seems that it was effectively so: Branxholme's grandson and heir Walter was confirmed in the captaincy and bailiary by Mary, Queen of Scots in 1565 and by James VI in 1573. His son, Walter, also held the office.³⁴⁴

Branxholme's commission of 1543 detailed his duties as captain and bailie and the associated powers of jurisdiction. As bailie of the forest lands he was granted full power to hold bailie and chamberlain courts in the lordship. He was to punish trespassours, poind goods from offenders and hold courts as 'oft as neid beis', with the 'privilege and fredome of the said baillie and chalmerlane courttis, to ... replege' inhabitants of the forest from 'quhatsumeuir juge or jugeis, spirrituale or temporale'. As chamberlain, he was expected to arrange the collection of all duties from the lands and deliver them to the queen's comptroller. The material compensation for these responsibilities was the mails, fermes, profits and duties from the lands of Carterhaugh, Whitilbra, Auldward and Huntly.³⁴⁵ In 1595 Branxholme still had these mails 'assignit of auld to the keping of the said castell' extending to £120.³⁴⁶ Equally important however were the powers of jurisdiction, assignment of lands and patronage that the office brought him. In 1592 James Scott of Newark was Branxholme's chamberlain there and, in 1617, when Buccleuch had the 'chief commandiement within the haill boundis of the cuntrey of the Forrest', Walter Scott of Harden and his son William were his chamberlain and bailies.³⁴⁷ Buccleuch was able to reward adherents at the same time as staffing his offices.

Justices of the Peace

During the last quarter of the sixteenth century, the crown became increasingly concerned about heritable office or anything else it perceived as

³⁴³ Fraser *Buccleuch* ii no. 162

³⁴⁴ Fraser *Buccleuch* ii no. 191; GD224/890/10/20; *ER* vol xxiii 63

³⁴⁵ Fraser *Buccleuch* ii no. 162

³⁴⁶ *ER* xxiii 63

³⁴⁷ Craig-Brown *Selkirkshire* 323; *RPC* v 25; xi 100

an obstacle to the peaceful maintenance of the law in the localities. One way of increasing central control over judicial processes in the localities was for the crown to regain the power of appointment of those with jurisdiction there. This resulted in the commission of the Justice of the Peace enacted in 1609 and the appointment of the first JPs in 1610. Goodare notes that the JPs were 'to extend the authority of the state further down the social scale' and the resultant 'dramatic expansion' of local administrators.³⁴⁸ The creation of the office of JP may have been an innovation in Scotland: however there was nothing new about the types and names of those receiving commissions in the Middle March.

The act of 1609 blamed the past 'bludie and mortall trubles' of the realm on the 'ungodlie barbourous and brutall custome of deadlie feadis'. It proposed to resolve this situation by appointing 'some godlie wyse and vertuous gentilmen' with commission to oversee 'trye and prevent all sic occasionis as may breid truble and violence' in each shire.³⁴⁹ With this preamble in mind, it is interesting to note the composition of those nominated for office in the Middle March in 1610.³⁵⁰ Each group receiving commissions in each shire included lairds from opposing sides in previous or existing feuds and it would be difficult to apply the description 'godlie' or 'vertuous' to Roxburgh or Buccleuch. In Roxburghshire, both Buccleuch and Roxburgh and other Kers and Turnbull of Minto, were appointed. In Selkirkshire, appointments included Robert Scott of Haining, himself still in dispute with the burgh of Selkirk, as was another appointee Andrew Ker of Yair. In Peeblesshire, representatives of the historically feuding families of Yester and Traquair, Hay of Smithfield and Sir Robert Stewart tutor of Traquair were appointed JPs, as was Murray of Blackbarony, previously in dispute with Yester. However, the commission for the peace provided a new structure in which existing and former combatants were meant to work together in implementing crown policies.

The appointment of JPs reflected the existing *status quo* of the locality and included either the incumbent sheriff or a member of their family. Goodare notes that JPs were landlords too and that 'they were now acting by virtue of

³⁴⁸ Goodare *Government in Scotland* 203; *APS* iv 434; *RPC* ix 75-76.

³⁴⁹ *APS* iv 434

³⁵⁰ See App. I List of JPs

state authority as well as their own'.³⁵¹ The local lairds benefited from the powers associated with their new positions, whilst the government was able to use these lairds' networks of kinship and alliance to effect judicial processes. In 1611, at a justiciary court held at Jedburgh by Elibank, a Scott affiliate, the assize was dominated by the surnames of Scott and their allies: it also included a Roger Scott, captain of Hermitage Castle, whose office put him in a position to effect the apprehension of offenders on behalf of the JPs.³⁵²

The Commission of the Peace was a new thing in Scotland, and in general it seems to have been introduced relatively harmoniously alongside existing jurisdictions. There was perhaps potential for conflict with the existing sheriffs: however, most of these in the Middle March received commissions of the Peace in 1610 as well. The only exception to this was Hay of Yester, but his son John Hay of Smithfield received one instead. Goodare further notes that JPs' duties did not usually compete with those of the sheriffs, the former being more concerned with local social and economic matters, such as the management of poor relief.³⁵³ A certain blurring of duties did happen: in 1623, Sir James Pringle of Galashiels in his capacity as sheriff of Selkirkshire convened a meeting of the local lairds and bailies to set in place measures for poor relief.³⁵⁴ However, there does appear to have been a need for further clarification of JPs' powers. For instance it was felt necessary to issue a separate commission to Sir Robert Stewart tutor of Traquair in 1612, to apprehend 'ane commoun and notorious theif and lymmair'. This was for an offence committed in an area in which he already held powers of justiciary, by an inhabitant of the same.³⁵⁵ It was perhaps inevitable that the JP system would take time to establish itself.

The position of the Middle March from 1603 within a specially designated area, the Middle Shires, in which Border-specific types of jurisdiction existed, complicated the picture. In 1611, James VI granted commissions to his 'weilbelovit' Cranstoun and Elibank to be Justices within the bounds of the sheriffdoms of the Middle Shires: both of these were already commissioned

³⁵¹ Goodare *Government of Scotland* 203

³⁵² *RPC* ix 708

³⁵³ Goodare *Government of Scotland* 204, 206

³⁵⁴ Pringle of Galashiels was one of the original JPs for Selkirkshire. *RPC* xiii 418

³⁵⁵ *RPC* ix 320-21.

JP. These new commissions gave them jurisdiction in a wider area, the whole of the Scottish Middle Shires, than that of their commissions for the Peace in their respective shires. The commissions also gave them 'full pouir, frie libertie and auctoritie' to try pleas of the crown at justice courts.³⁵⁶ Clearly, the need for the formalised registering of this widened jurisdiction reflected government's perception of the difficulties caused by differing levels and areas of jurisdiction: such clarification in the Middle March was particularly needed, given the overall jurisdiction invested in the commission of the Middle Shires which transcended local jurisdictions.³⁵⁷

There were few changes to those nominated as JP to 1625. In 1623 a renewal of the commissions of the Peace confirmed them in the hands of those who had held them since 1610, with the addition of a few lairds of the lesser variety.³⁵⁸ However, the issue continued of separate commissions of justiciary for specific cases, such as that issued in 1614 to the sheriff of Roxburgh and deputies, various lairds and the provost and bailies of Jedburgh for the apprehension of two local offenders.³⁵⁹ In 1618, Buccleuch, despite his appointment as both JP and commissioner for the Middle Shires, was issued with a separate commission for the apprehension of some fugitives, though possibly since their surnames were Scott, it was felt necessary to underline his duty in this case.³⁶⁰ The system of JPs was established in legal terms, though perhaps not fully functional 'on the ground'.

Border-specific officials before 1603³⁶¹

The appointments so far discussed were in line with what was happening contemporaneously elsewhere in Scotland. However, in the Borders there was an added layer of officialdom, whose roots lay in the need for military defence in the fourteenth century and which had evolved into the Border

³⁵⁶ *RPC* ix 194-96

³⁵⁷ Conflicting jurisdictions and appointments to Middle Shires offices are dealt with below, and in Chap. Six on the pacification.

³⁵⁸ *RPC* xi 445-46; xiii 331, 342

³⁵⁹ *RPC* x 332

³⁶⁰ *RPC* xi 452-53;

³⁶¹ For a fuller account of the border-related circumstances of the Middle March see Chap. Five.

institutions of the sixteenth. Ian Rae's exhaustive analysis of the border-specific institutions does not need repeating here. Instead what follows is an attempt to build a picture of these offices and the networks on which they depended within the Middle March. These institutions lapsed on the Union of the Crowns, with the renaming of the cross-border region as the Middle Shires, and were replaced with others during the pacification that followed. These new offices are discussed in Chapter Three, and an evaluation of their part in the pacification in Chapter Six. Border-specific appointments may have been particular to the region: however, like other offices, they were as dependent on the holders' networks of kinship and allegiance for their effectiveness, and as much a reflection of their existing local status.

Lieutenants³⁶²

The most senior office in the Borders was that of lieutenant. The crown made limited-term appointments to the post, usually of one year, normally in response to heightened concern about the border region, either over defence or over the perceived state of law and order there. Lieutenants were almost always nobles. Sometimes the appointment was for just one or two marches but, particularly in the case of longer terms of office, the lieutenancy could cover all three. In addition, it sometimes was held with the wardenship of a particular march. Commissions of lieutenancy, such as one granted to the earl of Angus in 1598, always included the powers of justiciar. Angus had 'full power and commission' to hold courts anywhere within the specified marches. In support of this office, he was to charge the borderers to 'convene thame selffis in armes at all tymes and occasionis for accompanying him to the ... dayis of trew or persute of thevis'.³⁶³ By the later part of the sixteenth century, a system of payment from a proportion of the proceeds of justice had evolved which provided sufficient incentive and the means with which to pay for support: the escheated goods of those 'dissobedientis' the lieutenant was to 'intromett with and uptak the ane halff thair of to his awin use to apply', paying the rest to the crown. Some commissions, such as that to the earl of Angus in 1586, specified wages to be paid monthly to his armed retinue of 100 merks to the captain of horse, horsemen at £20 and

³⁶² See App. M List of wardens and lieutenants

³⁶³ *APS* iv 170-72; *RPC* v 464

footsoldiers at £6.³⁶⁴

From 1573 to 1603, the lieutenancy was filled intermittently for around seventeen years: it is difficult to be more precise than this, since there are few records of the ending of lieutenancies. Apart from John Lord Hamilton, who was appointed lieutenant of the West March in 1586 and of all the marches from 1589 to 1590,³⁶⁵ the principal holders of the lieutenancy were the Douglas earls of Angus, who held it for at least nine years.³⁶⁶ The Douglas family's historical landholding in the region had partly survived the forfeiture of the earls of Douglas in 1455 and the earls of Angus managed to retain a significant foothold in the region in the regality of Jedforest. Others of the Douglas surname members were still landholders in the Middle March and held office there such as the Douglasses of Cavers. This meant that the Anguses had a network of adherence in the march and existing powers of jurisdiction in their own lands there. Undoubtedly the crown will have recognised the benefits of these in effecting the lieutenancy.

From 1573, regent Morton's hopes of concluding an alliance with England resulted in the most consistent efforts to impose order in the region until 1597. He used his local network of Douglas kinship and adherence to support him in this. Archibald eighth earl of Angus was appointed lieutenant of all the marches in at the end of July 1574.³⁶⁷ Whilst Morton depended on Angus for support in the Borders, Angus was similarly dependent on Morton for office: Angus was dismissed in March 1578, a week after regent Morton was dismissed from the regency.³⁶⁸ Angus fled into exile following the execution of Morton but was restored in 1585. Following the renewal of negotiations with the English over the League in 1586, Angus was again appointed lieutenant and justiciar in the East and Middle Marches.³⁶⁹ Angus took part in at least two judicial raids to the Middle March from 1586 to 1588.³⁷⁰ He died in 1589, when Hamilton took over the whole lieutenancy until December 1590.³⁷¹ James VI's increasing concern from 1597 over the

³⁶⁴ *RPC* iv 111

³⁶⁵ *RPC* iv 124, 426, 552

³⁶⁶ Rae App. 4 254-56

³⁶⁷ *RPC* ii 384, 572-73, 613, 679

³⁶⁸ *RPC* ii 678-79

³⁶⁹ *RPC* iv 111, 124

³⁷⁰ *RPC* iv 84-85, 146, 156-57, 247, 257, 271, 275

³⁷¹ *RPC* iv 426, 552

English succession triggered a more consistent approach by the crown to imposing justice in the region. This led to the appointment of William tenth earl of Angus as lieutenant and justiciar over all the marches in June 1598. He was still in office in 1600 and took part in at least two judicial raids to the region, in 1599 and 1602.³⁷²

The short-term nature of their role, their involvement in central government, residency elsewhere and temporary prioritisation of border affairs by government meant that, although lieutenants may have had some effect on the imposition of justice in the region, it was often short-lived. Their efforts were hampered by local allegiances, disputes or legal complexities; for instance, Archibald earl of Angus was warded for a couple of weeks in early 1587 as a pledge for the entry of those accused by the earl of Arran, despite having been reappointed lieutenant only five days before.³⁷³ In addition, their appointment with powers of jurisdiction and resources superior to those held by the wardens could lead to resentment since, as Rae noted, it amounted sometimes to 'the temporary eclipse of the warden altogether'.³⁷⁴ Co-operation between lieutenant and warden will have been dependent also on ties of kinship: Angus, Scott of Branxholme's uncle, lieutenant from 1574 to 1578 was unlikely to have garnered much support from the warden Ker of Cessford, though he would have had more luck with Douglas of Bonjedburgh, appointed warden of the west side of the Middle March from 1576 to 1578.

Wardens and their deputies³⁷⁵

In contrast, the indefinitely-termed appointments of the wardens were perhaps of more significance in attempts to effect long-term imposition of justice. The role of warden had evolved over the centuries from a military function in defence of the border into policing the borders, with responsibility for liaising with the warden of the opposite English march. By this period, the warden normally received the powers of justiciar with his

³⁷² *RPC* v 464, 466, 838-89; vi 76, 467-76, 825-29; *CSP Scot* xiii pt. i 229; Rae App. 6 265-271

³⁷³ *RPC* iv 156-57, 157-58

³⁷⁴ Rae 111

³⁷⁵ See App. M

commission and this enabled him to try the four pleas of the crown.³⁷⁶ A commission signed by regent Arran to Walter Scott of Branxholme in 1550 committed him to 'the rewle of the Myddil Bordowris betwuix Mynto Crage and Craykcorse', to answer for his affiliates to both 'Scottis and Inglis, and to mak redres for thame at dayis meting on the bordouris' with the English wardens with 'full power and speciall command' to punish all 'transgressionis, according to the law of our bordowris'.³⁷⁷ Whilst it was recognised that his friends, servants and tenants lived within the bounds of the march, for whom he was answerable, similarly was it recognised that they would give him support there.

The wardenship technically was a paid position: however the amounts involved were minimal and the payment of these not guaranteed.³⁷⁸ After 1587 the payments to the Cessford Middle March wardens came from a new barony of Roxburgh erected in 1588 and the barony of Ernecleugh erected in 1595.³⁷⁹ This did not stop Cessford complaining in 1598 that he had never been compensated for his service as warden. In 1600, he received a charter to the bailiary of Kelso, worth 650 merks a year, in recognition of his services.³⁸⁰ The English wardens often noted the poverty of their counterparts, finding in it one of the main reasons for their ineffectiveness. In 1596 Lord Eure noted that Cessford's 'meane estate of lyving' 'forces him to befriend his clan, overlook outrages, and support lawless men about him who serve him without charge'.³⁸¹ There was potential for conflict between wardens and sheriffs, over competing powers of jurisdiction, though there was an understanding of the border-related offences for which the warden was responsible.³⁸²

In the sixteenth century the holders of these posts had mainly been the personages of prominent local families on an almost hereditary basis. In the East March, it was the Homes; in the West it ricocheted between the rival

³⁷⁶ Rae has more on warden's duties and the problems they faced, Rae 42-73. In 1586, a statute declared that Cessford should not be burdened as warden 'with any action criminal or civile ... saulffing in materis tuicheing redress of [border] attemptatis', *RPC* iv 46

³⁷⁷ Fraser *Buccleuch* ii no. 176; Rae 24. Craykcorse was probably Craik Cross hill, west of the Hermitage

³⁷⁸ For list of payments of wardens' salaries see Rae App. 3 250-53

³⁷⁹ *RMS* v 1521; vi 318

³⁸⁰ NRAS1100/728

³⁸¹ *CBP* ii no. 410

³⁸² Meikle *A British Frontier?* 62-63

families of Maxwells and Johstones. In the Middle March, the Kers of Cessford were predominant in this period: Walter Ker of Cessford was warden from 1558 to 1570, his son William from 1570 until 1594 (apart from a short interval in 1584 to 1585); he was succeeded by his son Robert as warden until 1602, when Andrew Ker of Greenhead took over in Cessford's absence. As the major landholders in the old seats of power at Roxburgh and Jedburgh, the adherence of their Ker surname gave them the authority to effect government in their locality, not only in the day-to-day business of local government but also, in the defence of Scotland's border.³⁸³

Almost without exception, their deputies were of the Ker surname and in the case of Robert Ker younger of Cessford directly related: he was deputy for his father William in 1590 and 1594.³⁸⁴ Andrew Ker of Faldonside 'being a speciall man by whome [Cessford] is advised' appeared with him at a day of truce in 1583 and was his deputy in 1590.³⁸⁵ In 1583 James Ker of Greenhead was Cessford's deputy when he took eighty prisoners in a raid.³⁸⁶ Between 1597 and 1602, Andrew Ker of Heiton and Andrew Ker of Greenhead were deputies for Robert, along with John Mowe of that ilk, who was a significant local laird, linked with the Ker family.³⁸⁷

There were few exceptions to the Ker dominance of the wardenry. Thomas Ker of Ferniehirst was temporarily warden on behalf of the Queen's party in the Marian wars (with Cessford still in office for the king) but following its defeat, he went into exile.³⁸⁸ During his regency, the earl of Morton attempted to regain some crown control over the office, in 1576 appointing his adherent Douglas of Bonjedburgh to the western half of the wardenry, that lying 'bewest the Strete'. Bonjedburgh did not outlast the end of Morton's regency in 1578.³⁸⁹ Factionalism at court again influenced the wardenry during the short-term ascendancy of the earl of Arran when, from November 1584, Thomas Ker of Ferniehirst was warden for eight months.

³⁸³ See App. M

³⁸⁴ See App. M. *CBP* i nos. 736, 750

³⁸⁵ Ker of Faldonside was married to the earl of Arran's sister and advised Cessford to join with Arran in 1583, advice Cessford clearly ignored, which led to his eventual (but temporary) replacement by Ferniehirst in 1584. *CBP* i nos. 90, 103, 659

³⁸⁶ *CBP* i no. 245

³⁸⁷ *CBP* ii nos. 1382, 1383; *RPC* vi 440

³⁸⁸ Rae 240

³⁸⁹ *CSP Scot* v nos. 284, 315

His alleged involvement in the murder of Francis Lord Russell at a day of truce on the border led to his dismissal and warding, at the same time as Arran fell from power.³⁹⁰ From 1594, Walter Scott of Buccleuch was considered effective warden of the west side of the Middle March, and responsible for Liddesdale. This reflected the significant increase of his landholding and status following the forfeiture of the earl of Bothwell in 1594 and his acquiring of the associated keepership of Liddesdale.³⁹¹ Sir William Bowes complained that Cessford could not answer for the whole of the march 'but must seeke' to two others he was at feud with, Buccleuch and Ferniehirst, for their parts.³⁹²

Factionalism at court was not the only circumstance to influence the appointment or effectiveness of the warden. As much as the warden depended on his local network of kinship and alliance, so was he affected by the enmities inherent in such a system. English wardens ascribed the ineffectiveness of their Scottish counterparts to their dependence on adherents, and thus involvement in their disputes: the Scottish wardens were 'extraordinarily addicted to parcialities, favour of their blood, tenants and followers'.³⁹³ The principal feud to affect the wardenry was that between the Cessford wardens and the Scotts of Branxholme and their alliance. Cessford's effectiveness as warden was also compromised by his feud with the Kers of Ferniehirst: in 1590 Sir Andrew Ker of Ferniehirst and his allies Thomas Ker of Cavers and Robert brother of the late William Ker of Ancrum (who had been murdered by Robert Ker of Cessford), were exempted from the warden court of William Ker of Cessford.³⁹⁴ In 1584, whilst warden, Sir Thomas Ker of Ferniehirst received some guidance from Arran that since 'thair may be many greit exemptiounis' as a result of 'that bipast affection to his hienes present rebellis', he should convict offenders on 'sum furthir pruiif'. It was clearly felt necessary for extra measures to be taken to ensure support for Ferniehirst's wardenship: his allies Branxholme, the Rutherfords of Hundalee, Edgerston and Hunthill and William Douglas

³⁹⁰ *RPC* iii 699; iv 4; *CSP Scot* viii no 80; GD40/2/9/70, 75; 40/2/11/48, 49, 50

³⁹¹ *RPC* v 178

³⁹² *CBP* ii no. 171

³⁹³ *CBP* ii no. 323. This was hypocritical given that the English wardens were also involved in feuding. In 1596 Lord Eure, for a short time Middle March warden, complained he had 'so many such ennimies' amongst the Carey, Widdrington and Forster faction. *CBP* ii nos. 432, 441.

³⁹⁴ GD40/2/11/56

of Cavers subscribed a bond to assist him in his office.³⁹⁵ The kinship networks that supported any warden in office could simultaneously prove an impediment.

Keepership of Liddesdale³⁹⁶

Though Liddesdale was technically part of the Middle March, it had a keeper who held the same powers of jurisdiction in Liddesdale as the warden did in the rest of the march and who was not subordinate to that warden. In part, this was due to its independent nature as a lordship and regality, which in this period was held by the earl of Bothwell, until his forfeiture in 1594, when it passed to Walter Scott of Buccleuch. Sometimes the keepership and the wardenship were held by the same person, but always with separate commissions. Keepers could appoint deputies: these were often given the captaincy of Hermitage Castle and its occupancy.

In the same way as wardens were dependent on the support of their network of kinship and allegiance, so were the keepers. Prior to 1573, keepers appointed from outside the region and lacking local alliances or landholding were generally short-lived and deemed ineffective. In 1574, as part of regent Morton's initiative in the Borders, John Carmichael of that Ilk was appointed to the keepership, an office which he held (with interruptions) until 1581, and the demise of his patron.³⁹⁷ Ostensibly, Carmichael was an outsider and might have been expected to fail. However, Carmichael was married to Margaret Douglas, regent Morton's sister, and commanded considerable support both from central government and from the Douglas and Scott affinities in the Middle March.

With the passing of Morton, Ker of Cessford's position recovered and he was appointed keeper conjointly with his wardenship from 1581 to 1583. His kinsman, Andrew Ker of Faldonside, was deputy keeper for him in 1581.³⁹⁸ Thomas Ker of Ferniehirst held the keepership similarly conjoined during his

³⁹⁵ GD40/2/9/69, 72

³⁹⁶ See App. M

³⁹⁷ *RMS* iv no 2570; *RPC* iii 47, 344; *CSP Scot* iv no. 788; Rae 240

³⁹⁸ *RPC* iii 344-48, 574; *CBP* i no. 103

brief ascendancy in 1584 to 1585.³⁹⁹ Subsequently the earl of Bothwell was keeper, based on his ownership of the lordship of Liddesdale, from 1586 intermittently until his rebellion in 1591.⁴⁰⁰ Buccleuch was granted the keepership but following his involvement in his step-father Bothwell's rebellion, he was discharged and went abroad. The lands and offices from Bothwell's forfeiture were granted to the duke of Lennox but over the next three years the keepership in this period was held temporarily by Cessford, then Lennox with Ferniehirst as his deputy, and then Cessford again.⁴⁰¹

However, in 1594 Liddesdale and its keepership were resigned by Lennox on an hereditary basis to Buccleuch for which Buccleuch apparently was prepared to pay Lennox 2,500 merks.⁴⁰² The grant to Buccleuch probably recognised that he was the surname leader with the most authority in the region; his surname's vast landholdings lay at the northern head of the valley.⁴⁰³ Buccleuch strengthened the position that his landholdings gave him in Liddesdale by getting his Armstrong and Elliot tenants there to subscribe bonds promising to be answerable to him for the redress of any offences.⁴⁰⁴ This meant that he could be effective, if he chose to. A letter of indemnity by James VI to Buccleuch in 1608 lauded him as a 'man of energy, prompt in counsel and action, powerful in fortune, force, arms and following ... in punishing malefactors and refractory and rebellious persons.'⁴⁰⁵ Buccleuch also had the support of his large Scott kinship to act as his deputies in Liddesdale: Walter Scott of Goldielands and Robert Scott of Haining did so before 1603; Robert Scott was captain of the Hermitage castle, in 1599, when he witnessed a number of bands by the men of Liddesdale to Buccleuch, and, in 1611, when he appeared on the assize at a justiciary court in Jedburgh.⁴⁰⁶

The English wardens found the status of the keeper difficult to understand, equating it more with the keeperships of Tynedale and Redesdale, who were subordinate to the English Middle March warden. This meant that they were

³⁹⁹ *RPC* iii 699

⁴⁰⁰ *RPC* iv 197-98, 432; *CSP Scot* ix no. 436. See also Robin G Macpherson 'Francis Stewart, fifth earl Bothwell, c.1562-1612' PhD thesis (Edin. 1998) 238-246

⁴⁰¹ *RPC* iv 649, 668; *CSP Scot* x nos. 581, 623, 640, 652, 695, 765, 779; xi no. 157

⁴⁰² *RPC* v 178; *Fraser Buccleuch* i 174-75, 178; ii no. 211.

⁴⁰³ See Map Three

⁴⁰⁴ *Fraser Buccleuch* i 227-29; ii nos. 216, 217; GD224/906/5

⁴⁰⁵ *Fraser Buccleuch* i 230-32

⁴⁰⁶ *RPC* vi 179; ix 708; GD224/906/5

unsure with whom to deal for effective redress when offences were committed by men of Liddesdale.⁴⁰⁷ Buccleuch received the heaviest weight of English censure. In 1596, Eure complained that he could not get any redress from Buccleuch for Liddesdale for most of its inhabitants were joined with him 'by oath and scripture'.⁴⁰⁸ Buccleuch himself was clearly implicated in a number of cross-border raids, particularly into Lord Scrope's West march and was described by Scrope as 'the chief enemy ... to the quiet of the border'.⁴⁰⁹ The most notorious of these raids was his release in April 1596 from Carlisle castle of Kinmont Willie, an Armstrong and tenant in Liddesdale for whom Buccleuch was responsible. It may have been a convenient way to uphold the honour of his country, and an enjoyable snipe at his foe, but for Buccleuch it was important that he should be seen to be protecting his adherents. This need, similar to that of the wardens, was seen by the English to be to the detriment of his office.⁴¹⁰

Border commissioners

A brief mention should be made here of the various border commissions appointed by the crown to negotiate with their English counterparts. These commissions were short-term, appointed usually with specified agendas. In the period from 1573 to 1603 around twelve commissions met:⁴¹¹ two of these, in 1586 and 1597, discussed treaties and two were to deal with specific incidents, in 1575 and 1585.⁴¹² The most common purpose of a commission, however, was the redress of cross-border crime. The cases were those that were felt to be beyond the jurisdiction of the wardens, although, as Rae noted, the treaty of 1553 allowed wardens to deal with murder and slaughter.⁴¹³ Wardens could divert cases to the commissioners either as a way of avoiding cases which could compromise themselves or their adherents or to delay redress during uncertain times. Such were William Ker of Cessford's procrastinations in the early 1580s when he refused to deal with cases of slaughter and murder for which he claimed not to have

⁴⁰⁷ Rae 36

⁴⁰⁸ *CBP* ii no. 232

⁴⁰⁹ *CBP* ii no. 253

⁴¹⁰ *CBP* ii nos. 237, 252

⁴¹¹ Rae App. C

⁴¹² See Chap. Five

⁴¹³ Rae 102

sufficient authority.⁴¹⁴

Commissioners were usually non-borderers with backgrounds in central government, rather than local office-holders. Very few had links with the Middle March, the principal one being the privy councillor Mark Ker, commendator of Newbattle and a cousin of the Kers of Cessford. Apart from Newbattle, from 1573 to 1603, the only others were James Home of Cowdenknowes, who served several times in the 1570s and 1580s, Andrew Ker of Faldonside in 1591 and 1597 and Sir William Stewart of Traquair in 1591. The Kers of Newbattle and Faldonside would have been expected to favour Ker of Cessford interests, as would have Home of Cowdenknowes whose mother was the daughter of Andrew Ker of Cessford.

Conclusion

The English sneered at the dependency of the Scottish wardens on the support of their kindred and allegiances. This, however, was to underestimate the way in which government was able to use the obligations of kinship and alliance to impose its will in the locality. In addition, the manpower that a surname leader or landlord of the Middle March could command in the locality helped him to carry out the duties of any office he held. Cessford's deputies in his wardenship were almost always Kers, whilst Buccleuch used Scotts in his offices in Liddesdale, Melrose and Newark. Furthermore, such prominent local figures could count on the support of those in their alliance: such were the links between the Kers of Ferniehirst and the Rutherford provosts of Jedburgh. Similarly Buccleuch could count on the support of the Murrays of Blackbarony and Philiphaugh in Selkirkshire who themselves held office there. The intrusion of central government in the locality, for instance through the appointment of JPs, might have been expected to undermine the significance of kinship and alliance in the framework of local authority. By the end of the seventeenth century this was probably the case: however in the early seventeenth century, in the Middle March, central government was still using largely traditional methods of imposing its policies. The new institutions or offices of the state, such as that of the JP, were developing alongside, and to some

⁴¹⁴ *CSP Scot* vi no.107

extent utilising, traditional frameworks of authority. The rhetoric associated with kinship was certainly overblown, kinship may have been becoming less significant in the face of a growing state machinery, but it still mattered.

This pattern of local office-holding in the Middle March differs somewhat to the dominance that Meikle has found of the Homes over office in the East March. At times, both the offices of East March warden and the sheriff of Berwickshire were held by the fifth and sixth Lords Home. They used their Home kinsmen to help them in their public offices and as bailies within their landholdings.⁴¹⁵ The existence of several kinships holding office in each shire of the Middle March meant that no one family came to dominate the march as a whole. Though the Kers of Cessford were (usually) warden, they never held the sheriffship of Roxburghshire in which the majority of their landholdings lay. The picture in the West March was more muddled: the wardenship was constantly in dispute, swapping hands repeatedly between the Maxwells, Johnstones, Herries and others. In contrast, in the Middle March, the continuity of the same kinships and their allies in the various local offices demonstrated an underlying stability in the frameworks of authority there. Friction between the surnames could lead to dispute but, at the same time, the alliances of surnames acted as a counter-balance to any one surname's power.

If anything, this account of local office-holding in the Middle March has demonstrated the existence of a comprehensive framework of government in the locality. The individual shires of the march had the institutions of local government that existed elsewhere in Scotland: furthermore, the position of the shires within the march meant that there was an additional superstructure of border-specific offices. As Goodare notes, the nerve-endings of central government were exceedingly alive in this locality as a result of the 'over-government' of the Borders.⁴¹⁶ The system of government in the Scottish Middle March was, perhaps, more cohesive and responsive to central government than the more confused situation in its English counterpart. The English Middle March warden suffered from the interference of the garrisons at Carlisle and Berwick and the outsiders brought in by the later Tudor governments. ME James has illustrated how

⁴¹⁵ Meikle *A British Frontier?* 62-63

⁴¹⁶ Goodare *State and Society* 257-58

'the agents of the government frequently showed a greed and aggressivity offensive to the northern communities'.⁴¹⁷ Typical of these was the English West March warden Thomas, tenth Lord Scrope, whom Spence describes as an 'inexperienced outsider'.⁴¹⁸ Such a situation did not exist across the border in Scotland where local authority remained in the hands of the region's indigent leading figures. As part of the process by which the Scottish crown was able to centralise or monopolise government, by including within government those whose authority it had harnessed, so the Scottish government was able to retain the service of its men in the Middle March.

⁴¹⁷ James *Society, Politics and Culture* 3

⁴¹⁸ Spence 'Pacification of the Cumberland Borders' 69

Chapter Three: The inclusion of the borderers of the Middle March in central government

Introduction

In the latter part of the sixteenth century, there was a movement towards more centralised government and state monopolisation of the judicial processes. This was achieved at a local level by the use of prominent local figures in existing offices alongside the introduction of newer institutions. What was remarkable about this process was the relative lack of resistance from local figures who might have resented any encroachment on their authority. The way in which the crown achieved this was to make them feel part of this evolved structure of government, not only in the locality but by including them at central government level as well. This was true to a point of all of the marches: however it was particularly true of the Middle March. Traditionally, such men from the Middle March had been used to being involved at central government level: in a representative or advisory capacity; in being called to account by the privy council and the admission of some to the council itself; as allies of court factions; as members of the royal household or by their physical presence in Edinburgh. As Goodare observes, the participation of the political elite of the Borderers in national politics was noticeable, even though it may have been less than the elite of the central Lowlands.⁴¹⁹

Political or court life was not alien to the lairds of the Middle March. One of the reasons for this was the Middle March's proximity to Edinburgh and the relative ease of communication through the routes provided by the Tweed basin, the River Teviot and the Leader and Gala valleys. The physical links between Edinburgh and the Middle March show up clearly on the map of the marches.⁴²⁰ This map also reveals the contrasting situation of the West March, significantly further away from Edinburgh and with the hills separating Nithsdale, Annandale and Eskdale impeding communication across the region. Of the two main places used by central government for musters or judicial courts in the Middle March, Peebles was only a day's ride, whilst Jedburgh, at the south of the region, was less than fifty miles from Edinburgh. In 1576, the privy council met in Edinburgh on 8 November and

⁴¹⁹ Goodare *State and Society* 257

⁴²⁰ See Map One

was recorded at Jedburgh on 12 November. A messenger sent on a round of the East and Middle March towns was paid virtually the same as one sent to St Andrews or Perth.⁴²¹ Whilst the lines of communication with the Middle March could be used by the crown on a judicial raid, these routes also facilitated the presence of men from the Middle March in Edinburgh and their involvement in central government. They were used to being in Edinburgh and a number of them owned townhouses.⁴²²

From 1603, the involvement of men from the Middle March became even more significant, when James departed for London leaving the privy council to carry out government in his name. Whilst the deluge of directives from London was to form policy in Scotland, the Scottish privy council was able to resist unpopular or unworkable directives from London⁴²³ and was to continue to make many of its own.⁴²⁴ The appointment of those from the Middle March to central government positions and within the royal household in London brought with it the power of the office itself and crucially the patronage associated with the office or access to the king.⁴²⁵ The benefits accruing to the adherents of the office-holders, either in terms of being able to get something done, or in the pensions that could be recommended, ensured their support further down the scale and in the localities. This underwrote the authority of the surname leaders both at central and local level. Thus the crown, its official elite and their adherents mutually benefited from an inclusive system of obligation, service and reward.

In the Middle March there was an extra layer of office: though the post of warden disappeared on Union, after 1605 other border-specific

⁴²¹ A messenger sent on 13 October 1578 to Haddington, Duns, Lauder, Jedburgh and Selkirk was paid £6; that sent to Stirling and Fife, £5, and to Glasgow, £10. *TA* xiii 224

⁴²² Meikle *A British Frontier?* 4, 53, 63-64, 279

⁴²³ An instance of this was the council's carefully worded evasion of proposals for the transportation of offenders on the borders to the colonies in 1618, *RPC* xi 291,353-34

⁴²⁴ Goodare notes 'there was still only one privy council. Not only did it not move to London, but no second council for Scottish affairs was established there'. Goodare *Government of Scotland* 142. He also observes that the council was able to take decisions on its own, that it 'was the government, or at least the daily central government'. *Ibid.* 138

⁴²⁵ Goodare *Government of Scotland* 147; Cuddy has demonstrated the involvement of Scots within patronage system in James's English court. N Cuddy 'The revival of the entourage: the Bedchamber of James I, 1603-1625' in D Starkey ed. *The English Court: From the Wars of the Roses to the Civil Wars* (1987) 173-224; N Cuddy 'Anglo-Scottish Union and the Court of James I, 1603-1605' *TRHS* 39 (1989) 107-24

appointments were made during the pacification of the region including those to the commissions of the Middle Shires, the border guard and, from 1622, the triumvirate. The workings of this system provide a good illustration of the benefits derived by both central government and prominent local figures. Commissioners were paid and the disposal of escheated goods was in their jurisdiction. Simultaneously, the crown was able to use them and their affiliates to effect its policy of pacification in the Borders. Furthermore, the commissioners' offices gave them both status in the locality and also access to central government through their direct accountability to the privy council. Some commissioners, such as Sir Gideon Murray of Elibank and Lord Cranstoun, were admitted to the privy council on a long-term basis, Elibank achieving high office. Prominent locals in the Middle March and throughout Scotland co-operated with the crown in its intrusion into the localities, benefiting from their inclusion at a central level of government.⁴²⁶

Representatives at parliament and conventions⁴²⁷

As elsewhere in Scotland the Borders had been represented in parliaments and conventions for centuries by nobles and clerics, either resident or with landed interests there, and by burgesses from the region. From the Middle March, the main noble representatives were the earls of Angus, Morton and Bothwell and Lord Yester. The church was represented by the commendators of the abbies of Kelso, Dryburgh, Melrose and Jedburgh: also attending was the bishop of Glasgow, who as head of the diocese that encompassed the march, had interests in the area, as did the Ker commendator of Newbattle. Burgesses were sent from the burghs of Jedburgh, Selkirk and Peebles and from Lauder on the edge of the region. Given the often lengthy gaps between parliaments, the same burgh did not tend to reappear at the next, with the odd exception such as Thomas Henderson who represented Jedburgh in 1587, 1593 and 1594.⁴²⁸ Some names reappear however such as the Mitchelhill family, burgh commissioners for Selkirk, in 1579, 1612 and 1617 and the Rutherfords for

⁴²⁶ Goodare *State and Society* 257-58

⁴²⁷ See App. K List of parliamentary representatives from Middle March

⁴²⁸ *APS* iii 427-28; iv 7-8,50

Jedburgh in 1584, 1612, 1617 and 1621. The latter two were Mr John Rutherford: he was typical of a burgh commissioner, occasionally provost of Jedburgh, often sheriff depute for the Douglasses of Cavers and with connections to the Kers of Ferniehirst.⁴²⁹

The biggest change in parliamentary membership in this period was the appearance of lairds in parliament. Though lairds had been attending conventions and parliaments in increased numbers from the Reformation Parliament of 1560, their admission was not formalised until the act of 1587 which called for a shire electoral system.⁴³⁰ Before 1606 the lairds were not listed as representatives of a specific shire in the Middle March, though prominent local figures do appear under a general listing of barons. Almost all of these were already members of the privy council such as Traquair, Cessford and Buccleuch who attended several conventions and parliaments from 1593 to 1598. From 1606, shire commissioners were listed from Roxburghshire, Peeblesshire and Selkirkshire.⁴³¹ They were drawn from a pool of prominent local surname leaders: these figures were already familiar from taking responsibility for their kinship under general bands or from local office holding. Typical of these were the Murrays of Blackbarony (or Eddleston) who appeared regularly for Peeblesshire. Sir Gideon Murray of Elibank, a member of the Blackbarony branch and a commissioner of the Middle Shires, appeared for Selkirkshire in 1612 accompanied by Sir John Murray of Falahill (or Philiphaugh), the sheriff there. Other prominent local families also represented Selkirkshire including Scott of Thirlestane and the Pringles of Torwoodlee and Galashiels. Galashiels was a JP and also sheriff in 1622. Similarly, the sheriffs of Roxburghshire, the Douglasses of Cavers, often represented the shire at parliament.

Other lairds from the Middle March attended parliament and conventions as a result of office within central government and not as shire representatives. These included Carmichael of that ilk, who had been involved with the

⁴²⁹ *APS* iii 127-28, 290-92; iv 465-67, 525-26, 594

⁴³⁰ From 1573 to 1587, only one laird from the Middle March was recorded attending either convention or parliament. However there were very few of these in this period. Before 1573 a few Middle March borderers were recorded, principally the Kers of Cessford and Faldonside, though McDowell of Makerstoun, Turnbull of Bedrule and Pringle of Galashiels were listed at the convention of November 1572. Julian Goodare 'The admission of lairds to the Scottish parliament' 1110-2, 1115-16, App. 2-7; *APS* iii 509-10 c.120

⁴³¹ See App. K

region from his keepership in the 1570s and who, in 1590, had served on a short-lived privy council sub-committee for the Borders. Perhaps the most prominent figure in parliament with ties in the region was Sir John Maitland of Thirlestane, chancellor from 1587. Another laird, the former captain of the border guard, subsequently privy councillor Lord Cranstoun attended in 1612.⁴³² This substantiates Goodare's broader observation that borderers could participate fully in national political life if they wished.⁴³³ There is evidence that the lairds of the Middle March did so.

Those summoned to advise on border policy and those held accountable for their kindred and alliances

Throughout the period, at times of greater crown concern over the Borders, prominent borderers were summoned to appear before the privy council in Edinburgh. They were asked to advise on border affairs and arbitrations of local feuds, to assist on judicial raids into the march, to subscribe to general bands⁴³⁴ and to stand surety for members of their adherences. Sometimes the council came to the Borders on judicial raids and summoned borderers to meet it there. The names of those summoned remained remarkably similar from the 1570s through to the end of James's reign. This reflected the crown's continuing use of the local frameworks of power and those with border knowledge in implementing policy in the locality. Towards the end of the period the position of those advisers who did not already hold office was increasingly formalised by appointment either to the commission of the Middle Shires or as JPs. Being ordered to help the council was something of a double-edged sword; appearance at the council underlined these borderers' importance within the locality and gave them access to the council. All too often, however, it also involved them having to find monetary surety for their own good behaviour or that of their adherence.⁴³⁵

'Close writings' were sent out often to local lairds, such as one sent in 1573 to William Douglas of Bonjedburgh, John Rutherford of Hunthill and others of Teviotdale to appear before regent Morton to give 'advis for quieting of the

⁴³² *APS* iv 97, 104, 118, 173, 465-67, 524-25, 581

⁴³³ Goodare *State and Society* 232

⁴³⁴ See App. C

⁴³⁵ Rae 115, 124-26, 184

cuntrey'.⁴³⁶ A typical summons was that in 1600 for 'a meitting of his Counsale, [at Falkland] with certane speciall barounis of the Bordouris ... for ordoure-taking anent the settling of the present disordouris of the Bordouris and repressing of the insolence of the rebellious thevis' and for this matter to 'be solidlie deliberat and advisit upoun and the ordoure to be tane'. Those ordered to attend from the Middle March under pain of rebellion were amongst those repeatedly summoned throughout the period: Ker of Cessford the warden, Ker of Ferniehirst, Scott of Haining (who was Branxholme's representative in his absence), Elliot of Redheugh, the Tweedies of Drumelzier and Dreva, Veitch of Dawick, Elliot of Falnash, the Armstrongs of Whithaugh and Mangerton and Scott of Tushielaw. Having deliberated, James and his council decided that one of the causes of disorder was the non-residence of certain prominent borderers. They ordered therefore that some should reside there, Mark Ker commendator of Newbattle in Neidpath castle by Peebles and Drumelzier and Dawick in their own castles.⁴³⁷

Rather differently worded summonses were also received by borderers to answer before the council for things 'tuicheing gude reule and quietnes to be observit on the Bordouris heireftir'. One such, to various Kers in 1586, was accompanied by the order to find surety for their appearance: the amounts involved were significant, Andrew Ker of Greenhead and John Rutherford of Hunthill having to find £10,000, Will Ker of Ancrum 10,000 merks and his brother Robert and James Ker of Lintalee 5,000 merks.⁴³⁸ A similar summons in 1587 was made to Scott of Branxholme, Ker of Ferniehirst, Douglas of Cavers, Elliot of Redheugh, Turnbull of Bedrule and the Rutherfords of Hunthill and Edgerston. This resulted in Robert Scott of Haining having to stand surety of 5,000 merks for Branxholme's appearance.⁴³⁹ As the 1590s progressed such summonses to the lairds of the Middle March declined in frequency but continued to those in the West March: in particular to Lord Maxwell, who in 1600 was denounced rebel for his non-appearance to answer for 'himself and those for whom he is answerable'.⁴⁴⁰

⁴³⁶ *TA* xii 359-60

⁴³⁷ *TA* xii 359-60; *RPC* vi 136-38, 152-55

⁴³⁸ *RPC* iv 77,82

⁴³⁹ *RPC* iv 183, 189, 191

⁴⁴⁰ *RPC* vi 121, 240

The privy council also asked landlords from the Middle March to present lists of fugitives and also from 1605 those without surety or obvious employment. The act anent the Highlands and Borders of July 1587 called for all landlords and chiefs of clans to present lists of those for whom they were accountable.⁴⁴¹ One of the first ordinances made by the new commission of the Middle Shires in April 1605 was for all lairds, lords and officers in the borders to 'gif up on writing a speciall accompt upoun thair othis of the nowmber, quantitie, qualite, and names of all thair tennentis or inhabitantis within thair severall officeis ... in quhatmaner, forme or trade of lyf they leve or mantene themeselffis'.⁴⁴² In December 1606 the commission ordered all landlords to present any who were fugitive or did not have surety.⁴⁴³ The men of the Middle March were used to being called to advise central government on the Borders.

In line with the development of central government's monopolisation of justice, borderers were increasingly asked to appear before the privy council for resolution of their feuds. The most notorious of these in the Middle March, that between the Kers of Cessford and the Scotts of Branxholme, resurfaced in 1577. The council summoned both sides to appear with twenty men each before Morton in January 1578. They appeared and the council ordered the Kers to pay £1,000 for the non-fulfilment of a marriage contract between the two sides of 1565.⁴⁴⁴ Surname leaders were also summoned to help the council in the arbitration of other feuds: in 1575 Andrew Ker of Faldonside, Walter Riddell of that ilk, William Stewart of Caverton and James Heriot of Trabroun were ordered to advise the council on behalf of the Pringles, in their feud with the Elliots. The Elliots were represented by William Douglas of Cavers, George Douglas of Bondjedburgh, William Douglas of the Cruke, John Turnbull of Minto, Richard Rutherford of Edgerston and George Rutherford of the Grange.⁴⁴⁵

Borderers were not only summoned to Edinburgh, but ordered to meet with the council during its judicial raids into the Borders. This was particularly the case during the regency of Morton, when the Middle March experienced at

⁴⁴¹ *APS* iii 461-67

⁴⁴² *RPC* vii 707-9

⁴⁴³ *RPC* vii 722-23

⁴⁴⁴ *RPC* ii 643-44, 665

⁴⁴⁵ *RPC* ii 453-54

least four such raids.⁴⁴⁶ 'Close writings' were often sent in advance of the council's arrival to local lairds, such as those sent out in August 1573 to Douglas of Cavers, the sheriff of Teviotdale, the Rutherfords of Hundalee and Hunthill and Douglas of Bonjedburgh.⁴⁴⁷ A proclamation would be made in advance charging all 'Erlis, Lordis, baronis, Frehalderis, Landit Men, Gentilmen, and Substantious Yeomen' of the Borders to attend the council, such as one issued to those of Roxburgh, Selkirk and the bailiary of Lauderdale to meet the council at Jedburgh in October 1575.⁴⁴⁸ A similar proclamation and raid in 1576 resulted in the council being recorded at Jedburgh from 12 November until at least 6 December. Each day was set aside to deal with the business of separate regalities and parishes and at the end a roll of fugitives was drawn up. All local leaders, wardens and sheriffs were charged to pursue those rebels.⁴⁴⁹

After James's departure for London, he was to continue to use borderers to advise him and his privy council on the situation in the Borders. In 1606, the commissioners of the Middle Shires composed some questions to the landlords of the marches and then presented their answers to the privy council who agreed with their suggestions.⁴⁵⁰ In 1618, the Middle Shires commission was temporarily expanded in the form of a conjunct commission for the Middle Shires of thirty borderers each from both sides of the border. As ever, the council expected those appointed to provide local knowledge and to have the power to continue the pacification in the locality and to account for their activities to the council. The roll call of names from the Middle March made familiar reading.⁴⁵¹ Later that year these commissioners were assigned to specific areas to produce lists of idle men and fugitives.⁴⁵² In 1622, letters were sent to the nobles, barons and gentlemen of the Middle Shires to attend a meeting of the commission in Edinburgh for 'consulting and advysing upon the best and reddeist meanis how the foder growth of ... evellis may be stayid' in Annandale, Eskdale and Ewesdale: the list of those summoned was almost the same as four years before.⁴⁵³ The names of those

⁴⁴⁶ Hewitt *Morton* 131-33

⁴⁴⁷ *TA* xii 358

⁴⁴⁸ *RPC* ii 460

⁴⁴⁹ *RPC* ii 554, 566-73; *CSP Scot* v no. 241

⁴⁵⁰ *RPC* vii 720-21

⁴⁵¹ *RPC* xi 344-48. See App. J List of Middle Shires commissioners.

⁴⁵² *RPC* xi 445-47

⁴⁵³ *RPC* xii 650, 671

advising James in the 1620s on the Borders were similar to those giving advice to the privy council in the 1570s. On the whole, James was continuing to use men whose families had a tradition of being involved in central government.

Attendance at privy council meetings⁴⁵⁴

One of the most significant ways in which some of the Middle March were involved in central government was through admission to the privy council. Such appointments underlined the status of these prominent figures to their kindreds and allegiances in the locality. Council membership also provided tangible connections between those in the locality and central government. Through them, locals could have direct access to one of the most powerful decision making institutions in Scotland and, furthermore, to the crown.⁴⁵⁵ Goodare notes the sustained frequency of council meetings at around every three days which ensured almost constant contact at the highest levels of government.⁴⁵⁶ Reversing the direction of linkage downwards, central government was able to use the allegiance of its councillors to implement policy in the locality where all of the councillors from the Middle March held local office.

What remained constant throughout this period was the high level of involvement of prominent borderers in the council, which was often out of proportion to those from the rest of the country. Whilst this may have been a factor of their residential proximity, it was also a reflection of crown concern about the Borders region: simultaneously, however, this concern gave those prominent borderers a foothold at the centre of power in Scotland. Of the three marches, the largest number of councillors came from

⁴⁵⁴ See App. O. Attendance figures for men from the Middle March. All figures for attendance at privy council meetings are minimum figures, since they are based on an individual's name appearing on the sederunt lists published in *RPC*, and not where the entry is abbreviated to 'sederunt dicto'.

⁴⁵⁵ Ried R Zulager 'A Study of the middle-rank administrators in the government of King James VI of Scotland, 1580-1603' PhD thesis (Aberdeen 1991) 116, 146-47

⁴⁵⁶ Goodare *Government of Scotland* 132

the Middle: from the East the Lords Home occasionally attended,⁴⁵⁷ and from the West, the Lords Herries and Maxwell were similarly infrequent, with the exception of Robert Lord Maxwell who attended from 1619. An exception from the East March was George Home of Spott, earl of Dunbar, who appeared regularly from 1592 until his death in 1611.⁴⁵⁸

Sir John Carmichael of that ilk, though originally from the West March, should be mentioned here due to his activities within the Middle March and also to his links with the march. He was admitted to the council in November 1588. He had been appointed West March warden two months before replacing his brother-in-law the earl of Angus, who had just died, and in the aftermath of the border legislation of 1587. He was clearly a trusted figure, accompanying James on his journey to Denmark in 1590.⁴⁵⁹ From 1591 to 1598 he averaged at least eighteen appearances a year at council, with more frequent attendances in 1592 and 1596. Arguably these were years of greater government concern in the Borders following Bothwell's rebellion and the Kinmont Willie episode. However, there are not many examples of Carmichael's presence occasioning greater border discussion. An exception to this, in January 1589, was his complaint in council against the release of pledges made in his capacity as West March warden.⁴⁶⁰ In 1599, he was reappointed West March warden, which he remained until his murder the following June. In 1599, his attendance at council peaked at fifty-three times: this coincided with James's pre-occupation with the succession, which he did not want prejudiced by border incidents.⁴⁶¹

In 1594 another borderer, Sir William Stewart of Traquair, from the Middle March was admitted. Zulager notes that the appointment of Carmichael and Traquair to the council was 'quite clearly an effort to involve influential local men in the decision-making process of the central government, though they

⁴⁵⁷ Alexander Lord Home attended thirty-four times from 1591 to 1597 and then not at all until 1607. Neither he nor his successor attended after 1610 to 1625. The Homes were suspected of continued Catholicism, Alexander being subject to pastoral supervision in 1602 and his successor was confined in 1615 following a dispute with the archbishop of St Andrews. *RPC* vi 477n.; NLS Adv MS 33.1.12 vol. 15 no. 30

⁴⁵⁸ For further on the earl of Dunbar, see Chap. Six on the pacification. Zulager on Dunbar, Zulager 'Middle-rank administrators' 77-78, 109-10

⁴⁵⁹ *RPC* iv 322, 326, 768; Moysie *Memoirs* 84; Zulager 'Middle-rank administrators' 75, 114-15

⁴⁶⁰ *RPC* vi 346

⁴⁶¹ *RPC* vi 33, 66, 117

were also sent back to the borders to implement those policies'. He compared such inclusion to the 'broad geographical base' of James IV's government.⁴⁶² Traquair, unlike his enemy Yester who appeared only very occasionally, attended the privy council frequently between 1595 and 1603. His attendance figures peaked in 1599 at at least forty-one times. Like Carmichael's, Traquair's regularity in 1599 was almost certainly a reflection of James's concern to maintain good relations with England over the Borders. In October 1602 Traquair was with the council at Dumfries and Peebles for nearly two weeks during which judicial courts were held.⁴⁶³

The main noble councillors holding lands in the Middle March, though not resident there, were the earls of Angus. They were all members of the council throughout this period: Archibald from the 1570s until his death in 1588, William from 1589 until his death in 1591 and his son William from 1591 until 1608. He died in 1611. There is no record of his son William, the eleventh earl's attendance after that until he appeared at a convention of council and nobles in 1621. All of them held the lieutenancy of the Borders at some stage in their lives and were clearly involved in border affairs: the tenth and eleventh earls' vigorous dispute with the Kers of Ferniehirst over their bailiary of the Angus-owned regality of Jedforest was evidence of their personal interest in the region.⁴⁶⁴

The three most prominent figures resident in the Middle March to attend council meetings regularly in this period were Robert Ker of Cessford, created Lord Roxburgh in 1600, Walter Scott of Buccleuch, created Lord Buccleuch in 1606 who died in 1615 and his son Walter, second Lord Buccleuch. Both Branxholme and Cessford were appointed to the council in December 1594 but did not appear with any frequency, in the case of Cessford until 1599 and of Buccleuch until 1607.⁴⁶⁵ There is, however, record of them being at court in the intervening period, and evidence of their popularity with the king. In 1596, following the rescue of Kinmont Willie from Carlisle castle, the English complained that Buccleuch 'openly says the King has freely remitted his deed ... as good service to him and his 'comune

⁴⁶² Zulager 'Middle-rank administrators' 116

⁴⁶³ *RPC* vi 467-72

⁴⁶⁴ *RPC* iii 23; iv 365; v 466; xii 404

⁴⁶⁵ *RPC* v 197, 557; vii 340; x 464

wealth".⁴⁶⁶ William Bowes in 1598 wrote that Cessford 'is the cheife champion in the Kinges deepe-rooted offence' against Bothwell, and that James's protection had delayed Cessford's surrender to temporary ward in England that year.⁴⁶⁷ Their appointment to the council was a recognition of their significance in their locality, whilst the increased frequency of their attendance reflected their growing involvement in central government. This coincided with, or was part of, their greater commitment to the imposition of justice in the Borders. Both were reappointed to the reconstituted council in 1610, Roxburgh immediately and Buccleuch in 1611.⁴⁶⁸

Cessford seems to have been particularly involved in central government and the rewards that it brought. He was perhaps a more politically-agile courtier than Buccleuch. In 1598, Bowes noted that Cessford was 'well befriended by a stronge faction' at court which helped keep him in James's favour. Lord Eure thought Cessford's 'naturall dispositione ... is wyse, quicke spirited, perfecte in Border causes, ambitious, [and] desyrous to be greate'.⁴⁶⁹ Robert Carey, Eure's successor in the English Middle March, was not initially so enamoured; however following Cessford's warding with Carey in 1598, his opinion changed and 'every day we grew better friends'.⁴⁷⁰ The favour that Cessford was in with James was demonstrated by his frequent attendance at council from 1599 and his ennoblement in 1600. The same year, a confirmation by James of an annual pension of 650 merks for Cessford's services as warden also recognised his services as 'domestik servitor and counsallor'.⁴⁷¹

Roxburgh's attendance at council meetings varied from year to year: from 1599 and 1621 he usually attended between fifteen and twenty-four times a year peaking in 1607, 1609 and 1613. His attendance became more frequent again in 1622 rising to around fifty times in 1624. This could be said to be very regular given that council meetings averaged just over a hundred times a year during this period.⁴⁷² In 1617 he was appointed to the commission for the Plantation of the Kirks, in 1619 to Prince Charles's Scottish Council (along

⁴⁶⁶ *CBP* ii no. 302

⁴⁶⁷ *CBP* ii no. 909; *CSP Scot* xii no. 195; *RPC* v 300n.

⁴⁶⁸ *RPC* viii 469; ix 138-39; *Birrel Diaries* 41

⁴⁶⁹ *CBP* ii nos. 343, 909

⁴⁷⁰ *CBP* ii no. 365; *Carey Memoirs* 41-42

⁴⁷¹ *NRAS*1100/728

⁴⁷² *Goodare Government of Scotland* 132

with Sir Robert Ker of Ancrum and Sir Gideon Murray of Elibank) and in 1623 to the commission anent Manufactures.⁴⁷³ After the office of warden lapsed in 1603, Roxburgh did not hold any specific border office, except in 1618 when he was named as a commissioner of the Middle Shires. He did, however, hold public office in his locality when in 1610 he was appointed JP for Roxburghshire.⁴⁷⁴ His absence from council meetings from 1602 to 1606 was due to his accompanying James to London. Court life periodically kept him away from Edinburgh throughout the rest of the reign: in 1610 the opulence of a list of his clothing left in London gives an idea of the kind of life he was leading there. His second wife Jean Drummond, whom he married in 1614, was governess to James VI's children until 1617.⁴⁷⁵ Roxburgh's career provides a good example of how the crown inclusion of prominent local figures within central government simultaneously rewarded their loyal service. In addition, the regular presence of Roxburgh at council meetings meant that the Ker surname had a constant representative at the highest level of government.

Buccleuch's political career never matched the heights of Roxburgh's and was cut short by his death in 1615. He was however intermittently involved in the privy council. There were conflicting reports of his favour with the king: in 1596, though at a time when James was in effect protecting Buccleuch, Eure observed that the king was 'indifferent' to him, describing him as 'malitious, proude of nature mimitating the Spaniard'.⁴⁷⁶ Despite this, Buccleuch appeared twice this year on the council, at the convention of nobles and council in January 1597 and in October 1597, James asked Elizabeth to release Buccleuch early from ward.⁴⁷⁷ Buccleuch did not appear on the privy council from 1597 to 1607, though his absence was partly explained by his military service in the Low Countries. In December 1608 the council signed an approbation and indemnity by James for Buccleuch's service on the Borders.⁴⁷⁸ In 1608 he sat eighteen times at council and in 1609 twenty times. He was not immediately appointed to the reconstituted

⁴⁷³ *RPC* xi 169; xii 59-60; xiii 291-92

⁴⁷⁴ *RPC* ix 75-76; xi 345

⁴⁷⁵ NRAS1100/1227; *Scottish Peerage* vii 346. Roxburgh's second wife Jean Drummond was the sister of the earl of Perth who had just married Roxburgh's daughter from his first marriage to Margaret Maitland.

⁴⁷⁶ *CBP* ii no. 265

⁴⁷⁷ *CSP Scot* xiii pt i no. 86

⁴⁷⁸ Fraser *Buccleuch* i 230-32; *RPC* xiii 205

council of 1610, but in February 1611 was readmitted, sitting thirty-two times that year. He did not reappear before his death four years later.⁴⁷⁹

His son Walter, second lord Buccleuch, was admitted to the council two months later suggesting that he was taking his place on the council. His rate of attendance was similar to Roxburgh's at around sixteen times a year though he did not achieve the latter's heights politically and was not appointed to the Prince's council. However he was created earl of Buccleuch in 1619 and in 1622, in recognition of the usefulness of his allegiance in the locality, he was appointed one of the triumvirate to reinvigorate the pacification in the Middle Shires.⁴⁸⁰ In 1624 an apparent attempt by Robert Elliot of Redheugh to murder his 'superiour and landis lord' Buccleuch was treated by James with the utmost severity considering 'the qualite of the persone whome they intendit to haif murthoured being a nobleman, a counsellor, [and] our comissionar'.⁴⁸¹ Buccleuch was also on a commission to discuss the export of Scottish wool to England, along with several other borderers with extensive grazings, whose own interests like Buccleuch's were affected.⁴⁸² Buccleuch's inclusion in the privy council left him in a position to protect his own interests including his landholdings in the Middle March. At the same time, the crown was able to use his authority over his surname and his landholdings in the region particularly after his appointment to the triumvirate.

Another prominent Ker on the council, Andrew of Oxnam, was Sir Andrew Ker of Ferniehirst's eldest son and nephew of James's favourite Robert earl of Somerset. Letters from Robert to Ferniehirst and Oxnam, from 1608 onwards, show that he had been at the court in London striving to resurrect his family's fortunes.⁴⁸³ In October 1613, Somerset was admitted at the height of his favour (in his absence, resident in London) to the privy council and appointed Treasurer of Scotland. A month later his nephew Oxnam was admitted to the council, granted the captaincy of the border guard in place of his cousin and friend Ker of Ancrum (who was to attend Prince Charles) and

⁴⁷⁹ *RPC* ix 138-39; x 464

⁴⁸⁰ *RPC* x 464; xi 562n.; xii 675-79

⁴⁸¹ *RPC* xiii 486-87

⁴⁸² *RPC* xiii 70, 106, 141

⁴⁸³ Letters in around 1610 and 1612 in GD40/2/12/20, 22, 34

appointed a commissioner for the Middle Shires.⁴⁸⁴ In 1613, Oxnam was also granted the keepership of the castle of Dumfries from Maxwell's forfeiture.⁴⁸⁵ Oxnam was clearly the beneficiary of kinship connections. The favour in which he was held survived Somerset's fall from grace in 1614 and he was probably aided by Ker of Ancrum's success at the court in London.⁴⁸⁶ Oxnam was a diligent member of the council, his attendance peaking in 1614, 1618 and 1619 and averaging over thirty-four times a year to 1625. Lacking the huge accumulation of lands of Roxburgh and Buccleuch, he was more dependent on the benefits associated with involvement in central government. When the guard was disbanded in 1621, Oxnam's pay as captain was continued for his lifetime.⁴⁸⁷ His position on the council meant that he was able to intervene on his family's behalf; in 1616, the council suspended an action by Ralph Ker of Dalcove in favour of Lord Roxburgh which would have removed the ownership of the teinds of Little Newton from Ferniehirst.⁴⁸⁸ Oxnam's captaincy of the border guard, which involved him directly in the pacification of the Middle Shires, will have been facilitated by his kinship connections in the Middle March. At the same time, the status the captaincy gave him in the locality was additionally underwritten by his membership of the council. Office transformed Oxnam's position both financially and socially. Three years before his councillorship, he had failed in an attempt at court in London to rescue his family's parlous circumstances but in 1622, his father was created Lord Jedburgh, to which title Oxnam was heir.⁴⁸⁹

Four other members of the council after 1603 were also directly involved in the pacification - the earl of Dunbar, Sir William Cranstoun, John Spottiswoode archbishop of Glasgow and Sir Gideon Murray of Elibank.⁴⁹⁰ All had connections with the Borders, but Elibank and Cranstoun were particularly linked to the Middle March: Elibank was from Peeblesshire and

⁴⁸⁴ *RPC* x vi-vii, 164, 170-71, 200

⁴⁸⁵ GD40/7/30

⁴⁸⁶ For Ancrum's career, see below.

⁴⁸⁷ *RPC* xii 582-84, 657-60

⁴⁸⁸ GD40/2/12/44

⁴⁸⁹ *RPC* xii cviii, 679; GD40/2/12/15, 20

⁴⁹⁰ Spottiswoode was involved in the Middle March due to much of it falling within his remit in the diocese of Glasgow. He worked with Dunbar in the pacification from 1608. See Chap. Six. Also AS Wayne Pearce 'John Spottiswoode, Jacobean Archbishop and Statesman' PhD thesis (Stirling 1998).

Cranstoun was the son of Cranstoun of Morriston in Roxburghshire.⁴⁹¹ Elibank like Oxnam was an example of a man whose career and wealth were built in James VI's service and dependent on his favour. In 1616, having not been at court for two years, he was worried that James had heard bad reports of him, beseeching John Murray of Lochmaben to recommend him to James.⁴⁹² He was to use his kinship connections with the Murrays of Blackbarony and Philiphaugh and alliance with the Scotts of Buccleuch, to support his actions as commissioner for the Middle Shires from 1605 and as privy councillor from August 1610. In 1611 he was named lieutenant of the Middle Shires following the death of the earl of Dunbar, and appointed a JP. In 1612 he became deputy treasurer possibly as the result of Somerset manoeuvring before his own admittance to the council as treasurer.⁴⁹³ He was a diligent councillor, his attendance figures from 1612 to 1619 averaging at least fifty-seven times a year. In 1613 he was again made a commissioner for the Middle Shires, but in recognition of his increasing duties on the council, he was replaced by his nephew Sir John Murray of Philiphaugh as commissioner in early 1617.⁴⁹⁴

The combination of border-specific and privy council offices held by Elibank meant that he could be of help to those in alliance with him from the Middle March at the highest level. Thus, in 1616, he secured a pardon from James for Scott of Tushielaw for the slaughter of a brother of Scott of Thirlestane and, in 1617, he intervened with James on behalf of Sir Walter Scott of Harden, in his feud with the Scotts of Bonnington; Harden's son was married to Elibank's daughter. He wrote that he had already given the escheat of Bonnington's land to his son-in-law and asked James to uphold the grant.⁴⁹⁵ In addition, he was able to use his good relationship with Lochmaben, the future earl of Annandale, for the benefit of himself and his kindred.⁴⁹⁶ Lochmaben, as a member of James's household in London, had access to the king and Elibank petitioned him on behalf of others. Some examples of this correspondence appear in Appendix L which illustrate the tangible benefits of such communication. One such letter, in 1615, was written 'at the desyre

⁴⁹¹ Details of Elibank's career are in AC Murray *Memorials of Sir Gideon Elibank*

⁴⁹² Adv MS 33.1.1 vol. 7 no.2. See App. L Court correspondence

⁴⁹³ *RPC* ix 54, 128-29, 194, 504; x vii

⁴⁹⁴ *RPC* x 164; xi 11

⁴⁹⁵ GD124/15/29/14; Adv MS 33.1.1 vol. 8 no.33. See App. L.

⁴⁹⁶ See App. L

of my Lord of Baclughe' asking for Lochmaben's support at court for Buccleuch over a charter of lands held by a Robin Elliot. Elibank enclosed letters from Buccleuch on the same subject.⁴⁹⁷ In 1616, Elibank sent his 'earnest request' for Lochmaben's support for a petition for compensation by their cousin James Murray of Kilbaberton, the king's master of works in Edinburgh.⁴⁹⁸ In another letter, of 1616, to his 'weillbelovit' nephew Patrick Hamilton at court, Elibank told him that he has already 'disponed the office' of comptroller of the ordinance, which was being disputed, to another nephew James Murray.⁴⁹⁹ Elibank also wrote variously to James and Lochmaben on behalf of his great-nephew Ker of Oxnam and his friends Lords Binning and Cranstoun.⁵⁰⁰

Elibank's long career brought him lands and pensions, whilst his offices brought him the associated patronage with which to reward his kin and the power with which to intervene on their behalf. As a younger brother, Elibank, previously known as Murray of Glenpoint, did not inherit much land, but in 1595 his acquisition of the lands of Elibank, in the lordship of Ettrick, formed the nucleus of what would become an extensive landholding.⁵⁰¹ By 1608 he was the heritable proprietor of the lands of Langshaw in the regality of Melrose and in 1617 he was granted a charter of his lands of Elibank, Glenpoint and others in Tweeddale within the Middle March.⁵⁰² His deputy treasureship came with a yearly salary of £1,500 which was increased in 1616 to £2,400 a year for his lifetime; after his death it was to be split between his sons.⁵⁰³ His eldest son benefited too: in 1615 his son Patrick Murray of Langshaw was granted an annual pension for his lifetime of £100. In 1623 the treasurer was ordered to pay Elibank's heirs all annuities and arrears due to them.⁵⁰⁴ Elibank's dependence on the king's favour was dramatically demonstrated at the end of his life, when in June 1621 he heard that James had withdrawn it: he was said to have died of melancholy shortly

⁴⁹⁷ Adv MS 33.1.1 vol. 6 no. 55; 33.1.1 vol. 7 no.21. Buccleuch also wrote to Lochmaben on the subject. Adv MS 33.1.1 vol. 6 nos. 58,49. This was probably Robert Elliot of Redheugh who in 1624 conspired to murder Buccleuch. *RPC* xiii 475-76

⁴⁹⁸ Adv MS 33.1.1 vol. 7 no. 9. Kilbaberton was a brother of Murray of Philiphaugh.

⁴⁹⁹ Adv MS 33.1.1 vol. 7 no. 32

⁵⁰⁰ Adv MS 33.1.1 vol. 6 nos. 51-52, 57; vol. 7 no.2

⁵⁰¹ GD32/12/15-20

⁵⁰² *Regality of Melrose* 38; GD86/443; *RMS* vii 1661, 1854, 1915

⁵⁰³ GD32/1/6; GD86/433; *APS* iv 564-70

⁵⁰⁴ GD32/1/9, 16; GD124/10/264

afterwards.⁵⁰⁵ Elibank's career had lasting effects for his branch of the Murray surname, establishing it as one of the prominent families in the Middle March, his son Patrick being created Lord Elibank in 1643.⁵⁰⁶

Lord Cranstoun, having been ennobled as a result of his work in the pacification of the Borders, was admitted to the privy council in August 1611, when he resigned the captaincy of the border guard. He continued as a commissioner of the Middle Shires, being reappointed in 1613 and 1618. He averaged at least eighteen appearances a year from 1612 to 1619. Like Elibank, he used his position to help himself and his family: in 1611 he wrote to James asking for his continued favour in a dispute over some of his lands and in 1615 he wrote to Murray of Lochmaben on behalf of his nephew Douglas of Cavers.⁵⁰⁷ In March 1617 he was able to use his membership of the council to defend himself in an arbitration over the lands he had been granted on the forfeiture of Lord Maxwell. Unlike Elibank however he never achieved higher office, the only further appointment being to the commission for the parliamentary tax of 1621. He attended council meetings until at least 1624.⁵⁰⁸

For a few men from the Middle March on the council, their presence was perhaps not solely as a result of their border connections and was more to do with their administrative talents. However, of course, their prominent positions were of benefit to their kinship in the march. Two such councillors were Mark Ker, commendator of Newbattle abbey (Lord Newbattle), second son of Ker of Cessford, and his son Mark who inherited the commendatorship and became first Earl of Lothian. Newbattle sat regularly on the council from 1579 until his death in 1584 when he was replaced by his son who remained on the council until his death in 1609. The latter was appointed vice chancellor in 1604. He was first cousin to William Ker of Cessford and in 1614 his daughter Margaret married Andrew, eldest son of Ker of Ferniehirst: he was thus tied into the Ker kinship and no doubt this strengthened the position of the Kers at court. The closeness of these links was demonstrated by the misfortune of his son Robert, second earl of

⁵⁰⁵ *RPC* xii 509n.

⁵⁰⁶ GD32/1/18

⁵⁰⁷ Adv MS 33.1.1 vol. 3 no.58; vol. 6 no. 47

⁵⁰⁸ For Cranstoun's well-rewarded career see below under the captaincy of the border guard. *RPC* ix 244; x 164; xi 59,345; xii 404; xiii 552

Lothian, whose suicide in 1624 was related to his involvement in the debts of his kinsman Sir John Ker of Jedburgh. Robert, who had replaced his father on his death as councillor, had also regularly attended council meetings. Their attendance did not correlate, however, with times of greater crown concern over the Borders.⁵⁰⁹

Another councillor who had established himself in the Middle March was John Maitland of Thirlestane. Like Lothian, he made his career in James VI's service on the privy council and as chancellor from 1587 until his death in 1595.⁵¹⁰ But as Rae noted 'although a man devoted entirely to the central government, [he] was a man with border ancestry', in possession of lands in the Middle March and with ties to other border families. Whilst generally he was occupied with the whole spectrum of government Rae felt, justifiably, that his border connections 'undoubtedly coloured his entire border policy'.⁵¹¹ The marriage of his niece Margaret Maitland to Robert Ker of Cessford in 1587 (in spite of James's disapproval) linked him firmly with that principal branch of the Ker surname. Maitland's closeness to James protected Cessford from the king's wrath over his marriage and Cessford's killing of William Ker of Ancrum in 1590. Maitland was also likely to have protected Cessford from English accusations over his actions in the Middle March.⁵¹² Zulager notes Maitland was 'both the most successful product and manipulator of secondary social patronage'.⁵¹³ He was well rewarded with lands in Lauderdale amongst others and in 1585 an act was made in his favour restoring all lands lost on the forfeiture of his brother, William Maitland of Lethington.⁵¹⁴ His son John, created Viscount Lauderdale, was admitted to the council in 1617 on which he appeared regularly, almost weekly, for the rest of James VI's reign. Whilst this meant that he covered business that was unrelated to border affairs, he sat frequently with other borderers such as Ker of Oxnam, Murray of Elibank, Lord Cranstoun and the earl of Lothian, and often with Roxburgh or Buccleuch.⁵¹⁵

This last point is significant: though no correlation can be made between the

⁵⁰⁹ *RPC* vii 15; viii 272; xiii 453n.; Zulager 'Middle-rank administrators' 61, 68, 89, 90

⁵¹⁰ Maurice Lee jr. *John Maitland of Thirlestane* (1959)

⁵¹¹ Rae 209

⁵¹² *NRAS* 1100/987; Meikle *A British Frontier* 232

⁵¹³ Zulager 'Middle-rank administrators' 149

⁵¹⁴ *APS* iii 413; *RMS* v 1305, 1306, 1346, 1392

⁵¹⁵ *RPC* xi 214

presence of the borderers at council meetings and recorded border-related business, they frequently coincided with each other at meetings. It is perhaps not too fanciful to infer from this that it resulted in a more coordinated approach to dealing with the Borders, particularly throughout the pacification. There was evidence before of councillors involved in or from the Borders coinciding at sittings: in 1586 to 1587 and in 1590 to 1591 a group of men with lands and connections within the Middle March, the earls of Angus, Maitland of Thirlestane, Ker of Newbattle and Home of Cowdenknowes, and from 1590 Carmichael of that ilk, predominated in privy council attendance, at a time when the number of those appearing was usually between four and ten members. From 1592, another borderer, Sir George Home of Spott, from the East March attended council regularly. The attendance of men from the East and Middle March was not replicated by those of the West March, Lord Herries attending only infrequently. During the early 1590s, this meant that attendance by men with strong connections in the East and Middle Marches was disproportionate to that by councillors from other Scottish regions.⁵¹⁶ It is difficult to determine if this was a conscious policy by James to include those with influence in a region deemed of concern, either to suppress perceived disorder, or to manage events there as part of a diplomatic leverage against England. An expansion of the privy council in the later 1590s, arguably at a time when it was of greater importance to James to secure stability in the Borders during discussions over the succession, meant that the predominance of Borderers decreased in the council. This perhaps reflected a decrease in the usefulness of the region as a bargaining counter with the English.

After 1603, the continued regularity of attendance by Newbattle (soon earl of Lothian) and increasingly by the Lords Roxburgh and Buccleuch ensured Middle March representation on the council and a direct link from council to those responsible for implementing the pacification of the region. This became even more so with the admission after 1609 of Cranstoun, Elibank and Oxnam, all of whom were involved in an official capacity in the pacification. Most of these men or their heirs remained on the council for the rest of James's reign. This contrasts with the relative lack of attendance by

⁵¹⁶ Meikle notes the involvement of Lord Home and Home of Spott at court in the 1590s and contrasts Lord Home's decline in favour with Cessford's rise in the late 1590s. Meikle *A British Frontier?* 77-82

men from the other marches, in particular from the West March.⁵¹⁷ This last was a result of the continuing upheaval caused by the Johnstone-Maxwell feud and the forfeiture of John Lord Maxwell. John's brother Robert was restored eventually to most of the Maxwell lands and finally admitted to the council in 1619.⁵¹⁸ Lord Home from the East March hardly attended at all after 1603 though Home of Spott, later earl of Dunbar, was a significant member of the council until his death in 1611. So, whilst it is difficult to discern the precise motivation behind James's employment of the men from the Middle March, the fact remains that at all times there were close links between council and their locality: prominent figures from the Middle March were not alienated from central government, they sat at its table.

Offices in the royal households and court patronage

Privy councillors and those employed within the royal household benefited from their service and were also in a position to pass these benefits onto their kinship and alliance. Indeed their support system was maintained by the patronage they could provide. As Zulager notes, the 'redistribution of patronage to kinsmen and friends was at the core of Scottish politics.' It was expected of prominent figures. 'This is where the real give-and-take of Scotland's kin-based society impacted upon the institutions of State and shaped the particular methods of Scottish government.'⁵¹⁹ Goodare observes that 'the characteristic pattern of authority within the early modern state was one of patronage and clientage' noting the power of patronage inherent in an appointment to a royal office. A senior official 'stood at the head of a network of clients ... who staffed the lower levels of administration'.⁵²⁰ Government was still conducted predominantly through personal relationships, embodied in the personal style of James's government. Access

⁵¹⁷ An exception to this was the naming of Lords Herries and Maxwell from the West March as advisers to Hamilton on the short-lived sub-committee on the Borders in 1590. *RPC* iv 423-29

⁵¹⁸ Robert Maxwell was created earl of Nithsdale in 1620 but was forced to go abroad in 1623 as a result of financial embarrassment. *RPC* xi 563; xii cvi. Sharon Adams notes that he 'successfully combined a career at court with influence in his locality'. He and the earl of Annandale are the only borderers from the south-west involved in political life that Adams can identify - and not before 1615. Adams 'Road to Revolution' 52-53

⁵¹⁹ Zulager 'Middle-rank administrators' 146-47

⁵²⁰ Goodare further notes that clients who were ineffective in office or did not hold posts in the administration were of no use to the patron. Goodare *State and Society* 81-82

to the king or his heirs was, therefore, of great significance.

Access could be through official governmental office or through membership of the royal household. In 1603 the court moved south to London and inevitably there were changes. However, where the Elizabethan court had preserved the distance between monarch and people, James's court continued to allow relatively open access, regulated through the Bedchamber. For Neil Cuddy, the Bedchamber from 1603 was integral to the way James governed, and which 'continued to be of central political importance during the reign'.⁵²¹ Cuddy demonstrates the significance of membership of the chamber using the figures of signatures to signet warrants procured by the Bedchamber, which in 1614 were about a sixth of the total and by 1624 nearly one half. These may have been English warrants but these figures demonstrated the power that Scottish courtiers in London could utilise, as the careers of Robert Ker, earl of Somerset, and Sir Robert Ker of Ancrum would show. Court favourites in the Bedchamber had substantive power thanks to their 'intimate, institutionalized access' to the king.⁵²²

Some of those who attained high governmental office started their careers in the household where, as Zulager observes, the importance of 'introduction and endorsement' cannot be overstated.⁵²³ The appendices of appointments in Amy Juhala's thesis on James's household until 1603 provide evidence of the early careers of subsequently prominent figures and indications of proliferation of offices through kinship. For instance, from at least 1590 to 1599, George Home of Spott was master of the wardrobe as well as appearing on the privy council. His wife, Elizabeth Gordon, was a gentlewoman of the Queen's bedchamber in 1591. There are examples of those with connections in the Middle March appearing within the royal household: a Carmichael was listed as a gentleman pensioner in 1580 and Sir John Carmichael of that ilk was principal master stabler from around 1585 to 1593 and captain of the guard 1592 to 1596. Mark Ker of Prestongrange, Lord Newbattle from 1591, was master of requests in 1578 and 1581 and was a gentleman of the bedchamber in 1580. Sir Walter Ker of Cessford was an

⁵²¹ Cuddy 'The revival of the entourage' 177

⁵²² Cuddy 'The revival of the entourage' 187-88. See also Cuddy 'Anglo-Scottish Union' 110-11, 118-19

⁵²³ Zulager 'Middle-rank administrators' 149

extraordinary gentleman of the chamber in 1580 and his son Robert was principal of the king's guard in 1593. Sir Andrew Ker of Ferniehirst was a gentleman of the bedchamber in 1592 and his brother Robert, the future earl of Somerset was a page of honour from around 1598 to 1603. However, apart from the numerous examples of Kers throughout the royal household there were not many others from the Middle March.⁵²⁴

After 1603, the Ker kindred continued to be prominent recipients of patronage and appointment at court: the privy council careers and rewards of Roxburgh and Oxnam have already been noted. Roxburgh's connections with the court in London were additionally secured by his second wife Lady Jean Drummond who had been a gentlewoman of the queen's bedchamber from at least 1590 to 1601, governess to Prince Charles in 1602 and the royal children in London. In 1610 she was granted an annual pension of £500 sterling. It was, however, a rival branch of the Ker kinship which would achieve greater notoriety.⁵²⁵

A list of pensions of 1608 granted to various men of the Bed and Privy Chambers in London included one of £800 to Sir Robert Ker, the half-brother of Sir Andrew Ker of Ferniehirst. He had been supported by the earl of Dunbar in London and was a Groom of the Bedchamber from 1603 and a Gentleman of the Bedchamber in 1607, soon becoming James's favourite: Ker of Ancrum wrote, in 1608 from Paris, to his cousin Ferniehirst that he had heard of his brother's 'preferment'.⁵²⁶ In 1610, he was granted extensive lands (mainly in Dumfriesshire) from the forfeiture of John Lord Maxwell. Following Dunbar's death in 1611, the Venetian ambassador reported that 'everybody is endeavouring to secure [Ker's] favour and goodwill'.⁵²⁷ Ker was created viscount Rochester in May 1612 and elevated to the earldom of Somerset in November 1613. At the same time he was admitted in his absence to the Scottish privy council and appointed Treasurer of Scotland.⁵²⁸ In 1614 he managed to get his nephew William Ker appointed a Groom of the Bedchamber: William survived Somerset's fall in 1615 and was still in

⁵²⁴ Amy Juhala 'The household and court of James VI of Scotland, 1567-1603' PhD thesis (Edin. 2000) App. 1 Royal Household; App. 2 Bills of Household

⁵²⁵ Juhala 'Household and court' App. 1; NRAS1100/1011

⁵²⁶ GD40/2/13/2; Cuddy 'Anglo-Scottish Union' 115-16

⁵²⁷ *RMS* vii 217; *CSP Venetian* xii 135

⁵²⁸ *RPC*, x vi-vii, 157

place in 1625.⁵²⁹ As James himself observed to Somerset 'Do not all court graces and place come through your office as Chamberlain ... And have you not besides your own infinite privacy with me, together with the main offices you possess', a kinsman employed in the royal household, referring to Robert Ker of Ancrum 'who loves not to be idle in my son's Bedchamber'.⁵³⁰

Somerset's patronage was not confined to the offices he could secure for his kindred but also extended to the distribution of the lands that he had acquired through James's favour. In 1611 he disposed of the lands of Maxwellhaugh to James Ker of Overcrailling.⁵³¹ More significant however were his grants from the Maxwell forfeiture to his uncle Sir Gideon Murray of Elibank. In 1611, Elibank, acting as Ker's agent for his affairs in Scotland, brought a case before the council against the bailie of Caerlaverock, the lands of which had been granted to Ker. In 1612 Ker granted from Maxwell's forfeiture the castle of Caerlaverock to Patrick Murray of Langshaw, Elibank's heir, and later that year further lands to Langshaw and also to Elibank, thus securing Elibank's support on the privy council and locally for the Ferniehirsts.⁵³² However, what court success brought to a kindred could be endangered by the favoured one's fall from grace. In December 1615 Elibank wrote a deeply thankful letter to James for the 'extraordinarie' favours granted to him, despite the 'ruyne of my unhappie kinsman' Somerset.⁵³³

Ker's initial success had ramifications for his family. In the early 1600s, the house of Ferniehirst was in poor financial straits. Andrew Ker of Oxnam's journey to court in London, in 1609, was not immediately successful and he returned 'barren of hopes and friends'.⁵³⁴ However, the rising fortune of his uncle Sir Robert prompted the latter to suggest Oxnam return to court when he had more power. Later in 1610, Robert wrote that James was willing to give the title of Lord Jedburgh to his brother Ferniehirst, for his 'love of the house of Ferniehirst', but first had to have proof that the estate was fit to

⁵²⁹ Cuddy 'The revival of the entourage' 213

⁵³⁰ James *Letters* 340

⁵³¹ *RMS* vii 613

⁵³² *RPC* ix 232; *RMS* vii 636, 754

⁵³³ Adv MS 33.1.1 vol. 6 no. 57. See App. L

⁵³⁴ GD40/2/12/14, 15, 20

support it. In 1612, Robert, now viscount Rochester, resigned lands from the Maxwell forfeiture to his brother Ferniehirst.⁵³⁵ The same year, Rochester sent Ferniehirst 'helpes' which he had 'procured from the king ... with promise of furtherance in anything that may contribute to the preservation of the house of Ferniehirst'.⁵³⁶ The following year, first Rochester and then his nephew Ker of Oxnam were admitted to the privy council. Oxnam was also appointed to the commission of the Middle Shires and the captaincy of the border guard.⁵³⁷ His position was threatened by his uncle's, now Somerset's, disgrace in 1615. Elibank, on behalf of his nephew Oxnam, asked the help of Murray of Lochmaben at court in London, since Oxnam's enemies would not fail 'to seik his harme and skaithe at this tyme when hie hes not my Lord Sumerset to stand for him'.⁵³⁸ That Oxnam prospered despite Somerset's ruin says much for his diligence in office and Elibank's support. Oxnam owed much also to his cousin Robert Ker of Ancrum, himself one of Somerset's protegees.

The Kers of Ancrum were part of the Ferniehirst affiliation and involved with them in their feud with the Cessford Kers for at least a generation. When in 1613, Ancrum was seconded to London to attend Prince Charles, he nominated his cousin and friend Oxnam to replace him as captain of the border guard.⁵³⁹ Ancrum was also allied with John Murray of Blackbarony, Elibank's older brother, through his marriage to Blackbarony's daughter Elizabeth. During his continental travels in 1607, he nominated Blackbarony to manage his affairs.⁵⁴⁰ Ancrum was to remain in service as a gentleman of the Bedchamber for Prince Charles for many years. He survived a short period of disfavour in 1620 when he was forced into exile but was quickly restored.⁵⁴¹ In 1621, Prince Charles recommended him to the countess of Derby as suitable for marriage to her daughter, reassuring her that 'what hee wants in meanes hee hath in neerness about my person'.⁵⁴² Ancrum's

⁵³⁵ GD40/2/12/20, 22; *RMS* vii 786

⁵³⁶ GD40/2/12/34

⁵³⁷ *RPC* x 157,170,176,200

⁵³⁸ Adv MS 33.1.1 vol. 6 nos. 51-52

⁵³⁹ *RPC* x 176

⁵⁴⁰ GD40/2/13/1

⁵⁴¹ GD40/2/13/13, 15. He had been involved in a duel with Charles Maxwell of Terregles during which Terregles died. Ancrum was convicted of manslaughter but pardoned six months later. D Laing ed. *Correspondence of Sir Robert Kerr, First Earl of Ancrum and his son William, Third Earl of Lothian* (Bann. 1875) xiv

⁵⁴² GD40/2/19/1/8

service in the household of James's heir, and the longevity of it, guaranteed him constant access to Prince Charles. In 1619, the importance of this increased further when Charles began to take more interest in Scotland and his own Scottish council was appointed. This meant that it was beneficial for anyone who wanted office or something done in Scotland to find favour with Ancrum. Both Ancrum and Lord Roxburgh were appointed to the prince's council. In 1623, Roxburgh found himself having to write to Ancrum, the son of the man he had killed in 1590, to assure Prince Charles of Roxburgh's 'treu haert ... reddie to his service'.⁵⁴³ Ancrum was also in a position to advance others in Charles's favour and service in England. The significance of this increased exponentially on Charles's succession in 1625 with Ancrum still in his household.

A wealth of letters to Ancrum throughout this time survives in the Lothian papers.⁵⁴⁴ They provide a remarkable illustration of how the patronage system worked, demonstrating the importance of his position and the nature of his power. At the most basic level was what he could secure for his kindred. As early as 1606 his aunt Alison Home wrote asking Ancrum to give his friendly advice to her son who wanted a post in London.⁵⁴⁵ In 1616, James ordered the Scottish privy council to suspend an action which would have been 'to the prejudice' of Ferniehirst and in 1622, Sir Andrew Ker of Ferniehirst was made Lord Jedburgh. Both these benefits were partly a result of Oxnam's success on the council but will have been secured by Ancrum's favour in London.⁵⁴⁶ In 1617, Somerset's sister Anne, Lady Balmerino, wrote to Ancrum asking for his approval of her petition on Somerset's behalf to James in Edinburgh. Ancrum was able to secure some favour for Lord Balmerino, since in 1621 Balmerino acknowledged his obligation to him and committed his 'business' to him.⁵⁴⁷ A letter from Margaret Lady Ochiltree in 1621, signed 'your most affectionat mother', thanked Ancrum for furthering her suit with Prince Charles and asked him to remind the prince to prompt Elibank, the deputy treasurer, to pay her

⁵⁴³ GD40/9/8/1; *RPC* xii 59-60

⁵⁴⁴ Some of these letters are printed in Laing ed. *Correspondence of Sir Robert Kerr*

⁵⁴⁵ GD40/2/13/8

⁵⁴⁶ GD40/2/12/44; 40/7/42; *RMS* viii 265. Ancrum remained close to his cousin Oxnam, in 1623 writing to him affectionately during a visit to Scotland. GD40/2/13/36

⁵⁴⁷ GD40/2/13/12, 29

pension.⁵⁴⁸ In 1624, a William Ker promised Ancrum that he would do him 'kindness in anything except what touches his honour and standing', asking for his favour in assisting with his 'troubled estate'.⁵⁴⁹ Others of Ancrum's and Ferniehirst's adherence in the locality who importuned him included Dr Abirnethie, brother of Mr John Abirnethie, minister at Jedburgh.⁵⁵⁰

The longer Ancrum remained at court, the wider the circle of supplicants became. After Elibanks's death in 1621, which left a vacancy on the prince's council, the earl of Lauderdale asked Ancrum to influence Prince Charles into appointing him.⁵⁵¹ Ancrum and his kin benefited from these connections in a self-perpetuating cycle of patronage, favour prompting service, reward expanding the circle of adherence. Ancrum himself was rewarded both financially and with the protection of his royal master. In 1626, Charles I instructed the privy council to investigate the intromission with teinds by Sir William Ker of Cockpen which had been granted to Ancrum following the escheat of the late earl of Lothian. Ancrum was granted the earldom of Ancrum in 1633 and manoeuvred to acquire the earldom of Lothian for his son.⁵⁵²

The Kers were certainly the most notable beneficiaries and manipulators of court patronage from the Middle March, but other kinships received similar if less spectacular benefits. For example, the Murrays were involved at court in Edinburgh and in London, and on the privy council in Scotland. In 1594 a warrant was granted by James VI in favour of Archibald Murray, of the Blackbarony branch, page of honour to Queen Anne 'of ane horse leveray in stray and corne' out of their stables 'enduring his said service'.⁵⁵³ Murray of Elibank's rewards and patronage have already been noted. John Murray of Lochmaben became one of the triumvirate of commissioners for the Middle Shires in 1622 and in 1625 the earl of Annandale.⁵⁵⁴ Lord Cranstoun used his position to keep his portion of the forfeited Maxwell lands. In 1617, he protested to the council that he had already 'disponit a pairt of these landis

⁵⁴⁸ GD40/2/13/20. She was not his mother. Her daughter Anne was married to Sir Andrew Ker of Ferniehirst, first Lord Jedburgh.

⁵⁴⁹ GD40/2/13/35

⁵⁵⁰ GD40/2/13/6.

⁵⁵¹ GD40/2/13/28

⁵⁵² GD40/2/13/48; 40/7/47; 40/2/13/53

⁵⁵³ GD32/1/4

⁵⁵⁴ Adv MS 33.1.1 vol. 5/68; 6/51, 52

amangis his freindis' which neatly illustrated the way in which office-holders were able to dispense the rewards associated with their office to their adherents. In so doing, people such as Cranstoun, Elibank, Oxnam and Ancrum retained support in the Middle March whilst being involved in the highest levels of central government.⁵⁵⁵

Border-specific office after 1603 in the Middle March⁵⁵⁶

Captaincy of the border guard⁵⁵⁷

The extra layer of officialdom in the Borders that was specific to the circumstances of the region inevitably changed in composition following the regnal union which in theory had removed its national frontier characteristics. As elsewhere, the people involved tended to be those involved before union, or from their kindreds and alliances. Border-related office was both a gift of patronage and a means to further a career in the service of the crown. The ability to place adherents within the judicial framework of the Middle March provided the patron with the support he needed in the locality, whilst simultaneously rewarding that support.

Contemporarily, the continuation of disorder in the marches was most frequently attributed to the lack of a paid armed force to maintain the impetus of judicial raids.⁵⁵⁸ One of the first measures taken in the pacification from 1605 was the creation of a border guard with twenty-five horsemen under the captaincy of Sir William Cranstoun. Cranstoun was to be paid one hundred merks a month, his horsemen forty merks each.⁵⁵⁹ It was a difficult job which involved liaising with both Scottish and English commissioners and covered the entire Borders. In 1606 he told the English commissioners 'If you will needs be commanders, I desire that your discretion may appear as well as your authority. Think not that my body can be everywhere to do all your services. Our own courts approach.'⁵⁶⁰ Cranstoun, the son of

⁵⁵⁵ *RPC* xi 59

⁵⁵⁶ What follows is only an account of the appointments made during the pacification and not an account of the pacification itself. For this see Chap. Six

⁵⁵⁷ See App. N Border guard and triumvirate

⁵⁵⁸ The formation of one under Angus in 1586-87 was short-lived.

⁵⁵⁹ *RPC* vii 704

⁵⁶⁰ *HMC Muncaster* 250-51

Cranstoun of Morriston, was married to Sara the second daughter of John Cranstoun of that ilk from whom he appears to have inherited the designation. Cranstoun was tied into the kinship networks of the Middle March: Sara Cranstoun's sister Margaret was married to Sir James Douglas of Cavers, sheriff of Roxburghshire and in 1616 his son John married Elizabeth Scott, daughter of Walter Lord Buccleuch.⁵⁶¹

An indication of his methods came in several approbations and exonerations granted to him by James VI, such as one in 1609 which recognised his 'verie good and acceptable service' having 'exponit himself to mony perrillis and hazertis' and 'incurrit the malice of sic as haittis oure peace'.⁵⁶² Indemnities were granted to him and to those who had assisted him: it is interesting to note the enduring strength of kinship in that his deputies were mostly of his own kin, including his sons John and James, his brother Alexander of Morriston, and another two John Cranstouns.⁵⁶³ A commission in 1611 lauded his 'singular wisdome, foresight and dexteritie'.⁵⁶⁴ It must have been an embarrassment to him and Elibank that their sons were at feud with each other. It is a tribute to both fathers' value that neither suffered by it.

The rewards associated with the captaincy were not merely monetary. In 1609, Sir William was created Lord Cranstoun of Craillilng. In 1610, James, in recognition of his service in the pacification of the 'lands lately called the Borders', granted him the lands, fortalice, manor and fishings of Langholme and others in the West March recently forfeited by John lord Maxwell and now erected into the free barony of Langholme. More lands followed in Esk, Wauchopedale, Roxburghshire and Lauderdale.⁵⁶⁵ His success in the border guard was recognised by additional office. In 1608, being known as 'affectionat to his Majesties service', he was appointed provost of Annan in place of Lord Maxwell. In 1610 he was made a JP for Roxburghshire. It was acknowledged that the earl of Dunbar had been 'very weelee secundit' by Cranstoun, and on Dunbar's death in early 1611, he replaced him as lieutenant of the whole Middle Shires.⁵⁶⁶ Later in 1611 he was joined by

⁵⁶¹ GD135/1028; *RMS* vii 25

⁵⁶² *RPC* vii 286-87

⁵⁶³ *RPC* viii 279, 420; ix 1-2, 40-42, 155, 166, 305-6; GD40/7/29

⁵⁶⁴ *RPC* ix 129

⁵⁶⁵ *RMS* vii 169, 214, 217, 223, 659; *RPC* viii 471

⁵⁶⁶ *RPC* viii 36-37; ix 75-76, 129, 244

Elibank and two others in a reconstituted commission of the Middle Shires with an annual fee of £500, to which he was reappointed in 1613 and 1618. Most significantly he was admitted to the privy council in August 1611 on which he served until at least 1624.⁵⁶⁷ Cranstoun epitomised the way in which local authority and influence at a national level could be combined in one person to his own benefit and to that of the crown's. Cranstoun could effect crown policy in the Middle March whilst the crown underwrote his authority in his locality.

Following his admittance in 1611, Cranstoun resigned his captaincy of the border guard to Sir Robert Ker of Ancrum, who had been nominated by James. Ker, it was said, was known for his 'sufficiency and mony worthie pairtis' which would enable him to fulfil his office. The support of those in his kinship would have been part of this, in particular the Kers of Ferniehirst. He was employed under the same terms as Cranstoun and to be paid monthly. Under him the guard was enlarged by a further fifteen horsemen that November.⁵⁶⁸ In November 1613, Ker of Ancrum nominated Ker of Oxnam, Ferniehirst's heir and his cousin and friend, in his place. Ancrum was careful to get an indemnity registered by the privy council for his actions as captain before his departure. He appears also to have had the captaincy of the king's guard for, in April 1614, Oxnam replaced him in this as well.⁵⁶⁹ The captaincy of both the king's and border guards was combined from then on: in 1618, Oxnam received another commission as captain of the guard in Scotland. Oxnam remained captain until the guard's disbandment in 1621.⁵⁷⁰ He received a number of indemnities including one, in 1615, which excused him and his father Ferniehirst from their part in the slaughter of various Turnbells in the years before his captaincy, in 1601, 1604 and 1611.⁵⁷¹

Unlike Cranstoun and Ancrum, fears over Oxnam being too busy as captain of the border guard did not seem to preclude his appointment in the same month in 1613 as commissioner of the Middle Shires and his admission to the

⁵⁶⁷ *RMS* vii 505; *RPC* x 164; xi 345; xiii 552

⁵⁶⁸ *RPC* ix 244-45, 248, 276, 289-90

⁵⁶⁹ *RPC* x 176, 184, 231

⁵⁷⁰ GD40/7/35; *RPC* xii 582-84. Goodare notes that 'in effect the Border guard was transformed into a new "king's guard".' However, the guard was still being called the 'Gaird upoun the Bordouris' and 'Border Garrison' in 1617. Goodare *State and Society* 150; *RPC* xi 217

⁵⁷¹ GD40/7/31

privy council. He was reappointed commissioner on the formation of the conjunct commission of the Middle Shires in 1618.⁵⁷² Oxnam was assisted by a lieutenant and there are references to such throughout the period: in 1615 the lieutenant was William Ker of Grange and, in March 1619, Sir William Scott of Harden was recorded as Oxnam's lieutenant. An exoneration of 1622 for service within the border guard listed those who had assisted Oxnam: in addition to Harden, Oxnam's brother William, George Ker apparent of Cavers, another two William Kers and Murray of Philiphaugh were included.⁵⁷³ For all his power in the locality and on the council it did not guarantee him success in all arbitrations: in 1619 he lost an action against an alleged 120 men raiding the turfs on his moor at Oxnam.⁵⁷⁴ In 1621 the guard was disbanded by James because 'oure kingdome is reduceit to suche quietnes as thair is no necessitie ane ordinarie Gaird within the same'. Oxnam was granted an indemnity for any of his actions in pursuit of his captaincy.⁵⁷⁵ Rewards for his service came not only with further office but were also monetary: in 1613 he was granted the keepership of the castle of Dumfries; in 1618 he was granted a pension of £200 sterling as captain and in 1622 the privy council was moved to continue his pension for his lifetime: the council's approbation commended him for his 'singulair wisdome, foirsight, courage and dexteritie' and for accepting the disbandment of the guard with a 'most submissive maner'.⁵⁷⁶

Commissioners of the Middle Shires, the lieutenancy of earl of Dunbar and the triumvirate⁵⁷⁷

The office of march warden lapsed with the union of 1603,⁵⁷⁸ but the opportunistic cross-border raiding of the 'Ill week' showed James the necessity of maintaining an overseer in the Borders. Lord Home was

⁵⁷² *RPC* x 164, 170-71, 200; xi 345

⁵⁷³ GD40/13/43; *RPC* xi 546-47

⁵⁷⁴ *RPC* xii 21

⁵⁷⁵ *RPC* xii 583-84

⁵⁷⁶ GD40/7/30, 36; *RPC* xii 657-60

⁵⁷⁷ See App. J List of commissioners for the Middle Shires from 1605-1625 and Chap. Six for context.

⁵⁷⁸ Diana Newton has questioned when the office of warden was abolished since there is no record of it. However as each appointment as warden was by commission, and not a statutory office, it did not have to be formally abolished, merely not reappointed. Newton *The Making of the Jacobean Regime* 127

appointed lieutenant over all three Scottish marches in July 1603, with Sir William Cranstoun as his deputy.⁵⁷⁹ By 1604 this was felt to be insufficient permanently to suppress offenders, and articles were drawn up for a new judicial framework in the Borders. In March 1605 the privy council announced the creation of the commission of justiciary for the Middle Shires and the appointment of five Scots to it with 'full power to hold courts of justiciary in the said shires [within Scotland] for the trial and punishment of offenders, accounting for the unlaws and ameracements to the Kings Treasurer' and with immunity for any 'mischance or inconvenient' in execution of their commission. They were to have the assistance of the border guard and the sheriffs in their duty. In November 1605 their power of justiciary were extended to allow them to act individually and also to impose fines, for which they were accountable to the Exchequer, in addition to warding offenders. A similar number were made commissioners in England.⁵⁸⁰ Whilst their powers were similar to that of the march wardens, the commissioners' jurisdiction was not confined to one march and covered the whole Scottish Borders. In addition, the assistance of a standing force meant that the commissioners could maintain their effectiveness over a prolonged period.

Those appointed were the 'most meit and able to execute the charge comittit unto thame, quhais former behaviour and actionis assures us of their fidelitie and eirnest affectioun.' They were accountable to the privy council for their actions and were supposed to submit a report on their proceedings every two months. Whilst their reports may not have been as regular as prescribed, there was evidence of much direct contact between commissioners and council, the former asking the latter for advice on specific cases. The post was to be paid an annual £500, and whilst there was occasional delay in payment, commissioners did benefit financially. Appointments were not made for a fixed term, but were occasionally renewed. All of the initial five Scottish commissioners continued so for some time through the various permutations of the commission: four of the five were appointed to the conjunct commission of 1618.⁵⁸¹

⁵⁷⁹ Details of this week of raiding following Elizabeth's death are in Chapter 6. *RPC* vi 833-34; vii 19

⁵⁸⁰ *RPC* vii 701-7, 714

⁵⁸¹ *RPC* vii 701-4, 714-17, 717-20; ix 287; xi 345

Almost all of the commissioners throughout the pacification originated in the Borders or had strong connections there. They included Sir Gideon Murray of Elibank; he was one of the longest serving and in 1607 was one of four commissioners whose fee was increased to an annual £800 to be paid twice yearly. Another commissioner named that year was fellow Middle March resident Sir William Cranstoun.⁵⁸² Success in the Borders brought further advancement: in August 1610 Elibank was admitted to the privy council and in November was named one of the JPs for Selkirkshire. Concerns about the Borders resurfaced in 1611 and in June he was appointed to the reconstituted commission of the Middle Shires along with the now ennobled Cranstoun. That July, October and November Elibank held justiciary courts at Jedburgh. Though no renewed appointments to the commission were recorded until 1617, he was still active as commissioner acting as one in a case referred to the privy council by the commissioners in 1615.⁵⁸³ In 1612 he had been made deputy treasurer and, in 1617, his heavy workload was recognised when his nephew Sir John Murray of Philiphaugh replaced him on the commission of the Middle Shires.⁵⁸⁴

As previously noted, he had the support of the local kinships of the Murrays of Falahill and Blackbarony and of the Scotts of Buccleuch which was to aid him in his office, providing him both with manpower and the status in the locality to effect command. His allies benefited from his protection and access to the privy council: in 1606 he petitioned the council in a case against Andrew Scott at 'the earnest sute of ... young Buccleuch, with sindry utheris of the name of Scott, upoun particular promissis of grit offices in the advancement of this our service, and the presenting of sum to justice mair notorious' than the one presently convicted. This indicated the way in which he was able to effect his authority: the assistance of the surname Scott would be to the better fulfilment of his office.⁵⁸⁵

In December 1606, James VI wrote to his commissioners 'we do not find so good success of your proceedings as we expected ... We have therefore appointed the earl of Dunbar, who is a counsellor in both our kingdoms and likely to be often at Berwick, to resolve any difficulties that may arise in the

⁵⁸² *RPC* viii 15-16

⁵⁸³ *RPC* ix 54, 75-76, 194-96, 705, 708; x 331

⁵⁸⁴ *RPC* xi 11. Elibank's sister Agnes was Philiphaugh's mother.

⁵⁸⁵ *RPC* vii 714-17

execution of your service', given the distance of the commissioners from his council in London. As the senior commissioner he was to hold 'supreme authority in all matters requiring dispatch [in the Borders] ... with power to apprehend outlaws and put any of them to trial and execution' on both sides of the border.⁵⁸⁶ Dunbar was the recently ennobled George Home of Spott, a long-time servant of James's and since 1601 treasurer of Scotland. From 1603 to 1606 he was also chancellor of the exchequer in London. His devotion to James and tirelessness in his service enabled him to fulfil his offices in both countries. He had been active in the Borders from at least August 1605 when he was involved with a justice court held by the commissioners at Hawick. In May 1606 he directed Maxwell, Johnstone, Buccleuch, Cranstoun and Elibank in a search for fugitive Grahams on both sides of the border and in August 1606 held a justice court at Peebles in that August. He remained the supreme commissioner for the rest of his life and the only one who ever held jurisdiction on both sides of the border.⁵⁸⁷

Dunbar had been granted the lands of Greenlaw, Redpath, Foulden and Lochend in Berwickshire and in Northumberland at Norham.⁵⁸⁸ Crucially he held the ears of both James and the earl of Salisbury, conducting an intimate correspondence with the latter. Despite his long-standing ill-health, he hunted regularly with James in England: he was hunting with him for much of July and August in 1607 when he was given renewed powers of justiciary in the Middle Shires.⁵⁸⁹ Repeatedly reports of his success and severity were sent south and in January 1608 he was granted a letter of approbation by the privy council in Edinburgh.⁵⁹⁰ He was well rewarded for his efforts: in 1606 his lands with the castle of Dunbar were erected into the free barony of Dunbar and in 1610 he was granted lands worth £350 rent annually, £3,000 in money and bonds for £6,000. Dunbar's passing was acknowledged by the privy council, who thanked him posthumously for reducing the Borders to a

⁵⁸⁶ *HMC Muncaster* 266-67; *HMC Salisbury* xviii 371

⁵⁸⁷ *HMC Salisbury* xvii 410; xviii 368-71; *HMC Muncaster* 255, 260. For a survey of Dunbar's career after 1603, see Jared RM Sizer 'The Good of this Service Consists in Absolute Secrecy: The Earl of Dunbar, Scotland and the Border (1603-1611)' in *Canadian Journal of History* xxxvi (2001) 229-57, quote from p. 233. Also Maurice Lee jr *Government by Pen: Scotland under James VI and I* (1980) 61-111 and Cuddy 'Anglo-Scottish Union' 108-10, 115, 118

⁵⁸⁸ *HMC Salisbury* xvi 78

⁵⁸⁹ *HMC Salisbury* xix 31, 164, 247, 254, 320, 350; *RPC* vii 728-29

⁵⁹⁰ *RPC* viii 37-38

‘wounderfull obedience’ and to ‘ane perfyte and setle peace’.⁵⁹¹

This assessment of the Borders would seem to have been premature for later in 1611 a new commission of the Middle Shires was appointed. It recognised the ‘sufficiencie, knowlege, and experience in punishing of vice and the committaris thairof, and of thair willingnes to sie justice florishe’ of those appointed. This description certainly applied to Elibank who was reappointed as well as Seton and Cranstoun, a commissioner from 1607 as a result of the success of his captaincy of the border guard. Also appointed in 1611 was David Murray of Clonyaird who was the older brother of John Murray of Lochmaben, the future earl of Annandale and one of the triumvirate of commissioners appointed in 1622.⁵⁹² Clonyaird died however in 1613. In November 1613, Ker of Oxnam became a commissioner at the same time as being appointed captain of the guard and admitted to the privy council.⁵⁹³ Cranstoun, Oxnam and Elibank all remained commissioners until at least 1617, concurrently with being privy councillors and JPs in their shires. All three had significant support in the Middle March from their kinships and alliance. This last also held true of Murray of Philiphaugh, named commissioner in 1617 and both a JP and sheriff of Selkirkshire. This combination of office co-ordinated their efforts in the pacification, reinforced their powers of jurisdiction and facilitated lines of communication from central government, through the commissioners, to their localities.⁵⁹⁴

The renewal of central government concern over the Borders amid reports of the resumption of disturbance, following James VI’s journey north in 1617, led to the formation of the rather different ‘conjunct commission’ of 1618.⁵⁹⁵ This unwieldy body of thirty commissioners each from Scotland and England was an attempt to involve a wider number significant local figures in the Borders than had previously been included in the commission. Most of whom already held office as JP or sheriff in the Middle Shires. In many ways, it reflected a judicial framework already in place in the borders: from the Middle March, in addition to Elibank, Cranstoun, Oxnam and Elibank, it included the earl of Roxburgh, Lords Buccleuch and Yester, Douglas of

⁵⁹¹ *RMS* vi 1773; *HMC Salisbury* xxi 212; *RPC* ix 129

⁵⁹² *RPC* ix 194

⁵⁹³ *RPC* x 164, 170, 176, 200

⁵⁹⁴ *RPC* xi 11

⁵⁹⁵ *RPC* xi 291, 344-48, 386-87

Cavers sheriff of Teviotdale, Sir John Ker of Jedburgh, Douglas apparent of Bonjedburgh, Riddell apparent of that ilk and Sir Robert Stewart of Shillinglaw heir to Traquair. Most of these had the previous September appeared before the privy council to swear responsibility for their adherents under the terms of the General Band of 1602.⁵⁹⁶ The council was continuing to use the traditional accountability for their adherents of an enduring group of Middle March surname leaders and lairds, alongside granting these leaders new powers as commissioners. In November 1619 eight of the twelve commissioners from the Middle March appeared to give advice to the privy council. That December some of these commissioners received a further commission to conduct a survey of 'all idill personis, maisterles men, and vagaboundis' in their localities: Yester and Shillinglaw were to be responsible for Tweeddale, the Douglasses of Cavers and Bonjedburgh for Jedburgh Forest, Buccleuch for Liddesdale and Eskdale and Roxburgh, Cranstoun, Oxnam and Cavers for Teviotdale.⁵⁹⁷

The privy council's perception that the pacification in the Borders was complete led, during the fiscal crisis of 1621, to the disbanding of the guard in the Borders.⁵⁹⁸ This, however, proved premature for in March 1622 the nobles, barons and gentlemen of the Middle Shires were summoned to attend a meeting of the commissioners in Edinburgh to consult on the reported increase in theft in Annandale, Eskdale and Ewesdale. On their advice, it was decided to appoint a triumvirate of persons of 'power and friendship' within the Middle Shires to 'have oversight of all these schyris ... with power to thame to convene the remanent Commissioners at all tymes quhen they sall think expedient ... [to] procure the assured peace.' Those receiving this new commission were the earl of Buccleuch, the Maxwell earl of Nithsdale, and John Murray of Lochmaben, subsequently the earl of Annandale. They were to nominate ten men to act under them.⁵⁹⁹

Buccleuch's list of deputies was formed predictably from his kinship and alliance including Walter Scott called Norths, Walter Scott called of Newburgh, John Scott, Thomas Armstrong, William Elliot, Robert Pringle and Hector Cranstoun. His nomination of six further men to assist him four

⁵⁹⁶ *RPC* xi 218, 225-27; See App. J

⁵⁹⁷ *RPC* xii 105-6, 149-151, 219-222

⁵⁹⁸ *RPC* xii 583-84; Goodare *State and Society* 131-32, 150

⁵⁹⁹ *RPC* xii 672-79, 775; See Apps. K and L

months later gave an indication of how burdensome the office was: 'the chairge is so spatious and wyid as hardlie can the ten persones gevin up be him discharge that poynt of dewtie'. The six included the Armstrongs of Whithaugh and his brother and of Kinmont and another Elliot, all from his adherence.⁶⁰⁰ It was characteristic of the way in which pacification had been undertaken that the names of Whithaugh and Kinmont, synonymous with cross-border raiding before Union, were now deputies in the suppression of such activity. However, concern over engrained habits prompted the exemption of the Johnstones of that ilk and Westraw from the jurisdiction of the triumvirate due to the presence on it of their former Maxwell enemy. It was thought the triumvirate's duties could not 'be accomplesched without secund employmentis of inferior persounes' and the Johnstones 'hes very grite ressoune ... to suspect some trouble and inconvenient to follow ... [since] the hairtburning betuix thair frendis and followeris is not yit fullie extinguishit'.⁶⁰¹

The 1618 conjunct commission seems to have disappeared by this point.⁶⁰² However, the original commission of 1613, of Seton of Kylesmure, Cranstoun and Oxnam, with Elibank's replacement of 1617, Murray of Philiphaugh, was to remain in place but in a subordinate role to the triumvirate. In 1622, the triumvirate were supposed to be able to call upon their assistance; at the justice courts held at Jedburgh in August 1622 four commissioners were listed that were not of the triumvirate. In October that year Oxnam was referred to as one in a joint action with Buccleuch.⁶⁰³ However, in 1623, it was felt necessary to extend the original Middle Shires commissioners by four from the West March since none of the original four resided on the West March which was felt to be the main area of concern.⁶⁰⁴ In July 1624 Lord Yester and Sir John Stewart of Traquair were adjoined to triumvirate and later that month a meeting of the Middle Shires commissioners included Cranstoun, Amisfield and Seton.⁶⁰⁵ Cranstoun and

⁶⁰⁰ *RPC* xii 695-96; xiii 18-19

⁶⁰¹ *RPC* xii 673-75

⁶⁰² Watts notes the resurrection of the English side of the 'virtually defunct' commission in 1619 which continued functioning until around 1624. No superior commission, such as that of the Scottish triumvirate, was appointed in England. Watts *From Border to Middle Shire* 200-1

⁶⁰³ *RPC* xiii 68-69; xiv 677-92

⁶⁰⁴ *RPC* xiii 155-57

⁶⁰⁵ *RPC* xiii 542-43, 553

Seton were still commissioners in 1625, when others were appointed, whilst the earl of Angus and Yester (again) were adjoined to what appears to have been a separate and renewed commission for the triumvirate to Buccleuch, Nithsdale and Annandale.⁶⁰⁶

Conclusion

Despite the increasing centralisation of government and the growing state monopolisation of justice, kinship and allegiance continued to be important mechanisms for the conduct of government. They continued to influence appointments and provide the support for those offices. It is notable that the names of those from the Middle March in office in the 1570s were remarkably similar to those in office in 1625. The crown had managed to retain their loyalty even when they might have been expected to resist any encroachment on their existing authority. The importance of patronage, both as part of a system of reward and a means of staffing government, if anything increased in this period. After James's accession to the English throne, the scope for reward was much widened. The grant of governmental office, from the locality to the highest level, involved nobles and lairds within a newly invigorated framework of authority. In this both the crown and its officers benefited in a cycle of mutual reward and service.

Borderers were prominent in all spheres of public life, at court, in parliament and in and around the privy council. They were also involved in an additional layer of border-specific office. Men from the Middle March seem to have been particularly prominent at court, especially after 1603, where the successes of the various Ker branches were most obvious. However, the disproportionate predominance of borderers within the membership of the privy council, especially in the period after 1603 to 1625, was perhaps more remarkable. The majority of these were from the Middle March, the most notable exception being the earl of Dunbar. The lack of involvement of men from the West March reflected the problems of its prominent family, the Maxwells, whilst the Homes in the East March were probably limited by their lingering Catholicism.⁶⁰⁷ Whether the inclusion of borderers was a

⁶⁰⁶ *RPC* second series i 193, 373

⁶⁰⁷ Meikle *A British Frontier?* 78-79. See n.37 above.

conscious policy by James to involve local prominent figures from an area of particular government concern is open to question. Before 1603, it had also reflected the usefulness of the Middle March to him as a form of leverage in negotiations with the English. The involvement of men from the Middle March was certainly a factor of the accessibility of the region and its inhabitants to Edinburgh. Simultaneously, the region's proximity ensured that it remained at the forefront of the crown's consciousness.

What is evident from all this is that borderers were not alienated from central government; they were part of it. It would be a mistake to think of the Middle March as a remote peripheral region in the way that English historians have identified Cumberland and Northumberland in relation to the centre of government in London. Ellis, Spence, Watts and James have all variously noted the sense of alienation of English borderers from their national government and lack of involvement in it. Spence identifies 'a fundamental divergence between local and central government attitudes towards the clans' of the English Borders.⁶⁰⁸ Ellis notes that the northern counties of England were represented by only sixteen out of a total of 462 MPs in the House of Commons in 1601.⁶⁰⁹ The English northerner's alienation was exacerbated further by Tudor governments' use of outsiders in the marches as wardens and in the two garrisons at Carlisle and Berwick. Furthermore, the English border officials were answerable to the Council of the North at York, a body which impeded contact between the English borderers and their central government.⁶¹⁰ There was no such blockage between the borderers of the Scottish Middle March and the privy council in Edinburgh.

⁶⁰⁸ Spence 'Pacification of the Cumberland Borders' 65

⁶⁰⁹ Ellis 'Tudor State Formation' 62

⁶¹⁰ Watts *From Border to Middle Shire* 35-36. Spence notes the detrimental effect of the overlapping jurisdiction of the Council of the North on the efficacy of the warden. Spence 'Pacification of the Cumberland Borders' 71.

Chapter Four: Crime, feud and violence

Introduction

The object of the last three chapters has been to illustrate the framework of power in the Middle March, which in 1625 bore much resemblance to its form in 1573, dynamised by broadly similar characteristics of kinship and personal relationships and staffed from the same group of prominent families. The existence of this framework and its close links with central government could provide the crown with a system with which to effect its policies in the region, if it had the will to do so.⁶¹¹ Changing crown motivation in the Borders throughout the period is covered in the following two chapters: this chapter will look at the record of crime in the Middle March from 1573 to 1625. The pacification of the Borders from 1605, however, will be considered separately in Chapter Six. There can be little argument that widespread crime did take place: there was report enough of theft, reset, feud, violence and cross-border raiding from both English and Scottish sources. There can also be small doubt that the Middle March's proximity to England occasioned specific types of crime and that there were areas close to the border that appeared to be beyond the limits of government. To the government then, and to subsequent historians, the border-specific nature of crime was what caused extra concern over the region: this concern, however, should be placed within the context of the evolution of crown's approach to crime and the law throughout the kingdom.⁶¹²

The latter part of the sixteenth century and the early part of the seventeenth saw the criminalisation of some activities previously tolerated, such as firearm-bearing, witchcraft and, peculiar to the Borders, hunting in the Cheviots.⁶¹³ But perhaps of most significance was the crown's changing

⁶¹¹ Rae 156-57

⁶¹² Irvine Smith noted the 'haphazard and sporadic' legal developments in this period, though he acknowledged the 'vigour' of James VI in the reform of criminal law. Such developments he set against the 'background of the extreme lawlessness of the country', an assessment that would be subject to review following Wormald's contributions. J Irvine Smith 'The Transition to the Modern Law 1532-1660' in *An Introduction to Scottish Legal History* (Stair Society, 1958) 25, 37

⁶¹³ *RPC* v 274-45, 321-22; vii 41-42, 707-9

attitude to feud, criminalised in 1598.⁶¹⁴ Moreover, attempts to suppress feud were part of a broader development in the way government was effected. Private settlement of dispute was deemed no longer acceptable as the crown increasingly drew all judicial processes within its remit, effectively monopolising justice. Nobles, heads of surnames and lairds were encouraged to bring their disputes, or those of their adherents, to Edinburgh for arbitration by the court of session or in some cases by the privy council. Theoretically at least, arbitrations could then be imposed by the crown, either directly at council or through a warrant sent to the local sheriff or through holding a cautioner accountable for his adherent. For this process to work the crown needed the co-operation of prominent figures: much has been made of the nobility's acquiescence to this, but for it to be effective in the locality, the co-operation of the lairds and their surnames was crucial.⁶¹⁵

The effect of the suppression of feuding was felt throughout society and government. The replacement of private justice by state-controlled judicial processes led, as Goodare observes, to the ending of both 'autonomous noble power' and its 'machinery', a noble's 'network of armed local lordship'.⁶¹⁶ Bonds of manrent, the adhesive of lordship, swiftly died out after 1600 and in 1604 there was an ordinance against the making of private assurances.⁶¹⁷ Moves towards government monopolisation of justice should also be put within the context of broader government policies which involved greater intrusion into the localities, a widening base of those with official authority and the evolution of non-judicial administrative structures throughout Scotland.

The changed political and social frameworks that resulted were to be found in the Middle March as much as anywhere else in Scotland. Numerous borderer lairds, including the surname leaders, were forced to submit their differences to arbitration by the privy council and to find surety for the good behaviour of their kin and alliance. The numbers of acts of caution made during the period 1600 to 1610 illustrated the government's determination to

⁶¹⁴ 'Act anent Removing and Extinguishing of Deidlie Feuds' *APS* iv 158-59; ratified 1600 *APS* iv 233-35

⁶¹⁵ Keith Brown notes that feud was pursued not only by the nobility but by the landed elite as a whole and predominantly by a class which included 'the barons, clan chiefs, and lairds'. Brown *Bloodfeud* 8, 241-43

⁶¹⁶ Goodare *State and Society* 76

⁶¹⁷ *Wormald Lords and Men in Scotland* Chap. Nine 'The end of bonding' ; *RPC* vi 594-96

suppress feud. In the 1620s the number of sureties being registered for the Middle March was greatly reduced. This suggests that the incidence of feud there had lessened since it no longer troubled the privy council so much. The inclusion of the surname leaders such as Roxburgh and Buccleuch in central government rewarded the ending of their own feuds. By the 1620s, little dispute was recorded from the East March, where the numbers of acts of caution had always been significantly less than either the Middle or West Marches. The suppression of feud took longer in the West March where as late as 1622 James Johnstone of that ilk was granted an exemption from the jurisdiction of Robert Maxwell, earl of Nithsdale, one of the triumvirate of commissioners. The reference in the exemption to 'the hairtburning betuix thair frendis and followeris is not yit fullie extinguischt' indicated that the leaders may have reconciled but it would take longer for the changes to filter down through society.⁶¹⁸

Michael Wasser continues on this theme for the period from 1603 in his thesis 'Violence and the Central Criminal Courts in Scotland, 1603-1638' in which he looks at the cases of violent crime coming before the privy council and the justice courts. He uses these to determine the 'seriousness' of violence in Scottish society and how the crown used the courts to address violence. He observes a decline in violence which was linked to the ending of bloodfeud and the increasing resolution of dispute within the courts. However, he concludes that, although there was an increase in state power, cases before the courts still tended to be private prosecutions rather than the state imposition of exemplary punishment. This caveat aside, he sees the state's attempts to suppress crime in the Borders as part of a more general increase in the crown's power. He also notes that crime in the Borders was still being seen as a problem in the 1630s with calls for a new conjunct commission to deal with it.⁶¹⁹ However, the suppression of violent crime was a on-going process throughout the sixteenth century in the Middle March as well as in the central lowlands of Scotland.

⁶¹⁸ In June 1623 the privy council forced a formal reconciliation between Nithsdale and Johnstone and Johnstone's exemption was lifted. *RPC* xii 673-75; xiii 261-62

⁶¹⁹ Wasser 'Violence' 1, 57-58, 293-301

Border and domestic law in the Borders

The Borders, as elsewhere in Scotland, were subject to competing public and private jurisdictions. Catherine Ferguson sees the overlapping jurisdictions as detrimental to effective justice.⁶²⁰ Conversely, Goodare points out that Scotland could be seen to have benefited from an integrated network of jurisdiction. This study suggests somewhere between the two views. There was certainly a judicial framework in the Middle March which could be effective if government chose to use it. However, disputes over jurisdiction, such as that between the earl of Angus, the Ferniehirsts and Jedburgh, hindered the legal process and led to further violence.⁶²¹ Furthermore, the complexity of legal situation in the marches was exacerbated by their proximity to a foreign country. In addition to Scottish domestic law, a body of border laws had been built up through the previous centuries and both were applicable in the Borders. In order to implement the march or border laws, a framework of border-specific institutions and offices existed alongside the usual judicial system of the region. In addition, an international element was lent to judicial proceedings at meetings between opposing Scottish and English march wardens during which an international set of laws was implemented. All this resulted in the separate legal situation in the Borders, highlighted intermittently by the crown concern evident in its judicial raids into the region.

The body of border laws had evolved through custom and during cross-border negotiations between Scottish and English commissioners over previous centuries. Record of them was made often as part of treaty negotiations but occasionally an official would attempt to clarify them. In 1448 William earl of Douglas drew up the known articles of border law at Lincluden to which Sir James Balfour acknowledged his debt in his summation of border laws in the 1560s.⁶²² In 1551 Sir Robert Bowes, the English East March warden, made a record of them and, in 1553, a meeting of border commissioners from both countries agreed a record of march laws

⁶²⁰ Ferguson 'Law and Order'. She is particularly concerned with the ability of the holders of private jurisdictions to repledge their tenants from other courts. 28, 109, 240, 264, 320

⁶²¹ See below

⁶²² Balfour *Practicks* ii 590-613

which Rae noted was 'largely a codification of customary law'.⁶²³ Finally in 1604 Richard Bell, the long-serving clerk to the English West March warden, addressed his collection of march laws to his new king. Subsequently a number of historians have amalgamated the march laws from treaties and contemporary records: Nicolson's *Leges Marchiarum* (1705), based on Bell's MS, was for some time the standard reference book but was replaced by DLW Tough's comprehensive collection of laws in *The Last Years of a Frontier* (1928), which also provided an exhaustive critique of Nicolson's.⁶²⁴

Contemporary problems in defining march law occurred partly because of the diverse ways in which it had evolved. Many articles had been established by custom whilst some had been drawn up to deal with specific times of peace and war. Tough recognised that the 'whole subject is thus very complicated'.⁶²⁵ A clause included by Balfour which noted 'all uther thingis that are not put in writ, that ar pointis of weir, and usit of befoir in time of weirfare' neatly brought together the problems of lack of complete official record, the existence of laws that had force 'by custom' and those that evolved during hostility: his answer to these problems was to leave any queries to the judgement of the warden, his council and 'the eldest maist worthie bordoureris, that best knawis the auld use of marche'.⁶²⁶ Tough described the product of the 1553 meeting of border commissioners as 'the first real code of Border Laws for peace time'.⁶²⁷ There was an inherent problem in a set of laws, devised in times of hostility, which were meant to operate also in times of peace (or less overt hostility). Lack of knowledge of the laws continued to frustrate their application: in 1576 the privy council noted 'be dailie experience quhat harme and inconvenient occurris upon bordouris of bath the realmis throw ignorance of the lawis and lovabill custumes thairof'.⁶²⁸ A border commission in 1597 collated all the existing

⁶²³ Bowes's record of march law in 1551 was published in Raine *North Durham* (1852) xxii-xxvii. Also considered in George Neilson 'The March Laws' ed. TI Rae *Miscellany* (Stair Soc. 1971) vol 1, 11-77. Rae quote on p.185,48-49

⁶²⁴ Richard Bell *Book of Marches* printed in Nicolson and Burn *Westmorland and Cumberland* i xxiii-xxv; Tough xi-xx, chapters vi and vii. For the development of border law within an English context to 1502 see Cynthia J Neville *Violence, Custom and Law: The Anglo-Scottish Border Lands in the later Middle Ages* (1998) x-xiv

⁶²⁵ Tough noted the vagueness of the term 'Laws of the Marches', citing Bell's summary of the different influences on march law on the English side of the border, Tough 95-96

⁶²⁶ Balfour *Practicks* ii 600

⁶²⁷ Tough 98

⁶²⁸ *RPC* ii 523-24

march laws into a new border treaty which suggested that confusion still existed. This did not however stop complaints.⁶²⁹

In addition, though Anglo-Scottish treaties produced agreed sets of laws, applicable to both countries, they were never comprehensive and each country had its own sets of border laws and specific ordinances. This meant that there was scope for endless dispute on the legality of various actions or legal procedures. One of the most notorious of these was the argument in 1596 between Lord Scrope and Scott of Buccleuch over the legality of the capture of Kinmont Willie by the English on the Scottish side of the border during a day of immunity customary at a day of truce. Following Scrope's complaint over Buccleuch's rescue of Armstrong, a convention of estates endorsed the legitimacy of Buccleuch's actions but typically referred the whole matter to a meeting of Anglo-Scottish border commissioners for further resolution.⁶³⁰ The privy council in July 1596 upheld Buccleuch's position pointing out that it could have asked for Scrope's delivery to Scotland, since his deputy had transgressed border law. Scrope and Elizabeth continued to contest, however, the legality of Buccleuch's actions since they violated English sovereignty.⁶³¹

Further complication arose from the equal applicability of domestic as well as border law in the region and the existence of a judicial framework to enforce it.⁶³² Thus the region was subject to any changes in domestic law or increase in government control of judicial processes that affected the rest of the country. In addition, such legal developments did result in laws targeted specifically at the Borders. These were not march or border laws in the traditional sense (which were to do with managing cross-border relations) but principally the result of the government's nationwide intrusion into legal processes being applied to a specific region. The act of 1587 for the quieting of the Highlands and the Borders was an example of this. However, the

⁶²⁹ *CBP* ii nos. 621-23

⁶³⁰ *CBP* ii nos. 237, 252; *RPC* v 290 n.; *APS* iv 99-100

⁶³¹ *RPC* v 298-99, 300n.; *CSP Scot* xii no. 195

⁶³² Neville notes a similar situation in England with the development of border law and 'institutions to meet [the] special requirements' of the English border region, co-existing with common law there. She concludes, however, that despite the 'unique problems of the frontier', the English were able 'to construct from that bewildering array [of laws] a workable system of law.' Neville pp x, xiv, 195. Irvine Smith included developments in laws affecting the borders, such as the 1587 act, in his resume of reforms of the whole body of criminal law in this period, Irvine Smith 'The Transition to the Modern Law, 1532-1660' 37-38.

continued use until 1603 of the border laws meant that the Borders remained marked out as a peculiar region, even when most of the hostile circumstances that inspired the original laws had subsided. This underlined the perception of the unique nature of the Borders and influenced the way in which government and the judicial system responded to the area.

Jurisdictions, courts and judicial raids in the Middle March⁶³³

The co-existence of march and domestic law in the Borders was matched by the co-existence of judicial systems to implement them. This occasionally resulted in overlapping jurisdictions and competing functions of officials there. In particular, the warden's jurisdiction was superseded temporarily during short-term lieutenancies or during judicial raids by the crown. Catherine Ferguson's comprehensive survey of all layers of the judiciary from 1603 to 1707 shows the complexity of the situation that existed after Union: it is fair to say that such a complicated framework existed before. It is useful therefore to look at the roles of the individual officers and their courts, acting under domestic and border laws, operating in the Middle March before 1603. One of the main problems with any assessment of their function is the almost complete lack of record of any of the wardens' or lieutenants' courts, though enough commissions exist to record what was hoped from them.⁶³⁴

Of prime significance within the Middle March was the warden. There was an inherent duality within the role of warden. Its military function, originating in times of hostility, had expanded to include a judicial function. Though the warden continued to be responsible for defence in times of ostensible peace, his role was now to police the Borders and arrange redress of cross-border offences with the opposite warden.⁶³⁵ In addition, though the warden's prime function was within border law, he also had responsibility for offences under Scots law. By 1573, the responsibility for

⁶³³ The following survey of the courts in the Middle March is intended to assess their role within a legal context only. The problems that wardens encountered in office are considered in the next chapter.

⁶³⁴ Very occasional records exist for a lieutenant's court such as those for that of the earl of Angus at Jedburgh in January 1587. *RPC* iv 146-48

⁶³⁵ Rae 24, 42-68

defence against England had declined in the face of calmer relations between the two countries, though liaison with the opposite warden remained crucial to preserve the new amity. Although commissions of wardenry were to some extent formulaic, each one was different. This reflected the differing circumstances of the time in which it was issued. Increasingly they included the appointment as justiciar of the march. A commission to Buccleuch in 1551 emphasised his responsibility for the defence of the realm, whereas one to Cessford in 1581 made no mention of this function, but underlined his role as 'justiciar'.⁶³⁶ The duality of the warden's role resulted in differing types of courts held by him: a warden's court dealt with domestic offences and was a national court, whereas a court held by a warden at a day of truce meeting with the opposite warden dealt with cross-border offences and was an international court.⁶³⁷ Though the office of warden was not hereditary, in this period in the Middle March it was effectively so. It remained in the hands of the Kers of Cessford, except for 1576 to 1578, when Douglas of Bonjedburgh assumed responsibility for the west part of the march, and briefly during Ker of Ferniehirst's ascendancy in 1584 to 1585.

Balfour attempted to define the warden's jurisdiction:

all wardanis are bund and oblist to expell all theivis, reiveris, and utheris trespassouris, furth of his rowmis, boundis and wardanrie, and hald thame furth of the samin, and sall answer for the inhabitantis and indwellaris of the saidis boundis, and keip all and sindrie our soverane Lord's trew lieges skaithles of thame, of all harmis, reifis, spuizies, or ony uther harm or crime to be done be thame.

The warden was similarly responsible for any who 'committis ony slauchter' and he was to apprehend all 'theives, trespassouris and misdoaris' within his wardenry.⁶³⁸ Apart from the definition of the territorial extent of his jurisdiction, Balfour did not limit the types of crimes a warden was to address or mention any potential overlapping jurisdiction, such as that of the sheriff. His jurisdiction was not limited to border-specific crime, though a prime function of his wardenship was to deal with such.

In his international capacity the warden was both policeman and judge. He was responsible for producing accused men at days of truce with the English and for sitting in judgement at such courts with the opposing warden. In

⁶³⁶ Fraser *Buccleuch* ii 204-5; *RPC* iii 344-48

⁶³⁷ Rae in 'George Neilson: The March Laws' 54 n.3

⁶³⁸ Balfour *Practicks* ii 598

addition, where he was able to capture an offender in the course of his action, or with stolen goods, he could summarily appoint a jury, try and execute the offender. Thus the English East March deputy warden Robert Carey wrote of the way in which he inspired fear in Middle March raiders into the English East March in 1596: he ordered his horsemen

to watch in the fittest places for them, and it was their good hap many times to light upon them with the stolen goods driving before them.

They were no sooner brought before me, but a jury went upon them, and being found guilty they were presently hanged.

Though this was his right, he admitted that it was 'a course which had been seldom used'.⁶³⁹ The Scottish warden had the same rights under march law.

The commission to Sir Walter Ker of Cessford in January 1581 appointed him to the 'wardenrie and justiciarie' of the Middle March (and also to the keepership of Liddesdale).⁶⁴⁰ It similarly made no differentiation between crimes under march or domestic law and Cessford was to hold four justice courts a year to deal with all such offences. When appointed with the commission of justiciar, the warden was given the power to try the four pleas of the crown (robbery, arson, rape and murder). The only limitation put on Cessford in 1581 was that he was to arrest only those caught redhanded: others should be entered for trial by those that stood surety for them. However if 'his master or landis lord refuis or delay upoun requisitioun to ... entir him to the law', then Cessford could effect an arrest.⁶⁴¹ There is evidence that wardens sometimes found this dual responsibility too onerous: in 1586 an ordinance was issued absolving Cessford from responsibility for trial of offences which should be dealt with by sheriffs, provosts or bailies, limiting his duty to offences for which he had to arrange redress with the English warden.⁶⁴² Under the 1581 commission Cessford had the powers of justiciar but, although a warden frequently was granted such powers in this period, it was not always so.⁶⁴³

As a result there was some ambiguity in the powers of the 'warden-justiciars' as Rae termed them, relating to the duality of the warden's office: the

⁶³⁹ *Carey Memoirs* 34-35

⁶⁴⁰ The jurisdiction of the keeper of Liddesdale is dealt with in the section on Liddesdale below - the warden of the Middle March was sometimes, but not always, keeper.

⁶⁴¹ *RPC* iii 344-48

⁶⁴² *RPC* iv 46

⁶⁴³ Goodare notes the difficulty in distinguishing between courts held by the warden in his dual capacity, *Goodare State and Society* 258.

development of this office he noted was 'neither continuous or regular'.⁶⁴⁴ As he further observed, the appointment of a warden effectively superseded the jurisdiction of the sheriff who usually was responsible for the trial of domestic offences: moreover the warden 'was superior in law to other local officials, sheriffs, stewards and bailies of regalities, no matter how powerful they might actually be'.⁶⁴⁵ However, though the warden was theoretically legally superior, a powerful neighbouring official might effectively limit his judicial powers. His jurisdiction could also be limited by exemptions granted to specific individuals within his march, usually as a result of their involvement in a feud with the warden. A warden would try therefore to get privy council confirmation of his authority over all those within his territory. Thus, in 1551, when Scott of Branxholme ran into trouble during his wardenship, due to his feud with the Kers of Cessford, a council ordinance called on all inhabitants of the Middle March to support him.⁶⁴⁶ In 1581 and 1582, the privy council ordered that anyone involved in feud with the warden Cessford was to be exempted from his power of justiciary: if they offended they were then to be tried by a laird from such an area as Fife or Lothian. In 1584, James VI granted an exemption to Ker of Ferniehirst from his enemy Cessford's jurisdiction as warden.⁶⁴⁷

The impediments to a warden's authority, due to his involvement in feud, were an inevitable result of his power in the locality being based upon his surname and alliance. The English certainly thought this, repeatedly ascribing Cessford's actions to his 'meane estate of lyving' which forced him to 'befriend his clan, overlook outrages and support lawless men about him who serve him without charge'.⁶⁴⁸ Cessford's feud with Ferniehirst, exacerbated by his involvement in the murder of Ferniehirst affiliate William Ker of Ancrum in 1590, impacted on his efficacy as warden. By extension of this he was brought into dispute with several burgesses of Jedburgh. In 1602 he complained to the privy council that he could not get the bailies of Jedburgh to deliver one Henderson being reset there: Henderson had been found guilty at a warden court on a day of truce but because Cessford had been unable to enter the offender, he had been forced to surrender one of

⁶⁴⁴ Rae 61

⁶⁴⁵ Rae 77

⁶⁴⁶ Fraser *Buccleuch* ii no. 182

⁶⁴⁷ *RPC* iii 344-48, 448; GD40/2/10/51

⁶⁴⁸ *CBP* ii no. 410

his own men as pledge to the English warden. Similarly Cessford's feud with the Scotts led to another complaint by him to the council against Robert Scott of Thirlestane for his non-entry or payment of money owing to an Englishman, Newton, whose original complaint had been upheld by a warden court. The council ordered the bailies and Thirlestane to comply: however, there is no record of whether this happened.⁶⁴⁹ In any case, the time lapse between the original offence, complaint, warden court and council decision only served to hamper the warden's efficiency.

The warden's jurisdiction could be eclipsed temporarily by the appointment of a lieutenant over the march, whose superior jurisdiction was to the diminution of the warden's role. Usually the office of justiciar was granted with a commission of lieutenancy and a lieutenant's court would deal with offences under both domestic and border law. Records of the 'Justice Courts' held by the earl of Angus, acting as lieutenant in January 1587, made no distinction between domestic and border crime. The court seems to have been concerned principally with the punishment of, or surety taken over, 'reiff, thift and ressett of thift': Calderwood recorded that Angus hung sixteen and the privy council listed ninety-four who should be declared fugitive for non-appearance to answer for such offences. Most of the fugitives were given time to appear but an exception to this clemency was for those wanted for the slaughter of three Scotsmen.⁶⁵⁰ Thus, like the warden's court, that of the lieutenant had both an internal and an international remit.

And also similar to that of the warden, the lieutenant's role could be either primarily military or judicial. By the 1570s, however, he normally acted in a judicial capacity. Rae thought 'the powers they wielded were almost as extensive as those of the king himself': though only temporary appointments 'they possessed all the powers wielded by the wardens, with greater authority and more extensive resources'. This he attributed partly to the wider territorial area of their jurisdiction (often the whole borders rather than one march) and partly to the greater resources, primarily manpower, they had to help them enforce their authority.⁶⁵¹ However, whilst this was

⁶⁴⁹ *RPC* vi 407-8

⁶⁵⁰ *RPC* iv 146-48; Calderwood *History* iv 605

⁶⁵¹ Rae 105-6, 108-11

certainly true of the periods during which there was a lieutenant, the temporary nature of these appointments meant that there was no long-term diminution in the role of warden. If anything, to be effective, the lieutenant would have needed to make use of the warden and his framework of support.

The cases of theft of livestock and goods and those of a violent nature which were not heard before the warden or lieutenant, or had been referred on by the sheriff, were supposed to be heard at regular judicial ayres. However these ayres do not seem to have been regular, and the most usual time when such criminal cases were heard was during the occasional armed judicial raids into the Middle March by king, regent or lieutenant. As courts held in the name of the crown, they had unlimited jurisdiction over offenders and over the types of cases they could hear. They were primarily domestic courts and did not deal usually with crimes committed across the border, which were referred to meetings of the wardens or border commissioners. They were, however, motivated occasionally by diplomatic concerns, particularly in times of greater amity with England, when disturbance in the Borders might be prejudicial to good relations with Elizabeth. Such judicial raids indicated extra government concern in a region but were not a border-specific phenomenon: a muster proclaimed for Peebles in July 1574 was planned at the same time as one to Argyll during which 160 were executed and another to Aberdeen in August when a general band was subscribed by the 'Barons of the North'.⁶⁵²

There were often a number of intentions detectable in any raid. A typical proclamation, in June 1573 for a raid by Regent Morton, said it was 'for persute and invasioun of the saidis thevis and disorderit people, and reduceing of thame to oure soverane Lordis obedience', where they had committed burnings, slaughters, ransoming and theft. Morton spent the last week in August at Ayton Burn and Kelso, receiving pledges and organising reparation for past offences. On this occasion, there was a clear diplomatic interest, Morton reassuring Lord Burghley that 'I have so travailed these days past with our disordered people ... that I hope good fruits shall follow thereon to the comfort of the good people of both countries'. On 29 August, the English and Scottish Middle March wardens met at Haddon Rig and

⁶⁵² *CSP Scot* v no. 31; *TA* xiii 16;

agreed to free prisoners without payment of ransoms.⁶⁵³ In 1576, another raid by Morton accompanied by the lieutenant Angus held courts at Jedburgh from 12 November to at least 6 December for the 'administratioun of justice and punisement of offendouris ... to the establissing of gude ordur'. It heard cases on specific days for each of the regalities of Jedforest, Kelso and Melrose, for the burgh of Jedburgh, for Liddesdale and for groupings of various parishes in the Middle March. The raid was intended to signal co-operation to the English, an order being given to restore goods taken at Redeswyre the previous year. These were to be delivered to the Liddesdale keeper John Carmichael at Jedburgh kirkyard. Anyone not doing so was to be arrested as if they had stolen the goods. The compositions of the court at Jedburgh totalled £5,344 and those of the day-long court held at Selkirk in December were £1,097.⁶⁵⁴ This last suggests that the motivation behind the judicial raids was not merely to suppress crime and impress the English but also to raise money through fines.⁶⁵⁵

Operating at a more local and purely domestic level were the sheriffs, on whom both warden and lieutenant depended to a certain extent, no matter how much they might limit his authority. As CA Malcolm noted, the 'civil jurisdiction of the Sheriff was wide', including cases of spulzie, debt, removing and the brieves of terce, tutory and inquest. There were, however, limits on their criminal jurisdiction. They did not have the right to try the four pleas of the crown unless they had caught the offender 'with the fang' (in the act).⁶⁵⁶ The cases recorded in the sheriff court book of Roxburgh were predominantly civil until the early seventeenth century, including the proving of brieves and arbitration of debt disputes. This situation was changing gradually: for the period from 1610 to 1615 Ferguson quantifies civil actions at this court at ninety-five per cent, but by 1634 this figure had decreased to forty-seven per cent. This she notes as broadly similar to sheriff courts in Fife and Stirlingshire: civil actions dominated the records of the

⁶⁵³ *RPC* ii 242-43, 274, 275; *CSP Scot* iv no. 723; *TA* xii 359-60

⁶⁵⁴ *RPC* ii 566-84; *CSP Scot* v no. 241; *TA* xiii 123;

⁶⁵⁵ The reasons for Regent Morton's judicial raids are assessed in Chap. Five.

⁶⁵⁶ CA Malcolm 'The Sheriff Court: Sixteenth Century and later' in *An Introduction to Scottish Legal History* 356-62, quote on p.360

Dumfriesshire court as well.⁶⁵⁷ However there is some problem with the classification of these actions. Ferguson noted the 'blurred margin' between spulzie (taking without the owner's consent) and theft, suggesting that spulzie occasionally may have been recorded as debt, where the offender was ordered to repay what he had 'borrowed'. Similarly, some cases, particularly disputes over territorial boundaries, may have involved violence but since the arbitration made under civil law, the settlement usually involved compensation rather than punishment.⁶⁵⁸ Also, as W Croft Dickinson suggested, sheriffs may have ignored the requirement for the offender to be caught 'with the fang'. So although actions may appear as civil, they were sometimes of a criminal nature.⁶⁵⁹

There were other limitations on a sheriff's powers: like the warden, the sheriffs were resident in the Middle March and linked into the social framework of the region, which meant that they too were involved in feud. It was possible to be exempted from a sheriff's court on grounds of 'deadly enmity and feud'. Sheriffs were also limited by the exemption from their jurisdiction of certain categories of people: these included any ecclesiastic, any burgh resident within a royal burgh where they had the right to be tried and those living within private jurisdictions, such as that held by the earl of Angus in the regality of Jedforest.⁶⁶⁰ The burgesses of the three burghs of the Middle March, Selkirk, Peebles and Jedburgh, were exempted from the jurisdiction of the sheriff's court, but not from those of the warden and lieutenants. They had the right to be tried by the burgh court, the records for which exist for Peebles and Selkirk, but not for that of Jedburgh. The fact that the sheriff court of Roxburghshire always took place in Jedburgh, often presided over by a burgher as depute for the sheriff, suggests that much of the burgh business was conducted through the shire court. Indeed many of the cases before the sheriff court were concerned

⁶⁵⁷ SC62/2/3-7; Ferguson 'Law and Order' 223-24, 229; P Hamilton-Grierson 'The Sheriff Court Book of Dumfries, 1537-1538' (*Dumfriesshire Trans.* 1918) vol. v 85-109; P Hamilton-Grierson 'The Sheriff Court Book of Dumfries, 1573-1583' (*Dumfriesshire Trans.* 1926) vol. xii 126-224

⁶⁵⁸ Ferguson 'Law and Order' 234. A case before the court of Dumfriesshire in 1583 over the violent eviction of Cristel Irving from her lands at Egilfechan was resolved with the order for payment of all profits from the lands to be paid to her by the offender, P Hamilton-Grierson 'The Sheriff Court Book of Dumfries, 1573-1583' 208

⁶⁵⁹ Croft Dickinson noted that spulzie was a 'quasi-criminal' action and had been criminalised in 1482. W Croft Dickinson *Sheriff Court Book of Fife* (SHS 1928) xxvii

⁶⁶⁰ Ferguson 'Law and Order' 239-40

with repayment of debts owing to Jedburgh burgesses. The cases from 1612 before the burgh court of Lochmaben, just into the West March, were similarly dominated by civil cases: these were a mixture of orders to flit land and repayments of debts, but also included a number of cases where 'blood' was committed.⁶⁶¹

Exemptions from a sheriff's jurisdiction were held also by those within the private jurisdictions of regalities. Though there is a relative lack of record for regality courts in the Middle March,⁶⁶² some do exist, such as the lengthy extracts which have been printed for the bailie court of the regality of Melrose, held under the bailiership of Scott of Branxholme.⁶⁶³ Some papers exist from the court of the regality of Jedforest, owned by the earls of Angus: they are however of limited use for the Middle March because most of the courts they record were for lands territorially outside the march in Angus owned land in Lanarkshire. Cases heard appear to be mostly concerned with disputes over land, payment of rent and orders to flit.⁶⁶⁴ The jurisdiction of Jedforest was further complicated by the contested bailiership of the regality, fought over by Angus and the hereditary bailies the Kers of Ferniehirst in the early seventeenth century. Ferniehirst claimed the right to hold courts there. The earls of Angus however insisted on their rights to repledge inhabitants of Jedforest from trial at other courts, particularly that of Roxburghshire at Jedburgh. In 1601, in a case by Ferniehirst against Jackie Laidlaw of Rawflat, Angus succeeded in having Laidlaw repledged to his own court and out of reach of Ferniehirst. In 1606 Angus's right to repledge his tenants, the Turnbells of Wauchope, to his regality court was upheld by the court of session in Edinburgh, on everything except fire-raising charges.⁶⁶⁵

⁶⁶¹ Peebles Burgh Records and NAS B58/8/3 for 1565-1573,1585; Jedburgh Sheriff Court SC62/2/3-7; for Selkirk, Walter Mason papers and Burgh Court Book 1557-1575, NAS B68/7/1. The Lochmaben court on 26 January 1614 heard one debt case and two cases of unpaid sums owing on land with an order to flit. The next court on 23 February heard four cases of blood of apparently minor nature, one of which received a monetary punishment and one was 'purgit'. John B Wilson (ed) *The Lochmaben Court and Council Book, 1612 - 1721* (SRS 2001) 5-7

⁶⁶² Goodare *State and Society* 226; list of baronial and regality courts in P Rayner *et al*, *Handlist of Records for the Study of Crime in Early Modern Scotland* (List and Index Society, 1982)

⁶⁶³ *Regality of Melrose*. See Chap. Two for the jurisdiction of the bailiary of Melrose.

⁶⁶⁴ GD111/1/17 - bills relating to the regality of Angus 1579-1620

⁶⁶⁵ Pitcairn *Trials* i pt. ii 370-77, 509-11; GD40/13/41

Whatever the limits on a sheriff's jurisdiction were, it does seem as if they were broadly able to maintain their authority through the period. Ferguson found the position of the English sheriff much in decline in comparison to the 'remarkable stability in the position of his Scottish counterpart'.⁶⁶⁶ However such a comparison is inappropriate given the different nature of the office in the two countries. The office of sheriff survived Union, outlasting those of warden and lieutenant, and was not affected initially by the appearance of JPs in 1610.

Types of crime in the borders

Records of crime appear in privy council registers, the Books of Adjournal of the court of high justice in Edinburgh and Pitcairn's summary of these in *Ancient Criminal Trials*, Court of Session records,⁶⁶⁷ sheriff and regality court records, English warden reports to 1603, those of the Middle Shires commissioners from 1605 to 1625 and, from the later part of the sixteenth century, presbytery and kirk session records. The keeping and registering of some of these records, in particular the privy council register, reflected the contemporary priorities of the government, generally at a time of increased concern, and as such they cannot be taken as a quantitative survey. However they do provide both a qualitative record of crime in the Middle March and a history of government reaction to it.

The preambles to many border-related ordinances repeated a litany of offences: the 'band of Roxburgh' subscribed by a large number of borderers at Jedburgh in 1573 listed 'the innumerabill slauchteris, fyre rasingis, thifts, reiffis, heirschippis and utheris detestabill enormiteis, dailie comittit'. The act of 1587 reiterated the problems of 'reiff, thift or ressett of thift, depradationis opin and avowit fyre raising upoun deidle feidis'.⁶⁶⁸ Some of the crimes listed were peculiar to the Borders: in 1573, a proclamation of a muster at Peebles included the complaint that the 'disorderit people' were harming the law-

⁶⁶⁶ Ferguson 'Law and Order' 210

⁶⁶⁷ It has been outside the scope of this study to analyse the justice court and Court of Session records. Wasser's analysis of seven one-year samples of these between 1603 to 1638 has been of great help here. No such analysis exists for the period before 1603. Wasser 'Violence'

⁶⁶⁸ *RPC* ii 242-43; *APS* iii 461-67

abiding there by 'ransoming of thair personis, and constraining thame to pay blak maill, quhairby divers gude and proffeittabill landis ar utterlie herreit and laid waist'.⁶⁶⁹ In times of increased government concern over relations with England, or the succession there, ordinances were made against cross-border crime. One of 1587 ordered that 'nane of thame tak upoun hand to ryde in England in weirlike maner, or to rais fyre, mak depredationis, or committ slauchtar, reif, thift, or ressett thairof, upoun quhatsumevir personis, inhabitantis of the realme of England' under pain of death.⁶⁷⁰

The type of language used by government in such ordinances reflected the government's perception of the Borders, which appeared to be worsening throughout the sixteenth century, as government priorities in the region changed.⁶⁷¹ The borderers they described were stereotypical and generalised. The perpetrators of crimes in the Borders were variously described as 'disorderit and wickit personis'.⁶⁷² The muster of 1573 complained of the borderers' actions being 'to the greit hurt of the commoun weill'. The act of 1587 noted the 'wicked inclinaioun of the disorderit ... foiranent England ... delyting in all mischeiffis and maist unnaturallie and cruellis waistand flayand heryand and distroyand' to the detriment of their 'awin neighbouris'. Their offences were the 'maist barbarous cruelties and godless oppressionis'.⁶⁷³ These offenders were not mere common criminals but, in another ordinance of 1587, 'thevis, tratouris and malefactouris owthir aganis the gude peax and amytye standing betuix the twa realmes or his awne peceable and gude subjectis':⁶⁷⁴ in other words, because their crimes took place in a region of sensitivity bordering on a foreign nation, the criminals were prejudicing the security of the whole realm. The crimes were not merely theft from their neighbours, but traitorous to their country and king: and since the king was so by divine appointment, any challenge to him was seen as evil or 'godless'. Such condemnation increased through the 1590s, when it became even more important to James to keep the amity on the Borders in order to secure the succession. A preamble to ordinance of 1599 complained of those

⁶⁶⁹ *RPC* ii 548-59

⁶⁷⁰ *RPC* iv 209

⁶⁷¹ Goodare analyses a similar trend in government's perception of the stereotypical highlander. Goodare *Government of Scotland* 222, 233-35

⁶⁷² *RPC* ii 558-59

⁶⁷³ *RPC* ii 242-43; *APS* iii 461-67

⁶⁷⁴ *RPC* iv 188

disordourit and brokin men of the Bordouris, enemyis to the publict peace and quietnes betuix the realmes, [who] hes of lait committit divers insolenceis and enormities in hostile and weirlyke maner within the realme of England, to the evident preiudice and violating of the peace and amitie.⁶⁷⁵

Government's reports of crime had an extra level of meaning added to them and as such they cannot be used as an accurate depiction of reality. These reports, however, did colourfully illustrate the effect of changing government priorities on its perception of the crime in the Borders.

It is necessary to look at the exact nature of these crimes. The most common complaint was against theft. Theft was variously termed: 'thift', the illegal removal of someone else's goods; 'spulzie', the removal or borrowing of goods without someone's permission, either with intent to return or claiming them as their own; 'heirschip', theft with violence, often used to describe raiding and 'reif', also used to describe raiding, in particular theft of livestock. In the Borders the theft was usually that of cattle or sheep, and sometimes movable goods: this was predictable because the wealth and subsistence of the borderers was dependent on the animals that were pastured there.

The theft of what provided subsistence in the region was seen by government as particularly significant: it deemed that theft of cattle had replaced ordinary farming or other honourable employment as a way of life. Theft therefore struck at the core of society, impeding normal agricultural practices and fostering further instability in the Borders, if it were not exemplarily dealt with 'without immediate remeid'. Central government's view of an endemic lifestyle in the Borders, based on theft, was perceived as deleterious to the 'peace, quyetnes, and gude ordour' in the region. This was evident in a privy council instruction to the new commissioners of the Middle Shires in 1605: they were to expel 'all idle vagaboundis quhais meanis to leif and sustene thameselffis being unknawyne caryis ane presumptioun of thair unlawfull maintenance'.⁶⁷⁶

Another form of theft, that of crops, was increasingly brought to the attention of central government. Often referred to as 'intromission with the

⁶⁷⁵ *RPC* vi 13

⁶⁷⁶ *RPC* vii 701-4

teinds' of someone's lands it was usually associated with a dispute over ownership of the lands. Such cases frequently resulted in violence. In 1601, William Paterson, portioner of Windylaws, brought a case against Andrew Pringle, also portioner there, for slaying several sheep on his lands over the last year, harrasing his servant, stripping 'his haill claithis of him, strak and dang him, and left him naked, and schortlie thairefter invadit and persewit [Paterson] ... for his slaughter' and then 'pasturit his guidis upoun [Paterson's] ... growand cornis'. In 1602, Jackie Laidley of Antrop accused the Rutherfords of the Toftis for scaring him off his lands, throwing his corn in the river Jed, burning down his house, and theft of his goods and animals throughout 1601. The Rutherfords, failing to appear before the privy council, were denounced rebel.⁶⁷⁷ In March 1597, a complaint was made by provost and bailies of Peebles against Robert Scott of Thirlestane for using 'open oppression' to keep them from the burgh common lands of Cademure. It described how Scott and his allies 'with braid aixis and swerdis ... cuttis five plewis pertening to the inhabitants'; they came 'in hostile and weirlyke maner to the portis of the said burgh and with bendit pistollettis and uthir armis persewit the said complanirs of thair lyveis'.⁶⁷⁸ Such violence was often a feature of dispute.

Extreme violence sometimes resulted in slaughter. In 1601, a case was brought by Sir Andrew Ker of Ferniehirst, as provost of Jedburgh, against the Turnbolls of Bewlie and Thomas Turnbull apparent of Minto, for armed convocation in the burgh against his order 'that nane sould repair to the ... mercat bot in sobir and quett maner'. However, 'they haifing consavit ane deidlie feid aganis him and umqle Thomas Ker of Caveris ... for his slaughter and hurt, and woundit him in divers pairtis of his body', then shot dead him and his servant. Given that the wearing of pistols had been outlawed, the prosecution said that for the 'shuiting and weiring of the saidis dagis and pistolettis ... [they] sould be puneist in thair persounes and guidis, according to the lawis of this realme, in example of utheris'. The Turnbolls were found guilty of murder, but acquitted of armed convocation. Their sentencing was referred to James for advice and Andrew Turnbull was beheaded in Edinburgh.⁶⁷⁹ This was not the end of it, however, for in 1615, Ferniehirst

⁶⁷⁷ *RPC* vi 224, 331-32

⁶⁷⁸ *RPC* v 373-74

⁶⁷⁹ *Pitcairn Trials* i pt. 2 370-77, 378-81; *RPC* vi 261-62, 266, 310

received a remission for his involvement in the slaughter of Robert Turnbull of Bewlie in 1601, that of Hector, son of Walter Turnbull of Bewlie in 1604 and that of Hector Turnbull of Stanyledge in 1611.⁶⁸⁰ This was but one case of many such crimes occurring in the Middle March, but it should not be viewed as something that was a regional characteristic. In the late sixteenth century, feud was a national phenomenon.

When the theft was cross-border it acquired an extra dimension. The opprobrium attached to it depended on the state of Anglo-Scottish relations at the time. As Goodare notes, if relations were bad 'far from being punished, the criminals would be encouraged'.⁶⁸¹ However, in 1586 to 1587, and from 1597 onwards there was a detectable increase in government condemnation of raiding across the border. The largest part of English warden reports recorded theft by Scots in England: those of the Middle March reflected raiding into Tynedale, Redesdale and north-east Cumberland. A typical English report was that by Sir Robert Carey in June 1596 describing a raid by the Kers, Youngs and Burnes at Hethpool in Northumberland in which forty cattle were taken: the following month, Carey's figures for recent raids into the English East March enumerated 296 cattle, forty-three horse and 1,055 sheep taken 'by our unruly neighbours of Tyvidale'. The value of spoils taken from its Middle March in 1596 were estimated by the English at £15,876 sterling.⁶⁸²

All these figures, however, have to be considered with some caution. It was often in the English warden's interest to inflate such figures, either in attempts to get compensation from the Scots, or in underlining the importance of his office to the English government. Lord Scrope, the English West March warden, certainly exaggerated his figures when he complained that Buccleuch was 'ready with 3,000 men on the border side to invade us' in August 1596, though he was happy to admit to an English raid into Buccleuch territory that had brought back 400 sheep. Cross-border raiding often had a violent nature: a government ordinance in 1597 for the restoration of English goods and prisoners taken in a raid that July noted that

a grite noumer ... [had] enterit in weirlyke and hostile maner within the realme of England ... be oppin force and violence hes not onlie reft,

⁶⁸⁰ GD40/7/31

⁶⁸¹ Goodare *State and Society* 220

⁶⁸² *CBP* ii nos. 281, 295, 323

intromettit with and brocht away a grite quantitie of guidis, bot a grite noumer of prisoneris, with thair horssis and armour.⁶⁸³

The size of such raids varied but the larger scale ones gave them their notoriety. Peter Dixon, in his thesis provides a useful table of the size of raids from 1526 to 1603.⁶⁸⁴ This shows a decline in the average size of recorded raids through the century, with a slight rise from 1591, which may have been the result of increased reporting by wardens. Raids by between fifty and 200 men represented over forty-seven per cent of the raids recorded between 1550 and 1585, declining to twenty-two percent of the raids between 1586 to 1590. Raids with over 200 men remained fairly constant throughout the century at between 1.4 to 1.9 per cent. Significantly, after 1585, over half the numbers of raids were accompanied by under ten men though Dixon feels that these figures probably reflected increased reporting of smaller raids. Thieves from Liddesdale dominate the league table: Liddesdale accounted for eighty per cent of raids from 1580 to 1585, dropping to twenty-two per cent for the next period to 1590, a slack taken up by the increased number of raids attributed to the Grahams of the West March. Bills against men of Teviotdale in the Middle March accounted for an average of twenty-two per cent from 1586 to 1603. Most of the rest are accounted for by the West March. Over the period 1510 to 1604, over 50,000 cattle were claimed to have been stolen. English offences are under-represented in these figures due to the fewer numbers of surviving Scottish bills of complaint. These figures were also subject to the overestimation by English (and Scottish) wardens and complainants of numbers stolen.⁶⁸⁵ The impression given by these figures is that the levels of raiding remained fairly constant from the 1570s to the late 1590s, a view which Rae broadly shared.⁶⁸⁶

Sentencing policy on theft reflected contemporary concern about it. Balfour recorded that 'gif ony man dwelland upon the bordouris ... swearis thameselfis innocent of the crimes' of theft but after trial were found guilty,

⁶⁸³ *CBP* ii nos. 332, 336; *RPC* v 404-5

⁶⁸⁴ Dixon 'Fortified Houses' 75

⁶⁸⁵ Dixon's figures are based on reports in *CBP*. He attributes a huge rise in the total number of recorded raids in the period after 1585 to a greater frequency of reporting, partly as a result of increased government interference on both sides of the border, rather than to an increase in numbers of raids. These reports cannot 'be accepted as proof of a real increase in violence'. Dixon 'Fortified Houses' 73-74

⁶⁸⁶ Rae 220

they 'sall be justifyit to the deid thairfoir'.⁶⁸⁷ In 1597, in fear that a 'publict weare' would result from the raid of July, James declared that he would pursue the miscreants 'with fyre and swerd, with all rigour and extremitie, to the ruteing oute of thame, thair race and posteritie'. That November, the privy council ordered that no longer was mercy to be granted to thieves who were to be 'puneist ... to the deid'. In 1599, to prevent the 'violating of the peace and amitie quhilk sa happelie hes continewit betuix the realmis' James was 'resolved ... to persew and punishe will all rigour the disturbaris' of the peace.⁶⁸⁸ The use of such severe rhetoric by James reflected worsening in the general perception of the borderers. The use of such rhetoric was not just mere words for this perception resulted in the formation of new ordinances applicable to the Borders. In 1605, the government's view of theft, as one of the root causes of disorder in the whole cross-border region, prompted a severe sentencing policy on anyone stealing goods across the border. Those taking cattle valued at more than twelve pence were to be sentenced to death. In contrast, attacking an Englishman with a weapon was punishable only by twenty days in jail: if harm was involved, the offender was to be jailed until some form of satisfaction could be given.⁶⁸⁹

The reset of theft was seen as almost as heinous as theft itself because it was seen to encourage criminals by providing them with safety: this was particularly so in relation to any cross-border crime, where offenders could escape over the border out of reach of their kingdom's jurisdiction. In November 1576 the privy council claimed that 'the cheif cause of all the stowthis and utheris disordouris committit within ayther of the realmes be the wicked and inobedient subjectis inhabitin the frontiers of baith, is the resett supplie consort and ayd gevin to the fugitives rebellis and outlawis'; it ordered that resettters were to be punished the same as if they had committed the crime themselves.⁶⁹⁰

Cross-border crime was certainly extensive. It should, however, be viewed within the context of cross-border relations and separately from internal crime within the march. Contemporarily and historiographically, reports of cross-border crime have influenced the perception of crime within the

⁶⁸⁷ Balfour *Practicks* ii 595-96

⁶⁸⁸ *RPC* v 404-5, 422-23; vi 13

⁶⁸⁹ *RPC* vii 707-9

⁶⁹⁰ *RPC* ii 476-77

region. Furthermore, concentration on border-related offences should not preclude the consideration that although, for example, cattle raiding was not prevalent in the Lowlands, other offences that caused equal concern, such as counterfeiting, treason or feud, did occur there. Maitland was talking about the whole country when he lamented that

In Scotland gritter miserie
grit ewill in to this land we se
As slauchtir hirschep thift and reiff
Distruction of all polecey
and all manner of maist mischeiff.⁶⁹¹

Though impossible to quantify, crime in the Borders does appear to have been higher and certainly it was perceived to be so contemporarily. This study has enumerated the entries related to violent crime appearing in the published privy council records from 1573 to 1599.⁶⁹² All entries mentioning slaughter, feud, assault and violent theft have been included as have the numerous acts of caution for one party to remain 'harmless' of the other. Such acts indicated feuding was taking place or violence was threatened and often they were the only official record of a feud existing. The figures show a significant increase nationally in the record of violence from about 1587. This was accounted for by the dramatic increase in the numbers of assurances being subscribed as central government drew the resolution of private dispute into its remit. Over the whole period, violent crime in the Borders represented about twenty per cent of the total figures for Scotland. If the population of the Borders was about ten per cent of the national figure, this percentage would suggest a higher incidence of violent crime within the Borders than elsewhere in Scotland. A six month sample of the cases appearing before the Court of Session from June 1605 to March 1606 shows a similar ratio of incidence of cases from the Borders and the Middle March relative to the rest of Scotland.⁶⁹³

However, though some assurances, registered by the privy council, were subscribed by highlanders at Aberdeen and Inverness, there were almost no assurances from the western Highlands. This meant that violence in the Highlands was misleadingly under-represented in national figures and the

⁶⁹¹ Maitland 'Lament for the Disorderis of the Cuntrie' in WA Craigie (ed) *The Maitland Folio Manuscript* STS (1919) vol. i 317-20

⁶⁹² *RPC* ii-vi; See App. G

⁶⁹³ CS7/216

Borders, almost certainly, over-represented. This was partly a result of the greater proximity of the Borders to Edinburgh. However, crucially, the apparatus of government was far more developed in the Borders than in the Highlands. As Goodare notes, the 'nerve-ends' of government were particularly sensitive in the Borders.⁶⁹⁴ Once the crown began to insist on the central resolution of feud, it was relatively easy to encourage the borderers to subscribe assurances. As might have been expected, the East March accounted for significantly less record of violence than the Middle and West Marches. Perhaps the surprising thing here was that the figures for the West and Middle Marches roughly approximate: this did not reflect the greater degree of council concern over the West March, particularly in the 1590s. The similarity in figures was due to the higher frequency of cautions being subscribed by men from the Middle March who were closer to Edinburgh than their Western counterparts. It could also suggest that the framework of government was more effective in the Middle March.

Wasser has quantified the number of cases appearing before the central criminal courts, the privy council and the High Court of Justiciary, for seven one-year periods between 1603 and 1638. He also found that cases of violent crime from the Borders numbered about twenty per cent of the total: this he contrasts with population figures and surface area estimates for the Borders of just under ten per cent. His conclusion is that using these figures, violent crime in the Borders was twice the per capita national average and that the Borders had 'an ongoing severe problem with violence'.⁶⁹⁵ However, noting the huge number of cases from elsewhere in Scotland, he concludes that violence was not a 'regional phenomenon'. Instead, he concludes that the large numbers of cases from the Borders illustrated how well the region had become integrated into the machinery of central government' and, therefore, that violence there was probably over-represented.⁶⁹⁶

Reports of crime were thus a reflection of an evolving framework of government. As a result, if the crown's policies in the Borders were to alter, it was able to impose its will in the locality. Similarly, Dixon warns that the increased reports of cross-border crime from the 1580s were attributable to

⁶⁹⁴ Goodare *State and Society* 258

⁶⁹⁵ Wasser 'Violence' 57-58

⁶⁹⁶ *Ibid.* 13, 56, 58, 62

more centralised government and as much part of 'internal politics', unconnected with the situation in the Borders, as any real increase in crime there.⁶⁹⁷ The figures for violence may not be quantitatively accurate but they do give a qualitative impression that violent crime was taking place throughout Scotland. Violence in Fife was no more out of the ordinary than in the Borders. The impression that such figures give of crime in the Borders therefore should be viewed with caution: government perception of disorder in the Borders was affected both by changing priorities there and its nearer physical proximity to the region.

There was perhaps more violence in the Borders but not overwhelmingly so. Moreover, it appears that the incidence of cross-border crime was greater in the West March than in the Middle March, particularly if the figures for Liddesdale are excluded. It is probable that the extensive reports of cross-border crime gave a misleading impression of crime being prevalent *within* the region. The government, however, tended to describe crime in any part of the Borders as general to the entire Scottish Borders. As a result, events in the West March tended to colour the impression of the Borders as a whole: this would not be representative of the situation in the quieter East March and probably would be unrepresentative of the majority of the Middle March too.

Feud and government intrusion into its settlement⁶⁹⁸

In 1595, James having considered the state of the

commounweill, altogidder disordourit and shaikin louse be ressoun of the deidlie feidis and contraverseis standing amangis his Hienes subjectis of all degreis ... calling to mynd quhat unnaturall slauchtaris, bludeshed, barbarous cruelteis and inconvenientis hes occurit

had lately decided to 'purge this land of the proude contempt' of government that he felt feud represented.⁶⁹⁹ He ordered a number of outstanding feuds to be brought for resolution before him and his council, so that by his own 'panes and travellis', 'perfyte reconsiliatoun and agreement' would be had amongst all the lieges. Having not seen much progress in

⁶⁹⁷ Dixon 'Fortified Houses' 74

⁶⁹⁸ App. F Feuds

⁶⁹⁹ *RPC* v 248

such resolution, the act anent feuding was passed by a convention of estates in 1598.⁷⁰⁰

Contemporarily, feud was seen as one of the main reasons for disorder in the borders: a preamble of 1599 complained that

the cheiff and onlie caus of the grite misreule and unquietnes of the West Bordour ... hes bene the deidlie feidis and querrellis standing betwixt the principall noblemen and barronis within the said Bordour, and seing the said Bordour can not be quieted and settled ... unless the saidis feidis be removeit.⁷⁰¹

English wardens would have concurred with this view: an English report of 1596 provided an exaggerated description of 'deadly foed, the word of enmitye in the Borders, implacable without the blood and whole family distroied'.⁷⁰² But as has already been noted, Wormald has shown that the 'widespread acceptance of the principle of compensation rather than retribution' meant that there was an inherent framework of resolution of dispute within feud and a means to stop the further escalation of violence.⁷⁰³

However, in the 1590s it is clear that feud was seen by government as a nationwide problem. Subsequent historians (until Wormald and Keith Brown) have been keen to note feud as a characteristic of the Borders, ignoring contemporary concern over its incidence elsewhere. Ian Rae voiced a consensus of opinion: feud was a 'specific cause of turbulence on the borders' where 'border society was turbulent by nature'.⁷⁰⁴ Curiously, he made no mention of feud being considered a matter of concern elsewhere in Scotland. His excellent summary of the process of resolution of dispute within a feud and Maitland's policy of channelling 'the settlement of these [border] feuds towards the law rather than to allow violence to take its course',⁷⁰⁵ did not go on to include the legislation of 1598 on something seen as a *national* problem. It is important to consider feud in the Borders within this national context: of the thirty-four nobles and lairds in dispute listed in the ordinance of 1595, only four were from the Borders: Sir John Edmestone

⁷⁰⁰ *APS* iv 158-59;

⁷⁰¹ referring to the West March *RPC* vi 46

⁷⁰² *CBP* ii no. 323; Jenny Wormald challenges this sort of excessively wide definition of feud encompassing whole surnames. *Wormald Court, Kirk and Community* 37; Wormald 'Bloodfeud' 70-71

⁷⁰³ *Wormald Court, Kirk and Community* 36

⁷⁰⁴ Rae 10, 126

⁷⁰⁵ Rae 211

of that ilk was at feud with Mr William Cranstoun (the future captain of the border guard, Lord Cranstoun) and James Tweedie of Drumelzier (an inveterate feuder) at feud with Charles Geddes of Rachan.⁷⁰⁶ For the period 1604 to 1610, 1,965 acts of caution were registered in Scotland and predominantly related to feud. Of these around 330 were for the Borders, that is about seventeen per cent. Of the acts of caution from the Borders around a third originated in the Middle March, (that is 6.1 per cent of the total) very many fewer in the East March and around a half from the West March.⁷⁰⁷ These figures for the Borders broadly concur with Keith Brown's findings that feuds in the Borders numbered around twenty-three per cent of the national total, compared with a figure of forty per cent for the Lowlands south of the Tay.⁷⁰⁸ It should also be borne in mind that the proximity of the Borders to Edinburgh made it possible for more cases to be brought before the central courts for resolution than from places that were further away. Cases from the Borders were overrepresented in the figures. Feuding was happening in the Middle March but not at a rate that far outstripped that in the rest of Scotland.⁷⁰⁹

With this context in mind, it is necessary to look at crown intervention in feud in the Middle March: such crown interest was increasing here as elsewhere during the 1580s. In 1586 it was seen as a particular problem in Jedburgh. The council was informed that the numerous feuds existing within the burgh were getting in way of the execution of justice: 'be resson of the saidis deidlie feidis standing unreconsilit ... [the bailies of Jedburgh] can nawayes gif obedience to the said charge without the perrell and dangear of thair lyveis'. Feuds listed there included that between many of Jedburgh's residents and William Ker of Woodhead for his killing of John Rutherford and another between the Moscropes and Sir Thomas Turnbull.⁷¹⁰ In June 1586, the council banned anyone from attending a planned day of combat between the Burnes of the Middle March against their enemies from the English Middle March, since if others attended 'amangis quhome sa mony querrellis and deidlie feidis being standing, it is to be feirit that ... sum

⁷⁰⁶ *RPC* vi 248-49

⁷⁰⁷ *RPC* vii 545-697; viii 629-733

⁷⁰⁸ Brown *Bloodfeud* 6-7, 277

⁷⁰⁹ See App. G

⁷¹⁰ *RPC* iv 57-58

unhappy accident fall oute'.⁷¹¹ A couple of months later, the council intervened in the feud between Lord Hay of Yester and Scott of Buccleuch. Understanding their 'inordinate, contemptuous, and laules' actions including 'oppin weir and hostilitie ... divers slaughtaris, mutilationis, grite heirships and depredations, to the wrak of mony trew men', both men were ordered to find surety within six days of £10,000 each. No longer would their 'insolent and outrageous cruelties' be tolerated. In 1587, the council complained that 'the variance between the two parties has not been removed' ordering them to find new assurance. They were also to submit 'ane submissioun of the saidis differenceis to his Majestie ... quhairthrow travellis may be tane for removing of the same ... and satisfioun of the pairty offendit'.⁷¹² The government was intervening increasingly in the resolution of feud in the Middle March as elsewhere in Scotland.

However, in the 1590s, crown interest in resolving feud in the Middle March was heightened by the international implications of feud there, in particular that between two crown officials, Cessford and Buccleuch. This continued despite the marriage of Buccleuch to Cessford's sister. In May 1596 Lord Eure, the English Middle March warden, drew satisfaction from the continuing dispute noting that Cessford's 'quarrel with Buccleuch is a means of peace with us, who he fears may join his adversary'. Two months later, James sent for Lord Home, Cessford and Buccleuch 'some think to reconcile the two latter - others that it is to settle better justice on the border'.⁷¹³ The English were involved in feuding too: in 1597 Robert Carey told Burghley that 'there was not one of his officers or men but was in deadly feud with the Tevidale surnames'. Buccleuch himself was involved in a feud with the Charltons of Hesleyside in Tynedale, Eure complaining in 1597 that he had 'revived with cruel revenge, his malicious feede' against Tynedale.⁷¹⁴ There were complaints against Cessford too: in 1600 he was accused of the murder of four in England and the slaughter by his adherents of twenty-four of Sir Cuthbert Collingwood's men. Despite crown efforts, Buccleuch and Cessford were still enemies in 1597, when Buccleuch replied to his brother-in-

⁷¹¹ *RPC* iv 81

⁷¹² *RPC* iv 98, 210

⁷¹³ *CBP* ii nos. 265, 293

⁷¹⁴ *CBP* ii nos. 561, 612. Forster too had been involved in various feuds within Northumberland. Meikle 'Sir John Forster' 126-63; Braddick *State Formation in Early Modern England* 375

law's letter 'your brother in na termis'.⁷¹⁵

The obstructive effect of Cessford's feud with Ferniehurst, noted above, did not remain unaddressed. In 1596, James intervened, forcing a public reconciliation between Cessford on the one part and Ferniehurst and Ker of Cavers on the other over the murder by Cessford of Ferniehurst's ally William Ker of Ancrum in 1590. All involved were made to shake hands in front of James and his court: the dispute was not fully resolved, however, Ferniehurst reserving the right for Ancrum's heirs to pursue the murder further on reaching their majority.⁷¹⁶ In 1600 the English reported that there was 'some appearance that ... Ancrum's slaughter may be renewed against Sir Robert again.' In 1602 James, understanding that 'the quirrill and deidlie feid standing betwixt' Lord Roxburgh, Ferniehurst and his friends was not reconciled and worried that 'sum inconvenient may ensew to you trubling ... that peacable estates' of the country, ordered the two to sign bonds of assurance.⁷¹⁷

Feud was a characteristic of life in the Middle March, as it was elsewhere: when feud began to be viewed as a problem, the same measures were taken to suppress it in the Borders as throughout Scotland. In this the crown was supported by the acquiescence of the nobles and lairds: in 1619, fearing a resumption of feud, Roxburgh wrote to Ferniehurst having heard of an injury sustained by a Ferniehurst man in a brawl with one of his. He offered to take such measures as Ferniehurst recommended 'to teach them to live more civilly and quietly'. This, from a man, involved personally in several feuds in the 1590s, was typical of the way in which prominent figures everywhere had changed their attitude towards feud in line with government policy. The chief perpetrators of feud had become the agents of its suppression.⁷¹⁸

⁷¹⁵ *CBP* ii no. 842; *CSP Scot* xiii pt. i no. 640

⁷¹⁶ *RPC* v 273

⁷¹⁷ *CSP Scot* xiii pt. ii no. 526; GD40/9/3

⁷¹⁸ GD40/2/12/50

Liddesdale

The valley of Liddesdale to the south-west of the Middle March was technically part of that march, but traditionally it was administered separately by a keeper. Though nominally within the sheriffdom of Roxburghshire, Liddesdale appears to have been effectively outside the remit of that sheriff and though the warden of the Middle March was sometimes also keeper, this was not often the case. It therefore merits a section to itself. More than this, however, was the fact that it was seen as an area of particular concern by both Scottish and English governments, in a region that was already the subject of heightened concern. Raids across the border by Liddesdale men had the added dimension that they threatened Anglo-Scottish amity: in 1587, Forster worried that the 'oppin attemptatis and incursis committitt be Liddesdaill is lyklie to cause the haill Bordouris brek, gif spedie remeid be nocht provydit'. The Liddesdale historian RB Armstrong attributed the necessity for a separate official to 'the extreme lawlessness of its inhabitants'. The levels of cross-border crime here were certainly higher here in comparison to the rest of the march, given the frequency with which they were mentioned in reports, though it is almost impossible to quantify these.⁷¹⁹

The opprobrium with which Borderers were viewed as a whole was multiplied in government reports on Liddesdale. A band by the men of the Middle March in 1569 committed them to assisting in the suppression of 'the rebellious people inhabitantis of the cuntre of Liddisdaill and utheris thevis: ... having regaird to the innumerabill slauchteris, fyre raisingis, heirschippis and detestabill enormiteis dalie committit be thame upoun the peciabil' subjects, in particular by 'personis of the surnames of Armestrang, Elliot, Niksoun, Crosar, Littill, Batesoun' amongst others. It was enough to characterise someone as an inhabitant there for their heinous nature to be understood. Voicing the court's perception of the region, Maitland's poem complained 'Aganis the Theivis of Liddisdaill':

Off liddisdaill ye commoun thevis
Sa peirtlie stelis, now and revis

⁷¹⁹ *CBP* i no. 514; Armstrong's *History* is comprehensive and extensively researched, but frustratingly he never finished its second part, the narrative ending in 1530. His copious notes are in the NLS. RB Armstrong *The History of Liddesdale Eskdale Ewesdale Wauchopdale and the Debateable Land* (1883) 10-11; NLS MS 6110-20; Rae 35-37

That nane can keip, hors nolt nor scheid
Nor yit dar sleip, for thair mischevis...

Thai have neir hand hirreit hail
Ettrik forrest and Lawderdail
now ar thai gane, in lowthiane
And sparis nane, that thai will waill.

He thought 'ye mekle deill thame gydis' and that all they had 'the deill
ressaif'.⁷²⁰

Traditionally the keepership had been hereditary, granted to the earls of Bothwell in 1491 as lords of the regality of Liddesdale.⁷²¹ However James V found the Bothwells unreliable and began to appoint his own nominees: at the beginning of the period of this study, the keepership was a crown appointment, filled from 1574 for seven years by the capable John Carmichael of that ilk. He had jurisdiction there as a crown appointed official with equivalent status to the warden. Buccleuch's commission for the keepership in 1551 was very similar to that for his wardenship.⁷²² On the forfeiture of Bothwell in 1594, the keepership was granted on an hereditary basis to Buccleuch as the new lord of the regality of Liddesdale. His jurisdiction there thus carried the authority of a crown appointee and that of a private jurisdiction. His widowed mother Lady Margaret Douglas, who had subsequently married the earl of Bothwell, appears to have been holding courts there on behalf of her son in his absence in 1603, when a case against a Liddesdale man was referred to her by the deputy keeper of Hermitage.⁷²³ Though jurisdiction in the Middle March and Liddesdale was sometimes joined when the warden was also keeper, the only jurisdictions superior to that of the keeper were those of the crown and the occasional lieutenants. In a judicial raid at Jedburgh in 1576 by regent Morton, with the earl of Angus as lieutenant, a day was designated for the hearing of cases from the regality of Liddesdale.⁷²⁴

There were, however, discrepancies between the effectiveness of the keeper's jurisdiction, and the consistency of his actions, and what was

⁷²⁰ *RPC* ii 650-53; Maitland 'Aganis the Theivis of Liddisdail' in WA Craigie (ed) *The Maitland Folio Manuscript* STS (1919) vol i 301-3

⁷²¹ *RMS* ii 2092

⁷²² Rae 36; Fraser *Buccleuch* ii no. 201

⁷²³ *RPC* v 178, 191-92; vi 539

⁷²⁴ *RPC* ii 567-68

expected from him by the crown. The English complained in 1579 that the 'officers of Lyddisdale ... had neither the authority nor assistance to do or execute their offices'. They also noted that the 'particular quarrels betwixt Cesford [the warden] and [Carmichael the keeper] for the earl of Morton his master's causes ... cannot but be a hindrance to justice.'⁷²⁵ The aforementioned case of 1603 throws into light some of the complexities of the situation. The accused, Sym Elliot of the Banks, 'ringleader of the thieves' who included three Armstrongs amongst others, was charged for armed theft and assault. At the request of the complainant the deputy keeper, Robert Scott of Haining, agreed to refer the matter to Lady Bothwell's court: though the complaint was upheld, Haining delayed in apprehending the accused and the complainant was forced to take the matter to the privy council. Haining was denounced rebel for failure to produce the accused and his own non-appearance. This left a situation where the official responsible for effecting justice in Liddesdale found himself being pursued by the crown.⁷²⁶

The complainant had implied that Haining was reluctant to fulfil his duty in this case: this was probably because of the adherence of the Elliot and Armstrong surnames to Scott of Buccleuch, during whose absence Haining was acting as both keeper and temporary head of surname. A number of Armstrongs and Elliots who 'hes given thair bandis to him [Buccleuch], comes under his standart and baner' and Haining as Buccleuch's 'governor' was forced to assume responsibility for them.⁷²⁷ He had already been pursued in a number of other cases against them. He was therefore caught in a position where he was responsible for delivering his adherents to what was technically his own or his ally's justice. The English Middle March warden in 1596, Lord Eure, complained that he could not get any redress from Buccleuch for Liddesdale, since all of Liddesdale are allied with him 'by oathe and scripture'.⁷²⁸ This was often the case with the Ker wardens of the Middle March and their own Ker affinity, but in Liddesdale the problem was exacerbated in the 1590s by the combination of Buccleuch's lordship of the entire area, the obligations involved in his personal ties with most of the inhabitants and the duties of his keepership.

⁷²⁵ *CSP Scot* v nos. 443, 446

⁷²⁶ *RPC* vi 538-39

⁷²⁷ *RPC* vi 179-80

⁷²⁸ *CBP* ii no. 232

The crown's continuing use of a system of assurance to impose the law was inherently problematical, asking as it did for surname leaders to present to justice their own adherents on whom they themselves were dependent for support. This could not have been more clearly illustrated than by the surnames of Liddesdale. The principal leaders of surnames here had often acted independently of the other surnames of the march. As a result, though they provided pledges from within their surname, they were not tied into the system of assurance and surety of the rest of the march. There were some attempts to extend the ties of obligation for Liddesdale into the rest of the march. In 1569, a number of pledges were entered for (and from) the Armstrongs of Mangerton, Harlaw, Eskdale and Ewesdale and the Elliots of Redheugh, the Park, Gorumberry, Thorlieshope and Whithaugh. In an hopeful attempt to reinforce the constraining effect of these pledges, a number of Middle March surname leaders were forced to stand surety for the good behaviour of the pledges including Ker of Cessford for Elliot of the Park, Turnbull of Bedrule for Elliot of Thorlieshope and Scott of Branxholme for Elliot of Redheugh under pain of 2,000 merks.⁷²⁹ However, it would have been as difficult for those guarantors to have fulfilled their obligations, in an area outside their own, as it was for the crown to impose its will in Liddesdale. Indeed, Branxholme had been involved in a feud with the Elliots only shortly before this. The independence of Liddesdale surnames from ties of assurance with the rest of the march remained until the 1590s, when Scott of Buccleuch received the burdensome adherence of the Armstrongs and the Elliots, the problems of which have been noted.⁷³⁰

The judicial situation in Liddesdale was already difficult; the area's position on the border with England further complicated the imposition of law there. Like the rest of the Borders region, Liddesdale was subject to a combination of Scottish domestic law, Scottish border-specific law (sometimes specific to Liddesdale) and international march law. Like the wardens, the keeper thus had both an internal and international judicial function. Liddesdale fronted on the English Middle March and the keeper was responsible for arranging redress for cross-border offences with that warden. However, the English appeared not to appreciate the seniority of the keeper, questioning his authority and apparently equating him with the subordinate English Middle

⁷²⁹ *RPC* ii 42-44

⁷³⁰ Fraser *Buccleuch* i 143-46; ii nos.216, 217

March officials, the keepers of Tynedale and Redesdale. In 1585, the English Middle March warden Sir John Forster complained that 'Liddesdale hitherto has never obeyed the wardens, and yet they [the Scottish privy council] think the authority of the warden is sufficient'.⁷³¹

It is English report that gives most evidence of crime by Liddesdale inhabitants and was thus concerned solely with cross-border offences: as a result, the types of crime involved were generally those of theft of livestock, sometimes with violence and reset of goods or offenders. A typical report was one by Scrope in 1597 of a raid by the Armstrongs with twenty-four men into the English West March, taking seventeen horses, ten pounds sterling of goods and killing two men. The same month William Bowes complained to Elizabeth of seventeen 'great attempts' by Liddesdale men since the Anglo-Scottish treaty of that May, which was meant to have stopped such incidents. The surnames of Armstrong and Elliot repeatedly featured in English complaints. In 1597 the English demanded that pledges be surrendered from Liddesdale: the list included the Armstrongs of Mangerton and Whithaugh, Elliot of Laristane, two other Elliots and a Nixon.⁷³²

Domestically, theft, reset and theft with violence were the typical charges brought against Liddesdale men. A complaint in 1603 to the privy council by Walter Scott of Tushielaw and his tenants listed theft of livestock and 'insight' from his lands near Etrick by a number of Armstrongs of Liddesdale on five separate occasions in the course of a month in 1586. They were alleged to have taken a total of 2,800 sheep, 340 cattle and twenty horses. Even allowing for the massaging of figures by Tushielaw, these raids were of a sizeable nature.⁷³³ Men from Liddesdale were responsible for much internal crime within the region as well cross-border crime. However, it was the cross-border crime that gave them their particular notoriety. As already suggested, cross-border crime should be viewed within the context of the changing Anglo-Scottish relations and their effect on fluctuating government policy towards such crime.

⁷³¹ Rae 36; *CBP* i no. 399; ii nos. 232, 239

⁷³² *CSP Scot* xiii pt. i nos 13, 25; *CBP* ii 666

⁷³³ *RPC* vi 538

State-sponsored violence

When it came to the use of violence there was nothing more violent than the crown and its officials acting in their execution of justice. This was nothing new: a king who could summarily dispatch an earl of Douglas in 1452 was not representative of an authority afraid to use violence. The difference, however, between the mid fifteenth and the later sixteenth centuries was in the increased harnessing by the crown of violent methods of justice within its own control - what Keith Brown has termed the 'state monopoly of violence'.⁷³⁴ This developed hand in hand with the crown monopolisation of justice which the suppression of feud exemplified. The crown's growing insistence on centralised adjudication of dispute brought the enforcement of these rulings within its own remit, removing it from the hands of the nobility and lairds in the localities. These local figures may have continued to be involved in the prosecution of justice, but as the officials of government and in the name of the crown.

In the Middle March there was a tradition of armed judicial raids by king, regent or lieutenant. Musters were called to support these, those summoned being ordered to appear 'bodin in the feir of weir'. Common to all the proclamations of these raids was the intention to pursue miscreants with 'extreme rigour': the severity of justice meted out in such raids was intended to be an exemplary deterrent. Sentencing policy at such courts was harsh, theft often punishable 'to the deid'. Judicial raids have left few records; in one of the few records that exist, for the court held at Jedburgh in 1587, at least sixteen were executed. Though a policy of harsh sentencing was generally followed, the crown, sometimes, forebore to apply full punishment: when remission was granted to offenders or assurances or pledges were taken, it was to secure the loyal gratitude of such offenders for relief from violent reprisal by the state.⁷³⁵

Crown officials also used violence out of court. Lieutenants and wardens were empowered to arrest, try and execute any offenders taken 'with the fang' and were granted indemnities for any summary justice that they had applied in the execution of their offices. This could lead to confusion.

⁷³⁴ Brown *Bloodfeud* 269

⁷³⁵ *RPC* iv 146-48; Rae App. 6

Cessford was the subject of a complaint that he had slain four men in England: his reply was that it was in the execution of his duty as warden, two being Scottish thieves. This was not clear to Scrope who complained that the 'greatest murderers are made the chief governors of the frontiers'. He included Buccleuch in this assessment.⁷³⁶

The English repeatedly questioned the motivation of the Scottish government which, whilst overtly professing its intention to suppress crime in the Borders, appeared privately to condone the illegal activities of its officials there. The English noted a blurred margin between passive condonation and active sponsoring of cross-border crime. In March 1587, Forster complained that the 'Kinge dothe write to the Lairde of Cesfurde to do justice, and yet in the meane tyme he appoyntethe others to ryde and breake the borders, and dothe winke therat'. That November, Lord Hunsdon, the English East March warden, questioned the point of James coming to Kelso on a judicial raid, when 'great oughtrages durst not be attempted by such men as hath done them, without the Kinges privitie', referring to the apparent approval that James had given to a cross-border raid by Buccleuch with 300 men who carried off goods to the Hermitage. In August 1596, Scrope railed against Buccleuch who he claimed was on the border with 3,000 men 'ready ... to invade us ... yet this man is thought fit by the King and Council to be still officer!' And in April 1597, Bowes wrote to Burghley of James's reluctance to 'bridle these wicked clandes' questioning 'whether it springe of too mucche facilitie, or too little sincereitie': he concluded 'I consider their actions are done 'by him or for him''. As Maitland acknowledged in his diatribe against those of Liddesdale, "To se sa grit stouthe quha wald trowit/ onles sum grit man it allowit".⁷³⁷

The English certainly thought that cross-border crime was partly attributable to James's policies in the Borders. His continued maintenance of figures such as Buccleuch and Cessford, despite their undeniable involvement in cross-border offences, was testimony to his use of the situation on the Borders in the conduct of relations with England. This is addressed further in chapters five and six. Cross-border crime disappeared fairly quickly after 1603, following concerted efforts by governments on both sides of the border.

⁷³⁶ *CBP* ii no. 405; *CSP Scot* xiii pt. i nos. 3,640;

⁷³⁷ *CBP* i nos. 499, 560; ii nos. 336, 603; Maitland 'Aganis the Thevis of Liddisdail' 302

This suggested that if the will had been there, such crime could have been suppressed before. Cross-border crime, that had probably been sponsored by the state, should not be allowed to unfairly prejudice our impression of crime *within* the region.

Conclusion

There was much evidence of much violent crime in the Borders. There was, however, much evidence of violent crime throughout Scotland.⁷³⁸ Wasser concludes that crime in Scotland was 'serious, extensive, and frequently practiced by the landed elite'.⁷³⁹ The figures for violent crime within the Borders were not completely out-of-step with the Lowlands. Contemporary government's perception of endemic violence in the Borders and the stereotypically violent borderer, ignored the use of private and public violence to settle dispute in sixteenth century Scotland. This perception mattered: it influenced government policies in the Borders and has affected most subsequent analyses of the region.

Wormald notes her own downplaying of violence in her analysis of the feud and that Keith Brown has redressed the balance.⁷⁴⁰ Michael Wasser also notes Wormald's hesitancy to acknowledge the violence in feuding.⁷⁴¹ However, Wormald's overturning of a historical orthodoxy, that viewed all violence as indicative of a powerless government, has been invaluable in allowing a reassessment of government in Scotland.⁷⁴² The old orthodoxy has indelibly permeated any assessment of violence in the Borders with an assumption of a violence there that was beyond the control of any government. This study hopes that such an analysis can be re-evaluated in the light of its own findings. Where Keith Brown acknowledges that feuding was more geographically spread than historically assumed, this study would go further and claim a similarity in the experience of the Middle March to the

⁷³⁸ Wasser notes that over sixty-four per cent of cases of violent crime coming before the justice court were homicides which he suggests indicates 'a very large scale of violence'. Wasser 'Violence' 294

⁷³⁹ Wasser 'Violence' 21

⁷⁴⁰ Wormald *Lords and Men* vi

⁷⁴¹ Wasser 'Violence' 4-6

⁷⁴² Wormald 'Taming the Magnates?' in KJ Stringer ed. *Essays on the Nobility of Medieval Scotland* (1985)

The circumstances of the Borders should be seen within the context of developments in government attitude to crime and jurisdictions throughout Scotland. During the 1590s, identifiable moves were made by the crown to bring the system of justice within its own remit and to impose the rule of law in the localities. There were several proclamations for the 'administration of better justice'. In 1590, understanding the abuse by lieutenants and others of their judicial powers James ordered the discharge of all commissions of justiciary and lieutenantry. In 1600, a commission was ordered to consider the way in which sheriffs could be made more effective.⁷⁴⁴ The insistence on a peaceful resolution of dispute was extended to other measures to prevent violence, such as the ordinances against bearing of pistols and hagbuts, the subject of at least seven privy council proclamations from 1593 to 1597. Similarly, orders against feud proliferated, registered ten times between 1595 and 1597. A way of life, which previously had been tolerated throughout the country, was now subject to systematic review by government.⁷⁴⁵

But a final note of caution is necessary: such moves towards crown monopolisation of justice and violence were not concluded in this period. Wasser found that the 'new was coexisting with the old' in terms of the continuation of the private pursuit of compensation. However, this was now increasingly conducted through the courts rather than through the violence of feud. The use of courts was new, but the motivation behind it remained largely the same and dispute still included the use of violence.⁷⁴⁶ The psychological attitudes of the whole community towards violence would take time to change. State prosecution of violent crime, with punishment as deterrent, was still in its infancy. This serves as a useful reminder that the growth in state power, which the increasing crown control of judicial processes represented, was underway but it was a work in progress.⁷⁴⁷ The same should be said of its intervention in crime in the Middle March.

⁷⁴³ Brown *Bloodfeud* 6-7

⁷⁴⁴ *RPC* iv 552; vi 68,233-34

⁷⁴⁵ *RPC* v 90-91, 242, 247, 248-9, 261, 262-63, 273, 274-75, 280, 303-4, 321-23, 387, 392-93, 403, 437-38, 463, 497

⁷⁴⁶ Wasser 'Violence' 271, 296; *Scots Peerage* vii 345

⁷⁴⁷ As Goodare notes, the growth of state power should be viewed as a process 'which could never be completed'. Goodare *State and Society* 100

Chapter Five: Road to Pacification, 1573-1597

Introduction

An attempt has been made in the previous chapters to show how the history of the Middle March from 1573 to 1625 should be seen within the context of developments that affected the whole realm: broader changes in crown policy towards its localities and in judicial matters, the evolution of kingship and government, the changing nature of lordship and the resultant gradual social evolution. The Middle March may have been on the periphery of Scotland but it was not an area separated from the kingdom. Its prominent figures were involved in central government and that government was able to make itself felt within the march if and when it chose to do. Furthermore, given the fundamental importance of kinship in social and political frameworks at both local and central levels, factionalism at court had ramifications in the Middle March.

Having considered the similarity of circumstances that affected both the Middle March and the rest of the kingdom, these next two chapters will attempt to address the differing circumstances impacting on the region. These were occasioned principally by the proximity of the frontier with England and the changing nature of Anglo-Scottish relations during this period. Historically, these had resulted in a unique layer of institutions, particular to the region, and in the perception of it by both Scottish and English governments as an area of concern. For three centuries hostile governments had used the area as a diplomatic tool or military buffer zone. However, during the later sixteenth century, there was a crucial change in the balance of their relations, triggered by the increasing likelihood of James's succession to the English throne. This meant that, by 1597, an area traditionally used as a buffer was now seen as a barrier to good relations. What had been an area of concern and occasional direct action was now the subject of growing co-operation between two increasingly amicable governments. By 1625 this had resulted in the more-or-less successful pacification of the borders.

In 1573, the outlook had been very different. Only four years before then, English forces under the earl of Sussex had burnt their way through the

Middle March. In 1573, Scotland was emerging from six years of dynastic crisis and James was in his minority. By the end of the period in 1625, the crowns of Scotland and England were united in the person of James and the international nature of the border had disappeared. However, James's succession was neither confirmed nor inevitable. Similarly, the pacification of the Borders was neither guaranteed nor consistently pursued, enthusiasm for it fluctuating with successive regents, chancellors and monarchs. These chapters will trace that process through times of pursuit of the English alliance, factionalism at court, inconsistency of policy, tacit crown condoning of disorder and attempts at the co-ordinated suppression of crime in the Borders.

From 1573 to 1625 five main periods can be identified in the crown's attitude to the Borders. These periods were from 1573 to around 1578 during the regency of the earl of Morton and moves towards amity with England; from then until late 1585, through the years of factionalism; from then until 1597, following the emergence of James into his personal rule, through years of increasing amity with England undermined by the inconsistency of crown policy in the Borders; from 1597 to 1605, when concern over first the English succession and then the union prompted a novel consistency in border policy; and from 1605 to 1625 when a policy of pacification was consistently prosecuted in the newly created cross-border region, now renamed the Middle Shires. It was by no means a step-by-step progression, each phase being subject to reversal and inconsistency. The title 'road to pacification' perhaps describes too smoothly linear a process: more accurately it should read 'the tortuous track towards pacification'.

1573-1578: regency of Morton and moves towards amity with England

The beginning of this period was overshadowed by the preceding years of civil war, in which the Middle March had been as divided as the rest of the country. Cessford had supported the King's party, whilst Ferniehurst and Buccleuch had joined the Marian side: Buccleuch's lands at Branxholme had been raided by the English under Sussex in alliance with the Kers of Cessford. Though Cessford had been nominally warden of the march from

1570, for much of the time Ferniehirst had been acting as warden, dealing amicably with the opposing English warden Sir John Forster. The new regent, James Douglas, earl of Morton, had secured his position with English military support and he indicated his intention to preserve this co-operation from the outset.⁷⁴⁸ He repeated this in a letter to Elizabeth in 1574 on measures to maintain the 'weale and increase of the amity betwixt both the realms'.⁷⁴⁹ One of the first things Morton did was to secure the forfeiture and exile of Ferniehirst, which removed one of the few men who could challenge the Ker of Cessford's authority in the Middle March. Cessford commanded the support of several branches of the Ker surname, including the Kers of Newbattle, Littledean and Faldonside, and a wider affinity which included such a prominent figure as Sir James Home of Cowdenknowes. In addition, one of the other major figures of the march, Walter Scott of Branxholme, died prematurely in 1574, leaving his son, the future Lord Buccleuch, in his infancy. Though Branxholme's tutors managed his surname's affairs until he reached his majority in the mid 1580s, this effectively left the Middle March with few to counter-balance Cessford's power in the wardenship. The only family that attempted to do so, in the 1570s, was Morton and his alliance within the Douglas surname.

This period is covered admirably in George Hewitt's book on the regency of the earl of Morton, which deals both with his administration of the Borders and with Anglo-Scottish relations. In the period from 1573 to 1578, Hewitt describes an 'uneventful interval' in Anglo-Scottish relations, characterised by Morton's unsuccessful pursuit of formal alliance with England.⁷⁵⁰ The only exception to this was the Redeswyre crisis of July 1575 during which a kinsman of Sir John Forster, the English Middle March warden, was killed. Morton's preoccupation with good relations with England resulted in a concerted effort to suppress any crime in the Borders which was prejudicial to the 'amity'. Morton's determination resulted in nine judicial raids into the Borders,⁷⁵¹ the tightening of the pledge system, measures to assist the

⁷⁴⁸ Rae 195, 200-01; *CSP Scot* iv no. 723. Conyers Read noted of Morton, 'his disposition towards England was friendly in the extreme, and he posed [shrewdly] as being entirely within the Queen's commandment'. C Read *Mr Secretary Walsingham and the policy of Queen Elizabeth* (Oxford 1925) quote on p131, 131-150

⁷⁴⁹ *CSP Scot* v no. 34

⁷⁵⁰ George R Hewitt *Scotland under Morton 1572-1580* (1982) 131-33, 168, Chapters 7 and 9

⁷⁵¹ Rae App. 6, 265-66

wardens in redress of cross-border offences and the appointment of a lieutenant to oversee the enforcement of justice. Rae's evaluation of Morton's border policy lauded his efforts to maintain an efficient administration, in which he persisted in the face of chilling relations between regent and English queen, frustrated by Elizabeth's reluctance to agree a formal alliance or pension. On the basis of Elizabeth's refusal, Rae questioned Maurice Lee's interpretation of Scotland's subordination in a form of 'satellite diplomacy' with England.⁷⁵² Both would have concurred, however, with Goodare's view that Morton's judicial raids were in order to cement Anglo-Scottish relations as well as to raise money from judicial fines.⁷⁵³ In 1574, Morton reiterated his commitment to this policy asking Elizabeth to urge her wardens to fulfil 'their duties in administration of justice, and such other good offices for the keeping of the peace and amity'.⁷⁵⁴

Morton's repeated use of the judicial raid was to be an exemplar both of judicial severity to the Borderers and of sustained intent to the English. Of the nine raids to the Borders, at least four were to the Middle March: the first in August 1573 was based in Peebles and Jedburgh and was repeated that November; in July 1574 there was a muster at Peebles and Selkirk; following the Redeswyre incident in 1575, a muster was called for Jedburgh but later postponed (one took place in Dumfries instead); and a judicial court was held at Jedburgh in November and December 1576.⁷⁵⁵ Morton was present at all of these: indeed the privy council was present wherever the court was held. The English were supposed to take notice: Morton wrote to Burghley in August 1573 that 'I have so travailed these days past with our disordered people inhabiting the frontier that I hope good fruits shall follow thereon to the comfort of the good people of both the countreis'.⁷⁵⁶ He wrote similarly, in November 1576, after a court at Jedburgh.⁷⁵⁷

Judicial raids were intended to make a lasting impression on the 'thevis and

⁷⁵² Rae 196, 201, 222 n.10

⁷⁵³ Goodare *State and Society* 262

⁷⁵⁴ *CSP Scot* v no.34

⁷⁵⁵ *RPC* ii 242-43, 259-60, 274-75, 304-7, 384, 460, 461, 476-77, 554, 566-73; *TA* xii 352, 359-60; xiii 17, 25

⁷⁵⁶ *CSP Scot* iv no.723

⁷⁵⁷ *CSP Scot* v no. 241

disorderit people' of the region, often lasting for several weeks.⁷⁵⁸ That at Jedburgh in 1573 lasted from 10 November to 8 December and in 1576 the privy council was at Jedburgh from 12 November to at least 6 December. They were calculated mixtures of severity and leniency: the privy council was concerned at 'the evil exempill of utheris to do the like [steal] gif this be sufferit to remane unpunist'.⁷⁵⁹ In contrast, at Jedburgh in August 1573 'a greit part of [the thieves] hes enterit thair plegeis and maid suirtie for thair ... obedience in tyme cuming and reparatioun of thair bipast offenssis'; the records for a court in December 1576 at Jedburgh noted the use of 'clemencie and pardoun for bigane offencis ... on hoip to wyn the offendouris to obedience and bettir forme of leving heireftir'; that of November 1573 took 'grit soumes of money' which Rae thought were probably from the remissions granted.⁷⁶⁰ The emphasis on monetary rather than physical punishment had the dual benefit of demonstrating crown magnanimity at the same time as replenishing its coffers. 'Thair guidis and geir salbe uptakin and intromettit with as escheit' at Jedburgh in 1573, whilst at Dumfries in 1575 'brokin men ... war puneist be thair pursis rather than thair lyvis'.⁷⁶¹ The inhabitants of Selkirk paid £100 in 1573 when they came 'in the will of the King for assistance given by them to Sir Thomas Ker of Phairyhirst' and £308 was recorded as having been part payment of Selkirk's fines at Peebles on 2 December 1573. The composition collected by the raid at Peebles in November 1573 was over £3,450 and that by the raid at Jedburgh, in 1576, totalled over £6,400 for Roxburghshire and Selkirkshire.⁷⁶²

Crown use of pledges and assurance during judicial raids to secure future good behaviour was bolstered by the increasing use of mass subscription of bands.⁷⁶³ In January 1573, twenty-seven inhabitants of Teviotdale appeared before the privy council in Edinburgh to swear they would 'releif his Hienes and his Wardanis present and to cum at the handis of the Wardanis of Inglanď'. They were obliged further not to 'resset, supple nor intercommoun' with Ferniehirst or his ally, Ker of Cavers 'or ony utheris declarit tratouris ... bot sall ryise, assist and serve his Hienes, his said Regent,

⁷⁵⁸ The raids of 1573 were also to deal with the supporters of the queen's party, punishing those who had assisted, for example, Ker of Ferniehirst.

⁷⁵⁹ *RPC* ii 304-7, 566-573

⁷⁶⁰ *RPC* ii 274, 304-5, 572-73; Rae 109, 144

⁷⁶¹ *RPC* ii 304-5, 476-78. The composition of the Dumfries court was £1,968. *TA* xiii 16

⁷⁶² *TA* xii 270, 272; xiii 123

⁷⁶³ See App. C

Lieutenantis Wardane'. To ensure that they would do so, they agreed to 'takand the burding for thame selffis and utheris that thay have promissit for', by becoming cautioners for various named men, mostly members of their own surname. Those finding surety included the sheriff, William Douglas of Cavers, for whom William Ker of Caverton and Andrew Ker of Faldonside became cautioners, under pain of 2,000 merks.⁷⁶⁴

The Teviotdale band was representative of several bands subscribed by men of the Middle March, earlier in April 1569, and then again during Morton's regency in August 1573, reiterated in June 1574 and repeated in August 1576. Though it was often used in the Borders, a band was not, however, a border-specific device: a similar band was subscribed by the 'Northland Men' of Aberdeenshire in August 1574 during a judicial expedition there which lasted at least from 9 August to 3 September. It was repeated at Holyrood in May 1575.⁷⁶⁵ What was different about the Teviotdale band was its specific obligation not to reset Ferniehurst and the predominance of certain surnames subscribing to it. In particular, various Rutherfords had to find surety because of their adherence to the Kers of Ferniehurst and Cavers.⁷⁶⁶

This band illustrated one of Morton's main interests in the Middle March, in which the suppression of crime was equalled by his desire to wreak vengeance on his opponents from the Marian wars amongst whom Ferniehurst was prominent. This was more than prosecution of treasonable crime: it typified the personal vendettas that Morton typically pursued. Goodare lists Morton's pursuit of his opponents amongst the reasons for his judicial raid, though Rae interpreted Morton's moves against his opponents rather differently, noting the leniency with which he treated such as Lord Herries.⁷⁶⁷ Melville felt that Morton committed 'dyvers wrangis and extorcions' under the pretext of administering justice and that Morton's initial success as regent was because there 'was not another Erle of Mortoun to steir up the subjectis in factioun, as he used to do'. His position deteriorated, Melville said, once he alienated the nobility and became 'ingrat to all his auld

⁷⁶⁴ *RPC* ii 179-80. It repeated the sentiment of the band subscribed at Jedburgh for the pursuit of Ferniehurst in February 1572, *RPC* ii 117-18

⁷⁶⁵ *RPC* i 650-53; ii 370-73, 452, 547, 548-49

⁷⁶⁶ *RPC* ii 179-80

⁷⁶⁷ Goodare *State and Society* 262; Rae 195

freindis and sarvandis'.⁷⁶⁸ Whatever Morton's personal intentions were, they fitted in with his public moves towards alliance with England, in which the suppression of crime in the Borders played a prominent part.

Morton clearly believed in the use of law to effect crown policy in the Borders and throughout his regency attempted to tighten the relevant ordinances. In particular, he addressed some of the problems of the pledge system. In 1573, an ordinance made those with whom pledges were warded responsible for their non-escape and in 1574, a number of Armstrongs and Baties were listed to be entered as pledges with various Maxwells and Johnstones on the West March. Warders were to 'become actit and oblist cautioneris for the personis plegeis'.⁷⁶⁹

Similarly, lairds were increasingly asked to stand surety for the entrance to justice or good behaviour of their adherents. For instance in December 1573, following a judicial ayre at Peebles, the Scotts of Thirlestane, Gamescleuch, Hartwoodmyres, Tushielaw, Branxholme, Birkenside, Deephope and Dryhope and Malcolm, son of the Selkirkshire sheriff Patrick Murray of Falahill, were listed in valentines as surety for the entry of a number of Scotts and Littills to the Edinburgh tolbooth on 20 January 1574.⁷⁷⁰ In June 1574 the sheriff of Roxburgh was charged to ensure that various lairds of the Middle March were to register themselves in the books of the privy council as 'plegeis and souirteis for all ther personis inhabiting of thair landis'. These acts of caution were sometimes difficult to enforce.⁷⁷¹ In December 1573, Branxholme made a complaint against Sir Ralph Ker for breaking his ward in Berwick, for whom he had stood surety. In June 1574 it was directed that if any had not upheld the band against the reset of Ferniehirst, the lairds standing surety for them should 'hald thame, thair whiffis, bairnis, servandis and guides furthe of the saidis landis'.⁷⁷² Since, however, this was asking a laird to throw out tenants who were often of his own surname, and on whom he was dependent for support, the likelihood of such measures being carried out was questionable. That same June, three lairds, bound under the pledge of Liddesdale for a number of Crosiers and Elliots, were fined the

⁷⁶⁸ Melville *Memoirs* 260

⁷⁶⁹ Rae 197; *RPC* ii 272, 367-70

⁷⁷⁰ Valentines were lists of tenants and servants for which a laird stood surety. *RPC* ii 306-7

⁷⁷¹ *RPC* ii 370-73

⁷⁷² *RPC* ii 307-8, 370-73

surety of 5,000 merks each for their non-appearance before the privy council to answer for their adherents' failure to appear.⁷⁷³

The dynamics of kinship and alliance on which the systems of pledge and assurance were based also affected the appointments that Morton made to posts in the Middle March. This was the way much government was conducted and it inevitably introduced the disharmony of personal enmities. Morton ran the risk of alienating those outside his kinship network by filling offices in the Middle March with his own men. Initially his relations with Ker of Cessford, warden from 1570, were relatively harmonious, oiled by their mutual enmity to Ferniehirst, and Cessford continued in office. In late 1573, however, Morton appointed his kinsman, John Carmichael of that ilk, as keeper of Liddesdale with the intention that Carmichael would work with Cessford.⁷⁷⁴ Carmichael was present at the ill-fated day of truce with Forster at Redeswyre in 1575. Morton referred to Carmichael as 'his cousin and servant' and Walsingham commented that 'Carmichael is one whom the Regent dearly loves'.⁷⁷⁵ Next, Morton appointed his nephew the earl of Angus as lieutenant over all the marches. Then, in a move which would alienate Cessford, in December 1576, Morton appointed his kinsman William Douglas of Bonjedburgh warden of the Middle March, west of Dere Street, effectively splitting the responsibility for the march in two and reducing Cessford's area of authority. He also re-appointed Angus to the lieutenancy, further widening his kindred's authority by giving Angus the West March wardenship the following year.⁷⁷⁶

Kinship and alliance also formed the background for the feuds occurring in the Middle March, as elsewhere. The violence these caused led Morton to attempt to suppress them. Cases were increasingly brought to the privy council for arbitration.⁷⁷⁷ For instance on 3 June 1575, in an attempt to resolve the long-standing and troublesome Pringle-Elliot feud, representatives of the two surnames were called to appear before the council on 24 June with their 'commonaris' to advise on the feud. Those summoned to appear for the Pringles were Ker of Faldonside, Riddell of that Ilk, Stewart

⁷⁷³ *RPC* ii 370-73

⁷⁷⁴ *CSP Scot* iv no.788

⁷⁷⁵ *CSP Scot* v nos.172, 200

⁷⁷⁶ *RPC* ii 568-73; *CSP Scot* v nos. 284, 315; Rae 196,201; App. 2

⁷⁷⁷ See App. G

of Caverton and Heriot of Trabroun and for the Elliots, the Douglasses of Cavers, Bonjedburgh and the Cruke, Turnbull of Minto and the Rutherfords of Edgerston and the Grange.⁷⁷⁸ The list of supporters showed a neat delineation of alliances in the Middle March. It was to be expected that the Rutherfords would act with the Douglasses against the Kers of Cessford and Faldonside and their affiliates: in 1576 when William Ker of Cessford and Sir Thomas Turnbull of Bedrule found assurance not to molest each other, Douglas of Bonjedburgh and Rutherford of Hunthill stood caution for Bedrule.⁷⁷⁹ The Elliot-Pringle list also however showed the complexity of the situation in that these Rutherfords were usually allies of Ker of Ferniehirst, who was no friend of the Douglas Morton.

The privy council's intervention in feuds was probably influenced by Morton's pursuit of his kindred's interests. In October 1577, the council intervened in the long-standing feud between the Scotts and the Kers of Cessford, which had resurfaced, summoning each side to appear with twenty men before the council. The council's interest reflected the weakened position of the Kers under Morton. In addition, the Scotts were linked to Morton: Margaret Douglas, the young Branhholme's mother, was a sister of the earl of Angus and Morton's niece. The Kers were ordered to pay Janet Scott £1,000 for the failure of a son of Ker of Faldonside to honour a marriage contract with her, the receipt of which she confirmed the following February. The feud continued, however, Robert Bowes noting in 1580 that 'little effect is come' of attempts by Angus to reconcile them.⁷⁸⁰

Throughout his regency, Morton sought to prevent any disturbance of the peace with England. From 1573 until 1578, the only incident potentially disruptive of Anglo-Scottish relations was at a Middle March day of truce at Redeswyre on 7 July 1575: an argument had broken out between Forster, the English Middle March warden, and Carmichael, acting for the Scottish Middle March, which resulted in the killing of Sir George Heron, Forster's brother-in-law, and the capture of Forster and other English officials by Carmichael. They were warded immediately with Morton at Dalkeith in an

⁷⁷⁸ *RPC* ii 453-54

⁷⁷⁹ *RPC* ii 526-27. In 1578, an assurance was made between Cessford on the one part and Jedburgh and the Rutherfords on the other in another dispute. *RPC* ii 685

⁷⁸⁰ *RPC* ii 643-44, 665; *CSP Scot* v no. 471.

effort to prevent further fighting.⁷⁸¹ On 8 July, the English emissary to Scotland, Henry Killigrew, wrote to Walsingham that 'peace or war hangs now by a twine thread ... the broken men of the borders ... will draw on this sudden misadventure to great inconvenience and a dangerous consequence'. The Scots reacted quickly to soothe relations, Morton writing to Walsingham on 8 July for advice on how to proceed 'best for eschewing further breach and mischief'.⁷⁸² Sir James Home of Cowdenknowes was sent to the border to request a meeting with Killigrew. Huntingdon later noted that 'that the beginners of the fray were the evil men of both the realms' but he was relieved that 'though the game was very injurious, yet good came thereof; for the Borders during that time remained quiet.'⁷⁸³ It is likely that the increased government concern in the region, that Redeswyre had prompted, discouraged cross-border crime.

Morton, in stopping the incident escalating, showed himself able to control actions taken by the Middle March warden and, by extension, the inhabitants of the Middle March themselves. He issued a proclamation on 26 July reassuring the English of Scotland's continuing desire for peace on the frontier. This was to be read out at Dumfries, Lochmaben, Hawick, Jedburgh, Duns and Kelso so that no borderer would disturb the 'good amytie' or claim ignorance of the government's intentions.⁷⁸⁴ Another proclamation to keep the peace was made in September and a muster was ordered for 8 October at Jedburgh to accompany a judicial raid. Though this was postponed, another went to Dumfries in late November.⁷⁸⁵ Morton continued to reassure the English of his good faith, reiterating that he had kept Forster in ward to calm 'the blood' and to maintain peace.⁷⁸⁶

Though the English did not want further trouble to break out in the Borders, they were not as conciliatory as Morton. Walsingham wrote to Killigrew to impress on the regent that 'the Queen of England cannot in honour endure that a minister of hers of that quality that Sir John Forster is should be so used' unless 'some severe punishment [is] executed on the offenders'.

⁷⁸¹ Rae 199-201; Maureen Meikle 'Sir John Forster' 126-63; *CSP Scot* v no. 177

⁷⁸² *CSP Scot* v nos. 169, 170

⁷⁸³ *CSP Scot* v nos. 166, 171

⁷⁸⁴ *RPC* ii 459

⁷⁸⁵ *RPC* ii 460, 461-63

⁷⁸⁶ *CSP Scot* v no. 193

Walsingham suggested the warding of Carmichael.⁷⁸⁷ Both sides, however, wanted to negotiate and a meeting took place between Morton and Huntingdon at Foulden in mid-September. A treaty was agreed in which both Morton and Carmichael were to enter four men each of their own name as pledges with Hunsdon at Berwick. Carmichael himself was to be delivered to Huntingdon. By mid-October relations were significantly improved and in November Morton thanked Killigrew for Carmichael's 'speedy release'. However, the English, particularly Forster, continued to use the excuse of Redeswyre to postpone days of truce.⁷⁸⁸

One of the reasons for the subsequent cooling of relations between the two countries was Morton's failure to secure a pension from the English. Concern over this was prompted by the Scottish crown's financial insecurity. Impecunity was often presented as a limitation on the warden's effectiveness in the Middle March. As early as November 1573, Morton wrote to Elizabeth that whilst having 'to retain an ordinary force of horsemen and footmen for keeping the Borders in quietness', 'state charges [have] been panefull and verie expensive for me', particularly because the King's rents had so diminished in value.⁷⁸⁹ This was still the case in 1579, when an English memorial noted that Cessford had but £16 sterling a year 'yet his wardenries great and troublesome, and he of good mind.' It further noted that a border guard and adequately compensated wardenries could be done for £3,000 sterling but that James could not afford this.⁷⁹⁰

The wardens would have been expected to finance any armed force they had to assist them from their own resources. The lack of a paid armed force on the Borders has been used as one of the reasons for the continuation of theft there.⁷⁹¹ However, Morton occasionally alluded to such a force, as in his complaints to Elizabeth of its expense in November 1573. Similarly, in November 1575, Morton reassured the English that he had 'levied some force both of horsemen and footmen to leave behind me for suppressing of

⁷⁸⁷ *CSP Scot* v nos. 172, 175

⁷⁸⁸ *CSP Scot* v nos. 195, 196, 197, 206, 209. In this last, Morton re-assured Killigrew that his hawks which had been stolen in Northumberland, and spotted in Rutherford of Hunthill's house, would be returned immediately and the offenders punished.

⁷⁸⁹ *CSP Scot* iv no. 732

⁷⁹⁰ *CSP Scot* v no. 445

⁷⁹¹ The privy council after Union certainly thought so, appointing a border force under Sir William Cranstoun as one of its first measures in the pacification. *RPC* vii 709

the fugitives ... so that I mean to leave nothing undone ... that may repress the thieves'.⁷⁹² Rae noted that military forces were used frequently but not continuously.⁷⁹³ Almost of all the examples he cited were for the West March: there was however no record of the payment of such a force in the Middle March during Morton's regency, though subsequently both Cessford and Ferniehirst were thought to have been so assisted in the early 1580s. Perhaps it was felt that cross-border redress and internal judicial measures were working sufficiently well in the Middle March for armed support to be less necessary there.

One of the main problems facing wardens was seen to be the reset of thieves, both internally and cross-border. A preamble to an ordinance of 1575 which attempted to stifle reset noted that it was 'the cheif cause of all the stowthis and utheris disordouris committit within ayther of the realmes'.⁷⁹⁴ A further ordinance threatening the punishment of reset, in 1577, was to be proclaimed at Lauder, Selkirk, Peebles, Lanark, Dumfries and Jedburgh, so that none could claim ignorance of it.⁷⁹⁵ In September 1574 Morton complained to Huntingdon over the reset of Scottish thieves in England, including David Elliot and his son from the Middle March 'received in Tynedale' with 'Duke' Fenwick. He bemoaned Forster's failure in this respect in the English Middle March 'wherein their fugitives are ... received and maintained' and 'in his default ... to the great encouraging of the wicked and disordered people'.⁷⁹⁶ This demonstrated one of the intrinsic problems that wardens faced in apprehending offenders; the lack of co-operation of the English warden would always undermine the efficacy of the Scottish warden (and *vice versa*). Forster's partisan execution of his duties was subject also to increasing English complaint and investigation.⁷⁹⁷

The problem of reset was not confined to border thieves. Morton was made uneasy by the disaffected Scotsmen lying just inside the English Borders following the end of the Marian wars. In September 1574 he complained to the English that, at the last day of truce with Forster, the English warden had

⁷⁹² *CSP Scot* v no. 209

⁷⁹³ Rae noted the transitory nature of military support for financial reasons. Rae 28, 85-89

⁷⁹⁴ *RPC* ii 476-77

⁷⁹⁵ *RPC* ii 620-21

⁷⁹⁶ *CSP Scot* v nos. 55, 64, 111

⁷⁹⁷ Meikle rehabilitates Forster's reputation, somewhat, by putting it into the context of the complexity of Northumbrian political and social structures. Meikle 'Sir John Forster' 126-63

been accompanied by the rebel Ferniehurst and others. Not only was this potentially incendiary in a meeting with Cessford, but it had allowed 'sic of this cuntremen as plesit to confer with thame ... frie access sa to do'.⁷⁹⁸ The continuing proximity of Marian sympathisers and their good relations with the English was a direct threat to Morton's own attempts to foster such relations and potentially undermined the efficacy of cross-border redress.

In addition, problems associated with kinship and alliance impacted on the wardens' efficiency. All those holding office as warden or keeper were involved in networks of kinship and alliance within the march and, by extension of this, enmities. Indeed office was secured through such alliances and supported by the adherents. Thus, Robert Bowes's description of the problems besetting cross-border redress after the Redeswyre incident included concern that the Middle March wardens 'as parties to the factes', themselves involved in the affair, were also 'much touched both in their own causes and for their friends'. He felt that justice would not be done by the wardens for fear of stirring up further trouble.⁷⁹⁹ This was as applicable to cross-border alliances and enmities. The friendship between Forster and Ferniehurst, evident during the Marian wars and again at Redeswyre, would inevitably be to the detriment of relations between Forster and Cessford. Similarly, the English West March warden Lord Scrope's good relationship with Carmichael during his keepership of Liddesdale was not replicated with Carmichael's replacement, (and enemy) Cessford, after 1581.⁸⁰⁰

Morton's efforts in the Middle March were undermined by his deteriorating position at court. His style of government had inspired increasing antagonism and, in March 1578, Morton was forced to stand down as regent by the alliance of the earls of Argyll and Atholl, with whom Cessford and Home of Cowdenknowes were joined. In June, he managed to regain his membership of the privy council but did not regain his full regency powers. His dependence on his adherents in local office in the Borders now rebounded against him.⁸⁰¹ It had alienated Cessford, who remained too

⁷⁹⁸ *CSP Scot* v no. 54

⁷⁹⁹ *CSP Scot* v no. 197

⁸⁰⁰ In 1583 Scrope recalled that Carmichael 'never refused to make delivery', 'even himself bringing the offenders to anser justice at Carlisle castle' unfavourably comparing this with Cessford's actions. *CSP Scot* v nos. vi 678, 708

⁸⁰¹ *CSP Scot* v no. 313; *RPC* ii 310, 705

strong locally to be removed from office. As Morton's power decreased in 1578, Cessford regained control over the whole of his wardenship. There were few to stop his recovery. Ferniehirst was still in exile and the Scotts, the only other surname which could have challenged Cessford, were limited by the youth of their leader, Branxholme.⁸⁰² Morton's authority in the Borders was weakened further by the replacement of Angus by Lord Ruthven as lieutenant in March 1578.

Hewitt concludes of Morton's administration of the Borders that 'his frequent judicial excursions ... displayed the characteristic signs of an efficient regime', yet that after his position at court was weakened, in 1578, he did little more in the region.⁸⁰³ Morton's effectiveness in the Middle March was undermined in the end by the personal nature of his intervention in the region, and his over-reliance on his adherents' support there, which inevitably alienated those outside his affinity. His rocky relationship with Cessford was typical of this: once the tide had turned against him, Cessford and his adherents assisted in Morton's slide from power. The personal antagonism that Morton inspired was captured in Calderwood's description of another of Morton's enemies, Ferniehirst, dressed in 'large ruffes, delyting in this spectacle' at Morton's execution in 1581.⁸⁰⁴

1578-1585: factionalism and inconsistency in border affairs⁸⁰⁵

From 1578, Morton's weakened position at court resulted in a lengthy period of factionalism, during which the leadership of the government changed hands several times. An English report in 1580 on Scotland found that 'the whole commonalty ... are ever apt for faction and tumult.'⁸⁰⁶ In the Middle March, Morton's decline was evident in the strengthening of Cessford's authority as warden. In August 1578 Cessford and Cowdenknowes were

⁸⁰² Buccleuch's date of birth is not certain but his parents' marriage contract was dated 1568. *SP* ii 231. Rae also noted 'it would be impossible to replace' Cessford. Rae 203

⁸⁰³ Hewitt *Morton* 206

⁸⁰⁴ Calderwood *History* iii 575

⁸⁰⁵ This period is covered in some detail partly because it exemplifies the effect of Anglo-Scottish relations on the crown's attitude to the Borders but also because Rae did not cover it all in his narrative history which jumped from 1580 to 1587, omitting the Russell incident. Hewitt's account ends in 1581 though he notes Morton did little in the Borders after 1578. Hewitt *Morton* 133-34

⁸⁰⁶ *CSP Scot* v no. 639

sent for by James, at which meeting Cowdenknowes fell out 'in heich termes' with Morton. Despite this, Cessford continued in talks with Morton for nearly a week receiving further instructions for his wardenry.⁸⁰⁷ The hostility between Morton and Cessford had an impact on cross-border relations. In December 1579, an English officer complained to his privy council of 'such impediment and delays [to redress], notwithstanding the King's good inclination'. He thought the problem was that 'Carmichael continues still Keeper of Lyddisdale' and that considering 'the particular quarrels betwixt Cesford and him for the Earl of Morton his master's causes ... [this] cannot but be a hindrance to justice.' The English seemed to approve of Cessford:

Truly the Laird of Cesford has kept East Tivydale very well from any great attempt since the treaty in June last, and is willing to continue with goodwill if he might be assisted. It is ordered that Carmichael shall be answerable to him for Lyddisdale and most Tyvydale, but there will be devices to remove Carmichael, so that he be possessed in the whole office. The King likes well of Cesford, and wishes his fee to be augmented.⁸⁰⁸

The situation in the Middle March replicated the factionalism at court, disputes radiating outwards into the localities. In 1579, the English observation of 'the heat borne and hatred betwixt the Earl of Morton and the Carrs and Humes, who depend on Argyll, Montrose and that fellowship', illustrated the rift between Morton and Cessford. Furthermore, Robert Bowes noted that Angus's failure to reconcile the Ker-Scott feud had irritated Morton 'with whom he has become disaffected and distanced'.⁸⁰⁹ Then in September 1579, the arrival of Esme Stewart, shortly afterwards created earl of Lennox, catalysed the opposition to Morton. In the face of this Morton's position declined further: in the Middle March those opposed to Morton were drawn to Lennox. In September 1580, Forster wrote that the Kers and the Homes (of East Teviotdale) were allied to Lennox since anti-Morton, whereas the men of West Teviotdale, the Scotts, Rutherfords and Turnbells, were dependent on Angus and Morton. The same month, in Edinburgh, Lennox was reported to be 'strongly accompanied with sundry noblemen, the Carrs and Humes': the English feared that as a result 'the flame of fire

⁸⁰⁷ *Moysie Memoirs* 13-14, 17

⁸⁰⁸ *CSP Scot* v no. 446. Cessford was recommended for an English pension being 'of great power, constant, stout, valiant, greatly devoted to the Queen of England, and [he] hates the French'. *CSP Scot* v no. 459

⁸⁰⁹ *CSP Scot* v nos. 432, 471

[was] likely to kindle by the open dealing against [Morton] ... and peradventure, come to hazard troubles on the Borders, already disquieted'.⁸¹⁰

Despite the crisis at court, Morton and the privy council continued to assure England of their good faith. An English report of December 1579 noted that 'The King is truly well affected to the Queen of England' since he thought that no 'good Scottish man ... will hinder the good amity betwixt the realms'. It suggested a pension of £3,000 sterling for James. However, disputes at court proved an impediment to the efficacious judicial administration of the Borders and to the detriment of Anglo-Scottish relations. Another report noted that, following a number of complaints against Scots raiding into England, 'notwithstanding the King's good inclination', the 'causes being debated daily before the Council for *five weeks*, they could not bring the said offences to any conclusion.'⁸¹¹ The tighter frontier control that Morton had been able to effect in his regency had lapsed as his support there declined. Morton's attempts to maintain good relations with England were not to save him: Elizabeth prevaricated in showing support for him. Without either English or local support, in December 1580, Morton was unable to resist an indictment by the privy council for his involvement in the murder of Lord Darnley. Six months later he was dead. Lennox was elevated further to a dukedom.⁸¹²

Despite his kinship and continuing association with Morton, Angus had initially recovered his position following his removal as lieutenant in 1578. He was offered the lieutenancy of the East and Middle Marches again in 1580, though he prevaricated in accepting it. In October 1580, Angus was able to summon five hundred men to prevent Lord Home holding the Berwickshire justice court at Duns, whose office he now claimed on the forfeiture of Home's father. In January 1581, following the arrest of his uncle Morton, Angus was still in possession of Dalkeith, Morton's main property, when he resisted invitations to join the Lennox faction.⁸¹³ However, the Douglas position was deteriorating as Lennox's position strengthened. In the Middle March, Carmichael, who had been restored to the keepership of Liddesdale after a brief dismissal in 1578, was discharged again in January 1581.

⁸¹⁰ Ibid. nos. 584, 592

⁸¹¹ Ibid. nos. 445, 446

⁸¹² Rae 204-6

⁸¹³ *Moysie Memoirs* 31-32; *CSP Scot* v nos. 608, 614

Cessford, an ally of Lennox, was made keeper in his place. Later that month, Cessford and Andrew Ker of Faldonside were both sent to the Borders to re-establish a Ker dominance of Middle March office.⁸¹⁴ Cessford, Faldonside and Mark Ker, commendator of Newbattle, all received parliamentary ratifications of their lands.⁸¹⁵ Carmichael was ordered to appear before the privy council in Edinburgh under pain of treason by the end of March. Angus held out at Dalkeith until June, when he was forced to flee to Carlisle with his adherents.⁸¹⁶

The men of the Middle March, who had not been previously allied to the Cessford-Lennox faction, were forced to change their allegiances. In March 1581, ten border lairds were obliged to sign a renunciation of 'all and quhatsomevir bandis of manrent or service made and subscrivit be thame in ony tyme by gane for the service of Archibald Erll of Angus'. The Rutherfords of Hundalee and Hunthill and Turnbull of Bedrule, who had just signed bonds of manrent to the former lieutenant, were made to abandon him whilst George Douglas younger of Bonjedburgh, son of the man whom Morton had given office, also changed sides.⁸¹⁷ The same month, Randolph told Lord Hunsdon that

one of the Traquairs came yesterday morning to the King and assured him that all the clans of the Scots, Trumbles, Rotherfords, and others of West Tivedale belonging to the earls of Morton and Angus have offered their services to the King, notwithstanding their bands and promises made to Angus ... it is said that Traquair has brought this assurance in writing from them

and that they were 'free of Morton'.⁸¹⁸ Later that year, Traquair was rewarded for his service with the gift and patronage of the parsonage of Bedrule in the heart of Turnbull lands.⁸¹⁹ This patronage was excluded from

⁸¹⁴ *CSP Scot* v no. 670; *RPC* iii 402. In these uncertain times, Cessford's need to protect his position by staying in touch with events at court was at odds with his duties in the Borders. There was a telling urgency in his 'coming in great haste' to show Bowes that he had been given power over the whole wardenry. The English representative, Thomas Randolph, noted that a 'Car, the solicitor for Cessford, attends here to hear what is done'. *CSP Scot* v nos 614, 712

⁸¹⁵ *APS* iii 269, 271, 276

⁸¹⁶ *CSP Scot* v no. 756; vi nos. 32, 33

⁸¹⁷ *RPC* iii 368; Fraser *Douglas* iii 266-68; Hewitt *Morton* 194

⁸¹⁸ *CSP Scot* v no. 756

⁸¹⁹ *APS* iii 281-82. Traquair may have needed to protect himself against Lennox. In 1582 Lennox and the earl of Gowrie fell out over Gowrie's nomination of a brother of Traquair's for the 'colonellship' of Teviotdale, which Lennox wanted to give to another Peeblesshire man, Charles Geddes of Rachan. Calderwood *History* iii 632

the restoration, in 1581, of the lands of another of Morton's enemies, that of Ferniehurst.⁸²⁰ Ferniehurst's recovery was sponsored by Lennox but, due to Cessford's strength in the Middle March, his position was still precarious.⁸²¹ In September 1581 the English reported that Ferniehurst had been made provost of Jedburgh and that he and Cessford, the warden, were 'at point of falling furth, and great enmytie is like to growe betwixt them'.⁸²²

Inevitably, the changing political situation in Scotland had an impact on its relations with England. During the uncertainty following the arrest of Morton, the English felt that the Middle March had been left to its own devices to the detriment of good relations. Hunsdon complained to Randolph of a raid in January 1581 by over a hundred men from West Teviotdale into England: moreover, it was done, he said, not in a manner of theft 'but with open foray, as if it were open war'. He demanded that the Scottish privy council, 'if they mean the continuance of the amity', order the surrender of the offenders. It appears that he meant Cessford and Buccleuch, for it was commented that by the non-delivery of such as these, 'The King makes but a show of desire of quietness on the Borders.' Such distrust of each other's intentions typified Anglo-Scottish relations in this unsettled period.⁸²³

Finally, in January 1581, the English mounted a belated attempt to save Morton, amassing a military force on the Borders of about five hundred horsemen and two thousand footmen. In the confusion caused by Elizabeth's hesitant commitment, the Scots were unsure if the English were going to invade in support of Morton.⁸²⁴ James wrote to Elizabeth in March 1581 to express his opposition to an English force approaching the Borders in a time of 'so good peace'. He further requested a resumption of the wardens' meetings for the administration of justice.⁸²⁵ Elizabeth however repeatedly delayed any such meetings, waiting for the outcome of Morton's trial, whilst James continued to reassure Elizabeth of his desire for 'the good amity and quietness betwixt us'.⁸²⁶

⁸²⁰ Remission and restoration of lands to Ferniehurst, July 1581. *RSS* viii 379, 380

⁸²¹ Ferniehurst was forced into exile again in early 1583 on Lennox's banishment. See below.

⁸²² *CBP* i nos. 109, 111

⁸²³ *CSP Scot* v nos. 680, 681

⁸²⁴ *CSP Scot* v nos. 652, 653, 666, 668

⁸²⁵ *CSP Scot* v no. 752

⁸²⁶ *CSP Scot* v nos. 725, 764; vi no 10

The distrust within Anglo-Scottish relations created a confusing situation in the Middle March, where Cessford, ostensibly sent by James and the council to organise redress, seemed unable to conclude any redress with his opposite Forster. Until their disbandment, the close presence of English forces alarmed Cessford, who wrote to Forster worrying that they planned to 'fire' his house.⁸²⁷ Forster himself was constrained by Elizabeth's refusal to allow a meeting of the border commissioners, which could settle the more serious complaints.⁸²⁸ In April, following the failure of numerous appeals by the English to James on Morton's behalf, the majority of the English forces were disbanded. In June, following the execution of Morton, a Scottish force was dismissed 'seing the invasioun of England and thair forces from the Bordoures is removit'.⁸²⁹

From 1581 to 1582, the ascendancy of the allegedly Catholic Lennox unnerved the English who distrusted his assurances that he would do nothing to change the religion.⁸³⁰ Against a background of fraught negotiations between Elizabeth and the captive Mary and Mary's correspondence with her French relations, English worries escalated over Lennox's alleged promotion of a revival of the 'ancient league' between the French and the Scots.⁸³¹ However, the situation changed in August 1582 following a coup, known as the Ruthven Raid, led by the Protestant earl of Gowrie, who seized the King.⁸³² The Raiders accused the deposed Lennox of having shown extraordinary favour to the exiled Ferniehurst, despite Ferniehurst being an 'enemy to this State'. In September, Bowes reported that Ferniehurst, during a reappearance in Scotland, appeared to be 'practisyng' to break the Borders by planning a provocative raid by Liddesdale men into England 'in daylight, that a war might arise between the realms'.⁸³³ In November, Ferniehurst was with Lennox besieging Edinburgh castle in an attempt to rescue James from the Raiders. The situation was

⁸²⁷ *CSP Scot* v nos. 732

⁸²⁸ *CSP Scot* v nos. 725, 752, 764

⁸²⁹ *CSP Scot* vi nos. 5, 9, 27; *RPC* iii 392-93

⁸³⁰ *CSP Scot* vi no.86, 121. Though Lennox signed a Protestant confession of faith in 1581, this did nothing to dispel the English concern over Lennox's catholicism.

⁸³¹ *CSP Scot* vi nos. 89, 121, 145. Walsingham wrote of the need for England to secure 'the postern gate to any mischief or peril that might befall this realm' that Scotland represented. Read *Mr Secretary Walsingham* quote on p.150, 172-73

⁸³² Lynch *A New History* 232; Moysie *Memoirs* 41-43

⁸³³ *CSP Scot* vi nos. 145, 160

complicated further by reports, in December, of a split between the earls of Arran and Lennox despite James's efforts for a reconciliation and in January 1583, Arran and his wife were described to be 'in full sway' at court. Lennox's subsequent banishment meant that his ally, Ferniehurst, was again forced to flee, asking Elizabeth for refuge at Alnwick.⁸³⁴

Against this background of shifting court politics, the situation in the Middle March remained confused. Despite protestations of friendship, there were recurring problems between wardens over delivery for slaughter or violent crime. Slaughter was supposed to be referred to a meeting of the border commissioners for redress: Scottish wardens claimed that their 'private authority' was not sufficient to settle such serious offences. Perhaps as a result of a lack of direction from central government, Cessford appeared to be prevaricating. In April 1582, Cessford had written to Scrope that he was 'ready to cause deliver for any bills of "geir" filed ... since my acceptation. But for slaughter, I cannot "mell" with it, but "mon according to the aunciente custome referre the delivery hereof to the Princes and their commissioners"'.⁸³⁵ In August 1582, one of the main charges against Lennox was that 'disorders on the Borders [had been] altogether neglected'. However, apparently things had not improved under the Ruthven regime. In October 1583, Scrope complained about the lack of redress since the downfall of Morton for Liddesdale from Cessford, in comparison to the good redress he had had with Carmichael. In three years he had had only one meeting with Cessford for Liddesdale, that July, at which Scrope complained 'I could not have any answer at all of justice, though I always offered'. Cessford had refused to settle any complaints of 'hurts or mutilations' which he claimed should be referred to a commissioners' meeting. Scrope felt that Cessford was using a spurious technicality to obstruct justice.⁸³⁶ The feeling appears to have been mutual: in mid 1582, James had complained to Elizabeth over Scrope's refusal to hold meetings for redress. Elizabeth's response was to praise Scrope for his 'discrete dealing'.⁸³⁷

In June 1583, the political situation at court changed again following the

⁸³⁴ Calderwood *History* iii 635, 691; *CSP Scot* vi nos. 288, 298

⁸³⁵ *CSP Scot* vi no. 107

⁸³⁶ *CSP Scot* vi nos. 144, 656, 678

⁸³⁷ *CSP Scot* vi no. 135

overthrow of Gowrie by Arran and the release of James. This was of advantage to Ferniehurst who was to become close to Arran.⁸³⁸ Cessford's continued office as warden in the Middle March and Lennox's fall from power in August 1582 had meant that Ferniehurst spent most of the early 1580s in exile. In 1583 he was in Paris, leaving his wife Janet Scott (an aunt of Buccleuch's) in charge of his affairs at home. Despite his brief return to the Borders in 1581 and in late 1582, Ferniehurst was still in Paris in 1584.⁸³⁹

However, even Cessford was vulnerable to changes in regime. Arran's increasing power at court through 1583 and 1584 gradually eroded the position of Cessford's affiliation. In January 1583, Ker of Faldonside was warded. In March 1584 it was reported that Cessford and his ally Cowdenknowes were 'in some danger of warding', amid reports of Ferniehurst's imminent return. Cowdenknowes was in ward by late April.⁸⁴⁰ In May 1584, Cessford was 'indisposed to hazard himself in court, where he finds no surety'.⁸⁴¹ Ferniehurst returned in June and in September was granted an immunity from the jurisdiction of Cessford's wardenry. Though this was withdrawn later that month, by October Ferniehurst had replaced Cessford as warden and Cessford was warded. In November, Ferniehurst was granted a force of one hundred hagbutters to assist him, paid for by the Treasury.⁸⁴² He was further granted £1,000 a year to repay him for the past 'wrak and ruyne of his leving ... quhairthrow he is not of power to retene and hold in hous his freindis or servandis'. His wife wrote thankfully of the family's restoration.⁸⁴³

Factionalism at court did not just affect the appointment of border officials but was replicated at local level by feuding surnames. In early 1581, the Scottish privy council, recognising that 'there be great deadly feuds amonst his grace's subjects in the Middle March of Scotland, who ... may make some

⁸³⁸ Arran had initially dissented in council to Ferniehurst's remission in 1581. However, in 1584, Arran's neice Anne, daughter of Andrew master of Ochiltree, was contracted in marriage with Ferniehurst's heir Andrew with Arran's consent. GD40/2/10/57. Ruth Grant 'Politicking Jacobean Women: Lady Ferniehurst, the Countess of Arran and the Countess of Huntly, c.1580-1603' in E Ewan and M Meikle eds. *Women in Scotland c.1100-1750* (1999) 95-104 at pp.96-97

⁸³⁹ GD40/2/9/65, 68; *CSP Scot* vi no. 676

⁸⁴⁰ *CSP Scot* vi no. 298; vii nos. 40, 77, 109

⁸⁴¹ *CSP Scot* vii no. 113

⁸⁴² *CSP* vii no.180; *RPC* iii 699-700; GD40/2/10/51,53,56; 40/2/9/75

⁸⁴³ *RPC* iii 700

misrule among themselves as may stir some further perturbation', had suggested that Forster and Cessford should meet with one hundred men to prevent any further escalation of conflict. Hunsdon wryly observed that he could not 'but marvel' how such a meeting would have any effect: his 'long experience' was that the borderers 'were never, nor are, at his Wardens' devotion'.⁸⁴⁴ In 1584, Ferniehirst received his appointment as warden with some trepidation. 'He is in such fear upon entering into his office, that he has requested that the Laird of Cessford's men and other surname in East [Teviotdale] should lay in pledges to the King'. Cessford's warden-clerk Menteith refused to serve under Ferniehirst declaring he would 'rather refuse the realm of Scotland, than serve any but his old master'. As a result, Forster noted, 'there is great variance and contention like to grow, amongst them'.⁸⁴⁵ Cessford's decline was to the benefit of Ferniehirst's allies: Buccleuch, the Rutherfords of Hundalee, Edgerston and Hunthill, Douglasses of Cavers elder and younger and Robert Elliot of Redheugh subscribed a bond to assist Ferniehirst.⁸⁴⁶

The lack of redress in the Middle Marches inevitably had a knock-on effect on Anglo-Scottish relations. Walsingham protested himself confused by James's assurances of amity.⁸⁴⁷ Whilst in Edinburgh in September 1583, he complained that a raid on 30 August by the Scots into the English Middle March was so 'extraordinary' that it could not be left to the wardens to redress as James had suggested. He advised Elizabeth that, without James's own attention to this offence, she 'could not but take it as a breach of the peace and amity'. 'There wanted nothing but banners displayed to have made it a plain act of hostility.' As he left for London, Walsingham thanked James for his list of good intentions in the Borders but regretted that Elizabeth would find them too 'ambiguous' to reassure her of his good faith.⁸⁴⁸ James for his part appeared to distrust Elizabeth's intentions. He answered English complaints sympathetically but blamed the lack of redress on Scrope as 'the chief occasion thereof'. He demanded that Elizabeth instruct her wardens to co-operate. In February 1585 the Scottish demanded that Elizabeth organise 'the delivery of the traitors and rebels according to

⁸⁴⁴ *CSP Scot* v no. 703

⁸⁴⁵ *CSP Scot* vii no.411; GD40/2/10/55

⁸⁴⁶ GD40/2/9/72

⁸⁴⁷ C Read *Mr Secretary Walsingham* 205-224

⁸⁴⁸ *CSP Scot* vi nos. 626, 628, 640

the league and amity'.⁸⁴⁹

The English also distrusted Arran, in particular for his links with Ferniehurst. In January 1584, English worries about a conspiracy by Mary, Queen of Scots, appeared to achieve some credence following the mysterious residence of some of Mary's envoys as guests of Lady Ferniehurst at Ferniehurst castle. Mary was godmother to one of the Ferniehursts' sons and in correspondence with Lady Ferniehurst. Bowes feverishly reported the gratitude of the envoys to their hostess for her help in their negotiations with James as they departed for France.⁸⁵⁰ In April it was warned that Ferniehurst was to reappear from France with 12,000 crowns from Mary's French revenues. Ferniehurst returned in June but without the money.⁸⁵¹ In August 1584, Hunsdon wrote that despite the promises of redress made by Secretary Maitland, Scrope 'finds these to be but words, for he has had no meeting since, nor can he get anyone to answer for Liddesdale'. Scrope further complained that immediately following a meeting he had had with Arran, over three hundred horsemen of Liddesdale, Ewesdale and Annandale had raided into the English Middle March.⁸⁵²

The mixed signals coming from each country's government and wardens appear to have facilitated (if not actually encouraged) an increase in internal and cross-border raiding - or at least the report of it. The tenants of Ettrick Forest complained of an English raid in January 1581 by eighteen men 'bodin in feir of weir' who had taken three prisoners, holding them captive in England for a month. They were only freed on a pledge by Armstrong of Mangerton for the payment of the rest of their ransom. Then Hunsdon reported a large raid by men from West Teviotdale into the English East March.⁸⁵³ In September 1583, Walsingham told the English privy council of meeting the 'poor distressed people' of the English Marches on his journey to Edinburgh. He recounted their 'grievous complaints of the great spoils and outrages committed on them by the Scots [principally from Liddesdale], some of them showing the bloody shirts of their friends and kinsmen

⁸⁴⁹ *CSP Scot* vii nos. 204, 549

⁸⁵⁰ *CSP Scot* vi no. 676; vii nos. 17, 19, 22, 24, 27, 33

⁸⁵¹ *CSP Scot* vii nos. 58, 180

⁸⁵² *CSP Scot* vii no. 271

⁸⁵³ *RPC* iii 415-16; *CSP Scot* v no.680

slain'.⁸⁵⁴ The increased number of reports of raids that occurred in the early 1580s certainly suggested an increase in raiding. However, it is likely this was partly a factor of increased reporting (and its preservation) rather than increased raiding. Rae did not think that there was an appreciable increase in the amount of raiding in the last part of the century, despite the increase in reports, an opinion that the figures supplied by Dixon seem to confirm.⁸⁵⁵ It is probable, however, that some increase in raiding did take place during the early 1580s given the unsettled nature of central government and the precarious nature of the warden's position, particularly that of Ferniehurst's. Raids were not politically-inspired but the political situation could facilitate them.

Contemporarily, the Scottish privy council perceived an increase in internal crime in the Middle March: in May and July 1581 it noted that the feud between the Scotts and the Elliots had resurfaced and that there had been a 'brek of assurance' between the surnames. In February 1582, an order for a justice court at Jedburgh was made 'in consequence of the enormities "committit betuix the inhabitantis of Teviotdale and Liddisdaill of the surnames of Scott, Elliot, Armstrang and thair assisters"' in Selkirkshire and Roxburghshire.⁸⁵⁶ A similar pronouncement by the Ruthven regime in November 1582 noted that crimes had not only been committed in England but also upon the offenders' own countrymen and neighbours. This accusation should be put into context: the same regime had also alleged that, under Lennox, the 'whole order of justice [had been] perverted...In matters criminal no justice done, and great feuds fostered.' Crime was not only being committed in the Borders: factionalism at the centre had affected the administration of justice throughout Scotland.⁸⁵⁷

The warden's attempts to administer justice in the Middle March were hampered further by internal and cross-border feuds. The order for the court at Jedburgh in 1582 declared that if anyone stood 'in unkyndness or feid with the said wardane and justice, quhairthrow he may be suspect juge to thame', they were to be 'exemit fra the commissioun and pouer of justiciarie foirsaid of the said warden' and could be tried by some other

⁸⁵⁴ *CSP Scot* vi no. 653

⁸⁵⁵ Rae 211, 220. See previous chapter.

⁸⁵⁶ *RPC* iii 380-82, 404, 448-49

⁸⁵⁷ *RPC* iii 524; *CSP Scot* vi no 144

nobleman.⁸⁵⁸ At a muster arranged for June 1583 at Hermitage, it was ordered that none 'invade or persew the uther, owther for auld feid or new, in thair cuming, remaning or returning'.⁸⁵⁹ English recommendations for the Borders of September 1583 declared that feuds should be reconciled for 'otherwise, such as are interested will ever seek occasion to get their private revenge and hazard the peace'.⁸⁶⁰

The privy council attempted to deal with the outbreaks of feuding much in the way Morton had.⁸⁶¹ In 1581 a number of assurances were ordered to be found by the most notorious families such as the Elliots of Braidley and Armstrongs of Whithaugh and Mangerton. In May 1581, Walter Scott of Goldielands, tutor to Scott of Branxholme, was ordered to show the assurances before the council and in July 1581, he had to find surety of £2,000 following the 'brek of assurance' between the Scotts and Elliots.⁸⁶² In August, in an attempt to make these measures effective, an order was made against the reset of the now rebel Elliot of Braidley, Armstrongs of Mangerton and Whithaugh and Scotts of Goldielands and younger of Tushielaw. The links between court factionalism and the locality were ever present: also included in the list of rebels were the now disfavoured (and Cessford's enemies) Douglasses of Bonjedburgh and Cavers and Carmichael of that ilk.⁸⁶³ In March 1583, Whithaugh, Mangerton, Redheugh and Braidley were denounced rebel for their non-appearance before the council to answer for attempts committed by their tenants and servants. Braidley and Whithaugh were further found liable for various sums for the non-entry of several Elliots for whom they stood surety.⁸⁶⁴

The privy council did not just rely on assurances to impose order. In February 1582 the privy council ordered the justice court of Roxburghshire and Selkirkshire to be held at Jedburgh as a result of renewed disturbances in Teviotdale and Liddesdale. Concern over feuding affecting the impartiality

⁸⁵⁸ *RPC* iii 448-49

⁸⁵⁹ *RPC* iii 570-574

⁸⁶⁰ *CSP Scot* vi no. 603

⁸⁶¹ See App. G

⁸⁶² *RPC* iii 380-82,404

⁸⁶³ *RPC* iii 414. Braidley was under pressure from both the Scottish government and the English: in November he petitioned Elizabeth for redress for the demolition of his house during a raid by Scrope. *CSP Scot* vi no. 209

⁸⁶⁴ *RPC* iii 558

of justice given out by the warden and sheriffs led to an order to the provost of Dundee to sit in judgement at the court; the King's own justice-clerk was also to be present. The Ruthven Raid of August then intervened, but new orders were made for musters at Jedburgh and at Peebles in November.⁸⁶⁵ This was further postponed to December: this delay the council attributed partly to the lack of response by Elizabeth to Scottish requests to instruct her wardens to co-operate, but also to allow the 'principallis of the Bordouris' time to enter pledges for their surnames in Edinburgh.⁸⁶⁶ Such postponements were a reflection of the changes in regime through the year and the threat posed to the Gowrie regime by Lennox in late 1582. They cannot have helped convince either Scottish offenders or the English of the council's determination to suppress crime in the Middle March.

The privy council's attention was not just confined to internal crime. Following Lennox's departure, it increasingly addressed the issue of cross-border offences, showing an appreciation of the importance of Anglo-Scottish co-operation in any attempts to suppress them. In May 1583, a muster was ordered to accompany Cessford to a meeting at the Hermitage with Lord Scrope in order to make any redress effective. That December some Borderers were summoned to give answers on some questions of Border law and custom.⁸⁶⁷ In January 1584, various Scotts and Turnbells were denounced rebel for not appearing to give evidence on the trial of an English bill filed on the sons of Turnbull of Bedrule. Bedrule himself was denounced rebel (with Scott of Headshaw) for his non-appearance before the council in February.⁸⁶⁸ In June 1584, there was a proclamation of a muster to proceed to the Borders deal with the rebels and 'brokin men of the Bordouris' who intended 'to suscitat oppin weir' and 'thairby to dissolve the amitie ... betuix thir twa Crownes'.⁸⁶⁹

Despite the uncertainties affecting Anglo-Scottish relations in this period, both sides continued to protest their wishes to maintain the amity. In October 1581 James urged parliament to approve attempts to secure an anti-

⁸⁶⁵ *RPC* iii 448-49, 519, 524

⁸⁶⁶ *RPC* iii 530-31

⁸⁶⁷ *RPC* iii 570, 574, 621

⁸⁶⁸ *RPC* iii 624-26, 634

⁸⁶⁹ *RPC* iii 674

Catholic league with the English.⁸⁷⁰ A Scottish request in 1585 that Elizabeth honour her obligations as a 'league and covenant keeper' in cross-border redress took place against a background of negotiations over such a league. The connection was made repeatedly between the successful conclusion of an alliance and the settlement of Border issues. Maitland was said to consider 'that the conclusion of the league will necessitate the meeting of commissioners of account on the Borders ... for the redress of the Border causes'.⁸⁷¹ However, the necessity for co-operation between the wardens, combined with contradictory indications by both governments, formed a potential stumbling block to successful negotiations. Exacerbating this was the continued factionalism at the Scottish court and Elizabeth's inability to resist meddling in the Borders.

Nothing more typified these problems than the slaying of Lord Francis Russell, eldest son of the earl of Bedford, at a day of truce between Ferniehirst and Forster in July 1585.⁸⁷² By this time court politics were in flux again: in May, Walsingham had been told that Arran 'has not as much of the King's power as he once had.' As a result, Cessford was 'feared likely to break his ward and make as great a "stimp stamp"' in the Middle March.⁸⁷³ Though the Scots claimed that the Russell incident was an accident, both Arran and Ferniehirst were suspected of complicity in it. Elizabeth thought that a provocative incident had been planned and Forster wrote to Walsingham that it was 'a pretended purpose to breake the amitie and peace between these two realmes'.⁸⁷⁴ What makes Forster's suspicions surprising is that he and Ferniehirst previously had always been friends. Forster had lent Ferniehirst money during his exile and written on his behalf to the English government.⁸⁷⁵ However, tensions were high at such days of truce and perhaps it is of more surprise that there were so few incidents where tensions turned into violence. James reacted quickly with an order that none was to harm any Englishman 'for staying of forder inconvenient' and Arran and Ferniehirst were eventually warded in Scotland. A muster was ordered for the Borders to prevent the 'brek of the gude peax' yet Elizabeth

⁸⁷⁰ *CSP Scot* vi nos. 72, 75

⁸⁷¹ *CSP Scot* vii nos. 549, 653

⁸⁷² WC Dickinson 'The death of Lord Russell, 1585' *SHR* xx (1923)

⁸⁷³ *CSP Scot* vii no. 621

⁸⁷⁴ *CBP* i nos. 330, 331, 336, 341

⁸⁷⁵ *CBP* i nos. 145, 678

prevaricated in accepting the Scottish assurances.⁸⁷⁶

Court politics then again intruded in the Middle March and Elizabeth was unable to resist involvement in them. Angus and the other lords banished following the end of the Ruthven Raid were massing on the English side of the border. Wotton noted that 'if the Queen will send them down, [the exiled lords] will be able to work wonders'.⁸⁷⁷ Elizabeth delayed any decision about Angus until the border commissioners' meeting, in early October, about the Russell affair. However, the Russell incident was not resolved, the Scots refusing to deliver Ferniehirst.⁸⁷⁸ In late October, Forster, agreeing to a request by Angus, had 'taken order that none under my rule shall trouble the Borders, till these matters come to stay'. He noted that the earls had 'the hole force of the Borders with them' including Buccleuch.⁸⁷⁹ Angus, Mar and the master of Glamis met at Cessford's residence near Kelso and were joined by 'the haill Merse and Hamiltonis'. Elizabeth's anger over the lack of redress of Russell's murder appears to have triggered her acquiescence in their return and coup at Stirling on 2 November. Two days later, the banished lords were welcomed into the privy council.⁸⁸⁰ In late November Cessford returned to the Middle March from Stirling 'chosen warden and provost of Jedworthe and keeper of Jedworthe forest, and entered to divers commodities that Farnyhirst had'.⁸⁸¹ Carmichael was granted a remission and restored to his lands at Fenton and Dirleton.⁸⁸² Negotiations were resumed between the two countries and these formed the background to a more amicable beginning to 1586.

⁸⁷⁶ *RPC* iii 759; iv 4, 11, 13; *CSP Scot* viii no. 55

⁸⁷⁷ *HP* no. 521; *CSP Scot* viii no. 133

⁸⁷⁸ *CBP* i no 356, 358, 359, 365. Fortunately for both English and Scottish governments, Ferniehirst died shortly thereafter thus honourably relieving any need to deal further with him. *CBP* i no. 417

⁸⁷⁹ *CBP* i nos. 379, 382

⁸⁸⁰ *CBP* i nos 387, 388, 398; *RPC* iv 27, 30-33; *Moysie Memoirs* 53-55; *Melville Memoirs* 344, 348, 350

⁸⁸¹ Charter by James VI to William Ker of Cessford of offices of warden and justice in the Middle March, 7 January 1586, NRAS1100/633

⁸⁸² *APS* iii 399, 401

1586-1596: inconsistent steps towards cross-border co-operation

In the light of improved Anglo-Scottish relations and an apparent commitment by both governments to settle disputes, negotiations for an Anglo-Scottish league were continued from early in 1586.⁸⁸³ These discussions took place against the background of English concern, in 1586, over Spanish preparations for an Armada and Elizabeth's desire to secure her northern frontier.⁸⁸⁴ In the Middle March these better relations were exemplified by Forster's description of a day of truce at Kelso at the beginning of April 1586 'where I gott very good enterteignment at the opposite wardens handes, and greater justice then ever I dyd see in my life'. In mid April a return day of truce was held at Alnwick, Forster commenting that 'now the state of the Borders is as quiet as ever I knew'. In May the compilation of all complaints was ordered by the privy council, for the forthcoming Border Commission, to facilitate an amicable meeting.⁸⁸⁵ The same month, James received the first £4,000 of his new English pension. A new commitment by Elizabeth to establishing a league was evident in a letter that she sent to James in June. Though this letter fell short of the confirmation of the pension and succession that James had hoped for, it expressed Elizabeth's hope that she would continue to pay the pension and would do nothing to hinder his succession.⁸⁸⁶

Much was done to avoid any outbreak of cross-border trouble which could threaten negotiations or be used as an excuse to delay them. Various borderers were ordered to enter some of their affiliates for past offences, including Robert Elliot of Redheugh to enter a number of his surname and James Ker son of the laird of Greenhead to enter two of his servants. A proclamation ordered those in the Middle March to assist the warden Cessford.⁸⁸⁷ Several Kers from the Ferniehirst affinity found caution of sizeable sums to appear before the privy council on 9 June. They included

⁸⁸³ There had been talks over a league in 1585 but these had been held up by the Russell incident. *CSP Scot* viii no. 81.

⁸⁸⁴ RB Wernham *Before the Armada: The Growth of English Foreign Policy, 1485-1588* (London 1966) 373, 380

⁸⁸⁵ *CBP* i no. 421; *RPC* iv 68. These amicable relations contrasted with Scrope's complaints on the West March at the same time that the Johnstone-Maxwell feud threatened to break the borders. *CBP* i no.423

⁸⁸⁶ Goodare 'James VI's English Subsidy' 115; *CSP Scot* viii no. 443; *RPC* v 324-25

⁸⁸⁷ *RPC* iv 46, 69-70

William Ker of Ancrum who was told to find surety of 10,000 merks. A number of Rutherfords, Kers and Moscropes of Jedburgh stood surety for each other.⁸⁸⁸ A fortnight later, Forster wrote to Walsingham about accommodation for the proposed delivery of some Kers, but on 9 July several Kers were denounced rebel for their failure to appear.⁸⁸⁹ In June a privy council order prohibited anyone from attending a planned day of combat between the Burns of the Middle March and English Middle March men.⁸⁹⁰ Against these happier circumstances, the border commissioners met in June to discuss the Anglo-Scottish league and again in early July to arrange redress.⁸⁹¹ This was supported by the proclamation of a muster at Peebles to punish those who continued to commit offences 'aganis the subjectis of his [James's] darrest suster and cousing the Quene'. On 5 July 1586 a league was established between Scotland and England.⁸⁹²

The execution of Mary, Queen of Scots on 8 February 1587 could perhaps have undermined the new amity. The way in which both Elizabeth and James dealt with the aftermath said much about their desire to protect their alliance.⁸⁹³ It also demonstrated the confusing difference between their public expressions of intention and private acquiescence in hostile actions which typified their relations until Elizabeth's death. Initial threats of hostility by Scotland led to Scrope's muster of a defensive force on the West March. However, his observation of 'the great brags given out by our opposite neighbours for revenge' remained unrealised.⁸⁹⁴ Moysie noted that 'The Inglishe ambassadour desired that the leage and amitie betuix the twa nationis might be confermit, and inviolablie observit, because sayd he, the Queine wes werie sorie for taking' Mary's life.⁸⁹⁵

Elizabeth immediately sent Robert Carey north 'to make known her innocence of her sister's death': James stayed him at Berwick for his own safety and to prevent any cause for offence to Elizabeth.⁸⁹⁶ In fear, Forster

⁸⁸⁸ *RPC* iv 77, 82

⁸⁸⁹ *RPC* iv 87; *CBP* i nos. 436, 440

⁸⁹⁰ *RPC* iv 81

⁸⁹¹ Rae App. 5

⁸⁹² *RPC* iv 84-85, 92; Rae App.5

⁸⁹³ Wernham *Before the Armada* 382-83

⁸⁹⁴ *CBP* i nos. 484, 485, 487, 490

⁸⁹⁵ Moysie *Memoirs* 60

⁸⁹⁶ Carey had made a good impression on James when he accompanied Walsingham to Edinburgh in 1583. Carey *Memoirs* 5, 7-8

had cancelled a day of truce, but a letter from Cessford reassured the English that he wanted to maintain good order in the Middle March. A day of truce appears to have taken place between Forster and Cessford's deputies on 2 and 3 March and a meeting was planned between Carey and Home of Cowdenknowes and Robert Melville at Foulden in the East March.⁸⁹⁷

Suspicion continued however: in mid March, Forster wrote to Walsingham that 'the Kinge dothe write to the Laird of Cesfurde to do justice, and yet in the meane tyme he appoyntethe others to ryde and breake the bordors, and dothe winke therat'. A Scottish proclamation against intercommuning with the English appeared to support this view but in April Forster was able to write that 'the state of the Border is quiet'.⁸⁹⁸ The general impression given by the records in the *CBP* in 1587 is that there was not a major outbreak of raiding. If anything, despite the public 'brags' of revenge made, it appears that the council was trying to maintain the peace between the two countries. Forster's remaining complaint against raids by men from Liddesdale and West Teviotdale found a sympathetic ear, a number of Middle March men being summoned before the privy council that June to answer touching 'gude reule and quietnes' there.⁸⁹⁹

The privy council's reaction to Anglo-Scottish relations and the policy it pursued in the Middle March should also be seen within the context of the political situation in Scotland. From 1586, Sir John Maitland of Thirlestane, chancellor from 1587, brought to James's government his determination to establish an efficient administration and effective implementation of justice. Rae described Maitland's interest in Anglo-Scottish relations being only 'as much as they affected his domestic policy.'⁹⁰⁰ This inevitably impacted on the Middle March where a desire to avoid upsetting the amity combined with Maitland's attempts to suppress any challenge to crown authority.

Traditional methods were used with a consistency not seen since Morton's regency to administer justice and to preserve good cross-border relations. In November 1586, the earl of Angus was appointed lieutenant with a waged

⁸⁹⁷ *CBP* i nos. 489, 491, 497

⁸⁹⁸ *CBP* i nos. 497, 499, 514

⁸⁹⁹ *RPC* iv 183, 189

⁹⁰⁰ Rae's description of Maitland's domestic policy 'to limit the power of the aristocracy', violently out of control, would be open to re-evaluation given more recent appreciation of the nobility's co-operation in the suppression of feuding. Rae 206-8

force of two hundred men. In January 1587 a court held by Angus at Jedburgh reportedly hanged sixteen people, took pledges from others and ordered at least ninety more to find surety to enter themselves by March.⁹⁰¹ In June, Robert Scott of Haining was made cautioner for Turnbull of Bedrule's entrance to the opposite wardens for all attempts committed by him and for whom he was responsible under the general band. He also stood surety of 5,000 merks for Walter Scott of Branxholme, who had now reached his majority, to 'underly sic ordour as salbe imputt for the weill and quietnes of the Bordouris'. A number of new cautions were made for the men of Teviotdale, including several by the earl of Angus for his affiliates including the sheriff William Douglas of Cavers and George Douglas of Bonjedburgh. Significantly, the caution obliged them to 'relieve his Majesty and his warden at the hands of the opposite wardens' for themselves and those for whom they were accountable. Maitland's concerns were not only internal. However, the fact that even Cessford, the warden, was himself forced to find surety showed the crown's continuing dependence on strong local figures, despite English complaints against them.⁹⁰² The English were bemused by the lack of effective prevention complaining of nineteen Scottish raids into the English Middle March in May and June and fifteen in July, including one by Branxholme with (allegedly) 200 men into Redesdale.⁹⁰³

A couple of things were new however. Firstly, there was much greater involvement of the privy council in what would have been previously a matter of correspondence between the wardens. Maitland wrote in July 1587 to reassure Forster of the King's determination to stop further raiding. The wardens of the West and Middle Marches and Bothwell, as keeper of Liddesdale, were summoned before the council and made to promise to keep days of truce with the English.⁹⁰⁴ This intervention was partly the result of another novelty: in the late 1580s, the way in which government perceived the Borders appeared to be worsening. The numerous English complaints to the Scottish king and council were a constant reminder of the Borders as a region of special concern. In addition such complaints were accompanied now by the threat to alliance and pension. Increasingly the region was equated with the problematic Highlands and similar measures to

⁹⁰¹ *RPC* iv 111, 124, 132, 146-48; *APS* iii 489-90

⁹⁰² *RPC* iv 189, 191

⁹⁰³ *CBP* i nos 522, 535

⁹⁰⁴ *CBP* i no 525; *RPC* iv 92

deal with both began to be promoted.⁹⁰⁵ In July 1586 musters were proclaimed for both Peebles and Badenoch to deal with offenders 'inhabiting the cuntreyis ewest the Bordouris and the North and South Iles, and utheris Hieland cuntreyis' which was seen as endangering the amity.⁹⁰⁶ Then in July 1587, the act 'for the quieting and keeping in obedience of the disorderit subjectis inhabitantis of the bordoris hielandis and Ilis' for the first time equated the regions in legislation. The act noting the 'wicked inclinaioun' of the disordered inhabitants 'delyting in all mischeifis ... maist unnaturallie and cruellie waistand slayand heryand and distroyand' with 'barbarous cruelties and godless oppressionis' graphically portrayed central government's increasingly intolerant characterisation of the Borderers.⁹⁰⁷ They were 'godless' and 'barbarous' in the same way as the Highlanders had come to be seen over the previous two centuries. By the 1590s, James's observations in *Basilikon Doron* that Highlanders living near Inverness were capable of civilisation, whilst those of the Isles were irredeemably barbarous, were replicated in the council's special opprobrium reserved for the men of Liddesdale, Annandale, Ewesdale and Eskdale.⁹⁰⁸

The act may have encapsulated a new attitude to the Borders but its articles contained largely traditional measures. It was a combination of domestic law applicable throughout Scotland, such as the use of the general band to make landlords accountable for their adherents and the entry of pledges, and existing border-specific laws, such as the ban on cross-border marriage. Such marriages were seen as a 'hindrance to justice and obedience', encouraging the reset of offenders.⁹⁰⁹ What was more innovative was the attempt to make these measures more effective by the order for a register of all landlords, for whom they were responsible, the names of the pledges and those fugitive. In addition, a council was to sit on the first day of every month to hear complaints against borderers and highlanders. Neither of

⁹⁰⁵ Goodare and Lynch 'Scottish state and its borderlands' 201-4; R Nicholson 'The domesticated Scot and the wild Scot' *Guelph University Journal*; AH Williamson 'Scots, Indians and empire: the Scottish politics of civilization, 1519-1609' *Past and Present* (1996) no.150

⁹⁰⁶ *RPC* iv 92

⁹⁰⁷ *APS* iii 461-67

⁹⁰⁸ James VI and I *Political Writings* 24-25

⁹⁰⁹ See Chap. One. There were both English and Scottish reports of such marriages and others have used them as an example of a 'borderer' mentality. However, this study has not come across any such marriages on the level of lairds or above and it may have been a characteristic of lower economic levels in society. Rae 208, 212.

these last two measures were carried out at the time, though the concept behind them reappeared in subsequent and more consistently carried out legislation.

What the act did do was to establish the Borders as an area of extra concern in a way that stuck. This sustained perception affected all future policies on the Borders, even at times when government actions appeared to conflict with its expressed intentions. When James travelled to Denmark for his marriage in 1589, he appointed a committee to oversee border affairs under John Lord Hamilton with the wardens, including Cessford, as his advisers. In June 1590, this was taken further with the setting up of a weekly court, first suggested in the 1587 act to deal with all cases from the Borders.⁹¹⁰ This council included two borderers with extensive experience in the region, Carmichael of that ilk and Home of Cowdenknowes but, as Rae noted, the others such as Maitland, the justice clerk and the clerk register formed the nucleus of the main privy council. This had the effect of setting aside a day a week for the council to consider border affairs, displaying the priority with which they were now seen.⁹¹¹ Significantly, the register that recorded its deliberations was named *Liber Actarum penes Hyberniae, Insularum, et Marciarum Regni Ordinem*, a clear indication of the council's mental linkage of the regions. Though the meetings of this council petered out after about six months, the separate register continued long after its disappearance, an indication of the government's enduring concern.⁹¹²

In September 1593 parliament repeated the act of 1587, specifically charging landlords and bailies to find surety for the good behaviour of their adherents and for 'masterless men and vagabonds' to find surety or be declared fugitive. At the same time a muster was ordered to meet at Peebles in November.⁹¹³ Another act of June 1594, that referred to the 'vickit thevis and lymaris of the clanis and surnames' in the highlands and isles, also called for a listing of the troublesome surnames of the Borders 'that thair may be ... a perfite distinctioun be[tuix] names and surnames ... that ar and desirit to be estemit honest and trew' and those that were not.⁹¹⁴ Official policy hardened

⁹¹⁰ *RPC* iv 426; Rae 127-29, 210-12

⁹¹¹ Rae 127-29, 210-12

⁹¹² *RPC* iv 781-814; v 733-48; vi 823-29

⁹¹³ *APS* iv 39-40; *RPC* v 94-95

⁹¹⁴ *APS* iv 71-73

further, under the act of 1599, which stipulated that thefts on the borders were no longer to be resolved by redress, but rather by punishment 'unto the death'. In an act of 1600, wardens were again ordered not to make redress but to burn offenders' houses and to expel their wives and bairns: it was noted that this should 'be extendit alsweill to heland as bordour'.⁹¹⁵

The incorporation in this legislation of mostly traditional methods of imposing justice was replicated in the continued use of the judicial raid. In the period from 1586 to 1597, at least seven raids were made into the Middle March. James himself accompanied four of these. However, they were not all motivated by border-specific concerns for those in 1591, 1592 and 1593 were to deal with Bothwell and his adherents following his raids at Stirling, Falkland, Leith and Holyrood. Some of Bothwell's supporters, such as his stepson Buccleuch, came from the Middle March but all of them came into line. Buccleuch with the Scotts of Harden and Whitslaid received a remission, in 1591, for their involvement with Bothwell.⁹¹⁶ Angus's court at Jedburgh in January 1587 and James's at Peebles in November 1587 and Jedburgh in April 1588 were more specifically to address the usual border complaints.⁹¹⁷

Whilst such measures may appear to mark the Middle March out as an area of special concern, they were symptomatic of a broader approach by James and Maitland to make the administration of justice more effective throughout Scotland. This included the intervention of the privy council in the resolution of feuding, measures against weapon-bearing of 1593, 1595 and 1596 and attempts to make officials more efficient.⁹¹⁸ It is important to keep this context in mind for the increased report of border affairs might otherwise give them a significance out of proportion to their place within other government pre-occupations. Much of this report came from the English wardens who were in a different situation to their Scottish counterparts. It is informative to note Walsingham's comment of 1581 that redress of border complaints was 'a matter of small importance' which should not stand in the way of more important negotiations with the Scots over alliance.⁹¹⁹ As Watts notes for the period after 1603, it was in the interest

⁹¹⁵ *APS* iv 181-82, 237

⁹¹⁶ Fraser *Buccleuch* ii no. 209

⁹¹⁷ Rae App. 6

⁹¹⁸ *RPC* v 90-91, 247, 274-75, 321-22

⁹¹⁹ *CSP Scot* v no. 754

of English border officials to exaggerate the amount of crime, since its existence justified their continuation in office to their privy council.⁹²⁰ Their woeful reports repeatedly referred to the lack of resources available to them to fulfil their duties. However, in the late sixteenth century, border affairs seemed decreasingly important to English central government as the likelihood of further outright hostility disappeared in the face of an increasingly probable succession by James to the English throne. Rae concluded that it was no longer 'so necessary politically' for the English to insist on redress of complaints and that this was the reason for the wardens' 'petulant outpourings' to Burghley and Walsingham.⁹²¹

The increasing perception of the Borders as a markedly different region did not mean, however, that it existed in a separate bubble. The politics of central government continued to impact on the Middle March. The balance of power which swung away from the Maitland-Hamilton faction following Maitland's temporary retirement and the Lennox faction's resurgence in 1592, swung back towards Maitland following his reconciliation with the Queen in late 1593. Throughout the wardenry remained in the hands of the Cessford Kers, allied to Maitland through the marriage of his niece Margaret, daughter of Maitland of Lethington to Robert Ker younger of Cessford.⁹²²

However, other local office-holding was affected. This particularly applied to Liddesdale, the keepership of which changed hands five times in the period 1591 to 1594.⁹²³ In 1590, Lord Hamilton's border affairs committee included the earl of Bothwell and Bothwell's stepson Buccleuch was appointed keeper in July 1591.⁹²⁴ However, following Bothwell's rebellion and the open enmity between him and Maitland, Buccleuch was replaced as keeper by Robert Ker, younger of Cessford, by November 1591. Cessford only managed to retain this office whilst Maitland's position remained secure.⁹²⁵ On Maitland's forced retirement in August 1592, Lennox took over the keepership, appointing Cessford's rival Ferniehirst as his deputy in Liddesdale. However, in

⁹²⁰ Watts *From Border to Middle Shire: Northumberland* 134-35, 152

⁹²¹ Rae 220-21

⁹²² In 1587 a marriage contract was signed between Cessford younger and Margaret Maitland. In 1588, William Ker of Cessford had the grant of the fruits of the abbacy of Kelso, previously held by his father Walter, for his services in the Middle March. NRAS1100/987,1196

⁹²³ See App. M

⁹²⁴ *CSP Scot* x no. 592; *RPC* iv 649, 668; *CBP* i no. 714

⁹²⁵ *CSP Scot* x nos. 606, 616, 623, 640, 652

October 1593, on Maitland's recovery, Cessford replaced Ferniehirst as deputy. He also took over the wardenry from his ageing father William. This combination of roles eventually was to prove too much.⁹²⁶ In the meantime, Buccleuch's position had recovered and he received a remission for his involvement with Bothwell. In addition, following Bothwell's forfeiture, Buccleuch was granted the lordship of Liddesdale in a monetary arrangement with Lennox who had briefly had possession of it.⁹²⁷ As a result, Buccleuch was appointed keeper in October 1594 and continued so on an hereditary basis for the rest of the period. He distanced himself from Bothwell's affinity, for when that October he met the Armstrongs at the Hermitage he 'told them plainly that if any of them dealt with Bothwell, that he would hang them'.⁹²⁸

The importance of Maitland in court politics, particularly in the first part of this period to 1592, should not obscure the increasing importance, from around 1588, of James's own views and authority. James's growing stature, combined with his attempts to suppress feuding, meant that the factionalism which previously had so dominated court proceedings began to have less effect on crown policy. Factionalism had not disappeared but James's own views increasingly directed what the government did and whom it appointed. Domestically, he was to continue to extend the intrusion of central government into every locality, in the Borders as elsewhere. But his policies did not remain static, necessarily evolving in the face of changing circumstances. Externally, Anglo-Scottish relations were markedly less hostile, even occasionally amicable. However, this did not stop James continuing to use the Borders as leverage in diplomatic negotiations, rather as he showed himself sympathetic to the earl of Tyrone's rebellion in Ireland until 1597. He was also keen for his independence from English control to be seen, especially over his marriage.⁹²⁹

Such posturing, however, could not obviate his acute financial need for the English pension, his appreciation of the alliance and his desire for the confirmation of his succession to the English throne. As a result his actions in the Middle March sent out a rather mixed message to the English. In 1588,

⁹²⁶ *CSP Scot* x nos. 765, 779; xi no. 157

⁹²⁷ Fraser *Buccleuch* i 174-75, 178; ii nos. 209, 211

⁹²⁸ *RPC* v 178, 191-92; *CBP* i no. 986; *CSP Scot* xi no. 390

⁹²⁹ Rae 207, 218

Lord Hunsdon voiced his confusion. Noting 'the nyghtly spoyles in the Mydell Marches' and his 'smale hope of justis', he questioned the point of James's raid that November to Peebles 'where it was thought hee woulde have taken seveare order with them of Liddesdale and Weste Tyvidale, to be aunserable to England for suche attemptes as they had committed'. Hunsdon, probably unfairly, thought that James had had little effect wondering 'what leklyhode ther ys of the recovery of thys kyng'.⁹³⁰

The English found James's attitude to particular men from the Middle March especially confusing. Such complaints revealed much about James's intentions in the Borders and his personal style of government. Though the earl of Angus reassured the English that 'my sovereigne greatlie dislikes of this grit disorder at the Mydle Marche' in 1587, the English questioned James's lack of reaction to repeated English reports of Buccleuch's and Robert Ker younger of Cessford's misdemeanours.⁹³¹ In November 1587, Hunsdon, complaining about a raid by Buccleuch into the English West March, thought that such 'great oughtrages durst not be attempted by such men as hath done them, without the Kinges privitie'.⁹³² The following month, both Cessford and Buccleuch were accused of leading a raid by two thousand men into England. Buccleuch was apparently warded in Edinburgh castle for it, but was soon released on surety.⁹³³ Cessford's father continued as warden and in 1593 Robert was captain of the king's guard. The grant, in 1594, to Buccleuch of the keepership of Liddesdale confounded the English.⁹³⁴

Both Cessford and Buccleuch attended privy council meetings in 1594 and 1596, Cessford appearing five times in 1596. That year, the earl of Northumberland complained of the lack of redress from the Middle March warden, who he felt was protecting Scots who 'have good bands' from Buccleuch and Cessford. Lord Eure, in the English Middle March, complained that he could get no redress from Buccleuch for Liddesdale since its inhabitants were all joined to him 'by oathe and scripture'.⁹³⁵ Scrope noted that Buccleuch as keeper of Liddesdale showed 'a backwardness to justice,

⁹³⁰ *CBP* i no 563

⁹³¹ *CBP* i nos. 575, 638

⁹³² *CBP* i no. 560

⁹³³ *CBP* i nos. 570, 574

⁹³⁴ *RPC* v 178

⁹³⁵ *CBP* ii nos. 231, 232

except [that] which was solely for the profit of his own friends'. Enumerating Buccleuch's offences, Scrope complained that he 'has ever been the chief enemy (and still is) to the quiet of the border', 'yet this man is thought fit by the King and Council to be still officer!'⁹³⁶ Scrope's outpourings about Buccleuch were mainly inspired by the personal antagonism between them and should be viewed with some caution. However, such reports were typical of the general attitude of the English. Robert Carey was similarly contemptuous of the 'unworthy officer' Cessford, describing his 'delatarye and doublye' dealings. He thought that Cessford's poverty and his small remuneration as warden lay at the root of the problem and that without the grant of a bigger pension to Cessford, Carey thought there was not much hope of justice.⁹³⁷ Cessford and Buccleuch were clearly involved in cross-border raiding: that James continued to employ and reward them indicated that, for the moment, he tacitly at least condoned their activities. Even if he did not, the English thought that he did.

One particular incident exemplified James's approach to the Middle March and its officers and the changing effect of Anglo-Scottish relations on his policies there. This was the rescue by Buccleuch of his adherent Willie Armstrong of Kinmont in April 1596 and James's reaction to it. Kinmont Willie had been apprehended on the Scottish side of the border by Scrope's deputy during a day of truce. Buccleuch, protesting against the violation of the customary immunity on such days, demanded Kinmont's return. Scrope refused, so Buccleuch took matters into his own hands. Elizabeth and Scrope were outraged.⁹³⁸ Six weeks later, Robert Bowes addressed the Scottish Convention of Estates demanding Buccleuch's delivery to English justice. The Convention however referred the matter to a meeting of the border commissioners as Buccleuch had requested.⁹³⁹ Eure thought that Buccleuch 'strengthens himself much of late... his surest friends in court are papists about the Queen, and labour his grace with the King'. In July the privy council replied to the increasingly angry correspondence from Elizabeth that, though the King remained 'inviolable observing' of the amity, he upheld Buccleuch's demand for an 'ordinair forme of tryale' by the commissioners.

⁹³⁶ *CBP* ii nos. 237, 253, 336

⁹³⁷ *CBP* ii nos. 295, 343

⁹³⁸ *CBP* ii nos. 237, 252; *CSP Scot* xii no. 196

⁹³⁹ *RPC* v 290; *Spottiswoode History* ii 415

Scrope reported Buccleuch 'openly says the King has freely remitted his deed at this castle as good service to him and his "comune wealth"'.⁹⁴⁰ Buccleuch was warded on another charge by James in August but was released in October, despite English protestations.⁹⁴¹ The delayed meeting of the commissioners finally took place the following January; it settled a large number of cross-border bills, but failed to achieve the delivery of Buccleuch. Scrope complained that James and his council 'intend to extenuate and bear out Buccleuch's "proude acte"'.⁹⁴² The continuation of James's support for Cessford and Buccleuch had resulted in an impasse between the Scottish and English governments on the matter.

Conclusion

Throughout this period from 1573 to 1597, court politics had affected the Middle March: this began with the direct intrusion into the region of Morton's regency; to the radiation of court factionalism into the locality in the late 1570s and 1580s; and finally to James's own interest in extending crown authority throughout Scotland and the increasing priority he gave to it in the Borders. The effects of such intrusion were complicated further by the differing priorities given by successive regimes to Anglo-Scottish relations. Though these were characterised by uncertainty and mutual distrust throughout the period, there seems to have been an underlying desire by both countries for peaceful relations. Repeatedly, potentially disruptive disputes were subjected to intense negotiations at the highest levels.

In the 1590s, when the government acted to maintain the amity, the mechanisms it used to impose its authority in the region were very similar to those in the 1570s. Whilst the surrendering of pledges and subscribing of assurances had been somewhat superseded by orders to find monetary surety, all these measures continued to be reliant on the personal responsibility taken by a surname leader or landlord for his kinship and adherents. Similarly, personal relationships continued to determine the office-holders charged with imposing government policy in the locality. In

⁹⁴⁰ *CBP* ii nos. 283, 302; *RPC* v 298-99

⁹⁴¹ *CSP Scot* xiii pt i nos. 256, 264, 284; *RPC* v 323n.; *CBP* ii nos. 413, 416

⁹⁴² *CBP* ii nos. 473, 475, 476

the Middle March, this meant that Cessford and Buccleuch continued to be of importance to the crown in effecting its policy. Rae thought that the crown only intruded into the region when it had the will to do so, as it had under Morton. Crown implementation of order in the marches, he felt, was impeded by a tradition of local leaders prioritising the needs of their kinship and alliances over their duty to the crown.⁹⁴³ This however is to underestimate how government was already utilising the structures of the surnames and the accountability of the surname leaders of the Middle March to effect government policy in the region. Government had been able throughout the period to control potential conflict in the Middle March.

It is also important to note that throughout the period from 1573 to 1597 authority in the locality remained within the same families: apart from a brief interval in 1584 to 1585, the Kers of Cessford retained the office of warden. Similarly, once Buccleuch had achieved his majority in the mid 1580s, he took his place at the head of his surname becoming one of the most notable men in the march. In early 1597, a stalemate existed between the Scottish and English governments over their Middle March officials, where neither wished to fall out irretrievably with the other, yet nor could they countenance any slight to their honour. Moreover, James's personal support of Cessford, in particular, sent confusing messages to the English about his commitment to amicable relations. This remained the case until some change in James's priorities could tip the balance away from the strength of Cessford's position.

There were signs however that James's policies were about to change. In November 1596, the privy council registered the letter from Elizabeth of 1586 in which she had vaguely acknowledged James's rights to succeed her on the English throne.⁹⁴⁴ This indicated that the lack of a formal confirmation by Elizabeth was beginning to unnerve James. In the same way that external political considerations had intruded on the Middle March before, so they were to again.

⁹⁴³ Rae 18, 222. He did however acknowledge that the wardens usually obeyed the crown that had given them office. Rae 26

⁹⁴⁴ *RPC* v 324-25

Chapter Six: Pacification, 1597 to 1625

1597-1605: the beginnings of pacification

Crown policy in the Middle March had always been affected by external considerations, in particular relations with England. Whilst successive Scottish governments had used disturbances in the Borders as a form of leverage in diplomatic negotiations with England, so had some governments, such as that of Morton, attempted to use the imposition of order to encourage amicable relations. In 1597 James's border policy was affected by a number of concerns, the most overriding of which was his succession to the English throne. The registering in November 1596 of Elizabeth's letter of 1586 had indicated James's increasing concern over Elizabeth's reluctance to confirm his succession.⁹⁴⁵ This had led to his involvement in secret negotiations with the earl of Essex. In 1597 James was keen not to prejudice these by any cross-border incident.⁹⁴⁶

His relations with England were also influenced by his financial need for the English pension. This meant that he was vulnerable to any delay in its payment. Such delay could be occasioned by a cross-border dispute. In June 1596 Eure had written to Cecil that James 'is displeased as yt is thought, that the Quene threatneth to withhold her pentione from him in regarde of Baclugh his layte acte to my Lord Scrope' referring to the Kinmont Willie incident.⁹⁴⁷ Payment was finally made in September 1596 but no payment was forthcoming throughout 1597. The combination of James's concerns over the pension and the succession were to create a watershed, in 1597, in his attitude to the Borders: external concerns were to begin to outweigh his inclination to support his officials there.⁹⁴⁸

Against this more conciliatory background, the English were also in need of

⁹⁴⁵ *CSP Scot* viii no. 443; *RPC* v 324-25

⁹⁴⁶ Susan Doran traces James's concerns over the succession increasing from 1594, worsening through 1597 and calmed only after the Scottish embassy to London in 1601 which succeeded in securing Sir Robert Cecil's support. S Doran 'Loving and Affectionate Cousins? The relationship between Elizabeth I and James VI of Scotland, 1586-1603' in S Doran and G Richardson eds. *Tudor England and its neighbours* (2005) 203-33, 216, 218-221, 227; *RPC* v 324-25

⁹⁴⁷ *CBP* ii no. 284

⁹⁴⁸ Goodare 'James VI's English subsidy' 110, 116; S Doran 'Loving and Affectionate Cousins?' 218, 221

amicable relations with Scotland. Throughout the 1590s, English worries about a second Spanish Armada finding a landing in Scotland had been exacerbated by James's continuing indulgence of the Catholic earl of Huntly. At the same time, English attempts in Ulster to suppress the earl of Tyrone's rebellion needed James's co-operation in stopping any support for the rebellion from Scotland.⁹⁴⁹ Thus, in 1597, the external concerns of both governments resulted in increasingly amicable cross-border relations, despite continued English complaints against Buccleuch and Cessford who remained in office.

In January and February 1597, a meeting of the border commissioners was largely successful, with commissioners meeting daily and a series of compromises being effected.⁹⁵⁰ This success was partly due to the well-established mechanisms for resolving complaints but was principally the result of a new determination by both governments that it should succeed. Rae noted that the tensions over the Kinmont Willie incident had shown both governments the necessity for a clarification of border redress and neither wanted any escalation of the dispute.⁹⁵¹ The commission then went on to collate the existing march laws into a new border treaty, which they finally signed on 5 May. Tough described the new treaty as 'a great improvement on its predecessors'.⁹⁵² This did not stop English wardens subsequently complaining of its 'knottes' which 'nobody goe about to untye'. Interestingly a clause on the forcible renouncing of feuds received its first mention in such treaties and reflected both governments' growing perception of the need to deal with it. Other new clauses, which called for a border council and the planting of vacant churches, were not fulfilled before 1603 but did anticipate similar measures after 1605.

For James, his concern over the succession underlined the need for the maintenance of the amity evident in the treaty of May with England. No

⁹⁴⁹ *CSP Scot* xii nos. 118, 119; xiii pt. i no. 98; RB Wernham *The Return of the Armadas: The Last Years of the Elizabethan War Against Spain, 1595-1603* (Oxford 1994) 31, 143, 149, 202-3

⁹⁵⁰ *CBP* ii nos. 481, 520, 594

⁹⁵¹ Rae 218-19. Lord Eure in March 1597 noted the need for such clarification observing 'the ignorance I find among expert borderers touching [border laws] and the desire of the wisest in my March to know the law of the Border'. *CBP* ii no. 569

⁹⁵² *CBP* ii nos. 621-23. Tough lists some of the clauses that contained existing laws and all of the new ones. Tough 124-35, 264-66

disturbance in the Borders was to be allowed to upset Anglo-Scottish relations. In July 1599 a proclamation against incursions into England illustrated the importance that James gave to the suppression of further raiding 'quhilk may importe the brek of violatioun of the peace' and amity between the two realms.⁹⁵³ From 1597, the prioritisation of amicable relations resulted in a new consistency in James's implementation of justice in the region. This policy anticipated the measures used in the pacification from 1605 onwards. The beginnings of the pacification can thus be traced to 1597, in preparation for the regnal Union, rather than to the Union itself.

In 1597, the increasingly amicable Anglo-Scottish relations were jeopardised by English complaints over Buccleuch's and Cessford's behaviour and the failure to resolve the Kinmont Willie incident. From the start this affair had been linked to the payment of the pension. In 1596, Bowes reported that the King was 'much perplexed at her resolution to stop his yearly gratuity unless he satisfy her in the redress demanded against Buccleuch'. James's need for the pension battled with his indignation at Elizabeth's attitude towards him. In a letter of late June, he expressed his fury on the Queen's 'threatening to stop the payment of his annuity, and treating him as her pensioner.' He thought 'it a greater break of the League than his not giving up Buccleuch'.⁹⁵⁴

The English often bracketed Cessford and Buccleuch together in their complaints against them. However, Cessford and Buccleuch were not working together in the 1590s; in contrast, they were at feud with each other, perpetuating the Scott-Ker feud that had continued for much of the sixteenth century. This was despite the marriage of Cessford's sister to Buccleuch in 1586. Cessford probably felt threatened by the older and more experienced Buccleuch whose increasing power in the march, following his acquisition of Liddesdale, had been formalised by his appointment as keeper. In 1596 the dispute flared again and Cessford challenged Buccleuch to a combat.⁹⁵⁵

⁹⁵³ *RPC* vi 13

⁹⁵⁴ *CSP Scot* xii nos. 195, 212, 215; *RPC* v 300; S Doran 'Loving and Affectionate Cousins?' 216-17

⁹⁵⁵ *CSP Scot* xii nos. 197, 224. There is an undated fragment of an assurance signed by Buccleuch promising not to 'seek any dishonest advantage' of Cessford 'in his cuming to the field'. GD224/1059/17

Though there was much report of this challenge, there was no report of the combat having taken place. It is likely that Cessford was pressured by James to back down. From the various English reports, Cessford appears to have been the favourite of the two men with James. Also Cessford had the support of his kinsman Mark Ker, commendator of Newbattle, who frequently attended the privy council.

Whilst Buccleuch and Cessford retained James's favour, they were secure but their political position was vulnerable to any changes in Anglo-Scottish relations. English calls for Buccleuch's surrender had been provoked further by raids by Cessford and Buccleuch in late 1596.⁹⁵⁶ However, in March 1597 the bishop of Durham, writing about a proposed exchange of pledges, thought that 'the king neither can nor will perform it against the opposition of Cessford and Buccleuch'.⁹⁵⁷ In April Cessford felt able to boast that James would never deliver him to the commissioners. Bowes complained that Cessford, Buccleuch and Johnstone had got 'great reputation with the inland lords and gentlemen, for their valorous defence of their charges'.⁹⁵⁸ Scrope was even more suspicious: he thought that the only way 'to bridle these wicked clandes' was if the 'king can be persuaded to break their [Buccleuch's and Cessford's] combination'. Since 'these officers hold his full authority', he considered that James's lack of action showed that 'their actions are done by him or for him'. Furthermore, Scrope felt there was 'little [hope] of peaceable fruit of their commission' when 'the greatest murderers are made the chiefest governors of the frontiers'.⁹⁵⁹

However, the registering of Elizabeth's letter suggested that James's nerve had begun to weaken. He delayed doing anything about Buccleuch and Cessford for the first half of 1597, whilst the commission's negotiations went well and the treaty was signed in May. However, in June, Buccleuch and Cessford failed to comply with one of the treaty's clauses which called for the exchange of pledges with the opposite side, both refusing to surrender any

⁹⁵⁶ *CBP* ii nos. 356, 405, 473, 475

⁹⁵⁷ *CBP* ii no. 564

⁹⁵⁸ *CBP* ii no. 595

⁹⁵⁹ *CBP* ii nos. 603; *CSP Scot* xiii pt. i no 3. Undoubtedly, Scrope's language will have been coloured by the challenge to his pride following the Kinmont Willie incident. This does not, however, mean that his suspicion of James's motives was without foundation: it followed a number of similar remarks by English wardens from the 1580s onwards.

one of their own adherents.⁹⁶⁰ The following month, a change in James's attitude to the Borders was detectable in the order for the return of all English prisoners and goods taken in a recent Scottish raid. A judicial raid was proposed to prevent further raiding which threatened 'a publict weare'.⁹⁶¹ In early October, Bowes reported James's 'full assurance that Buccleuch and Cessford would present and enter on the next day to him all the pledges'. Despite a fracas at the day of truce at Norham on 8 October, Buccleuch delivered himself into English custody.⁹⁶² James remained concerned at the non-payment of his pension but Elizabeth made it clear that she connected the payment of the pension with the surrender of Cessford. She looked 'every hour to hear ... some good satisfaction in the Border causes'. Cessford held out until the following year but in January it was reported from the court at Edinburgh that 'we look daily to hear that the gratuity should be paid which will stop the mouths of many'.⁹⁶³ Cessford was forced to surrender to Carey's custody at Berwick on 14 February 1598. Temporarily his position at court had collapsed. Bowes thought that Cessford's friends 'could no longer bear out his evasion; whilst the king, straitened by her Majesty's last letters' finally realised that Cessford 'was not worth balancing against the Queen's merit'. In addition, the duke of Lennox, working on Buccleuch's behalf to arrange his release, supported Bowes's requests to James.⁹⁶⁴ In May £3,000 sterling was received from the English.

The change in James's attitude to the Borders seemed to mark a watershed in the borderers' understanding of what was expected of them. The surrender of Cessford and Buccleuch proved crucial in their re-education. In March 1598, Buccleuch was released in exchange for his young son, regaining him on the surrender of pledges from his adherents. Cessford was freed shortly after.⁹⁶⁵ Cessford, in particular, used the opportunity to build an amicable relationship with his warder Robert Carey and with William Bowes who passed on a favourable impression of him to Cecil and Elizabeth. Bowes

⁹⁶⁰ *CBP* ii no. 666; *CSP Scot* xiii pt. i nos. 6, 32, 40

⁹⁶¹ *RPC* v 404-5

⁹⁶² *CSP Scot* xiii pt. i nos. 77, 78, 79, 82, 84; *CBP* ii nos. 783, 784

⁹⁶³ *CSP Scot* xiii pt. i nos. 116, 117, 120. Cessford's initial refusal to enter ward exacerbated his dispute with Buccleuch who suspected his brother-in-law's intentions. An angry exchange of letters between the two in November 1597, as Buccleuch languished in Berwick, ended with Buccleuch signing himself 'Your brother in na termes'. *CBP* ii no. 842

⁹⁶⁴ *CBP* ii nos. 906, 908, 909

⁹⁶⁵ *CSP Scot* xiii pt. i no. 124

advised Elizabeth to 'tie fast a knotte upon his faith' since Cessford was 'so well befriended by a stronge faction' and 'better furnished to do hurt on these Borders than any other of his nation' if alienated.⁹⁶⁶ Subsequently both Cessford and Buccleuch were drawn into central government.⁹⁶⁷ Cessford attended privy council meetings between twelve and nineteen times annually to 1603 when he accompanied James south. In 1600, James, remembering Cessford's 'gude honorabill and thankfull service', granted him the annual pension of 650 merks from the abbacy of Kelso previously held by Robert's father William. Later that year Cessford was made Lord Roxburgh.⁹⁶⁸ Buccleuch's advancement took longer and he was not regularly present on the privy council until 1607. In 1599 he received a new confirmation of the barony of Branxholme which he had previously been granted in 1577, when his lands of Branxholme, the lordship of Ettrick Forest and the barony of Minto were consolidated into one barony. He then spent a few years serving in the Low Countries, returning to help with the pacification in the Middle March. In March 1606 he was ennobled as Lord Scott of Buccleuch.⁹⁶⁹

The only potentially serious diplomatic incident in the Middle March after 1597 was that of August 1598 following Sir Robert Carey's over-enthusiastic pursuit of an unauthorised Scottish hunt into England but both governments seemed intent on resolving the affair amicably.⁹⁷⁰ James's preoccupation with the succession, and maintaining good relations with England, was not confined to the Borders. In July 1600 a proclamation was made banning the recruitment in the west Highlands of men to assist the Irish rebels 'in thair rebellious and treasonabell courseis against his Majesteis darrest suster' Elizabeth in direct contrast to James's threats of assistance to the earl of Tyrone in 1596.⁹⁷¹ In 1601 James ordered Roxburgh to try a Scottish minister for the murder of an Englishman. He was to put his head 'upoun a publict place of the merche ... to be a testimony to baith the nationis of our eirnest cair that freindschip, love and amitie may be interteneit'.⁹⁷² In May 1601, James's efforts were recognised when Elizabeth raised the pension to £5,000

⁹⁶⁶ *CBP* ii no. 909

⁹⁶⁷ See App. O for their attendance at council

⁹⁶⁸ NRAS1100/728

⁹⁶⁹ GD224/479/1; 224/890/14; 224/917/34; *RPC* vii 340; Fraser *Buccleuch* i 235

⁹⁷⁰ *CSP Scot* xiii pt. i no. 252; ii nos. 515, 640

⁹⁷¹ *RPC* vi 127, 252-53, 304-5, 324

⁹⁷² *HMC Roxburgh* no. 74

and in 1602, it was reported that Elizabeth 'does much commend the great care which the King does show to preserve the mutual peace'.⁹⁷³

James's new vigour and consistency in the Middle March should be seen in the context of these concerns. In February 1598 in anticipation of a planned justice court at Peebles in March, all commissions of justiciary in the Merse, Teviotdale and Tweeddale were discharged to prevent judges showing partiality to their adherents.⁹⁷⁴ To maintain this new consistency, William tenth earl of Angus was appointed lieutenant and justice over all the marches in June 1598, a post which he retained until at least 1600. He was to be given the necessary support and all border pledges were to be at his disposal. In July 1599 the proclamation against raiding into England reiterated James's determination to suppress any disturbance. In the same month, Angus's commission was renewed.⁹⁷⁵ Furthermore, an act ordered that border thefts were to be punished 'conforme to the first lawis and custome of the saidis Bordouris'. Wardens were ordered not to accept redress for theft but to 'execute unto the death'. In 1599 and 1602, two ordinances, applicable, as in the act of 1587, to both Borders and Highlands, reinforced the accountability of surname leaders for the behaviour of their men under the General Band.⁹⁷⁶ Anything perceived to undermine the efficient and consistent administration of justice in the locality was then addressed. The sheriffs of the shires of Roxburgh, Selkirk, Peebles and Berwick were charged in December 1599 with neglect of duty in failing to present fugitives to justice.⁹⁷⁷ In July 1600 a large number of border lairds and nobles were summoned to a council meeting to discuss the quieting of the Borders. Then in November an act called for the wardens to burn offenders' houses. This last was 'to be extendit alsweill to heland as bordour'.⁹⁷⁸

These measures suggested that significant levels of crime still persisted. There were seven judicial raids recorded in the Borders in the period 1597 to 1603. Only one of the raids, however, was to the Middle March. This was in October 1602 to Peebles and Jedburgh, during which the surname leaders

⁹⁷³ *CSP Scot* xiii pt. ii nos. 659, 828

⁹⁷⁴ *RPC* v 444

⁹⁷⁵ *RPC* v 452, 464, 466; *APS* iv 170-72

⁹⁷⁶ *RPC* vi 17, 45-46, 435-36; *APS* iv 181-82

⁹⁷⁷ *RPC* vi 56-58, 68

⁹⁷⁸ *RPC* vi 136-37, 137-38; *APS* iv 237

were required to subscribe again the General Band, for which they were to find caution. Little more from the Middle March troubled the privy council register in this period. Instead, it seems that the particular region of concern was the West March, which experienced continuing disturbance from the Maxwell-Johnstone feud. It is therefore likely that the measures addressed to the Borders as a whole were in fact more targeted at the West March.⁹⁷⁹

The council thought that 'the cheiff and onlie caus of the grite misreule and unquietnes of the West Bordour ... hes bene the deidlie feidis' there. In December 1598 each branch of each West March surname was required to surrender two pledges to Angus. In February 1599 Angus was rewarded by the escheat in his favour of Sir James Douglas of Drumlanrig. In September 1599, Maxwell, Johnstone and Drumlanrig, the leading figures from the West March, were held in ward whilst an ordinance called for the West March surname leaders to submit their feuds to the privy council for resolution.⁹⁸⁰

The murder by some Armstrongs of the West March warden, Sir John Carmichael, in June 1600 as he made his way to a court at Lochmaben on the West March, triggered sustained retribution. Carmichael had been one of James's most trusted officials, accompanying him to Denmark in 1589. In July, the new warden, Lord Herries, was ordered to arrange the trial and execution of an Armstrong pledge held in the 'pledge chamber' at Dumfries. The man was known as 'ane commoun and notorious theiff' but if the court could not prove anything against him, he was to be executed for the involvement of his surname in Carmichael's murder. Armstrongs were still being prosecuted for this murder in 1606.⁹⁸¹

All measures taken in the Middle March, whether or not prompted by concern over the English succession and pension, should be viewed within the context of the implementation of similar policies throughout Scotland. The most compelling example of this was that provided by the act anent feuding of 1598 in which a problem, often portrayed contemporarily as a peculiarly border characteristic, was addressed on a nationwide basis.⁹⁸²

⁹⁷⁹ Rae App. 6; *CSP Scot* xiii pt. ii no. 863. A extensive raid to Dumfries had taken place in November 1597 which was not replicated by one to the Middle March. In November it was recorded that James would return every Michaelmas to deal with the miscreants of the West March. *RPC* v 421-27

⁹⁸⁰ *RPC* v 503, 537; vi 31, 46

⁹⁸¹ *RPC* vi 117-18, 127-28

⁹⁸² *APS* iv 158-59. See App. G

Similarly, the charges against the sheriffs of the Middle March in 1599 were swiftly followed by measures in 1600 and 1601 to improve the efficacy of sheriffs in general.⁹⁸³ All these were symptomatic of James's overriding concern for the better administration of justice throughout his kingdom.

The negotiations and preparations in the Borders finally bore fruit in March 1603, on the death of Elizabeth, with James's undisputed succession to the throne of England. It was fitting that Sir Robert Carey, the son of the redoubtable warden Hunsdon, and with extensive Borders experience himself, was the person to bring the news to James. As he passed through Berwick on his slow journey south, James stopped to issue a proclamation on 'the pairt of baith the countreyes quhilk of lait wes callit the Mariches and Bordouris, and now, be the happie union, is the verie hart of the cuntrey'.⁹⁸⁴ In James's mind, the borderline as an international frontier had vanished on his succession. This perception was to guide all his future policies within the region, in which he was to strive to eradicate any difference of law or practice between the Scottish and English Borders.

This, however, was to ignore the significance of continuing differences between the two regions and what Jane Dawson has termed 'the long-standing enmity': how was he to 'transform their deep-rooted hatred into an enduring amity?'⁹⁸⁵ An English officer in Berwick in 1604 observed 'the inveterate passions of the two nations who convening here daily engender new occasions of dislike'.⁹⁸⁶ Brian Levack's observation on the name 'Great Britain' that 'the use of a new name to describe one's nationality usually reflects, rather than inspires, a new national identity' is equally applicable to the new name James had for the Borders, that of the 'Middle Shires'. Sir Francis Bacon's list of complaints to the English parliament in April 1604 on the name 'Great Britain' included that 'we find no precedent, at home or abroad, of uniting or contracting of the names of two several kingdoms ... into one name, where the union has grown by marriage or blood' except 'in the case of conquest'. As Levack further notes, Scotland 'was qualitatively

⁹⁸³ *RPC* vi 68-69, 233-34, 329

⁹⁸⁴ *RPC* vi 560-61

⁹⁸⁵ Jane Dawson 'Anglo-Scottish protestant culture and integration' 91

⁹⁸⁶ *HMCSalisbury* xvi 4

different' from all other regions that had been subsumed into England. This was also true of the Scottish Borders.⁹⁸⁷ The separate nature of the two kingdoms was to fundamentally undermine attempts to bring them together in the early 1600s as events in the Middle March would exemplify. Though the term 'the marches' was meant to have been replaced by 'the Middle Shires', government continued to use the terminology of the 'former Borders' and of each march to address crown policies. The shires of Roxburgh, Selkirk and Peebles that formed the Middle March continued to embody an administrative area that was different to the other Scottish marches and very separate from the area across the border.⁹⁸⁸

The cross-border raiding by around 400 men including the Grahams in Busy or Ill Week in March 1603 suggested that its perpetrators had not understood the significance of the regnal Union. The Grahams claimed that they had believed that there had been an interregnum which had meant no laws applied on the Borders. Official reaction was immediate, taking the form that had come to be expected since 1597: a force of 200 men was despatched from the Berwick garrison, which was augmented by a further 1,000 men from the rest of the Borders, in pursuit of the Grahams.⁹⁸⁹ The Grahams could be forgiven for being confused about what was permissible within the new situation: mixed signals from James both before Union and as late as 1605 could have been interpreted as more favourable to them.⁹⁹⁰ In June 1604, James ordered the earl of Cumberland to stop the prosecution of those involved in Ill Week 'but who were known not to have been malefactors before that time'. In 1605, he was reminded of his promise to 'show mercy to' the Grahams. Simultaneously, the earl of Dunbar was being congratulated by Salisbury for his efforts in pursuing the offenders. By April 1605, however, the Grahams' position had deteriorated and new measures against them proved the precursor of the pacification. For the first time, it

⁹⁸⁷ BP Levack *The Formation of the British State: England, Scotland, and the Union 1603-1707* (1987) 24, 189; Sir Francis Bacon in J Spedding ed. *Letters and Life of Lord Bacon* (1872) iii 197-99

⁹⁸⁸ This chapter will portray the experience of pacification in the administrative area of the Middle March within the wider framework of the Borders.

⁹⁸⁹ Walter Graham of Netherby petitioned James claiming 'some had persuaded us that until your Majesty was a crowned King in England, the laws of the kingdom ceased and were of no force'. Sizer enumerates the Grahams at 24.7% of the total, Armstrongs at 15.3% and 60% other surnames from either side of the border, Sizer 'Middle Shires' 48. *HMC Muncaster* 244; *HMC Salisbury* xv 20, 47

⁹⁹⁰ Spence 'Cumberland' 77-81, 91-93, 97-98

was being discussed which of the Grahams 'we think most fit to be sent away'. This list included the surname leader Richard Graham of Netherby.⁹⁹¹

In the Borders in 1603, despite James's proclamations on the new 'Middle Shires', nothing much had changed. The abolition of march or 'hostile' laws at Newcastle in April 1603 was not formally ratified by either English or Scottish parliament until 1607.⁹⁹² The office of wardenship had lapsed on Union, but Lord Home was appointed lieutenant with jurisdiction over the Scottish marches in July 1603, with Sir William Cranstoun as his deputy. His commission, like many such before, was to reduce the inhabitants to a 'godlie, peciable, and quyete forme of leving'. A recognition of the changed circumstances was reflected in the grant to Home of a substantial annuity of 1,000 English merks (£8,000 Scots) and a paid force of fifty horsemen.⁹⁹³ As before, however, there were difficulties in getting payment. Home, suffering from contradictory orders and privy council interference in January 1604, resigned that July. In December 1604, there was a further order for those in the Scottish Borders to assist Cranstoun in his duties but problems of communication between London and officials in the Borders abounded.⁹⁹⁴

Attempts to trace the change in Scottish thinking on the Borders are frustrated by the intermittent nature of the privy council records, many of which have disappeared for 1603 and 1604. More illuminating are James's own writings and the records of debate through 1604 by the Anglo-Scottish commission appointed to draw up articles on the Borders for inclusion in the proposed treaty of Union.⁹⁹⁵ James's attitude to the Borders after his succession, expressed in his *Basilikon Doron* of 1598, was that 'then they will be the middest of the Ile, and so as easily ruled as any part thereof.' His speech to the English parliament in March 1604 spoke of 'the benefits that doe arise of that Union which is made in my blood ... as the head wherein that great Body is united'. His view on the indivisibility of the island, 'separated [internally] neither by Sea, nor great River', so that the borderers

⁹⁹¹ *HMC Muncaster* 229-31 ; *HMC Salisbury* xvii 177, 223-24

⁹⁹² *RPC* vi 560-61; *APS* iv 366

⁹⁹³ *RPC* vi 833-34

⁹⁹⁴ *RPC* vi 601, 604; vii 19. The earl of Cumberland was appointed lieutenant over the English counties of Northumberland, Cumberland and Westmorland but was sacked in December 1604 having suffered, like Home, confusing orders from the English privy council. Watts *From Border to Middle Shire Northumberland* 133-34, 137

⁹⁹⁵ Bruce Galloway *The Union of England and Scotland* (1986) 65-66, 84-86

'cannot distinguish, nor know, or discern their owne limits', was the expression of his hopes rather than contemporary reality.⁹⁹⁶ James made his intentions clear in a memorial in his own hand of 1604: he intended

to extinguishe as well the name, as substance of the bordouris, I meane the difference betwene thaim and other pairts of the kingdome. For doing quhair of it is necessarie that querrellis amoungst thaim be reconcyled and all straingenenes betwene the nations quyte removed; that all theeves, murderers, oppressouris and vagabondis be quyte rooted out ... that severe and indifferent justice be ministered upon all offenders and that no factions be fostered among thaim by the partialitie of thaire judges ...⁹⁹⁷

The overriding theme was that the Borders should be the same as anywhere else in the new Great Britain. This necessitated the removal of any difference between the areas either side of the border. The methods James proposed replicated the way in which he had pursued a more efficient administration of justice in Scotland. Dispute between those of either side of the border was to be resolved; the impartiality of judges had to be ensured; sureties should be taken to ensure the future good behaviour of the inhabitants. Whilst the Union commission did not take issue with much of this, James's insistence on the standardisation of laws, to remove any dissimilarity between the two countries, proved more problematic.⁹⁹⁸ As Sir Edward Coke, the English attorney general, noted in 1606, 'it will not appear which will be the middle shires, for a jury of England and Scotland cannot yet join. And for many respects I think that such a proviso would be very offensive'.⁹⁹⁹ These differences had wider implications: as Levack notes of contemporary opinion, 'If the union were to be an incorporating one, a union of laws appeared to be a necessity'.¹⁰⁰⁰

James's desire to create a union of the laws ignored the differences between his subjects in each country and the lawyers' defensive protection of their individual legal systems. Levack notes the 'most formidable obstacle of all ... [being] the substantial differences' between the two systems.¹⁰⁰¹ In the

⁹⁹⁶ James VI and I *Political Writings* 25, 135

⁹⁹⁷ *HMCSalisbury* xvi 405

⁹⁹⁸ *HMCSalisbury* xvi 413-14

⁹⁹⁹ *HMCSalisbury* xviii 186-87

¹⁰⁰⁰ Levack *Formation of the British State* 69

¹⁰⁰¹ Levack's chapter 'The Union of Laws' details Scottish and English resistance to and difficulties (amounting to impossibilities) facing any such union. Levack *Formation of the British State* Chap. Three, quote on 91

Borders, the protectionism resulted in the continuation of separate administrations in what was supposed to have become one region. Subsequently, it also led to heated resistance to James's demands for the remanding of offenders across the border, on the grounds that this would interfere with each country's jurisdiction. Galloway identified the three tasks with which the Union commissioners were faced: the abolition of all national statutes in which those of the opposite country were seen as hostile; the abolition of all laws, customs and ordinances which distinguished the Borders from elsewhere; and the setting up of a new system in the region which would administer the laws that existed in the rest of the new composite kingdom.¹⁰⁰² For James, the Middle Shires were to be an exemplar of the benefits of regnal Union, and an encouragement to further 'perfect Union'. However, though the commission readily agreed on the abolition of hostile laws, the methods for the future administration of justice proved more problematic.¹⁰⁰³ Sir Francis Bacon's suggestion for an Anglo-Scottish court to try cases from either side of the border under a practical mix of both countries' laws made no headway.¹⁰⁰⁴ No new legislation was made on the Borders and the treaty of Union presented to the English parliament in 1604 made similarly little progress.

In December 1604, the captain of the Berwick garrison wrote to Cranborne that 'the Borders are much infested with stealing, and now and then some disordered persons of the Scottish side stir up the ancient and barbarous custom of deadly feuds'.¹⁰⁰⁵ The continued instability in the Borders formed an unhappy background to the Union negotiations and parliaments. James now realised that something more had to be done if the example of the Middle Shires was to convince both countries of the benefits of Union. Ironically, the administrative framework and ordinances created to enforce a pacification continued to define the cross-border region as dissimilar to the rest of the united kingdoms. They continued to institutionalise an enduring mutual hostility and to endorse the separate administrative nature of the two regions within the 'Middle Shires'.

¹⁰⁰² Galloway *The Union of Scotland and England* 67-68

¹⁰⁰³ The relevant clause in the proposed treaty read 'the laws or usage of the late Marches or Borders, instituted or tolerated while they stood separate thereof, are utterly frustrated and expired'. *RPC* vii 706-7

¹⁰⁰⁴ Levack *Formation of the British State* 75

¹⁰⁰⁵ *HMC Salisbury* xvi 376

1605-1611: the pacification and the earl of Dunbar's lieutenancy

In March 1605, the ordinance for the new commission of justiciary for the Borders noted the importance of the region as an example of 'civilitie and obedience to the haill remanent boundis of his kingdome of Grit Britane'.¹⁰⁰⁶ In order to achieve this, a co-ordinated pacification of any further crime was planned for the region. There were a number of priorities that central government felt should be addressed for the sustained success of this pacification. All occasions for further dispute were to be removed, either through the suppression of feuding or the redress of past complaints. The punishment of offences should act as an example to prevent further crime. A local body of commissioners was necessary to oversee the co-ordination of official responses to crime. An effective armed force should be formed to prosecute the pacification. There should be cross-border co-operation between the two judicial administrations and harmony between the people of both sides. Judicial processes should be standardised. And finally, there should be a change in attitude on the part of the 'godless' borderers, which necessitated the reinvigoration of the work of the kirk there. For the pacification to be deemed a success, it had to work not only in the short term but had to be maintained in the long term. An article calling for the expulsion of offenders out of the region where 'the change of air will mak in thame ane exchange of thair maneris' was based on a perception of the necessity for a change in mentality of the borderers for the long-term success of pacification. Their whole way of life was to be transformed, by force if necessary. Most of the methods used bore remarkable similarity to what had gone before. What was novel was the sustained commitment of central government on both sides of the border to the pacification.¹⁰⁰⁷

The formation of the commission for the Middle Shires in March 1605 was an attempt to encompass all these aspirations. However, its own form embodied the continuation of mutually exclusive spheres of administration, with five commissioners from each realm having jurisdiction only in their own country. All were men with kinship links in the locality or experience of it. Kinship, though under pressure from the suppression of feuding, remained the basic foundation of a government effected through personal

¹⁰⁰⁶ *RPC* vii 701-4

¹⁰⁰⁷ *RPC* vii 701-4; Spence 'Cumberland' 107

relationships.¹⁰⁰⁸ The Scottish commissioners were Sir William Home of Whitelaw and Patrick Chirnside of East Nisbet, both part of extensive surnames in the East March; Robert Charteris of Amisfield, part of the Maxwell network in the West March; Sir William Seton of Kylesmure who, though not resident in the Borders, was a younger brother of the new chancellor, the earl of Dunfermline; and Sir Gideon Murray of Elibank, who was resident in the Middle March and linked to both the Murray and Scott surnames there. He would subsequently become the most important Scottish commissioner. Unlike border commissioners of the past, whose commissions had lasted the length of a specific meeting, these commissioners were appointed indefinitely and received an annual payment, initially of 400 merks. Most of them served several years: Elibank acted as a commissioner until 1617 when his duties as deputy treasurer forced him to resign his place in favour of his nephew Sir John Murray of Philiphaugh.¹⁰⁰⁹

The privy council instructions given to the commissioners formed a blue print for all subsequent statutes on the pacification and it is instructive to note the main priorities within them. They were to have 'ane speciall cair and regaird for removing of deidlie feidis', that 'unnaturall and barbarous custome'. They were to cause 'delyverie to be maid of all personis fugitive' from one country to the other when called on by the opposite officer. Lists were to be made of all those fugitive and decisions taken on how to bring them to justice. All those standing surety for others' good behaviour, or accountable under the General Band for their adherents, were to be listed and made to enter offenders. The commissioners were to expel all 'idle vagabondis' whose means of subsistence was unknown and therefore suspect of 'unlawfull purchase'. Local sheriffs, noblemen, gentlemen and burgesses were to assist them in their pursuit of the fugitives and 'besieging and destroying the houses or castle where they may take refuge'. To ensure the sustained implementation of these measures, the commissioners were to report to the privy council every two months.¹⁰¹⁰ The commissioners were to work with the English commissioners and the sheriffs to remove 'all occasioun of strangeness and mark of divisioun' between them and thus to

¹⁰⁰⁸ *RPC* vii 701-4; *HMC Muncaster* 229. See App. J

¹⁰⁰⁹ *RPC* xi 11; Sizer 'Middle Shires' 95-97. Elibank was also a privy councillor from 1610. *RPC* ix 54

¹⁰¹⁰ *RPC* vii 701-4. Though there is no record of bimonthly meetings, the council and commissioners did meet and close contact was maintained over several years.

'quench all the spark of ony hope of escape from punishment'.¹⁰¹¹ They were to 'ruit out all malefactouris for the present bot to continew a sever course of justice ... for the perpetuall preservatioun of these countreyis in peace'.¹⁰¹² In recognition of the methods that they would have to use there was to be an immunity to the commissioners for any 'mischance or inconvenient'. Subsequent indemnities issued to them indicated that their actions necessitated such immunity.¹⁰¹³

Whilst summary justice often occurred during the pursuit of fugitives, the commissioners held set-piece courts every few months when they sentenced offenders with exemplary severity. Severity was to be one of the keystones of government policy in the pacification. In August 1605, a court at Hawick provoked English concern that the commissioners 'made no bones to kill such fugitives or felons as made resistance'.¹⁰¹⁴ Another was held at Jedburgh in October 1605, at Peebles that December, at Jedburgh in April 1606 and again that October. In January 1606 the commissioners reported to the privy council that they had convicted six at Peebles of capital crimes which 'we have exemplarlie puneist with lyffe'. In May 1606 they reported that 'we haif execute be watter and gallous' thirty-two criminals at Hawick, Peebles, Jedburgh and Dumfries, including a Turnbull, three Elliots, five Armstrongs and three Johnstones. A further five Elliots and several Armstrongs were banished. In October 1606 five were executed at Jedburgh.¹⁰¹⁵ Wasser observes that 'in a savage age the government must sometimes also be savage - but its victory was the only hope for ending the cycle of barbarism'. Such a view equates with the early seventeenth century government's perception of the borderers, though is perhaps open to reassessment now.¹⁰¹⁶

Despite the commissioners' efforts, crime in the Borders did not immediately cease. In December 1606, James impatiently complained to them that 'we do not find so good success of your proceedings as we expected ... We have therefore appointed the earl of Dunbar, who is a councillor in both our kingdoms' to oversee the pacification.¹⁰¹⁷ Dunbar was to be the 'supreme

¹⁰¹¹ *RPC* vii 706-7

¹⁰¹² *RPC* vii 707-9

¹⁰¹³ *RPC* vii 701; viii 37, 278, 420, 432, 846

¹⁰¹⁴ *HMC Muncaster* 236

¹⁰¹⁵ *RPC* vii 714-17, 717-20, 725-27

¹⁰¹⁶ Wasser 'Pacification' 189

¹⁰¹⁷ *HMC Muncaster* 266-67

authority in all matters requiring dispatch in those parts; with power to apprehend outlaws and put any of them to trial and execution, as he may think fit.¹⁰¹⁸

Dunbar, formerly George Home of Spott, had risen within James's household over the course of the previous twenty years and had proven himself capable in the recent trial of ministers at Linlithgow in early 1606. He was made Chancellor of the Exchequer in London in May 1603 and in 1605 appointed to the Scottish privy council.¹⁰¹⁹ He was an appropriate choice for a Borders' official given the expansion of his landholdings, both in the East March and at Norham in Northumberland, the latter purchased from Sir Robert Carey.¹⁰²⁰ This meant that his self-interest tallied with that of the government in the region. He was apparently already unofficially involved in the pacification, the success of the court at Hawick in August 1605 being attributed to him. Initially James was careful not to grant Dunbar too much power, it being noted that James did not wish 'to attribute to him thereby any power that may make alteration in the government'.¹⁰²¹

This did not hold him back, for in February 1607 Dunbar reported his execution of five men of the Middle March, including the notorious Armstrongs of Whithaugh and Mangerton, and that of fourteen others 'for stealths and other punishable causes'.¹⁰²² It showed something about both the strength of his position and government resolve that this was possible.¹⁰²³ Dunbar enjoyed a close relationship with both James and the earl of Salisbury, with whom he frequently corresponded. A letter from Dunbar to Salisbury in 1605 thanked him for his 'continual favours and great care of me'. That May, Salisbury congratulated his efforts against the Grahams but urged him to come south to join in the hunting.¹⁰²⁴ In sharing James's love of hunting, Dunbar managed to retain his favour throughout his career. The

¹⁰¹⁸ *HMC Salisbury* xviii 371

¹⁰¹⁹ Sizer 'The Earl of Dunbar, Scotland and the Border' 229-57; Cuddy 'Anglo-Scottish Union' 109-10

¹⁰²⁰ *HMC Salisbury* xvi 78; Watts *From Border to Middle Shire* 139

¹⁰²¹ *HMC Salisbury* xvii 223-24, 410; xix 14-15

¹⁰²² *HMC Muncaster* 270-71

¹⁰²³ Lee has noted that 'If ever there was a period of time during which James's government of Scotland could properly be called despotic, Dunbar's years of power constitute that period' and that 'it was less government by pen than it was government by visitation'. Lee *Government by Pen* 62, 104

¹⁰²⁴ *HMC Salisbury* xvii 223-24, 591

necessity of Dunbar's attendance on James must have been to the hindrance of his duties on the Borders: he was hunting with James throughout the period of June to September 1607. However, this bore fruit: a commission of lieutenancy was granted to Dunbar that August. His career was cut short by his premature death in 1611 from a long-term illness that had frequently incapacitated him.¹⁰²⁵

Dunbar's work was to be renowned throughout the Middle Shires. Northumbrian gentry attributed any outbreak of renewed disorder to his absence; any quiet to his presence. His time in Northumberland 'no doubt has given more occasion of fear and terror to the evil disposed of those parts, and his very name there has suppressed more disorders than all the Commissioners could do'. Appreciation of his arrest of the principal thieves of Tynedale and Redesdale was matched by Selby's praise of his apprehending of 'the chief ringleaders of Liddesdale ... of such men as have not been taken in my memory [which] have brought a general abstinence from theft'.¹⁰²⁶ By 1609, the chancellor the earl of Dunfermline, not normally an ally of Dunbar's, was moved to superlatives in a letter to James, claiming that Dunbar

he had rendered all these ways and passages betwixt ... Scotland and England as free and peaceable as is recorded Phoebus in old times made free to his own oracle in Delphos ... These parts are now, as lawful, as peaceable and quiet as any part in any civil kingdom.¹⁰²⁷

Such hyperbole, however, is an inexact base for an assessment either of the levels of crime in the region or Dunbar's effectiveness in suppressing it. Central government was prone to descriptions of endemic disorder and border officials were in the habit of exaggerating it, in order to justify their offices. Watts has revealed the difference between Dunbar's claims of disorder in Northumberland and the figures for convictions provided in the *Vetera Indictamenta* by the assize clerk there.¹⁰²⁸ In 1607, Dunbar's self-congratulatory letters to Salisbury spoke of his suppression of crime without

¹⁰²⁵ *HMC Salisbury* xix 31, 44, 164, 184, 192, 207-8, 209-10, 247, 254, 315, 350-51, 428; *RPC* vii 728-29

¹⁰²⁶ *HMC Salisbury* xviii 368-71; xix 44

¹⁰²⁷ Adv MS Denmilne 33.1.1 vol. 3 no. 23

¹⁰²⁸ Lee *Government by Pen* 46; Watts *From Border to Middle Shire* 152; *Vetera Indictamenta: Criminal Records of the General Gaol Delivery and General Quarter Sessions of the Peace for Northumberland, 1594-1630* at the Northumberland Record Office.

which there would have been 'a most troublesome winter'. He was resolved 'on a course to terrify those that would offend and to punish those that have offended'.¹⁰²⁹ His efforts had included the engineering of the warding of the Widdrington brothers in Northumberland which Watts attributed to factionalism within Northumberland rather than the outbreak of crime that Dunbar blamed the Widdringtons for.¹⁰³⁰ Political expediency appears to have magnified the incidence of crime in Northumberland; perhaps a similar analysis should be applied to the Scottish situation, particularly in view of the lack of official Scottish records.

Previous attempts to maintain order by lieutenants and wardens had been undermined by the lack of a standing armed force to assist them after the initial muster. Only occasionally had the lieutenant been granted a temporary paid force. Thus the appointment of Sir William Cranstoun as captain of a new border guard of twenty-five horsemen was of crucial importance in supporting the work of the Commissioners on a year-round basis.¹⁰³¹ A similar guard was formed for the English Border counties under Sir Henry Leigh.¹⁰³² The Scottish guard continued in existence until 1621, sending out an exemplary message to the Borderers of their sustained vulnerability to justice.¹⁰³³ Cranstoun's methods were subsequently described as 'daylie and nychtlie troublit in searcheing and suppressing of lymmaris, als weill for thair tryall and punischment at hand as for thair delyverie to our brethrene and fellow-commissioners in England'.¹⁰³⁴ The severity with which he pursued his commission was evident in the numerous indemnities granted to him.¹⁰³⁵ In one of 1610 it was recognised that he had

¹⁰²⁹ *HMC Salisbury* xix 254, 427

¹⁰³⁰ *HMC Salisbury* xix 487, 507; Watts *From Border to Middle Shire* 149-52. Sir Henry Widdrington was a JP, MP and keeper of Redesdale. He and Sir William Selby, one of the English Middle Shires commissioners, were enemies. Henry and his brother Roger were prominent Catholics.

¹⁰³¹ Cranstoun was to be paid a hundred merks a month and the horsemen forty merks. An order was made to the Comptroller to pay the sums on the fifteenth of every month. Previous armed guards, such as the one granted to Angus as lieutenant in 1587, were established only on a temporary basis. There is evidence that both commissioners and the guard had difficulties in getting payment, a complaint being made at a meeting of the privy council and commissioners in January 1606. *RPC* vii 704, 714-17.

¹⁰³² Cranstoun and Leigh, initially at least, sometimes worked together. In June 1605 both were ordered by the commissioners to search for escapees from Carlisle jail. *HMC Muncaster* 232

¹⁰³³ *RPC* x 176, 231; xi 217; xii 583-84

¹⁰³⁴ *RPC* vii 714-17

¹⁰³⁵ *RPC* vii 286-87; ix 155-56, 305-6

'to mak ane quick dispatche of ane grite number of [offenders] without ony convictioun or dome gevin aganis thame be ane assyse, and sometyme to assedge thame in houssis and strenthis, and to rais fyre' against them.¹⁰³⁶

He was exonerated of 'actions of pursuit, shooting with fire-arms, slaughter, mutilioun, fire-raising'. The inclusion in this indemnity of his sons Sir John and James, John Cranstoun his brother, Alexander Cranstoun of Morrison and John Cranstoun of Skaidisbus indicated how kinship still provided the manpower that an official needed to fulfil his duties.¹⁰³⁷ Sometimes his duties must have been too onerous and insufficiently supported: in March 1606, he complained to the English commissioners that 'Our own courts approach. I am charged with the apprehension of the Grahams and several other duties. None come to me with armour. For me to ride to their several houses would be an infinite travel.' Cranstoun's efforts were recognised in June 1610 when he was ennobled as Lord Cranstoun of Crailing. He became lieutenant on Dunbar's death and in September 1611 was appointed to the privy council.¹⁰³⁸

The commissioners appeared to take to their work with alacrity, adding ordinances of their own. The underlying theme in all of these was the exemplary nature of consistent and severe justice, in order to enforce a changed way of life in the region. Some of the commissioners' methods and concerns were traditional. Old cross-border feuds were to be resolved under a 'general assurance' and any new feuds prosecuted immediately. 'We may compel the cheiff ... to tak burding for the minor, thocht bot ane branche of his house, and bind for the commoun peace' particularly in cases of feud. Cases of oppression over the possession of lands were to be brought before the council for resolution.¹⁰³⁹ However, there were also new measures. The priority given to cross-border theft was seen in the sentences prescribed for its punishment: in comparison to the relatively lenient twenty days jail for harming with a weapon, theft of goods of over 12d value 'salbe punished by death' and significantly 'that all accessaries to sutche felonyis, viz, outputting and recetting, sall lykewyse suffer death for the same'. Noone other than a gentleman or nobleman 'unsuspected of felony' was to be

¹⁰³⁶ *RPC* viii 279

¹⁰³⁷ *RPC* viii 279

¹⁰³⁸ *HMC Muncaster* 250-51; *RPC* viii 471; ix 129

¹⁰³⁹ *RPC* vii 709-12

allowed to wear armour or carry arms. Noone was allowed to keep a horse worth above £30 on pain of imprisonment. All landlords in the Borders were to make lists of their tenants and in what manner 'forme or trade of lyf they leve or mantene thameselffis', so that the criminals should be known.¹⁰⁴⁰ Most illustrative of governmental intrusion was the prohibition of 'the ordinary custome' of hunting in the Cheviots by those of Selkirkshire, Roxburghshire and Liddesdale which might be the cause of further trouble. These were not just threats: in June 1605, the Scotts of Goldielands and Thirlestane and Douglas of Cavers were forced to find caution of upto 1,000 merks not to hunt there. In December 1605 the Scotts of Harden and Bowden, the Armstrongs of Whithaugh and Kinmont and several Elliots, all prominent Middle March names, were charged for hunting in the Cheviots and Redesdale.¹⁰⁴¹ Then in May 1608 a horse race at Peebles was banned by the privy council for fear of 'quarrellis leading to trouble'.¹⁰⁴²

This intrusion was not limited to the temporal life of the Borders but also to its religion. Great significance was attached to the lack of competent ministers and regular worship in creating a godless society, prone to crime. In March 1605 the border commission's remit was described as dealing with those conducting a 'godless, lawless, and disordered course of lyffe'. Lord Sheffield noted that 'it were fit the Borders ... should be lightened by the preaching of the Word, being the only way to bring them to civility who are now so barbarous'.¹⁰⁴³ This linkage of law-abiding people with godliness formed part of James's emphasis on the need for the plantation of sufficient ministers in all the parishes of Scotland. However, in addition to this, James was encountering extreme resistance by ministers, presbyteries and synods throughout Scotland to his re-introduction of the episcopacy. It is beyond the scope of this thesis to undertake a full examination of this topic but the experience of the presbyteries of the Middle March should be viewed within the context of widespread resistance to James's interventions in the kirk.¹⁰⁴⁴

¹⁰⁴⁰ *RPC* vii 707-9

¹⁰⁴¹ *RPC* vii 41-42, 601-2, 623, 709. Sizer 'Middle Shires' 58-59

¹⁰⁴² *RPC* viii 81. Another horserace planned in Annandale in 1611 was banned in fear of the 'dangerous effectis of trouble'. *RPC* ix 152-53

¹⁰⁴³ *RPC* vii 706-7; *HMC Salisbury* xvii 125

¹⁰⁴⁴ A comprehensive account of the resistance to James's measures within the kirk is provided by Alan MacDonald. AR MacDonald *The Jacobean Kirk, 1567-1625: Sovereignty, Polity and Liturgy* (1998) 120, 138

The presbyteries of the Middle March already had a difficult reputation in the kirk. MacDonald notes the strength of opposition, in 1607, to the acceptance of nominated constant moderators and the horning of five ministers of the synod of the Merse and Teviotdale.¹⁰⁴⁵ In March 1607 Lord Roxburgh, under a commission to appoint a constant moderator for the presbytery of Selkirk, insisted on his nominee Mr John Knox being accepted. The presbytery held out until May but was finally forced to submit.¹⁰⁴⁶ In April, the presbytery of Jedburgh similarly was told by Ferniehurst and Ker of Ancrum to receive its nominated constant moderator, Mr John Abirnethie who had close links with the Kers.¹⁰⁴⁷ MacDonald further notes the continued resistance of the synod of the Merse and Teviotdale. In March 1608 the privy council accused the synod of Merse and Teviotdale of disobedience ‘upoun some passionat humour of thair awne’ in discharging their constant moderator and refusing to appoint a new one.¹⁰⁴⁸ Some members were to be put to the horn as a result. Then in June, the presbytery of Jedburgh refused to accept Abirnethie as moderator. Several ministers of the presbytery, including the historian David Calderwood, then refused to submit to a visitation to Teviotdale by the bishop of Orkney. The council thought that this was ‘ane offence so heinous, as gif that it be not examplarlie punist, thair nedis no forder dewtye nor obedience to be ony way expected’ from ministers. They were banned from preaching and confined to their parishes. Elibank was appointed to enforce the nomination, leading to Calderwood’s suspension and the installation of a new minister that August.¹⁰⁴⁹

The privy council and the kirk’s hierarchy having been alerted by these presbyteries’ recalcitrance, the next sitting of the General Assembly in July 1608 made a priority of addressing the state of the kirk in the Borders. The assembly, of which Lord Buccleuch was a member, noted that there were many kirks ‘wanting pastors, and other misorders, speciallie in the Merse and Teviotdaill, Cathnesse and Sutherland’. A commission was nominated which included Dunbar and the archbishop of Glasgow, John Spottiswoode, in whose diocese much of the targeted region lay. It was given full power for the ‘planting of the kirks that ar presentlie destituted of pastors’ paying

¹⁰⁴⁵ MacDonald *Jacobean Kirk* 132-33

¹⁰⁴⁶ Presbytery of Selkirk records CH2/327/1/3, 8; MacDonald *Jacobean Kirk* 134-35

¹⁰⁴⁷ Presbytery of Jedburgh records CH2/198/1/33; MacDonald *Jacobean Kirk* 135-36

¹⁰⁴⁸ *RPC* viii 68; MacDonald *Jacobean Kirk* 134

¹⁰⁴⁹ *RPC* viii 102-3, 126, 128, 148, 508-10; Calderwood *History* vi 706-712, 716

particular attention to 'the great necessitie of the kirks' of Annandale, Ewesdale, Eskdale and 'the rest of the kirks of the Dales, which are altogether unplanted'. Spottiswoode and Mr John Knox were given full power and commission to conduct a visitation to the region and to deprive incompetent ministers.¹⁰⁵⁰ In March 1609, this received royal approval in a letter from James attributing 'the bypast barbarite and incivilitie in that parte of the Middle Shyris' to 'the inhabitantis in most pairt thair of being voyd of all trew feir of God and religioun'. This 'wes the caus that the kirkis ar the same, for laik of reparatioun ... almoist to decay and ruyne'.¹⁰⁵¹ Spottiswoode was to enforce the physical repair of churches, and organise the uniting of parishes in order to help the planting of adequate ministers in them and make the parishes more viable. Wayne Pearce notes that 'the archbishop's exertions in this region must be interpreted as an integral part of this wider campaign to "civilise" the Borders'.¹⁰⁵² In November 1610, in official recognition of Spottiswoode's involvement, his powers were extended into the secular side of the pacification on his appointment to the commission of the peace for Roxburghshire, Selkirkshire and Peeblesshire.¹⁰⁵³

Spottiswoode and Dunbar were to become a formidable joint force in the Borders.¹⁰⁵⁴ Pearce calls Dunbar Spottiswoode's 'most powerful secular ally' and Spottiswoode's description of Dunbar provided evidence of this. Dunbar, he wrote, was 'a man of deep wit, few words, and in his Majesty's service no less faithfull then fortunate. The most difficult affaires he compassed without any noise, and never returned when he was employed, without the work performed that he was sent to doe'.¹⁰⁵⁵ Spottiswoode stayed with Dunbar at Newcastle in late 1605 and again in August 1608, perhaps then planning the visitation to the Middle March. Spottiswoode no doubt provided some weight to Dunbar in the latter's rivalry with the

¹⁰⁵⁰ *BUK* iii 1061-62. Calderwood observed the assembly made no mention of the Bishop of Orkney's 'tyrannous proceeding' against the Jedburgh ministers. Calderwood *History* vi 768,771-75. MacDonald does not relate the General Assembly's resolutions on the Borders, concentrating instead on its actions against the Catholic earls. MacDonald *Jacobean Kirk* 141-42. Neither does Wayne Pearce provide much more information. Wayne Pearce 'John Spottiswoode'. This is probably because the records of Spottiswoode's visitation are very scarce.

¹⁰⁵¹ *RPC* viii 266-67, 564-65

¹⁰⁵² Wayne Pearce 'John Spottiswoode' 95-97,170

¹⁰⁵³ *RPC* ix 75-76

¹⁰⁵⁴ Lee has noted that the alliance of Dunbar and Spottiswoode balanced the power of the chancellor, Dunfermline. Lee *Government by Pen* 47

¹⁰⁵⁵ Pearce 'John Spottiswoode' 116; Spottiswoode *History* iii 516

chancellor, Dunfermline.¹⁰⁵⁶

Another innovation of the pacification was the plan for the transportation of problematic borderers. Individuals had been exiled before: however, the attempts to displant many of the surname of Graham were unprecedented in the Borders. These measures replicated the privy council's targeting of the 'wicked Clan Gregor' from 1600, though the government fell short of proscribing the name itself.¹⁰⁵⁷ Though the Grahams were mostly resident just over the border into England, many were formerly from Scotland and maintained close kinship links and alliances there.¹⁰⁵⁸ In 1606, the bishop of Carlisle felt that fugitive Grahams were being given refuge in Scotland 'where I am well assured they could not so safely range had they not some connivance (I fear from authority) there'. The bishop thought that transportation should also be applied to other troublesome surnames including the Armstrongs. He wrote to Salisbury hoping that Annandale and Liddesdale might be 'purged', since James was 'so well understanding the wickedness of the inhabitants'.¹⁰⁵⁹ The first attempt, in 1605, to send 150 of what were felt to be the most incorrigible Grahams to serve in the Low Countries was not a success. Some disappeared *en route* slowly resurfacing in the Borders. By November 1605 it was reported that only fourteen remained at Flushing.¹⁰⁶⁰ The next attempt was a little more successful: from June 1606 measures were taken to transplant fifty families of Grahams to Ulster. The English commissioners observed that they found the Grahams 'so willing that they humbly entreat to be settled in the places appointed before winter. We intend to send the unmarried ... to the cautionary towns.'¹⁰⁶¹ This was a precursor to the colonisation programme, from 1609, whereby Scottish lairds were encouraged to set up estates in Ulster in order to undermine Irish resistance to English rule. Much has subsequently been made of such moves, but it affected a very small minority in the Borders at

¹⁰⁵⁶ Pearce 'John Spottiswoode' 65,78

¹⁰⁵⁷ *RPC* v 41; vi 72,558n. In April 1603 a statute ordered that the name of MacGregor 'sulde be altogether abolisched'. *APS* iv 550. Goodare traces changing government attitudes to highlanders, including the MacGregors. Goodare *Government of Scotland* 236

¹⁰⁵⁸ Spence 'Cumberland' 61

¹⁰⁵⁹ *HMC Salisbury* xviii 293-95

¹⁰⁶⁰ *HMC Muncaster* 231-36, 238, 240, 242, 246

¹⁰⁶¹ *HMC Muncaster* 257, 259-61; *HMC Salisbury* xviii 214-6, 224-25, 284-86, 302; xix 127; *CSP Dom* 1603-10 237

the time.¹⁰⁶²

The commissioners and guards faced a number of problems in carrying out their duties. An indemnity to Cranstoun noted that his actions had 'incurrit the malice of sic as haittis oure peace and obedience'.¹⁰⁶³ Feuding had not disappeared and the Middle March's officials were involved in it. Elibank's family were embroiled in several. In 1604, Elibank was cautioner for his nephew Sir John Murray of Philiphaugh, sheriff of Selkirkshire, and others of his family, not to harm Sir William Stewart of Traquair and his kin. Elibank himself found caution for 3,000 merks with Robert Scott of Thirlestane.¹⁰⁶⁴ Even more embarrassingly, Elibank's and Cranstoun's sons were at feud in 1610. Fathers and sons were all called several times before the privy council to resolve the dispute. Cranstoun declared that he 'wes so far frome countenancing or allowing of his sones actioun ... these sevin yeiris past ... which had so muche grevit him.' The fathers 'choppit handis and imbraceit ane another' and James Cranstoun was banished from Scotland. Cranstoun also became cautioner for his other sons whilst Elibank similarly stood surety for his son for 10,000 merks.¹⁰⁶⁵

Commissioners also suffered from the difficulties of communication - between each other, with those of the other side and with the English privy council in London. An English commissioner, Sir William Selby, wrote to the others complaining that 'Salisbury does not seem to understand how distant the Northumberland Commissioners are from the West border.'¹⁰⁶⁶ In addition, the commissioners were hindered by inadequate jails and insufficient officers, such as clerks of court. This was blamed on a lack of finance, burghs refusing to pay for the upkeep of those prisoners too poor to finance themselves.¹⁰⁶⁷ In September 1608 the bailies of Jedburgh were charged for refusing to ward, as requested by Cranstoun, a man wanted for murder. John Rutherford, the provost, appeared before the privy council

¹⁰⁶² *RPC* viii 792-94; Spence 'Cumberland' 100-1, 110-18, 159; M Perceval-Maxwell *Scottish Migration to Ulster in the Reign of James I* (1999) 22-23, 26, 97-100; Elliot *The Border Elliots* 177, 199

¹⁰⁶³ *RPC* viii 279

¹⁰⁶⁴ *RPC* vii 556

¹⁰⁶⁵ *RPC* ix 1-2, 16, 41-42

¹⁰⁶⁶ *HMC Muncaster* 247

¹⁰⁶⁷ *RPC* vii 140, 709-12, 713

and was directed to receive all future offenders.¹⁰⁶⁸

Problems were also caused by worsening relations with the English commissioners. Things had started well: in April 1605, one of them, Sir Wilfred Lawson, wrote that 'I cannot but commend the Scottish Commissioners for their care for his Majesty's service' following their trial and execution of an Armstrong for the murder of Carmichael.¹⁰⁶⁹ However, this initial co-operation was not to last. By July 1605, Seton, whilst protesting friendship, was writing snidely to Lawson that 'though you have wealth, we have liberality. Knightships with you are common merchandise, with us they are rewards of virtue'.¹⁰⁷⁰ That August, the English commissioners were disgruntled by their non-involvement in the court held by their Scottish counterparts at Hawick. Though they were invited to attend, it was made clear to them that they 'had nothing to do' with it: they complained that the severity of Scottish justice was too great, about which 'there was a somewhat vehement disputation'.¹⁰⁷¹ In December, the Scots complained to the English commissioners that they should search the farms on their side more carefully 'for we are informed that the fugitives have their maintenance there, dreading our side more than their own'.¹⁰⁷² Cranstoun's stinging reproach to the English commissioners in March 1606 exemplified the difficulties: 'If you will needs be commanders, I desire that your discretion may appear as well as your authority. Think not that my body can be everywhere to do all your services'.¹⁰⁷³

One of the most enduring problems was the dispute over suggested measures for the remanding of prisoners to the country of their offence.¹⁰⁷⁴ James thought that the lack of remand effectively promoted immunity from prosecution, which was to the encouragement of further offence. Furthermore, the lack of remanding was at odds with James's desire for the standardisation of the laws of both countries. However, the defensive protection by English and Scottish commissioners and parliaments of their

¹⁰⁶⁸ *RPC* viii 167-68, 189

¹⁰⁶⁹ *HMC Muncaster* 243

¹⁰⁷⁰ *Ibid.* 244

¹⁰⁷¹ *Ibid.* 235-36

¹⁰⁷² *Ibid.* 242

¹⁰⁷³ *Ibid.* 250-51

¹⁰⁷⁴ Galloway *The Union of England and Scotland* 122-23, 142-43; Sizer 'Middle Shires' 80-83

jurisdictions, which the dispute over remanding typified, demonstrated the divisive flaw in James's visions of unity in his 'Middle Shires'. Despite James's enthusiasm for legislation on remanding, the English parliament of 1607 refused to pass an act for its institution. The bishop of Carlisle and other borderers complained because they thought that of 'the remedies applied none was found so powerful as remanding. It brought terror to the thieves of both kingdoms that theft was in a manner banished, and every malefactor feared that he should find justice without favour with those of the opposite nation.'¹⁰⁷⁵ Watts shows the part that the Northumbrian officials played in resisting James's wishes on remanding to be partly inspired by fear for their own immunity.¹⁰⁷⁶ The only thing that the English parliament of 1607 agreed was the abolition of the hostile border laws. It was not until 1610, that James succeeded in getting the legislation on remanding, though its ratification was dependent on the Scottish parliament passing a reciprocal act. This finally was agreed by the Scottish body in 1612 but problems associated with remanding continued.¹⁰⁷⁷ In 1617 they were still a subject of discussion and in 1623 Buccleuch experienced difficulty in extraditing a fugitive from Northumberland.¹⁰⁷⁸

The problems of a border-specific nature, which continued to define the marches as a region of special concern, should not obscure the similarity of the Borders' experience with that of the rest of Scotland. For instance, in November 1610, the grant of Commissions of the Peace to prominent figures in the Middle March was part of a programme of government efforts to improve the judicial system in all the localities of Scotland.¹⁰⁷⁹ Goodare notes the appointment of about 400 JPs in Scotland, 'a dramatic expansion of the number of local administrators'.¹⁰⁸⁰ The government was imposing its will in an unprecedented way on the region, but it was doing much the same elsewhere.

Moreover, this was not a government alienated from borderers for borderers continued to be part of central government. Men from the Middle

¹⁰⁷⁵ *HMC Salisbury* xix 300

¹⁰⁷⁶ Watts *From Border to Middle Shire* 142, 148, 151, 155

¹⁰⁷⁷ *APS* iv 470

¹⁰⁷⁸ *RPC* xi 290; *CSP Dom 1623-1625* 38, 82

¹⁰⁷⁹ *RPC* ix 75-76

¹⁰⁸⁰ Goodare *Government* 203

March were increasingly involved in the privy council in this period.¹⁰⁸¹ The frequent attendance of Roxburgh and Buccleuch, for example, has already been noted and Elibank, Buccleuch's ally, was admitted in 1610. Cranstoun attended a Convention of Estates in 1608 as commissioner for Roxburghshire and was admitted to the privy council in August 1611.¹⁰⁸²

Whilst it is impossible to quantify any decrease in the levels of crime, contemporary report increasingly spoke of the Middle Shires as 'settled in perfyte obedience' and border business troubled the privy council less.¹⁰⁸³ Also, evidence of crime in the Borders should be placed within a national context. There were 1,965 acts of caution calendared from 1604 to 1610 in a separate section of the published *RPC*, most of which were concerned with feuding; of these only around 120 were for those from the Middle March, 6.1 per cent of the total. Feuding and violent crime were nationwide phenomena.¹⁰⁸⁴ GM Fraser's description, however, of the ending of disorder in the Borders in 1611, is to ignore the continuation of government concern for at least another fourteen years.¹⁰⁸⁵ Braddick's assessment that James might fairly claim, in 1607, a successful pacification in Northumberland may have been true of the situation in the English Borders. However, subsequent measures in Scotland, and the concern shown by James, particularly in around 1617 to 1618, make Calder's assessment, that 'the Border problem melted like snow on the Cheviots in spring', seem somewhat premature.¹⁰⁸⁶

The last old-style raid into England was in 1611 to Leaplish in the English Middle March: it was made by the Armstrongs and Elliots, including Robert Elliot of Redheugh and Lancelot Armstrong of Whithaugh. The privy council

¹⁰⁸¹ See App. O

¹⁰⁸² *RPC* viii 93, 139; ix 54, 244

¹⁰⁸³ Goodare describes a 'shift in tone' in government rhetoric on the Highlands in the early seventeenth century. 'Instead of saying that the Highlands were incorrigibly lawless, the line now tended to be that the Highlands had been successfully pacified'. He notes that this was not an objective assessment. Goodare *Government of Scotland* 236-37

¹⁰⁸⁴ Around fifty were recorded for the East March and around 160 for the West. This gives a total figure for the Borders of around 330, 16.8 per cent of the national figure. These figures are indicative only of relative levels of crime, not exact figures for crime. Figures could be skewed by a misrepresentative quantity of acts relating to one specific person, such as those registered for the non-reset of the rebel Lord Maxwell in the West March. *RPC* vii 545-697; viii 629-733

¹⁰⁸⁵ Fraser *Steel Bonnets* 376

¹⁰⁸⁶ A Calder *Revolutionary Empire: The Rise of the English-Speaking Empires from the Fifteenth Century to the 1780s* (1981) 108, quoted by Braddick *State Formation in Early Modern England* 376, 378

expressed disbelief that 'such an accident and outrage should haif fallin out', ordering 'exampilar puneshment'. Cranstoun was directed to apprehend the guilty Scotsmen so that they would have 'no kind of suspitioun that thay haif protectioun'.¹⁰⁸⁷ Immediately courts were held at Jedburgh in July and October, during which eighteen were executed, and at Dumfries in October. A large number from the Middle March were forced to find caution for as much as 500 merks and others were fined for the non-appearance of those for whom they stood surety. Everyone thought suspect in the region was listed. It is the last such lengthy record of a court until the courts held in 1622.¹⁰⁸⁸

Although such government intrusion into the way of life was unprecedented in the Borders, many of the methods used were not new. The accountability of surname leaders and landlords for their tenants and adherents under the General Band had been in use since at least the 1560s. Similarly the warding of various Scotts, Elliots and Rutherfords in Fife, Perth and Aberdeen as surety for future good behaviour in November 1607 replicated the pledge system of the sixteenth century.¹⁰⁸⁹ Kinship continued to provide the framework for such accountability and also for the network of support relied on by local officials. The new JPs in the Middle March were all existing prominent figures and surname leaders. As Spence notes, 'the roots of reform are to be found in an earlier phase' though this study would not agree with his verdict that the pacification needed 'new men to execute' it.¹⁰⁹⁰ What was new was the maintenance over several years of the consistency and severity of the implementation of justice.

1611-1625: consolidation of pacification

The premature death of Dunbar in February 1611 triggered central government fears about a resumption of crime in the Borders and the Armstrong-Elliot raid seemed to give them further grounds for concern.¹⁰⁹¹

¹⁰⁸⁷ *RPC* ix 614-15; Elliot *The Border Elliots* 184-86, 203-5

¹⁰⁸⁸ *RPC* ix 705-14

¹⁰⁸⁹ *RPC* viii 7-8

¹⁰⁹⁰ Spence *Cumberland* 97

¹⁰⁹¹ Sizer observes that 'All traces of unity between the two sets of Border Commissioners gradually vanished with the death of Dunbar' until the conjunct commission of 1618, his death leaving something of a power vacuum. Sizer 'Middle Shires' 112, 114.

The privy council reacted immediately to contain any further outbreak. In June 1611, a new commission for the Middle Shires was constituted with Cranstoun, Elibank, Seton and Sir David Murray of Clonyaird given 'full pour, frie libertie and auctorite' to hold justice courts at Jedburgh and Dumfries.¹⁰⁹² The new lieutenant, now Lord, Cranstoun was admitted to the privy council in August. He was replaced as captain of the border guard by Sir Robert Ker of Ancrum from the Ferniehurst affinity. In November the guard was enlarged by fifteen to forty. An exoneration to Cranstoun in February 1612 for his 'quyck despatche of a grite number of ... lawless thevis and insolent outlawis' suggested how effective he was.¹⁰⁹³

The make-up of the personnel involved in the pacification remained remarkably stable throughout this period, though significant additions were Sir Andrew Ker of Oxnam, Ferniehurst's eldest son in 1613, and the earls of Buccleuch, Nithsdale and Annandale in 1622.¹⁰⁹⁴ The commission appointed in 1613 (Elibank, Oxnam, Cranstoun and Seton) was the same in 1616.¹⁰⁹⁵ The links between commission and privy council remained strong with all, but for Seton, members of the council from 1613. In January 1617, Sir John Murray of Philiphaugh was appointed a commissioner in place of his cousin Elibank. The latter had become too busy as deputy treasurer though he retained his right to vote in the Commission. In 1619, Philiphaugh surrendered his heritable sheriffship of Selkirkshire in return for compensation and the continuation of his paid appointment as a commissioner. He returned to office as sheriff at least twice, in 1621 and 1623.¹⁰⁹⁶

The involvement of prominent figures from the Middle March in central government continued as did the self-perpetuating cycle of reward and

¹⁰⁹² *RPC* ix 194-96. Elibank and other commissioners held justice courts at Jedburgh in July, October and November 1611. Murray of Clonyaird, brother of John, future earl of Annandale, died in 1613. A court was held at Dumfries from 15 -22 October. *RPC* ix 705-15

¹⁰⁹³ *RPC* ix 129, 244-45, 248, 279, 289-90, 305-6

¹⁰⁹⁴ See App. L; *RPC* x 176, 200, 231; xii 673. Oxnam and Elibank were allies. See Chap. Three and App.E. He was also acting in Scotland for Oxnam's uncle, Sir Robert Ker, the future earl of Somerset. *RPC* ix 232

¹⁰⁹⁵ *RPC* x lxxvi, 168, 469; xi lxxvii

¹⁰⁹⁶ *RPC* xi 11, 14; xii 490; xiii 333. A similar attempt to get Douglas of Cavers to surrender his sheriffship of Roxburghshire with compensation of £20,000 came to nothing. *RPC* xii 289-90

patronage.¹⁰⁹⁷ Both the main branches of the Ker surname were prominent beneficiaries. In 1616, Roxburgh became the earl of Roxburgh and his attendance at privy council meetings remained frequent. In August 1619, he was one of those chosen to be a member of the new 'Scottish Council' for Prince Charles, which also included Elibank and Ker of Ancrum. Though Ancrum was a powerful member of Prince Charles's household in London, he was present in Edinburgh that August to be sworn in. On the death of Elibank in June 1621, Ancrum was the target of much persuasion by those eager to replace the deputy treasurer.¹⁰⁹⁸ Involvement in central government had its down side. The loan of 100,000 merks that was raised to finance James's visit to Scotland in 1617 was guaranteed by Elibank with Buccleuch, Murray of Blackbarony and Sir Patrick Murray and it was said that Elibank died of misery having fallen out of favour with James over his treasury duties.¹⁰⁹⁹

In this period, the maintenance of the pacification continued to be a priority for the privy council. Proclamations were made renewing measures in order to show that there would be no softening of government determination to punish offenders. This prompted an ordinance in December 1616 against the 'auld custome' of hunting in the Cheviots. James was worried that 'the hoip of oversight and presumptioun of impunitie hes bene the cause of this publict contempt and violatioun'. In January 1621, several from Hawick were charged with the wearing of hagbuts, two of them appearing before the privy council.¹¹⁰⁰ The severity of justice meted out was meant to be exemplary but occasionally it was perceived to have gone too far. In November 1614 the magistrates of Selkirk, including the provost Robert Scott of Haining, were fined 150 merks for illegally torturing two wool merchants from Leith to force a confession of some minor thefts.¹¹⁰¹ Another incident in 1624, noted by Sizer, gave an indication of methods used: John Maxwell of Bromeholme, acting as bailie depute to the commissioner, the earl of Nithsdale, was accused of dragging a mother and son 'violentlie further [from their house] under nyght binding thame with coirdis, and

¹⁰⁹⁷ See Chap. Three for details of patronage by Elibank, Ancrum and Somerset to those in the Middle March. See also examples of court correspondence in App. L

¹⁰⁹⁸ *RPC* xii 59-61, 65, 66, 509 n.

¹⁰⁹⁹ *RPC* ix 168

¹¹⁰⁰ *RPC* x 198-99; xii 396-97; Sizer 'Middle Shires' 59-60

¹¹⁰¹ *RPC* x 793

carieing thame as captives ... to the Water of Ewes' where they cruelly drowned them.¹¹⁰²

The government particularly persisted, in the Middle March, in the suppression of feuding in this period in order to contain any further outbreak of trouble. James continued to intervene, especially when his officials were involved. In May 1612, the continuing dispute between the earl of Angus and his bailie Ferniehirst resulted in a 'great convocation of the lieges in arms for holding courts at Lintellie in the Lordship of Jedburgh Forest, [where] ... both parties were resolved to hold the same'. Angus was accompanied by up to four hundred men. Ferniehirst and one of his sons were warded. James then intervened ordering their release and the council to arbitrate in the dispute.¹¹⁰³ Cranstoun was Angus's spokesman, whilst Elibank supported Ferniehirst. The case was brought before the privy council for resolution in June, at which Angus's right to hold courts in Jedforest was upheld but with no more than sixty people in his company. However, the affair continued prompting James's order in September 1613 to the council to resolve it.¹¹⁰⁴ Similarly, in May 1619, James asked the council to settle the 'questionis and heartburninges' between Roxburgh and the son of the forfeited earl of Bothwell.¹¹⁰⁵

Similarly, James and the council continued to intervene in private disputes which threatened to disturb the Middle March. Such was the intervention in December 1616 in an internal Scott dispute between Simon Scott of Bonnington and Sir Walter Scott of Harden. Buccleuch and the Scotts of Goldielands, Haining and Burnfoot were ordered to produce before justice a number of the Bonnington Scotts.¹¹⁰⁶ In April 1617, a counter-complaint was made by Mary Scott Lady Bonnington against a man 'mantenit' by Harden. With two gentlemen of the guard, Harden and other Scotts had violently put the Bonningtons out of their home, the escheat of which Harden had been granted. There was clearly confusion here over the official nature of Harden's actions. However, Harden's alliance with Elibank worked in his

¹¹⁰² Sizer 'Middle Shires' 169 quoting from JC2/8 Justiciary Record Books of Adjournal 1637-1650

¹¹⁰³ *RPC* ix 372-74; GD40/13/41

¹¹⁰⁴ *RPC* ix 372-74, 394, 398, 400, 403; x 152.

¹¹⁰⁵ *RPC* x 637-38

¹¹⁰⁶ *RPC* x 667; xi 20

favour: both sides appeared but the privy council found in favour of Harden. In August 1617, Sir William Scott of Harden, Elibank's son-in-law, was appointed lieutenant of the border guard.¹¹⁰⁷ In September 1617 Elibank wrote to James reminding him that James had agreed to Elibank's disposal of the escheat to Harden and asking him not to undo the grant.¹¹⁰⁸ The dispute must have continued, however, for in 1619, Elibank, on behalf of the Hardens, persuaded James to delay another arbitration. However, in October, James, convinced by Bonnington of his remorse, ordered the council to resolve the feud. It appears that it found in Harden's favour because the Scotts of Harden were confirmed in possession of Bonnington's lands of Erniscleugh and Singlie by 1624.¹¹⁰⁹

Government intrusion into the locality, as elsewhere, continued to grow in all aspects of life. In March 1619, the earl of Roxburgh was forced to apologise before the privy council for setting a bad example by not taking Communion in accordance with a directive by James for all his privy councillors to do so.¹¹¹⁰ In the Middle March, privy council concerns began to include trade. Reacting to the sale of English-processed Scottish skins at a market in Kelso, the council registered the tanning industry ordinances of 1619 and 1620. English tanners were appointed to teach the tanning and barking of leather to the Scots.¹¹¹¹ However, it was not a popular measure. In July 1622 a number of Selkirkshire tanners were denounced rebel for refusing to comply with the official instruction and, in 1623, a complaint by Scottish tanners against the tanning laws was subscribed by nineteen from Selkirk.¹¹¹²

The council's attention to things other than crime suggested that cross-border crime in the Borders was no longer seen as overwhelmingly prevalent. Trade was becoming more important. Following the re-imposition of duties payable on Anglo-Scottish trade, a statute of 1612 named Kelso and

¹¹⁰⁷ *RPC* xi 98-101, 217. Papers relating to the Bonnington-Harden feud GD157/1246. Action by Walter Scott in Essinsyde's widow against Bonnington's brother for the murder of Essinsyde. GD157/1249. Harden's son was married to Elibank's daughter. In 1604 Harden and Elibank had been granted a remission for a raid in Liddesdale. GD157/1419

¹¹⁰⁸ Adv. MS 33.1.1 vol. 8 no.32

¹¹⁰⁹ GD124/15/29/14; *RPC* xii 123; GD157/190, 194

¹¹¹⁰ *RPC* xi 635-36

¹¹¹¹ *RPC* xii 161, 294

¹¹¹² *RPC* xiii 9, 247, 635-46

Jedburgh as the places for the payment of customs on horses, cattle and sheep passing between England and Scotland in the Middle March. This indicated that there had been an increase in cross-border trade, which in turn suggested that a decrease in crime had occurred.¹¹¹³ Jennifer Watson's recent thesis on Scottish foreign trade notes that any figures for cross-border overland trade with England would be 'necessarily incomplete' due to traders avoiding the customs posts. However, she concludes there was a huge expansion of cross-border trade, particularly in livestock, cloth and grain, in the 1610 to 1619 period, which she attributes to the suppression of crime in the region.¹¹¹⁴

This did not stop continuing claims of poverty as a result of border conflict. A letter from the burghs in 1623 on the restrictions on selling wool noted that the 'greittest part of the Border ... hes no other menteynance bott be thair wooll; ... sua this being taiking frome thame, they may sterve for hunggar or else beg'. A report by the Selkirkshire JPs on the burgh's 'obstinat refusall' to concur in the collection of tax for the poor noted that the JPs wanted to fulfil the order but could only 'so far as the present estate of this puir shireffdome will permit'. They complained further there were 'no jayellis to hold the [idle] and no worke to imploy' the willing.¹¹¹⁵

The lack of adequate jails was to be a continuing problem for the commissioners: the council noted that prisoners were escaping before trial to the 'grite hinder of justice and disapointing of complenaris of redresse'.¹¹¹⁶ Therefore, in May 1614, 1,000 merks was to be paid from the fines made by the commissioners for the repair of the tolbooth of Jedburgh. In January 1618, the provost of Selkirk was summoned before the council to explain the escape of some 'notorious thevis': the council was angered because Selkirk, as a royal burgh, should have had 'ane sufficient jayle and wairdhouse'.¹¹¹⁷ In 1620, the provost and bailies of Jedburgh protested to the council against the obligation of guarding a prisoner due to the 'povertie' of Jedburgh and it was not until 1623 that the council, understanding that the burgh was 'verrie

¹¹¹³ *RPC* ix 394-95

¹¹¹⁴ Jennifer C Watson 'Scottish Foreign Trade, 1597-1640' PhD thesis (Edin. 2003) 171, 192

¹¹¹⁵ *RPC* ix 714-15; xiii 777

¹¹¹⁶ *RPC* xi 216

¹¹¹⁷ *RPC* x 239; xi 292, 299-300

poore', ordered part of the fines from future commissioners' courts to be allocated to the upkeep of the tolbooth.¹¹¹⁸

James's continuing interest in the Middle Shires, as an exemplar of the benefits of union, intensified from time to time. In November 1616, following some years of relatively little interest being shown in the Borders, James wrote to express his surprise at complaints 'being made unto us of some wronges done on the Bordouris ... [that] are not free of that mischeife of thefte'.¹¹¹⁹ In response, in January 1617, the Middle Shires commissioners were ordered to hold a justice court as soon as possible and to report back to the council on the 'caus of the disorderis and thiftis'. It is difficult to analyse the accuracy of these reports of renewed crime. As Sizer observes, 'local authorities tended to interpret incidents of violence as a sign of impending disaster rather than an isolated incident in the long term process of pacification'.¹¹²⁰ James's interest and the council's actions were triggered by his imminent arrival in Scotland in June that year. His passage through Berwick and Dumfries inescapably brought the Borders to his attention again; though he did not pass through the Middle March itself, his concern over the Borders in general was to result in measures that impacted in that march.¹¹²¹

Whilst James was in Scotland, in August 1617, Buccleuch, Cranstoun, Oxnam, Sir John Ker of Jedburgh and Douglas of Cavers were called before the council to sign another band for the good behaviour of their kin, tenants and servants. In his absence, the earl of Angus was represented by his kinsmen and bailies of Jedburgh forest, the Douglasses of Cavers and Bonjedburgh. These landlords and surname leaders were ordered to apprehend offenders and 'punishe thame, yf thay have jurisdiction, or then present thame to the judge ordinair to abyde thair tryall': lairds were to make restitution for any theft or harm 'conforme to the General Band'. A band made previously in

¹¹¹⁸ *RPC* xii 173; xiii 160-61, 484, 525, 619; Sizer notes a similar problem with lack of jail space in the English Middle Shires. Sizer 'Middle Shires' 84-86

¹¹¹⁹ *RPC* x 847

¹¹²⁰ Sizer 'Middle Shires' 88-91

¹¹²¹ *RPC* xi 14

1602 by the men of the Middle March was re-inserted in the register.¹¹²² These border lairds asked that a letter be sent to James requesting a similar course of action taken with the landlords on the other side of the border. The council also agreed to a petition by these lairds that they should have power 'to apprehend thair awne malefactouris and to exhibite thame' to the commissioners if they catch them with the 'red hand' and, with individual commission, try them.¹¹²³ All the landlords of the marches were called to appear before the council in September to 'underly the lyke ordour'. This prompted the appearance of a large number from the Middle and West Marches, including the new earl of Roxburgh, to subscribe the band over the following couple of months.¹¹²⁴ At the same time, the problem of prisoners escaping before a justice court day was remedied by the commissioners being given full power individually 'to fense and hald courtis' and to put criminals to execution.¹¹²⁵

James's return to London did not stem his interest: early in January 1618, the privy council received a long list of proposals from the English privy council on the Middle Shires. The overriding principle behind these suggestions was that the law and its administration should be the same in both Scotland and England. This was because it was felt that the 'greitest causis of thair offences is houpe of impunitie' in the other country.¹¹²⁶ In April this resulted in the appointment of a 'Conjunct Commission' whose aim was to limit such impunity more effectively, with thirty members from each side of the border on the one body. They were to act jointly in apprehending offenders and charged to remand them back to the country where the offence took place, in accordance with the commission of July 1611. The Scots appointed included all the original commissioners of 1605 and added to them the other principal figures in the Borders, most of whom also already held Commissions of the Peace. The sheriffs and other officers of the region were ordered to assist the commissioners. Since, in the Middle March, the commissioners included the sheriffs of Selkirkshire and Roxburghshire, this would not have prejudiced the sheriffs' authority there. The commission

¹¹²² *RPC* xi 215-16, 218

¹¹²³ *RPC* xi 216-17, 228-29

¹¹²⁴ *RPC* xi 216, 225-28, 253, 257, 276, 283, 407

¹¹²⁵ *RPC* xi 216-17

¹¹²⁶ *RPC* xi 288-91

was to stand until the king directed otherwise.¹¹²⁷ However, the commission was undermined by the requirement for a quorum of at least five commissioners, which potentially limited their efficiency. Also commissioners from one country never had jurisdiction in the other. The commission's size ultimately was to prove too unwieldy to be effective.¹¹²⁸

The proposals also addressed what were seen as the causes of disturbance, including measures for the suppression of hostilities. The most extreme suggestion was 'to send the most notorious leiveris of thame unto Virginia, or to sum remote pairtes, to serve in the wearris or in colloneis'.¹¹²⁹ The council replied a month later to the suggestions drawing attention to some 'points of doubt or delicacy on the Scottish side'. Skilfully they evaded the proposals on transportation noting that, since landlords were responsible for notorious thieves under the General Band, there was no necessity for such a course. Similarly, whilst they agreed that 'all warrandis frome the schireffis, justeices, and commissioneris sall runne throchout the Schyres' they added the caveat 'so far as the lawis of this countrie will permit'. However, James was insistent on the transportation proposals and in May the council was forced to concede.¹¹³⁰ The following February the 'Commission for the Transportation of Criminals' was ordered to report to the council 'the evill disposed, vagarant, and idle persones in these schyres' and to transport them. There is no record, however, of this happening within this period.¹¹³¹

The council was keen to maintain the pacification in all its ramifications, in June calling for the appearance before the council of the commission for the Plantation of the Kirks. In August, James ordered that the new regulations be printed and fixed to the mercat crosses in the Borders and to the houses of every freeholder, so that none could claim they were unaware of them.¹¹³² In

¹¹²⁷ James took a personal interest in the membership, altering those nominated before the final appointments were made. *RPC* xi 291, 344-48, 360, 386-87. See App. L

¹¹²⁸ Watts calls this commission the 'least useful' one noting the hostility that its duties of remanding engendered amongst the Northumbrian gentlemen and the continuation of the original separate Scottish commission of 1613. Watts *From Border to Middle Shire* 194-95

¹¹²⁹ *RPC* xi 289

¹¹³⁰ In May James compared the transportation measure to that taken against the clan Gregor. *RPC* xi 313-14, 353-54

¹¹³¹ *RPC* xi 506. Perceval-Maxwell suggested that a population surplus on the Borders was one of the motivating factors behind transportation proposals. Perceval-Maxwell *Scottish Migration* 25-26, 280-88, 312

¹¹³² *RPC* xi 354-55, 425-26

September, another commission was appointed to draw up a survey of the 'brokin men', existing commissioners being given responsibility for specific regions generally corresponding to those in which they were already JPs. A list of fugitives, including some Rutherfords and Turnbolls from the Middle March, was added to the register. The privy council reiterated the new regulations and revived some older ones, such as the responsibility of landlords under the General Band agreed by the parliaments of 1587 and 1594.¹¹³³ In March 1619, having received reports of people re-arming, the acts banning the bearing of fire-arms and the ownership of horses over £30 in value were re-registered. The captain of the border guard (and privy councillor) Ker of Oxnam and his lieutenant Scott of Harden were charged with their enforcement and another order for the implementation of the survey of broken men was made. Commissioners were ordered to submit a new roll of 'lawless persons' by April 1620.¹¹³⁴

Thereafter, the English privy council appeared to lose interest in the Borders.¹¹³⁵ In 1621, the English privy council decided that since the Borders were 'now brought to a peaceable estate' that the commission should be abolished and 'a more ready and less chargeful mode of governing' the region should be devised.¹¹³⁶ The Scottish privy council continued to deal with a few cases from the Middle March each month but there was no significant action taken in relation to the region until November 1621. Demonstrating the reduced prioritisation of the Borders, that month a warrant from the king noted that since 'oure kingdome is reduceit to suche quietnes ... thair is no necessitie [for] ane ordinarie Gaird within the same, and that the moneiyis bestowit that way may be reserved for more necessarie useis'. The guard was discharged with immediate effect.¹¹³⁷ Its

¹¹³³ *RPC* xi 441-47. See App. L

¹¹³⁴ *RPC* xi 546-47; xii 92-93, 103, 149-51, 219-22

¹¹³⁵ Only seven references to the whole of the Borders appeared for the seven years covered by *CSP Dom 1619-1623* and *CSP Dom 1623-1625*, in contrast to the twenty-eight entries for the eight years in *CSP Dom 1611-1618* and over seventy in the eight years in *CSP Dom 1603-1610*. There were no border-related entries in the English *APC* from January 1618 to March 1625.

¹¹³⁶ *CSP Dom 1619-1623* 331

¹¹³⁷ *RPC* xii 582-84. The decision to discharge the guard should be considered also within a financial context. Goodare notes the fiscal crisis of 1620 to 1621 when the government froze pensions. Goodare *State and Society* 132, 150

captain, Ker of Oxnam, received a royal exoneration and the following February his annual pay was confirmed in perpetuity. On the same day his father Ferniehurst was created Lord Jedburgh.¹¹³⁸

It did not take long for complaints to surface. However, these primarily related to the dales of the West March. In February 1622, the Middle Shires commissioners complained to the privy council of the increase in crime in Annandale, Nithsdale, Eskdale and Ewesdale since the discharge of the guard. In response, prominent borderers were summoned to give their advice: this was principally taken up with the benefits of a standing guard which 'was not onlie ane countenance and grandour to the courtis, bot a grite terrour to malefactoris'.¹¹³⁹ Several men of 'power and friendship' within the region should be appointed to oversee such a resident force. This resulted in a new commission of three men, known as the triumvirate, as overseers of the pacification with superior judicial powers, who were to have the paid support of ten armed men each. This effectively resurrected the border garrison. The original border commission of 1613 was to continue in existence but in a subordinate role.¹¹⁴⁰ This meant that Oxnam, Seton of Kylesmure and Cranstoun continued as commissioners as did Murray of Philiphaugh, Elibank's replacement, whilst the conjunct commission seems to have faded into non-existence by 1622. This original commission was expanded by four men from the West March in early 1623 since it was felt necessary to include some resident in the main area of concern.¹¹⁴¹

The new triumvirs were the earl of Buccleuch, Robert Maxwell, the new earl of Nithsdale, and John Murray of Lochmaben, the future earl of Annandale. They all fulfilled the requirement for men of 'power and friendship', all holding lands in the dales listed above. Though these were in the West March, the Middle March, where Buccleuch also held extensive lands, apparently remained an area of concern. It is questionable how effective Annandale could have been since he was at court in London for most of his tenure. Relations between the triumvirate seem to have been strained. In August 1623, following a triumvirate court at Dumfries from which Douglas of Drumlanrig had got two men repledged to his regality court, Oxnam

¹¹³⁸ *RPC* xii 657-59, 663

¹¹³⁹ *RPC* xii 650, 670-72, 775-79

¹¹⁴⁰ *RPC* xii 672-79. See Apps. J and N

¹¹⁴¹ *RPC* xiii 155-57

wrote to Annandale beseeching his intercession with James: the earl of Nithsdale had apparently taken offence to Oxnam seeking his advice on the repledging and was about to complain to James.¹¹⁴² The residual antipathies of the Maxwells, not only with the Johnstones, but also with Douglas of Drumlanrig will not have helped relations between commissioners. In a subsequent letter to Annandale, the Maxwell earl of Nithsdale exclaimed that Drumlanrig had said that if 'anie man wald bring his regalatie in question then he intendit to cut his throt' and complained that repledging undermined the effectiveness of the triumvirate.¹¹⁴³ In June 1624, following the departure abroad of Nithsdale and Annandale's preoccupation with his duties at court, two similarly prominent Middle March men, Lord Yester and Stewart of Traquair, were appointed in their place.¹¹⁴⁴ There are records of courts being held by the triumvirate, along with a number of the other commissioners, in Jedburgh in August and October 1622 and February and April 1623. Buccleuch sat on all of these. At least forty-one were executed, nine 'brunt on the cheik with the commone birning irne' of Jedburgh, eighteen had their cases referred to the privy council and a number banished under pain of death.¹¹⁴⁵ Exemplary severity was still the basis for central government's approach to the region. However, it was apparently still felt necessary to issue new commissions to the triumvirate in November 1625 to Buccleuch, Yester, the returned Nithsdale and Annandale and a new figure from an old family used to service in the Borders, the earl of Angus.¹¹⁴⁶

The men Buccleuch named to assist him were his adherents, mainly Scotts with a Pringle, an Elliot and an Armstrong.¹¹⁴⁷ In many ways, this triumvirate used the traditional methods of effecting justice, through frameworks of kinship and adherence: the surname leader was forced to be accountable for the actions of his alliance. The difference here was that Buccleuch was being

¹¹⁴² Adv MS 33.1.1 vol. 10 no. 135

¹¹⁴³ Adv MS 33.1.1 vol. 10 no. 112

¹¹⁴⁴ *RPC* xiii 542-43. Nithsdale was experiencing financial difficulties. Sizer calls Traquair 'a relative unknown' which is to underestimate Traquair's significance in the locality of his office and the history of his family's involvement in government at national level. Sizer 'Middle Shires' 129

¹¹⁴⁵ *RPC* xiii 545-46, 621; xiv 677-714. Sizer calls the triumvirate 'a study in failure'. Sizer 'Middle Shires' 120-29

¹¹⁴⁶ *RPC* second series i 193

¹¹⁴⁷ Buccleuch's list of six further deputies, since 'the chaarge is so spatious a nd wyid', included three Armstrongs and an Elliot. *RPC* xii 695-96; xiii 18-19, 475-76, 486-87, 572-73, 614, 651-52

called to police, in an official capacity, his own lands and men. An indication of his severity was the description by two English travellers in 1629 of a river, between Langham and Selkirk, where 'my lord Buckpleugh did wapp the outlaws into the dubb'.¹¹⁴⁸ However, alliances, which could facilitate the imposition of justice, could also be to its hindrance. The privy council in 1625 reminded Buccleuch of his duty to ensure that his dependents compensate another Scott, threatening that it would inform James if he did not comply.¹¹⁴⁹

The formation of these various commissions underlined the continuation of separate administrative and judicial systems. These were exacerbated by strained relations amongst commissioners and evidence of enduring general hostility.¹¹⁵⁰ In 1617, the privy council felt it necessary to issue a threat of the death penalty for anyone harming any Englishman in the King's company on his forthcoming journey to Scotland. In 1621, a letter from a Scottish commissioner criticised the failure of his English counterparts whilst praising Scottish efforts, which were 'so active and vigilant that the thieves fly to England'.¹¹⁵¹ Even the powerful Buccleuch had problems with remanding fugitives from England. In 1623, Sir Ralph Grey, one of the English commissioners, rescued a fugitive thief 'lawfully apprehended' by Buccleuch: Grey countered this saying a proper warrant had not been produced.¹¹⁵² In November 1624, the Scottish commissioners complained of the lack of redress of offences done by men from Tynedale and Redesdale, contrasting this with their own efficiency.¹¹⁵³

The last years of James's reign continued to be beset with disputes between the two sides. A fitting example of this was that between Home of Wedderburn and Lord Walden over fishing rights on the Tweed which had come to blows. In 1622 a letter from James prompted the order to Cranstoun, the Master of Jedburgh, the sheriff of Teviotdale and George Home of Manderston to meet with some English commissioners to settle the

¹¹⁴⁸ C Lowther *et al* 'Our Journal into Scotland AD 1629, 5th of November, from Lowther' in *HMC Lonsdale* xiii report, app. 7 (1893) 76

¹¹⁴⁹ *RPC* xiii 457, 681-82

¹¹⁵⁰ Sizer also notes the breakdown in communication between the two sets of commissioners, partly as a result of enduring separate judicial systems. Sizer 'Middle Shires' 114, 147-48

¹¹⁵¹ *RPC* xi 108-9; *CSP Dom 1611-1618* 152

¹¹⁵² *CSP Dom 1623-1625* 38, 82

¹¹⁵³ *RPC* xiii 625-26

dispute. This was reiterated in February 1623.¹¹⁵⁴ However, such mutual suspicion remained that Wedderburn asked that 'in evrie thing the commissione be conseved in equall termes for both nationes, and that what ever preveledges the English hath, we may not be depryved of the lyk'.¹¹⁵⁵ The matter was still not resolved in 1625, a new commission being issued by James for six prominent men from both sides, including Roxburgh and Buccleuch, to sit in arbitration. He noted that the dispute had caused 'unlawfull assemblies, ryotts, routts, and other misdemeouris and tumults have bene raised and one of our subjectis killed'.¹¹⁵⁶ Despite his efforts, the dispute outlasted James. In August 1626, Wedderburn complained over the inclusion of Walden's chamberlain and pensioner on a new commission as 'suspect judgeis in this matter.' The residual hostility of two individual countries continued to bedevil administration.¹¹⁵⁷

Conclusion

If the success of the pacification of the Middle Shires, from its hesitant beginnings in 1597, is to be measured by the decreasing amount of privy council record devoted to it, then, by 1625, the pacification can be deemed to have worked. Certainly, if the situation in the Middle March in 1597 is compared with that in 1625, there had been significant changes. The ending of the international nature of the border was meant to have removed the hostility from the march's relations with its opposing march; cross-border raiding appeared to have ceased, whilst cross-border trade was increasing; the privy council recorded far fewer crimes from the region and complained much less about it; the kirks had more ministers; a system of JPs had been set up and the hereditary sheriffdom of Selkirk replaced by a yearly appointment; and the office of Middle March warden had lapsed, his jurisdiction absorbed by a supposedly co-operative cross-border body of commissioners. Similar developments can be found in the East March. In the West March, however, problems lingered. The enduring effect of the Johnstone-Maxwell feud was evident in an exemption to Johnstone of that ilk

¹¹⁵⁴ *RPC* xii 746; xiii 178-79

¹¹⁵⁵ *HMC Colonel David Milne Home* 90

¹¹⁵⁶ *RPC* xiii 565-66, 573-74, 675-76

¹¹⁵⁷ *RPC* xiii 703-5, 722; 2nd series i 415-16; *HMC Colonel David Milne Holme* 90

from the triumvir, Robert Maxwell, earl of Nithsdale's jurisdiction.¹¹⁵⁸

However, it is in the cross-border commissions that the flaws in the pacification were most evident. This thesis agrees with Sizer's observations on the failure of the commissions to establish lasting good cross-border relations. It would agree too with Sizer's description of the problems of 'two fundamentally different kingdoms' which undermined the longevity of the 'Middle Shires' as an administrative entity or terminology.¹¹⁵⁹ Despite undeniable improvements in the co-operation between the officials of either side of the border, at no time in the whole pacification were the two bodies of commissioners joined within a cross-border jurisdiction. The only person (apart from James) to hold authority on both sides of the border was the earl of Dunbar from 1606 to 1611 and no attempt was made to replace him after his death. The legal systems of each country remained separate and the mutual suspicion of the Wedderburn-Walden dispute demonstrated an enduring hostility between the inhabitants of either side of the border.

If the 'Middle Shires' were to be judged as an exemplar of Union, whereby they would be the same as anywhere else in Great Britain, then, by 1625, this could not be said to have happened. The very existence of border-specific institutions continued to mark out the region as an area of concern. Catherine Ferguson notes in her thesis that the pacification was not complete until the full Union of 1707. Although the scope of this work ends in 1625, the evidence makes it clear that the full ramifications of the pacifications had not worked themselves out in the reign of James VI and I. The reign had, however, put in place a base on which a more settled future would grow.¹¹⁶⁰

¹¹⁵⁸ *RPC* xii 673-75; xiii 261-62

¹¹⁵⁹ Sizer 'Middle Shires' Conclusion

¹¹⁶⁰ Ferguson 'Law and Order' xi, 205, 459

Conclusion

Those confining places which were the Borders of the two Kingdomes, where heretofore much blood was shed, and many of your ancestours lost their lives; yea, that lay waste and desolate, and were habitations but for runnagates, are now become the Navell or Umbilick of both Kingdomes ... where there was nothing before ... but bloodshed, oppressions, complaints and outcries, they now live every man peaceably under his owne figgetree ... The Marches beyond and on this side Twede, are as fruitfull and as peaceable as most parts of England¹¹⁶¹

James's portrayal of the Borders to the English parliament in 1607 owed more to wishful thinking than to reality. Similarly hopeful was his pronouncement in 1604 that the geographical unity of Scotland and England was 'by nature so indivisible, as almost those that were borderers themselves on the late Borders, cannot distinguish, nor know, or discern their owne limits'.¹¹⁶² With such protestations, James intended to convince a sceptical, sometimes hostile, English audience of the benefits of the 'union of the crowns': if the English recognised these, they might agree to extend the dynastic union into a full political or 'perfect union'. The transformation of the Borders was intended to have epitomised the unification; the 'Middles Shires' were to have become a microcosm of the unified kingdoms; the pacification was to have demonstrated a new co-operation between formerly hostile administrations.

However, James's descriptions were a little premature. Enduring hostility, mutual suspicion and separate administrative and legal systems continued to demonstrate the divisions between Scotland and England within a region still demarcated by a frontier. James did not fully achieve his plan 'to extinguishe as well the name, as the substance of the bordours [and] the difference betwene thaim and other pairts of the kingdome'.¹¹⁶³ Indeed, the existence of institutions such as the border commissioners or the triumvirate continued to mark out the Borders region as different or separate to any other part of Scotland, if only in administrative terms.

Any attempt to explain this failure is bound up with James's aspirations for a

¹¹⁶¹ Speech by James to Houses of Parliament, Whitehall, 31 March 1607. James VI and I *Political Writings* 169

¹¹⁶² Speech by James to Upper House of English parliament, 19 March 1604. James VI and I *Political Writings* 135

¹¹⁶³ *HMC Salisbury* xvi 405

fuller union than the dynastic union that he embodied on his succession in 1603. Any analysis of events in the Middle March has to consider the external influences on the region as well as internal pressures arising from personal relationships and kinship. One of the central themes of this study has been to evaluate and place the experience of the Middle March within a wider political context and the evolution of government throughout Scotland: from the close linkage between crown action in the Middle March and court faction of the 1570s and 1580s to the impact of James's desires for unification after his relocation to London.

Conversely, the experience of the Middle March can inform wider debate on the development of government throughout the period and the effect of the succession on Scotland. For instance, the careers of Buccleuch and Cessford demonstrated the inclusion of the greater lairds within central government whilst, conversely, acting as agents of the intrusion of central government into the locality. This would seem to bear out Keith Brown's emphasis on the co-operation of the landed elite in the government's suppression of feud. Similarly, the crown's increasing interference in the resolution of feud in the Middle March illustrated its wider moves towards the monopolisation of justice. These themes suggest a significant evolution of the framework of government throughout Scotland between 1573 and 1625. Julian Goodare's analysis of the process of state formation underway in the late sixteenth century is invaluable in providing a governmental context to the developing framework of authority in the Middle March. In common with other parts of Scotland, the new administrative or judicial institutions in the Middle March, such as the body of JPs, worked alongside and using many of the same personnel as the traditional institutions. The co-existence of the old and new indicated the way in which the state machinery was able to evolve without engendering too much resistance. It is hoped that this study will provide a small example of Goodare's wider themes within a local context. Where this study is different from Goodare's is in its analysis of the impact of a change in policy in the Borders, rooted in James's concern over the succession, which was evident in James's treatment of Buccleuch and Cessford in 1597. Subsequently, James's determination to suppress anything that threatened the succession or Union was demonstrated by the prioritisation of the pacification in the Middle March. The way in which the

pacification was carried out, the institutions created and the personnel involved, was to illustrate a process whereby a continuity of traditional mechanisms and kinship underlay and implemented the changes that preceded and followed Union.

The Middle March also needs to be seen within the context of what was happening in the Scottish marches to either side of it. Many of the policies pursued by government in the Middle March were part of those implemented in all the marches: a judicial raid to Peebles displayed similar intentions and methods to those in a raid to Dumfries in the West March, as did the subscribing of the general band by Middle March lairds to that by their eastern neighbours. There were, however, differences. Maureen Meikle has shown the lairds of the Eastern Borders to have been, in the main, of less concern to the government than those further to the west. However, as Meikle also acknowledges 'there may also be Western Borderers who have been incorrectly included as violent men in standard Border histories'.¹¹⁶⁴ Moreover, this study would suggest that any violence needs to be seen within the context of crown policy in the region: the activities of the Middle March lairds such as Buccleuch and Cessford were useful to the crown in a different way to those of Lord Home in the East. The experience of the West March seems to have been rather different as well. The inclusion of Maxwells and Johnstones in central government took rather longer than the Scotts, the Murrays and the Kers. Feud in the West March was still remarked on in the 1620s as a continuing cause of disturbance when report of it in the Middle was much decreased. Perhaps the traditional explanations of such disturbance, of an alienation or remoteness from central government, are more applicable to the West than to the more centrally integrated men of the Middle March.

And, finally, the experience of the Middle March seems particularly relevant to any discussion of the influences of one region on another that informs attempts at a 'British History'. Certainly this study of a Scottish region on the frontier with England has tried to counter any anglocentric appraisal of the Middle March's history. At the same time, however, it is hoped that an account of what governments did in the Middle March before and after the regnal union will provide some Scottish evidence and Scottish perspective to

¹¹⁶⁴ Meikle *A British Frontier?* 279-80

the wider 'British' debate.

Caution is necessary in any application of the wider context that British history could provide to the histories of either the Middle March or Scotland. Whilst theorizing can lend perspective to a specific region, such theorizing needs to be rooted in primary research. As Allan Macinnes warns, 'a post-modern rationalising of theory divorced from archival endeavour' would 'jeopardise seventeenth-century studies as the crucible' for any 'integrated' British history.¹¹⁶⁵ Similarly, for English history, SG Ellis points to the limitations of 'traditional surveys of nation and state in England' which were 'generally based, not on primary sources, but on syntheses written by English historians': these were further limited by a failure to address 'regionalism, marcher society and the problems of cultural assimilation'.¹¹⁶⁶ This has particular relevance to the Scottish Middle March in any survey of the growth of the British state. When trying to assess a 'British' government's efforts in its borderlands, it is not sufficient to look, for instance, at the pacification in Northumberland or Cumberland. To do so would be to limit the analysis of the British state, to the actions of an English government within England. The work of Ellis on Tudor policy in the English north and Watts and Spence is invaluable in understanding the difficulties an English government faced in prosecuting the pacification in the English north which in turn can inform a study of Scottish government within the Scottish Borders. However, if anything, these works serve to highlight the differences between the English and Scottish Borders. All these English works describe a remoteness from the court in London experienced by the English borderers: this alienation is not applicable to the Scottish Middle March whose inhabitants were used to being part of the court in Edinburgh.¹¹⁶⁷ Even after James had gone south, Scottish borderers continued to be closely involved in central government. An acknowledgement is needed of the separate and particular conditions in Scotland as a whole, in the Scottish Borders and the specific circumstances of the Scottish Middle March. As Brian Levack observes, Scotland, in 1603 'was qualitatively different from all the other political units that had been

¹¹⁶⁵ Macinnes thinks that no such 'integrated' British history has been achieved yet. Macinnes and Ohlmeyer eds. *The Stuart Kingdoms in the Seventeenth Century* 15

¹¹⁶⁶ Ellis notes the importance of ME James's study of Durham for a more balanced evaluation of English government. Ellis *Tudor Frontiers and Noble Power* 8, 254

¹¹⁶⁷ Watts *From Border to Middle Shire*; Spence 'The Pacification of the Cumberland Borders'

incorporated into, or otherwise united to, England'; Scotland was a 'free, independent kingdom, a sovereign state in its own right' with its own institutions and laws.¹¹⁶⁸ The primary research for a study of a particular region, the Middle March, could provide one of the foundation blocks for any 'integrated' British history.

So what were the particular circumstances in the Middle March in 1573 and had these changed by 1625? Government hyperbole would suggest that the situation was very different: a proclamation for a muster at Peebles, in 1573, noted that the 'thevis and disorderit people' had inflicted on the Borderers 'birningis, slaucheteris, heirschippis of thair guidis, ransoming of thair personis ... quhairby divers gude and proffeittabill landis ar utterlie herreit and laid waist, to the greit hurt of the commoun weill'. Contrast this with the discharge, in 1622, of the guard as a result of the 'quieting and reducing to his Majesteis obedience of the lait Borderis', 'as thair is no necessitie ane ordinarie Gaird'.¹¹⁶⁹

If James's claims of 1607 were not wholly justified, how much progress in pacifying the former Middle March could he have claimed by 1625? Of course, success could have been measured in several ways: if it meant solely a reduction in the privy council's pre-occupation with cross-border crime there from 1573 to 1625, then James's triumphalism had some basis. Similarly, the council's record of internal crime in the shires of Roxburgh, Selkirk and Peebles no longer spoke of wide-spread offences; where crime was reported by 1625 it was almost always within arbitrations of specific disputes. Absolute levels of crimes are harder to quantify. The hugely increased records of the privy council mean that a quantitative comparison of the frequency of recorded crime in 1573 and 1625 would be misrepresentative of the frequency of crime itself. In addition, the increasing monopolisation of the judicial process by courts in Edinburgh meant that there was more record of disputes which previously would have been privately or locally resolved. It is easier to make a qualitative comparison: the concern of 1573 over the wicked men of Teviotdale and Roxburghshire in

¹¹⁶⁸ Levack *The Formation of the British State* 23-24

¹¹⁶⁹ *RPC* ii 242-43; xii 583-84, 657

the Middle March had disappeared from the privy council's records by 1625. Any enduring concern in the 1620s seemed to be reserved for the inhabitants of the dales of Annan, Esk, Ewe and Nith in the former West March.

How had this change been brought about? Such a dramatic difference in government reporting might suggest that significant changes had been made in the way in which government had implemented justice in the region. Certainly, the volume of government reporting of incidents in the Borders and the measures to deal with them had increased hugely during this period, though it was lessening by 1625. However, perhaps one of the most remarkable points to come out of this study is the continuity apparent both in the mechanisms that government used to impose its policies and the local agents used to enforce the government's will. In 1573, during a judicial raid by Morton to Jedburgh, the principal figures of the Middle March subscribed the 'Band of Roxburgh' promising to assist in the suppression of disorder 'conforme to the General Band'; in 1574 and 1576 the landlords were to deliver pledges from their kin and tenants that they were responsible for under the band of 1573. In 1617, following James's visit to Scotland, a general band of 1602 was resubscribed before the privy council by all the prominent men of the Middle March, including Buccleuch, Cranstoun, Oxnam and Douglas of Cavers. All of these men were from families subscribing in the 1570s. In 1618 the privy council reiterated the responsibility of Borders' landlords for their kin and tenants by restating the acts of 1587 and 1594 which also called for the observation of 'ane Generall Band'. As late as 1622 the earl of Angus was forced to subscribe a band for the good behaviour of 'suche as he is obleist to ansueir for ... conforme to the General Band' of 1602.¹¹⁷⁰

The underlying dynamics for imposing justice, through the responsibility of the laird for his men, were the obligations of kinship and alliance. One of the central themes of this study has been the importance of kinship and alliance in the mechanisms that government continued to use throughout the period to implement its authority in the locality. The kinship element was implicit within the 'haill men' referred to in the band of 1617. Similarly, government used the responsibility for kinship in its suppression of feud. In 1607, in order to resolve a feud between Geddes of Rauchan and Jardine of

¹¹⁷⁰ *RPC* ii 370-73, 548-52; vi 825-29; xi 215-19, 225-28, 441; xii 671

Applegarth, Buccleuch 'takand ye burding upone him for all his kin freindis assistaris pairtie and partakeris and in speciall for Charles Geddes of Rauchane and haille surname of Geddes thair kin'.¹¹⁷¹ Kindreds and members of alliances staffed the bodies which the government used within its administration. The indemnity that Ker of Oxnam received in 1622 for his actions as captain of the guard was extended to those that had assisted him and they were all Kers.¹¹⁷² Similarly, though there may have been some change in the types of offices held, with the disappearance of the march wardenship and the introduction of JPs, those in office in the locality in 1625 were from the same families that had held office in 1573. Murray of Philiphaugh may have surrendered his hereditary sheriffdom of Selkirkshire in 1619, but he still held office in the region as a JP and border commissioner and also served as sheriff again in 1621 and 1623. Buccleuch's keepership of Liddesdale may have effectively lapsed in 1603 but he still had enormous authority in the region as a JP, subsequently one of the triumvirate of border commissioners and a privy councillor. Roxburgh was no longer march warden but he too was a JP, one of the most important privy councillors and the head of a kinship network which staffed government both in the locality and Edinburgh. Sir Robert Ker of Ancrum's prominence in the household in London further extended the Kers' influence. In the 1620s, the kinships and alliances of Buccleuch and Cessford continued to dominate power structures within the former Middle March.

Something must have changed, however, to explain the slow disappearance of the Middle March from privy council records by 1625. Most useful in explaining this, is an appreciation of the external influences on the march, and the context provided by more general developments throughout Scotland; James's increasing direction of government, central government intrusion into the locality throughout Scotland, mounting concern over the succession and the Union of 1603. Measures taken in the Middle March were often part of a wider programme such as the suppression of feud or, after 1603, James's initiatives to secure a fuller Union. What is evident, also, from this account is that the crown was able to impose its will in the Middle March. It may not have been able to do so as quickly or as thoroughly as it may have wanted but when, for instance, James embarked on a more consistent

¹¹⁷¹ GD224/906/60/3

¹¹⁷² *RPC* xii 659

approach to the Borders in 1597, Buccleuch and Cessford were forced to come into line. There were mechanisms in place in 1573 which could be used to impose government authority in the region if the government chose fully to implement them. Before 1597, with perhaps the sole exception of Morton's regency, successive governments had equivocated over a full crackdown in the region. After 1597, however, the government's priorities were changed irrevocably by the dynamics of the English succession.

In 1603, the Middle March's position at the geographical centre of the Scottish marches put it also at the centre of the Middle Shires, the exemplary heart of the unified kingdoms. Though James's description of every man living 'peaceably under his owne figgetree' exaggerated the order imposed in the region, it is clear that, contemporarily, the pacification was perceived to have succeeded in the suppression of crime. However, if the pacification was meant to be more than this and to include the co-operative implementation of newly standardised laws within a supra-national region, then little progress could have been discerned by 1625. English parliaments of 1604 and 1607 refused to agree to a fuller Union and upheld the separate legal systems.

For Bruce Galloway 'the residual hostility and prejudice of the two nations towards each other' crucially undermined the union negotiations of 1604 to 1607. He quoted Robert Parsons sceptical observation of 1594 about 'the aversion and natural alienation of [the Scots] from the English'. Though Galloway notes a general acceptance of Union by 1603 there was little consensus on how such a Union should be institutionalised.¹¹⁷³ The continuation of border-specific institutions with delineated Scottish and English jurisdictions indicated that divisions remained at what was meant to be the heart of a unified Britain. Buccleuch's difficulties in extracting an offender from England in 1623 testifies to the effect of such division. Levack's observations on Scotland's own laws, kirk and parliament are pertinent here: 'the status of Scotland as an independent state also made perfect union more unlikely' than if it had been a 'subordinate or conquered political unit in the possession of the English crown'.¹¹⁷⁴ If negotiations over

¹¹⁷³ Galloway *The Union of England and Scotland* 10,12; quoting R Parsons *A Conference touching Succession to the Crowne* (Antwerp 1594) 118

¹¹⁷⁴ Levack *The Formation of the British State* 24-25

Union and the standardisation of the legal system failed at the highest levels, how much less likely was Anglo-Scottish co-operation over a border defined by hundreds of years of hostility?

The enduring problems, manifested in the former marches, served to inhibit full union for over a century after 1603. The Borders had a profound and long-term effect on the development of the British state. It is important to acknowledge the resistance of the component parts of Britain to each other in any history of it. Similarly, the significance should be recognised of the continuation of a separate Scottish government within Scotland. A Scottish privy council had a more immediate effect on the Scottish Middle March than that in Whitehall. For the time being, government of the Middle March continued within a Scottish framework using largely traditional methods originated in Scotland before 1603. As Michael Braddick usefully notes, the processes at work in Scotland after 1603 were not Anglicisation because they had already been in progress before the Union. He further suggests 'that a process of state formation was under way in Scotland independent of that in England'.¹¹⁷⁵ Ellis also notes the different circumstances in Scotland to Ireland and Wales at Union: for him, Scotland as 'an independent sovereign kingdom' was less susceptible to English policies towards its peripheries of 'centralization and administrative uniformity'. As a result, the English approach to Scotland at dynastic union was 'to treat Scotland as another conquest lordship to be incorporated into England, rather than as an equal partner' which led to tensions that undermined Union in 1603 and 1707.¹¹⁷⁶

Ellis's comparisons of Tudor policy on its northern frontier with that in its Irish pale were made with the context of 'British History' in mind. If 'British History' is to achieve the objective that Macinnes describes as an 'integrated history' using a 'wider contextualisation', then it should counter any anglocentric tendency to explain the development of Britain. Events in the periphery should be assessed within their national historiographies as well as in terms of the external influences that affected them. Thus any methodology which applies English terms of reference is more useful in

¹¹⁷⁵ Braddick *State Formation in Early Modern England* 356, 368

¹¹⁷⁶ Ellis sees the continuation of these tensions to this day. Ellis *Tudor Frontiers and Noble Power* 271; SG Ellis 'From Dual Monarch to Multiple Kingdoms' in AI Macinnes and J Ohlmeyer eds. *The Stuart Kingdoms in the Seventeenth Century* 41

explaining English rather than British state formation.¹¹⁷⁷ Ellis's valuable conclusions on the English north should not be applied to a very different Scottish situation. The resistance Ellis describes of men like Lord Dacre to the centralising of Tudor government in the sixteenth century was not replicated in the Scottish Middle March. The Scottish privy council used the acquiescence of prominent figures in the march, such as Buccleuch and Roxburgh, by including them within its intrusion into the locality. Furthermore, the conclusions Ellis draws for the difficulties of a Stuart English government in Scotland after 1603 are based on his conclusions of Tudor policy within the *English* north before Union.¹¹⁷⁸ The scepticism expressed by Keith Brown in 1993 over the dangers of 'British History' becoming merely another vehicle for an anglocentric account of the British Isles would seem to be prescient.¹¹⁷⁹

This study began with a desire to look behind the legends of the reivers of the Middle March. What it has found is a far greater connection between the crown and the inhabitants of the Middle March than that implied by the image of 'King' Johnnie Armstrong's proudly acclaimed independence in 1529. The Middle March may have been geographically on the periphery of the kingdom of Scotland but its inhabitants were anything but remote from the centre: they were involved in government at its highest level and, conversely, central government could and increasingly did use those from the Middle March as agents of crown policy within it. This is to challenge the orthodoxy of accounts which ascribe an 'endemic' violence to an area outwith crown control. In doing so it is hoped to have countered the anglocentric models traditionally used to assess the Borders and to put the Middle March into its proper *Scottish* context.

¹¹⁷⁷ Al Macinnes 'Introduction: Awkward Neighbours' 15, 23, 25, 35

¹¹⁷⁸ Ellis 'Tudor state formation' 43, 62-63

¹¹⁷⁹ Keith Brown 'British History: a Sceptical Comment' in RG Asch *Three Nations: A Common History? England, Scotland, Ireland and British History c1600-1920* (Bochum 1993) 117-127