



THE UNIVERSITY *of* EDINBURGH

This thesis has been submitted in fulfilment of the requirements for a postgraduate degree (e.g. PhD, MPhil, DClinPsychol) at the University of Edinburgh. Please note the following terms and conditions of use:

- This work is protected by copyright and other intellectual property rights, which are retained by the thesis author, unless otherwise stated.
- A copy can be downloaded for personal non-commercial research or study, without prior permission or charge.
- This thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the author.
- The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the author.
- When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given.

**Gender, Sex and Social Control:
East Lothian, 1610-1640**

Harriet J. Cornell

Ph.D.
School of History
University of Edinburgh
2012

Declaration

I declare that this thesis has been composed by me and that the work is my own.

It has not been submitted for any other degree or professional qualification.

Any use of any of the material herein, for personal or academic purposes, must be properly acknowledged.

Harriet J. Cornell

20 October 2012

Abstract

Early modern Scotland was a religious society where the doctrine of Calvinism permeated everyday life in the localities through the official regulation of personal behaviour. Recent historical studies have debated the nature and experience of social control in Scotland between 1560 and 1780, including the importance and influence of gender, geographic location and social status. Where such studies have traditionally focussed on kirk session minutes as a lone source, the thesis engages with this debate by employing an ‘all courts’ approach to examine social control, family structures and interpersonal relationships. In doing so, it departs from the binary division of gender and contributes to a wider thematic historiography involving patriarchy, family and household that is present in contemporary English and Continental scholarship. In Scotland, although the period between 1560 and 1640 has received attention from historians, there is no focussed study of these themes for the period between 1610 and 1640.

The thesis employs evidence from secular and ecclesiastical court records drawn from ten parishes across East Lothian to analyse the structure of the operational court system in Haddingtonshire and to examine social control and notions of honour and shame. Focus is given to how these two concepts interacted with popular experiences of household life, sexual relationships, violent actions and violent words. Its central argument is that, between 1610 and 1640, there was a localised experience of social control and authority in East Lothian, which was administered through an integrated justice network of civil and ecclesiastical courts that was influenced by gender roles, ideas of patriarchy and the importance of social status.

Table of Contents

Acknowledgements	v
List of Figures	vi
Conventions and Abbreviations	ix
1. Introduction	1
1.1 Historiography	3
1.2 Research Design and Methodology	18
1.3 Chapter Structure	36
2. The Jurisdictions of Haddingtonshire	41
2.1 The Courts of Haddingtonshire	42
2.2 A Web of Justice in Operation	71
2.3 Conclusion	79
3. The Haddingtonshire Courts in Action	82
3.1 The Business of the Courts	82
3.2 Punishing the Purse and Person	97
3.3 Authority and Legitimacy	109
3.4 Conclusion	117
4. Social Control: Individual Behaviour and Sexual Relationships	120
4.1 The Regulation of the Individual	122
4.2 Regulating Relationships	136
4.3 Conclusion	160
5. Social Control: Methods and Consequences	164
5.1 Thieves and Whores: the Examples of Slander and Violence	165
5.2 The Methods of Social Control	179
5.3 Case Study: the Trial and Death of Margaret Alexander, Haddington, May 1612	188

5.4	Conclusion: Social Control, or Social Intrusion?	194
6.	Family and Patriarchal Responsibility: Controlling the Household	198
6.1	Patriarchy: Households and Fatherhood	200
6.2	Patriarchy: Competition and Control	212
6.3	Conclusion: the Presence of Patriarchy	229
7.	According to Rank: the Importance of Status	232
7.1	Rank	233
7.2	Case Study: John Airth of Tynninghame, 1616-1629	245
7.3	Before Sheriff and Provost	254
7.4	Conclusion	260
8.	Conclusion: Kirk, State and Social Control	261
	Appendix: Maps of East Lothian	269
	Bibliography	281

Acknowledgements

I would like to thank my supervisors, Dr. Adam Fox and Dr. Julian Goodare, for their expertise, advice and patience. I could not have wished for better care or generosity from two exceptional scholars – thank you. I would like to thank my examiners, Dr. Alexandra Shepard and Dr. Alexander Murdoch for a rigorous, rewarding and encouraging viva – thank you both. I would like to thank Professor Bob Morris for starting the ball rolling through his support of my ESRC application and training in quantitative methods, and Dr. Cordelia Beattie and Professor Michael Lynch for their criticism and direction in the early stages of the project. I would like to thank Dr. Adam Budd, Professor Elizabeth Ewan, Dr. Michael Graham, Dr. Janay Nugent, Dr. Tawny Paul, Dr. Jane Ridder-Patrick and Dr. Nuala Zahedieh for discussions on and around my subject; and Dr. Louise Jackson and the GHN for support, ideas and encouragement. Heartfelt thanks go to P. J. Goulden and L. P. for casting critical eyes over various drafts, and for managing to do so with humour.

I would like to thank Dr. Scott Moir for his generosity of spirit in offering to post his only hardcopy of his own PhD thesis to me from Canada. An electronic alternative was found, but such kindness is exemplary. I must say the same of Jenny Parkerson, Map Assistant at the National Library of Scotland, who's knowledgeable replies to my map-related queries were truly helpful. Thanks must go to David Ritchie for his efforts in locating much-needed tomes from the former Scottish History Library. Special thanks are reserved for the Economic and Social History Department, the postgraduate community of HCA – past and present – and to all who attended the works-in-progress seminars organised by Dr. Katherine Nicolai. You prevented what is a sole pursuit from ever turning lonely.

I would like to thank Sally Lancashire and Michael Bower for encouraging me not to give up History all those years ago and, finally, those who have been present throughout this academic endeavour. John Paul – it would have been impossible without your love and understanding. To John and Elsie Thomas – it is a great sadness that you saw the start but not the finish. You are missed. Thomas – you missed the start by a mere three months. Thank you for never failing to make me laugh. Olive Cornell – you have been a supportive presence from the Beginning. Anna, Cam, Christo, Emma P., Louise A., Lillian, Lydia and Tawny – I am truly lucky to count you as friends. But my greatest debt is to my parents. This thesis is dedicated to them. Thank you all for not asking 'is it finished yet?' too frequently.

~HJCC, Edinburgh, October 2012~

List of Figures

		<u>PAGE</u>
Figure 1.1	John Adair, <i>A Map of East Lothian / survey'd by J. Adair</i> (Edinburgh: Cooper, ca. 1736).	269
Figure 1.2	<i>Map of Haddingtonshire</i> from the Second Statistical Account of Scotland (1845).	270
Figure 1.3	Herman Moll, <i>Lothian: contains The Shire of Linlithgow or West Lothian, The Shire of Edinburgh or Midlothian. and Haddington or East Lothian</i> (London: Bowles and Bowles, 1745).	271
Figure 1.4	Aaron Arrowsmith, <i>Ecclesiastical Map of Scotland</i> (Edinburgh: P. Brown, 1825).	272
Figure 1.5	Aberlady and its immediate surrounds.	273
Figure 1.6	Cockburnspath and Innerwick, and their immediate surrounds.	274
Figure 1.7	Haddington and its immediate surrounds.	275
Figure 1.8	North Berwick and its immediate surrounds.	276
Figure 1.9	Pencaitland and Salton, and their immediate surrounds.	277
Figure 1.10	Prestonpans and its immediate surrounds.	278
Figure 1.11	Tynninghame and its immediate surrounds.	279
Figure 1.12	Yester (Bothans/Gifford) and its immediate surrounds.	280

Figure 2.1	distribution of individual cases brought before Haddington burgh court, 24 February 1634-31 December 1640.	44
Figure 2.2	location of Blance, between Bolton and Saltoun, East Lothian.	48
Figure 2.3	distribution of individual cases brought before Haddington sheriff court, 1 December 1625-19 January 1632.	53
Figure 3.4	distribution of individual cases heard by East Lothian kirk sessions between January 1610 and December 1640.	84
Figure 3.5	individual cases brought by individuals before East Lothian kirk sessions between January 1610 and December 1640.	85
Figure 3.6	distribution of individual cases heard by Haddington presbytery between January 1610 and December 1640.	91
Figure 3.7	distribution individual cases brought by Individuals before Haddington presbytery between January 1610 and December 1640.	92
Figure 3.8	distribution of individual cases heard by Haddington sheriff court between January 1610 and December 1640.	93
Figure 3.9	distribution of individual cases heard by Haddington burgh court between January 1610 and December 1640.	94
Figure 3.10	punishments imposed on individual cases heard by Tynninghame kirk session between 4 May 1615 and 22 November 1640.	98
Figure 3.11	location of Stoneypath, near Garvald and Stenton.	104
Figure 4.1	distribution of fornication cases heard by East Lothian kirk sessions between 1610 and 1640.	137

Figure 4.2	distribution of individual cases of charming and witchcraft heard by the East Lothian kirk sessions between 1610 and 1640.	146
Figure 4.3	distribution of individual cases heard by the Saltoun kirk session between 1635 and 1640.	147
Figure 4.4	distribution of individual cases of suspicious conduct heard by East Lothian kirk sessions between 1610 and 1640.	153
Figure 6.1	distribution of servants appearing for breaking the sabbath whilst carrying out orders, January 1610 – December 1640.	216
Figure 6.2	distribution of employers/masters appearing for breaking the sabbath through the actions of their servants, January 1610 – December 1640.	217
Figure 6.3	location of Bearford and its immediate surrounds	227
Figure 7.1	distribution of outcomes in theft cases heard by the Haddington burgh court between 1610 and 1640	256

Conventions and Abbreviations

Money: All sums are in pounds (£s) Scots unless otherwise stated, sometimes rounded to the nearest £. Each £ Scots comprised 20 shillings (s.), each shilling in turn consisting of 12 pence (d.).

One merk was valued at 13s. 4d. in 1651.

One dollar (a Danish coin) was worth approximately £2 Scots.

In 1560 the English £ (sterling) was equal to about £4. 10s. Scots. By 1600, the English £ (sterling) was worth £12 Scots. The Scottish currency was pegged to the English in 1603, although it remained relatively depressed in comparison up to 1640.

Dates: These are given in old style (i.e. Julian calendar), but with the year beginning 1 January, not 25 March – a change made in Scotland in 1600.

Style: Contemporary documents are quoted in the original spelling, but the letters i/j and u/v are modernised; yogh is given as y, thorn as th. Contractions are expanded, and modern capitalisation and punctuation used. In the text, names of people and places use the standard modern form where one exists.

The following abbreviations are used:

APS *Acts of the Parliaments of Scotland*, 12 vols., ed. T. Thomson and C. Innes (Edinburgh, 1814-75).

Balfour, *Practicks* Sir James Balfour of Pittendriech, *Practicks*, 2 vols., ed. P. G. B. McNeill (Stair Society, 1962-3).

EcHR *Economic History Review*

FBD, ed. Cameron *The First Book of Discipline of the Church of Scotland*, ed. James Cameron (Edinburgh, 1972).

Mackenzie, *Matters Criminal* Sir George Mackenzie, *The Laws and Customs of Scotland in Matters Criminal* (Edinburgh, 1678), ed. Olivia F. Robinson (Stair Society, Vol. 59, 2012).

MFHS	Family History Centre, Church of Jesus Christ of Latter Day Saints, Salt Lake City, UT.
NLS	National Library of Scotland, Edinburgh
NRS	National Records of Scotland, Edinburgh
<i>SSW</i> , Goodare et al.	Julian Goodare, Lauren Martin, Joyce Miller and Louise Yeoman, <i>The Survey of Scottish Witchcraft</i> , http://www.arts.ed.ac.uk/witches/ (archived January 2003).
<i>Dumf. Trans.</i>	<i>Transactions of the Dumfriesshire and Galloway Natural History and Antiquarian Society</i>
<i>East Lothian Trans.</i>	<i>Transactions of the East Lothian Antiquarian and Field Naturalists' Society</i>
<i>WMQ</i>	<i>William and Mary Quarterly</i>

Introduction

Early modern Scotland was a religious society where the doctrine of Calvinism permeated everyday life through the official regulation of personal behaviour. From the Reformation in 1560 until the turn of the nineteenth century, Scotland's network of church courts – the kirk sessions – policed the manners and morals of their parish congregations, punishing purse and person in the name of a godly society.¹ The kirk sessions operated with and alongside a sophisticated network of secular courts at local level, and Scotland's people were governed by codes of honour, shame and reputation, like their contemporaries on the Continent. Recorded detail from ecclesiastical and secular court cases involving neighbourhood disputes, the supernatural, violence, gossip, slander and sexual misconduct have proved a valuable source for the historical investigation of ordinary folk and the nature and experience of social control in these early modern societies.

For Scotland, focus has been on the actions of the kirk sessions in this role – the actions of local men regulating behaviour in their local communities. Attempts have been made to identify a popular experience of the Kirk's authority and ascertain the influence of personal characteristics – especially gender – over that experience. English and Continental scholarship has emphasised the web-like operation of early modern judicial systems where secular and ecclesiastical courts worked in tandem to regulate, control and influence the behaviour of local people. Likewise, Scotland's ecclesiastical authorities were not acting in isolation but as a part of an integrated justice system that was operational at local level.² In East Lothian, the sheriff court, burgh courts, presbyteries and kirk sessions were the central institutions of this system during the seventeenth century. The authority and legitimacy of these courts extended from the tolbooths in Haddington and North Berwick into rural county parishes thanks to a network of shared officials, shared business and shared punishment. This was possible

¹ The most recent survey: Margo Todd, *The Culture of Protestantism in Early Modern Scotland* (New Haven and London, 2002).

² Julian Goodare, *The Government of Scotland, 1560-1625* (Oxford, 2004), esp. chapters 8 and 9; Stephen T. Davies, 'The Courts and the Scottish Legal System, 1600-1747: the Case of Stirlingshire Crime and The Law', in V. A. C. Gatrell, Bruce Lenman and Geoffrey Parker, *Crime and the Law: the Social History of Crime in Western Europe since 1500* (London, 1980), 120-154.

in part because of a common, unifying religious belief that extended from central government.

It was through this local judicial network that sexual relationships, personal conduct and the household were subjected to state regulation under the guise of establishing (and later maintaining) early modern Scotland as a godly society. Social control as a sociological term is traditionally associated with nineteenth-century Britain and changes in the popular experience of governance that included the establishment of a formal police force and the rise of municipal authorities.³ In the burgh and sheriff courts, the aim of restoring smooth neighbourly relations can be seen in the conduct and resolution of violence cases. Constituting part of the formal legal system and local court network, the activities of early modern kirk sessions have been characterised partly by their pastoral role: concern with family life, leisure and recreation, and the official provision of education and poor relief.⁴ As a result, the idea of social control has been applied by scholars in an early modern context when investigating the parameters of personal behaviour in these societies. This has included work on post-Reformation Scotland.⁵

Throughout early modern Europe, patriarchal ideals and codes of honour, reputation and shame were subscribed to by individuals and were apparent in sanctions from official bodies.⁶ Thus, parameters of personal behaviour were set by state regulation and popular subscription to that regulation because of commonly-held religious beliefs. In Scotland, this included the policing of sexual conduct and personal relationships, principally by the kirk sessions and presbyteries but with a driving religious fervour that extended to the cases of murder and witchcraft heard by secular courts. Documented detail from slander cases evidence the importance of personal reputation and honour within this patriarchal society. The continued influence of patriarchy and importance of social hierarchies is apparent from cases involving family members and households. Therefore, the binary division of gender was not the sole influence over the experience of social control in the early modern parish.

³ A. P. Donajrodzki (ed.), *Social Control in Nineteenth-Century Britain* (London, 1977), 9.

⁴ Todd, *Culture of Protestantism*, esp. chapters 5 and 6.

⁵ Leah Leneman and Rosalind Mitchison, *Sin in the City: Sexuality and Social Control in Urban Scotland, 1660-1780* (Edinburgh, 1998); Rosalind Mitchison and Leah Leneman, *Girls in Trouble: Sexuality and Social Control in Rural Scotland* (Edinburgh, 1998); Peter Symms, 'Social Control in a Sixteenth-Century Burgh: a Study of the Burgh Court Book of Selkirk, 1503-1545' (Unpublished Ph.D. Thesis: Edinburgh, 1986).

⁶ For use of these concepts in modern social science studies see: Julian Pitt-Rivers (ed.), *Mediterranean Countrymen: Essays in the Social Anthropology of the Mediterranean* (Paris, 1963); J. G. Peristiany (ed.), *Honour and Shame: the Values of Mediterranean Society* (London, 1965); J. K. Campbell, *Honour, Family and Patronage: a Study of Institutions and Moral Values in a Greek Mountain Community* (Oxford, 1974).

This thesis re-evaluates the idea of social control within the early modern Scottish parish by addressing the experience of authority within these urban and rural communities as delivered through the local court network. It offers a comprehensive understanding of how secular and ecclesiastical courts operated at local level. This is possible through the examination of their respective judicial remits, case business, punitive actions and sources of power, authority and legitimacy. Having done so, the nature of social structures, household structures, interpersonal relationships and personal conduct within urban and rural environments are analysed and evaluated. Conclusions are then drawn on the influence of gender roles, ideas of patriarchy and the importance of social status over social control.

I. Historiography

This thesis contributes to three strands of historiography. Firstly, it seeks to augment early modern Scottish social history by extending existing historical debates on social control and re-evaluating the experience of authority by looking at the court system as a secular and ecclesiastical network. In doing so, this thesis engages with early modern British social history – the second strand – and the thematic debates around gender, family and patriarchy that have originated in this scholarship. Thirdly, this thesis seeks to situate early modern Scotland in a European context that extends beyond its southern neighbour. Primarily, this will be done by using an all courts methodology – examining the surviving records from a variety of jurisdictions – and, whilst acknowledging the importance of gender as a determinant of social control, by extending analysis to consider the importance of geography, patriarchy, age and social status.

The methodology of this thesis is intended to make a contribution to the understanding of the early modern court system in the localities: its powers, how it operated and the sources of its authority and legitimacy. Such examination is necessary in order to situate this thesis soundly within the previous three strands of scholarship. It also offers a comprehensive overview of how state power manifested itself at local level in early modern Scotland.

Relevant historiographical arguments and debates are detailed throughout the thesis, but it is valuable to offer an overview of existing scholarship from the outset in order to contextualise the aims of this study.

Whilst the history of Scotland's Reformation has been well documented, the study of Scotland's 'ordinary folk' has only received attention in recent decades.⁷ The survival of court records from the early modern period has been central to the development of this vein of historiography in wider British and European scholarship. It is a well-established methodology in pre-modern British social history. Scholars, including Barbara Hanawalt and J. A. Sharpe, have used secular and ecclesiastical court records successfully to examine the household economy, community relations and social structures in medieval and early modern England.⁸ For early modern Scotland, the wealth of qualitative detail contained in Scotland's kirk session minutes has been relied upon by historians investigating the social and cultural implications of the establishment of Calvinist theology in Scotland from 1560.

Through their use of kirk session minutes from the late seventeenth- and eighteenth-centuries, Rosalind Mitchison and Leah Leneman were early pioneers of such historical investigation. Not only did their research demonstrate these minutes as a valuable, viable source for examining the popular experience and personal expectations of living in religious communities, but they succeeded in showing how 'many kirk session registers went beyond the "bare bones" of a case'. These records illuminate the workings of a household – from relationships with and between servants, to working practices and even common sleeping arrangements.⁹ By focusing on illegitimacy and marriage, Leneman and Mitchison portray a sense of popular church authority that continued from a century after the Reformation into the 1780s. They conclude that the

⁷ Robert Fenwick, 'Locating Scotland's Ordinary Folk, among the lesser known sources for social and family history research, c.1630-c.1790' (Unpublished PhD Thesis: University of Edinburgh, 2006). See also: Julian Goodare, 'Scotland', in R. W. Scribner, Roy Porter and Mikulas Teich (eds.), *Reformation in National Context* (Cambridge, 1994), 95-110; Michael Lynch, *Edinburgh and The Reformation* (Edinburgh, 1981); Margaret Sanderson, *Ayrshire and the Reformation: People and Change 1490-1600* (East Linton, 1997); Alec Ryrie, *The Scottish Reformation* (Manchester, 2006); Jane E. A. Dawson, 'The Face of ane Perfyrt Reformed Kyrk': St Andrews and the Early Scottish Reformation', in James Kirk (ed.), *Humanism and Reform: the Church in Europe, England and Scotland, 1400-1643, Essays in Honour of James K. Cameron* (Oxford and Cambridge Mass., 1991), 413-36; Alec Ryrie (ed.), *The European Reformations* (Basingstoke, 2005). On Scottish Calvinism and its economic manifestation in relation to Max Weber, see Gordon Marshall, *Presbyteries and Profits. Calvinism and the Development of Capitalism in Scotland, 1560-1707* (Edinburgh, 1980).

⁸ Barbara Hanawalt, *The Ties That Bound: Peasant Families in Medieval England* (Oxford, 1986); J. A. Sharpe, 'Defamation and Sexual Slander in Early Modern England: the Church Courts at York', *The University of York Bothwick Papers*, 58 (1980); J. A. Sharpe, 'Such Disagreement betwix Neighbours': Litigation and Human Relations in Early Modern England', in J. Bossy (ed.), *Disputes and Settlements: Law and Human Relations in the West* (Cambridge, 1983), 167-187. See also: Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge, 2003); Christopher Haigh, 'Slander and the Church Courts in the Sixteenth Century', *Transactions of the Lancashire and Cheshire Antiquarian Society* (1975), 1-13; Shannon McSheffrey, *Marriage, Sex, and Civic Culture in Late Medieval London* (Philadelphia, 2006).

⁹ Leneman and Mitchison, *Sin in the City*; Mitchison and Leneman, *Girls in Trouble*, 94-5, 91-2.

experience of social control in both rural and urban areas was dependent on gender and social status.¹⁰ Merry Wiesner-Hanks has drawn similar conclusions on the importance of status for social control in early modern Germany.¹¹

In Scotland, observations on the influence of social hierarchies are not confined to after 1560. Elizabeth Ewan's work on late-medieval Scottish burghs shows its longevity, concluding that the 'regulation of townspeople's lives was affected by gendered perceptions of appropriate behaviour of men and women', which often clashed with active female roles in the urban economy where 'to maintain the household required assertive and independent behaviour'.¹² Leneman and Mitchison's research initiated a new debate in Scottish history: what was the popular experience of kirk session discipline? Were all Scots subject to the policing of morals and manners equally and evenly, in accordance with the *First Book of Discipline*?¹³ The authors engage with these questions by concluding that social status and gender continued to influence the experience of kirk discipline and social control throughout lowland Scotland after 1660.

There is opportunity to extend this debate forwards into the post-Reformation period between 1560 and 1660. Currently, Scottish historiography of the century preceding Leneman and Mitchison's work is divided in its conclusions regarding the influence of social status and gender over kirk discipline, and there is room for further analysis and interpretation. Using qualitative data from over forty sessions alongside presbytery and synod minutes, Margo Todd's monograph offers a comprehensive overview of kirk activities between 1560 and 1640, which sheds light on the 'culture that

¹⁰ Leneman and Mitchison, *Sin in the City*, 86. See also their 'Acquiescence in and Defiance of Church Discipline in Early Modern Scotland', *Records of the Scottish Church History Society*, 25 (1993), 19-39, which explores this theme further.

¹¹ Merry E. Wiesner-Hanks, *Women and Gender in Early Modern Europe* (Cambridge, 2008), 65.

¹² Elizabeth Ewan, 'Women and Daily Life in Late-Medieval Scotland', in Yvonne Galloway Brown and Rhona Ferguson (eds.), *Twisted Sisters: Women, Crime and Deviance in Scotland Since 1400* (East Linton, 2002), 118. See also Elizabeth Ewan, 'For Whatever Ales Ye': Women as Consumers and Producers in Late Medieval Scottish Towns', in Elizabeth Ewan and Maureen Meikle (eds.), *Women in Scotland, c.1100-c.1750* (East Linton, 1999), 125-135. For women in the wider medieval economy see: Nicholas Mayhew, 'The Status of Women and the Brewing of Ale in medieval Aberdeen', *Review of Scottish Culture*, 10 (1996-7), 16-21; Judith M. Bennett, *Ale, Beer and Brewsters in England: Women's Work in a Changing World, 1300-1600* (Oxford, 1996); Helena Graham, 'A Woman's Work?: Labour and Gender in the Late-Medieval Countryside', in P. J. P. Goldberg (ed.), *Woman is a Worthy Wight: Women in English Society, c.1200-1500* (Stroud, 1992), 126-48.

¹³ *FBD*, ed. Cameron, 165-179. [N.B. Although they were not published when first written, the *First* and *Second Book of Discipline* have been italicised throughout to reflect their importance as religious tracts and their later publication.]

was established by that system of parochial sessions'.¹⁴ In contrast to Leneman and Mitchison's findings for the later period, Todd's examination of this nationwide 'cultural transformation' concludes that sessions not only 'provided genuine social services to families' but embodied a vigorous disciplinary system that was both remarkably geographically homogeneous and immune to social difference, be it according to rank or gender.¹⁵

Michael Graham has acknowledged that the desire to 'bring discipline to all social strata' was present in the ministry of the 1580s. But he contests Todd's argument that the kirk's disciplinary agenda was immune to the influence of rank.¹⁶ This is perhaps not surprising in light of Leneman and Mitchison's conclusions for the later period. Furthermore, in the most Reformed of societies – Calvin's Geneva – Bill Naphy has found instances where the consistory and city council employed softer sentencing because of a person's high-ranking socioeconomic status.¹⁷

Like social rank, the gendered popular experience of Scotland's Reformed discipline throughout the early modern period is contentious. Geoffrey Parker's quantitative study of St Andrews emphasises how being subjected to public kirk discipline was commonplace for both men and women, even if women were more likely (statistically) to face censure at the hands of the kirk session than men.¹⁸ This gender divide in the experience of kirk discipline is, once more, in line with Merry Wiesner-Hanks' findings for early modern German congregations.¹⁹ In Reformed Augsburg, Lyndal Roper has emphasised a gendered pattern of crime where women were more likely to be tried for sexual offences whilst men faced prosecutions for fighting and rowdy behaviour.²⁰ Both men and women may have been held to account for their misbehaviour by Scotland's

¹⁴ Todd, *Culture of Protestantism*, 14, 413-6. See also: Anne Gordon, *Candie for the Foundling* (Edinburgh, 1992), esp. 243-389; Alison Hanham, *The Sinners of Cramond: the Struggle to Impose Godly Behaviour on a Scottish Community, 1651-1851* (Edinburgh, 2005).

¹⁵ Todd, *Culture of Protestantism*, 266, 403, 405-7.

¹⁶ Michael F. Graham, *The Uses of Reform: 'Godly Discipline' and Popular Behaviour in Scotland and Beyond, 1560-1610* (Leiden, 1996), 148, 267-8, 279. See also, his: 'Equality Before the Kirk? Church Discipline and the Elite in Reformation-era Scotland', *Archiv Fur Reformationsgeschichte*, 84 (1993), 289-310; 'Social Discipline in Scotland, 1560-1610', in R. A. Mentzer (ed.), *Sin and the Calvinists: Morals Control and the Consistory in the Reformed Tradition* (Kirksville MO., 1994). 129-158.

¹⁷ W. M. Naphy, *Sex Crimes from Renaissance to Enlightenment* (Stroud, 2002), 38, 31. See also Robert M. Kingdon, *Adultery and Divorce in Calvin's Geneva* (London, 1995).

¹⁸ Geoffrey Parker, 'The 'Kirk By Law Established' and the Origins of "The Taming of Scotland"', in Leah Leneman (ed.), *Perspectives in Scottish Social History: Essays in Honour of Rosalind Mitchison* (Aberdeen, 1988), 9-11.

¹⁹ Merry E. Wiesner, *Gender, Church and State in Early Modern Germany* (London, 1998), 91-2.

²⁰ Lyndal Roper, *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford, 1989), 83, 86.

kirk sessions, but the gender equality of their respective punishments – as advocated by Margo Todd – has been challenged by Gordon DesBrisay through his convincing analysis of disciplinary fines.²¹

The importance of geography in the experience of kirk session discipline is a third area of contention within early modern Scottish historiography. Michael Graham suggests that the establishment of kirk sessions helped give women a voice for ‘it established a forum for the complaints of the humble – male and female’ and that, in small rural parishes especially, the idea of a sexual ‘double standard’ with regard to church discipline is hard to find.²² But he concedes that women outnumbered men in sexual prosecutions in larger population centres, thus prioritising the existence of rural-urban differences. As Graham has recognised for the period up to 1610, Leneman and Mitchison are careful to emphasise how differences in the experience of kirk discipline were not just related to gender or social status but inextricably linked to location. The existence of such a geographical divide has been avoided by Margo Todd, although it has been identified as present on the Continent.²³ Early modern Scotland was overwhelmingly rural in its population. Todd’s insistence on portraying the nation as a whole whilst using significant quantities of urban court records has been identified as a point of weakness in what is otherwise a seminal piece of scholarship.²⁴

The history of rural Scotland has not been completely neglected. Indeed Leneman and Mitchison have helped insure against this. Furthermore, Margaret Sanderson and Winifred Coutts have used a variety of legal sources to illustrate the existence of rural hierarchies in the southwest of the country. Sanderson and Coutts have shown how everyday social and economic experiences – land-owning, bequests, family life, household structures – differed according to both sex and rank during the early modern period.²⁵ Together, their work echoes the research of Keith Wrightson and David

²¹ Gordon DesBrisay, ‘Twisted by Definition: Women Under Godly Discipline in Seventeenth-Century Scottish Towns’, in Brown and Ferguson (eds.), *Twisted Sisters*, 141-2. See also his ‘Wet Nurses and Unwed Mothers in Seventeenth-Century Scotland’, in Ewan and Meikle (eds.), *Women in Scotland*, 210-20.

²² Michael Graham, ‘Women and the Church Courts in Reformation-Era Scotland’, in Ewan and Meikle (eds.), *Women in Scotland*, 195-6. See also: Graham, *Uses of Reform*, 289.

²³ R. Po-Chia Hsia, *Social Discipline in the Reformation: Central Europe, 1550-1750* (London, 1992), 124.

²⁴ Julian Goodare, Review in *Albion*, 36:2 (2004), 375-7; Goodare, *Government of Scotland*, 192-5.

²⁵ Margaret Sanderson, *Scottish Rural Society in the Sixteenth Century* (Edinburgh, 1982), 124-131, 172-6; *A Kindly Place? Living in Sixteenth-Century Scotland* (East Linton, 2002), esp. ch. 8; *Mary Stewart’s People: Life in Mary Stewart’s Scotland* (Edinburgh, 1987); Winifred Coutts, ‘Provincial Merchants and Society: a Study of Dumfries Based on the Register of Testaments 1600-1655’, in Michael Lynch (ed.), *The Early Modern Town in Scotland* (London, 1987), 163; ‘Farmers in Dumfries from 1600 to 1665, As Seen Through the Registers of Testaments and Grants of Confirmation’, *Dumf. Trans.*, 61 (1986), 63-72; ‘Women, Children and

Levine on village life in Essex, where evidence from Quarter Session transcripts allow the conclusion that prosecutions for theft ‘were primarily initiated by more substantial, established villagers against [the] poorer’.²⁶ Like David Underdown’s re-creation of seventeenth-century Dorchester, such examinations of family ties and good neighbourliness are made possible by the survival of adequate sources.²⁷

This thesis aims to add to this early modern Scottish historiography (and the associated debate over the importance of gender, status and location) within the context of European Reformation history. It examines the experience of godly discipline as part of a wider judicial network of social control in one, under-examined locality (East Lothian) which has a tri-partite mixture of urban, urban-landward and rural populations.²⁸ By using the innovative approach of an all-courts methodology, this thesis seeks to redefine the experience of authority in early modern Scotland by considering family roles, household structures and the importance of patriarchy across a variety of parishes, rather than focusing on the sole differential of gender and traditional emphasis on the experience of women in general. By doing so, this thesis contributes to early modern British and Continental social history, where thematic studies of patriarchy, status, gender and manhood have emerged over recent decades at a rate not seen for Scotland.

Margaret Sanderson and Winifred Coutts have shown patriarchal rural society in Scotland to be at once hierarchical and adaptable to the realities of early modern life. Of married women, Coutts states that ‘the evidence of the entries [in the Register of Testaments] suggests that her actual position was stronger than her legal position suggests’.²⁹ Monetary legacies and the bequeathing of land may have enforced the position of spinsters in similar fashion, but the witnessing of wills was regarded as a male role, even if that male was a lowly domestic servant.³⁰ Throughout the first half of the seventeenth century, interpretation of Scotland’s secular court records has shown how economic and social roles in the rural southwest were being dictated by gender and

Domestic Servants in Dumfries in the Seventeenth Century: Their Economic Status as seen through the Registers of Testaments and Grants of Confirmation from 1600 to 1655’, *Dumf. Trans.*, 61 (1986), 73-83.

²⁶ Keith Wrightson and David Levine, *Poverty and Piety in and English Village: Terling, 1525-1700* (Oxford, 1995), 122.

²⁷ David Underdown, *Fire From Heaven: the Life of an English Town in the Seventeenth Century* (London, 1992).

²⁸ Full explanation of these terms, and justification for choosing East Lothian and the period 1610-1640, is given in the following section, below.

²⁹ Coutts, ‘Women, Children and Domestic Servants’, 73.

³⁰ Coutts, ‘Women, Children and Domestic Servants’, 74.

social standing. But, although the experience of ‘what it was like to live in small-scale communities where many forms of personal behaviour were subject to legal sanction’ has started to be explored for early modern Scotland, conceptually it is an area of research that has developed further elsewhere.³¹

Scottish historians have engaged with the idea of the existence of a gendered ‘double standard’ in the treatment of individuals appearing before their local kirk session, be it in 1580 or 1780, but for early modern England the existence of such a double standard in this historical context has been extended and synthesised by Bernard Capp and Keith Thomas.³² Capp’s own research suggests that patriarchal ideas, the centrality of the family and the importance of household and community order remained remarkably unchanged throughout the early modern period, but that subordinate groups developed ways of evading these standards, both within and outside the home.³³ Family studies by Jack Goody and Steven Ozment have identified the patriarchal structure of early modern European households, whilst cautioning against underestimating the ‘part played by women’ in domestic settings where ‘above all the husband was supposed to *rule*’.³⁴ Although Ozment has been criticised by Lyndal Roper for his optimistic view of female domestic power, studies such as these have demonstrated the validity of social hierarchies and patriarchy as themes of historical investigation.³⁵ English and Continental historiography has moved away from the binary division of gender to encompass broader analytical terms: patriarchy, family and household.

This thesis engages with these ideas in a Scottish context in order to expand the existing national historiography in line with European socioeconomic histories. As an analytical term, the concept of patriarchy can broaden understanding of authority, social control and interpersonal relationships – as Julie Hardwick has found in her study of

³¹ Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge, 1987), p. xi.

³² Keith Thomas, ‘The Double Standard’, *Journal of the History of Ideas*, 20:2 (1959), 195-216; Bernard Capp, ‘The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England’, *Past and Present*, 162 (February, 1999), 70-100.

³³ Bernard Capp, *When Gossips Meet: Women, Family and Neighbourhood in Early Modern England* (Oxford, 2003), 376. See also David Underdown, *Revel, Riot and Rebellion: Popular Politics and Culture in England, 1603-1660* (Oxford, 1985) which explores these themes in the context of the Civil War; and Wrightson and Levine, *Poverty and Piety*. On the remarkable endurance of patriarchy see Judith Bennett, ‘Feminism and History’, *Gender and History*, 1:3 (1989), 251-72.

³⁴ Jack Goody, *The European Family: an Historico-Anthropological Essay* (Oxford, 2000), 72; Steven Ozment, *When Fathers Ruled: Family Life in Reformation Europe* (Cambridge Mass., 1983), 50.

³⁵ Ozment, *When Fathers Ruled*, 55.

household authority in early modern France.³⁶ Where Scottish scholarship has tended to focus on the female experience of social control in the ecclesiastical courts, patriarchy is not gender specific. Monographs by Elizabeth Foyster and Alexandra Shepard are at the forefront of investigating the male experience of patriarchal ideals and society, and its interaction with established notions of manhood in early modern England.³⁷ The identification of the potential for conflict between the patriarchal household, established ideals of manhood and the authorities rings true with Lyndal Roper's conclusions from Augsburg, where officials can be seen to have intervened in household disputes on the side of the weaker, subordinate party.³⁸

The use of a mixture of court records by Foyster and Shepard in their consideration of these broader themes shows the potential of such a methodology to make a significant contribution to the historical field by illuminating behavioural ideals, community realities and existing tensions.³⁹ Traditionally, it is a relationship that has been overlooked – especially for early modern Scotland, where existing studies have avoided addressing the concept of patriarchy, its influence and importance. English and German scholarship has been at the forefront of economic and social histories that address ideas of patriarchy, manhood, gender and community relations. This thesis seeks to bridge this gap between Scotland on the one hand and England and the wider Continent on the other.

With the use of formal depositions, English church court records have been identified as a rich source for the early modern period and one of the few routes of insight into the lives of ordinary people, whose behaviour was very much a public matter. The study of social control within English communities has been approached from various angles: the aforementioned thematic scholarship undertaken by Alexandra Shepard, Elizabeth Foyster and Anthony Fletcher; the broader examinations of the workings of community by Bernard Capp and David Underdown; and the use of case

³⁶ Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park PA., 1998). For more on the flexibility of patriarchy see Jonathan B. Durrant, *Witchcraft, Gender and Society in Early Modern Germany* (Leiden, 2007), 253.

³⁷ Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford, 2003), 128; Elizabeth Foyster, *Manhood in Early Modern England: Honour, Sex and Marriage* (London, 1999), 177. See also: Anthony Fletcher, *Gender, Sex and Subordination in England, 1500-1800* (London and New Haven, 1995); Elizabeth Foyster, 'Male Honour, Social Control and Wife Beating in Late Stuart England', *Transactions of the Royal Historical Society*, Sixth Series, 6 (1996), 215-224.

³⁸ Roper, *Holy Household*, 191, 193.

³⁹ On male homosexuality see: Naphy, *Sex Crimes*; Alan Bray, *Homosexuality in Renaissance England* (London, 1982); Alan Bray, *The Friend* (Chicago, 2003). On male honour and civility see Markku Peltonen, *The Duel in Early Modern England: Civility, Politeness and Honour* (Cambridge, 2003).

studies by Underdown, D. G. Hey and Keith Wrightson and David Levine.⁴⁰ Martin Ingram's research demonstrates how both ecclesiastical and secular court records reflect the normative social values of a community and how this sometimes spilled over into the pursuit of popular justice in the form of charivari in seventeenth-century England.⁴¹ On the Continent, Ulinka Rublack has exploited the quality and detail recorded in Stuttgart court records to illuminate a distinct female experience of authority there.⁴² In her investigation of abortion, Rublack has been able to create a case study of Christina Schauth, a Württemberg villager who claimed to have given birth to eight frogs in 1715, from the detail available in this archive.⁴³ By doing so, Rublack has illustrated how contemporaries viewed the female body and its physiological possibilities and illuminated popular ideals of marriage and child-rearing. Her work shows the historiographical possibilities of these types of records. As in England and Scotland, village gossip, suspicions, honour and dishonour were the order of the day.

The importance of reputation, honour and shame in early modern society has been touched upon in Scottish studies, most recently by Tawny Paul in her study of credit and reputation in eighteenth-century Edinburgh.⁴⁴ But as a historiography, it is more developed in early modern England where scholars have shown how honour manifested itself according to gender, age and rank and how shame and dishonour were related to personal behaviour and associations with others.⁴⁵ The Scottish debate over the experience of kirk discipline between 1560 and 1780 has engaged with the shameful nature of kirk session punishments: from repenting on the stool, to women being put in

⁴⁰ D. G. Hey, *An English Rural Community: Myddle under the Tudors and Stuarts* (Leicester, 1974). Bernard Capp and David Underdown have drawn attention to Fletcher's focus on the experience of patriarchy and gender within the higher levels of society, where secular and ecclesiastical court records would have been an ideal route into the lower orders had they been used. Bernard Capp, Review Article, *EcHR*, New Series, 49:2 (May, 1996), 385-386; David Underdown, Review Article in *WMQ*, Third Series, 54:1 (January, 1997), 266-268.

⁴¹ Ingram, *Church Courts*. Martin Ingram, 'Ridings, Rough Music and the 'Reform of Popular Culture' in Early Modern England', *Past and Present*, 105 (1984), 33.

⁴² Ulinka Rublack, *The Crimes of Women in Early Modern Germany* (Oxford, 1999).

⁴³ Ulinka Rublack, 'The Public Body: Policing Abortion in Early Modern Germany', in Lynn Abrams and Elizabeth Harvey (eds.), *Gender Relations in German History: Power, Agency and Experience from the Sixteenth to the Twentieth Century* (London, 1996), 69-74.

⁴⁴ K. Tawny Paul, 'Credit, Reputation, and Masculinity in British Urban Commerce: Edinburgh, c.1710-70', *EcHR*, 65: 2 (May 2012).

⁴⁵ See: Faramerz Dabhoiwala, 'The Construction of Honour, Reputation and Status in Late Seventeenth- and Early Eighteenth-Century England', *Transactions of the Royal Historical Society*, Sixth Series (1996), 201-213; Foyster 'Male Honour', 215; Lyndal Roper, *Oedipus and the Devil. Witchcraft, Sexuality and Religion in Early Modern Europe* (London, 1994), 108. On the distinction between honour and dishonour see Laura Gowing, 'Women, Status and the Popular Culture of Dishonour', *Transactions of the Royal Historical Society*, Sixth Series (1996), 225-234.

the branks or 'scold's bridle' for unseemly, ungodly verbal behaviour.⁴⁶ This has initiated discussion on the nature and success of kirk discipline itself. Was making public repentance a normal experience of parish life, or something which was most definitely shameful and therefore to be avoided at all costs? What did notions of honour, dishonour and shame mean for social control in the parish setting?

This thesis seeks to examine the experience of authority and social control in early modern Scotland, and therefore directly addresses the importance of honour, shame and reputation. Whilst some European studies stress the presence of popular resistance and resentment to the changes in tradition and village custom that were brought with the Reformation, others emphasise how parishioners used the church courts for their own ends.⁴⁷ In its assessment of the experience, methods and consequences of social control, this thesis evaluates the success of social control in the early modern Scottish parish. Considering the role that the secular courts played as well as the kirk sessions, and the experience of men as well as women in a patriarchal context, makes this a departure from existing Scottish studies.

How can these analytical ideas from English and Continental scholars be applied successfully in a Scottish setting? Today, East Lothian is an agriculturally fertile, diverse, relatively developed region with its own market centres at Haddington, North Berwick and Dunbar, and it falls within Edinburgh's economic and social hinterland as well as centralised legal jurisdiction. This was very much the case between 1610 and 1640.

Wrightson and Levine took the village of Terling as the focus for their 1975 study. Terling is located in Essex, and with its proximity to the coast and London, number of smaller market centres and its agricultural importance, some tentative parallels could be suggested with East Lothian and Edinburgh. In both localities, a significant body of useful, legal records have survived and yet, perhaps due to the proximity of the capital with its even greater abundance of sources, there is not a huge amount of existing research.

⁴⁶ For the most comprehensive overview see Todd, *Culture of Protestantism*, chapter 3. See also John G. Harrison, 'Women and the Branks in Stirling, c.1600 to c.1730', *Scottish Economic and Social History*, 18 (1998).

⁴⁷ C. Scott Dixon, *The Reformation and Rural Society: the Parishes of Brandenburg-Ansbach-Kulmbach* (Cambridge, 2002). For a positive view of the use of London's early modern courts, see Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford, 1996). Other studies emphasise both sides: see Po-Chia Hsia, *Social Discipline*, 125, 123. For the problems of assessing the success of early modern policing, see Wiesner-Hanks, *Women and Gender*, 42-3, 64; and Heide Wunder, 'Gender Norms and their Enforcement in Early Modern Germany', in Abrams and Harvey (eds.), *Gender Relations*, 48-50.

Research published in *The Transactions of the East Lothian Antiquarian and Field Naturalists' Society (East Lothian Trans.)* demonstrates the survival of early modern sources from the area. Articles have been published on local baron courts, population and migration, trade, poor relief and marriage.⁴⁸ More recent issues have a high number of articles concerned with personal histories.⁴⁹ Despite the good survival rate of its court records, it is clear that little attention has been paid to the region in the context of social control, morals and manners and community and family hierarchies. If 'most of the inhabitants of early modern Europe experienced religion in the context of small rural social systems', it presents a distinct opportunity.⁵⁰

The one early modern historiographical arena in which East Lothian has received attention is that of witchcraft. Traditionally, the study of witchcraft has been concerned with the act itself – the political and ecclesiastical context, the demonology, the panics and the trials. Scottish historiography here is well-developed and expanding, made possible in part by the extent of surviving legal sources as catalogued by the *Survey of Scottish Witchcraft*.⁵¹ More recently, David Robertson has detailed the surviving sources relating specifically to witchcraft in East Lothian, of which there is a significant body.⁵²

⁴⁸ For example: E. C. B. Lindsay, 'Colstoun: a Story of a Scots Barony', *East Lothian Trans.*, 4 (1948), 19-33; Georgina Burns, 'Two Cases from the Baron Courts of Dirleton', *East Lothian Trans.*, 19 (1987), 1-3; Ian D. Whyte, 'Marriage and Mobility in East Lothian in the Seventeenth and Eighteenth Centuries', *East Lothian Trans.*, 19 (1987), 5-15; R. A. Houston, 'Births and Baptisms: Haddington in the mid-seventeenth Century', *East Lothian Trans.*, 18 (1984), 43-4; Rosalind Mitchison, 'A Parish and its Poor: Yester in the Second Half of the Seventeenth Century', *East Lothian Trans.*, 14 (1974), 15-28; and 'East Lothian as an Innovator in the Old Poor Law', *East Lothian Trans.*, 19 (1987), 17-29; Alexander Fenton, 'The Rural Economy of East Lothian in the Seventeenth and Eighteenth Centuries', *East Lothian Trans.*, 9 (1963), 1-23; T.C. Smout, 'The Trade of East Lothian at the End of the Seventeenth Century', *East Lothian Trans.*, 9 (1963), 67-78.

⁴⁹ For example: Stephen Bunyan, 'General Sir David Baird and the Bairds of Newbyth House', *East Lothian Trans.*, 26 (2006), 54-68; David Affleck, 'James Balfour of Whittingham and Balgonie', *East Lothian Trans.*, 25 (2002), 61-79.

⁵⁰ Martin Ingram, 'Religion, Communities and Moral Discipline in Late Sixteenth- and Early Seventeenth-Century England: Case Studies', in Kaspar von Greyerz (ed.), *Religion and Society in Early Modern Europe* (London, 1985), 177-193.

⁵¹ For example: Christina Larner, *Enemies of God: the Witch-Hunt in Scotland* (Oxford, 1981); Julian Goodare (ed.), *The Scottish Witch-Hunt in Context* (Manchester, 2002); Stuart Macdonald, *The Witches of Fife: Witch-Hunting in a Scottish Shire, 1560-1710* (East Linton, 2002); Lawrence Normand and Gareth Roberts (eds.), *Witchcraft in Early Modern Scotland: James's Demonology and the North Berwick Witches* (Exeter, 2000); Julian Goodare, 'Women and the witch-hunt in Scotland', *Social History*, 23 (1998), 299-308; Liv Helene Willumsen, *Seventeenth Century Witchcraft Trials* (Unpublished Ph.D. Thesis: University of Edinburgh, 2008); Julian Goodare, Lauren Martin, Joyce Miller and Louise Yeoman, *The Survey of Scottish Witchcraft*, <http://www.arts.ed.ac.uk/witches/> (archived January 2003).

⁵² David M. Robertson, *Goodnight, My Servants All: the Sourcebook of East Lothian Witchcraft* (Glasgow, 2008).

These records have been used to great effect by Elizabeth Robertson in her dissertation on East Lothian witch-hunting.⁵³

Carlo Ginzburg, in his study of Italy, and Robert Muchembled, in his study of France, have used traditional witchcraft sources for the purpose of studying the early modern family and broader popular culture.⁵⁴ For example, Muchembled details the strained relationship between step-mother and step-son at the trial of Jeanne Petit in Wail-lès-Hesdin; whilst Ginzburg has used the detail from trial transcripts to illuminate a peasant community and its individual families with their traditional rites and rituals. Lauren Martin and Scott Moir have recognised the potential of similar methodologies for early modern Scottish social history.⁵⁵ Where Martin clearly makes a case for using witchcraft trials as a source for such study, Moir concentrates on what witchcraft documents can tell us about the effect of accusations on the family and family reactions to these accusations. Together, these two scholars have shown the potential of this most detailed of secular court records beyond the study of witchcraft towards research on early modern communities, social structures and interpersonal relationships.

With its mixture of urban, urban-landward and rural parishes, the sheriffdom of Haddingtonshire – modern-day East Lothian – had a functioning network of ecclesiastical and secular courts by 1610. There is an opening in early modern social history for a study using East Lothian sources from the period 1610-1640. As with Anne Gordon's earlier work on the kirk sessions, Margo Todd's study of Scotland between 1560 and 1640 is intent on presenting the whole picture of how the new religion manifested itself in everyday life for a majority of Scots, including their experience of kirk discipline and punishment. In doing so, both scholars have revealed the wealth of information contained in pre-1640 session minutes pertaining to behavioural ideals and attitudes to family, patriarchy and personal relationships. Leneman and Mitchison recognise this, but justify the later start date of their research because 'before 1660 there were too many disturbances to civic order' and many old

⁵³ Elizabeth J. Robertson, 'Panic and Persecution: Witch-hunting in East Lothian, 1628-1630' (Unpublished M.Sc. by Research dissertation: University of Edinburgh, 2009).

⁵⁴ Carlo Ginzburg, *The Night Battles: Witchcraft and Agrarian Cults in the Sixteenth and Seventeenth Centuries* (Baltimore, 1992); Robert Muchembled, *Popular Culture and Elite Culture in France, 1400-1750* (London, 1985), 256-7.

⁵⁵ Lauren Martin, 'Witchcraft and family: what can witchcraft documents tell us about early modern Scottish family life', *Scottish Tradition*, 27 (2002), 7-22; Scott Moir, 'The Crucible: Witchcraft and the Experience of Family in Early Modern Scotland' in Ewan and Nugent (eds.), *Finding the Family*, 49-59. See also Lauren Martin, 'The Devil and the Domestic: Witchcraft, Women's Work and Marriage in Early Modern Scotland' (Unpublished Ph.D. Thesis: New School for Social Research, 2003).

parish registers were ‘irregularly kept’ which would be problematic for a demographic study of illegitimacy.⁵⁶ They highlight this methodological problem, but maintain that many sessions were ‘rigorous in documenting any pregnancy in an unmarried woman’ in their minutes and registers.⁵⁷ This is essential for a pre-1640 study such as this, which is not concerned primarily with demographics but with the personal and popular experience of authority.

The survival of suitable sources has bearing on the selection of 1610-1640 as the time period for this research. Full explanation of this is given in the next section. But there are also historiographical reasons. Firstly, Michael Graham ends his study of Reformation discipline in 1610. Although the majority of Margo Todd’s evidence comes from the 1610-1640 period, the methodology of this thesis (its all court approach and use of quantitative as well as qualitative analysis) means that it is a new avenue of investigation into social control and the experience of authority for ordinary folk. With a different methodology and broadened set of sources, Professor Todd may welcome this as a logical next step.

Bob Scribner suggests that ‘the aim of social control is to create a deep-rooted consensus within civil society, which leads to the acceptance of the social and political order as legitimate and purposive’.⁵⁸ He elaborates that the creation of consensus and solidarity is important in order to allow for social conformity without naked coercion, which would undermine the legitimacy of authority and the success of any conformity. Writing of nineteenth-century Britain, A. P. Donajrodzki defines social control as a collaboration of sorts, where the behaviour of individuals is controlled both formally by the actions of the State and informally according to popularly-held expectations.⁵⁹

As a working definition of the term ‘social control’, this thesis uses this collaboration of formal and informal governance over personal actions that was reinforced by a sense of institutional and popular consensus of purpose. The degree of this consensus around social control – both between different parts of the judicial system and between the judicial system as a whole and the individuals over whom it presided – is taken as a workable parameter for judging the relative success of social control in East Lothian between 1610 and 1640.

⁵⁶ Mitchison and Leneman, *Girls in Trouble*, 2-3. See also Rosalind Mitchison and Leah Leneman, ‘Scottish Illegitimacy Ratios in the Early Modern Period’, *EcHR*, 40:1 (1987), 41-63.

⁵⁷ Mitchison and Leneman, *Girls in Trouble*, 2.

⁵⁸ R. W. Scribner, *Popular Culture and Popular Movements in Reformation Germany* (London, 1987), 177.

⁵⁹ Donajrodzki, *Social Control*, 9.

With its focus on social control, this thesis is concerned with interpersonal relationships within the context of public authority and government. Rather than solely relying on church court material, it uses secular court material as well. By taking this all courts approach to the subject, this study contributes to existing Scottish social history within the context of early modern British and European historiography. Introducing this methodology forms the final strand of historiography relevant to this study.

In his work on community structures and relations in early modern England, Martin Ingram's research on Wiltshire uses church court records alongside evidence from surviving quarter session material.⁶⁰ He has since criticised over-reliance on one source, citing Laura Gowing for her failure to consider secular material in her study of female experiences of authority and discipline in early modern London.⁶¹ Furthermore, Ingram has emphasised the need to understand the workings, function and remit of early modern criminal justice systems in any study that draws heavily on court records as a social source. Of Susan Amussen's *An Ordered Society*, he states that 'the author's lack of legal expertise is an even more serious limitation in a book which uses ecclesiastical and secular court records as a major source'.⁶²

Early modern judicial networks were webs of authority connected to parliament. In Scotland, the legal system consisted of a network of local and central courts, as illustrated by Stephen Davies in his review of jurisdictions in early modern Stirlingshire.⁶³ During this period, each parish or town did not fall under the auspices of a single authority, but a network of several that were not operating in isolation. Whilst Margo Todd emphasises the key role played by the kirk sessions in the regulation of parish behaviour, Julian Goodare concludes that, in the central lowlands, the sessions were not the 'only show in town' when it came to governing ordinary folk.⁶⁴

This thesis recognises this statement and it is a view that is becoming increasingly popular amongst historians from medieval to modern, especially in light of the burgeoning growth in masculinity studies. In Scottish history, there is growing

⁶⁰ Martin Ingram, 'Communities and the Courts: Law and Disorder in Early Seventeenth-Century Wiltshire', in J. S. Cockburn (ed.), *Crime in England: 1550-1800* (London, 1977), 110-34; Ingram, *Church Courts*.

⁶¹ Gowing, *Domestic Dangers*; Martin Ingram, 'Men and Women in Late Medieval and Early Modern Times' [Review Article], *English Historical Review*, 120 (2005), 26.

⁶² Martin Ingram, review of S. D. Amussen's *An Ordered Society: Gender and Class in Early Modern England*, (Oxford, 1988), in *Social History*, 14:2 (May, 1989), 250.

⁶³ Davies, 'Courts and the Scottish Legal System'.

⁶⁴ See contrasting arguments in: Julian Goodare, *State and Society in Early Modern Scotland* (Oxford, 1999), 173; Todd, *Culture of Protestantism*, 408-409.

recognition of the validity and opportunity offered by an all courts methodology that has been present for some time in early modern English studies, as recognised by Ingram.⁶⁵ In his study of central Europe from 1550, Po-Chia Hsia has been able to comment how the secular and ecclesiastical authorities worked together in the imposition of reformed discipline through legislation and sanction. Heide Wunder has suggested that secular and religious authority reinforced each other in their regulation of economic and social life in Germany at this time, and Robin Briggs has cited the seventeenth-century French monarchy and church as doing the same.⁶⁶ This advocates an all courts methodological approach of this thesis, for the successful examination of social control in early modern Scotland.

The historiography of Scottish governance has recently undergone significant growth with the work of the Scottish Parliament Project at St Andrews.⁶⁷ Although this research has not focused on the localities as such, it has informed the central idea of an operational court network that, in the context of this thesis, cannot be broken up without creating false divisions that were not there in practice. It is true to say that in early modern Scotland ‘there was a single network of authority encompassing both civil and religious institutions in fruitful cooperation’.⁶⁸ This network was ‘knit together by convention, by personal contacts and by shared personnel’.⁶⁹ By employing such a methodology, the intention of this study is to make a contribution to the understanding of how the law operated in the localities and in East Lothian in particular.

In doing so, this thesis harnesses this interlinked judicial system in order to contribute and extend existing Scottish historiography in a Continental context. It seeks

⁶⁵ The ‘Scottish Masculinity in Historical Perspective’ project, based at the University of Glasgow organised three interdisciplinary workshops in 2010-2011 bringing together scholars and policy-makers. These were entitled: men’s bodies; men and the family; violent crime and disorder. Historians now shifting their focus to using both civil and ecclesiastical court records for Scottish research include Elizabeth Ewan and Janay Nugent (co-editors of *Finding the Family in Medieval and Early Modern Scotland* (Aldershot, 2008). This methodology has already been recognised by J. R. D. Falconer in ‘A Family Affair: Households, Misbehaving and the Community in Sixteenth-Century Aberdeen’, in Ewan and Nugent (eds.), *Finding the Family*, 139-150. See also: Symms, ‘Social Control’; Gordon DesBrisay, ‘Menacing Their Persons and Exacting on Their Purses’: the Aberdeen Justice Court, 1657-1700’, in David Stevenson (ed.), *From Lairds to Louns : Country and Burgh Life in Aberdeen, 1600-1800* (Aberdeen, 1986), 70-90, and with Karen Sander Thomson, ‘Crediting Wives: Married Women and Debt Litigation in the Seventeenth Century’, in Ewan and Nugent (eds.), *Finding The Family*, 85-98.

⁶⁶ Po-Chia Hsia, *Social Discipline*; Wunder, ‘Gender Norms’, 39-56; Robin Briggs, *Communities of Belief: Cultural and Social Tension in Early Modern France* (Oxford, 1989) 381.

⁶⁷ See: K. M. Brown and A. J. Mann (eds.), *The History of the Scottish Parliament, Volume II: Parliament and Politics, 1567-1707* (Edinburgh, 2005); K. M. Brown and A. R. MacDonald (eds.), *The History of the Scottish Parliament, Volume III: Parliament in Context, 1235-1707* (Edinburgh, 2010).

⁶⁸ Goodare, *State and Society*, 173.

⁶⁹ Davies, ‘Courts and the Scottish Legal System’, 122.

to address the debate over the importance of gender and social status in the experience of social control and extend this analysis away from binary divisions to include the importance of the household and patriarchy. By acknowledging the importance of geography, this thesis seeks also to ascertain if there were any differences in the experience of social control and authority depending on location, and what that experience was actually like in terms of honour, dishonour, shame and reputation. Finally, the examination of the local court system as it was operating in East Lothian is intended as a contribution in itself to the understanding of local governance as delivered by Kirk and State during the early decades of the seventeenth century.

II. Research Design and Methodology

This thesis is not intended as a regional micro-history of one corner of Scotland, but as a contribution to three strands of historiography: Scottish history, British economic and social history and European Reformation history. This is possible by using quantitative and qualitative methods of analysis on a combination of secular and ecclesiastical court records drawn from urban and rural parishes in one geographic location. This thesis has three major aims which it intends to address through this methodology: how local court networks operated; the nature and experience of social control in the localities; and how this experience can be defined in terms of patriarchy, geography and social hierarchies rather than simple binary gender divisions.

Firstly, examining how the local court networks operated, who officeholders were and what they could do has been identified as the crucial starting point of this thesis. Clear understanding of East Lothian's justice system is necessary in order to examine the experience of that authority – that is, the nature of social control and popular responses to the regulation of morals, manners and criminal behaviour. This analysis develops Stephen Davies' approach to the court system of Stirlingshire to consider how these bodies were able to exert social control over the local population and the ways in which they did so. It examines office holding in the shire – the nature of personal authority – and how the courts acquired or retained popular legitimacy between 1610 and 1640 in Haddingtonshire. How to measure the success or otherwise of this local network of justice is a methodological concern that needs to be defined and negotiated from the outset.

Clear understanding of East Lothian's court system, how it operated between 1610 and 1640, and limits to that operation both informs and contextualises closer analysis of the experience of social control during the period. This is the second major aim of this thesis. It was not just local ecclesiastical courts that possessed the tools and ability to control the morals and manners of ordinary folk. Differentiating between sin and crime in early modern societies is problematic, if not artificial.⁷⁰ In Scotland, the secular courts concerned themselves with notions of both in their sentencing and recording of various crimes. The process of humiliating and shaming offenders by way of punishment was employed by burgh and sheriff courts as well as kirk sessions. The regulation of relationships and sexual conduct strayed into the secular sphere with prosecutions for incest, witchcraft allegations and, on rare occasions, bestiality. This thesis seeks to address what it meant to be subject to early modern Scotland's local justice network and what this meant for personal relationships and sexual conduct. It ascertains the extent to which this was an honour and shame society, informed by religious zeal, where punishments against the person were shameful and words against reputations damaging. In doing so, this research engages with current historiography on early modern Germany, placing the debate over the existence of social control as a tangible concept during this period and its success in a Scottish context.⁷¹

Finally, the third major aim of this thesis is to address how the experience of social control – the regulation of behaviour and relationships as administered through the local courts – can be defined in terms of patriarchy, geography and social hierarchies as well as binary gender divisions. This aim informs the whole thesis. Consideration of patriarchy, social status and the household is in line with the advances away from a focus on female experience and gender divisions that have been made in English scholarship. It is through close analysis of these important differentials that this thesis seeks to extend current Scottish historiography in a study based on a variety of sources drawn from a variety of parishes. Furthermore, this allows for the identification of continuities and contrasts the in relative importance of patriarchy, gender and hierarchy between these parishes across a set period of time.

There is both opportunity and means to carry out a study of this kind in Scotland with the possibility of drawing significant conclusions. Before justifying the choice of

⁷⁰ Sharpe, *Crime in Early Modern England*, 5-6; Marchant, *Church Under the Law*, 4; Ingram, *Church Courts*, 3.

⁷¹ Scribner, *Popular Culture*, 175-184; Wunder, 'Gender Norms', 39-56.

location and time period for this thesis and the choice of sources used for this research, it is important to define some key terms.

Gender is a complex entity that has been employed in numerous historical guises and in various theories from the Marxist to the feminist. Gender history is just one facet of a term that has been used by anthropologists, sociologists, and psychologists as well as by historians. In the context of this thesis, gender is important because it has been a long-term focus in the existing historiography of morals and manners, where the nature of inter-personal relationships has been linked with a gendered experience of the controls on personal behaviour. Natalie Zemon Davis was the first to observe that gender is a *relational* category that incorporates the social qualities of a distinction based on sex. Women and men are defined in terms of one another, thus requiring that men and masculinity are analysed alongside women and femininity. Davis argues that this enables us to ‘understand the significance of the *sexes*’, their roles and their functioning within the social order.⁷² This is crucial within the context of this thesis as a study investigating both women and men and the importance of hierarchy. Where scholars have argued over the existence of a double standard in kirk session discipline cases, gender is not intended as a description of fact shown through the data collected, but as a form of analysis.

Compared to gender, social hierarchy is more faceted. An individual’s status can relate to their economic situation in their occupation and land-holding, the positions of authority they hold (perhaps as a justice of the peace, bailie or kirk elder), or to their personal position within a household. Establishing these roles is reliant on qualitative detail from the sources which, where it exists, can define explicitly what an individual’s social status was. Where such direct references do not exist, the qualitative detail of a case (the circumstances of the offence and the outcome), can be just as informative. Furthermore, such detail often contains references to patriarchy – either commonly-held ideals or conflicting notions relating to the term.

Patriarchy has, like gender, been central to in various feminist theories on the subordination of women, including those by Mary O’Brien and Shulamith Firestone.⁷³ Whereas these definitions of patriarchy hold reproduction and women’s knowledge of

⁷² Natalie Zemon Davis, ‘Women’s History in Transition: the European Case’, *Feminist Studies*, 3 (1975-6), 90. See also Joan Wallach Scott, ‘Gender: a Useful Category of Historical Analysis’, *The American Historical Review*, 91 (1986), 1053-1075 .

⁷³ See Mary O’Brien, *The Politics of Reproduction* (London, 1981); Shulamith Firestone, *The Dialectic of Sex* (New York, 1970).

the 'labour of childbirth' at their centre, in this thesis patriarchy is concerned with the role of men in forms of social organisation, either within the household or wider community. Julie Hardwick writes that 'the term *patriarchy* is often generically used to describe any society where men monopolize authority and where women's access to it is restricted'.⁷⁴ Wally Seccombe has defined this further for modern British history, using a version of domestic patriarchy in which fathers and husbands hold a combination of 'prerogatives' over their wives and children. These include the right to represent the family group and supervise the labour of other family members.⁷⁵

It is easy to see how such a concept has become embroiled in feminist historiography and, whilst Judith Bennett has characterised the term as one of 'immense variety', other historians have been able to work the idea successfully into their scholarship.⁷⁶ Julie Hardwick, Margaret Sanderson, Bernard Capp and Anthony Fletcher have considered the patriarchal structure of societies and the experience of authority from this perspective.

By applying factors such as social status and age in its analysis, this thesis presents gender as one part of a complicated series of interlocking hierarchies that were present in the reality of early modern life in a patriarchal society. During this period, the experience of authority (if not life in general) was conditioned depending on where an individual resided in these hierarchies: male or female; of high social status, a lowly labourer or a wandering vagrant; a school-aged child, an adolescent, a parent or elderly; a domestic servant or a master or mistress. This thesis addresses the experience of men as well as women, and the interaction between gender and these other differentials – namely age; social status; household position and regional origins.⁷⁷ In taking this approach, gender, social status and patriarchy are at the centre of the investigations into the experience of authority and social control within the early modern Scottish parish. Gender is not presented as a sole category of analysis at the expense of other hierarchies, and women are not isolated at the expense of their male counterparts.

⁷⁴ Hardwick, *Practice of Patriarchy*, ix.

⁷⁵ Wally Seccombe, 'Patriarchy Stabilized: the Construction of the Male Breadwinner Wage Norm in Nineteenth-Century Britain', *Social History*, 11:1 (1986), 59.

⁷⁶ Judith M. Bennett, *History Matters: Patriarchy and the Challenge of Feminism* (Manchester, 2006), 54.

⁷⁷ In early modern England, such flexibilities meant that societies were rife with various tensions. For example, that between patriarchy and manhood has been examined by Shepard and Foyster, showing the important differences between the attributes of the two terms.

Alongside gender, social status and patriarchy, regional origins were an important facet of this early modern society. This thesis addresses the importance of geography for the experience of authority at this time and, in order to do this, the secular and ecclesiastical court records from ten parishes across East Lothian have been analysed for a thirty year period. Maps of East Lothian can be found in the appendix.⁷⁸ The parishes and their boundaries are shown in figures 1.1 and 1.2 respectively, whilst figures 1.5-1.12 show individual parishes in further detail. East Lothian's location in relation to Edinburgh can be seen in figure 1.3, Herbert Moll's eighteenth-century map of the Lothians.

A modern term for the sheriffdom or constabulary of Haddingtonshire, East Lothian was bureaucratically well-developed by the early seventeenth century. The presbyteries of Haddington and Dunbar were created in 1581 under the umbrella of the Synod of Lothian and Tweeddale and it had three Royal burghs: Haddington, North Berwick and Dunbar. Arrowsmith's nineteenth-century ecclesiastical map of Scotland (figure 1.4,) shows the geographic location of these presbyteries and synods. East Lothian boasts a body of suitable surviving legal sources from across its parishes. Urban centres, such as Haddington and North Berwick, are represented, as are rural settlements including Pencaitland and Saltoun. Larger parishes, including Haddington and North Berwick, had significant landward portions populated by agricultural landowners and tenant farmers – thus coining the term 'urban-landward'. These settlements are distributed both inland and along the coastline, and have not been the subject of significant early modern social research thus far.

East Lothian's economic diversity lends robustness to the conclusions of this thesis. Dependency on one economic activity, such as hill sheep farming, would categorise any investigation into the experience of authority at parish level and the nature of social control as a very specific contribution to existing literature – a micro-study of one economic geography. Whilst this is valuable in itself, an element of economic diversity across a geographical area allows for comparative consideration of social control and notions of patriarchy, gender and social hierarchy within urban, urban-landward and rural populations. As can be expected, Scotland's Reformation differed in impact across the nation. Highland geography, its limited communications infrastructure, distinctive

⁷⁸ Although Pont's maps of Scotland (as published by Andro Hart in 1630) are more contemporary, these later maps have been selected for being clearer and, therefore, more useful to the reader.

social structure of clans and lairdships and surviving pockets of Catholicism put the region quite at odds with Lowland urban centres and their hinterlands, thus delaying the impact of the Reformation on daily life.

Statistical analysis of East Lothian's physical and economic geography suggests it was prosperous and productive as an agricultural region during the early modern period with land quality throughout coastal parts classified as the 'best', and a 'warm' or 'fairly warm' climate with a long growing season of seven to eight months.⁷⁹ With rainfall averaging less than 750mm annually, southeast Scotland enjoyed a favourable balance of warmth and precipitation, creating conditions where 'climate [conspired] with soil geology and topography to favour the east for agriculture'.⁸⁰ These physical conditions explain the amount of land that would have been put into agricultural production around smaller settlements and medium-sized burghs during the early seventeenth century.

This was reflected in the region's trading network which extended outside the county, indicating levels of production above subsistence levels and elements of economic and administrative sophistication. This can be seen through sea trade with Edinburgh. For the years 1638-9, 44 ships mostly carrying fish and grain from Eyemouth, Dunbar and North Berwick docked at Leith. For some of these cargoes, Leith would not have been the final destination, stretching these trading networks outside of the immediate locality and perhaps internationally.⁸¹ Increased yields were facilitated by local agricultural improvements – liming allowed grains to be marketed and transported from the 1620s.⁸²

Alongside mixed agriculture, salt panning was an important industry and documents relating to coal mining in the region date back to 1171. Subsequent growth in the sector was likely fuelled by increasing demand from an expanding Edinburgh.⁸³ Water power was important for East Lothian's rural industries – it has been suggested that 'between 1550 and 1700 over three-hundred 'walk' mills were at work' within the region.⁸⁴ Further research on trading patterns, agricultural practice and labour has largely been

⁷⁹ Peter G. B. McNeill and Hector L. MacQueen (eds.), *Atlas of Scottish History to 1707* (Edinburgh, 1996), 15, 17-18. Land further south is noted as being of 'medium' quality – still productive farmland.

⁸⁰ McNeill and MacQueen, *Atlas*, 19.

⁸¹ McNeill and MacQueen, *Atlas*, 272.

⁸² Whyte, 'Crop Yields', 23-30.

⁸³ David Spence, 'Documents Illustrative of the Long History of Coal Mining in East Lothian', *East Lothian Trans.*, 18 (1984), 1.

⁸⁴ John P. Shaw, 'Water Power and Rural Industry in East Lothian', *East Lothian Trans.*, 20 (1988), 33.

confined to the eighteenth and nineteenth century with the work of Ian Whyte and Tom Devine; but what has been done using available sources for the seventeenth century serves to illustrate the relative diversity present in the East Lothian economy and its productivity during this early decades of the 1600s.⁸⁵

As well as a strong economic base in agricultural production, East Lothian had significant urban centres throughout the early modern period. This thesis considers the experience of social control through the context of a local justice network and in relation to social hierarchies. The presence of settlements with sufficient population density gives an urban analytical angle, allowing comparison of the policing of behaviour and importance of patriarchy and gender with that in smaller settlements. Furthermore, trading centres attracted non-burgh residents on market days, thus lending an additional perspective to the experience of early modern secular and ecclesiastical authority.

Within the region, Haddington remained the most populous town in 1639 with 3-4,000 inhabitants and valued rents amounting to £5,198. Dunbar was second at around half the size with nearly 1,500 inhabitants and combined rents of £2,248, with North Berwick probably sustaining a population of around 500.⁸⁶ Ian Whyte has calculated that, in 1560, 2.5 per cent of the total Scottish population lived in towns with over 2,000 inhabitants, rising to over 11 per cent by 1639.⁸⁷ Between 1610 and 1640, the Scots were still an overwhelmingly rural population. The rural experience is, therefore, important. After the Reformation, did burghs really ‘provide the model for the cultural transformation of smaller and more isolated communities’?⁸⁸

By this definition, the only urban centre in East Lothian by 1639 would have been Haddington. But designation as a royal burgh is itself categorisation as an urban administrative centre. Michael Graham comments that ‘while many settlements had been incorporated over the years, few had any size or significance and those which did were concentrated in the southeast’.⁸⁹ In addition to this, ‘by 1707, only 18% of the mainland of Scotland was more than 15 miles from an authorised market centre’.⁹⁰ This

⁸⁵ T. M. Devine, ‘The Demand for Agricultural Labour in East Lothian after the Napoleonic Wars’, *East Lothian Trans.*, 16 (1979), 49-61.

⁸⁶ McNeill and MacQueen, *Atlas*, 320.

⁸⁷ Ian D. Whyte, *Scotland Before the Industrial Revolution: an Economic and Social History c.1050-c.1750* (London, 1995), 174.

⁸⁸ Todd, *Culture of Protestantism*, 15-16.

⁸⁹ Graham, *Uses of Reform*, 29.

⁹⁰ McNeill and MacQueen, *Atlas*, 295.

means that definitions for the preceding century, based on burgh rents and estimated population size, need to be flexible.

Helen Dingwall has employed a comprehensive check list to identify a settlement as urban in her own research, which has since been criticised by Robert Fenwick in his thesis.⁹¹ From studying Hearth Tax records from 1691, Michael Lynch has suggested that over half of the population of East Lothian was urban at this point in time – defining these terms for the preceding period lacks such sources.⁹² In this thesis, in order to circumvent such controversies, Dunbar with its 1,500 people and North Berwick with its 500 occupants are classed as urban centres alongside Haddington. All three were incorporated royal burghs and parishes with significant landward portions. They possessed the larger populations, more sophisticated administrations and economic functions needed to fulfil the urban quota of experience with surrounding, smaller settlements satisfying the rural experience. Those include Aberlady, Pencaitland and Yester – rural parishes with insufficient populations to register on the 1639 ‘value of burgh rents’ scale, but which possessed elements of administrative sophistication in their local secular and ecclesiastical courts. Yester had a functioning poor relief system by the latter half of the seventeenth century and an active kirk session and birlaw court during the decades before.⁹³

The population distribution, economic diversity, trading networks and geography of East Lothian advocate the region as a suitable location for this thesis. An air of infamy has been lent to Haddingtonshire by one of the most documented occurrences of this period. The North Berwick witch-hunt of 1590 to 1591, has a notable historiography and is an exceptional example of the quality of surviving local legal records.⁹⁴ In fact,

⁹¹ Fenwick, ‘Ordinary Folk’, esp. ch. 1; Helen M. Dingwall, *Late Seventeenth-Century Edinburgh: a Demographic Study* (Aldershot, 1994).

⁹² McNeill and MacQueen, *Atlas of Scottish History*, 321.

⁹³ Rosalind Mitchison, ‘Parish and its Poor’, 15-28. The birlaw court was a local franchise court found within rural baronies for which surviving records are rare. See W. G. M. Hay, ‘The Boorlaw Court Book of Yester and Gifford’, *East Lothian Trans.*, 7 (1958). The birlaw courts are discussed in full in chapter 2, below.

⁹⁴ For example: Robertson, *Goodnight my Servants all*; Normand and Roberts (eds.), *Witchcraft in Early Modern Scotland*; Jenny Wormald, ‘The witches, the Devil and the King’, in Terry Brotherstone and David Ditchburn (eds.), *Freedom and Authority: Scotland, c.1050-c.1650: historical and historiographical essays presented to Grant G. Simpson* (East Linton, 2000), 165-82; Peter G. Maxwell-Stuart, ‘The Fear of the King is Death: James VI and the Witches of East Lothian’, in W.G. Naphy and Penny Roberts (eds.), *Fear in Early Modern Society* (Manchester, 1997), 209-25.

witch-hunting in the area was not just confined to this panic – East Lothian was at the top of the Scottish league for witch-hunting.⁹⁵

With its proximity to Edinburgh and the central courts, East Lothian possessed economic and geographic diversity suitable for analytical comparison within the major aims of this thesis. Its administrative development and functioning secular and ecclesiastical legal networks are of great importance. That formal judicial practice was in operation here in the early modern period is crucial. Where smaller parishes such as Aberlady, Morham, Garvald and Bara had Readers until around 1580, beneficed kirk ministerial posts were held for Bolton, Saltoun, Haddington, Humbie, North Berwick, Tranent and Seton from the 1560s, showing the extent of the area's bureaucratic development at parish level and the firm establishment of Reformed religion.⁹⁶

By 1640, the Kirk and its structures of administration and authority had become firmly established as part of Scottish national identity, before the nation was gripped by lengthy and turbulent civil war. Before the outbreak of war, conflict between presbyterianism and episcopalianism was confined largely to the higher levels of the established church and its relations with king and court. The general assembly may not have met for the majority of the period between 1600 and 1640, but remaining records show that the local kirk sessions and their overseeing presbyteries and synods were not similarly afflicted. The crisis of manpower that had engulfed the Kirk in the 1570s and 1580s had abated.

This was in the context of broader changes to Scotland's criminal justice system that had been taking place under the monarchy of James VI. During his reign, James oversaw a successful campaign to curb bloodfeud and attempt to bring 'provincial autonomies' in the Borders and Highlands under a centrally-orchestrated rule of law.⁹⁷ The use of the courts as a means to settle disputes has been highlighted in Laura Gowing's work as an important facet of the early modern English legal system.⁹⁸ In Scotland, this period saw the re-invention of the church courts as commissary courts

⁹⁵ See *SSW*, ed. Goodare et al.

⁹⁶ Hew Scott (ed.), *Fasti Ecclesiae Scotticanae, Volume I: Synod of Lothian and Tweeddale* (Edinburgh, 1915), 351-401.

⁹⁷ Goodare, *Government of Scotland*, 281. See Keith Brown, *Bloodfeud in Scotland 1573-1625: Violence, Justice and Politics in an Early Modern Society* (Edinburgh, 1986).

⁹⁸ Gowing, *Domestic Dangers*. See also Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (New Haven and London, 2003); Laura Gowing, 'Giving Birth at the Magistrate's Gate: Single Mothers in the Early Modern City', in Susan Broomhall and Stephanie Tarbin (eds.), *Women, Identities and Communities in Early Modern Europe* (Aldershot, 2008), 137-52.

and the creation of the new, local kirk sessions. It saw the emergence of other new legal entities with the first Justices of the Peace being appointed in 1610, and notable prosecutions for feuding. Such developments show how the Scottish legal system was evolving at this time, with the power attributed to the rule of law increasing.

As detailed in the preceding section, Scottish research that has used kirk session minutes as part of a collection of sources or relied on session records as a sole source stretches across the early modern period from 1560 to the late seventeenth-century. Leneman and Mitchison may have doubted the quality of pre-1660 old parish registers when justifying starting their research in the 1660s, but Margo Todd's nationwide study and Michael Graham's comparative work have highlighted the quality of earlier kirk session minutes and the possibilities for qualitative and quantitative analysis. Todd and Graham have shown that it was during this earlier period, before 1640, that the kirk was functioning as a high-activity presence in everyday life, when first- and second-generation Calvinist Reformers attempted to instil discipline into their flocks. Furthermore, Margo Todd did not look at the old parish registers for her monograph, and those that have survived from North Berwick and Prestonpans are rich in kirk discipline.

Aberdeen, St Andrews, Ayrshire and Edinburgh have been the geographical focus of local studies of social control and everyday life using court records. There is space in the existing historiography (alongside Margo Todd and between Michael Graham, Leneman and Mitchison and Gordon DesBrisay), for a study of the period between 1610 and 1640 in East Lothian.

Along with these justifications of time and space, choosing the scope of this thesis is dependent on the availability of sources. The national concerns of the kirk were not static and were inevitably influenced by the broader political climate. This is an argument for employing an all courts methodology.⁹⁹ In England, Essex has received significant historical attention, both due to its geographical location and bureaucratic development and also to its significant surviving sources, archived in the capital and Cambridge. Margo Todd describes how she immersed herself into the kirk session records, and only after collecting her data did she 'turn to theory in order to frame questions and possibilities for interpretation'.¹⁰⁰ It is an epistemological approach that

⁹⁹ Graham, *Uses of Reform*, 143-7.

¹⁰⁰ Todd, *Culture of Protestantism*, 19.

carries a general warning on the critical importance of the dataset – the ability to engage with and answer any research question is dependent on the sources consulted.

By 1610, Haddingtonshire's judicial network consisted of a sheriff court, burgh courts, local franchise courts, kirk sessions and its presbytery (alongside the central courts based in Edinburgh). For the thirty-year period between 1610 and 1640, records have survived from Haddingtonshire sheriff court, the burgh courts of Haddington and North Berwick, the baron court of Cockburnspath, Haddington presbytery and the kirk sessions of Haddington St Mary's, North Berwick, Aberlady, Pencaitland, Prestonpans, Saltoun and Yester. Minutes from the Tynninghame session, which came under the auspices of the presbytery of Dunbar but the sheriffdom of Haddingtonshire, also survive and are of exemplary quality.¹⁰¹ Extracts from the minutes of the session of Innerwick, also under Dunbar, complete the set of ten settlements in total. All ten are marked on figure 1.1. with figure 1.2 detailing the boundaries of larger parishes.

Before 1610 – the terminal date of Michael Graham's research – these records have not survived in viable quantity for East Lothian. Indeed, kirk session minutes from before 1600 are scarce on a nationwide scale.¹⁰² By 1640, the disruption of war cited by Leneman and Mitchison starts appearing in session and presbytery minutes.¹⁰³ Ministers began working to cover divine services and sacraments in neighbouring parishes where their fellow brethren had been seconded to nearby army camps to oversee God's work there. The disruption is evident, necessitating co-operation within the synod between the brethren of Haddington and Dunbar, firstly to cover the spiritual needs of the camps, and secondly of those parishes that were deprived of their minister in the interim.¹⁰⁴ Between 1610 and 1640 there was a thirty-year period of effective administration at local and county-wide level in East Lothian, from which a significant body of court records from a variety of sources and locations survives. These sources (including the old parish registers) have not been used for the investigations into social control, the household, gender, patriarchy and status that are undertaken in this thesis. This makes this study both original and historiographically relevant.

¹⁰¹ As recognised by Peter Hatley Waddell in *An Old Kirk Chronicle: being a History of Auldhame, Tynninghame and Whitekirk in East Lothian from Session Records, 1615-1830* (Edinburgh, 1833).

¹⁰² For a published example see: Alma B. Calderwood (ed.), *The Buik of the Kirk of the Canagait, 1564-1567* (Scottish Record Society, 1961).

¹⁰³ The Tynninghame kirk session minutes from 1639-40 offer a good example of this, National Records of Scotland (hereafter NRS), CH2/359/1, ff. 105-16.

¹⁰⁴ For example see: Haddington Presbytery Records, 19 August 1640, NRS, CH2/185/5, ff. 59-60; 30 September 1640, CH2/185/5, ff. 66-7; 14 October 1640, CH2/185/5, f. 74.

Absent records are a reality for early modern historians. For Scottish court records, years of missing transcripts and further years where sources survive but are either damaged, illegible or lack in detail due to a clerk's personal preferences of minute-taking have to be contended with. In some cases before 1610, kirk session records have not survived because, in the absence of a minister, a session did not exist. Even where a minister had been planted, records have not always survived. Such is the case of Athelstaneford, beneficed in the 1570s but with no surviving records from 1610 to 1640. Although the brethren are documented in other court records as having met between 1610 and 1640, Dunbar presbytery records have not survived before 1652.¹⁰⁵

The session records that have survived could be described as elaborate diaries. In Tynninghame, the session minutes were taken by the minister, John Lauder, who sometimes strays into the first person in his description of events.¹⁰⁶ A meeting of Haddington presbytery or a typical local session was headed by the date and, usually, those officials present, followed by the minutes of business. This was sometimes accompanied by short details in the précis, probably to allow for contemporary 'quick reference'. Existing research has shown how the structure of these and other early modern Scottish court records allows for both quantitative and qualitative analysis – specifically that by Michael Graham, Geoffrey Parker and Mitchison and Leneman. This is a complementary methodological approach. Quantitative data in the form of percentages, tables, graphs and single statistics can give quick visualisation of how many cases of what offence were heard when. Analytical divisions can be made along gender lines or according to the type of punishment incurred, be it public or private rebuke or the imposition of a fine. It is pedestrian, cautious analysis that been shown to provide a complementary context to qualitative detail and initial illustration of contrast and continuity between locations and over time. In his *Uses of Reform*, Graham has shown how a sound analytical approach that is systematic in nature can be central to substantiating more complex arguments.

Qualitative analysis develops such arguments. Detailed information gleaned from court records elaborates straightforward statistics to consider the detail of cases – the interpersonal relationships, the experience of authority and how these interact with patriarchal ideas and gender divisions. This thesis balances these two approaches.

¹⁰⁵ Dunbar Presbytery Records, 1652-1657, NRS, CH2/99/1.

¹⁰⁶ Such as the death of his mother on 12 October 1640, NRS, CH2/359/1, fr. 115.

Quantitative work shows the extent of the local justice system and suggests tentative patterns in experience, whilst qualitative detail provides the in-depth insight to substantiate conclusions relating to households, patriarchy and gender roles. There are two case studies in the thesis, where the qualitative detail of the records are of exceptional quality and duration to warrant the closest examination. This approach has been used to good effect by Graham in his more recent work.¹⁰⁷

This methodology is designed to allow for a definitive examination of the local justice system of early seventeenth-century Haddingtonshire. Although court records lend themselves to this combined approach, it is not without limitation or contention. Using quantitative data collected from legal records to attempt to ‘profile early modern criminality’ has been advised against by numerous commentators.¹⁰⁸ Existing European historiography highlights the methodological difficulties involved in gauging the relative success of church discipline because of the centrality of personal interpretation. Whilst Geoffrey Parker cites prosecutions in the church courts as indicative of disciplinary success, Carlo Ginzburg takes the view that such prosecutions are evidence of disciplinary failure, reflecting widespread resentment of official authority that encroached on popular village customs and rituals.¹⁰⁹ This thesis navigates these problems by considering the kirk sessions as part of the network of justice that was operating in East Lothian between 1610 and 1640, rather than relying on analysis of the operations of one branch of the court system and what this meant for the experience of social control. Also, it employs a careful counting methodology.

The irregular survival of those records carries another warning relevant to this thesis. Whilst describing Geoffrey Parker’s collection of quantitative kirk session data from St Andrews as ‘sound’, Michael Graham has criticised subsequent ‘dubious interpretations’ regarding the nature of session discipline that Parker has made using this data.¹¹⁰ Graham does employ statistical analysis in his own work, including a large table entitled ‘Breakdown of Cases by Year for the St Andrews Kirk Session, 1559-81’, but he is very clear on the interpretative dangers that are attached to such data.¹¹¹ The statistics

¹⁰⁷ Michael F. Graham, *The Blasphemies of Thomas Aikenhead: Boundaries of Belief on the Eve of the Enlightenment* (Edinburgh, 2008).

¹⁰⁸ Bruce Lenman and Geoffrey Parker, ‘The State, the Community and the Criminal Law in Early Modern Europe’, in V. A. C. Gatrell, Bruce Lenman, and Geoffrey Parker (eds.), *Crime and the Law: the Social History of Crime in Western Europe since 1500* (London, 1980), 46-7; Graham, *The Uses of Reform*, 85.

¹⁰⁹ Ginzburg, *Night Battles*, esp. 69-99.

¹¹⁰ Graham, *The Uses of Reform*, 75.

¹¹¹ Graham, *The Uses of Reform*, 90-1.

of both historians show a drop in sexual cases appearing before the session in the years 1595-6. Parker has attributed this to ‘a genuine ‘reformation of manners’” under Andrew Melville and Robert Bruce that was reflected in higher Sunday attendance. Graham questions this, because cases returned to previous levels after 1596 and Bruce had never taken up the ministerial position offered to him.¹¹² Instead, he attributes the brief drop in business due to the likelihood of cases being heard in the bailie court.

These difficulties resulted in Margo Todd rejecting any statistical investigation of kirk session records from the outset of her research – and the qualitative analysis she employed instead was to great effect.¹¹³ Unlike Todd, this thesis considers the popular experience of the secular courts alongside the ecclesiastical. Graham saw this as instrumental in his successful deployment of quantitative analysis in finding an alternative interpretation of the St Andrews evidence.

Alongside this warning, quantitative analysis of court record data is affected by missing records and incomplete datasets. Graham has emphasised that the early St Andrews’ register – as seemingly complete as it is – should not be taken as representative of Scotland as a whole and that analysis of records held for incomplete years could skew any resulting conclusions.¹¹⁴ It is a problem not limited to Scotland. Judith Pollman has shown the piecemeal nature of record-keeping by the consistory of Utrecht, who were concerned with social hierarchies and the political influence of individuals.¹¹⁵

The set of court records used in this thesis contains gaps in record-keeping, ranging from months to years. In order to allow for this, Graham uses quantitative data for pockets of complete years wherever possible to suggest ratios of cases to communicants. For Monifieth between 1579 and 1581, this averages at one case annually for every 81 communicants: ‘the lowest level of disciplinary intensity yet encountered’.¹¹⁶ Although Frank Bardgett has suggested that the Monifieth session was a rigorous part of local government, it had a disciplinary success rate that was much

¹¹² Parker, ‘Kirk By Law’, 18; Graham, *The Uses of Reform*, 213.

¹¹³ Todd, *Culture of Protestantism*, 17-8. An approach also favoured by Janay Nugent in her forthcoming study of the experience of childhood in early modern Scotland.

¹¹⁴ Graham, *The Uses of Reform*, 97. Where he has used quantitative data from incomplete yearly records he has noted so – such as for the Canongate between 1564 and 1567, 100.

¹¹⁵ Judith Pollman, ‘Off the Record: Problems in the Quantification of Calvinist Church Discipline’, *Sixteenth Century Journal*, 33:2 (Summer, 2002), 423-438.

¹¹⁶ Graham, *The Uses of Reform*, 129.

lower than in neighbouring burghs.¹¹⁷ Parker uses his figures for the period up to 1600 to suggest a popular experience of kirk discipline that was normative and common. It is a large-scale use of quantitative data, resulting in a sweeping conclusion of one case per 61 residents annually. Graham's data suggests a lower ratio of one case per 56 residents in the 1570s.¹¹⁸

The complementary use of qualitative analysis has been employed in this thesis to overcome these quantitative problems. The qualitative analysis of court records depends on the nature of the records themselves – the amount and nature of detail minuted by the clerk in each case. The relative abundance of English historiography can be attributed, in part, to the depositions contained in English court records. In Scotland's ecclesiastical and secular courts this was not common procedure, but oral witness statements given before the session, in court or at home to court officials, are transcribed in the record. In the sheriff and burgh courts, formal arguments from the prosecution, followed by those from the defence, are minuted where defendants have employed counsel. Where they are acting in their own defence, these arguments are recorded by the clerk. In the kirk sessions, advice from the presbytery and letters received in relation to a case are often inserted into the record by the clerk. Although kirk session minutes differ in nature to their English counterparts, this should not be seen as an intrinsic weakness because sufficient data and detail is apparent nonetheless. In this thesis, such qualitative detail is employed alongside that obtained from secular court minutes recorded as part of formal judicial process in answer to points of law. This contributes to the robust nature of any conclusions.

This is necessary because the use of legal records for economic and social history has inherent challenges. The detail recorded in kirk session, presbytery, burgh court and sheriff court records, either from defender (or panel), pursuer or witness, was transcribed for the record by the court clerk. David Sabeau has cautioned against the use of sources to access the 'ordinary people' of early modern German communities for this reason. He highlights how court records inevitably contain the input of those in authority, even just via the transcription role of the clerk, and how evidence is largely

¹¹⁷ F. D. Bardgett, 'The Monifieth Kirk Register', *Records of the Scottish Church History Society*, 23 (1987-9), 175-195.

¹¹⁸ Graham, *The Uses of Reform*, 97; Parker, 'The Kirk by Law Established', 9.

anecdotal and therefore subject to the distortion of story-telling.¹¹⁹ It is an interpretation of events.

This has allowed for a genre of historical analysis based on narrative and the ‘voices’ within official documents. It is a literary interpretation that Natalie Zemon Davis has termed ‘cultural exchange’, rather than ‘an impermeable “official culture” imposing its criteria on “popular culture”’.¹²⁰ This thesis seeks to analyse social control and the factors that influenced the experience of authority in East Lothian between 1610 and 1640. In order to do this rather than give a history of the recording of crime in the region, it examines exactly *how* the local court network was operating – as advocated by Martin Ingram. The conclusions of this thesis are reliant on the quality, quantity and content of surviving manuscript sources alongside conscientious data recording and organisation. The surviving court records from East Lothian for the period between 1610 and 1640 are of significant number and detail to allow for quality analysis and definitive conclusions.

The range of business dealt with by the post-Reformation kirk sessions can be seen from existing Scottish historiography. Disciplinary offences included, but were not limited to: various sexual offences; sabbath breach; slander; various other forms of anti-social behaviour such as drunkenness, breaches of the peace and swearing; charming; witchcraft and violent offences.¹²¹ Sessions presided over matters of baptism, vagrancy, charity and poor relief. They appointed local school masters, arranged for repairs to their buildings and organised and administered collections and fasts as ordained by the general assembly via the synod.

Burgh courts and sheriff courts were occupied by the business of local debtors and enforcing burgh and county regulations on trade and agriculture. But they found time to preside over cases of theft, violence, murder, incest, witchcraft and bestiality under commissions of justiciary issued by the privy council.¹²² In East Lothian during this period, people were reconciled, fined, shamed, maimed and executed at the hands of the

¹¹⁹ David Warren Sabean, *Power in the Blood: Popular Culture and Village Discourse in Early Modern Germany* (Cambridge, 1984), 2.

¹²⁰ Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford, 1987), 112; See also Liv Helene Willumsen, ‘Seventeenth-Century Witchcraft Trials in Scotland and Northern Norway’ (Unpublished Ph.D. Thesis: Edinburgh, 2008). Willumsen has isolated specific trials and analysed the ‘voices’ present, from the witnesses to the defender to the scribe.

¹²¹ ‘Charming’ refers to the casting of charms, usually to alleviate illness. A conviction for charming could lead to being suspected of witchcraft.

¹²² Commissions are explained in detail in chapter 2, below.

State. Initial transcriptions of cases against individuals form the basis of the qualitative analysis present in this thesis. This is made possible through the recording of these cases in a custom-made database and assigning categories to the offence and punishment of each to allow for clear, meaningful tabulations in line with current historiography. Categorisation has to be clear and consistent for this to be possible.¹²³

Similarly, what is a ‘case’ has to be defined and consistently applied. Michael Graham has presented a sound system of doing this for the kirk sessions which can be applied to the secular courts also. Using his methodology, a case ‘is defined as any instance in which an individual, almost always named, is charged with a particular sin of commission or omission’ and is dated from the first appearance in the register, even if it could be weeks, months, even years before a case was resolved. He goes on to clarify how he does not consider ‘official lapses’, such as accepting payment for performing a marriage, as cases in this context, because they are administrative rather than pastoral in concern.¹²⁴ In this thesis, there are instances where this methodology needs extending. Graham does not define what happens in the case of one person who committed two offences, or a household or group of individuals that committed one offence collectively.

For this dataset, these are rare anomalies. Margaret Alexander appeared before a justice court, convened in Haddington sheriff court in 1612, charged with murder, incest and adultery.¹²⁵ She stood trial for all offences at once and was executed. Such were the extent of the allegations against her, a new category was added to the tabulations to acknowledge the significance of her case. Groups of unknown number appear before kirk sessions on only seven occasions, all charged with sabbath breach.¹²⁶ These three cases from Pencaitland and four from Tynninghame constitute a negligible percentage of the dataset, which totals over 2000 individual cases. Lacking in any numerical detail, these seven instances have been flagged as anomalies and entered each as one individual case, reliant on accompanying qualitative detail by means of explanation. Together,

¹²³ See Graham, *Uses of Reform*, 85, 119.

¹²⁴ Graham, *The Uses of Reform*, 77-8.

¹²⁵ Haddington sheriff court extract decree book, 28 May 1612, NRS, SC40/7/13, f. 65. See case study in ch. 4, below.

¹²⁶ Pencaitland kirk session minute book, NRS, 15 December 1633, CH2/296/1, f. 8; 17 December 1635, CH2/296/1, f. 11; 8 November 1640, CH2/296/1, f. 15. Tynninghame kirk session minute book, NRS, 12 October 1617, CH2/359/1, f. 15; 14 June 1618, CH2/359/1, f. 20; 06 January 1622, CH2/359/1, f. 44; 11 September 1636, CH2/359/1, f. 94.

these contingencies have allowed for successful quantitative analysis alongside the qualitative insight necessary for any examination of social control.

Haddington sheriff court and the burgh courts of North Berwick and Haddington constitute the bulk of secular court material for East Lothian between 1610 and 1640. Although limited franchise court material survives for the period from the shire, mostly it pertains to land-related agreements concerning matters such as rents and teinds. Therefore it has been dismissed from this thesis.¹²⁷ Aside from the baron court book of Cockburnspath dating from 1638, references to other franchise courts and Justices of the Peace appear in the surviving kirk session, burgh and sheriff court material from across the period. The baron court book of Cockburnspath, located across the county border in neighbouring Berwickshire (see figure 1.1), contains consistent qualitative detail of cases and judgements from November and December 1645. This has been used in this thesis to illustrate the remit of a baron court in the area, for which no other baron court records survive.¹²⁸ No records dating past 1640 have been included in quantitative tabulations.

It is through this qualitative detail that this part of the Haddingtonshire justice system is analysed, contributing to how the secular authorities dealt with individuals in a community context with regards to morals, manners and discipline as well as outright criminal behaviour.

Haddingtonshire fell under the jurisdiction of the central commissary court in Edinburgh. Margaret Sanderson has demonstrated the usefulness of its records and, more recently, they have been analysed by Tom Green in a study of sixteenth-century divorce and litigation.¹²⁹ The central commissary court's jurisdiction extended across the Lothians and included the capital as a court of first instance. It was also the court of appeals. Only limited supplementary detail pertaining to family roles and household relationships has been collected from surviving processes for use in this thesis.

¹²⁷ Biel Muniments, ecclesiastical papers (churches and schools), records relating to Dirleton, 1631-1636, NRS, GD6/1146-9; Records relating to the regality of Drem, including: NRS, RH11/68/7/2, ff. 1-117; Proceedings in the regality courts of Torphichen and Drem, NRS, RH11/68/7/3, ff. 1-16; List of evidents not produced, 1615, NRS, RH11/68/7/4, ff. 1-11; Inventory of land grants from the Earl of Haddington, NRS, RH11/68/7/5, ff. 1-129; Notes and charters, NRS, RH11/68/7/6, ff. 1-8.

¹²⁸ See chapter 2, below. Cockburnspath baron court book, 10 November-4 December 1645, NRS, RH11/15/1, ff. 3-5.

¹²⁹ Sanderson, *Kindly Place*; Thomas Green, 'Court of the Commissaries of Edinburgh: Consistorial Law and Litigation, 1559-1576' (Unpublished Ph.D. Thesis, University of Edinburgh, 2010).

Other local records have been excluded, and some have conditions placed on their use. Debt cases from the sheriff and burgh courts have been omitted from analysis entirely. Their vast quantity has led already to a focussed, in-depth study on women, credit and interpersonal relationships across the Lothians by Cathryn Spence.¹³⁰

Records from the kirk sessions of Innerwick and Prestonpans and the session register from Haddington St Mary's have been excluded from tabulations and quantitative analysis entirely. The original records from Innerwick have not survived for the period between 1610 and 1640. Only a selection of extracts 'from some of the old records' compiled in 1838.¹³¹ There is no way of ascertaining the representative nature of these extracts, which by nature would have been limited to the most interesting cases that appeared before the session. As a selection of qualitative material, these transcriptions are valuable; but in order not to skew tabulations of business across Haddingtonshire's court system, they have been excluded from the quantitative dataset. The same rules have been applied for records from the Prestonpans session, which have been classified and microfilmed as old parish registers as well as being transcribed in extracts.¹³² The microfilmed originals are not in chronological order and are interspersed with lengthy registers of births, marriages and deaths. Furthermore, portions of the records are in a modern hand, suggesting that these too may be transcriptions. Geoffrey Parker relied on a nineteenth century printed edition of the St Andrews records by David Hay Fleming, which is perhaps an argument for using collections of original records. The doubts around the nature of these sets of East Lothian records – their providence, originality and completeness – limit their use to providing important qualitative detail for analysis in this thesis.

The surviving session register from Haddington has had similar limitations put on its use.¹³³ As an old parish register, this set of records is concerned primarily with births, marriages and deaths. But the Haddington register is unusual – the clerk has interspersed the register with the names of fornicating couples, but not included any qualifying, accompanying detail on circumstances or punishment. Whilst this would be

¹³⁰ Cathryn Spence, "To Content and Pay": Women's Economic Roles in Edinburgh, Haddington and Linlithgow, 1560-1640' (unpublished Ph.D. thesis: University of Edinburgh, 2010).

¹³¹ Extracts from the kirk session minutes of Innerwick (later Innerwick St Andrews), 1619-1640, NRS, CH2/1463/2, ff. 1-33.

¹³² Extracts from Prestonpans kirk Session Minutes, 1610-1637, NRS, CH2/307/28, ff. 150-166; Prestonpans kirk session registers, NRS, OPR 718/1, ff. 127-170; NRS, OPR 718/2, ff. 1-224; MFHS, microfilm 1067855.

¹³³ Haddington St Mary's kirk session register, NRS, OPR 709, ff. 1-72; MFHS microfilm 1067799.

valuable for a study of illegitimacy, perhaps allowing for the construction of illegitimacy ratios as used by Mitchison and Leneman, the lack of qualitative detail with these names mean the cases themselves are unclear. This really limits the use of the register in this thesis.

The courts of East Lothian were organised and active between 1610 and 1640. Surviving records cover a total of ten parishes and detail the cases of over 2000 individuals. The area was economically diverse, with urban- and rural-dwelling populations and this significant, under-utilised set of sources offers ideal opportunity to examine the major aims of this thesis: the nature and extent of the local justice network, the experience and nature of social control, and the influence of gender, patriarchy, social status and geography over that experience. The example of existing historiography has allowed for the development of a workable research methodology based on quantitative and qualitative techniques that considers and accounts for the ongoing problems of absences, gaps and omissions that plague early modern court records. It is through this methodology that this thesis seeks to bridge the gap between Graham's research and that of DesBrisay and Leneman and Mitchison, thus extending Scottish history in line with English and Continental scholarship.

III. Chapter Structure

In order to do this, the text of this thesis is unequally divided between examination of East Lothian's local court network and the popular experience of that network in action. An understanding of this web of judicial authority, how it operated and who operated it, provides the basis in the first two analytical chapters for the following four chapters of the thesis. Throughout, the influence of gender, patriarchy and social hierarchies are considered to varying extent. Each chapter uses a combination of secular and ecclesiastical records and quantitative and qualitative techniques in order to examine these influences within the context of interpersonal relationships and sexual conduct, violent behaviour and the household.

Chapters two and three examine Haddingtonshire's operational legal system, drawing on evidence from across the court network to illustrate what courts were operating between 1610 and 1640, the extent of their business and relations with one another. These chapters examine office-holding and analyse the punishments meted out

by the different courts under their different guises. Finally, chapter three analyses the authority and legitimacy of these courts – where and how they acquired these necessary sources of power.

Together, these two chapters are necessary for establishing that East Lothian had an operational court network in place between 1610 and 1640, with elements of authority and legitimacy in policing the popular behaviour of Haddingtonshire's population. Understanding how this network operated and what it could and could not achieve, provides the basis for the whole thesis and the examination of social control. Alone, it fills a gap in Scottish historiography in terms of the understanding of local courts as a network, the individuals involved in its operation and how these bodies worked together to regulate the behaviour of ordinary folk. As part of the thesis as a whole, chapters two and three allow successful examination of social control and relationships through a broader range of sources akin to English and Continental scholarship.

Chapter four explores the regulation of relationships through this web of justice. It introduces the concept of social control in the context of early modern Scotland – how the local courts exerted control over the behaviour of the population and with what consequences. It examines the regulation of individual behaviour and the personal relationships of individuals, and the efforts made by authorities to regulate these relationships – specifically, sexual conduct. Controlling sexual behaviour meant controlling the form of the household through the regulation of domestic service and newcomers to the parish. This chapter seeks to ascertain if the notion of social control is applicable for East Lothian between 1610 and 1640 and what limits existed to this regulation of relationships. It asks whether there is evidence of a gendered double standard in this regulation.

Chapter five analyses the methods that were employed by the courts in the administration of social control and how these methods worked in practice. Developments in the early modern legal system meant the early seventeenth century saw the rise of state-sponsored violence in the punishment of the person. This chapter considers why this approach worked and the influence of honour, dishonour and personal shame. Due consideration is given to the experience of men as well as women, in an attempt to extend analysis away from a discussion of female dishonour. It concludes with the case study of Margaret Alexander, who was tried in Haddington in 1612 for adultery, incest and murder. Close analysis of Alexander's case is used to

illustrate the extent of social control and state-sanctioned violence in this religious society, which was governed by codes of honour and shame and convinced of the bodily existence of evil.

Following from this insight into the control of relationships and broader behaviour, chapters six and seven examine the roles of family, patriarchy and status in the experience of authority and social control throughout East Lothian between 1610 and 1640. Firstly, these two chapters show the importance of these three influences in order to bring early modern Scottish historiography in line with English and Continental studies. Secondly, by examining evidence from across the court system, they are designed to show the variation that existed in the experience of authority and social control depending on location.

Chapter six focuses on the family and controlling the household. It uses qualitative examples from across East Lothian to demonstrate how patriarchy was a fluid concept, dependent on location and subject to tensions. Popular patriarchal duties of protection and responsibility can be seen to have existed between 1610 and 1640, alongside the obligations to respect and obey. Chapter six examines these roles in terms of the family and broader household, showing how patriarchy manifested itself in the domestic economy between husband and wife and what these ideals meant for child rearing and the governance of servants. The chapter shows how gender was not necessarily the primary determinate in the experience of authority and social control when it came to governing the household. Whilst the role of women in the domestic setting is acknowledged by some authorities and the personal power of individual women harnessed by others, the importance of paternity and paternal responsibility is continually enforced by the Kirk through the ritual of baptism.

The example of sabbath breach is used to illustrate the importance of geography for interpretations of patriarchy. Patriarchy was open to interpretation by parishioners and officials alike. Whether obligations to God or master were dominant depended largely on location. Quantitative analysis is used alongside qualitative examples to draw out these differences and direct Scottish historiography in a new direction.

Chapter seven engages directly with the existing Scottish debate over the importance of status. By building on the examination of patriarchy in chapter five, this chapter is designed to highlight how 'according to rank' continued to resonate across East Lothian between 1610 and 1640. This is exemplified by the case study of John Airth, a

parishioner from Tynninghame whose life can be charted through the session records across a fifteen-year period. The case study shows how popular expectations of Airth changed over the course of this period in his life, and how status and rank continually affected his experience of authority and participation in local governance. This case study is intended to question the idea that the experience of discipline and authority in early modern Scotland was in any way homogeneous.

To take this further, this final chapter examines what social status and age meant for the kirk sessions by using the qualitative examples of high-ranking offenders and the prevalence of paying their way out of making public repentance. Analysis is distanced from the importance of gender by highlighting instead the divisions that were drawn between men – many of whom, like their female contemporaries, were excluded from the bargaining process, simply because of their lack of economic power. In the secular courts, the ability to pay fines, the ability to find caution and occasionally the experience of punishment itself was experienced according to rank. Kirk sessions in both urban centres and rural settlements acknowledged the importance of status when it came to punishing the purse. Whether this was with positive or negative effect on the offender again depended on exact location.

The six main chapters of this thesis have been designed to address the overarching research aims of this project: how local court networks operated; the nature and experience of social control in the localities; and how this experience can be defined in terms of patriarchy, geography and social hierarchies rather than simple binary gender divisions. These aims have been designed so this thesis contributes to early modern Scottish history, engaging in existing debates whilst extending our understanding of the early modern parish by employing concepts that have been used with success by scholars of early modern England and further afield.

Chapter II

The Jurisdictions of Haddingtonshire

The local court system in early modern Scotland was a network of secular and ecclesiastical bodies, joined together in a web of shared institutions, shared personnel and shared concerns. This thesis seeks to extend early modern Scottish historiography in line with English and Continental scholarship by showing how this network of justice operated and the extent of its power over the regulation of popular behaviour at grassroots level. In doing so, it offers a new evaluation of social control – the extent of the regulation of the lives of ordinary folk during the early modern period and how gender, location, patriarchy and status influenced that experience.

This chapter introduces Haddingtonshire's court network as it was between 1610 and 1640. It examines the structure of the local secular and ecclesiastical courts, and how these courts functioned alongside the central jurisdictions that were based in Edinburgh. When it came to social control, the kirk sessions and presbytery were not operating in isolation from the activities of the secular courts. Instead, the experience of authority for ordinary folk at parish level was not characterised by two, separate branches of the legal system, but an interlinked web of legal bodies, joined together by shared office-holding and shared concerns. Together, this chapter and the one following provide a critical examination of this system. Whilst this chapter outlines how the courts operated and who court officials were, chapter three develops this further by showing how their business and powers to punish overlapped.

As a court network, Haddingtonshire's secular and ecclesiastical authorities enjoyed a level of legitimacy that made social control possible. In recent Scottish historiography, it is the kirk sessions that have received the lion's share of investigation. This is of immense value, but there is room for this scholarship to be extended. Examination of one branch of the Scottish legal system without consideration of the other does not allow for appreciation of these links or a complete picture of the system of local governance that presided over the lives of ordinary people. It was this court system that policed and regulated behaviour and personal relationships. Therefore, a clear understanding of the courts themselves is necessary before the experience of social control, and any divisions in that experience, can be shown and evaluated.

I. The Courts of Haddingtonshire

Between 1610 and 1640, five different types of court were operating locally in East Lothian: the burgh courts of North Berwick and Haddington, Haddingtonshire sheriff court, various franchise courts, parish kirk sessions and Haddington presbytery. The smaller franchise courts included: baron courts, non-baronial courts, birlaw courts and at least one regality court. In addition to these, the commissary court, justices of the peace courts, commissions of justiciary, justice ayres and circuit courts all operated at local level.

There was then a higher tier of authority in operation above all these bodies. For the Kirk, this was the synod of Lothian and Tweeddale and ultimately the general assembly of the Church of Scotland. For the State, this was via the central courts of the land: the court of session, court of high commission, court of justiciary and the privy council.¹ In addition to these, there was the convention of royal burghs, messengers at arms and notaries.

This was a significant number of different authorities, different legal entities that interacted with one another on a daily basis in governing the Scottish localities. This was the judicial network that delivered social control, not just via the kirk sessions and presbyteries. How this was possible without any serious judicial wrangling is remarkable, and this section examines exactly how these courts functioned and operated side by side in East Lothian between 1610 and 1640.

The limits to ecclesiastical jurisdiction were neatly summed up in 1571 in a list of demands sent by the general assembly to the Regent. As explained by Julian Goodare, the assembly's demands were ignored and remained so. The Regent's silence effectively codified the judicial limits of the general assembly in those wishes. These included: the right to define religious doctrine; the power to admit and suspend ministers to benefices; to clearly have the authority to punish moral lapses with excommunication; to judge legal cases involving ministers, as was the case before 1560; to excommunicate people who withheld the revenues of church benefices and, finally, to regain jurisdiction over matrimonial cases from the commissary courts. It was recognised at the time by Morton that this lack of statutorily-defined boundaries held potential for future conflict

¹ No records survive for the court of high commission, nor are they mentioned in any of the surviving East Lothian court records. See G. I. R. McMahon, 'The Scottish Courts of High Commission, 1610-1638', *Records of the Scottish Church History Society*, 15 (1965), 195-209.

between local civil and ecclesiastical authorities – as had been the case in England during the middle ages.² But this was not to be the case. Instead, offences including adultery, incest and witchcraft became the business of both Kirk and State; and when it came to punishment, the civil sword was expected to fall on those who would not submit to ecclesiastical censures.

It is a story of co-operation rather than conflict. Haddingtonshire court records from 1610 to 1640 suggest that such a working judicial compromise was in operation, rather than a competitive existence of various courts each vying to assert and implement its own authority. Stephen Davies has recognised this for Stirlingshire. Although he concludes that each operating court had a ‘clearly defined role’, he goes on to explain that inter-judicial clashes were rare and when they did occur there was ‘a well understood machinery’ for dealing with them based around convention, personal contacts and shared personnel.³ Such a web of jurisdiction existed in and around Haddington at this time, extending this argument south of the Forth. This is examined further in the next section.

There were two operational burgh courts in early modern Haddingtonshire, one in Haddington the other in North Berwick. As the largest urban centre, Haddington’s status as a royal burgh dated from David I and the town had been sending representatives to parliament since the fourteenth century.⁴ North Berwick was represented in parliament in 1479, although its privileges as a royal burgh were not confirmed through charter until 1568.⁵ Where the local sheriff presided over the whole sheriffdom, the burgh court’s jurisdiction was over the burgh’s inhabitants and centred around a concern for ‘guid nichtburheid’ that extended to the regulation and administration of the burgh’s economy and trade. Early modern burgh courts had gained considerable autonomy from central government – they administered their own taxes, officers were locally chosen and the courts themselves were organised and effective.⁶ With its provost and team of bailies along with the burgh council with its guild representation, Haddington was intensively governed by its burgh court. The burgh’s geographical characteristics as a significant, populous trading centre in close proximity to Edinburgh meant that, arguably, the court held significant authority simply

² Goodare, *State and Society*, 182; Ingram, *Church Courts*, 5.

³ Davies, ‘Courts and the Scottish Legal System’, 122.

⁴ Gordon Smith Pryde, *The Burghs of Scotland, a Critical List* (Oxford, 1965), 5.

⁵ Pryde, *Burghs*, 23-4.

⁶ Goodare, *Government of Scotland*, 190.

due to the number of people over whom it had enforceable jurisdiction. This was entrenched by the frequent holding of head courts, which all town burgesses were expected to attend.

From one uninterrupted folio of Haddington burgh court records, dating between February 1634 and December 1640, it is possible to breakdown the business of the court into eleven categories.⁷ The resulting distribution is as follows:

Figure 2.1: distribution of individual cases brought before Haddington burgh court, 24 February 1634 – 31 December 1640

So
 source: Haddington Burgh Court Minute Book, B30/10/13.⁸
 This sample illustrates the burgh court's

	[from 24 Feb.] 1634	1635	1636	1637	1638	1639	1640	TOTAL
debt	78	99	131	139	154	98	92	791
curatory, tutory & service	4	3	6	6	2	1	2	24
theft	5	0	4	10	3	0	0	22
lawburrows	0	0	1	0	2	2	2	7
servicing commissions	2	1	1	1	0	0	1	6
slander	3	0	0	0	0	0	1	4
officers	0	1	1	0	0	0	0	2
breach of the peace	2	0	0	0	0	0	0	2
trading	1	0	0	0	1	0	0	2
violence	0	2	0	0	0	0	0	2
witchcraft	0	1	0	0	0	0	0	1
TOTAL	95	107	144	156	162	101	98	863

primary occupation with debt at 92 per cent of individual cases heard. Albeit a marginal percentage difference, this is in line with what has been found for Stirling where debt

⁷ 'Debt' totals are for individual cases relating to the litigation of debts of money, goods or occasionally services. 'Curatory, tutory and service' are cases concerning the services of heirs. 'Lawburrows' refers to individuals assigning a sum of money, promising to act in a peacable manner towards named others. Those others, the pursuer(s), must have put forward a case to show fear of violence at the hands of the person to be enacted. The sum is then forfeited to the court should the subject fail to act in a peacable manner. The 'servicing of commissions' includes acts of caution granted in relation to commissions of judiciary granted by the privy council for the pursuit of individual criminals. Commissions are discussed fully below. Instances of selecting new court officers are classified as 'officers'. 'Breaches of the peace' are cases described as such in the court minutes, usually resulting in fines or cautions for the perpetrators. Other unruly disturbances against individuals are classified as 'violence' cases. 'Trading' cases concern breaches of Haddington's burgh trading rules and regulations. 'Theft', 'slander' and 'witchcraft' are self explanatory.

⁸ Haddington Burgh Court Minute Book, NRS, B30/10/13 covers an uninterrupted period of c. seven years at the end of the period and was selected as a continuous data set to provide a representative sample of day-to-day court business. The data represent individual cases being heard before the burgh magistrate where possible, in line with the overall thesis methodology. Where data are missing or incomplete, the case has been omitted. As an individual, especially when involved in a debt case, was likely to appear in court several times before resolution, the actual volume of day-to-day business would have exceeded these numbers.

cases heard by its burgh court outnumbered those heard by the sheriff.⁹ The burgh's sole witchcraft trial in 1635, the case of resident Anna Tait, was heard under a commission of justiciary from the privy council and should be mentioned as a rarity in the burgh court.¹⁰ Specifically, a commission of justiciary was a document issued by the Crown, empowering the recipient or recipients to hold a criminal trial for a specific crime. As the recipient was often a private individual, this in effect meant the authority to hold a single trial.¹¹

In the case of Anna Tait, the commission was granted to the provost, John Cockburn, and two of his bailies, Robert Learmonth and John Sleich. The trial proceeded as any other that was conducted before an assize in the burgh court proper. This was also the case in the sheriff court, where commissions of justiciary were granted between 1628 and 1630 to local magistrates and office holders. Trying cases through the authority of a privy council commission of justiciary enabled serious cases that would normally be outwith the local courts' jurisdiction to be resolved through trial by jury at local level. Commissions for trying individual witches continued to be granted for most of the seventeenth century, usually to a small group of local lairds who, in consultation with the local kirk session and presbytery, had presented the prosecution's evidence to the privy council.¹²

Anna Tait was tried in a justice court, held in the same venue and with some of the same procedures as the burgh court in whose minutes her trial was recorded. Between 1610 and 1640, all other witchcraft cases were tried in justice courts established under commission in Haddington sheriff court. In Haddington burgh court proper, theft made up the largest category of business behind debt and the services of heirs, but at a total that was under 3 per cent of all business.

Although the case of Anna Tait is a lone example, the burgh court itself was active in requesting commissions from the privy council to pursue and try criminals, especially witches, as locally-established justice courts. In some cases, these commissions of

⁹ Davies, 'Courts and the Scottish Legal System', 139.

¹⁰ The case of Anna Tait, 6 January 1635, NRS, B30/10/13, ff. 24-6. Also recorded in *SSW*, Goodare et al. (accessed 28/05/2011), and as a case study transcribed by Louise Yeoman in Louise A. Yeoman, 'Witchcraft Cases from the Register of Commissions of the Privy Council of Scotland, 1630-1642', *Miscellany of the Scottish History Society*, XII, 5th series: 14 (2004), 223-65.

¹¹ Although some general commissions were also granted. Julian Goodare, 'The Framework for Scottish Witch-Hunting in the 1590s', *Scottish Historical Review*, 81:2 (2002), 240-1. See also Julian Goodare, 'The Scottish Witchcraft Panic of 1597', in Julian Goodare (ed.), *The Scottish Witch-Hunt in Context* (Manchester, 2002), 51-72.

¹² Goodare, *Governance of Scotland*, 199-200.

justiciary were then granted to the sheriff, showing a delineation of court business based on where the accused resided. That is, whether they were an indweller of the burgh or not. The fact that John Cockburn was both the provost *and* sheriff depute when he was granted commissions alongside the burgh bailies during the witchcraft panic of 1630 would have streamlined this process somewhat – and shows the close ties and interaction between the two bodies and their officers. As a process that can often be seen to involve three different courts, a closer look at the people involved in witchcraft commissions and corresponding acts of caution gives some idea of the personal power structures that were operating within the town and wider area.

During two successive sittings of Haddington burgh court on 10 and 15 November 1628, acts of caution were passed for the pursuit of witches that involved local gentlemen. A typical act of caution from 10 November stated:

The quhilk day comperat personalie in presence of Mr James Cokburn provest, Patrick Brown and John Cokburn baillies of this said burgh of Hadingtone, Robert Learmonth merchant burgis thair and actit and oblist him that Johne Sinclair of Hirdmestoun, Sir Johne Sinclair his sone, Patrick Abirnethie of Netterdene baillie of the Baronie of Saltoun and Mr George Butler of Blans sall follow and persew criminallie William Davidstone dilatit and apprehendit be thame as ane witche.¹³

In getting Learmonth to promise that the Sinclairs, Abernathy and Butler would ‘follow and persew’ Davidson, the bailies wanted those individuals to act as witnesses during a subsequent trial. On 20 December 1628 these same individuals appeared again, this time to ‘persew Bessie Mak in Saltoun allegit guiltie of the detestable sinne of witchecraft for the said cryme presentlie putit in waird’. The rubric to this hearing reads ‘L. Hirdmanstoun and utheris for persewing Bessie Mak for witchecraft’.¹⁴ In both of these instances, ‘the saids John and Sir John [Laird of Herdmanston], Mr George and Patrick compeirand personallie and remitand thair awin jurisdiction and submitting thame to the jurisdiction of the said burgh in this caice alanirlie’.¹⁵ On 15 November, in similar wording:

The quhilk day in presence of Patrik Brown, James Bartrum and John Cokburne baillies of the said burgh compeirit personalie William Blake burges of the samen burgh and actit and oblist him that John Penhame baillie of the baronie of Keith, Richard Skirving fuer of Plewlandhill

¹³ Haddington Burgh Court Registers, Court Book, NRS, B30/10/12, ff. 19-20.

¹⁴ NRS, B30/10/12, f. 23.

¹⁵ NRS, B30/10/12, f. 21.

and Mr John Cockburn minister at Keith shall follow and peruse criminallie Elizabeth Duncan in Blaikschell alledged guilty of witchcraft.¹⁶

William Davidson was tried and executed by Haddington sheriff court on 16 December 1628, Bessie Mack on 17 February 1629.¹⁷ Mack, along with Sara Keith, had been denounced by Davidson at his trial. Both women were executed. The case of Elizabeth Duncan is an interesting one, for it does not appear in any burgh or sheriff court minutes again and is not listed in *The Survey of Scottish Witchcraft*. It is, however, an early appearance for Richard Skirving who would be a commissioner in 22 cases in 1649. Also, it was a lone commissioner appearance for the then minister of Keith-Humbie, John Cockburn.¹⁸ The acts of caution relating to witchcraft commissions that appear in the burgh court books are important in showing the mechanisms that local courts used in order to administer the law and justice at the highest level. Isolating the men involved in the trials heard by commissions of justiciary, shows how Haddington burgh court was not interested solely in the welfare of the town. It was a part of a web of personal power that extended beyond the burgh walls and beyond debt cases, trading regulations and town administration.

To take the aforementioned examples, George Butler appears in the session minutes of Yester, recorded as working closely with them in his role as a bailie of a baron court.¹⁹ Butler is recorded elsewhere as a bailie of Sir Patrick Hepburn of Luffness, laird of Wauchton. When Hepburn was accused of adultery in Aberlady in 1620, he sent Butler as his bailie to answer the Haddington presbytery's investigations on his behalf.²⁰ Hepburn was quite the land magnate. He held charters for lands in Perthshire alongside at least two, separate baronies in East Lothian, Luffness and Wauchton.²¹ It is not unfeasible that he may have held non-baronial lands in addition to these. In 1641, he acquired various parts of the Lauder estates around North Berwick, Morham and Garvald from his daughter and son-in-law, George Lauder of Bass.²² Figure 1.5 shows the location of Luffness, to the east of Aberlady. In the Yester records, George Butler is

¹⁶ NRS, B30/10/12, f. 21.

¹⁷ The trial by assize of William Davidson, Haddington Sheriff Court Extract Decree Book, NRS, SC40/7/17, ff. 359-368; the trial by assize of Bessie Mack and Sara Keith, NRS, SC40/7/17, ff. 383-393.

¹⁸ *SSW*, Goodare et al. accessed 11/07/2011).

¹⁹ See the scolding case of Beatrix Carfree and Patrick Kemp, Yester kirk session minutes, NRS, CH2/377/1, f. 140.

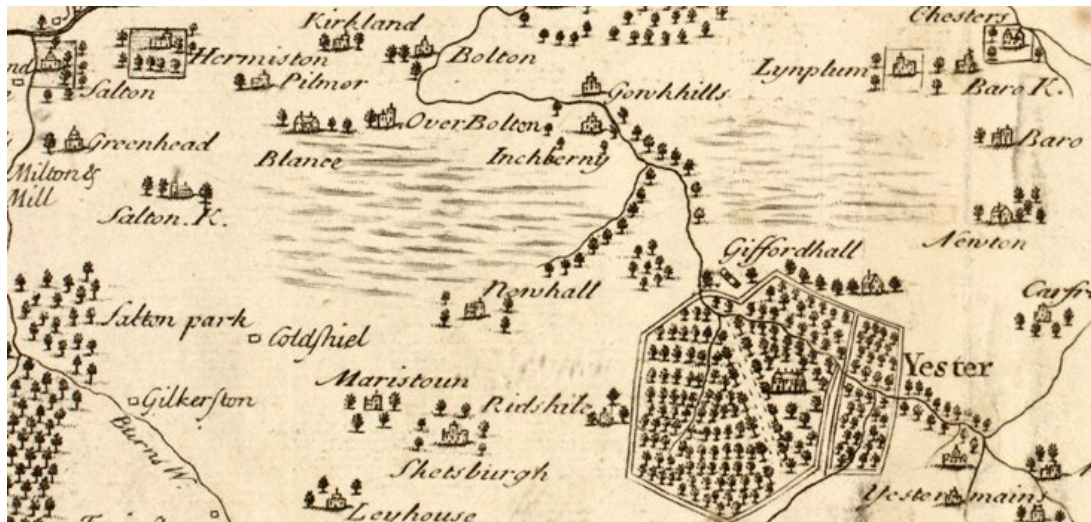
²⁰ NRS, CH2/185/3, f. 154. This case is examined further in chapter 6, below.

²¹ *Registrum Magni Sigilli Regum Scotorum: the Register of the Great Seal of Scotland, A. D. 1634-1651*, ed. John Maitland Thomson (Edinburgh, 1897), 341, 1702, 1666.

²² *Registrum Magni Sigilli*, 1021.

recorded as being ‘in Blance’ or ‘in Blans’, a steading situated some distance from Aberlady, approximately 2km southwest of Bolton. The settlement is named in a charter of Yester lands to John Hay, marquis of Tweeddale, signed by Charles I in Newcastle in 1646.²³ The location is shown below, in figure 2.2.

Figure 2.2: location of Blance, between Bolton and Saltoun, East Lothian.



Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736), NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

Like Sir Patrick Hepburn of Luffness, Butler’s personal authority within East Lothian was far-reaching, both geographically and between different jurisdictions. As well as his role of baron court bailie (possibly for the different jurisdictions of Hepburn *and* Hay), Butler was a Haddington provost and commissioner in four witchcraft trials, including William Davidson’s.²⁴

Butler was not alone. Robert Learmonth, merchant burgess in 1628, was a Haddington bailie by 1635 and a commissioner in the trial of Anna Tait.²⁵ The Sinclairs were landed gentry from the same Pencaitland-Saltoun-Bolton area, southwest of Haddington (see figure 2.2). At the suit roll of Haddington sheriff court on 18 January 1610, the clerk noted ‘Hirdmanstain excusit be his letter’.²⁶ As well as being a Haddington bailie, Patrick Abernathy of Netterdene was an elder of the Saltoun session

²³ *Registrum Magni Sigilli*, 1735.

²⁴ *SSW*, Goodare et al. (accessed 11/07/2011).

²⁵ *SSW*, Goodare et al. (accessed 11/07/2011).

²⁶ Haddington Sheriff Court Extract Decree Book, NRS, SC40/7/12, f. 152. For more on suitors and suit rolls see William Croft Dickinson (ed.), *The Sheriff Court Book of Fife, 1515-1522* (Scottish History Society, Vol. 12, 1928), esp. lxxv-lxxiii.

and elected on numerous occasions to attend meetings of the presbytery as ruling elder.²⁷ On 22 March 1640 he was listed as being present at a meeting of the heritors of Saltoun in order to arrange for provision to be made for a schoolmaster. Sir John Sinclair of Herdmanston was also present at the same meeting.²⁸ Abernathy appeared as commissioner for 19 witchcraft trials between 1628 and 1649, Sir John for at least 20 between 1628 and 1662.²⁹

When it came to acquiring any administrative necessities associated with commissions of justiciary, such as acts of caution, the burgh court was a resource often turned to in the first instance, regardless of where any subsequent trial may have been heard. This was because those to be tried either lived there or were in the burgh when the crime was alleged to have been committed. These sample commissions and acts of caution show that all of these men were active in local governance in its broadest sense. They held multiple offices spanning the secular and ecclesiastical and appeared under the guise of different titles depending on which office they were attending to. Some, such as Sir Patrick Hepburn, also appeared at the receiving end of Haddingtonshire court justice.³⁰ These men had continuing interaction with other men whom held similar positions, and first hand experience of the close interactions of the courts in question.

During the early decades of the seventeenth century, individuals were using the burgh courts in the first instance to pursue cases of wrongful violence inflicted upon them by others. This was also true of the sheriff court. But in Haddingtonshire, this was not the case when it came to allegations of slander or violent words. For slander in the first instance, individuals were bringing cases against others exclusively before the church courts.³¹ Some of these cases were then referred onto the civil magistrates, which possibly meant the burgh court depending on location. Cases of slander originating in the burgh court were rare. Only three individuals were tried between 1610 and 1640; two of these were in cases involving 'trubulance' (violent conduct or riotous behaviour) as opposed to one individual simply accusing another; and the third case had Alexander Hamilton, then minister of Haddington, as the subject of the slander. Hamilton had been the point of sustained local rumour regarding his personal moral and sexual

²⁷ For example: 28 June 1640, 4 October 1640 and 22 November 1640, Saltoun kirk session minutes, NRS, CH2/322/1, ff. 18, 20-21, 22.

²⁸ NRS, CH2/322/1, f. 86.

²⁹ *SSW*, Goodare et al. (accessed 11/07/2011).

³⁰ This is discussed in chapter 7 below.

³¹ See chapter 4, below.

conduct.³² Where the slander was complex and needed further probation, cases were referred across from the church authorities, showing some form of delineation between the church and secular authorities. To those in authority there was a defined idea of what warranted such a case to be heard by the magistrates, and for the victim of slander there seemed to be a clear choice as to where to initiate any legal action. Haddingtonshire burgh courts largely presided over cases of physical violence and instances of breached trading protocols; not those of violent words and trading on Sundays.³³

And yet both the civil and ecclesiastical courts were concerned with 'guid nichtburheid'. As a result, the overlap of personnel between the courts and the sharing of certain officials helped foster a working relationship where judicial clashes could be kept to a minimum. When a commission was referred to the sheriff court by the privy council, associated acts of caution were recorded in the burgh court. And yet there is no evidence of judicial wrangling in any minutes, and the successful hearing and completion of cases under commission as a justice court suggest no stalemate. The role of the bailies, such as George Butler, was another key aspect of this wider power network. This one set of officials were responsible for summoning, arresting and detaining offenders where necessary – services routinely called upon by burgh court, kirk session and presbytery alike.³⁴

Sheriff deposes and burgh bailies had court-appointed officers to do this for them, as did some kirk sessions. On 25 June 1615, it is noted in the Tynninghame kirk session minutes that 'the Laird and Ladie Bass to be desyrit to caus the officer to go with thame and poynd the absents [from the kirk]'.³⁵ Evidence from Yester shows that an elder took on the role. On 21 June 1634, the session ordained 'to warne Jonet Skeill of Yeaster for scandalering William Hay, elder and officer, for the second time'.³⁶ The birlaw court of Yester and Gifford continued to employ officers to carry out the poinding of goods in

³² The cases of: Christian Porteous, 4 June 1628, NRS, B30/10/12, f. 9; John Stevenson, 11 August 1620, NRS, B30/10/10, f. 163; Thomas Innes, 19 June 1640, NRS, B30/10/13, f. 194.

³³ See for example the case of Thomas and Alexander Lessence, imprisoned for transgressing an act of council on market day trading protocols: NRS, B30/10/12, f. 26.

³⁴ See, for example, the minutes of the kirk session of North Berwick and the regular use of the town's bailies in the enforcement of punishments and fine collection between 1610-1616, NRS, OPR713/1, ff. 85-156; and also the North Berwick burgh court book NRS, B56/6/1, ff. 1-14 for evidence of the civil jurisdiction of the bailies between 1638-1640.

³⁵ NRS, CH2/359/1, f. 1.

³⁶ NRS, CH2/377/1, f. 202.

lieu of the non-payment of fines into the eighteenth century.³⁷ Such officers were also used by sheriff deputies for the same purpose. In some cases, the links between courts could be closer still. Patrick Brown was one of Haddington's bailies from the start of this dataset in 1610, and acted as chancellor in the trial by assize of Cuthbert and William Stoddart, accused and convicted of 'trubance' on 10 April 1610.³⁸ On 17 May 1610, one Patrick Brown sheriff depute presided over the case of David Forrest in Haddington sheriff court.³⁹ On 28 May 1612, Brown's position was renewed: 'William Seaton creates Andro Gray and Patrik Broun Justice Deputtis and substitutis under him'.⁴⁰

The sheriff was the king's representative in the shires, 'the supreme justice of peace, to whom is mainly entrusted by the law the securing of the quiet and tranquillity of that part of the Kingdom'.⁴¹ In theory, Scotland's 33 sheriff courts existed under royal control; but 22 of these 33 were still heritable jurisdictions in 1747.⁴² As such, they were semi-private bodies, and a known thorn in the side of James VI.⁴³ Regardless of this, the early seventeenth-century saw an 'increased legal professionalism' in the localities, with sheriff courts becoming more bureaucratic, regularly functioning institutions with appointed clerks and statutory record keeping obligations.⁴⁴ Sheriffs were the main rural administrators, being local nobles or lairds with land within their sheriffdom. The sheriffdoms themselves often extended over large geographical areas – Davies cites this as a reason for the success of Stirling sheriffs in supporting and enforcing local jurisdiction.⁴⁵ This geographical scope was an important source of their authority, alongside the fact that they were local men who were already a part of local landed society.⁴⁶

This set up was present in Haddingtonshire. Briefly examining the commissions for witchcraft trials heard before the burgh court has shown the importance of personnel

³⁷ W. G. M. Hay, 'The Boorlaw Court Book of Yester and Gifford', *TELA/FNS*, 7 (1958), 12.

³⁸ Haddington burgh court registers, court book, NRS, B30/10/8, f. 220.

³⁹ Case of David Forrest, accused and convicted of 'trubance' and injury committed against the person of Sir William Seton, principal sheriff depute of the court, Haddington sheriff court extract decree book, NRS, SC40/7/12, f. 189.

⁴⁰ NRS, SC40/7/13, f. 65.

⁴¹ Mackenzie, *Matters Criminal*, 302.

⁴² Such as Sutherland, which was a heritable jurisdiction in 1619, under Sir Robert Gordon. See Goodare, *Government of Scotland*, 180-1.

⁴³ Goodare, *Government of Scotland*, 175-181, 187-190.

⁴⁴ Goodare, *Government of Scotland*, 180.

⁴⁵ Davies, 'Courts and the Scottish Legal System', 120.

⁴⁶ Davies, 'Courts and the Scottish Legal System', 138; Goodare, *Government of Scotland*, 175.

and the overlap that existed in the offices of each court. This was not confined to the burgh court. On 6 May 1613, Sir James Douglas of Spott was created sheriff principal and James Cockburn sheriff depute.⁴⁷ Cockburn's would be an enduring post – on 7 September 1625 and 31 August 1630 he was readmitted as sheriff depute and was still in the post when records cease in 1635.⁴⁸ It was an important position. The sheriff may have been largely absent from the locality, either due to his status and role in central government or at the royal court, or because he was indulging in the leisure befitting a gentleman. Furthermore, as a heritable jurisdiction the post had to be exercisable by depute because the next heir may be a minor or mentally incapable of the role. Therefore the sheriff depute would 'maintain a client network in his locality' and oversee court business.⁴⁹ Indeed, it was Cockburn who presided over the vast amount of court business in Haddington in the 1620s and 1630s, not Douglas of Spott. One James Cockburn was also provost of Haddington burgh court at this time. A closer official link or overlap between the two bodies would be hard to find. He was sheriff depute at the time of William Davidson's trial in the sheriff court, and provost when an associated act of caution went through the burgh court.⁵⁰ It would appear that the pool of suitable gentlemen available to fill these positions of local power was limited in Haddington and its broader shire at this time.

In line with the practices of the burgh courts, sheriff courts harnessed this local power by the holding of head courts, on average around three times a year, which 'were supposed to be an assembly of all the landed proprietors' in a show of strength of local landed society.⁵¹ In reality, no head court held in Haddington between 1610 and 1640 delivered a full set of proprietors and various members 'being oft tymes callit and not compeirand that and everie ane of thame wir condemned in ane unlaw of their not compeirance' as they had not sent an acceptable excuse beforehand.⁵²

If there were similarities in the structure of the burgh and sheriff courts, there were also similarities in their function. Like Haddington burgh court, the sheriff court was preoccupied with the business of debt. Between 1 December 1625 to 19 January 1632,

⁴⁷ NRS, SC40/7/13, f. 157.

⁴⁸ NRS, SC40/7/14, ff. 64, 281. *The Survey of Scottish Witchcraft* cites him as commissioner of witchcraft trials into the 1660s. *SSW*, Goodare et al. (accessed 12/07/2011).

⁴⁹ Goodare, *Government of Scotland*, 175-6.

⁵⁰ NRS, B30/10/12, ff. 19-20; NRS, SC40/7/17, ff. 359-368.

⁵¹ Goodare, *Government of Scotland*, 176; Davidson, *Sheriff Court*, xiv, xxi.

⁵² Head court and suit roll of the Haddington sheriff court, held on 18 January 1610, NRS, SC40/7/12, f. 155.

continuous surviving records from two extract decree books detail the breakdown of court business as follows:⁵³

Figure 2.3: distribution of individual cases brought before Haddington sheriff court, 1 December 1625 – 19 January 1632

	[from 1 Dec] 1625	1626	1627	1628	1629	1630	1631	[to 19 Jan] 1632	TOTAL
debt	23	122	281	265	212	234	187	8	1332
curatory, tutory & service	0	6	5	8	4	14	18	0	55
officer creation	0	7	9	5	6	7	9	0	43
violence	0	0	0	8	9	2	1	0	20
lawburrows	0	3	2	1	6	2	0	0	14
servicing of commissions	1	0	1	2	6	1	2	0	13
gypsies	0	12	0	0	0	0	0	0	12
breach of the peace	0	0	0	5	4	2	0	0	11
witchcraft	0	0	0	1	7	0	1	0	9
theft	1	1	0	1	0	0	4	0	7
murder	0	0	1	1	0	0	0	0	2
bestiality	0	0	0	0	0	0	1	0	1
trading	0	0	0	1	0	0	0	0	1
cautioners	0	0	0	0	1	0	0	0	1
slander	0	0	0	0	0	0	0	0	0
TOTAL	25	151	299	298	255	262	223	8	1521

Source: NRS, SC40/7/17 and SC40/7/18.⁵⁴

The stark contrast between the volume of debt cases and other business can be seen clearly here, and is a trend that is illustrative of Haddingtonshire as a whole during this period. In the folio sample 88 per cent of sheriff court business was concerned with debt, a substantial majority, with violence coming in behind the services of heirs with a 1 per cent share of business heard. This is a trend that has been identified for early modern Stirlingshire where debt cases incorporated acts of removing and poinding (the seizure of goods).

⁵³ Categories are the same as figure 2.1, with the addition of one case against a cautioner, and one of bestiality.

⁵⁴ Folios NRS, SC40/7/17 and SC40/7/18 were selected as a continuous data set to provide a representative sample from the middle of the period. The data represent individual cases being heard before the sheriff depute where possible, in line with the overall thesis methodology. Where data are missing or incomplete, the case has been omitted. As an individual, especially when involved in a debt case, was likely to appear in court several times before resolution, the actual volume of day-to-day business would have exceeded these numbers. It is also worth noting the spike in witchcraft prosecutions, which is not wholly representative but rather the result of a panic. Slander has been included as a category to highlight its absence from the sheriff court in Haddington.

The high volume of cases in Haddingtonshire compared to Stirlingshire 20 years later deserves some attention. In 1648 the Stirlingshire sheriffs saw 96 separate items of business.⁵⁵ In 1628 Haddington sheriffs dealt with 298 individual cases. Webster's 1755 census put the population of Stirlingshire at 37,014; Haddingtonshire at 29,709.⁵⁶ Although these numbers would not have been correct for the early seventeenth century, it is plausible that the proportions would have been similar; meaning Stirlingshire was approximately 25 per cent more populous than Haddingtonshire. There is room for manoeuvre here to allow for different counting methods (individuals or cases) and possibly different contemporary recording methods for cases that stretched beyond one court appearance. Furthermore, 1648 was a year of civil war. This is a marked difference in litigiousness that could warrant a much fuller comparative study, but perhaps it is suggestive of the different geographic and socio-economic characteristics of the two shires regardless of the twenty year separation.

With some exceptions, jurisdiction over treason and the 'four pleas of the crown' – murder, robbery, rape and arson – rested with the central courts, as did witchcraft. Cases such as that of the thief caught with stolen goods in his possession, or where a homicide was committed in public in hot blood, were clearly excluded from the four pleas. As with the case of Anna Tait in the town's burgh court, sheriff courts also tried cases through the authority of a privy council commission of justiciary. Not only was this true of the aforementioned witchcraft cases by commission, but also of both the murder cases included in the above sample – the 1627 case against Isobel Lauder for infanticide and the 1628 case against William Gullane for the 'cruel and violent murder' of Andro Cockburn in Haddington.⁵⁷ Both were executed after guilty verdicts were delivered by each assize.

An additional branch of local government was added within the sheriffdom when the creation of justices of the peace was enacted by parliament in 1609 under James VI. Although originally intended as a body to help suppress feuding in the localities, in reality JPs emerged with a dual remit. Firstly, this was to police local disorder; secondly

⁵⁵ Davies, 'The Courts and the Scottish Legal System', 136-7.

⁵⁶ James Gray Kyd (ed.), *Scottish Population Statistics: Including Webster's Analysis of Population, 1755* (Edinburgh, 1975), 36-7, 13-4.

⁵⁷ The case against Isobel Lauder, 5 May 1627, Haddington sheriff court extract decree book, NRS, SC40/7/17, f. 134; the case against William Gullane, 28 March 1628, NRS, SC40/7/17, f. 252.

it was to oversee local economic regulation – a role that would be more longstanding.⁵⁸ Offences including vagrancy, dealing with gypsies and the cutting of green wood came under their jurisdiction, but this did extend to rioting and breaches of the peace where offenders were of ‘meaner degrie’. Together, this meant that JPs were largely occupied by dealings with the poorer portion of the population, rather than confrontation with the rich.⁵⁹ It was not until the Cromwellian occupation that JPs obtained authority over ‘landit gentlemen’ and the indwellers of baronies and regalities.⁶⁰

Records from JPs in East Lothian, which include quarter session minute books, start in 1751. It has been recognised that the lack of surviving, early evidence of the work of JPs presents problems in identifying the institution’s role, remit and effectiveness.⁶¹ As a result, recent focus on their operations and relationship with other judicial bodies has been confined to Stirlingshire. Traditionally, historians have dismissed the JPs in their earliest incarnations as ineffective and superfluous to local justice and administrative needs – in other words an unnecessary addition to local governance.⁶² Julian Goodare cites a paper sent from the East Lothian JPs during the famine year of 1623. This is a rare piece of pre-1750 direct evidence for the area, where these local property-owners would have had the task of organising poor relief for a starving population. In light of this, they described their JP responsibilities as ‘ane service toilsome and troublesome unto us, importing nathair credeit nor benefeit’.⁶³ This may well have been because it involved local taxation, and would therefore cost them money personally, rather than from any reluctance to order people about. Depending on personal longevity, the signatories may have included members of the North Berwick session that were absent in 1611 as a result of their JP duties in Haddington.

Records from other courts in Haddington reveal a certain amount about this supposed ‘toilsome and troublesome’ role and the functioning remit and influence of the local JPs before 1640. A close working relationship with the presbytery regarding the

⁵⁸ See Scott Moir, ‘“Some Godlie, Wyse and Vertious Gentlemen”: Communities, State Formation, and the Justices of the Peace in Scotland’, 1587-1660 (Unpublished Ph.D. Thesis: University of Guelph, 2002), esp. 294-308; John G. Harrison, ‘The Justices of the Peace for Stirlingshire, 1660-1706’, *Scottish Archives* (12, 2006), 114-31.

⁵⁹ Goodare, *Government of Scotland*, 203.

⁶⁰ Davies, ‘Courts and the Scottish Legal System’, 133.

⁶¹ For the expansion in the role and remit of English JPs from the mid-16th century see Anthony Fletcher, *Reform in the Provinces: the Government of Stuart England* (New Haven and London, 1986), 43-62.

⁶² For example see Margo Todd’s argument to support the sole use of kirk session minutes for research in *Culture of Protestantism*, 408-409.

⁶³ Goodare, *Government of Scotland*, 205.

ongoing problem of vagrancy is evident. On 8 December 1613, the justices of the peace gave in a charge regarding the banishment of beggars to the presbytery.⁶⁴ On 7 August 1616, they gave in another request – this time for the presbytery to intimate to the people that order was to be taken with the poor in distinguishing the deserving from the strangers and idle paupers.⁶⁵ JPs from throughout the presbytery met at Haddington on 10 March ‘and stentit the paroch kirks within the said constabularie having the act of the secret counsel for thair warrand for the entertainment of the poore within the said bounds’. A means of apportioning taxation was set down and sums of money were then distributed to each parish, from every pound collected presumably according to population size or numbers of poor. For example, Baro received 12 pence, North Berwick 2 shillings. It was ordained that ‘everie boxmaister of everie paroch bring in ane years contribution the XII of this present Aprill 1623 to serve unto the moneth of April 1624’.⁶⁶ These dealings suggest that the JPs were harnessing the advertising powers that the presbytery held at grass-roots level through its parish kirks. But they were also trying to foster a consistent approach with consistent administration in dealing with what was seen to be a chronic civic and economic problem that was being made worse by famine. On 12 January 1623, it was recorded by the Tynninghame kirk session clerk that

intimation [was made] to the pepill to have ane cair of the pure within thair awin parishe for the justicis of peace hathe appointit everie parishe to fied thair awin in respect of the famin and if any parishe in the presbitrie wer not abil to susteine thair awin poore than they sald have liberte to seik through the bounds of this presbitrie.⁶⁷

The JPs of Haddington may have already been heading towards their predominantly economic role, but this did not mean that they could be excluded from the network of local governance that existed. Recent scholarship suggests that early JPs may have been more important and influential than traditionally thought, not necessarily on their own but as a part of a local judicial network.⁶⁸ Scott Moir has recognised this, and shown that their creation was not met without opposition – especially from the royal burghs. This was despite the method of appointment devised by the privy council that meant that the burgh provost, bailies and dean of guild were to serve as JPs for the duration of their

⁶⁴ NRS, CH2/185/3, f. 16.

⁶⁵ NRS, CH2/185/3, f. 60.

⁶⁶ NRS, CH2/185/3, ff. 188-9.

⁶⁷ NRS, CH2/359/1, f. 47.

⁶⁸ Goodare, *Government of Scotland*, 204-205.

office.⁶⁹ Through such shared office-holding, the JPs were integrated into the existing network of town governance, even if this was not welcomed initially.

The presbytery was not the only local authority that referred to their presence and power when it came to the administration and enforcement of authority, especially at county-wide level. In another example from Tynninghame, on 20 October 1616 the session clerk recorded that

the minister has organised the repair of a gate at the parish boundary with the laird of Wauchton and Edward Hepburne and every husbandman should willingly provide a man to do so, otherwise the justicis of the peace would charge them with the kings letters (seeing they had full powar).⁷⁰

Davies suggests that the importance and influence of the early JPs (a ‘fairly important part of the Scottish judicial system’) was, once again, largely due to who they were – the shire’s important landowners, the natural persons for other jurisdictions to apply to for support with powers that, in this role, were not limited to their barony.⁷¹ Between 1610 and 1640, they retained a distinct level of influence in East Lothian governance.

Below the sheriff were the barons. Landlords who held their lands in the form of baronies had the associated right to hold baron courts for their tenants. Within the baronies were the burghs of barony. By 1640, there were eight chartered burghs of barony and one regality in the sheriffdom of Haddingtonshire, with a further ten burghs of barony in neighbouring Berwickshire.⁷² Each of these was created by royal charter and all lands making up one barony or regality formed one single unit of jurisdiction, even if the lands were scattered some distance apart. But if one superior held more than one lordship, such as James Maxwell, a separate court would still have been held for each.⁷³ To use an earlier example, Sir Patrick Hepburn of Luffness was also the laird of Wauchton. He would have presided over at least two East Lothian baron courts before 1640, and likely more after his land acquisitions in 1641.

⁶⁹ Moir, ‘Some Godlie, Wyse and Vertious Gentilmen’, 82-3 and esp. ch. 3.

⁷⁰ NRS, CH2/359/1, f. 9.

⁷¹ Davies, ‘Courts and the Scottish Legal System’, 134. For more on landowners, see Sharon Adams, ‘James VI and the politics of south-west Scotland, 1603-1625’, in Julian Goodare and Michael Lynch (eds.), *Reign of James VI* (East Linton, 2000), 228-40.

⁷² According to Pryde, *Burghs*, Haddingtonshire burghs of barony included: Dunglass, Pencaitland, Tranent, Prestonpanns, Cockenzie, Drem, Innerwick and Dirleton. Tynninghame was the only regality. Berwickshire burghs of barony included: Earlston, Duns, Langton, Dryburgh, Greenlaw, Eyemouth, Preston, Cockburnspath, Hyndlawhill and Coldingham.

⁷³ Davies, ‘Courts and the Scottish Legal System’, 141; Pryde, *Burghs*, 68.

It is likely that there would have been various non-baronial courts in addition to these baronies and burghs of barony. If a landlord held his estates by a charter that included the phrase ‘cum curiis’, then he too was entitled to hold a court for his tenants.⁷⁴ On paper, regality courts were the stronger sibling of the baron courts and could exclude the sheriff from their decisions, which baronies could not. Despite this, any judicial wrangling between barons and sheriffs is absent from the Haddingtonshire record. Simply defined, baron courts had the same powers as a sheriff court in matters criminal and civil, with the large exception of cases where a ‘penalty of life and limb’ was at stake. In such circumstances, a representative of the sheriff had to be present during the trial or, more usually, it would go to the sheriff court. On the other hand, most regality courts had the same powers as the sheriff in civil matters but the power of the justice court in criminal matters. Theoretically this meant that its lord was a powerful individual who presided over an institution that could try all criminal offences, including the four pleas of the crown, under its own steam with only treason and witchcraft falling outside its judicial remit.⁷⁵ Whether they did or not by the early seventeenth century is less clear – the mid-seventeenth century regality court of nearby Falkirk never used the death penalty.⁷⁶ Haddingtonshire’s lack of franchise court records for the period between 1610 and 1640 precludes any meaningful analysis of the distribution of cases between these courts and the sheriff court; but such an avenue of investigation is long overdue for seventeenth century Scotland where such comparable records do exist.

Theoretically, baron court business fell into three categories – civil, criminal and ‘the weil of the tenantis and the keeping of gude nichtburheid’.⁷⁷ As a result, the baron was responsible for maintaining order, or for acting as the agent of other jurisdictions – such as the sheriff – through the serving of writs or seizing offenders in order to do so. By the early seventeenth century, most cases of theft and slaughter were being taken to the sheriff courts. Evidence from Stirlingshire suggests main points of business for the barons were cases of petty debt and other possessory actions alongside the enforcement of feudal obligations, such as the payment of rent or the regulation of farming practices.⁷⁸ Such was the case in Cockburnspath, Berwickshire, in the late 1630s and

⁷⁴ Goodare, *Government of Scotland*, 181.

⁷⁵ Davies, ‘Courts and the Scottish Legal System’, 141, 143.

⁷⁶ Goodare, *Government of Scotland*, 185. See also D. M. Hunter (ed.), *The Court Book of the Barony and Regality of Falkirk and Callendar, I: 1638-1656* (Stair Society, Vol. 38, 1991).

⁷⁷ Goodare, *Government of Scotland*, 181.

⁷⁸ Goodare, *Government of Scotland*, 181; Davies, ‘Courts and the Scottish Legal System’, 142.

1640s, where cases of violence and improper behaviour were outnumbered by such regulation of obligations, practices and tenantry.⁷⁹ Cockburnspath was a burgh of barony, so its jurisdiction extended to the regulation of local trade. Court officials could include specialist officials such as an ale-taster or a herdsman. As a result, residents of these settlements would have been more intensely governed than those living in the countryside – of Luffness, for example – simply because of the settlement’s local trading rights.⁸⁰

For tenants living outside the burghs of barony, the concern for ‘guid nichtburheid’, speaking ill of neighbours or not keeping control of animals could have landed them before their baron court, or perhaps another court within the barony – the birlaw court – for which records are notoriously scant. Evidence from the barony of Stitchill, near Kelso, records the election of ‘Bourlawmen to desyde all matters questionable and debatable among neybouris’ in an impartial manner as officials of the baron.⁸¹ The birlawmen were effectively judges as well as clerks and officers of the court and drew their authority from the fact that they were ordinary members of the community. This is one of the few examples of popular participation in early modern Scottish government: participation in the legal system through elected office-holding or sitting on the jury of an assize was limited to those men with property.⁸² As such, they adjudicated on neighbourly disputes but with limited clout – evidence from Falkirk suggests that they could not impose fines of £10 without the help of the regality court.⁸³

There is evidence that the birlaw court of Yester and Gifford continued to meet throughout the eighteenth century, passing acts including those ‘anent Horsetethering’, ‘anent Pasturage of Goods’ and ‘anent Breaking of Ground’, as well as adjudicating petty debts and disputes between neighbours.⁸⁴ There seems to have been a focus on ‘guid nichtburheid’ in the business dealt with by the court, with acts passed to fine those ‘whosoever complains upon his neighbour wrongously’ and to limit complaints of corn being eaten by a neighbour’s cattle to those concerning ‘more than one halfpeck of

⁷⁹ Baron court book of Cockburnspath, NRS, RH15/1, ff. 1-8.

⁸⁰ Goodare, *Government of Scotland*, 182-3. See also I. D. Whyte, ‘The Function and Social Structure of the Scottish Burghs of Barony in the Seventeenth and Eighteenth Centuries’, in A. Maćzak and C. Smout (eds.), *Gründung und Bedeutung kleinerer Städte in nördlichen Europa der frühen Neuzeit* (Wiesbaden, 1991), 11-30.

⁸¹ Davies, ‘Courts and the Scottish Legal System’, 143.

⁸² Goodare, *Government of Scotland*, 251-2.

⁸³ Goodare, *Government of Scotland*, 252, 183.

⁸⁴ Hay, ‘Boorlaw Book’, 10-11.

Corn'.⁸⁵ Its powers remained limited into the eighteenth century. Those who did not appear before the birlaw men having been lawfully summoned were 'liable to pay for the first fault Ten shillings scots, for the second Twenty shillings and thereafter be Complained of to the Bailee as Contemners and disobedient to the Authority'. Those who stopped the birlaw officer from seizing goods (poinding) for non-payment of a fine were liable to pay five pounds Scots.⁸⁶ No records survive for East Lothian before 1700, but the book that has survived for Yester suggests that the court met thrice yearly to sentence transgressors of the 37 acts that constituted 'the boor law'. Along with financial penalties, confinement in the joughs (situated 'beneath the School') was used on some as a punishment. The Marquis of Tweeddale notes that 'the last person so confined, managed to light the damp straw bedding and died of suffocation'.⁸⁷ The joughs or branks are described by Margo Todd as the equivalent of the English scold's bridle – a method of punishment examined further in the next chapter.⁸⁸ This small court run by local men was harnessing the power of display and humiliation in its governing of the village and its neighbourly relations.

As holders of such officially-sanctioned authority, that very limited franchise court records survive for East Lothian before the latter half of the seventeenth century is a challenge. But evidence from Cockburnspath and the records of other courts from this period suggest that burghs of barony were active jurisdictions over elements of 'guid nichtburheid'. There were also a supporting resource for other courts, such as the kirk sessions. Other places in East Lothian are recorded to have held courts towards the end of the seventeenth century including the barony of Samuelston, a small settlement located southwest of Haddington along the River Tyne.⁸⁹ Between 1610 and 1640, cases from Samuelston involving theft and wounding were heard routinely in Haddington sheriff court.⁹⁰ It is reasonable to expect these cases to come before the sheriff rather than a baron, but these lands definitely had an owner who possessed the accompanying jurisdiction. Susanna Sinclair, Lady Samuelston is referenced in the witchcraft case of

⁸⁵ Hay, 'Boorlaw Book', 11, 12.

⁸⁶ Hay, 'Boorlaw Book', 12.

⁸⁷ Hay, 'Boorlaw Book', 16, 10.

⁸⁸ Todd, *Culture of Protestantism*, 142.

⁸⁹ *Registrum Magni Sigilli*, 841, 1919.

⁹⁰ See the case of John Lindsay, convicted of theft on 21 November 1625, NRS, SC40/7/14, f. 78; and the case of George Knox, convicted of wounding on 7 July 1628, NRS, SC40/7/14, f. 212.

Alexander Hunter before the sheriff court on 30 April 1629 as having consulted him in an attempt ‘to dispatche’ her husband. Only shortly after this did he depart this life.⁹¹

No records have survived at all from East Lothian’s only regality – Tynninghame. But that is not to say that it was not operating between 1610 and 1640. It will be shown in the next chapter how the surviving Tynninghame kirk session minutes show that the Lauders of Bass were very much part of local governance in the parish before 1641. Although no evidence survives of a regality court having been in operation during this period, some late seventeenth-century records from the ‘baron court of Tynninghame’ have survived.⁹² This may have, in fact, been the regality court.

The court of session and court of justiciary were at the pinnacle of the court system in early modern Scotland.⁹³ Until 1709, indictments before the high court were normally made on the basis of ‘dittays’ collected from local sheriffs who had been requested to delate anyone suspected of certain, pre-listed serious crimes. This ‘porteous roll’ was then sent to Edinburgh, leaving the sheriff responsible for summoning those on it to appear before the high court there. Although there were a few earlier circuit courts, (notably in 1628-9 under the new justice general, the earl of Mentieth) it was not really until after 1672 that summons were issued for individuals to appear before the next local circuit.⁹⁴ When the accused did appear, they were referred to as the ‘panell’ and if their case was admitted (and a guilty plea not entered) they were put on trial before an assize of fifteen men. The Lord Advocate prosecuted and witnesses were called under the pain of being fined.⁹⁵

In Haddington, this trial process can be seen in cases tried before the sheriff and burgh courts under commission from the privy council and prosecuted by a procurator fiscal. In order to hold a criminal trial in the localities to, say, prosecute a witch, a petition had to be taken to the privy council for a commission of justiciary, which would be granted to a minimum of three lairds or people of equivalent status – as we have

⁹¹ NRS, SC40/7/18, f. 5. In the dittay presented at the trial, Susanna Sinclair is also said to have consulted with Hunter in an attempt to murder her brother – none other than Sir John Sinclair of Hermanston, another baron. Pencaitland was erected as a burgh of barony under Sinclair of Hermanston on 20 April 1505. See Pryde, *Burghs*, 55.

⁹² Proceedings of the baron court of Tynninghame, NRS, RH15/39/208, 1684-1691 (4 items).

⁹³ Goodare, *Government of Scotland*, 163; Davies, ‘Courts and the Scottish Legal System’, 151.

⁹⁴ Goodare, *Government of Scotland*, 198.

⁹⁵ It should be mentioned that to be a member of an assize or a witness in the sheriff court, you had to have property. See Goodare, *Government of Scotland*, 252.

previously seen.⁹⁶ Murder, witchcraft, bestiality and robbery were all tried in local justice courts between 1610 and 1640 and, as with the high court, ‘acquittal was rare and mercy unheard of’ with maiming, death, banishment and burning all at the court’s disposal.⁹⁷

Although the central commissary court was also based in Edinburgh and regulated by the court of session, around 20 local commissary courts existed after 1564. There was no such circuit for Haddingtonshire. Cases from the county were heard in Edinburgh at first instance jurisdiction and are therefore scattered amongst other business, including appeals from the commissary circuit courts. At this time, the commissaries were re-launched as secular bodies, although their origins lay in the pre-Reformation church courts. Their responsibilities regarding marriage meant that they entwined with ecclesiastical responsibility, remaining a hybrid vehicle for government by church and state although without any direct church control via the general assembly.⁹⁸

References to the commissary court from Haddingtonshire between 1610 and 1640 mostly come from local ecclesiastical sources. On 17 March 1616, Isobel Napier protested at the reading of the banns between John Gilpatrick and Magdalen Grand, saying that John had previously made her a promise of marriage and that she had borne a child to him. After consulting with the presbytery, the session halted the banns for 40 days to allow Isobel to present her case before the commissary court at Edinburgh. She never did this, so on 19 May 1616 the banns continued uninterrupted.⁹⁹ This situation was seen again on 21 June 1618, when the banns of Robert Hay and Bessie Richardson continued ‘because the woman quha impedit the proclamation of thair bands and the said Robert Hay wer agreit, the fortie dayis also quhilk were given hir to persew him befor the comissaris being now expyrit’.¹⁰⁰

The commissary court was used by the Tynninghame session in order to help solve family disputes – albeit permanently through the threat of formal separation. On 3 January 1630, ‘James Anderson [was] callit on and accusit for not adhering to his wyff and reporting to hir’. Anderson testified that ‘he did not desert hir nether was of mynd

⁹⁶ Goodare, *Government of Scotland*, 195.

⁹⁷ Davies, ‘Courts and the Scottish Legal System’, 149.

⁹⁸ Goodare, *Government of Scotland*, 202; For the commissary courts and divorce during the 16th century see Green, ‘Court of the Commissaries of Edinburgh’. English church courts retained extensive matrimonial powers. See Ingram, *Church Courts*, esp. chapters 5 and 6.

⁹⁹ NRS, CH2/359/1, f. 5.

¹⁰⁰ NRS, CH2/359/1, f. 20. There are no records of similar cases being heard by the Edinburgh commissaries in a sample folio from the register of decreets, 10 September 1617 – 18 March 1620, NRS, CC8/2/47; nor in a comparable folio of decreets from the Lanark circuit, 13 Apr 1629 – 2 Apr 1632, NRS, CC14/2/1. Similarly, no such cases appear in the Edinburgh processes from 1621, NRS, CC8/4/1.

to do so' but 'that hir sister being in the hous with hir with quhom he cult not never agre was the caus of his strangeness to hir'. In response to this, 'the session assures him that if he did not amend they wald assist the woman to intend process against him befor the comissaris' in Edinburgh.¹⁰¹ It is a case that is examined further in chapter four. Desertion was one of the few acceptable grounds for divorce and, as such, the commissary courts were an occasional member of the local web of jurisdiction and authority within East Lothian due to the courts' concerns with morals and family life.

Although not from East Lothian, a case that appeared before the Edinburgh commissaries during 1621 illustrates the role that this court played in such a situation. On 21 April 1621, the commissaries heard a case brought to them by Janet Millar, daughter of a skinner burghess from Ayrshire, against her husband John Mitchell who had not only deserted her but who was alleged to have already been married to one Marie Hill when then were wed over two years previously. In setting out to ascertain the facts, the commissaries called a ream of local witnesses, including the parish minister and local bailie, before them to give their accounts of the marriage between Millar and Mitchell and Mitchell's living arrangements. The outcome of this particular case is unknown, but at least two of the witnesses who appeared on 21 April deponed that Mitchell 'cohabittes daylie with Marie Hill, [she] peacabillie keping howss with him as mariet folks'.¹⁰² In cases such as this, the commissaries played a key role in the lives of ordinary people – not just those involved in the immediate case before them, but their neighbours and acquaintances who were called to give evidence in Edinburgh.

This was an inquisitorial role that characterised the post-Reformation church courts in Scotland more generally. Church courts existed in Scotland before the Reformation with the few surviving records suggesting their business was largely devoted to testaments, contracts, debts and property disputes.¹⁰³ *The First Book of Discipline* from 1561 proclaimed that 'no Commonwealth can flourish or long indure without good lawes and sharpe execution of the same, so neither can the Kirk of God be brought to purity neither yet be retained in the same without the order of Ecclesiastical Discipline'.¹⁰⁴ The first Reformed kirk sessions were established shortly afterwards in order to facilitate this, consisting of a minister and a supporting group of local lay elders,

¹⁰¹ NRS, CH2/359/1, f. 64.

¹⁰² NRS, CC8/4/1.

¹⁰³ Davies, 'Courts and the Scottish Legal System', 43-4.

¹⁰⁴ *FBD*, ed. Cameron, 165.

as well as deacons with responsibility for administering the kirk's monetary affairs at grass-roots level within the parish.¹⁰⁵

After the first few sessions were established, it became necessary to define these responsibilities in terms of powers. This was first done by statute in 1567, which codified the church's jurisdiction in three terms: firstly, to preach the word of God; secondly, to administer the sacraments and thirdly to oversee the 'correctioun of maneris'.¹⁰⁶ This vague third strand of authority was not clarified further, and so in a certain sense individual sessions gradually developed their own style of authority when it came to morals and manners. Meetings varied in regularity and content and it is easy to appreciate the potential for individual ministers with strong disciplinary beliefs and oratory skills to wield influence over a session and its style of judicial authority.

Peter Hately Waddell has recognised this to be the case for Tynninghame, under the long ministry of John Lauder.¹⁰⁷ The North Berwick session provides an illustrative further example. On Tuesday 4 June 1611 a 'heid session' was held.¹⁰⁸ Aside from a list of absentees, no further details of this extraordinary meeting were minuted – and no other session is recorded to have held their own equivalent of the sheriff and burgh court head courts. It was also a singular occurrence with no further head sessions recorded to have been held between this date and when minutes cease in 1616. It is, however, suggestive of how this session was organising itself and the role it perceived for itself at local level. If the head courts held by the sheriff courts were meant to show the strength of rural society, perhaps this head session meant to claim the same sort of authority within North Berwick society but from a distinctly ecclesiastical perspective. It is interesting to note that the North Berwick session was also one of only two, alongside the Prestonpans session, that routinely imprisoned people in the steeple of its church for displays of disobedience and the non-payment of fines. On Sunday 22 September 1611, the session passed an ordinance 'concerning those that ar convict of prophaning the sabboth day', ordering that 'quhen they ar convict that instantlie they salbe committit to the steple until ther penaltie be payit and such as hes not to pay they salbe utherwayis punishit as to remain in the steple sa long as the session think expedient'.¹⁰⁹

¹⁰⁵ In reality, the divisions between these two offices could well have been blurred. See John McCallum, *Reforming the Scottish Parish: the Reformation in Fife, 1560-1640* (Farnham, 2010), 158-160.

¹⁰⁶ Goodare, *State and Society*, 181.

¹⁰⁷ Waddell, *Kirk Chronicle*, 15-22.

¹⁰⁸ NRS, OPR 713/1, f. 105.

¹⁰⁹ NRS, OPR 713/1, f. 109.

‘Sa long as the session think expedient’ was employed on 27 November 1614, when ‘Alexander Henryson accusit for revyling the session convict wes ordainit to be imprisonnit four nychts and four dayis in the steple and to have onlie bread and watter to fead upon in that tyme’.¹¹⁰ Between 1610 and 1616 this was an active session in a parish with an urban and landward population that not only prosecuted sabbath breach, fornication and adultery but instances of charming, violence, slander and improper household governance. It also used imprisonment in order to assert and enable its authority, even for sabbath breach. That it organised itself in such a way as to hold a head court is perhaps not surprising.

Provision of preaching and the administering of the sacraments presented numerous challenges to the ministry. This was still true of East Lothian after 1610, at a time when the Reformation was well-established and the kirk had worked to overcome the ministerial shortages that had plagued it towards the end of the sixteenth century. On 20 September 1629 the kirk session of Haddington St Mary’s was ‘held in the tollbooth of Haddington by Mr James Flemming, minister at Bothanes directed be the presbitrie to that effect because of the want of ane actuall minister at Hadingtonne, being there present with him Mr James Cockburn provest’.¹¹¹ It is an example of cross-court co-operation and the shared use of public space being used to mitigate the disciplinary difficulties arising from lack of a minister.

Issues regarding the minister’s capabilities were not new in Haddington. At the visitation by the presbytery recorded on 11 July 1621, it was reported that parishioners were largely content but that there were concerns regarding the lack of preaching on some Sundays and Tuesdays due to James Carmichael’s old age and ill health.¹¹² The parish of Dirleton provides a more extreme example. On 18 April 1638, the brethren visited the parish at the written request of its parishioners. In this supplication delivered on 4 March 1638, the people of Dirleton had called for their minister, Mr John Trotter, to be deprived of his post, citing that he had not only been a preaching deacon but that there was an established lack of regular preaching, baptisms, marriages and sermons – all of which was ‘contrair to the politie established in the first and second book of

¹¹⁰ NRS, OPR713/1, f. 144.

¹¹¹ Haddington St Mary’s kirk session minutes, NRS, CH2/799/1, f. 306.

¹¹² NRS, CH2/185/3, f. 150.

discipline'.¹¹³ Judging by the date, it is likely that Trotter's real offence may have been to be against the National Covenant – seemingly deemed unacceptable by many of his congregation.

In North Berwick, the installing of Michael Gilbert as minister was met with venomous opposition from the parish. At the scheduled visitation by the brethren of the presbytery on 4 July 1621, it was 'reported with uniform consent in name of the whole people that thei ware not content with Michael Gilbert and that universallie the people had no lyking of him and thaucht him not reit for that place'.¹¹⁴ With the backing of the archbishop of St Andrews, Gilbert remained minister there for the next six years. But he sealed his fate at the visitation of the brethren on 13 April 1627 when he refused to preach to them, as was requested. Instead, he subjected them to 'sundrie uther unreverend and clamorous speiches', thus giving the presbytery apt 'observation of his violent and immodest railing'. The same day 'the presbiterie seing the so urgent a necessitie of the supplie of that kirk of North Berwick' was 'willing to settle Mr Thomas Hogg' with immediate effect.¹¹⁵ Finding good ministers was not straightforward – parishioners had opinions that counted.

Like any organisation, the Kirk experienced challenges when its representatives (the parish ministers) were not well-liked by those they served, be it because of belief or personality. By the end of the 1630s, the fog of war was adding to the Kirk's challenges. The ministers who were happily settled and accepted in their parishes were seconded to military camps for weeks at a time, leaving their brethren from neighbouring parishes to cover their preaching and sacramental responsibilities at home. This was overseen by the presbytery. On 19 August 1640 the brethren put measures in place to cover the upcoming fast. With 'Mr Jhone Maghe attending the camp' it was ordained that 'Mr Thomas Tyrnbull to goe thair [Dirleton] and keep the fast and ordains Mr Robert Brown to goe to Moram and keep the fast thair and Mr Jhone Courtrie to goe and keep the fast at Bolltoun'.¹¹⁶ John McGhie had been attending the camp for several weeks. On 9 August 1640, John Lauder minister of Tynninghame recorded that 'being at the camp I taucht at Lantowne in the fields to the regiment at a publick fast befor noon and

¹¹³ NRS, CH2/185/4, ff. 111-113. Serious doubts about his character were also raised, with allegations of drinking, gaming and smoking tobacco and allowing his servants to work on the sabbath, as well as the preaching of incorrect doctrine and allegations of Arminianism.

¹¹⁴ NRS, CH2/185/3, f. 149.

¹¹⁵ NRS, CH2/185/4, ff. 6-7.

¹¹⁶ NRS, CH2/185/5, f. 60.

Mr Johne Magyhie minister at Dirletowne efter noon'. He continues: 'upon the fyfteine day of August being Setterday I came fra the camp at Chowsley in the Mers being relevit be Mr Johne Daliell quha came thair being sent be the presbiterie'.¹¹⁷

These accommodations by the Haddington brethren show how they stretched available resources to try to ensure the upholding of preaching and administration of the sacraments both within their bounds and beyond in conjunction with their counterparts at Dunbar. Furthermore, they show how arranging suitable preaching cover, baptisms and burials was challenge enough, let alone policing and administering kirk discipline. Administering kirk discipline was, after preaching the word of God and administering the sacraments, the third strand of the Reformed religion. *The First Book of Discipline* stated that

drunkenness, excesse be it in apparel, or be it in eating and drinking, fornication, oppressing of the poore by exactions, deceiving of them in buying and selling by wrang met and measure, wanton words and licentious living tending to slander, doe openly appertaine to the kirk of God to punish them, as God's word commands.¹¹⁸

The focus in 1560 was on 'reproving and correcting of the faults, which the civill sword either doth neglect or not punish'.¹¹⁹ With this laid down as above, the surviving court records from East Lothian – not just its kirk sessions – are the best sources for exploring the nature of session business during the early decades of the seventeenth century.

When it came to discipline, these sessions mainly concerned themselves with four categories of offence: sexual offences, from suspicious relationships between unmarried men and women through to incest; sabbath breach, including guising and other illicit festive activities; unseemly breaches of the peace such as drunkenness, cursing and swearing; and slander, including flyting and scolding. There was some overlap – guising could involve drunkenness, and scolding would often involve cursing. Other offences, not so numerous but nonetheless serious enough to have their own categories, included: assault and violence; charming and witchcraft; and those concerning family, parentage and household – such as servants or children misbehaving.¹²⁰ The lines between kirk and

¹¹⁷ NRS, CH2/359/1, f. 114.

¹¹⁸ *FBD*, ed. Cameron, 166-7.

¹¹⁹ *FBD*, ed. Cameron, 165.

¹²⁰ These categories are an amended version for East Lothian between 1610 and 1640 of the five used by Davies for Stirlingshire. Whilst Davies' are useful to a certain extent, the nature of business in East Lothian during this time means that cases which he would of classed in 'miscellaneous', such as charming

civil authority had been somewhat blurred in practice since publication of *The First Book of Discipline*, when it was stated that ‘blasphemie, adulterie, murder, perjurie and other crimes capitall, worthy of death, ought not properly to fall under censure of the kirk, but be taken away by the civill sword’.¹²¹

As prescribed in 1560, East Lothian kirk sessions did find a sizeable proportion of their time taken up by collecting and administering poor relief to their parish. As evidenced throughout the session minutes, this remained the case after the creation of the justices of the peace, even within the burgh of Haddington. It was a responsibility that, out of pragmatism, sometimes clouded a punitive take on the Calvinist reasoning behind administering godly discipline. Whilst not widespread and actively prohibited by certain sessions, instances of monetary payments being accepted in lieu of public penance due to the ‘great need’ of the parish poor certainly happened in parishes during this period. On 9 February 1617, George Chalmers appeared before the Tynninghame kirk session and confessed his fornication with Agnes Bryson, stating

that he was readdie to satisfie the kirk maist willinglie desiring in the meine tyme that he might sitt bot ane Sondag [rather than the usual three] on the pillar for quhilk caus he sald give the greater penaltie to the pure, the minister was lothe to grant heirunto seing he affirmed that he never did it to any except to ane man befor and that it was ane evill perpartive seing utheris nicht desyre lyke, yit being informit of the great necessitie of many pure in the parosche and seing the said George verie penitent in all appearance the elderis all present consenting heirto, was enforsit to resave him that day and ordainit him presentle to go to the pillar and presentlie to pay thre lib.¹²²

Luckily for George Chalmers, although perhaps not his purse, John Lauder was convinced by the pragmatism of his elders. He seems to have satisfied the Calvinist need for actual penitence without having to be publicly punished. This attention to discipline alongside preaching the word of God and administering the sacraments, fulfils the power remit set down in the statute of 1567 – at least on paper.¹²³ In reality the role of the kirk sessions in local governance extended further and into the realms of dispute resolution and relief with the help of the next tiers of jurisdiction – the presbytery and synod.

and witchcraft, are numerous enough to be categorised individually. Davies, ‘Courts and the Scottish Legal System’, 124-7.

¹²¹ *FBD*, ed. Cameron, 165-6.

¹²² NRS, CH2/359/1, f. 10. Chalmers was a servant to the laird of Scoughall.

¹²³ *APS*, iii, 24, c.12.

Presbyteries were not established until the 1580s, with the first plans being drawn up in 1581 and statutory recognition obtained in 1592. By 1638 there were 66 presbyteries and 10 synods operating between the kirk sessions and general assembly.¹²⁴ The brethren of the presbytery of Haddington was made up of ministers from its parishes, one of whom was elected moderator for a set period of time (usually annually) and another as clerk. The clerk was responsible for bookkeeping – both literally and through minute-taking at meetings, usually held weekly on Thursdays.

The presbytery was responsible for its kirk sessions, but it was a two-way relationship. The brethren organised and carried out parish inspections, vetted and appointed ministers, oversaw manpower issues and issued doctrinal and disciplinary guidance; but they also dealt with complaints and the verification of decision making processes that had taken place at kirk session level – such as those regarding discipline. The presbytery also held an important governmental function as an administrator: issuing news and proclamations, conscripting men for war and informing parishioners of national events (excommunication of bishops, for example). The general assembly is considered to have been a part of Scottish central government: evidence of this function can be extended by the presbyteries organising the signing of the National Covenant after the meeting of 1638. Alan MacDonald has argued that the general assembly saw presbyteries as ‘the natural bodies of delegation’ from 1589, not the synods. He cites the evidence that presbyteries were directly sending commissioners to attend the general assembly. Indeed, Haddington was sending its own commissioners from at least 1588 and can be seen to have done so to Glasgow in 1638.¹²⁵

By the late 1580s, the presbyteries of Stirling and Dalkeith had already taken on their roles as courts for the hearing of moral discipline cases. By comparison Haddington was somewhat late in doing this, but records show that this role as disciplinarian was firmly established by 1610, both as a court of first instance and one of referral upwards from kirk sessions.¹²⁶ For Stirlingshire, Davies has commented how it was rare for the presbytery to impose its own sentence in a case referred to it by a kirk session.¹²⁷ This is

¹²⁴ Davies, ‘Courts and the Scottish Legal System’, 123.

¹²⁵ Alan R. MacDonald, *The Jacobean Kirk: Sovereignty, Polity and Liturgy, 1567-1625* (Ashgate, 1998), 38; *The Records of the Synod of Lothian and Tweeddale, 1589-96, 1640-49*, ed. J. Kirk (Stair Society, Vol. 30, 1977); Minutes from the synod of Lothian and Tweeddale, 1589-1596, NRS, CH2/252/1; 1640-1648, NRS, CH2/252/2.

¹²⁶ MacDonald, *Jacobean Kirk*, 38.

¹²⁷ Davies, ‘Courts and the Scottish Legal System’, 129.

also true for referrals in Haddingtonshire. For example, adultery cases were always passed upwards to the presbytery as a matter of routine, with kirk sessions ordering adulterers to appear before the brethren to confess their fault at the earliest opportunity, usually at the next scheduled presbytery meeting. In these cases, instead of passing sentence the brethren opted to refer downwards again, for the session to administer its own sanctions against the perpetrators. As such, a two-way working judicial relationship between presbytery and session with a form of shared authority was cemented.

Records also show that some discipline cases were referred upwards from Haddington presbytery to its synod, although this was a rare occurrence. Such was the case of John Ballantyne who, on 25 January 1637 before the presbytery, denied committing adultery with Margaret Preston.¹²⁸ Over the course of the following three years, Ballantyne successfully evaded the presbytery, sending in letters of excuse for his absences and continuing in his denial. On 30 September 1640, 'Henry Aikenheid declared that he had summoned Jhone Bannatyne to compeer before the synod for the slander of adultery', but this was not a light undertaking and it was suggested that two or three of the brethren should go to speak to him, to see 'if he wold confess or purg himself befor it went to the said synod'.¹²⁹ What this suggests is that Haddington at least used the synod of Lothian and Tweeddale as a forum to gain sanction, opinion and approval. If from the 1580s presbyteries overtook the synods in importance in the general assembly's eyes, it could be argued that they were important from the bottom-up as a link between presbytery (and therefore local ministers and sessions) and the governing body of the kirk.

These were the courts that were operating in East Lothian between 1610 and 1640. Some were local bodies governed by local men – quite often the same local men. Others were central courts with far-reaching powers. Looking at the commissions of justiciary that were granted to Haddingtonshire men has given a good indication of the web of justice that was in operation during this period. Haddingtonshire had an interlinked network of courts and officials that regulated the behaviour and relationships of its ordinary men and women. Social control was experienced from a combination of official sources rather than from the local kirk sessions and Haddington presbytery operating in isolation.

¹²⁸ NRS, CH2/185/4, f. 97.

¹²⁹ NRS, CH2/185/5, f. 67.

II. A Web of Justice in Operation

The business of the kirk session of Prestonpans provides a good example of the sort of reciprocal relationship that existed between ecclesiastical authorities and the civil magistrates in East Lothian.¹³⁰ On 1 March 1610 ‘the magistratis and session considering the great abuse of this parishe be the retaining and resetting of straingers of suspect lyfe without any testificate of their lyfs befor’ ordered the setting up of a systematic scale of fines against ‘quhatsoever persone in this bounds [who] sall tak in service or let hous or houssis to any extraneous persons without a qualefyit testimonial productit of their honest lyfis’. Fines were set according to ability to pay, with those ‘of a great rank’ paying ‘XL shillingis or mair according to their rank and discretion of the session and magistratis’.¹³¹

The civil magistrates of Prestonpans had open involvement in ensuring the establishment of a true godly society within their parish and ensuring the spiritual welfare of those under their jurisdiction. On 22 March 1610, it was proclaimed that ‘because of the great ignorance of many at the examination preceeding the communion and negligence of many to report...it is ordainit be the magistratis with consent of the session that everie householder sall be answerabill for the hail hous’, with individuals liable for a fine – again ‘according to ranks’.¹³² Here the civil authorities took the lead in an attempt to uphold key Reformation principles, the true administration of the sacraments and understanding imparted through the hearing of the word – all of which is recorded in an average session meeting.

Futhermore, a joint approach between session and civil authorities in Prestonpans was apparent in the control of bad behaviour. On 13 September 1610 the session ‘ordains Issobell and Jeane Lowrie to be punishit (after dew probabtion) in body and purs, civillie and spiritually for sclanderling of Marion Tait’.¹³³ In North Berwick – a larger parish and royal burgh with urban and landward populations – on 7 April 1612,

¹³⁰ John Martine describes Prestonpans in 1894 as: ‘The parish in extent is one of the smallest in Scotland. It was separated from Tranent in 1606. It contains about 760 acres, and is about two and a half miles long, and one broad.’ John Martine, *Reminiscences and Notices of the Parishes of the County of Haddingtonshire* (East Lothian, 1999 edition), 177.

¹³¹ Prestonpans kirk session register, NRS, OPR 718/1, f. 63.

¹³² NRS, OPR 718/1, ff. 63-4.

¹³³ NRS, OPR 718/1, f. 69.

Marion Duncan appeared before the session there to report that she had been attacked.

She

accusit James Ross to have prassit to tak his will of hir the 24 March cuming fra the mill to North Berwick and being refusit be hir he pullit hir plads fra hir, cast hir down to pull hir legs syndrie with his hands and she turning upoun hir face toward the ground, he punisit hir with his kneis and bruisit hir bowels syds and leggis that she wes forcit to keip bed for aucht dayis thereft and haltit upoun ane of hir legs.¹³⁴

James Ross was present to answer the charges and ‘confessit that he wes mirrie efter drink, took hir plads fra hir, cust hir down bot molestit hir na farther’.¹³⁵ Based on Marion’s testimony this was a serious assault, if not an attempted rape. The session adjourned the case until the following day ‘because Sir Jhone Home within quhose jurisdiction the said James remains promisit to tak order with the wrong done efter tryell had there anent’.¹³⁶

Ross eventually satisfied at the hands of the session, but the session’s relationship with Home, as ‘the gudeman of North Berwick’, was ongoing. Eyemouth was erected as a burgh of barony under Home of Wedderburn in the late 1590s, although figure 1.8 shows how this was some distance away from North Berwick.¹³⁷ North Berwick’s session minutes do not afford their ‘gudeman’ with any other discernable characteristics, but there was a barony of North Berwick attributed to Sir John Home.¹³⁸ It is likely that this was the ‘gudeman of North Berwick’ – the local landowner of a barony with a functioning baron court – rather than Home of Wedderburn.

On 3 January 1613, ‘Alexander Kennidis peynaltie was ordanit to be put in the box and confiscate to the poor because he being advertisit be William Fouller to cum and satisfie the tua lords dayis last bypast and promising to the baron to do the samin, he refusit and cam not’.¹³⁹ In rural areas of parishes where there were functioning franchise courts of some description, or at least a functioning baron or landlord, these could prove important resources for the kirk session to draw upon in order to enforce and enable their own jurisdiction to function as part of an effective network.

¹³⁴ North Berwick kirk session register, NRS, OPR 713/1, f. 119.

¹³⁵ NRS, OPR 713/1, f. 119.

¹³⁶ NRS, OPR 713/1, f. 119.

¹³⁷ Pryde, *Burghs*, 62.

¹³⁸ *Registrum Magni Sigilli*, 103.

¹³⁹ NRS, OPR 713/1, f. 129.

This is also true of small rural parishes where local franchise courts were often used to enforce church attendance and acceptable neighbourly behaviour, and to punish festivities such as guising and displays of disobedience before the session. This was a regular occurrence in Aberlady. On 23 September 1638, Helen Gottray was convicted by the kirk session there of cutting corn on the sabbath and sent to the bailie and magistrates of Ballencrieff (where she lived) to be punished.¹⁴⁰ On 16 April 1640, a male servant of Euphame Bairnfather's would not appear before the Aberlady session to answer charges of guising, so the case was referred to the baron so that order might be taken with him.¹⁴¹

Which secular authority Aberlady parishioners were referred to depended either on where they lived within the parish bounds, where their offence was reported to have taken place or what that offence was. As a result, the kirk session fostered relationships with a variety of local landowners and notables, whom they called upon in times of need. On 7 October 1631, James Elphistone stood before the session accused of 'prophaning of the sabbath day in scheiring corne', whereupon he 'gave ruid and proud words and accusit Johne Baptie who delatit him to the sessione'. The elders continued the case to the following day, 'that he be more sober' and ordered that 'the laird of Gosfoord be acquaintit with his misbehaviour in that place'.¹⁴² In Yester, Patrick Kemp and Beatrix Carfree appeared before the kirk session on 3 August 1628, having been caught scolding on the sabbath. They were referred to the 'Lordis court' so order could be taken with them. On 21 September 1628 they appeared before the session again and this is where one of George Butler's offices is revealed. The session minutes note that 'by the ordinance of the bailyie Mr George Butler in his court', Kemp and Carfree were cautioned for their future behaviour.¹⁴³ Butler must have been presiding over one of Sir Patrick Hepburn's baron courts in his absence.

In Cockburnspath, the baron court not only heard cases of riot and violence – including those brought by individuals seeking redress – but passed ordinances with the kirk session to regulate popular behaviour and relationships. As a barony it was a relative newcomer, being erected as a burgh of barony on 15 October 1612 under the

¹⁴⁰ NRS, CH4/1, f. 32.

¹⁴¹ NRS, CH4/1, f. 52.

¹⁴² NRS, CH4/1, f. 6.

¹⁴³ NRS, CH2/377/1, ff.140-2.

Arnots.¹⁴⁴ Although in neighbouring Berwickshire, early surviving records from Cockburnspath baron court are illustrative of the co-operation that existed between it and the local session when it came to regulating popular behaviour – something that has been under-investigated for the east central lowlands. On 10 November 1645, the court passed measures to contain the plague, regulations on the laying of stones in the church yard and an ‘act anent pennie brydells’.¹⁴⁵ Christine Peters suggests that penny bridals were gatherings in celebration of newlyweds where ‘gifts of the guests provided almost all of the economic resources of the newly married couple’. Fear of such couples then becoming a burden on the parish motivated regulation of these events by the Kirk. In 1636 in Edinburgh, no guest was allowed to give more than 20 shillings and a maximum of 24 guests were allowed to attend. The Kirk recognised the impossibility of banning penny bridals altogether, so sought to curb their excesses ‘because such occasions were riotous’ in nature.¹⁴⁶ On 4 December 1645, six men appeared before the baron court of Cockburnspath

be their awin declaratioun having confest them selffis to have transgrest the said act be receaving off more then according to ten shillingis for the man and eight shillingis for the woman.¹⁴⁷

Each of the men were fined £5 and the court

thought mist fit and expedient that the forsaid act anent pennie brydells sould be ratified and approving and to be conforme to the kirk sessioun that is to say for ilk man brydell or brydells ten shillingis and for the woman the lyke and under prejudice of any punishment to be inflicted be the ecclesiasticall judge.¹⁴⁸

The court gave no reason why women were only allowed 8 s. under the previous Act, whilst men were allowed 10 s.. Nor is it minuted why this is then redefined as 10 s. each, divided equally between the sexes.¹⁴⁹ The ‘ecclesiasticall judge’ was presumably the minister, sitting with the elders on the session. In this instance, the baron court sought reinforcement from the kirk session, showing a desire to put up a united front. Fear of public disorder and economic burden led the two bodies to act together as regulators of

¹⁴⁴ Pryde, *Burghs*, 65.

¹⁴⁵ NRS, RH11/15/1, ff. 3-4.

¹⁴⁶ Peters, *Women in Early Modern England*, 30.

¹⁴⁷ NRS, RH11/15/1, f. 4.

¹⁴⁸ NRS, RH11/15/1, f. 4.

¹⁴⁹ The gendered division of fines is given full discussion in chapter 5, below.

personal relationships and popular festivity on the border between Haddingtonshire and Berwickshire.

As suggested for Aberlady, franchise courts could provide solutions in times of difficulty by working alongside local sessions to oversee and regulate personal relationships. On 26 April 1618 Marion Bruce, wife of Hugo Foster, was summoned by the minister of Tynninghame (John Lauder) to appear before the kirk session to answer ‘for stryking of George Foster on the sabbothe day preceeding and also for miscalling hir nichbouris and for hir misbehaviour to hir husband’.¹⁵⁰ It was a difficult case:

The minister and elderis considering quhat was best to be done in the said matter thocht gude that the minister with twa or thre of the elderis sald pass to hir and admonishe hir and exhort hir to amendement and to live in peace with hir husband and nichtbouris, the minister having often admonishit hir also before. This they thocht meitt to be done because she was in danger of going mad for she seimed to be besyd hir self and therfor thocht it not meitt as yit to enter in protest with hir nor handill hir according to the censures of the kirk.¹⁵¹

At the next meeting of the session on 3 May, the minister reported that he had ‘admonished Marion Bruce and that he culd bring hir to na amendement and that he had spokin to the Ladie anent hir quha promeisit shortlie to hald ane court that order nicht be takin with hir if she amendit not’.¹⁵² He was referring to Lady Bass of the Lauders of Bass – Sir Patrick Hepburn’s daughter, Isobel Hepburn. Tynninghame regality court was erected under the Lauder family on 6 August 1591.¹⁵³ Lauder was a common surname in the area at the time; it is not known if John Lauder the minister was related to George Lauder of Bass, the Lady’s husband.¹⁵⁴

Frank Bardgett has suggested that the establishment of the kirk sessions reinvigorated local government at parish level, but that this was at the expense of local franchise courts.¹⁵⁵ However, in Tynninghame the support of the local nobility and their institutions was important for the session to work effectively – although not to the extent of the accommodations that Michael Graham has identified for Anstruther Wester. In that case, the minister convened two separate sessions at various locations

¹⁵⁰ Minutes of the kirk session of Tynninghame, NRS, CH2/359/1, f. 19.

¹⁵¹ NRS, CH2/359/1, f. 19.

¹⁵² NRS, CH2/359/1, f. 19.

¹⁵³ Pryde, *Burghs*, 61.

¹⁵⁴ Hatley Waddell, *Old Kirk Chronicle*, 14-22.

¹⁵⁵ F. D. Bardgett, ‘The Monifieth Kirk Register’, *Records of the Scottish Church History Society*, 23 (1987-9), 175-195.

throughout the parish, which itself contained four tiny burghs within three separate baronies.¹⁵⁶

As with other East Lothian parishes, the Tynninghame session was certainly not operating in isolation, removed from other judicial bodies and the authority of individuals. Furthermore, parish boundaries did not correlate with those of personal estates. Thus, the Lauders of Bass held influence in Tynninghame, and by 1641 Sir Patrick Hepburn held lands and baron courts throughout the county. James Maxwell of Innerwick held the burghs of barony of Innerwick and Dirleton from 1631.¹⁵⁷ One was in Berwickshire, one in Haddingtonshire, thus necessitating two separate courts and a broad geographical reach to his personal influence. As jurisdictions overlapped and extended across the shire, so the court network and experience of authority at the hands of the courts became further entwined. The nature of landowning and the importance of status and power conferred through this in the form of franchise courts tied East Lothian kirk sessions with their neighbouring parishes. As the presbyteries of Haddington and Dunbar enjoyed close links, so these ties could extend across administrative county boundaries.

Between 1610 and 1640, individual cases of sabbath breach, disobedience, violence, slander and neighbourly disputes from Aberlady, Saltoun, Yester, Tynninghame and North Berwick were heard by both ecclesiastical and civil authorities.¹⁵⁸ Personal petitions alleging slander or violence that were brought before kirk sessions were also referred to the civil magistrate where the accusations were mutual and thought to warrant further trial. Such was the case on 29 January 1611 before the North Berwick session. On 27 January, Robert Baptie petitioned the North Berwick session to take action against Patrick Gylor for slandering his wife 'in calling her a hooer'. Two days later, the session concluded that it 'faind it bot ane mutuall flytting and referit it to the

¹⁵⁶ Graham, *Uses of Reform*, 125-9.

¹⁵⁷ Davies, 'Courts and the Scottish Legal System', 141; Pryde, *Burghs*, 68. Innerwick was licensed as a burgh of barony under James Maxwell on 22 May 1630. Dirleton was erected as a burgh of barony also under Maxwell on 4 June 1631.

¹⁵⁸ Further examples: the kirk session of Aberlady on 9 February 1640 against six individuals for disobedience before the session, NRS, CH2/4/1, f. 48; the kirk session of Saltoun on 4 October 1640 against five women for disobedience, NRS, CH2/322/1, f. 20; group action brought against the Sunday football players from Scoughall by the kirk session of Tynninghame on 6 June 1619, NRS, CH2/359/1, f. 27; case against Jean Kerr on 3 August 1628 before the kirk session of Yester for flytting, NRS, CH2/377/1, f. 140; case against Isobel King on 16 October 1614 before the kirk session of North Berwick for striking her father-in-law, NRS, OPR/713/1, f. 143.

civill magistrat' for further trial.¹⁵⁹ Unfortunately, records from the franchise courts mentioned and from North Berwick burgh court have not survived from the corresponding dates so it is not possible to trace these cases further. Survival rates from Haddington's secular courts are much better.

Unlike some of its neighbours, the Haddington authorities are conspicuous in their relative absence from routine referral of cases between the courts that met in the burgh for which records survive: kirk session, presbytery, burgh and sheriff. Records from the sheriff court and burgh court – the two most powerful secular authorities that met in Haddington tolbooth – have survived. Less conspicuous referral of cases between the kirk session and civil authorities in Haddington is suggestive of the workings of these authorities within a larger urban setting. A setting that not only had a sophisticated system of burgh governance and regulation in its burgh court and council, but was the centre for rural governance via the sheriff court and higher tier of kirk authority via the presbytery. This basic observation in the difference in procedure between the authorities operating in an urban centre and those from its immediate, more rural surrounds questions the homogenous nature of the early modern court system. It is illustrative of the importance of geography and the continued relevance of urban-rural distinctions in the experience of everyday life in early modern Scotland.

For any parish or burgh at this time, the pool from which to draw the individuals who administered authority – elders, bailies, barons, justices of the peace, shire commissioners, provosts and so on – was finite. The overlap of personnel between authorities is important when considering the administration of authority and the experience of authority at parish or county level. Studies of Aberdeen have highlighted such overlap, but what this meant for the experience of social control and the regulation of morals, manners and relationships between 1610 and 1640 across a lowland shire has not been examined in any detail to date.

On 5 November 1611, the North Berwick session met as normal for a Tuesday. A list of session elders present was minuted by the clerk, who noted 'absents from the session: Sir Jhone Home, Hew Baillie, Jhone Mure, Mr Robert Jhonstoun' who were 'in Hadingtoun at the justices of peace'.¹⁶⁰ These four men were not only elders but also justices of the peace for the county. Furthermore, it has been shown that Sir John was

¹⁵⁹ NRS, OPR/713/1, ff. 96-97.

¹⁶⁰ NRS, OPR 713/1, f. 112.

also a baron with a functioning authority based on his land – the following April he would promise to take order with James Ross for his attack on Marion Tait.¹⁶¹ Here was an individual with at least three sources of authority and power. Did this matter?

With evidence of such an overlap of personnel, perhaps it is not surprising to ask the same question from the opposing view – whether any distinction in the business that these courts dealt with was evident to the people who were using them or appearing before them. It has been seen how petitions of slander or violence brought to a kirk session were sometimes referred to the local magistrate for resolution. This could suggest one of two things: firstly, that should an individual wish to initiate a prosecution, it was not immediately clear which institution to approach; or, secondly, that even if it was clear to an individual but they favoured one particular institution out of personal choice or perhaps for a logistical reason, they could be confident that referral mechanisms in place (however informal) would work effectively to ensure due process for their complaint. There is also a third possibility, that defining these local courts as ‘institutions’ is a little grandiose. Evidence that shows the overlap of personnel between bodies and courts and the shared use of public spaces such as the tolbooth and market cross raises the question, ‘did parishioners even know what ‘institution’ they were dealing with, or appearing in?’¹⁶²

Alongside evidence of shared personnel lies evidence of shared purpose and overlap within the individual web of local ecclesiastical justice. Although kirk sessions occupied the bottom rung of the ladder of authority, there are instances in Haddingtonshire where parishioners were referred straight to the presbytery, or possibly took matters to the brethren independently in the first instance. In either case, the kirk session was being bypassed.

On 22 August 1632, Margaret Sandy and Richard Brown, parents of Margaret Brown from Bolton, appeared before the presbytery at Haddington ‘compleining of James Symsones servitor to George Browne that he had abused and striven to force the said Margaret Browne two severall tymes with great hurt done to hir bodie’.¹⁶³ The following week, ‘the bretherene finding the matter criminall desired the magistrates of Haddingtonne to commit the said James Sympsones to prison and take cautionne of

¹⁶¹ NRS, OPR 713/1, f. 119.

¹⁶² I am grateful to Michael Graham for this point. His answer is that we cannot be sure.

¹⁶³ NRS, CH2/185/4, f. 60.

George Browne' to appear before them again when called.¹⁶⁴ It is not possible to suggest that they took this action independently without the support of the kirk session because no corresponding records survive from Bolton. But the action of Brown's parents shows that there were matters deemed too serious to be considered at the most local of levels in the first or second instance. If they did not act independently, then this had been recognised by the Bolton session.

The fate of James Simpson is one of the few cases where a referral between the authorities based in Haddington is seen to have taken place. This occurred whilst George Brown was referred back to Bolton to make public repentance in sackcloth and pay a fine of £5 for not stopping the attack on Margaret – although this was not until 20 March 1633.¹⁶⁵ That punishments were meted out by the presbytery in conjunction with the kirk session was quite routine, especially in adultery cases. But the case of Margaret Brown serves to show that bypassing the session in the first instance, or referring up from it, did not necessarily remove the session from the judicial process entirely. As kirk sessions can be seen to routinely refer serious cases to the presbytery, so the presbytery routinely referred them downwards again for resolution.

III. Conclusion

These recorded interactions between East Lothian's secular and ecclesiastical authorities – interactions presided over by men, many of whom held positions throughout the legal system – are key advocates for the all-courts methodology that is deployed throughout this thesis. Haddingtonshire's kirk sessions and presbytery played pivotal roles in the social control of East Lothian's population, but they did so alongside local franchise courts, burgh courts and the sheriff court. Together, this network of authority oversaw public order and the maintenance of a godly society in rural parishes and urban centres. The men that formed this network personally oversaw the social control of these parish congregations. This was not the business of the kirk sessions and presbytery alone.

It is impossible to understand the way that Scotland's early modern court system worked by only studying one aspect of it. Alastair Mann has argued that focusing on one local jurisdiction at the expense of others is itself a false distinction. When Scotland

¹⁶⁴ NRS, CH2/185/4, f. 61. It is a case that is given full consideration in chapter 6, below.

¹⁶⁵ NRS, CH2/185/4, f. 66.

embarked on its Reformation in 1560, there was a three-fold aim at its central purpose: firstly, to correctly preach the word of God; secondly, to ensure the correct administration of the sacraments and thirdly to establish a 'godlie societie' in line with *The First Book of Discipline*. This would need further clarification, resulting in *The Second Book of Discipline*, yet Scotland became a society seeking godliness. It was that 'godlie societie' that allowed the pursuit and prosecution of a range of newly-defined crimes, from certain behavioural offences through to witchcraft. In light of this, Mann cites the dealings of local sheriffs and bailies in regard to horrible oaths and heresy as evidence of the potential to create false judicial divisions.¹⁶⁶

J. R. D. Falconer suggests that the Aberdeen kirk session 'did not start to play a prominent role in regulating the community until the seventeenth century'. Instead, the task fell to the burgh magistrates, as had been the case in pre-Reformation Selkirk.¹⁶⁷ Falconer stresses how behaviour, or rather misbehaviour, was not just the concern of the church but of the wider burgh authorities 'for the purpose of protecting the 'common weal' and maintaining social order'.¹⁶⁸ With cases of assault, sexual misdemeanours and breaches of the peace appearing before both burgh court and kirk session, Falconer (like Mann) advocates an inclusive look at the early modern court network and uses qualitative examples from both in his own research on the early modern family.

For post-1650 Aberdeen, DesBrisay has made great use of the extent and quality of surviving official records for the burgh, using records from the justice court and bailie court in his research, alongside kirk session minutes.¹⁶⁹ The urban history of Aberdeen itself is relatively developed and DesBrisay is a key contributor to this, harnessing a complementary approach to available legal sources in order to examine the economic and social roles of the burgh's inhabitants and the official and unofficial parameters that were placed around popular behaviour.¹⁷⁰ It is an in-depth approach that has not yet been employed away from the north-eastern burgh.

¹⁶⁶ Alastair J. Mann, 'The Law of the Person: Parliament and Social Control', in Brown and MacDonald (eds.), *History of the Scottish Parliament, Volume 3*, 186-215. For the punishment of immorality in borough courts and by justices of the peace as well as by church courts in England see R. A. Marchant, *The Church under the Law: Justice, Administration and Discipline in the Diocese of York, 1560-1640* (Cambridge, 1969).

¹⁶⁷ Falconer, 'A Family Affair', 139-50; Symms, 'Social Control'.

¹⁶⁸ Falconer, 'A Family Affair', 140-1.

¹⁶⁹ DesBrisay, 'Menacing Their Persons', 70-90; DesBrisay and Thomson, 'Crediting Wives', 85-98.

¹⁷⁰ See E. Patricia Dennison, David Ditchburn and Michael Lynch (eds.), *Aberdeen before 1800: a New History* (East Linton, 2002).

Like these scholars have found for other parts of the country, East Lothian's courts operated as a network between 1610 and 1640. The overlap in their judicial concerns means that all of these authorities were active in the regulation of the personal behaviour of and personal relationships cultivated by parishioners. In order to show how this overlap worked in practice, the next chapter examines the business of these courts in further detail, and how they acquired and retained popular legitimacy in Haddingtonshire during this period. In doing so, this analysis engages with established conclusions on the importance of early modern legal systems in regulating popular behaviours.

Chapter III

The Haddingtonshire Courts in Action

The previous chapter introduced the different jurisdictions that were operating in East Lothian between 1610 and 1640 and what their legal parameters were. Where it showed that the secular and ecclesiastical authorities possessed the ability to work as an integrated legal network with the overlap in office-holding and concerns, this chapter examines what different local courts actually did on a daily basis, how they managed to do this and with what consequences.

In practice, as well as on paper, it is a scene of co-operation rather than conflict (contrasting with the clashes between Augsburg's council and its guilds over marriage and the household that Lyndal Roper has identified).¹ As a court network, its ability to function successfully and with a sense of legitimacy can be attributed to a shared sense of purpose alongside a sophisticated administration. This was the administration responsible for social control in East Lothian during the early modern period.

A clear understanding of the business of each court, their shared use of public space and punishment rituals, and the sources of each court's authority has two purposes. The first is to inform understanding of local government and the governance of ordinary folk by giving a clear view of what jurisdictions were in operation and in what ways. The second purpose is to expose the judicial network that was responsible for social control – that is, the regulation of the behaviour and relationships of ordinary people. From this, the experience of social control at the hands of the secular and ecclesiastical authorities in early modern Scotland can be re-evaluated.

I. The Business of the Courts

In 1560, the Kirk was willing to state that 'open transgressors of Gods laws ought to be taken away by the civill sword'.² This chapter examines how this clear delineation of business was maintained within the interlinked web of secular and ecclesiastical courts that was operating in the reality of the early seventeenth century (if it was at all in light

¹ Roper, *Holy Household*, 205 and esp. ch. 5.

² *FBD*, ed. Cameron, 166.

of the preponderance of shared office-holding). An initial idea of who was appearing in what court, in what location, for what offence and with what outcome can be best given by some statistics.

Using quantitative data in order to draw comparisons within a data set is limited when the data set in question is incomplete or incongruous – a main reason why it was dismissed entirely as a methodology by Margo Todd.³ Such limitations apply to this data set, due to gaps in record keeping, missing records and different record survival rates for each source. This is complicated further by the different recording styles and the unknown levels of conscientiousness of each clerk, so any comparisons must be made with caution. It is not possible to confirm, for example, the blanket statement that the North Berwick session was less active than the session in neighbouring Tynninghame. North Berwick's records cover 6 years whereas Tynninghame's cover 25 with no interruptions.⁴ Looking at the broader quantitative patterns in case distributions can, however, be insightful without being misleading providing some caution is employed. Such is the case when showing what cases were being heard before what court.

From the records that have survived and that have been included in quantitative analysis, it is possible to ascertain that at least 2151 individual prosecutions were heard before courts in Haddingtonshire between 1610 and 1640.⁵ The table below shows the distribution of cases by offence and sex brought before East Lothian kirk sessions as disciplinary cases during this 30 year period.⁶

³ Todd, *Culture of Protestantism*, 14-18. See also chapter 1, above.

⁴ And with all the cautionary notes regarding counting and record gaps as given by Michael Graham in his *Uses of Reform* and discussed fully in chapter 1, above.

⁵ Figures do not include debt cases from the burgh and sheriff courts. Where case information is missing or incomplete, a case has not been added to this total – in line with the methodology of the thesis as detailed in chapter one, section II, *Research Design and Methodology*. Actual numbers would have therefore been slightly higher, and doubtlessly higher still should all records sets used have been complete for 1610-1640.

⁶ Defined as 'office cases' for the English church courts by Ingram in *Church Courts*, 3. 'Sabbath Breach (violence and words)' are cases that were recorded by the kirk sessions as sabbath breach, but where the activity that breached the sabbath involved physical or verbal violence. 'Testimonial issues' are cases where parishioners were punished by the session for not having the correct paperwork (a testimonial), issued by the parish that they were last resident in.

Figure 3.4: distribution of individual cases heard by East Lothian kirk sessions between January 1610 and December 1640

Offence	Male	Female	TOTAL
Adultery	14	17	31
Charming and Witchcraft ⁷	4	5	9
Disobedience before the session	23	28	51
Drinking	8	0	8
Family, household and parentage	33	8	41
Flyting and scolding	11	41	52
Fornication	238	252	490
Guising	6	8	14
Incest	1	1	2
Improper/incomplete marriage	2	2	4
Prostitution	0	1	1
Sabbath Breach	382	141	523
Sabbath Breach (violence and words)	50	18	68
Slander	29	31	60
Suspicious conduct	30	35	65
Testimonial issues	1	3	4
Theft	1	0	1
Violence	6	1	7
TOTAL	838	592	1430

Source: minutes of the kirk session of Aberlady, NRS, CH2/4/1, ff. 3-59; minutes of the kirk session of Haddington St Mary's, NRS, CH2/799/1, ff. 306-323; North Berwick kirk session register, NRS, OPR 713/1, ff. 90-156; minutes of the kirk session of Pencaitland, NRS, CH2/296/1, ff. 6-15; minutes of the kirk session of Saltoun, NRS, CH2/322/1, ff. 5-90; minutes of the kirk session of Tynninghame, NRS, CH2/359/1, ff. 1-115; minutes of the kirk session of Yester, NRS, CH2/377/1, ff. 6-243.

In addition to the cases in figure 3.4, there are also instances of cases being brought before the kirk session where it is clear that they are being petitioned freely in the first instance by a parishioner. This is what Ingram calls 'suits between parties' for the early modern English church courts.⁸ These can give some limited insight into the use of these courts as a public resource, and are detailed in figure 3.5 below.

⁷ An accusation or conviction for charming could lead to suspicion of witchcraft, but they were different offences. They have been conflated here as two closely-related offences to make the data in the table more accessible to the reader.

⁸ Ingram, *Church Courts*, 3.

Figure 3.5: individual cases brought by individuals before East Lothian kirk sessions between January 1610 and December 1640

Accusation	sex balance of petitioner-accused				TOTAL
	Female-Female	Female-Male	Male-Male	Male-Female	
Adultery	1	1	0	0	2
Family, household and parentage	0	0	0	1	1
Flyting	1	0	0	0	1
Irregular marriage	0	2	0	0	2
Slander	10	7	18	18	53
Theft	1	0	0	0	1
Vandalism	0	0	2	0	2
Violence	0	1	3	0	4
TOTAL	13	11	23	19	66

Source: minutes of the kirk session of Aberlady, NRS, CH2/4/1, ff. 3-59; minutes of the kirk session of Haddington St Mary's, NRS, CH2/799/1, ff. 306-323; North Berwick kirk session register, NRS, OPR 713/1, ff. 90-156; minutes of the kirk session of Pencaitland, NRS, CH2/296/1, ff. 6-15; minutes of the kirk session of Saltoun, NRS, CH2/322/1, ff. 5-90; minutes of the kirk session of Tynninghame, NRS, CH2/359/1, ff. 1-115; minutes of the kirk session of Yester, NRS, CH2/377/1, ff. 6-243.

In addition to the above cases, there was one case of slander brought before Haddington kirk session by a husband and wife as a couple against a brother and a sister and two cases of slander where the sex of the petitioner is unknown.⁹

Whether 'the Elizabethan village was a place filled with malice and hatred', as characterised by Lawrence Stone, or a more harmonious environment in which to live, as advocated by D. G. Hay in his case study of the Shropshire village of Myddle, is a well-thumbed debate in English historiography.¹⁰ The same is true of whether church courts were an odious, unwanted intrusion on parish life or a great resource for parishioners seeking redress.¹¹ Addressing this question, and further interpretation of figures 3.4 and 3.5, gives rise to a serious conceptual and methodological issue. Initially, the first step in trying to ascertain the extent to which kirk sessions were used as a resource for parishioners to settle disputes should seem to involve calculating the proportion of business that was brought to the session from parishioners themselves –

⁹ Case brought by a Mr and Mrs Duncan against Marion Whitelaw and James Whitelaw on 8 May 1631, NRS, CH2/799/1, f. 323. Petitions of slander against George Gullane and Thomas Gullane before Aberlady kirk session on 9 September 1638, NRS, CH2/4/1, f. 31.

¹⁰ Lawrence Stone, *The Family, Sex and Marriage in England, 1500-1800* (London, 1977), 98; D. G. Hay, *An English Rural Community: Myddle under the Tudors and Stuarts* (Leicester, 1974), esp. 209-18.

¹¹ As outlined by, for example: Ingram, *Church Courts*, 7-9; J. A. Sharpe, 'Such Disagreement betwix Neighbours?: Litigation and Human Relations in Early Modern England', in John Bossy (ed.), *Disputes and Settlements: Law and Human Relations in the West* (Cambridge, 1983), 167-187; Mitchison and Leneman, *Girls in Trouble*; Leneman and Mitchison, *Sin in the City*.

i.e. 'bottom-up' litigation, as shown in figure 3.5. As this table shows, between 1610 and 1640, 66 cases were brought before East Lothian kirk sessions by parishioners. By contrast, 1430 cases were heard by these same sessions in what outwardly appear to be 'top-down' prosecutions. These stark figures could be interpreted to support the argument that church courts were oppressive and unwanted, with only 4 per cent of kirk session business over a period of 30 years resulting from parishioners bringing disputes and grievances to the court for resolution.

But they reveal something more nuanced than this. Firstly, where it might be construed as oppressive to punish people for offences that lacked an individual victim – public drunkenness, for example – such an oppressive construction is not entirely obvious. The business of these East Lothian sessions is indicative of the emergence of the idea of crime as a *public* act, which the state can prosecute even if the individual does not. This contrasts with the medieval idea of criminal trials as a contest between accuser and accused. Not all offences pursued by the kirk sessions were criminal acts, but the same theory can be applied. Some offences that they did pursue were deemed public acts, worthy of regulation because they offended the *community*, not just an individual.¹² It was the kirk session that decided if an individual had offended the community and therefore God, so it was the kirk session that initiated such prosecutions. But this did not mean that such actions were unwanted or unwelcomed.

This gives rise to a second important point. A conclusion based on these statistics alone would be short-sighted in light of a more pertinent question: how were kirk sessions and other early modern authorities able to initiate prosecutions? The straight forward answer is: gossip. If the offences prosecuted by kirk sessions offended the community and the establishment of a godly society, it was on that community that sessions relied in order to pursue and regulate these public acts of crime and misbehaviour.

The parish minister, session elders, local bailies and court officers were all reliant on neighbourhood information in the form of idle and not-so-idle chit-chat – as Bernard Capp has established for early modern England.¹³ But they were also active in seeking out misbehaviour amongst their congregation. In 1636, Sir William Brereton described the role of elders in Edinburgh as

¹² For examples from early modern England, see the fifteen case studies in David Cressy, *Agnes Bonker's Cat: Travesties and Transgressions in Tudor and Stuart England* (Oxford, 2001).

¹³ Capp, *When Gossips Meet*, esp. 49-68.

to take notice and cognizance of all misdemeanors and offences committed in their parish, unto every of which elders there is proportioned an allotted a part of the parish, which is under their care and charge, who take notice of all fornications, adulteries, thefts, drunkards, swearers, blasphemers, slanderers, extortioners, and all other scandalous offences committed in their parishes. These are to present all these offenders unto the minister and church-officers, who proceed to ecclesiastical censure.¹⁴

Brereton's account gives the impression of active, top-down policing of behaviour and relationships by these elders. Rather than a passive reliance on gossip and common fame, his impression is that the Edinburgh elders were seeking out and bringing cases to the session, based on what the Kirk considered to be an offence against God and therefore against the community. It was a practice employed by some East Lothian sessions. At the meeting of the Tynninghame session on 19 December 1616

Mr Jhone also demandit the elderis if they knew of any thing to be takin order with in the parische. They ans writ they knew nothing, bot they sald try out of their powar. The minister earnestlie exhortit them to be faithfull in their calling and to warn sik as behave themselves disorderlie.¹⁵

The result of similar policing orders can be seen in North Berwick. On 2 July 1611, 'David Sandilands deponit he saw George Home with the woman his partie at the gait be West Lenthie'.¹⁶ Three weeks later on 28 July, 'four men drinking in tyme of sermon delatit be Robert Baptie'.¹⁷ In Aberlady, Andro Wylie was active in reporting misbehaviour to the session in his role as a Kirk deacon.¹⁸ One of his fellow office-holders, the session elder Patrick Bairnfather, took his reporting duties as seriously as John Lauder had advised to the Tynninghame session. On 21 October 1628, Bairnfather reported personally that 'Cathrine Getgood, ane of his servitrixes, is with chyld'.¹⁹

But this active observation network still relied on gossip. On 2 July, before David Sandilands reported George Home to the North Berwick session, Andro Alexander appeared before the session 'and declarit that he hard Jhone Jhonstoun say that Alexander Paterson told him that Robert Baptie delatit him to the session'.²⁰

¹⁴ Peter Hume Brown (ed.), *Early Travellers in Scotland* (Edinburgh, 1891), 143.

¹⁵ NRS, CH2/359/1, f. 10.

¹⁶ NRS, OPR713/1, fr. 107.

¹⁷ NRS, OPR713/1, fr. 108.

¹⁸ NRS, CH2/4/1, f. 15.

¹⁹ NRS, CH2/4/1, f. 34.

²⁰ NRS, OPR713/1, fr. 107.

Furthermore, it relied on the active involvement of parishioners. On 11 April 1613, ‘delatit be William Fouller that Marie Storie complenit to him of Margaret Quhytlaw’.²¹

The activities of the session elders in actively seeking out ungodly behaviour were not always welcome. When James Elphistone appeared before the Aberlady session on 7 October 1631 to answer for shearing corn on the sabbath, he ‘gave ruid and proud words’ towards John Baptie who had reported him.²² On 1 March 1640, the invasive propensities of the same session were laid bare when

compeirit Agnes Paterson being suspect of fornication. And hir fault laid to hir charge denyed the samyne most abstinatlie. Thairfair continewis hir to the nixt day and ordaines the midwyfes to leik hir brist and try hir and report the samyne.²³

Paterson had first been reported on 23 February, when it was ‘delaited be Johne Grier that Agnes Patersone in his quarter is suspect to be with chyld’.²⁴ She confessed on 10 May and, by July, both she and her partner John Reid (‘hir masters sone’) had been ordered to make their public repentance on the pillar.²⁵

Agnes Paterson first came before the session having been reported by the elder responsible for the part of the parish where she lived. But there is no evidence to show how John Greer came by his suspicions. Was he reacting to some gossip that he heard in his neighbourhood, that a servant woman was up to no good with her master’s son? Or had he seen Paterson and acted on his own opinions? The record does not say. This is symptomatic of the disciplinary cases that were being brought before the East Lothian sessions between 1610 and 1640. Where North Berwick, Tynninghame and Aberlady give some, limited information on how certain offences were coming to their attention, other sessions neglect to record such detail. As a matter of routine, the Yester minutes start their discipline entries with ‘the quhilk day compeirit...’, with no mention of how the individual concerned came to their attention.²⁶ The Pencaitland session had 16 elders in 1634. It is highly likely that these men would have been posted to different parts of the parish to seek out and report ungodly behaviour. But the session minutes simply state the accused, their offence and the outcome of the case.²⁷ No detail of how these people

²¹ NRS, OPR713/1, fr. 132.

²² NRS, CH2/4/1, f. 6.

²³ NRS, CH2/4/1, f. 49.

²⁴ NRS, CH2/4/1, f. 49.

²⁵ NRS, CH2/4/1, ff. 53, 55-6, 58.

²⁶ NRS, CH2/377/1, ff. 1-245.

²⁷ NRS, CH2/296/1, ff.4-5, 1-16.

got to be before the session is given. As a result, it is not possible to quantify what cases were being heard because of active policing by session elders, compared to those which were exposed by commonplace gossip. But it is possible to say that the Kirk did not take a passive role. The East Lothian sessions recognised that gossip only went so far, so they deployed searchers on the sabbath, and ordered their elders to seek out ungodly behaviour in their allocated parish quarters. Some of their methods – such as breast-leaking – were truly invasive.

Did this mean that the early modern parish ‘was a place filled with malice and hatred’, as defined by Lawrence Stone? Indeed, the development of crime and behavioural offences as public acts during the early modern period meant that action could be taken by the State where the community, rather than an individual, had been offended by such occurrences. And it was the State, in the form of the Kirk, that decided when this was the case. But alongside the active policing of behaviour, both rural parishes and burgh authorities were able to operate because of the information they gleaned from bottom-up reporting by parishioners. This could range from the hearing of a rumour to the direct relay of neighbourhood incidents and transgressions. This had the added bonus of conferring some form of legitimacy on the formal policing of behaviour. But which of these two were the origins of a case was not consistently recorded by session clerks. Therefore trying to address the ideas surrounding perceptions of early modern church courts as either a welcome resource or unwelcome imposition through these lines of reasoning is inherently problematic. There were the cases that were brought directly by individual to the sessions seeking redress, but the distinction between cases that were brought from above that either resulted from common fame or active policing is, at best, unclear. As a result, any conceptual or methodological distinction between two supposedly different types of prosecution (top-down or bottom-up) is blurred.

Although differentiation between top-down and bottom-up cases is somewhat false, figure 3.5 still has some value in helping to ascertain the preoccupations of the East Lothian sessions between 1610 and 1640. Even if these statistics cannot answer directly whether sessions were an unwanted intrusion or a welcome resource, they can suggest something of the issues that perhaps mattered most to parishioners. In 42 of these 66 cases it was a male petitioner personally bringing an accusation before the session for resolution, compared to the 24 cases brought by female petitioners. Of those accused by

their peers, 32 were women and 34 men. Slander was, most tellingly, the predominant accusation accounting for around 80 per cent of total petitions.

By considering this alongside Figure 3.4, some further basic observations can be made. Cases of sabbath breach, including instances involving violence or verbal outbursts and cases of illicit fornication or suspicious conduct were most widely pursued; although illicit sexual conduct other than that between a man and a woman is remarkably absent. These offences are followed in popularity by cases of slander and flyting or scolding. More men appeared before the session in total, largely due to the increased instances of sabbath breach amongst male parishioners. Young children were not allowed at Sunday preaching for fear of disturbing the salvation of the congregation.²⁸ This necessitated childcare arrangements and, therefore, sanctioned female absences which could perhaps account for some of this gendered disparity between sabbath breakers. Although a small sample, illicit drinking and cases of violence were also largely attributed to the male population. Around 80 per cent of cases involving issues of family, household and parentage involved men, likely reflecting the predominantly male position as head of the household in a patriarchal society.²⁹ Slightly more women than men were prosecuted for adultery, fornication and suspicious conduct, although not in any significant number. Women did, however, dominate charges of flyting and scolding at around 79 per cent.

The sessions were occasionally straying into civil territory by dealing with cases of violence and a sole count of theft.³⁰ But some overlap must be inevitable – after all, incest was a form of illicit sex and suspicion of charming and witchcraft an offence against God – not to mention what the Bible has to say about violence and theft.³¹ Some distinctions can be made along gendered lines – perhaps shown most clearly in the contrast between violence and drinking on the one hand and flyting and scolding on the other. But a majority of offences can be similarly distributed between men and women, and this is persuasive for using qualitative evidence from kirk session and other court records. This evidence can be used to make more subtle distinctions based around other factors, including socio-economic status, geographic location and the importance of patriarchy.

²⁸ Todd, *Culture of Protestantism*, 35.

²⁹ See chapter 6 below.

³⁰ On 29 June 1628, Yester kirk session ordered John Halliday to perform public repentance for consulting with Patrick Christison over stolen gear, NRS, CH2/377/1, f. 138.

³¹ See, for example, the ten commandments: *Exodus*, 20:1-26.

Around 60 per cent of court business dealt with by Haddington presbytery concerned cases of adultery, with a similar male to female ratio as adultery cases in the kirk sessions.

Figure 3.6: distribution of individual cases heard by Haddington presbytery between January 1610 and December 1640

Offence	Male	Female	TOTAL
Adultery	67	74	141
Charming and witchcraft	2	5	7
Disobedience	9	2	11
Family, household and parentage	3	4	7
Fornication	11	23	34
Incest	2	1	3
Irregular marriage	8	6	14
Libel	1	0	1
Murder	2	0	2
Signing National Covenant	1	0	1
Sabbath breach	1	0	1
Suspicious conduct	1	0	1
Theft	1	0	1
Violence	5	0	5
Violence against officials	4	0	4
TOTAL	118	115	233

Source: Haddington presbytery minutes, NRS, CH2/185/3-5.

Dealing with illicit fornicators, irregular marriage and more severe cases of disobedience made up the bulk of remaining cases that came before the brethren. Unlike in the kirk sessions, female fornicators accounted for around 68 per cent of the total number: a significant gender disparity.³² In line with the kirk sessions, violence cases were also male dominated. That the presbytery was a higher jurisdiction is apparent through the business that came through its doors as well as its dealings with adulterers. On 1 February 1637 John Dewar appeared before the brethren, accused as an accessory in the murder of his own child. The accusation was based on a deposition given by the child's mother, Alison Wadie, before her execution. Lack of evidence meant that the case against him was dismissed.³³ The Kirk held no jurisdiction over murder, but the child had been conceived in adultery. The close links between civil and ecclesiastical jurisdiction that operated within East Lothian between 1610 and 1640 were exploited to establish (through the Kirk's inquisitorial system) whether Dewar was party to the

³² That is discussed in Chapter 3.

³³ NRS, CH2/185/4, f. 98.

crime of infanticide. The presbytery was also an administrative machine with notable powers in the locality: on 29 May 1639 Andrew Bannatyne appeared before the brethren, accused of withdrawing himself from signing the National Covenant. He was ordered to remove himself from the town or sign within 8 days: he signed on 12 June 1639.³⁴

The small number of individual petitions received by the presbytery from parishioners also reflects its status and operations as a higher level of authority above the kirk sessions.

Figure 3.7: distribution of individual cases brought by individuals before Haddington presbytery between January 1610 and December 1640

Offence	Cases brought
Adultery	2
Assault	1
Church seats	4
Excommunication	11
Marriage	1
Slander	3
Words against officials	1
TOTAL	23

Source: Haddington presbytery minutes, NRS, CH2/185/3-5.

Most individuals who brought cases personally before the presbytery were concerned with relieving themselves from sentences of excommunication or resolving ongoing disputes over church seats that had strayed into verbal onslaughts during Sunday preaching. Two of the three slander cases were brought by Mr. Thomas Turnbull, minister of Morham and the sole ‘words against officials’ case also by Turnbull when he accused Lady Bearford of railing and laughing at him during sermon.³⁵ Relief from excommunication could not be granted by kirk sessions, and the nature of these other cases and the people they involved perhaps meant that they too could not be readily dealt with by the sessions with any successful resolution. No minutes have survived from Morham to shed further light on this particular situation, but Margo Todd has

³⁴ NRS, CH2/185/4, f. 136.

³⁵ For example see the case of the Bearford’s disputed church seats, NRS, CH2/185/5, 25, f. 46; cases of slander brought by Thomas Turnbull against William Acheson on 19 February 1640, NRS, CH2/185/5, f. 25 and against Elspeth Randie on 16 September 1640, NRS, CH2/185/5, f. 64. The case against Lady Bearford brought by Turnbull on 16 September 1640, NRS, CH2/185/5, f. 65. Lady Bearford and her son, the laird of Bearford, are discussed in detail in chapters 6 and 7, below.

detailed how disputes over kirk seats could be prolonged and could easily descend into violence.³⁶

It has been mentioned how Haddington's sheriff and burgh courts between 1600 and 1640 were largely occupied in dealing with the business of debt, administration and cases involving the service of heirs; after which violence and then theft were the largest categories of case.³⁷ The following two tables show the breakdown of remaining cases in more detail.³⁸

Figure 3.8: distribution of individual cases heard by Haddington sheriff court between January 1610 and December 1640

Offence	Male	Female	TOTAL
Bestiality	1	0	1
Burning moor	9	0	9
Charming and witchcraft	4	6	10
Disobedience	3	0	3
Fishing	14	0	14
Gypsies	6	6	12
Hunting	2	0	2
Incest, adultery and murder	0	1	1
Murder	3	1	4
Theft	31	4	35
Trading ³⁹	1	0	1
Tree cutting	2	0	2
Vagabond	1	0	1
Violence	70	1	71
Violence against officials	3	0	3
Wrongful arrest	1	0	1
TOTAL	151	19	170

Source: Haddington sheriff court extract decree books, NRS, SC40/7/12-14, ff. 16-18.

³⁶ Todd, *Culture of Protestantism*, 318-325.

³⁷ See Figures 2.1 and 2.2.

³⁸ Remaining cases meaning all business aside from debt cases and the service of heirs, as outlined in detail with justification in chapter 1.

³⁹ 'Trading' refers to any individual who appeared accused of breaching local trading regulations.

Figure 3.9: distribution of individual cases heard by Haddington burgh court between January 1610 and December 1640

Offence	Male	Female	TOTAL
Charming and witchcraft	0	1	1
Disobedience	1	1	2
Family, household and parentage	2	0	2
Gambling	1	0	1
Murder	5	0	5
Rioting	1	0	1
Slander	2	1	3
Theft	61	44	105
Trading	7	0	7
Vagabond	1	0	1
Violence	65	1	66
Violence and slander	2	0	2
TOTAL	148	48	196

Source: Haddington burgh court books, NRS, B30/10/8-13.

The volume of remaining business after debt cases and those involving the service of heirs are removed is remarkably similar for both Haddington's sheriff and burgh courts, totalling 170 and 196 individual cases respectively. In light of the samples detailed in Figures 2.1 and 2.3, these are relatively modest numbers, with men constituting the majority of defenders/panels because of the preponderance of violence cases. More women appeared in the burgh court than the sheriff court due to a greater number of theft charges brought against them there; yet the number of women appearing before either jurisdiction to answer violence charges is negligible at one sole case apiece.⁴⁰ The differences between these two secular courts – one being an urban body, the other covering a large rural area – can be seen by the difference in prosecutions over trading violations on the one hand and agricultural and hunting violations on the other.

Similarly, taking a closer look at the male violence offences heard by both courts gives some idea of the divisions in the two jurisdictions through the type of people who were appearing in each. Whether a case was heard before the burgh court or sheriff court depended on two factors. The first was where those involved lived: whether these men were indwelling burgesses or non-burgesses, or resident in a settlement outside of Haddington, even if it was as close as Nungate. The second factor was where the offence was committed. On 20 April 1612, John Hepburn son of Patrick Hepburn from

⁴⁰ See chapter 5, below.

Linton and William Bunteen servant to Sir Alexander Seton appeared before the burgh court to answer for the 'trubance' committed between them and against others within the burgh.⁴¹ Neither were indwellers, yet the case was heard by the burgh court because the offence was committed in Haddington itself. One exception to this was the case of George Michelson which was heard before the burgh court on 11 August 1618. Michelson was a webster by trade and newly arrived with his family to live in Nungate. He was accused and convicted of 'sundrie expressions and bangistrie [violent or bullying behaviour for wrongful gain] usit be him agains sundrie personis in nungait' and banished the burgh on pain of scourging.⁴² All other cases of male violence tied to Nungate were tried in the sheriff court. Perhaps Michelson's case was an exception because of its ties to deceit and therefore trade. The only other possible exception is the case of George Craig before the sheriff court on 27 June 1611. Craig was noted to have been a burgess of Dunbar and was enacted to the sheriff under the pain of 100 merks for trubance committed between him and one Patrick Bald 'in Dunbar'.⁴³ Assuming this meant that Bald was also a Dunbar resident, the 'trubance' presumably must have taken place outwith Dunbar or Haddington in order to come under the sheriff's jurisdiction rather than under one of the respective burgh courts.⁴⁴

From analysing the business heard in East Lothian courts between 1610 and 1640, a further absence can be noted that is relevant to broader discussion. Whilst putting the case forward for the positive, empowering and levelling characteristics of early modern church courts, Scottish scholars occasionally cite child support arrangements as valuable evidence. The example is given of mothers of illegitimate children facing financial hardship who instigate paternal payments by successfully petitioning the session for redress.⁴⁵ But all monetary transactions recorded in these East Lothian session minutes either relate to disciplinary fines, the poor roll, the collection (whether for the poor box or for specially advertised cases) or to work being undertaken – such as repairs to the kirk or manse. The sort of evidence used by Todd has been found in some surviving kirk session material and yet there is not one case of monetary child support in any

⁴¹ NRS, B30/10/9, f. 87.

⁴² NRS, B30/10/10, f. 102.

⁴³ NRS, SC40/7/12, f. 278.

⁴⁴ There were 137 cases involving male violence out of a total of 139 brought before Haddington sheriff and burgh courts between 1610 and 1640. In these 137, where details of the accused and crime are given this rule can be applied with certainty apart from in these two cases.

⁴⁵ For example see Todd, *Culture of Protestantism*, 306-308; Leah Leneman, *Alienated Affections: the Scottish experience of divorce and separation, 1684-1830* (Edinburgh, 1998), 180-3.

surviving East Lothian court records from 1610 to 1640. This highlights the piecemeal nature of early modern child support and the absence of any formal statutory obligation.

There are various possible explanations for this. Firstly, it is possible that such arrangements were being heard elsewhere by authorities for which no records have survived – this could include the JPs and smaller franchise courts. Leah Leneman has cited eighteenth-century evidence of single mothers petitioning the JPs for child support from the fathers of their bastard children.⁴⁶ Secondly, it is possible that arrangements for monetary child support in the region were made on a much more informal basis without the need for court intervention. But the exception to this would be matrimonial cases involving children that ended up in the commissary court, thus necessitating formal financial arrangements. Again for a later period, Leneman has also noted how ideas of honour and reputation were linked to taking monetary responsibility for bastard children by fathers, especially amongst the gentry: arrangements were willingly offered to the kirk session in lieu of performing public repentance.⁴⁷

Lastly, Rosalind Mitchison has noted instances of ‘parishes coupling relief with some form of discipline’ into the early decades of the eighteenth century.⁴⁸ This is evident throughout East Lothian between 1610 and 1640. On 24 May 1610, the Prestonpans session gave orders to ‘tak the tickit fra Issobell Cunninghame in respect of the sclander with John Andersone’ for which she had not satisfied.⁴⁹ There are no further details, but either her place on the parish’s poor roll or her communion ticket or token was revoked in light of her ungodly behaviour. If it was the latter, then she was not permitted to take communion unless she made her repentance, which would have had disciplinary consequences of its own.

It follows that a single mother who had performed repentance for her fornication and then found herself in monetary need at a later date would have been supported in some manner by the session. Perhaps it was at this point that the session approached the child’s father to provide support and to relieve the parish from any additional burden. But if this was the case then it was done informally or without being noted by any clerk. No minutes from any East Lothian session detail such provision being sought. No definitive answer can be offered as to whether child maintenance was not

⁴⁶ Leneman, *Alienated Affections*, 192.

⁴⁷ Leneman, *Alienated Affections*, 191, 193.

⁴⁸ Rosalind Mitchison, *The Old Poor Law in Scotland: the Experience of Poverty, 1574-1845* (Edinburgh, 2000), 47.

⁴⁹ NRS, OPR 718/1, f. 65.

expected, not necessary or already being provided; but the absence of any provisions in any court – ecclesiastical or secular – or of any petitions for provision is noteworthy in itself.

II. Punishing the purse and the person

H. L. A. Hart has defined punishment as meeting five primary criteria. Firstly, it must involve pain or other consequences normally considered unpleasant; secondly, it must be for an offence against legal rules; thirdly, it must be of an actual or supposed offender for his offence; fourthly, it must be intentionally administered by human beings other than the offender; and lastly, it must be imposed and administered by an authority constituted by a legal system against which the offence is committed.⁵⁰ In East Lothian between 1610 and 1640, the actions of the ecclesiastical authorities can be included as a part of Haddingtonshire's legal system, operating alongside the secular courts in punishing offenders who had broken disciplinary rules as codified in the *First Book of Discipline* as well as helping prosecute criminal behaviours. The records that have been quantified from Haddingtonshire presbytery and its kirk sessions for this period contain the details of 1756 individual cases heard by the ecclesiastical authorities. This does not include cases from the Prestonpans or Innerwick sessions. The range of punishments imposed by the presbytery and these seven sessions can be divided into two categories: those that attacked the offender's purse, and those that attacked their person or reputation.

It is true to say that the main sanction in the kirk session's arsenal was penance.⁵¹ This could take the form of public repentance over various numbers of Sundays from a designated area of the kirk before your peers, or in some cases more private remorse to only the minister and elders. The ecclesiastical authorities often used a combination of this sort of personal punishment and fines on an ad hoc basis deemed suitable to the offence. On 14 April 1611, Mary White appeared before the North Berwick session to answer for her fornication with Dionysus Mark: she was sent for a stint in the joughs and then ordered to perform public repentance for her fault. When she appeared before the session to request baptism for her son, her request was granted on condition that she

⁵⁰ H. L. A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford, 1968), 4-5.

⁵¹ Todd, *Culture of Protestantism*, esp. chapter 3; Goodare, *State and Society*, 183.

leave the parish. Thus she was banished, creating a threefold combination of punishments to her person.⁵²

With so many different combinations of punishments employed by the church courts it is difficult to use quantitative data to give an overview of the sanctions used across the quantitative sample in any meaningful way. To illustrate this, Figure 3.10 shows the punishments imposed on disciplinary offences by the Tynninghame session.

Figure 3.10: punishments imposed on individual cases heard by Tynninghame kirk session between 4 May 1615 and 22 November 1640

Outcome	Male	Female	TOTAL
Not known/Fugitive	5	0	5
Acquitted/Dismissed	11	6	17
Banished	0	1	1
Cautioned	39	33	72
Fined	7	1	8
Oath	1	1	2
Private repentance	3	1	4
Private repentance and fined	6	0	6
Private visit from elders	0	1	1
Public repentance	17	9	26
Public repentance and fined	110	74	184
Public repentance and reconciliation	0	1	1
Public repentance (sackcloth)	1	1	2
Public repentance (sackcloth) and fined	4	0	4
Reconciliation	1	5	6
Reconciliation and fined	1	0	1
Referred elsewhere	14	13	27
Take order at home ⁵³	4	1	5
TOTAL	224	148	372

Source: minutes of the kirk session of Tynninghame, NRS, CH2/359/1, ff. 1-115.

The Tynninghame session also brought three group actions against sabbath breakers: one was cautioned, one fined and the other received public repentance.⁵⁴

⁵² NRS, OPR/713/1, ff. 103, 105, 111.

⁵³ 'Take order at home' refers to cases where the kirk session ordered individuals to, for example, personally punish subordinates within their household for their bad behaviour.

⁵⁴ The cases against: Lady Bass' stonemasons on 12 October 1617, NRS, CH2/359/1, f. 15; fishermen from North Berwick, 11 September 1636, NRS CH2/359/1, f. 94; John Fa's servants, 6 January 1622, NRS CH2/359/1, f. 44.

Technically, the most serious punishment that could be imposed by the kirk session, via the presbytery and without the need to involve the civil authorities, was excommunication. The cases brought before the presbytery by individuals seeking relief from excommunication and seeking the excommunication of others suggests that it was a sanction that meant something to parishioners, although how effective it was remains unclear. On 10 April 1620, Alison Bassindene petitioned the presbytery to excommunicate Alexander Humbie and his son Patrick (who both stood accused of murdering her husband, Alexander Kerr).⁵⁵ The sentence was passed, but on 9 May Patrick Humbie presented a supplication to the presbytery requesting ‘to be relaxit fra the sentence of excommunication produced against him’, which the brethren said they would consider. On 20 June, Patrick Humbie presented another supplication for the same – this time in light of his being ‘proved innocent of the crime quhair of he was wrongfullie accused’, and as a result ‘the brethren allowed his petition and ordained James Lamb the nixt day to relaxe him fra excommunication and report the same that the brethren may make intimations thereof in all the pulpits’.⁵⁶

Public punishment of offenders was not reserved for the sole use of the kirk session and presbytery. Rituals of honour, shame and display can be seen routinely in punishments imposed by civil authorities through the use of flogging, conveying, display (of people or body parts), banishment and, most potently, execution. Margo Todd discusses briefly the meanings of penitential performance in a Reformed setting and emphasises the dramatic nature of kirk penitence.⁵⁷ Involving cases from the secular courts allows this idea to be investigated further.

On 28 May 1612, Margaret Alexander was sentenced to death for the murder of her three children, conceived in an incestuous, adulterous relationship with her dead sister’s widower. Before her execution, Margaret had to endure a series of ritualistic punishments at locations throughout Haddington seen as fitting for the heinous crime of infanticide, in order to display ‘hir reproche and schame’ to her peers and to set ‘exemplar certificatioun to all godless harlottis’. This included digging up the body of her youngest child from its grave in the kirk yard, in front of her fellow parishioners with her bare hands.⁵⁸ The minutes from the case, couched in its Reformed language,

⁵⁵ NRS, CH2/185/3, ff. 124-5.

⁵⁶ NRS, CH2/185/3, 143, ff. 146-7.

⁵⁷ Todd, *Culture of Protestantism*, 128-130.

⁵⁸ NRS, SC40/7/13, f. 66.

cannot be easily classed as mere theatrical spectacle without suggesting an element of ridiculousness inappropriate to her fate.⁵⁹ Her trial was before a civil authority in a Reformed society not a church court itself, and shows a rationale of deterrence overlapping with the desire to prevent future crime.

Mitchell Merback has identified this as an enduring motivation behind horrific execution rituals in late medieval Europe.⁶⁰ Religion was, however, ever-present in these rituals and in the minds of those who went to partake in them as spectators. Merback writes:

It has often been said that for ordinary people executions, though intended to be terrifying, actually offered an experience that was emotionally comforting: the reassurance that comes with seeing a bona fide sinner confess his crimes, show contrition, receive absolution, endure a painful ordeal and find redemption on the other side. If such an unfortunate wretch can be thus saved, the reasoning goes, so can a sinner like me.⁶¹

Undoubtedly there was an intentional display of state power and authority that accompanied the public execution as a form of state ritual. Foucault comments how 'it is a ceremonial by which a momentarily injured sovereignty is reconstituted', where 'the public execution, however hasty and everyday, belongs to a whole series of great rituals in which power is eclipsed and restored', coronation being another example.⁶² Robert Muchembled has shown how subjugation of the body was used by authorities in France through corporal punishments: some of which, such as ear-cropping, were designed to take away personal ownership of the body in a display of power. It is an experience mirrored in early modern Germany.⁶³

If communities needed such ritual to offer a perverse comfort or explanation for events, on a different level the State held such ritual as an effective show of, or restorative for, its power over these communities. Steve Hindle comments how the early modern English assizes were a 'particular instance of social theatre' and also 'a theatre of blood' with 'its crucial ceremony' of the gallows.⁶⁴ As such, Foucault writes that

⁵⁹ The case is the subject of a case study in chapter 5, below.

⁶⁰ Mitchell Merback, *The Thief, The Cross and The Wheel: pain and the spectacle of punishment in medieval and Renaissance Europe* (London, 1999), 135.

⁶¹ Merback, *The Thief*, 143-4.

⁶² Michel Foucault, *Discipline and Punish: the Birth of Prison* (New York, 1977), 48.

⁶³ Robert Muchembled, 'Lay Judges and the Acculturation of the Masses (France and the Southern Low Countries, Sixteenth to Eighteenth Centuries)', in Kaspar von Greyerz (ed.), *Religion and Society in Early Modern Europe* (London, 1985), 64; Richard J. Evans, *Rituals of Retribution: Capital Punishment in Germany, 1600-1987* (Oxford, 1996), esp. chs. 1 and 2.

⁶⁴ Steve Hindle, *The State and Social Change in Early Modern England, 1550-1640* (Basingstoke, 2000), 119.

Not only must the people know, they must see with their own eyes. Because they must be made afraid, but also because they must be witnesses, the guarantors of the punishment, and because they must to a certain extent take part in it.⁶⁵

In order for this to be effective, it was imperative that people knew and understood the symbolism of the execution or punishment that they were witnessing. Burning satisfied any desire or need to see the convicted perish absolutely and purge the community of their heinous deed thus averting the wrath of God.⁶⁶ In early seventeenth-century Haddingtonshire, this was reserved for convicted witches and James Lyle in 1631, convicted of bestiality before the sheriff court. In light of the 'odious and abominable crime', both Lyle and the horse in question were to be 'burnt together in a fire to ashes' after their deaths at the hand of William Allat, the burgh lockman and executioner.⁶⁷ As party to such evil, neither Lyle, the horse nor their corpses were allowed to remain intact.

Furthermore, this included the difference between 'honourable and disgraceful means of death', with the contrast between being beheaded and hanged providing a straight-forward illustration.⁶⁸ On 9 November 1611, Edward Millar appeared before Haddington sheriff court, accused of the murder of Robert Tait. Miller confessed the crime after the dittay was presented by the dead man's father, 'denying nane thereof confest and grantit the samen craving god pardone for his offence'. Millar was sentenced to be 'tane to the south of the said burgh to that part thereof callit the Heiding Hill as place appointit for sic executiounis and his heid laid upoun aine stok and struken aff with ane aix'.⁶⁹ A similar fate was awarded to William Gullane on 28 March 1628 at his trial in a justice court, convened by the sheriff court for the 'cruell and violent slauchter' of Andro Cockburne, to which 'the said William oppunlie on pannell confest craving god pardon for that and all utheris his sinnis'.⁷⁰ Although also to be performed with an axe rather than a sword, beheading can be seen at this time to have held some of the merciful or honourable connotations mentioned by Richard Evans in his study of capital punishment in Germany.⁷¹ These two men readily confessed their

⁶⁵ Foucault, *Discipline*, 58.

⁶⁶ Merback, *The Thief*, 136.

⁶⁷ Case of James Lyle, 13 October 1631, NRS, SC40/7/18, ff. 207-8.

⁶⁸ Merback, *The Thief*, 140-1.

⁶⁹ NRS, SC40/7/13, f. 28.

⁷⁰ NRS, SC40/7/17, ff. 252-3.

⁷¹ Evans, *Rituals of Retribution*, 54-5. For further discussion of a later, English context see V. A. C. Gatrell, *The Hanging Tree: Execution and the English People, 1770-1868* (Oxford, 1994); Simon Devereaux and Paul

crime and showed contrition in court, and they were not hanged like their contemporary common male thieves but beheaded. Millar is referenced as being a 'sometime servant', so it was not a judicial choice reflecting social status but rather the imposition of a punishment consistently applied to male murderers in Haddington between 1610 and 1640.⁷²

Evans writes how 'modes of execution which denied the condemned any freedom of bodily movement, such as hanging, were dishonourable while decapitation with the sword was not, because the condemned remained free and unbound'. Furthermore, hanging involved close contact with the lockman and his apparatus, and involved being physically touched by the same. A sword or axe offered some distance and opportunity to remain upright, and therefore honour in a sentence that would not degrade or animalize the condemned.⁷³ It follows that other punishments employed by the secular courts in Haddington that confined movement, such as carting or being convoyed through the burgh streets by the lockman, would have held similar symbolic meaning to the general population; just as 'punishments such as branding or mutilation cast a permanent stigma of dishonour upon the offender from which it was extremely difficult to escape', with the added benefit of rendering them easily recognisable should they return to the burgh after subsequently being banished. As with hanging, a public whipping at the pillory or through the streets of the burgh 'dishonoured offenders because it involved the executioner or his servants handling them' in order to secure their limbs and so on.⁷⁴

Of course the kirk session had its own sets of symbolic punishments in its style of penance that sometimes strayed into corporal territory. Haddingtonshire sessions added dressing in sackcloth to penance on the stool in kirk for adultery, fornication, violent cases of sabbath breach and slander.⁷⁵ Margo Todd writes how both linen and sackcloth

Griffiths (eds.), *Penal Practice and Culture, 1500-1900: Punishing the English* (Basingstoke, 2004); Tim Hitchcock and Robert Shoemaker, *Tales from the Hanging Court* (London, 2006).

⁷² NRS, SC40/7/13, f. 28. The third man being Adam Miln, sentenced to beheading on the 'common sands of the burgh' (rather than Heading Hill) by Haddington burgh court for the murder of Robert Weik, NRS, B30/10/9, f. 176.

⁷³ Merbeck, *The Thief*, 138.

⁷⁴ Evans, *Rituals*, 32, 55, 57. See also Kathy Stuart, *Defiled Trades and Social Outcasts: Honour and Ritual in Early Modern Germany* (Cambridge, 1999), 69-93.

⁷⁵ For example see the cases of: William Gledstones, 20 October 1639 before the kirk session of Saltoun for a third fornication, NRS CH2/322/1, f. 13; Jonet Brown, 6 December 1612 before the kirk session of North Berwick for adultery, NRS, OPR 713/1, f. 128; Bessie Hood, 9 March 1628 before the kirk session of Yester for slander, NRS, CH2/377/1, f. 134; John Shortwood, John Clune and William Goodfellow, 9

‘were construed as humiliating’ by those wearing them and those witnessing their display of repentance – more so if this was outside the kirk door before the service started providing maximum exposure, as well as inside during the preaching.⁷⁶ Todd’s description of the jougs provides a visual impression of their symbolism as a punishment used by the North Berwick session for offences including adultery, fornication, violence and slander and the humiliation that would have accompanied the wearer of the ‘iron neck collar, sometimes with cruelly serrated edges and wrist manacles’ with ‘a forked protrusion designed to go into the mouth’. Todd concludes that ‘we tend to associate both jougs and branks with secular rather than ecclesiastical use...however enforced repentance and secular punishment overlapped’.⁷⁷ If the jougs, situated ‘beneath the School’ were used by the Yester birlaw court, then this overlap would certainly have been the case in East Lothian.⁷⁸

Away from obvious public punishments there were other options available to the civil and ecclesiastical authorities that, whilst not involving death, the infliction of physical pain or adorning or displaying the body in some manner, could carry an element of shame. The enforced separation of couples, dismissals from service, imprisonment (largely for short periods) and banishment had implications for honour and reputation – and therefore credit.⁷⁹ In some cases there was a direct link with earning ability. On 30 July 1632, Agnes Cockburn appeared in Haddington burgh court, accused of the cruel hurting and wounding of Thomas Low’s (unnamed) wife. Cockburn was the wife of Robert Smyth, a merchant burgher of Haddington, and Low a smith from East Barns. She was accused of striking Low’s wife ‘upoun the heid to the effusioun of hir blode in great quantitie’ and had been detained to await trial before an assize consisting ‘of famous personis burgheris and indwellars within the said burgh’. In fact, this was not necessary because Cockburn confessed the blood and willingly

March 1618 before the kirk session of Tynninghame for drinking and fighting in time of sermon, NRS, CH2/359/1, f. 18.

⁷⁶ Todd, *Culture of Protestantism*, 143.

⁷⁷ Todd, *Culture of Protestantism*, 142. For example see the cases of: Barbara Bartilmonth, 20 February 1614 for fighting on the sabbath, NRS, OPR 713/1, f. 140; Nans Nicholson, 31 May 1612 for slander, NRS, OPR 713/1, f. 121; Bessie Nicholson, 1 October 1615 for fornication, NRS, OPR 713/1, f. 151 and James Ross, 18 July 1613 for adultery, NRS, OPR 713/1, f. 135.

⁷⁸ Hay, *Boorlaw Book*, 10.

⁷⁹ For further discussion on credit see: Craig Muldrew, *The Economy of Obligation: the Culture of Credit and Social Relations in Early Modern England* (Basingstoke, 1998); Margot C. Finn, *The Character of Credit: Personal Debt in English Culture, 1740-1914* (Cambridge, 2003); Tawny Paul, ‘Credit and Social Relations Amongst Artisans and Tradesmen in Edinburgh and Philadelphia, c.1710-1770’ (Unpublished Ph.D. Thesis: University of Edinburgh, 2011), esp. chapter 5.

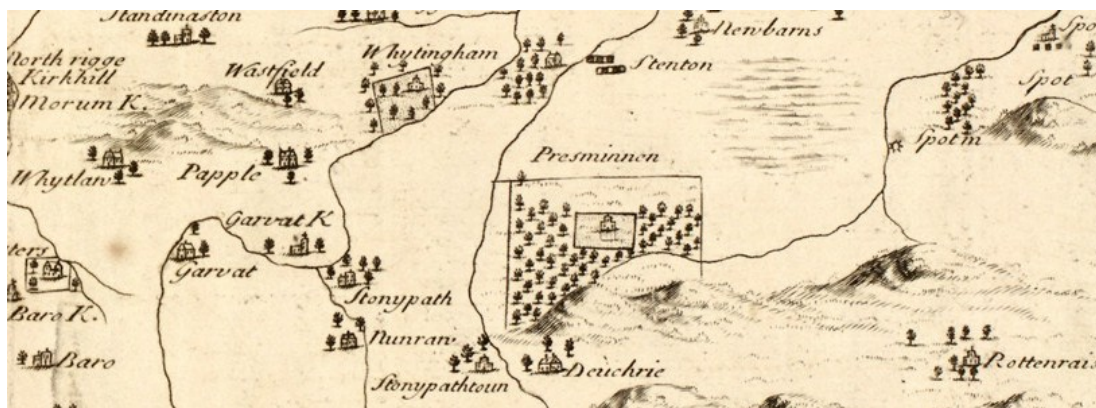
submitted herself to the judges' will – which was to declare an unlaw (a fine paid after conviction) of £50 and detain her in ward until the sum was paid.⁸⁰ However

In the meantime compeirit William Cockburne, elder burges of the samen burgh, father of the said Agnes and declairit that in regard she had divers young children and bairnes at hame in her hous and in respect of hir uther affairs in absence of hir said husband quhairin she and hir said spous may sustain great los throw her abydding in waired earnestlie in oppin court entreattit and requestit the said judges to accept him as cautioner and full debtor for the said unlaw and to set her to libertie.⁸¹

The judges heeded his request, declaring William Cockburn responsible for the payment of the £50 unlaw and that he was to remain in ward until it was settled.⁸² His daughter was freed in his place, thus supposedly preventing domestic disaster.

The same cannot be said for the Bryden family. On 20 January 1631, John Bryden, his son Adam and another family member Robert, son of one Walter Bryden, appeared before Haddington sheriff court having been apprehended by Arthur Douglas of Stonepath and warded on charges of sheep stealing.⁸³ The location of Stonepath can be seen in figure 3.11 below.

Figure 3.11: location of Stonepath, near Garvald and Stenton.



Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736), NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

A commission of justiciary had been granted for their trial, at which all three pleaded guilty to the stealing of seven sheep from the lands of Stonepath during the previous December, with Adam committing the actual stealing and John and Robert being 'airt

⁸⁰ NRS, B30/10/12, f. 167.

⁸¹ NRS, B30/10/12, f. 167.

⁸² NRS, B30/10/12, f. 167.

⁸³ NRS, SC40/7/18, ff. 135-6.

and part thereof and as counsellors directors and hounderis out of the said Adam to comitt the said cryme'. At the granting of commission, the privy council also stated that 'the said Lords be acquaintit with the process of thair conviction' before sentence be passed.⁸⁴ This being adequately done, on 14 February 1631 the three men were sentenced

to be banishit furth of this realme of Scotland for the forsaid thift comittit be thame and ordains thame to become actit for thair departure furth of the said kingdome within twentie dayis heirefter and not to return again without his majestis licence had and obtenit to that effect under the paine of death.⁸⁵

Although occupations were not mentioned and it was noted at the start of the trial that the three men 'being oft before apprehendit and comittit to waird within the tolbuith of the said burgh', they were not vagrants or gypsies but settled local men who were part of a family network.⁸⁶ There is no surviving evidence of the effects on immediate family members – it can only be surmised that the economic and emotional implications would have been felt on some level by those left behind and by any who chose to accompany them into exile.

Of course economic punishments could be much more direct, with all courts imposing and collecting fines. A certain amount of pragmatism was attached to this in certain parishes – as has been seen in Tynninghame minutes and in the setting of fines by the Prestonpans session. In other parishes, the minister and session remained outwardly immune to such opportunities and thus wealthier parishioners were deprived of a route to avoiding public penance for their sins. On 12 February 1615, George Baillie told the North Berwick session 'that he wald give 4 lib to the poore to releave him from the pillar' upon which he had been sentenced to sit 6 Sundays in penance for his relapse in fornication with one of his servants, in addition to his original fine of £4.⁸⁷ Despite his best efforts, as shown by the large sum on offer, the session quickly rebuffed Baillie's request 'allegding that it is an ordinance of the Assemblie quhilk they nicht not alter'.⁸⁸

Lastly, the swearing of oaths to purge oneself of allegations of bad behaviour and enactments for future good behaviour were deployed by both secular and ecclesiastical

⁸⁴ NRS, SC40/7/18, f. 138.

⁸⁵ NRS, SC40/7/18, ff. 139-140.

⁸⁶ NRS, SC40/7/18, f. 136. In only one other instance was a similar sentence passed of banishment from the entire Kingdom, and this was in a case of 12 gypsies banished by the sheriff court to 'conforme to act of parliament': Haddington sheriff court, 12 January 1626, NRS, SC40/7/17, f. 19.

⁸⁷ NRS, OPR 713/1, f. 143.

⁸⁸ NRS, OPR 713/1, f. 146.

authorities in Haddingtonshire between 1610 and 1640. Straight-forward enactments for keeping His Majesty's peace – in general or with certain named individuals – and for future goodwill were frequently employed by Haddington's burgh and sheriff courts but most often in reaction to instances of violence between men and with a sum of money attached as caution to that effect. This could extend to limitations on dress for burgesses – such as carrying a sword only under certain circumstances – under pain of forfeiting the burgh-ship should the conditions be broken.⁸⁹

On the other hand, the kirk sessions deployed the swearing of oaths in a twofold manner in hope of resolving alleged offences once and for all. On 9 November 1628, William Allan swore an oath before Yester kirk session to purge himself of the allegation that he had consulted with charmers.⁹⁰ It was sufficient an act for the case to cease being investigated by the session. Sometimes the threat of having to swear an oath was enough to elicit a confession for a previously-denied offence – such was the case of Helen Hepburn, who finally confessed her fornication with David Johnstone before the Pencaitland session on 24 September 1637.⁹¹

The weight of the action can be seen here – indeed, swearing an oath before a kirk session which was then proved to be false could be met with allegations of perjury in the civil courts. On 5 May 1627, Isobel Lauder appeared before Haddington sheriff court accused of murdering her newborn baby. At the trial by commission in the assembled justice court, the dittay noted that

she wes knawin at leist suspectit to be with bairne be hir nychtbors and dilatit to the sessioun of the kirk of Dirltoun and accusit be thame as guiltie of the sin of fornication she not onlie ipoun the 22 day of the said moneth of Aprill last obstinatlie denyet the said sin but also efter many great aithes maid be hir affirmit hir self to be frie of any bairne in hir bellie.⁹²

It goes on to detail how 'the tyme of hir burth being imminent and at hand she to hyd and conceill hir perjurie...affirmit hir to be seik'. Isobel was sentenced to be drowned until dead in the Water of Tyne 'at that part callit Saidler Weyll', reflecting Merback's

⁸⁹ As in the case of James Learmonth, 20 August 1611 before Haddington burgh court, NRS, B30/10/9, f. 58. For further examples see the cases of: Thomas Brown, 15 May 1632, Haddington burgh court, NRS, B30/10/12, f. 159; Robert Trotter, 13 July 1630, Haddington burgh court, NRS, B30/10/12, f. 72; David Hood, 11 October 1610, Haddington sheriff court, NRS, SC40/7/12, f. 314; Adam Williamson, 18 February 1630, Haddington sheriff court, NRS, SC40/7/18, f. 65.

⁹⁰ NRS, CH2/377/1, f. 145.

⁹¹ NRS, CH2/296/1, f. 12.

⁹² NRS, SC40/7/17, ff. 135-6.

observation of medieval Europe generally that ‘women charged with offences against religion or morality, such as adultery or infanticide, were drowned’.⁹³

This comprehensive list of interchangeable options depended on the case and individual jurisdiction, rather than the powers of the local courts in general. Yes, kirk sessions could not execute people, but they had mechanisms in place – not least made possible by the overlap in personnel and shared officials – to ensure that anyone who came before them deserving of such treatment could be dealt with in suitable manner. The case of Margaret Alexander is perhaps the best illustration of this web of justice at work, where nominal secular and ecclesiastical boundaries are blurred and a woman greeted death in the guise of a shamed, displayed, irreligious murderess.⁹⁴

In order to achieve such an outcome, the use of public space by the authorities was a key factor. The Kirk, tolbooth, market cross, burgh streets, burgh boundaries and places of execution were all symbolic of localised state governance.⁹⁵ Michael Graham’s case study of Thomas Aikenhead, the last man executed for blasphemy in Scotland, details the public nature of the tolbooth. During his incarceration in Edinburgh’s tolbooth, Aikenhead interacted with the public and held conversations from his cell window with individuals in the street.⁹⁶

In Haddington, the burgh court, sheriff court and occasionally the local kirk session met in the tolbooth. Individuals were warded in the tolbooth or held there whilst awaiting trial, which would then also take place within its walls. It was a physical representation of justice, and the setting for at least 29 sentences of execution between 1610 and 1640.

The wider burgh could be seen as an extension of this. In both Haddington and North Berwick (which also had a tolbooth), guilty individuals were flogged or convoyed through the burgh streets – sometimes on a specific route for maximum exposure to the town’s inhabitants and sometimes ending with branding on the shoulder or cheek. The sheriff court ordered Margaret Alexander ‘to makane oppin confessioun of hir wicked

⁹³ NRS, SC40/7/17, f. 136. Merback, *The Thief*, 140.

⁹⁴ NRS, SC40/7/13, ff. 65-67.

⁹⁵ Contemporary British symbols could include objects such as the iconic red telephone box or post box bearing the Queen’s insignia. The telephone box would become a symbol of British rule in Northern Ireland in the late twentieth-century – see R. J. Morris’ work. For example: Liam Kennedy and R. J. Morris (eds.), *Ireland and Scotland: Order and Disorder, 1600-2000* (Edinburgh, 2005); R. J. Morris, ‘Cities and Civil Society’, in Andreas Fahrmeir and Elfie Rembold (eds.), *Representation of British Cities: the Transformation of Urban Space, 1700-2000* (Berlin, 2003), 49-72.

⁹⁶ Graham, *Blasphemies*, esp. chapter 4.

lyfe, incest, adultrie and maist unnaturrall and detaistable murthuris' before being hanged on the scaffold erected at Haddington's market cross – a location that gave maximum exposure to the town's population and provided an audience for her confession.

In the case of thieves, such display would convey a warning to tradespeople of untrustworthy faces for future reference. The burgh also had a thieves' hole: a public bunker where individuals were imprisoned and subjected to insults and detritus being thrown at them from the burgh's inhabitants. This was where James Barnes, a beggar prone to shouting filthy abuse to passers-by, was displayed before being banished at the command of Haddington kirk session.⁹⁷ This was an unusual example of kirk authority in practice, presumably passable as Barnes appeared on a slander charge before them.

Standing on the porch of the kirk, outside the main door, was a more routine place of display used by sessions. On 20 February 1614, Helen Warrior appeared before the North Berwick session to answer for flyting with Barbara Bartilmonth on the sabbath. As punishment, on 6 March the session requested the bailies to ensure that she stand in the joughs at the kirk door at the ringing of the first bell, so she might be adequately displayed to her peers as they entered the kirk for Sunday preaching.⁹⁸

In Tynningame, on 18 January 1618 letters of horning were read at the kirk door by Archibald Wilson, messenger. Individuals who had been 'put to the horn' had been outlawed.⁹⁹ On this occasion, the messenger at arms (Wilson) was requesting that these named individuals 'micht conveine and stent themselfis and make payment of the money quhairin they suld be stentit within ten dayis'. The tax that was being raised was to provide 'for ministration of the sacrament of baptism, and of cupis, tabils and tabil claites for the communion, according to the act of parliament'.¹⁰⁰ Presumably, by paying this tax these people would then be relaxed from horning. And it was the kirk door that was identified as the place most likely to result in this happening.

On the outskirts of settlements, burgh and parish boundaries were symbolic as the point of banishment, places of display for body parts after certain executions and of relevance to execution itself. In the case of Margaret Alexander, the court ordered that

⁹⁷ Case of James Barnes before Haddington kirk session on 23 May 1630, NRS, CH2/799/1, f. 312.

⁹⁸ NRS, OPR 713/1, f. 140.

⁹⁹ See Goodare, *Government of Scotland*, 119-20, 178-80.

¹⁰⁰ NRS, CH2/359/1, f. 17.

efter hir death hir twa armes fra the elbow down to be stricken aff, the ane to be affixt to hang upoun the port of Hadintoun callit Nories Port, the uther to be convoyit to Abirlady to hung up upoun ane pike or staik and to remaine to the terror and exmple of utheris.¹⁰¹

A person condemned to death by Haddington burgh or sheriff court could be led to meet their end either on the sands of Aberlady, in the River Tyne, at ‘Gallowlee’ or the ‘Ordinar Place’ in Haddington, or on top of the nearby, aptly named ‘Heading Hill’ to the south of the burgh.

As a symbol of the heinous nature of his crime, Thomas Aikenhead was executed outside of Edinburgh’s city walls at Gallowlee, at the end of a procession that had started at the city’s mercat cross.¹⁰² In Haddington, Gallowlee was also located on the fringes of the burgh, outwith the walls. This is revealed in evidence of an assault case which came before the sheriff court. On 1 May 1628, four men stood accused of attacking Alexander Wilson and William Gillian after lying in wait for them ‘in thair way neir to the said burgh of Hadingtoun bewest the gallois and thair, the saids Alexander and William being going home to Spittle or Reidhous’.¹⁰³ At the next hearing on 8 May, the minutes detail the men ‘lying in waitt of thame in thair way neir to the burgh of Hadingtoun at the gallois thereof at the West Port’.¹⁰⁴

Further from Haddington, the sands of Aberlady were largely reserved for executing and burning witches, thus physically removing any perceived evil from the burgh itself. Although outside of burgh boundaries, the process of burning a corpse on a pyre with no available accelerant would have resulted in a widely-visible spectacle at the culmination of a state controlled process couched in religious ritual.¹⁰⁵

III. Authority and legitimacy

Although an early modern legal system, the network of courts operating in Haddington and elsewhere in Scotland during the early decades of the seventeenth century could be seen to possess some of the ‘salient features’ of the law in a municipal legal system, so defined by H. L. A. Hart as a system of modern local government.

¹⁰¹ NRS, SC40/7/13, f. 67.

¹⁰² Graham, *Blasphemies*, 1-4.

¹⁰³ NRS, SC40/7/17, f. 268.

¹⁰⁴ NRS, SC40/7/17, f. 276.

¹⁰⁵ Graham, *Blasphemies*, 1-2.

At this time, rules existed to forbid or enjoin certain types of behaviour under penalty; to require people to compensate those whom they injure in certain ways; and to specify what must be done to make wills, contracts or other arrangements that confer rights and create responsibilities. There were also courts to determine what the rules were, when they had been broken and to fix the punishment, and a legislature that could make new rules and abolish old ones.¹⁰⁶ And so the network of jurisdiction present in East Lothian can be seen to have formed a *public* legal system through its secular and ecclesiastical courts alongside those centralised in nearby Edinburgh. Also, there were elements of a ‘settled character and continuity of the legal system’ from 1560 throughout the Stuart monarchies, civil war and conquest, restoration, revolution and enlightenment.¹⁰⁷ It was not until the late eighteenth-century that the influence, authority and legitimacy of local kirk sessions would be halted by an unstoppable decline in public support. Thus, the eastern Lowlands during the early seventeenth-century were not governed by a penal state unable to produce such continuity, as characterised by Hart in his fictional despot ‘Rex’. They were governed by a legal system that had some form of popular, accepted, legitimate authority with defined legal rules for punishing offenders – rules which they believed would be implemented when necessary.¹⁰⁸

Some sources of this popular, accepted, legitimate authority in Haddington have already been suggested, specifically that the personnel of the courts were local men and that the kirk sessions relied on popular gossip. The sources of the authority of the first- and second-generation kirk sessions have been addressed to some extent by John McCallum and Margo Todd. McCallum argues that ‘the acceptance of discipline could be a result either of an acceptance of the principles of Calvinist discipline, or simply of fear of the kirk session’ with this fear being evaluated alongside the benefits provided to parishioners by the sessions, as discussed by Todd.¹⁰⁹ McCallum suggests that Calvinist discipline ‘relied to a large extent on popular acceptance of reformed norms’ in order for it to be effective, citing how for rituals of repentance to be an effective and meaningful punishment the audience had to be at least broadly in sympathy with the goals of discipline – a conclusion enforced by a noticeable lack of popular dissent.¹¹⁰ If

¹⁰⁶ H. L. A. Hart, *The Concept of Law* (Oxford, 2nd Edition, 1994), 3.

¹⁰⁷ Hart, *Concept of Law*, 9-10, 24-5.

¹⁰⁸ Hart, *Concept of Law*, 52-9.

¹⁰⁹ McCallum, *Reforming the Scottish Parish*, 228.

¹¹⁰ Graeme Murdock, *Beyond Calvin: the intellectual, political and cultural world of Europe's Reformed churches, c. 1540-1620* (Basingstoke, 2004), 100-101.

legitimacy is about what people think about government, this is largely irrelevant if those thoughts are not manifested in action which leaves evidence for the historical record.¹¹¹ This has some basis in Hart's discussion of how popular, sometimes habitual 'obedience' often suggests deference to authority and not merely compliance with orders backed by threats'.¹¹² When endorsement of a government arises from cynical self-interest, that government may find itself deserted in a crisis.¹¹³ Hart is careful to point out that 'acceptance of a rule by a society at one moment does not *guarantee* its continued existence' – as the kirk sessions and church courts throughout Western Europe would later discover.¹¹⁴

The common people were excluded from participatory government in early modern Scotland. For them, conferring legitimacy on central government was limited to attending displays of royalty, such as coronations, or in some cases acting as witnesses in court. They could also attend church, although as part of a godly society there were many reasons to do so, and complain to the local courts of wrongs done to them.¹¹⁵ But there are further indicators of the conveyance of popular legitimacy to local governance and the local court network in East Lothian between 1610 and 1640, particularly that which involved the Kirk. Throughout the period, parishioners contributed consistently to the church collections and ministers successfully raised funds for special causes ordained by the presbytery, sometimes for causes far removed from their daily lives.¹¹⁶ There were also regular contributions to the parish poor box – although the North Berwick session admonished its people on at least two occasions for their lack of generosity.¹¹⁷ Local landowners and nobles participated in the system, not just through office-holding and as the barons of local courts but as parish heritors, financially responsible for the upkeep of the kirk, its buildings and employment of a parish schoolmaster. Furthermore, where a parish minister was not living up to the expectations of his parishioners, he could be removed from his post through popular protest to the presbytery – as Michael Gilbert found in Dirleton. Alongside the meaning

¹¹¹ Goodare, *Government of Scotland*, 25.

¹¹² Hart, *Concept of Law*, 51.

¹¹³ Goodare, *Government of Scotland*, 25.

¹¹⁴ Hart, *Concept of Law*, 59.

¹¹⁵ Goodare, *Government of Scotland*, 33.

¹¹⁶ Such as a 'contribution for the prisoners of the Turks' via the presbytery on 27 June 1627. NRS, CH2/185/4, f. 4.

¹¹⁷ On 15 January 1611, NRS, OPR 713/1, f. 95 and 12 January 1612, NRS, OPR 713/1, f. 116.

attached to the swearing of oaths, this is evidence of popular investment in the institutions of the kirk and, by association, in its ideology and session.

Legitimacy was conferred on the established system of parish government and its authority through these interactions, alongside popular acquiescence to Kirk discipline. The state exerted its power in East Lothian through a combination of three methods: military, where non-compliance could be met by death or physical punishment; economic, where non-compliance was met with material sanctions; and ideological power, acting on persuasion through common religious values with sanctions ranging from public disapproval to eternal damnation, sometimes death.¹¹⁸

When the Reformation came to East Lothian, local notables brought themselves into this system of state governance and became established in civil as well as ecclesiastical positions of responsibility. Ordinary folk lent legitimacy through their own lack of organised popular dissent. The Reformers were not run out of town, much less ignored. On 23 October 1639, it was recorded in the presbytery minutes that ‘it is regreted that sundrie processes depending before the presbitrie lyes over unclosed, quhair through sin remains undiscovered and unrepented quhilk may draw down the wrath of God upon the land’. As a result, the brethren ordered the clerk ‘to visit the presbitrie books, to tak a not of such processes therein as have not been concluded and to report’.¹¹⁹ This was done at the next meeting on one week later, when the clerk reported that

he had found manie [processes] from the beginning of the yeer 1633 unto the present time, quhair of he thought sundrie wer concludit before the particular sessions of the kirks quhair the delinquents lived, though no not be extant in the book of anie remitt to them or report of the diligence there anent.¹²⁰

This may not have been a great surprise to the brethren: the previous week it had been noted that ‘because of the last synod the volume of the register of the presbitrie wes complained of as too litle’.¹²¹ But the clerk had been able to identify two further types of unresolved cases that needed to be pursued: the first where those involved had been ‘fugitive when they wer processed’ causing action against them to cease; the second that had been ‘stopped by the iniquitie of the time by letters from the bishop’. In total, the clerk identified nine individuals who had appeared before the brethren since 1633 and

¹¹⁸ Goodare, *Government of Scotland*, 31.

¹¹⁹ NRS, CH2/185/5, f. 7.

¹²⁰ NRS, CH2/185/5, f. 8.

¹²¹ NRS, CH2/185/5, f. 7.

whose cases remained unresolved for one of these reasons. They ordained a 'searche to be made through the severall congregations of the presbitrie' immediately.¹²² Even accounting for any lackadaisical recording as observed by the synod, nine unresolved cases over six years suggests a high level of popular participation in the Kirk's disciplinary machine once an offence had been discovered and pursued. Not only was this essential for these 'delinquents' to be discovered in the first place via neighbourhood gossip and reporting, but such levels of participation conferred legitimacy on this arm of local governance. In 1639, Andrew Bannatyne was the only individual held to account for not signing the National Covenant, and he quickly rethought his stance when faced with banishment.¹²³ Parishioners began contributing to the mission of the Kirk through monetary collections, undergoing the rituals of kirk discipline and informing on their neighbours to the same ends. Clearly coercion was a source of power for Haddington's local courts between 1610 and 1640, but there is evidence that the courts were operating in a way that was not wholly coercive nor oppressive.

Undoubtedly, the authority of the kirk session was accepted as legitimate partly because of the role played by the local laity and their connexions with local civil governance. The elders of the session were all local men who knew or knew of the people whom they governed. It is likely that JPs were the area's most important landowners, maybe with their own baron courts.¹²⁴ Magistrates may also have been elders, as has been seen. Todd argues the importance of this for the kirk sessions, saying that the local nature of session enforcement meant common knowledge of people's troubles, which therefore prevented the emergence 'of a system that might have been truly oppressive' otherwise. She cites incidences of elders verifying excuses given by sabbath breakers as evidence of this.¹²⁵ In England, the support of the 'middling sort' was seen as crucial with most petty constables, tithingmen and parish officers coming from 'the middling ranks' by the mid-seventeenth century, if not before, and at a time when litigation and the business of the courts were growing.¹²⁶

¹²² NRS, CH2/185/5, f. 8.

¹²³ NRS, CH2/185/4, f. 136.

¹²⁴ Goodare, *Government of Scotland*, 193.

¹²⁵ Todd, *Culture of Protestantism*, 37.

¹²⁶ Fletcher, *Reform in the Provinces*, 63-4; J. A. Sharpe, 'Crime and Delinquency in an Essex Parish, 1600-1640', in J. S. Cockburn (ed.), *Crime in England, 1550-1800* (London, 1977), 95; Hindle, *State and Social Change*, 14-15, 117, 228-230.

This is reflected in the absence of popular dissent against kirk authority in Haddingtonshire, as in McCallum's Fife and Davies' Stirlingshire. Davies suggests that the power of the church courts came from a combination of general popular support and 'an intimate connection with civil authority' – something that can be clearly seen in Haddingtonshire with its preponderance of multiple office-holding.¹²⁷ This invested any judicial authority with an air of legitimacy, even if it is impossible to ascertain how many people *actually* went to church and how many parishioners *actually* believed in the theology being prescribed therein. The logistics of fitting an entire parish into its kirk would have been eye-watering if not impossible, and could explain some of the venom apparent in the seat disputes that can be found before Haddington presbytery. For any form of governance to be accepted as legitimate, it does not have to be strictly welcomed.

Regardless of these difficulties, it is true to say that communities generally accept institutional legitimacy and the somewhat natural idea that if you commit a crime, you need to be punished. (Through his fictional leader 'Rex', Hart points out that a society can learn a habit even if it is at odds with any natural human tendency.¹²⁸) After the Reformation, the Scottish authorities were able to establish a network of institutions and personnel that could demand a level of outward religious conformity and punish any discovered moral lapses.¹²⁹ Without this, the ability of the state to punish certain crimes, such as witchcraft, would be completely null.

This being said, although there is evidence of popular acceptance of the legitimacy of the kirk's authority by those on the receiving end of this punishment – the ready confessions for illicit fornications found throughout the minutes offer good examples – there were also limits to this legitimacy. On 20 September 1629 at the meeting of Haddington kirk session that was held in the tolbooth by Mr James Fleming, Mr Patrick Cook gave in a complaint against Alison Forrest 'for coming to Mr Patrick his hous and abusing and railling him to hir malicous talk'. Cook was a preacher in Haddington and the minutes detail how he had 'reprovit sum one of the parochin the sonday imediatlie preceeding, quhilk the forsaide Alisone took up as spoken of hir husband'. She was 'sorrowfull for hir offence' and 'offerd hir self in the sessions will for satisfacione thereof; but

¹²⁷ Davies, 'Courts and the Scottish Legal System', 130.

¹²⁸ Hart, *Concept of Law*, 52.

¹²⁹ Goodare, *Government of Scotland*, 255.

The forsaid Mr Patrick being there present desyrit the session that they would not cause her mak public satisfacione be putting hir in the jogges and therefore the session granting the forsaid Mr Patrick his desyre thought meit that she sould be fynit in ane pecunal soume.¹³⁰

Instead of the joughs, Alison Forrest received a hefty fine of £10 at the hand of the magistrates. Cook's presence at the session and his intervention was acknowledged positively by them and in spite of Forrest's initial acceptance of the session's authority over her behaviour. Indeed, alongside Forrest's own contrition, an emphasis on reconciliation and a return to natural neighbourhood relations can be seen. As such, it can be suggested that any intrusion of the courts – sometimes at the request of an injured party – was a reflection of the failure of normal community relations to reconcile grievances and the natural human need for disputes to end, ideally through arbitration and reconciliation. Indeed, Anthony Fletcher has observed a 'tradition of neighbourliness which made prosecution without very good cause an unfriendly and therefore unacceptable act' in early modern England; with Steve Hindle concluding that 'arbitration was crucial in almost every jurisdiction' there.¹³¹

In Scotland, the sixteenth-century elite had their own method of resolving disputes in a finite manner outwith official legislative process – the feud. Jenny Wormald has argued how the bloodfeud survived in Scotland 'not just in its bloody form, but as a force for peace' with 'acceptances of the principle of compensation rather than retribution as the best way to settle crimes and disputes' and the advantage of quick settlement.¹³² Disputes were also mediated with quick resolution in Haddingtonshire, providing a swift return to normal communal relations – a 'crucial' function indeed. On 3 December 1620, James Neilson approached the Tynninghame session regarding 'ane great outcast' between him and his wife Christian Nesbit, their arguing and 'hir misbehaviour' being so great that he did not know what to do. The minister, John Lauder, embarked on a process of stern mediation outside of the formal setting of the session and the couple, having been 'both admonishit to agreement and peace among themselves' were reconciled, resulting in the elders agreeing that they need not appear

¹³⁰ NRS, CH2/799/1, f. 306.

¹³¹ Fletcher, *Reform in the Provinces*, 106-9. See also: Capp, *Gossips*; C. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge, 1987); M. J. Braddick, *State Formation in Early Modern England, c. 1550-1640* (Cambridge, 2000); Krista J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge, 2003).

¹³² Jenny Wormald, *Court, Kirk and Community: Scotland 1470-1625* (Edinburgh, 2007), 36; See also Brown, *Bloodfeud*, esp. part one.

publicly before them.¹³³ In effect, the session had acted as arbiter in a domestic dispute, only having to threaten litigation and possible punishment.

Figure 3.10 shows that seven people were reconciled with others involved as a result of appearing before the Tynninghame kirk session for various offences, one of whom was also fined. Alongside arbitration, East Lothian sessions worked to facilitate the reconciliation of neighbours in conflict. On 10 May 1640, the Saltoun session announced that ‘this day the folks of Blance are ordanit be the session to come to the examination upon Fryday nixt and to be reconcilit together in respect of som variance among them’.¹³⁴ It was the business of the Saltoun session to prepare these individuals at the examination for the approaching communion, and reconciling their differences was identified as the means to achieve the necessary spiritual peace. In Aberlady on 3 May 1640

Compeirit in presence of the hail congregation [blank] Thomsoun for hurting of George Berth with a sword under cloud of night. Our minister ordaines him to sitt upoun his kneis in presence of the hail congregation and crave the hail parochen and the said George Berth forgivenes. And the said George their in presence and audience of the hail paroch forgive him that offence and in token their of tooke him by the hand.¹³⁵

Arbitration has been identified by Anthony Fletcher as an important resource for English JPs.¹³⁶ In contemporary Germany, presbyteries heard cases brought to them by parishioners, mediated marital disputes and arbitrated verbal and physical exchanges within the household.¹³⁷ In Scotland, the use of arbitration lent the court of session ‘some of its legitimacy by being seen to be pragmatic, concentrating on the need to settle the dispute rather than scoring points’.¹³⁸ The case between the ‘folks of Blance’ shows that the Saltoun session recognised the validity of arbitration over punishment, and there are traces of this in the cases from other sessions where reconciliation was sought as part of the resolution process. Sometimes the individuals involved in cases of wrongdoing at the hand of another lobbied the session successfully for reconciliation rather than punitive justice. This is discussed further in chapter five, below.

¹³³ NRS, CH2/359/1, f. 38.

¹³⁴ NRS, CH2/322/1, f. 18.

¹³⁵ NRS, CH2/4/1, f. 53.

¹³⁶ Fletcher, *Reform in the Provinces*, 79-81.

¹³⁷ Po-Chia Hsia, *Social Discipline*, 125.

¹³⁸ Goodare, *Government of Scotland*, 163.

At the other end of the spectrum in the burgh and sheriff courts, there are the 29 executions minuted as being carried out in Haddington between 1610 and 1640. For these people, it was the end of the road for their community involvement, with a symbolic dispatch in ritualistic fashion befitting their crime. With arbitration and reconciliation emphasised in some cases and limitations being put on other cases by those involved in order to aid the reconciliation process, these executions could be seen as the ultimate failure in community relations where the courts stepped in but where the attempt to normalise relations necessitated complete, permanent removal. Personal disputes between neighbours were nothing new, but the witchcraft panic that swept through East Lothian between 1628 and 1631 offered the possibility, through state initiative and popular demand, for such disputes to escalate to the point of no return: execution at the hands of the state – as had been the case in the previous panics of 1590-1 and 1597 and would be again in 1649-50 and 1661-2. Even then, perhaps half of all those executed for witchcraft had no neighbours testifying against them but began their ‘route to the stake’ on the testimony of another accused witch that had been obtained under torture.¹³⁹ It is arguably the ultimate failure; or the ultimate response by local authorities attempting to re-instate ‘business as usual’ within the parish.

IV. Conclusion

The secular and ecclesiastical courts that were operating in East Lothian throughout the period 1610-1640 formed a network of effective local governance, representing the Scottish state in the delivery and administration of formalised justice at local level. Although the government of early modern Scotland has received due historiographical attention over recent years, examination of how these courts operated in the localities in terms of personnel and divisions of business has been looked at far less – with historiographical concentration resting on Stirlingshire and Aberdeen. Whilst the operations of the kirk sessions, their powers and ability to regulate the behaviour of ordinary folk has been emphasised; that these courts operated with and alongside secular courts as part of a web of justice has been overlooked. Social control in early modern Scotland extended beyond the kirk during the seventeenth century. This was

¹³⁹ Goodare, *Government of Scotland*, 262.

facilitated by a common ideology, shared personnel, overlapping judicial remits and the shared use of public space.

A sound appreciation of the operations of the early modern court network has been identified as crucial for studies of social control, personal relationships and everyday life by Martin Ingram, and acknowledged in recent English and Continental scholarship. This chapter has outlined and identified what courts were operating in East Lothian between 1610 and 1640 and how they were doing so in relation to each other. Haddington sheriff court and the burgh courts of North Berwick and Haddington were the mainstays of the secular legal system, under which operated local regality, burgh of barony, baron and at least one birlaw court. This system was augmented by the creation of the Justices of the Peace, for which little evidence survives before 1751.¹⁴⁰ Alongside the more routine business of debt and petty theft, the sheriff and burgh courts heard cases by commission as justice courts and were responsible for executing at least 29 individuals. The Kirk operated alongside this network of civil authority through its own network of sessions, organised under the presbytery of Haddingtonshire and in co-operation with the neighbouring presbytery of Dunbar. The range of business heard by these courts was wide, with the notable exceptions of anything relating to financial child support or homosexuality. This is examined further in the next chapter.

As a single network of courts, the jurisdictions of Haddingtonshire functioned as a relatively harmonious operation between 1610 and 1640, aided by concurrent office-holding, shared personnel in terms of the bailies and court officers and the shared ideological motivations of Calvinist theology. As a result, business was allocated and divided, with no evidence of jurisdictional wrangling between different bodies. Both secular and ecclesiastical courts employed rituals of honour, shame and display in meting out punishments against the person, at a time when crime and criminal behaviour was establishing itself as a public act – the prosecution of which was the responsibility of local men informed by local gossip. What this meant for social control and the regulation of behaviour is examined in detail in the following chapter. Similarly, all imposed financial punishment – although not in a uniform fashion. As identified by Ingram, the full examination of this network of courts here allows for successful examination of the politics of social control and robust analysis of the experience of

¹⁴⁰ Court books for the Edinburgh JPs date from 1613. Record of cases of the Justices of the Peace for the city of Edinburgh, 1613-1663, NRS, JP35/4/1.

everyday life under these authorities in the next chapter. This then forms the basis for subsequent discussion of any divisions that are found to exist in this experience, be it according to gender, geography, patriarchal norms or social status.

Early examples from Prestonpans and Aberlady show how the ecclesiastical and secular courts were entwined at parish level. Sessions and local barons operated together in the policing and regulation of popular behaviour, enforcing each other's authority and structuring formal methods of governance – as shown through the valuable examples of penny bridals from neighbouring Cockburnspath. In rural parishes, it was not unusual for disciplinary cases to be referred to the civil magistrate by the kirk sessions, but the surviving records indicate that this was not the case in Haddington itself. Although the sessions of North Berwick and Prestonpans were particularly active in the scope of their operations by imprisoning sinners and prosecuting a wide range of offences, so was the rural Tynninghame session under the guidance of its minister, John Lauder. Observations such as these are indicative of the continued importance of geography when it comes to analysing popular experience at the hands of the kirk and law in early modern Scotland – a distinction that has been overlooked in previous scholarship.

Both the secular and ecclesiastical authorities in East Lothian invoked the authority of and the belief in God when punishing both purse and person. Between 1610 and 1640, there was an established, sophisticated legal system in place that enjoyed elements of popular acceptance and legitimate authority characterised by an absence of popular dissent. The overall impression is not of an oppressive, coercive network of courts but of one where there were limits to legitimacy and popular participation in the judicial process in both secular and ecclesiastical settings through the processes of arbitration and reconciliation. But it was a system that employed state-sanctioned violence, and when restoration of 'guid nichtburheid' failed this was deployed through the ultimate penalty. It is now time to turn to what this meant for social control and the influence of the East Lothian courts over the shaping of popular behaviour.

Chapter IV

Social Control: Individual Behaviour and Sexual Relationships

'In early modern thinking, 'sin' and 'crime' were not discrete concepts, the former to come under ecclesiastical jurisdiction and the latter under civil'.¹ So wrote Leah Leneman and Rosalind Mitchison, from within the context of late seventeenth-century Scotland. Twenty years before the start of their chosen period of research into social control and illegitimacy, an integrated network of civil and ecclesiastical courts was operating in East Lothian, pursuing and prosecuting individuals for various criminal acts and ungodly behaviours. Here too, 'sin' and 'crime' became interchangeable terms, harnessed by Church and State in their regulation of relationships and personal conduct. In sixteenth-century Augsburg, Lyndal Roper has found that social control was an 'uneasy amalgam of religious and secular traditions' as the policing of marriage and morals was transferred from church to civil council.²

Traditionally, historians have placed the kirk at the centre of social control in early modern Scottish parishes. The range of behavioural offences under kirk jurisdiction in Haddingtonshire for this period can be seen in figure 3.4. These statistics show how behavioural offences were pursued alongside criminal acts of violence and witchcraft. At face value, this broad business remit itself can be taken as evidence of the social control of these communities. This is the conclusion of Leneman and Mitchison, who cite the formal 'hierarchy of courts' – kirk session, presbytery and synod – as the mechanisms used for social control in late seventeenth-century, urban Scotland.³ Ecclesiastical discipline, prescribed in *The First Book of Discipline* as necessary for the establishment of a godly society, was the vehicle through which social control was made possible.

But this is not a clear definition of the term 'social control'; nor does it say anything of how successful it was in early modern Scotland. This thesis looks to A. P. Donajgrodzki in its definition of social control as the process of controlling or governing the actions and behaviour of individuals by formal and informal means.⁴ And although this had been present in medieval English societies, the context here is the

¹ Leneman and Mitchison, *Sin in the City*, 19.

² Roper, *Holy Household*, 56.

³ Leneman and Mitchison, *Sin in the City*, ch. 2.

⁴ Donajgrodzki, *Social Control*, 9.

intent of those in authority in Scotland on firmly planting and maintaining a post-Reformation, godly society as the established social order.⁵ This meant that mechanisms for controlling actions and behaviour had to be established, both as formal institutions and through the fostering of common expectations and ideology to allow for the prosecution of a wide range of offences. This included cultivating and using notions of honour, reputation, dishonour and shame.

These expectations and common beliefs contributed to the authority and legitimacy of the early modern kirk sessions, as discussed in the previous chapter. Margo Todd has emphasised how the sessions provided the kinds of services that parishioners wanted. The sessions intervened in household disputes, prosecuted violent behaviour and provided poor relief, whilst instilling the norms of godly behaviour in the populace.⁶ Pursuing illicit fornicators required information, and that information came from parishioners. Social control through this avenue was, therefore, made possible by the use of formal and informal methods of enforcement.

Early modern methods of social control meant punishing the purse and the person. Citing behavioural ideals alongside evidence of sin and moral laxity permeated the secular courts as well as the kirk sessions and, as a court system, these bodies operated together to instil social control in East Lothian between 1610 and 1640. How successful they were in doing this is harder to judge. Participation in the system at parish level and the lack of any great revolt against it between 1610 and 1640 have been used to show the accepted legitimacy of social control and these courts in general. But that is not to say that it was a system without limits. As Barbara Hanawalt writes of medieval England, 'not all crimes, trespasses, slanders, and irritations are prosecuted or end in some sort of settlement'.⁷

Two Scottish historiographical debates have been introduced already: the first, over the existence of a gendered double standard in the experience of kirk discipline; the second, over the importance of geography for the type and nature of that discipline. Further questions remain, especially what role the secular authorities played in this system of regulation and just how successful that regulation was.⁸ This chapter considers

⁵ See: Weisner-Hanks, *Early Modern Europe*, esp. ch. 2; Barbara A. Hanawalt, *'Of Good and Ill Repute': Gender and Social Control in Medieval England* (Oxford, 1998); McSheffery, *Marriage, Sex and Civic Culture*; Beattie, *Medieval Single Women*.

⁶ Todd, *Culture of Protestantism*, esp. ch. 5 and 6.

⁷ Hanawalt, *'Of Good and Ill Repute'*, 1.

⁸ Debating the importance of social status has been left for discussion in chapter six.

the experience of social control in Haddingtonshire by looking at the court system as a whole. It seeks to address what the regulation of behaviour in a parish setting meant for the personal relationships of men and women, and if this was dependent on where you happened to live. The subsequent chapter extends this discussion to violent acts and violent words and an assessment of the methods of social control and their consequences.

I. The Regulation of the Individual

Margo Todd states that ‘the household as seminary of church and commonwealth was a sixteenth-century commonplace that gave the kirk all the backing it needed to intervene in every aspect of family life’.⁹ Such was the case during the early decades of the seventeenth century, when second- and third-generation Reformers were emboldened by the successful plantation of ministers throughout the central lowlands and by the backing of the civil authorities for their religious and disciplinary agendas. Between 1610 and 1640 in East Lothian, intervening in ‘every aspect of family life’ involved the social control of the individual and their personal relationships. This took two forms. The first was the regulation of the movements and activities of the individual and household; the second was the regulation of sex and sexual relationships. In both cases the kirk session and presbytery tended to be at the forefront of social control, but they also enjoyed the important backing of the secular authorities.¹⁰ And when it came to criminal behaviour and criminalised individuals, it was the secular authorities that took the lead.

Regulating the household and regulating sexual relationships were not discrete concepts. Domestic service was regulated through enforced dismissals by the kirk sessions as a result of inappropriate, ungodly behaviour. Strangers to parishes were vetted for their suitability through the testimonial system.

A testimonial was the certification of good behaviour that was issued by local sessions after penance had been completed, or if a resident wanted to move to another jurisdiction. Margo Todd has championed its effectiveness and efficiency as a regulatory network.¹¹ This was helped by the Kirk’s stance on the baptising of illegitimates, which

⁹ Todd, *Culture of Protestantism*, 265.

¹⁰ Controlling the household and the importance of patriarchy is given separate consideration below in chapter 6.

¹¹ Todd, *Culture of Protestantism*, 12-3.

is discussed in chapter six. Finally, undesirables, especially gypsies, were criminalised, litigated against and forcibly removed by burgh authorities. All of these actions limited the movement of individuals, which helped control the shape and form of parish households whilst transmitting a message of what was desirable and what was not in a godly society.

In addition, the regulation of sex and sexual relationships was at the forefront of the social control of individual men and women, used as a tool to control the form of the household in similar fashion. Marriage was necessary to form a new household, so heterosexual contact between unmarried individuals was viewed and pursued out of suspicion by East Lothian's ecclesiastical authorities. Alongside fornication and childbirth outside of marriage, marriage itself was regulated by the kirk.¹² Through this regulation of individuals and their relationships, social control permeated the everyday lives of ordinary folk.

Church jurisdiction over marriage and its violation continued in Scotland after the Reformation, buoyed up from its previous medieval remit by 'regular, frequent and readily accessible local court sessions'.¹³ But what did such social control mean for men and women dwelling in different parishes throughout East Lothian between 1610 and 1640? Existing Scottish historiography is divided on three fronts: firstly over the existence of a gendered double standard in the experience of kirk discipline; secondly over the importance of geography for that experience; and, finally, over the influence of socioeconomic status. These first two debates are addressed in this chapter.

Furthermore, what role did the secular authorities play in social control during this period? Were the bailies, justices of the peace, burgh courts and sheriff court bit players, or did they have central roles in the regulation of the social lives of ordinary men and women? Existing historiography has focused on the kirk sessions and their policing of fornication. This chapter extends this scholarship by considering evidence of the social control of the individual and personal relationships from across East Lothian's court system, and by placing this evidence in a European early modern context.

Acceptable sexual relationships were defined as heterosexual relationships and, as such, were idealised in various forms during the early modern period. The kirk placed

¹² For more on marriage and its transition from being a sacrament in medieval Scotland see Elizabeth Ewan, 'The Early Modern Family', in T. M. Devine and Jenny Wormald (eds.), *The Oxford Handbook of Modern Scottish History* (Oxford, 2012), esp. 268-276.

¹³ Todd, *Culture of Protestantism*, 266.

marriage at the centre of the godly, orderly household – Margo Todd states that ‘a new household was properly founded in marriage’.¹⁴ This echoes Lyndal Roper’s statement that ‘the moralism of reformed Augsburg placed marriage at the head of economic, moral and social ordering’.¹⁵ Todd’s households were part of patriarchal society – another inheritance from the medieval period that is examined further in chapter six, below. Shannon McSheffery has shown that ‘in the late medieval English urban world, households were ideally patriarchal – ruled by the husband-father’ so that ‘good rule began at home: the properly governed household was the model both of and for the government of the realm’.¹⁶ And the ‘properly governed household’ had marriage at its centre.

This patriarchal ideal for early modern England has been shown by Bernard Capp, David Underdown and Wrightson and Levine to have been open to contemporary interpretation.¹⁷ A patriarchal household was not always centred around a married couple with a dominant husband and a subordinate wife. European studies by Jack Goody and Steven Ozment have shown this experience to extend to the Continent, where strategies of ‘evasions, accommodation, negotiation and resistance’ were employed by women and servants in order to cope with or to better their situation both within and outside of the household.¹⁸ Yet the *ideal* relationship between man and woman remained in the patriarchal context during the seventeenth century, as did relationships between adults and children and masters and subordinates.

It is within this context that the early modern secular and ecclesiastical authorities regulated the behaviour and movements of individuals in East Lothian. The prevalence of young women in domestic service throughout the seventeenth century left the household exposed to regulation from the ecclesiastical authorities, concerned as they were with policing illicit fornication. For the later period, Gordon DesBrisay has found that ‘a majority of Aberdeen households, many of them modest indeed, employed one or more female domestics – about half of whom had moved into town from elsewhere’.¹⁹ For members of the domestic economy like these women, their security of

¹⁴ Todd, *Culture of Protestantism*, 267.

¹⁵ Roper, *Holy Household*, 132.

¹⁶ McSheffery, *Marriage, Sex and Civic Culture*, 137-8.

¹⁷ Capp, *When Gossips Meet*, 376; Wrightson and Levine, *Poverty and Piety in and English Village*. For these themes as experienced in the context of the Civil War see Underdown, *Revel, Riot and Rebellion*.

¹⁸ Jack Goody, *The European Family: an Historico-Anthropological Essay* (Oxford, 2000), 72; Steven Ozment, *When Fathers Ruled: Family Life in Reformation Europe* (London, 1983), esp. 50-5.

¹⁹ DesBrisay, ‘Wet Nurses’, 212.

employment was often correlated with their personal behaviour and, specifically, how they conducted their personal relationships in relation to the patriarchal ideals of the godly household founded on marriage.

This was the case in East Lothian parishes between 1610 and 1640, where servants caught engaging in illicit sexual activity risked facing enforced dismissal from their posts. Before the Haddington kirk session on 3 April 1631 ‘compeirit Marie Brounhill and confessit hir fornication with Robert Simpstone’.²⁰ The following week on 10 April, Brownhill and Simpson appeared before the session and confessed together. They were both ‘put to the stool’, and the session ordered ‘Johne Lauder (hir master) to remove the said Marie out of his hous’.²¹ In other instances, enforcing official social control through performing penance for the offence was dispensed with altogether. On 17 September 1615, ‘tua servants of Patrick Huntars, fornicators’ came to the attention of the North Berwick kirk session, who ordained them to be warned to appear ‘with Patrick him self’.²² On 29 October, Hunter appeared before the session alone and ‘promisit to put away his tua servants that wir suspect in fornication’.²³ Neither servant is personally named, nor recorded to have appeared before the session in person to answer for the suspicion surrounding their relationship. Instead the session harnessed Hunter’s personal status as their master, ordering him to regulate his household by dismissing two of his employees. In this way, the kirk was able to regulate illicit sexual conduct within the domestic setting, and control the form of the household by purging undesirable members from the congregation and restoring patriarchal authority where it had been identified to have lapsed.

It was not only errant servants who faced being dismissed out of service or banished in the authorities’ attempts to control the behaviour of individuals and the form of the household. Landlords could be called upon to administer the Kirk’s decisions to errant tenants, effectively enforcing the session’s authority over individuals by using their own patriarchal status. Before the Haddington session on 12 December 1630, ‘James Ben was ordanit to remove Elspet Wait out of the hous he had seit to hir and that with all possible diligence’.²⁴ Wait had appeared on 7 December 1630

²⁰ NRS, CH2/799/1, f. 321.

²¹ NRS, CH2/799/1, f. 322.

²² NRS, OPR 713/1, f. 151.

²³ NRS, OPR 713/1, f. 152.

²⁴ NRS, CH2/799/1, f. 317.

and confessit she was in hir hous with James Gullen there alone and tha he clikit the door and wold not let open it. Being demandit to quhom she boor the last bairne, said to James Veitch. And if she had maid satisfaction for that hir fault ansrit she was never requyrit to do it bot that she was being willing the baillie was requestit to detain hir in ward till she found caution to compeer the nixt dyet and obey the session.²⁵

James Gullane appeared on 19 December ‘and confessit his oversicht and scandal in being so secretlie in hous with Elspet Wait bot denyit any carnall dealling with hir’. The Haddington session ‘in respect ther could be nothing proven’ had no choice but to order Gullane ‘not to haunt so slanderouslie with hir’ in future, under pain of further censure.²⁶

On 27 March 1631, the session received news that ‘Elspet Wait to be with bairne’.²⁷ Whether this was information had come from local gossip or the direct investigations of elders is not noted, but the pregnancy was the proof that the session needed. James Ben may have removed her from one of his properties but Wait was still in Haddington, allowing the session’s former suspicions to be confirmed when she appeared before them on 10 April and ‘confessed hir fornication with James Gullen’.²⁸ This was the last time Wait appeared before the session. By 1 May, the clerk reported ‘Elspet Wait dissobedient. The baillie was requeastit to caus banish her out of the toune’.²⁹ The ministers and elders from this urban kirk session saw it as unacceptable that a fornicatrix, living alone with two bastard children from two different fathers, refused to repent her sins for forgiveness. And so Elspeth Wait was forcibly removed from the burgh. This seems to have solved the additional problem of James Gullane’s behaviour, for he disappears from the minutes too with this last ordinance, whilst Elspeth Wait’s household unit was forced into a state of upheaval. Her case was symptomatic of a system where the ecclesiastical and secular authorities in Haddington worked together and with the help of other parishioners to exert social control over individuals and their relationships.

The importance of Haddingtonshire’s secular authorities in this process of control and regulation can be seen in a case from nearby Aberlady. On 29 May 1636 it was noted in the session minute book that a group of elders should go with the ‘constabill’

²⁵ NRS, CH2/799/1, f. 317.

²⁶ NRS, CH2/799/1, f. 317.

²⁷ NRS, CH2/799/1, f. 320.

²⁸ NRS, CH2/799/1, f. 321.

²⁹ NRS, CH2/799/1, f. 322.

to see Jean Bickerton and her partner Thomas Cockburn. Constables were executive officers attached to the justices of the peace. The 1609 statute creating the office had originally intended them to suppress feuding, but by the 1630s they were 'extending the authority of the state down the social scale' by regulating the behaviour of 'those who previously had been ruled by landlords'.³⁰ In Aberdeen, their remit included 'to root out whoredom, drunkenness and swearing'.³¹ Haddington certainly had its own JPs by the 1630s, and the power afforded to their officers was being harnessed by the session elders in their policing of sexual behaviour and criminality. These 'incestuous persons' were to be ordered by 'the sessione that thay abayde out of this parosche', or else face 'justice for thair falt'.³²

In the case of Bickerton and Cockburn, social control and criminality were entwined. The Aberlady session was not just controlling an illicit sexual relationship from within their remit of the social control of godly discipline, but a criminal relationship subject to statutory law and punishable by death.³³ The exact relationship between this couple is never defined. Neither party appeared in person before the session, nor in any other East Lothian court to answer what was a criminal allegation as well as a sinful concern. Faced with the immediate problem of an incestuous couple continuing to reside in Aberlady, the session and JPs acted together to physically remove the problem.

Alongside incest, adultery and 'the filthie vice of fornication' were subject to statutory regulation from parliament during James VI's rule. Theoretically, perpetrators could 'be punished to the deith' at the hands of the civil sword.³⁴ An ecclesiastical court could force the hand of a secular court to act on these powers, and the secular courts had the power to force oaths which could lead to self-incrimination. In theory, there could have been a conflict of jurisdiction between ecclesiastical courts with their maximum penalty of excommunication and the secular criminal courts with their power to use the death penalty.³⁵ But, in East Lothian between 1610 and 1640 a working relationship between the secular and ecclesiastical emerged instead of such a clash.

³⁰ Goodare, *Government of Scotland*, 203.

³¹ Michael Lynch and Helen M. Dingwall, 'Elite Society in Town and Country', in E. P. Dennison, David Ditchburn and Michael Lynch (eds.), *Aberdeen Before 1800: a New History* (East Linton, 2002), 182; See also J. G. Harrison, "'Policing" the Stirling Area, 1660-1706', *Scottish Archives*, 7 (2001), 16-24.

³² Aberlady kirk session minutes, NRS, CH2/4/1, f. 23.

³³ Mackenzie, *Matters Criminal*, 122.

³⁴ *APS* iii, 26 c.14-5; *APS* ii, 539 c.10; Balfour, *Practicks*, 521.

³⁵ Goodare, *State and Society*, 165.

Fornication and adultery remained in the hands of the kirk sessions and presbytery. Anything more problematic, like incest, led the kirk to work with the secular authorities to restore godly order in the community.

Michael Graham has argued that ‘without the backing of such authorities the disciplinary apparatus would have been toothless’.³⁶ That ‘disciplinary apparatus’ was tested to breaking point in Tynninghame, when the form of another household was called into question. On 4 October 1629

James Andersone compeirit [before the session] being warnit and accusit for not cohabiting with his wyff. He was ordainit to cohabit primo quoties tempere [immediately] or else to compeer before the presbitrie to be censurit with all severite.³⁷

James Anderson was not a novice when it came to disciplinary appearances. The case went back to 6 May 1627, when Anderson appeared before the session with Jean Craig, ‘accusit for reporting scandalouslie togidder being suspect of adulterie’. At the same appearance, it was recorded that ‘the said James Anderson did not report to his wyff, Marion Skugall, ane of this twa yeirs bygain’.³⁸ The adultery between Anderson and Craig was proved – on 28 December 1628 ‘James Anderson adulterer with Jean Craig satisfiet his last day and [was] resaitit’.³⁹ But Anderson had not returned to his wife, continuing instead to associate with Craig.

After the report on 4 October 1629, the session took a different approach. On 27 December

Jean Craig callit on, adulteress with James Andersone being sumonit and rebuikit for hir suspicious resorting with James Anderson she altogidder denyed the same. The session considering that Marion Skugall, James Anderson his wyffe, takis great exception at the said Jean Craig hir byding in the towne, ordains hir to go off the towne within fyfteine dayis and dwell in ane uther place seing the said James dois not resort to his wyffe, albeit he dwellis in the towne.⁴⁰

The session’s actions can be seen as an attempt to restore an acceptable form of marriage and household by removing Jean Craig from the parish. But it was also a response to the needs of Marion Scoughall – the desirable, social services function of

³⁶ Graham, *Uses of Reform*, 345.

³⁷ NRS, CH2/359/1, f. 63.

³⁸ NRS, CH2/359/1, f. 56.

³⁹ NRS, CH2/359/1, f. 60.

⁴⁰ NRS, CH2/359/1, f. 64.

the courts as identified by Margo Todd. Even after Craig's departure, Anderson needed some further persuasion to return to his wife's side. On 3 January 1630

James Anderson callit on and accusit for not adhering to his wyff and resorting to hir, he affirmit that he did not desert hir nether was of mynd to do so, bot that he did report to hir and sald continew to do so doing God willing, and that hir sister being in the hous with hir with quhom he cult not never agre was the caus of his strangeness to hir.⁴¹

At this explanation, 'the session assures him that if he did not amend they wald assist the woman to intend process against him befor the comissers' – and with this threat, the infidelities and marriage problems of James Anderson and Marion Scoughall disappear from the minutes. In their policing of adultery, John Lauder and his elders effectively championed Scoughall and exerted a level of successful social control over Jean Craig and James Anderson in an attempt to rescue a marriage that they had acknowledged could end in divorce. This involved using banishment to physically remove Craig from the unfortunate situation and threaten Anderson with the action of the commissary court in Edinburgh.

Banishment itself often required the reinforcement of the local bailies, who provided the secular muscle needed to instigate and enforce any removal – the teeth to Graham's 'disciplinary apparatus'. Being dismissed from service or banished the bounds for participating in an extra-marital sexual relationship was not a given consequence of illicit actions, rather an option that was deployed by East Lothian's ecclesiastical authorities in some cases. In others, fornicating servants were treated in the prescriptive fashion of fornicators in general, meaning that the household remained undisrupted. On 16 September 1627 'compeared James Crief [and] Jonet Arkine, servantis of Alexander Smith for fornication' before the Yester kirk session.⁴² On 7 October, the session ordered them both 'to repair to the pillar to satisfie for their fornication the nixt day'.⁴³ And so their case was concluded. In Tynninghame on 20 May 1621, 'George Foster and Margaret Syd in Alexander Cunyninghame his hous suspect of fornication compeirit'. Both confessed their fornication – which was a relapse for Foster 'having fallin 15 yeirs ago in this before with ane uther woman' – and were ordered to perform penance on the stool and pay a fine.⁴⁴ Neither Alexander Smith nor Alexander Cunningham were

⁴¹ NRS, CH2/359/1, f. 64.

⁴² NRS, CH2/377/1, f. 128.

⁴³ NRS, CH2/377/1, f. 129.

⁴⁴ NRS, CH2/359/1, f. 40-1.

involved in the resolution of these cases, and there were no enforced dismissals, let alone banishments.

Enforcing the dismissal of fornicating servants and banishing individuals whose households did not conform to godly standards did occur in East Lothian between 1610 and 1640, but not with any discernible pattern either according to the nature of the offence, where it took place or those involved. This is similar to what Margo Todd has found for Edinburgh, where sufficient show of repentance by certain offenders could be deployed to mitigate sentencing.⁴⁵

For those without the security of residency or acceptable employment, social control from the ecclesiastical and secular authorities was more pronounced. For those who had been banished the bounds previously, or could be categorised as a member of an undesirable group, social control could be elevated to criminalisation. Across the county, parish officials were concerned with the receipt of strangers – individuals without testimonials and therefore of unknown godliness. On 30 January 1631, the Haddington session ‘ordains that no testimonial be given hereafter to any persone, except the name of the persone and the dait of the testimonial be bookit in ane register’.⁴⁶ On 8 June 1617, the Tynninghame session showed its concern with the ungodly and unrepentant when an

Act was maid that quhasoever suld resaife any persone giltie of fornication within thair hous without a testimoniall fra the minster of the parische quhair fra they came last beiring that they had satisfiet the kirk quhair the offence was comittit, that they suld pay sik ane penaltie the minister and elderis sald injone them according to the gude and lawfull custome of uther parishes. And siclyke if any within the parische sald resave in thair houssis any bairn or bairnis unbaptized sald pay ane penaltie in lyk maner. And therefor [the session] thinkis gude that intimation be maid heirof out of pulpit the nixt sabboth to the pepil that [none may] pretend ignorance.⁴⁷

In passing such an Act, the Tynninghame session sought to regulate the movement of people into the parish by two means. Those who formed relationships with unrepentant or suspicious fornicators by entertaining them, be it by providing lodging or sustenance, would be liable for sanction too. The Act was passed in line with ‘uther parishes’, showing the testimonial system in action.

⁴⁵ Todd, *Culture of Protestantism*, 161.

⁴⁶ NRS, CH2/799/1, f. 318.

⁴⁷ NRS, CH2/359/1, f. 12.

In Aberlady in 1636, the concern with the receipt of strangers was tied not to illicit fornication but to the plague. Figure 1.5 shows Aberlady's location – it was Haddington's port, the burgh's point of contact with the trading routes that operated along the Firth of Forth. As a reaction to a plague outbreak, the session passed measures with the backing of the local elite to regulate interpersonal contact – particularly with strangers whose previous whereabouts were unknown or unverified. An outbreak was first noted in the minutes on 22 May, quickly followed by measures on 29 May to contain infection with the 'concurrance of the nobil men'. Having secured the informal involvement of other authorities, the first point of this 'statute' was that no person 'sould lodge or intertein straingers', nor 'gif relif to aney vagabonds'. Only 'secondlie' was it ordained 'that none have any meddling with the people for the suspitione of the plague'.⁴⁸ In this case, the movement and interactions of individuals were regulated out of concern for public health, the greatest worry for the Aberlady session being that any 'meddling' would happen between parishioners and strangers.

This was a well-versed worry in Prestonpans during the early months of 1610, but not because of the immediacy of a plague outbreak. The session minutes detail parishioners appearing at every February meeting to answer for setting houses to strangers of unknown character. On 8 February 1610 Andro Althingcock appeared, accused for the 'resetting of Andro Mayghie and Alisone Goderall strangers, and setting of ane hous to them'. Not only were Maghie and Goderall strangers, but it had come to the session's attention that Goderall had 'confessed carnal dealling with this man', Maghie. They were ordered to 'remove tham[selves] out of this parochie betwixt and setturday nixt' or face 'the censure of the kirk'.⁴⁹ By 1 March, the session decided to take decisive action with the support of the local magistrates:

The quhilk day the magistrats and session, considering the great abuse of this parishe be the retaining and resetting of straingers of suspect lyfe without any testificat of their lyfs befor, for abaiding thereof it is ordainit that quhatsoever persone in this bounds sall tak in service or set hous or houssis to any extraneous persons without a qualefyit testimonial productit of their honest [character, will be fined] XX shillings als weil as the extranier.⁵⁰

With the support of the magistrates, the Prestonpans session then ordained that whoever should 'reset of a great rank sall pay toties quoties [on every occasion] XL sh.

⁴⁸ NRS, CH2/4/1, f. 22-3.

⁴⁹ NRS, OPR 718/1, f. 62.

⁵⁰ NRS, OPR 718/1, f. 63.

or mair according to their rank and discession of session and magistratis'. It was broadcast from the pulpit on the following Sunday, detailing the united front that had been cultivated between the secular and the ecclesiastical.⁵¹ The Act was voiced as a godly concern over the 'suspect lyfe' of strangers; but the town magistrates were lending the power of enforcement to the kirk sessions, thus enabling a system of social control over personal movements.

In cases where banishment had been sought by the kirk session, it was likely that the support of the secular authorities would be needed for it to happen. Again, a united front was acknowledged and used by kirk sessions in this respect. Before the Haddington session on 6 April 1630 'compeirit Issobell Wilsone who being befor banishit the toune had come again to the toune'. Once the session had passed sentence, 'the baillies wir requested to put their former execile against hir'.⁵² When it came to expelling people from the parish for bad behaviour or illicit relationships, the secular authorities that banished people for criminal behaviour were called upon to facilitate. Relying on the testimonial system could only get the kirk sessions so far.

The importance of this co-operation in allowing the kirk to exert a level of social control over the actions and behaviour of ordinary Scots has been recognised by Gordon DesBrisay as well as Michael Graham.⁵³ DesBrisay has highlighted the importance of the overlap in office-holding that existed in seventeenth century Aberdeen, where session elders also controlled the town council, in facilitating co-operation between the two bodies. Leneman and Mitchison have discovered similar patterns in eighteenth-century Dundee.⁵⁴ East Lothian was no different – the overlap in personnel between Haddingtonshire's jurisdictions has been detailed in the previous two chapters.

But putting the kirk sessions at the forefront of social control because of their disciplinary goals has meant that the examination of social control in early modern Scotland has neglected too often the role that the secular authorities played in their own right. For early modern Europe, scholars including Ulinka Rublack, Lyndal Roper, Robert Muchembled and Robert Kingdon have shown how the secular courts often took on a central role in regulating the behaviour, relationships and actions of

⁵¹ NRS, OPR 718/1, f. 63.

⁵² NRS, CH2/799/1, f. 309.

⁵³ See DesBrisay, 'Menacing their Persons', 70-90.

⁵⁴ Leneman and Mitchison, *Sin in the City*, 20.

individuals from Germany to the Low Countries.⁵⁵ Martin Ingram's work has shown the same to be true for early modern England.⁵⁶ When it came to social control in early modern Scotland, were the secular authorities really mere support acts for the kirk sessions and presbyteries?

The presence of strangers did receive attention from the Haddington sheriff and burgh courts to the exclusion of the presbytery and sessions. Such a case came before the burgh court on 24 September 1621, when appeared

ane pair auld aigit woman calling hir self Issobell Wilsoun alledging hir selff to have bein borne in Dunkeld, being apprehendit put in waird and dilatit for certaine poyntis of theft, oppining of dures and blawing up of lockis with fals keyis and utheris unlawfull means and as ane egiptiane enterit on pannell and being inquirt giff she had any persoun to speik for hir answerat she had nane.⁵⁷

The first item on her dittay concerned the thefts in question, but the second was devoted to her status as an 'egiptiane', or gypsy. It would have great bearing on Isobel Wilson's fate because

she is accusit as ane Egyptian, wandring and forbiddin persone to be within this toone be the actis of parliament thereof, and therefor aucht and sould conforme thereto be execut and put to deathe, quhilkes poyntis of indittay she denyit.⁵⁸

Gypsies had been victimised by the expansion of the state between 1560 and 1625. After the nationwide witch-panic of 1590-1, both the kirk and secular authorities acted to contain gypsies, more colourfully described as 'the counterfute idill lymmarris and harlottis falslie calling thame selffis Egiptianis' in an act against vagrants that was passed in 1593.⁵⁹ By 1609, an ordinance of the privy council ordering all gypsies to leave the country had been ratified, and executions and banishments for the new crime began against this group who suffered 'at least in part because of their unwillingness to subject themselves to masters'.⁶⁰ Neither kirk nor state could reconcile their part-nomadic, gypsy lifestyle with that of the idealised, patriarchal parish household.

⁵⁵ See for example Rublack, *Crimes of Women*; Roper, *Oedipus and the Devil*; Muchembled, *Popular Culture*; Pollman, 'Off the Record'; Robert M. Kingdon, *Church and Society in Reformation Europe* (London, 1985) and *Adultery and Divorce in Calvin's Geneva* (London, 1995). Huguenot communities in France may have been the exception. See Graham, *Uses of Reform*, ch. 9 and 346-7.

⁵⁶ Ingram, *Church Courts*.

⁵⁷ NRS, B30/10/10, f. 191.

⁵⁸ NRS, B30/10/10, f. 191.

⁵⁹ Goodare, *Government of Scotland*, 264.

⁶⁰ Goodare, *Government of Scotland*, 264.

Isobel Wilson's case is a prime example of how a matter of social control born of the kirk's desire to keep undesirables out of parish communities was also harnessed by the state for the criminal control of certain groups. At her trial, 'the said haill assyse, be the words of William Deaname chancellor, fyllis the said Issobell of the said thyfteous oppining of the said John Maisletis dures' because she had been 'apprehendit be the said John' in the act, and 'brocht to the saids judges' by him to be tried. But on the separate charge of being a gypsy, the court was faced with a dilemma 'in respect that they sawe na laikines thereof, bot rather that she was ane heilland womane in regard of hir maneris and language'. Her appearance was of a highland woman, so the assize 'clainges [acquits] hir of the uther part of the said indittay accusing hir as ane egyptiane'. What had not been apparent at her apprehension and at the start of her trial, ended up saving Isobel Wilson's life. Instead of being executed as a thieving gypsy, the court ordered that

she sald be tane hir hands boundin behind hir back and scurgit threw the haill streitis of this burgh, brunt on the ryt scheik with the burning irn thereof, and banischt this burgh [and] said liberteis thereof for evir with certification that giff evir heir efter she salbe fund within the samen to be drownit to deathe.⁶¹

This was a common fate for common thieves. The fact remained that some strangers were less desirable than others, even if they did appear equally foreign to Haddington officials at first encounter. The criminalisation of gypsies was social control at its most aggressive – and it took place under the jurisdiction of the secular authorities in East Lothian between 1610 and 1640.

A group of twelve appeared before the sheriff court on 12 January 1626

All egyptionis being apprehendit, and conforme to act of parliament incarcerat and wairdit within the tolbuith of Haddingtone. The judge at direction and command of our souveraine lords letters, [takes] thame furth of waird and ordains thame to be banisht this kingdome for eveir under the paine of death giff evir they be apprehendit therein heirefter.⁶²

It was one of the few instances where banishment was imposed beyond parish or burgh boundaries, as made possible by the 1609 act. As a case, it highlights the increased power afforded to the civil courts compared to the ecclesiastical authorities acting alone.

Where gypsies were the lowest of the low, vagabonds tended to fare only slightly better in the hands of the civil authorities who were keen to regulate incomers. In

⁶¹ NRS, B30/10/10, f. 191-2.

⁶² NRS, SC40/7/17, f. 19.

Haddington, the sheriff court, burgh court and justices of the peace worked together to control vagabonds in accordance with statute law. On 28 July 1614

Andro Geddis, borne in the barronie of Downie in Angus in the parochin of Monikie, of the aige of threttie twa yeiris, apprehendit be the said Sheriff principil and ane of the justiceis of peace within the said constabularie as ane vagabond and ane levand without ane lawfull tred and calling contrair to the actis of parliament and lawis of this realme. The said Andro Geddes actit and obleist him presentlie to depart out with this schyre and nevir heirefter to repair therein under the paine of deid.⁶³

In a similar case before the burgh court on 11 August 1618

ane vagabound calling himself Johne Adamesoun, sone to umquhill Capitaine William Adamesoun, being apprehendit and wairdit as ane common vagabound these many yeirs bygane leving as ane vagabound, begger, slouth, [and] bangistrie, comperand [and] personallie acctit and obleist him upoun his awin frie will and confession nevir nor at tyme herefter to cum within this parochin of Hadintoun under the paine of hanging.⁶⁴

In the kirk sessions, the policing of vagabonds was extended to the regulation of beggars. At a meeting of the Tynninghame kirk session on 2 January 1620, ‘the minister exhortit the elderis and honest men to hald hand that the vagabound and sturdie beggeris micht be restrainit according to the act of the secreitt counsall’. Again, this was not just a social concern, but one that had involved the privy council. In order to differentiate ‘the vagabond and sturdie beggeris’ from the parish poor, the minister added that the session and ‘honest men’ ‘wald have ane cair of the pure with in the parishe, and that they sald tak on the badge that they micht be kend’.⁶⁵ In this way, certain groups were excluded from the poor relief system and others had to prove the legitimacy of their need.⁶⁶ Such measures worked to limit individual movement and economic existence, and personal contact with these individuals within the parish setting was subjected to regulation.

In East Lothian, this meant another point of co-operation between the Kirk and justices of the peace. On 17 May 1617 in Tynninghame ‘the minister intimat (as the rest of brethren of the presbitrie did to their pepill) the ordinance of the justices of peace anent the vagabond beggars’.⁶⁷ The JPs were leading the way in this aspect of social control. But where the problem of begging was taken into the household setting, it was

⁶³ NRS, SC40/7/13, f. 270.

⁶⁴ NRS, B30/10/10, f. 102.

⁶⁵ NRS, CH2/359/1, f. 32.

⁶⁶ See Mitchison, *Old Poor Law*, esp. ch. 2-3.

⁶⁷ NRS, CH2/359/1, f. 19.

the kirk sessions that intervened to restore acceptable normality. On 27 April 1630, John Wilkie appeared before the Haddington kirk session and ‘was ordanit to remove his begger servants betwixt and Saturday nixt’, or face having to ‘pay ten pounds for ilk’.⁶⁸

Both kirk sessions and secular courts concerned themselves with regulating individual actions and behaviours in East Lothian between 1610 and 1640. Domestic service was subjected to oversight, especially where there was any suggestion of impropriety. Sexual relationships could be regulated by banishment, and the movement of people between parishes was subjected to tight control. The mechanisms that these measures involved often necessitated close interaction between jurisdictions and officials, with local magistrates and bailies acting to enforce session judgements and ordinances and providing muscle for the testimonial system.

But this co-operation in the name of social control that has been identified in existing Scottish historiography was not always Kirk-led. The social control of certain groups was a matter of criminal concern between 1610 and 1640, not simply spiritual welfare. When it came to the policing of strangers, the burgh and sheriff courts were active agents and the kirk sessions could find themselves relegated to a supporting act for the local JPs. The Kirk may have been intent on regulating sexual relationships, eliminating undesirable sexual behaviour and expunging undesirable characters from the parish community, but there were limits to what it could achieve alone even in its position of relative security in 1610-1640.

II. Regulating Relationships

The Reformed kirk’s reputation for being obsessed with fornication has been well-acknowledged.⁶⁹ The regulation of sexual relationships through the policing of illicit sex by local kirk sessions was the ‘bread and butter of Scots discipline’ – an area of social control where church authority could stand alone without the need of secular help.⁷⁰ In East Lothian between 1610-1640, fornication cases constituted over one third of all session business. Figure 4.1 shows the breakdown of these cases in more detail.

⁶⁸ NRS, CH2/799/1, f. 311.

⁶⁹ Graham, *Uses of Reform*, 345-6; Todd, *Culture of Protestantism*, 23.

⁷⁰ Graham, *Uses of Reform*, 346.

Figure 4.1: table to show distribution of fornication cases heard by East Lothian kirk sessions between 1610 and 1640

Parish	Female	Male	TOTAL
Aberlady	43	34	77
Haddington	33	31	64
North Berwick	44	51	95
Pencaitland	23	22	45
Saltoun	12	12	24
Tynninghame	61	57	118
Yester	36	31	67
TOTAL	252	238	490

Source: Aberlady kirk session minutes, NRS, CH4/1, ff. 1-61; Haddington St. Mary's kirk session minutes, NRS, CH2/799/1, ff. 306-325; North Berwick kirk session register, NRS, OPR 713/1 ; Pencaitland kirk session minutes, NRS, CH2/296, ff. 1-16; Saltoun kirk session minutes, NRS, CH2/322/1, ff. 1-111; Tynninghame kirk session minutes, NRS, CH2/359/1, ff. 1-116; Yester kirk session minutes, NRS, CH2/377/1, ff. 1-245.

The ideal heterosexual relationship was within the context of marriage.⁷¹ Kirk sessions pursued and policed sexual relationships that fell outside of marriage, as well as those that threatened its existence – like the Tynninghame love triangle of James Anderson, Marion Scoughall and Jean Craig.

The kirk was able to regulate marriage as an institution by pursuing individuals who were thought to have entered into improper marriages.⁷² Figure 3.4 shows only four individuals fell into this category between 1610 and 1640. It was not until the late seventeenth-century that the problem of irregular marriage, rather than improper marriage, really began to take up the sessions' time.⁷³ During this earlier period, kirk sessions exerted a level of social control over adult men and women and their sexual relationships by refusing to complete marriages where there was any doubt regarding the character of either party. In North Berwick, the marriage of Patrick Wilson and Nans Robertson was delayed because Robertson had not brought a testimonial to the session to prove she was not lying under any sort of slander. On 3 December 1611, Watson 'promisit to compleit maryage with hir betwixt and Witsonday or souner if she bring hir testimoniall'.⁷⁴ On 15 November 1618, Patrick Bassindene and Janet Carfree appeared

⁷¹ As explained in *FBD*, ed. Cameron, 191-9.

⁷² As opposed to an irregular marriage, which was a technical term for a legal and binding but non-church marriage.

⁷³ Leneman and Mitchison, *Sin in the City*, ch. 8.

⁷⁴ NRS, OPR713/1, f. 114.

before the Tynninghame session ‘being accusit of fornication, confessit the same desiring also their bands of mariadge to be proclaimit’. They were ordered to ‘sitt ane sabbothe on the pillar’ and complete their public penance before their banns would be read.⁷⁵ Marriage was only to be entered into by those with clear sexual consciences.

Shannon McSheffrey has written that ‘in the language of courtship there were strong associations between marriage and something they call “love” in late-medieval England’.⁷⁶ The choice of marriage partners seemed to have remained a personal decision in East Lothian between 1610 and 1640. If advice was sought or consent needed, under normal circumstances this was not from the kirk. Officially, the kirk proposed that young people who ‘have their heart touched with the desire of marriage’, should honour their parents by ‘asking their counsell and assistance’; but warned that ‘the worke of God ought not be hindered by the corrupt affections of worldly men’.⁷⁷ On 17 February 1629 Sara Keith and Bessie Mack stood in Haddington sheriff court, on trial under commission for witchcraft. In the dittay that was read out against her, Bessie Mack was

accuset that professing your self to be able be your inchantments to make marriages and death and force love of men and women towards utheris tha wer in dislyk with utheris of before, ye come to Helen Palmer spous of James Young in Saltoun and offerit ane marriage to George Young hir sone for some acknowledgement for your paines.⁷⁸

Helen Palmer pointed Mack in the direction of her son. Palmer is said to have ‘willit yow [Mack] to go and show to the said George himself affirming she wold not make choise of his wyff’. As a mother, the record suggests that she had no intention of interfering in her son’s choice of bride without being asked. This was not the case in medieval London, nor in sixteenth-century Augsburg, where ‘marriages were frequently arranged by the couple’s parents’, with no clear connection between wealth and status and the level of parental participation.⁷⁹ As it turned out, George Young had no intention of letting anyone intervene in such a choice. Make was said to have approached him and ‘desyrit him to take your consel in his marriage, and ye suld get him

⁷⁵ NRS, CH2/359/1, f. 22.

⁷⁶ McSheffrey, *Marriage, Sex and Civil Culture*, 19.

⁷⁷ *FBD*, ed. Cameron, 192-3.

⁷⁸ NRS, SC40/7/17, f. 389.

⁷⁹ Roper, *Holy Household*, 154, 156-7. For Europe more generally see Wiesner-Hanks, *Women and Gender*, 75-9. On arranged marriages in medieval London including the use of matchmakers, see Barbara A. Hanawalt, *The Wealth of Wives: Women, Law and Economy in Late Medieval London* (Oxford, 2007), 70-8.

ane honest marriage with ane honest woman, to witt Adame Arnots sister in Fala Myln'.⁸⁰ His answer was short, stating 'that he wald tak the advise of utheris to his marriage and wald have nane of yours'.⁸¹ And so it was claimed that Make cursed George Young, resulting in his untimely death soon after. Both Make and Keith were executed for 'witchcraft, sorcerie and meitting with the divill'.⁸²

For George Young, marriage was a personal decision to be entered into after consulting people of his choosing. Margo Todd has used evidence of broken marriage matches to show the value that the kirk placed on the personal choice of those involved, helping to illustrate how the kirk's social control of heterosexual relationships was not unduly invasive, unwelcome or oppressive in this respect.⁸³ Throughout East Lothian, the kirk sessions did not force couples to marry based on promises of marriage made during consensual fornication – even though this could constitute an irregular, yet binding, marriage.⁸⁴ Indeed, the Haddington session rarely investigated alleged promises in the course of their policing of sexual behaviour. On 28 November 1630, Agnes Geddes and John Herbert appeared and 'confessit fornicatione'. But where Geddes alledged that this was under promise of marriage, Herbert denied that this was so.⁸⁵ A denial by one party was enough to dismiss the whole notion of marriage. Instead, both were ordered to 'the public place of repentance' for two Sundays – the prescribed punishment for Haddington fornicators. This was also a case in Pencaitland, where promise of marriage had little bearing on the fate of Margaret Crawford and Archibald Miller who appeared before the session on 20 March 1636.⁸⁶

East Lothian sessions were hesitant to enforce promises of marriage unless both parties were willing – even where a promise had been acknowledged by both parties. Bessie Neilson appeared before the North Berwick session on 7 May 1611, and 'confessit fornication with Jhone Murson alledging promis of maryage'. In light of this, the session 'delyit till the man is presente'.⁸⁷ This was nearly one month later on 2 June,

⁸⁰ NRS, SC40/7/17, ff. 389-390.

⁸¹ NRS, SC40/7/17, f. 390

⁸² NRS, SC40/7/17, f. 391.

⁸³ Todd, *Culture of Protestantism*, 267-8.

⁸⁴ See the work of W. D. H. Sellar, including: 'Marriage, Divorce and Concubinage in Gaelic Scotland', *Transactions of the Gaelic Society of Inverness*, 51 (1979-80), 464-93; 'Marriage, Divorce and the Forbidden Degrees: Canon Law and Scots Law', in W. N. Osborough (ed.), *Explorations in Law and History: Irish Legal History Society Discourses, 1988-1994* (Dublin, 1995), 59-82.

⁸⁵ NRS, CH2/799/1, f. 316.

⁸⁶ NRS, CH2/296/1, f. 11.

⁸⁷ NRS, OPR713/1, f. 105.

when ‘Jhone Murson confessit promis of maryage with Bessie Neilson’ before the minister and elders. But Murson had had a change of heart. He confessed having made the promise to Neilson at the time of their fornication, ‘bot wes not myndfull to performe his promis because as he alledges she wes not for him and could not work in the sea’.⁸⁸ The session accepted this and ‘they wer ordainit to satisfie as fornicators’.⁸⁹ There was no attempt to hold Murson to his promise. Instead, his contemplations on the economic characteristics that he thought would make a good wife were accepted by the minister and elders as reason enough not to push the match.

Where fornicators expressed a mutual desire to marry, this could be taken as mitigation of the offence by East Lothian sessions. Across Haddingtonshire, ministers and elders reacted to such sentiment with lesser punishments for the perpetrators. Before the Prestonpans session on 8 October 1611, ‘John Conchie and Nans Fall confessit simpill fornication’. The session ordered them ‘to sit 3 sabboth days except thay mary’, and for the banns to be ‘proclaimit the nixt sabboth primo, with caution’.⁹⁰

On 7 August 1610, William Gullane ‘fornicator with Isobell Stevinson’ appeared before the North Berwick session to request baptism for their illegitimate child. The session granted the request, on the condition that Gullane ‘consigne sax pounds money to enter to the pillar the nixt sabboth’.⁹¹ On 10 February 1611, Stevenson appeared before the session, the ‘fornicatrix with Williame Gulane, alledging promise of maryage’. Her allegation meant that the case ‘wes deferat till the said Williame gave answer therto’.⁹² One week later, Gullane appeared

and in presence of the session then present confessit voluntarily that he had maid promis of maryage to Isobell Stevinsoun according to her alledgence quhilk he wes myndfull to performe bot could appoint no tyme to the performance thereof.⁹³

With this supporting statement, the session decided that Stevenson should not have to satisfy as if she had relapsed, but ‘sould satisfie be three dyets on the pillar be ressoun of the intendit maryage’.⁹⁴

⁸⁸ NRS, OPR713/1, f. 105.

⁸⁹ NRS, OPR713/1, f. 105.

⁹⁰ NRS, OPR718/1, fv. 81.

⁹¹ NRS, OPR713/1, f. 92.

⁹² NRS, OPR713/1, f. 98.

⁹³ NRS, OPR713/1, f. 100.

⁹⁴ NRS, OPR713/1, f. 100.

In July 1612, the couple remained unmarried. But their promise – as presented to the kirk session over a year previously – was holding its influence. On 19 July 1612, the session minutes noted the elders considering ‘the banishing of Isobel Stevinson for reseving William Gulane having committit fornication with him’. Stevinson was present, and ‘at hir earnest request’ she was

liberatit to byd upoun condition that if William Gulane be sene using hir companie any mor of way befor the compleitting of ther maryage she sall pay ten lib to the poor, and if he wold cum visit hir tak some honest man with him and let him give hir quhat he pleases, otherwys to be convict and removit also out of the toun.⁹⁵

On 16 May 1613 the session issued another, similar warning to Stevinson rather than acting on this earlier threat, and she was allowed to remain in the town. By 1615 she and Gullane had finally married – five years since their first fornication and the birth of their daughter, Alison. During these five years, the mutual promise of marriage had prevented this unmarried couple from being banished from North Berwick as undesirable characters of suspect moral fibre. On 23 August 1615,

at fyve hors at night baptizit ane [son] lawfull of William Gullans, haldin up be Walter Lauder (the said William being at the drave), the bairnis name Alexander, quhilk bairne wis sick.⁹⁶

When Archibald Nimmo and Nans Russell, ‘fornicators together’, appeared on 4 September 1614, they confirmed that there was a promise of marriage between them. In this case, the North Berwick session ordered the marriage to be completed within a matter of weeks.⁹⁷ This was in line with the general worry that any delay between contract and solemnisation would lead to fornication.⁹⁸ But William Gullane was a fisherman; he was absent for long periods of time. To some extent this explains why he ‘could appoint no tyme’ to perform the marriage when questioned by the session back in February 1611. It also explains why the kirk lent credence and lenience to the promise that existed between himself and Stevinson. The path to hell may be paved with good intentions, but evidence of good intentions was influential when it came to controlling sexual relationships in this royal burgh.

This was the case in other East Lothian parishes, where both men and women received reduced sentences for fornication committed before the completion of their

⁹⁵ NRS, OPR713/1, f. 124.

⁹⁶ NRS, OPR713/1, f. 150.

⁹⁷ NRS, OPR713/1, f. 143.

⁹⁸ Todd, *Culture of Protestantism*, 270.

marriages. The aforementioned case of Patrick Bassindene and Janet Carfree was typical of the Tynninghame session – their intention to marry meant they only sat one Sunday on the stool instead of three.⁹⁹ On 12 August 1637, George Haldane appeared before the Saltoun session ‘confessit his fault of fornication and was ordainit to come to the pillar of repentance this day 8 dayes’.¹⁰⁰ When he appeared on 20 August, Haldane reported his desire to marry his fornicatrix, Elspeth Douglas. He asked the minister and elders if he ‘might be obsolved fra the stoole’ because of this – which was agreed on the condition that he ‘consyne ten pund befor his resaving’ and ‘solemnizat his mariag betwixt and Mertimes’.¹⁰¹ In Yester, Thomas Hogg and Bessie Forbrand confessed their fornication under promise of marriage. Their marriage banns had already begun to be called, so the session ordained that their marriage would be completed after they had performed one act of public penance rather than the usual three.¹⁰² It was a consistent approach by the Yester session – on 21 September 1639, Charles Jolly and Katherine Ferguson received the same sentence. They performed their single act of penance on 6 October, and were married two days later.¹⁰³

The *First Book of Discipline* clearly stated that ‘if any commit fornication with that woman he requires in Marriage they doe both loose this foresaid benefit’. This was because neither kirk nor magistrate ‘ought to be intercessors or advocates for filthy fornicators’.¹⁰⁴ But once some show of repentance had been given and forgiveness had been bestowed on those involved, fornicators did go on to marry with the kirk’s blessing. Furthermore, where the intent to marry was mutual it worked to mitigate that show of repentance, saving parishioners from undue appearances on the stool.

If marriage was the vehicle for the procreation of children, the avoidance of sin and mutual help and companionship, Merry Wiesner-Hanks asserts that ‘Calvin did view the last purpose as the most important’.¹⁰⁵ Marriage continued to matter throughout Haddingtonshire between 1610 and 1640. It mattered in the sense that it was a union to be treated with respect and one which was not to be entered into lightly. The *First Book of Discipline* permitted that ‘the father, or nearest friend, whose daughter being a virgine

⁹⁹ NRS, CH2/359/1, f. 22.

¹⁰⁰ NRS, CH2/322/1, f. 8.

¹⁰¹ NRS, CH2/322/1, f. 8.

¹⁰² NRS, CH2/377/1, f. 125.

¹⁰³ CH2/377/1, f. 233.

¹⁰⁴ *FBD*, ed. Cameron, 193.

¹⁰⁵ Wiesner-Hanks, *Women and Gender*, 31-2.

is defloured, hath power by the law of God to compel the man that did that injurie, to marry his daughter'.¹⁰⁶ This has been echoed by Margo Todd's research into rape cases, which she claims reveals those sessions 'at their least enlightened'. In cases of rape, Todd has found evidence that the sessions 'often punished the victim as well as the perpetrator for fornication', or pressured the victim to marry her attacker.¹⁰⁷

In 1680s Aberdeen, Gordon DesBrisay argues that the authorities treated rape with an element of sympathy. In an example from the St Nicholas kirk session, DesBrisay shows that although Jean Stevin was punished for extra-marital fornication, she was not subjected to the full might of the kirk session because of the harrowing nature of the rape attack that she described.¹⁰⁸ Even allowing for the passage of time, this contrasts with Todd's examples from Falkirk and Pitmarthly where victim and perpetrator were treated equally. Todd acknowledges that enforcing marriage after rape was 'an exception to the rule that the kirk sought happy marriages and harmonious families to foster the true religion'.¹⁰⁹

There seems to have been a high level of geographical variation in the treatment of these rare cases of sexual violence. Formal rape allegations are noticeably absent from the East Lothian record, although there are some recorded attempts. On 7 April 1612, Marion Duncan appeared before the North Berwick kirk session and 'accusit James Ross to have pressit to tak his will of hir the 24 March cuming fra the mill to North Berwick. Duncan fought Ross off, who

being refusit be hir, he pullit hir plads fra hir, cast hir doun, assirtit to pull hir legs syndrie with his hands and she turning upoun hir face toward the ground, he pushit hir with his kneis and bruisit hir bowels, syds and leggis that she wes forcit to keip bed for aucht dayis thereafter and hurtit upoun ane of hir legs.¹¹⁰

Ross had not succeeded in his attempt to force Marion Duncan, so the kirk was spared having to deal with a case of illicit fornication. Instead, Ross' excuse that he 'wes mirrie efter drink' was given little sympathy and he was referred to 'Sir Jhone Home within quhose jurisdiction the said James remains'.¹¹¹

¹⁰⁶ FBD, ed. Cameron, 193.

¹⁰⁷ Todd, *Culture of Protestantism*, 296. Todd places Scotland within a European model here, citing Rublack, *Crimes of Women*.

¹⁰⁸ DesBrisay, 'Women Under Godly Discipline', 144-5.

¹⁰⁹ Todd, *Culture of Protestantism*, 296-7.

¹¹⁰ NRS, OPR713/1, f. 119.

¹¹¹ NRS, OPR713/1, f. 119.

The attack on Duncan was treated by the authorities as an ordinary assault. On 8 March 1618, John Tullie appeared before the Tynninghame congregation. The session ordered him to

sitt on the pillar in linen claithe and satisfie the kirk also be sitting downe on his kneis befor the pulpit for his drinking in Skugall in tyme of preaching, in William Brown his hous, and thereafter going out of Skugall struggled with Hary Neilson his wyfe in Pilmure be the way in tyme of preaching and wald have forcit hir in the gait betwixt Quhytkirk and Pilmure.¹¹²

John Tullie was punished for sabbath breach. His attempted rape of Harry Neilson's wife was simply an aggravating factor.

Rape was technically one of the 'four pleas of the crown', but Julian Goodare writes that the criminal courts – like the kirk sessions – did not in practice prosecute it either. During this period the statute law on rape was from *Regiam Majestatem*, and could not have been in regular use because its final clause, containing a reference to the 'lord of the schirefdome', was obsolete.¹¹³ Michael Wasser has shown that the Scottish criminal courts only pursued rape cases where there was an aggravating factor, such as the woman concerned being underage or pregnant.¹¹⁴ Even then, the official procedure that was defined for reporting rape would have deterred any woman from doing so. She should immediately 'pass to the nixt toun, and their schwa to honest men the injurie done to hir, and the blude, gif ony was drawin, als weill in hir bodie under hir claithe, as in hir face, togidder with hir revin claithe, gif ony be'. She then had to find the local sheriff or coroner and repeat the same procedure, before doing the same to the (obsolete) lord of the sheriffdome – all without delay, not even 'the space of ane nicht'.¹¹⁵

Like formal rape allegations, there is a wholesale absence of forced marriages from the East Lothian session and presbytery minutes. Enforcing promises of marriage or suggesting marriage to errant fornicators was not used by the sessions or presbytery as they exerted control and regulation over heterosexual relationships. Instead, it was always the theory that the couple involved had to be in agreement, and where this was not the case they were allowed to step away from any previous obligation.

¹¹² NRS, CH2/359/1, fr. 18.

¹¹³ Goodare, *Government of Scotland*, 259-60.

¹¹⁴ Michael B. Wasser, 'Violence and the Central Criminal Courts in Scotland, 1603-1638' (Unpublished Ph.D. Thesis: Columbia University, 1995), 63-5. The experience in England was similar. See N. Bashir, 'Rape in England between 1550 and 1700' in London Feminist History Group, *The Sexual Dynamics of History: Men's Power, Women's Resistance* (London, 1983).

¹¹⁵ Goodare, *Government of Scotland*, 260.

Extending discussion away from marriage, the general pattern of fornication cases across East Lothian between 1610 and 1640 – as detailed in figure 4.1 – is one of remarkable evenness. 252 women appeared before their local sessions to answer charges of illicit fornication, compared to 238 men. The gender ratios within parishes are characterised by their evenness. And the volume of business does vary between locations. This is understandable considering the differing extents of surviving records between the parishes, but further significant observations can be made regardless.

Firstly, there are the number of prosecutions according to parish. Prosecutions for fornication in Aberlady totalled 77 cases for a set of minutes that last only nine years. Tynninghame records 118 cases, but for a period of 25 years between 1615 and 1640. Yester, the parish with the longest extent of minutes, saw only 67 cases between 1613 and 1640. The quality of the minutes and the level of astuteness of the various session clerks only go some way to addressing and explaining these differences. One of the three key questions engaged by this thesis is the influence of geography over the experience of social control. After differences in the various extents of different sets of parish records have been accounted for, these fornication statistics suggest that geography was playing some part in the experience of the church regulation of sexual relationships.

Broadly speaking, figure 4.1 suggests that the number of fornication cases heard by East Lothian kirk sessions depended on the size of their parish populations. Between 1629 and 1631, the Haddington session heard 64 cases of illicit fornication – three less than the Yester session saw over a period of almost 30 years. Michael Graham has identified a geographical urban-rural divide in the experience of kirk discipline before 1610, citing the example of the parish of Monifieth and the broader difficulties of settlement and manpower than plagued the kirk in the 1580s.¹¹⁶ It is a logical expectation that where there are more people, there are more people who can misbehave and more sophisticated networks of local governance able to catch them. But does this mean that the Haddington session was exerting a level of social control over its parishioners that was unmatched by the smaller settlements of Yester and Tynninghame?

¹¹⁶ Graham, *Uses of Reform*, 125-9. For an alternative explanation see Bardgett, 'The Monifieth Kirk Register', 175-95.

Looking at the other activities of these sessions beside fornication can give clearer idea of what social control meant for men and women in different East Lothian parishes between 1610 and 1640. Social control did not just mean the regulation of personal relationships but the regulation of broader behaviours in the kirk's quest to establish and maintain a godly society. Figure 3.4 details some of these: charming and witchcraft, guising, flyting and scolding, slander and violence. Although these were different offences, a closer look at the nine cases of charming and witchcraft that appeared before East Lothian sessions between 1610 and 1640 reveals more of significance.

Figure 4.2: table to show the distribution of individual cases of charming and witchcraft heard by the East Lothian kirk sessions between 1610 and 1640.

Parish	Male	Female	TOTAL
North Berwick	0	2	2
Tynninghame	1	2	3
Yester	3	1	4
TOTAL	4	5	9

Source: North Berwick kirk session register, NRS, OPR 713/1; Tynninghame kirk session minutes, NRS, CH2/359/1, ff. 1-116; Yester kirk session minutes, NRS, CH2/377/1, ff. 1-245.

Tynninghame and Yester have the two longest stretches of surviving session records in East Lothian. Whilst this may increase the probability of a case involving charming or allegations of witchcraft being heard, that these cases were being heard *at all* suggests something of the nature of the ecclesiastical authorities that were operating in these smaller parishes *in particular*. Between 1633 and 1640, Pencaitland session business was largely confined to policing fornication and sabbath breach with a few cases of slander and taking order with unruly households.¹¹⁷ By contrast, the Tynninghame session heard 372 individual cases covering a range of 14 different offences including guising, drunkenness, scolding, flyting and slander – as well as the charming and witchcraft instances in figure 4.2. Between 1610 and 1640, being a rural kirk session in East Lothian did not necessarily translate as being an inactive or complacent one. Both Tynninghame and Yester heard a range of cases that were recorded throughout the extent of their minutes and did not confine their policing of behaviour or general practice of social control to the regulation of illicit sex and sabbath breach.

¹¹⁷ NRS, CH2/296/1, ff. 1-16.

The general pattern of business heard by the Pencaitland session is mirrored in the Saltoun minutes for 1635-1640, but to a more pronounced extent.¹¹⁸ This is shown in figure 4.3 below.

Figure 4.3: table to show the distribution of individual cases heard by the Saltoun kirk session between 1635 and 1640.

Offence	Male	Female	TOTAL
Disobedience	5	15	20
Family, Household and Parentage	3	2	5
Fornication	12	12	24
Group Disagreement	5	0	5
Sabbath Breach	43	24	67
Slander	6	7	13
Suspicious Conduct	0	2	2
TOTAL	74	62	136

Source: Saltoun kirk session minutes, NRS, CH2/322/1, ff. 1-111.

A closer look at the business of the Saltoun session using figure 4.3 shows that 20 cases of disobedience were heard by the elders during this period. This constituted 15 per cent of all session business. By comparison, the Tynninghame session heard nine cases between 1615 and 1640; the Yester session heard two; and the Haddington and Pencaitland sessions heard one apiece. This is a pronounced quantitative difference.

The month of October 1640 saw a clustering of these cases as action was taken against those who had undermined their authority for long enough. On 4 October ‘the bailye declared that he assisted the officer in taking of poinds from those who refused obedience to the kirk session’.¹¹⁹ Resorting to pointing via secular officers was extremely unusual for an East Lothian session acting to exert a level of social control over local people, thus maintaining its position of authority. But in Saltoun, the session officer needed the assistance of the bailie (presumably of the local baron court) to hold those who had flouted kirk discipline to account. The pointing itself demonstrates the lack of ready coin within this settlement. The bailie took ‘from Jean Reid ane yrn pot’, ‘fro Marione Home ane pane’, ‘from Margaret Flinker ane coat’. They were given 40 days to ‘redeem these poinds’, ‘or else to lose them’.¹²⁰ The message here, is that the

¹¹⁸ NRS, CH2/322/1, ff. 1-111.

¹¹⁹ NRS, CH2/322/1, f. 20.

¹²⁰ NRS, CH2/322/1, f. 20.

Saltoun kirk session officer relied on local secular officers to assist him in the execution of his assigned duties.

Closer investigation of Margaret Flinker's disciplinary record illuminates this further. At the meeting on 4 October, the session clerk noted that Flinker had been warned to appear, but 'compeirit not'. At the next meeting on 11 October, the session 'ordains to poind Margaret Flinker and Marion Jonstone for ther absence fra the kirk and disobedience to the session'.¹²¹ Resorting to poinding seems to have been a common Saltoun sanction for sabbath breakers and the unrepentant. Flinker appeared before the session on 25 October 1640, but to be posed 'anent the slander give in by John Spence' rather than questioned about her previous sabbath breach. On that former charge, the session clerk reported that 'the bailey promises to come cause poind' a list of disobedients, including Flinker, 'for their disobedience to the session in non comperance'. Furthermore, the bailie promised 'to mak order with those mockers of John Owens and to inflict some punishment upon John Paterson for his disobedience'.¹²²

Maintaining social control over the behaviour of Saltoun parishioners was in need of a two-pronged strategy devised between session and bailie. But even with secular support, there was no guarantee of quick success. On 8 November 1640 'the bailyie excused himself that he came not to tak ordor with the parties above namit, and promises to come the nixt weik'.¹²³ Helping the kirk session police and punish behavioural lapses was a pressure on the time of these local magistrates. It was not until 22 November that 'the bailyie declared that he tak tent to the officer' to poind those referred to them from the session.¹²⁴ As for Marion Flinker, on 21 February 1641 she refused to apologise to John Spence for calling him a common thief as charged the previous October. So the session 'gave hir over to the bailyies to tak ordor with hir and to inflict some civill punishment upon her and to cause hir obey the church'. This may have meant a stint in the joughs, with which the session threatened Barbara Paterson and Bessie Adams during the same meeting, 'if they be caught scolding again'.¹²⁵

In Saltoun, the kirk session battled to exert a level of social control over its parishioners during the second half of the 1630s. Figure 4.3 shows that there was a level

¹²¹ NRS, CH2/322/1, f. 21.

¹²² NRS, CH2/322/1, f. 22.

¹²³ NRS, CH2/322/1, f. 22.

¹²⁴ NRS, CH2/322/1, f. 22.

¹²⁵ NRS, CH2/322/1, f. 24.

of compliance amongst the accused, but where there was contention or defiance of kirk discipline the session relied on the bailie to cause those individuals to ‘obey the church’ – a process which took weeks, even months. The Haddingtonshire session that recorded the narrowest range of business in its surviving minutes – its five family, household and parentage cases involved the resetting of strangers, nothing more complex – was also subjected to the most disciplinary flouting.

In East Lothian, there is no clear rural-urban divide when it came to the activity of social control practised by its kirk sessions. Considering the social control of the community through the policing of profane past-times and the public offences of drunkenness, scolding and flyting is important for assessing the activity of individual kirk sessions. When this is combined with a session’s disciplinary record – specifically the amount of time the ministers and elders devoted to chasing individuals who would not answer for their behaviour – some idea about the relative success of social control within these individual parishes begins to emerge. Although the volume of business does seem to correlate with the size of settlement, both rural and urban sessions pursued a range of offences with no clear urban-rural divide. But social control at the hands of the kirk sessions was more successful in some parishes than others and, in East Lothian, it was the small rural parish of Saltoun that fared the worst. This is shown by the number of cases and its reliance on the local bailies to support its disciplinary agenda where similar cases in neighbouring parishes would not have needed such civil back-up.

In the rural, coastal settlement of Tynninghame, the strong character of minister John Lauder reverberates throughout the session minutes across their 25-year stretch. Saltoun received a new minister in 1633 when Richard Brown succeeded Archibald Livingston who had ministered there since 1613.¹²⁶ Livingston was an active member of the Haddington brethren. On 19 January 1620, Thomas Palmer gave in his third supplication ‘desyring hi micht be releaved fra the fearful sentence of excommunication and to be reseved into the bosom of Gods kirk again’. The brethren appointed Livingston with James Lamb to go ‘in privat to instruct and inform the said Thomas Palmer that he might be tawcht’ and thereafter received back into the community of the kirk.¹²⁷ This contrasts with his successor, whose presence in the presbytery minutes after 1633 is largely confined to his dispute with Livingston’s widow over taking possession

¹²⁶ Livingston’s admission is recorded in the presbytery minutes of 10 March 1613, NRS, CH2/185/3, 2. Scott (ed.), *Fasti Ecclesiae*, 391.

¹²⁷ NRS, CH2/185/3, f. 119.

of Saltoun's manse.¹²⁸ Brown was deprived from his position in 1644 'for speaking against the Covenant', and was not placed again in a parish as minister until 1661.¹²⁹ With no discernible geographical pattern, the business of social control in East Lothian may have depended more on the character, zeal and personal work ethic of those in charge than on the size and location of the parishes themselves.

The experience of social control was, to some extent, localised within East Lothian between 1610 and 1640. Different sessions displayed different levels of prosecutorial activity and faced disobedience from their flocks in a relationship that was not simply a rural-urban divide. To what extent did gender influence the experience of social control, as exerted by authorities through their regulation of relationships?

The fornication statistics shown in figure 4.1 are relatively evenly divided. On the whole, women tend to be slightly better represented – apart from in North Berwick where more men were pursued by the session on charges of illicit fornication. This statistic should be treated with some caution because the North Berwick record is a session register, not a strict disciplinary minute book. As a result, the earliest leaves of the surviving volume are dedicated to baptisms, the calling of marriage banns and the weekly service collection.¹³⁰ As a set of records, the North Berwick register is littered with men petitioning the minister and elders for baptism of their illegitimate offspring – a sacrament that is granted with the contingency that these fathers perform penance for their fornication first. This was the case for Patrick Paterson, who appeared before the session on 7 August 1611 and

desyris ane barne to be baptyisit and because his barn wes begotten before the wedding and spousing as he confest, he confest his offence craving God pardon on his kneis [and] wes ordanit to pay xii sh to the poore and to put his infant [forward on] the nixt sabboth.¹³¹

Paterson's wife never appears before the session to answer for this antenuptial fornication, and the frequency of baptismal cases such as these makes it unsound to attribute any further meaning to the gender divide present in the North Berwick fornication statistics.

¹²⁸ NRS, CH2/185/5, f. 70-2.

¹²⁹ Scott (ed.), *Fasti Ecclesiae*, 391. No note is made by Scott as to where Brown was placed in 1661 – if anywhere – making it difficult to ascertain just where he insinuated himself with the Restoration regime in Scotland.

¹³⁰ NRS, OPR713/1, ff. 85-89.

¹³¹ NRS, OPR713/1, f. 92.

The historiographical debate around the existence of a gendered double standard in the experience of early modern Scottish kirk discipline has centred around the treatment of illicit fornication. Margo Todd has presented a system of social control that was both remarkably geographically homogeneous and immune to social difference, be it according to rank or gender.¹³² On the other hand Geoffrey Parker has asserted that, in St Andrews fornication cases, ‘the session almost always picked on the woman first’.¹³³ For the later period, Gordon DesBrisay has presented a convincing case on the unequal punishments afforded to men and women who appeared before the Aberdeen kirk session.¹³⁴ Mitchison and Leneman have been able to conclude that social control in both rural and urban Scotland was dependent on gender and social status because ‘the ideal of all men and women being equal in the eyes of God was hard to sustain in a hierarchical world’.¹³⁵ Although Michael Graham is hesitant to present such a clear divide for the period up to 1610 (concluding that – in small rural parishes especially – the idea of a sexual ‘double standard’ with regards to church discipline is hard to find), he does argue that women outnumbered men in sexual prosecutions in Scotland’s larger population centres.¹³⁶

The quantitative totals presented in figure 4.1 do not reveal any clear delineations on a gendered experience of fornication prosecutions – especially when viewed on a county-wide scale. What the evidence from punishments suggests in relation to the double standard debate is examined below, but firstly the qualitative detail that accompanies another set of numbers deserves further discussion.

The statistics of social control as shown in figures 3.4 and the three tables above can tell us more about the experience of social control during this time period when backed up with detailed examples. At face value, the statistical breakdown of cases brought before Haddington presbytery shows a gendered double standard when it came to fornication prosecutions. Figure 3.6 shows that 23 women appeared before the brethren to answer for illicit fornication between 1610 and 1640, compared to just 11 men. Local sessions were capable of dealing with straightforward fornication cases from start to finish, which explains these small figures. The difficulty came when an illicit fornication was not straight forward. Qualitative data from the records show that these 34 cases fell

¹³² Todd, *Culture of Protestantism*, 266, 403, 405-7.

¹³³ Parker, ‘Kirk By Law’, 11.

¹³⁴ DesBrisay, ‘Twisted by Definition’, 141-2.

¹³⁵ Leneman and Mitchison, *Sin in the City*, 86.

¹³⁶ Graham, ‘Women and the Church Courts’, 195-6; *Uses of Reform*, 289.

into this category. Even with these small numbers, there is clear suggestion of a significant gender disparity that is not reflected elsewhere; figure 3.6 shows that the gender divide in adultery cases was much more even at 74 women to 67 men.

Of the 23 women who appeared before the brethren on fornication charges, 13 were sent to answer for a relapse in fornication. For at least four of these women this was their fourth offence, making them quadrilapse in fornication. At least six were answering their third offence, or trilapse in fornication. In a typical case on 6 April 1614, Isobel Robinson appeared before the brethren having confessed her fourth illicit fornication to the Yester kirk session. It was her second fault with David Craill, having fallen twice before that with one William Hay. Robinson appeared alone at the presbytery, 'gave confession of hir sin and ask[ed] the congregation of repentance. [She] was admitted and ordained to satisfie at the kirk of Bothens [Yester] according to order'.¹³⁷ David Craill, normally resident 'in the parrochin of Haddington', had appeared before the Yester session on 5 March. He confessed falling in fornication with Isobel Robinson during 'the last harvest and that it was his 2 falt'. He was fined 26s. and was ordered to complete his 'publict repentance betwixt and the 15 day of May'.¹³⁸ It was his second fornication to Robinson's four, so Craill was not sent to the presbytery.

This is the main reason for the gendered skew to the presbytery fornication statistics – it was a reflection of kirk protocol for policing fornication. Only a certain number of offences resulted in an appearance before the presbytery and this was adjudicated by the session on an individual basis. But the statistics also suggest that there were other factors at work. Of the eleven men who appeared before the brethren, only three were there because they were relapse on the third or more occasion.¹³⁹ The remaining eight were either disputing paternity allegations or requesting baptism for their bastard children. Why were women being found trilapse and quadrilapse in fornication more than their male peers? On a parish-by-parish basis the fornication statistics are remarkable for their evenness of division. As discussed previously, figure 4.1 shows that at face value both men and women were being held to account for their sexual indiscretions across East Lothian parishes, with 252 women prosecuted for illicit

¹³⁷ NRS, CH2/185/3, f. 24.

¹³⁸ NRS, CH2/377/1, f. 18.

¹³⁹ They were: Robert Finlason, 5 January 1620, NRS, CH2/185/3, f. 119; William Thomson, 26 September 1632, NRS, CH2/185/4, f. 62; and William Gladstones, 16 October 1639, NRS, CH2/185/5, f. 3.

fornication in total between 1610 and 1640, compared to 238 men. For a sample size nearing 500, it is a difference of only 14 individuals.

Without the evidence of a pregnancy, or that offered by an eye-witness who happened upon a fornication taking place, proving illicit fornication was reliant on confession. Figure 4.4 below shows the parish distribution of the 30 men and 35 women who were questioned by the kirk sessions for suspicious conduct, also termed scandalous carriage or slander, between 1610 and 1640. Overall, the cases brought against women are around 54 per cent of the total – a little over half.

Figure 4.4: table to show distribution of individual cases of suspicious conduct heard by East Lothian kirk sessions between 1610 and 1640

Parish	Female	Male	TOTAL
Haddington	1	2	3
North Berwick	10	10	20
Pencaitland	3	2	5
Saltoun	2	0	2
Tynninghame	13	10	23
Yester	6	6	12
TOTAL	35	30	65

Source: Haddington St. Mary's kirk session minutes, NRS, CH2/799/1, ff. 306-325; North Berwick kirk session register, NRS, OPR 713/1 ; Pencaitland kirk session minutes, NRS, CH2/296, ff. 1-16; Saltoun kirk session minutes, NRS, CH2/322/1, ff. 1-111; Tynninghame kirk session minutes, NRS, CH2/359/1, ff. 1-116; Yester kirk session minutes, NRS, CH2/377/1, ff. 1-245.

These 65 individuals all denied any sexual wrongdoing, and a fornication charge was impossible without adequate evidence. Such was the case before the Pencaitland kirk session on 12 October 1634, when

compeired John Craigswalls and Bessie Hendersone and nothing being provin against them they are acted that if they haunt slanderously together herefter they sall double the penultie and satisfie as fornicators.¹⁴⁰

In cases such as this, the burden of proof often fell on the female party, and the Pencaitland session was quite open about this. On 28 September 1634, the clerk noted that 'there was mention made of a slander of Jon Dickson with ane Kathren Friskin now in Winton, and the summoning of him is stayed till the woman be first tried'. When

¹⁴⁰ CH2/296/1, fv. 9.

Friskin confessed on 5 October, only then was Dickson summoned and offered his own confession for the fornication.¹⁴¹

A case from the extracts from the Innerwick kirk session minutes provides an informative example outside of the 65-strong quantitative sample. On 9 February 1612, Janet Anderson appeared before the session 'being accusit of slander with John Littlejohn'. John Littlejohn also appeared before the session that day, but only when he 'confessit his fornication with Isabel Gardner', for which he was ordered to 'enter to his satisfaction'.¹⁴² After Littlejohn's confession with another woman, Anderson appeared before the minister and elders 'being accusit of her being with him at nyne hours at even in ane stabill there laine. She confessit it was so but that she is free of him'.¹⁴³ Faced with such denial, the session issued a warning

The sessionne ordains in respect of the slander and suspicions that are betwixt them that gif she be found with him in any suspect place or after the sessionne go down in any place she shall be halden guilty of fornication and sall satisfie conform[ing] to ane fornication.¹⁴⁴

Despite just admitting his fornication with Isobel Gardner, John Littlejohn was not questioned about what happened that evening in the stable with Janet Anderson. Nor did he appear on 25 December 1612:

The quhilk day comperit Bessie Robison, Christian Gammwell and Janet Anderson quha being citit for resorting with John Littlejohn, contrair to the ordinance of the sessione, they all three being guilty are ordanit to remove out of the parish because they disobeyed the ordinance of the session and keepe still their slanderous report as it said and quha ever receives them to pay fourty shillings conform to the act toties quoties.¹⁴⁵

For Bessie Robison and Christian Gammwell, the proof of their slander with Littlejohn did not rest on an eyewitness alone. They were cited by the session for 'resat of the man with quhom they gat their bairns'.¹⁴⁶ Whether Janet Anderson had become pregnant in similar manner is unclear from the extracts. The session wanted her to be removed from the parish with Robison and Gammwell, three women who did not fit the ideal model of personal behaviour within a household founded on marriage.

¹⁴¹ NRS, CH2/296/1, fv. 9.

¹⁴² Extracts from the kirk session minutes of Innerwick, NRS, CH2/1463/2, f. 23.

¹⁴³ NRS, CH2/1463/2, f. 23.

¹⁴⁴ NRS, CH2/1463/2, f. 23.

¹⁴⁵ NRS, CH2/1463/2, f. 30.

¹⁴⁶ NRS, CH2/1463/2, f. 30.

Pregnancy was the ultimate giveaway. It motivated the confession of Margaret Blackie, who appeared in Innerwick on 27 May 1612 having been 'cited before the sessionne as suspect of fornication. She comperit and confessit that she commitit the falt of fornication with William Foster and is with bairn to him'.¹⁴⁷ Where pregnancy was not already confirmed, it could be used as leverage. On 14 March 1619, Margaret Hamilton appeared before the Tynninghame session 'and being demandit if she had comittit fornication with Jhone Walker answerit that she had not'.¹⁴⁸ This denial posed a problem for the minister and elders who

considering the said mater thinking hir to be giltie thocht gude in respect of their slanderous behaviour that the said Jhone Walker and she also suld aither consigne twentie lib that incaise therefter it were qualifeit [by] any wayis that they wir giltie. Being giltie, to sitt ane sonday on the pillar befor their mariadge and to pay the penaltie of fornicatoris quhairas utherwayis if she refusit the minister wald not end hir proclamations nor proceed to their mariadge.¹⁴⁹

Margaret Hamilton was engaged to be married, meaning John Walker was already involved in her personal narrative of social control. Where such personal links were more tenuous, accusations could be harder to prove. On 1 July 1638 Timothy Donaldson and Grissell Brown stood before the Saltoun session accused of fornication. The evidence given against Brown was that

she was in Haddingtounne all that night til she was given up to have being found in fornication in the postmaisters of Haddingtounne, and that it was daylight befor shee cam owt of Haddingtounne.¹⁵⁰

It was not enough evidence for the session to proceed against the pair. In his defence, Donaldson 'affirmed that he cam from Haddingtounne befor ayn hour at night and was in his bead till fyve hour at morne'.¹⁵¹ On 22 July, Donaldson appeared again

being wairned to the sessiounne and nothing being fund to prove against him, he is with his awn consent that if ather efterwards sche be found with child to him or if any thing in that kynd schall be prove on him herefter, he schall be layable to the sensewr of the sessiounne and also that if he have any publick converse with hir in tyme to come he schall pay four lib and mak his publick repentance befor the congregatioun.¹⁵²

¹⁴⁷ NRS, CH2/1463/2, f. 25.

¹⁴⁸ NRS, CH2/359/1, f. 25.

¹⁴⁹ NRS, CH2/359/1, f. 25.

¹⁵⁰ NRS, CH2/322/1, f. 10.

¹⁵¹ NRS, CH2/322/1, f. 11.

¹⁵² NRS, CH2/322/1, f. 11.

In this small rural settlement, the session made it clear to Donaldson that he would be held to account if it was discovered that Grissell Brown was pregnant. Like Hamilton and Walker in Tynninghame, the pair had an established connection that had been flagged as suspicious outside of the established relationship protocol of marriage.

Where that suspicious connection had not been previously discovered by the kirk, it was physically easier for men to avoid detection for illicit fornication (should they get away without being happened upon by a nosy neighbour). As a result, it is possible that this aspect of the social control of sexual relationships could not be entirely gender blind – as Parker has shown for St Andrews.¹⁵³ Perhaps the gendered evidence from the Haddington presbytery records between 1610 and 1640 shows that the burden of proof *did* lie with the female party and that this *did* have an impact on the experience of the social control of heterosexual relationships at presbytery level.

From 1660, Leneman and Mitchison have shown how an accusation of fornication ‘would normally be made only on the evidence of pregnancy’.¹⁵⁴ For allegations to stand up, such evidence was also relied upon for the earlier period. Before 1640, Margo Todd has maintained that although ‘pregnancy made a sexual offence easier to spot in women than in men’ there remained a remarkable ‘gender equality in kirk discipline’.¹⁵⁵ This is borne out in the fornication statistics shown in figure 4.1. But it is certainly more plausible to suggest that the burden of proof in fornication cases did rest unequally between men and women than to suggest that women were more sexually deviant by nature – and therefore more likely to commit fornication for the third or fourth time than their male contemporaries.

As an explanation, it is lent credence by the absence of homosexuality from the East Lothian records. James Lyle’s trial and conviction for bestiality is recorded in the sheriff court, which suggests that this absence is not due to doctored minute-taking in face of criminal sexual deviance. But the criminal act of sodomy is not pursued by either ecclesiastical or secular jurisdictions in the county between 1610 and 1640.¹⁵⁶ Margo Todd’s research concludes that sodomy cases are ‘rare in the minute books’ of the kirk

¹⁵³ Parker, ‘Kirk by Law’, 11.

¹⁵⁴ Mitchison and Leneman, *Girls in Trouble*, 91 and ch. 5.

¹⁵⁵ Todd, *Culture of Protestantism*, 178-9.

¹⁵⁶ Trial of James Lyle, 13 October 1631, NRS, SC40/7/18, f. 207. For cases in the court of justiciary in Edinburgh, see *Criminal Trials in Scotland, 1488-1624*, ed. R. Pitcairn, 3 vols. (Bannatyne and Maitland Clubs, 1833).

sessions, because homosexuality was ‘difficult to detect’.¹⁵⁷ As with bestiality, there were no evidentiary pregnancies – James Lyle was executed because he was allegedly caught in the act by his neighbour, the owner of the horse. There is no suggestion that homosexual relationships did not exist in the early modern period, simply that there were limits to what the authorities could regulate when faced with lack of substantive evidence.¹⁵⁸

For Calvin’s Geneva, Bill Naphy has concluded that ‘the greatest threat posed to the control of sexual acts in the early modern period was female sexuality’ because of the impetus to ensure paternity and ‘patriarchal control of society’ that was born out of male fear.¹⁵⁹ If there were limits to what early modern ecclesiastical authorities could control, at least there was no such fear associated with homosexuality.

The sexual social control of married and unmarried men was reliant to some extent on their choice of extra-marital partner. On 31 December 1626, James Meikle and Helen Dunlop appeared before the Yester kirk session on suspicion of adultery, which James denied altogether. Helene confessed twyse befor witnesses bot in the presence of James Meikle denied’.¹⁶⁰ The session had to gather the facts, so they took a formal deposition from Dunlop.

First sche confessed that James Meikie tuik hir in to the stable, nixt that he lay with hir and had carnall copulation. This sche confessed before William Wallace and hir father. Nixt being sumoned befor our session, thair [she] did confess everie thing according to hir former confession and sat doune upon hir kneis in presence of us all in session and did crave God mercie with tearis.¹⁶¹

It was enough to convince the session to pressure Meikle further.

The next day James Meikie sumoned compered and promised in privat to confess with me and William Meikle elder in Gamelstone, and then upon farder demand confessit and promised satisfacione according to the order of the kirke.¹⁶²

¹⁵⁷ Todd, *Culture of Protestantism*, 295.

¹⁵⁸ See Peter G. Maxwell-Stuart, ‘Wild, filthie, execrabil, detestabil, and unnatural sin’: bestiality in early modern Scotland’, in Tom Betteridge (ed.), *Sodomy in Early Modern Europe* (Manchester, 2002), 82-93.

¹⁵⁹ Naphy, *Sex Crimes*, 16.

¹⁶⁰ NRS, CH2/377/1, f. 120

¹⁶¹ NRS, CH2/377/1, f. 120.

¹⁶² NRS, CH2/377/1, f. 120.

Meikle could have stuck to his denial, but a combination of his partner's actions and the session's stance meant that he was persuaded to confess and repent – presumably so that he could be forgiven. Helen Dunlop had helped facilitate a successful prosecution.

In other cases, the actions of the individuals involved in fornication cases worked to thwart such an outcome. On 30 October 1639 the Haddington brethren heard report from their clerk on all the 'unconcludit processes' contained in the presbytery records since 1633. The desire to root out those lying under disobedience was evident throughout the meeting. The last entry by the clerk read:

Because it is regrated that Margaret Simson remitted to the magistrats of Hadintoun is going up and down the town of Hadintoun at her own liberties, therefor the ministers of Hadintoun ar appointed to deale with the magistrats forsaid for comitting her, quhill some brethren may deale with her for declaring her child's father.¹⁶³

Evidence shows how the brethren had involved the secular courts already in their dealings with Simpson, but to no avail. On 6 November

compeered Margaret Simson still denying that she knew who wes her child's father. The brethren appoints the ministers of Hadintoun to deale with the magistrats to tak caution of her to be presented before the presbitrie with the first convenience after her deliverie.¹⁶⁴

With this planned co-operation between jurisdictions, Simpson disappeared from the records. If she ever named the father of her child, it was not recorded; and her testimony was needed to hold the delinquent father to account. Her case was not without precedent. On 16 October 1639, the brethren involved the civil magistrates in their dealings with Jonet Simpson, who

being referred from the session of Pencaitland and, by a warrant from them, warned to compeer before the presbitrie to answer for the father of her child, compeering and being posed there anent, deponed, that gathering wooll in Laingremoore in the beginning of May last, there came to her a man whom she never saw befor, and lay with her, to whom she is presentlie with child.¹⁶⁵

Her explanation was given little credence. If it had been investigated by the Pencaitland session before her referral to the presbytery, it was not recorded. In the face of its telling, the brethren ordered that she be 'referred to the magistrats of Hadintoun to be

¹⁶³ NRS, CH2/185/5, f. 8.

¹⁶⁴ NRS, CH2/185/5, f. 8.

¹⁶⁵ NRS, CH2/185/5, f. 8.

imprisoned in the tolbuith thair to be sustained of her fee, quhill she confesse her bairns father'.¹⁶⁶ Jonet Simpson then disappears from the written record. It is not known whether she was raped or had cultivated the story to avoid naming her partner, nor if she was soon released from the tolbooth like Margaret Simpson. It is not known whether she did name the father of her child, nor if she performed repentance for her fall in fornication. But regardless of the outcome of these cases, the actions of these two women in the face of kirk discipline – discipline that had the backing of the burgh authorities – put an effective limit on the level of social control that the kirk could exert over sexual relationships. If women refused to name the fathers of their bastard children and there were no concurrent suspicions, holding those men to account for their ungodly behaviour was difficult if not impossible.

In the face of increasing pressure from his local session, James Meikle had admitted to his adultery with Helen Dunlop. But not all men did when placed in a similar situation. When Agnes Scott named James Concord as the father of her child to the brethren on 22 September 1624, 'in the meane tyme the said James Concord compaired and said the bairne wes not his'. As a result, 'the tryall of this wes remitted to thair minister', although neither minister nor parish is named.¹⁶⁷ Perhaps Concord confessed during this subsequent inquisition, but it remains that his initial denial had the power to disrupt the successful social control of their illicit relationship.

Mitchison and Leneman have identified the existence of such wrangling between fornicating couples during their later period of study.¹⁶⁸ Whilst this was also the case between 1610 and 1640, the point here is that there was more opportunity for men to avoid the sting of Kirk discipline for fornication, in spite of the best efforts of the kirk sessions. This has not been universally recognised in current, pre-1640 scholarship. The sessions may have been remarkably gender blind in the numbers of men and women that they prosecuted for fornication during this period and between 1560 and 1640 more generally, but when this was met with a staunch male denial, their ability to enforce godly behaviour and punish illicit relationships was limited.

Margaret and Jonet Simpson, Helen Dunlop, Agnes Scott all had the misfortune of falling pregnant. There was physical evidence of their offence; the burden of proof lay with them. Should they refuse to name the man involved, or claim not to know the man

¹⁶⁶ NRS, CH2/185/5, f. 8.

¹⁶⁷ NRS, CH2/185/3, f. 215.

¹⁶⁸ See Mitchison and Leneman, *Girls in Trouble*, esp. ch. 5-6; and *Sin in the City*, esp. ch. 6-7.

involved, or should the man they name contest his involvement, all had ramifications for the kirk's ability to regulate sexual relationships. But their actions had personal ramifications as well. Two of these women were imprisoned; no men were imprisoned in East Lothian between 1610 and 1640 for denying fathering a bastard child. The politics of biology meant that there was an inherent difference between the treatment of men and women who did not immediately submit to public repentance for illicit fornication in Haddingtonshire at this time. This echoes what has been found in cases heard after 1660.¹⁶⁹

But the power of confessing remained strong between 1610 and 1640. Margo Todd cites the evidence of a 'respectable Aberdeen couple' confessing to sexual activity during a fast – 'clearly not the sort of sin that would ever have been discovered'.¹⁷⁰ Even for the later period, Leneman and Mitchison have been able to conclude that 'the majority of Scots, urban dwellers as well as rural, accepted church discipline'.¹⁷¹ The small number of more serious fornication cases that were being sent to the presbytery at Haddington show that it was much more likely that, when faced with an evidenced allegation of illicit fornication, many East Lothian parishioners confessed and endured the stint on the stool and pecuniary fine. There were on occasion some strong words accompanying this process. On 3 October 1632, Elspeth Robertson appeared before the brethren, having confessed falling in fornication for the third time with one John Bartrone. Having confessed to her offence, Robertson 'notwithstanding [this] most obstinately disobeyed, whence the presbiterie referred to the magistrat to be cordinglie punished and thereafter to returne in sackcloth to the presbiterie'.¹⁷²

III. Conclusion

During the early modern period, the secular and ecclesiastical authorities in Scotland's localities were regulating the behaviour and movements of individuals and their interpersonal relationships. In doing so, the authorities walked a fine line between exercising social control and prosecuting criminality. The regulation of individuals exemplifies this. In the quest to regulate the form of the household, the kirk's oversight

¹⁶⁹ Mitchison and Leneman, *Girls in Trouble*, 91 and ch. 5.

¹⁷⁰ Todd, *Culture of Protestantism*, 170, 170-8.

¹⁷¹ Leneman and Mitchison, *Sin in the City*, 82.

¹⁷² NRS, CH2/185/4, f. 62.

of domestic service and the movements of undesirable characters meant co-operating with local bailies and the secular courts. The use of banishment required this co-operation to ensure the success of a sanction that was employed by Haddington burgh and sheriff courts as social control progressed into criminal action against those individuals who were excluded from society, especially gypsies. The ideal household was viewed as a patriarchal entity founded on marriage and steeped in godliness. As an ideal, this view of the household influenced the regulation of individuals by both kirk and state, and those who did not comply faced physical exclusion from the parish, if not the kingdom.

This examination of the fates of those who fell outside the system has introduced the importance of the household and the influence of patriarchy over social control in East Lothian between 1610 and 1640. Patriarchy was important. Commonly-held ideals informed the experience of social control and the regulation of individual actions and behaviours within the parish setting. What this meant for individuals, families and households is examined further in chapter five.

If patriarchy was important, so was marriage. Marriage defined the social control of heterosexual relationships within the early modern parish. But unlike in medieval England or early modern Germany, entering into marriage in East Lothian was overwhelmingly a personal decision. It was not forced onto those that were unwilling and promises that had been made could be rescinded with relative ease if there had been a change of heart. 490 individual cases of fornication that had taken place outside the confines of marriage were heard across East Lothian between 1610 and 1640 – a little over a third of all business. In itself, the prosecution of illicit fornication reinforced the importance of marriage during this period.

This is not a point of great debate, but the kirk's regulation of sex is. Although there is no great gender divide in East Lothian cases, there is evidence that the burden of proof in fornication cases rested on female shoulders. More women than men appeared before the presbytery to answer for their third or fourth faults and it was women who were relied upon to name their lovers when a pregnancy became common knowledge. Whilst it is remarkable that Scottish sessions pursued men for their sexual indiscretions, the power of denial should not be underestimated. On 10 February 1611, Alison Harlaw appeared before the North Berwick session and 'confessit fornication with Stevin Brun and with Jhone Libbertoun, alledging Stevin to be the father of hir barne'. When both

men appeared, they both ‘confessit fornication with hir, but nether wold grant them to be father to the barne’. With lack of physical evidence, the session reacted by ordaining ‘to warne the woman wes midwife to the said Alison to try of hir something to that effect’.¹⁷³ Their enquiries revealed nothing further. Brown eventually accepted that the child was his, paying his 30 s. fine on 28 April.¹⁷⁴ Had this not been the case, the physical evidence of a pregnancy paired with a staunch male denial would have combined to send Harlaw to the pillar alone.

Any gender bias towards the pursuit of East Lothian fornicators is by no means as pronounced as that found in early modern Germany. In Augsburg, Lyndal Roper has found that around half of the crimes for which women were accused were sexual compared to only 14 per cent of male crimes. Roper goes on to harness qualitative detail from the language used in the records to show the ‘contradictory beliefs about women’s sexual natures and anxieties about embattled manhood’.¹⁷⁵ East Lothian sessions did go to great lengths to hold male parishioners to account for their sexual indiscretions, but by accident of biology the burden of proof could fall unduly on women. This softly echoes Merry Wiesner-Hanks’ statement that ‘women were often the only ones to suffer punishment in cases of fornication, for they alone bore the proof of their actions’.¹⁷⁶

Evidence of the influence of geography for social control more generally is both more quantifiable and more concrete. Speaking of early modern European societies generally, Po-Chia Hsia states that ‘moral discipline was most effectively enforced among urban congregational Calvinist communities, due to a high degree of internal cohesion and communal participation in the supervision’.¹⁷⁷ This cohesion and communal participation informs Michael Graham’s similar conclusions for early modern Scotland before 1610, and perhaps the sentiment is reflected in Saltoun’s practice of social control and the disciplinary experience of its parishioners at the hands of the kirk and bailies. But a clear urban-rural divide is not present within East Lothian. With the exception of Saltoun, smaller rural parishes were also displaying evidence of the ‘internal cohesion and communal participation’ seen in the North Berwick and Haddington records. This was particularly the case in Tynninghame under the guidance of John

¹⁷³ NRS, OPR713/1, f. 98.

¹⁷⁴ NRS, OPR713/1, f. 104.

¹⁷⁵ Roper, *Holy Household*, 83, 86.

¹⁷⁶ Wiesner, *Gender, Church and State*, 91-2.

¹⁷⁷ R. Po-Chia Hsia, *Social Discipline in the Reformation: Central Europe, 1550-1750* (London, 1992), 124.

Lauder. Within East Lothian, social control and kirk discipline in particular was not administered or experienced with any geographic uniformity.

But it was experienced. Unwanted individuals and illicit relationships were scrutinized between 1610 and 1640 throughout Haddingtonshire, albeit to differing extents. And yet it is not enough to say that this meant that the social control of ordinary people and their personal interactions was successful. Fornication figures only represent the people who got caught. Quick confessions may represent a subscription to the idea that such conduct was morally wrong, but it is highly unlikely that this was to the extent that people just stopped having extra-marital sex.¹⁷⁸ Illicit fornication had been catapulted into popular Scottish consciousness after 1560 and many parishioners may have been attuned to the messages of sexual morality that emanated from their local kirk. But for others, the message received would have been the need to be furtive to avoid detection rather than to review their personal behaviours altogether.¹⁷⁹

In assessing the relative success of social control throughout East Lothian at this time, the apparent predisposition towards confession as identified by Margo Todd has to be accounted for. When badgered by the session, Steven Brown accepted that he was the father of Alison Harlaw's child and he was by no means an isolated case. But does this preponderance mean that it can be assumed that the experience of social control over relationships and broader behaviour at this time was not in any way common and meaningful? To answer this question fully, it is time to take a closer look at the methods of social control used by East Lothian's secular and ecclesiastical authorities and the importance of honour, dishonour, shame and reputation in the early modern community.

¹⁷⁸ As shown by Michael Graham's criticism of Geoffrey Parker's interpretation of the St Andrews statistics in *Uses of Reform*, 213.

¹⁷⁹ For the heightened experience of this phenomenon in sixteenth-century Germany see Roper, *Oedipus and the Devil*, esp. ch. 7.

Chapter V

Social Control: Methods and Consequences

Drawing on recent work by cultural anthropologists and early modern historians, Margo Todd points out that ‘a penitential performance that meant one thing to the authorities who ordered it may have meant something quite different to its actors and to its audience’.¹ The ritual of punishment in medieval and early modern societies has been discussed generally in chapter three. This chapter translates these meanings into a Reformed Scottish context where punishment was ritualised and intended to be experienced in certain ways for certain results. Todd has argued that ‘making repentance’ became the ‘central ritual act of protestant worship in Scotland’.² It was a dramatic performance involving words of contrition and physical props such as the stool, linen clothes or the joughs.³ The ritual of making repentance was a tool of social control, used by East Lothian kirk sessions and Haddington presbytery in their regulation of behaviour and personal relationships.

In order for this to have held any meaning to those asking to be forgiven for their immoral, ungodly conduct, the practice of Reformed public penance had itself to be meaningful. The previous chapter considered the ideal form of the household as a patriarchal unit based on marriage. Whilst the importance of patriarchy is considered specifically in the following chapter, individual male and female identities were idealised in similar fashion in early modern Scotland. Constructions based on notions of honour, dishonour, shame and reputation informed social control in East Lothian between 1610 and 1640.⁴ Furthermore, this informed what the regulation of behaviour and experience of authority meant for ordinary men and women.

Codes of honour and shame reverberated in early modern societies across the western world.⁵ Like patriarchy, these constructs have remarkable longevity and have

¹ Todd, *Culture of Protestantism*, 128.

² Todd, *Culture of Protestantism*, 129.

³ I am grateful to Nikki Macdonald (School of Divinity, University of Edinburgh) for sharing her informed opinions on the dramatic nature of Scottish Reformed repentance with me.

⁴ As had been the case in the medieval period. See Elizabeth Ewan, “‘Tongue You Lied’: the Role of the Tongue in Rituals of Public Penance in Late Medieval Scotland.”, in E. D. Craun (ed.), *The Hands of the Tongue: Essays on Deviant Speech* (Kalamazoo, 2007), 115-36.

⁵ For the North American experience see: Clara Ann Bowler, ‘Carted Whores and Shrouded Apologies’, *Virginia Magazine of History and Biography*, 85 (1977), 411-426; Mary Beth Norton, ‘Gender and Defamation

been identified by social scientists and anthropologists studying contemporary southern European communities.⁶ In an early modern context, honour, shame and reputation have been identified as flexible ideas that were defined according to gender, rank and position.⁷ Honour and dishonour could be personal, or communal.⁸

In eighteenth-century Edinburgh, ‘the honour of husbands and wives was closely intertwined’ and ‘male honour and reputation depended not only on a man’s own actions, but on the behaviour of other members of his household’. In an economy short of coin, a reputation was something that had to be cultivated and protected by men (as well as women) to avoid being lost.⁹ This was the case in seventeenth-century England, where Elizabeth Foyster has shown how honour within the home held implications for men out with the domestic sphere because of the currency held in reputation.¹⁰

If ideas of honour and shame were the ‘constant preoccupation of individuals in small scale, exclusive societies where face to face personal relations are of paramount importance’, what did this mean for early modern Scotland?¹¹ In East Lothian between 1610 and 1640, ideas of honour and dishonour informed the experience and expectations of social control. Constructing shame was a cornerstone of punishing wrongdoing made possible because of the importance of reputation. But to what extent was this an honour and shame society, informed by religious zeal, where punishments against the person were shameful and words against reputations damaging? Examining the exchange of violent words and violent actions is a good place to start.

I. Thieves and Whores: the Examples of Slander and Violence

Figure 3.5 details the individual cases that parishioners brought to East Lothian kirk sessions for redress between 1610 and 1640, 80 per cent of which were concerned with slander. In addition to these cases, figure 3.4 shows that a further 60 slander cases were

in Seventeenth-Century Maryland’, *WMQ*, 3rd Series, 44 (1987), 3-39; John Demos, ‘Shame and Guilt in New England’ in Carol Zisowitz Stearns and Peter Stearns (eds.), *Emotion and Social Change: Toward a New Psychohistory* (New York, 1988); Peter N. Moogk, ‘“Thieving Buggers and Stupid Sluts: Insults and Popular Culture in New France’, *WMQ*, 3rd Series, 36 (1979), 524-47.

⁶ For a good overview see: Pitt-Rivers (ed.), *Mediterranean Countrymen*; Peristiany (ed.), *Honour and Shame*; Campbell, *Honour, Family and Patronage*.

⁷ Dabhoiwala, ‘Construction of Honour’, 201-13.

⁸ Gowing, ‘Women, Status and the Popular Culture of Dishonour’, 225-234.

⁹ Paul, ‘Credit, Reputation, and Masculinity’, 15.

¹⁰ Foyster ‘Male Honour’, 215.

¹¹ Peristiany, *Honour and Shame*, 11.

heard by the sessions, as well as 52 individual instances of flyting or scolding. In Saltoun, seemingly the most inactive of all the sessions, 14 cases of slander were heard by the minister and elders between 1635 and 1640, plus an additional 10 petitions brought to the minister and elders by individuals seeking redress. It seems that during this period, there was noticeable concern from parishioners and authorities alike over the exchange of violent words throughout East Lothian parishes. 'In the early modern period, when honour and status were so dependent on reputation, words carried considerable power'.¹²

Before the North Berwick session on 10 May 1612

William Bassindane compeirit and being accusit for slandering Elizabeth Hamiltoun, spous to Robert Home elder in Heugh, calling hir ane hoore, the said William confessit that he said to Robert, his brother, nane wold call him a theif bot they quha wer aither a theif or a hoore them self. Bot the said Robert Home being present, alledgit that the said William desyrit his brother to gang up to his wyfe and lay doun a peace of claith before hir, and say to hir that she wes better kend for a hoore than he wes for a theif.¹³

The insults exchanged in this case were gendered. Bassindane confessed to calling Elizabeth Hamilton a whore, but on the basis that she had called him a thief first. It was not a spontaneous outburst, but a reaction delivered by proxy that received some staging. Male reputation had been pegged to honesty, whereas female reputation had been sexualised.

The correlation between reputation and credit has been well established for the early modern period, and the language of insult has received significant historiographical attention.¹⁴ Martin Ingram sums this up by suggesting that many plaintiffs in defamation suits in early seventeenth-century England pursued their cases in the church courts because they 'feared such slanders would lower their credit'.¹⁵ Verbal assaults referencing male thieves and female whores is a pattern of insult that has some mileage in this early modern context. Bernard Capp and Martin Ingram have both acknowledged the prevalence of gendered insults in early modern England in the defamatory

¹² Abrams and Harvey (eds.), *Gender Relations*, 7. For more on early modern England see Sharpe, 'Defamation and Sexual Slander'; 'Such Disagreement', 167-187; Haigh, 'Slander and the Church Courts', 1-13.

¹³ NRS, OPR713/1, f. 121.

¹⁴ The most comprehensive surveys of credit in England are Muldrew, *Economy of Obligation*; and Finn, *Character of Credit*. See also Alexandra Shepard and Judith Spicksley, 'Worth, Age and Social Status in Early Modern England', *ECHR*, 64:2 (2011), 493-530. For the Scottish experience see Paul, 'Credit, Reputation, and Masculinity'. For a comparative study of the British Atlantic see Paul, 'Credit and Social Relations'.

¹⁵ Ingram, *Church Courts*, 308.

exchanges of both male and female instigation.¹⁶ Capp has acknowledged that ‘the overwhelming majority of recorded insults were sexual in character’, whilst ‘the fragility of female reputation made women highly vulnerable with painful repercussions at home as well as in the community’.¹⁷ But both scholars are clear to point out that men were also affected by slights on their sexual reputations, with terms such as ‘knave’ and ‘rogue’ offering an equivalent insult to ‘whore’.¹⁸

This has been contested by Laura Gowing and Susan Amussen, who argue that the sexualised insults directed at women were both more concrete in meaning and more commonplace.¹⁹ Christine Peters offers an alternative interpretation more akin to Capp and Ingram’s findings. Using Gowing’s own evidence, Peters has suggested that men were also affected by sexualised insult and slander and also litigated in order to defend their sexual reputations, albeit on a smaller scale.²⁰ For early modern England and Scotland there is agreement that reputation and credit were built on words as well as actions. Opinions may be divided around the influence of gender, but it remains that existing scholarship has shown how a significant proportion of these words – the words that were voiced as part of verbal assaults – were sexualised.

Lyndal Roper has suggested that the honour of men could be just as reliant on sexuality and the body as that of women in early modern Germany.²¹ In her examination of the Edinburgh St Cuthbert’s disciplinary minutes before 1625, Melissa Hollander has found that this was also the case in Scotland’s capital, where the ‘sexualised language of insult’ was employed to ‘express social, economic and spatial tensions’ by and between both men and women.²² In East Lothian parishes between 1610 and 1640, sexual insult was one of three common themes in the slander cases that were being heard by the local kirk sessions, the other two being honesty and allegations of witchcraft or charming. In these early modern parishes, the popular associations of being labelled a whore were enough to warrant pursuing the perpetrator through the formal legal system for redress.

¹⁶ Capp, *When Gossips Meet*, 200-17, 228-32; Ingram, *Church Courts*, 308-19.

¹⁷ Capp, *When Gossips Meet*, 230, 228.

¹⁸ Martin Ingram, ‘Law, Litigants and the Construction of ‘Honour’: Slander Suits in Early Modern England’, in P. R. Coss (ed.), *The Moral World of The Law* (Cambridge, 2000), 157; Capp, ‘Double Standard Revisited’, 71.

¹⁹ Gowing, *Domestic Dangers*, esp. 60-3; Amussen, *Ordered Society*, 102.

²⁰ Peters, *Women in Early Modern Britain*, 105.

²¹ Roper, *Oedipus and the Devil*, 108. On male honour and civility see Markku Peltonen, *The Duel in Early Modern England: Civility, Politeness and Honour* (Cambridge, 2003).

²² Melissa Hollander, ‘Sex in Two Cities’, 98. For the medieval Scottish experience, see Elizabeth Ewan, ‘“Many Injurious Words”: Gender and Defamation in Late Medieval Scotland’, in R. A. McDonald (ed.), *History, Literature and Music in Scotland, 700-1560* (Toronto, 2002), 163-86.

As Bernard Capp has recognised for early modern England, in many East Lothian cases this was done by the victim's husband, perhaps reflecting the impact that such an allegation could have on marital relationships and the stability of the household in general.²³ In a show of patriarchal support, on 27 January 1611 Robert Baptie appeared before the North Berwick session and 'delatit Patrick Gylor for slandering his wife in calling hir a hooer'. At the following meeting on 29 January, the session decided that the incident was 'bot ane mutuall flytting and referit to to the civill magistrate' for order to be taken.²⁴ Presenting a united marital front before the Haddington session on 8 May 1631, 'Duncan Morie and his wyfe gave in ane bill of complaint against James Quhytlaw and Marion Quhytlaw his sister, for calling the said Duncan's wyfe ane common whoor'.²⁵ Unlike the North Berwick case, there is no suggestion that this was a 'mutuall flytting' and the Haddington session saw fit to deal with the lone verbal assault when, on 22 May, brother and sister appeared and confessed to the slander. James Whitelaw 'was reuikit for his misbehaviour and ordanit to pay ane penaltie, 13 s. 4 d.'. This was the same amount as that handed down for common instances of sabbath breach. But Marion Whitelaw 'being convict of the lyke slanderous speeches was ordanit to be detenit in ward in respect she had no money to pay with', and the session threatened that 'if ever she fell in the lyke fault, she sould be sett in the jogges'.²⁶ Marion Whitelaw's inferior economic capabilities meant she was imprisoned in place of the fine she could not pay and then threatened with public humiliation should the like happen again. This is an East Lothian punishment trend that is examined further in the next section.

So, attacking sexual morality was a common thread in East Lothian cases of verbal assault. Mellissa Hollander had found evidence that contemporary Edinburgh men were suffering attacks on both their sexual reputation and physical sexuality through allegations of venereal disease.²⁷ But the exchanges of sexualised slanders in East Lothian that made it to the formal court setting were reserved for female victims, and used by both men and women in their construction of insults against those victims. Insults were designed to dishonour, and husbands brought cases to the kirk sessions to restore the reputations of their wives, part of which was constructed around their sexual honour. This was a period when chastity – both sexual and through appearing passive

²³ Capp, *Gossips Meet*, esp. 210-3.

²⁴ NRS, OPR/713/1, f. 97.

²⁵ NRS, CH2/799/1, f. 323.

²⁶ NRS, CH2/799/1, f. 323.

²⁷ Hollander, 'Sex in Two Cities', 84-91.

and free of sin – was a cornerstone of female honour.²⁸ If honour and reputation could be won and lost by associational as well as personal behaviours, having a wife of dubious sexual morality could have consequences that reached beyond damaging *her* reputation. In a patriarchal society, ‘a respectable man supervised the relationships of those in his sphere of influence’.²⁹ As such, defending the reputation of wives was of added importance.

In the slander cases brought to the session by women against other women (ten in total between 1610 and 1640, according to figure 3.5), the language of insult tended to be more adventurous than the straight-forward accusation of being a whore. Before the Haddington session on 24 October 1630, ‘Elspe Baigbie gave in ane bill of complaint against Issobell Watsone for calling hir [a] whoor, thief and bordeller’. On 31 October, Watson was found guilty of the charge based on a witness confirmation by one Archibald Kane and ‘was sharplie rebukit for hir unchristiane behaviour towards hir neichbour and was ordanit to pay 1 lib’.³⁰ It was more than the fine received by James Whitelaw for his one-pronged attack on Duncan Morie’s wife. The unchristian language used by Watson was not wholly reliant on slighting Begbie’s sexual morality, but also her honesty.³¹ Attacks on personal honesty and honest reputations were the second common thread in the slander cases that appeared before East Lothian sessions between 1610 and 1640.

These two threads were combined in the case between Katharine Warrior and Robert Windrum that first came to the attention of the Yester kirk session on 16 October 1631, when Windrum confessed to calling Warrior a whore. On 23 October, William and Effie Creiff described the incident to the minister and elders, and ‘affirmed thay both called ane other huir and theife’. Although Windrum had already admitted calling Warrior a whore, she denied that she had called him a thief. Faced with the prospect of the case lying unresolved, the Yester session decided that ‘to prevent firther harme to them both’ they should be cautioned to keep the peace in time coming or face

²⁸ Foyster, *Manhood*, 46; Roper, *Holy Household*, 84; Gowing, ‘Women, Status and the Popular Culture of Dishonour’, 226. See also Cordelia Beattie, *Medieval Single Women: the Politics of Social Classification in Late Medieval England* (Oxford, 2007), 56-61.

²⁹ McSheffery, *Marriage, Sex and Civic Culture*, 189.

³⁰ NRS, CH2/799/1, f. 316.

³¹ For more on the interpretation of female honour away from constructs of sexual morality see Garthine Walker, ‘Expanding the Boundaries of Female Honour in Early Modern England’, *Transactions of the Royal Historical Society*, Sixth Series, 6 (1996), 235-45.

a fine of thirty shillings and a stint of public penance. The terms were agreed by Windrum and Warrior and the case was dismissed.³²

Being called a thief was only one method of casting doubt on an honest reputation. On 12 December 1630, James Beer appeared before the Haddington session ‘and gave in ane bill of complaint against Helen Thomsone for abusing him with her tongue, calling him [a] debased mensworne’.³³ The accusation here – of being a an immoral ‘mensworne’ – was that Beer had somehow perjured himself on an unspecified occasion. The session considered it an unfounded accusation and, on 2 January 1631, Thomson was convicted of ‘slanderous speches’ and sentenced ‘to be sett in the jogges and because she had no money to pay [her fine], the baillie was requested to detain hir in ward till niht’.³⁴

The seriousness of casting doubt on constructions of honesty can be seen in another case from Yester. On 28 January 1627, the session ordered ‘that Thomas Carfree should make duple satisfaction if he againe be found sclandering his neighbor’. On that day, Patrick Bartrum and George Dickson had given in a deposition to the session in order to free one Mr Thomas Maitland from a slander perpetrated by Carfree. Bartrum and Dickson deponed ‘solemlie upon their conscience that their was no laine holdine bake frome the tiending’ and that Maitland ‘receaved no laines utherwayis, ether to their knowledge, that was unknown to my Lord or unmarked’.³⁵ Their deposition had been taken on the order of the presbytery. The accusation that Maitland had somehow cheated both his subordinates and a system of taxation for personal gain was one to be taken seriously, casting the damaging doubt that it did on his moral and economic honesty.

Margaret Flinker from Saltoun was introduced in the previous chapter. On 25 October 1640, the session there ‘posed’ Flinker ‘anent the slander given in by John Spence’. On 18 October, Spence had given in a bill of complaint against Flinker and her husband, James Johnston ‘who slanderit him in the harvest rig, calling him common theiff’ and accused him for having ‘stollen the halfe of their corne the last yeir’.³⁶ Spence

³² NRS, CH2/377/1, ff. 178-9.

³³ NRS, CH2/799/1, f. 317.

³⁴ NRS, CH2/799/1, f. 318. Beer appeared again on 26 June 1631 accused of slandering John Strachan. Before the session, Strachan said Beer was ‘lyke ane fals knave’ and was convicted for misbehaviour. CH2/799/1, f. 324.

³⁵ NRS, CH2/377/1, f. 121.

³⁶ NRS, CH2/322/1, f. 21.

wanted to disprove such an accusation, presumably to allay any immediate fears from fellow users of the runrig farming system that he was in any way dishonest and willing to steal for personal gain. On 25 October, Flinker appeared to answer the charge and the ‘samyn wes proven, and the said Margaret confessit she called him comon theiff’. The slander proved, Spence could be reassured that Flinker and Johnston had chosen the nature of their verbal attack for best effect in a situation where ‘many slanderous unchristian words’ were said to have been exchanged.³⁷ This case suggests how the language of abuse that parishioners levelled against one another in the heat of a quarrel may not have been directly related to the dispute in hand, but chosen for best effect.³⁸ Bernard Capp writes that ‘the immediate goal of a public confrontation was to crush and humiliate the adversary’.³⁹ As a result, the labels that individuals chose to dishonour their victims with during such disputes reveals what characteristics were seen as most important for good reputation and personal and associational honour during this period. It was those characteristics that were chosen as subjects to be dishonoured.

Sexual insults against men may be conspicuously absent from the East Lothian record, but the same is not true of female thieves. In part of her miscalling of Elspeth Begbie, Isobel Watson had labelled her a thief. Before the Haddington session on 9 May 1630, ‘compeirit Margaret Whyte being complainit upon be Bessie Ely and confessit that she called the forsaid Bessie ane thief and was fyned 13s. 4d.’.⁴⁰ The insults that were being litigated in East Lothian between 1610 and 1640 reveal the importance of female sexual reputation and that this was something to be protected even from within the relative security of marriage. They also reveal the importance of honesty to both men and women, and a fear of what being labelled as economically dishonest and therefore dishonourable would do to reputations that were built around constructions of personal and associational credit. This shows how ‘a man suspected of betraying his word lost his worth, as he was no longer deemed trustworthy’.⁴¹ It was a common currency of male reputation.

³⁷ NRS, CH2/322/1, f. 21-2.

³⁸ Capp, *Gossips Meet*, 201-3; Shepard, *Meanings of Manhood*, 159.

³⁹ Capp, *Gossips Meet*, 201.

⁴⁰ NRS, CH2/799/1, f. 312.

⁴¹ Shepard, *Meanings of Manhood*, 193. For the importance of economic independence/dependency see Alexandra Shepard, ‘Manhood, Credit and Patriarchy in Early Modern England c.1580-1640’, *Past and Present*, 167 (2000), esp. 95-7.

In these two threads, of sexual reputation and honestly, insults were gendered. On rare occasions women did call other women thieves, but men were not appearing before East Lothian kirk sessions to defend their sexual character – although they were doing so elsewhere. Here, men were appearing to defend their reputations by association by protecting and restoring the sexual honour of their wives. There seems to have been great currency in the sexual reputation of women.

Before considering the final common thread of East Lothian insults, another gender divide must be acknowledged. Between 1610 and 1640, only two women appeared before the secular courts in Haddington to answer violence charges – one in the sheriff court, one in the burgh court (see figures 2.8 and 2.9). In the kirk sessions, where cases of violence were few, only 1 woman stood accused of physical violence (see figure 3.4). All six violence cases recorded by the North Berwick burgh court between 1638 and 1642 involved men.⁴² Figure 3.4 shows that there was again a male bias in cases of aggravated sabbath breach, with 50 individual cases brought before male parishioners compared to 18 cases against female parishioners. Lyndal Roper has written how the penalisation of fighting and rowdy behaviour on the streets of Augsburg was largely reserved for men, both before and after the Reformation. This was because it was men who were ‘armed as a matter of course’, and were the group identified as most likely a clear threat to civic peace.⁴³ Similarly, when it came to physical violence in East Lothian, it was an overwhelmingly male court experience – an experience which reveals something more of the construction of male honour and reputation during this period.

On 20 August 1611, James Learmonth appeared in Haddington burgh court. The clerk recalled how Learmonth

enacts himself not to make trublance in time coming with any frieman or burges of the said burgh, except it be in his awin defence under the paine of forfeiting of his friedome and burgesschip.⁴⁴

As part of the bargain struck with the provost and bailies, Learmonth consented that

sa laing as any judgeis sall remaine in this office he sall not weir ane sword within this burgh daylie, bot on the mercat dayis or uther dayis quhen there is ane cause, or quhen he sall suspect or understand any of his enemies to be within the said burgh, providing always that in caice the said James to be amended his behaviour that it salbe left to thame to deleit this act.⁴⁵

⁴² NRS, B56/6, ff. 1-14.

⁴³ Roper, *Holy Household*, 82-3.

⁴⁴ NRS, B30/10/9, f. 58.

⁴⁵ NRS, B30/10/9, f. 58.

Learmonth signed the act with his own hand. Whether it was deleted or not is unknown. If it was, it was never crossed from the official record. Learmonth had shown himself to be lacking in the patriarchal imperatives of order and self-control that have been identified by Alexandra Shepard.⁴⁶ He could not be trusted by the authorities to carry a sword on a daily basis, so they limited this overt display of socioeconomic status – this assertion of manhood – to market days or when Learmonth suspected ‘any of his enemies’ to be in Haddington. Patriarchy and manhood existed in tension. In this case, Haddington burgh court was acting to rebalance the relationship between the two in favour of patriarchy.

When displays of manly strength were seen to flout authority and patriarchal order, this was an aggravating factor in the sentencing of those involved. On 3 February 1627, John Thin and his daughter, Marion, appeared before James Cockburn, provost of Haddington burgh court. They were

accusit and convict for contemting and disobeying James Bartrum, ane of the baillis of the said burgh, being in the execution of his office for obedience to his majesties warrand for furneching posthorssis to certain noble men rydding past.⁴⁷

John Thin was accused of

refuseing to give his horssis to ryd and refuseing to come to ward for his refusell of his saids horssis, and geving evill words to him [Bartrum] and menassing him with ane quhinger and making to styk him therewith.⁴⁸

Rather than be enacted to keep the king’s peace in time coming or fined for menacing Bartum, both Thin and his daughter were ordered to

re enter ward within the tolbuith quhensoevir the saids provest and baillies sall require thame, and that they sall fulfil and underly quhatsumevir punishment of bodie or guids the saids judges sall inflict upoun thame for the said contemptioun and fault.⁴⁹

Any lack of awareness of the importance of patriarchal order which was shown through an aggressive display of manhood was not tolerated by Haddington burgh officials – especially when the order in question was emanating from the Crown. Thin’s daughter had been implicated by association. She had not personally menaced Bartrum with a

⁴⁶ Shepard, *Meanings of Manhood*, 98.

⁴⁷ NRS, B30/10/11, f. 177.

⁴⁸ NRS, B30/10/11, f. 177.

⁴⁹ NRS, B30/10/11, f. 177.

whinger, but by being involved the dispute alongside her father she had acted inappropriately in the face of a higher authority.

Overt displays of masculinity did not always rest easily with commonly acknowledged and accepted patriarchal attitudes. Where John Thin had come up against the Haddington burgh authorities, Thomas Denham was called before the sheriff court on 22 May 1628 to answer for a violent attack on his servant man, James Watson. Robert Shorthouse, procurator fiscal, read out the charge

against the said Thomas Denheim for the cruell hurting and wounding of the said James with ane quhinger, kie or ring upoun the face and heid to the effusioun of his blode in great quantite.⁵⁰

Denham did not appear, so the court held him as 'pro confesso' and 'the judge condemnis him in an unlaw of 50 pounds'.⁵¹ Flouting a household position of authority and patriarchal responsibilities of care and protection was not to be tolerated – the correction of servants could go too far.⁵²

Whilst East Lothian men seemed to have walked a fine line between acceptable shows of masculinity and unacceptable violence in a patriarchal society, were East Lothian women simply the passive sex? Elizabeth Ewan's recent study on the acts of violence perpetrated by women in late-medieval Scottish burghs puts forward a convincing argument that it was not simply the case 'that men used their fists whilst women used their tongues'.⁵³ In East Lothian between 1610 and 1640, very few women appeared before the secular or ecclesiastical authorities to answer charges of outright violence. Where female displays of violent behaviour were being heard by the courts, it was common for these to be associated with scolding and flyting. Such charges were not slander proper, but 'words spoken in a spirit of malice' that breached Christian charity and neighbourly ethics.⁵⁴ Thus these words were not a criminal concern as such, but a part of the kirk's social control remit in the first instance. The existence of such an offence shows how physical violence and violent words were not discrete concepts, but rather two points on a spectrum of unacceptable, aggressive behaviour. A vicious

⁵⁰ NRS, SC40/7/17, ff. 278, 283.

⁵¹ NRS, SC40/7/17, f. 283.

⁵² Elizabeth Ewan, 'Disorderly Damsels? Women and Interpersonal Violence in Pre-Reformation Scotland', *Scottish Historical Review*, 89:2 (October 2010), 170. See also Susan Dwyer Amussen, "'Being Stirred to Much Unquietness?': Violence and Domestic Violence in Early Modern England", *Journal of Women's History*, 6 (1994), 70-89.

⁵³ Ewan, 'Disorderly Damsels?', 156.

⁵⁴ Sharpe, 'Such Disagreement', 178.

exchange of ‘words spoken in a spirit of malice’ was itself, an act of violence. Charges of scolding and flyting came before kirk sessions across East Lothian between 1610 and 1640, and figure 3.4 shows it to be a female-dominated offence at 79 per cent of all individual cases heard.

A typical example of the amalgamation of violent words and violent actions exchanged between women was heard by the Tynninghame session on 3 August 1617. On this day

Issobell Wood callit on compeirit and accused for railing and flyting with hir nichtbour Agnes Robesone, spous to Patrik Watsone in Tynninghame, shephird to Robert Lawder, confessed the same bot in the mein tyme affirmed that the said Agnes did in lyk maner to hir, namlie did rail and slander her. The said Agnes Robesone callit [and] compeirit and accused heirof insisted that she cald not contene hir self seing she bothe sclandered hir and did case stains at hir.⁵⁵

The testimony of two male witnesses, James Neilson and George Shorthouse, led the session to conclude that the incident was a mutual between the two neighbours because ‘they did bothe flyt and rail against uther’. But it was also concluded that ‘Issobell Wood was loudest and most estrainged, and did cast stainis at the uther and compelit hir to leive the gait and pas into ane house’. Woods’ actions had led Robeson to flee the public space of the street. Both women were ordered ‘to satisfie the kirk publiklie on their kneis before the pulpit the nixt sabboth before noone and pay ane penaltie’, but that ‘Mr John sald aggrevat the said Issobellis falt before the pepill because it was greatest’.⁵⁶

A sabbath-day exchange between Elspeth Mill and Nans Nicolson in North Berwick turned more physical than the throwing of stones when ‘Elspeth Mill confessit she strak Nans Nicolson with ane key and brak hir heid’ and ‘having the other hand in hir mouth, she shot Nans over’. Not to be out done, the session heard on 26 April 1612 that Nicolson reacted to this by biting Mill’s hand and then placing ‘both hir hands’ on Mill’s head to topple her to the ground’. It was quite a spectacle, but the session’s concern was that it had taken place on a Sunday. Mill paid the price of a sabbath breaker for instigating the attack. She was ordered ‘to pay 13 sh. 4 d. to the poor and to confess the offence before the congregation on the nixt sabboth’ for her public ‘tuilyeing’, or brawling quarrel, with Nans Nicolson.⁵⁷

⁵⁵ NRS, CH2/359/1, f. 14.

⁵⁶ NRS, CH2/359/1, f. 14.

⁵⁷ NRS, OPR713/1, f. 120.

When slander was expressed as scolding or flyting – the heated exchange of words that led Agnes Robeson to state that she ‘could not conteine herself’ – the gender divisions of insult did not necessarily disappear. Scolding and flyting was not an exclusively female experience, and the element of display that was afforded to the perpetrators in their public expressions of violent words led them to draw upon all manner of insulting labels to discredit their opponent’s honour and reputation. On 5 April 1634, the Pencaitland session ‘ordains Patrik Meikle and Helen Carrail for profaining the sabbath by flyting and blaspheming of God’.⁵⁸ Both appeared on 12 April, where Carrol ‘said that Patrik Meikle called her drunken carling and lewd jade and harlot’. The details of any retaliatory insults issued by Carrol are not recorded, but both parties were ‘ordained if they be found flyting againe at any time to double the penultie’.⁵⁹

Four men appeared before the Haddington session during 1630 to answer charges of scolding. On 19 December 1630, Nicol Carbreath and Margaret Scougell were fined by the session for ‘their unchristiane behaviour, insulting and scolding on another’.⁶⁰ Another of these cases was that of John White, a Webster, who appeared before the minister and elders on 16 May 1630 with his wife, Agnes Stevenson. The couple

wer advisit of the unchristiane behaviour in scolding and flyting and upbraiding on another [and] wer admonishit not to doe the lyke under the paine of double [penalty]. For the present ilk ane fined 20s under 3 tits.⁶¹

Their public display of marital disharmony was labelled unchristian by the session – a bad example of how to run a respectable, godly household. As Patrick Meikle had assaulted Helen Carrol’s honour and reputation by calling her a ‘lewd jade and harlot’, public displays of marital upset were also dishonourable and to be regulated and actively discouraged. But the first part of Meikle’s insult referred to Carrol as a ‘drunken carling’ – that is, a drunk old woman. It was a style of insult that belies the third and final thread that informed the construction of verbal abuse in Haddingtonshire during this period.

In England, men ‘denounced their female adversaries as drunkards, thieves, liars or, occasionally, witches’.⁶² By contrast, in East Lothian, accusations of witchcraft and

⁵⁸ NRS, CH2/296/1, f. 8.

⁵⁹ NRS, CH2/296/1, f. 8.

⁶⁰ NRS, CH2/799/1, f. 317.

⁶¹ NRS, CH2/799/1, f. 312.

charming were more than ‘occasionally’ represented. Instead, allegations of charming practices or outright witchcraft made up a third and final common thread in slander cases and the exchange of insults during scolding and flyting. Whilst this was concerning for individuals content on protecting good reputations and personal and associational honour, being accused as a witch would have also been met with fear. In East Lothian between 1610 and 1640, it was an accusation to be dispelled with vigour.

On 16 September 1638, George Gullane appeared before the Aberlady session to answer ‘for the blaspheming of Patrick Chrystisones children in calling them witchis gett’. Gullane quickly confessed the same and was ordered to make public repentance on his knees before the congregation.⁶³ A previous case from 1634 had warranted a closer examination. On 2 February of that year, Francis Elphinstone appeared before the same session to answer the charge that ‘he hes bein resident and his wyfe in our parish this thrie yeirs and hes not gotten ane testimonial’. He was ordered to produce certification ‘from quhilk parochin he caim last, his wyfe suspect of witchcraft’.⁶⁴ East Lothian had endured a witchcraft panic between 1628 and 1630 – the period of Elphinstone’s past that the Aberlady session knew nothing about. Francis Elphinstone produced a testimonial from Tranent, for himself and his wife, to the Aberlady session at their next meeting on 9 February. Cleansed of any suspicion, the session ‘ordaines Robert Douglas to be censured for sclandering his [Elphinstone’s] wyfe of witchcraft’.⁶⁵

Neighbourhood tensions were still running high – calling someone a witch was a serious threat. In the middle of the panic on 12 April 1629 in Yester, ‘John Wheatlie younger satisfied for the sclandering of Jonet Begbie for witche in linen claithes’.⁶⁶ Allegations of charming were at the forefront of this session’s mind during this period. On 15 March 1629

Andro Mathesone in Yeaster satisfied for charming. Ordaines that gif Andro Mathesoen shall ever be fund charming or meddling in any maner with charmeris and wiches then he sall be delivered over into the hands of the civill judge to be punished according to the lawis of the land for ane obstinate persone persevering in the divillis art.⁶⁷

⁶² Capp, *When Gossips Meet*, 230.

⁶³ NRS, CH2/4/1, f. 31.

⁶⁴ NRS, CH2/4/1, f. 13.

⁶⁵ NRS, CH2/4/1, f. 13.

⁶⁶ NRS, CH2/377/1, f. 152.

⁶⁷ NRS, CH2/377/1, f. 151.

On 22 March, David Dickson satisfied for the same offence.⁶⁸ Dickson had been first warned on 16 November 1628 alongside Isobel Cairnes.⁶⁹ Whilst the allegation against Dickson had been founded, that against Cairnes was not. On 28 December the session clerk notes that 'Jeane Ker maid satisfaction for scolding of Issobell Carnes'.⁷⁰ In this case, the gossip that ecclesiastical authorities relied so strongly on to bring actions against parishioners for their errant behaviour had been proven to be false. The accusation of charming during a nationwide witchcraft panic was serious enough for Jean Kerr to be censured publicly for peddling a falsehood of such nature. The potential repercussions for Isobel Cairnes went further than dishonouring her reputation.

Throughout early modern societies, personal reputation was of great importance. Reputation affected credit, worth and popular representation within the parish setting. It was tied to personal honour and the honour of relations and associates, where representations of sexual morality and honesty were of utmost importance. This was the case in East Lothian between 1610 and 1640, where the insults exchanged between parishioners were highly gendered. The labels of whore and thief were litigated against in the defence of reputations, with whore being reserved for female victims in attacks from both men and women.

In his *Matters Criminal*, Sir George Mackenzie writes 'I went, when I was a Justice-Depute, to examine some women who had confessed judicially' to the crime of witchcraft.

One of them, who was a silly creature, told me under secrecy that she had not confessed because she was guilty but, being a poor creature who wrought [worked] for her meat and being defamed for a witch, she knew she would starve, for no person thereafter would either give her meat or lodging, and that all men would beat her and hound dogs at her, and thereupon she desired to be out of the world.

This was probably Janet Daill, whom Mackenzie interviewed within Musselburgh tolbooth during another witchcraft panic in 1661.⁷¹ Reputation mattered – it made the shaming rituals employed by Scotland's early modern kirk sessions possible. But being accused as a witch gave rise to more than a personal concern that such words would damage a moral, honest reputation. Being accused as a witch carried an element of real

⁶⁸ NRS, CH2/377/1, f. 151.

⁶⁹ NRS, CH2/377/1, f. 146.

⁷⁰ NRS, CH2/377/1, f. 148.

⁷¹ Mackenzie, *Matters Criminal*, 71.

fear. Being named by a suspected witch could be fatal. William Davidson's trial and execution for witchcraft on 16 December 1628 was recorded in Haddington's sheriff court records.⁷² Being denounced by Davidson sealed the grizzly fate of Bessie Make, Sara Keith and Alexander Hunter.⁷³ The *Survey of Scottish Witchcraft* shows that convicted witch Alexander Hamilton was responsible for denouncing at least 21 others.⁷⁴ In addition to these 21, John Carfra, Thomas Carfra and Alison Borthwick were tried on 21 August 1629 in Haddington and executed as witches, having been named by Hamilton.⁷⁵ As a well-founded fear, the language of witchcraft informed the litigation of defamation in East Lothian between 1610 and 1640. Furthermore, the fear it incited was a useful tool that was harnessed by the kirk and state as a method of social control.

II. The Methods of Social Control

The sources of the authority enjoyed by Haddingtonshire's secular and ecclesiastical authorities, and how these conferred a sense of accepted legitimacy between 1610 and 1640, have been discussed in detail in chapter two. As quoted in that discussion, John McCallum has argued that 'the acceptance of discipline could be a result either of an acceptance of the principles of Calvinist discipline, or simply of fear of the kirk session'.⁷⁶ Court records are mediated insights into the lives of ordinary folk, so judging this statement from such sources poses inherent difficulties. But McCallum's phrase draws attention to an important point. Regardless of the balance of influence between the two, the acceptance of the principles of Calvinist discipline and fear of the kirk session were certainly propellants of early modern social control at the hands of the church.

Alongside these, the 'social services' function of the kirk sessions (rightly identified by Margo Todd) may have helped those parishioners who did not fully subscribe to (or understand) Calvinist doctrine, to accept the more invasive aspects of the kirk's disciplinary activities.⁷⁷ The cases clearly brought by parishioners for resolution via the sessions and presbytery are shown in figures 3.5 and 3.7. Although these are less

⁷² NRS, SC40/7/17, f. 359.

⁷³ NRS, SC40/7/17, f. 384; NRS, SC40/7/18, f. 5.

⁷⁴ *SSW*, ed. Goodare, accessed 26/06/2012.

⁷⁵ NRS, SC40/7/18, f. 28.

⁷⁶ McCallum, *Reforming the Scottish Parish*, 228.

⁷⁷ Todd, *Culture of Protestantism*, 266 and ch. 5 and 6 in general.

numerous, this use of the church courts when considered alongside the other services on offer (including conflict mediation and poor relief) helps advocate the system as a welcome vehicle for social control rather than an oppressive force from above. Although Haddington's secular courts did mediate personal conflicts within the context of criminal law, especially in their numerous dealings with debt, this could not be described as 'social services'. These were criminal courts. And yet Reformed belief and the real fear of sanctions were important facets of the authority of the sheriff and burgh courts as well as the ecclesiastical jurisdictions. Reputation and honour were important commodities throughout East Lothian between 1610 and 1640, and the corresponding prospects of losing or damaging these commodities were used in criminal litigation as well as tools for social control during this period.

In his quantitative study of St Andrews, Geoffrey Parker has emphasised the all-encompassing nature of kirk discipline within the burgh, arguing that 'by 1600, some 1,716 parishioners had appeared before the session' at a time when 'the entire adult population of the parish was probably under 2,000'.⁷⁸ When such a large proportion of a burgh population had, at some point in time, been called to make their public repentance, how meaningful was that ritualistic display of penance? The historiographical debate over the experience of kirk discipline between 1560 and 1780 has engaged with the shameful nature of kirk session punishments: from repenting on the stool, to being put in the branks or 'scold's bridle' for unseemly, ungodly behaviour.⁷⁹ Further examination of the methods of social control that were employed in East Lothian between 1610 and 1640 is needed, before the experience of the consequences of social control can be properly addressed.

Debating the importance of gender for the experience of kirk session discipline extends beyond the actual pursuit of sinful men and women to their treatment once they appeared before the ecclesiastical authorities. In her research on early modern Germany, Merry Wiesner-Hanks has found that women were more likely to be put to public ridicule as a punishment for their disciplinary lapses than their male counterparts – which could take the form of a stone bridle, or *Lasterstein*, to highlight 'unfeminine'

⁷⁸ Parker, 'Kirk By Law', 9-11.

⁷⁹ For the most comprehensive overview see Todd, *Culture of Protestantism*, ch. 3. See also John G. Harrison, 'Women and the Branks in Stirling, c.1600 to c.1730', *Scottish Economic and Social History*, 18 (1998), 114-31.

activities.⁸⁰ That men appeared before Scotland's kirk sessions throughout the early modern period to answer for a whole range of offences from illicit sex to charming is not in dispute, even if women felt the disciplinary 'sting in ways that men could not'.⁸¹ But what happened to men and women after they had been convicted?

The 1567 Act of Parliament prescribed the same fines to men and women found guilty of fornication.⁸² In his analysis of the Aberdeen justices of the peace court in the late seventeenth-century, Gordon DesBrisay has noted that 'in theory men and women were to be treated in exactly the same way by the court', with similar legislation stating how fines should be levied on both sexes. DesBrisay points out that for women appearing before the JPs, this should have been done 'according to her quality' or socioeconomic rank; but his investigations reveal that 'the law was equitable, though, society was not'.⁸³ DesBrisay has detailed a convincing argument to show how, although fines for behavioural lapses may have been fixed at the same rate for both sexes, reduced female earning power put women at a natural disadvantage when it came to ability to pay.⁸⁴ Just because kirk sessions were bringing cases against men as well as women, did not necessarily mean that gender equality was present and robust in the experience of early modern social control at the hand of these courts.

Two of the slander cases that were heard by the Haddington kirk session, that of Marion Whitelaw and that against Helen Thomson, have been detailed above for their use of insults. But the use of punishment deployed by this kirk session deserves closer attention. Marion Whitelaw was unable to pay the fine set by the session, so she was imprisoned and threatened with public humiliation should she commit the like offence again.⁸⁵ Helen Thomson's violent words against John Beer were serious enough to have her put in the joughs in the first instance, but like Whitelaw she was warded by the bailies for being unable to pay her fine.⁸⁶ Before the Haddington session, an inadequate purse was compensated with punishment against the person. There are instances where this

⁸⁰ Wiesner, *Gender, Church and State*, 91-2.

⁸¹ Graham, *Uses of Reform*, 289.

⁸² *APS*, iii, 25 c.14.

⁸³ Gordon DesBrisay, 'Menacing their Persons and Exacting on their Purses': the Aberdeen Justice Court, 1657-1700', in David Stevenson (ed.), *From Lairds to Louns: Country and Burgh Life in Aberdeen, 1600-1800* (Aberdeen, 1986), 86.

⁸⁴ DesBrisay, 'Menacing their Persons', 86-9; 'Twisted by Definition', 141-2. The affect this had between men of different rank is discussed in chapter 7.

⁸⁵ NRS, CH2/799/1, f. 323.

⁸⁶ NRS, CH2/799/1, f. 318.

discriminated against poorer men, but it was women who felt the ‘sting’ disproportionately because of their reduced earning power.

The fines handed down by this session across the board during 1630 and 1631 did not take ability to pay into account. Instead they were related to interpretation of the circumstances – such as in cases of sabbath breach. On 27 March 1631, ‘compeirit John Johnstone and William Sincler there wyfes, and war convict of prophaning the sabbboth in selling aill in tyme of preaching’. Each woman was ordered to pay ‘twentie shillings under 3 tit’ – the standard fine in the parish for working or trading on Sundays.⁸⁷ At the other end of the scale, when the smith Patrick Scriven appeared on 10 April 1631 and ‘confessit his prophaning of the sabbboth in drinking in tyme of preaching’, he was rebuked and fined the standard 13s. 4d.. In Saltoun, fines for offences including working on the sabbath and slander were set at 20 shillings for a first offence for all parishioners.⁸⁸

As recognised by DesBrisay, the fining of individuals for their behavioural lapses was the most contentious imbalance in the kirk sessions’ disciplinary system. Illicit fornication is the clear example here. There is no similarity to Wiesner’s findings for early modern Germany. As Margo Todd states, ‘both the begetters and bearers of bastards appeared on the stool, generally together and for the same number of sabbaths’.⁸⁹ In the records from every East Lothian parish, men and women were making their repentance publically when they were ordered to, having appeared for the same offence. Figure 3.10 shows that it was more common to see a man making his repentance on the stool in Tynninghame than a woman. This can be attributed to the higher numbers of male sabbath breakers, as detailed in figure 3.4. But when it came to being fined, gender mattered.

In contrast to the policies of the Haddington session, where women were more likely to be warded for their behaviour than men due to their lower economic capabilities, the economic divide between men and women was recognised and accounted for elsewhere. In Tynninghame, the kirk session consistently applied different financial penalties to convicted male and female fornicators between 1615 and 1640. A case from 22 May 1625 is a typical example. On this day

⁸⁷ NRS, CH2/799/1, f. 320.

⁸⁸ NRS, CH2/322/1, f. 90.

⁸⁹ Todd, *Culture of Protestantism*, 178.

Agnes Robesone suspect of fornication with James Patersone accusit heirof confessit the same, ordains hir being heavilie rebuikit to pay 10sh and satisfie 3 several dayis on the stoole of repentance. The said James Patersone accusit of fornication with the said Agnes Robesone confessit the same, ordains him being heavilie rebuikit to pay 20sh and to sitt 3 severall dayis on the stoole of repentance.⁹⁰

Like before other East Lothian sessions, those who confessed to a first offence of illicit fornication here could expect to appear on the stool for three consecutive Sundays, regardless of their gender. But this session set clear, different financial penalties for men and women convicted of the same, commonplace offence. The Tynninghame minister and elders passed over 60 ordinances between 1615 and 1640 to regulate everything from brewing on the sabbath to signing the national covenant, but there is no written record of the reasoning behind the different fornication fines. Regardless of this, in this parish gender was a factor that was positively discriminated against in the levying of fornication fines. It is possible that there was contemporary recognition of the influence of gender over real economic worth, and that this should be accounted for in the exertion of social control. Fornication fines were increased in Tynninghame in the autumn of 1629, but cases from 22 November 1629 onwards show that the gender divide was kept so women paid one merk for a first offence, men two merks.⁹¹

This phenomenon of fining as identified by Gordon DesBrisay has been briefly acknowledged by Margo Todd, although Todd does not credit it with obscuring the overall gender égalité which she affords the kirk sessions.⁹² In East Lothian, a female fornicator in Tynninghame, where fines were varied for the sexes, received a better deal than a female fornicator in Prestonpans or a female sabbath breaker or slanderer in Saltoun, where fines were applied in blanket fashion.⁹³ But, if gender was influential when it came to the experience of paying the fines imposed by local sessions, the contrast in approaches to this punishment that can be seen from parish to parish within a single shire highlight how geography was also a key influence when it came to the experience of punishment in general. The differences in the experience of social control at the hands of the sessions for ordinary folk did not end with the setting of fines. Where you lived had bearing on how you were treated by these jurisdictions after conviction in a much broader respect.

⁹⁰ NRS, CH2/359/1, f. 52.

⁹¹ NRS, CH2/369/1, f. 63.

⁹² Todd, *Culture of Protestantism*, 179.

⁹³ In Prestonpans on 22 October 1611, William Nicoll and Agnes Harrison were both ordered to sit three sabbaths on the stool and each pay 20 s. for their fornication. NRS, OPR/718/1, f. 83.

As mentioned in chapter two, only the North Berwick and Prestonpans sessions liked to make use of their steeples to imprison disobedient delinquents on occasion, and the Haddington session relied on the bailies to perform this task where necessary. In Yester, sackcloth was a humiliation tool of choice, deployed for aggravated cases of sabbath breach as well as adultery. One such case was on 23 December 1632, when the session summoned ‘Margaret Porteous and Margart Fruid for scalding upon the sabboth, who compeiring were ordained to satisfie in lynyng sheitts the nixt day’, which they did.⁹⁴ Although the Haddington session threatened individuals like Marion Whitelaw with the humiliating ordeal of being put in the joughs, the only East Lothian session that afforded this to its errant parishioners was North Berwick. Between 1611 and 1614, the session instructed eight individuals to be put in the joughs for their exceptional misbehaviour. For Nans Nicholson – future victim of Elspeth Mill – this was her conviction for slandering Katherine Johnstone. On 31 May 1612, Nicholson was ordered to be ‘presentlie put in the joughs at the porch door and remainit ther till the session dissolved’.⁹⁵ Alison Harlaw was introduced in the previous chapter as a pregnant fornicatrix who confessed to having illicit sex with two different men. On 5 March 1611, she had been ‘ordainit to be in the joughs thre dyetts and sax on the pillar’ as penance for her promiscuity.⁹⁶

The use of the joughs was a show of social control plundered from the secular bailies that was longed for by Tynninghame’s John Lauder. On 15 October 1615

Mr John reportit that their was sa many railers in the towne, especiallie women, and that they trublit the session sa oft, [he] earnestlie desyrit that the civill magistrat wald concur in punishing of them and that joughs might be maid at the kirk door quhairin the delinquents might be put.⁹⁷

If the local magistrates co-operated, there is no record of the Tynninghame session ever using the joughs as punishment. It is possible that the civil magistrates did assist with the punishing of ‘sa many railers’ in this fashion, but none of their records survive from this period.

This overview of punishment patterns used by East Lothian sessions suggests that parishes that enjoyed the support of strong, secular burgh authorities had more readily available options. There is a divide between the types of physical punishments used by

⁹⁴ NRS, CH2/377/1, ff. 188-9.

⁹⁵ NRS, OPR/713/1, f. 121.

⁹⁶ NRS, OPR/713/1, f. 101.

⁹⁷ NRS, CH2/359/1, f. 3.

the sessions in the two royal burghs and those relied upon in other, more rural parishes. But rural parishes such as Yester still used props to illustrate the dishonour of those making their public repentance before the congregation, and to highlight the shameful nature of their various behavioural faults. Urban kirk sessions may have had more disciplinary resources, but this does not mean that the experience of disciplinary punishment in rural parishes was at all without meaning for ordinary men and women.

Social control in early modern Scotland had been made possible because of the legitimacy afforded to the kirk sessions and the local nature of their authority. Although the kirk sessions may have been providing the sorts of services wanted by parishioners, the rise in state-sponsored fear during this period (as exemplified by witchcraft accusations), and the state-sponsored persecution of certain groups (gypsies, for example), were instrumental in helping the overall success of the kirk's disciplinary programme. Every week, neighbours and acquaintances would be subjected to the public humiliation of the stool of repentance before being received back into the kirk community. Others had the added shame of being dressed in sackcloth. More still may have been put on display outside the kirk door between the ringing on the bells. In North Berwick, individuals were put in the joughs. The ritual of making public repentance may have been an expected sight, but this does not mean that it was not shameful. In a society where reputation and honour mattered, shame was a crucial method of social control in East Lothian between 1610 and 1640 and a powerful message that was harnessed by the secular courts in criminal prosecutions.

The average penance for a first fornication fault across East Lothian was three appearances on the stool of repentance, except in Haddington where two sufficed.⁹⁸ Illicit fornicators may have been numerous, but performing this display of contrition built around the admission of the dishonour of sexual immorality was still viewed with horror by some. Before the North Berwick session on 27 January 1611 'compeirit Alexander Stott, and being demandit if he was maryit to the woman quhilk he had with him in North Berwik ansrit not, bot that ther wes promis of marriage betwixt them'. Faced with this suspicious state of affairs, the session enquired of their previous whereabouts. Stott replied that they had been in Edinburgh and, being asked

⁹⁸ NRS, CH2/799/1, ff. 306-325.

the caus of his departur therefra, ansrit that in respect the acts of the kirk of Edinburgh wer sa grait agains fornication that he micht not pay the penalty, and the punishment sa hevie that the woman being grait hartit could not abyd it and therfor they had transportit themselves.⁹⁹

The shame of their fornication, as displayed and highlighted by ritual punishment, had led Stott and his partner to flee the city for a fresh start. Unfortunately, this was not to be the case. Having not made satisfaction in Edinburgh, they were without testimonials. Two days later ‘the session desyrit the bailyis to caus Alexander Stott and his partie, fornicators, to remove out of the bounds’.¹⁰⁰

The real nature of shame and dishonour was not only felt in the city or smaller town. Mitchison and Leneman have displayed the eighteenth-century predication for paying your way off the stool if at all possible. Although contested in importance by Margo Todd, Michael Graham has acknowledged this phenomenon for the post-Reformation period, and it was present in East Lothian between 1610 and 1640 as those who could afford it tried to avoid public humiliation.¹⁰¹ The sums on offer in lieu were not insignificant. It was seen as a bargain worth making if at all possible, testifying to the unpleasantness of public humiliation on the kirk’s stool.¹⁰² Although forgiveness and re-acceptance into God’s community were on offer at the end of performing penance, the effects on honour and reputation could be more lasting.

On 15 March 1640, Helen Baine appeared before the Aberlady session with her neighbour, Helen Smith. The session were investigating a rumour of sexual slander and were trying to gather as much information as possible so that they could go ahead and make an accusation. Baine had been named as a witnesses, having discovered a couple in the act. But when she was asked to name them, she said that when she made the discovery ‘the man raised up and vowed if he hard any mair word of it by hir he should break hir neck’. Not wanting to appear threatened, Baine told the session that if it ‘wer not for the womans saik she would tell, bot she will not tell for slandering of hir’.¹⁰³ This case reiterates the importance of chastity for contemporary notions of female honour, but also speaks of the real, shameful consequences that illicit fornicators faced courtesy of kirk discipline.

⁹⁹ NRS, OPR/713/1, f. 97.

¹⁰⁰ NRS, OPR/713/1, f. 97.

¹⁰¹ Todd, *Culture of Protestantism*, 176; Michael Graham, ‘Equality before the Kirk’, 289-310.

¹⁰² This phenomenon is discussed in detail in chapter 7.

¹⁰³ NRS, CH2/4/1, f. 50.

The language of shame was used to insult in defamation suits – and the ritualistic, humiliating punishments used by the secular authorities during the early modern period provided good inspiration for some. On 20 March 1614, witnesses appeared before the Yester kirk session to recall the slander that Janet Hewlatsone had levelled at John Todd's wife. They deponed that Hewlatsone had called her 'ane skurgit loune', a reference to the usual public humiliation received by common, feckless thieves who were convicted by the Haddington sheriff and burgh courts.¹⁰⁴ Like the kirk sessions, the secular courts used punishment rituals to shame the convicted and display their own authority to the population. Mackenzie wrote of Janet Daill's desire to die in 1661 rather than return to a community that did not want her and would not accommodate her. Throughout early modern Europe, other convicted witches took their own lives rather than face a shameful public death at the hands of the lockman, and slanderous witchcraft accusations were pursued through the church courts for redress in order to help avoid such a fate.¹⁰⁵

On 17 January 1613, the North Berwick session issued a stern reminder to the parishioners making their public repentance, that 'the said within the pillar wer comandit be the minister to sit up that they micht be sene, with certification if they refusit they suld not be ressavit'.¹⁰⁶ Although parishioners had to be reminded on occasion to take their godly duties seriously, for some the feeling of shame and the anticipation of being shamed was a real fear. Indeed, slouching on the stool itself could mitigate the ordeal of being seen and mocked by your peers. Relationships with neighbours and associates were constructed around labels of honesty and honour, and the constituents of a good, moral reputation. As such, shame and the fear of being shamed were used as tools of social control. Their potency can be attested to by how shame was also used for criminal control. Haddington's secular courts did not just humiliate thieves by scourging them through the burgh streets. They harnessed the language of shame that was so apparent

¹⁰⁴ NRS, CH2/377/1, f. 19. See figure 7.1 for a breakdown of theft punishments at the hands of Haddington burgh court.

¹⁰⁵ In the Haddington records, Anna Tait, the only witch during this period whose trial is recorded in Haddington's burgh court records, was recorded to have attempted to hang herself whilst awaiting trial. 6 January 1635, NRS, B30/10/13, f. 6. For a good introduction see Brian P. Levack, *The Witchbunt in Early Modern Europe* (Harlow, 2006), 17. For Scottish witches and suicide see the collection of essays in Julian Goodare (ed.), *The Scottish Witchbunt in Context* (Manchester, 2002), many of which reference instances of suspected or convicted witches committing suicide whilst in prison.

¹⁰⁶ NRS, OPR713/1, f. 130.

in kirk discipline to punish for greatest effect. Shame did not end with East Lothian's ecclesiastical jurisdictions, as Margaret Alexander discovered in 1612.

III. Case Study: the Trial and Death of Margaret Alexander, Haddington, May 1612

On the 28 May 1612 Margaret Alexander, born in Aberlady, was produced before Haddington sheriff court having been 'committit to waird within the tolbuith of the said burgh for the notorious crymeis of incest, adultrie and murthure of hir awin bairnis, gott in the said vice of incestuous adultrie.'¹⁰⁷ The court asked Margaret if she desired anyone to speak for her, she declined. An assize of fifteen men was then formed, variously from Aberlady, Ballincrieff and Haddington, to preside over her trial. The dittay covers three pages, tracing the roots of Margaret's incestuous relationship with Patrick Learmonth, her bearing of two children to him and their subsequent deaths. As the case is put to the court and recorded in the formulaic language of the state in the sheriff court record book, the importance of God, notions of femininity, motherhood and criminality converged to dictate the fate of the accused.

Firstly, Margaret was told that she was 'accusit and indictit for [her] vicious and filthie harlottrie, adultrie and incestuous adultrie with Patrick Learmonth in Abirlady, lying and continuwing therein be the space of sevin yeiris', resulting in the birth of two children.¹⁰⁸ The nature of their relationship as 'incestuous adultrie' made this a capital offence in Scotland, that was usually punished by hanging.¹⁰⁹ The dittay against her would go on to reveal that Learmonth had once been in a sexual relationship with Alexander's sister, who was now dead, thus fulfilling this category. Rather than simply stating the facts of the charge, the court record preceded this with a moral judgement on their relationship, branding Alexander's behaviour as 'vicious and filthie harlottrie'. It was the first of many such observations that were littered throughout the case as the assize was presented with further details of the deaths of their two children.

The first child 'be his [Learmonth's] perswasion ye fathered upoun ane James Haitlie', before conspiring with Learmonth to murder the baby by attempting to induce

¹⁰⁷ NRS, SC40/7/13, f. 65.

¹⁰⁸ NRS, SC40/7/13, f. 65.

¹⁰⁹ Mackenzie, *Matters Criminal*, 121-2.

abortion in the first instance. Evidence of abortion is rare in written court records, often only surfacing when something went wrong.¹¹⁰ Alexander is accused of using

sundrie unnaturall and cruell meanis to put doun your said first bairne in your wombe be taking of drinkis fra Agnes Cowstiane in Nungait quha was suspect to be ane witche, quhilk taking na effect ye usit sundrie uther meanis to destroy the samen bairne quhilk all failying ye obstinatlie abaide at your fathering thereof upoun the said James Haitlie, and befor the sessioun of the kirk and the presbyterie and having also confest the samen to the minister.¹¹¹

The Aberlady kirk session had been Alexander and Learmonth's first point of contact with the Haddingtonshire authorities. Their relationship had drawn attention from the minister, either acting on direct information from his elders and parishioners, or reacting to common fame and well-circulated local gossip. Here, Alexander's 'unnatural' instincts as a mother are first introduced to the assize, alongside her obstinacy in the face of authority.

'Upoun the said Patrikis perswasion', Alexander was said to have retracted her confession that she had falsely fathered the child on Haitlie. Successfully passing the child off as another man's would have removed the problem of her relationship with Learmonth, but her previous confession meant that the situation had gone too far for that to be convincing. Instead, the retraction earned Alexander her excommunication – a rarely-used weapon in the kirk's arsenal. The dittay plays on the seriousness of the sanction, telling Alexander that 'to red yourself out of truble, ye maist cruellie and unnaturallie murthurit the said bairne be sic means as ye and he [Patrick] devysit efter it was borne'.¹¹²

Alexander is then accused of an 'abominable cruell and unnaturall' second murder, committed on 19 March 1612, in more detail. It is emphasised that she knew of the incestuous nature of her relationship with Learmonth from the beginning, because she 'knew befor ye had companie with him that he had carnall deall with umquhill Marie Alexander your sister'.¹¹³ Yet the assize was told how the pair continued in their relationship, conceiving a second baby in Learmonth's Aberlady barn around the time that Alexander was called to appear before the Bishop of Dunkeld. Alexander was now living in Edinburgh, and travelled from there to Aberlady to answer for their incestuous

¹¹⁰ I am thankful to Brian Levack for affirming this observation from his own research. Anna Tait was convicted at her witchcraft trial of killing her daughter in an attempt to abort her daughter's child. 6 January 1635, NRS, B30/10/13, ff. 24-6.

¹¹¹ NRS, SC40/7/13, f. 65.

¹¹² NRS, SC40/7/13, f. 65.

¹¹³ NRS, SC40/7/13, f. 65.

relationship and the death of her first baby. Learmonth had sent his son, William, with a horse to fetch her for the appearance. Afterwards, it is stated that Alexander continued ‘in harlottrie with him [Patrick Learmonth] in Edinburgh, the tyme of the second birth approaching’.¹¹⁴

At this point, the dittay asserts that Alexander sought Learmonth’s counsel regarding the impending birth of their baby, like she had done previously. It was said that ‘he baid yow tak drinkis and dispatche the bairne, or ells to father it upoun sum uther man in Edinburgh’. Alexander replied that she ‘nevir kend about that tyme any man bot him’ and so it was said that, out of desperation, they decided to murder the child.¹¹⁵ Learmonth brought her to his house in Aberlady, but their case was still fresh in the kirk session’s mind. In the 1630s, the Aberlady session was active and efficient in its policing of local behaviour, collecting and distributing poor relief and appointing elders and officers.¹¹⁶ In 1612, it was reported that Andro Blackhall had instigated searches of the parish since Alexander had left for Edinburgh. Risking discovery, Learmonth is said to have persuaded her to go to Haddington and try either to abort the child once more or to murder it soon after birth.

The final part of the dittay’s story starts to unfold at the Haddington house of Alexander’s brother, William Lauder. It was said that she arrived at her brother’s house ‘fayneing to be seik and swellit of the hydripsie, denying that ye wer with bairne’.¹¹⁷ Alexander gave birth on 19 March, alone in Lauder’s brewhouse. She had ‘refuisit all help’, firstly because of her ‘beastlie and unnaturall conditioun’ at the hands of the ‘incestuous harlot father of the said bairne’, and secondly to allow ‘for the more eisie murthuring of the same’. According to the record, she did this by wrapping the baby tightly in cloth and ‘casting the samen most beistlie and unnaturallie behind ane malt seck’.¹¹⁸ Alexander was described as ‘beastlie’ and ‘unnaturall’ – the antithesis of feminine motherhood. Learmonth was referred to as a ‘harlot father’. His sexual relationship with two sisters was akin to harlotry, the antithesis of acceptable masculinity.

And so it was said that Alexander kept her secret, telling neither her sister-in-law nor her niece Christian Lauder of her ‘disperat and ungodly deed and lyk unnaturall

¹¹⁴ NRS, SC40/7/13, f. 65.

¹¹⁵ NRS, SC40/7/13, ff. 65-6.

¹¹⁶ For a good example, see NRS, CH2/4/1, ff. 13-18.

¹¹⁷ NRS, SC40/7/13, f. 66.

¹¹⁸ NRS, SC40/7/13, f. 66.

intention'.¹¹⁹ The dittay states that Alexander – with the baby wrapped and concealed beneath her clothing – accompanied her niece on a walk to the nearest port. When she sent Christian on a false errand to John Symson elder's house,

in hir absence gaid to the dyk side beside the watter and there privelie and most beastlie scraipit ane hoill with [her] handis, laid the bairne in the same and coverit it with the muddis of the dyke, and there left it and came hame to [her] sisteris hous and therein remainit quhill the Sunday thereafter.¹²⁰

The baby was found 'by goddis providence' the following Saturday 'and laid to the croce and search maid throw the toun for the mother'. This evidence of 'beastlie' and 'unnaturall' motherhood was displayed in the most conspicuous of places for all to see, at the market cross. The authorities saw this as the best way to draw attention to the crime that had taken place – a newborn child had been murdered. It is not surprising that Alexander is said to have hid, before chancing to travel to Aberlady to be with Learmonth

in quiet maner till ye had recoverit, and maid your milk to go from your papas that ye mycht move, understanding the just suspicion had of yow for the said incestuous murthure hearing search maid for your apprehension.¹²¹

At Learmonth's persuasion – 'by your incestuous harlott and convict murthurer his counsall, advyse and command' – Margaret was said to have fled on horseback overnight to Leith.¹²² She was once again accompanied by his son, William. William Learmonth left her there, and she fled onwards to Fife to avoid

punischment for thy haynous crymes, from place to place fleying, being accompaneit with the worme of thy conscience and the judgement of god, quhilk evir hang over thy heid till by his mercie thou was apprehendit.¹²³

At this point in the dittay, the secular court invokes Alexander's lack of morality to its fullest extent. Her crimes were labelled as crimes against God. It ends with Alexander being accused of evading the kirk and being 'ane vylle harlot and incestuous adulteress sinc evir thou hes bein able to offend God'. She is accused of using 'all means to cloik and clued thy vyll and abhominable adultrie to the reproach of gods ministrie'.¹²⁴ These were not simply personal acts of unnatural violence perpetrated by a beastly individual.

¹¹⁹ NRS, SC40/7/13, f. 66.

¹²⁰ NRS, SC40/7/13, f. 66.

¹²¹ NRS, SC40/7/13, f. 66.

¹²² NRS, SC40/7/13, f. 66.

¹²³ NRS, SC40/7/13, f. 66.

¹²⁴ NRS, SC40/7/13, f. 66.

'They were an abomination on Reformed society. A taint on Haddington's godly status. Alexander, with Learmonth, had carried out a *public* crime.

When challenged to answer to all the points contained in the case, Alexander confessed to all 'except the actual murthure of the saids bairnis quha alledges the first thereof to have deid and the last bairne sche depoint was borne bot quhidder quick or deid she knew not'.¹²⁵ It was not enough. Margaret Alexander was convicted by the assize on all points, and the universally agreed judgement and sentence was given by the chancellor, David Forrest. The assize

findis and declairis the said Margaret Alexander gyltie of the filthie and incestuous adultrie committit be hir with the said Patrick Learmonth, lying and continwing therein be the space forsaid, and of the cruell and abhominable murthuring of the saids bairnis gottin betwex hir and the said Patrick be conceilling the said vicious harlottrie, the first thereof borne in Abirlady, and the last borne in Hadingtoun the XIX day of March last bypast in William Lawderis brewhous. And for colluding therof efter hir unordinary and unnaturall birth dispatch the samen imediatlie efter the birth thereof, and carying the samen that said day under the clude of nycht privelie to the watter side and hyding the samen under the dyk syd.¹²⁶

William Sinclair, dempster of the sheriff court, proceeded to give Alexander her sentence of two parts. Firstly, she was to be publicly shamed for her crimes and an example made of her case. Secondly, she was to be executed for her crimes and an example made of her corpse. It was ordered that Alexander

salbe takin furth of this tolbuith and in exemplarie maner to hir reproche and schame conveyit be the lokman directlie fra the said tolbuith to the brewhous quhair she bore and murthurit the said bairne. And there to gif opin confessioun of hir actioun from hence to the pairt quhair she maist cruellie and unnaturallie did hyde the said bairne under the dyk at the wattersyde, and there to gif testament of hir unworthie behaviour and present repentance thereof.¹²⁷

The ordeal was designed to cultivate maximum public shame and humiliation for perpetrating an ungodly act. This is clearly stated in the judgement as the intention, and it was a process that was not to end in the brew house. From there, Alexander was

to be convoyit directlie to the kirkyaird quhair the said bairne was bureit, for an exemplar certificatioun to all godles harlottis to flie and abhorre the lyk beastlie behaviour, and there with the same handis quhairwith sche first skraippit the hoill at the wattersyde to hide hir said adulterious and incestuous murthure, and to skraip out hir said murthurit bairne out of the graive quhairit presentlie lysis to the greater testimmonie of hir ignomnie.¹²⁸

Alexander's public shaming was not only to be personal to her, but was to be used as an example to others. Her fate was designed to deter, by reinforcing the message of what

¹²⁵ NRS, SC40/7/13, f. 66.

¹²⁶ NRS, SC40/7/13, f. 66.

¹²⁷ NRS, SC40/7/13, f. 66.

¹²⁸ NRS, SC40/7/13, f. 66.

happens to those who turn their backs on God. As a spectacle, a mother being made to dig up the grave of her dead child with her bare hands must have been grim. As a ritual of punishment it would have stuck in the mind, even to those who were used to seeing witches being strangled and burned on a pyre constructed on the Aberlady sands, or watching men being beheaded on Haddington's 'heiding hill'.

Alexander was sentenced to hang, but not without one final show. On the scaffold at Haddington's market cross, after the ordeal in the kirk yard and before her actual execution, she was once again 'to mak ane oppin confessioun of hir wicked lyfe, incest, adultrie and maist unnaturrall and detaistable murthuris'. In case any spectators had missed part of Alexander's journey to the scaffold, or had failed to digest the consequences of leading such a 'wicked lyfe', the court ordered that

after hir death hir twa armes fra the elbow down to be strucken aff, the ane to be affixt to hang upoun the port of Hadintoun callit Noreis Port neir to the part quhair the said last murtherit bairne was found, and the uther to be convoyit to Abirlady to [be] hung up upoun ane pike or staik, and to remaine to the terror and exmple of utheris.¹²⁹

And so Margaret Alexander departed her life, as an example to others. She had been criminalised, defeminised and dehumanised at every stage of the trial process from being produced for trial to her execution. At the final stages leading up to her tragic end, the state had emphasised the need to make repentance. The scenes that were engineered for these shows were stages in a dramatic sense. Alexander was made to confess, at the brew house, in the kirk yard and on the scaffold. But she was not going to be accepted back into the parish fold, she was going to be dispatched to meet her maker. Her corpse was not burned like that of a convicted witch. There was no direct reference to evil nor the devil. But the language of disgusted religiosity permeated her case. She was an affront to womankind as a mother and incestuous whore. She was an affront to Reformed humankind as an ungodly murderer.

When shame was practised by the secular courts, it was with the backing of the kirk. In its prosecution of criminal offences – murder, adultery, incest – the state drew upon the kirk's message of acceptable behaviour and the parameters of that behaviour. It showed how this behaviour was a matter of public concern. Margaret Alexander and Patrick Learmonth's multiple crimes were an affront on society, not simply actions against individual victims. In doing this, the message that was conveyed to the people of

¹²⁹ NRS, SC40/7/13, f. 67.

Haddington constituted the pinnacle of social control, performed in shared public spaces and carried out in conjunction with kirk personnel. The difference was that the state had inflated powers to maim and the power to kill. The joughs were cruel and painful; the branding iron and, ultimately, the scaffold were finite.

IV. Conclusion: Social Control, or Social Intrusion?

Laura Gowing writes of early modern English society that ‘the force with which women’s unchastity was imagined, ridiculed and proscribed made for a culture in which the possibilities of dishonour seem almost to erase those of honour’.¹³⁰ Be that as it may, reputation and honour were of great importance in early modern societies, regardless of the labels (honest, good, whore, thief, knave, witch) that were used to construct both of these concepts in positive or negative forms. In a sense everything is partly defined by its opposite, which is why the insults and slanders that were exchanged between men and women in pre-modern societies suggest what was considered honourable and respectable. Insults were thrown for effect. The common insult of whore that was used against various East Lothian women between 1610 and 1640 would not have been based on fact necessarily, but designed for reaction. The same is true of thief. Both honour and dishonour were flexible ideas that changed depending on the age, sex and status of those involved. In looking at what was considered dishonourable, it is possible to consider what character attributes mattered to ordinary people during this period.

Reputation mattered, not least for personal and household credit. Therefore being dishonoured mattered, and shaming rituals entered the Scottish public consciousness after the Reformation on a scale not seen before – largely because of the disciplinary activities of local kirk sessions. Ordinary men and women throughout East Lothian experienced the brand of social control delivered through the kirk sessions. But their experience of the system after being convicted of certain behavioural offences was by no means uniform. The use of fines by local sessions was very much a parish decision, so Tynninghame stands out as a session that made allowances for the different earning power of the sexes by varying the set rates of disciplinary fines, amidst neighbouring sessions that did not. Where you happened to live had a bearing on the type of public repentance you could be expected to perform, whether it was in the joughs in North

¹³⁰ Gowing, ‘Women, Status and the Popular Culture of Dishonour’, 225.

Berwick or sackcloth in Yester. In Haddington, there was the possibility of being put in the thieves hole.¹³¹ When it came to the sharp end of social control, gender and geography were influential. As a result, socioeconomic status was important as well. Although less numerous, poorer men would have been unable to pay the fines set by the Haddington session. The final two chapters of this thesis look at the relationship between gender and socioeconomic status within a patriarchal society more closely. The experience of authority was not a simple case of men versus women.

The power of reputation was crucial for the ecclesiastical and secular authorities in East Lothian between 1610 and 1640. The kirk sessions had a sure footing thanks to their locally-acquired legitimacy. Whether this was achieved because of broad agreement with doctrinal principles, popular fear or common apathy we cannot be sure. Some combination of these is most likely. But it remains that Reformers were not driven out of town when they arrived in Haddington and elsewhere in the county. If these people were not popular, they were not dismissed as laughing stocks. Instead, the Calvinist drive for ecclesiastical discipline became a reality throughout the shire. The principles behind this were not abhorred by these parish populations, or if they were it was offset by the appealing nature of some of the services these bodies provided.

Surviving records show that all sessions were being used to some extent by parishioners seeking redress for wrongs, because honour and reputation were things to be protected and defended in the early modern world. The figures in table 3.4 compared to those in 3.5 show that cases that were most certainly petitions handed in to the session by individuals or couples made up a small proportion of total business when compared to those that were brought by the session either as a result of informal neighbourhood policing or the common fame leant by parish gossip. But this does not mean that the sessions were unwanted, arbitrary intrusions on parish life.

In North Berwick, the popularity of bringing neighbourly disputes to the session was getting out of hand by 1615. On 1 January 1615, the record states that ‘ane act to be sett doun concerning quha complenis to the session and ar gilty them selfs, or that quharin they complain and that cannot qualifie their accusations’.¹³² In Tynninghame, the session was keen to advocate its role as a mediator. On 4 May 1615, the session heard the slander case against William Gategood for calling Janet Utterson ‘ane witch’. After

¹³¹ Like mouthy beggar James Barnes, 23 May 1630, NRS, CH2/799/1, f. 312.

¹³² NRS, OPR713/1, f. 145.

the case had been resolved, the minister warned Utterson not to take matters into her own hands in future, but to ‘stifle hir peace and come to the minister and complaine’.¹³³

To a certain extent, the process of social control in East Lothian was a two-way street that required and listened to the input of parishioners. In Tynninghame on 8 October 1629, ‘the minister regratit to the session that he cult not geitt sik concurrence to punish the prophaners of the sabboth in tyme of draife’. There had been ‘so many delinquents’, that without co-operation from parishioners there was no hope of flexing any disciplinary muscle. Instead, Lauder had to be content to speak from the pulpit at the next sabbath ‘to shew to them out of gods word the danger of sabbothe breaking if they repent and amend not’.¹³⁴ On 20 September 1629, Patrick Cook gave in a petition against Alison Forrest for ‘abusing and railing him in hir malicious talk’. The slander was proven, but as the session prepared to sentenced Forrest

the forsaid Mr Patrick being there but desyrit the session that they would not cause her mak public satisfacione be putting hir in the jogges, and therefore the session granting the forsaid Mr Patrick his desire, thocht it reit that she sould be fynit.¹³⁵

Cook’s actions not only betray the unpleasant nature of such a punishment, but the power parishioners had to limit the experience of the kirk’s authority where they thought it to be excessive. Whether all sessions would listen is another matter, but their activity in mediating neighbourly disputes to the ends of reconciliation – a key function of the sessions according to and evidenced by Margo Todd – shows an awareness of what constituted normal community relations.¹³⁶ Elsewhere, parishioners were asked their opinions. In Tynninghame on 15 September 1640, Janet Henry was ‘convict for miscalling Johne Airthe’. She

humblit hir selff befor the sessioun and askit God forgivness and desyrit Johne Airthe to forgive hir and to tak hir be the hand. The session demandit Johne Airthe if he requyrit any more, for the sessioun was content to [ordain] hir to publick satisfacioun if the said Johne was not content. He answerit he cravat no more and took hir be the hand.¹³⁷

¹³³ NRS, CH2/359/1, f. 1.

¹³⁴ NRS, CH2/359/1, f. 63. On 21 August 1631, Lauder complained that he would consult the presbytery because the town magistrates were not punishing sabbath breakers ‘so severelie as they demandit’. NRS, CH2/359/1, f. 70.

¹³⁵ NRS, CH2/799/1, f. 306.

¹³⁶ Todd, *Culture of Protestantism*, ch. 5, esp. 232-49

¹³⁷ NRS, CH2/359/1, f. 114. John Airth is the subject of the case study in chapter 7, below.

Scotland may not have managed to become a true godly society, but the East Lothian records suggest that social control was in operation between 1610 and 1640 and as more of a success story than not. The power and authority of the secular courts must be acknowledged as a reason for this. The kirk was at the forefront of controlling relationships, but social control was at its most visible and extreme when it was carried out in conjunction with the secular authorities in their prosecution of criminal offences. The language of the kirk – honour, shame, godliness – permeated criminal procedures. The value of reputation meant that these concepts held value to ordinary people and were effective tools for showcasing the power of the state. Without this, the state-sponsored killing sprees of Scotland's witchcraft panics would have been impossible.

Chapter VI

Family and Patriarchal Responsibility: Controlling the Household

Between 1610 and 1640, the people of East Lothian experienced what can be described as social control. Individual behaviour, sexual relationships and personal interactions were mediated and regulated through a network of kirk sessions under the oversight of Haddington presbytery. The previous two chapters have examined social control in detail – what it meant for ordinary folk, their personal behaviour and sexual relationships. Definitions of acceptable, godly behaviours centred around the household and marriage, which were held up as ideals especially when it came to the conduct of sexual relationships. Across East Lothian, those who flouted these ideals by engaging in suspicious relationships, illicit sex and the unchristian exchanges of violent words and violent actions, were held to account based on accepted norms of male and female behaviour. The secular authorities participated in this through the criminalisation of dishonourable groups and in assisting the kirk sessions in their enforcement of godly discipline and social order. This all took place in the parish setting where reputation, honour and dishonour held important meanings for both sexes, and where public punishment at the hands of the kirk and law could be truly shameful.

This examination of social control has highlighted the importance of gender and geography in the Kirk's regulation of illicit behaviour and subsequent punishment. The influence of socioeconomic status has been briefly introduced. Before the importance of social rank is examined in detail, this chapter extends the debate surrounding gender and the kirk sessions by considering how social control functioned in a patriarchal society. Social control and the experience of authority more generally was gendered in some respects, but being a man or a woman was not a binary categorisation operating in isolation from other important factors. In a society where Church and State championed marriage and the godly household, divisions were drawn not just between the sexes but within them. This was because of the additional importance of social rank, economic strength and age. Alongside gender, these factors influenced the experience of social control at the hands of the kirk sessions and the regulation of criminal behaviour by the secular authorities. Patriarchy takes all of these categories of analysis into account.

Patriarchy has been introduced as an analytical term which offers great opportunity to broaden understanding of authority, social control and interpersonal relationships. Julie Hardwick demonstrates this in her study of patriarchy and authority in early modern France, where ‘the household was the fundamental block on which the rule of husbands, fathers and kings was rhetorically and legally founded’.¹ Where Scottish scholarship has tended to focus on the female experience of social control in the ecclesiastical courts, patriarchy offers an analytical opportunity that is not gender specific. This has been recognised to great effect in early modern England, where ‘everyone who attended church was receiving the constant reiteration of the principles of husbandly authority over wives and parental authority over children and other subordinates’.²

Elizabeth Foyster and Alexandra Shepard have shown how this meant that the male experience of patriarchal ideals was often at odds with established notions of manhood, because ‘violence was one of the main props of patriarchy in early modern England, which existed in tension with patriarchal principles of order’.³ This has been seen, on occasion, in East Lothian’s cases of violence and slander that were discussed in the previous chapter. It is a relationship that has been overlooked too often for early modern Scotland, subsumed by attempts to ascertain the existence of a gendered double standard in the experience of kirk discipline.

Patriarchy can be defined as a useful category of analysis for the early modern context, away from the Marxist and feminist theories that have been discussed in chapter one, above. Wally Seccombe’s version of domestic patriarchy is one in which fathers and husbands hold a combination of ‘prerogatives’ over their wives and children. These are: the right to represent the family group in the community; effective possession and rights of disposal to family property; supervision of the labour of other family members; exclusive conjugal rights to ensure paternity and custodial rights over children entailing authority in their upbringing. Each or any of these could be held ‘with various strengths and modes of assertion’.⁴

Evidence from East Lothian points to a working model of the early modern household centred around gender, age and economic contribution. Household heads

¹ Hardwick, *Practice of Patriarchy*, 77.

² Fletcher, *Gender, Sex and Subordination*, 205.

³ Shepard, *Meanings of Manhood*, 128; Foyster, *Manhood in Early Modern England*, 177. See also Roper, *Holy Household*, 191, 193.

⁴ Seccombe, ‘Patriarchy Stabilized’, 59.

had responsibilities towards other household members, who in turn had obligations to obey their superiors. Julie Hardwick points out how western European countries that were experiencing ‘political centralization combined with religious reformations, economic uncertainties and military struggles’ during the early modern period, ‘created a context in which household patriarchy flourished’. Hardwick names France, Germany, Spain and England as examples of this phenomenon. But lowland Scotland also fulfils this set of contextual criteria, within which ‘rulers and members of local elites in much of the early modern West explicitly mobilized household government as a means to order social, political and cultural organisation’.⁵

Although its analytical usefulness has been contested and debated within social-science circles over the past fifty years, a study of patriarchy allows for and acknowledges the overlap of gender and generation within early modern households, and between those households and at a broader parish level.⁶ Whilst ‘the rule of fathers’ undoubtedly relies on gender differences, the appeal of patriarchy as an analytical tool owes much to the possible inclusion of other, aforementioned categories of division – specifically age and socioeconomic status. This broadens discussion of the experience of social control in early modern Scotland away from a polarised male-female, rich-poor perspective to one which can include other ideas, such as the importance of parenthood and the roles of fathers and mothers. The generational aspect of the term also allows for consideration of what power and influence may have been held by female heads of households – where they are found to exist – or by the female half of a marriage partnership rather than the subjugated wife.

I. Patriarchy: Households and Fatherhood

The Scottish kirk was quick to identify the patriarchal family as a vehicle for its purpose of creating a godly society. As examined by Margo Todd, the ‘family exercise’ of religion was seen as key to ‘instilling the principles of the gospel into the next generation, specifically by means of an organised, disciplined, regular and rigorously enforced round of family discipline, prayers and catechism’.⁷ On 11 December 1639, the clerk of the

⁵ Hardwick, *The Practice of Patriarchy*, x.

⁶ For further discussion of the usefulness of patriarchy as a term see Carole Pateman, *The Sexual Contract* (Stanford, 1988), 19-38.

⁷ Todd, *Culture of Protestantism*, 311.

Haddington presbytery made record of two letters that had been received by the brethren. One was from the Edinburgh brethren and the other from the clerk to the General Assembly. The letter from Edinburgh exhorted the Haddington brethren ‘to strive up themselves and the people committed to their care to the renewing of the repentance, love and defense of religioun’. The letter from the General Assembly was ‘comanding unto the brethren the execution of the act of the said assemblie anent catechizing and familie worship’.⁸ This letter contained an extract of the Act, with its provisions to ensure popular salvation by ‘not onlie to catechize and performe other points of devine worship in their own families but also with the minister to hold hand to the promising thereof. Ministers were to do this by seeing ‘that a text of scripture be chosen for the purpose by each brother for the pressing of familie exercises in the severall congregations.’⁹ It was not enough to require ordinary folk to come to church to hear the Word, they had to be actively godly in between times and the family and household was the best setting in which to encourage and ensure this.

In Aberlady, the minister Andrew Blackhall – still in his post since his involvement with the Alexander case in 1612 – was ahead of the presbytery. The parish’s kirk session met on 8 December 1639, ‘upon the quhilk day directit be the sessioun ane buik to everie familie within our parochin callit the buik of familie exercise to be perused be everie familie and that with all expedition’.¹⁰ This was followed up on 15 March 1640, when the minister ordered ‘the eldars of Ballincreiff to visite their quarter if the worship of God be advanced and sett up in their families and to mak report thairto to the session againe the nixt sabboth’.¹¹ The Aberlady elders were ordered to police this directly. Neighbourhood gossip or absence from church were not to be relied upon.

Similar exhortations were given in Tynninghame on 5 January 1640 when the minister, John Lauder, ‘shew out of pulpit to the pepill the necessitie of familie exercise and exhortit the pepill thairto’.¹² Before the session a few days earlier, on 29 December 1639, ‘the minister urged verie earnestlie familie exercise and desyrit the elderis to begin, quhilk they promeisit to do’.¹³ These were turbulent religious times, but family worship and community-wide salvation based around the family unit were not new ideas; rather

⁸ NRS, CH2/185/5, ff. 12-3.

⁹ NRS, CH2/185/5, f. 14.

¹⁰ NRS, CH2/4/1, f. 44.

¹¹ NRS, CH2/4/1, f. 50.

¹² NRS, CH2/359/1, f. 111.

¹³ NRS, CH2/359/1, f. 111.

Reformation ideals that needed to be reinforced on a national level. As Todd writes: 'the household as seminary of church and commonwealth was a sixteenth-century commonplace'.¹⁴

Families as a unit were expected to participate in public worship and evidence from session minutes suggest that it was the head of the household's responsibility to make sure that this happened. This message was consistently enforced by the Tynninghame session before the General Assembly ordinances of 1639. On 29 March 1618, William Brown and his wife Agnes Tait appeared to answer for selling ale on the sabbath. As head of the household, 'William was rebuikit for suffering aill to be sald in his hous in tyme of preiching'. After this, the session turned its attention on the couple. They were told that they should 'keip their hous as quyit as micht be on the sabbothe at efternoone, and that befor noone they sald sell na aill at all'. They were warned that 'if they faltit, the minister assurit them that he wald tak sever order with them and that he wald deale with the Laird their maister to discharge them to sell aill at all any day'. Finally – to really get the message across - 'they wer also exhortit to come to the kirk and continew in heiring of the word with their familie as they did, quhilk they promeisit to do'.¹⁵

Although Brown and Tait had appeared as a couple to be censured, the session's preliminary rebuke of Brown was due to the lapse of patriarchal authority that had been shown by him 'suffering aill to be sald in his hous'. Should it happen again, the session pointed out that they would not hesitate to involve the next level of patriarchal authority – his landlord, the laird. But the responsibility for family attendance at Sunday preaching was given to the couple, not to Brown alone. Tait had been selling ale. Clearly she had an economic role within the household unit that entailed some independence and was perceived by the session to have some responsibility within that household.¹⁶

This was not the case when the Tynninghame elders convened on 1 October 1620. At this meeting,

William Sprie callit on compeirit and accusit for not coming to the kirk and some utheris with him in tyme of preaching answerit that he keipit the kirk weill at other tymis except at that tyme.

¹⁴ Todd, *Culture of Protestantism*, 265.

¹⁵ NRS, CH2/359/1, f. 18.

¹⁶ For more on female roles and power in the Scottish domestic economy see: Ewan, 'For Whatever Ales Ye'; Helen Dingwall, 'The Power Behind the Merchant? Women and the Economy in Late Seventeenth-Century Edinburgh', in Elizabeth Ewan and Maureen Meikle (eds.), *Women in Scotland c.1100-c.1750* (East Linton, 1999), 152-162.

And as for the women in his hous, they war presentlie come in at his doore fra Lintowne. Being removit and callit in againe he was earnestlie exhortit to report to the kirk everie sabbothe with his familie quhairunto he willinglie grantit utherwayis if he wer found absent againe with hes familie he sald be censurit with all rigour and pay doubil penaltie.¹⁷

The women that ‘war presentlie come in at his doore’ may well have been servants or lodgers, not close relatives necessarily. Regardless of their relationship to Sprie, responsibility for the household’s spiritual health had been squarely laid on Sprie alone. The session considered him to be the sole authoritarian within the household with the ability to both take responsibility for and to govern its members.

Unlike Sprie, on 6 October 1620 Jhone Coteris callit on compeirit not. His wyfe callit on compeirit and excusit hir husband affirming that he was lying sik.¹⁸ The Tynninghame elders accused the couple of shearing corn on the sabbath and, in his absence, the charges were read to Cotters’ wife for her to answer. She did so by providing two witnesses, Robert Barrie and William Ross, to affirm that they had merely been visiting their cornfield on the sabbath. Barrie and Ross testified that Jhone Coteris did bend twa steivis quhilk wer lois at the stork, and that his wyf did gather verie few peis in their judgement scarclie sex.¹⁹ The session considered the men’s statements and

Seing the said Jhone Coteris was ane seik agit man and scarclie abill to come to the kirk [he] sald be admonishit to keip the kirk if it wuld pleas god to give him any healthe. And his wyfe was admonishit and earnestlie exhortit to report to the kirk to the heiring of the word with the pepil in the familie, utherwayis they sald be rigorously censurit and pay dowbill penaltie if she amendit not. She was also admonishit not to gather any peis or to do the leist work on the sabbothe.²⁰

In respect of the head of the household being ‘ane seik agit man’, the responsibility for the family’s salvation had been given to his wife under the pain that she should be ‘rigorously censurit’ should she fail to come to church with these other members. Reflecting the importance of this, Mrs Cotters’ sabbath breach was dealt with as a separate issue, also carrying the pain of being ‘censurit severilie’ should she be caught working on the sabbath again.²¹

Responsibility for the spiritual needs of the godly household through regular church attendance and family religiosity was fluid, either squarely resting with a male head, such

¹⁷ NRS, CH2/359/1, f. 36.

¹⁸ NRS, CH2/359/1, f. 36.

¹⁹ NRS, CH2/359/1, f. 36.

²⁰ NRS, CH2/359/1, f. 36.

²¹ NRS, CH2/359/1, f. 36.

as William Sprie, or where he could not fulfil his patriarchal duties for whatever reason, with a female household member, such as John Cotters' wife. Alternatively, this important task could be a shared responsibility between an economically-active couple, such as William Brown and Agnes Tait. But there was one aspect of spiritual salvation that was almost exclusively a male responsibility, even when a male householder was either not present or non-existent. This was baptism.

In Scotland, 'the baptismal ceremony initiated legal and social, as well as spiritual, relationships between fathers and their children', with both social and spiritual expectations being placed on fathers.²² Both Margo Todd and Melissa Hollander have recognised how the rite of baptism could be used by local authorities to examine parents and monitor the behaviour of other members of the community, such as the unmarried parents of illegitimate babies.²³ Bastard children born to single mothers were likely burdens on the parish – something to be avoided at all costs. As a result of this, in 1594 Edinburgh's burgh council enacted that the parents of bastard children should find caution in the form of a responsible town burgess that their children should not become a burden on the parish. If they failed, then the child would not be baptised.²⁴ Similarly, the emphasis on the correct instruction of the child in the Word meant that the doctrinal soundness of parents was paramount, so this was made another condition of baptism.²⁵ In the city, Hollander has found that there was an emphasis on male presence and importance at baptism, signifying a continued commitment of these authority figures to participate in and account for raising the child in accordance with the Word.²⁶

In East Lothian, baptism presents the strongest example of the sort of religious responsibility expected of a male householder and one which was not shared with female counterparts, let alone assumed by single mothers. In Tynninghame on 23 July 1615 four men gathered to witness the baptism of James Lucan's son. One witness, James Muir, was a maltman who had travelled from Dunbar; another, William Wolf, was

²² Melissa Hollander, 'The Name of the Father: Baptism and the Social Construction of Fatherhood in Early Modern Edinburgh', in Elizabeth Ewan and Janay Nugent (eds.), *Finding the Family in Medieval and Early Modern Scotland* (Aldershot, 2008), 65.

²³ Todd, *Culture of Protestantism*, 119-120; Hollander, 'Name of the Father', 67. For more on baptism as a social tool to enforce kinship connections see: Jane E. A. Dawson, 'There is nothing Like a Good Gossip': Baptism, Kinship and Alliance in Early Modern Scotland', in Christian J. Kay and Margaret A. Mackay (eds.), *Perspectives on the Older Scottish Tongue, a Celebration of DOST* (Edinburgh, 2005), 38-47; Hardwick, *The Practice of Patriarchy*, 167-181.

²⁴ Hollander, 'Name of the Father', 66.

²⁵ Todd, *Culture of Protestantism*, 121.

²⁶ Hollander, 'Name of the Father', 72.

from nearby Knowes Mill. The Lucan family are recorded to have lived in Tynninghame itself, so this was a gathering of male friends from the surrounding area in order to witness an important event.²⁷ This was not an unusual occurrence in East Lothian at this time. The recorded witnesses to baptisms were nearly exclusively male, despite female witnesses being allowed by the kirk.²⁸ Before the Aberlady session on 6 January 1639 ‘compeirit Jhone Broun fornicator with Margaret Rae quho is presently lying in childbirth and the said Jhone desiring his child to be baptized. The session ordaines him to find caution to satisfie’.²⁹ On 13 September 1640, Andro Smith appeared before the same session, also to request baptism for his illegitimate child begotten with Elspeth Wilson. Presented with the circumstances, ‘the session ordaines him to find cautione that his partie sall compleit hir satisfaction to our kirk when she is aible to travel’.³⁰

In these cases, Margaret Rae and Elspeth Wilson were unable to personally appear before the session, but evidence from both Aberlady and other Haddingtonshire sessions suggest that it was not for this reason alone that Brown and Smith were the parents who appeared to request the rite of baptism. On 18 August 1639, Thomas Gullane appeared before the Aberlady session ‘desyrit his child to be baptized quhilk was begotten in fornication with his wyfe before mariage’.³¹ Unlike in the other two cases, there is no mention of Mrs Gullane’s inability to travel or her still lying in childbed. Practicalities aside, throughout the early seventeenth-century baptism was almost exclusively a father’s responsibility and a male-dominated ritual in East Lothian, as it was elsewhere.

The surviving session registers from North Berwick provide relevant evidence of this because they contain lists of baptisms alongside disciplinary entries. In these lists of baptisms performed by the minister, Thomas Bannatyne, the children concerned are referred to exclusively as sons or daughters of their fathers.³² One such entry dates from 15 January 1611, when four illegitimate infants were baptised by Bannatyne. The first of these was recorded in typical fashion as

²⁷ NRS, CH2/359/1, f. 2. On the struggles of separating rite from celebration, including evidence of female celebrating, see Todd, *Culture of Protestantism*, 123-5.

²⁸ And both in limited number. Dawson, “There is nothing Like a Good Gossip”, 39-40.

²⁹ NRS, CH2/4/1, ff. 35-6.

³⁰ NRS, CH2/4/1, f. 57.

³¹ NRS, CH2/4/1, f. 40.

³² NRS, OPR 713/1, ff. 85-9.

a sone of Alexander Paterson begotten in fornication with Barbara Baillie, quhilk Alexander had consignit sax pounds money in the hands of George Baillie for his satisfaction as quadralapse. The bairnes naim Jhone.³³

Patrick Paterson, Robert Dudgeon and John Gilpatrick – the other three fathers – suffered similar fates. Dudgeon and Gilpatrick consigned adequate caution for their further satisfaction, and Paterson paid his 12 shilling fine and satisfied the kirk immediately. None of the entries mention the children’s mothers, nor their pending penance as fornicatrixes if they had not already satisfied. This was also the case in Yester parish between 1613 and 1640, where baptisms were routinely recorded in the session’s minute book at the start of each meeting under the father’s name and those of the two male witnesses, before the discipline cases were dealt with.³⁴ On 18 April 1613 there was an exception to this procedure when Barbara Lyle appeared before the session and ‘confesit hir bairne that sche hes unbapteisit was almost ane year ald and that it was gottin in the Canongait parochin in fornication with Jhone Tailyeour servand’.³⁵ The session

ordainit [her] against the nixt day to gang to the minister of the Canongait and crav baptism to hir bairne and to report his testimonial or certification. If sche did it not we will caus her to be banischit the parochin.³⁶

In this case, the onus was on Lyle to request and ensure the baptism of her bastard son. But this was an anomaly, perhaps because the child’s father did not live in Yester and the child was not born in the parish. In a break with normal, male-dominated procedure, Lyle was to go to Canongate for the baptism to be performed, where Taylor did live and may well have been instrumental in the process.

A father’s absence did not mean that an infant’s mother assumed the responsibility of presenting her child for baptism. In Tynninghame on 9 July 1615, the entry before the Lucan baptism notes ‘ane bairne baptizit to William Borthuick husband to Marion Traill in Tynninghame. The bairne was presentit be George Shortus in Tynninghame in his fatheris absence’.³⁷ It was not sufficient for Marion Traill to present her son personally

³³ NRS, OPR 713/1, f. 88.

³⁴ NRS, CH2/377/1, ff. 1-245. From 1626, witnesses were limited by the kirk to four from each gender by the Order of Baptism. The previous limit had been two men and two women. See Dawson, “There is nothing Like a Good Gossip”, 39-40.

³⁵ NRS, CH2/377/1, f. 8.

³⁶ NRS, CH2/377/1, f. 8.

³⁷ NRS, CH2/359/1, f. 2.

for baptism from her position as a married, female parishioner who, in her husband's absence, was likely running a household or at the very least sustaining and caring for their children on a daily basis. Although there is no hint that Borthwick was permanently absent, another man was needed to take responsibility for the child – in this case a session elder.

In North Berwick on 7 May 1611

Compeirit James Dun fornicator with Beatie Blak, denyit that he was the father of her barne as she alledgit but confessit copulation with hir, affirming that he had not to do with her befor mertymes 1609 and the barn wes borne befor witsunday 1610.³⁸

This was the start of a lengthy case for the session. Dunn's unwillingness to accept responsibility for Black's child limited the ability of the minister and elders to resolve this case of illicit sex – as has been shown in chapter four. Dunn's unwillingness to confess meant that the ecclesiastical authorities had to call on those in secular positions of power to come to their aid. Faced with his denial, on 26 May 'the session thocht expedient that the minister sould speak the Erle of Angus anent the satisfaction to be maid be James Dun' and on 2 July it ordained that he should be warned 'publictly' to appear before them.³⁹

As a rule, Dunn was not adverse to take responsibility for his fathering of illegitimate children, as was expected by the kirk. On 28 July he appeared before the session, but 'desyrit to have ane infant baptizit begotten in fornication in Dulkeyth'. The session thought best that he be held to account for one fault at a time, and 'ordainit that he sould satisfie the kirk for his fornication comittit with Betie Blak and baptisit that bairn first'.⁴⁰

It was on 17 October 1611 that Dunn 'comperit to offer his repentance and promisit to baptise the bairne begotten betwixt him and Beatie Blak'. But he would not consign any money to find caution in case he reneged on his finally-found responsibility.⁴¹ The session concluded that they had best speak with the Earl of Angus again, but by 17 November this had all proved too much for Beattie Black who

³⁸ NRS, OPR 713/1, f. 105.

³⁹ NRS, OPR 713/1, ff. 105, 107.

⁴⁰ NRS, OPR 713/1, f. 108.

⁴¹ NRS, OPR 713/1, f. 112.

personally ‘compeirit requiring her bairne to be baptizit’.⁴² She returned to the session on 26 November with her child and testimonial, and the minister

Baptizit a daughter of Betie Blak callit Margaret begotten in fornication betwixt hir and James Dun as the said Beatie affirmit, bot he denyit the bairne and wes not present at the baptyzing thereof bot the bairne wes presentit be William Foulter, witness Jhone Manuel and Jhone Barnes.⁴³

With Dunn’s denial and without the direct involvement of three of the session elders, Black would not have been able to have her daughter baptised. It would not be the end of the matter. On 24 May 1612, after Black had completed her public penance on the pillar

Compeirit James Dun promisit to acknowledge him self as father to the bairne begotten betwixt him and Beatie Blak baptisit of before in the kirk of North Berwick and also promisit to come before the session or to the minister and pay five libs penaltie to the poore the sevint of June nixt to cum, and being Sunday and so to enter to the pillar and satisfie as relapse in fornication.⁴⁴

It had been over a year since the couple had first appeared before the session, and six months since the baptism when a man of no relation but suitable character was employed to present Margaret to the minister in order for it to take place. This is a key example of how the power of the confessional remained strong during this period. Without it, the kirk would have been unable to pin a fornication relapse charge on Dunn and Black alone would have been held to account for their illicit relationship by fault of biology. But for whatever reason, Dunn had decided to acknowledge his responsibility as a father after the fact, and doing this after his absence at Margaret’s baptism remains remarkable for being the only such occurrence in the North Berwick minutes.

Dunn’s inflated penalty of £5 is an indication of how being seen not to fulfil this important fatherhood role was policed and punished by the kirk when it was able, regardless of the infant’s legitimacy. On 23 April 1611, James Stenison was cited to appear before the Prestonpans session ‘the nixt session day for not desiring baptyism to his bairne’.⁴⁵ When he did appear, the session ordered him to be publicly admonished by the minister during the Sunday service on three separate days, for the last of which he was ‘to stand in his awin sait on sabbboth nixt and confes his neglection with craving his

⁴² NRS, OPR 713/1, f. 113.

⁴³ NRS, OPR 713/1, f. 113.

⁴⁴ NRS, OPR 713/1, f. 121.

⁴⁵ NRS, OPR 718/1, f. 77.

bairns baptyme in time and promeis amendment under the gravest censorship of the kirk'.⁴⁶ His penance was intended to emphasise the shame of committing such a basic oversight in regards to the spiritual welfare of his family unit and the salvation of its newest member. But, as can be seen with the mechanisms of family worship, kirk-enforced patriarchal roles did not end with responsibility for newborns – and neither did the concept of shaming householders where they were seen to have failed in or breached their authority.

This can be seen by another baptism case from Tynninghame, this time from 7 September 1634. When the session met on this day

The minister compleinit on Andrew Fa in Tynninghame that his wyff bein delyver[ed] of ane bairne and he being at the draife did nether come to sie hir nor yit seik baptyme to his bairne. His wyff being extreamlie pure the session thocht reitt to give hir ten shillingis out of the box and being advertesit if he came not hame to se hir and help hir, to be censurit. The ten shillingis was presentlie given to hir be the minister himself seing she dwelt nixt to his hous.⁴⁷

Andrew Fa's son, Andrew was baptised the same afternoon. It can be assumed that he was presented for baptism by an elder, but the emphasis of this case was not only that Fa had failed to seek baptism for his son but that he had shown no care nor concern towards his wife and her situation as an 'extreamlie pure' mother of a newborn. Despite temporarily being away at sea (an excuse that went some distance when it came to performing penance for illicit sex), this was not seen by the session as an acceptable way to behave from his position as head of the household – a household whose neighbour, John Lauder, perceived to be struggling without his presence.

Although rare, issues of paternal or patriarchal responsibility around baptism could engulf session elders. John Douglas, elder of the North Berwick session and 'Captain of Tantallon' under the Earl of Angus found this to be the case in the summer of 1611. On 31 January 1611, a letter from Mr John Maxwell minister at Whittinghame was produced before the North Berwick session. Maxwell wrote to enquire about a six-year old boy who had been sent to live with Thomas Wood, one of his parishioners, by John Ramsay, a North Berwick parishioner. The boy, John Clerk was 'to our knowledge not yit baptytit' – the source of the minister's concern.⁴⁸ On 7 August, Ramsay appeared before the North Berwick session and testified that he had received the boy from 'Jhone

⁴⁶ NRS, OPR 718/1, f. 79.

⁴⁷ NRS, CH2/359/1, f. 85.

⁴⁸ NRS, OPR 713/1, f. 90.

Douglas captaine of 'Thantalloun' around two years ago, when a servant of Douglas had brought the boy to his house.⁴⁹

A network of informal foster care emerged during Ramsay's questioning. He testified that he did not know who the boy's parents were, except that Douglas had named one of his servants as the father – a servant who had since departed for Flanders. He revealed that he was reimbursed at a rate of £5 per quarter by Douglas for the boy's board, up until a servant of Thomas Wood's came to collect the boy and take him to Whittinghame.⁵⁰ Douglas was present, and confirmed Ramsay's answers as being 'of veritie and he would abyd therat and approve the samen'. Douglas named Gilbert Clerk as the boy's father, who had been in his service for two years at the time of the boy's birth. He named 'Margaret Ker servand to the countess of Angus being in my lords house in 'Thantallon for the tyme' as his mother, although he did not know her current whereabouts.⁵¹ The session then

demandit quhat movit him to have sic a care of the forsaid bairne. Answerit that he did it of choice lest the barne should have beine left, also in respect he wes addebit to the said Gilbert for his service [so] he bestowit the same upoun his bairne.⁵²

That Douglas should have taken the boy in out of some sense of duty, provided for him and boarded him with male friends over the years had already been seen as suspicious by Dunbar presbytery and the Haddington kirk session. As a result, the North Berwick session heard how Douglas

therefore dischargit himself of the said bairne and interteining thereof and declairit that upoun his conscience he would anser them presentlie for his auth of fidelitie or any other name of way quhatsoever it pleisit them require, to purge him self of the suspitioun.⁵³

This was enough evidence to convince the North Berwick session to leave questions of the sexual reputation of one of their elders alone and return to the pressing issue of whether the child had been baptised or not. It turned out to be another lengthy investigation. On 10th February 1611, the session received a letter from their colleagues in Haddington demanding that they question Douglas further to try to ascertain whether

⁴⁹ NRS, OPR 713/1, f. 90.

⁵⁰ NRS, OPR 713/1, ff. 90-1.

⁵¹ NRS, OPR 713/1, f. 91.

⁵² NRS, OPR 713/1, f. 91.

⁵³ NRS, OPR 713/1, ff. 91-2.

John Clerk had been baptised and where his mother might now be.⁵⁴ Douglas appeared two days later and

being demandit quhair the forsaide barne wes baptizit and be quhome he ansrit he knew not, but he be informit onlie be the barnes mother that it wes baptizit bot knew not quhidder it wes trew or not.⁵⁵

This was unfortunate for the session. Douglas added that he did not know where Margaret Kerr now lived, only that it was not within the North Berwick bounds. Without such information, the kirk session was limited in what it could do and their investigations into John Clerk ended. Douglas resumed his duties as elder and local JP unscathed, presumably after swearing his oath both in Haddington and Dunbar.⁵⁶

The Clerk case shows how baptism was not just an important rite in itself, but a useful mechanism for ensuring sexual discipline and monitoring people's movements between parishes. It gave added bite to the testimonial system as another tool of social control in the regulation of illicit, extra-marital sex. On 19 September 1632 the Haddington presbytery only granted the 'benefeit of baptisme' to a traveller, James Ross, 'his wyfe being delivered at Haddingtonne', on production of a testimonial detailing their lawful marriage.⁵⁷ Whilst the John Clerk case illustrates the informal arrangements that men could make under certain circumstances to care for children, it also shows how enforcement and policing of baptism at parish level took was of two-fold importance. Gilbert Clerk and Margaret Kerr seem to have slipped through this net. If John Clerk had been requested to be baptised, then his parents would have been called to do penance for the original fornication. Limited in information, the Kirk was limited in power. It was an unusual case. If both of these events happened, they were not traceable by either East Lothian's sessions or its presbyteries.

⁵⁴ NRS, OPR 713/1, ff. 98-9.

⁵⁵ NRS, OPR 713/1, f. 99.

⁵⁶ Douglas was one of the elders absent from the session on 5 November 1611, being 'in Hadingtoun at the justices of peace'. NRS, OPR 713/1, f. 112.

⁵⁷ NRS, CH2/185/4, f. 62. Social control and the mechanisms used by authorities for social control and regulation of relationships are explored further in the previous chapter.

II. Patriarchy: Competition and Control

John Douglas maintained that he was not a father, but it was not only fathers who had patriarchal responsibilities to uphold. Before Haddington presbytery on 22 August 1632

Compeired Margaret Sandie mother and Richard Browne father to Margaret Browne paroschiners of Boltoune, complaining of James Symson servitor to George Browne that he had abused and striven to force the said Margaret Browne two severall tymes with great hurt done to hir bodie as was seine, and that in the house of George Browne in presence of the servants of the house and in hearing of the goodman of the house.⁵⁸

This first complaint of attempted rape was brought by Margaret Brown's parents on her behalf and cited George Brown, the householder and master of her attacker, as privy to the assault. Like James Simpson, Margaret Brown was a servant of George Brown's and as such was no longer living at home in Bolton. Instead, she was a part of George Brown's household. He was her master; she was his responsibility. But Margaret's parents still felt a responsibility towards their daughter and protective of her welfare, even though she had moved out of the family home. This may well have been because her master, the patriarch of the house she was living in in Yester parish, was not measuring up as a responsible substitute for Richard Brown's fatherly care. As Gordon DeBrisay has argued, 'the tightly regulated urban labour market for single women that pushed them into domestic service in a patriarchal household was justified in part by the need to protect these women from sexual peril.'⁵⁹

On 29 August, Simpson and George Brown appeared before the brethren alongside Margaret herself. During the appearance, Simpson's 'violent struggling with the woman and hurting of hir at two severall tymes, and that in sight of two servant women and heiring of the said George and his wyfe' convinced the brethren that the matter was a criminal one, and so they 'desyred the magistrates of Haddintonne to commit the said James Sympsone to prison and to take cautionne of George Browne and his servant women to compeer when they should be called on'.⁶⁰ This was not until 27 February 1633, when

⁵⁸ NRS, CH2/185/4, f. 60.

⁵⁹ DesBrisay, 'Twisted by Definition', 146.

⁶⁰ NRS, CH2/185/4, f. 61. It is not known whether Simpson was imprisoned. As the offence did not take place within the burgh of Haddington, a criminal case of violence would (in all likelihood) have come to the attention of the sheriff court. There is a gap in the sheriff court extract decree books between volumes NRS, SC40/7/18 and NRS, SC40/7/19 covering most of 1633 and 1634. If it had come before the burgh

The brethrine ordained James Lamb to charge George Broun in Warreston to come this day eight days and receive his ordinance to satisfie for suffering his servant man to force Margaret Broun his servant woman efter hie heard hir manie tymes cryeing for help.⁶¹

This was not something that Brown was keen to do. On 6 March it was ordained that he 'sould be charged the third tyme to compeer before the brethrine'. This finally happened on 20 March, and he

was ordained to stand at the kirk door [in Yester] Sunday nixt betwixt the second and third bell, and efter sermon come before the minister in sackclothe and pay fyve pundis of penaltie to the kirk session of Bothans for suffering his servant man presence to force and abuse his servant woman in the night and wald not help hir and the penaltie to be givin to the officer of Haddington.⁶²

No record of George Brown's public penance was made in Yester's kirk session minutes and he does not appear again before the presbytery, but this last entry shows how such a neglect of patriarchal responsibility in failing to care for the welfare of a more vulnerable member of your household warranted serious censure by the presbytery via the kirk session. Furthermore, whilst his fine was substantial and would have undoubtedly exacted pressure on his pocket, the combination of being ordered to dress in sackcloth and stand outside the kirk door whilst parishioners were arriving for Sunday service was designed to shame. The Yester session liked to dress its delinquents in linen clothes, but the appearance at the door of the kirk was reserved for serious miscreants – a ritual of which George Brown's neighbours and peers would have been well aware. The Haddington brethren saw George Brown's neglect of Margaret and lack of control over Simpson as a shameful failure in his responsibilities as a mature male householder. So they made the decision to maximise attention to this fault by the element of ritualistic display contained in his punishment.⁶³

How the kirk sessions dealt with rape has been discussed fully in chapter four. Gordon DesBrisay's cited example of Jean Stevin, who was raped in 1680 in Aberdeen, illustrates the difficulties that the ecclesiastical authorities faced in trying to balance what was a violent act against a person with the fact that she had become pregnant by the married Thomas Kentie. The pregnancy had been the proof of the rape and, whilst Kentie had fled and had not been found after six years of session-led enquiries, Stevin

court, there is also a corresponding gap in its court books between and July 1632 and February 1634, between volumes NRS, B30/10/12 and NRS, B30/10/13.

⁶¹ NRS, CH2/185/4, f. 66.

⁶² NRS, CH2/185/4, f. 66.

⁶³ As discussed in chapters 2 and 5.

had to repent as an adulteress.⁶⁴ That James Simpson had not succeeded in his attack on Margaret Brown saved the Haddington presbytery from such a dilemma, where sexual purity was pitted against sexual violence in what should have been a protected environment. Instead, they were able to safely side with George Brown's lack of patriarchal duty and obligation, without fear of jeopardising the kirk's understanding and treatment of extra-marital sex as an important part of its social control remit.

This was also the case in 1639 in the parish of Saltoun, where a case of sabbath breach – suitably removed from the complication of any sexual activity, forced or otherwise – saw its kirk session react strongly against patriarchal failings. On 20 October 1639, a group of eight 'boyes quho trublit the kirk in the tyme of divine service [were] ordained to be wairnit', namely Adam Clerk, Adam Brown, Robert Stenner, Alexander Johnston, John Sinclair, William Elder, William Finlayson and William Hunter. When none of the eight appeared before the session the following week,

it wes ordained be the session that the master sould bring their servantis, the parentis their childrein and quhipp them in fais of saisson upon Fryday nix. And incais of contempt the masteris and parentis to underly the censur of the session.⁶⁵

The clerk made no record of the ordeal, but neither the boys nor their corresponding authority figures appear again in the minutes. Troublesome male youths were evidently a problem that autumn in Saltoun – at the next recorded meeting on 3 November, the session ordained 'to wairn some other boyes that troublit the kirk' and listed a further seventeen names.⁶⁶ It is not clear what happened to this group because this entry is the only record of their misbehaviour; but the treatment of the former group warrants consideration in its own right.

The boys had been called to appear before the session and had not, therefore the session ordered that the consequence of their original fault should be a public display of household authority in action. The group are referred to as 'boyes' in the minutes. Some were in service or apprenticeships and had 'masteris', whilst others were living at home under the authority of their 'parentis'. Beating younger members of any household would not have been a joyful task for the majority of authority figures, even in the

⁶⁴ Although her punishment was reduced. DesBrisay, 'Twisted by Definition', 144-147. See chapter 4 for further discussion of rape.

⁶⁵ NRS, CH2/322/1, f. 14.

⁶⁶ NRS, CH2/322/1, f. 14.

seventeenth century.⁶⁷ The session felt it necessary to warn these authority figures – these patriarchs – of the consequences they would face should they not appear to administer the whipping. The shaming nature of this punishment was two-fold. Firstly, the boys would be punished for their unruly behaviour. Secondly, those who were responsible for them at home were to be humiliated for not controlling their household in allowing the original behaviour to take place and then for allowing the boys not to appear before the session when cited. Fellow parishioners would visually experience what happens when household authority was not being upheld to the Kirk's standards, forcing its session to step in to re-establish that authority for all to see to the shame of all involved.

In this case, it is perhaps not entirely clear whether the Saltoun session was working to enforce established ideals regarding domestic authority and control, or imposing its own ideals on the domestic setting. It is not known what the boys' parents or masters thought of their misbehaviour. It is not known whether they thought that it was a matter that could be dealt with at home without outside intervention, or if they accepted that the boys were individuals with individual responsibility for their actions on the sabbath, and should therefore be dealt with by the Kirk. A closer examination of sabbath breach throughout Haddingtonshire between 1610 and 1640 highlights this dichotomy and the potential that existed for conflict between these two ideas.

Figure 3.4 shows how sabbath breach was the most common offence prosecuted by East Lothian kirk sessions between 1610 and 1640. Most people appeared to answer their own charges of sabbath breach – their own misbehaviours of drinking, working, travelling, playing games of golf or football and so on, either at time of preaching or on the sabbath day generally. But a small percentage of cases were prosecutions against people who were breaking the sabbath by carrying out the orders of others; or against people who perhaps did not personally break the sabbath but made others do so by issuing such orders. In her examination of sabbath breach, Margo Todd states that leniency towards servants who were absent from Sunday service on their masters' orders generally disappeared by the 1560s, to be replaced by the 'norm' of prosecuting both masters and servants for the oversight.⁶⁸ Figure 6.1 details servants who appeared before

⁶⁷ A theme explored by Bernard Capp using contemporary sources in *The Travails of Agnes Beaumont: Faith and Family in Early Modern England*, a paper given as part of the University of Edinburgh Gender History Network seminar series on 'The Lifecycle', 11 October 2011.

⁶⁸ Todd, *Culture of Protestantism*, 36.

East Lothian sessions to answer for breaking the sabbath where the activity they were engaged in was on their master's behalf.

Figure 6.1: table to show distribution of servants appearing for breaking the sabbath whilst carrying out orders, January 1610 – December 1640.

PARISH	SEX	OFFENCE								TOTAL
		Brewing	Grinding/ Cutting	Transporting/ Travelling	Shearing	Fishing	Threshing/ Agricultural Labour	Unspecified Work	Other	
Aberlady	Male									0
	Female						1			1
Pencaitland	Male						2			2
	Female									0
Tynninghame	Male			2		1	3	5		11
	Female						1*			1*
Yester	Male						3			3
	Female		1						1	1
TOTAL		0	1	2	0	1	9	5		19

* Not a single female servant, but a group of female servants of unknown number. The total includes this group.

Source: minutes of the kirk session of Aberlady, NRS, CH2/4/1, ff. 3-59; minutes of the kirk session of Pencaitland, NRS, CH2/296/1, ff. 6-15; minutes of the kirk session of Tynninghame, NRS, CH2/359/1, ff. 1-115; minutes of the kirk session of Yester, NRS, CH2/377/1, ff. 6-243.

The numbers are small at only nineteen cases in total, one of which was a group action against an unknown number of windsters (muck spreaders) pertaining to Lady Bass. Even after accounting for this female group, the clear majority of offenders were male. This reflects the gender division of sabbath breach generally. Out of the 523 individual cases prosecuted by East Lothian sessions between 1610 and 1640, 382 were men – a majority of almost three-quarters.

Clerical factors must be considered here – only cases where it is clear from the minutes that this was what had happened have been included in figure 6.1. For example, on 16 October 1614 a servant of James Nesbit's appeared before the North Berwick session, accused for carrying a load on the sabbath and was fined 13 shillings 4 pence.⁶⁹ The entry is scant on detail and there is no direct indication from the minutes that this was on his master's orders. As a result, the case has not been entered into the above tabulation. Despite allowing for cases such as this, the number of servants prosecuted for breaking the sabbath whilst carrying out orders remains small at between 3 and 4 per cent of total breaches.

⁶⁹ NRS, OPR 713/1, f. 143.

As indicated, there were instances of employers appearing before East Lothian sessions, not to answer for their own sabbath breach but that of servants like those in figure 6.1, who broke the sabbath by carrying out their orders. A sabbath breach by proxy.

Figure 6.2: table to show distribution of employers/masters appearing for breaking the sabbath through the actions of their servants, January 1610 – December 1640.

PARISH	SEX	OFFENCE						TOTAL	
		Brewing	Grinding/ Gutting	Transporting/ Travelling	Shearing	Fishing	Threshing/ Agricultural Labour		Unspecified Work
Aberlady	Male						2	2	
	Female						1	1	
Haddington	Male	1	2					3	
	Female			1				1	
North Berwick	Male			1	2			3	
	Female					1		1	
Tynninghame	Male			1		1	2	5	
	Female							0	
Yester	Male					1		1	
	Female		1					1	
TOTAL		1	3	2	2	1	6	2	18

Source: minutes of the kirk session of Aberlady, NRS, CH2/4/1, ff. 3-59; minutes of the kirk session of Haddington St Mary's, NRS, CH2/799/1, ff. 306-323; North Berwick kirk session register, NRS, OPR 713/1, ff. 90-156; minutes of the kirk session of Tynninghame, NRS, CH2/359/1, ff. 1-115; minutes of the kirk session of Yester, NRS, CH2/377/1, ff. 6-243.

The numbers here are remarkably similar at eighteen in total, again with a distinct male majority. Out of these cases from figures 6.1 and 6.2, there are six instances where master and servant appeared in relation to the same sabbath breach, five of which were due to a servant working on their master's orders on a Sunday. After these six pairings, the remaining individuals – the majority – were either master or servant, appearing before the session as a sole party. Not both parties as suggested by Todd as the 'norm'.

The distribution and characteristics of this majority of cases suggests two significant points. Firstly, qualitative detail from cases brought against servants for breaking the sabbath by carrying out their master's orders, reveals that these individuals were experiencing some sort of conflict between different patriarchies. Were they to obey one (their master), at the expense of the other (God), or vice-versa? The Tynninghame session recorded the most cases of sabbath breach of this kind, with eleven individual men and one group of women offering the orders of their employers as a defence.

On 25 February 1616, George Richardson was called before this session to explain his working on the sabbath. In his defence he ‘answerit that his masteris William Wolf and John Yong in Knowis Miln knew of it and allowit it, utherwayis if they had not consentit heirto he sald not have transgressit’. The minister saw this as a poor excuse and ‘answerit that he sald rather have obeyit god’ before sentencing him ‘to mak publick satisfaction the nixt sabbothe before the congregation’.⁷⁰ But William Wolf and John Young were not completely absolved of responsibility. The minister and elders ordained ‘his maisters to pay the penaltie of sabbothbreakeris utherwayis if they sald failyie they sald also satisfie the kirk publiklie with him’.⁷¹ Although Richardson was not held exclusively responsible for his sabbath breach, John Lauder made it quite clear in his rebuke that God should have taken precedence. Evidently this was not a choice that was so clear to Richardson at the time.

Where the Tynninghame session held more than one party responsible in Richardson’s case, the session in Pencaitland rested the burden of blame squarely on the shoulders of the sabbath breakers themselves. On 5 January 1634

William Browne and Robert Aitken compeired and confest that Mr Robert Baiglie being angrie for ane ill threshing of pease, that [they took] the said pease to the barne the sabbath day at morne and thresh it better to try if there was any pease in that or no. And being convict are ordained to satisfie and pay the penaltie the next day.⁷²

No further details were recorded by the clerk, but this entry suggests how Bagley’s apparent anger had necessitated the threshing on a Sunday morning. Regardless of the conflict between master and church, Brown and Aitken were held solely responsible by this session for their decision in favouring Bagley’s peas over God.

These two examples evidence an important point. Geography was, again, an important influence over this experience of social control. A sabbath-breaker’s fate depended not only on which of these authoritative, patriarchal figures they chose to obey but, crucially, on the East Lothian parish in which they happened to live. The attitude and approach of the local kirk session held sway over whether servants were

⁷⁰ NRS, CH2/359/1, f. 4.

⁷¹ NRS, CH2/359/1, f. 4. There is no record of either William Wolf or John Young making any appearance before the session, nor paying the penalty. As it is not certain whether they were held to account for their faults, this case has not been included in the small number of instances where both masters and servants were held jointly responsible for servant sabbath breaches. Richardson appeared alone and is recorded satisfying alone, although mention of Wolf and Young might have mitigated this outcome in some respects – at least for Richardson personally.

⁷² NRS, CH2/296/1, f. 8.

personally held responsible for their sabbath breaches or whether employers were thought to have some accountability for breaches which happened as a result of their orders. The most straight forward observation shows that neither North Berwick nor Haddington prosecuted any servants for breaking the sabbath whilst carrying out orders. Instead, over the same period of time both of these sessions – the only royal burghs in the area, with both urban and landward portions – prosecuted employers for issuing the said orders. On 23 January 1614, Christian Simpson appeared before the North Berwick session for ‘causing her sone and servant thresh on the sabboth’.⁷³ She ‘cravit god forgivnes’ and was ‘ordanit to compare publictlic before the congregation on the nixt sabboth to confess the offence and to pay 13 shillings 4 d’.⁷⁴ Similarly, on 31 March 1616

Andro Cudbirt comperit accusit for prophaning the sabboth in sending his horses and servands with lapster and crills on the sabboth betwixt aucht and nyne hour on the sabboth day at morn. Ordainit to compeer publictlic before the congregation the nixt sabboth to confess his offence and to pay 13 shillings 4 d penultie.⁷⁵

Like Simpson, only Cuthbert was summoned to appear and was punished. A similar pattern can be seen in Haddington in 1630. On 14 February ‘comperit James Stevin and William Smyth and affirmit that ther milnes gaid not on the sabboth in tyme of preaching bot if it was so ther servants did it by [without] thar knowledge’.⁷⁶ None of these mentioned servants had been summoned to appear with their masters, and the session warned the two men that, should it happen again, they would be subject to ‘double of the penaltie stated of befor for break of the sabboth’, regardless of whether it occurred with or without their knowledge.⁷⁷ On 17 October, Alexander Burnett appeared and confessed to his servants tending to his bere on the sabbath. The session ordained that it ‘was forbidden to do the lyke and for his fault was ordainit to pay 1 tit’.⁷⁸ As with Steven and Smyth, none of the servants in question appeared to be held to account and, from the information recorded, Burnett himself may well have been at rest at the time in question – as was required on the sabbath.

⁷³ NRS, OPR 713/1, f. 139.

⁷⁴ NRS, OPR 713/1, f. 139.

⁷⁵ NRS, OPR 713/1, f. 155. ‘lapster and crills’ were lobster and crill.

⁷⁶ NRS, OPR 799/1, f. 308.

⁷⁷ NRS, OPR 799/1, f. 308.

⁷⁸ NRS, OPR 799/1, f. 315.

Although North Berwick and Haddington are conspicuous in their absence from figure 6.1, identifying a rural-urban divide in the experience of the regulation of sabbath breach or the established patriarchal rules that the various sessions subscribed to would have to be tentative with such small numbers and variable quality of records. Alternatively, the volume of such activity recorded by the Tynninghame session in figures 6.1 and 6.2 is attributable to the discipline of this well-organised body. Or it could be a reflection of exemplary minute-taking in comparison to the Yester records which are more vague in detail.⁷⁹ But qualitative detail from this small number of cases still allows for some solid interpretations.

Aside from Tynninghame, only the Aberlady and Yester kirk sessions prosecuted both employers and servants for servants' sabbath breaches. In addition to the case of George Richardson that is detailed above, in five of the other cases tabulated these sessions subscribed to both of the above lines of reasoning and initially held both master and servant to account for one specific instance. All cases received some censure, apart from in Aberlady. When the shepherd Thomas Knight and his servant woman appeared on 22 September 1639 accused of shearing corn on the sabbath, the session 'having tryit and examined them could not find them guiltie' and was forced to 'frie them'.⁸⁰ Acting on a combination of the information gathered by session elders and head through neighbourhood gossip, there was not enough evidence for the session to proceed. But it remains that the Aberlady session was willing to hold both to account in the initial stages of the social control process.

Evidence was not lacking on 12 August 1621 in Tynninghame, when Robert Skugall appeared before the session accused of carrying nets to the sea in a cart after the afternoon sermon. Skugall confessed this, but in his defence said that he 'did it as he alledgit at his master his direction'. His master, James Neilson, was also present and countered that he 'bade him not' to take the nets to the sea. Skugall was ordered to 'satisfie publiklie the nixt lordis day' for his actions.⁸¹ At this first instance, it appears that Skugall was censured for choosing to carry out the orders of his master, when the orders themselves were questionable.

But on 26 August, Neilson appeared again and was

⁷⁹ Such as the gap between 1624 and 1625: NRS, CH2/377/1, ff. 96-102.

⁸⁰ NRS, CH2/4/1, f. 42.

⁸¹ NRS, CH2/359/1, f. 42.

accusit for commanding his man to pass to the sea with netis in ane cairt. The said James denyit that he comandit him except onlie to carie them on his bak to him. The minister answerit that the last day he confessit he bade him to get the cairt, quhilk some of the elders testifeit. The brethren present ordainit the said James be removed to be censured and ordains him to sit downe on his kneis befor the elderis and ask god forgiveness and to pay twentie shillingis to the box quhilk bothe he did. The session was contentit.⁸²

Neilson escaped public censure but at the cost of a fine that was well above the normal 13 shillings 4 pence set for straight forward sabbath breach.

Lady Bass was at the root of the other two cases of this kind from Tynninghame. On 14 June 1618, her aforementioned windsters (of unknown number) appeared before the session ‘and accusit for breaking the sabbothe by spreading of muik confessit the same alledging also that Jhone Davie greive to the Ladie comandit them’.⁸³ John Davie was duly summoned and appeared on 5 July, when

being demandit quhy he comandit the women abovwritin to spred muick on the sabbothe and so to break the commandment of god to keep the sabbothe holie to do na maner of work thairin, the said Jhone answerit and affirmit constantlie that he bade them not to spred it on the sabbothe bot to have it readie to spred againe the morn.⁸⁴

With such conflicting stories, both parties were summoned to appear together. They did so on 26 July, when ‘after the sermon the session conveyed ordains the women spredderis of muick to satisfie publicklye and Jhone Davie greive to the Ladie Bass also’.⁸⁵ In the second case on 31 December 1620, Matthew Bell and his servant man appeared before the session ‘and accusit of sabboth breaking confessit the same’. During subsequent questioning by the elders, both men ‘affirmit they wer urgit be the greivis quha had receivit ane letter fra the Ladie to send in some bread to Edinburgh’. The outcome of the case was delayed whilst the session ‘ordains Mr Jhone [the minister] to speik the Ladie thairanent’.⁸⁶

On 28 January 1621, Bell’s man reappears before the session ‘and confessit his oversicht and was ordainit to satisfie the kirk publiklye the nixt sabbothe being rebuikit and exhortit to repentance’.⁸⁷ Lauder’s words to Lady Bass spelt the end of the matter for Bell and the grieves – neither appeared again in relation to the case – but, in all three

⁸² NRS,CH2/359/1, f. 42.

⁸³ NRS,CH2/359/1, f. 20.

⁸⁴ NRS,CH2/359/1, f. 20.

⁸⁵ NRS,CH2/359/1, f. 21.

⁸⁶ NRS,CH2/359/1, f. 38.

⁸⁷ NRS,CH2/359/1, f. 39.

of these instances the Tynninghame session can be seen to have taken a dim view of both instructing and doing work on the sabbath at the expense of God.

This was clearly echoed in the single, straight-forward case from Yester, when the session punished both master and servant at their first appearance. On 28 April 1632, the session ordained ‘to warne James Coxes servants for prophaning the sabbath by muking peas upon the sabbath’. At the next recorded meeting, ‘this day James Cox and his servant Agnes Skeill satisfied the kirk for prophaning the sabbath’.⁸⁸ No further details of the censure are given, although the original citation made no mention of Cox himself actually labouring on the sabbath.

Finally, the case of Margaret Burn presents a more unusual example from this parish. On 16 January 1631, the Yester session ordained ‘to summond Margret Burne for absence from the kirke since Mertimes’.⁸⁹ She appeared before them on 23 January

and being asked quhen she was in the kirke last, she answerit not from Mertimes until this day. Secundlie being asked whither she baid away of hir owne accord or not, she answerit she would willinglie have come. Thirddie being demanded gif she was stayed by hir maister, she answered hir maister stayed hir and would not let hir come.⁹⁰

On 13 February, her master William Brownfield appeared alongside Burn and ‘being confronted for the staying from the kirke the said Margret acknowleged in presence of us all that hir maister said that she might not come to the kirke because of the bairnis’.⁹¹ Babies and very young children were barred from attending Sunday sermons should they disrupt the ability of others to hear, so her excuse for non-attendance was convincing.⁹² The session believed her account – Margaret Burn did not appear before the session again.

However, on 20 February the clerk noted that ‘payed be William Brounfeildis wyfe for deteining hir servants 10 shillingis’.⁹³ Only Brownfield was recorded to have appeared previously, but here his wife was being held responsible for keeping her servants away from the kirk – to look after the children of the household, according to Margaret Burn. Mrs Brownfield was evidently a wife thought by the authorities to hold a measure of authority within her household. Her’s was an authority seen as significant

⁸⁸ NRS, CH2/377/1, f. 184. ‘muking’ refers to manuring land with dung or other fertiliser.

⁸⁹ NRS, CH2/377/1, f. 168.

⁹⁰ NRS, CH2/377/1, f. 168.

⁹¹ NRS, CH2/377/1, f. 169.

⁹² Todd, *Culture of Protestantism*, f. 37.

⁹³ NRS, CH2/377/1, f. 169.

enough to mitigate the long-term sabbath breach of Burn, who escaped kirk discipline altogether. Although her husband had appeared previously to answer the charges, it was she who paid the fine for detaining *her* servants. It was an outcome similar to the case of Christian Simpson in North Berwick. These sessions recognised an economic role for these wives within the household. In the case of the Brownfields, this was within the partnership of marriage.

The fate of sabbath-breaking wives is an interesting addition to the examination of conflicting patriarchies in a parish setting. The aforementioned 1618 case of William Brown and his wife Agnes Tait suggests how male householders or husbands could be instructed by the session to take order with the behaviour of members of their household – be it wives or servants – including over their sabbath breach. On 13 December 1610, John Watson and David Thomson were cited by the Prestonpans session ‘for prophanation and being in Jhone Barnis [house] in tyme of sermon 15 dayis synce’.⁹⁴ They did not personally appear when called, and by 27 December the session had grown tired of waiting, so remitted them to the civil magistrates ‘to be poyndit’.⁹⁵

John Barnes had also been cited to appear before the session and did so on 13 December. But he was not punished for receiving the men into his house during the Sunday sermon. Instead, the session ordered ‘Jhone to admonishe his wyfe for ressait of thame’ and he disappears from the minutes, presumably to subject Mrs Barnes to the kirk’s discipline without her ever setting foot before the session.⁹⁶ This was social control using commonly-accepted household hierarchies. Although Mrs Barnes seems to have had the personal authority to invite or receive men into her husband’s house, that she did so was seen by the kirk as an affront to her husband’s authority over his household, and showed a slackness in that authority on his part.

Sometimes, female household autonomy could prove to be a useful defence. On 19 June 1614, Alexander Crawford appeared before the North Berwick session accused of cleaning and preparing oats on the sabbath. In his defence, Crawford ‘ansrit that his wyf dicht them, he being absent’.⁹⁷ In this case, ‘the session ordainit to cause warne his wyfe to answer that’, rather than cause Crawford to take order with her in persona at home.⁹⁸

⁹⁴ NRS, OPR 718/1, f. 72.

⁹⁵ NRS, OPR 718/1, f. 73.

⁹⁶ NRS, OPR 718/1, f. 72.

⁹⁷ NRS, OPR 713/1, f. 142.

⁹⁸ NRS, OPR 713/1, f. 142.

The kirk's attitude to sabbath-breaking servants was variable. It was variable on a localised, parish-by-parish scale, with evidence from these parishes collectively supporting the idea that the kirk was operating in a way to enforce or allow for accepted household patriarchal responsibilities *on its own terms*. Servants and masters were prosecuted when actions at a household level interfered with a household's responsibilities towards God. Either servants should have known better, or household heads should have exerted more religious responsibility and control over their subordinates. Which of these methods was subscribed to depended on the wills and ideals of the session in question. In North Berwick and Haddington in particular, correction to household governance was emphasised in dealings with sabbath breaking servants. Qualitative examples from Prestonpans show how, in that parish, this was extended to economically-active wives.

With such a localised geographical pattern, any evidence from outside formal ecclesiastical jurisdictions is crucial for the successful examination of the patriarchal ideals that were upheld within households and by families in East Lothian between 1610 and 1640. Before the Haddington burgh court on 30 July 1632 appeared

Agnes Cockburne, spouse of Robert Smyth merchant burgess of the said burgh, being accusit for the cruell hurting and wounding of [blank] spouse of Thomas Low, smyth in Eaistbarnis upoun the [blank] day of June last bypast upoun the heid to the effusoun of hir blode in great quantitie.⁹⁹

The court was set to try Cockburn by an assize. But this was averted when Cockburne

willingly of hir awin accord confest the said bloode and came in the saids judges wills for the samen. Thairfore the saids judges unlawis hir in ane unlay of L lib money and ordainis hir to remaine in waird within the said tolbuith till the samen were payit.¹⁰⁰

Cockburn was the only woman who appeared before the burgh court to answer a violence charge between 1610 and 1640. Whilst the provost and his deutes were handing down their judgement,

in the meantime compeirit William Cockburne, elder burges of the samen burgh, father of the said Agnes and declairit that in regard she had divers young children and bairnes at hame in her hous and in respect of hir uther affairs in absence of hir said husband, quhairin she and hir said spous may sustain great lose throw her abydding in waird, earnestlie in oppin court entreatit and requestit the said judges to accept him as cautioner and full debtor of the said unlay and sett her to libertie. Quhairunto the saids judges wer pleassit and therefore the said William actit and oblist him, his executors and aires, to content and pay to

⁹⁹ NRS, B30/10/12, f. 167.

¹⁰⁰ NRS, B30/10/12, f. 167.

the saids juges the forsiad unlaw of L lib money or sameikle thereof as they wald take of him, and to remaine still in waird quhill the samen wer payit.¹⁰¹

Like Margaret Brown's parents, William Cockburn felt a real sense of parental responsibility towards his daughter Agnes even though she was a married woman with young children and economic responsibilities that would leave her marriage partnership at a 'great lose' should she be imprisoned. In her husband's absence, William Cockburn resumed a protective, patriarchal role in his relationship with his daughter – to the real extent of being imprisoned until the £50 unlaw was cleared. There is no indication from the minutes that his daughter openly petitioned the court to see if her father would consent to be cautioner to that effect, only that he appeared whilst sentence was being passed. Although she had been detained in the tolbooth before her appearance, if any discussions of the arrangement had previously taken place then it was between father and daughter and was not officially recorded. If, as a woman with her own household, Agnes Cockburn had asked for her father's help, then he was content to give it. This was an obvious human motive of a father wanting to help his daughter. But when this is considered alongside the case of Margaret Brown, the actions of parents suggest how the upholding of patriarchy as a system, including through the punishment of those who did not adhere to it, may not have simply been a case of the kirk imposing its own ideals of patriarchal responsibility and duty on ordinary people. Similar ideals were readily felt at grassroots level.

At the opposite end of the patriarchy relationship, children who showed disregard or disrespect to their parents were held to account by both the church and secular authorities. In Tynninghame on 24 June 1621, Alexander Jackson was called before the session and 'accusit of disobedience to his parents for menacing his father in his drunkennes and trubling the hous in his drunkennes'.¹⁰² In the previous summons, the clerk noted this as a 'hainous offence' which also included 'fechting with sic as came to stay him'.¹⁰³ When confronted with his behaviour, Jackson

confessit his fulishnes and oversicht in his drunkennes, being sharplie and vehementlie rebuikit promeisit amendement and cravat his father pardon and promeisit also to abstain from drunkennes. [The session] referis him to the civill magistrate to be punished for his misbehaviour and offence and orders him to pay 3 lib for his drunkennes.¹⁰⁴

¹⁰¹ NRS, B30/10/12, f. 167.

¹⁰² NRS, CH2/359/1, f. 41.

¹⁰³ NRS, CH2/359/1, f. 41.

¹⁰⁴ NRS, CH2/359/1, ff. 41-2.

The control of wayward youth – an affront to patriarchal control and regard – was an issue which session and civil authorities policed together. William Thomson appeared before the Haddington burgh court on 25 September 1618 to answer for his ‘allegit undewtiffull behaviour had be him towardis his parentis in allegit violent handis’. For this offence, he had been ‘presently wairdit’.¹⁰⁵ Thomson was noted as ‘now being willing to amend’ and ‘therefor cravis god and man pardone thairfor’. The court granted this, on the condition that

the said William sall at all tymes heirefter behave him self dewtiefullie towardis his parentis as become ane sone to do towardis his parentis, and that the said William sall nevir repair nor enter his saids parentis dwelling howss [except] with their licence and guidwill and oblesit thereto under the paine of ane hundredth punds.¹⁰⁶

In both of these cases, the use of violence was a key motivating factor behind the actions of the kirk session and burgh court in pursuing the charges. But, the language recorded as being used by both the ecclesiastical and secular authorities shows how the violence that had been directed towards a father by Alexander Jackson and towards both parents by William Thomson was a serious, aggravating factor. Jackson was guilty of a ‘hainous offence’ and Thomson had not behaved ‘as become ane sone to do towardis his parentis’.

If such ideals of patriarchal family and household life were prevalent and can be seen to have endured changes to household structures over the course of the life cycle as parents aged and children moved out of the family home, then these ideals were identified as a useful resource for local authorities. As suggested by Hardwick, in early modern France accepted norms of patriarchal society meant a hierarchical family and household structure. This ‘little commonweal’ was reflected in the structure of the parish as a whole.¹⁰⁷ Similarly, widespread adherence and subscription to patriarchal authority was used by East Lothian kirk sessions for social control, both to prevent neighbourly disputes worsening or as an avenue of enforcement where other options had failed.

This often involved aristocratic matriarchs, using their position within the household or immediate vicinity. In Haddington on 4 July 1630, the clerk noted ‘James

¹⁰⁵ NRS, B30/10/10, f. 105.

¹⁰⁶ NRS, B30/10/10, f. 105.

¹⁰⁷ Hardwick, *Practice of Patriarchy*, esp. ch. 4.

Clerk disobedient again, ordains speik the Lady Clerkingtonne his mistres to caus him compeir'. The location of Clerkington is shown in figure 6.3 below. James Clerk appeared promptly at the next meeting on 11 July 'and confessit his sin in drinking in tyme of preaching upon the sabbath'.¹⁰⁸ Lady Clerkington had succeeded where formal session mechanisms had failed and the session was able to hold Clerk to account 'for his said sin and thrie dayes disobedience', for which he 'was fynit 1 lib 10 shillingis'.¹⁰⁹

Like mistresses, mothers could be harnessed by kirk sessions to solve disputes, either between parishioners or between an individual and the authorities. On 15 January 1640 'Jean Edgar fornicatrix with James Hepburne of Bearefoord [appeared] craving her child to be baptized'.¹¹⁰ Figure 6.3 shows the location of Bearford in relation to Haddington, Morham, Bolton and Garvald.

Figure 6.3: map to show location of Bearford and its immediate surrounds



Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736), NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

The illicit fornication had been committed in Edinburgh, and the brethren ordered Edgar 'first to bring a testificat from the minister and session of Halyrudhous' of her satisfaction for the fornication before they would agree to baptise the child. As detailed above, this was common practice. Edgar did not appear again until 22 April 1640, having been 'remitted back from the session in Edinburgh to the session in Haddington

¹⁰⁸ NRS, CH2/799/1, f. 313.

¹⁰⁹ NRS, CH2/799/1, f. 313.

¹¹⁰ NRS, CH2/185/5, f. 19.

there to satisfie', because both parents 'had no residence nor aboard there bot onlie came for a space and departed again and therefor culd not admit of that satisfaction'.¹¹¹ This was the beginning of the presbytery's dealings with James Hepburn, Laird of Bearford.

On 13 May 1640, 'complened Mr Thomas Turnbull [minister at Morham] of som rough spetches as he sayd was given him be James Hepbune this last sabbath in the kirk befor sermone'. The brethren ordered Turnbull 'to give in ane bill containing the speches the laird speik against [him] that day aucht dayes' so that 'they might censur and giv the judgement to them quhat wes meitest and fittest'.¹¹² Matters were complicated further over the course of the following week by a dispute over church seats in Morham kirk. On 20 May, both Turnbull and Hepburn appeared before the presbytery and reported that William Achison had attacked Hepburn in church on the previous sabbath during prayers, elaborating that 'the syd William come to and streangle Mr Jhone whene sitting in that seat', and then 'took him be the arme to haist him out of the seat, speiking the words be him: divill have me and ye sit thair'.¹¹³ On 3 June, Achison appeared before the presbytery along with witnesses from Morham to try and resolve the matter, which ended when Achison 'gav in ane bill of complaint against the Laird of Berfut in respect of the seat'.¹¹⁴

On 24 June, the brethren called Achison to appear again and 'ordains him to give acknowledgement the next sabbath publictly of his fault before the pariosh'.¹¹⁵ Aware that this was not likely to offer lasting resolution to the dispute, at the same meeting Thomas Turnbull gave in a bill of petition to the brethren desiring Lady Bearford and her son to stop coming to Morham kirk altogether as 'they not being his paroshioners or resident'. He added that he thought they should also be urged to 'cary thairselfs modestly and that not under the pain of the censure of the kirk to pass against them'. The brethren agreed, and it was ordained that 'Mr James Fleming and Mr Andrew Bannatyne speik them and especiallie to the Laddy'.¹¹⁶

Achison had been due to satisfy at Morham, but appeared again before the presbytery on 1 July. The brethren

¹¹¹ NRS, CH2/185/5, f. 34.

¹¹² NRS, CH2/185/5, f. 41.

¹¹³ NRS, CH2/185/5, ff. 42-3.

¹¹⁴ NRS, CH2/185/5, f. 46.

¹¹⁵ NRS, CH2/185/5, f. 49.

¹¹⁶ NRS, CH2/185/5, f. 50.

asked why according to the act he mad no acknowledgement the last day of his fault, answered he could not get it done in so far he mycht not com in ane peacable maner quhilk the minister could beir witness to.¹¹⁷

Turnbull was ‘asked if he knew any danger to the said William’ and it was concluded that the ministry would ‘suspend the examination of that act anent his satisfaction till in ane peicable maner it mycht be given be him’.¹¹⁸ Confirmation that this was possible was received from James Flemming and Andrew Bannantyne, who

being inquired concerning their comission in speaking my Laddy Berfut conforming the act, answerit they had spokin hir and that they had ane good answer that she hes promised to mak no interruption of the minister and to cary hirself in ane calm and modest way.¹¹⁹

She gave the two ministers assurances that her son would do the same, which meant that the family were allowed to continue to worship at Morham. The involvement of Lady Bearford was instrumental in ending the seat dispute between her son and William Achison, who was then able to perform the penance for the assault that the Kirk required. She must have been a formidable character, like the force of the *hausmutter* that Steven Ozment has illustrated using the papers of a Cologne man, the catholic Hermann von Weinsberg.¹²⁰ At the same time as offering her assurances on behalf of her family, Lady Bearford asked that in future ‘Mr Thomas nicht be injurred to turne his face to her in the tyme he wes preiching’. She was not requesting the brethren to *ask* Turnbull to do this, but to *tell* him to – and they promised to consider doing so, despite the circumstances under which the request had been made.¹²¹

III. Conclusion: the Presence of Patriarchy

Patriarchy in terms of the early modern parish can be defined as resting on a system of male headship of households where their obligation to other household members was reciprocated by the obligation of those members to obey. Patriarchal order and organisation can be seen in the experience of family worship and family church attendance in East Lothian parishes between 1610 and 1640, but with an element of

¹¹⁷ NRS, CH2/185/5, f. 51.

¹¹⁸ NRS, CH2/185/5, f. 51.

¹¹⁹ NRS, CH2/185/5, f. 51.

¹²⁰ Ozment, *When Fathers Ruled*, 55.

¹²¹ NRS, CH2/185/5, f. 51.

fluidity, as recognised by Bernard Capp for early modern England, which meant that household hierarchies were not dominated by men alone.¹²² Where marriage was an economic partnership, with wives exerting control over servants and contributing to the household income, this was recognised by the kirk in its control over parishioners and their spiritual welfare.

Baptism was an exception to this across all of East Lothian's parishes. It remained a male-dominated ritual which was designed to showcase paternal responsibility, even if this was couched in elements of display and performance. Although this is not altogether surprising, it is important to note how paternity and, by association, patriarchy was harnessed by local authorities as a means of monitoring behaviour through the baptising of illegitimate children. The case of John Clerk and his male-dominated fostering network illustrates this well.

On the other hand, the experience of sabbath breaking servants was hugely dependent on location, with different parishes pursuing different protocols against master and servant. Some parishes, such as Tynninghame, emphasised the individual's responsibility towards the ultimate patriarch – God – at the expense of all others. It could be argued that a master who was fined for ordering his servant to work on the sabbath might have thought the kirk session was interfering with his authority, his household and his income. To local authorities, household patriarchy was a powerful resource that was to be sanctioned on occasion. One of these was when it was seen to clash with other, greater obligations, but this depended on which parish you resided in. Geography was definitely an influence over this area of social control and the experience that sabbath breakers faced at the hands of different kirk sessions.

Popular patriarchal ideas at grassroots level, such as the duty of protection and the obligation of respect, enabled local ecclesiastical and civil authorities to harness the power of individual family members to enforce both doctrinal aims and statute laws. This was not necessarily in the form of male heads of households. Lady Bearford was not the head of her branch of the Hepburn family in terms of property and inheritance, but her seniority over the head in terms of her age and her relation to him as his mother was a welcome source of power for the Haddington presbytery. Without popular or widespread subscription to these household hierarchies, this official use of individuals

¹²² Capp, *When Gossips Meet*, 376.

without official posts but with personal influence would not have been possible. Their intervention would have had no effect.

Patriarchy was present in East Lothian between 1610 and 1640. It informed how households were structured and the rights and responsibilities of those who lived within them. Patriarchy is hierarchical, and during this period it relied on a combination of age and personal status in ordering the rights and responsibilities associated with the term. Gender was not the primary focus – as Lady Bearford and the earlier cases of sabbath breach involving husbands and wives have shown. Commonly-held patriarchal beliefs influenced the actions of the Haddingtonshire authorities in their regulation of personal behaviour and personal interactions. The practice of social control was not determined solely by whether those being policed were men or women, but by hierarchical relationships in line with an individual's place within their household and their economic weight. And, therefore, socioeconomic status was an important influence in itself. This is given due attention in chapter seven, below.

Chapter VII

According to Rank: Status and Social Control

In their study of social control in urban Scotland between 1660 and 1780, Rosalind Mitchison and Leah Leneman argue successfully that, by the eighteenth century, social divisions in the experience of kirk discipline were apparent throughout Scotland. They write: ‘the ideal of all men and women being equal in the eyes of God was hard to sustain in a hierarchical world’.¹ It is a conclusion that they also apply to rural Scotland where ‘there were still groups that the Church in Scotland could not fully control. At the head of these came the landowning class’.² For the earlier period, Margo Todd has emphasised the opposite to be true – that the Scottish kirk between 1560 and 1640 was largely immune to difference in either gender or status, sometimes on a remarkably homogeneous scale thanks to a rigorous disciplinary system that ‘was the envy of puritans to the south, banned as they were by bishops and queen from implementing classes and consistories on the Genevan/Scottish model’.³ As such, Todd argues that everyone from the ‘jokers on the stool’ to ‘status-conscious lairds’ were included under the umbrella of Reformed discipline and subjected to its rigour.⁴

For this period, it is a conclusion that is remarkably contentious. Michael Graham has highlighted ‘the difference in the way kirk sessions valued the obedience of the elite compared with that of the general population’, with religious and political indiscretions most frequently policed after sexual failings, as opposed to the sabbath-breaking and verbal disputes of ordinary folk. Graham concludes that the kirk may have ‘peered into the bedrooms of the notables, but not nearly at the same rate’, meaning that ‘the blanket of order with which [the kirk] sought to cover society was hardly seamless’ – largely because the sessions and presbyteries were newcomers to a long-established system of *localised* rather than *centralised* government.⁵ This is an important point that has been overlooked in more recent scholarship. The kirk sessions did form a network of church authority that, theoretically at least, stretched nationwide as part of a broader system of

¹ Leneman and Mitchison, *Sin in the City*, 86.

² Mitchison and Leneman, *Girls in Trouble*, 15. See also, ‘Acquiescence in and Defiance of Church Discipline in Early Modern Scotland’, *Records of the Scottish Church History Society*, 25 (1993), 19-39.

³ Todd, *Culture of Protestantism*, 405.

⁴ Todd, *Culture of Protestantism*, 407.

⁵ Graham, *Uses of Reform*, 267-8 and 279.

jurisdiction over ordinary people. But, as with the sheriff and burgh courts, these were local institutions governed by local men.⁶ In East Lothian between 1610 and 1640 it was a structure of justice that informed the delivery of justice.

Showing appreciation of the early modern Scottish legal system as a network of justice, Gordon DesBrisay uses secular court records alongside kirk session minutes in his research on late seventeenth-century Aberdeen.⁷ His research on the burgh challenges the gender blindness of the kirk sessions, citing evidence that although fines for behavioural lapses may have been fixed at the same rate for both sexes, reduced female earning power put them at a natural disadvantage in their ability to pay.⁸ There is opportunity here for this argument to be extended beyond gender to the importance of socio-economic status, the ability to pay and the personal experience of kirk and civil authority. Close examination of records from East Lothian sessions, Haddington burgh court and Haddington sheriff court can ascertain what influence socio-economic status – alongside gender – exerted on the experience of kirk discipline and criminal prosecution between 1610 and 1640. Rank did have influence – what emerges is a variation of experience that has not been appreciated for this period, and an extension of the experience of 150 years later that has previously been dismissed as absent.⁹

I. Rank

Throughout East Lothian, ‘Hepburn’ was a common surname during the early modern period. James Hepburn, laird of Bearford, came to the attention of Haddington presbytery in 1640, firstly because of an on-going dispute over a seat in Morham kirk with one William Achison and, secondly, for his fornication with Jean Edgar. Whilst the minister of Morham, Thomas Turnbull, had petitioned Hepburn’s mother, Lady Bearford, to intervene in respect of the seat (as seen in the previous chapter), no such request was made in order to get Hepburn to satisfy the Haddington session publicly for

⁶ Todd, *Culture of Protestantism*, 403.

⁷ DesBrisay, ‘Menacing Their Persons’, 70-90; Gordon DesBrisay and Karen Sander Thomson, ‘Crediting Wives: Married Women and Debt Litigation in the Seventeenth Century’, in Elizabeth Ewan and Janay Nugent (eds.), *Finding The Family in Medieval and Early Modern Scotland* (Aldershot, 2008), 85-98.

⁸ DesBrisay, ‘Twisted by Definition’, 141-2.

⁹ Mitchison and Leneman justify starting their studies in 1660 partly due to ‘too many disturbances to civic order’ beforehand. See *Girls in Trouble*, 3.

his fornication. What emerged was a lesson in ‘satisfaction evasion’ from an errant young laird.

When William Achison was preparing to submit his bill of complaint against Hepburn to the presbytery on 3 June 1640, the Haddington session had a complaint of their own to put to the brethren – ‘that the syd James Hepburn would not make satisfaction [according] to the act’ for his fornication with Jean Edgar. When the bill was heard on 27 May, Hepburn was present and retorted ‘that his fault was comittit in Edinburgh and therefor [he] would mak satisfaction thair’.¹⁰ Indeed, when the couple had originally appeared before the presbytery the brethren had initially referred them to Holyrood to satisfy where the fault had occurred; but Holyrood had ordered them back to Haddington where they were both resident at the time of their fornication.¹¹ At this appearance on 22 April, the brethren had agreed that the child should be baptised once Edgar entered satisfaction at Haddington kirk. This is the last time she appears in the minutes, suggesting that this happened with no further difficulties. Yet, over a month later Hepburn was back before the brethren to re-open the location debate and to delay his appearance on the stool of repentance. It brought him a stay of around two months.

On 22 July 1640, the presbytery reported that ‘the laird of Berfut called upone compeired not. The brethring ordains ane sterne summons to be sent to him’.¹² The same happened one week later and on 5 August the kirk officer confirmed that a ‘literall summons’ had been issued – at which the brethren promptly issued a second one.¹³ On 12 August, he finally appeared

and being asked anent his disobedience to the session ansred he com ther and that the minister and the rest of the session wold hav him to sit four sabbath dais and [that] he was relapse in fornication quhilk he wold not be and sayd ‘devil hav him he sould sit so many’. The brethring wer sorgylie offendit at his words and in ane voice ordains him under the pain of excommunication to fulfil the number of dayes set downe to him be the session and then the minister sould repeat the words he uttered in the presence of God and the grief of the brethring sould be told.¹⁴

Three sabbath days on the pillar was the usual punishment for a first fornication in an East Lothian parish, six for a first relapse. Why the Haddington session had settled on four appearances for Hepburn is unclear, but for a man who had not wanted to sit one Sunday in the place of repentance in that particular kirk it was taken upon as another

¹⁰ NRS, CH2/185/5, ff. 44-5.

¹¹ NRS, CH2/799/1, f. 313.

¹² NRS, CH2/185/5, f. 55.

¹³ NRS, CH2/185/5, f. 57.

¹⁴ NRS, CH2/185/5, f. 58.

tactic of delay – one that ultimately backfired. Having not appeared, on 19 August it was ordered that he should be warned publicly from the pulpit and, finally, on 26 August the minister of Haddington reported to the brethren that James Hepburn ‘had entered the last sabbath the pillar’.¹⁵ The laird of Bearford was a young man of social status conveyed through land, something which was reflected by the seat he occupied in a kirk in whose bounds he did not technically reside. He had the ability and means to return to Edinburgh on various occasions between April and July in order to attempt to persuade the session there that he could account for his sins in their parish – one where he did not live, nor had ever done so – as a relative stranger. His ability to evade kirk discipline extended to questioning that discipline, which was rare across East Lothian during this period and required articulation and confidence in order to do so publicly during Sunday preaching. Throughout the case from January to April 1640, Jean Edgar – of whose background we know nothing – cut a passive character in comparison, guided by the brethren and submitting to discipline when called.

James Hepburn did repent for his fornication and was publicly rebuked during that performance of penance for his disobedience towards the session in uttering words that ‘sorghlie offendit’ the members of the presbytery. Another Hepburn – one that was introduced in chapter two – had come to that presbytery’s attention on 1 August 1620 when

compeired Margrit Maghie remittit be the session of aberladie, adulteres with Sir Patrick Hepburne of Luffnes as she alledgis. The presbitrie ordains an letter to be directed to Mr Jhon Dalyael to charge the laird of Wauchton to compeer befor us to answer to this slander this day aucht dayes and the said Margrit to compeer that same day to be confrontit with the said Sir Patrick.¹⁶

Hepburn was ‘callit thrie tymes according to order be the officer of the presbyterie’, but did not appear on 8 August.¹⁷ Margaret Maghie did – alone and ‘standing to hir former confession and offering hir self to be confronted with the said Sir Patrick and reddie to obey quhatever the presbyterie would injune hir for hir offence’.¹⁸ Over the course of the next fortnight, the brethren – led by their moderator James Carmichael – went to the various lengths of home visits, chance meetings and public summons to get Hepburn to appear. Instead, Sir Patrick sent Mr. George Butler, his bailie, to them on 15

¹⁵ NRS, CH2/185/5, ff. 59-60.

¹⁶ NRS, CH2/185/3, f. 151.

¹⁷ NRS, CH2/185/5, ff. 152-3.

¹⁸ NRS, CH2/185/3, f. 153.

August 'direct with commission fra the said Sir Patrick Hepburn to desire the brethren to continew all farther provision against him until the synod assemblie approaching', which was granted.¹⁹

The laird of Wauchton was a knighted member of the local gentry, a landlord with at least two baron courts to his name, and a justice of the peace.²⁰ He was also a commissioner of at least ten witchcraft trials between 1612 and 1613.²¹ Unlike Margaret Maghie, his status as one of Haddingtonshire's prominent male office-holders was cemented by 1620 and the presbytery records show no disdain at his 'appearance' before them by proxy in the form of Butler. The following week Butler appeared again at Hepburn's request, 'and in his name maid verball appellation' of his innocence in regards to Margaret Maghie. But when asked to 'sat it down in writ and put his hand theirto', Butler reported that Hepburn refused.²² Hepburn made his first public appearance before the brethren on 29 August, but only to accuse Mr Andro Blackhall 'for speiking some scandalous speiches of him publickly out of pulpit in the kirk of Aberlady the 19 of August' which 'the said Mr Andro being present denayed'.²³ At this, the presbytery recommended delaying the matter again 'till the Synod' and the case against Sir Patrick disappears from the minutes, leaving his 'supposed adultery' to remain forever 'supposed'. During his staunch denial and comprehensive stonewalling of various ministers, Margaret Maghie was ordered to make her repentance in the kirk of Aberlady 'for hir greavous sinne'.²⁴ It can be assumed that she completed her satisfaction there 'according to order', before her peers as an adulteress dressed in sackcloth, for she too disappears from the presbytery records after this entry.

In her research on the Calvinist consistory court of Utrecht, Judith Pollmann has not only discovered that the consistory was unwilling to officially record information that concerned members of Utrecht's elite, but that the relationship between the consistory and members of that local elite 'who were higher in social status than the elders and ministers themselves was extremely problematic'.²⁵ Not only did the consistory shy away from proceeding against members of the aristocracy but, on the

¹⁹ NRS, CH2/185/3, f. 154.

²⁰ On 28 July 1614, Hepburn appears before the Haddington sheriff court having apprehended Walter Dempstarton, a fourteen-year old vagabond. NRS, SC40/7/13, f. 271.

²¹ Recorded as 'Sir Patrick Hepburn of Wauchton' from Haddington in *SSW*, ed. Goodare et al.

²² NRS, CH2/185/3, f. 156.

²³ NRS, CH2/185/3, f. 157.

²⁴ NRS, CH2/185/3, f. 153-4.

²⁵ Pollmann, 'Off the Record', 432.

rare occasions that it did so, a successful outcome was not guaranteed. In his personal diary from the 1620s, the church elder Arnoldus Buchelius recalls being dispatched to tell the Lady of Brederode ‘how disappointed the consistory was that she had allowed dancing at her house’ but that ‘it was her lady-in-waiting who burst into tears, while Her Ladyship merely blushed and said that her house was “not a convent”’.²⁶ Where Buccelius’ record from Utrecht suggests that members of the local elite were not as committed to the Reformed church as that church would have liked, Scottish scholarship has consistently emphasised the inclusiveness of its Reformation and the emergence of a symbiotic relationship between church and civil authorities that enabled and enforced so much of the kirk’s authority.²⁷

Sir Patrick Hepburn disappeared from the presbytery minutes leaving no evidence that he even had to swear a public oath or subscribe to a written rebuttal of Margaret Maghie’s Aberlady testimony. A few years previously in North Berwick, George Baillie and his servant woman Nans Baillie were called before the session being suspected of fornication. This case contrasts well with the experience that Sir Patrick Hepburn had before his local session and presbytery.

On 11 September 1614, ‘Nans Baillie compeirit and confessit fornication with George Baillie humblie cravat forgiveness, ordanit to pay xl sh and to sit 3 on the pillar and comandit to separate hir self from his service quhilk she promisit to do’. Her master is recorded to have been in Edinburgh on this day, so she appeared alone.²⁸ On 18 September, he appeared and also confessed the fornication – but it was a relapse, so the session ‘ordanit [him] to sit sax dyetts and to pay 4 lib for him self’.²⁹ Although not titled gentry like Sir Patrick, at this appearance Baillie revealed himself to be a man of some economic status. In addition to his £4 fine, the clerk recorded that Baillie ‘wes desyrit to pay xl sh for Nans Baillie’ and that ‘the session tolerated George Baillie to retaine Nanes Baillie in service with him for the space of fourtie dayis’, the terms of which – a fine of £20 in case of failure – Baillie signed his name to in the session book.³⁰ Their son,

²⁶ Pollmann, ‘Off the Record’, 423-3.

²⁷ Todd, *Culture of Protestantism*, 21-3; Leneman and Mitchison, *Sin in the City*, 19-21. In relation to East Lothian specifically, see chapter two

²⁸ NRS, OPR 713/1, f. 143.

²⁹ NRS, OPR 713/1, f. 143.

³⁰ NRS, OPR 713/1, f. 143.

George, was baptized on 2 December because Baillie had paid the original fine ‘and found caution for satisfaction according to order’.³¹

Two months later, on 12 February 1615

compeirit George Baillie offrit to give fourtie shillings for Nans Baillie, ansrit he had payit for him self and wis no farther oblist. Ordanit to sit sa many dayis as wis injonit ansrit that he wald give 4 lib to the poore to releave him from the pillar, quhilk the session mycht not grant alledging that it is an ordinance of the assemblie quhilk they mycht not alter.³²

George Baillie’s behaviour not only belies some sense of patriarchal obligation towards his servant woman, but contained a clear offer of money in exchange for the stool. His sense of patriarchal duty towards Nans, who would likely have been paid around £3 or £4 per year, was seen by the session as an obligation he had no need to fulfil – or one that conflicted with his servant’s personal repentance and redemption, which should always take precedence.³³ What is interesting here is not only the North Berwick session’s refusal to grant such a request – £4 would have likely been a welcome addition to the poor box – but that they did so in accordance to an ordinance from the General Assembly.

In their studies of sexuality and social control in urban and rural Scotland, Mitchison and Leneman have outlined the reasons behind the decline in effective church discipline in Scotland from around 1780. They write how ‘it was the stress laid on penitence that marked the fundamental difference between ecclesiastical and civil discipline, even for the same offences’, without which the power of the kirk sessions would have been severely limited.³⁴ Their research has shown how, by the mid-eighteenth century, sessions were increasingly accepting money in lieu of public penance and that, by the 1770s, the price of escaping the stool in Aberdeen had been standardised at a relatively affordable half a guinea.³⁵ Although they emphasise that ‘church discipline was never meant to be purely punitive’, Mitchison and Leneman do argue that it was this change at this time which meant that ‘the basic principle – that church discipline was primarily

³¹ NRS, OPR 713/1, f. 144.

³² NRS, OPR 713/1, f. 146.

³³ For more on ‘conflicting patriarchies’ see chapter 6. See Spence, ‘To Content and Pay’. Her evidence from debt cases from the Haddington burgh court from this period suggest that female servants were being paid between £3 and £4 per year. Some received up to £8, but often to reflect extra economic activity, such as selling wine, which supplemented their income or warranted a higher rate of pay. In Aberdeen, the rate was significantly higher at around £10 per year according to Gordon DesBrisay in ‘Twisted by Definition’, 140.

³⁴ Leneman and Mitchison, *Sin in the City*, 32.

³⁵ Leneman and Mitchison, *Sin in the City*, 35.

redemptive rather than punitive – was hopelessly undermined.³⁶ In East Lothian, this challenge was already being faced by sessions in the opening decades of the seventeenth century.

It can be hypothesised with some level of conviction that paying your way out of public discipline would have appealed to at least some early seventeenth-century offenders. The Baillie case shows how, by 1614, the general assembly had had to issue a clear stance on the matter.³⁷ Mitchison and Leneman's work on the latter half of the century also concludes how 'the ability to write a smooth letter, and raise the money, meant that evasions of penance were more likely to be achieved by men than by women'.³⁸ Indeed, women are noticeably absent from this particular discussion for East Lothian between 1610 and 1640. None appear to request a larger fine for less penance, it is only their male contemporaries. In the cases where these male requests relate to sexual indiscretions, their female partners (such as Nans Baillie and Margaret Maghie) are completely omitted from any bargaining. But this is not the whole picture. The key factors of money and articulation would have also been out of reach for certain men.

George Baillie's request to the North Berwick session was unusual and ultimately unsuccessful, yet he was able to make such a request because he possessed the means to do so. It is not known whether he was a burgher, but he had a household which employed servants, ready cash, credit enough to find caution to satisfy and the ability to bargain with the session on the terms of dismissal for Nans Baillie. He was also a literate man who could clearly sign his name to the terms of agreement reached. The ability to find caution in front of any court relied heavily on reputation, affecting both men and women. DesBrisay has emphasised the dislocation and isolation experienced by young female domestic servants, newly arrived in urban centres, but this was not an exclusively female experience.³⁹ Men who had recently arrived in Haddington could struggle with finding the caution necessary to avoid a stay in the tolbooth or a stint of public humiliation. An 'Englishman' named Andro Wilson found this to be the case on 25 August 1624 when he appeared before Haddington burgh court, accused of 'invaiding ane pure man callit Thomas Edinestoun and ane pure woman callit Kathren Nycolsoun

³⁶ Mitchison and Leneman, *Girls in Trouble*, 113; Leneman and Mitchison, *Sin in the City*, 36.

³⁷ The shaming nature of public penance is examined in chapter 5.

³⁸ Mitchison and Leneman, *Girls in Trouble*, 36.

³⁹ DesBrisay, 'Twisted by Definition', 142.

upoun the Kingis Hie Streat'.⁴⁰ For his offence, Wilson had already been 'put in the stokes and thaireft[er] releivit at the earnest requeistis of the said Thomas and Katharen for the quhilk he being not able to find cautione being heir ane stranger furth of his awin countrey'.⁴¹ Where George Baillie had been in a position to attempt to escape the stool of repentance and find caution so that his son could be baptised, Wilson had not acquired sufficient status and honourable reputation within the burgh to procure a cautioner, rendering him unable to escape the stocks by that means.⁴²

If the North Berwick session of 1614 was adverse to the prospect of sinners paying their way to redemption or aiding the redemption of others, this was not always the case in neighbouring parishes between 1610 and 1640. To those who could afford such an alternative, not all East Lothian sessions were adverse to this prospect; nor were they operating in a religious bubble, insulated from challenges that may have been affecting the parish. Responsibility for poverty was a heavy burden in itself. One of the male masters from figure 6.2, appearing before the Aberlady session on 30 September 1638 'for prophanatione of the sabboth day in setting his servants to dighting cornes' was ordered to 'pay 20 sh of penultie to the use of the puir [by] this day aucht dayis or utherwyse to compeer publiclie in presence of the hail congregatione in quhite sheits to acknowledge his offence'.⁴³ Redemption through a public show of repentance was only threatened here – the primary goal of the session was the successful collection of a pecuniary penalty which could be put to good use. The appeal of such an outcome was evident in Tynninghame as early as 1617. At a time when the neighbouring North Berwick session was recording a refusal of payment in lieu of penance, the same requests were being viewed very differently by the Tynninghame elders. On 9 February 1617

comperit George Chalmeris servitor to the Laird of Skugall being callit on for his fornication comittit with Agnes Brysone confessed his oversight being accusit and said that he was readdie to satisfie the kirk maist willinglie desiring in the meine tyme that he nicht sitt bot ane Sondag on the pillar for quhilk cause he sald give the greater penaltie to the pure. The minister was lothe to grant heirunto seing he affirmed that he never did it to any except to ane man befor and that it was ane evill preparative seing utheris nicht desire lyke. Yit being informit of the great necessitie of many pure in the parosche and seing the said George verie penitent in all appearance, the elderis all present consenting heirto was enforcit to resave him that day and ordainit him presentlie to go to the pillar and presentlie to pay thre lib.⁴⁴

⁴⁰ NRS, B30/10/11, f. 86.

⁴¹ NRS, B30/10/11, f. 86. On the limits of social control, see chapter 6.

⁴² For more on credit and the culture of credit between men in early modern Edinburgh see Paul, 'Credit and Social Relations'.

⁴³ NRS, CH2/4/1, f. 33.

⁴⁴ NRS, CH2/359/1, f. 10.

John Lauder, himself a local man as the son of a Tynninghame bailie, had been minister of the parish since 1613.⁴⁵ His response to George Chalmers' offer centred on the fear it would create an 'evill' precedent, which was only calmed by the reassurances of Chalmers contrition from his elders. This illustrates Mitchison and Leneman's point that the kirk traditionally focused on repentance and redemption in its punishments, with Lauder's awareness that monetary alternatives to the public display of these would undermine this authority – something that would eventually contribute the overall decline in power and influence of the sessions, especially in jurisdiction over illicit sex. Chalmers had been held to account for a sexual fault, but he did not succeed in completely removing himself from the pillar. Instead, for a sum less than that offered by George Baillie in neighbouring North Berwick, he succeeded in limiting his exposure to the congregation – largely because of the pragmatism of the session elders in his parish. He was also able to pay the sum, which was triple the usual amount of 20s.. As a servant to the laird of Scoughall, it was a significant amount that not all servant men, much less servant women, would have been able to find.

Requests such as these were relatively unusual. Indeed, requests to pay money in lieu of public penance are notable by their complete absence from the surviving written record of other sessions in the dataset. This was the case for the combined total of over 400 disciplinary cases which were recorded by the sessions of Haddington, Saltoun, Pencaitland and Aberlady between 1629 and 1640. John Lauder is recorded to have never granted such concessions to anyone 'except to ane man befor'. If it was recorded in the minutes like Chalmers, this would have to have been prior to May 1615 when the surviving record starts. Yet for many parishes, no record of any such requests exists at all – in fact, they are conspicuous by their absence. An appearance before the Yester session on 2 March 1623 offers an explanation for this. On this day

Richard Cranstoune having sittin ane Sunday on the pillar for his second fornication he desyrit to be excusit from sitting on the pillar the rest of the Sundays and offerit to give the grater penultie. The sessione having considerate the grait number and neid of the puir in the parochin ordenit that he sould pay sax pund and be excusit from sitting on the pillar of the rest of the Sundays and that all quho desirit the lyk faivour for the second falt sould consigne to the box and sit ane Sunday on the pillar.⁴⁶

Here, the Yester session are clearly setting a precedent for the future – that a fine of £6 would necessitate only one appearance on the pillar for a first relapse in fornication.

⁴⁵ Scott (ed.), *Fasti Ecclesiae*, 425.

⁴⁶ NRS, CH2/377/1, f. 89.

Cranstone's is the sole request of its kind to have been recorded by the session; for any subsequent sinners one public appearance and £6 fine could constitute satisfying the kirk 'according to order', without the need to document any further detail. It was a favoured phrase of the Yester session clerk throughout. Furthermore, if either James Mitchelson or his successor James Fleming shared the concerns of their colleague John Lauder, these were not recorded in the minutes. Indeed, any concerns that Mitchelson may have had in 1623 were overcome to the extent that Richard Cranstone's treatment was to be the first of many possibilities, not just a one off due to the needs of the parish poor at that particular time.

An inflated fine of £6 was seen as an adequate offer in lieu of the five additional Sundays on the pillar prescribed for a first relapse in fornication. That Yester had joined Tynninghame in openly tolerating such an offer in written record suggests something about George Baillie's lesser suggestion of £4 to the North Berwick session. No other offers of this kind were recorded in the surviving minutes to have been made to the North Berwick session – but, as Pollmann's research has shown, this is no guarantee that they were not made nor that any larger sums were not accepted. Perhaps £4 was not large enough to justify contravening an order from the General Assembly for the sake of the parish poor. Regardless of motivation, in this instance Baillie's socio-economic status was of no help to him.

As well as remitting the public penance of fornicators who could afford such treatment, the Yester session was in the habit of setting fines for other offences based on the ability to pay, thus benefiting those of lesser means unlike in DesBrisay's Aberdeen. On 16 December 1621, the session decided to set a sliding scale of fines, for unspecified offences, so that 'meilmen and fearmeris sall pay four pund to the box, servands 40 sh, bairns of ten or twelf (boys) year old thertie sh or their faytheris sall pay it for tham'.⁴⁷ Women were completely excluded from the ordinance and no similar measures were introduced for them. Yester was not alone in operating such a system – the Prestonpans session was similarly inclined to issue fines according to rank and was not so gender-specific in doing so. During 1610, both the session and town magistrates were highly concerned with 'the great abuse of this parishe be the retaining and resetting of straingers of suspect lyfe without any testificat of their lyfs befor' – something

⁴⁷ NRS, CH2/377/1, ff. 80-1.

reflected by a spate of prosecutions during the first two months of the year.⁴⁸ At a session meeting on 1 March, it was ordained that any parishioner who let a house to a stranger with no testimonial or hired them into domestic service would be fined twenty shillings, except those 'of a great rank sall pay toties quoties XL sh or mair according to their rank and discretion of session and magistrats'.⁴⁹ Their appreciation of ability to pay was shown again later in the month. On 22 March, the session issued another ordinance 'because of the great ignorance of many at the examination preceeding the communion and negligence of many'. Here, it set down not only 'that everie howsholder sall be answerabill for the hail hous', but that the master of the house would be liable for a 40d. fine and 'utherways the howshold according to ranks', presumably on a sliding downwards scale.⁵⁰ In this case, the Prestonpans session also subscribed to the importance of a patriarchal household structure, with the male head being held responsible for 'intimation of any of his howshold' to attend the examination under the pain of a 40d. fine.

It seems that the Prestonpans session was keen to operate some form of leveller when it came to imposing fines and other punishments on its parishioners. Concern that all members of the community should be subject to godly discipline was voiced on 24 December 1609,

the quhilk day it is aggreit upoun be the sessioun and civill magistrats that persons or persons who observe or keip the superstitious tyme of yuill or uther pastaime and idill days that be changing apparel ordinar or leafing of to do sic wark as may be got tai done sall without exception of persone or degrie be punishit and poyndit (according to the act of parliament and siclyke) in the penaltie of [blank] it is decernit that the act of befor of the dait the 16 Dec 1600 be execut againe.⁵¹

That this session was joining with the civil authorities to actively police popular pastimes suggests something of its high level of disciplinary activity – and its aim to exert a level of social control over all members of the community in question, regardless of their 'degrie'. As previously mentioned, DesBrisay's argument can be extended within one sex because the ability to pay a standardised 40 shilling fornication fine would differ according to your 'degrie'. But the joint actions of the Prestonpans civil and

⁴⁸ NRS, OPR 718/1, f. 63.

⁴⁹ NRS, OPR 718/1, f. 63.

⁵⁰ NRS, OPR 718/1, f. 63.

⁵¹ NRS, OPR 718/1, f. 1. See 'Act for abolisheing of the actis contrair the trew religioun' of 5 June 1592, in K. M. Brown et al (eds.), *The Records of the Parliaments of Scotland to 1707* (St Andrews, 2007-2011), 1592/4/26, accessed on 29th November 2011.

ecclesiastical authorities during the 1610s are strong evidence that some sessions were actively working to account for this differentiation in means, either just for working men or for household members more generally; whilst others were enabling such differences in status with the option to pay your way off the stool. In the case of Yester, both of these statements were true – presumably the category of offence became a deciding factor at this most local level.

Prestonpans, Tynninghame, Yester and North Berwick are the only four East Lothian sessions that have surviving minutes from the 1610s and 1620s. Three of these four were in close proximity and had experience of dealing with male parishioners attempting to pay their way out of punishments for sexual sin. The cases in question did not involve titled members of the local gentry, only men who possessed the ability and means to negotiate an escape from public penance. In other sessions, like Sir Patrick's Aberlady, a title could insure you against answering for your sexual activities altogether – as recognised by Leneman and Mitchison for the later period and by Pollmann in Utrecht.⁵² The recorded actions of the authorities in these four parishes within a short space of time suggest the presence of localised variation at parish-level, even within presbyteries, that previously has not been truly appreciated. Throughout Todd's *Culture of Protestantism*, emphasis is placed on the inclusiveness of the kirk session and on the similarity of the disciplinary experience for parishioners throughout the country as a whole – to the extent that 'a remarkable uniform discipline on the visibly ungodly' was successfully established by 1640.⁵³ But in East Lothian between 1610 and 1640, according to rank continued to resonate. This included the identification of high-status individuals – sometimes aristocratic women like James Hepburn's mother, Lady Bearford – by the local authorities as an important, patriarchal resource that could be used for social control.

Mitchison and Leneman have suggested how, by the late eighteenth-century, the kirk's authority was being irreversibly undermined by the changing relationship between fines and penance, especially for sexual cases. It was a challenge already being negotiated in East Lothian parishes before 1640, although it was not expected by either kirk or petitioner that a large fine alone would ensure forgiveness and personal redemption. Those who chose to part with £6 in fines in Yester still had to sit one Sunday in the

⁵² Leneman and Mitchison, *Sin in the City*, 30; Pollmann, 'Off the Record', 432-3.

⁵³ Todd, *Culture of Protestantism*, 410-11.

place of repentance. 'Repentance for redemption' was central to the kirk's operation, without which its authority entered a steep decline after 1780. The strongest weapon in the kirk's arsenal, aside from referral to the civil authorities, was excommunication. How effective this sanction was is debatable – indeed, Haddington presbytery records for between 1610 and 1640 show how rarely the process was started, let alone completed. Furthermore, successful enforcement of such measures would likely have needed the support and power of secular officials, from the bailies to the sheriff. More often it was threatened in order to instil the importance of action.

On 1 February 1626 'compeired Daniell Walker unmarried adulterer with Isabell Lauder married' before the brethren. Both were from North Berwick and Walker 'confessed his fault all humblie and was ordained to satisfie the elders and session of his own parochine under paine of excommunication'.⁵⁴ Indeed, the laird of Bearford was threatened with the same when facing his own penance for fornication in 1640. Excommunication would mean complete exclusion from the secular life of the community, not just from participatory religion. It was seen through to completion by the Haddington presbytery only in exceptional circumstances. Bessie Duncan and Katherine Lauder were two such cases, both denounced by the warlock Alexander Hamilton as guilty of witchcraft. At the meeting on 27 January 1630, it was noted that the brethren had not yet received 'all the depositions against them', that were necessary to 'formallie proceed to their excommunicatione'.⁵⁵ Duncan and Lauder were both executed, but in lesser circumstances the door of re-admittance was always left ajar – 'one's neighbours were forbidden to eat or drink, shelter or do business with the offender', but only 'until [they] had 'made satisfaction''.⁵⁶

II. Case Study : John Airth of Tynninghame, 1616-1629.

The case of John Airth of Tynninghame provides an example of the trials of a young man of some socioeconomic status. Airth's dealings with his parish authorities over the course of thirteen years illustrate the importance of personal status and the power the kirk exerted through its recognition of repentance and redemption. It also highlights interesting aspects of a patriarchal society with clear ideas of acceptable manhood and

⁵⁴ NRS, CH2/185/3, f. 236.

⁵⁵ NRS, CH2/185/4, f. 38.

⁵⁶ Todd, *Culture of Protestantism*, ff. 12-13.

how these changed over the course of the male life-cycle. Alexandra Shepard and Elizabeth Foyster have led the way in examining the existence of such ideals and what informed these popular perceptions in early modern England.⁵⁷ For Scotland, the academic focus has consistently rested on gender divisions and the female experience. There has been less focus on the divisions within genders that the socioeconomic factors associated with status and rank dictated and patriarchal household structure enabled. As the main holders of high status and rank, there was a specific, telling effect on the judicial experience of men.

Over the course of the eleven years between 1616 and 1627, John Airth appeared before the session on which his father, Thomas, served as an elder to answer at least five different charges ranging from fornications to acts of physical violence. He appeared in the minutes for the first time on 28 April 1616 when

Jhone Airthe sone to Thomas Airthe in Tynninghame and Jonet Watsone servitrix to the said Thomas Airthe being suspect of fornication and being warnit lawfullie callit on compeirit first the said Jonet and accusit of fornication confessit hir falt with the said Jhone Airthe. Jhone Airthe also callit compeirit and accusit of fornication with the said Jonet Watsone confest the same, being rebuikit heavily having fallin in ane elderis house.⁵⁸

Thomas Airth's patriarchal authority within his own household had been flouted by his son and servant and questioned by his colleagues. As Foyster observes: 'it was deeply insulting to men to suggest that they had lost control over their households'.⁵⁹ The couple were ordered to separate immediately and Thomas Airth reacted quickly to the outcome of the case in order to restore his personal authority and standing, promising 'to remove the said Jonet out of his hous this day, quhilk he did'. John Airth and Watson were both ordered 'to sitt 3 several sabbothis on the pillar and to pay according to the act', which was a twenty shilling fine.⁶⁰ Order was restored to the Airth household for a period of over eighteen months, but Jonet Watson would not be the last of Thomas Airth's servants to fall for his son's charms. On 28 December 1617

Marin Nisbett being sumond lawfullie callit on and accusit of fornication with Jhone Airthe confessed hir offence being rebuikit and admonished earnestlie to repentance she was ordainit presentlie to separate and to remove fra Thomas Airthis hous quhair Jhone Airthe was resident.⁶¹

⁵⁷ Foyster, *Manhood in Early Modern England*; Shepard, *Meanings of Manhood*.

⁵⁸ NRS, CH2/359/1, f. 5.

⁵⁹ Foyster, *Manhood in Early Modern England*, 87.

⁶⁰ NRS, CH2/359/1, f. 5.

⁶¹ NRS, CH2/359/1, f. 17.

Airth did not appear before the session until 4 January 1618, when he confessed his fault and 'being vehementlie rebuikit and earnestlie exhortit to repentance being his second fall and also in his fatheris hous quha was ane elder'.⁶² Although the session minutes do not record any direct questioning of Thomas Airth's household governance, that this all took place within his house was seen by the session as relevant to the circumstances of the case. For those actions in his father's house, Airth was sent to the stool for six Sundays' worth of public penance and was ordered to pay a 40 shilling fine. Their illegitimate son, Thomas, was baptised after the afternoon sermon on 12 April.⁶³

The following November, Airth put his name forward to be proclaimed in marriage to Margaret Neilson, also from Tynninghame, and they were married a few weeks later on 22 December 1618.⁶⁴ They would only have been married for four months when a new sexual scandal descended. On 14 March 1619

Marin Traill compeirit and being demandit if she was with bairne answerit that she was with bairne, being demandit to quhom she answerit to Jhone Airthe sone to Thomas Airthe in Tynninghame, being demandit if she had led with any uther men but Jhone Airthe answerit that she had to do with na uther bot him onlie.⁶⁵

In 1615, Traill appears in the kirk record as a married woman with a legitimate son. George Borthwick was baptised without his father, William Borthwick, being present.⁶⁶ These previous minutes show that Traill had been a Tynninghame resident for at least four years – she was no stranger to the parish, but a woman with a bad reputation. This meant that any accusations made by her were handled with caution by the session. The minutes note how session members believed that many in the parish thought her 'to be ane woman of na gude'.⁶⁷ It was a reputation that Airth possessed enough knowledge to play upon when he was called to answer the fornication charge and 'being demandit if he had carnal deal with Marin Traill denyit and affirmit that he wald not be the father to hir bairn because he thocht hir ane woman of evill carradge and had to do with uther men.' When asked by the session to name some of these 'uther men', Airth refused and Traill was called back to reaffirm her allegations – which she did, in vehement fashion. When threatened with an appearance before the presbytery, she retorted 'that albeit they

⁶² NRS, CH2/359/1, f. 17.

⁶³ NRS, CH2/359/1, f. 18.

⁶⁴ NRS, CH2/359/1, ff. 22, 23.

⁶⁵ NRS, CH2/369/1, f. 24.

⁶⁶ NRS, CH2/359/1, f. 2.

⁶⁷ NRS, CH2/369/1, f. 24.

should call her befor any judicatorie she wald never say utherwayis because she had already confessit the treuthe’, adding that the fornication was committed ‘on ane Sunday at even at the west end of hir motheris yaird about twentie dayis or ane moneth before Mertimes last bypast’.⁶⁸ To the session it was emerging as a complicated case, with reputations on both sides

because it was not altogidder certaine quhidder or not the said Marin Trailis husband was dead, albeit said so, secondlie because Jhone Airthe denyit that he had to do with hir, thirdly becaus Jhone Airthe was now ane maryit man and had fallin twys in fornication befor with twa severall women.⁶⁹

Airth had fallen into what Foyster would term ‘dangerous passions’, with previous extra-marital liaisons with women affecting his reputation and status as an ‘honourable man’.⁷⁰ The session therefore adjourned the case until they had received advice on how to proceed from the presbytery.

On 21 March 1619, both parties appeared again before the session. Traill had appeared before the presbytery when summoned and had stuck to her story, but Airth had not and so the presbytery ordained him to be tried again before the session with the prospect of having to give a public declaration of his innocence. With this prospect in mind

Jhone Airthe being callit on compeirit and being earnestlie exhorted to confess at lenthe confessit that he had ance to do with hir as she deponit about aucht or fourteine dayis efter Michaelmess last bypast and if the bairn come to that recking that he sald be father to the said bairn.⁷¹

This was before Airth’s marriage, but Traill had not been able to prove that her husband, William Borthwick, was dead and offered the session no elaboration of the circumstances. He had not been present at the baptism of his son in 1615, but no reason had been given. Proof of his demise was, of course, a necessity if the charges should be dealt with as fornication rather than adultery. She was given twenty days in which to produce a testimonial of his death – and so the scandal of Airth’s trilapse in fornication was to prove to be a prolonged affair. The first testimonial she produced, on 2 May 1619 from Borthwick’s last known whereabouts in Leith, was thought ‘not altogidder sufficient warrand to cleir hir from the cryme of adulterie’ and she was

⁶⁸ NRS, CH2/359/1, f. 25.

⁶⁹ NRS, CH2/359/1, f. 25.

⁷⁰ Foyster, *Manhood in Early Modern England*, 55-8.

⁷¹ NRS, CH2/359/1, ff. 25-6.

ordered to bring another that had been signed by a minister or bailie within fifteen days.⁷²

On 16 May 1619 Tynninghame's minister, John Lauder, reported that Airth had been to see him, eager to speed up the process of proving Traill's widowhood and thereby ensuring that he satisfy the kirk as a trilapsed fornicator, not an adulterer, by any method within his means. This personal intervention by Airth, using his own contacts and resources, would prove to be central to the case. Lauder reported that Airth had sent a man, John Nisbett, to Leith with view to obtaining better certification of Borthwick's death. There he happened upon one William Jackson, son to a Tynninghame man called Patrick Jackson, who testified that sometime fellow parishioner Borthwick 'was departit this lyfe being hangit at Linlithgow and declairit to him bothe the place and caus of his execution', which he put in writing to both Airth and the minister.⁷³ But it was not until 29 August, after over three months of paper-chasing in West Lothian, that the session agreed that Airth 'had producit some testimonialis quhilk were provable evidentis of the deathe of the said Marin Traillis husband'.⁷⁴

In the meantime, on the 27 June Traill had sat on the stool of repentance and started to satisfy the impatient kirk as an adulteress.⁷⁵ As a woman without the socio-economic status of her one-time sexual partner, shown to be necessary in order to either participate in or enable the investigation, after initial questioning she had been omitted from the process of verification entirely. If Airth had been in a similar situation, as a low-status male parishioner perhaps in service himself, his fate would have been sealed in similar fashion.

The post-Reformation kirk sessions may have been lauded as a sophisticated network of authority capable of pursuing and tracing individuals, but in this case the system was failing to elicit the answers that the Tynninghame session needed. The civil and ecclesiastical authorities from nearby localities were not sharing information readily – perhaps because they were simply unable to due to the incongruous or incomplete nature of their recordkeeping. Airth's fornication case with Marion Traill lasted five months after his confession, largely due to the problems that he encountered in acquiring the necessary information. This was despite Airth evidently having money and

⁷² NRS, CH2/359/1, f. 26.

⁷³ NRS, CH2/359/1, f. 27.

⁷⁴ NRS, CH2/359/1, f. 30.

⁷⁵ NRS, CH2/359/1, f. 8.

influence at his disposal – both of which he used. He met personally with the minister on 16 May 1619 to offer his help in drawing the case to a swift close and could employ a man and horse to travel to Leith to investigate accordingly.⁷⁶ His personal endeavours there revealed a location and a jurisdiction that could be contacted in writing by the minister – a turning point in the case. On 23 May 1619, probably frustrated by his lack of progress with this information in hand, Airth personally asked the minister to write to the session of Linlithgow to enquire if they had any information on Borthwick's death.⁷⁷ In fact, the Tynninghame authorities had no better success; significant delays persisted in Linlithgow whilst the burgh authorities there tried to ascertain if William Borthwick had indeed been executed by them. An extract from the relevant records would have sufficed: in his capacity as minister, John Lauder is noted to have written 'to caus the towne clerk to seik unto the process anent the execution' in Linlithgow.⁷⁸ The delays in locating and obtaining an extracted process of an execution says something about the piecemeal state of early modern record keeping by Scotland's secular courts, not just their oft-berated kirk counterparts.⁷⁹ This was so even when the case in question was purported to be a capital one resulting in execution.

Although a time-consuming and costly process for Airth, that he was not on the pillar with Marion Traill satisfying for adultery was motivation enough. Whilst Traill was still performing public penance as an adulteress, 'Jhone Airthe compeirit befor the session desiring baptism to his bairn, seing he had usit diligence in getting testimoniallis quhilk wer as he alledgit sufficient testimoniallis being certain evidentis of the deathe of Marin Trailis husband'. The session had previously stated otherwise, yet Airth – like George Baillie – had credit enough to be able to find caution that he too would start his penance, as an adulterer unless otherwise proved. Airth's illegitimate daughter was baptised on 20 July.⁸⁰

The couple were spared the requisite 26 Sundays on the stool just over one month later, thanks to Airth's continuing endeavours in Linlithgow, and resumed their satisfaction before the congregation as fornicators – drawing their narrative together to a close. But sufficient doubt had been cast in the minds of the session members, so this

⁷⁶ NRS, CH2/359/1, f. 27.

⁷⁷ NRS, CH2/359/1, f. 27.

⁷⁸ NRS, CH2/359/1, f. 27.

⁷⁹ Which helps to verify and possibly extends the caution suggested by Michael Graham when employing quantitative analytical methods to such records. See *Uses of Reform*, 75, 90-1.

⁸⁰ NRS, CH2/359/1, f. 29.

was under the condition that Airth consign £5 10 shillings that he would satisfy as an adulterer or pay a further £40 if it should be later proved that Borthwick was alive. Airth must have been in possession of ready cash, and in relatively large sums, because he paid the £5 10 shillings immediately.⁸¹ Traill had already sat three Sundays on the stool, completing the prescribed penance for a first fornication, therefore the session received her on 19 September 1619 after she had paid a 10 shilling penalty. She found caution to satisfy as an adulteress should it be discovered that she was still married at the time of her fornication. This was in the form of George Shortus, the session elder who had presented her son, George, for baptism in 1615. But she was not ordered to pay the £5 10 shillings that Airth had been, nor given the option to pay £40 instead.⁸² Perhaps in Traill's case, the session realised that delivering such sums to them would not be possible, and so they were removed from the available options – an example of 'according to rank' in practice.

John Airth's sexual failings seem to have ended with this third and final fornication and the birth of his second illegitimate child. After August 1619, he does not appear in the minutes again on any similar charges. All three of those fornications had taken place before his own marriage, after which he became the head of a household, no longer a member of someone else's. As with early modern England, this independence marked a new stage in the life-cycle of manhood, with a new set of responsibilities to correspond with the skills of self-government and restraint that were readily prescribed as ideals.⁸³ Indeed, Airth's appearances before the session had previously extended beyond answering for the moral laxity he showed by seducing his father's servants and a third woman shortly before he was due to be married. It extended into displays of overt masculinity of the kind that Shepard classifies as having 'existed in tension with patriarchal principles of order'.⁸⁴

On 16 March 1617 the minister reported to the elders that he had informed the presbytery of a great disturbance that had taken place within Dunbar parish on the night of 9 March, which included men from Tynninghame who 'drew swords and quhingens and raist the pepill of the towne' as 'they notoriouslie brak the sabboth' after copious

⁸¹ NRS, CH2/359/1, f. 30.

⁸² NRS, CH2/359/1, f. 31.

⁸³ Shepard, *Meanings of Manhood*, 23-37.

⁸⁴ Shepard, *Meanings of Manhood*, 128.

amounts of drinking.⁸⁵ John Airth was amongst the group and was duly summoned to appear before the Dunbar kirk session to answer their charges of aggravated Sabbath breach. This he eventually did. He satisfied the Dunbar session in accordance with the presbytery on 13 April 1617, in the same manner as Robert Sinclair and Robert Young had done before him, 'by cuming befor the blissing befor the pulpit publicklye and sitting downe on their kneis, confessit their falt and cravat mercy according to the order and payit the penaltie of sabboth breakeris'.⁸⁶ On June 22 1617, Airth was back before the Tynninghame session where

the minister shew to the elderis present how that the last sabbothe about the sun setting John Airthe sone to Thomas Airthe in Tynninghame had abused Alexander Davidson and his man also in the said Alexander Davidsons his hous after drinking by schorning him and threttening farther by manacing to stryk him and that he struik Robert Shortus the said Alexander his man.⁸⁷

Elizabeth Foyster argues that 'being able to defend one's honour with one's fists was important'.⁸⁸ Although with whinger rather than fist, Airth's actions here well illustrate the similar tensions that existed for Scottish men, caught between demonstrating and defending their manhood and a peaceful, ordered existence within a patriarchal household and community. When the session reconvened one week later, witnesses to the attack were called – shedding some light on the background to the outburst in line with this analysis. Four witnesses

all deponit severallie and their depositions agreit to wit that Jhone Airthe desyrit Alexander Davidson to sell him aill, Alexander Davidson said he wald not because he saw thair was some appearance of ane ploy betwixt him and some of his companie, thairfor Jhone Airthe raiss up and said he shall put ane quhinger through baith his cheikis bot as yit drew not ane quhinger for the rest held him. Alexander Davidson seing this drew his quhinger first apparentlie to defend himself quhilk maid the said Jhone Airthe to be the mair intensed against him quhairupon he drew his quhinger and manacit the said Alexander Davidson thretning to stryk him.⁸⁹

Whether a show of manly strength for the benefit of his companions or an assertive, masculine reaction against suggestion of 'some appearance of ane ploy', it was unusual for such a case to come before the kirk sessions: instances of violence being much more commonly heard in either the burgh or sheriff courts. The session evidently thought the same and decided 'that it was the kirks pairt onlie to meddill with taking order for prophanation of the sabbothe and that the injurie done be any of them to uther did

⁸⁵ NRS, CH2/359/1, f. 11.

⁸⁶ NRS, CH2/359/1, f. 11.

⁸⁷ NRS, CH2/359/1, f. 13.

⁸⁸ Foyster, *Manhood in Early Modern England*, 177.

⁸⁹ NRS, CH2/359/1, f. 13.

apperteine to the civil magistrat', to whom they then referred the case. No further record exists past this referral, nor details as to which 'civil magistrat' they had in mind – the bailies, a baron court or the sheriff court. The session did, however, order both men to perform public repentance on their knees, pay a fine and 'that Jhone Airthe his falt wair far greater than Alexanderis was' and therefore 'at the time of their satisfaction the minister sald aggravate Jhone Airthis offence mair'. Subsequently, the minister had to ask Thomas Airth to use his patriarchal authority to chase his son's unpaid penalty so that he could be received by the congregation having performed adequate penance.⁹⁰

After these cases of violence and his case of fornication with Marion Traill, John Airth disappears from the session minutes entirely until 1626. There is no indication of his age in the records, and his actions in the intervening ten years are unknown. It is possible that his actions before 1617 were similar to those of the hot-headed, lusty young Cambridge men examined by Shepard, and that Airth had since managed to tame his temper and sexual appetite to embrace the role of being a father within marriage and the head of a patriarchal household. An early modern institution, the patriarchal household held the opposite ideals of thrift, order and self-control at its centre.⁹¹

On 28 November 1619, Airth was one of three male witnesses at the baptism of the illegitimate daughter of John Davie, grieve to Lady Bass.⁹² Two legitimate children of his own shortly followed.⁹³ However, on 7 January 1626 the session noted that there was 'some suspicion of fornication betwixt Andrew Fay servand to Jhone Airthe and Bessie Lairmonth in Skugall'.⁹⁴ Airth's position was beginning to resemble his father's a decade before. The minutes then cease from February 1626 until March 1627; but the first entry when they resume on 18 March reads

The minister desyrit Thomas to advertise Jhone Airthe his sone to tak heid if Bessie Wallace reportit to Jhone Airthis and was seing Robert Skugall servand to Jhone Airthe [who] was suspect in fornication with the said Bessie Wallace, and if they so servit togidder they sald be callit befor the session againe.⁹⁵

Airth may have tamed his own sinful ways but now the governance of his household was definitely in question as he embarked on a new phase of manhood as a patriarchal householder. Furthermore, the session was once more casting a role for his father in the

⁹⁰ NRS, CH2/359/1, ff. 13, 14.

⁹¹ Shepard, *Meanings of Manhood*, 93-113.

⁹² NRS, CH2/359/1, f. 32.

⁹³ NRS, CH2/359/1, ff. 34, 45.

⁹⁴ NRS, CH2/359/1, f. 54.

⁹⁵ NRS, CH2/359/1, f. 56.

unfolding situation because, although his son no longer lived with him, Thomas Airth's paternal position still included advisory responsibilities which could be both judged and used by the session.

One month later and Thomas Airth would no longer have to impart such official messages to his son: at the meeting of the session on 22 April 1627, the clerk noted that 'Alexander Cunnyhame, George Lawder and Jhone Airthe nominat to be elderis'.⁹⁶ Airth was accepted to the same post that his father still held and was still serving as an elder in 1629.⁹⁷ He had acknowledged and accounted for his previous behaviour and had graduated to the formal position of an office-holder, responsible for the oversight of the behaviour of others beyond his own household. That he does not appear again, at the sharp end of the session's business, is lasting evidence of this. That he had accounted for his previous behaviour had made these developments possible. Always ready to forgive, the kirk was able to welcome Airth into an official role, his socioeconomic status allowing him to follow his father's lead because he had been absolved of all his youthful sins and was aware of any new personal challenges that his servants may have had in store for him as their employer and master.

III. Before Sheriff and Provost

John Airth's behaviour over a thirteen-year period had, on occasion, necessitated the intervention of the civil authorities. The Tynninghame session had accepted that there were limits to its own jurisdiction and referred one of Airth's violent outbursts to the civil magistrate. This attitude is reflected by the small number of violence cases that were heard and dealt with by East Lothian sessions between 1610 and 1640. As shown in figure 3.4, only seven individuals – six men and one woman – appeared before a kirk session on violence charges, two in Aberlady and five in North Berwick. A further four individuals personally brought bills complaining of violent behaviour to the sessions, as shown in figure 3.5. In contrast, cases of violence dominated business in Haddington's sheriff court and came second only to theft in its burgh court, as shown in figures 3.8 and 3.9. In the sheriff court, all bar one of these individuals accused of acts of violence were male and all who were convicted were either enacted to keep His Majesty's peace

⁹⁶ NRS, CH2/359/1, f. 56.

⁹⁷ On 22 February 1629, John Airth is referred to in the minutes as collecting and consigning the penalty of James Anderson to the poor box. NRS, CH2/359/1, f. 60.

or discerned to pay an unlaw of a certain sum, usually £50, which they had to find caution to settle within a set period of time – like Agnes Cockburn in the previous chapter. Here, civil punishments were divorced from the repentance-retribution cycle seen in the kirk sessions and the ‘blanket of authority’ identified by Graham was in action, in this instance exerting pressure on male purses without regard to ability to pay.

Before the sheriff court on 22 October 1629 ‘compeered personalie Thomas Leitch in Abirlady to answer for the blode alledged comittit be him in the persone of [blank] Tod thair’. Leitch had previously secured caution for his appearance in the form of Robert Gray, skinner and burgess of Haddington – although this had not saved him from being warded in the tolbooth. At this appearance, Leitch was ordered to ‘enter againe in waird within the tolbuith of Hadingtoun to answer for the said blode and to give satisfaction to the said judge and partie offendit and that under the paine of 500 lib money in caice of failyie’.⁹⁸ Leitch was the only individual imprisoned by the sheriff as punishment for his violence, others could expect to be warded until their unlaw was paid unless they could secure adequate caution to insure otherwise – much like a modern bail bond. On 26 April 1631, James Gullane appeared before James Cockburn, sheriff depute

quha being apprehendit and wairdit within the tolbuith of the said burgh for the maist wrangous abusing of Issobell Hepburne indwellar in the said Tounn of Abbey and Patrick Hepburne there upoun Sunday at nycht last the XXIII day of Aprill instant and for the wrangous breking of their wyre and glassin windowis without any occasioun or offence done to him be thame.

Gullane confessed the offence ‘promising nevir to comitt the lyke heirefter and declairit upoun his great aith that he culd get nane quha would be caution for him to that effect’.⁹⁹ Gullane’s means and social standing within the burgh were inadequate to resolve the case either through direct payment or caution and it was Isobel and Patrick Hepburn who appreciated his predicament, not the judicial process. After hearing his statement, ‘the saids Issobell and Patrick acceptit of this his confession’ and were content that Gullane should be enacted ‘under the paine of 500 merks money and under the paine of perjurie and defamation’ that he should at no time in the future ‘truble, molest nor inquyet’ them, but that he should be ‘esteamed ane cristiane thereft[er]’.¹⁰⁰ Whilst the language of his oath indicates how church and state remained entwined and

⁹⁸ NRS, SC40/4/18, f. 37.

⁹⁹ NRS, SC40/7/18, f. 163.

¹⁰⁰ NRS, SC40/7/18, f. 163.

formalised in the law courts, it was the acceptance of Gullane's assurances by the Hepburns that secured his release by the sheriff rather than any formal, legal process. As with the settlement of personal debts through poinding, no leeway was given to a man convicted of violence by the sheriff court based on his ability to pay.

Instances of violence only came second in number to theft in the crimes tried by Haddington burgh court between 1610 and 1640. The outcomes of these individual theft cases were distributed as follows:

Figure 7.1: distribution of outcomes in theft cases heard by the Haddington burgh court between 1610 and 1640.

Punishment	Male	Female	TOTAL
Acquitted	4	1	5
Banished	23	24	47
Convoyed and Banished	8	7	15
Cautioned	2	0	2
Enacted ¹⁰¹	3	1	4
Executed	5	0	5
Referred Elsewhere	1	0	1
Scourged and Banished	6	7	13
Scourged and Branded	2	0	2
Scourged, Branded and Banished	6	4	10
Warded and fined	1	0	1
TOTAL	61	44	105

Source: Haddington burgh court books, NRS, B30/10/8-13.

More men than women were tried and convicted of theft by the burgh court during this period, although the numeric distribution of punishments between the sexes was remarkable for its evenness. Execution was a notable exception – the burgh court did not execute any women for theft between 1610 and 1640. This was probably in part due to the sort of theft that resulted in such consequences. Three of the five – Robert Thomson, John Dow and John Smith – had been convicted of stealing sheep.¹⁰² Female thieves who were banished were, however, threatened with such treatment should they return – most commonly by being drowned in the Tyne.

The individuals who were convicted of their crime but escaped corporal punishment or banishment deserve some closer attention. Their number was small: four were enacted, two cautioned and one warded and fined. Banishment, sometimes

¹⁰¹ Enacted to maintain future good behaviour or to keep His Majesty's peace under pain of punishment.

¹⁰² NRS, B30/10/10, f. 245; B30/10/13, f. 99.

accompanied with some form of whipping or display, was much more common, in accordance with the 'lawis of [the] contrey'.¹⁰³ On 28 April 1619, 'William Haistie sone to Patrik Haistie maltman indwellar in the said burgh' appeared, having been 'apprehendit and wairdit in the tollbuith of the said burgh for certine pykerie committit be him within the samen burgh quhilk was sufficiently provin to the saids judgeis'.¹⁰⁴ Haistie's father was a burgh indweller with a noted occupation. Haistie presumably still lived at home because he was young enough to be defined as the son of a local maltman, resident within the burgh and therefore privy on some level to its trading privileges. Had he been in service and a member of another's household, subject to their authority, he would have been referred to as such. One or both of these factors – age and status – resulted in Haistie being freed by the provost and bailies under the condition that he 'never heirefter comit the lyke offence under the paine of skurging of him threw the hail streittis of this burgh'.¹⁰⁵

Where this case had combined factors of age and social status, age alone was sometimes influential in mitigating local kirk session judgements between 1610 and 1640. Such was the case in February 1616, when seven individuals appeared before the Tynninghame session accused of guising during the previous yuletide. At their first appearance on 4 February, the group were 'accusit for their superstitious doing and abhominations', to which all confessed, adding 'they knew not that it suld have so offendit the minister and elderis'. The three women of the group then elaborated 'that they did gang to some houssis in the towne to sho the guising bot that they wer not gyssers themselves for they did not put on menis clothing', before all promised never to do the like again.¹⁰⁶ The session took the presbytery's advice on how to formally deal with the group and reconvened on 25 February. The presbytery advised that 'the said deliquents find caution under the paine of twentie lib everie ane of them' for their future amendment, but that they should not have to perform public penance because they 'had beine yong'. Had they been older 'they wald have beine severlie censurit'.¹⁰⁷

Under certain circumstances, disciplinary allowances could be made for foolish youth; for other cases, social status can be seen to have been a deciding factor in dealing

¹⁰³ NRS, B30/10/12, f. 35.

¹⁰⁴ 'Pykerie' means theft, especially petty theft or pilfering, pickery. It is still in use as a modern Scots legal term

¹⁰⁵ NRS, B30/10/10, ff. 124-5.

¹⁰⁶ NRS, CH2/359/1, f. 4.

¹⁰⁷ NRS, CH2/359/1, f. 4.

with crime. In Haddington burgh court on 7 September 1615, John Simpson younger, John Wilkie and John Thomson appeared, all three having been apprehended and warded on certain points of theft. All three were notaries – educated, literate men. Simpson younger was himself a burgher and, alongside Wilkie, had represented Alexander Sinclair, a Haddington indweller, as procurator in the prosecution of John Bartholomew’s children for theft on 5 March 1611.¹⁰⁸ All stood accused for ‘cuming to George Thomsounis hous in this burgh upoun Tuesday the fyft of September instant under clude of nyt at ellevin hours at evin and there with your compliceis for the thyftuous steilling and away taking out of the said George his stable thrie geyslin [goslings] of fourteen dayis auld’. Of the three men, only Thomson was convicted and was sentenced to ‘remaine in waird for the space of four dayis heirefter and to pay twentie pundis of penaltie for his offence’.¹⁰⁹ When Thomas Haldane was convicted of stealing two sheaves of peas from John Ayton’s yard on 11 March 1617 he was ‘baneshit the toun and liberties thereof for evir’ under the condition that he find caution within twenty-four hours to remove himself voluntarily, ‘utherwayis to be skurget’.¹¹⁰ Similarly, on 1 February 1623 Thomas Wauchope (‘alleging him to be borne in Mersingtoun’) was banished for ‘pulling of stakis and rubbing of corne thereof out of the barne yaird of Clerkingtoun’. Should he return, he was warned that ‘he salbe skurgit throw the toun and brunt on the shoulder with the tounes buring irn without furder indittay’.¹¹¹ For John Thompson, a professional man and burgh resident, four days imprisonment in the relative privacy of the tolbooth and the payment of a hefty fine was seen to suffice for being convicted of a like offence.

Between 1424 and 1640, the statute law on theft was limited to clarifying what constituted certain types of theft – for example, where game and wildlife were concerned – and suitable methods of apprehending those suspected of theft. Special measures to deal with problematic geographical areas – especially the borders – can also be seen in law.¹¹² Perhaps reflecting its roots in common law, no laws were enacted to either define theft as a crime or to standardise punishments. In his *Practicks*, Balfour’s overview of the ‘pane of thift’ is restricted to Scotland’s old laws dating from before 1424. He cites one item from *Leges Burgorum Scocie* which defined punishments according

¹⁰⁸ NRS, B30/10/9, ff. 32-3.

¹⁰⁹ NRS, B30/10/9, f. 230.

¹¹⁰ NRS, B30/10/10, ff. 59-60.

¹¹¹ NRS, B30/10/10, f. 252.

¹¹² Balfour, *Practicks*, 521-9.

to values of the theft, for example ‘gif ony theif be apprehendit within burgh, with stollin breid, to the valour of ane halfpenny, he sall be scourgit throw the town’, and goes on to clarify ‘in quhat caisis a theif sould not be hangit’.¹¹³ That he does so, suggests that these old laws were still a contemporary point of reference. But there is no record of punishments for theft being defined by central government according to the social status of the thief in question, nor exemptions being allowed on such grounds.

It is not known for certain whether Thompson was a burgess like his ‘compleis’ Simpson, but it was not unheard of for indwellers to be banished for theft by the Haddington burgh court. Two female indwellers, Bessie and Isobel Wilson, were even convoyed through the streets by the lockman beforehand on 24 April 1624.¹¹⁴ But none were publicly whipped or branded for theft. On 12 June 1629, the provost and bailies made it quite clear that scourging formed part of the prescribed treatment for such offences – as laid down by parliament. On this day ‘comeperit personalie John Gottray tailyeor burges their’ and confessed committing ‘sundrie pittie thiftis within this burgh and specialie in steilling and taking out of George Blaikburnis staks out of his barneyaird within the said burgh certain quheit at divers tymes’. For such crimes, the punishment that was ‘dew to be imposit and inflictit upoun him be the lawis of contrey quhilk is skurging and banishmement’, but ‘the provest and baillies of the said burgh have out of their lenitie remittit him the said punischment of skurging and public inpannellung of him not willing to put him to oppin stance’ on the condition that ‘the said Johne willinglie and of his awin accord take upoun him voluntar banichment’.¹¹⁵ In absence of any other given reason, the thought of publicly displaying a town burgess – albeit a thieving one – was not acceptable to James Bartrum or Patrick Brown, the bailies who presided over the case. Gottray’s socio-economic standing had saved him from painful, public humiliation.

IV. Conclusion

East Lothian between 1610 and 1640 was a patriarchal society, with the patriarchal household at the centre of each parish community. Patriarchy in this period did not simply encompass gender differences, but the importance of rank – a hierarchy present

¹¹³ Balfour, *Practicks*, 526.

¹¹⁴ NRS, B30/10/11, f. 65.

¹¹⁵ NRS, B30/10/12, f. 35.

within households and families and within the broader community, as conferred by socio-economic status and seniority. Such conditions served to exclude many ordinary women from the bargaining process, but they also drew divisions between men. Other individuals, including certain women, became resources for social control, or evaded such control as it applied to their own behaviour.

As popular expectations of men changed over the course of the life-cycle, the personal experience of authority was variable within East Lothian on a parish-by-parish basis and could even vary within a parish depending on the matter in hand. Rather than reflecting an urban-rural divide in the experience of social control, this shows the truly localised nature of governance during this period, where local men were making local decisions that often differed from those of their neighbours. Similarly, the experience of prosecution by the Haddington burgh authorities and sheriff court were not always divorced from matters of status. The ability to pay fines, find sufficient caution and, occasionally, punishment itself was experienced according to rank.

Based on the evidence from Haddingtonshire's secular and ecclesiastical courts, there is a case to be made that the major influence over social control – the regulation of personal behaviour and personal relationships in the parish setting – was a combination of gender and socioeconomic status. But exactly what bearing these factors had on individual cases depended on geography. In short, this was not a homogeneous blanket of State and Kirk authority, but the setting and regulation of behavioural standards in a godly society that was structured along patriarchal lines.

Conclusion

Kirk, State and Social Control

Early modern government can be defined in three ways. Firstly, it can be seen as the everyday business of central government that focused on the actions of the monarch and his or her court. Secondly, it can be viewed as the broader political community of parliament and its members. Thirdly, government was experienced by ordinary people in the localities through their interactions with their immediate superiors – the bailies, the elders and the lords of local baron courts.¹ It is by this last definition that the ordinary folk of East Lothian experienced government between 1610 and 1640. Through a network of local courts and local officials, their actions, behaviour and personal relationships were regulated by the State in a programme of social control that was policed from above and subscribed to from below.

This thesis was introduced with three major aims. The first was to examine how the local judicial system operated and the nature of personal authority within East Lothian's secular and ecclesiastical courts. The local court network was crucial for social control during the early modern period. Between 1610 and 1640, the East Lothian judicial system was a sophisticated, integrated operation. It was a network built around local men – local patriarchs – whose own authority straddled various jurisdictions and geographies. Along with shared concerns and common methods of governance (as seen in punishment rituals), this helped to join Kirk and State together in the parishes, and gave the government of the localities its legitimacy. There was no popular backlash against this system of governance and the social control of behaviour and actions based on religious ideals. Like Calvin's Geneva, early modern Germany and Reformed Utrecht, in this part of lowland Scotland the Church operated in partnership with the State. Individuals who benefitted from the services provided by the kirk sessions – including poor relief and schooling – also used the courts to seek the reinstatement of normal neighbourly relations through the mediation and arbitration of disputes, as did parishioners in early modern England.

The second major aim of this thesis was to ascertain and examine the experience of social control as it was delivered through this judicial system. The official regulation of

¹ Goodare, *Government of Scotland*, 298-9.

the behaviour and actions of individuals and their interpersonal relationships was present in East Lothian between 1610 and 1640. But social control was not solely in the power of the Kirk. These East Lothian parishes were typical early modern societies, where notions of honour, dishonour and shame held great importance because reputation was crucial for personal and household credit. As in England and on the Continent, shame was a powerful tool for social control and was used by all Scottish courts in their punishment of crime and ungodly behaviour. This was a religious criminal justice system, but social control was prevented from being truly oppressive because it relied on parishioners to operate. As identified for early modern England by Laura Gowing, Bernard Capp and Martin Ingram, ordinary Scottish folk used the court system for their own ends by bringing cases before the kirk sessions personally. Furthermore, parishioners co-operated with officials when caught misbehaving, as has been shown by Margo Todd. But refusing to co-operate with the kirk sessions did affect the ability of those sessions to police and prosecute ungodly behaviour. Official authority had limits.

The final major aim of this thesis was to evaluate the experience of social control in terms of gender, socioeconomic status and geography. In short, social control as experienced through East Lothian's secular and ecclesiastical courts, was in no way homogeneous. When it came to the experience of kirk discipline, both men and women were held to account for their sexual indiscretions and ungodly behaviours, and both men and women experienced the shame of making their public repentance. But when it came to illicit sex, the burden of proof fell on women rather than men. Women experienced the Kirk's disciplinary 'sting', as identified by Michael Graham. There is not enough evidence to suggest that social control in early modern Scotland had a gendered double standard. But there is evidence enough to be able to say that men and women were not equals before the courts.

In a patriarchal, seventeenth-century society where all office-holders were men of social standing and all assize members were men with property, equality between men and women was not possible. Neither was equality *within* the sexes. Patriarchal societies are hierarchies, and East Lothian parishes and their congregations subscribed to popular patriarchal ideals. Patriarchy informed the experience of social control, from the ritual of baptism and its use for policing illicit sex, to the regulation of the sabbath and the punishment of those caught working on this day of rest and reflection. During this

period, households were expected to be run to popular patriarchal standards, and those who failed in their responsibilities towards others, or neglected their obligations to their superiors, were held to account by their peers, the Kirk and the State.

In a patriarchal society, rank is important. The East Lothian authorities were far from blind to social status and economic might between 1610 and 1640. Men who had sufficient means could pay their way off the stool of repentance, and others who had sufficient social status (or the benefit of youth) could avoid the kirk session altogether. Gordon DesBrisay has shown how women were disadvantaged by the setting of equal disciplinary fines, but the poorer sort of men struggled to pay these fines too. In the secular courts, socioeconomic status as conferred through reputation was needed to secure caution, and the burgh authorities were unwilling to allow a burgher to be publicly whipped through the streets as a punishment for theft.

But all this was experienced according to geography. Rather than a strict rural-urban divide, or no divide at all, social control was conditioned on a parish-by-parish basis. The regulation of personal behaviour and sexual relationships differed between neighbouring communities, from whether a man could pay his way off the stool, to the punishment and fines handed down for illicit fornication. Where some kirk sessions were effective and efficient in their policing of behaviour, others needed the support of the secular authorities in order to enjoy a popular adherence to their brand of godly discipline. In conclusion, there was no homogeneous experience of social control in East Lothian, but one that depended not only on who you were but where you lived.

In answering the proposed aims of this thesis it is not intended that any conclusions can or should be applied to other geographies. Although all were agriculturally productive areas, to say that Haddingtonshire, Ayrshire and parts of Angus were comparable socially, economically or politically would inevitably obscure certain important characteristics. This could be East Lothian's economic and administrative sophistication, or Ayrshire's distinctive Reformation. To apply any conclusions from this thesis to other Scottish regions or on a national scale would be detrimental to the integrity of the research. It is more likely for further questions and proposals to emerge: are these conclusions to be found elsewhere in Scotland?

But there are bigger questions to answer here. Was social control successful? Po-Chia Hsia suggests that 'it is impossible to generalise from case studies about the degree

to which the state succeeded in imposing a moral regime on its subjects'.² Laws reflect an ideal that their authors are trying to cultivate, and the laws of this period at least are a reflection of this ideal. It follows that the relative success or failure of keeping to this ideal is most difficult or impossible to quantify in moral terms.³ Merry Wiesner-Hanks argues that laws in themselves only tell us what behaviour a society felt it most important to control, rather than the success or failure of moral discipline or the attitudes of the population.⁴

Bearing this in mind, Heide Wunder suggests that we may be too inclined to believe in the effectiveness of indoctrination and controlling institutions – such as the early modern Church. If gender norms in the forms of acceptable male and female roles were, for example, being endlessly repeated throughout early modern society, she asks how were the authorities really that successful in their attempts to regulate gender relations 'according to their ideas'.⁵ Although preaching was undoubtedly a powerful medium through which to inculcate normative values of any kind, attendance at church was often forced – as was the case in post-Reformation Scotland. Attendance could therefore be more physical than spiritual, with the common occurrence of so-called 'church-sleep'.⁶ Similarly, in 1543 English women outside of the ranks of the gentry and nobility were banned from reading the Bible, and those from the landed classes were not allowed to read to others. But it is debatable whether this was widely obeyed, and evidence from contemporary women's diaries suggest that it was not.⁷

Despite these difficulties, the evidence from across East Lothian's judicial network suggests that, between 1610 and 1640, the authorities were successful in regulating personal behaviour, personal relationships and personal actions. The courts that delivered social control enjoyed popular authority and legitimacy rather than being unwanted or unduly arbitrary. Although some aspects of social control were truly invasive and shame was relied upon as a method of enforcement, social control was only possible because of the participation of ordinary people *alongside* the officials who

² Po-Chia Hsia, *Social Discipline*, 123.

³ Wiesner-Hanks, *Women and Gender*, 42-3.

⁴ Wiesner-Hanks, *Women and Gender*, 64.

⁵ Wunder, 'Gender Norms', 50.

⁶ Wunder, 'Gender Norms', 48-9. In her own research into the kirk sessions, Janay Nugent notes the example of a man who took a metal spoon with him to the Kirk on Sundays, which he used to stab himself in the thigh when sleep threatened to overtake his godly concentration. I thank her for this amusing, informative anecdote.

⁷ Wiesner-Hanks, *Women and Gender*, 217.

were actively policing ungodly behaviour. The experience of kirk discipline and secular prosecutions was mitigated by this participation and the resources offered to parishioners by the sessions. Even in parishes with less-effective kirk sessions, such as Saltoun, godly behaviour was enforced with the help of the secular authorities and there was no popular revolt of disobedience.

Did this mean that Scotland succeeded in becoming a true, godly society? It is widely accepted amongst historians that Scottish Reformers had less success than they hoped in building a devout populace.⁸ Margo Todd has addressed this dichotomy of success or failure for early modern Scotland by emphasising the aforementioned argument of how kirk sessions provided services that people wanted. They punished slander, assault, and quarrelling; they provided poor relief and mediated household disputes.⁹ But it was in the policing of popular festivities and popular culture that the Kirk was least successful, and this meant that establishing a godly society never became a complete reality, even if it did ‘enjoy a good deal of popular acceptance’.¹⁰

Jenny Wormald notes how Stirling’s presbytery minutes are littered with examples showing ‘the determination of sinners to withstand these efforts’ of the godly to contain and punish sin.¹¹ Whilst there is no evidence from the East Lothian records of the enduring lure of supposedly sacred wells, the cases that came before the sessions that involved the use of charms to cure illness, demonstrate the longevity of some pre-Reformation beliefs.¹² Even by 1640, Scotland’s Catholic past had not faded completely from memory.

In Tynninghame on 12 January 1634, ‘the minister did intimat out of pulpit to the pepill that na person or personis sald advyse six corn leifis in tyme cuming, to cause seik personis as is foolishlie alledgit ather to end or mend, or any uther superstitious practisis under the pain of most sever censure’.¹³ This intimation was given following a case from the previous December, where Jeremy Ferguson and Janet Utersone were accused of

⁸ Goodare, *Government of Scotland*, 255.

⁹ Todd, *Culture of Protestantism*, esp. 402-12. See also Margo Todd, ‘Profane Pastimes and the Reformed Community: the Persistence of Popular Festivities in Early Modern Scotland’, *Journal of British Studies*, 39 (2000), 123-56.

¹⁰ Goodare, *Government of Scotland*, 255-6.

¹¹ Jenny Wormald, ‘Reformed and Godly Scotland?’, in T. M. Devine and Jenny Wormald (eds.), *The Oxford Handbook of Modern Scottish History* (Oxford, 2012), 208-9.

¹² Wormald, ‘Reformed and Godly’, 210-11. For the English experience see: Alexandra Walsham, *The Reformation of the Landscape: Religion, Identity and Memory in Early Modern Britain and Ireland* (Oxford, 2011), esp. 66-79.

¹³ NRS, CH2/359/1, fv. 80.

using six corn leaves in an attempt to cure Marion Laing's baby of a sickness.¹⁴ The baby died, and when Laing appeared before the session to answer for the charm, it is noted that she was 'halff mad for sorrow, and being nourisher to ane honest mans bairne (viz William Meister) delayit for a tyme hir compeirance'.¹⁵ In her desperation to cure her baby, Laing had turned to a charm.

The keeping of Christmas was another pre-Reformation hangover that had to be endured by East Lothian's Reformers. In Aberlady on 20 December 1640,

the minister ordained everie elder in our parochin to gane threw their quarters upoun Fryday nixt, being Yoole day, and that their be no superstitious feasting bot that all persones be at their work as at uther tymes, and to report the samein to the sessione the nixt Sunday'.¹⁶

This was one of the least successful aspects of social control because it did not have popular support, and so kirk elders were ordered to actively police their areas of the parish, rather than rely on local gossip. The Reformers did not succeed in fully changing Scotland into a godly society after 1560 because there were elements of the Reformed religion that were not popular. Social control from above in the form of policing by elders was not successful without this support. It may be arguable that Scotland became a Calvinist country, but its Reformers did not achieve the enduring level of godliness that they had hoped for.

If true godliness was something that was forever to be aspired to, were the people of East Lothian witnessing the rise of the State between 1610 and 1640 instead? Keith Brown argues that Scotland, with its own monarch, Parliament, and governing structures never had the chance to develop into a modern State because they were 'hijacked by London' after 1603 and then 'blown away' by Cromwell after 1640.¹⁷ On the other hand, Julian Goodare has shown how there was a 'Stewart revolution in government' by 1625, as crown and parliament worked together and parliamentary sovereignty was established 'not just over the church, but over the magnates too'.¹⁸ It is a complex historiographical debate that focuses, rightly, on Scotland's sixteenth- and

¹⁴ NRS, CH2/359/1, ff. 80-1.

¹⁵ NRS, CH2/359/1, fv. 79.

¹⁶ NRS, CH2/4/1, f. 60.

¹⁷ Brown, *Bloodfeud*, 272; K. M. Brown, 'From Scottish Lords to British Officers: State Building, Elite Integration and the Army in the Seventeenth Century', in Norman Macdougall (ed.), *Scotland and War: A. D. 79-1918* (Edinburgh, 1991), 136.

¹⁸ Goodare, *Government of Scotland*, 296 and ch. 12.

seventeenth-century central institutions of power – the monarchy, parliament and the nobility.¹⁹ But what about the role of the State in the localities?

This thesis has shown that the ordinary folk of East Lothian were interacting with the mechanisms of the State between 1610-1640. They were tied to their landlords (the barons), the officers of their parish kirk sessions and the officers of their local secular courts. It is unlikely that ordinary people would have considered these courts and individuals to represent ‘The State’, but the men who had charge of these courts were *agents* of the State. Like their contemporaries in early modern England, these local people were experiencing social control at the hands of these courts and using them for arbitration and redress. Furthermore, the ritualistic punishments employed by the ecclesiastical courts, and the secular courts in particular, were overt displays of State power. Margaret Alexander’s execution rituals not only shamed her, but displayed the State as a force against the criminal and ungodly.

By 1640, Scotland had entered its descent into civil war. The business of the kirk sessions was disrupted as local landowners (including Sir Patrick Hepburn, laird of Wauchton) diverted their attentions to raising militias, ready for armed conflict. In comparison with the civil war, between 1610 and 1640 East Lothian enjoyed thirty years of stable governance by Kirk and State. The behaviour and personal relationships of ordinary folk were regulated in the name of the godly society and these people experienced social control at the hands of their peers, as well as at the hands of local men in local positions of secular and ecclesiastical authority.

The evidence used in this thesis shows that this thirty-year period was important for Scotland’s ordinary people, the structures of Scottish government and the nature of early modern power and authority. There was no great rebellion against Kirk and State because of social control, but change was on the horizon after 1638 as the Kirk and its congregations reacted with the National Covenant to proposals to alter the presbyterian status quo. By 1780, the system of kirk sessions would be in terminal decline as the momentum behind the godly society waned and the Kirk lost its popular legitimacy for the policing of manners and morals. Scotland’s secular courts were changed forever with the Heritable Jurisdictions Act of 1747, which abolished hereditary offices and heritable jurisdictions and placed qualified advocates in charge of the sheriff courts as salaried

¹⁹ See Laura A. M. Stewart, ‘The ‘Rise’ of the State?’, in T. M. Devine and Jenny Wormald (eds.), *The Oxford Handbook of Modern Scottish History* (Oxford, 2012), 220-235. For the English experience see Michael Braddick, *State Formation in Early Modern England, c.1550-1700* (Cambridge, 2000).

sheriff deposes, presiding over the localities.²⁰ Such a decline in the influence of the web of local courts would have been hard to fathom from the context of social control in East Lothian over a century before.

²⁰ See A. E. Whetstone, 'The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries', *Albion*, 9 (1977), 61-71.

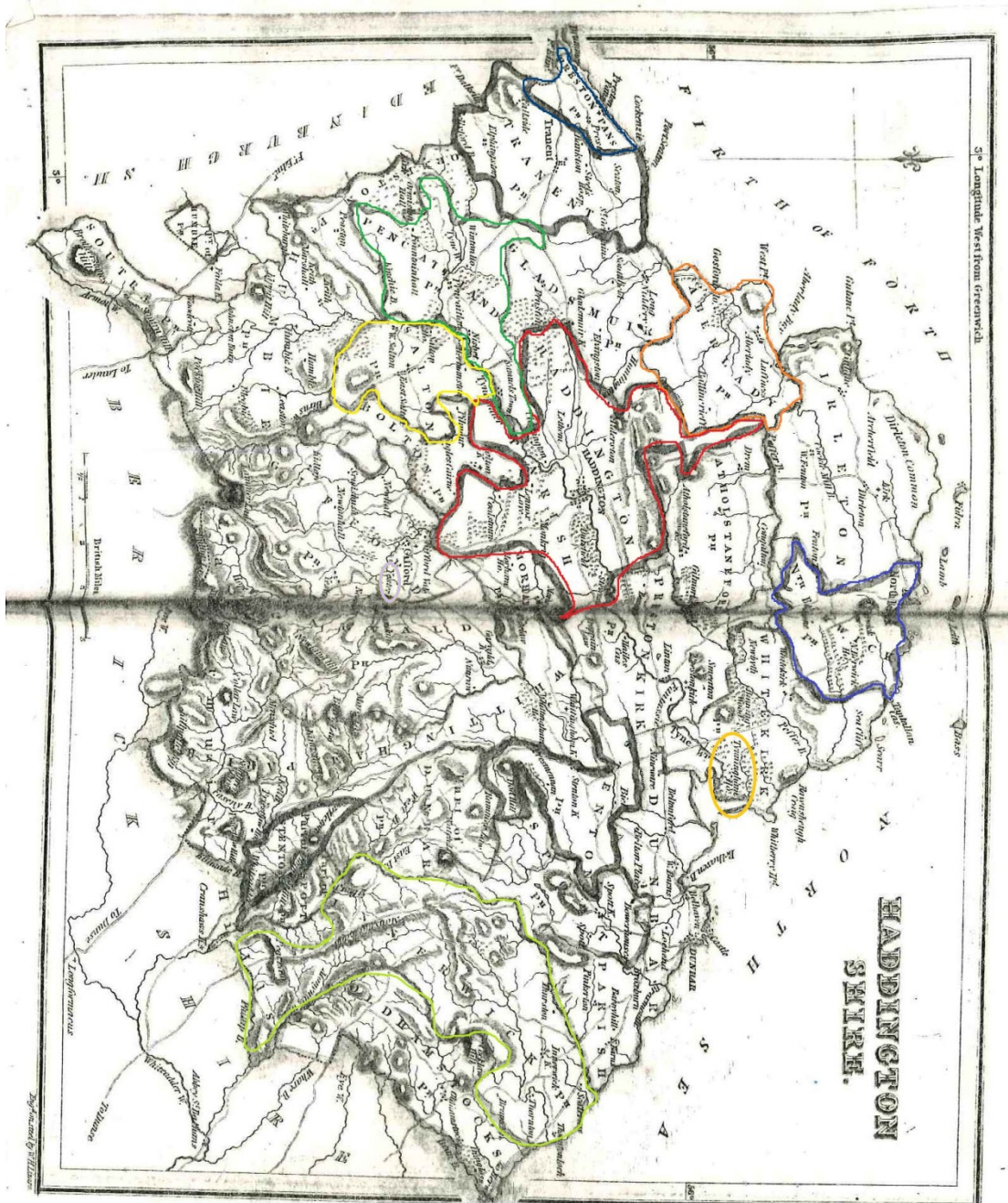
Appendix: Maps of East Lothian

Figure 1.1: John Adair, *A Map of East Lothian / survey'd by J. Adair*



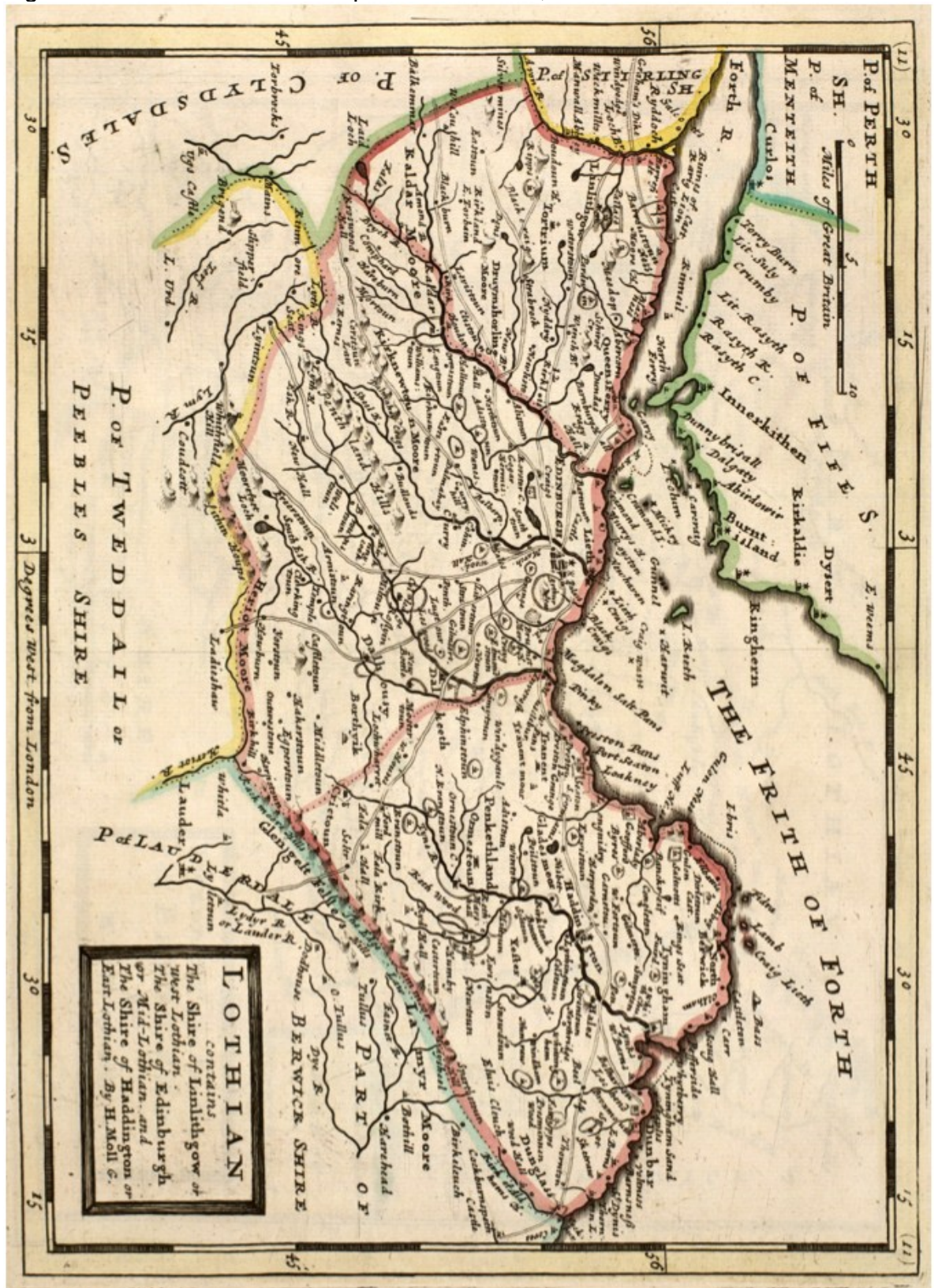
Source: Edinburgh: Cooper, ca. 1736. NLS shelfmark: EMS.s.737 (15).
Reproduced by permission of the Trustees of the NLS.

Figure 1.2: Map of Haddingtonshire



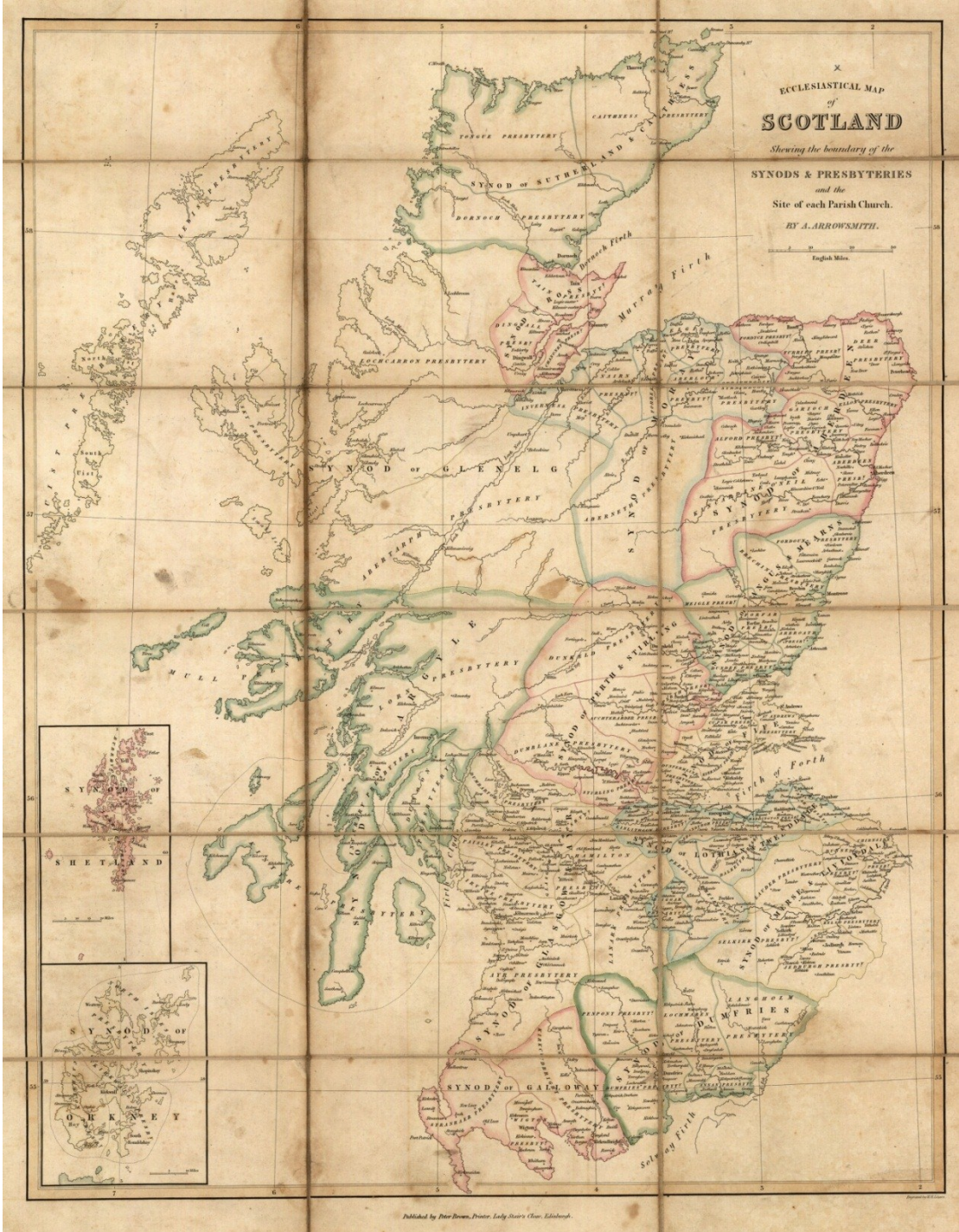
Source: from the Second Statistical Account of Scotland (1845). Reproduced by permission of the Trustees of the NLS.

Figure 1.3: Herbert Moll's map of the Lothians, 1745



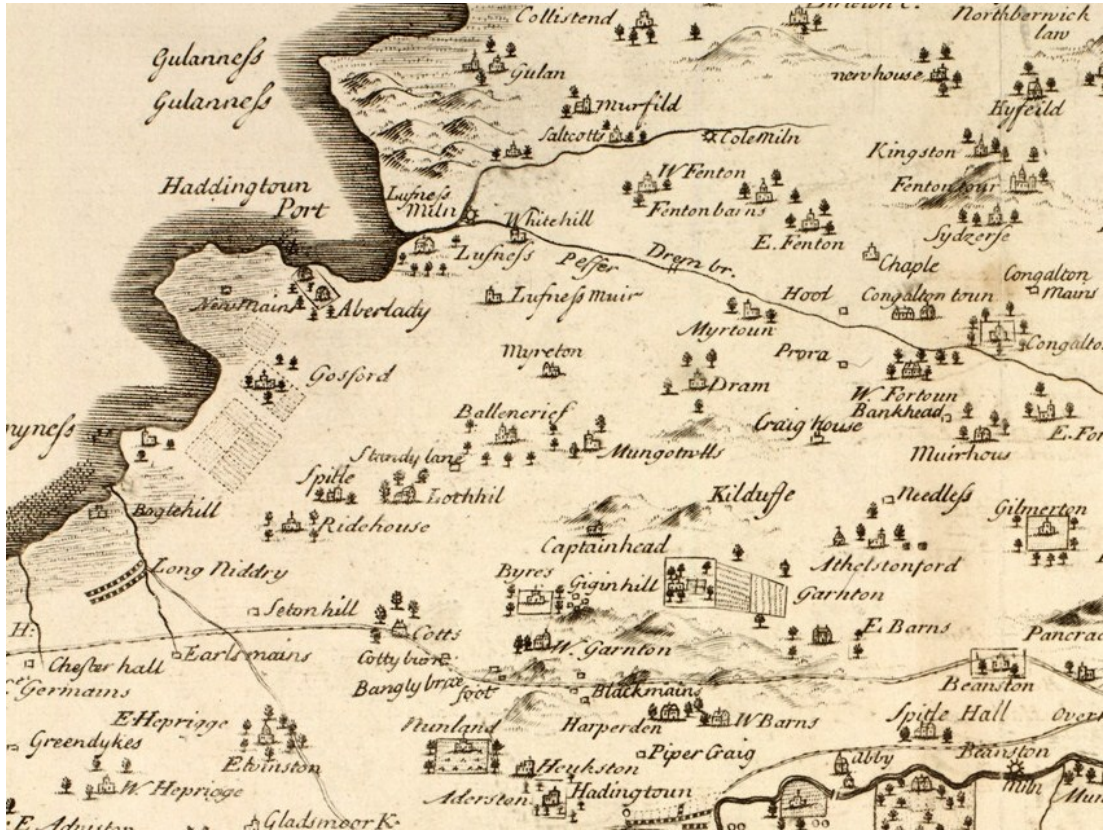
Source: Herman Moll, *Lothian: contains The Shire of Linlithgow or West Lothian, The Shire of Edinburgh or Midlothian, and Haddington or East Lothian* (London: Bowles and Bowles, 1745). NLS shelfmark EMS.b.2.1 (11). Reproduced by permission of the Trustees of the NLS.

Figure 1.4: Aaron Arrowsmith, *Ecclesiastical Map of Scotland*



Source: Edinburgh: P. Brown, 1825. EMS shelfmark: EMS.b.1.4. Reproduced by permission of the Trustees of the NLS.

Figure 1.5: Aberlady and its immediate surrounds



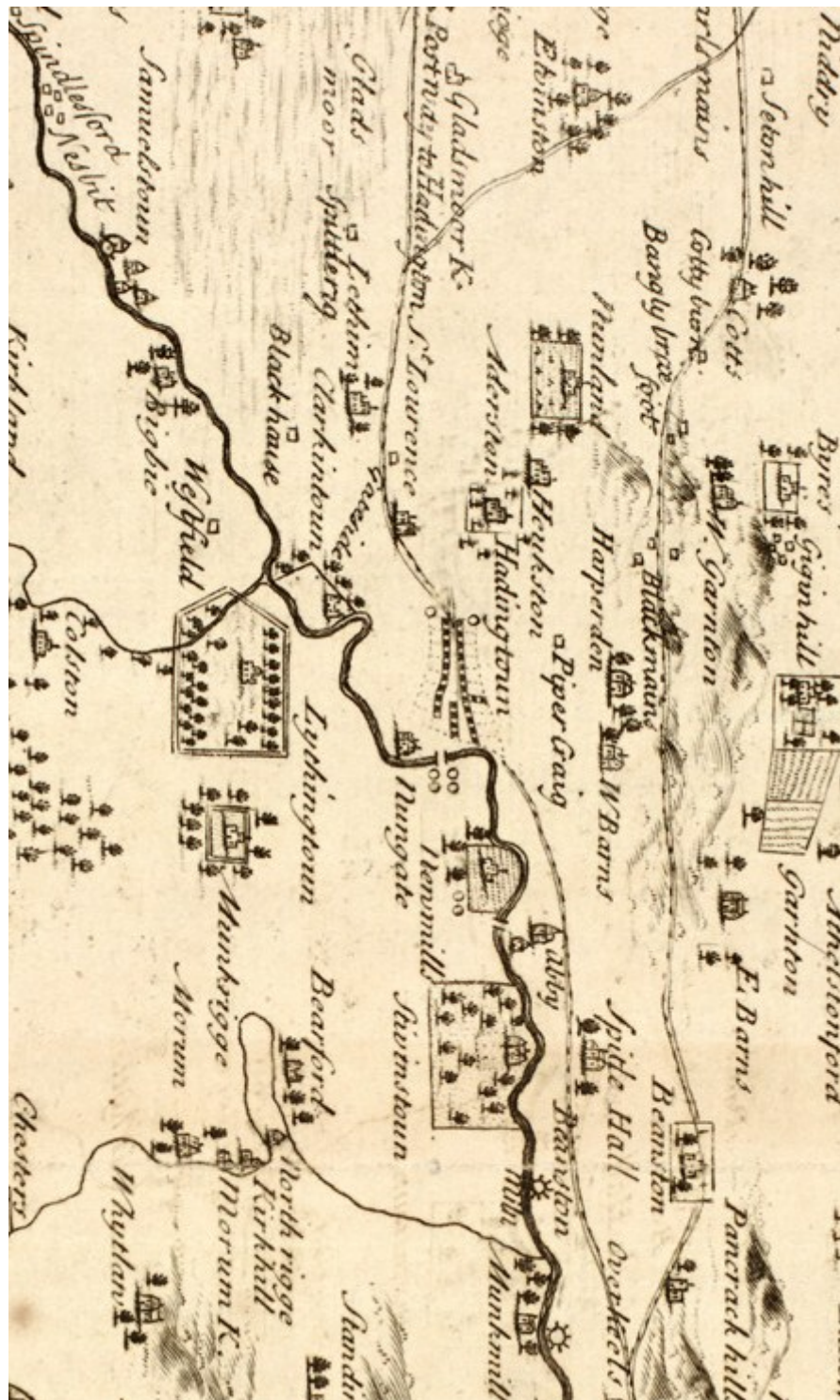
Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736). NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

Figure 1.6: Cockburnspath and Innerwick, and their immediate surrounds



Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736). NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

Figure 1.7: Haddington and its immediate surrounds



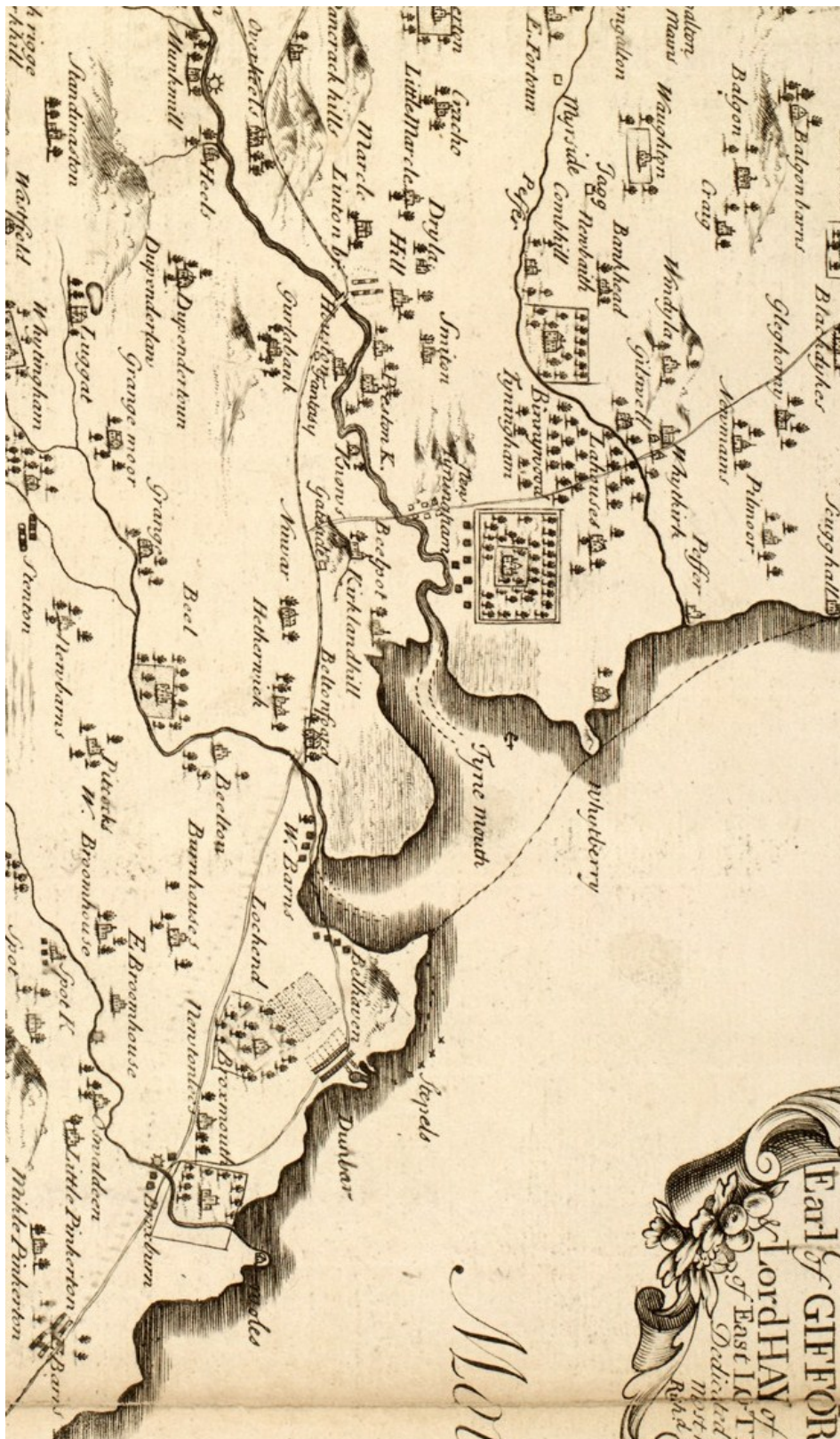
Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736). NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

Figure 1.9: Pencaitland and Salton, and their immediate surrounds



Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736). NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

Figure 1.11: Tynninghame and its immediate surrounds



Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736). NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

Figure 1.12: Yester (Bothans/Gifford) and its immediate surrounds



Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736). NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

Bibliography

I. Manuscripts

National Library of Scotland, Edinburgh

Adair, John, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh, ca. 1736).

Arrowsmith, Aaron, *Ecclesiastical Map of Scotland* (Edinburgh, 1825).

Map of Haddingtonshire from the Second Statistical Account of Scotland (1845).

Moll, Herman, *Lothian: contains The Shire of Linlithgow or West Lothian, The Shire of Edinburgh or Midlothian. and Haddington or East Lothian* (London, 1745).

National Records of Scotland, General Register House, Edinburgh

Commissary Courts

Edinburgh register of decreets, 10 September 1617 – 18 March 1620, CC8/2/47.

Edinburgh processes, 1590–1659, CC8/4/1 (loose bundles).

Lanark register of decreets, 13 Apr 1629 – 2 Apr 1632, CC14/2/1.

Haddington sheriff court

Court, Diet, Minute and Act Book, February-March 1621, SC40/6/1.

Extract Decree Books, 1608-1620, SC40/7/12-14; 1624-1632, SC40/7/16-18; 1635-1659, SC40/7/19. [N.B. 1620-1623, SC40/7/15 is unfit for production]

Haddington burgh court

Court books, 1610-1642, B30/10/8-13.

North Berwick burgh court

Court book, 1638-1642, B56/6/1, ff. 1-14.

Cockburnspath baron court

Court book, 1638-1656, RH11/15/1.

Tynninghame baron court

Proceedings, 1684-1691, RH15/39/208, (4 items).

Haddington presbytery

Records, 1613-1640, CH2/185/3-5

Kirk session of Aberlady

Minutes, 1631-1640, CH4/1, ff. 1-61.

Kirk session of Haddington St. Mary's

Session register, 1619-1659, OPR 709, ff. 1-72.

Minutes, 1629-1631, CH2/799/1, ff. 306-325.

Kirk session of Innerwick

Extracts from the kirk session minutes of Innerwick (later Innerwick St Andrews), 1619-1640, CH2/1463/2, ff. 1-33.

Kirk session of North Berwick

Session register, 1604-1616, OPR 713/1.

Kirk session of Pencaitland

Minutes, 1633-1640, CH2/296, ff. 1-16.

Kirk session of Prestonpans

Extracts from Prestonpans Kirk Session Minutes, 1610-1637, CH2/307/28, ff. 150-166.

Session register, OPR 718/1, ff. 127-170.

Session register, OPR 718/2, ff. 1-224.

Kirk session of Saltoun

Minutes, 1635-1640, CH2/322/1, ff. 1-111.

Kirk session of Tynninghame

Minutes, 1615-1640, CH2/359/1, ff. 1-116.

Kirk session of Yester

Minutes, 1613-1640, CH2/377/1, ff. 1-245.

Family History Centre, Church of Jesus Christ of Latter Day Saints, Salt Lake City, UT.

Kirk session of Haddington St Mary's

Session register, 1619-1659, microfilm 1067799.

Kirk session of North Berwick

Session register, 1604-1616, microfilm 1067857.

Kirk session of Prestonpans

Session registers, 1596-1642, microfilm 1067855.

II. Printed Primary Sources

Acts of the Parliaments of Scotland, 12 vols., ed. T. Thomson and C. Innes (Edinburgh, 1814-75).

Balfour of Pittendriech, Sir James, *Practicks*, 2 vols., ed. P. G. B. McNeill (Stair Society, 1962-3).

Canongate. *The Buik of the Kirk of the Canongait, 1564-1567*, ed. Alma B. Calderwood (Scottish Record Society, 1961).

Criminal Trials in Scotland, 1488-1624, ed. R. Pitcairn, 3 vols. (Bannatyne and Maitland Clubs, 1833).

Fife. *The Sheriff Court Book of Fife, 1515-1522*, ed. William Croft Dickinson (Scottish History Society, Vol. 12, 1928).

Falkirk. *The Court Book of the Barony and Regality of Falkirk and Callendar, I: 1638-1656*, ed. D. M. Hunter (Stair Society, Vol. 38, 1991).

Hume Brown, Peter (ed.), *Early Travellers in Scotland* (Edinburgh, 1891).

Rayner, P., Lenman, B., and Parker, G., *Handlist of Records for the Study of Crime in Early Modern Scotland (to 1747)* (London, 1982).

Mackenzie, Sir George, *The Laws and Customs of Scotland in Matters Criminal* (Edinburgh, 1678), ed. Olivia F. Robinson (Stair Society, Vol. 59, 2012).

Records of the Synod of Lothian and Tweeddale, 1589-96, 1640-49, ed. James Kirk (Stair Society, Vol. 30, 1977).

Registrum Magni Sigilli Regum Scotorum: the Register of the Great Seal of Scotland, A. D. 1634-1651, ed. John Maitland Thomson (Edinburgh, 1897).

The First Book of Discipline of the Church of Scotland, ed. James K. Cameron (Edinburgh, 1972).

The Second Book of Discipline, ed. James Kirk (Edinburgh, 1980).

III. Secondary Sources: Books

Abrams, Lynn, and Harvey, Elizabeth (eds.), *Gender Relations in German History: Power, Agency and Experience from the Sixteenth to the Twentieth Century* (London, 1996).

Ägren, Maria, and Erickson, Amy Louise, *The Marital Economy in Scandinavia and Britain, 1400-1900* (Aldershot, 2005).

Amussen, Susan Dwyer, *An Ordered Society: Gender and Class in Early Modern England* (Oxford, 1988).

Baker, J. H. (ed.), *Legal Records and the Historian: Papers Presented to the Cambridge Legal History Conference, 7-10 July 1975, and in Lincoln's Inn Old Hall on 3 July 1974* (London, 1978).

Bardgett, Frank D., *Scotland Reformed: the Reformation in Angus and the Mearns* (Edinburgh, 1989).

Beattie, Cordelia, *Medieval Single Women: the Politics of Social Classification in Late Medieval England* (Oxford, 2007).

Bennett, Judith M., *Ale, Beer and Brewsters in England: Women's Work in a Changing World, 1300-1600* (Oxford, 1996).

-----, *History Matters: Patriarchy and the Challenge of Feminism* (Manchester, 2006).

Braddick, Michael J., *State Formation in Early Modern England, c.1550-1700* (Cambridge, 2000).

Braddick, Michael J., and Walter, John (eds.), *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland* (Cambridge, 2001).

Bray, Alan, *Homosexuality in Renaissance England* (New York, 1995).

-----, *The Friend* (Chicago, 2003).

Briggs, Robin, *Communities of Belief: Cultural and Social Tension in Early Modern France* (Oxford, 1989).

-----, *Witches and Neighbours: the Social and Cultural Context of European Witchcraft* (London, 2002).

-----, *The Witches of Lorraine* (Oxford, 2007).

Brotherstone, T., Simonton, D. and Walsh, O. (eds.), *Gendering Scottish History: an International Approach* (Glasgow, 1999).

Brown, Keith M., *Bloodfeud in Scotland, 1573-1625: Violence, Justice and Politics in an Early Modern Society* (Edinburgh, 1986).

Burke, Peter, *Popular Culture in Early Modern Europe* (Aldershot, 1994).

- Carter, Philip, *Men and the Emergence of Polite Society: Britain, 1660-1800* (Harlow, 2001).
- Campbell, J. K., *Honour, Family and Patronage: a Study of Institutions and Moral Values in a Greek Mountain Community* (Oxford, 1974).
- Capp, Bernard, *When Gossips Meet: Women, Family and Neighbourhood in Early Modern England* (Oxford, 2003).
- Chambers, Robert, *Domestic Annals of Scotland: from the Reformation to the Revolution* (Edinburgh, 1874).
- Collinson, Patrick, *The Birthpangs of Protestant England: Religious and Cultural Change in the Sixteenth and Seventeenth Centuries* (Basingstoke, 1988).
-----, *The Reformation* (London, 2005).
- Coutts, W. K., *The Business of the College of Justice in 1600s: How it Reflects the Economic and Social Life of Scots Men and Women* (Edinburgh, 2003).
- Cowan, E. J., *The Ballad in Scottish History* (East Linton, 2000).
- Cowan, I. B., *The Scottish Reformation: Church and Society in Sixteenth Century Scotland* (London, 1982).
- Crawford, Patricia, *Women and Religion in England, 1500-1720* (London, 1993).
- Crawford, Patricia, and Gowing, Laura (eds.), *Women's Worlds in Seventeenth-Century England*. (London, 2000).
- Cressy, David, *Agnes Bowker's Cat: Travesties and Transgressions in Tudor and Stuart England* (Oxford, 2001).
- Davis, Natalie Zemon, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Stanford, 1987).
- Dawson, Jane, *Scotland Re-Formed, 1488-1587* (Edinburgh, 2007).
- Dennison, E. P., Ditchburn, David, and Lynch, Michael (eds.), *Aberdeen Before 1800: a New History* (East Linton, 2002).
- Devereaux, Simon, and Griffiths, Paul (eds.), *Penal Practice and Culture, 1500-1900: Punishing the English* (Basingstoke, 2004).
- Dingwall, Helen, *Late Seventeenth-Century Edinburgh: a Demographic Study* (Aldershot, 1994).
- Dodgshon, R. A., *Land and Society in Early Scotland* (Oxford, 1981).
- Donajrodzki, A. P. (ed.), *Social Control in Nineteenth Century Britain* (London, 1977).

- Dunbar, Linda, *Reforming the Scottish Church: John Winram (c. 1492-1582) and the Example of Fife* (Aldershot, 2002).
- Durrant, Jonathan B., *Witchcraft, Gender and Society in Early Modern Germany* (Leiden, 2007).
- Evans, Richard J., *Rituals of Retribution: Capital Punishment in Germany, 1600-1987* (Oxford, 1996).
- Ewan, Elizabeth and Meikle, Maureen (eds.), *Women in Scotland, c.1100-c.1750* (East Linton, 1999).
- Ewan, Elizabeth, and Nugent, Janay (eds.), *Finding the Family in Medieval and Early Modern Scotland*. (Aldershot, 2008).
- Finn, Margot C., *The Character of Credit: Personal Debt in English Culture, 1740-1914* (Cambridge, 2003).
- Firestone, Shulamith, *The Dialectic of Sex* (New York, 1970).
- Fletcher, Anthony, *Gender, Sex and Subordination in England, 1500-1800* (London, 1995).
- Fletcher, Anthony, and Roberts, Peter (eds.), *Religion, Culture and Society in Early Modern Britain: Essays in Honour of Patrick Collinson* (Cambridge, 1994).
- Fletcher, Anthony, and Stevenson, John (eds.), *Order and Disorder in Early Modern England* (Cambridge, 1987).
- Flinn, Michael et al (eds.), *Scottish Population History* (Cambridge, 1977).
- Michel Foucault, *Discipline and Punish: the Birth of Prison* (New York, 1977).
- Foyster, Elizabeth, *Manhood in Early Modern England: Honour, Sex, and Marriage* (London, 1999).
- , *Marital Violence: an English Family History, 1660-1875* (Cambridge, 2005).
- Fyfe, J. G., *Scottish Diaries and Memoirs, 1746-1843* (Stirling, 1942).
- Gatrell, V. A. C., *The Hanging Tree: Execution and the English People, 1770-1868* (Oxford, 1994).
- Ginzburg, Carlo, *The Night Battles: Witchcraft and Agrarian Cults in the Sixteenth and Seventeenth Centuries* (Baltimore, 1992).
- Goodare, Julian, *State and Society in Early Modern Scotland* (Oxford, 1999).
- , *The Government of Scotland, 1560-1625* (Oxford, 2004).
- Goodare, Julian (ed.), *The Scottish Witch-hunt in Context* (Manchester, 2002).

- Goodare, Julian, Martin, Lauren, and Miller, Joyce (eds.), *Witchcraft and Belief in Early Modern Scotland* (Basingstoke, 2008).
- Goody, Jack, *The Development of the Family and Marriage in Europe* (Cambridge, 1983).
----- . *The European Family: an Historico-Anthropological Essay* (Oxford, 2000).
- Gordon, Anne, *Candie for the Foundling* (Edinburgh, 1992).
- Gowing, Laura, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford, 1996).
----- . *Common Bodies: Women, Touch and Power in Seventeenth Century England* (London, 2003).
- Graham, Michael F., *The Uses of Reform: 'Godly Discipline' and Popular Behaviour in Scotland and Beyond, 1560-1610* (Leiden, 1996).
----- . *The Blasphemies of Thomas Aikenhead: Boundaries of Belief on the Eve of the Enlightenment* (Edinburgh, 2008).
- Gray, W. Forbes, and Jamieson, James H., *A Short History of Haddington* (Stevenage, 1995).
- Griffiths, Paul, Fox, Adam, and Hindle, Steve (eds.), *The Experience of Authority in Early Modern England* (Basingstoke, 1996).
- Hadley, D. M. (ed.), *Masculinity in Medieval Europe* (London, 1999).
- Haigh, Christopher, *The English Reformation Revised* (Cambridge, 1987).
----- . *English Reformations: Religion, Politics and Society Under the Tudors* (Oxford, 1993).
- Hanham, Alison, *The Sinners of Cramond: the Struggle to Impose Godly Behaviour on a Scottish Community, 1651-1851* (Edinburgh, 2005)
- Hanawalt, Barbara, *The Ties That Bound: Peasant Families in Medieval England* (Oxford, 1986).
- Hanawalt, Barbara and Wallace, David, *Medieval Crime and Social Control* (London, 1999).
- Hardwick, Julie, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park PA., 1998).
- Harris, Tim (ed.), *Popular Culture in England, c.1500-1850* (Basingstoke, 1995).
- Harris, B., and Macdonald, A. R. (eds.), *Scotland: the Making and Unmaking of the Nation, c.1100-1707, Volume I: Scottish Nation: Origins to c.1500* (Dundee, 2006).
----- . *Scotland: the Making and Unmaking of the Nation, c.1100-1707, Volume II: Early Modern Scotland, c.1500-1707* (Dundee, 2006).
- Hart, H. L. A., *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford, 1968).
----- . *The Concept of Law* (Oxford, 2nd Edition, 1994).

- Herrup, C., *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge, 1987).
- Hey, D. G., *An English Rural Community: Myddle under the Tudors and Stuarts* (Leicester, 1974).
- Hill, Christopher, *Society and Puritanism in Pre-Revolutionary England* (London, 1969).
- Hindle, Steve, *The State and Social Change in Early Modern England, c.1550-1640* (Basingstoke, 2000).
- Hitchcock, Tim, *English Sexualities, 1700-1800* (Basingstoke, 1997).
- Hitchcock, Tim, and Shoemaker, Robert, *Tales from the Hanging Court* (London, 2006).
- Houlbrooke, Ralph, *Church Courts and the People During the English Reformation, 1520-1570* (Oxford, 1979).
- , *The English Family, 1450-1700* (London, 1984).
- Houston, R. A. and Whyte, I. D., *Scottish Society, 1500-1800* (Cambridge, 1989).
- Hufton, Olwen, *The Prospect Before Her: a History of Women in Western Europe, 1500-1800* (London, 1997).
- Ingram, Martin, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge, 1990).
- James, M., *Family, Lineage and Civil Society: a Study of Society, Politics and Mentality in the Durham Region, 1500-1640* (Oxford, 1974).
- Kermode, J. I., and Walker, G. (eds.), *Women, Crime and the Courts in Early Modern England* (London, 1994).
- Kesselring, Krista J., *Mercy and Authority in the Tudor State* (Cambridge, 2003).
- Kingdon, Robert M., *Church and Society in Reformation Europe*. (London, 1985).
- , *Adultery and Divorce in Calvin's Geneva* (London, 1995).
- Kyd, James Gray (ed.), *Scottish Population Statistics: Including Webster's Analysis of Population, 1755* (Edinburgh, 1975).
- Larner, Christina, *Enemies of God: the Witch-bunt in Scotland* (Edinburgh, 2000).
- Leneman, Leah, *Alienated Affections: the Scottish Experience of Divorce and Separation, 1684-1830* (Edinburgh, 1998).
- Leneman, Leah, and Mitchison, Rosalind, and *Sin in the City: Sexuality and Social Control in Urban Scotland, 1660-1780* (Edinburgh, 1998).

- Lynch, Michael, *Edinburgh and the Reformation* (Edinburgh, 1981).
 ----- . *The Early Modern Town in Scotland* (London, 1987).
- McCallum, John, *Reforming the Scottish Parish: the Reformation in Fife, 1560-1640* (Farnham, 2010)
- McIntosh, M. K. *Controlling Misbehavior in England, 1370-1600* (Cambridge, 1998).
- McShane, Angela, and Walker, Garthine (eds.), *The Extraordinary and the Everyday in Early Modern England: Essays in Celebration of the Work of Bernard Capp* (Basingstoke, 2010).
- McSheffrey, Shannon, *Marriage, Sex, and Civic Culture in Late Medieval London* (Philadelphia, 2006)
- MacDonald, Alan R., *The Jacobean Kirk: Sovereignty, Polity and Liturgy, 1567-1625* (Ashgate, 1998).
- Macdonald, Stuart, *The Witches of Fife: Witch-Hunting in a Scottish Shire, 1560-1710* (East Linton, 2002)
- MacNeill, Peter G. B., and MacQueen, Hector L. (eds.), *Atlas of Scottish History to 1707* (Edinburgh, 1996).
- Mann, Alastair J., *The Scottish Book Trade, 1500-1720: Print, Commerce and Print Control in Early Modern Scotland* (East Linton, 2000).
- Marchant, R. A., *The Church Under the Law: Justice, Administration and Discipline in the Diocese of York, 1560-1640* (London, 1969).
- Marshall, Gordon, *Presbyteries and Profits: Calvinism and the Development of Capitalism in Scotland, 1560-1707* (Edinburgh, 1980).
- Marshall, R. K., *Childhood in Seventeenth Century Scotland: the Scottish National Portrait Gallery, 19 August-19 September 1976* (Edinburgh, 1976).
 ----- . *Virgins and Viragos: a History of Women in Scotland from 1080 to 1980* (London, 1983).
 ----- . *The Days of Duchess Anne: Life in the Household of the Duchess of Hamilton, 1656-1716* (East Linton, 2000).
- Martine, John, *Reminiscences and Notices of the Parishes of the County of Haddington* (East Lothian, 1999).
- Mason, R. A., *John Knox and the British Reformations* (Aldershot, 1998).
- Mendelson, Sara, and Crawford, Patricia, *Women in Early Modern England, 1550-1720* (Oxford, 1998).
- Mentzer, Raymond A., *Sin and the Calvinists: Morals Control and the Consistory in the Reformed Tradition* (Kirksville MO., 1994).

- Merback, Mitchell, *The Thief, The Cross and The Wheel: Pain and the Spectacle of Punishment in Medieval and Renaissance Europe* (London, 1999),
- Miller, Joyce, *Magic and Witchcraft in Scotland* (Musselburgh, 2004).
- Mitchison, Rosalind, *The Old Poor Law in Scotland: the Experience of Poverty, 1574-1845* (Edinburgh, 2000).
- Mitchison, Rosalind and Leneman, Leah, *Girls in Trouble: Sexuality and Social Control in Rural Scotland, 1660-1780* (Edinburgh, 1998).
- Muchembled, Robert, *Popular Culture and Elite Culture in France, 1400-1750* (Baton Rouge, 1985).
- Muldrew, C., *The Economy of Obligation: the Culture of Credit and Social Relations in Early Modern England* (Basingstoke, 1998).
- Mullan, D. G., *Scottish Puritanism, 1590-1638* (Oxford, 2000).
- Murdock, Graeme, *Beyond Calvin: the Intellectual, Political and Cultural World of Europe's Reformed Churches* (Basingstoke, 2004).
- Naphy, W. G., *Sex Crimes: for Renaissance to Enlightenment* (London, 2002).
- Normand, Lawrence, and Roberts, Gareth (eds.), *Witchcraft in Early Modern Scotland: James's Demonology and the North Berwick Witches* (Exeter, 2000).
- O'Brien, Mary, *The Politics of Reproduction* (London, 1981).
- Outhwaite, R. B., *Marriage and Society: Studies in the Social History of Marriage* (London, 1981).
- Ozment, Steven, *When Fathers Ruled: Family life in Reformation Europe* (London, 1983).
----- *Ancestors* (Harvard, 2001).
- Pateman, Carole, *The Sexual Contract* (Stanford, 1988).
- Peltonen, Markku, *The Duel in Early Modern England: Civility, Politeness and Honour* (Cambridge, 2003).
- Peristiany, J. G. (ed.), *Honour and Shame: the Values of Mediterranean Society* (London, 1965).
- Peters, Christine, *Patterns of Piety: Women, Gender and Religion in Late Medieval and Reformation England* (Cambridge, 2003).
----- *Women in Early Modern Britain, 1450-1640* (Basingstoke, 2004).
- Pitt-Rivers, Julian (ed.), *Mediterranean Countrymen: Essays in the Social Anthropology of the Mediterranean* (Paris, 1963).

- Po-Chia Hsia, R., *Social Discipline in the Reformation: Central Europe, 1550-1750* (London, 1992).
- Prestwich, Menna (ed.), *International Calvinism, 1541-1715* (Oxford, 1985).
- Pryde, Gordon Smith, *The Burghs of Scotland, a Critical List* (Oxford, 1965).
- Reay, Barry, *Popular Culture in Seventeenth-Century England* (London, 1985).
- Robertson, D. M., *Goodnight My Servants All: the Source Book of East Lothian Witchcraft* (Glasgow, 2008).
- Roper, Lyndal, *Disciplines of Faith: Studies in Religion, Politics and Patriarchy* (London, 1987).
 ----- *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford, 1991).
 ----- *Oedipus and the Devil: Witchcraft, Sexuality and Religion in Early Modern Europe* (London, 1994).
 ----- *Witch Craze: Terror and Fantasy in Baroque Germany* (London, 2004).
- Rowlands, A., *Witchcraft Narratives in Germany: Rothenburg, 1561-1652* (Manchester, 2003).
- Rublack, Ulinka, *The Crimes of Women in Early Modern Germany* (Oxford, 1999).
 ----- *Reformation Europe* (Cambridge, 2005).
- Sabean, David, *Power in the Blood: Popular Culture and Village Discourse in Early Modern Germany* (Cambridge, 1984).
- Sanderson, M. H., *Scottish Rural Society in the Sixteenth Century* (Edinburgh, 1982).
 ----- *Mary Stewart's People: Life in Mary Stewart's Scotland* (Edinburgh, 1987).
 ----- *Ayrshire and the Reformation: People and Change, 1490-1600* (East Linton, 1997).
 ----- *A Kindly Place? Living in Sixteenth-Century Scotland* (East Linton, 2002).
- Scott, Hew (ed.), *Fasti Ecclesiae Scoticae, Volume I: Synod of Lothian and Tweeddale* (Edinburgh, 1915).
- Scott-Dixon, C., *The Reformation and Rural Society: the Parishes of Brandenburg-Ansbach-Kulmbach* (Cambridge, 2002).
- Scribner, R. W., *Popular Culture and Popular Movements in Reformation Germany* (London, 1987).
- Sharpe, J. A., *Crime in Seventeenth Century England: a County Study* (Cambridge, 1983)
 ----- *Crime in Early Modern England, 1550-1750*. (London, 1999).
- Shepard, Alexandra, *Meanings of Manhood in Early Modern England* (Oxford, 2003).
- Shepard, Alexandra, and Withington, Phil, *Communities in Early Modern England: Networks, Place, Rhetoric* (Manchester, 2000).

- Smout, T. C., *A History of the Scottish People, 1560-1830* (London, 1972).
- Spufford, Margaret, *Contrasting Communities: English villagers in the Sixteenth and Seventeenth Centuries* (London, 1974).
- Spurlock, R. S., *Cromwell and Scotland: Conquest and Religion, 1650-1660* (Edinburgh, 2007).
- Stone, Lawrence, *The Family, Sex and Marriage in England, 1500-1800* (London, 1977).
 ----- *Road to divorce: England, 1530-1987* (Oxford, 1990).
 ----- *Broken Lives: Separation and Divorce in England, 1660-1857* (Oxford, 1993).
- Stuart, Kathy, *Defiled Trades and Social Outcasts: Honour and Ritual in Early Modern Germany* (Cambridge, 1999).
- Symonds, Deborah A., *Weep Not For Me: Women, Ballads, and Infanticide in Early Modern Scotland* (Pennsylvania, 1997).
- Thomas, Keith, *Religion and the Decline of Magic: Studies in Popular Beliefs in Sixteenth- and Seventeenth-Century England* (London, 1991).
- Todd, Margo, *Reformation to Revolution: Politics and Religion in Early Modern England* (London, 1995).
 ----- *The Culture of Protestantism in Early Modern Scotland* (London, 2002).
- Underdown, David, *Revel, Riot, and Rebellion: Popular Politics and Culture in England, 1603-1660* (Oxford, 1985).
 ----- *Fire From Heaven: the Life of an English Town in the Seventeenth Century* (London, 1992).
- Waddell, Peter Hatley, *An Old Kirk Chronicle: being a History of Auldhame, Tynninghame, and Whitekirk in East Lothian from Session Records* (Edinburgh, 1893).
- Walker, Garthine, *Crime, Gender and Social Order in Early Modern England* (Cambridge, 2003).
- Walsham, Alexandra, *The Reformation of the Landscape: Religion, Identity and Memory in Early Modern Britain and Ireland* (Oxford, 2011).
- Weber, Max, *The Protestant Ethic and The Spirit of Capitalism* (London, 1976).
- Whetstone, A. E., *Scottish County Government in the Eighteenth and Nineteenth Centuries* (Edinburgh, 1981).
- Whyte, I. D., *Scotland before the Industrial Revolution: an Economic and Social History, c.1050-c.1750* (London, 1995).
 ----- *Scotland's Society and Economy in Transition, c.1500-c.1760* (Basingstoke, 1997).
- Wiesner, Merry E., *Gender, Church, and State in Early Modern Germany: Essays* (London, 1998).

----- . *Christianity and Sexuality in the Early Modern World: Regulating Desire, Reforming Practice* (London, 2000).

----- . *Early Modern Europe, 1450-1789* (Cambridge, 2006).

Wiesner-Hanks, Merry E., *Women and Gender in Early Modern Europe* (Cambridge, 2000).

Williamson, A., *Scottish National Consciousness in the Age of James VI: the Apocalypse, the Union and the Shaping of Scotland's Public Culture* (Edinburgh, 1979)

Wormald, Jenny, *Court, Kirk, and Community: Scotland, 1470-1625* (Edinburgh, 1991).

Wormald, Jenny (ed.), *The Seventeenth Century* (Oxford, 2008).

Wrightson, Keith, and Levine, David, *Poverty and Piety in an English Village: Terling, 1525-1700* (Oxford, 1995).

IV. Secondary Sources: Articles and Book Chapters

Affleck, David, 'James Balfour of Whittingham and Balgonie', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 25 (2002).

Amussen, Susan Dwyer, "'Being Stirred to Much Unquietness": Violence and Domestic Violence in Early Modern England', *Journal of Women's History*, 6 (1994).

Bardgett, F. D., 'The Monifieth Kirk Register', *Records of the Scottish Church History Society*, 23:2 (1988).

Bennett, Judith M., 'Feminism and History', *Gender and History*, 1:3 (1989).

Bowler, Clara Ann, 'Carted Whores and Shrouded Apologies', *Virginia Magazine of History and Biography*, 85 (1977).

Brown, K. M., 'From Scottish Lords to British Officers: State Building, Elite Integration and the Army in the Seventeenth Century', in Norman Macdougall (ed.), *Scotland and War: A. D. 79-1918* (Edinburgh, 1991).

Bunyan, Stephen, 'General Sir David Baird and the Bairds of Newbyth House', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 26 (2006).

Burke, Peter, 'The Art of Insult in Early Modern Italy', *Culture and History* (2, 1987).

Burns, Georgina, 'Two Cases from the Baron Courts of Dirleton', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 19 (1987).

Capp, Bernard, 'The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England', *Past and Present*, 162 (1999).

Collinson, Patrick, 'Not Sexual in the Ordinary Sense': Women, Men and Religious Transactions', in Patrick Collinson (ed.), *Elizabethan Essays* (London, 1994).

Coutts, W. K., 'Women, Children and Domestic Servants in Dumfries in the Seventeenth Century', *Transactions of the Dumfriesshire and Galloway Natural History and Antiquarian Society*, 61 (1986).

-----, 'Farmers in Dumfries from 1600 to 1665, as seen through the register of testaments and grants of confirmation', *Transactions of the Dumfriesshire and Galloway Natural History and Antiquarian Society*, 61 (1986).

-----, 'Provincial Merchants and Society: a Study of Dumfries Based on the Registers of Testaments 1600-1665', in Michael Lynch (ed.), *The Early Modern Town in Scotland* (London, 1987).

Dabhoiwala, Faramerz, 'The Construction of Honour, Reputation and Status in Late Seventeenth- and Early Eighteenth-Century England', *Transactions of the Royal Historical Society*, Sixth Series (1996).

Davies, Stephen J., 'The Courts and the Scottish Legal System, 1600-1747: the Case of Stirlingshire Crime and The Law', in V. A. C. Gatrell, Bruce Lenman, and Geoffrey Parker (eds.), *Crime and the Law: the Social History of Crime in Western Europe since 1500* (London, 1980).

Davis, Natalie Zemon, 'Women's History in Transition: the European Case', *Feminist Studies*, 3 (1975-6).

-----, 'Charivari, Honor and Community in Seventeenth-Century Lyon', in J. J. MacAloon (ed.), *Rite, Drama, Festival, Spectacle: Rehearsals Toward a Theory of Cultural Performance*, (Philadelphia, 1984).

Dawson, Jane, 'The Face of Ane Perfytt Reformed Kyrk': St Andrews and the Early Scottish Reformation', James Kirk (ed.), *Humanism and Reform: the Church in Europe, England and Scotland, 1400-1643, Essays in Honour of James K. Cameron* (Oxford, 1991).

-----, 'The Two John Knoxes: England, Scotland and the 1558 Tracts', *Journal of Ecclesiastical History*, 42 (1991).

-----, 'Anglo-Scottish Protestant Culture and Integration in Sixteenth-Century Britain', in S. G. Ellis and S. Barber (eds.), *Conquest and Union: Fashioning a British state, 1485-1725* (London, 1995).

-----, 'Trumpeting Resistance: Christopher Goodman and John Knox', in R. A. Mason (ed.), *John Knox and the British Reformations* (Aldershot, 1998).

-----, 'There is Nothing Like a Good Gossip': Baptism, Kinship and Alliance in Early Modern Scotland', in C. J. Kay and M. A. McKay (eds.), *Perspectives on the Older Scottish Tongue: a Celebration of DOST (Dictionary of the Older Scottish Tongue)*, (Edinburgh, 2005).

Demos, John, 'Shame and Guilt in New England' in Carol Zisowitz Stearns and Peter Stearns (eds.), *Emotion and Social Change: Toward a New Psychobiology* (New York, 1988).

DesBrisay, Gordon, 'Menacing Their Persons and Exacting on Their Purses': the Aberdeen Justice Court, 1657-1700', in D. Stevenson (ed.), *From Lairds to Louns: Country and Burgh Life in Aberdeen, 1600-1800* (Aberdeen, 1986).

-----. 'Wet Nurses and Unwed Mothers in Seventeenth-Century Scotland', in Elizabeth Ewan and Maureen Meikle (eds.), *Women in Scotland, c.1100-c.1750* (East Linton, 1999).

-----. 'Twisted by Definition: Women Under Godly Discipline in Seventeenth-Century Scottish Towns', in Yvonne Galloway Brown and Rhona Ferguson (eds.), *Twisted Sisters: Women, Crime and Deviance in Scotland Since 1400* (East Linton, 2002).

DesBrisay, Gordon and Sander Thomson, Karen, 'Crediting Wives: Married Women and Debt Litigation in the Seventeenth Century', in Elizabeth Ewan and Janay Nugent (eds.), *Finding the Family in Medieval and Early Modern Scotland*. (Aldershot, 2008).

Devine, T. M., 'The Demand for Agricultural Labour in East Lothian after the Napoleonic Wars', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 16 (1979).

Dingwall, Helen, 'General Practice' in Seventeenth-Century Edinburgh: Evidence from the Burgh Court', *Social History of Medicine*, 6:1 (1993).

-----. 'The Power Behind the Merchant? Women and the Economy in Late Seventeenth-Century Edinburgh', in Elizabeth Ewan and Maureen Meikle (eds.), *Women in Scotland c.1100-c.1750* (East Linton, 1999).

Ewan, Elizabeth, 'A Realm of One's Own? The place of Medieval and Early Modern Women in Scottish History', in T. Brotherstone, D. Simonton, and O. Walsh (eds.), *Gendering Scottish history: an International Approach* (Glasgow, 1999).

-----. 'For Whatever Ales Ye': Women as Consumers and Producers in Late Medieval Scottish Towns', in Elizabeth Ewan and Maureen Meikle (eds.), *Women in Scotland, c.1100-c.1750* (East Linton, 1999).

-----. 'Women and Daily Life in Late-Medieval Scotland', in Yvonne Galloway Brown and Rhona Ferguson (eds.), *Twisted Sisters: Women, Crime and Deviance in Scotland Since 1400* (East Linton, 2002).

-----. "'Many Injurious Words': Gender and Defamation in Late Medieval Scotland", in R. A. McDonald (ed.), *History, Literature and Music in Scotland, 700-1560* (Toronto, 2002).

-----. 'Mistresses of Themselves? Female Domestic Servants and By-Employments in Sixteenth-Century Scottish Towns', in A. Fauve-Chamoux (ed.), *Domestic Service and the Formation of European Identity* (Oxford, 2004).

-----. "'Tongue You Lied": the Role of the Tongue in Rituals of Public Penance in Late Medieval Scotland.', in E. D. Craun (ed.), *The Hands of the Tongue: Essays on Deviant Speech* (Kalamazoo, 2007).

-----. 'Disorderly Damsels? Women and Interpersonal Violence in Pre-Reformation Scotland', *Scottish Historical Review*, 89:2 (October 2010).

-----. 'The Early Modern Family', in T. M. Devine and Jenny Wormald (eds.), *The Oxford Handbook of Modern Scottish History* (Oxford, 2012).

Falconer, J. R. D., 'A Family Affair: Households, Misbehaving and the Community in Sixteenth-Century Aberdeen', in Elizabeth Ewan and Janay Nugent (eds.), *Finding the Family in Medieval and Early Modern Scotland*. (Aldershot, 2008).

Farr, J. R., 'The Pure and Disciplined Body: Hierarchy, Morality and Symbolism in France During the Catholic Reformation', *Journal of Interdisciplinary History*, 21:2 (1991).

Fenton, Alexander, 'The Rural Economy of East Lothian in the Seventeenth and Eighteenth Centuries', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 9 (1963).

Foyster, Elizabeth, 'Male Honour, Social Control and Wife Beating in Late Stuart England', *Transactions of the Royal Historical Society*, Sixth Series (1996).

Goodare, Julian, 'Scotland', in R. W. Scribner, Roy Porter and Mikulaš Teich (eds.), *Reformation in National Context* (Cambridge, 1994).

-----, 'Women and the Witch-Hunt in Scotland', *Social History*, 23 (1998).

-----, 'The Framework for Scottish Witch-Hunting in the 1590s', *Scottish Historical Review*, 81:2 (2002)

-----, 'The Scottish Witchcraft Panic of 1597', in Julian Goodare (ed.), *The Scottish Witch-Hunt in Context* (Manchester, 2002).

-----, Review in *Albion*, 36 (2004).

Gowing, Laura, 'Women, Status and the Popular Culture of Dishonour', *Transactions of the Royal Historical Society*, Sixth Series (1996).

-----, 'Giving Birth at the Magistrate's Gate: Single Mothers in the Early Modern City', in Susan Broomhall and Stephanie Tarbin (eds.), *Women, Identities and Communities in Early Modern Europe* (Aldershot, 2008).

Graham, H., 'A Woman's Work': Labour and Gender in the Late-Medieval Countryside', in P. J. P. Goldberg (ed.), *Woman is a Worthy Wight. Women in English Society c.1200-1500* (Stroud, 1992).

Graham, Michael F., 'Equality Before the Kirk? Church Discipline and the Elite in Reformation-era Scotland', *Archiv Fur Reformationsgeschichte*, 84 (1993).

-----, 'Social Discipline in Scotland, 1560-1610', in R. A. Mentzer (ed.), *Sin and the Calvinists: Morals Control and the Consistory in the Reformed Tradition* (Kirksville MO., 1994).

-----, 'Knox on Discipline: Conversionary Zeal or Rose-Tinted Nostalgia?', in R. A. Mason (ed.), *John Knox and the British Reformations* (Aldershot, 1998).

-----, 'Women and the Church Courts in Reformation-era Scotland', in Elizabeth Ewan and Maureen Meikle (eds.), *Women in Scotland, c.1100-c.1750* (East Linton, 1999).

-----, 'Conflict and Sacred Space in Reformation-era Scotland', *Albion*, 33:3 (2001).

-----, 'The Scottish Reformation', in R. Tittler and N. L. Jones (eds.), *A Companion to Tudor Britain* (Oxford, 2004).

Haigh, Christopher, 'Slander and the Church Courts in the Sixteenth Century', *Transactions of the Lancashire and Cheshire Antiquarian Society*, 78 (1975).

Harrington, J. F., 'The Forest For The Trees: Society and The Household in Early Modern Europe', *Historical Journal*, 41:4 (1998).

Harrison, John G., 'Women and the Branks in Stirling, c.1600 to c.1730', *Scottish Economic and Social History*, 18 (1998).

- . 'Policing' the Stirling Area, 1660-1706', *Scottish Archives*, 7 (2001).
- . 'The Pottery at Throsk, Stirlingshire c.1600-c.1800: Context, Links and Survival', *Proceedings of the Society of Antiquaries of Scotland*, 132 (2002).
- . 'Improving the Roads and Bridges of the Stirling Area, c.1660-1706', *Proceedings of the Society of Antiquaries of Scotland*, 135 (2005).
- . 'The Justices of the Peace for Stirlingshire, 1660-1706', *Scottish Archives*, 12 (2006).

Hay, W. G. M., 'The Boorlaw Court Book of Yester and Gifford', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 7 (1958).

- Hindle, Steve, 'The Shaming of Margaret Knowsley: Gossip, Gender and the Experience of Authority in Early Modern England', *Continuity and Change*, 9:3 (1994).
- . 'Exclusion Crises: Poverty, Migration and Parochial Responsibility in English Rural Communities, c.1560-1660', *Rural History*, 7 (1996).
- . 'Power, Poor Relief, and Social Relations in Holland Fen, c.1600-1800', *Historical Journal*, 41:1 (1998).
- . 'Hierarchy and Community in the Elizabethan Parish: the Swallowfield Articles of 1596', *Historical Journal*, 42:3 (1999).
- . 'A Sense of Place? Becoming and Belonging in the Rural Parish, 1550-1650', in A. Shepard and P. Withington (eds.), *Communities in Early Modern England: Networks, Place, Rhetoric* (Manchester, 2000).

Hollander, Melissa, 'The Name of the Father: Baptism and the Social Construction of Fatherhood in Early Modern Edinburgh', in Elizabeth Ewan and Janay Nugent (eds.), *Finding the Family in Medieval and Early Modern Scotland* (Aldershot, 2008).

- Houston, R. A., 'Parish Listings and Social Structure: Penninghame and Whithorn (Wigtownshire) in Perspective', *Local Population Studies*, 23 (1979).
- . 'Births and Baptisms: Haddington in the Mid-Seventeenth Century', *Transactions of the East Lothian Antiquarian and Field Naturalist's Society*, 18 (1984).

Houston, R. A. and Charles, W. J., 'Population Mobility in Scotland and Europe, 1600-1900: a Comparative Perspective', *Annales de Démographie Historique* (1990).

- Ingram, Martin, 'Communities and Courts: Law and Disorder in Early Seventeenth-Century Wiltshire', in J. S. Cockburn (ed.), *Crime in England: 1550-1800* (London, 1977).
- . 'Ridings, Rough Music and the 'reform of popular culture' in Early Modern England', *Past and Present* 105 (1984).
- . 'Religion, Communities and Moral Discipline in Late Sixteenth- and Early Seventeenth-Century England: Case Studies', in Kaspar von Greyerz (ed.), *Religion and Society in Early Modern Europe* (London, 1985).
- . 'Puritans and the Church Courts, 1560-1640', in C. Durston and J. Eales (eds.), *The Culture of English Puritanism, 1560-1700*, (Basingstoke, 1996).
- . 'Reformation of Manners in Early Modern England', in P. Griffiths, A. Fox, and S. Hindle (eds.), *The experience of Authority in Early Modern England* (Basingstoke, 1996).
- . 'Law, Litigants and the Construction of 'Honour': Slander Suits in Early Modern England', in P. R. Coss (ed.), *The Moral World of The Law* (Cambridge, 2000).

-----'. 'Sexual Manners: the Other Face of Civility in Early Modern England', in Peter Burke, Brian Harrison, and Paul Slack (eds.), *Civil Histories: Essays Presented to Sir Keith Thomas* (Oxford, 2000).

-----'. 'Regulating Sex in Pre-Reformation London', in Bernard, G. W., and Gunn, S. J. (eds.), *Authority and Consent in Tudor England: Essays Presented to C. S. L. Davies* (Aldershot, 2002).

-----'. 'Family and Household', in A. F. Kinney (ed.), *A Companion to Renaissance Drama*, (Oxford, 2004).

-----'. 'Men and Women in Late Medieval and Early Modern Times' [Review article], *English Historical Review*, 120:487 (2005).

Lenman, Bruce, 'The Limits of Godly Discipline in the Early Modern Period with Particular Reference to England and Scotland', in Kaspar von Greyerz (ed.), *Religion and Society in Early Modern Europe, 1500-1800* (London, 1985).

Lenman, Bruce, and Parker, Geoffrey, 'The State, the Community and the Criminal Law in Early Modern Europe', in V. A. C. Gatrell, Bruce Lenman, and Geoffrey Parker (eds.), *Crime and the Law: the Social History of Crime in Western Europe since 1500* (London, 1980).

Lindsay, E. C. B., 'Colstoun: a Story of a Scots Barony', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 4 (1948).

Lynch, Michael and Dingwall, Helen M., 'Elite Society in Town and Country', in E. P. Dennison, David Ditchburn and Michael Lynch (eds.), *Aberdeen Before 1800: a New History* (East Linton, 2002).

McMahon, G. I. R., 'The Scottish Courts of High Commission, 1610-1638', *Records of the Scottish Church History Society*, 15 (1965)

Mann, Alastair J., 'The Law of the Person: Parliament and Social Control', in Keith M. Brown and Alan R. MacDonald (eds.), *The History of the Scottish Parliament. Volume 3: Parliament in Context, 1235-1707* (Edinburgh, 2010)

Marshall, R. K., 'Wet-Nursing in Scotland: 1500-1800', in A. Fenton, H. Cheape, and R. K. Marshall (eds.), *Review of Scottish Culture* (Edinburgh, 1984).

Martin, Lauren, 'Witchcraft and Family: What Can Witchcraft Documents Tell Us About Early Modern Scottish Family Life', *Scottish Tradition*, 27 (2002).

Maxwell-Stuart, Peter G., 'The Fear of the King is Death: James VI and the Witches of East Lothian', in W. G. Naphy and Penny Roberts (eds.), *Fear in Early Modern Society* (Manchester, 1997).

-----'. 'Wild, filthy, execrabil, detestabil, and unnatural sin': bestiality in early modern Scotland', in Tom Betteridge (ed.), *Sodomy in Early Modern Europe* (Manchester, 2002).

Mayhew, Nicholas, 'The Status of Women and the Brewing of Ale in medieval Aberdeen', *Review of Scottish Culture*, 10 (1996-7).

Meikle, Maureen M., 'Victims, Viragos and Vamps: Women of the Sixteenth-Century Anglo-Scottish Frontier', in J. C. Appleby and P. Dalton (eds.), *Government, Religion and Society in Northern England, 1000-1700* (Stroud, 1997).

Mitchison, Rosalind, 'A Parish and its Poor: Yester in the Second Half of the Seventeenth Century', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 14 (1974).

-----, 'East Lothian as Innovator in the Old Poor Law', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 19 (1987).

-----, 'Poor Relief and Health Care in Scotland, 1575-1710', in P. O. Grell and A. Cunningham (eds.), *Health Care and Poor Relief in Protestant Europe, 1500-1700* (London, 1997).

Mitchison, Rosalind and Leneman, Leah, 'Scottish Illegitimacy Ratios in the Early Modern Period', *Economic History Review*, 40:1 (1987).

-----, 'Acquiescence in and Defiance of Church Discipline in Early Modern Scotland', *Records of the Scottish Church History Society*, 25 (1993).

Moogk, Peter N., "'Thieving Buggers and Stupid Sluts: Insults and Popular Culture in New France', *William and Mary Quarterly*, 3rd Series, 36 (1979)

Scott Moir, 'The Crucible: Witchcraft and the Experience of Family in Early Modern Scotland' in Elizabeth Ewan and Janay Nugent (eds.), *Finding the Family in Medieval and Early Modern Scotland*. (Aldershot, 2008).

Muchembled, Robert, 'Lay Judges and the Acculturation of the Masses (France and the Southern Low Countries, Sixteenth to Eighteenth Centuries)', in Kaspar von Greyerz (ed.), *Religion and Society in Early Modern Europe* (London, 1985).

Muldrew, Craig, 'The Culture of Reconciliation: Community and the Settlement of Economic Disputes in Early Modern England', *Historical Journal*, 39:4 (1996).

-----, 'Hard Food for Midas': Cash and its Social Value in Early Modern England', *Past and Present*, 170 (2001).

Mullan, D. G., 'Women in Scottish divinity, c.1590-c.1640', in Elizabeth Ewan and Maureen Meikle (eds.), *Women in Scotland, c.1100-c.1750* (East Linton, 1999).

-----, 'Mistress Rutherford's Conversion Narrative', *Miscellany of the Scottish History Society*, XIII (Edinburgh, 2004).

Norton, Mary Beth, 'Gender and Defamation in Seventeenth-Century Maryland', *William and Mary Quarterly*, 3rd Series, 44 (1987).

Parker, Geoffrey, 'The 'Kirk By Law Established' and the Origins of 'The Taming of Scotland', in Leah Leneman (ed.), *Perspectives in Scottish social history: Essays in Honour of Rosalind Mitchison* (Aberdeen, 1988).

Paul, K. Tawny, 'Credit, Reputation, and Masculinity in British Urban Commerce: Edinburgh, c.1710-70', *Economic History Review*, 65: 2 (May 2012).

- Peters, Christine, 'Single Women in Early Modern England: Attitudes and Expectations', *Continuity and Change*, 12:3 (1997).
- '. 'Gender, Sacrament and Ritual: the Making and Meaning of Marriage in Late Medieval and Early Modern England', *Past and Present*, 169 (2000).
- Pollmann, Judith, 'Off the Record: Problems in the Quantification of Calvinist Church Discipline', *The Sixteenth Century Journal*, 33:2 (Summer, 2002).
- Pollock, Linda, 'Rethinking Patriarchy and the Family', *Journal of Family History*, 23 (1998).
- Rublack, Ulinka, 'The Public Body: Policing Abortion in Early Modern Germany', in Lynn Abrams, and Elizabeth Harvey (eds.), *Gender Relations in German History: Power, Agency and Experience from the Sixteenth to the Twentieth Century* (London, 1996).
- Schilling, H., "'History of Crime' or 'History of Sin'? Some Reflections on the Social History of Early Modern Church Discipline", in E. I. Kouri and T. Scott (eds.), *Politics and Society in Reformation Europe: Essays for Sir Geoffrey Elton on the Occasion of his Sixty-Fifth Birthday* (Basingstoke, 1987).
- Scott, Joan Wallach, 'Gender: a Useful Category of Historical Analysis', *The American Historical Review*, 91 (1986).
- Secombe, Wally, 'Patriarchy Stabilized: the Construction of the Male Breadwinner Wage Norm in Nineteenth-Century Britain', *Social History*, 11:1 (1986).
- Sharpe, J. A., 'Crime and Delinquency in an Essex Parish, 1600-1640', in J. S. Cockburn (ed.), *Crime in England, 1550-1800* (London, 1977)
- '. 'Defamation and Sexual Slander in Early Modern England: the Church Courts at York', *The University of York Borthwick Papers*, 58 (1980).
- '. "'Such Disagreement betwix Neighbours': Litigation and Human Relations in Early Modern England', in J. Bossy (ed.), *Disputes and Settlements: Law and Human Relations in the West* (Cambridge, 1983).
- '. 'The People and the Law', in B. Reay (ed.), *Popular Culture in Seventeenth-Century England* (London, 1985).
- Shaw, John P., 'Water Power and Rural Industry in East Lothian', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 20 (1988).
- Shepard, Alexandra, 'Manhood, Credit and Patriarchy in Early Modern England c.1580-1640', *Past and Present*, 167 (2000).
- Shepard, Alexandra and Spicksley, Judith, 'Worth, Age and Social Status in Early Modern England', *Economic History Review*, 64:2 (2011).
- Smith, L. M., 'Sackcloth for the Sinner or Punishment for the Crime? Church and Secular Courts in Cromwellian Scotland', in J. Dwyer, R. Mason, and A. Murdoch (eds.), *New Perspectives on the Politics and Culture of Early Modern Scotland* (Edinburgh, 1982).

- Smout, T. C., 'The Trade of East Lothian at the End of the Seventeenth Century', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 9 (1963).
- Spence, Cathryn, 'Women and Business in Sixteenth-Century Edinburgh: Evidence from their Testaments', *Journal of Scottish Historical Studies*, 28 (2008).
- Spence, David, 'Documents Illustrative of the Long History of Coal Mining in East Lothian', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 18 (1984).
- Spicer, A., 'Accommodating of Thame Selfis to Heir the Worde': Preaching, Pews and Reformed Worship in Scotland, 1560-1638', *History*, 88:291 (2003).
- Stewart, Laura A. M., 'The 'Rise' of the State?', in T. M. Devine and Jenny Wormald (eds.), *The Oxford Handbook of Modern Scottish History* (Oxford, 2012).
- Stone, Lawrence, 'Interpersonal Violence in English Society, 1300-1980', *Past and Present*, 101 (1983).
- Thomas, Keith, 'The Double Standard', *Journal of the History of Ideas*, 20:2 (1959).
- Todd, Margo, 'Profane Pastimes and the Reformed Community: the Persistence of Popular Festivities in Early Modern Scotland', *Journal of British Studies*, 39 (2000).
 ----- 'The Church and Religion', in B. Harris and A. R. Macdonald (eds.), *Scotland: the Making and Unmaking of the Nation, c.1100-1707, Volume II: Early Modern Scotland, c.1500-1707* (Dundee, 2006).
- Vage, J. A., 'Ecclesiastical Discipline in the Early 17th Century: Some Findings and Some Problems from the Archdeaconry of Cornwall', *Journal of the Society of Archivists*, 7 (1982).
- Walker, Garthine, 'Keeping it in the Family: Crime and the Early Modern Household', in Helen Berry and Elizabeth Foyster (eds.), *The Family in Early Modern England* (Cambridge, 2007).
 ----- 'Just Stories: Telling Tales of Infant Death in Early Modern England', in Margaret Mikesell and Adele F. Seeff (eds.), *Culture and Change: Attending to Early Modern Women* (Newark DE, 2003).
 ----- 'Rereading Rape and Sexual Violence in Early Modern England', *Gender and History*, 10 (1998).
 ----- 'Expanding the Boundaries of Female Honour in Early Modern England', *Transactions of the Royal Historical Society*, Sixth Series (1996).
- Walter, J., 'Popular Iconoclasm and the Politics of the Parish in Eastern England, 1640-1642', *Historical Journal*, 47:2 (2004).
 ----- 'Abolishing Superstition with Sedition? The Politics of Popular Iconoclasm in England 1640-1642', *Past and Present*, 183:1 (2004).
- Whetstone, A. E., 'The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries', *Albion*, 9 (1977).

White, A., 'The Impact of the Reformation on a Burgh Community: the Case of Aberdeen', in Michael Lynch (ed.), *The Early Modern Town in Scotland* (London, 1987).

Whyte, I. D., 'Grain Production in East Lothian in the Seventeenth Century', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 15 (1976).

-----, 'Commissary Court Testaments: a Neglected Source for Scottish Local History', *Local Historian*, 17:1 (1986).

-----, 'Marriage and Mobility in East Lothian in the Seventeenth and Eighteenth Centuries', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 19 (1987).

-----, 'The Function and Social Structure of the Scottish Burghs of Barony in the Seventeenth and Eighteenth Centuries', in A. Maćzak and C. Smout (eds.), *Gründung und Bedeutung kleinerer Städte in nördlichen Europa der frühen Neuzeit* (Wiesbaden, 1991), 11-30.

-----, 'Crop Yields on the Mains of Yester, 1698-1753', *Transactions of the East Lothian Antiquarian and Field Naturalists' Society*, 22 (1993).

-----, 'Poverty or Prosperity? Rural Society in Lowland Scotland in the Late Sixteenth and Early Seventeenth Centuries', *Scottish Economic and Social History*, 18:1 (1998).

-----, 'Rural Society and Economy' in B. Harris and A. R. Macdonald (eds.), *Scotland: the Making and Unmaking of the Nation, c.1100-1707, Volume I: Scottish Nation: Origins to c.1500* (Dundee, 2006).

Whyte, I. D. and Whyte, K. A., 'Debt and Credit, Poverty and Prosperity in a Rural Community', R. Mitchison and P. Roebuck (eds.), *Economy and Society in Scotland and Ireland, 1500-1939* (Edinburgh, 1988).

Wiesner, Merry E., 'Guilds, Male Bonding and Women's Work in Early Modern Germany', *Gender and History*, 1 (1989).

Wormald, Jenny, 'The Witches, the Devil and the King', in Terry Brotherstone and David Ditchburn (eds.), *Freedom and Authority: Scotland, c.1050-c.1650: historical and historiographical essays presented to Grant G. Simpson* (East Linton, 2000).

-----, 'Reformed and Godly Scotland?', in T. M. Devine and Jenny Wormald (eds.), *The Oxford Handbook of Modern Scottish History* (Oxford, 2012).

Wunder, Heide, 'Gender Norms and their Enforcement in Early Modern Germany', in Lynn Abrams and Elizabeth Harvey (eds.), *Gender Relations in German History: Power, Agency and Experience from the Sixteenth to the Twentieth Century* (London, 1996).

Yeoman, Louise A., 'Witchcraft Cases from the Register of Commissions of the Privy Council of Scotland, 1630-1642', *Miscellany of the Scottish History Society*, XII, 5th series: 14 (2004).

V. Secondary Sources: Unpublished Theses

Fenwick, Robert, 'Locating Scotland's Ordinary Folk, among the lesser known sources for social and family history research c.1630- c.1790' (Unpublished Ph.D. Thesis: University of Edinburgh, 2006).

Green, Thomas, 'Court of the Commissaries of Edinburgh: Consistorial Law and Litigation, 1559-1576' (Unpublished Ph.D. Thesis: University of Edinburgh, 2010).

Hardy, J. R., 'The Attitude of the Church and State in Scotland to Sex and Marriage, 1560-1707' (Unpublished Ph.D. Thesis: University of Edinburgh, 1978).

Hollander, Melissa, 'Sex in Two Cities: the Formation and Regulation of Sexual Relationships in Edinburgh and York, 1560-1625' (Unpublished Ph.D. Thesis: University of York, 2006).

Martin, Lauren, 'The Devil and the Domestic: Women's Work, Marriage and Witchcraft in Early Modern Scotland' (Unpublished Ph.D. Thesis: New School of Social Research, 2004).

Miller, Joyce, 'Cantrips and Carlins: Magic, Medicine and Society in the Presbyteries of Haddington and Stirling, 1603-88' (Unpublished Ph.D. Thesis: University of Stirling, 1999).

Moir, Scott, 'Some Godlie, Wyse and Vertious Gentilmen?: Communities, State Formation, and the Justices of the Peace in Scotland, 1587-1660' (Unpublished Ph.D. Thesis: University of Guelph, 2002).

Paul, K. Tawny, 'Credit and Social Relations Amongst Artisans and Tradesmen in Edinburgh and Philadelphia, c.1710-1770' (Unpublished Ph.D. Thesis: University of Edinburgh, 2011).

Symms, P. S. M., 'Social Control in a Sixteenth-Century Burgh: a Study of the Burgh Court Book of Selkirk, 1503-1545' (Unpublished Ph.D. Thesis: University of Edinburgh, 1986).

Spence, Cathryn, 'To Content and Pay: Women's Economic Roles in Edinburgh, Haddington and Linlithgow, 1560-1640' (Unpublished Ph.D. thesis, University of Edinburgh, 2010).

Robertson, Elizabeth J., 'Panic and Persecution: Witch-hunting in East Lothian, 1628-1630' (Unpublished M.Sc. by Research dissertation: University of Edinburgh, 2009).

Wasser, Michael B., 'Violence and the Central Criminal Courts in Scotland, 1603-1638' (Unpublished Ph.D. Thesis: Columbia University, 1995).

Willumsen, Liv Helene, 'Seventeenth-Century Witchcraft Trials' (Unpublished Ph.D. Thesis: University of Edinburgh, 2008).

Yeoman, Louise A., 'Heart-work: Emotion, Empowerment and Authority in Covenanting Times' (Unpublished Ph.D. Thesis: University of St. Andrews, 1992).

VI. Web Resources

K. M. Brown, et al (eds.), *The Records of the Parliaments of Scotland to 1707* (St Andrews, 2007-2011).

Julian Goodare, Lauren Martin, Joyce Miller and Louise Yeoman, *The Survey of Scottish Witchcraft*, <http://www.arts.ed.ac.uk/witches/> (archived January 2003).

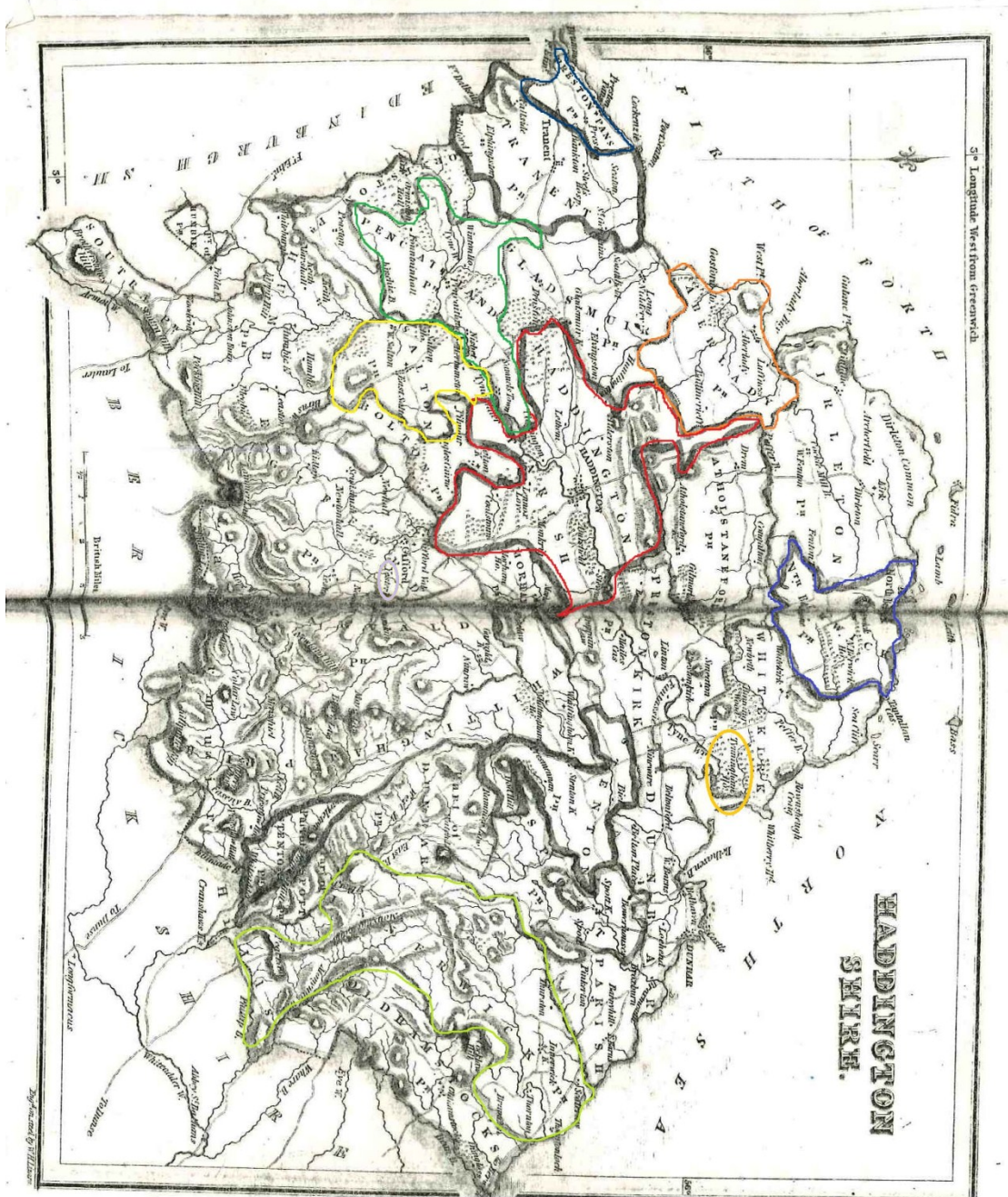
Appendix: Maps of East Lothian

Figure 1.1: John Adair, *A Map of East Lothian / survey'd by J. Adair*



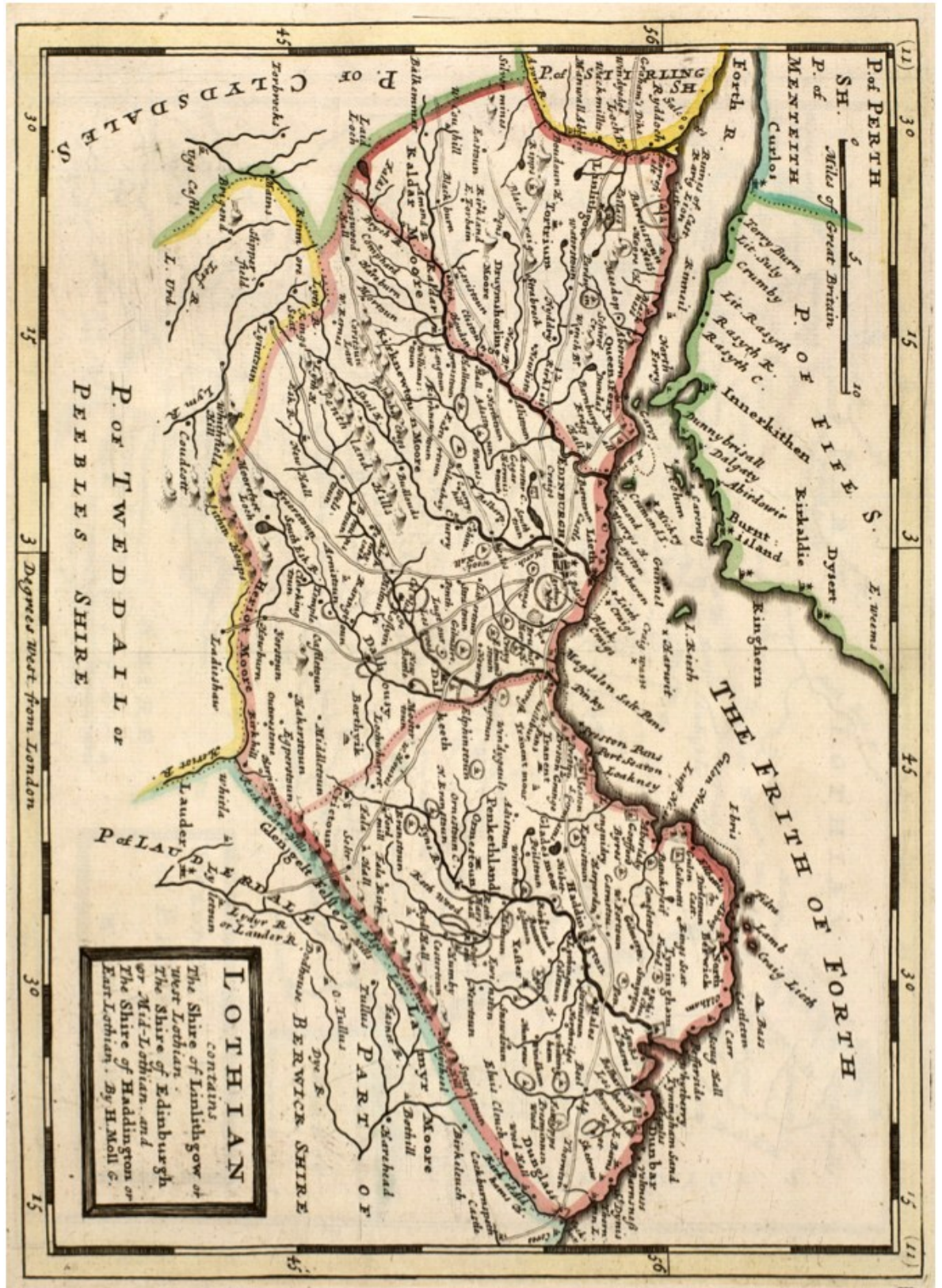
Source: Edinburgh: Cooper, ca. 1736. NLS shelfmark: EMS.s.737 (15).
Reproduced by permission of the Trustees of the NLS.

Figure 1.2: Map of Haddingtonshire



Source: from the Second Statistical Account of Scotland (1845). Reproduced by permission of the Trustees of the NLS.

Figure 1.3: Herbert Moll's map of the Lothians, 1745



Source: Herman Moll, *Lothian: contains The Shire of Linlithgow or West Lothian, The Shire of Edinburgh or Midlothian, and Haddington or East Lothian* (London: Bowles and Bowles, 1745). NLS shelfmark EMS.b.2.1 (11). Reproduced by permission of the Trustees of the NLS.

Figure 1.5: Aberlady and its immediate surrounds



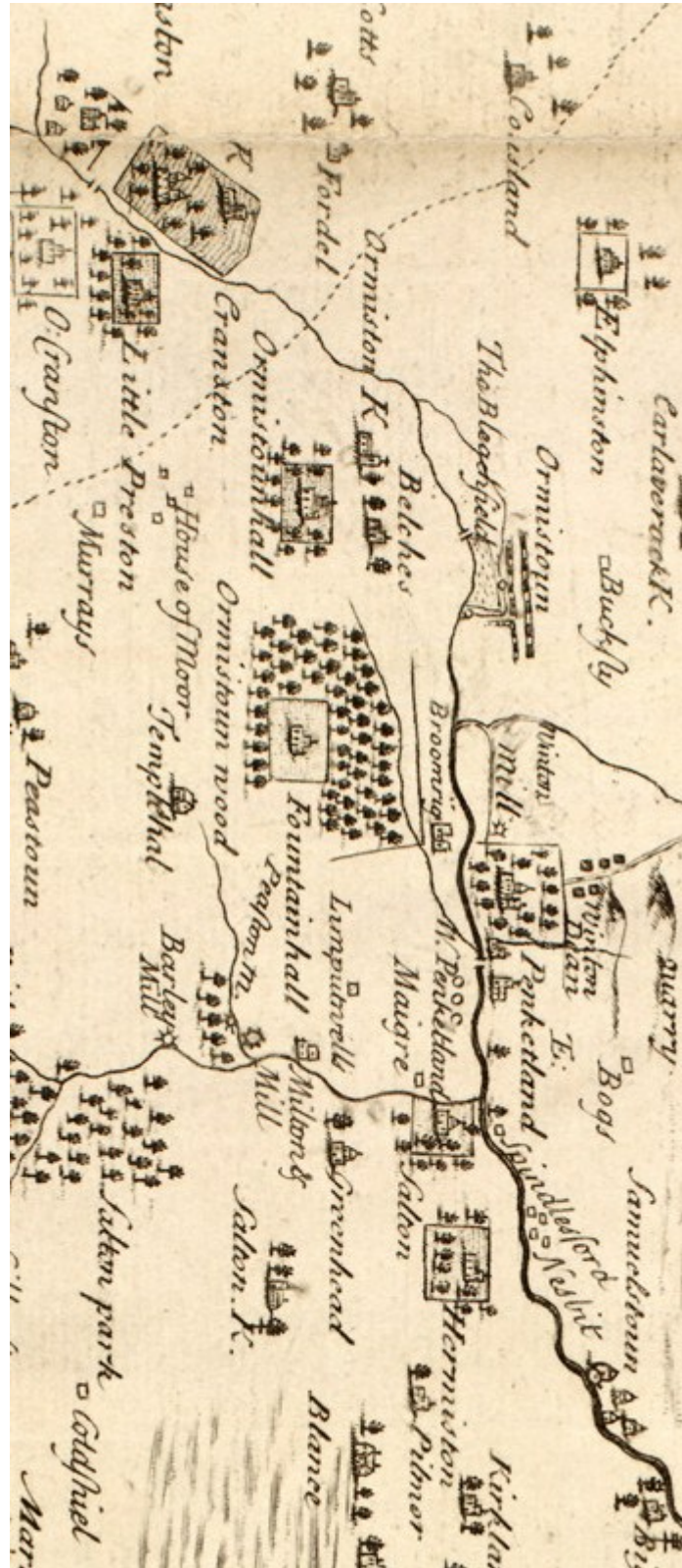
Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736). NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

Figure 1.6: Cockburnspath and Innerwick, and their immediate surrounds



Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736). NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

Figure 1.9: Pencaitland and Salton, and their immediate surrounds



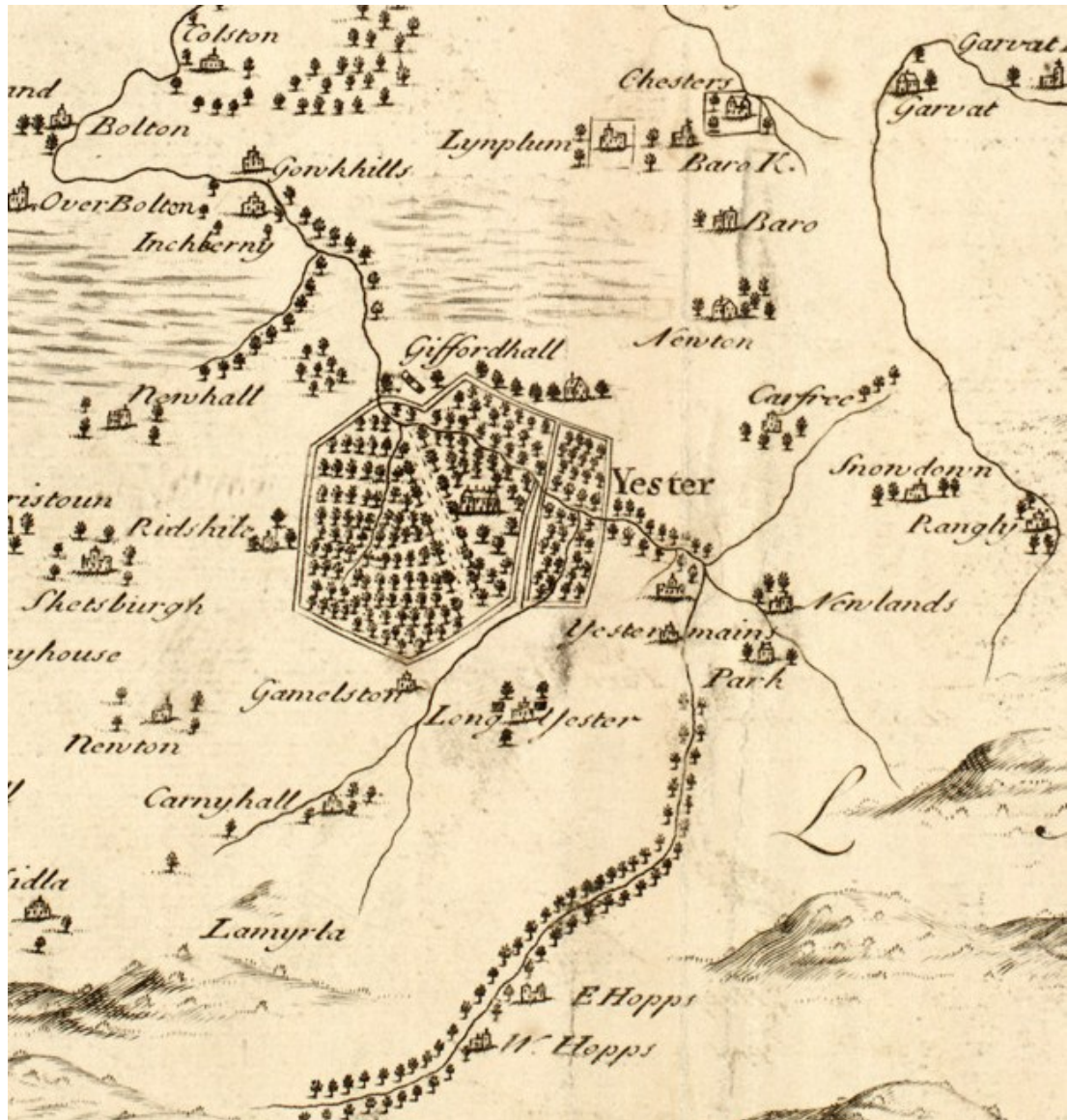
Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736). NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

Figure 1.11: Tynninghame and its immediate surrounds



Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736). NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.

Figure 1.12: Yester (Bothans/Gifford) and its immediate surrounds



Source: John Adair, *A Map of East Lothian / survey'd by J. Adair* (Edinburgh: Cooper, ca. 1736). NLS shelfmark: EMS.s.737 (15). Reproduced by permission of the Trustees of the NLS.