THE POLITICS AND ADMINISTRATION
OF SCOTLAND 1725 - 1748

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Despite the Union, Scotland remained in many respects a 'semi-independent' country and it soon became clear to successive Ministries that it was not possible to govern Scotland directly from London. The abolition of the Scottish Privy Council in 1708 left Scotland without a natural focus of government. The main problem thus facing Ministers was to establish proper channels, both administrative and political, to manage Scotland. A distinct administrative structure quickly emerged in Edinburgh - the new customs and excise boards, the courts of Session, Justiciary and Exchequer, the principal law officers, the Receiver General. In particular, the public finances of Scotland were kept largely separate from those of England. The administration, both central and local, provided a substantial number of jobs and such Crown patronage had to be properly deployed to secure maximum political benefit, particularly the return of MPs prepared to support the Ministry. Most Ministers had neither sufficient knowledge nor inclination to distribute this patronage effectively and political power was thus delegated, to a varying degree, to a Scottish manager who was expected to control Scotland in the Ministry's interest. Such a manager naturally became the focus of government in Scotland and an ambitious manager could set himself up as an intermediary between the Ministry and Scotland. This in turn created a political opposition in Scotland among those who felt excluded from a share of power. The most successful manager of the period was the earl of Illy who, with his sous-ministre Milton, managed Scotland for much of the period, first for Walpole and later Pelham. The delegation of political power, however, was always one of some balance and although he could often exert a degree of bargaining pressure on Ministers, the manager ultimately depended on the continuing support of a stable Ministry at Westminster. The devolution of administrative power to the various bodies in Edinburgh and the role of the manager created a buffer between London and Scotland which both reinforced the feeling that Scotland remained a 'semi-independent' country and allowed the Union settlement time to work.
DECLARATION

This thesis has been composed entirely by myself and is my own work.

Richard Scott

September 1981
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SHR Scottish Historical Review
SHS Scottish History Society
SPA Saltoun Public Affairs Papers
SRO Scottish Record Office
SYP Supplementary Yester Papers
YP Yester Papers
XM Christmas quarter

Note on dates

All dates quoted are in Old Style, but with 1 January as the beginning of the year.
This study has been a long time in preparation and undoubtedly reflects many changes in my views and approach since I set out in 1970. It is consciously confined to a political and administrative study of Scotland in the first half of the eighteenth century: this not only reflects my own interests but also, I believe, the priorities of the age itself.

Over the years I owe a debt to many, both professionally and personally, too numerous to mention. To the staff at various libraries and record offices who have assisted me in finding my way through the mass of source material which the eighteenth century has bequeathed to historians and to friends who have come and gone but unfailingly lifted my flagging spirit. Alex Murdoch's advice and example was invaluable and Doris Williamson achieved the impossible by deciphering my handwriting.

Certain people, however, deserve special mention: Jackie Tombs who provided the necessary encouragement just when I needed it most; my parents who would never let me give up; John Simpson who over the years believed in both the project and me and gave me invaluable guidance and help; and my daughter Shonagh who never really knew what I was doing all these long nights — perhaps one day she'll read it. To them this work is dedicated with love and gratitude.

Richard Scott
CHAPTER ONE: INTRODUCTION

The Act of Union of 1707 united the Parliaments of Scotland and England but it was not a 'complete' Union. Scotland retained her own legal and electoral systems; property rights, including the extensive heritable jurisdictions, were specifically safeguarded, as was the position of the Scottish kirk and universities. The structure of local government, the vast influence of the great Scottish magnates, the very social fabric of the country, was left undisturbed. Nor, except for the stipulation that a new Scottish Court of Exchequer should be established, did the Union make any provision about the way in which Scotland was to be administered. How Scotland was to in future be governed was left to be worked out in practice.

The domestic functions of government in the eighteenth century were confined largely to the collection of revenue and the maintenance of internal order. After the Union responsibility for the government of Scotland lay with the Ministry in London and the relatively small central government departments there, but it soon became apparent that it was virtually impossible to administer Scotland directly from London, particularly given the very real differences between the two countries. Moreover, before any detailed consideration could be given to the administration of Scotland after the Union, Parliament in 1708, against the wishes of the Ministry, abolished the Scottish Privy Council, hitherto the chief executive organ of government in Scotland.¹

¹The Keepers of the Great and Privy Seals of Scotland, the Lord Justice General and the Lord Clerk Register were made members of the Privy Council of Great Britain.
This left a considerable gap in executive power, one indeed which was never properly filled. The main problem thus facing successive Ministries was to establish proper channels, both political and administrative, to govern Scotland: to keep Scotland quiet, to ensure that sufficient revenue was raised at least to meet the cost of its civil government, and to marshal the bulk of the Scottish political nation behind the Ministry of the day. In practice this was to lead, despite the Union, to a devolution of power back from the centre. Administrative power was devolved to various subordinate bodies in Edinburgh and a new administrative system began to evolve, building in many cases on the existing pre-Union structure. Again, after 1707 the Ministry in London became the ultimate source of political patronage but as a consequence Ministers were faced with the problem of distributing offices in the gift of the Crown in Scotland. There was a substantial number of these, over three hundred, (and well over double that number in the customs and excise services), though never enough to satisfy the demands of the needy Scots. Such patronage had to be properly deployed to keep Scotland quiet and to gain and maintain the support of the majority of Scots politicians. No Minister, however, had sufficient knowledge of Scotland to supervise the effective distribution of jobs to this end. Thus political power, and in particular the management of patronage and Parliamentary elections, also came to be delegated, to a varying degree, to Scottish politicians, or 'managers', who were expected to control Scotland in the Ministry's interest and, most important, to provide a solid phalanx of Scottish members of Parliament.

2 For a contemporary discussion see Sir John Clerk, Observations on the Present Circumstances in Scotland (1730), ed. T.C. Smout, Scottish History Society (1965), pp.184, 203: "... by taking away the Privy Council of Scotland there is very little Government to be seen amongst us".

3 See Hay to Tweeddale 13 Mar 1742 NLS YP7045, 86.
and representative peers who would support the government at Westminster. Neither process was straightforward, and as Dr Riley has shown, in the years following the Union successive English Ministers experimented with different systems of managing Scotland while attempting to keep ultimate control in their own hands. There were several factors, both administrative and political, militating against complete integration. The central government departments had little knowledge and even less interest in Scottish matters and the subordinate bodies in Scotland soon realised that they could function, at least on a day to day basis, with a considerable degree of autonomy. The delegation of political power was also one of delicate balance: in order that the Scottish manager could control Scotland effectively in the Ministry's interest, Ministers had to allow him a certain amount of patronage to distribute as he thought fit, but this could enable an ambitious manager to set himself up as an intermediary between the Ministry and the people in Scotland and thus exert a degree of bargaining pressure on the Ministry.

These two strands, the administrative and the political, were of course very closely interlinked: most administrative decisions of any consequence were, as always, political decisions; the administrative actions of revenue or law officers, for example, could often affect the balance of local power. More immediately, the administration provided jobs, the very life-blood of politics in this period and a principal currency of electoral influence. Politicians worked through the administrative structure to achieve political power and men were dependent for their offices on the influence of great men. There was no clear distinction in the

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eighteenth century between civil and political service and administrative and political duties often blended into one another. Many officials were actively involved in political matters: Ministers, including the Scottish manager, regularly undertook relatively menial administrative tasks. Even the most minor post was brought into the political arena and was subject to claims from competing interests. Rarely could such a post be given simply as a reward for past services: even the meanest customs tidewaiter might be useful in winning support at election times. The prestigious offices of state were given to prominent peers to secure their support. The Scottish manager sought to obtain jobs for his followers in the central offices in Edinburgh, both to build up his own position and to give a clear indication that he enjoyed the favour of the Ministry. In the localities, customs and excise jobs, other revenue and legal posts, and a host of minor offices at the government's disposal were distributed to voters in the constituencies or to the dependents of influential figures to build up alliances with local interests and thus extend Ministerial influence and win elections. Local officials were actively involved, and indeed were expected to be, in electoral matters.

Ministers generally had little interest in Scottish affairs. Preoccupied with more important concerns, they rarely gave Scottish business, other than patronage matters, detailed attention except in times of crisis - during the Jacobite rebellions and the malt tax and Porteous riots for example. The ordinary administration of Scotland from the London end was thus left to the central departments, the Treasury and the Secretaries of State, and to a lesser extent the War Office and the Admiralty. Since the late seventeenth century the Treasury had been expanding its influence, both politically and administratively, emerging as the pre-eminent government department: both Walpole and Pelham used the Treasury as a base from which to
dominate the rest of the Ministry. After the Union the Treasury became responsible for the public revenues of Scotland, including the newly introduced customs and excise services. Separate customs and excise boards, subordinate to the Treasury, were set up in Edinburgh to administer these revenues. In 1708 a new Scottish Exchequer was established by Act of Parliament with both judicial and administrative functions: in their administrative capacity the barons were responsible to the London Treasury and in fact acted as a subordinate Treasury in Edinburgh. The Treasury's main concern was to ensure that Scotland raised sufficient revenue to meet the cost of its own civil government. Provided this was achieved, it generally did not interfere to any great extent in the day to day work of the Scottish revenue boards. In the eighteenth century there were two Secretaries of State (for the Northern and Southern Departments) one responsible for home affairs, the other for foreign. At certain times, from 1708 to 1725 and 1742 to January 1746, there was also a third Secretary of State who, although he might technically be a 'British' Secretary of State, in fact dealt solely with Scottish business. When there was no 'Scottish' Secretary, official Scottish business was handled by one of the other Secretaries, usually during this period the Duke of Newcastle. The Secretary of State's office was formally responsible for processing appointments to judicial and various other Crown offices in Scotland, and for the official correspondence with Scotland. The War Office and the Admiralty had certain more limited responsibilities for Scotland: the Secretary at War was responsible for the army in Scotland and for all Scottish military appointments; the Admiralty similarly for naval


6 Official correspondence was normally carried to and from Scotland in a 'black box': for example see Thomas Scott to Postmaster General 3 Jan 1720 SRO RH2/4/396, 94; Delafaye to Alex McMillan 6 Sep 1726 SRO RH2/4/324 f240.
matters. Special arrangements were made at the Treasury and the Secretary of State's office to handle Scottish business: Scottish matters were dealt with by about a dozen clerks supervised by two secretaries at the Treasury and in the Secretary of State's office by three or four clerks under an under-secretary. In practice, however, both departments were usually preoccupied with more important matters, few of the officers understood Scottish affairs and Scottish business was largely neglected or dealt with in an inefficient manner.

This division of functions between the four central departments meant that even when there was a 'Scottish' Secretary of State his responsibilities were limited: the appointment for example of revenue, army and navy officers in Scotland all fell outwith his official remit. More importantly, his authority and particularly his influence in patronage matters very much depended on his standing with other Ministers and his own political strength in Scotland. In short, the official position mattered much less than the personal influence which the holder could wield. Secretaries of State Roxburghe in the early 1720s and Tweeddale from about mid 1744, because they no longer enjoyed the full support of the Ministry, in effect could exert little influence, particularly in the distribution of offices.

Despite the Union and the abolition of the Privy Council, Edinburgh was to remain a natural focus of government for Scotland. The courts of Session, Justiciary and Admiralty remained, subordinate customs and excise boards and the new Court of Exchequer were set up, various other government bodies sat there, and the General Assembly of the Church of Scotland and the Convention of Royal Burghs met there annually. All this provided a considerable number of government jobs, the very essence of political patronage. Moreover, usually only the 45 Scots members of Parliament, the sixteen representative peers and a handful of other
richer peers went regularly to London: the rest remained in Edinburgh. Edinburgh thus continued to be an active social centre for the Scottish aristocracy and middle classes—

Edinburgh being the place for all Civil judicatorys; for the General Assembly and Commissions of the clergy; the most frequented university; the Center of all Scots Correspondence, and at which the post from London stops; and the place to which all orders from the King and Government are sent, and thence distributed, and from which all returns thereto are made; and the place at which many of the principal families and persons pass the winter, as the English do at London, it is a place of great Influence, and Calls for the Governments particular notice. 7

The administration of Scotland thus operated on a London-Edinburgh axis: the Ministry and central departments in London, the courts and subordinate administrative bodies in Edinburgh. The first half of this thesis studies in depth various branches of the administration of Scotland in the first half of the eighteenth century: the customs and excise services, the Court of Exchequer, the public revenues and the civil list, and the legal system, courts and judges. The way in which Scotland was administered, the tensions between London and Edinburgh, and the inter-relationship between politics, patronage and the administration of Scotland in the period 1725 to 1748 form one of the major themes of this thesis.

The second half of the thesis concentrates on the political struggles of the period and in particular on the role played by the Scottish manager. Given the separate administrative structure in Scotland and the need to distribute jobs to secure the maximum political benefit, both the Ministry and the Scots required a well-recognised channel of communication between London and Edinburgh, especially in patronage matters,

7James Erskine to Pelham 22 Sep 1747 NUL NBC 1801a.
and this led to the emergence of an identifiable Scottish minister or manager. The Scottish manager, who might or might not hold the office of Secretary of State, undertook two closely related functions. On the one hand he acted as a focus for Scottish government, particularly in the absence of the Privy Council, and for the interests and aspirations of Scotsmen. He represented Scottish interests within the government and in particular pushed Scottish business through the inefficient and cumbersome central government machinery. His presence indicated a clear channel of communication between Scotland and the government at London. He was expected to obtain jobs from the Ministry for the Scottish political nation in need and to ensure that government action was taken when necessary. Scotland was a poor country and for many of the nobility and gentry the rewards of office were of paramount importance. As the Ministry was the source of most jobs, it was essential that the manager was seen to have the support of Ministers. As long as he had and could obtain jobs for his followers, the majority of Scots were usually prepared to rally behind him. On the other hand, he was expected to provide the Ministry and central departments with information and advice on Scotland, particularly on the disposal of Crown offices, to manage Scotland in the Ministry's interest, and most important to ensure the return of as many Scots members and representative peers as possible to support the Ministry in Parliament. Godolphin had viewed the accession of a solid group of Scots members and peers who would support the Court in Parliament as one of the main attractions of Union, and from 1707 onwards successive Ministries regarded it as of prime importance to secure the return of as many Scots as possible who would support the Ministry in order to strengthen its position in both the Lords and

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Commons. Few Ministries ever had a sufficiently comfortable majority, particularly in the Commons, that they could dispense with the need for the Scots. The bulk of government posts in Scotland were to be distributed to this end: to build up and maintain electoral influence in the constituencies and to win support for the Court list of representative peers.

There is one great object of a Ministers' attention should be [sic.] the establishing and preserving a Parliamentary Interest in the Country which is indeed necessary for carrying on the Public Service by adding a proper weight to the power and influence of the Crown - The Sinecure Employments may be dedicated for those purposes with as few deviations as possible.  

To this end most Ministers were prepared, to a varying degree, to delegate Scottish patronage to the Scottish manager in order that he could gain and maintain electoral support for the Ministry in Scotland, while, for his part, the manager continually sought to expand his control over Scottish patronage in order to strengthen and consolidate his position in Scotland. Much of the manager's time, therefore, was spent in dealing with the minutiae of patronage: sifting through recommendations he received and the time-consuming task of pursuing them through the Whitehall machinery. Although ultimately dependent on and responsible to the London Ministry, the relationship between the Scottish manager and the Ministry was not simply one-sided but rather one of balance.

Successive Ministries were usually prepared to delegate responsibility to a varying degree to the Scottish manager but at the same time were anxious to retain ultimate control in their own hands: the Scottish manager sought to build up his position as far as possible in Scotland so as to increase his bargaining power and make himself indispensable. The state of this balance at any particular time was very much a

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reflection of the current state of politics at Westminster and the security of, and the degree of stability within, the Ministry itself.

The most important and successful Scottish manager in this period was Archibald Campbell, earl of Ilay, from 1743 third Duke of Argyll. Ilay was closely associated with Walpole and later Pelham, and in return for being allowed to dispense the bulk of government patronage in Scotland he built up an extensive support and succeeded in keeping most of the Scottish members of Parliament behind the Ministry.

Although in Scotland he achieved almost vice-regal status, it is important to note that he never held the formal office of Secretary of State: the basis of his power lay in his personal influence in Scotland and the support he received from various Ministers, notably Walpole and Pelham.

As the Scottish manager had to be resident in London for much of the year he required a loyal lieutenant in Edinburgh to act on his behalf. The principal function of such a "sous ministre" was to serve as a point of contact in Edinburgh for those who wanted something of government, whether it be patronage or otherwise, and to act as a channel of communication with the manager in London. Ilay's sous ministre was Andrew Fletcher, Lord Milton, Lord of Justiciary and later Lord Justice Clerk, an extremely able and conscientious man with a considerable talent for the painstaking minutiae of administrative matters, patronage and electioneering and who successfully managed the Argyll interest in Scotland for over 35 years. The task of balancing competing claims for vacant posts and forwarding recommendations to London was delegated to Milton while Ilay pursued them with Ministers and through the respective central departments. So successful were Ilay and Milton that by the mid 1730s Argathelian supporters filled the majority of judicial and administrative posts in Edinburgh and this
provided Ilay with a solid platform from which to negotiate with the Ministry and to weather successfully the Secretaryship of his rival the Marquis of Tweeddale in the early 1740s.

Not everyone, however, was content to allow Ilay to engross all political power in Scotland. Between 1714 and 1725 the Squadrone, an interest composed of several leading noblemen and their followers, and the Argathelians, allied to rival political factions at Westminster, fought to achieve supremacy in Scotland, mirroring the contest between Walpole and his opponents to dominate the Ministry itself. Only with the emergence of a stable Ministry under Walpole, who was prepared to delegate a degree of authority to Ilay, did the political situation in Scotland become reasonably stable. Thereafter Ilay steadily consolidated his position in Scotland. Nevertheless the Squadrone continued to oppose Ilay throughout the period, seeking to undermine his standing with the Ministry in an effort to gain political power for themselves. In order to circumvent Ilay's position, the opposition constantly argued the need for closer Union, that all Scots should be directly dependent on the Ministry and that to set one man between the Ministry and Scotland was contrary to complete Union. Throughout the late 1720s and the 1730s the opposition struggled against Ilay both in Scotland, where it sought to secure the return of as many Scottish members as possible independent of his interest and on occasion to run a rival list at the representative peers election, and at London where constant attempts were made to go over the head of Ilay and obtain jobs directly from the Ministry. Attempts were made to ally with opposition groups at Westminster and to exploit divisions within the Ministry. The Squadrone's opportunity came with the fall of Walpole in 1742. Tweeddale, an ally of Carteret, was appointed Secretary of State and Ilay was temporarily eclipsed.
But Tweeddale received little support from a divided Ministry and could make little headway against Ilay's entrenched position in Scotland. His Secretaryship was soon doomed to failure and Ilay re-emerged to enjoy much the same authority under Pelham as he had under Walpole. The relationship between the Scottish manager and the Ministry and the political struggle between the manager and his opponents in Scotland and at Westminster form the other major theme of this thesis.
CHAPTER TWO: THE CUSTOMS AND SALT SERVICES

Introduction

In the discussions leading up to the Union, the English customs commissioners had made it clear that, if the revenue [and by this they meant primarily the English revenue] was to be safeguarded, two conditions must be satisfied before Scotland was admitted to some "communication" of trade: uniformity with England in trade regulation, and English power over Scottish subjects to ensure that the regulations were obeyed.1 Thus while the Act of Union gave Scotland equal rights within the English trading system,2 Scotland had to accept the reorganization of its customs service to fit in with the pattern and aims of the English system. In the eighteenth century, the customs service was charged with two main responsibilities, the collection of revenue and the supervision of trade regulations. The old simple Scottish customs service was to be replaced by the much tighter English system with its higher duties, complex procedure, mercantile policies and more extensive control. On no account could Scotland remain a back-door for bringing illegally entered goods into England. A board of commissioners, directly responsible to the Treasury in London, was set up in Edinburgh to administer the new system. The reorganization and development of the new customs service in Scotland in the first twenty years after the Union form one of the major themes of Dr. Riley's book.3 By 1725 this process had been completed and there were to be no further major changes in the period covered by this thesis. This chapter will examine the structure of the service as it had evolved by 1725; the

1Riley, English Ministers, p.13.


3English Ministers, especially chapters III, IV, IX and XIII.
role played by the Scottish customs commissioners, the central officers and the officers in the outports; and the problems facing the customs service. We shall also consider the extent to which the Treasury in London exercised control over the Scottish customs service. The customs service provided the Ministry with a major source of patronage: how far did this affect the smooth running of the service and to what extent did Ministers at London manage to keep control over Scottish customs patronage?

At the time of the Union the population of Scotland was about one million, four-fifths of whom derived their livelihood from the soil. Agriculture in most parts of Scotland was in a poor state, even by subsistence standards. Such industry and trade as then existed were small in scale. Although the Union gave Scotland freedom of trade within the English colonial system, it did not of itself bring immediate prosperity. Scotland remained a poor country and indeed until the 1740s there was no economic growth worth speaking of. For most of the period under study, therefore, the economy of Scotland remained stagnant, although there was a gradual improvement in certain areas of trade, notably grain, black cattle and tobacco.

The English customs system introduced into Scotland was one of a large number of duties and complex procedure, so much so that even in England, Hoon has asserted, 'whatever deficiencies there were in the eighteenth-century customs service rests with the system rather than with its administrators'. Throughout the period, over thirty different

4 W. Ferguson, Scotland: 1689 to the Present (Edinburgh, 1968), pp. 70, 76.


customs duties were levied on imported and exported goods. One article might have to pay several separate sums and different principles were used in the calculation of the various duties. Most duties were a proportion of the value of the article as laid down in the official Book of Rates, but this often bore no relation to the current value of the article and not all articles were listed. In an attempt to overcome some of the problems Walpole published in 1724 a supplementary Book of Rates which gave the official valuation of a large number of articles not in the old Book. The problems in Scotland were aggravated both by the novelty of the new service and because the number of customs officers, mainly for reasons of economy, was kept far below what was needed to operate the system properly. Moreover many of the officers employed were unqualified and unfit and the connivance by outport officers at fraud and evasion was a major problem. High duties and intricate procedure encouraged smuggling which in turn was facilitated by the geography of the Scottish coastline and the insufficient number of officers to guard it adequately. As soon as the commissioners managed to plug one gap another opened. As a result the duties collected often barely covered the cost of the administration of the service, far less being able to make a significant contribution to the payment of the Scottish civil list. Nor was the service any more successful in the regulation of trade. One of the main tasks of the Scottish commissioners was "to render ye practice Here uniform to yt observ'd in South Britain... in order to an exact equating in trade in both parts of this Kingdom", and in particular, especially

7See Hoon, English Customs System, pp. 25-37.
9SRO CE1/2 30 Mar. 1726.
in English eyes, to prevent a flood of goods being illegally entered into Scotland and from thence to England where they could be sold at a cheaper rate and ruin the honest English trader. Even the amount of revenue raised was of secondary importance to this: "if there be a Necessity of looking after this Revenue, small as it is, and I take it, there is, [it is] to prevent their Roguery here from hurting the Merchants in England..." Nevertheless there were frequent complaints throughout the period from English merchants, especially those dealing in tobacco, of the harmful effects of illegally imported goods being brought in through Scotland and creating unfair competition.

During his years in power, Walpole attempted "to make the exportation of our own manufactures, and the importation of the commodities used in the manufacturing of them, as practicable and easy as may be..." by reducing or abolishing the duties on such goods, by providing bounties to encourage various exports, and by protecting home industries by high tariffs on foreign manufactured goods. Such was the relatively small volume of Scottish trade and industry, however, that such policies only had a marginal effect on the amount of customs duties collected in Scotland.

By the Act of Union Scotland was exempted from paying duties on home-made salt for seven years. When salt duties were imposed, from

11 Speech from the Throne 19 Oct 1721, Coxe Walpole I, p.163
1 May 1714, they were placed under the management of the Scottish customs commissioners and many of the central and outport customs officers were also employed in the collection of salt duties. Thus while it is more properly an excise, the administration of the salt duties will be considered in this chapter.

The Commissioners

After the Union direction and control of the Scottish customs system flowed through two main channels: between the Treasury in London and the customs commissioners resident in Edinburgh, and between these commissioners and the principle officers in the outports. As in several other branches of Scottish administration sheer physical distance meant that such control was largely dependant on the written word - warrants, orders, instructions, reports - rather than on close personal supervision, and the effectiveness of central authority, at both London and Edinburgh, suffered accordingly. As we have noted, soon after the Union a board of five commissioners was established in Edinburgh, directly responsible to the Treasury in London, to administer the new customs service in Scotland. The commissioners supervised the work of the outports - and were responsible for ensuring that all revenue collected was properly remitted to central office and that the requisite accounts were timeously compiled. To this end the board sent a constant stream of letters and instructions to outport officers, although only in exceptional cases did commissioners visit an outport in person. The board sat regularly, three, four or even five days a week, to deal with the day-to-day running of the service and to issue instructions on all matters brought before them. They could also make regulations to improve

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15 Although the following discussion is mainly concerned with the customs service, it also applies to the management of salt duties.

16 Riley, English Ministers, p.42.
the running of any part of the system, although these regulations were often subject to Treasury approval. All violations of the revenue laws—smuggling, frauds, corruption among officers, had to be laid before the board for consideration, and it lay with the commissioners to decide what further action should be taken, whether, for example to prosecute, or alternatively to compound with the offender. The commissioners also had to consider petitions and memorials received from merchants and prepare reports on numerous questions relating to Scottish customs referred to them by the Treasury. The commissioners were also responsible for the supervision of customs and salt personnel. Unlike the Scottish excise service, the appointment of customs and salt officers lay with the Treasury and not the commissioners. When vacancies occurred in these services it fell to the commissioners to 'present' (that is nominate) supposedly qualified candidates to the Treasury whom the Treasury could either approve or, alternatively, appoint another person. On receipt of the Treasury warrant the commissioners issued their deputation to the person appointed and ordered his salary to be paid. Over the established staff the commissioners exercised a discipline which was a combination of the carrot and the stick. Officers were encouraged to be diligent by the prospect of presentment to the Treasury for promotion or for an increase in salary, by rewards and allowances, and by shares in

17 For example see SRO CEL/2 27 Jul 1727; SRO CEL/3 27 Sep 1728; SRO CEL/4 4 Oct 1733; 14 Nov 1734; SRO CEL/7 1 Dec 1746.

18 See below, pp. 53–62.

19 "... No remarkable diligence and Readiness in an officer to do his utmost for the public service will at any time pass unregarded..." SRO CEL/2 24 Dec 1725. Also see SRO CEL/2 28 Feb 1727; SRO CEL/3 5 Oct 1730.
The board could also grant leaves of absence to its officers. On the other hand, commissioners could order inspections into the conduct of outport officers and enforce their authority by stopping payment of salaries until their orders were obeyed, and by fining, 'rolling' (that is transferring), suspending, or dismissing negligent, disobedient or corrupt officers. The board could also appoint temporary officers, re-allocate officers between ports, and recommend to the Treasury the creation of additional officers, although as we shall see the commissioners' enthusiasm or otherwise for such disciplinary action was often tempered by political considerations.

Frequent efforts were made by the board to see that all officers involved received their fair share of seizures and that principal officers did not keep the money to themselves. Otherwise, it was felt, inferior officers would be discouraged from doing their duties and the revenue would suffer. For examples of such regulations see SRO CE1/1 16 Mar 1724; SRO CE1/3 17 Jan 1732; SRO CE1/4 17 Jun 1735 ("The Corruption of the inferior offrs (at Leith) maybe in a great Measure owing to the want of proper encouragement out of seizurcs"); SRO CE1/4 14 Jan 1736.

Leaves for the commissioners and the principal central officers were granted by the Treasury, e.g. SRO NBB RH2/4/439, 246 25 Mar 1729; ibid. 284 22 May 1729; SRO CE1/4 30 Apr 1736; SRO CE1/7 25 Mar 1745, 2 Apr 1745. On rare occasions the Treasury might also grant leaves to minor outport officers, e.g. SRO NBB RH2/4/441, 114 17 Jun 1731.

See below, pp.46-8.

For stopping salaries see SRO CE1/2 18 Oct 1727; SRO CE1/5 26 Jul 1738. Fines were usually applied to the superannuation fund, see for example, SRO CE1/4 26 Mar 1734. 'Rolling' an officer to another port usually implied some reprimand of his conduct, and was done to prevent too great intimacy developing between officers and merchants; see SRO CE1/3 19 Nov 1730; SRO CE1/4 12 Apr 1732.

For temporary officers see below, pp.44-5. Rearrangement generally took place either as a result of shifting trade patterns or as a form of promotion, for example see SRO CE1/4 11 Jul 1735. Treasury approval was only required if the places involved were paid different salaries. For a general statement of the need to move officers around from port to port see SRO NBB RH2/4/432, 175, customs commissioners to Treasury 17 Nov 1723; also CTB XXVIII part II, p. 346 7 Jul 1714.
From the outset the board did not function with the hoped-for efficiency. The Scottish commissioners failed to provide adequate supervision and guidance in the formative years of the new system, and, moreover, many of the officers appointed on their recommendation were unfit, thus further aggravating the difficulties.\(^{25}\) Despite increased Treasury interference after 1714, the customs service continued to be wracked by serious problems. The exposure of extensive tobacco frauds at Glasgow, Port Glasgow and Greenock in the early 1720s and the lethargy of the commissioners in dealing with these abuses, demonstrated most clearly, to English eyes at least, the need for changes. Walpole, by now First Lord of the Treasury, was also anxious to strengthen his political influence in Scotland. He therefore decided to bring Scottish customs administration under closer Treasury control from London by amalgamating the Scottish and English boards.\(^{26}\) Of the fourteen new British commissioners, seven were to be resident in London, five in Edinburgh, and two to visit the outports.\(^{27}\) The commissioners were to be periodically rotated so that those familiar with London procedure would have a turn at Edinburgh where, it was hoped, they could keep the Scottish system in closer conformity with Treasury wishes and the English model. In fact this rotation of commissioners did not take place to any great extent\(^{28}\) and although for a short time after 1723 it appears that the Treasury communicated with the Scottish

\(^{25}\)See Riley, *English Ministers*, chapters IV, IX and XIII.

\(^{26}\)See ibid., pp. 274-280. Riley assigns to Baron Scrope the main impetus behind this reform.

\(^{27}\)Act 9 Geo I c21 (1723) authorised the creation of a single board. The first joint commission was issued the following year. See Hoon, *English Customs System*, pp. 56-7. In fact seven commissioners were placed on the Scottish establishment: see SRO NBB RH2/4/434, 422 28 Sep 1725.

\(^{28}\)See below, p. 25.
commissioners through the commissioners in London in an attempt to make the new joint board a reality, this practice soon lapsed. On the other hand, the Scottish commissioners were encouraged to write to the London board for advice on specific problems, especially on the collection of new duties. Although the Scottish commissioners sought advice from their London colleagues most frequently in the years immediately following the formation of the joint board in 1723, such correspondence continued throughout the period. Nevertheless, despite the amalgamation of the two boards, the day-to-day running of the service remained largely unaffected and the commissioners in Edinburgh continued to act more or less independently. After an initial burst of reforming zeal, the Scottish commissioners again settled down to a more leisurely pace. In 1742 the two boards were again separated and the number of

29 For example see SRO CE1/1 15 Oct 1723.

30 For example in 1728 the Scottish commissioners wrote to the English commissioners for advice on foreign salt importation procedures "so as the Practice here, with respect to that Branch of Trade, may be uniform to that in South Britain" SRO CE1/3 4 Oct 1728. See also SRO CE1/1 4 Aug 1724, 2 Mar 1725; SRO CE1/2 28 Feb 1728; SRO CE1/4 8 Feb 1733. The commissioners appear to have kept a book of opinions, decisions etc. of the English commissioners and others on all difficult points: see SRO CE1/4 29 Aug 1732.

31 See generally SRO CE1/1 and specifically 2, 15, 23, 29, 30 Oct 1723, 12, 13, 24 Dec 1723, 28 Jan 1724, 13 Feb 1724 etc. For the reorganisation at Glasgow after the exposure of frauds see PRO TI/249 No. 6(1), and for other schemes throughout 1724, ibid., no. 6(2-8). The board also had the eight carefully drawn reports of Paul, Sankey and Kettiby, sent by the Treasury to make a general survey of Scottish customs to work on, PRO TI/250 no. 9. As these three had found widespread neglect in the Scottish system the new commissioners had plenty to do, and their initial efforts at least met with the approval of Paul and co., ibid., Report 8.

32 In 1731 Forbes, concerned at the state of the revenues and the smuggling of foreign spirits, called both the customs and excise boards together and "rattled them up as well as I could": Forbes to Scrope 6 Nov 1731 MCP III, 144; G. Menary The Life and Letters of Duncan Forbes of Culloden 1685-1747 (London, 1936), p.88. See also Forbes to Scrope 11 Aug 1730 OR pp.114-6.
commissioners on the Scottish establishment reduced to five. This step was taken partly because the Scottish board was already more or less autonomous in all but name, but also as part of the attempt by Tweeddale and his allies in the Ministry to wrest control of customs appointments in Scotland away from Ilay. In the period from 1724 to 1748 twenty two men held the post of customs (and salt) commissioner resident in, and after 1742 for, Scotland. The commissioners were appointed by the Crown during pleasure, and the post was, after the judges and the principal legal officers, one of the most prestigious in Scotland. A 'manager' such as Ilay was anxious to have his candidates appointed, not only as a reward to loyal supporters, but as a clear indication that he had the favour of the Ministry. Most important, a commissioner could have considerable influence in ensuring that candidates favoured by the manager were presented to the Treasury for appointment to subordinate customs posts. For their part, in appointing a commissioner Ministers had both to weigh the claims of their political allies in Scotland against the danger of allowing one Scottish interest to become dominant and thus make control from London that much more difficult and, given the importance of the customs service, to balance political considerations with the need for some degree of administrative ability and efficiency. Throughout the period the Scottish board was made up of a mixture of Scots and Englishmen: there were normally two or three Englishmen on every Scottish customs board. Most of the Scottish commissioners in this period were active Argathelian supporters. The appointment of

33 The number of English commissioners was increased to nine: Hoon, *English Customs System*, p. 57 and footnote 2; CTEP V, p. 70 24 Aug 1742.

34 See below p. 470.

35 See table A. Most of the following is based on SRO NEE RH2/4/433-56; CTEP I - V (1728-45); and SRO CEF/1-7. Salaries £1,000 p.a. (£800 p.a. customs, £200 p.a. salt) until 1742; thereafter £500 p.a. (£400 p.a. customs, £100 p.a. salt).
<table>
<thead>
<tr>
<th>Date</th>
<th>Commissioners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Midsummer 1724</td>
<td>Sir John Stanley, Humphrey Brent, John Campbell, Brian Fairfax</td>
</tr>
<tr>
<td>12 November 1724</td>
<td>Thomas Maynard loco Stanley</td>
</tr>
<tr>
<td>26 October 1725</td>
<td>Sir James Campbell loco John Campbell</td>
</tr>
<tr>
<td>Midsummer 1726</td>
<td>John Campbell loco Hill</td>
</tr>
<tr>
<td>Christmas 1727</td>
<td>Alan Broderick loco Fairfax</td>
</tr>
<tr>
<td>Michaelmas 1728</td>
<td>Gwyn Vaughan loco Maynard</td>
</tr>
<tr>
<td>Christmas 1730</td>
<td>George Ross loco Broderick</td>
</tr>
<tr>
<td>14 May 1731</td>
<td>Wardel George, Westby loco Brent</td>
</tr>
<tr>
<td>29 December 1732</td>
<td>Edward Trelawney loco Hale</td>
</tr>
<tr>
<td>15 October 1737</td>
<td>Beaumont Hotham, Sir James Campbell loco Drummond</td>
</tr>
<tr>
<td>29 June 1741</td>
<td>Edward Riggs loco Vaughan</td>
</tr>
<tr>
<td>9 September 1742</td>
<td>Now 5 commissioners</td>
</tr>
<tr>
<td>18 February 1744</td>
<td>Mansfieldt Cardonnel loco James Cardonnel</td>
</tr>
<tr>
<td>20 October 1746</td>
<td>Alexander Logrand loco Arbuthnot</td>
</tr>
</tbody>
</table>

The four dropped were Sir James Campbell, George Ross, Richard Somers, Colin Campbell, plus James Cardonnel and Alexander Arbuthnot.
Englishmen was used both to bring in men with some administrative experience of the English customs service and to try and counter Scottish political interests. Unfortunately, most able Englishmen were reluctant to move to Scotland and thus those appointed were usually of second-rate ability and several were among the least active of the commissioners, rarely attending.\(^{36}\)

Most of the commissioners were men of some wealth and standing – two were the sons of Lords\(^{37}\) and another two were knights\(^{38}\) – and all had useful political connections,\(^{39}\) usually being either members of or related to, influential families. Few had had much previous experience of customs or salt business, although two were promoted after long service as established officers – Beaumont Hotham,\(^{40}\) previously secretary to the board, and Alexander Legrand, an inspector general and then collector at Leith. Many of them, however, held office for long periods, of ten years and upwards,\(^ {41}\) and during this time naturally

\(^{36}\)For example, James Cardonnel, Edward Trelawney, Thomas Maynard, and Edward Riggs (Irish).

\(^{37}\)(Lord) George Ross, Allan Broderick (Lord Middleton).

\(^{38}\)Sir John Stanley, Sir James Campbell.

\(^{39}\)The post of revenue commissioner was incompatible with a seat in the House of Commons. For a discussion of the English revenue commissioners see W.R. Ward, 'Some Eighteenth Century Civil Servants: the English Revenue Commissioners 1754-98',\(^ {42}\) vol. 70 (1955), pp. 25-54.

\(^{40}\)For further details of Hotham see A.M.W. Sterling, The Hothams, (London, 1918).

\(^{41}\)For example George Ross (24 years), John Campbell (18 years), George Drummond and Gwyn Vaughan (14 years), Sir James Campbell (12 years), Richard Somers and Colin Campbell (11 years). On the other hand, James Cardonnel never once attended and Edward Riggs, an Irish M.P., sat for just over one month, August – September 1741.
acquired some degree of knowledge and expertise. In fact, once appointed the commissioners enjoyed reasonably secure tenure and only Arbuthnot was dismissed for purely political reasons. The others either resigned for reasons of age or were transferred to other posts. At least eight (mostly Englishmen) were subsequently moved down to London to become English customs commissioners, most in the years immediately after 1723. Indeed the new joint commission, instead of supplying Scotland with experienced English commissioners as planned, appears to have functioned in reverse, Scotland acting as a training ground for future London commissioners. Only one case of genuine rotation in fact occurred when in 1725–6 John Campbell was first moved from Scotland to England, and then returned to Edinburgh, exchanging places with John Hill who was moved to the English board. Three other commissioners, George Drummond, Richard Somers and George Ross had previously served on the Scottish excise board, Somers in fact replacing Drummond on the customs board in 1737 when the latter returned to excise. 42 Thus on every board there was always two or three commissioners with some degree of experience and this was enhanced by the fact that commissioners were usually replaced singly as occasion arose: only twice, in 1737 and September 1743, did major changes take place.

The changes of 1723–4 had left the board basically Argathelian in composition, most notably in George Drummond, John Campbell and Humphrey Brent, and the Argathelian hegemony was gradually consolidated over the following years, particularly with the appointment of Gwyn Vaughan in 172843 and the removal of Hale, who had tended to favour Squadron

42 James Cardonnel was previously an English salt commissioner for many years but he never appeared. He was replaced by his son Mansfeldt Cardonnel: Hughes, Studies in Administration, p.338. For the Cardonnels generally see ibid. p.278.

candidates, to the English board in 1732. The Argathelian dominance remained relatively unaffected after the fall of Walpole and the appointment of Tweeddale as Secretary of State in 1742. Although a separate Scottish board was again established and Tweeddale secured the appointment of Alexander Arbuthnot with a view to controlling the customs board in his interest, Arbuthnot faced a ceaseless uphill and largely unsuccessful struggle against Argathelians Ross and Colin Campbell. After Tweeddale's dismissal, Arbuthnot lost his place and the board once again became solidly Argathelian.

Nevertheless, although most commissioners were appointed on a political basis, many became reasonably efficient administrators, particularly those who served a long term in office. As a whole the majority of Scottish customs and salt commissioners were aware of their responsibilities and were reasonably conscientious. Undoubtedly the period of greatest zeal came in the few years after 1723 when generally five, six or all seven commissioners met four or five days a week, often morning and afternoon. By 1727 the number of commissioners attending had dropped to only two or three but this was the lowest average for the entire period. By the following year the number was up to four or five and remained around this figure throughout

44 See Ilay to Milton 7 Dec 1727 NLS SC 16535: "If Hale continues to recommend Squadrone people let me know it, I am sure his Patron the Duke of Devonshire does not approve of it".

45 CTBP V, p. 70, 24 Aug 1742. Cardonnel was appointed at the same time.

46 This struggle is recorded in great detail in the Yester papers and Supplementary Yester papers, (NLS). See also below pp. 470-2.

47 For example John Campbell, Sir James Campbell, George Ross, George Drummond, Colin Campbell and Gwyn Vaughan.

48 See customs board minute books - SRO CE1/1-7.
the 1730s. Similarly, although there was a tendency for Easter and Christmas holidays to spread over a whole week, the board usually met three, four often five times a week. Attendance, of course, was not everything: "... at that board they are soon sick of work and are more apt to study the news papers than how to do their affairs". Nevertheless, on the basis of entries each day in the minute books, there was undoubtedly a decline in the amount of business conducted by the board about 1727 and, despite periodic upsurges, entries remained at a lower level throughout the 1730s and early 1740s, compared to the immediate post-1723 period. There was an increase of activity in the early years of Tweeddale's Secretaryship but this was short-lived. A more sustained burst came after the Forty-five rebellion when the board was spurred on by the Treasury, particularly to enquire into possible Jacobite sympathisers among its officers.

Relations with the Treasury

Ultimate responsibility for the customs and salt services and the formulation of general policies and guidelines lay with the Treasury, while the day-to-day administration of the system was left to the commissioners in Edinburgh. The commissioners had to refer all matters involving changes in personnel or in customs procedure to the Treasury for approval. All quarterly salary bills and various other major expenses had to be warranted by the Treasury before they could be paid

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49 For example Christmas week 1730 SRO CEL/3.

50 By the late 1730s the convention grew up of not meeting on Fridays. The board only met once on a Saturday in the entire period — 20 Jan 1739 — and for no apparent reason: SRO CEL/5.

51 Thomas Hay to Tweeddale 25 Dec 1742 NLS YP 7052, 91.

52 The quarterly salary bills with Treasury warrant are in SRO NBB RH2/1/433–456.

53 See SRO NBB RH2/4/433, 162 (14 Apr 1724).
by the commissioners. Annual accounts of revenue collected and of costs of management were sent to the Treasury for inspection.\textsuperscript{54} All petitions and memorials on customs matters sent to the Treasury were referred as a matter of course to the commissioners who were instructed to report back with their opinion.\textsuperscript{55} Most important, as we have seen, the commissioners could only 'present' candidates for vacant customs jobs: actual appointments lay with the Treasury.\textsuperscript{56}

By these means, and by regularly demanding reports, accounts of revenue and of management costs, and investigations into frauds, smuggling and negligent officers, the Treasury exerted a reasonably close supervision over the work of the commissioners and became involved in many routine aspects of customs business.\textsuperscript{57}

Although the Treasury took a fairly active interest in all aspects of customs and salt business in Scotland throughout the period, Treasury concern in the running of the Scottish customs service, and particularly over appointments, was most marked in times of political or administrative uncertainty: in the years following the reorganization of 1723, during the early 1740s, a time of considerable political tension in both England and Scotland, and in the years after the Forty-five rebellion. The channel of communication between the Treasury and Edinburgh was not

\textsuperscript{54}It is not clear how thoroughly the Treasury checked the various accounts: the salary bill for midsummer quarter 1735 is wrongly totalled but was nevertheless warranted - see SRO NBB RH2/4/445, 279.

\textsuperscript{55}Examples SRO CE1/4 1 Feb 1737; SRO CE1/5 14 Feb 1740; SRO NBB RH2/4/439, 244 27 Feb 1729; SRO NBB RH2/4/441, 71 1 Feb 1731; SRO NBB RH2/4/446, 350 9 Dec 1735; CTP (1720-28) p.403 13 Jun 1726.

\textsuperscript{56}For lists of Treasury warrants see CTBP I-V, and for a fuller discussion on this topic see below pp.53-62.

\textsuperscript{57}See generally SRO NBB RH2/4/433-456 and SRO CE1/1-7. Specific examples can be found at SRO NBB RH2/4/440, 362 10 Jan 1730; SRO NBB RH2/4/441, 158 28 Sep 1731; SRO NBB RH2/4/442, 339 and 344, 5 Dec 1732; SRO NBB RH2/4/443, 483 28 Jun 1733; SRO CE1/3 16 Jan 1730; SRO CE1/4 12 Oct 1732; PRO T1/249 no 6 (1-9) (1724).
entirely efficient, despite the fact that much Scottish business at the Treasury was handled by John Scrope, Secretary to the Treasury, and a man who had no little experience of Scottish revenue matters, having served as a baron of the Scottish Exchequer from 1708 to 1724. The Treasury was a large organization, responsible for all public revenues, and quite often enquiries, reports or presentations from the Scottish commissioners remained unanswered at the Treasury for months, sometimes years. On occasion they were even lost altogether.  

In an attempt to improve the despatch of business at the Treasury the customs commissioners, jointly with the Scottish excise commissioners and the Court of Exchequer, employed an agent to act at London on their behalf. The commissioners sent their presentments and other correspondence to the agent who would personally hand them in to the Treasury and "Sollicit their Regular dispatch". Nevertheless, despite this London agent, delays remained quite frequent and thus not only did vacant custom places remain unfilled for some time but, in the absence of specific Treasury instructions, the commissioners were often reluctant to take vigorous action. For their part the commissioners were not always particularly efficient and on several occasions took literally years to make out reports on memorials or petitions referred to them by the Treasury.

58. The Treasury lost the accounts for 1728, 1729 and 1730 and had to ask for duplicates to be sent: SRO NBB RH2/4/441, 131-2 3 Jul 1731; SRO CEI/3 6 Jul 1731. Also "Presentments wch are sent up to London to be warranted by ye Lords of ye Treasury being frequently lost or mislaid, whch occasions great Inconveniences in that branch of the business..." SRO CEI/1 12 Dec 1723.

59. See SRO NBB RH2/4/447, 144-5 6 Dec 1737. The Exchequer had appointed a London agent soon after it was established in 1708; see CTP (1720-28) p. 461-2, 15 Jun 1727. The first reference I have found of this agent serving for customs is in 1718 (CTB 1718 part II, p.570 11 Sep 1718). Joseph Tudor, agent from 1716 to 1737, was appointed by the barons (CTP (1720-28)p461-2 15 Jun 1727), but his successors, William Bowles (1737) and Milward Rowe (1748) were both nominated and appointed by the Treasury (SRO CEI/5 12 Dec 1737; SRO CEI/7 19 Jul 1748).

60. SRO CEI/1 12 Dec 1723. See also SRO CEI/1 13 Mar 1724, 5 May 1724; SRO CEI/2 2 Oct 1725; SRO CEI/3 6 Jul 1731.

61. For example see SRO CEI/3 11 Aug 1730; SRO NBB RH2/4/443, 389 2 Apr 1733.
Normally relations between the Treasury and the Scottish commissioners were fairly harmonious, and only rarely did the Treasury act in direct contradiction to advice given by the commissioners. The only example of a Scottish commissioner being called before the Treasury appears to be in 1722 when Brent was summoned to answer complaints by English merchants against the widespread tobacco frauds in Scotland. The commissioners for their part quite clearly recognized the authority of the Treasury and despite occasional disagreements always accepted Treasury decisions as final.

Central Officers

Directly under the commissioners and working in the customs house in Edinburgh was a small central office. Unlike the London central office, where there were numerous offices and sinecures, the number of officers in Edinburgh, principally for reasons of economy, was kept to an essential minimum; indeed it approached very closely Hoon's ideal for London. Several of these officers also worked for the salt revenue, and in general there was a greater flexibility in the tasks central officers performed.

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62 For one example see SRO CE1/3 6 Nov 1730 and 9 Jun 1731.
64 The most interesting example of disagreement came in 1732 when the commissioners decided to move the Edinburgh customs house to a more spacious building owned by the Duke of Queensberry, without first obtaining Treasury permission. The Lords "resent the proceedings of the commissioners herein in regard they were not apprised by them thereof until an agreement for the Duke of Queensberry's house was actually concluded". They ordered the commissioners to remain where they were and, despite some protest, they obeyed: CTEP II, p. 218-9 23 Mar 1732. For further details and correspondence between the commissioners and the Treasury on this matter see SRO CE1/3 15 Feb 1732, 30 Mar 1732; CTEP II, pp. 215-8 29 Feb 1732, 7 and 16 Mar 1732; SRO NBB RH2/4/442, 212 2 Mar 1732 and 24 Mar 1732.
65 "As to the Custom house, you know, just as well as I, how ill it is situated, and to what Danger, from fire, it is exposed from Taverns, and a number of Alehouses below, and round it. You know[to]what a beggarly Board Room, waiting Room and Secretary's office there is, and in general how very straitened and inconvenient all their Offices are": Drummond to Pelham 17 Jul 1753 N.U.L. NEC 2205.
66 Hoon, English Customs System, p.120.
officers had to perform compared to their London counterparts.\textsuperscript{67} Unfortunately, this streamlined organization did not lead to a particularly efficient despatch of business, and indeed delays in compiling central accounts were, if anything, even greater than at London. The structure of the Edinburgh office remained basically unchanged throughout the period.

The most important of the central officials was the secretary\textsuperscript{68} whose function, assisted by a first clerk and various other minor clerks, was to service the board and to deal with all incoming and outgoing correspondence. From 1725 the customs secretary also acted as secretary for the salt duties.\textsuperscript{69} There was also a solicitor, receiver general and comptroller general, who headed respectively the small legal, treasury and accounting 'departments'. The solicitor,\textsuperscript{70} aided by two assistant solicitors\textsuperscript{71} and one or two minor clerks,\textsuperscript{72} prosecuted all offences against customs law, whether by merchants or officers, when

\textsuperscript{67} For example see SRO CEI/7 9 Feb 1748.

\textsuperscript{68} Established salary £270 p.a. plus allowance of £150 p.a. for clerks: SRO NBB RH2/4/433, 199.

\textsuperscript{69} Customs commissioners to Treasury 8 Oct 1725 SRO NBB RH2/4/434, 463; Treasury to customs commissioners 19 Oct 1725, ibid. Salary for salt £150 p.a. and £50 p.a. for clerks.

\textsuperscript{70} Salary £150 p.a. and £50 p.a. for clerks. Unlike the English customs solicitor and the Scottish excise solicitor he was not allowed, however, to take fees for the work he did: SRO NBB RH2/4/433, 199 MS 1724; SRO NBB RH2/4/442, 299 15 Aug 1732. The salary was raised by £100 p.a. from 1732: SRO NBB RH2/4/443, 445 28 May 1733; SRO CEI/4 10 Oct 1733. All legal charges were paid out of revenue raised: for example see SRO CEI/5 1 Dec 1737, 25 Jul 1738; SRO CEI/6 8 Apr 1741.

\textsuperscript{71} As the Solicitor could not attend all cases personally, other lawyers were employed by the board as occasion arose. In important or difficult cases the solicitor would confer with the principle Crown lawyers in Scotland, the Lord Advocate and the Solicitor General, and either act on their advice or hand the conduct of the case over to them: for example see SRO CEI/4 4 Jan 1733, 7 Nov 1733. A board minute in 1743 ordered the Solicitor to consult with the Crown lawyers 'in all causes related to the revenue' SRO CEI/6 3 Feb 1743. The opinion of the English Attorney General was also quite frequently sought: for example see SRO CEI/2 2 Nov 1725; SRO CEI/3 15 Jul 1731; SRO CEI/4 29 Aug 1732; SRO CEI/5 26 Oct 1737.

\textsuperscript{72} The commissioners allowed the solicitor a second clerk in 1730: SRO CEI/3 25 Mar 1730.
the commissioners, often advised by the solicitor himself, thought fit. When necessary he would prosecute local officials - justices, constables, and others - for failing in their duty to help customs officers. The solicitor also kept lists of arrears of revenue owed by all present and late collectors, and of all other money and bonds due, and, when ordered by the commissioners, would prosecute these in Exchequer for recovery. Cases involving revenue and bonds were normally taken in Exchequer; those of a more purely criminal nature, such as smuggling or assaulting an officer were brought before the Court of Justiciary, while incidents at sea could be dealt with by the Court of Admiralty. Minor seizure or assault cases were usually taken before local justices.

Both Justiciary and Exchequer juries were very prone to favour smugglers against customs officers and many customs cases were lost. As a result, the board would often attempt to come to some sort of composition with the

73 For example see SRO CEI/1 20 Jul 1724; SRO CEI/5 21 Dec 1737, 14 Nov 1738.

74 For example see SRO CEI/2 3 Nov 1725.

75 See SRO CEI/5 21 Dec 1738.

76 For example see SRO CEI/1 9 Dec 1723, 31 Jul 1724; SRO CEI/2 8 Nov 1725, 27 Jul 1727; SRO CEI/4 28 May 1734; SRO CEI/6 22 Mar 1742. Solicitors were not always as diligent in this matter as the board expected, e.g. SRO CEI/4 17 Jan 1733. In 1739 to try and remedy this the comptroller general was instructed to keep a joint custody of such bonds with the solicitor and act as a check on him; SRO CEI/5 30 May 1739, 28 Aug 1739. Bond prosecutions continued to remain in arrears however; see SRO CEI/7 28 Jan 1748.

77 If cases looked like going against the board in justice of the peace courts they could be removed to Exchequer or Justiciary by a writ of certiorari.

78 For example see PRO T1/270 No. 31 22 Feb 1729.

79 For example see SRO CEI/2 21 Jul 1726; SRO CEI/3 25 Jul 1728. Also Arbuthnot to Tweeddale 24 Jul 1744 NLS YP7063, 54 "... the partiality of the Juriys during the whole time of Lant's being Chief Baron gave such encouragement to the smuggling trade and brought it to the hight it has come to of Late..."
The solicitor also defended the commissioners and other officers against any vexatious suits brought against them. Regular reports of all prosecutions carried on in the board's name had to be laid before the commissioners so that they might give directions thereon if necessary, and the solicitor regularly attended the board to give advice on legal matters. A particular problem was the application of English customs laws to Scotland and this led to several Englishmen being employed in the solicitor's department. Not all solicitors in this period, however, were particularly conscientious and in 1734 the commissioners had to issue the following minute: "The Board observing that business is frequently hindered by Reasons of the Solicitor [Parker] not duey attending in his office It is therefore this day ordered that notice be given him that the Board Expect he do for the future punctually attend in his office while they are at ye Custom House".

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80 For example see SRO CEL/5 8 Feb 1739, 7 Jun 1739, 24 Jul 1740. See also SRO CEL/7 16 Jun 1748.

81 For example see SRO CEL/3 28 Jun 1731; SRO CEL/5 30 May 1739, 16 Jan 1740, 14 Apr 1740.

82 For example see SRO CEL/1 28 Jan 1724; SRO CEL/5 18 Jan 1738. Solicitors were not always prompt in compiling such reports; for example see SRO CEL/5 2 Dec 1737.

83 For example see SRO CEL/6 2 Apr 1741; SRO CEL/7 21 and 22 Dec 1747.

84 See Milton to Ilay Nov 1724 NLS SC 16, 529; Ilay to Milton 8 Jan 1730 NLS SC 16, 542. For example in 1726 a clerk was brought from London who had a competent knowledge in the customs (SRO NBB RH2/4/442, 229 15 Aug 1732) and Richard Swaniston, appointed solicitor in 1743, was previously third solicitor in the English customs-SRO NBB RH2/4/452, 499 29 Dec 1743. Baron Edlin, however, felt that the solicitor's salary was too small to tempt down suitable men from England: Edlin to Chancellor English Exchequer 1745 SRO NBB RH2/4/453, 169.

85 SRO CEL/4 27 Jun 1734. See also Arniston to Tweeddale 4 Dec 1742 NLS YP7052, 11 on Lascelles, sent up by the Treasury to be customs solicitor but who, complained Arniston, was ignorant "... it is impossible matters of ye revenue can go tolerably on if the Treasury will send or continue such ignorant fellows in the offices such as that which have the most business...".
In England the customs treasury department comprised several different officers, each dealing with separate branches of income and expenditure, but in Scotland all such matters, and also all salt revenues, were handled by one man, the receiver general, assisted only by a few clerks. He received all monies from duties, fines and seizures sent in by outport collectors, and in turn paid out the various charges of management, shares of seizures, and all other sums warranted by the commissioners or the Treasury. He was to keep monthly and yearly accounts of all money that passed through his hands. These were checked by the comptroller general and then inspected and lodged in the Scottish Exchequer. The reluctance of most outport collectors to remit money to Edinburgh, the complex system of accounting resulting from the need to detail revenue raised on individual duties separately as each was appropriated by Parliament for different funds or services, and the sheer volume of work involved, meant that the business of the receiver general's office was often in a state of confusion and arrears.

Working in parallel to, and as a check on, the receiver general was a separate central accounting office headed by the comptroller general.

86 Hoon, English Customs System, pp. 99-106.

87 The receiver general was paid an established salary of £300 p.a. and a further £230 p.a. for clerks, for his normal customs tasks (SRO NBB RH2/4/433, 199 MS 1724) and for his work on salt duties and customs seizures he was 'to be paid such sums as the Treasury shall think fit'. (see SRO NBB RH2/4/432, 210 1 Jan 1724). This became fixed at £100 p.a. for salt and 2d in the pound for seizures although these were not usually paid over until after the receiver general had finished his term of office; see PRO TL/289 No. 27(1) 1735 and PRO TL/296 no. 24 1737 for receiver general Graeme; PRO TL/330 Nos 8, 9, 10 1747 for receiver general Campbell.

88 "He is also once a month to lay before ye board an Acct of his receipts and payments for their Information" SRO CEI/3 28 Nov 1728.

89 See Hoon, English Customs System, pp. 25-37.

This mirrored the position in the outports where a comptroller acted as a check on the collector keeping similar quarterly accounts of all sums received and paid out by the collector. The collector sent the net revenue of the port along with his accounts to the receiver general, while the outport comptroller sent his accounts to the comptroller general, who, assisted by various clerks and from 1733 by an assistant comptroller general, examined these accounts and then checked them against those of the collectors. The annual and other accounts of the receiver general were also examined in this department, the comptroller general thus acting as a check on the accounts of three groups — the receiver general's department, the outport collectors and the outport comptrollers. The comptroller general similarly inspected the various salt accounts. All final general customs and salt accounts were compiled in this office, as were all accounts demanded by Treasury or Parliament. All the comptroller general's accounts were eventually examined and lodged in Exchequer. There were, however, serious weaknesses in practice in this checking and accounting system. An outport collector and comptroller could collude in fraud, fixing their accounts to tally with each other and thus evade the comptroller general's scrutiny. In an effort to combat this, an Examiner of Outport

92 In that year Anthony Norman, the chief clerk, was made assistant to comptroller general Edmund Pargiter whose ill health prevented him from carrying out all the tasks of his office. Norman was to be paid £80 p.a. for customs and £20 p.a. for salt out of Pargiter's salary: SRO NHB RH2/4/443, 362 4 Jan 1733.

93 See PRO T1/249 No. 6 (7) 27 Oct 1724.

94 For fuller details see ibid.

95 For examples see SRO CEL1/2 28 Jul 1727; SRO CEL1/3 21 Feb 1732; SRO CEL1/4 28 Feb 1734.

96 SRO E501, E507, E531. Also SRO E205/1, E206/1 (Pipe Office); SRO E216/19 and 22 (Auditor's Office).

97 For example see SRO CEL1/1 24 Dec 1723.
Books was appointed whose task was to inspect the quarterly accounts and vouchers of the collectors to ensure that all duties, drawbacks and bounties were properly calculated. Again, outport comptrollers, like collectors, were notoriously slow in sending in their accounts. The comptroller general's accounts often fell years behind: general salt accounts were usually made up in batches: those for 1714 - 1724 were all compiled in June and July 1726, those for 1736 - 1742 in June 1746. Thus there was often a delay of ten years or more.

There were three other minor central customs officials. A Registrar of Seizures who kept a register of all seizures made, whether they were to be prosecuted and accounts of what revenue accrued to the customs from them; an Inspector of Officer's Securities, whose principal task was to see that the securities given by each officer on entering his job, to ensure proper fulfillment of his employment, were both sufficient and were renewed on the death of any surety;

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98 Salary £100 p.a.: SRO NBB RH2/4/433, 199 MS 1724.


100 See SRO E531.

101 Sometimes called the inspector of prosecutions.

102 See SRO CEL/2 21 Feb 1726, 19 Oct 1726; SRO CEL/3 15 Dec 1731; SRO CEL/7 24 Jun 1745. He was paid £30 p.a. (SRO NBB RH2/4/433, 199 MS 1724) which was raised to £50 p.a. from Ladyday 1732 because of an increase in his business: SRO CEL/3 15 Dec 1731.

103 These securities were often quite high: the collector of Port Glasgow had to find £8,000 (SRO CEL/7 15 Feb 1748) and the collector of Kirkcudbright £2,000 (SRO CEL/4 25 Apr 1737).

104 In the case of collectors he had to receive the commissioners' approval before he accepted the securities offered (SRO CEL/1 12 Dec 1723) as a collector's sureties might have to pay off any debts he owed the Crown; for examples see SRO CEL/5 12 Aug 1737, 28 Aug 1738, 25 Jul 1739. Proper securities were not always given, however, and often those that were, were allowed to lapse: see SRO CEL/2 17 Nov 1725; SRO CEL/5 6 May 1737.
and finally a Registrar of Scots Ships and Inspector of Coast
Business, who kept various trade and shipping statistics. A
housekeeper, messenger and watchman completed the Edinburgh custom
house establishment.

The receiver general, comptroller general, the secretary (who
served as 'secretary, solicitor, examiner, clerk of securities and
correspondent'), and an assistant solicitor all acted for salt duties
as well as for customs. In addition there were two other central
officers who worked solely for the salt revenues: a supervisor general
of salt (£130 p.a.), and a clerk (£40 p.a.). When the salt duties
were abolished from Christmas 1730 the commissioners, receiver general,
comptroller general and secretary continued to be established at
their former salaries in order to receive and account for all arrears
of salt duties. Initially this was only for a six month period,
but in fact, because of various delays and difficulties in bringing the
accounts to a conclusion, they were twice more continued for six month
periods and were thus still officiating for the old salt duties when
the new salt duties were introduced in 1732. The central officers, with
the exception of the clerk, were re-established as before.

105 This office was reformed in 1734 and a new registrar appointed:
SRO CEI/4 8 May 1734, 28 May 1734.

106 Various collectors and supervisors were continued for 1 month and
1 fortnight respectively for this end: see generally CTBP I, p. 484, 8 Dec
1730; SRO NBB RH2/4/441, 46 15 Dec 1730.


108 CTBP II, p. 74 29 Jun 1731; ibid., p. 132, 30 Jun 1731; and SRO NBB
147, 149, 14 and 21 Dec 1731; customs commissioners memo to Treasury PRO
December 1731.

109 The only other change 1732-48 was that from 1733 the new assistant
comptroller general also acted for salt.
The central officers regularly attended board meetings to advise the commissioners. While several were undoubtedly able and conscientious others treated their office as a mere sinecure, rarely if ever attending and leaving the work to be undertaken by deputies or clerks. For example, Pargiter, comptroller general for much of the period, did not reside in Scotland at any time in the last 20 years before his death. Again, in 1725, the commissioners, "observing that some of ye officers in the service of the Revenue Heret, do Sometimes leave off business and go away before the board rises, which frequently proves a great hindrance to the dispatch of business and maybe very prejudicial in matters that require haste and speedy directions", warned that such slackness must immediately cease. This order had to be renewed early in 1733 and strongly repeated in December 1738 and early 1743 as many officers continued to be absent when required. To make matters worse the Treasury throughout the period gave frequent leaves of absence to central officers for months at a time. Moreover, some of the central officers, for example the receiver general, were appointed by Crown patent and could only be dismissed after a court judgement. The commissioners therefore could not easily invoke the sanction of dismissal

110 For example SRO CE1/2 4 Apr 1728.

111 See Corbyn Morris to Pelham 28 Jun 1752 N.U.L. NEC 2149; John Douglas to Tweeddale 17 Apr 1742 NLS YP 7046, 69.

112 SRO CE1/2 19 Nov 1725. Similar example SRO CE1/4 22 Feb 1737 where commissioners warn central officers to be at their posts by 10 a.m. when the board meets or they shall be censured.

113 SRO CE1/5 9 Jan 1738, 22 Dec 1738; SRO CE1/6 7 Feb 1743, 20 Jun 1743.

114 For example 9 months for the receiver general SRO CE1/4 30 Apr 1736; 3 months for secretary SRO CE1/4 10 Jun 1736. Hughes suggests that this was so they could engage in electioneering activities; Hughes, Studies in Administration, p.311.
against patentees and their authority over the deputies was limited by the fact that the deputy was the servant of two masters, the patentee and the board. Nevertheless, given the inherent difficulties in the system it had to administer, and the almost overwhelming problems in trying to impose customs duties in a country like Scotland, central office appears to have functioned with reasonable efficiency.

The Outports

In 1725 there were 24 head outports in Scotland, each with a collector and comptroller and with each headport controlling a certain section of coastline along which might be several member ports and creeks. The

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116 See Map. Member ports were those under the head port at which various customs officers would be more or less permanently resident. Three member ports, Greenock (Port Glasgow), Portpatrick (Stranraer), and Kirkcudbright (Dumfries), were rather special cases, each having a deputy collector and a deputy comptroller because of the large volume of business transacted there: see OTH (1720-8) pp. 416-17 15 Dec 1726. These deputies were usually nominated by the headport collector and comptroller and were responsible to the headport. In 1733, however, Kirkcudbright was separated from Dumfries and made directly accountable to Edinburgh, thus becoming an independent port: SRO CEL/4 12 Sep 1733. This was the only change in the number of headports in the period, although the customs house at Lewis was moved to Lochbroom on the mainland in 1738 in an effort to prevent the growth of fish debenture frauds: OTH III, p. 304 25 Mar 1737; SRO NBB RH2/4/447, 97 3 Aug 1737; SRO CEL/5 9 Aug 1737, 19 Apr 1738. A creek was merely an authorised landing place where ships could load and unload and where officers had to be present, but were rarely resident. Trading at unauthorised landing places was strictly forbidden: see SRO CEL/3 31 Mar 1739. Members and creeks could be closed, created or re-arranged according to changes in trading patterns - alterations had to be authorised by a commission issued by Exchequer: for example see SRO CEL/4 20 Jul 1736; SRO CEL/5 9 Aug 1737. Several member ports were downgraded to creeks in 1725-26: SRO NBB RH2/4/433, 177 ND; In 1723 various new creeks were established in Caithness, Orkney and Shetland to allow the easier exportation of corn: SRO CEL/1 13 Dec 1723. For other examples see SRO NBB RH2/4/446, 387 16 Mar 1736; OTH III p. 175 29 Jun 1736, SRO NBB RH2/4/446, 439-40 1 Jul 1736, SRO CEL/4 20 Jul 1736, 3 Aug 1736; SRO CEL/4 23 Jul 1736. Several attempts were made to curtail the excessive number of creeks because often there were not sufficient officers to stand guard at them all and thus the opportunity for fraud was greatly increased: for example see customs commissioners to Scrope 10 Mar 1742 PRO TI/249 No. 6(3); SRO CEL/1 29 Jun 1724, 28 Sep 1724; SRO NBB RH2/4/433, 177-8 18 Jun 1724. Economy was also a motive for limiting the number of creeks. Early in 1726, for example, the commissioners observing that "The Expense of Establisht'd and Extraordinary Tidewaiters at port Glasgow and Greenock is Very Great, which in some Measure maybe Lessned if some of the Tidewrs which are station'd at Remote places (where they appear to have been altogether useless) be Call'd in", proceeded to cut out several of these outlying creeks and centralise business more on Port Glasgow and Greenock: SRO CEL/2 7 Jan 1726. Customs commissioners to Treasury SRO NBB RH2/4/433, 177 1724 sets out the general problems of having too many creeks.
The principal outport officer was the collector, who was responsible for the smooth-running of the port, the collection of all duties and revenues and the remittance of these to receiver general in Edinburgh, and the supervision and discipline of all officers at his port.\textsuperscript{117} He was to send quarterly salary and management bills up to Edinburgh and also monthly abstracts and quarterly accounts of goods passing through his port and the duties received on them.\textsuperscript{118} When his district was also a salt collection the collector performed similar tasks for the salt duty. Unfortunately for the efficiency of the outport system, far too many collectors were at best indolent and negligent,\textsuperscript{119} and at worst actively involved in every type of evasion or fraud. During the period several collectors were dismissed for participating in or conniving at smuggling, drawback frauds and allowing merchants to evade paying duties in return for a share of the profits.\textsuperscript{120} Again, despite repeated warnings and reprimands from the commissioners, most collectors were dilatory in sending in their

\textsuperscript{117}Collectors could suspend any inferior officer whom they considered unfit or in breach of duty: (for example see SRO CEL/1 11 May 1724), and recommend his dismissal or otherwise to the board, but the final decision on the officer’s fate rested with the commissioners: for example see SRO CEL/2 11 Nov 1726; SRO CEL/4 29 Jun 1733; SRO CEL/5 21 Aug 1738.

\textsuperscript{118}The collector’s quarterly accounts, vouchers etc. were eventually lodged in Exchequer: SRO E504, 505, 510, 511, 512 customs; SRO E533, 536, 537 salt. See also SRO CEL/6 21 Jun 1744.

\textsuperscript{119}For example see SRO CEL/2 31 Dec 1725, 4 Apr 1726; SRO CEL/4 13 Dec 1732. Also Lord Advocate Craigie to Tweeddale 1 Oct 1743 NLS YP7058, 51 “I have complaints from all quarters of Collectors of the Customs who think their offices sinecures they don’t so much as reside at their posts...”; Arbuthnot to Tweeddale 12 Jul 1743 NLS YP7057, 22 “... several of the Collectors of the Customs do not so much as reside att the posts they belong to in the Summer time but mind their farms and diversions only sometimes on a post day may [they] appear to answer the boards Letters when notice is sent to them”.

\textsuperscript{120}For example SRO CEL/4 17 Mar 1737, collector of Lewis.
accounts and more importantly the cash and bonds in their hands.\(^{121}\)

Over time, considerable sums accrued in the hands of collectors instead of being remitted to Edinburgh,\(^{122}\) which in turn caused considerable delays in compiling central office accounts. The comptroller often became involved in much of the day to day running of the port, especially if the collector was frequently absent. Relations between collector and comptroller were not always amicable, however, to the detriment of the revenue. When the collector and comptroller of Stornoway made complaints against one another to the commissioners "The Board order'd them to return forthwith to the port and admonish'd them to live together in greater unanimity and friendship in time coming, that ye business of ye Revenue might not suffer by their being at variance one with another",\(^{123}\) and in 1743

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\(^{121}\) In December 1723 the Board ordered all accounts to be sent within ten days of quarter day "on pain of dismissal" SRO CEI/1 18 Dec 1723. Similar orders were continuously issued throughout the period but the problem remained. Almost half the collectors (12) were reprimanded for delaying to send up their Midsummer quarter 1724 accounts: SRO CEI/1 4 Aug 1724. See also SRO CEI/3 11 Mar 1731. Even threats of dismissal had little effect: for example see SRO CEI/1 18 Nov 1724. In 1735 the collectors of Campbeltown, Dumfries, Dunbar and Kirkcudbright were each fined 1 week's salary for not sending up their abstract accounts in time, SRO CEI/4 7 Feb 1735; for similar examples see SRO CEI/4 3 Feb 1737, 26 Jun 1738; SRO CEI/6 16 Jan 1745.

\(^{122}\) For example, the collector of Dumfries was ordered by the Board to send immediately £600 of the £800 in his hands to the receiver general or "he will answer the contrary at his peril": SRO CEI/3 17 Feb 1730. See also SRO CEI/4 20 Nov 1732, 28 May 1734. In 1738 the collector of Port Glasgow had about £12,000 cash in hand and the board ordered him to send immediately most of it to Edinburgh: SRO CEI/5 21 Mar 1738. Sometimes the collector had in fact embezzled the money: for example see SRO CEI/3 12 Jan 1732, SRO CEI/4 5 Jul 1737. On occasion collector's salaries were stopped until their debts had been paid off: for example see SRO CEI/2 26 Oct 1727. Lists of arrears of both present and late collectors were kept; SRO E501 (customs); E531 (salt); see also SRO CEI/3 22 Jan 1729; SRO CEI/4 17 Aug 1732. Even when prosecuted such arrears were not always fully recovered; for example see SRO CEI/1 24 May 1725; SRO CEI/5 18 Sep 1738. Similar problems arose with the salt duties: SRO CEI/6 26 May 1743. It should be noted, however, that the collectors faced certain difficulties in remitting cash to Edinburgh, not least in ensuring its safe arrival.

\(^{123}\) SRO CEI/2 23 May 1726.
an effort was made to get collectors and comptrollers to work in closer harmony. 124

There were three main groups of customs officers who actually conducted the waterside business: landwaiters, who supervised the import and export procedure, ensuring that all goods were weighed and inspected and the relevant details entered as the basis for calculating both duties payable and drawbacks and debentures due; tidesmen (or tidewaiters) who guarded against any unauthorised loading or unloading; 125 and boatmen who operated the customs boats. At Leith, and to a lesser extent at Port Glasgow, there were certain other more specialised officers - coast waiters, 126 a sworn appraiser, coopers and weighing porters - reflecting the greater volume of business at these ports. 127 Several ports also had a number of riding officers attached to them. Most outports had one or two landwaiters although there were six at Port Glasgow and five at Leith. As the discovery and prevention of frauds, and indeed the amounts of revenue raised, depended to a large extent on the honesty and efficiency of these officers, 128 there were strict rules governing their conduct and

124 SRO CE1/6 14 Dec 1743.

125 I can plainly see that the Revenue of Customs must go very Little if ther is not due cair had to the putting in of proper tydesmen particularly, they are the kyes (sic.) of all the ports and do hurt the Revenue dayly unknown to the Superior Officers and when matters are so settled that any attention can be allowed on that subject a thorow reformation amongst all the tydesmen att the several ports in Scotland would in my humble oppinion be the first thing and the most effectuall of any for recovering the present decay of the Revenue of Customs" Arbuthnot to Tweeddale 7 Dec 1742 NLS YP7052, 25.

126 For details on coastal coal frauds in the Forth and the efforts of the board to improve procedure see SRO CE1/3 19 Feb 1730, 26 Mar 1730.

127 The work of the English equivalent of these officers had been analysed in depth by Hoon, English Customs System, chapters 4 and 5.

128 For the importance of entry and other books kept by these officers in order to keep a check on legally entered goods as opposed to smuggled ones see customs commissioners to Treasury 9 Jan 1724 PRO T1/249 No. 6(1).
at all but the smallest ports they were supervised by a landsurveyor. 129 It was impossible, however, for the surveyors to keep a constant eye on all officers and consequently there was much scope for negligence and fraud. Again, although tidewaiters were meant to change their stations every six months to prevent too great an intimacy developing with merchants, such rotations rarely took place. 130

Attached to certain ports, mainly on the west coast, were a number of officers specifically concerned with the tobacco trade, some of whom, known as riding officers, patrolled the coast in an effort to prevent illegal running of tobacco. Although Edinburgh and Glasgow were not strictly ports, several customs officers – the landcarriage waiters under the supervision of several landcarriage surveyors – were stationed at the gates of Edinburgh and on the outskirts of Glasgow to act as a ‘landguard’ to check all goods coming up from Leith and Port Glasgow to see that they had been properly imported and that the necessary duties had been paid. 131 Finally various temporary or ‘extraordinary’ customs and salt officers were appointed by the commissioners as the business required, 132 usually during seasonal rushes or when the

129 See SRO CEL/5 20 Dec 1738. The landsurveyor also supervised the tidesmen except at certain of the larger ports where there was a separate tidesurveyor.

130 See SRO CEL/6 26 Nov 1742.

131 There were 12 landcarriage waiters at Edinburgh under four surveyors (SRO NBB RH2/4/433, 199 Midsummer 1724) and from Michaelmas 1724 10 at Glasgow supervised by two surveyors (SRO NBB RH2/4/433, 245). These officers were frequently lax in their duty: for example see SRO CEL/2 16 Sep 1725.

132 SRO CEL/3 21 Dec 1729. A treasury warrant was not required. They were charged on the outport incident account and were normally paid by the day at the same rate as corresponding established officers, although sometimes they might receive more: see SRO CEL/5 19 Aug 1740.
established staff was undermanned through absences or vacancies.\textsuperscript{133}

Most extraordinary officers were removed when the reason for their employment passed,\textsuperscript{134} but some were continued for several years, usually when a concerted attempt was being made to reduce smuggling in an area.\textsuperscript{135}

Besides their customs work, most outport officers had, at sometime or other, to undertake various other tasks. These included aiding excise officials collect excise duties on imported liquors and other exciseable commodities;\textsuperscript{136} enforcing quarantine and embargo orders issued by the Privy Council;\textsuperscript{137} seizing ships and goods of enemy countries in time of war;\textsuperscript{138} and obtaining intelligence on pirates, foreign ships, Jacobites, and other undesirable intruders in their area.\textsuperscript{139}

Such tasks often interfered with the work of revenue collection.

\textsuperscript{133}On dismissal or death of an established officer an extraordinary man was usually employed until a new officer was warranted; for example see SRO CEI/15 17 Oct 1738. Also on absences or illness SRO CEI/5 25 Apr 1739; SRO CEI/6 9 Jun 1741.

\textsuperscript{134}For example see SRO CEI/3 3 Feb 1730.

\textsuperscript{135}For examples see SRO CEI/4 27 Jul 1736, 23 Dec 1736; SRO CEI/3 9 Jan 1730; SRO CEI/6 26 Oct 1741; SRO CEI/7 2 Dec 1746 (over 7 years). A study of the relevant incident accounts shows no marked increase in the use of temporary officers over the period: customs SRO E510 and 511 (collectors); SRO E502 (receiver general); salt E531 (collectors), E532 (receiver general).

\textsuperscript{136}For example, Edinburgh landcarriage waiters were to keep accounts of all paper made in the neighbouring area and brought into Edinburgh, and transmit such accounts weekly to the excise commissioners; SRO CEI/3 20 May 1731.

\textsuperscript{137}For examples see SRO CEI/2 13 May 1728; SRO CEI/6 12 Jul 1743; SRO CEI/6 2 Aug 1744; CTPP V, pp. 299-300, 20 and 23 Jul 1743; all quarantine. SRO CEI/5 7 Feb 1740 embargo; for some difficulties in enforcing this embargo, the first since the Union see SRO CEI/5 12 Feb 1740, 25 Mar 1740.

\textsuperscript{138}For Spanish example by order in Council 19 Oct 1739, see SRO CEI/5 26 Oct 1739.

\textsuperscript{139}For examples see SRO CEI/1 14 Jul 1725; SRO CEI/5 12 Sep 1737, 2 Aug 1739. SRO CEI/6 12 Mar 1744; SRO CEI/7 26 Mar 1745, 6 Aug 1745, 10 Dec 1745, 28 Jul 1746, 8 Oct 1746.
In the normal run of affairs the control exercised by the commissioners over the outports rested mainly on written communication, either general or circular letters sent to all outports or specific directions to one particular port. Unfortunately collectors often failed to carry out board orders, were dilatory at responding to queries or even failed to pass on the board's directives to the inferior officers. Collectors were generally reluctant to act vigorously in difficult cases until orders were received from Edinburgh and the time it took to obtain advice from Edinburgh could be crucial. On occasion, however, certain officers were sent by the board to enquire into alleged abuses at outports. In relatively minor cases the collector of a neighbouring port could be sent. The collectors of Leith and Port Glasgow were frequently ordered to enquire into irregularities at ports in the Forth and on the west coast respectively. There were also a number of surveyors general, normally attached to

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140 Example of circular letter CE1/2 4 Apr 1728. Outport collectors were to enter all official communications from the board in their Book of Orders (see SRO CE/51 and succeeding vols. where such books for various ports are given; see also CE1/2 23 May 1728), publicly display important orders and acts of Parliament in the custom house, (SRO CE1/1 8 Jun 1725) and inform the officers under them of the instructions received relevant to their tasks.

141 The Comrs having been acquainted yt ye generall Letters they send to ye ports are frequently kept Secret from ye Inferiour Officers and ye contents thereof so far as are Relative to them not communicated to them as is ye Intention of ye board, a general letter is to go to the ports to direct the superior officers to observe it as a Rule on all occasions, that when they receive General Letters from the board which any ways concerns the Inferior Officers, such Letters are to be Read or communicated to them, and as a proof thereof they are to subscribe underneath ye same or otherwise certifie that they are acquainted with the contents of those letters; SRO CE1/1 17 Mar 1724. Often even repeated injunctions to outport officers to exert themselves proved fruitless; SRO NBD RH2/4/439, 211 19 Dec 1728.

142 For example see SRO CE1/4 12 Oct 1733.

143 For example see SRO CE1/3 28 Oct 1731.

144 The number of surveyors general varied from 4 to 7 in this period.
certain ports - Inverness, Port Glasgow, Greenock, Bo'ness, Dumfries - whose main task was to supervise the tobacco and riding officers but who were also used to make regular tours of inspection of the various ports in their districts and report their findings to the board and, where necessary, to investigate specific abuses.\textsuperscript{145} Finally there was a direct central supervision in the form of two inspectors general\textsuperscript{146} attached to central office. These two inspectors went on circuits of the northern and western ports, or other tours as the commissioners directed, to report on how the service was functioning and to recommend any necessary changes.\textsuperscript{147} They could also be ordered by the commissioners to any part of Scotland to investigate serious cases of evasion or corruption,\textsuperscript{148} thus, it was hoped, bringing the immediate weight of the commissioners' authority to bear on any outport when required. Where the collector himself was implicated, the inspector general would take over the management of the port.\textsuperscript{149} They performed a similar role for the salt service.\textsuperscript{150} Only on rare occasions, would

\textsuperscript{145} For example the surveyor general at Greenock was sent to enquire into the officers and management of Fort William and Campbeltown after the board had received information on suspected frauds: SRO CE1/3 1 Dec 1731. Similar example SRO CE1/2 21 Sep 1727.

\textsuperscript{146} Salary £130 p.a. each: SRO NBB RH2/4/433, 199 Midsummer 1724.

\textsuperscript{147} For examples see SRO CE1/2 29 Sep 1725, 16 Nov 1725; SRO CE1/4 14 Aug 1734, 1 Oct 1734; SRO CE1/5 19 Jun 1739; SRO CE1/6 17 Aug 1742.

\textsuperscript{148} For examples see SRO CE1/1 4 Jun 1724; SRO CE1/4 31 May 1733, 13 Jun 1733; SRO CE1/5 5 and 6 Jul 1738. Also SRO CE1/1 17 Apr 1724, 27 Aug 1724. Inspectors might also take over when a collector died: SRO CE1/6 24 Apr 1744.

\textsuperscript{149} For examples see SRO CE1/2 23 Jan 1728, 17 Oct 1728; SRO CE1/3 23 Jan 1730, 14 Sep 1730, 12 Jan 1732.

\textsuperscript{150} See SRO CE1/2 31 Dec 1725.
a commissioner investigate a problem at first hand, although outport personnel were frequently summoned before the board usually following reports by investigating officers.

The number of established customs outport officers varied from port to port depending on the volume of business. There were over 60 at Port Glasgow, 33 at Leith; 6 other ports - Inverness, Aberdeen, Bo'ness, Irvine, Anstruther and Dumfries - had over 20 officers, and the remaining 16 less than 20. Allowing for some minor rearrangements between ports, these figures remained fairly constant throughout the period. In fact the number of outport officers was far too small to make any serious attempt to combat smuggling and there was often not even enough staff to cope with seasonal trade rushes. The position in Scotland was in very marked contrast to the continuing and rapid expansion in the number of customs officers in England, and was in large measure due to the desire of the Treasury, given the relatively small amount of customs revenue being raised, to keep the cost of the

151 For example, early in 1730, after receiving numerous accusations against the collector of Kirkcaldy the board sent an inspector general to enquire. The inspector, however, could not perform his task because of the collector's "rude treatment and Insolent Behaviour towards him". Therefore commissioner Gwyn Vaughan was sent by the board to probe into the collector's conduct and also make a thorough examination into every aspect of customs administration at Kirkcaldy: SRO CE1/3 23 Jan 1730. The same year Vaughan made a survey of several northern ports: SRO CE1/3 14 Sep 1730. He seems to have been the commissioner most trusted by the Treasury to enquire into serious frauds etc. for they specifically suggested him to investigate tobacco frauds at Port Glasgow etc. in 1732: CTBP II, p. 254 3 Oct 1732: SRO NBB RH2/4/442, 303 6 Oct 1732; SRO CE1/4 12 Oct 1732.

152 For example in 1724 the land and tide surveyors and several of the landwaiters and coastwaiters at Leith were called in by the board and warned that constant attendance at their posts was expected of them: SRO CE1/1 4 Jun 1724. Similar example SRO CE1/4 2 Mar 1737.

153 All figures for Midsummer 1724, SRO NBB RH2/4/433, 199.

154 For example see SRO NBB RH2/4/453, 36 30 Mar 1744 and SRO CE1/6 3 Apr 1744; SRO CE1/7 17 Nov 1748.

155 For example see SRO CE1/5 24 Nov 1737.

156 See Hoon, English Customs System, pp. 145, 165.
Scottish establishment to a minimum. 157

For similar reasons the salaries of the established outport officers were generally small, indeed inadequate, 158 nor were there any significant increases during the period. 159 The collector of Port Glasgow might be paid £200 p.a. and that of Leith £150 p.a., but most outport collectors received less than £50 p.a. salary and those at relatively important places like Alloa and Perth got only £30 p.a. Outport comptrollers almost always received less than the surveyor and quite often only marginally more than landwaiters. Comptrollers at Port Glasgow and Leith were paid £100 p.a. but for most of the others £20 – £30 p.a. was the average salary. Landwaiters averaged £25 p.a. while tidesmen received perhaps £20 p.a. 160 Salaries for corresponding jobs were higher at the larger ports than at the smaller and thus an important form of promotion was to be moved from a small port to say Leith or Port Glasgow. 161 The low salaries led

157 For the desire to economise from the outset see Riley, English Ministers, p. 38.

158 In 1722 the commissioners reported to the Treasury that "We are humbly of Opinion that the Salaries of the most of the Inferior Officers in Scotland are no ways equal to the Trust Repos'd in them, and therefore wish that better Rewards were afforded them, because We think that the Lowness of their sallaries, subjects them too much to Temptation and nothing is more Apparent, than that the Revenue under our Management dayly decreases by the Corruption of our Officers" 1 Feb 1722 PRO T1/239 No. 12; PRO T1/240 No. 39 29 Aug 1722.

159 1722-4 there were several minor increases given, both to various central and outport officers, in an effort to check corruption (see note 158 above) but there were very few increases after that: PRO T1/278 No. 21. See also SRO NBB RH2/4/446, 361 8 Jan 1736.

160 All figures are for Midsummer 1724. SRO NBB RH2/4/433, 199. For salaries generally see SRO CE3/4-9 Scottish Board of Customs Establishment Books 1724-49; SRO NBB RH2/4/433-456.

161 PRO T1/249 No. 6 (4). In fact, officers were rarely appointed to these ports without prior experience in a smaller outport, ibid.; SRO CE1/1 14 Apr 1724. For a case of demotion see SRO CE1/4 19 Dec 1734.
many outport officers to demand excessive fees or accept bribes from merchants.\textsuperscript{162} Although tables of fees which could be legally demanded were drawn up, these were rarely adhered to,\textsuperscript{163} and fees levied varied greatly from port to port.\textsuperscript{164} Merchants often had to pay quite large sums to get officers to discharge their goods with any sort of speed or, at times, at all,\textsuperscript{165} and this, coupled with the general complexity of outport procedure, was a further incentive to merchants to resort to illegal practices, "to the great discouragement of Trade and prejudice of the Revenue".\textsuperscript{166}

The officer structure in the salt collections was somewhat simpler than that for customs. The collection of a 12d per bushel duty on Scots salt had been established from 1 May 1714.\textsuperscript{167} By mid summer 1724\textsuperscript{168} there were 11 salt collections in Scotland with 104 established officers, of

\textsuperscript{162}The commissioners early realised that lowness of salary was one of the main causes of excessive fees: PRO T1/249 No. 6 (4) 23 Jul 1724. Merchants frequently complained to the board about high fees: for example see SRO CE1/1 15 Oct 1723, 9 Jul 1724. Generally also SRO CE1/1 19 Nov 1724; SRO CE1/4 16 Dec 1736; SRO CE1/5 22 Jan 1740.

\textsuperscript{163}See PRO T1/250 No. 9 (8) 9 Oct 1724; SRO CE1/2 29 Nov 1727 "... for ye sake of exorbitant and illegal fees the Land surveyor [at Inverness] has been in constant practice of endorsing every warrant etc. altho' seldom present at ye shipping of ye goods"; PRO T1/249 No. 6 (4) 23 Jul 1724.

\textsuperscript{164}PRO T1/250 No. 9 (8) 9 Oct 1724. For lists of fees taken at various ports in 1742 and 1767 see PRO T64/242. See also Hay to Tweeddale 26 Mar 1743 NLS YP7054, 69.

\textsuperscript{165}"Complaints [have] been made to ye board that some of ye officers of ye Customs have sett up a Table of fees, according to which they demand the same and refuse ye necessary dispatch to Merchts untill they comply therewith" SRO CE1/1 9 Dec 1724.

\textsuperscript{166}PRO T1/249 No. 6 (4) 23 Jul 1724.

\textsuperscript{167}For details of the salt establishment in 1714 see SRO CE 12/1.

\textsuperscript{168}SRO NBB RH2/4/433, 214. See also Scottish Customs Board - Salt Establishment Books SRO CE12/1-2. These, however, are not complete.
which 83 (over 80%) were at the four largest ports, Prestonpans (24),
Alloa (23), Kirkcaldy (21) and Bo'ness (15). In every collection,
including those with only 2 men, there was a collector, who was always
also the customs collector, and a supervisor. At the larger ports
the collector might get £30 p.a. but at the smaller only £5 p.a. At
the four major ports the supervisor was a separate officer for salt
alone, receiving over £40 p.a., but at the others he was usually either
the customs comptroller or surveyor and was only paid an additional
£6 p.a. for his salt work. There were also a varying number of salt
officers (£25 p.a.) and salt watchmen (£15 p.a.) who were not also
customs officers.

In 1730 the Commons abolished the salt duty throughout the United
Kingdom. This meant the loss of over 350 jobs and a valuable source
of patronage. Walpole therefore persuaded the House to revive the
duties from Lady Day 1732. The re-established outport structure
in Scotland was almost identical to that prior to 1730. Three of the
smallest collections were dropped but otherwise the number and
salaries of the officers at the remaining collections were almost
completely unaltered and indeed of the 98 officers appointed from

169 The other collections were Ayr (5), Irvine (4), Campbeltown (4),
and Wigtown, Dumfries, Stranraer, Orkney (2 each).

170 Plumb, Walpole, pp. 239-41; Dickinson, Walpole, p. 75; Reed Browning,
reviving the salt duty, accusing the government of seeking to influence
elections through salt officials; History of Parliament: The House of
Commons 1714-54, ed. R.R. Sedgwick (London, 1970), 1, p. 629; Plumb,
Walpole, p. 243. Walpole won the crucial vote to restore the duties by
only 29 votes and the opposition claimed he had only succeeded with the
aid of the Scottish members. No division list survives to confirm this:
Plumb, Walpole, p. 244.

Lady Day 1732 at least 67 (nearly 70%) were the same as had served at Christmas 1730. There were no further changes in structure from 1732 to 1748.

In summary, in the period under study the customs and salt establishments in Scotland underwent little expansion; in Midsummer’s quarter 1724 there were 479 outport officers in 26 head outports (including Edinburgh and Glasgow), by Christmas quarter 1747 there were 492. This was reflected in the salary bills. Except for variations in the number and salary of the commissioners there were only minor charges after the various salary increases of 1720-4. Thus for the quarters Midsummer 1724 and Christmas 1747 the total

172 The figure of 67 is almost certainly conservative as some of the posts in Christmas 1730 establishment list are only marked 'the Person serving': SRO NBB RH2/4/441, 52. On Treasury instructions the customs commissioners sent a complete list of officers to be warranted and the Treasury seemed to have accepted almost all of these recommendations. The new officers were gradually warranted through April and May 1732: SRO NBB RH2/4/442, 215 6 Apr 1732; ibid. 242, 12 May 1732; ibid. 277, 20 Jul 1732.

173 SRO NBB RH2/4/433, 199. In July 1707 there were 256 outport officers - Riley, English Ministers, p.55. In the ensuing years the customs commissioners’ answer to all problems was extra officers, ibid. pp.126-7.


175 1725 seven commissioners at £800 p.a. each for customs (total salary bill £21,735 4/5d) SRO NBB RH2/4/433, 309 (LD 1725); SRO NBB RH2/4/434, 383 (MS 1725); ibid. 435 (XM 1725); SRO NBB RH2/4/435, 16 (XM 1725), and £200 p.a. each for salt. After the abolition of the salt duties from Christmas 1730 the commissioners continued to be paid the £200 p.a. for salt on the customs establishment. This continued even after a separate salt establishment was restored in 1732 and not until 1736 were the commissioner’s salt salaries again paid on the salt establishment. Customs salary bills were therefore at a maximum between 1730 and 1736, £24,523 6/- in 1732 for example (SRO NBB RH2/4/441, 80 LD 1731; SRO NBB RH2/4/447, 12 XM 1736). In 1742 the separation of the English and Scottish customs boards left only 5 commissioners on the Scottish establishment at £400 p.a. and £100 p.a. for salt. This meant that for the years 1743-8 the average established customs salary bill was approximately £19,250.
customs salaries amounted to £5,053 18/- and £4,753 2/- respectively; those for salt to £956 and £750.

**Appointment of Officers**

As we have seen the appointment of customs and salt officers in Scotland lay with the Treasury. Customs appointments in England had to be warranted by the Treasury and this system was built into the new Scottish customs service introduced at the Union. Under Godolphin Treasury interference in Scottish customs patronage was kept to a minimum and warrants were issued on the commissioners' presentments as a matter of course. Indeed on occasions the commissioners felt strong enough to ignore Treasury recommendations. Under Harley, however, the Treasury began to expand its control over Scottish customs patronage, and this position was maintained by his successors despite some resistance from the commissioners. Nevertheless, the amount of Treasury interference was still not great and the commissioners continued on occasions to reject men. From around 1725, however, this

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179 Ibid., pp. 123-4.

180 Ibid., pp. 197-201; Lord President Dalrymple to Stair, 9 Dec 1716 *Annals and Correspondence of the Viscount and the First and Second Earls of Stair*, ed. J.M. Graham (Edinburgh, 1875) I, p. 306 “And indeed our commissioners have no great character for their conduct, either here or above, so that many commissions are disposed of by the Treasury and sent down to them without their participation”.

181 Riley, *English Ministers*, p. 274 and footnotes 5 and 6. There were only about 30 cases of direct interference 1714-27: 2 of the 30 were openly rejected.
picture changed as Walpole sought to extend his political influence by increasing Treasury control over all parts of the administration. Treasury control over revenue administration was further increased by the Pelhams in the 1740s. 182 When the new salt service was established in Scotland in 1714 the Whig Lord Treasurer, Shrewsbury, at first contemplated the usual departmental control of appointments as in England, and in fact issued a general empowering warrant to that effect in September 1714. 183 This was quickly dropped, however, and salt appointments placed on the same footing as customs.

Normal procedure when vacancies arose was for the commissioners to present the name of a suitable candidate to the Treasury who could either approve the presentment or appoint another person. 184 The Treasury then issued a warrant authorising the commissioners to place the person appointed on the customs or salt establishment for Scotland. On receipt of this warrant the commissioners issued their deputation giving the new officer the requisite powers to act.

182 Hoon, *English Customs System*, pp. 196–202; Hughes, *Studies in Administration*, chap. 7. Treasury control over customs and salt in Scotland during the period appears to have been much tighter than in England. Although a start was made under Harley, only under Pelham did the Treasury systematically encroach on the English salt department's control of patronage: Hughes, *Studies in Administration*, pp. 288–9, 306–8. Hughes also suggests (ibid., pp. 210, 308–9) that Scrope, in his position as secretary to the Treasury, was instrumental in the increased level of Treasury interference in Scottish customs patronage from the 1720s and that he was influential in controlling this patronage. There is little evidence, however, to support the latter claim.


184 Sometimes, in anticipation, the commissioners employed their presentee in the vacant post as an extraordinary officer until the Treasury warrant arrived. Such candidates were not always warranted, however; for example see SRO CEI/6 26 Feb 1741, 3 Mar 1741 and SRO NEE RH2/4/450, 150 28 Apr 1741.
in the service. All established officers, apart from the receiver general, some of the more minor boatmen, and central office clerks, were appointed in this way. All such appointments were during pleasure.

The average turnover of customs officers, excluding commissioners, in the period 1725–48 was about 40 each year (8% of the total staff). Of this number death accounted on average for 40%, dismissals just over 30%, other reasons such as resignations and promotions 25%, with the remainder unaccounted for. The reasons for almost every dismissal are well documented and all are for illegal activities of one sort or another (although this may of course also mask political reasons) and there is no evidence either statistically or otherwise of any marked increase (or decrease) in dismissals prior to or following elections or at times of political change.

It became a recognised and accepted convention, although never a rigid rule, that whichever commissioner held the chair in the week that a post became vacant, by death, dismissal or otherwise, had the right to present a candidate for that vacancy. This method, however, did not apply in the case of outport collectors and

185 In all, from June 1724 to Christmas 1748 there were 985 changes: 327 being dismissals: SRO NBB RH2/4/433–456; CH1 CE/1–7. The corresponding figures for the salt service are: average annual turnover 10%, of which dismissal 31%, death 29%, other 32%, unknown 8%. In 1746 13 salt officers, mostly employed at Prestonpans, were dismissed for Jacobite sympathies.

186 The commissioners held the chair in weekly routine. "When any officer of the Customs Dyes, the Commissioner who has the chair that week, has the presenting of one to the Lords of the Treasury to be his successor, but the Board of Customs appoint who they think properest and fittest for that office, to take charge thereof, till the pleasure of the Lords of the Treasury be known" Collector of Port Glasgow Walter Grossett to Sir Everard Fawkener 22 Dec 1747 N.U.L. NEC 1836. See also Arbuthnot to Tweeddale 19 Oct 1742 NLS YF7050, 125.
comptrollers: the right to present to these places was strictly rotated among each commissioner in turn. Whenever a vacancy arose (or seemed likely to arise) commissioners would be solicited by various parties attempting to secure a presentment: from leading political figures anxious to extend their influence and provide places for their supporters; from other nobles and gentlemen who wanted jobs for their relations and friends; from prospective officers themselves; and lastly from senior outport officials who usually recommended officers under them for promotion but who were also not averse to promoting the interests of their friends and relations. The commissioners also had friends for whom they wished to provide and at times, particularly in the 1720s, Ilay had some difficulty in preventing commissioners nominating their own friends instead of consulting with him. Through the period George Drummond was a particular thorn in Ilay's side in this respect. The whole pattern of customs and salt presentments was an intricate series of compromises between these competing forces.

The success of the Scottish manager (or his rivals) in obtaining customs appointments was a clear indication of his standing with the Ministry and also indicated which local interests enjoyed government favour. Ilay entrusted the management of suitable customs presentments to Milton. "I must have An Account sent to me always of the

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187 For example see SRO CEL/7 3 Oct 1748.

188 For example see customs commissioner Hale to Milton 22 Feb 1727 NLS SC 16537 f.9.

189 "I am very angry at G Drummond for neglecting poor Maxwell... I never in my life did half the service to any man alive as I have from time to time done him and it's A little hard that a just recommendation of mine to him should be treated in that manner" Ilay to Milton 5 Aug 1724 NLS SC 16,529.
Presentations of the Commissioners of the Customs, and A state of Candidates for those offices, that I may know whom to recommend to the Treasury". Milton's role in overseeing customs matters in Scotland, and particularly the presentation of suitable officers, was widely recognized by contemporaries. Ilay throughout the period (usually through Milton) and Tweeddale during his Secretaryship would give 'friendly' commissioners lists of men they wished presented when suitable vacancies occurred and these commissioners would then work their way through the lists. It was thus very important for a manager such as Ilay to have the support of as many commissioners as possible and as we have seen, Ilay was particularly successful in securing the appointment of commissioners who favoured his interest. For most of the period the board was solidly Argathelian although in the early years of Tweeddale's Secretaryship there was considerable in-fighting on the board over presentations between Alexander Arbuthnot, appointed on Tweeddale's recommendation, and Argathelians Ross and Campbell.

As the actual appointment lay with the Treasury, it was open to anyone to solicit the Treasury directly. If the First Lord of the Treasury had some arrangement with the Scottish minister, as Walpole had


191 William Bowles, solicitor to Exchequer, to Treasury 22 Feb 1729 CTBP I, p. 23.

192 The practice is fully illustrated in a long series of letters between Thomas Hay and Tweeddale, 1742-6, in Yester Papers and Supplementary Yester Papers, NLS. Both Ilay and Tweeddale kept the commissioners sweet by encouraging them to present their (the commissioners') own friends from time to time.

193 See below pp.470-2.

with Ilay, he would normally rely on the manager's advice in accepting or rejecting presentments from Scotland. After Walpole's fall, however, matters became more complicated as first Tweeddale sought to thwart at the Treasury presentments by Argathelian commissioners, and then in the late 1740s Newcastle and Pelham attempted to widen the Ministry's support in Scotland. On average over the period the Treasury rejected between a third and a quarter of the commissioners' presentments and warranted another man for the job. This was a significant increase from the immediate post-Union period when more or less by default the Treasury had allowed the commissioners in Edinburgh to gain the controlling hand in appointments. Unlike the period 1707-14, there is no evidence that during the years 1725-48 the commissioners did other than accept the Treasury's authority on appointments. The level of Treasury rejection was most marked during the early 1720s when Walpole was seeking to consolidate his political position, the Argathelian - Squadron conflict was at its height, and the Treasury was anxious to improve the efficiency of the Scottish customs service; the early 1740s when Tweeddale was Secretary of State and there were considerable tensions within the Ministry; and in the years following the Forty-Five when Ministers sought to broaden their support in Scotland and the Treasury

195 On Ilay working through the Treasury see Ilay to Milton 4 Dec 1731 NLS SC 16, 545.

196 See Yester and Supplementary Yester Papers NLS generally. Also SRO NBB RH2/4/453, 25 13 Mar 1744.

197 There is no evidence that those appointed directly by the Treasury were any more able than those presented by the commissioners.

198 Riley, English Ministers, pp. 123, 274.
was anxious to cleanse the service of all officers suspected of disaffection. In particular, during the first nine months of 1742, following Walpole's resignation a very high number, over half, of the board's presentments were rejected as Tweeddale and Carteret sought to counteract the influence of the Argathelian commissioners. Even during the late 1720s and throughout the 1730s the Treasury rejected about one quarter of the commissioners' presentments and this can be seen as part of Walpole's general policy of attempting to retain some direct control over Scottish affairs and restrain to some extent Ilay's growing influence.

Revenue patronage was particularly important in building up electoral interest in the constituencies. The obtaining of a customs job for a potential supporter could often sway an election. As Col. John Middleton MP for Aberdeen Burghs wrote to Milton in 1724 "I cannot express how much of my success att Aberdeen depends upon the affair of John More being provided there [as a land-surveyor]: My Lord Ilay wrott to Mr. Hill [customs commissioner] and had his answers by the last post, where he hints some difficulty... I [must] gett More provided there, he be of infinite use to me in my election". Thus many of the posts were given to the younger sons or relations of minor landowners, town magistrates and others with a vote: in other words, members of the political nation in need. The number of posts was limited and on

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199 They demanded details of all officers, vacancies etc., see SRO CE 1/7 27 Jun 1746.

200 Middleton to Milton 16 Mar 1724 NLS S016,530. See also Middleton to Milton 10 Mar 1724, 24 Mar 1724, 26 Mar 1724 NLS SC 16,530; Middleton to Milton 23 Sep 1724 NLS S016,530 "Our [magistrates] Election has gone wrong, from my not being able to make one Daniel Parquarson... A Landwaiter; God forgive the Commissioners". For importance of customs appointments for local elections see also Hay to Tweeddale 25 Oct 1743 NLS YP7058, 125 and Hay to Tweeddale 22 May 1744 NLS SYP Box 11 F2.
any vacancy there was usually a number of demands from competing local interests.  

Ilaysought to win and retain the support of those with a natural local interest by obtaining customs jobs for them and similarly Tweeddale, for example, sought to strengthen Rothes' interest in Fife "by endeavouring to provide those he recommended with Offices in the Customs in the towns in that neighbourhead..."  

While political considerations loomed large in customs presentments, there were rules governing the requirements a man had to meet before being presented and, from time to time, the commissioners emphasized the need to present only properly qualified officers. In 1724, "The Commrs being of opinion, That it will tend to ye Service and Security of the Revenue, if when Vacancies happen, no persons be appointed to supply the same, but such as are actually, or have been instructed and duly qualified for ye service, Do therefore agree, That no person shall be presented to be Surveyor or Landwaiter, but such as have been instructed in ye business, and no Regard is to be had to any certificate of such persons being qualified for the same unless He has been under Instruction six months".  

Suitably experienced officers could expect to be presented to promoted posts when vacancies occurred in order to provide at least a core of able officers at each outport. Although no-one

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201 For example see Milton to Ilays ND1736 NLS SC 16,566; Arbuthnot to Tweeddale 16 Nov 1742 NLS YP7051, 55.

202 Ilays to Milton 12 Sept 1735 NLS SC 16,559: "D of Athols friend Capt James Murray is receiver of the Customs in Walter Campbell's place, the Duke press'd it very much, and I thought right for me and for the Government to please him intirely".

203 Hay to Tweeddale 23 Dec 1742 NLS YP7052, 75. Also Hay to Tweeddale 19 Feb 1743 and 22 Feb 1743 NLS YP 7053, 166 and 168.

204 SRO CEM/1 4 Nov 1724.

205 For example see SRO CEM/4 23 Jan 1734.
was supposed to be presented for a job in a port of which he was an inhabitant\textsuperscript{206} in order to avoid possible intimacy with local merchants, this was usually overridden by political considerations. It was resolved in 1724, and repeated in 1732, "not to Employ or Present any person for the future for the service of the Customs or Salt Duty but such whose age shall not Exceed forty years".\textsuperscript{207} Finally from 1724 the secretary was ordered to check that no one presented by the board had previously been dismissed\textsuperscript{208} and by the early 1740s, if not before, a "Black Book" was kept specifically for this purpose.\textsuperscript{209} Political interests usually took precedence, however, and these rules were more often breached than observed. Thus many new officers were ignorant of customs business and, what was worse, were often totally unfit or incapable of properly performing their duties. To take but one example, it was discovered only after some years that a man appointed to be a tidesman at Fort William could not write and so could not make up his books.\textsuperscript{210} Many of those presented by the commissioners had later

\textsuperscript{206} This had first been stated by an Order in Council 21 Jun 1714 but allowed to lapse. The board revived it in 1724 with Treasury approval: customs commissioners to Treasury 17 Nov 1724 PRO TL/249 no. 6(6); Scrope to customs commissioners 25 Nov 1724 SRO NBB RH2/4/433, 272; CE1/1 1 Dec 1724. For an example of this rule being set aside for political considerations see Hay to Tweeddale 4 Jun 1743 NLS YP7056, 21. See also Arbuthnot to Tweeddale 21 Jun 1743 NLS YP7056, 98; Hay to Tweeddale 23 Aug 1743 NLS YP, Box 11 Fl; Riley, English Ministers, pp. 199-200.

\textsuperscript{207} SRO CE1/4 12 Apr 1732; SRO CE1/1 21 Jan 1724.

\textsuperscript{208} SRO CE1/1 9 Jan 1724.

\textsuperscript{209} See SRO CE1/7 8 Oct 1746; 22 Jan 1747; Hay to Tweeddale 26 Jan 1745 NLS YP7056, 32. For examples of reappointments of those previously dismissed see SRO CE1/4 28 Oct 1734, 7 Nov 1734, 8 Jan 1735, and SRO NBB RH2/4/445, 302 12 Aug 1735; SRO CE1/4 15 Jan 1735 and SRO NBB RH2/4/445, 220 13 Feb 1735; SRO CE1/4 18 Jun 1735, 8 Feb 1737 and SRO NBB RH2/4/447, 98 4 Aug 1737; SRO NBB RH2/4/447, 142 8 Dec 1737 - on this occasion the commissioners were warned by the Treasury to be more careful.

\textsuperscript{210} SRO CE1/5 21 Sep 1738.
to be dismissed for corrupt activities, sometimes within months of being appointed. In putting the interests of the service second to political pressures the commissioners must, therefore, bear some share of the blame for the negligence, corruption and general unfitness that characterised so many of the Scottish customs and salt staff during this period.

The Service at Work

In light of the nature of many customs appointments and given the complex system of customs procedure and duties it is hardly surprising that outport management was characterised by ignorance, negligence or deliberate malpractices among the officers. Rare indeed was the case of the comptroller of Fort William who, in a letter to the board "acknowledged his Incapacity to execute that office with yt Exactness and Regularity which is requisite, for want of knowledge how to compute the duties, and therefore desiring leave to surrender that Employt in hopes the board will be pleas'd to provide for Him in some other Station when they see a fitt opportunity". Officers were frequently granted leave of absence from their posts thus leaving many ports regularly understaffed. Unofficial absences were an even greater problem. Frequently officers failed to attend their tasks for days on end and

211 For example see SRO CE1/5 27 Oct 1737, 12 Jul 1738.

212 SRO CE1/2 3 Nov 1725.

213 Leave to be absent was usually granted to the outport officers by the commissioners, normally on the proviso 'as long as the business does not suffer': for example see SRO CE1/1 15 May 1724. Unfortunately it often did, especially as it was difficult to ensure that absent officers returned after their term of leave was over.
sometimes deserted the service altogether. Drunkenness, the taking of bribes, insubordination and insolence were common. Again, despite repeated instructions to the contrary, several officers retailed wines and spirits or kept an ale house. Hercules Smith, collector at Kirkcaldy, even used the warehouse as a wine cellar. In fact, Smith, besides selling liquor, refused inferior officers access to information and kept board orders from them, allowed his son to act as his deputy without board permission, appropriated all profits from seizures to himself, failed to keep his books properly, and was generally ill-natured and indolent. He was eventually dismissed.

Many officers were negligent in inspecting cargoes or in keeping entry books. This last was particularly serious as the revenues to

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214 For example see SRO CE1/1 4 Jun 1724; 1 Oct 1724. In 1743 the board ordered collectors and comptrollers not to absent themselves for more than three days without permission, "the absence of Principal Officers having been found by experience to be attended with great inconvenience to the Revenue" (SRO CE1/6 14 Dec 1743) but this order was little observed. Attempts were made to make all outport officers sign a daily register and suspensions and dismissals were at times used by the commissioners to discipline officers but to little effect: see SRO CE1/4 30 Sep 1736; SRO CE1/7 27 Apr 1748.

215 Examples SRO CE1/2 2 Mar 1726; SRO CE1/4 10 Jun 1735, 9 Sep 1735; SRO CE1/5 12 Jun 1738.

216 Examples SRO CE1/2 10 Mar 1727; SRO CE1/3 24 Sep 1728; SRO CE1/4 1 Feb 1733; SRO CE1/6 26 Feb 1745. Merchants were regularly prosecuted for offering bribes to officers: for example see SRO CE1/5 11 Mar 1740.

217 Examples SRO CE1/3 18 Jul 1729; SRO CE1/4 24 Nov 1735.

218 For example, a tidewaiter at Aberdeen was suspended for "giving saucy language to his Tide Surveyor" SRO CE1/3 4 Nov 1729. Also SRO CE1/2 7 Apr 1727.

219 A tideman at Stranraer kept a pub where smugglers used to concert the running of goods with his connivance: he was dismissed — SRO CE1/4 20 Jun 1734. Another example SRO CE1/3 17 Feb 1729.

220 SRO CE1/3 23 Jan 1730.

221 Examples SRO CE1/4 4 Dec 1733; SRO CE1/7 8 Oct 1746; SRO CE1/2 31 Dec 1725; SRO CE1/7 3 Nov 1747.
be collected and the whole accounting system from waterside to central office depended to a large extent on entry books being properly kept. Such negligence made it that much more easy for merchants to perpetrate frauds. Low pay and inadequate supervision encouraged a large number of officers, from the collector downwards, to connive at or actively join in these frauds. Techniques of fraud and evasion were almost limitless: goods could be underweighed, not properly inspected, or allowed to be run ashore while the officers looked the other way. Entry books and coquets could be fixed so that only perhaps half the goods involved were entered. If this was done properly it was difficult for outside examiners to detect discrepancies. Perhaps one of the most common frauds was the payment by collectors of drawbacks far in excess of those entitled by the volume of goods re-exported. In most cases the officers involved were either given a bribe by the merchant or a share of the duties evaded. Officers might also connive at the stealing of previously seized goods from the customs warehouse. "The Country is used so much to the constant practice

222 For example see SRO CE1/4 4 Dec 1733, 19 Dec 1734.

223 FRQ T1/239 no12 1 Feb 1722; SRO CE1/4 14 Dec 1733; SRO CE1/5 2 Aug 1733.

224 See CTP (1720-8) pp. 116-7 11 Jan 1722. Also SRO CE1/2 24 Jan 1727; SRO CE1/5 17 Jul 1739, 23 Jan 1740, 8 Feb 1740.

225 Examples SRO CE1/1 27 Jul 1724; SRO CE1/4 4 Dec 1733.

226 In the last resort officers often "burnt or otherways destroyed the books and accounts of customs to prevent an examination"; SRO CE1/1 24 Dec 1723.

227 For example see SRO CE1/7 1 May 1745. Tobacco debenture frauds were especially common: SRO NHB RH2/4/442, 303 1732; Arbuthnot to Tweeddale 31 Mar 1744 NLS YP 7061, 72.

228 For example see SRO CE1/2 28 Mar 1726, 28 Apr 1726.
of frauds, both on Import and Export that an honest officer attempting to curb them would be in danger of his Life..."\textsuperscript{229}

Much of the time of the board was spent probing into suspected frauds, but even when they were exposed definite proof was difficult to obtain especially if the outport officers maintained a conspiracy of silence, and often the commissioners had to be content with reprimanding officers to behave better in future.\textsuperscript{230}

The extent to which customs laws were enforced also had a political side and it was common, particularly before elections, for officers appointed on the interest of the sitting MP or one of the candidates to relax enforcement in the case of those who would support that person in the election, while being rigorous against his opponents.\textsuperscript{231} Similarly erring officers looked to their patron for protection against dismissal and this was a factor the commissioners had to take into account. "Those officers who have friendships and connections are apt to wink at their relations and friends committing frauds and besides are apt to be negligent or corrupted knowing why they are put in and what will be a means of keeping them if complaints were made".\textsuperscript{232} As Arbuthnot complained

\begin{itemize}
\item \textsuperscript{229}Arbuthnot to Tweeddale 4 Oct 1743 NLS YP7058, 64.
\item \textsuperscript{230}For an excellent example illustrating the connivance of officers in the illegal activities of merchants and in fish debenture frauds in Inverness 1727 see SRO CE1/2 29 Nov 1727; SRO CE1/2 6 Feb 1728.
\item \textsuperscript{231}For an excellent example of a merchant in Dingwall being hounded by customs officers for political reasons prior to the 1741 general election see W. Ferguson, Electoral Law and Procedure in Eighteenth and Early Nineteenth Century Scotland (unpublished Ph.D. thesis, Glasgow, 1997).
\item \textsuperscript{232}Hay to Tweeddale 1 Jan 1743 NLS YP7053, 19. See also Hay to Tweeddale 17 Nov 1744 NLS SYP Box 12 Fl.
\end{itemize}
to Tweeddale, dishonest officers "many times find patrons that protect them, people of Influence who have to much to say with some att the Board, who have their bread depending on their office, and of Course have neither courage, honesty, nor resolution to do their duty..." 233 The commissioners were generally lenient in disciplining wayward officers. Many, even on a second or third offence, received only a reprimand or a small fine. 234 Although there were periodic purges at various outports when major frauds were revealed, 235 the number of dismissals in proportion to the number of officers examined by the board was not high. Usually the offending officer was suspended pending enquiries but was later restored with loss of salary. 236 The lack of suitably qualified replacements was one factor 237 but more important was the need to avoid offending political

233 Arbuthnot to Tweeddale 30 Apr 1745 NLS YP7065, 180.

234 For example see SRO CEL/2 9 Feb 1726, 20 Mar 1728.

235 For example 12 tidesmen and a watchman were dismissed at Leith in 1737 for various frauds, SRO CEL/5 9 Sep 1737, 4 Oct 1737; 4 tidesmen Aberdeen dismissed 1739 for allowing running, SRO CEL/5 23 Nov 1739, 13 Dec 1739; 7 Leith tidesmen dismissed 1743 for neglect and connivance, SRO CEL/6 14, 15, 20, 21 Sep 1743, 21 Feb 1744.

236 On one day alone 15 officers, previously suspended on suspicion of frauds etc., were restored, SRO CEL/4 14 Aug 1735. For other examples of leniency see SRO CEL/5 1 Nov 1739, 23 Nov 1739, 28 Nov 1740, 29 Mar 1739, 10 Apr 1739, 13 Oct 1740; SRO CEL/6 2 Feb 1742; SRO CEL/7 25 Jul 1745.

237 "A complaint of Archd Cameron asst Surveyor at Leith agt Matthew Crawford Tidesman for Refusing to obey orders being Read at the Board, They direct that the Collr suspend him for his offence but if he is in want of Tidesmen only to fine him a weeks salary to be Remitted on the Superann fund" SRO CEL/4 24 Nov 1735.
interests, particularly at local level. There was also a growing feeling that holders of offices, no matter how lowly, should enjoy some sort of security, particularly against political changes, and should not be dismissed except for the grossest of corruptions.  

Smuggling (the landing of goods outwith ports controlled by the customs service as opposed to evasion and fraud at these ports themselves) was another major problem. Even before the Union smuggling was rife in Scotland, but the introduction of the English customs system after 1707, with its higher duties and complicated procedure, greatly exacerbated the situation and tempted even the honest trader to bypass the outport system completely. And, of course, the very length of the Scottish coast with its numerous creeks, inlets and bays made Scotland a smugglers' paradise. The proximity of numerous off-shore islands, and notably the Isle of Man which was outside the British revenue system, greatly facilitated the running of goods onto the mainland, and the relanding of certain commodities such as tobacco on which export drawbacks had been paid. Finally, almost all sizeable towns in Scotland lay either on or very near the coast, enabling smuggled goods to be quickly dispersed. The number of officers on the Scottish establishment, kept low as we have seen for

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238 Hughes, Studies in Administration, chap. 7; Henry Parris, Constitutional Bureaucracy - the Development of British Central Administration since the Eighteenth Century (London, 1969) chap. 1.

239 Excessive and illegal fees demanded by many outport officers was also a factor: see PRO T1/250 no.9 (8) 9 Oct 1724. See also 'Various observations on customs and excise revenues 1714-7' by Clerk of Penicuik, SRO CD18/2703.

240 The nearness of the Isle of Man was one reason for the large number of customs officers in the Solway Firth area.

241 PRO T1/249 no.6 (1) 9 Jan 1724.
reasons of economy, was totally inadequate to guard a fraction of the coastline effectively. There were no headports between Inverness and Aberdeen, for example, and only a handful of officers from these two ports were supposed to prevent "the great quantities of goods run betwixt Peterhead and Cullen". Not until 1747 was a general surveyor established at Campbeltown to survey the long stretch of coast from Lochbroom to Kintyre. Both smuggling and frauds meant serious losses to the revenue and were harmful to the fair trader. English merchants, in particular, constantly complained that illegally entered tobacco was being brought down from Scotland, and, having paid no duties, was able to undercut the tobacco legally imported by English merchants thus ruining their trade.

The smuggling of foreign salt coupled with its illegal use for domestic consumption also seriously affected the salt revenue. In 1739 various salt masters presented a memorial to the commissioners complaining of great Frauds in Using Foreign Salt for home Consumption, and that the same is chiefly owing to the Negligence or

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242 SRO CEL/4 10 Oct 1734. In 1738 the board discussed a proposal to set up a new port at Banff but nothing came of it, SRO CEL/5 6 Jul 1738.

243 SRO NBE RH2/4/455, 385 30 Jul 1747; SRO CEL/7 13 Aug 1747. See also SRO CEL/3 23 Oct 1730 where the collector of Orkney complains that it is impossible to stop the illegal export of wool as his officers cannot keep full watch over all the remote creeks and islands.

244 It is impossible to put any accurate figure on this but commissioner Humphrey Brent after making a survey of various Scottish ports in 1722 estimated that tobacco frauds alone had cost the revenue £23,000 in 1720 and £30,000 in 1721; PRO T64/240 15 Nov 1722.

245 For details on various tobacco frauds 1732-48 and their harmful effect on England see PRO T1/336 no. 6 4 Mar 1749. Also CTP (1720-8) pp. 116-17 11 Jan 1722.

246 "... The duty on home salt appears to have been much diminished by the great use of foreign salt for home Consumption without paying any duty..." SRO CEL/3 15 Feb 1732.
Connivance of the Officers of the Customs..." The commissioners thought such complaints "harsh and exceptionable" but admitted that it was unfortunately too easy to run salt, for "in the long extended Coast [it] is but too often found to be impracticable, not withstanding the Boards best Endeavours, to prevent it".247

The commissioners spent much time urging collectors to see that their part of the coast was guarded as closely as possible and in devising suitable preventive measures. Extraordinary officers were appointed on incidents or established officers rearranged so that some notorious smuggling area could be better guarded.248 Riding officers to patrol specific sections of the coastline were also appointed on occasion. The most notable example came in 1725 when, after representations from various landed gentry about the deleterious effect the smuggling of black cattle and victual from Ireland and the Isle of Man into the west coast of Scotland was having on the profits of their estates,249 William Hamilton, collector of Wigtown, was made surveyor general of riding officers west coast and given £1,200 p.a. for himself and not more than 10 riding officers who were to be under his control.250 Customs boats were also employed to hover off the

247 SRO CE1/5 22 and 23 Jan 1739. The salt masters also petitioned the Treasury for legislative redress of the problem; CTBP IV p. 73, 1739. See also SRO CE1/4 23 Jan 1735; SRO CE1/5 22 Feb 1739, 27 Feb 1740. The "loose and irregular" keeping of accounts relating to foreign salt by outport officers also enabled merchants to import foreign salt duty free on pretext of using it to cure fish for exportation but sell it for domestic consumption instead: SRO CE1/2 4 Apr 1728.

248 For examples see SRO CE1/2 9 Aug 1727; 20 Sep 1727; SRO CE1/3 2 Dec 1729, 14 Jan 1731, 4 Feb 1731.


250 SRO NBB RH2/4/434, 370 9 Jun 1725. The £1,200 was placed on the Port Glasgow establishment. It was raised to £1,500 in 1728 because of the success of the scheme, SRO NBB RH2/4/438, 80 29 May 1728. See also Arbuthnot to Tweeddale 9 Apr 1745 NLS TP7065, 145; SRO CE1/7 8 Jul 1747.
coast and intercept any ships with illegal designs. Seven new sloops were built in 1724-5 for the customs service at a cost of over £6,000, four to operate off the east coast, three off the west. They were not altogether successful, however, and several were later sold off and smaller boats used in their place. All too frequently commanders remained in port instead of being out at sea despite frequent instructions from the board. In short, such schemes often merely plugged one gap and exposed another.

The customs service in Scotland was notoriously unpopular, smuggling was regarded as a 'respectable crime' and smugglers were looked upon favourably by most sections of the community. The board therefore often had to rely on the military to help customs officers combat smuggling and to put down anti-customs mobs.

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251 These are distinct from the outport boats which were basically meant to transport officers to ships etc., but which might, if the occasion arose, also be used to combat illegal trading. See for example letter from the collector of Inverness to the commissioners 18 May 1733: "... some ill disposed persons carried away the Custom ho boat a Cross the ferry and with saws and axes Cutt her in two by the Middle And this is supposed to be done at the instigation of the Smugglers in these parts the said boat having lately been of great service in suppressing that pernicious trade..." SRO CE1/4 23 May 1733.

252 SRO NBB RH2/4/433, 184, 19 Jun 1724; SRO NBB RH2/4/434, 416 22 Sep 1725; SRO CE1/2 4 Oct 1725. For their stations see SRO CE1/2 9 Nov 1726 east coast, SRO CE1/2 25 Nov 1726 west coast.

253 Prince Frederick Sloop SRO CE1/3 27 Jan 1730, SRO NBB RH2/4/440, 376 6 Jan 1730; Princess Louisa Sloop SRO CE1/3 26 Nov 1730; Princess Carolina Sloop SRO CE1/6 8 Mar 1743. The Princess Mary Sloop was also sold, SRO CE1/3 26 Nov 1728, SRO NBB RH2/4/439, 206 26 Nov 1728.

254 For example SRO CE1/2 9 Nov 1726; SRO CE1/3 9 Nov 1730; SRO CE1/4 11 Dec 1733, 28 Jan 1737.

255 For example see customs commissioners to Treasury 20 Jul 1725 CTP (1720-8) pp. 351-2. Mobs frequently insulted officers and obstructed them from carrying out their duties: for examples see SRO CE1/1 2 Oct 1723; SRO CE1/3 22 Oct 1728, 30 Dec 1728; SRO CE1/5 31 Jan 1738, 16 Aug 1739; SRO CE1/6 8 Jul 1741, 17 Feb 1742.

256 Examples SRO CE1/5 8 May 1738; SRO CE1/7 11 Mar 1747.
and Violences being of late become very frequent We find our selves obliged for the Protection of the officers of the Customs in the Execution of their duty to call more frequently than usual for the Assistance of the Soldiers and to procure orders for their being station'd on the Coast, and We have found them very serviceable, and that the securing of seizures would otherwise be impracticable". 257

On several occasions the commissioners drew up schemes to quarter detachments of regular troops at all major headports to assist the customs officers in arresting smugglers and in guarding seized goods in the customs warehouse. 258 Unfortunately there were never sufficient numbers of troops in Scotland to be spared for such regular customs work and usually troops were only sent in after customs officers had discovered specific smuggling operations. 259

The board or the local collector would apply to the nearest troop commander 260 but commanders were often reluctant and on occasions refused to comply, knowing that if any of their soldiers should fire, even in self-defence, and kill or wound anyone, they were quite likely

257 Customs commissioners to Treasury 23 Apr 1740 PRO T1/302 no 62.

258 For example see SRO CE1/1 13 Apr 1725. See also 1726 example where the collector of Prestonpans "represented the great necessity there is for a party of soldiers to be constantly quarter'd there, ye custom house and warehouse being continually liable to be broken open and ye officers in ye Execution of their duty expos'd to ye Insults of the Mob" SRO CE1/2 21 Sep 1726. Although the commissioners asked for 12 soldiers to be sent there, they obviously did not become permanently resident for early in 1727, when the warehouse was again broken open, a fresh detachment of soldiers had to be sent: SRO CE1/2 26 Jan 1727.

259 For example see SRO CE1/2 30 May 1728.

260 For example see SRO CE1/1 18 Jan 1725.
to be arrested and charged with murder by some local magistrate or justice. The problems of smuggling and of violence against officers had become so serious by the early 1730s that the Treasury had to remind the military in Scotland that it was their duty to help revenue officers on all proper occasions. When troops were used to put down smuggling operations tempers often flared. Clashes frequently occurred when mobs tried to prevent troops and officers making seizures or to rescue goods which had been seized and placed in the customs warehouse and bloodshed was not uncommon.

Perhaps even more serious than the antipathy of the ordinary people was the indifference or even downright hostility of many of

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261 Elgin example Delafaye to Magistrates of Elgin 20 Jul 1725 SRO RH 2/4/318 f. 258 and Forbes to Delafaye 27 Jul 1725 ibid. f. 274. Similar example, Inverness, see Milton to Newcastle 18 Oct 1735 SRO RH 2/4/334 f. 143-4. St Andrews example Roxburgh to Dundas 16 Nov 1723 SRO RH 4/15/2 (vol II) 31. See also for example SRO CEI/3 9 Mar 1730; SRO CEI/4 12 Jun 1735. The attempted prosecution of Captain Bushell etc. after the malt tax riots in Glasgow 1725 (see below pp. 349-50) strengthened this apprehension. It was also an important factor in the reluctance of troops to act vigorously during the Porteous riots. The commissioners always exerted themselves on behalf of such soldiers and on several occasions obtained royal pardons for them: Naism example – SRO CEI/4 13 Jun 1735, 31 Jul 1735, 28 Aug 1735, 30 Sep 1735, and CTBP III, p. 44 21 Aug 1735. Also Aberdeen SRO RH 2/4/410, 81 9 Mar 1728 royal letter of remission.

262 Scrope to Wade 19 Sep 1733 SRO NBB RH2/4/443, 483. Soldiers were usually given rewards for services they rendered, payable out of customs incidents: SRO CEI/4 31 Dec 1733, 15 Jan 1734. Examples SRO CEI/2 11 Apr 1728; SRO CEI/4 28 Aug 1733. New tables of increased rewards and allowances drawn up after the Forty-five: SRO CEI/7 28 Oct 1746.

263 For example see SRO CEI/5 26 Sep 1739. Warehouse examples SRO CEI/2 26 Jul 1725, 30 Aug 1725, 11 Apr 1728; customs commissioners to Treasury 30 Apr 1723 SRO RH 2/4/397, 76.

264 Examples SRO CEI/4 12 Jun 1735; SRO CEI/6 20 Dec 1742, 3 Jul 1744.
those in authority locally to attempts to enforce the customs laws. A large number of gentlemen throughout Scotland were involved in illegal trade and customs evasion, if only by buying smuggled goods. Sometimes they would join together and offer to help put down smuggling in their area, but such schemes were usually very half-hearted. Town magistrates, too, on occasion offered to help stamp out customs abuses but such assistance was rare and much more often local authorities obstructed the work of the customs services. Constables, magistrates, justices, sheriffs were all guilty of refusing to help officers, obstructing them in their duty, or refusing to execute warrants issued by the Court of Justiciary of the Court of Exchequer relating to customs offences. Frequently

265 The insults which the officers dayly meet with ... give us [commissioners] great reason to apprehend that unless the civil magistrates are more hearty in putting the laws in execution against such as publicly abuse the officers of the revenue, and interpose their authority in protecting them in doing their duty ... it will be impossible to levy the King's duties in this country without the assistance of military forces." Customs commissioners to Treasury 20 Jul 1725 CTP (1720-8) pp. 351-2. Also see SRO CEl/1 21 Oct 1724 and SRO NBB RH2/4/433, 244 14 Oct 1724.

266 For example see SRO CEl/3 18 Nov 1730, 3 Dec 1728.

267 Examples SRO CEl/2 11 Jan 1726; SRO CEl/3 14 Oct 1731; SRO CEl/4 11 Jan 1734.

268 See for example SRO CEl/7 6 Jun 1745.

269 Examples PRO T1/350 No. 39 and 40 30 Apr 1752; SRO CEl/3 30 Apr 1729; SRO CEl/4 29 Aug 1734. Most notably, there were frequent clashes between revenue officers (customs and excise) and JPs in Glasgow and Lanarkshire throughout the period, for example see PRO T1/249 No. 6 (6) 23 Oct 1724.

270 Examples SRO CEl/1 29 Sep 1724; SRO CEl/4 27 Jun 1737.

271 For a description of this problem generally see Sorope to customs commissioners 3 Aug 1725, SRO NBB RH2/4/434, 404. On seizures, for example, often if the officers did not obey the exact letter of the law local JPs or magistrates arrested them or ordered the seizure be returned: see PRO T1/249 No. 6 and 9.
the commissioners had to prosecute defaulting local officials 272 or else remove customs cases being tried before hostile justices to Exchequer, Session or Justiciary. 273 There were difficulties even with the central courts: Lord Advocate Dundas complained in 1723 of "the great Tenderness of the Judges towards Inferiour Magistrates And the general Inclination of our Jurys never to favour a Custom house officer when they can hurt him". 274 It should be said, of course, that local authorities were on occasion right to arrest or restrain customs officers, for the latter were often none too scrupulous in obeying the letter of the law when searching for uncustomed goods or making seizures. 275

**Customs and salt revenue**

In light of all the various difficulties besetting the customs service it is not surprising that the net yield in the years 1725-48 was not substantial. Gross receipts in money on entries remained quite steady between £50,000 and £60,000 from 1724-5 until the early 1740s and then with the rapid rise of the tobacco trade at Glasgow, in the 1740s, 276 increased sharply to well over £90,000 by

272 Examples SRO CEL/1 9 Oct 1723; SRO CEL/5 30 Nov 1737, 13 Jan 1741.
273 Examples SRO CEL/4 16 May 1732, 11 Feb 1736; SRO CEL/6 13 Mar 1741, 16 Jul 1744.
274 Dundas to Delafaye 5 Nov 1723 SRO RH2/4/316 f. 228-9 - on a case involving customs officers at Inverness. See also Dundas to Lords Justices 30 Jul 1723 ibid. f. 196-7.
275 For example see SRO CEL/4, 2 and 4 Jan 1734.
1747-8. 277 At least a third of receipts, however, were paid back to merchants in the form of drawbacks, bounties and debentures. Again as we have seen, collectors often kept large sums at the outport instead of sending them to the receiver general in Edinburgh; in 1728-9 for example over £22,000 remained in the hands of outport collectors. 278 Thus for most of the years between 1725 and 1748 only between £30,000 and £40,000 p.a. on average was reaching the receiver general. Out of this he had to pay the yearly salary bill of over £20,000, various incident expenses which had not been paid directly at the outports, averaging £2,000 to £3,000 p.a., and similarly various debentures which outport collectors had been unable to meet and which often amounted to £4,000 to £5,000 a year. 279 As a result, for most of the period just enough customs revenue was raised to cover the expenses of the service and there was little surplus to contribute to the cost of the civil list establishment, the Equivalent fund or other charges payable out of the revenue raised in Scotland. 280 In the ten years 1725-35 only negligible

277 These and subsequent figures are based on the various customs accounts lodged in the Court of Exchequer Scotland, SRO E501-515, and in particular upon Customs General Accounts E501/18-41 29 Sep 1724 to 29 Sep 1748; Customs cash accounts E502/18-44 29 Sep 1724 to 29 Sep 1748. Gross receipts in money and in bonds continued on this upward curve throughout the 1750s. It was often several years before bonds were finally discharged. For examples of the problems in recovering bonds, especially on tobacco, see SRO CEI/2 25 May 1728.

278 See PRO T1/272 No. 35. Details of the balances owed by late and present collectors were kept in the yearly accounts, SRO E501 parts 2 and 3.

279 See SRO E502 Receiver General’s cash accounts.

280 For details of the various payments made out of customs revenues see SRO Exchequer records, Auditor’s officer, E224/2-5 July 1718 – October 1753, ‘Entry Books of Establishment Lists, Impront Warrants etc.’ and also E502 Receiver General’s cash accounts.
amounts of revenue from customs were paid over for the civil establishment and during these years the cost of the civil list had to be borne by the excise revenue. After 1736 greater amounts of customs revenue were earmarked for civil list expenses, but even so these rarely covered more than one quarter of the total costs. Not surprisingly, no revenue arising from customs in Scotland was remitted to London between 1730 and 1747.

Although the amounts of money raised on salt duties were much less than those brought in on customs, in proportion the surpluses available were much higher. Average yearly gross receipts from the salt duties levied from 1714 to 1730 were £7,000 - £8,000 in money. After the restoration of the salt establishment in 1732 there were three different sets of duties: those levied from Ladyday 1732 to Ladyday 1742, those from Ladyday 1742 to Ladyday 1746, and those from Ladyday 1746 on. The first and last of these duties grossed between £9,000 and £10,000 p.a. on average but those levied in the years 1742–6 only around £8,000 p.a. Three collections normally raised the bulk of the money—Prestonpans, which often produced nearly half, Kirkcaldy and Bo'ness. Outport salaries and incidents were paid directly out of the money raised and the remainder

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281 For fuller details see below pp. 203–4 and Appendix II.

282 1747 was the only year when they contributed more than half, SRO E224/5.

283 PRO T1/272 No. 35 and SRO E502. £2,000 remitted in 1747–8, SRO E502/44.

284 Salt accounts, like those of customs, were lodged in Exchequer: SRO E531-537.

285£4,000 – £6,000 in bonds: SRO E531/1–45 1714–59. The bulk of the bonds were paid back in a form of debentures. Debentures on fish exported were paid out of salt duties: see SRO NBD 112/4/445–7 1736.
remitted to the receiver general in Edinburgh. From 1724-30 about £5,000 - £6,000 p.a. on average was remitted to the receiver general and this figure remained the same in the first few years after 1732. From 1735 it rose to between £7,000 - £8,000 p.a. and remained fairly steady for the rest of the period except for a slight drop in the years 1742-6. Out of such sums the receiver general paid the salaries of the salt commissioners and the central officers, and also the various incidents incurred in the running of central office. After this there was usually £3,000 - £4,000 left each year to be applied as the Treasury or the Court of Exchequer directed. From 1714 to 1730 the money raised on salt duties was allocated to the Equivalent fund: in these years £64,000 was paid over. After 1732 when the salt duties were restored they were no longer appropriated to the Equivalent and Manufactures funds, probably by an oversight: the net produce was to be sent to London. £29,000 was remitted in the years up to 1744. In 1743, when the amount of customs and excise revenues being raised in Scotland was at a low ebb and unable to meet the costs of the civil list, the Exchequer barons secured Treasury agreement that the salt duties should once again be applied to the Equivalent fund and the fund for Manufactures.

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286 For these and subsequent figures see SRO E532/1-40 1714-59.

287 Except for 1732-6 when they were paid on the customs establishment.

288 See SRO E224/5.

289 By Act 5 Geo II cap. 17. Sometimes the board needed Treasury prompting before they sent money; see Scrope to salt commissioners 8 Jan 1741 SRO NBB RH2/4/450, 89; SRO CE1/5 13 and 16 Jan 1741; Scrope to salt commissioners 1 Feb 1743 SRO RH2/4/13, 375.

290 See Hay to Tweeddale 3 Mar 1743 NLS YP7054, 8; Hay to Tweeddale 14 Jun 1743 NLS YP7056, 57; Craigie to Tweeddale 17 Jun 1743 NLS YP7056, 82; Craigie to Tweeddale 11 Aug 1743 NLS YP7057, 80; Craigie to Tweeddale 11 Aug 1743, also, NLS YP7057, 82; Forbes to Tweeddale 18 Aug 1743 NLS YP7057, 103.
Conclusion

The Scottish customs service in the period under study was caught in a vicious circle of high and numerous duties, an intricate collection system, fraud, smuggling and corruption, compounded by the priority given to political considerations over administrative needs in the appointment of officers. The commissioners were "continually forced to cope with the problem of the insufficiency and ineffectiveness of the organisation at the outports to deal with the nefarious trade". The key to breaking the circle, the rationalisation of the procedure and of the duties themselves, lay outside the control of the commissioners, and consequently they could only try to prevent major abuses, plug gaps as they arose and keep the system working as well as possible. In this, they operated as effectively as could be expected in the circumstances. On the other hand it could be argued that the commissioners tended to wait until problems were laid before them instead of taking the initiative in making enquiries and ordering inspections: only in periods of exceptional zeal, most notably in the years after 1723 and 1745, did they consistently move from specific individual cases to more general solutions and policies. However this is in part a reflection of the degree of Treasury interest. The commissioners could only recommend changes, final authority lay with the Treasury. The commissioners were most industrious when the Treasury took an active interest in Scottish customs affairs. Like most subordinate bodies the Scottish customs board worked best when prompted from above. According to commissioner Hotham "the only good thing in that station was the salary for that the many frauds of the Merchants

291 Hoon, English Customs System, p. 36.
and their own officers and the bad success of their tryals owing
to perjury of witnesses and Jurys made the business in every respect
disagreeable". 292 Walpole's long rule at the Treasury was not marked
by any radical reforms: no revenue offices, however unnecessary,
were abolished as they provided a useful source of patronage; no
cumbersome procedure was reformed. Efficiency within the existing
framework was all that was desired. 293. For its part therefore the
Treasury, although often under pressure from English merchants to take
action against smuggling in Scotland, was generally content so long as
the Scottish customs service functioned in a reasonably efficient
manner and would only intervene in the event of major abuses or
where political considerations so required. It was not particularly
anxious to stir the commissioners into major reform, particularly as
these would cost money, for example by way of additional staff, and
might lead to pressure for similar reforms in England, and this in
turn discouraged the commissioners from putting forward any such
schemes.

292 Hay to Tweeddale 21 Oct 1742 NLS YP7050, 139.
293 Plumb, Walpole, p. 329.
CHAPTER THREE: THE EXCISE SERVICE

Introduction

Article VII of the Union extended, with various minor exceptions, the English excise duties to Scotland. At the time of the Hanoverian succession the chief items subject to excise duty were beer, ale, spirits, cider, perry, candles, leather, soap, paper and starch: to these Walpole added in 1724 tea, coffee and chocolate. The structure of the Scottish excise service was similar to that of the customs service: a board of five commissioners sitting at Edinburgh who were responsible for running the service and for the collection of excise revenues; a central office at Edinburgh; and a number of collections throughout Scotland each with a hierarchy of officers who collected the duties. Unlike the custom service, only the principal central officers were appointed by the Treasury: all other excise posts were at the disposal of the commissioners themselves.

The Commissioners

During the period 1725 to 1748 fifteen men served as excise commissioners for Scotland (see table B). Of these, nine were Scots and six English, and most boards contained three of one and two of the other. The composition of the excise board was fairly stable. No fewer than seven commissioners served more than twenty years each.

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1 These replaced the existing import duties on these items and was a forerunner to Walpole's excise scheme of 1733 by which he proposed to replace the import duties on wine and tobacco with excise duties: Owen, Eighteenth Century, p.30; Dickinson, Walpole, p.96.

2 Salary £500 p.a. each: see Midsummer quarter 1724 salary list SRO NBB R2/4/433, 223. Much of the following is based on a card biography of excise officers 1707-1830 compiled by J.F. Mitchell 1963, SRO RH4/6/1-2.
### TABLE B

**Changes in the Excise Commission 1725-48**

<table>
<thead>
<tr>
<th>Date</th>
<th>Appointee(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>By January 1725</td>
<td>Sir Alexander Wedderburn, David Ross, Sir William Bennet, Gilbert Burnet, Charles Cockburn</td>
</tr>
<tr>
<td>May 1725</td>
<td>Henry Robinson loco Bennet, Thomas Broughton loco Cockburn</td>
</tr>
<tr>
<td>1726</td>
<td>George Ross loco David Ross</td>
</tr>
<tr>
<td>April 1730</td>
<td>Richard Dowdeswell loco Broughton, Thomas Cochrane loco Wedderburn</td>
</tr>
<tr>
<td>September 1730</td>
<td>Richard Somers loco George Ross</td>
</tr>
<tr>
<td>September 1735</td>
<td>Christopher Wyvil loco Robinson</td>
</tr>
<tr>
<td>October 1737</td>
<td>George Drummond loco Somers</td>
</tr>
<tr>
<td>July 1738</td>
<td>Christopher Rhodes loco Wyvil</td>
</tr>
<tr>
<td>September 1742</td>
<td>Alexander Udney loco Burnet</td>
</tr>
</tbody>
</table>
The commission remained unchanged from the appointment of Udney in 1742 until the death of Dowdeswell in 1758, a sign of the growing acceptance that revenue commissioners should not be removed from office simply because of changes in the Ministry. Most excise commissioners either died in office, retired, or were promoted to other jobs: relatively few were dismissed for political reasons. Of the fifteen commissioners, six died in office, four moved to other posts, one (Udney) retired, and one (Thomas Cochrane) resigned on becoming the eighth earl of Dundonald in 1758 (see table C). Many of the excise commissioners therefore accumulated considerable administrative expertise. Sir Alexander Wedderburn, commissioner from the Union to 1730, came from a family remarkable for its devotion to the excise service in the first half of the eighteenth century; his son Peter being secretary from 1730 to 1755, and three other relations serving as collectors. Henry Robinson, an Englishman, had been sent down to Scotland in 1723 by the Treasury to make a general survey and inspection of the excise and was made a commissioner in 1725, serving for ten years before being moved to an excise post in England. He was replaced on the Scottish board by another Englishman, David Ross served for 19 years.

Hughes, Studies in Administration, pp. 274-9. Hughes attributes this partly to the fact that from 1702 revenue commissioners could not sit in the House of Commons, ibid., p. 284.

He later became a judge of the Court of Session as Lord Chesterhall.

CTBP I, p. 35 18 Mar 1729. For the report see Hughes, Studies in Administration, p. 310.

Inspector general of the inland duties on coffee, tea and chocolate: CTBP III, p. 131, 24 Sep 1735.
<table>
<thead>
<tr>
<th>Name</th>
<th>In</th>
<th>Out</th>
<th>Reason for Departure</th>
</tr>
</thead>
<tbody>
<tr>
<td>S Sir Alexander Wedderburn</td>
<td>1707</td>
<td>Jan 1730</td>
<td>Death</td>
</tr>
<tr>
<td>S/A David Ross</td>
<td>1707</td>
<td>1726</td>
<td>Resigned</td>
</tr>
<tr>
<td>S/SV Sir William Bennet</td>
<td>1714</td>
<td>May 1725</td>
<td>Dismissed, political reasons</td>
</tr>
<tr>
<td>E Gilbert Burnet</td>
<td>1714</td>
<td>Apr 1741</td>
<td>Death</td>
</tr>
<tr>
<td>S/SV Charles Cockburn</td>
<td>1717</td>
<td>May 1725</td>
<td>Dismissed, political reasons</td>
</tr>
<tr>
<td>E Henry Robinson</td>
<td>May 1725</td>
<td>Sep 1735</td>
<td>Becomes inspector general of English Excise</td>
</tr>
<tr>
<td>E Thomas Broughton</td>
<td>May 1725</td>
<td>Sep 1729</td>
<td>Death</td>
</tr>
<tr>
<td>S/A George Ross</td>
<td>1726</td>
<td>Sep 1730</td>
<td>Becomes Scottish customs commissioner</td>
</tr>
<tr>
<td>E/A Richard Dowdeswell</td>
<td>Apr 1730</td>
<td>Jun 1758</td>
<td>Death</td>
</tr>
<tr>
<td>S/A Thomas Cochrane</td>
<td>Apr 1730</td>
<td>Apr 1761</td>
<td>Becomes 8th Earl Dundonald</td>
</tr>
<tr>
<td>E Richard Somers</td>
<td>Sep 1730</td>
<td>Oct 1737</td>
<td>Becomes Scottish customs commissioner</td>
</tr>
<tr>
<td>E Christopher Wyvil</td>
<td>Sep 1734</td>
<td>Jul 1738</td>
<td>Becomes comptroller of English excise</td>
</tr>
<tr>
<td>S/A George Drummond</td>
<td>Jan 1715</td>
<td>1717</td>
<td>Political dismissal: becomes Scottish customs commissioner 1723:Death</td>
</tr>
<tr>
<td>E Christopher Rhodes</td>
<td>Jul 1738</td>
<td>Oct 1761</td>
<td>Death</td>
</tr>
<tr>
<td>S/SV Alexander Udney</td>
<td>Sep 1742</td>
<td>1787</td>
<td>Death</td>
</tr>
</tbody>
</table>

S: Scottish  
E: English  
A: Argathelian sympathiser  
SV: Squadrone sympathiser
Christopher Wyvil, the then inspector general of inland duties on coffee, tea and chocolate in England.\(^8\) After three years Wyvil returned to London as comptroller of the English excise.\(^9\) Indeed there was a conscious policy by the Treasury during the mid and late 1720s of sending experienced English excise officers to Scotland, similar to the efforts made after the formation of the joint customs board in 1723. Two commissioners, George Ross\(^{10}\) and Richard Somers\(^{11}\) after sitting on the excise board for four and seven years respectively went on to become long-serving customs commissioners. Richard Dowdeswell, an Englishman sent up to be secretary to the new excise service after the Union,\(^{12}\) served in that post for twenty-three years before being promoted to commissioner in 1730, where he continued until his death twenty eight years later. He was perhaps the most able of all excise commissioners in this period.\(^{13}\) Christopher Rhodes, with many years experience in various branches of revenue in England,\(^{14}\)

\(^{8}\)For Wyvil as inspector general see OTBP II, p.347, 30 Oct 1732.

\(^{9}\)Mitchell, SRO RH4/6/1-2. Wyvil's father, Sir Marmaduke Wyvil, had been an English excise commissioner.

\(^{10}\)He became 12th Lord Ross on the death of his father 1738.

\(^{11}\)Somers previously "was but a salt collector in England and such might make good enough Scotch Commrs at any time" Sir John Wood, excise collector Fife 1733, quoted Mitchell, SRO RH4/6/1-2.

\(^{12}\)Riley, English Ministers, p.64. He came from a prominent Worcestershire family which provided several MPs: Mitchell, SRO RH4/6/1-2; Sedgwick, The House of Commons I, p.619.

\(^{13}\)Dowdeswell's advice was sought on the setting up of the Royal Bank and he was a director for over 30 years. He was sympathetic to the Argathelians. On Dowdeswell's ability, see John Thomson, surveyor general, to Albemarle August 1746, The Albemarle Papers, ed. C.S. Terry (New Spalding Club, 1902), I pp. 159-61.

\(^{14}\)Mitchell SRO RH4/6/1-2.
was appointed excise comptroller Scotland in 1732, and then promoted to commissioner in 1738, continuing in that office until his death in 1761. Finally George Drummond, appointed accomptant general for excise Scotland after the Union, served on the excise board for two years, 1715-17, as a customs commissioner for fourteen, 1723-37, and then as excise commissioner again until his death in 1766, a total of forty-five years on the two boards. Drummond was also politically active as a prominent Argathelian in Edinburgh politics, being Lord Provost six times.

Nevertheless, political considerations were paramount in the appointment and, in certain cases the removal, of excise commissioners. Sir William Bennet and Charles Cockburn (son of the Squadrone Lord Justice Clerk Adam Cockburn of Ormiston), both Squadrone supporters, were dismissed in May 1725, at the same time as Lord Advocate Robert Dundas, for political reasons, victims of Walpole's policy of reducing Squadrone influence. Significantly, Walpole replaced these two commissioners not with Argathelians but with Englishmen, Henry Robinson and Thomas Broughton. The following year David Ross was replaced by George Ross. Riley claims that David Ross, an Argathelian, was dropped in favour of George Ross, whom he suggests was a Squadrone supporter, much to Ilay's annoyance: "I have not seen the Earle of Ilay, but am told ye new commission of excise does not please him". Riley cites this as an example of Walpole's policy towards Scotland at this

15Riley, English Ministers, pp. 264, 266.

16From Roxburghshire. He appears to have been an MP 1707-8.

17See below p. 325.

18Riley, English Ministers, p. 287 and n. 6, quoting Scrope to Forbes 24 Nov 1726 CP p. 355.
time: in order to curb the growing Argathelian influence and maintain a balance between the two groups in Scotland, Walpole was prepared on occasion to promote Squadrone supporters. In fact although, as Riley claims, 'the new commission was not in accordance with Ilay's advice, in spite of Walpole's promise to consult Ilay', the reason for Ilay's displeasure was the failure of Walpole to remove another member of the excise board, Gilbert Burnet. Walpole wrote to Ilay on 7 October 1725: "I am fully convinced by the account given me that Mr. Burnet must not continue a commissioner of the excise; but I think the alteration of that commission may wait our meeting together; and for me, I think, you have a right to direct me in all things; which makes me confident, that you will not think any delay in the execution of your commands is playing the minister. You shall find me sincere and ready to do what you think adviseable, and without a grain of more discretion than you shall think necessary from circumstance". Despite these assurances Burnet remained a commissioner. Burnet was probably the type of politically 'neutral' commissioner that Walpole was looking for at this time but his continuation was an indication to Ilay that Walpole was not going to be as open-handed as he had led him to believe. On the other hand there appears no reason why the replacement

19 Riley, English Ministers, p. 287 n. 6.

20 Burnet was related to the Bishop of Salisbury, apparently the son of the Bishop's brother Sir Thomas Burnet.

21 Walpole to Ilay 7 Oct 1725, Coxe, Walpole, II p. 470.

22 I am uncertain why Ilay wished Burnet removed. Ilay to Newcastle 25 Sep 1725 SRO RH2/4/319 f118 suggests that Burnet had Squadrone sympathies. Burnet was one of the commissioners sent to visit the various towns up the east coast in 1725 to try and secure the peaceful introduction of the malt tax. He was none too successful in this venture and perhaps Ilay felt he had been dragging his feet. He remained on the board until his death in 1741.
The evidence suggests that George Ross was an Argathelian and not a Squadron supporter and that David Ross, far from being removed, voluntarily resigned his office in favour of George. Thus while the changes in the excise board in 1725–6 illustrate Walpole’s desire not to hand total control over to Ilay, his ability to pursue such a policy, even in this early period, must not be exaggerated. The growth of Argathelian influence had a momentum of its own which Walpole could check to some extent, but could not stop completely or reverse.

While the excise board was basically Argathelian in sympathy throughout the period 1725 to 1748, excise board changes show, more clearly than those of customs, Walpole’s continuing determination to maintain some sort of balance, not so much between Squadron and Argathelians, particularly after the dismissal of Bennet and Cockburne, but between Scottish ‘political’ appointments and those, usually English, who might be expected to comply more readily with the Treasury. Thus of the three new commissioners appointed in 1730 two were English, Somers and Dowdeswell, while the third, Thomas Cochrane, was a staunch Argathelian, having sat as MP for Renfrewshire from 1722 to 1727. Somers was a friend of Walpole’s and Ilay worked hard to secure his appointment.

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23 See Sedgwick, House of Commons, II p.393.

24 This of course would be subject to Government approval. Prior to his appointment as a commissioner in 1707 David Ross had already served for 18 years in the excise service: CTB XXI Part II, p.262, 8 May 1707. He died soon after his resignation, aged 70, in 1730. Mitchell suggests that the two were related: SRO RH4/6/1-2.

25 “Cochrane was incapable to examine books and not fit to be a commr” Collector John Wood of Fife, quoted Mitchell, SRO RH4/6/1-2.

26 “I have been of so much use to him in this preferment that I really believe he will be entirely my friend”: Ilay to Milton 21 Oct 1730 NLS SC16,542: see also Ilay to Milton 4 Aug 1730 ibid.
Following these changes, four of the commissioners were English, Cochrane being the only Scot, although both Dowdeswell and Somers had Argathelian sympathies. Similarly, of the three new appointments in the 1730s only George Drummond was actively Argathelian. The only other change in this period occurred after Walpole's fall. Gilbert Burnet had died in April 1741 but the general election in May-June of that year and the resulting political confusion meant that no new commissioner was appointed before Walpole left office. Even then it was not until August 1742 that Tweeddale obtained the appointment of Alexander Udney. Udney was a nephew of the earl of Aberdeen and was sympathetic to Tweeddale's interest. With Argathelians Drummond and Cochrane remaining on the new commission, however, Udney had the same uphill struggle to further Tweeddale's interest on the excise board as Arbuthnot had on the customs. No attempt was made to oust Udney after Tweeddale's resignation and he stayed on the board until 1787, a further indication of the growing acceptance of the security of tenure of revenue commissioners' posts. In fact, according to Hay, by 1744, Udney was not being particularly helpful on Tweeddale's behalf and the Argathelian dominance was quickly reasserted, particularly through Cochrane: "As the board was modelled to suit his [Ilay's] mind the Commissioners hurried to serve him..."

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27 CTBP V p.70 24 Aug 1742. This is the same date as the customs board changes.

28 See Hay to Tweeddale 16 Oct 1744 NLS SYP Box 12 Fl. He unsuccessfully contested the Aberdeenshire election in 1734 against Argathelian Sir Arthur Forbes: Sedgwick, House of Commons, I p.381.

29 Hay to Tweeddale 16 Oct 1744 NLS SYP Box 12 Fl.

30 Hay to Tweeddale 4 Oct 1744 NLS SYP Box 12 Fl. See also below pp. 470-2, 497.
Central Office

There were fifteen principal officers in the central excise office in Edinburgh, together with several more minor officials and clerks. From 1707 to 1730 one man, Richard Dowdeswell, acted as secretary, solicitor, clerk of securities and correspondent. These various tasks became too great a burden for one man and on Dowdeswell's promotion to commissioner in 1730 Peter Wedderburn was appointed secretary, clerk of the securities and correspondent and William Clifton solicitor. The secretary and then the solicitor were helped in their legal duties by an assistant solicitor who also acted in the same capacity for the customs service, thus ensuring some degree of coordination in matters that affected both revenues.

The remaining officers were concerned with the receipt and accounting of the revenues raised. The receiver general or cashier (£450 p.a. salary for himself and clerks) received the actual cash as it came in and issued it when warranted by the commissioners or barons of the Scottish Exchequer. Two accoutants general dealt respectively with excise duties proper (£120 p.a.) and other duties (£80 p.a. later £100 p.a.) and there were also two ordinary accoutants, one dealing

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31 The following is based on the quarterly salary lists for Edinburgh given in North Britain Books SRO RH2/4/433-456.

32 He received £420 p.a. for himself and clerks, later increased to £520 p.a. after the introduction of the malt tax into Scotland: see SRO NBB RH2/4/435, 148 13 Jul 1726; ibid. 153 excise commissioners' report 21 Jul 1726; ibid. 153 Treasury to excise commissioners 10 Aug 1726. Thus he was paid more than the commissioners. His (and later the solicitor's) charges were paid out of excise incidents.

33 At £340 p.a. and £180 p.a. respectively: SRO NBB RH2/4/441, 36 MS and XM 1730 quarters. For the activities of Ilay and Milton over these appointments see Ilay to Milton 8 Jan 1730 NLS SC 16,542; Milton to Ilay 11 Jun or Jul 1730 NLS SC 16,543.

34 He received £80 p.a. on excise and £120 p.a. on customs. See SRO NBB RH2/4/438, 76 29 May 1728.

35 For salary increases generally see PRO T45/4 No 9A, 'An account of all additional salaries or pensions granted to excise officers in Scotland 1716-1732'.
with the Edinburgh breweries and distilleries revenue (£50 p.a., £60 p.a. from 1724) and the other with the country collectors excise accounts (£50 p.a.). A third comptant, for the duty on malt, was added after 1725 (£50 p.a.) and three other comptants, for candles, leather and soap and other duties were added by 1748. Their accounts, and those of the country collectors, were checked by the comptroller (who received £500 p.a. for himself and clerks and was one of the two patent officers in the Scottish excise) who then compiled the various annual accounts. Most of the work appears to have been done by a deputy comptroller. For some years under Barnaby Barrow this office did not function altogether efficiently and in 1733 Christopher Rhodes, the new comptroller appointed in 1732, was praised by the Treasury for his diligence in bringing the business of your office, which was much in arrear before your arrival in Scotland, up to date. There were also four examiners of the country officers' and Edinburgh excise books (£35 p.a. each) and one examiner of the leather officers' books (£35 p.a.). All the quarterly abbreviate accounts of receipts and payments, which were sent to the Treasury, were signed by the commissioners and by an comptant general and the (deputy) comptroller, as were the other more general accounts sent from time to time. The other patent officer was the auditor (£310 p.a. for himself and

36 See PRO T45/1 Accounts.

37 See Royal warrants for Rhodes to be comptroller in place of Barrow 20 Jun 1732 SRO NBB RH2/4/442, 267; Gough in place of Rhodes SRO NBB RH2/4/448, 220 29 Jun 1738; Stephen Penny in place of Gough SRO NBB RH2/4/452, 498 3 Nov 1743.

38 Scrope to Rhodes 7 Jun 1733 SRO NBB RH2/4/443, 453.

39 Another examiner, for malt books, was added 1726, PRO T45/1.
The office in this period was granted for life, first to George Tilson and after him to Christopher Tilson (who dying before George never enjoyed the office), and then on George Tilson’s death to William Williams, Ilay’s illegitimate son. The auditor could nominate a deputy, who did most of the work. Williams in fact nominated Tilson’s deputy, George Fraser, thus ensuring a continuity in the business of the office. The auditor checked the final annual accounts before they went to the Exchequer, and in this respect the excise differed from the customs whose annual accounts were examined by the auditor of Exchequer, there being no separate customs auditor. The offices of the cashier, auditor and comptroller were all in practice discharged by deputies. After the accounts had been signed by the excise auditor and commissioners they passed through Exchequer in the normal way. It was usually three, four, or even five years after the end of the financial year before the accounts were

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40“This office as it is a great Trust and the only cheque upon the Commissioners and all others their Dependents so it has been the care of the Soveraign to guard it against any Dependence on the Commissioners by granting the Commission for life with such powers and authority over every individual belonging to the Excise as at once to show the respect to such an eminent trust” History of the Exchequer (c1748) NLS Adv Ms 25.617 p.79.

41SRO NBB RH2/4/449, 333 4 Jan 1739 (till 1 Apr 1786).

42See Mitchell SRO RH4/6/2. Son of Mrs Anne Williams of Whittendean to whom Ilay left his estates in England on his death in 1761.

43“... A Gentleman of very uncommon learning and Parts and will see the Business done to perfection...” Mitchell SRO RH4/6/1-2.


45See Arbuthnot to Tweeddale 22 Jan 1743 NLS YP 7053,94.

46See below pp.177-80.
finally passed in the Exchequer.\(^{47}\)

The excise board shared the same London agent as the customs and Exchequer.\(^{48}\) There were also sundry minor officials: a billman, an agent, messengers, a housekeeper, a doorkeeper and storekeeper and a watchman. Various clerks and minor officials were added to the central office as the occasion arose, usually when new duties were imposed.

Many of the central officers and clerks received pay increases during the period, usually on the imposition of new duties and particularly in the years immediately after 1725 for the increased work in connection with the newly imposed malt duty.\(^{49}\) Several central officers held their positions for many years, some throughout the entire period 1725 to 1748. Dowdeswell, as we have noted, was secretary from 1707 to 1730 and Peter Wedderburn then held the post until 1755. The two accouptants general, Robert Forrest and John Dickie, and the two ordinary accouptants, Alex Chalmers and John Ross, also served for the whole of the period. Tilson and Williams were the only two auditors, Clifton and Haldane (from 1741) solicitors, James Nimmo cashier from 1726. Only the patent office of comptroller changed hands several times, there being four incumbents — Barnaby Barrow, Christopher Rhodes (1732-8), John Gough (1738-43) and Stephen Penny (1743 onwards).

\(^{47}\) For example the 1736-37 accounts not passed until Midsummer 1742, SRO NBB RH2/4/451, 306; 1737-38 until Ladyday 1743 SRO NBB RH2/4/452, 432. Delays continued long after this period: in 1761 3 clerks were appointed "for bringing up accounts in arrears": PRO T45/1.

\(^{48}\) First appointed by the commissioners 25 Dec 1716 at £50 p.a. See also Scrope to excise commissioners 6 Dec 1737 SRO NBB RH2/4/447, 145: Scrope to excise commissioners 12 Jul 1748 SRO NBB RH2/4/455, 480.

\(^{49}\) See PRO T45/4 No 9A and No 10.
The excise collections

There were thirteen excise collections in Scotland, each covering several shires: Edinburgh, Aberdeen, Ayr, Argyll, Caithness, Dumfries, Fife, Glasgow, Haddington, Inverness, Linlithgow, Perth and Teviotdale. At Edinburgh, which had several specialised officers, there was at Midsummer 1724 a general examiner and port surveyor at Leith (£90 p.a.), a general surveyor of the breweries and distilleries (£80 p.a.), and four other surveyors for excise and candles (one at £60 p.a., the rest at £50 p.a.), fifteen gaugers (£30 p.a.) and four assistant gaugers (£20 p.a.), two officers for candle duty (£30 p.a.), five for brandy (three at £30 p.a., two at £15 p.a.) and one for leather (£30 p.a.). Various new officers were added from time to time, especially after the imposition of the malt duty in 1725 so that by 1748 the number of warranted officers in Edinburgh had risen to forty seven. In the other collections there was a collector, a supervisor and a number of officers or gaugers who looked after the various branches of excise revenue. There were also several general surveyors who inspected the collections from time to time to ensure that all was running smoothly. There were approximately 240 established officers in Edinburgh and the other collections in 1724. Temporary officers

50 SRO NBB RH2/4/433, 223. It is not clear whether this list is exhaustive.

51 See below pp. 110–12.

52 SRO NBB RH2/4/455, 485 Midsummer 1748. Thus by Christmas 1729 there were 42 officers: SRO NBB RH2/4/440, 383–4.

53 At £150 p.a. each: PRO T45/4 No 9B.

54 For details of excise establishment in various years see PRO T45/1 (1707 and 1779); PRO T45/4 No 9B (1733).
were employed as the occasion demanded and were paid out of incidents. In Edinburgh payments were regularly made to constables who assisted the surveyors and gaugers in making their surveys at night time and in preventing frauds in the breweries, and also "to sundry watchmen for sitting on fraudulent brewers in Edinburgh and precincts to see their Guiles [sic.] brewed off and carried out to prevent their abstracting and carrying off worts and mixing their 2d ale with water before carried out".

In 1723 the commissioners informed the Treasury that application had been received from various collectors, supervisors and officers that a superannuation fund be established, as in England: "Such fund would be a great encouragement for officers to be faithful and diligent in expectation of having some comfortable subsistence in case they should be rendered incapable, by age, infirmities, etc." The scheme was approved and authorised by the Treasury in June 1724. Perhaps the willingness to set up the fund was a result of the report of three special surveyors, Hide, Pinney and Robinson, sent by the Treasury in 1723 to enquire into the running of the excise service in Scotland, and in particular the failure of the malt tax there. Efficiency, they reported, was conspicuously lacking and most of the officers "were very ignorant of the laws".

55See excise incidents Christmas 1739 SRO NBB RH2/4/449, 485. In 1746 'a constable for attending the officers in and about Edinburgh on their nightly surveys' was put on the establishment at £20 p.a., PRO T45/1.


57Excise commissioners to Treasury 12 Dec 1723 and Treasury to excise commissioners 19 Jun 1724 SRO NBB RH2/4/433, 188.

58Hughes, Studies in Administration, p. 310.
Although by 1725 most of Scotland had been brought under the direct supervision of the excise commissioners, Shetland, partly because of its remoteness and relative poverty, was still farmed. This caused many problems as farmer after farmer found it an unprofitable venture and often gave up before the term of the farm had expired. Consequently the amounts raised steadily decreased. The difficulties were in large part due to the refusal of local justices to give the farmers any legal backing and thus people could evade paying the duties with impunity. By 1736 the excise commissioners were 'obliged to lay these islands under survey for want of a proper person to undertake it'.

The service at work

The excise service in the collections was undoubtedly more efficient than the customs service, partly because excise was a comparatively simple method of collecting duties and excise law was more flexible than that of customs, but partly also because the various grades of officers acted more effectively as a check on each other. There was not the same scope for control in the customs service: if a tidewaiter turned a blind eye very little could be done about it. Nevertheless, Thomas Hay for one believed that there was considerable scope for improving the calibre of excise officers and that gaugers should be moved round much more frequently. More generally the


60 See SRO NBB RH2/4/448, 255-6 7 Jul 1738.

61 See Thomas Hay to Tweeddale 1 Feb 1743 NLS XP7053, 111.

62 See Hay to Tweeddale 6 Nov 1742 NLS XP7051, 21.
excise commissioners faced many of the problems with which the customs commissioners had to deal, particularly in dealing with unsuitable officers and in maintaining an effective supervision over the collections. In addition, excise revenues were notoriously unpopular, partly because they affected many of the necessities of life and partly because the activities of excise officers made evasion of payment difficult. As a consequence excise officers were subjected to public hostility to a much greater extent than their custom colleagues.

Attacks on excise officers by individuals and mobs were frequent throughout the period, in some cases resulting in the death of an officer. The most notable occasion during the period of mobs intimidating excise officers occurred over the collection of the new malt tax in 1725–6. Often the assistance of the military was needed to collect excise duties and protect officers, but there was a general reluctance on the part of the troops to act vigorously, especially after 1725–6 with the fate of Captain Bushell in mind. In 1726, the Secretary at War had to instruct Colonel Clayton to order the

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63 For example see excise incidents Ladyday 1729 SRO NBB RH2/4/439, 282; excise incidents Michaelmas 1729 ibid. 351; excise incidents Ladyday 1730 SRO NBB RH2/4/440, 447; George Harries to excise commissioners 24 Jan 1728 (Aberdeen) PRO SP36/5 f.57-8; excise incidents Midsummer 1738 SRO NBB RH2/4/448, 273.

64 See below chapter 9.

65 For example see excise commissioners to Treasury 14 Oct 1720 PRO T1/232 no.46. Also excise commissioners to Treasury 10 Feb 1728 PRO SP36/5 f.108-9 on an incident at Aberdeen where soldiers had been forced to open fire on a mob and one of the mob was killed. The magistrates arrested the soldier involved. The commissioners wrote to the Treasury seeking help to have him released "for if soldiers when attack'd by a Mobb and most barbarously bent and abused must upon firing in their own defence be imprisoned and run the risk of being hanged (and 'tis too well known that the Jurys here will very readily contribute all in their power towards it) it is not to be expected our officers can have any further Assistance from them, and if that once comes to be known, the consequence seems to be plain and visible, that all other Endeavours for making and securing any seizures or even the Revenue itself, will be found very ineffectual in this Country". On Bushell see below pp. 349-50.
officers under his command to help excise officers as the occasion should require. 66 This reluctance was aggravated by a running feud between the commissioners and the army in Scotland as to whether beer brewed for soldiers working on the roads or stationed in remote barracks should be subject to excise duties. 67 In 1733 the commissioners complained to the Treasury that military assistance had been refused in two seizure cases, "Lt General Wade having given orders that none of His Majesty's troops should assist the excise officers ... We have hitherto been in use upon all proper occasions to have assistance of the forces when desired, and we too often find it impracticable for our officers to do their duty without their protection, especially of late, since the practices of smuggling and mobbing have been so frequent, and we cannot discover why contrary orders are now given, unless it is to express a resentment for our having ordered the parties on the road to be surveyed when brewing and malting for sale". 68 The Treasury immediately ordered Wade to help excise officers whenever necessary. 69 Not until August 1735 was an agreement reached whereby the army was to pay a yearly lump sum in lieu of duties. 70 After that relations seem to have been more harmonious. 71 Soldiers usually received rewards out of excise for their help. 72


67 For example see SRO NBB RH2/4/438, 85 3 Jun 1728; SRO NBB RH2/4/443, 348, 5 Jan 1733.

68 Excise commissioners to Treasury 4 Sep 1733 CTEP II, p.401.

69 CTEP II, p.404 18 Sep 1733.

70 See SRO NBB RH2/4/454, 222 7 Feb 1746.

71 For example see excise commissioners to Treasury 20 Feb 1746 SRO NBB RH2/4/454, 241.

72 See CTEP III, p.349 1 Dec 1737.
The excise service also suffered from the reluctance, even hostility, of many justices of the peace and other local officials to put the excise laws into operation. "When informations are laid before the Justices of the Peace for frauds, or offences committed against the laws of excise, the judgements given are generally such as rather to encourage these frauds than to deter others from committing the like offences. The officers are discouraged in their duty, as the justices generally reduce the penalty so low that little or nothing comes to the officers' share, and frequently the Justices acquit the offender from any penalty, though the proof be never so clear". 73 Justices throughout Scotland were notably reluctant in helping excise officers impose the new malt tax. Again in 1726 a Fife quarter sessions passed a decree which the commissioners claimed was in direct opposition to the laws for securing the leather duty and it required expressions of 'high resentment' from Ilay before another meeting of the justices reversed this decision. 74

Justices had considerable powers in excise matters, 75 indeed they sometimes claimed sole jurisdiction, and the division of jurisdiction over excise between the justices and the central courts was not altogether clear. Brewers and others quickly discovered after the Union that they had allies in the justices and the excise commissioners were soon complaining about decisions. 76

74 Ibid.
75 For details of the jurisdiction of justices over excise matters after the Union, and some of the difficulties that arose, see C.A. Malcolm, The Minutes of the Justices of the Peace for Lanarkshire, 1707-23, SHS 3rd series vol 17 (1931) Introduction, pp. lvi-lx; Riley, English Ministers, pp.61, 68, 72.
76 Riley, English Ministers, p.70.
remove cases to Exchequer but this procedure had its problems:

"The remedy has been to prosecute in the Exchequer or some other
Court at Edinburgh; but many of the offenders are so poor that the
carrying prosecutions through those Courts (where the penalties are
never mitigated) would ruin many people, and be very chargeable to
the Government, for few of the people would be able to pay the penalties
in their full". Thus the commissioners were anxious to compound
with offenders whenever possible. For their part, justices were
unwilling to give up what they believed to be their rights of
jurisdiction and protracted legal wranglings often ensued. These
disputes came to a head in the case of the Glasgow brewers and the
Lanarkshire justices in the early 1740s. The gist of an exceedingly
complex matter was that the excise commissioners claimed that brewers
in Glasgow and more recently in Edinburgh had for some time been paying
less duty on small beer than they ought to have. The Lord Advocate
and Solicitor General agreed with the commissioners' interpretation of
the various excise statutes and in November 1741 the commissioners
ordered their officers to charge what they considered to be the correct
duty. Various brewers in Edinburgh were brought before the justices
who ordered them to pay the higher duties but in Glasgow the Lanarkshire
justices found in favour of the brewers. Prior to this judgement the


78 For a clash between the Court of Justiciary and justices over excise
jurisdiction, see Milton to Ilay 18 Jan 1732 NLS SC16,549 "By Dundass's
advice the Justices of peace in Cliddsdale ... pretend that they are final
in all matters of Revenue".

79 For full details see various papers in NLS SYP Box 140 Folder F1(o)
'Excise and brewers in Glasgow 1743' which includes Report of excise
commissioners to Treasury 10 Nov 1743, in which the commissioners
estimated the annual loss to the revenue at £5,367; and also a pamphlet
'Memorial for the Brewers of Glasgow in Relation to the Duties of Excise
Payable by them' 24 Jun 1742.
The brewers naturally claimed that "the Justices alone have a power by law to determine matters of this nature" and a circular letter was sent to justices in other shires in an effort to raise money to fight the cause.

An initial attempt to remove the case to Exchequer failed, but after considerable delay and difficulty it was eventually agreed that the matter should be determined in Exchequer where the justices' ruling was overturned.

Lanarkshire justices were notoriously obstructive. They were prominent in giving repeated decisions in favour of the 36 English gallon barrel to the advantage of the brewers, a problem which bedevilled the excise commissioners from the time of the Union and over the years caused no small loss to the revenue.

Again, the composition of the commission of the peace for Lanarkshire was usually such that few of those named actually resided in Glasgow itself and because of this excise officers were "often unable to Obtain Courts for Carrying on Prosecutions for..."

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80 See petition of Neil Buchanan, MP Glasgow burghs, for common brewers of Glasgow, to Treasury 6 Oct 1743 SRO NBB RH2/4/452, 472.

81 Ibid.

82 See Hay to Tweeddale 21 Apr 1743 NLS YP7054, 137; Craigie to Tweeddale 14 Jun 1743 NLS YP7056, 55.


84 This problem is one of some complexity but basically the Union stipulated that a 12 Scots gallon barrel was equivalent to 34 English gallons and that this was to be the standard for excise charges. Justices, however, regularly gave decisions in favour of a nominal 12 Scots gallons barrel which contained somewhat more than 34 English gallons, usually about 36 English gallons. As the officers continued to charge on 34 English gallons as laid down by the Union this meant over the years a considerable loss to the excise revenue, amounting to £40,800 by 1726. See Riley, English Ministers, pp. 70-2; excise commissioners to Treasury 16 Apr 1726 CTP (1720-8) P. 399; excise commissioners to Treasury 10 Jan 1727 ibid. pp. 439-40.
Arrears and Frauds, That from the same Cause they find it a Matter of great difficulty to Obtain proper Warrants to search for concealments of Prohibited Goods, such as Coffee Tea Spirits etc., and others lyable to seizure, whereby great Opportunities are given to Carry on Frauds with impunity, and without controll".85

Nevertheless, all the difficulties cannot be blamed on the justices. The three special surveyors sent to Scotland by the Treasury in 1723 reported that "a great complaint is made that the justices are backward in acting and 'tis probable that some few of them are so, but we have reason to believe that the greatest part of them are otherwise".86 Officers whose kinsmen or political friends were canvassing for parliamentary election were hardly likely to be conspicuous in prosecuting defaulting maltsters and innkeepers,87 and there were regular complaints that excise officers favoured friends and harassed enemies over the payment of duties.88

Relations with the Treasury

Shortly after the Union Godolphin sent a directive to the new customs and excise commissioners in Scotland ordering both boards to report once a week. This was, as Riley observes, "at once an assertion of Treasury supervision, and an establishment of a proper and regular channel of advice".89 Nevertheless, from the outset the excise

85Excise commissioners to Treasury 5 Dec 1749 PRO T1/336 no. 37.
87Ibid.
88For example see Hay to Tweeddale 2 Jun 1743 NLS YP7056, 1.
89Riley, *English Ministers*, p.50.
missioners in Scotland were not subject to the same level of
treasury interference as the customs commissioners in the day-to-day
running of the service. In particular the Scottish excise commissioners,
unlike the customs commissioners, did not have to obtain Treasury approval
or the appointment of new officers. Again, unlike the customs, only
quarterly salary bills for Edinburgh (including the commissioners and
entral officers) had to be warranted by the Treasury. Treasury
approval was required for leave of absence by the commissioners and
arious central officers. All petitions and memorials on excise
atters sent to the Treasury were referred to the commissioners at
inburg. The reports of the commissioners were almost always
cepted by the Treasury. Salary increases and the payment of certain
traordinary expenses also required Treasury approval, but generally
excise commissioners appear to have enjoyed a rather wider latitude

90See North Britain Books generally, SRO RH2/4/433–456. Treasury
icials received fees out of excise incidents for their work on these
; for example see excise incidents Midsummer 1735 SRO NBB RH2/4/445,
1 examples of commissioners' leaves: SRO NBB RH2/4/436, 261 7 Mar 1727;
NB RH2/4/437, 408 3 Aug 1727; SRO NBB RH2/4/441, 45 23 Dec 1730;
BB RH2/4/442, 185 6 Jan 1732; SRO NBB RH2/4/443, 453 7 Jun 1733;
BB RH2/4/446, 225 26 Dec 1735; SRO NBB RH2/4/447, 8 22 Dec 1736;
id., 69 5 Jul 1737; SRO NBB RH2/4/451, 323 22 Sep 1742; SRO NBB RH2/4/455,
18 Mar 1748 and 13 Oct 1748; CTBP II p. 288 21 Jun 1732; CTBP V, p. 673
ar 1745; ibid., p. 725 17 Oct 1745. Central officers' leaves: SRO NBB
2/4/436, 236 5 Jan 1727 cashier; ibid., 261 7 Feb 1727 secretary; SRO
B RH2/4/443, 453, 7 Jun 1733 comptroller; SRO NBB RH2/4/451, 177 25 Sep 1741
mptroller.

92Examples CTBP I, p. 35 18 Mar 1729; SRO NBB RH2/4/441, 139 28 Jul
31; SRO NBB RH2/4/443, 348 5 Jan 1733; SRO NBB RH2/4/445, 348 23 Oct
5; SRO NBB RH2/4/452, 472 6 Oct 1743.

93For examples see CTBP I, p. 121 29 Jul 1720; SRO NBB RH2/4/454, 241
ar 1746.
in matters of expenditure than the customs commissioners. Finally the Treasury regularly sent orders and instructions to the board and these were invariably followed by the commissioners.

From the Union until 1725 there are relatively few references to Scottish excise in Treasury correspondence, indicating a general satisfaction with the service, and indeed until the malt tax disturbances of 1725 the excise was largely untroubled. The introduction of the malt tax occasioned a flurry of correspondence but thereafter the Treasury only interfered when matters of some difficulty arose, for example over the size of the 12 Scots gallon barrel, the question of levying duties on beer brewed by and for soldiers, the difficulties in farming Shetland, the Glasgow brewers case in the early 1740s, and other disputes with justices. The volume of Treasury correspondence with the excise commissioners was considerably less in the period 1725 to 1748 than that with the customs commissioners, partly because of the traditional independence of the English excise board from the Treasury which the former was anxious to see upheld in Scotland, and partly because the excise service in Scotland faced fewer problems than the customs service. The bulk of Treasury correspondence with the board during the period was concerned with the amount of revenue being raised and the surpluses available for paying the civil list. The money raised by excise duties paid the major part of the civil establishment in Scotland in most years between 1725 and 1748 and quarterly abbreviated accounts

94 Riley, English Ministers, p. 74.

95 Hughes, Studies in Administration, chap. 7; Riley, English Ministers, p. 60.

96 See below pp. 203-4 and Appendix II.
as well as final annual accounts were sent to the Treasury detailing the amounts of revenue raised and how it was expended. The Treasury frequently queried items in the quarterly accounts and became particularly irritated at the commissioners retaining large sums of money in their hands instead of using it to pay off various charges in Scotland, or, in the case of the malt and silver plate duties, sending it to London where it was earmarked for the payment of interest on certain funds. For example, in Lady Day quarter 1730 the cashier had £34,401 undisposed in his hands, plus a further £20,207 for malt duty which ought to have been sent to London. Despite repeated warnings, and assurances from the commissioners that "for the Future we shall take great care to make our Remittances as fast as the money comes into our Hands", the amounts of cash in hand continued to worry the Treasury.

Appointment of Officers

As we have noted the English excise board had a tradition of greater freedom from Treasury control than the customs service, and in particular the excise commissioners had complete authority over the appointment of their officers. Jealous of this position and anxious to prevent any detrimental precedent being created, the English excise commissioners insisted at the time of Union that the new commissioners for Scotland be given the same powers to appoint their own officers. Unfortunately as officers did not have to be


98 Excise commissioners to Treasury 25 Oct 1743 PRO T1/321 no. 23.

99 Hughes, Studies in Administration, p. 269.

100 Riley, English Ministers, pp. 60, 64-5.
warranted at London there is little information on excise patronage in official correspondence and the problem is accentuated by the lack of excise board minutes and by the fact that only the establishment lists for central and Edinburgh officers appear to have survived. As with the customs board, the excise commissioners appointed new officers in rotation as vacancies occurred. As excise appointments did not require Treasury approval, direct pressure on the commissioners from Scottish political interests was almost certainly greater. Argathelian influence was strong on the board, as Tweeddale found to his cost when he became Secretary of State: "I am perfectly persuaded that if your Lordship made peremptory recommendations to that board when proper opportunities offered a mouse would be [made] a mountain of and the declension [sic.] of the Revenue would be attributed to it which will always lead me to be very cautious how I conduct myself with that board in your Lordships concerns. The power they have of appointing their own officers and the rare interpositions of the Ministry in those matters no doubt is of considerable advantage to that branch of the Revenue which partly through this yields greater returns than the Customs do but ... the Commissioners are arbitrary enough in advancing their own friends and your Lordship may be sure that private views in any cases are preferred to publick interest". On the other hand, given the importance of excise revenue in financing the major part of the Scottish civil list, the need for reasonably efficient officers was clearly recognised and certain qualifications were required although how far these were insisted upon is uncertain. Sureties were also required for the due performance of their office. Many of the officers in

101 Hay to Tweeddale 1 Feb 1743 NLS YP7053, 111.
102 Hughes, Studien in Administration, p. 201.
103 See CTP (1720-8) pp. 3-4 9 Feb 1720; CTBP II, p. 377 27 Apr 1733.
the collections appear to have enjoyed relatively permanent tenure and there is no evidence of any widespread dismissals for political reasons.

The Treasury do not appear to have interfered to any significant extent in the appointment of local excise officers. "I enquired at Mr Wedderburn [excise secretary] yesterday how any recommendations from the E of Ilay to the Commissioners of Excise were negotiated and he said Just in the same way that your Lordships recommendations were made. And that he never knew the Lords of the Treasury nor any of the Commissioners of the Treasury write to the board of Excise recommending any person for an office depending upon the Commissioners but that he could not know if any of the Lords of the Treasury may have writ private letters to any of the Commissioners but never heard that they did except that he remembered that Sir Robert Walpole in a letter to Mr Sommers and the other Commissioners would advance Mr Lidderdale now Collector at Aberdeen as fast as their Rules would permit which was accordingly done and that when the E of Ilay had anything to ask it was usually done by the Justice Clerk or any other known to be entrusted by his Lordship who applied in behalf of the Earl of Ilay privately to one or more Commissioners as the thing required". 104 The only two other examples of the Treasury asking the excise commissioners to appoint ordinary officers during the period both occurred after the Forty-Five rebellion. 105 Significantly, after the Forty-Five the Treasury asked the excise commissioners only for names of any of their

104 Hay to Tweeddale 29 Oct 1743 NLS YP7058, 138.

105 See Scrope to excise commissioners 16 Apr 1747 SRO NHB RH2/4/454, 353 and West to excise commissioners 5 Feb 1748 SRO NBB RU2/4/455, 430. For the years 1707-27 Riley has found only two Treasury recommendations to excise posts, in 1710 and 1716: English Ministers, p. 65 n2.
officers concerned in the rebellion, whereas they also asked the customs commissioners to send a list of all vacancies. On the other hand the Treasury took considerable interest in the appointment of central excise officers and central officers were on occasion dismissed by Treasury order. In 1724 for example the Treasury ordered the removal of Andrew Fletcher as cashier and his replacement by Sir William Kerr. Two years later they instructed the commissioners to replace Kerr with James Nimmo. The names - Fletcher, Kerr, Nimmo (a friend of George Drummond) would suggest that these changes were political, part of the Squadrone-Argathelian struggle. Among other examples, the Treasury ordered the commissioners to appoint James Hamilton as joint assistant solicitor with the customs in place of John Hamilton in 1733, and directed the removal of solicitor William Clifton and the appointment of Patrick Haldane to succeed him in 1741. The Treasury also nominated the London agent.

106 Scrope to customs commissioners and Scrope to excise commissioners both 20 Jun 1746 SRO NBB RH2/4/454, 259 ff.


108 Treasury to excise commissioners 20 Sep 1726 SRO NBB RH2/4/436, 173.


110 16 Nov 1733 SRO NBB RH2/4/444, 16.

111 Haldane, the man involved in the Court of Justiciary affair in the early 1720s, became an English excise commissioner 1724-7 and was later appointed solicitor general for Scotland in 1746.

112 CTBP IV p. 462 5 May 1741; SRO NBB RH2/4/450, 153 5 May 1741.

113 For example see Scrope to excise commissioners 6 Dec 1737 SRO NBB RH2/4/447, 145.
The Malt tax

One of the most important branches of the excise in Scotland in this period was the tax on malt. By the Act of Union the duty on malt levied in England was not to be applied to Scotland for seven years or the duration of the War of the Spanish Succession, whichever was the longer period. In May 1713, however, the Scottish Tory members, growing increasingly restless at Harley's reluctance to give them more power in Scotland, and with the support of many English backbenchers, voted to apply the full malt tax to Scotland. This raised an almost universal opposition in Scotland, culminating in a Parliamentary motion to dissolve the Union, and was against the express wishes of the Ministry and in face of Treasury doubts as to whether the new duties could be collected. Such doubts were confirmed: "... the maltsters refusing to permit the officers entrance to their malthouses, and the justices declining to act on account of this duty is the reason why none of the duty has been collected". The revenue raised by this act was therefore negligible and it largely fell into abeyance.

114 Article XIV.

115 "The malt tax is past, but wee of north Britain are possiblie not to pay it, and if I can believe the Jees of our countrie, that are in my Lord Tre...rs good graces It's not desyre'd that north Britain should pay. But time must try this". Duncan Forbes to his wife 22 May 1714, MCP II P-39.

116 Votes of the House of Commons 1718/19 Credit and Debit Account quoted Riley, English Ministers, p. 242 n.7.

117 See SRO RH2/4/535 duty on malt 1716-1723: "None of this Duty has been paid by the Maltsters for these seven years, Except £155 14/- In the year ended 24th June 1714".
Throughout the late 1710s and early 1720s it became increasingly apparent that the revenue raised in Scotland was not always sufficient to cover the expenses of the civil list establishment, far less produce surpluses to remit to London. There was often little left over after the courts of Exchequer, Session and Justiciary had been paid. Despite the reorganisation of the Scottish customs in 1723 little more could be expected in the immediate future from that source. Again, administrative difficulties in collection meant that the land tax could not supply the deficiency. Many English members were becoming dissatisfied with Scotland's continuing inability to pay her own way and in particular that no malt tax was being levied. Walpole therefore came under pressure to extend the malt tax effectively to Scotland. In February 1724 a motion was made in the Committee of Ways and Means to apply the full English duty of 6d per bushell to Scotland, but with more pressing problems on his plate and anxious to let the Scottish dog lie, Walpole managed to have this attempt postponed. The clamours from the English country gentlemen, however, arose again in the following session, and Walpole himself seems to have been convinced by this time that Scotland 'must be made to pay her own way'. Various Scots MPs, including Dundas, attempted to organise


120 Sir John Broderick to Lord Middleton 8 Feb 1724, Coxe, Walpole II pp. 438-9; Coxe, Walpole I, pp. 230-1.

121 See Robert Dundas to Baron Clerk 8 Feb 1724 SRO GD 18/3194.

122 Coxe, Walpole, I pp. 230-1; Dundas to Clerk 10 Dec 1724 SRO GD 18/3194; Dundas to Clerk 14 Jan 1725 ibid.

123 Riley, English Ministers, p. 283.
an opposition to the proposal but there was considerable disagreement and irresolution as to what should be done. Nevertheless the opposition persuaded Walpole to introduce the tax at half the English rate. An act was accordingly passed placing a duty of 3d per bushell on malt in Scotland to commence on Midsummer's day 1725. Money raised by the duty, after the deduction of management costs, was to be remitted to the commissioners of excise at London. To placate Scottish concern the act also provided that any revenue raised in excess of £20,000 p.a. should be used for the encouragement of manufactures in Scotland.

Four experienced English excise officers were sent up to Edinburgh by the Treasury in early June to help in the charging and collection of the new duty. They appear to have toured various towns in Scotland and instructed the officers there. It was normal practice when new excises were imposed to appoint additional officers to cope

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124 See Dundas to Clerk 14 Jan 1725 SRO GD 18/3194; Dundas to Clerk 19 Jan 1725 ibid; Dundas to Clerk 21 Jan 1725 ibid. Also below p.327.

125 Act 12 Geo I c.4. The Treasury also recognised that Scotland was relatively much poorer than England and thus would not be able to bear the full 6d per bushell.


127 R.H. Campbell, 'The Anglo-Scottish Union of 1707 - The Economic Consequences', EHHR vol. 16 (1963-4); p. 474. The clause to this effect was moved in Committee by Forbes: it was opposed by Dundas "because I was and am of opinion that it was not very consistent with the standing out against the malt duty". Dundas and Sir John Anstruther voted against it but it was carried 90-27: Dundas to Clerk 19 Mar 1725 SRO GD 18/3194.

128 See English excise commissioners to Treasury 7 Jun 1725 and Treasury to English excise commissioners 16 Jun 1725 SRO NBB RH2/4/434, 368.

with the collection: for the malt tax 101 new officers were created, one of the largest increases in the Scottish excise service in the eighteenth century. As there were only 239 officers in 1710 and no significant increase since then, this new addition had a considerable impact on the size and cost of the excise administration in Scotland. The cost in salaries for the new malt officers was about £5,000 p.a., raising the salary bill for the year Midsummer 1725 to Midsummer 1726 from £14,744 to £19,324. The following year, May 1726, the Scottish excise commissioners wrote to the Treasury seeking an all-round salary increase to compensate for the increased amount of work most officers faced as a result of the malt tax. Officers' pay, it was claimed, had remained more or less static since the Union, despite a continuing rise in the cost of living, and this was discouraging new recruits to the service to the detriment of the revenue. For these reasons, and perhaps also to keep the excise service in Scotland happy after the difficulties, even physical dangers, to which it had recently been exposed, the Treasury granted these increases, to take effect from Midsummer 1726. The total increase was estimated at £2,366 12/- p.a. pushing the annual salary bill to over £21,000.

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130 Riley, English Ministers, p. 67.
131 SRO RH2/4/534.
133 Treasury to excise commissioners 23 Jun 1726 SRO NBB RH2/4/435, 118. See also 'An Account of all additional salaries and pensions granted to excise officers in Scotland 1716–21' PRO T45/4 no. 9A. For clerks, doorkeepers etc. see PRO T45/4 no. 10.
134 SRO RH2/4/534.
central officers were given individual increases later: for example, secretary Richard Dowdeswell received an additional £100 p.a. in August 1726.\textsuperscript{135}

The introduction of the malt tax met with a hostile reception in Scotland: the disturbances and their political implications are discussed in detail in a later chapter. For several months after Midsummer's day excise officers, often intimidated by mobs, were generally unable or too frightened to survey the stock in hand and collect the duties; many fled from their posts.\textsuperscript{136} It was mid-July before they could venture even to start putting the malt tax into operation. These months were naturally exceptionally busy ones for the excise commissioners. They met regularly and received directions from Lord Advocate Forbes, Illy and other government servants in Scotland\textsuperscript{137} and in turn issued instructions to their officers in the collections. Commissioners Gilbert Burnet and Alexander Wedderburn were sent as 'troubleshooters' to Stirling, Dundee, Perth, Aberdeen and other places, but met with little success.\textsuperscript{138} Initially the Treasury was well satisfied with the commissioners and hoped 'your example and extraordinary industry will bring the malt duty to bear'.\textsuperscript{139} A week or so later, however, the Treasury reminded the commissioners of the need 'for a more than ordinary vigilance, care and attendance

\textsuperscript{135}Dowdeswell's petition 18 Jun 1726 RH2/4/324 f. 250. See also SRO NBB RH2/4/435, 148 13 Jul 1726; ibid. 153 excise commissioners Report 21 Jul 1726; Treasury to excise commissioners 10 Aug 1726, ibid. 153; PRO T1/254 no 9A.

\textsuperscript{136}Wade to Delafaye 8 Jul 1725 RH2/4/317 f. 200-1.

\textsuperscript{137}Ordered to do so by the Treasury - Scrope to excise commissioners 12 Aug 1725 SRO NBB RH2/4/434, 405; Scrope to excise commissioners 16 Sep 1725 ibid. 412.

\textsuperscript{138}See Burnet to excise commissioners 28 Jul 1725 Dundee SRO RH2/4/318 f. 303; Burnet to excise commissioners 26 Jul 1725 ibid. f. 302; excise commissioners to Treasury 20 Jul 1725 PRO TL/254 no 5 (4).

\textsuperscript{139}Scrope to excise commissioners 29 Jul 1725 SRO NBB RH2/4/434, 402.
in your management' and told them to consult constantly with and be guided by the Lord Advocate.\footnote{Scrope to excise commissioners 12 Aug 1725 SRO NBB RH2/4/434, 405.} By the end of August Treasury patience had become increasingly strained and they delivered a rare and stinging reprimand to the commissioners: "The settling of the Malt Duty in Scotland which hath and doth still create difficulty, and disturbance should, as My Lords of the Treasury conceive, have engaged You to have transmitted to them if not every post yet once a week at least an account or journal of the measures taken by Yourselves, and the progress You and Your officers had made towards settling the same, But their Lordships thereof have received two representations only from You [dated 26 July and 3 August]\footnote{CTP (1720-8) pp. 378-80.} ... And these in so general terms, that their Lordps ... are under concern to know what You and Your officers are doing since they have no intimation from You on material facts regarding the said duty which they are persuaded are true. I am therefore by their Lordps Commanded to direct You to give them a full and particular accot of all that hath been doing and is done in relation to the settling, levying and collecting this revenue, and the obstructions given to the same, And that You do continue to send to their Lordps the accounts once every week at least whilst all this revenue or the settling thereof shall be under any disorder".\footnote{Scrope to excise commissioners 26 Aug 1725 SRO NBB RH2/4/434, 409.} This letter had the desired effect and the commissioners promptly sent a whole series of detailed reports to London.\footnote{See Scrope to excise commissioners 16 Sep 1725 SRO NBB RH2/4/434, 412. Excise commissioners Reports to the Treasury of 24 Aug, 28 Aug, 16 Sep, 30 Sep and 7 Oct 1725 are given in CTP (1720-8) pp. 380-1.}
The Board of Trustees

Although by November most of the disturbances were over, the malt tax remained very unpopular in Scotland. There had also been mounting pressure, particularly from the Convention of Royal Burghs, for some sort of effective help to be given to Scottish trade and industry which had remained in a depressed state since the Union. The government responded in 1726 by setting up, by act of Parliament, a Commission for Improving Fisheries and Manufactures in Scotland to administer and distribute a variety of funds previously granted to Scotland for economic purposes by various acts, including the surpluses over £20,000 raised on the new malt duty. The establishment of the Board of Trustees, as it was commonly known, was the most conspicuous example of central government intervention in the Scottish economy after the Union.

The Board's principal functions were to formulate proposals for fostering the Scottish economy and in particular to encourage herring

144 13 Geo I c.30.

145 Annuity of £2,000 p.a. for 7 years out of the Equivalent under the Act anent Public Debts 1707 for the encouragement of the manufacture of coarse wool. (This could not be paid out because nobody had been named in the act to receive it. By 6 Anne c.51 the responsibility was handed over to the barons of the Exchequer: Riley, English Ministers, pp. 212-4); the 'second equivalent' annuity of £2,000 (from 1719) for the encouragement of fishing, manufactures and improvements by 5 Geo. I c.20 (1718); the surpluses over £20,000 raised on the malt tax in Scotland by act 12 Geo. I c.4.

146 R.H. Campbell, 'The Anglo-Scottish Union of 1707 - The Economic Consequences', EHR vol. 16 (1963-4) pp. 468-77. Campbell sees the Board as the Union's most beneficial though delayed consequence.
fishing and the manufacture of linen and hemp and of coarse wool. 147

In November 1726 the Convention of Royal Burghs, after several months' work, finalised a scheme for the distribution of the various sums, concentrating on the linen and fishing industries, and this scheme was by and large embodied in the Commission. 148

Twenty-one trustees were appointed under the first commission in July 1727; 149 thereafter vacancies were filled by royal warrant as they occurred. 150 The trustees, who were not paid, were drawn largely from the aristocracy and the bench, with a few Lothian gentry and Edinburgh merchants. Forbes, Milton and baron Clerk were among the most prominent members. The composition of the board was solidly Argathelian and remained so throughout the period. 151 The establishment of the Board provided Ministers with a welcome new source of government patronage.

The accumulated annuities, amounting to £30,000, from the Union and the 1718 act were paid over to the board soon after it was set up, 152 £20,000 of which was put out on loan. The bulk of the accumulated malt tax surpluses, amounting to £19,000, was not paid over until 1733; this also was invested. On average the Board's income was about

147 The Board was to act as trustees in terms of act 13 Geo. I c26 (1726) and other earlier statutes for the regulation of linen and hemp manufactures in Scotland.


150 A completely new commission was issued in July 1761.

151 See Hay to Tweeddale 31 Mar 1743 NLS YP7054, 86.

152 See Treasury to Exchequer 29 Nov 1727 SRO NBB RH2/4/438, 1. The receiver general of land rents acted as cashier for the board.
£6,000 a year from the 1718 annuity, malt tax surpluses and the interest on the sums invested, although the amount fluctuated considerably from year to year, depending particularly on the state of the excise revenue. About half the yearly income was usually earmarked for the linen industry. The board submitted annual reports to the Crown detailing the money spent in the year and the proposed plans for the coming year. The amounts were warranted and approved by the Treasury.

The establishment of the board of trustees drew much of the heat out of the opposition to the malt tax although the Squadrone continued to complain that the burden of the malt duty was ruining the Scottish economy. The initial expectations of the board in Scotland were high: "Tis from the care of these gentlemen that we expect great advantages in this trade [linen] especially when it seems to be the genius of our country people is most inclinable to promot". While the board had an immediate and beneficial effect on the linen industry, its general long-term contribution to stimulating the Scottish economy is more doubtful. By the 1740s few of the commissioners attended

153 By 26 Geo. II c20 (1753) a further annuity of £3,000 was paid for nine years for promoting linen manufactures in Scotland. The malt surpluses continued to be paid up to 1791.

154 For example see CTP (1720-8) p.420 1726 Dissent of Haddington; see also Sedgwick, House of Commons, I, pp. 628-9.

155 Clerk's Observations, ed. Smout p.196. Clerk was a founder member of the Board.

and there was difficulty in getting a quorum of five. To a large extent the board became just another useful source of patronage: there were for example over eighty local stampmasters of linen cloth. "I could never learn how these trustees employ their constant funds ... but I have frequently heard it surmised that the thing is entirely made a Job of in many respects and they Gratify their Creatures with sallarys for which they do no service..." Many of the officials working under the board simply pocketed their salaries and did little or nothing to implement the board's schemes.

In the late 1730s and early 1740s, the board's income was badly hit by the fall in excise revenues (which affected the £2,000 annuity) and the failure of the malt duty to produce any surpluses for several years. Led by Forbes, the board were not slow to blame the consumption of tea for the fall in excise revenue. In fact by the 1740s Forbes had come to dominate the board, demanding his own way on various schemes, which led him into direct clashes with Milton and others.

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157 See Hay to Tweeddale 28 Jul 1743 NLS SYP Box 11 Fl.

158 Hay to Tweeddale 22 Jan 1743 NLS YP7053, 89. Also Hay to Tweeddale 3 Mar 1743 NLS YP7054, 8.

159 See Sir Charles Gilmour to Tweeddale 14 Apr 1743 NLS YP7054, 123.

160 By January 1745, for example, only £500 of the £2,000 annuity due at Midsummer 1744 had been paid: CFMS Report 1744 11 Jan 1745 PRO T1/316 no. 6.

161 See CFMS Report for 1737 PRO T1/247 no. 15 20 Jan 1738 "And this shortcoming of the Malt Duty gives your Trustees the greater concern that it seems to them to proceed principally from a cause that affects the revenue of excise in the same degree, and must continue to destroy both unless prevented by some new law to be executed with vigour. They mean the excessive use of tea, which has extended itself to the lowest degree of persons". See also 1738 Report PRO T1/300 no.4 19 Jan 1739 and 1741 Report on restricting plans for the current year PRO T1/307 no. 6 23 Jan 1742.

162 See Hay to Tweeddale 5 Mar 1743 NLS YP7054, 16; Hay to Tweeddale 12 Mar 1743 NLS YP7054, 31.
and he pressed Secretary of State Tweeddale to make changes on the board. "A man must be very blind if he does not see what his Lordship [Forbes] would be at. He would have those only kept in who concur with him and those turned out who dare differ... His intentions I believe are good but he is certainly often misled and is impetuous and overbearing... if he wishes for a change of trustees at all it is only to become thereby more absolute".163

The amount of gross revenue raised from the malt tax from 1726 onwards fluctuated between £20,000 and £30,000 per annum.164 There were, of course, several variables outwith the control of the excise commissioners which partly accounted for such fluctuations, most notably the quality of the harvest.165 The best years in the period 1725 to 1748 were from 1729-30 to 1733-4 when the amounts raised were just over £30,000. In contrast, in 1740-1, which saw a particularly bad harvest, the amount was only £14,000. The salaries of the officers employed to collect the tax, together with other management costs and legal charges, were on average between £6,000 and £6,500 although in some years nearer £7,000. Thus unless the gross amount raised was more than about £26,000 the net sum for the year would fall below £20,000 and there would be no surplus for the board of trustees. In the years 1726-7 to 1747-8 inclusive there was a surplus in thirteen of the years and a deficit in the remaining nine: from 1738 on only 1743-4, 1746-7 and 1747-8 produced surpluses.

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163 Hay to Tweeddale 28 Jul 1743 NLS SYP Box 11 Fl.
164 These and subsequent figures are taken from SRO RH2/4/534. See also Exchequer Pipe Office SRO E207/3/1-23 malt tax accounts 1713 - 1748.
165 See excise commissioners to Treasury 4 May 1730 PRO T1/273 no.54.
Net amounts in the 1750s were steadily and often seriously below £20,000 and only in 1759-60, when new malt duties were introduced, did the situation markedly improve. By the act imposing the malt duty if the amount raised fell short of the £20,000 a surcharge was to be levied. The excise commissioners quickly realised, however, that it would be impossible to exact this. 1727-8 was the first year to suffer a deficit and on 4 February 1729 the commissioners wrote to the Treasury of "the difficulty we apprehend would attend any endeavours for making the same good by a surcharge". No attempt was in fact made and the idea was quietly dropped.\(^{166}\)

By 1748 the total surplus produced by the malt tax since 1726 was £36,378.\(^{167}\) By the end of 1748 it appears that £28,425 of this had been paid over to the board.\(^{168}\) There was often considerable delay before the board received its money. Thus the first payment, of only £500, was not made until July 1732 and the bulk of the surpluses for 1726 to 1733 were not paid until late 1733.\(^{169}\) This long initial delay in paying over surpluses went some way to diminish the enthusiasm with which the scheme had been generally greeted. The Treasury was determined that surpluses over £20,000 must make up any deficiencies under £20,000 and only then would any remaining net surplus be paid over to the board.\(^{170}\) Thus for the years 1726 to 1733, although there was a total surplus of £23,603, there was also a deficit of

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166 Ibid.

167 The total "deficit", i.e. from years when £20,000 was not reached, was £35,713. These figures are calculated from SRO RH2/4/534.

168 The Treasury warranted the Exchequer which in turn ordered the excise commissioners to pay over the sums to the receiver general of land rents in Scotland who acted as cashier for the board: see SRO E224/3-5.

169 SRO E224/3.

170 See CTBP I p. 383, 3 June 1730.
£4,434, and the board eventually received only the difference, £19,169.\textsuperscript{171} This was the only time the Treasury deducted deficits, however, and thereafter surpluses were paid in full.\textsuperscript{172} The rest of the malt tax money, over £400,000 for the years 1726 to 1748, was remitted to the excise commissioners at London.\textsuperscript{173} There were often delays in sending the money and large amounts of cash accumulated in the hands of the Scottish excise commissioners, much to the irritation of the Treasury.\textsuperscript{174} The Treasury were always concerned about the duty on malt and regularly asked for accounts of the sums raised:\textsuperscript{175} in particular they often asked the commissioners to estimate whether or not there would be a surplus for the year before the final figures were available.\textsuperscript{176}

\textsuperscript{171} By Treasury warrants 29 Jun 1732 (£500), 19 Jun 1733 (£2,010) and 14 Dec 1733 (£16,659) SRO E224/3. See also Treasury to Exchequer 14 Dec 1733 SRO NBB RH2/4/444, 22.


\textsuperscript{173} For 1725 to 1731 see PRO TL/278 no. 24 and for 1730 to 1748 see excise incidents accounts in SRO NBB RH2/4/440-456; also SRO C65/16.

\textsuperscript{174} For £20,000 not sent between 1725 and 1730 see Scrope to excise commissioners 21 Apr 1730, SRO NBB RH2/4/440, 443; Scrope to excise commissioners 5 Jun 1730 ibid., 461; excise commissioners to Treasury 16 Jun 1730 CTBP I, p. 392. For £15,035 not sent in 1743 see Scrope to excise commissioners 18 Oct 1743 SRO NBB RH2/4/452, 489; excise commissioners to Treasury 25 Oct 1743 PRO TL/312 No. 23. See also excise incidents accounts 1730-48 generally SRO NBB RH2/4/440-56. Part of the difficulty lay in finding ways to remit the money other than by costly bills of exchange: see SRO NBB RH2/4/442, 31 Oct 1730; excise commissioners to Treasury 4 May 1730 PRO TL/273 No. 54.

\textsuperscript{175} For example see CTBP II, p. 230 6 June 1732.

\textsuperscript{176} See SRO NBB RH2/4/447, 69 5 Jul 1737.
Excise revenue

Two factors militated against the amount of excise collected in Scotland. First many areas were so poor that the duties raised there often did little more than meet the cost of the officers' salaries. Moreover the quality of much Scottish beer was so low - 'brewers' wash' - as not to be worth raising excise upon. Second, as we have seen, there was almost universal resistance to the payment of excise, and excise officers faced very considerable difficulties in collecting duties. Gross annual income from excise duties (excluding the malt tax) was roughly between £60,000 and £70,000 during the period, although 1740-2 saw a sharp drop to around £50,000 and the early 1740s as a whole, a time of bad harvests, were the least productive years. Income picked up again by the mid 1740s and rose steeply thereafter, partly because of various new excise duties imposed, to well over £70,000 p.a. Well over half the gross produce always came from the old excise duties on beer, ale and vinegar. Several duties, including the new duty on hops (from 1730-1) raised very little, sometimes nothing, and in the case of the duty on coffee, tea and chocolate, imposed from Midsummer 1724, the cost of the management was in many years greater than the amount raised. Of the other new duties added between 1725 and 1748 - on spirit licences - on low wines and spirits and on glass - and on wheel carriages -

177 Excise commissioners to Treasury 10 Jan 1727 CTP (1720-8) pp. 439-40.

178 SRO RH2/4/534 excise accounts Scotland 1707-1770. See also excise declared accounts, Exchequer Pipe Office, SRO E207/1/18-41 1725 - 1748. Gross income had remained steadily within this range since the Union. A peak of £78,000 had been reached in 1712-3 and this was not attained again until 1749-50: SRO RH2/4/534.

179 Chief baron Lant to baron Clerk 25 Nov 1740 SRO GD 18/2881; Wilmington to Clerk 23 Mar 1742 ibid.

only the second, low wines and spirits, raised a sizeable sum.
The salary bill rose from about £14,500 in 1724 to just over £16,000
with the salary increases granted in 1726, but thereafter remained
steady until the mid 1740s when several additional officers were
employed for the various new duties imposed. On average a further
£5,000 p.a. was spent on other management costs, incidents and
legal charges, bringing average annual outlay to around £21,000.
Thus net income was between £40,000 and £46,000 from 1725 to the early
1740s, falling to around £30,000 in 1740-2 because of the bad harvests,
and then slowly climbing back up to its old level. Although the excise
commissioners fled when the rebels approached Edinburgh in 1745 and
many officers in the collections deserted their posts, the collection
of excise duties suffered only temporarily by the rebellion.

181 See above pp. 111-2.

182 These included rent of the house in Edinburgh; postage;
stationery bills; petty incidents claimed by collectors; riding charges
allowed to collectors, supervisors etc; the cost of extraordinary officers;
the solicitor's legal bills; fees to Exchequer and Treasury officials for
their work on the various excise accounts; and for a time payment to the

183 Cost of management had been increasing steadily since 1708 (£13,000)
with no corresponding increase in revenue raised, until £20,000 became a
fairly regular figure in the early 1720s: SRO RH2/4/534.

184 All accounts and cash in hand were lodged in Edinburgh Castle:
excise commissioners to Treasury 26 Nov 1745 PRO T1/318 no.24.

185 Ibid: "We have issued the necessary orders to our officers in
the several places where the rebels have been, to return a share of
the revenue under their inspection, and we shall use our utmost
endeavours to prevent as far as we can further loss to the publick, as
well as to recover what can be recovered". For details of attempts by
the rebels to collect excise see PRO T1/347 no.33 (1746) and PRO T1/356
no.27 (1754).
In the years immediately after 1748 the increase in gross income was partly offset by a mounting salary and incidents costs, but generally net produce increased to average around £55,000 p.a.

The net produce from excise in the period 1725 to 1748 (again excluding the malt tax) met on average three-quarters or more of the total cost of civil government in Scotland. The large amounts of cash in the commissioners' hands at any one time also meant that major extraordinary expenses arising in Scotland were usually met out of excise. Thus the excise supplied the money paid out in return for arms surrendered in the years after the Fifteen; the £6,080 compensation given to Daniel Campbell after the Shawfield riots in 1725 (to be paid back by Glasgow); and various other sums such as the £3,000 for the repair of Holyrood House in 1733. On occasion excise revenues were also used to subsist HM troops in Scotland.

186 See below pp. 203-4 and Appendix II. Until 1746 only silver plate duty (and of course the first £20,000 raised on malt) were sent to London. Several of the new duties imposed in that and subsequent years also had to be remitted to London.

187 See generally SRO E224/2-5.

188 See SRO CE6/16 amount of money paid.

189 See SRO E224/2, 426.

190 See CTBP II, p. 387 21 Jun 1733.

191 For example see West to excise commissioners 4 Nov 1748 SRO NBB RH2/4/455, 511. For the '45 see SRO E224/5, 53.
Conclusion

Despite its widespread unpopularity, the excise service successfully raised sufficient revenue to meet the bulk of the cost of civil government in Scotland during the period. The margin was always tight, however, and when in the early 1740s the excise revenue temporarily slumped, partly as a result of a series of bad harvests, the fragile nature of Scotland's public finances was clearly revealed. The importance of the excise revenue led the Treasury to take a steady interest in the Scottish excise service, although, unlike the customs service, the appointment of excise officers was made by the Scottish commissioners themselves and not by the Treasury. Patronage largely determined the appointment of excise officers and while Walpole attempted to maintain a strong English presence on the board, Argathelian influence was usually predominant. Nevertheless, given the importance of excise revenue, more than lip-service had to be paid to efficiency: the composition of the board and central office remained fairly stable throughout the period and most officers appear to have performed their difficult, and at times hazardous, tasks reasonably conscientiously.
CHAPTER FOUR: OTHER CROWN REVENUES IN SCOTLAND: THE RECEIVER GENERAL

Introduction

While the customs and excise services were remodelled after the Union in order to bring Scotland into line with England, the collection of crown rents and various other feudal dues, and bishops' rents remained unaltered. These sums, levied on Crown vassals, were either collected by the local sheriff, bailie, steward or by specially appointed chamberlains and then paid over to the Receiver General of Crown Rents and Casualties or, where larger sums were involved, the money was paid directly to the Receiver General. The duties were accounted for in the Court of Exchequer which had overall responsibility for their collection. The small amounts of money thus raised were normally applied to the civil list and to certain other expenses of government in Scotland such as the fund for manufactures, the Equivalent fund and the General Assembly of the Church of Scotland. There were also two assessed taxes levied in Scotland in this period in addition to customs and excise: land tax and, from 1747, window tax. The amounts to be raised were fixed annually by Parliament; the money was collected and accounted for by the commissioners of supply and paid into the English Exchequer. Various stamp duties were also levied in Scotland and there was a small amount of local taxation.

The Receiver General was a key figure in the financial administration of Scotland. All public revenues, including customs and excise, earmarked for public expenditure were handed over to him and in turn he

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1 See SRO E227/1-2; for example SRO E227/1, 332 16 Feb 1728.

2 See above pp 114-7 and below pp. 208-10.
paid out the warranted civil list salaries and other government expenditure in Scotland, accounting to the Exchequer for all his transactions.

Crown Rents

Vassals holding land from the Crown in Scotland had to pay various feudal dues according to the nature of their tenure. These might be annual rents such as feu and blench duties, or casual payments, for example on marriage. Collection of these duties was normally the responsibility of the sheriff who was accountable to Exchequer. All amounts under £10 Scots p.a. were paid to and discharged by him; if the amount exceeded £10 Scots p.a. the sheriff could only give a discharge under the direction of the Exchequer auditor and usually such larger sums were paid directly to the Receiver General and accounted for in Exchequer by the vassal himself. Before the abolition of the heritable jurisdictions in 1747 crown rents in the franchises were collected and accounted for by the bailies of the regalities and bailieries and by the stewarts in the stewartries and then paid over to the Receiver General. Crown rents and casualties for certain Lordships (irrespective of the amounts involved) namely Dunbar, Ettrick Forest, Fife and Strathearn, Galloway, Lindores, Orkney and Shetland, and Ross were collected and accounted for in Exchequer by specially appointed chamberlains. These posts, which

3Sir John Clerk and John Scrope, An Historical View of the Forms and Powers of the Court of Exchequer in Scotland (Edinburgh, 1820) pp. 212, 254. Responde Books listing the charges against each collector were kept by the Chancery and sent yearly to the Exchequer. The Exchequer auditor's office also kept a Property Roll of the regular annual payments to be made by vassals in every shire, stewartry, bailiery and regality; see SRO E218/1/2 1721-47. For crown rent records see SRO E220-10, E218-220, E236-7.

4For accounts see SRO E220/1-8. For details of chamberlains and amounts to be collected see N.U.L. NEC1613 26 Jul 1742.
were held during pleasure, provided another useful source of government patronage and were usually given to nobles or others with local influence as a mark of political favour. For example, the Chamberlainry of Fife and Strathearn was taken from Rothes shortly before the 1734 general election and given to the earl of Leven. A substantial part of the rents was usually paid to the chamberlain as a salary. The remainder was remitted to the Receiver General but often various pensions and allowances were granted out of this and the amount of money left in the Receiver General's hands for government expenditure was consequently only a small fraction of the amount originally raised.

Every sheriff, bailie, stewart and chamberlain was supposed to attend Exchequer yearly in July/August to account for the rents and other casualties charged to them. For the most part, despite various Exchequer exhortations, they were not regular in remitting the money and in making their accounts and large arrears and delays in

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6 For example Rothes received £320 p.a. as chamberlain of Fife and Strathearn: CTP (1720-8) p. 117 15 Jan 1722. In a petition to the Treasury in 1749 Rothes pointed out that all his predecessors, instead of paying the annual balance, applied every four or five years to the Crown for a discharge which was always granted: see Rothes to Pelham 28 Mar 1749. N.U.L. NEC2004. The salary might even be greater than the amount raised: the warrant to Patrick Sinclair as chamberlain of Ettrick Forest at £500 p.a. and £20 p.a. to his depute 'out of said monies' stated that if Ettrick Forest rents fell short then the rest was to be paid out of the revenues of the Lordship of Dunbar: SRO NBB RH2/4/455, 357 7 May 1747.

7 For example the rents of the Lordship of Dunbar and of Ettrick Forest were to meet a pension of £400 p.a. paid to Douglas of Cavers, a former Receiver General, from 1731 to his son, and from 1742 to Basil Murray: SRO E401/15-40.

8 See Clerk and Scrope, Court of Exchequer, pp.327-8.
accounting were common throughout the period. For example by 1743 the earl of Cromarty, chamberlain of Ross, had arrears of over £5,000 and had neither paid over any money nor passed any accounts for the previous ten years. A list of debts owing by various chamberlains in 1730 shows that most of them had not passed their accounts for the previous three or four years. For their part sheriffs often faced considerable difficulties. In 1730 Haddington wrote to Marchmont, "I believe I need use few words to convince you how little profit it is to be a shiriff, but on the contrary. Yet there is now an additional trouble upon me. The Exchequer are pursuing me for Castle Wards etc. tho no mortal knows where they are nor can any intelligence be got of them, and all that is payable out of this county set it altogether for fifteen years (for so long as I have been shiriff) comes to about £300 sterling. However, small as it is it's not very convenient for me to pay it since one sixpence of it has never come in to me". The sheriffs and other collectors usually paid over several years' monies at one time and this resulted in considerable fluctuations in the amounts coming in in any one year. Accounting of crown rents was also fairly lax in Exchequer itself and indeed some duties were never accounted for. Nor was any effort made to send regular accounts of

9 SRO E231/14 1743; Scrope to Exchequer 18 Sep 1746 SRO NHB RH2/4/454, 276; Scrope to Exchequer 25 Nov 1746 ordering them to carry the law into execution with expedition for the recovery of said debt, SRO NHB RH2/4/454, 296.

10 SRO E231/5 'Debts owing by collectors of revenues 1730'. For arrears in 1743 see SRO E231/14, (total £33,315).


12 For example from Michaelmas 1726 to Michaelmas 1727 only three sheriffs paid in money: Lanarkshire for the previous six years, Elgin and Forres for the previous fifteen and Annandale stewartry for the past four.

13 For example see CTBP I, p. 164 5 Dec 1729.
crown revenues to the Treasury throughout the period, much to the
irritation of the Treasury when they finally awoke to this omission. Prosecutions could be started in Exchequer for recovery of arrears
but these rarely ran their full course as threatened sheriffs or
other collectors would petition the Crown for a discharge and
such petitions were rarely refused. Gifts were also often made
by the Crown of crown rents and casualties to the collectors, to those
who had to pay them or others. Indeed over half the crown rents
and casualties annually were gifted away. The residue that did
reach the Receiver General was usually applied towards payment of
the salaries of the non-three court offices in the civil list, and towards other costs of government in Scotland such as the fund

14 Scrope to Exchequer 20 Feb 1748 SRO NBB RH2/4/455, 431.

15 There are numerous examples of discharges: Archibald Douglas
of Cavers release and discharge of £579 as sheriff of Roxburghshire,
SRO NBB RH2/4/435, 155 16 Aug 1726; Marchmont as sheriff of Berwickshire,
SRO NBB RH2/4/436, 253 12 Jan 1727; petition of Rothes wanting discharge
of arrears, SRO NBB RH2/4/439, 243 19 Feb 1729, agreed to CTIP I p.89
12 Jun 1729; petition from Marchmont for discharge as sheriff of
Berwickshire, discharged on report of barons, CTIP I, p.30 11 Mar 1729
and SRO NBB RH2/4/439, 245 17 Mar 1729; petition of Cromarty as
chamberlain of Ross for discharge of £6,000 arrears 'as usually done
to his predecessors', SRO NBB RH2/4/453, 90 20 Jul 1744 - this arrear
was not discharged. Also see petition of Rothes for discharge of
prosecution against him in Exchequer for £1,805 due by him as chamberlain
of Fife and Strathearn and as sheriff of Fife and Aberdeenshire: SRO NBB

16 For example the feu and other duties and casualties out of his
estates in Scotland were granted in 1744 to Ilay in renewal of the like
grant made to Argyll: SRO NBB RH2/4/455, 33 16 Mar 1744.

17 Clerk and Scrope, Court of Exchequer, p. 160. For example of the
£4,904 crown rents etc. raised in the year Midsummer 1727 to Midsummer
1728, £2,530 was granted away, leaving £2,374: SRO E231/4. From accounts
of crown rents etc. 1715 to 1727, total gross £69,000, management etc.
charges £14,000, granted away £27,000, leaving net £28,000: PRO TI/278
no. 27 10 Mar 1732.

18 See below pp 198-200.
for Manufactures and the General Assembly of the Church of Scotland.
The net total thus applied in the years 1725 to 1748 was £30,000,
an average of just over £1,200 p.a.19 Compositions on signatures
and on leases of teinds passed in Exchequer were normally included
in the crown rents accounts.20 The income from this source, averaging
about £500 p.a., was similarly applied to civil list and other
miscellaneous expenditure.

Royal burghs also had to pay fixed annual dues to the Crown,
details of which were kept on the Burgh Roll held in Exchequer.21
These amounted in total to only £76 p.a.

Bishops' Rents

Rents and casualties from lands formerly possessed by the bishops
but annexed to the Crown on the abolition of the episcopacy in 1689/90
were collected and accounted for in Exchequer separately from the other
crown rents.22 The archbishopric of St Andrews and eight other
bishoprics23 were under the control of the collector general of
bishops' rents.24 He accounted in Exchequer and paid over the money

19 Of which the civil list took on average £1,000 p.a: SRO E224/2-5;
SRO E401/15-40; PRO T1/272 no. 32 29 Sep 1729 for 1722 to 1729. The
average paid directly to the Receiver General by vassals and the chamber-
lains was £1,000 p.a. While that paid through the sheriffs, stewards etc.
was only £200 p.a.

20 For example see account of produce of crown rents and revenues for
Midsummer 1727 to Michaelmas 1728 SRO E231/4.

21 SRO E322. The burghs accounted to and were discharged in Exchequer:
Clerk and Scrope, Court of Exchequer, p. 158.

22 For account of bishops' rents see SRO E202/10-15 Pipe Office; SRO
E221/2 Auditor's office; and SRO E424 Receiver General abstract accounts.

23 Aberdeen, Brechin, Caithness, Dunblane, Dunkeld (to 1732), Edinburgh,
Galloway and Moray: SRO E221/2.

24 Salary £200 p.a. plus £200 for subcollectors. Collectors general in
the period were Sir William Seton 1705-17; Archibald Murray 1717-26; Robert
Urquhart 1726-42 (SRO NBB RH2/4/435, 156 16 Aug 1726); James Fall 1742-4
(SRO NBB RH2/4/451, 243 11 Feb 1742); and John Hay of Belton 1744-59
(SRO NBB RH2/4/453, 94 1 Aug 1744).
to the Receiver General of Land Rents. Various subcollectors supervised the collection in the old bishoprics. In addition there were individual collectors for the bishoprics of Glasgow, Dunkeld (from 1732), Argyle and the Isles, Ross\textsuperscript{25} and Orkney, who made separate accounts in Exchequer. Most of the revenue of these five bishoprics was earmarked for specific payments, those from the first three being wholly or partly applied for educational purposes.\textsuperscript{26} The collections were usually leased out to individuals for fixed periods, the collector being allowed any surplus after the charges on the rents had been met.\textsuperscript{27} Arrears and delays in accounting by the collector general and other collectors were again common. In 1730, for example, collector general Robert Urquhart had not passed accounts for the previous four years.\textsuperscript{28} The amounts actually paid over to the Receiver General for civil list and other purposes varied from year to year but on average were little over £300 p.a. during the period.\textsuperscript{29}

\textsuperscript{25}For details of a dispute between the collectors and vassals of Ross on whether rents should be paid in money or in kind see SRO E227/1, 283-4 Exchequer order for regulating the Collection of the Bishopric of Ross c.1724.

\textsuperscript{26}See SRO E424. The Argyle revenues were gifted by Anne in 1705 to the Synod of Argyle for pious uses, including augmentation of ministers' stipends, the repair of kirks and manses, and the maintenance of schoolmasters and university bursars. Those from Dunkeld went to the provision of schools in the Highlands, and Glasgow's went to augment the ordinary revenue of the University of Glasgow. In 1725 £230 plus £10 p.a. was granted to the minister of Greyfriars Church in Edinburgh out of the rents of the bishopric of Ross: SRO NBB RH2/4/434, 460 21 Oct 1725.

\textsuperscript{27}For example see SRO E227/1, 425-6 20 Jul 1732 tack of bishops' rents of Orkney to John Hay of Balbeithan for 5 years to 1736.

\textsuperscript{28}SRO E231/5 debts owing by collectors of revenue 1730.

\textsuperscript{29}SRO E401/15-40.
Receiver General of Crown Rents and Casualties

The post of "Receiver General of Crown Rents and Casualties and Paymaster of Civil Affairs in Scotland" (also known as the Receiver General of Land Rents or simply the Receiver General) was held during pleasure and carried a £650 p.a. civil list salary.\(^{30}\)

All monies collected in crown rents and casualties and bishops' rents were paid over to him, either directly or through the relevant collectors. All customs and excise revenues warranted by the Exchequer for government expenditure were also remitted to him from time to time by the commissioners. In turn, again on receipt of a warrant from the barons, the Receiver General would pay from the monies in his possession all civil list and other government expenditure in Scotland.\(^{31}\) The Receiver General accounted yearly (usually Michaelmas to Michaelmas) to the Exchequer for the receipt and expenditure of all monies which passed through his hands, including civil list payments.\(^{32}\)

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\(^{30}\)It was a pre-Union post: W.R. Ward, *The Land Tax in Scotland 1707-98*, p. 291.

\(^{31}\)Whitefoord's warrant as Receiver General referred to "Paymaster of all such salaries, pensions and allowances as by any establishment warrant signed by us directed to be paid in Scotland" SRO NBB RH2/4/439, 316 ND.

\(^{32}\)The Receiver General normally accounted for the income and expenditure under the following heads:

1. Property rents - chamberlains, feuars, vassals of the Crown.
2. Sheriffs, bailies of baileries and regalities. Rents
3. Compositions on signatures.
5. Compositions on tacks of teinds.
6. Customs and salt.
7. Excise.
8. Fines and forfeitures of prohibited and uncustomed goods.
10. Exchequer fines.

See SRO Pipe Office E201/1/15-38 1724-48, Receiver General imprest account for civil establishment. Also SRO E400/11-19 1720-9 Accounts of Receiver General as paymaster of the civil establishment.
These accounts were often several years in arrears, the 1727–8 accounts, for example, not being signed until November 1731.\textsuperscript{33} Monthly abbreviates of all money received and issued by the Receiver General were sent to the Treasury.\textsuperscript{34} The Receiver General also acted as Receiver General for the land tax in Scotland, and from 1727 as cashier to the Board of Trustees. The task of dealing with and accounting for any miscellaneous income and expenditure arising from time to time in Scotland usually fell to him: "the office of Receiver General is the only Receipt of the Exchequer at Edinburgh."\textsuperscript{35}

Thus, for example, the Receiver General was given the task of receiving the forfeited estates money after the Fifteen, making accounts and remitting the money to London, and of accounting for the forfeited estates money after the Forty-Five.\textsuperscript{36}

There were four Receivers General for Scotland during the first half of the eighteenth century. The first, Archibald Douglas of Cavers (1708–18), had been Receiver of Crown Rents and Casualties and other funds before the Union. He was dismissed in 1718 having fallen foul of the Squadron Lord Justice Clerk Cockburn\textsuperscript{37} and was replaced by Sir Robert Sinclair (1718–25), a Squadron supporter. Following the

\textsuperscript{33}See SRO E400/18.

\textsuperscript{34}See CTEP vols I–IV generally; for example, CTEP I, p.480 28 Nov 1730.

\textsuperscript{35}SRO E225/2, 56.

\textsuperscript{36}CTEP I, pp. 71–2, 20 May 1729; SRO E715 Forfeited Estates after the 45, Accounts of the Receiver General.

\textsuperscript{37}Sedgwick, House of Commons, I p.393; ibid., II, p.9. Douglas received a £400 pension in 1721, was made Paymaster General for Scotland in 1725 and sat as MP for Dumfries burghs 1727–34.
sharp decline in Squadrone fortunes Sinclair was replaced in 1725 by Charles Cathcart (1725-9), an Argathelian. Cathcart in turn was succeeded in 1729 by his deputy and nephew Allan Whitefoord, also an Argathelian supporter, who held the post until his death in 1766. Whitefoord was an extremely able and conscientious administrator, coping with an ever-increasing work load. Unfortunately his various proposals for reforms in Scottish financial administration were ignored by successive governments.

Land Tax

By article nine of the Union land tax was to be raised and collected in the same manner as cess now is in Scotland but was henceforth subject to the regulations of the Great Britain Parliament. The quota for Scotland was fixed at £48,000 p.a. when the rate in England was four shillings in the pound. The sum was less than for many English counties and was the equivalent of eight months' old cess. The new land tax was to be raised under Scots law by traditional Scots practice and thus the new land tax was superimposed on the older system of cess collection. Annual land tax acts passed by Parliament imposed

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38 SRO NBB RH2/4/434, 352 3 Jun 1725.

39 SRO NBB RH2/4/439, 316 ND. Whitefoord was a relation of the earl of Stair: see Hume Campbell to Marchmont c. Nov 1726 EMC Polwarth V pp184-5.


41 Ibid., which forms the basis of this section.

42 The amounts rose and fell in proportion to the current land tax in England. Thus if the English rate was 2/- in the £ Scotland's quota would be £24,000 and if 3/- then £36,000.

the sum to be collected and set out the amount for each shire in proportion to the total. In turn the shire quota was levied from the heritors according to the valuations in the shire cess books.

Commissioners of supply, named for each shire in the annual Acts of Supply, usually on the recommendation of the local MP, were responsible for determining the value of estates and supervising the collection of the land tax. The commissioners appointed a collector, who actually collected the tax, and paid him a salary. The collectorship was usually a sinecure and more often than not the work was done by a deputy. Article nine of the Union, however, prohibited the payment of the commissioners and their clerks and hence from the beginning the local commissioners had an incentive to turn surplus land tax funds to unofficial purposes and to keep the money raised in their hands for as long as possible. This in turn created delays in remitting the money to the Receiver General in Edinburgh. The commissioners had considerable powers in apportioning the land tax among individuals: normally people could appeal only to the commissioners themselves, although in certain cases the barons of the Exchequer could enquire into grievances and stop the commissioners' valuations for a time. If a party continued to feel aggrieved he could present a bill of equity to Exchequer and a jury would decide the facts. The commissioners valuation of an estate also determined whether a person could qualify for the electoral roll.


45 Clerk and Scrope, Court of Exchequer, pp. 160-4.


47 Clerk and Scrope, Court of Exchequer, pp.160-4.
and the annual meeting of the commissioners and the appointment of collectors occasioned much local rivalry between competing political interests. In many cases commissioners were interested only in providing a place for a friend as collector, the collectors in profiting from their balances; both united in obstructing the Receiver General. On the other hand, many of the commissioners were also justices and indeed as the century progressed came to play an important role in local government, acquiring responsibility for the repair of roads and bridges, apprehending and detaining criminals, and even providing schools.

After the Union the royal burghs of Scotland continued to bear one-sixth of the land tax quota in return for their legal monopoly of trade. Throughout the eighteenth century, however, the smaller, more remote and decaying burghs had great difficulty in raising even their trifling quotas.

48 For details of struggle in Forfarshire for example see Memorial by earl of Panmure, John Maule and Sir James Carnegie ND c.1747 N.U.L. NEC1814. See also below p.295.

49 Ward, The Land Tax in Scotland, p.296. See also letters from Commissioners of Taxes to Treasury enclosing a petition from Allan Whitefoord, Receiver General of the Land Tax in Scotland 21 Jan 1748 PRO T1/333 Nos. 2-5.

50 Ward, The Land Tax in Scotland, p.289. The Convention of Royal Burghs apportioned the one-sixth among the various burghs: see S.A. Turner, History of Local Taxation in Scotland (Edinburgh, 1908), pp. 153-4. Periodically the whole burgh roll tax could be revised by commissioners appointed on oath but there were no further changes after 1737 in the tax roll and the burgh quotas became rigid: An Introduction to Scottish Local History, Stair Society vol. 20 (1958), p.384.

51 For the problems encountered by the royal burghs in attempting to preserve their monopoly of trade in the 18th century from encroachment by burghs of barony and regality and unfree burghs, and the largely unsuccessful attempts to get these burghs to shoulder some of the land tax burden in return for 'communication of trade' see Ward, The Land Tax in Scotland, pp. 290-4; Turner, Local Taxation, pp. 154-60. By 1737 the burghs of barony which had come to terms were only paying 2% of the burghal cess.
The Receiver General of Crown Rents acted as Receiver General for the land tax, being appointed on a yearly basis to receive each year's tax. As the Tax Office in London was both distant and ignorant of the special problems in Scotland, and as under Scots law he had authority over the local commissioners\(^52\) the Receiver General of land tax in Scotland assumed many of the functions exercised in England by the central office.\(^53\) He remitted all the land tax collected in Scotland to the Exchequer in London: none was spent in Scotland except some minor sums (£20 or £30 p.a.) on apprehending army deserters. Accounts of the monies received and remitted were sent to the Treasury, although these were often several years in arrears.\(^54\) In the period 1725 to 1748 land tax of £12,000 was levied in two of the years, £24,000 in ten, £36,000 in two and £48,000 in ten: thus in the twenty-four years about £816,000 was chargeable on Scotland for land tax, of which all but approximately £1,000 was eventually paid into the Court of Exchequer in London.

The Receiver General accounted to the Scottish Exchequer for the land tax.\(^55\) As he received no salary or poundage for his work on the land tax he had every inducement to profit by his balances instead of

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\(^{52}\) There was one receiver general to each county in England.


\(^{54}\) For example see CTP (1720-8) p.237-238 on backwardness of Receiver General Sinclair's payments; CTEP V p.279, 25 May 1743 on Whitefoord's arrears.

remitting them to London. Lengthy delays in accounting and remitting were therefore common. Further delay was caused by the tardiness of the commissioners of supply in making their accounts and sending money up to Edinburgh. Complaints that the Scottish land tax was in arrears began shortly after the Union and lasted throughout the eighteenth century; in fact landowners often faced genuine difficulties in paying the land tax, particularly in the 1740s and 1750s, years of economic depression. The principal weapon at the Receiver General's disposal was to quarter parties of troops on those in arrears but there were serious difficulties in this procedure.

The size of the party had legally to be in proportion to the size of the arrear and as a result small units were so roughly handled that commanders became unwilling to use them. Remote places such as

56 Ward, The Land Tax in Scotland, p.290. One problem faced by most of the Receivers General of the land tax in this period was the obtaining of allowances for expenses. Cathcart (perhaps because even in 1766 after his death his accounts had still not been cleared) despite several petitions was totally unsuccessful. Whitefoord received no payments for all his additional work. As Ward points out "the Treasury could hardly state more clearly the view that the Receiver General must make his living through the use of the balances in his hands" (Ward, The Land Tax in Scotland, pp. 303-5). For Sinclair see CTBP I, p.205 3 Jun 1729; ibid. p.403 25 Jun 1730. Cathcart - CTBP I, p.126 7 Aug 1729; CTBP II pp.49-50 29 Apr 1731; SRO NNB RH2/4/445, 255 2 May 1735; CTBP III p.17 1 May 1735 and ibid. p.39 29 Jul 1735. Whitefoord - PRO T1/454 no.116; PRO T1/469 no.286; PRO T1/518 no.114.

57 SRO E217/3/5. The land tax accounts for 1730 and 1731 were not passed until Feb 1738.

58 See SRO E217/3/5. Also for example SRO E231/5 1730 on Cathcart's and Whitefoord's arrears.

59 Ward, The Land Tax in Scotland, p.294; Report Commissioners of Taxes to Treasury 1723 CTP (1720-8), 237 on backwardness of Sinclair's payments; SRO E224/2, 458; CTBP V p.279 25 May 1743 on Whitefoord's arrears for 1740-1; SRO E231/5 debts owing by collectors of revenue 1730 including Cathcart, Whitefoord etc; Whetstone, Scottish County Government, pp.77-9.

60 On the arrears of cess in Berwickshire 1726-7 and the difficulties involved in quartering troops see HMC Polwarth V p.12 warrant from Allan Whitefoord ordering a party of troops to "quarter upon the commissioners of supply in the shire of Berwick or their collector until payment be made of the sum of seven hundred pounds sterling"; Whitefoord to Marchmont 26 Jun 1728 ibid. p.12. Also on problems of quartering see Thomas Hay to Tweeddale 3 Mar 1743 NHS YP7054, 8.

61 PRO T1/285 no.15 9 Feb 1734.
Orkney and Shetland were inaccessible for such long periods that quartering was almost impossible. Moreover the law concerning the land tax in Scotland was complex and in a state of some confusion, and no sound statutory basis had been provided at the time of the Union. Whitefoord pressed for a radical overhaul of the law for over forty years, even submitting draft acts, without success. These difficulties, together with the remoteness of many areas of Scotland from which the land tax had to be collected and the "obstructive nature of the local administration" meant that the "collection of the land tax in Scotland was one of the great unsolved problems of eighteenth century administration".

Remitting the land tax monies to the Exchequer in London was often a hazardous process. Douglas refused to send money to London by wagon without special orders as the cost of a guard was prohibitive. Remittance by bill of exchange was also difficult and expensive.

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63 See Memo of Whitefoord on defects of law for collecting land tax in Scotland PRO T1/285 no.15 9 Feb 1734: the land tax "has for several years laboured under many difficulties which have rendered [sic] the collecting of it exceedingly troublesome, and in some cases almost impracticable..." The memorandum called for a speedy remedy but none was forthcoming. See also Lord Advocate and Solicitor General report concerning the land tax 2 Feb 1747 SRO E312/1 - which discusses the difficulties of quartering.

64 For Whitefoord's reports, memos etc. see PRO T1/325 no.48 18 Aug 1747; PRO T1/331 nos. 1-4 22 Jan 1748; PRO T1/333 no.2 21 Apr 1748.


66 See ibid., pp. 300ff.

67 In the 1720s a premium of 1% or $\frac{1}{2}$% was usual: PRO T1/245 no.246. See also SRO CE1/2 14 Dec 1726 and 29 Dec 1726.
The founding of the Royal Bank in 1727 provided a new channel for remitting these monies. In political terms the Royal Bank was an Argathelian creation and it was therefore natural that the Argathelian Receivers General Cathcart and Whitefoord should make use of the facilities it offered. There was also a personal connection between the Royal Bank and the Receiver General, for Cathcart was one of the first nine extraordinary directors, while Whitefoord held the position of Chief Cashier of the bank from 1727 until his retirement on ill-health in 1745 when he was made an ordinary director. His deputy George Innes was appointed Cashier. First unofficially, and then through contact with Paymaster General Pitt, the Royal Bank gained the use of the land tax balances in return for finding bills for the Receiver General and paying the Scots garrisons. However attempts to solve the problem of remittances by means of the Receiver General supplying the Scots garrisons with money for pay and subsistence, and taking in exchange bills on the Paymaster General in London never really worked satisfactorily. Sometimes there were too few troops in Scotland; more often colonels were tempted by the favourable exchanges to profit "by taking their subsistence money from private persons for their own lucre, instead of from the Receiver General" despite Treasury orders in June 1723 and October 1740 to the contrary.

68 For example see SRO NBB RH2/4/441, 107 18 May 1731.


Window Tax

A new assessed tax, the window tax, was imposed in 1747. The act placed the management of the duties in the hands of the land tax commissioners of supply. Several inspectors general were appointed to supervise the overall collection in Scotland and separate collectors were appointed by the commissioners to bring in the money. Excise supervisors and general supervisors were to help the inspectors as necessary. All appeals concerning the duties and assessments lay firstly with the commissioners and then to the justices of the peace at quarter sessions. All money collected was sent to the Receiver General who remitted it with his accounts to London. The new tax had a difficult inception in Scotland. There was a delay in making surveys of the counties. The commissioners claimed that the poundage was too miserable to offer the collectors and there was some reluctance to accept the post of collector. Taxpayers, led by the clergy, refused to pay. As a result, only small amounts were raised initially and these failed to reach the Receiver General in Edinburgh. The Treasury wrote to Lord Advocate Grant and others.


72 PRO T1/325 no.73 8 Sep 1747.

73 Duplicate accounts were lodged in the Scottish Exchequer: Pipe Office SRO E204/1/1 25 Mar 1747 - 5 Jul 1766. See also SRO E326/1; General ledger of monies received and paid 1724-66 SRO GD1/169/1.

74 Baron Maule to Scrope 6 Aug 1748 PRO T1/329 no. 43.


76 PRO T1/331 nos. 1, 2, 27 22 Jan 1748, 20 Jul 1748; PRO T1/326 no.64 25 Mar 1748.
in Edinburgh to enquire into why little was being raised and
Newcastle got Ilay, somewhat reluctantly, to assist him in "putting
an end to the evil in a gentle but at the same time in an effectual
manner". Finally in 1755 Newcastle pushed through a bill which
took the collection of the tax out of the hands of the commissioners
of supply and created a new service, with two surveyors general in
Edinburgh and twenty local surveyors in the shires. Thereafter
collection of the tax proceeded on a more efficient basis.

Stamp Duties

Various stamp duties were also levied in Scotland after the
Union. The commissioners for stamp duties in London were responsible
for Scotland and appointed, on Treasury directions, a head distributor
and collector of stamp duties for Scotland. Under him were various
distributors of stamped paper and collectors of duties. There was
also a small central office in Edinburgh with a comptroller, solicitor
and various clerks. All money collected was remitted to London:
£23,871 was paid into the English Exchequer between 1716 and 1731.
Arrears in remitting the duties were common.

Local Taxation

Various minor local taxes and 'customs' duties were also collected
and spent locally in the eighteenth century. In a small number of

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77 BM Add MSS 32, 736 f 271-2, 449-50, 531 quoted Ward, The Land Tax in
Scotland, p. 297.

78 A. Murdoch, The People Above: Politics and Administration in Mid-
Eighteenth-Century Scotland (Edinburgh, 1980), pp. 67-8; Ward, The Land
Tax in Scotland, p. 298.

79 From OTP (1720-8) pp. 236-7 1723 it would seem that they were first
imposed in 1711. John Hamilton was appointed head distributor in that year.

80 The head distributors and collectors in this period were John Hamilton
1711-23; Ventrice Columbine 1723-9; William Jones from 1729 SRO NBB RH2/4/439,
286 3 Jun 1729.

81 PRO TI/276 no. 26 28 Feb 1732, "the annual accounts of said duties terminating
at that time". New duties were imposed after 1732.
parishes a rate for poor relief was levied on the heritors and in even fewer a small levy to provide schooling. In certain burghs, notably Edinburgh and Glasgow, there were local taxes or excises on beer and ale, and various burghs also imposed petty customs duties on inland trade and harbour and market dues. These local customs and excise duties co-existed with the larger national duties on the same commodities. The various petty taxes were spent locally. There was also some, though not much, local rating on the heritors in the shires, usually for the purpose of repairing roads and bridges.82

In East Lothian, for example, as in other counties, the commissioners of supply were empowered to tax the heritors 10/- for every £100 of valued rent for the repair of bridges and highways within the county.83

The Convention of Royal Burghs, in addition to the burghal quota of cess, could also impose extra taxes on the burghs for special purposes, usually to provide for the execution of large public works such as building or repairing harbours.84 Local burgh rating was used only as an exceptional expedient. Burgh expenditure was normally met by income from common property and petty customs and other indirect taxes or where there was relatively heavy capital outlay, by borrowing or through a grant from the Convention.85

82 Turner, Local Taxation, pp. 27-8, 40, 117, 131, 137-9, 143, 180-2, 208-14.

83 See petition commissioners of supply and heritors of East Lothian to George I 4 Jul 1721 CTP (1720-8) pp.63-4.

84 Turner, Local Taxation, p.157.

85 Ibid., p.168.
Conclusion

The collection of crown rents in Scotland raised only negligible sums towards the cost of civil government expenditure and in practice revenue was sacrificed to the political spoils system. Collectorships were given to those with local influence in order to help build up government interest in the constituencies and much of the money collected was gifted away for similar purposes. The land tax did manage to raise substantial sums, the bulk of which were remitted to London, but the local nature of the system of assessment and collection, coupled with the inbuilt incentives to delay forwarding the money raised meant that collection was always in arrears. The window tax suffered similar difficulties. As Lord Chancellor Hardwicke bemoaned in 1752, "some method to be sure should be taken to make Scotland pay her taxes, but could any ministry hit upon that method".86

CHAPTER FIVE: THE COURT OF EXCHEQUER

Introduction

The introduction of the English customs and excise systems in 1707 necessitated restructuring of the old Scottish Exchequer and Treasury. By the seventeenth article of Union, "the laws concerning regulation of trade, customs and such excises, to which Scotland is by virtue of this Treaty to be liable, were to be the same in Scotland, from and after the Union as in England". As a consequence, the nineteenth article of Union provided "That there shall be a Court of Exchequer in Scotland after the Union for deciding questions concerning the revenues of customs and excise there having the same power and authority as the Court of Exchequer has in England and that the said Court of Exchequer in Scotland have powers of passing signatures gifts and tutories and in other things as the Court of Exchequer at present in Scotland hath". A new Court of Exchequer in Scotland was duly established by act of Parliament in 1708, replacing the old Scottish Exchequer and Treasury.

The court in a general sense inherited the judicial and administrative functions of the old Scottish Exchequer and Treasury, amended or extended to deal with the new financial system. Judicially, the barons of the Exchequer bench determined all cases brought before it involving the payment of public revenues, including customs and excise, and debts owing to the Crown. The court's administrative powers were

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1 Act 6 Anne c26. For details of the act see Scrope, Court of Exchequer, pp. 123-56. This document was written between 1727 and 1752, presumably for internal use as a working manual. It was eventually privately published in Edinburgh in 1820. The powers of the court under the 1708 act were extended from time to time by warrants under the Privy Seal. On the history of the introduction of the new Court of Exchequer in Scotland see Riley, English Ministers, pp. 75-86.
delegated to it by the London Treasury. One of the major consequences of the Union was the introduction of London Treasury control over Scottish revenue and expenditure: in this respect the Exchequer functioned as an administrative arm of the Treasury in Scotland. Ultimate responsibility for all public revenues lay with the Treasury and most administrative business dealt with by the Scottish Exchequer had to obtain Treasury approval or authority at some stage; in particular, except in a few minor cases, all warrants for payment of money required prior Treasury approval.

The administrative work of the Exchequer involved the auditing of all Crown revenue accounts in Scotland; the general oversight of the collection of public revenues and of revenue officers; various tasks relating to Crown gifts of land, Crown casualties, offices and pensions; supervision of the Scottish civil list; and the preparation of reports on all matters referred to them by the Treasury. The barons were also responsible for issuing warrants for the payment of money on the authority of the Treasury. Thus with the new Scottish Exchequer, as before the Union, "those responsible for the Crown's financial administration were also judges in financial matters".

Supervision of the customs and excise services was the most important aspect of the work of the Exchequer: "nothing belongs to it more properly than what relates to the improvement of the revenue from the two principal branches thereof, the Customs and Excise, and the enforcement of such penal statutes, as are so necessary for the

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3 Ibid., p. 75.
preservation of the balance of our trade with foreigners, and the
support of the Crown". As the new system of customs and excise
collection was English, and as the Exchequer was to be responsible
for administering revenue statutes which were largely framed with
reference to England, the new court was modelled on a simplified
version of the Westminster Exchequer. The court was "designed
to bring certain things into line with English practice, and its
procedure and constitution was English in pattern". The judicial
functions of the court were brought into line with those of the
English Exchequer (although unlike the English Exchequer they were
confined to revenue matters) and various forms of English procedure
were introduced. Certain Crown revenues, however, generally those
concerned with property - Crown rents, various feudal casualties and
bishops' rents - continued to be collected and accounted for in the
same way as before the Union. The court also inherited the
specifically Scottish functions possessed by the old Scottish
Exchequer and Treasury in matters relating to the revising, compounding
and passing of signatures and the power of examining grants and gifts
and returning them for consideration. The extent of change in 1708
must not, therefore, be exaggerated; outwith the field of customs and
excise revenue the new court was the old Scottish Exchequer and Treasury
restructured rather than a completely new introduction. As the barons

4 Clerk and Scrope, Court of Exchequer, p. 49.
5 Riley, English Ministers, p. 81.
6 J.A. Lorimer, A Handbook of the Law of Scotland, (3rd edition, Edinburgh,
7 Clerk and Scrope, Court of Exchequer, p. 157. See also chapter 4 above.
8 Riley, English Ministers, pp. 77, 83; A.L. Murray, "Administration and
Law" in The Union of 1707: Its Impact on Scotland, ed. T.I. Rae (Edinburgh,
9 Clerk and Scrope, Court of Exchequer, p. 99.
informed the Treasury in 1730 "... we do not look upon the Court itself with the several members of it to be a new erection, but to have been constitute in place of the former Court of Exchequer in Scotland in consequence of the 19th Article of the Treaty of Union, under different names, in order to adapt it to the practice of the Exchequer in England". In fact, while retaining many of its old functions, the court was hampered by the adoption of English forms and procedures and much of the flexibility of the pre-Union Exchequer was lost.

The Barons

The Exchequer bench was to comprise a Lord Chief Baron and four ordinary barons, appointed by the Crown by letters patent under the Great Seal of Scotland. Candidates were to have been either sergeants or barristers of law at the 4 Inns of Court or advocates of the College of Justice for 5 years. Once appointed the barons remained in office during good behaviour. From the accession of George I it was established that, unlike the English barons, they were not removable on the death of the sovereign.

10 PRO T1/273 No23 26 Feb 1730.

11 Ferguson, Scotland: 1689 to the Present, p. 159.

12 By section 2 of the 1708 act the Lord High Treasurer was to be a judge of Exchequer and by section 13 he was to have the same full powers relating to Scotland as to England. This power fell to the Lords of the Treasury when there was no Lord High Treasurer. No Lord of the Treasury ever sat on the Exchequer bench in this period (1707-50): Clerk and Scrope, Court of Exchequer, p. 147. No quorum was stipulated ibid p.156.

13 Ibid., p. 125.

14 Ibid., p. 126; Riley, English Ministers, p. 80.
inherited the powers and privileges of the old Lords of Exchequer and the old Scots Treasury Lords. 15 They were also to have the privileges and immunities of the senators of the College of Justice except that they could be pursued in the Court of Session. 16 In 1729 the barons were placed on the same rank of precedence as the senators; seniority alone was to decide the ranking except that the Lord President of the Court of Session was given precedence over the Lord Chief Baron. 17 Throughout the period, in order to combine on the bench both experience of the newly introduced English revenue system and English revenue law and a knowledge of Scots law, the Lord Chief Baron and one ordinary were always English and the remaining three ordinaries Scots. "We assisted one another with our advice, and what knowledge of the laws we had attained in either nation, so that everything was transacted amongst us with great friendship and unanimity, as well as justice." 18 From the Ministry's point of view, the presence of English barons was seen as a means of counteracting the possible influence of Scottish political interests on

15 Shortly after the Union it was queried whether a baron of the new Scottish Exchequer could sit as an MP, the objection being based on the Act of Settlement 1701 which stated that holders of new offices could not sit in Parliament. It was decided that "the office of judge in Exchequer was not only an old one, but even more ancient than any other, and that the new name of Baron made no alteration in the office". Clerk and Scrope, Court of Exchequer, p. 104. Scrope was elected for Rippon in 1722 while Miller was MP for Petersfield and was successfully re-elected at a bye-election in 1727 on his appointment as baron but did not stand at the general election of that year. Sedgwick, House of Commons, vol II pp. 258, 413. Barons were debarred from being MPs by 7 George II c16 s4 - 1734.

16 1708 act section 10: Clerk and Scrope, Court of Exchequer, p. 131.

17 Ibid., p. 143.

the bench and making the Exchequer more amenable to Treasury control. The Scottish manager was rarely consulted by the Ministry on the appointment of English barons. Until 1775, the Ministry always ensured that the post of Lord Chief Baron was filled by an Englishman. Baron Clerk believed that it should be held by a Scotsman and set his sights on the post. He was passed over, however, in both 1726 and 1741 (despite the support of Scrope) in favour of inferior English candidates. He was particularly disappointed and disgruntled in 1741: "those who have friends in any great offices in England will always be preferred to any Scotsman.

Arniston complained to Tweeddale "that it is the worst judged thing in the earth to fancy that it is either necessary or fit to have the chief of that court ane Englishman, the jurys never will have a proper regard for them ... let the English ministers fancy what they please".

The Lord Chief Baron received a salary of £1,000 p.a. on the Scottish civil list and the ordinary barons £500 p.a. each. As an incentive to go to Scotland the English barons, including the Lord Chief Baron, were paid an additional £500 p.a. on the civil list.

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19 For example see Clerk to Lawrence Charteris 29 Sep 1732 SRO GD 18/5245, no.103; 9 Nov 1732 ibid. no.105; 18 Nov 1732 ibid. no.106.
20 See Bowles to Clerk 7 Nov 1741 London SRO GD 18/2863, no.41.
22 Arniston to Tweeddale 8 Mar 1743 NLS YP7054, 22.
23 For example see SRO NBB RH2/4/438, 82 29 May 1728 (Miller); SRO NBB RH2/4/438, 83 29 May 1728 (Lent); SRO NBB RH2/4/441, 18 5 Oct 1730 and SRO E227/1/409 (Edlin); SRO NBB RH2/4/451, 202-3 12 Nov 1741 (Idle). The practice appears to have originated with the appointment of Scrope as a baron in 1708. "As an encouragement for him to accept and in consideration of his giving up his practice at the bar in England" he was granted £500 p.a. over and above the normal salary in 1708, and a further £500 p.a. in 1710 to cover his travel expenses as a result of his enhanced role in Harley's administrative system for Scotland: see Riley, English Ministers, p.162. The additional £1,000 p.a. was ratified by George I, and on his appointment as secretary to the Treasury in 1724 he continued to receive this yearly sum. The payment was confirmed in 1728, then made payable for life in 1734: see SRO NBB RH2/4/438, 77 28 May 1728; SRO NBB RH2/4/444, 93 15 Apr 1734.
At the beginning of 1725 the bench consisted of Lord Chief Baron John Smith, an Englishman, appointed in 1708; Sir John Clerk of Penicuik, also an original member of the court; George Dalrymple; Thomas Kennedy; and Matthew Lant, another Englishman with estates in Sussex (see Table D). Smith was a baron of the English Exchequer before he was appointed to Scotland, apparently on the nomination of Godolphin. He was promoted to Lord Chief Baron on the resignation of Seafield in 1708 and according to Clerk was "vastly superior to the Earl in learning, wisdom and discretion, so that we who were his brethren in the Exchequer lived very happily with him". While considerably more able than most of the 'English' barons, Smith shared various characteristics with them: he normally spent the vacations on his English estates, in this case in Leicestershire, rarely attended the court during the winter session, and was not anxious to become embroiled in the struggle between the Argathelians and the Squadrone, although his sympathies after 1714 undoubtedly lay with the former. Sir John Clerk of Penicuik had originally been appointed through his standing with Queensberry and after Queensberry's death he took relatively little part in Scottish political affairs. George Dalrymple, the brother of the second earl of Stair, had been nominated by the earl of Loudon to fill the place vacated by the promotion of Smith in 1708. Like

24 See Riley, English Ministers, p. 79.
26 Riley, English Ministers, p. 163.
27 Ibid., p. 271.
28 Ibid., p. 78.
29 Ibid., p. 79.
TABLE D

Exchequer Barons

**Midsummer 1724**
- LCB Smith
- John Clerk
- George Dalrymple
- Thomas Kennedy
- Matthew Lant

**1726-7**
- LCB Lant (29 June 1726)
- Clerk
- Dalrymple
- Kennedy
- Edward Miller (20 July 1727)

**1730**
- LCB Lant
- Clerk
- Dalrymple
- Kennedy
- Edward Edlin (17 August 1730; Miller died 21 May 1730)

**1741**
- LCB Idle (2 November 1741; Lant died 24 October 1741)
- Clerk
- Dalrymple
- Kennedy
- Edlin

**1745**
- LCB Idle
- Clerk
- Kennedy
- Edlin
- Lawrence Craigie (15 August 1745; Dalrymple died 2 August 1745)

**1747-8**
- LCB Idle
- Clerk
- Kennedy
- Edlin
- John Maule (12 May 1748; Craigie died 9 December 1747)
the rest of his family he was neither Argathelian nor Squadrone, "the Dalrymples never being anything but a Dalrymple party".

Thomas Kennedy, previously solicitor then Lord Advocate under Harley, had been appointed in July 1721 on the influence of Argyll to replace Alexander Maitland. Baron Edlin was later to complain that "E. Kennedy had always acted as if he thought he was set upon the Bench for no other purpose than to protect his Countrymen against the oppressions of his English Brethren". Matthew Lant was appointed on the promotion of Scrope to be secretary of the Treasury in 1724. He was described by Clerk as "a poor, harmless, timorous man". "Mr. Lant seems to be an honest man", wrote Milton to Ilay, "and we'll endeavour to possess him with useful matters of Fact".

As early as 1716 at least three of the barons - Smith, Scrope and Maitland - favoured the Argathelian interest. This position was not seriously disturbed during the years of conflict with the Squadrone and by 1725 Argathelian influence remained strong on the Exchequer bench. Nevertheless Argathelian strength must not be exaggerated: from 1726 to 1747 Kennedy was the only staunch Argathelian and it is clear that the politically 'neutral' barons - Dalrymple, Clerk, Lant - held the balance. Compared with the customs

30 Riley, "The Structure of Scottish Politics and the Union of 1707", in The Union of 1707, ed. Rae, p. 17.

31 Riley, English Ministers, p. 271 n.1. Kennedy was originally a Tory but had moved into favour with Argyll to whom he owed his return as MP for Ayr burghs in 1720: Sedgwick, House of Commons, vol II p. 186.

32 Edlin to Pelham 14 Feb 1754 N.U.L. NEC 1891.


34 Milton to Ilay July 1726, NLS SC16,534.

35 Riley, English Ministers, p. 271; Lovat to Forbes 7 Jul 1716 M&G II p. 126. Maitland had been put in on Argyll's influence: Riley, English Ministers, p. 78.
and excise commissions and, as we shall see, the judiciary, the Exchequer bench was much less political.

Smith died in 1726, and in June of that year Lant was promoted to Lord Chief Baron. Lant was frequently ill in the 1730s and often unable to go to Scotland. For over a year there were only four barons until the appointment of Edward Miller, an Englishman. He was not politically active and his appointment no doubt reflected Walpole's desire to counterbalance the growing Argathelian influence in Scotland. He died in May 1730 and was replaced by an English barrister, Edward Edlin, who went on to become a baron of long standing. "I believe", wrote Ilay to Milton on Edlin's appointment, "you will easily be better with him than anybody else because I believe Sr Rob had talked to him in a way that will facilitate his taking the part of our friends. There is another thing, that he will stay more in Scotland than any of his Predecessors, and it was so understood upon his being named". Thereafter the bench remained unchanged until the death of Lant in October 1741. His place

36 See R. Campbell to Delafaye 2 Jul 1726 SRO RH 2/4/324, f.178.

37 Lant appears to have been a follower of Wilmington: see SRO GD 18/2881 Letters of Lant and Wilmington to Clerk 1728-42.

38 SRO NBB RH2/4/441, 11-12 17 Aug 1730.

as Lord Chief Baron was taken by John Idle, on the influence of Lord Chancellor Hardwicke. 40 George Drummond informed Clerk that Idle was "a great favorit of My Lord Chancellors even so great that Sir R W and Lord I behoved to submit to his Lordps choyce of Mr. Idle ... your good friend Baron Scrope did all that was in his power to serve you, but the Benches must be fill'd to my Lord Chancellors satisfaction it seems where the English law is practizd". 41 Idle had the reputation of being a very heavy drinker. 42 Thomas Hay later complained to Tweeddale that "this Chief Baron is a man of good understanding but no Lawyer and ignorant of practise tho better than Lant. They send us down English barons as if they knew the law better and yet I am sure that though our Lawyers know Little of these matters till they study it there are fifty Lawyers here who in half a year could acquire more knowledge than any in the Court. It is really shamefull to see Judges made so bad a figure". 43 Idle soon became "much under the influence of Milton". 44 "I cannot say", wrote Hay to Tweeddale in 1743, "that your Lordship is at all well situated in that court". 45 George Dalrymple's death in August


41Drummond to Clerk 28 Nov 1741 London SRO GD 18/3228.

42Hay to Tweeddale 6 Jan 1743 NLS YP7053, 37.

43Hay to Tweeddale 24 Jul 1742 NLS YP7048, 84.

44Hay to Tweeddale 27 Jul 1742 NLS YP7048, 95.

45Hay to Tweeddale 20 Jan 1743 NLS YP7053, 84.
1745, after thirty seven years service on the bench, the first of a Scottish baron since Maitland in 1721, coincided with the last throes of the renewed Argathelian - Squadrone conflict of the early 1740s and the outbreak of the Jacobite rebellion. Ironically, Tweeddale succeeded in obtaining the appointment of Lawrence Craigie, brother of Lord Advocate Robert Craigie, one of his few successes as Secretary of State. Craigie died only two years later, however, in December 1747, and in May 1748 Ilay succeeded in obtaining the post for his political secretary John Maule as part of the compromise with Newcastle and Pelham whereby Arniston was made Lord President and Charles Areskine Lord Justice Clerk.

Of the ten men who sat on the Exchequer bench between 1725 and 1748 only Clerk and Smith had any real abilities. Instead of appointing Englishmen skilled and experienced in revenue business, the Scottish Exchequer bench was regarded more as a second-rate consolation for those unable to secure more prestigious English posts and none apart from Smith displayed any great talent or enthusiasm. Both chief barons, Lant and Idle, failed to give the court any positive leadership and the latter was only too typical in living up to his name. In the absence of suitable chief barons the effective leadership of the bench fell for much of the time to Sir John Clerk.

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46 Craigie to Tweeddale 3 Aug 1745 SRO RH2/4/341 f.141 "I will not Pretend to Recommend Any Body for his successor But I will be Allowed to Observe that hitherto too little Care has been taken to fill up that Court with People of firmness and zeal for the Interest of the Revenue".


48 See below pp.545-8.

49 See Clerk to Drummond 18 May 1732 SRO GD 18/5245 no.97.
Despite, or perhaps because of, all his wide-ranging interests and undoubted literary and financial talents, Clerk was not really a first-rate administrator. He too often neglected his Exchequer duties in favour of other pursuits and, although not entirely his fault, few of his paper schemes were turned into practical administrative reality. In short, the Exchequer in these years lacked both leadership and barons of ability and the initial post-Union momentum was soon dissipated.

The four Exchequer terms were short and the barons only sat for a total of about three months each year. During term time the barons usually met four or five times a week and on exceptional occasions even on a Saturday. Most English barons returned south to London or their estates immediately term was over and were often late in arriving back for the new term. Many of the Scottish barons also retired to the country when the bench was not sitting and Clerk was typical in that he preferred to spend his time on his estate rather than become involved in political affairs.

Exchequer Officers

The 1708 Act dealt very generally with the appointment of officers. The Exchequer was to have "the several officers following,

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50 See Murray "Administration and Law", in The Union of 1707, ed. Rae, p.30.

51 1708 Act Section 9; Clerk and Scrope, Court of Exchequer, pp.139-41; Clerk's Memoirs, ed Gray, p.73. Terms were Martinmas 3-29 November; Candlemas 23 Jan-12 Feb; Whitsuntide 1-22 June; and Lammas 7-26 July.

52 Minute Books were kept of the barons' meetings on Treasury and revenue business (SRO E305/3-4 4 Nov 1725 - 6 Aug 1747) and registers were kept of all orders issued by them (SRO E305/1-2 1710-54).

53 For example see Bowles to Clerk 29 Oct 1726 London SRO GD 18/2863 no.8.
that is to say, the office of Queen's Remembrancer, the office of
Lord Treasurer's Remembrancer, the office of Clerk of the Pipe and
such other officers now in being in Scotland relating to signatures,
gifts and tutories as the Queen's Majesty her heirs and successors
shall from time to time think fit and proper to be constituted and
appointed. 54 In fact the Exchequer was divided into four main offices
during this period: King's Remembrancer's office, Lord Treasurer's
Remembrancer's office, Clerk of the Pipe's office and Auditor's office. 55
Each had clearly defined tasks but there was no rigid division of work:
in particular revenue accounts progressed through the various offices
in turn, each office acting as a check on the other.

The principal holders of these offices were appointed by the Crown
by letters patent under the Great Seal of Scotland and for such term of
office as the Crown determined: in practice all four were held for
life. They had a power of deputation and could also appoint such
clerks and attorneys under them as necessary. 56 Much of the work
was in fact done by deputies. 57 In theory the barons could refuse to
accept unsuitable officers appointed by the Crown, otherwise, as Clerk
and Scrope virtuously pointed out, "it might be in the power of a
minister of state to procure gifts of these offices to insufficient

54 1708 Act section 3.

55 While the office of Auditor was not expressly established by the
1708 act, its existence was implied by section 11.

56 1708 Act section 3; Clerk and Scrope, Court of Exchequer, p.28.

57 When these deputies were on leave the barons usually nominated
a temporary 'stand-in' in order "that there may be no stop or delay in
the carrying on and despatching of the business...": see SRO E227/1/335
6 Mar 1728.
persons and so render the business of the Court impracticable": 58 however the barons never exercised this power during the period. The principal holders, as well as all other officers under them, were subject to the direction and control of the barons and could be removed, suspended or fined by them for neglect of duty and crimes in office, 59 but again this power does not appear to have been used. All established Exchequer officers were paid a salary on the civil list. In addition various officers were permitted to take fees according to scales drawn up by the barons. The work of these officers increased rapidly in the years following the setting up of the court and various new clerks and attorneys were employed, so that by 1726 the barons had to petition the Treasury to take on more rooms to accommodate the staff and the increasing volume of records. 60 In the period under study, however, while the amount of work continued to increase little or no additional staff was taken on.

The office of the King’s Remembrancer was pre-eminent, dealing with the widest and most important range of Exchequer business. Most of the work was done by a deputy. The staff comprised four attorneys and various clerks, appointed by the King’s Remembrancer. 61 The office was loosely divided into a 'law department' and a 'treasury department'. 62 On the law side, the office did most of the preliminary

58 Clerk and Scrope, Court of Exchequer, p.129.
59 1708 act section 4.
60 Exchequer barons to Treasury 16 Feb 1726 CTP (1720-8) p.394.
61 Clerk and Scrope, Court of Exchequer, pp.284-8.
paper work in connection with trials and all judgements of the barons were recorded there. All writs and processes of Exchequer were issued from the office and all recognizances, informations, compositions, witnesses commissions, fines, and the like were entered in it. All signatures were registered in the office and fees paid there. On the treasury side all accounts of public revenue were examined and recorded in the office after being made up by the auditor. The accounts of feu and blench duties payable by the royal burghs were actually discharged by the King's Remembrancer. It was also the task of the King's Remembrancer to ensure that sheriffs gave good security for the execution of their offices and paid the balance of their accounts. Finally the office prepared most of the reports referred to the barons by the King, Parliament or the Treasury.

When the Exchequer was established in 1708 the principal offices, with the exception of Lord Treasurer's Remembrancer, were granted jointly to two people, one English the other Scots, for life and to the survivor, in order to bring English experience to the new court. The post of King's Remembrancer was held jointly from 1708 to 1740 by John Tarver and William Steuart. The former had given up his legal practice in England to come to Scotland, for which he received an additional £100 p.a. salary in recompense, while Steuart had held office as principal clerk to the Scottish Exchequer from 1705 to 1708.

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63 Clerk and Scrope, Court of Exchequer, p. 84; SRO E353 Books of Rules and Judgements.

64 Clerk and Scrope, Court of Exchequer, p. 276.

65 See Idle to Tweeddale 21 Dec 1742 NLS YP7052, 72.

66 Originally the King's Remembrancers received £100 p.a. each plus the additional £100 p.a. to Tarver; see Riley, English Ministers, p. 80 n2; George I civil list 1714 SRO E223/1/1. However by 1724 Steuart was receiving £400 and Tarver £200.
On Tarver's death in 1740 he remained as sole King's Remembrancer until his own death in 1768. He was a prominent Argathelian supporter, being returned to Parliament on the Argathelian interest for nearly thirty years, first for Inverness burghs 1713–22, then for Ayr burghs 1722–34 and finally for Elgin burghs 1734–41. He did not stand in 1741. He also held several other posts, mostly sinecures which he owed to Argyll's interest: Secretary to the Prince of Wales for Scotland 1714–27, Director of the East India company 1716–19; Paymaster of pensions 1731–42; and Overseer of the King's Swans from about 1739. The total income from his offices was worth about £4,400 in 1739. Most interestingly, he was the confidential agent of Argyll and Ilay. Hervey relates in his Memoirs the famous tale that around 1724 Argyll and Ilay had a quarrel, after which, for many years, they never spoke to one another but "by means of a Mr. Stuart, who went between them, an adroit fellow and common friend to them both, they acted as if they had been the most intimate and the most cordial friends". Although he appears to have owed his position originally to Argyll he sided with Ilay in the late 1730s: the political split between the two brothers may have played a part in his decision not to contest the 1741 elections.

The bulk of the work of the office was done by William Bowles, deputy King's Remembrancer until 1738. Bowles concurrently held the posts of Exchequer solicitor and solicitor for stamp duties in

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67 At £500 p.a. For Tarver's death - 5 Apr 1740 - see SRO NBB RH2/4/450, 14.


In 1737 he was promoted to the post of London agent for the Exchequer, customs and excise. He was a 'career administrator', hard-working and able, willing to take on extra work and anxious to improve the running of his office. In 1725 he was paid a lump sum of £300 and an annual payment of £20 thereafter for his additional services in keeping account of all seizure money paid into the hands of the receiver general of customs.

The Lord Treasurer's Remembrancer was principally concerned with the accounts of the sheriffs, stewarts, and bailies of regality. He, or more commonly his deputy, issued the charge against the sheriff and others from Responde Books sent to his office from Chancery, and they in turn were accountable to the Treasurer's Remembrancer for these charges. Other public revenue accounts were enrolled in the office before being sent to the Clerk of the Pipe. The Lord Treasurer's Remembrancer for most of this period was William Allanson appointed for life in 1708 at £200 p.a. By 1734 Allanson had not attended the court for twenty years and baron Clerk sought to persuade him to resign in favour of Allanson's nephew (who had been acting as deputy) and Clerk's son. Bowles advised Clerk "that it must be first proposed and agreed to by our Great Governor [Ilay] otherwise Sir Robt...

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70 CTENP III p.626 21 Mar 1738.

71 6 Dec 1737 SRO NBB RH2/4/447, 144; ibid., 147 1 Dec 1737. His successor James Bogle also held both solicitor and deputy King's Remembrancer posts: SRO NBB RH2/4/448, 247; SRO E225/2, 150.


73 Before the Heritable Jurisdictions Act, 1747, there were 32 shires, 8 stewartries, 4 baileries and 3 regalities which were required to pass accounts in the Lord Treasurer's Remembrancer's office: History of the Exchequer, (1748) p.63 NLS Adv. Ms. 25.6.17.

74 Ibid., p.43.
will not goe into it, there not being the minutest thing relating to the North that is to be done, but by him". Although "Lord Ilay has at least given his Consent to Mr. Scrope of it being done..."

Allanson could not be persuaded to give up the office. Five years later the matter still hung fire: "if it came to Sr Rs hands by any other person than my Ld I—y it might not be well received; that being the only Channell thro' which all Northern Affairs pass"... Allanson still refused to resign in 1742 and, wrote Bowles, "I am afraid the present state of Affairs would hardly admit of such an Alteracion now". When he finally surrendered the post in 1744 it was given jointly to Wyvill Boteler and George Clerk Maxwell for life at £100 p.a. each.

The work of the Pipe Office, which was modelled on the corresponding office in the English Exchequer, was largely confined to a routine examination of revenue accounts received from the Lord Treasurer's Remembrancer's office and the formal discharge of various accountants: indeed there seems little need to have established a Pipe Office in Scotland at all. It was also the Clerk of the Pipe's task to remind

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75 Bowles to Clerk 22 Aug 1734 London SRO GD 18/2863 no.22.
76 Bowles to Clerk 22 Oct 1734 London SRO GD 18/2863 no.23.
77 Bowles to Clerk 26 Jun 1739 London SRO GD 18/2863 no.28.
78 See Bowles to Clerk 6 Mar 1742 SRO GD 18/2863, no.45; Bowles to Clerk 11 May 1742 SRO GD 18/2863 no.46.
79 See Clerk to Lawrence Charteris 11 Jan 1734 SRO GD 18/5245 (4) no.121.
81 See Murray, "Administration and Law" in The Union of 1707, ed. Rae p.35. As most accountants (except customs and excise) tended to present up to a dozen years accounts at once, there was no great work for the clerk: History of the Exchequer, p.70 NLS Adv. Ms. 25.6.17.
people of arrears owing and to inform the Kings' Remembrancer of these so that writs could be issued. The principal enrolled accounts and various other documents relating to Exchequer business were preserved in the office. Fees were charged for several of the services performed, notably the discharging of accountants. The post was given jointly in 1708 to Sir Colin Mackenzie, and John Tyas for life at £100 p.a. each with Tyas getting an additional £100 p.a. for leaving his law practice in England. On Tyas's death Mackenzie became sole holder of the office at £200 p.a.; on his death in 1740 he was replaced by Milton's eldest son, Andrew, who later became Exchequer Auditor in 1751.

The office of Auditor was one of "great name and salary but the business of the office is entirely in the Deputy Auditor."

The Auditor examined and made up all accounts of public revenue

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82 Clerk and Scrope, *Court of Exchequer*, pp. 280-3.


84 SRO NBB RH2/4/450, 73 3 Dec 1740; SRO E225/2/187. See also Ilay to Milton 13 Nov 1740 NLS SC16, 580 "I went immediately to Sr RW who made no manner of difficulty in giveing your son Sr Colin's place"; Ilay to Milton 14 Nov 1740, 20 Nov 1740, 22 Nov 1740, 2 Dec 1740, 4 Dec 1740, all ibid.

85 Clerk and Scrope, *Court of Exchequer*, p. 283.
which passed in Exchequer except excise. He also compiled
the quarterly lists of civil establishment salaries sent to the
Treasury and when these were returned made out the certificates
for payment to every person concerned; prepared all warrants
for the barons' signature for payment of other salaries, pensions
and other sums of money; examined and struck out all compositions
on signatures which passed in Exchequer for both lands and teinds;
drafted reports on references from the barons; and prepared returns
called for by Parliament and the Treasury relating to the civil
establishment and the revenues of Scotland. "The business of
this office is so great and laborious, requiring constant Attendance
as well in vacance as well in Term time, that it requires close work

86. The main accounts were:
1. Controller general customs account of customs
2. Receiver general customs account of customs
3. Controller general customs account of salt
4. Receiver general customs account of salt
5. Receiver general customs account of seizures
6. Receiver general land rents accounts of monies paid to him
to defray the expense of a civil list
7. Receiver General account of land tax
8. Receiver General account of crown vassals on the Property Roll
9. Receiver General account of the several chamberlains
10. Receiver General account of bishops' rents
11. Receiver General account of all public monies imprest
12. Receiver General account of forfeited estates.

87Clerk and Scrope, Court of Exchequer, p.285. For civil list
records see SRO E223, 224.

88SRO E225-228, E231/1-16.
for three Clerks to write and engross the Accompts Enter Warrants etc, prepare the quarterly Establishments and precepts and give ready dispatch therein". 89

The post of Auditor was established in 1709 and given jointly to John Philp and Robert Arbuthnot during pleasure at a salary of £150 p.a. each. 90 Nine years later the post of Principal Auditor was created, but the commission to James Dalrymple of Hailes (at £500 p.a. on the civil list) specifically reserved the rights of Philp and Arbuthnot as deputy Auditors. 91 In 1720 the commission was renewed jointly to James Dalrymple and his father Sir David Dalrymple, the latter obtaining the post as consolation for his dismissal as Lord Advocate. They were to hold the office for life and to the survivor at a joint civil list salary of £1,200 p.a. 92 Again the rights of Philp and Arbuthnot were reserved, "in consideration of their loyalty and good services". 93 On the death of Sir David in December James Dalrymple succeeded as sole principal Auditor, receiving the full £1,200 p.a. salary. He sat as MP for Haddington burghs from 1722 to 1734, by which time he had joined the opposition to Walpole and lost his seat in the general election of that year. 94 In 1748 Andrew

89 "Return to the Commissioners appointed by HM to take a survey of the offices of the Courts of Justice of the business of the Auditor's Office and the fees attending the execution thereof", which also gives a more detailed account of the work of the Auditor's office: SRO E231/12 15 Nov 1733.

90 SRO E225/1, 1-2 23 May 1709. Paid on civil list.
91 SRO E225/1, 295 1 Aug 1718; SRO NBB RH2/4/429ff Michaelmas 1718 civil list.
92 SRO E225/1, 321, 22 Jun 1720.
93 SRO NBB RH2/4/427, 242 8 Jun 1720.
Fletcher, Milton's eldest son, obtained a reversionary grant of the office on the death, surrender or other determination of Dalrymple, as part of the arrangements by which Milton resigned as Lord Justice Clerk. Fletcher succeeded to the office on Dalrymple's death in 1751. The office of principal Auditor was and remained a sinecure and commissions to principal Auditors continued expressly to reserve the rights of Philp and Arbuthnot, (the latter dying in 1727 leaving Philp sole deputy at an increased salary of £200 p.a.) and then of William Allanson who was appointed joint deputy Auditor with Philp in 1757 and held the office until his death in 1775. Philp, who was probably English, was a conscientious and hard-working official and his long experience and ability made him more or less indispensable. Indeed, the author of the 1748 "History of the Exchequer", who was usually critical of Exchequer officials, wrote, "this officer has out of sight the greatest Trust of any in Scotland, a Trust which I think no single person ought to have, tho' no one deserves it better I believe than Mr. Philp".

Prosecutions in the Exchequer were looked after by a Solicitor, the post being set up in November 1708 on the representations of the barons that unless "some particular person be appointed to prosecute them", those owing money to the Crown "will never be brought to account".

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95 SRO NBB RH2/4/455, 476 29 Jun 1748; SRO E225/2 18 Jul 1748.
96 See below pp. 545-8.
97 For example see Fletcher's commission SRO NBB RH2/4/455, 476 29 Jun 1748.
98 SRO NBB RH2/4/437, 446 2 Nov 1727.
99 P.76, NLS Adv. Ms. 25.6.17.
100 SRO E225/1, 141, 17 Nov 1708.
The Solicitor was to act "... in all matters relating to debtors and accomplants to the Crown in Scotland, except those under the conduct of the solicitors of Customs and Excise there, and to take care they may be duly prosecuted until they have finished and fully discharged the same, and anything else the Barons think fit to do." He was paid £140 p.a. on the civil list for himself and clerks and, from 1725, given an allowance of up to £500 p.a. to cover prosecution expenses. As we have noted, the post was held by William Bowles until his appointment as London agent in 1737, when he was succeeded, on Ilay's recommendation, by James Bogle, who like Bowles, also concurrently acted as King's Remembrancer. According to Arniston, Steuart, the King's Remembrancer, made a "Bargain with L Ilia for naming Bogle to be D Remembrancer, whom L Ilia wanted in the Exchequer that he might have every court in the hands of his tools". On Bogle's death in

101 See warrant appointing Bogle 16 Mar 1738 SRO NBB RH2/4/448, 184. Prosecutions were carried on at the relation of the Lord Advocate and the Solicitor General.

102 Salary was increased from £80 p.a. in 1721: see PRO T1/278 no.33 22 Mar 1732.

103 At the request of the Treasury the barons issued an order in 1725 'setting out the manner of carrying on criminal prosecution'. This outlined the procedure by which the Exchequer Solicitor was to defray the expenses of such prosecutions; SRO E227/1, 384, 26 Jul 1725. For accounts see SRO E404/1-5 1725-52; SRO E201/2/1-5 1725-52.

104 See Clerk to Tweeddale 23 Nov 1742 NLS YP7051, 81.

105 For Bogle's warrant of appointments see SRO NBB RH2/4/448, 184 16 Mar 1738.

106 Arniston to Tweeddale 23 Nov 1742 NLS YP7051, 42.
1742 James Lesley was appointed solicitor. 107

In summary the principal Exchequer posts were largely sinecures and most of the work was done by deputies, many of whom, such as Bowles, Philp and Bogle, were able and hard-working administrators who spent most of their careers in Exchequer, and were often promoted from one office to another. With the notable exception of William Steuart, none were particularly active in politics.

There were various other minor Exchequer officials, some appointed by the Crown, others in the nomination of the barons. 108

Little is known about most of the holders of these minor offices; there is the usual mixture of Englishmen and Scots and several appear to have been related to influential Scottish political figures. The Keeper of the Exchequer Seal (£100 p.a.), which was in the gift of the Lord Chief Baron, 109 sealed all letters, writs, grants and other official documents of the court. The Presenter of Signatures 110 (£52 17/6 p.a.) took care of all signatures that came before the court to ensure that nothing was passed prejudicial to the Crown's interests. The Registrar of Resignations (£40 p.a.), a complete sinecure, 111 recorded all resignations made in Exchequer, while the Examiner (£50 p.a., life), appointed by the barons, took the depositions of witnesses.


108 The barons appointed among others the examiner, clerk to the port bonds, registrar of resignations, macers, doorkeepers and messengers: see SRO E225/2 commissions 1727-56. The barons could also depute and appoint all such other officers, clerks, servants and attendants necessary for the convenient service of the court: 1708 Act section 5.

109 1708 Act section 5. Lant appointed Anthony Norman and on his death in 1735 Alex Home. Idle appointed Francis Pletcher.

110 See also below p. 181. The post was held by John Dundas throughout the period.

111 On the creation of this office, see History of the Exchequer, p. 91 NLS Adv Ms 25.6.17; also see below pp. 181 and footnote 169.
receiving fees for his work. The Clerk of the Port Bonds (£40 p.a.) received from the ports bonds granted by merchants which were to be put in suit; he also took fees for his work. All persons committed to prison by the court were entrusted to the care of the Marishall (£80 p.a.) an "absolute sinecurce". 112 "In the Generall" wrote Hay to Tweeddale "no man in Exchequer works very hard either for sallary or perquisites". 113 There were also several officials whose function was merely 'to support the honour and dignity of the court', 114 the most notable of these being the Principal Usher of Exchequer (£11 10/- p.a.), a heritable office belonging to the family of John, Lord Bellenden. 115 Other officials included three macers (£50 p.a. each) and two doorkeepers (£15 p.a. each from 1728). The latter often acted as messengers for the court. As with customs, excise and judicial officials, Exchequer officers appointed during pleasure were rarely removed for political reasons: once appointed they usually remained in office until death or transferred to another post.

Soon after the Exchequer was set up it was found necessary to have an agent at London to look after Exchequer business at the Treasury and to try and ensure that it was dealt with as expeditiously as possible. The Exchequer shared this London agent with the customs and excise commissioners. Despite pleas from the barons in 1723 the agent was

112 History of the Exchequer, p. 93, NLS Adv Ms 25.6.17.

113 Hay to Tweeddale 1 Feb 1743 NLS YP7053, 111.

114 Clerk and Scrope, Court of Exchequer, p. 291.

115 Before the Union the post was 'one of honour and considerable profit' but after, as Bellenden complained in 1722, it became merely a post of honour; see memorial of John, Lord Bellenden CTP (1720-8) p. 123 c12 Mar 1722; SRO RH2/4/398, 210. In 1742 he was given an additional £200 p.a. on the civil list.
not put on the civil list until 1728, at £200 p.a. The post was held first by Richard Lerego, then from 1716 by Joseph Tudor until 1737 when he was appointed secretary to the customs commissioners. Tudor was succeeded by William Bowles who on his death in July 1748 was in turn succeeded by Milward Rowe, a Sussex man, on Pelham's express direction. Indeed, although the appointment of London agent was supposed to lie with the barons, in practice the Treasury usually intervened. In 1737 they virtually ordered the barons to appoint Bowles and in 1748 Lord Chief Baron Idle "was not in good humour about Bowles' successor", Rowe, for he had written to Pelham in favour of "one who was recommended by Lord Irvine". He complained to Pelham that it was "an Arbitrary Dictate, which was never attempted before".

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116 See Exchequer barons to Treasury 1 Aug 1723 PRO T1/246 no.69; barons to Treasury 15 Jun 1727 PRO T1/259 no.27. On civil list Midsummer 1728 SRO NBB RH2/4/438, 134; also PRO T1/278 no.33 22 Mar 1732. Prior to 1728 he only received a small allowance out of the fund for criminal prosecutions and petty expenses.

117 PRO T1/259 no.27 15 Jun 1727.

118 See Scrope to Clerk 19 Jan 1749 SRO GD18/2857 no.27.

119 SRO E225/2, 141; Scrope to Exchequer 6 Dec 1737 SRO NBB RH2/4/447, 144.

120 Baron Maule to Scrope 6 Aug 1748 PRO T1/239 no.43. See also Scrope to Exchequer 12 Jul 1748 SRO NBB RH2/4/455, 480; Scrope to Clerk 19 Jan 1749 SRO GD18/2857 no.27.

121 Idle to Pelham 28 Apr 1749 NUL NFO 1985.
Work of the Exchequer  

(i) Revenue jurisdiction

By section 6 of the 1708 act all prosecutions for recovering customs and excise revenues and other Crown revenues in Scotland were to come within the jurisdiction of the new Exchequer and by section 18 the collection and payment of these revenues were put under Exchequer supervision and all offenders were to be tried in that court. 122 All disputes between taxpayers and the Crown or its accountants were to be settled in Exchequer. 123 Unlike the English Exchequer, the jurisdiction of the new Scottish court was confined to revenue matters 124 and there was consequently no dispute over jurisdiction between the Exchequer and the Court of Session. 125

The Crown took proceedings in Exchequer against those in debt to the revenue and against revenue officials, both local officers and central accountants, who were in arrears, in order to recover the amounts outstanding. The goods and chattels of the debtor were subject to seizure but, unlike the English Exchequer, the Scottish Exchequer's jurisdiction in this respect did not extend to the confiscation of lands which could only be confiscated by the Court of Session. 126 In practice the court's ability to recover debts and

122 Clerk and Scrope, Court of Exchequer, pp.131-2.

123 Riley, English Ministers, p.77.


125 Clerk and Scrope, Court of Exchequer, p.111. There had been such a struggle between Session and the old Scottish Exchequer before the Union.

126 1708 act section 8.
arrears was limited and they often remained outstanding for many years before finally being paid or written off as a loss. In some cases the collector or accountant had died and there were problems in getting the money from his sureties; in others there were difficulties in enforcing the court's jurisdiction in the more remote areas. In many cases compositions were agreed with the debtor before trial, or the Crown might waive the debts all together. If a Crown debtor was prosecuted in any other court he could procure a writ of certiorari from Exchequer to remove the cause from the inferior court to Exchequer. The majority of cases brought before Exchequer involved customs matters. Exchequer jurisdiction over excise was more circumscribed, particularly as justices of the peace often claimed to have sole jurisdiction in excise matters.

Most cases brought before Exchequer were settled without going to trial: "... tho' we have many causes sett down, there were none of them brought to a tryall; most of those against whom prosecutions were carrying on having consented that judgement should go against them, and others were glad to come to a composition". Trial procedure was,

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127 For example see CTP (1720-8) p. 325 24 Feb 1725 Exchequer report: "feu duties of the forfeited estate of the late earl of Seaforth are very much in arrears by reason the ordinary process of this court for levying the duty could not be executed in those remote parts where the estate lies".

128 1708 act section 15.

129 Clerk and Scrope, Court of Exchequer, pp. 57-8.


131 For details of pre-trial procedure in customs and excise cases see Clerk and Scrope, Court of Exchequer, pp. 3, 17-18, 42-3, 48-9.

132 Baron Maule to Scrope 6 Aug 1748 PRO TL/329 no. 43.
by the 1708 act, to be the same as in the Court of Exchequer in England. The barons could hear cases either in law or in equity. Where the Crown was plaintiff the Lord Advocate, Solicitor General or their deputies prosecuted; when the Crown (normally in the form of its revenue officers) was being sued they defended His Majesty's interests. In general few cases brought before Exchequer "appeared to have presented much legal difficulty and in the majority the facts were so clear that no defence was attempted". 

The facts of a case were determined by a jury of twelve, normally composed of freeholders from Edinburgh and Midlothian. Twenty-four jurors were called and the required twelve chosen by the barons (though any juror was open to challenge by either party) giving them the same dubious power in this respect as that possessed by the Lords of Justiciary. Exchequer juries, unlike those of the Court of Justiciary, had to be unanimous. Jurors were often, in the eyes of the barons, perverse and, despite the method of selection, notoriously favoured revenue law breakers, especially customs and excise smugglers. "The extravagance of our Exchequer jurors has so long been a reproach to this country" wrote Craigie in

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133 Clerk and Scrope, Court of Exchequer, p.157. Full details of trial procedures are set out in ibid., pp. 12-41, 59-64, 67-82.

134 1708 Act section 6; Clerk and Scrope, Court of Exchequer, p.132.

135 See SRO E201/2/1-5 Accounts for criminal prosecutions at the instance of the Lord Advocate and Solicitor General.


137 For fuller details of juries see Clerk and Scrope, Court of Exchequer, pp.18-40. By the 1708 Act jurors were to be qualified for the first time in Scotland, but the qualifications were very low compared to England: Riley, English Ministers, p.77 n.2; Clerk and Scrope, Court of Exchequer, p.135.

138 See Clerk and Scrope, Court of Exchequer, pp. 271-3 and above p. 74.
1743, a sentiment echoed by Clerk: "None gives so great encouragement to all kinds of prejudicial importation than those who serve as jurors in trials before the Court of Exchequer. These, if I may so express, cut the throat of their country and by mistaken notions fancy they ought in all cases to encourage those who go under the name of merchants. These men have brought incredible losses on us." Juries were also often swayed by political considerations:

"notwithstanding of the great Appearance of Business the beginning of the last Term, it ended in the Tryall of one Custom House Cause only; and tho the evidence was very clear for the Crown, yet Deft was acquitted; Owing as 'tis said, to the Division that is in the Town [Edinburgh] about the Magistracy; the Majority of the Jury being against the present set of governors: so that from one cause or other, it is become impracticable for the Crown Lawyers to have Justice done them in any Tryalls here". Delays were a marked feature of Exchequer jurisdiction, exacerbated, as in the Court of Session, by the difficulties in bringing a cause to issue and the fact that most proceedings were written.

Once the barons had accepted a jury's verdict on matters of fact it was not subject to appeal. The barons would then proceed to give

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139 Craigie to Tweeddale 20 Aug 1743 NLS YP7057, 113.

140 Clerk's Observations, ed. Smout, p. 206. See also Clerk and Scrope, Court of Exchequer, pp. 272-3.

141 William Bowles to - 22 Feb 1729 PRO T1/270 no. 31.

142 For example in 1728 the customs commissioners complained that several cases had been lying in Exchequer for a long time and insisted that the progress of customs cases must be speeded up: SRO CEI/2 7 Jun 1728.

143 See below p. 219.
judgement and impose sentence. 144 Appeals from the barons' judgment on points of law could only be made to the House of Lords. 145 Fines or imprisonment could be imposed or goods forfeited, writs of sequestration being sent to the local sheriffs. The sheriff was the principal executive organ of the Exchequer in the localities and all orders issued by the court were normally executed by him, for example he would arrest accused persons and put into effect all judgements of the court. 146 Failure to comply was punishable as contempt of court 147 and sheriffs were liable to fines and imprisonment if they neglected such duties. 148

The Exchequer could exercise an equitable jurisdiction similar to that of the English Exchequer. 149 Most equity cases in the Exchequer were concerned with fraud, breach of trust and deceit where there was

144 For full details on judgements see Clerk and Scrope, Court of Exchequer, pp. 83-7.

145 Ibid., pp. 91-5. To appeal from a judgement in a case decided in law the party adversely affected would apply to the Chancery of Great Britain for a writ of error to have the execution of the sentence stopped and the matter cognosed in the House of Lords: 1708 act section 12. There was some feeling that the involvement of the Great Britain Chancery was contrary to the nineteenth article of union: see Clerk and Scrope, Court of Exchequer, p. 92; Lorimer, Handbook of the Law of Scotland, p. 445. Procedure in appeals from decisions in equity differed slightly from those in law in that the aggrieved party could petition the House of Lords direct, a writ of error was not necessary. This was similar to appeals from the Court of Session: Clerk and Scrope, Court of Exchequer, p. 94.

146 By section 5 of the 1708 act all sheriffs and their deputies (and all other Crown officers and subjects in Scotland) were required to assist, attend and obey the Exchequer when so ordered by the barons in all matters which concerned the court.

147 Clerk and Scrope, Court of Exchequer, p. 130.

148 Ibid., pp. 253-8.

149 1708 act sections 6 and 9. For details see Clerk and Scrope, History of Exchequer, pp. 64-83. Exchequer's equitable jurisdiction was further elucidated in a Privy Seal 31 Dec 1714: ibid., pp. 249-51. See also warrant George II 29 May 1728 SRO NNB RH2/4/438, 89.
often no suitable remedy in law; and incidents at sea involving piracy, shipwreck or adverse weather conditions, where the strict application of the law would produce over-harsh results. There appears, however, to have been some reluctance to use this form of procedure. 150

(ii) Supervision and Accounting of Public Revenues

The Scottish Exchequer was made responsible under the 1708 act for the supervision of and accounting for the collection of public revenues in Scotland; customs, salt, excise, Crown rents and casualties, bishops' rent, land tax and others. By section 11 of the 1708 act all revenue officers in Scotland were subject to the Exchequer and the barons were empowered to impose such regulations as were not inconsistent with the standing laws or orders given by the Treasury. 151 The barons exercised a general supervision over the public revenue, issuing directions where necessary, 152 advising the commissioners, collectors and accountants on all aspects of the revenues under their control, and suggesting improvements. "The barons in Scotland have very justly taken upon them to give their advice and opinion to the Commissioners of Customs and Excise in relation to their management." 153 Such help was often required, especially in the early years after the Union, as the Scottish commissioners were a long way from their English brethren and could

150 For example see customs commissioners to Treasury 10 Apr 1723 CTP (1720-8) p.207; Exchequer to Treasury 13 May 1723 ibid., pp.209-10.

151 For examples of Exchequer orders concerning revenue collection see SRO E227/1-2; for example SRO E227/1, 203-4, Exchequer order for regulating the collection of the bishopric of Ross, 1724.

152 For example on the procedure for taking bonds: SRO CCh/2 19 Jul 1728.

153 Clerk and Scrope, Court of Exchequer, p.145.
not easily get advice from that quarter and certainly not advice which took account of Scottish conditions and the different Scottish legal system. 154

Under section 11 all accounts of public revenues were to be audited and recorded in the Exchequer. By an Exchequer order of 1710 the Exchequer Auditor, King's Remembrancer, Lord Treasurer's Remembrancer, and Clerk of the Pipe were to keep records of all revenues and feu duties payable to the Crown, and thereby act as a check on each other. 155 The main accounts dealt with by Exchequer were customs and salt; excise; Crown rents, including accounts of monies collected by sheriffs, bishops' rents and dues from chamberlains; and land tax. The principal accountants to the Crown for these revenues were the receiver general of customs; the commissioners of excise; the Receiver General of Crown Rents and Casualties in Scotland; the sheriffs and various chamberlains; and the Receiver General of land tax. The actual money collected remained in the hands of the receiver general of customs, the excise commissioners, and the Receiver General of Land Rents and was paid out only on receipt of an order from the barons, except in the case of the land tax which was paid over by the Receiver General of the land tax to the Court of Exchequer in England.

The usual procedure was for the accountant concerned (including sheriffs) to present his accounts to the Exchequer Auditor, the main

154 Riley, English Ministers, pp. 82-83.

155 Clerk and Scrope, Court of Exchequer, p. 327.
exception being excise which had its own separate auditor.\textsuperscript{156}

The Auditor compared this account with its vouchers, prepared an enrolment on parchment\textsuperscript{157} and a duplicate enrolment on paper or in a register, the latter being retained in his office.\textsuperscript{158} The account was then declared before one of the barons and signed by the accountant concerned. The original accounts were transmitted to the King's Remembrancer for examination and preservation and a copy of the enrolment recorded in a register kept in his office.\textsuperscript{159} After an abridgement had been recorded by the Lord Treasurer's Remembrancer,\textsuperscript{160} the Clerk of the Pipe retained the principal parchment enrolment for preservation, such rolls of declared accounts forming the bulk of the records of his office.\textsuperscript{161} The Clerk of the Pipe also entered an abridgement of the account in the Record of Quietuses,\textsuperscript{162} a copy of this being given to the accountant as his discharge. Despite this elaborate procedure, designed so that each principal office would act as a check on the others, in practice examination by the King's Remembrancer, Lord Treasurer's Remembrancer and Clerk of the Pipe of the accounts which came from the Auditor's office was a formality: "These officers are all designed to be cheques upon one another, But I never heard of any objection anyone of them made to the Accompts".\textsuperscript{163}

\textsuperscript{156} The Exchequer Auditor not being concerned with excise accounts, they were not recorded in his office, but the other officers dealt with them in the normal manner and the Clerk of the Pipe received the parchment enrolments (SRO E207). The duplicate enrolments (SRO E902) were retained by the excise auditor.

\textsuperscript{157} Parchment rolls had been discarded by the old Scottish Exchequer in 1672 but were reintroduced to conform with English Exchequer practice in 1708; Murray, "Administration and Law" in The Union of 1707, ed. Rae, pp.38-9.

\textsuperscript{158} SRO E215, 216.

\textsuperscript{159} SRO E321.

\textsuperscript{160} SRO E239.

\textsuperscript{161} SRO E201-8.

\textsuperscript{162} SRO E211/1.

\textsuperscript{163} History of the Exchequer, p.76 NLS Adv Ms 25.6.17.
Delays of several years before accounts were examined by Exchequer officials and signed by the barons were common: the Receiver General’s accounts for 1727–8, for example, were not passed until November 1731. Although greatly hampered in finalising the accounts by the slowness of local collectors in submitting their money and accounts, the central accountants compounded the delay by their own sloth. Moreover, the fact that the accounts had to pass from one department to another meant that delay in one office held up the others.

Accounts of all Scottish revenues were regularly transmitted to the Treasury for scrutiny and approval and the Treasury could call at anytime for details of the state of the Scottish revenues. In particular the Treasury regularly asked to see accounts of the monies available to meet the civil list and of arrears owing to the Crown.

(iii) Gifts and Signatures

By section 19 of the 1708 Act the Exchequer was given the power of passing, revising or stopping all signatures from the Crown to subjects in Scotland (or involving Scottish offices and lands) granting lands, jurisdictions and feudal casualties, certain offices and pensions and various other minor gifts. These powers had been possessed by the

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164 SRO E400/18

Much of the work in compiling the reports requested was done by the Exchequer Auditor: see SRO E231/4-16 for copies of Exchequer returns to Treasury and other bodies on revenues. Other examples Scrope to Exchequer 18 Apr 1729 SRO NBB RH2/4/439, 274 for account of produce of duties and revenues payable in Scotland 1727–28 in accordance with address of the House of Commons for same to be laid before the House: such requests were fairly frequent. SRO NBB RH2/4/441, 211 24 Feb 1731 Scrope asks barons for 1715–19 civil list accounts. On arrears see for example SRO NBB RH2/4/440, 461 5 Jun 1730; CTBP III p.14 3 Apr 1735 “Barons to be written to for accounts of debts owing from any receivers or cashiers of the revenue thore who are dead or removed, and what care is taken to recover the same”; PRO T1/289 no.27 1 Aug 1735-barons to Treasury forwarding 8 accounts of money owing to the Crown from past and present Receivers General and cashiers of the revenue in Scotland.

166 Signature: a writ signed by the King, or by the barons in the King’s name, for expediting charters for infeftments, commissions for offices, and any other sort of gift at the seals. Gift: any grant or donation from the Crown to the subject for reward etc. Clerk and Scrope, Court of the Exchequer, pp.152, 167.
the old Scottish Exchequer, but "now they were to be wielded by professional judges backed by the English Treasury." The English Exchequer did not have such powers.

All renewals of grants and leases and transfers and changes of ownership of land had to go through the Crown as the King was the ultimate feudal superior. The land involved was resigned to the Crown and a new grant made. Preliminary work involving the transfer of lands was done by the Presenter of Signatures, a pre-Union office: most of the work was done by a deputy. Any petitions against the intended grant were reported to the barons who would attempt to resolve any disputes between the parties, but their role was advisory rather than judicial and law suits went to the Court of Session. Various compositions due to the Crown on the granting or renewal of lands, crown casualties and the like were collected and accounted for in Exchequer at the time the signature was passed.

The King could also make gifts, countersigned by the Lords of the

167Ibid., p.151. The Crown could still, as before the Union, make gifts directly without involving the Scottish Exchequer. Various further minor regulations concerning the passing of signatures in the court were made by a privy seal 23 Dec 1714.

168Riley, English Ministers, pp. 77-8.

169Registers of Resignations were kept in Exchequer: Clerk and Scrope, Court of Exchequer, pp. 153, 176-7. In 1726 the barons informed the Treasury that the keeping of these registers had been discontinued for some time to the great disadvantage of business. They had therefore appointed by their warrant one David Stephen to keep the Register Book of Resignations in order to expedite the granting of new charters and suggested that he be paid £40 on the civil list. The Treasury approved this recommendation: Treasury to barons 4 Oct 1726 SRO NBB RH2/4/436, 174. The post, however, became an absolute sinecure: see History of the Exchequer, NLS Adv Ms 25.6.17 p.91.

1701708 act section 22; Clerk and Scrope, Court of Exchequer, pp.190,208; Murray, "Administration and Law" in The Union of 1707, ed. Rae, p.39.

171SRO E222/1; SRO E222/5/1; SRO E254; SRO E409/4-15, 16.
Treasury, of various crown rents and casualties and of any other revenues not appropriated by act of Parliament for specific purposes. Gifts were commonly made out of feu, blench and ward duties, often in return for repairing roads and bridges, and from the rents of various chamberlains and bishoprics. As we have seen, gifts of the arrears of such rents were regularly made to those who were supposed to collect them, a convenient form of patronage. "It hath been by long practice held to be reasonable and legal for the Crown to exercise its bounty to such of its vassals as His Majesty is inclined". On entry duties and fines, for example, it was common for "parliament men when they happened to be admitted tenants, to procure gifts from the Treasury of the duties or fines payable by them".

Gifts of certain minor civil list and other offices, of money and pensions out of the public revenues; of forfeiture in cases of high treason or crimes of the Crown; of legitimacy or bastardy; of ultimus haeres; of remissions and pardon; and, most important

172 For examples see CTP (1720-8) p.261 8 Feb 1724; SRO NBB RH2/4/438, 2 5 Dec 1727.
174 For example see grant to Argyll of all feu duties etc, of Argyll, during pleasure, "in consideration of the great duties performed by the family of Argyll to the royal family": SRO NBB RH2/4/439, 314 11 Jul 1729. The grant was renewed to Ilay in 1744 SRO NBB RH2/4/453, 33 16 Mar 1744. Tweeddale when Secretary of State took the opportunity to have various duties and arrears granted to himself and his political allies.
176 PRO TL/260 no.48 (after 1727).
177 For example clerk of the wardrobe, mace of session, trumpeter, botanist, apothecary.
178 For example various collectorships of Crown land rents and casualties.
179 For example see CTP (1720-8) p.93 21 Dec 1721.
180 Where a person died intestate leaving no heirs, the estate falling to the Crown.
gifts of certain offices and pensions, were also sent to the Scottish Exchequer to be scrutinised and a report sent to the Treasury. All gifts of already established offices were countersigned by a Secretary of State, while all new offices and pensions or where an increase in salary was involved had to be countersigned by the Lords of the Treasury. To ensure that officers or pensions were not multiplied to such a height as to exceed the annual funds for their payment, it is the duty of the Barons of Exchequer to guard against them and to make proper remonstrances to the King and Treasury for preventing a kind of bankruptcy in public administration, a crude attempt to keep a check on government spending. In fact very few new offices were created in Scotland during the period and the barons do not appear to have made any such "remonstrance".

The Exchequer's role in dealing with signatures and gifts was to ensure that nothing was passed prejudicial to the Crown's interest and advise the Treasury accordingly. Petitions seeking the grant of a gift were usually sent to the Treasury, which would then refer them to the Scottish Exchequer for consideration and report, though occasionally the Treasury would grant a petition without referring the matter to the barons. Much of the court's time was spent dealing with such petitions: those from sheriffs, chamberlains and other collectors of Crown revenues seeking gifts of arrears were particularly numerous. The barons

183. Clerk and Scrope, Court of Exchequer, p.216.

184. Clerk and Scrope, Court of Exchequer, p.215. See also Clerk to Tweeddale 1 Nov 1742 YP/05, 1.

appear to have scrutinised the petitions referred to them with some care, suggesting alterations where appropriate, and were usually sticklers for correct procedure. Political considerations also often played an important part in determining the barons' attitude to any particular gift and on occasion they did not scruple at deliberately delaying their report to the Treasury for several months, even years, or at raising technical but time-consuming objections to the terms of a gift or signature. Normally it took the barons a few months to return a report on a Treasury reference but sometimes there were much longer delays and on occasion the Treasury had to stir the barons to activity. The final decision lay with the Treasury, but only rarely did the Treasury dissent from the conclusions of the barons and the signature or gift normally bore the words "with the advice and consent of the Barons of the Court of Exchequer in Scotland". On return to the Treasury the signature would receive royal approval and pass under the relevant seal: the Great Seal of Scotland for land charters and other important gifts, the Privy Seal of Scotland for more minor offices, pensions and

186 For example see CTBP I p.89 12 Jun 1729.

187 See Clerk and Scrope, Court of Exchequer, p.129; Riley, English Ministers, p.82; example CTP (1720-8) p.146 16 Jul 1722.

188 For example see Scrope to Exchequer 26 Jun 1730 SRO NBB RH2/4/440, 454.

189 See CTP (1720-8) pp.394-5 16 Feb 1726 where the Treasury "disagreed" with an Exchequer report. Sometimes the Treasury requested more particulars or detailed reasons for the barons' opinions; for example see Scrope to Exchequer 6 Jun 1729 SRO NBB RH2/4/439, 286.

190 From about 1713 onwards: see Riley, English Ministers, p.82.
gifts such as those of feu duties.\footnote{191}{Clerk and Scrope, Court of Exchequer, p.190.}

In addition to the gifts which flowed directly from the Crown, there were various minor gifts, originally at the Crown's disposal, but which Anne (and subsequently George I and George II) had delegated to the Exchequer. These included single and liferent escheats; gifts of tutory, that is the right to look after the interests of those under age; minor gifts of \textit{ultimus haeres} and bastardy not dealt with directly by the Crown; gifts of vacant stipends; bursaries for students, mostly paid out of bishops' rents; and small pensions on the Charity Roll.\footnote{192}{This last was a fund of £2,000 p.a. on the civil list. Placement on the Roll lay solely with the barons, although the Treasury were never slow in 'recommending' people.\footnote{193}{The pensions were small, £5-10 being the maximum allowed and most falling within the £3-5 range.\footnote{194}{They were given mainly to orphans and widows. These minor gifts provided the barons with a useful if limited source of patronage.}}}

\textbf{Exchequer and the Treasury}

The new Scottish Court of Exchequer was set up in 1708 to act as the administrative arm of the Treasury in Scotland and to supervise and coordinate Scottish revenue administration. Ultimate authority clearly lay with the Treasury. There was a well-defined flow of

\begin{itemize}
\item \footnote{191}{Clerk and Scrope, Court of Exchequer, p.190.}
\item \footnote{192}{For full details of all these see Clerk and Scrope, Court of Exchequer, pp.225-38.}
\item \footnote{193}{For example see CTBP IV, p.457 21 Apr 1741; SRO NBB RH2/4/450, 144 23 Apr 1741; West to Exchequer 30 Mar 1748 SRO NBB RH2/4/455, 433; West to Exchequer 21 Apr 1748 ibid. 454.}
\item \footnote{194}{See Clerk to Tweeddale 1 Nov 1742 and enclosure, YP7051, 1-2. For details of recipients see SRO E407/17-40 1725-48. See also Hay to Tweeddale 20 Nov 1742 NLS YP7051, 70.}
\end{itemize}
business between the two: the barons enquired into matters referred to them by the Treasury and reported back with their recommendations. The Treasury would accept, reject or modify these recommendations as they thought fit and authorise the barons to act accordingly. It was of course open to interested parties to approach the Treasury and attempt to persuade the Lords not to accept an unfavourable recommendation from the barons. This tactic was used by both Roxburghe and later Tweeddale in an effort to overcome the Argathelian influence among the barons. "I am told," wrote Roxburghe to Dundas in 1721, "in those cases [grant of a gift] Application is first made to the Barons below, who inquire into the Nature and Circumstances of the Thing and then lay it before the Lords of the Treasury, so that We shall have an opportunity of stopping the passing of it here [Treasury] tho' it should be approved of by the Board in Scotland".

The Lords of the Treasury appear to have set aside certain days to deal with Scottish business: "Tuesday next in the forenoon appointed for the consideration of the Scotch affairs"; "the Lords say they will appoint a particular day to take the Scotch papers into consideration". Much of the Treasury correspondence with the Exchequer was handled by Treasury secretary John Scrope who, as a former Scottish baron, had a unique and indispensable understanding of revenue administration in Scotland. Walpole relied to a considerable degree on Scrope's knowledge and experience and hence Scrope wielded considerable influence over Scottish

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195 For details of all reports made by the barons on matters referred to them by the Treasury see SRO E307/3-5 1723-57.

196 Roxburghe to Dundas 10 Aug 1721 SRO RH4/15/2, I, p.120.

197 CTEP I, pp.367-8 20 May 1730; CTEP V p.51 29 Jun 1742. For example see CTEP I pp.414-6 22 Jul 1730; CTEP II, p.547-8 25 Apr 1734; CTEP III p.23 29 May 1735.
business. After Walpole's fall Scrope remained in office but his authority was somewhat blunted by the appointment of another secretary, Jeffries, to act jointly with him.\textsuperscript{198} From Ladyday 1726 the sum of £100 p.a. was paid on the Scottish civil list to augment the salaries of various under-secretaries and clerks at the Treasury for their work in connection with Scottish business.\textsuperscript{199}

The Treasury frequently instructed the Exchequer to deal with a wide variety of exceptional tasks, some of which were only indirectly connected with the public revenue, the Exchequer being the only suitable body in Scotland on which to delegate such work. Thus, for example, the Exchequer was made responsible for the supervision of payments in connection with the Disarming Acts after the Fifteen rebellion;\textsuperscript{200} the initial management of the forfeited estates after the Forty-Five rebellion;\textsuperscript{201} for the supervision of the repair of Holyrood Palace in the 1730s;\textsuperscript{202} and was instructed to propose methods of stopping the importation of Irish foodstuffs into Scotland.\textsuperscript{203} Indeed, as we shall see, Harley even attempted to administer Scotland for a time in 1710-11 from the Treasury through the Court of Exchequer.\textsuperscript{204}

\textsuperscript{198}See John Douglas to Tweeddale 24 Dec 1742 NLS YP7052, 89.
\textsuperscript{199}See SRO NBB RH2/4/435, 10 note at end of Christmas 1725 civil list; SRO NBB RH2/4/435, 31 24 Jan 1726.
\textsuperscript{200}See CTBP I, pp.456-7 30 Sep 1730.
\textsuperscript{201}See Murray, "Administration and Law" in The Union of 1707, ed. Rae pp.37-8; below p.513 and footnote 328.
\textsuperscript{202}CTP (1720-8) p.47 2 Feb 1721; SRO NBB RH2/4/443, 462 27 Jun 1733; warrant to Exchequer 15 Jun 1735 SRO NBB RH2/4/445, 266.
\textsuperscript{203}Riley, English Ministers, p.83; Murray, "Administration and Law" in The Union of 1707, ed Rae, p.36.
\textsuperscript{204}Below, pp.285-90.
Unfortunately the Treasury did not always deal with Exchequer business in a speedy and efficient manner. Despite the presence of a London agent it was often months, sometimes years, before reports sent by the barons were considered by the Treasury. Thus, for example, the petition of the widow of Alex Arbuthnot, chamberlain of Galloway 1714-23, for a release of his outstanding balance of £265 which was lodged in 1725 and reported on by the barons in February 1726, still lay unattended before the Treasury in July 1743. The barons' first report on the Argyllshire mines dispute was 'mislaid' by the Treasury and the barons had to submit a new report. The Treasury generally regarded Scottish business as something of a nuisance: as Scrope, while still a baron, wrote to Clerk, "Nobody here understands anything of our affairs and I can find nobody that hath leisure enough to receive information". Only on relatively few occasions did the Treasury not accept the barons' recommendations or interfere in the conduct of Exchequer business. Even more exceptionally the Treasury might act directly without referring the matter to the barons at all. It is clear the Treasury kept a reasonably close eye on the administration of Scottish revenues and the quarterly civil list returns in particular appear to have been scrutinised closely and alterations occasionally

205 SRO E231/14 31 Jul 1743. For another 'sad case' see Murray, "Administration and Law" in The Union of 1707, ed. Rae, p.37.

206 SRO NRB RH2/4/442, 177 28 Oct 1731.

207 SRO GD 18/2857,6 20 Dec 1715.

208 For example see CTBP IV p.13 1 Mar 1739.
Nor was the Treasury inattentive to even the most minor aspects of Scottish revenue: thus in 1729 Scrope was quick to inform the barons that the Treasury had heard that a sea captain had found some treasure off the coast and to remind them to ensure the Crown received its share. Generally, however, given the relatively routine nature of much of the business, the Treasury recognised that the barons were best placed to take decisions with regard to Scottish matters and only in cases where they thought other wider considerations should prevail or they had been influenced by direct pressure from interested parties would the Treasury interfere.

Thus while the ultimate authority of the Treasury was clearly understood, the Scottish Exchequer functioned on a day-to-day basis relatively free from Treasury interference. The barons themselves were anxious not to be seen as mere servants of the London Treasury and this in turn contributed to the impression that, despite the Union, Scotland retained a separate administrative identity and Edinburgh continued to be a focal point of government.

Conclusion

"Upon reading the foregoing paper one might be tempted to conclude that they are a set of thrang people in the Exchequer, and indeed there are severalls of them who have enough to do, but for the most part the Earl of Chesterfield's simile will hold. He was asked on a day what was the business of a Scots Secretary, He answered the question with a Story [sic.] of a Captain of a Man of War who came on Deck to take the air before Dinner, The Captain ask'd at a fellow what he was doing there,

209 For example to Midsummer 1726 civil list: SRO NBB RH2/4/435, 125.

210 SRO NBB RH2/4/439, 244 28 Feb 1729.
He answered Nothing, He then asked his next Neighbour What he was doing, Who answered He was helping him". 211

The verdict of modern historians is similar. "The first six years of its existence were really the formative years for the Court of Exchequer. By the end of that time it had all the powers it needed. The normal channels of business had been defined and its relationship to the other courts and departments established.... But as time went on and Scrope left the Exchequer and Smith died, the court settled more deeply into the excessively comfortable routine of Scottish administrative life. In the long run the most notable reputation it made was for procrastination and inefficiency". 212 "For the most part the Exchequer pursued a path of inglorious inefficiency". 213

During this period there were no barons with the ability of Smith or Scrope. The English barons were often absent and of the Scottish barons only Clerk was in any way outstanding and his contribution to Scottish life lay largely outwith the Exchequer. There was, therefore, no strong leadership or direction from the top. Most of the major office holders were sinecurists although some of the deputies, notably Bogle, Philp and Bowles, were conscientious and able administrators. The volume of work increased throughout the period and delays in transacting business were the norm. Exchequer procedure was unduly duplicative and the completion of accounts depended on a whole series of officers having performed their tasks timeously and satisfactorily.

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212 Riley, English Ministers, p. 86.

On the other hand, revenue collection was notoriously difficult in Scotland and it normally took considerable time before all the money was collected and the accounts could be presented to the Exchequer. While the Exchequer might have done more to improve the revenue administration in Scotland they faced considerable practical difficulties in enforcing their orders, particularly in the more remote areas. For their part the Treasury were anxious only that Scottish business was conducted with the minimum trouble and were unwilling to undertake any major reforms. Again the Treasury saw the Exchequer as a convenient repository for a wide range of miscellaneous business and this added to the burdens of the court. These tasks were given to existing officers; there was little increase in staff numbers or restructuring of the offices to meet the increase in work. Undoubtedly many of the officers were of low calibre, partly due to the political nature of their appointment, but the court was probably understaffed and this placed a strain on the conscientious officers who often found difficulty in keeping up with the volume of work.

In the last resort the judgement that the Scottish Court of Exchequer in the period 1725 to 1748 was 'ingloriously inefficient' is too severe. Rather, given the difficulties under which it laboured, both external and of its own making, the evidence suggests that Exchequer dealt with routine matters relatively efficiently without in any way providing the firm positive financial administration required in Scotland.
CHAPTER SIX: THE CIVIL LIST AND THE COST OF SCOTTISH GOVERNMENT

Introduction

For the first two years after the Union the payment of the established civil officers in Scotland was dealt with on a largely hand-to-mouth basis, salaries being paid out of the English Exchequer as and when the Treasury had individual arrears brought to its notice. By 1709, however, Godolphin had fumbled his way to confining and consolidating the civil list within specified limits. A large number of pre-Union Treasury servants and servants of various officials were removed, while the barons and other officials of the new Exchequer were brought on to the establishment. A new system of payments was laid down by a Privy Seal of May 1709. Godolphin's original plan was for Scottish revenue to be remitted to the English Exchequer and then paid out to the Receiver General in Scotland as required. Such a procedure had obvious disadvantages and was unnecessarily cumbersome. Godolphin therefore decided to put into effect a system which kept Scottish revenue and its commitments separate from that of England. The responsibility for dealing with the Scottish civil list was delegated by the Treasury to the Scottish Exchequer. The quarterly lists were to be sent by the barons to the Treasury to be warranted and on return the barons were to order the excise commissioners and the receiver general of customs to pay over to the Receiver General of land rents sufficient money to pay the civil list salaries. Crown rents, and shortly afterwards compositions and seizures, were also to be employed to meet civil list expenditure.

1 For details see Riley, English Ministers, pp. 83-5.

2 Riley suggests that an additional benefit in Ministers' eyes was that it would be easier to see whether Scottish revenue was paying its own way: ibid p. 85.

3 By Privy Seals 30 Jun 1709 and 24 Feb 1710.
The 1709 consolidated civil list included the senators of the College of Justice, the barons and the new Exchequer officials but not the salaries of the great officers of state who continued to be paid directly from the Treasury until 1714 when they too were put on the civil list. 4

During the first decade or so after the Union the new administrative structure in Scotland slowly developed out of the Union settlement and the various administrative experiments of these years, which as we shall see 5 were in turn partly a consequence of the unsettled political climate. There was a general increase in both the numbers of civil officers and in the level of their salaries. This, coupled with the various steps towards the consolidation of the civil list, resulted in the civil list steadily growing in both size and cost until the early 1720s. By then this phase of post-Union development had worked itself out and the administrative structure of Scotland had become relatively settled. Thereafter during the period 1725 to 1748 the size and cost of the Scottish civil list remained fairly constant for the obvious reasons that almost no new civil list offices were created in these years and because salary increases to existing officers were relatively few and mostly minor. While the volume of work generally continued to increase and a few new areas of work did emerge, there was a marked reluctance to create new offices. Efficiency within the existing administrative structure was the hallmark of Walpole's years at the Treasury. Thus additional work was placed on existing officials, normally without any compensating rise

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4 The procedure for paying the civil list was confirmed by a Privy Seal 23 Dec 1714 on the accession of George I: see Clerk and Scrope, Court of Exchequer, pp. 239-43. The customs and excise had, as we have seen, their own separate establishments.

5 Below chapter 8.
The Scottish civil list was loosely divided between the offices of the 'three courts'—Exchequer, Session and Justiciary, and the remaining 'non three court' offices. Although the entire establishment was made up in one list and dealt with as a whole, this division was of some importance. If sufficient money was not immediately available to pay the entire quarter's establishment, as frequently happened, the 'three courts' were always given first priority. In addition, the largest and most reliable sources of income in Scotland, the customs and excise revenues, were always assigned for payment of the 'three courts'; other salaries were to be paid from the less reliable and much smaller sums brought in from Crown rents, compositions and seizures and from any residue remaining from the customs and excise monies.

Most civil list officers were appointed by the Crown: the major officers of state—the Lord Justice General, the Lord Clerk Register, Keepers of the Great and Privy Seals, Knight Marischall, Lord Lyon, Lord Advocate, Solicitor General, the barons and principal officers of Exchequer, and others—under the Great Seal of Scotland; various more minor 'three courts' officials, the royal tradesmen and household officers by warrant under the Privy Seal of Scotland. Certain other officials, not directly appointed by the Crown, were also paid on the civil list. Among these were the various Exchequer officials appointed

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6 The quarterly civil lists are contained in North Britain Books, SRO RH2/4/433-456 1725-50. See also SRO E223-229 for Exchequer Auditor's records of quarterly lists and other civil list material. The civil list for Midsummer quarter 1733 is set out at Appendix I.

7 Clerk and Scrope, Court of Exchequer, p.242.

8 Privy Seal May 1709, reiterated by Privy Seal 23 Dec 1714.

9 SRO E225/2 Entry Books of Commissions 1727-66.
by the barons, usually under the 1708 Act; heralds and pursuivants appointed by the Lord Lyon; macers of Justiciary appointed by the Lord Justice General, and the clerk of that court appointed by the Lord Justice Clerk. The dempster to the Court of Justiciary was "nominated and elected by the bailies, council, deacons of craft ordinary and extraordinary of Edinburgh", while the appointment of housekeeper of Justiciary alternated between the senators and the town council and magistrates of Edinburgh. Finally the appointment of one of the four macers of Session lay with a Captain George Moncrief by royal charter granted in 1690.10

The Three Courts

The officers of the 'three courts' paid on the civil list comprised the judges of Session and Justiciary11 and the barons of Exchequer, together with most of the officials of these courts. The charge of the annual Justiciary circuit was placed on the Midsummer quarter bill and the second circuit, introduced in 1748, was paid on the Christmas quarter.12 Also included under the 'three courts' were the other major office holders in Scotland: the Lord Advocate (£1,000 p.a., salary, pleasure), the Solicitor General (£400 p.a., pleasure), the Keeper of the Great Seal of Scotland (£3,000 p.a., pleasure), the Keeper of the Privy Seal of Scotland (£3,000 p.a., pleasure), the Deputy Keeper of the Signet Scotland (£100 p.a., pleasure),13 the Lord Clerk Register

10 Ibid., passim.

11 In addition to their salaries certain allowances payable to senators before the Union out of customs, amounting to £26,000 Scots p.a., which were continued after 1707 by royal warrant, were paid on the civil list: see Clerk and Scroope, Court of Exchequer, p.241; Riley, English Ministers, p.84.

12 See below p. 222.

13 The Deputy Keeper of the Signet was paid on the civil list from January 1722: see PRO T1/278 no.33 22 Mar 1732.
(£444 16/8 p.a., £1,200 p.a. from 1728, 14 pleasure), the Lord Lyon (£300 p.a., life), 15 Director of Chancellory Scotland (£25 p.a., life) 16 and the Receiver General of Land Rents (£650 p.a., pleasure).

The Secretary of State for Scotland, when one was appointed, was not paid on the Scottish civil list, but on the English Exchequer.

Several of these posts, namely the Keeper of the Great Seal, 17 Keeper of the Privy Seal, Lord Clerk Register, 18 Lyon and Director Chancellary 19 were largely prestigious sinecures, the work being done by deputies resident in Edinburgh. The Keepers of the Great and Privy Seals, the Lord Justice General and the Lord Clerk Register were members of the Privy Council of Great Britain after the Union.

Illy was Keeper of the Privy Seal from 1717 to June 1733 when he replaced Montrose as Keeper of the Great Seal, Atholl becoming Keeper of the Privy Seal. In 1726 £1,000 p.a. was deducted from Illy's salary of £3,000 p.a. as Keeper of the Privy Seal and added to his salary of £1,000 p.a. as Lord Justice General (a post held for life), making his salary £2,000 p.a. for each post. This was in part a reward to Illy for his "great loyalty, abilities, fidelity etc" especially during the troubles of 1725 and for the "eminent services he has done and is capable of doing as Lord Justice General". 20

14 See SRO NHB RH2/4/438, 64 11 Apr 1728.

15Sir Alex Erskine until his death 3 Feb 1727, then Alex Brodie 2 Jun 1727: see SRO NHB RH2/4/437, 347 2 Jun 1727.

16 Held from 1724 by Robert Ker, a grandson of the Marquis of Lothian: see SRO RH2/4/409, 122.

17 For details of the "State of the office of the Keeper of the Great Seal, the officers under him and fees, as supplied to the Fees Commission" 1733, see SRO GD 18/2675.


19 See Hay to Tweeddale 17 Mar 1743 NLS YP7054, 42.

Ilay's overall salary did not increase because "His Majesty does not want to increase the expense of civil affairs in Scotland" — an indication of Treasury policy throughout the period of keeping a tight reign on Scottish expenditure — but he did benefit from the transfer of the £1,000 p.a. in that the office of Justice General was for life while that of Keeper of the Privy Seal was during pleasure only. In 1741, in order to secure Atholl's support in the forthcoming election, the salary of the Keeper of the Privy Seal was again increased to £3,000 p.a. 21

The office of Deputy Keeper of the Signet of Scotland was in the gift of the Secretary of State for Scotland or, when there was no Scottish Secretary, in the Secretaries of State for Great Britain. 22 The official duties of the office were negligible, 23 but the Deputy Keeper normally acted as an important channel of correspondence between Scotland and London, 24 and the post was usually held by a political agent of the Scottish manager: Thomas Pringle, appointed by Roxburghe, till Roxburghe's dismissal in 1725; Reanold Campbell, appointed by Newcastle, until his death in 1726 and then Alex McMillan, appointed by Newcastle and Townshend, 25 to February 1742, both men being key figures

21 SRO NBB RH2/4/450, 115 2 Feb 1741.

22 For details of the office see 'State of the office of Keeper of Signet, his depute and clerks and of fees charged, as supplied to the Fees Commissioners' 19 Nov 1733 GD 18/2764.

23 See Hay to Tweeddale 4 May 1742 NLS YP7047, 5.

24 "The Publick dispatches in relation to Scottish affairs are directed to the Signet office in Edinburgh" Memo by Deputy Keeper of the Signet McMillan c.1728 PRO SP36/9, 245–6.

25 For appointment see SRO NBB RH2/4/436, 291 18 Apr 1727.
in Ilay's inner circle of supporters in Edinburgh; Thomas Hay, appointed by Tweeddale on becoming Secretary of State in 1742 and Tweeddale's principal correspondent on all matters of Scottish politics, patronage and administration in the years of his Secretaryship; and on Tweeddale's dismissal in 1746, McMillan once again.

Very roughly the annual cost of the Courts of Session and Justiciary together averaged just over £10,000, that of the Court of Exchequer over £9,000 and a similar figure for the other principal officers of state. Thus the cost of the 'three courts' normally ranged between £28,000 and £30,000, slightly more than three-quarters of the total civil list bill.

'Non three courts'

The 'non three court' section of the civil list contained a miscellany of officers and pensions. The most important officers were the Heritable Master of His Majesty's Household in Scotland (£2,000 p.a.), a position held by the Duke of Argyll until his dismissal in 1740 and not filled thereafter in this period; the Knight Marischall (£400 p.a., pleasure); and the Conservator of Scots Privileges in the Netherlands (£200 p.a., pleasure). From 1728 the Secretary to the Order of the Thistle (£300 p.a., life), at that time Sir David

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26 For appointment see SRO NBB RH2/4/451, 248 24 Mar 1742; for correspondence see NLS Yester Papers and Supplementary Yester Papers and chapter 11 below.

27 For details see Appendix I.

28 SRO NBB RH2/4/450, 6 3 May 1740.

29 Charles, Lord Binning, to his death 27 Dec 1732; the earl of Kintore from 2 Jul 1733.

30 Sir John Anstruther until 1743, then George Dundas: SRO NBB RH2/4/452, 434 13 Apr 1743.
Nairne, was placed on the civil list. Also on the list were several officers of the Wardrobe in Scotland and various keepers of Holyrood Palace — all largely honorary positions — together with six trumpeters who performed on formal occasions. Fairly regular payments to royal messengers for circulating official proclamations, such as on the death of the sovereign, were also paid on the civil list. Although most royal 'tradesmen' had lapsed at the time of the Union, several still received a civil list salary, namely two physicians, an apothecary, a botanist, an limner, and an under-falconer. The royal chaplains, between two and four, received £50 p.a. each, while the Church of Scotland itself was given £500 p.a. for "defraying the charge of Church Affairs in Scotland and paying the salaries of their officers". HM Almoner was given varying sums to distribute to bedesmen on the King's birthday, and £2,000 was allotted to pay for the Charity Roll. Several pensions were also paid on the civil list. These, rarely more than ten or so in number, seem largely to have been to retired officials, their widows or relatives, and varied between several hundred pounds per annum and

31 SRO NBB RH2/4/438, 166 20 Aug 1728; SRO NBB RH2/4/439, 193 Michaelmas 1728 civil list; PRO T1/278 no 33 22 Mar 1732. George Drummond became Secretary in 1736, SRO NBB RH2/4/446, 418 15 Apr 1736.

32 The post of chief heritable housekeeper of Holyrood Palace was held by Hamilton till his death in 1743, and thereafter by his son (£46 p.a.).

33 For example Christmas 1724 civil list SRO NBB RH2/4/433, 291; Ladyday 1726 civil list SRO NBB RH2/4/435, 69. Messengers were also employed to escort prisoners; for example see Roxburgh to John Crawford, 19 May 1722, SRO RH2/4/409, 133.

34 For details see 'List of Places in Scotland in the Gift of the Crown' NLS Adv Ms 31.5.3.

35 George I's birthday fell in Ladyday quarter, that of George II in Michaelmas quarter. The sum increased each year in proportion to the king's age; for example see SRO NBB RH2/4/433, 167 11 Jun 1724.

36 See above p.185.
£20-30. One of the largest was £1,000 p.a. to the widowed Henrietta, Duchess of Gordon, from Michaelmas 1735, with a view to her bringing up her children as Protestants. Finally, the four universities in Scotland, Edinburgh, St Andrews, Glasgow and Aberdeen, each received £210 p.a. towards the payment of professorial salaries. Allowing for variations in pensions, the cost of the 'non three court' civil list was usually between £7,000 and £8,000.

The Civil List

Excluding pensioners and those on the Charity Roll, there were around 110 to 115 individual offices and places on the Scottish civil list, although one man might hold more than one of the minor court posts. Over 70 of these were directly connected with the three courts (that is, including the judges and barons but excluding the Lord Advocate, Solicitor General and other major officers) which underlines their importance as a major source of patronage.

Between 1725 to 1748 only two new civil list offices were created, the Keeper of the Register of Resignations (£40 p.a.) in 1726 and a deputy clerk of Justiciary (£40 p.a.) in 1729. Several existing officers were placed on the establishment: the Exchequer Auditor in 1720, the Deputy Keeper of the Signet in 1722, the London agent and the Secretary to the Order of the Thistle in 1728. There were few salary increases in the period, the most important being the rise in the Lord Clerk Register's salary from £444 16/8 to £1,200 p.a. in 1728 and the payment of an additional £1,000 p.a. to the Keeper of the Privy Seal.

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8 For details see report of barons to the Treasury CTP (1720-8) p.408 26 Jul 1726; ibid. p.478 1727; SRO NBB RH2/4/439, 269 ff. 9 Apr 1729.

39 See above p. 181 and footnote 169.
Few civil list officers who held their post during pleasure were removed for political reasons, the only important exceptions being the Lord Advocate, Solicitor General and Deputy Keeper of the Signet, the occupants of which were always deeply involved in political activity. There were certainly no wholesale alterations as a consequence of shifts in political power: most officers were not replaced until they were promoted or died. Thus tenure of office was relatively secure for the majority of civil list officers: even just before or after elections normally only the Lord Advocate, Solicitor General and Deputy Keeper of the Signet, and sometimes one or two of the politically influential great men holding prestigious sinecure posts were at risk. Marchmont, for example, was removed from his post as Lord Clerk Register shortly before the 1734 election and replaced by Selkirk and Montrose dismissed as Keeper of the Great Seal. Even after Tweeddale's appointment as Secretary of State in 1742 only Lord Advocate Areskine and Deputy Keeper of the Signet McMillan, both prominent Argathelians, lost their jobs immediately, followed some months later by Solicitor General Grant. All were replaced by Squadrone men. Despite mounting pressure from his supporters, Tweeddale made very few further changes in the following four years. Several minor court officials were replaced in Michaelmas 1743 quarter and changes were made among the Royal chaplains in Midsummer 1744, but most officials remained untouched. The only other group who were liable to sudden removal were the minor 'royal' officials

40 For an "Account of all Salaries or pensions for civil affairs granted in Scotland since Christmas 1716" (to 1732) see PRO T1/278 no 33 22 Mar 1732.

who might be replaced on the accession of a new sovereign. Thus on the accession of George II the only real changes in the civil list occurred among the Wardrobe officials and royal tradesmen. One other interesting series of changes occurred from Ladyday 1746 onward when several heralds, pursuivants and trumpeters suspected of being involved in the Forty-Five rebellion were replaced.42

Cost of the civil list

On average43 the total cost for Ladyday, Michaelmas and Christmas quarters from 1725 to 1748 was £9,000 while that for Midsummer quarter, which included the charge for the circuit courts was just under £10,000. From 1748 when circuits were held twice a year and judicial salaries were increased the Midsummer quarter and now also the Christmas quarter amounted to over £10,000. The annual cost thus averaged just over £37,000 with low and high points of just under £35,000 in 1726 and just over £38,000 in 1748.44 Most variations were caused by offices remaining vacant for a quarter or two following the death or removal of the previous incumbent, and then the new incumbent being paid back salary on one quarter's bill.

Payment of the civil list

The procedures for dealing with the civil list which had been evolving

42 SRO RH2/4/454, 277 Ladyday 1746; ibid. 280 Midsummer 1746; ibid. 307 Michaelmas 1746. See also Scrope to barons 20 Jun 1746 SRO NBB RH2/4/454, 259: the Lords of the Treasury returned the Christmas 1745 civil list to the barons with the instruction "to stop payment to all persons in the civil list suspected of being in the Rebellion, till further orders". Three of them were later reinstated: see report barons to Treasury 20 Jun 1749 PRO T1/336 no 13.

43 Figures are calculated from quarterly establishment lists in SRO NBB RH2/4/433-456.

44 The annual civil list expenditure on the accession of the first three Georges was respectively £29,293 (1714), £36,235 (1728) (the 1748 total including payment of the additional circuit was £38,258) and £52,830 (1761); SRO E223/1/1.
since the Union were confirmed by a Privy Seal 23 December 1714, by which the barons were to make out quarterly certificates for the salaries of all civil officers on the establishment and send the list to the Treasury. The actual work in making up the quarterly lists was done in the Auditor’s office. The barons were also to notify the Treasury of any vacancies that occurred. The Treasury checked these quarterly lists and, if they approved, countersigned them and returned them to the barons, keeping a duplicate copy for Treasury records. No payments could be made without Treasury countersignature. On receiving the countersigned certificates from the Treasury the barons issued precepts, again made out in the Auditor’s office, to the receiver general of the customs and the excise commissioners to pay over to the Receiver General such sums as were applicable for the payment of the salaries of civil list officers connected with the ‘three courts’, including circuits, or what might be sufficient for that purpose. The Receiver General then paid out the ‘three courts’ salaries as set out in the quarterly list. The Receiver General was similarly ordered to pay the ‘non three court’ salaries out of monies arising from land rents and casualties, and if such sums were insufficient, as they always were during this period, also out of such customs and excise money remaining at His

45 See Clerk and Scrope, Court of Exchequer, pp. 239-43.
46 SRO E223-9.
47 Normally the Treasury Lords countersigned the lists without comment or amendment but, for example, they added at the foot of the Midsummer 1726 quarter list “We approve all except payment of £75 pension to William Carmichael, late Solicitor General”. The barons were instructed not to pay the sum nor to insert it on any future quarterly bill: SRO NBB RH2/4/435, 125. The Treasury returned the Christmas 1745 certificate with instructions to stop payment of the Duchess of Gordon’s pension and payments to all established officers suspected of being in the Forty-Five Rebellion until further notice: Scrope to barons 20 Jun 1746 SRO NBB RH2/4/454, 259.
Majesty's disposal after the payment of the 'three courts'. The Receiver General made out detailed yearly (usually Michaelmas to Michaelmas) accounts of all monies received by him and expended for civil list purposes. These accounts were often several years in arrears. The bulk of the money to meet the cost of the Scottish civil establishment came from excise and to a lesser extent customs revenues: between them they supplied on average 95% and more of the required amount during the period 1725-48. The rest came from Crown rents and casualties.

The task of making out the quarterly civil lists and obtaining Treasury approval was fairly routine and normally took only a few weeks. Once the lists were returned to the Exchequer, however, difficulties and delays often occurred. Payment was dependent on the amount of cash available in the hands of the customs receiver, the excise commissioners and the Receiver General which could be appropriated for civil list uses. In the 1720s and 1730s receipts from customs, excise and Crown rents and casualties in Scotland were normally at least marginally, often comfortably, ahead of civil list expenditure. The civil list was paid reasonably promptly, delays rarely being more than a month or so, perhaps waiting

48Clerk and Scrope, Court of Exchequer, p.242: "And as it happens often, that there is not a sufficiency of money to pay all those concerned in the establishment, there is a preference given to the three Courts; and in some little time after, when money comes into the hands of the Receiver General, or into the hands of the Cashier of the Customs, or the Commissioners of Excise, which is applicable to the civil list, and at his Majesty's disposal, then the other fees and allowances on the establishment are immediately satisfied and paid". See also George II warrant 5 Jun 1728 SRO NBB RH2/4/438, 109.

49See SRO E400/18.

50Details of the various sources from which the money to pay the civil list came are contained in SRO E224/2-5, which inter alia details the Exchequer warrants to the customs receiver, the excise commissioners and the Receiver General. For a general breakdown see Appendix II.
for a further quarter's excise or customs to come in. 51 During the early and mid 1740s, however, income fell below expenditure largely due to a temporary decline in excise revenue as a result of a series of bad harvests. Delays in payment of two or three months or more became common. "The finances are so low in this country", wrote Hay to Tweeddale in September 1742, "that there is not yet so much cash in the Receiver General's hands as that the Exchequer can issue precepts for payment of the quarterly establishment due at midsummer last". 52

By December 1743 the equivalent fund, the £2,000 to the Board of Trustees and the money for itinerant preachers 53 had all not been paid for over a year. 54 The 1744 Midsummer quarter was not paid until the end of September and the Christmas quarter of that year until March 1745.

Lord President Forbes was particularly concerned at the poor state of the public revenues and the consequent lack of money to aid manufactures. 55 He put the blame on the smuggling of foreign spirits, particularly brandy, and the consumption of tea to which he ascribed the fall in excise revenue. During the early 1740s he harried Tweeddale, Lord Advocate Craigie and the Treasury to take active steps to counteract the fall in revenue and in particular to prohibit the drinking of tea, "... a remedy which, tho unpleasant is in our opinion necessary to prevent our utter ruin". 56 The Ministry, however, had other more pressing

51 There were some delays around 1730 and 1731, due to a slight downturn in the amount of excise raised in 1728 and 1729 in turn caused by bad harvests in these years and the removal of the salt duties in 1730; see Milton to Ilay Nov 1728 NLS SC 16,539; Milton to Ilay 10 Sep 1730 NLS SC 16,543; SRO E224/3 199, 202, 209ff; SRO E224/3, 146 and 179. There was also delay in 1736; see Milton to Ilay 15 Apr 1736 NLS SC 16,566; Ilay to Milton 12 Aug 1736 NLS SC 16,564.

52 Hay to Tweeddale 4 Sep 1742 NLS XP7050, 19. See also Hay to Tweeddale 28 Dec 1742 NLS XP7052, 99; Forbes to Tweeddale June 1742 CP pp.183-4.

53 See below p. 211.

54 Exchequer to Treasury 13 Dec 1743 NLS SYP Box 138 F3.

55 For the problems facing the Board of Trustees see Menary, Forbes, pp.164-71.

56 Forbes to Tweeddale 18 Aug 1743 NLS XP7057, 98.
problems on its plate and despite a flood of correspondence from Forbes no legislative measures were introduced.\(^{57}\) Others were not slow in blaming the inefficiency of the revenue services: "... Revenue here ... is indeed in a very declining state at present much owing to the negligence as well as Roguery of the officers employed minding with great Care their fees and sallaries but little regarding the Business..."\(^{58}\) The problem was eventually recognised at the Treasury and it was agreed that Scottish salt revenue could be applied to the Equivalent and Manufactures funds (as it had been before 1730) instead of being remitted to London which had happened since the introduction of the salt duties in 1732.\(^{59}\) Efforts were also made to get local collectors to

\(^{57}\) See full details see Menary Forbes, pp.142-54; Scrope to Forbes 10 Feb 1742 CP p.174; Forbes to Tweeddale June 1742 ibid. pp.183-4; Forbes to Newcastle 18 Sep 1742 ibid. pp. 185-6; Tweeddale to Forbes 6 Oct 1742 ibid. pp. 186-8; Hay to Tweeddale 28 Dec 1742 YP7052, 99 "I wonder that he did not think of promoting these schemes when his friends were at the helm ... it would be extraordinary to force people to drink two penny [ale] if they find tea more healthful and cheaper"; Forbes to Tweeddale 1 Jan 1743 CP pp. 188-95; Tweeddale to Forbes 17 Feb 1743 MCP III, pp. 166-7; Forbes to Scrope 9 Apr 1743 MCP III, pp. 168-9; Forbes to Tweeddale 11 Apr 1743 MCP III, p.170; Tweeddale to Forbes 28 May 1743 MCP III, pp. 171-3; Armitson to Tweeddale 28 Jun 1743 NLS YP7056, 122; Forbes to Andrew Mitchell Aug 1743 MCP III pp. 173-8 "... if a scheme relating to Scotland contrived with the utmost perfection by an angel, came to be laid before an English minister or members sitting in Parliament or even just before it, when their heads are usually full of business more interesting to them, they would not so much as afford it an attentive consideration, to examine whether it had or had not faults; whereas if such a scheme was laid before them about this time [in recess], when they have full leisure, it might have a better chance of being sifted and examined"; Forbes to Tweeddale Aug 1743 MCP III, pp. 175-6; Forbes to Craigie 10 Aug 1743 MCP III, pp. 185-6, expressing his irritation that Craigie had not prepared any draft legislation; Forbes to Newcastle 18 Aug 1743 NUL NEC 1611; Hay to Tweeddale 18 Oct 1743 YP7058, 103; Craigie to Tweeddale 27 Oct 1743 NLS YP7058, 122; Forbes to Tweeddale 24 Dec 1743 NLS YP7059, 121; Forbes to William Murray 24 Dec 1743 MCP III, pp. 186-90 "the complaints of this poor country seldom make impressions with you, when the evil is not felt to the southward"; Forbes to Craigie 24 Dec 1743 MCP III, pp. 190-1; Forbes to Mitchell 24 Dec 1743 MCP III, pp. 191-2; Tweeddale to Forbes 31 Dec 1743 MCP III, pp. 192-4; Memo relating to various of Forbes's letters NUL NEC 1612; Mitchell to Forbes 5 Jan 1744 MCP III, pp. 195-7; Forbes to Tweeddale 7 Jan 1744 NLS YP7060, 15; Craigie to Forbes 10 Jan 1744 MCP III, pp. 196-200.

\(^{58}\) Arbuthnot to Tweeddale 12 Jul 1743 NLS YP7057, 22.

\(^{59}\) See above p.77.
send up all balances in their hands as quickly as possible. Such balances, though substantial, were no greater than normal, and it was the decline in incoming duties, rather than outstanding balances that was the real cause of the problem.

The Jacobite rebellion temporarily made matters worse. While payment of the Midsummer 1745 quarter was only four months behind, the Michaelmas quarter was not met until April 1746 and the next four quarters were all paid six or seven months late. The customs and excise commissioners and many of the outport officers fled from their posts on the outbreak of the rebellion and the Jacobites attempted to gather in the customs and excise revenues in late 1745 and early 1746. Secretary Murray issued instructions to various collectors to attend at Holyrood Palace with their accounts and all outstanding balances in their hands. Attempts were also made to raise the revenues locally and after the rebellion various revenue officers were accused of collaborating with the rebels. The Treasury ordered a full enquiry and several officers were suspended or dismissed. Nevertheless, despite the upheaval of the rebellion most of the customs and excise money did slowly trickle in and the civil list officers were eventually paid. As many of them had fled to England on the outbreak of the rebellion and were slow to return in 1746 they had little cause for complaint. Thereafter, excise income began to increase, the delays were quickly reduced and by Michaelmas 1747 quarter payment was again being made within about one month.

60 See Scrope to Exchequer 21 Oct 1743 SRO NBB RH2/4/452, 498; Exchequer to Treasury 13 Dec 1743 NLS SYP Box 138 F3.

61 See PRO TL/356 no 27 Jas McKay to Newcastle 24 Aug 1754. On Jacobites levying excise in the Linlithgow area, October 1745, see PRO TL/347 no 33 3 Sep 1751.

62 See Scrope to customs commissioners 20 Jun 1746 SRO RH2/4/454, 259; Scrope to excise commissioners 20 Jun 1746 ibid.

63 See SRO CEL/7 5 Mar 1746 and following meetings; SRO CEL/7 9 Apr 1746, 20 Oct 1746, 17 Jul 1746.

64 SRO E224/5; SRO E401/35-8 1744-5 to 1748-9.
Other payments

In addition to the established civil list payments, the Exchequer barons were also empowered by the Privy Seal of 1714 "to allow payments of all other sums as His Majesty should, by warrants under his royal sign manual, command to be paid to any person for any use whatever, out of any of the Crown revenues in Scotland applicable to the uses of civil government or at His Majesty's disposal". The royal sign manual was always countersigned by the Lords of the Treasury. The procedure for payments was the same as for the civil list, the barons issuing their warrants to the Receiver General, customs receiver or excise commissioners. Such non civil list payments fell broadly into two categories: large regular annual sums paid to various bodies and officials in Scotland such as the Equivalent Company, the Fund for Manufactures and Fisheries and the Lord High Commissioner to the General Assembly of the Church of Scotland; and numerous gifts, rewards, royal bounty and other payments for specific purposes or to favoured individuals.

As part of the Union agreement, England was to pay Scotland a sum of £398,085 10/-, known as the 'Equivalent'. A commission was set up to administer the distribution of the money but it soon became apparent that the Equivalent was quite inadequate to pay off the various public debts charged to it. By 1711 with most of the Equivalent money used up, £111,451 was still outstanding, together with a further £104,744 which had been paid out in the form of debentures at 5% interest.

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65 These powers were renewed by Privy Seal at the start of each reign; for example George II 5 Jun 1728 SRO NBB RH2/4/438, 109.


It was also becoming increasingly clear that there was little hope that customs and excise revenues could meet these sums. Finally after considerable agitation among the creditors a new Equivalent Act was passed in 1714 by which time the sum outstanding was £230,308.68 The old debentures were to be called in and the commissioners were to issue new debentures at 5% converting the total of the old outstanding debt together with the interest it had accumulated.69 A further Act was then passed empowering the Crown to appoint commissioners to examine the debts due to Scotland by way of the Equivalent.70 Following the report of these commissioners the Commons resolved that the civil list debt of Scotland was a just debt and ought to be provided for. A new Equivalent Act was therefore passed71 which established two annual funds out of the unappropriated revenue of Scotland, that is out of customs and excise revenues in Scotland after the civil list had been paid and in preference to all other payments except drawbacks; one, the Equivalent Fund, of £10,000 (plus £600 for management costs) to pay off debts and provide the interest on the debentures, and the other of £2,000 to provide a subsidy for the encouragement of fisheries and manufactures. "The said £10,000 and £2,000 are in lieu and full discharge of all Equivalents whatsoever which shall or may be claimed on the part of Scotland".72 By this time the debt was standing at £248,500 in debentures and interest.

68Act 13 Anne c.12; Riley, English Ministers, p.224.
69Ibid., p.225.
70Act 1 Geo I c.27; see Riley, English Ministers, p.225. This was re-enacted in 1717 by Act 3 Geo I c.14.
71Act 5 Geo I c.20 (1718); see Riley, English Ministers, p.228.
72See PRO T1/329 no.40 2 Feb 1748.
In 1724 holders of equivalent debentures were incorporated into the Equivalent Company with a capital which consisted of the amount issued in debentures (£248,500) and the annual £10,000 became the dividend payable to the proprietors of the company. Payments were made quarterly from Michaelmas 1724. The directors of the new company soon sought a more enterprising activity than simply distributing the annual £10,000 dividend and in April 1727 they applied for permission to engage in banking. The Equivalent Company was legally a Scottish one so there was no risk of breaking the monopoly of the Bank of England. By this time the Bank of Scotland’s twenty-one year monopoly had expired and no application had been made for its renewal. Despite protests from the directors of the Bank of Scotland the Equivalent Company was granted a charter to set up a bank in Scotland to be known as the Royal Bank of Scotland. The £10,000 (and £600 for management) continued to be paid to the Equivalent Company out of customs and excise throughout the period although there were occasional delays depending on the state of the excise revenues in particular and in 1730, 1738 and 1742 the Company had to petition the Treasury to have arrears paid. From 1727 the £2,000 for manufactures was paid over to the Board of Trustees together with the backlog from the years 1719 to 1726.

73 Riley, English Ministers, p.228. See also HM to Exchequer 11 Mar 1725 and Exchequer to excise commissioners 20 Oct 1725 SRO E224/2, 383; Exchequer to excise commissioners 29 Nov 1728 SRO E224/3, 26.

74 CTP (1720-8) p.453 "Representations of Directors of Equivalent Company to HM" 22 Apr 1727.

75 Memo Governor and Company of the Bank of Scotland c. 22 Apr 1727 CTP (1720-8) p.453.

76 Riley, English Ministers, pp.228-9; N. Munro, History of the Royal Bank, especially chap. III. Royal Bank Charter 31 May 1727 SRO NBB RH2/4/437, 325 confirmed by George II 3 Jul 1727 ibid., 368.

77 See Report Exchequer to Treasury on two memos from Equivalent Company 14 Jul 1743 CTEP V pp.297-8; also CTEP V p.307 10 Aug 1743.

78 Treasury to Exchequer 29 Nov 1727 SRO NBB RH2/4/438, 1; SRO E224/2, 503ff; SRO NBB RH2/4/441, 139 28 Jul 1731.
The Lord High Commissioner was paid £1,000 each year to cover his expenses in attending the General Assembly and from 1725 £1,000 royal bounty was paid annually to the Church of Scotland for itinerant preachers in the Highlands in an attempt to counteract 'popish' tendencies there. Various other more minor annual payments were also made, for example 100 gns. for a horse race run each year on the sands at Leith.

There were also numerous 'one-off' payments: to quote but a random selection £1,000 was paid in 1721 for the repair of Holyroodhouse; £509 to the royal engraver in 1729 for making new Scottish seals following the accession of George II; Alex McMillan was paid £300 and £409 respectively for expenses in connection with his work as secretary to the Fees Commission; and in 1726 George Crawford was given £100 royal bounty as a reward for his "History of the Great Officers of Scotland". Relatively few Scottish pensions were paid in this way, those that were being relatively minor. Most pensions were either placed on the Scottish civil list or more commonly paid out of the English Exchequer.

79 The warrants are recorded in SRO North Britain Books: for example see SRO NBB RH2/4/439, 247 17 Apr 1729.

80 George I to Loudon 17 Apr 1725 SRO RH2/4/409, 260. For accounts of distribution and disposal of the royal bounty for itinerant preachers see SRO E412/1-24, 1725-48.

81 SRO NBB RH2/4/433-456 passim for various examples. For example of Leith race see SRO NBB RH2/4/439, 247 4 Apr 1729.

82 CTP (1720-8) p.47 2 Feb 1721.


84 SRO NBB RH2/4/445, 295 7 Jul 1735.

85 SRO NBB RH2/4/436, 209 6 Dec 1726.

86 See CTP I, p.289 10 Dec 1729 for a list of various Scots receiving pensions. For Scots receiving pensions etc. on the English Exchequer see CTP vols. I-V, Table II for each year. Also PRO T52/31-44 1725-48.
As with the civil list, most of these non civil list payments were met out of excise monies, the bulk of the remainder coming from customs and salt.\textsuperscript{87} The average annual cost of payments to the Equivalent, Lord High Commissioner, itinerant preachers and Manufactures, together with the various other irregular payments and minor pensions was about £15,000. Warrants for non civil list payments were given lowest priority: the civil list charge had to be met first, then the statutory annuities to the Equivalent Company and the Commissioners for Manufactures, and only then was any money remaining devoted to the various other payments. Thus it is not surprising that there were often delays of several months before the recipients actually got their money. This problem was of course exacerbated in the years when income from Crown revenues in Scotland fell, notably in the early 1740s, and payments were sometimes as much as a year in arrears.

The Mint

After the Union a separate Mint was retained in Scotland charged with the task of coining money for Scotland in line with standards laid down by the English Mint. No coinage seems to have been minted after 1709,\textsuperscript{88} despite the scarcity of specie in Scotland during the period.\textsuperscript{89} This scarcity meant that supplies had to be sent from London and led to considerable counterfeiting of coin in Scotland.\textsuperscript{90} Thus the offices in the Scottish Mint were largely sinecures. The chief officer

\textsuperscript{87} For lists of warrants and payments see SRO E224/2-5.

\textsuperscript{88} See Memo Lauderdale to Treasury (after) 25 Mar 1723 CTP (1720-8) p.205. Also CTP II pp.231-2 7 Jun 1732.

\textsuperscript{89} For details of notes and specie in Scotland in the immediate post Union period see Rondo Cameron, Banking in the Early Stages of Industrialisation, (New York, 1967), p.65. For complaints about lack of specie see Clerk's Observations, ed. Smout, p.206; Areskine to Delafaye 16 May 1729 SRO RH2/4/328 ff.235-6; Illy to Newcastle 2 Sep 1729 SRO RH2/4/329 ff.323-4.

\textsuperscript{90} See Memo Belhaven to Treasury 29 and 30 May 1735 CTP III, pp.23-5, proposing to coin some 60-70 tons of copper coin at Edinburgh.
was the General of the Mint who received a salary of £300 p.a. 91

The office was held by the earl of Lauderdale from 1714 to 1734 (when he was made first commissioner of Police) and thereafter by John, Lord Belhaven. 92 Under the General was a Master (£200 p.a.) and a Warden (£150 p.a.), both appointed by the Crown and held during pleasure. The remaining posts were the counter-warden (£60 p.a., life), an assayer (£100 p.a., pleasure), an engraver (£50 p.a., pleasure) and a smith (£30 p.a., pleasure). The engraver had the task of engraving new royal seals when required. Most of these officers, although appointed during pleasure, retained their offices until they died. The salaries of the various Mint officers and all the charges connected with the Mint were paid from money issued to the General of the Mint (and from the early 1730s to the Master of the Mint) by the English Exchequer out of coinage duties. 93

Commission of Police

In December 1714 the new Whig ministry set up a Commission of Police for Scotland 94 which was in many respects the successor to Oxford’s abortive Commission of Chamberlainry and Trade. 95 Like Oxford, the


92 Belhaven SRO NBB RH2/4/444, 111 29 Apr 1734.

93 See Mint Accounts SRO E411 various volumes; CTP (1720–8) p. 205 (after) 25 Mar 1723; ibid., p. 86 20 Oct 1721; ibid. p. 313 (after) 29 Sep 1724. The annual bill was £1,200.

94 Riley, English Ministers, pp. 185–6.

95 For the Commission of Chamberlainry and Trade see Riley, English Ministers, pp. 174–187.
Whig ministry may have had thoughts of providing signs of government closer at hand but more important the new Commission, like its predecessor, was seen as providing a further source of government patronage. The Commission of Chamberlainry and Trade had lapsed largely because there were no worthwhile tasks for it to undertake and the Whig ministry found similar difficulties in finding duties for the new Police Commission. In the end the Commission of Police was allotted a variety of tasks. It was to recommend ministers for vacant churches in Crown patronage and collect information concerning papists and non-jurors. It was to prepare a report on the state of the Highlands and make proposals thereon, and to consider means for employing the poor, and for repairing the highways and making rivers navigable. Finally it was to be responsible for the encouragement of the export of naval stores from Scotland, and to make proposals for the disposal of the coarse wool money.96

The Commission was composed of a President, who received £1,200 p.a. salary, and a number (usually eight) of peers and commoners paid £800 p.a. and £400 p.a. respectively. There was also a staff of clerks for whom the Commission received £600 p.a. for salaries and incidental expenses. These sums, totalling £7,000 p.a., were paid out of the English Exchequer. The Marquis of Tweeddale was appointed the first president and the rest of the Commission represented a careful balancing of Squadron and Argathelian interests.97

From the start appointments were made on a purely political basis and throughout the period commissioners were appointed and removed largely for political reasons.98 As a result the commissioners made

96 Ibid., p.186; SRO NBB RH2/4/409, 84 7 Jul 1721.
97 See Riley, English Ministers, p.258.
98 For changes shortly before the 1734 general election see OTHP II pp.547–8 25 Apr 1734.
little or no attempt to undertake any of the tasks assigned to them and, as Riley points out, "the amount of work accomplished up to 1727 was ludicrous". Membership of the Commission became a comfortable sinecure. When the Board of Trustees was set up in June 1727 it took over the job of disposing of the coarse wool money and when the Commission was renewed after the death of George I it also lost responsibility for the exercise of Crown church patronage. In 1733 the opposition in Scotland considered that the Commission served no useful purpose whatsoever and that it should be abolished and the salaries used to pay the expenses of the sixteen elected peers attending the House of Lords, but the proposal came to nothing.

Conclusion

From a detailed study of the official accounts of the period, it can be concluded that Scotland just raised sufficient revenue to meet the cost of its civil government in the years 1725-48. Local government cost virtually nothing: sheriffs, justices and the like were unpaid and such costs as did arise were met from fines. Various other costs were met directly from the English Exchequer, most notably the salaries of the Scottish Secretary and of the Commissioners of Police, the cost of the Mint and most Scottish pensions: against this it should be remembered that Scotland contributed fairly substantial sums to the


100 Ibid., p.187. The Commission was abolished in 1782.


102 27 Feb 1728 SRO RH2/4/410, 74. The commission at this time (Jan 1728) consisted of Sutherland president, Buchan, Hyndford, Lauderdale, Torphicen, Haddington, Charles Aroskine, Lord Alex Hay and David Haldane. See also SRO NBB RH2/4/438, 38 21 Mar 1728.

103 See NLS SYF Box 140 Fl(a) 1733.
London Treasury by way of land tax and malt tax. The cost of the military in Scotland was also met from London.

Excise and customs normally raised just sufficient net revenue to meet the bulk of the cost of the Scottish civil establishment. Such was the margin, however, that the Treasury kept a very tight rein on civil list expenditure and allowed almost no increases in the number of jobs or the level of salaries. The slump in excise income in the early 1740s meant that the flow of money to Edinburgh was not sufficient to meet the civil list and other costs and arrears in payment began to occur. The problem was exacerbated by local collectors' practice of keeping large sums in their hands instead of remitting them to Edinburgh. As a result, when the Jacobite rebellion broke out in August 1745 there was a desperate shortage of cash available in Scotland and the Treasury had to make hurried arrangements to send up money to Scotland to meet Cope's immediate needs.
CHAPTER SEVEN: COURTS AND JUDGES: THE LAW AND POLITICS

"Shew me the man and I'll shew you the law". ¹

Introduction

The Act of Union provided express safeguards for the Scottish courts and legal system. ² For most of the eighteenth century Scots law was little affected by English influences and the Scottish courts were left basically untouched until the reforms of the early nineteenth century. ³ Nevertheless with the Union ultimate responsibility for the proper maintenance of law and order passed to the English government which had higher expectations of civil obedience and larger resources for dealing with trouble.⁴

Court of Session

The supreme civil court in Scotland was the Court of Session which


² By article XVIII of the Union Scots law was declared to be unalterable by the United Kingdom Parliament, absolutely so far as public rights, of policy and civil government, were concerned, only for the evident utility of the subjects within Scotland so far as private rights were concerned. By article XIX the supreme civil and criminal courts in Scotland were to continue, subject to such regulations and alterations as might be considered necessary by the United Kingdom Parliament for the better administration of justice.


had both a primary and an appellate jurisdiction. In the eighteenth century the court consisted of fourteen 'Lords Ordinary' sitting individually in weekly rotation in the 'Outer House' and collectively under a fifteenth judge, the Lord President, (nine being a quorum), in the 'Inner House' as a court of appeal. These 'Senators of the College of Justice' were appointed by the Crown and held office for life. Three or four extraordinary Lords, appointed by the Crown during pleasure and who required no legal qualification, could also sit and vote in the Inner House. No cause could be brought into the Inner House until a Lord Ordinary had pronounced on it in the Outer House and in fact there were very considerable delays before appeals to the Inner House were heard, six years for example in 1750.

After the Union it was quickly established that there was a right of appeal from the Court of Session to the House of Lords.

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6 Salaries Lord President £800 p.a., Lord Justice General £1,000 p.a., Lord Justice Clerk £700 p.a., ordinary judges £300 p.a. each. There were no juries in civil cases in Scotland, the judges deciding on both law and fact by a majority vote: Smith, The Scottish Contribution, p.55. For a contemporary view on the merits or otherwise of jury trial see Clerk and Scrope, Court of Exchequer, p.21.


8 Before the Union appeals from Session were heard by the Privy Council of Scotland; while the Union was silent (probably deliberately) on the subject of appeals to the House of Lords, the right of taking such appeals was soon settled by a decision of the Lords in 1708 in the case of Roseberry v. Pirrie, followed by the Greenshields case in 1710-11; Riley, Union of England and Scotland, p.184 and n 132; Stair Society, Introduction to Scottish Legal History, pp. 28, 55; Smith, The Scottish Contribution, p.65. For the method of appeal see Clerk and Scrope, Court of Exchequer, p.93. The number of appeals to the House of Lords multiplied rapidly in both volume and triviality; see Clerk's Observations, ed. Smout, p.210.
While Scots civil law had, by 1707, assimilated many of the best features of both Roman law and English common law, the processes of litigation in the Court of Session were both complex and cumbersome. It was particularly difficult to bring the parties to an issue and skilful lawyers could protract a case almost indefinitely. All pleadings had to be written which was not only laborious and expensive but very time-consuming. Session was not so much a court of law as a court of arbitration whose forms rested upon the assumption that the parties wanted to find a solution to the dispute between them: it was the great bargaining centre of Scottish life. Moreover, the quality of the senators was at one of its lowest ebbs in the first half of the eighteenth century: appointments to the bench were almost entirely political and few had any real legal ability. Cases were usually decided on political grounds rather than on legal merits and debates in the Inner House often

9Ferguson, Scotland: 1689 to the Present, p.162.


11Ramsay tells of Sir James Naismith, a lawyer who excelled in "proposing dilators". Seemingly when Duncan Forbes and Robert Dundas were rising lawyers they were consulted in a case where delay was of the utmost importance. They advised with Sir James who, upon topics which did not even occur to them, produced nine sheets of dilators which effectually procrastinated the decision until a favourable change in circumstances took place: Scotland and Scotsmen in the Eighteenth Century From the Manuscripts of John Ramsay of Ochtertyre, ed. A. Allardyce (1888), vol. I, p.41. Cases taking ten, twenty, even thirty years to complete were not uncommon: see Menary, Forbes, p.124.

12See Stair Society, Introduction to Scottish Legal History, p.341; Smith, The Scottish Contribution, p.76.

13Phillipson, Reform of the Court of Session, pp.119-21.

developed into unseemly brawls between judges of opposing political factions. As a result, litigants relied on party and political connections to influence the bench rather than legal reason.\textsuperscript{15} The problem was particularly acute in the 1720s when the bench was fairly evenly divided between Argathelian and Squadron supporters, highlighted by the great dispute over the nomination of Patrick Haldane.\textsuperscript{16} After 1725 the bench was increasingly dominated by Argathelians. Judges were often pre-determined for one side or another before a case was even heard\textsuperscript{17} and the situation was made worse by the fact that they did not have to give any reasons for their decisions. Losing litigants often felt confused, dissatisfied and bitter, convinced, often with some justification, that the judges had not understood the case, nor even bothered to read the long written pleadings.

When Duncan Forbes became Lord-President in 1737 he attempted various reforms.\textsuperscript{18} In 1737 an Act of Sederunt stipulated that all cases were to be taken in strict order and that no case should be protracted for more than four years.\textsuperscript{19} Forbes also took steps to tighten up the discipline

\textsuperscript{15}Phillipson, Reform of the Court of Session, p.123. See also pamphlet "The Testamentary Duty of the Parliament of Scotland" c.1706 quoted J. Maidment, The Court of Session Garland, (Edinburgh, 1871), p.23: "... men take not ordinarily their measures according to the justice or injustice of their suits, but their influence and interests with the Lords..." For a good example of personal pressures that might be put on judges see ibid. pp.23-5.

\textsuperscript{16}See below pp.247-60.

\textsuperscript{17}Legal stories of the time echo this. After a suit of the magistrates of some burgh had been brought to a successful conclusion largely owing to the support of a certain judge they presumed to solicit that judge's favours in another forthcoming suit. "Na, na, I canna do that," said the judge. "Why?" exclaimed the astonished magistrates, amazed at what they conceived to be a most uncalled for scruple of conscience. "Because", rejoined the judge, "ye're over late, I've already gain my promise to the opposite party". J. Maidment, The Court of Session Garland, p.7.

\textsuperscript{18}For details see Menary, Forbes, pp.124-135. He was encouraged in such reforms by Hardwicke.

\textsuperscript{19}Act of Sederunt 29 Jul 1737; Menary Forbes, p.124; Phillipson, Reform of the Court of Session, pp.12-13. For previous abuses in calling cases see J. Maidment, Court of Session Garland, p.10.
and efficiency of court officials. The following year the senators resolved not to be absent from the bench without due notification and lawyers were warned that they must study properly all legal papers before signing them. Nevertheless, although these new rules brought some order out of the prevailing chaos and reduced the backlog of cases, they did little to eradicate the fundamental weaknesses in court procedure.

Forbes was also baulked by political pressures:

I am not surprised, (wrote William Murray, later Lord Mansfield), that ... the influence of party or power is sometimes too strong for you.

As Forbes himself confessed to Lord Chancellor Hardwicke in 1739,

The men are almost the same as formerly; bad habits, and evil maxims are hardly to be rooted out, and to tell your Lordship the truth I begin to despair that in the time that I have in my own mind, professed for my services, the mischief can be cured.

**Court of Justiciary**

The supreme criminal court in Scotland was the High Court of Justiciary, established in 1672, comprising of the Lord Justice General, the Lord Justice Clerk and five Senators known as the "Lords of Justiciary".

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21 See Forbes to William Grant 29 Feb 1740 CP pp.156-7.

22 Phillipson, Reform of the Court of Session, p.126.


25 For the history of criminal justice in Scotland and the formation of the court see Stair Society, Introduction to Scottish Legal History, chapters 4 and 31; Donaldson, Scotland: James V to James VII, pp.223-4.

26 From 1721 the office of Lord Justice Clerk was to be held for life: Stair Society, Introduction to Scottish Legal History, p.56; SRO RH2/4/409, 80 7 Jul 1721. In the Court of Session the Lord Justice Clerk had no pre-eminence but was merely ranked according to his date of appointment: Brunton and Haig, Senators of the College of Justice, p. xxxvi.
The Lord Justice General, who was usually a nobleman and not a senator (the post was held by Ilay from 1710 to 1761), was president of the Court, but as he attended irregularly the chair was normally taken by the Lord Justice Clerk. In important 'state' trials, however, notably those of the malt tax rioters in 1725, Ilay personally took the chair. The Court sat in Edinburgh every Monday during term: four judges constituted a quorum. There was no right of appeal to the House of Lords. The 1672 Act also required that the six lords made annual circuits in April/May to various towns in Scotland, two lords going to the north, south and west respectively. No circuits were held until 1708, but from then on they were made regularly. After the Heritable Jurisdictions Act 1747 circuits were held twice a year, in May and October: "justice must be rightly administered throughout the Kingdom".

27 Ilay was also an extraordinary Lord of Session.

28 The law terms were 1 June to 1 August and 1 November to 1 March. The Court of Session did not sit on Mondays.

29 See Smith, The Scottish Contribution, p.68. In fact several appeals were attempted shortly after the Union and one was successful: see Murray, "Administration and Law" in The Union of 1707, ed. Rae, p.46.

30 They were held at Inverness, Aberdeen and Perth; Stirling, Glasgow and Ayr; and Dumfries and Jedburgh. Each judge was paid £100 per circuit and from 1726 an additional £50 if one judge went alone: see Ilay to Milton 30 Aug 1726 NLS SC 16533; Memo Royston, Calderwood and Dun to Treasury 1724 CTP (1720-8) p.296. From 1734 a single judge got £180: see CTBP II p.550 30 Apr 1734.

31 20 Geo II c.43. The salary for each judge was increased to £150 per circuit and the various officials (advocates, macers, clerks and trumpeters) who attended them received corresponding increases, all paid on the civil list: see SRO NHB RH2/4/455, 488 28 Jul 1748. These increases raised the annual cost from £930 for the one circuit to £2,580 for the two circuits.

In both the Court of Justiciary and on the circuits a jury of fifteen decided the facts of a case on a majority verdict.\textsuperscript{33} The Justiciary jury was selected from lists of Midlothian heritors, by the judges themselves: the Lord Advocate also on occasions became involved.\textsuperscript{34} Despite this, juries notoriously favoured the accused, particularly in cases involving violence against revenue officers.\textsuperscript{35} Scots criminal law was neither as well defined or enlightened as the civil law and showed scant regard for individual liberty. It remained largely unchanged until the end of the eighteenth century except for the introduction of the harsh English treason laws in 1708.

Although in theory the Court of Justiciary had a universal criminal jurisdiction throughout Scotland, except in the area where the Argyll family had a right of justiciary, in practice this power was severely circumscribed, first by the existence of various other jurisdictions in Scotland most notably those of a heritable nature, and second by the geography of Scotland - the further from Edinburgh the more difficult it became to enforce central justice. Not until after the abolition of the heritable jurisdictions in 1747 did royal justice begin to become effective throughout Scotland.\textsuperscript{36} The limits of the Court of Justiciary's authority is clearly illustrated in a letter

\textsuperscript{33}Originally the Court of Justiciary jury was restricted to a verdict of proven or not proven and it was left to the judges to determine whether the facts, if proven, inferred guilt. In 1728, however, in the trial of Carnegie of Finhaven for the murder of the Earl of Strathmore, Robert Dundas persuaded the jury to return a general verdict of not guilty. This right has never since been questioned: I. S. Ross, Lord Kames and the Scotland of His Day, p. 18.

\textsuperscript{34}For example Lord Advocate Grant to Newcastle 1 Feb 1747 SRO RH2/4/362, f94-99.

\textsuperscript{35}For example in the trials of the malt tax rioters in 1725. See also Ilay to Newcastle 11 Nov 1725 SRO RH2/4/321, f344-5.

\textsuperscript{36}For an analysis of the origins and difficulties in establishing control in areas outwith the central lowlands see Smout, History of the Scottish People, pp. 39-46.
from Lord Advocate Dundas in 1723, discussing the continuing growth of popery in the Highlands. Before the Union the laws against trafficking priests had been executed by the Scottish Privy Council. These powers had been transferred to the Court of Justiciary,

yet as the forms of that Court are tedious, the prosecutions very expensive; and as that Court have no power by Law to act in way of Governor as the Privy Council Did, but are confined to act in their Judicative Capacity only, and that the offences against those laws are mostly committed in the remotest parts it seems to be very hard, If at all possible, effectually to prosecute offences against these laws without some new remedy be provided, more especially Considering that Inferior magistrates, particularly Sheriffs and Magistrates of Burghs are entirely negligent as to doing their parts in order to bring offenders to conviction....

In fact the abolition of the Privy Council had created serious problems for the enforcement of the criminal law in Scotland and the Court of Justiciary lacked the necessary executive powers effectively to fill the gap. Writing to the Lords Justices on a case where the Inverness magistrates had taken proceedings against a customs officer and two soldiers who, in his view, had only been carrying out their duty, Dundas complained:

I Do Humbly Certify to Your Excys That before the Union of the Two Kingdoms a proceeding of this nature would fallen to have been judged of by the Privy Council of Scotland, But now that we have no Court vested with the powers they had, If it be Your Excys pleasure That the said Magistrates be prosecuted I don't see any other way of doing it than by a libell before the Court of Justiciary for oppression and malversation in their offices But I must beg leave Humbly to submit to your Excys consideration That the Court of Justiciary as now constitute is so very tender of Inferior Magistrates, and our Juries will be so unwilling to hurt a Magistrate for any hardship put upon a Customs house officer That I can have very little hope of succeeding in such a trial If it should be gone on in....

37 Report of Lord Advocate Dundas to Lords Justices 28 Sep 1723 SRO RH2/4/316, ff.216. For a similar complaint see Dundas to Delafaye 3 Nov 1720 SRO RH2/4/314, ff.316-7.

38 Dundas to Lords Justices 30 Jul 1725 SRO RH2/4/316 f196. See also Dundas to Delafaye 5 Nov 1723 ibid., ff.228-9, quoted above p.74.
In 1742 Tweeddale, newly appointed Secretary of State, decided to canvass ideas for a comprehensive reform of the courts in Scotland, particularly Justiciary. Arniston, with some initial though lukewarm support from Forbes, drew up a draft bill to separate completely Session from Justiciary, to reform the selection of Justiciary juries and make other procedural changes, and to improve the operation of the circuits.\(^{39}\) It soon became clear, however, that such reform would be both difficult and expensive and, with the Ministry being wracked by internal conflict and facing mounting problems abroad, the scheme was quietly dropped.\(^{40}\)

**Courts of Admiralty and Exchequer**

There were two other important central courts, the High Court of Admiralty and the Court of Exchequer. The existence of these two courts meant that the Court of Session did not during this period enjoy the almost universal jurisdiction in civil cases it was later to attain in the nineteenth century when it had absorbed many of their functions.\(^{41}\)

By the Act of Union the Scottish Court of Admiralty was to be allowed to function only when private rights were involved.\(^{42}\) It had both a civil and criminal jurisdiction. In theory the Vice Admiral of Scotland, who was appointed by and responsible to the Lord High Admiral and the

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\(^{39}\)See Arniston to Tweeddale 15 Jan 1743 NLS YP7053, 72; Forbes to Tweeddale 4 Jan 1743 NLS YP7053, 24; Hay to Tweeddale 26 Feb 1743 NLS YP7053, 178; NLS SYP Box 138 Fl "The Alterations proposed to be made in the Criminal Law of Scotland"; NLS SYP Box 139 Fl Memo to Tweeddale and draft bill; Menary, Forbes, p.134.

\(^{40}\)See Tweeddale to Forbes 24 Aug 1742 CP p.184; Forbes to Tweeddale 18 Sep 1742 CP pp.185-6.


Commissioners of Admiralty for Great Britain, sat as judge in the court but in practice the duties were performed by his deputy (appointed by him for life) the Judge of the High Court of Admiralty. In civil cases Admiralty was an independent court and its decisions could not be taken to the Court of Session. Its civil jurisdiction included all disputes among merchants and mariners on such matters as contracts, exchange, insurance and delivery of cargo. In criminal cases its jurisdiction was cumulative with that of the Court of Justiciary: piracy and mutiny were exclusively cognoscable in the Court of Admiralty, while murder at sea, might be competently tried in the Court of Justiciary. The Judge of Admiralty could issue certain executive orders, for example to customs officials to apprehend pirate ships. The relative speed and simplicity of procedure in the Court of Admiralty made it a serious rival to the Court of Session for commercial litigation, while the Court of Justiciary begrudged its criminal jurisdiction.

Local jurisdictions

In the localities legal authority was exercised by sheriffs, justices of the peace, burgh magistrates and the holders of various heritable titles.

43 For example see commission of Vice Admiral Earl of Finlater and Seafield to James Philp 11 Dec 1746 SRO RH2/4/361, f286-7. The office of Judge was held for life and was held from 1702 to 1746 by James Graham: "Memorial on the Office of Judge of the High Court of Admiralty" by Finlater c. 21 Nov 1746 SRO RH2/4/360 f116-7. He does not appear to have been paid a salary until 1750: see Finlater to Pelham 19 Apr 1750 N.U.L. NEC 1983a and enclosed memorandum NEC 1983b; Finlater to Pelham 25 Jun 1730 N.U.L. NEC 1984a and b; List of Places in Scotland NLS Adv MS 31.5.3.

44 Stair Society, Introduction to Scottish Legal History, p.399.

45 See SRO RH2/4/317 f71-82.

Sheriffs. There were 33 sheriffdoms in Scotland: 20 were held by heritable sheriffs and the rest appointed by the Crown either for life (4) or during pleasure (9). The office was one of some prestige: in 1724 23 of the sheriffs were noblemen and the rest were prominent landed gentry in their respective counties. Appointnent of the non-heritable sheriffs was political, being given to the most influential government supporter in the shire. Deputies were usually nominated by the sheriff to do the actual work. The functions of both heritable and non-heritable sheriffs were the same. The sheriff was the king's chief officer for preserving the peace and executing royal writs. He was the representative and principal executive officer of the central government, exercising administrative, financial, military and judicial powers and acting as the main link between central and local government. He had both a civil and a criminal jurisdiction (except over treason and the four pleas of the crown) although his jurisdiction did not extend into the royal burghs or other franchises within the sheriffdom. There was a right of appeal to Session or Justiciary from the sheriff's decisions. The relationship between the sheriff court and the central courts was somewhat confused. Causes could be removed from the sheriff court to a central court if, for example, the Crown lawyers felt that the sheriff was not acting with sufficient vigour. On the other hand, the sheriff could in certain instances recall causes from the central courts. The sheriff was responsible for executing writs and orders issued by the central courts.

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48 Murder, rape, arson, robbery; see Stair Society, Introduction to Scottish Local History, p. 360.
Session, Justiciary, Exchequer — and for putting into effect the judgements of these courts. He was also responsible as we have seen for the collection of various Crown revenues in the sheriffdom.

Finally the sheriff was the returning officer for shire elections, receiving the election writ and setting the day for the election, and in this position could often influence the conduct of the election or indeed make a return at variance with the actual result.

Sheriffs received no allowances except for the fines they exacted from criminals.

The other main official in the sheriffdom was the sheriff clerk who kept the court records and often acted as clerk at elections. As this office presented a possible means of control over the sheriff, the Crown had attempted to retain the right of appointment but in fact the sheriff clerks (and the clerks of the peace) were in the gift of the Keeper of the Signet, which in practice meant the Secretary of State until Milton was appointed Keeper in 1746, and were usually "sold for money".

In general sheriffs, and particularly the heritable sheriffs, had become largely independent of Crown control. The majority of heritable sheriffs were negligent in their duties: they failed to collect or account regularly for the Crown rents; court records were not properly kept, if at all; exorbitant fees were exacted and bribes accepted; and the quality of justice was severely impaired by personal, clan or political considerations. The sheriffs appointed by the Crown were usually only

49 Above pp. 126-9.

50 For fuller details of the sheriff's role see Ferguson, Electoral Law and Procedure, pp. 20-1, 46-7.

51 See Hay to Tweeddale 25 Mar 1742 NLS YP7045, 117; Hay to Tweeddale 27 May 1742 NLS YP7047, 91; Hay to Tweeddale 8 Jun 1742 NLS YP7047, 121. For details of sheriff court officials see Whetstone, Scottish County Government, pp.17-22.
slightly more active. Shortly after the Union, in an attempt to keep a check on the sheriffs, they were ordered to attend the Lords of Justiciary on circuit and answer any complaints against their conduct. It would have taken a brave or powerful man, however, to raise a complaint against such a prominent figure and this procedure had little effect. Real reform only came with the Heritable Jurisdictions Act of 1747 which abolished the heritable and life tenure sheriffs and replaced them with legally qualified and salaried sheriffs-depute appointed by the Crown.

Justices of the Peace. Although justices of the peace were introduced into Scotland by James VI in 1587 and numerous other statutes were passed confirming or enlarging their powers, the institution had not developed deep roots. In particular holders of heritable jurisdictions saw the justice of the peace as a serious potential rival and therefore did all they could to hinder its development. In 1707, however, given the absence of any suitable alternative and to bring Scotland into line with England, jurisdiction over customs and excise matters were added to the justices' responsibilities.

After 1707 justices in Scotland were appointed by royal authority delegated to the Lord Chancellor. Commissions were named at the

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54For the early history of the justice of the peace in Scotland see Malcolm, Minutes of the Justices of the Peace for Lanarkshire, SHS 3rd series vol.17 (1931), pp.xix-xxviii; Donaldson, Scotland: James V - James VII, pp. 224-5, 348.

beginning of each reign, in 1725 to help with the new Disarming Act, and between 1739 and 1744 partly in an effort to purge the commissions of suspected Jacobites. Certain justices held the post ex-officio — sheriffs, some provosts and magistrates, senators, the Lord Advocate and Solicitor General — while several army officers were included in the commissions for the Highland counties to give them the necessary powers with respect to disarming.\(^56\) The rest were appointed largely on the recommendation of the local member of Parliament:

\[\ldots\text{it is the Parliament Men for the Counties that give in the Lists; and that is mostly complied with.}\] \(^57\)

The Ministry only took an interest in their composition when Hardwicke was Lord Chancellor and usually left the inspection of the recommendations to the Lord Justice Clerk.\(^58\) Thus for most of the period under study the lists were scrutinised and compiled by Milton, acting on Ilay's behalf.

In practice the justices' criminal jurisdiction was very limited and their main civil task lay in the area of price and wage controls. The justices suffered most from the considerable overlap of jurisdictions in Scotland. The Crown regularly removed cases from quarter sessions to the Court of Justiciary or Exchequer. There was also much rivalry in certain areas with the heritable jurisdictions, and cases could often be claimed to regality or barony. In most counties justices failed to organize themselves effectively and met but irregularly. The indolence of many of the constables, whose job it was to enforce the orders of the justices, also severely hampered the effectiveness of the


\(^{57}\) Cumberland to Newcastle 30 Apr 1746 Inverness enclosure 6, SRO RH2/4/355 f.250-5. See also Whetstone, Scottish County Government, pp.36-8.

The tasks of the justice of the peace were, in theory at least, wide: they included preserving the peace; punishing those guilty of various minor crimes (mainly breaches of the peace); taking care of highways, bridges and ferries; controlling the constables; repressing beggars; regulating the price of labour and contracts between masters and servants; and most important exercising a jurisdiction over revenue matters and punishing contraventions of the revenue laws. Many of the administrative tasks, however, came to be performed by the commissioners of supply. Justices were often instructed by the Lord Advocate and other central law officers to enquire into crimes, riots, or suspected Jacobites in their area and to report their findings. Justices could issue warrants of arrest and commitment, and order troops to take action against mobs. After 1747, with the appointment of sheriff-deputies, the local criminal jurisdiction of the justices went into rapid decline. Given the difficulties in generalising about the efficiency of justices from county to county, it would appear that many justices were often indolent and only interested in the money they could make, and at worst directly obstructed or perverted the law and used their powers as weapons in clan or political feuds within the shire. In particular we have already noted the reluctant, even obstructive manner in which many justices acted in customs and excise matters. Moreover, despite widespread changes in 1716-7 many disaffected justices


60 Malcolm portrays the Lanarkshire justice 1707-23 as conscientious, even energetic, and fair, Minutes of the Justices of the Peace for Lanarkshire, SHS 3rd series vol. 17 (1931), pp.lxxvi-lxxvii, but many of these same justices fled Glasgow during the Shawfield riots of 1725.

61 Above pp. 73-4, 98-101.
remained on the commissions. As with sheriffs, an attempt was made to get the judges on circuit to keep a check on justices' proceedings but this proved similarly ineffective. At best, justices performed a useful role in executing minor civil tasks: as the century progressed they declined into general inactivity.

**Heritable jurisdictions.** By Scots feudal law all rights of jurisdiction belonged to the Crown. These rights could be granted by the Crown along with the right to hold a court to implement the jurisdiction. Such a grant, known as a franchise, thus established a separate legal unit from which the King's officers might be partially or wholly excluded. There were four types of franchise, each with its own court: regality, barony, stewartry and bailiery. By Article XX of the Union, all these heritable jurisdictions were preserved.

The most powerful of the heritable jurisdictions, the Justiciary Generalship of Argyle, from which there was no appeal, was held by the Argyll family. Only slightly less powerful were the regalities, of which there were about thirty. The lord of regality exercised an extensive civil and criminal (except treason) jurisdiction, equal to sheriffs in civil and Justiciary in criminal cases and he could often repledge cases from these courts. More numerous, but with less

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64 For fuller details on heritable jurisdictions see Stair Society, Introduction to Scottish Legal History, chapter 28; Donaldson, Scotland: James V - James VII pp.5-7; Smout, History of the Scottish People, pp.33-4.

extensive powers, were the baron courts. The baron himself, or one of his bailies, had jurisdiction over a range of activities which by the late sixteenth century had become largely confined to the maintenance of 'good neighbourhood' (petty crimes, etc.), and the implementation of the social and economic dictates of Parliament or the baron himself, especially the payment of rents. Appeals could be made from the baron court to the sheriff court (although the baron could also repledge from the sheriff), or, if the barony was in a regality, to the regality court. The stewartries and the bailieries were essentially royal lands administered directly on behalf of the King but with a special jurisdiction apart from his other jurisdictions. Broadly the stewartry had a jurisdiction similar to the regality, the bailiery to the sheriff.

These various franchises, numbering well over two hundred, were concentrated mainly in the Lowlands of Scotland. They gave considerable power and influence to their holders, the major landowners, and this meshing of judicial power into the social structure of the county was an important factor in the administration of Scotland. With the gradual strengthening of central government in the seventeenth century the need for franchise courts declined and many of their powers fell into disuse. Nevertheless, although they had to a large extent outlived their usefulness, they still retained and could exercise fairly wide jurisdictions. Their continuing existence alongside other institutions such as the justices and commissioners of supply led to administrative chaos in many areas.

Abolition of the heritable jurisdictions. Since the Union Ministers

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66 See Smout, History of the Scottish People, pp. 115-118. Part of the decline of the baron court was due to the establishment of a strong central Court of Session.

67 See also below pp. 527-31. For details see Whetstone, Scottish County Government, pp. 4-5.
had regarded these private jurisdictions as archaic, defeating any real attempt at central control and this view was echoed by many of the rising group of middle class lawyers in Edinburgh who saw the heritable jurisdictions as both obstructing a coherent centralised legal system and a bastion of noble power. The Forty-five rebellion and the total inability of those with such powers to resist the Jacobite upsurge gave the Ministry the opportunity and in 1747 an Act was passed abolishing all heritable jurisdictions, with the exception of the baron court, from 25 March 1748. The competence of the baron courts was severely restricted, principally to recovering rents from tenants and they died out in the second half of the eighteenth century. The holders of heritable jurisdictions were compensated for their loss. A large number of inflated claims, totalling almost £600,000, were submitted to the Court of Session but these amounts were severely reduced and only £152,037 12/2 was paid out. The Act also instituted a new system of properly constituted sheriff courts in place of the old mixture of heritable, life and pleasure sheriffs. Henceforth legally qualified sheriffs, confusingly called sheriffs depute, were appointed by the Crown. The sheriff depute was required to reside in his jurisdiction for at least four months in every year and hold regular

68 20 Geo II c.43.

69 See Report of Court of Session concerning claims for heritable jurisdiction compensation PRO T1/329 no.38 15 Jun 1748; Memorial Lord Advocate Grant to Exchequer 13 Nov 1747 PRO T1/329 no.9; warrant for payment 5 Oct 1748 PRO T52/44,433 which lists all the claims to be paid. The highest compensation, of £21,000, went to Ilay for his Justiciar Generalship of Argyll (£15,000), heritable sheriffship of Argyll (£5,000) and his regality of Campbell (£1,000).

70 For the first seven years after the Act came into effect the Crown could appoint during pleasure, thereafter all sheriffs depute were to be appointed for life. This was extended for a further 15 years in 1755. They were paid £200 in the larger counties, £150 in the smaller.
courts at the county town. He could appoint a sheriff substitute, usually a solicitor, to act in his absence. The sheriff depute took on various duties as the principal local executive officer of the Crown: he carried out Exchequer writs, accounted for Crown property in his jurisdiction, called jurors and received the writs for parliamentary elections. The role of the sheriff principal was reduced to returning members at elections and raising the militia: he had no judicial role. Although various evils remained, these reforms, coupled with the abolition of the various competing heritable jurisdictions, led to a marked advance in the authority, quality and esteem of the sheriff courts in Scotland and the establishment of a public justice in Scotland comparable to that in England.

Other jurisdictions. Two other minor jurisdictions should be mentioned briefly. Each royal burgh had its own court with the bailies as judges. The burgh courts initially had a fairly wide civil and criminal jurisdiction but this was eroded in the seventeenth century due to the rivalry of other jurisdictions, most notably the Court of Session, the Commissary Courts and the justices. Burghs courts were thus left to deal mainly with minor crimes, petty local disputes and the regulation of trading and market practices. After the Reformation the Commissary Courts took over the jurisdictions previously held by the ecclesiastical

71 Murdoch, The People Above, p.23.

72 Smout, History of the Scottish People, p.212.

73 Only Edinburgh had a jurisdiction free from the local justices and sheriff.

courts in Scotland. The local commissaries dealt mainly with executory matters but also had limited powers over cases involving obligations fortified by oath, actions by widows and others, and slander. Besides their local jurisdiction the four judges of the Commissary Court in Edinburgh exercised a jurisdiction covering all Scotland in matters such as testaments, legitimacy, marriage and divorce. Appeal could be made from the commissary courts to Session. Appointment of commissaries lay with the Crown and was usually for life. In the counties it was a useful source of patronage and was usually given to a prominent gentry landowner. Advocates were generally appointed to the Edinburgh court, many of whom later became senators of the College of Justice.

Relations between central courts and local jurisdictions

From the outset an important part of the Court of Session's role was to exercise control over the subordinate courts. It quickly attracted to itself most of the important civil litigation, and this in turn caused the decline of several of the local jurisdictions, particularly those of a heritable nature. The same process began to work in the criminal field after the establishment of the Court of Justiciary.


76 For example see SRO RH2/4/315 f1 1723. The commissary clerk was also named by the Crown and was therefore another useful piece of patronage; for example see Ilay to Delafaye 16 Sep 1731 SRO RH2/4/330 f235. On the low quality of commissary judges see Hay to Tweeddale 1 Feb 1743 NLS YP7053, 111.

77 Stair Society, Introduction to Scottish Legal History, pp.368-71; Smith, The Scottish Contribution, p.57.
Crown lawyers would seek to bring a case to Edinburgh when local circumstances made an unfavourable decision in the inferior court likely. Although clashes of jurisdiction continued to occur during the first half of the eighteenth century the supremacy of the central courts was increasingly established. A notable example was after the malt tax riots in 1725 when Ilay felt that local justices, particularly those in Aberdeenshire, would be too lenient to offenders and had them brought to Edinburgh for trial. The expense to the accused of such trials in Edinburgh was often punishment enough, even if they were eventually acquitted. In 1730 the Court of Justiciary refused a replegiation from the regality court at Glasgow and declared its supremacy over all local jurisdictions no matter how exclusive the original grant, a sign of the growing awareness that certain matters were too important to leave to the heritable courts. Ilay, writing to obtain a royal pardon for a man sentenced to death by the Duke of Atholl’s regality court, argued that "such a discretionary power of life and death, if at all reasonable, is too great to be trusted in the hands of private persons". A royal pardon was eventually obtained.

The law in Scotland

The existence of so many competing and conflicting jurisdictions in Scotland in the first half of the eighteenth century created considerable

78 Smith, The Scottish Contribution, p. 57; Stair Society, Introduction to Scottish Legal History, pp. 27, 377.


80 Stair Society, Introduction to Scottish Legal History, pp. 431-2. Replegiation was the process whereby local courts could call before them from any other court persons normally subject to their jurisdiction. The practice had greatly declined in the seventeenth century.

confusion and greatly hampered the speed and efficiency with which the law operated. A large section of the legal system, the heritable jurisdictions, was outside the Crown’s control while in many of the local courts the Crown’s interest and the enforcement of justice had to compete against local and personal influences. The central courts of Justiciary and Session were growing in stature and attracting many of the more important cases, but this was a gradual process, working throughout most of the seventeenth century, continuing in this period, and only given a rapid boost in 1747 with the abolition of the heritable jurisdictions. On the other hand, while Justiciary and Session went far to providing strong central institutions they both suffered from serious weaknesses. The quality of both the judges, and consequently the law they dispensed, was at something of a low ebb: politics intruded into the legal system to a damaging extent. In 1732 Forbes felt constrained to warn the Marchioness of Annandale against allowing her son, the third marquis, from interfering in election matters in Dumfries-shire where several judges and Solicitor General Charles Areskine had interests, at a time when the marquis had a cause pending in Session:

I ought not surely to insinuate that passions or disobedigations may pervert judgement, but our judges are no more than men, and I leave it to your Ladyship to consider from what you have formerly heard or experienced, whether it is prudent without any necessity, to give occasion for raising or playing with their passions to your prejudice.

Scotts landed society as a whole was small and tightly knit and Scotland had a tradition of political interest and personal malice being intermingled with justice. From the central courts to the local jurisdictions

personal, clan or political connections usually overrode any idea of impartial justice. The tortuous nature of legal procedure also led to widespread abuses to the detriment of justice. The Crown was often reluctant to bring prosecutions in difficult cases, particularly those involving violence at elections:

the remembrance of the bad success that all Government prosecutions have met with in Scotland for several years ... that no proceedings can be carried on in matters of this kind [election dispute] but what will be complain'd of and misrepresented from one hand or other makes your Majties Councell in Scotland very Cautious as to commencing such prosecutions without your Majties express Command. 83

The further from Edinburgh the less effective royal justice became:

The Island of Barra lyes at so very great distance from this place [Edinburgh] and is Inhabited by so barbarous a set of people intirely disaffected to his Majties Governt amongst whom there is no such thing as Justice of the peace, or any Magistrat or Governat which they notice.... 84

Senators of the College of Justice

The post of senator of the College of Justice was one of the most prestigious places the Crown had at its disposal in Scotland. Although many of the judges during the period were little more than placemen, the post could carry considerable status and authority and given the intermeshing of law, politics and administration it had a potential influence which in the right hands could be extended well beyond the formal legal duties of the office. The appointment of judges was political and the Scottish bench consequently represented important political and kinship groups.

Table E lists the fifteen senators at the time of the appointment

84 Dundas to - 3 Apr 1722 SRO RH2/4/314 f328.
of Andrew Fletcher as Lord Milton in June 1724. In addition there were four extraordinary lords - Ilay, who also held the post of Lord Justice General, Loudon, Athole and Tweeddale. The Lord President was Sir Hew Dalrymple of North Berwick, third son of the first Viscount Stair whom he had replaced as Lord President in 1698 and brother of the first earl of Stair. Although he was to hold the chair until his death in 1737 (aged 85), he suffered much ill-health from the early 1720s and there were constant rumours of his impending retiral. During this period he provided the court with little leadership and many abuses developed. Adam Cockburn of Ormistoun had been appointed Lord Justice Clerk in 1714, having twice previously held the post (1692-9, 1705-10). Cockburn was an active Squadrone supporter and along with Robert Dundas, Solicitor General and then Lord Advocate, was Secretary of State Roxburghe's principal agent in Scotland. Despite promptings from London Cockburn remained inactive during the malt tax disturbances of 1725 and after the fall of Roxburghe took little further part in administrative or political activities, confining himself to purely legal duties until his death in 1735. The longest serving senator in 1724 was Robert Dundas, Lord Arniston, who had been appointed at the time of the Revolution. The son of Sir James Dundas, himself a senator, and father of Solicitor General, Lord Advocate and later Lord President

85Biographical details are given in Brunton and Haig, Senators of the College of Justice.

86In 1726 he went to London to obtain permission to resign, but George I and Walpole refused to allow it: R. Woodrow, Analecta or Materials for a History of Remarkable Providences, ed. R. Leishman, Maitland Club (1842-3) vol. III, pp.290,364.

### TABLE E

**Senators of the College of Justice, June 1724**

<table>
<thead>
<tr>
<th>Senator</th>
<th>Title</th>
<th>Appointment Dates</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert Dundas,</td>
<td>Lord Arniston</td>
<td>1 Nov 1689 to 29 Dec 1726</td>
<td>Death</td>
</tr>
<tr>
<td>Hew Dalrymple,</td>
<td>(Lord President)</td>
<td>7 Jun 1689 to 1 Feb 1737</td>
<td>Death</td>
</tr>
<tr>
<td>Sir John Maxwell,</td>
<td>Lord Pollock</td>
<td>17 Feb 1699 to 3 Nov 1732</td>
<td>Death</td>
</tr>
<tr>
<td>Adam Cockburn,</td>
<td>Lord Ormiston</td>
<td>31 Jan 1705 to 3 Nov 1735</td>
<td>Death</td>
</tr>
<tr>
<td>Sir Alexander Ogilvy,</td>
<td>Lord Forglen</td>
<td>23 Jul 1705 to 10 Jun 1727</td>
<td>Death</td>
</tr>
<tr>
<td>James Erskine,</td>
<td>Lord Grange</td>
<td>18 Mar 1707 to 11 Jul 1734</td>
<td>Retiral</td>
</tr>
<tr>
<td>Sir Francis Grant,</td>
<td>Lord Cullen</td>
<td>10 Jun 1709 to 4 Jun 1726</td>
<td>Death</td>
</tr>
<tr>
<td>Sir James Mackenzie,</td>
<td>Lord Royston</td>
<td>7 Jun 1710 to 23 Nov 1744</td>
<td>Death</td>
</tr>
<tr>
<td>David Erskine,</td>
<td>Lord Dun</td>
<td>8 Nov 1710 to 15 Feb 1754</td>
<td>Retiral</td>
</tr>
<tr>
<td>Sir William Calderwood,</td>
<td>Lord Polton</td>
<td>6 Nov 1711 to 3 Nov 1733</td>
<td>Death</td>
</tr>
<tr>
<td>James Hamilton,</td>
<td>Lord Pencaitland</td>
<td>8 Nov 1712 to 1 Jul 1729</td>
<td>Death</td>
</tr>
<tr>
<td>James Elphinston,</td>
<td>Lord Coupar/</td>
<td>5 Jun 1714 to 19 Dec 1746</td>
<td>Death</td>
</tr>
<tr>
<td></td>
<td>Balmerino</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sir Andrew Hume,</td>
<td>Lord Kimmerghame</td>
<td>23 Nov 1714 to 5 Mar 1730</td>
<td>Death</td>
</tr>
<tr>
<td>Sir Walter Pringle,</td>
<td>Lord Newhall</td>
<td>6 Jun 1718 to 10 Jun 1737</td>
<td>Death</td>
</tr>
<tr>
<td>Andrew Fletcher,</td>
<td>Lord Milton</td>
<td>4 Jun 1724 to 12 Feb 1767</td>
<td>Death</td>
</tr>
</tbody>
</table>

**Senators appointed between 1725 and 1748**

<table>
<thead>
<tr>
<th>Senator</th>
<th>Title</th>
<th>Appointment Dates</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sir Gilbert Elliot,</td>
<td>Lord Minto</td>
<td>29 Apr 1726 to 14 Jun 1766</td>
<td>Death</td>
</tr>
<tr>
<td>Hew Dalrymple,</td>
<td>Lord Drummore</td>
<td>18 Dec 1726 to 31 Jul 1755</td>
<td>Death</td>
</tr>
<tr>
<td>Patrick Campbell,</td>
<td>Lord Monzie</td>
<td>31 May 1727 to 6 Feb 1752</td>
<td>Death</td>
</tr>
<tr>
<td>John Pringle,</td>
<td>Lord Haining</td>
<td>5 Jun 1729 to 28 Nov 1754</td>
<td>Death</td>
</tr>
<tr>
<td>Alexander Fraser,</td>
<td>Lord Strichen</td>
<td>24 Mar 1730 to 10 Mar 1775</td>
<td>Death</td>
</tr>
<tr>
<td>Patrick Grant,</td>
<td>Lord Elchies</td>
<td>5 Aug 1732 to 14 Nov 1754</td>
<td>Death</td>
</tr>
<tr>
<td>John Sinclair,</td>
<td>Lord Muckle</td>
<td>20 Aug 1733 to 5 Jul 1755</td>
<td>Death</td>
</tr>
<tr>
<td>Alexander Lesley,</td>
<td>Earl of Leven</td>
<td>28 Jun 1734 to 20 Nov 1754</td>
<td>Death</td>
</tr>
<tr>
<td>Sir James Ferguson,</td>
<td>Lord Kilkerran</td>
<td>3 Sep 1735 to 14 Jun 1759</td>
<td>Death</td>
</tr>
<tr>
<td>Robert Dundas,</td>
<td>Lord Arniston</td>
<td>24 Mar 1737 to 2 Feb 1754</td>
<td>Death</td>
</tr>
<tr>
<td>Duncan Forbes,</td>
<td>(Lord President)</td>
<td>20 Jun 1737 to 10 Sep 1748</td>
<td>Death</td>
</tr>
<tr>
<td>Charles Areskine,</td>
<td>Lord Tinwald</td>
<td>15 Nov 1744 to 16 Jun 1763</td>
<td>Death</td>
</tr>
<tr>
<td>Patrick Boyle,</td>
<td>Lord Shewalton</td>
<td>9 Dec 1746 to 18 Jun 1761</td>
<td>Death</td>
</tr>
<tr>
<td>(Robert Dundas)</td>
<td>(Lord President)</td>
<td>15 Jun 1748</td>
<td></td>
</tr>
</tbody>
</table>
Robert Dundas, he was also a Squadrone supporter, as were Pollock, Forglen and Cullen. All five died within ten years of the malt tax riots, three of them by 1727, and all were to be replaced by men more favourably inclined to the Argathelian interest. Three senators – Polton, Pencaitland and Dun – were appointed during the last four years of Anne’s reign. While Polton and Pencaitland were at least nominally Whigs, Dun was a recognised Tory. None of the three were Argathelian supporters, all favouring the Glasgow malt tax rioters in their trials for example, much to Ilay’s annoyance. Of the remaining six judges in 1724, three were staunch Argathelians – Milton, Royston and Grange. Lord Newhall was considered to be one of the most able judges of his time, highly respected by lawyers and public alike, and was little involved in politics. He initiated several of the reforms later developed by Forbes. Sir Andrew Hume of Kimmerghame was the brother of the second earl of Marchmont a Squadrone stalwart, but not noticeably attached to that faction himself, while James Elphingston, Lord Coupar (later Balmerino), was the brother of the Jacobite lord executed in 1746 but seemingly himself a staunch Whig.

Thus in 1724 there were five Squadrone senators and three staunch Argathelians. The Lord President generally favoured the Argathelians as did Polton and Newhall while Pencaitland seems to have leant to the Squadrone. Tory Dun regularly voted against the Crown whatever the


89 For Royston’s involvement in Cromartyshire politics and elections 1708-44 see Ferguson, Electoral Law and Procedure, chapters III and IV. He was the third son of the earl of Cromarty.

90 Ramsay, Scotland and Scotsmen, I pp.41-2, 49, 64.
complexion of the Ministry, while Kimmerghame and Balmerino, although both Whigs, seem independent of either faction.

There were fourteen changes between 1725 and 1749 and these dramatically altered the complexion of the Court in favour of the Argathelian interest. In June 1726 Sir Gilbert Elliot of Minto replaced Lord Cullen. Elliot had been Argathelian MP for Roxburghshire since 1722, owed his professional success to his ties with the house of Argyll, and continued after 1726 to take an active part on the Argyll side in local politics. Later in 1726 Hew Dalrymple (Lord Drummore) replaced Lord Arniston, probably on the application of his father the Lord President. He was generally receptive to Argathelian pressure. The following year Patrick Campbell (Lord Monzie) succeeded Lord Forglen on Ilay's recommendation. On Pencaitland's death in 1729 John Pringle of Haining, MP for Selkirkshire 1708–29, was appointed. Pringle was basically a government supporter rather than an Argathelian, having voted for the government on every recorded division including the Cadogan vote in 1717. Alexander Fraser (Lord Strichen) replaced Kimmerghame in 1730, again on Ilay's recommendation, and was later successfully recommended by Ilay to take over Milton's Justiciary gown.

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91Ibid., p.85.

92See Forbes to Delafaye 9 Jul 1726 SRO RH2/4/324 f196.

93See Sedgwick, House of Commons II, p.9. After almost 40 years on the bench he was made Lord Justice Clerk in 1763.


95"My friend Scroop gave me A devilish deal of work against Monzie, but Sir Robert was very kind in it to me, the letter is signed": Ilay to Milton May 1727 NLS SC 16,535.

96Sedgwick, House of Commons, II, p.370.

in 1735. 98 Patrick Grant (Lord Elchies), also an Ilay protégé, succeeded Pollock, who died aged 90, in 1732. 99 In August 1733 John Sinclair of Murkle, who had been one of the Squadrone solicitors under Lord Advocate Dundas, replaced Polton, in order, it was alleged to secure his brother's (Caithness) vote at the representative peers' election. 100 The following year Alexander, fifth earl of Leven, at that time another Argathelian sympathiser, was appointed following Grange's resignation to stand for Parliament. The opposition peers claimed that Leven had been given the post as a reward for voting for the government list in the peers election of June 1734. 101 In 1735 Ilay recommended Sir James Ferguson of Kilkerran, MP for Sutherland, to succeed Lord Justice Clerk Cockburn as a Lord Ordinary, 102 Milton being made Lord Justice Clerk. Robert Dundas, erstwhile Solicitor General, Lord Advocate and a leading Squadrone figure, was elevated to the bench on the death of Newhall in March 1737 to the great surprise of much of Scotland but probably in an attempt by Ilay to neutralise his political influence. Soon afterwards, on the death of Dalrymple, Duncan Forbes was made Lord President. The next vacancy did not occur until Royston's death in November 1744 and it was to be the only one during


100 SRO RH2/4/410, 267. See also HMC Polwarth V p.108, evidence produced by opposition regarding corruption in the 1734 peers election, where it is claimed "That Earl Ilay told him [Elphingstone] that he [Ilay] had made Mr Sinclair of Murkell a Judge in the Court of Session in order to get his brother, Earl Caithness to vote the Ministerial List".

101 See HMC Polwarth V p.111.

Tweeddale's Secretaryship. By that time Tweeddale's position both in Scotland and at Westminster was rapidly declining, but it was still a heavy blow when Charles Areskine, Argathelian MP from 1722 onwards, Solicitor General under Forbes, then Lord Advocate from 1737 to 1742 and one of Ilay's most trusted servants in Scotland, was appointed as Lord Tinwald. Early in 1746 Lord Balmerino died and for a time the Ministry considered promoting Tweeddale's Lord Advocate, Robert Craigie, but the seat was eventually given in December to Patrick Boyle (Lord Shewalton), second son of the earl of Glasgow, initially recommended to Newcastle by Queensberry.

Thus by the time of Lord President Forbes's death in December 1747 the Scottish bench had become dominated by Argathelians. At least eight of the judges — Lord President Forbes, Lord Justice Clerk Milton, Minto, Strichen, Elchies, Kilkerran, Areskine and probably Campbell — owed their elevation to their Argathelian connections, while Haining, Drummore and Leven also evinced Argathelian sympathies. Of the remaining four, Tory Dun lingered on and Shewalton owed his place more directly to Newcastle. Only Arniston and Murkle could boast a Squadrone pedigree. Loud were Squadrone complaints that Ilay had prostituted the bench for his own political interest: "not one properly qualified named for five that knew nothing of the matter and many not distinguished by too great a character in point of honesty or firmness".

103 See below pp. 545-8.
105 See Queensberry to Newcastle 10 Jan 1746 SRO RH2/4/348 f64.
106 Arniston to Tweeddale 9 Nov 1744 NLS YP7064, 60.
From the late 1740s onwards there was a shift in the nature of Scottish judicial appointments. The Ministry was anxious to broaden its bottom in Scotland and to promote those who were prepared to support the Ministry, regardless of previous political attachments. More particularly, with the enhanced role of the central courts following the abolition of the heritable jurisdictions, Lord Chancellor Hardwicke took an increasing interest in Scots legal appointments and sought to improve the quality of those raised to the bench. For its part, with the demise of Tweeddale’s administration, the Squadrone realised that, as a group, it had finally lost out in the struggle with the Argathelians. The new generation of anti-Argathelians saw that the old way of attempting to obtain power, direct conflict with the Argathelians, had failed, basically because they did not have a broad enough support in Scotland and that for the future they would have to work more directly with the Ministry in order to circumvent Argathelian power in Scotland. Arniston quickly realised the advantages of going along with Hardwicke, not only to obtain a better Scottish bench, but more importantly because the appointment of judges for reasons other than simply their Argathelian connections would tend to lessen Illy’s influence in Scotland. The promotion of Arniston himself to Lord President in 1747 heralded a new era: anyone who supported the Ministry, whether or not they had Argathelian connections, could hope for elevation to the bench and more emphasis was placed on legal ability. 107 This change was an essential prerequisite for the emergence in the third quarter of the eighteenth century of the ‘golden era’ of the Court of Session.

107 For judicial appointments in the 1750s see Murdoch, *The People Above*, pp. 53-62.
The Haldane Affair

The affair of Patrick Haldane vividly illustrates the way in which politics permeated the legal establishment in the first half of the eighteenth century. The dispute was essentially political, the judges consistently dividing along party lines.

By the early 1720s the Squadrone-Argathelian struggle which had marked Scottish politics from the accession of George I was reaching its height. The Squadrone were in the ascendancy: Roxburghe was Secretary of State, Robert Dundas Lord Advocate and Charles Binning and John Sinclair joint Solicitors General. The Argathelian interest was, however, rapidly increasing in size and influence and Argathelians occupied several important legal and revenue posts. In England the political situation was no less tense. Stanhope and Sunderland, the Squadron's English allies, had recently fallen from power following the South Sea Bubble scandal and had been replaced by Townshend and Walpole. The position of these two remained somewhat precarious, however, especially with Sunderland still lurking menacingly in the background.

Amidst this intense political rivalry and uncertainty, George I signed on 21 December 1721 a letter nominating Patrick Haldane to be a senator of the College of Justice in place of Lord Fountainhall, who had lately demitted on the grounds of age, and requesting the other senators to admit Haldane to a trial of his qualifications and ability prior to being accepted.\textsuperscript{108} Patrick Haldane of Bearcrofts, Stirlingshire (and later of Gleneagles), was a staunch Squadrone supporter, sitting as Member

\textsuperscript{108} SRO RHE/4/409, 115. While the Crown nominated persons to be appointed senators, the College of Justice had, at this time, the right to reject any person they considered unqualified. The candidate had to undergo a legal trial, the format of which had been settled, with royal approval, by an Act of Sedcrunt in 1674.
for Perth Burghs 1715 to 1722. His sister was married to the second son of the Squadrone Lord Justice Clerk Adam Cockburn. In 1716 he was appointed a Commissioner of Enquiry into the Forfeited Estates in Scotland in which post he acted with much vigour, rigorously applying the full letter of the law and there were also unsubstantiated hints that he had lined his own pocket in the process. Early in 1721 Roxburghe recommended him for a vacant place on the Scottish Exchequer bench but the job went to Thomas Kennedy, an Argathelian. It is probable that Roxburghe had more or less secured the King's consent to Haldane having the next vacant seat on the bench and Ilay did not actively campaign for any alternative candidate.

Soon after the letter of appointment reached Edinburgh various members of the Faculty of Advocates met and led by prominent Argathelians such as Duncan Forbes and Charles Areskine drew up a representation objecting to Haldane on the grounds that he was not properly qualified in terms of Article 19 of the Act of Union (by which candidates had to serve a minimum of five years as an advocate or principal clerk of session or ten years as a writer to the signet). Haldane, it was claimed, had spent so much time either at Parliament

109 He had previously held the posts of Professor of Greek, St Andrews 1705-7; Professor of Ecclesiastical History St Andrews 1707-18; Commissioner of the Equivalent Nov 1715-May 1716; Provost of St Andrews 1716-20; Sedgwick, House of Commons, II p.95.


111 Roxburghe to Dundas 11 Jun 1721 SRO RH4/15/2 vol. 1, 112-3.

112 Andrew Fletcher canvassed initially for the post; see Fletcher to earl of Sutherland Nov 1721 NLS SC 16,526.

113 For details of the Faculty of Advocates and also the Society of Writers to the Signet see Stair Society, Introduction to Scottish Legal History, pp.28-9; R.K. Hannay, The Society of Writers to the Signet (Edinburgh, 1936); "Memorial for the Writers to the Signet" 1731 SRO RH2/4/330 f243-8. In this period there were about 200 members of the Faculty, most of whom belonged to noble or upper gentry families: Phillipson, Reform of the Court of Session, p. 358. The Society, which had c.110 members in 1731, was far less aristocratic in composition: ibid., pp.19-20.
or acting as a Commissioner of Enquiry that he had only fitfully and irregularly attended the Court since being admitted advocate on 18 January 1715. This, and a similar representation from five of the six principal clerks of session, was presented to the Court of Session. The Court ordered Haldane to draw up a rebuttal of these allegations. The anti-Haldane advocates replied with two more memorials, expanding and elucidating their case, even claiming that "Mr Haldane had not so much as a Pin put up for him by the Faculty's Gown Keepers so small was his attendance". Haldane in turn offered a further condescendance. The case resolved itself into the interpretation of the nineteenth article. The advocates claimed that Haldane should have served at least thirty months. Haldane more or less admitted this latter figure but argued that the nineteenth article did not imply a constant attendance and that any such interpretation was too rigorous. Meanwhile, Lord Advocate Dundas, who was also Dean of the Faculty, Solicitors Binning and Sinclair, and 29 other members of the Faculty, including Robert Craigie, mostly with Squadrone leanings, had counter-petitioned the Court, supporting Haldane's claim to be qualified and arguing that the opposition was composed of only a small rump of the Faculty. In fact, while just under half of the 200 or so advocates became involved in the affair, of those that did a clear majority were anti-Haldanites.

114 SRO RH2/4/398, 73. As Roxburghe did not send the royal letters to the Lord President until 19 Dec 1721 (SRO RH2/4/397, 18), and the advocates met to draw up this representation on 23 Dec 1721, it seems likely that opposition was being concerted even before the letter reached Edinburgh.

115 SRO RH2/4/398, 80.
117 SRO RH2/4/397, 84; SRO RH2/4/398, 90.
118 28 Dec 1721 SRO RH2/4/398, 90.
The petition from Lord Advocate Dundas and the Squadrone members of the Faculty argued that the opposition to Haldane has its rise chiefly from personal Prejudices that some have concurred against the Gentleman who is pointed at on Account of the Part he hath acted in the Service of the Government in the Commission of Enquiry.120

Haldane's severity had alienated many Whigs, particularly those of Argathelian leanings who favoured a more lenient policy.121 It is no surprise that Duncan Forbes, an outspoken advocate of leniency after the rebellion, played a leading part against Haldane. Haldane himself blamed the persecution on his 'faithful execution' of the powers given to him as Commissioner of Enquiry.122 Nevertheless while this contributed to the bitterness of much of the opposition, the crucial point was that Haldane was an active Squadrone politician, and most of the opposition, both inside and outside the Session, came from Argathelians.

We are frightned [sic.] out of our witts here (wrote Duncan Forbes to his brother on 19 December 1721) that Peter Haldane will be made Lord of Session in place of Fountainhall, who has demitted. If this happen, we [Argathelians] have no more to say in the Session ... I am hopefull the Duke [Argyll] will look to his Own Interest in this particular; which will be mortally wounded, if not killed quite dead, by such a Judge; and I cannot help thinking, that if the Ministers put such a Judge upon him, he has very little to look to from their promises.123

120 Ibid. See also Lord Advocate and Solicitor General report to HM 3 Jan 1722: "this opinion [interloquitor 28 Dec 1721] seems to give so great satisfaction to a great many to whom Mr Haldane's services in the Commission of Enquiry have rendered him disagreeable" SRO RH2/4/398, 106-13.

121 Haldane's severity was almost universally remarked on: for example see Dr William Strafford to Edward Harley 6 Jan 1722 HMC Portland VII, p.313. See also Ramsay, Scotland and Scotsmen, II p.480 "As party spirit ran very high at that period, so like an aspiring man who had his fortune to make, he [Haldane] thought he should recommend himself to the Administration by the exuberance of his zeal. But he over shot his mark".


123 GP p.75.
Dundas and the other Squadrone advocates were well aware that much of the opposition was politically inspired:

We being well informed of the spring from which this motion flows, and the great Pains that hath been taken to influence the Members of the Faculty to enter into such a Measure we apprehend the Resolution is dishonourable to our Society. The Faculty in this Case being treated as the Cat's foot in the Fables, made use of to raise a Dissention which others have begun and encouraged but are not willing to appear as the First Authors of it... 124

The veiled references to higher encouragement were aimed at Argyll and Ilay who, while they secretly approved of the actions taken by their supporters in Scotland, could not openly declare against Haldane for fear of incurring the wrath of the King.

Between 1715 and 1726 - the years of fiercest Squadrone-Argathelian rivalry - only two vacancies occurred on the bench. The first on Lord Minto's death in 1718 was filled by Newhall a well-respected lawyer and politically acceptable to both sides. The other was created by the demission of Fountainhall. There would almost certainly have been a struggle over Fountainhall's successor in any event, but the nomination of Haldane, an active Squadrone supporter, ensured that Argathelians would do all they could to prevent Haldane securing the seat. In addition, while the basis of the opposition was a combination of political rivalry and genuine personal hatred, many senators and advocates were particularly jealous of the rights and privileges of the Court and undoubtedly saw in the nomination of Haldane the thin end of a Crown attempt to erode these rights.

On 28 December 1721 the Court declared by a majority of 7-6 that Haldane was not sufficiently qualified in terms of the nineteenth article. It is important to note that Tweeddale, an extraordinary lord, 125 took

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125 He had been so appointed February 1721; see Roxburghe to Tweeddale 28 Feb 1721 NLS SYP Box 8 F2.
part in this vote without any objections being raised. The judges on both sides immediately wrote to London justifying their positions.126 Most of the judges who opposed Haldane (Grange, Dun, Kimmerghame, Polton, Coupar, Newhall and Royston, and also Lord President Dalrymple) were either Argathelian or sympathetic to that interest (except Dun who was always against the government) while all those who supported Haldane (Lord Justice Clerk Cockburn, Arniston, Pollock, Cullen, Forglan and extraordinary lord Tweeddale) were staunchly Squadrone. The judges were to divide consistently along party lines as the dispute developed.127

The King, through Secretary Roxburghe, then ordered the Lord Advocate and the Solicitors to make a full report on the matter but as all three were involved in the affair their finding, in favour of Haldane, was a foregone conclusion.128 The matter was therefore referred to the English Attorney General and Solicitor General129 who agreed with both Haldane and Lord Advocate Dundas that Article 19 only implied that the person should have been admitted advocate more than five years previously and practised as the occasion offered. Unless, however, the Court could be persuaded to reconsider their decision the only solution would be an appeal to the House of Lords,

where not only the error of this judgement upon the construction of the 19th Article, but also whether the Lords have not assumed to themselves a jurisdiction in this case which they have no right to exercise can be considered.130

Despite anxious letters between Roxburghe and Townshend, the

126 SRO RH2/4/398, 103-4.
127 See Table F.
**TABLE F**

VARIOUS COURT OF SESSION DIVISIONS ON PATRICK HALDANE

<table>
<thead>
<tr>
<th>Date</th>
<th>Against Haldane</th>
<th>For Haldane</th>
</tr>
</thead>
<tbody>
<tr>
<td>28 Dec 1721</td>
<td>Grange</td>
<td>LJC</td>
</tr>
<tr>
<td>(original inter-</td>
<td>Dun</td>
<td>Arniston</td>
</tr>
<tr>
<td>loquitor against</td>
<td>Kimmerghame</td>
<td>Pollock</td>
</tr>
<tr>
<td>Haldane)</td>
<td>Polton 7 - 6</td>
<td>Cullen</td>
</tr>
<tr>
<td></td>
<td>Coupar</td>
<td>Forglen</td>
</tr>
<tr>
<td></td>
<td>Newhall</td>
<td>Tweeddale *</td>
</tr>
<tr>
<td></td>
<td>Royston (LP)</td>
<td></td>
</tr>
<tr>
<td>12 Feb 1723 (1)</td>
<td>Grange</td>
<td>LJC</td>
</tr>
<tr>
<td>(to enquire into the</td>
<td>Dun</td>
<td>Arniston</td>
</tr>
<tr>
<td>accusation of bribery</td>
<td>Kimmerghame</td>
<td>Pollock</td>
</tr>
<tr>
<td>and corruption)</td>
<td>Polton 8 - 7</td>
<td>Cullen</td>
</tr>
<tr>
<td></td>
<td>Coupar</td>
<td>Forglen</td>
</tr>
<tr>
<td></td>
<td>Newhall</td>
<td>Tweeddale *</td>
</tr>
<tr>
<td></td>
<td>Royston (LP)</td>
<td>Atholl *</td>
</tr>
<tr>
<td>12 Feb 1723 (2)</td>
<td>Grange</td>
<td>LJC</td>
</tr>
<tr>
<td>(to enquire into the</td>
<td>Dun</td>
<td>Arniston</td>
</tr>
<tr>
<td>accusation of Jacobitism)</td>
<td>Kimmerghame</td>
<td>Pollock</td>
</tr>
<tr>
<td></td>
<td>Polton 6 - 8</td>
<td>Cullen</td>
</tr>
<tr>
<td></td>
<td>Coupar</td>
<td>Forglen</td>
</tr>
<tr>
<td></td>
<td>Newhall (LP)</td>
<td>Tweeddale *</td>
</tr>
<tr>
<td></td>
<td>Royston</td>
<td>Atholl *</td>
</tr>
<tr>
<td>28 Feb 1723</td>
<td>Grange</td>
<td>LJC</td>
</tr>
<tr>
<td>(whether Haldane's bad</td>
<td>Dun</td>
<td>Arniston</td>
</tr>
<tr>
<td>fame had been sufficiently</td>
<td>Kimmerghame</td>
<td>Pollock</td>
</tr>
<tr>
<td>proved)</td>
<td>Polton 7 - 8</td>
<td>Cullen</td>
</tr>
<tr>
<td>6 Jun 1723</td>
<td>Coupar</td>
<td>Forglen</td>
</tr>
<tr>
<td>(Double interloquitor)</td>
<td>Newhall</td>
<td>Pencaitland</td>
</tr>
<tr>
<td>8 Jun 1723</td>
<td>Royston (LP)</td>
<td>Tweeddale *</td>
</tr>
<tr>
<td>(Has Haldane passed his trial)</td>
<td></td>
<td>Atholl *</td>
</tr>
</tbody>
</table>

* Extraordinary Lord

The Lord President only voted when there was a tie.

Atholl did not take part in the vote of 28 Dec 1721.

At the time of the votes on 28 Dec 1721 and 12 Feb 1723 Pencaitland was ill and did not attend the Court. His return completely altered the balance in the Court. By voting for Haldane he obviated the need for the Lord President's casting vote and turned an 8-7 majority against Haldane into one of 8-7 in his favour, although this of course included the two extraordinaries Tweeddale and Atholl.
dissident senators showed no disposition to reconsider their decision.\footnote*{131} Instead they passed two further interloquitors against Haldane on 26 January and 8 February 1722.\footnote*{132} The Ministers therefore decided that the only solution was to take the case on appeal to the House of Lords and on 4 February 1723 the House overruled the Court's interloquitors.\footnote*{133} When news of the decision reached Scotland various petitions were raised against Haldane, accusing him of being a Jacobite, a paradoxical reversal of the previous charges against him. When the Court met on 12 February 1723 the Lord Justice Clerk presented the House of Lords' judgement and desired that Haldane be admitted to trial. The senators opposing Haldane now changed their tactics and began objecting to Haldane on the grounds of his bad character, raising charges similar to those alleged in the recent petitions.\footnote*{134} Such objections were pursued by the same judges as had previously voted against him on 28 December 1722—Grange, Dun, Kimmerghame, Polton, Coupar and Newhall, and Lord President Dalrymple. When the question was put whether to proceed to an

\footnote*{131}For example see Roxburghe to Dundas 16 Jan 1722 and 6 Feb 1722 SRO RH2/4/397, 20, 21-2; Roxburgh to Dalrymple 22 Feb 1722 SRO RH2/4/398, 22-3; Townshend to Loudon 29 May 1722 SRO RH2/4/314 f330-1.


\footnote*{133}Ibid; Sedgwick, House of Commons, II, p.95.

\footnote*{134}The three main charges were that Haldane had carried his election for Perth burghs and as Provost of St Andrews by bribery and corruption; that he had caused four trades deacons of St Andrews to be imprisoned on a pretended charge of high treason because they would not vote for him and the moment his purpose was served they were let out; and that he was a Jacobite, having on numerous occasions drunk the Pretender's health. Other accusations were that he was anti-religious ("... he had sung a Canto of Spencers Fairy Queen on a Sunday...") and that he had fiddled South Sea stock: Lord Advocate Dundas "Memorial on the Affair" June 1723 SRO RH2/4/315, f36-9; Ramsay, Scotland and Scotsmen, II pp.481-2; MCP II pp. 226, 231, 234-5; Sedgwick, House of Commons, I, p.402.
enquiry into the accusations of bribery and corruption the motion was carried in the affirmative by 8 votes (the six senators abovementioned plus Royston and the casting vote of the Lord President) to 7 (Cockburn, Forglen, Cullen, Pollock, Arniston and extraordinary lords Tweeddale and Athole). Fencaitland was ill at this time and did not attend. The vote whether to enquire into Haldane's alleged Jacobitism, however, was defeated, Royston changing sides. Because of the closeness of the voting, Dalrymple, Grange and Dun then argued against the right of the extraordinary lords to vote in matters affecting the appointment of a new senator and were supported in this by Coupar, Kimmerghame and Polton. Newhall reserved his judgement while the others naturally upheld the extraordinaries' rights. No more was heard on this point at this stage.

The Court then proceeded with the enquiry into the bribery and corruption charges, with Grange and Dun leading the attack. It became clear, however, that the enquiry could not be completed and still allow time for Haldane to finish his trial before the end of term and the pro-Haldanite judges therefore argued that the enquiry should be abandoned. Given the lack of firm evidence against Haldane several anti-Haldanite judges wavered and agreed to the proposal, only Grange, Dun, Coupar and Kimmerghame standing out for continuing the enquiry. Haldane therefore proceeded to his trial. During the course of the trial four more petitions were presented to the Court, once again raising the subject of his character. In the Court itself the question


136 For "Minutes of the proceedings of the Lords of Session in the trial of Patrick Haldane" 12, 13, 15, 16, 18, 19, 20–3, 25–8 February 1723 see NLS SYP Box 137 Fl.

137 See "A few Remarks on the case of Mr Haldane as it now stands" 8 Jun 1723 SRO RH2/4/315, f50–6.
of the right of the extraordinary lords to vote became a major issue with Grange and Dalrymple leading the attack on the extraordinaries.

I am very much concerned for poor Mr Haldane (wrote Roxburghe to Tweeddale) I am likewise convinced that this mighty puther [sic] is chiefly intended to do me hurt; ... it is impossible for any one well affected to the King, and his Family not to abhor such factious proceedings, that plainly tend to the stirring up of sedition, and inflaming the people with a Dislike to his Majties Government. 138

The affair reached a bitter climax on 28 February 1723, the last day of term, when a vote was taken whether Haldane's bad fame had been sufficiently proved. By this time Pencaitland had returned to the Court and voted in favour of Haldane. The other lords ordinary voted in the usual manner and thus seven were against Haldane, six for. The two extraordinaries present, Tweeddale and Atholl, favoured Haldane, however, and so tipped the balance. The minority protested against the extraordinaries voting. Haldane was then allowed to carry on with his trial, but as there was now insufficient time to complete this before the end of term, "it is put off till June, and thus the whole matter is open still..." 139

The Court met again on 1 June.

These full Eight Days past the Court of Session has done nothing but wrangled, and disputed, and protested against one another as to the Admission of Mr Haldane. 140

More evidence was heard against Haldane's character but this was often flimsy and there was a strong suspicion that much of it was being

138 Roxburghe to Tweeddale 20 Feb 1723 NLS SYP Box 8 F2.

139 Unknown to Forbes 28 Feb 1723 MCP II pp. 232-5. See also Haldane's pleadings before Lords of Session 28 Feb 1723 NLS SYP Box 137 F1; Roxburghe to Tweeddale 5 Mar 1723 NLS SYP Box 8 F2.

140 Dundas to Roxburghe 8 Jun 1723 SRO RH2/4/315, f27.
fabricated by Lord President Dalrymple and his friends. On 6 June the Court agreed by the same 8-7 majority as on 28 February on an interloquitor allowing the extraordinary lords to vote on the question 'are the extraordinary lords entitled to judge and vote in the trial of a proposed Lord Ordinary', and then passed the question itself by the same majority. This double interloquitor of course begged the question in the eyes of the minority lords as both decisions were carried by the vote of the extraordinaries themselves. The other two extraordinary lords, Loudon and Ilay, did not attend any of the proceedings on Haldane. While both were anti-Haldane they could not afford to appear so publicly and incur the King's wrath. Two days later, 8 June, Patrick Haldane had finished his trial and a compromise solution was reached. It was agreed that the Court should vote on whether Haldane had passed his trial but if the result of the vote depended on the votes of the extraordinary lords Haldane should not be admitted immediately and the whole question of the right of the extraordinary lords to vote on the trial of a lord ordinary should be referred to the King and Parliament. The question as to Haldane passing his trial was carried by the usual 8-7 vote and so the referral was made.

This Dispute (wrote Athole to Roxburghe) run so high betwixt us, that without hazarding a Breach of the Court, and consequently the peace of the Country, which might have proved inconvenient, especially now in his Majties Absence from Britain, we cou'd not have him presently

141 For example see copy deposition of John Tod and Alex Armstrong 4 June 1723 SRO RH2/4/315 f62-3; Lord Advocate's Memorial June 1723 SRO RH2/4/315 f36-8; "State of Proceedings in the Case of Patrick Haldane and queries thereupon" SRO RH2/4/315 f46-9.

142 See Table P.

143 SRO RH2/4/315 f33.

144 "State of Proceedings in the Court of Session in the Case of Patrick Haldane and Queries thereupon" SRO RH2/4/315 f46-9.

145 Interloquitor 8 Jun 1723 SRO RH2/4/315 f40; see also Athol l to Roxburghe 8 Jun 1723 SRO RH2/4/315 f23.
admitted, and therefore remitting the final Determination to the House of peers, in sustaining the Extraordinary Lords voting, which we have allways been in possession of, will make effectual his Majties Nomination, they both being so much the concern of the Crown. 146

Both Roxburghe and Atholl were confident that the House of Lords would confirm the rights of the extraordinary lords and that Haldane would then take his seat. 147

Extraordinary lords had been included in the original foundation of the Court, "to fortify the nomer of the Session to the effect that it may persist in the gud and sur order as it first begun," 148 that is to facilitate royal interference. Over the years they had regularly exercised their rights to take part in and vote on all matters, including the trial of new judges after 1674, without objections being raised, but their exact position had never been strictly defined. 149 Nevertheless, at least by prescription, the extraordinary lords had a strong case and it is hard to disagree with the conclusion that "nothing was said in the contrary till other means of keeping Mr Haldane out of possession of his office failed." 150

No notice appears to have been taken of the Court's reference to Parliament. 151 By mid-1723 Walpole's position had been greatly strengthened while the fortunes of the Squadron's erstwhile allies, the Sunderland-Stanhope group, were rapidly declining. The Haldane

146 Atholl to Roxburghe 8 Jun 1723 SRO RH2/4/315 f23.

147 For example see Roxburghe to Townshend and Carteret 14 Jun 1723 SRO RH2/4/397, 84-5.

148 Stair Society, Introduction to Scottish Legal History, p.26; Brunton and Haig, Senators of the College of Justice, p. xlvii.

149 For full arguments see pamphlet "Arguments concerning the Right of the Extraordinary Lords to Vote on the Trials and Admission of Lords Ordinary" SRO RH2/4/315 f42-5.

150 Ibid.

151 Brunton and Haig, Senators of the College of Justice, p.xlvi; Woodrow, Analecta III, p.144.
affair itself was an important factor in influencing Walpole to favour the Argathelian interest in Scotland. The whole affair had not only been vexatious to George personally but a troublesome distraction to Walpole when all his attention was centred on the power struggle at Westminster. He was fully aware that it was the Squadrone leaders Roxburghe and Montrose who had advised the King to nominate Haldane, while Argyll, Ilay and Stair had been against it from the start. Pressure was put on Haldane to give up his claim and take a seat on the English excise board. With Roxburghe no longer to give him any effective support Haldane had little option but to accept. Significantly this appointment was not renewed on George II’s accession. In June 1724 Fountainhall’s seat was given to Andrew Fletcher (Lord Milton), a strong indication of the way the political wind was blowing.

George and his Ministers were determined to prevent such a confrontation recurring and an Act was passed affirming the power of the Crown to appoint Scottish judges and limiting the power of the Court merely to remonstrating against an appointment of which they disapproved. The same Act also provided that when the present extraordinary lords died no replacements were to be appointed. The

152 Woodrow, Analecta III, p.144.


154 See Andrew Fletcher to Margaret Fletcher 5 May 1724 NLS SC 16,529.

155 See PRO T52/33, 99 ½ May 1724. Haldane was granted £300 'in consideration of his being appointed' lord of Session although he never enjoyed the post; see Treasury to Exchequer 29 Jul 1724 SRO NBB RH2/4/433, 236.

156 Haldane returned to the bar. In 1746 he was made joint Solicitor General for Scotland: Sedgwick, House of Commons, II, pp.95-6; below p.511.

157 10 Geo I c.19; Sedgwick, House of Commons II, p.95; Brunton and Haig, Senators of the College of Justice p.xlvi; Stair Society, Introduction to Scottish Legal History, p.343.
post finally lapsed on Tweeddale's death on 9 December 1762.\textsuperscript{158}

It had become increasingly anachronistic, particularly at a time when opinion increasingly favoured the independence of the judiciary from overt Crown interference. Moreover, the Act, by strengthening the Crown's right of appointment made the need to influence the Court through extraordinaries less necessary. The extraordinaries took little further part in the work of the Court of Session although Tweeddale for political reasons attended the debates on the steps to be taken against the Edinburgh brewers and voted against the Act of Sederunt of 29 July 1725.\textsuperscript{159}

The affair of Patrick Haldane was largely political in nature and the judges consistently divided along party lines. Roxburghe's position suffered, particularly his standing with the King, and it greatly reduced the likelihood of the Squadrone coming to an accommodation with Walpole,\textsuperscript{160} while at the same time highlighting the latent strength of the Argathelians in Scotland.

\textbf{The Lord Advocate and the Solicitor General}

The Crown's principal legal officers in Scotland were the Lord Advocate and his deputy the Solicitor General, appointed by the Crown

\textsuperscript{158}Atholl died 14 Nov 1724, Loudon 20 Nov 1731, Ilay 15 Apr 1761. "For my part I should not be sorry to foresee an end of extraordinary Lords after the death of myself and my brethren..." Ilay to Fletcher 25 Feb 1724 NLS SC 16,529.

\textsuperscript{159}Forbes to Delafaye 29 Jul 1725 SRO RH2/4/318, f276-7; below pp.341-2.

\textsuperscript{160}See Hay to Tweeddale 9 Aug 1742 NLS STP Box 11 Fl: "... he [Craigie] said his [Amiston's] former violent measures had brought down the party in which he was formerly engaged and that he remembered that Lord Carteret told him Dundass as he called him had putted [sic] them down and mentioned the instance of Peter Haldane which with others gave Sir Robert Walpole the handle to persuade the late king that the party was leading him into unpopular measures..."
during pleasure at salaries of £1,000 p.a. and £400 p.a. respectively. The Lord Advocate was the main official link between the Ministry and the Scottish legal establishment. He prosecuted or defended the Crown's interest in the central courts, and spoke for the Government on Scottish matters in the House of Commons, particularly on Scottish legislation which he was usually responsible for drafting. He also acted as a 'whip' over the Scots members. After 1708 much of the executive burden in maintaining law and order, which had previously rested with the Privy Council, fell to the Lord Advocate, and the office consequently grew in authority. The powers and privileges of the office were not fully defined, however, and in 1725 even the Lord Advocate's power to issue warrants of arrest and commitment was challenged.

Lord Advocates undertook a wide range of semi-legal, semi-executive activities, notably in dealing with local riots and disturbances. On receiving news of a disturbance the Lord Advocate would normally order the local justices or magistrates to make strict enquiries, examine witnesses, arrest suspects and send detailed reports to Edinburgh. If necessary he would order troops to the scene. In the case of the malt tax riots Forbes went personally to Glasgow to take charge of the situation. On receiving such reports the Lord Advocate would decide what further action should be taken, often in consultation with other government servants in Edinburgh and Ministers at London. His role

162 For example see Forbes' answers to Court of Justiciary 20 Jul 1725 SRO RH2/4/318 f. 254-5.
163 See below pp. 338-9.
164 For example see Roxburghe to Solicitors General 19 Oct 1722 SRO RH2/4/397, 53-4.
went beyond the purely legal task of prosecuting offenders: he acted as a central coordinator, stirring up the local authorities to action, liaising with the military and keeping Ministers at London informed of events. More generally the Lord Advocate was often instructed by the Ministry to enquire into and advise upon a wide range of Scottish matters, \(^{165}\) not only those of a legal nature such as petitions for pardons \(^{166}\) or questions involving the rights of the Crown in Scotland, \(^{167}\) but, for example, the activities of Jacobites and papists. On receiving such references the Lord Advocate or Solicitor General would make the necessary enquiries, interview those involved, or if this was geographically impossible delegate the task to the nearest sheriff, justice or magistrate, and then compile a report setting out the facts, their conclusions and proposing such remedies as seemed required. On most occasions Ministers would accept the recommendations in these reports and act accordingly. The Lord Advocate and the Solicitor General thus had a considerable role in the day-to-day decisions concerning the administration of Scotland. They were also consulted when more general policies for Scotland were being proposed, although here their voice was only one among many and likely to be overshadowed by the leading politicians. Given the lack of a clear administrative structure, the

\(^{165}\) With the exception of revenue matters which were usually referred by the Treasury to the relevant revenue commissioners or to the Exchequer. For a detailed discussion of the administrative work undertaken by the Lord Advocate see M.S. Bricke, Management and Administration of Scotland 1707-65 (Unpublished Ph.D. thesis, Kansas, 1972), pp.46-83.

\(^{166}\) For example petition for the reprieve of Hume (murderer) and Lord Advocate’s Report 8 Aug 1732 SRO RH2/4/332 f64; Lord Advocate and Solicitor General Report to HM on a murder 17 May 1733 SRO RH2/4/333 f38. The Lord Advocate also dealt with petitions for patents, for example SRO RH2/4/333 f72.

\(^{167}\) If the problem was purely legal the advice of the Attorney General and Solicitor General of England might also be sought; for example on petition of attainted rebels see HM to Attorney General Yorke and Lord Advocate Forbes c.1735 SRO RH2/4/334 f147.
Lord Advocate was given considerable discretion:

I am further to acquaint yr Lordps (wrote Roxburghe to Lord Advocate Dundas and Lord Justice Clerk Cockburne in 1721) that it is his Majties pleasure that upon all such Emergencies for the future yr Lordps, and the Commander in Chief of the Forces do, at the same Time that you send Informations up hither, give the proper and necessary orders according to Law, without waiting for Directions from hence.168

From all this it follows that the Lord Advocate, and in his absence the Solicitor General, even more than the other Government servants in Scotland, were expected to correspond regularly with London on all matters affecting the government of Scotland and for much of the period the Lord Advocate was the principal official correspondent of the Secretaries of State. In particular, Dundas fulfilled this function for Roxburghe and Forbes for Newcastle. Such correspondence was naturally most full in times of crisis, but even in the calmer periods the Lord Advocate was expected to send all news and information on Scottish affairs that he thought would be relevant. Normally this correspondence with London was concerned with the more formal aspects of Scottish administration: individual Lord Advocates such as Dundas and Areskine also corresponded with their political masters (in this case Roxburghe and Ilay respectively) on more overtly political and electoral matters.

Before 1725 there was no established fund to pay the cost of Crown prosecutions, and given the costs involved, individuals were often unwilling to bring private prosecutions in matters such as riots and election disorders "which touch the Interest of the Government and good

168 Roxburghe to Dundas and Cockburne. 17 Oct 1721 SRO RH2/4/397, 14-5.
The lack of a public fund was thus a very great Prejudice to the Public Service for that since the Kings Accession to the Crown there have been frequent Disorders committed and Insults against the Govermt in different Corners a vigorous Execution of the Laws wou'd necessarily have demanded a considerable Advance of money for defraying such Expense which no body wou'd take upon them where they saw no way of Reimbursement.

There was also no fund for the maintenance of public prisoners and justices and magistrates were often reluctant to commit offenders who might be left to starve. Only in 1725, after several years of pressure from Lord Advocate Dundas, were both these omissions remedied and the Exchequer solicitor empowered, on the direction of the Lord Advocate or Solicitor General, to defray all charges of prosecutions at the instance of the Crown, and also, on receiving accounts from prison keepers, to reimburse their maintenance expenses.

Five men held the post of Lord Advocate in this period: Robert Dundas (1720-5), Duncan Forbes (1725-37), Charles Areskine (1737-42), Robert Craigie (1742-6) and William Grant (1746-54). The appointment was made on the recommendation of the current Scottish political manager: Dundas by Roxburghe, Craigie by Tweeddale, the other three by


170 "Memorial concerning the charges of prosecutions for crimes and the maintenance of public prisoners in Scotland" by unknown (but probably Dundas) c. 13 Mar 1721 SRO RH2/4/398, 9-12. See also Solicitor General Dundas to Lord Advocate Dalrymple 1 Aug 1719 SRO RH2/4/314 f259-62; Memo to Treasury c. 15 Jan 1723 OTP (1720-8) p.196.

171 See "Accounts for Criminal Prosecutions at the instance of the Lord Advocate and Solicitor General" from Midsummer 1725-1752 SRO E201/2/1-5. The total expenditure 1725 to 1728, for example, was c. £700 of which £287 was incurred on the two trials of the Glasgow malt tax rioters.
Ilay. Dundas, Areskine and Grant had previously held the post of Solicitor General; all five were eventually promoted to the bench. Again all five Lord Advocates in this period sat in the House of Commons, where they were expected to support the government at all times. As a consequence of their active political role, it was accepted that the Lord Advocate (and Solicitor General) was liable to be replaced when there was a significant change in the political management of Scotland. Unless the principal government servants in Edinburgh were politically at one with the current manager the efficiency of the administration would be jeopardised by internal dissensions. Thus, for example, with the appointment of Tweeddale as Secretary of State in 1742 Argathelian Lord Advocate Areskine and Solicitor General Grant were dismissed. Similarly following Tweeddale's resignation in 1746 Craigie was dismissed at Ilay's insistence and Dundas resigned. Dundas clearly saw the realities of the situation:

... as by the Marquis of Tweeddale's resignation, the Channel of Correspondence for this Country must now be altered, my Retiring at this time can occasion no Interruption or prejudice to the Service...“

172 Dundas for Midlothian 1722 - 10 Jun 1737; Forbes for Inverness burghs 1722 - 21 Jun 1737; Areskine for Dumfries burghs 1722 - 1741 and for Tain burghs 1741 - 1 Mar 1742; Craigie for Tain burghs 2 Apr 1742 - 1747; Grant for Elgin burghs 18 Feb 1747 - Nov 1754.

173 Similar considerations came into play when Craigie was being considered as Milton's replacement as Lord Justice Clerk in 1748: George II remarked, "that it would not be right to make him justice clerk, because he and the Duke of Argyll could not act together": Stone to Pelham 15 June 1748 quoted Sedgwick, House of Commons, I, p.592.

174 Sedgwick, House of Commons, I, p.592.

175 See below pp.510-11.

Robert Dundas was a leading Squadrine figure and, with Lord Justice Clerk Cockburn, acted as Secretary of State Roxburghe's agent in Scotland on political, patronage and electoral matters, as well as undertaking the more routine tasks of his office such as dealing with disturbances at various magistrates elections at Nairn, Dingwall, Montrose, Aberdeen and Coupar, and in attempting to suppress papists, trafficking priests and illegal meeting houses. Duncan Forbes was the protegé and friend of John, Duke of Argyll, but his relationship with Ilay was somewhat less amicable. Forbes was politically active in various northern constituencies where he had considerable influence, but otherwise took little interest in electoral management or political patronage. As we shall see, Ilay never fully trusted him and preferred to leave political affairs in the hands of Milton. On the other hand he was able and hard-working in the

177 For correspondence with Roxburghe see Dundas of Arniston MSS SRO RH4/15/2.


179 Dundas to Delafaye 28 Sep 1723 SRO RH2/4/316 f216 and his report to the Lords Justices on the same, ibid. f218-9.


181 See Menary, Forbes, pp. 56, 357-8. Forbes was considerably older than both Ilay and Milton.

182 See ibid., passim, for example pp.52-4.
more formal legal and administrative tasks of his office, and as a result he was well-respected by Ministers, especially Hardwicke. Following his appointment in 1725 he corresponded regularly with the Ministry, writing almost every week when he was in Scotland:

I intend to give you the Trouble of a letter Regularly once every week, whether anything material fall out, or no; to the End you may not be allarmed with any false surmises, which frequently are Carried from hence to London. 183

After 1729, however, this correspondence began to peter out. Forbes' interests were wide-ranging, particularly on matters of revenue, trade and manufactures. 184 He played a major part, for example, in drawing up the plan for the Board of Trustees, 185 and participated fully in its work. He also took part in the Convention of Royal Burghs and the General Assembly of the Church of Scotland. 186

Charles Areskine was an active Argathelian and one of Ilay's most trusted agents in Scotland. 187 He was deeply involved in Argathelian politics and was particularly active in promoting and coordinating Ilay's interests in the 1741 general election. 188 He also dealt with church patronage on Ilay's behalf. 189 He was, however, a rather lax correspondent with the Ministry. Robert Craigie who replaced Areskine in 1742 was a Squadrone supporter and one of the small


184 See Monary, Forbes, pp.136-73.

185 See Forbes to Delafaye 6 Dec 1726 and enclosures SRO RH2/4/324 f311-28; Monary, Forbes, p.156 ff.

186 For example see Forbes to Newcastle 7 Jul 1726 SRO RH2/4/324 f188-9; Monary, Forbes, pp.63, 86, 156.


188 For example see Areskine to Stone 19 Jun 1740 SRO RH2/4/337 f182; Areskine memo for Stone 23 Apr 1741 ibid f226; Areskine to Stone 26 May 1741 ibid f247.

189 Areskine to Stone 22 Nov 1740 and enclosure ibid f200-2; Areskine to Stone 17 Jul 1741 ibid f251-2.
group of government servants in Scotland on whom Tweeddale relied to further his interests. He was, however, of rather average ability and was consequently normally overshadowed by Arniston. Much of his time was spent enquiring into the activities of suspected Jacobites and of officers recruiting in Scotland for the service of France in the years immediately preceding the Forty-five rebellion. By the time the Rebellion broke out, Tweeddale's position had seriously declined and Craigie simply opted out, fleeing to London when the Jacobites advanced on Edinburgh. He took little further part in the governing of Scotland, and was dismissed early in 1746. He was replaced by William Grant. Although nominally an Argathelian, Grant was not fully trusted by Ilay and was largely overshadowed by Milton. He contented himself with work on claims on the forfeited estates and other routine administrative matters. Grant's term of office gives the lie to claims that there was a sudden aggrandisement of the Lord Advocate's position in Scotland on the demise of the office of Secretary of State. As with most major offices in Scotland, what mattered was the person who occupied the post and his connections with the Scottish manager, not the office itself.

Much of the routine work of the Lord Advocate's office, including correspondence with the Ministers when the Lord Advocate was absent in

190 The others included Lord Arniston, Solicitor General Dundas and Deputy Keeper of the Signet Thomas Hay; see below, chapter 11.

191 "He was very indifferently qualified to be an officer of State in trying times. His office required something more than knowledge of books and of the mysteries of law. His colleagues soon discovered that he knew next to nothing of the world beyond his own very limited sphere..." Ramsay, Scotland and Scotsmen, I pp.111-3.

192 For example see Tweeddale to Craigie 10 Jul 1742 SRO RH2/4/399, 17; Tweeddale to Craigie 14 Aug 1742 ibid., 21-2; Craigie to Tweeddale 19 Aug 1742 ibid., 37-8.

193 "... He was an officer of State, who, while in office, had no by-view to promote, or any politics but those of the king..." Ramsay, Scotland and Scotsmen, I pp.122-3.
London, fell to the Solicitor(s) General. The Solicitors in this period were John Sinclair and Charles Binning (1720-5), Charles Areskine (1725-37), William Grant (1737-42), Robert Dundas (1742-6) and Patrick Haldane and Alex Home (from 1746). Like the Lord Advocate, the Solicitor was a political appointment and for similar reasons when the political climate changed and the Lord Advocate was replaced a new Solicitor was always appointed. Areskine alone of Solicitors during this period sat in Parliament at the same time as being Solicitor. When both Forbes and Areskine were absent in London the legal duties were delegated to junior advocates-depute while much of the administrative work was done by Milton, which further enhanced the latter's position. Apart from Areskine and Dundas, the Solicitors during this period confined themselves mainly to the routine legal and administrative functions of the office. Haldane had, of course, been the central figure of the 1721-3 appointment struggle. He was appointed in 1746 on the recommendation of Cumberland but his advancing years and declining health rendered him of little use in the office. He retired in 1755. Sinclair was a son of the eighth earl of Caithness and was later elevated to the bench in 1733. Little is known of Binning and Home.

Conclusion: the sous ministre

The abolition of the Privy Council in 1708 had removed the collective executive power of the Scottish Ministry: thereafter there was only

195As MP for Dumfries-shire 1722-41.
196Sedgwick, House of Commons, II, pp.95-6.
197Brunton and Haig, Senators of the College of Justice, p.505.
individual ministers, most of whose offices did not include executive power. During the first half of the eighteenth century there was no precisely defined administrative structure in Scotland; the whole system was extremely flexible. Men mattered more than offices; which individuals were called upon to carry out the Ministry's wishes depended largely on the exigencies of the particular situation, the personalities of those occupying the major Scottish offices and the relative political strengths of rival political interests at any particular time. In emergencies, such as the malt tax riots, the Porteous riots or the Forty-five, it was a case of all available hands on deck. More generally business came to be handled by one or two of the ministers in Scotland who were in the particular confidence of the Ministry and its Scottish manager. Since the Lord Advocate was in a position to take action on the part of the Crown, the responsibility for maintaining the peace mostly fell to him. However, there were times when he was supported or even overshadowed by other ministers, most particularly in the years 1725 to 1748 by Lord Justice Clerk Milton, and indeed after 1745, the Lord Justice Clerk, by virtue of Milton's personal influence, in many respects became the principal law officer in Scotland. In the absence of any clear limitations on their powers, the principal government officers in Scotland, particularly the Lord Advocate, were in a unique position to wield executive power if they had the inclination and the political backing. On the other hand they often had to rely on their own judgement as to how they should act in any given situation: the London Ministry was often reluctant to send precise instructions and distance was a great handicap, particularly in times of emergency.

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198 Riley, English Ministers, pp.96-7.

199 Bricke, Management and Administration of Scotland, pp.183, 189-203, 211-6. The Lord Advocate's Supremacy was not regained till the time of Henry Dundas.
The sentiments expressed in the following two letters are constantly echoed throughout the period and underline one of the most important factors affecting the administration of Scotland at this time. The first is from Delafaye, secretary to the Lords Justice, to Lord Advocate Forbes at the height of the malt tax crisis, in reply to one of Forbes's many letters asking for more specific directions:

The nature of ye service requires that your Lop should have such a discretionary power; for it is impossible at this Distance to give particular Directions that may reach Cases unforeseen & suit Circumstances that vary everyday; & who can guess what will be ye proceedings of people who seem out of their senses? ... The Lord Justices Directions have been so fully & expressly given & repeated to your Lop to proceed in those affairs according to your own Judgement and Discretion that I apprehend they are sufficient to support and Justify you in the performance of whatever is Incumbent on the office you so worthily possess.200

This, of course, merely begged the question of what exactly was incumbent on the Lord Advocate's office. The second letter is from Secretary Tweeddale to Solicitor General Dundas on the increasing problem of French recruiting in Scotland in 1745:

It is impossible to be more explicite on such matters and therefore a great deal must be left to your own Prudence and Discretions and I am persuaded you will do your best to discover practices, so detrimental to the Publick Service, so I have not the least doubt but what you do therein will be approved of by authority.201

This last remark touches on another problem. While apparently being given a wide discretionary power, government servants in Scotland, uncertain of the limits on their authority, were often reluctant to act with the requested vigour, apprehensive of incurring the displeasure of the Ministers if their tactics caused offence or were unsuccessful.

For its part the Ministry wished to be troubled as little as possible with Scottish problems: as long as Scotland was kept quiet and the

201 Tweeddale to Dundas 2 May 1745 SRO RH2/4/399, 133-5.
administration there functioned without undue difficulty Ministers were content. To achieve this successive Ministers were prepared, to a varying degree, to entrust Scotland to a manager (in this period, Roxburghe, Ilay and Tweeddale) who might or might not occupy the formal post of Secretary of State, to whom they were prepared, again to a varying degree, to hand over the disposal of Scottish patronage in return for keeping Scotland quiet and for ensuring the return of a solid bloc of ministerial supporters to Westminster. As the manager spent much of his time in London and as it was not possible to run the day-to-day political and administrative affairs of Scotland from there, he required a loyal and dedicated servant in Scotland, preferably occupying a post of some influence, who would both oversee the general running of the administration, correspond with him, particularly on matters too important or sensitive to leave to the official channels, take decisive action when problems arose, and coordinate political, electoral and patronage matters on a day-to-day basis on his behalf, serving as a point of contact in Edinburgh for those who wished something from the government.

As Lord Ilay resided chiefly at the court, he required a confidential agent in Scotland, who might give him all necessary information, and act as his guide in the disposition of the government patronage. 202

Such an agent, the intimate confidant of the manager, came to be known as a 'sous ministre'. 203

From the above discussion it might appear that the Lord Advocate would have made the ideal sous ministre and indeed several historians,

202 R. Chambers, A Biographical Dictionary of Eminent Scotsmen (Edinburgh, 1885), I p. 36, under Andrew Fletcher.

203 Murdoch, The People Above, p. 12 and p. 154 n46 suggests that the term was little used by contemporaries but see Grange to Tweeddale 2 Sep 1734 TP7044, 101 "A Precognition was taken this day by Ld Milton, on Qualiti, I suppose, de sous - Ministre d'Escoss, for a single Ld of justiciary used not to do it".
notably Menary and Omond, influenced in particular by Forbes's activity in the malt tax riots, have laid much stress on the importance of the Lord Advocate compared to the other government servants in Scotland, suggesting that the office of Lord Advocate at this time was as important as it was to become under Henry Dundas and others later in the century. Various factors gave Forbes as Lord Advocate the opportunity to take the leading role in the early stages of the malt tax disturbances but, as we have seen, there was nothing intrinsic in the office itself which automatically meant that the Lord Advocate would always take the lead; given another set of factors, for example in the Porteous riots (when Forbes was at Inverness) others could play an equally prominent part. Indeed, if the situation was particularly serious, as in the case of the malt tax disturbances and the Porteous riot, the Ministry would dispatch the manager himself to take control. In fact there was a crucial factor militating against the Lord Advocate acting as sous ministre: being a member of Parliament he was always absent from Scotland for about six months in every year. This absence was not particularly serious as far as the routine legal and administrative tasks were concerned - these could be carried out by the Solicitor General or others - but it was of little use to the Scottish manager to have a sous ministre tied down in London for half the year and only free to operate in Scotland during the Parliamentary recess, the very time when the manager himself could go to Scotland. Thus while Dundas and

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204 Menary, Forbes, G.W.T. Omond, The Lord Advocates of Scotland (Edinburgh, 1883).

205 See below chapter 9.

206 Forbes claimed in 1734 that "since I first had the honour to serve the Crown, I was never one day absent from Parliament. I attended the first and last and every intermediate day of every session whatever calls I had from my private affairs": Forbes to Scrope 23 Nov 1734 MOP III pp.103-5. Only occasionally did legal affairs detain the Lord Advocate in Scotland after the opening of Parliament; for example see Areskine to Stone 22 Nov 1740 SRO Rh2/4/327 f200-2.
Craigie were key agents acting on behalf of Roxburghe and Tweeddale respectively neither acted as sole sous-ministres. Dundas worked in concert with Lord Justice Clerk Adam Cockburn while Craigie shared the role with Lord Arniston, Solicitor Dundas and Deputy Keeper of the Signet Thomas Hay.207

What was required for an effective sous ministre was a person of some prestige and influence who was resident for most of the time in Edinburgh. The most suitable candidate was a judge, and preferably one who was also a Lord of Justiciary and therefore went on circuit. A seat on the bench served a dual purpose in this respect: it could be used to reward a prominent supporter and in turn conferred prestige and power on such a man which enabled him to act more effectively for the manager. "Legal patronage provided ministers with the means of rewarding such men with prestigious and lucrative places which had the added advantage of anchoring the recipient to Scotland".208 The most outstanding sous ministre in this period was Andrew Fletcher, Lord Milton who faithfully served Ilay in this capacity from the early 1720s to the latter's death in 1761. Ilay had singled out Fletcher at an early age and his elevation to the bench in 1724 was designed to give him the necessary authority. His later promotion to Lord Justice Clerk was both a reward for his services and a further indication to the Scottish people that he was the trusted servant of Ilay and the government. Of the various sous ministres in the period only Milton built up, with Ilay's aid, an array of followers in the administrative world of Edinburgh, in the courts and

207 For an interesting, if flawed, discussion of the role of successive Lord Advocates in the management of Scotland, see Bricke, *Management and Administration*, pp.89-139.

208 Phillipson, *Reform of the Court of Session*, p.29.
revenue services, and an extensive network of political correspondents throughout Scotland.

In this capacity [as sous ministre] Lord Milton served for a considerable number of years, during which time his house [in the Canongate] was, in its way, a kind of court, and he himself looked up to as a person little short of a king.210

Only after 1765, with Henry Dundas and later Ilay Campbell and Robert Dundas, by which time reforms in the Court of Session had made it much less appropriate for a judge to act as sous ministre211 and improved communications made it possible for the Lord Advocate both to attend Parliament and serve the government in Edinburgh,212 did the Lord Advocate become the effective sous ministre.

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210 Chambers, Biographical Dictionary of Eminent Scotsmen, I, p.36.

211 Phillipson, Reform of the Court of Session, pp.36–40. See also Dundas's response in 1765 when Newcastle attempted to centre the management of Scotland around him as Lord President: "I confess that I have long entertained the opinion that the management of the public affairs in Scotland is improper for any Judge, if not entirely incompetent with his character..." G.W.T. Onond, The Armiton Memoirs: Three Centuries of a Scottish House, 1571–1838 (Edinburgh, 1887), pp.177–9.

From the time of the Revolution settlement there had been little
doubt in people's minds that Scotland was governed from London. Under
Anne questions of day-to-day government were settled by her English
ministers. This was particularly hurtful to Scottish pride and
explains much of the heat of the last Scottish Parliament. Never-
theless, although decisions concerning Scotland were made in London,
there was a Scottish ministry whose members, in theory, advised the
Queen on Scottish affairs. In practice their task was to carry out,
by tactical manoeuvre, the general lines of policy laid down for them.
The ministers were chosen for their influence in Scotland, their ability
to control the Scottish Parliament and their willingness to carry out
Court measures. The most important figure was the Lord High
Commissioner, delegated to represent the sovereign at meetings of the
Scottish Parliament. He was given instructions on his appointment,
largely drawn up by the English ministers, and his subsequent role was
to concert, with the rest of the Scottish ministers,\(^1\) suitable plans
for carrying the policy in Parliament and then to give royal assent to
such measures as were approved. Scottish ministers were also members
of the Privy Council of Scotland which was responsible for the executive
government of Scotland; when Parliament was not in session the Council
had undisputed control of the country. The attempt to maintain control
from London was the main weakness of the system; the ministry had

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\(^1\)The Chancellor, the Keeper of the Privy Seal, the Lord Clerk Register,
the Lord Advocate, the Lord Justice Clerk, the Treasurer, the Treasurer
Depute, the Secretary or Secretaries and the President of the Privy Council.
constantly to refer matters to London and the Commissioner was in the position of a colonial governor with a representative assembly whose will he had continually to defy.

Scottish politics in the period between the Revolution of 1688 and the Union was largely dominated by a small group of powerful landowning magnates, notably Hamilton, Queensberry, Atholl and Argyll, who continually and cynically competed against each other to achieve a monopoly of political power and as a result defeated all attempts to manage the country. By the early 1700s Queensberry had emerged as leader of the most significant group and consequently generally formed the "Court interest". His ability to control Scotland was always precarious, however, and he faced constant opposition from his magnate rivals. The history of Anne's reign to 1707 showed the impossibility of consistent management in Scotland within the Union of the Crowns.

The stormy years of the last Scottish Parliament and the reasons for Union have been studied in depth elsewhere. Two factors were crucial in ensuring that the Union proposals were eventually accepted by the Scottish Parliament: the support of Argyll, which was only gained after considerable difficulty by promising to make him a major general and by creating his brother Archibald, earl of Ilay, and even

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2 For a full discussion of the role of the magnates in the immediate pre and post Union period see P.W.J. Riley, "The Structure of Scottish Politics and the Union of 1707" in The Union of 1707: Its Impact on Scotland, ed. T.I. Rae, pp.1-29; Riley, The Union of England and Scotland, pp.11-15, 312 and passim. Riley convincingly argues that the Court saw the breaking of the entrenched power of the magnates in Scotland as one of the benefits to be gained from Union. The first half of this chapter owes much to Riley's various works.


4 John Campbell 2nd duke 1678-1743.

5 Archibald Campbell 3rd duke (1743), 1682-1761.
more decisive, the decision of the Squadrone Volante to support the Union in the hope that with the transfer of the political stage to Westminster they could ally with English political groups and overturn the Court party's dominance in Scotland. The Treaty of Union made no reference to the future system by which Scotland was to be governed; that problem was left to the English ministers. The end of the Scottish Parliament, however, removed one of the main reasons for the existence of a semi-formal Scottish ministry and also meant that the various Scottish political groups would have to pursue their interests at Westminster. Voting in the Westminster Parliament in the reign of Anne was on rigid party lines, Whig and Tory, while the Scottish Parliament had been divided on a court-country (or 'ins' and 'outs') basis. It was to take some time before the various interests in Scotland were absorbed into the English party structure.

Of the 45 commoners elected by the Scottish Parliament to sit in the Westminster Parliament, about 11 were Squadrone and most of the rest Court supporters. Five Squadrone peers were included in the Court's list of the sixteen peers to be chosen to represent the Scots peerage in the House of Lords, but in the event only four were elected - Montrose, Tweeddale, Roxburghe and Sutherland. The Squadrone was to remain after the Union an interest composed largely

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6 This interest had emerged from the Country party as a coherent group in 1704 to carry out a scheme whereby the Marquis of Tweeddale (John Hay 2nd Marquis 1645-1713) replaced Queensberry as Lord High Commissioner. The scheme failed but the group preserved their separate identity. They were firm adherents of Whig principles and the Protestant Succession and staunch enemies of Jacobitism. The leading men of the group - Montrose (1st duke 1707 d.1742), Roxburghe (John Ker 5th earl and first duke 1707 d.1741), Tweeddale, Rothes (7th earl d.1722), George Baillie of Jerviswood - and a surprising number of their adherents were linked by marriage.
of various nobles of the second rank - Roxburgh, Tweeddale, Marchmont, Haddington, Rothes - closely connected by marriage and kinship, but most of whom were either idle or incompetent or both, an interest too exclusive to attract widespread support. The remainder of the peers elected were wholehearted Court supporters with the exception of Ilay who was never happy in league with Queensberry, but who was included to satisfy his brother Argyll. 7

Under continuous and increasing pressure from the Whig Junto, Godolphin, the Lord Treasurer, was counting on the support of the Scottish Court party led by Queensberry to bolster the strength of the Court in Parliament. Thus initially no radical changes were made in the administration of Scotland and business was left to work itself into a new pattern, although one immediate effect was that as the Ministry required the support of the Scottish ministers in Parliament during session, business in Scotland fell to the officers who remained there. The Court party was confirmed in power in Scotland and all the leading Court men, including Seafield and Argyll retained their places, Queensberry himself being made Keeper of the Privy Seal and Mar and Loudon continued as "Secretaries of State within Scotland". Some accommodation also had to be made for the Squadrons whose votes had finally carried the Union. Accordingly Montrose was made Lord President of the Council, Adam Cockburn of Ormiston Lord Justice Clerk, and Squadrons supporters were given various other posts. 8 The Squadrons were not

7 Both Queensberry and Argyll had secured elevation to the English peerage before the Union and therefore did not have to seek election.

8 In addition Montrose and Roxburgh were given Scottish dukedoms.
satisfied, however, and strongly suspected that the Court was trying to squeeze them out. The old pre-Union rivalry between the two groups resumed and the Squadrone sought other allies at Westminster with a view to attacking the Scottish Court party.

By late 1707 Godolphin turned his mind to putting the administration of Scotland on a more permanent footing: he had no radical changes in mind. In December, however, the Squadrone proposed the abolition of the Scottish Privy Council, arguing that the new Privy Council of Great Britain made a separate Scottish Council superfluous. Godolphin believed that the easiest way to control Scotland was to leave it in the hands of a Court group dependent on the power of the Ministry. As the Privy Council was a main prop of the influence of the leaders of the Court party in Scotland it was in the interests of both Godolphin and Queensberry to keep the Council functioning. To the Squadrone, however, the Privy Council was simply an instrument for preserving the perpetual rule of the Court party and keeping them out of any share of power. If Scotland preserved a separate administrative system which conferred ministerial power, it would very probably be in the hands of Queensberry. Instead, the Squadrone argued, Scotland should become dependent on the Ministry at Westminster where the balance of parties would be different and the Squadrone, in alliance with the Whigs, might achieve as much influence as Queensberry. The Junto Whigs, the High Tories and other dissident groups (including Hamilton and the Scottish Jacobites) took the opportunity of lining up against the Ministry and, despite all the Ministry’s efforts,

9Dartmouth later remarked that Godolphin sought to rule Scotland like a colony in which his avowed principle was to rule via a governor and council and uphold them: C. Burnet, History of His Own Time (Oxford, 1833) vol V, p.362.

10Some members of the Squadrone, notably the earl of Marchmont, believed in the idea of 'more complete Union' as a matter of principle as well as political expediency.
a bill was passed in February 1708 abolishing the Scottish Privy Council from 1 May 1708. Despite the jubilation of the Squadrone, the abolition of the Privy Council left a serious gap, both politically and administratively, in particular by removing the collective executive power of the Scottish ministry, and its absence coloured much of the administrative and political history of Scotland over the following decades. The post of Scottish Secretary also fell with the abolition of the Scottish Privy Council, a beneficial side-effect as far as the Squadrone were concerned as this important administrative channel would now be controlled by the English Secretaries from London.

1708 was an election year, and, under increasing pressure from the Whig Junto and their Squadrone allies, Godolphin supported the Court party in Scotland in order to secure the return of as many Scottish members as possible who would support the Ministry. The position of the Court party in Scotland was therefore strengthened and most significantly Mar was appointed Keeper of the Signet: "Except the name, he had almost all the power that belonged to the Scottish Secretaries". Godolphin had already grasped a fundamental factor in managing Scotland at this time, namely that it was necessary to show quite clearly which party enjoyed royal favour and could dispense patronage and hence which party

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11 In order to strengthen judicial power following the abolition of the Privy Council, the Squadrone added clauses to the bill which gave Scottish justices the same powers as in England and also provided for the introduction of circuit courts. A separate bill enacted that the militia in Scotland should be organised on the same footing as in England. Riley, English Ministers, pp.92-3.

12 As the office was technically 'Secretary to the Council': Riley, English Ministers, p.98; Omond, Lord Advocates, vol. I, p.281.

13 Seafield became Lord Chief Baron of the new Exchequer; Queensberry was confirmed in his place as Keeper of the Privy Seal; and Mar and Loudon were made Keeper of the Great Seal and Keeper of the Signet respectively in compensation for their loss of place as Scottish Secretaries. Various other Court supporters were given pensions.

was to be supported at elections. By appointing Mar as Keeper of the Signet, Godolphin sought to retain, under another name, the channel formerly provided by the Secretaryship. The significance of the appointment was quickly recognised in Scotland. The ensuing election was keenly fought and the abolition of the Privy Council undoubtedly weakened Ministerial influence. Nevertheless although the Squadrone secured the return of three representative peers and nine members, the Scottish Court party emerged relatively unscathed. The Squadrone realised that by themselves they were not strong enough to gain more influence in Scotland and tied their hopes of securing political and administrative change to the success of the Junto whose position had been further strengthened by the 1708 election results. With Mar as Keeper of the Signet acting as Scottish Secretary in all but name, Squadrone opinion swung in favour of a third British Secretaryship of State to deal with Scottish business. This was in line with Squadrone thinking on a more 'complete Union' and their enthusiasm for the idea increased when the Junto declared their ability to obtain the post for Montrose. Ideally Godolphin would have liked to have ignored the magnates after the Union and have built up a strong united Scottish Court interest. This was not possible, however, partly because of the continuing magnate rivalry in Scotland and partly because Godolphin had continually to strive to preserve his Ministry against Junto attacks. Queensberry was therefore made third Secretary of State with full powers to deal with home affairs in

15 The Commons elections resulted in 27 members attached to Queensberry and Argyll, 9 Squadrone and 9 Jacobites of one complexion or another.

the same way as the other two Secretaries. 17

By 1710 Godolphin's continued reliance on the Junto had identified the Scottish Court party and Queensberry as basically Whigs. It had also created a growing dissatisfaction and resentment among the excluded magnates, particularly Mar and Argyll both of whom began to align with Robert Harley 18 who was rapidly building up a strong and organised opposition to the Ministry among the Tories. The Sacheverell trial increased the tensions at Westminster and throughout the summer the Ministry lurched from one crisis to another as support for the Tories grew and the nation became increasingly war-weary. Finally Godolphin was dismissed on 7 August and the Treasury put into commission. Harley became Chancellor of the Exchequer and the guiding spirit at the Treasury. Harley, like Godolphin, was essentially a manager rather than a politician and he sought a broadly-based Ministry composed of moderate men of all parties who would cooperate together in serving the Crown. The Tory landslide in the 1710 election, however, effectively put paid to such a scheme and in the long run ensured the failure of his policy of moderation. For the next four years Harley fought a delaying action to retain a moderate Ministry, in both England and Scotland, in face of mounting pressure from his own supporters.

By the time Parliament was dissolved on 21 September 1710, the political situation in Scotland had become very confused, more especially as the various interests there were being pushed into the Whig-Tory

17 Foreign affairs were to remain in the hands of the English Secretaries. The office of the Signet returned to the Secretaries and as a result Mar lost his place; he was compensated with a £3,000 p.a. pension. In order to placate the Squadrone and the Junto Montrose was made Keeper of the Scottish Privy Seal and Roxburghe appointed a Privy Councillor. The Queen, acting on her own initiative, added Argyll to the Privy Council in order to counterbalance Roxburghe.

18 Argyll appears to have been prompted in this switch by Ilay.
mould. The Squadrone supported the Junto who were allied with Godolphin. Cooperating with them in Godolphin's interest were Seafield and various other members of the old Court interest such as the Dalrymples led by the earl of Stair. Together they opposed the new influence in Scotland led by Mar and Argyll. The situation was complicated by Queensberry who despite the changes in the Ministry had continued to cling to office; trusted by neither side he sought simply to protect his own interest. Harley's main concern was to establish a moderate Court party in Scotland and to secure the election of sixteen peers who would depend on him and support the Ministry. Mar was made Harley's particular agent in Scotland, attending to details of election influence, and his brother, Grange, replaced Squadrone Adam Cockburn as Justice Clerk. It was also proposed to make Ilay Lord Justice General. Various other places and pensions were distributed and money was sent up to Scotland for election purposes. Yet although Mar and Argyll were regarded as the centre of the new interest in Scotland, Harley did not hand the management of Scottish affairs over to them and he was studiously vague about his intentions. In reality, in face of the opposition from the Godolphin interests, Harley was being forced to rely mainly on Tory help. After much confusion a Court list of the 16 peers to represent

19 John Dalrymple, 2nd earl, 1673-1747.

20 Ilay became Lord Justice General sometime in late 1710 although his commission is dated 24 June 1711.

21 Mar, but not Ilay, would also have been prepared to cooperate with the Squadrone to further Harley's interests.
Scotland in the House of Lords was drawn up and carried although the Squadrone, having been refused a share of places, abstained at the election. Of the 45 members elected, the Court could count on about 23 to 25, these being Jacobite, Tory or just Court men. In addition there were adherents of the old Court interest and of particular interests, foremost of which was the Argyll group, who in practice could be relied upon to support the Ministry in all but extreme Tory measures. The opposition to the Ministry consisted of Squadrone supporters and a handful of strong Whigs: 'together they numbered perhaps nine or ten.

Despite the electoral success of the Tories and the ambitions of Mar, Argyll and Ilay, Harley was determined to build up a new system of administering Scotland more directly from London. Queensberry was allowed to remain in office but was largely disregarded. Instead Harley sought to administer Scotland himself from the Treasury, through the Scottish Court of Exchequer and with the aid of baron John Scrope. Scrope was a trained lawyer and a judge and had rapidly acquired a detailed knowledge of Scotland and Scottish affairs. As the one ordinary baron who was an Englishman he was the obvious man to maintain a personal administrative liaison between England and Scotland and convey the kind of confidential first-hand information for which official correspondence would not serve. He also seems to have had a long-standing friendship with the Harley family. Harley consulted him on a wide range of Scottish business. He dealt with patronage matters; acted as a one-man commission of enquiry into administrative difficulties and disputes;

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22 Hamilton, Atholl, Annandale, Mar, Ilay, Eglinton, Loudon, Kinnoull, Roseberry, Orkney, Northeek, Balmerino, Marischal, Home, Kilsyth and Blantyre. The last four were Jacobites.

23 Riley, English Ministers, p.163.
checked the recommendations of the customs and excise commissioners; and attended the Treasury to report and advise on Scottish matters. The office of Secretary of State became largely superfluous as there was little Scottish business which did not concern the revenue and hence the Treasury. 24

Nevertheless Queensberry's death in July 1711 created an embarrassment for Harley: Mar, Ilay and Hamilton, the leading Scottish Tory, all expected to be appointed. Harley, however, was determined to retain his new system. Moreover, the office of Secretary created political difficulties as it was looked upon as the channel of patronage and an intermediary between the Queen and her subjects. This both attracted a following and in turn created an opposition. Harley wanted the contending parties to depend on him and not upon a separate Scottish minister. He therefore decided not to appoint a new Secretary.

Harley's new system of administering Scotland from the Treasury suffered from two main weaknesses. First the Treasury was unable to deal with the increased volume of Scottish business speedily and effectively and delays occurred particularly in patronage matters, the very business usurped from the Secretary's office. Harley's natural lethargy compounded such delays. Second, political forces militated against the system. The absence of both the Privy Council and a Secretary of State led to a feeling of lack of government in Scotland and that Scotland was being neglected: in particular the absence of a Secretary meant that there was no clear indication of where application should be made for favours. Moreover Harley was anxious to keep the major

24 Compare Daniel Defoe to Harley 13 Jul 1711 "Scotland No More Requires a Secretary than Yorkshire or Wales, Nor ... can it supply business for an office with Two Clerks".: Letters from Daniel Defoe, ed. G.H. Healey (Oxford, 1955), p.336.
offices in Scotland in moderate hands and few new appointments had been made. As a result there was a growing uneasiness among the excluded and mounting pressure for changes, particularly from the Tories.

The need for the support of the Scottish peers in the House of Lords over the projected peace with France in the 1711-12 session forced Harley to take drastic action. In November 1711 he set up a Commission of Chamberlainry and Trade with various assorted powers, principally in relation to trade and industry. The new Commission was envisaged as a replacement for the Privy Council and it was hoped, would provide signs of government closer at hand, relieve the burden on the Treasury and increase Ministerial influence in Scotland particularly over elections. More immediately it would also increase the amount of patronage available to the Ministry. Four of the eight men on the original Commission were representative peers whose support Harley was anxious to secure. The opposition in Scotland, however, quickly saw through this design and Harley realised that to allow the Commission to exercise its powers would stir up considerable trouble. Although the Commission enabled Harley to keep the Scottish Tories quiet for a time, as an innovation in the government of Scotland it quickly died.

Dissatisfaction with the new system continued to grow and the struggles between the various Scottish groups became more intense. In particular Argyll and Hamilton each wanted to rule Scotland as the

25 The Commission was also to execute the old powers of the Lord High Chamberlain of Scotland over the burgh magistrates; these powers were very great and if used could have brought the burghs under complete control for elections.

26 See Brice, Management and Administration of Scotland, pp.7-9.

27 Annandale, Eglinton, Northesk and Balmerino.
dominant faction had always done. Harley attempted to retain their continued cooperation by creating Hamilton Duke of Brandon, although the House of Lords would not admit his right to sit as a British (that is, post Union) peer, and by making Argyll commander-in-chief in Scotland and Governor of Minorca. Scottish Tory pressure was also being felt in the Commons where, despite the reluctance of the Ministry, bills were pushed through giving toleration to Episcopalians in Scotland, restoring the right of church patronage and providing for a Christmas vacation in the Court of Session. Harley, however, continued to aim for moderation and was determined to resist Tory demands for places in both England and Scotland. Nevertheless, his new system for governing Scotland was beginning to break down and there was an increasing lack of direction in Scottish affairs. The continuing absence of a Secretary, designed to bring Scotland more directly into dependence on Harley himself, and, in theory, to avoid generating opposition, in fact meant that the Scots, who had always been accustomed to looking to one faction in office and in possession of the Secretaryship as a clear sign of where favour lay and to whom applications should be made, did not know where they stood when obvious control was given to no-one. The normal working of the political system had been disturbed and growing uncertainty and confusion resulted. Moreover the breakdown of Harley's policy of moderation and his increasing reliance on the Tories, and more particularly the Tory measures of 1711-12 affecting the religious settlement in Scotland, was finally forcing the Scottish court-opposition political dichotomy.

20 December 1711. The cause was lost by 5 votes and prevented Scottish peers with British peerages from sitting in the House of Lords by virtue of such peerages. The defeated was treated as a national disaster in Scotland for it meant that no Scottish peer could ever sit in the Lords other than as one of the sixteen elected peers. One of the reasons for the Lords' action was undoubtedly their realisation of the danger of being swamped by new creations of Scots as peers of Great Britain: G.S. Holmes, 'The Hamilton Affair of 1711-12: A Crisis in Anglo-Scottish Relations', EHR lxxvii, (1962), pp.257-82.
into the Whig-Tory pattern. Scottish politics increasingly mirrored what went on at Westminster. With Hamilton's death in 1712, the main contest for influence lay between Mar, seen as nominal leader of the Tories, and Ilay, who with Argyll was gradually assuming Queensberry's mantle as leader of the Revolution Whigs. Although he tried to retain some sort of balance between the two groups, the forthcoming 1713 general election forced Harley into increasing dependence on Scottish Tory support. Ilay and Argyll began to be eased out, thus putting them into opposition and alliance with the Whigs. Harley, however, did little to gratify Tory demands for places. The Tories were understandably annoyed and caused trouble in the Commons by voting in May 1713 to apply the malt tax to Scotland. General Scottish dissatisfaction culminated the following month in a motion in the House of Lords to repeal the Union which was only narrowly defeated by four votes. Mar argued that Scotland would be easier to manage if Harley had someone dependent on him who would be responsible for Scottish affairs. This was the old system of ruling Scotland and Harley was finding himself gradually driven back upon it.

By mid 1713 the clash between Harley and Bolingbroke had brought the Ministry almost to breaking point. In order to extend his influence, Bolingbroke sought to make himself, through his office of Secretary of State, the channel for Scottish business, capitalising on the prevailing lack of direction in Scottish affairs. This development signalled the end of Harley's scheme of government. Scotland had to be shown clearly where favours lay and Bolingbroke kept out. Thus in August 1713, at the same time as changes were being made in England


30 Ferguson, Scotland: 1689 to the Present, p.61.

31 Riley, English Ministers, p.242.
to strengthen his position, Harley once more set up a third Secretaryship of State. The post was given to Mar, a clear indication that Argyll and Ilay had no share of confidence and a move to rally the Tories. More importantly, however, while Mar was the man the Tories expected to become Secretary, he was not a magnate but essentially a Court placeman. He was dependent on Harley and managed Scotland on his behalf. His appointment quickly brought a more businesslike atmosphere back to Scottish affairs and again provided a focal point for Scottish business. The same strengthening of Court rather than Tory influence was also involved in the appointment of Seafield to the revived post of Lord Chancellor of Scotland in an effort to provide some overriding legal authority to overcome Whig influence in the Courts of Session and Justiciary.

Mar and Seafield were given the task of managing the 1713 elections. Various pensions and other rewards were distributed and some changes made, for example among the sheriffs depute and other shire officials. A Court list for the representative peers election was drawn up in London. Ilay was allowed no part in affairs and could make no headway against the declared wishes of the Court. The Squadron also again boycotted the election. Thus the Court list was carried unanimously. The Commons elections results, however, were less satisfactory. Harley could rely, for the most part, on a group of about twelve Court men and Tories. There were also at least three Tories who would vote for the Ministry but who supported Bolingbroke. Of the opposition, the Squadron had a hard core of four,

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32 The office gave the Lord Chancellor the right to preside in any court in Scotland. It lapsed shortly after the Hanoverian succession: Riley, *English Ministers*, p. 258 n. 1.

33 Atholl, Mar, Eglinton, Kinnoull, Loudon, Findlater, Northesk, Orkney, Roseberry, Kilsyth, Balmerino, Dundonald, Breadalbane, Dunmore, Portmore, and Selkirk.
the Argyll interest about five and there were some fifteen other opposition Whigs. In the following session the struggles within the Ministry continued as one crisis followed another. In both houses of Parliament the Ministry was frequently under attack. Harley, however, still stood for moderation and fought against sweeping changes although both Montrose and Argyll were removed from their places. Finally Bolingbroke succeeded in forcing Harley to resign but it was too late. The Queen died a few days later, the Lords Justice took over and Bolingbroke's chance was gone.

The first seven years of Union thus saw a series of administrative experiments as successive Ministries sought to establish an effective way of controlling Scotland. Of particular importance in a period when the Court faced continual difficulties in managing a Parliament torn by the intense rivalry between Tories and Whigs was the return of as many Scottish representative peers and members of Parliament as possible who would support the Ministry. Scottish votes were often crucial as Godolphin strove to retain his independence from the Junto and then Harley fought to maintain a policy of moderation in face of mounting Tory pressure. The Ministry's interest in Scotland was always most marked when it stood in urgent need of Scottish support at Westminster. Any system of managing Scotland had to take into account the strengths and ambitions of the various political interests there and the rivalry of the powerful magnates. The approach of Godolphin and of Harley to Scotland were significantly different. To Godolphin the easiest way to secure Court influence was to set up a viceroy dependent on the power of the Ministry, whether in the guise of a Secretary for Scotland (Mar and Loudon), Keeper of the Signet (Mar), or third Secretary of State (Queensberry), and leave the management of the country to a Court group which could be relied upon to support the Ministry in Parliament. This had the advantage of establishing
a clear channel of favour but it also generated opposition among those groups excluded from power. To Harley the office of Secretary was an unnecessary intermediary between Scotland and the Ministry and created an unwelcome focus for opposition. He therefore attempted to centralise control of Scotland in the Treasury, and more especially in himself personally. The prevailing political climate was not conducive to such a system, however, and it led to confusion and restlessness among all interests in Scotland who were accustomed to having a recognisable channel of favour. His failure to give a clear indication of where favour lay led to intense rivalry among Scots to obtain the ear of the Ministry and also a feeling that Scotland was being neglected. In the end the system broke down: Harley was forced back on the old system and the third Secretaryship of State was revived. The office of Secretary thus remained of paramount importance in managing Scotland.

The sudden death of Anne left the Tories disorganised and demoralised and by the end of 1714 Whigs had replaced Tories in all the major offices of State, followed by similar changes in the royal household, army, navy, law courts and local government. Henceforth, with their leader gone, the Tories were to act as individuals rather than a united group - "I see plainly", wrote Bolingbroke, "that the Tory party has gone" and over the next turbulent decade the main political struggle was to lie between various Whig factions. In Scotland Mar initially hoped to preserve his interest in the new reign and continued to act as Secretary, but his reputation had been destroyed in Hanoverian circles by stories of his

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encouragement of Jacobite intrigues and when George arrived he was dismissed. As in England a complete clearance was made in all the great offices of state in favour of the Whigs. Ostensibly the Whigs in Scotland were united in face of the Tory threat, but in fact the two main Whig factions, the Argathelians and the Squadrone, were already in a state of intense rivalry, fuelled largely by the determination of Argyll, the last surviving magnate of the old school, to dominate Scotland, which was to continue unabated over the next decade, mirroring and intensified by the fierce political struggle between the various Whig groups at Westminster. Changes in Scotland during the period 1715-1725 were usually occasioned by a shift of power within the English part of the Ministry. The rivalry between the two groups hampered all attempts to manage Scotland up to 1725.

Initially the Ministry needed to maintain some sort of unity to crush the Tories and the changes of 1714 thus reflected an attempt to achieve a balance between the two Whig groups and keep the Scottish part of the Ministry on a broad bottom. Argyll was appointed commander-in-chief for Scotland and Groom of the Stole to the Prince of Wales. Ilay remained Lord Justice General and was also made Lord Clerk Register. Sir David Dalrymple resumed his office as Lord Advocate. For the Squadrone interest, Montrose was appointed third Secretary of State for Scotland, being easier to control than Argyll or Ilay, Roxburghe Keeper of the Great Seal of Scotland, Adam Cockburn of Ormiston Lord Justice Clerk, Rothes Lord High Admiral of Scotland, George Baillie a Lord of the Admiralty and John Cockburn a Commissioner of Trade and Plantations.

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Appointments to the new Commission of Police,\textsuperscript{37} which replaced the defunct Commission of Chamberlainry and Trade also represented a careful balancing of both interests: Tweeddale, Sutherland, Marchmont and John Haldane of Gleneagles represented the Squadrone, while Bute, Deloraine and Thomas Kennedy represented the Argyll interest. Various changes were also made on the revenue boards. There were few changes among the more minor officers on the civil list largely because they had hardly been touched by Harley. Changes at local level were left to the Scottish interests to sort out among themselves. In general the Squadrone fared rather better than their rivals, particularly in that they controlled the Secretaryship, but Argathelian influence was growing.

Before the end of 1714 supporters of both groups were active in many constituencies preparing for the forthcoming general election.

By article 22 of the Union Scotland was to be represented at Westminster by sixteen elected peers and in the Commons by 45 members, thirty from the counties and fifteen from the burghs. Most counties returned a member at each general election, but certain of the smaller counties were paired, each returning a member at alternative elections.\textsuperscript{38}

The royal burghs, which had previously returned a member each to the old Scottish Parliament, were arranged into fourteen groups of four or five burghs, each group returning one member.\textsuperscript{39} Each burgh in the group sent a delegate to the presiding burgh (which rotated at each election) to cast the burgh's vote for its chosen candidate. Edinburgh (which before the Union returned two members) alone of the burghs returned a member of its own.

\textsuperscript{37}See above pp.213-5.

\textsuperscript{38}Caithness alternated with Bute, Kinross with Clackmannanshire, and Cromartyshire with Nairnshire.

\textsuperscript{39}65 towns arranged in 14 districts, 5 districts of 4 burghs each, 9 with 5.
The Act of Union was silent on the franchise which therefore remained, for the counties, based on an Act of 1681. The vote lay in land of the requisite valuation: freeholders holding land valued at either 40/- old extent or £400 Scots valued rent.\(^{40}\) By the 1681 Act all freeholders were to be inserted on a Roll to be compiled for each shire and thereafter the freeholders were to meet each year at the Michaelmas head court to revise or adjust the Roll.\(^{41}\)

The sheriff, or his clerk, acted as returning officer at the election; all else was in the hands of the freeholders. Before the Union there were relatively few abuses of the electoral system, but the Act of Union failed to grant the Court of Session any jurisdiction to review franchise cases, thus leaving the freeholders in their head courts free to manipulate the system for political ends.\(^{42}\) It was the task of the local commissioners of supply to provide a certificate of valuation for the electoral Roll\(^{43}\) and the commissioners therefore had a crucial influence in determining the composition of the Roll. Many commissioners made their valuations on political rather than strictly economical grounds.\(^{44}\) All this, coupled with the pressure for seats following the reduction of shire constituencies from 83 to 30 and the promise of largesse at Westminster, quickly led to the growth of nominal and fictitious votes, and other abuses as various peers sought to build up...
'interests' in the constituencies. The Septennial Act of 1716, which extended the life of a Parliament to seven years, further increased the value of a seat.

The total number of county voters in Scotland in the first half of the eighteenth century was small, about 1,500 in all, with less than a dozen in certain constituencies, and it became of paramount importance to get as many supporters as possible on the electoral Roll. Indeed elections were often decided long before the actual polling day and there were relatively few poll contests during the period, usually less than one quarter of the constituencies at any one general election. At the most bitterly fought elections, those of 1722 and 1734, there were twenty contests at each. Although the House of Commons had the authority to decide contraverted elections, such decisions were always made on a political basis and the Commons committees never looked at questions of franchise. The complex franchise system led to innumerable lawsuits and lawyers played an important part in Scottish elections.

Efforts were made to check the creation of fictitious votes by Acts of Parliament in 1714 and 1734 but neither was effective. A more serious attempt was made to curtail abuses in 1743 by an Act which finally conferred a review jurisdiction on the Court of Session and made various provisions to restrain the partiality of the returning officers. There was a

46 Dickinson, Walpole, p.41.
47 For example there were only 8 in Cromartyshire in the 1730s: Ferguson, Electoral Law and Procedure, p.149; Sedgwick, House of Commons, vol. I, p.20.
48 Ferguson, Electoral Law and Procedure, p.528; Phillipson, Reform of the Court of Session, pp.21-2.
49 Act 16 Geo II c.11.
rapid proliferation of franchise cases after 1743 and freeholders in many shires made vigorous attempts in the following years to purge their rolls, though such activity was often politically motivated.  

The bad practices had, however, taken root and the Act failed to confer sufficiently strong powers on the Court of Session. For its part, Session was excessively cautious in exercising its new powers, partly apprehensive of appeals to the House of Lords, and for long the jurisdiction of the Court over the freeholders remained weak and ineffective, which in turn encouraged the continued growth of fictitious votes, especially after 1760.  

Given the smallness of the electorate, most Scottish counties tended to be dominated by one or two leading families who would either agree to alternate the member between them, or more commonly struggle over the electoral Roll and clash at successive elections until one family finally gained supremacy. Such local rivalries were often deep and very bitter, particularly in the Highlands. Given the system of grouping, the burghs were usually much more difficult to control than the counties. In the burghs the appointment of the burgh delegate lay with the individual town councils: although burgh sets varied greatly, in most burghs the old town council elected the new one, leading to the consolidation of a small elite. Control of town councils was therefore important to those who sought to win burgh seats and magistrates elections often occasioned bitter clashes between contending parties.  

51 See Hay to Tweeddale 21 Jul 1743 NLS SYP Box 11 Fl; Hay to Tweeddale 18 Jul 1743 ibid.; Hay to Tweeddale 26 Jul 1743 ibid.; Craigie to Tweeddale 1 Nov 1744 NLS YP7064, 43; Hay to Tweeddale 5 Feb 1745 NLS YP7065, 54.  

52 Ferguson, Electoral Law and Procedure, pp. 42-6, 50-2, 69, 84.  

53 Smout, History of the Scottish People, pp.149-50.  

54 For details of various northern burghs, particularly Dingwall, see Ferguson, Electoral Law and Procedure, pp.294-331.
parliamentary franchise was a tangible asset and an important source of revenue. As a result, burghs were much more open than the shires to the influence of political patrons with no local standing but who were willing to spend money. A patron or candidate would ignore a town council at his peril and he could only hope to prevail by providing for the town. Moreover, although most individual burghs were dominated by a local peer or laird, the burghs in a group were usually spread over several counties and no one man could hope to control all the burghs in a group. As a result different interests would either have to reach an agreement on a common candidate or, more usually, a struggle would ensue. Opposing sides would send rival delegates from the same burghs; force would be used in magistrates' elections in order to secure a favourable council with a view to the nomination of a delegate for the general election; sheriffs would return a favoured candidate regardless of the actual election result. Double returns and election petitions to the House of Commons were thus a common feature of burgh elections.

Scottish elections in the first half of the eighteenth century involved a complex interaction between local interests, Scottish politicians particularly the manager, and the Ministry. Ministerial control of Parliament was a mixture of building up a court party among those elected and of obtaining the return of court supporters through electoral management. The Ministry therefore sought the return


56 On occasion two opposing sets of magistrates were elected and the matter had to be settled before the Court of Session; often this took several years and the burgh was left without an effective government during that time. For examples see petition of the burgesses of Montrose to the Lords Justices 1727 SRO RH2/4/326 f317; petition of the burgesses of Dysart c. 1 Apr 1725 SRO RH2/4/398, 254; Lord Advocate Dundas's Report on the 1720 Coupar election 17 Oct 1722 SRO RH2/4/397, 57-62.

57 Plumb, Growth of Political Stability, p. 44.
of as many Scottish members as possible who would support it in the Commons: this was usually one of the major responsibilities of the Scottish manager. For their part, Scottish politicians sought to build up a bloc of members - a 'marketable interest' to a Ministry in search of a stable majority\textsuperscript{58} - in order to bargain with the Ministry, while local interest sought to use their influence in the constituencies to win favours and jobs from the Government. Prominent politicians such as Montrose, Roxburghe and most especially Ilay, worked assiduously to extend their interest beyond those constituencies in their own immediate control by winning the support of influential local figures by declaring they had the ear of the Ministry and could obtain places and other rewards. For this reason it was essential for ambitious Scottish politicians to be seen to have the support of the Ministry and have access to government patronage: this "attractive power" lay at the heart of the relationship between central and local interests. As Milton was later to advise James Stuart Mackenzie,

\begin{quote}
there is one great object of a Ministers Attention should be [sic.] the establishing and preserving a Parliamentary Interest in the Country which is indeed necessary for carrying on the Public Service by adding a proper weight to the power and Influence of the Crown - the Sinecure Employments may be Dedicated for those purposes with as few Deviations as possible.\textsuperscript{59}
\end{quote}

For their part, particularly if there was a clash at local level, it would be to the advantage of local interests to be seen to have the support of the manager in order to create the expectation of favours to come. Such alliances between local interests and the politicians were,


\textsuperscript{59}Memorandum 2.1761-2 NLS SPA 17,501, quoted Murdoch, \textit{The People Above}, p.138.
however, often fairly loose and remained conditional on the promised rewards materialising. 60 Moreover, a sizeable number of local patrons and members remained unattached to either the Squadrone or Argathelian factions and were prepared independently to support, or oppose, the government of the day. It should also be stressed that, particularly given the paramount importance of the electoral Roll in the counties, local interest was the most important factor in winning an election.

As Ferguson has clearly shown, where Ministerial support reinforced an interest already well entrenched and able to carry out the steps necessary under the electoral system, it could be an effective aid, but if a local interest was weak or badly organised Ministerial influence was of little use. 61 Indeed, Ministerial support could often be wielded most effectively at the London end, either in influencing the judgement of the House of Lords in franchise cases or, more importantly, the Commons committees on contested returns. 62

In short, the politics of the shires and burghs were largely determined by the interest and rivalries of local families and Ministerial control was not easily established. Management rested on a series of bargains between the manager and leading local interests and no one man could hope to dominate all 45 constituencies. 63 The most successful electoral manager of the period was Ilay, but the multiplicity of local

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60 "Though that district [Linlithgow burghs] be in the hands of your friends", wrote Milton to Ilay, "I mean such as wish you well and hates the Enemy, yet having never been in pay, it could not be expected they would act like disciplined troops and obey implicitly yr word of Command" January 1725 NLS SC 16,531.

61 Ferguson, Electoral Law and Procedure, p.533.

62 Ibid. For details on how the Ministry of the day could manipulate election petitions to its advantage see Sedgwick, House of Commons, I, pp.14-5.

63 Ferguson, Electoral Law and Procedure, p.534.
interests put practical limits on his power, even when backed with the full weight of Ministerial patronage, and he often had to settle for supporting whoever was likely to win rather than lose face by pushing an unsuccessful opposition. 64

During the period the majority of Scots members were prepared, in the normal run of events, to support the Ministry. As we shall see, the largest single group of members were those returned on the Argathelian interest, which usually numbered about a dozen or so. Their ranks were swelled by twenty or more others who were prepared to follow Ilay's lead so long as he was seen to have the full support of the Ministry. Most, even of the ten or so members who favoured Squadrone or Tory interests, were also usually prepared to go along with the Ministry of the day except in times of political tension or over particular issues. The Scots members therefore generally provided the Ministry with a solid and fairly stable bloc of support. One of the reasons for this was the relative poverty of most Scots members, particularly in comparison to their English counterparts, and their personal reliance on government patronage. Moreover, the Scots member was seen very much as a representative of his shire and was expected to promote his constituents' interests, not least by securing government jobs and other favours for them. 65 As John Maule MP wrote in 1743

... it is for his Majesty's Service, that people in my situation [MP] that lay themselves out to serve his Majesty, And are Friends to the Administration, ought to have their Interest strengthened in those Burroughs they represent by procuring the small offices in them. 66


65 In certain shires such as Midlothian and Stirling there were committees of freeholders who regularly gave instructions to their members and expected the member to be answerable to them: Ferguson, Electoral Law and Procedure, pp.31-6; Phillipson, Reform of the Court of Session, pp.135-6.

66 Maule to Inglis 1 Sep 1743 NLS YP7058, 35.
On occasions, however, Scots members were prepared to sink their political differences and unite to oppose any threat to what they thought to be Scotland's interests, notable instances being over the passage of the Treason Bill in 1709, the Hamilton Affair of 1711, the proposed measures against Edinburgh in 1737 after the Porteous Riots, and the passage of the Heritable Jurisdictions Bill in 1747. 67

Particularly after the Hamilton decision in 1711, 68 the election of the sixteen peers to represent Scotland in the House of Lords became an occasion for a major show of strength as it was the only way a Scottish peer could get to Westminster. 69 No aspiring Scottish Lord could hope to have political advantages except by winning in this election and only a party strong enough to contend for several of these seats could hope to be of weight. This in turn helped to foster the rival Whig factions, the Squadrone and Argathelians, and held them together with much greater coherence than groups at London. The Squadrone, though of itself never numerically very strong, came in the 1730s to be an umbrella for that part of the Scottish aristocracy which resented or opposed the Argathelians. 70 For much of the period the bishops and the Scots peers formed the kernel of Ministerial stability in the House of Lords. 71 Successive Ministries therefore took particular care to ensure that the Court list of sixteen peers was carried, while the election was a focus for those

67 Riley, English Ministers, p.118; Murdoch, The People Above, p.28.

68 See above p.288.

69 There were 154 Scots peers in 1707: Donaldson, Scotland: James V to James VII, p.277.


peers who opposed the government. In fact, provided the Ministry and its Scottish manager was sufficiently organised, it was relatively easy to carry the Court list and the whole affair was usually a "nomination" rather than an election.  

As a result most elected Scottish peers were little more than Ministerial dependents, often receiving pensions out of the Secret Service funds.  

On dissolving Parliament in January 1715 George I castigated the Tories and urged everyone to support the Whigs. The Ministry's campaign against the Tories was well-organised, and was backed up by the new disposal of places. Despite the recent turn of events, however, the Tories in Scotland did not see their cause as irretrievably lost. Mar and the supporters of the late Ministry put up candidates for the Commons elections and hoped to secure support from sufficient peers to attempt to force the inclusion of some of their number in the court list for the representative peers election. For his part Montrose as Secretary of State busily organised the Whig interests. Nevertheless while the general rule was cooperation against the Tories, it was apparent as early as November 1714 that Argyll and the Squadrone were at "daggers drawn" over the election and there was intense rivalry between the two Whig groups in several constituencies. The Squadrone were particularly concerned about the number of Campbells appearing as election candidates and Montrose was prepared to support even Tory candidates, as in Cromartyshire and Inverness burghs, in order to keep out Argathelian

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72 Ferguson, Scotland: 1689 to the Present, p.137.

73 Ibid; Plumb, Walpole: the King's Minister, pp.104-6.

74 Ford, His Majesty's Opposition, p.52.

75 John Forbes to Duncan Forbes 26 Nov 1714 MCP II p.50.
Whigs. In the event 41 Whigs and four Tories were returned. Of the Whigs approximately twelve were followers of Argyll and Ilay, five were Squadrone supporters and one independent. The remaining 23 can be classified as "government Whigs", that is Whigs who were prepared to support a Whig government regardless of its complexion, and who did not display any marked attachment to either the Argathelian or Squadrone interests. In the peers election the court list was carried with virtual unanimity, Mar having decided against running a rival list. The 1715 election was thus a severe blow to the Tories: the ensuing Jacobite rebellion virtually condemned them to the political wilderness. The contest for political dominance in Scotland now clearly lay between the Argathelians and the Squadrone. In this struggle both groups sought allies among the rival Whig factions at Westminster, and in turn the fluctuating fortunes of the English Whig groups did much to shape political events in Scotland. The security bred in the Whig ranks by the collapse and disgrace of the Tories allowed full rein to factional rivalries; most of the old Junto leaders were dead and a new younger generation of Whig politicians fought among themselves to monopolise power. They intrigued at Court, dallied with the Prince.

76 Riley, English Ministers, p.261. For details of elections in various northern constituencies and the activities of Argyll and Ilay see MCP II, pp.47-68.

77 There were 8 contests.

78 Analysed from details in Sedgwick, House of Commons. In this analysis and those for subsequent elections "Argathelians" are classified as those MPs with a direct personal relationship with Argyll or Ilay or who clearly owed their election to the political influence of the brothers.


80 In the Commons as a whole the Tories were reduced to 160 MPs.
of Wales and opposed Ministerial measures in Parliament, all in
the scramble for office. The old issues were fading fast and the
old Whig-Tory division was rapidly dissolving into one of 'ins' and
'outs' with the Tories remaining aloof as back-bench watchdogs
pursuing a negative 'country' policy.

The 1715 rebellion and its aftermath intensified the struggle
in Scotland as both groups manoeuvred to improve their position.
Argyll used his power as commander-in-chief to obtain his own way
in various matters which involved Montrose in some humiliation.
When Argyll rather than Montrose (who was sheriff for the shire)
was made Lord Lieutenant of Dunbartonshire in August 1715, the latter
took the opportunity to resign. Squadrons supporters were bitterly
disappointed but Montrose was not sufficiently thick-skinned to be
an effective politician, despite his general popularity and after
his resignation he largely withdrew from active politics. Official
Scottish business once again reverted to the English Secretaries.
The conduct of Argyll in suppressing the rebellion had not been
particularly impressive, however, and he was reluctant to take the
harsh measures to suppress the Highlands demanded by the Ministry.
He was therefore replaced as commander-in-chief by Cadogan.
Following Montrose's resignation, the Squadrons pushed hard to
obtain the appointment of Roxburghe as Secretary of State but this was
opposed by the Argathelians in concert with Walpole, recently appointed
First Lord of the Treasury and Chancellor of the Exchequer, and the
English Secretaries Townshend (Walpole's brother-in-law) and Stanhope.
The King therefore decided not to make Roxburghe a Secretary of State
at this time but as a consolation his salary as Keeper of the Great Seal
was raised in June 1716 by £1,000 p.a. Shortly afterwards, however,
the Argathelians received a major setback. George, resentful of the
apparent influence Argyll had over the Prince of Wales, removed Argyll and Ilay from all offices they held under the Crown and ordered the Prince to dismiss Argyll. Montrose was made Lord Clerk Register in Ilay's place.

In Scotland the Argathelians fought back, determined to extend and preserve their interest by every means open to them. They were particularly active in various local magistrates elections, achieving notable successes at Glasgow and Edinburgh, and building up strong local political interests which were to stand them in good stead at future general elections. Nevertheless at the centre the Squadrone and their English allies, Sunderland, Cadogan and Stanhope, who had decided to abandon his alliance with Walpole and Townshend, were in the ascendancy. The influence of Walpole and Townshend in the Ministry was reduced and in December 1716 Sunderland at last obtained the Scottish Secretaryship for Roxburghe. Roxburghe was to remain as Secretary of State until his removal in 1725. At times he seemed destined to play a leading part in British politics but he was indolent, inconsistent and incautious, and, unlike Ilay, temperamentally unfitted for routine office business or for the detailed management of a political interest. Montrose took the Great Seal and Polwarth, Marchmont's son, became Lord Clerk Register. Townshend was finally dismissed in April 1717, the following day Walpole resigned, and the Ministry was left in

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81 June 1716: Foord, His Majesty's Opposition, p.60: John Forbes to Duncan Forbes 29 Jun 1716 MCP II, pp.124-5. Ilay retained his office of Lord Justice General which was held for life.


83 See Grant to Forbes 17 Nov 1716 MCP II, p.147.

84 13 Dec 1716. He was also made Keeper of the Scottish Signet.

85 Riley, English Ministers, p.23.
the hands of the Sunderland group and Stanhope. As the influence of the Squadrone increased as a result of the successes of their English allies, so Argyathanians were purged from office in Scotland. George Drummond, a strong Argyll supporter, was removed from the excise board; John Campbell, Argyll's uncle, lost his place as Master of Works in Scotland in favour of Sir John Anstruther, a staunch Squadrone supporter; Robert Dundas, a rising figure in the Squadrone hierarchy, replaced Sir James Stuart as Solicitor General; Sir Robert Sinclair replaced Archibald Douglas of Cavars as Receiver General; and Bute lost his place on the Police Commission. Squadrone supporters were appointed to various sheriffships and lieutenancies, especially in the northern shires, in order to strengthen Squadrone electoral influence.

From 1717 to 1720 the Ministry of Sunderland and Stanhope gradually weakened itself by driving potential allies out of office and consequently faced a growing opposition centred around the Prince of Wales which included Argyll and the Walpole and Townshend group. Walpole, largely to secure the financial rewards of office necessary to uphold his expensive style of living, embarked on a campaign of factious opposition to force the Ministry to take him in again. During this campaign the opposition succeeded, from time to time, in really embarrassing the Ministry, for example in May-June 1717 when they raised charges of corruption against Cadogan in connection with the transportation of Dutch troops to suppress the Fifteen rebellion. This matter was one close to Argythalian hearts, Cadogan having been Argyll's great rival. Great pressure was brought to bear by the Ministry on Scottish members and in

87 Foord, His Majesty's Opposition, p. 60.
the event of the Scots only hard-core Argathelians voted against Cadogan. Nevertheless the Ministry just managed to close the debate by 204-194. The opposition's most notable success, however, came in 1719 over the Peerage Bill. The Bill proposed to restrict the creation of new English peerages to six, except for princes of the blood and to replace extinct peerages, and also to eliminate the election of sixteen Scottish peers by nominating 25 Scottish Lords of Parliament who would sit by right. No other Scottish peer would be allowed to sit in the Lords. This measure received considerable support in the Lords and was favoured, not unnaturally, by all the sitting Scottish peers including Argyll and Roxburgh. There was considerable opposition in Scotland generally, however, to the proposal. Feeling in the Commons too was strongly against the Bill and Walpole's speech ensured its defeat by 269-177 on 8 December.

The opposition was, however, by no means united and the struggle for influence and favour at Leicester House was intense. Throughout 1718 relations between Walpole and Argyll and Ilay were becoming increasingly strained and the Ministry realised that Argyll would be willing to join them on very low terms. In February 1719 he was made Steward of the Household, but was to be excluded from all Scottish affairs, which remained in the hands of the Quadrone. Argyll, however, was not one to suffer such restraint and his relationship with the Ministry remained uneasy.

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88 Sedgwick, House of Commons, vol. i, p.83, lists these as Daniel Campbell (Glasgow burghs); Sir James Campbell (Argyllshire); Col. John Campbell (Elgin burghs); Henry Cunningham (Stirling burghs); Sir James Cunynghame (Linlithgow-shire); George Douglas (Linlithgow burghs); Alex Grant (Elginshire); John Middleton (Aberdeen burghs); William Stewart (Inverness burghs); John Montgomery (Ayr burghs).

89 See Roxburgh to Dundas 14 Mar 1719 SRO RH4/15/2 vol. I doc.63.

90 Owen, Eighteenth Century, pp.11-12; Dickinson, Walpole, p.53.

91 Foord, His Majesty’s Opposition, p.61.

92 "There has been, since the two brothers came among us, a good deal of jealousy and distrust among our friends" Craggs to Stair 10 Mar 1719 Graham, Stair Annals, vol. II p.103.
In Scotland rivalry between the two groups continued unabated. One particular area of dispute concerned the treatment of the Fifteen rebels. The Argathelians, in order to extend their interest as far as possible, particularly in Highland areas, generally favoured a policy of leniency, for example over the forfeited estates. Lord Advocate Sir David Dalrymple in particular openly opposed harsh measures much to the annoyance of the Ministry and he was eventually dismissed in 1720. For their part, to curry favour in London, the Squadrone advocated stringent measures and were not slow to castigate the Argathelians as Jacobite sympathisers, shielding Jacobites for electoral purposes. Indeed it would seem that negotiations between Argyll and Ilay and the Jacobites went so far at this time that in 1718 a patent of Jacobite nobility was made out for Ilay.

By the spring of 1720 the Stanhope-Sunderland Ministry was in considerable difficulty and the advantages of an agreement with Walpole were becoming increasingly obvious to the Court. In April a reconciliation was effected between the King and the Prince of Wales, Walpole and Townshend were to be readmitted to office and Argyll was to be dismissed for his previous desertion of the Prince. The South Sea Bubble scandal, by eliminating or reducing the power of his rivals,

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93 For example see Sir David Dalrymple to Stair 14 Jun 1716 Graham, Stair Annals, vol. I pp. 322-4; Dalrymple to Stair 12 Aug 1717 ibid. vol. II, pp.44-5; Dalrymple to Andrew Fletcher August 1720 NLS SC 16,525.


95 For Argyll's flirtation with the Jacobites at this time see HMC Stuart Papers vols. V-VII passim; G. Lockhart Memoirs and Commentaries on the affairs of Scotland (London, 1817), vol. II pp.11ff.

96 Poord, His Majesty's Opposition, p.62.

97 In June 1720 Walpole became Paymaster and Townshend President of the Council: Dickinson, Walpole, pp.54-5; Owen, Eighteenth Century, p.14.
tremendously improved Walpole's position: when the height of the crisis had passed, Stanhope was dead and Sunderland had resigned from the Treasury, although he remained in the Ministry as Groom of the Stole. Walpole, whose combination of financial and political skill saved the Ministry from complete collapse, was elevated to First Lord of the Treasury and Chancellor of the Exchequer in April 1721. As First Lord of the Treasury he was now at the centre of the whole network of government patronage and, moreover, in control of the secret service money which was used to supplement places and other open favours, and as an election fund. The contest was by no means over, however, and the Ministry remained balanced between the Sunderland and Walpole interests. Townshend regained his place as Secretary of State, but his colleagues were Carteret and Roxburghe, both allies of Sunderland. Sunderland's death in April 1722 strengthened Walpole's position but he was still opposed by the formidable alliance of Carteret and Roxburghe, both of whom had strong influence with the King. Walpole now had control of the Treasury and was strong in the Commons, but he still had to gain supremacy in the Closet to be able to persuade the King to reward the candidates for office he recommended and to accept the policies he proposed.

In Scotland Walpole was faced, on the surface, with the entrenched position of the Squadrone in the administration as a result of the changes of 1717 and 1718. Their position had been further strengthened by the appointment in 1720 of Robert Dundas as Lord Advocate in place of the dismissed Dalrymple. Throughout 1720 and the early part of 1721 Squadrone

98 Dickinson, Walpole, pp. 56-64.
99 Ibid. p. 190; Sedgwick, House of Commons, I p. 41.
100 Dickinson, Walpole, p. 69.
101 Riley, English Ministers, p. 270. Charles Binning and John Sinclair, both Squadrone men, were made joint Solicitors: SRO RH2/4/409, 16 and 19 18 Jan 1721.
supporters continued to be appointed to most of the vacant posts in Scotland. Argathelian influence, however, had by no means been eclipsed. Ilay remained Lord Justice General and Duncan Forbes was an advocate depute. At least three of the Exchequer barons—Smith, Scrope and Maitland (and subsequently Kennedy who replaced Maitland in July 1721)—were Argathelian sympathisers and there was also a significant Argathelian presence in the Court of Session and the revenue boards. Argathelians used these positions to baulk the Squadrone and produce an administrative inertia for example, the Argathelian barons sought on occasion to block gifts in favour of Squadrone supporters. Roxburghe was largely impotent in face of such difficulties and abandoned himself to intrigue at Court. If Walpole had a long-term policy for Scotland at this stage it was, like Harley, to make Scotland directly dependent on himself and the Treasury. More immediately it was essential to reduce the influence of the Squadrone who were in control of the important office of Secretary and who were allied with his rivals Sunderland and Carteret. This meant that there would have to be some measure of redistribution of places in favour of the Argathelians. For their part Argyll and Ilay were determined to oust the Squadrone and dominate Scotland as Queensberry had once done. The alliance of 1717–18 between Walpole and Argyll and Ilay, broken by Argyll's desertion to the Court in 1719, was therefore resumed. The first signs of this shift became evident

102 For Roxburghe's disappointment over Kennedy's appointment see Roxburghe to Dundas 22 Jun 1721 and 4 Jul 1721 SRO RH4/15/2 vol. 1, 114 and 116.

103 See above pp. 25, 80-8, 240-2.


105 See Riley, English Ministers, p.271.

mid-way through 1721 when the Squadrone run of appointments came to an end. Ilay was appointed Keeper of the Privy Seal in April 1721 following Annandale’s death and in July Argyll was made Master of the Household. In the same month John Campbell was appointed to the Scottish customs board and Thomas Kennedy to the Exchequer bench. Rothes bitterly complained to Tweeddale about the increasing influence of the two brothers, and Roxburghe himself was becoming apprehensive about the way things were going. Nevertheless by no means everything went the Argathelian way at this stage. In 1721 Squadrone Lord Justice Clerk Adam Cockburn, who had been appointed in 1714 during pleasure, was confirmed in the office for life, and on Rothes’s death in 1722, his son succeeded him as sheriff of Aberdeenshire, Lord Lieutenant of Aberdeenshire and of Fife and Kinross, and Governor of Stirling Castle.

While the political allies of the Squadrone, Sunderland and Stanhope, had held sway in the Ministry the Argathelians in Scotland had concentrated on consolidating their strength at local level and using what influence they had in administrative posts to hinder the Squadrone. Now the tide was turning the Argathelians became more aggressive, most notably in their campaign against the appointment of Patrick Haldane as a Lord of Session. Yet while the Haldane episode made clear the latent strength of the Argathelians in Scotland, it also caused Argyll and Ilay some embarrassment in their developing relations with Walpole. The opposition to Haldane’s nomination was not only

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107 27 Apr 1721 SRO RH2/4/409, 50.
108 Rothes to Tweeddale 2 Apr 1721 NLS SYP Box 8 F2.
109 For example see Roxburghe to Dundas 2 Dec 1721 SRO RH4/15/2 vol. 1, 132.
110 7 Jul 1721 SRO RH2/4/409, 80.
111 22 May 1722 SRO RH2/4/409, 136.
112 See above pp. 247-60.
vexations to George himself but a troublesome distraction to Walpole at a time when all his attention was focussed on the power struggle at Westminster. On the other hand it was the Squadroon leaders Roxburghe and Montrose who had pushed for the nomination of Haldane in the first place, while Argyll, Ilay and Stair had advised against it, and this of itself greatly lessened any chance that the Squadroon could come to some accommodation with Walpole. The entire episode strengthened Walpole's resolve to bring Scotland under his own firm control.

Meanwhile both sides had for some time been busy preparing for the general election of March/April 1722 which, as a result of the Septennial Act of 1716, was the first since 1715 and was to be the most bitterly contested of the eighteenth century. Particular attention had been paid to local Michaelmas magistrates' elections with a view to controlling the nomination of the burgh delegate. As a result the early 1720s saw a spate of disturbances at local elections, for example at Coupar and Nairn. 113 Coupar was traditionally controlled by the Rothes family: the family seat was just outside the town and the earl himself had been provost of the burgh for some years prior to 1720. 114 In the Michaelmas elections of that year, however, an anti-Rothes faction attempted to wrest control of the town from him. Although this opposition appears to have sprung initially from local discontent, Argathelians were not slow to take advantage of an opportunity to create difficulties for a leading Squadroon figure. The opposition was unsuccessful at the election but raised a suit in the

113 For similar disturbances at Dingwall in 1721 see Roxburghe to Dundas 7 Oct 1721 SRO RH2/4/397, 12; Roxburghe to Dundas 15 Dec 1721 ibid 17; Roxburghe to Dundas 26 Feb 1722 ibid 23. For various northern burghs see Ferguson, Electoral Law and Procedure, pp. 301-7; MCP II, pp. 210-221.

Court of Session to have the election declared void. The following year there were tumultuous proceedings at the election resulting in a double return and both sides laying cases before the Court of Session. Rothes, however, continued as provost with his supporters as the magistracy. Both Rothes and Lord Advocate Dundas had no doubt that the opposition had been "instigated by some who inclined to gain over the corporation of Coupar to their interest against the next elections for Parliament", in order to defeat the Rothes interest in Perth burghs. In the event, the general election for Perth burghs was contested between Charles Leslie, brother of the younger Rothes, and William Erskine, an Argyll Whig. The Rothes faction in Coupar sent Leslie himself to Forfar as their delegate while the other side sent Erskine's brother. Of the other burghs in the group, Perth and Dundee supported Leslie while Forfar and St Andrews favoured Erskine. The presiding clerk at Coupar returned Erskine, the sheriff returned Leslie. By creating an opposition at Coupar the anti-Rothes faction had succeeded in forcing a double return at the general election and in the event the House of Commons awarded the seat to Erskine. The struggle at Coupar continued after the general election. By Michaelmas 1722 the various suits before Session had still not been resolved and on the election day, after Rothes's party had conducted the election, the anti-Rothes faction led by a mob,

115 As was normal, the Court of Session decreed that those elected should continue in office until the case was decided: SRO RH2/4/397, 57-62 17 Oct 1722

116 On his death on 9 May 1722 he was replaced by his son.


seized the town Tolbooth and proceeded to elect themselves as magistrates. Troops were sent in to disperse the mob and Roxburghe ordered Lord Advocate Dundas to enquire into the riots and report what should be done. Dundas, not surprisingly, came down in favour of the Rothes side.

At Nairn there were similar clashes with a view to nominating the burgh delegate for the 1722 election. The burgh had hitherto been controlled by Hugh Rose, younger of Kilravock, an Argathelian sympathiser and current provost. An opposition faction among the magistrates led by Alex Gordon, brother of Sir William Gordon, Squadron member for Sutherland, were equally determined "to free the burgh from the Kilravocks". As a result the Kilravocks entered Nairn at midnight on 20 September 1721 "with about 200 armed tenants to insult and overawe the inhabitants and carry off some of our number. They have encamped in the town to overawe the election". By election day, 25 September, the mob had increased to 300. Nevertheless Gordon and his interest managed to carry the election. Roxburghe eventually ordered in troops and instructed Lord Advocate Dundas to make an enquiry into the affair. In the general election Alex Gordon stood against Duncan Forbes. Forbes obtained the votes of three

119 Rothes to Cockburn 10 Oct 1722 SRO RH2/4/314 f380; Rothes to Cockburn 12 Oct 1722 ibid 381; Dundas to Roxburghe 30 Jul 1723 enclosing memo. ibid, 86-90.

120 Roxburghe to Dundas 16 Oct 1722 SRO RH2/4/314 f382; Roxburghe to Binning and Sinclair 19 Oct 1722 SRO RH2/4/397, 53-4; Roxburghe to Sabine or Preston 19 Oct 1722 ibid. 54-5.

121 Dundas to Roxburghe 30 Jul 1723 SRO RH2/4/315 f86; Lord Advocate's Report to Roxburghe 25 Feb 1723 ibid. 106. For the arguments of the other side see Petition Crombie et al to HM, SRO RH2/4/398, 149.

122 Representations of magistrates, councillors and inhabitants of Nairn to Dundas 22 Sep 1721 SRO RH2/4/397, 3-5.

123 25 Sep 1721, SRO RH2/4/397, 7-10.

124 Roxburghe to Preston 7 Oct 1721 SRO RH2/4/397, 10-11; Roxburghe to Dundas 7 Oct 1721 ibid 12. The following year Roxburghe took the precaution of having troops sent into Nairn in advance of the magistrates' election in order to avoid any repetition of such troubles; Roxburghe to Sabine 12 Sep 1722 SRO RH2/4/397, 29.
of the four delegates, including that of Nairn, and was declared
the victor by the common clerk of the presiding burgh, Inverness.
The deputy sheriff, however, a kinsman of Gordon, accepted a return
in Gordon's favour. Forbes was eventually awarded the seat on
petition to the House of Commons. 125

Considerable attention was also paid by both sides to Edinburgh.

I wish from my Heart (wrote Roxburghe to Dundas) that your negotiations with some
of ye Town of Edinburgh may have the desired
success; for it will be of vast Importance
to have a right sett of Magistrates in that
Place, and a right Member of Parliament
returned from it. 126

The Tories also initially sought to become involved in the 1722
elections and both Whig factions manœuvred for their support.
Argyll in particular was prepared to cooperate with them and Forbes
became anxious lest Tory peers be elected and then follow the leader-
ship of Aberdeen, a Tory peer who cooperated with the opposition to
Walpole. 127 The Ministry, however, quickly gave clear orders to
Argyll and the Squadrone to cooperate to exclude all Tories and
any projected alliance with the Tories did not materialise. In the
end the Tories decided to forfeit the elections in Scotland knowing
well that few or none would be returned, "tho elected by ever so great
a majority". 128 The Ministry's directive, however, did little to
quell Argathelian-Squadrone rivalry and as a result the 1722 Commons
election in Scotland was bitterly fought: twenty contests went to the
polls, more than double the number in 1715. Money was liberally spent

126 Roxburghe to Dundas 26 Aug 1721 SRO RH4/15/2 vol. 1, 121.
127 Forbes to Argyll 11 Jan 1722 MCP II pp.206-7; Forbes to Argyll 3 Feb
1722 ibid., pp.207-9; Ford, His Majesty's Opposition, p.88.
by both sides. Only one or two of the contests involved a direct Whig—Tory (Jacobite) clash while there were at least fifteen contests between Whigs of different complexions, of which at least 7 were between overtly Squadrone and Argathelian candidates. There were three double returns, at least two of which and almost certainly the third, involved direct Argathelian—Squadrone clashes. Rothes was involved in all three: as sheriff at Anstruther Easter burghs and Dysart burghs and, as we have seen, as an active party at Perth burghs. All three double returns were decided in favour of the Argathelian candidates. Four returns were reversed as a result of petitions laid before the House: three involved Argathelian—Squadrone contests and again all four were eventually decided in favour of the Argathelian candidate. Once the election petitions and double returns had been decided it emerged that while the Squadrone had retained a hard core of five members, the Argathelians had increased their strength from twelve to nineteen, almost half the Scottish representation. Of the remaining 21 Scottish members, eighteen were government Whigs, two were independent Whigs and there was one Tory.

129 For example see Lady Margaret Hay (wife of William Hay of Newhall, candidate for Haddington burghs) to Tweeddale 29 Jan 1722 NLS SYP Box 8 F3(b): "... monie being now the only way of gaining thatt business... [I have sent Bassendene] with Instructions to join Mr. Scott in manageing the monie I have sent for that end; we were sencible that because of the laws it was dangerous for my Ld. to be known in any such thing, therefore I am nesesetatt [sic] to take this partt upon me, thatt in case of any after game my Ld. may be free to declair his ignorance. I have ordered Bassendene to goe as great a length as he, with our other friends ther, shall Judge proper thatt the cause be nott lost...".

130 Analysis and details from information in Sedgwick, House of Commons.
In general, the 1722 election results were a severe blow to the Squadrone and confirmed that the political balance in Scotland was shifting in favour of their rivals. Argyll and Ilay now had an interest in both Houses more considerable than anyone save Walpole himself. Moreover by supporting the Argyll interests in all the controverted elections Walpole gave a clear indication of where his sympathies lay. Few MPs supported Roxburghe: "those of the Scots in the House of Commons that are not Argyll's men act as individuals and but a few by Roxburghe's interest (scarce Sir William Gordon if anybody else would take him up)." 131

Various Squadrone peers, notably Rothes, initially entertained hopes of drawing up a representative peers list which excluded leading Argathelians, including Ilay, 132 but in the event the Ministry's list, which included peers from both Whig groups, was carried without opposition. 133

After the 1722 election, although official business continued to rest in Squadrone hands with Roxburghe as Secretary, Dundas Lord Advocate and Cockburn Lord Justice Clerk, Walpole's policy towards Scotland began to emerge more clearly. After 1722 Walpole set out to engross the entire field of patronage and make it yield victories at elections and a solid core of support in the Commons. His general long-term political strategy, which was ultimately to prove fatal, was to eliminate any rival who appeared to threaten his position as sole Minister. This policy applied equally to Scotland and from 1722 Walpole

131 George Baillie quoted Sedgwick, House of Commons, vol II, p.70.

132 See Rothes to Tweeddale 23 Dec 1721 NLS SYP Box 8 F2.

133 21 Apr 1722 Montrose, Tweeddale, Roxburghe, Rothes, Haddington, Hopetown, Aberdeen, Sutherland, Buchan, Loudon, Selkirk, Orkney, Stair, Bute, Deloraine and Ilay: SRO PE 27.
took an increasing interest in Scottish patronage and worked to reduce the influence of Roxburghe and the Squadrone who were allied to his rivals Carteret and Cadogan. Thus the role of the Scottish Secretary (Roxburghe) was to be weakened, the administration of Scotland was to centre on the Treasury and the various competing Scottish interests were to be balanced so that none would achieve a dominant position and all would be directly dependent on the Ministry, that is on Walpole himself. As Baillie wrote in March 1723,

... I think the whole points at taking the management of Scots affairs in their [the Ministry's] own hands without regard to either side. 134

James Dalrymple similarly informed Andrew Fletcher that

... the Ministry are resolved forever to work by two sets in Scotland ... one day they shine on one sett and on another another... 135

To achieve such a balance Walpole had first to break the strength of the Squadrone as a group though he did not intend to eradicate them completely. Inevitably, however, by weakening Roxburghe Walpole was simultaneously exalting the Argathelians. For their part neither Argyll nor Ilay were as yet fully committed to Walpole. 136 Gradually, however, both sides began to see the mutual advantages of working together and increasingly vacant places in Scotland were filled by Argathelians. Yet while Walpole's intentions at this time are quite clear, events, particularly as we shall see, from 1725 onwards, were to develop a momentum largely beyond Walpole's control and undermine his "masterly" plan. 137

135 James Dalrymple to Andrew Fletcher March 1723 NLS SC 16,528.
136 Plumb, Walpole: The King's Minister, pp.38, 50.
Meanwhile at Westminster Carteret had hoped to make use of his influence with the King and his capacity in foreign affairs to gain the ascendancy, but Walpole and Townshend were finally able in April 1724 to force his resignation to the Lord Lieutenancy of Ireland, his place as Secretary of State being taken by Newcastle. Cadogan was also dismissed and replaced by Argyll as Commander-in-chief.

Walpole had finally consolidated his power and all the major offices of state were now controlled by his close allies. While Roxburghe continued to cling to office, Walpole was increasingly bypassing him as Secretary and dealing with Scottish business directly from the Treasury, in much the same way as Harley had bypassed Queensberry in 1710-11. In 1722, for example, Walpole appointed Loudon, an Argathelian, as Lord High Commissioner to the General Assembly. Roxburghe objected so much that he refused as Secretary to handle the commission and asked Carteret to let it go through his office. The following year Roxburghe had in mind the appointment of either Atholl or Tweeddale but Hopeton was appointed and Roxburghe told nothing of it until it came to his office in the normal course of business.

Also in 1723 Roxburghe countersigned a royal warrant in favour of Andrew McLivraith to be HM Limner in Scotland but Walpole had a separate warrant prepared for James Abercrombie of Glasshaugh MP and countersigned by the Lords of the Treasury. Roxburghe complained, with justification, that in the past only warrants involving newly established posts or a change in salary had had to go through the

138 See Ilay to Andrew Fletcher 2 Apr 1724 NLS SC 16,529.
139 Plumb, Walpole: The King's Minister, p.76.
140 Riley, English Ministers, pp.273-4.
Treasury. Roxburghe was fully aware of Walpole's aim:

I must observe to your Lordp that if Commissions of this sort are not to pass through my office, as usual, but to pass to the Treasury, it is in effect to give the Treasury the greatest part of my Business as Secretary of State. ¹⁴¹

This had no effect and Abercrombie got the job. Townshend's assurance "that my Bror Walpole had not the least intention to encroach upon any part of your Grace's province" ¹⁴² did little to allay Roxburghe's fears. These and other similar incidents were designed to humiliate Roxburghe and force him out of office as Montrose had been earlier. By 1724 Roxburghe was dealing largely with minor and routine matters, and a considerable amount of correspondence from Scotland was going to Townshend.

In Scotland the Squadrone fought desperately to retain their position and party rivalry was intense. Even the General Assembly was wracked by political divisions. ¹⁴³ The Squadrone were not without their successes: in 1723 Roxburghe secured without opposition the election of the 10th earl of Rothes to replace Bute, lately deceased, as representative peer. ¹⁴⁴ Yet the tide was clearly running against Roxburghe and the Squadrone and many supporters began to drift away. In the Lords Haddington and Hopeton deserted, leaving only Montrose, Tweeddale, Rothes, Roxburghe himself and the Tory Aberdeen

¹⁴¹Roxburghe to Townshend 10 Jun 1723 SRO RH2/4/315, f13; see also Anonymous ND ibid. f74.

¹⁴²Townshend to Roxburghe 18 Jun 1723 SRO RH2/4/315, f68. The matter was referred to the Scottish Exchequer barons; Walpole to Smith 25 Jun 1723 ibid. f72.

¹⁴³See Findlater to Townshend 12 May 1724 SRO RH2/4/316 f259-60; Findlater to Townshend 14 May 1724 ibid. f261-4.

¹⁴⁴13 Jun 1723. See Rothes to Roxburghe 9 Jun 1722 SRO RH2/4/314, f322; Roxburghe to Townshend 21 Jun 1723 SRO RH2/4/315, f70; Roxburghe to Attorney General 18 Apr 1723 SRO RH2/4/396, 198-9. He also obtained a £1,000 pension for Tweeddale; see Roxburghe to Tweeddale 1 Jun 1723 and 13 Jun 1723 NLS SYP Box 8 F2.
who were not prepared to follow Argyll, while in the Commons only Sir William Gordon was prepared actively to support Roxburghe. Even Baillie broke with Roxburghe at this time. Roxburghe would even have lost Montrose but for the latter's humiliation over the Glasgow tobacco frauds and the removal of many customs officers there who had been put in on his recommendation which in turn weakened his electoral influence in the Glasgow area. The Argathelians were increasingly optimistic and indeed Ilay had to restrain the enthusiasm and impatience of his own supporters. Ilay himself saw the limits of his influence:

... if my interest was so great as... imagined there should not be so many fools and knaves in Scotland in offices as there are at present.

Nevertheless Argathelians continued to obtain most of the vacant posts in Scotland and the Squadrone were "very low". All three Scots on the new joint customs board designed to bring Scottish customs patronage more directly under Treasury control — Sir James Campbell, John Campbell and George Drummond — were strong Argathelians. It was widely rumoured that Scrope was instrumental in the reorganisation of the Scottish customs board and it is not surprising that, as Walpole moved towards Harley's old policy of centering Scottish business

145 See Riley, English Ministers, p.279.

146 For example see Ilay to Andrew Fletcher 19 May 1724 and 24 May 1724 NLS SC 16,529; Middleton to Andrew Fletcher 16 Apr 1724 NLS SC 16,530.

147 Ilay to Milton 7 Jan 1725 NLS SC 16,531.

148 Fletcher to Ilay 11 Apr 1724 NLS SC 16,529.

149 See above pp.20-1.

on the Treasury, Scrope once more came to the fore. In January 1724 he was made Secretary to the Treasury bringing with him an extensive knowledge of Scottish business.\textsuperscript{151} His departure from Scotland, however, removed the one disinterested person there who might have been able to implement Walpole's policy of making all Scots directly dependent on the Ministry. With Scrope gone the way was clear for the rapid emergence of Milton, whose primary loyalty lay with Ilay and Argathelian interests rather than with Walpole.

Andrew Fletcher was appointed to the bench as Lord Milton in May 1724.\textsuperscript{152} By the early 1720s Fletcher, a rising young lawyer,\textsuperscript{153} was conducting legal business for Argyll and his brother,\textsuperscript{154} and he quickly became a close confidante of Ilay. His long career as Ilay's adviser on patronage matters appears to have begun when Ilay requested a list of the members of the Faculty of Advocates with marks on those who practice at the bar with some little description as to those whom possibly I may not know, especially the young ones.\textsuperscript{155}

By 1723 Ilay was pressing to have him promoted to the bench\textsuperscript{156} in order to give him a position of prestige from which he could promote Ilay's interests. Even before his appointment Fletcher's position as Ilay's

\textsuperscript{151}See Ilay to Andrew Fletcher 6 Feb 1724 NLS SC 16,529 "Baron Scroop coming into the treasury is very agreeable to all our friends".

\textsuperscript{152}SRO RH2/4/409, 225 6 May 1724. See also Andrew Fletcher to Ilay 30 May 1724 NLS SC 16,529.

\textsuperscript{153}Fletcher's initial connections appear to have been with the Stair family.

\textsuperscript{154}See NLS SC 16,525 - 16,528 passim; for example Andrew Fletcher to Argyll 1721 NLS SC 16,526; Fletcher to Ilay 20 Sep 1723 NLS SC 16,528.

\textsuperscript{155}Ilay to Milton 21 Aug 1723 NLS SC 16,528.

\textsuperscript{156}See Ilay to Andrew Fletcher 18 Jul 1723 NLS SC 16,528. This letter also indicates that Ilay placed more trust in Fletcher than Duncan Forbes. Also Ilay to Andrew Fletcher 21 Aug 1723 ibid.; James Dalrymple to Andrew Fletcher 7 Mar 1724 NLS SC 16,529. Roxburghe made an unsuccessful attempt to oppose Fletcher's promotion; see Duncan Forbes to Andrew Fletcher 27 Feb 1724 and 26 Mar 1724 ibid.
political agent was becoming widely recognised and people seeking jobs and pensions applied to him in order to obtain Ilay’s ear. In April 1724 he became involved for the first time, along with Drummond and Forbes, in organising the Argathelian interest in the election of the Moderator of the General Assembly. Following his elevation to the bench, Milton was to serve as Ilay’s sous ministre in Scotland for almost forty years. Ilay trusted Milton’s judgement completely and relied on him almost exclusively to supervise the distribution of places in Scotland. Solid and meticulous, perhaps, one suspects, rather dull, he was nevertheless “a man of great ability in business, a man of good sense, and of excellent talents for managing men”. He was unswervingly loyal to Ilay, continued to handle much of Ilay’s personal legal and financial business, and the relationship between the two men appears to have been one of real friendship. His greatest asset was his ability to manipulate the minutiae of eighteenth century patronage in Ilay’s interest; his skill lay in balancing competing demands for places and favours in order to maximise Ilay’s influence, particularly at elections. He had a detailed grasp of family ties, economic dependencies and political connections in most constituencies:

There was hardly a county or burgh in the kingdom where he was not acquainted with all the friends and opponents of the Administration and with the characters and views of the leading men on both sides... he considered the superintending of elections as his masterpiece...
Milton also took a considerable and active interest in most aspects of Scottish life, devoting much time in particular to encouraging trade and manufactures, agriculture and banking.  

The changes in Scotland came to a head in May and June 1725. Squadron commissioners Bennet and Cockburn were removed from the excise board; Receiver General Sir Robert Sinclair, put in by Roxburghe, was dismissed and the post given to an Argathelian, Charles Cathcart, and finally Squadron Lord Advocate Robert Dundas was dismissed for his opposition to the malt tax and was replaced by Duncan Forbes while another Argathelian, Charles Areskine, was made Solicitor General in place of Binning and Sinclair. The Ministry then embarked on a series of sweeping changes in the lord lieutenancies and sheriffships, notably in the north of Scotland, designed to break up the local electoral power of the leading Squadron magnates. The large concentration of power in the hands of the earl of Sutherland was split up. Of his eight lieutenancies he was left with only Caithness and Sutherland, the

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161 For his interests see The Bee, vol XI (1792), pp.1-5.

162 31 May 1725: see above p.85.

163 See Roxburghe to Dundas 4 Jun 1725 Omond, Arniston Memoirs, pp.69-70; below p.329.

164 29 May 1725 SRO RH2/4/409, 265. In June 1725 Lord Arniston proposed to resign from the bench in favour of his son, Dundas. Walpole was initially receptive to the proposal but was dissuaded by Ilay and Arniston remained on the bench until his death the following year: see Roxburghe to Dundas 10 Jun 1725 Omond Arniston Memoirs, pp.70-1; Walpole to Dundas 19 Jun 1725 ibid. p.71.

165 29 May 1725 SRO RH2/4/409, 267.

166 Riley, English Ministers, p.286. He held the Lord Lieutenancies of Ross, Cromarty, Moray, Nairn, Caithness, Sutherland, Orkney and Shetland and Inverness.
rest being given mainly to Argathelian supporters. Several Squadrone supporters were also removed from various sheriffships in the gift of the Crown and held during pleasure. Roxburghe himself continued to cling to office despite being ignored by Walpole and Townshend:

> I have seen so many changes, and have out-lived so many Ministries, that I am resolved not to give them that satisfaction [of resigning] at this time, however uneasy and disagreeable the situation I am in may be to myself.

What finally brought his dismissal was the malt tax crisis of mid-1725.

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167 Lt Gen Charles Ross (Ross-shire), Morton (Orkney and Shetland), Hugh Rose of Kilravock (Nairn) and his son (Cromarty), Lovat (Inverness-shire) and Alexander Brodie of Brodie (Moray): SRO RH2/4/409, 274 9 Jun 1725. All these, with the exception of the first named, were Argyll men by this time.

168 Humphrey Grant of Grant replaced Sutherland as sheriff of Inverness; Sir Robert Munro replaced Sir William Gordon as sheriff of Ross; and James Allardice replaced Arbuthnot of Fordon as sheriff of Kincardine: SRO RH2/4/409, 275 9 Jun 1725.

169 Roxburghe to Dundas 4 Jun 1725 SRO RH4/15/2 vol 2, 58.
CHAPTER NINE: THE MALT TAX CRISIS

As we have seen, 1 by 1724 Walpole was under considerable pressure to extend effectively the malt tax to Scotland. He managed to avoid a commitment that year but the following session the Committee of Ways and Means, voted, by 133 to 41 (all but nine of the latter being Scots), to have the malt tax at the English rate of 6d per barrel applied to Scotland. 2 This caused considerable concern in Scotland, there were one or two minor disturbances and various shires began to petition their members of Parliament. 3 Initially most Scots members, including several leading Argathelians, opposed the extension of the malt tax to Scotland as a breach of the Union and as a burden Scotland was unable to bear. A committee was formed which included not only Squadrone members such as Dundas and Sir John Anstruther, but also Daniel Campbell and his brother John (who was provost of Edinburgh at the time) to press for a reduction in the rate of tax to be applied to Scotland. 4 Under pressure from the Midlothian heritors 5 Dundas, however, quickly emerged as the main opponent of the proposal and was regarded as such by the Ministry. 6 Walpole finally agreed that the rate should only be 3d on every bushel of malt which,

1 See above pp. 109-110.
2 See Dundas to Clerk 10 Dec 1724 SRO GD 18/3194.
3 See Milton to Ilay 17 Dec 1724 NLS SC 16,529; Clerk to Dundas 18 Dec 1724 SRO GD 18/3199; Clerk to Dundas 18 Jan 1725 ibid.
4 See Dundas to Clerk 14 Jan 1725 SRO GD 18/3194; Dundas to Clerk 19 Jan 1725 ibid.
5 See Midlothian heritors to Dundas 19 Dec 1724 SRO GD 4/15/2 vol 2, 56; copy letters to Dundas from freeholders of Midlothian 7 Jan 1725 SRO GD 18/3200; Dundas to Clerk 21 Jan 1725 SRO GD 18/3194.
6 Dundas to Clerk 21 Jan 1725 SRO GD 18/3194: "they have in effect broke me with the Ministry". See also Dundas to Clerk 18 Feb 1725 ibid.
initially at least, satisfied Dundas. An act was accordingly passed imposing this malt tax on Scotland, to commence on Midsummer's Day 1725.

In the months following Midsummer's Day 1725 the grumbling discontent against the new malt duty erupted in disturbances throughout Scotland, most notably in Glasgow and Edinburgh. The disturbances forced the Ministry to take more positive steps to deal with Scotland and by the time the dust had settled Roxburghe had been dismissed as Secretary of State and not replaced, and Walpole had increased his efforts to establish a more direct control from London, but running counter to this the Argathelians, and Ilay in particular, had emerged stronger than ever: in short a new pattern of management was beginning to emerge. The disturbances following the introduction of the new malt tax also highlighted the problems of governing Scotland in this period. As Ilay complained,

by a long series of no-administration the mere letter of the law has little or no weight with the people.

The difficulties in quelling the troubles were in large part due to the lack of clear administrative channels and a consequent reluctance on the part of both civil and military officers to act decisively. The events of 1725 vividly illustrate that the vacuum created by the abolition of the Scottish Privy Council had not been satisfactorily filled.

Much of the opposition to the malt tax was genuine. Many saw it as a clear breach of the Union and more importantly as an additional burden on a basic commodity, ale, the price of which was already

7See Dundas to Clerk 21 Jan 1725 SRO GD,18/3194.
812 Geo I c.4.
11For example see Dundas to Clerk 10 Dec 1724 SRO GD 18/3194; Clerk to Dundas 18 Dec 1724 SRO GD 10/3199.
relatively high, a burden which, it was felt, Scotland was unable to bear particularly at a time when Scottish trade seemed to be decaying, the promised economic benefits of Union had not materialised and the economy was generally at a low ebb. More particularly, the quality of Scottish beer was very low compared to that of England and, compounded by the bad harvests of 1724 and 1725, it was felt that the malt tax could well ruin the brewing industry. All this led to some anti-English feeling. In addition, the political events of the preceding years ensured that the whole affair became subsumed in the Squadrone-Argathelian rivalry. Although both sides had initially opposed the introduction of the tax, the Argathelians in the administration quickly found themselves in the position of seeking to uphold the government’s authority and quell the disturbances, while Squadrone supporters and Robert Dundas in particular, dismissed from his post as Lord Advocate in May for his continued opposition to the tax, fomented opposition to embarrass the government and show the Ministry that the Squadrone was still a

12 For example see petitions from Lord Provost John Campbell for the magistrates and town council of Edinburgh to Townshend 31 Jul 1725 SRO RH2/4/318 f287; Royal burghs petition to House of Commons c.17 Jul 1725 ibid. f289; Royal burghs to HM Dec 1725 SRO RH2/4/322 f445. These generally remarked on the poverty of Scotland and argued that the malt tax was the last straw which would ruin the country’s trade and economy, and that it should either be removed or the burden made less severe.

13 For example see Customs Commissioner Fairfax to Newcastle 26 Jun 1725 SRO RH2/4/317 f150; Wade to Newcastle 26 Jun 1725 ibid. f151.

14 For example see Walpole to Townshend 23 Aug 1725 Coxe, Walpole, II pp. 449-52: Dundas ”is the adviser and drawer of all papers that are prepared in opposition to the malt tax”.

15 “The only reason that was ever given to me for your being dismissed, was the part you acted against Sir R Walpole’s scheme proposed in lieu of the Malt Tax, particularly your writing the proposal or resolution, at the meeting of the Scots members, with your own hand” Roxburghe to Dundas 4 Jun 1725 Omond, Arniston Memoirs, p.69.
force to be reckoned with in Scotland. By exploiting the genuine discontent over the malt tax, and by appearing as champions of Scotland's liberties in contrast to the Argathelians, the Squadrone hoped to revive their political fortunes on a wave of popular emotion. For their part many Argathelians saw the affair at bottom as a Squadrone plot and the more the Squadrone could be implicated in the disturbances the more loyal and trustworthy the Argathelians would appear.

It would be of infinite use (wrote Ilay to Milton) if any scheme or previous design could be discovered in any person of a great or middling rank of people who could be said to belong to the Enemy.16

In short, as Walpole informed Townshend,

'tis most certain the whole springs from a contest for power, and this I dare affirm is the opinion of every thinking man in Scotland.17

Although certain individual Jacobites, notably Lockhart of Carnwath in Midlothian,18 were active in opposing the new tax, there was little organised threat from the Jacobites at this time. Nevertheless the government was sensitive to any threat of a Jacobite insurrection and a brief scare was raised when three foreign ships (probably Russian) were sighted off Lewis.19 The Ministry in London were also very quick to realise the serious nature of the disturbances and the threats posed by resistance on such a widespread scale. "I am far from thinking",

16Ilay to Milton 10 Jul 1725 NLS SC 16,531.


19In Scotland only Wade gave credence to this Jacobite threat (compare Forbes to Scrope 1 Jul MCP II pp.251-2). He believed the disturbances were "probably [the] beginnings of a Rebellion, especially since I have been Informed that During the Riot at Glasgow one of the Cry's was, Down with Walpole and up with Seaforth... [this is] the usual way of the Jacobites who never fail to Mix themselves with all Mobbs, and to take All advantage of creating disturbance to ye Government": Wade to Newcastle 1 Jul 1725 and enclosures SRO RH2/4/317 f158-170; Daniel Campbell to Townshend 1 Jul 1725 ibid. f173-4.
wrote Walpole, "that the troubles there are over. On the contrary, I greatly apprehend it will come to be a serious matter, and prove as difficult a task as any thing that has happened since his majesty's accession." Correspondence flew almost daily between Walpole and Newcastle in London and Townshend with an anxious George in Hanover.

No chances were to be taken. The troops already in Scotland, preparing to carry out the new Disarming Act, were diverted to Glasgow and other towns where disturbances had occurred and more troops were sent up from England.

Initially the trouble centred on Glasgow. Both Montrose and Argyll had considerable influence in the Glasgow area and in recent years there had been a Squadron-Argathelian struggle to control the magistrates' elections. Montrose's interests had suffered a considerable set-back with the exposure of widespread tobacco frauds among customs officers, many of whom had been appointed on his recommendation. The Squadron interest and many leading Glasgow merchants placed the blame for the exposure on Daniel Campbell of Shawfield, a wealthy Glasgow merchant, member of Parliament for Glasgow burghs and a leading Argathelian. Campbell was later to complain to Townshend of the villainous calumnys with which a party in the town of Glasgow supported by the countenance of the people then in power in Scotland persecuted me all last year as if I had been the destroyer of their trade for no other reason but because by the wise methods your brother Walpole took in settling the affairs of the Customs here, there was in a measure an end put [to] their extravagant frauds in the

20 Walpole to Townshend 29 Jul 1725 Coxe, Walpole, II, p.442. See also Townshend to Newcastle 17 Aug 1725 ibid. pp.444-6.


22 See above p.322.
Dundas appears to have taken an active part in securing this electoral upturn. It was also generally believed that Campbell had supplied the government with details on the consumption of malt and ale in Scotland and had been active in supporting the bill in Parliament.

On 21 June 1725 several Glasgow magistrates and justices of the peace met the chief excise officers of the town and warned them that "it is not in their power to suppress a Mobb, or Insurrection if such happen." The excise officials accordingly wrote to the commissioners in Edinburgh, asking for the assistance of troops. After consulting General Wade, commander in chief in Scotland, two companies under Captain Bushell set out for Glasgow on 22 June. On 23 and 24 June several small groups, composed mostly of women and boys, effectively prevented any survey of the stock in hand being made but otherwise caused little mischief. The real catalyst for action was the arrival

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23 Campbell to Townshend 1 Jul 1725 SRO RH2/4/317 f173-4.
25 Campbell believed this 'rumour' to have been instigated by Robert Dundas: Campbell to Townshend 1 Jul 1725 SRO RH2/4/317 f173-4. See also copy Clerk to Dundas 10 Apr 1725 SRO GD 18/3199; copy Clerk to Jas. Hart, minister at Greyfriars Edinburgh, ND ibid.; Clerk to - 17 Jan 1726 ibid. It was encouraged and spread by Campbell's Squadrone enemies: Forbes to Scrope 24 Jun 1725 MCP II pp.245-7.
27 Ibid.
28 12 men. See Areskine to Delafaye 18 Dec 1725 and enclosures SRO RH2/4/321 f425-8; Forbes to Delafaye 20 Jul 1725 enclosure no. 1 Account of the Riots SRO RH2/4/318 f238-41; Wade to Newcastle 24 Jun 1725 SRO RH2/4/317 f139-40.
of the troops between 6 and 7 p.m. on 24 June. Bushell asked Provost Charles Millar for the troops to be quartered in the main Guard House but the mob, swelled by interest at the troops' arrival, seized the keys. The provost, fearful of the mob's reaction, refused Bushell's request to break down the doors and instead ordered the troops to various separate quarters throughout the city. Bushell, who had been sent with strict instructions to place himself under the command of the civil magistrates as was the normal procedure, had little alternative but to obey. The provost then ordered the Town Guard to be mounted as usual but because of the mob no serious attempt was in fact made to do so. Around 10 p.m. the mob suddenly increased in both size and fury and launched an attack on Daniel Campbell's house at Shawfield. The provost, dean of guild and several prominent burgesses hurried to the scene and

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29 Colin Bell in an interesting comparative article argues that the arrival of government troops sparked off the riots in all three major "invasions" of Glasgow: 1725, the "Radical War" of 1820 and the occupation of 1919. Colin Bell, "The Glasgow Invasions", Weekend Scotsman, 22 May 1975.

30 For a general account of the events following see Forbes to Delafaye 20 Jul 1725 SRO RH2/4/317 f234-7 and his enclosure no. 1 "An Account of the Riots at Glasgow etc." SRO RH2/4/318 f238-41.


33 One estimate put their numbers as high as 3,000; see Fairfax to Newcastle 26 Jun 1725 SRO RH2/4/317 f150. According to Forbes' "Account" there were only about a hundred rioters "but as usual in such events, there was a great crowd of spectators that did not meddle in the matter" SRO RH2/4/318 f238-41.

34 Campbell and his wife had retired to their country house at Woodhall, 8 miles from Glasgow, the previous day: Campbell to Townshend 1 Jul 1725 SRO RH2/4/317 f173-4; Wade to Newcastle 26 Jun 1725 ibid. f151-4. There had been reports at Edinburgh several days before that Campbell's house was to be the target: see Lord Provost George Drummond, testimony to the House of Commons, House of Commons Journal, XX, p. 624, 18 Mar 1726; Forbes' "Account" SRO RH2/4/318 f238-41; Wade to Newcastle 26 Jun 1725 SRO RH2/4/317 f151-4. Wade concluded from this that the riots were "undoubtedly concerted".
tried to persuade the mob to retire but they soon retreated in face of mob threats. About 11 p.m. Bushell, on hearing of the troubles, sent a sergeant to offer the provost the assistance of the troops but the provost turned down the offer, claiming that the soldiers would be attacked by the mob before they could be safely assembled from their separate quarters and the mob were left undisturbed to plunder and destroy Campbell's house.

Next morning the provost broke down the doors of the Guard House and admitted the troops. By noon the mob began to reassemble and around 3 p.m. they attacked the soldiers outside the Guard House with a hail of stones, injuring some of them and forcing them to retire inside. Bushell, fearing that the mob would destroy the building, ordered his men back outside but they were met with a further hail of stones and again forced back inside. After firing from inside to push the mob back the soldiers once more emerged. Bushell then ordered his men to fire over the rioters' heads but this only enraged them further and Bushell finally ordered the soldiers to fire at the mob. Several rioters were killed and others wounded. The rioters retreated, but only so far as the town's magazine where they seized the arms stored there. The provost, by now thoroughly alarmed at the escalating situation, advised Bushell to retire for the safety of Dumbarton Castle.

The mob pursued the troops for six miles out of Glasgow and the soldiers fired several times killing more rioters before eventually reaching Dumbarton. The number of rioters killed was later officially given

35The provost did not, however, read the proclamation to order the mob to disperse, although by his own later admission he had it in his pocket: "Questions put to the Magistrates" by Forbes 15 Jul 1725 SRO RH2/4/318 f244-7, question 10. This was to be one of the main charges of negligence later levelled against the provost.

36For fuller details see Forbes' "Account" SRO RH2/4/318 f238-41.
as nine. That night the mob spent its fury pulling down the walls of Daniel Campbell's house, causing over the two nights an estimated £6,080 worth of damage.

Meanwhile in Edinburgh the wheels of the Scottish administration began to turn. Lord Advocate Duncan Forbes seized the initiative. On 25 June he wrote to Provost Millar and the magistrates demanding that they make a full enquiry and seize such rioters as they could find.

The following day he sent a long letter to Charles Delafaye, Secretary to Newcastle and to the Lords Justices, outlining the events in Glasgow and arguing that provost Millar should be arrested for negligence as a warning to other magistrates throughout Scotland. Millar, however, fled the town for fear of the mob and many of the magistrates were...

37 At the rioters' trial. See also Forbes' "Account" ibid. No soldiers were killed although it was claimed that one of the two soldiers captured by the mob while retreating to Dumbarton was so badly treated that he died soon after: Wade to Newcastle 26 Jun 1725 SRO RH2/4/317 f151-4.

38 This was the figure which the Commons by Act of Parliament 12 Geo I c.27 in May 1726 ordered the city of Glasgow to pay Campbell in compensation; see Menary, Forbes, pp.75-6; Treasury to Exchequer 3 Jun 1726 SRO NBB RH2/4/435, 103. The proposal was opposed in Parliament by Dundas: see Hay to Milton 5 Mar 1726 NLS SC 16,533; "Account of Debates in House of Commons on Daniel Campbell's petition for payment of his losses" SRO GD 18/3203 5 Mar 1726; Drummond to Grange 5 Mar 1726, Abbotsford Club Miscellany vol. I (1837), pp.419-23.

39 Forbes to Glasgow magistrates 25 Jun 1725 SRO RH2/4/318 f256. He also secretly sent ahead two men to ferret out information and evidence: see Forbes to Delafaye 8 Jul 1725 SRO RH2/4/317 f191-2.

40 The Lords Justices were established under the Regency Act to administer the country when the King was in Hanover. They were simply the formal Cabinet under another name. For Delafaye see Browning, Newcastle, p.45.


also absent. Wade was ordered by the Lords Justices to send more troops to Glasgow as soon as they arrived from Berwick in order to re-establish law and order and to help in the discovery and arrest of suspected rioters.

Elsewhere in Scotland excise officers had been refused access in a number of towns. To counteract a widely spread rumour that the royal burghs had resolved not to pay the malt duties Forbes got the Convention of Royal Burghs, then meeting in Edinburgh, to pass a resolution abhorring such resistance and asking maltsters to allow excise officers free entry.

It was Remarkable, (wrote Forbes) the Burroughs that opposed the Resolution most Smartly and Avowedly were such as were under the influence of our Late Ministry in Scotland viz Dundee Dunbar Haddington and Peebles.

The resolution was sent by circular letter to all member burghs.

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43 When they eventually returned they did little but give Forbes a list of eight obscure names against whom they offered little evidence: they arrested no-one. Forbes to Delafaye 20 Jul 1725 SRO RH2/4/317 f234-7, and enclosures 2, 3 and 5 SRO RH2/4/318 f242, 244, 250. Two of the absent magistrates, Stirling and Johnston, spent their time after returning in compiling a pro-magistrate account of the riots. This account (30 Jun 1725 SRO RH2/4/318 f248-9) was the first of many to claim that the provost and other magistrates present had done all that could have been expected of them and more, that the riot was not so serious as had been portrayed, and that Bushell and the troops had over-reacted, firing on the mob indiscriminately and without warning. This version was elaborated in a 'true account', which the provost and magistrates sent to the King: 31 Jul 1725 SRO RH2/4/318 f290-5. For other examples see "A Letter from a Gentleman in Glasgow to his Friend at London etc" 30 Jul 1725 ibid. f423-38; "A Letter from a Gentleman in Glasgow to his Friend in the Country" 1 Sep 1725 SRO RH2/4/319 f13-22.

44 Delafaye to Wade 1 Jul 1725 SRO RH2/4/318 f395-5.

45 See Forbes to the magistrates of Inverness 8 Jul 1725 MCP II pp.259-60.


47 Forbes to Scrope 8 Jul 1725 MCP II pp.258-9.
Forbes, Wade and a large party of troops finally set out for Glasgow on 8 and 9 July. Although all had been quiet in Glasgow, no effort had been made to survey stock in hand or collect any duties as most of the excise officers had fled. Forbes spent the next four or five days examining over 150 witnesses, including the provost and magistrates. Evidence was extremely difficult to obtain, "a confederacy to favour the rioters being very universal", and Forbes received little help from the magistrates:

... when questions were ask'd them, that might promote discoveries, their memories fail'd them, and their prevaricating answers plainly shew'd they were rather disposed to screen the offenders than to contribute to bring them to justice.

Nevertheless although the provost and those magistrates who had been in town during the riots claimed to have done all that could possibly have been expected of them, Forbes felt that he had a sufficient case against the provost and five magistrates and they were arrested on 16 July for malversation in office. There can be little doubt that the magistrates

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48 Troops of dragoons, a regiment of foot, an Independent Highland Company, together with 4 field pieces and 8 mortars; for details see Menary, Forbes, p.64; Wade to Delafaye 8 Jul 1725 SRO RH2/4/317 f200-1.

49 See Forbes' "Account" SRO RH2/4/318 f238-41; Fairfax to Newcastle 26 Jun 1725 SRO RH2/4/317 f150; Wade to Newcastle 26 Jun 1725 ibid. f151-4. They only returned, and then reluctantly, under the protection of Wade's troops on 8 and 9 July; Wade to Delafaye 8 Jul 1725 ibid. f200-1.

50 Forbes to Delafaye 20 Jul 1725 ibid. f234-7.

51 Forbes to Scrope 14 Jul 1725 MCP II p.275.


53 Wade to Newcastle 17 Jul 1725 ibid. f230-1.

54 "Questions put to Magistrates of Glasgow" 15 Jul 1725 SRO RH2/4/318 f244-7.

55 Forbes to Delafaye 20 Jul 1725 SRO RH2/4/317 f234-7 and enclosure no. 6, 16 Jul 1725, warrants for committing the magistrates, SRO RH2/4/318 f251. The main charges against the provost were (1) he did not put the troops in possession of the Guard House or quarter them together, (2) he did not read the proclamation outside Campbell's house, (3) he refused the assistance of troops when offered; see Forbes' "Account of the Conduct of the several Magistrates of Glasgow, touching the late riots there, from whence those acts of malversation in office are deduced for which they are committed and may be tried" 20 Jul 1725 SRO RH2/4/318 f244-7.
had considerable sympathy with the opposition to the malt tax and did little to prevent the disturbances or secure offenders afterwards. For their part the magistrates and the Squadrones accused the authorities of propagating false accounts of the riots for party ends and several 'true accounts' were published. It was claimed that those in authority had

courted our rising in Tumults that they might have some better handle against a City that has done more for the preservation of his Majesties Government than twenty little Imperious Ministers of State were ever capable to do.56

It is said, and perhaps is really so, that the great Crime chargeable upon them the provost and magistrates is, That they favoured not Mr Campbell's Interest in the late Election of Magistrates, and of common Council for this city.57

Thirty-six suspected rioters were seized by the troops; twenty-one were kept in custody, the others released for lack of evidence.58 All the prisoners were transported under military guard to Edinburgh. The magistrates, spurred on and aided by Robert Dundas,59 three times en route petitioned the Court of Justiciary, arguing that Forbes as Lord Advocate had no authority to issue such warrants arresting them and ordering them to Edinburgh and secondly that the charges in the warrants were insufficiently precise, the particular grounds of malversation not being cited.60 They were eventually successful with their third

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57 "Letter from a Gentleman in Glasgow to his Friends in the Country etc" 1 Sep 1725 SRO RH2/4/319 f13-22.
58 Warrants were issued against 45 other suspects who had fled from Glasgow: Forbes to Delafaye 20 Jul 1725 SRO RH2/4/317 f234-7.
60 Forbes had issued the warrants against the magistrates both as Lord Advocate and as a justice of the peace of Lanarkshire: Forbes to Delafaye 20 Jul 1725 SRO RH2/4/317 f234-7; Forbes to Scrope 6 Jul 1725 MCP II pp. 255-7. For the first petition signed by Dundas, see CP pp. 89-90.
petition and were released on bail, much to Forbes's dismay, on 20 July. Next day two of the magistrates made a triumphant return to Glasgow.

Before leaving Glasgow, Forbes had called a meeting of all maltsters and threatened them with seizure of their stock in hand and even conscription into the Highland disarming expedition unless they allowed access and gave security for the malt duties with which they were charged, the excise commissioners agreeing to waive any penalties incurred. They submitted and under the protection of the troops the excise officers at last began to put the malt tax into operation.

Meanwhile there was growing resistance in other parts of Scotland, especially in the north, encouraged, alleged the authorities, by 'emissaries' sent out from Glasgow. At Elgin soldiers, attacked by a mob, fired and killed one person, and at Dundee the house of the only

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61 Forbes to Delafaye 20 Jul 1725 SRO RH2/4/317 f234-7 and enclosure 7 "Petition in the name of Provost Charles Millar, John Stirling, James Johnston and James Mitchell, bailies; John Stark, dean of guild; John Armour, deacon convener" SRO RH2/4/318 f252-3; Forbes's answers 19 Jul 1725 ibid. f254-5. Squadrons Lord Justice Clerk Cockburne was particularly forward in granting the petition: see Forbes to Scrope 17 Jul 1725 MCP II pp.277-82; Wade to Newcastle 20 Jul 1725 SRO RH2/4/317 f232-3.

62 Forbes to Delafaye 20 Jul 1725 ibid. f234-7; Forbes to Scrope 20 Jul 1725 MCP II pp.284-6.


66 For example see Findlater to Newcastle 26 Jul 1725 SRO RH2/4/318 f266-7; various reports of excise commissioners to Treasury August - September CTP (1720-8), pp.378ff.


maltster who allowed the excise officers access was plundered. In Edinburgh the government faced a different but no less awkward problem. The Edinburgh brewers, most of whom were also maltsters, had initially allowed excise officers free access to survey the stock in hand but by mid July, encouraged by the events in Glasgow, they formed a 'confederacy' to stop brewing rather than pay the malt duty. No brewing meant no ale and, as no yeast would be produced, no bread; the whole city would soon be without food and drink and serious disturbances would inevitably ensue. Again Dundas played a prominent part:

Mr Dundas is the spring, to which the success of their sowing sedition is owing ... they [the brewers] had given themselves up to Mr Dundas, body and soul.

Although anxious to take decisive action, Forbes could not risk arresting the brewers until there were sufficient troops in Edinburgh. He therefore met the brewers in an attempt to persuade them to give up their

69 Wade to Newcastle 17 Jul 1725 ibid. f230-1. A few weeks later James Scott, MP for Forfarshire, was violently beaten by a mob at Dundee, which accused him of supporting the malt act: Forbes to Scrope 7 Aug 1725 MCP II pp.266-7; Forbes to the magistrates of Dundee 9 Aug 1725 ibid. pp.267-8; magistrates of Dundee to Forbes 12 Aug 1725 ibid. pp.268-9; James Scott to Townshend 5 Aug 1725 SRO RH2/4/318 f310-1. For full details of these and other troubles throughout Scotland see the several reports of the Scottish excise commissioners to the Treasury August - September 1725. OTP (1720-3) pp.378ff.

70 Forbes to Scrope 24 Jun 1725 MCP II pp.245-7; Wade to Newcastle 24 Jun 1725 SRO RH2/4/317 f139-40.


73 John Campbell to Walpole 31 Jul 1725 Coxe, Walpole, II pp.440-2. See also Forbes to Delafaye 17 Jun 1725 MCP II pp.243-4; Forbes to Scrope 27 Jul 1725 MCP II pp.288-93.

scheme but without success. Both he and Wade suggested that Ilay's presence would be helpful, a suggestion taken up by the Lords Justices. Meanwhile, despite pleas for directions, it was made clear to Forbes from London that he was to use his own discretion in handling the affair.

On 29 July, by which time a further hundred soldiers had arrived in Edinburgh and were making constant patrols, Forbes applied to the Court of Session, (which had power to regulate all matters relating to provisions in Edinburgh), to require the brewers to enter into a recognizance that none of them would stop brewing within a given period. The lords, with the exception of Lord Justice Clerk Cockburn and extraordinary lord Tweeddale, both Squadron supporters, agreed to Forbes's request and accordingly issued an act of sederunt requiring all brewers

75 Forbes to Scrope 27 Jul 1725 MCP II pp. 288-93; Forbes to Delafaye 29 Jul 1725 SRO RH2/4/318 f276-9. One complaint of the brewers was that, as they were restrained by the 7th article of the Union from selling their beer at more than 2d a pint unless they paid a higher excise, the whole malt duty must come out of their profits and not passed on to the consumer as was usual with similar taxes. Forbes promised to look into this matter, and it was eventually decided in London that as the 7th article was 'descriptive' rather than 'restrictive' such a price increase was permissible. See Forbes to Scrope 27 Jul 1725 MCP II pp. 288-93; Forbes to Scrope 5 Aug 1725 MCP II pp. 304-5; Newcastle to Ilay 24 Aug 1725 SRO RH2/4/318 f358-61; Ilay to Newcastle 4 Sep 1725 SRO RH2/4/319 f31-2; Newcastle to Ilay 11 Sep 1725 ibid. f55-7.

76 Wade to Newcastle 20 Jul 1725 SRO RH2/4/317 f232-3; Forbes to Scrope 20 Jul 1725 MCP II pp. 284-6. See also Newcastle to Townshend 27 Jul 1725 PRO SP43/69.


78 Forbes to Scrope 27 Jul 1725 MCP II pp. 288-93; "Information and Memorandum" by Forbes to the Court of Session 29 Jul 1725 SRO RH2/4/318 f278; Forbes to Delafaye 29 Jul 1725 ibid. f276-7.

79 Forbes to Scrope 29 Jul 1725 MCP II pp. 294-5.

80 Entitled "An Act for Preventing the Want or Scarcity of Ale or Beer and Bread in the Good-town of Edinburgh" 29 Jul 1725 SRO RH2/4/318 f279.
to carry on brewing until 1 November. The brewers were to attend the Court the following day to give security to this effect. The brewers, however, refused to obey. Instead, steiled by Squadrone lawyers, a remonstrance was drawn up, almost certainly by Dundas, signed by 65 brewers and presented to the Court. The lords deemed it an insolent affront to their dignity and ordered it to be burnt by the common hangman. Forbes was now in a quandary. If he had all the brewers arrested, then they had an excellent excuse to stop brewing and in any event there were still insufficient troops to risk the consequences if the brewers were arrested. Although he felt it "absolutely necessary to disappoint this mad scheme", he realised that delay was still the only possible course. He therefore obtained a further act of sederunt putting back the date by which the brewers had to give security to 10 August. Forbes again wrote to London for specific directions; once more he was told to follow his own

81 Of the 130 brewers called to give security by the act only one, bailie Simpson an Edinburgh magistrate, did so: excise commissioners to Treasury report no. 6 CTP (1720-8) p. 380; "... and who has so far already suffered, Because of his obedience that almost all his Customers have left him" Forbes to Delafaye 31 Jul 1725 SRO RH2/4/318 f280-1.

82 30 Jul 1725 ibid. f283.

83 See Forbes to Delafaye 31 Jul 1725 ibid. f280-1; Ilay to Milton 5 Aug 1725 NLS SC 16,531. Newcastle bitterly complained to Townshend of the encouragement given to the brewers by Dundas, Cockburn, Tweeddale and Arniston: Newcastle to Townshend 6 Aug 1725 PRO SP43/70.

84 Forbes to Delafaye 31 Jul 1725 SRO RH2/4/318 f280-1.

85 Forbes to Delafaye 12 Aug 1725 ibid. f324-5.

86 Forbes to Delafaye 29 Jul 1725 ibid. f276-7.

87 31 Jul 1725 ibid. f282. The court then went on vacation until 1 November: see Lord President Dalrymple to Delafaye 20 Aug 1725 ibid. f344-5.

88 Forbes to Delafaye 31 Jul 1725 ibid. f280-1 "... as the Matter is of so Great Consequence I humbly hope their Excellencies the Lord Justices will signify to me their pleasure..."; also Forbes to Delafaye 3 Aug 1725 ibid. f293-301.
By 10 August the brewers still showed no signs of obeying. Further moves now awaited the arrival of Ilay who, under pressure from the King and after discussing the matter with Walpole, had reluctantly agreed to go up to Scotland.

Ilays eventual reached Edinburgh on 16 August, and, anxious to show Ministers that he alone was the man on whom they could rely to keep Scotland quiet, largely took control of the situation out of Forbes' hands. Forbes had owed his rise largely to Argyll and he had never been fully trusted by Ilay. With the emergence of Milton as Ilay's particular confidant (and a certain distancing between Argyll and Ilay at this time) relations between the two became even cooler.

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90 Forbes to Delafaye 10 Aug 1725 SRO RH2/4/318 f320-1.

91 See Townshend to Newcastle 14 Aug 1725 Hanover PRO SP43/6 - HM anxious that Ilay go to Scotland "who by his office of Justice General, as well as by his Credit and Influence in these parts, would undoubtedly be of great weight and therefore his Maty does not doubt but that his Lop will have his service so much at heart as to take that trouble upon him"; Townshend to Newcastle 17 Aug 1725 Coxe, Walpole, II pp.444-6 "His Majesty has a great opinion of his capacity and zeal to do him service there in this juncture".

92 See Newcastle to Townshend 30 Jul 1725 PRO SP43/69.

93 "I own the Journey sticks most dammably in my stomach but considering it will probably do good as much here [London] as with you, I must submit" Ilay to Milton 27 Jul 1725 NLS SC 16,531.


95 "My friend here [Ilay] goes on in the same manner as formerly, keeping everything a secret from me" Forbes to Scrope 31 Aug 1725 MCP II p.322. Forbes was not even told when the expresses to London were sent, "Nor indeed consulted on any Occasion" Forbes to Scrope 24 Aug 1725 MCP II pp.317-9.

96 See Ilay to Andrew Fletcher 18 Jul 1723 NLS SC 16,528.

97 See Ilay to Andrew Fletcher 21 Aug 1723 NLS SC 16,528.

98 For example see Ilay to Milton 20 Feb 1725 NLS SC 16,531.
Forbes had not, for example, written at all to Ilay about the disturbances in Scotland.\(^99\) While Forbes believed strong measures were necessary, the Ministry was anxious to avoid taking any drastic action at this critical juncture:\(^100\) Ilay therefore moved cautiously\(^101\) and decided to proceed against some of the most considerable brewers before the justices of the peace.\(^102\) When about a dozen brewers were summoned a few days later, however, almost all their colleagues stopped brewing.\(^103\) Forbes wanted to commit some of the ringleaders immediately but Ilay decided to postpone any arrests for a day or two.\(^104\) More troops were brought in and efforts made to import beer from neighbouring areas. On 23 August four\(^105\) brewers were arrested on Court of Session warrants but even this had little effect on the brewers' attitude.\(^106\) Meanwhile Walpole sent Ilay £1,500 to use at his discretion for managing affairs.\(^107\) As the scarcity of drink

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\(^99\) Ilay to Milton 27 Jul 1725 ibid.

\(^100\) Walpole to Townshend 28 Aug 1725 Coxe, Walpole, II pp.447-8; Walpole to Ilay 26 Aug 1725 ibid., pp.453-6.


\(^102\) Forbes to Delafaye 17 Aug 1725 MCP II pp.310-1; Ilay to Steuart 24 Aug 1725 Coxe, Walpole, II pp.456-62. Walpole approved: see Walpole to Ilay 26 Aug 1725 Coxe, Walpole, II pp.453-6. See also Forbes to Scrope 17 Aug 1725 MCP II pp.309-10: "I thought a smarter Measure was Necessary to prevent the Effect of their Combination ..... But as his Lordship insisted on this Method I gave way".


\(^106\) Forbes to Delafaye 24 Aug 1725 ibid., f362-3.

began to be felt, a further attempt was made to persuade the brewers to go back, the justices promising to mitigate any penalties if the brewers gave security to continue brewing and pay the duties. The brewers unanimously refused.\textsuperscript{108} Nevertheless under this increasing pressure the brewers could not maintain their unity much longer. The hoped-for disturbances had not materialised and the news of the dismissal of Secretary Roxburghe which reached Edinburgh on 28 August had dampened Squadron support for the brewers' cause.\textsuperscript{109} It is clear that Roxburghe's dismissal at this stage reflected Ministers' fears about the escalating situation in Edinburgh and their hopes that the removal of Roxburghe would take the heat out of the opposition.\textsuperscript{110} Dundas himself was still in the north:

the Brewers here begin to complain of his having deserted them after his bragging so much of the service he would do them.\textsuperscript{111}

By 28 August some brewers had already returned: the 'frenzie' was almost over\textsuperscript{112} and the rest of the brewers finally voluntarily gave security, both to carry on brewing and to pay the duties.\textsuperscript{113}

\textsuperscript{108}Forbes to Scrope 26 Aug 1725 MCP II pp.319-20.

\textsuperscript{109}See below pp.354-5. Squadron supporters claimed that Roxburghe had been dismissed without the King's knowledge and that when George returned the present Ministry would be overturned and the malt tax abolished: Ilay to Steuart 24 Aug 1725 Coxe, Walpole, II pp.456-62; Walpole to Townshend 24 Aug 1725 ibid., pp.452-3; Ilay to Newcastle 16 Sep 1725 SRO RH2/4/319 f84-7; Coxe, Walpole, I, p.234. Roxburghe himself did much to spread these rumours; Riley, English Ministers, p.284.

\textsuperscript{110}See Walpole to Townshend 17 Aug 1725 Coxe, Walpole, II pp.447-8; Walpole to Townshend 23 Aug 1725 ibid., pp.449-52; Newcastle to Townshend 6 Aug 1725 PRO SP 43/69 "I very much fear that whilst My Lord Duke of Roxborough continues Secretary of State, it will be in vain to think of getting the better of this spirit".

\textsuperscript{111}Ilay to Newcastle 9 Sep 1725 SRO RH2/4/319 f49-50.

\textsuperscript{112}40 out of 130; Ilay to Newcastle 31 Aug 1725 SRO RH2/4/318 f375-6; Forbes to Scrope 28 Aug 1725 MCP II p.320.

\textsuperscript{113}Forbes to Scrope 31 Aug 1725 MCP II p.322.

\textsuperscript{114}Ibid.; Ilay to Newcastle 2 Sep 1725 SRO RH2/4/319 f23-4.
I am very hopeful (wrote Forbes) that as the direction of the affairs of Scotland is now in his Grace's [Newcastle] hands, the madness of the people, which was pretty much encouraged by the countenance they met with from the friends of a certain great man [Roxburghe], will cool, and that things will speedily grow quiet.\footnote{Forbes to Delafaye 31 Aug 1725 SRO RH2/4/318 f368-9. The four arrested brewers were released on giving security to carry on brewing: Ilay to Newcastle 31 Aug 1725 ibid. f375-6.}

Ilay turned his attention to the rest of Scotland: there was "obstinacy in all considerable towns".\footnote{Wade to Newcastle (received) 6 Aug 1725 ibid. f300-1.} Excise commissioners Burnet and Wedderburn had been sent to Stirling, Dundee, Perth, Aberdeen and other places but with little success.\footnote{See above p.112.} By the September the main trouble centred in the north, around Aberdeen, especially as "Mr Dundas has been making a Sacheverel progress to the North".\footnote{Ilay to Newcastle 9 Sep 1725 ibid. f49-50.} Ilay proposed to bring offenders before the Court of Justiciary in Edinburgh rather than leave them to local justices\footnote{Ilay to Newcastle 4 Sep 1725 SRO RH2/4/319 f31-2; Ilay to Newcastle 7 Sep 1725 ibid. f35-6.} but in fact few were brought before that Court.\footnote{Ilay to Newcastle 4 Sep 1725 ibid. f31-2; Ilay to Newcastle 16 Sep 1725 SRO RH2/4/320 f216-7.} By November most of the disturbances were over\footnote{The trial of some Aberdeen maltsters started in the Court of Justiciary on 11 Nov 1725: Ilay to Newcastle 11 Nov 1725 SRO RH2/4/321 f344-5; see also Ilay to Newcastle 6 Nov 1725 ibid. f338-9.} although Squadrone supporters and others attempted to keep the issue alive as long as possible by organising a series of petitions in various counties, notably Midlothian.\footnote{But see excise commissioners to Treasury 25 Nov 1725 CTP (1720-8) p.369 on trouble in Orkney.} Further petitions

\footnote{Lockhart of Carnwath was particularly active in Midlothian, holding meetings and sending circular letters: for example see copy of Lockhart's "Circular letter for Convincing the Heritors of the County of Edinburgh to address against the Malt Tax" 6 Dec 1725 SRO RH2/4/321 f442. The resultant petition of freeholders and heritors was presented to the Commons by Midlothian MP Robert Dundas: see Reaold Campbell to Delafaye 21 Dec 1725 and enclosure ibid. f440, 443.}
were intermittently sent up until 1729.  

The prosecution of the Glasgow rioters and magistrates remained outstanding and was the subject of much correspondence between Edinburgh and London. Eighteen rioters were to be prosecuted in two separate trials. With Forbes ill, Solicitor General Charles Areskine led for the prosecution, while the principal lawyers for the defence (Dundas was still up north) were Craigie, Stewart and Graham, the Judge Admiral, "well known for their peculiar [that is Squadrone] attachments". Lord Justice General Ilay, sitting as president of the Court, found the Lords of Justiciary — Newhall, Polton, Pencaitland, Dun and Royston — very difficult to manage. Only Royston was an Argathelian supporter; the rest were inclined "to do all they can, and much more than there is any shadow of Law to warrant, in order to skreen the criminals from Justice". After the preliminaries the first trial proper began on 4 October and after hearing twenty-two hours of evidence the jury found only two of the ten accused guilty, one man and one woman, both of whom were sentenced to transportation. In the second trial, which began on 13 October, five of the eight accused were found guilty; three

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124 For example see petitions from various landowners in Midlothian 25 Feb 1727 SRO RH2/4/325 f36-7 and 1729 SRO RH2/4/329 f384, and in Roxburghshire 2 Mar 1727 SRO RH2/4/325 f40.

125 For example see Delafaye to Forbes 1 Jul 1725 SRO RH2/4/317 f177-8. Ilay advised that a prosecution for high treason was likely to miscarry: Newcastle to Townshend 1 Jul 1725 SRO RH2/4/318 f385-90.

126 Ilay to Newcastle 14 Oct 1725 SRO RH2/4/320 f200-3. See also Ilay to Newcastle 21 Sep 1725 SRO RH2/4/319 f100-1.

127 Lord Justice Clerk Cockburn had gone to Bath.

128 See above pp. 240-1.


131 Ilay to Newcastle 14 Oct 1725 ibid. f200-3.
were sentenced to whipping and transportation, one to transportation, 132 and one, a woman, to whipping only. 133

It was reasonable to expect your character and example should have had a greater influence among the Lords of the Court of Justiciary, (wrote Newcastle to Ilay) but it has proved otherwise. 134

The whippings were carried out in Glasgow on 16 November without disturbance. 135 The five 136 to be transported (which under Scots law meant only 'banishment' and did not entail any specific period of confinement) 137 were first shipped to London 138 and then to various West Indian islands. 139 At least one rioter spent only a day in the West Indies before returning to Britain, spending some time in Glasgow before moving on to Ireland. 140

Forbes had hoped to try the provost and magistrates for malversation in office,

... whose guilt I conceive to be much the greatest... and whose punishment will be of greater consequence to the public peace than that of the more obscure offenders... in convincing Magistrates every where that it is not safe for them to be passive. 141

Walpole decided at an early stage, however, that, given the lack of evidence, the trial of the magistrates should be postponed as long as


133 Ilay to Newcastle 16 Oct 1725 SRO RH2/4/320 f216-7. For details of the verdicts and sentences see ibid. f222-7. For copies of the depositions of witnesses see first trial ibid. f251-77 (40 prosecution witnesses, 2 defence); second trial ibid. f277-95 (36 and 0 respectively).

134 Newcastle to Ilay 14 Oct 1725 ibid. f204-7. See also Newcastle to Ilay 8 Oct 1725 ibid. f189-95.

135 Wade to Newcastle 13 Nov 1725 SRO RH2/4/321 f350-3; Areskine to Newcastle 18 Nov 1725 ibid. f362-3.

136 See SRO RH2/4/319 f132.


140 Ilay to Delafaye 22 Oct 1726 SRO RH2/4/324 f307-8.

possible although the appearance of action was to be kept up in order
to keep the magistrates of Glasgow and elsewhere subdued.\textsuperscript{142} By October
Ilay concluded that

it will be absolutely vain, and many ways unsafe

to attempt any trials at present against the
Magistrates of Glasgow ... for fear of some
accident happening to give courage to the disaffected,\textsuperscript{143}
who are now, for the most part very much frightened.

They were never brought to trial.

One act still remained. Determined to make as much political
capital as possible out of the recent troubles and keep passions high,
the opposition, led by Squadrone lawyers Dundas and Graham,\textsuperscript{144} pressed
some of the relatives of those killed at Glasgow to indict Captain
Bushell and his fellow officers for murder.\textsuperscript{145} This placed the
government in an embarrassing dilemma of either allowing the trial
to proceed, with the consequent risk of the soldiers being found
guilty, or granting them a royal pardon which by Scots law was tantamount
to an acknowledgment of guilt.\textsuperscript{146} The bill\textsuperscript{147} was offered to Solicitor
General Areskine (in the absence of Forbes at Bath) for his concurrence.\textsuperscript{148}

Areskine delayed answering and wrote to London for advice.\textsuperscript{149} After

\begin{footnotes}
\item[142] Walpole to Ilay 26 Aug 1725 Coxe, Walpole, II pp.453-5; Scrope to Forbes
27 Jul 1725 MCP II pp.297-8; Forbes to Scrope 3 Aug 1725 ibid. pp.298-300;
Forbes to Scrope 17 Aug 1725 ibid. pp.309-10; Forbes to Scrope 19 Aug 1725
ibid. pp.311-12.
\item[143] Ilay to Newcastle 14 Oct 1725 SRO RH2/4/320 f200-3.
\item[144] Reanold Campbell to Delafaye 24 Nov 1725 SRO RH2/4/321 f373-4; Milton to
Stewart Oct 1725 NLS SC 16,531.
\item[145] Such a prosecution had been suggested as early as 14 Sep 1725 in the
pamphlet "A Letter from a Gentleman in Glasgow to a Friend in Edinburgh etc"
\item[146] Milton to Stewart Oct 1725 NLS SC 16,531; R. Campbell to Delafaye 24 Nov
\item[147] SRO RH2/4/322 f549-52 ND.
\item[148] Areskine to Delafaye 24 Nov 1725 SRO RH2/4/321 f371-2; Ilay to Delafaye
26 Nov 1725 ibid. f379-80.
\item[149] Areskine to Delafaye 16 Dec 1725 ibid. f419-20; Areskine to Delafaye 21
Dec 1725 and enclosures SRO RH2/4/322 f446-51; Areskine to Delafaye 28 Dec 1725
and enclosures ibid. f464-9; Areskine to Delafaye 30 Dec 1725 ibid. f473-4.
\end{footnotes}
considerable debate the Lords Justices decided to give a pardon to Bushell, the other officers, and also all the ordinary soldiers in case an attempt was made against them. The form of the pardon barred any law officers of the Crown in Scotland from concurring in any future prosecutions on this matter. 150

The malt tax crisis highlighted many of the difficulties in governing Scotland in this period. Compounded by the political uncertainty and lack of direction from the top, many officials at all levels were reluctant to exert themselves:

Few here in Authority dare exercise Their Power against the Commonalty from which remissness They never expect punishment. 151

Revenue officers in Glasgow and elsewhere fled whenever danger threatened, some even to England. 152 Forbes and Wade had difficulty in finding constables willing to arrest Glasgow rioters and some had to be seized from their beds and forced to do their duty. 153 Local justices often declined to take action against maltsters who refused to pay malt tax or those who caused disturbances. This problem was greatly aggravated by a delay at London in sending down new commissions of peace, 154 which gave justices a legal excuse for doing nothing.

150 Delafaye to Areskine 11 Dec 1725 SRO RH2/4/321 f411-2. The pardon was signed on 30 Dec 1725 SRO RH2/4/322 f479-80.

151 Fairfax to Newcastle 26 Jun 1725 SRO RH2/4/317 f150.

152 Ibid.

153 Forbes to Delafaye 20 Jul 1725 ibid. f234-7. See also Wade to Newcastle 8 Jul 1725 ibid. f198-9.

154 New commissions had been drawn up to help with the recent Disarming Act: E.K. Carmichael, *Jacobitism in the Scottish Commission of the Peace 1707-60*, SHR lviii, (1979) p.63. Ilay had been actively involved in preparing the new lists but the Lord Chancellor delayed issuing them for technical reasons: Newcastle to Townshend 1 Jul 1725 SRO RH2/4/318 f385-90. See also minutes of meeting of the Lords Justices 1 Jul 1725 PRO SP 44/293. Eventually, under pressure from Newcastle, four were dispatched — Berwickshire, Lanarkshire, Haddingtonshire and Edinburgghshire: the rest followed later. See also Forbes to Delafaye 17 Jun 1725 MCP II pp.243-4; Wade to Newcastle 24 Jun 1725 SRO RH2/4/317 f139-44; Forbes to Scrope 24 Jun 1725 MCP II pp.245-7.
new Glasgow justices were not sworn in until mid July\textsuperscript{155} while in Aberdeen the sheriff clerk refused to accept the new commission for over a month so that "during all that time there has and will be no authority to put the Malt Tax law in execution".\textsuperscript{156} Many were reluctant to be sworn in\textsuperscript{157} and many who did remained inactive.\textsuperscript{158}

What difficulties us in the matter (wrote Forbes) is... it has become very unpopular in the eyes of the Generality to accept of the office of Justice of peace, and if the whole should stand out in any Countie it will be difficult to put the Laws in Execution.\textsuperscript{159}

As late as November Ilay complained that many Aberdeen justices were still trying to 'screen' offending maltsters.\textsuperscript{160}

Difficulties also arose between local magistrates and the military. The military was regarded as an extension of the civil power and was empowered to act only under direct instructions from magistrates.\textsuperscript{161} Officers were often reluctant to take vigorous action for fear of being arrested and even prosecuted. At Elgin, for example, a storehouse containing brandy and guarded by soldiers was attacked by a mob. Not having time to receive orders from the...
magistrates the soldiers fired and one man was killed. Three of
them were immediately imprisoned by the magistrates and were only
released after Forbes had sent a strongly worded protest to the
magistrates. 162 Bushell too, as we have seen, was threatened with
prosecution and the government feared that "such vexatious suits might
deter other soldiers from obeying their officers on like future emer-
gencies". 163

More generally the crisis illustrates that the vacuum in
executive power in Scotland created by the abolition of the Scottish
Privy Council in 1708 had not been properly filled. Roxburghe was
nominally Secretary of State until his dismissal in late August but
was in London and in any event, as we have seen, had been reduced to
little more than a cipher. Ilay too was in London while Lord Justice
Clerk Cockburn asked leave to retire to Bath, 164 and until his departure
in early August did little but hinder government measures.

I wish (wrote Wade to Newcastle) that some
people of power and interest who have an
influence over the minds of the people were
here. 165

It was left to Duncan Forbes, newly appointed Lord Advocate, to seize
the initiative. Forbes was often very uncertain how to proceed and

162 Provost and bailies of Elgin to Forbes 5 Jul 1725 MCP II pp.263-4;
Forbes to the provost and bailies of Elgin 10 Jul 1725 ibid. pp.264-5;
Wade to Newcastle 12 Jul 1725 SRO RH2/4/317 f208-9 "... you'll see
how many difficulties soldiers labour under for doing their duty";
Forbes to Delafaye 27 Jul 1725 SRO RH2/4/318 f274-5.

163 Delafaye to Townshend 10 Dec 1725 SRO RH2/4/322 f510-1.

164 Cockburn to Delafaye 8 Jul 1725 SRO RH2/4/317 f189-90. Despite
Forbes's objections (see Forbes to Scrope 24 Jul 1725 MCP II p.288) the
Lords Justices consented. The Lords Justices had previously reprimanded
Roxburghe for Cockburn's neglect in corresponding with them (Lords Justices
to Roxburghe 8 Jul 1725 SRO RH2/4/317 f179) but with little result. See also
Newcastle to Townshend 7 Jul 1725 PRO SP 43/69.

constantly turned to London for advice and direction and for approval of the steps he had taken. The difficulty, as Delafaye on conveying to Forbes the Lords Justices' command to proceed "according to his own judgement and discretion" pointed out, was that

the nature of ye service requires that your Lop should have such a discretionary power: for it is impossible at this Distance to give particular Directions that may reach Cases unforeseen and suit Circumstances that vary every day; and who can guess what will be ye proceedings of people who seem to be out of their very senses?167

In normal times four or five days delay in receiving instructions from London was not crucial but in times of crisis every hour was important. Ministers in London could merely exhort action, demand to be kept fully informed of events and hope that someone in Scotland would take responsible control on the government's behalf. It was an extremely difficult situation for the government officers in Scotland: their power was uncertain, they were attacked by the opposition and their actions were constantly open to criticism or misunderstanding at London.169 As we have seen, many simply opted out and at times

166 A good example is Forbes to Delafaye 10 Aug 1725 SRO RH2/4/318 f320-1, where he regrets that the Lords Justices have not given him more specific directions, hopes nevertheless that such directions would still be sent, and that meantime the Lords Justices will put the best construction on his acts.

167 Delafaye to Forbes 7 Aug 1725 ibid. f312-3. See also Delafaye to Wade 6 Jul 1725 SRO RH2/4/317 f187-8; Forbes to Delafaye 29 Jul 1725 SRO RH2/4/318 f276-7; Delafaye to Forbes 12 Aug 1725 ibid. f322-3. The problem was compounded by George being in Hanover: see Townshend to Newcastle 17 Aug 1725 Coxe, Walpole, II pp.444-7 "His majesty cannot take upon him at this distance, to suggest what measures shall be most proper and effectual for obtaining these ends. Your grace and my brother Walpole are on the spot and are more distinctly informed of the working of this evil and what remedies are to be applied."

168 For example see Newcastle to Wade 22 Jul 1725 SRO RH2/4/318 f260-1.

169 For example see Forbes to Scrope 3 Aug 1726 MCP II pp.298-300: "I must own to you ... I am under Some apprehension that what I did [arresting the Glasgow magistrates] has not been approved of by those whose opinions I have the Greatest Regard for". Forbes was right to be concerned for Ilay wrote to Milton "He [Walpole] and I are very much of the opinion Duncan had better have let the Magistrates alone till he had advised with his friends here": 27 Jul 1725 NLS SC 16,531.
government almost crumbled through inaction. The need for someone with authority and political influence to take control in Scotland in times of trouble was clearly recognised in London, hence the insistence that Ilay himself go to Scotland. Even after the worst of the disturbances were over Newcastle urged Ilay to stay in Scotland a little longer as "the present quiet is chiefly owing to your presence", while Delafaye believed

His [Ilay] absence from Scotland would certainly be very prejudicial, for he seems singly to support His Majty's Authority and that of the Laws.

Politically Roxburghe had considerable sympathy with the opposition to the malt tax, and, as Secretary of State, he had done nothing to help the government. He "was counteracting all we did", wrote Walpole to Townshend, "which at least put it in his power to render every thing ineffectual". "Such a behaviour in one in His Station", complained Newcastle, "I humbly conceive is as wrong as the most open and declared opposition..." Roxburghe was also active in promoting the rumour, which he himself appears to have believed, that George, on his return from Hanover, would dismiss the present Ministry and bring in Pultney and his friends. While Walpole had been prepared to allow Roxburghe to continue as a cipher, he obviously could not tolerate such conduct.

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170 Newcastle to Ilay 23 Oct 1725 SRO RH2/4/320 f244-5.

171 Delafaye to Townshend 22 Oct 1725 SRO RH2/4/322 f499-500. Walpole was also warm in praise of Ilay's efforts: see Walpole to Townshend 3 Sep 1725 Coxe, Walpole, I, pp.467-8.


173 Newcastle to Townshend 6 Aug 1725 PRO SP 43/69. See also Newcastle to Townshend 1 Jul 1725 ibid.

and Roxburghe was therefore dismissed on 23 August 1725. As part of his policy to bring Scotland under more direct control from London Walpole decided not to replace Roxburghe and the office of Secretary of State was allowed to lapse. The formal duties were to be handled by the two British Secretaries. 

Ilay was disappointed with the decision and other Argathelians initially expressed the old fears: "the King must give us a Scots Minister, otherways I fear our affairs must go to sixes and sevens". As Newcastle informed Wade, however, the decision not to have for the future a particular Secretary of State for Scotland ... [would] ... take away one occasion of Contention for power in that Country, and disappoint those who have been chiefly concerned in fomenting the late Disturbances, of the hopes they might have formed to themselves of support there. As the King has by this step done all that was possible to make his Service easy in Scotland, one may hope Those who are employed in it, being


176 Townshend to Newcastle 24 Aug 1725 Hanover PRO SP 43/6 "His Majesty took seriously into consideration what was represented by You and My Brother Walpole concerning the present state of affairs in Scotland, and among the measures to be used towards quelling the spirit of Disobedience there, His Majesty resolved to keep up no longer a separate and distinct Secretary of State in that part of the Kingdome ... and I am to let your Grace know that the King would have you take care of the affairs of Scotland...". Walpole had been considering this for some time: Riley, English Ministers, p.284; Walpole to Townshend 10 Aug 1725 PRO SP 43/69; Walpole to Townshend 24 Aug 1725 Coxe, Walpole, II p.443. Compare also Newcastle to Townshend 6 Aug 1725 PRO SP 43/69 "I am therefore of opinion, that as long as there is a Scottish Secretary there will be No Quiet in Scotland". It is ironic that the Squadrone, which in Anne's reign had argued for 'closer Union' with England and the abolition of a separate Scottish Secretary, now found this argument being used against them.

177 See Townshend to Newcastle 24 Aug 1725 PRO SP 43/6.


now under no manner of Discouragement from hence, will exert their utmost skill and Diligence to bring the Affairs in those parts into the quiet and happy Condition we all desire ...

Newcastle hoped Scotland would henceforth "be as much in His Majtys power almost as the least Corporation in England". Forbes, echoing the hopes of the Ministry, expressed his joy that Scotland was no longer to be governed by a District Ministry ... From henceforth we flatter ourselves all faction and contention betwixt his Majesties faithfull subjects in this country will cease, Your Grace's [Newcastle] Disinterestedness, will soon put an End to party views and projects.

In theory, with the removal of the office of Secretary of State, the way was now open for direct control of Scottish patronage from London. Ministers were fully aware, however, of the need for someone

180 Newcastle to Wade 24 Aug 1725 SRO RH2/4/318 f354-5. See also Newcastle to Ilay 24 Aug 1725 ibid. f358-61 "... as His Majesty has been graciously pleased to lay aside all Distinctions with relation to his people of Scotland, and to put his Affairs in that Country in such a method, that they may all have the same Access to Him and equal pretension to his Favour; I doubt not but in return they will all joy in with one heart to promote His Majesty's service, by showeing a due obedience to the Laws of the Land and a firm adherence to the King's person and Government"; Newcastle to Townshend 25 Aug 1725 PRO SP 43/69 - "I dare almost venture to promise, that this step which His Majesty has taken, will have such a universal good Effect that all parties in Scotland, without distinction, will be endeavouring to recommend themselves to the King's favour, and when they at once see what Behaviour they must observe, the Business of the Country, I am persuaded, will be attended with little difficulty ... His Majesty's Intention as far as ever it is possible, to destroy any Distinction between England and Scotland which, in my humble opinion, is the only way to bring the latter under a right Regulation".

181 Newcastle to Townshend 1 Jul 1725 PRO SP 43/69.

182 Forbes to Newcastle 31 Aug 1725 SRO RH2/4/318 f373-4: "... for some time at least, we shall not be troubled by that nuisance, which we have so long complained of, a Scots Secretary, either at full length or in miniature; if any one Scotsman has absolute power, we are in the same slavery as ever, whether that person be a fair man or a black man, a Peer or a Commoner, 6 foot or 5 foot high, and the dependence of the country will be on that man, and not on those that make him".
to manage Scotland on their behalf, for a person of influence to act "for us" in Scotland, particularly to supervise elections. Moreover, the history of Scotland since the Union had made it abundantly clear that, both to satisfy Scottish expectations and for the system to operate effectively, patronage and other government business had to flow through some clearly recognisable channel. There was really only one choice, Ilay. The Campbell brothers, Argyll and Ilay, with their extensive lands and jurisdictions, particularly in the western Highlands, had, at this time, by far the largest natural interest of any magnate family in Scotland. They also headed one of the major political interests groups in Scotland: with the dismissal of Roxburghe, Walpole could hardly look to the Squadrone. Duke John, however, was too much of an old-style magnate, too much of a soldier in the field - authoritarian, demanding, self-assertive, impatient, hot-tempered, volatile, quite unwilling to act as subordinate to anyone for long - to undertake the task of managing Scotland for Walpole:

The late D of A—les composition, (wrote Horatio Walpole) had a complication of passions, such as Avarice, Pride and Ambition. He had no principles but what were inherent to these vices, was impatient of any rival... His younger brother Archibald, earl of Ilay, was in many ways the complete contrast. Unimpressive in appearance - short, slovenly dressed, walking with a limp and speaking in a high, grating voice - he had been brought up in England and then educated as a lawyer in Scotland and Holland.

183 See Newcastle to Townshend 25 Aug 1725 BM Add MSS 32,687 f145.


and he possessed the precise and incisive, if unimaginative, mind of that profession. More importantly, he had the necessary qualities to master the intricacies of eighteenth century political management: he was tolerant, flexible, organised, artful, devious, ingratiating without being obsequious, and had a quick understanding and sure grasp of the complexities of patronage. Above all he had an unquestioning love of the political system for its own sake. He often compared politics with his favourite diversion, whist:

In short alls A game and I'll play the cards: selon le jeu, quelq fois on gagne and [sic.] quelq fois on perd; in the main, good cards never lose at the long run... 186

It is enough (he once wrote to Bute,)

that we can maintain an interest with both sides without giving up anything we must and ought to maintain, and if I can save myself or my friends by being thought a Mahometan by a Turk, I'll never decline it. 187

Ilay was neither a skilful court politician nor a powerful Parliamentary figure: his ability was to lie in being able to manipulate and cajole the bulk of the Scottish Whigs behind the administration of the day and, because he was prepared to overlook the Jacobite sympathies of many Scots, especially in the north, and do business with them, to neutralise or even reconcile for much of the time large elements of the Scottish political nation who were hostile to the Whig interest. To maximise his full

186 Ilay to Fletcher 6 Feb 1724 NLS SC 16,529. See also Ilay to Bute 1716 HMC Bute V, 618 "Thus Politics is a continuall petty war and game, and as at all other games, we will sometimes win and sometimes lose, and he that plays best and has the best stock has the best chance".

potential, Ilay required the support and cooperation of the Ministry, and for the bulk of patronage in Scotland to be placed at his disposal. In return he could aspire to offer the Ministry a solid bloc of support in Parliament and a solution to the difficult problem of controlling Scotland. In short, Ilay was prepared to manage Scotland on Walpole's behalf. Thus while Argyll remained the nominal head of the Argathelians,

from this period Lord Ilay became the person in whom Walpole implicitly confided for the management of the Scottish affairs, which he conducted with great ability and prudence, and with so much real authority, that he was called the king of Scotland. 188

It seems likely that Walpole did not fully appreciate the implications for his policy towards Scotland of Roxburghe's dismissal and the decision to manage Scotland through Ilay. His aim remained "to keep the two partys in Scotland, that he may the better balance one with the other" 189 and there was no wholesale purge of Squadron supporters from office following Roxburghe's dismissal. Indeed many, such as Montrose, continued to enjoy their posts for several years and Walpole specifically instructed Ilay not to precipitate too many changes and "to do justice to all who are willing to support the king and his government". 190 Nevertheless, the malt tax affair, and in particular the conduct of Dundas and Roxburghe, had forced Walpole to go further than was desirable in weakening the Squadron. With the removal of their most powerful rivals there was little to counterbalance the Argathelians in Scotland. 191 Moreover people in Scotland

188 Coxe, Walpole, I pp. 234-5.
191 Simpson, 'Who Steered the Gravy Train' in Scotland in the Age of Improvement, ed. Phillipson and Mitchison, pp. 53-5.
quickly came to recognise that Ilay was Secretary in all but name.

I did myself the honour to wait on the 
Great Man [Ilay] at Edinburgh ... he has 
all the airs of a Secretary. Every third 
word is Sir R W with whom he corresponds every 
post. The Duke of Newcastle and the former 
are to treat everybody here according as he 
shall inform them as to their behaviour in the 
present juncture.192

The office itself was not important and Ilay quickly realised that he 
could operate more flexibly without it.193

It should be stressed that Walpole did not intend to hand control 
of Scotland over to Ilay and it was made quite plain to him that the 
trust placed in him was to be exercised under central control.194
Walpole intended dealing with Ilay personally and directly and advised 
him not to neglect writing to Newcastle but "your more private 
sentiments you may communicate to me".195 He was also prepared to 
hint to Ilay that steps would be taken to "strengthen your hands in 
affairs of consequence".196 Perhaps because of this he felt it 
necessary to assuage the fears of his ministerial colleagues:

I think
(he wrote to Townshend)

I can answer for him [Ilay], he will not be 
unreasonable in his demands, or give the King 
or his servants any uneasiness by proposing 
unnecessary changes, or aiming to ingross the 
whole power of Scotland into his own hands. 
These matters have already been so fully 
explained betwixt him and me, that I think we 
need be under no apprehension upon that account.197

192James Lord Torphichen to Marchmont 21 Sep 1725 HMC Polwarth V p3.
193Simpson, Who Steered the Gravy Train, in Scotland in the Age of 
Improvement, ed. Phillipson and Mitchison, p. 66.
194Riley, The Structure of Scottish Politics and the Union of 1707, in 
196Ibid.
197Walpole to Townshend 3 Sep 1725 Coxe, Walpole, II pp.467-8.
Newcastle, who throughout his long career was to regard Ilay with suspicion and jealousy, also viewed the situation with some concern:

"It is material at this juncture, I am sure (he told Townshend), that Every Preferment should go in that Channel [Argathelians], where alone his Majesties Government has ye best support and assistance in Scotland. This is a melancholy truth but a most certain one." 198

In short, Ilay's role, like Mar before him, was envisaged as primarily advisory. Unlike Mar, however, Ilay had both considerable territorial influence and was the leader of a major political interest. Nor did Walpole fully appreciate the pride and greed of the Campbells. 199

Attempts at control from London were to prove insufficient to bridle the ambitions of Ilay in Scotland. While technically Ilay did not dispense patronage but asked for it, 200 in reality the position was more complicated. The Ministry was faced with the old dilemma: to control Scotland it was necessary to have someone who could manage the country and control elections but in order for him to do this satisfactorily it was necessary to allow him to build up his position to the extent where he became able to exert pressure on the Ministry. The majority of vacant posts in Scotland thus came to be filled on Ilay's recommendation and the decade following Roxburghe's dismissal saw the slow draining away of patronage powers to him. 201

As it became apparent that the Argathelians were in favour, Ilay

198 Newcastle to Townshend 29 Jul 1725 PRO SP 43/69. See also Newcastle to Townshend 15 Oct 1725 PRO SP 43/71.

199 Ferguson, Scotland: 1689 to the Present, p.143.

200 Plumb, Political Stability, p.181.

attracted an increasing support beyond his own personal interest. The Argathelians consolidated their position at local level and in the central administration, rapidly overwhelmed their Squadrone rivals and established a supremacy in Scotland unmatched even by Queensberry's Court party. As a result of Argathelian dominance in Scotland and their strength as a Parliamentary bloc, Ilay was able to bargain with Walpole for more places and rewards in return for continued support. Walpole's Parliamentary position was rarely sufficiently secure that he could afford to ignore completely Argathelian pressures. Walpole, in applying to Scotland his policy of eliminating all rivals, ignored the need for a balance of forces in Scotland which ultimately resulted both in the entrenchment of Argathelian power and in the growth of a Scottish opposition which was finally to play a considerable part in his downfall.

Yet while it is easy to criticise Walpole, it is difficult to see what else he could have done, particularly given his overriding aim of simply keeping Scotland quiet. One way or another the Argathelian influence had to be coped with: better harnessing it to the side of the Ministry than having it in constant opposition. And while Walpole never achieved his original plan of controlling Scotland from London, Ilay served him well, keeping Scotland quiet and amenable for most of Walpole's term of office and providing at successive elections a solid phalanx of members who would support the Ministry.

Previous attempts to govern Scotland without a Secretary had not been entirely successful, partly, as Newcastle, upon whom in the frequent absences of Townshend abroad with the King the main burden would fall, recognised because English Ministers were "unacquainted with the Laws and methods of proceeding in Your Country".202 Few Englishmen

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and certainly no Ministers ever went to Scotland and therefore had very little conception of conditions there. The information they received from Scotland, both formal and informal, and the channels through which it passed was thus a critical factor in determining their attitudes. Since the Union it had been the duty of the principal officers in Scotland to write regularly to London: more often than not the task had been neglected. Considerable effort was therefore devoted to setting up a more comprehensive system of correspondence from Scotland. In particular Forbes was ordered to enquire into the Signet Office with a view to reviving it as a major channel of communication. Forbes reported that part of the duties of the deputy keeper was to dispatch to London, and receive from it, the Secretary's Packet, commonly called the black Box, in which all public dispatches, warrants etc. are contained.

Thomas Pringle, the deputy keeper appointed by Roxburghe, was dismissed and the office given, on Ilay's recommendation, to Reanold Campbell. Campbell was ordered to keep a regular correspondence with Charles Delafaye, Secretary to both Newcastle and the Lords Justices which he did until his death the following year. Ilay himself was instructed to remain in Scotland once the Glasgow trials were over and set up a correspondence network.

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204 Forbes to Delafaye 31 Aug 1725 SRO RH2/4/318 f368-9.


206 Newcastle to Ilay 18 Sep 1725 SRO RH2/4/319 f94.
I must ... desire your Lop (wrote Newcastle) to consider into whose hands it would be proper to put the correspondence of Scotland, should the Lord Advocate's ill state of health render him incapable of it, and even should it not, as his Lop will be obliged to attend the Parliament here, I must beg you will in that Case think what is proper to be done, and when We have settled these Matters, nobody will be more glad to see your Lop here than my selfe. 207

I lay therefore set about preparing proper methods for having accounts sent to Edinburgh from all parts of Scotland of everything that occurs.

In the absence of Lord Advocate Forbes, Solicitor General Areskine was to send accounts of all matters in his province:

In my opinion he is in some respects the most useful servant that the Crown has here .... the Correspondence from Mr Reanold Campbell may appear at first mentioning it of little moment, but as I have prepared it, I make no doubt but it will be to Your Grace's Satisfaction: As for Mr Campbell he is only A mere lawyer and useful in the formal part of the office, but he maintains out of it privately one Daily Lindsay One of the Magistrates of Edinburgh who is A half pay Officer A good schollar, and who knows the World very well; this Mr Lindsay will assist Mr Campbell in his letters and constantly attend him for that purpose; if anything of consequence should occur, Ld Milton (Mr Fletcher) on whom in all respects I could depend more than on any person in this Country, will direct and assist Mr. Campbell, and in all cases where Ld Milton shall think that Ld Crange can be useful, and where its proper, he will meet with him and hear his opinion. The present Ld Provost of Edinburgh [George Drummond] happens to be the person who at the latter end of the late Queens Reign was active in A private Society then formed for getting intelligence from all parts of the Country for the use of the friends to the present Government. Upon the Queens death the Lords Justices did him the honour to employ him. He will now be very proud of letting your Grace know everything that happens, and if he can be any ways usefull I am sure he will be faithful diligent and laborious in obeying Your Graces commanda... 208

207 Newcastle to Ilay 23 Oct 1725 SRO RH2/4/320 f244-5. See also Newcastle to Ilay 28 Oct 1725 SRO RH2/4/321 f321-5.

208 Ilay to Newcastle 28 Oct 1725 SRO RH2/4/321 f306-8. Arrangements were also made for the safer delivery of public letters between Edinburgh and London: see R Campbell to Delafaye 16 Oct 1725 SRO RH2/4/320 f220-1. Ilay was then allowed to return to London: Newcastle to Ilay 4 Nov 1725 SRO RH2/4/321 f332-3.
Even Newcastle for once was happy:

the Disposition that has been made by Lord Ilay for settling the Correspondence with Scotland is very judicious, and, in my opinion will entirely answer the End proposed.209

Forbes, Areskine, Milton, Grange, Drummond and Reanold Campbell—these were the men, chosen by Ilay, to whom the vital communication link with London was to be entrusted. All at this stage were staunch Argathelians. Despite their hopes of preserving a balance between the political groups in Scotland, Ministers had put the main channel of information and hence advice on patronage matters, firmly in the hands of Ilay and his supporters.

The new system of formal correspondence with London started well but soon began to fall off. Deputy Keeper Reanold Campbell wrote to Dolafaye about once a week until his death in August 1726, but his successor let the correspondence lapse. Forbes too initially wrote once a week when he was in Edinburgh210 but his correspondence began to decline by 1729. With Scotland once again relatively quiet the old lethargy returned. For their part Ministers were too busy with other matters to insist that such regular official correspondence was maintained. The really important channel of communication was not the formal one between government servants in Edinburgh and the Ministers in London but the informal ones between Milton and Ilay and Ilay and Walpole.

209 Newcastle to Townshend 5 Nov 1725 PRO SP 43/72.

210 "I intend to give you the Trouble of a Letter Regularly once each week, whether anything material fall out or no" Forbes to Delafaye 21 Jun 1726 SRO H12/4/323 f174-5. On his return from the Highlands to Edinburgh on 29 Oct 1726 he wrote to Delafaye "I return to my former practice of letting you hear weekly from me; which I take to be my duty, because it was my Lord Duke of Newcastle's command" SRO H12/4/324 f177-80.
CHAPTER TEN: THE CONSOLIDATION OF ARGATHELIAN POWER

From 1725 to 1741 Ilay successfully managed Scotland on Walpole's behalf and although he was never one of Walpole's small inner Cabinet (Newcastle, Townshend, Hardwicke, Pelham) he was called on to give advice on Scottish matters whenever occasion arose. During that period the majority of vacant posts in Scotland were filled on Ilay's recommendation and the Argathelians steadily consolidated their position within the judiciary and administration. Ilay, with the particular help of Milton, also extended his electoral influence in many constituencies, enabling him to provide a solid phalanx of members prepared to support the Ministry in Parliament. Although an attempt was made by the remnants of the Squadrone and others excluded from a share of power to challenge his increasing domination of Scotland by mounting a strong opposition at the 1734 general election, and in particular at the representative peers election, it was unsuccessful and Ilay emerged stronger than ever, with the opposition for a time demoralised and in complete disarray.

For his part Walpole was prepared to leave Scotland largely in Ilay's hands and did not attempt to assert the authority of the central government until 1737, following the Porteous Riots. The Ministry's punitive reaction to the Porteous affair temporarily united most Scots against it, weakened Ilay's prestige in Scotland, led to the defection of Argyll and gave new heart to the opposition. Thereafter, the growing opposition to Walpole in the late 1730s was mirrored by a renewed challenge to Ilay in Scotland. With the defection of Argyll to the opposition the Argathelians entered the 1741 election divided and weakened and the results from Scotland played no small part in Walpole's fall. At bottom Ilay owed his position as Scottish manager to his
links with Walpole and with the partial triumph of the opposition led by Pulteney and Carteret and the appointment of their ally Tweeddale as Secretary of State for Scotland, Ilay's role was temporarily eclipsed.

By the end of 1725 the opposition to the malt tax had largely petered out although Dundas attempted to keep the discontent active by organising a petition in Midlothian and there was a brief stir in Parliament during the debates on compensation for Daniel Campbell. Any remaining opposition was finally stilled by the Ministry's acceptance of the detailed proposals worked out during 1726 by the Convention of Royal Burghs, under their president George Drummond, for the application of the malt tax surpluses over £20,000 and various other sums allocated by acts of Parliament to encourage trade and manufactures in Scotland, which led to the setting up of the Board of Trustees in 1727. Argathelians were at first suspicious of the scheme, seeing it as a means of continuing opposition to the malt tax, but they quickly realised it would increase the government's popularity in Scotland. In the end only Dundas and one or two

1 For example see R. Campbell to Delafaye 30 Nov 1725 SRO RH2/4/321 f388-9 and 28 Dec 1725 SRO RH2/4/322 f470; Areskine to Delafaye 4 Jan 1726 SRO RH2/4/323 f6-7.

2 See above p. 346; also Scrope to excise commissioners 30 Dec 1725 SRO NBB RH2/4/435, 5.

3 Areskine to Delafaye 13 Jan 1726 SRO RH2/4/323 f16-7.

4 For details of Convention's initial proposals see enclosure with R. Campbell to Delafaye 22 Feb 1726 SRO RH2/4/323 f69-72. For royal instructions to pursue the scheme see George I to Royal Burghs 7 Jun 1726 SRO RH2/4/410, 7; Drummond to Newcastle 7 Jul 1726 SRO RH2/4/324 f190-1 and 6 Dec 1726 ibid f315-6. For final proposals see "Plan by Convention of Royal Burghs" 9 Nov 1726 ibid f317-28.


6 For example see Areskine to Delafaye 12 Feb 1726 SRO RH2/4/323 f65-6; Campbell to Delafaye 22 Feb 1726 ibid. f67-8.

7 See Ilay to Newcastle 24 Sep 1726 SRO RH2/4/324 f262-3; Forbes to Delafaye 7 Jul 1726 ibid. f186-7.
others dissented from the proposals. 8

Once the major disturbances of 1725 were over, the Ministry issued instructions that full lists of all offices and officers in Scotland were to be drawn up in order to keep a firm control on the disposal of jobs. 9 For his part, while keen to purge as many of his rivals as possible, 10 Ilay was careful not to push matters too hard and constantly stressed his concern to have only people of ability appointed for his Majesty's service. 11 He forbade Daniel Campbell from interfering with one office "lest the little changes here should savour more of resentment than carrying of the business of the government" 12 and he promised not to be too partial to the name of Campbell when recommending persons for places. 13 Nevertheless, Milton was receiving a growing stream of requests for jobs, pensions and favours which he sifted and passed on to Ilay in London who in turn assiduously made recommendations to Ministers whenever a vacancy arose. 14 Pursuing such requests involved Ilay in a considerable amount of work and application:

8 See Ilay to Newcastle 3 Nov 1726 ibid. f201-2; Forbes to Newcastle 6 Dec 1726 ibid. f313-4; Drummond to Newcastle 6 Dec 1726 ibid. f315-6.

9 Campbell worked on these lists until his death: see Campbell to Delafaye 24 May 1726 SRO RH2/4/323 f162-3.


13 See Ilay to Walpole 27 Aug 1725 Coxe, Walpole, II pp.462-4; Walpole to Townshend 3 Sep 1725 ibid. pp.467-8; Newcastle to Townshend 3 Sep 1725 EM Add MS32,687 f153.

14 See Ilay to Newcastle 9 Sep 1725 SRO RH2/4/319 f49-50, 16 Sep 1725 ibid. f84-7 and 21 Sep 1725 ibid. f100-1; Newcastle to Ilay 30 Sep 1725 ibid. f142-3; Ilay to Milton 29 Dec 1726 NLS SC 16,533 and NLS SC 16,533-4 puncim for correspondence between Ilay and Milton 1726. Ilay made a particular effort to cultivate the Dalrymples and the earl of Stair who normally steered clear of attachment to any interest but their own: see Ilay to Milton 29 Nov 1726 NLS SC 16,533 "I have pushed it [a vacant post] so as to be in the highest favour with the family..." Also Ilay to Milton 29 Nov 1726 and 21 Dec 1726 NLS SC 16,533.
when People speak to You about any thing to be done here of any kind I pray [you] endeavour to convince them that things never go on here in haste and must take time. I mention this because I get letters from different folks every post not only asking favours but as it were setting A time too for the accomplishment of their desires.15

Even at this stage the bulk of vacant posts were filled on Ilay's recommendation:

I find nothing difficult when I catch the great folks at leisure for our sublimary [sic.] matters.16

Among others he secured the appointment of Sir Gilbert Eliot (Lord Minto),17 and Patrick Campbell (Lord Monzie)18 to the bench, of Milton as a Lord of Justiciary on Pencaitland's demission,19 and on Reanold Campbell's death in September 1726 of Alexander McMillan as deputy keeper of the Signet.20 Ilay himself was rewarded in December 1726 when £1,000 was transferred from his salary as Keeper of the Privy Seal a post held during pleasure, to his salary as Lord Justice General which was held for life.21

On the electoral front Ilay worked hard to ensure a favourable

15 Ilay to Milton 4 Jan 1726 NLS SC 16,533. See also Ilay to Milton 15 Jan 1726, 12 Feb 1726, 10 Mar 1726 all ibid.


17 29 Apr 1726 SRO RH2/4/410, 14.

18 31 May 1727 SRO RH2/4/410, 45.

19 10 Aug 1726 SRO RH2/4/410, 32. See also Ilay to Milton 13 Aug 1726 NLS SC 16,533.

20 13 Sep 1726 SRO RH2/4/410, 35. See Alex Campbell (non) to Delafaye 1 Sep 1726 SRO RH2/4/324, f236-7; Delafaye to Alex McMillan 6 Sep 1726 ibid. f240-3. McMillan seems to have been a protegé of Daniel Campbell: see Ilay to Delafaye 21 Jun 1729 SRO RH2/4/328, f257-8.

21 30 Dec 1726 SRO MBB RH2/4/436, 230. Ministers were anxious not to increase the overall cost of the Scottish civil list. The increase also emphasised the pre-eminence of the Lord Justice General over the other Scottish judges.
outcome at the 1725 Edinburgh magistrates' elections. Despite the recent stand by the Argathelian magistrates against the brewers and a concerted attempt by Squadron supporters to "overturn the present magistrates and all their interest", Ilay was successful, George Drummond was elected Lord Provost and "all the rest are such as I wish". The following year both he and Milton were active in promoting Argathelian interests at local magistrates' elections with considerable success. In April 1726 Ilay took particular care to ensure the return of the Argathelian candidate, Mungo Haldane, at a bye-election in Perthshire despite determined Squadron opposition led by Athol and Montrose. Anxious to demonstrate his indispensability to the Ministry, Ilay instructed Milton and Areskine to push as many Scots members as possible up for the opening of the 1726 and 1727 sessions of Parliament, although he was unwilling to write formal letters to some of them because I have formerly had experience of their raising their demands upon that account.

The death of George I in June precipitated an unexpected general election, held in September, the first since Walpole's rise to power.

22 See Ilay to Newcastle 2 Sep 1725 SRO RH2/4/319 f23-4 and 16 Sep 1725 ibid. f84-7; Delafaye to Townshend 24 Sep 1725 SRO RH2/4/322 f495-6.

23 Ilay to Newcastle 16 Sep 1725 SRO RH2/4/319 f84-7.


25 For example see Forbes to Milton 30 Sep 1726 NLS SC 16,534; John Campbell to Milton 10 Oct 1726 NLS SC 16,533; Archibald Campbell to Milton 11 Jul 1726 ibid. Drummond was re-elected in Edinburgh without difficulty: Ilay to Newcastle 8 Oct 1726 SRO RH2/4/324, f271-2; Drummond to Newcastle 18 Oct 1726 ibid. f277-8.

26 "I shall write to all I find can do any good, in the mean time let every thing that can be done for his [Haldane's] support" Ilay to Milton 12 Mar 1726 NLS SC 16,533. See also William Steuart to Milton 5 Apr 1726 and 28 Apr 1726 NLS SC 16,534; Patrick Grant to Milton 8 Apr 1726 ibid.

Walpole had quickly established himself with the new sovereign and was anxious to ensure the return of as many government supporters as possible to consolidate his position at Westminster. He looked to Ilay to coordinate the elections in Scotland in the government interest and the 1727 general election was Ilay's first real test as Walpole's Scottish manager. Preparations for the elections began immediately.

With the emergence of a stable Ministry under Walpole, Westminster politics had begun to align more clearly on a court-country basis and this was mirrored in Scotland. The dismissal of Roxburghe demoralised the already weakened Squadrone and although individual Squadrone figures struggled on, in many respects the old Squadrone was at an end. Henceforth, although the name was still used, it increasingly became the nucleus of a wider but more diffuse 'country' opposition, embracing those who felt excluded from the Argathelian hegemony. Until stirred into activity in the early 1730s by the growing opposition to Walpole at Westminster, the excise scheme of 1733 and the general election of the following year, the opposition to Ilay in Scotland was weak and rarely organised: at best it fought Argathelian interests in particular constituencies or over particular vacancies. There was therefore

28 "Sr Robert this day resumed his publick levies as usual to the great mortification of those who thought his gone over" Ilay to Milton 27 Jun 1727 NLS SC 16,535. See also Owen, Eighteenth Century, p.28; Plumb, Walpole: The King's Minister, pp.164-70.

29 For example see John Drummond to Milton 11 Jul 1727 NLS SC 16,536: "I had this day a very kinde answer from the Duke of Argyll and Baron Scroop brought me from Sir R Walpole that he wished me well and would speak to Ld Ilay who would have the management of those affairs". Argyll remained in London (see Ilay to Milton 10 Aug 1727 NLS SC 16,535) and confined his interest largely to constituencies which came under his own direct influence.

30 See Forbes to Newcastle 29 Jul 1727 SRO RH2/4/325 f130-1.
little coordinated attempt made to oppose the Argathelians and the government interest at the 1727 general election.\textsuperscript{31} The Jacobites and Tories too were at a low ebb.\textsuperscript{32} With Ilay in London until August, Milton played the leading role, aided by Charles Areskine and Grange,\textsuperscript{33} in coordinating the electoral effort and promoting Argathelian candidates in various constituencies.\textsuperscript{34} As Ilay's secretary, William Steuart, informed Milton:

This almost impossible at this distance to fix in many cases who should stand and be supported it being necessary in order to do that to know the disposition of the several counties. You are better able to judge of that and we doubt not encourage the likeliest to succeed, to whom others of our friends must be begged to submit for the good of the common cause and to guard against a foe...\textsuperscript{35}

Money was spent\textsuperscript{36} and jobs promised\textsuperscript{37} to persuade local interests to

\textsuperscript{31}Nationally the opposition, which had not been expecting an election till 1729, was also unprepared: Plumb, Walpole: The King's Minister, p.176.

\textsuperscript{32}Forbes to Newcastle 29 Jul 1727 SRO RH2/4/325 f130-1.

\textsuperscript{33}See Ilay to Milton 27 Jun 1727 NLS SC 16,537.

\textsuperscript{34}For examples see John Sinclair of Muckle to Milton 22 Aug 1727 (Caithness) NLS SC 16,537; Alex Abercrombie to Milton 14 Aug 1727, 1 Sep 1727, 2 Sep 1727 (Aberdeen burghs), NLS SC 16,535; Alex Brodie to Milton 5 Jul 1727, 7 Jul 1727, 14 Jul 1727 (Elgin burghs and Elginshire) ibid; and NLS SC 16,535-7 passim.

\textsuperscript{35}William Steuart to Milton 15 Jun 1727 NLS SC 16,537. See also Ilay to Milton 29 Jun 1727 NLS SC 16,535.

\textsuperscript{36}For example in Aberdeen burghs: see Robert Middleton (brother of John Middleton elected MP) to Milton 11 Sep 1727 NLS SC 16,537 "I am engaged jointily with Allardyce for five hundred and odd pounds ... there was not the least shadow of succeeding without it..."; William Steuart to Milton 19 Aug 1727 ibid. "we are doubtful of Middleton's chances, money must be spent". For other examples see Walter Keith to Milton 7 Sep 1727 ibid.; Alex Leslie to Milton 5 Sep 1727 ibid.

\textsuperscript{37}For example in Cromartyshire where the controlling interest the earl of Cromarty was promised a £400 p.a. pension: Sedgwick, House of Commons, I, pp.383-4. In fact the Ministry did not keep its promise and the third earl was to join the opposition in the 1734 election; see Sir William Gordon to Cromarty (son) 2 Aug 1733 HMC Polwarth V pp.54-6; Cromarty to Gordon 7 Aug 1733 ibid. pp.56-7.
support Argathelian candidates. Robert Dundas, by now allied with Pulteney in opposition to Walpole, worked hard to combat Argathelian interests but Ilay was confident of success:

I am very sure the Sq: have no manner of reason to hope for better times than the late which were disagreeable to them.

In the event the elections in Scotland went extremely well for the government and were a personal triumph for Ilay.

The peer has acquired great credit for his conduct in the Elections.

39 of the 45 members returned can be classed as government supporters, of whom about 14 were staunch Argathelians, either having close personal links with the Argyll family or owing their election to the influence of Argyll or Ilay. These included Solicitor General

38 Forbes, however, complained that Ilay's preparations were inadequate: "this I am sure of, that for the want of proper advice and direction, matters are likely to go at sixes and sevens... The case is pretty much the same over almost the whole country, and if the director of these matters do not act with some greater vigour than he does, chance and not forecast will return your Parliament from hence" Forbes to Scrope 29 Jul 1727 MCP III pp.25-6 and Menary, Forbes, pp.80-1.


40 For example see Alex Brodie to Milton 14 Jul 1727 ibid. the "has wrote to all his friends to put all Irons to work in this country" (Elginshire).

41 Ilay to Milton 6 Jul 1727 ibid.

42 John Middleton to Milton 8 Oct 1727 NLS SC 16,537.

43 Analysed from details in Sedgwick, House of Commons:

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Charles Areskine (Dumfries-shire), John Campbell of Mamore,\(^{44}\) John Middleton (Aberdeen burghs),\(^{45}\) William Steurat, Ilay's secretary (Ayr burghs), Henry Cunningham, one of Ilay's leading burghmongers, (Stirlingshire),\(^{46}\) and John Campbell (Edinburgh).\(^{47}\) Campbell's brother, Daniel, however, lost the election in Glasgow burghs where he had incurred the enmity of both the merchants by his exposure of the tobacco frauds and the Glasgow town council for his part in the malt tax affair.\(^{48}\) He was later, however, awarded the seat on petition by the House of Commons, despite counter-petitions from all four burghs.\(^{49}\) In Aberdeenshire, Ilay's brother-in-law Alexander Fraser was beaten by the sitting member Sir Archibald Grant who supported the opposition.\(^{50}\) All the remaining six members were Whigs. Five of them were to vote regularly with the opposition including the only two Squadrons members, Robert Dundas (Midlothian) and George Baillie (Berwickshire).

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\(^{44}\) Later 4th Duke of Argyll.

\(^{45}\) Described, with Milton, in 1733 as "the great favourites" of Ilay, he was one of Ilay's principal election managers: see Spalding Club Miscellany, vol. III (1846), p. 48.

\(^{46}\) In fact Cunningham won both Stirlingshire and Stirling burghs: he chose to sit for the shire and was replaced in the burghs by Thomas (Lord) Erskine, son of the earl of Mar, who was at this time under the 'protection' of Walpole and Ilay. Sedgwick, House of Commons, II, pp. 393-4, 403.

\(^{47}\) "... The Election at Bır ran very near if my Lord Ilay had not come in time the provost [Campbell] had certainly lost it..." Henry Fletcher of Saltoun to Milton 19 Sep 1727 NLS SC 16,536.

\(^{48}\) The award to him of £6,080 compensation to be paid by Glasgow had further increased his unpopularity, as had his calling in immediately after the riots of a £4,500 loan he had made to the town council.


\(^{50}\) Ibid. I, p. 381; II pp. 77-8.
Ilay also devoted considerable effort when he arrived in Scotland to converting the representative peers election and successfully carried the Crown list, which again contained peers from both factions, without opposition.

Only the war between the Bank of Scotland and the new Royal Bank in 1727 and the disputes in the General Assembly over Arminianism and the teachings of Professor Simson disturbed the general calm in Scotland in the years following the 1727 election. There was little active opposition to Ilay and in Parliament, where, spurred on by the growing rift between Walpole and Townshend, the opposition had begun to step up its efforts.

51 See Ilay to Milton 6 Jul 1727, 25 Jul 1727 ("I received the 200 pieces by Ld. Belhaven, he wants mightily to be one of the 16") and 10 Aug 1727, 17 Aug 1727 ("In all human probability there will be no opposition") all NLS SC 16,353; Ilay to Newcastle 31 Aug 1727 SRO RH2/4/325 f145-6.


53 Politically the Royal Bank was strongly supported by the Argathelians in order to break the monopoly of the old Bank of Scotland, many of whose directors were Squadron sympathisers. (Marchmont was elected Governor in 1728: see Marchmont to Townshend 3 Sep 1728 HMC Polwarth V p.14; Townshend to Marchmont 19 Sep 1728 ibid. p.16). Shortly after it was established the Royal Bank began to buy up as many Bank of Scotland notes as it could thus creating a run on the Bank of Scotland and placing it in serious difficulty. (See Clerk’s Observations, ed. Smout, p.208). In March 1728, the Bank of Scotland stopped payment on its old notes and issued new notes. Various anti-Argathelian judges in the Court of Session, notably Newhall, managed to block any diligence against the old Bank for summary recovery of payment on the old notes (see Ilay to Milton 6 Aug 1728 NLS SC 16,538; Milton to Ilay 24 Feb 1729 NLS SC 16,540). The Royal Bank later appealed to the House of Lords: see Marchmont to James Gordon, deputy governor of the Bank of Scotland 22 Mar 1729 HMC Polwarth V p.19. Marchmont, being a representative peer, felt obliged to resign the Governorship of the Bank (see Marchmont to Lady Newtone 7 Mar 1728 ibid. p.19; Milton to Ilay July 1728 NLS SC 16,539; Ilay to Milton 20 Jul 1728 NLS SC 16,538) and had particularly serious implications for customs and excise revenues as many collectors held old notes. The dispute between the two banks rumbled on throughout the 1730s (see Rondo Cameron, Banking in the Early Stage of Industrialisation, p.68; Milton to Ilay 27 Jan 1732 NLS SC 16,549).

54 See Loudon to Newcastle 4 May 1728 SRO RH2/4/327 f56-7; Buchan to Newcastle 26 Apr 1729 SRO RH2/4/328, f203-4.


56 Plumb, Walpole: The King’s Minister, p.200.
only Dundas among the Scots was noticeably active against the government. The Argathelians continued to consolidate their position. As we have seen, the number of jobs available in Scotland was relatively small and there was always keen competition for vacant places. As a result Milton handed out more promises than there were jobs, and many were inevitably disappointed. No post was too minor to be overlooked.

At last I have found out a very fit minister for that vacancy [Renfrew] which being one of the Towns of the district of Glasgow, is of moment in the Elections.

In fact the growing supremacy of the Argathelians in Scotland and the lack of any effective opposition created some difficulties for Ilay in controlling his own supporters. In particular Daniel Campbell, his brother John, and George Drummond took upon themselves to direct the magistrates elections at Edinburgh and Glasgow in an attempt to establish a degree of independence from Ilay. Ilay needed no

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For example over Dunkirk affair 1730: see Milton to Ilay March 1730 NLS SC 16,543.

For example see Ilay to Milton 26 Jan 1727 NLS SC 16,535 "Its incredible how many people want this little morsel" (Professor of Divinity at St Andrews); Ilay to Milton 9 Feb 1727 ibid. As a consequence Ilay was always alert against any attempt to make offices hereditary or allow reversions from father to son: see Memorandum by Ilay 28 May 1732 SRO RH2/4/332 f44-5; Ilay to Delafaye 12 May 1731 SRO RH2/4/330, f215-6; Ilay to Milton 11 Jun 1736 NLS SC 16,564 "We cannot afford the making offices hereditary, there are but too few to be given even upon Vacancies by Death".

See Robert Rose to Milton 11 Aug 1727 NLS SC 16,537.


Ilay to Delafaye June 1728 SRO RH2/4/327, f107/8.

See Ilay to Milton 17 Sep 1728, 6 Oct 1728 NLS SC 16,538; Milton to Ilay Jan 1729 NLS SC 16,540.
reminding of the importance of Edinburgh in particular:

The having of ye Good Town gave us much to say in ye Royal Burghs and Assembly and tended much to affirm and support yr other different interests in the Countrey.

and Milton accordingly took steps to bring them to heel:

I will do my best to uphold your interest against these pittyfull scoundrels attempting to cut ye grass below your feet after your Lop has been exceedingly good to ym.

By mid-1729 matters had been resolved and Edinburgh brought once more under firm control. Drummond, as customs commissioner, also irritated Ilay by his tendency to present candidates without consulting Ilay:

George has really had a strange notion of my credit here, or else seems to think I am more patient than perhaps he will find me.

By the early 1730s the Ministry's policy for controlling Scotland had, on the surface, achieved a fair degree of success. Scotland was quiet and there was little active opposition. Ilay was skilfully managing Scotland on Walpole's behalf without apparently being too outrageous in his demands. While Ministers had to accept that the majority of vacant posts in Scotland were filled on Ilay's recommendation nevertheless with various Squadron supporters continuing to hold office it was still possible to claim that a balance was being maintained.

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63 Milton to Ilay ND 1729 NLS SC 16,540.

64 Milton to Ilay Jan 1729 ibid. See also Ilay to Milton 28 Jan 1729, 8 Feb 1729, 22 Feb 1729, 26 Apr 1729 and 5 Jun 1729 all NLS SC 16,540.

65 See Milton to Ilay Jun 1729 NLS SC 16,540; Milton to Vaughan June 1729 ibid.

66 See Ilay to Milton 18 Jun 1730 NLS SC 16,542. One cause of the continuing uneasy relations between Drummond and Ilay seems to have been that Drummond was a strongly religious man and believed that many of those whom Ilay and Milton favoured at successive magistrates elections were irreligious; see for example, W. Baird 'George Drummond: An Eighteenth Century Lord Provost', Book of the Old Edinburgh Club IV (1911), pp.24-5, 27.
Walpole remained determined to retain some degree of control over Scottish appointments:

sometimes I [Ilay] have no difficulty about
A considerable thing, at other times I meet
with the greatest about trifles. 67

For his part Ilay was prepared to compromise over minor matters: on
Lord Kimmerghame's death in March 1730, 68 for example, he applied
to get the gown for Streichen

but to make all easie I was forced to give
way to an application Ld Rothes had made to
D Newcastle for his Brother to be Commissar.
This was of so little moment in comparison
of the other, that I did not think it right
to ballance one moment. 69

Walpole's own position had been further strengthened in 1730 with
the resignation of Townshend and the dismissal of Carteret, 70 and he
remained ready to uphold Ilay's interest despite some reservations
among his Ministerial colleagues:

Ld Harrington had endeavoured to overset my
project on the Professors of Phisicks but upon
my standing my ground Sr Rob allows me not to
give it up, so I will have it. 71

The death of Findlater in September 1730 created a vacancy in the
representative peers. Morton, who was favourably disposed to the
Argathelians, was set up by the Ministry. 72 Both Ilay 73 and

67 Ilay to Milton 8 Dec 1730 NLS SC 16,542. See also Ilay to Milton 30 Sep 1732 NLS SC 16,548.
68 See Torphicen to Marchmont 3 Mar 1730 and 19 Mar 1730 HMC Polwarth V p.25.
69 Ilay to Milton 17 Mar 1730 NLS SC 16,542. For another example see Ilay to Delafaye 27 Nov 1730 SRO RH2/4/330, f157-8.
70 Dickinson, Walpole, pp.127-8; Plumb, Walpole: The King's Minister, p.222. Harrington replaced Townshend as Secretary of State.
71 Ilay to Milton 5 Feb 1733 NLS SC 16,552. See also Ilay to Milton 26 Nov 1730 NLS SC 16,542.
72 See Ilay to Milton 1 Sep 1730 ibid.
73 See Ilay to Delafaye 20 Sep 1730 and 27 Sep 1730 SRO RH2/4/330, f125-8, 135-6.
Newcastle\textsuperscript{74} were active on Morton's behalf. Roxburgh and Dundas had some thoughts of setting up Atholl against Morton\textsuperscript{75} and Milton suggested that "the ordinary prevailing Arguments" might be used:

what I chiefly mean by this, is that some of them that are most necessitous would be glad of part of your pension arrears due by ye late King or part of ym, oyers are pressing for Gifts of Peu duties, some would be content wt Engignys or Cornetsys to yr broyrs or sons.\textsuperscript{76}

The Squadrone were too disorganised, however, to mount any serious opposition and Ilay rightly decided that such "douceurs" were unnecessary (besides "things of that nature are damnably uphill work").\textsuperscript{77} Morton was returned unopposed.\textsuperscript{78} In February 1731 Lothian replaced Deloraine\textsuperscript{79} and in December of that year Crawford, on Ilay's strong recommendation, replaced Loudon,\textsuperscript{80} both without opposition. On

\textsuperscript{74}See Newcastle to — 18 Sep 1730 ibid. f119-20.

\textsuperscript{75}See Morton to Ilay 10 Oct 1730 ibid. f141-2.

\textsuperscript{76}Copy Milton to Ilay Sept 1730 NLS SC 16,543.

\textsuperscript{77}Ilay to Milton 12 Sep 1730 NLS SC 16,542.

\textsuperscript{78}Morton to Delafaye 17 Nov 1730 SRO RH2/4/330, f155-6. For lists see NLS SYP Box 138 F2(a); SRO PE 31.


\textsuperscript{80}SRO PE 33. See Ilay to Milton Oct 1731 NLS SC 16,545; Ilay to Milton 30 Nov 1731 ibid. Ilay had to wait until Walpole returned from Norfolk before the nomination of Crawford was settled — "I am not desirous of bringing A matter of that nature to A determination in his absence": Ilay to Milton 25 Nov 1731 ibid. See also Newcastle to Crawford 2 Dec 1731 SRO RH2/4/330 f259-60; Newcastle to Marchmont 9 Dec 1731 HNC Polwarth V p.31; John Campbell of Memore to Elphingstone 3 Dec 1731 ibid. pp.30-1 "this puts me in the head of asking you if you had any thoughts of coming into the Army, for Lord Ilay said he did not see but that if you liked it why you might not be set on horseback ... Commit this to the flames as soon as you have read it. My Lord Crawford is the man". Elphingstone, however, refused to be bound by such prominent Elphingstone to Campbell 13 Dec 1731 ibid. p.31.
both occasions Ilay remained in London and left the management of the elections to Milton. In July 1732 Squadrone senator Lord Pollock died and was replaced on Ilay’s recommendation by Patrick Grant (Lord Elchies). 81

By early 1732 the opposition in Scotland finally began to stir, encouraged by the growing opposition to Walpole at Westminster led by Pulteney, Sandys and Wyndham, and the need to prepare for the forthcoming general election which, by the Septennial Act, had to take place by 1734. The Squadrone rump (notably Montrose, Tweeddale, Roxburghe and Rothes) was swelled by those such as Marchmont (who openly joined the opposition to Walpole early in 1733), Queensberry, Stair and Haddington, 82 who resented Ilay’s increasing monopoly of patronage and were rapidly losing all hope of getting any share of the spoils which they felt their due. There were signs of activity in many constituencies from late 1731 onwards:

I observe that of late through all the shire and burghs of Scotland parties are forming and interest making for votes against the dissolution of this Parliament. 83

The opposition were greatly encouraged by the success of the campaign against Walpole’s excise scheme. The proposal to extend excise to tobacco and wine provided a single clear-cut issue on which the opposition could focus their efforts and the first major opportunity to galvanise the political nation against Walpole. 84

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82 See Haddington to Marchmont 1 Jan 1733 HMC Polwarth V pp.43-4, and Haddington to Marchmont 25 Feb 1733 ibid. pp.44-8 — "I am not vain yet I think I have deserved better of the Government than many who are greater favourites have done".

83 Elphingstone to John Campbell of Mamore 13 Dec 1731 ibid. pp.31-2. Marchmont, for example, was active in Berwickshire: see ibid. pp.39-43.

84 For full details see Plumb, Walpole: The King’s Minister, pp.241-71; Owen, Eighteenth Century, pp.30-2.
Dundas and others were all active against the Bill, while in Scotland others campaigned against it as an attack on liberty. Walpole was forced to abandon the scheme but he quickly took steps to reassert his authority and Chesterfield and Clinton were dismissed on 13 April. Emboldened by Walpole's retreat, however, the opposition in the Lords attempted to bring up an old grievance, the management of the confiscated estates of the former South Sea Company directors. In this they were supported by various court peers including Argyll. After considerable lobbying and putting heavy pressure on the Court peers, Walpole narrowly frustrated the opposition's campaign. Thereafter he acted ruthlessly against those whose support was not essential: Cobham, Bolton and Stair were removed from their posts and shortly afterwards Marchmont was dismissed as Lord Clerk Register, the post being given to Selkirk, and Montrose was replaced as Keeper of the Great Seal by Ilay, who had remained completely loyal to Walpole and had spoken for the government in the debates. Ilay's place as Keeper of the Privy Seal was given to Atholl. On the other hand, although Argyll had voted against the government in a division on 24 May,

85See Ilay to Milton 17 Mar 1733 NLS SC 16,552; Marchmont to Carlisle ND HMC Polwarth V p.52.
86Haddington placed much of the blame on Scrope: "all the discouragements that Mr. Scroop can invent are put upon our merchants, and as long as he lives or is in power he'll do all the harm he can to this country" Haddington to Marchmont 3 Apr 1733 HMC Polwarth V p.49.
87Dickinson, Walpole, pp.169-70.
88Plumb, Walpole: The King's Minister, pp.276-81; Dickinson, Walpole, p.171; Owen, Eighteenth Century, p.32.
89See John Campbell to Elphingstone 16 Jun 1733 HMC Polwarth V, pp.52-3; Marchmont to HM ND ibid. pp.51-2. Appointments Ilay 30 Jun 1733 SRO RH2/4/410, 254; Atholl 30 Jun 1733 ibid. p.257; Selkirk 30 Jun 1733 ibid. 260. Marchmont was also replaced as sheriff of Berwickshire by the earl of Home, a government supporter: 10 Sep 1733 SRO RH2/4/410, 272.
it suddenly became clear that Walpole had by this time allowed Scots patronage to drain away to the Argathelians to such an extent that Argyll's support was indispensable and Walpole was compelled to win him back with offers of fresh preferment. As Plumb remarks

In the end Walpole had to accept Argyll's abstention [on the vote of 2 June] and be grateful for it. There were few men in 1733 who could treat Walpole with such a lofty display of independence and not only retain but increase their honours and dignities.90

This purge of defecting office-holders was a momentous move and greatly strengthened the opposition benches in the Lords and, through the influence of individual peers, in the Commons. Those whom Walpole pushed into opposition now supplied sufficient talent to provide a credible alternative to the Ministry. Walpole's Ministry was never to be as secure or as confident again.91 The closeness of the voting in the House of Lords had shown that Walpole's position there was seriously weak, particularly as the bishops were also showing signs of rebelling. It was therefore essential to secure the return of the Ministerial list at the forthcoming representative peers election. For their part the opposition were fully aware that if a sufficient number of opposition peers could be returned from Scotland then Walpole's control of the House of Lords could be broken. The representative peers election thus became the focus of election activity in Scotland.

As early as June 1733 the leading opposition peers - Marchmont, Montrose, Tweeddale, Roxburghe, Hamilton and Stair92 - resolved to concentrate their efforts on defeating the 'King's List' at the

90Plumb, Walpole: The King's Minister, pp.276-81.
91Browning, Newcastle, pp.65, 71; Owen, Eighteenth Century, p.47.
92Rothes, Haddington, Glasgow, Dundonald, Wigtown, Kincardine, Strathmore and Elantyre (Cromarty and Caithness) also supported the opposition.
representative peers election and carry instead a rival list. 93

Such a list would also help unite those peers whose only common
ground was opposition to Ilay's interest. It was clearly recognised,
however, that

an attempt of this nature has many
difficulties to struggle with, and
consequently requires an unanimous
and deliberate management. 94

Ilay quickly realised that steps would have to be taken to counteract
this opposition:

... I have settled matters concerning
some Peers, some new, and others aug-
mentations, viz Hume Dalhousie Northesk
Cromarty Carnock Oliphant Elibank (and
Somervil wch must be a great secret)
Colvil, Rea and Kirkcudbright. These
you may as you have opportunity assure
that they are not forgot, and what
others are necessary to be thought of, I
don't doubt but I shall have sufficient
powers. 95

The Ministry saw the dangers and Ilay was sent up to Scotland to stem
the tide. 96

Immediately upon his arrival [Ilay] took
care to speak to most peers who were under
the least dependence on the Court that it was
necessary in this critical time that
they should declare if they were resolved
to follow the King's measures without
reserve. He sent also for some of the most

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93 For example see John Campbell to Elphinstone 16 Jun 1733 HMC Polwarth
V pp.52-3; NLS SYP Box 140 F1(a) "A concert amongst the Scots Peers 1733"
where it was resolved not to be tied to vote for the ministerial list but to
run a rival list instead. The idea had been mooted as early as Nov 1732 by
Marchmont, Aberdeen and others: see Cathcart to Stair 1 Nov 1733 Graham,

94 "A concert amongst the Scots Peers 1733" NLS SYP Box 140 F1(a). The
opposition suggested that the Commission of Police should be abolished and the
money used to provide the representative peers with a salary: ibid. Consider-
atation was also given to setting up a fund to pay the expenses of Scots MPs in
attending Parliament: see Kincaidine to Tweeddale 12 Jun 1734 NLS SYP Box 140
F1(a).

95 Ilay to Milton 21 Jun 1733 NLS SC 16,552.

96 See Nottingham to Tweeddale 15 Jul 1733 NLS SYP Box 12 F2.
needy of our peers and acquainted them with his Majestys bounty in giving some of them a pension of 100, some of 200 sterling a year, and that he had prevailed that they should be paid immediately a years advance.97

"Lord Ilay is taking great pains", wrote Queensberry, "being determined to try the force of money, promises and threats".98

I am now fully convinced (Ilay informed Newcastle) that there has been a scheme carried on some time here for a surprise at the next Elections... The only disagreeable circumstance that I foresee will attend my doing my duty here, is the being obliged too often to importune the King's servants with applications in [sic.] behalf of some who though they are incapable of being misled so far as to join in the opposition, yet through human frailty, and the byass of self interest, are easily convinced of their own merit, and willing to think their rewards unequal to it.99

"I doubt not", replied Newcastle, "but by your good Management the Endeavour of our Enemies will be disappointed".100

On the death of Polton in August, Ilay secured the elevation of John Sinclair to the bench in order, the opposition were later to claim, to win the support of his brother Caithness.101 Strong efforts were also made to win over Elphingstone with promises of his being made sheriff

97Tweeddale to Marchmont 14 Aug 1733. HMC Polwarth V pp.57-8. See also Grange to Tweeddale 21 Oct 1733 NLS YP7044, 43; Montrose to Tweeddale 15 Sep 1733 NLS SYP Box 12 F2.


100Newcastle to Ilay 16 Sep 1733 SRO RH2/4/333 f55-6.

101HMC Polwarth V p.108.
of Stirlingshire, or of an army post, or even of being included in the government list of sixteen peers, if he would support Ilay. Elphingstone steadfastly refused "to enter into any engagement with particular persons" and finally came out in support of the opposition. \(^{102}\)

The death of Sutherland in July created a representative peer vacancy. In an effort to forestall opposition the Ministry set up Atholl who, while a government supporter, was not identified with the Argathelians. \(^{103}\)

Ilay took personal control of the election and Atholl was elected without opposition. \(^{104}\)

To combat Ilay's activity the leading opposition peers met in Edinburgh in August and made a public declaration that

> We were resolved to unite and concur in promoting amongst the peers an independent election of their representatives. This has the good effect to engage several peers to declare for our measure and to prevent others to engage themselves rashly with the opposite side. ... We have also I think laid a foundation for giving our governor no small trouble in the election of the commons ... I think the appearances at present are good and by what I hear not disagreeable further south. \(^{105}\)

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\(^{102}\)See John Campbell to Elphingstone 16 Jun 1733 ibid. pp.52-3; Elphingstone to Campbell 25 Jun 1733 ibid. p.53; Campbell to Elphingstone 8 Jul 1733 ibid. p.53; Lovat to Elphingstone 17 Oct 1733 ibid. pp.63-4; Elphingstone to Lovat 4 Nov 1733 ibid. pp.64-5; Elphingstone to Stair 18 Nov 1733 Graham, Stair Annals, II p.429; Campbell to Elphingstone 27 Nov 1733 HMC Polwarth V, pp.67-8; Elphingstone to Campbell 7 Dec 1733 ibid. pp.70-2; Elphingstone to Ilay 1 Jan 1734 ibid. pp.77-8; Lovat to Elphingstone 15 Jan 1734 ibid. p.79; Elphingstone to Ilay 17 Jan 1734 ibid. p.80; Elphingstone to Lovat 17 Jan 1734 ibid. pp.79-80.

\(^{103}\)See Ilay to Newcastle 19 Jul 1733 SRO RH2/4/333, f43-4. Roxburghe had considered setting up Atholl against Morton in 1731, see above pp.378-9.

\(^{104}\)21 Sep 1733 SRO PE34. See Atholl to Newcastle 21 Sep 1733 EM Add MSS 32,688 f365; Nottingham to Tweeddale 15 Jul 1733 NLS SYP Box 12 F2; Jo. Dalrymple to Marchmont 22 Sep 1733 HMC Polwarth V pp.60-1; Newcastle to Ilay 16 Sep 1733 SRO RH2/4/333, f55-6; Ilay to Newcastle 21 Sep 1733 EM Add MSS 32,688 f367-8; Tweeddale to Marchmont 14 Aug 1733 HMC Polwarth V pp.57-8. The opposition was later to accuse the government of using bribery to secure Atholl's election: see Evidence to House of Lords in Support of Petition ibid. p.110.

\(^{105}\)Tweeddale to Marchmont 14 Aug 1733 ibid. pp.57-8. See also Montrose to Tweeddale 15 Sep 1733 NLS SYP Box 12 F2; Tweeddale to Marchmont 28 Aug 1733 HMC Polwarth V p.59.
The opposition were in fact becoming increasingly optimistic:

Our ministers are very busie. They make use of butt one argument and indeed it is a strong one with some. However I don't find they gain any ground, and if we continue firm and unanimous I think we have still a good game in our hands.106

In August - September, Ilay suffered a major blow with the defection of James Erskine, Lord Grange, to the opposition. Grange had for some time been dissatisfied at Ilay's failure to fulfill his promises to obtain a pardon for his brother Mar (who had died in 1732) and restore the family honours to his nephew Thomas Lord Erskine. He was also piqued by Argathelian encroachment on what he considered were his electoral interests in Clackmannanshire, Stirlingshire and Stirling burghs.107 Grange quickly became the principal propagandist for the opposition in Scotland, providing a gloss of Patriot ideas to the opposition cause, and played a leading role, together with Marchmont, in keeping up a correspondence between the various Scottish opposition peers and the

106 Tweeddale to Marchmont 26 Sep 1733 HMC Polwarth V p.62. See also Sir William Gordon to Marchmont 15 Aug 1733 ibid. p.58 "the labours of of our great man [Ilay] here ... are far from going so glibly as he expected"; Montrose to Stair 15 Sep 1733 Graham, Stair Annals, II, pp.195-6.

107 See Grange to Stair 4 Aug 1733 and Stair to Grange 6 Aug 1733 Graham, Stair Annals II, pp.427-8; Grange to Tweeddale 8 Aug 1733 NLS YP7044, 32; Montrose to Grange 11 Sep 1733 NLS YP7104, 116; Montrose to Tweeddale 15 Sep 1733 NLS STP Box 12 F2; Montrose to Stair 15 Sep 1733 Graham, Stair Annals II, pp.195-6; Montrose to Marchmont 15 Sep 1733 HMC Polwarth V, p.59; Tweeddale to Marchmont 26 Sep 1733 ibid. p.62 - "the breaking Grange with Earle of Ilay was no trifling matter"; Gower to Tweeddale 22 Oct 1733 NLS YP7044, 47; Ilay to Milton 30 Nov 1733 NLS SC 16,552 "Vaughan writes me something of Grange's appearing altered. I don't believe it..."; Milton to Ilay Dec 1733 NLS SC 16,553. See also below pp. 396-8. Montrose was initially concerned that Grange might interfere in his (Montrose's) own electoral interests in the area and steps had to be taken to calm his fears; see Montrose to Tweeddale 15 Sep 1733, Montrose to Stair 15 Sep 1733, Montrose to Marchmont 15 Sep 1733, Tweeddale to Marchmont 15 Sep 1733 all quoted above; also Grange to Tweeddale 28 Sep 1733 NLS YP7044, 39; Grange to Tweeddale 16 Oct 1733 ibid., 41.
leading opposition figures in London. 108

The opposition peers held a general meeting in Edinburgh on 22 November but it was less well attended than had been hoped. The meeting agreed that the nomination of sixteen Peers by any ministers is contrair both to the letter and spirit of the 22nd article of the Treaty of Union and such a nomination would have a direct tendency to destroy the freedom of Parliament and in consequence, the rights and liberties of the Island: and such nomination is highly injurious to the honour and interest of the peers of Scotland, who have an undoubted right to an open and free election. ... We have had many opportunities to hear of many extraordinary practices, used by a certain Lord [Ilay] during the course of this summer, to influence the elections of Lords and Commons; money given to many, promised to more; offers of pensions, places, civil and military preferments, acts of grace, reversals of attainders; in short by money, promises or threats, most of the Peers of Scotland have been attempted. The conditions his Lordship required were, supporting what he was pleased to call the King's list, and voting for it, and using what interest the persons tempted might have in the different shires and boroughs of Scotland, in favour of such persons as his Lordship did or should recommend to them, and these things have been done in a barefaced manner. 109

It was accordingly agreed to oppose publicly the King's list at the election and to keep a

constant regular correspondence with London and with the different corners of this country. ... We think there is a good spirit raised and rising

108 For the importance of such correspondence see Grange to Tweeddale 21 Oct 1733 NLS YP7044, 43.

109 Hamilton, Tweeddale, Aberdeen, Marchmont and Strathmow to Queensberry, Montrose and Roxburgh (who did not attend the meeting) 1 Dec 1732 A Selection from the Papers of the Earls of Marchmont ed. G.H. Rose (London, 1831), vol. II pp.64-7. See also Marchmont to Haddington 15 Dec 1733 HMC Polwarth V, pp.73-4: "if any minister shall avowedly fix a list of peers and name the commoners for counts and burghs can it be pretended that the least appearance of publick liberty is left?"
in this country, and that we have a fair prospect of overcoming all the difficulties that lie in our way. 110

In order to overcome the problem of the government regularly intercepting and opening their mail, 111 the opposition arranged for a special messenger to carry correspondence to and from London. 112

Grange also set about organising the dissemination of opposition propaganda, including the Craftsman in Scotland to counteract the distribution of government pamphlets through the Post Office. 113

A press was established in Edinburgh to reprint anti-government pamphlets sent up from London 114 and for a time a newspaper called the Thistle was published. 115 The first edition appeared on 13 February 1734 and ran to 4 pages of short essays and news:

110. Hamilton etc. to Queensberry etc. 1 Dec 1732 Marchmont Papers, ed. Rose, vol. II, pp. 64-7. Haddington, however, was less optimistic: "I really can not see of what service such a declaration can be ... I am afraid we shall find the majority upon the Court side as it has ever been since I knew Scotland and I am afraid ever shall be ... our peers can resist temptation as little as any set of men" Haddington to Marchmont 27 Nov 1733 HMC Polwarth V pp. 66-7.

111. See Sir William Gordon to Marchmont 15 Aug 1733 HMC Polwarth V p. 58; Marchmont to Haddington 15 Dec 1733 ibid. pp. 73-4; Queensberry to Stair 23 Oct 1733 Graham, Stair Annals II pp. 196-8; Grange to Tweeddale 9 Jan 1734 NLS YP7044, 52; Grange to Tweeddale 28 Jan 1734 ibid. 58.

112. See Grange to Marchmont 1 and 2 Dec 1733 HMC Polwarth V pp. 68-70; Drummore to Stair 25 Jan 1734 Graham, Stair Annals II pp. 430-1; Grange to Tweeddale 21 Oct 1733 London NLS YP7044, 43.

113. See Grange to Tweeddale 21 Oct 1733 NLS YP7044, 43; Grange to Marchmont 10 Dec 1733 HMC Polwarth V pp. 72-3; Drummore to Stair 15 Jan 1734 Graham, Stair Annals, II p. 430.

114. See Tweeddale to Marchmont 12 Dec 1733 HMC Polwarth V p. 74.

115. Originally intended to be called the 'Monitor': Drummore to Stair 25 Jan 1734 Graham, Stair Annals II pp. 430-1; Grange to Tweeddale 9 Jan 1734 NLS YP7044, 52; Drummore to Stair 14 Feb 1734 Graham, Stair Annals II pp. 431-2.
Your 'Thistle' is a very well writt paper, and need not blush in company with our 'Craftsman'.

The government retaliated by producing more of its own pamphlets. Grange was becoming an increasing irritation to the government and strong efforts were made to oppose him in Stirling burghs. It was also rumoured that the Ministry was considering introducing a provision, aimed directly at Grange, to disqualify Scottish judges from sitting in the House of Commons.

The opposition were determined to mount a strong challenge in the forthcoming session of Parliament in order to attract support at the election and Marchmont, Stair, Queensberry and Tweeddale were back in London by mid-December. A series of meetings with the English opposition peers and members were held at the Rump Steak or Liberty Club to concert the attack on Walpole. The various opposition groups, however, remained divided amongst themselves, and the Ministry was able to maintain solid majorities in both Houses.

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118 See Grange to Marchmont, 1, 2 and 10 Dec 1733 HMC Polwarth V pp. 68-73.
120 Graham, Stair Annals, II p. 203; Marchmont to Stair 8 Dec 1733 ibid. p. 204; Tweeddale to Marchmont 12 Dec 1733 HMC Polwarth V p. 74; Chesterfield to Stair 13 Dec 1733 Graham, Stair Annals II, pp. 204-5. See also Memorandum by Marchmont 3 Jan 1734 Marchmont Papers ed. Rose, vol. II p. 14; Grange to Tweeddale 11 Mar 1734 NLS YP7044, 65 "God forbid that this Session go over without some publick noted popular appearance by the Patriots. We shall otherwise lose the Elections".
121 The first meeting, at the King's Arms Pall Mall, was held on 15 Jan 1734 and those who attended included Bedford, Bolton, Queensberry, Montrose, Tweeddale, Chesterfield, Marchmont, Stair and Cobham. The meetings continued until 1735; Graham Stair Annals II p. 226. See also HMC Polwarth V pp. x-xii; Marchmont Papers, ed. Rose, vol. II pp. 19-20.
throughout the Session. Most significantly a blistering attack by Walpole on Bolingbroke's character during a debate on the proposed repeal of the Septennial Act in March 1734 successfully prevented any alliance between an embarrassed Whig opposition and the Tories. Ilay and Milton continued to work assiduously on the Scottish peers:

in what manner are we to secure Ld Kilmarnock ... what are we to do about Roseberrie in order to please him and at the same time not throw away our favours?123

Milton worked ceaselessly on the Ministry's behalf coordinating Argathelian interests in various constituencies and corresponding regularly and in great detail with Ilay in London on the activities of the opposition. Various changes were made in the sheriffships with a view to influencing Commons elections.125

By March the opposition effort was beginning to flag and Grange sought to galvanise it back into action.126 It was proving difficult to hold together the various disparate interests and


123 Ilay to Milton 8 Jan 1734 NLS SC 16,555.

124 For example see Milton to Ilay 12 and 13 Nov 1733 NLS SC 16,553. Milton to Ilay Dec 1733 ibid.; Milton to Ilay Jan 1734 NLS SC 16,556 with full details of elections and what needed to be done for whom; Marchmont to Chesterfield 2 Dec 1733 Marchmont Papers, ed. Rose vol. II pp.9-10 "There has been great pains taken by the agent here".

125 See Marchmont to Grange 15 Dec 1733 HMC Polwarth V pp.76-7 "the barefaced change of the sheriffs".

individuals who opposed Walpole and Illy: "they are afraid and distrust one another". In order to unite the differing interests and also to secure Tory support, the opposition decided to make a major push to repeal the Septennial Act. In Scotland, as in England, attempts were made to organise a campaign of petitions from various constituencies. For the government Milton counter-attacked by persuading the Convention of Royal Burghs to declare in favour of the Septennial Act. The attempted repeal was comfortably defeated in the Commons. The opposition motions in the Lords against undue Ministerial influence being used at the representative peers elections and for that election to be conducted by ballot, were also easily defeated.

Grange, together with Lord President Dalrymple, Dundas and other opposition lawyers had also been considering provisions

127 Stair to Grange 2 Mar 1734 Graham Stair Annals, II pp.207-9.

128 Plumb, Walpole: The King's Minister, p.305; Stair to Grange 2 Mar 1734 Graham, Stair Annals II pp.207-9; Hamilton to Tweeddale 5 Mar 1734 NLS YP7044, 64; Haddington to Marchmont 4 Mar 1734 HMC Polwarth V p.83.

129 See Haddington to Tweeddale 5 Mar 1734 and 11 Mar 1734 NLS YP7044, 64 and 74; Milton to Newcastle 5 Mar 1734 SRO RH2/4/333, f68-9; Freeholders of Linlithgowshire to Alex Hamilton MP March 1734 SRO GD 76 no.335 Henderson Collection.


131 Plumb, Walpole: The King’s Minister, pp.305-9; Haddington to Marchmont 28 Mar 1734 HMC Polwarth V pp.84-6; Grange to Tweeddale 29 Mar 1734 NLS YP7044, 79.

132 Ballot motion 11 Mar 1734; undue influence 18 Mar 1734: see Stair to Grange 2 Mar 1734 Graham, Stair Annals II pp.207-9; Stair to Grange 20 Mar 1734 ibid. pp.210-1; Queensberry to Marchmont 28 Mar 1734 HMC Polwarth V pp.83-4; ibid. x-xii; William Robertson Proceedings relating to the Peerage of Scotland, 1707-88 (Edinburgh 1790), pp.141-5; NLS YP Box 136 F2(b) passim and Box 140 Fl(a) passim. Marchmont, Stair, Tweeddale, Montrose and more than 20 English peers supported the motions.
to make the procedure at elections more certain and to prevent tricks of the sheriffs and clerks. Such an act may cut off one of the unjust ways which the courtiers plainly and barefacedly tell us they are to use. 133

Consequently a Bill was introduced by Dundas in February 134 but its provisions were watered down by the Ministry and rendered largely ineffective. 135 More important, as feared, the government added a clause, directed against Grange, to exclude Scottish judges and Exchequer barons from sitting in the Commons:

this favourite clause be added to it by Lord Ilay in honour of you. 136

Although the clause was politically motivated, there was also a growing feeling that judges should not be so overtly involved in politics. 137 The Bill, including the clause on Scottish judges, was duly passed 138 and in May Grange offered his resignation which was readily accepted. 139

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133 Grange to Marchmont 12 Dec 1733 HMC Polwarth V pp. 74-6. See also Marchmont to Grange 18 Dec 1733 ibid. pp. 76-7.

134 Sedgwick, House of Commons II, p. 15.

135 See Grange to Tweeddale 29 Mar 1734 NLS YP7044, 79.

136 Pulteney to Grange Feb 1734 quoted Sedgwick, House of Commons II p. 15. See also Grange to - 25 Feb 1734 Graham, Stair Annals II pp. 206-7; Grange to Marchmont 9 Mar 1734 Marchmont Papers, ed. Rose vol II p. 18; Grange to Tweeddale 11 Mar 1734 NLS YP7044, 68 "Tho as matters go I hate to be in the Session with all my soul...... if I be knocked down and submit on this clause I know I shall be trampled and pissed on by every little Cur of Ilays, wch I acknowledge I can not bear"; Grange to Tweeddale 18 Mar 1734 ibid. 76.

137 For arguments against excluding Scots judges see two memorials in NLS SYP Box 138 F2(a).

138 7 Geo II c.16.

139 Erskine (Grange) to Newcastle 9 May 1734 SRO RH2/4/333, f99-103; Newcastle and Harrington to Erskine 21 May 1734 ibid. f106-7. He was replaced, after the election, by Alexander, earl of Leven.
Parliament was dissolved on 17 April without the opposition having made any real breakthrough, but they remained confident:

the Court begins to discover great uneasiness upon the chapter of the new elections. Sir Robert finds himself disappointed in the hopes he had of dividing the opposition...
'Tis certain our friends are now in good spirits, and the other folks are down. 140

Marchmont and the other opposition peers in London hurried back to Scotland. Both sides put in a final effort. £5,000 secret service money was given to Ilay through George Middleton 141 to make use of as he thought fit. Nor were the opposition above using bribery themselves, although they had only their own personal resources. Hamilton felt constrained to put Tweeddale in mind of ye necessitous situation of some of our peers, and to assure you [that] without a proper remedy nothing can be done with them. This however must be managed with ye greatest secrecy and prudence. But Believe me there is no time to be lost. 142

The Ministry continued to make changes right up to the last moment to show clearly where favour lay. Montrose was removed from his sheriffship of Stirlingshire in an effort to curtail his electoral influence; 143 Leven replaced Rothes as Chamberlain of Fife and Strathearn; 144 at Ilay's request. Lord Ross's eldest son George was

140 Stair to Grange 20 Mar 1734 Graham Stair Annals II pp.210-2. See also Hamilton to Tweeddale 5 Mar 1734 NLS YP7044; 64: "the voice of the people is loudly for us and increases every day".

141 CTEP vol II p.646.

142 Hamilton to Tweeddale 29 Mar 1734 NLS YP7044, 87.

143 See Ilay to Delafayre 19 Apr. 1734 SRO WIP 4/133, f391-2.

144 25 Apr 1734 CTEP vol II pp.547-8. This entry gives orders for over a dozen changes of office, payment of pensions, discharge of arrears etc.
made sheriff of Ross-shire in place of Hugh Rose of Kilravock who resigned the post to stand, successfully, for Ross-shire, and Alex Ross was appointed sheriff clerk;\footnote{145} Stair had his regiment, the 3rd Enniskillen Dragoons, taken away from him;\footnote{146} Buchan and Haddington were replaced on the Police Commission by Hopetown and Sutherland;\footnote{147} the opportunity was taken on renewing the Fees Commission for a further two years to replace Montrose, Marchmont and Haddington with Atholl, Selkirk and Belhaven;\footnote{148} and various arrears of salaries and pensions were paid out.\footnote{149} Ilay himself arrived in Scotland in early May to direct matters personally on the Ministry's behalf.

The election of Scottish peers took place on 4 June in the Burgh Room near Parliament House.\footnote{150} Normally any troops in Edinburgh were sent out of town during the time of the election but on this occasion a troop of soldiers was paraded nearby. The opposition saw this as intimidation and Stair entered a protest with which eighteen peers concurred. At the election the thoroughness of Ilay's preparations and the influence he had been able to exert soon became apparent and the opposition suffered a complete rout. The peers on the King's list were elected with large majorities:\footnote{151} Buccleuch got 60 votes.

\footnote{145}{See Ilay to Delafaye 15 Apr 1734 SRO RH2/4/333, f383-4; Sedgwick, House of Commons II, p.392.}
\footnote{146}{See Newcastle to Stair 17 Apr 1734 Graham, Stair Annals, II p.213.}
\footnote{147}{27 Apr 1734 SRO RH2/4/410, 281. See also Ilay to Delafaye 23 Apr 1734 SRO RH2/4/333, f85-6.}
\footnote{148}{20 Apr 1734 SRO RH2/4/410, 276.}
\footnote{149}{25 Apr 1734 CTBP vol II pp.547-8.}
\footnote{150}{The peers election usually took place in Holyrood House.}
\footnote{151}{Buccleuch, Atholl, Lothian, Crawford, Sutherland, Morton, Loudon, Findlater, Selkirk, Balcarres, Dunmore, Orkney, Portmore, Hopetown, Ilay, Cathcart. See certificate of election SRO RH2/4/333,f108; also SRO PE 35.}
fourteen others received 59, Ilay was content with a mere 58. For
the opposition Stair and Buchan received 25 apiece; Marchmont, Rothes
and Queensberry got 24; Montrose, Roxburgh and Tweeddale each received
23; Haddington 20. Before the meeting dissolved, Queensberry
handed in a protest against the use of undue influence, which
asserted that the pretended election of the peers on the King's
list was void and demanded that in their stead the sixteen who
otherwise had the greatest number of votes should be elected.

The 1734 Commons elections in Scotland were hard fought and there
were poll contests in twenty constituencies. In the end, the
opposition improved their position winning eleven seats, compared to
only six in 1727, but government supporters were returned in 34, of whom 15 were staunch Argathelians.156 The results in Scotland

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152 This of course meant that the leading Squadron peers - Montrose,
Marchmont, Tweeddale, Rothes, Haddington, Stair - no longer sat in the
House of Lords.

153 Robertson, Peerage of Scotland, pp.152-161; Sir James Fergusson,

154 See Dundas to his son 6 Jul 1734 SRO GD 4/15/2 vol. 2, 82
"As to the elections of our Commons, there are many more factious
persons than were last parliament from this country and would have been
more still If returns had been fairly made, but such liberties never
were taken by sheriffs and returning officers, nor such barefaced
things Done but power and a majority can both screen and Justify". See
also Dundas to his son 5 Jun 1734 ibid., 79.

155 38 in 1727.

156 Figures compiled from details in Sedgwick, House of Commons.

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Among the opposition members returned were John Rutherford (Roxburghshire),
John Cockburn (Haddington-shire), James Erskine (Clackmannan-shire), Alex
Cunningham (Renfrewshire), John Murray (Selkirkshire), William Dalrymple
(Wigtownshire) and Thomas Leslie (Dyceart burgh).
reflected the limited success of the opposition in the country as a whole:

By a very exact calculation we have made, it appears that there are in this parliament 238 opposers, besides those from your Country, which we reckon eleven; so that the minority consisting of 249 will not be a contemptible one.\[157\]

There were several fierce clashes between government and opposition supporters, most notably involving Grange and his nephew Thomas (Lord) Erskine in Stirling burghs and Stirlingshire respectively. In 1715, 1722 and 1727 Henry Cunningham, Ilay's burghmonger, had been elected for Stirling burghs, but in 1727 he had chosen to sit for Stirlingshire and the seat was taken by Thomas (Lord) Erskine, son of Mar and nephew of Grange. According to Grange, Ilay promised Thomas Erskine that if he voted for the excise bill he would be restored to the honours of his family next session, but though he did so, going along with them as fully as their other slaves,\[158\] he was disappointed. Erskine therefore joined the opposition, voting against the government on the repeal of the Septennial Act.\[159\]

Grange had supported Cunningham in 1727, but for the 1734 election in Stirlingshire (when Cunningham did not stand) Ilay secretly set up a relation Sir James Campbell. Piqued, Grange went over to the opposition, agreeing with Tweeddale and Marchmont that Thomas Erskine should be put

\[157\]Chesterfield to Stair 15 Jun 1734 Graham, Stair Annals, II pp.216-20. Sedgwick, House of Commons I, p.43 calculates the result, after the election petitions had been decided, as 330 ministerial supporters, 83 opposition Whigs and 145 Tories.


\[159\]Sedgwick, House of Commons II, p.17.
up for Stirlingshire, while Grange himself stood for Stirling burghs, one of the most venal constituencies in Scotland. Ilay immediately dispatched Cunningham to set up Peter Halket, an army officer, against Grange in Stirling burghs and Ilay and Milton worked industriously on Halket's behalf. At the election Grange received the votes of Stirling, Queensferry and Dunfermline, while Halket got Culross and Inverkeithing. Cunningham, as delegate for Inverkeithing the presiding burgh, rejected Grange as delegate for Dunfermline. Having thus created an equality of votes, he gave his casting vote to Halket, who was thus returned. Grange petitioned repeatedly without success. He was, however, elected for Clackmannanshire with the support of the Dalrymples, against the government candidate Sir John Shaw who had won the seat in 1722.

In Stirlingshire the opposition pushed hard to secure Thomas Erskine's election:

Lord Erskine was with me this day eight days, and I attended him to the houses of those gentlemen Your Lordship mentioned to me, and to some other houses where I thought the persons were in a state of uncertainty; and by hard thrashing and speaking plainly have got them tied down to Lord Erskine's interest as far as plain words can bind.

160 This was arranged without the knowledge of Montrose who was initially irritated but eventually agreed to support the scheme: see above p. 386 and footnote 107.

161 See Grange to Tweeddale 26 Aug 1733 NLS YP7044, 35; Grange to Tweeddale 11 Mar 1734 ibid. 66; Grange to Tweeddale 18 Mar 1734 ibid. 76; Grange to Tweeddale 29 Mar 1734 ibid. 79. Grange made particular efforts, and with some success, to win the support of Ebenezer Erskine and other 'high-flying' ministers who were influential in Stirling and Dunfermline; see Grange to Tweeddale 20 Aug 1733 NLS YP7044, 35; Grange to Tweeddale 9 Jan 1734 ibid. 52; Grange to Tweeddale 26 Jan 1734 ibid. 56.

162 Sedgwick, House of Commons I, p. 403. See also Grange to Marchmont 1 and 2 Dec 1733 HMC Polwarth V pp. 68-70; Dundas to his son 6 Jul 1734 SRO GD 4/15/2 vol. 2, 82.

163 Sedgwick, House of Commons I, p. 383.

With the support of Cunningham, however, Sir James Campbell won the seat by 28 votes to 23.165

Both of Marchmont's sons were returned, Lord Polwarth for Berwick-on-Tweed and Alexander Hume Campbell for Berwickshire. Queensberry, however, was less successful and Solicitor General Charles Areskine defeated Queensberry candidates in both Dumfriesshire and Dumfries burghs.166 The Stair family also suffered setbacks. At Haddington burghs, Sir James Dalrymple who had held the seat since 1722, lost to James Fall, a wealthy Dunbar merchant set up against him by the government, while in Wigtown burghs, where Stair had previously been able to bring in his brother and then his nephew John Dalrymple without opposition, Lord Galloway, with the support of the Ministry, put up his son James Stewart who beat John Dalrymple. Stair's brother William Dalrymple, however, retained Wigtownshire. Rothes too had mixed success. His brother Charles Leslie had to give up the fight against Sir John Anstruther in Fife167 but another brother Thomas successfully won Dysart burghs against the sitting member James St Clair, an Argathelian.168 In Edinburgh, where sitting member Argathelian John Campbell did not stand, George


166 Areskine was re-elected for the county against Alexander Ferguson (who petitioned unsuccessfully) and beat Basil Hamilton in the burghs. He chose to sit for the county: Sedgwick, House of Commons I, pp.384, 397; Queensberry to Marchmont 26 Mar 1734 HMC Polwarth V, p.87; Hamilton to Tweeddale 29 Mar 1734 NLS XP7044, 87.

167 See Rothes to Marchmont 19 May 1734 HMC Polwarth V p.87; Milton to Ilay Dec 1733 NLS SC 16,553.

168 See Rothes to Marchmont 19 May 1734 HMC Polwarth V p.87. For details on Dysart burghs see Rothes to Tweeddale 27 Apr 1734 NLS YP Box 8 F3(4).
Drummond, along with a number of other burgesses caused Ilay some difficulties by raising

a mutiny in the town by setting up for themselves and boasting that they had the superior favour with Sir Robert Walpole, which ended in my bringing in Patrick Lindsay [the current Lord Provost] merely to prevent the common enemy getting a victory. 169

Finally at Glasgow burghs William Campbell, a first cousin of Argyll, was elected. 170

In the northern counties the tangled clashes between local Whig families, most of whom supported the government, continued. Milton proposed to Ilay a scheme to allocate the various seats among the contending interests but Forbes was indignant at Ilay's meddling and the proposal came to nought. 171 In Inverness-shire, where Lovat held the chief interest, Sir James Grant, a government Whig and the sitting member since 1722 (the "hereditary commoner of Inverness-shire"), and Lovat's brother-in-law,clashed for the third general election in a row with John Forbes, Duncan Forbes' brother. Despite attempts by the Forbes brothers to fix the electoral roll, 172 Grant, with the help of Lovat who had recently been made sheriff, and of Milton, 173 was again successful. 174

170 Sedgwick, House of Commons I, p.400.
171 See Milton to Ilay 12 and 13 Nov 1733 NLS SC 16,553; Bricke, Management and Administration of Scotland, pp.120-2. For details of electioneering in the north and Ilay's activities, particularly his differences with Forbes, see Menary, Forbes, pp.89-95; MCP III pp.59-97 and relevant letters in CP and MCP vol. III.
172 Sedgwick, House of Commons I, pp.386-7; Grant to Stair 30 Oct 1733 Graham, Stair Annals, II pp.231-2.
173 See Milton to Ilay Doc. 1733 NLS SC 16,553.
Despite the defeat at the peers election the Scottish opposition quickly returned to the attack. Montrose, Queensberry, Grange and Marchmont, after consulting with Chesterfield, Pulteney, Carteret and others, resolved that some protest or petition should be laid before the House of Lords complaining about the "corrupt influence" used at the peers election. It was also agreed that some Scotch commoner, well armed with facts and proofs, should get up in the House of Commons and impeach Islay of high crimes and misdemeanours, which no doubt the corrupt influencing of elections amounts to. This would be a capital stroke, and affect the master [i.e. Walpole] as well as the man.

In the meantime every effort was to be made to obtain evidence of Islay's bribery:

... offers of money, places or pensions to Lords to vote for the Court List; 2dly, promises of pensions to some that did vote for the List and actual payment to them or their agents under the name of arrears of pensions for the former years [etc.]

During the following months Tweeddale, Marchmont, Grange and others were active in trying to gather such evidence and met several times in Edinburgh, but much time was spent in rather sterile debate on whether the proposed petition should demand that the return of the court list


177 Ibid. Even at this stage Chesterfield was not optimistic about obtaining any redress: "I fear you must expect more justice from your appeals to the rest of mankind, than from your appeals to our house, where now our strength is so much diminished". See also Nottingham to Tweeddale 9 Sep 1734 NLS SYP Box 12 F2.

should be declared void and perhaps further that the sixteen with
the most votes thereafter should be returned in their place, or should
simply seek an enquiry into the whole matter. It was finally agreed
to pursue a general petition for an enquiry since, not surprisingly,
it was proving difficult to obtain sufficient evidence to sustain
the overturning of the election. 179

By the turn of the year, despite all their efforts to get
material to show

that Lord Ilay was the Agent of the Court in
the elections of either the peers or the Commons
or both; that he took up or was authoriz'd to
take up any sums of money from the New Bank,
Excise or Customs [etc] 180

the evidence the opposition managed to collect was at best circumstantial.

As Dundas pointed out

...[getting] a place can change ones way of acting.
But as giving a place is no corruption such a fact
would have no influence unless it were prov'd as
well as believ'd that the place was offer'd and
given him to concur in the election. 181

It was therefore decided that it would be wiser to avoid making a direct
accusation against any person, and to proceed by a general petition,

179 See inter alia Tweeddale to Marchmont ND 1734 HMC Polwarth V p.90;
Tweeddale to Marchmont 9 Aug 1734 ibid. p.89; Tweeddale to Marchmont
10 Aug 1734 ibid. p.88; Tweeddale to – 12 Aug 1734 NLS STP Box 138 F2(b);
Tweeddale to Winchelsea 13 Aug 1734 BM Add MSS 29, 589 B f4-5; Queensberry
to Tweeddale 21 Aug 1734 NLS YP7044, 93; Pulteney to Marchmont 25 Aug 1734
Marchmont Papers, ed. Rose vol. II pp.39-41; Montrose to Tweeddale 26 Aug 1734
NLS YP7044, 95; Chesterfield to Marchmont 27 Aug 1734 Marchmont Papers, ed.
Rose vol. II pp.41-5; Montrose to Marchmont 27 Aug 1734 ibid. pp.46-7;
Orange to Tweeddale 2 Sep 1734 NLS YP7044,101; Tweeddale to Marchmont HMC
Polwarth V pp.90-1; Tweeddale to Marchmont 20 Sep 1734 ibid. p.91; Aberdeen
to Tweeddale NLS YP7044, 105.

180 "Minutes of what Further Evidence should if possible be secured to
support either the Petition or the Impeachment" HMC Polwarth V pp.106-7.
See also NLS SYP Box 137 Fl.

181 "Opinion of Mr Dundas" HMC Polwarth V, pp.102-4. There was considerable
jealousy between Orange and Dundas at this time: see Lindsay to Clerk 25 Feb
1735 SRO CD 18/5245(11).
signed by as many peers as possible, against the whole conduct of
the election, asking the Lords to make an enquiry into the matter
with a view to setting aside the election on the grounds of corruption.
Such evidence as the opposition had obtained would be held in readiness
to back up their case. Grange prepared a draft petition on this
basis, which after much consultation was amended into its final
form.

Parliament met on 14 January 1735 and great effort was made to
get as many Scottish opposition Lords as possible up to London before
the opening:

to concert with their friends and finally
settle those matters that are but hinted at
in the papers

and

to stir about and solicit.

182 HMC Polwarth V pp.100-101: "It has been publickly and openly said
by most of the nation and there have been strong appearance that the list
of sixteen peers returned at the last election was made up and settled
by persons in high offices under the Crown without consulting or having
respect to the sentiments of the peers and was shewn and given out
under the name of the Court List or the List of the Ministry. That
several noble Lords were solicited and others engaged to give their
votes for that List or such other list as should be concerted by those
in the service of the Crown upon insinuations or direct threatenings
of losing or promises of getting places, pensions or summes of money
to themselves or their relations and friends by persons employed
under the Crown or their known agents, and that considerable summes
were actually paid to or for the use of several Lords on account of
their voting or granting their proxies to vote for such lists ... it
would [therefore] appear that the said election was rather a nomination
by the officers of the Crown then an election and that this nomination
was under the meer figure of an election promoted and carried out in
an undue manner inconsistent with the design and intention of the laws
directing the election of the sixteen peers to sit in the parliament
for Scotland".


A series of meetings was held between the leading Scottish and English opposition figures to determine their tactics. It was agreed that Bedford would present the petition in the House of Lords while Polwarth, seconded by Dundas and Erskine, would lay details of events in Scotland before the Commons and Sandys would move for the impeachment of Ilay. The Ministry, however, had taken the necessary steps to rally its supporters and the opposition quickly found itself completely outmanoeuvred in the Lords. The petition in its final form was presented to the House of Lords on 13 February 1735 in the names of Hamilton, Queensberry, Montrose, Dundonald, Marchmont and Stair. The petition represented, in general terms,

that several undue methods and illegal practices were used towards carrying on this election and towards [sic.] engaging peers to vote for a list of peers to represent the Peerage of Scotland such as are inconsistent with the freedom of Parliaments, dishonourable to the Peerage, contrary to the design and intention of those laws that direct the election of the sixteen peers for that part of Great Britain called Scotland and such as may prove subversive of our happy constitution, instances and proofs whereof we are able to lay before your Lordships in such manner as your Lordships shall direct.

The petitioners therefore desired that the House give serious consideration to the affair and allow proofs to be laid before them. A detailed list of the evidence which had been collected was held ready.

Consideration of the petition was adjourned to 20 February and then further adjourned to the following day to enable the petitioners to indicate

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187 For full details see "Evidence in Support of the Petition" ibid. pp. 108-111.
whether by their petition they intend to contra-
vert the election or return of the sixteen peers
for Scotland mentioned in the said petition or any
of them and which of them, or whether the petitioners
intend to proceed by way of complaint of the undue
methods and illegal practices mentioned in general
without contesting the right of the said sixteen
peers or any of them. 188

The opposition replied that they did not intend to
contravert the election of any of the sixteen
peers mentioned in the election but to produce
evidence as to undue methods dangerous to the
constitution...

The House then ordered the petitioners within a week to lay before the House
in writing "particular instances of undue methods and illegal practices",
together with the names of the persons by whom such methods and practices
were used. 189 The opposition were aware that they had insufficient
evidence to implicate Illy or any of his agents directly. On their
return the petitioners therefore argued that they had not

by our petition stated ourselves accusers of any
person whatever nor did we intend to do so... We
conceive we cannot take upon us to name particular
persons who may have been concerned in those
illegal practises, but who those were will
undoubtedly appear to your Lordships upon takeing
the proper examinations.

They then repeated their general charges that Ministers had drawn up
a list of sixteen peers to be carried at the election, that

... endeavours were made to engage peers to vote
for this list by promises of pensions and offices,
civil and military, to themselves and near relations
and by actual promise and offers of sums of money
and that the House should make an enquiry into the matter. 190 In response
the Lords passed a motion on 28 February that the return did not comply

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188 Minute of Parliament 20 Feb 1735 ibid. p.115.
189 Minute of Parliament 21 Feb 1735 ibid. p.115.
190 Return of the Petitioners to the Order of the House of 21 February
with the order of the House. Various English opposition peers entered a protest, but the House proceeded to carry a motion to dismiss the petition. The same peers entered a further protest. The opposition then attempted to have the protests made immediately after the election in 1734 received and read but instead it was carried that the House should adjourn without appointing a day when the protests should be read. There the matter rested. The opposition met with a similar lack of success when they attempted to raise the matter in the Commons.

With the collapse of the protests over the peers election and a series of defeats in the Commons, the momentum which Grange, Marchmont and others had managed to maintain over the previous two years quickly crumbled. Walpole's position, and with him that of Ilay, seemed unchallengeable. Many of the opposition simply stopped attending Parliament, and the Scots peers in particular deserted politics for a time. Marchmont for

191 Somersett, Maynard, and Tadcaster and signed by 30 English peers: see ibid. pp.118-22.

192 Ibid. "...if the election of sixteen peers to represent the Peerage of Scotland should ever by the foul arts of corruption dwindle into a ministerial nomination instead of persons of the first rank, greatest merit and most considerable property we may expect in future Parliaments to see such only returned who, owing their election to the nomination of the minister, may purchase the continuance of their precarious seats by a fatal and unanimous submission to his dictates."

193 Notably over the petition of the unsuccessful opposition candidate at the Haddington burghs election, Sir James Dalrymple, during which debate the opposition launched a violent attack on Milton's conduct. See Ilay to Milton 13 Mar 1735 NLS SC 16,559; Sedgwick, House of Commons I, pp.400-1.

194 For example, see Drummore to Stair 20 Mar 1735 Graham, Stair Annals, II pp,233-4: "the Court had indeed aides-de-camp and majors of brigade to fly about and collect their scattered troops, but it seems those upon the side of the country have no such officers... How in it possible to profit by advantage, if due attendance is not given?"
one concentrated on local affairs. 195

The dismissal from office of the remaining leading Squadron peers in 1733 and his success at the 1734 general election had greatly strengthened Ilay's position. In April 1735 Squadron Lord Justice Clerk Adam Cockburn, who had taken little part in political matters since the malt tax riots, died. Ilay was anxious to have Milton promoted and worked hard to overcome some initial resistance from Walpole, visiting Walpole in Norfolk. 197 In the end, he not only secured the post for Milton but successfully recommended Alexander Fraser, Lord Streichen for the vacant Justiciary post and Sir James Ferguson for Cockburn's place as Lord of Session. 200

I had been in Scotland a month agoe (Ilay informed Milton) if your affair had been then determined, but it was too great A card to leave at sixes and sevens as we say here. 201

Grange, who had returned to his law practice, was in despair.

What is become of him [Pultney] or almost anybody else, what they think of affairs, what they are doing or intending to do I know not. I am told here that the courtiers ... cry that the Patriots have nothing now

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195 HMC Polwarth V p.xiv.

196 See Ilay to Milton 1 May 1735 NLS SC 16,559: "I doubt of success... These disagreeable difficulties arising in business, not from any Enemy, are great deductions of the satisfaction in having interest and Power, so that those that are in as well as those that are out have use for all their Philosophy".


198 For life 21 Jul 1735 SRO RH2/4/410, 305. See also Ilay to Milton 27 Jul 1735 NLS SC 16,559.


200 See Ilay to Newcastle 28 Aug 1735 SRO RH2/4/334, f141-2; warrant 3 Sep 1735 SRO RH2/4/410, 309. Also Ilay to Milton 12 Sep 1735 NLS SC 16,559: "the Enemy have not gained ground in our Judicatures this year".

201 Ilay to Milton 2 Aug 1735 NLS SC 16,559.
to say and are dispirited and divided. ...
My present ignorance of all things seems to
throw me into a lethargick state ... But
what can one do tho awake? Who is to be
trusted? Who will exert himself? 202

By early 1736 the opposition was at a low ebb both at Westminster 203
and in Scotland. This calm was rudely shattered by the Porteous
riots and their aftermath. 204

The dramatic if temporary breakdown of law and order in Edinburgh
on the night of 7 September 1736 and the helplessness of the authorities
in the face of a large, well-disciplined mob greatly alarmed the
political establishment in London. A major Parliamentary enquiry
followed and a punitive Bill was introduced to reduce Edinburgh's
privileges. The proceedings which ensued were a direct challenge to
Ilay's authority in Scotland, led Argyll to clash violently with the
Ministry and shook the very basis of the Walpole administration. In
the end Walpole, who had initially supported punitive measures to
placate English opinion, had to retreat in the face of overwhelming
Scottish hostility in order to maintain his system of managing Scotland
and shore up Ilay's influence. Nevertheless Ilay emerged with his
credibility in Scotland severely dented and the drift of Argyll away
from the Ministry into opposition created a split in the Argathelian

202 Erskine (Grange) to Marchmont 2 Dec 1735 HNC Polwarth V pp.124-5.
See also Montrose to Stair 2 Jun 1735 Graham, Stair Annals, II pp.235-6;
Montrose to Marchmont 5 Jan 1736 HNC Polwarth V, pp.125-6; Stair to
Marchmont 27 Dec 1735 Marchmont Papers, ed. Rose vol. II, p.68

203 See Ilay to Milton 10 Apr 1736 NLS SC 16,564; Stair to Grange 15 Mar
1736 Graham, Stair Annals II pp.237-9 - "their counsels disjointed and
their operations feeble".

204 For full details of the events see William Roughead, The Trial of
Captain Porteous (Edinburgh, 1909); H.T. Dickinson and K. Logue, 'The
Porteous Riot - a study in the breakdown of law and order in Edinburgh
1736-7', Scottish Labour History Society Journal no. 10, June 1976;
H.T. Dickinson and K. Logue, 'The Porteous Riot 1736', History Today,
vol. 22 (1972), pp.272-81. There is also a considerable amount of material
in NLS SPA 17509-10.
ranks which was to result in the return of a substantial number of opposition members from Scotland in the 1741 general election which in turn contributed in large part to the downfall of Walpole's administration.

Three men, Andrew Wilson, William Hall and George Robertson, had been found guilty by the Court of Justiciary in February 1736 of robbing an excise officer at Pittenweem. Wilson and Robertson were sentenced to be hanged, Hall to transportation. The Sunday before 14 April, the day set for their execution, Wilson and Robertson made a bid for freedom while attending service at the Tolbooth church. Wilson was quickly seized but managed to engage the soldiers, allowing Robertson to escape. Such was the unpopularity of the revenue services and the general sympathy towards smugglers and Wilson in particular following the escape attempt, that the authorities, fearing possible trouble at the execution, called in 150 troops to stand by the City Guard under Captain John Porteous already a notoriously unpopular figure in the city. In the event there was no trouble until Wilson was hanged and his body about to be cut down. At that stage the mob began to throw stones at the Town Guard who, probably in panic, retaliated by firing indiscriminately, both at the mob and into the air thereby hitting people watching from neighbouring windows. Three people were killed instantly and about a dozen injured. The Guard retreated but then turned and once more fired on the mob killing three more people. The regular troops took no part in the affray.

Horrified by the events and fearful of the mood of the Edinburgh citizens Lord Provost Alexander Wilson immediately had Porteous and

205 See Allan Ramsay to Forbes 15 Apr 1736 MCP II pp.113-5.
fifteen members of the Guard arrested and imprisoned. In the absence of the Lords of Justiciary on circuit, the Edinburgh magistrates proposed to try those arrested summarily before Provost Wilson as High Sheriff of Edinburgh in order to satisfy the clamour for vengeance.\textsuperscript{206}

Wilson himself, however, was opposed to this, as was Ilay in London:

\begin{quote}
The affair of Capt Porteous is very unhappy, as the fact appears here, it seems very harsh and cruel to English Ears. I think it would sound very odd here if the Tryal was left to the Sherifs and so the Lord Chancellor told me.\textsuperscript{207}
\end{quote}

The law officers, Forbes and Areskine, accordingly gave their opinion against this procedure,\textsuperscript{208} and it was not until July that Porteous was brought before the Court of Justiciary,\textsuperscript{209} a delay that did nothing to calm the feelings of the Edinburgh populace. Although Porteous "persisted to ye last in denying he eiyr fired or gave orders to fire"\textsuperscript{210} and the evidence was at best contradictory and inconclusive, such was the climate of opinion in Edinburgh that a fair trial was virtually impossible and he was found guilty on both counts\textsuperscript{211} and sentenced to be executed on 8 September.\textsuperscript{212}

Although the vengeance of the Edinburgh populace seems to have been satisfied, in London there was a strong feeling that Porteous

\begin{itemize}
\item \textsuperscript{206}See Roughead, Porteous, p.221; Menary, Forbes, pp.107-8.
\item \textsuperscript{207}Ilay to Milton 24 Apr 1736 NLS SC 16,564.
\item \textsuperscript{208}See Roughead, Porteous, p.224.
\item \textsuperscript{209}5 Jul 1736. The judges were Milton (presiding), Royston, Dun, Newhall and Minto; Forbes prosecuted: for details see Roughead, Porteous, pp.145-216; Dickinson and Logue, "The Porteous Riot: a study in the breakdown of law and order", pp.24-5. There is also a mass of material on the trial of Porteous and the legal debate thereafter in NLS SPA 17509-10. The other 15 guardsmen arrested were never brought to trial.
\item \textsuperscript{210}Milton to Ilay ND NLS SC 16,566.
\item \textsuperscript{211}For jury's verdict see Roughead, Porteous, pp.213-4. See also Ilay to Milton 29 Jul 1736 NLS SC 16,564; Milton's "Memorial about Capt Porteous" to Ilay 25 Aug 1736 NLS SPA 17,509. For Milton's justification of the verdict see Milton to Ilay ND NLS SC 16,566.
\item \textsuperscript{212}Milton's "Memorial on Capt Porteous" to Ilay 25 Aug 1736 NLS SPA 17,509.
\end{itemize}
had been sacrificed to appease the fury of the mob and both the conduct of the trial and of the Scottish legal system itself soon came under attack. In fact the verdict left the Government in a difficult position. As Milton argued,

... it was too rash and unanswerable in ye Guard to fire at Random among a Multitude Lawfully assembled because of a few stones thrown without giving innocent people some notice to retire.... These were ye reasons why ye Court did unanimously pronounce a sentence of death and Thus far ye Law gave a proper check to ye Military fancying that upon the least insult by some idle unruly people that ye Military shall have it in yr power to put his Majesties innocent subjects to death without distinction or reasonable notice given.\textsuperscript{212}

The Ministry, however, were primarily concerned to uphold the authority of law and order by saving Porteous whose offence it regarded largely as one of excessive if unfortunate zeal in the performance of his duty.\textsuperscript{213} For his part, Ilay, anxious to placate opinion at Westminster, initially failed to appreciate the strength of feeling in Edinburgh. He therefore advised that Porteous petition Queen Caroline and urged Milton to organise a parallel petition on Porteous's behalf.\textsuperscript{214} This was signed by fifty 'noblemen and gentlemen' of Scotland, all government supporters, pleading mitigating circumstances and arguing that if the sentence was carried out it would merely encourage resistance to the law.\textsuperscript{215} In an effort to forestall the opposition making political capital out of a reprieve for Porteous, which Ilay soon realised would be highly unpopular in Scotland, Ilay also

\textsuperscript{214}See Ilay to Milton 5 Aug 1736 NLS SC 16,564.
sought to encourage another petition in favour of Porteous to be signed by as many opposition supporters as possible. Queen Caroline, however, granted Porteous a six week reprieve before these petitions reached London.

News of the reprieve reached Edinburgh on 3 September, and despite Milton's initial belief that

This act of Her Majesty's Royal mercy, meets with almost a General Approbation, especially among those of the highest Rank and greatest distinction. And the few who grumble are only of the meaner sort... or such as seem determined to complain whatever happens

in fact there was an immediate and widespread resentment in the city and rumours were soon rife about plans to murder Porteous. The Edinburgh magistrates, however, failed to take these seriously or take any precautionary steps.

At about 10 p.m. on Tuesday 7 September, the day before that originally set for the execution a mob, which grew to around 4,000, besieged the Tolbooth. As Dickinson and Logue have convincingly shown, the mob was both well organised and disciplined with only one purpose in mind and undoubtedly had a strong central core of respectable citizens - shopkeepers, tradesmen, craftsmen and their apprentices.

216 See Roughead, Porteous, p. 234. The only prominent opposition signature was Drummore. See also Ilay to Milton 19 Aug 1736 NLS SC 15, 564.

217 See Newcastle to the Lord Justice General, Lord Justice Clerk and Lords of Justiciary 26 Aug 1736 SRO RH2/4/336, f37; Roughead, Porteous, p. 68.


219 Milton to Newcastle 4 Sep 1736 ibid.

220 Roughead, Porteous, p. 69: "the conspiracy was a deep-laid and elaborate scheme which required five full days to mature and execute". See also Dickinson and Logue, The Porteous Riot: a study in the breakdown of law and order

221 Dickinson and Logue, ibid. pp. 29-32.
Only about fifteen of the City Guard were on duty, none of whom were armed. They were therefore powerless to resist the mob, who eventually broke into the Tolbooth at 11.30 p.m., seized Porteous, dragged him down to the Grassmarket and there brutally hanged him on the dyer's pole. The mob had already secured the city gates, particularly the Nether Bow port, thus preventing the magistrates getting speedy help from the troops stationed in the Canongate. In fact the determined action of the mob alarmed and virtually paralysed the civic authorities. Moreover Forbes, Areskine and Milton were all out of town and provost Wilson and the four bailies had no one to turn to. After considerable delay, Wilson eventually sent Patrick Lindsay, MP for Edinburgh, Dean of Guild and Town Treasurer (but who was not a magistrate) to General Moyle's house at Abbeyhill to request the aid of troops. Moyle, however, aware of the problems which had occurred throughout the period when troops assisted the civil authorities, was reluctant to move without a proper warrant or written instructions from the provost or a magistrate. It is unclear exactly what happened when Lindsay arrived at Moyle's house: there was later much ill-feeling between the two, each casting the blame on the other and their mutual recriminations were to cause the authorities considerable embarrassment. Moyle eventually went

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222 For full details see Roughead, Porteous, pp.71ff; Dickinson and Logue, 'The Porteous Riot: a study in the breakdown of law and order'.


225 Roughhead, Porteous, pp.89-93; Moyle to Newcastle 9 Sep 1736 Coxe, Walpole, III, pp.360-1.

to join his troops at the Canongate and waited for orders from the magistrates but none ever came. Although prompt action by Moyle might have saved Porteous, had he acted without a warrant and bloodshed resulted he could well have found himself in the same position as Porteous.

The General asked the Lord Justice Clerk the morning after the Murther of Porteous, if he could have been justified in breaking open the gates of the Town without the Authority of the Civil power, he said, if he had, he must have answered for the consequences that might have followed on his giving such an order... 227

Fearing to return to Edinburgh because of the mob, Lindsay sent a messenger to Milton, who lived several miles away, with news of the riot and seeking a warrant for the troops. Milton sent a warrant by return 228 but by that time Porteous was dead, the mob had dispersed and the troops made no effort to enter the town that night.

Milton came to Edinburgh the following morning and took charge of the situation. 229 He met the magistrates —

I was in great wrath at ym because of yr negligence and want of precaution... 230

but like Forbes in 1725 he was reluctant to act without specific

227 See "A brief account of the Riotous proceedings at Edinburgh relating to the Murther of Capt Porteous" Roughead, Porteous, pp.243-6. Wade had the previous year instructed Moyle always to get written orders for assistance: see Wade to Moyle 13 Mar 1736, ibid. p.309.

228 Milton to Lindsay, Brunstan6 1 a.m. (received 2 a.m.) 8 Sep 1736 Roughead, Porteous, pp.311-2.

229 Lord Advocate Forbes and Solicitor General Areskine were both out of town.

230 Milton to Ilay ND 1736 NLS SC 16,566. Compare George Drummond in his diary: "All the blood that has been shed and the mischief done is owing to the infatuation or unaccountable stupidity of the present Magistrates... My Lord Ilay has thrown the town's affairs into the hands of men void of religion, and little respected" 16 Sep 1736; "The conduct of our Magistrates for some years past has been very grieving to all good men in the city. They have been named by the Justice-Clerk, and have prostituted their powern to his will in every instance" 7 Apr 1737: W. Baird, "George Drummond: An Eighteenth Century Lord Provost", Book of the Old Edinburgh Club, IV (1911), pp.24-5, 27.
directions from London. He therefore wrote immediately to Newcastle
with a brief account of the affair:

The mob are now so insolent and the Town Guard
so dispirited and in such Contempt that I find
it would be in vain for the Magistrates, upon
their own Authority to attempt to enquire after
and seize the Authors or Actors of this Barbarity,
and at the same time considering what ill blood
it might occasion to bring in the Military into
the City contrary to their Privileges, till I
receive farther Directions, I have prevailed
with General Moyle to double his Guard in the Canon-
gate, and to send fifty Men to the Castle of
Edinburgh to be daily relieved by the same
number marching thro' the City. 231

The dramatic breakdown of law and order in Edinburgh was viewed
with considerable alarm in London. Newcastle instructed Milton to
consult with the magistrates and take such measures as were necessary
for restoring the peace and discovering "the authors, ringleaders and
abettors of these wicked and audacious proceedings". Forbes and
Areskine were to return to Edinburgh to assist 232 and Moyle was to
use his troops as necessary. 233 Although, spurred on by Newcastle
and Ilay, 234 Milton was active in making enquiries, he quickly realised
he had little hope of success:

231 Milton to Newcastle 8 Sep 1726 SRO RH2/4/334 f187-90. Both Moyle and
Provost Wilson were quick to justify their actions to Newcastle: see Moyle
to Newcastle 9 Sep 1736 ibid. f191-2; Moyle to Newcastle 23 Sep 1736 SRO
RH2/4/335 f223-4; Wilson to Newcastle 17 Sep 1736 ibid. f210-1. Moyle
blamed the magistrates, Wilson claimed the magistrates had done all they
could.

232 Newcastle to Milton 12 Sep 1736 SRO RH2/4/334 f195-6; Milton to Forbes
16 Sep 1736 NLS SC 16,566.


234 Newcastle to Milton 17 Sep 1736 enclosing orders for the Lord
Provost SRO RH2/4/334 f201-5; Ilay to Milton 16 Sep 1736, 17 Sep 1736
NLS SC 16,564. See also Newcastle to Forbes 17 Sep 1736 SRO RH2/4/335
f206-7; Newcastle to Moyle 17 Sep 1736 ibid. f208-9; Newcastle to Wade
17 Sep 1736 ibid. f214-6; Newcastle to Orkney, Governor of Edinburgh Castle
17 Sep 1736 ibid. f212-3.
As this outrage was committed not by an ordinary sort of mob guided by sudden rage, but by a well contrived scheme, executed by a cool resolute Gang, taking evidently to themselves authority over the Mobb, and restraining them from every folly but the wickedness they had determined to perpetuate, to which they kept them close at work, there is great reason to believe that some of that abandoned gang of smugglers had a chief hand in all this... I have got some hints of some of the principal actors, but doubt much of getting evidence against them, except from such as if they were not actors, were at least abettors. 235

On 25 September the Queen therefore issued a royal proclamation offering rewards for information leading to the discovery of those involved. 236

Meanwhile Areskine arrived in Edinburgh on 18 September, while Forbes, who was at Culloden and had delayed at first because of illness, eventually, on direct orders from the Queen, came up on 8 October. 237 Wade too was ordered to Edinburgh 238 and Ilay himself set out from London 239 with orders to probe to the bottom of the affair:

Lord Ilay goes for Scotland this week; and I think determined to exert himself to the utmost on this occasion. 240

He arrived in Edinburgh on 4 October. 241 As in 1725 the Ministry were relying heavily on him to restore order and bring the culprits to

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236 Roughead, Porteous, pp.100, 247-8; London Gazette, no. 7545, 25-8 Sep 1736 SRO RH2/4/335 f251.

237 Roughead, Porteous, pp.98-9; Forbes to Newcastle 1 Oct 1736 SRO RH2/4/335, f237-8; Areskine to Newcastle 9 Oct 1736 ibid. f252-3.

238 Roughead, Porteous, p.99.

239 He had proposed to come to Scotland in any event to deal with a representative peer election caused by the death of Balcarres: see Ilay to Milton 5 Aug 1736 NLS SC 16,564.

240 Sir Robert Walpole to Horace Walpole 20 Sep 1736 Coxe, Walpole, III, pp. 365-6. See also Horace Walpole (with George II in Germany) to R. Walpole 6 Oct 1736 ibid. pp.269-70.

241 Ilay to Newcastle 5 Oct 1736 SRO RH2/4/335, f244-5.
Thus by early October all the principal government officers were in Edinburgh and, according to Ilay, had never worked so well together. The ringleaders had fled, however, and the bulk of the city were in complete sympathy with the aims of the riot, believing Porteous's fate to have been fully justified. As a result, the investigations met with a hostile wall of silence and little progress was made. The letters of Ilay and his colleagues to London reflected their difficulties and increasing frustration. Various witnesses were examined but little information obtained; Ilay directed the Town Council to instruct all members of the City guilds and corporations to make lists of their apprentices and servants who were in their service immediately before 7 September and who had left or deserted since then, but again to little avail. Five Edinburgh tradesmen were arrested and other warrants were issued, but none were among the leaders, and in the

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242 See Newcastle to Ilay 12 Oct 1736 ibid. f254-5.
244 For example see Ilay to Walpole 16 Oct 1736 Roughead, Porteous, pp. 324-5: "All the lower rank of the people, who have distinguished themselves by pretence to a superior sanctity, speak of this murder as the hand of God doing justice; and my endeavours to punish murderers are called grievous prosecutions".
245 Ibid, p.100; Ilay to Newcastle 7 Oct 1736 SRO RH2/4/335, f246-7; Ilay to Newcastle 15 Oct 1736 ibid. f258-9; Wade to Newcastle 4 Nov 1736 ibid. f279-80.
249 See Areskine to Newcastle 9 Oct 1736 ibid. f252-3.
end only two men were ever tried in the Court of Justiciary for taking part in the Porteous riots. Both were unanimously found not guilty. 250

Ilay returned to London in early December to mounting disquiet over the Porteous affair and concern that a well-disciplined mob had been able to take over control of Edinburgh for several hours without the authorities being able to take effective counter-measures or subsequently to bring the offenders to justice. There were growing demands for a full Parliamentary enquiry and for punitive measures against Edinburgh. 251

When Parliament reassembled the English opposition were determined to press the Porteous affair in order to embarrass the government and attack Walpole through his agent Ilay. On 10 February Carteret opened the attack by demanding a full enquiry. 252 He accused the Edinburgh magistrates of encouraging the riot and argued that if no-one was arrested and convicted of the crimes then the whole city should be punished. He also attacked the conduct of the Court of Justiciary in finding Porteous guilty in the first instance and questioned the very independence of the Scottish legal system. 253 Ilay rightly saw the opposition attack as a direct challenge to his political authority in Scotland. In response to Carteret, therefore, he spoke in a very handsome manner and tho he condemned the horridness of that mob and the cruelty which they committed, yet spoke very strongly against taking away the privileges of the city or removing the Court of Justiciary to another place [as proposed by Carteret]. 254


251 Ilay to Milton 4 Dec 1736 NLS SC 16,564.

252 For details of proceedings in both Houses, see Menary, Forbes, pp.113-121.


254 Morton to Aberlour 10 Feb 1737 Roughead, Porteous, pp.256-7. See also ibid. p.118.
Carteret, however, successfully moved that Provost Wilson and the four bailies of Edinburgh, the commander of the city guard during the riots, and the commander-in-chief in Scotland should all attend the House of Lords, and that a copy of the record of Porteous's trial and all proceedings thereon should be laid before the House. 255

On 3 March Newcastle presented the relevant documents to the Lords 256 and on 10 March the House resolved itself into a Committee of the Whole House to consider the affair. Wilson, the four bailies, Wade, Lindsay, General Moyle, Major Pool, Col. Durore and Captain Lind (of the City Guard) 257 were all examined. 258 Moyle and the other army officers laid the blame squarely at the door of the provost and magistrates. 259 Lords Milton, Royston and Dun, the three senior judges who had sat on Porteous's trial, 260 were ordered to attend the House on a motion made by Newcastle on 21 March in order to forestall another motion that Milton alone should attend. 261 The mood both

255 Ibid. p.118; Morton to Aberlour 10 Feb 1737 ibid. pp.256-7: "by this You'll see what a dilemma that villainous mob has brought upon our nation and the City of Edinburgh in particular, and God knows what length it will be carried".

256 See "Authentic Extract of the Proceedings in the Trial of Captain John Porteous laid before the House of Lords" March 1737, Roughead, Porteous, pp.145-71. For Milton's copy of the same, liberally annotated with comments, see NLS SPA 17,510. Also list of documents delivered to House of Lords SRO RH2/4/336, f336.

257 Lind was later dismissed by the Town Council from his post as Captain Lieutenant of the Guard apparently for giving evidence contradicting the Provost: see Capt Alex Lind to John Lind 14(?) Jul 1737 SRO RH2/4/336, f89-90; Col Durore to John Lind ND ibid. f91.

258 Roughead, Porteous, pp.272-308 gives details of the examinations.

259 Ibid. pp.119-20; Morton to Aberlour, 10, 17, 19 and 22 Mar 1737 ibid. pp.258-60.

260 All three had also sat at the trial of Wilson.

inside the House and out was clearly in favour of strong action being taken and Ministers were anxious to placate the groundswell of indignation. Newcastle and Hardwicke in particular believed that a hard line should be taken:

The House and indeed vast numbers of people here are so exasperated at the Edinburgh mob (wrote Ilay) that whatever is proposed however violent and unjust is popular; and it is impossible to judge what effect this violence may have ... Duke Newcastle was frightened out of his wits. 262

I plainly see this work will drive Scotland stark mad. 263

The opposition, spurred on by English lawyers, prepared to launch an attack on the conduct of the Court of Justiciary in the Porteous trial and the independence of the Scottish judicial system. 264

On 1 April the Lords debated whether to introduce a punitive Bill against Edinburgh. Argyll spoke out strongly against such a Bill and voted against the motion as did Atholl. Crawford, Findlater, Dunmore, Breadalbane, Loudon, Cathcart and Morton voted for the motion, while Ilay withdrew and did not vote. 265 The motion was carried and on 3 April a Disabling Bill was introduced which debarred Provost Wilson from holding office, abolished the City Guard and ordered the dismantling of the Netherbow Port. 266 Argyll was

262 Ilay to Milton 19 Mar 1737 NLS SC 16,569.
263 Ilay to Milton 21 Mar 1737 ibid.
264 See Ilay to Milton 22 Mar 1737 ibid.
265 Morton to Aberlour 2 Apr 1737 Roughead, Porteous, p.261.
266 "An Act to disable Alexander Wilson from taking, holding, or enjoying any office or place of magistracy in the city of Edinburgh, or elsewhere, in Great Britain; and for imprisoning the said Alexander Wilson [for one year], and for abolishing the guard kept up in the said city, commonly called the Town Guard and for taking away the Gates of the Nether Bow Port of the said City and keeping open the same": Roughead, Porteous, pp.121, 255.
vehemently opposed to any punitive measures against Edinburgh, which he saw as an unwarranted attack on Scotland as a whole, and he was particularly enraged when Lord Chancellor Hardwicke and Newcastle supported the opposition's efforts. 267 The debates on the Edinburgh Bill saw the beginnings of what was to be a growing rift between Argyll and the Ministry which eventually led Argyll into the opposition camp and a split in the Argathelian ranks.

On 26 April Carteret moved to have the verdict and sentence against Porteous declared erroneous on the grounds that Porteous was fully justified in his actions. 268 The motion was opposed among others by Argyll and a division was not insisted upon. Tempers increased on 29 April during a debate on whether the three Scots judges should be called to the bar of the House, the table or the Woolsack. The motion that they should stand at the bar was carried by 48-37 269 which was seen as a slight on their dignity and aroused considerable resentment among the Scots. 270 Several days later Milton made a spirited defence in the House of the Court of Justiciary's procedure and verdict in the Porteous case. 271 Nevertheless the Disabling Bill continued its progress through the Lords. The Edinburgh magistrates petitioned against it and Provost Wilson was allowed to be heard. On 11 May Argyll made another powerful speech against the Bill blaming

269 Among those voting against the motion were Argyll, Illy, Newcastle, Atholl, Crawford and Findlater.
270 Roughead, Porteous, pp.122-3.
271 For various drafts of his speech see NLS SPA 17,509.
the "wild dissenting clergy" for stirring up the mob. During the third reading debate Argyll felt constrained to point out that

I am no minister, and never will be one. Time was when I might have been a piece of a minister, but I was too sensible of my own want of capacity to engage in any state affairs; and I thank God I had always too great a value for those few abilities which Nature has given me to employ them in doing any drudgery or any job of what (sic.) kind soever... For his part Ilay attempted, with little success, to point out the dangerous implications of the Bill which was rapidly alienating large sections of Scottish opinion from the Ministry. Despite mounting Scottish hostility, however, the Ministry remained primarily concerned to placate political opinion at Westminster and the Bill finally received a third reading in the Lords by 54-22. Only seven Scots peers were prepared to vote for the Bill. Ilay himself abstained while Argyll broke with the Ministry and voted against.

When the Bill reached the Commons all the Scots members with the exception of General Philip Anstruther refused to follow the government's lead and united to oppose what they regarded as a humiliating and punitive measure, voting against it at second reading. Nevertheless the Bill was carried by 146-99. Opposition to the Bill in Scotland became intense and various petitions were laid against it. Such was the strength of feeling that the government's principal

272 Roughead, Porteous, pp.124-5; Cobbett, Parliamentary History, vol.X, pp.238-47; HMC Polwarth V, p.xv. Ilay also gave credence to the idea that the clergy were behind the Porteous affair: see Ilay to Walpole 16 Oct 1736 Roughead, Porteous, p.107.

273 Roughead, Porteous, p.123.

274 Ibid., p.124.

275 MP Anstruther Easter burghs. He subsequently lost his seat in 1741. In 1751 all Scots members voted against him in a parliamentary enquiry into his conduct as Governor of Minorca. See Sedgwick, House of Commons I, pp.417-8.

276 Roughead, Porteous, p.126; Morton to Aberlour 26 May 1737 ibid, p.264.

277 Ibid., p.127.
law officers in Scotland, Forbes and Areskine, took the lead in opposing the Bill in the House. On 9 June, on the motion to commit the Bill, Forbes, by this time aware that he would succeed Lord President Dalrymple—who had died in February, made a final impassioned speech against the Bill, emphasising the danger of national prejudice and defending the conduct of the Provost and magistrates. Areskine, Erskine (Grange) and Polwarth also spoke against committing the Bill. The English opposition, realising the strength of Scottish feeling and the potential rebellion against the Ministry, now changed their position and also began to attack the Bill in order to embarrass the Ministry. Walpole finally realised that if the Ministry continued to press the Bill in face of almost total Scottish opposition it would not only completely undermine Ilay's position and quickly lead to the collapse of his system for managing Scotland but also threaten the future of his own administration. Therefore although he spoke in favour of the motion to commit the Bill, Walpole gave broad hints that amendments would be made to lessen its punitive effects. In the end the motion was narrowly carried 124-118.

In Committee, with Scots members opposing vehemently every clause,

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278 For Forbes' part see Menary, Forbes, pp.114-121.

279 It is more than probable, Sir, that I shall never trouble you again with my sentiments on this or any other subject, but my conscience would ever afterwards have accused me if I had quitted my seat before I had given my reasons why I think the present Bill should not be committed" Roughead, Porteous, pp.127-8. Dalrymple had died on 1 Feb 1737; see Milton to Newcastle 1 Feb 1737 SRO RH2/4/336 f1-2.


281 Roughead, Porteous, pp.128-9.

282 Ibid., pp.129; Coxe, Walpole, I, p.496.
Walpole finally agreed to amendments deleting the clauses on the imprisonment of the Lord Provost, on the City Guard and on the Netherbow Port, replacing them with a fine of £2,000 on the city to be paid to Porteous's widow.  

Newcastle and Hardwicke reluctantly agreed to accept the amendments but Argyll remained totally opposed to the Bill. Even this modified Bill was almost defeated on the division to report back to the House: the Committee tied 130-130 and only the casting vote of the Chairman saved it.

The Bill passed third reading 128-101 on 13 June, the Commons amendments were accepted by the Lords, and the Bill received royal assent on 21 June, the last day of the session.

Wilson received a hero's reception when he returned to Edinburgh on 28 June. As with the excise bill, Walpole knew when to retreat: had he persisted with the original Bill he would have alienated Scottish opinion at a time when he increasingly required the support of the Scots in both Houses of Parliament.

Meanwhile in a further attempt to placate English opinion the government had introduced in the Lords a Bill "for the more effectually bringing to Justice any Persons concerned in the barbarous Murther of Captain John Porteous, and punishing such as shall knowingly conceal any of the offenders", which was passed with little notice or opposition.

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283 Roughhead, Porteous, p.129. The provision disabling Provost Wilson was retained.

284 Ibid. Areskine and Grange were absent from this vote as they were engaged as counsel in an appeal case before the House of Lords where, it was said, they were purposely detained by the Lord Chancellor, otherwise the Bill would have been defeated.

285 Ibid. pp.129-30 "Act to disable Provost Wilson and fine the City of Edinburgh" 10 Geo II c.34.

286 Ibid., p.130.
The act, which was to be read in every church in Scotland on the first Sunday of every month for one year from August 1737, was resented by many of the clergy in Scotland, not only because it was Erastian but also because the proclamation mentioned "the Lords spiritual here assembled", that is the English bishops. The clergy held meetings in various parts of the country and as 7 August drew near it became increasingly apparent that many would not read the act as required:

The clergy here are like to Mutiny, And it is thought a great many will not give Obedience to the late Act, and those who have no scruple and are inclined to obey begin to be afraid that if those who disobey be too numerous to be taken notice of... those who obey will only expose themselves, so plots are going on to concert a general resistance to the Law.

Such fears were justified and when the act came into effect on Sunday 7 August it was widely ignored in many areas, especially by the "highflyers". Ilay was concerned at this display of disobedience and instructed newly appointed Lord Advocate Charles Areskine to get

An exact account how that matter has passed in the several places, that I may the better know what to say either in publick or private upon that subject.

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287 Ibid.

288 HMC Polwarth V p.xv. For pamphlet attacking the act as Erastian etc. see "Scotch Memorial" SRO RH2/4/341 f1-6. See also Ilay to Walpole 16 Oct 1736 Roughead, Porteous, p.103. See also Areskine to Newcastle 13 Aug 1737 Roughead, Porteous, p.100-1; Areskine to Newcastle 14 Aug 1737 also ibid. p.108-9. For incidents in Berwickshire see Sir James Hall of Dunclus to Marchmont 8 Aug 1737 HMC Polwarth V p.138. For details of Scotland generally and Edinburgh in particular see ibid. p.140-1.

289 Milton to Ilay 12 Jul 1737 NLS SC 16,569. See also Captain Alex Lind to John Lind 14 Jul 1737 SRO RH2/4/336, f89-90.

290 Roughead, Porteous, pp.134-40. See also Areskine to Newcastle 5 Aug 1737 ibid, p.328; Areskine to Newcastle 13 Aug 1737 SRO RH2/4/336, f98-9; Areskine to Newcastle 13 Aug 1737 also ibid. f100-1; Areskine to Newcastle 1 Sep 1737 ibid. f108-9. For incidents in Berwickshire see Sir James Hall of Dunclus to Marchmont 8 Aug 1737 HMC Polwarth V p.138. For details of Scotland generally and Edinburgh in particular see ibid. p.140-1.

291 Ilay to Milton 20 Aug 1737 NLS SC 16,569.
The information Areskine received from the sheriffs was that only about two-thirds had read the Act in any shape; the rest had not read it at all. There was little the Government could do and although Ilay urged that examples should be made, Areskine hesitated to prosecute with so many Sundays left and with so many ministers involved. Nor was the opposition enthusiastic about the whole business and made little attempt to make political capital out of the situation. No-one was ever brought to trial and the protests slowly died away.

The Porteous affair had shaken Ilay's position, opened up a dangerous rift between Argyll and the Ministry, highlighted growing differences in the Ministry itself and as a consequence given new heart to the opposition to Walpole. Ilay had been caught between the acceptance by the Ministry of the need for punitive measures to placate English feeling and the almost total opposition of the Scottish political nation to such measures. He had been forced to abstain on key divisions and his prestige in Scotland was undoubtedly reduced for a time by the clear demonstration of the limitations on his influence on the Ministry. Moreover, although he remained loyal to Walpole, doubts had been cast at Westminster on his ability to control Scotland:

> It is certain (wrote Marchmont) that the management in Scotland was not approved of at court, and that the managers were for some time in danger of being called to account, it being thought that the King's government had been affronted.

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294 For example see Grange to Marchmont 18 Oct 1737 HMC Polwarth V p.144.

Relations between Ilay and Newcastle in particular, never cordial, deteriorated even further:

The Duke of Newcastle comes here today (wrote Ilay) but I hardly think we can ever do business with him sincerely again however I will look on and watch the game as it shall lie.296

In short, as Marchmont informed Stair,

The whole affair had created such a jealousy and misunderstanding [between the Ministry and the Argathelians] as is not easily and entirely removed 297

and after 1737 the Walpole Ministry never recovered its earlier dominance over Scottish affairs.298

The situation was made much worse by the gradual drift of Argyll into the opposition camp. The reasons for this remain obscure. At bottom he despised Walpole as a parvenu upstart; he was 'too much the monarch in the west Highlands to make a good courtier in London,'299 and his alliance with the Ministry had always been uneasy. As we have seen, he was incensed at the Ministry's attitude, and particularly that of Newcastle, over the Porteous affair. Perhaps he believed that he and Ilay had indeed brought Scotland into 'slavery' and dependence on England,300 as the opposition had for so long claimed. More

296 Ilay to Milton 13 Jul 1737 NLS SC 16,569. See also Marchmont Papers, ed. Rose II, p.73.

297 Marchmont to Stair 28 Sep 1737 Marchmont Papers, ed. Rose vol.II, pp. 86-7. See also Carteret to Tweeddale 7 May 1737 "I think this operation has laid such a foundation of disunion between my Ld Islay and some of ye Ministry as will not easily be made up", NLS SYP Box 8 F3.

298 Dickinson, Walpole, p.178.

299 Ferguson, Scotland: 1689 to the Present, p.145.

likely he was beginning to chafe under Walpole's rule, despising "as much to be the Drudge of a Minister, as the Tool of a faction" and was anxious to take a more prominent role befitting his perceived status. Again Walpole was by this time beginning to lose his earlier dominance over the other Ministers and Newcastle in particular was taking a more independent line: perhaps Argyll saw opportunities to manoeuvre himself into a position to strike when Walpole did fall. This would explain, in part at least, Argyll's espousal of the need for a broad-bottom administration designed to attract wide support among the opposition.

More generally, Walpole's confidence had never fully recovered after the events of 1733-4 and by 1737 he was beginning to encounter serious difficulties and growing resistance. The death of Queen Caroline in November, while not seriously weakening his influence with George, did undermine his confidence about being able to dominate his ministerial colleagues at Court. The defection of the Prince of Wales to Leicester House in July provided a new respectable 'patriot' focus for the opposition which had already begun to emerge after their despondency of the previous years. Walpole's arrogant monopoly of power had driven more and more able men into opposition and they were now to stage a marked revival with a more systematic programme of opposition. Most important, Walpole's pacific foreign policy, and


302 "It was clamorous self-assertion quite consistent with all his earlier behaviour" Riley, 'The Structure of Scottish Politics and the Union of 1707', in The Union of 1707: Its Impact on Scotland, ed. Rae, p. 24.

303 Browning, Newcastle, p. 75.
and particularly his decision to keep Britain out of the War of the Polish Succession, had left Britain increasingly isolated in Europe. He came under increasing attack from his own ministerial colleagues, particularly Newcastle and Hardwicke, who with Caroline's death were more prepared to voice their disagreements at Court knowing they had the King's support on foreign policy, from the opposition in Parliament, and from public opinion at large, especially among the merchant community, all of whom argued that Britain would have to fight to protect her commercial and colonial interests from the aggressive policies of France and Spain. Finally, no doubt as a result of all this strain, Walpole was plagued with ill-health after 1737. In short, Walpole was gradually losing his grip on the administration and government policy. 304

All this greatly heartened the opposition. Over the next four years the opposition, with Scots peers playing a prominent supporting role, sought to unite under a broad 'Country' programme and to mount an attack on Walpole each new Parliamentary session, particularly over his policy towards Spain, in an effort to force him out of office. Despite supreme efforts each session, however, the various opposition factions were too divided amongst themselves to shake Walpole's position and the opposition swung between moods of optimism and deep despair. The bulk of the Commons remained 'independent' members who acted as individuals and were not particularly interested in places, and it was difficult to get them to unite against the government. Moreover the various Whig opposition factions had little in common except being out of office and antipathy to Walpole and they were bound together only by expediency. Opposition

304 Dickinson, Walpole, pp. 132-5, 151, 173-4, 177-82.
cooperation thus seldom survived a session and had to be remodelled before the next session. Partly for this reason, all their efforts were to prove insufficient to convince a majority of independent backbenchers that Walpole should be replaced.  

As for the rest, each winter up they run,  
And all are clear that something must be done...  
Till having done whatever was fit or fine,  
Uttered a speech, and asked their friends to dine,  
Each hurries back to his paternal ground,  
Content but for five shillings in the pound.  
Yearly defeated, yearly hopes they give,  
And all agree Sir Robert cannot live.  
Rise, rise great Walpole, fated to appear,  
Spite of thyself, a glorious minister.  

As we have seen, Lord President Dalrymple died on 1 February 1737. Lord of Justiciary Newhall had also died two months earlier. With Milton, Royston and Dun called before the House of Lords, it was necessary to fill the Justiciary vacancy quickly and on Ilay's recommendation Lord Elchies was appointed:  

this will serve to show the Patriots that I do not intend to lay down the cudgels.  

Robert Dundas had applied for the vacant Lord President post but the Ministry had already decided that this should go to Forbes. On grounds of legal experience, however, Dundas had good claim to fill the vacant Session place and Walpole was anxious to have Dundas

305 Dickinson, Walpole, p.151.  
306 Alexander Pope, 'Satire on the Country Party'.  
308 As Milton himself recognised, although he suggested Robert Craigie: see copy Milton to Ilay, Feb or Mar 1737 NLS SC 16,570.
removed from the Parliamentary scene. Ilay therefore wrote a conciliatory letter to Dundas:

Some years ago I was not unwilling that you should have stood first oars (as we say here), which the other [Forbes] does now, so that all that remains is whether you should take the other... The preference [of Forbes], unavoidable at present, will appear manifestly to all the people of Scotland, not to arise from the comparison of persons, but the situation of them, for the time being... I presume to advise you to accept of it. 309

Dundas accepted:

the uncertain state of health I found myself in of a long time which made me both tyred of parliamentary attendance and quite unable further to undergo the fatigue of the bar, and therefore since I found myself obliged to retyre in one way or other I thought this was quite a Decent way to goe. 310

Forbes was made Lord President on 20 June. 311 Charles Areskine, whom Ilay had groomed to be Forbes's successor, became Lord Advocate 312 and William Grant was made Solicitor General. 313

Throughout 1737 the opposition began to gather round the Prince of Wales whose relations with his father were rapidly deteriorating. 314

Finally, shortly after the birth of their daughter on 1 August, George ordered the Prince and Princess out of St. James's. 315 Marchmont,


311 SRO RH2/4/411, 5.

312 20 Jun 1737 SRO RH2/4/411, 8; Bricke, Management and Administration of Scotland, p. 123. He was successfully re-elected for Dumfriesshire: Areskine to Newcastle 5 Aug 1737 SRO RH2/4/336, f96-7.


314 See HMC Polwarth V pp. xv-xvi; Ilay to Milton 20 Aug 1737 NLS SC 16,569.

315 12 Sep 1737: see Memorandum by Marchmont 13 Sep 1737 HMC Polwarth V pp. 139-40.
who again took the lead in organising Scottish opposition to Walpole, wrote a circular letter to Hamilton, Montrose, Tweeddale, Stair and Elphingstone, and to various opposition members, urging them to be up for the next session.\(^{316}\) Grange, later to be appointed Secretary to the Prince,\(^{317}\) was also active and the opposition were further strengthened by the dismissal of William Pitt for his adherence to the Prince. Nevertheless the opposition remained a loose body of separate factions:

> they all have the appearance of being well together, but you know in \[what\] they generally lump together under the denomination of the opposition, tis several subdivisions.\(^{318}\)

Marchmont and Carteret among others, for example, fought clear of becoming too closely involved with the Prince's entourage, particularly as they felt there was too much levity at Leicester House.\(^{319}\)

The death of Queen Caroline in November 1737 weakened Walpole's position at Court and with Newcastle taking an increasingly independent and assertive line, particularly over foreign policy, and the opposition growing in momentum, Ilay and Milton were quick to realise that Walpole would have to rely even more heavily on their support.

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\(^{316}\) Marchmont to Hamilton and the other peers and to John Rutherford (Roxburghshire), John Cockburn (Haddingtonshire), Sir James Hamilton (Lanarkshire), Alex Cunningham (Renfrewshire), John Murray of Philiphaugh (Selkirkshire), William Dalrymple (Wigtownshire), James Erskine (Grange) (Clackmannanshire), Hon Thomas Leslie (Dysart burghs), and one or two others 26 Sep 1737 HMC Polwarth V, p.142. See also Grange to Marchmont 18 Oct 1737 ibid. pp.144-6: "It gave me great joy to read... the good hopes there are of more union and more precision and determinedness in opposing S.R.W. and his corrupt gang".

\(^{317}\) C.1 June 1738. See Prince of Wales to Tweeddale 1 Jun 1738 NLS YP. 7102, 20; Tweeddale to Prince of Wales 12 Jul 1738 NLS YP7075, 1.

\(^{318}\) Lady Archibald Hamilton to Tweeddale 28 Apr 1737 NLS YP Box P2. Also Lady Murray to Marchmont 8 Nov 1737 Marchmont Papers, ed. Rose, vol.II, p.90.

\(^{319}\) HNC Polwarth V pp.xv-xvi; Memorandum by Marchmont 19 Apr 1733 ibid. p.149.
What your Lop writes about Sir Robert is what I guessed would be the case ... these past or present difficulties makes your assistance ye more necessary and consequently facilitate your being in the situation that yr friends wish.

On the other hand, Argyll's drift away from the Government - "who throws his favours in the Enemies bosom without so much as taking a backbend" and the growing gulf between the two brothers was creating some confusion among the Argathelians, many of whom were becoming restless at what they regarded as the lack of jobs and other favours coming their way.

At present most of our friends think themselves ill used and if they do not see a redress begin in some one of ys particulars I am afraid you will not be able to rally them again.

A month later, on being urged by Ilay that "Upon the Queen's death it is the more necessary that the members should attend" Milton expanded on the difficulties:

The present situation of affairs in this Countrey gives me much pain, I am sensible how necessary and usefull it would be to Sr R That our Members should attend well and early this session and yet by any thing I can learn there never was a worse appearance...

The Complaints which I was hopeful would by this time in part been forgot, or at least dropt, on this criticall occasion are repeated with uncommon warmth even by our best Freinds. The Countrey (say they) has been ill used, Lord Ilay no better and his freinds continue to be dispised. And though they are told if if had not been for Sr R, we should have been worse used, this has little Effect; They say, it is the same thing, both to the Countrey and them, whether it proceeded from want of Inclination or Power in those upon whose protection they depended... Some are angry because

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320 Milton to Ilay Nov 1737 NLS SC 16,569. There are various drafts of this letter in the Saltoun Collection, for example compare "What yr Lop writes on ye Queen's] Death is what I judged would be ye case, ye difficulty will make yr Lop assistance ye more nary [necessary] and yrfore still giving you the power of makeing better terms."

321 Milton to Ilay ND NLS SC 16,570.

322 Milton to Ilay Nov 1737 NLS SC 16,570.

323 Ilay to Milton 26 Nov 1737 NLS SC 16,569.
things so often promised and with such assurances, are not performed, while no visible cause for the delay appears. Some that performances have only been made by halves, and others that they are worse used than people of the like rank and no greater merite. In short it is too tedious to trouble you with all their complaints, wch each with respect to their own particular seem in a different class of yr own, and the general conclusion of most people is that so long as you, my Lord Ilay, are ill used and continue to bear it, it cannot be in his power to promise them better treatment... I have on former occasions used all the art I could to get freinds to attend regularly, and was almost run out of Credite with most of them, and though I have still the same zeal for the common Interest yet what happened last year [Ministry's conduct in the Porteous debates] has spoilt any credite yt remained.

Milton also urged that the Ministry make every effort to hold Argyll:

I think the D [Argyll] is [the] best card Sir R has to play, and it would be no difficult matter to make him. If the Duke in Army matters were in favour I think by all appearance [it] would be the best card Sir R has to play and the most conduieve to yr things I wish for...

Yet although the opposition leaders held a meeting in Edinburgh in mid-December, they were unable to take advantage of the situation. On Morton's death, Hyndford was elected in March 1738 to fill the representative peer vacancy without opposition, while at Westminster, despite increased activity against Walpole's policy towards Spain and a secession from the House in March, the opposition, fraught with internal divisions and a lack of organisation, failed.

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324 Copy Milton to Ilay Dec 1737 NLS SC 16,570.
325 Milton to Ilay Nov 1737 NLS SC 16,570.
326 See Milton to Ilay 19 Dec 1737 ibid.; Ilay to Milton 22 Dec 1737 NLS SC 16,569.
327 See Ilay to Milton Jan 1738 NLS SC 16,572; — to Tweeddale 26 Jan 1738 NLS SYP Box 9 Fl; SRO PE 38.
to make any real impact. Carteret was particularly uneasy about the presence of Argyll in the opposition ranks and by the end of the session the opposition were in a despondent mood.

Relations with Spain again dominated the following session with the opposition attacking the Convention of Pardo which attempted to settle the outstanding grievances between Britain and Spain. Petitions were organised from London merchants and from Scotland against the Convention. The government only carried the Convention by narrow majorities in the Lords, where Argyll spoke at length against the Ministry and voted with the opposition, and as a consequence had his various army commands taken away from him on 30 April 1739. The government also managed to carry the Spanish Convention in the Commons. By this stage at least four Argathelian members had followed Argyll into opposition and voted against the Convention. Many of

330 See Memorandum by Marchmont 19 Apr 1738 HMC Polwarth V p.149.

331 For example see Marchmont to Montrose 12 May 1738 Marchmont Papers, ed. Rose vol. II, pp.99-101; Lady Murray of Stanhope to Marchmont 3 Feb 1738 Graham, Stair Annals, II, p.224 - "I think, as I did, that all your consultations will come to nothing, but Sir Robert will outwit you every one ... it is only running your head against a hard wall".


333 See Marchmont to Montrose 23 Feb 1739 HMC Polwarth V pp.161-2; Grange to Tweeddale 29 Mar 1739 NLS YP7044, 121 - "these petitions have raised a flagging spirit in Scotland".


335 See Grange to Tweeddale 1 May 1739 NLS YP7044, 131; Rothes to Tweeddale 1 May 1739 NLS SYP Box 6 F3(4). Marchmont had been working assiduously to cultivate Argyll: for example see Marchmont to Montrose 10 Mar 1739 HMC Polwarth V pp.162-3.


337 Sir Arthur Forbes (Aberdeenshire), Charles Campbell (Argyll), Patrick Campbell (Bute) and William Campbell (Glasgow burghs).
the opposition, led by Pulteney and spurred on by Bolingbroke (who had returned to England in 1738) again seceded from the House in disgust.338 Several of the opposition, however, notably Carteret, Grange and Aberdeen, considered the secession a futile gesture339 and, as Chesterfield himself later admitted

the secession had not the effect that I expected.340

The opposition once again became despondent.341

Throughout the second half of 1739 Marchmont worked hard to keep up the opposition momentum in Scotland342 despite the lack of encouragement or direction from London.343 In July Stair drafted a memorial suggesting that the freeholders at their Michaelmas head courts should send instructions to their members urging them to oppose Walpole the "sole and absolute minister" who had corrupted Parliament, threatened the constitution and ruined the country both at home and abroad.344 Stair emphasised the importance of securing the support

338 See Grange to Tweeddale 29 Mar 1739 NLS YP7044, 121.
339 See Illey to Milton 20 Mar 1739 NLS SC 16,576; Aberdeen to Tweeddale 7 Apr 1739 NLS YP7044, 129; Stair to Grange 10 Apr 1739 Graham, Stair Annals, II, pp.247-8; Grange to Marchmont 17 Jul 1739 Marchmont Papers, ed. Rose vol.II p.115; Grange to Marchmont 6 Sep 1739 ibid. pp.158-61. Marchmont, however, believed that the secession would have a good effect; see Marchmont to George Ker 28 Mar 1739 HMC Polwarth V p.163; Marchmont to Tweeddale 28 Mar 1739 NLS YP7044, 117; Marchmont to Stair 28 Mar 1739 Marchmont Papers, ed. Rose vol.II, p.111.
341 For example see Stair to Grange 10 Apr 1739 ibid. p.247.
342 He corresponded with, among others, Stair, Chesterfield, Grange, Queensberry, Montrose, Pulteney, Carteret, Cobham, Winchelsea and Argyll: see Marchmont Papers ed. Rose vol.II, pp.110-173 passim.
344Part of the object of the Instructions was to enable seceding members to return to the House without loss of face: see Polwarth to Marchmont 17 Aug 1739 Marchmont Papers ed. Rose vol.II pp.142-6; Bolingbroke to Polwarth 22 Jul 1739 ibid. pp.183-91.
of Argyll:

if the Duke of Argyll will heartily join interest with the other patriots, and give his orders accordingly, there is very good reason to believe that, in the nineteen counties which lie on the southside of the Tay, seventeen will give such instructions to their members of Parliament, as can be desired... 345

Argyll, however, while professing an identity of interest, was as yet not prepared to commit himself fully to the opposition and would not support the proposal. 346 Another suggestion considered was that the opposition Scottish peers should petition the House of Lords against the "nomination" of the sixteen representative peers. 347 Carteret (at this time intriguing with Newcastle to get into office), 348 Winchelsea and others in London, however, poured cold water on both proposals, partly because they were still undecided whether or not to return to the House 349 and nothing was done. 350

The Convention of Pardo had resolved nothing and in the face of continuing Spanish intransigence, an increasingly bellicose mood in Britain and a growing breach within the Ministry, Walpole finally

345 See Stair to Chesterfield 26 Jul 1739 enclosing "Memorial for Instructions to the members from Scotland" ibid. pp.115-23. See also Marchmont to Tweeddale 26 Aug 1739 NLS YP7044, 136.

346 See Argyll to Stair 16 Aug 1739 Marchmont Papers, ed. Rose, vol. II, pp.139-40; Cobham to Stair 18 Aug 1739 ibid. pp.147-8. See also Winchelsea to Stair 13 Aug 1739 ibid. pp.129-34 - "I do verily believe the Duke of Argyll is as much and as irreconcileably broke with Sir Robert and even Lord Islay, as it is possible for man to be; nor do I think it in their power or nature to make up the breach. I am very much persuaded, that even in the election, you might depend upon his assistance ... yet I am thoroughly persuaded he would never sign such paper".


bowed to the inevitable in October and grudgingly concurred in the declaration of hostilities against Spain. It quickly became apparent that the Ministry, and Walpole in particular, lacked the capacity and the will to fight a decisive war against Spain and the situation was made even worse in late 1740 when Frederick of Prussia seized Silesia, thus entangling Britain in the War of the Austrian Succession. Nevertheless, by the time Parliament met in November the opposition had gained little ground and remained disorganised and dispirited. Both Stair and Grange hinted that they would retire from active politics if matters did not go more successfully in the forthcoming session. Even Marchmont, whose health was rapidly deteriorating, was becoming pessimistic about the opposition making any impact in the new session. Unless clear progress could be made the opposition would soon begin to lose credibility and support, both inside Parliament and out, would evaporate. Yet in the new session, despite attacks on the misconduct of the war, the introduction of a place bill which was only narrowly defeated and another secession from the House, the opposition again made little headway. On 16 February 1740 Marchmont wrote to Montrose


353 See Marchmont to Grange 20 Sep 1739 HMC Polwarth V p.172; Marchmont to Polwarth 20 Sep 1739 ibid. pp.172-3.

354 Grange to Marchmont 8 Sep 1739 Marchmont Papers, ed. Rose vol.II, pp. 161-6; Grange to Tweeddale 15 Oct 1739 NLS YP7044, 142.
regretting that as usual right measures had not produced the good effects expected as even those who saw what was to be done could not be brought to act with spirit. 355

A fortnight later he was dead. 356

Despite the efforts of Ilay and Milton, Argyll had by now moved firmly into the opposition camp, and as a consequence was dismissed from his remaining posts, Master of the Ordnance and Heritable Master of HM Household in Scotland. 358 Chesterfield enthused that

He [Argyll] both talks and acts well at present, and takes every opportunity that presents itself in the House of Lords to attack Sir Robert personally and without reserve. I think he will go on this way, which, I hope, may be of great use to us at the ensuing elections in your part of the Kingdom; and therefore I would wish (the more to confirm him in these dispositions) that all our friends in Scotland would show him regard, and lay aside his past enmities for the good of the whole. You know his temper well enough to know that he must be soothed and not drove; and I am convinced that, with proper management, he may be brought into all your concerts this summer. 359

After the session was over both sides stepped up their preparations for the elections in Scotland. New commissions of the peace had been issued in 1739 and again in 1740 (and succeeding years), partly at least with a view to minimising the effects of Argyll’s defection. 360 The opposition leaders met in Edinburgh in June:


356 Died Ealing 27 Feb 1740 aged 65. His son Lord Polwarth became 3rd earl of Marchmont but appears to have withdrawn from politics for a time, particularly after the death of his friend William Wyndham in June 1740: see Chesterfield to Marchmont 6 Sep 1740 ibid. pp.237-9.

357 For example see Milton to Ilay Oct 1739 NLS SC 16,578.

358 See Argyle to Newcastle 30 Apr 1740 EM Add MSS 32,693 f.249. He was replaced as Master General of the Ordnance by Montagu while the post of Master of the Household was left unfilled.


we had many of the Chief in the opposition assembled in this place to concert their operations against the next Elections (wrote Areskine); but we shall defend ourselves, with the assistance of our friends with you the best we can.361

The political tension was heightened by a series of bad harvests and a scarcity of corn resulting in very high prices in 1740. Towards the end of the year there were disorders in various parts of the country.362 Ilay himself was in Scotland between July and mid-October and busied himself with patronage matters with a view to the election. He took particular interest in army posts,363 previously dealt with by Argyll, but he met with some difficulties:

The project of the affair you mentioned about Ld Somervil is impracticable, in army matters I can hardly get common things done where rank and service afford the best arguments in that way, but for exoticks however desirable I can do nothing.364

Various sums of money were paid out;365 steps were taken to remove various opponents, including Rothes, from office;366 and a purge was made of the post office in Scotland.367 A new postmaster at Edinburgh was appointed with


364Ilay to Milton 4 Dec 1740 NLS SC 16,580.

365See Ilay to Milton 22 Nov 1740 ibid.


orders to change all officers under him except Mr Borthwick and some of the inferior officers whom he chuses. Pray take Care (wrote Ilay to Milton) that he disposes of the Comptroller so as to make A friend in the Town [Edinburgh] of character and steadiness, and to dispose of the rest prudently and usefully.\textsuperscript{368}

By the end of the year, despite the activities of Argyll in cooperation with the opposition in several constituencies\textsuperscript{369} and the split in the Argathelian ranks, Ilay remained confident about the future.\textsuperscript{370}

The political split between the two brothers had by now become irreconcilable. Argyll violently attacked the King's speech in the Lords in November:\textsuperscript{371}

Things go worse and worse as to my brother lamented Ilay.\textsuperscript{372} Argyll wrote in December to his nephew James Stuart Mackenzie:

\ldots there is without Question great differences of Opinion between your Relations, My Brother, Ilay, wants to make all his friends tools to Walpole because he finds his ends in so doing, your Brother Bute and I would have all Our friends Independent of Walpole and all other Ministers Whatevsoever, My Brother Ilay prefers his places to all other considerations, friendship Honour Relation gratitude and Service to his Country. Seem at present to have no weight with him, your Brother Bute and I think it Our Honour that these considerations should weigh with us... I should let you know that tho your Relations differ in Publick affairs they live in civility with one another.\textsuperscript{373}

\textsuperscript{368} Ilay to Milton 30 Oct 1740 ibid. Also Ilay to Milton 4 Dec 1740 ibid; Ilay to Milton 16 Dec 1740 ibid.

\textsuperscript{369} See below pp.442, 446.


\textsuperscript{372} Ilay to Milton 22 Nov 1740 NLS SC 16,580.

\textsuperscript{373} Argyll to James Stuart Mackenzie 1 Jan 1741 Papers of James Stuart Mackenzie, Bute MSS at Mount Stuart, uncatalogued. I am grateful to Alex Murdoch for bringing this letter to my attention.
The war with Spain had gone badly for Britain in 1740 and the Ministry remained sharply divided over foreign policy with Newcastle pushing for a more aggressive line and constantly quarrelling with an increasingly dispirited Walpole. In February 1741 the opposition mounted a full scale attack at Westminster culminating in a motion to dismiss Walpole. Many of the independent backbench Tories, however, were not prepared to support Carteret and Pulteney in what they regarded as a blatant push for power and as a result the motion in the Commons to dismiss Walpole was defeated on 13 February by 290-106, the largest majority of Walpole's political career, with around fifteen Tories voting with the government while many others abstained. Instead of having the good effect proposed (wrote Chesterfield), and naturally to be expected, it has strengthened him [Walpole] and broke the opposition to pieces ... I have but little hopes, I confess, in the next elections, which, I fear, will by the same means be carried in the same manner as the last; ... The Duke of Argyile, who (to do him justice) has acted with very great vigour and spirit this session in the House of Lords, will go, before it is long, to Scotland, in the resolution of doing all he can in the elections, but at the same time much out of humour both at the late event and at the private views, the general lukewarmness and the weak scruples which have rendered so numerous an opposition so ineffectual.

Ilay, in contrast, was jubilant:

we all long to hear how the total defeat of the patriots last week sounds in Scotland, it has made A great change here.

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374 Browning, Newcastle, pp.100-3.
375 See Ilay to Milton 10 Feb 1741 NLS SC 16,584.
376 Owen, Eighteenth Century, p.168.
379 Ilay to Milton 21 Feb 1741 NLS SC 16,584.
Parliament dissolved on 28 April and both Ilay and Argyll hurried up to Scotland to make final preparations for the elections.\(^{380}\)

The drift of Argyll into the opposition camp caused a unique split in the Argathelian ranks in the run-up to the 1741 general election. Although the management of previous elections had been undertaken by Ilay, with Argyll playing little active part, nevertheless as head of the Campbell clan Argyll was able to exercise considerable personal influence in various constituencies. By the late 1730s Argyll was actively cooperating with the opposition in several constituencies,\(^{381}\) for example in Aberdeen burghs where he, Tweeddale and Aberdeen eventually agreed to put up Alexander Udny against Ilay’s candidate, his secretary John Maule,\(^{382}\) and in Edinburgh where he enjoyed considerable personal prestige.\(^{383}\) In the north Forbes was ready to cooperate with his old patron Argyll rather than with Ilay,\(^{384}\) for example in Inverness-shire, while Lovat, who had previously sided with Ilay in the north, now also supported Argyll’s interest. Bute too had joined with Argyll and both were anxious to bring in James Stuart Mackenzie, Bute’s brother and Argyll’s nephew, for either Perthshire or Forfarshire, although Ilay had

\(^{380}\) See Ilay to Milton 23 Apr 1741 ibid.

\(^{381}\) "... it's no secret that he made as much Interest that way, as his Station would permit, by the Intervention of his Creatures" Remarks upon the Life of John Duke of Argyll in a Letter to Robert Campbell (London, 1749), p.9.

\(^{382}\) See Aberdeen to Tweeddale 27 Sep 1740 NLS SYP Box 12 F2.

\(^{383}\) Ibid: "I am extremely glad to know that my Lord Duke [Argyll] has continued so long in the country, and that his endeavours in the Town of Edinburgh have been attended with so great success, which I hope will prove of great Utility in many respects".

\(^{384}\) See Drummore to Stair 6 Sep 1740 Graham, Stair Annals, II pp.265–6.
advised him against it. Argyll warned Mackenzie, who was in Venice, that

I have reason to fear My Brother Ilays advice to you will be to make your Self a Slave of Walpols. My Advice and your Brother Buts will be to keep your Self an Independent man and that you should scorn any dependence upon any Minister whatsoever... 385

You must judge for your Self as to My Brother Ilays thinking [that] you Could have no chance for Perthshire. 386

In fact Mackenzie did not stand. 387 Unlike 1734, however, there was little attempt by the opposition to coordinate their electoral activity from the centre and success was achieved without the Patriots ever appearing to act as a party to support their friends acting in the different corners of the country... 389

For his part Ilay, aided by Milton, worked hard to secure the return of as many members as possible who would support Walpole's administration and to frustrate the activities of the opposition. 389

As usual money was spent:

I have desired Mr Stewart [the confidante between Ilay and Argyll, who remained with Ilay after Argyll's defection] to ask you [Walpole] for the 500 which I am now laying out and I fear 100 more. 390

385 Argyll to James Stuart Mackenzie 23 Oct 1740 Bute MSS, Mount Stuart, uncatalogued.
386 Argyll to Mackenzie 1 Jan 1741 Bute MSS at Mount Stuart, uncatalogued. I am grateful to Alex Murdoch for bringing these two letters to my attention.
387 He was brought in for Argyllshire at a bye-election in February, 1742, joining Argyll in opposition: Sedgwick, House of Commons II, pp.454-5.
389 For example see Ilay to Milton 23 Apr 1741 NLS SC 16,584.
390 Ilay to Walpole 16 Sep 1740 quoted Sedgwick, House of Commons II, pp.446-7.
There were accusations both during and after the election that Ilay soft-pedalled in his support of government candidates in constituencies where Argyll had a strong interest, with a view to maintaining and strengthening Argathelian interests generally. 391

A disgruntled Sir Robert Munro, who was defeated in Tain burghs by Charles Areskine, later complained to Pelham

> My Lord Ilay could make at best 10 members in room of as Many of our members now decaled Patriots, but it was not consistent with his schenm of agrandizing His family so that a person to depend on the D: of Argyll was more agreeable to the Earle than one absolutely attached to Sr Robt Walpole and the administration, and the opposition given by the Earle to any who was to act in Concert with the Duke was faint without Intention to prevail. 392

There is little evidence, however, to substantiate such accusations, and no reason to suspect Ilay of any intrigue or betrayal. On the contrary, there were direct clashes between opposition candidates backed by Argyll and government candidates backed by Ilay in several constituencies, for example Ayrshire and Aberdeen burghs, and Ilay was fully aware of the need to get government supporters returned to uphold Walpole's administration and his own position in Scotland.

In April he instructed Milton that

> all dissentions amoung Enemies should be encouraged and opportunities watched of puzzling if there is no defeat possible. 393

Various changes were made right up to the last moment with a view to influencing elections in various constituencies. Most notably Ilay had Lovat, whom as we have seen was supporting Argyll in the north,

391 See also Sodwick, House of Commons I, p.46.

392 Sir Robert Munro to Pelham 24 Jun 1741 N.U.L. NEC 178a. See also Munro to Walpole 24 Jun 1741 N.U.L. NEC 178b.

393 Ilay to Milton 10 Apr 1741 NLS SC 16,584.
replaced as sheriff of Inverness-shire by Moray and also Marchmont as sheriff of Berwickshire by the earl of Home. Finally, Walpole himself placed no credence in such accusations and remained convinced to the end that Ilay had been entirely loyal to him.

The Commons election took place in late May, early June 1741. The results in Scotland were a major success for the opposition. After the various election petitions had been decided, approximately 27 of the Scottish members returned were opposed to Walpole's administration, the only time in the eighteenth century that an opposition majority was returned from Scotland. Of these, eleven owed their election at least in part to Argyll's influence and were to become known as 'the Duke of Argyll's gang'. Of the eighteen government supporters returned, nine had been elected on Ilay's influence, while most of the remaining nine were prepared to support any Whig administration. Thus twenty 'Argathelian' members were returned but they were almost evenly divided between Ilay and Argyll, government and opposition.

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394 10 Mar 1741 SRO RH2/4/411, 71. See also Ilay to Milton Jan 1741 NLS SC 16,584.

395 Changes were also made in the Commission of Police: Lewis Grant resigned to stand for Morayshire and was replaced on Ilay's recommendation by Thomas Grant: See Memo for Stone by Areskine SRO RH2/4/337 f226; JC (sic.) to Alex McMillan 28 Apr 1741 ibid. f227-8; warrant 24 Apr 1741 SRO RH2/4/411, 77.

396 Owen, Rise of the Pelhams, pp.7-8 and footnote 2.

397 See Sedgwick, House of Commons, I pp.114 and footnote 4, 159.

398 Analysis from details in Sedgwick, House of Commons

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\[ \text{Total: 27} \]
In Aberdeenshire, Sir Arthur Forbes, who had followed Argyll into opposition in 1739, was returned with the active support of Argyll and Lovat; while in Ayrshire the sitting member, James Campbell, Loudon's son, actively supported by Ilay, was defeated after a fierce contest, by Patrick Crauford supported by Argyll as the anti-Walpole candidate. In Inverness-shire, the Argyll candidate Norman Macleod was returned with the support of Lovat and Forbes. John Campbell, later to succeed as 4th Duke of Argyll, remained with Ilay, however, and was returned unopposed for Dumbartonshire. In the burghs, Ilay's secretary John Maule successfully withstood the opposition of Alex. Udny backed by Argyll, Tweeddale and Aberdeen in Aberdeen burghs, while Lord Advocate Charles Areskine was returned for Tain burghs after a contest with Sir Robert Munro. Argyll candidates, however, won both Edinburgh (Archibald Stewart) and Glasgow burghs (Neil Buchanan). In Anstruther Easter burghs John Stewart, the Argyll candidate, defeated General Philip Anstruther the sitting member backed by Ilay, partly as a result of Anstruther's continuing unpopularity over his support of the Bill against Edinburgh in 1737. James Erskine (Grange) was elected for Stirling burghs; Sir William Gordon, Roxburgh's old

399 Sedgwick, House of Commons I, p.381; ibid. II p.42.
400 Ibid. I, pp.382, 521-2, 592-3.
401 Ibid., I pp.386-7.
402 See Munro to Walpole 24 Jun 1741 N.U.L. NEC 178b; also Ferguson, Electoral Law and Procedure, pp.312-23.
favourite, for Cromartyshire; and Tweeddale's brother Lord Charles Hay for Haddington-shire. There were three double returns, in Berwickshire, Haddington burghs and Linlithgow burghs. All three were eventually decided in favour of the opposition candidate. In Berwickshire, Alexander Hume Campbell, Marchmont's brother, and Sir John Sinclair had both been returned. The double return was treated as a trial of strength between Walpole and the opposition. In the end Walpole was forced to give way and Hume Campbell was declared elected on 19 January 1742.

Despite their activity at the Commons elections, the opposition, perhaps recalling the failure of 1734, did not mount any concerted opposition at the representative peers election. Indeed in the event the opposition peers did not even attend the election on 13 June and the government list was therefore returned unopposed.

Despite the gains of the opposition in Scotland and also in Cornwall, elsewhere the Ministry had more or less held its ground. Government supporters in Scotland therefore remained optimistic that little would change and for the remainder of the year Scottish
business continued to flow as usual through Ilay. Ilay returned to London in September hopeful that Walpole would still have a sufficient majority to withstand 'Patriot' attacks in the new session.\footnote{Our friends are very sanguine that we shall have a Majority of above 40.}

1741, however, had seen a further deterioration in the situation abroad, and this, coupled with the less than satisfactory election results created further discord in the Ministry between Walpole on the one hand and Newcastle and Hardwicke on the other. The opposition too remained divided, not only between its Whig and Tory wings but among the various Whig interests themselves. In particular many Whigs, including Chesterfield and Marchmont, had a deep distrust of Carteret and Pulteney whom they regarded as simply using the opposition as a stepping stone to power. Thus both the Ministry and the opposition were beset by internal feuds and when Parliament met in early December everything remained uncertain.\footnote{Its impossible to know what will happen, the battle will be fairly fought out and whatever the Event shall be, the Publick will suffer most.}

The Commons quickly got down to considering the various election petitions. Although the early ones were decided narrowly in the government's favour, the Ministry's candidate lost the crucial contest for chairmanship of the Committee of Elections and Privileges on 16 December, a blow from which Walpole never fully recovered. The

\footnote{For example see Ilay to Milton 24 Sep 1741, Oct 1741, NLS SC 16,584.}
\footnote{Ilay to Milton 3 Dec 1741 ibid.}
\footnote{Owen, Rise of the Pelhams, pp.9-11, 15-18.}
\footnote{Ilay to Milton 19 Dec 1741 NLS SC 16,584.}
opposition began to scent his downfall, and with him that of Ilay in Scotland:

We have dayly news of great changes and though they differ in some particulars yet those who do not wish well to yr Lop always insult me and say they are certain yr Lop is soon to be out of ye Government; I hope they're prove false prophets. 413

Then on 22 December, just before the Christmas adjournment, the Ministry was defeated by 220 to 216 over the Westminster election petition. Many of the Administration's supporters particularly those in the 'Court and Treasury Party', were beginning to look to their own future and abstaining. 414

When the House reassembled in January, the Ministry quickly suffered another defeat when the Berwickshire double return was decided in favour of Alexander Hume Campbell without a division. The writing was on the wall. Despite a herculean effort in defeating an opposition move to set up a Select Committee to examine all papers on the conduct of the war, the opposition continued to carry most election petitions, and when they carried the Chippenham election petition on 28 January by 236 to 235 Walpole accepted it as decisive and made up his mind to resign, 415 which he did on 3 February. By successively excluding from his administration all those who from time to time had dared to challenge his power, Walpole had gradually created a formidable opposition which included most of the debating talent in both Houses. Furnished with ample material by the manifest misconduct of the war, and aided by the tensions within the Ministry

413 Milton to Ilay Dec 1741 NLS SC 16,585. See also Milton to Ilay 20 Dec 1741 ibid. "We are told here that Sr R is to be demolished very soon..."
415 Ibid. pp.29-33.
itself, the opposition had finally succeeded in winning over sufficient of the independent members to reduce Walpole's majority below the minimum required for stable administration. Once his ability to maintain himself had become doubtful, an ever-increasing number of Administration supporters began to abstain, allowing the opposition to gain the upper hand. 

You will hear from all hands this Post (wrote Ilay to Milton) that the Political Game is over, Sr Roberts Patent is passing as Earl of Orford, the strength of the opposing [sic.] encreased to that degree that without throwing the publick into the utmost confusion, there was no standing it any longer.

For sixteen years Ilay had managed Scotland on Walpole's behalf. During that time he had, by a careful disposal of the patronage made available to him, built up a strong electoral influence in many constituencies and consolidated his control over much of both central and local administration. Although his position had been weakened by the defection of Argyll in the late 1730s, he remained pre-eminent in Scotland. Yet, in the last resort, Ilay depended on Walpole continuing to dominate the King, Cabinet and Commons and the downfall of his 'master' was to have immediate repercussions for Ilay.

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417 Ilay to Milton ND 1742 NLS SC 16,587.
CHAPTER ELEVEN: THE TWEEDDALE INTERLUDE, THE FORTY FIVE AND AFTER

The less share you appear to have in the distribution of offices the less influence you must have in the Country. 1

George had been reluctant to part with Walpole and was determined to keep subsequent changes to a minimum. There was therefore no wholesale restructuring of the Ministry: the Court bought off only as much of the opposition as was necessary to enable it to carry on the administration. Carteret and Pulteney, "the two most notoriously unpopular politicians of the day" 2 were brought in and various posts given to their 'New Whig' supporters. 3 Carteret, who was quickly to gain the confidence of the King particularly in foreign affairs, was made Secretary of State in place of Harrington, Newcastle remaining as the other Secretary of State. Argyll had wanted the Ministry to be placed on a broader bottom with the inclusion of various Tories, including Gower, Bathurst, Wynne and Cobham, but this was unacceptable to the Court and he was eventually persuaded to accept office by his Tory colleagues. 4 He was restored to his former posts as commander in chief of the Army and Master General of the Ordnance 5 but was to resign within a month. 6 Bedford, Chesterfield, Cobham, Gower, Pitt, Marchmont and others all remained in opposition; 7 they

1 Hay to Tweeddale 30 Oct 1744 NLS SYP Box 12 Fl.
2 Owen, Rise of the Pelhams, p. 36. Carteret and Pelham had very few personal followers in the Commons: ibid. p. 77.
3 Ibid. pp. 92-5.
4 For details see Sedgwick, House of Commons, I, pp. 51-3, 71-3.
5 CTHP V 20 Feb 1742 p. 212.
6 See below pp. 465-6.
7 Marchmont Papers, ed. Rose vol. II, p. 266; Owen, Rise of the Pelhams, p. 36; Browning, Newcastle, p. 112. See also Bolingbroke to Marchmont 6 Apr 1742, Marchmont Papers ed. Rose vol. II, pp. 273-9: "... it was plain, that some persons meant, that the opposition should serve as their scaffolding, nothing else".
were too disunited amongst themselves to avoid being skilfully out-
manoeuvred by the Court. The new Ministry was thus purely Whig and
the Cabinet comprised of Newcastle, Pelham and Hardwicke; Carteret
and Pulteney; and Wilmington and Harrington.

The fall of Walpole and the consequent changes in the Ministry
heralded a period of political instability. As Owen has convincingly
shown, in order to form a stable administration it was necessary to
control the two main sources of political power, the King and the
Commons. Walpole, by establishing himself as a link between the
two, had made himself indispensable to both. Between 1742 and
1746 no one person controlled both: Henry Pelham, Newcastle's
younger brother, was steadily building up a dominant position in
the Commons but Carteret, while largely distrusted and unsupported
in the Commons, had the ear of the King. Only with the final
dowfall of Carteret in February 1746 did the Pelhams gain the
ascendancy in the closet as well as the Commons and stable
government begin to return. The political history of these four
years is, therefore, one of a continual contest between two opposing
sets of politicians for the allegiance of the independent members
in the Commons and the support of the King in the closet, which
in turn caused a serious dislocation in government. For much of the
time the battlefield was foreign policy; the role of Britain and
Hanover in the major European conflict. Despite his lack of
Parliamentary support, Carteret won George's favour by his mastery

8 Browning, Newcastle, p.113.

9 Owen, Rise of the Pelhams.

10 Ibid. p.42.
of diplomacy and his pro-Hanoverian policies, and was thus able continually to defy the Pelhams.

The political tensions at Westminster had important implications for Scotland. We have already seen, notably in the years 1714 to 1725, that instability within the Ministry usually led to similar instability in Scotland, and how political rivalries at Westminster were mirrored in Scotland. This is particularly true of the period 1742–6. Moreover, the bitter struggle for supremacy at Westminster, coupled with the concentration on foreign affairs, meant that, even more than usual, Scotland was largely ignored until the arrival of Charles Edward Stuart shook the very foundations of the government itself.

It was several days before the new Ministry got round to considering Scotland and in the interim Ilay met with Carteret in an effort to preserve his position. It soon became clear, however, that Ilay would be ousted: "how soon I may be out I don't know and I believe Ld Tweeddale will succeed me". Finally on 15 February John Hay, fourth Marquis of Tweeddale, was appointed Secretary of State for Scotland during pleasure. Carteret's intention in resurrecting the office of Secretary of State for Scotland was to

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12 See Ilay to Milton 4 Feb 1742 ibid. "in all human appearance the new ministry will do me very well. I am sure they are very civil to me"; Ilay to Milton ND 1742 ibid.

13 Ilay to Milton ND 1742 ibid.

14 See SRO RH2/4/411, 1A 16 Feb 1742; patent 20 Feb 1742 ibid, 1B - "whereas the Publick Business of Our United Kingdom of Great Britain are increasing it seemeth expedient to Us to appoint One other Principal Secretary of State beside Our Two Principal Secretaries of State already nominated and constituted...". He received a salary of £1,850 p.a. on the English Exchequer; CTBP V 13 May 1742 p.174. Tweeddale was also made Keeper of the Signet; 18 Feb 1742 SRO RH2/4/411, 3. He was also given about £3,000 each year secret service money without account presumably for political purposes; see CTBP V p.172 13 May 1742; ibid. p.405 25 May 1743; ibid. p.616 17 May 1744; ibid. p.523 4 Oct 1744 (£2,250); ibid. p.318 3 Jul 1745. At this time he was not a representative peer.
overcome the entrenched position of Ilay and the Argathelians in Scotland and, by erecting a channel of control over him, to give a clear indication where favour was henceforth to lie. Tweeddale had for some time been a close political and personal friend of Carteret and was later to marry his daughter. He had no real political influence in Scotland, however, even compared to the other leading opposition figures such as Marchmont, Montrose and Queensberry, nor was he on particularly close terms with them. He was made Secretary of State on the strength of his connection with Carteret. He was basically incompetent, and his lack of a political power base in Scotland, coupled with the instability within the Ministry, was to be at the root of all the difficulties he faced in trying to control Scotland over the next four years. He had few close supporters whom he could promote to office to replace Argathelians and he received little support from other Scottish opposition peers such as Marchmont and Montrose, most of whom withdrew from politics during his Secretaryship. Tweeddale also received less than total support from Carteret who was usually preoccupied in safeguarding his own position and simply wished to keep Scotland as quiet as possible. Carteret was reluctant to embark on any sweeping changes and although places were filled on Tweeddale's recommendation

15 See Carteret to Tweeddale 7 May 1737 NLS SYP Box 8 F3 "I choose to set Yr Lop at ye head of every thing I appear in, and have told my ld Ilay so.... I have often told ld Ilay yt you woud be ye first man in Scotland, I think You cant fail of it...".

16 In 1748: see Owen, Rise of the Pelhams, p.77 footnote 4; also Hay to Tweeddale 24 Apr 1744 NLS SYP Box 11 F2.

17 His only close supporters in the Commons were Lord Charles Hay, Sir Charles Gilmour and John Murray of Philiphaugh.

18 On lack of support from Marchmont see Hay to Tweeddale 16 Jul 1743 NLS SYP Box 11 F1.
as they became vacant, most Argathelians continued to enjoy their posts undisturbed. 19

During his Secretaryship Tweeddale sought to manage Scotland with the help of a small group of advisers in Edinburgh: Lord Arniston; his son Robert Dundas appointed Solicitor General; Robert Craigie, who replaced Charles Areskine as Lord Advocate; and Thomas Hay, appointed deputy keeper of the signet by Tweeddale in place of Alex McMillan. 20 Of the four, Hay, previously a lawyer with little experience of government, was to be Tweeddale's principal advisor and correspondent in Scotland, in itself a sign of the relative weakness of Tweeddale's position. Hay was instructed to write every post with "any particulars that you may judge necessary for me to know". 21 Tweeddale had an obsession for secrecy which, he constantly reminded Hay, was "absolutely necessary for the right management of business". 22

I will as of myself drop a hint to Mr Craigie that Your Lordship is a great Lover of secrecy and looks upon it as the life of business. 23

Hay was instructed to give Tweeddale early notice.

19 There is also some indication (from some years earlier) that Carteret was not altogether averse to Ilay retaining power in Scotland: "he [Carteret] has lately dropt out yt should he come in at the Head of affairs Ld Ilay should allways be at the head of those in Scotland" Lady Archibald Hamilton to Tweeddale 28 Apr 1737 NLS SYP Box 12. F2.

20 Appointment 3 Mar 1742 SRO RH2/4/411, 7. See also Hay to Tweeddale 25 Feb 1742 NLS XP7045, 20; Tweeddale to Hay 27 Feb 1742 NLS XP7075, 4 - "whoever I pick upon to be Keeper of the Signet under me must be a person not only of Integrity but also of Judgement and Address, in whom I can confide, since he will be my ordinary Correspondent for the publick Business in Scotland...". His enemies accused Hay of having Jacobite connections: for example see entry in "Character of officials and other leading persons in Scotland" c.1746 N.U.L. NEG 2222.

21 Tweeddale to Hay 27 Feb 1742 NLS XP7075, 4.

22 Tweeddale to Hay 3 Mar 1742 ibid. 6.

23 Hay to Tweeddale 9 Mar 1742 NLS XP7045, 70. See also Hay to Tweeddale 30 Mar 1742 ibid. 132.
when offices fall [vacant], and to suggest who are the proper persons to succeed.24

Over the next four years Hay, working prodigiously from 6 a.m. to 10 p.m. most days,25 was to be the most assiduous and diligent correspondent. Rarely a post passed but he did not spend four to six hours26 writing a lengthy letter to Tweeddale, often of eight or twelve pages, full of a mass of information covering vacant revenue, legal, church and other posts, local politics, electoral matters and indeed almost every aspect of Scottish public life.27

The private correspondence your Lordship desires me to carry on with your self is no necessary appendant of that office [signet] tho my being in it makes this the more easy and natural ... I will write to you about everything occurs to me and tho nine tenths should be good for nothing yet if the remainder be useful it will give me satisfaction...28

Hay set about trying to build up a network of correspondents throughout Scotland in order to get early warning of expected vacancies among revenue officers, clerks of the peace, sheriff clerks, commis-

saries and others.29 Here again, however, Tweeddale's lack of

24Tweeddale to Hay 6 Mar 1742 NLS YP7075, 9. See also Hay to Tweeddale 25 Feb 1742 NLS YP7045, 20 - "As I think it of use to your Lordship to know everybody's sentiments about men and things I will always write what I hear that your Lordship may make your own use of the hints I get"; Hay to Tweeddale 2 Mar 1742 ibid., 49; Hay to Tweeddale 18 Apr 1742 NLS YP7047, 64 "I will not fail to give your Lordship all the information I can of vacancies of all sorts whoever has the disposal of the offices".

25See Hay to Tweeddale 23 Jul 1743 NLS SYP Box 11 Fl.

26See Hay to Tweeddale 7 May 1743 NLS YP7055, 19.

27See NLS YP and SYP generally.

28Hay to Tweeddale 2 Mar 1742 NLS YP7045, 4. It was arranged that Hay's correspondence with Tweeddale be carried by the ministerial black box: see Hay to Tweeddale 9 Mar 1742 ibid., 70. Tweeddale appointed Andrew Mitchell as his London secretary: see Tweeddale to Sir John Ryles PMG 18 Feb 1742 SRO RH2/4/599, 1.

29See Hay to Tweeddale 22 May 1742 NLS YP7047, 74; Hay to Tweeddale 21 Oct 1742 NLS YP7050, 139; Hay to Tweeddale 25 Oct 1742 ibid., 148.
widespread support made Hay's task difficult. While Milton had
over the years built up an extensive correspondence network and could
also rely for information on the various Argathelian members and
supporters throughout the administration, both locally and centrally,
Hay had to start from scratch and was forced to rely upon men of
lesser standing. He also was hampered by Tweeddale's obsession for
secrecy:

as for obtaining Information about things
or characters of persons I may have occasion
to write to you of where I am not fully
Acquainted myself I will rely chiefly upon
Baillie Arbuthnot, Sr John Inglis Mr Robert
Pringle Advocate my brother John and such
others as I can absolutely trust to here but
I don't mean that I am to communicate to them
or any other one iota of what your Lordship
writes privately to me.30

Of these, Arbuthnot was made a customs commissioner and confined
himself mainly to customs recommendations;31 Inglis was appointed
postmaster general for Scotland and spent most of his time trying
to improve the Scottish postal system;32 and neither Pringle nor
John Hay, who was appointed a deputy under his brother in the signet
office,33 took much active part in affairs. In short the attempted
correspondence network never got off the ground and had more or less
collapsed by 1744.34

The other three advisers formed an unhappy group, torn by mutual
distrust and jealousy. Unfortunately for Tweeddale, Arniston suffered

30 Hay to Tweeddale 2 Mar 1742 NLS YP7045, 49.
31 See below pp.470-2.
32 See Inglis to Tweeddale 16 May 1742 NLS YP7047, 48; Hay to Tweeddale
17 Jun 1742 ibid., 140.
33 See Hay to Tweeddale 25 Feb 1742 NLS YP7045, 20; Hay to Tweeddale 13
Mar 1742 ibid., 86.
34 See Hay to Tweeddale 6 Aug 1743 NLS SYP Box 11 Fl.
constant ill-health throughout the period and played only an intermittent part in public affairs. Possessed of a brilliant mind, but extremely hot-tempered, he was motivated primarily by a hatred of the Argathelians carried over from the long years of Squadrone-Argathelian rivalry and he grew increasingly angry, frustrated and disillusioned at Tweeddale's lack of ability to purge the courts and revenue services of Argathelian supporters. He also became increasingly irritated at Tweeddale's disinterest at his plans to reform the law courts in Scotland. Finally he had married a young wife, had a large family and was not particularly wealthy. He was therefore anxious to obtain a prestigious office, both as a sign of his importance in the new régime and to relieve his financial difficulties. Tweeddale's failure to obtain such an office for him increased the tension between them. Thus, as Hay pointed out, while Arniston's abilities made him a useful and necessary ally, his passions made him difficult to work with, and rather than spearheading Tweeddale's interest in Scotland, he became an increasingly disruptive force.

Robert Craigie was a well-respected and learned lawyer but had little practical experience of politics or public affairs. He owed his rise largely to the earlier support of Arniston, a fact which Arniston did not allow him to forget. Craigie was a man of self-importance, long-winded, argumentative, petty and greedy, and liked to

35 Hay to Tweeddale 10 Nov 1744 NLS SYP Box 12 Fl.
36 Hay to Tweeddale 27 Feb 1742 NLS YP7045, 36.
37 See Hay to Tweeddale 9 Mar 1742 NLS YP7045, 70; Hay to Tweeddale 17 Apr 1742 NLS YP7045, 72.
portray himself as Tweeddale’s principal adviser in Scotland which infuriated Arniston. Relations between the two men grew steadily worse. Hay was later to complain to Tweeddale that Craigie could not be fully trusted and was particularly bad at keeping secrets:

he is an exquisitely bad politician in so far that he does not so much as conduct himself with reserve and prudence. 38

The third member of this group was Arniston’s son Robert Dundas, to be appointed Solicitor General later in the year. Dundas normally sided with his father and as a result the government’s two principal law officers in Scotland were frequently in dispute. Indeed despite constant pleas from Tweeddale in London, Arniston, Craigie and Dundas constantly quarrelled amongst themselves to the detriment of Tweeddale’s interest.

All this was not helped by the fact that Tweeddale came to Scotland only once, in 1742, during his time in office. Moreover, because of his obsession for secrecy, he rarely took his advisers in Scotland fully into his confidence, and told each only what he thought they had to know. They were thus often unaware of why certain appointments had been made or, for example, of Tweeddale’s intentions when a bye-election occurred. Writing to Lord Aberdeen in August 1744 about the Aberdeenshire bye-election, Tweeddale candidly admitted

It is no great matter but I don't trust him [Hay] in such secrets not that I doubt of his sincerity, secrecy and inclinations but I am not sure of his discretion and judgement. He is but a young politician and I am sure has not dignity character or authority sufficient to answer the end which indeed is the case of all employed by me and therefore they know only such of my views as it is absolutely necessary they should know and I keep my mind to myself till the thing is executed. I know this in one view is prejudicial to my interest but in another it is of advantage considering the present situation here. 39

38 Hay to Tweeddale 22 Jul 1742 NLS YP7048, 78. See also Hay to Tweeddale 15 July 1742 ibid., 39; Hay to Tweeddale 27 Jul 1742 ibid., 95.

39 Tweeddale to Aberdeen 2 August 1744 NLS YP7075, 108.
This attitude was in sharp contrast with the trust Ilay placed in Milton.

On taking office, Tweeddale was faced with the absence of any clear administrative channels or institutions through which to work. He was therefore anxious that Lord President Forbes and particularly Arniston came to London "to Assist by Your advice, in settling what may be thought Proper to be Proposed with Respect to this Part of the Island [Scotland]". 40

It appears necessary (he wrote to Forbes) some general plan or scheme for the Government of Scotland should be immediately concerted 41 and to Arniston

I have the satisfaction to be engaged with those in the Administration with whom I have long lived in friendship and connection, whose principals and views are the same with yours and mine. As to our particular part, in so far as concerns the future government of Scotland, a great deal depends upon the first steps taken by which the outlines are shaped. I am diffident of my own opinion, dare not venture to proceed till once I know your opinion, both as to persons and to measures... tho' from the present situation of things, everything that could be wished cannot be at once effectuated, yet I dare venture to say more will be than you probably imagine... it is vain for me to have right and good intentions unless I can find persons in whom I can confide, proper to be employed in the service. Those may not indeed be very easy to be found. 42

Both, however, declined to make the journey on the grounds of ill-health 43 which left Tweeddale in some difficulty:

I have hardly any person here who knows anything of the affairs of Scotland in whom I can confide to advise with. 44

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40 Tweeddale to Arniston 23 Feb 1742 Omond Arniston Memoirs, pp.96-7; Tweeddale to Forbes 23 Feb 1742 CP pp.175-6.  
41 Tweeddale to Forbes 23 Feb 1742 CP pp.175-6.  
42 Tweeddale to Arniston 23 Feb 1742 Omond Arniston Memoirs, pp.96-7.  
43 Forbes to Tweeddale 2 Mar 1742 NLS YP7045, 45; Hay to Tweeddale 9 Mar 1742 ibid., 70; Hay to Tweeddale 11 Mar 1742 ibid., 83.  
44 Tweeddale to Arniston 27 Feb 1742 NLS YP7075, 2.
For his part Ilay was anxious to be seen as a loyal servant of the Crown and to be cooperating with the new Ministry in serving the King's interest. He therefore advised Milton to write to Tweeddale congratulating him on his appointment and offering to do all he could to serve him: this Milton did. Ilay also took steps to cultivate Carteret's friendship:

Milton continued to correspond with Ilay but was careful to be seen only to undertake the official duties of his office and not to interfere at this time in political matters. Hay told Tweeddale that he would not approach or consult with Milton without Tweeddale's express orders.

Tweeddale and Hay soon began to receive a steady stream of requests for places and other favours but it quickly became clear that there was to be no immediate purge of offices in Scotland. Indeed it was only after the House of Commons had on 1 March declared Charles Areskine's return at the Tain burghs election void that he was replaced as Lord Advocate on 4 March by Robert Craigie.

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45 Ilay to Milton 18 Feb'1742 NLS SC 16,587.

46 Milton to Tweeddale 23 Feb 1742 NLS YP7045, 14.


48 Hay to Tweeddale 27 Feb 1742 NLS YP7045, 36.

on Tweeddale's recommendations, and although consideration was
given to making Robert Dundas joint solicitor with William Grant,
the holder of the office, this came to nothing and Grant remained
in post. In fact Tweeddale was at this stage too preoccupied with
the continuing struggle at Westminster to concern himself unduly
about the disposal of jobs in Scotland. Nor was he anxious to face
the upheaval involved in turning out of office people who were per-
forming their tasks reasonably efficiently for purely political
reasons, particularly when he had few close supporters suitably
qualified to replace them:

I am sensible (wrote Hay somewhat virtuously)
you'll be constantly teased not only to supply
vacancies with improper persons but likewise to
make removes unseasonably or without considering
the public advantage and I confess I think that
those who are employed in offices which
require skill and faithfulness in the discharge
of them have a sort of Title in Justice to be
continued till they commit some fault and that
their place can be better supplied. With Sine
Cures or what places are almost so I take care
to be different. In General I find most
people think your Lordships chief business
ought to be the providing your friends or

50 4 Mar 1742 SRO RH2/4/411, 8. See Tweeddale to Hay 3 Mar 1742 NLS YP
7075, 6; Tweeddale to Milton 4 Mar 1742 ibid., 8; Hay to Tweeddale 9 Mar
1742 NLS YP7045, 70; Craigie to Tweeddale 9 Mar 1742 ibid., 76. Craigie
subsequently stood for Tain burghs with government support against Sir Robert
Munro. According to Hay the election was badly conducted, Craigie was com-
placent of success, did not bother to go up north and was "too mean to employ
some person in every town to entertain the councillors and chief inhabitants":
Hay to Tweeddale 17 Apr 1742 NLS YP7046, 72. See also Craigie to Tweeddale
9 Mar 1742 NLS YP7045, 76; Craigie to Tweeddale 30 Mar 1742 ibid., 136; Craigie
to Tweeddale 6 Apr 1742 NLS YP7046, 17; Fortrose to Delvine 3 Mar 1742
Delvine Papers NLS 1357 f21; Fortrose to Delvine 6 Mar 1742 ibid. f22 "... tell
him [Craigie] he must give three, or four Hundred Pd. to the Town of Dingvall
to make his Election quite sure considering Sir Robert [Munro] Is content to
give two Thousand. Insist hard wt Craigie what Is It to one who gets 1500
a year"; Delvine to Craigie 2 Apr 1742 Cmond, Lord Advocates, II, p.9.
Ferguson, Electoral Law and Reform, p.324. In the end Craigie won but only
by a narrow margin.

51 See Hay to Tweeddale 9 Mar 1742 NLS YP7045, 70.

52 See Hay to Tweeddale 30 Apr 1742 NLS YP7046, 115: "I believe you are not
at leisure to give attention at present to the Disposal of petty offices here..."
those whom they recommend with beneficial Offices which tho not altogether to be neglected yet is to be done with a view to His Majestys better service and the public Good.53

Nevertheless the clamour for places and wholesale changes steadily grew:

people have got it into their heads that no man that served under the former administra-
tion ought to be continued in office an hour and that the doing so is an indication that the Ministry is the same.54

The number of posts available was, as we have seen, very limited:

the favours you can bestow are few in Comparison of the numbers of those who will imagine that they are entitled to have favours done them...55

Supporters of the new Ministry in Scotland began to become impatient and Hay thought it proper at this time to assure all your friends who spoke to me that I had good Authority to say that if men would have a little patience and temper they would in a short time see A turn in Affairs for the advantage of the country beyond expectation.56

Despite such assurances, however, Tweeddale could do little without Carteret but the latter was primarily concerned to secure his position within the Ministry and was not anxious to rock the boat in Scotland:

Lord Carteret seems resolved to procure as much smooth water as possible which makes him so moderate in many things.57

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53 Hay to Tweeddale 20 Apr 1742 NLS YP7046, 87. See also Hay to Tweeddale 2 Mar 1742 NLS YP7045, 49; Hay to Tweeddale 1 Apr 1742 NLS YP7046, 5; Hay to Tweeddale 3 Apr 1742 ibid., 9; Hay to Tweeddale 1 May 1742 NLS YP7047, 3; Hay to Tweeddale 1 Sep 1743 SYP Box 11 Fl for similar sentiments.

54 Hay to Tweeddale 3 Apr 1742 NLS YP7046, 9.

55 Hay to Tweeddale 4 May 1742 NLS YP7047, 7.

56 Hay to Tweeddale 18 Mar 1742 NLS YP7045, 98.

57 Hay to Milton 24 Jul 1742 NLS SC 16,587.
Moreover the Ministry was anxious to retain the support of as many Scots members as possible and did not wish to risk alienating them by turning their friends out of office:

I know (wrote Tweeddale to Arniston) it is His Majesty's intention to make a great alteration in the persons employed in Scotland as the particular circumstances of this will allow. We are in the beginning of Parliament. This is a Whig administration. Dissolution of the Parliament would ruin the Whig interest, since it is certain a new Parliament would be Tory. So there is no thought of that... and must have great influence in determining how far it is proper to go. 58

In fact Tweeddale's continuing inability to make changes and dismantle the influence which Ilay had built up within the administration in Scotland was not only to alienate many potential supporters but to play into Argathelian hands by convincing people that, despite the changes at the top, control of Scotland still effectively rested with Ilay. Ilay, wrote George Drummond...

... keeps still all he had and makes his Court well. 59

The general belief that Walpole was still pulling the strings from behind the scenes also made many people reluctant to desert their old allegiances until the position had become much clearer:

as long as people have notions that the new Ministry is not well fixed they are less apt to engage in their interest... 60

Marchmont felt that Tweeddale was too much Carteret's man while the

58 Tweeddale to Arniston ND 1742 quoted Omond, Arniston Memoirs, p.98.
59 Drummond to Clerk 25 Mar 1742 SRO GD 18/3228.
60 Hay to Tweeddale 1 Jul 1742 NLS YP7048, 1.
61 See Hay to Tweeddale 30 Mar 1742 NLS YP7045, 132.
Dalrymples pursued an independent course and indeed in local politics, much to Arniston's annoyance, "continued to oppose all our friends". For his part Ilay kept a relatively low profile and busied himself in estate improvements.

Following Hopetoun's death in March, Tweeddale was put up for the vacant representative peer place. His handling of the election was amateurish compared to Ilay before him and he relied principally on Aberdeen and Hay to organise the election for him. Ilay was too prudent to undertake any sort of opposition and Tweeddale was duly elected on 30 April.

Meanwhile at Westminster the tensions within the Ministry continued. Argyll had expected that Tweeddale would simply be a cipher and that he would have the running of Scotland. When Carteret and Pulteney made it clear that this was not to be the case he was incensed and, failing to persuade the Ministry to take in more Tories, and in particular to get Sir John Hinde Cotton appointed to the new Admiralty Board, he resigned on 10 March and put himself at the

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62 Arniston to Tweeddale 1 Apr 1742 NLS YP7046, 3. See also Arniston to Tweeddale 3 May 1742 NLS YP7047, 5; Hay to Tweeddale 8 Jan 1743 NLS YP7053, 41 - the Dalrymples "take all opportunitys of flying in your face. I confess I allwayn thought them your inveterate enemy".

63 See Tweeddale to Attorney General 6 Mar 1742 SRO RH2/4/399, 2.

64 See Hay to Tweeddale 1 Apr 1742 NLS YP7046, 5; Hopetoun to Tweeddale 3 Apr 1742 ibid. 11; Aberdeen to Tweeddale 5 Apr 1742 ibid. 13; Leven to Tweeddale 5 Apr 1742 ibid. 15; Hay to Tweeddale 27 Apr 1742 ibid. 100; Aberdeen to Tweeddale 30 Apr 1742 ibid. 126.

65 "I sent my Proxy to Lt Tweeddale last week. Some of the fools, viz Erroll and Kilmarnock writ to me for Advice. I can say nothing to any body but that I am supporting the King's servants and I advise every body to do the same" Ilay to Milton March 1742 NLS SC 16, 587.

66 See Hay to Tweeddale 30 Apr 1742 NLS YP7046, 121; Leven to Tweeddale 30 Apr 1742 ibid. 123; SRO PE41.
head of the Tory opposition: 67

... they would not allow him to dispose of everything according to that Plan which he had prescribed himself ... and because he would not be allowed to conduct the ship wholly to his own skill, and a crew of his own choosing, he left her to herself to sink, or swim, as she pleased. 68

It was also suspected that he was intriguing with the Jacobites. 69

His conduct thereafter bore the signs of mental collapse, perhaps the result of despair at his own miscalculations: 70

I saw D Argyle yesterday, I think he seems despairing and it is no wonder. 71

In the remaining months before his death in 1743 Argyll's health deteriorated rapidly and his political influence diminished with amazing speed. 72

Suspicion that the new Ministry was little different from the last increased when opposition attempts to repeal the Septennial Act were defeated and their efforts to mount an enquiry into Walpole's administration neutralised. 73

There was growing disillusionment in Scotland:

the cry and clamour is strong against all Courtiers, as screening Sr Ro, carrying on the government by the same dirtyed hands;

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67 Owen, Rise of the Pelhams, p.10; Sedgwick, House of Commons I, pp.52-3, 71-2; Omond, Arniston Memoirs, p.97; Tweeddale to - 16 Mar 1742 Omond, Arniston Memoirs, p.98; Drummond to Clerk 11 Mar 1742 SRO GD 18/3228 "The reasons given are, that they do not enlarge the bottom and take in severall Tories which his Grace had agreed should be employ'd and that they treat his Grace as ill as Sir R.W. used to do, by not concerting measures and filling up whole Commissions viz: the Admiralty without his Graces approbation into which his Grace designed to have had Sir John Cotton"; Drummond to Clerk 25 Mar 1742 ibid. Stair was appointed Commander in Chief and Montagu Master of the Ordnance.


71 Ilay to Milton 3 Apr 1742 NLS SC 16,587.

72 Owen, Rise of the Pelhams, pp.110-2.

73 Ibid., pp.101-10.
refusing all wished for bills etc...
I can not help believing Sr R hath
still the ear.\textsuperscript{74}

There was a further redistribution of places once Parliament prorogued:
Cobham, Gower and Bathurst were brought in, the last two in an
effort to gain some Tory support.\textsuperscript{75} Pulteney retired to the Lords as
earl of Bath, his political influence at an end. The struggle now
clearly lay between Carteret, who ruled the Closet, and Pelham with
his superior strength in the Commons. Until May 1743, when Carteret
went abroad with the King, the Ministry was to remain reasonably
stable: foreign affairs were improving and the opposition remained
disorganised.\textsuperscript{76} It was during this period that Tweeddale's Secretary-
ship functioned most smoothly. Ilay felt it prudent to remain in
London:

I would fain take A trip to the Whim
[estate in Peebles] for A fortnight
but I feel I shall be forced to watch
the waters closely here this summer.\textsuperscript{77}

Carteret, however, was not anxious to create unnecessary changes,
a policy which Ilay found particularly welcome:

I have been several times lately with the
King and I think that things stand well ...
Ld Carteret is very civil to me, he says
that he will do everything that he can to
make A calm and avoid everything that may
disturb it, he has promised to protect my
brothers friends that are in offices, which
I hope will save Vaughan, Colin Campbell
and Th Cochran [revenue commissioners].
The Marquis is civil to me but his manner
is so dry and so obscure that little is
to be gathered from it.\textsuperscript{78}

\textsuperscript{74}Arniston to Tweeddale 3 May 1742 NLS YP7047, 5.

\textsuperscript{75}Owen, \textit{Rise of the Pelhams}, pp.115-7; Carteret to Stair 8 Jun 1742

\textsuperscript{76}Owen, \textit{Rise of the Pelhams}, pp.120-1, 127.

\textsuperscript{77}Ilay to Milton 21 Jul 1742 NLS SC 16,587.

\textsuperscript{78}Ilay to Milton 21 Jul 1742 \textit{ibid.}
As a consequence the position of the Argathelians in Scotland remained relatively undisturbed. Both Arniston and Dundas were ill during the summer and took little active part in affairs. Hay, Craigie, Inglis and Arbuthnot gave some consideration as to whether an attempt should be made to challenge the Argathelian interest in Edinburgh at the Michaelmas elections:

... it is very worthwhile to gain this City if possible as it has great influence over the rest of the Burrows... 79

Argyll's influence in Edinburgh remained strong, however, and it was clear that unless further changes were made to demonstrate Tweeddale's influence, there was little chance of success. 80 Tweeddale did not want any 'noise' created 81 and no attempt was made.

Tweeddale's close advisers in Scotland became increasingly restless. Arbuthnot urged that various Argathelian commissioners be removed from the revenue boards to reduce Argathelian influence on the appointment of revenue officers. 82 Inglis suggested that receiver general Allan Whitefoord, 'a tool of the old ministry', should be dismissed. 83 Craigie, irritated at the difficulties in working with Solicitor General Grant, formally recommended his dismissal and replacement by Dundas. 84 Arniston too remained discontented:

79 Hay to Tweeddale 1 Jul 1742 NLS YP7048, 1.
80 Inglis to Tweeddale 3 Jul 1742 NLS YP7048, 7; Hay to Tweeddale 6 Jul 1742 ibid. 22; Hay to Tweeddale 22 Jul 1742 ibid. 78; Hay to Tweeddale 24 Jul 1742 ibid. 84.
81 Hay to Tweeddale 9 Aug 1742 NLS YP7049, 18; Hay to Tweeddale 24 Aug 1742 ibid. 81; Tweeddale to Craigie 26 Aug 1742 NLS YP7075, 27.
82 See Inglis to Tweeddale 17 Jul 1742 NLS YP7048, 44; Craigie to Tweeddale 17 Jul 1742 ibid. 43; Craigie to Tweeddale 29 Jul 1742 ibid. 106.
83 Inglis to Tweeddale 22 Jul 1742 ibid. 63.
84 Craigie to Tweeddale 29 Jul 1742 ibid. 107. See also Craigie to Arniston 20 Jul 1742 SRO RH4/15/2 vol.II, 131.
I find him [Arniston] a good deal sourd with your present situation. I mean your connexions with E Ordord and L Islays people in this country such of them as are in Parliament and their Dependents which he thinks very unlucky. And it is very dis-agreeable to him who has so long been engaged in so keen an opposition to them. However, he is to goe on with us tho somewhat surily.

For his part, Hay bemoaned the difficulties of working with Craigie and trying to keep Arniston content. The continuing rumours of the Ministry breaking up through internal divisions and of Walpole's return to power all raise the spirit of the severall Partizans of the two Brothers and weaken the interest and influence of the new administration.

All agreed that it was essential that changes be made if Tweeddale was to establish any interest in Scotland:

Those who have their own needs in view who I fear make a great part of the body of our Northern Politicians as long as they are doubtfull of your powers will hardly be persuaded to forward your interests or desert their old friends whereas if you get promotions now and then to those of Your party this of consequence draws a number of more expectants to join Your interests. The Hopes of preferment with which people are apt to amuse themselves in spite of frequent dissappointments or the fear of losing what they are possessed of has I believe the strongest influence in the gaining and keeping up a party.

Rothes wrote to Tweeddale in similar vein:

It is not to be thought of that every body even the tools formerly made use of should be immediately stript to make Room for a new sett. That would unite them too much in their opposition and make it troublesome. But at the same time I cannot think it prudent to keep these people in offices of Great trust such as these where the Revenue is concerned because of the Influence they will allwise have in the Choise.

85 Craigie to Tweeddale 5 Aug 1742 NLS YP7049, 6.
86 Hay to Tweeddale 5 Aug 1742 ibid. 8.
87 Hay to Tweeddale 9 Aug 1742 ibid. 18.
88 Ibid.
of members of parliament for it is there they can do most harm... Isla is an instance... By having thereby got the upperhand of some of your Lordships friends and mine who were indolent in these matters while they had the power in their hands and at this very time he feels the Effect by still retaining a very Great Interest in our Country not out of Love to him but the hopes of the continuance of these advantages they will enjoy if ever he can get the power again. 89

Under such pressure Tweeddale at last secured the dismissal of Grant and the appointment of Robert Dundas as solicitor general on 11 August 1742. 90 A few weeks later a separate Scottish customs board of five commissioners was established. 91 Westby, Hotham, John Campbell and Gwyn Vaughan, the last two being Argathelian supporters, were dropped from the old commission and replaced by James Cardonnel and Alexander Arbuthnot. Arbuthnot, one of Tweeddale’s close supporters, was appointed with a view to “having the chief direction of that board” and forwarding the recommendations of those favoured by Tweeddale. 92 At the same time Alex Udney, nephew of Aberdeen, was appointed to the excise board on Tweeddale’s recommendation to fill the place vacated by the death of Gilbert Burnet the previous year. 93

Ilay, however, was not unduly concerned about the changes:

You will be surprised to hear of Vaughan’s being left out, but I believe it will be the better for him considering the reduction of the salary for I have it from good hands that A great person has said he would take care of Vaughan. The Marquis of Tweeddale nor Lt Carteret had any hand in leaving

89 Rothes to Tweeddale (from Ghent) 19 Aug 1742 ibid. 63.

90 11 Aug 1742 SRO RH2/4/411, 52. See also Tweeddale to Dundas 12 Aug 1742 SRO RH2/4/399, 18; Tweeddale to Craigie 14 Aug 1742 NLS YP7075, 21; Dundas to Tweeddale 19 Aug 1742 NLS STP Box 13 Fl; Craigie to Tweeddale 17 Aug 1742 NLS YP7049, 48; Hay to Tweeddale 17 Aug 1742 ibid. 51.

91 See above pp. 21-2.

92 See Hay to Tweeddale 31 Aug 1742 NLS YP7049, 122; Arbuthnot to Tweeddale 31 Aug 1742 ibid. 120.

93 See above p. 88; Udney to Tweeddale 30 Aug 1742 NLS YP7049, 110.
him but of the reformed Commission. On the contrary the Marquis protected Colin Campbell [customs board] and Tom Cockran [excise board] upon the D of Argiles recommendation and that in a very frank and Polite manner; Vaughan stood upon the same footing but Ld Wilmington had a friend [Cardonnel] to send down, and he did it without consulting anybody that I know of. 94

Indeed despite the changes at least two commissioners on each board were Argathelians: George Ross and Colin Campbell on the customs board, and George Drummond and Thomas Cochrane on the excise board; and most of the others favoured Ilay's interest. 95

Arniston in particular was bitterly disappointed that more changes had not been made:

He thinks D Argyle and Lord Ilay are cutting your throat. That Argyle has a Dispensation from his party the torys and that the two brothers are in a better way together than ever and that the Duke came in in part to be able to support his brother. 96

What Lord Arniston seemed most to dislike was that you could not well be said to have above one Commissioner of either board attached to your interest and that consequently everything would go heavily on and places dependent on the boards might be given to the friends of the D of Argyle and the E of Ilay who had the majority in both boards the consequence of which as to your interest and influence in the country was visible and that there was no remedy but a troublesome applying to the treasury on all occasions. 97

Nevertheless, with Arbuthnot's appointment, both he and Hay began to take an increasing interest in customs and excise appointments. 98

Hay to Tweeddale 31 Aug 1742 NLS YP7049, 122. See also Arniston to Tweeddale 24 Aug 1742 ibid. 83; Arniston to Tweeddale Aug 1742 ibid. 128 "... that unhappy necessity you are brought under of being obliged to remain in the hands of the same person who has been for so many years the instrument of all our oppressions and misery..."; Ingles to Tweeddale 2 Sep 1742 NLS YP7050, 3; Andrew Mitchell to Dundas 2 Sep 1742 SRO Hi4/15/3 vol.II, 140.

Hay to Tweeddale 2 Sep 1742 NLS YP7050, 9.

For example see Hay to Tweeddale 21 Oct 1742 ibid. 139.
wrote to various revenue officers in different parts of the country asking them to give him early warning of impending vacancies and with Arbuthnot began to compile lists of persons to be presented by the latter when vacancies arose. As we have seen, the commissioners made presentments to vacant posts in rotation and not surprisingly Arbuthnot had an uphill struggle to persuade the Argathelian commissioners to present any candidate favoured by Tweeddale. It was, of course, open to Tweeddale to attempt to get the Treasury to set aside any unfavourable presentments, but in this he had to overcome the influence of Ilay through Pelham at the Treasury and it was not thought prudent constantly to attempt to get the Treasury to overturn the board's recommendations. The continuing Argathelian domination of the customs board therefore frustrated to a large extent any sweeping changes Tweeddale might have hoped to make. Similar difficulties were encountered with the excise commissioners, who, as we have seen, appointed officers directly without requiring Treasury approval. Hay arranged that the excise secretary, Wedderburn, should keep him informed of all vacancies and he compiled lists of those whom Tweeddale wished to be provided for. Hay regularly applied to the commissioner whose turn it was to nominate for a vacancy, pinning most hopes of success at this stage on Dowdeswell. The Argathelian commissioners,

99 Hay to Tweeddale 2 Oct 1742 ibid. 139; Hay to Tweeddale 6 Nov 1742 NLS YP7051, 21.

100 See Arbuthnot to Tweeddale 7 Oct 1742 NLS YP7050, 96; Hay to Tweeddale 16 Oct 1742 ibid. 121; Hay to Tweeddale 4 Nov 1742 NLS YP7051, 17.

101 See Hay to Tweeddale 9 Nov 1742 NLS YP7051, 31.

102 See Arbuthnot to Tweeddale 11 Oct 1742 NLS YP7050, 108.

103 Hay to Tweeddale 28 Oct 1742 ibid. 153; Hay to Tweeddale 6 Nov 1742 NLS YP7051, 21.


105 Hay to Tweeddale 28 Oct 1742 ibid. 153; Hay to Tweeddale 2 Nov 1742 NLS YP7051, 7.
however, began to fill up vacancies as soon as they occurred without waiting for recommendations from Hay in order "to keep the power of disposal of places as much in their hands as possible..."106 Nor had Tweeddale much influence in the Court of Exchequer, where Lord Chief Baron Idle was "entirely in the hands of Milton":

I cannot say that your Lordship is at all well situated at present in that court.107

Tweeddale also took a considerable interest in church patronage. The Toleration Act of 1712 had restored lay patronage while at the same time vaguely safeguarding the rights of congregations.108 Patronage to about one third of churches in Scotland lay with the Crown. Up to about 1725 Crown patronage had been exercised with careful regard to the feelings of the parishioners but Ilay considered that patronage was a civil right to be treated as a piece of property regardless of the wishes of the congregations. He therefore opposed any attempt to undermine lay patronage and patronage became increasingly involved with political management with both he and Milton taking a close interest in the presentation to vacant churches.109 Lay patronage was strongly opposed by the evangelical or 'high-flying' section of the Church, the same group which had wracked the General Assembly in various controversies over Arminianism and the teachings of Professor Simson in the 1720s.110 The claims of 'high-flying'

106 Hay to Tweeddale 30 Nov 1742 NLS YP7051, 115.

107 Hay to Tweeddale 20 Jan 1743 NLS YP7053, 84. On continuing difficulties with the barons see Hay to Tweeddale 16 Aug 1744 NLS STP Box 12 Fl.

108 Ferguson, Scotland: 1689 to the Present, p.111. After 1712 the presbyteries exercised a right to appoint in the case of a vacancy where the patron had made no effective move within six months: ibid. p.122.


110 See Ferguson, Scotland: 1689 to the Present, pp.111-25.
congregations were, not unnaturally, looked upon with disfavour by Ilay and in 1732 the General Assembly, under the management of Argathelian sympathisers, passed an Act Anent Calls which restricted election to heritors and elders rather than the congregation as a whole. This led to a storm of protest from the 'high-flyers', led by Ebenezer Erskine, a Stirlingshire minister, and the Act had to be repealed two years later. The disputes dragged on, however, and led to the Secession of 1740 when Erskine and his followers left the established church. Nevertheless, despite the 'high-flyers', Milton easily managed the Church on Ilay's behalf, with the assistance of clerics such as Neil Campbell, William Hamilton, George Wishart and Patrick Cuming. Of these, Campbell, principal of Glasgow University and a royal chaplain, was Milton's principal adviser up to 1737 when he was replaced by Cuming.

Tweeddale, while more concerned to avoid disputes with parishes over appointments, was nevertheless anxious to uphold the Crown's rights, particularly as presentations could be used to reward supporters and build up political interest:

... the using it properly would be of advantage in establishing an interest in the Country and particularly among the Burrows.

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112 Grange and others sided with the 'high-flyers' in an attempt to stir up opposition to Ilay in the Stirlingshire area at the 1734 general election; for example see Grange to Tweeddale 29 Mar 1734 NLS YP7041, 79.
113 Ferguson, Scotland: 1689 to the Present, pp.122-3.
114 In 1727 the commissions for the six royal chaplains were revised and all given to the ministers attached to Ilay's interest: see Ilay to Milton 26 Oct 1727 NLS SC 16,535; Bricke, Management and Administration, p.159.
116 Tweeddale to Craigie 13 Mar 1742 NLS YP7075; 11. Tweeddale to Craigie 14 Aug 1742 ibid. 23.
117 Ilay to Tweeddale 7 Aug 1742 NLS YP7049, 14.
He therefore sought a clergyman who would advise him on church vacancies, recommend suitable ministers and control church affairs generally. Craigie suggested Tullideph, principal of St Leonard's College, St Andrews, and moderator of the General Assembly in 1704, while Arniston, who took a keen interest in church matters and believed that the views of the heritors should be taken fully into account whenever possible, recommended Robert Wallace, an Edinburgh minister. This engendered considerable animosity between Arniston and Craigie and in the end Tweeddale put forward a compromise; Tullideph was to be the principal adviser, but Wallace was also to advise on vacancies in the southern part of Scotland. Both were to keep up a correspondence with the presbyteries and inform Craigie of all vacancies together with their recommendations for presentation. This scheme worked reasonably well initially but after a time Tullideph began to lose interest and most of the work was done by Wallace whose general policy was

118 See Hay to Tweeddale 2 Mar 1742 NLS YP7045, 49; Hay to Tweeddale 18 May 1742 NLS YP7047, 64; Hay to Tweeddale 22 May 1742 ibid. 74.

119 See Craigie to Tweeddale 18 Mar 1742 NLS YP7045, 94; Grant to Tweeddale 6 May 1742 NLS YP7047, 13.

120 See Arniston to Tweeddale 15 Apr 1742 NLS YP7046, 61.

121 Arniston to Tweeddale 13 Apr 1742 ibid. 47; Craigie to Tweeddale 3 Apr 1742 ibid. 7; Craigie to Tweeddale 5 Aug 1742 NLS YP7049, 6. For Wallace see Sefton, 'Rev Robert Wallace', Records of the Scottish Church History Society, vol. 16 (1966-8), pp.1-22; Norah Smith, 'Clerical Corridors of Power: Extracts from Letters concerning Robert Wallace's Involvement in Ecclesiastical Politics 1742-3', Notes and Queries, New Series vol. XX (1973), pp.214-9. Wallace had been a determined opponent of Walpole's administration and had refused to read the Act concerning Porteous. He was much less enthusiastic than Cuming about lay patronage.

122 See Craigie to Tweeddale 5 Aug 1742 NLS YP7049, 6; Hay to Tweeddale 7 Aug 1742 ibid. 14; Craigie to Tweeddale 17 Aug 1742 ibid. 48.

123 See Hay to Tweeddale 7 Aug 1742 ibid. 14; Hay to Tweeddale 12 Aug 1742 ibid. 34; Tweeddale to Craigie 26 Aug 1742 SRO GD 609/2, 34; Hay to Tweeddale 26 Aug 1742 NLS YP7049, 69.

124 See Hay to Tweeddale 25 Jan 1743 NLS YP7053, 98; Hay to Tweeddale 17 Nov 1744 NLS YP Box 12 Fl.; Hay to Tweeddale 1 Jun 1745 NLS YP7066, 85.
to present such as were agreeable to the heritors but not to neglect the King's right by not presenting. 125

Indeed, as a result of this policy, the Crown's right of presentation was somewhat diminished in the years 1742 to 1746 and did not fully recover thereafter when Cuming again took over the mantle on Ilay's behalf. 126

In September 1742 Tweeddale came to Scotland where he consulted with Arniston, Arbuthnot, Hay, Craigie, Inglis and Sir Charles Gilmour 127 on, among other things, the introduction of a bill with further measures to secure the peace of the Highlands, 128 and Arniston's proposals to improve the efficiency of the courts. 129 Tweeddale's initial enthusiasm quickly waned, however, and nothing was to be done. It was indicative of Tweeddale's weakness that, in his absence in Scotland, his Ministerial colleagues continued to dispose of vacant Scottish posts without consulting him. 130 In fact, by the end of 1742 very few changes had yet been made and indeed some of those that had been appointed were supporters of the old Ministry. 131 This not only irritated Tweeddale's close supporters but alienated large numbers of dissatisfied applicants, who "sowered at their disappointment

125 Hay to Tweeddale 4 June 1745 NLS YP7056, 91. See also Sefton, 'Rev Robert Wallace', Records of the Scottish Church History Society, vol. 16 (1966-8), pp. 8-10.

126 Bricke, Management and Administration, pp. 161-2.

127 See Andrew Mitchell to Tweeddale 2 Sep 1742 NLS YP7050, 84.

128 See Tweeddale to Craigie 14 Aug 1742 NLS YP7075, 21; Tweeddale to Craigie 26 Aug 1742 ibid. 27.

129 See Craigie to Tweeddale 19 Oct 1742 NLS YP7050, 131; Craigie to Tweeddale 28 Oct 1742 ibid. 151.

130 For example storekeeper of Edinburgh Castle appointed on Carteret's recommendation: "I am concerned that it has been disposed of ut your privity [sic.] and approbation... I hope his Lop will consider this as a debt and make you amends, for I am sure you have no place to spare" Mitchell to Tweeddale 30 Sep 1742 NLS YP7050, 84.

131 See Hay to Tweeddale 2 Dec 1742 NLS YP7052, 1; Hay to Tweeddale 12 Feb 1743 NLS YP7053, 151.
first grow secret enemies then avowed opponents, but it suited Ilay who, while publicly supporting the Ministry, worked hard to uphold his influence in Scotland and counteract any attempts to oust his supporters from office. In this he was helped by the continuing tensions within the Ministry and, in particular by a certain cooling of relations between Carteret and Tweeddale. Ilay remained on good terms with Carteret and

Lord Ilay's people gave it confidently out that his Lordship Governed everything relating to Scotland behind the Curtain. Such Reports are no doubt attended with some disadvantage but I hope a little time and experience will show that Lord Ilay has not the disposal of everything here and that favours are to be got in another Channel.

By late 1742 there was a growing divergence within the Ministry over foreign affairs and Newcastle in particular was becoming increasingly jealous of Carteret's position with the King. Nevertheless the relative success abroad during 1742 ensured a fairly quiet session when the Commons resumed in November. The Ministry successfully withstood a fierce attack on the use and payment of Hanoverian troops in December and thereafter the rest of the session passed uneventfully. As we have seen, a bill was passed to deal

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132 Hay to Tweeddale 29 Jan 1743 NLS YP7053, 106.
133 For example see Ilay to Milton 7 Oct 1742 NLS SC 16,587.
134 See Ilay to Milton 10 and 12 Feb 1743 NLS SC 16,591.
135 Ilay to Tweeddale 16 Apr 1743 NLS YP7054, 125.
137 Ibid. pp.147–55.
with Scottish elections, but nothing was done to tackle the serious fall in Scottish revenues.\footnote{See Ilay to Milton 10 and 12 Feb 1743 NLS SC 16,591.} In May Carteret went abroad with the King and over the summer months he was temporarily freed of the necessity of placating Parliament. He was in a position where he could monopolise the favour and attention of the King and he proceeded to pursue his own pro-Hanoverian foreign policy without consulting the Pelhams, indeed treating them with scarcely disguised contempt.

Throughout 1743 Hay and Arbuthnot continued to work diligently on a mass of patronage matters and particularly revenue posts but with little real success. Both complained of the general inefficiency, negligence and corruption within the revenue services and stressed to Tweeddale the need for reform and the appointment of suitable qualified officers.\footnote{For example see Hay to Tweeddale 9 Jun 1743 NLS YP7056, 33.} Arbuthnot received little help from his fellow commissioners in attempting to enquire into frauds or to dismiss negligent officers and despite all their activity few changes were made. Tweeddale's advisers continued to bicker amongst themselves.\footnote{See for example Hay to Tweeddale 18 Oct 1743 NLS YP7058, 103.} Relations between Dundas and Craigie in particular grew more acrimonious and they rarely met or discussed business.\footnote{See Hay to Tweeddale 11 Aug 1743 SYP Box 11 Fl; Hay to Tweeddale 1 Sep 1743 ibid.; Hay to Tweeddale 15 Nov 1743 NLS YP7059, 45.}
vahity and notions of his influence over your Lordship and a conviction of his own sufficiency lead him to act all by himself and to affect to have the world believe that he is Deputy Governor of the Country the effect of which is that some ridicule him for it and others reflect on your choice in putting all in his hands. 142

This particularly irritated Arniston who looked on Craigie as his protegé. Hay had little success in trying to pacify them:

in my humble apprehension it may be proper to give weight to Lord Arniston's recommendations sometime when he pleases to make them and leave Lord Advocate to go on as he can but your Lordship in one respect is better served by the Advocate than you would be by Lord Arniston if he was to be the administrator here (and two suns cannot shine at once) that the Advocate will follow your directions tho he may take a little of the merit of what your Lordship does to himself but the other if I mistake not would dictate rather as serve. His council is good but his Government despotic. 143

Arniston, plagued with ill-health, 144 was becoming increasingly disinclined 145 both at Tweeddale's failure to provide him with a lucrative post 146 and at "L Ilays creatures being continued in trust." 147 Even Hay, the most patient of Tweeddale's supporters in Scotland, was beginning to become frustrated:

Few things having as yet been disposed of and people in the apprehension that your Lordship cannot turn out and in at pleasure it is of disadvantage to be thought of your party. 148

142 Hay to Tweeddale 10 Nov 1744 NLS SYP Box 12 Fl. See also Hay to Tweeddale 9 Aug 1743 NLS SYP Box 11 Fl.
143 Hay to Tweeddale 5 Jul 1743 NLS SYP Box 11 Fl.
144 See Hay to Tweeddale 5 Jul 1743 NLS YP7055, 12.
145 "I confess I am quite sick and discomfitted as to politicks which is one reason why I write so seldom" Arniston to Tweeddale Oct 1743 NLS YP7058, 144.
146 See Arniston to Tweeddale 11 Feb 1744 NLS YP7060, 65.
147 Craigie to Tweeddale 23 Apr 1743 NLS YP7054, 146.
148 Hay to Tweeddale 3 May 1743 NLS YP7055, 3.
Yet while his supporters in Scotland saw things in simple anti-
Argathelian terms, Tweeddale was caught up in a much more complex
d power struggle at Westminster and was fettered by Carteret's desire
to keep Scotland quiet and alienate as few people there as possible.
Tweeddale felt obliged to defend himself to Arniston:

I will only observe as to what you mention
about a noble Lords [Carteret] Scots Politicks
that whatever Appearance they may have, I
believe they are not well understood with
you. It is true, few changes are made, but
it is equally true that there appears some
difficulty to judge how to make right Changes,
since it is generally thought here, whatever
may have been former connections they are
pretty much forgotten at present. 150

In response Arniston complained of Carteret's treatment of Tweeddale
and neglect of his friends in Scotland:

I really think it is too soon to forget or
rather too strong never to have minded that
he [Carteret] jumped into power by at least
a strong assistance from the north and those
who procured it are not so many but they may
be numbered... there are many of us here
think he uses you as bad as any other by such
conduct. 151

In short, the Ministry's lack of interest in Scottish affairs and the
absence of a recognised and influential sous-ministre in Edinburgh was
rapidly undermining the authority which Tweeddale derived from his
office of Secretary of State:

Arbuthnot and Inglis in particular were not keen "to provide for
any body that is not venerable Old Squadron Stamp" Hay to Tweeddale 27 Dec
1743 NLS YP7059, 128.

Tweeddale to Arniston 7 May 1743 NLS YP7075, 38.

Arniston to Tweeddale Oct 1743 NLS YP7058, 144. There seems to
have been some longstanding animosity between Arniston and Carteret:
rumour had it that "Lord Carteret had said that he [Arniston] had once
[1720s] almost ruined them by his hotness and violence but should never
have it in his power again" Hay to Tweeddale 2 Oct 1744 NLS SYP Box 12 Fl.
I cannot but from my heart regret the misfortune of your not having someone or other of experience and authority who had health, lived mostly in this town [Edinburgh] to direct and advise in matters that occurs in this country. I see the strait but doe declare I don't know of one I could wish for men of that stamp are so rare. 152

Tensions were increased by Tweeddale's mishandling of a bye-election in Linlithgowshire on May 1743. The sitting member, George Dundas, returned in 1741 with the support of the Squadrone and Argyll and who supported the new administration, sought re-election following his appointment as Master of the King's Works in Scotland. 153 He was opposed by Charles Hope Weir, brother of the third earl of Hopetoun an Argathelian supporter. Weir also claimed to have the support of the Ministry. 154 Tweeddale wrote rather late in the day supporting Dundas 155 but was unable to persuade Hopetoun to drop Charles Hope Weir's candidature. 156 Arniston was furious that Hopetoun was pushing Hope Weir covertly in Ilay's interest (Ilay did not support Weir publicly) in opposition to the government candidate 157 and criticised Tweeddale for allowing this to happen. 158 Inglis was also

152 Inglis to Tweeddale 4 May 1743 NLS YP7055, 12. See also Hay to Tweeddale 16 Jun 1743 NLS YP7056, 76 "we had great need in your absence of some Comptroller amongst ourselves".

153 19 Apr 1743 SRO RH2/4/411, 71, in place of Sir John Anstruther who was made a Commissioner of Police - 15 Jun 1743 ibid. 81.

154 See George Dundas to Tweeddale 28 Apr 1743 NLS YP7054, 169; Inglis to Tweeddale 28 Apr 1743 ibid. 174; Charles Hope Weir to Tweeddale 30 Apr 1743 ibid. 180; Dundas to Tweeddale 30 Apr 1743 ibid. 182; Weir to Tweeddale 4 May 1743 NLS YP7055, 8; Tweeddale to Arniston 17 May 1743 ibid. 38; Tweeddale to Carteret 20 May 1743 SRO RH2/4/337 f259-60.

155 See Hay to Tweeddale 7 May 1743 NLS YP7055, 19; G Dundas to Tweeddale 7 May 1743 ibid. 23; Tweeddale to Arniston 17 May 1743 NLS YP7075, 38.

156 See G Dundas to Tweeddale 2 May 1743 NLS YP7055, 1.

157 See Hay to Tweeddale 12 May 1743 NLS YP7055, 43; Gilmour to Tweeddale 14 May 1743 ibid. 57.

158 See Arniston to Tweeddale 30 Apr 1743 NLS YP7054, 184.
concerned that it gives great joy to the enemies of the present establishment to see those who profess to be friends of it cutting one anothers throats, those who are at the helm should take care to ordre matters so as people who are their friends and have places and pentions from the government should not take such libertys...

At the election on 13 May Weir defeated Dundas by 11 votes to 8. This was widely regarded as a defeat for Tweeddale and a victory for Ilay: 

... the Noble Lord [Ilay] who is said to have been at the bottom of this is pretending to act in concert with the administration and is underhand endeavouring all he can to subvert the Ministers and your Lordship in particular.

Tweeddale's lack of influence was publicly exposed. Now that its over (wrote Craigie) and as the weight against him [Dundas] is Lord Ilays people I hope it will convince those in the administration that while they try your hands they cannot expect you will be able to doe them that service that is necessary for carrying on the affairs of the Government.

With Carteret in Hanover with the King for much of 1743, Tweeddale was left in a vulnerable position and his correspondence with Carteret

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159 Inglis to Tweeddale 28 Apr 1743 NLS YP7054, 174.

160 For details see G Dundas to Tweeddale 14 May 1743 NLS XP7055, 61; Arniston to Tweeddale 14 May 1743 ibid. 64; Tweeddale to Carteret 20 May 1743 SRO RH2/4/337, f259-60; Tweeddale to Carteret 24 May 1743 ibid. f261-2; 'Minutes of Mr Charles Hope's Election at Linlithgow 1743' SYP Box 138, F1; Sedgewick, House of Commons, I, pp.389-90. Weir was to support the Government in the Commons.

161 See Hay to Tweeddale 10 May 1743 NLS XP7055, 35; Hay to Tweeddale 17 May 1743 ibid. 75.

162 Hay to Tweeddale 24 May 1743 NLS XP7055, 101.

163 Ibid.

164 Craigie to Tweeddale 17 May 1743 NLS XP7055, 72.
reflects his own anxiety at the lack of changes. Hay and Arbuthnot faced increasing obstruction from commissioners Campbell and Ross over customs presentments, while on the excise board Cochrane led the opposition to Tweeddale's recommendations. Rhodes and even Udny could prove difficult at times, Drummond had been absent from the board for over a year and only Dowdeswell was reasonably helpful: "I reckon you have not a friend at that board."

As long as the Excise is in the Government of men attached to the late administration it is visible this will have great effect in all the burrows in Scotland... I cannot help noticing en passant (wrote Arniston) that the generality of the boards especially the excise make no ceremony of speaking with more spite against the present administration than they did in Sr Ro time... Then on 2 July Wilmington died and was replaced by Pelham as First Lord of the Treasury, despite efforts by Pulcroy to secure the post, thus

165 For example see Tweeddale to Carteret 31 May 1743 SRO RH2/4/337 f267-9; Tweeddale to Carteret 9 Sep 1743 ibid. f269-71.
166. See Hay to Tweeddale 17 May 1743 NLS XP7055, 75.
167. See Hay to Tweeddale 16 Jul 1743 NLS SYP Box 11 Fl; Hay to Tweeddale 6 Oct 1743 NLS XP7058, 68.
168. See Hay to Tweeddale 4 Aug 1743 NLS SYP Box 11 Fl; Hay to Tweeddale 6 Aug 1743 ibid.
169. Hay to Tweeddale 6 Aug 1743 ibid.
170. Hay to Tweeddale 16 Jul 1743 ibid.
171. Hay to Tweeddale 6 Aug 1743 ibid. See also Hay to Tweeddale 3 Sep 1743 ibid.
172. Arniston to Tweeddale Oct 1743 NLS XP7058, 144.
strengthening the position of the ‘old Ministry’ faction within the Ministry. Shortly afterwards, Stair resigned as commander in chief over differences on military tactics in Europe and the lack of consultation with the army. These alterations and the continuing lack of changes in Scotland led to rumours that Tweeddale himself would resign:

It is told for news in this country that your Lordship was to resign because there was not that change of men and measures you was made to believe would be when you accepted the office of Secretary of State And that you had only agreed to continue till his Majesty came over at the earnest entreaty of Lord Carteret.

These rumours increased the restlessness among Tweeddale’s friends and Hay became desperate that Tweeddale make some changes to show that he had the “direction of affairs in Scotland”. By the time Carteret returned to London in November his pro-Hanoverian policy was beginning to threaten the stability of the Ministry and there were violent altercations between him and the Pelhams over his proposed convention with Austria which was finally defeated in the Cabinet by nine votes to four. In December Gower and Cobham resigned, returning to the opposition, and various changes were made to the Ministry which further strengthened the Pelhams.

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174 See Memorial Stair to HM 4 Sep 1743 Graham, Stair Annals II, pp.54-5; Owen, Rise of the Pelhams, p.184.
175 Hay to Tweeddale 17 Sep 1743 NLS SYP Box 11 Fl.
176 See Hay to Tweeddale 27 Sep 1743 ibid; Hay to Tweeddale 13 Oct 1743 NLS YP7058, 85; Hay to Tweeddale 29 Oct 1743 ibid. 138.
177 Hay to Tweeddale 29 Sep 1743 NLS SYP Box 11 Fl.
178 Owen, Eighteenth Century, p.57; Owen, Rise of the Pelhams, p.179.
179 Owen, Rise of the Pelhams, p.196.
180 Ibid. p.203. Pelham himself became Chancellor of the Exchequer.
These changes and the continuing weakness of Tweeddale's position encouraged Ilay (who on the death of his brother in September had become the third Duke of Argyll\(^{181}\)) and the Argathelians to become more aggressive in their opposition to Tweeddale's administration:

I find the old ministry people and those in opposition very closely corresponding together at this place [Edinburgh] at this time as I find all the dependants of the present D of Argile in high spirits...\(^{182}\)

My apprehension is (wrote Hay) that his Grace will make use of the number of His Partizans on all proper occasions to show that he is more significant and has more interest in this Country even when he is under a little Cloud than your Lordship has when at the head of the Administration in Scotland.\(^{183}\)

Following his brother's death, Ilay made a particular effort to win back those who had followed Argyll, notably in Edinburgh, and reunite the Argathelian ranks.

What I mentioned formerly of the Lord J Clerks application to Caress the patriots in order to List them under the present D of A is everyday more remarkable non of them sooner appear than they are taken up and treated in the most obligeing manner and the favourits of the Late ministry that have continued in Office speak out very freely that things now run in the former channel...\(^{184}\)

Rumours continued that Tweeddale was about to be dismissed:

this is so far of ill consequence that it keeps people in suspense and hinders them from appearing in your favours or possibly throws them into the opposite side and your interest may suffer a little in this way for so long as people observe no marks of great power and are made believe that a turn

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\(^{181}\) To avoid confusion, however, I will continue to refer to him as Ilay except in direct quotations.

\(^{182}\) Arbuthnot to Tweeddale 3 Nov 1743 NLS YP7059, 13. See also Hay to Tweeddale 6 Nov 1743 YP7059, 20.

\(^{183}\) Hay to Tweeddale 5 Nov 1743 YP7059, 15.

\(^{184}\) Arbuthnot to Tweeddale 12 Nov 1743 NLS YP7059, 42.
Tweeddale's administration thus lurched into 1744, his position in the Ministry increasingly insecure and his influence in Scotland rapidly evaporating:

My Lord Carteret's interest and your Lordships must every day diminish in Scotland (wrote Hay) except Something is done to show you have power and exert it for I'm told they make no secret to assert it will soon be at an end... 186

A bye-election in Midlothian, hitherto a Squadrone stronghold, in January 1744 highlighted the renewed Argathelian challenge. Sir Charles Gilmour, one of the few Scots members who actively supported Tweeddale, stood for re-election after appointment to office but was opposed by Sir John Baird. Milton was active behind the scenes in fomenting opposition to Gilmour in Illy's interest. 187 The contest was fiercely fought with opposition to Gilmour coming from "Jacobites, old ministry men, Dalrymples and Duke of Argyll's servants" 188 but few of even Tweeddale's closest supporters were prepared to become involved. 189 In the end Gilmour was re-elected by 32 votes to 18 190 but the bye-election had not only encouraged Argathelians in their opposition but also increased the mutual recriminations among Tweeddale's advisers in Scotland. Hay complained that Dundas and

185 Hay to Tweeddale 29 Nov 1743 ibid. 70.
186 Inglis to Tweeddale 18 Jan 1744 YP7060, 27.
187 See Hay to Tweeddale 7, 10, 14 and 17 Jan 1744 all NLS SYP Box 11 F2.
188 Arniston to Tweeddale 21 Jan 1744 NLS YP7060, 36.
189 Hay to Tweeddale 5 Jan 1744 NLS SYP Box 11 F2.
190 See Hay to Tweeddale 13 Jan 1744 ibid. See also Inglis to Tweeddale 10 Jan 1744 NLS YP7060, 19; Hay to Tweeddale 12 Jan 1744 NLS SYP 11 F2; Inglis to Tweeddale 18 Jan 1744 NLS YP7060, 27.
Arniston did not concern themselves enough in public business\textsuperscript{191} while Arniston complained that as long as Carteret was prepared to protect supporters of the 'Old Ministry' in Scotland, it is impossible to maintain the shadow of any interest, or to carry through anything.\textsuperscript{192}

Hay reminded Tweeddale that, despite their public assertions of support, Ilay and the Argathelians remained your greatest enemies. They have influence because the powers they were long possessed of enabled them to provide for many who are linked to them by the ties of gratitude and others serve them in hopes of their soon getting the better whereas your Lordship had so few opportunities of showing power that it greatly weakens your interest...\textsuperscript{193}

Throughout the early 1740s there had been increasing Jacobite activity in Scotland with agents regularly travelling to and from France and considerable efforts being made to recruit for Jacobite regiments abroad. Then early in 1744 the government received intelligence of a Franco-Jacobite plan for the invasion of southern England and that a French fleet was gathering at Brest.\textsuperscript{194} This caused a flurry of activity among the government's civil and military servants in Scotland.\textsuperscript{195} Hurried efforts were made to gather intelligence from various parts of the country,\textsuperscript{196} to watch the ports and to seize people suspected of...
treasonable activities. Cope was made commander in chief in Scotland and the military put on guard. Political tensions among the government servants in Scotland, however, prevented their working effectively together – an ominous foretaste of events the following year. In particular, despite Illy’s initial disapproval at Cope’s appointment, Milton quickly won Cope’s confidence and attempted to exclude the other government servants from correspondence with him, much to the annoyance of Dundas and Arniston. There was little Tweeddale could do, however, except advise Dundas to show no mark of resentment on this occasion. The present state of public affairs requires that such trifles should be overlooked and that at least a seeming harmony should be preserved among His Majesty’s servants.

In the event a severe storm broke up the French fleet in harbour and the invasion attempt was called off.

Meanwhile at Westminster the position of the Ministry was becoming increasingly less secure. Carteret’s pro-Hanover foreign policy was not only heightening the divisions within the Ministry but alienating much of the support Pelham had sought to build up in the Commons and an increasing number of members began to drift over to the opposition. As 1744 progressed it became increasingly obvious that the Ministry was unlikely to survive another session if Carteret

197 See Mitchell to Dundas 4 Feb 1744, Omond, Arniston Memoirs, p.120.

198 See Hay to Tweeddale 25 Feb 1744 NLS SYP Box 11 P2 "I have alwayes been sensible of what disadvantage it is to your Lordship that you have nobody here that can equall him [Milton] in this way..." [wining and dining important people to win their confidence].

199 See Omond, Arniston Memoirs, pp.121-2; Hay to Tweeddale 13 Mar 1744 NLS SYP Box 11 P2; Hay to Tweeddale 17 Mar 1744 ibid.

200 Mitchell to Dundas 6 Mar 1744 Omond, Arniston Memoirs, p.122.
continued to have the direction of foreign affairs. 201 Ilay wisely stood back from the Ministerial conflict:

I have nothing to do but let the stream drive and observe all circumstances as they pass; what will arise out of the internal political war that rages at present is hard to say, they seem more busie to get the better of one another than of the common enemy; neutrality sometimes becomes one, and at the same time is the game. It is the easier to be wise when one has neither any occasion, necessity or temptation to play the fool.

In Scotland, however, he worked assiduously to safeguard his interest: 202

The Duke of Argyll and his Agents are now more busy then ever... if a new Election happened The Duke would carry everything to which the power he showed of getting in and keeping in his Creatures contributed greatly. 203

It was now clear to all that Tweeddale's present standing depended upon your friends at Court continuing with you in the present administration and not upon any supposed Influence you had in Scotland. 204

The strength of Ilay's influence was clearly demonstrated in August when he held a large public levee in Edinburgh which was attended by most of the judges, revenue commissioners and other prominent figures. 205 Yet although Tweeddale by now was exercising little effective government over Scotland and there was "much murmuring amongst your Lordships..." 206

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201 Owen, Rise of the Pelhams, pp. 204-10, 223.
202 Ilay to Milton 10 Mar 1744 NLS SC 16,596.
203 See Hay to Tweeddale 20 Mar 1744 NLS SYP Box 11 Fl; Hay to Tweeddale 4 Aug 1744 NLS SYP Box 12 Fl; Hay to Tweeddale 4 Oct 1744 ibid.
204 Hay to Tweeddale 7 Jun 1744 NLS SYP Box 11 Fl.
205 Ibid.
206 See Hay to Tweeddale 2 Aug 1744 NLS SYP Box 12 Fl.
friends and relations as if they were neglected", Tweeddale was determined to struggle on:

> I know itt would be impossible to please tho.
> I could dispose of everything as I could wish.
> The Pasture in our parts is too small for the flock, but as I even have nott thatt I could [not] have thought of remaining so long in so untoward and uneasy situation was itt nott the taking a contrary step I know would please my enemies...

In July, Lauderdale, a representative peer, sheriff of Midlothian and president of the police commission, died. Aberdeen, Hopeton, Stair and Rothes all sought his representative peer place. Tweeddale recommended Aberdeen to the King, but foresaw difficulties... nott arising from want of Inclination in freinds butt from certain present circumstances here... 

After some delay, which in itself reflected badly on Tweeddale's influence, Tweeddale was overruled by Pelham and Newcastle who both insisted on Stair and carried the rest of the Cabinet, including Carteret, with them. Stair was duly elected unopposed on 12 October. Sutherland was appointed president of the Police.

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207 Hay to Tweeddale 3 Jul 1744 ibid.
208 Tweeddale to Aberdeen 2 August 1744 NLS YP7075, 108.
209 See Hay to Tweeddale 16 Jul 1744 NLS YP7075, 99. See also Aberdeen to Tweeddale 22 Jul 1744 NLS YP7063, 53; Aberdeen to Tweeddale Jul 1744 ibid. 70; Aberdeen to Tweeddale 8 Aug 1744 ibid. 81.
210 See Hay to Tweeddale 16, 21, 23 and 31 Jul 1744 all NLS YP7075, 99. See also Aberdeen to Tweeddale 17 Jul 1744 NLS YP7075, 99. Tweeddale to Aberdeen 17 Jul 1744 NLS YP7075, 99. See also Aberdeen to Tweeddale 22 Jul 1744 NLS YP7063, 53; Aberdeen to Tweeddale Jul 1744 ibid. 70; Aberdeen to Tweeddale 8 Aug 1744 ibid. 81.
214 29 Nov 1744 SRO RH2/4/411, 126.
although Tweeddale had favoured Garlies. Then in November, Royston, one of the most experienced judges, died, the first vacancy on the bench since Tweeddale became Secretary of State:

The naming Lord Royston's successor will be a trial of skill between the two parties.

All were agreed that it was essential that a well-qualified lawyer be chosen or the Court of Justiciary in particular would fall into disrepute. Lord Advocate Craigie recommended his brother Lawrence, Hay suggested Arniston might be offered the Justiciary gown and various other candidates were mentioned. For his part Ilay pressed for Charles Areskine, Lord Advocate from 1737 to 1742 who was eminently qualified. Arniston and Craigie were quick to warn Tweeddale of the political dangers of Areskine being appointed:

... if the Duke puts one of his people into the Justiciary As he has already three in that court the court is absolutely in his hands. And if he has an additional judge in the court of session He must have the chief direction not in Argyllshire but in Scotland... If the Duke of Argyll supply this vacancy either with C Areskine or J Maule Your Lord will for some time at least have but small influence in this Island. The Power will be in him who has our Lives and property at his Disposal.

Ilay and the Pelhams moved quickly. Areskine's express on Royston's death reached London some hours before that from Hay reached Tweeddale:

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216 See Garlies to Tweeddale 22 Aug 1744 NLS YP7063, 104. See also Torphicen to Tweeddale 16 Jul 1744 ibid. 36; Sutherland to Tweeddale 19 Jul 1744 ibid. 51; Somerville to Tweeddale 14 Aug 1744 ibid. 96; Garlies to Tweeddale 17 Jul 1744 ibid. 42.

217 See Hay to Tweeddale 9 Nov 1744 NLS SYP Box 12 Fl; Dundas to Tweeddale 9 Nov 1744 NLS SYP Box 13 Fl.

218 Hay to Tweeddale 13 Nov 1744 NLS SYP Box 12 Fl.

219 For example see Dundas to Tweeddale 9 Nov 1744 NLS SYP Box 13 Fl; Arniston to Tweeddale 9 Nov 1744 NLS YP7064, 60.

220 Craigie to Tweeddale 10 Nov 1744 NLS YP7064, 65.

221 Hay to Tweeddale 10 Nov 1744 NLS SYP Box 12 Fl.

222 See Dundas to Tweeddale 9 Nov 1744 NLS SYP Box 13 Fl; Hay to Tweeddale 10 Nov 1744 NLS SYP Box 12 Fl.

223 Craigie to Tweeddale 10 Nov 1744 NLS YP7064, 65. See also Arniston to Tweeddale 9 Nov 1744 ibid. 60.
Immediately after L D of Newcastle and Granville [Carteret] went to the D of Argyles without acquainting your Lop and asked if Mr Areskine would be agreeable to his Grace, that his answer was that whomever the King please to name would be agreeable to him, but Mr Ar... very much so, that immediately they went to the King and fixed the matter... 224

Thus even Carteret deserted Tweeddale on this occasion. Areskine was duly appointed on 15 November to both the Session and Justiciary places 225 before Tweeddale could even begin to canvass support for any other candidate. He had been totally outmanoeuvred.

The appointment of Areskine coupled, as we shall see, with the resignation of Carteret just over a month later, destroyed any remaining authority Tweeddale had both within the Ministry and in Scotland and effectively ended his administration of Scotland, although he remained in office for a further year. Arniston bluntly told Tweeddale that he had been imposed, abused, downright betrayed. I owned before I had no aversion to Charles being a judge, but this way of his coming in is terrible fatal to your Lops interest and will give an unhappy turn in the country and return it I fear to its former horrible state... 226

Hay wrote in similar vein:

I believe evrybody here thinks it is a severe blow to your Lordships interest in this Country... [it] gives concern to friends and triumph to enemys... I take it for granted that when your Lordship was called upon to discharge the High Office You have it were not because of any great influence you had in this Country. At that time

224 Arniston to Tweeddale 20 Nov 1744 ibid. 89 ("some say it was Pelham and not Newcastle who went with Granville to Argyll").

225 SRO RH2/4/411, 123 and 125.

226 Arniston to Tweeddale 20 Nov 1744 NLS YP7064, 89.
you had never been in office nor invested with power which had been in the hands of others who had by long possession and assiduous application to it had acquired great influence. In my notion therefore your friends who concurred in obtaining this trust to be delivered to your Lordship considered you as one who was every way fitted for your office and whom nothing was wanting but power to produce influence. It was therefore very necessary that you should have power as the proper means of obtaining influence in this Country whereby you might contribute to the support of the administration. And if Your powers had been confined whither in appearance or in reality the power seems to be lodged in the hands of another [Ilay] who is supposed to be your opposite the natural effect is that your influence is small. Men are selfish. The Generality as Mr Areskine expressed it some years ago run after the loaves and fishes which if they dont find they flock about the person with whom they imagine they are to be found and your Lordships Enemies are not deficient in making improvements by sowing lies and talking contemptibly... One of the things of greatest consequence that a minister in this Country can have to dispose of is that of the Judges of the Supreme Courts. If the Benches are filled with men of a particular party who have power over the lives of the Kings Subjects, those who have a dependence (and all men may have a dependence) upon the Courts will be directed by the party of which their Judges are and will naturally be complaisant and fall into their views. This is the remote consequence of a nomination contrary to Political interest, beside the immediate effect that such a nomination has upon the opinion of men as to the parties of the Great men. These are partly the reasons why I said that if this nomination was made your Lordship was undone.227

Tweeddale had been appointed Secretary of State not because of any political strength in Scotland but simply because he was the political ally of Carteret. He had no influence in the Cabinet, little support in Scotland and no group of Scots members with which to bargain with

227 Hay to Tweeddale 22 Nov 1744 NLS SYP Box 12 Fl. See also Hay to Tweeddale 20 Nov 1744 ibid.
the Ministry. Carteret wanted Scotland kept quiet in order to concentrate on the struggle against Pelham and the 'Old Ministry' men for the ear of the King. He had no intention of allowing Tweeddale to create an unnecessary diversion by dismantling the Argathelian hegemony in Scotland. Most people in Scotland quickly realised this and saw little point in switching their allegiance from Ilay, who, with the backing of the Pelhams who were strong both in the House of Commons and in the Treasury, still retained considerable influence over most Scottish appointments. Argathelians continued to hold the majority of the important posts in the Scottish administration and Ilay, particularly after Argyll's death, controlled the largest block of Scottish members. Tweeddale was in effect impotent. He also compounded his difficulties by his failure to set up a clear sous-ministre in Edinburgh and, with his obsession for secrecy, to take his advisers more fully into his confidence:

Your friends here complained amongst themselves that they were kept quite in the dark as to everything that was passing... I think it is impossible for a minister in England whose part it is and who wishes to govern Scotland to do it with any success if he will trust nobody with even the secrets of and plots at court that concern this country. I always thought that no minister could govern this country without some body he could take the trouble to inform and trust for his man. It is to him to choose him, but if he can trust no body he neither can serve nor govern with any success far less with endurance.

The appointment of Areskine left Tweeddale's friends bewildered and dispirited. The Argathelians were openly triumphant. The pretence was over. Tweeddale clung to office for another year or so but it was clear to all that he had no real power or influence.

228 Arniston to Tweeddale 22 Nov 1744 NLS YP1064, 99.
Events had been going very badly for Britain in Europe throughout 1744 and the disputes between Carteret and the Pelhams grew even more bitter. Such was the distrust of Carteret on both sides of the Commons, particularly given his abysmally unsuccessful war policy, that the Pelhams believed it would be impossible to carry government business in the forthcoming session if he remained in the Ministry. Thus on 1 November Pelham, Newcastle, Hardwicke and Harrington (with the complete support of Illy among others) told the King that unless Carteret was dismissed they would resign. George made a desperate attempt to save Carteret but the Pelhams had already secured the agreement of the major opposition leaders that they would not serve under Carteret. Favour in the Closet was not enough to save Carteret: he resigned on 24 November, forced out by the Pelhams to safeguard the administration's Parliamentary majority.

The Ministry was then reconstructed on a 'broad bottom' basis with all the opposition leaders (including Chesterfield, Gower and Bedford but with the exception of Pitt) who had either the prestige or ability to embarrass the Ministry being brought in. Various Carteret 'New Whigs' were replaced by 'New Allies' from the opposition, while at the same time care was taken not to alienate the 'Old Corps'. Walpole's policy of excluding opponents was reversed: instead, Pelham emasculated the opposition by depriving them of their leaders and leaving them totally disorganised. As a result the following session was unusually peaceful. Yet one thing remained unchanged. George despised his new Ministers and continued to take advice from Carteret who, despite

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230 Harrington was made Secretary of State in place of Carteret.

231 Owen, Rise of the Pelhams, p.61.

232 Ibid., pp.239-51, 266-7.
his resignation, remained as influential as ever in the Closet. As a result George continued to quarrel with the Pelhams, especially over foreign policy and they were as far as ever from gaining the confidence of the King. While Carteret continued to wield such influence the Ministry remained unstable.

The enhanced position of the Pelhams within the Ministry benefitted Ilay and indeed, according to one report, after Carteret's removal the office of Scottish Secretary was actually offered to Ilay but declined. Marchmont and Atholl were also talked about as possible replacements for Tweeddale.

It is said that the Duke of Argyll is to continue nominally as he is but that another Secretary of State is to be appointed in your Lordships place who will follow his directions...

Yet Tweeddale continued to cling to office despite repeated rumours of his dismissal throughout 1745. His supporters in Scotland, however, had more or less given up:

I am not fond of meddling at present (wrote Hay in February 1745) because I know it is believed that your Lordship is only continued in place at present till it is settled whether your office is to be suppressed or who shall be your successor and the news of your dismissal is not doubted of as soon as these things can be adjusted.

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233 Ibid., pp.267-76; Browning, Newcastle, p.130.
234 Mitchell to Dundas 17 Jan 1745 SRO RH4/15/3 vol.4, 1; Bricke, Management and Administration, p.29.
236 Hay to Tweeddale 22 Dec 1744 NLS XYP Box 12 Fl. See also Mitchell to Dundas 17 Jan 1745 Omond, Arniston Memoirs, pp.125-6.
237 For example see Hay to Tweeddale 4 May 1745 NLS YP7066, 9.
238 Hay to Tweeddale 26 Feb 1745 NLS YP7065, 86. See also Hay to Tweeddale 5 Mar 1745 ibid. 94.
For their part, the Argathelians worked hard to push home their advantage:

> every little incident that happens even here is told over by somebody with intent to induce a belief that every thing is done by the Duke of Argyll...239

The Argathelian commissioners had fully regained control of customs presentments:

> the business att our board goes on exactly as the Lord Justice Clerk gives directions240

and Tweeddale had given up attempting to influence appointments at the Treasury.241 Hay's correspondence with Tweeddale dropped dramatically, while Dundas confined himself to his legal duties.242

The animosities between Craigie, Dundas and Arniston grew steadily worse.243 Thus during the first half of 1745 there was a marked absence of effective government in Scotland. Tweeddale as Secretary of State, together with Lord Advocate Craigie and Solicitor General Dundas occupied the official channels of control and were responsible for the management of Scotland but they were exercising little or no authority and matters were allowed to drift. Real influence, particularly in patronage matters, lay in the hands of Ilay and the Argathelians but as long as Tweeddale remained Secretary of State Ilay could disclaim any official responsibility for Scottish affairs. Scotland lacked any real government when the Young Pretender landed at Eriskay on 23 July.

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239 Hay to Tweeddale 22 Dec 1744 NLS YP Box 12 Fl. See also Hay to Tweeddale 25 Jun 1745 NLS YP7066, 177.

240 Arbuthnot to Tweeddale 1 Aug 1745 NLS YP7068, 3.

241 See Arbuthnot to Tweeddale 20 Jun 1745 NLS YP7066, 155.

242 See Hay to Tweeddale 19 Mar 1745 NLS YP7065, 121.

243 Hay to Tweeddale 20 Jun 1745 NLS YP7066, 150.
Control of the Highlands had remained an unsolved problem after the Union. As we have seen central government lacked any real authority outside the Lowland belt and real power lay with the clan chiefs and feudal superiors. The English model of local government, almost negligible central executive power with the localities expected to administer themselves through justices of the peace (and in Scotland the sheriffs), was completely unsuitable for the Highlands. Moreover there was very little government patronage available in the Highlands (a few parliamentary seats, sheriffships, and various minor revenue posts) with which to win over clan chiefs to the government. The political rivalry between the Squadrone and Argathelians during the period meant that the bulk of patronage in Scotland went to influential lowlanders although Ilay for his part had made some attempt to bring the Highlands within the patronage network. In turn the virtual monopoly of power and profit by the two Whig factions ensured that Jacobitism in Scotland was a real political alternative to a large section of the country.

Nothing positive had been done about the Highlands after the Fifteen. The Highland Companies had been disbanded in 1717, work on building new barracks was slow and disarming largely ineffective. There was a sudden flurry of Ministerial interest in 1724-5, various proposals were considered and Wade received a commission to

244 See above p. 358.


246 See SRO RH2/4/316 passim.
investigate the whole state of the Highlands.\textsuperscript{247} A new Disarming Act was passed, six new Highland Companies were raised among the well-affected clans,\textsuperscript{248} a new programme of road and barrack building commenced, and £1,000 a year granted for the provision of schools. This renewed attention lasted only about a year, however, and more importantly, the basic problems of the heritable jurisdictions and clanship remained untouched.\textsuperscript{249}

The single most influential family in the Highlands was, of course, that of Argyll, which had risen to pre-eminence by service to the Crown and by 1700 controlled vast areas of the Highlands, especially in Argyllshire and west Inverness. Particularly after 1688 the Argyll family was the indispensable agent of central government in the Highlands and indeed without the loyal support of the Argylls the Hanoverians and the Whig interest would have been left practically without a friend in the Highlands. Conversely, however, the Jacobite movement was in many respects fostered by hatred of the Campbells among those clans who had lost their lands to them.\textsuperscript{250}

Argyll's breach with the Ministry in the late 1730s had the effect of reducing the government's influence in the Highlands and his policy after 1737 of attempting to run his estate as a landowner rather than a clan chief, shifting the basis of land tenure on to a more commercial basis, weakened the loyalty of the cadet branches of the

\textsuperscript{247}See Private Instructions to Wade 1724 ibid. f326-31.

\textsuperscript{248}See Menary, Forbes, pp.188-9. In 1739 those six Companies were increased to ten and formed into a Highland Regiment: ibid. p.190.

\textsuperscript{249}Mitchison, 'The Government and the Highlands', in Scotland in the Age of Improvement, ed. Phillipson and Mitchison, pp.30-5.

Finally, as we have seen, the appointment of Tweeddale as Secretary of State in 1742, led to renewed political conflict between the Whig groups in Scotland to the detriment of effective government. Moreover Tweeddale, unlike Ilay, made little attempt to give the Highlands a share of government benefits and patronage, and he represented that group within the Ministry which wished to pare down home commitments to concentrate on the war effort abroad. In this atmosphere of neglect, Jacobitism grew virtually unchecked in the Highlands.

Although there had been constant fussing among the government servants in Edinburgh throughout the first half of 1745 over French recruiting in the Highlands and a possible Jacobite rising, few effective measures had been taken and Tweeddale for one remained convinced as late as 2 August that no attempt would be made that year, or if it was it would have little success. Thus when the Young Pretender landed the government were completely unprepared and when the news filtered through to Edinburgh about 8 August the mood in the city quickly turned to one of despair. The lack of sufficient troops, arms and money in Scotland was dramatically exposed:

251 Ibid. pp.111ff; Mitchison, 'The Government and the Highlands', in Scotland in the Age of Improvement, ed. Phillipson and Mitchison, pp.36-7; Monary, Forbes, pp.183-7. This policy was reversed by Ilay.

252 Mitchison, Scotland, p.333.


254 Those troops in Scotland were put on the alert; renewed efforts were made to gather intelligence and various suspected Jacobite agents were seized; for example see Tweeddale to Dundas 2 Apr 1745 SRO RH2/4/399, 129; Tweeddale to Craige 13 Jun 1745 SRO RH2/4/399, 151; Craige to Tweeddale 22 Jun 1745 NIS YP 7066, 157 and enclosure; Tweedale to Craige 29 Jun 1745 SRO RH2/4/399, 169; Craige to Tweeddale 9 Jul 1745 SRO RH2/4/341 f75-6; Cope to Tweeddale 9 Jul 1745 ibid. f77-8.

Ever since the Battle of Fontenoy (wrote Milton to Tweeddale) I have been dreading an Invasion... we continue so ill provided to resist any powerful attempt... I fear he [Young Pretender] will be joined by numbers enough to make it very difficult for the small number of Troops here to dislodge him... it's too obvious that we, civil officers, can do little on such occasions, when superior [strength] is on the other side; It is Men, Money and ammunition; It is properly and timely arming the King's Friends and Faithful subjects, that only can resist the Enemies of the Government, in time of an Invasion and even these may come too late, if a Rebellion arises of a Sudden.256

The lack of arms, money and troops was compounded by three other factors, all of which enabled the Young Pretender rapidly to gather support and march south with little resistance: the absence of effective government in Scotland, the reluctance to raise and arm the loyal clans, and Cope's delay in marching from Edinburgh to meet the Young Pretender.

The political tensions between the various government servants, which over the previous months had led to the lack of any central government in Scotland, also hampered any concerted action when faced with the Jacobite threat. The Scottish administration was too deeply split to be effective and despite the emergency neither side was prepared to sink their political differences.257 In their correspondence to London each government servant praised his own side's actions and maligned the other so that ministers could not tell what to depend upon concerning Scotland, one side constantly contradicting the other.258


257 See for example Craigie to Tweeddale 14 Sep 1745 Edinburgh NLS YP7071, 141; Arbuthnot to Tweeddale 14 Sep 1745 NLS YP7071, 126 "... those scandalous seeds of Private Party Politicks don't cease to Appear every hour. Advice from our Quarter cross'd Blam'd and Murmur'd at without offering any better or I may say any at all".

Ilay, in his private correspondence to Newcastle and Pelham, placed the blame for kindling the rebellion and the state of unpreparedness in Scotland squarely on Tweeddale and complained that he and Milton were not being consulted by Tweeddale and Craige:

"if I had only to do with your brother and your self I could easily adjust matters, but during the time of this Regency, I am at a loss to know how to form a scheme in the directing of which every inch of ground will be fought at the board publicly before it can be ordered."

For the other side Hay accused Milton of keeping all intelligence to himself:

"His Lordship wants to show that he is the only man that can serve the Government in this Exigence [sic.]."

Ilay and Milton who had been on their way to Inveraray returned to Edinburgh on 16 August.

Where Mr Cragie says that he wants my assistance, advice and countenance magna scansiona verba! My assistance I am not allowed to give, my advice has been despised, and my countenance is penal to those that have it.

In fact, although Ilay was prepared to help where he could in suppressing the rebellion he was not willing to aid Tweeddale in doing so, and was

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259 See Newcastle to Ilay 1 Aug 1745 SRO RH2/4/341 f127-32; Ilay to Newcastle 13 Aug 1745 SRO RH2/4/342, f225-6 "I beg leave to suggest to your Grace that I write these letters as one friend to another, and not in the way of office correspondence. I should be very happy to be able to give your Grace any useful lights"; also Ilay to Pelham 11 Aug 1745 N.U.L. NEC 1639 "I have been doing all the service, or rather good offices in my power, I use this phrase because as we correspond by stealth, so I am forced to give my little assistance to the Government as a sort of smuggler only, it being highly imprudent, illegal and impracticable for me to do otherwise".


261 Ilay to Pelham 11 Aug 1745 N.U.L. NEC 1639.

262 Ilay to Tweeddale 30 Aug 1745 NLS YP7070, 100.


anxious to set off for London as soon as possible. He therefore stopped but briefly in Edinburgh, conferring with the other government servants before leaving for London on 20 August.

If more had been in my power I should not have been idle.

He was not well received by the King, Ministers or the public when he arrived there. Cope meanwhile bemoaned the general lack of help from the civil officers, though he himself worked almost solely with Milton, ignoring Craigie. For its part, the Ministry, bedevilled by Carteret and constant internal bickerings and by a worsening situation abroad after Fontenoy, proved incapable of effective action once the rebellion had broken out. Much of the difficulty stemmed from the ill-credit in which the Pelhams stood with the King: they remained largely impotent as long as Carteret remained in favour in the Closet.

It is interesting to note that Marchmont considered that the troubles were the culmination of the way Scotland had been governed and that the basic fault lay with the Ministry, particularly in allowing too much power to fall into Ilay's hands:

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265 See Ilay to Pelham 17 Aug 1745 N.U.L. NEC 1740.

266 Ilay to Newcastle 20 Aug 1745 SRO RH2/4/343 f337-8.


268 Cope to Pelham 17 Aug 1745 N.U.L. NEC 1628.

269 See Hay to Tweeddale 20 Aug 1745 NLS YP7069, 150 - "I suppose he considers the Duke as best able to support him and continue him in his Command and therefore will give His Grace all opportunitys of showing that he is best able to serve the publick and that your Lordships friends here are of little use..."; Craigie to Tweeddale 24 Aug 1745 NLS YP7070, 45; Tweeddale to Craigie 10 Sep 1745 SRO RH2/4/399, 259.

270 Owen, Rise of the Pelhams, pp.277-84.
I only wished the English would have before this time thought a little more of Scotland, for that we had all foreseen the danger of our country, which had been thought of here only as a present to be made to some great man...

Scotland was undone in the dispute between two men who should [be] the viceroy of it, and the English ministry considered only which of those two men should be absolute lords of the Kingdom, and thus the King had lost his Crown, which he seemed not to value; that all this might have been prevented last winter, if, instead of holding up the Duke of Argyll to be King, and insisting on all of us bowing to him, they had obliged his Grace to shake hands with the rest of the nobility and content with his share... that then the Duke was brought to do nothing unless he could do every thing, and Lord Tweeddale thought he had credit enough in the closet to suffer none to have power but himself, and, therefore, from resentment to the Duke of Argyll and all of us who had not cringed to him, he had neglected the common and necessary precautions to defend the kingdom....

Marchmont made it clear that he was not prepared to act merely for the Ministry to put the 'yoke of Argyll' back on Scotland once the Rebellion was over but that all friends of the present establishment should be taken into the Ministry's confidence in running Scotland, thus placing Scotland on the same footing as England.

Any possible attempt to nip the Rebellion in the bud was frustrated by the considerable confusion and indecision in government circles as to whether the loyal clans should or indeed could be raised and armed and under what authority this could be done. The right to call out the militia had lain with the Privy Council but with the abolition of that body the position had become confused. Various commissions for

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272 Ibid. pp.104-9 27 Sep 1745.

273 See Ibid. pp.104-9 27 Sep 1745; ibid. pp.121-6 7 Oct 1745; ibid. pp.127-9 8 Oct 1745; ibid. pp.129-33 10 Oct 1745. Marchmont's Diary during this period constantly stresses his concern that Scotland should not be ruled by a viceroy and abandoned to Ilay, but be treated as an integral part of the United Kingdom.
lord lieutenants had been issued in 1715 but although new commissions had been drawn up in 1727 on the accession of George II, which specifically included the power to call out the militia, they were never issued. Those of 1715 were never revoked and some were still held in 1745, though none for the Highlands. The whole position was thus clouded in uncertainty. Tweeddale had realised the need for new lieutenancies by early 1744 but he became entangled in political complications over whom to appoint, particularly in the northern shires, and nothing was done. Again, despite pressure from Forbes during the early 1740s, Tweeddale had hesitated to refound the Highland Companies, and although commissions for three new Highland Companies were finally issued in February 1745, the companies had hardly been raised and were not properly armed, trained or stationed when the rebellion broke out.

Much of the government's reluctance lay in their fear that arms would fall into the wrong hands:

274 See "Abstract of the Law of Scotland with respect to the Militia" ND NLS YP7079, 78ff. Tweeddale, Ilay, Milton, Forbes and Craigie all expressed doubts about the legality of raising the loyal clans without express authority; for example see Forbes to Tweeddale 8 Aug 1745 CP pp.204-5; Ilay to Pelham 11 Aug 1745 N.U.L. NEL 1639; Ilay to Newcastle 11 Aug 1745 SRO RH2/4/342 f211-2; Ilay to Newcastle 19 Aug 1745 SRO RH2/4/343, f318-9; Newcastle to Ilay 21 Aug 1745 ibid. f362-4; Milton to Tweeddale 6 Sep 1745 SRO RH2/4/344 f17-8; Ilay to Tweeddale 10 Sep 1745 NLS YP7071, 99; Arniston to Tweeddale 12 Sep 1745 ibid. 120; Arniston to Tweeddale 14 Sep 1745 ibid. 126; Marchmont Papers, ed. Rose vol. I pp.129-33 10 Oct 1745; H. Walpole, Memoirs of the Reign of King George the Second (London, 1846), I, p.277.

275 See Mitchison, 'Government and the Highlands', in Scotland in the Age of Improvement, ed. Phillipson and Mitchison, pp.39-42; Aberdeen to Tweeddale 22 Feb 1744 NLS YP7060, 119; Dundas to Tweeddale 10 Mar 1744 NLS YP7061, 21; Arniston to Tweeddale 12 Apr 1744 ibid. 101; Tweeddale to Dundas 14 Apr 1744 NLS YP7075, 94.


277 The effect of the Disarming Acts had been to leave the disaffected clans armed while there was a general shortage of arms among the loyal clans; see Cope to Tweeddale 2 Jul 1745 SRO RH2/4/341 f59-60; also Wade(?) to Newcastle Aug 1739 SRO RH2/4/337 f190-1.
I own I have always been very doubtful (wrote Tweeddale) whether it would be for His Majesty's Service, on many Accounts, to put Arms into the hands of those who are supposed to be friends to the Government in the Highlands, as has been proposed by some...

Although, after some debate, the Lords Justices had ordered in late July that 5,000 arms were to be sent to Scotland to be lodged at Edinburgh, Stirling and Perth, some of which were to be given to Ilay if he requested them (though this was to be kept secret "to prevent Application of the like nature from others, to whom, perhaps it may not be so proper to distribute Arms") no general distribution was made. Despite requests from Glasgow, Aberdeen and various individuals, it was only after protracted debate that the government finally resolved that it was quite legal for men to arm themselves against the rebels and by mid September warrants were sent down authorising town magistrates to raise and arm their citizens. Arming the counties, however, in the absence of lord lieutenants, remained a problem. In order to overcome this, blank commissions were sent to Forbes in Inverness to raise

278 Tweeddale to Harrington 12 Jul 1745 SRO RH2/4/341 f85-6. See also Craigie to Tweeddale 20 Aug 1745 SRO RH2/4/343 f347-8; Craigie to Tweeddale 23 Aug 1745 ibid. f380-1.

279 See Tweeddale to Cope 1 Aug 1745 SRO RH2/4/399 f194; Newcastle to Ilay 1 Aug 1745 SRO RH2/4/341 f127-32; Tweeddale to Harrington 2 Aug 1745 ibid. f139-40.

280 See Newcastle to Ilay 1 Aug 1745 ibid. f127-32.

281 Tweeddale to Harrington 2 Aug 1745 ibid. f139-40.

282 For example see Glenochy to Newcastle 15 Aug 1745 SRO RH2/4/342 f254-5; Provost Morrison of Glasgow to Milton 31 Aug 1745 SRO RH2/4/344 f34; magistrates of Dumfries to Milton 2 Sep 1745 ibid. f35.

283 See Tweeddale to Milton 12 Sep 1745 NLS SC 16,603.

284 See Milton to Tweeddale 16 Sep 1745 SRO RH2/4/344 f77-78; Tweeddale to Milton 21 Sep 1745 NLS SC 16,608.
the well-affected clans with a view to hindering Jacobite recruiting in the area. Ilay also managed to persuade the King to accept him as lieutenant of Argyllshire on a hereditary basis and Campbell of Stonefield set about raising the Argyllshire militia. In fact by this stage the Young Pretender had already taken Edinburgh and George and his Ministers preferred to await the arrival of Cumberland rather than raise and arm the loyal clans. Tweeddale's indecision, legal quibbles and confusion at both Edinburgh and London had effectively negated one of the traditional forms of defence: many Scots used the lack of any formal directions as an excuse for doing nothing.

The rebel army took Edinburgh on 17 September with little resistance. Milton, Craige, Dundas and most of the other government servants fled the city and joined Cope who had just arrived by sea at Dunbar from Aberdeen. A few days later the rebels attacked and defeated Cope at Prestonpans. Cope retreated to Berwick, accompanied by Milton, Craige and Dundas. Scotland

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285 See Tweeddale to Craigie 4 Sep 1745 SRO RH2/4/399, 254; Tweeddale to Cope 4 Sep 1745 ibid. 258; Tweeddale to Forbes 12 Sep 1745 ibid. 272. For full details on the raising of the companies and their activities see Menary, Forbes, pp.195-307 and relevant papers in CP and MCP.


290 Lord Provost Archibald Stewart was later tried in the Court of Justiciary but acquitted on charges of not taking sufficient steps to avoid the fall of Edinburgh and of encouraging the other magistrates to capitulate.

291 See Milton to Tweeddale 17 Sep 1745 SRO RH2/4/344, f79-80; Craigie to Tweeddale 18 Sep 1745 ibid. f91-2.

292 For details see Cope to Tweeddale 21 Sep 1745 NLS YP7072, 3; Milton to Newcastle 25 Sep 1745 SRO RH2/4/344 f104-7; Account of taking of Edinburgh and Battle of Prestonpans by an Eyewitness N.U.L. N.EC 1652; Cope to Pelham 23 Sep 1745 N.U.L. N.EC 1664.

293 See Craigie to Tweeddale 21 Sep 1745 SRO RH2/4/344 f93-4.
had fallen, albeit temporarily, into the Young Pretender's hands. Craigie was ordered by Tweeddale to come to London, leaving Dundas and Milton at Berwick to forward information on the Young Pretender's activities. Up to this point Milton had left official correspondence largely to Craigie but once the Lord Advocate had gone to London Milton increasingly took the lead. He corresponded directly with Newcastle and Tweeddale was rapidly excluded from any share in Scottish business. Dundas was soon to complain that Milton did not consult with him or keep him informed of affairs.

Meanwhile in Edinburgh the Jacobites issued orders that the various collectors of customs, excise and land tax were to bring their books and all money in their hands to Holyrood. Glasgow, for example, was ordered to pay over £5,500 and parties were sent out from Edinburgh to take up cess, excise and malt duties in the surrounding areas. Milton estimated in January 1746 that the rebels had seized £60,000 of public revenue.

After much delay the rebels finally marched south at the beginning of November and on 7 November Milton, Dundas and the other government

294 Tweeddale to Craigie 28 Sep 1745 SRO RH2/4/399, 303.
295 For example see Dundas to Tweeddale 1 Nov 1745 NLS SYP Box 13 Fl.
296 For example see Provost of Ayr to Tweeddale 30 Sep 1745 enclosing J Murray (Young Pretender's secretary) to Provost of Ayr 26 Sep 1745 SRO RH2/4/344 f125 - money to be paid to secretary at Holyrood House in proportion to the excise duties raised in Ayr; Robert Gardner, collector land tax ayr, to Tweeddale 30 Sep 1745 enclosing John Murray to himself 27 Sep 1745 ibid. f126; collector and comptroller customs ayr to Tweeddale 30 Sep 1745 enclosing Murray to same 27 Sep 1745 ibid. f127. See also Craigie to Tweeddale 1 Oct 1745 SRO RH2/4/344 f123 (land tax, Midlothian); Lord Provost of Glasgow to Tweeddale 4 Nov 1745 NLS YP7073, 3 (on levying excise); Dundas to Tweeddale 2 Nov 1745 NLS SYP Box 13 Fl (excise); Dundas to Tweeddale 7 Nov 1745 ibid (land tax).
297 See Provost Andrew Cochrane to Tweeddale 28 Sep 1745 NLS YP7072, 50.
298 See Charles Hay, collector of land tax in Haddingtonshire, to Tweeddale 2 Oct 1745 NLS YP7072, 90.
299 Milton to Newcastle 2 Jan 1746 SRO RH2/4/348 f2-5. Most commissions lost some cess to the rebels but the Government accepted no excuses and held collectors responsible: Whetstone, Scottish County Government, p.140 footnote 61.
servants in Berwick resolved to return to Edinburgh and restore the
civil government. He once Milton quickly assumed
command, issuing directions, consulting with the military,
gathering intelligence, rallying government supporters, raising
volunteers to help the regular troops, organising the defence of
Edinburgh, and communicating with London, although in all this
he was considerably hampered by a continuing lack of money.

The Justice Clerk had the sole direction
Civil and military too under General Guest
[who was old and in poor health].

He almost totally ignored Dundas who in turn accused Milton of
distributing the few arms available only to his political allies:

the true fact is that my Lord Justice
Clerk who governs without controul, will
not nor has not given them to any one
person that is not either Dependent on
him or presently employed by him, and it
is plainly the scheme that this country
will rather be allowed to sink than any
person other than I have formerly de-
scribed, suffered to assist in preserving
it.

Over the next few months Milton, in effect, was the government in
Scotland.

On 6 December the Young Pretender reached Derby, hesitated and
turned back, pursued up north by Cumberland who had arrived from abroad
with British and Dutch troops.

Since late 1744 Tweeddale had been more or less a cipher and he

300 Milton to Newcastle 7 Nov 1745 enclosing Milton to Wade 7 Nov 1745 SRO
NH2/4/345 f203-5; Dundas to Tweeddale 7 Nov 1745 NLS SYP Box 13 Fl.

301 See for example Milton to Newcastle 9 Dec 1745 Edinburgh NH2/4/345
f252-7; Newcastle to Milton 14 Dec 1745 ibid. f265-8.

302 Hay to Tweeddale 10 Dec 1745 NLS YP7073, 73. See also Hay to Tweeddale
21 Dec 1745 ibid. 90.

303 See Dundas to Tweeddale 6 Dec 1745 NLS SYP Box 13 Fl.

304 Dundas to Tweeddale 21 Dec 1745 ibid.
was quite clearly unable to handle the Jacobite crisis. During much of November, when the rebel army was marching south, he had been almost totally by-passed as far as official business was concerned. Thus although there was no indication that the Pelhams intended to remove him, and indeed Ilay believed he would continue in office until the rebellion was over, he finally resigned on 4 January 1746:

... after what I have seen and suffered, the wonder is how he has had the patience to keep them [the seals] so long.

For the time being the official functions of the office were again to revert to the two English Secretaries of State. Ilay was determined that Lord Advocate Craigie too should go:

I have told them [Pelhams] flatly I would have nothing to do with Craigie directly or indirectly... the non execution of that point has made me say very little to the great men this week, though they all speak of it as to be immediately done.

George and the Ministry were both reluctant but Ilay insisted and Craigie was dismissed. Dundas was advised by his friends not to resign immediately but he felt that as Milton was almost completely excluding him from government business he could not continue and

305 See Ilay to Milton 18 Jan 1746 NLS SC 16,615.

306 See Mitchell to Dundas 4 Jan 1746 Omond, Arniston Memoirs, p.138. He would almost certainly have been removed in the Ministerial crisis a month later.

307 Mitchell to Dundas 31 Dec 1745 Omond, Arniston Memoirs, pp.136-7. See also Mitchell to Dundas 2 Jan 1746 ibid. p.137.

308 See Newcastle to Milton 9 Jan 1746 SRO RH2/4/348 f44-7: "His Majesty has been pleased to direct, that the Correspondence with Scotland, should be carried on by my Lord Harrington and me; And I must beg, That your Lordp would have the Goodness to suggest whatever you may think for his Majy's service; And we shall always give a particular Attention to it".

309 Ilay to Milton 18 Jan 1746 NLS SC 16,615.

310 Sedgwick, House of Commons I, p.592.

311 See Mitchell to Dundas 2 Jan 1746 Omond, Arniston Memoirs, p.137; Craigie to Dundas 4 Jan 1746 ibid. p.138; Arniston to Dundas ND, 1 and 12 Jan 1746 ibid. pp.139-40.
by the Marquis of Tweeddale’s resignation, the channel of Correspondence for this Country must now be altered, my Retiring at this time can occasion no Interruption or prejudice to the service. 312

He therefore tendered his resignation which was at once accepted. 314

Arniston was not pleased:

You have by this step established for ever the power of the very man I believe you and I abominate. 315

William Grant of Prestongrange was appointed Lord Advocate and Patrick Haldane (on Cumberland’s recommendation) and Alex. Home joint solicitors. 316

The Squadrone as a political group more or less died with Tweeddale’s Secretaryship. They had held together throughout the 1730s, sustained by hopes of office, but Tweeddale’s failure had disillusioned them and more importantly politics was about to enter a new era in which the Ministry was more willing to accommodate men of talent, regardless of party connection. There was consequently little need for exclusive factions and the Squadrone as a group simply disappeared. 317

On the surface Ilay’s success seemed complete:

The Marquis having demitted, the Duke comes into the same situation he was in before the Patriots prevailed against Sr R. W—le; and consequently the J—ce is once more depute Vice Roy. 318

313 Ibid.
314 Newcastle to Dundas 24 Jan 1746 SRO RH2/4/349 f117-8. Arbuthnot and Inglis were removed in October 1746 and in the same month Hay was replaced as deputy keeper of the signet by Alex McMillan on Milton’s appointment as principal keeper.
315 Arniston to Dundas ND Omond, Arniston Memoirs, p.141.
316 Two solicitors were appointed, partly because of the increased volume of legal business and partly to reconcile a conflict of interest between Ilay, who wanted Home, and Cumberland who favoured Haldane: Murdoch, The People Above, pp.55-6.
318 Wightman to Forbes 22 Jan 1746 CP pp.266-7.
Yet, as we shall see, Ilay too was to be affected, at least for a time, by the Ministry's renewed determination to exercise more direct control over Scotland.

By late January, with the rebels retreating north of the Forth and Cumberland in hot pursuit the immediate danger of the Rebellion was over and the Pelhams were determined once and for all to resolve the continuing difficulties caused by Carteret's influence in the Closet. Thus on 10 February Secretaries Harrington and Newcastle resigned, followed the next day by Pelham, Bedford, Gower, Monson and Pembroke. About 45 other members of the administration made it clear they were prepared to follow suit: such solidarity derived as much from distrust of Carteret as loyalty to the Pelhams. George attempted to form a new Ministry headed by Carteret and Bath (Pultney) and there was talk of Marchmont being made Secretary of State for Scotland. Such was the opposition hatred of Carteret, however, that the whole scheme was doomed to failure. George was forced to reinstate the Pelhams within forty-eight hours and agree to dismiss all the remaining adherents of Carteret and Bath. These events finally destroyed Carteret's political influence although as we shall see the Ministry continued to be wracked by internal divisions, particularly over foreign policy, and political stability did not immediately return.

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319 "I thought fitt to let the soldiers a little loose with proper precautions, that they might have some sweets with all their fatigues": Cumberland to Newcastle 5 Feb 1746 Crieff SRO RH2/4/350 f31-2.

320 See Newcastle to Fawkener (Cumberland's aide) 10 Feb 1746 SRO RH2/4/350 f56-9; Newcastle to Milton 10 Feb 1746 ibid. f74-5.

321 See Owen, Rise of the Pelhams, pp. 293-7; Browning, Newcastle, pp. 133-4; Craigie to Dundas 11 Feb 1746 Omond, Arniston Memoirs, pp. 142-3; Marchmont Papers, ed. Rose vol. I pp. 171-3 11 Feb 1746; ibid. p. 175 15 Feb 1746; Newcastle to Cumberland 15 Feb 1746 SRO RH2/4/350 f92-4; Milton to Newcastle 18 Feb 1746 SRO RH2/4/351 f101-2; Milton to Stone 19 Aug 1746 ibid. f107-8.

322 Owen, Rise of the Pelhams, pp. 297-301.
Even before Cumberland had finally defeated the rebel army at Culloden on 16 April 1746, the Ministry had begun to consider what measures should be taken to ensure, once and for all, the future peace of the Highlands. In fact neither Pelham nor Newcastle had much interest in the reformation of Scotland. The real force for change came from Cumberland who wished to punish the Scots and even more from Hardwicke who desired to rationalise the Scottish legal system. Numerous plans and schemes were submitted to Ministers by various individuals for consideration and a systematic programme of reform, largely the work of Hardwicke, was drawn up by May 1746. Over the next two Parliamentary sessions a whole series of Bills were put on the statute book. These included an Act of Attainder against the principal Jacobites; an Act forfeiting the estates of all those attainted for treason and vesting most of them in the Crown; various measures to tighten the policing of the Highlands.

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323 See Fawkener to Newcastle 16 Apr 1746 Inverness SRO RH2/4/355 f165-6; Cumberland to Newcastle 18 Apr 1746 ibid. f183-9 "I must own I never expected They would have the impudence to risk a general Engagement"; Fawkener to Pelham 18 Apr 1746 N.U.L. NNC 1740; Milton to Newcastle 19 Apr 1746 SRO RH2/4/355, f202-3.

324 Jewell, The Legislation Relating to Scotland After the Forty-Five, pp.49-50

325 Ibid., pp.65-84.

326 For a detailed study of these measures, their preparation and passage through Parliament see Jewell, The Legislation Relating to Scotland after the Forty-Five.

327 19 Geo II c.26 1746.

328 20 Geo II c.41 1747. After the Fifteen rebellion a commission had been set up to sell the forfeited estates but this had proved to be a troublesome and unprofitable exercise. The estates forfeited after the Forty-Five were initially placed under the management of the Scottish Exchequer. Most were eventually sold but thirteen were eventually annexed to the Crown in 1752 (Annexing Act 25 Geo II c.41) and placed in the hands of a Commission for the Annexed Estates. The Annexing Act provided that the rents and profits arising from the estates were to be used solely for 'civilising the Highlands': for details see Murdoch, The People Above, pp.38-9, 73-82.
and improve aspects of the criminal justice system including an
Act to suppress more effectively non-juring meeting houses which
were widely regarded as a prime cause of the rebellion, \(^{329}\) and a
new Disarming Act which also proscribed the wearing of the Highland
dress; \(^{330}\) and finally and most important in 1747 the Heritable
Jurisdictions Act which fundamentally remodelled the Scottish
judicial system by abolishing most of the heritable jurisdictions
and introduced legally qualified sheriffs depute, appointed by the
Crown, throughout Scotland, \(^{331}\) and the Tenures Abolition Act which
abolished military tenure thereby eliminating much of the feudal
structure of Scottish land-holding. \(^{332}\)

With Lord Advocate Grant engaged for much of the time in the
preparation of legislation, 1746 and 1747 were extremely busy years
for Milton. Although Cumberland had taken over control when he was
in Scotland, Milton was in those years clearly the principal
government officer in Scotland. He conducted the official corres-
pondence with Newcastle and other Ministers (as well as his private
correspondence with Ilay), co-ordinated intelligence operations,
liased with the military, and on instructions from London began to
enforce the new laws against non-juring meeting houses. \(^{333}\) He was
also responsible for dealing with the Jacobite prisoners, the collection
and preparation of evidence on those who were to stand trial and their

\(^{329}\) 19 Geo II c. 38 1746. The previous acts had been largely ineffective:
see — to Horatio Walpole 8 Jul 1746 N.U.L. NEC 85c.

\(^{330}\) 19 Geo II c. 39 1746.

\(^{331}\) 20 Geo II c. 43 1747. See also above pp. 233-5 and below pp. 527-31.

\(^{332}\) 20 Geo II c. 50 1747.

\(^{333}\) See for example Milton to Newcastle 30 Jun 1746 SRO RH2/4/357 f 65-7.
transportation to Carlisle and Newcastle, all of which involved him in considerable difficulties and an enormous amount of work: 334

This whole affair has been very troublesome and difficult to manage, and nothing but his Majesty's service and your Grace's commands could have engaged me in it. 335

He was faced with a wide range of new problems 336 and continually had to intervene to smooth relations between the military and civil authorities in various parts of Scotland. 337 In October 1746 he was rewarded for all his sterling services by being made Principal Keeper of the Signet in Scotland during pleasure 338 which had hitherto been held by the Secretary of State. 339

Despite the resignation of Tweeddale, the spectacular failure of Carteret and Pulteney to form an alternative administration and the triumph of the Pelhams, Ilay's position was to remain relatively weak until 1748. There were two main reasons for this. First he was in particular disfavour in the Closet, George regarding him as little better than a crypto-Jacobite especially after his flight to London, 340 and second, the predominant figure within the Ministry in these years was Newcastle, who had always been jealous of Ilay's influence, and not Pelham. Until 1748 the most pressing problem facing the government


336 "It was a new case, I had no rule to walk by, other than wishing to do the best for his Majesties Service" Milton to Newcastle 8 Jun 1746 SRO RH2/4/357 f40-1.


338 See Newcastle to Milton 7 Oct 1746 SRO RH2/4/360 f1-2; Milton to Newcastle 13 Oct 1746 ibid. f32-3. Alex McMillan, who had held the post prior to 1742, replaced Thomas Hay as deputy keeper.

339 By Newcastle and Harrington since Tweeddale's dismissal.

340 Murdoch, The People Above, p.35.
was the conduct of the war abroad. Newcastle, in order to curry favour with George and Cumberland, supported an aggressive foreign policy while Pelham was anxious to secure peace as soon as possible. In fact, as long as the war lasted Cumberland was the dominant figure and his attitude to Scotland in general and Ilay in particular was of crucial importance. Leaning heavily on his experiences during the rebellion, and in particular the lack of support from supposedly loyal Scots, he was convinced that most Scots were, if not active, at least passive Jacobites, and that strong measures were necessary if Scotland were to be made safe from further Jacobite attempts. No Scotsman, least of all Ilay, could be trusted and it was essential that the Ministry took direct control of Scotland. Ilay's promotion of Jacobites for jobs and at elections, particularly in the north, had, he believed, greatly encouraged the rebellious spirit and he was extremely critical of the policy of leniency advocated by Ilay and Milton once the rebellion was over. Indeed, during 1746 Cumberland successfully attacked Ilay in the heart of his political base, Edinburgh. Cumberland believed that the Edinburgh magistracy was Jacobite and as the 1745 elections had been disrupted by the rebellion, was determined to hold a poll election in an effort to defeat Ilay's interest. A fierce battle was fought during the summer which Ilay eventually lost.

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341 For example see Cumberland to Newcastle 28 Feb 1746 MCP V p.36; Cumberland to Newcastle 23 Apr 1746 SRO RH2/4/355 f215B; Cumberland to Newcastle 30 Apr 1746 MCP V p.71-2; Cumberland to Newcastle 28 Jun 1746 SRO RH2/4/357 f83-108.

342 For example see Hume Campbell to Marchmont 19 Mar 1747 HMC Polwarth V pp.221-5; Murdoch, The People Above, pp. 12, 35.

343 See Fawkener to Pelham 4 Apr 1746 N.U.L. NEC 1739a.

344 See Maule to Milton 3 Jun 1746 NLS SC 16,630; Maule to Milton 10 and 18 Sep 1746 NLS SC 16,631; Jewell, The Legislation Relating to Scotland after the Forty-Five, p.44.
who favoured harsh measures against the Scots and his influence was particularly marked in the early legislation of 1746. Newcastle, anxious to retain Cumberland’s support on foreign policy, was only too ready to agree with his attitude towards Scotland. Hardwicke, the main architect of the post-rebellion legislation, although his approach was that of the lawyer seeking to rationalise the laws and institutions of Scotland, also generally supported the Newcastle-Cumberland faction. Against this, Pelham, while anxious to make Scotland more directly dependent on the Ministry, was not prepared to alienate the Scots by pushing severe measures too hard and too fast. He believed in a policy of moderation, seeking compromise rather than confrontation wherever possible and to mitigate the severity of the English reaction. This policy was to bring him repeatedly into conflict with Newcastle. For his part Ilai was anxious to re-assert his old supremacy, which led him to clash with all groups in the Ministry, but he also marshalled behind him the bulk of the Scottish political nation in seeking to moderate the English reaction. As a result, Ilai and Pelham found themselves drawn together once again and despite his misgivings Pelham was frequently placed in the position of upholding Ilai’s influence in Scotland.

Nevertheless, despite these differences in approach, the Ministry were generally agreed that control of Scotland could not simply be handed back to one faction, the Argathelians. Ministers had little doubt that the factious rivalry between Tweeddale and the Argathelians

345 He had for long been on close personal terms with Newcastle.
had contributed in large measure to the speed with which Scotland had collapsed in the face of the Young Pretender. Although leaving Scotland to a manager had undoubted advantages, not least in that it left Ministers untroubled with everyday problems, it quite obviously alienated many influential Scots who did not enjoy the manager's favour. Ministers were particularly conscious of the fears of those such as Marchmont that once the rebellion was over Scotland would simply be returned into the hands of Ilay which, as we have seen, had made them reluctant to take up arms in defence of the government. Moreover, both Pelham and Newcastle had had first hand experience during the Walpole years of seeing how Ilay, building on his natural power-base in Scotland, had been able to make himself alarmingly strong. Ministers were therefore united in their determination to attempt yet again to make Scotland more directly dependent on the Ministry, rather than on a Scottish vicerey. Rewards and favours would be distributed to all who were prepared to support the Ministry, regardless of faction. An early indication of this 'new' policy was the decision for the time being not to replace Tweeddale as Secretary of State although the final decision to let the office lapse does not appear to have been taken until late 1746. As we have seen, the office was traditionally regarded as the formal channel of control over Scotland and by not filling the post Ministers obviously hoped, as Harley and Walpole had

346 For example see Newcastle to Cumberland 6 Mar 1746 MCP V pp. 37-8: "... the divisions amongst the Friends of the Government have run so high in Scotland, that Both Parties have in their turns, courted the assistance of the Jacobites; and that is the chief cause of the present misfortune".

347 Above p. 504.


349 See Hume Campbell to Marchmont 27 Nov 1746 HMC Polwarth V pp. 188-9. It was rumoured at this time that Athole might be appointed; ibid.
previously, to make the Scots more directly dependent on the Ministry. Ministers were also reluctant to dismiss Craigie, and when Ilay insisted, he was offered a vacant seat on the bench. He turned this down, however, preferring to return to the bar and the place was eventually given to Patrick Boyle, uncle of the earl of Glasgow, rather than to an Argathelian.

In a lengthy letter to Pelham in August 1746 Horatio Walpole discussed 'ye proper measures to secure ye Government interest in Scotland' which closely reflected the lines along which Pelham was already thinking. It was particularly important, argued Walpole, that the management of Scotland be put on a proper footing in view of the general election which must take place within the next two years. He stressed the need to detach men from both the Squadrone and Argathelian groups, join them together with those who belonged to neither, and make all directly dependent on the Ministry. The late Duke of Argyll, he pointed out, helped by Forbes and Ilay, had, with the support of many of the lesser nobles, many of whom were Jacobites, or disaffected, won a superiority in Scotland and forced the Ministry to join with them and dispose places in Scotland at their direction. This in turn had alienated several prominent nobles who were loyal to the establishment but not prepared to follow Argyll:

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351 9 Dec 1746 SRO RH2/4/411, 166.

352 Horatio Walpole to Pelham 13 Aug 1746 N.U.L. NEC 88.

353 Pelham had expressed some fears that to take too active measures against the Argathelians would merely throw Scotland into the hands of the Squadrone who followed Carteret.
the 'late D: of A...le, in a great measure by ye help of our wild freind Duncan Forbes on one side, and ye management and artful qualitys of his brother I...y on ye other; (tho' no freind to Duncan on account of their being rival agents under his Grace) found means to get a great superiority among ye Nobility, Gentry and Populacy against the Squadron, and having showed that they had gott that Superiority ye Government in England was obliged to close in with them and to dispose of ye places and pensions in Scotland according to ye direction of ye two brothers there.

There were indeed a few families

all naturally well affected to ye Governmt, and not part of ye Squadron, that were disposed to act under ye Influence of ye English ministry independent of ye two Scotch brothers, but as Lord I...lay would not bear this independancy, and as Sr R... W...le had not leisure to attend to ye Governemnt of Scotland himself, he was forced to leave it entirely to his Lrdp, who gradually took care to lessen ye interest and credit of those who were not immediately sub-servient to him.

In their place Ilay fostered the interest of several Jacobite families who

were persuaded for ye sake of pensions, and places to support in Parliament ye measures of it [governemnt], from hence it naturally followed that the Episcopal party were favoured, and indulged, and ye kirk and their freinds neglected, and discountenanced; by this means ye Squadron were disobliged and discontented, and when Patriotism encreased they Joyn'd under that head in ye opposition to ye administration. Thus matters stood, when ye D: of Ar...les insatiable views of Avarice and Ambitions broke out like a Torrent, big wt vengeance agst t Sr R: W...le and finding noe resistance from ye Lrds in ye administration he bore all before him; the English, the Scotch Patriots, Squadron and Jacobites, all bent upon that one object of bringing ye Minister to Destruction, forgetting all former differences, jealousys, and envy among one another gladly served under his Graces banners, they let him take ye lead, and in taking ye lead he flung himselfe into ye hands and interest not of those who were occasionally discontented, but of those that were most disaffected; and having done that, he went into Scotland; where being respected and adored by all partys, and his brother I...lay being forced to submit to, or connive at his Graces violent and arbitary Proceedings, ye whole Power of that kingdom was put under ye direction and influence of Magistrates that were jacobites; from that time, and ye removal of Lrd Or...rd in consequence, was laid ye foundation for ye Late Rebellion.
Arguing that the Argathelians had shown too much favour to the Episcopalians and Jacobites, it would be necessary
to transfer the power of that country from
ye influence of ye Jacobites into ye hands
of ye well affected kirk; it will naturally
follow that ye Squadron and their freinds
must have ye cheif credit there, as long as
ye impression of ye late troubles shall last;
and if that shall be till ye next election
they must have ye share in ye choice of ye
representatives for both houses.

Unfortunately, the Squadrone had been and remained attached to
Pelham's political rivals, particularly Carteret. This was the crux
of the problem: the Argathelians had lea-at too much to the disaffected
but the Squadrone were still allied to Pelham's rivals at Westminster:

How to obviate ye inconveniencys that follow
thence is ye great and a very difficult Question.

Walpole accepted that there was no alternative at present of leaving
the chief direction of Scotland to Ilay, particularly as he controlled
many of the Scottish members:

the D. ke as you rightly observe, must have
chief direction of ye Politicks there; ...
Considering how many of ye Scotch members
are at ye D: of A...les devotion at present
in ye house, and that before ye dissolution
of this parliament, you may have ministerial
questions of great moment before you, his Grace
must be manged to a certain degree.

He advised Pelham, however, to turn his thoughts on

how to secure an interest among others, that
are not immediately his freinds; for that
purpose our old freind Duncan P...s should
be brought to town, he is I sayd before wild,
but sincere and capable and since his Great
Patron ye late Duke of Ar...le is no more I think
he will truly cordially attach himselfe to you
and you will find him knowing and practicable...
I doe not mean by looking out for these helps,
separately from ye Squadron and ye D: A...le
you should entirely abandon either ye one or
ye other, you should rather court ye first and
detach such of them as you are able from Lrd
Gra...le [Carteret]and fling ye power in the
respective countys and boroughs, in to ye hands
of such as can be so detached ... On ye other
side, I imagine Lord Justice Clerk has done
great service, he, I reckon is inseparable from
ye D. of Ar....le and may if he has ingratiated
himselse into ye D...ke's favour be of service to reconcile ye D: of Ar...le to such of ye Squadron as must be necessarily employed;... in short I suppose you will have thoughts of framing some plan for putting ye Government of Scotland into such hands as may be depended upon; and for taking as much care as you can that these hands may be such as you could can depend upon, in wch case I wish you all imaginable success.

Although Pelham began to take an increasing interest in Scots patronage in an effort to establish an interest in Scotland independent of Ilay, there were considerable difficulties. Ministers lacked both a sufficiently detailed knowledge of Scotland and the time or inclination to apply themselves to the minutiae of Scottish politics and patronage.

More importantly, given the tensions within the Ministry, Pelham, Newcastle and Chesterfield (who had replaced Harrington as Secretary of State at Newcastle's instigation in October 1746) each approached Scotland primarily with a view to strengthening their own position. Chesterfield, while he remained in the Ministry, sought to build up an alternative source of support in Scotland, primarily through Marchmont and his brother Hume Campbell, with a view to undermining Ilay. These differences of approach among the Ministers had the effect of keeping the Argathelians united and meant that most politicians in Scotland had to continue in either the Argathelian or anti-Argathelian camp, which in turn prolonged the conviction at Westminster that Scotland remained divided into two factions:

As things are here... Scotland is taken to be divided into two parties, one the Duke of Argyle's which is for the ministers, the other Squadrone looked upon as the friends of the earl of Granville [Carteret].354

Nor could Ilay's position in Scotland, which had been assiduously built up over the last twenty years and had emerged more or less unscathed after the four years of Tweeddale's Secretarvship, be easily dismantled.

He was still by far the major figure in Scottish politics and retained a powerful bargaining position. There was no-one else with sufficient influence or ability to match him, least of all those suggested by Horace Walpole – Hopetoun, Morton, Sutherland, the Munros and Grants. Even Marchmont and Hume Campbell came to realise, as we shall see, that it was not possible to overthrow Ilay completely; at best they could work with him and hope to modify his influence.

During the winter of 1746-7 the Ministry made particular efforts to win over Marchmont and his brother Alexander Hume Campbell. The brothers had been outspoken critics of Ilay and his domination of Scotland, particularly since the outbreak of the rebellion and, as we have seen, were anxious that the Ministry did not simply hand Scotland over to Ilay on Tweeddale's resignation. Pelham and Newcastle saw the acquisition of Marchmont and Hume Campbell as part of the scheme to broaden support in Scotland, and Hume Campbell in particular, an excellent orator, would be a useful ally in the forthcoming debates in the House on the legislation for Scotland, particularly the Heritable Jurisdictions Bill. The lead, however, was taken by Chesterfield. The price the brothers demanded for their support was, however, high: control of Scotland should be taken out of Ilay's hands and Marchmont made one of the sixteen peers and given a prestigious post in Scotland. Otherwise Hume Campbell threatened to oppose the Ministry in the Commons over the Scottish bills.355

Protracted negotiations between Hume Campbell and the Ministry, particularly Chesterfield, took place over several months, but for long made little headway.356 With Pelham under pressure from both Newcastle

355 See Hume Campbell to Marchmont 27 Dec 1746 ibid., p.191.

356 For full details see ibid. pp.185ff.
and Chesterfield and being forced to rely to a greater extent than he might have wished on Ilay, Hume Campbell feared that:

... it seems determined to leave Scotland to the Duke of Argyle as a province in which none are to interfere owing perhaps to weakness, laziness or ignorance about anything at all. 357

... I do not find any likelihood of anything being proposed about Scotland. I fancy those in power will be glad to let it sleep since that way they will have no trouble. 358

Negotiations dragged on through into February. Chesterfield hinted that Pelham did not fully trust Ilay and might be prepared to bring in Marchmont as a counter-balance and even suggested that he, Chesterfield, and the King would like to see Marchmont eventually take over from Ilay. 359 Hume Campbell remained adamant, however, that neither he nor his brother would play second fiddle to Ilay. He suggested that Marchmont be made Keeper of the Privy Seal 360 but the post was given to Atholl for his services in the Forty-five and perhaps as consolation for not being made Secretary of State. 361 Hume Campbell then suggested other posts for Marchmont including the Keeper of the Great Seal (held by Ilay) and the Lord Clerk Register (held by Lothian). By this time, however, Chesterfield's own position in the Ministry had been weakened as a result of differences with Newcastle over foreign policy, and Hume Campbell began to realise that Chesterfield's support

357 Hume Campbell to Marchmont 9 Dec 1746 ibid. pp. 190-1.
358 Hume Campbell to Marchmont 27 Dec 1746 ibid. p. 191.
360 Ibid.
361 See above, p. 518 footnote 349.
was not sufficient to overcome Pelham and Ilay\textsuperscript{362} who "was look'd upon as the interest of Scotland for the present".\textsuperscript{363}

As to Mr Pelham the Duke of Argyle had only to say go and the other would run.\textsuperscript{364}

He therefore recognised that he and Marchmont would have to come to terms with Ilay or they would be condemned to permanent opposition:

I think you never could undertake to meddle with Scotland without the interest and weight of the Duke of Argyle.\textsuperscript{365}

When Hume Campbell met Pelham in mid-March to discuss the Heritable Jurisdictions Bill he therefore took the opportunity to inform Pelham that despite Ilay's determination not to share power with anyone else in Scotland he and his brother were prepared to work with Ilay on the Ministry's behalf:

[I said] we had no objection to the Duke of Argyle being first and principal but not sole and absolute. Let others be in according to their abilities.\textsuperscript{366}

Pelham with the heritable jurisdictions bill soon to come before the Commons was anxious to keep Hume Campbell's hopes alive and Hume Campbell therefore came away confident that Pelham, as well as Chesterfield and Newcastle, was anxious to reduce Ilay's power in Scotland:

\textsuperscript{362}He [Chesterfield] is not active enough nor knows enough of Scotland to cope with the Duke of Argyle in these things, but if we join with the Duke of Argyle and have Lord Chesterfield too the case is different and our friends in a better case": Hume Campbell to Marchmont 19 Feb 1747 HMC Polwarth V pp.203-4.

\textsuperscript{363}Hume Campbell to Marchmont 3 Feb 1747 ibid. pp.197-200.

\textsuperscript{364}Hume Campbell to Marchmont 3 Mar 1747 ibid. pp.307-12.

\textsuperscript{365}Hume Campbell to Marchmont 5 Feb 1747 ibid. pp.200-1.

... both Chesterfield and Pelham avowed they wanted to have other people to supply them with friends more agreeable as I plainly perceiv’d to Cumberland who is very averse to all that look like Jacobites, as he thinks all these who are Argyle’s friends are... both Chesterfield and Pelham have privately to me desired the connection with Argyle might only be in avoiding differences in business but really with them and in private with them do what was fit to be done, avoiding to quarrel with Argyle... on the whole the view in which as far as I can see the thing is to be looked upon is this, the ministry find the King and Cumberland averse to Argyle and his people; they want assistance themselves, Pelham in the House; Chesterfield wants a connection and attachment to himself, and the Chancellor [Hardwicke] wants help about the affairs of Scotland which are thrown heavily upon him alone, and this has produced the whole... it show’d me they wanted people not strangers to business and who could apply to it to assist them. 367

Ilays, however, was not prepared to accept any diminution of his power without a struggle 368 and was particularly averse to Marchmont becoming one of the sixteen peers:

... Argyle fear’d you there for now he was all the sixteen himself but would not be so then... 369

Finally in June 1747, partly as a reward for supporting the Heritable Jurisdictions Bill, Hume Campbell’s negotiations bore some fruit. Efforts to persuade Lothian to give up his Lord Clerk Register post to Marchmont in exchange for a place on the Police Commission fell through, 370 largely because Ilay advised Lothian against it, 371 but Marchmont was offered


368 For example see Hume Campbell to Marchmont 24 Mar 1747 ibid. pp. 222-3.


and accepted the post of first Commissioner of Police at an enhanced salary of £3,000 p.a. to bring it into line with that of the Lord Clerk Register. Much to Hume Campbell's annoyance, however, Ilay succeeded in having Marchmont excluded from the court list of sixteen peers for the 1747 election.

The difficult position in which Ilay found himself at this time - seeking on the one hand to retain support in Scotland by mitigating the severity of the Ministry's measures, while on the other defending himself against the determined efforts of Newcastle, Cumberland and Chesterfield to curtail his influence - is well illustrated by his attitude towards the Heritable Jurisdictions Bill which, as we have seen, in its final form abolished most heritable jurisdictions, provided for payment of compensation to the holders for the loss of their rights and introduced legally qualified sheriffs depute appointed by the Crown. The bill had had a long period of gestation and had undergone several redrafts in an effort to take account of various criticisms (including those of Ilay himself) before it was finally presented to Parliament in February 1747. Although in principle Ilay accepted that the heritable jurisdictions were a serious impediment to the orderly administration of


373 Pelham to Hume Campbell 21 Jul 1747 HMC Polwarth V p.252.

374 Hume Campbell to Pelham 26 Jun 1747 N.U.L. NEC 1915. Hume Campbell himself received a pension and retired from politics to the bar for the next three years: Sedgwick, House of Commons II, pp.159-60. Menary, Forbes, pp. 312-3.

375 Above pp.233-5.

376 See Jewell, The Legislation Relating to Scotland after the Forty-Five, pp.150-2, 159. The Bill was largely the work of Hardwicke, the Court of Session having refused to prepare a draft.
justice, and had indeed in the past said so, his political instincts convinced him that this was not the appropriate time to make such a sweeping change. Anglo-Scottish relations were obviously strained by the Rebellion (and the early post-Rebellion legislation) and an attack on fundamental institutions was bound to appear to most Scots as a vindictive measure to punish them. More particularly a general election was imminent. The Bill was almost universally disliked in Scotland and if passed was bound to generate strong anti-ministerial feeling and thus adversely affect Ilay. If he could not at least amend some of the more unpalatable parts of the Bill it would raise resentment against him and his credit would be weakened. Specifically it would weaken his control by taking away some of his old tools of electoral manipulation. Against this, such was his political position after the Rebellion, that he could not afford to come out openly against the Bill. Cumberland, Newcastle, Chesterfield and others, were all only too ready to seize any opportunity to see him destroyed. His principal tactic throughout 1746, therefore, was to delay the Bill for as long as possible while trying to persuade the Ministry to amend or delete its more obnoxious provisions. Although prepared to listen to detailed points of criticism, however, Hardwicke,


378Ilay personally, of course, stood to be stripped of extensive heritable powers.


380"... that these powers may be abused, that they tend to give Lords an influence in even elections of the Commons cannot be denied... I know that an heritable sheriffship in a Lord or even in a commoner is too great an influence for other freeholders to contest with": Hume Campbell, speech to the House of Commons, HMC Polwarth V pp.238-42.
supported by Newcastle, Cumberland and Chesterfield, was determined to press ahead with his 'rationalising' measure.

When the Bill came before the Commons in late February it was clear that the majority of Scots members were opposed to it. The measure had aroused widespread opposition in Scotland as an attack on private property and contrary to the Union. It was also feared that the appointment by the Crown of sheriffs depute would greatly increase Ministerial influence in the counties. Most Scots members, however, were primarily moved by electoral considerations, fearing that to support the Bill would mean almost certain defeat at the polls:

I know at the same time that though we that are in Parliament had been really for the bill in our hearts, that it was so disagreeable to the bulk of our constituents that there was an absolute necessity of opposing it, if ever we have a mind to come back here again, and I am persuaded those that have voted for it will feel the weight of this at their next election.381

For his part, with further delay no longer possible, Ilay gave passive support to the Bill but his unenthusiastic attitude was clear to all.382 He did not order his followers in the Commons to oppose the Bill: there was no need to do so.383 His failure to give active support to the measure, however, incurred what he had sought to avoid, the suspicion and hostility of the Ministry, eventually even of Pelham.384 His

381 Maule to Milton 25 Apr 1747 NLS SC 16,650.

382 See for example Hume Campbell to Marchmont 24 Feb 1747 HMC Polwarth V pp.204-7; Hume Campbell to Marchmont 3 Mar 1747 ibid. pp.207-12; Grant to Milton 10 Apr 1747 NLS SC 16,646.

383 In fact Ilay believed their opposition at this stage was futile: Ilay to Milton 16 Apr 1747 NLS SC 16,641.

attempts to provide that the new commissions for sheriffs-depute
should pass the Great Seal of Scotland, which would have been worth about
£1,000 to him as Keeper, further increased the hostility, while
his Scots political opponents seized the opportunity to spread rumours
that he had been responsible for agitation against the Bill in
Scotland.

The Bill only passed its first reading on 7 April by 96 votes
to 75. Lord Advocate Grant, who had been deeply involved in its
preparation, was caught in a particular dilemma:

the Advocate's speech was like his situation, every other sentence against
the Bill and you will imagine how clear it was.

The smallness of the majority seriously alarmed the government and
Ministers were

... much exasperated against Argyle for
on the division there were twelve Scotch
for the bill, none of them his, against
the Bill were eighteen Scotch and amongst
them all Argyle's people except his
secretary, John Maule, who was there but
did not vote.

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386 See Maule to Milton 2 May 1747 NLS SC 16,550.
387 The Bill had been withdrawn and various changes made in the interim
in an effort to placate the Scots, notably the retention of the powers of the
baron courts: Jewell, The Legislation Relating to Scotland after the Forty-Five,
pp.192-6, 251.
389 Hume Campbell to Marchmont 11 Apr 1747 HMC Polwarth V pp.235-6. See also
Mitchell to Forbes 6 Apr 1747 CP pp.475-7 "I hear the Ministry are very angry
with the D of A with whom they had concerted every Clause in the Bill and, as
the Chancellor said, depended on his assistance, etc. to carry it thro': that
he has left them in the lurch, all his friends being either absent or voting
against the bill at the first reading. This, his Grace says, they did without his
knowledge; but if he can persuade them of this, I think he has gained a great
point, and may afterwards do what he pleases. Had he opposed in due time, and
openly, perhaps the Ministry might not have thought proper to push a point of
this sort against the Majority of a national representative; but they depended
on his assistance; they had it in the drawing and correcting of the Bill, nay,
they even submitted to the amendments of his Advocate; but all would not do;
for, without telling the Ministry, his people had their cue, and went off to a
Man".
Pelham's speech at second reading on 14 April was a clear warning to Ilay:

Mr Pelham spoke for the Bill in general and to this remarkable purpose that he was going to say what little could be expected of one of his station that Scotland had never since the Union been treated or considered in the same manner as England had. The views of ministers here had not been [to] the satisfaction of the people of that country but throwing Scotland under the power of some great lord or another to procure representatives from thence; that the power these lords had in their country had been the causes of such measures being pursued here which he thought very improper and dangerous to the King's interest; that he thought Scotland was as well intitled to be freed of a sole minister as England was and that every Scotch man who had zeal and abilities to serve the King should have the same admission into the administration as the subject of England had, etc. This everybody perhaps did not understand but you and the Duke of Argyle's people can be at no loss to see their meaning. 390

Although all the Argathelian members again voted against the Bill, it passed comfortably with a majority of over 100. 391

When the Bill reached the Lords, Ilay finally spoke in its favour, albeit somewhat obliquely:

The D of A made the most exotic speech I ever heard. Had I not been informed before that he was to speak for the bill I should have thought from his facts and reasonings that he intended to vote ag't it. 392

Only three Scots peers - Morton, Sutherland and Moray - voted against it 393 and the Bill finally received royal assent on 17 June 1747. Ilay, wrote Hume Campbell gleefully

... has frighten'd them [Ministers] damnably this session... I dare say they don't desire again to trust [him] solely and only. 394

390 Hume Campbell to Marchmont 16 Apr 1747 HMC Polwarth V pp.236-8.
392 Mitchell to Forbes 22 May 1747 MCP V pp.180-3. Tweeddale spoke strongly in favour of the Bill.
393 Jewell, The Legislation Relating to Scotland after the Forty-Five, pp.204-5.
394 Hume Campbell to Marchmont 2 Jun 1747 HMC Polwarth V pp.245-7.
By mid 1747 Ilay's fortunes were at their lowest ebb and his future looked decidedly uncertain. His conduct over the Heritable Jurisdictions Bill had seriously eroded his standing with the Ministry, confirmed the worst suspicions of George and Cumberland, and conversely weakened his credit in Scotland. His avowed opponents - Cumberland, Newcastle and Chesterfield - were in the ascendancy and wished to see him humbled and even Pelham was determined to curtail his influence. What saved Ilay was the 1747 general election, because Pelham, as the principal electoral manager, needed Ilay's assistance in Scotland.

Although under the Septennial Act an election was not due until 1748, by mid 1747 both Pelham and Newcastle were agreed that an immediate dissolution was desirable. To wait any longer might expose the Ministry to the unpopularity of an unsatisfactory peace or, if the war was continued, of an increased financial burden on the nation. Moreover, the Prince of Wales had recently moved back into opposition and the Pelhams were anxious to strike before he could organise any new threat. Parliament was therefore dissolved on 17 June; the elections were to take place in late July.

Pelham was determined to take a close interest in the elections in Scotland and he was anxious to secure the return of as many members as possible who would support the Ministry directly, rather than be dependent on any particular Scottish faction. He therefore prepared lists of candidates he wished to see returned, and actively promoted

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396 Owen, Rise of the Pelhams, p.312; Browning, Newcastle, p.141.

397 For example see N.U.L. NEC 2219.
the interests of favoured candidates in various constituencies.
Publicly at least, Ilay was to be regarded simply as an intermediary
acting on the Ministry's behalf, and candidates were encouraged to
write direct to Pelham. In private, however, Pelham relied
heavily on Ilay's advice and assistance:

I went over the Scotch list with the Duke
of Argyll, in which all was settled to my
satisfaction at least... You will be
surprised how little the Duke of Argyll
insists upon for his own people and how
compliant he is with all those this ministry
can depend upon, be they friends of his
Grace, or enemies. His Majesty may call him
Vice Roy, but if he does the King's business
well, and in a manner inoffensive to those
who are known friends to the King, I can't
but say he is a Vice Roy of an extraordinary
nature, not supported or even countenanced by
the royal family, arraigned by many of the
King's servants, and warmly protected by very
few of 'em. Yet this man does all we want,.399
Can HM or his faithful servants desire more?

Yet if Ilay had succeeded in reassuring Pelham, the situation on the
ground in Scotland was rather different. There Milton was as active
as ever in forwarding Argathelian interests, which were not always
identical to those of Pelham. People in Scotland had little doubts
about Ilay's involvement:

D. Ar...le has by all been taken to be the only
Person trusted by the Ministry in those affairs,
or any Scots Affairs. But almost all who have
spoke with him say he denies it, or that he has
anything to do with the Elections, except what
he might have like any other man by his own
private Interest... Very few, if any, believe
him in this; and they say if he is not to be

398 For correspondence of various candidates with Pelham see N.U.L.
NBD 1912-1945.

399 Pelham to Newcastle 24 Jul 1747 BM Add MSS 32,732 f347.
trusted with the management, who is? and that there is not any one else who can be in the least conjectured to be trusted in the management; and that the Ministry would not leave all the Elections and the Affairs of this Country to go at haphazard, and Commit them to no body's care.

As Ilay himself told Pelham,

I do all I can in my humble concealed way of acting.

Most candidates were Whigs although the accusation of Jacobitism was frequently levied at opponents. Several candidates took advantage of the divisions within the Ministry to oppose candidates favoured by Ilay or Pelham while at the same time professing their support for the Ministry. Thus, for example, Solicitor General Patrick Haldane successfully pushed his son George against the Ilay-Pelham candidate Sir Peter Halket in Stirling burghs.

As Milton later complained,

they [elections] would have gone better, had not some in the King's service laid out money to oppose what had been concerted by his Majesty's servants.

Among the candidates actively supported by Pelham was Andrew Mitchell in Aberdeenshire. Mitchell had been Tweeddale's London secretary but had moved over to support the Pelhams after Tweeddale's fall.
Pelham's support particularly annoyed Lord Advocate Grant whose brother, Sir Archibald Grant, initially stood against Mitchell but, under pressure from Pelham and Newcastle, was persuaded to give up. Ilay too was unhappy about Mitchell's candidacy but, somewhat reluctantly, agreed to support him. Pelham was also active in supporting, among others, James Abercrombie in Anstruther Easter burghs. In Berwickshire Hume Campbell was anxious to obtain Ministerial support for his re-election, but here Pelham, perhaps wary of antagonising Ilay, was more cautious:

As to your own [election] for Berwickshire if we are friends, as I hope we are, you may say what you think proper in my name. If I have time to reply to your answer the Lord Justice Clerk or any other you think advisable shall be wrote to, tho' I believe he is not a stranger to my good wishes for you.

Despite Pelham's apparent support, Ilay openly manoeuvred against Hume Campbell:

Every man that has any dependance upon those who are employ'd in the management of this part of the Kingdom, and who are expected to have acted agreeably to your inclinations (Hume Campbell...)

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406 See Newcastle to Milton 2 Jul 1747 SRO RH2/4/364 f107-9; Newcastle to Grant 2 Jul 1747 ibid. f111-2; Newcastle to Mitchell 2 Jul 1747 ibid. f113-4; Grant to Newcastle 14 Jul 1747 ibid. f117-8; Grant to Newcastle 30 Jul 1747 ibid. f144-5.

407 See Mitchell to Newcastle 5 Jul 1747 EM Add MSS 37,712 f121; Ilay to Pelham 12 Aug 1747 N.U.L. NEC 1952; Mitchell to Forbes 6 Apr 1747 CP pp.475-7 "... everything is to be feared from a certain personage [Ilay] who does not choose that his countrymen should be known to be connected with anybody but himself"; Mitchell to Forbes 22 May 1747 MCP V pp.180-3; Newcastle to Ilay 7 Aug 1747 SRO RH2/4/364 f196-7.


409 See Anstruther to Pelham 11 Jul 1747 N.U.L. NEC 1913.

informed Pelham), Declared themselves my enemies, soliciting strenuously against me, and asserting your enmity and that of the other ministers to me, and offering the favour of the Court to who ever would oppose me...411

Finally Pelham wrote to Milton and George Drummond in favour of Hume Campbell 412 but he left it so late that most electors were already engaged. Milton

... assured me (wrote Pelham to Hume Campbell) that he would explain to proper persons any supposed opinion of the Governments being disinclined to your interest. I never expected much more from him nor you could you think it prudent for me, all things considered, to write in a very strong style to one of his rank and who was not naturally disposed to your interest in favour of your election.413

In the end Hume Campbell won by only one vote against George Kerr who was favoured by Ilay and Milton. 414 Marchmont was later to complain that

... not one who had anything from the Court having voted for my brother but against him; that this was one of his Grace's [Ilay] tricks who could never forgive my brother and me all the ill offices he had done us...415

In Edinburgh, Pelham favoured George Drummond, whom Milton had managed to have elected Lord Provost at the stormy poll election in November 1746.416 By the time of the general election, however,

411 Hume Campbell to Pelham 26 Jun 1747 N.U.L. NEC 1915.
412 See Pelham to Hume Campbell 18 Jul 1747 HMC Polwarth V pp.251-2.
413 Ibid.
414 See Erskine to Pelham 29 Sep 1747 N.U.L. NEC 1801a; "From Scotland 3 Aug 1747" N.U.L. NEC 1875c; HMC Polwarth V pp.212-30 passim. Milton claimed not to have opposed Hume Campbell wilfully; see Milton to Pelham 7 Jul 1747 N.U.L. NEC 1925a; Milton to Pelham 21 Jul 1747 N.U.L. NEC 1926.
relations between Ilay and Drummond had once again become rather strained. As a consequence Ilay was somewhat reluctant to give his wholehearted support to Drummond and for his part Drummond, anxious as ever to be seen to be independent of Ilay, was not prepared to ask Ilay for his help,

though we say it’s a poor whore who is not to be asked the question.

In the end James Ker stood against Drummond with the backing of the incorporated trades, of which he was convener, and, it seems likely, with the underhand connivance of Milton:

It is said by many who affirm they know it certainly that Id Justice Clerk did chiefly got this brought about... and those who know him [Ker] Exceeding well, are positive that if the D of A...le had seriously let him know that he desir’d him not to stand but be for Drummond, he would have Instantly Comply’d.

In the event Drummond was forced to withdraw and Ker was returned unopposed. Following his victory, Ker promised to support the Ministry.

In Linlithgow burghs the Ilay–Pelham candidate, James Cannichael, was defeated by Lawrence Dundas who had made a fortune as a contractor to Cumberland in the Forty-five and who won the seat by wholesale

417 Partly, believed Drummond, because Ilay thought Drummond was too much Pelham’s man: Drummond to Pelham 30 Jul 1747 N.U.L. NEC 1920.
419 Assay master in the mint. "Mr Ker, the Jeweller is certainly a Whig, but he was too much a patriot at a certain time to be a favourite of mine..." Ilay to Pelham 23 Jul 1747 N.U.L. NEC 1946b.
bribery, much to Ilay's displeasure. Although Dundas promised to support the Ministry, he was unseated on petition on strong evidence of corruption in favour of Carmichael. Milton came to an arrangement with his old rivals the Dalrymples whereby Sir Hew Dalrymple was returned for Haddingtonshire and Milton's son Andrew Fletcher for Haddington burghs. In the north, a scheme was worked out by Pelham to distribute the various seats among government supporters to avoid unnecessary contests between them and this was largely successful. The opposition to the Ministry had their successes, however: in Fife, for example, David Scott the sitting member supported by Ilay and Pelham was defeated in a close contest by 43 votes to 38 by James Oswald.

The results of the 1747 election nationally were an unqualified success for the Pelhams, and this applied equally in Scotland where at least 34 of the 45 members returned were government supporters. Of these, Pelham


427 See Brodie to Forbes 9 Jun 1747 MCP V pp.187-9; Sedgwick, House of Commons, I, p.489.


429 Analyzed from details in Sedgwick, House of Commons:

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<th>Gov. supporters</th>
<th>Argathis</th>
<th>Pelham</th>
<th>Opp. Whigs</th>
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had taken an active interest in at least six. Once again, however, the real victor was Ilay. The Argathelian interests had been reunited since 1741 and Ilay, while publicly acting simply as the Ministry’s servant, secured the return of a solid bloc of eleven committed Argathelians. As in the past, many others would readily follow his lead if he was seen to have the Ministry’s support.

Cumberland intervened in several Scottish Parliamentary elections, seeking to thwart Argathelian candidates, but he concentrated his main thrust in attempting to remodel the list of representative peers. In the end he succeeded in having five new peers included — Leven (his own particular ‘toady’), Gordon, Lauderdale, Rothes and Aberdeen. The last two had been strong opponents of Ilay in recent years and their inclusion, along with that of Tweeddale, was a further indication of the Ministry’s determination to broaden their support in Scotland. Indeed, only vigorous protests from Ilay prevented even more drastic changes being made. Particular effort was made to ensure that peers voted for the Ministerial list en bloc:

It ought to be made a strong point with all Peers, and in all Letters to Scotland that there is to be no Scattered Votes, but that all vote for the same List completely.

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432 They replaced Breadalbane, Portmore, Somerville (all Argathelians), Stair and Sutherland. See Ilay to Milton 18 Jun 1747 NLS SC 16,641; Jewell, The Legislation Relating to Scotland after the Forty-Five, p.45.

433 "He [Newcastle] said... that the List of Peers [was] made up of all the parties in Scotland, without distinction" Marchmont Papers, ed. Rose vol. I Diary 1 Sep 1747 pp.189-95.

434 See Ilay to Milton 23 Jun 1747 NLS SC 16,641; Bricke, Management and Administration, p.114. He did, as we have seen, secure the exclusion of Marchmont

The management of the election on the government's behalf was successfully undertaken by Milton and the Ministerial list was carried at the election on 1 August with near unanimity.

Marchmont, however, abstained:

we were in hopes that Earl of Marchmont having lately got a considerable Employment [First Commissioner of Police] would have either by his presence or his proxy countenanced the Election of the Sixteen Peers which everybody here knows had the King's good wishes, but we heard nothing of him.

The results of the 1747 election consolidated Ilay's position in Scotland and served to remind Ministers that he remained by far the most dominant interest there. Marchmont complained bitterly to Cumberland that

whether from old habits or some other cause the ministers could not shake off an influence that had no regard for the King's interest in Scotland and that his interest was betray'd there... all askt in Scotland of any man to be preferr'd was whether he would devote himself to the Duke of Argyle and, whether he were the King's friend or foe; if he would go to Hell for the Duke of Argyle he was sure of preferment.

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437 See Milton to Newcastle 1 Aug 1747 SRO RH2/4/364 f150-3; Ilay to Newcastle 1 Aug 1747 BM Add MSS 32, 712 f305. The full list was Gordon, Argyll (Ilay), Tweeddale, Lothian, Crawford, Rothes, Morton, Moray, Home, Lauderdale, Findlater, Leven, Aberdeen, Dunmore, Hayndford and Loudon; SRO PB43. Ilay to Pelham 1 Aug 1747 NEC 1949 - "The Election of Peers is over without any difficulty".

438 Milton to Newcastle 1 Aug 1747 SRO RH2/4/364, f150-3. See also Marchmont Papers, ed. Rose vol. 1, pp.177-98 Diary 30 Aug 1747, 1 Sep 1747 and 2 Sep 1747.

439 Memoranda by Marchmont 1 Dec 1747 HMC Polwarth V pp.256-7.
Chesterfield commiserated with Marchmont:

He [Chesterfield] said, the King hated Duke of Argyle, Mr Pelham was the minister who liked him best, not from affection, but the old habits of Walpole's time; and that the Duke of Newcastle was his enemy, except on the days that the Duke of Argyle coerced him, and treated him as sole minister... 440

In fact, even after the election, as long as the war continued and the Ministry remained deeply divided over foreign policy, Ilay's position remained uncertain. These divisions reached new heights 441 with Pelham and Newcastle openly quarrelling on occasions, causing a near paralysis of government. 442 Marchmont and others sought to take advantage of these divisions to urge Ministers to limit Ilay's influence and the Ministry's declared policy remained to broaden their base in Scotland by encouraging all Scots, regardless of faction, who were prepared to support the Ministry direct. Chesterfield and Cumberland remained resolutely opposed to Ilay, but Newcastle was beginning to realise the difficulties in attempting to dispense with Ilay's services:

he said, he would tell us the foundation of all his politics, which was, that in Scotland those only who were attached to his Majesty's family should be employed without regard to any other factions or divisions; but that this was impracticable... 443


441 For an analysis of the political events and the struggles within the Ministry during this period see Marchmont Papers ed. Rose vol. I pp.177-280 Diary 30 Aug 1747 - 2 Mar. 1748.

442 For a time they would only converse through Stone: ibid. pp.222-6 Diary 27 Oct 1747.

443 Ibid. pp.189-95 Diary 1 Sep 1747.
For his part Pelham continued to be favourably disposed towards Ilay, regarding him as a necessary ally if Scotland was to be brought under control:

I [Marchmont] saw that Mr Pelham durst not stir one step in Scots matters without the Duke and would be imposed on by him.⁴⁴⁴

All I desired (wrote Marchmont) was that they would not make him [Ilay] my king.⁴⁴⁵

As ever, uncertainty within the Ministry was reflected in Scotland: most Scots were prepared to support the Ministry but were divided between the Argathelians under Ilay who sought to re-establish himself as the indispensable intermediary between the Ministry and Scotland, and the anti-Argathelians who wished to limit Ilay's influence. At the Edinburgh magistrates' election of 1747, for example, George Drummond, ever-troublesome to Ilay and Milton, sought to strengthen his position and lessen his dependence on Ilay by claiming direct Ministerial support:

Mr Dr——nd and his Whigs are for diminishing D Ar——le and his friend L——d J——ce Cl——k and others, which is a Scots Interest, to bring us under subjection to an English Pell—m and a Chest——.⁴⁴⁶

In turn, Milton was accused of placing Argathelian interests above all else:

... their own particular interest being superior with them to all others whatsoever they encouraged the Torrys that they may support and advance it and let the Interest of the Royal Family and Kingdom take its Hazard...⁴⁴⁷

⁴⁴⁴Ibid. pp.222-6 Diary 27 Oct 1747. See also ibid. pp.219-222 Diary 22 Oct 1747.
⁴⁴⁵Ibid. pp.253-8 Diary 18 Dec 1747.
⁴⁴⁶Erskine to Pelham 17 Dec 1747 N.U.L. NEC 1801a.
⁴⁴⁷Ibid.
Arniston, echoing the feelings of many Scots who opposed Ilay, urged Pelham not to allow Scotland to be governed by Ilay alone:

... You gentlemen or noble Lords of ane English ministry need never be afraid of any one man in Scotland being able to hurt or distress you here, in elections or any thing else, unless You your selves put it in his power. 448

Milton, as Ilay's sous ministre, came in for particularly virulent attack:

I dare say You know That My Lord Justice Clerks way is To keep every body but his own toad eaters at all the distance he can from the people who have the execution of what concerns the Kings service entrusted to them... He wants to be thought the only useful man in this country... 449

What gives L...D J...ce Cl...k etc so great Influence? Incessant Labour and Contrivances, and the power of getting places and Employ- ments to their Creature; so that none do now expect to be Regarded but by them or at least with their concurrence and whoever is thought to apply to others in the Mi.....y and not by them and their Chief Dopenance, Seldom fail to be disappointed and neglected, if not worse. There are so many Instances of this that none here seems now to Doubt of it. And as to L...d J...ce Cl...k in particular he is a judge on both Benches (and judges have been known not to be directed by law and justice only) and chiefly entrusted and employ'd and supported, both here and at Court by a Certain Great man [Ilay]. Should a judge be the ordinary administrator, and Manager of all the little political jobs? Is it safe as to justice? Is it decent? and must it not lessen the Confidence of the people in their judges? Can he mind all these little jobs and not Neglect the Business of the Bench? 450

Nevertheless Ilay's influence remained limited, as can be seen from the appointment of the new sheriffs-depute and of a successor to

448 Arniston to Pelham 17 Dec 1747 N.U.L. NEC 2016.
449 Drummond to Pelham 8 Oct 1747 N.U.L. NEC 1874.
450 Erskine to Pelham 22 Sep 1747 N.U.L. NEC 1801a.
Forbes as Lord President. The appointment of the new sheriffs-depute from 25 March 1748 under the Heritable Jurisdictions Act created a sudden new source of patronage and Pelham and Newcastle were deluged with applications. Milton forwarded a list of those recommended by Ilay and himself and the anti-Argathelians were convinced that the whole nomination would be controlled by Ilay:

What surprised me most was that the English Ministers gave the strongest assurances that the D of A did not meddle, that he quite agreed to what was by them proposed... many people were deceived so far as to recommend particular persons, their recommendations were no further regarded as they tended to confirm the character of such as were recommended by the D of A friends without his appearing openly.... there was an underhand game with his Grace.... he had the sole direction and management of these affairs.... and indeed the whole nomination seems [to be] little more than a list of the sons, sons in law and alliances of those Gentlemen whom the D of A has thought fit to place upon the bench.

In the event, however, it was the recommendations of General Bland, commander-in-chief in Scotland and protégé of Cumberland, which carried most weight, and several of Milton's suggestions were rejected.

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451 See for example SRO RH2/4/364 f225-239; Memorandum by Findlater 1 Jul 1747 PRO SP36/99; PO to Pelham 2 Jan 1748 N.U.L. NEC 1853.

452 Milton to Newcastle 29 Feb 1748 and encl. III Albermarle Papers, ed. Terry vol. II pp.529-30, 537-42: "it is no easy matter to find a sufficient number of Advocates duly Qualified to be Sheriff Deputies in every County of Scotland".

453 Mitchell to Dundas (19 Mar 1748) SRO RH4/15/2 vol. II, 105. There is some dispute about the date of this letter: Omond, Arniston Memoirs, p.89 places it in 1737 while Ferguson, Scotland: 1689 to the Present quotes it in relation to the 1734 election. Although it is cited among the papers for 1737 in the Dundas of Arniston collection on microfilm in the SRO it seems quite clear from internal evidence in the letter itself that it was written in relation to the appointment of the new sheriffs depute.

454 Maule to Milton 17 Mar 1748 NLS SC 16,661; Murdoch, The People Above, pp.35-6; Bricko, Management and Administration, p.114.

455 For those appointed 18 Mar 1748 see SRO RH2/4/411, 194-7.
Local interests who supported the Ministry were favoured, regardless of party connection and a particular effort was made to appoint existing deputy sheriffs who had been vigorous against Jacobites.

Lord President Forbes died on 10 December 1747, thus creating a vacancy in one of the most important posts in Scotland. The appointment of his successor was clearly seen as a trial of strength between the Argathelian and anti-Argathelian factions and would give an important indication of the sincerity of the Ministry's professed intentions towards Scotland:

The filling of the President's place makes more noise here than I had expected, and some don't hesitate to say it will be a declaration what set of men in Scotland are to be supported. 456

Although various candidates were mentioned, including Lord Advocate Grant, former Lord Advocate Robert Craigie, and Lords Kilkerran and Elchies, 457 the real choice lay between Lord Tinwald (formerly Charles Areskine) strongly favoured by Ilay, and Lord Arniston who was supported by the anti-Argathelians including Marchmont and Hume Campbell. Arniston himself was anxious to obtain the post and threatened to resign from the bench if he was passed over. 458 Ministers met to discuss the vacancy in late December but the divisions between them prevented any agreement being reached:

He [Chesterfield] said they had a meeting about the presidenship of the Session in which Mr Pelham was for Mr Tinwald as the Duke of Argyle's man, which he owned, saying

456 Sir Charles Gilmour to Arniston 17 Dec 1747 Omond, Arniston Memoirs, pp.101-2.

457 See PO to Pelham 1 Dec 1747 N.U.L. NEC 1850; PO to Pelham 15 Dec 1747 N.U.L. NEC 1852.

the Duke has assisted them and was
to be prefer'd to the Squadrone who
were linkt to Lord Granvil [Carteret],
Sir John Gordon and the Prince; but he
added that he thought Arniston and his
son were to be gained if possible and
therefore he would propose giving Grant
now advocate, the [Session] gown and
making young Dundas Advocate. The Duke
of Newcastle mentioned Tinwald and
Arniston but seem'd to incline to Lord
Elchies saying he Thought they should
name one who would make it apparent
that the English ministry had named him. 459

Both Lord Chancellor Hardwicke, who was anxious to improve the
quality of the Scottish bench, and Chesterfield, for more overtly
political reasons, favoured Arniston. When Newcastle indicated to
Marchmont that he might be prepared to accept Tinwald, Marchmont
expressed the fears of the anti-Argathelians:

I said I was heartily sorry to hear it;
that it was a mortal blow to the King's
interest for Areskine [Tinwald] had been
a notorious Jacobite and we knew of no
conversions; that Arniston would probably
quit the Bench and then all the property
in Scotland would be at the mercy of the
Duke of Argyle... 460

If Tinwald was appointed

.... they might as well take the Crown of
Scotland off the King's head and put it
on the Duke of Argyle's... 461

The King too opposed the appointment of Tinwald saying 'he would not
make him [Ilay] King of Scotland'. 462 Thus matters stood and no
appointment was to be made for several months. 463

460 Memoranda by Marchmont 2 Dec 1747 ibid. pp. 258-9. See also Omond,
461 Memoranda by Marchmont 3 Dec 1747 HMC Polwarth V pp. 259-62.
463 It was claimed that the delay was in part due to the Ministry's desire to
keep the Court of Session on its mettle in dealing with claims for compensation
for the loss of heritable jurisdictions; see PO to Pelham 2 Jan 1748 N.U.L., NEC
1853; PO to Pelham 20 Feb 1748 N.U.L., NEC 1885 - "the Court of Session have made
great progress in the Jurisdictions, and have proceeded very commendably. Its
Imputed to your delay of filling up the presidents chair".
In February 1748, however, an important shift of power occurred in the Ministry. Chesterfield was finally driven to resign because of Newcastle's continued failure to consult him over foreign policy, and at the same time the failure of the Dutch to meet the military commitments of their alliance with Britain gave increased strength within the Ministry to those who favoured peace. These changes enhanced Pelham's position and enabled him in May 1748 to effect a compromise over the Lord Presidency calculated to maintain Illy's willingness to cooperate with the government while making it clear that he did not dominate its Scottish policy. By this "expedient", Arniston was appointed Lord President while Milton, who was suffering ill-health as a result of all his recent exertions and was finding the burden of being Lord Justice Clerk increasingly wearing, agreed to resign the post and was replaced by Tinwald. As compensation, Milton's place as principal Keeper of the Signet, previously held during pleasure, was made for life and he received a reversion of Sir James Dalrymple's office of Exchequer Auditor for his eldest son. He also retained his seat on the bench. Finally

464 Browning, Newcastle, pp.148-9. He was replaced by Bedford.


467 15 Jun 1748 SRO RH2/4/411, 204. See also Illy to Arniston 13 May 1748 Omund, Arniston Memoirs, p.105; Hardwicke to Arniston 24 May 1748 ibid. p.106.


471 See Milton to Pelham 17 May 1748 N.U.L. NEC 1936.
Ilays secretary John Maule was appointed to fill the place on the Exchequer bench made vacant by the death of Lawrence Craigie.\textsuperscript{472}

Pelham achieved this compromise at about the same time as the signing of the preliminary peace at Aix-la-Chapelle. The advent of peace marked the beginning of Pelham's supremacy within the Ministry as Newcastle's diplomacy became less important than his brother's plans for financial reform. Cumberland's brief period of influence also came dramatically to an end with the peace, and was finally destroyed when he quarrelled bitterly with Newcastle.\textsuperscript{473}

By appointing Arniston to the post of Lord President, Pelham had made it clear that he wished to reconcile the 'contending parties' in Scotland and encourage all to act together under the Ministry in the King's interest:

\begin{quote}
I have always wish'd to see those distinguish'd (he wrote to Arniston) who are the true Friends to both [King and Ministry] but personal Altercations and party Divisions have too often prevented the execution of ye best Intentions for that end... Don't let Politicks create you Enemies whom Justice would make your Friends. Unite cordially with those whom the King thinks proper to employ in the great stations of your Country: You cannot want support here; A great deal is to be done to bring the Factions and disaffected in Scotland to a proper sense of their Duty; which cannot effectively be brought about but by a thorough Union amongst those who are the friends to the Government...\textsuperscript{474}
\end{quote}

Nevertheless as we have seen, Pelham had always been the Minister most favourably disposed towards Ilays and the compromise reflected both Ilays continuing influence and Pelham's willingness to uphold it:

\begin{quote}
\textsuperscript{472}12 May 1748 SRO RH2/4/411, 201. Miltons son Andrew Fletcher took Maule's place as Ilay's secretary.

\textsuperscript{473}Jewell, The Legislation Relating to Scotland after the Forty-Five, p.23; Murdoch, The People Above, pp.36-7.

\textsuperscript{474}Pelham to Arniston 12 May 1748 N.U.L. NEC 2017. See also Sir Hew Dalrymple to Milton 4 Mar 1748 NLS SC 16,657: "A Ralliance of Power is what is aim'd at in Scotland at present".
\end{quote}
a noble Duke, tho he has not obtained the first office to be disposed of according to his wish, has shown the weight of his Interest by what has been done about the other two.475

And Milton, while praising Pelham's "generous disposition to put an end to all party disputes", also commended him for preserving at the same time as far as possible the interest of and credit of your old true and sincere Friends. 476

With the re-emergence of a strong Ministry under Pelham, which had the support of a majority in Parliament and the confidence of the King, the country was to enjoy a period of relative political calm and stability which lasted until Pelham's death in 1754. Pelham had in the past usually found Ilay ready enough to help him and saw no reason to antagonise so important a man. For his part Ilay's fortunes were clearly linked with Pelham and he was now sufficiently secure to accept the appointment to office of several of his erstwhile rivals. In short the two men were prepared to do business with one another:

.... nothing should be done (Pelham informed Newcastle) without the Duke of Argyll. You know I think he is the more consequence than all the rest of Scotland.477

The D of A grows every day more powerful, and of more consequence, he yr fore must not be disoblige...478

Milton continued to manage Argathelian interests in Scotland, especially in the administrative world of Edinburgh.479 Nevertheless, Pelham did

477 Pelham to Newcastle 25 Dec 1749 EM Add MSS 32,719 f337.
479 Murdoch, The People Above, p.12.
not intend Ilay to have sole power in Scotland and was determined to extend the Ministry's influence. Seats on the bench, sheriffdoms and other Crown legal appointments, and places among the sixteen representative peers, were therefore awarded on a broader basis.

... Though I have great regard for his Grace (wrote Pelham to Hardwicke in 1753) and think him the most able, and willing to serve there as any in Scotland, yet I do not think it is necessary always to have his fiat in the disposition of offices.

Pelham also attempted to build up his own network of correspondents in Edinburgh, men such as Exchequer baron Edlin; Corbyn Morris, appointed secretary to the customs board in 1751; David Bruce, surveyor of the forfeited estates; and Robert Dundas, Arniston's son. Others, such as Lord Justice Clerk Tinwald (Areskine) and Lord Advocate Grant, were prepared to distance themselves to a certain extent from their former Argathelian connections and work more directly with Pelham, Newcastle and Hardwicke. Morris was no doubt reflecting Pelham's own views when he wrote:

what I wish to see here is the distinction between both parties abolished, And that no other may subsist but that of Whiggs and Jacobites, as in England, And that every private Gentleman of Fortune or Merit in

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481 For example Marchmont in 1750.

482 Murdoch, The People Above, p.36.

483 Pelham to Hardwicke 10 Jun 1753 BM Hardwicke MSS 35423 f.160.


Scotland may know that he has free Access to the Court, and to the Ministry, just as every private Gentleman in England, without being obliged to goe through the pass of Argyle or Tweeddale. For this seems to me to be introducing a true Union between ye two Kingdoms, and putting them both Upon the same equal Footing. 486

Yet generally Pelham was prepared to work and compromise with Ilay and a modus vivendi, satisfactory to both sides, was reached. Together they dominated Scotland.

Pelham's death in 1754 shattered the relatively coherent political situation at Westminster and led to another period of uncertainty and instability as Newcastle attempted to take his brother's place and form a viable Ministry. Newcastle's relations with Ilay had never been cordial and he believed that Pelham had indulged Ilay too much. Newcastle was anxious to 'complete the Union' by incorporating Scottish affairs more closely into the structure of national government at London and this meant eliminating any separate Scottish minister. 487 He therefore sought to reduce Ilay's political power by directly extending his own. During Pelham's last illness, Newcastle and Hardwicke had successfully blocked Ilay's attempts to get Tinwald made Lord President and secured the place for Robert Craigie instead. 488 Before he died Pelham had made arrangements for the elections in Scotland in conjunction with Ilay 489 and Newcastle had time only to make minor adjustments.

Following the election, however, and despite his protestations to the

486 Morris to Pelham 7 Nov 1751 N.U.L. NEC 2048.

487 Murdoch, The People Above, p.52.


489 See letters Ilay to Pelham Sep - Nov 1753 N.U.L. NEC 2210-2219, especially N.U.L. NEC 2217a-c 'Lists of Candidates for Scottish elections as proposed by Pelham with variations by Ilay'.
contrary, Newcastle began to attempt to undermine Ilay's position in Scotland, principally through Hopeton, Deskford who was made a customs commissioner, and Robert Dundas who was appointed Lord Advocate on Grant's elevation to the bench. These men presented themselves as servants of Newcastle himself not of any Scottish rival to Ilay. Not only did this alienate Ilay, however, but it also antagonised Ilay's erstwhile opponents such as Tweeddale and Marchmont who aspired to take Ilay's place, not dispense with the position he held.

By late 1755, facing continued difficulties in forming a stable Ministry and with the possibility of Ilay moving over to join the opposition, Newcastle began to realise the dangers of losing Ilay and quickly reversed his previous policy. The bulk of appointments to legal and revenue posts were once again made on Ilay's recommendation and the administrative world of Edinburgh again became securely Argathelian. Newcastle had failed to reduce Ilay's influence in Edinburgh. Nevertheless, for a time Ilay faced continuing difficulties in London where Newcastle maintained an unpredictable attitude towards Scottish patronage, some times disregarding Ilay's recommendations, at other times delaying appointments.

After 1756 the task of waging war pushed Scottish affairs into the background, with the important exception of the recruiting of Highland

491 Murdoch, The People Above, p.52.
492 Ibid., pp.46-7.
troops. Scotland's extensive contribution to the war effort made Ilay necessary to the government and as a result he became increasingly influential within the Ministry. His virtual control of the large number of military commissions that were given to Scotsmen in these years further enhanced his political influence in Scotland and, given the divisions among English politicians, he was able to use his Parliamentary strength to extract every possible advantage for his followers and his country. Even George II was finally won over by Ilay's aid to his beloved army. Thus Ilay's position in relation to central government was at its strongest during the last four years of his life.\(^{493}\)

On the accession of George III in 1760, Ilay's nephew Bute became the major force in British politics. Ilay's expertise and experience were too valuable for Bute to cast aside and Scottish affairs were delegated to Ilay with Newcastle being specifically excluded. Between them, Ilay and Bute made the necessary arrangements for the 1761 general election\(^ {494}\) but Ilay died on 15 April before the elections took place. Milton penned his public obituary: his abilities drew upon him the attention and confidence of his fellow subjects; and without the advantages of a minister, bestowed upon him a very high degree of ministerial power. His strength lay in the depth of judgement, the talents of conversation, and graceful elocution, discernment, moderation and caution.\(^ {495}\)

\(^{493}\)Ibid., pp.49-51, 83-4, 132.

\(^{494}\)Ibid., pp.95-8.

Milton took over supervision of the elections in Scotland and until his own death in December 1766 continued to assist and advise the Ministry, and James Stuart Mackenzie in particular, on Scottish affairs. 496

During the last decade of his life Ilay had emerged as an elder statesman, 497 a minister acting as the guardian of Scotland's interests within the Union as well as a manager. He and Milton had the prestige and authority to withstand accusations of pro-Jacobitism and attempt to influence the government's Scottish politics, for example over the setting up of the Annexed Estates Commission, and check the tendency of London-based politicians to take a repressive attitude to Scotland. 498 By 1760 economic development in Scotland had begun to quicken and the long-awaited benefits of Union at last began to be felt. Public opinion in Scotland was also shifting, becoming more 'British' (partly as a result of Scotland's involvement in the war effort) and demanding equality within the Union. 499 For over thirty years Ilay had provided a buffer between Scotland and the government at London, which had given Scotland time to adjust to the realities of Union. Ilay's death marked not only the end of Argathelian politics but the beginning of a new era for Scotland.


497 Mitchison, Scotland, p.343. He was 68 in 1750.


499 Ibid, p.103.
CHAPTER TWELVE: CONCLUSION

By the mid eighteenth century, despite an inauspicious start, the Union had come to be accepted by most Scots.¹ A major reason for this, as this thesis has argued, was that in spite of the Union, politically and administratively, as well as economically, culturally and socially, Scotland remained to a large extent a semi-independent country. The immediate impact of Union was much less than has sometimes been supposed. While ultimate authority was transferred to London and Westminster became the focus of political activity, the difficulties of direct control, both political and administrative, from London led in practice to a marked degree of devolution: Scottish affairs remained largely separate and distinct and Ministers generally had little desire to exert their authority over Scotland except in times of crisis so long as Scotland was kept quiet.

The Union not only preserved the Scots legal system (which was of particular importance given the prominent role played by the courts and law officers in the government of the country) but Scotland was allowed to retain a separate administrative structure based in many respects on pre-Union institutions. Although English influence over the development of Scottish institutions increased after 1707, the Act of Union, subsequent legislation and custom enabled Scotland to maintain institutions, both central and local, which differed greatly from those in England. Moreover, Ministers

¹Ferguson, Scotland: 1689 to the Present, p.147.
were generally inclined to favour minor changes within existing institutions rather than create unnecessary difficulties by forcing Scotland into the English mould. Immediately after the Union the customs and excise services were remodelled to fit in with the English system of revenue collection and a new Court of Exchequer was established, but much else was left unchanged. Scots law, the courts, the electoral system and, until mid-century, local government, all remained more or less untouched, and there was little legislation affecting Scotland until the aftermath of the Forty-five. The new revenue system took some time to settle down but by 1725 the period of development and expansion was complete. Thereafter, although the volume of work continued to increase and new tasks were added, there was little further change until much later in the century.

By 1707 an independent Scotland was no longer viable but the introduction of the English revenue system of customs and excise, with its tighter control from the Treasury and its more extensive, onerous and complex system of duties and trade control, resolved this. Thereafter Scotland was at least able to meet the cost of its own civil government and partly as a consequence the various administrative bodies in Edinburgh won and retained a degree of independence from the central departments in the day to day conduct of business. The structure of subordinate boards and officers of state in Edinburgh thus provided a degree of administrative devolution which was one important factor in creating a buffer between the central departments and Scotland.

The sense of institutional stability and of a separate Scottish

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2Murray, 'Administration and Law', in The Union of 1707: Its Impact on Scotland, ed. Rae, p.34.
administrative identity was also fostered by the security of tenure in practice enjoyed by most officials and by the gradual Argathelian domination of the administrative bodies and courts in Edinburgh. Although the patronage system undoubtedly hindered the development of a more efficient administration in Scotland, most officers once appointed were relatively secure and dismissal for purely political reasons was largely confined to certain prominent political posts such as the Lord Advocate. Many indeed continued to hold their offices despite flagrant inefficiency or neglect. Wholesale changes would have alienated large numbers of the political nation, as Walpole found when he attempted to dismantle the salt service in 1730. Changes except on death, resignation, transfer or promotion therefore became increasingly unusual and it became more and more possible for men to make a good career in the government service in Scotland.

Central to the whole political and administrative history of Scotland in the first half century after the Union was the role played by the Scottish manager, and Ilay in particular. With the abolition of the Scottish Privy Council, government in Scotland lacked any formal focus or strong collective executive authority. There was only a number of offices, each with its own ill-defined responsibilities. Administrative duties and powers were not clearly defined. As Milton told James Stuart Mackenzie in 1761, the government of Scotland had not been reduced to any proper useful science, but things were considered as they occurred and executed according to the former precedents.3

Men were more important than the offices they held; the power of any of the Scottish officers was wholly a function of the personal political power and connections of the men who held them. In this situation it was not surprising that the manager, with his close links with the Ministry, came to be regarded as the focus of government and administration in Scotland. In turn this meant that only those in Scotland who were closely connected to and trusted by the manager wielded any real power.

Politically, there was pressure from both sides for a clear channel of communication between the Ministry and Scotland, for a single manager of patronage. Ministers were therefore prepared, to a varying degree, to delegate authority while trying to retain ultimate control in their own hands: with Ilay they only partly succeeded. It soon became clear that it mattered little whether such a manager held the official post of Scottish Secretary for such a responsibility had to be exercised almost entirely by personal influence. Ilay's position was entirely unofficial: his influence rested on his power as a large territorial magnate, on his building up of a strong political interest in Scotland and on his relations with individual Ministers. Indeed the whole system worked the better for being informal. The basis of Ilay's strength in Scotland in these years lay in the way he was able to enhance his own natural position by building up a network of supporters in the administrative offices in Edinburgh and in the localities through the careful distribution of government posts, and thus in turn clearly demonstrating that the best way to gain employment was through him. Anxious for the rewards of office, most Scots were prepared to follow Ilay so long as he had the support of the Ministry and was able to obtain jobs for them.
In the last analysis, however, the extent and limits of a manager's power were always dependent on the wider distribution of power in British politics as a whole. Ilay owed his position to the fact that Walpole and Pelham, in order to solve the difficult problem of controlling Scotland, were prepared to a large extent to delegate the management of Scotland to him in return for his marshalling the majority of the Scots political nation behind the Ministry. To maximise his full potential Ilay required the support and co-operation of the Ministry and for the bulk of patronage in Scotland to be placed at his disposal. He was thus dependent on a stable Ministry dominated by a Minister who was content to allow him to control Scotland. When the Ministry was unstable, those who opposed Ilay's hegemony, both within the Ministry and among his Scottish rivals, had greater opportunities to undermine his position and seek to channel patronage through other hands. While Walpole and Pelham were generally prepared to leave Scotland to Ilay, other Ministers were less inclined to do so and sought to broaden Ministerial support in Scotland in order to counterbalance Ilay's influence.

Of the three managers in the period - Roxburghe, Ilay and Tweeddale - only Ilay enjoyed the support of a stable Ministry. Moreover, only Ilay had a strong political interest and support in Scotland and enjoyed power for a sufficient period of time to build upon that support. Even Walpole, however, did not intend to hand Scotland over to Ilay completely: his role was envisaged as primarily advisory. But faced with the problems of controlling Scotland, Walpole was forced to allow Ilay to build up his position to the

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4Phillipson and Mitchison, Scotland in the Age of Improvement, pp.2-3.
extent where he was able to exert pressure on the Ministry. Over the years Ilay was able to strengthen and consolidate his following among the administrative structure in Scotland: he was seen to have the 'attractive' power of being able to obtain jobs. As a result of Argathelian dominance in Scotland Ilay was able to bargain with Walpole for more places and rewards in return for his continued support. Walpole's Parliamentary position was rarely sufficiently secure that he could afford to ignore completely Argathelian pressures. Ilay successfully used his strength in Scotland to persuade Ministers to appoint his nominees to as many vacant posts as possible and ultimately as a lever to prise more power for himself. He thus gradually consolidated his position to the extent that he became more or less indispensable.

As manager, Ilay thus provided another effective buffer between the English dominated Ministry and Parliament and Scotland which allowed the Union settlement time to work. He did not oppose the implications of the Union but favoured gradual change rather than immediate incorporation. He ensured that Scotland, or at least those Scots who were prepared to support his interest, benefitted from the English patronage system while at the same time retaining a considerable degree of administrative separateness. Indeed it was usually his political opponents, men such as Marchmont, who, in order to circumvent Ilay's role as manager, argued for closer, more 'complete' Union. Ilay also sought to mitigate any attempts by English politicians at political repression and was particularly anxious to reconcile those with alleged Jacobite sympathies to the new system. With the bulk of the Scots behind him, he successfully

5Murdoch, The People Above, p.38.
used his independent political base in Scotland as a means of exerting influence over government policy. He was thus able to exact compromises, as for example after the Porteous riots and over the legislation after the Forty-five, and latterly to persuade the government of the need to foster economic improvements in Scotland. Ilay effectively provided Scotland with a period in which to grow accustomed to the Union and this in the long term was his most lasting achievement.
APPENDIX I

Civil List Establishment Scotland, Midsummer Quarter 1733

"To the Rt Honble the Lords Commrs of his Mats Treasy"

A List of all such Sum and Sums of money as are incurr'd and become due upon his Mats Establishment for Civil Affairs within Scotland bearing date the 5th day of June 1728 for one quarter commencing the 25th day of March 1733 and ending the 24th day of June 1733 made up by the Barons of Exchequer at Edinburgh.

To James Duke of Montrose Keeper of the Seal used as the Great Seal of Scotland £750

to Archd Earl of Ilay Keeper of the Privy Seal there £500

to the Lords of Session the Allowances which were payable to them before the Union out of Customs £416 13/4

to the Lords of Justiciary the Allowances which were payable to them before the Union out of customs £125

to Sir Hew Dalrymple, Lord President of the Session £200

to Adam Cockburn of Ormistoun £75

to Mr. James Erskine of Grange £75

to Sir James McKenzie of Roystoun £75

to Mr David Erskine of Dun £75

to Sir Wm Calderwood of Polton £75

to Mr. James Elphingston of Coupar £75

to Sir Walter Pringle of Newhall £75

to Mr Andrew Fletcher of Milton £75

to Sir Gilbert Elliot of Minto £75

to Mr Hew Dalrymple of Drummore £75

to Mr Patrick Campbell of Monzie £75

to Mr John Pringle of Hayning £75

to Mr Alex Fraser of Streichen £75

to Mr Patrick Grant of Elchies £75

to Archd Earl of Ilay Lord Justice General £500

to Adam Cockburn of Ormistoun Lord Justice Clerk £100

to Alexr Earl of Marchmont Lord Register £300

to Alex Brodie Lord Lyon King of Arms £75

to Matthew Lant Lord Chief Baron of the Court of Exchequer £375

\[1\] SRO NBB RH2/4/443, 466.
to Anthony Norman deputed by him to keep the Exchequer seal £25

to Sir John Clerk Bart £125

Barons of George Dalrymple £125
Exchequer Thomas Kennedy £125
Edward Edwin £250

to John Scrope late one of said Barons £250

to King's Wm Stewart £100
Remembrancers John Tarver £50

to Sir Colin Mackenzie Clerk of the Pipe £50

to William Allanson Treasurer's Remembrancer £50

to James Stephen Sergeant at Arms & Deputy Usher of Exch. £75

to Attorneys James Stewart £12 10/-
John Vickerage £12 10/-

to Wm Bowles Solicitor to Court of Exchequer £35

to be paid to his hands for defray the charges of Prosecutions and such petty expenses as the Barons shall think necessary to direct £125

to Wm Montgomery Marishall to the Court of Exchequer £20

to Doorkeens Robert Hog £3 15/-
of Excheq John Aikman £3 15/-

to said John Aikman Messenger of Exchequer £1 13/4

to David Stephen Keeper of the Register of Resignations in Exchequer £10

to Joseph Tudor for taking care of the business of the Exchequer Customs and Excise in England [London agent] £50

to Sir James Dalrymple Principal Auditor £300

to John Philip Deputy Auditor £50

to Wm Kelso Clerk to the Port Bonds £10

to David Anderson Examiner in Exchequer £12 10/-

to George Glass £6 5/-
Roderick Chalmers £6 5/-
Alexander Martin £6 5/-
John Areskine £6 5/-
James Fordyce £6 5/-
James Brodie £6 5/-

Heralds

Robert Brown £4 3/4
Wm Gray £4 3/4

Pursuivants
Charles Gordon £4 3/4
Alex Thomson £4 3/4
James Clerkson £4 3/4
George Dick £4 3/4
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<td>the Session</td>
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<td>of the Treasury</td>
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<td>Land Rents etc. for himself and</td>
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<tr>
<td>clerks</td>
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<td>to Neil McVicar</td>
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<td>his Mats Almoner</td>
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to King's James Alston (25 Mar 1733-19 Apr 1733) Chaplains (ye day of his death) £3 8/8
  Wm Gusthart £12 10/-
to James Abercrombie his Mats Limner £25
to Thos Hamilton Master of the Wardrobe £13 17/10
to James Baird Clerk thereof £7 10/-
to James Oliphant 1st Underkeeper thereof £10
to Peter Lindsay 2nd Underkeeper thereof £5
to James Duke of Hamilton Heritable Housekeeper of the Palace of Holyroodhouse £11 10/-
to John Porterfield Underkeeper of said Palace £12 10/-
to Walter Mitchell Porter thereof £9 8/10
to Dr Andrew Sinclair his Mats 1st Physician £25
to Dr James Lidderdale his Mats 2nd Physician £12 10/-
to John McGill his Mats Apothecary £10
to Sir John Anstruther Sole Master of Works £100
to Wm Adams Clerk to the Stores under the Master of Works £7 10/-
to Sir Gilbert Kennedy his Mats Under falconer £12 10/-
to Charles Alston Keeper of the Physick Garden £12 10/-
to John Duke of Argyll Heritable Master of his Mats Household in Scotland £500
to his Mats Charities and Bountys to such indigent & necessitous persons as shall be approven by the Barons of Exchequer £500
to Wm Grant Procurator for the Church for defraying the charge of the Church Affairs in Scotland & the Salaries of their Officers £125
to Archd McAulay Conservator of the Priviledges of Scotland in the Netherlands £50
to Margaret Cleland (pension) £12 10/-
to John Adair (pension) £10
to Sir David Nairn Secretary to the Order of the Thistle £75
to Adam Cockburn of Ormistoun Lord Justice Clerk for his Charges and Expenses in the Southern Circuit May 1733 £100
Southern Sir Wm Calderwood of Polton one Circuit of ye Lords of Justiciary for his Charges and Expences in said Circuit £100
John Forbes his Mats Advocate there £50
Alex Lindsay Clerk there £30
Humphrey Colquhoun Macer £10
Charles Areskine Trumpet £10
Thos Weir Trumpet £10
to
Sir James McKenzie of Roystoun
one of the Lords of Justiciary for his Charges and Expenses in the
Western Circuit May 1733 £100
Sir Walter Pringle of Newhall
the other Lord of Justiciary in said Circuit £100
Western Circuit
Hew Dalrymple his Mats Advocate Depute there £50
John Henderson Clerk there £30
James Pittillo Macer £10
James Gairdner Trumpet £10
James Marine Trumpet £10
to
David Erskine of Dun one of the Lords of Justiciary in the
Northern Circuit £100
Andrew Fletcher of Milton the other Lord of Justiciary in said Circuit £100
Northern Circuit
Hugh Forbes his Mats Advocate Depute there £50
Robert Gordon Clerk there £30
Thomas Leslie Macer £10
John Yates Trumpet £10
John Meinzie Trumpet £10
to the University of Edinburgh for their professors £52 10/-
to the University of St Andrews for their professors £52 10/-
to the University of Glasgow for their professors £52 10/-
to the King's College in the University of Aberdeen for their professors £26 5/-
to the Marishall College in the said University for their professors £26 5/-

Edinburgh 26 June 1733

£9,837 13/5d
To the Chief Barons and the rest of the Barons of his Maj's Court of Exchequer in Scotland.

After etc We in pursuance of the Power given to Us by his Maj's Letters of Privy Seal bearing the date on or about the 6th day of July 1727 do hereby Signify Our Approbation of the foregoing List of Salaries and Pensions for the Quarter ended at Midsummer 1733 amounting to the sum of £9,837 13/5 and return the same to you to the end you may direct payment thereof in the usual manner as by the same Letters of Privy Seal you are impowered to do.

Whitehall Treasury Chambers 31st July 1733.

RWGD.

WC.
## APPENDIX II

Sources of Revenues applied to Civil List Expenditure 1725-48

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<th>From Excise £</th>
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Sub

Total

to 1735  402,650  348,986  87  40,327  10  12,354  3
1736-48  485,442  339,032  70  132,785  27  12,791  3

Total £888,092  £688,018  78 £173,112  19 £25,145  3

Average per ann £37,004  £28,667  £7,213  £1,048

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1 Figures from SR0 E224/2-5. In some cases the figures do not exactly add up to the civil list total: certain minor sums were occasionally derived.
from other sources. From 1725 to about 1735 excise supplied between 80% and 90% of the cost of the civil list: in some quarters, for example Michaelmas 1728 and Michaelmas 1730 excise paid the whole civil list, customs revenue being applied to the Equivalent fund etc. After 1736 the excise figure generally fluctuated between 60% and 80% as larger amounts of excise revenue were channelled into paying the Equivalent debts and other non civil list charges previously met out of customs.
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I MANUSCRIPT SOURCES

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C7/42-44 Great Seal Warrants 1733-55
C38/1 Sheriffs' Commissions 1748

Customs and Excise Records (CE)

CE1/1-7 Scottish Customs Board Minute Books
29 Sep 1723 - 6 Dec 1749
CE3/4-9 Scottish Customs Board Establishment Books
1724-49
CE6/7, 13, 16 Scottish Excise Board Miscellanea
CE12/1-2 Scottish Customs Board Establishment
Books - Salt duties 1714-57
CE51 - CE84 Customs outport records for various ports

The Minute Books of the Scottish Excise Board
for the period have not survived.

Exchequer Records (E)

Pipe Office

E201 Declared Accounts - Imprests
E201/1/15-38 Receiver General of Land Rents and Casualties -
Imprest accounts for civil establishment 29
Sep 1724 - 29 Sep 1748
E201/2/1 - 5 Accounts for criminal prosecutions at the
instance of the Lord Advocate and Solicitor
General, Midsummer 1725 - 14 Jan 1752.
E201/3/16-37 Exchequer prosecutions and petty expenses
29 Sep 1724 - 25 Dec 1749

E202 Declared Accounts - Crown Rents etc.
E202/1-9 Crown rents accounts
E202/10, 12-15 Bishop's rents accounts
E203  Declared Accounts - Land Tax
E203/1/18-41  Yearly land tax accounts 1724-48

E205  Declared Accounts - Customs
E205/1/18-41  Comptroller General's accounts 29 Sep 1724 - 29 Sep 1748
E205/2/17-44  Receiver General's accounts 29 Sep 1724 - 29 Sep 1748

E206  Declared Accounts - Salt
E206/1/11-34  Comptroller General's accounts 29 Sep 1724 - 29 Sep 1730, 25 Mar 1732 - 25 Mar 1748
E206/2/11-38  Receiver General's accounts 29 Sep 1724 - 29 Sep 1730, 25 Mar 1732 - 25 Mar 1748

E207  Declared Accounts - Excise
E207/1/18-41  Accounts of Scottish Excise Commissioners 1725-48
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Auditor's Office

E215/1  Register of Declared Accounts 26 Nov 1709 - 13 Jun 1749

E217  Declared Accounts Miscellaneous
E217/3/3  Orders etc. relating to customs accounts 1716-89
E217/3/5  Reports relating to land tax accounts 1738-83

E218/1/2  Property Rolls (Entry Books of Property Eques) 23 Dec 1721 - 10 Sep 1747

E219/12/1  Bishops' rents accounts 1677 - 1737
E220/1/1  Bishops' rents abstract accounts 1711 - 1800
E223/1/1  Civil List Establishments 1709-1820
E224/2-5  Entry Books of Establishment Lists, imprest warrants etc. by barons for payments by Receiver General, Excise Commissioners etc. 1718-53
E225/1-2  Civil establishment - entry books of commissions 1709-66
Civil establishment - warrants for payment of salaries, pensions etc.

George I 1715-26
George II 1728-55
Warrants signed by Lords of Treasury 1740-59

Civil establishment - entry books of warrants under Privy Seal and Royal Sign Manual 1709-74

Various returns made to Treasury and other bodies concerning the revenues of Scotland

Lord Treasurer's Remembrancer's Office

Various sheriffs accounts

Barons' Minute Books 4 Nov 1725 - 6 Aug 1747
Register of orders relating to Treasury and revenue business 1710-54
Register of reports made by barons on references from the Treasury 1723-57
Letter Books 1723-30
Opinions of Crown Counsel 1714-1867
Register of Commissions etc. 1709-54
Window tax accounts 1748

Receiver General's Accounts 1720-9
Receiver General's Abstract Accounts 1724-50
Criminal Prosecution Accounts 1725-52
HM Charity and Bounty Accounts 1725-48
Mint Accounts
Royal bounty for itinerant preachers accounts 1725-48
### Customs Accounts

- **E501/18-41**
  - General Accounts (Comptroller General)
  - 29 Sep 1724 - 29 Sep 1748

- **E502/18-44**
  - Cash Accounts (Receiver General Customs)
  - 29 Sep 1724 - 29 Sep 1748

- **E503/9-34**
  - Seizures Accounts (Receiver General Customs)
  - 29 Sep 1724 - 29 Sep 1748

### Salt Accounts

- **E531/1-16**
  - 1 May 1714 - 29 Sep 1730

- **E531/18**
  - 1 May 1731 - 1 May 1750
    - (arrears of old salt duty)

- **E531/19-32**
  - 25 Mar 1732 - 25 Mar 1746

- **E531/33-45**
  - 25 Mar 1746 - 5 Apr 1759

- **E532/1-40**
  - Salt cash accounts (Receiver General Customs)
    - 1714-50

### Peers’ Elections (PE)

- **PE24-47**
  - Warrants of representative peers elections
    - 1715-54

- **PE18(9)**
  - Excerpts of Protests taken at peers’ elections
    - 1713-52

### Secretary of State’s Office

#### State Papers Scotland : Warrant Books

(Photostat copies of documents in the Public Record Office in SP57)

- **RH2/4/409(SP57/31)**
  - Roxburghe 23 Jun 1720 - 9 Jun 1725

- **RH2/4/410(SP57/32)**
  - 11 May 1725 - 30 Aug 1736

- **RH2/4/411 (SP57/33)**
  - 28 Jan 1737 - 29 May 1753

#### State Papers Scotland : Letter Books

(Photostat copies of documents in the Public Record Office in SP55)

- **RH2/4/396(SP55/9)**
  - Roxburghe - Petitions, Reports etc.
    - 29 May 1718 - 27 May 1725

- **RH2/4/397(SP55/10 and 11)**
  - Roxburghe - Letters 22 Sep 1721 - 6 Jul 1725
  - Military Commissions 12 Oct 1714 - 24 Apr 1725
State Papers: Scotland
(Photostat copies of documents in the Public Record Office in SP54)
RH2/4/314-364(SP54/13-36) 1718-47

Treasury

Treasury Books: North Britain
(Photostat copies of documents in the Public Record Office in T17)
RH2/4/433-456(T17/7-15) 1724-50

Treasury: Accounts of Scotland 1707 – 1818: Miscellaneous returns and accounts of excise etc.
(Photostat copies of documents in the Public Record Office in T36)
RH2/4/534(T36/1) General Accounts of Excise 1707-70
RH2/4/535(T36/2) General Accounts of Excise 1716-32
RH2/4/537(T36/4) General Accounts of Excise 1739-62
RH2/4/553(T36/13) Miscellaneous Excise papers

The RH2/4 material in the Scottish Record Office is a full and exact copy of the SP (State Papers) and T (Treasury) records in the Public Record Office. The page or folio numbers cited in the footnotes to this thesis are those of the originals.

Correspondence and Miscellaneous Records

Robert Craigie of Glendoick Manuscripts
GD/609/2-6 Correspondence of Lord Advocate Robert Craigie 1742-8

Campbell of Stonefield Papers
GD14 Various correspondence, particularly on the Forty-Five Rebellion in Argyllshire.

Clerk of Penicuik Muniments
GD13 (a) Court of Exchequer Papers GD 18/2688-2922
    (b) General papers and correspondence
        (i) State, political and parliamentary GD 18/3103-3299
        (ii) Family and personal GD 18/5245
Hay of Belton Muniments

GD73/56

Correspondence between Tweeddale and John Hay of Belton

Morton Papers

GD150/3476-3478, 3480

Correspondence on Porteous Affair 1736–7

Arniston Papers

Microfilm at West Register House of letter books kept at Arniston House, Midlothian, containing the general correspondence of the Dundas of Arniston family

RH4/15/2–4 (vols. 2–5) 1722–55

Craigievar Papers: Papers of Sir Andrew Mitchell

Microfilm RH4/70/1

Various letters on the 1747 general election in Aberdeenshire

Miscellaneous

GD1/169/1

Accounts of window tax 1747–66

GD1/616/61

Copy Report of Lord Advocate Dundas 28 Sep 1723 on "judicial means of counteracting the spread of popery and the increasing number of Jacobite meeting houses in Scotland.".

Microfilm RH4/6/1–2

Card Biography of Scottish excise officers 1707–1830, compiled by J.F. Mitchell 1963

PUBLIC RECORD OFFICE

Secretary of State's Office

SP35/51–76

State Papers Domestic George I, 1724–7

SP36/1–108

State Papers Domestic George II 1727–48 - relevant material

SP43/6–8

State Papers Regencies 1725 Townshend, Hanover

SP43/69–72

State Papers Regencies 1725 Newcastle, Whitehall

SP43/86–88

State Papers Regencies 1735 Newcastle, Whitehall

SP44/122–133

State Papers: Entry Books, Domestic 1721–50

SP44/292–4

State Papers: Entry Books, Regencies 1725

(For other State Papers - SP54, 55, 57 - see under Scottish Record Office)
Treasury

T1  Treasury Papers 1720–50 – relevant material
    T29/25–31  Treasury Minute Books 1725–51
    T43/1  Customs registers – appointment of customs and salt officers 1737–45
    T43/3  Customs establishments 1714 and 1779
    T45/1 and 4  Various excise establishments and accounts
    T52/34–44  King's Warrant Books 1725–48
    T53/32–42  Money Books 1725–48
    T54/29–34  Warrants not relating to money 1724–48

T64  Treasury Miscellanea, including
     T64/238  Report on frauds in customs at Inverness 1718
     T64/240  Report on revenue frauds in tobacco trade 1722
     T64/242  Fees taken by customs officers 1742

(For T17 (North Britain Books) and T36 (Accounts) see under Scottish Record Office)

NATIONAL LIBRARY OF SCOTLAND

Saltoun Papers

Since I originally consulted these papers (which at that time were roughly grouped in loose folders in boxes), they have undergone two major recataloguing exercises: the second is still in progress. The references given in this thesis are to the new volume numbers. It has not been feasible also to give folio references but the individual letters can be easily located within the relevant volume, more so once the general index of correspondents is completed.

Correspondence

SC 16,525–16,663  General correspondence to and from Lord Milton, including his correspondence with Ilay, 1720–48

Public Affairs

Other useful material is contained in

SPA 17501  Public Affairs 1709–64
SPA 17,503–4  Administration 1725–64
SPA 17,509–10  Porteous Riots 1736–7
SPA 17,532-3  Elections 1727-63
SPA 17,534  Peers 1707-61
SPA 17,605  Cyphers. (The correspondence between Milton and Ilay was often written partially in cipher. The main code used was a system of symbols and dots similar in appearance to modern shorthand).

Yester Papers
YP7044-7080  Correspondence and Papers of John, 4th Marquis of Tweeddale 1715-61
YP7102-7104  Composite volumes of correspondence
YP7118-7119  Miscellaneous

Supplementary Yester Papers
SYP Boxes 8-13  Correspondence of John, 4th Marquis of Tweeddale
SYP Boxes 137-40  Papers of the same
SYP Box 195  Printed papers, political broadsheets etc.
SYP Box 212  Miscellaneous papers
SYP Box 215  Annual Reports of Board of Trustees 1727-44

(Since this thesis was prepared, the Supplementary Yester Papers have been rearranged and recatalogued as Accession 7174. Tweeddale's correspondence, previously in SYP Boxes 8-13, is now contained in folders 14,420 to 14,426, and in particular that with Thomas Hay is in folders 14,424 and 14,425. Individual letters referred to in the thesis can be located with the aid of the comprehensive index).

BRITISH LIBRARY

Newcastle Papers
Add MSS 33,049  Political and other papers relating to Scotland 1715-1802

The following volumes have been consulted for correspondence between Newcastle and Argyll, Atholl, Edlin, Forbes, Lord Advocate Grant, Ilay, Lothian, Marchmont, Milton, Rothes, Roxburghe and Tweeddale 1725-48:
Add MSS 32,668 - 32,691
Add MSS 32,693
Add MSS 32,695 - 32,697
Add MSS 32,699
Add MSS 32,702 - 32,704
Add MSS 32,707
Add MSS 32,711 - 32,712

**Hardwicke Papers**

Add MSS 35,446

Scottish correspondence (mainly on legal matters) 1737-48

Correspondence with Ilay in

Add MSS 35,587 - 35,588 1742-5

**NOTTINGHAM UNIVERSITY LIBRARY**

**Newcastle Clumber Manuscripts (NEC)**

This is an important collection, supplementing the main Newcastle Papers in the British Library and containing a large number of papers and correspondence on Scottish affairs, particularly in the 1740s and early 1750s. The principal recipient of the correspondence from a wide range of prominent Scots was Pelham.

NEC 1608-2225

Correspondence and Papers on Scottish affairs 1742-54

NEC 85a-c, 86a-b, 88

Letters Horatio Walpole to Pelham concerning Scotland 1746

NEC 178a-b

Letters Sir Robert Munro to Pelham and Walpole 1741

II **PRINTED SOURCES**

**OFFICIAL PUBLICATIONS**

*Calendar of Treasury Papers, 1720-8.*

*Calendar of Treasury Books and Papers, vols. 1 - V, 1729-45.*

<table>
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<th>Author</th>
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<td>Albemarle</td>
<td>The Albemarle Papers: Being the Correspondence of William Arne, Second Earl of Albemarle, ed. C.S. Terry, New Spalding Club (Aberdeen, 1911).</td>
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Hervey, Lord John  

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Extracts from Original Letters of George, Earl of Morton, to his son James, Lord Aberlour, as to Proceedings in Parliament relative to the Porteous Mob, 1736, Maitland Club Miscellany, (Edinburgh, 1840).


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States of the Annual Progress of the Linen Manufacture, 1727-54; From the Records of the Board of Trustees for Manufactures... in Scotland Preserved in the Scottish Record Office, ed. R.H. Campbell, (Edinburgh, 1964).

Walpole, H.  

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III SECONDARY SOURCES

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The Scottish Commissions of the Peace, 1707-60 (University of Glasgow Ph.D., 1977).

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Electoral Law and Procedure in Eighteenth and Early Nineteenth Century Scotland (University of Glasgow Ph.D., 1957).

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The Scottish Whigs and the Reform of the Court of Session, 1785-1830 (University of Cambridge Ph.D., 1967).

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ARTICLES AND ESSAYS

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Burn, W.L.  

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Ferguson, Sir J. 'Making Interest' in Scottish County Elections', Scottish Historical Review, XXVII (1947), pp.119-33.


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BOOKS (a select list)


Brunton, G. and Haig, D. An Historical Account of the Senators of the College of Justice from its Institution in 1532, (London, 1832).


Haldane, J.A. The Haldanes of Gleneagles, (Edinburgh, 1929).


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<tr>
<td>Maidment, J.</td>
<td>The Court of Session Garland, (Edinburgh, 1871).</td>
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<td>Omond, G.W.T.</td>
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Thomson, M.A.  

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*History of Local Taxation in Scotland*, (Edinburgh, 1908).

Van Thal, H.  

Ward, W.R.  

Whetstone, A.E.  

Wilkes, J.W.  

Williams, B.  

Youngson, A.J.  