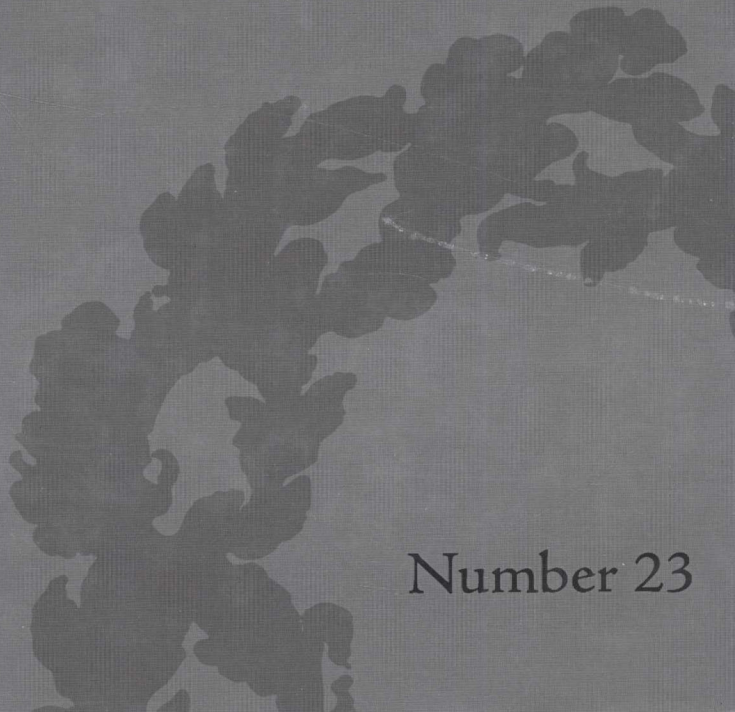


Crime and Community in Reformation Scotland

J. R. D. Falconer



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CRIME AND COMMUNITY IN REFORMATION
SCOTLAND: NEGOTIATING POWER IN A
BURGH SOCIETY

BY

J. R. D. FALCONER



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My students, first at the University of Windsor, and currently at Grant MacEwan University, have pushed me to think more critically about patriarchy, household formations, criminality and religious influences on social reform. I am often inspired by their desire to learn and their willingness to see, as they

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CONTENTS

Acknowledgments	ix
List of Figures and Tables	xiii
Introduction: Community, Conflict and Control	1
1 Crime, Community and Belonging	23
2 Godly Discipline	45
3 Property	67
4 Violence	99
5 Disobedience and Exclusion	127
Conclusion: (Re)Defining the Community of the Burgh	149
Notes	157
Works Cited	197
Index	211

LIST OF FIGURES AND TABLES

Figure 3.1: Distribution of incidents of unspecified strubance brought before the burgh court of Aberdeen, 1542–91	95
Figure 3.2: Distribution of incidents of physical assault brought before the burgh court of Aberdeen, 1542–91	95
Figure 3.3: Distribution of incidents of verbal assault brought before the burgh court of Aberdeen, 1542–91	96
Figure 3.4: Distribution of incidents of vandalic property crime brought before the burgh court of Aberdeen, 1542–91	96
Figure 3.5: Distribution of incidents of away taking and intromission brought before the burgh court of Aberdeen, 1542–91	97
Figure 3.6: Distribution of incidents of breaking statutes, regrating and forestalling brought before the burgh court of Aberdeen, 1542–91	97
Figure 3.7: Distribution of incidents of strubling the town brought before the burgh court of Aberdeen, 1542–91	98
Figure 3.8: Distribution of incidents of disobedience and disorder brought before the burgh court of Aberdeen, 1542–91	98
Table 3.1: Incidents of petty crimes brought before the burgh court of Aberdeen, 1542–91	94
Table 4.1: Incidents of unspecified strubance, physical and verbal violence before the burgh court, 1542–91	102
Table 4.2: Total cases of petty crime brought before burgh court c. 1542–c. 1591	104
Table 4.3: Number of ‘cases’ of verbal and physical assaults delimited by sex of victim	114
Table 4.4: Number of ‘cases’ of petty crime delimited by sex of offender	124
Table 6.1: Number of ‘cases’ of petty crimes brought before the burgh court, 1562–91	153

INTRODUCTION: COMMUNITY, CONFLICT AND CONTROL

In the late evening of 4 October 1549, five sailors from Hamburg conducting trade in Aberdeen attacked a local man, William Portuis, disturbing the Scottish burgh 'under silence of the night'. It is not clear what precipitated the attack, but the court records indicate that the sailors violently assaulted Portuis, bound him, taunted him and carried him off to their ship 'without ony ordour of law or justice'.¹ What's more, the skipper's children stripped Portuis of his sword and bonnet while he was bound and powerless to defend himself. This physical assault combined with the verbal abuse he endured undermined the sense of security Portuis should have felt within the limits of the burgh. As the records make very clear, the attack also posed a direct challenge to the authority of the magistrates whose responsibility it was to insure the safety and welfare of the burgh's inhabitants. Furthermore, the humiliating act committed by the skipper's children underscored the depth of the victim's sense of powerlessness. Although it was likely that Portuis had the means to legally seek restitution for this attack through the burgh court, and that such action would have been welcomed by the magistrates, Portuis chose to act on his own, to right the wrong committed and to regain some of the power that was taken from him. Upon gaining his freedom from the ship, Portuis gathered some of his neighbours together and attacked the ship, throwing stones and assaulting the sailors in an act of retribution that served to restore to him what had been lost.

Although the crimes committed by the sailors (and by Portuis and his neighbours) were not felonies, to classify them as 'petty' trivializes what the contemporary clerk characterized as a violent offence to the Queen, the burgh and well-being of the burgh community.² We might also consider the actions of Isobell Gardiner who, in May 1566, destroyed a former provost of Aberdeen's garden. For her actions she was placed in the govis [pillory] with a paper crown on her head bearing an inscription that detailed her offence against her neighbour.³ In choosing to destroy the garden, an act of retribution, Gardiner used what power she possessed to diminish her neighbour's ability to safeguard his property. Ultimately, the very public punishment Gardiner endured encouraged

her neighbours to demonstrate their disapproval of such actions through taunts and jeers. The principle behind such punishments was that it would restore to the victim their honour, reputation and sense of security by making the broader community aware of the affront. However, there was also a restorative aspect to such punishments intended to benefit, in some way, the culprit. Once the punishment had occurred, order was to be restored to the community. In principle, this meant that wrongdoers were to be accepted back into civil society and not to be harmed or incur the lasting enmity of their neighbours. Yet, despite the belief that order was restored once the punishment had been met, many of the burgh's inhabitants regularly proved that their memories were long, and that such prescriptive regulation often failed to reduce conflict within the burgh.

Ten days before Christmas 1582, Helen Allan was convicted for 'mensweiring of hir self befor the magistrate'.⁴ While the immediate charge was for perjury, the account stressed that she had a lengthy history of criminal activities in the burgh. The account states that Allan had been 'accusit of & divers tymes vpon sic crymes as laid to hir charge be the session and ecclesiasticall magistrate' and she:

being founding getine participant & madnis of ane theifteous buitht and barne in respect quairhof and mony utheris divars odious crymes committit be hir obofeir notefeit and knawin to the consale quhilkis are suppressit for the vilitie & odiousness thairof.⁵

The council determined that because of her criminality Allan should be banished from the town for a year and a day and that if she were found within the burgh limits, she was to be burned on the cheek. While the account of Allan's wrongdoing stands out for the language used to describe the seriousness with which the courts adjudged her actions, her activities provide a demonstrative example of the injurious nature of the petty crimes Aberdonians committed during the period under consideration. Ultimately, criminal activities, like those committed by Portuis, Gardner and Allan, and how they were punished (legally and extra-legally) represented an aspect of the negotiation of social power among those who called Aberdeen their home. Indeed, the court records highlight the fact that early modern societies were in a constant state of negotiation, what Keith Wrightson and others have referred to as the "the constant jostling and realignments" to be observed in families and communities; the element of negotiation that infused so many relationships of power and authority.⁶

Early modern concerns over social regulation, misbehaviour, criminal activity, marginalization and power and authority have lengthy historiographical traditions.⁷ Increasingly, students of early modern Scottish history can find studies focused on the locales, the people who inhabited the countryside and burghs of the realm, and the issues that affected daily life – poverty, productivity and piety.⁸ But while a few historians have examined the impact the Reformation had on

social issues, and in particular regulation of behaviour, there have been very few full-length histories of crime in early modern Scotland.⁹ This led Julian Goodare to conclude that in order to better understand the role of discipline in early modern Scotland 'what we need, therefore, are better comparative studies of the scope and effectiveness of religious and civil authorities, especially in the localities.'¹⁰ This book aims to fulfill, in some part, this call for a comparative study of authority and power in the localities by examining the role misbehaviour played in defining social space and outlining the boundaries of inclusion and exclusion in the burgh of Aberdeen during the last half of the sixteenth century. It should also provide a starting point for filling the historiographical void suggested by Goodare.

This book examines the crimes tried in the burgh court of Aberdeen between *c.* 1541 and *c.* 1600, and the impact such crimes had on this burgh community during a period of significant religious, economic, social and political change. Over a period of roughly sixty years, the Aberdeen Council Register and Baillie Court Books recorded nearly 2,000 individual convictions for a variety of crimes that included property offences (theft, fraud, trespass, intromission, willful destruction), breaking the peace (physical and verbal assault, riot, 'strubulance'), regulatory offences (statute breaking, regrating and forestalling, unlawful practice of crafts and sale of merchandise) and vice (fornication, adultery, breach of sabbath, recusancy, gambling and drunkenness). The accounts left behind shed light on the social interactions of a community at work, play and prayer and the regulatory systems in place that governed proper behaviour and attempted to instill in the inhabitants of the burgh the idea of 'good neighbourliness'.¹¹ A comparison of the accounts found in the St Nicholas Kirk Session records and Aberdeen's burgh court records reveals that the burgh's secular and spiritual authorities played an interconnected role in regulating behaviour and protecting what contemporaries called the 'common weal of the burgh'.

While the ideals of 'good neighbourliness' and the 'common weal' provided the ideological framework for regulating behaviour, crime challenged such prescriptive ideas enabling individuals, regardless of their social standing, to settle disputes, right wrongs and exercise power in informal, extra-legal ways. Frequently, criminal acts were a means of resolving conflict, asserting control and challenging the boundaries of normative society. The attempts made by individuals to illegally access the exclusive smaller communities within the burgh draws attention to the fact that competing visions of 'order', 'discipline' and 'belonging' drew members of burgh society into conflict. This book contends that through an analysis of criminal activities and enforcement of the burgh's laws and customs we can arrive at a better understanding of the community of the burgh of Aberdeen in the sixteenth century.

Historians who practice 'history from below' have demonstrated that early modern communities were rife with inequality in terms of wealth and formal

political power.¹² Recent scholarship building on this perspective has in one way or another argued that inequality could also be measured by other factors such as gender, age, health, occupation, place of abode, religious conformity and adherence to the prescriptions of normative society.¹³ While few question the hierarchical nature of early modern societies, it is becoming increasingly clear that binary models, rulers and ruled, superiors and subordinate, are too simplistic to offer any real insight into social relations in this period. As Steve Hindle argued nearly a decade ago, 'while inequalities of *wealth* and *status* are the usual starting points for most discussions of local social relations in early modern England, asymmetries of *power* tend to be implied rather than explored'.¹⁴ Increasingly, historians are adopting the ideas of social theorists who have argued that *power* was more widely distributed and negotiated.¹⁵ As such, 'the disadvantaged in early modern society navigated their way in a world which afforded many sources of influence to their more powerful contemporaries. But in negotiating their way around these potential dangers they did not lack negotiating powers of their own'.¹⁶

Social theorists, like Michael Mann, have defined 'power' as the 'generalized means' individuals employ for achieving their goals.¹⁷ Historians who have adopted this definition, and apply it in purely political terms, tend to present power as the ability to coerce either through force or sanction.¹⁸ Accordingly, they locate power most often in the state or in some other institution such as the law or the church. Such a definition, however, excludes the means that individuals use to achieve personal goals, goals that may not have far reaching consequences but impact their social structures nonetheless. Even those who have attempted to explore the deeper social meaning behind the exercise of power have employed binary models leaving out any proper discussion of the social relations/power dynamics among individuals of similar socio-economic groupings, gender or occupation. Such understanding of power, and its exercise, raises the question of whether the average sixteenth-century baxter, cordiner, miller's wife or merchant's daughter was able to exercise and negotiate power within their communities. If so, what was the nature of such power and through what means did they attempt to exercise this power to enhance their own social or economic standing in the community or to diminish the power other individuals in their community hoped to exercise?

If we cannot get away entirely from the notion of domination and subordination, especially if we accept Gramsci's ideas of hegemonic power, then, rather than seeing domination and subordination solely in socio-economic terms, it is more fruitful to look at how individuals across their own social groups exercised power as a means of affecting change in their own situation or their neighbour's.¹⁹ To do so power needs to be viewed as something other than a quantifiable object, i.e. something individuals possess, and approach power as

a process, or technique.²⁰ Thus, individuals with similar outlooks, occupying similar places within society worked to establish normative values that defined acceptable behaviour and worked to maintain their position, their networks and their relationships within that community. A clear example of this is the variety of activities magistrates undertook to regulate burgh society. But standing in contrast, or in relation, to this horizontal vision of power, or collective power whereby individuals jointly use the power available to them to control others, is the more vertical, or distributive power system that has one individual seeking to exercise power over another, that often led to competing visions of social space and the jostling for positions within society.²¹

If power is not to be quantified, or even objectified, and we therefore must not see it as something which is attainable, i.e. a goal or a thing to possess, should we continue to discuss power in terms of those who have it and those who do not? More importantly, can we continue to focus solely on power in the political sense of the word, relying on examples which only illustrate rulers and ruled, master and subordinate? Wrongdoing, while frequently caused by malcontents, must certainly have also been a means of affecting change in the community. Such changes may not have been long-lasting and most likely did not affect the entire community, though indeed in some cases they were and did have such consequences. Nonetheless, they impacted upon the lives of individuals as well as on social relations in the community. Collectively, wrongdoing helped to shape normative attitudes and helped to create ideas of what constituted neighbourly behaviour and what did not. Wrongdoing also constituted a direct challenge to the authority vested in the magistrates who governed the burgh or the laws in place to maintain the common weal. Indeed, property crimes, statute breaking, regrating and forestalling and open defiance of burgh officers and public nuisance often brought individuals into a negotiation of power – the power to affect order in the community. Most crimes brought before the burgh court involved multiple levels and participants or were, as Simon Gunn recently demonstrated, ‘operative at multiple sites’ in a negotiation that while outside the boundaries of formalised political power were actions which sought to bring about a change in the community regardless of how that change may be characterised.²² In challenging the norms prescribed by the authorities and legitimated by the entire community, those individuals convicted of crimes negotiated the power structures and social space within their social settings.

Crime, Power and the Processes of Exclusion and Inclusion

Three decades ago James Sharpe surveyed what was at that time the burgeoning field of the history of crime and asserted its importance to social historians for understanding past attitudes towards social behaviour, law and order, criminal