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Falconer, J.R.D.

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SOLON Crimes and Misdemeanours

University of Plymouth

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**‘MONEY UTHERRIS DIVARS ODIOSUS CRIMES’:  
WOMEN, PETTY CRIME AND POWER IN  
LATER SIXTEENTH CENTURY ABERDEEN  
J. R. D. Falconer<sup>1</sup>**

**Abstract**

This article examines the nature of petty crimes committed by sixteenth century Aberdonian women and the impact they had on burgh society. The evidence presented here challenges the notion that the burgh court charged women with a much more narrow range of criminal activities than men. Over a period of roughly 50 years (1541-1591), the Aberdeen Council Register and Baillie Court Books record nearly 2,000 individual convictions for a variety of criminal acts that included statute breaking, property crimes, and acts of verbal and physical assault. This article looks at a specific section of this evidence to argue that women used the same methods to wrong their neighbours, challenge the authority of the magistrates and to push the boundaries of acceptable behaviour. Even if it was not the intended consequence of their actions, the petty crimes committed by Aberdonian women, not unlike those committed by their male counterparts, (re)shaped their social space. The evidence suggests that individuals used petty crimes to achieve specific goals and to establish dominance within their environment. In many cases, such crimes, and the responses to these acts, constituted a negotiation of social power.

**Keywords:** petty crime, female offenders, Scottish burgh court, Aberdonian sixteenth century crime, gender and crime

**Introduction**

In his *Description of both touns of Aberdeen* the sixteenth century Scottish surveyor and cartographer, James Gordon of Rothiemay, described the ‘new burgh’ as exceeding ‘not onlie the rest of the touns of the north of Scotland, bot lykewayes any citie quhatsumever of that same latitude, for greatnes, bewtie, and frequencie of trading’.<sup>2</sup> As part of his description, Rothiemay asserted that the climate of north-east Scotland contributed to the ‘civil inclinations’ of the ‘citizens’ of Aberdeen. Thus, Aberdeen was ‘reputed (and not

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<sup>1</sup> Rob Falconer is an Assistant Professor of History at Grant MacEwan University, Edmonton, Alberta, Canada, [falconerj2@macewan.ca](mailto:falconerj2@macewan.ca)

<sup>2</sup> James Gordon, *Abredoniae vtrivsqve descriptio: A description of both touns of Aberdeen* in C. Innes (ed.) (Edinburgh, 1842) p.3.

without just cause,) the seminarie of so many quho ather are or have been remarkable for wisdome, learning, gallantrie, breeding, and civill conversatione'.<sup>3</sup>

While Rothiemay was convinced of the civility of sixteenth century Aberdonians, contemporary burgh court records paint a very different picture. Numerous accounts of physical and verbal assaults, property crimes, and statute-breaking highlight conflict within the burgh community; conflict between individuals, between individuals and the local magistrates, and between individuals and the wider community. Since many of the accounts indicate that wrongful behaviour constituted a threat to the burgh's common weal and to notions of good neighbourliness, such activities also reflect a conflict between an idealised vision of burgh society and the actualities of burgh life. What the court records make clear is that while these ideals were meant to bind the community together and to demonstrate order, concord and stability, petty crime posed a significant challenge to such virtues.

For those familiar with early modern history it is clear that activities that challenged the boundaries of acceptable behaviour were not unique to Aberdeen.<sup>4</sup> Just what those boundaries looked like has been the subject of several inquiries into the nature of early modern communities.<sup>5</sup> Much of the current research indicates that over the course of the sixteenth century contemporaries witnessed changes in kin relationships, population growth, plague, famine and dearth, to say nothing of further socio-economic polarization, the growth of commercial activities, the growth of state apparatus, and shifts in legal and religious practices. All of these influenced contemporary attitudes on community, conflict and control.<sup>6</sup> This has prompted some historians to examine the impact such changes had on the localities.<sup>7</sup> In this respect, studies of early modern Scotland lag behind.<sup>8</sup>

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<sup>3</sup> Ibid, p.4.

<sup>4</sup> See for example, Marjorie McIntosh, *Controlling Misbehaviour in England, 1370-1600* (Cambridge, 1998); Steve Hindle, 'A Sense of Place? Becoming and Belonging in the Rural Parish, c.1550-1650' in A. Shepard and P. Withington (eds.), *Communities in Early Modern England: Networks, Place, Rhetoric* (Manchester, 2001) pp.96-114.

<sup>5</sup> Michael J. Halvorson and Karen E. Spierling, (eds), *Defining Community in Early Modern Europe* (Aldershot, 2008).

<sup>6</sup> On these subjects see for example Keith Wrightson and David Levine, *Poverty and Piety in an English Village: Terling, 1525-1700* (New York, 1979); A. Fletcher and J. Stevenson, (eds.) *Order and Disorder in Early Modern England* (Cambridge, 1985); R. Po-chia Hsia, *Social Discipline in the Reformation: Central Europe 1550-1750*, (London, 1989); Carter Lindberg, *Beyond Charity: Reformation Initiatives for the Poor* (Minneapolis, 1993); Robert Jutte, *Poverty and Deviance in Early Modern Europe* (Cambridge, 1994); Paul Slack, *From Reformation to Improvement: Public*

By contrast historians of early modern England can rely on fairly lengthy historiographical traditions. In a survey of the history of crime in England, James Sharpe asserted its importance to social historians for understanding past attitudes towards social behaviour, law and order, criminal activity and social control.<sup>9</sup> He argued that historians interested in such topics can gain insights into early modern societies by re-examining the materials used primarily by legal and economic historians. But in doing so, Sharpe argued, historians open themselves up to criticisms from sceptical critics of social history in general.<sup>10</sup> For the most part, such scepticism has been addressed by the work of historians like Keith Wrightson, Steve Hindle, and Susan Amussen who have helped to entrench the place of social history within the discipline.<sup>11</sup> Yet, one of the lingering concerns for historians examining crime and its impact on society is the ability to define crime in its contemporary context. Failure to recognise this led Geoffrey Elton to reject on the one hand the equation of adultery and theft as similarly criminal while on the other asserting that theft and treason were 'real crimes.'<sup>12</sup> Increasingly, historians

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*Welfare in Early Modern England* (Oxford, 1999); Steve Hindle, *The State and Social Change in Early Modern England, 1550-1640* (Basingstoke, 2000).

<sup>7</sup> A few select studies of French and English urban centres include David Parker, *La Rochelle and the French Monarch: Conflict and Order in 17th Century France* (London, 1980); Penny Roberts, *City in conflict: Troyes during the French wars of religion* (Manchester, 1996); K. Robbins, *City on the Ocean Sea: La Rochelle, 1530-1650: Urban Society, Religion, and Politics on the French Atlantic Frontier* (New York, 1997); P. Clark (ed.), *The Cambridge Urban History of Britain* (Cambridge, 2000); For Scotland see Michael Lynch, *Edinburgh and the Reformation* (Edinburgh, 1981); E. P. Dennison, D. Ditchburn and M. Lynch, (eds.) *Aberdeen Before 1800: A New History* (East Linton, 2002); M. Verschuur, *Politics or religion? The Reformation in Perth, 1540-1570* (Edinburgh, 2006)

<sup>8</sup> This has 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'. See J. Goodare, *State and Society in Early Modern Scotland* (Oxford, 1999) p.178.

<sup>9</sup> J. A. Sharpe, 'The history of crime in late medieval and early modern England: a review of the field,' *Social History* 7(2), (1981) 187-203.

<sup>10</sup> *Ibid*, p.187, fn. 2.

<sup>11</sup> Over the past three decades, a number of historians have contributed to the growth of social history in the British Isles, and its connection to the history of crime. See for example, Wrightson and Levine. *Poverty and Piety*; J. A. Sharpe, 'Such Disagreement betwix Neighbours': Litigation and Human Relations in Early Modern England,' in John Bossy (ed.) *Disputes and Settlements: Law and Human Relations in the West* (Cambridge, 1983) pp.167-87; C. B. Herrup, 'Law and morality in seventeenth-century England,' *Past and Present*, 106 (1985) 102-123; S. Amussen, 'Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England,' *Journal of British Studies* 34 (January 1995) 1-34.

<sup>12</sup> G. R. Elton, 'Introduction: Crime and the Historian' in J. S. Cockburn (ed.) *Crime in England 1550-1800* (Princeton: Princeton University Press, 1977) pp.2-6; Sharpe, *Crime in Early Modern England*, pp.6-7.

recognise that culturally and temporally constructed attitudes determined whether contemporaries considered certain activities to be criminal.

While Sharpe and others have countered Elton's claims by pointing out that contemporary writers could indeed put adultery and theft on an equal plane, Elton's argument does draw our attention to one of the most obvious distinctions made by modern commentators; namely, between those crimes which historians have labelled 'real' or classified as 'heinous,' and those 'misdemeanours', 'misconducts' and 'misbehaviours' that accounted for a large number of cases brought before local authorities.<sup>13</sup> Some historians equate these latter categories more closely with sin than with 'crime'. Implicit in such understandings is the notion that crimes were activities that led to the perpetrator's permanent exclusion from society whereas misbehaviour represented a temporary lapse in judgment that could be forgiven.<sup>14</sup> Moreover, there is a sense amongst historians of crime that 'real crimes' had a genuine impact on society whereas misbehaviour was so commonplace that contemporaries were little bothered by such actions.<sup>15</sup> Yet, as Karen Jones recently argued 'the local courts [in England] impacted on the lives of many more people than did the assizes or county quarter sessions, since petty crime or misconduct was far more typical and common than felony.'<sup>16</sup> Thus, the study of petty crimes provides the historian an opportunity to investigate the lives of ordinary individuals and to gain insights into a world that has been explored less frequently.

Almost three decades ago Bruce Lenman and Geoffrey Parker drew attention to the fact that in 'Stuart Scotland keeping the peace was seen as more important than establishing guilt and disciplining offenders.'<sup>17</sup> The number of ecclesiastical and lay courts in Scotland in this period reflected this overriding concern for order. But while these courts

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<sup>13</sup> Elton, 'Introduction: Crime and the Historian;' See also the editors' 'Introduction' in V. A. C. Gattrell, B. Lenman and G. Parker (eds.) *The Social History of Crime in Western Europe since 1500* (London, 1980); M. R. Boes, 'Public appearance and criminal judicial practices in early modern Germany,' *Social Science History* 20(2), (1996) 259-279.

<sup>14</sup> Herrup, 'Law and Morality in England,' pp.110-111.

<sup>15</sup> Andrew Finch has argued that the types of crimes which contemporaries brought before local courts tended to be of the 'banal and mundane' variety: 'The Nature of Violence in the Middle Ages: an Alternative Perspective,' *Historical Research*, LXX (1997) 249-268.

<sup>16</sup> K. Jones, *Gender and Petty Crime in late Medieval England: The Local Courts in Kent, 1460-1560* (Woodbridge, 2006) p.8.

<sup>17</sup> B. Lenman and G. Parker, 'Crime and Control in Scotland, 1500-1800,' *History Today* (1980) 15.

served a variety of functions and exercised their own jurisdictions, the maintenance of 'social control' was the primary concern of every Scottish court magistrate regardless of the types of crime brought before them. Felony crimes, murder, aggravated assault, abduction, robbery with violence, bestiality were the 'serious crimes' tried in the Justiciary courts or the King's High Court. Less serious offences were under the jurisdiction of the local authorities usually heard in the Sheriff, Burgh and Baron Courts. And although the local courts dealt with less serious offences, Lenman and Parker have argued that the authorities tended to exercise their power more rigidly in order to root out disreputable characters.<sup>18</sup> The records of the burgh court in Aberdeen for the sixteenth century certainly support the idea that local magistrates were rigid in their belief that they alone possessed the right to exercise authority in the burgh, but flexible in terms of how they 'rooted out' wrongdoers.

Few historians answered Lenman and Parker's call for greater inquiry into crime in Scotland in the early modern period. While there are no full-length monographs dealing with this subject, a few historians have explored the social implications of the Scottish Reformation.<sup>19</sup> Much of the literature on this subject, however, focuses on the role of the Scottish kirk sessions with little evaluation of the role of the burgh courts. This dearth of work on crime in early modern Scotland makes any valuable comparative analysis between the burghs of the realm difficult to construct. This article's modest aim is to be a starting point for filling this *lacuna* by examining the nature of petty crimes committed by Aberdonian women and the impact they had on burgh society. The evidence presented here challenges the notion that women were charged with a much more narrow range of

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<sup>18</sup> This was the case when an individual accused of theft, although he denied the charge, was sentenced to be scourged and banished. Lenman and Parker, 'Crime and Control in Scotland, 1500-1800,' p.15.

<sup>19</sup> The relatively limited number of studies examining crime and authority in Scotland during the middle ages and early modern period underscores the real need for historians to turn their attention to these subjects. See Michael Graham, *The Uses of Reform: Godly Discipline and Popular Behaviour in Scotland and Beyond, 1560-1610* (Leiden, 1996); Margo Todd, *Culture of Protestantism in Early Modern Scotland* (New Haven, 2002); Y. G. Brown and R. Ferguson, *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400* (East Linton, 2002); E. Ewan, 'Many Injurious Words': Defamation and Gender in Late Medieval Scotland,' in R. Andrew McDonald (ed.) *History, Literature, and Music in Scotland, 700-1560* (Toronto, 2002), pp. 163-186; J.R.D. Falconer, 'A family affair: households, misbehaving and the community in sixteenth-century Aberdeen,' in E. Ewan and J. Nugent (eds.) *Finding the Family in Medieval and Early Modern Scotland* (Aldershot, 2008), pp.139-150.

criminal activities than men.<sup>20</sup> With the exception of craft and merchant infractions, women were brought before the burgh court and charged for the same types of petty crimes as their male counterparts. Although more men than women found themselves before the court in Aberdeen, this article argues that women used the same methods to wrong their neighbours, challenge the authority of the magistrates and push the boundaries of acceptable behaviour. Even if it was not the intended consequence of their action, the petty crimes committed by Aberdonian women – not unlike those committed by their male counterparts – (re)shaped their social space.

## **1 Social Networks, Politics and the Documentary Evidence**

In most social relationships there exists the potential for a single individual to place themselves in a position to impose their will on another, regardless of resistance.<sup>21</sup> This is what Michael Mann refers to as ‘social power’. Social power, according to Mann, enables the individual to achieve their goal and to establish some dominance within their environment. In most early modern communities resistance to such impositions, either through retribution or litigation and prosecution, was a negotiation of that social power.<sup>22</sup> Sixteenth century Aberdonians, like most early modern townspeople, operated in well-established social networks and were part of ever-changing social relationships.<sup>23</sup> The power dynamics that existed among their peers, between themselves and their immediate superiors, and within the overlapping and concentric circles that defined the urban community, regularly influenced these relationships. Individuals within the community understood that wrongdoing disrupted the community and altered these established relationships.

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<sup>20</sup> Jenny Kermode and Garthine Walker have argued that ‘female activity is marginalised if it is measured only against male criminality’. See Introduction, J Kermode and G Walker (eds.) *Women, Crime and the Courts in Early Modern England* (University of North Carolina Press, 1994), p.4. In his analysis of kirk session records in Scotland, Michael Graham has argued that men were much more versatile miscreants and therefore charged with a greater variety of crimes. See M. Graham, *The Uses of Reform: Godly Discipline and Popular Behaviour in Scotland and Beyond, 1560-1610* (E. J. Brill, 1996). However, his examination of misbehaviour utilised ecclesiastical records alone and therefore does not entirely mirror the findings in this study.

<sup>21</sup> Michael Mann, *The Sources of Social Power: Vol. 1, A history of power from the beginning to A.D. 1760* (Cambridge University Press, 1986) p.6.

<sup>22</sup> Michael Braddick and John Walter (eds.), *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland* (Cambridge University Press, 2001).

<sup>23</sup> See A. White, ‘Religion, Politics and Society in Aberdeen, 1543-1593’ (University of Edinburgh, unpublished Ph.D. thesis, 1985); E. P. Dennison, D. Ditchburn and M. Lynch (eds.) *Aberdeen Before 1800: A New History* (Tuckwell Press, 2002).

For most of the sixteenth century Aberdeen maintained its medieval foundations in terms of local government and social structure. Elected provosts, baillies, officers, town councils and deans of guild were invested with the formal powers to regulate the burgh's market and the burgh's nearly 5,000 inhabitants.<sup>24</sup> Not unlike in other early modern towns, the wealthiest merchants in Aberdeen controlled the burgh government and thereby the burgh court. Although laws were in place to ensure that council members, provosts and baillies were properly chosen by the 'hail communite' for a term of a single year, a well-placed oligarchy fronted by the Menzies family controlled government and the mechanisms for establishing order in the burgh for nearly that entire century. Despite the laws in place to prevent hereditary office-holding, sons and even sons-in-laws took up key positions in the burgh on the death of their father (or father-in-law) while in office. The significance of this political situation was that the burgh court, provost and council provided continuity for how the burgh dealt with crimes/misbehaviour throughout the sixteenth century.<sup>25</sup>

Scottish burgh courts had jurisdiction over cases raised in the burgh excepting those reserved to the four pleas of the crown: arson, murder, rape and robbery. Thus, the baillies heard cases of verbal and physical assault, statute-breaking, property crimes (including petty thefts and wilful destruction), reset [possessing stolen property], forestalling and regrating,<sup>26</sup> civil disobedience, rioting, drunkenness, adultery and any other transgression against good neighbourliness. As was the case in many other burgh courts in Scotland, Aberdeen court clerks were inconsistent in how they recorded court proceedings and detailed criminal accounts. For the most part, their accounts simply contain the names of the individuals involved, the nature of the offence, and a statement that the perpetrator had been amerced (fined). There are, however, also instances where the clerk provided details of past transgressions, the individual's social status or

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<sup>24</sup> Using baptismal records to determine population growth, Robert Tyson has argued that by 1574 the population of Aberdeen 'was growing rapidly.' Tyson's figures suggest that between 1574 and 1644 there was a growth rate of nearly 151% and that the population of Aberdeen in 1644 was nearly double its population in 1500. R. Tyson, 'People in the Two Towns,' in E. P. Dennison, D. Ditchburn and M. Lynch (eds.) *Aberdeen Before 1800: A New History*, pp.111-128 at pp.111-112 .

<sup>25</sup> A. White, 'Religion, Politics and Society in Aberdeen;' J.R.D. Falconer, 'A Family Affair,' pp.141-142.

<sup>26</sup> Forestalling and regrating were common law offences involving buying goods en route to the market, to sell them there at inflated prices.



marriage connection, and the impact of the offence either on the victim or the wider burgh community.

Although the burgh of Aberdeen was also the site of the Sherriff's court, the people of Aberdeen had the freedom to be tried exclusively in the burgh court.<sup>27</sup> The only other regulatory bodies within the burgh after the Reformation were the merchant's guild and the kirk session (Scottish church court) which, although briefly in existence in the 1560s, did not make its presence felt until the mid-1570s and even then only to a limited extent and for a brief period. The hesitancy of Aberdeen's inhabitants to embrace the Reformation and adopt reform ideals has been well documented.<sup>28</sup> While a 'culture of Protestantism' was emerging in places like Dundee and Ayr, in Aberdeen there was no accompanying 'reformation of manners' in the sixteenth century. Rather, the burgh court continued to be the primary site for regulating behaviour in much the same way it had before the Reformation began to take root in Scotland. This is a crucial point to make. Margo Todd and Michael Graham have demonstrated that the kirk sessions could be quite active in cracking down on sexual improprieties, drunkenness and gaming, slander and assault, recusancy and sabbath breaking in many Scottish burghs in this period.<sup>29</sup> What their work has not highlighted is the leading role the burgh courts and secular authorities continued to play in regulating behaviour after the Scottish Reformation.

The choice of Aberdeen as a site for examining the impact of petty crime on a Scottish urban society during the mid-to-late sixteenth century is obvious. First, as a centre with lasting Catholic sympathies it provides an interesting venue for exploring contemporary ideological conflicts during the Reformation period and for detailing the more nuanced shifts in social regulation.<sup>30</sup> Second, there is good reason to see petty crimes and civil disobedience as challenges to Menzies' power within the burgh.<sup>31</sup> Third, and perhaps

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<sup>27</sup> David Walker has argued that 'burgesses were entitled not to be brought before a court of the king, lord or regality, baron or even another burgh, and if indicted, attached and presented in court were entitled to plead the freedom of their burgh and be granted it.' D. M. Walker, *A Legal History of Scotland, Vol. III: The Sixteenth Century* (Edinburgh, 1995) p.335.

<sup>28</sup> B. McLennan, 'The Reformation in the burgh of Aberdeen.' *Northern Scotland*, 2(2), (1976-7), 119-144; A. White, 'The Impact of the Reformation on a Burgh Community: The Case of Aberdeen' in M. Lynch (ed.) *The Early Modern Town in Scotland* (Croom Helm, 1987) pp.81-101; Graham, *The Uses of Reform*.

<sup>29</sup> Todd, *Culture of Protestantism*; Graham, *Uses of Reform*.

<sup>30</sup> See M. Graham, *Uses of Reform*; White, 'Impact of the Reformation'.

<sup>31</sup> Although there is significant evidence to suggest this was the case, much of the activities that threatened Menzies' domination were undertaken by craftsmen and a few craft deacons. As such,

most important from a practical perspective, there are extensive surviving records for the burgh of Aberdeen.

The Aberdeen Council Register, extant from 1398, offers perhaps the greatest source of information on Aberdeen's social, economic and political landscape. As a window into Aberdeen's past, what it occasionally lacks in clarity it makes up for in the size of the vista it affords. Through an examination of the Council Register, I have been able to gather information on local statutes and ordinances, civic elections, guild business and craft injunctions.<sup>32</sup> However, the main evidence taken from this source consists of the conviction accounts for petty crimes committed in the community and the penalties prescribed by the burgh court. Two things stand out when examining the statutes and ordinances found in the Aberdeen Council Register: first, for the most part the provost, baillies and council were inclined to maintain the laws and customs established by their predecessors. Changes were introduced very slowly unless necessitated by some direct cause, such as war, dearth of victuals, or plague immediately affecting the common weal.<sup>33</sup> Second, in terms of regulating behaviour within the town, the local authorities frequently relied on Acts of Parliament for introducing changes to earlier burgh laws. For example, Acts of Parliament concerning the treatment of forestallers and regrators increasingly required the burghs to share the convicted party's escheated goods with the Crown.<sup>34</sup> However, this often influenced burgh magistrates in Aberdeen to impose fines

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these activities are outside the scope of this article. For insight into the Menzies' control of the burgh and actions that threatened their power see White, 'Religion, Politics and Society'; J.R.D. Falconer, 'Community, Conflict and Control: the burgh of Aberdeen c.1542–c.1603' (unpublished Ph.D. thesis, University of Guelph, 2005).

<sup>32</sup> In 1985 Ian Flett and Judith Cripps offered this useful description of the Register's contents: 'Alongside the election of provosts, councillors and office bearers, registrations of property transfer, admission of burgesses, amercements of forestallers, promulgations of statutes to regulate the conduct of the inhabitants and the prices of staple foodstuffs and the proceedings of the chamberlains ayre, clerks of Aberdeen recorded numerous cases of mercantile and property-based debt and law and order offences.' I. Flett and J. Cripps, 'Documentary Sources' in M. Lynch, M. Spearman and G. Stell (eds.) *The Scottish Medieval Town* (Edinburgh, 1988) p.25.

<sup>33</sup> This is most obviously noted in the statutes and ordinances made in the Guild Court each Michaelmas. At these courts, the town elected officials, designated quarters to each of the four officers and baillies, regulated prices of bread, beef, ale, and ratified old statutes. Blanchard, et al. have argued that 'the basis of many regulations published by the provost, baillies, and council were the rules and conventions set out in early collections of laws relating to burgh government. See I. Blanchard, E. Gemmill, N. Mayhew and I. D. Whyte, 'The Economy: Town and Country,' in Dennison et al. *Aberdeen before 1800*, pp.129-158 at p.138.

<sup>34</sup> In 1535 an Act of James V forbade regrating of the burgh markets 'vnder the pane of prisoning of thare personis and escheting of all sik gudis cost or Erlit be thame.' The escheated goods were to be distributed 'two parts to go to the King, a third to the sheriff or provost and baillies of the burgh. Acts of the Parliament of Scotland (APS) II, p. 347. By 1540 another Act under James V

that went directly into the burgh coffers rather than force the escheatment of goods that would leave the burgh with only half of the intake. This resulted in what appears to be a more flexible treatment of individuals convicted of breaking statutes, a flexibility that the magistrates demonstrated in prosecuting most forms of petty crime within the burgh.

Apart from the council registers there are a few other sources available that shed light on the burgh community in the sixteenth century. The Aberdeen baillie court books, St. Nicholas kirk session records, and Aberdeen guildry accounts offer insight into the burgh, but the large gaps in the records that have survived limit their value.<sup>35</sup> To some extent, the council registers make up for these limitations. Yet, to depend entirely on the conviction accounts as they appear in the records for an accurate picture of the events as they took place is to overestimate the objectivity of the court clerks whose task it was to document these accounts. In large part, conviction accounts lack the transgressor's own words. We hear little to nothing of the explicit motivations behind the acts committed by members of Aberdeen society and only occasionally hear of any guilt, remorse or satisfaction they may have felt in wronging their neighbours. Instead, we are left to extrapolate such things from the details provided by court clerks and the context when provided. However, this does not entirely remove the transgressor's voice. The actions they took and the legal and illegal responses they engendered – prosecution and restorative justice or violent and destructive retaliations – communicate in a very loud way. In this way, individuals negotiated the 'public transcript' – 'the acceptable public version of relations of domination and subordination' – by misbehaving in an attempt to redraw the boundaries of normative society.<sup>36</sup>

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had the goods split evenly, half for the king and the other half for the burgh. APS, II, p.376. Acts passed in 1567 and 1579 ratified the Acts of James V (APS, III, p.41, 146); APS, III, p.452.; APS, III, pp.576-577.

<sup>35</sup> Aberdeen City Archives (ACA), Baillie Court Books, 1<sup>1</sup> 1572-1576; 1<sup>2</sup> 7 Apr 1581–28 Sept 1582; 1<sup>3</sup> 10 Feb 1585–2 Sept 1587; 1<sup>4</sup> 18 Nov 1594–23 Sept 1595; 1<sup>5</sup> 21 June 1596–s NAS CH2/448/1. 1562, 1568, 1573-77.

<sup>36</sup> Braddick and Walter, *Negotiating Power in Early Modern Society*, p.5; J. Scott, *The Moral Economy of the Peasant: Rebellion and Subsistence in Southeast Asia* (New Haven, 1976).

## **2 Statute Breaking, Property Crimes, Verbal and Physical Assaults**

In early December 1580, two Aberdonian women, Katherine Hay and Marion Soulis, became involved in a dispute. As the tensions mounted, Hay lashed out at Soulis calling her a 'common harlot and utheris sklanderis detractouris.' Hay's misdeed resulted in the burgh court convicting her for verbally assaulting her neighbour and charging her for 'staning of the said marion.'<sup>37</sup> A year later the burgh court convicted another local woman, Helen Allan, for disobeying the magistrates and perjuring herself.<sup>38</sup> The court clerk indicated that Allan was not a first time offender, stating that both the burgh and kirk magistrates had accused her of 'mony utheris divars odious crymes'; the exact nature of which the clerk 'supressit for the vilitie & odiousness thairof'.<sup>39</sup> The fact that these 'crimes' were tried at the burgh court indicates that that they were not crimes generally reserved to the Crown. However, the clerk made it clear that the magistrates took her actions seriously. For her crimes, the court banished Allan from the town for a year and a day and threatened that if she were to be found within the burgh limits during that period she would be burned on the cheek. While there was no standardised formula for recording criminal activities committed in Aberdeen, court clerks often indicated that the crime committed had 'stained' the victim's reputation and also that any and all criminal action 'troubled' the town. Such accounts underscore the power inherent in the wrongdoing.

These women's experiences were not unusual. In the last half of the sixteenth century the burgh court charged, and convicted, Aberdonian women for a variety of petty crimes. Despite a range of punishments available to, and used by, the burgh court – from fines to corporal punishment, confinement to banishment – the baillies most frequently placed law breakers in amercement of court. The records suggest that for the most part the penalties incurred by the wrongdoer did little to keep recidivism low. However, this was not the only reason why individuals continued to commit such crimes. Lacking in formalised political power, they sought to increase their profits, inspire fear, influence their social relationships and dominate their environment through petty criminal acts. While members of the middling sort committed petty crimes in the burgh, the majority of

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<sup>37</sup> ACA, Council Register (CR), xxx, 289 (17 Dec 1580).

<sup>38</sup> ACA MSS Baillie Court Book 1<sup>2</sup> (15 Dec 1581).

<sup>39</sup> ACA MSS Baillie Court Book 1<sup>2</sup> (15 Dec 1581).

women brought before the burgh court were cake bakers and brewsters, the wives of craftsmen and day labourers. The manner in which these individuals wronged their neighbours suggests that crimes could function as a means of exercising and negotiating social power within their community.

A good example of this sort of negotiation can be found in instances of regrating and forestalling or statute breaking which the court perceived as direct attacks on the authority vested in the local magistrates. As challenges to the rights of the town council, provost and baillies to regulate society through statutes, they also threatened the mercantile interests that underpinned the power of the magistracy and threatened the welfare of the community these officials represented. Actions that defied the fixed prices of goods within the town were especially disconcerting. Every Michaelmas the town council promulgated statutes that fixed the prices of bread, ale, beef, mutton and also delimited the activities of the craftsmen responsible for such goods. In large part, the burgh's magistrates dealt with poverty in the town by keeping the prices of foodstuffs low; it was relatively clear to them that low prices benefited everyone in the community. Activities that contravened such statutes reveal the interests of those individuals seeking to increase their earnings and to challenge the power structures established by the merchants, town council and, to some extent, that of their neighbours. Attempts by the council and burgh court to crack down on the sale of goods at dearer prices were part of the process of regulating the market for the benefit of the community and the protection of the native poor.<sup>40</sup>

Alex Gibson and Christopher Smout have raised concerns over reading statute prices too closely, given the associated difficulties with ascertaining the extent to which the authorities enforced the prices they fixed.<sup>41</sup> Still, out of 1881 cases of petty crimes brought before the courts between 1541 and 1591, 648 were for regrating and forestalling and for contravening town statutes. Thus, roughly 35 per cent of the business brought before the burgh courts dealt with matters surrounding the market and the liberties associated with the production and sale of goods. The bulk of the offences categorised as contravening statutes were for selling goods at prices above, and/or of a

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<sup>40</sup> On this subject see I. Whyte, *Scotland before the Industrial Revolution*, pp.192-193.

<sup>41</sup> A. J. Gibson and T. C. Smout, *Prices, Food and Wages in Scotland, 1550-1780* (Cambridge, 1995) p.19.

quality less than, those fixed by statute. The rest reflected growing concerns over movement between the free and unfree, and the craft and merchant, communities. By far the most frequent offenders contravening statutes in mid sixteenth century Aberdeen were the baxters (bakers) who the court often convicted of baking 'breid of less weght' or of 'insufficient stuff' and occasionally fined for baking bread on Sundays.<sup>42</sup> Prices for bread were dictated by the cost of materials plus an appropriate allowance for the baker's labour. This was, in principle, the same for all 'food-processing crafts'.<sup>43</sup> Much of the scholarship examining costs and standards of living in early modern Scotland has shown that regulations were in place to ensure fair prices, to safeguard against dearth and therefore to protect the consumer.<sup>44</sup>

While male craftsmen and unfree labourers tended to commit such crimes more regularly than women, certain food crafts where women dominated, like cake-baking and brewing, could on occasion provide enough temptation to contravene neighbourliness in order to increase their profit margin. This was accomplished by breaking the statutes regulating foodstuffs sold within the burgh. Not only did this challenge the established laws but it also sought to place the individuals committing such acts in a position of power over those who respected the laws and abided by their regulatory power.<sup>45</sup> For example, in May 1543 the court convicted six Aberdeen brewsters for buying more victual than the statutes allowed.<sup>46</sup> Apart from contravening the statutes passed by the town council, the account emphasises the impact their behaviour had on the entire community. As a result of their conviction, the council passed an ordinance banning all other brewsters within the burgh from buying grain until after the next sitting of the Head Court. The baillies also reiterated their position of authority by insisting that they alone could set prices, regulate the market and maintain the laws governing the burgh. As a

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<sup>42</sup> See for example, ACA, CR, xxvii, 26 (7 Nov 1541); ACA, CR, xviii, 177 (19 May 1544); ACA, CR, xviii, 367 (7 Feb 1544/5); ACA, CR, xix, 150 (2 July 1546); ACA, CR, xx, 325 (16 Dec 1549); ACA, CR, xxiv, 17 (7 Oct 1560); ACA, CR, xxv, 489 (11 Feb 1564/5); ACA, CR, xxvi, 468 (2 Dec 1567); ACA, CR, xxvii, 263 (16 Mar 1569/70); ACA, CR, xxviii, 125 (20 Nov 1573); ACA, CR, xxix, 242 (2 Sept 1577); ACA, CR, xxxii, 91 (15 Aug 1586).

<sup>43</sup> Gibson and Smout, *Prices, Food and Wages*, p.23.

<sup>44</sup> See for example, I. Whyte, *Scotland before the Industrial Revolution*; Gibson and Smout, *Prices, Food and Wages*; E. Gemmill and N. Mayhew, *Changing Values in Medieval Scotland: A study of prices, money, and weights and measures* (Cambridge, 1995); Blanchard, Gemmill, Mayhew and Whyte, 'The Economy: Town and Country,' in Dennison et al. *Aberdeen before 1800*, pp.129-158.

<sup>45</sup> Gemmill and Mayhew, *Changing Values in Medieval Scotland*, pp.38-41.

<sup>46</sup> ACA, CR, xvii, 480 (4 May 1543). Gemmill and Mayhew, *Changing Values in Medieval Scotland*, pp.48-53, esp. 52 for discussion of brewsters buying more malt than they were allowed

final measure, the convicted party was required to name other individuals in the community who were likewise buying more victual than the law allowed.<sup>47</sup>

Such crimes reveal individuals putting their own interests ahead of respecting the power of the authorities to regulate the market and the right of their neighbours to be unencumbered by fraudulent behaviour. According to Gibson and Smout, contemporaries viewed any such person as an 'enemy of the community'.<sup>48</sup> Many of the court records in Aberdeen reveal that such enemies were likely to experience some form of retributive justice at the hands of their neighbours. Yet, despite how such activities affected the community and occupied so much of the magistrates' time, convicted offenders usually received only a fine for their actions. Very rarely do we find individuals convicted for such offences being put in ward, enduring corporal punishment or public humiliation. The burgh court did not banish a single individual convicted of statute breaking between 1541 and 1591. Only once did the authorities use banishment as a threat against future transgressions.<sup>49</sup> However, in cases of cheating the market the court had no problem issuing strong ultimatums to force wrongdoers to return to proper behaviour. For example, the court ordered John Cowper's wife, who had been convicted for the regrating of victuals, to abstain in the future from such activities 'vnder the pane of banesing the town' and 'wes remittit of hir unlaw vnder this condition.'<sup>50</sup> The court considered Tibbe Davidson's activities 'fraudulent,' convicting her and putting her in amercement of court for buying goods before they had been brought to the market and 'defrauding alexander menzies of his duety of the toll.'<sup>51</sup> Motivated by potential personal gain, Davidson's attempt to cheat the magistrate of his duty should be seen as both a challenge to the authority of the burgh magistrates and an attempt to place herself in a better position than her neighbours.

It is equally clear that individuals frequently used property crimes and assaults to position themselves better in disputes with their neighbours. Although women charged

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<sup>47</sup> A list of 13 persons closes out the account of the conviction of the six brewsters

<sup>48</sup> Gibson and Smout, *Prices, Food and Wages*, p.23.

<sup>49</sup> The court fined Robert Benat and James Manser of breaking statutes in selling 'measurable guidis' at prices higher than those established by the town council and warned them that future convictions would result in permanent banishment from the burgh. ACA, CR, xxiv, 505 (11 Sept 1562).

<sup>50</sup> ACA, CR, xxiv, 551 (26 November 1562).

<sup>51</sup> ACA, CR, xvii, 185 (21 May 1542).

with destruction of property constitute only 11 per cent of the total recorded incidents, they figured in nearly 36 per cent of the cases of petty theft.<sup>52</sup> While the records tend to leave out the details of the initial disputes that contributed to such crimes, there is a clear impression that destruction/theft of property could be an alternative method of prosecuting an ongoing argument.<sup>53</sup> Thus, despite their relatively low occurrence, property crimes brought before the burgh court during this period had an impact on the inhabitants of the burgh as well as the burgh authorities. In November 1544, Mage Angous, Mage Cruikshank, Gane Merchand and Margaret Cruikshank went to the home of John Byris and promptly began to destroy a dike built around his yard and remove the stones. For their acts of vandalism and theft, the provost ordered the officers of the town to pass to the homes of the four women and ‘baneiss thaim the town for yeir and a day’.<sup>54</sup> In August 1553, Jonet Kane became involved in a dispute with William Gray. Although the details are lacking, we do know that as the argument between the two reached its crescendo, Kane verbally assaulted Gray and attacked his cows. For this action, the baillies put Kane in amercement of court and ordered her amends to be modified by the council.<sup>55</sup> If we contrast these two cases, it is likely that the four women convicted in 1544 received the more severe punishment for stealing the stones rather than for property destruction.

The burgh court convicted Isobel Gardner in May 1566 for ‘the braking of William menzies yard’ by pulling up flowers that he had planted there.<sup>56</sup> For her crime, the court ordered Gardner to be placed in the govis [pillory] with a crown of paper on her head inscribed with the details of the offences she had committed. Gardner had not been convicted of other crimes in the past and there is no indication of her marital status or how she earned her livelihood. Her victim, on the other hand, had served as a baillie in the town a decade earlier. Although there is no direct evidence that Menzies’ connection to burgh government contributed to Gardner’s punishment, a number of cases suggest

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<sup>52</sup> Karen Jones estimates that women charged with property crimes at the quarter sessions and assizes in Kent constituted somewhere between 7 and 25 per cent. If that was the case, then the percentage of women charged with property crimes in Aberdeen falls within a similar range. See K. Jones, *Gender and Petty Crime in late medieval England*, p.39.

<sup>53</sup> Elizabeth Ewan has suggested the removal of parts of a house, or of goods from a household, by creditors or landlords was also a means of forcing the resolution of a conflict. See E. Ewan, ‘Scottish Portias: Women in the Courts in Mediaeval Scottish Towns’, *Journal of the Canadian Historical Association*, 3 (1992) pp.27-43, esp. p.38.

<sup>54</sup> ACA, CR, xviii, 317 (21 Nov 1544).

<sup>55</sup> ACA, CR, xxi, 485 (18 Aug 1553).

<sup>56</sup> ACA, CR, xxvi, 147 (13 May 1566).



that when the victims were authority figures the punishment tended to be more severe.<sup>57</sup> Regardless, the entire incident from the moment Gardner pulled the flowers from Menzies' yard to the moment she found herself in the govis represents a negotiation of social space and power. In this particular case, the individuals imposed their will on one another (one through wrongdoing, the other through prosecution) ultimately resulting in a newly defined relationship between the accused, her victim and the wider community. The victim's ability to harness a majority of the power through his social status, political networks and economic wherewithal enabled him to settle the dispute in his favour.<sup>58</sup> The govis helped to make a spectacle of Gardner; it helped reveal to the community her offences, and reinforced the authority of the burgh magistrates. Her punishment also enabled the community to participate in the process of regulating behaviour within the burgh. As a result, Gardner's reputation (and social space) in the community would have been compromised.

In Aberdeen, at least, it appears that the burgh court was consistent in how it viewed petty theft. Nearly 37 per cent (24:65) of the cases of 'wrongous away taking' or 'intromission' of goods resulted in banishment. This stands in stark contrast with cases of physical assaults where the court banished only one per cent (5:473) of the convicted parties from the burgh. Still, while banishment appears to have been the most consistently applied punishment for petty thefts this was not a hard and fast rule. For example, in May 1550 the baillies put Margaret Skynner and her daughter in amercement of court for taking a 'creill full of elding' [basket full of firewood] from one of Duncan Fraser's servants. The court ordered the pair to return to Fraser's servant the 'creil and elding again als guid as thai intromitit' within twenty four hours under the threat of incurring not banishment, but a fine.<sup>59</sup> The records are not very helpful for determining why the burgh court in Aberdeen was more inclined to banish petty thieves than any other petty criminal. Acts of Parliament indicated that anyone harbouring a thief was to

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<sup>57</sup> For example, ACA, CR, xxv, 491 (11 Feb 1564/5), ACA MSS Baillie Court Book 1<sup>3</sup> (5 Aug 1587).

<sup>58</sup> For discussion of a similar situation in an English village see K. Wrightson and D. Levine, *Poverty and Piety in an English Village, 1525-1700*, 2nd Edn. (Oxford University Press, 1995) pp. 121-124.

<sup>59</sup> ACA, CR, xx, 418 (19 May 1550).

suffer the same penalty as the convicted party.<sup>60</sup> This may be a case where the burgh sought to put distance between itself and such criminal acts.

Stealing from one's neighbour certainly disrupted community relations and went against the ideas of good neighbourliness. However, the power struggle becomes more clear in cases where petty thefts were accompanied by violent assaults. In December 1541 the baillies convicted Jonet Paterson of the 'strublanche [molestation] of Margaret Smytht & wrangous away taking of hir mantill [cloak or wrap]'.<sup>61</sup> For her offence, the court ordered Paterson to ask Smyth's forgiveness and to pay two pounds of wax to the 'halyblud lycht'.<sup>62</sup> By this act Paterson increased her own sense of power and took away any sense of security Smyth felt entitled to as a resident of the burgh. Marion Wyntoun must have experienced a similar sense of loss when Alexander Mollison attacked her in April 1581. The baillies convicted Mollison for the 'strubling striking down casting and trapping of marioun wyntounis wares'.<sup>63</sup> Unfortunately, the clerk provided no detail of the motivation behind the attack or whether Wyntoun and Mollison had previously known each other.

What then of the power of casting stones and aspersions? While Alex Mollison did not cast any stones, he did cast down Marion Wyntoun's wares. In response, we know that the court ordered Mollison to set 'suretie' for his return to good behaviour. Yet this attempt by the court to settle the dispute and redress the power imbalance caused by Mollison's attack did not satisfy Wyntoun's neighbours. According to witnesses presented at her trial in April 1581, Jonet Cruikshank lashed out at Mollison for his actions against Wyntoun calling him a 'common thief'.<sup>64</sup> We need to bear in mind that Mollison was a craft deacon whose reputation was vital not only for his livelihood but also for his position as the leader of his craft guild. By bringing into question his honesty, Cruikshank threatened Mollison's standing in the community. As such, the baillies ordered Cruikshank to present herself at the market cross 'in the presens of the common pepill' and 'confess the said offens committit be hir'. More importantly, the court ordered her to 'revoke the said iniurious wordis spoken be hir as fals and untrew' in order to

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<sup>60</sup> See for example *The Records of the Parliaments of Scotland to 1707*, K.M. Brown et al eds., (St Andrews, 2007-2010), 1384/11/7; RPS, A1515/7/3. Date accessed: 4 October 2009

<sup>61</sup> ACA, CR, xvii, 55 (13 Dec 1541).

<sup>62</sup> Holy blood light.

<sup>63</sup> ACA MSS Baillie Court Book 1<sup>2</sup> (23 April 1581), (29 April 1581).

<sup>64</sup> ACA MSS Baillie Court Books 1<sup>2</sup> (28 April 1581).

restore Mollison's good name.<sup>65</sup> This suggests that the court-ordered public act of repentance at the burgh market not only served as a deterrent against committing such crimes, it also helped to reassert the power of the magistrates to regulate society, as well as to restore the victim's reputation and place in the community.

In January 1582 Isobel Gibson slandered Katherine Rathe, the spouse of James Menzies, calling her 'baneist theiff and resettar of greyn malt & keil [cabbage]'.<sup>66</sup> Six months later the court convicted Jonet Philip for the mispersoning of Cristane Cultis calling her 'comon thieff, wyne staillar and vagabond'.<sup>67</sup> Although neither Rathe's nor Cultis' name can be found in earlier court records, Cultis' husband, Mr. James Burnett, had been convicted of breaking statutes.<sup>68</sup> This may be a case where the husband's misdeeds tarnished the household and contributed to the derision that Cultis experienced.<sup>69</sup> It is also possible (though difficult to prove) that Rathe's and Cultis' neighbours had suspected improper behaviour but lacked the evidence or wherewithal to bring them before the court. Thus instead they resorted to a different sort of regulatory practice. There is some indication that rising court expenses contributed to fewer cases being brought before the court by individuals.<sup>70</sup> It could be that personal retributive justice was the alternative chosen by some. In January 1591 Margaret Molen became involved in a dispute with Duncan Donaldson over the price of his goods. In anger, Molen lashed out at Donaldson calling him a 'fals commond theif'.<sup>71</sup> Donaldson, a member of the merchant guild and a more substantial member of society, was concerned that his damaged reputation would prevent him from earning a respectable living and thus sought action through the court. In a society where honour was an integral part of inter-personal relationships, mispersoning, defaming, slandering and all such verbal assaults were a powerful means of affecting an individual's ability to live free from scorn or ridicule.

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<sup>65</sup> ACA MSS Baillie Court Books 1<sup>2</sup> (20 May 1581).

<sup>66</sup> ACA, CR, xxx, 592 (14 Jan 1581/2).

<sup>67</sup> ACA, CR, xxxi, 151 (4 June 1583).

<sup>68</sup> ACA, CR, xxiii, 43 (21 Oct 1558). Burnett appears in two other accounts as a regrater and forestaller. ACA, CR, xxxi-1, 482 (13 Jan 1589/90); ACA MSS Guildry Accounts (23 Jan 1593).

<sup>69</sup> Falconer, 'A Family Affair,' pp. 143-145.

<sup>70</sup> Falconer, 'Community, Conflict and Control,' p.284.

<sup>71</sup> ACA, CR, xxxiii-1, 959-60 (18 Jan 1590/1).

Aberdeen was not unique in this regard. Because the records for other Scottish burghs are not as extensive, it is difficult to evaluate petty crime in the same way as we can for Aberdeen.<sup>72</sup> That said, it is still possible to detect some similarities in how magistrates responded to petty crimes. For example, public acts of repentance were common in places like Elgin and Dundee. In June 1545, an assize in Elgin determined that Margaret Hay had wronged Margaret Balfour by calling her 'ane huyr and ane wyche'.<sup>73</sup> For her crime, the burgh court ordered Hay to make an oath that Balfour was a good and honest woman and to ask Balfour's forgiveness. The court stipulated that if Hay were to offend in the future she would be 'utterly secluded this burgh and banished therefrom'.<sup>74</sup> In 1550 the Dundee burgh court convicted Ellen Bunch for verbally assaulting Cristen Thomsen and ordered her to confess her crime and publicly ask Thomsen for forgiveness under threat of being banished for a year and a day.<sup>75</sup> In the modern world it may be easy to disregard the act of asking for forgiveness as a meaningless punishment and to readily assume that such penalties could only have been handed out for non-serious offences. However, such assumptions arise from misunderstanding the importance of credit and social harmony in early modern burghs. Forcing slanderers to revoke the slanderous words helped to restore the victim's reputation. As Craig Muldrew has demonstrated, albeit in a slightly different context, credit in the early modern period had much to do with one's reputation.<sup>76</sup> Thus, in December 1572, the Dundee burgh court banished Agnes Sym from the burgh 'perpetually' for a verbal assault on a Dundee couple. The account makes it very clear that the magistrates believed that by banishing Sym from the burgh that their actions 'clengis [cleansed] Andrew Galloway and his spous fra ony wordis or slander allegit be the said Agnes as it is proven befor the kirk'.<sup>77</sup>

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<sup>72</sup> The court records for other burghs in this period are too patchy to evaluate criminal activities over a period of time or to permit the drawing of any useful comparisons with Aberdeen. While there are a few sources, like the Elgin Burgh Court Minutes and the Dundee Head and Burgh Court books, that contain accounts of petty crimes committed in those burghs, none are as extensive or complete as those for Aberdeen. The Canongate Burgh Court books begin in the 1570s and are limited for the early period due to the wear and tear they have experienced over time. Other burghs, like Perth, lack any extant records dealing with criminal activities in this period

<sup>73</sup> Elgin Burgh Court Record Minutes (16 June 1545) p.184.

<sup>74</sup> *Ibid.*

<sup>75</sup> Dundee City Archives, Burgh and Head Court Records, (26 Jan. 1550 Vol. III, F.32b).

<sup>76</sup> C. Muldrew, *The Economy of Obligation: the culture of credit and social relations in early modern England* (Basingstoke, 1998). See also G. DesBrisay and K. Thomson 'Crediting Wives: Married Women and Debt Litigation in the Seventeenth Century', in Ewan and Nugent (eds.) *Finding the Family*, pp.85-98.

<sup>77</sup> Dundee City Archives, Burgh and Head Court Records, (5 Dec 1572, Vol. XII).

Penalties for verbal assaults varied as much as they did for property crimes. In March 1542 Besse Spring was placed in the govis for an hour and threatened with banishment for the strubance and mispersoning of Besse Rany.<sup>78</sup> Between 1543 and 1553 Molly Abell was accused and convicted of strubance, mispersoning and defamation on five different occasions. Included in these charges were an attack on Alexander Kay, one of the burgh officers; an assault on one of her neighbours and the destruction of her livestock; and an attack on a married couple. For her crimes, the baillies required Abell to pay a fine and perform an act of repentance before the congregation in St. Nicholas Parish kirk. The court also admonished the 'gud men of the town to caus thaim forgiv hir.'<sup>79</sup>

For nearly 16 years (1542-1558) Besse Walcar and Besse Barcar slandered and defamed their neighbours, strubled [molested] and struck out at them, regrated the market and broke town ordinances. Despite their continuous misbehaviour both women managed to continue living their lives relatively uninhibited by the magistrates. They were amerced in all but two of the combined 17 accounts of their convictions. In the other two accounts, the baillies ordered Walcar to set caution for her behaviour and Barcar to publicly atone for her offences. Still, there is some indication that both experienced a sort of personal 'justice' at the hands (and words) of their neighbours through physical or verbal retaliation. Such retributive acts indicate that members of the community did not tolerate their neighbours' attempts to exert their power over them with either word or deed.

For example, in March 1542 the baillies convicted Walcar and Marioun Strachyn for the mispersoning of each other. In April 1543 Barcar found herself in similar circumstances when she and her husband strubled and struck Besse Walcar's sister Cristane. Cristane Walcar responded by mispersoning Barcar and both were convicted for their crimes.<sup>80</sup> From the records it is clear that the two Besses knew each other well. In September 1552, the court convicted the pair for mispersoning each other.<sup>81</sup> Although their activities intersected at this point, their joint appearance before the magistrates did little to stop them from continuing to misbehave. More importantly, their activities did little to diminish

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<sup>78</sup> ACA, CR, xvii, 133 (17 March 1542).

<sup>79</sup> ACA, CR, xxi, 539 (27 Oct 1553).

<sup>80</sup> ACA, CR, xvii, 418 (2 Apr 1543).

<sup>81</sup> ACA, CR, xxi, 213 (4 Sept 1552).

their place or status in the eyes of the magistrates. In May 1556 Walcar was the victim of an apparently unprovoked assault committed by John Turner. For his crime, the baillies ordered Turner to 'sit down ane his kneis and ask hir forgifness.'<sup>82</sup> By this time Walcar had been convicted on five occasions for a variety of crimes. Nonetheless, the court determined that Turner had wronged her and should seek her forgiveness. Three months later Walcar appeared before the same baillies and provost accused of defaming and mispersoning Turner and was put in amercement of court. Walcar's last appearance in the source materials is for her conviction, along with Marion Inshell, for strubling and mispersoning each other.<sup>83</sup>

The accounts that detail the experiences of Barcar and Walcar support the idea that in Aberdeen, at least, the burgh court punished the crime and not the criminal. That is why when the wrongdoers became victims themselves the court did not hesitate to punish their transgressors. This is apparent, particularly, in cases where convicted wrongdoers became victims of verbal and physical assault. The examples of John Turner and Alexander Mollison stand out. That the court regularly chose to prescribe pecuniary punishments and public acts of repentance to cure the common ills that plagued Aberdonian society reflects the notion that magistrates sought to rehabilitate wrongdoers rather than root them out entirely. However, as many of the cases presented suggest, members of the wider community were less than enthused by the court's sense of restorative justice and sought to take matters into their own hands to correct wrongs committed by their neighbours. In August 1559, Barcar appeared before the magistrates accused of strubling and mispersoning Kay Watson. Watson was the widow of Alexander Kay, the officer who Molly Abell had mispersoned in 1544. Barcar, in the verbal attack on the officer's widow, referred to her as 'theyffis geit [brat] beggaris geit commond huir & culzear [dupe] of hir husband witht mony vther wyill [vile] wordis.'<sup>84</sup> The burgh council ordered Barcar to appear at the market cross and revoke the words she had spoken against Watson as untrue. The court repeated their earlier threat that if she was to offend again she would be banished from the town.

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<sup>82</sup> ACA, CR, xxii, 314 (5 May 1556).

<sup>83</sup> ACA, CR, xxii, 620 (20 Aug 1557).

<sup>84</sup> ACA, CR, xxiii, 210 (25 Aug 1559).

In terms of slanderous or defamatory language, impugning someone's social status as well as their honour was rather standard practice. This can be detected in the words 'thief's brat' and 'beggar's brat' that Barcar used to disparage Watson. The account of Molly Abell's mispersoning of Alexander Kay in 1544 states that she called him 'skayth karll [mischievous peasant] with uther injurious words.' As a burgh official, Kay represented the burgh and enforced its laws. How others perceived him affected his ability and power to perform those duties. It is clear that Abell's attack on Kay continued to resonate long after the initial attack as his reputation played into the assault Barcar launched on his wife. Almost without exception those that maligned both Walcar and Barcar were themselves victims of these women seeking to restore their honour and their sense of empowerment within the community. By calling into question an individual's good standing in the community or by drawing attention to their failings, members of the community were able to influence how people responded to those individuals.

### **3 Gender Perspectives**

There has been a tendency to view verbal assaults as a particularly 'female crime.'<sup>85</sup> However, recent work by Michael Graham and Elizabeth Ewan suggests that in sixteenth century Scotland men and women 'were equally adept at using their tongues.'<sup>86</sup> Ewan, in particular, has argued that in Scottish burghs men were convicted for a higher number of incidents of 'verbal violence and insult' than were women.<sup>87</sup> By the first decades of the seventeenth century the kirk sessions in Scotland began to handle the majority of these types of offences and it is possible to detect a shift in emphasis that occurred in who was brought before the courts and on what account.<sup>88</sup>

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<sup>85</sup> An example of the tendency to view verbal crimes as a particularly female pursuit can be found in L. Gowing, 'Language, power and the law: women's slander litigation in early modern London,' in J. Kermode and G. Walker (eds.) *Women, Crime and the Courts in early Modern England* (Chapel Hill, 1994) pp.26-48. See also M. Ingram, 'Scolding women cucked or washed: a crisis in gender relations in early modern England?' in Kermode and Walker (eds.) *Women, Crime and the Courts*, pp. 48-80, esp. pp. 54-5; K. Jones, *Gender and Petty Crime*, pp.1-12.

<sup>86</sup> Michael Graham's study of reform discipline in Scotland is the only other study that offers a statistical analysis from which to compare the occurrence of verbal crimes along gender lines. The following comparison is based on what is found in chapter three of Graham's book, *The Uses of Reform*, pp.73-124.

<sup>87</sup> Ewan, 'Many Injurious Words,' pp.176-177.

<sup>88</sup> The lack of full church court records for the period 1542-1591 makes it impossible to determine if there was a difference in approach before the first decade of the seventeenth century. See

But for the period under consideration, it is quite clear that an individual's sex did not determine whether they used their tongue to abuse their neighbours.

If we take into account the fact that women could not hold office, and in 15 of 177 cases the victim was one of these authority figures, the victims of verbal assault breaks down to an almost equal number of male and female victims.<sup>89</sup> In terms of the sex of the offender, a cursory glance at the records reveals that men were five times more likely to slander or defame other men while women verbally assaulted men half as often as other women. As we might expect, the tendency for attacks on the same sex bears out for physical assaults as well. Men were three times as likely to physically assault other men than women whereas women were four times as likely to physically assault other women than men.<sup>90</sup> When we consider that a broad cross-section of Aberdeen society participated in such behaviour, either standing convicted for committing the crimes or dishonoured by an attack committed against them, we may determine that injuring in word and deed was a fairly common occurrence in sixteenth century Aberdeen. It is important to note that this compares well with other communities during this period.<sup>91</sup>

The most obvious area of difference in terms of gender and verbal assault was the form the insults took. While a man's sexuality was very rarely the subject of the insult used against him, it almost always was the basis for insults used against women.<sup>92</sup> In Aberdeen, as elsewhere, 'whore' and 'harlot' were the most commonly used insults directed towards women. The intention behind such insults was to question the woman's integrity by attacking the cornerstone of her reputation; as such, slanderers often used it

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Graham, *Uses of Reform*; J. Harrison, 'Women and the Branks in Stirling, c.1600 to c.1730,' *Scottish Economic and Social History*, 18(2) (1998) 114-131.

<sup>89</sup> This average is based on number of cases rather than individual victims. The cases where there was more than one victim count for a single case, as such the number of actual victims may be slightly higher. That said, the difference is negligible and does not undermine the overall analysis.

<sup>90</sup> This is based on individual victims wherein there might be multiple offenders

<sup>91</sup> See for example Marjorie McIntosh, *Controlling Misbehaviour in England, 1370-1600* (Cambridge University Press, 1998) Appendix 7.1a, p.253.

<sup>92</sup> Commonly used insults directed at men also brought their honesty into question but tended to focus more on their financial probity and social standing. Slurs like 'coward and knaiff (rogue or scoundrel)' or 'common thief' and 'dolt' figure prominently in the records. See for example, ACA MSS Baillie Court Book 1<sup>4</sup> (29 Aug 1596).



as a 'catch-all' term.<sup>93</sup> For example, in late August 1589 Agnes Murray confronted Katherine Menzies and verbally assaulted her calling her a common thief and harlot and using other injurious words to impugn her good name.<sup>94</sup> Two years later, Elspet MacGowrie went to the home of Jonat Forsyth and John Robertson and there slandered Forsyth 'calling hir common huir, common theiff and common reset[tar] and casting of stanes at the said Jonat's duir.'<sup>95</sup> The perpetrators brought Menzies' and Forsyth's reputation into question through attacks on their sexuality. However, both attackers alleged previous wrongdoings on the part of the victim. By this date neither Menzies nor Forsyth had been brought before the kirk session on account of any sexual impropriety nor had they been convicted by the burgh court for any crime. It is likely that, in these incidents at least, 'common whore' was a general insult meant to damage the probity of the victim; it is also possible, that such an attack was a means of appropriating the powers of the magistrates to punish unprosecuted wrongdoing.

Inhabitants of the burgh also used physical violence to overpower their victims and to gain control over situations that emerged in their community. The language used by the court clerks make it clear that by physically assaulting members of the community, individuals exercised their social power in a truly tangible fashion.<sup>96</sup> Helen Keith was found guilty of 'striking and blud drawing of thomas moreis and iniuring heuelye be word off the said Thomas to his greyt sklender and defamation.'<sup>97</sup> Although the court had convicted Morris on a few occasions for illegal sale of merchandise, the magistrates recognised the importance of protecting his honour and keenly attempted to curb such violent attacks. This suggests that once the convicted party paid their fine, performed their public act of repentance, endured their banishment or corporal punishment, the magistrates perceived them to be rehabilitated and restored to their proper place in burgh society. Helen Allan, whose consistent lawbreaking we recall had caused the magistrates some grief, was convicted in May 1587 for 'the trubling of Alex Harpar and

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<sup>93</sup> On this subject see Ewan, 'Many Injurious Words', pp. 166-169; Laura Gowing, 'Language, Power and the Law: women's slander litigation in early modern London', in Kermodé and Walker (eds.), *Women, Crime and the Courts*, pp.26-47.

<sup>94</sup> ACA, CR, xxxiii-1, 309 (1 Sept 1589).

<sup>95</sup> ACA, CR, xxxiii-1, 1104 (17 May 1591).

<sup>96</sup> Mann argues that violence (in this case physical violence) is the 'bluntest, instrument of human power.' See Mann, *Source of Social Power*, pp.1-32, esp. 18-20, 26-27.

<sup>97</sup> ACA, CR, xxviii, 5 (10 April 1573).

his spous in their own hous.<sup>98</sup> One week later, the court, once again, convicted Allan along with four other women for the ‘strubling of the town as common vagabonds and striking of utheris.’<sup>99</sup> This account reflects a contemporary attitude that associated vagrancy with criminal activities. While there is no indication that these women were without connections to the burgh, the magistrates, not unlike many members of burgh society, used a reference that carried powerful connotations that affected the individuals involved. As we have seen in cases of verbal assault, the reference did not need to be accurate to have an impact.

When individuals committed physical assaults ‘under silence of the night’ their actions underscored the victim’s vulnerability and undermined the sense of security that living within the boundaries of the burgh community provided.<sup>100</sup> Ordinances passed throughout Scotland throughout this period suggest a constant concern with individuals being outdoors after nightfall.<sup>101</sup> In Edinburgh, for example, the town council ordered that no persons remain on the streets ‘after the ringing of the ten-hour bell at night.’<sup>102</sup> As early as 1490, Aberdeen’s town council passed ordinances to protect the inhabitants from crimes being committed against them during the night.<sup>103</sup> Yet, on the night of 26 April 1595, Elspet Lesly and her daughter went to Agnes Cullan’s house and there violently attacked Cullan ‘vnder silence of the nycht.’<sup>104</sup> With the testimony presented by witnesses to the crime, the court convicted Lesly and her daughter for ‘putting violent hands on the said agnes rugging hir be the hair and striking her in the face.’ The court put both mother and daughter in amercement of court. Nonetheless, the account of their conviction stands out for a number of reasons: first, unlike most other accounts, this one details the exact day the offence took place; second, it demonstrates further that many

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<sup>98</sup> ACA MSS Baillie Court Book 1<sup>3</sup> (19 May 1587).

<sup>99</sup> ACA MSS Baillie Court Book 1<sup>3</sup> (26 May 1587). Allan had resided in the burgh for at least 6 years and was not likely a ‘vagabond.’ Rather, there is some evidence in the records to suggest that the authorities in the burgh were increasingly inclined to associate criminality with idleness and vagabondage. ACA, CR, xxx, 16-17 (8 October 1593).

<sup>100</sup> This phrase was used to describe criminal activities that occurred in secrecy or which disturbed the quiet of the night.

<sup>101</sup> *Register of the Privy Council of Scotland, J. H. Burton et al. (eds.), 38 vols. (Edinburgh: General Record Office for Scotland, 1877-)* Vol. 9, p.133.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Abdn. Coun.* Vol. I, p. 417, ‘it wes statutit and ordanit be the consale present for the tyme, that gif euer William Lamyntone, or ony vtheris, wakes in the nicht and comitis ony injuris stribulance, or inquietis ony persone or personis, or the toune, sale pay fiwe merkis to Sanct Nicholess werk.’ If the convicted party held goods they were to put in the govvis for three to four days and banished if they committed a second offence.

<sup>104</sup> ACA MSS Baillie Court Books 1<sup>4</sup> (2 May 1594).

of the violent acts recorded in the burgh records were not random; third, it underscores the notion that having weapons close at hand was not necessary for committing acts of physical violence. Like verbal assaults, statute-breaking and property crimes, physical violence was another method for resolving a conflict, negotiating power, and establishing control over one's neighbours and community.

As with cases of verbal assault, it is possible to examine the frequency of physical violence and to establish the number of incidents of physical violence by the sex of both victim and perpetrator. Unlike accounts of verbal assault where the words spoken were not always recorded, accounts of physical violence present a fairly clear picture of the individuals involved, the type of action committed and the authorities' response to such behaviour. It is clear that a significantly higher number of men were accused of committing acts of physical violence than women. Men were also more likely to be charged with committing acts of physical violence than verbal assault whereas women were more prone to be charged with committing a verbal attack than a physical assault.<sup>105</sup>

The number of incidents of physical assault where the victim was female matches almost exactly the number of incidents of verbal assault where the victim was female. In contrast, men more frequently fell victim to physical violence than verbal assault. In cases of verbal assault there was a higher proportion of multiple targets than in cases of physical violence. As well, men more frequently attacked women than women attacked men. Of the 118 recorded incidents of physical violence committed by women between 1542 and 1591, in 18 (or 6.5 per cent) of those cases the victim was male. Of the 370 incidents of physical violence committed by men and women where there was only a single victim, 80 (or 22 per cent) of those victims were female.<sup>106</sup>

Despite the numbers, it seems fairly obvious that misbehaviour was not entirely defined by gender nor did any one group demonstrate a greater inclination to misbehave than the other. In light of both the qualitative and quantitative evidence, misbehaviour served as an outlet for 'righting' wrongs within the community and for negotiating social power. By committing petty crimes the inhabitants of the burgh could manoeuvre against their

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<sup>105</sup> Falconer, 'Community, Conflict and Control,' p.236.

<sup>106</sup> *Ibid.* pp. 236-237.

neighbours for the purpose of establishing some form of control. In this sense, establishing control usually meant over trade, standing within the community, reputation and day to day functions. Thus, even those individuals without access to formal political arenas found ways to exercise social power.

### **Conclusion: Petty Crime and the Negotiation of Social Power**

Between 1541 and 1591 the burgh court charged Aberdonians for nearly 34 per cent (290:865) of the total recorded incidents of physical and verbal assaults committed in Aberdeen. Excluding incidents where there were multiple culprits (either more than one male, more than one female, or one male and one female), 185 men and 176 women stood convicted of verbal assaults, 315 men and 87 women stood convicted of physical assaults, and 75 men and 27 women stood convicted of non-specified 'strublers' – unspecified molestation of another individual or group. Women also participated in 17 per cent (72:430) of the cases of Statute Breaking, 11 per cent of property destruction (3:27) 12 per cent of regrating the market (31:257), only 2 per cent of the cases of outright disobedience towards civil authorities (2:72) but nearly 36 per cent of the cases of petty theft (23:64). While there is little doubt that more men than women committed petty crimes in sixteenth century Aberdeen, there is little reason to believe that women were disinclined to wrong their neighbours or to challenge the boundaries of acceptable behaviour.

Garthine Walker has argued that treating male criminality as the norm leads to the marginalization of female crime. If we focus too closely on the ratio of crimes committed by men to crimes committed by women we fail to comprehend that one's sex did (does) not determine the inclination to commit crimes. That is not to say that crime could not be gendered; the nature of verbal assaults, the proclivity towards one form of wrongdoing over another was, to some extent, influenced by gender. The evidence provided in this paper, however, illustrates that women used criminal activities to achieve their goals and to dominate their environment. Although explicit motives are often absent from the court records, the impact the criminal acts had on the inhabitants of the burgh reveal the deeper social meaning behind crime. The evidence presented here suggests that beyond expressing malcontent, crime could function as a means of exerting power and

influence over other individuals. Like some of their male counterparts, some women used crime to negotiate what power they possessed within the burgh. Moreover, the petty crimes committed helped to shape social space. While there is no question that both the magistrates (provost, baillies, town council) and the wider community viewed petty crimes as detrimental to the common weal of the burgh and contrary to good neighbourliness, the different responses to crime illustrates contemporary values.

The fact that most crimes brought before the burgh court led to fines or public acts of repentance suggests that those in official positions of power to regulate Aberdonian society during this period perceived most wrongdoers within the community as somehow redeemable.<sup>107</sup> Cynthia Herrup has argued that in early modern England 'crime implied moral and social lapses as well as legal fault.'<sup>108</sup> Thus, the individual who possessed the 'attributes of neighbourliness' but temporarily fell from grace frequently benefited from the court's 'operative definition of criminality.' Conversely, those individuals who demonstrated the deadly sinfulness of sloth, greed and pride were more likely to find themselves on the receiving end of an enforced 'technical definition of criminality.'<sup>109</sup> In other words, officials were in the position to determine whether or not those brought before them in the courts exhibited signs of repentance, signs which differentiated, in Herrup's words, 'criminals from mere offenders.' For Aberdeen, it is clear that the burgh court reserved its most serious penalties for those individuals they believed could not be easily restored to proper behaviour.

Aberdeen's Burgh Court records very infrequently offer us a window into the experiences of the parties involved following their convictions and punishments. Although there are limits on our ability to see the full impact such crimes had in the community, court records do offer us insights into how individuals took it upon themselves to respond to their neighbours. Such insights enable us to see beyond formal regulatory processes and to gain a fuller understanding of life in this early modern community. By diminishing or destroying the material goods of their neighbours, individuals demonstrated their power over their victim and attempted to increase their victim's sense of vulnerability or

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<sup>107</sup> See M. Todd, *Culture of Protestantism*, pp.129-130.

<sup>108</sup> C. Herrup, 'The Law and Morality in Seventeenth-Century England,' pp.110-111.

<sup>109</sup> Herrup, 'The Law and Morality,' p.110. For a similar argument set for different periods see T. Dean, *Crime in Medieval Europe, 1200-1550* (New York, 2001) p.12; P. King, *Crime, Justice and Discretion in England, 1740-1820* (Oxford, 2000).

diminish any power vested in the resources they possessed (economic or social). Likewise, the removal of goods from a neighbour's home, workplace, or yard could function in the same way. In responding to these actions through physical and verbal assaults or prosecution in the courts and acceptance of the terms of restorative justice, the victim participated in a negotiation process that attempted to restore the power taken away from them by the transgressor.

Most studies of power dynamics and power relations employ binary models: rulers and ruled, dominants and subordinates.<sup>110</sup> This article has attempted to highlight daily interactions and social relations between those who were, for the most part, of a similar socio-economic background. These individuals, most of whom lacked the opportunity to participate formally in the political forum, sought to achieve goals and to establish some dominance within their community through petty criminal acts. While such crimes were often committed by malcontents, they were also used as a means of effecting change in the community. We recall the case of the six brewsters convicted in 1543 for buying up victual. Their actions forced the magistrates to issue new statutes regulating brewing in the burgh. Such changes may not necessarily have been long lasting, and most likely did not affect the entire community; nonetheless, they had an impact on the lives of individuals and on social relations in the community. Collectively, they helped to shape normative attitudes and helped to create ideas of what did and did not constitute neighbourly behaviour. They 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 assault often brought individuals into a negotiation of power – the power to affect order in the community. Most negotiations of power involved multiple levels and participants. As Simon Gunn recently demonstrated, power was 'operative at multiple sites.'<sup>111</sup> Thus, petty crimes could bring about changes in the community regardless of how that change may be characterised.

The inclination to exercise power in this way was not, at least during this period, influenced by gender. As the examples presented above have illustrated, women in

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<sup>110</sup> See for example M. Lynch 'Urbanisation and Urban Networks in Seventeenth-century Scotland: Some Further Thoughts,' *Scottish Economic and Social History* 12 (1992) 24-41.

<sup>111</sup> S. Gunn, 'From Hegemony to Governmentality: Changing Conceptions of Power in Social history,' *Journal of Social History* 39(3) (2006) 705-720 at p.705.

Aberdeen were just as capable as men of manoeuvring against their neighbours for the purpose of establishing some form of control. In this sense, establishing control usually meant over trade, standing within the community, reputation, and day to day functions. While others have argued that the types of crimes and the intended targets or victims of their actions differed from those committed, and targeted by, men, in Aberdeen this does not seem to have been the case.<sup>112</sup> Generally speaking, the total number of cases of petty crimes within the burgh brought before the court remained relatively consistent over the 50 year period under consideration. This suggests that misbehaviour continued to challenge the ideal notions of good neighbourliness and, from the perspective of the burgh authorities, threatened the common weal of the burgh. Crime and conflict sought to undermine the control the burgh magistrates had over the social structures within the burgh. Moreover, each of the different types of misbehaviour under consideration acted as a form of control and a means of exerting power over other individuals in the community. Thus, the interactions between 'neighbours' helped to outline areas of concern for a magistracy keen to ensure the protection of the common weal and determined that order reigned in the burgh. In this regard, the case of late sixteenth century Aberdeen supports Lenman and Parker's assertion that Scottish courts were first and foremost concerned with maintaining an orderly society.

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<sup>112</sup> Karen Jones for example has demonstrated that in Kent men more frequently verbally assaulted authority figures than women, while the local court tended to prosecute women as 'common scolds' more regularly. See Jones, *Gender and Petty Crime in Late Medieval England*, p.108. See also M. Graham, *Uses of Reform*.