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Terre, mer et communautés dans les îles Shetland au XVIII^e siècle

Audrey Beaudouin

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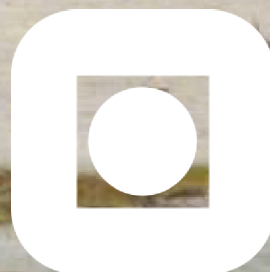
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Land, sea and communities in 18th-century Shetland Islands

Thesis defended on December 12, 2016

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École Doctorale Humanités et Sciences de
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Sous le sceau de l'Université Bretagne Loire

Norwegian University of Science and Technology
(Norway)

Department of Historical Studies

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PhD thesis

History

Presented by

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2016

Uyeasound, Unst, Shetland, from the Brae of Mailand
J. White (attributed to)
© Shetland Museum and Archives
c. 1890
oil on canvas
33.1x43.2 cm

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This dissertation is dedicated to my grand-parents.

Prolegomenon

In 2008 a short British novel about the island of Guernsey was a great success.¹ I for myself read it just after I moved to Norway in October 2010. The book by Mary Ann Shaffer and Annie Barrows is called *The Guernsey Literary and Potato Peel Pie Society*. It is a very popular novel and never pretended to anything other than being read. It is not a history book. The story has nothing to do with the content of the following thesis but in this post-World War 2 story one sentence struck me and deserved to be noted here:

I honestly was on the verge of stealing away to the Shetlands to take up the life of a hermit.²

This sentence is a good example of three kinds of feeling towards islands (out of numerous) that we share in occidental Europe. The first one is the representation of islands as places of isolation and contemplation. The second one is the hierarchy that we establish between these spaces and their mainland; some islands, we think, are more isolated, more genuine even, than others. The third one is our propensity to talk and disseminate knowledge about islands which are pieces of our culture.

¹ 213 000 books sold in France for the year 2008-2009, in Observatoire de l'économie du livre, *Le secteur du livre : chiffres-clés 2008-2009*.

² Mary Ann Shaffer and Annie Barrows, *The Guernsey Literary and Potato Peel Pie Society: A Novel* (New York: The Dial Press, 2008), 23.

Introduction

In the explanatory introduction of the 1772's rental of Shetland, the clerk wrote that:

Lands here as elsewhere being Divided into parishes, the next smaller Divisions is that of Scattalds, comprehending 1, 2 or more often 12 to 20 towns or Hamlets, tho[ugh] lands of which have a right, *pro indiviso*, to pasture, Peats &c. in one and the same Common called in common speech "The Scattald". This Scattald commonly takes its distinguishing name from the largest Town having right of Commonage in it such as Reafirth-Scattald Windhouse-Scattald &c. The inhabitants of the Towns within the same Scattald are called scatt brethren.¹

In this short extract, the clerk described precisely three different units that shaped the social life of the inhabitants in the 18th century: parish, *scattald* and township. These units formed the basis of communal life. They were not inert entities but rather flexible and evolving units. They were not only territorial; they were also social, economical and cultural elements.

Research question(s) and contents of the dissertation

The aim of this dissertation is to study in which ways communities, in a rural and insular context, are shaped both by material and immaterial conditions and through time – especially when facing socio-economical, judicial, environmental and cultural changes and challenges. This way to look at the communities is all-encompassing. Several – if not all – aspects of the communities' life will be studied, from the practical agrarian collective activities to the more elusive collective memory.

This introduction will provide insights on the definition of 'community' in a historical setting. In the first chapter, I'll detail how island history has been studied and how different historiographical traditions fit together in the dissertation. I'll also detail sources and methods. This chapter will provide the occasion to look at the 'land' and 'sea' elements of the title. The second chapter will focus on how human beings who are at the heart of a community are, nevertheless, defined and controlled both from the inside and from the outside through civil and religious institutions. These institutions contributed to define early modern communities but they were complemented by other form of actions.² The third chapter will be dedicated to an analysis of the way in which collective and individual actions in a specific environment contribute to shape a community. The fourth and last chapter deals with the 'evolutions' of the communities: their territory and memory.

¹ NAS, RH4/102, 'Rental of Lordship of Shetland' 1772, fol. 2.

² Michael Halvorson and Karen E. Spierling, 'Introduction: Definitions of Community in Early Modern Europe', in *Defining Community in Early Modern Europe*, ed. Michael Halvorson and Karen E. Spierling (Ashgate, 2008), 6.

In their introduction of *Communities in early modern England*, Phil Withington and Alexandra Shepard explain that “community may be approached as a combination of six constituent parts”:¹

First, the institutional arrangements, practices and roles that structured it. Second, the people who did it, did not do it, did not want to do it, were excluded from it. Third, the acts and artefacts – whether communicative or material – which defined and constituted it. Fourth, the geographical places in which it was located. Fifth, the time in which it was done and perpetuated. And, sixth, the rhetoric by which it was legitimated, represented, discussed, used and turned into ideology.²

Obviously, the plan of this dissertation doesn’t follow this list of constituent parts of the community but all of these parts irradiate in the study. They form the backbone of the analysis and they are present in each chapter.

¹ Alexandra Shepard and Phil Withington, ‘Introduction: Communities in Early Modern England’, in *Communities in Early Modern England: Networks, Place, Rhetoric*, ed. Alexandra Shepard and Phil Withington (Manchester: Manchester University Press, 2000), 12.

² Ibid.

The research object: the community

The starting point of my work is an acknowledgement of the fact that the study of ‘community’ can only be understood if a proper definition of the term is given. The difficulty, however, is the variety of definitions of the word ‘community’ and its variations: ‘rural community’, ‘village community’, ‘parish community’, ‘fishing community’, etc. For Raymond Williams, community is “that difficult word”¹ and for Peter Burke, “[c]ommunity is at once an indispensable term and a dangerous one”.²

In her book, *La communauté: histoire critique d’un concept dans la sociologie anglo-saxonne*, the sociologist Cherry Schrecker starts by reminding the reader that in the *Vocabulaire européen des philosophies*, the word *communauté*, community, is polysemous.³ She explains that in the sociological field, *community studies* are “studies of social groups rather heterogeneous in their purpose, form and scientific value, to which the authors attribute for the circumstances, the name of ‘community’”.⁴ For some of these authors, the concept of community is opposed to the concept of society. Community’s links are customary, traditional and stable when the links between an individual and the society are contractual, utilitarian and transient.⁵

Giving a definition of ‘community’ in a work looking at understanding their functioning is primordial. Very often, as noticed by Cherry Schrecker, community studies’ scholars don’t even bother about giving a proper definition of what they understand as ‘community’.⁶ Similarly to the sociologist, my goal here is not to give a detailed definition of what a community is but to outline avenues for further reflexions since one of the aims of this dissertation is to provide new ideas for a better definition and understanding of communities in the early modern period.

¹ Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (Oxford: Oxford University Press, 1985), 23; Quoted in: Shepard and Withington, ‘Introduction: Communities in Early Modern England’, 1.

² Peter Burke, *Languages and Communities in Early Modern Europe* (Cambridge: Cambridge University Press, 2004), 5; Quoted in: Halvorson and Spierling, ‘Introduction: Definitions of Community in Early Modern Europe’, 1.

³ Cherry Schrecker, *La communauté: histoire critique d’un concept dans la sociologie anglo-saxonne*, Logiques sociales (Paris: L’Harmattan, 2006), 11.

⁴ “études d’ensembles sociaux, plutôt hétérogènes par leur objet, leur forme et leur valeur scientifique, auxquelles les auteurs attribuent pour les circonstances, le nom de “communauté””, in Ibid., 12.

⁵ Ibid., 15. On this issue most of the writers refer to the distinction between *Gemeinschaft* and *Gesellschaft* formalized by the German sociologist Ferdinand Tönnies in his book first published in 1887. See: Ferdinand Tönnies, *Community and Civil Society* (Cambridge: Cambridge University Press, 2001); Williams, *Keywords*, 76; Halvorson and Spierling, ‘Introduction: Definitions of Community in Early Modern Europe’, 3; Shepard and Withington, ‘Introduction: Communities in Early Modern England’, 3; Schrecker, *La communauté*, 23–24.

⁶ Schrecker, *La communauté*, 21.

In sociological terms, the community is “a concrete entity based on direct relations”¹. Thus the community is either “a social and localised group subject to an empirical study” or “a part of the social structure, an intermediary element between the individual or the family and the society”.² The two key elements in defining the community are: place and social relations.³ From this objective community, the community of the researcher, we can move towards the subjective community, the community of its members. For the members of a community, the elements that define their community implement geographic and behavioural boundaries that contribute to establish a separation between “us” and “them”.⁴ These elements of definition contribute to create an internal cohesion based on symbolic media and institutions, activities and circumstances.⁵ The community members are not necessarily aware of “the symbols of the expression of their community”.⁶ They are often analytical tools created by the researchers to explain behaviours and activities in a community for which they are a given. The fact that the concepts sometimes precede the analysis of a group of people or are only analytical tools disconnected from individuals’ reality is for Raphael Samuel and Gareth Stedman Jones a short-coming in the sociological field and at risk for historians who should be very cautious when resorting to sociology.⁷ The conceptual definition of community given in this introduction isn’t a strict and definitive definition. On the contrary, it is only a starting point for both the author and the reader. Only a thorough empirical and analytical study of the sources will help us to understand how communities are shaped both by material and immaterial conditions.

Two important books which dealt with early modern community were published in the 2000s: Karen E. Spierling and Michael J. Halvorson’s *Defining community in early modern Europe* and Phil Withington and Alexandra Shepard’s *Communities in early modern England*.⁸ In their introductions, the editors expressed the idea that a community should be understood at the level of its members and in the historical fields, of its contemporaries, the modern historians use the ‘community’ as a research tool and eventually, the meaning of community

¹ “une entité concrète basée sur des relations directes”, in *Ibid.*, 22.

² *Ibid.*, 21.

³ “l’espace et la relation sociale”, *Ibid.*, 22.

⁴ *Ibid.*, 35.

⁵ *Ibid.*, 35, 42.

⁶ “la symbolique de l’expression de leur communauté”, in *Ibid.*, 44; Anthony P. Cohen, *The Symbolic Construction of Community* (London: Routledge, 1985).

⁷ Raphael Samuel and Gareth Stedman Jones, ‘Sociology and History’, *History Workshop Journal* 1, no. 1 (20 March 1976): 6–8.

⁸ Michael Halvorson and Karen E. Spierling, *Defining Community in Early Modern Europe* (Ashgate, 2008); Alexandra Shepard and Phil Withington, eds., *Communities in Early Modern England: Networks, Place, Rhetoric* (Manchester: Manchester University Press, 2000).

evolved through time therefore, there is a certain amount of futility in trying to establish a strict and inflexible concept.¹ In the historical field, there are two ways – at least – to define ‘community’. The first way is to look at how communities have been studied in the past by historians and to identify the common denominator(s) in these studies. In doing so, Phil Withington and Alexandra Shepard explains that “‘community’ has been appropriated by historians to denote sets of organic, hierarchical and consensual social relations with implicitly conservative undertones”, for example, “the gentry-dominated ‘county communities’” but “[a]t the other end of the spectrum, community’s ‘implications of comprehensiveness and neighbourliness’ have been used to encapsulate a quite contrary, radical tradition of resistance and social conflict”.² The second way is to propose a definition based on social interactions. Karen E. Spierling and Michael J. Halvorson define the early modern community as “a group of people who perceived themselves as having common interests and, thus, a common identity or self-understanding”.³ The first definition based on the historiographical traditions seems to grant more importance to the contemporaries’ self-definition of ‘community’ but it also implies more ideological involvement from the historian than the second definition which is mostly a sociological definition of ‘community’ and can therefore serve as a tool – which can in turn be used ideologically by the historian.

In this dissertation, the aim is to analyse the “direct relations” of the Shetlanders in the 18th century. Therefore, I have circumscribed a “social and localised group” upon which I will carry out an empirical and analytical analysis. Socially, this group is composed of small landowners – those who don’t possess any land in another locality than where they live –, tenants and any other men and women living in Shetland who are not members of the clergy or of the landed and merchant élite. The study is circumscribed to the archipelago of Shetland but this geographical circumscription is mostly a question of feasibility⁴ more than a research statement. Indeed, even though a community is set on a territory, this area only becomes a community through shared experiences of people who live there.⁵

Similarly, Aud Mikkelsen Tretvik explains in her book on local and regional history how the area where a community lives is “geographically limited” and has “common

¹ Shepard and Withington, ‘Introduction: Communities in Early Modern England’, 2, 6; Halvorson and Spierling, ‘Introduction: Definitions of Community in Early Modern Europe’, 1, 19–21.

² Shepard and Withington, ‘Introduction: Communities in Early Modern England’, 3.

³ Halvorson and Spierling, ‘Introduction: Definitions of Community in Early Modern Europe’, 2.

⁴ Schrecker, *La communauté*, 26.

⁵ Harvey W. Zorbaugh, *The Gold Coast and the Slum* (Chicago: The University of Chicago Press, 1929), 222–23; quoted in: Schrecker, *La communauté*, 29.

political/administrative primary institutions” and is also an area that “may be intertwined socially, economically and culturally”.¹

The notion that “community and place are often compatible” doesn’t mean that they are “coterminous”,² indeed “there is a growing body of recent work that looks at community at the national level, or at communities that cross regional or national borders”.³ Karen E. Spierling and Michael J. Halvorson eventually write that “the least-conflicted and most coherent early modern communities were often those whose members were widely dispersed”.⁴ The importance of such a ‘network community’ is complementary to the idea that “individuals can and usually do belong to a number of different communities”.⁵ These different communities can be analysed as “intermediary communities”.⁶ That is all the communities from the individual or family to the more global society: farm, fishing booth, hamlet, village, *scattald*, parish and county. These communities are local communities, *communautés de proximité*.⁷ They can also be non-local communities, *communautés sans proximité*. In these communities the territory doesn’t play a key role, a common activity or interest is the structuring point of these communities. For Barry Wellman, “[s]earch[ing] community ties in an area and not in a network could lead researchers to focus their attention on local phenomena and stability at the expense of long distances and mobility”.⁸ The definition of the early modern communities lies in between these two acceptations of the communities: a type of community based on localness and another type of community based on common activity and interest. These two types can actually overlap each other.

The analysis of changes in communities was done by sociologists – and historians to a certain extent⁹ – in order to show the negative disintegration of communities. Cherry Schrecker

¹ “Lokalsamfunn er eit geografisk avgrensa busetnadsområde med visse felles politisk/administrative primærinstitusjonar der innbyggjarane har mangesidig kontakt med kvarandre. Området kan vere samansett sosialt, økonomisk og kulturelt. Kontakten er normalt hyppigare internt enn på tvers av områdegrensene, og mellom innbyggjarane finst det eit opplevd felleskap med både positive og negative forteikn.”, in Aud Mikkelsen Tretvik, *Lokal Og Regional Historie* (Oslo: Samlaget, 2004), 9.

² Shepard and Withington, ‘Introduction: Communities in Early Modern England’, 7.

³ Halvorson and Spierling, ‘Introduction: Definitions of Community in Early Modern Europe’, 3.

⁴ *Ibid.*, 22.

⁵ Burke, *Languages and Communities in Early Modern Europe*, 6; Quoted in: Halvorson and Spierling, ‘Introduction: Definitions of Community in Early Modern Europe’, 11.

⁶ Schrecker, *La communauté*, 21.

⁷ *Ibid.*, 18.

⁸ *Ibid.*, 30.

⁹ When he describes the renewal of sociability studies in the French historiography, Jean-Pierre Gutton writes: “Il entre d’abord dans cet engouement le souci contemporain de redécouvrir la “vie associative”, comme nous disons. La solitude de l’homme moderne, isolé dans la vie grouillante de ses semblables ignorés, trouve un antidote dans l’attachement sentimental aux voisinages des campagnes d’autrefois. Et l’historien, une fois de plus, est témoin de son temps, reflet des préoccupations de son époque. [...] Le souci de retrouver la chaleur de la vie rurale permet sans doute de comprendre le succès auprès d’un large public de livres consacrés à

explains that the word ‘community’ “seems never to be used unfavourably”.¹ The sociologist keeps on explaining that “the authors of community studies [...] seek very often either to defend or to restore the studied community”.² A similar type of behaviour is observed in island studies’ scholars and will be detailed in the Introductory Chapter.

The understanding of the word ‘community’ differs from a national tradition to another. Since this dissertation draws on various historiographical traditions, it seems important to remind the reader of these traditions and their understanding of ‘communities’. Firstly, it appears that in France, in Norway and in Scotland, and most generally in Europe, the study of communities in the past owes a lot to the development of sociology, ethnology, anthropology and social psychology.³ Today sociology, ethnology and anthropology are three distinct sciences but when the first community studies were carried out the differences between sociology and anthropology were not clearly identified.⁴ Secondly, the development of rural history in France and in Norway owes a lot to the changes in sociology and ethnology. In France and in Norway, the Durkheimian sociology had a great influence on the institution that transformed the writing of rural history: the *Annales* in France and the *Institutt for sammenlignende kulturforskning*, Institute for Comparative Research in Human Culture, in Norway.⁵

Montaillou, village occitan ou aux Mémoires d'un paysan du pays bigouden de la fin du XIX^e siècle.”, in Jean-Pierre Gutton, *La Sociabilité Villageoise Dans La France d'Ancien Régime* (Paris: Hachette, 1998), 8. Similarly, “David Underdown, while noting that “[w]e should not sentimentalize the pre-capitalist village community”, argues that in the sixteenth and seventeenth centuries communal ideals and ‘important unifying bonds’ of ‘still functioning communities’ were compromised by ‘profoundly unsettling social and economic changes.’”, in Shepard and Withington, ‘Introduction: Communities in Early Modern England’, 4.

¹ Williams, *Keywords*, 76; Quoted in: Schrecker, *La communauté*, 9; Shepard and Withington, ‘Introduction: Communities in Early Modern England’, 2.

² “Les auteurs des *community studies* [...] cherch[ent] très souvent soit à défendre, soit à restaurer la communauté étudiée.”, in Schrecker, *La communauté*, 14.

³ Halvorson and Spierling, ‘Introduction: Definitions of Community in Early Modern Europe’, 1.

⁴ Schrecker, *La communauté*, 14.

⁵ Émile Durkheim and his followers built a criticism of history at the beginning of the 20th century. Émile Durkheim, founder of the journal *L'Année Sociologique*, had wished to make the sociology as “the unified social science in which the views and types of approaches from different disciplines would merge in order to access a scientific status”. The Durkheimian criticism is illustrated by an article published in the *Revue de Synthèse Historique* by the sociologist, François Simiand in 1903. The article called “Méthode historique et science sociale” was a manifesto in itself. François Simiand established a programme in order to place history within the field of social sciences. In this article, François Simiand criticised openly the “historising” history, *l'histoire “historisante”*, also called positivist. He disagreed with the *École Méthodique*. In François Simiand’s idea “an isolated fact doesn’t mean anything”. Only its *problematization* and its integration into series could help to evaluate changes and relations. The French sociologist condemned the historians’ subjection to the political fact, “political idol”, the individual fact, “individual idol” and the origins’ fact, “chronological idol”. Marc Bloch and the Norwegian historians worked with Durkheimian scholars. In Paris, Marc Bloch was a student of Émile Durkheim at the ENS. At Strasbourg, Marc Bloch worked with the Durkheimian sociologist, Maurice Halbwachs, specialist of the social role of memory. Afterwards Maurice Halbwachs was even appointed in the editorial committee of the *Annales*. Later in his life, Marc Bloch acknowledged that the Durkheimian journal *L'Année Sociologique* highly influenced his work. The *Institute for Comparative Research in Human Culture*

Jean-Claude Schmidt, successor of Jacques Le Goff at the head of the *Groupe d'anthropologie historique de l'Occident medieval* (GAHOM) founded in the 1978, explains how historical anthropology developed in a double social context of “relativisation of Western values, which leads to take a greater interest in non-Western societies studied by anthropologists and an increased attention towards traditional European societies (including peasants) who seem to fade with industrialisation and urbanisation”.¹ And in 1979, Jean-Pierre Gutton writes that “[o]ther sciences, anthropology, folklore, sociology, also presided over the birth of the history of village sociability. The sociological literature devoted to Comtadin or Breton villages is exemplary in this regard”.² Today, French rural historians and archaeologists maintain a strong connection with ethnology: Samuel Leturcq writes that his “historical study is strongly oriented by ethnographical and geographical preoccupations”³ and Sylvain Burri has achieved a PhD dissertation in ethno-archaeology.⁴ In Norway, Rigmor Frimannslund,⁵ the first student of ethnology in Norway,⁶ and in Sweden, the ethnologist Sigurd Erixon contributed both greatly to the development of rural history.⁷ The development

was also highly influenced by the Durkheimian sociology. Alf Sommerfelt, linguist member of the *Institute*, had attended the course of the eminent Durkheimian linguist, Antoine Meillet, at the Sorbonne. Linda Holmås notes that the Durkheimian influence is even easier to grasp when one looks at the list of researchers who were invited to give conferences at the *Institute*. During the 1920s and the 1930s, some of them belonged to the “circle” of *L'Année Sociologique*. The linguist, Antoine Meillet, was invited in 1924; the ethnologist, Marcel Mauss, in 1925; Marc Bloch in 1928; the sociologist Paul Fauconnet and the sinologist Marcel Granet were both invited in 1936. (See: Burguière, André. « Histoire d'une histoire : la naissance des Annales. » *Annales. Économies, Sociétés, Civilisations* 34, n° 6 (1979): 1347-59; Burke, Peter. *The French Historical Revolution: The Annales School, 1929-89*. Stanford: Stanford University Press, 1990; Holmås, Linda. « Norwegian academics and their contribution to international reconciliation and peace: the Institute for Comparative Research in Human Culture. » In *Academics as public intellectuals*, édité par Sven Eliaeson et Ragnvald Kalleberg, 87-100. Newcastle: Cambridge Scholars Publishing, 2008; Revel, Jacques. « Histoire et sciences sociales : les paradigmes des Annales. » *Annales. Économies, Sociétés, Civilisations* 34, n° 6 (1979): 1360-76.)

¹ “une relativisation des valeurs des sociétés occidentales qui conduit à porter un intérêt plus grand aux sociétés extra-occidentales étudiées par les anthropologues et une attention accrue à l'égard des sociétés européennes traditionnelles (paysannerie notamment) qui semblent s'effacer avec l'industrialisation et l'urbanisation”, in Nicolas Offenstadt, ‘Anthropologie historique’, in *Les mots de l'historien*, ed. Nicolas Offenstadt (Toulouse: Presses Universitaires du Mirail, 2005), 10.

² “D'autres sciences, l'anthropologie, le folklore, la sociologie, ont aussi présidé à la naissance de l'histoire de la sociabilité villageoise. Des ouvrages de sociologie consacrés à des villages comtadins ou bretons”, in Gutton, *La Sociabilité Villageoise Dans La France d'Ancien Régime*, 9–10.

³ Samuel Leturcq, *Un village, la terre et ses hommes: Toury en Beauce, XIIIe-XVIIe siècle* (Paris: Éditions du CTHS, 2007), 45.

⁴ Sylvain Burri, ‘Vivre de l'inculte, vivre dans l'inculte en Basse Provence centrale à la fin du Moyen Âge: Histoire, archéologie et ethnoarchéologie d'un mode de vie itinérant’ (PhD thesis, Université d'Aix-en-Provence, 2012).

⁵ Audrey Beaudouin, ‘Reider Almås, (Dir.), Norwegian Agricultural History, Trondheim, Tapir Academic Press, 2004, 365 P.’, *Histoire et Sociétés Rurales*, no. 40 (2013): 155.

⁶ Jan E. 1947- Horgen et al., ‘Studenten Som Før Faget’: *Etnolog Rigmor Frimannslund (1911-2006): Et Minneskrift*, vol. 135 (Oslo: Novus, 2011).

⁷ Janken Myrdal, *The Agrarian History of Sweden: From 4000 Bc to Ad 2000* (Lund: Nordic Academic Press, 2011), 11. It should be noted here that the Swedish ethnologist, Sigurd Erixon, collaborated intensely with the French folklorist, Georges Henri Rivièrè, in the interwar period in the 20th century. They both contributed to the development of “European (regional) ethnology”. This relationship is detailed in: Bjarne Rogan, ‘Une alliance

of community studies in Scotland owes a great deal to Rigmor Frimannslund¹ and Sigurd Erixon.²

The meaning of the concept of ‘community’ varies between the different sociological traditions. In France, the community is a “social group more or less circumscribed sharing a unique feature, often embodied by institutional links (a religious community, the gay community, the North African community)”³ while in the English speaking countries, it is a “more disparate reality, composed of a set of people similar to each other because of origin, circumstances, a fate or common interests”.⁴ Furthermore the vitality of community studies is different in France and in the English speaking countries. In the United States of America and the United Kingdom, community studies started at the beginning of the 20th century when in France we know only of a few community studies such as the study of the village of Plozévet in Brittany.⁵ In the French historical tradition, the inhabitants’ community, *communauté d’habitants* has a very distinct almost institutionalised meaning in the early modern period. Jean-Pierre Gutton explains that the community is “nothing other than the tax parcel or collection”,⁶ neglecting to take into consideration cultural or social relationships between inhabitants. The importance of a common taxation in early modern communities will be discussed in the dissertation.

If I consider my own research object “the communities in Shetland in the 18th century” in these historiographical traditions, the role of mediator of the Scottish ethnologist, Alexander Fenton is striking. He read both Norwegian and French ethnologists, such as Rigmor Frimannslund⁷ and Per-Jakez Hélias,⁸ and he wrote an ethno-history of the Shetland Islands in

fragile: Sigurd Erixon, Georges Henri Rivière et l’ethnologie européenne d’avant-guerre’, *Ethnologie française* Vol. 38, no. 4 (22 September 2008): 701–10.

¹ Alexander Fenton, ‘Ethnology as a Subject’, in *An Introduction to Scottish Ethnology*, ed. Alexander Fenton and Margaret A. Mackay, vol. 1, *Scottish Life and Society: Compendium of Scottish Ethnology* (Edinburgh: John Donald in association with the European Ethnological Research Centre, 2013), 317.

² Ibid., 14; Margaret A. Mackay, ‘Social Organisation’, in *An Introduction to Scottish Ethnology*, ed. Alexander Fenton and Margaret A. Mackay, vol. 1, *Scottish Life and Society: Compendium of Scottish Ethnology* (Edinburgh: John Donald in association with the European Ethnological Research Centre, 2013), 316.

³ “groupe social plus ou moins circonscrit partageant une caractéristique unique, très souvent matérialisée par des liens institutionnels (une communauté religieuse, la communauté homosexuelle, la communauté maghrébine)”, in Schrecker, *La communauté*, 11.

⁴ “réalité plus disparate composée d’un ensemble de personnes assimilées les unes aux autres en raison d’origines, de circonstances, d’un destin ou d’intérêts communs”, in Ibid.

⁵ Ibid., 11–12; Edgar Morin, *Commune en France: la métamorphose de Plozévet* (Paris: Fayard, 1967).

⁶ “La communauté n’est rien d’autre que la parcelle fiscale ou collecte. Ces circonscriptions sont attestées dans les rôles des aides dès le XIV^e siècle, et jusqu’à la Révolution de 1789 elles resteront le cadre de la perception des impositions royales et notamment de la taille.”, in Gutton, *La Sociabilité Villageoise Dans La France d’Ancien Régime*, 20.

⁷ Alexander Fenton, *The Northern Isles: Orkney and Shetland* (East Linton: Tuckwell Press Ltd, 1997), 666.

⁸ Per-Jakez Hélias was not an academic ethnologist, however *Le Cheval d’Orgueil* was published for the ethnology-anthropology oriented series “Terre Humaine” exactly 20 years after the publication of Claude Levi-

the early modern period.¹ He was a very important figure in ethnology in Scotland where he was “appointed to the first chair of Scottish ethnology in 1989”.² The archivist Brian Smith holds an important place too. His *Toons and Tenants* is a seminal historical work on the life of the rural communities. In the introduction, he writes that he “trace[s] the political economy of Shetland’s rural communities over a long period: from the high middle ages to the brink of the twentieth century”.³ His contributions on the subject are significant – even though he doesn’t define what is a rural community.

To sum up, I have chosen to start not with preconceived ideas or expressions when it comes to communities in non-urban areas. I won’t talk, at first, about rural communities or religious communities. The aim of this work is to propose a complex vision of community organisation based on both a sociological definition of ‘community’ and the use of archives’ materials and contemporaries’ words. Phil Withington and Alexandra Shepard have explained how in the 17th-century dictionaries, the definition or understanding of *communitie* evolved. This semantic evolution illuminates social evolutions. These evolutions – semantic and social – might, however, not be in synchrony. I have decided to use very specific words when needed and to resort to the word ‘community’ or ‘communities’ when I speak less specifically and refers mostly to social interactions in an undefined group. In the core of the dissertation, specific communities will appear and they will be identified by more appropriate names. Names that appear in the 18th-century archives: I will shed light on the ‘parishioners’ and the parish community as well as on the ‘scattalders’ or ‘scat brethren’ and the scattald community.

Since this dissertation focuses on the building of communities, there will be some subjects of great interest that won’t be directly dealt with in this work. First of all, the question of social hierarchy or stratigraphy within the community won’t be studied extensively. I will pin point some individuals who held specific roles in their community but there won’t be any systematic investigation on the hierarchy and relations of power in the community itself at the exception of a social portrait of the south part of the parish of Dunrossness with the use of a very specific source, the Quendale Judicial Rental of 1747. Secondly, I won’t investigate the

Strauss’ *Tristes Tropiques* in the same series; Per-Jakez Hélias, *Le cheval d’orgueil: mémoires d’un reton du pays bigouden*, Terre humaine (Paris: Plon, 1975); Mackay, ‘Social Organisation’, 318.

¹ Fenton, *The Northern Isles*.

² Alexander Fenton and Margaret A. Mackay, ‘A History of Ethnology in Scotland’, in *An Introduction to Scottish Ethnology*, ed. Alexander Fenton and Margaret A. Mackay, vol. 1, Scottish Life and Society: Compendium of Scottish Ethnology (Edinburgh: John Donald in association with the European Ethnological Research Centre, 2013), 60.

³ Brian Smith, ‘Introduction’, in *Toons and Tenants, Settlement and Society in Shetland 1299-1899* (Lerwick: Shetland Times Ltd, 2000), xii.

laird-tenant relationship. In some ways, this work has already been done by Jonathan Wills in his own PhD dissertation, *Of laird and tenant*, where he focused on the relationships between the lairds and their tenants on the island of Unst in the 18th century.¹ Even though, as I shall detail thereafter, I have also used sources produced by the lairds, I have considered that they tend to distort our attention or as Mathieu Arnoux said in a talk on his book about peasantry and growth in the Middle-Ages:² “when one sees a lord on the photograph, one doesn’t see the peasants anymore”³. Thirdly, I won’t study the communities of Lerwick. There are, at least, three reasons for this choice: 1) Lerwick society is more heterogeneous than the rest of Shetland society, more people come and go and individuals had more specific activities attributed to their names, it doesn’t necessarily mean that there is more complexity in relationships in a more densely populated area but that there are more individuals’ analysis to do, 2) this heterogeneity as well as the size of the town mean that archives materials are too numerous and are beyond the scope of analysis of this thesis, 3) eventually, I consider Lerwick as the only town in 18th-century Shetland. Even if Lerwick didn’t have the royal burgh status – at the difference of Kirkwall, Orkney – it had a military fort as well as garrisons stationing there from now and then in the 18th century. Jean-Pierre Gutton explains that the existence of a curtain wall or defensive wall around the town is an important criterion in defining a town in the Middle-Ages.⁴ There was no defensive wall around the whole of Lerwick in the 18th century, but the position of the fortress, even if “the fort was burnt by the Dutch in 1673, and had been left derelict ever since”,⁵ gave a defensive character and made of Lerwick a special place in Shetland, a town maybe. The fort was rebuilt in 1782. Fourthly, even if I will study the different intermediary communities in Shetland I won’t spend too much of my attention on the family and this for two reasons. The first reason is that working on Shetland families in the 18th century is rendered difficult by the absence of consistent demographic sources. The second one is given by Cherry Schrecker who writes that “family ties [...] create a community within the community. Generally speaking, these sub-

¹ Jonathan Wills, ‘Of Laird and Tenant: A Study of the Social and Economic Geography of Shetland in the Eighteenth and Early Nineteenth Centuries, Based on the Garth and Gardie Estate Manuscripts.’ (PhD thesis, University of Edinburgh, 1975).

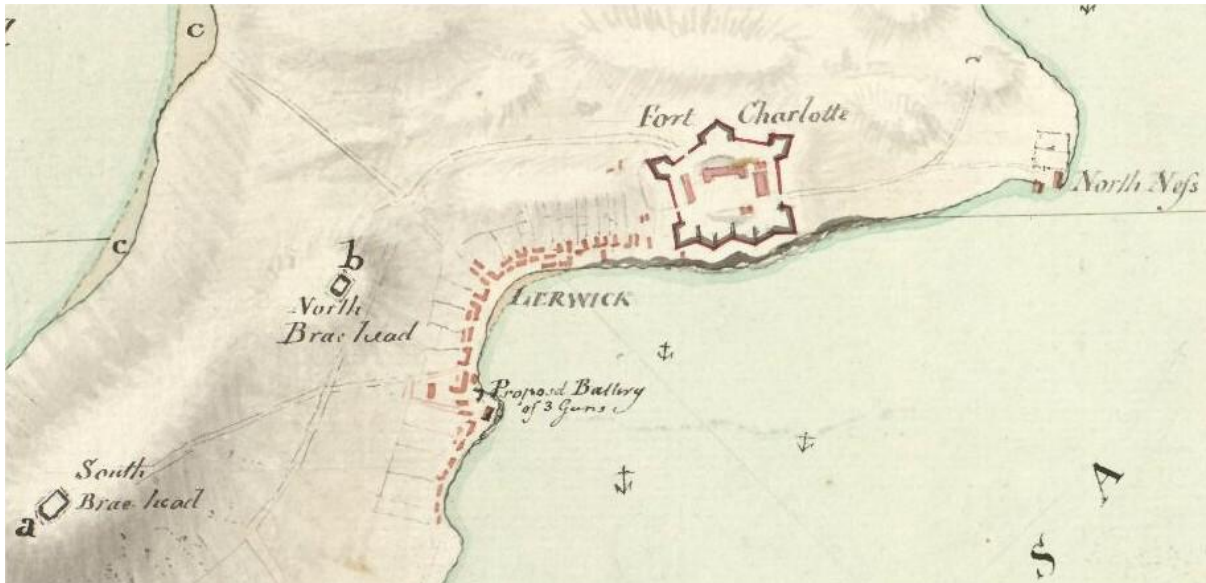
² Mathieu Arnoux, *Le temps des laboureurs: travail, ordre social et croissance en Europe, (XIe-XIVe siècle)*, L’*évolution de l’humanité* (Paris: Albin Michel, 2012).

³ “quand on voit un seigneur sur la photographie, on ne voit plus les paysans”, Mathieu Arnoux, ‘Le temps des laboureurs: travail, ordre social et croissance en Europe, (XIe-XIVe siècle)’ (paper, Séminaire Actualité de la recherche historique, Rennes, 16 January 2014).

⁴ Gutton, *La Sociabilité Villageoise Dans La France d’Ancien Régime*, 17.

⁵ Andrew Saunders, ‘Eighteenth Century Coastal Defence’, in *Fortress Britain: Artillery Fortification in the British Isles and Ireland* (Liphook: Beaufort, 1989), 128.

communities are not factors of division because, in turn, the different families are interconnected.”¹



NLS, MS.1649 Z.03/43a. 'Plan of Brass Sound in the Southern Part of the Isles of Shetland, and Survey of the Grounds Adjoining to Fort Charlotte by Andrew Frazer', 1783. <http://maps.nls.uk/military/record.cfm?id=321>.

Plan 1: Fort Charlotte: Plan

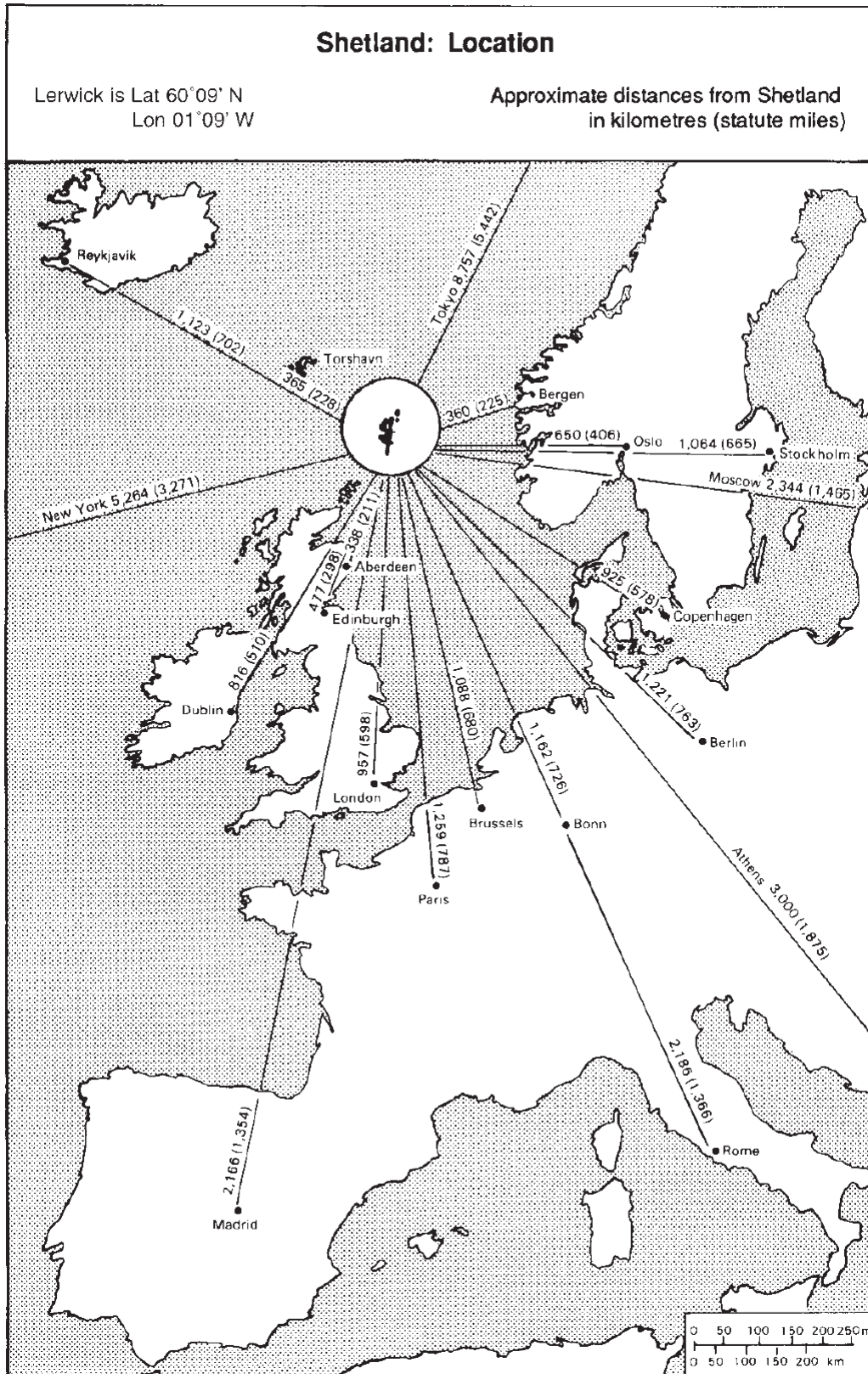
¹ “[L]es liens familiaux [...] créent une communauté à l’intérieur de la communauté. De manière générale, ces sous-communautés ne sont pas facteurs de division car, à leur tour, les différentes familles sont liées entre elles.”, in Schrecker, *La communauté*, 44.

Geographical and environmental context

The Shetland archipelago is located in an area where two masses of salted water meet. The islands are bordered on the east by the North Sea and on the west by the North Atlantic Ocean, “they lie between the fifty-ninth and sixty-second degrees of north latitude, [...] and a little west of the meridian of London”.¹ The distance between the southern and the northern points of the archipelago is roughly of 150 km. Its approximate distance with Bergen, on the west coast of Norway, is of 360 km, with Edinburgh – the Parliament’s town of Scotland today and in the 18th century, the administrative and cultural centre of Scotland –, it is of 477 km and with Aberdeen – an important harbour in the north of Scotland after the harbour of Leith (Edinburgh) –, it is of 338 km. The north of Scotland and the islands of Orkney are at about 150 km south of Shetland.²

¹ Arthur Edmondston, *A View of the Ancient and Present State of the Zetland Islands; Including Their Civil, Political, and Natural History; Antiquities and an Account of Their Agriculture, Fisheries, Commerce, and the State of Society and Manners*, vol. 1 (Edinburgh: John Ballantyne and Co., 1809), 1. The latitude and longitude of the town of Lerwick, the main town of Shetland in the 18th century, are of 60°09’ N and 1°09’ W (See: *Shetland in Statistics* (Lerwick: Shetland Islands Council, 2011), 3, http://www.shetland.gov.uk/economic_development/documents/29523statisticpages_001.pdf)

² ‘Shetland in Statistics’ (Lerwick: Shetland Islands Council, 2011), 3, http://www.shetland.gov.uk/economic_development/documents/29523statisticpages_001.pdf.



‘Shetland in Statistics.’ Lerwick: Shetland Islands Council, 2011, 3.
http://www.shetland.gov.uk/economic_development/documents/29523statisticpages_001.pdf
Map 1: Shetland: Location

The historical climate of the early modern period is known under the name of the Little Ice Age (LIA).¹ This period “has been dubbed ‘The Little Ice Age’ because not only in Europe but in most parts of the world the extent of snow and ice on land and sea seems to have attained a maximum as great as, or in most cases greater than at any time since the last major ice age.”² The LIA affects north-west Europe differently in terms of location but the common thread is colder and more variable seasons from year to year. Hubert Horace Lamb studied the climate of central England and he estimated that the mean temperatures between 1700 and 1800 were just 0.2 to 0.4°C below the average for 1900 to 1950.³ The climate was slightly colder but the important thing was that the frost period was longer and that could last until March or April which had disastrous consequences on agriculture.⁴ In summer, the variations from year to year were very important during the LIA.⁵ These variations happening in central England can be estimated as appropriate for Shetland as well.⁶ Shetland is especially sensitive to climate changes because it lies “close to the bathymetric boundary between deep oceanic water and the Eurasian continental shelf, at a hydrographic junction of the North Atlantic and the North Sea”⁷. Indeed, “[t]he North Atlantic Current (NAC) and the Shelf Edge Current (SEC) that pass between Shetland and the Faroe Islands [exert] much influence over northern European climate and high latitude maritime and terrestrial ecologies”⁸. Furthermore, “Shetland is located in a zone of sensitivity to both cyclical shifts in atmospheric and oceanic circulation”⁹. In Shetland, the LIA meant a succession of dearth, sand blows on agricultural land and extreme storminess.¹⁰ Volcanic eruptions could also have produced a climatic shock which

¹ I'd like to thank Hervé Regnault and Olivier Planchon for reminding me that it is an important issue and for lending me books on the question.

² Hubert Horace Lamb, *Climatic History and the Future*, vol. 2, Climate: Present, Past and Future (London: Methuen & Co Ltd, 1977), 461–62.

³ Hubert Horace Lamb, ‘Climate in the Last Thousand Years: Natural Climatic Fluctuations and Change’, in *The Climate of Europe: Past, Present and Future*, ed. Hermann Flohn and Roberto Fantechi (Dordrecht: D. Reidel Publishing Company, 1984), 37.

⁴ *Ibid.*, 47.

⁵ *Ibid.*, 48.

⁶ Gerald F. Bigelow et al., ‘Researching Catastrophic Environmental Changes on Northern Coastlines: A Geoarchaeological Case Study from the Shetland Islands’, *Arctic Anthropology* 42, no. 1 (2005): 90.

⁷ *Ibid.*, 89.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Susan Knox, *The Making of the Shetland Landscape* (Edinburgh: John Donald Publishers Ltd., 2003), 7; Bigelow et al., ‘Researching Catastrophic Environmental Changes on Northern Coastlines’; Hubert Horace Lamb, *Historic Storms of the North Sea, British Isles and Northwest Europe* (Cambridge: Cambridge University Press, 2005). Shetland’s climate is today a cold oceanic climate with high rainfalls in the months from January to March and then from September to December with an average of more than 100 mm per month. The highest temperatures occur during the months of June, July, August and September with an average daily mean between 10°C and 12°C. The sunniest days occur between April and August with a monthly average of more than 100 hours of sunshine, culminating in May with an average of 162 hours of sunshine. The wind is constant in Shetland and blows every day at an average speed of 14.3 knots. There are, however, less windy periods between

impacted on the growth conditions and led to harvest failures. That's one of the solutions proposed by Audun Dybdahl to explain the demographic crisis of the 1740s in Norway.¹

Underneath the surface, the Shetland Islands hold an intermediary position between Scotland and Norway.² Their bedrock geology is made of hard and old rocks which differentiates it from the basalts of the Faeroe Islands.³ The best description of Shetland's geology is found in Walter Mykura's *British Regional Geology: Orkney and Shetland*.⁴ Shetland's "most striking characteristic" is "its north-south elongation and the presence in the eastern half of the island group of smooth north to north-east trending ridges with intervening partly drowned valleys".⁵ Furthermore, "Shetland is divided into two geologically distinct parts [...] by a major north-south trending fault which is termed the Walls Boundary Fault".⁶ In the north-east of the island the rocks consist of metamorphic rocks and granites. In the west, the bedrock geology is more varied. It includes "large masses of granite and diorite, some belts of metamorphic rocks and a large area of highly folded sandstone and lava of Old Red Sandstone age".⁷ In the south-east and western seaboard of the peninsulas forming north and west Mainland, the rocks include "sandstones, flagstones and conglomerates of Old Red Sandstone age".⁸ The best arable lands are located in the south-east and west mainland of the archipelago where the sandstones favoured the development of arable land and human settlements.⁹ A proper knowledge of Shetland's geology is important for several reasons: it

the months of May and August when the wind blows at around 11.5 knots. (See: *Shetland in Statistics* (Lerwick: Shetland Islands Council, 2011), 5-7,

http://www.shetland.gov.uk/economic_development/documents/29523statisticpages_001.pdf.)

¹ Audun Dybdahl, 'Sult Eller Sykdom? Hva Var Årsaken Til Den Demografiske Krisen I Norge Først På 1740-Tallet?', *Michael Quaterly*, no. 11 (2014): 24. On Norwegian climate history, see also: Audun Dybdahl, 'Klimatiske Sjokk, Uår, Sykdom Og Demografiske Kriser I Trøndelag På 1600- Og 1700-Tallet', *Historisk Tidsskrift* 93, no. 2 (2014); Audun Dybdahl, 'Uår I Trøndelag', *Adresseavisen*, 10 March 2011, <http://www.adressa.no/meninger/article1601668.ece>. Shetland's climate is today a cold oceanic climate with high rainfalls in the months from January to March and then from September to December with an average of more than 100 mm per month. The highest temperatures occur during the months of June, July, August and September with an average daily mean between 10°C and 12°C. The sunniest days occur between April and August with a monthly average of more than 100 hours of sunshine, culminating in May with an average of 162 hours of sunshine. The wind is constant in Shetland and blows every day at an average speed of 14.3 knots. There are, however, less windy periods between the months of May and August when the wind blows at around 11.5 knots.

² Walter Mykura, Derek Flinn, and Frank May, *Orkney and Shetland*, ed. Institute of geological sciences (Edinburgh: Her Majesty's Stationery Office, 1976).

³ Alan Small, 'Geographical Location: Environment and History', in *Shetland and the Outside World 1469-1969*, ed. Donald Withrington, Aberdeen University Studies 1 (Oxford: Oxford University Press for University of Aberdeen, 1983), 20.

⁴ Mykura, Flinn, and May, *Orkney and Shetland*.

⁵ *Ibid.*, 1.

⁶ *Ibid.*, 4.

⁷ *Ibid.*, 1.

⁸ *Ibid.*

⁹ Small, 'Geographical Location: Environment and History', 21.

gives information on the capability of agricultural soils in a specific location. Stone was paramount in building houses and dykes in the 18th century and they worked as social markers. Eventually knowing Shetland's geology is also about knowing the history of research in Shetland geology. The first geologists who visited Shetland at the end of the 18th century and at the beginning of the 19th century wrote detailed accounts, not only of the geology, but also of the life of those who inhabited these islands.¹ These accounts are primary sources for this study.

The sedimentary deposits consist mainly of acidic ombrotrophic peat lands also called blanket peat. They cover most of the archipelago: in the south they are found alongside coastal peaty podsols and alongside brown soils with some gleys in the north, on the islands of Unst and Fetlar. In the southern top, the sedimentary deposits are made of immature calcareous sands.² In this area, erosion has been extremely important since the early modern period.³ The blanket peat covers range of hills. The Shetland Islands count 19 hills with a relative height of at least 150 m, most of them attaining almost 300 m. The highest hill is located on the northwest peninsula of Northmavine: Ronas Hill's summit culminates at 450 m above sea level.⁴

¹ Mykura, Flinn, and May, *Orkney and Shetland*, 11–14; Derek Flinn, *Travellers in a Bygone Shetland: An Anthology* (Edinburgh: Scottish Academic Press, 1989), 54–68, 90–103.

² David Spence, *Shetland's Living Landscape: A Study in Island Plant Ecology* (Sandwick: Thule Press, 1979), 21.

³ Bigelow et al., 'Researching Catastrophic Environmental Changes on Northern Coastlines'.

⁴ Small, 'Geographical Location: Environment and History', 21.

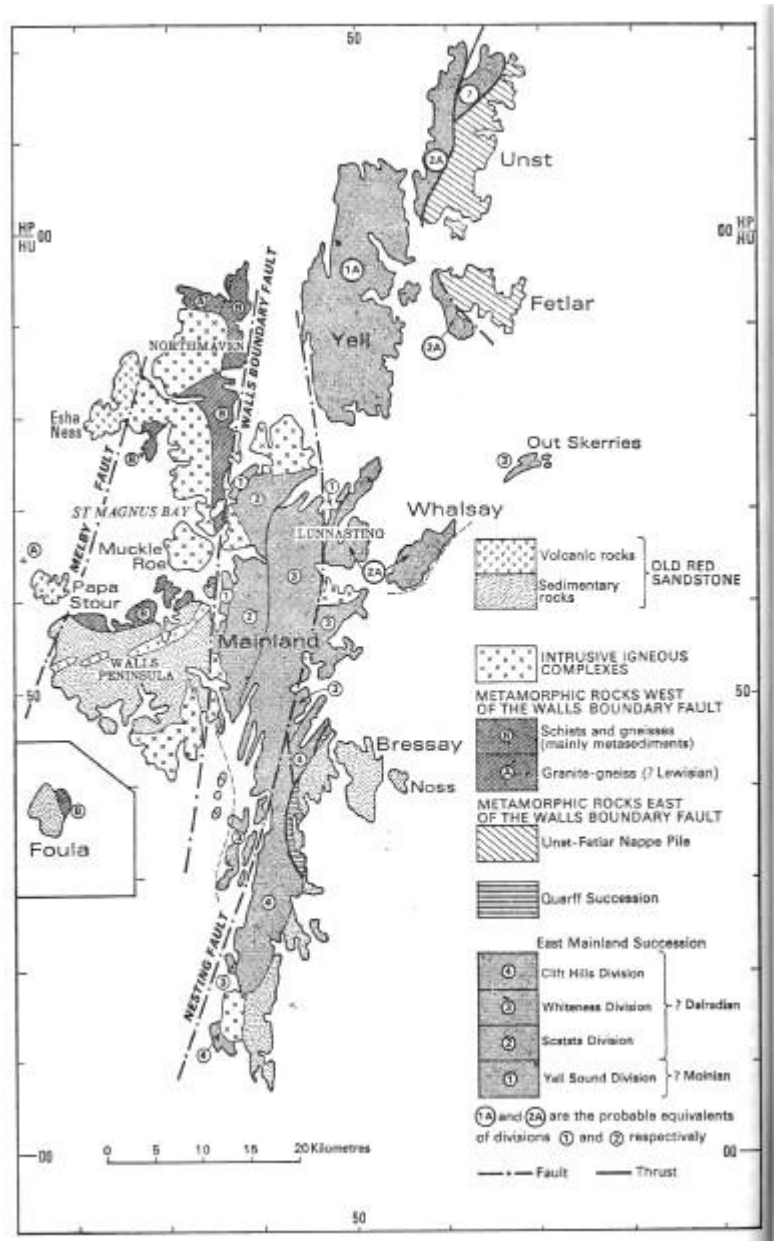
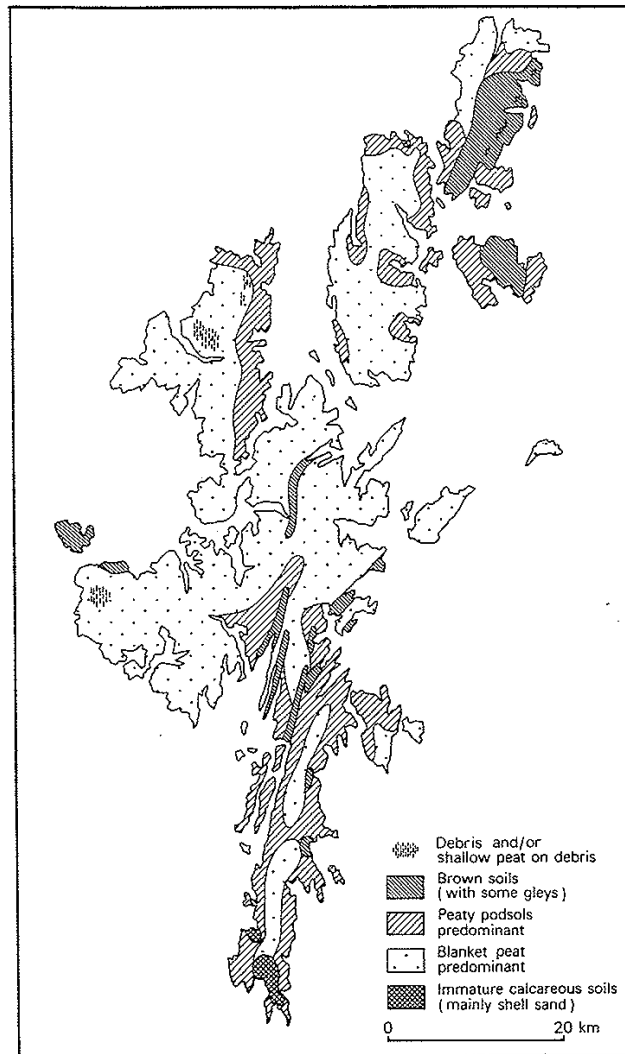


FIG. 2. Geological sketch-map of Shetland

Mykura, Walter, Derek Flinn, and Frank May. *Orkney and Shetland*. Edited by Institute of geological sciences. Edinburgh: Her Majesty's Stationery Office, 1976, 6.

Map 2: Shetland: Geology



Spence, David. *Shetland's Living Landscape: A Study in Island Plant Ecology*. Sandwick: Thule Press, 1979, 21.

Map 3: Shetland: Sedimentary deposits

Down these hills and in the plains, burns, rivulets and lochs are numerous. Shetland's hydraulic state is complex and extremely dense, indeed "[t]he relatively high rainfall, low evaporation and generally impermeable rock lead to a highly developed surface drainage network, but most of the drainage basins are small and there are no sizeable rivers"¹. With 1,596 standing waters or lochs² and 946 separate running water systems entering the sea – for a total of 3,026 streams contained in these systems –,³ the supplying of fresh water in the islands is guaranteed – even if the water of some lochs is undrinkable because of peat sediments.⁴ The presence of fresh and drinkable water was essential in the early modern

¹ P. S. Maitland and R. H. Britton, 'The Fresh Waters of Shetland: I. The Strategy of a Synoptic Resource Analysis', *Scottish Geographical Magazine* 101, no. 3 (1985): 151.

² A. A. Lyle and R. H. Britton, 'The Fresh Waters of Shetland: II Resources and Distribution', *Scottish Geographical Magazine* 101, no. 3 (1985): 157.

³ *Ibid.*, 158.

⁴ Maitland and Britton, 'The Fresh Waters of Shetland', 163–64.

period, at a time when the conservation of water in tanks or other containers was difficult.¹ The highest concentration of standing waters is found on the glacially eroded plateaux of Northmavine and Walls with predominantly lochs from 1 to 5 ha. Another high concentration of standing waters is found in Yell and south Northmavine in the deep blanket peat with a dense aggregation of peat pools with a size predominantly inferior to 1 ha.² Two lochs, Strom in North Mainland and Cliff in Unst, have a size superior to 100 ha. They are both “long, narrow, valley lochs”³. Compared to the rest of the British territory, it seems that Shetland holds the second position both in terms of number of standing waters per 100 km² and in stream frequency.⁴

	Number of standing waters per km ²	Stream frequency
Great Britain (estimated)	35	0.64
Outer Hebrides	208	1.80
Shetland	107	1.70

Maitland, P. S., and R. H. Britton. ‘The Fresh Waters of Shetland: I. The Strategy of a Synoptic Resource Analysis.’ *Scottish Geographical Magazine* 101, no. 3 (1985): 163.

Table 1: Comparison of the Shetland freshwater resource with Great Britain and the Outer Hebrides

What was growing on this acid blanket peat and in between these “widespread drainage networks”⁵ Vegetation changes through time. Pollen analyses have been undertaken in Shetland and they offer very interesting results on the history of vegetation in the archipelago.⁶ The study of P. D. Hulme and J. Shirriffs, *The Late-glacial and Holocene vegetation of the Lang Lochs Mire area, Gulberwick, Shetland: a pollen and macrofossil investigation*, provides interesting results for a specific location in Shetland.⁷ Nevertheless, the problem with such a study is the almost absence of data for the historical periods. Studies of post-medieval pollen fossils in Shetland can be found in two studies of long-term settlement in the Biggings on Papa Stour and in Kebister.⁸ They outline the changes in the vegetation cover in these two locations and underline the influence of human activities in the

¹ Thomas Chiron, ‘Les îles de Bretagne et leurs ressources en eau : trois siècles de gestion communale (XVIIIe-XXe siècle)’, *Annales de Bretagne et des Pays de l’Ouest. Anjou. Maine. Poitou-Charente. Touraine*, no. 116–2 (30 June 2011): 121–39.

² Lyle and Britton, ‘The Fresh Waters of Shetland’, 158.

³ Ibid.

⁴ Maitland and Britton, ‘The Fresh Waters of Shetland’, 163.

⁵ Lyle and Britton, ‘The Fresh Waters of Shetland’, 164.

⁶ A good summary of these studies is given in: Simon Butler, ‘Climate, Ecology and Land-Use since the Last Ice Age’, in *The Shaping of Shetland*, ed. Val Turner (Lerwick: The Shetland Times Ltd., 1998), 3–11.

⁷ P. D. Hulme and J. Shirriffs, ‘The Late-Glacial and Holocene Vegetation of the Lang Lochs Mire Area, Gulberwick, Shetland: A Pollen and Macrofossil Investigation’, *New Phytologist* 128, no. 4 (1 December 1994): 793–806.

⁸ Barbara E. Crawford and Beverley Ballin Smith, *The Biggings, Papa Stour, Shetland: The History and Excavation of a Royal Norwegian Farm* (Edinburgh: Society Antiquaries Scotland, 1999); Olwyn Owen and Christopher Lowe, *Kebister: The Four-Thousand-Year-Old Story of One Shetland Township* (Edinburgh: Society of Antiquaries of Scotland, 1999).

disappearance of plant species such as in Papa Stour where the cutting of flaws led to the disappearance of indigenous flower species in the 18th and 19th centuries.¹



NASA. *Shetland Islands (Landsat 7's)*, 6 June 2004. earthobservatory.nasa.gov/IOTD/view.php?id=4546.

Figure 1: Shetland: Aerial Picture

At the beginning of the 18th century, 33 islands of the archipelago – out of more than 100 – are inhabited.² The total area of Shetland is of 1,468 square kilometres³ which means that the 18th-century density varied between 9.7 inhabitants/km² in 1755 and 16.7 inhabitants/km² in 1821.⁴ The total length of Shetland's coastline is approximately of 2,702 kilometres¹ and

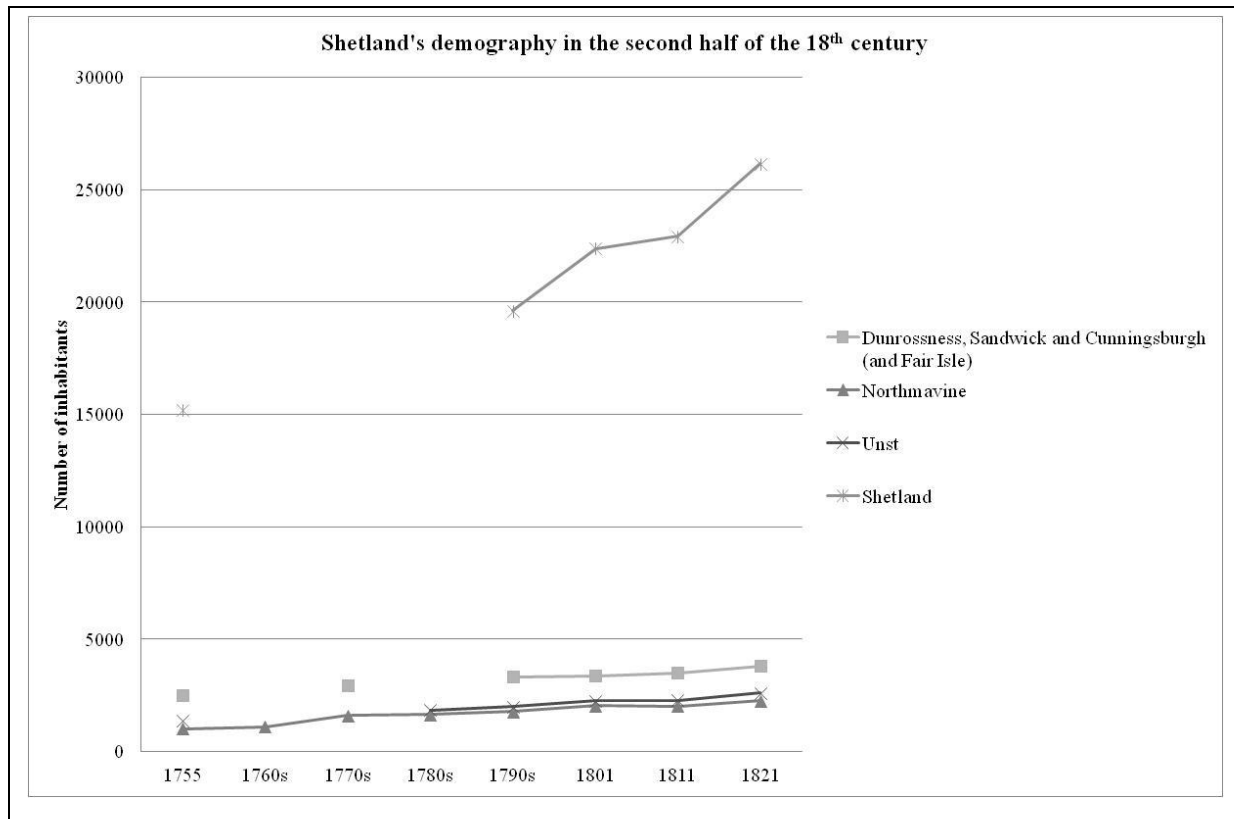
¹ Crawford and Smith, *The Biggings, Papa Stour, Shetland*, 7.

² Thomas Gifford, *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents* (Sandwick: Thule Print Ltd, 1976), 1.

³ 'Shetland in Statistics', 4.

⁴ James Gray Kyd, ed., *Scottish Population Statistics Including Webster's Analysis of Population 1755* (Edinburgh: T. and A. Constable Ltd., 1952); 'Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94: Shire of Orkney and Shetland', in *Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94*, vol. Scotland, 1821, 524–26,

“[b]ecause of the shape of the land mass no place is more than a few kilometres from the sea”². Nevertheless not all the coastline is easily accessible for boats. There are numerous cliffs, dangerous bays and complicated currents that render difficult the navigation and the landing of boats in various areas of Shetland.³



Graph 1: Shetland: demography in the second half of the 18th century

[http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20\(by%20date\)/1821&active=yes&mno=7&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=562](http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20(by%20date)/1821&active=yes&mno=7&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=562).

¹ 'Shetland in Statistics', 4.

² Maitland and Britton, 'The Fresh Waters of Shetland', 151.

³ Mykura, Flinn, and May, *Orkney and Shetland*, 3.

Parish	1755	1760s	1770s	1780s	1790s	1801	1811	1821
Dunrossness, Sandwick and Cunningsburgh (and Fair Isle)	2,495		2,942		3,327	3,361	3,498	3,798
Northmavine	1,009	1,109	1,594	1,657	1,786	2,045	2,024	2,264
Unst	1,368			1,853	1,988	2,259	2,288	2,598
Shetland	15,210				19,619	22,379	22,915	26145

Gray Kyd, James, ed. *Scottish Population Statistics Including Webster's Analysis of Population 1755*. Edinburgh: T. and A. Constable Ltd., 1952. http://www.gro-scotland.gov.uk/files2/the-census/Webster_final.pdf.
Jack, William. 'Parish of Northmaven.' In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 12:346–68. Accessed 1 December 2011. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Northmaving/>.
Mill, John. 'Parish of Dunrossness in Zetland.' In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 7:391–98. Accessed 23 November 2011. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Dunrossness/>.
Mouat, Thomas, and James Barclay. 'Island and Parish of Unst in Shetland.' In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 12:182–202. Accessed 27 September 2012. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Unst/>.
'Abstract of Answers and Returns to the Population Act, 51 Geo. III. 1811, Shire of Orkney & Shetland.' In *Abstract of Answers and Returns to the Population Act, 51 Geo. III. 1811*, Scotland:496–97, 1811.
[http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20\(by%20date\)/1811/Great%20Britain&active=yes&mno=5&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=529](http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20(by%20date)/1811/Great%20Britain&active=yes&mno=5&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=529).
'Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94: Shire of Orkney and Shetland.' In *Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94*, Scotland:524–26, 1821.
[http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20\(by%20date\)/1821&active=yes&mno=7&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=562](http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20(by%20date)/1821&active=yes&mno=7&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=562).
'Abstract of the Answers and Returns to the Shire of Orkney and Shetland.' In *Abstract of the Answers and Returns Made pursuant to an Act, Passed in the Forty-First Year of His Majesty King George III. Intituled, 'An Act for Taking an Account of the Population of Great Britain, and the Increase or Diminution Thereof.'*: Enumeration, Part II. Scotland:534, 1801.
[http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20\(by%20date\)/1801&active=yes&mno=2&tocstate=expandnew&toceq=9400&display=sections&display=tables&display=pagetitles&pageseq=first-nonblank](http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20(by%20date)/1801&active=yes&mno=2&tocstate=expandnew&toceq=9400&display=sections&display=tables&display=pagetitles&pageseq=first-nonblank).

Table 2: Shetland: Demography in the second half of the 18th century

All of these, geography, geology, hydrology, ecology, etc., had an influence on the life of the Shetlanders in the 18th century. Nevertheless, I won't look at them throughout this dissertation as deterministic factors but as Jørn Øyrehaugen Sunde coined it: “the Shetland landscape is a landscape of opportunities and not of limitations”¹ or in a less non-causal way: “Of course there were limitations, but I will look at these natural conditions more as opportunities”.

¹ Jørn Øyrehaugen Sunde, 'Not a Stick of Wood - Trade Relations as the Core of Shetland-Norwegian Relations up till the Mid 19th Century', *The New Shetlander*, no. 253 (2010): 18.

A brief history of Shetland before the 18th century

The first traces of human life in the Shetland archipelago date back to the Mesolithic period. A shell midden has been dated in West Voe, Sumburgh, from 4320 to 4030 cal. BC. This shell midden “can be identified with the 'fossil' oysters that George Low described digging for 'in the seabank' at Sumburgh during his tour of Shetland in 1774”.¹ During the Neolithic times, the inhabitants of Shetland built heel-shaped chambered cairns. One of these cairns was built on the top of Ronas Hill in Northmavine² and was used by fishermen in the 18th century as a landmark to navigate.³ In the site located near Sumburgh, Dunrossness, and called for the first time “Jarlshof” by Sir Walter Scott in his novel the *Pirate*,⁴ the main settlement dates from the Bronze Age.⁵ The brochs, typical features of the Shetland landscape, widely advertised today in tourist guide books and quite extensively described by the 18th-century observers, were built in the Iron Age.⁶ The 18th-century observers described the brochs as “Pictish house” or “Pictish castle”,⁷ even if these structures aren't Pictish, Picts' sites could be located on the same spots.⁸

The first Vikings raid started in Shetland at the end of the 8th century. Vikings started to settle right after 800.⁹ The literature on the question is extensive: Viking studies are an important part of the scholarship written on Shetland. The Viking settlement led to the integration of Shetland to the realm of Norway in the middle ages. The Jarl of Orkney had a direct power from the king of Norway to govern Orkney and Shetland. Shetland was a *skattland*. The Norwegian kingdom perceived the *skat*, the land tax, in Shetland as well as in Orkney, Iceland and Faroe. The archipelago belonged to what can be considered as a Norse community: they shared the same institutions, officials, similar customs and laws as well as the same language: the Norn.¹⁰ Nevertheless, Scottish men started to emigrate to Shetland and Orkney before the

¹ N. D. Melton and R. A. Nicholson, ‘The Mesolithic in the Northern Isles: The Preliminary Evaluation of an Oyster Midden at West Voe, Sumburgh, Shetland, U.K.’, *Antiquity* 78, no. 299 (2004); George Low, ‘Voyage to Schetland’, in *A Tour Through the Islands of Orkney and Schetland: Containing Hints Relative to Their Ancient Modern and Natural History Collected in 1774*, by George Low (Inverness: Melven Press, 1978), 186.

² Noel Fojut, *Prehistoric and Viking Shetland* (Lerwick: Shetland Times Ltd, 2006), 113.

³ Samuel Hibbert, *A Description of the Shetland Islands, Comprising an Account of Their Geology, Scenery, Antiquities, and Superstitions* (Edinburgh: Archibald Constable and Co., 1822), 515.

⁴ Sir Walter Scott, *The Pirate*, vol. 1 (London: Archibald Constable and Co.; and Hurst, Robinson, and Co., 1822), 4.

⁵ Fojut, *Prehistoric and Viking Shetland*, 49, 112.

⁶ For example: Low, ‘Voyage to Schetland’, 181.

⁷ For example: Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 4.

⁸ Fojut, *Prehistoric and Viking Shetland*, 127–29.

⁹ *Ibid.*, 89.

¹⁰ Steinar Imsen, ed., *The Norwegian Domination and the Norse World, C.1100-c.1400* (Trondheim: Tapir Academic Press, 2010).

end of the Dano-Norwegian rule in 1468/69. In 1468/69, the king of Denmark and Norway, Christian I pawned the group of islands to the king of Scotland, James III, as the dowry of his daughter Margaret. The archipelagos were supposed to go back to the kingdom of Denmark and Norway once the dowry properly paid: this implied that the local rules and culture were not supposed to be modified by the Scottish government.¹ This changed in 1611, when the Lords of the Privy Council of Scotland decided to abrogate the Norwegian laws in Shetland.

At the beginning of the 18th century, Shetland belonged to the kingdom of England, France, Scotland and Ireland which had become a dual monarchy in 1603 when James IV of Scotland became James I, king of England, France, Scotland and Ireland.² In 1707, the Act of Union promulgated the fusion of the two kingdoms in one kingdom and the suppression of the Scottish Parliament and its fusion with the English Parliament in a Parliament of Great-Britain in London.³ In the Act of Union, clauses protected, among other things, the Scottish Law and the Scottish established church, the Presbyterian Kirk.⁴ In term of administrative division, Shetland belonged to the earldom of Orkney and Lordship of Shetland since 1707 when Queen Anne, despite the Act of Annexation of 1669 turning the Shetland Islands into a Crown dependency, transferred the islands of Orkney and Shetland to the Earl of Morton in form of a feudal charter.⁵ The Earl was elected Steward and Justiciar of Orkney and Shetland and he could appoint deputies for the administration of justice. After the Union of 1707, Sir Alexander Douglas of Eagleshay, Orkney, was co-opted as a Member of Parliament in June 1708 for the constituency of Orkney and Shetland. The constituency was a single-Member seat after the Union.⁶ In the beginning of the 18th century, the lordship of Shetland was divided into 12 parishes belonging to the Presbytery of Shetland.⁷

¹ William P. L. Thomson, 'The Marriage Treaty and the Pawning of the Islands', in *The New History of Orkney* (Edinburgh: Birlinn, 2008), 189–2015.

² Michel Duchéin, *Histoire de l'Ecosse* (Paris: Fayard, 1998), 239; François-Joseph Ruggiu, 'L'émergence d'une puissance impériale: les îles à l'époque moderne (du XVI^e siècle à l'aube du XIX^e siècle)', in *Histoire des îles Britanniques*, ed. Stéphane Lebecq et al. (Paris: Presses Universitaires de France, 2007), 402.

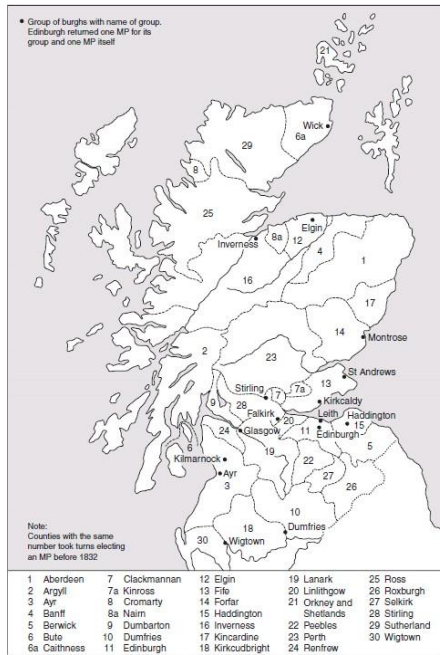
³ Duchéin, *Histoire de l'Ecosse*, 316–17; Ruggiu, 'L'émergence d'une puissance impériale: les îles à l'époque moderne (du XVI^e siècle à l'aube du XIX^e siècle)', 440–41.

⁴ Duchéin, *Histoire de l'Ecosse*, 317; Ruggiu, 'L'émergence d'une puissance impériale: les îles à l'époque moderne (du XVI^e siècle à l'aube du XIX^e siècle)', 440.

⁵ William P. L. Thomson, 'Tacksmen, Lairds and Udallers, 1615-1707', in *The New History of Orkney* (Edinburgh: Birlinn, 2008), 311; Frances J. Shaw, *The Northern and Western Islands of Scotland: Their Economy and Society in the Seventeenth Century* (Edinburgh: John Donald Publishers Ltd., 1980), 22, <http://www.getcited.org/pub/102185118>.

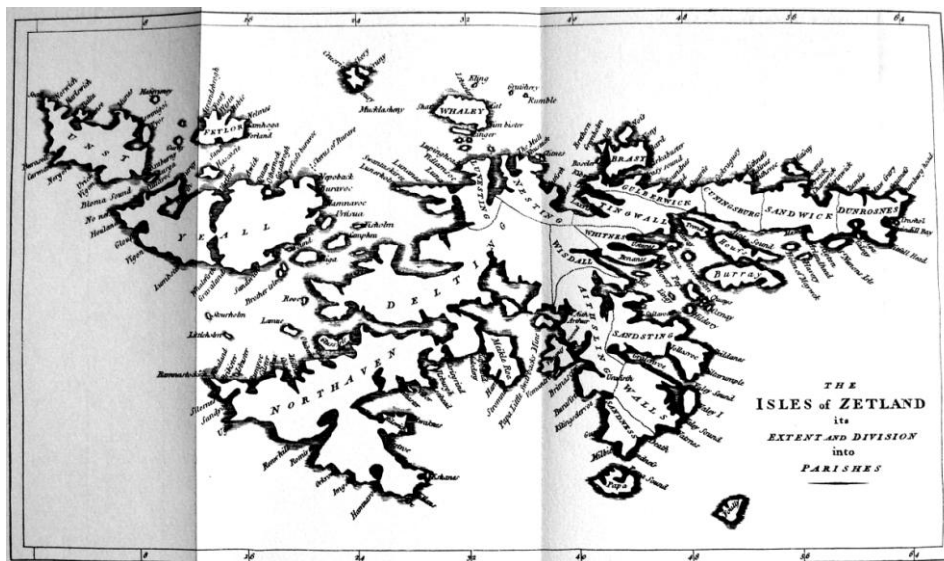
⁶ David Wilkinson, 'Orkney and Shetland', in *The History of Parliament: The House of Commons 1690-1715*, ed. D. Hayton, E. Cruickshanks, and S. Handley (Cambridge: Cambridge University Press, 2006).

⁷ Hew Scott, *Fasti Ecclesiae Scoticae. The Succession of Ministers in the Church of Scotland from the Reformation. Synods of Ross, Sutherland and Caithness, Glenelg, Orkney and of Shetland, the Church in England, Ireland and Overseas*, vol. 7 (Edinburgh: Oliver and Boyd, 1928), 279.



Dickinson, H. T. *A Companion to Eighteenth-Century Britain*. Oxford: Wiley-Blackwell, 2002, xxi.

Map 4: Scotland: Parliamentary Constituencies (1707-1832)¹

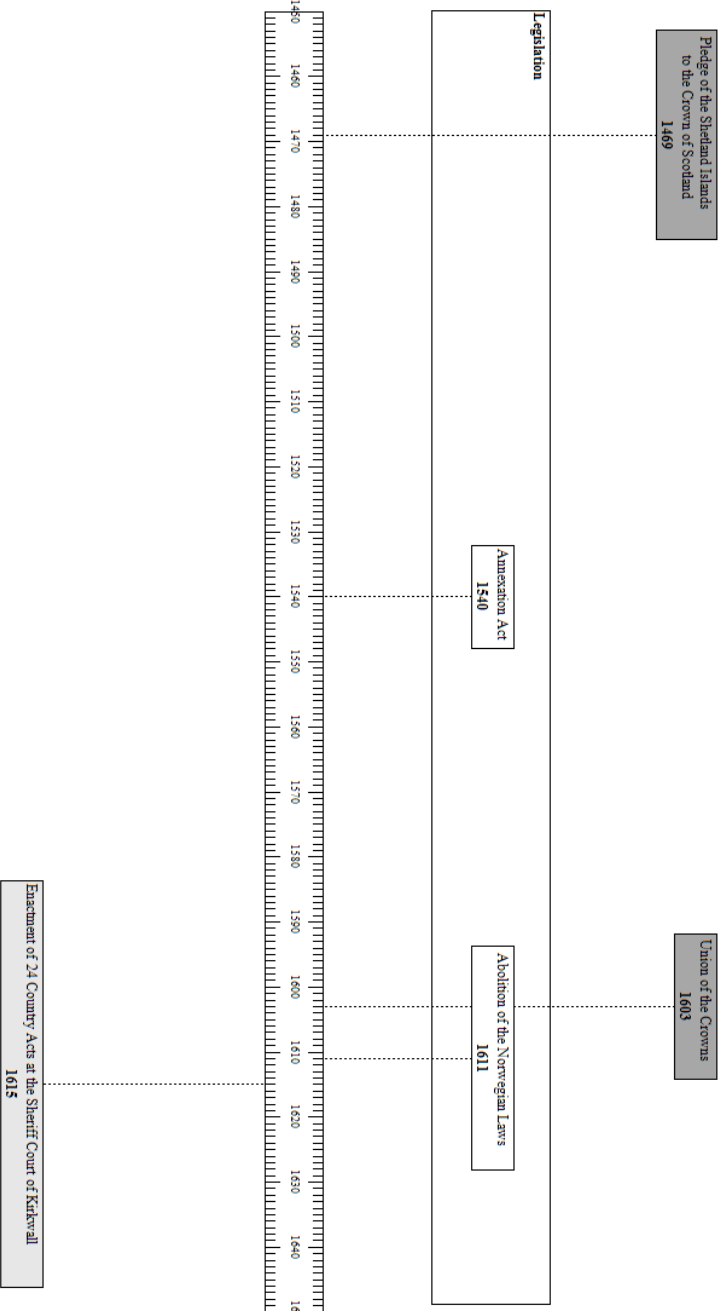


NLS, A.44.d.9. 'The Isles of Zetland, Its Extent and Division into Parishes.' *Bibliotheca Topographica Britannica*. London: J. Nichols, 1790.

Map 5: Shetland: Parishes in the 18th century

¹ Note that Shetland should be positioned in the classical box since its geographical position is not adequate. It obviously lies north of the Orkney archipelago.

The following chronological outlines give a quick summary of the 17th- and 18th-centuries' geopolitical and social situation in Scotland and Shetland.



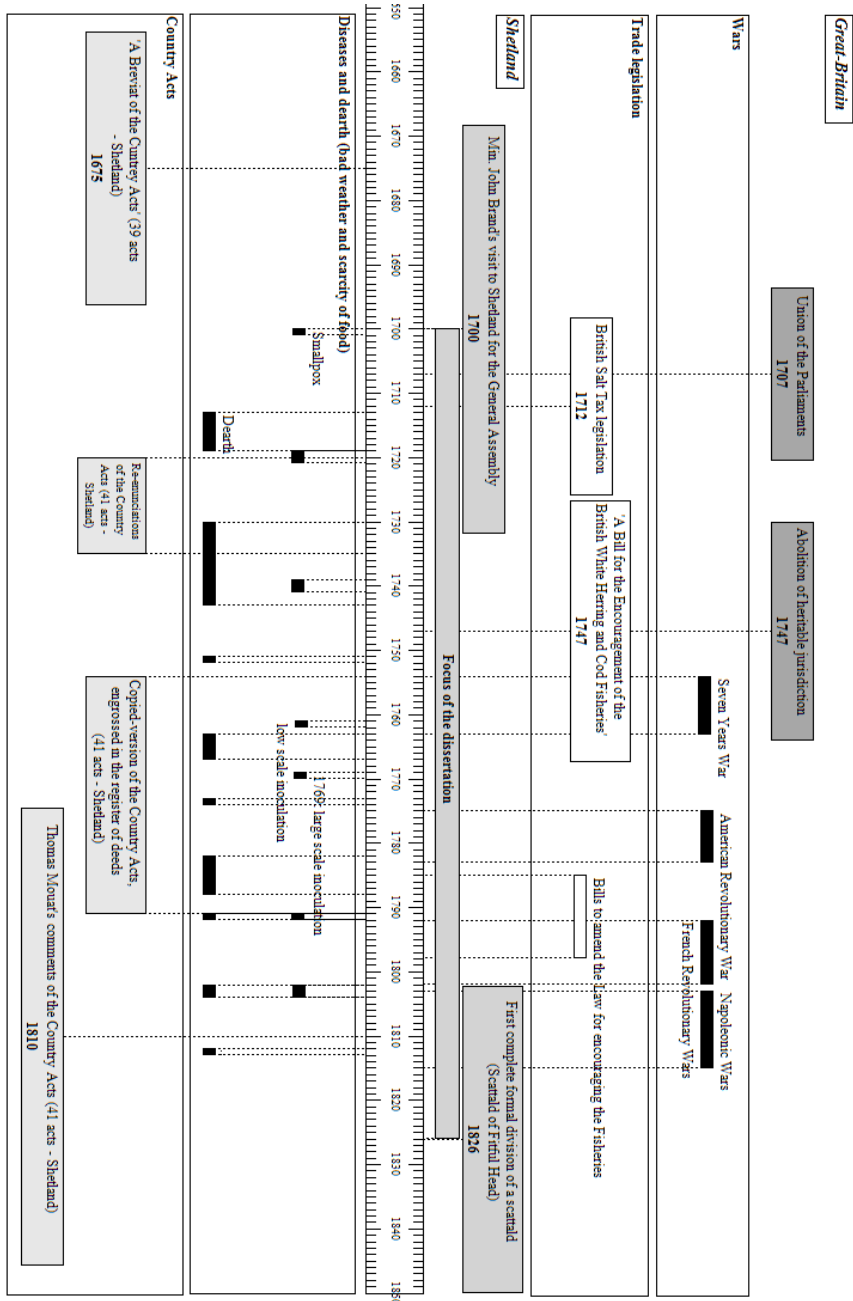


Figure 2: Shetland: Outline of chronology

Why the 18th century?

The question of temporality, time-limits, changes and continuities came at the very start of this dissertation project. For any early-modernists working on the Shetland Islands the period going from the beginning of the 17th century to the early 19th century is extremely interesting. Indeed, during this period major transformations affected the life of Shetland inhabitants: the Scots Law was adopted at the expense of the Norwegian laws, the local courts were abolished in favour of a more regional justice court, the *udal* lands were (for some scholars) feudalised or at least they lost their original meaning, the sand blows destroyed agricultural land due to extreme storminess, the rent from being paid in kind (butter and fish oil mainly) changed to be paid in ‘fish’, individualised commons replaced progressively the extensive and communal commons, the Norn language disappeared in favour of the English language, and the trade with Dutch and German merchants faded away in favour of the British traders.

These changes which happened at different pace and had complex interactions are to be understood in a national and European context that saw the strengthening of central authorities and the development of the modern state, the development of the agriculturists’ thoughts and the Agricultural Revolution, the Enlightenment, the Industrious Revolution, and the development of written culture.

Eventually, the idea is not to write a case-study but a localised history that offers possibilities to seize the variations in temporalities of some events or changes that are most of the time presented as uniform at a national or European level but when analysed at a local level they tend not to correspond to the so-called academic chronologies. In that respect, I agree with Keith Wrighton when he writes that “[t]he ‘community study’, then, at least at the micro-level of a village or parish, provides insight into how ‘larger processes were experienced in particular local societies, how they impinged upon individuals lives, and how the varied responses which they occasioned helped to shape their outcomes’.”¹

To study and evaluate these changes, the chronological frame seemed quite obvious at first. The study would start in 1611, when the Scottish Government prohibited Norwegian laws and end in 1826 when the first division of commons happened in Shetland. This time-span covered two centuries, the 17th century and the 18th century. These two centuries saw the union of the Scottish and the English crowns in 1603 and the Union of Parliaments in 1707.

¹ Keith Wrighton, ‘The Politics of the Parish in Early Modern England’, in *The Experience of Authority in Early Modern England*, ed. Paul Griffiths, Adam Fox, and Steve Hindle (Basingstoke: Macmillan Press Ltd., 1996), 12; Quoted in: Shepard and Withington, ‘Introduction: Communities in Early Modern England’, 6.

Furthermore, this timeline could capture all the phenomena presented above and thus draw a nuanced portrait of the cultural, social and economic life of communities. However, considering the mass of documentation, this dissertation will focus on a long 18th century, starting at the end of the 17th century when Presbyterianism was reaffirmed in Scotland and finishing in 1826 when the first division of scattald happened in Shetland.

The societal raison d'être of this PhD dissertation

In the process of writing this dissertation, I decided that I wouldn't use any oral sources since even if I used the work of ethnologists I worked mainly on written sources. This focus on written sources kept me away from 21st-century Shetlanders and from their narratives. Nevertheless there is in this work as in any other historical work a strong presence of contemporaries concerns or at least reflexions. In writing this dissertation, I remembered Marc Bloch's thoughts on "the question of the use of history"¹ and on the importance of knowing the present to read history backwards² – that is the regressive method – in order to be able to "restore its true direction"³. He wrote that "[t]here is, then, just one science of men in time. It requires us to join the study of the dead and of the living"⁴. History is this science but historians have to belong to the present and not live in autarchy.⁵ Looking at the present can help understand the setting in which decisions are taken and how these decisions affect the life of people or make changes possible. I hope that this dissertation will provide, in return, Shetlanders and other local communities with some elements to discuss various issues concerning their life on the islands such as: their place in the European Union (fishing quota) or in the United-Kingdom (the Scottish independence referendum), the question of *udal* law, the question of living on an island in the 21st century, environmental issues and common resources preservation (wind turbines and oil), and the protection of their cultural heritage (free knitting lessons and music courses).

In *Toons and tenants*, Brian Smith shares the same goals. He writes that "[i]t is important for Shetlanders to understand their history; but I hope that history can be instructive to others as well".⁶ I have written above that some community studies' scholars are community's enthusiasts and I will explain in the first chapter how island studies' scholars can be *islophiles*. In my case, I believe that writing this dissertation made me realise how being an actor in its own place of life – city, village, island, mountain, etc. – matters not only for us as individual human beings but also for our communities. However it is important to know what are the different communities we're involved with in order for them not be betrayed 'Community' just like 'history' can be used and some people don't hesitate to pretend that the

¹ Marc Bloch, *The Historian's Craft* (Manchester: Manchester University Press, 2004), 9.

² *Ibid.*, 37.

³ *Ibid.*

⁴ *Ibid.*, 39.

⁵ *Ibid.*

⁶ Brian Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899* (Lerwick: Shetland Times Ltd, 2000), xiii.

‘community’ thinks something or something else and most of the time it is never clear “what and where this community is”.¹

¹ Brian Smith, ‘Community Pronouncement?’, *The Shetland Times*, 10 February 2012, <http://www.shetlandtimes.co.uk/2012/02/10/community-pronouncement-brian-smith/>.

“A Note on Scottish and English Money”¹

In their seminal book *Prices, food and wages in Scotland*, A. J. S. Gibson and T. C. Smout explain that

[a]fter 1603 [...] the pound Scots was fixed at one-twelfth of the pound sterling. This ratio remained unchanged until in 1707 the pound sterling became the only pound recognized in Great Britain and arrangements were made for calling in Scottish and English coins and reminting them as the coinage of the United Kingdom. Nevertheless; the pound Scots continued to be used as a unit of account in Scotland, particularly in rural areas, for some decades thereafter.²

The authors have decided “[to render] all prices and wage rates into pound Scots, even those from the eighteenth century that were originally quoted in the source as pounds sterling (as in the *Statistical Account*), in order to facilitate comparison over time.”³ This is also the choice that I have made: throughout this thesis the prices and wages are given in pound Scots (£) – and in sterling when indicated otherwise.

Scots Money	Equivalent Sterling
1 penny (d.)	1/12 penny
12 pennies=1 shilling (s.)	1 penny
20 shillings=1 pound (£)	1 shilling 8 pennies

¹ A. J. S. Gibson and T. C. Smout, *Prices, Food and Wages in Scotland 1550-1780* (Cambridge: Cambridge University Press, 1995), xv.

² Ibid.

³ Ibid.

Chapter 1: Historiography, Sources and Methods

There were two books on the table, both of them open. One was old, Rachel Carson's *Silent Spring*. He knew it was one of the first books warning that the advance of Western civilization constituted a threat to the future of the planet.¹

Henning Mankell, *The Troubled Man*.

*

Shetland local or network communities lived in an environment made of both land and sea. In order to appreciate Shetland communities, it is important to understand if it mattered that Shetland was an archipelago.² In an article published in 1997, Robert E. Dewar explained that scholars working on island communities should always ask themselves if the fact that they worked on an island modified or had an influence on their own research.³ Working on an archipelago brings out specific issues that deserve to be treated in their own rights.

The first step is to assess what 'archipelago' means for the researcher. In this dissertation, the archipelago is a geo-historic archipelago – and not a metaphoric one. The geo-historic archipelago is a set of geographically close islands, socially, culturally, economically and environmentally bound. In the 18th century, the islands of Shetland, as an archipelago, had the same social organisation; they shared the same Norwegian cultural heritage and developed within the Scottish realm their own cultural features; the whole archipelago acted as a merchants' and economic hub between the Atlantic Ocean and the North Sea; and eventually, the islands' milieu, though comparable from one island to the other, was different – a usual bio-geographical setting.

This chapter explores the ways in which the study of Shetland communities offers possibilities to reflect on the historian practice. It will be suggested that Island studies as such, even if they provide considerable data and points of comparison, might not be the best angle of approach for early modern island history. It is further argued that the perception of the island as a laboratory is ineffective for early modern History and should be replaced by a localised regional approach. It can be added that local historiography as well as local materials offer an operating angle of approach. This chapter also provides the occasion to come back on some issues touched upon in the introduction such as the involvement of island

¹ Henning Mankell, *The Troubled Man* (London: Vintage Books, 2012), 76.

² Here, I paraphrase Robert E. Dewar: Robert E. Dewar, 'Does It Matter That Madagascar Is an Island?', *Human Ecology* 25, no. 3 (1997): 481–89.

³ *Ibid.*

and community scholars with their object of study and the relevance of this dissertation for today's society.

From Island Studies to Margin Studies

Insularity, insularism and islandness

Historians, geographers, social scientists but also French speaking or English speaking scholars have different words to express different ideas about islands. In my opinion, three specific words need a definition because they are understood with great variations in different academic works. In 1997, Anne Meistersheim published a paper entitled: “Figures de l’îleité, image de la complexité...”. In this paper, she elaborates on the notion of *islandness*. But what she also does is give proper definitions for three different words: *insularité*, *insularisme* and *îleité*, respectively insularity,¹ insularism and islandness. She explains that most of the time the word *insularité*, insularity, covers also the meaning and reality of the two other words. This confusion between insularity and insularism can be found in the Oxford English Dictionary. Indeed, the OED defines “insularity” as:

1. The state or condition of being an island, or of being surrounded by water.
2. The condition of living on an island, and of being thus cut off or isolated from other people, their ideas, customs, etc.; hence, narrowness of mind or feeling, contractedness of view.²

This two-fold definition is both geographical and socio-cultural but it is also quite deterministic. The OED defines “insularism” as:

The quality of being insular, or of having the character which is developed by living on an island detached from free intercourse with other people; esp. narrowness of ideas, feelings, or outlook.³

This definition is socio-cultural –deterministic as well – and is similar to the second meaning of insularity. It exemplifies the fact that *insularity* and *insularism* are often used indifferently. However, Anne Meistersheim advocates for stricter definitions, and in this dissertation, I will follow her definitions. She defines *insularity* as a set of measurable realities, assessable from figures or quantified data. The word *insularity* defines geographical and economical realities.⁴ *Insularism* reflects both socio-political and geographical phenomena and distinguishes the

¹ Comes from the French “insularité”; ‘Insularity, N.’, *OED Online* (Oxford University Press), accessed 19 August 2013, <http://www.oed.com.distant.bu.univ-rennes2.fr/view/Entry/97223>.

² Ibid.

³ ‘Insularism, N.’, *OED Online* (Oxford University Press), accessed 19 August 2013, <http://www.oed.com.distant.bu.univ-rennes2.fr/view/Entry/97222>.

⁴ Anne Meistersheim, ‘Figures de L’îleité, Image de La Complexité...’, in *Île Des Merveilles, Mirage, Miroir, Mythe*, Actes Du Colloque de Cerisy Du 2 Au 12 Août 1993 (Paris: L’Harmattan, 1997), 109.

peculiar institutions of the island. Therefore *insularism* defines political and institutional realities.¹ The words *iléité* and its English counterpart, *islandness*, don't appear in dictionaries but they appear in the writing of island studies' scholars.² They are neologisms specially created to understand a deeper layer of the life on islands. Anne Meistersheim defines *iléité* as the experience of the insular inhabitants, their culture, their imagination and their behaviours, all of them induced by the insular space. The *islandness* is the "quality of the perception and behaviour influenced by the specific shape of the insular space".³

These definitions are broad and they don't eliminate all the difficulties that arise when one studies islands. Indeed, in an article published in 2006, Pete Hay's first line starts with the following question: "Is a coherent theory of islandness possible?".⁴ This question refers to the various difficulties encapsulated in the theory of *islandness*. In his Editorial of the *Island Studies Journal*, Godfrey Baldacchino writes that "the core of 'island studies' is the constitution of 'islandness'".⁵ Needless to say that *islandness* is still a notion – and a word – hotly debated. However these three words and their broad definitions give us the possibility to organise our thoughts on insular life, they are a point of departure and they shouldn't be fixed categories. The archive materials might challenge them.

Eventually, the neologism *islophilia*⁶ – formed on *islo-* (isle, island) and *-philia* (Ancient Greek for "love of or liking for"⁷) should be defined because some Island Studies scholars call themselves *islophiles*. *Islophilia* means the love of islands and the *islophile* loves islands.

Island studies

Are all Island Studies scholars *islophiles*? It is a difficult question to ask and I don't know if it's relevant for the following analysis but what is certain is that this *islophilia* might encourage some scholars to follow ideas that might be scientifically inaccessible. Pete Hay

¹ Ibid., 110.

² Respectively no definition in the Dictionnaire de l'Académie française or in the Oxford English Dictionary in August 2013.

³ "qualité de la perception et du comportement influencés par la forme spécifique de l'espace insulaire", in Meistersheim, 'Figures de L'iléité, Image de La Complexité...', 110.

⁴ Pete Hay, 'A Phenomenology of Islands', *Island Studies Journal* 1, no. 1 (2006): 19.

⁵ Godfrey Baldacchino, 'Islands, Island Studies, Island Studies Journal', *Island Studies Journal* 1, no. 1 (2006): 9.

⁶ Stephen A. Royle, "'Small Places like St Helena Have Big Questions to Ask': The Inaugural Lecture of a Professor of Island Geography", *Island Studies Journal* 5, no. 1 (2010): 20.

⁷ '-Philia, Comb. Form', *OED Online* (Oxford University Press), accessed 19 August 2013, <http://www.oed.com.distant.bu.univ-rennes2.fr/view/Entry/142417>.

writes that “[p]erhaps, though, as ‘islophiles’ we *will* ourselves to pursue in vain the alluringly unattainable” [Hay’s italics].¹

Islands Studies are based on at least one idea, the fact that “island(ers) have a sufficient commonality to warrant looking at them comparatively, justifying a systematic ‘island studies’ perspective.”²

Island Studies is addressed to research into island communities – social entities that have both an insular condition, being surrounded by sea, and, usually, a connectivity, produced by the use of the sea as a means of navigating between islands and/or mainlands³

Islands Studies scholars or Nissology scholars as well as islandology scholars⁴ come from a variety of academic backgrounds. They are anthropologists, ethnologists, writers, artists, geographers, historians, archaeologists and psychologists. There is at least one common thread between these people: they mostly work on the representation of islands and insular life in the modern times. Archaeologists or historians work on earlier historical periods but they aren’t many and they have worked on very specific issues such as questions of power – the Mediterranean islands in the Antiquity –, distance – the Pacific Islands from Prehistoric times to nowadays – or representation – Islands in literature. I won’t provide the reader with a comprehensive and detailed bibliography of these works. There are, however, two journals which can provide this kind of information: the *Island Studies Journal* and *Shima: The International Journal of Research into Island Cultures*.⁵ In a context of international debates

¹ “qualité de la perception et du comportement influencés par la forme spécifique de l’espace insulaire », in Hay, ‘A Phenomenology of Islands’, 20.

² Godfrey Baldacchino, ‘Islands — Objects of Representation’, *Geografiska Annaler Series B: Human Geography* 87, no. 4 (December 2005): 247., quoted in Hay, ‘A Phenomenology of Islands’, 19–20.

³ Philip Hayward, ‘Aquapelagos and Aquapelagic Assemblages. Towards an Integrated Study of Island Societies and Marine Environments’, *Shima: The International Journal of Research into Island Cultures* 6, no. 1 (2012): 1.

⁴ Grant McCall, ‘Nissology: The Study of Islands’, *Journal of the Pacific Society* 17, no. 2–3 (1994): 1–14., quoted in Baldacchino, ‘Islands, Island Studies, Island Studies Journal’, 10. Already in 1982, Abraham A. Moles, psychologist, had published an article entitled “Nissonologie ou science des îles”; see: Abraham A. Moles, ‘Nissonologie Ou Science Des Îles’, *L’Espace Géographique*, no. 4 (1982): 281–89.. In 2014, Marc Shell added the word ‘islandology’ to the vocabulary of nissology and island studies. His book, *Islandology: Geography, rhetoric, politics* is, according to James E. Rendall, “an ambitious and comprehensive review of the etymology, history and philosophy of islands, as reflected in the humanities” (Marc Shell, *Islandology: Geography, Rhetoric, Politics* (Stanford, California: Stanford University Press, 2014); James E. Randall, ‘Marc Shell (2014). *Islandology: Geography, Rhetoric, Politics*. Stanford CA: Stanford University Press. 392pp, ISBN: 978-0-8047-8629-4. US\$35.00.’, *Island Studies Journal* 10, no. 1 (2015): 123.).

⁵ The *Island Studies Journal* is a scholarly online journal which is, since 2012, the official journal of the *International Small Islands Studies Association* (ISISA). Its institutional home is the Institute of Island Studies at the University of Prince Edward Island (UPEI), Canada. The editor-in-chief is Godfrey Baldacchino (‘Island Studies Journal’, *IslandStudies.ca*, accessed 20 August 2013, <http://www.islandstudies.ca/journal>). He holds the Canada Research Chair in Island Studies at the UPEI where he is also an Associate Professor in the Department of Sociology and Anthropology (‘Godfrey Baldacchino’, *University of Prince Edward Island*, accessed 20 August 2013, <http://mais.upei.ca/gbaldacchino>). The first issue of the Journal was published in May 2006. The

and conferences in Island Studies, these journals show the existence and the excellence of an extensive literature in the heuristic and phenomenology of islands as well as theories and methodologies in Island Studies. However the papers published in these journals are too often ahistorical and maybe, even, a little deterministic. It seems that islands always were and always will be even though their perception and representation greatly changed through time as Karine Salomé explains in her work,¹ and their geographical realities can also have changed through time which is what David Barrowclough explained in an article published in *Shima* in 2010. Ely was an island at some point in its past and this might have influenced its society even after it had lost its insularity.²

The historicity of island lacks in the approach of these two journals, even if in the case of *Shima*, one of the aims of the journal is to understand the historical development of island societies.³ *Shima* and the *Island Studies Journal* are similar in their main perspective: they are 21st-century journals involved in local development, and even more precisely in the local development of small islands. This perspective is visible in Adam Grydehøj's PhD dissertation when he refers to the two journals and explains that "island studies' broader research into the intersections of culture, economy, and geopolitics [does] inform out perspective on Shetland's place in the world".⁴ The Editorials of these two journals abound with references to the importance of islands in our societies, on the planet, for ecological reasons, cultural reasons, and so on. In the Editorial of the *Island Studies Journal*, Godfrey Baldacchino writes that "[t]he synergetic outcome of these two features [potential laboratories and peripherality] is to propel islands as sites of innovative conceptualizations, whether of nature or human enterprise, whether virtual or real".⁵ While Philip Hayward writes that *Shima* "has been

second journal is *Shima: The International Journal of Research into Island Cultures*. It is a peer-referred online journal and is facilitated by the Division of Research, Southern Cross University, Australia. The editor-in-chief is Philipp Hayward. He is a Professor at the Southern Cross University. He is an active researcher in Island Studies, local culture and tourism ('Philip Hayward', *Official, Southern Cross University*, accessed 20 August 2013, http://works.bepress.com/philip_hayward/). The first issue was published in April 2007, less than a year after the first issue of the *Island Studies Journal*. While the *Island Studies Journal* is the official journal of the ISISA, *Shima* refers more directly to another small island organisation: the *Small Island Cultures Research Initiative* (SICRI) ('Shima: The International Journal of Research into Island Cultures', *Shimajournal.org*, accessed 20 August 2013, <http://www.shimajournal.org/>).

¹ Karine Salomé, *Les îles bretonnes: une image en construction (1750-1914)*, Histoire (Rennes: Presses universitaires de Rennes, 2003).

² David A. Barrowclough, 'Expanding the Horizons of Island Archaeology. Islandscapes Imaginary and Real, Ely: The Case of the Dry Island', *Shima: The International Journal of Research into Island Cultures* 4, no. 1 (2010): 27–46.

³ 'An Introduction to Island Culture Studies', *Shima: The International Journal of Research into Island Cultures* 1, no. 1 (2007): 2.

⁴ Adam Grydehøj, 'Historiography of Picts, Vikings, Scots, and Fairies and Its Influence on Shetland's Twenty-First Century Economic Development' (PhD thesis, University of Aberdeen, 2009), 28.

⁵ Baldacchino, 'Islands, Island Studies, Island Studies Journal', 6.

established to serve as a publication platform for researchers and activists concerned with various aspects of island cultures”.¹ Maybe Godfrey Baldacchino and Philip Hayward aren't activists but they are, at least, engaged in a fight for insular local development.

This criticism of ahistoricism and positive preconception of the researchers on island life is comparable with the position of the community studies' scholars who might use a fixed definition of 'community' without considering its evolution through time and the historical context in which they observe a community and in the mean time they tend to have a positive opinion on community life and deplore its disappearance.

“The necessity of margins”²

One of the main problems for the historian is that comparing islanders such as proposed by Godfrey Baldacchino³ might be relevant for the 20th and 21st centuries but it's not necessarily the case for the earlier periods. For the historians, the singularity of the island is not necessarily brought by its shape but by the discourses and the practices induced by its shape. These discourses and practices evolved through time. In his article 'Not continents in miniature: islands as ecotones', John R. Gillis writes that “[h]ow islands are perceived varies from culture to culture and over time within cultures”.⁴ Most importantly, these discourses and practices were not the sole preserve of islands or islanders; other environments knew the same. This is for example the case of mountains. In her PhD dissertation, Emmanuelle Charpentier explains how

Laurence Fontaine, in her study on the societies of the high valleys of the western Alps, discusses the difficulty to write the history of mountains and of their perception because of the representations that these areas carry [...]. An interest in the coast means adopting the same approach and proceeding immediately to a deconstruction of the representations that value the coast so much today.⁵

¹ 'An Introduction to Island Culture Studies', 3.

² John R. Gillis, 'Not Continents in Miniature: Islands as Ecotones', *Island Studies Journal* 9, no. 1 (2014): 164–65.

³ Baldacchino, 'Islands — Objects of Representation', 247., quoted in Hay, 'A Phenomenology of Islands', 19–20.

⁴ Gillis, 'Not Continents in Miniature: Islands as Ecotones', 158.

⁵ “Laurence Fontaine, dans son étude sur les sociétés des hautes vallées des Alpes occidentales, évoque la difficulté qu'il y a à écrire l'histoire des montagnes et de leur perception, en raison des représentations dont ces espaces sont porteurs [...] S'intéresser au littoral suppose d'adopter la même démarche et de procéder, d'emblée, à une déconstruction des représentations qui le valorisent tant aujourd'hui.”, in Emmanuelle Charpentier, 'Le

Emmanuelle Charpentier further details how the geographers were the first to deconstruct these representations of the mountains. Historians came after and they worked both on mountains and on the coast. In *The Lure of the sea: Discovery of the Seaside in the Western World, 1750-1840*,¹ Alain Corbin explains how the coasts became an object of attraction for the élite in the 19th century after they had been for centuries an object of repulsion.² In 2009, an international conference entitled “Sea and mountains in European culture (16th-19th century)” put an emphasis on the reciprocal character of sea and mountains in the European culture. In his introductory paper, Alain Cabantous explains how “sea and mountains appear as “teratological reservoirs”, inhabited with monsters and evil presences, sometimes until the 19th century”³. Godfrey Baldacchino writes that “islands have occupied such a powerful place in modern Western imagination that they lend themselves to sophisticated fantasy and mythology. Paradise, but also Gulags, are generally islands.”⁴ In an article published in 2004, the French geographer, Françoise Péron uses, similarly to Alain Corbin, the word “lure” to describe the attraction of the islands on mainlanders. She writes how

[t]he idealised image of the island as we know it today is primarily a historical invention of Western culture. It developed its features before the triumph of the industrial era in the nineteenth century.⁵

The construction of this “idealised image” is detailed, for example, in Karine Salomé’s *les îles bretonnes : une image en construction*.⁶ Just like mountains, islands are “a myths’ reservoir”⁷ and “it [the island] feeds us with them [the myths] since the Antiquity”⁸. The Swedish historian, Janken Myrdal, explains how “[m]any small hamlets were like islands in an ocean

Littoral et Les Hommes : Espaces et Sociétés Des Côtes Nord de La Bretagne Au XVIIIe Siècle’ (PgD thesis, Université Rennes 2, 2009), 33.

¹ Alain Corbin, *The lure of the sea: the discovery of the seaside in the Western world 1750-1840* (London: Penguin, 1995).

² Charpentier, ‘Le Littoral et Les Hommes’, 33.

³ “Mer et montagnes apparaissent comme des “réservoirs tératologiques”, peuplés de monstres et de présences maléfiques, quelquefois jusqu’au XIX^e siècle”, in Federico Ferretti, ‘Le Colloque international “Mer et Montagne Dans La Culture Européenne (XVI^e-XIX^e Siècle)”’, *Projets de Paysage*, no. 3 (2009), http://www.projetsdepaysage.fr/fr/le_colloque_international_mer_et_montagne_dans_la_culture_europeenne_xv_ie_xixe_siecle_.

⁴ Baldacchino, ‘Islands — Objects of Representation’, 247–48. Quoted in: Hay, ‘A Phenomenology of Islands’, 21.

⁵ Françoise Péron, ‘The Contemporary Lure of the Island’, *Tijdschrift Voor Economische En Sociale Geografie* 95, no. 3 (2004): 331.

⁶ Salomé, *Les îles bretonnes*.

⁷ “un réservoir de mythes”, in Anne Meistersheim, ‘Le Malentendu’, *Ethnologie Française* Vol. 36, no. 3 (2006): 504.

⁸ “elle nous en nourrit depuis l’Antiquité”, in *Ibid*.

of trees, and around the villages, in woodland pastures, the cattle roamed”¹. Jacques Blondel underlines the same aspect:

[...] insularity is a universal phenomenon. If the term "island" is understood as an isolated biotope in a "matrix" of different backgrounds: a grove in the middle of the plain of Beauce, the top of a mountain, a clearing in a forest, a public garden in a big city, a village in the countryside or a natural reserve of modest size, all these environments are islands, at least for some species and communities, in the same way that a true oceanic island.²

Forests, cold climes, deserts, wetlands, mountains and islands faced and face the same kind of discourses in European culture. These areas, geographically very different, were comparable on numerous issues. Their commonality resided on several points and one of them was the high death rate that these places knew before the middle of the 20th century. People would die of great cold, at sea, of disease in the swamps, of dehydration under the sun, and they would be eaten by wild animals. Another part of their commonality was the difficulty to access these places. Islands were not the only places to be perceived as isolated. If monsters inhabited the sea, wolves and bears lived in the forests and complicated the access to villages located in forest districts. In his “A Phenomenology of Islands”, Pete Hay abruptly writes the following: “So edges are ‘edgy’. They attract the unconventional and the creative, and much might happen there.”³ In this sentence he talks about the foreshores of the island but in my opinion, the geographical edges of Western Europe, the margins – coasts, islands, mountains, cold climes and forests – were and are where “the unconventional and the creative” might happen. John R. Gillis explains in his article ‘Not continents in miniature: islands as ecotones’ that the ecological crisis of the 21st century pushes historians to “[rediscover] the need for margins”.⁴ These margins – beaches, wetlands, deltas, estuaries, mountain slopes but also fields’ and forests’ edges – bring places together and are “a space of flows”.⁵

¹ Janken Myrdal, ‘Farming and Feudalism, 1000-1700’, in *The Agrarian History of Sweden, 4000 BC to AD 2000*, ed. Janken Myrdal and Mats Morell (Lund: Nordic Academic Press, 2011), 87.

² “[...] l’insularité est un phénomène universel. Si on entend par “île ” un biotope isolé au sein d’une “matrice” de milieux différents : un bosquet au milieu de la plaine de Beauce, le sommet d’une montagne, une clairière au milieu d’une forêt, un jardin public dans une grande ville, un village perdu dans la campagne ou une réserve naturelle de dimension modeste, tous ces milieux sont, au moins pour certaines espèces et communautés des îles, au même titre qu’une véritable île océanique.”, in Jacques Blondel, *Biogéographie et écologie: synthèse sur la structure la dynamique et l’évolution des peuplements de vertébrés terrestres* (Paris: Masson, 1979), 6. Quoted in: Jean-Marc Drouin, ‘Quelques Figures de L’insularité. Réflexions Sur La Biogéographie’, in *Maîtres et Protecteurs de La Nature*, ed. Alain Roger and François Guéry, Collection Milieux (Seysssel: Champ Vallon, 1991), 204.

³ Hay, ‘A Phenomenology of Islands’, 23.

⁴ Gillis, ‘Not Continents in Miniature: Islands as Ecotones’, 164.

⁵ Ibid.

For some Island Scholars, islands keep an undeniable specificity: the sea.¹ However, the sea is not the sole preserve of islands. Coastal regions had and still have a special relationship with the sea. That's what Emmanuelle Charpentier and John R. Gillis developed in their work² and what Philip Hayward mentions briefly, but still mentions it, when he writes that

The aquapelago I propose comprises an integrated land and aquatic space. Single islands can articulate with aquatic spaces to form aquapelagic assemblages. *Equally, isolated peninsulas, 'outports', etc. can have aquapelagic aspects.*³ [My italics]

Eventually, it is the strictness of the comparison that should be questioned. I have explained why islands have been and should be compared with other margins and not only with other islands, they should also be compared with places that shared similar social, cultural, economical, etc. settings. Islands were places of opportunities⁴ such as anywhere else. This idea is even more easily understood when we stop focusing on perceptions and representations and when we look at human practices and activities. This idea leads me to look at how societies and island societies have been scrutinised in the academia and how a less deterministic approach of their setting can be more fruitful.

¹ Helen Dawson, 'Archaeology, Aquapelagos and Islands Studies', *Shima: The International Journal of Research into Island Cultures* 6, no. 1 (2012): 18.

² Charpentier, 'Le Littoral et Les Hommes'; John R. Gillis, *The Human Shore: Seacoasts in History* (Chicago: University of Chicago Press, 2012).

³ Philip Hayward, 'The Constitution of Assemblages and the Aquapelagality of Haida Gwaii', *Shima: The International Journal of Research into Island Cultures* 6, no. 2 (2012): 2.

⁴ Jørn Øyrehagen Sunde, 'Not a Stick of Wood - Trade Relations as the Core of Shetland-Norwegian Relations up till the Mid 19th Century', *The New Shetlander*, no. 253 (2010): 18.

From laboratory to localised history

The island as a laboratory

It is in the strictness of borders and edges that Island Studies emerged. The inspirational works were first of all those of Charles Darwin and Alfred Russel Wallace on evolutionary biology.¹ It is in the island setting that they shaped the Theory of Evolution.² Jean-François Drouin explains that the “Darwin’s finches” also known as the “Galapagós finches” are “probably the most famous birds in biogeography”³. He compares the importance of the Galapagós archipelago in the history of biogeography with the importance of the Trobriand Islands – where Bronislaw Malinowski studied the *kula* exchange system⁴ – in the development of ethnology.⁵ It is true to say that islands played an important role in the foundations of the ethnological and anthropological sciences. Margaret Mead’s seminal work on the Samoa Islands contributed greatly to the founding of the anthropological sciences.⁶ *Coming of Age in Samoa* was published for the first time in 1928 and its study objects were the insular Samoan society and culture.⁷ Godfrey Baldacchino explains that “it has been claimed that her *Coming of Age in Samoa* remains the most famous anthropological (and perhaps island-based) work written to date”⁸. However Godfrey Baldacchino’s comment can, in my opinion, be misleading. It suggests that Margaret Mead’s work dealt with ‘insular issues’ or that she chose voluntarily the Samoa for their insular status. This wasn’t the case. She explained in the introduction how she “[chose] primitive groups who have had thousands of years of historical development along completely different lines from our own, whose language does not possess our Indo-European categories, whose religious ideas are of a different nature, whose social organisation is not only simpler but very different from our

¹ Charles Darwin, *On the Origin of Species by Means of Natural Selection, Or, The Preservation of Favoured Races in the Struggle for Life* (London: John Murray, 1859); Alfred Russel Wallace, *Contributions to the Theory of Natural Selection* (New York: MacMillan and Co., 1871).

² Hay, ‘A Phenomenology of Islands’, 20; Drouin, ‘Quelques Figures de L’insularité. Réflexions Sur La Biogéographie’, 205–7.

³ Drouin, ‘Quelques Figures de L’insularité. Réflexions Sur La Biogéographie’, 205.

⁴ Bronislaw Malinowski, *Argonauts of the Western Pacific: An Account of Native Enterprise and Adventure in the Archipelagoes of Melanesian New Guinea* (London: George Routledge & Sons, Ltd., 1922).

⁵ Drouin, ‘Quelques Figures de L’insularité. Réflexions Sur La Biogéographie’, 205.

⁶ Godfrey Baldacchino, ‘The Coming of Age of Island Studies’, *Tijdschrift Voor Economische En Sociale Geografie* 95, no. 3 (2004): 272–283; Baldacchino, ‘Islands, Island Studies, Island Studies Journal’, 4; Hay, ‘A Phenomenology of Islands’, 20.

⁷ Margaret Mead, *Coming of Age in Samoa. A Psychological Study of Primitive Youth for Western Civilisation* (New York: William Morrow & Co., 1928).

⁸ Baldacchino, ‘The Coming of Age of Island Studies’, 274.

own”.¹ She explained that it was for these reasons that she decided “to go not to Germany or to Russia, but to Samoa, a South Sea island”.² She was interested in the distance between the cultural, religious and social norms that she knew and those of the Samoan islands, and not in their specific insular condition.

Even if Margaret Mead didn’t state in her introduction that the insular context interested her, it is possible that it played an attractive role. In the 1950s, some twenty years after the publication of *Coming of Age in Samoa*, anthropologists put forward “[t]he theoretical importance of islands for studying human social evolution”.³ For anthropologists, islands offered “quasi laboratory settings”⁴ with “controlling variables”⁵. Ben Fitzhugh and Terry L. Hunt explain how

[m]any anthropologists interested in understanding cultural evolution felt they were faced with a profoundly difficult task on continents, where untangling human history would be confounded by an immeasurable degree of diffusion, cultural infiltration, and replacement. But on more remote islands, where colonization events would have been rare and cultural interaction presumably more limited, it was assumed that ethnographic variability would more closely relate to unique evolutionary histories. Remote islands, it seemed, offered the nearest analogue to cultural petri dishes accessible to scholars of cultural evolution.⁶

This view was strengthened in 1963 with the work of Robert H. MacArthur and Edward E. Wilson on island biogeography.⁷ For the archaeologist Robert E. Dewar, “it is the uniformity of evolutionary processes across islands and continents that has stimulated the notion that islands could serve as “laboratories,” or natural experiments in cultural evolution”⁸.

This idea was not new. Penny Fielding explains how “Arthur Edmondston’s 1809 account identifies the isolated northern islands as an early kind of Galapagos of human society ready to instruct the scientific mind”⁹. She quotes Arthur Edmondston when he writes that

[t]he history of a country circumscribed in extent, and detached in its situation by exhibiting its varied internal relations in an isolated form, is, perhaps, the best calculated of any, for the attainment of correct notions of human society. Under such circumstances, the whole range of the

¹ Mead, *Coming of Age in Samoa. A Psychological Study of Primitive Youth for Western Civilisation*, 8.

² *Ibid.*, 9.

³ Ben Fitzhugh and Terry L. Hunt, ‘Introduction: Islands as Laboratories: Archaeological Research in Comparative Perspective’, *Human Ecology* 25, no. 3 (1 September 1997): 380.

⁴ Baldacchino, ‘Islands, Island Studies, *Island Studies Journal*’, 4.

⁵ *Ibid.*, 6.

⁶ Fitzhugh and Hunt, ‘Introduction’, 380.

⁷ R. H. MacArthur and E. O. Wilson, ‘An Equilibrium Theory of Insular Zoogeography’, *Evolution* 17 (1963): 373–87. Quoted in: Barrowclough, ‘Expanding the Horizons of Island Archaeology. Islandscapes Imaginary and Real, Ely: The Case of the Dry Island’, 27–28; Drouin, ‘Quelques Figures de L’insularité. Réflexions Sur La Biogéographie’, 201; Hay, ‘A Phenomenology of Islands’, 20.

⁸ Dewar, ‘Does It Matter That Madagascar Is an Island?’, 482.

⁹ Penny Fielding, ‘Ultima Thule: The Limits of the North’, in *Scotland and the Fictions of Geography*, Cambridge Studies in Romanticism (Cambridge: Cambridge University Press, 2008), 144.

political system appears, as it were, spread out before us, and its various branches can be studied, either in detail or in conjunction.¹

But this conception of the island as an isolated space that could serve as a laboratory of cultural evolution was questioned and progressively abandoned. One of the reasons was that “[m]any in anthropology have come to regard more particularistic “history” [...] as of greater significance in accounting for patterns of human diversity than the explanatory qualities of evolutionary theory”². Another reason was that “[i]t has also become increasingly evident that even the most remote islands of the Pacific were not the isolates the early analysts had assumed for methodological convenience”³. Indeed David A. Barrowclough specifies that “it is becoming clearer that cultural isolation is a phenomenon that rarely occurred on islands and thinking of them as laboratories can be misleading and inaccurate”⁴.

The “continuum formed by islanders, land and sea”⁵

The concept of laboratory has its limits. One of them is that when islands are inhabited by human beings they are not isolated. John R. Gillis argues that “there is no culture in the world that can be said to be fixed and bounded, separate from other cultures”⁶. Here, it is especially interesting to note that John R. Gillis after writing a book on the history of islands in Western cultures published eight years later a book on the history of seacoasts.⁷ Indeed the foreshore is for several scholars the metaphor of the island as a place of exchanges. In his article, “A Phenomenology of Islands”, Pete Hay recalls the importance of the edge “to the constructions of islandness”⁸. He explains that for some scholars the beach is “a transit point that guarantees enrichment within islands” whilst for others it is a place of “instability”.⁹ Eventually he writes that “[p]erhaps the island edge is more than just permeable; perhaps it is actually the portal to roads and sea-trails fanning out to other (is)lands, a natural bridge to the world beyond”¹⁰.

¹ Arthur Edmondston, *A View of the Ancient and Present State of the Zetland Islands; Including Their Civil, Political, and Natural History; Antiquities and an Account of Their Agriculture, Fisheries, Commerce, and the State of Society and Manners*, vol. 1 (Edinburgh: John Ballantyne and Co., 1809), vi., quoted in Fielding, ‘Ultima Thule’, 144.

² Fitzhugh and Hunt, ‘Introduction’, 381.

³ Ibid.

⁴ Barrowclough, ‘Expanding the Horizons of Island Archaeology. Islandscapes Imaginary and Real, Ely: The Case of the Dry Island’, 27–28.

⁵ Dawson, ‘Archaeology, Aquapelagos and Islands Studies’, 17.

⁶ John R. Gillis, *Islands of the Mind: How the Human Imagination Created the Atlantic World* (New York: Palgrave Macmillan, 2004), 119., quoted in Hay, ‘A Phenomenology of Islands’, 23.

⁷ Gillis, *Islands of the Mind*; Gillis, *The Human Shore*.

⁸ Hay, ‘A Phenomenology of Islands’, 21.

⁹ Ibid., 23.

¹⁰ Ibid.

This view is shared by Elizabeth McMahon. She argues that “[the] binarism [between land and water] has been roundly criticised in Island Studies, most profoundly by Epeli Hau’ofa’s description of the Pacific as a sea of islands”¹. Indeed in his decisive work, Epeli Hau’ofa writes that

[t]heir universe [i.e. the universe of the Oceania inhabitants] comprised not only land surfaces but the surrounding ocean as far as they could traverse and exploit it, the underworld with its fire-controlling and earth-shaking denizens, and the heavens above with their hierarchies of powerful gods and named stars and constellations that people could count on to guide their way across the seas.²

In his writing, Epeli Hau’ofa claims that there is no “hard-edgeness”³ in the world of the inhabitants of Oceania. In fact, scholars believe now that “islanders are generally more aware of, and in touch with, the worldwide web of human intercourse than others may be”⁴. The foreshore becomes “a site of possibility”⁵. Pete Hay eventually concludes that “[c]onnectedness describes the island condition better than isolation”⁶. The idea that the foreshore or the coast offers a portal towards exchanges and trades appears already in the writings of Adam Smith in the 18th century. The Scottish classical economist explains how “[a]s by means of water-carriage a more extensive market is opened to every sort of industry than what land-carriage alone can afford it, so it is upon the sea-coast [...] that industry of every kind naturally begins to subdivide and improve itself”⁷. The importance of sea transport in the early modern ages is underlined by various studies,⁸ of which numerous works deal with the exchanges with the colonies on the other side of the Atlantic Ocean,⁹ others deal mostly with daily life transport.¹⁰

Eventually looking at the margin, at the place where the sea and the land meet helps to understand the various possibilities and opportunities that a life on an island can mean. It

¹ Elizabeth McMahon, ‘Reading the Planetary Archipelago of the Torres Strait’, *Island Studies Journal* 8, no. 1 (2013): 56.

² Epeli Hau’ofa, ‘Our Sea of Islands’, in *We Are the Ocean: Selected Works* (Honolulu: University of Hawaii Press, 2008), 31.

³ Hay, ‘A Phenomenology of Islands’, 22.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid., 23.

⁷ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, An Electronic Classics Series Publication (Hazleton: PSU-Hazledton, 2005), 22., quoted in Penny Fielding, *Scotland and the Fictions of Geography*, Cambridge Studies in Romanticism (Cambridge: Cambridge University Press, 2008), 147.

⁸ A good summary of Scottish transports between 1600 and 1800 is in: Alastair Durie, ‘Movement, Transport and Travel’, in *A History of Everyday Life in Scotland, 1600 to 1800*, ed. Elizabeth A Foyster and Christopher A. Whatley (Edinburgh: Edinburgh University Press, 2010), 252–72.

⁹ See for example the seminal work of Pierre Chaunu: *Pierre Chaunu, Séville et l’Atlantique*, 12 vols (Paris: SEVPEN, 1955).

¹⁰ On the daily coastal transport, see for example: David Worthington, ‘A “Passage Exceeding Hazardous”? The Ferries of the Beauly, Cromarty and Dornoch Firths before 1900’, *University of the Highlands and Islands Blog*, 19 May 2014, <https://thinkuhiblog.wordpress.com/>.

gives to the human being a real possibility of agency: humans are not the subjects of the islands; they participate in defining its status and level of connectedness. Works on coastal society contributed to develop this line of thoughts. The work of Emmanuelle Charpentier on the Breton littoral society, the work of David Worthington on the Scottish coasts, the works of Isaac Land, Michael Pearson and John R. Gillis on the (American) coastal societies as well as the works of the Norwegian researchers on what has been qualified as a ‘coastal culture’, *kystkultur*, all lead to a positive appreciation of the role of the foreshore in the coastal societies’ relationships with land and sea.¹ This appreciation of the shore, as a porous place of exchanges, both in island studies and coastal history is highlighted in John R. Gillis’ article ‘Not continents in miniature: islands as ecotones’ published in 2014 in the *Island Studies Journal*. In his article he explains how shores and islands – mostly small islands – are *ecotonal*.² They are “places where ecosystems intersect, overlap and exist in creative tension with one another”.³ He underlines the fact that Michael Pearson in his work on the Indian Ocean’s shores has emphasised the same: littorals are porous and connective.⁴ It is therefore “the continuum formed by islanders, land and sea” that should be investigated.⁵ Philip Hayward and Helen Stratford both stress the importance of the relationship between land and sea and the significance of the foreshore in this relationship.⁶ Helen Dawson analyses thoroughly this relationship when she writes that “[t]his symbiotic relationship is borne by the dynamic interactions between islanders, their lands and seas, and their connections with mainland communities”.⁷ The archaeologist keeps on explaining that “[f]rom an archaeological perspective, land and sea shed light on each other”⁸: she details how onshore data can provide information on the life offshore and vice-versa. Her analysis is pertinent for

¹ Charpentier, ‘Le Littoral et Les Hommes’; Worthington, ‘A “Passage Exceeding Hazardous”? The Ferries of the Beaulieu, Cromarty and Dornoch Firths before 1900’; Isaac Land, ‘The Coastal History Blog’, *Port Towns and Urban Cultures*, accessed 20 July 2015, <http://porttowns.port.ac.uk/coastalhistory/>; M. N. Pearson, ‘Littoral Society: The Concept and the Problems’, *Journal of World History* 17, no. 4 (2006): 353–73; Gillis, *The Human Shore*; Dag Hundstad, ‘The Norwegian Term “Coastal Culture” and the Movement Associated with It’, *Deutsches Schiffarchiv* 30 (2008): 421–26.

² “The word ‘ecotone’ was used in 1904 to indicate a space that separated. By 1926, it had come to be associated with connection, and its current sense of a transitional space. It was first applied to water in the 1960s. *Ecotone* combines the Latin term *eco* (derived from the Greek word *oikos*, meaning house) with *tone*, which means tension in Greek (Oxford English Dictionary). It is not a passive or static place, but one that is dynamic, belonging as much to history as to nature. Ecotones not only produce the greatest biodiversity, but the greatest rates of change.”, in Gillis, ‘Not Continents in Miniature: Islands as Ecotones’, 159.

³ *Ibid.*, 155.

⁴ *Ibid.*, 156.

⁵ Dawson, ‘Archaeology, Aquapelagos and Islands Studies’, 17.

⁶ *Ibid.*, 19; Hayward, ‘Aquapelagos and Aquapelagic Assemblages. Towards an Integrated Study of Island Societies and Marine Environments’, 1; Elaine Stratford et al., ‘Envisioning the Archipelago’, *Island Studies Journal* 6, no. 2 (2011): 115.

⁷ Dawson, ‘Archaeology, Aquapelagos and Islands Studies’, 19.

⁸ *Ibid.*

any historians concern with island history. As historians, we use whatever sources can shed light on our research questions: archaeological material, written sources, oral sources, iconographic sources, etc. Our sources on the sea-life of islanders are found in the archives where they are kept from the damage of water. Indeed writing the history of islands is a challenge because our sources and materials are on land, they do not navigate on the sea but once we've considered that the island is both its land and the surrounding sea then we can start to investigate properly the localised history of islanders.

Local or localised general history¹

Traditions in local history vary greatly according to the different national historiographies. In Norway, local history participated in building the Norwegian state in the 19th century and some material features of this local history were preserved in the open air museums that developed in Norway at the same time. Marc Bloch, who visited Scandinavian open air museums at the end of the 1920s,² explains that “it should not be forgotten that in Norway, owing to country-specific historical conditions, it is the farmers who were the appointed guardians of national manners and there, more than anywhere else, the three terms democracy, peasant traditions and nationality tend to be synonymous.”³ Local rural history has been important in the development of history as an academic discipline in Norway. Today, even though for some historians there is a division between local history which is “the presentation of the local past with the local population as the primary intended readership”⁴ and localised general history, *lokalisert historie*, “[which] use empirical data from the local community in order to illuminate general structures or processes”,⁵ it seems fairly shared between Norwegian historians that local history is a way to connect the local and the global and to ask questions at the micro-level. These questions offer the possibility for new

¹ I would like to thank Knut Kjeldstadli for pointed out the difference between case studies and localised general history at the occasion of the Atna seminar in October 2012.

² Marc Bloch, ‘Musées Ruraux, Musées Techniques’, *Annales D’histoire Économique et Sociale* 2, no. 6 (1930): 248–51.

³ “il convient de ne pas l’oublier, en Norvège, par suite des conditions historiques propres à ce pays, ce sont les milieux paysans qui ont été les gardiens attitrés des mœurs nationales et là, beaucoup plus que nulle part ailleurs, les trois termes de démocratie, de traditions paysannes et de nationalité tendent à être synonymes.”, in Marc Bloch, ‘Mr Halvdan Koht, Les Luttés Des Paysans En Norvège Du XVIIe Au XIXe Siècle’, *Annales D’histoire Économique et Sociale* 3, no. 10 (1931): 282.

⁴ Harald Winge, ‘Local History’, in *Making a Historical Culture: Historiography in Norway*, ed. William H. Hubbard (Oslo: Scandinavian University Press, 1995), 254.

⁵ *Ibid.*, 256.

interrogations and a different understanding of social issues.¹ In French rural history, this definition can be compared with the *monographies régionales* written from the 1970s to the early 1990s. The Annales School strongly influenced the development of these *monographies* and the way rural history was then written. In his PhD dissertation, Samuel Leturcq details the history of these regional studies.² When it comes to the history of islands and of their societies in the early modern times, one French historian should be mentioned. In 1987 Dominique Guillemet wrote a traditional regional monography on the island of Belle-Île-en-Mer. He focuses on the interactions between landlords and tenants as well as the development of what he calls the “*seigneuries agro-maritimes*”, agro-maritime estates.³

In Britain, local history groups developed in universities⁴ but it seems that local history has had bad press. In his introduction of *Toons and Tenants*, Brian Smith asks the following question: “Why study the rural communities of a poor country?” and he answers: “I ask because metropolitan historians sometimes regard regional studies with disdain, unlike their colleagues in other disciplines.”⁵ He then quotes Raphael Samuel who wrote that:

In archaeology [the region’s] relics are given equal weight to those of England in reconstituting patterns of religion or settlement. Sociologists, discussing ‘communities in Britain’, will refer as easily to family and community in Co. Clare – or villages on the Welsh border – as to family and kinship in East London. [...] Matters are quite different for the student, or teacher, of British history...⁶

It is within these traditions that I understand the study of the Shetland Islands communities. In the Norwegian and French traditions the environmental and geographical settings are primordial since the beginning of the 20th century. This can be exemplified with the prominent place of Marc Bloch in the two historiographical traditions.⁷ In 1945, Henri Baulig, a “Strasbourggeois” like Marc Bloch,⁸ made him a historian-geographer in his article, “Marc

¹ Aud Mikkelsen Tretvik, *Lokal Og Regional Historie* (Oslo: Samlaget, 2004); Aud Mikkelsen Tretvik, ‘Grenda Bliir Global. Om Det Globale I Det Lokale Og Det Lokale I Det Globale’, *Heimen*, no. 48 (2011): 115–28.

² Samuel Leturcq, *Un village, la terre et ses hommes: Toury en Beauce, XIIe-XVIIe siècle* (Paris: Éditions du CTHS, 2007).

³ Dominique Guillemet, ‘Insularité et archaïsmes, paysans et seigneurs à Belle-Ile-en-mer, vers 1660-1760’ (Université de Poitiers, 1987). ; See also his book on French Western Islands: Dominique Guillemet, *Les Îles de l’Ouest de réhat À Oléron: Du Moyen Age À La Révolution* (La Crèche: Geste Editions, 2007).

⁴ Tretvik, *Lokal Og Regional Historie*, 40–42.

⁵ Brian Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899* (Lerwick: Shetland Times Ltd, 2000), xiii.

⁶ Raphael Samuel, ‘In Search of Britain’, *New Statesman and Society*, 25 August 1989, 21–22. Quoted in: Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, xiii.

⁷ See for example: Steinar Imsen, ‘Marc Bloch Og Arven Etter Edvard Bull’, *Heimen*, no. 4 (2010): 293–314; William H. Hubbard et al., eds., *Making a Historical Culture: Historiography in Norway* (Oslo: Scandinavian University Press, 1995); Audrey Beaudouin, ‘Marc Bloch and Norway’, Essay, KULT8851, Vår 2011: Vitenskapshistoriske Tema (Trondheim: NTNU Norges teknisk-naturvitenskapelige universitet, 2011).

⁸ André Burguière, ‘Histoire D’une Histoire: La Naissance Des Annales’, *Annales. Économies, Sociétés, Civilisations* 34, no. 6 (1979): 1349.

Bloch, géographe”¹. The geographer Paul Vidal de la Blache had a great influence on Marc Bloch’s work. The French geographer refused to give to the natural environment the biggest role in the development of populations and their cultures. He explained that sometimes populations confronted to similar milieu behaved differently within their environment: it’s the theory of possibilism against determinism. The Vidalian geography offered new perspectives in terms of issues, research questions and work at a local scale.² Although the Vidalian geography faced criticisms,³ the use of the “double dialectic relation”: time/space and human groups/natural environment contributed to the “intellectual matrix” of the *Annales* historians.⁴ This is also visible in Norway when Jørn Sandnes quotes Andreas Holmsen who said that “history without geography is nonsense”⁵.

As a scientific project, the local history of the Shetland Islands communities embraces the whole environment of the island, both its land and sea. It also embraces the multiplicity of relations between people and places. In fact, “[i]sland people need to be studied in relation to the network of social and economic relationships that bind them to each other and also to the outside world, moving between the local scale and the national and international”⁶.

The history of islands is still studied and will keep on being studied not necessarily because islands might be easier to circumscribe and small islands can be used “as manageable systems to test and explore conceptual store”⁷ but because like any other places, in the mountains, valleys or forests, they offer a door to enter into the local and general history of mankind. What can change though is the perspective with which we study this history. Great works have been written recently on islands in two different historical fields: environmental history and “histoire à parts égales”, “equal history”. John Gillis dedicated the *Human Shore* published in 2012 to “Rachel Carlson, who brought us all back to the sea”.⁸ Rachel Carson, an eminent marine biologist, was an important figure for the North American environmental movements and the development of environmental history on this continent.⁹ Her books, *The*

¹ Henri Baulig, ‘Marc Bloch, Géographe’, *Annales D’histoire Sociale* 8, no. 2 (1945): 5–12.

² Jacques Revel, ‘Histoire et Sciences Sociales : Les Paradigmes Des Annales’, *Annales. Économies, Sociétés, Civilisations* 34, no. 6 (1979): 1366, doi:10.3406/ahess.1979.294131.

³ Burguière, ‘Histoire D’une Histoire’, 1351.

⁴ Ibid.

⁵ “Historie uten geografi er nonsens”, in Jørn Sandnes, ‘Geografi Og Geologi’, in *Handbok I Lokalhistorie: Faget Og Metodene* (Oslo: Universitetsforlaget, 1983), 106.

⁶ Barrowclough, ‘Expanding the Horizons of Island Archaeology. Islandscapes Imaginary and Real, Ely: The Case of the Dry Island’, 30–31.

⁷ Baldacchino, ‘Islands, Island Studies, Island Studies Journal’, 9.

⁸ Gillis, *The Human Shore*, v.

⁹ Eliza Griswold, ‘How “Silent Spring” Ignited the Environmental Movement’, *The New York Times*, 21 September 2012, <http://www.nytimes.com/2012/09/23/magazine/how-silent-spring-ignited-the-environmental->

Sea Around Us and *Silent Spring* are frequently quoted as references in Environmental History books.¹ North American scholars published in the last decade works localised on islands, such as John Gillis' *Islands of the Mind*, John R. McNeill's *Mosquito Empire* – and Jared Diamond's *Collapse*.² Romain Bertrand's *L'Histoire à parts égales*³ came out in 2011. But these books do not touch upon the history of Shetland Islands, they respectively study other Atlantic Islands, Caribbean Islands and Insulindian Islands. The question now is: what has been the Shetland historiographical tradition when it comes to the “island question”?

movement.html; Lawrence Culver, Christof Mauch, and Katie Ritson, eds., ‘Rachel Carson’s Silent Spring: Encounters and Legacies’, *RCC Perspectives*, no. 7 (2012).

¹ Rachel Carson, *The Sea Around Us* (Oxford: Oxford University Press, 1951); Rachel Carson, *Silent Spring* (Boston: Houghton Mifflin, 1962). In 2009, Munich's Ludwig-Maximilians-Universität and the Deutsches Museum founded the Rachel Carson Center for Environment and Society (RCC), “an international, interdisciplinary center for research and education in the environmental humanities and social sciences” (Rachel Carson Center for Environment and Society – LMU, 2015, <http://www.carsoncenter.uni-muenchen.de/index.html>). The Centre publishes every year an online journal, *RCC Perspectives* and a half-yearly, peer-reviewed journal, *Global Environment*.

² Gillis, *Islands of the Mind*; J.R McNeill, *Mosquito Empires: Ecology and War in the Greater Caribbean, 1620-1914 (New Approaches to the Americas)* (Cambridge: Cambridge University Press., 2010); Jared M Diamond, *Collapse: How Societies Choose to Fail or Succeed* (New York: Penguin Books, 2011). Jared Diamond isn't an academic historian. However, the immense public success of his book *Collapse* and the attention he placed in this book on island societies and their resources' management deserve to be mentioned here.

³ Romain Bertrand, *L'Histoire À Parts Égales: Récits D'une Rencontre Orient-Occident* (Paris: Seuil, 2011).

Shetland history, the sea, the land and the communities

In the Shetland historiographical tradition, historians have always tried to figure out the interface between land and sea. Sometimes they gave more room to the land than to the sea or vice-versa. In this short part, I'll explain how historians – and other academics – working on the Shetland Islands dealt with its insular features.

A brief Shetland historiography

Shetland history in Scottish and Norwegian historiographies

Shetland holds a specific place in both Scottish and Norwegian historiographies. Randi Bjørshol Wærdahl in a paper entitled “The Norwegian realm and the Norse World: a historiographic approach” and Torhild Øien in her Master thesis, “Orknøyene og Shetland I norsk og skotsk historieforskning” and a subsequent article in *Northern Studies*, have detailed how Shetland history has been studied within both traditions.¹ These historiographies diverge on at least two points which, consequently, contribute to build different narratives of Shetland history.

History played an extremely important role in the nation-building process in Norway in the 19th century.² The Norwegian historians, such as Peter Andreas Munch (1810-1863), Alexander Bugge (1870-1829) and Steinar Imsen (1944-), started early on to study the Norwegian medieval kingdom and its “scatlands of the West” – Iceland, Shetland, Orkney and even the western islands of Scotland. This western extension of the kingdom was a proof of the strength and power of Norway. In the meantime, “Scottish historians”, explains Randi Bjørshol Wærdahl, “have traditionally focused on the Scottish kingdom’s expansion and territorial consolidation in the Early and high Middle Ages, and especially its relationship with England. [...] [They] have paid little attention to development in the realm’s periphery; in general, the Norse element has played a limited part in Scottish medieval research and popular representation of Scottish history.”³ In a footnote of her article, Torhild Øien

¹ Randi Bjørshol Wærdahl, ‘The Norwegian Realm and the Norse World: A Historiographic Approach’, in *The Norwegian Domination and the Norse World, C.1100-c.1400*, ed. Steinar Imsen (Trondheim: Tapir Academic Press, 2010), 35–57; Torhild Øien, ‘Orknøyene og Shetland i norsk og skotsk historieforskning’ (Master thesis, Universitet i Oslo, 2002); Torhild Øien, ‘The Northern Isles - between Two Nations’, *Northern Studies* 39 (2005): 80–104.

² Wærdahl, ‘The Norwegian Realm and the Norse World: A Historiographic Approach’, 47; Knut Kjeldstadli, ‘History as Science’, in *Making a Historical Culture: Historiography in Norway*, ed. William H. Hubbard et al. (Oslo: Scandinavian University Press, 1995), 55.

³ Wærdahl, ‘The Norwegian Realm and the Norse World: A Historiographic Approach’, 38–39.

explained how “Norwegian historians (at least in the past) have preferred *vesterhavsøyene* [Western Ocean islands] as a combined term for Orkney and Shetland, whereas Scottish historians still use ‘The Northern Isles’. The names reflect two geographical points of view.”¹ Before the 1980s, Scottish historians showed a certain disinterest for these Northern islands, which were – and still are in certain studies – perceived as too foreign, too different. They concentrated their attention on the Western islands and Highlands as they were deemed more representative of a perceived Scottish identity – Celtic and/or Gaelic.² More recently, the attention on the building of the Scottish state in the medieval period has led historians to focus on the relationship between mainland Scotland and its islands of the North.³

The interest of Norwegian academic historians in the Northern isles and the apparent disinterest of their Scottish counterparts led to the writing of a two-level Shetland history. These two levels weren’t exclusive but inclusive, complementary. On the one hand, the Norwegian historians included the Shetland Islands in a comprehensive history of Norway, assessing the differences between the various regions of the Kingdom but always including their trajectories in a more global narrative.⁴ On the other hand, Scottish historians who wrote on Shetland were, for the vast majority of them, local, Shetland-born historians or academic historians who had direct or indirect contacts with Shetland.⁵ This might explain why in her article, Torhild Øien “[chose] not to differentiate between historians from the islands and those from the mainland of Scotland”.⁶ The most important thing, however, is that most of these historians, until the late 1970s, wrote a local history which either blamed ‘Scottification’ or contributed to the ‘Norwegianisation’ of the islands. At the University level (and local level), Gordon Donaldson wrote in 1978 that “‘unity of race’ [one is tempted to enquire, what race!] was ‘disrupted by the immigration of a considerable number of Scots into the islands

¹ Øien, ‘The Northern Isles - between Two Nations’, 86.

² Ibid., 90; Wærdahl, ‘The Norwegian Realm and the Norse World: A Historiographic Approach’, 48; Hugh Trevor-Roper, ‘The Invention of Tradition: The Highland Tradition of Scotland’, in *The Invention of Tradition*, ed. Eric Hobsbawm and Terence Ranger, First published 1983 (Cambridge: Cambridge University Press, 2013), 15–41.

³ See for example: Alex Woolf, *From Pictland to Alba, 789-1070*, New Edinburgh History of Scotland 2 (Edinburgh: Edinburgh University Press, 2007); Quoted in: Wærdahl, ‘The Norwegian Realm and the Norse World: A Historiographic Approach’, 39.

⁴ Øien, ‘The Northern Isles - between Two Nations’, 84. See for example: Steinar Imsen, *Norsk bondekommunalisme fra Magnus Lagabøte til Kristian Kvart*, vol. Del 1: Middelalderen (Trondheim: Tapir, 1990); Steinar Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’, *New Orkney Antiquarian Journal* 1 (1999): 53–65.

⁵ This was for example the case of Croft Dickinson, an English-born historian, professor at the University of Edinburgh and a close colleague of Gordon Donaldson, a Scottish historian of Shetland origin.

⁶ Øien, ‘The Northern Isles - between Two Nations’, 82.

from the fifteenth century onwards”¹. In addition to this extremely negative approach to Scottish immigration and change, a very positive vision of Norway and of Norwegian history occurs in the work of some authors, inherited from the 19th-century romantic vision of Shetland. Without underestimating the high quality of the work of Ian Tait in his *Shetland vernacular buildings* published in 2012,² one must underline his passion for all things Norwegian.³ At the difference with Alexander Fenton’s *Northern Isles* in which the Scottish ethnologist compared Shetland material culture with Scottish, Norwegian, Irish, and, less often, with other regions’ material cultures,⁴ Ian Tait focuses mostly on the Norwegian vernacular buildings in a comparison with Shetland’s.⁵ His fixation on Norwegian heritage is particularly striking in its use of Norwegian spelling for Shetland words, which Brian Smith described in a review as “eccentric”.⁶ However with the advance of other fields of history such as environmental history, Shetland has recently found a place in Scottish academic history, and not only in medieval history. Indeed, T.C. Smout’s collection of essays entitled *Exploring Environmental History*, offers a wide-ranging analysis of Scotland environmental past in the early modern times with examples from all the regions under Scottish rule at that time: the Shetland Islands are no exception.⁷ On the local scene, published papers presented at the Viking Congress of 1954 are a perfect example of what Brian Smith as described as ‘legal determinism’.⁸ Local historians and British academics, such as John Stewart and Croft

¹ Gordon Donaldson, ‘Norse and Scottish Law in Shetland: The Background’, in *Shetland Report*, ed. The Nevis Institute (Edinburgh, 1978), 186; Quoted and annotated in: Brian Smith, “‘Lairds’ and ‘Improvement’ in 17th and 18th Century Shetland”, in *Lairds and Improvement in the Scotland of the Enlightenment*, ed. T. M. Devine (Dundee, Glasgow: Scottish Historical Association, 1979), 11. Gordon Donaldson “was born (in Edinburgh in 1913) to a postman of Shetland stock, and he never forgot his boyhood adventures in Yell [...]. Shetland was a bedrock to which he returned constantly”. After a PhD at London University on ecclesiastical history, he worked as an Assistant Keeper at Register House in Edinburgh and “[i]n 1947 he made the central move of his life, joining W. Croft Dickinson in Edinburgh University’ department of Scottish History, where he was to remain for thirty-two years.”, in Marcus Merriman, ‘Gordon Donaldson, 1913-1993: An Appreciation’, *The Scottish Historical Review* 72, no. 194 (1 October 1993): 240.

² In a review of Ian Tait’s book, Brian Smith explained that even if “Tait sometimes depends on the bogus social history of antiquaries” and “[h]is remarks about alleged ‘Scottish feudalisme’ (p. xxxiv) and the ‘Scottification of culture’ from the 16th onwards (p. 15) [...] are not sensible accounts of what happened [...] in Shetland”, “Tait doesn’t suggest, as others have done, that the arrival of Scots here had a devastating effect on local culture. His book says the opposite: it celebrates the plebeian society which created the townships.”, in Brian Smith, ‘Shetland Vernacular Buildings 1600-1900’, *The New Shetlander*, no. 260 (2012): 34–35.

³ Ian Tait, *Shetland Vernacular Buildings, 1600-1900* (Lerwick: Shetland Times, 2012).

⁴ Alexander Fenton, *The Northern Isles: Orkney and Shetland* (East Linton: Tuckwell Press Ltd, 1997).

⁵ To a lesser level, he compares also Shetland material culture with Hebridean, Icelandic and Faroese material cultures. Iceland, the Faroes and the Hebrides belonged to a Norwegian sphere of influence in the medieval ages.

⁶ Smith, ‘Shetland Vernacular Buildings 1600-1900’, 35.

⁷ T. Christopher Smout, *Exploring Environmental History: Selected Essays* (Edinburgh: Edinburgh University Press, 2009).

⁸ John Stewart, ‘Udal Law and Government in Shetland’, in *The Viking Congress*, ed. William D. Simpson, Aberdeen University Studies 132 (Edinburgh: Oliver and Boyd, 1954), 84–111; William C. Dickinson, ‘Odal Rights and Feudal Wrongs’, in *The Viking Congress*, ed. William D. Simpson, Aberdeen University Studies 132 (Edinburgh: Oliver and Boyd, 1954), 142–60.

Dickinson,¹ promoted the idea that “Scotsmen [...] introduced something called ‘feudalism’ into Shetland, and obliterated the native, ‘odal’ system of landholding”.² This deterministic and simplistic view of Shetland history has been deconstructed, and a more nuanced, balanced and reasoned approach of the situation between Scotland, Norway and the Dano-Norwegian Kingdom in the medieval and early modern ages has been developed by local historians such as William P. L. Thomson and Brian Smith.³ The shift of focus, from deterministic, racial and legal histories to transnational and environmental histories has also led to look more at the similarities and the interactions between Scotland and the Northern Isles than at the differences.

The island as a scientific object

To my knowledge, there is no methodological work that deals with the insularity of the Shetland Islands throughout history. Nevertheless some historians and other academics pointed out the specificity of Shetland’s location.

First, it is important to note that sociologists, anthropologists and ethnologists studied amply the Shetland Islands even if these islands are located between the North Atlantic Ocean and the North Sea and not the Pacific Ocean. Erving Goffman wrote his PhD dissertation on social interaction after a one-year field study in Baltasound on the island of Unst, the northernmost island of the archipelago.⁴ Between the 1970s and 1987 when he published *Whalsay: symbol, segment and boundary in a Shetland island community*, the social anthropologist, Anthony Paul Cohen, spent several months doing research in the Shetland Islands and especially on the island of Whalsay, on the eastern part of the archipelago. Anthony P. Cohen is renowned for

¹ John Stewart was born in Whalsay, Shetland, in 1903 and “in 1950 he embarked on the ambitious project of recording all Shetland place-names”. Croft Dickinson was born in Leicester (England) in 1897. He was appointed professor of Scottish History and Paleography in the University of Edinburgh in 1944. From 1947 to his death in 1963, he was the editor of the *Scottish Historical Review*. His successor as editor, Gordon Donaldson, wrote that “[Croft Dickinson’s] services to Scottish history were many, but none of them surpassed in importance his work on this *Review*.”, in Gillian Fellows-Jensen, ‘John Stewart: Shetland Place-Names. Shetland Library and Museum, Lerwick, 1987. 354 Pp.’, *Northern Studies* 24 (1987): 65; ‘Dickinson, Professor W(illiam) Croft’, *Who Was Who* (Oxford: Oxford University Press, 2014); Gordon Donaldson, ‘An Appreciation of Professor W. Croft Dickinson, C.B.E. M.C. D.Lit. Hon.LL.D. (St Andrews)’, *The Scottish Historical Review* 42, no. 133 (1 April 1963): viii.

² Smith, “‘Lairds’ and ‘Improvement’ in 17th and 18th Century Shetland’, 11.

³ On the question of ‘scottification’, see for example: William P. L. Thomson, ‘The Marriage Treaty and the Pawning of the Islands’, in *The New History of Orkney* (Edinburgh: Birlinn, 2008), 189–205; Wærdahl, ‘The Norwegian Realm and the Norse World: A Historiographic Approach’, 48; Smith, “‘Lairds’ and ‘Improvement’ in 17th and 18th Century Shetland’.

⁴ Erving Goffman, ‘Communication Conduct in an Island Community’ (University of Chicago, Department of Sociology., 1953); Yves Winkin, ‘Goffman À Baltasound’, *Politix* 1, no. 3 (1988): 66–70.

his works on communities, especially rural communities, and on identity.¹ In the 1980s, he published two books that contributed to enlighten the strength of the British social anthropology.² In 1978, Alexander Fenton published one very important book in British ethnology and European ethnology, *The Northern Isles: Orkney and Shetland*.³ His book is a detailed and thorough study of the material culture of these two archipelagos from the Viking Ages to the beginning of the 20th century. Alexander Fenton was at this time Deputy Keeper at the National Museum of Antiquities of Scotland.⁴ His main fields of research were “language, poetry and material culture, especially food, tools and processes, and vernacular buildings”⁵. A little more than twenty five years before, another well-known ethnologist conducted a field-trip in Shetland. In 1951, Rigmor Frimannslund, the Norwegian ethnologist, scholarly visited the archipelago. Her visit would nourish her methodological approach towards comparative study of rural life, settlements and communities.⁶

In the history of Shetland, the island or the archipelago was never the main study object. However, it is interesting to note that even though academics didn't necessarily quote Island Studies scholars, Shetland scholars followed the same trail. Two examples of this parallel movement appeared in 1996 in *Shetland's Northern Links: Language and History*.⁷ In his paper, the archaeologist Ian A. Morrison concludes with a long paragraph that I will quote lengthily here:

[...] Shetland and the other North Atlantic isles have a special attractiveness as a theatre for re-assessing one's ideas on the processes of history. They have advantages for evaluating the extent to which the interplay between elements sustaining continuity and those promoting change has varied from period to period, and for investigating the ways in which human and environmental factors each have the potential to influence the development of a community and its landscape in both long-term and short-term ways. Thus, all these island communities are sufficiently small and relatively well documented for their internal dynamics to be accessible, and there is a rich legacy of previous scholarly study to provide starting points. *The very fact that they are islands also tends to make the evolution of their relationships (for good or for ill) with other societies elsewhere more explicit and visible than is necessarily the case for inland communities set amidst the artificial political boundaries of a continent.*⁸ [My italics]

¹ Sophie Chevalier, Jeanette Edwards, and Sharon Macdonald, 'L'anthropologie de La Grande-Bretagne : Une Discipline En Plein Essor', *Ethnologie Française* 110, no. 2 (2007): 197–212.

² *Ibid.*, 197.

³ Fenton, *The Northern Isles*.

⁴ Heather Holmes, 'Alexander Fenton (1929–2012) CBE, M.A., B.A., D.Litt., Hon. D.Litt. (ABD), FRSE, FRSGS, FSA, FSAScot, HRSA, Professor Emeritus of Scottish Ethnology', *Folklore* 123, no. 3 (2012): 362.

⁵ *Ibid.*

⁶ Jan E. 1947- Horgen et al., 'Studenten Som Kom Før Faget': *Etnolog Rigmor Frimannslund (1911-2006): Et Minneskrift*, vol. 135 (Oslo: Novus, 2011).

⁷ Doreen J. Waugh and Brian Smith, eds., *Shetland's Northern Links: Language and History* (Edinburgh: Scottish Society for Northern Studies, 1996).

⁸ Ian A. Morrison, 'The Auld Rock: The Physical Environment as an Element in the Interplay of Continuity and Change in Shetland's History', in *Shetland's Northern Links: Language and History*, ed. Doreen J. Waugh and Brian Smith (Edinburgh: Scottish Society for Northern Studies, 1996), 89.

This illustrates the fact that Shetland scholars – at least in the case of Ian A. Morrison – shared the idea with other Island scholars that islands could serve as laboratory of human evolution. He didn't write that the Shetland Islands were isolated and therefore offered a vision of the evolution of a society cut off from the rest of the world but what Ian A. Morrison wrote matched what Godfrey Baldacchino described as “quasi laboratory settings”¹ with “controlling variables”² – compared to other areas which are unfortunately never clearly defined by those writers. The second example is the blunt analysis of James R. Coull when he writes that “[d]espite its apparently isolated location, developments in Shetland in all of history have been influenced by repeated external contacts”³. His comment matches the analysis of both Epeli Hau'ofa⁴ and John R. Gillis:⁵ insular societies were and still are connected to the rest of the world. And it is the sea that served as a medium to connect the Shetlanders to the rest of the world for several centuries.

¹ Baldacchino, ‘Islands, Island Studies, Island Studies Journal’, 4.

² Ibid., 6.

³ James R. Coull, ‘Shetland: The Land, Sea and Human Environments’, in *Shetland's Northern Links: Language and History*, ed. Doreen J. Waugh and Brian Smith (Edinburgh: Scottish Society for Northern Studies, 1996), 76.

⁴ Hau'ofa, ‘Our Sea of Islands’.

⁵ Gillis, *Islands of the Mind*.

The land and the sea

In Shetland historiography, the sea holds a special place as it was for century the only way for Shetlanders to connect with the rest of the world. The historiography illustrates the heterogeneity of contacts but also of means of contact. I will not provide the reader with an exhaustive list of the works published on this subject, I solely wish to pin point the variety of undertaken studies.

In the past few years, PhD dissertations about the sea part of Shetland history were completed or just started. Bobby Gear completed a PhD on the history of pelagic fishing in Shetland in the 20th century.¹ Silke Reeploeg defended a dissertation on the intercultural links between Shetland and Norway from the 18th century to the 20th century: in her study, the sea plays a considerable role.² In 2013, Marc Chivers started a PhD on the history of the Shetland boats.³

The boats are important items as means of transportation but also of cultural exchanges. Various scholars studied their different architecture, building materials and the transmission of both skills and knowledge. Two brief sections are, for example, included in the previously mentioned work of Alexander Fenton, “Fishing Boats from Norway”⁴ and “Yoles and Sixerns: Construction and Terminology”⁵. Shetlanders used these boats for several activities and one of them was fishing – for others or for themselves. James R. Coull has written extensively on this subject.⁶ Fishermen were either directly involved with merchants or as fishing tenants they sold their fish to their landlord. In any case they participated to the Shetland trade. Hance Smith studied the variety of exchanges and the Shetland trade in his book entitled *Shetland life and trade, 1550-1914*.⁷ His book as well as Derek Flinn’s *Travellers in a bygone Shetland*⁸ detailed the diverse reasons for travelling and the pedigree of the travellers who visited Shetland. These travellers going to Shetland as well as the fishermen or any other seafarer navigating around Shetland, could be victim of a wreck. Andrew C. O’Dell used the data collected by R. Stuart Bruce to publish a Shetland wreck-

¹ Robert W. Gear, *An Eye to Windward: The Development of Shetland’s Pelagic Fishing Industry* (Lerwick: Shetland Times Ltd, Forthcoming).

² Silke Reeploeg, ‘Northern Maps: Re-Negotiating Space and Place in the Northern Isles and Norway in the Eighteenth Century’, *Northern Scotland* 6, no. 1 (May 2015): 24–48.

³ Mark Chivers, ‘PhD Research into the Shetland Boat: History, Folklore & Construction’, *Unkans. Newsletter of the Shetland Museum and Archives*, 2015.

⁴ Alexander Fenton, ‘The Shore and the Sea’, in *The Northern Isles: Orkney and Shetland* (East Linton: Tuckwell Press Ltd, 1997), 552–62.

⁵ *Ibid.*, 563–70.

⁶ See for example: James R. Coull, *Fishing, Fishermen, Fish Merchants and Curers in Shetland: Episodes in Fishing and Curing Herring and Whitefish* (Lerwick: Shetland Amenity Trust, 2007).

⁷ Hance D. Smith, *Shetland Life and Trade 1550-1914* (Edinburgh: John Donald Publishers Ltd., 2003).

⁸ Derek Flinn, *Travellers in a Bygone Shetland: An Anthology* (Edinburgh: Scottish Academic Press, 1989).

rose¹ while Hance Smith drew a map of the Shetland wrecks.² The cargo of the wrecks contributed to what can be called the economy of the foreshore i.e. what was brought on land by the sea. Therefore the study of wrecks is both a study of the sea as a medium and of the sea-originating opportunities

Indeed wrecks can symbolise what has been quoted earlier as “the continuum formed by islanders, land and sea”.³ Islanders reused on land the boat timber which came from the sea. Several other studies have in themselves the study of this continuum even if it’s done unconsciously. All the studies on the *scattalds* and their transformations through time remind the reader that people who possessed rights on a *scattald* had rights on the foreshore too. The importance of these rights can be found in the works of Brian Smith but also Susan Knox, Jonathan Wills, Michael Jones and James R. Coull to cite only a few – as well as in the work of archaeologists.⁴ The works on Shetland agriculture and “rents from the sea”⁵ acknowledged, amongst other things, the importance of sea-weed as a fertiliser but also made the connection between renting a land and fishing for a landlord in 18th-century Shetland. The works on fisheries and fishing underlined the importance of the related activities done on land: fish curing took place on the beach and fish curers worked there, at the border between land and sea. These fish curers and kelp cutters were not only men. Gender studies scholars have also worked on these interactions between land and sea. Lynn Abrams portrayed the interactions that women had with land and sea and how they very often stood on the border of these two spaces.⁶ I’ve explained that several scholars studied the building of boats but Shetlanders built these boats on land, they also landed their boat on land – the landing place was called a *noost*.⁷ Similarly it was both on land and on sea that Shetlanders transmitted fishing and boat building knowledge to the future generations.

¹ Andrew C. O’Dell, ‘The Shetland Islands Wreck-Rose’, *Mariner’s Mirror* 19 (1933).

² Smith, *Shetland Life and Trade 1550-1914*, 273.

³ Dawson, ‘Archaeology, Aquaplagos and Islands Studies’, 17.

⁴ Brian Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, in *Essays in Shetland History: Heidursrit to T.M.Y. Manson*, ed. Barbara E Crawford (Lerwick: Shetland Times Ltd, 1984), 99–124; Susan Knox, *The Making of the Shetland Landscape* (Edinburgh: John Donald Publishers Ltd., 2003); Jonathan W. G. Wills, ‘The Zetland Method’, in *Essays in Shetland History: Heidursrit to T.M.Y. Manson*, ed. Barbara E Crawford (Lerwick: Shetland Times Ltd, 1984), 161–78; Michael Jones, ‘Perceptions of Udal Law in Orkney and Shetland’, in *Shetland’s Northern Links: Language and History*, ed. Doreen J. Waugh (Edinburgh: Scottish Society for Northern Studies, 1996), 186–204; Coull, ‘Shetland: The Land, Sea and Human Environments’.

⁵ Brian Smith, ‘Rents from the Sea’, in *Toons and Tenants, Settlement and Society in Shetland 1299-1899* (Lerwick: Shetland Times Ltd, 2000), 65–80.

⁶ Lynn Abrams, *Myth and Materiality in a Woman’s World: Shetland 1800-2000*, Reprint (Manchester: Manchester University Press, 2010).

⁷ Shetlandic: *noost* and Norwegian: *naust*, a boat shelter or a place on the beach where the boat is drawn up.

This brief account demonstrates that Shetland scholars have considered the insular character of Shetland in their work. They did so consciously or unconsciously. They stressed the complementary roles that these two spaces played in Shetland history, with the foreshore as their meeting place. Eventually, this brief account also shows that even though it can appear at first that sea and land have been studied separately deeper investigations show the continuous presence of sea, land and foreshore in all these works.

Sources for the study of communities

How can one look at both the sea and the land? Look at the farming activities, the fishing activities and any other activities shaping a community? Or should I say: where can we look? What kind of materials can provide us with data that help the historian to build a narrative detailing the community life and its evolution? The sources that were used in this research and the methods of analysis are not essentially different from the type of sources and methods that are used by European scholars who work on rural life, sociability, conflicts in rural milieu, etc.

Sources about the past of the communities in Shetland can be found in various places. The three main locations are in Lerwick, at the Shetland Museum and Archives (SA), in Edinburgh, at the National Register of Scotland (anciently the National Archives of Scotland) (NRS or NAS) and at the National Library of Scotland (NLS).¹

These sources can be classified in three main categories: 1) the sources that give (almost) direct access to the voices and physical traces of the Shetlanders; 2) those which came both from the practices (of the communities) and from the normative institutions; and 3) the sources that tend to present only the communities from an outsider's perspective – even though some insider's information are sometimes provided.

The voices and the physical traces of the Shetlanders

This study starts with a very conventional source for rural historians interested in the interactions between communities' members: the judicial archives – lay or religious. These

¹ Traces of Shetland's past can also be found in more curious places such as in Rennes, at the Bibliothèque Municipale, where I read the book of Yves-Joseph de Kerguelen de Trémarec, a Breton navigator who sailed in the North Sea between 1767 and 1768 and wrote a few pages about the Shetland Islands and their inhabitants (Yves-Joseph de Kerguelen de Trémarec, *Relation d'un voyage dans la Mer du Nord aux costes d'Islande... et de Norvège fait en 1767 et 1768* (Paris: Prault, 1771), 151–161.).

sources have been extensively studied and criticised in France, Norway and in Great-Britain.¹ Their use has been of great help for the renewal of rural social history since the 1960s. Their biases are also very well known: they don't show the "true" voices of the inhabitants because their voices are mediated through several persons and means (from the clerks to the language in which the proceedings are written) and they tend to show a conflict-packed arena where violence and theft predominates. All these biases have been carefully studied and if used prudentially and a good amount of source criticism these materials are a mine of information on the interactions between inhabitants in a given place. If these sources provide some glimpses of the Shetlanders' voices other sources give us the possibility to touch upon the physical life of the Shetlanders. Archaeoscientists and ethnographers, in their studies, have in France, Norway and Great-Britain,² been providers of a quantity of information on the way the physical landscape of a place looked like at a given time and how human activities transformed it as well as how human activities were affected by the changes in their environment. These second hand sources – archaeological report, pollen analysis, ethnographic studies, etc. – are extremely useful for the historian of communities. They participate in giving a substance to the studied communities.

When I first started to work on the Shetland Islands, I wanted to look at the solidarities in rural areas. In order to do so, the French historians have used the seigniorial archives of *basse*

¹ See for example: Francois Billacois, 'Pour Une Enquête Sur La Criminalité Dans La France d'Ancien Régime', *Annales. Économies, Sociétés, Civilisations*, 1967, 340–49; Arlette Farge, *Vivre Dans La Rue À Paris Au XVIIIe Siècle* (Paris: Folio, 1979); Arlette Farge, *Le Goût de L'archive*, Points Histoire (Paris: Seuil, 1989); Benoît Garnot, ed., *Histoire de La Criminalité de l'Antiquité Au XXe Siècle. Nouvelles Approches*, Actes du Colloque de Dijon, 1991, Séries Du Centre D'études Historiques (Dijon: Éditions Universitaires de Dijon, 1992); François Brizay, Antoine Follain, and Véronique Sarrazin, eds., *Les Justices de Village. Administration et Justice Locales de La Fin Du Moyen Âge À La Révolution*, Actes du colloque d'Angers des 26 et 27 octobre 2001 (Rennes: Presses Universitaires de Rennes, 2003); Philippe Chassaigne, 'Développements Récents Dans L'histoire Du Crime et de La Justice En Grande-Bretagne', in *Histoires D'outre-Manche: Tendances Récentes de L'historiographie britannique*, ed. Frédérique Lachaud, Isabelle Lescent-Giles, and François-Joseph Ruggiu (Paris: Presses de l'Université Paris-Sorbonne, 2001), 247–62; Aud Mikkelsen Tretvik, *Tretter, Ting Og Tillitsmenn. En Undersøkelse Av Konflikthåndtering I Det Norske Bygdesamfunnet På 1700-Tallet.*, Skriftserie Fra Historisk Institutt Akademisk Avhandling 32 (Trondheim: Norges teknisk-naturvitenskapelige universitet, 2000). Aud Mikkelsen Tretvik's work was part of the *Tingbokprosjektet*, the Court Book Project, which started at the Historic Institute at the University of Oslo in 1987 and was under the supervision of professors Sølvi Sogner and Hilde Sandvik. Twenty-three books were published between 1992 and 2005, masters' theses and PhD's dissertations were written and sources were edited ('Tingbokprosjektet', UiO: Institutt for Arkeologi, Konservering Og Historie, 2010, <http://www.hf.uio.no/iakh/forskning/prosjekter/tingbok/>). See also: Eva Österberg and Sølvi Sogner, eds., *People Meet the Law: Control and Conflict-Handling in the Courts, the Nordic Countries in the Post-Reformation and Pre-Industrial Period* (Oslo: Universitetsforlaget, 2000).

² See for example: Christine Rendu, *La Montagne d'Enveig: Une estive pyrénéenne dans la longue durée* (Perpignan: Trabucaire Editions, 2003); 'Kultur Og Natur I Grimsdalen Landskapsvernområde. Sluttrapport Fra DYLAN-Prosjektet', NIKU Tema 38 (Oslo: NIKU Og UiO: Kulturhistorisk museum og Naturhistorisk museum, 2011); Chris Dalglish, *Rural Society in the Age of Reason: An Archaeology of the Emergence of Modern Life in the Southern Scottish Highlands* (New York: Kluwer Academic/Plenum Publishers, 2003).

justice. In Scotland, the Franchise Courts had what French historians call a right of “basse justice”.¹

[The regalities, baronies, stewardries and baileries] formed legal jurisdiction separate from other more familiar local jurisdictions such as sheriffdoms. Within their bounds, the owner of the jurisdiction, usually the local landowner, had a franchise from the Crown to administer justice. [...] The courts dealt with disputes between tenants, in which the civil and criminal seem to combine [...].²

Thomas Gifford writes that in 1733 all the parishes of Shetland had a lay judge, a bailie.³ The court books of only three of them are surviving. Traces of other baileries exist but their court books, if they existed, are now gone.⁴ A document of 1739 gives the names of 15 bailies and their 14 baileries – the island of Unst having two bailies.⁵ For this dissertation, I have worked on the court books of the baileries of Dunrossness, Sandwick and Cunningsburgh, of Northmavine (Quarter of Ollaberrie) and of the North Parish of Unst.⁶ These three court books form the basis of a local investigation at the village level – town or room in Shetland. The following table gives the number of cases judged in the different courts.

Baileries	Years covered by the court book	Number of cases brought before court
Dunrossness, Sandwick and Cunningsburgh	1730-1735	61
Northmavine	1744-1747	25
North Parish of Unst	1731-1733	18
	Total N:	104

¹ Leah Leneman, *Living in Atholl, A Social History of the Estates 1685-1785* (Edinburgh: Edinburgh University Press, 1986), 153.

² Cecil Sinclair, *Tracing Scottish Local History*, ed. Scottish Record Office (Edinburgh: HMSO, 1996), 94–95.

³ Thomas Gifford, *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents* (Sandwick: Thule Print Ltd, 1976), 46.

⁴ SA, GD150/2534B/1, ‘Commission by James Keith of Benholme, Tutor to William Earl of Mortone, to John Cheyne of Essilmonth to Be Bailie of the Parishes of Quhytnes and Wisdail’ 1650; SA, GD150/2534B/7, ‘Commission by George Earl of Morton to Sir John Mitchell of Westshoar, Bart, to Be Bailie of the Parishes of Tingwall, Sandsting and Aithsting, “and the Lands in Quarf Belonging in Property to Him” (I.e. Sir John Mitchell)’ 1734; SA, D25/1/5, ‘Note of Bailies of Shetland Parishes in 1688 Reconstructed by Thomas Mouat of Garth’ c 1800; SA, D18/36/9/19, ‘Typed Transcript and Corrected Proof of Complaint by Thomas Mouat of Garth to Bailie of Delting, circa March 1740. Concerning Trespass of Inhabitants of Firth and Swinister and Collafirth in Island of Linga.’ ca 1740, 36.

⁵ SA, SC12/53/2/ page 259, ‘Obligation by Andrew Sinclair, Baillie of the Parishes of Dunrossness, Sandwick and Cunningsburgh, Robert Sinclair of House, Baillie of Island of Burray, Sir John Mitchell of Westshore Baillie of Parish of Tingwall, Aithsting and Sandsting, John Scott of Melbie Baillie of Parishes of Walls and Sandness, George Greig Bailie of Island of Papa Stour, Alexander Sinclair of Brew Baillie of the Parish of Whiteness and Weisdale, Thomas Gifford of Busta Baillie of Delting, James Cheyne of Tannick, Baillie of the Parish of Northmavine, John Scott of Scarpo, Baillie of the Island of Yell, Andrew Scott of Greenwall and Thomas Mouat, Merchant in Uyasound, Baillies of the Island of Unst, William Bruce of Urie, Baillie of the Island of Fetlar, Robert Bruce of Simbester, Baillie of the Islands of Whalsay and Skerries, Robert Hunter of Lunna, Baillie of Nesting and Lunnasting, and James Greig, Baillie of the Island of Bressay, Parishes of Lerwick, Gulberwick and Quarff, to Robert Dick of Frackafield, for Payment of £40 Sterling, Yearly, to the Commissioners of Excise for North Britain, for the Power to Exact and Levy the Several Excise Duties from the Inhabitants of Zetland, Engrossed on 21 November 1739’ 1737.

⁶ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’ n.d.; NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’ n.d.; SA, D25/3, ‘Fragment of Bailie Court Book of Northmavine, 1744-1747’ n.d.

NAS, RH11/29/1. 'Dunrossness Sandwick and Cunningsburgh: Bailie Court Book', 1731-1735.
SA, D25/3. 'Fragment of Bailie Court Book of Northmavine', 1744-1747.
NAS, RH2/8/33. 'Photostat Copy of Bailie Court Book of the North Parish of Unst, Shetland', 1731-1733.

Table 3: Bailieries: Number of cases

In the bailie court books, the minutes are short but they are an extremely valuable source for the historians.¹ They provide a quantity of data on solidarities, family strategies, agricultural and fishing activities, movements, etc. Having the possibility to study three court books from three different bailieries gives the opportunity to study geographic variations. The court book of Northmavine dating from the middle of the 18th century, just before the abolition of the Franchise Courts, gives the possibility to study the evolution of community life from the 1730s to the 1740s and throughout the second half of the 18th century with the study of the Sheriff Court records. In the parish of Dunrossness, two bailie court books were kept for the years 1694 and 1700. The functioning of these courts and the type of processes were different from the bailie courts of the 1730s and 1740s. These courts predated the reorganisation of the Presbyterian kirk sessions. Therefore, local judges or bailies had to deal with “the process of cursing, swearing etc,”² such as in the bailie court of Dunrossness in 1700 where nineteen cases of cursing, swearing or defaming were dealt with.

After 1747, the bailie courts were replaced by a regional court: the Sheriff Court. The records of the processes held throughout the 18th century in front of the Sheriff Court are numerous. As we can see in the following table, 1,096 cases were brought to the attention of the court between 1700 and 1800. The big increase in court cases from 1770s can be explained at least by two reasons: the first one is practical and the second one is more institutional. It is possible that before the end of the Franchise court (1747) and for the following twenty years, the meagre institutional position of the Sheriff Court in the islands contributed to a bad conservation of the court records. Complementary to this practical reason, it is possible that it took sometime before the Shetlanders from all social groups completely turned their attention towards the Sheriff Court and started using its full capacity. That might also be explained by a temporary increase in a certain type of processes: summons of removing, divisions of

¹ They do not exceed more than 132 lines in length – in the case of the *scattalds*' description of Unst¹ – and are more often comprised between 10 and 20 lines in length. The minute starts with the names and place of residence of the defender(s), the charges and the necessity for witnesses. If witnesses aren't needed or if the witnesses are already present at court, the process can start, otherwise it is postponed to the following day. Then the witnesses testify under oath and the judge announces the verdict and the conditions of its execution. This strict procedure can change slightly from one case to another and from one court to another but most of the time, it is rigorously followed.

² SA, D6/35, 'Minutes of Bailie Court of Dunrossness' 1700, fol. 1.

scattalds and land lying runrig. The Sheriff Court cases differ greatly from the Bailie Court minutes. The cases' records are dense and the bundles comport several pieces.¹

	Sheriff Court Cases
1700-1710	0
1711-1720	1
1721-1730	4
1731-1740	1
1741-1750	20
1751-1760	26
1761-1770	49
1771-1780	182
1781-1790	277
1791-1800	536
Total N:	1,096

SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1900.

Table 4: Sheriff Court: Number of cases

Considering the number of cases as well as the status of the Sheriff Court I decided to focus mainly on a qualitative approach of cases pin pointed after a thorough study of the archives' catalogue.² Therefore, I excluded cases that concerned only affaires between élite members (clergy, merchants, landlords, etc.) or cases located in Lerwick. With this method, I selected about 120 cases between the middle of the 18th century and the early 19th century; they took place outside of Lerwick and involved both members of Shetland's élite and of lower social categories. The Sheriff Court Records, just like the bailie court minutes, contain precious information on rural life. The density and clarity of their documents helped greatly to understand several issues such as the importance of the immemorability of the *scattalds*, Shetland commons and the socio-cultural importance of trust in the communities.

The lay courts were not the only judicial courts in Shetland in the 18th century: the Presbyterian Kirk had well-established Kirk Sessions in all the parishes. In Scotland, the Presbyterian Kirk was a key-stone in the organisation of the early-modern state and its control of the inhabitants. The records of the Kirk Sessions in Shetland are extensive. It is possible that something like 4,000 minutes were judged by these religious courts between 1700 and 1800. In order to keep a study of these cases judged by the Minister and the Elders feasible, I decided to focus my attention on four Kirk Sessions: the Kirk Sessions of 1) Dunrossness, 2)

¹ These pieces can range from one page to twenty or more pages long. The bundles can hold from one piece to more than thirty. In front of the Sheriff Court, the different parties involved with a case work with professional writers and other legal professionals. The pieces are of various natures. They can be petition addressed to the Sheriff depute or his substitute, answers, replies, accounts, plans, letters, etc.

² Indeed, in the Sheriff Court catalogue, the archivists provided details on: the type of document, the title of the document, the date of the document and a detailed description of the pursuer(s) and defender(s). The titles of the document were extremely helpful since the archivists have been extremely constant in indicating what the reason(s) of the case was, for example: "Petition (damage by swine.)" (SA, SC12/6/1770/2, 'Petition (Damage by Swine.)' 1770.).

Northmavine, 3) Sandwick and Cunningsburgh and 4) Unst. A complete transcription of the minutes of the Kirk Session of Sandwick and Cunningsburgh between 1754 and 1842 was done by Angus Johnson at the Shetland Archives. I thank him deeply for letting me use his file. I have also done a 10-year survey for the Kirk Session of Dunrossness (1764-1773) and a five-year survey for the Kirk Session of Northmavine (1758-1762). I have used the records of the parish of Unst more punctually, mostly when comparing special events appearing in the Kirk Session Registers – such as the fast for the Kingdom during the American War of Independence. The folios indicated in the footnotes are those indicated on Scottish Documents Digital Volumes viewer. The minutes of the Kirk Session can be divided in (at least) ten categories.

Annual accounts of the Kirk Session money	Poor Rolls
Appointments of Elders in the parish	Preaches
Money collections	Reappearance ¹
Moral cases (illegitimate child, ante-nuptial fornication, adultery, breach of Sabbath, insults, calumny, petty theft and minor violence, defamation and witchcraft)	Religious celebrations
Days when no sermon could be given because of bad weather conditions or illness	Serving edicts
SA, CH2/112/1. 'Dunrossness Kirk Session Minutes', 1764-1841. SA, CH2/286/1. 'Northmavine Kirk Session Minutes', 1729-1765. SA, CH2/286/2. 'Northmavine Kirk Session Minutes', 1765-1834. SA, CH2/325/1. 'Sandwick and Cunningsburgh Kirk Session Minutes', 1755-1842. SA, CH2/385/1. 'Unst Kirk Session Minutes', 1720-1739. SA, CH2/385/2. 'Unst Kirk Session Minutes', 1797-1843.	

Table 5: Kirk Sessions: Types of minutes

The minutes interesting for the historians of communities are among others: the appointments of Elders which give the names of those in the local communities who are the daily eyes of the Kirk in the life of its parishioners; the moral cases which give clues on the reasons for defamations and loss of trust in the community; the days when no sermon could be given which give information on the impact of the Little Ice Age on the religious life of the communities; the poor rolls which give us an idea of the social stratigraphy of the parish. Presbytery Courts records have been only partially used: the density of the Kirk Sessions records provided early a solid basis for argumentation and narration.

In these sources – bailie courts, Sheriff Court and Kirk Sessions Registers – the voice of the communities' members appear, distorted most of the time, probably transformed and translated by the clerk, but in the complaints, in the defences, in the witnesses' testimonies and in the letters presented at court, the considerations and interests of the Shetlanders can appear. Their solidarities and mistrusts can also arise from a cautious analysis of their defence

¹ When one person had been judged, one of his/her possible sentences was to appear in front of the whole congregation for a certain number of Sabbath in a row. Therefore, they 'reappeared' at court.

strategy, of the geographical pattern of violent acts or of the defamations' words. In these sources, the physical life of the people can also appear: the pursuer(s), defender(s) or witness(es) can detail the setting of their encounters with other participants in the case and very often, cases deal with the material life of the inhabitants, from the theft of their sheep to the destruction of a dyke.

This material life gives the opportunity of seeing aspects of the life of communities. Some sources, mostly second hand sources, provide a more direct access to the material life of the communities usually more difficult to reach for the historians of the texts. Archaeological notes and references can be found in the Canmore, the data base of the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS).¹ Archaeological evidences can help the historians to understand the presence of the community in its landscape as well as the role that this landscape might have played in the socio-cultural interactions between the community's members. Eventually, two ethnographic collections, Alexander Fenton's *The Northern Isles: Orkney and Shetland* and Ian Tait's *Shetland Vernacular Buildings: 1600-1900*,² bring together archaeological data, written sources and comparative facts.³

The norms in the communities

Leaving the physical life of the Shetlanders, we can now turn towards documents that bring to light the norms that framed the communities. In an article that discusses the misconception of Antiquarians on the nature of *tings*, assemblies, in Shetland before the 17th century, Brian Smith explain that "Shetland might have had an althing, a general assembly of free men, during the centuries after the Scandinavian settlement of the islands. If so, it probably met at Tingwall. [...] In the late 13th century Magnus Hakonsson's new law code came into use in the islands, and royal officials took control. First the regime established a lawting at Tingwall, where the new laws, and revisions to them, were promulgated."⁴ When at the end of the 13th century, Magnus the Lawmender's law code arrived in the islands; it was the version of the

¹ 'Canmore', *Royal Commission on the Ancient and Historical Monuments of Scotland*, accessed 19 May 2014, <http://www.rcahms.gov.uk/canmore.html>.

² Fenton, *The Northern Isles*; Tait, *Shetland Vernacular Buildings, 1600-1900*.

³ These two seminal works cover topics including the "Settlement and Agricultural Landscape of Shetland", the "Maritime buildings", the "Fuel for the Fire", the "Land and its Produce", the "Shore and the Sea" and other topics which transform a few lines in a written document into a physical reality in the world of the Shetlanders (Ian Tait, *Shetland Vernacular Buildings, 1600-1900* (Lerwick: Shetland Times, 2012), 45-90 and 469-504; Alexander Fenton, *The Northern Isles: Orkney and Shetland* (East Linton: Tuckwell Press Ltd, 1997), 206-239, 274-317 and 510-624.). These two books provide information on the materiality of socio-cultural relations in the landscape such as the importance of the building of dyke and of the erection of boundary markers.

⁴ Brian Smith, 'On the Nature of Tings: Shetland's Law Courts from the Middle Ages until 1611', *The New Shetlander*, no. 250 (2009), http://www.thingsites.com/useful-articles/on-the-nature-of-tings#_ednref67.

Gulathing law book that “came to be introduced in Shetland and Orkney”.¹ The Gulathing was a regional representative assembly which jurisdiction extended over the shires of Hordaland, Sognfylki and Firdafylki,² a vast region on the west coast of Norway, around the town of Bergen. Before the introduction of a new law code by Magnus Hakonsson in 1274, the writing down of the custom of this western region had probably started at the end of the 11th century and the older manuscripts’ fragments that are conserved today date from the middle of the 12th century.³ This written custom is called the Gulathing law or the older Gulathing law since Magnus Lagabøters Landslov is sometimes referred as the Gulathing law because it had been first accepted by the Gulathing.⁴

For the historians of communities, these two law codes, the Gulathing law and Magnus Lagabøters Landslov, are of great interest because they form, along with the Scots law and other sources, the inspiration for the Shetland by-laws of the 17th century. These two law codes rule on the preservation of a good neighbourhood by keeping proper farming practices and the management of common resources. The version of the Gulathing Law most commonly used by non-Old Norwegian readers is the translated version of Laurence M. Larson published in 1935.⁵ Eleven sections, subdivided into chapters, compose the Older Law of the Gulathing. The section entitled, “The Law of Tenancy” is divided into 31 chapters of between 5 lines and 40 lines in length.⁶ The affiliation between the Gulathing law, the Landslov and the Shetland by-laws appear when reading the content of the chapters or acts. For example, in the Gulathing law, Chapter 83 rules on “One who opens a gate shall close it again”,⁷ and in Shetland’s Old Country Acts, the 6th Act starts with “That good neighbourhood be observed and kept by timous and sufficient bigging of decks, and putting up of grinds and passages, keeping and closing the same”.⁸ In the 7th section of the Landslov, Chapter 34 is entitled “Om nogen spilder folks gjærder”,⁹ in English “if someone is destroying people's fences”¹⁰ and in Shetland’s Old Country Acts, the 6th Act continues with

¹ Knut Robberstad, ‘Udal Law’, in *Shetland and the Outside World, 1469-1969*, ed. Donald J. Withrington, Aberdeen University Studies 157 (Oxford: Oxford University Press, 1983), 51.

² Laurence M. Larson, trans., *The Earliest Norwegian Laws. Being the Gulathing Law and the Frostathing Law*, Records of Civilization, no. 20 (New York, 1935), 7–8.

³ *Ibid.*, 26.

⁴ Robberstad, ‘Udal Law’, 51.

⁵ Larson, *The Earliest Norwegian Laws. Being the Gulathing Law and the Frostathing Law*.

⁶ The Law of Tenancy in *ibid.*, 89–107.

⁷ *Ibid.*, 96.

⁸ ‘The Old Country Acts, or Abridgements Thereof’, in *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents*, by Thomas Gifford (Sandwick: Thule Print Ltd, 1976), 81–85 act 6.

⁹ Absalon Taranger, ed., *Magnus Lagabøters Landslov* (Christiania: Cammermeyers Boghandel, 1915), 132–33.

¹⁰ Translation in: Aud Mikkelsen Tretvik, ‘Re: Fwd: Historiography Sources and Methods’, 28 May 2014.

“[t]hat whoever neglects to close the grinds, or breaks down, and goes over decks”.¹ The Landslov is composed of 9 sections, subdivided into chapters. The version of the Landslov that is mostly used by Norwegian historians is the translation in modern Norwegian by Absalon Taranger.² The 7th section of the Landslov, “Landsleiebolken”, which includes Chapter 34, is divided into 65 chapters of various lengths – from 5 lines to 40 lines in length.³ The Old Country Acts, Shetland by-laws, include 41 acts from 2 lines to 24 lines in length.⁴ The Old Country Acts were first recorded in front of the Sheriff Court in 1615 and the version of the Old Country Acts that I will use in this dissertation is the published version of 1786, available in the Appendix of Thomas Gifford’s *An Historical description of the Zetland Islands in the year 1733*.⁵

The study of the communities in Shetland in the 18th century couldn’t be properly carried on without the use of another legal corpus: the Scottish and British laws enacted respectively by the Parliament of Scotland before 1707 and the Parliament of Great-Britain after this date. The historian can select the laws which concern directly his or her subject and in the case of Shetland communities: 9 Scottish laws concerning directly the improving and enclosing of arable and common land⁶ were carefully studied as well as British laws concerning, for example, the development of fisheries. The Records of the Scottish Parliament before 1707

¹ ‘The Old Country Acts’ act 6.

² Taranger, *Magnus Lagabøters Landslov*.

³ Landsleiebolken in *ibid.*, 110–61.

⁴ ‘The Old Country Acts’.

⁵ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*.

⁶ K. M. Brown and al., eds., ‘1661/1/348: Act for Planting and Enclosing of Ground’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/1661/1/348>; K. M. Brown and al., eds., ‘1663/6/55: Act for Encouragement of Tillage and Pasturage’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1663/6/55>; K. M. Brown and al., eds., ‘1669/10/54: Act Anent Enclosing of Ground’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/1669/10/54>; K. M. Brown and al., eds., ‘1685/4/84: Act for Sowing Peas and Beans, and Inhibiting the Casting up of Ground within the Shire of Aberdeen’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1685/4/84>; K. M. Brown and al., eds., ‘1685/4/73: Act in Favour of Planters and Enclosers of Ground’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/1685/4/73>; K. M. Brown and al., eds., ‘1686/4/37: Act for Winter Herding’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/1686/4/37>; K. M. Brown and al., eds., ‘1695/5/204: Act Concerning the Dividing of Commonties’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1695/5/204>; K. M. Brown and al., eds., ‘1695/5/156: Act Anent Lands Lying in Runrig’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1695/5/156>; K. M. Brown and al., eds., ‘1695/5/189: Act for Preservation of Meadows, Lands and Pasturages, Lying Adjacent to Sand-Hills’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/1695/5/189>.

are available online in a modern Scottish translation on the University of St. Andrews' dedicated website: "Records of the Parliaments of Scotland to 1707".¹

¹ K. M. Brown and al., eds., *The Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/>.

The discourses on Shetlanders

After the judicial sources, the archaeo-scientific sources, the ethnographic collections and the legal sources, the historian turns his or her attention towards sources whose aim was to produce – more or less directly – a subjective discourse on the Shetlanders. These sources can fall to three categories: 1) the testimonial and statistical sources, 2) the maps, plans and iconographic sources, and 3) individuals', estates' and institutions' sources.

In the 18th century, observers from Scotland – and Shetland – wrote abundantly on the archipelago. At least fifteen printed accounts of visits or of the life on the islands exist – I might have missed a few, especially if they only dealt with natural life.¹ The writers of these accounts came from a variety of backgrounds. They were local landowners or ministers such as Thomas Gifford or John Mill. They could also be naturalists whose visits to the islands were first of all of scientific interest. This was for example the case of Samuel Hibbert and Robert Jameson. These accounts might have been published long after they were written or only a few years after the visit of the writer to Shetland. They might have been part of a bigger project such as the twelve parochial accounts of the *Old Statistical Account*² or they

¹ John Brand, 'A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701', in *A General Collection of the Best and Most Interesting Voyages and Travels in All Parts of the World*, ed. John Pinkerton, vol. 3 (London: Longman, Hurst, &c., 1809), 731–810; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809; Arthur Edmondston, *A View of the Ancient and Present State of the Zetland Islands. Including Their Civil, Political, and Natural History, Antiquities and an Account of Their Agriculture, Fisheries, Commerce, and the State of Society and Manners*, vol. 2, 2 vols (Edinburgh: John Ballantyne and Co., 1809); James Fea, *Considerations of the Fisheries in the Scotch Islands* (London: Printed for the author, 1787); Gifford, *An Historical Description of the Zetland Islands in the Year 1733*; Samuel Hibbert, *A Description of the Shetland Islands, Comprising an Account of Their Geology, Scenery, Antiquities, and Superstitions* (Edinburgh: Archibald Constable and Co., 1822); Robert Jameson, *An Outline of the Mineralogy of the Shetland Islands, and of the Island of Arran: Illustrated with Copper-Plates. With an Appendix; Containing Observations on Peat, Kelp, and Coal* (Edinburgh: Printed for William Creech, 1798); Yves-Joseph de Kerguelen de Trémarec, *Relation d'un voyage dans la Mer du Nord aux costes d'Islande... et de Norv ge fait en 1767 et 1768* (Paris: Prault, 1771); John Laing, 'Of the Shetland Isles (1806-1807)', in *A Voyage to Spitzbergen Containing an Account of That Country, of the Zoology of the North; of the Shetland Isles; and of the Whale Fishery*, [1818] (Edinburgh: Printed for the author, 1825), 1–42; George Low, 'Voyage to Schetland', in *A Tour Through the Islands of Orkney and Schetland: Containing Hints Relative to Their Ancient Modern and Natural History Collected in 1774*, by George Low (Inverness: Melven Press, 1978), 64–196; John Mill, *The Diary of the Reverend John Mill, Minister of the Parishes of Dunrossness Sandwick and Cunningsburgh in Shetland, 1740-1803. With Selections from Local Records and Original Documents Relating to the District*, ed. Gilbert Goudie (Edinburgh: Edinburgh University Press, 1889); Robert Monteith, *Description of the Islands of Orkney and Shetland*, ed. Robert Sibbald, 1st edition: 1711 (Edinburgh, 1845); Patrick Neill, *A Tour Through Some of the Islands of Orkney and Shetland, With a View Chiefly to Objects of Natural History, but Including Also Occasional Remarks on the State of the Inhabitants, Their Husbandry, and Fisheries* (Edinburgh: A. Constable and Company and John Murray, 1806); Alexander Peterkin, *Notes on Orkney and Zetland: Illustrative of the History, Antiquities, Scenery, and Customs of Those Islands* (Edinburgh: Printed by J.Moir, for Macredie, Skelly, and company, 1822); John Sinclair, ed., *Statistical Account 1791-1799. Orkney and Shetland*, vol. 19 (Wakefield: EP Publishing, 1978); John Shirreff, *General View of the Agriculture of the Shetland Islands with Observations of the Means of Their Improvement* (Edinburgh: Archibald Constable and Co., 1814).

² John Menzies, 'United Parishes of Bressay, Burra, and Quarff', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 10, 194–203, accessed 1 December 2011, <http://stat-acc->

were only a single-man project. They all had in common to deal with various aspects of Shetland life and provided data on a diversity of subjects. Most importantly these subjects were categorised and very often criticised by the authors and they gave an idea of what the contemporaries thought of the life on the Shetland Islands and of what they made of the way the members of the communities interacted with one another. Arthur Edmondston writes at the beginning of the 19th century this wonderful description of the possibility for any man or woman to walk freely on the hills:

Notwithstanding the various sources of disgust - to which the lower classes of people in Zetland are exposed, yet no individuals feel a stronger attachment to their native country, or a more ardent desire to revisit it. [...] Whatever other difficulties he may have to surmount, or restraints to endure, the Zetlander has the uncontrolled liberty of ranging over every field. No penal prohibitions oppose his passage through extensive enclosures, which, in other countries, the selfish possessor deems fit to be pressed only, by his own sacred feet. The hills and the rocks are all his own, and there is something in the exuberant wildness that surrounds him, congenial to his own unlettered mind. It is, I apprehend, more to the possession of personal freedom in this respect, than to any fondness for the contemplation of particular scenery [...]¹

Rosalind Mitchison thoroughly analysed the making of the *Old Statistical Account* and the character of his editor, Sir John Sinclair in her book, *Agricultural Sir John*.² The *Old Statistical Account* is the first large-scale Scottish population's categorisation and census to be published. At the British level, the census of 1801, 1811 and 1821 are all extremely

scot.edina.ac.uk/link/1791-99/Shetland/Bressay%2C%20Burra%2C%20and%20Quarff/; John Morison, 'Parish of Delting', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 1, 385–408, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Delting/>; John Mill, 'Parish of Dunrossness in Zetland', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 7, 391–98, accessed 23 November 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Dunrossness/>; James Gordon, 'United Parishes of North Yell and Fetlar', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 13, 278–91, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Fetlar%20and%20North%20Yell/>; James Sands, 'Parish of Lerwick', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 3, 414–20, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Lerwick/>; A Friend to Statistical Inquiries, 'Parish of Nesting', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 17, 498–502, accessed 31 January 2013, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Nesting/>; William Jack, 'Parish of Northmaven', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 12, 346–68, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Northmaven/>; Patrick Barclay, 'United Parishes of Aithsting and Sandsting', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 7, 580–97, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Sandsting%20and%20Aithsting/>; William Mitchell, 'Parish of Tingwall', *The Statistical Accounts of Scotland 1791-1799*, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Tingwall%20Whiteness%20and%20Weesdale/>; Thomas Mouat and James Barclay, 'Island and Parish of Unst in Shetland', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 12, 182–202, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Unst/>; David Thomson, 'Parish of Walls and Sandness', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 20, 97–116, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Walls%20and%20Sandness/>; Andrew Dishington, 'United Parishes of Mid and South Yell', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 2, 565–75, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Yellmid%20and%20South/>.

¹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:79.

² Rosalind Mitchison, *Agricultural Sir John. The Life of Sir John Sinclair of Ulbster 1754-1835* (London: Bles, 1962).

interesting for the historian of communities. They give a broad idea of the density of population and of the type of employment in the archipelago. The limits of such sources are even indicated in the documents themselves. In the 1821 census, the surveyor for the islands of Orkney and Shetland wrote that:

The mixed occupation of the Inhabitants of Aithsting and Sandsting, and of Brassay and Barra, has caused almost all the families to be ascribed to agriculture in the latter, to the fishery in the former. In the rest of Shetland, they are generally ascribed to agriculture. In some of the Orkney Islands, the same doubt has evidently had a like effect.¹

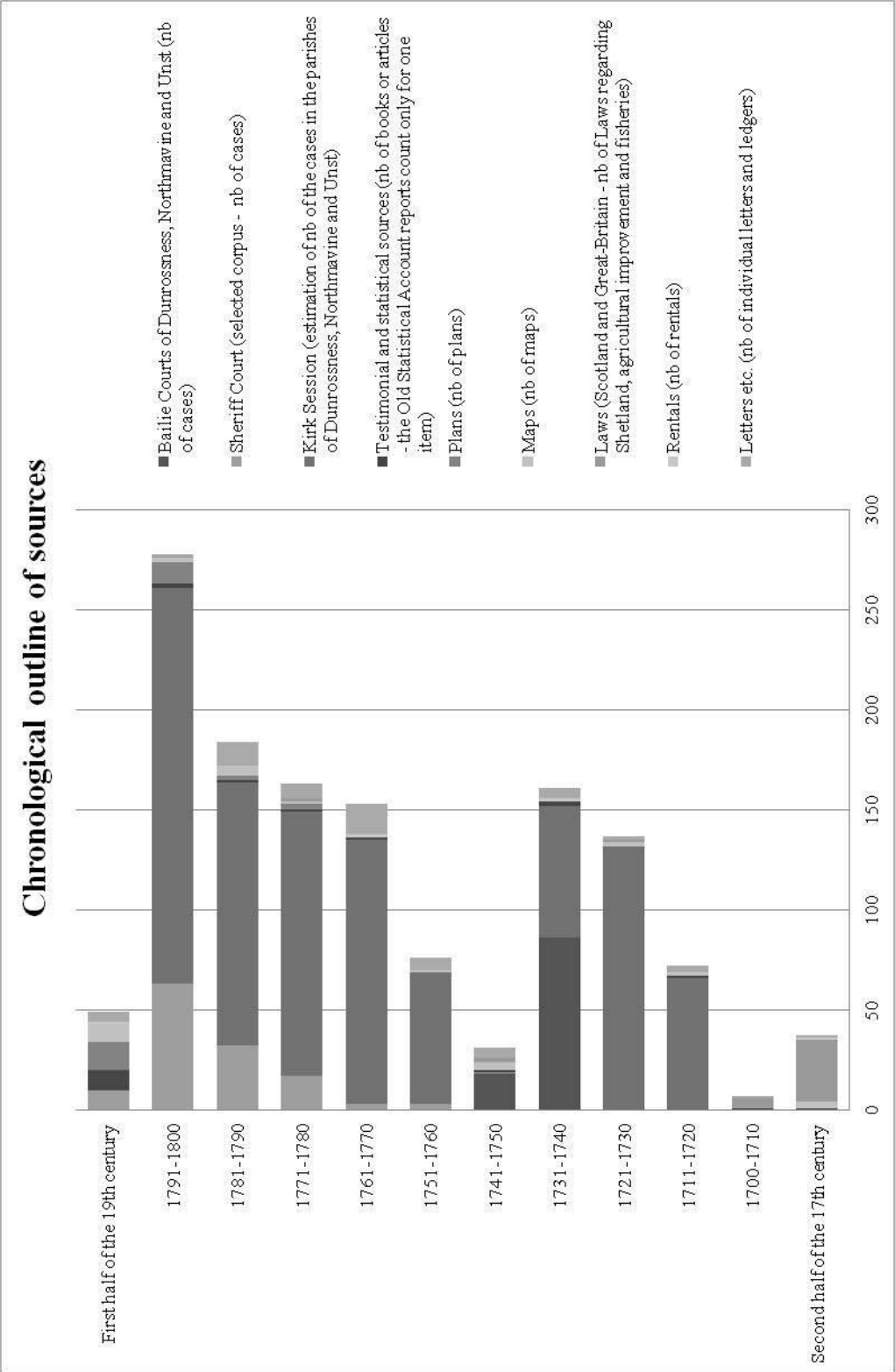
The 15 printed accounts of Shetland include numerous engravings that constitute the basis of a rich iconographic corpus. I have included in this corpus the title blocks or cartouches of Shetland maps published in the 18th and early 19th centuries. These engravings and the title blocks reflect the way mapmakers and visitors looked at the Shetland landscape and communities. I also considered these maps for their own cartographic interests and for the choices of the cartographers. For example, I asked myself what were the townships that were represented? Was there some kind of exhaustiveness in the representation? I asked myself these questions again when I looked at the plans that figured parts of Shetland landscape: plans of townships, *scattalds*, arable lands, kelp shores, etc. These documents, at the difference of most of the maps, were produced by local surveyors who participated in judicial cases that required the mapping of certain areas of Shetland. The subjects of these maps – townships, *scattalds*, arable lands, kelp shores, etc. – as well as their localness offer quantity of data on the evolution of the communities' landscapes and of the rights to common resources in the 18th century.

Eventually, I have used complementary sources – rentals, letters, lists, accounts, private ledgers, published booklets, wrecks' register, etc. Their study has been carefully done and when necessary, I presented their limits in the core of the dissertation. Presenting them here would only result in a long and tedious list.

However, these sources which cover a range of angles into the history of communities in Shetland don't cover uniformly the period. The following graph indicates the disparity in sources' availability. This graph doesn't include the complementary sources and the archaeological and ethnographic sources. The Kirk Sessions records, the three bailie court books – and complementary sources – counterbalance somehow the lack of sources for the first half of

¹ 'Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94: Shire of Orkney and Shetland', in *Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94*, vol. Scotland, 1821, 525, [http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20\(by%20date\)/1821&active=yes&mno=7&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=562](http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20(by%20date)/1821&active=yes&mno=7&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=562).

the 18th century since their preciseness and richness in details help the historian to portray the communities of the first half of the 18th century.



Graph 2: Sources: Timeline

A brief commentary of this graph should pinpoint three elements: 1) most of the Scots Laws which played an important role in the second half of the 18th century actually dated from the second half of the 17th century; 2) the sudden decline of archive materials in the 1740s can be explained by the absence of Kirk Session records for the parishes of Dunrossness, Sandwick and Cunningsburgh, Northmavine and Unst; 3) the increase of archive materials from the 1760s onwards can be explained by two reasons at least: a better conservation of the Kirk Session and Sheriff Court records and a more systematic use of these courts.

Source analysis

The construction of a narration from these sources isn't an easy task. How can one make sense of the contents of such different materials? How can the historian build a narration that will be able to reader to both see the scientific process in action and the analytical synthesis? How can the communities appear from the study of these materials?

Coming from a background in socio-economical rural history, the first thing that I did was to put data in a table and start counting what could be counted. At the same time, I selected information that would be useful in order to give substance to the narration. This method is what can be called a simultaneous quantitative and qualitative approach. I selected countable information that I transferred into a Microsoft Excel Table or in a Microsoft Access Database. I did so for the corpuses which inner data could be easily quantified: the bailie court books and the Kirk Session registers but also for materials that weren't as obviously quantified: the Shetland maps' title blocks and the testimonial and statistical accounts. However, these samples are small. The bailie court books' database which contains the most important sample counts 104 judicial cases and 415 Shetlanders. This is a small sample but it allows some statistical interpretation even if the danger of over-interpretation is always close, the margin of error being always bigger when one works on a small sample. Nevertheless, if one acknowledges the wider margin of error in the statistical analysis of a small sample, the danger of over-interpretation might be avoided.¹

¹ Claire Lemerrier and Claire Zalc, *Méthodes quantitatives pour l'historien*, Repères 507 (Paris: La Découverte, 2007), 25–26.

The multiplication of small corpuses can be a good solution to address the problem of wider margin of error. The small corpuses can be used for detailed studies where different variables enter into the equation.¹

It appears that the cases concerning the common rules and good neighbourhood represent ca. one third of the cases but the sample being so small, just a little more than 100 cases, the margin of error is of more than $\pm 5\%$. There would be no statistical significance in saying that they were more cases concerning common rules and good neighbourhood judged at court than cases of violence and riot because when considered together, cases of violence or riots represent almost one third of the cases brought to court. The only thing that can be said is that cases concerning common rules and good neighbourhood seem to have been quite as important in Shetland as cases concerning violence and riots and this differs with the assertion of Cecil Sinclair who explains that “[p]hysical violence is the commonest cause of complaint” in the Franchise Courts.²

Cases concerning:			
Common rules and good neighbourhood	38	37%	ca. 1/3
Defamation	13	13%	ca. 1/10
Riot	12	12%	ca. 1/10
Violence	18	17%	ca. 1/5
Theft	9	9%	
Embezzlement of wrecked goods	1	1%	
Servants	3	3%	
School wages	1	1%	
Theft/Inheritance	1	1%	
Inheritance	2	2%	
Debt	4	4%	
Payment of the Excise of Zetland	1	1%	
Teind	1	1%	
Total N:	104	100%	
NAS, RH11/29/1. ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book’, 1731-1735.			
SA, D25/3. ‘Fragment of Bailie Court Book of Northmavine’, 1744-1747.			
NAS, RH2/8/33. ‘Photostat Copy of Bailie Court Book of the North Parish of Unst, Shetland’, 1731-1733.			

Table 6: Bailieries: Types of cases

The qualitative approach always requires prudence and source criticism. The risk of over-interpretation exists there as well. There is a necessity to discriminate between significant data and representative data. I have considered that any information that was corroborated by various sources and, when possible, statistically significant was considered as representative. The multiplicity of corpuses and the use of both quantitative and qualitative approach lead to a consideration on the levels or scales of investigation. In order to understand the functioning of communities, I have changed the level of the investigation throughout the thesis,

¹ Ibid., 21.

² Sinclair, *Tracing Scottish Local History*, 95.

sometimes looking carefully at the situation of one man or woman, then investigating the social-interactions of a small group such as the inhabitants of a farm or of a townships and eventually, discussing the perceptions that outside writers had of the Shetlanders as a whole. These variations in the level of analysis allow an investigation into the different intermediary communities, from the family to the county community and can “turn visible relationships that would have stayed elusive at a macro-historic scale”.¹

¹ “Le changement d’échelle du regard de historien modifie le contenu de l’analyse en rendant visibles des relations restées insaisissables à l’échelle macro-historique [...]”, in Grégory Dufaud and Hervé Mazurel, ‘Echelle’, in *Les mots de l’historien*, ed. Nicolas Offenstadt (Toulouse: Presses Universitaires du Mirail, 2005), 38.

Conclusion

Writing the history of Shetland in the 18th century must take into consideration historiographies, sources and methods: What are the historiographies of islands and archipelagos – and Shetland’s historiographies? What are the sources available for writing this narration? How can these sources be analysed?

Island studies as well as local or localized general history force us to go beyond the archipelago, to look in all directions. It forces us to look at any environment as a place of opportunities where geographical features may impose limits but offer new possibilities. On islands, the shores can be places of possibilities: they offer natural resources that can prove of extreme value for the local economy and they offer opportunities for exchanges – any kind of exchanges. These exchanges lead us to consider archipelagos not as isolated, laboratory-like places but as hubs, places of interconnections and interactions. It is in that perspective that the Shetland archipelago will play a role in this study. The Shetland Islands were both a place of limits and opportunities in the 18th century. The shores with their diversity of structures, from cliffs to long beaches, were places where the land and sea met and offered various possibilities for the inhabitants in terms of resources, transport and exchanges.

The historiographies of island as well as the sources available for such a study, force us to consider the complexity of Shetland’s history. It is necessary to change scale in order to change perspective: therefore, micro-local analysis as well as local and regional analysis will offer possibilities to write a balanced narration considering the interactions on both local and regional levels. It is also necessary to imagine Shetland in the 18th century as a place of cultural diversity which received influences from all across the North Sea, without having necessarily any competition between these influences, and with a potential for the development of its own culture. Eventually, the society of Shetland, in its own development, can be compared with other places in a large North-Western European context either in terms of cultural and socio-economic developments or in terms of local institutions.

Sources and historiographies offer different points of view on Shetlanders. It is important to consider them. The variety of sources and the literature written on Shetland both offer a possibility for a complex narrative on Shetlanders. Some of these sources and historiographies give us the possibility to write a history of Shetland ‘from the bottom’ where the physical traces, the environment of the people and their local geography play an important part. Sources and literature confirm that Shetlanders belonged to a wider network than what can be

prefigured from the edges of their islands: among other things, they had contacts with Scotland for their law and institutions, contacts with Norway and other countries for exchanges and they belonged to the British Empire which formed a kind of worldwide archipelago. In these contexts, a variety of discourses emerged on Shetlanders themselves and on the islands where they lived. These discourses, as biased as they can be, still offer the possibility to look at the Shetlanders from yet another angle.

Chapter 2: A regulated community¹

The town seemed deserted. He turned up Hamngatan and parked near the post office. He stepped out into the wind again. He saw himself as a pathetic figure, a police officer in a thin sweater, battling the wind in a desolate Swedish town in the fall. The Swedish criminal justice system, he thought. What's left of it. This is how it looks. Freezing police officers in thin sweaters.²

Henning MANKELL, *The Fifth Woman*.

*

In the second volume of the *Compendium of Scottish Ethnology* published in 2012, Robert Dodgshon, a Scottish historian specialist of the early modern Highlands, explains the following:

It will be clear from a number of the foregoing sections that the Highland town, like all communal system, was a regulated community when it came to farming and resource use. In most cases, this regulation was achieved through acts and byelaws passed by local or district courts and the levying of fines and punishments for their infringement, and through a network of birlawmen across the various towns who acted as eyes and ears for local courts so as to ensure compliance with its regulations, and who served to resolve local disputes.³

What does Robert Dodgshon mean by ‘regulated’ – and especially “when it came to farming and resource use”? The rest of the paragraph gives more clues. In Robert Dodgshon’s view, a “regulated community” was a community whose agrarian activities and access to resources were limited, controlled and monitored. This regulation was organised: laws or customs formed the base, institutions such as courts insured that laws and customs were implemented and eventually, police men worked locally as agents of these courts.

At the end of the 17th century, Scottish local courts could use the legislation passed by the Parliament of Scotland, the written acts and by-laws voted in the local courts and the custom “which, without any express enactment by the supreme power, derives force from its tacit consent; which consent is presumed from the inveterate or immemorial usage of the community” explained John Erskine Esq. of Carnock, who was appointed professor of Scots law in the University of Edinburgh in 1737;⁴ Shetland made no exception. However, Shetland’s intermediary position between Norway and Scotland involved characteristic features: a Norwegian heritage on customs and police personnel and a Scottish influence on

¹ Robert A. Dodgshon, ‘Highland Towns before the Clearances’, in *Farming and the Land*, ed. Alexander Fenton and Kenneth Veitch, *Scottish Life and Society: Compendium of Scottish Ethnology 2* (East Linton: Birlinn Ltd, 2012), 126.

² Henning Mankell, *The Fifth Woman: A Kurt Wallander Mystery* (New York: The New Press, 2013), 168.

³ Dodgshon, ‘Highland Towns before the Clearances’, 126.

⁴ John (Esq.) Erskine, *An Institute of the Law of Scotland*, First edition: 1779, vol. 1 (Edinburgh: Bell & Bradfute, 1824), 17–18; Robert Chambers and Thomas Thomson, *A Biographical Dictionary of Eminent Scotsmen: With a Supplement Continuing the Biographies to the Present Time*, vol. 1 (Glasgow: Blackie and son, 1875), 549.

laws and customs, courts and personnel. Robert Dodgshon identifies the ‘toun’, the Highland township, as a community. The ‘toun’ wasn’t the only “communal system” in early modern Scotland: parish and commonties could also be considered as ‘local communal systems’ and they were also ‘regulated’.

If “the Highland toun, like all communal system, was a regulated community”, how was its Shetland counterpart regulated? Or in a more global way, in what respect were the Shetland communities regulated – and especially “when it came to farming and resource use”? This is the question with which this chapter is concerned. It attempts to analyse the legislation and customs, which regulated the country life in Shetland; to study the courts, which insured the implementation of the laws; to discover the men and the justice in action.

Law and Custom

From ‘Shetland laws’ to Scots law

The presentation of the evolutions of the legal system in Shetland is mainly a work of historical Geography and cultural History such as Michael Jones presents it in his article “Perceptions of Udal law in Orkney and Shetland”.¹ Law is understood in the following pages “in a broad sense as comprising not only formal law, such as statutory and common law, but also divergent conceptions of law, local legal cultures, customary rights and folk law.”²

The first sections of this chapter contain several references to second hand sources. Since they deal mostly with medieval matters regarding law and justice in Shetland, the works of Norwegian historian, Steinar Imsen, and Shetland archivist, Brian Smith, were in that respects extremely helpful.

Law in medieval Norway

Since the Vikings settlements, the Shetlands Islands had been under a system of judicial government that was specific to the Norse sphere of influence. Norwegians set up complex judicial institutions in their home country as well as where they established new settlements. The law had a dominant place in the Norse society. The *thing* was the “central feature of the relationship between the king and the peasantry”.³ They were two kinds of *things*: the *althings* which were popular assemblies on a local scale where all the freemen could meet up to discuss judicial or political issues and the *lawthings* which were representative assemblies on a larger scale where the legislative decisions were taken. The oldest Norwegian sets of laws are those enacted by the Gulathing and the Frostathing:⁴ the manuscripts that have survived date respectively from about 1150 and 1260.⁵ It is probable that the earliest Norwegian laws were originally unwritten by-laws. The written versions of these provincial law codes “reflect, in their extant form, the legal situation of the twelfth century, though several provisions go

¹ Michael Jones, ‘Perceptions of Udal Law in Orkney and Shetland’, in *Shetland’s Northern Links: Language and History*, ed. Doreen J. Waugh (Edinburgh: Scottish Society for Northern Studies, 1996), 187.

² Michael Jones, ‘Udal Law’, in *The Law*, ed. Mark A. Mulhern, Scottish Life and Society: Compendium of Scottish Ethnology 13 (East Linton: Birlinn Ltd, 2012), 389.

³ Stale Dyrvik et al., *Norway: A History from the Vikings to Our Own Times* (Oslo: Scandinavian University Press, 1995), 31.

⁴ *Ibid.*, 31.

⁵ Laurence M. Larson, trans., *The Earliest Norwegian Laws. Being the Gulathing Law and the Frostathing Law*, Records of Civilization, no. 20 (New York, 1935), 26–27.

further in time”.¹ Through the 12th and 13th centuries, the Norwegian monarchy strengthened and by the end of the 13th century, the legislative decisions were taken by the king’s chancery and the royal council.² Thus the lawthings in Norway lost their legislative powers and became “provincial peasant-courts”.³ In 1274 Magnus Håkonson Lagabøter, the ‘Lawmender’, set up a national law code: the Landslov.⁴ The Lawbook was accepted by the four lawthings of Norway.⁵

Legal and judicial situation in Shetland before 1469

Steinar Imsen explains in his article “Public Life in Shetland and Orkney, c.1300-1550” that the “public life in late medieval and early 16th century Orkney and Shetland was deeply rooted in the political system of the late 13th century Norwegian monarchy”.⁶ In the same article, he describes how the “provincial communes of Shetland and Orkney were not mere carbon copies of the mainland-pattern”.⁷ The statute of the lawthing in Shetland was in the late Middle Ages different from that of Norway which was then almost reduced to the statute of a “provincial peasant-court”:⁸ the Shetland lawthing “constituted the provincial communes”⁹ and it also retained some of its legislative powers.¹⁰ The situation in Shetland before 1469 was the following: the archipelago had a proper lawthing, a lawbook, lawmen and lawrightmen but it was not an identical reproduction of the Norwegian situation. The public life institutions and officers in Shetland followed their own path, distant in some points from that of their counterparts in Norway. There were possibilities of change and evolution on a local basis within the Norwegian system. Indeed, Steinar Imsen compares the situation in Shetland and Orkney with the situation in Jemtland at the same period.¹¹

In a 2009 article “On the nature of tings” in Shetland, Brian Smith updates considerably our knowledge on the Shetland *things*. He confirms what Gilbert Goudie stated in 1886 that “much that has been hinted about the Shetland Althing is conjectural, and some of it

¹ Dyrvik et al., *Norway*, 31.

² *Ibid.*, 67–68; Steinar Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’, *New Orkney Antiquarian Journal* 1 (1999): 54.

³ Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’, 54.

⁴ Dyrvik et al., *Norway*, 31.

⁵ Knut Robberstad, ‘Udal Law’, in *Shetland and the Outside World, 1469-1969*, ed. Donald J. Withrington, Aberdeen University Studies 157 (Oxford: Oxford University Press, 1983), 50.

⁶ Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’, 53.

⁷ *Ibid.*, 56.

⁸ *Ibid.*, 54.

⁹ In italic in the text, in *Ibid.*, 60.

¹⁰ *Ibid.*

¹¹ Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’.

apocryphal, because the records do not exist”.¹ For Brian Smith, “[w]e don’t know”, if “Shetland [had] an althing, a general assembly of free men”;² the question of lawthing being “a different matter”.³ Eventually, Brian Smith concludes that “Shetland might have had an althing, a general assembly of free men, during the centuries after the Scandinavian settlement of the islands. If so, it probably met at Tingwall.”⁴ Gilbert Goudie and Knut Robberstad reach the same conclusion.⁵ When the *Landslov* was introduced in Shetland, it changed the althing into a lawthing.⁶ The version of the *Landslov* introduced in Shetland was the Gulathing version of the Lawbook – the same was also introduced in Orkney.⁷ The law in Shetland was then settled following the principles of this Lawbook.⁸

The main officers at the lawthing were the lawmen.⁹ However the Northern isles’ lawmen didn’t fulfil the same prerogatives as their Norwegian counterparts. Steinar Imsen explains that “[t]he late medieval lawmen of Shetland and Orkney were primarily representatives and spokesmen of their islands-communities” while the Norwegian lawmen were royal judges presiding the lawthings.¹⁰ He further explains that the lawmen in Shetland represented higher social categories than their counterparts in Norway; the Shetland lawmen were recruited at the “top stratum of provincial society”¹¹ and could pretend to a higher position in the Shetland society than their Norwegian colleagues.¹² The Norwegian historian writes that “in the Northern Isles the lawmen were probably elected by the lawrightmen at the lawthing”.¹³ The lawrightman is a complex figure in the history of Shetland. The meaning of the name widely evolved from the medieval ages to the 18th century. Steinar Imsen defines the Shetland lawrightmen in the medieval period as “a delegate to the lawthing, who after being sworn by

¹ Gilbert Goudie, *The Ancient Local Government of the Shetland Islands*, Universitets Jubilæets Danske Samfunds, Blandinger (Copenhagen, 1886), 274.

² Brian Smith, ‘On the Nature of Tings: Shetland’s Law Courts from the Middle Ages until 1611’, *The New Shetlander*, no. 250 (2009), http://www.thingsites.com/useful-articles/on-the-nature-of-tings#_ednref67.

³ *Ibid.*

⁴ *Ibid.*

⁵ Goudie, *The Ancient Local Government of the Shetland Islands*, 1; Robberstad, ‘Udal Law’, 52.

⁶ Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’, 64; Robberstad, ‘Udal Law’, 52.

⁷ Robberstad, ‘Udal Law’, 51.

⁸ *Ibid.*, 53.

⁹ For a definition of the *lawmen* in the 19th-century historiographical production about Shetland history, see Goudie, *The Ancient Local Government of the Shetland Islands*.

¹⁰ Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’, 57–58.

¹¹ *Ibid.*, 59.

¹² *Ibid.*

¹³ *Ibid.*

the lawman could act as a lay judge in the provincial court”.¹ In the course of the medieval ages, the lawrightmen trusted most of the public offices in the local communities.²

Literature on udal law in Shetland focuses mostly on its legal aspects and its possible contradictions with the Scots Law after the Middle Ages. It is more difficult to find data about the beginning of udal law in Shetland and its span of characteristics. Michael Jones notes that “[i]n a broad sense, the term udal law is used to refer to the whole system of Norse law, based principally on the Magnus Code of 1274”.³ In an article published in 1996, he gives the main characteristics of udal law as applied in the islands. His work focused on the 19th and 20th centuries but his approach is relevant as it circumscribes the definition of udal law to the context of the life of the non-urban inhabitants. Six of the ten characteristics proposed by Michael Jones can be retained here to give an outline of the udal law in Shetland and its effects on the daily life. First of all, the udal law meant “absolute ownership of land”.⁴ There was no feudal superior and the title didn’t emanate from the Crown; no written title was needed to secure a land.⁵ Secondly the “udal land [was] held with an entail on the family”:⁶ it meant that after the unbroken possession of four generations or sixty years by the same family, a land would become udal.⁷ Thirdly the inheritance of an udal land was “partible”: it meant that all the children received a portion of the land – the daughters receiving half the shares of the sons. There was no primogeniture in Shetland at the difference with the feudal and clan reality of mainland Scotland.⁸ Fourthly the udal landowners had to pay a tax, called *skatt* for “government purposes” regarded as “a tribute to the Crown”. This tax was not a feudal duty.⁹ Fifthly the payment of the *skatt* is thought to have been originally made by territorial unit regrouping several townships instead than by separated townships. These units were called *scattalds*.¹⁰ The payment of the *skatt* within these districts gave privileges to the owners of arable land and to their tenants on the hill pastures. They could also cast peat, harvest several raw materials from the hills, the moorlands and it gave them privileges on the foreshore such as gathering driftwood and parts of beached whales. This leads us to the sixth

¹ Ibid., 55.

² Ibid.

³ Jones, ‘Perceptions of Udal Law in Orkney and Shetland’, 187.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid., 188.

⁷ Ibid.

⁸ Ibid., 188–89.

⁹ Ibid., 189.

¹⁰ I will privilege this spelling since it is mostly used in the 18th-century documents when *skattald* seems to be mostly used in the literature or second hand sources.

characteristic of the udal law:¹ “[t]he ownership of the udal land extends from the highest stone on the hill to the lowest of the ebb”.² This meant that the udal owners had rights to sand, shingle, pebbles, seaweed, driftwood, wrecks, beached whales, bait, sealing-places and offshore islands.³

Before 1469, the lawthing, the lawmen and the lawrightmen exerted coercive powers on the inhabitants. The Shetland lawthing applied the udal law and had the possibility to enact specific acts and ordinances – the likelihood of this practice is not very high in Shetland because of the Norwegian direct control on the archipelago but there are no materials to prove the contrary.⁴ The lawthing was a court of relative proximity and enabled what could be called ‘a self-regulation of the society’. The officers of the court were (for most of them) from Shetland, they were not Norwegian officers sent by the Crown to control the islands – the Norwegian crown might not have had the capacity to be represented.

These slight differences with the Norwegian model show a certain pattern: it seems that lawmen and lawrightmen of Shetland differentiated in a way that their prerogatives would not overlap. The lawmen were the representatives of the Shetland archipelago as a communal body while the lawrightmen were the public officers within the islands. Under udal law, the Shetland inhabitants knew a different life than their Scottish counterparts who were either living under the feudal rule in the Lowlands or under the chieftain and the clan’s rule in the Highlands.⁵ They knew no feudal superior; their land was entail to the family; the primogeniture didn’t exist; and they had a wide access to the natural resources of the islands.

Scottish Acts from 1469 to 1611

In 1469 the Shetland Islands were pledged by the King of Denmark and Norway to the King of Scotland as a dowry for his daughter but this transfer from one Crown to another didn’t imply the end of Shetland specificities within the Scottish Kingdom. Steinar Imsen states that

¹ Jones, ‘Perceptions of Udal Law in Orkney and Shetland’, 190; Brian Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, in *Essays in Shetland History: Heidursrit to T.M.Y. Manson*, ed. Barbara E Crawford (Lerwick: Shetland Times Ltd, 1984), 100–103; Audrey Beaudouin, ‘Les Zones Humides Shetlandaises : Des Espaces Communautaires Face Aux Mutations Sociales Du XVIIIe Siècle’ (Conférence, Usages et espaces communautaires dans les zones humides - GHZH - Université d’Orléans, Orléans, 13/11 2010); Audrey Beaudouin, ‘The Scandinavian Intangible Heritage of the Shetland Islands in the 18th Century’ (Conférence, The Inaugural St Magnus Conference - Centre for Nordic Studies, Kirkwall, 15/04 2011).

² Jones, ‘Perceptions of Udal Law in Orkney and Shetland’, 190.

³ Ibid.; Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 103.

⁴ Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’, 64.

⁵ See for example: Robert A. Dodgshon, *From Chiefs to Landlords: Social and Economic Change in the Western Highlands and Islands, c. 1493-1820* (Edinburgh: Edinburgh University Press, 1998); T. M. Devine, *The Transformation of Rural Scotland: Social Change and the Agrarian Economy, 1660-1815* (Edinburgh: John Donald Publishers Ltd, 1999).

“[p]ublic life in Shetland and Orkney bears an unmistakable Norwegian or Norse imprint even two generations after the islands had been pledged to the Scottish Crown”.¹

In 1469 when the islands were pledged they kept their legal and judicial institutions as they could be redeemed by the Crown of Denmark and Norway. It meant that the udal system and the judicial system of the lawthing, the lawmen and the lawrightmen were not supposed to evolve, change or even be suppressed.² In 1472 the Scottish parliament annexed the earldom of Orkney and lordship of Shetland to the Crown. However this act didn't mention any changes within the legal system of the islands:

Also the same day our sovereign lord, with the deliverance of his three estates, annexed and united the earldom of Orkney and the lordship of Shetland to the crown, not to be given away in the future to any person or persons except to one of the king's legitimate sons only.³

The pledge of the Northern Isles didn't involve the end of the offices of lawman and lawrightman as well as the end of the lawthing.⁴ The steps towards more integration for the Shetland Islands within the Scottish kingdom included several rewritten acts of Parliament. In 1504 a project for an act of Parliament stipulated the following:

That all our Sovereign Lord's lieges both within Orkney, Shetland and the Isles and other places be ruled by our Sovereign Lord's own laws and the common laws of the realm; and by no other laws.⁵

The act was rewritten and passed by the Parliament in that form:

Item, that all our sovereign lord's lieges who are under his authority, and in particular all the Isles [the Western Isles, the “Sudreys”]⁶, be governed by our sovereign lord's own laws and the common laws of the realm, and not by any other laws.⁷

In 1540 the Annexation Act was passed by the Parliament of Scotland.⁸ The Shetland Islands belonged to the Scottish Kingdom and the Danish King had no title anymore to redeem them. The judicial institutions changed and it involved some considerable changes in terms of judicial management, social representation as well as cultural features. However the changes

¹ Imsen, 'Public Life in Shetland and Orkney, C. 1300-1500', 55.

² Barbara E. Crawford, 'The Pledging of the Islands in 1469: The Historical Background', in *Shetland and the Outside World, 1469-1969*, ed. Donald J. Withrington, Aberdeen University Studies No. 157 (Oxford: Oxford University Press, 1983), 47.

³ K. M. Brown and al., eds., '1472/14: Annexation of the Earldom of Orkney and the Lordship of Shetland', in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1472/14>.

⁴ See for example the Orkney's lawman of 1475-6 in William C. Dickinson, 'Odal Rights and Feudal Wrongs', in *The Viking Congress*, ed. William D. Simpson, Aberdeen University Studies 132 (Edinburgh: Oliver and Boyd, 1954), 144. The history of the Shetland lawthing and lawmen after 1469 is in: Smith, 'On the Nature of Tings: Shetland's Law Courts from the Middle Ages until 1611'.

⁵ Quoted in Dickinson, 'Odal Rights and Feudal Wrongs', 145-46.

⁶ *Ibid.*, 146.

⁷ K. M. Brown and al., eds., '1504/3/45: That All the Isles Be Governed by Our Sovereign Lord's Own Laws', in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1504/3/45>.

⁸ K. M. Brown and al., eds., '1540/12/26: Act of Annexation', in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1540/12/26>.

were slow in Shetland: it was maybe due to the laws of Shetland which didn't change. In 1567 the Parliament decided once again that the Shetland Islands should keep their own laws:

[...] Whether Orkney and Shetland shall be subject to the common law of this realm or if they shall use their own laws. [In margin:] Finds they ought to be subject to their own laws.¹

The Scottish approach of the Shetland legal system in the 16th century can be compared with the relationship of the United States with its islands in the Pacific Ocean in the 20th century.² The adoption of pragmatic solutions, such as maintaining the legal and judicial system of the islands, was maybe for the Scottish Crown a way to keep some peace and quiet in Shetland. There were no strong economic or military efforts on the Scottish side and no resistance on the Shetland side. There were no normative changes from 1469 to the end of the 16th century but evolutions in the understanding of the laws and in the practice of justice occurred.

From the Lawthing to the Sheriff Court

The judicial institutions of Shetland drew slowly apart from their Norwegian counterparts in the course of the 16th century. They tended to incorporate Scottish features and Scots legal terminology.³ One of the main changes was the change of name of the judicial court. The Lawthing became the Sheriff Court. This change was neither sudden nor definitive in the sense that even after the lawman ceased to be the head of the court in 1549,⁴ the word lawthing was used to name the Shetland judicial court.⁵

The Shetland judicial institutions in the second half of the 16th century and at the beginning of the 17th century offered features from both Scotland and Norway. Michael Jones explains that “the lawman in Orkney was replaced by a sheriff in 1541, while the lawman in Shetland was last mentioned 1549”⁶ or 1548⁷. Steinar Imsen states that this decision of James V had “very serious effects on the traditional order of society in the Northern Isles”.⁸ Robert Stewart moved the lawthing from Tingwall to Scalloway in the 1570s, which Brian Smith has described as taking the justice court “into his own hands”.⁹ The Shetland archivist explains that the end of the appointment of lawmen produced “resentments” in the islands. The

¹ K. M. Brown and al., eds., ‘1567/12/60: Orkney and Shetland Ought to Be Subjected to Their Own Laws’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1567/12/60>.

² François Doumenge, ‘Les Îles et Les Micro-Etats Insulaires’, *Hérodote*, no. 37–38 (1985): 318–19.

³ Jones, ‘Udal Law’.

⁴ Ibid.

⁵ Ibid.; Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’, 57.

⁶ Jones, ‘Udal Law’.

⁷ Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’, 57.

⁸ Ibid.

⁹ Smith, ‘On the Nature of Tings: Shetland’s Law Courts from the Middle Ages until 1611’.

administration of Lawrence Bruce, a “tyrannical official” led in 1577 to 700 Shetlanders to complain. In these complaints appeared the will for a strong lawthing as a place of public decisions and justice with Shetlanders as assessors. It seems that by the beginning of the 17th century, things had improved in that respect.¹ Nevertheless, Brian Smith underlines that “[o]n 20 August 1612, to be precise”, the Shetland lawthing became a Sheriff Court: this name change arrived a little bit more than a year after the abolition of the Norwegian Laws in 1611.²

The Country Acts of Shetland

Abolition of the Norwegian Laws and enactment of the Country Acts

In 1611 the law of Orkney and Shetland was replaced by the Scots law.

Forsamkle as the kingis majestie and his predicessouris of famous memorie with the consent and auctoritie of their esteatis of parliament hes statute and ordanit that all and sindrie the subjectis of this kingdome sould lieve and be governit under the lawis and statutis of this realme allanarlie, and be no law of foreyne countreyis, as in the actis maid thairanent at tenth is contenit, nocht withstanding it is of treuthe that some personis beiring pouer of magistracie within the boundis of Orknay and Yetland hes this divers yeiris bigane maist unlauchfullie tane upoun thame for their awne privat gayne and commoditie to judge the inhabitantis of the saidis cuntreyis be foreyne lawis, making choise sometimes of foreyne lawis and sometimes of the proper lawis of this kingdome, as thay find mater of gayne and commoditie [...]³

The Shetland Islands had been progressively influenced by Scots law: institutions had changed but there was no obligation to adopt the Scots law. The ruling and judging élites were free to adopt the specificities in each legal system that suited them better for their own agenda such as detailed in the act:

Thairfoir the lordis of secreit counsaill hes dischargeit ... the saidis foreyne lawis, ordaning the same to be no forder usit within the saidis cuntreyis of Orknay and Yetland at ony tyme heirefter [...] [and] to use the proper lawis of this kingdom to his majesties subjectis in all their actionis and caussis [...]⁴

The Scottish power decided to force changes both within Orkney and Shetland. On May 28 1611 the Lords of the Privy Council of Scotland discharged foreign laws in Shetland. Just before or just after the Act of 1611: the Lawbook of Shetland ‘disappeared’. This disappearance puzzles the historians but they can try to reconstruct the Lawbook from the Court Books’ minutes. Knut Robberstad as well as Jørn Sunde have worked on these

¹ Ibid.

² Robert S Barclay, ed., *The Court Book of Orkney and Shetland 1612-1613* (Kirkwall: Kirkwall Press, 1962), 18. Quoted in: Smith, ‘On the Nature of Tings: Shetland’s Law Courts from the Middle Ages until 1611’.

³ John Ballantyne and Brian Smith, *Shetland Documents: 1159-1579* (Shetland Times Ltd, 1999), 261.

⁴ Ibid.

documents and found interesting traces of the Shetland Lawbook in the records of the Court.¹ In 1612 the Sheriff Court enacted by-laws.² This wasn't specific to Shetland, indeed Stephen Davies explains in his PhD thesis how “all of the courts of pre-industrial Scotland had legislative powers; they all made law as well as enforcing it”.³ He further explains that “the law of pre-industrial Scotland derived primarily from custom and practice and was established by many different bodies rather than by one”.⁴

Versions of the Country Acts

Brian Smith explains how after 1612, the ancient ‘actis’ of the Shetland Lawbook “seem to have become the basis for a new series of ‘Country Acts’, enunciated by the Sheriff Court”.⁵ T. C. Smout, a Scottish historian, states in his seminal work *A History of the Scottish People, 1560-1830* how in the early 17th century some local courts such as Baron Courts – but this was also the case for regional Sheriff Courts – “were like small replicas of Parliament, legislating with ‘the advice and consent of the whole commons and tenants’ in the same way as the king did with the ‘consent of his estates’”.⁶ It is difficult to know, however, what was the extent of the commons’ and tenants’ consent.

The first acts enacted on July 30 1612 concerned ‘Bailleis’ of the burgh of Kirkwall, ‘Counsellouris’ of the court, ‘Ministeris’ of the Kirk, ‘Mercat day’ in Kirkwall and ‘Drunkin men’ there.⁷ The first Country Acts, worthy of the name, date from August 3 1615. They count 24 acts. The following table reproduces the first words of the acts such as printed in the Maitland’s version of 1840.

[1.] For punishment of sin and vice	9. Anent the Holmes	17. Anent Flescheouris
[2.] That all persones honour the Kingis Majestie	10. Anent gude nyctbourheid	18. Anent transporting of Servandis
3. Anent directing of the corse	11. Anent sheip doggis	19. Anent hyring of Servandis
4. Anent false wechtis	12. Anent grindis and yetis	20. That na man by nor sell with ane uther manis servand
5. Anent vagabondis and beggaris of woll	13. Anent going through their nyctbouris scattell	21. Anent ryding of uther menis horsis &c.

¹ Robberstad, ‘Udal Law’, 57; Jørn Øyrehagen Sunde, ‘Murder in Shetland in 1602’, *Unkans. Newsletter of the Shetland Museum and Archives*, 2012.

² ‘Acts and Statutes of the Lawthing, Sheriff and Justice Courts within Orkney and Zetland M.DC.II-M.DC.XLIV’, in *Miscellany of the Maitland Club, Consisting of Original Papers and Other Documents Illustrative of the History and Literature of Scotland*, Maitland Club, vol. 1 (Edinburgh, 1840), 137–216.

³ Stephen J. Davies, ‘Law and Order in Stirlingshire, 1637-1747’ (PhD thesis, University of St Andrews, 1984), 60.

⁴ Ibid.

⁵ Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 106.

⁶ T. C. Smout, *A History of the Scottish People, 1560-1830* (London: Fontana Press, 1998), 115.

⁷ ‘Acts and Statutes of the Lawthing, Sheriff and Justice Courts within Orkney and Zetland M.DC.II-M.DC.XLIV’, 157–58.

6. Anent the payment of the lating oxin and scheip	14. Anent ranselling	22. Anent boitis hyris
7. Anent quhitred craw corbie and earne	15. Anent rowing of sheip	23. Aganes conceilling of thift &c.
8. Contra Repairis ta Brassay	16. Anent Peddereis	24. Contra Bailies oppressoris
<small>‘Acts and Statutes of the Lawthing, Sheriff and Justice Courts within Orkney and Zetland M.DC.II-M.DC.XLIV.’ In <i>Miscellany of the Maitland Club, Consisting of Original Papers and Other Documents Illustrative of the History and Literature of Scotland</i>, Maitland Club., 1:169–179. Edinburgh, 1840.</small>		

Table 7: Country Acts: 1615

In 1675, “A Breviat of the Cuntrey Acts” is extracted from the Sheriff Court books. It counts 39 acts and is written in Shetland dialect.¹ In the following table, I have transcribed the first words of the acts, sometimes I’ve shortened it without losing its meaning but I have kept the original spelling.

[1.] That the baillie in each parochin concwr and assist in the displen of the kirk	[14.] That none sett land or house to any person or persons who have not Fourtie pund of free gear	[27.] That nan remove from land or hous
[2.] That nan miscarry or lay down the cross	[15.] That non ryd labour or use ane other mans horse	[28.] That all have sufficient corneyard dykes
[3.] That all weights and measurs by yearly justed	[16.] That nan hyd or conceal any kind of thift or sorcery witchcraft ryots blood or wrong injurie or oppression	[29.] That nan Libb any bestiall ane Sunday
[4.] That all thigars of wool come fish and others bee aprehended	[17.] That the bailie in ilk paroch take order yearlie with the trying and justing of bismars	[30.] That all bloods and ryots be assygned
[5.] Anent destroying of Ravens Corbeis and others	[18.] That none roe sheip ane Sunday	[31.] For bigging of bridges and passages
[6.] That Good Nighbourhood be observed and kept by tymous and sufficient biging of dyke and seting up of grinds & passage keeping and closing of samen	[19.] That nane meddle with other mens goods or gear	[32.] That nan use staff bismers
[7.] That nan go in other mens holms	[20.] That nan buy victual in great and sell it againe at a derar and greater rait	[33.] That all scattalls have ane sufficient pund
[8.] That non keep sheip dogs but such are apointede	[21.] That no brousters sell no aill deirar	[34.] That nane use mussel bait or other bait
[9.] That non bloodhurt or harme ther nighbours sheip nolt or others	[22.] That nane mix aill beir or wyne	[35.] That ilk nighbour keep order law and good nighbourhood
[10.] That all dogs in the respective paroch be tryed yearly	[23.] That na bound have more persons in their families than effeirand to their estates	[36.] That all horses ordinary trubling ther nighbours
[11.] That the rancellmen be yearly sworn and examined	[24.] That nane delve teill labour or pastour upon ther nighbours’ land and grass	[37.] That non contempteouslie pastour upon their nighbours nor cut floss ryve flaws cut peats or turfs
[12.] That nan sell marked lambs or sheip	[25.] That nane repair to feasts uncalls	[38.] That the baillie of ilk paroch with twelve honest men
[13.] That nan fie nor seduce any o[th]er man’s servant	[26.] That all pounded goods	[39.] That ilk baillie have the hail Cuntrey Acts

¹ SA, GD150/2527/2, ‘A Breviat of the Cuntrey Acts Extracted Furth of the Sheriff Court Books and Rolls for the More Easie and Readie Peruseall Therof, to Be Red in Ilk Currant Court and Baillie Courts for Examination and Tryall of the Breaches of the Same [Papers Concerning “Country Acts” of Shetland, 1675-1733 and Undated]’ ca 1675. I would like thank Brian Smith for his help in getting access to this document.

Table 8: Country Acts: 1675

Between 1615 and 1675, we already notice an increase in the number of acts the Sheriff Court enacted: from 24 in 1615 to 39 in 1675. In 1786, the *Historical Account of the Shetland Island in 1733* by Thomas Gifford is published.¹ It contains another version of the Country Acts.² I'll mostly refer to this version of the Country Acts in the dissertation since it was published in the second half of the 18th century and we know that Thomas Gifford re-enunciated the acts in the 1720s.³ This version is written in English with specific Shetland dialect words and contains 41 acts.

1. That the bailie in each parish concur and assist in the discipline of the kirk	15. That none hide nor conceal any kind of theft, sorcery, witchcraft, riots, blood, or other injury, and prejudices done	29. That all bloods and riots be assithed according to justice
2. That none miscarry or lay down the cross	16. That the bailie in each parish take order without the trying and adjusting of bismers	30. That all briggs and common passages be kept in repair
3. That all weights and measures be yearly adjusted	17. That none row sheep on Sunday	31. That none use staff bismers
4. That all thiggers of wool, corn, fish, and others, be apprehended	18. That none meddle with other mens goods or gear	32. That every scattald have a sufficient pund
5. Anent destroying of ravens, corbies, &c.	19. That none buy victual in wholesale, and retail it at a greater price	33. That none use mussel bait, or other bait
6. That good neighbourhood be observed and kept by timous and sufficient bigging of decks, and puttings up of grinds and passages, keeping and closing the same	20. That no brewer sell ale dearer	34. That all persons living in neighbourhood, keep order, law, and good neighbourhood
7. That none go into other mens holms	21. That none mix ale, beer, or wine	35. That all horses belonging either to utscalders or inscalders, oppressing and overlaying the neighbourhood, be instantly removed
8. That none keep sheep-dogs but such as are appointed	22. That bounds have no more persons in their families than effierent to their estates	36. That none contemptuously pasture upon puves flawses, cut floss, or cast peats
9. That none blood, hurt, or mutilate their neighbours nolt, sheep, or horses	23. That none delve till take on pasture upon their neighbours land or grass	37. That none keep scar sheip
10. That all dogs in the respective parishes be tryed yearly	24. That none repair ro feasts uncalled	38. That none bring nor teather their horses within the dikes of Kirktowns
11. That the rancellmen be yearly sworn and examined	25. That poinded goods	39. That the bailie of each parish, with twelve honest men there, ride the marches of the parish
12. That non fee or seduce another man's servant	26. That none move from land or houses	40. That each bailie have the heal country acts

¹ Thomas Gifford, *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents* (Sandwick: Thule Print Ltd, 1976).

² 'The Old Country Acts, or Abridgements Thereof', in *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents*, by Thomas Gifford (Sandwick: Thule Print Ltd, 1976), 81–85.

³ Thomas Gifford, 'Country Acts Anent Parochial Schools', in *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents* (Sandwick: Thule Print Ltd, 1976), 87–88; Smith, 'What Is a Scattald? Rural Communities in Shetland, 1400-1900', 108.

13. Forbidding any person to marry and set up house who has not forty pounds Scots of free gear	27. That all persons have sufficient corn yard dykes	41. That none go to sea, or be employed about fishing, from sun set on Saturday nights till after sun rising Monday morning
14. That none ride, labour, or use, any other man's horse	28. That none libb any beast upon Sunday	
‘The Old Country Acts, or Abridgements Thereof.’ In <i>An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents</i> , 81–85. Sandwick: Thule Print Ltd, 1976.		

Table 9: Country Acts: 1733

The version of the Country Acts written down around 1675 and the version printed in Thomas Gifford's book in 1786 are pretty similar. Acts 37, 38 and 41 of this later version don't appear in the version of 1675 while act 12 of the 1675 version doesn't appear in the version published in 1786. In 1810, Mr Mouat of Garth wrote a copy of the Country Acts with observations.¹ His version counts 41 acts and is written in English, keeping Shetland dialect words when necessary. The observations consist of 5,281 words added at the end of most of the 41 acts. The following table contains the few words that detail the content of each act in the original document. In the columns entitled 'Cmts' (for comments), I have indicated the number of words of Mr Mouat of Garth's commentary in order to highlight the subjects on which he focuses his attention.

	Cmts		Cmts		Cmts
Act 1 st Requires the Sheriff in each Parish to honour and assist in the discipline of the kirk	0	Act 15 Concealing of Thift &c.	66	Act 29 Bloods & Riots	0
Act 2 ^d That none miscarry or ley down the Cross	241	Act 16 Trying of Bismers mets & Measures.	60	Act 30 th Brigs & Passages	0
Act 3 Weights and Measures, to be yearly adjusted & marked	21	Act 17 That none rue Sheep on Sunday	0	Act 31 Bismers	32
Act 4 Tiggers of Beggars of wool, Fish &c.	39	Act 18 Middling with other mens Goods &c.	2	Act 32 Scattald Punds	7
Act 5 Ravens	6	Act 19 Victual	14	Act 33 Bait, and fishing with Haddock line &c. – Cutting Tang.	1,341
Act 6 Grinds “gates” or ligates, bigging Dykes – Trespassing of Cattle – Winter slops or Grinds – Good neighbourhood – Swine – herding and builling &c	205	Act 20 Ale	7	Act 34 orda-law_Orderly and good neighbourhood.	263
Act 7 Holms & Isles	76	Act 21 Beer & Wine	0	Act 35 Stray Horses &c.	2
Act 8 Sheep dogs – marking Lambs &c.	894	Act 22 Servants	36	Act 36 Cutting Floss & Casting Peats, Swine [+ final commentary on the cutting of peats]	263+592 =855
Act 9 Unlawfull Baiting and hurting Sheep & Cattle	10	Act 23 Taking away ground from others.	34	Act 37 Scar Sheep	82
Act 10 Sheep Dogs, Runing Dogs	67	Act 24 Feasts	4	Act 38 Teathering Horses in Kirk towns	75

¹ NAS, RH9/15/157/9, ‘The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations, 1810’ 1810.

Act 11 Ranselmen their Dilligence & Duty	369	Act 25 Poinded Goods	10	Act 39 Riding the Scattald Marches	69
Act 12 – Seeing of Servants & Idle women, Housefolk or Saturday beggars	310	Act 26 Removing Houses and land &c.	16	Act 40 Reading the Country Acts &c.	0
Act 13 Poor Marriages &c.	29	Act 27 Corn Yard Dykes and Mends.	19	Act 41 Sabbath breaking	0
Act 14 Riding or working on Horses without liberty of the owner Cutting hair out of Horse Tails	20	Act 28 th	0		
NAS, RH9/15/157/9. ‘The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations’, 1810.					

Table 10: Country Acts: 1810

Mr Mouat of Garth’s comments offer an overview of the use of the Country Acts at the turn of the century. He focuses most of his attention on three aspects that will be greatly detailed in this thesis: fishing, good neighbourhood and common resources (sheep grazing and peat casting). The last version of the Country Acts worth mentioning here is Gilbert Goudie’s printed version of 1892. His version is written in English, with the usual Shetland dialect words. It has footnotes explaining some words from Norn origins and consists of 42 acts. His version is a reconstitution. He used the 41 acts published in Thomas Gifford’s and added one final act for directing the rancelmen which was published in 1786 as the 27th act of the *Compend of the Country Acts for directing the Rancell Men*: “That no person any way impede, molest, or abuse a Rancelman [...]”.¹

These 41 (or 42) acts dealt with important aspects of rural life and good neighbourhood. They regulated not only husbandry but also fishing practices and trade. They were also concerned with social and religious orders. The Scottish mainland Baron Courts shared similar concerns. T. C. Smout gives some examples of the acts enacted by the Baron Courts of the Campbells of Glenorchy in Perthshire (Highland) in the 1620s and by the Baron Court of Stichill in Roxburghshire (Lowland) in the 1660s.²

¹ Gilbert Goudie, ‘The Old Country Acts, of Abridgements Thereof [The Fouds, Lawrightmen, and Ranselmen of Shetland Parishes]’, *Proceedings of the Society of Antiquaries of Scotland*, 14 March 1892, 196–202; Thomas Gifford, ‘A Compend of the Country Acts for Directing the Rancell Men, and Society for Regulating of Servants, and Reformation of Manners, with Their Instructions’, in *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents* (Sandwick: Thule Print Ltd, 1976), 89–96 act 27.

² Smout, *A History of the Scottish People, 1560-1830*, 116–17; The Baron Court book of the Campbells of Glenorchy is published in: Cosmo Innes, ed., *The black book of Taymouth: with other papers from the Breadalbane charter room* (Edinburgh: T. Constable, printer to Her Majesty, 1855); Clement Bryce Gunn, ed., *Records of the Baron Court of Stichill: 1655-1807*, Publications of the Scottish History Society, v. 50 (Edinburgh: Printed at the University Press by T. & A. Constable for the Scottish History Society, 1905); See also: Douglas Gordon Barron, ed., *The Court Book of the Barony of Urie in Kincardineshire, 1604-1747*, Publications of the Scottish History Society, v. 12 (Edinburgh: Printed at the University Press by T. & A. Constable for the Scottish History Society, 1892); J. M. Thomson, ed., ‘The Forbes Baron Court Book, 1659-1678’, in *Miscellany of the Scottish History Society*, Publications of the Scottish History Society, v. 3 (Edinburgh: Printed at the University Press by T. & A. Constable for the Scottish History Society, 1919), 205–

Husbandry
Burning on the moors was restricted to the month of March
Head dykes were to be repaired every year
Peat was not to be cut in cornlands, or cut with any other implement than a 'lawland peit spaud'
Tenants were to plant trees and to kill vermin
Tenants were orderered to cut no rbiar or thorn except 'in the waxing of the moone'
Social order
No one was to give shelter to a poacher or a vagabond
No wife was to drink without her husband being in the premises
No weaver was to ask more than a firlot of meal for making a plead
Smout, T. C. <i>A History of the Scottish People, 1560-1830</i> . London: Fontana Press, 1998, 116.

Table 11: Baron Court Acts: Campbells of Glenorchy

Husbandry
Rules for the cutting of peats, planting of peas, erection of dykes, etc.
Social order
'Put into execution all acts and decrees of the kirk-session against all persons whomsoever'
None within the barony 'drink excessively, nor be sensibly drunk, nor use filthy nor scuttulous speeches and that none mock at piety ... curse, swear or blaspheme'
Parents were put under a ten-pound penalty if they failed to send their children to school
Rioters and sabbath-breakers were put in the stocks at the kirk door
Smout, T. C. <i>A History of the Scottish People, 1560-1830</i> . London: Fontana Press, 1998, 116-117.

Table 12: Baron Court Acts: Barony of Stichill

Customary rights, custom and by-laws

In 1754, Andrew Dick of Wornadale copied a version of the Country Acts.¹ In this version, it was written that the Country Acts were "still to be found as appoven in the Parliament house at Edinburgh among the unprinted Acts of Charles the first" and this version of the Country Acts was engrossed in the register of deeds on April 1791, making it "the equivalent of a decree".² It meant that both the Parliament of Scotland and the Sheriff Court of Shetland recognised the Country Acts as local regulations which could serve in the rulings of the Sheriff Court. In 1787, an "Abbreviate of the "Country Acts of Shetland", extracted from the Sheriff Court Books thereof" was sent to the Parliament House in Edinburgh. There it was engrossed in the Parliament House papers.³

What does that mean for a local set of regulations to be approved in the Parliament house? This question brings us to the notions of customary rights, custom, by-laws and parliament legislation. In the introduction of *Custom, Improvement and the Landscape in Early Modern*

321; The Marquis of Tweeddale, ed., 'The Boorlaw Book of Yester and Gifford', *East Lothian Antiquarian & Field Naturalists' Society* VII (1958): 9-17; NAS, GD18/695, 'Barony Court Book of Lasswade. With Offprint from Chambers's Journal of Article by James Steuart [Stewart] on the Above, 1664-1740' n.d.

¹ SA, SC12/53/6/ folio 168v., 'Text of "Country Acts" of Shetland, from a Just True Copy of These Bye Laws, Written by Andrew Dick of Wornadale in 1754, at a Meeting of the Commissioners of Supply of Shetland, Engrossed on 6 April 1791.' 1790.

² Ibid.; Cecil Sinclair, *Tracing Scottish Local History*, ed. Scottish Record Office (Edinburgh: HMSO, 1996), 106.

³ NAS, SRO1/107, 'Abbreviate of the "Country Acts of Shetland", Extracted from the Sheriff Court Books Thereof' 1787.

Britain, Richard Hoyle explains in one footnote how “[r]ecent interest in custom may be said to have started with E. P. Thompson’s *Customs in Common*” and especially the third chapter “Custom, Law and Common right”.¹ A same reference to the work of the British historian is made in Robert A. Houston’s article, “Custom in context: medieval and early modern Scotland and England”.² These three works constitute a solid basis in order to understand the place of customary rights, custom, by-laws and parliament legislation in the British society and more especially in Scotland. It is in this context that the Country Acts of Shetland should be understood.

Richard Hoyle defines custom as:

an understood set of rules which govern some aspect of behaviour. [...] [I]ts key feature is that it draws on past practice to guide current practice. Custom is therefore based on precedent and a belief that the tried and tested ways of the past are a guide of the ways of the future. It could regulate any aspect of social organization, not merely the relationship between lord and tenant or the conduct of farming, but also the rating of a parish, the selection of its officers and the conduct of weddings and funerals. [...] Because of their economic value, and the ways in which they were placed under pressure, it is customs relating to property which are most fully recorded.³

For Edward P. Thompson the custom can be “sharply defined”, through activities at the manorial courts, written in the court rolls, through the recitations of custom and village by-laws.⁴ It can also be “less exact”, such as the continual renewal of oral traditions and the annual or regular perambulation of the bounds of the parish.⁵ And eventually, it can hide itself “in areas altogether indistinct”: unwritten beliefs, sociological norms, and usages asserted in practice but never enrolled in any by-law.⁶ It is “[t]his area [that] is the most difficult to recover, precisely because it belongs only to practice and to oral tradition. It may be the area most significant for the livelihood of the poor and the marginal people in the village.”⁷

In the introduction of *Custom, Improvement and the Landscape in Early Modern Britain*, Richard Hoyle follows the conclusions of Robert A. Houston who has explained in “Custom in context” that the use of custom in England and in Scotland was very different in the early

¹ Richard W. Hoyle, ed., *Custom, Improvement and the Landscape in Early Modern Britain* (Ashgate Publishing, Ltd., 2011), 1; E. P. Thompson, ‘Custom, Law and Common Right’, in *Customs in Common* (London: Merlin Press, 1991), 97–184.

² Robert Houston, ‘Custom in Context: Medieval and Early Modern Scotland and England’, *Past & Present*, no. 211 (1 May 2011): 35–76.

³ Richard W. Hoyle, ‘Introduction: Custom, Improvement and Anti-Improvement’, in *Custom, Improvement and the Landscape in Early Modern Britain*, ed. Richard W. Hoyle (Farnham: Ashgate Publishing Ltd., 2011), 3–4. “Customs denotes rules and conduct arising through the consolidation of people’s everyday usage and habits. [...] Local custom comprises the rule of the neighbourhood, and may be formalized in the form of by-laws.”, in Michael Jones, ‘Landscape, Law and Justice - Concepts and Issues’, *Norsk Geografisk Tidsskrift-Norwegian Journal of Geography* 60 (2006): 4.

⁴ Thompson, ‘Custom, Law and Common Right’, 98.

⁵ *Ibid.*, 98–99.

⁶ *Ibid.*, 100–101.

⁷ *Ibid.*

modern period.¹ In Scotland, there were “limited uses of ‘custom’ [...] suggesting that ‘customary practice’, in the general sense of the way things are done, is a very different thing from ‘custom’ as a legal ‘term of art’ with binding power in certain circumstances”.² In Scotland, custom concerned mostly agrarian practices but couldn’t reach the property level. Indeed customary practices or common usages “[didn’t constitute] any legal right”.³ When custom existed in Scotland, it had “to be proved to the satisfaction of a court; it had to be reasonable; it had to be generally known and well established; and, while it could theoretically be an exception to an existing ‘common law’ [...], it had to be inconsistent with any written contract or general body of law. Finally, in order to be recognized by courts, customary practices had to be obligatory not discretionary.”⁴ Stephen J. Davies has a slightly different view than Robert A. Houston when it comes to custom in Scotland in the early modern period. In “The Courts and the Scottish Legal System 1600-1747”, he writes that “[l]arge areas of territory were outside the control of the central government, which did not enjoy the commanding and dominant position it possessed in England. [...] Moreover, [the administration of justice] rested much more than in England upon custom and usage rather than Statute law.”⁵ He continues with the following analysis of the legal situation in Scotland:

Indeed, the sharp distinction made by modern historians between custom and statute law is not really appropriate when applied to pre-industrial Scotland. Many of the Statutes passed by the Scots Parliament were essentially declaratory (that is, they were formal statements or clarifications of existing customs) while others were basically exhortatory, such as the many acts passed against sins of one sort or another. Great portions of statute law were ignored in practice because they were incompatible with the established usage or with the political and economic facts of life.⁶

Where does this difference in the analysis of the Scottish situation come from? I think it is sound to say that even though Robert A. Houston and Stephen J. Davies both deal with parliament legislation and custom they don’t talk about the same aspects. Robert A. Houston focuses mostly on the general legal relationship between custom and property in Scotland and in England while Stephen J. Davies focuses on the practical aspects of local administration of justice and the use of custom. Eventually, this means that on a normative level custom didn’t grant property in Scotland but on a practical level, statute law was often ignored in the local courts in favour of custom or by-laws.

¹ Hoyle, ‘Introduction: Custom, Improvement and Anti-Improvement’, 1–2; Houston, ‘Custom in Context’.

² Houston, ‘Custom in Context’, 39.

³ Ibid., 49–50 and 53.

⁴ Ibid., 42–43.

⁵ Stephen J. Davies, ‘The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire’, in *Crime and the Law: The Social History of Crime in Western Europe Since 1500*, ed. V. A. C. Gatrell, B. Lenman, and G. Parker, The Europa Social History of Human Experience (London: London Europa, 1980), 121.

⁶ Ibid.

In Shetland, the Country Acts, the written by-laws, as well as the unwritten custom had been both recognised by the Sheriff court and it seems that customary practices could even confer property rights.¹ The Parliament engrossed the Country Acts and in several processes, both in the Franchise Courts and in the Sheriff Court, direct references to Shetland's by-laws were made. Indeed in a petition presented at the Sheriff Court in 1789, William Mouat of Garth referred to “the established Laws of this Country and universal unquarrelled practice authorised by the laws of this Country called the Country Acts”.² On occasion there was no direct reference to the Country Acts, such as in a case of 1776 where it is referred to “the use and practice of this country in the like cases” without more explanation – in this precise case, this might indicate a trace of customary sharecropping practice.³ Sometimes both the by-laws and the custom were used at court simultaneously to deliver justice. In a complaint of 1777,⁴ opposing three persons to eleven other persons on the grounds of destruction of the harvest by sheep, the complainers referred to the Act of Parliament, “Act for Winter Herding”⁵ which stated in 1686 on the herding of horses, sheep and swine all year long, summer and winter, in folds, houses or enclosures at night. In front of what, the eleven defenders replied that it was compulsory to build dykes higher than six feet-high to prevent the sheep and the horses to jump over them. They referred to the 27th act of the Old Country Acts which, however, didn't give any precise measurement of the dykes' height. It only stated that they should be high enough to prevent any animals to go over them.⁶ But, it was clearly stated in the process that the dyke should be built as it “is ordained by the Country Acts, and has been the Custom or practice for Time immemorial” and that “it is a general Rule in this Country, Enacted in the Country Acts, and confirmed by the decision of several Judges in cases of the like nature, and by practice in general for Time out of mind that the Dykes or Hedges of Corn yards should be built, kept Six foot or upwards perpendicular height”.⁷ In this case, we see both in action at

¹ See for example: SA, SC12/6/1781/13, ‘Petition (Carrying of Tang.)’ 1781; SA, SC12/6/1785/14, ‘Petition for Division of Tang at Ness of Houlland and Hamnavoe, South Yell’ 1785; SA, SC12/6/1789/29, ‘Petition for Interdict (Concerning Destruction of Pund or Cru.)’ 1789; SA, SC12/6/1797/1, ‘Petition (Concerning Casting Peats on Gluss Isle.)’ 1797.

² SA, SC12/6/1789/60, ‘Petition (Concerning Obstruction of Ranselmen.)’ 1789 piece 1; See also: SA, SC12/6/1774/7, ‘Complaint (Compensation for Potatoes Destroyed by Swine.)’ 1774; SA, SC12/6/1775/23, ‘Petition (for Retaining Calf.) (Criminal)’ 1775; SA, SC12/6/1777/14, ‘Complaint (Failure to Herd.) (Criminal)’ 1777; SA, SC12/6/1787/30, ‘Petition (for Damages Caused by Defender's Sheep Dog.) (Criminal)’ 1787; SA, SC12/6/1789/60, ‘Petition (Concerning Obstruction of Ranselmen.)’; SA, SC12/6/1794/1, ‘Petition (Going Unaccompanied to Sheep Hill.)’ 1794; SA, SC12/6/1798/20, ‘Petition (for Warrant to Regulate Swine.)’ 1798.

³ SA, SC12/6/1776/12, ‘Summons (for Profits of a Halvers Calf.) (Criminal)’ 1776.

⁴ SA, SC12/6/1777/14, ‘Complaint (Failure to Herd.) (Criminal)’.

⁵ K. M. Brown and al., eds., ‘1686/4/37: Act for Winter Herding’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/1686/4/37>.

⁶ ‘The Old Country Acts’ act 27.

⁷ SA, SC12/6/1777/14, ‘Complaint (Failure to Herd.) (Criminal)’ piece 2.

court a by-law, the 27th act, and custom, the size of the dyke. This example illustrates what Edward P. Thompson describes as an “interface”: “[a]t the interface between law and agrarian practices we find custom. Custom itself *is* the interface, since it may be considered both as praxis and as law.”¹

Another aspect of custom is that it is geographically circumscribed. Edward P. Thompson explains how “[t]he land upon which custom lay might be a manor, a parish, a stretch of river, oyster beds in an estuary, a park, mountain grazing, or a larger administrative unity like a forest”.² It was the case in Shetland as well. The custom – and the by-laws – was circumscribed to the archipelago, to the county or “country” of Shetland as it was frequently referred to at the Sheriff Court.³

As explained previously and visible in the preceding example, custom and by-laws were important in Shetland, just like in Scotland, when it concerned agrarian practices. Robert A. Houston adds another criterium: low level.⁴ It is true in Shetland as well. The by-laws and custom organised the life of the lower social categories and the lords and their tenants could use them. In Shetland, the by-laws ruled on servants,⁵ domestic life,⁶ crimes,⁷ commercial activities,⁸ religious life⁹ and fishing.¹⁰ On mainland Scotland, the baronies of the Campbells of Glenorchy (Highland) and of Stichill (Lowland) enacted by-laws which regulated the life of the tenants. The boorlaw court of Yester in East Lothian (Lowland) “had in 1760 a code of thirty-seven acts described then as having been ‘from time immemorial the Boorlaw of Yester’”.¹¹ These acts dealt exclusively with husbandry matters. T. C. Smout explains how “[i]n the Highlands, the birlaymen¹² were possibly elected from the tenants on a more or less democratic principle. In the Lowlands they seem normally to have been imposed from above by a laird nominating experienced tenants to serve upon it.”¹³ In the case of the boorlaw court, the acts ruled tenants’ life and tenants themselves – supervised by Baron Baillies – controlled

¹ Thompson, ‘Custom, Law and Common Right’, 97.

² *Ibid.*, 98.

³ On the question of Country and County, see: Kenneth R. Olwig, ‘Recovering the Substantive Nature of Landscape’, *Annals of the Association of American Geographers* 86, no. 4 (1 December 1996): 635–37.

⁴ Houston, ‘Custom in Context’, 73–74.

⁵ ‘The Old Country Acts’ act 12.

⁶ *Ibid.* act 13.

⁷ *Ibid.* acts 15 and 29.

⁸ *Ibid.* acts 19, 20, 21 and 31.

⁹ *Ibid.* acts 1, 2, 17, 28 and 41.

¹⁰ *Ibid.* acts 33 and 41.

¹¹ Smout, *A History of the Scottish People, 1560-1830*, 117–18; The Marquis of Tweeddale, ‘The Boorlaw Book of Yester and Gifford’.

¹² Birlaymen or Birlaymen: judges at the local Boorlaw Court who passed judgement on matters of husbandry and good neighbourhood.

¹³ Smout, *A History of the Scottish People, 1560-1830*, 118.

the acts' implementation. Jonathan Davies describes these courts – baron, burgh, regality, stewardry and baillerie and Sheriff courts – as legislative bodies which made law and enforced it “over a wide field of law but had their jurisdiction limited to a particular area of land”.¹

Edward P. Thompson, Robert A. Houston and Richard Hoyle agree on the fact that custom was often the custom of the lords. Robert A. Houston explains how “[t]he extensive network of franchisal or non-royal secular courts in Scotland may have enforced the king’s law, but they dispensed the lord justice”² and Richard Hoyle notes that custom “was also the practice of the lords”.³ Ian Whyte explains in his book *Agriculture and the Society in 17th-century Scotland* that the “first basic role of the court [the local court which enacted by-laws] was to serve as an instrument for protecting the proprietor’s interests”.⁴ Were the by-laws another way for the lairds in Shetland to control the inhabitants? One thing is certain, is that in the 1720s, Thomas Gifford of Busta, Stewart and Justiciar depute of Shetland, re-enunciated the Country Acts as a “useful & desirable mainstay of the new fishing tenure system”.⁵ The fact that written customs or by-laws served as a tool for landowners is well explained by Edward Thompson:

Customals and by-laws should not be taken to be an exhaustive accounting of the actual practice of common right usages, especially where these bear upon the fringe benefits of common, waste, the herbage of lanesides, to the landless inhabitants or the cottager. For these documentary sources are often partisan briefs drawn up by the lord’s steward, or by the substantial landholders on the in-coming of a new lord; or they are the outcome of bargaining and compromise between several propertied parties in the manorial court, in which the cottager or the landless had no voice on the homage.⁶

It is interesting to note that Shetland’s (and Orkney’s) by-laws were written down when the old system was transformed: the Lawbook disappeared replaced by the Scots Law – this could correspond to what Edward Thompson as described as “the in-coming of a new lord”. By writing down the custom, Shetland and Orkney “substantial landholders” used the possibility offered by the Sheriff Court to pass acts that were favorable to them within this new arrangement. In 1791, when the Country Acts were again reaffirmed by the Commissioners of Supply for Shetland and copied in the Register of Deeds, it was clearly stated “that they [the

¹ Davies, ‘Law and Order in Stirlingshire, 1637-1747’, 60.

² Houston, ‘Custom in Context’, 66.

³ R. W. Hoyle, ‘An Ancient and Laudable Custom: The Definition and Development of Tenant Right in North-Western England in the Sixteenth Century’, *Past & Present* 116, no. 1 (8 January 1987): 51, doi:10.1093/past/116.1.24; Quoted in: Houston, ‘Custom in Context’, 71.

⁴ Ian Whyte, *Agriculture and Society in Seventeenth Century Scotland* (Edinburgh: John Donald Publishers Ltd., 1979), 45.

⁵ Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 108.

⁶ Thompson, ‘Custom, Law and Common Right’, 101; See also: Houston, ‘Custom in Context’, 73.

Country Acts] were framed & devised by the whole Heritors of the Country”.¹ A few months before that, in November 1790, “At a meeting of the [...] Commissioners of Supply of Shetland”, the Sheriff and Stewart Substitute of Shetland, Walter Scoot read a letter dated August 1st 1787 and written by Robert Craigie, the Sheriff Depute of Shetland.² In this letter, it was stated:

1st. That the said Country Acts are of a salutary nature and have been observed for more than a Century back and ought still to be observed unless where a particular Law of a more recent date shall be thought by the Judge ordinary directly inconsistent with them.³

In enunciating the by-laws at the Sheriff Court, the Shetland élite had the upper hand on the contents of the by-laws and on their possibilities of use. It is therefore interesting to trace those who used the by-laws at court.

N=25		
Procurator fiscal	18	Landlord or tacksman/large farmer
Victim	10	(cf. table)
Rancelman	1	Large farmer/Udaller/Tenant
NAS, RH2/8/33. ‘Photostat Copy of bailie court Book of the North Parish of Unst’, 1731-1733. NAS, RH11/29/1. ‘Dunrossness Sandwick and Cunningsburgh: bailie court Book’, 1731-1735. SA, D25/3. ‘Fragment of bailie court Book of Northmavine’, 1744-1747.		

Table 13: Country Acts: Pursuers

N=10	
n/a (Udaller/Tenant/Servant)	6
Minister	2
Sailor	1
Master	1
NAS, RH2/8/33. ‘Photostat Copy of bailie court Book of the North Parish of Unst’, 1731-1733. NAS, RH11/29/1. ‘Dunrossness Sandwick and Cunningsburgh: bailie court Book’, 1731-1735. SA, D25/3. ‘Fragment of bailie court Book of Northmavine’, 1744-1747.	

Table 14: Country Acts: Victims as pursuers

N=7	
Sheriff	1
Landowner	1
Large farmer	1
Udaller/Small farmer/Tenant	4
SA, SC12/6. ‘Lerwick Sheriff Court Records: Ordinary Court Processes’, 1692-1900.	

Table 15: Country Acts: Pursuers at the Sheriff Court (<1800)

These three tables show who in terms of social status and landholding position referred to the Country Acts at court, both at the Sheriff Court and at the bailie courts. It appears that the by-laws were used by each party: rich, middling farmers, peasantry and the poor.⁴ The middling

¹ SA, SC12/53/6/ folio 168v., ‘Text of “Country Acts” of Shetland, from a Just True Copy of These Bye Laws, Written by Andrew Dick of Wormadale in 1754, at a Meeting of the Commissioners of Supply of Shetland, Engrossed on 6 April 1791.’

² SA, SC12/53/6/ folio 201r., ‘Attested Copy of Precognition for James Ross, Merchant in Lerwick, Concerning Marches between Fladabester and Quarff on the Lands of Deceased Sir John Mitchell of Westshore, with Evidence from Elderly Residents Citing Hill Marks and StyBilly, Engrossed on 13 February 1794.’ 1794, fol. 168v.

³ Ibid., fol. 169r.

⁴ Thompson, ‘Custom, Law and Common Right’, 102–3.

farmers, the peasantry and the poor still had a possibility to act and the by-laws belonged to them too. The rich, the middling farmers, the peasantry and the poor all used the by-laws and it would be wrong to consider that these regulations stayed inert through time, they “had sometimes been in continuous evolution for centuries”.¹ The Country Acts kept on evolving – even if it was sometimes marginally – from 1615 to the early 19th century.

By-laws, Parliament legislation and landscape

Legal landscape

In his article “Custom in context”, Robert A. Houston writes that “[t]he criminal law was allegedly an agency of ideological control, while the civil law worked at the heart of economic relationships to exert a direct influence on material life.”² The Scottish historian doesn’t elaborate more on this issue. The idea that civil law exerts “a direct influence on material life” can be found in the concept of legal landscape defined by the geographer Michael Jones. In various studies he examines “the interaction between physical and institutional landscapes”.³ The etymology of *landscape* and the first uses of this word in the Germanic and Scandinavian areas in the medieval ages are tied up with the laws. The word itself encapsulates both the idea of physical and anthropic transformations of the land. In Norwegian the medieval provincial laws are called *landskapslover*.⁴ Michael Jones explains that “[t]hey were the laws of ‘landscapes’ in the sense of the administrative-territorial units within which the land was shaped by the customs and laws of the people, although subject to the external influence of canon law”.⁵ To go even further he writes that “[c]ustomary law lay at the root of the Old Norse conception of *landskapr* [...] the medieval Scandinavian notion of landscape incorporated the character and conditions of a land, including its traditions, customs and institutions, together constituting a district with a distinct identity”.⁶

Therefore, how did custom, by-laws and parliamentary statutes shape Shetland’s landscape? Or more precisely, how did the men and women of Shetland, through their use of custom, by-laws and Scots Law transform their landscape?

¹ Ibid., 108; See also: Jones, ‘Landscape, Law and Justice - Concepts and Issues’, 4.

² Houston, ‘Custom in Context’, 37.

³ Jones, ‘Landscape, Law and Justice - Concepts and Issues’, 4.

⁴ Ibid., 2.

⁵ Ibid.

⁶ Ibid.; See also: Olwig, ‘Recovering the Substantive Nature of Landscape’.

Commonities and field patterns

The question of landscape has been extensively studied in History, Geography, Ethnology, archaeology, etc.: from the physical landscape to the mental landscape, from the landscape of the Dutch painters to the landscape of the 21st-century photographers.¹ Here, I would like to focus mostly on the commonities and field patterns. Both commonities and field patterns contribute to create the visible and mental landscape of the inhabitants. By focusing on the commonities and field patterns, I aim to analyse both the context of production of the Shetland by-laws and of the Scottish Parliament legislation and the ‘theoretical landscape’ that these documents formulate. This search of context is the basis of the historical field or as Edward P. Thompson puts it: “the discipline of history is, above all, the discipline of context”.² Context is primordial in understanding a landscape. Michael Jones explains how “[l]andscape planning as a conscious undertaking is linked to specific landscape discourses. Particular notions of landscape may provide a means of gaining control of the physical surroundings, as when particular economic interests are favoured.”³ He also explains how “[l]andscape cannot be divorced from the social relations that are reflected in both the physical surroundings and the ways they are represented”.⁴

There is a tendency to believe that oral and written customs are more often declaratory than exhortatory. A declaratory law confirms practices that are already going on. It can also try to standardise or normalise these practices. An exhortatory law orders new practices, new circumstances, new actions or new behaviours. For example, Shetland by-laws state “[t]hat all persons have sufficient corn yard dykes”:⁵ this proposition implies that people already know what is the sufficient height a dyke and that it is already a common practice in Shetland. However, the very same document “[forbids] any person to marry and set up house who has not forty pounds Scots of free gear or some lawful trade to live by”.⁶ This act is clearly exhortatory: its aim is to change the practices going on. Similarly, the Parliament legislation could be both exhortatory and declaratory. Nevertheless, the acts that concern the commonities and the field patterns in the second half of the 17th century were all exhortatory.

¹ See for example: Olwig, ‘Recovering the Substantive Nature of Landscape’.

² Edward P. Thompson, ‘Anthropology and the Discipline of Historical Context’, *Midland History* 1, no. 3 (1 January 1972): 45; Quoted in: Houston, ‘Custom in Context’, 75.

³ Jones, ‘Landscape, Law and Justice - Concepts and Issues’, 3.

⁴ *Ibid.*

⁵ ‘The Old Country Acts’, 84 Act 27.

⁶ *Ibid.*, 82–83 Act 13.

What did that mean for the Scottish landscape? How did the context of enunciation of the Parliament legislation or of the Shetland by-laws influence the landscape? And who expected the landscape to change? In order to answer to these questions, a corpus of Scottish Parliament statutes has to be circumscribed. It's easier for the Shetland by-laws since a single document lists them all. Regarding Parliament legislation on commonies and field pattern, I've focused my attention on a decisive period in Scotland agricultural history: the second half of the 17th century, a time when Shetland was already under Scots law. This corpus shows the constant activity of the Scottish Parliament between 1661 and 1700 at a time when improvement and individualisation of land started to be encouraged all around Scotland by agriculturists and improvers.¹ The parliamentary statutes are indicators of the attitude of the landowners and of the Scottish Parliament composed mainly of landowners – nobility and shire commissioners – towards changes in agriculture.² Ian Whyte published a table of fourteen acts and one proposal in his book *Agriculture and society in 17th century Scotland*.³

TABLE 5

Summary of the late Seventeenth-Century Improving Statutes

1633	Assessment of teinds act.
1641	Pow of Inchaffray drainage act.
1645	Proposal to introduce Indian Corn.
1647	Limited division of commony act.
1661	General enclosure act – sharing costs on marches and diversion of roads.
1663	Export of grain and cattle act.
1669	Fencing of arable land by roadsides act.
1669	Act for straightening marches to facilitate enclosure.
1685	1661 and 1669 enclosure acts re-issued.
1685	Act for sowing peas and beans and preventing removal of turf on arable and meadow land.
1686	Act for winter herding of animals.
1695	Act for preservation of meadows and pasture adjacent to sand dunes.
1695	Division of runrig act.
1695	Division of commony act.
1696	Second Pow of Inchaffray drainage act.

Whyte, Ian. *Agriculture and Society in Seventeenth Century Scotland*. Edinburgh: John Donald Publishers Ltd., 1979, 100.

Table 16: Summary of the late Seventeenth-Century Improving Statutes

The acts before 1661, the “Act for repairing highways and bridges” and the Pow of Inchaffray drainage acts are excluded from this analysis;⁴ nevertheless these acts contained exactly the same “spirit of improvement” than the nine acts that will be carefully studied.¹

¹ Whyte, *Agriculture and Society in Seventeenth Century Scotland*, 94–112.

² *Ibid.*, 94 and 107.

³ Whyte, *Agriculture and Society in Seventeenth Century Scotland*.

⁴ K. M. Brown and al., eds., ‘1669/10/53: Act for Repairing Highways and Bridges’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/1669/10/53>; K. M. Brown and al., eds., ‘1641/8/430: Ratification of the Mutual Bond amongst the Heritors Adjacent to the Pow of Inchaffray’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2011), <http://www.rps.ac.uk/trans/1641/8/430>; K. M. Brown and al., eds., ‘1696/9/157: Act in Favors of Sir Robert Murray of Abercairnrie and Other Heritors upon the Pow of Inchaffray’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/1696/9/157>.; “Pow, n. Sc.A slow-moving

1661/1/348	Act for planting and enclosing of ground
1663/6/55	Act for encouragement of tillage and pasturage
1669/10/54	Act anent enclosing of ground
1685/4/73	Act in favour of planters and enclosers of ground
1685/4/84	Act for sowing peas and beans, and inhibiting the casting up of ground within the shire of Aberdeen
1686/4/37	Act for winter herding
1695/5/156	Act anent lands lying in runrig
1695/5/189	Act for preservation of meadows, lands and pasturages, lying adjacent to sand-hills
1695/5/204	Act concerning the dividing of commonties
Brown, K. M., et al., eds. <i>The Records of the Parliaments of Scotland to 1707</i> . St Andrews: University of St Andrews, 2007-2015. http://www.rps.ac.uk/ .	

Table 17: Scots Law: Commonties and field patterns

In order to compare the Scots Law with the Country Acts, I've selected eight acts that ruled on the same issues than the nine laws from the Scots Law: agrarian concerns, enclosures and dykes, herding of cattle and protection over natural resources.²

6	That good neighbourhood be observed and kept by timous and sufficient bigging of decks, and puttings up of grinds and passages, keeping and closing the same
23	That none delve till take on pasture upon their neighbours land or grass
27	That all persons have sufficient corn yard dykes
30	That all briggs and common passages be kept in repair
32	That every scattald have a sufficient pund
34	That all persons living in neighbourhood, keep order, law, and good neighbourhood
36	That none contemptuously pasture upon puves flawes, cut floss, or cast peats
39	That the bailie of each parish, with twelve honest men there, ride the marches of the parish
'The Old Country Acts, or Abridgements Thereof.' In <i>An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents</i> , 81–85. Sandwick: Thule Print Ltd, 1976.	

Table 18: Country Acts: Commonties and field patterns

ditchlike rivulet, esp. in a stretch of alluvial lowland beside a river; a small creek where such a rivulet falls into a river or estuary, serving as a dock or wharf for small vessels.”, in ‘Pow, n.1 : Oxford English Dictionary’, accessed 21 March 2012, <http://www.oed.com/view/Entry/149129?rskey=qYHbj0&result=3&isAdvanced=false#eid>.

¹ K. M. Brown and al., eds., ‘1661/1/348: Act for Planting and Enclosing of Ground’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/1661/1/348>; K. M. Brown and al., eds., ‘1663/6/55: Act for Encouragement of Tillage and Pasturage’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1663/6/55>; K. M. Brown and al., eds., ‘1669/10/54: Act Anent Enclosing of Ground’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/1669/10/54>; K. M. Brown and al., eds., ‘1685/4/84: Act for Sowing Peas and Beans, and Inhibiting the Casting up of Ground within the Shire of Aberdeen’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1685/4/84>; K. M. Brown and al., eds., ‘1685/4/73: Act in Favour of Planters and Enclosers of Ground’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/1685/4/73>; Brown and al., ‘1686/4/37: Act for Winter Herding’; K. M. Brown and al., eds., ‘1695/5/204: Act Concerning the Dividing of Commonties’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1695/5/204>; K. M. Brown and al., eds., ‘1695/5/156: Act Anent Lands Lying in Runrig’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1695/5/156>; K. M. Brown and al., eds., ‘1695/5/189: Act for Preservation of Meadows, Lands and Pasturages, Lying Adjacent to Sand-Hills’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/1695/5/189>.

² ‘The Old Country Acts’ acts 6, 23, 27, 30, 32, 34, 36 and 39.

Promoting a specific landscape

The analysis of the nine Scots statutes provides a strong framework to study rural life in Shetland in the 18th century and gives direct information on the ideological aims of the Scottish Parliament over the control of the countryside in Scotland. The first striking point when reading these nine laws is that they all promoted individualisation, enclosure and a so-called “improvement” of the agrarian system.

[...] for improvement of the pasturage of this kingdom and for encouragement of the breeders of the bestial thereof [...]¹

[...] considering how much the sowing of peas and beans does contribute for improving and fattening of the ground and for entertainment of people that labour at it and the labouring beasts [...]²

A thorough reading of these laws gives one of the reasons for individualising, enclosing and improving the land. The motive is economic. The mercantilistic approach towards land management taken by the Scottish Parliament clearly appears. The parliamentary statutes of the second half of the 17th century had a specific goal, according to Ian Whyte: the legislation was an aim to improve the agriculture.³ These statutes were also a means to reach a wider economic integration for Scotland. The central authority was growing and participated in the reorientation of Scottish agriculture towards more commercial structures. In the meantime burghs were developing, facilitating contacts with England and the continent and a constant demand for food supplies and rural crafted goods grew.⁴ Wood,⁵ meat⁶ and corn⁷ were favoured as the market demands rose. These laws were also the first legal attacks on the commonable lands and the commonties promulgated in Scotland.⁸ Five out of nine laws promoted individualisation of the lands and two out of nine the division of commonable lands and practices:

¹ Brown and al., ‘1663/6/55: Act for Encouragement of Tillage and Pasturage’.

² Brown and al., ‘1685/4/84: Act for Sowing Peas and Beans, and Inhibiting the Casting up of Ground within the Shire of Aberdeen’.

³ Whyte, *Agriculture and Society in Seventeenth Century Scotland*, 94–112.

⁴ Ian D. Whyte, ‘Early-Modern Scotland: Continuity and Change’, in *An Historical Geography of Scotland*, ed. G. Whittington and Ian D. Whyte (London: Academic Press, 1983), 122.

⁵ K. M. Brown and al., eds., ‘1661/1/423: Commission and Instructions to the Justices of Peace and Constables’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1661/1/423>; Brown and al., ‘1669/10/54: Act Anent Enclosing of Ground’; Brown and al., ‘1685/4/73: Act in Favour of Planters and Enclosers of Ground’; Brown and al., ‘1686/4/37: Act for Winter Herding’.

⁶ Brown and al., ‘1663/6/55: Act for Encouragement of Tillage and Pasturage’.

⁷ Ibid.; Brown and al., ‘1685/4/84: Act for Sowing Peas and Beans, and Inhibiting the Casting up of Ground within the Shire of Aberdeen’; Brown and al., ‘1695/5/156: Act Anent Lands Lying in Runrig’; Brown and al., ‘1695/5/189: Act for Preservation of Meadows, Lands and Pasturages, Lying Adjacent to Sand-Hills’.

⁸ Here I paraphrase the title of: Marie-Danielle Demélas and Nadine Vivier, eds., *Les Propriétés Collectives Face Aux Attaques Libérales (1750-1914). Europe Occidentale et Amérique Latine* (Rennes: Presses Universitaires de Rennes, 2003).

[...] wherever lands of different heritors lie in runrig, it shall be rightful to either party to apply to the sheriffs, stewarts and lords of regality, or justices of peace of the several shires where the lands lie, to the effect that these lands may be divided according to their respective interests [...]¹

[...] that all commonities [...] may be divided at the instance of any having interest, by summons raised against all persons concerned before the lords of session, who are hereby empowered to discuss the relevancy and to determine upon the rights and interests of all parties concerned, and to value and divide the same, according to the value of the rights and interests of the several parties concerned [...]²

Ian Whyte observes that in 1686 with the “Act for winter herding” the seeds were already sown for less co-operative practices usually associated with runrig.³ The enclosure could take two different forms: animals could pasture within enclosed field or be put inside folds; or the productive lands (arable lands, meadows and woodlands) could be enclosed and therefore animals wouldn’t destroy the products of the land. These two cases of enclosure were present in the Scots Law by the end of the 17th century. In the nine-law corpus four laws stated on the erection of dykes and hedges and on the digging of ditches⁴ and, one law stipulated that the cattle and sheep should be herded at night, in winter and summer, within “folds, enclosures or houses”.⁵ The products of land had to be preserved for economic and political reasons – as well as for social reasons, to a lesser extent. T. C. Smout explains in a book on Scottish woodlands that the Parliament declared in 1503 that wood of Scotland was “utterly destroyed”, “probably reflecting at least the king’s vexation in not being able to get his hands on the supplies he needed for his castles and ships”.⁶ The ‘Act for planting and enclosing of ground’ was passed by the Parliament in 1661 in an effort to counteract the damages on Scottish woodlands.⁷ The arable lands, meadows and pasturages were protected in order to produce sufficient corn for consumption and market as well as feed cattle.⁸ The 1688-1690s brought bigger powers and importance to the Scottish Parliament which, in Stephen Davies’ words, “was at the forefront of movement for reform”.⁹ This reform happened in a context of

¹ Brown and al., ‘1695/5/156: Act Anent Lands Lying in Runrig’.

² Brown and al., ‘1695/5/204: Act Concerning the Dividing of Commonities’.

³ Whyte, *Agriculture and Society in Seventeenth Century Scotland*, 105.

⁴ Brown and al., ‘1661/1/348: Act for Planting and Enclosing of Ground’; Brown and al., ‘1669/10/54: Act Anent Enclosing of Ground’; Brown and al., ‘1685/4/73: Act in Favour of Planters and Enclosers of Ground’; Brown and al., ‘1686/4/37: Act for Winter Herding’.

⁵ Brown and al., ‘1686/4/37: Act for Winter Herding’.

⁶ T. Christopher Smout, ‘The Extent and Character of the Woods, 1500-1920’, in *A History of the Native Woodlands of Scotland, 1500-1920*, ed. T. C. Smout, Alan R. MacDonald, and Fiona Watson (Edinburgh: Edinburgh University Press, 2007), 45.

⁷ Brown and al., ‘1661/1/423: Commission and Instructions to the Justices of Peace and Constables’; See also: Brown and al., ‘1685/4/73: Act in Favour of Planters and Enclosers of Ground’.

⁸ Brown and al., ‘1661/1/348: Act for Planting and Enclosing of Ground’; Brown and al., ‘1685/4/73: Act in Favour of Planters and Enclosers of Ground’; Brown and al., ‘1669/10/54: Act Anent Enclosing of Ground’; Brown and al., ‘1695/5/189: Act for Preservation of Meadows, Lands and Pasturages, Lying Adjacent to Sand-Hills’.

⁹ Davies, ‘Law and Order in Stirlingshire, 1637-1747’, 449.

economic and agricultural crisis: the 1690s saw failures of trade and harvest and dearth.¹ “The Seven Ill Years of King William” strengthened the landowners’ belief that agriculture should be reformed. Stephen Davies explains how simultaneously “[i]ndividual landlords began to move towards commercial farming and the adoption of new agricultural techniques” and “the convention Parliament passed several important measures of economic reform the most important of these being the “Act Anent Lands lying Run-Rig” and the Act For Division of Commonty”.²

The end of the 17th century saw the first legal dispositions on wastelands: the muirlands had to be fertilised³ and the mosses, even though they could be difficult to divide, had to be part of the division processes.⁴ Eventually these divisions as well as the surveillance for the enforcement of the law fell under the powers of justice officials such as Sheriffs or bailies of regalities. Their role was considerably increasing: they oversaw the divisions of the runrig land and the divisions of commonties.⁵ Sheriffs also had the power to assign land in case the marches were uneven and a dyke had to be built.⁶ In order to facilitate control over their estates’ productions and people, the landowners at the Scottish Parliament promoted a rectilinear landscape. The reorganisation of the field patterns should bring to the Scottish landowners a direct access to their farmland and to their uncultivated land on the former commons. It was clearly stated in these laws that landowners’ houses located near land lying runrig should receive in priority a portion of arable land adjacent to them and the uncultivated plots that these landowners received should be directly adjacent to their property.⁷ These laws contributed to the disappearance of curved lines in the Scottish – and Shetland – landscape.⁸

Regarding the Country Acts on commonties and field patterns, the first thing that should be said is that most of these acts were declaratory acts. For scholars who think that the Country Acts were based on an oral custom or at least that they conformed to ancient practices, the eight selected acts bring some arguments in favour of this idea. It appears that there wasn’t

¹ Ibid., 446.

² Ibid., 449.

³ Brown and al., ‘1685/4/84: Act for Sowing Peas and Beans, and Inhibiting the Casting up of Ground within the Shire of Aberdeen’.

⁴ Brown and al., ‘1695/5/204: Act Concerning the Dividing of Commonties’.

⁵ Brown and al., ‘1695/5/156: Act Anent Lands Lying in Runrig’; Brown and al., ‘1695/5/204: Act Concerning the Dividing of Commonties’.

⁶ Brown and al., ‘1669/10/54: Act Anent Enclosing of Ground’.

⁷ Brown and al., ‘1695/5/204: Act Concerning the Dividing of Commonties’; Brown and al., ‘1695/5/156: Act Anent Lands Lying in Runrig’.

⁸ Robert A. Dodgshon, ‘Everyday Structures, Rythms and Spaces’, in *A History of Everyday Life in Scotland, 1600 to 1800*, ed. Elizabeth A Foyster and Christopher A. Whatley (Edinburgh: Edinburgh University Press, 2010), 45.

any technical description relating to the different steps to follow in order to implement the acts. The only (vague) terms that appeared were: “sufficiently” in “all decks be sufficiently built before the last of March”,¹ “persons used to repair them [i.e. the bridges and passages]”² and “conform to the ancient custom formerly observed”.³ This last quotation suggests a certain filiation between a possible oral custom and the Country Acts. Another argument in the favour of this theory is the conciseness and shortness of the acts. Except for Act 6 that contains 336 words, the seven other acts contain between 74 and 14 words with an average of 40 words each. This could be explained by the lack of a need for explanation as the acts were mainly standardising an already occurring practice. Furthermore there aren’t any encouragements to enforce the law: it seems that the practices were already going on. The penalties were very detailed. Thus the norm was probably already interiorised but not necessarily the penalties given in Scots pounds. Eventually the coercive power of the State via the local judicial institutions was maybe still progressing and not sufficiently established. These eight acts ruled on four different categories of actions: herding of cattle, building of dykes, agrarian activities and common resources and commonties. The first type of prescription concerned the fact that cattle should never pasture on fields that were sown and should never go inside the corn yard and eat or destroy the harvest.⁴ It seems that there was a constant preoccupation to protect the corn when it was growing and when it had been harvested. The reasons for that were not economical. Shetland didn’t export corn: it imported meal from Orkney on a regular basis and from mainland Scotland in periods of scarcity.⁵ In order to increase the protection over food subsistence the whole community had to watch that animals didn’t destroy the harvest. The second prescription concerned the building of dykes and corn yard dykes.⁶ It has a lot to do with the previous preoccupation. The building and maintenance of the hill dykes that delimited the arable land and the waste land as well as the corn yard dykes delimitate the territory and identify the spaces. They were not individualising land. The third prescription had to do with the agrarian activities.⁷ The Country Acts

¹ ‘The Old Country Acts’ act 6.

² Ibid., act 30.

³ Ibid., act 34.

⁴ ‘The Old Country Acts’ acts 6, 27, 32 and 26.

⁵ For Orkney, see: Hance D. Smith, *Shetland Life and Trade 1550-1914* (Edinburgh: John Donald Publishers Ltd., 2003), 81–82; For the 1780s’ dearth, see for example: SA, D8/131, ‘Copy Letter by Sir Thomas Dundas to Messrs John Bruce of Sumburgh, Robert Hunter of Lunna, and Thomas Bolt, Lerwick, Concerning His Intention to Send Charity Meal to Shetland’ 1784; SA, SA2/69, ‘Photocopies of Letters by James Malcolmson, Sheriff Substitute, Lerwick, to Patrick Graeme, Esq., Orkney, 1780s, with Some Copy Replies, Concerning Sheriff Court Business in Shetland, 1780s’ n.d.

⁶ ‘The Old Country Acts’ acts 6, 27 and 32.

⁷ Ibid. acts 23 and 34.

enunciated that delving, tilling, manuring and labouring the ground were supposed to be conducted respecting to the “ancient custom”. This expression meant that “‘the ancient custom’ of managing the land” should be maintained because it was the most efficient and practical – for the local powers (lairds, merchants and judicial officials) but even if the by-laws could be considered as the law of the lords, they were used at court by the rich, middling farmers, peasantry and the poor.¹ Eventually the last prescription dealt with the common resources and the commonities, the *scattalds* in Shetland.² Some of the natural resources were protected within the scattalds and within a seasonal calendar. Thus flaves, floss and peat were subjected to very strict norms in terms of harvesting date and advertising to the neighbours.³ As the scattalds were the framework for resources management their marches were very strictly controlled. The Bailie and twelve “honest men” had to visit yearly the marches of the scattalds within his jurisdiction but they could also do it if required by the inhabitants.⁴

While the Parliament legislation tried to individualise the landscape, the Country Acts still presented actions that promoted a somehow collective landscape on which ownership was shared by those who lived in the same scattald. It can be considered that as leaders of the peregrination, the bailie and the twelve honest men had a stronger ownership than their counterparts on the scattald but it was with the whole scattalders that they walked the borders of the scattalds and as such the whole scattalders somehow owned this particular landscape. The Country Acts seem to indicate that the whole scattalders commonly owned a landscape where dykes were preeminent but didn’t act as an individualistic structure, a landscape that everybody could or should be able to control and see, a landscape which shape was not specifically defined in the by-laws therefore which probably had a pattern that constituted a pertinent structure for those who wrote down the custom.

¹ Thompson, ‘Custom, Law and Common Right’, 102–3.

² ‘The Old Country Acts’ acts 36 and 39.

³ “Flaw, n. A thin layer of turf, pared off the surface of a peat bank.” and “Floss, n. dial. In Orkney and Shetland: A collective term for reeds, rushes, etc.”, in Susan C. Rennie, ed., ‘Flaw, N.’, *Dictionary of the Scots Language. Dictionar O the Scots Leid* (Scottish Language Dictionaries Ltd., 2004), <http://www.dsl.ac.uk/>; Susan C. Rennie, ed., ‘Floss, N.’, *Dictionary of the Scots Language. Dictionar O the Scots Leid* (Scottish Language Dictionaries Ltd., 2004), http://www.dsl.ac.uk/entry/snd/floss_n.

⁴ ‘The Old Country Acts’ act 39.

Courts

In her PhD thesis, “Gender, Sex and Social Control: East Lothian, 1610-1640”, Harriet Jane Cornell explains that the “interactions between East Lothian’s secular and ecclesiastical authorities – interactions presided over by men, many of whom held positions throughout the legal system – are key advocates for the all-courts methodology that is deployed throughout this thesis”.¹ The same explanation in favor of an “all courts-methodology” can certainly be given for the present dissertation. The second explanation is that an “all courts-methodology” provide an access to the wide spectrum of communal life and individual interactions in a given place at a given time. Eventually, a third explanation is based on Scottish history. In a post-Reformation Scotland, all the local judicial actors, civil or ecclesiastic, were expected to contribute to establish a “godly society” and maintain a “godly discipline”.²

*The Jurisdictions of Shetland*³

Four different types of courts operated in Shetland in the 18th century: bailie courts, Sheriff Court, Admiralty Court and Kirk Sessions.

Bailie courts

In the 16th century, public servants identified as fouds existed in Shetland. Steinar Imsen explains that “the foud was a product of the Scandinavian union”.⁴ He continues: “he [the foud] was the private servant of the king's provincial officers”.⁵ These fouds had (apparently) local servants – here the terminology was varied: underfouds in Shetland, bailies and parish fouds in Orkney and local fouds or underfouds in Jemtland.⁶ Their prerogatives are not well-known but these local fouds lay in the middle of the debate that sees in these 16th-century underfouds the forefathers of the 18th-century bailies.⁷ The key of this debate lays in a thorough study of Shetland’s judicial institution in the 17th century. From an 18th century

¹ Harriet Jane Cornell, ‘Gender, Sex and Social Control: East Lothian, 1610-1640’ (PhD dissertation, University of Edinburgh, 2012), 79.

² Alastair J. Mann, ‘The Law of the Person: Parliament and Social Control’, in *Parliament in Context, 1235-1707*, ed. Keith M. Brown and Alan R. MacDonald, The History of the Scottish Parliament, v. 3 (Edinburgh: Edinburgh University Press, 2010), 195–96; Cornell, ‘Gender, Sex and Social Control’, 79.

³ Here, I paraphrase Harriet Jane Cornell’s chapter ‘The Jurisdictions of Haddingtonshire’: Cornell, ‘Gender, Sex and Social Control’, 41–81.

⁴ Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’, 63.

⁵ Ibid.

⁶ Ibid.

⁷ Gilbert Goudie, ‘The Fouds, Lawrightmen, and Ranselmen of Shetland’, in *The Celtic and Scandinavian Antiquities of Shetland*, by Gilbert Goudie (Edinburgh: Blackwood, 1904), 229–46.

perspective, it appears that although Shetland bailie courts had specificities, they also had strong similarities with their Scottish counterparts.

The bailie courts of Shetland were franchise courts. It meant that they had been attributed by a Crown Charter or a Charter from a superior to a landowner who owned the court hereditary or not.¹ Their main difference with the Scottish mainland bailie courts was that they were established on a parish basis and not on an estate basis. Because of the udal system the landowners were far too numerous in Orkney and Shetland to opt for estate-based courts.² There might be an exception though with the person of Mitchell of Westhore who became bailie of “the parishes of Tingwall, Sandsting and Aithsting, “and the lands in Quarf belonging in property to him””.³ Thomas Gifford wrote in 1733 that there were bailie courts in all the parishes of Shetland: “[t]here is also a bailiff in each parish, who holds his commission either of the steuart principal, or his depute, having power to hold courts within his bailliffrie”.⁴ A document of 1739 gives the names of 15 bailies and their 14 baileries – the island of Unst had two bailies.⁵ The bailie courts or baileries formed the first level of State jurisdictions in Scotland. In term of judged offences they were the equivalent of the *cours de basse justice* in France.⁶ They disappeared in 1747 when the heritable jurisdictions were abolished.⁷

¹ Sinclair, *Tracing Scottish Local History*, 94–97.

² William P.L. Thomson, *Orkney Land and People* (Kirkwall: Orcadian Ltd, 2008), 161. For a short presentation of Franchise courts based on estates, see: Davies, ‘The Courts and the Scottish Legal System 1600-1747: The Case of Stirlingshire’, 141.

³ SA, GD150/2534B/7, ‘Commission by George Earl of Morton to Sir John Mitchell of Westshoar, Bart, to Be Bailie of the Parishes of Tingwall, Sandsting and Aithsting, “and the Lands in Quarf Belonging in Property to Him” (I.e. Sir John Mitchell)’ 1734.

⁴ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 46.

⁵ SA, SC12/53/2/ page 259, ‘Obligation by Andrew Sinclair, Baillie of the Parishes of Dunrossness, Sandwick and Cunningsburgh, Robert Sinclair of House, Baillie of Island of Burray, Sir John Mitchell of Westshore Baillie of Parish of Tingwall, Aithsting and Sandsting, John Scott of Melbie Baillie of Parishes of Walls and Sandness, George Greig Bailie of Island of Papa Stour, Alexander Sinclair of Brew Baillie of the Parish of Whiteness and Weisdale, Thomas Gifford of Busta Baillie of Delting, James Cheyne of Tannick, Baillie of the Parish of Northmavine, John Scott of Scarpo, Baillie of the Island of Yell, Andrew Scott of Greenwall and Thomas Mouat, Merchant in Uyasound, Baillies of the Island of Unst, William Bruce of Urie, Baillie of the Island of Fetlar, Robert Bruce of Simbester, Baillie of the Islands of Whalsay and Skerries, Robert Hunter of Lunna, Baillie of Nesting and Lunnasting, and James Greig, Baillie of the Island of Bressay, Parishes of Lerwick, Gulberwick and Quarff, to Robert Dick of Frackafield, for Payment of £40 Sterling, Yearly, to the Commissioners of Excise for North Britain, for the Power to Exact and Levy the Several Excise Duties from the Inhabitants of Zetland, Engrossed on 21 November 1739’ 1737.

⁶ Leah Leneman, *Living in Atholl, A Social History of the Estates 1685-1785* (Edinburgh: Edinburgh University Press, 1986), 153.

⁷ Danby Pickering, ed., ‘An Act for Taking Away and Abolishing the Heretable Jurisdictions in That Part of Great Britain Called Scotland, 20 Geo. II C. 43’, in *The Statutes at Large, from the 20th to the 23d Year of King George II*, vol. XIX (Cambridge: Joseph Bentham, printer to the University, 1765), 127–43; Ann E. Whetstone, ‘The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries’, *Albion: A Quarterly Journal Concerned with British Studies* 9, no. 1 (1 April 1977): 63.

The prerogatives of the Shetland bailies were defined – at least for one bailie¹ – in his appointment charter as well as partially in the Country Acts.² Thus Andrew Sinclair, appointed bailie of Dunrossness, Sandwick and Cunningsburgh in 1730, had four different kinds of prerogatives. 1) He had obligations towards his superior, the Earl of Morton. 2) He had to manage the justice court. 3) He had to judge. 4) He had to supervise the police action within the bailiery. His first prerogative obliged him to settle tenants on the parish land as well as collect taxes and leases for the property lands of the Earl of Morton. This collect had to be paid yearly to the tacksmen or chamberlains of the Earl. Eventually the Earl of Morton wrote in the charter that the bailie had to make sure that his tenants wouldn't become poorer and would still be able to pay the taxes.³ His second prerogative was the management of the bailie court. He could appoint clerks, a procurator fiscal or anyone else that he thought suitable for the proper operation of the court. These officers were answerable to the bailie and had to take an oath.⁴ The 40th act of the Country Acts gave other precisions on how the bailie should administer his court:

40 – That each bishop⁵ (sic) have the heal country acts authentikly extracted under the steuart clerks hands, and cause read at least the abbreviate thereof in their bishop (sic) courts twice a year, or once at least, that none may pretend ignorance of the same and take true tryal of the breaches thereof, and cause poynd for the same, and that they find caution for what part thereof may be due to the sheriff, or pro[curato]r fiscal in his name, and deliver the same to the sheriff at the head court, under the pain of deprivation; and that each bishop (sic) have an authentic court book, wherein all their acts and process of court shall be written and set down, and that the same be produced to each clerk at the circuit courts kept in the parish, under the pain of deprivation.⁶

The bailie of each parish had the responsibility to make the rural communities know the local legislation. The bailie had the enacted Country Acts toward him and he had to read them publicly once a year at a court session. Also the bailie was obliged to hold a couple of plenary sessions every year where all the “householders” of the bailiery should be present. In his 1733's account, Thomas Gifford gave more information on the practicalities of these courts. The Country Acts ought to be read when the court met on Martinmas, on the 11th of November and on Whitsunday, on the 15th of May.⁷ In theory circuit courts also had to be

¹ SA, GD150/2534B/6, ‘Commission by George Earl of Morton to Andrew Sinclair, Brother of Robert Sinclair of Quendall, to Be Bailie of Dunrosness, Sandwick and Cunningsburgh’ 1730.

² ‘The Old Country Acts’.

³ SA, GD150/2534B/6, ‘Commission by George Earl of Morton to Andrew Sinclair, Brother of Robert Sinclair of Quendall, to Be Bailie of Dunrosness, Sandwick and Cunningsburgh’.

⁴ Ibid.

⁵ A misprint for bailie. In Gilbert Goudie's version of the Country Acts published in 1892, the word ‘bishop’ has been replaced by ‘Sheriff’: in the footnote Gilbert Goudie writes: “Sheriff. Apparently a misprint for “bailie.””, in Goudie, ‘The Old Country Acts, of Abridgements Thereof [The Fouds, Lawrightmen, and Ranselmen of Shetland Parishes]’.

⁶ ‘The Old Country Acts’ act 40.

⁷ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 47–48.

organised: clerk and procurator fiscal would travel from a township to another to hold a court. All the judicial processes and actions had to be recorded in the Court Book and if it was neglected the Stewart depute intervened.¹ The bailie's third prerogative concerned the trials at court. A large portion of the Crown charter appointing Andrew Sinclair as bailie detailed the general judicial assignments of the bailie. He judged the petty crimes, small disorders, fights, unpaid debts and the neighbourhood disputes for which the fines didn't exceed £10 Scots,² as well as witchcraft.³ Even though a Birlaw Court was a local emanation of a Franchise Court, it was comparable with Shetland bailie courts in regards of its interests for good neighbourhood. The birlawmen of Yester and Gifford (Lowland) could fine contraveners to up to £10 Scots.⁴ These birlawmen met every year to make sure that the 37 acts of the "boor law" of Yester and Gifford were respected.⁵ The last prerogative of a Shetland Bailie was the supervision of the police actions within the bailiery jurisdiction. He appointed the rancelmen and lawrightmen, Shetland police constables.⁶ In the company of "twelve honest men", he perambulated the marches of the scattalds every year to check on the erection of dykes and on the lawfulness of the borders.⁷ He delivered warrants to anyone in the bailiery that intended to keep sheep dogs and, in company of the rancelmen or "other honest men", he ensured yearly that the sheep dogs weren't hurting sheep and had been previously approved.⁸

Sheriff Court

In 1541, the Shetland lawthing became a Sheriff court. In this county, the process of judicial integration within the realm of Scotland is characterised by two very different record collections. Sources of the ancient Sheriff court of Orkney and Shetland from 1605 to 1644 are conserved, but for the later period and until the middle of the 18th century, they are very sporadic.⁹ The record collection of Lerwick Sheriff Court *per se* starts in 1692 and goes through the 18th and the 19th centuries: it is dense and it illustrates the changes affecting the judicial network in Scotland in the 18th century.¹⁰ Ann E. Whetstone explains in her article,

¹ Ibid., 46–47.

² SA, GD150/2534B/6, 'Commission by George Earl of Morton to Andrew Sinclair, Brother of Robert Sinclair of Quendall, to Be Bailie of Dunrosness, Sandwick and Cunningsburgh'.

³ 'The Old Country Acts' act 15.

⁴ Cornell, 'Gender, Sex and Social Control', 59.

⁵ Ibid., 60.

⁶ 'The Old Country Acts' act 11.

⁷ Ibid. act 39.

⁸ Ibid. acts 8 and 10.

⁹ NAS, SC10 [off site SA and OA], 'Orkney & Shetland Sheriff Court Records: 17th Century-19th Century' n.d., accessed 22 March 2012.

¹⁰ SA, SC12/6, 'Lerwick Sheriff Court Records: Ordinary Court Processes 1692-1900' n.d.

“The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries” how before 1748 “Scotland lacked a uniform system of justice”.¹ The Sheriff courts were weak; their weakness was reinforced by their hereditary character and the existence of the Franchise courts.² After the Jacobites Rebellion in 1745 it was decided to abolish the heritable jurisdictions. The bailie courts of Shetland as well as the other Franchise courts of Scotland effectively disappeared on 25 May 1748 after an Act of Parliament had been passed in 1747 in order to “[take] away and [abolish] the Heretable Jurisdictions in Scotland”.³ This decision led to an exponential increase in the numbers of processes before the Sheriff Court after 1748. In short, Ann E. Whetstone states that the “[a]bolition of heritable jurisdictions resulted in the immediate strengthening of the sheriff courts”.⁴

From 1748 onwards the sheriffdoms were under the control of the central government in Edinburgh. The Sheriff was “divested of all powers”.⁵ He was merely a representative of the central government. He appointed up to two Sheriffs depute: they were the kingpins of the Sheriff Court system.⁶ The jurisdiction of the Sheriff depute was quite vast. He could judge commercial claims as well as civil or criminal lawsuits. However he couldn’t interfere in any cases of treason or any cases under the “four pleas of the crown” – murder, robbery, rape and arson.⁷ The 1747 Act stated that Sheriffs depute had to be an advocate with at least three years of experience. Furthermore he had to keep his practice and was required in his jurisdiction for a maximum of four months a year.⁸ The Sheriff depute could appoint substitute(s) who were to be “no more than a personal assistant chosen by the sheriff depute at his own recognizance”.⁹ Thus the Sheriff substitutes had various backgrounds: they were not supposed to have received any kind of legal education.¹⁰ The Sheriff substitutes acted in the name of the Sheriff depute and dealt with everyday matters; only the more delicate cases were handled by

¹ Whetstone, ‘The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries’, 61.

² *Ibid.*, 61–63.

³ Pickering, ‘An Act for Taking Away and Abolishing the Heretable Jurisdictions in That Part of Great Britain Called Scotland, 20 Geo. II C. 43’; Whetstone, ‘The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries’, 63..

⁴ Whetstone, ‘The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries’, 63–64.

⁵ *Ibid.*, 64.

⁶ Whetstone, ‘The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries’; Davies, ‘The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire’.

⁷ Whetstone, ‘The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries’, 61; Davies, ‘The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire’, 136.

⁸ Whetstone, ‘The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries’, 64.

⁹ *Ibid.*, 65.

¹⁰ *Ibid.*, 65 and 69.

the Sheriff depute. In Shetland after 1748 it seems that the Sheriff substitute appointed the rancelmen and the lawrightmen.¹

Admiralty Court

The word ‘Admiral’ first appeared in 1402 in Scotland to design the office of Henry Sinclair Earl of Orkney († 1417), often described as ‘Admiral’.² The Admiral was always a member of the nobility but it was not compulsory for him to have a seagoing experience.³ His principal aim was to benefit of the pecuniary potential of his office: the High Admiral was entitled to a share in the profits made of ships taken – one tenth in wartime and one third on all wrecks on Scotland’s coasts.⁴ An Admiralty Court was held if a ship has to be declared wrecked or taken. Moreover the Admiral had a full scale of rights concerning the fishing in Scottish waters, the beached whales and dolphins, the prizes, the wrecks.⁵ The High Admiral had the right to appoint Vice-Admirals and Admirals Depute. The Admirals Depute could hold Courts in more specific areas such as Argyll or the Shetland Islands for example. A stretch of the coastline was designated to them. The Duke of Argyll was a hereditary Admiral Depute for Argyll and most of the Western Isles. In the late 17th and early 18th centuries, the Earl of Morton had a heritable jurisdiction as Admiral Depute over Orkney and Shetland; the Magistrates of Glasgow, the Burgh of Rothesay, the Magistrates of Aberdeen and the Regality of Dunfermline had Admiral Depute rights respectively in the Firth of Clyde, over the coast of Bute, around the mouth of the river Dee and on the Fife coast.⁶ The Admiral Depute had a principal financial interest in the wrecks occurring in his jurisdiction. He had to organise the salvage, to hold a court to determine the circumstances and then, to establish the legality of the wreck. He had subsidiary financial interests in the beached whales and the valuable goods washed up on shore. He also had dues on fishing. In a petition presented at the High Court of Admiralty in Edinburgh in 1704, two men, John Scott merchant in Zetland and George Paterson skipper in Dundee, explained how

Finding that Mr John Mitchell of West Shoar Admirall depute of that Country had abundance of wrack goods in his Store house which he offered to sell The petitioners did optima fide bargain for some Anchors, saills and peeces of [Gowes?] of two Fathom length the peece or thereby Which of necessity must be a Fair bargain in the petitioners since wracks are soo very ordinary in that

¹ NAS, RH9/15/157/5, ‘Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselman in the Island of Unst’ 1772.

² Sue Mowat and Eric J Graham, *High Court of Admiralty, Scotland. Records, 1627-1750* (Scotland: ESME, 2005).

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

Country and never sought after nor the owners never known And since it is noutourlie known that the Admirall depute in that Country are in use to sell wrack goods upon such occasions¹

However these regional courts were always answerable for their behaviours before the High Admiralty Court such as detailed in 1693 in the “Commission by The Duke of Hamilton to Alexander Brand For being Admirall deputt to his grace of the Isles of Orkney and Zetland 1693”:

Reserving allways to the Said high Court of Admiralty the whole power of Cognosceing Judgeing and Determineing in pryzes piracy’s and all Capitall Crimes, and in all other action’s and Causes which shall be intented and persued before the Judge of the said high Court of Admiralty betwixt any person or persons within the bounds abovewritten [Orkney and Shetland]²

In Shetland, the Vice-Admiral had similar interests than in the rest of Scotland. However, due to local customary practices on wrecks and beached goods, the repartition was slightly different. Hance Smith explains in his book *Shetland Life and Trade, 1550-1914* that “[b]y a tradition which extended not only to shipwrecks but also to the stranding of whales, the Admiral was entitled to one-third of the proceeds of the wreck, with one-third going to the owner of the shore on which the wreck occurred, and the remaining third going to the salvors, who were usually tenants”.³ He further explains how before the middle of the 18th century in a mercantilistic attempts the Admiral and landowners tried to secure as much wrecked goods as possible in order to obtain an important economic gain while in the second half of the 18th century, the Sheriff and Admiral Depute followed “commercial procedures” which included sale by roup.⁴

This delegation of competences from the High Admiral to the Admiral Depute led to a peculiar situation in Shetland. In 2010, in a discussion with Shetland archivist, Brian Smith, he explained that there was no substantial collection of Admiralty Court records for Shetland: the existing records are spread mainly throughout the 18th-century Sheriff Court processes. Even when the High Court of Admiralty intervened, the records were very sporadic. A study based on the catalogue set up by Eric J. Graham and Sue Mowat for the Admiralty Court on the period 1702-1750,⁵ shows that on a total amount of 1766 processes in Foro, only 23

¹ NAS, AC9/66, ‘James Lyall v John Mitchell and Others’ 1704 piece 26; NAS, AC13/5/41, ‘Commission The Lords of Admiralty to Mr John Mitchell of West Shoar for Zetland 13 November 1701 [Inventory of Commissions Granted by Lords of Admiralty]’ 1701.

² NAS, RH9/15/140, ‘Admiralty Court: Commission by William, Duke of Hamilton, President of Privy Council and High Admiral of Scotland, in Favour of Alexander Brand, Late Bailie of Edinburgh, to Be Depute Admiral of the Isles of Orkney and Zetland’ 1693.

³ Smith, *Shetland Life and Trade 1550-1914*, 278.

⁴ *Ibid.*, 278–79.

⁵ Mowat and Graham, *High Court of Admiralty, Scotland. Records, 1627-1750*.

processes concerned the Shetland Islands, closely or by far.¹ One of the explanations for this low number might be that Shetland possessed the right to set up a Vice-Admiralty Court.² This particularity authorised the Vice-Admiral to judge cases directly on Shetland territory. However the Vice-Admiralty used the Sheriff Court to judge and administer justice in matter regarding maritime rights. This special jurisdiction led to the conservation of the Vice-Admiralty processes within the Sheriff Court records.

Kirk Sessions

Scottish Reformation didn't create Church Courts. Stephen J. Davies explains that "Church courts existed in Scotland before the Reformation, but surviving records are few and what has survived gives the impression that their business was mainly to do with testaments, contracts and property disputes".³ Reformation, however, brought a new kind of Church Courts. Reformation had in its core the establishment of a "godly society". Harriet Jane Cornell details how "*The First Book of Discipline* from 1561 proclaimed that 'no Commonwealth can flourish or long indure without good laws and sharpe execution of the same, so neither can the Kirk of God be brought to purity neither yet be retained in the same without the order of Ecclesiastical Discipline'".⁴ Parochial Church Courts, the Kirk Sessions, took the responsibilities to maintain a "godly discipline". In each parish a minister was appointed and the moral issues arising from daily life were dealt with by a committee, the Kirk session.⁵ The Kirk session was a permanent committee consisting of the minister of the parish and the Elders who were elected by their predecessors.⁶ The session elected one elder in each quarter of the parish.⁷ The Civil War brought some disruption in the organisation of the Kirk with the introduction of the structure of Episcopacy but it was abolished in 1690 and Presbyterianism was restored.⁸ In 1700 a committee sent by the General Assembly of the Kirk came to Shetland in order to control if the parochial system in Shetland was conform to the rest of

¹ "A Process is a collection of all the documents lodged in a court in the course of a case. The Processes in Foro usually contain between 15 and 25 documents, and form the core of the Admiralty Court archive. They contained documents which both the protagonists have produced in court to back up their claims among with the depositions of the witnesses and other evidence", in *Ibid.*; NAS, AC9, 'Admiralty Court Processes in Foro' 1830 1703.

² NAS, AC13/2 p. 41, 'Earl of Morton Vice Admiral for the Islands of Orkney and Shetland [Commissions and Deputations]' 1738.

³ Davies, 'The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire', 123.

⁴ James K Cameron, ed., *The First Book of Discipline* (Edinburgh: St. Andrew Press, 1972), 165; Quoted in: Cornell, 'Gender, Sex and Social Control', 63.

⁵ Rosalind Mitchison and Leah Leneman, *Girls in Trouble: Sexuality and Social Control in Rural Scotland, 1660-1780* (Edinburgh: Scottish Cultural Press, 1998), 7.

⁶ *Ibid.*; Davies, 'The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire', 123.

⁷ Mitchison and Leneman, *Girls in Trouble*, 7.

⁸ Leneman, *Living in Atholl, A Social History of the Estates 1685-1785*, 86.

Scotland – similar committees surveyed the other Scottish parishes as well.¹ By 1733 there were thirteen parishes in Scotland: eight on the mainland and five on the islands.² The Kirk sessions were probably durably established in these parishes after 1700 and the coming of the committee in Shetland. The oldest records of Kirk Sessions kept in Shetland date from 1675 and concern only the parish of Tingwall. This court book mentioned the visit of the committee. The clerk wrote on May 26 1700 that “the sd. day yr. was publick intimatione made that the Commission of the late Generall Assemblie in Conjunction wt. the presbyterie of Zetland intended upon the last day of the moneth to [...] a visitatione of that whole Ministerie yrfore appointed all Herettors, Elders & oysr should be prt. the sd. day”.³ Most of the 18th-century session books conserved in Shetland Archives started in the 1720s and 1730s. This was the case for the parishes of Unst and Northmavine.⁴ The court books of the parish of Sandwick and Cunningsburgh started in 1755 and that of Dunrossness in 1764.⁵

The Elders and the minister were the moral body and, the treasurer and the clerk were the administrative body of the session. The Kirk Session had to promote and enforce the Presbyterian discipline: it was a local court of morality and a tool for social control.⁶ Even with predestination, the Kirk claimed that a society where sins and bad behaviours existed would lead towards plague, famine, uprisings and rebellions.⁷ The control of morality became a stated goal to establish a “godly society”. The Kirk session had a jurisdiction over ‘moral cases’: sexual offences such as illegitimate child, ante-nuptial fornication and adultery, breach of Sabbath, “Unseemlie behaviour” such as insults, calumny, petty theft and minor violence, defamation and witchcraft.⁸

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 34–35; John Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, in *A General Collection of the Best and Most Interesting Voyages and Travels in All Parts of the World*, ed. John Pinkerton, vol. 3 (London: Longman, Hurst, &c., 1809), 731–810.

² Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 2.

³ SA, CH2/1078/1, ‘Tingwall Kirk Session Minutes, 1675-1708’ n.d., fol. 49.

⁴ SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’ 1739 1720; SA, CH2/286/1, ‘Northmavine Kirk Session Minutes, 1729-1765’ n.d.

⁵ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’ n.d.; SA, CH2/112/1, ‘Dunrossness Kirk Session Minutes, 1764-1841’ n.d.

⁶ Leneman, *Living in Atholl, A Social History of the Estates 1685-1785*, 86; For the 17th century, see: Cornell, ‘Gender, Sex and Social Control’.

⁷ Mitchison and Leneman, *Girls in Trouble*, 6.

⁸ SA, CH2, ‘Shetland Church of Scotland Records 1675-1997’ n.d.; Davies, ‘The Courts and the Scottish Legal System 1600-1747: The Case of Stirlingshire’, 123–27.

*Courts' cooperation and adaptation: "A web of justice in Operation"*¹

Cooperation

In the traditional historiography the Scottish judicial system before 1748 is often depicted as a weak, un-centralised and inefficient system.² However Stephen J. Davies has shown that the system was more complex than what the 18th-century English visitors criticised.³ The system had its own logic and adapted to turn its weaknesses into strength. The Scottish state was presented as weak and the jurisdictions that covered its territory were said to be overlapping and incompetent. Thus the Franchise courts and the Sheriff courts shared similar competences during the first half of the 18th century; they also could judge Admiralty matters. As a latecomer the Admiralty court faced frequent challenges from other jurisdictions.⁴ Eventually the Kirk sessions, the Franchise courts and the Sheriff courts had the same prerogatives over a wide range of offenses. However this theoretical overlapping of jurisdictions wasn't a practical problem. A very dense and efficient judicial grid covered Scottish territory. Stephen J. Davies explains that

To the modern observer, the great number and variety of courts with their overlapping jurisdictions, patchwork quilts of territories and intimate connection with private interest may seem a sure recipe for confusion and disorder of all kinds. However, on closer examination, a different picture emerges. The different courts were in fact linked and knit together by convention, by personal contacts and by shared personnel. Each type of court had a clearly defined role and inter-judicial clashes were rare; there was in any case a well understood machinery for handling them when they did occur.⁵

Harriet Jane Cornell insists in her PhD thesis on the fact that "[t]he local court system in early modern Scotland was a network of secular and ecclesiastical bodies, joined together in a web of shared institutions, shared personnel and shared concerns".⁶ This network was based on "cooperation rather than conflict".⁷ One of the main reasons for such a cooperative network was that "both civil and ecclesiastical courts were concerned with 'guid nichtburheid'".⁸

¹ Cornell, 'Gender, Sex and Social Control', 71.

² Ann E. Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries* (Edinburgh: John Donald Publishers Ltd, 1981); Davies, 'The Courts and the Scottish Legal System 1600-1747: The Case of Stirlingshire'.

³ Davies, 'The Courts and the Scottish Legal System 1600-1747: The Case of Stirlingshire'.

⁴ Mowat and Graham, *High Court of Admiralty, Scotland. Records, 1627-1750*.

⁵ Davies, 'The Courts and the Scottish Legal System 1600-1747: The Case of Stirlingshire', 122.

⁶ Cornell, 'Gender, Sex and Social Control', 41.

⁷ *Ibid.*, 43.

⁸ *Ibid.*, 50.

Did Shetland civil and ecclesiastical jurisdictions worked side by side to regulate the communities? Was the Scottish state's strength felt in Shetland? The first thing against the theory of a weak central power is its judicial actions by proxy. The Scottish government kept on facilitating the work of the Kirk. T. C. Smout wrote that the success of the Kirk "was greatly assisted by the strength of its discipline over the morals of its congregations, and this in turn could not have come to fruition without support of the civil authorities".¹ This 'assistance' wasn't only coming from the central government.² In Shetland the Country Acts and the acts *Anent making of rancelmen, and their instructions* provided conditions of cooperation between the different courts.³ Thus the rancelmen in case of "unchristian or unlawful practices" should report them to the "judicatory competent".⁴ The first act of the Country Acts gave an even more precise idea of the collaboration between the civil and religious courts. It was stated: "That the bailie in each parish concur and assist in the discipline of the kirk and execution thereof".⁵ The Earl of Morton in the charter appointing the bailie of Dunrossness, Sandwick and Cunningsburgh wrote that the bailie should participate in "suppressing and reforming all Church irregularities And immoralities".⁶ On the Scottish mainland up until the 1660s at least, Franchise courts worked with the Kirk to protect the "godly discipline". They passed local acts to regulate moralities. T. C. Smout explains that in 1664 the Baron of Stichill "taking into his serious consideration how great necessity church and discipline has of the assistance and concurrence of the civil magistrate' he ordered his baillie to 'put into execution all acts and decrees of the kirk-session against all persons whomsoever'".⁷ This was also the case in the 1640s in Cockburnspath where the Baron Court "passed ordinances with the kirk session to regulate popular behaviour and relationships" and in the barony of Lasswade where the court passed an act concerned with Sabbath-breaking.⁸ This type of cooperation offered for the Kirk Session "important resources [...] to draw upon

¹ Smout, *A History of the Scottish People, 1560-1830*, 74.

² "The Scots Parliament repeatedly passed acts supporting the edicts of the Kirk, and the local courts often formally declared their intention of supporting local session or presbytery.", in Davies, 'The Courts and the Scottish Legal System 1600-1747: The Case of Stirlingshire', 130.

³ Thomas Gifford, 'Anent Making or Rancelmen, and Their Instructions', in *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents* (Sandwick: Thule Print Ltd, 1976), 94-95..

⁴ *Ibid.*, 94.

⁵ 'The Old Country Acts' act 1.

⁶ SA, GD150/2534B/6, 'Commission by George Earl of Morton to Andrew Sinclair, Brother of Robert Sinclair of Quendall, to Be Bailie of Dunrosness, Sandwick and Cunningsburgh'.

⁷ Gunn, *Records of the Baron Court of Stichill*; Quoted in: Smout, *A History of the Scottish People, 1560-1830*, 116.

⁸ Cornell, 'Gender, Sex and Social Control', 73; Whyte, *Agriculture and Society in Seventeenth Century Scotland*, 45.

in order to enforce and enable their own jurisdiction to function as part of an effective network” explained Harriet Jane Cornell.¹

To a certain extent, the Scottish state used the Franchise courts to enforce law and justice as well. In the chapter on Franchise Courts in the *Introduction to Scottish Legal History* published in 1958, Peter McIntyre explains that “it was better for the rights to be granted to one who could put them into effect [here: the Franchise courts] than to have the law a dead letter through the weakness of central government”.² Instead of looking at the central government as completely overwhelmed and incompetent in terms of justice it is possible to analyse its granting of Franchise courts as a pragmatic way of dealing with its difficulty to establish a strong, centralised power. This pragmatism has to be compared with the attitude of the Crown towards the legal system in Shetland. Even though the chronologies were different, the central government instead of taking risks and facing uprising adopted pragmatic decisions that didn’t force it to use power or more coercive methods. The cooperation between State and Franchise courts appear in the fact that they were placed, somehow, under the supervision of a higher authority – in the early 18th century, still hereditary: the Sheriff Court. For example, the Earl of Morton directly placed the bailie court of Dunrossness, Sandwick and Cunningsburgh under the supervision of the Sheriff depute or Stewart depute. If offences happened to fall outside of the Bailie’s prerogatives he should refer them to the Sheriff court. The Earl wrote that:

[the Bailie] shall be present and answer [?] of court to us and our depute Stewart and justiciars three times in the year if required and likeways the said Andrew Sinclair asBaillie forsaid shall not meddle with any bloodwitts or other crimes competent before us or our deputs asStewart or justiciar [...] and shall at three times in theYear if required give up his books and court rolls to be (persised) by us or our deputs so that effectuallCourse may be taken which such crimes and enormities as are not competent before the said Baillie [...]³

Stephen J. Davies explains that before 1747 if a baron court was to judge cases “involving ‘penalty of life and limb’ a representative of the Sheriff had to be present during the trial”; eventually, those judged by the Baron Court could appeal to the Sheriff Court.⁴

Stephen J. Davies differentiates three periods in term of courts’ cooperation: before 1690, between 1690 and 1748 and after 1748. Before 1690, the courts worked very efficiently together; they shared very often the same officers: a ruling elder could also be a Sheriff-

¹ Cornell, ‘Gender, Sex and Social Control’, 72.

² Stair Society, *An Introduction to Scottish Legal History*, vol. 20 (Edinburgh: Printed for the Stair Society, by R. Cunningham, 1958), 378. Quoted in: Davies, ‘The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire’, 142.

³ SA, GD150/2534B/6, ‘Commission by George Earl of Morton to Andrew Sinclair, Brother of Robert Sinclair of Quendall, to Be Bailie of Dunrosness, Sandwick and Cunningsburgh’.

⁴ Davies, ‘The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire’, 141.

depute like in Falkirk in the 1630s.¹ However after 1690 and the Glorious Revolution, the ties between the Kirk and the upper classes were somehow broken and the cooperation between the ecclesiastical and the civil courts lowered.² In the last period, when the Franchise courts had been abolished, the Sheriff courts became more powerful and their officials more specialised and trained.³ The cooperation between courts personnel existed in Shetland. The bailie court of Unst and the Stewart Court (the Sheriff Court in Shetland before 1748) shared the same procurator fiscal in 1732 at least.⁴ Even though his identity cannot be ascertained, he was probably William Mouat, attested procurator fiscal of the bailie court of Unst in 1731.⁵

The cooperation between civil and ecclesiastical courts can also be seized in their territorial organisation. The three baileries had widely different territorial organisations. The bailiery court of Dunrossness, Sandwick and Cunningsburgh was territorially restricted to the united parishes of Dunrossness, Sandwick and Cunningsburgh.⁶ The bailiery of (North) Unst covered the territory of the old parochial division of North Unst and in 1772, the Sheriff Court appointed Rancelmen and Lawrightmen in each of these ancient divisions – North Parish, Mid Parish and South Parish.⁷ The bailiery court of Northmavine was organised following the Kirk quarters, the Elders' districts of election.⁸ In these examples, the bailie courts used the territorial units of an ecclesiastical court to organise its jurisdiction. Stephen J. Davies writes that before 1747, the Kirk session tended to use the baronies within a parish as a basis for the election of the Elders.⁹ The difference between Shetland and the Scottish mainland can be explained by the fact that Shetland's Franchise Courts were parish-based and not estate-based.¹⁰ Church territories were the basis for civil institutions and *vice versa*. Civil buildings could also serve for ecclesiastical courts: in 1629, the Kirk Session of Haddington St Mary's in East Lothian (Lowland) was "held in the tollbooth of Haddington by Mr James Flemming,

¹ Ibid., 131; See also: Cornell, 'Gender, Sex and Social Control'.

² Davies, 'The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire', 131–32.

³ Whetstone, 'The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries'.

⁴ NAS, RH2/8/33, 'Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733' n.d., fol. 14.

⁵ Ibid., fol. 3.

⁶ SA, GD150/2534B/6, 'Commission by George Earl of Morton to Andrew Sinclair, Brother of Robert Sinclair of Quendall, to Be Bailie of Dunrossness, Sandwick and Cunningsburgh'; NAS, RH11/29/1, 'Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735' n.d.

⁷ NAS, RH2/8/33, 'Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733'; NAS, RH9/15/157/5, 'Appointment by the Sheriff Substitute of Zetland of Lawrightmen & Rancelmen in the Island of Unst'.

⁸ SA, D25/3, 'Fragment of Bailie Court Book of Northmavine, 1744-1747' n.d.

⁹ Davies, 'The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire', 142.

¹⁰ Thomson, *Orkney Land and People*, 161. For a short presentation of Franchise courts based on estates, see: Davies, 'The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire', 141.

minister at Bothanes”;¹ and in Shetland, churches were often used as a rallying point to disseminate civil information such as Country Acts and judgments, to open a bailie court session or to execute a verdict.²

“The Judge remitts the action to the Judges competent”³

Ecclesiastical and civil courts collaborated: they acted as a network. Cases of collaboration between courts in Shetland in the 18th century can be found in the records of the Kirk Sessions, the bailie courts and the Sheriff Court. The courts collaborated in two different ways: 1) they collaborated on cases: they referred cases to the ‘most competent court’; 2) they exchanged resources and supported each other’s decision. Between 1700 and 1800, the Kirk Sessions referred to the ‘civil magistrate’ in cases of violence and abusive language. In 1768, the Kirk Session of Tingwall initiated a case that concerned a certain James Halcrow who kept “insulting the Minister by impudent and provoking speeches in saying the Minister continually [sic] molested all his neighbours and that non could live at peace with him”.⁴ According to the minister, it didn’t stop there and James Halcrow turned violent. Mr William Mitchell, minister of Tingwall, eventually filled a criminal libel at the Sheriff Court against James Halcrow for killing his livestock (horse, cattle and sheep) and threatening him.⁵ Considering the exponential violence of the case, it was eventually referred to the Sheriff Court. Stephen Davies, in his article ‘The Courts and the Scottish Legal System 1600-1747: the Case of Stirlingshire’, explains that “church courts referred any case with a clear criminal element such as an assault or suspected infanticide to the civil magistrates”.⁶

The procedure at the Sheriff Court included extracts of the Kirk Session of Tingwall.⁷ The Kirk Sessions could also transfer cases of abusive language to a civil court either when a defendant denied the charges or when complexities arose in the procedure such as when a

¹ NAS, CH2/799/1, ‘Haddington St Mary’s Kirk Session, 1629-1657’ n.d., fol. 306; Quoted in: Cornell, ‘Gender, Sex and Social Control’, 65.

² Country Acts read and Bailie Court opened at the Kirk of Dunrossness: NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’; Punishment received at the Church of Midyell: SA, SC12/6/1772/17, ‘Indictment (Sheepstealing). (Criminal)’ 1772.

³ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 30.

⁴ “Extract of Kirk Session of the 13th, 16th and 20th November 1768 respectively at the Kirk of Tingwall, the Manse of Tingwall and the Kirk of Whiteness to call James Halcrow at the Church Door where he did not come”, in SA, SC12/6/1769/1, ‘Criminal Libel (for Killing Petitioner’s Animals, Breaking into the Manse and Slandering Petitioner, Writing to Petitioner a Note Threatening to Secure His Dismissal from the Office of Minister, and Stirring up the People against the Petitioner.) (Criminal)’ 1769 piece 4.

⁵ Ibid. piece 1.

⁶ Davies, ‘The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire’, 131.

⁷ SA, SC12/6/1769/1, ‘Criminal Libel (for Killing Petitioner’s Animals, Breaking into the Manse and Slandering Petitioner, Writing to Petitioner a Note Threatening to Secure His Dismissal from the Office of Minister, and Stirring up the People against the Petitioner.) (Criminal)’ piece 4.

pursuer was accused of the same charge than a defendant. This was the case in 1756 when Barbara Thomasdaughter in Hoswick, in the parish of Sandwick was “summoned to this diet as guilty of swearing & cursing her neighbours [Margaret Nicolsdaughter, wife to Laurence Halcrow in Hoswick]”.¹ As a defence, she explained that “she had met with provocation viz – That said Margt. Nicolsdaughter prayed the Divil curse her, if she did not cut her down with the corn hook”.² This double accusation and the “willingness [of the witnesses] to make oath upon what they have here asserted, if call’d before a Magestrate” both led the Session to appoint “the Clerk to give an extract hereof to the Magestrate &c.”³ The same year in the same parish, Margaret Jamesdaughter in Esthouse “being summoned to this diet for swearing and scoulding her neighbour Magnus Magnuson” refused to publicly “appear nixt preaching Sabbath before the congregation and be rebuked by the Minr. for her sin and scandal [...] unless Magnus Magnuson appeared likeways to be rebuked”.⁴ In order to further investigate the case, “the Session appoint[ed] their Clerk to draw out an extract of this and lay before Brow the Magistrate at first Cour[t] in the parish that she may be compelled to give obedience to discipline as law accords”.⁵ The magistrate in question, Alexander Sinclair of Brow was the “last parochial Magistrate or ‘Bailie’ of Dunrossness”.⁶ He held court up until the early 1760s, almost 15 years after the abolition of Franchise Courts. Unfortunately, records of his bailie court didn’t survive. In 1762, the Kirk Session of Northmavine “refer[ed] the whole affair to the Sheriff or Stewart Substitute who no Doubt will do justice to both parties & orders their Clerk to Send up ane Exact Coppie of this minute first Court Sitts in the Quarter”.⁷ The affair concerned defamation and violence between two women, Barbara Donaldsdaughter in Eastness and Christian Smith in Lian. Unfortunately, records from the Sheriff Court are very scarce for this year and it is impossible to trace this case further. Eventually, civil courts could refer cases to the Kirk Sessions. In 1746, the bailie court of the Quarter of Ollaberrie in Northmavine received a petition by Merrion Nicolson: “she had taught a scooll an half year in the sth. Quarter & two years in Northroe without receiveing any paymt. & so craved the people may be oblinded to pay her conform to agreemt”.⁸ After consideration, the judge

¹ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 5.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ John Mill, *The Diary of the Reverend John Mill, Minister of the Parishes of Dunrossness Sandwick and Cunningsburgh in Shetland, 1740-1803. With Selections from Local Records and Original Documents Relating to the District*, ed. Gilbert Goudie (Edinburgh: Edinburgh University Press, 1889), 22.

⁷ SA, CH2/286/1, ‘Northmavine Kirk Session Minutes, 1729-1765’, fol. 31.

⁸ SA, D25/3, ‘Fragment of Bailie Court Book of Northmavine, 1744-1747’, fol. 11.

ordained “that a Corrum of the Elders who it appears that engaged her make owt a Just Acct. of the sumes due her thereupon”.¹ Unfortunately, records from the Kirk Session of Northmavine in 1746 didn’t survive: it is impossible to know if the Elders eventually paid Merrion Nicolson what she was due. This last example underlines the fact that the bailie court had a detailed knowledge of its prerogatives and the Kirk Session’s. In 1724 Thomas Gifford of Busta as “stuart and justiciar depute of Zetland” declared in the *Country Act anent Parochial Schools* that once a school fund was settled, its direction was “to be left to the heritors, minister, and kirk session in each parish”.² Ministers and Kirk Sessions took care of the appointment of the schoolmaster and of the parochial fund to pay the schoolmaster. This was the case in Sandwick and Cunningsburgh in 1755 when Katherine Grott in Houlland received in March from the Kirk Session “half a crown from the Treasur for schoolage of some poor children”, 12 pence in September and again in February 1756, “four Shillings and sixpence for schoolage of poor children”.³ In 1772 William Jack, the minister of Northmavine, sent a petition to the Presbytery of Zetland “representing interalia that he had no legal school in his Ministry craving that the Presbytery woul take the legal steps in order to his procuring the same”.⁴ The Presbytery approved the proposition and the minister was appointed “to serve an Edict from his Pulpit advertising Heritors, Liferenters and all concerned in paying to, and upholding a Legal school and a school house in the parish of Nothmavine”.⁵ Civil and ecclesiastical personnels knew the extent of their responsibilities and this was not surprising since “each type of court had a clearly defined role and inter-judicial clashes were rare” explains Stephen J. Davies.⁶

The collaboration between civil and ecclesiastical courts included exchanges of resources and support, not only in terms of formal engagements but also in judicial practices. Civil courts could support the Kirk Sessions and their charity work in transferring civil fines to the poor fund of a Session. In 1793, Robert Thomson complained and petitioned the Sheriff Court: a dog had bitten his leg. John Strong of Virkie, the dog’s owner, was reluctant to kill it. Eventually he had to pay 20 sh. Scots to the poor of Dunrossness after the dog had attacked the petitioner, a child and a servant.⁷ Fifty years earlier, the judge of the bailie court of

¹ Ibid.

² Gifford, ‘Country Acts Anent Parochial Schools’, 88.

³ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 2 and 4.

⁴ SA, CH2/1071/4, ‘Lerwick Presbytery Minutes, 1749-1772’ n.d., fol. 512.

⁵ Ibid.

⁶ Davies, ‘The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire’.

⁷ SA, SC12/6/1793/42, ‘Petition Concerning Sheepdogs (Craving the Destruction of the Dogs of Mr Strong of Virkie and that of John Bruce of Sumburgh - on of Which Bit the Pursuer in the Leg Which Later Inflamed Dangerously.)’ 1793.

Northmavine fined “Malcom in Burgen [...] in the Sume of 30 Sh. Scots for the use of the poor & ordains the same to be pd. the Kirk Session”.¹ In 1794 the Moderator of the Kirk Session of Sandwick and Cunningsburgh ordered “William Nicolson in Fladabister [...] guilty of blaspheming the Holy Name of God [...] to pay half crown mor to the poor” after the said William Nicolson had paid “fourthy pence formerly by the Sherrife order for the abuve sin”.² Civil courts could also condemn a defendant to both a civil judgement and a public appearance for repentance at the church court. This could give legitimacy to the civil courts but also this could show to the parishioners that social control wasn’t only an ecclesiastical matter but a civil one as well. Through the 1730s and the late 1750s and early 1760s, the Bailies of Dunrossness, Sandwick and Cunningsburgh cooperated with the church courts on cases of abusive languages and theft. In 1733, the Bailie of the Dunrossness, Sandwick and Cunningsburgh “having considered the complaint [...] sufficiently proven and th[e]r[e]for fine[d] and amerciat[ed] the s[ai]d Marjory Gilbertsdaur. [a slanderer] in the sum of ten pounds Scots money to be payed to the Fiscal of Court”.³ His decision included another sentence: the Bailie “remitt[ed] the defr. to the Minr. and Kirk Session for censure”.⁴ Unfortunately, records from the Kirk Session of Dunrossness in 1733 didn’t survive: it is impossible to know if Marjory Gilbertsdaughter appeared at church. Between 1757 and 1763, the “Magestrate”, probably Alexander Sinclair of Brow, the last bailie of Dunrossness, sentenced five persons, accused of theft or abusive language, to appear before the congregation to be rebuked for their sin, exhorted to repentance and dismissed from discipline.⁵ In 1763 the “Magestrate” sentenced John Thomason in Gord “to appear publicly before the congregation & to pay 13 Shill. Scots to the poor”, which he did.⁶ This was also the case in Stirlingshire where “the secular courts, after exacting secular punishment for an offence would then refer the guilty party to the relevant session to make public repentance”, explains Stephen Davies.⁷ Kirk Sessions could also ask civil courts for a stronger support in the enforcement of discipline. In 1756, the Kirk Session of Sandwick and Cunningsburgh asked for the support of the civil magistrate. Hance Smith and Laurance Sutherland were both guilty of “scandalous behaviour prophaning the Lords day and neglecting ordinances” and to deal with this kind of behaviour, “the Session thought proper to apply to the Civil Magistrate

¹ SA, D25/3, ‘Fragment of Bailie Court Book of Northmavine, 1744-1747’, fol. 1.

² SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 65.

³ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 18.

⁴ Ibid.

⁵ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 2–3, 6, 7, 8 and 19.

⁶ Ibid., fol. 19.

⁷ Davies, ‘The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire’, 131.

to concur with the Sess. for surpressing such practices by corporal punishment or otherwise as shall be found most expedient for terror to others, and appoints the Clerk to intimate the same to the Magistrate by an extract hereof”.¹ In this case, the relationship between the two courts seemed to be conflict-free. However, a year earlier Robert Reid in Sandwick refused to obey the magistrate sentence: he refused to be publicly rebuked before the congregation. The Session took it badly and asked the Clerk to inform “Brow [the magistrate], that he might see to the execution thereof, that his authority be not contemned and a door opened thereby for more wickedness of that kind”.² This last sentence could be read as a sign of strong collaboration between the courts but it could also sound like an admonition: the civil magistrate didn’t participate enough in the enforcement of discipline. This admonition has to be understood in a larger context – it isn’t the symbol of bad relationship between courts but bad relationship between men. In the late 1750s and early 1760s John Mill, the minister of the parishes of Dunrossness, Sandwick and Cunningsburgh, didn’t have a peaceful relationship with “[t]he magistrate, namely Alexander Sinclair of Brow, [who] for a belly-full of drink” passed a sentence in favour of the minister’s opposition in a case of land property.³

With the exception of this last example, a rare inter-judicial clash in the words of Stephen J. Davies, the collaboration between civil and ecclesiastical courts in Shetland in the 18th century ensured a denser network of law enforcement: civil and ecclesiastical courts worked side-by-side to keep a godly discipline in Shetland.

Sheriff Court and Country Acts

After 1748 the cooperation between courts changed as the Franchise courts were abolished and the Sheriff courts strengthened. Did that mean the end of Shetland by-laws? Or the end of the police force – rancelmen and lawrightmen – that participated in their enforcement? It didn’t mean the end of the by-laws. The Parliament engrossed the Country Acts and the Sheriff Court used them in various processes in the second half of the 18th century. These processes were heterogeneous: they dealt with theft of cattle, herding, sheep dog, impediment of the rancelmen’s work, going unaccompanied on the hill, scattald’s marches and swine rooting on arable land.⁴ It was reminded in 1787 that they were used in “his Majesties

¹ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 4.

² Ibid., fol. 2.

³ Mill, *The Diary of the Rev. John Mill*, 22.

⁴ SA, SC12/6/1775/23, ‘Petition (for Retaining Calf.) (Criminal)’; SA, SC12/6/1777/14, ‘Complaint (Failure to Herd.) (Criminal)’; SA, SC12/6/1787/30, ‘Petition (for Damages Caused by Defender’s Sheep Dog.) (Criminal)’; SA, SC12/6/1789/60, ‘Petition (Concerning Obstruction of Ranselmen.)’; SA, SC12/6/1794/1, ‘Petition (Going Unaccompanied to Sheep Hill.)’; SA, SC12/6/1790/50, ‘Petition (Concerning Swine on the

Interest” and in 1793 that “[his] Lordship [here, the Sheriff] ha[d] been pleased, not only to approve, but Sanction these well regulated Laws & Customs”.¹ The Sheriff Court used both Parliament laws and Country Acts. They could even be used simultaneously such as in 1777 when the Act of Parliament, “Act for Winter Herding” and the 27th act of the Country Acts were used in a process concerned with the building of sufficient dykes.² The use of the Country Acts conjointly with the Acts of Parliament helped to preserve common resources, even if in certain cases it was only done in order to protect the interests of large landowners, and it helped to maintain for a little longer the ancient rural and agricultural practices.³

The rancelmen were active at the bailie courts before 1748 and they kept a similar place at the Sheriff Court after this date. They hold a comparable position with the office of police constables described in an Act of Parliament in 1661.⁴ Shetland Sheriff deputies and substitutes adopted a pragmatic approach and instead of replacing these men and appointing ‘constables,’ they relied on these men who were part of the communities. Between 1774 and 1798 at least, they mostly hired rancelmen on cases of swine rooting and theft. In this period, rancelmen appeared to still be present in almost all Shetland parishes. The other office that was in theory active at the bailie courts and at the Sheriff court was the office of lawrightman. In 1772, the Sheriff substitute decided to appoint rancelmen and lawrightmen in the island of Unst in order to counter attack “several abuses non complained”.⁵ It is difficult to know if the lawrightmen made a difference or not and if they actually fulfilled their office as there wasn’t any account left on this question. However, there is one – and only one – process at the Sheriff Court that mentioned active lawrightmen.⁶ In 1774 in the parish of Cunningsburgh, John Smith in Starkigarth was accused by Laurence Bain, Edward Halcrow and Laurence Jameson all in Ocrquooy and Laurence Jameson in Ukensetter of stealing plants of cabbage. The four men had reported him to two rancelmen Charles Halcrow in Aith and Laurence

Scattald of Haryilie.’ 1790; SA, SC12/6/1793/8, ‘Petition (for Enclosing Part of the Undivided Commonty of Schurron in Wiesdale.)’ 1793; SA, SC12/6/1798/20, ‘Petition (for Warrant to Regulate Swine.)’.

¹ SA, SC12/6/1793/8, ‘Petition (for Enclosing Part of the Undivided Commonty of Schurron in Wiesdale.)’ piece 8; SA, SC12/6/1787/30, ‘Petition (for Damages Caused by Defender’s Sheep Dog.) (Criminal)’ piece 1.

² Brown and al., ‘1686/4/37: Act for Winter Herding’; SA, SC12/6/1777/14, ‘Complaint (Failure to Herd.) (Criminal)’.

³ Audrey Beaudouin, ‘Les Zones Humides Shetlandaises : Des Espaces Communautaires Face Aux Mutations Sociales Du XVIIIe Siècle’, in *Usages et Espaces Communautaires Dans Les Zones Humides. Actes de La Journée D’étude 2010* (Usages et espaces communautaires dans les zones humides - GHZH - Université d’Orléans, Vincennes: Groupe d’Histoire des Zones Humides, 2011), 47–64.

⁴ Brown and al., ‘1661/1/423: Commission and Instructions to the Justices of Peace and Constables’.

⁵ NAS, RH9/15/157/5, ‘Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselmen in the Island of Unst’.

⁶ SA, SC12/6/1774/6, ‘Petition (Theft - of Plants.) (Criminal)’ 1774.

Manson in Tou.¹ The Sheriff substitute William Balfour wrote a “Direction for the Lawwrightman and Ranselman in the Parish of Cunningsburgh” addressed to “Peter Tulloch Lawwrightman and the Ranselman in the parish of Cunningsburgh” ordering them to investigate properly in the matter.² This lawsuit is probably one of the rare records of an active lawwrightman. It maybe testifies also of the concern of one – and only one – Sheriff substitute, William Balfour, who appointed both the Lawwrightmen of Unst and resorted to the Lawwrightman of Cunningsburgh. It is difficult to know for certain.

Date	Concern of the case	Surname	Firstname	Township	Parish
1774	Swine rooting	Laureceson	Thomas	Coldilift	Tingwall
1774	Swine rooting	Peterson	Thomas	Uresland	Tingwall
1774	Swine rooting	Mouat	Peter		Tingwall
1774	Swine rooting	Tait	Jerom		Tingwall
1774	Theft	Halcrow	Charles	Aith	Cunningsburgh
1774	Theft	Manson	Laurence	Tou	Cunningsburgh
1775	Theft	<i>Rancelmen his neighbour</i>			Dunrossness
1784	Theft	Cogle	John	Swinister	Delting
1784	Theft	Malcolmson	Duncan		Delting
1784	Theft	Green	William		Delting
1787	Division of land	<i>Rancelmen</i>			Cunningsburgh
1787	Theft	<i>Rancelmen</i>			Lerwick
1787	Theft	<i>Rancelmen</i>			Tingwall, Whiteness and Wiesdale
1787	Theft	Hunter	James	Setter	Wiesdale
1787	Theft	Hunter	Magnus	Skurron	Wiesdale
1788	Theft	Johnson	John	Scatness	Dunrossness
1788	Theft	Skuon	John		Dunrossness
1789	Obstruction of rancelmen	Irvine	Thomas		Delting
1789	Obstruction of rancelmen	Robertson	Hay		Delting
1789	Obstruction of rancelmen	Rawick	Laurence		Delting
1789	Obstruction of rancelmen	Green	William	Swinister	Delting
1790	Swine rooting	Taylor	Walter	Bailester	Tingwall
1790	Swine rooting	Laureceson	George	Deal	Tingwall
1790	Swine rooting	Linklater	James	North Caldcliff	Tingwall
1790	Swine rooting	Chappie	James	South Laxfirth	Tingwall
1790	Swine rooting	Peterson	Thomas	North Laxfirth	Tingwall
1790	Swine rooting	Pottinger	Alexander	Greenwall	Tingwall
1790	Appointment	Nicolson	George	Gott	Tingwall
1790	Appointment	Peterson	Henry	South Laxfirth	Tingwall
1790	Floss and obstruction of rancelmen	Irvine	William	South Lee	Tingwall
1790	Floss and obstruction of rancelmen	Laureceson	George	Deal	Tingwall
1790	Floss and obstruction	Jameson	Thomas	Vingarth	Tingwall

¹ Ibid. piece 2.

² Ibid. piece 9.

	of rancelmen				
1792	Miscellaneous	<i>Rancelmen of Lerwick</i>		Lerwick	Lerwick
1792	Theft	Thomason	Magnus	Scarvester	Sandsting
1792	Theft	Jameson	Umphray	Westerheld	Sandsting
1792	Theft	Jameson	Andrew	Westerwick	Sandsting
1794	Theft	Marshal	Robert		Northmavine
1795	Miscellaneous	<i>Rancelman</i>			Cunningsburgh
1798	Swine rooting	<i>Any two rancelmen of Fetlar</i>			Fetlar
1798	Regulation	<i>Rancelmen of each parish</i>			[Each parish]

SA, SC12/6/1774/6. 'Petition (theft - of Plants.) (Criminal)', 1774.
SA, SC12/6/1774/7. 'Complaint (compensation for Potatoes Destroyed by Swine.)', 1774.
SA, SC12/6/1775/23. 'Petition (for Retaining Calf.) (Criminal)', 1775.
SA, SC12/6/1784/2. 'Criminal Process (sheep Stealing - a Ewe Belonging to John Nice.) (criminal)', 1784.
SA, SC12/6/1787/1. 'Draft Submission Concerning Division', 1787.
SA, SC12/6/1787/35. 'Complaint (sheepstealing - Sheep Property of Hercules Anderson in Flamister in Nesting.) (Criminal)', 1787.
SA, SC12/6/1788/6. 'Information and Complaint (theft - Stealing Fleeces from Sheep Belonging to Robert Thomson, Tacksman of Sumburgh.) (Criminal)', 1788.
SA, SC12/6/1789/60. 'Petition (concerning Obstruction of Ranselmen.)', 1789.
SA, SC12/6/1790/50. 'Petition (concerning Swine on the Scattald of Haryilie.)', 1790.
SA, SC12/6/1792/3. 'Petition (concerning Theft - Sheepstealing.)', 1792.
SA, SC12/6/1795/60. 'Petition (for Intromitting with a Ram Conceivably Infected with Scab.) (criminal)', 1795.
SA, SC12/6/1792/1. 'Petition (complaining That Defenders Etc., Are Buying up Meal and Potatoes at "an Extravagant Rate").', 1792.
SA, SC12/6/1794/16. 'Petition (concealment of Sheep.)', 1794.
SA, SC12/6/1798/22. 'Petition (for Warrant to Regulate Swine.)', 1798.
SA, SC12/6/1798/30. 'Petition (to Retrieve Sheep Mark Registers.)', 1798.

Table 19: Rancelmen: Sheriff Court

Firstname	Surname	Township	Parish	Date	Type of source	Superior
John	Clerk	Velzie	Unst North Parish	1772	Appointment	William Balfour, sheriff substitute
Peter	Erasmuson	Ua	Unst Mid Parish	1772	Appointment	William Balfour, sheriff substitute
John	Hoscason	n/a	Unst South Parish	1772	Appointment	William Balfour, sheriff substitute
Peter/Patrick	Tulloch	n/a	Cunningsburgh	1774	Process	William Balfour, sheriff substitute

NAS, RH9/15/157/5. 'Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselmen in the Island of Unst', 1772.
SA, SC12/6/1774/6. 'Petition (theft - of Plants.) (Criminal)', 1774.

Table 20: Lawrightmen: Sheriff Court

Shown under that light, the Sheriff Court appears as a jurisdiction that helped old practices to last and kept the local constables' system in action.

Critics and resistances

Discriminations

When Shetland bailie courts were abolished in 1747 it meant that the civil court that judged the *basse justice* offences would hold court most of the time at Lerwick. The end of the bailie courts favoured the access to the court to the persons who had a certain social status. The minister of Walls and Sandness, the Reverend David Thomson wrote in his answers to Sir John Sinclair's statistical account in the 1790s that

Since the baron bailies were suppressed, by whom petty differences were cognosced, the minister is necessarily much troubled with the quarrels that arise among the people, who are at a distance from the seat of justice, where they might obtain redress.¹

The court seldom went to another township in order to delocalise or re-localise the trials. Some of the rare Sheriff Court circuit court included Tingwall in 1787, South Laxfirth in 1790 and Scalloway in 1791.² Even before the abolition of the Franchise courts, Henry Sinclair in a letter to his cousine explained that “[t]here is much need here just now of a bailie court and many complaining for the want of one, especially some for want of their servants whom they lauffully fied and now cannot take service till a judge determines it”.³ The Country Acts regulated the employment of servants and the bailie courts enforced these by-laws. The Sheriff Court could also enforce them but before the abolition of the Franchise courts, Shetland Sheriff Court appeared to have been either extremely weak or to rely on the bailie courts to enforce the by-laws. Ian D. Whyte explains how much “[i]t was convenient to have a source of justice close at hand when the organisation of the law at the regional level was not entirely effective and communications were slow and difficult”.⁴ He adds that “[t]he baron court must have helped maintain a peaceful rural community, for before it even the most humble sub-tenant could seek justice at no cost to himself in either money or time”.⁵ In 1791, the Commissioners of Supply felt that “the internal order of the different Parishes has since the abolition of the heritable Jurisdictions & of Parochial Baillies been chiefly maintained by the Ranselmen”.⁶ In writing so, they recognised that the Sheriff, who appointed the rancelmen “in conformity to the ancient local Laws called Country Acts”, needed a parochial police force that allowed him to administer justice more locally.⁷

In 1787 John Jameson, inhabitant of Houll on the island of Fetlar, was taken to court by the factor on the estate of Westshore because he had casted peat on the pasture of Lamb Hoga without a warrant.⁸ His landowner, James Spence wrote to the pursuer, Arthur Nicolson Junior, asking him if “he would drop from the process, and prevent the hardship of the

¹ David Thomson, ‘Parish of Walls and Sandness’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 20, 114, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Walls%20and%20Sandness/>.

² SA, SC12/6/1787/30, ‘Petition (for Damages Caused by Defender’s Sheep Dog.) (Criminal)’; SA, SC12/6/1790/50, ‘Petition (Concerning Swine on the Scattald of Haryilie.)’; SA, SC12/6/1791/3, ‘Minutes of Itinerant Court Held at Scalloway. Contains Following List of Heads of Families [...]’ 1791.

³ SA, GD144/56/10, ‘Letter by Henry Sinclair, Still, to “Dear Cousine”’ 1743.

⁴ Whyte, *Agriculture and Society in Seventeenth Century Scotland*, 47.

⁵ Ibid.

⁶ SA, SC12/53/6/ folio 168v., ‘Text of “Country Acts” of Shetland, from a Just True Copy of These Bye Laws, Written by Andrew Dick of Wormadale in 1754, at a Meeting of the Commissioners of Supply of Shetland, Engrossed on 6 April 1791.’

⁷ Ibid.

⁸ SA, SC12/6/1787/28, ‘Representation and Petition (Concerning Cutting Peats on Petitioner’s Pasture.)’ 1787.

Defenders traveling 30 Miles of Journey and subjected to expenses, he was little enabled to bear”.¹ Six years before, “Poor Thomas Cargil”, who had been accused of sheepstealing and was locked up in the Tolbooth of Lerwick, petitioned the Sheriff Court to be granted banishment rather than trial. He explained that as “a very poor man [who had] not money sufficient to stand trial before your Lordship’s court [...] [he] mean[t] to leave this Country provided your Lordship would Banish him therefrom without trial for the Crime aforesaid”.² The high cost of justice was again mentioned in 1799 in a case concerned with theft of hay and insults. Here again the defenders, William, John and James Adamsons in Burreland, had been “carried to Lerwick, & there incarcerated in the Tolbooth”.³ Their landowner, John Bruce of Sumburgh, petitioned the Sheriff Court “to grant warrant to liberate the Prisoners [...] [and to] become bound for their personal appearance at your Court to answer the Charges brought against them”.⁴ John Bruce had two main reasons for his action. Firstly he wanted to protect his economic interests: the defenders had lost their summer fishing and the harvest was approaching so he didn’t want his tenants to fall into poverty because they wouldn’t be able to pay their rent anymore. Secondly even though he had an economic interest in maintaining his tenants out of jail, he also realised that “they [had] no Funds or Lawyer in Lerwick to state their grievances, & as they cannot write, are unable to do themselves”.⁵ without his help, his tenants couldn’t defend themselves at court, they didn’t have the knowledge and they didn’t have the financial means. All these examples show that a certain equality in the access of court disappeared after 1747. This inequality was acknowledged in 1774 by the Sheriff substitute, William Balfour, who wrote that “when poor men are injured in their Pro[per]ty, they can have no Redress except by suffering a greater Injury in the Expense of the Prosecution”.⁶

The cost of justice, the necessity to know how to write to petition the court and the distance between place of living and justice meant that tenants, sub-tenants and landless didn’t have a comparable access to justice than when the bailie courts existed. The distance to the seat of justice and the cost made it difficult for ‘poor men’ to attend the court and therefore some of their preoccupations and offenses fell out of judicial attention – at the exception of the minister who could be in the words of the Reverend David Thomson “much troubled with the

¹ Ibid., fol. 2 piece 4.

² SA, SC12/6/1781/4, ‘Petition (Craving Banishment in Lieu of Imprisonment for Sheep-Stealing.) (Criminal)’ 1781.

³ SA, SC12/6/1799/40, ‘Petition Concerning Theft (Stealing Pursuer’s Hay and Insulting Him.)’ 1799 piece 2.

⁴ Ibid. piece 2.

⁵ Ibid. piece 2.

⁶ SA, SC12/6/1774/6, ‘Petition (Theft - of Plants.) (Criminal)’ piece 5.

quarrels that arise among the people”.¹ In his PhD thesis, Stephen Davies explains that between 1600 and 1747, “[s]o far as the legal system was concerned, the most visible change was from a system based in the locality to one dominated by the centre”.² He further explains that “[b]efore the Union at least the Scottish legal system was very localised: it was the local courts which made and enforced much of the law and which had the greatest impact on the every day life of Scots men and women”.³ His description fits perfectly to the situation in Shetland: before 1747, the bailiery courts and the Sheriff/Stewart Court provided a localised justice whereas after 1747, the Sheriff Court provided a more regionalised and centralised justice.

Yet in 1756 a bailie court was held in the parish of Dunrossness. What we know about this court is subject to caution as the writer of the story, John Mill, had a serious grudge against the principal actors of this court – they were Episcopalians. John Mill wrote in his diary that

The Laird of Symbister and Bigton, during my absence, caused serve an edict for riding of marches, in consequence of which they perambulat the ground covered with snow and held a court in a private manner. The magistrate, namely Alexander Sinclair of Brow, for a bellyful of drink, passed sentence in Symbister’s favours, who forthwith sent his tenants to labour up the ground in dispute, though I protested against the judge as incompetent in matters of property, and his sentence therefore to be null and void.⁴

Thus in 1756 Alexander Sinclair of Brow held a local court. No charter, however, records the appointment of Alexander Sinclair of Brow as Bailie of Dunrossness. John Mill explained that the court perambulated the ground and that decisions were taken to force the tenants of the Laird of Symbister and Bigton to labour ground in dispute between them and the Minister. The interesting issue here is that the Court Book of the bailie court of Dunrossness, Sandwick and Cunningsburgh never recorded such practices. The main landowners seldom appeared at court.⁵ The Laird of Symbister and Bigton and Alexander Sinclair of Brow seemed to be willing to avoid the Sheriff Court and not necessarily to reconstitute the action of a bailie court. They might have tried to play with the memory of the bailie court to legitimise their action in the eyes of the tenants but John Mill wasn’t ready to accept the situation. The Reverend threatened to sue the two landowners before the Lords of Session. Eventually they dropped their claim and the Minister regained his land.

¹ Thomson, ‘Parish of Walls and Sandness’, 114.

² Davies, ‘Law and Order in Stirlingshire, 1637-1747’, 71.

³ Ibid.

⁴ Mill, *The Diary of the Rev. John Mill*, 22.

⁵ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’.

This example illustrates perfectly the difficulties encountered by the Ministers and by the Admiral with some local landowners – especially in the Dunrossness parish – to enforce the Presbyterian discipline and the statutory law regarding maritime affairs.

Plunderers and Admiral Bailies

The Admiralty court was a latecomer and never developed an extensive and intensive jurisdiction over Shetland during the 18th century. There were numerous cases of “embezzlers of wrecked goods” and not all the maritime affaires “[fell] under the cognisance of the admiral of Zetland”.¹ This situation was probably inherited from the previous practices in the case of wrecks or beached whales. It was also probably the result of a difficulty to monitor all the coasts of Shetland, especially during the very stormy 18th century.²

In 1733, Thomas Gifford gave a fairly good account of the practices in case of wreck.³ He explained how the bailie or landowner of the ground where the wreck had happened would call for the Admiral. Once called the Admiral would set up a court on the place of the wreck where it would be decided if the ship was declared a “total wreck”, a wreck that no one was able to attest an ownership of the ship or if she was only declared “a wreck”. The Admiral organised the salvage of the ship and of the wrecked goods. Eventually, the Admiral secured the best anchor and cables as a retribution for his work. Thomas Gifford explained that ancient practices claimed that a wreck should be divided in three shares:

The proprietor of the ground where the wreck falls always claims a share of the wreck, pleading the old country practice, which was, that all wrecks were divided into three shares, one thereof to the proprietor of the ground, one to the salver, and the other to the proprietor, if any appeared, which failing, to the king, with the best anchor and cable to the admiral. But the admiral court for several years past has not followed that practice, being thought exorbitant, and only allows the heritor any damage his ground may sustain, and some allowance for the use of it; which is thought by many a great hardship upon the heritors, and a cutting them out of their antient privilege. But for preventing of any clamours of that kind, the Admiral does, and always should, make the proprietor of the ground, the principal salver, and beside reasonable salvage ordain him a premium for the use of the ground and personal trouble, wherewith every reasonable man is satisfied.⁴

This claim was based on the fact that the ownership of the land and the foreshore was different in Shetland than in the rest of Scotland. Sue Farran explains in an article on the coastal zone of islands that

In Scotland, the seaward extent of the foreshore is determined by the mean low-water spring tide mark, while the landward extent of the foreshore is measured by the mean high-water spring tides. [...] Under udal law, ownership of coastal land extends down to the lowest low water mark – which

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 48.

² Hubert Horace Lamb, *Historic Storms of the North Sea, British Isles and Northwest Europe* (Cambridge: Cambridge University Press, 2005).

³ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 49–50.

⁴ *Ibid.*, 50–51.

may be the lowest astronomical tide. As under udal law the foreshore is private land and not Crown or state land, the landward extent has not needed to be determined.¹

The foreshore rights belonged to the owner of the adjacent land. Anything that would happen to be beached there would therefore belong to the owner of the ground and he could basically ‘harvest’ what was wrecked there. One of the most important beached goods was the wood either from the hull of broken and wrecked ships or from their cargo. Usually it was the Admiral who had rights over the broken wooden hulls and the timber cargo.² Some pieces of timber sometimes drifted across the sea or the ocean. They were believed to come from Norway and America. Thomas Gifford wrote that they were called “ragha” by the inhabitants and that Shetlanders claimed an indefectible right to them.³ The Admiral couldn’t claim his right on this timber which was a “Godsend” wreck for the inhabitants who used it to repair their houses as the Norwegian wood imported from Norway was expensive for the inhabitants.⁴ For Thomas Gifford there wasn’t a lot of this “ragha” coming to Shetland in the 1730s, however, during the 18th century at least 32 boats wrecked on the coast of Dunrossness, Northmavine and Unst, with a timber cargo.⁵ The second kind of goods that had a certain status was beached whales.⁶ Thomas Gifford explained that

As soon as they [the whales] are got ashore, the bailie of the parish is advertised, who comes to the place, and takes care that none of them are embezzled; and he acquaints the admiral thereof, who forthwith goes there, and holds a court, where the phiscal presents a petition, narrating the number of whales, how and where drove ashore, and that the judge may give judgement thereupon according to law and the country practice; whereupon the admiral ordains the whale drove on shore to be divided in three equals parts; one of the parts to belong to the admiral, one part to the salvors, and one third part to the proprietor of the ground on which the whales are drove ashore, and appoints two honest men to divide the whales, and mark them with the letters A.B.C.⁷

Whales and wrecked ships were divided in three shares. They were mostly used to make oil.⁸ Timber, beached whales or any other cargo had a specific value either because it could be used directly instead of buying a product or because it could be sold to someone else and therefore it could provide a capital gain. People called “embezzlers”, wreckers or plunderers, ‘fraudulently appropriated’ beached whales and wrecked goods such as timber or any other

¹ Sue Farran, ‘The Coastal Zone of Islands: Comparative Reflections from the North and South’, *Island Studies Journal* 1, no. 1 (2006): 59.

² Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 52.

³ *Ibid.*

⁴ *Ibid.*

⁵ SA, D1/400, “Wreck Registers” of Robert Stuart Bruce [1873 - 1951]’ n.d., bk. 1, 3, 4, 19 and 22; Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 52.

⁶ NAS, RH4/35/1/388/63, ‘Extract Agreement between Earl of Morton and Heritors of Zetland, on the Division of Whales and Pallocks Etc. [Reg Stewart Court Books of Zetland.]’ 1739.

⁷ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 23.

⁸ *Ibid.*; Alexander Fenton, *The Northern Isles: Orkney and Shetland* (East Linton: Tuckwell Press Ltd, 1997), 545–51..

cargo without the consent of the Admiral or despite an Admiralty process.¹ In her PhD dissertation “‘So barbarous a practice’: Cornish wrecking, ca. 1700-1860, and its survival as popular myth”, Cathryn Jean Pearce records not less than nine statutes against the plundering of wrecks passed by the British Parliament between 1708 and 1818 and during the same period six other bills had been proposed.² The first act was passed in 1714 “for the preserving of all such Ships and Goods thereof which shall happen to be forced on Shore, or Stranded upon the coast”.³ Two other acts, passed in 1718 and 1724, reaffirmed this position. In 1753 an act was passed “for enforcing the Laws against Persons who shall steal or detain ship-wrecked Goods; and for the Relief of Persons suffering Losses thereby” but it didn’t extend to Scotland.⁴ After 1803, acts to prevent wrecking were passed almost every one or two years until 1813.⁵ In 1832 Sir Archibald Alison explained how “[b]y the modern law of Scotland, differing in that respect from our former practice, the plundering of wrecks, even though all on board have perished, and the owner is utterly unknown, is punishable with the highest arbitrary pains”.⁶

Even with such laws, plundering was a recurring problem for the judicial powers which all fought against these “barbarous practices” in Shetland.⁷ In 1734 at the bailie court of Dunrossness, Sandwick and Cunningsburgh, Thomas Young and Katherine Stout, his spouse, complained upon Alexander Young “for beating the s[ai]d Thomas and his servant and calling the said Katherine Stout a receipting thief”.⁸ One witness, Laurence Leisk, added that he heard “the said Allexander Young object to the said Thomas Young two bars or goads of iron

¹ “Embezle, Embazle, v. Also: embeasle, -bassel. [Late ME. *enbesel* (1469), *embesell*, e.m.E. *embezell*, etc., AF. *enbesiler*.]a. tr. To appropriate fraudulently.b. To impair in value.” in Susan C. Rennie, ed., ‘Embezle, Embazle, v.’, *Dictionary of the Scots Language. Dictionar O the Scots Leid*, 2004, <http://www.dsl.ac.uk/>.

² Cathryn Jean Pearce, “‘So Barabarous a Practice’: Cornish Wrecking, Ca. 1700-1860, and Its Survival as Popular Myth” (PhD thesis, University of Greenwich, 2007), 251.

³ Ibid.; Danby Pickering, ed., ‘An Act for the Preserving All Such Ships and Goods Thereof, Which Shall Happen to Be Forced on Shore, or Stranded upon the Coasts of This Kingdom, or Any Other of Her Majesty’s Dominions, 12 Anne Stat. 2 C. 18’, in *The Statutes at Large, from the Twelfth Year of Queen Anne, to the Fifth Year of King George I*, vol. XIII (Cambridge: Joseph Bentham, printer to the University, 1764), 121–25.

⁴ Pearce, ‘So Barabarous a Practice’, 251; Sir Archibald Alison, *Principles of the Criminal Law of Scotland* (Edinburgh: W. Blackwood, 1832), 640; Danby Pickering, ed., ‘An Act for Enforcing the Laws against Persons Who Shall Steal or Detain Ship-Wrecked Goods; and for the Relief of Persons Suffering Losses Thereby, 26 Geo. II C. 19’, in *The Statutes at Large, from the 26th to the 30th Year of King George II*, vol. XXI (Cambridge: Joseph Bentham, printer to the University, 1766), 53–60.

⁵ Pearce, ‘So Barabarous a Practice’, 251.

⁶ Alison, *Principles of the Criminal Law of Scotland*, 640.

⁷ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 18. For the use of the word ‘barbarous’ in the context of wrecking, an analysis of the wrecking practices and a study of the memory of wrecking in England and in France, see: Pearce, ‘So Barabarous a Practice’; Alain Cabantous, *Les Côtes arbares : Pilleurs D’épaves et Sociétés Littorales En France 1680-1830* (Paris: Fayard, 1993).

⁸ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 21.

alleged stolen by him of the wreck iron belonging to Busta”.¹ Alexander Young slandered Thomas Young by suggesting that the pursuer had stolen wrecked iron goods belonging to Busta. The wrecked goods could have come from a wreck that happened on the coast of Dunrossness in 1734 or from a wreck that took place in 1733 on the land of Thomas Gifford of Busta.² In any case, Thomas Gifford of Busta owned this wrecked iron – either because he held the land on which the wrecked good landed or because he was chosen as the salver of the wreck. Seven years after, Sophren Lycke trustee for the Danish Asiatic Company in Scotland “hath brought ane Action before the high Court of Admiralty against the Earl of Morton for Recovery of certain Effects of the Wreck of a Ship called the Vendala [...] about the End of the year 1737”.³ The Earl of Morton, who didn’t fulfil his part of the salvage contract he had passed with “Baron Sholenthal, in behalf of the Danish Asiatick Company”, tried to blame it on plunderers.⁴ He explained that

As to the Imbazlements in Generall the Nature of the thing speaks it out that such in some degree must have happen’d, the Wreck behoov’d to be known in the Country before the Officers of the Law could be appriz’d of it, every one would be forward to put to his hand & Grasp at what he could get for his own advantage; it would soon appear that the Cargo was waluable, [whi]ch would quicken the Industry of those that lay the nearest, from whence it is evidence that Imbazlements behoov’d to be committed before any Legall auth[ori]ty could be Interpos’d. Next when the Admirall deputes apply’d themselves to save what could be recover’d, they had it not intirely in their Chouce what persons to employ in this Service⁵

In 1758 after a wreck on the West coast of the parish of Dunrossness, the Vice-Admiral Substitute “[found] it necessary to that for Enquiring into these Affairs & prosecuting the Transgressors [Plunderers], to Appoint a Pror. Fiscal to act on Behalf of the Right Honorable the Earl of Morton, Vice Admiral of Orkney & Zetland & all others haveing Interest in these Affairs” and less than 20 years after, John Bruce of Sumburgh explained to the Sheriff Substitute of Shetland how “having agreed with the Capt[ain] Neils Mohrum of the Soe Rudderan to Salve and preserve as much of the Wreck of the said Ship as could be, [he was] greatly Disturb’d & annoyed by the Country people Stealing & Robbing wood & other things”.⁶ These civil courts were united in their fight against plunder. They also received the support of ecclesiastical courts and more especially the support of John Mill, minister of

¹ *Ibid.*, fol. 22.

² SA, D1/400/1, ‘Notes of Wrecks in Dunrossness, Circa 1000-1898, by Robert Stuart Bruce [1873-1951]’ n.d., 33; SA, GD144/16/19, ‘Account of Salvage, Thomas Gifford of Busta upon the Wreck Ship Found upon His Ground’ 1733.

³ NAS, AC9/1478, ‘Sophren Lycke v Earl of Morton’ 1740 piece 1.

⁴ *Ibid.* piece 1.

⁵ *Ibid.* piece 9.

⁶ SA, SC12/6/1758/2, ‘Proceedings of Vice-Admiralty Court (Concerning Wreck and Whale Driven Ashore on “West Side of Dunrossness”.) (Admiralty)’ 1758 piece 1; SA, SC12/6/1775/2, ‘Petition (Craving Incarceration of Defender for Plundering Wood from the Soe Redderan.) (Criminal)’ 1775 piece 1.

Dunrossness, Sandwick and Cunningsburgh who considered plundering as a terrible sin. He explained in his Diary how after the wrecks of two Dutch vessels at Sandwick in 1761

A number of persons went on board one of these vessels and in a violent and forcible manner carried off to the value of £50 Ster. worth of goods; which the Admiral at first threatened to punish them for. But taking £60 Ster., for two Admiral Courts relative to the wreck, took no more notice of the plunderers.¹

He decided to take action into his own hands and

in order therefore to separate ‘twixt the clean and unclean, I put two boats’ crews upon oath, who had been employed in the salvage of the goods, and found clearly proved that about 40 men had been concerned in the forsaid plunder. The Session appointed them to stand before the Congregation in different parcels, and be rebuked for the scandal; which they all did, except 8 or 9, who stood out till they were summoned before the Presbytery²

Already in 1763, John Mill had decided to ordain new Elders in the parish of Sandwick and Cunningsburgh because “many [had been] found guilty of scandalous outbreakings, in the affair of wreckd ships that happened about that time, and more being suspected of the like crime”.³ One year after in 1764 he rebuked about 40 men guilty of plundering and he asked for the support of the Presbytery to rebuke nine other men who refused to appear before the Congregation – the Presbytery refused at first and then, after John Mill had threatened to take the matter to the General Assembly, the Presbytery rebuked these men.⁴ John Mill considered plunderers as sinners and he rebuked these men before the Congregation. With his action, he collaborated with the civil courts in fighting against wreckers. Cathryn Jean Pearce explains that the State counted on clergymen “to educate and warn those who were involved in wrecking”.⁵ In the 1714 statute, a clause stated that “for its better observance should be read in all parish churches and chapels on the coast on four particular days every year [...] the Sundays next before Michaelmas day, Christmas-day, Lady-day, and Midsummer day”.⁶ The Kirk Sessions records of the parish of Sandwick and Dunrossness didn’t contain any trace of such practice but it is possible that John Mill did so anyway. John Mill didn’t consider what the Sandwick men had plundered (or harvested) as a “Godsend” such as described by Thomas

¹ Mill, *The Diary of the Rev. John Mill*, 24. “The Minister told the congregation further that he had spoke with the Admiral after the Presbytery and asked him the reason why he did not examine into that affair as became his office. To which he replyd that he had done so, and the proof came out against such as was guilty of the plunder. He behooved to have put the law in execution which was no less penalty than death & confiscation of movables, besides that at present it was difficult to put the law into execution for want of sufficient prison.”, in SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 23.

² Mill, *The Diary of the Rev. John Mill*, 24.

³ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 18.

⁴ Ibid., fols 21–23; SA, CH2/1071/4, ‘Lerwick Presbytery Minutes, 1749-1772’, fol. 321; Mill, *The Diary of the Rev. John Mill*, 24.

⁵ Pearce, ‘So Barabarous a Practice’, 75.

⁶ Ibid.; Pickering, ‘An Act for the Preserving All Such Ships and Goods Thereof, Which Shall Happen to Be Forced on Shore, or Stranded upon the Coasts of This Kingdom, or Any Other of Her Majesty’s Dominions, 12 Anne Stat. 2 C. 18’, 125 clause VIII.

Gifford 30 years earlier. The same opposition between providence and sin was found in other regions. In 1700, the commandant of the island of Ouessant, off the coast of Brittany in France, wrote that he “wouldn’t contain the inhabitants nor forbid them to plunder since the curate insinuates them that these sorts of wrecks are gifts from the heaven which belong to those who save what come from it”.¹ However island clergymen tended to be “useful judicial auxiliaries”. Dominique Guillemet explains how in the 1720s during “a mission on Ouessant [...] priests had threatened with excommunication any thief or receiver of wrecks”.² In Cornwall, in the south west of England, Cathryn Jean Pearce explains that some clergymen participated in the plundering but that others preached on the “evilness of wrecking.”³

Wrecking was not the only fraud that the Admiralty had to support in the first half of the 18th century. The Earl of Morton, appointed Vice-Admiral after 1707, complained in 1720 in a “Memoir” of the existence of an unlawful Admiral, in the person of Robert Sinclair of Quendale, and of unlawful Admiral Bailies appointed in each parish by the said Robert Sinclair of Quendale.⁴ These unlawful officials challenged directly the power of the Vice-Admiral in holding Admiralty court and suing plunderers. The Earl of Morton received this information directly by the “Ministers who came up to the Assembly last year”, maybe Walter Huggens, minister of the parish of Dunrossness and in a serious conflict with Robert Sinclair of Quendale around that time.⁵ In 1720 in a “Representation” the Earl of Morton eventually admitted that those usurping the status of Admiral and Admiral deputies were

those very men who were most Concerned in undutyfull and Disloyall practices during the late Rebellion, and who since their Coming into power have made use of it Towards the Oppression and Discouragement of the Clergy well affected to your Maj[es]tie and likewise of the Inhabitants. That their Maltreating the Clergy has been the Subject of Complaint in the Supream Court of Church Judicature of Scotland, in presence of Your Maj[es]tie High Commissioner That their using their power to Oppress the Inhabitants can be verified in too many Instance Such as their making every person upon meer Suspitions Swear as to their finding or using Useless pieces of

¹ Dominique Guillemet, *Les Îles de l’Ouest de réhat À Oléron : Du Moyen Age À La Révolution* (La Crèche: Geste Editions, 2007), 164.

² Ibid., 169. “Ecclesiastical and maritime law, as copped to the common law under which wreck law was eventually controlled, had much harsher penalties than mere fining. The ecclesiastical council of Nantes (1167) and the Lateran (1179) both prescribed excommunication.”, in Pearce, ‘So Barabarous a Practice’, 70.

³ Pearce, ‘So Barabarous a Practice’, 103.

⁴ NAS, RH9/15/142/2, ‘Memoir for the Earle of Morton [Admiralty Court: Representation to King by Robert, Earl of Morton, Petitioning for Possession of Powers of Admiralty of Orkney, for “the Interest of the Government, the Happiness of the Inhabitants of Orkney and the Islands Adjoining and for the Incouragement of Those Who Are Well Affected to Your Majesties Government”]’ 1720, fols 1–2.

⁵ Ibid., fol. 1; Hew Scott, *Fasti Ecclesiae Scoticanæ. The Succession of Ministers in the Church of Scotland from the Reformation. Synods of Ross, Sutherland and Caithness, Glenelg, Orkney and of Shetland, the Church in England, Ireland and Overseas*, vol. 7 (Edinburgh: Oliver and Boyd, 1928), 283; NAS, CS271/54449, ‘Robert Sinclair v Walter Huggens (Minister of Dunrossness)’ 1722.

Wood or other Triffls thrown out by the Sea and Imposing fines upon them when they acknowledged it¹

These unlawful Admiral Bailies oppressed the Clergy of the Presbyterian Church and the inhabitants of Shetland. Both the Earl of Morton in the 1720s and John Mill, minister of Dunrossness, in the late 1740s criticized what they considered as the exercise of an unlawful power by disloyal Jacobites and Episcopalians.

Episcopalians

The Shetlanders were not all Presbyterians. It is very difficult to know how many Episcopalians lived in Shetland at that time. Leah Leneman explains in her book *Living in Atholl, 1685-1785* that questions on the percentage of the population attending Episcopalian meeting houses or being baptised or married “remain unanswerable for our period [1685-1785], because records of meeting houses (legal or illegal) have not survived”.² This isn’t entirely true for Shetland since the Diary of the Episcopalian Reverend John Hunter has survived; but it offers only partial quantitative information.³ Two other types of sources, the Diary of the Reverend John Mill and the documentation on the affair between the Reverend Walter Huggens and Robert Sinclair of Quendale, form what Leah Leneman has called “denunciations” through which “we learn of the existence of meeting houses at this time”.⁴

After the Glorious Revolution, the Presbyterian Kirk was restored in Scotland in 1690.⁵ Stephen J. Davies argues that “the Kirk never fully recovered” from “the bitter political and religious disputes” of the 1670s and 1680s. He explains these disputes “eroded popular support for the church” and “caused a split between the established Kirk and the upper classes”; also, “after 1688, every parish contained a sizeable minority of disaffected Episcopalians”.⁶ In Shetland it wasn’t before 1700 that a committee from the General Assembly came to the islands to make the Ministers sign the *National Confession of Faith*. In 1733, Thomas Gifford presented a very idyllic picture of the situation where he explained that

¹ NAS, RH9/15/142/1, ‘Representation For Robert Earle of Morton [Admiralty Court: Representation to King by Robert, Earl of Morton, Petitioning for Possession of Powers of Admiralty of Orkney, for “the Interest of the Government, the Happiness of the Inhabitants of Orkney and the Islands Adjoining and for the Incouragement of Those Who Are Well Affected to Your Majesties Government”]’ 1720, fol. 2.

² Leneman, *Living in Atholl, A Social History of the Estates 1685-1785*, 91.

³ John Hunter, ‘Diary of the Reverend John Hunter, Episcopalian Minister in Shetland. Baptisms and Household Accounts’, ed. Gilbert Goudie, *Scottish Antiquary* 6 (1891): 97–112.

⁴ Mill, *The Diary of the Rev. John Mill*; NAS, CH1/2/42/1, ‘Bound - Part 1 Ff. 1-32. Objections to Presentation of Walter Huggens to Church of Dunrossness and Sandwick. 1718’ 1718; NAS, CS271/54449, ‘Robert Sinclair v Walter Huggens (Minister of Dunrossness)’; SA, GD150/2571B, ‘Walter Huggens, Dunrossness Manse, about Laird of Quendale’s Behaviour in Bringing in a Jacobite Curate, 22 Nov. 1723 [Letters from the Ministers in Shetland]’ 1723; Leneman, *Living in Atholl, A Social History of the Estates 1685-1785*, 91.

⁵ Leneman, *Living in Atholl, A Social History of the Estates 1685-1785*, 86.

⁶ Davies, ‘The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire’, 131–32.

all the Ministers did so without difficulty.¹ In practice the situation was slightly more complicated. Most of Shetland Ministers returned to Presbyterianism after the Glorious Revolution. John Catanach, the Minister of Unst and James Kay the Minister of Dunrossness were both admitted into Presbyterian communion in 1698;² and James Buchan was appointed Presbyterian Minister of Northmavine in 1700.³ These practices were similar with what Leah Leneman describes for the Scottish mainland at the same period.⁴ If most of the Ministers “renounced’ episcopacy”,⁵ some didn’t and some inhabitants kept their faith as well. There was an Episcopalian Minister in the parish of Dunrossness from about 1734 to 1761: John Hunter – he was the last Episcopalian clergyman in Shetland until 1864.⁶ He left a Diary where baptisms and marriages were recorded as well as some personal accounts.⁷ For Gilbert Goudie, a 19th-century Shetland antiquarian, John Hunter was probably from Shetland, maybe a member of the Lunna family.⁸ His diary gives a good overview of the regular practices of the Episcopalian Church in Shetland after the Glorious Revolution. What appears from John Hunter’s diary is exactly what John Mill and the Earl of Morton both criticised: the existence of an Episcopalian stronghold in the parish of Dunrossness in the persons of influent heritors – the upper classes mentioned by Stephen J. Davies.⁹ The figure of Robert Sinclair of Quendale was probably the most emblematic. He was denounced by the Earl of Morton as an unlawful Admiral and he was vehemently criticised by John Mill as a fervent Episcopalian and Jacobite. Leah Leneman explains how “as far as the Presbyterians were concerned, episcopalianism was synonymous with Jacobitism”:¹⁰ it meant that these ministers and their flock didn’t pray publicly for William and Mary and then for Anne but they prayed for James VII King of Scotland and his heirs. For John Mill, Robert Sinclair of Quendale was “a tyrant and oppressor” and “a gentleman disaffected to Church and State”.¹¹ Robert Sinclair of Quendale, after the death of the Reverend James Kay in 1716, tried for four years to appoint

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 34–35.

² Scott, *Fasti Ecclesiae Scoticae*, 7:283 and 299.

³ *Ibid.*, 7:313.

⁴ Leneman, *Living in Atholl, A Social History of the Estates 1685-1785*, 87.

⁵ *Ibid.*

⁶ Hunter, ‘Diary of the Reverend John Hunter, Episcopalian Minister in Shetland. Baptisms and Household Accounts’, 97.

⁷ Hunter, ‘Diary of the Reverend John Hunter, Episcopalian Minister in Shetland. Baptisms and Household Accounts’.

⁸ *Ibid.*, 98.

⁹ Mill, *The Diary of the Rev. John Mill*, xxxiii and liii; Davies, ‘The Courts and the Scottish Legal System 1600-1747: The Case of Stirlingshire’, 132.

¹⁰ Leneman, *Living in Atholl, A Social History of the Estates 1685-1785*, 86.

¹¹ Mill, *The Diary of the Rev. John Mill*, 3–4.

an Episcopalian as Minister for the parish of Dunrossness.¹ He was unsuccessful and by 1720 Walter Huggens was appointed.² The tensions between the Sinclair of Quendale family and the successive Ministers of Dunrossness lasted until the 1750s when his estate was sequestrated.³ Such struggles happened in a number of parishes all over Scotland. Leah Leneman details, for example, how “[i]n November 1703, when the newly-appointed Presbyterian minister of the Perthshire parish of Muthill asked for the keys to the kirk, he was refused them; and for more than a year he was forced to hold his services outdoors”.⁴

¹ NAS, CH1/2/42/1, ‘Bound - Part 1 Ff. 1-32. Objections to Presentation of Walter Huggens to Church of Dunrossness and Sandwick. 1718’; NAS, CS271/54449, ‘Robert Sinclair v Walter Huggens (Minister of Dunrossness)’; SA, GD150/2571B, ‘Walter Huggens, Dunrossness Manse, about Laird of Quendale’s Behaviour in Bringing in a Jacobite Curate, 22 Nov. 1723 [Letters from the Ministers in Shetland]’.

² Scott, *Fasti Ecclesiae Scoticae*, 7:283.

³ Mill, *The Diary of the Rev. John Mill*, xcv and 7.

⁴ Leneman, *Living in Atholl, A Social History of the Estates 1685-1785*, 88.

Personnel and Justice

Stephen J. Davies and Harriet J. Cornell analyse in their respective works how before the 1670s and 1680s, “the overlap of personnel between the courts and the sharing of certain officials helped foster a working relationship where judicial clashes could be kept to a minimum”.¹ Stephen J. Davies explains how after this period the overlap in personnel decreased: members of the upper classes who had been Elders – and, for some, bailies of regality or barony – before 1688 ceased to attend the Kirk but attended instead Episcopal meeting house.² However collaboration between courts was still a reality, there wasn’t a “total support” between the courts but they still collaborated. 1747 brought other changes: in Shetland, bailies disappeared and only ministers and rancelmen remained on a local basis. Who were these men who tried to maintain a “godly discipline”? How did they work on a court-basis? How was law enforced?

Personnel

No history of the judicial personnel in Shetland in the 18th century, no prosopography of these men has been written so far.³ The following pages won’t provide an exhaustive account of the officials’ life and careers in the same way as Fabrice Mauclair did in his prosopographical study of the judicial officials of the seigniorial court of the Duché-Pairie de la Vallière:⁴ they’ll detail some relevant aspect of their life, how they fitted or didn’t fit in the Scottish judicial system and if their life and career had any influence on judicial activities in Shetland. The lists of officials have been constituted using various sources. The records of the Sheriff Court and of the bailie courts have been extensively used to list and catalogue the men officiating at court. The actors of the Kirk appeared in the Kirk Sessions and Presbytery records. The Admiralty personnel were a bit more difficult to follow as there wasn’t any long-term court set up for the cases. Various genealogical, biographical and prosopographical books about Scottish families and Scottish officials have been used.

The top of the scale

¹ Cornell, ‘Gender, Sex and Social Control’, 50; See also: Davies, ‘The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire’, 130–31.

² Davies, ‘The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire’, 131–32.

³ On the use of prosopography, see the seminal article: Lawrence Stone, ‘Prosopography’, *Daedalus* 100, no. 1 (1 January 1971): 46–79.

⁴ Fabrice Mauclair, *La Justice Au Village : Justice Seigneuriale et Société Rurale Dans Le Duché-Pairie de La Vallière* (Rennes: Presses Universitaires de Rennes, 2008).

Following the career and life of the highest judicial officials before 1747 is difficult: one of the reasons is that officials' appointments were less strictly regulated than after 1747. Thomas Gifford wrote in 1733 that the law was implemented under the control of the Earl of Morton, George 13th Earl of Morton at this time, who was "heritable steuart, justiciary, sheriff, and bailiff, within the earldom of Orkney and lordship of Zetland".¹ The Earl of Morton held all the highest hereditary judicial offices in Shetland.² The effective judges were the Earl's deutes who held courts in Shetland. In his *Historical Description*, Thomas Gifford enumerated and briefly presented the jurisdiction of the judicial officials: Stewart depute, Stewart clerk, Bailie, rancelman, lawrightman and admiral depute.³ As a privileged witness of Shetland local government in the first half of the 18th century, Thomas Gifford probably presented the officials who had operative offices at this time. Thomas Gifford was himself one of these men. In the 1720s and 1730s, Thomas Gifford of Busta was "stuart and justiciar depute of Zetland".⁴ He was also the chamberlain of the Earl of Morton.⁵ In his introduction to the reprint of Thomas Gifford's *Historical Description*, Brian Smith writes that "[b]y 1733 he [Thomas Gifford of Busta] was virtually the most important man in Shetland: he had money, power and office" and as Steward and Justiciary Depute he was "responsible for all aspects of local government".⁶ In the 1740s, John Craigie was the Stewart depute of Shetland. He held all the leading judicial offices. A draft commission dating 1741 stipulated that John Craigie had been appointed "stewart, sheriff and justiciar depute, baillie principal and admiral depute of lordship of Shetland".⁷ John Craigie accumulated offices that he held from a hereditary superior, the Earl of Morton. He was at the same time his factor and chamberlain.⁸

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 45.

² A long list of offices was common thing in Scotland in the presentation of an individual such as the Earl of Morton. In practice, some of these words were synonymous or their senses overlapped – especially before 1747. In Orkney and Shetland, the Stewart's "duties were merged in those of the modern Sheriff, who retained the title Stewart in the county Stewartries of Orkney and Shetland and of Kirkcudbright until the 19th c." (Susan C. Rennie, ed., 'Stewart, N. Also St(e)uart', *Dictionary of the Scots Language. Dictionar O the Scots Leid*, 2004, <http://www.dsl.ac.uk/>.)

³ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 45–48.

⁴ Gifford, 'Country Acts Anent Parochial Schools', 87; Gifford, 'A Compend of the Country Acts', 89.

⁵ Brian Smith, 'Introduction', in *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents*, ed. Brian Smith (Sandwick: Thule Print Ltd, 1976), iv.

⁶ *Ibid.*, iv–v.

⁷ SA, GD150/2539/22 [NAS, GD150/2539B], 'Draft of Commission. To John Craigie to Be Stewart and Justiciar Depute in Shetland [22. Narrative of James Earl of Morton's Commissions to John Craigie as Stewart, Sheriff and Justiciar Depute, Baillie Principal and Admiral Depute of Lordship of Shetland, 1741.]' 1741.

⁸ SA, GD150/2024/27, 'Account of Charge and Discharge. Between James Earl of Morton and John Craigie, His Chamberlain, for Tack Duties of Zetland Crop 1744' 1747; SA, GD150/2024/40, 'Account of Charge and Discharge between James Earl of Morton and John Craigie, His Factor in Shetland' 1749.

Shetland courts were similar to their mainland counterparts in terms of processes' concerns. The study of their judicial officials – the vice-admirals, the vice-admirals depute and the Sheriffs depute – supports this idea.

Vice-Admirals and Sheriffs

Vice-Admirals could be appointed in more specific areas such as Argyll or the Shetland Islands. They had the same prerogatives in terms of wrecks, drift goods or fishing than the Admiral but on a more restricted part of the Scottish coastline. In the 18th century, three Vice-Admirals – James Earl of Morton, Lawrence Dundas of Kerse and Thomas Dundas 2nd Baronet – administered Shetland's coastline.

Before 1738 and the definitive attribution of the Vice-Admiralty to the Earls of Morton by King George II, the office of Vice-Admiral was irregularly attributed and, sometimes, to several men at the same time.¹ Depute Admirals, nominated on an irregular basis by the Lords of Admiralty, served within the bounds of Orkney and Shetland.² This situation was criticised by Robert Earl of Morton in a memorandum for the King in 1720 in which he asked to be appointed Vice-Admiral and to have the possibilities to nominate his own Vice-Admiral deputies.³ James 14th Earl of Morton was granted the position of Vice-Admiral in the islands of Orkney and Shetland by a Commission in 1738.⁴ James 14th Earl of Morton was Sheriff and Stewart of Orkney and Shetland as well as Vice-Admiral of the same jurisdiction. However he was very seldom in the islands. His activities as the President of the Philosophical Society of Edinburgh and his other scientific activities kept him away from Orkney and Shetland. He visited Orkney in 1739 to survey his estate.⁵ In 1766 James 14th Earl of Morton sold his lands, privileges and rights over the islands of Shetland to Lawrence

¹ OA, GD150/1692, '(B) 25 August 1702. Letters of Appointment to Master Robert Douglas and Lord Archibald Stewart as Seneschals, Justiciars and Admirals of Orkney and Shetland. (Under Seal). (c) 15 March 1707 Commission, under Great Seal to James Earl of Mortoun as Admiral of Orkney and Shetland.' ca 1700.

² See for example: NAS, RH9/15/140, 'Admiralty Court: Commission by William, Duke of Hamilton, President of Privy Council and High Admiral of Scotland, in Favour of Alexander Brand, Late Bailie of Edinburgh, to Be Depute Admiral of the Isles of Orkney and Zetland'; NAS, AC13/5/2, 'Commission The Lords of the Admiralty To Mr Archibald Sinclair to Be Deput Admiral of Orknay and Zetland 1695' 1695; NAS, AC13/5/37, 'Commission by the Lords of the Admiralty to Sir W[illia]m Craigie & James Becke of Tamborness? For Being Deput Amiralls of Orknay & Zetland 1697' 1697; NAS, AC13/5/41, 'Commission The Lords of Admiralty to Mr John Mitchell of West Shoar for Zetland 13 November 1701 [Inventory of Commissions Granted by Lords of Admiralty]'.

³ NAS, RH9/15/142/1, 'Representation For Robert Earle of Morton [Admiralty Court: Representation to King by Robert, Earl of Morton, Petitioning for Possession of Powers of Admiralty of Orkney, for "the Interest of the Government, the Happiness of the Inhabitants of Orkney and the Islands Adjoining and for the Encouragement of Those Who Are Well Affected to Your Majesties Government"]'.

⁴ NAS, AC13/2 p. 41, 'Earl of Morton Vice Admiral for the Islands of Orkney and Shetland [Commissions and Deputations]'.

⁵ William Anderson, *The Scottish Nation; Or, The Surnames, Families, Literature, Honours, and Biographical History of the People of Scotland*, vol. 3 (Edinburgh: A. Fullarton & Co., 1878), 209.

Dundas of Kerse who had been made baronet in 1762.¹ Lawrence Dundas of Kerse became Vice-Admiral of Shetland. His son Thomas Dundas 2nd Baronet inherited the title in 1781.² Here the pattern is similar than for the Earl of Morton's Vice-Admiralty: the Dundas had a very busy life in the Scottish capital city both as politicians and entrepreneurs.³ James 14th Earl of Morton was the heritable Sheriff or Stewart and Justiciar of Shetland until 1748. After this date, even though a Principal or High Sheriff remained named in Parliament acts, "he was divested of all powers", explains Ann E. Whestone. All judicial powers were delegated to the Sheriffs depute.⁴

Vice-Admiral deputes

The titles of Admiral and Vice-Admiral were not 'active' titles. They were mostly the representatives of one of the Crown attributions and the executive and coercive power was, in practice, delegated to the Admirals depute and their substitutes. The Admirals depute of Shetland under the Vice-Admiralty of James 14th Earl of Morton, Lawrence Dundas of Kerse and Thomas Dundas 2nd Baronet were William Chalmers, John Bruce and Thomas Bolt. Hance Smith claims that the Admirals depute were local leading landowners.⁵ He gives the example of John Mitchell of Westshore, appointed Admiral depute in 1701.⁶ This assertion may be true only until 1738 when James 14th Earl of Morton was appointed Vice-Admiral of Shetland and nominated regularly Vice-Admiral deputes. After 1738, the appointment of the Admiral deputes followed a different pattern. William Chalmers is a good example of this. William Chalmers, Vice-Admiral depute between c. 1759⁷ and 1767,⁸ was the Earl of Morton's chamberlain in Shetland⁹ as well as the collector of customs of Shetland.¹ He had

¹ William Anderson, *The Scottish Nation; Or, The Surnames, Families, Literature, Honours, and Biographical History of the People of Scotland*, vol. 2 (Edinburgh: A. Fullarton & Co., 1878), 95.

² Francis J Grant, *Zetland Family Histories* (Lerwick: T. & J. Manson, 1893), 15.

³ For example: Sir Laurence Dundas was, among other things, Governor of the Royal Bank of Scotland between 1764 and 1777. For more information, see: Edith (Lady) Haden-Guest, 'DUNDAS, Sir Lawrence, 1st Bt. (c.1710-81), of Kerse, Stirling and Aske, Nr. Richmond, Yorks', in *The History of Parliament: The House of Commons 1754-1790*, ed. L. Namier and J. Brooke (Boydell and Brewer, 1964), <http://www.historyofparliamentonline.org/volume/1754-1790/member/dundas-sir-lawrence-1710-81>.

⁴ Whetstone, 'The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries', 64.

⁵ Smith, *Shetland Life and Trade 1550-1914*, 278.

⁶ NAS, AC13/5/41, 'Commission The Lords of Admiralty to Mr John Mitchell of West Shoar for Zetland 13 November 1701 [Inventory of Commissions Granted by Lords of Admiralty]'.

⁷ SA, SC12/6/1759/3, 'Extract Proceedings Concerning the Petronella of Enchuysen and the Hope of Schiedam, Stranded at Sandwick. (Admiralty)' 1759.

⁸ SA, GD150/2587B, 'Discharge by James Earl of Morton, Late Vice Admiral of the Earldom and Stewartry of Orkney and Lordship of Zetland. To William Chalmers, Collector of Customs at Lerwick, His Admiral Depute in Zetland. Concerning Chalmers's Intromissions with Admiralty Rights.' 1767.

⁹ SA, GD150/2540B/5, 'Instructions by the Earl of Morton. To William Chalmers, Chamberlain of Zetland with History of Tacks of the Lordship Estate, and Detailed Advice Concerning Rental, Ministers' Stipends, Admiralty, Etc.' 1757.

the charges of the administration of James 14th Earl of Morton's estate² and he collected taxes levied on goods carried by ships coming into or out of the different ports of Shetland.³ After the sale of the Earl of Morton's estate in 1766, it seems that he became chamberlain or factor for Lawrence Dundas' estate in Shetland.⁴ The common points between William Chalmers, John Bruce of Sumburgh and Thomas Bolt of Crouster were as follows. 1) They were not issued from long-established landed families in Shetland – at the exception maybe of John Bruce who was a Bruce of Sumburgh.⁵ 2) They were all connected in another way to the central government via tax collection. William Chalmers and John Bruce were both collector of customs and Thomas Bolt had been collector of the house and window tax.⁶ 3) They all had complementary work-related links with the Vice-Admiral they represented in Shetland: they were his factors or chamberlains.⁷ 4) Eventually, two of them were collector of customs: an office that supplemented perfectly the office of vice-admiral depute as they kept an eye on all the goods travelling by sea from and to Shetland.⁸ It is interesting to note that in his study of the “merchants' rise” in Shetland in the 18th century, Hance Smith neglected these three men who undertook what he described, nevertheless, as a more commercial approach towards shipwrecks after the middle of the 18th century. However they were not following his model of Vice-Admirals depute as local landowners.⁹

¹ SA, D24/99/2, 'Fitted Accounts between William Chalmers, Collector of Customs, and Arthur Nicolson of Lochend, 1757-1765' 1765 1757.

² Susan C. Rennie, ed., 'Chamberlain, -Land, Chalmerlain, N.', *Dictionary of the Scots Language. Dictionar O the Scots Leid*, 2004, <http://www.dsl.ac.uk/>.

³ Sinclair, *Tracing Scottish Local History*, 83.

⁴ SA, GD144/141/3, 'Advertisement by William Chalmers, Chamberlain for Sir Laurence Dundas in Shetland, of Public Roup of Tacks of Dundas' Estate, Crops, 1766-1768' 1768 1766.

⁵ NAS, RH4/102, 'Rental of Lordship of Shetland' 1772.

⁶ SA, D24/99/2, 'Fitted Accounts between William Chalmers, Collector of Customs, and Arthur Nicolson of Lochend, 1757-1765'; SA, D8/149/8, 'Letter by John Bruce, Collector of Customs and Vice Admiral Substitute of Shetland, and Walter Scott, Vice Admiral Substitute, to the Lords Commissioners of the Admiralty, Concerning a Squadron of French Ships on the Coast of Shetland.' 1786; SA, D8/119, 'Thomas Bolt's House and Window Tax Accounts for Shetland' 1770.

⁷ SA, GD150/2540B/5, 'Instructions by the Earl of Morton. To William Chalmers, Chamberlain of Zetland with History of Tacks of the Lordship Estate, and Detailed Advice Concerning Rental, Ministers' Stipends, Admiralty, Etc.'; SA, GD144/141/3, 'Advertisement by William Chalmers, Chamberlain for Sir Laurence Dundas in Shetland, of Public Roup of Tacks of Dundas' Estate, Crops, 1766-1768'; SA, D8/102/1, 'Letter Books of John Bruce of Sumburgh, Chamberlain and Factor to Sir Laurence Dundas [Failure of Crops 1782-83, 1778-1784' n.d.; SA, SC12/6/1792/26, 'Petition. Pursuers: Bolt and Nicolson, Merchants in Lerwick, Tacksmen of Sir Thomas Dundas's Lands in Fetlar. Defender: George Clunes in Aith.' 1792; SA, SC12/6/1792/30, 'Petition. Pursuers: John, James, Henry and Robert Ross, and Thomas Bolt Esq., Factors for Sir Thomas Dundas of Kerse. Defenders: William Nicolson in Mewhouse in Haroldswick in Unst and Laurance Nisbet His Subtenant' 1792.

⁸ SA, D24/99/2, 'Fitted Accounts between William Chalmers, Collector of Customs, and Arthur Nicolson of Lochend, 1757-1765'; SA, D8/149/8, 'Letter by John Bruce, Collector of Customs and Vice Admiral Substitute of Shetland, and Walter Scott, Vice Admiral Substitute, to the Lords Commissioners of the Admiralty, Concerning a Squadron of French Ships on the Coast of Shetland.'

⁹ Smith, *Shetland Life and Trade 1550-1914*, 279.

Sheriff deputes

The Sheriffs principal or High Sheriffs had no judicial powers; Ann E. Whetstone states that they had “no duties at all”.¹ The judicial work was carried out by the Sheriffs depute appointed by the central government.² From the end of the 1760s to the end of the 18th century, three men held the office of Sheriff Depute: Patrick Graeme of Graemeshall, Robert Craigie of Kilgraston and Charles Hope of Granton. These three men personified the high Scottish society. They fitted perfectly in the trend presented by Ann E. Whetstone regarding the appointment of Sheriff depute and their position within the judicial system in Scotland after 1748. 1) They were all advocates which meant that their appointment followed perfectly the prescription of the Act of 1747 who stipulated that Sheriffs depute should be advocates with at least three years of experience.³ Robert Craigie had ten years of experience as an advocate when he was appointed in Orkney and Shetland; Charles Hope had eight years.⁴ 2) In 1748 most of the Sheriffs depute had ties with the counties they administrated but by the end of the 18th century it was not true anymore.⁵ The Orkney and Shetland Sheriffs depute followed the same trend. Patrick Graeme of Graemeshall, Sheriff depute from ca. 1767 to ca. 1780s was an Orcadian. However the following Sheriffs depute, Robert Craigie and Charles Hope, were from mainland Scotland, and respectively from Perthshire and Linlithgowshire.⁶ 3) Eventually the office of Sheriff depute wasn't the ultimate goal of a local justice official anymore. It was the first step towards a higher national position. Ann E. Whetstone explains that “the reforms of 1747 and the determination to use practicing lawyers eventually had the effect of splitting the counties from their highest local official. The position of sheriff depute became the lowest national legal office rather than the highest local. Local ties ceased to be

¹ Whetstone, ‘The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries’, 64.

² Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries*, 5.

³ Whetstone, ‘The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries’, 64.

⁴ SA, SC12/6/1769/1, ‘Criminal Libel (for Killing Petitioner’s Animals, Breaking into the Manse and Slandering Petitioner, Writing to Petitioner a Note Threatening to Secure His Dismissal from the Office of Minister, and Stirring up the People against the Petitioner.) (Criminal)’; SA, SC12/6/1773/5, ‘Petition (Claiming That Defender Has Laboured Pursuer’s Ground Which He Rents from Mr John Mackvicker in Sandsound.)’ 1773; SA, SC12/6/1776/12, ‘Summons (for Profits of a Halvers Calf.) (Criminal)’; William Anderson, *The Scottish Nation; Or, The Surnames, Families, Literature, Honours, and Biographical History of the People of Scotland*, vol. 1 (Edinburgh: A. Fullarton & Co., 1877), 694; SA, SC12/6/1789/8, ‘Petition for Restoration of Mare’ 1789; John McGowan, *Policing the Metropolis of Scotland: A History of the Police and Systems of Police in Edinburgh and Edinburghshire, 1770-1833* (Musselburgh: Turlough Publishers, 2010), 56; SA, SC12/6/1795/36, ‘Petition (Dispute Regarding Kelp on the Nesses of Houlland and Hamnavoe.)’ 1795; SA, SC12/6/1797/45, ‘Summons of Molestation (Concerning Kelp Houses at Aith.)’ 1797; SA, SC12/6/1799/45, ‘Petition for Interdict (for Appropriating Wood Driven Ashore.)’ 1799.

⁵ Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries*, 6–9.

⁶ Louisa G. Graeme, *Or and Sable: A Book of the Graemes and Grahams* (Edinburgh: William Brown, 1903), 497–512; Anderson, *The Scottish Nation; Or, The Surnames, Families, Literature, Honours, and Biographical History of the People of Scotland*, 1877, 1:694; McGowan, *Policing the Metropolis of Scotland*, 56.

necessary.”¹ In that respect, Charles Hope is a very good illustration of this process. From mainland Scotland he was parachuted as the Sheriff depute of Orkney and Shetland for his first ‘national judicial office’ and he progressively climbed the Scottish judicial ladder and was appointed Lord President, the head of all the justice courts in Scotland, in 1811.²

This brief prosopographical survey of the Sheriffs and Vice-Admirals, Sheriffs depute and Vice-Admirals depute shed light on the fact that: 1) Shetland was part of a nation-wide employment pool regarding the appointment of the Sheriffs depute. Furthermore the Sheriffs depute appointed in Shetland had the same characteristics and knew the same evolutions throughout the second half of the 18th century than their mainland counterparts. 2) The Vice-Admirals depute had other connections with the central government: they were all involved in levying taxes. Complementary contacts with the central government were a central feature for most of the judicial officials. 3) Eventually, when men developed special competences they had higher chances to get into another office that would fit with their (new) skills. It was the case here for the Vice-Admirals depute who were also collectors of customs.

The Vice-Admirals depute judged most of the cases. However embezzlement was still a recurring issue in Shetland.³ They needed local men who could go on site as soon as a wreck happened. The Sheriffs depute had very few responsibilities in judging the cases since they were not very often in Shetland. They needed local men to administer justice. Local men, who could, maybe, understand some of the specialness of the Shetland in terms of justice and customs.

Middlemen

Sheriff substitutes and Vice-Admiral substitutes

The Sheriff Substitutes were the active actors of the Sheriff Court judicial life: they acted as judges. Between 1769 and 1799, four Sheriff Substitutes were appointed in Shetland: the first three under Patrick Graeme of Graemeshall and the last one acted as Sheriff Substitute when Robert Craigie and Charles Hope were Sheriffs depute. To understand the role and importance of the Sheriff substitutes, light should be shed on their conditions of access to this office. The Sheriff substitutes were appointed by the Sheriff depute and they were initially supposed to be only a personal assistant of the Sheriff depute. Therefore, a legal training was

¹ Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries*, 9.

² McGowan, *Policing the Metropolis of Scotland*, 57.

³ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 50.

not necessary.¹ Their role was to deal with most of the daily work and to call only for the Sheriff depute to judge on the difficult cases.² Throughout the second half of the 18th century their role evolved – parallel to the evolution of the Sheriff Court. Right after 1748, it wasn't enviable to be Sheriff Substitute as they were really badly paid. Up until the beginning of the 1780s, they were very poorly considered by the central government as they were thought of being of bad training and quality. In 1787, the central government raised their wages and this gave to the government the right to determine the number of substitutes in each Sheriffdom. This change had the consequence to rapidly increase their qualifications.³ By 1787, Ann E. Whetstone identifies twenty-four Sheriff substitutes from whom only ten had a legal training: very often the lowest, they were writers at court. Their professions were rarely specified: two of them were merchants, two were commissaries, a very local official, one was a doctor, another was a schoolmaster and some of them were local landowners.⁴ James Nicolson, William Balfour of Trenaby in Orkney, James Malcolmson and Walter Scott of Scotshall were appointed as Shetland's Sheriff Substitutes in the second half of the 18th century. The Sheriff substitutes of Shetland fitted in Ann E. Whetstone's pattern. 1) Three of them were from Shetland. William Balfour of Trenaby, who was an Orcadian, lasted only two or three years in his office in Shetland.⁵ 2) They had no proper legal education or training but two of them were writers at court at Lerwick.⁶ 3) They had other connections with their superior: William Balfour of Trenaby was factor for Lawrence Dundas of Kerse in Shetland and Walter Scott of Scotshall had probably been Vice-Admiral Substitute for Thomas Dundas 2nd Baronet.⁷ 4) They had other connections with the central government. Walter Scot of

¹ Whetstone, 'The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries', 65.

² *Ibid.*, 67–68.

³ *Ibid.*, 68–70.

⁴ *Ibid.*, 69.

⁵ He appears in at least four processes between 1772 and 1774: SA, SC12/6/1772/17, 'Indictment (Sheepstealing). (Criminal)'; SA, SC12/6/1773/1, "'Sheep to Be given in to Melbie from Time to Time from Mr James Georgeson in Seliavoe". (Miscellaneous)' 1773; SA, SC12/6/1773/5, 'Petition (Claiming That Defender Has Laboured Pursuer's Ground Which He Rents from Mr John Mackvicker in Sandsound.)'; SA, SC12/6/1773/6, 'Petition for Division of Raga' 1773; SA, SC12/6/1774/6, 'Petition (Theft - of Plants.) (Criminal)'.

⁶ SA, SC12/6/1796/40, 'Petition to Open Repositories of the Late James Nicolson, Sheriff Substitute and Writer in Lerwick.' 1796; There are traces of a James Malcolmson, writer at Lerwick during the 1760s-1770s but I can't connect him with certitude to the Sheriff substitute: SA, D6/4/10, 'Petition by James Malcolmson, Writer in Lerwick, to Sheriff Depute in Action at Lunna's Instance against Tenants in Toft, Delting' 1762; SA, CH2/1071/25/1, 'Representation by James Malcolmson, Writer in Lerwick. On Behalf of Sir John Mitchell of Westshore, to the Presbytery of Zetland. Concerning Claim of William Mitchell, Minister at Tingwall, to Commony Containing the Break of Tingwall' 1765; SA, D24/124/3-5, 'Letters to James Malcolmson, Writer in Lerwick, Concerning Impressment of Men for Navy' 1771.

⁷ SA, GD144/116/14, 'Tack by Contract between William Balfour of Trinaby, Factor for Sir Lawrence Dundas of Kerse over the Lordship of Shetland, and Gideon Gifford of Busta and Robert Robertson of Gossaburgh, of Dundas's Property Lands in Northmaving and Delting' 1769; SA, D31/22/4, 'Rental of Shetland by William

Scotshall had been a lieutenant in the Royal Navy and James Nicolson was the convener of the Commissioners of Supply.¹ As a convener of the Commissioners of Supply he had the only privilege or right to call the yearly meetings of the Commissioners of Supply.² Ann E. Whetstone adds that “[l]ocal men were always chosen as substitutes; so all were subject to local pressure.”³ In Shetland, the fact that the Sheriff substitutes were chosen from the élite of the islands confirms somehow this affirmation. They had the opportunity to take actions in favour of the interests of their social group. They also had a pretty good knowledge of Country Acts and of their effects on the economy in Shetland: the judgement of the “complaint for failure to herd” in 1777, when the Sheriff substitute of the time, James Malcolmson, decided to use both the Scots Law and the Country Acts was a proof of Sheriff Substitutes’ pragmatic approaches.⁴

The prerogatives of the Vice-Admiralty substitutes were more blurry than those of the Sheriff substitutes. They weren’t any precise rules in Scotland regarding the appointment of the Vice-Admiral substitutes, only the fact that like for any other offices, one could deputise and substitute one man or more for the office of Vice-Admiral.⁵ Four Vice-Admiral Substitutes can be traced back between 1758 and 1786. James Nicolson, Alexander Ramsay, Andrew Heddell and Walter Scott were appointed as Vice-Admiral Substitutes. This list is unfortunately not exhaustive. Long-term locally-based and short-term salvage-based Vice-Admiral Substitutes could be both appointed. Vice-Admiralty courts being set up on the place of a wreck,⁶ it was necessary for the Vice-Admiral depute to have people on his side in the different parishes. The commission granted by William Chalmers in July 1759 stipulated that:

Be it known to all men by these present Mr William Chalmers Esquire Vice-Admiral Depute of Zetland, and hail Islands and Creeks thereto belonging [...] Nominate Constitute and Appoint the

Balfour. Rents and Taxes Payable to Sir Lawrence Dundas in Shetland, with Detailed Accounts of Townships, and Remarks on Shetland’s Political Economy’ ca 1774; SA, D6/104/2, ‘Receipt by Walter Scott, Vice Admiral Substitute, “for Account of the Whale [or Whole] Salvagers”’ 1784; SA, D8/149/8, ‘Letter by John Bruce, Collector of Customs and Vice Admiral Substitute of Shetland, and Walter Scott, Vice Admiral Substitute, to the Lords Commissioners of the Admiralty, Concerning a Squadron of French Ships on the Coast of Shetland.’

¹ Grant, *Zetland Family Histories*, 237; SA, D24/124/1, ‘Letter by William Balfour, Kirkwall, to James Nicolson, Convener of Commissioners of Supply for Shetland. Concerns Government’s Demand for Seamen from Shetland for the Navy -- “and the Consequence of Such a Demand during Seedtime or the Fishing Season”’ 1770.

² Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries*, 71.

³ Whetstone, ‘The Reform of the Scottish Sheriffdoms in the Eighteenth and Early Nineteenth Centuries’, 69.

⁴ SA, SC12/6/1777/14, ‘Complaint (Failure to Herd.) (Criminal)’.

⁵ K. M. Brown and al., eds., ‘1581/10/91: Ratification Granted to Francis [Stewart], Earl of Bothwell’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1581/10/91>.

⁶ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 49.

said Alexander Ramsay and James Nicolson, or any one of them accepting, to be Admiral Substitutes, *ad hunc effectum* [lat.: *for this purpose*] [...]¹

“This purpose” was to constitute an Admiral Court in order to deal with the wreck of “a vessel belonging to Copenhagen [which] was upon the fourteenth of this present month of July, Stranded on or near the Island of Papastour”.² In the same document, William Chalmers, the Vice-Admiral depute, wrote that substitutes should be appointed for this wreck on the shores of Papastour as “there being no Admiral Substitute in that Island”.³ Therefore long-term locally-based Vice-Admiral Substitutes might have existed at the same time as short-term salvage-based Vice-Admiral Substitutes. Similarities in the persons of the Vice-Admiral Substitutes resided in the fact that: 1) they were all from Shetland. Indeed, they had to be the first one on the spot when a wreck happened and they also had the knowledge of the local division of wrecks. 2) When entering the office, they held reasonable places in Shetland’s local élite. Among them, there were two writers⁴ and a comptroller of Customs.⁵ The reason for their appointment was clearly stated in a Commission letter: they had the “ability and loyalty” that were needed for the office.⁶ 3) Two of them seem to have been appointed as Sheriff Substitute a few years after being Vice-Admiral Substitute and one of them seems to have become a comptroller of Customs and the tacksman of Thomas Dundas 2nd Baronet’s estate in Gulberwick, Aithsting and Sandsting.⁷ Becoming a Vice-Admiral Substitute offered possibilities to climb the social or ‘judicial ladder’ in Shetland.

Bailies

Sheriff Substitute and Vice-Admiral Substitute were appointed by a Shetland official – the Sheriff Depute or the Vice-Admiral Depute. Similarly, the bailies of Shetland who officiated in the first half of the 18th century were appointed by the Earl of Shetland. Ten bailie courts were numbered by Thomas Mouat in a very short note that he wrote in 1800 on the state of the baileries in 1688.⁸ However it is highly difficult to know where his information came from. A document of 1739 gives the names of 15 bailies and their 14 baileries – the island of

¹ SA, GD144/118/15, ‘Commission by William Chalmers, Vice Admiral Depute of Zetland, to Alexander Ramsay and James Nicolson, to Be Admiral Substitutes.’ 1759.

² Ibid.

³ Ibid.

⁴ Ibid..

⁵ Ibid..

⁶ Ibid.

⁷ This is most likely the same Andrew Heddell: SA, D11/195, ‘Letter Book of Andrew Heddell, Comptroller of Customs at Lerwick, 1777-1795’ n.d.; SA, SC12/6/1787/19, ‘Petition (Desertion of Tack.) Pursuer : Andrew Heddell, Tacksman of Sir Thomas Dundas’s Estate in Gulberwick. Defender : Laurence Smith in Grimsetter in Quarff’ 1787; SA, SC12/6/1789/15, ‘Summons of Removing. Pursuer : Mr Andrew Heddell, Tacksman of Sir Thomas Dundas’s Lands in Aithsting and Sandsting. Defender : John Fraser in Garderhouse in Sandsting.’ 1789.

⁸ SA, D25/1/5, ‘Note of Bailies of Shetland Parishes in 1688 Reconstructed by Thomas Mouat of Garth’ c 1800.

Unst having two bailies.¹ A list that I have composed from more varied documents can trace back thirteen bailie courts between the middle of the 17th century and the first half of the 18th century.

Anno 1688		Likely
The Bailie	of Dunrosness	Sinclair Brother of Quendale
	of Tingwall	Charles Mitchell of Uresland
	of Nesting	Peter Hunter Brother of Lunna
	of Whalsay	
more guess not worth noticing	of Yell	Neven of Scousburgh
	of Unst & Fetlar	Gilbert Bruce of Clivocast Brother of Muness
	of Delting	Andrew Mouat of Garth
	of Northmaving	George Mouat of Hamnavoe
	of Papa	
	of Sandness & Walls	Cheyne of Tutaburgh
	of Aithsting	Umphrey of Sand
	of Walls	
	of Gulberwick	Arthur Nicolson of Ballister
	of Bressay	Lawrence Williamson Skipper William Henderson of Gardie
SA, D25/1/5. 'Note of Bailies of Shetland Parishes in 1688 Reconstructed by Thomas Mouat of Garth', ca. 1800.		

Table 21: Bailies: 1688

Andrew Sinclair	baillie of the parishes of Dunrossness, Sandwick and Cunningsburgh
Robert Sinclair of House	baillie of island of Burray
Sir John Mitchell of Westshore	baillie of parish of Tingwall, Aithsting and Sandsting
John Scott of Melbie	baillie of parishes of Walls and Sandness
George Greig	baillie of island of Papa Stour
Alexander Sinclair of Brew	baillie of the parish of Whiteness and Weisdale
Thomas Gifford of Busta	baillie of Delting
James Cheyne of Tannick	baillie of the parish of Northmavine
John Scott of Scarpo	baillie of the island of Yell
Andrew Scott of Greenwall and Thomas Mouat, merchant in Uyasound	baillies of the island of Unst
William Bruce of Urie	baillie of the island of Fetlar
Robert Bruce of Simbester	baillie of the islands of Whalsay and Skerries
Robert Hunter of Lunna	baillie of Nesting and Lunnasting
James Greig	baillie of the island of Bressay, parishes of Lerwick, Gulberwick and Quarff
SA, SC12/53/2/ page 259. 'Obligation by Andrew Sinclair, Baillie of the Parishes of Dunrossness, Sandwick and Cunningsburgh, [...] and James Greig, Baillie of the Island of Bressay, Parishes of Lerwick, Gulberwick and Quarff, to Robert Dick of Frackafeld, for Payment of £40 Sterling, Yearly, to the Commissioners of Excise for North Britain, for the Power to Exact and Levy the Several Excise Duties from the Inhabitants of Zetland, Engrossed on 21 November 1739', 1739.	

Table 22: Bailies: 1739

¹ SA, SC12/53/2/ page 259, 'Obligation by Andrew Sinclair, Baillie of the Parishes of Dunrossness, Sandwick and Cunningsburgh, Robert Sinclair of House, Baillie of Island of Burray, Sir John Mitchell of Westshore Baillie of Parish of Tingwall, Aithsting and Sandsting, John Scott of Melbie Baillie of Parishes of Walls and Sandness, George Greig Bailie of Island of Papa Stour, Alexander Sinclair of Brew Baillie of the Parish of Whiteness and Weisdale, Thomas Gifford of Busta Baillie of Delting, James Cheyne of Tannick, Baillie of the Parish of Northmavine, John Scott of Scarpo, Baillie of the Island of Yell, Andrew Scott of Greenwall and Thomas Mouat, Merchant in Uyasound, Baillies of the Island of Unst, William Bruce of Urie, Baillie of the Island of Fetlar, Robert Bruce of Simbester, Baillie of the Islands of Whalsay and Skerries, Robert Hunter of Lunna, Baillie of Nesting and Lunnasting, and James Greig, Baillie of the Island of Bressay, Parishes of Lerwick, Gulberwick and Quarff, to Robert Dick of Frackafeld, for Payment of £40 Sterling, Yearly, to the Commissioners of Excise for North Britain, for the Power to Exact and Levy the Several Excise Duties from the Inhabitants of Zetland, Engrossed on 21 November 1739'.

Date	Jurisdiction	Bailie	Sources (SA)
1650	Whiteness and Weisdale	John Cheyne of Essilmonth	GD150/2534B/1
1667	Yell	Gilbert Nieven	D13/8
1675	Aithsting, Sandsting and Walls	Laurence Umphray of Sand	GD144/19/11
1707	Walls	Patrick Umphray of Sand	D25/12
1717	Gulberwick	Andrew Bruce of Breiwick	D24/108/22
1730	Dunrossness, Sandwick and Cunningsburgh	Andrew Sinclair of Quendale	GD150/2534B/6; NAS, RH11/29/1
1731	Unst	Thomas Mouat of Garth	NAS, RH2/8/33
1734	Tingwall, Sandsting and Aithsting and “the lands in Quarf belonging in property to him”	John Mitchell of Westshore	GD150/2534B/7
1740	Delting	Herculus Murray of Tagon	D6/136/1
1743	Bressay	William Henderson	D12/73
1743	Lerwick	Andrew Horrie	D6/131/9/4
1744	Northmavine	John Gifford of Busta	D25/3
1748	Papa	George Greig	GD144/1/49

Table 23: Bailies: mid-17th to mid-18th century

Thomas Gifford wrote that all the parishes of Shetland had a bailie at their head.¹ It is very difficult to know their degree of action and if the Bailies actually submitted themselves to the different prerogatives and obligations enunciated both in the Country Acts and in the Scots Law as there are only three surviving Court Books. There aren't, at my knowledge, any prosopographical studies of the Scottish bailies; such a study would shed light on a crucial aspect of local justice and government in early modern Scotland. An analysis of all the Shetland bailies in the early 18th century would prove itself complicated since the Court Books didn't survive. For this reason, I'll focus my attention on the bailies of Dunrossness, Northmavine and Unst. The bailie of Dunrossness, Sandwick and Cunningsburgh between 1730 and 1735 was Andrew Sinclair of Quendale. He was the brother of Robert Sinclair of Quendale, a large landowner in Dunrossness and a renowned Jacobite and Episcopalian.² This appointment is highly surprising. As I explained before, both the ministers of Dunrossness and Robert 12th Earl of Morton had difficulties getting along with Robert Sinclair of Quendale.³ However in 1730 George 13th Earl of Morton, brother of Robert 12th Earl of Morton, appointed Andrew Sinclair and clearly stipulated in the charter “Andrew Sinclair

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 46.

² SA, GD150/2534B/6, ‘Commission by George Earl of Morton to Andrew Sinclair, Brother of Robert Sinclair of Quendale, to Be Bailie of Dunrossness, Sandwick and Cunningsburgh’.

³ NAS, RH9/15/142/2, ‘Memoir for the Earle of Morton [Admiralty Court: Representation to King by Robert, Earl of Morton, Petitioning for Possession of Powers of Admiralty of Orkney, for “the Interest of the Government, the Happiness of the Inhabitants of Orkney and the Islands Adjoining and for the Incouragement of Those Who Are Well Affected to Your Majesties Government”]’, fol. 2; NAS, CS271/54449, ‘Robert Sinclair v Walter Huggens (Minister of Dunrossness)’; NAS, RH9/15/142/1, ‘Representation For Robert Earle of Morton [Admiralty Court: Representation to King by Robert, Earl of Morton, Petitioning for Possession of Powers of Admiralty of Orkney, for “the Interest of the Government, the Happiness of the Inhabitants of Orkney and the Islands Adjoining and for the Incouragement of Those Who Are Well Affected to Your Majesties Government”]’.

brother german to Robert Sinclair of Quendall”.¹ It probably shows only that in order to be appointed as a bailie one should hold a quite high position in the local rural society. Andrew Sinclair’s father, Laurence Sinclair of Quendale, was a commissioner of supply in 1675, 1689, 1690, 1696 and 1704.² Commissioners of supply were only appointed for one year.³ Thomas Mouat of Garth, the bailie of Unst, was also from a landed family in Shetland.⁴ His father, Andrew Mouat of Garth, was appointed commissioner of supply for the years 1696 and 1704.⁵ Eventually, John Gifford of Busta, the bailie of Northmavine, was again from a landed family in Shetland. John Gifford of Busta senior and Thomas Gifford of Busta were both appointed Commissioners of Supply, respectively in 1689, 1690, 1698 and 1704, and 1706.⁶ The common points between the three bailies were the following: 1) they were all from a landed family in Shetland. 2) Their father had been Commissioner of Supply which meant that they owned land at a level of £100 per annum.⁷ Their main role was to collect the “cess” or land tax; they could also assist in educational provisions and supervision of roads and bridges.⁸ They were “the most important single body for expressing the views of the landholders in Scotland”;⁹ they represented the “landowning commoners”.¹⁰ The Shetland bailies had fathers who had been directly connected at the same time to the central government and the local life. As such they were a perfect bridge between the local and the national. 3) Regarding their administration of justice, they knew the Country Acts and the socio-economic and cultural organisation of rural life in Shetland. They might have been educated at Edinburgh and acquired some knowledge of the Scots Law. Thomas Gifford of Busta, who was himself maybe the father of the bailie John Gifford of Busta, wrote that “most people of condition [had] their children educated at Edinburgh”.¹¹ They also had personal interests in the parish.

¹ SA, GD150/2534B/6, ‘Commission by George Earl of Morton to Andrew Sinclair, Brother of Robert Sinclair of Quendall, to Be Bailie of Dunrosness, Sandwick and Cunningsburgh’.

² Grant, *Zetland Family Histories*, 266.

³ Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries*, 63.

⁴ Grant, *Zetland Family Histories*, 179–85.

⁵ *Ibid.*, 182.

⁶ *Ibid.*, 81 and 83.

⁷ Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries*, 62.

⁸ Ian Donnachie and George Hewitt, *Collins Dictionary of Scottish History* (Glasgow: Harper Collins Publishers, 2001), 70–71.

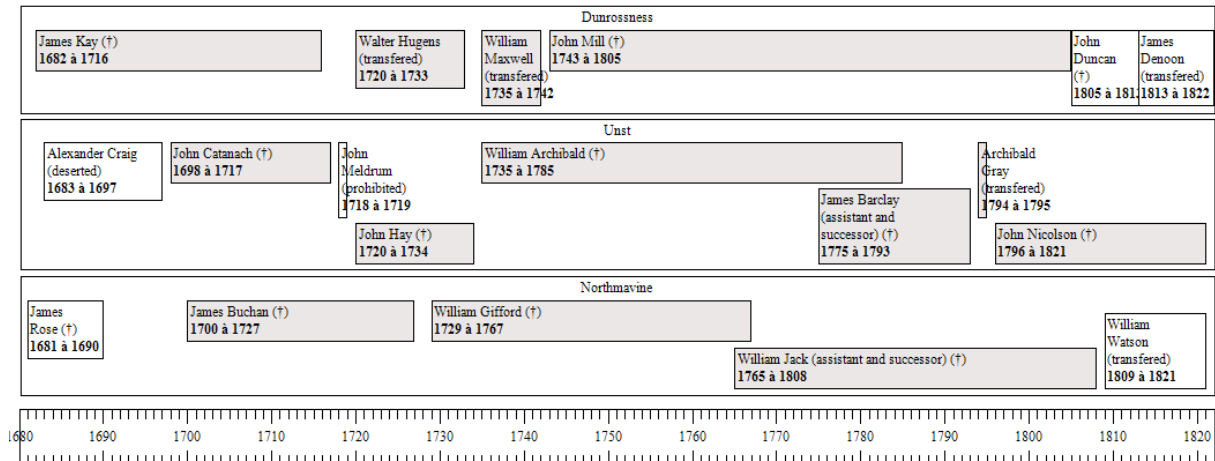
⁹ Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries*, 61.

¹⁰ *Ibid.*, 62.

¹¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 31.

Ministers

The last Shetland's middlemen were the parish ministers. The ministers of the Kirk carried the whole system: they were the kingpins of the Scottish Kirk's religious, moral and judicial system. They implemented the coercive power of the Kirk on their flock.



Scott, Hew. *Fasti Ecclesiae Scoticae. The Succession of Ministers in the Church of Scotland from the Reformation. Synods of Ross, Sutherland and Caithness, Glenelg, Orkney and of Shetland, the Church in England, Ireland and Overseas*. Vol. 7. Edinburgh: Oliver and Boyd, 1928.

Figure 3: Ministers: Dunrossness, Unst and Northmavine

In order to keep some coherence, the focus will be mainly on the ministers who were admitted in the parishes corresponding to the three baileries previously presented: Dunrossness, Sandwick and Cunningsburgh, Northmavine and Unst. Fourteen different men were presented in these parishes to become parish minister, and one of them wasn't admitted because he suffered of "melancholy",¹ between 1682 and 1796. Two of them were from Shetland, one from Orkney, seven from mainland Scotland and the last four were probably from mainland Scotland as no other data connected them to Shetland. From Shetland there were John Mill, son of James Mill, minister of Lerwick and William Gifford, son of John Gifford of Busta senior. William Gifford's nephew or brother was John Gifford of Busta, bailie of Northmavine at the same period.² This connection probably facilitated cooperation between the two courts but it also shows the connection between land, family and officials. The parish of Northmavine could be said to have been completely under the control of the Giffords of Busta in the 1740s. John Hay, minister of Unst between 1720 and 1734, was from Kilsyth, North Lanarkshire, in mainland Scotland. His brother, Thomas Hay was appointed minister of Yell, the neighbouring island and parish, in 1717.³ Their education and father's profession provide other information on their background. Six ministers were educated at Aberdeen,

¹ Scott, *Fasti Ecclesiae Scoticae*, 7:299.

² *Ibid.*, 7:283.

³ *Ibid.*, 7:299.

three at Edinburgh and a single one at St. Andrews; information is lacking on four of them. On their father's side: one had a minister as a father, another one a schoolmaster, another one a local official and eventually one minister had a factor as a father. The fathers of the other ten aren't identified in the *Fasti Ecclesiae Scoticae*.¹ Eventually the length of their stay in Shetland can be investigated. Half of them spent less than twenty two years in Shetland and the other half, more than twenty-two years. The Minister who had the longest residence was John Mill. He was minister of Dunrossness, Sandwick and Cunningsburgh for sixty-two years. Six of them had quite long tenures: they stayed for more than thirty-three years at the head of their parish in Shetland.

Eventually, most of the Ministers were from outside Shetland. Two out of thirteen were connected by birth to Shetland. It is difficult to know if the court that they led, the Kirk session, was whatsoever affected by their origin, education and life in Shetland – a compared study of their theological training and their sermons and preaches in Shetland would shed light on such connections and influences. As non-Shetlanders, what was their knowledge of Shetland rural specificities? As Shetlanders – once they had been living for some time in Shetland – which role did they play in enforcing the Kirk Law and trying the Shetlanders?

They are three ways to approach their possible actions and knowledge of the Shetland system: 1) through the Kirk sessions records; 2) through their presence in the bailie courts books; and 3) through Sir John Sinclair's statistical account for which John Mill in Dunrossness, William Jack in Northmavine and James Barclay in Unst sent answers. There aren't, to my knowledge, any mentions of the Country Acts or of the different ways to keep good neighbourhood in Shetland in the Kirk sessions' minutes of the three studied parishes. It seems quite coherent with the types of cases judged at court – sexual offences, 'Unseemlie behaviour', defamation, breach of Sabbath and witchcraft. Shetland custom didn't give any particular rulings for these crimes except for the breach of Sabbath and witchcraft which were severely reprimanded.² Nevertheless there is one type of offense or misdeed that could have brought the Ministers to use the Country Acts: servants' misbehaviours. The Kirk was strictly following the actions of the servants who were said to bring misconduct in the country and houses. One of the main means of domination of the Kirk over the servants was the attribution of *testificates* who stipulated if someone who wanted to move from a parish could actually move away and if this person was to be trusted.³ In Shetland the Country Acts ruled on the misbehaviours of

¹ Scott, *Fasti Ecclesiae Scoticae*.

² 'The Old Country Acts' acts 15 and 41.

³ Leneman, *Living in Atholl, A Social History of the Estates 1685-1785*, 107.

servants and masters and provided fines in case of misconducts.¹ Ministers used them at the bailie courts in cases of servants' misconducts: in 1731, John Hay, the minister of Unst craved the bailie court of the North Parish to “[supply] your petitioner in a womans Ser[van]t till Nov[embe]r next”.² His current servant, Ursula Francesdaughter, “was found by the Elders to be with child and had given Tho[mas] Lyon a man Ser[van]t of his for father”.³

Studying the *Old Statistical Account* is more fruitful. David Thomson, minister of Walls and Sandness wrote that he regretted the disappearance of the bailie courts because small and local offenses couldn't be judged anymore.⁴ His statement is interesting as he was not a Shetlander and had just moved to Shetland when he wrote his answers to Sir John Sinclair. How did he know about the Franchise Courts' 'positive' outcomes in rural areas? He was born in 1759 in Auchtermuchty in Fife, therefore after the 1747 Act. He had maybe heard or read about it when he was still in mainland Scotland, maybe during his studies of divinity at the University of Edinburgh⁵ or maybe he had it explained by Shetlanders themselves. My guess is that he knew about it from mainland Scotland as he used the expression “baron bailies”⁶ to identify these men and the word “baron” was not used to name the “bailies” in Shetland but it was highly used in mainland Scotland.⁷ However this is the only trace of a minister supporting the ‘old system’ in Shetland.

The appointment of these middlemen followed the same criteria in Shetland than in the rest of Scotland. These officials were educated on the Scottish mainland at Aberdeen or Edinburgh. The civil officials, as well as the ministers born in Shetland, belonged to families which maintained privileged relations with the central government through a series of local offices. Even if the Sheriff substitutes, the Vice-Admiral substitutes and the Bailies were from landed families in Shetland, they tended to protect the rural life until the end of the 18th century. It didn't mean, however, that they didn't try to individualise and divide the land but in order to maintain the fishing tenures they had to promote the access to common resources. The Ministers had a different agenda: they were not involved in the fishing industry. Their land mattered to them and that's why they promoted agricultural improvement.

¹ ‘The Old Country Acts’ act 12..

² NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 9.

³ Ibid., fols 8–9.

⁴ Thomson, ‘Parish of Walls and Sandness’, 114.

⁵ Scott, *Fasti Ecclesiae Scoticae*, 7:284.

⁶ Thomson, ‘Parish of Walls and Sandness’, 114.

⁷ Davies, ‘The Courts and the Scottish Legal System 1600-1747 : The Case of Stirlingshire’, 141.

Local Officials

The Ministers as well as the Bailies and the Sheriff Substitutes needed local agents to establish and enforce their coercive power. They appointed Elders, Procurators Fiscal, Rancelmen and Lawrightmen.

Elders

In his book *Reforming the Scottish parish*, John McCallum explains that “[t]racing the social background of kirk session members in any number is highly challenging, since we rarely have direct information on the lives of more than a handful in any given parish, and because of the difficulty in finding secure references to them outside kirk session minutes”.¹ He writes about the kirk sessions in Fife at the beginning of the 17th century. However his conclusion fits highly with the 18th-century situation. Leah Leneman in her study of the Atholl Estates wrote that “only a small number of the elders of Blair Atholl were traceable, and they were without exception small tenants”.² Shetland Elders left traces in the Kirk Sessions minutes. The minutes display the narrative of the parish life; nonetheless John McCallum explains that “there was no such thing as a typical kirk session”.³ The minutes of the Kirk Sessions varied vastly from one Kirk Session to another. Common information was however found: 1) date with or without texts read at service; 2) sederunt⁴ (with or without list of attendance); 3) offence, offenders and appearances; 4) yearly account and poor roll. The other information such as the election lists of Elders were variously distributed within the records. Election lists and sederunt with list of attendance provide clear indication of Elders’ diet or township. Election lists however don’t indicate if one Elder, once elected, acted effectively at the session. They cannot provide “attendance patterns”.⁵ This is a small price to pay compared to the scarcity of the sources.

The Elders were theoretically elected on a yearly basis. In practice: they served as Elders for a much longer time. Some of them served until they died. Others had to stop because they were moving away from the parish. Some were discharged as they had committed an offence.⁶ In

¹ John McCallum, *Reforming the Scottish Parish: The Reformation in Fife, 1560-1640* (Farnham: Ashgate, 2009), 160.

² Leneman, *Living in Atholl, A Social History of the Estates 1685-1785*, 96.

³ McCallum, *Reforming the Scottish Parish*, 187.

⁴ “Sederunt, n. 1. a. In minutes of various courts, used (in its Latin sense) to introduce the list of members of the court present. b. As a vernacular noun: The members, collectively, present at a particular sitting of a court”, in Susan C. Rennie, ed., ‘Sederunt, N.’, *Dictionary of the Scots Language. Dictionar O the Scots Leid*, 2004, <http://www.dsl.ac.uk/>.

⁵ McCallum, *Reforming the Scottish Parish*, 156.

⁶ *Ibid.*, 154.

Shetland it seems that the death of Elders was the main reason to elect new ones. In Sandwick on February 18 1761,

[the] Session finding that their number [i.e. the number of Elders] was so decreased by death, that there remained only three Elders of considerable age, and that there was an absolute necessity of having the whole parishes of Sandwick & Cunningsburgh supplyd (sic) as soon as possible with elders in every quarter – proceed to nominate the following persons whom they judge most fit for that end viz. for Cunningsburgh Edward Halcrow & Laurence Bain for Fladabester diet Nicol Halcrow for Aithsetter, Robert Mcpherson for Kotha, Peter Tulloch & Laurence Tulloch in Vadsgarth for Vestanore and Claphoul – for Sandwick & Sand Gaun Black and Malcom Halcrow, James Smith for Culliaster, James & Thomas Jamisons for Channerwick, Thomas Aiken, Charles Leisk, & Robert Mode for Irland. Clozd w[i]t[h] prayer.¹

The election lists of the parishes of Dunrossness, Northmavine and Sandwick and Cunningsburgh show that proper elections of a great number of Elders were rare. Some elders were appointed during the year but on a more occasional and informal basis.² An election of Elders was organised in 1763 by John Mill, minister of Sandwick and Cunningsburgh, when some Elders and potential Elders were reckoned to be guilty of embezzlement.³ John McCallum suggests this form of “*ad hoc* approach”: Elders were nominated when necessary.⁴ The elections of Elders followed three steps, distributed on three consecutive Sundays: 1) presentation and proposition to the congregation by the Minister of a list of Elders thought to be appropriate for the office; 2) examination of the list by the congregation: the minister asked ‘if anyone had any sufficient reason against one man why he shouldn’t be admitted Elder’; 3) ordination of Elders.⁵ The *ad hoc* approach could be divided in two different practices: on the one hand, ministers could nominate a large number of Elders, reaffirming some already in place and appointing new Elders – this was mostly the case in Dunrossness, Northmavine, and Sandwick and Cunningsburgh, in the second half of the 18th century; on the other hand, ministers could nominate a small number of Elders, without reaffirming those already in place – this was the case in the parish of Unst in the early 18th century. These two practices answered to specific needs and confirm an *ad hoc* approach.

¹ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 14. See also: “and all the old Elders being dead, except two old men”, fol. 18; “the old Elders taken off by death”, fol. 62; “As most of the Old Elders were dead”, in SA, CH2/112/1, ‘Dunrossness Kirk Session Minutes, 1764-1841’, fol. 23. “The Session taking into consideration the pawsity [paucity] of Elders in the Congregation occasion’d by the death of several within these five years”, in SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’ n.d., fol. 59.

² McCallum, *Reforming the Scottish Parish*, 154. See, for example: SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, 1739 1720, fol. 9.

³ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 18.

⁴ McCallum, *Reforming the Scottish Parish*, 155.

⁵ See, for example: SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, 1739 1720, fol. 9.

Parish	Date	N. of Elders nominated	N. of year from the previous appointment (n/a: not available)	Source
Dunrossness	1772	25	n/a	SA, CH2/112/1/23.
	1791	34	19	SA, CH2/112/1/59.
Northmavine	1758	10	n/a	SA, CH2/286/1/ 7.
	1765	17	7	SA, CH2/286/2/1.
	1783	11	18	SA, CH2/286/2/77.
Sandwick and Cunningsburgh	1761	14	n/a	SA, CH2/325/1/14.
	1763	12	2	SA, CH2/325/1/18.
	1791	21	28	SA, CH2/325/1/62.

Table 24: Elders: Election lists in Dunrossness, Northmavine, and Sandwick and Cunningsburgh

Parish	Date	N. of Elders	Source
Unst	12/06/1720	7	SA, CH2/385/1/5.
	14/01/1721	2	SA, CH2/385/1/9.
	01/05/1726	1	SA, CH2/385/1/31.
	23/09/1739	4	SA, CH2/385/1/59.
	05/11/1797	1	SA, CH2/385/2/1.

Table 25: Elders: Ad hoc approach in Unst

Who were the Elders? Some of the Elders nominated in Unst in the early 18th century, James Henderson in Bouaness and Gilbert Henderson in Midgarth in 1720, and George Pitcairn, laird of Muness and Thomas Mouat, merchant in Uyeasound in 1721, seemed to have specific profiles.¹ One James Henderson owned one merk of property land and 13 merk of udal land in Bouaness in 1716;² and one Gilbert Henderson owned 2 merk of property land and 12 merk of udal land in Midgarth at the same date.³ They were the only two Elders in a sederunt to be given with their name and place name.⁴ George Pitcairn, laird of Mouaness, owned 7 ½ merk of feued land and 84 merk of udal land in Muness as well as various small holdings on the island of Unst.⁵ Thomas Mouat was a merchant at Uyeasound one of the most commercially active place in Shetland in the 18th century.⁶ These men were relatively wealthy compared to the bulk of Shetlanders. They were “employers of labour” such as the Elders described by William P. L. Thomson in Orkney.⁷ They were the “better sort” described by William M. Abbott as the “prosperous farmers and successful merchants”;⁸ they were lairds or “unspecified goodmen” writes John McCallum.⁹ Both John McCallum and William M.

¹ SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, n.d., fol. 4 and 9.

² SA, SA4/2255, ‘Gifford’s Rental of Shetland: Transcript and Index’ 1716, fols 83, 91.

³ Ibid.

⁴ SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, 1739 1720, fol. 4.

⁵ SA, SA4/2255, ‘Gifford’s Rental of Shetland: Transcript and Index’, fols 86, 96.

⁶ Smith, *Shetland Life and Trade 1550-1914*, 53–54.

⁷ Thomson, *Orkney Land and People*, 192.

⁸ William M. Abbott, ‘Ruling Eldership in Civil War England, the Scottish Kirk, and Early New England: A Comparative Study of Secular and Spiritual Aspects’, *Church History* 75, no. 1 (1 March 2006): 61.

⁹ McCallum, *Reforming the Scottish Parish*, 165.

Abbott describe a 17th-century situation while William P. L. Thomson writes about the 18th-century Orcadian Kirk. However what they all imply is the use of members of the rural élite in order to enforce social control on the church level. William P. L. Thomson describes this as “an obvious class element to the Session’s proceedings”.¹ This idea is challenged by the inexistence of obvious members of the rural élite in the election lists of Dunrossness, Northmavine and Sandwick and Cunningsburgh for a later period.² Between 1758 and 1791, the Elders nominated in these three sessions didn’t appear on the rentals: they didn’t own property or feued lands.³ They were probably tenants or small udallers. This result is similar to what Leah Leneman has found for Blair Atholl.⁴ Eventually, John McCallum writes that “[m]ost of the unspecified individuals in these types of rural parish were almost certainly tenants and feuars rather than subtenants and labourers, but the precise economic and social status of these would have varied from parish to parish”.⁵

These Elders, whom we know almost nothing about, were compelled to two things: their good fame and trust and a correlated fitness for the office. The crucial elements for their appointment as Elders were an irreproachable character and moral as well as a ‘qualification for the office’. When appointed in 1721, George Pitcairn of Mouness was said to be “a most fit and well qualified gentleman for undertaking that office”.⁶ The fitness and qualification of a man was an impeccable moral and trust within the community. That’s why when an Elder ‘betrayed’ his Eldership when committing an offense he was “dismissed from the Eldership as he could be no longer useful to that office”.⁷ In 1763, in the parish of Sandwick and Cunningsburgh, John Mill had to nominate new Elders because of the involvement of some of the old Elders and Elders-to-be in embezzlement. The clerk wrote that

The Minister having some time ago read out before the congregation the names of several heads of families condescended upon by the members of the Session as fit persons to be employd for Ruling Elders in the United Parishes of Sandwick and Cunningsburgh, but many being found guilty of scandalous outbreakings, in the affair of wreckd ships that happened about that time, and more being suspected of the like crime -- the Session thought proper, to have the ordination of Elders delayd till they saw if the Magestrate woud discharge his duty, in examining into that affair to the outmost least any scandalous persons should be put into that sacred office.⁸

¹ Thomson, *Orkney Land and People*, 192.

² SA, CH2/112/1, ‘Dunrossness Kirk Session Minutes, 1764-1841’; SA, CH2/286/1, ‘Northmavine Kirk Session Minutes, 1729-1765’; SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’.

³ NAS, RH4/102, ‘Rental of Lordship of Shetland’.

⁴ Leneman, *Living in Atholl, A Social History of the Estates 1685-1785*, 96.

⁵ McCallum, *Reforming the Scottish Parish*, 166.

⁶ SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, 1739 1720, fol. 9. See also: SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 14; SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, 1739 1720, fol. 32.

⁷ SA, CH2/112/1, ‘Dunrossness Kirk Session Minutes, 1764-1841’, fol. 24. See also: SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 31.

⁸ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 18.

This long paragraph indicates two things: the necessity of an excellent reputation to be elected as an Elder as well as their belonging to the bulk of rural Shetlanders looking for resources. This confirms the idea that the Elders were probably tenants or small udallers.

Three criteria defined the character of the elected Elders: 1) they had to be ‘qualified’; 2) they were local men and had to report poor and offenses of their district; and 3) they had to be trustworthy within the community and for the minister. What did it mean for the community? Did it have consequences on the implementation of justice? Two different approaches analyse the place of the Elders in the parish community. On the one hand, Harriett J. Cornell explains that “the authority of the kirk session was accepted as legitimate partly because of the role played by the local laity and their connexions with local civil governance”;¹ she further insists on the fact that “the elders of the session were local local men who knew or knew of the people whom they governed”.² She eventually refers to Margo Todd who argues that “there were distinct advantages to local enforcement of a system that might have been truly oppressive if common knowledge of people’s troubles could not be brought to bear”.³ The locality of the Elders provided them both with authority and legitimacy: knowing their parishioners and their local issues were supposed to provide the Elders with a more operative and understanding approach of their role. Margo Todd gives the example of Elders in Kirkcaldy who tolerated the “casting of malt upon the Sabbath” as it was an important economic resource in the region and it took time to produce alcohol.⁴ In Shetland the participation of Elders in the crime of plundering of wreck could be interpreted as an adaptation to the local situation: wrecked goods provided consequent additional income and materials to local families. However, John Mill, the minister of Sandwick and Cunningsburgh didn’t approve with the behaviour of the local Elders and rebuked them all.⁵ On the other hand, the Elders contributed to maintaining a socially unequal Session: a class element as well as a gender element characterised the Kirk Sessions. The Elders could belong to a high social category in the parish – that was the case in Unst at least – and they had the possibility to ‘forget’ cases when they saw fit – which could mean that they could preserve their own interest or the interests of their counterparts and masters. There isn’t any proof of such behaviour in Shetland – at least in the records analysed for this dissertation – but Leah Leneman has found evidence of a case being reported at a session in 1749 but hushed up only

¹ Cornell, ‘Gender, Sex and Social Control’, 113.

² Ibid.

³ Margo Todd, *The Culture of Protestantism in Early Modern Scotland* (New Haven and London: Yale University Press, 2002), 37; Cornell, ‘Gender, Sex and Social Control’, 113.

⁴ Todd, *The Culture of Protestantism in Early Modern Scotland*, 37.

⁵ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 18.

because the possible illegitimate father was the son of a Lord.¹ Traditional Scottish historiography has seen the Kirk Sessions as institutions of oppression towards women, explains Lynn Abrams.² Even though, Leah Leneman and Rosalind Mitchison have argued that men and women accepted – in most of the cases – the discipline of the Church and that there was “no signs of stigma attaching to bastards, or to their mothers after penance”,³ the fact that women, in cases of pregnancies out of wedlock or antenuptial pregnancies, were presented to the Sessions to speak up and to give the name of the father put them in a difficult position. They were confronted to all-men Kirk Sessions.

Clerks, treasurers, Procurator fiscal and court officers

Elders and Ministers were the tools of social control but the Kirk Sessions had other members who played a role in the judicial administration. The clerk of court and the treasurer were two key elements of the organisation of the Kirk Session. However, clerk and treasurer left very scarce traces in the records. The clerk was paid by the session; his money taken off yearly from the collected fines. The same can be said of the treasurer. The clerk had to record the works of the session. It's one of the reasons why the minutes varied widely from one session to another. The clerk should also write extracts from the session's book or send letters regarding processes. The treasurer had to draw an account of the collected fines, poor box and other charges and revenues of the parish every year. He distributed money to poor people on an irregular basis at several occasions during the year. Patrick Tulloch was clerk of the Kirk Session of Sandwick and Cunningsburgh in 1755;⁴ and Charles Rose, clerk of the Kirk Session of Northmavine, died in 1759 and was replaced by John Halcrow.⁵ The clerk Patrick Tulloch is an interesting character. His father, Laurence Tulloch was treasurer of the Kirk Session of Sandwick and Cunningsburgh and “he [kept] their accts. now for the space of 30 years and therefore desired to be freed of that trouble”.⁶ His son, Patrick Tulloch, who was clerk at this time, was appointed treasurer after his father. No other clerk was appointed at this time; Patrick Tulloch might have held both offices. In Unst, the schoolmaster William Ogilvy was appointed treasurer of the Session in November 1728.⁷ The appointment of treasurers

¹ Leneman, *Living in Atholl, A Social History of the Estates 1685-1785*, 101–2.

² Lynn Abrams, *Myth and Materiality in a Woman's World: Shetland 1800-2000*, Reprint (Manchester: Manchester University Press, 2010), 160.

³ Leah Leneman and Rosalind Mitchison, ‘Girls in Trouble: The Social and Geographical Setting of Illegitimacy in Early Modern Scotland’, *Journal of Social History* 21, no. 3 (1 April 1988): 495–96.

⁴ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 1.

⁵ SA, CH2/286/1, ‘Northmavine Kirk Session Minutes, 1729-1765’, fol. 7.

⁶ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 1.

⁷ SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, 1739 1720, fol. 44.

both in Sandwick and Cunningsburgh and Unst follows a comparable process, on a local scale, than the appointment of Sheriff Substitute or Admiral Substitute: 1) a family tie with a coercive (or governing) institution could provide the insurance of probity; 2) skills could be developed in a previous office or in a specific situation and therefore lead to higher positions in the judicial bodies. Patrick Tulloch started clerk and was later appointed treasurer following the reliable work done by his father as treasurer and his own work as a clerk.

The Sheriff Court – and bailie courts - clerks held a much higher position compared to their counterparts at the Kirk Sessions. The bailie courts of Shetland employed clerks to write down their minutes. Of them, we know almost nothing. The Sheriff Court employed clerks as well. Ann E. Whetstone writes that “[t]he sheriffs depute and substitute were aided in carrying out the work of the sheriff courts by the sheriff clerk [and] the procurator fiscal [...]. The clerk and procurator fiscal [...] were fairly important officers who had a long connection with the sheriff courts.”¹ The clerks of court had a privileged office. In 1747 they were not concerned by the Heretable Jurisdictions Act. They kept hereditary rights to the clerkship. They were appointed by the government for life and had to report only to them; they didn’t receive any salary, they were paid by fees. They had to handle all the documents of the court – records, letters, etc.² Ann E. Whetstone notes that most of the clerks in Scotland had a background as writers or procurators;³ by an act of sederunt of 1680, they were required to be notaries.⁴ This background and education placed them on a medium high position on the social scale of the local hierarchy. They had a certain degree of power as they were directly hired by the government and paid on a fee-basis. They were also part of the judicial bodies and as such they were a link in the chain from the bottom of the hierarchy to the top. The few Shetland clerks that we know of are a good example of this process. James Nicolson who was clerk between at least 1754 and 1762⁵ and James Malcolmson clerk in 1769⁶ became respectively Vice-Admiral Substitute at the end of the 1750s and Sheriff Substitute at the end of the 1760s, and Sheriff Substitute from 1774 to 1785. These men step up from their clerkship to a position of Sheriff Substitute.

¹ Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries*, 17.

² Ibid.

³ Ibid., 18.

⁴ Ibid., 125.

⁵ SA, SC12/6/1754/4, ‘Petition (Craving That the Lands of the Estate of Voesgarth Be Set in Tack.) C. December 1754’ 1754.

⁶ SA, SC12/6/1769/1, ‘Criminal Libel (for Killing Petitioner’s Animals, Breaking into the Manse and Slandering Petitioner, Writing to Petitioner a Note Threatening to Secure His Dismissal from the Office of Minister, and Stirring up the People against the Petitioner.) (Criminal)’.

Another man was employed by the Sheriff Court and the Bailies Court: the procurator fiscal.¹ He is underestimated in Scottish historiography since he had a crucial office. He gave “his concurrence to private prosecutions and [...] [initiated] government prosecutions”.² Indeed the procurator fiscal of court had the power to present cases at court but more importantly he could bury others: he could choose which cases had to be tried. At the bailie courts he was the ‘local prosecutor for the local judicial institution’ especially in Dunrossness, Sandwick and Cunningsburgh. Lawrence Sinclair of Goat was the Procurator fiscal at the bailie court of Dunrossness, Sandwick and Cunningsburgh and William Mouat at the bailie court of Unst.³ William Mouat was both “the Procurator fiscall of the Baillie [of Unst] and Stewart Courts” in 1732.⁴ He was a Mouat, probably connected to the Bailie of Unst, Thomas Mouat of Garth, but information on his background are scarce. Lawrence Sinclair of Goat was a Sinclair such as the Bailie of Dunrossness, Andrew Sinclair of Quendale. The Sinclairs of Goat were defined as “heritable proprietor and udaller” of Goat, in Scatness, in 1717.⁵ At the Sheriff Court, Magnus Fraser was the Procurator fiscal between at least 1769 and 1774, James Maclellan between 1787 and 1795 and Henry Ross in the last years of the 18th century.⁶ However this list is not exhaustive; the men appearing there are those whose names were indicated in the studied corpus. Cases that the Procurator fiscal prosecuted or helped prosecuting at the Bailie and Sheriff Courts, illustrated their action. In order to broaden the scope of the study, the database of the Shetland Archives has been used to count the procurators fiscal listed as ‘Pursuers’ at the Sheriff Court. This account isn’t without imperfection. However it gives a good idea of the processes where the Procurator Fiscal acted as prosecutor.

¹ The office of procurator fiscal in Scotland was from French origin and had first been adopted and adapted by Scottish burghs in the 16th century. See: William Reid, ‘The Origins of the Office of Procurator Fiscal in Scotland’, *The Juridical Review*, 1965, 154–60.

² Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries*, 19.

³ See for example: NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, 5; NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, 3.

⁴ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 14. Many thanks to Ian Peter Grohse who confirmed my reading of this sentence.

⁵ Gilbert Goudie, ‘Some Forgotten Incidents and Personages in the Local History of Shetland’, *Proceedings of the Society of Antiquaries of Scotland* 25 (1890): 62.

⁶ See for example: SA, SC12/6/1772/19, ‘Verdict of an Assize (Sheepstealing.) (Criminal)’ 1772; SA, SC12/6/1789/40, ‘Petition Concerning Assault (Stabbing of John Hush Harpooner and Thomas Howard Boatsteerer, Both on the Ship Blessing of London.) (Criminal)’ 1789; SA, SC12/6/1798/30, ‘Petition (to Retrieve Sheep Mark Registers.)’ 1798.

bailie courts	Procurator Fiscal as prosecutor	N
Violence and mutual riot	29	30
Defamations	11	11
Rural troubles including Country Acts' breaches	20	31
Miscellaneous	1	5
Theft	6	9
Total (Dunrossness and Unst)	67	86
NAS, RH2/8/33. 'Photostat Copy of bailie court Book of the North Parish of Unst', 1731-1733.		
NAS, RH11/29/1. 'Dunrossness Sandwick and Cunningsburgh: bailie court Book', 1731-1735.		

Table 26: Procurator Fiscal: bailie courts

Sheriff Court	Procurator Fiscal as prosecutor	N	Procurator fiscal/SC	% SC
Admiralty	2	62	3%	6%
Breach of contract/agreement/service	1	16	6%	1%
Defamation	6	10	60%	1%
Miscellaneous	2	113	2%	10%
Petition (miscellaneous)	4	105	4%	10%
Property	4	58	7%	5%
Rural troubles	3	60	5%	6%
Summons (miscellaneous)	1	262	0%	24%
Theft	23	49	47%	5%
Violence	26	154	17%	14%
Total (1699-1799)	72	1078	7%	100%
SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1900.				

Table 27: Procurator Fiscal: Sheriff Court

In the first half of the 18th century, the Procurator fiscal of the bailie courts of Dunrossness and Unst acted as prosecutor for the local government or prosecuted in concurrence with a private pursuer in three-fourth of the processes at court. The situation was very different after 1747 when less than 10% of the cases saw an intervention of the Procurator fiscal. This was not different to the situation in Ayr or in Kirkcudbright in mainland Scotland.¹ It is difficult to explain why in the bailie court of Dunrossness and Unst, the Procurator fiscal had such an importance. This question hasn't been studied anywhere else in Scotland to my knowledge. In term of absolute value, the Procurator fiscal was mostly solicited at the bailie court in cases of violence, rural troubles and defamations. At the Sheriff Court, violent behaviours held the upper hand but at the difference of the bailie court, the Procurator fiscal intervened in numerous cases of theft. On the 72 interventions of the Procurator fiscal only three were dedicated to rural troubles identified as such. The principal role of the Procurator fiscal was to support in court people who had been victims of violence – mostly physical but also towards infrastructures such as dykes, plants or animals.²

¹ Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries*, 20.

² For example: NAS, RH11/29/1, 'Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735', fol. 3.

The Procurator fiscal intervened in all the defamation's cases at the bailie court and in 60% of the same cases at the Sheriff Court. Thus resolving the problem of violence was crucial but supporting the good name of the inhabitants was primordial.¹ A more detailed analysis of the Procurator Procurator fiscal's role in the Scottish context would hopefully bring a fuller account of their place in the local society. What appears from a study of Shetland sources is that the Procurator fiscal's role was to protect the interests of those who had access to the court: at the bailie court he protected the fame and resources of the commoners; and at the Sheriff Court he protected the goods of the landowners. At the bailie court, the Procurator fiscal was a local man, close to the upper stratum of the rural hierarchy but not high up. He served and knew the bylaws and the non-materialistic realities of the countryside such as the importance of trust within the communities. At the Sheriff Court, the Procurator fiscal was an educated man who served the interests of merchants and landowners. This oversimplified and schematic description is only a line of approach and would greatly benefit from a thorough study of the office of Procurator fiscal in Scotland before and after 1747.

Eventually the Sheriff Court employed an even less well-known figure than the Sheriff clerk or the Procurator fiscal: the Sheriff Officer. Ann E. Whetstone explains that “[t]hey were admitted by the sheriff under bond and served writs, carried executions and the like. They were essentially the civil equivalent of the constables, although unlike constables they could never do more than their warrant specifically allowed.”² As civil appointees the Sheriff Officers didn't have direct influence on the justice in Shetland, however they were a figure of the local authority within their community. Indeed in 1772, “John Mowat Sheriff Officer” received directions to transport a prisoner, James Simpson, from the Tolbooth in Lerwick to the Kirk of Midyell. It was further detailed that John Mowat “must observe that he [James Simpson, the prisoner] be not whipped till the day after his arrival at Midyell, & not before 12 o'Clock, that people in the neighbourhood may attend the Execution of the Sentence”.³ Sheriff Officers such as John Mowat contributed to decentralise justice by exporting locally the verdict.

Rancelmen and Lawrightmen

The equivalents of the constables in Shetland were the Rancelmen and the Lawrightmen: these police officers established a direct link between the house of the inhabitants and the

¹ Leah Leneman, ‘Defamation in Scotland, 1750–1800’, *Continuity and Change* 15, no. 2 (2000): 209–34; Abrams, *Myth and Materiality in a Woman's World*.

² Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries*, 125.

³ SA, SC12/6/1772/17, ‘Indictment (Sheepstealing). (Criminal)’, sec. 3.

court room of the bailie courts and the Sheriff Court. In a document written in 1791, it was plainly stated “[t]hat in particular the office of Ranselmen is extremely conducive to the well being of this Country, especially as there is here no Commission of the peace, and consequently no Establishment of Constables or other inferior Conservators of the peace”.¹

The Rancelmen and the Lawrightmen are important figures in Shetland history. The existing literature is complex: on one side, there are Samuel Hibbert and Gilbert Goudie’s 19th-century descriptions of the officials’ duties² who seemed to have been both inspired by Thomas Gifford’s description and on the other side, there are Steinar Ismen’s articles on the institutions in Shetland and Orkney but which mostly use normative sources and deal with the late Middle Ages.³ In 1733 Thomas Gifford wrote long descriptions of the offices of rancelman and lawrighteman:

Under the baillie there are ten or twelve honest men of the parish called *Rancelmen*. These are judicially appointed and chosen in the bailiff court: the whole housholders of the parish being present are asked, if they have any thing to object against such a man, why he should not be made a Rancelman; and no objection being made he is entered into that office, and takes an oath to be faithful and diligent therein, and the Rancelman’s instructions and power being read in open court, and recorded in the court-book, each Rancelman may have an extract thereof, if he please. These instructions are in the Appendix. The Rancelman has the power of a constable, to command the inhabitants to keep the peace, and to call for assistance; and to enter any house within the parish at all hours of the day or night, and search the house for stolen goods, which they call *ranuling* [misprint for: *rancellung*]; and if they find any thing that the owner of the house cannot give a good account how he came by it, then they seize him directly, and carry him to the bailliff, who takes precognition of the cause; and if it infers the crime of theft, then the thief, with the *fang* or thing stolen found in his custody, is sent to the prison, and the steuart depute acquainted thereof, who appoints a day for trying the thief according to law, and in case the bailliff finds that the representation of the rancelman will not amount to any proof of the crime of the theft, he dismisseth the suspected thief, upon his good behaviour, with certification. [...] The rancelmen are to give up lists of the poor in the parish at the bailiff-court [...]⁴

There is also in each parish a *lawrightman*, that is, an honest man, appointed judicially by the bailliff, as the rancelmen are. His business is to weigh and measure the rent-butter and oil; and also to judge of the quality thereof, and, if he finds it insufficient, to return it as not receivable. He is sworn to justice, and keep just weights and measures.⁵

Thomas Gifford’s description is not a practical account of the offices of rancelman and lawrightman even though one can see that he knew the technicalities of the office. He

¹ SA, SC12/53/6/ folio 201r., ‘Attested Copy of Precognition for James Ross, Merchant in Lerwick, Concerning Marches between Fladabester and Quarff on the Lands of Deceased Sir John Mitchell of Westshore, with Evidence from Elderly Residents Citing Hill Marks and StyBilly, Engrossed on 13 February 1794.’, fol. 169r.

² Goudie, ‘The Fouds, Lawrightmen, and Ranselmen of Shetland’; Goudie, *The Ancient Local Government of the Shetland Islands*; Gilbert Goudie, ‘The Fouds, Lawrightmen, and Ranselmen of Shetland Parishes’, *Proceedings of the Society of Antiquaries of Scotland*, 14 March 1892, 189–212; Samuel Hibbert, *A Description of the Shetland Islands, Comprising an Account of Their Geology, Scenery, Antiquities, and Superstitions* (Edinburgh: Archibald Constable and Co., 1822), 269–79, 333–35.

³ Goudie, ‘The Fouds, Lawrightmen, and Ranselmen of Shetland’; Goudie, *The Ancient Local Government of the Shetland Islands*; Goudie, ‘The Fouds, Lawrightmen, and Ranselmen of Shetland Parishes’; Hibbert, *A Description of the Shetland Islands*, 269–79, 333–35; Gifford, *An Historical Description of the Zetland Islands in the Year 1733*; Ismen, ‘Public Life in Shetland and Orkney, C. 1300-1500’.

⁴ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 47–48.

⁵ *Ibid.*, 48.

presented in this text his own point of view on the offices and he ignored local differences. These differences might nevertheless appear in practical sources such as Court Books.

The Country Acts and the *Anent making or rancelmen, and their instructions* provide normative information on the definition of the office of the rancelmen and of the lawwrightmen.¹ Three acts out of 41 described (partly) the role of the rancelmen in the Country Acts.² A fourth act on weights and measures could be said to describe the office of lawwrightman but there was no mention of the name of the official in this act.³ The office of rancelman was more carefully defined in 1725 when Thomas Gifford then Stewart depute of Shetland held a court at Burravoe where was presented “a Compend of the Country Acts for directing the Rancell Men”.⁴ Twelve acts were added that confirmed or increased the role of the Rancelmen. From these normative materials, the role of the Rancelmen could be divided in four categories: *rancelling* which means searching for stolen goods,⁵ moral survey of the inhabitants,⁶ punishment of quarrels, swearing and defamation⁷ and supervision of agriculture and trade.⁸ In 1822, Samuel Hibbert classified the role of the rancelmen in eight categories:⁹

	The Rancelman was intended to:
1	be the guardian of the domestic morals of the district, being (as the act specifies,) entrusted with the power of inspecting the manners of others
2	be the guardian of the religion of the district
3	be the guardian of the commercial dealing of the parish
4	be an inspector of the agriculture of the parish
5	be a steward for landlords
6	punish idle vagabond persons, and to take charge of the poor
7	inform against all persons using any manner of witchcraft, charms, or any abominable or devilish superstitions
8	be a general thieftaker [...]; which last office was named Rancelling
Hibbert, Samuel. <i>A Description of the Shetland Islands, Comprising an Account of Their Geology, Scenery, Antiquities, and Superstitions</i> . Edinburgh: Archibald Constable and Co., 1822, 272-273.	

Table 28: Rancelmen: Samuel Hibbert

The 27th act of the Compend provides a legal tool to protect the work of the Rancelmen:

Act 27. That no person in any way impede, maltreat, or abuse a rancelman in the full and free exercise of his office, under the pain of ten pounds Scots money, beside personal punishment, and a greater fine as the offence given shall be found to deserve; and that none refuse to aid and assist a rancelman in the execution of his office when required thereunto, under the like pain of ten pound money foresaid.¹⁰

¹ ‘The Old Country Acts’; Gifford, ‘Anent Making or Rancelmen, and Their Instructions’.

² ‘The Old Country Acts’ acts 8, 10 and 11.

³ Ibid. act 16.

⁴ Gifford, ‘A Compend of the Country Acts’.

⁵ Gifford, ‘Anent Making or Rancelmen, and Their Instructions’ acts i and xii.

⁶ Ibid. acts ii, v, viii and x.

⁷ Ibid. acts iii and iv.

⁸ Ibid. acts vi, vii, ix and xi.

⁹ Hibbert, *A Description of the Shetland Islands*, 272–73.

¹⁰ Gifford, ‘A Compend of the Country Acts’ act 27.

This act was added by Gilbert Goudie as the 42nd act of the Country Acts to the version he published in 1892 in the *Proceedings of the Society of Antiquaries of Scotland*.¹

The Rancelmen have been compared to the constables of mainland Scotland but they could also be compared to the ground officers and to the Birlaymen. Ian D. Whyte explains how in the 17th century, the ground officer of an estate had direct contacts with the tenants and diverse duties.²

	The ground officer was “ an inspector of the agriculture of the parish ” and he was intended to:
1	warn the tenants of when and where they were required to perform their labour services
2	supervise the work of tenants
3	ensure that the acts of the baron court were enforced and that wrongdoers were taken note of
4	collect rent for the chamberlain
5	undertake the removal of tenants
6	deliver impartial, sworn statements concerning disputed between the tenants
7	play an active part in resolving disputes by such means as making valuations for damages or re-positioning boundary stones
> variations from one estate to another	
Whyte, Ian. <i>Agriculture and Society in Seventeenth Century Scotland</i> . Edinburgh: John Donald Publishers Ltd., 1979, 48.	

Table 29: Rancelmen: Comparison with ground officer

Compared to the rancelmen, the ground officer didn't seem to have a role in term of moral surveillance of the community and in the search of stolen goods but it is possible that they also served as such. Ian D. Whyte explains that sometimes the volume of work of a ground officer on an estate was such that “part-time voluntary helpers known as birlaymen” were appointed “from the ranks of the tenantry”.³ Ian D. Whyte compares them to the “law-right men” of the Northern Isles. His comparison his based on Gordon Donaldson’s account of the lawrightman office.⁴ In my opinion, the birlaymen are closer to the rancelmen than to the lawrightmen – even in the 17th century and especially in the 18th century.

¹ Goudie, ‘The Old Country Acts, of Abridgements Thereof [The Fouds, Lawrightmen, and Ranselmen of Shetland Parishes]’.

² Whyte, *Agriculture and Society in Seventeenth Century Scotland*, 48.

³ *Ibid.*, 49.

⁴ *Ibid.*

	The Birlayman was “ an inspector of the agriculture of the parish ” and he was intended to:
1	maintain good neighbourhood
2	provide impartial assessments in valuations or disputes
3	ensure that the acts of the baron court or birlay court relating to agrarian affairs were implemented and that any tenants who disobeyed them were reported
4	supervise many of the proceedings where co-operation among the tenants was necessary but where self-interest on the part of individuals had to be guarded against
5	lay out boundary stones, divide lands of tenants into ‘just and equal’ runrig shares, decide how many animals an area of pasture could support
6	assess the value of crops and grass destroyed by stray animals so that compensation could be awarded to the victim
7	provide the proprietor with lists of approved repairs to the tenants farmsteads
> variations from one estate to another	
Whyte, Ian. <i>Agriculture and Society in Seventeenth Century Scotland</i> . Edinburgh: John Donald Publishers Ltd., 1979, 49-50.	

Table 30: Rancelmen: Comparison with Birlaymen

The Birlaymen didn’t seem to have had to supervise the moral conduct of the inhabitants or to search for stolen goods but they had similar duties than the rancelmen for whom the maintenance of ‘good neighbourhood’ was also at the heart of their office. Birlaymen, similarly to the rancelmen, worked directly under the supervision of “the officer and baillie, within the jurisdiction of the baron court or, on some estates, with a separate court of their own know as the birlay court”.¹ There wasn’t any separate court for the Rancelmen in Shetland: they worked under the direct supervision of the bailie in the first half of the 18th century and afterwards under the Sheriff depute or substitute. Similarly to the Rancelmen, the ground officer could be protected by an act of the baron court against “the ‘deforcement’ of the officer”.² In 1732, the Procurator fiscal of the bailie court of Dunrossness complained upon 17 persons in Cunningsburgh “for stoping hindring and impeding the rancelmen from sighting their dykes threatening to beat them”; actions which were “contrary to the Countrey Acts”.³ In 1709 in Stirlingshire, the ground officer at Balgair, Duncan Wood, complained that the tenants “not only abused him be their tongues but also hounded out their wives [...] with lapfuls of stanes [who] thereby violently and cruelly beat [...] the said Duncan [...] by throwing great stanes at him to the great danger of his life, the [...] bruises [still] remaining upon his body”.⁴

The Birlaymen and the ground officers shared similar duties with the Rancelmen. What were the duties of the Lawrightmen in the 18th century? The Lawrightman’s action was, to my knowledge, never described in any kind of local legislation in Shetland during the 17th and

¹ Ibid.

² Ibid., 48.

³ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 13.

⁴ Jean Dunlop, ed., *Court Minutes of Balgair, 1706-1736*, Scottish Record Society 87 (Edinburgh: Printed for the Society by J. Skinner, 1957), 7; Quoted in: Whyte, *Agriculture and Society in Seventeenth Century Scotland*, 48.

18th centuries. The only description of the office in the 18th century is given by Thomas Gifford in 1733. Steinar Imsen, Norwegian historian, gives a very specific description of the office in the late Middle Ages. The Lawrightman was “a delegate to the lawthing, who after being sworn by the lawman could act as a lay judge in the provincial court”.¹ In the course of the Middle Ages, Lawrightmen held most of the public offices in the local communities.² This is not, however, the description of the office provided by Thomas Gifford. Why, then, did the Lawrightmen in Shetland lose their function in the local court? How and why did they become this one-per-parish man in charge of the weights and measures? This evolution has to be connected to the Lawthing’s prerogatives in terms of weights and measures. The Lawthing had a hand on the regulation of weights and measures.³ When the Lawthing was abolished in 1611 and the Country Acts enunciated in 1615 by the Sheriff Court, there was no need for Lawrightmen at the Sheriff Court but there was a need of men skilled enough to supervise weights and measures. In Shetland, this prerogative of the Lawthing was transferred to the now-redundant Lawrightmen, giving to the office a new meaning and role in the community. Gilbert Goudie, the 19th-century Shetland antiquarian, wrote that:

It is remarkable that while the Lawrightmen were the first of the local functionaries to be set aside by the new alien authorities from Scotland, they seem to have lingered on, though it may have been little more than in name, till well into last century.⁴

Indeed, I’ve explained how the Lawrightmen described by Thomas Gifford differed from those of the earlier centuries and it is true that knowing on what scale the Lawrightmen actually officiated in the 18th century is a difficult task.

Rancelmen and Lawrightmen were all acknowledged by the Sheriff Court.⁵ They appeared in processes⁶ and were appointed by the Sheriff depute or his substitutes.⁷ According to its pragmatic approach towards the Country Acts, the Sheriff Court opened its doors to both Rancelmen and Lawrightmen. This was explained – at least partially – by the similarity of the

¹ Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’, 55.

² Ibid.

³ See for example: Absalon Taranger, ed., *Magnus Lagabøters Landslov* (Christiana: Cammermeyers Boghandel, 1915), 181–82 (MLL VIII 29); Steinar Imsen, ‘Lagrettemenn’, ed. Steinar Imsen and Harald Winge, *Norsk Historisk Leksikon* (Oslo: Cappelen Akademisk Forlag, 1999).

⁴ Goudie, ‘The Fouds, Lawrightmen, and Ranselmen of Shetland Parishes’, 206.

⁵ For example: ‘The Old Country Acts’; NAS, RH9/15/157/5, ‘Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselmen in the Island of Unst’; SA, SC12/6/1774/6, ‘Petition (Theft - of Plants.) (Criminal)’.

⁶ For example, Rancelmen were present in the following processes: SA, SC12/6/1774/7, ‘Complaint (Compensation for Potatoes Destroyed by Swine.)’; SA, SC12/6/1789/60, ‘Petition (Concerning Obstruction of Ranselmen.)’; SA, SC12/6/1792/3, ‘Petition (Concerning Theft - Sheepstealing.)’ 1792. To my knowledge, the only Lawrightman appearing at the Sheriff Court is present in: SA, SC12/6/1774/6, ‘Petition (Theft - of Plants.) (Criminal)’.

⁷ NAS, RH9/15/157/5, ‘Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselmen in the Island of Unst’; NAS, RH9/15/157/6, ‘Appointment by the Sheriff of Zetland of Ranselmen for Unst’ 1802.

office with the increasingly used police constables in the Scottish mainland courts.¹ Thomas Gifford himself compared the Rancelmen and the constables in 1733 and in 1791 James Edmondston, clerk of the Commissioners of Supply for Shetland, wrote that the “Ranselmen is extremely conducive to the well being of this Country, especially as there is here [...] no Establishment of Constables or other inferior Conservators”.² The Rancelmen were already locally based; they were accepted by the population; they knew both the territory and the Country Acts. Why then bother and impose alien constables who even if they had been handpicked in the local parishes and townships would have been a local defiance to the common and collective order in Shetland? Since the Rancelmen had what could be defined as an invasive role in the community – they could enter houses and break wooden chests by day or night – the coercive institutions had to make sure that the people knew the extent of the Rancelmen’s activities. In both the Sheriff Court and the bailie courts, the Rancelmen’s Instructions or the Country Acts were read in public.³ The Shetlanders couldn’t pretend to not know the Rancelmen’s duties and if so, they were sued at the Sheriff Court for obstructing the work of the constables.⁴

In practice, several questions can be asked. Who were the Rancelmen? What were their criteria of recruitment? How were they convened to court? What kind of cases did they mostly work on? What was their part in these cases? Did it lead mostly to the same verdict? What did their work imply for the rural communities? Four main sources provide information on the Rancelmen of Shetland: the bailie court Books, the Sheriff Court Records and two lists of appointment dated 1772 and 1802.⁵ We know very little of these men. In most of the cases, we have their first name and surname as well as their parish of residence; usually their township is also indicated. Other information such as literacy level, age or matrimonial status is difficultly gathered as they were seldom indicated. In 27 processes held either in a bailie court or at the Sheriff Court, 47 Rancelmen have been identified. Of which only eight were singled out with an indication of matrimonial status and age, and 14 with an indication of their

¹ Brown and al., ‘1661/1/423: Commission and Instructions to the Justices of Peace and Constables’.

² Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 47; SA, SC12/53/6/ folio 201r., ‘Attested Copy of Precognition for James Ross, Merchant in Lerwick, Concerning Marches between Fladabester and Quarff on the Lands of Deceased Sir John Mitchell of Westshore, with Evidence from Elderly Residents Citing Hill Marks and StyBilly, Engrossed on 13 February 1794.’, fol. 169r.

³ See for example: SA, SC12/6/1790/50, ‘Petition (Concerning Swine on the Scattald of Haryilie.)’.

⁴ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 13; SA, SC12/6/1789/60, ‘Petition (Concerning Obstruction of Ranselmen.)’.

⁵ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’; NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’; SA, SC12/6, ‘Lerwick Sheriff Court Records: Ordinary Court Processes 1692-1900’; NAS, RH9/15/157/5, ‘Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselmen in the Island of Unst’; NAS, RH9/15/157/6, ‘Appointment by the Sheriff of Zetland of Ranselmen for Unst’.

writing skills. The average age of these eight men was 47.6 years old with a maximum of 60 years old and a minimum of 41 years old and they were all married. This would indicate that men already settled in life as already married and men who were of a certain age without being considered as ‘aged’ tended to be appointed as Rancelmen. This fits with the normative definition of the Rancelman: he had to be capable of active work such as rancelling but at the same time his work could only be performed if he knew the community enough. He had, for example, to collect the names of the poor of a parish.¹ Eventually on the 14 men who had an indication of their writing skills, half of them were able to sign the minute.² In Shetland, this indicates a rather high level of education in an occupational category, since – at least in the first half of the 18th century – only 11% of the witnesses at the bailie court of Dunrossness knew how to sign.³ It is difficult to draw any conclusion on the recruitment’s criteria of the Rancelmen. However, in accordance with the tasks that they were supposed to achieve, being more literate than the other inhabitants, as well as of a mature age and married seem to be logical. They must have been ‘pillars’ of the community and in that respect quite similar to the Elders of the Kirk Session. Another similarity with the Elders was how they delated misdeeds to the court. On a regular basis, the Rancelmen were called at the bailie court to give the names of the wrong-doers. The similarity of the procedure is particularly striking between the bailie court and the Kirk Session of Unst. In the first half of the 18th century, Elders and Rancelmen were summoned and interrogated in very similar ways both at the bailie courts and at the Kirk Sessions. Here are two examples:

Att Troll the 19th Nov[ember] 1732 Court fenced Stembord called and Country Acts read the SeverallRanselmen are Examined and being Interrogate if theyhad punctually observed their duty or if they had any Complaintsto give in before this Court w[ith] Respect to Riots or theivery [sic]or any other Inormities they answered that they had observedtheir Duty but that they had no Complaints to give in worthy of Censure⁴

Ballasta Julie 3d 1720 After prayer sede[run]t Mr John hay minister and whole Elderes present the quilk day Andrew fordice low[rance] bruce w[illia]m w[illia]mson Andrew Henderson ja[mes] sinclair low[rance] w[illia]mson Andrew sinclair wer after sermon publickly ordeened Elderes The minister asked the Elderes if they had any thing to lay before the session it was answered by the Elderes that they did not know [of] any scandal meeting closed w[i]th prayer⁵

To confirm this idea of ‘pillars’ of the community, the Rancelmen received, in both normative and practical sources, intrinsic qualities: they were supposed to be “ten or twelve”, to have

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 48.

² On the question of literacy in Scotland, see: Robert Allan Houston, ‘The Literacy Myth?: Illiteracy in Scotland 1630-1760’, *Past & Present*, no. 96 (1982): 81–102.

³ Audrey Beaudouin, ‘La Bailleurs Écossaise de Dunrossness, Sandwick et Cunningsburgh. La Vie Rurale Des Îles Shetland Pendant La Première Moitié Du XVIIIe Siècle’ (Mémoire de Master, Université Rennes 2, 2009), 165.

⁴ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 10.

⁵ SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, 1739 1720, fol. 2.

taken an oath and to be honest. The figure *twelve* might be a further indication that the Country Acts came from medieval legislation either local or national. Indeed in the Church Law of the Book of the Gulathing, “twelve of the most prudent men of each bishopric” or “twelve of the most discreet men” should be appointed by the bishops “to act with them” or “to go with them” in different situations such as the death of the king.¹ In his book, *Konge og gode menn i norsk riksstyring ca. 1150-1319*, Knut Helle explains that the different boards or committees, *nevnder*, of ‘good men’ in medieval Norway “would usually consist of 12 persons or a fraction or a multiple of this figure.”² Geneviève Buhner-Thierry explains how “[i]n the purest tradition of medieval symbolism, the figure *twelve* represents an idea of harmony and plenitude coming from the biblical culture: the twelve tribes of Israel, twelve Apostles of Christ. It is the ultimate egalitarian group whose members meet for the same purpose and the same ideal.”³ The group of Rancelmen was a committee that shared the same purpose and ideal: *rancelling* and maintaining good neighbourhood being their most important goals. Even though the figure *twelve* might not have been as meaningful in the 18th century than in the medieval ages it was still used in the normative texts. In practice, the only appointment lists of Rancelmen that have been kept until today were written for the island of Unst in 1772 and 1802 and they show a different reality. Thirty one men were appointed as Rancelmen in Unst in 1772 and thirty two in 1802.

These ‘twelve men’ also had to share an oath. Here again, the filiation between the Country Acts and a medieval legislation either local or national appears. Knut Helle explains that the usual committee of ‘twelve good men’ had to take an oath.⁴ Oath taking has a long history in European politics and justice.⁵ The fact that the Rancelmen were under oath means that they

¹ Larson, *The Earliest Norwegian Laws. Being the Gulathing Law and the Frostathing Law*, 35–36 Gulathing Law (GL) I2.

² “disse nemndene vanlig skulle bestå av 12 personer eller en brøk eller et multiplum av dette tallet”, in Knut Helle, *Konge Og Gode Menn I Norsk Riksstyring Ca. 1150-1319* (Bergen/Oslo/Tromsø: Universitetsforlaget, 1972), 91; ‘Tolvmannsnevnder’ in: *Ibid.*, 91–99.

³ “Dans la plus pure tradition du symbolisme médiéval, douze représentent une idée d’harmonie et de plénitude provenant de la culture biblique : les douze tribus d’Israël, les douze apôtres du Christ. C’est par excellence le groupe égalitaire dont les membres sont réunis pour un même but et par un même idéal.”, in Geneviève Buhner-Thierry, ‘Michel Pastoureaux et Jean-Claude Schmitt, Europe. Mémoire et Emblèmes’, *Médiévales* 11, no. 22 (1992): 239; See also: Michel Pastoureaux, *Une histoire symbolique du Moyen Âge occidental* (Paris: Seuil, 2004), 24–25. “Au Moyen-Âge, [les nombres] expriment autant des qualités que des quantités et ne doivent pas toujours être interprétés en termes arithmétiques ou comptables, mais en termes symboliques. Trois, quatre ou sept, par exemple, sont des nombres symboliquement primordiaux qui signifient toujours plus que les seules quantités de trois, quatre et sept. Douze ne représente pas seulement une douzaine d’unités mais aussi l’idée d’une totalité, d’un ensemble complet et parfait ; de ce fait, onze est insuffisant et treize est excessif, imparfait et néfaste.”

⁴ Helle, *Konge Og Gode Menn I Norsk Riksstyring Ca. 1150-1319*, 93–94.

⁵ See for example: Raymond Verdier, *Le serment: Signes et fonctions* (Paris: Editions du Centre national de la recherche scientifique, 1991); Jean de Viguerie, ‘Contribution À L’histoire de La Fidélité. Note Sur Le Serment

not only had to respect their community and the institution that they served but also to respect their office in the eyes of God. On mainland Scotland, the Birlaymen and the ground officer took “an oath of fidelity upon appointment”, explains Ian D. Whyte. The Court Book of the Barony of Forbes indicates that the Birlaymen had to be “loyal and true [...] both to master and tenants”.¹ In the sixth edition of the *Dictionary of the English Language*, dated 1785, the oath is defined as “[a]n affirmation, negation, or promise, corroborated by the attestation of the Divine Being.”² The oath is sacred. An oath breaking meant that the oathbreaker, his family and his community could suffer from God’s revenge. That’s why all the cases, where an Elder or a Rancelman – even though I haven’t found any traces of misbehaviours from the Rancelmen – was guilty of any wrong behaviour, were dealt with great consideration and firmness. That’s why oath and honesty appear as extremely complementary in early modern Shetland. Indeed the Rancelmen who were allowed to swear an oath had to be honest and when they acted dishonestly, they broke their oath. Honesty was a complex value in early modern Europe. In 1785, Samuel Johnson defined honesty as “justice; truth; virtue; purity”.³ This very simple definition conveys the different meanings of honesty in the 18th century. While honest had a three-fold definition: “1. Upright; true; sincere. 2. Chaste. 3. Just; righteous; giving to every man his due.”⁴ The word honest was used in Shetland not only for the Rancelmen, but also the Lawrightmen and the twelve men perambulating the scattald’s boundaries and for various men appearing in the court records at the Sheriff Court or at the bailie courts.⁵ In his definition of honesty in 18th-century Languedoc, Yves Castan explains that honesty was a quality given by birth at the superior class and that it could be only acquired by *mérite* from those of the inferior classes. He explains that it is a “common ambiguity to all the societies to invest their élite, as an intrinsic value, of a quality proclaimed

En France À L’époque Des Guerres de Religion’, *Annales de Bretagne et Des Pays de l’Ouest* 82, no. 3 (1975): 291–95, doi:10.3406/abpo.1975.2780.

¹ Thomson, ‘The Forbes Baron Court Book, 1659-1678’, 237; Quoted in: Whyte, *Agriculture and Society in Seventeenth Century Scotland*, 237.

² Samuel Johnson, *A Dictionary of the English Language: In Which the Words Are Deduced from Their Originals, and Illustrated in Their Different Significations by Examples from the Best Writers. ... By Samuel Johnson*, The sixth edition, vol. 2 (London: printed for J. F. and C. Rivington, L. Davis, T. Payne and Son, W. Owen, T. Longman, [and 21 others in London], 1785), para. Oath.

³ Samuel Johnson, *A Dictionary of the English Language: In Which the Words Are Deduced from Their Originals, and Illustrated in Their Different Significations by Examples from the Best Writers. ... By Samuel Johnson*, The sixth edition, vol. 1 (London: printed for J. F. and C. Rivington, L. Davis, T. Payne and Son, W. Owen, T. Longman, [and 21 others in London], 1785), para. Honesty.

⁴ *Ibid.*, vol. 1, para. Honest.

⁵ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 47, 48 and 84; SA, SC12/6, ‘Lerwick Sheriff Court Records: Ordinary Court Processes 1692-1900’; NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’.

otherwise to be expected from all”.¹ Was it the case in Shetland as well? Who were these honest men? What did these men have in common? Unfortunately, the Lawrightmen, the Elders, the Rancelmen, the men who provided information on the scattalds’ boundaries at the Sheriff Court² and those who were called ‘honest’ at court³ didn’t leave numerous traces. Nevertheless, one can point out a few things. Those men who were called ‘honest’ were not wealthy landowners. Indeed the Elders – at the exception of the Elders of Unst at the beginning of the 18th century – and the Rancelmen didn’t belong to the category of rich landowners. Yet they could be identified as the superior stratum of the farming-fishing communities. They had settled down, married and some of them knew how to write. Those described at the Sheriff Court as being ‘honest’ and the ‘old men’ identifying the scattalds’ boundaries had similar features. They shared these features with the Rancelmen and the Lawrightmen. They had gained trust from their community and were therefore trusted in their neighbourhood. They had developed specific skills. Eventually, they had shown an excellent level of local knowledge. It is interesting to see how this practical description fits with the definition of 1785: they could be trusted which meant that they were “upright; true; sincere” and they had excellent local knowledge which meant that when needed they could be “just; righteous; giving to every man his due”.⁴ All this meant that these ‘honest men’ can’t be described as being part of the local élite of wealthy landowners, ministers and high judicial officials in Shetland in the 18th century. These ‘honest men’ could be “honest tho’ poor”.⁵ This definition of local honesty has to be understood in the broader context of trust within Shetland’s community but also as something that might have evolved between the late Middle Ages and the early modern period. Steinar Imsen explains how the Lawrightmen belonged at first to the group of “the best men of the country” and then to the group of “the honest men of the country”. For the Norwegian historian, it is explained by a change in recruitment. For Steinar Imsen, the Lawrightmen recruited in Shetland after 1400 were from a less exclusive

¹ « une ambiguïté commune à toutes les sociétés que d’investir leur élite, comme d’une valeur propre, d’une qualité proclamée par ailleurs normalement exigible de tous », in Yves Castan, *Honnêteté et Relations Sociales En Languedoc Au XVIIIe Siècle* (Paris: Plon, 1974), 23.

² See for example: SA, SC12/6/1797/45, ‘Summons of Molestation (Concerning Kelp Houses at Aith.)’; SA, SC12/6/1797/29, ‘Petition (to Fix Boundaries of Scattald of Quarff - the Pursuer’s Tenants Having Been Molested by the Men of Fladabister While Building a Cro.)’ 1797; SA, SC12/6/1793/8, ‘Petition (for Enclosing Part of the Undivided Commony of Schurron in Wiedsale.)’.

³ See for example: SA, SC12/6/1754/4, ‘Petition (Craving That the Lands of the Estate of Voesgarth Be Set in Tack.) C. December 1754’; SA, SC12/6/1774/7, ‘Complaint (Compensation for Potatoes Destroyed by Swine.)’; SA, SC12/6/1780/9, ‘Petition (for Delivery of Sheep.)’ 1780; SA, SC12/6/1785/14, ‘Petition for Division of Tang at Ness of Houlland and Hamnavoe, South Yell’; SA, SC12/6/1789/60, ‘Petition (Concerning Obstruction of Ranselmen.)’; SA, SC12/6/1791/51, ‘Petition (Appropriation of Swine.)’, 1791; SA, SC12/6/1795/60, ‘Petition (for Intromitting with a Ram Conceivably Infected with Scab.) (Criminal)’ 1795, 6.

⁴ Johnson, *A Dictionary of the English Language*, 1785, vol. 1, para. Honest.

⁵ SA, SC12/6/1795/60, ‘Petition (for Intromitting with a Ram Conceivably Infected with Scab.) (Criminal)’.

background.¹ Similarly, Ian D. Whyte explains that on mainland Scotland, the “Birlymen were referred to as ‘honest’ or ‘sworn’ men and this indicates their status. They were merely tenants in whom the proprietor or his officers placed a particular trust and who could be relied upon to give a fair, impartial verdict under oath in disputes and other business between tenants and between a tenant and the proprietor.”²

Rancelmen – but also Lawrightmen, Elders and Birlymen – had to be honest because they had taken an oath which made them liable in front of the community but also in front of God. They had to be themselves the living example of all the good behaviours detailed in the Country Acts otherwise their punishment would be more important than for the others such as it was explained in *Their Instructions*:

And in the last place, as you are intrusted with a power of inspecting the lives and manners of others, so let your own good life and conversation be exemplary unto them for good, and take care that you are not found guilty to those faults yourselves, that you are called to reprove in others, for if ye should, your punishment shall be double to theirs; now all these instructions, as far as it is in your power, you promise and swear solemnly in the sight of Almighty God, and as you shall answer to him at the great day, faithfully and honestly to observe and perform.³

The lack of information on the recruitments’ criteria is difficult to fill with any other kind of data on the Rancelmen’s life. However information on the Rancelmen’s office and practical actions are more numerous. The materials come from the Sheriff Court and the bailie courts of Dunrossness and Unst where Rancelmen officiated. The materials provide information on three important questions: 1) in what kind of cases did they interfere? 2) What was their role? 3) What was the result of the process? The answers to these questions provide the practical definition of a Rancelman’s office as well as they supplement the theoretical definitions provided by Thomas Gifford in both his *Historical Description*⁴ and the Appendices of the same text.⁵

¹ Imsen, ‘Public Life in Shetland and Orkney, C. 1300-1500’, 61.

² Whyte, *Agriculture and Society in Seventeenth Century Scotland*, 49.

³ Gifford, ‘Anent Making or Rancelmen, and Their Instructions’, 95.

⁴ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 47–48.

⁵ ‘The Old Country Acts’; Gifford, ‘Anent Making or Rancelmen, and Their Instructions’.

Type of process	N=27
defamation	3
miscellaneous	2
mutual riot	3
obstruction to Rancelmen	3
resource regulation	1
swine rooting	4
theft	11
violence	1
NAS, RH2/8/33. 'Photostat Copy of bailie court Book of the North Parish of Unst', 1731-1733. NAS, RH11/29/1. 'Dunrossness Sandwick and Cunningsburgh: bailie court Book', 1731-1735. SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1900.	
In one process, the issues of swine rooting and obstruction to Rancelmen appear simultaneously	

Table 31: Rancelmen: Interventions at court

In 27 processes shared between the Sheriff Court and the bailie courts, the Rancelmen interacted with the courts mostly on cases of theft. They also contributed to processes in cases of swine rooting, defamation and mutual riots. As they could be impeded in their work by other inhabitants, they also appeared in cases of obstruction to Rancelmen. Are these results in accordance with the theoretical framework of the office? If we read through Thomas Gifford's description of the office of Rancelman, the first role of the Rancelman should be to rancel which means "to search for stolen goods".¹ For his first and etymologic role, the practical data seem to follow the theoretical frame. The Rancelmen were called to investigate on thefts. Their second, third and fourth roles should be to survey the moral of the inhabitants, to punish the infamous words and to supervise agriculture and trade. Within these 27 processes, no reference to moral survey of the inhabitants or help to the Church by the Rancelmen was made. It doesn't mean that the courts didn't collaborate with the Kirk Session but that the Rancelmen were not asked to investigate on such cases. In regards to cases of defamation and mutual riots, the Rancelmen were called to investigate but there's no comparison there with the number of cases of theft. Eventually Rancelmen were called to protect both common resources and arable land; for example, from the rooting of swine that were said to deteriorate immensely the ground. The average number of Rancelmen per process was 1.74: the Rancelmen were usually not working alone on cases. The highest number of Rancelmen working on a case was in 1790 when Walter Taylor in Bailester, George Laurenceson in Deal, James Linklater in North Caldcliff, James Chappie in South Laxfirth, Thomas Peterson in North Laxfirth and Alexander Pottinger in Greenwall (six men) all in the Parish of Tingwall were summoned by an Itinerant Sheriff Court to look for rooting swine and sell them by roup.² When more than one Rancelman was working on a case, one can wonder if all the Rancelmen were assigned the same job to do. On a number of 62

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 47–48.

² SA, SC12/6/1790/50, 'Petition (Concerning Swine on the Scattald of Haryilie.)'.

Rancelmen, 24 of them had to rancel, 9 of them had to catch an animal (and sell it) and 8 of them performed only a delation. Then we find other activities such as apprehend a thief, guard a prisoner and survey an area or dykes. The fact that the main activity of the Rancelmen was rancelling is not surprising: it was theoretically their main prerogative and in practice, we've seen that they were mainly summoned to work on such cases. The same can be said for all other activities: they were all in accordance with the theoretical framework of the Rancelman's office.

Action	N=62
answer as a witness	1
apprehend a thief	3
catch an animal (sell it and deal with the proceeds)	9
delate	8
divide and count sheep	2
give an account	2
give sheep marks	1
guard a prisoner	4
interrogate witnesses	2
rancelling	24
survey an area	6
survey and/or measure the dykes	4
write a report	2
NAS, RH2/8/33. 'Photostat Copy of bailie court Book of the North Parish of Unst', 1731-1733.	
NAS, RH11/29/1. 'Dunrossness Sandwick and Cunningsburgh: bailie court Book', 1731-1735.	
SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1900.	
In three processes, the rancelmen delated and rancelled at the same time.	

Table 32: Rancelmen: Actions at court

Did the action of a Rancelman always mean that the defender(s) was (were) to be found guilty? Well, the answer is: most of the time, when a Rancelman was called to participate in the action the defender(s) was (were) found guilty. In which proportion then? Was it different from the other processes? The first question is easy to answer: more than half of the cases where a Rancelman intervened the defender(s) was (were) found guilty. The second question is more difficult to answer as I haven't estimated the Sheriff Court's rate of verdicts. However I can give a figure for the bailie courts of Dunrossness and Unst. There the figures are a bit different. The defenders were found guilty in a slightly more than half of the cases where the Rancelmen officiated. For the other cases, the defenders were found guilty in 2/3 of the cases. The calculations are set up on a very small corpus. This could explain the difference between the processes with and without Rancelmen. My guess is that at the bailie courts, Rancelmen could actually help the defenders. When the Bailie didn't call for any expertise – from the Rancelmen or anyone else – the defender(s) had no solution but to defend himself or hoped for fair witnesses' reports. The action couldn't be overturned: that's why when someone was 'falsely' accused of theft, he or she could sue for defamation but the theft would never be

investigated. The Rancelmen acting as police agents could bring some proper clues and less passionate information to the process.

Decision	N=27
adducing proof	1
bailed	1
banished	3
discharges, assoils, repels the action	5
fines and americiates; ordains to pay the skaith	9
ordains to go or be carried to the stocks	1
respect the herding act	1
n/a	6
guilty	15
not guilty	5
other	7
N: Number of processes	
n/a: Not available	
NAS, RH2/8/33. 'Photostat Copy of bailie court Book of the North Parish of Unst', 1731-1733.	
NAS, RH11/29/1. 'Dunrossness Sandwick and Cunningsburgh: bailie court Book', 1731-1735.	
SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1900.	

Table 33: Rancelmen: Decisions at court

Thus it is very difficult to state on how and why the presence of the Rancelmen at court could have an influence on the results of a process or on the conduct of judicial affairs on a local or county scale. Some hypothesis can be summed up. 1) The Rancelmen as police officers could bring fairest account in processes; 2) The Rancelmen as local men had a good knowledge of both the territory and the by-laws thus they could properly survey lands, dykes and drive animals; 3) The Rancelmen as local men were mostly respected by the community as such they could serve more effectively the judicial courts. It is also possible that their very local jurisdiction gave them the possibility to deal and treat misdeeds before they went to court.¹

Of the Lawrightmen, we know very few things. They were supposed, just like the rancelmen, to be honest, to be one per parish and to be “sworn to justice”.² They had “to weigh and measure the rent-butter and oil; and also to judge of the quality thereof”.³ Honesty and oath are here again closely connected. Nevertheless, it is extremely difficult to know if the description provided at the beginning of the 18th century by Thomas Gifford was effectively true. Did lawrightmen exercise an office in 18th-century Shetland? Indeed, at the exception of one process at the Sheriff Court in 1774, I haven’t found any practical source. There are two other documents which provide specific clues on these officers but from them no one can be sure that lawrightmen were effectively active, in all the parishes, in the 18th century. These two documents are respectively dated 1733 and 1772. In 1733 in order to improve the value of

¹ On this question, see: Benoît Garnot, *Infrajudiciaire Du Moyen-Âge À L'époque Contemporaine* (Éditions Universitaires de Dijon: Dijon, 1997).

² Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 48.

³ Ibid.

Shetland's coarse hosiery which was for some Shetland's officials of a poor quality,¹ Shetland's chamberlain declared that:

no person or persons within the said County make any Single Stockings or otherways insufficient of their kind for Sale or offer to Sell the same after the first Day of November next to come untill first shewing them to one of the lawright men as mentioned who is to put his mark of Sale upon them of Ist, 2nd and 3rd Socks according to their Goodness And that under the pain of forfeiting the value of all such stockings afforesaid And that the lawrightman be payed a Reasonable Sallaire for his pains by the Paroch.²

The lawrightmen were entitled with a new responsibility which fitted their role of comptroller of the weight and measure of the rent-butter and oil and most importantly of comptroller of their quality. So from now on, they also had to control the quality of the woollen goods. Eventually, it seems that it was the role of the parish to pay him for "his pains". Even though I haven't found any traces of any lawrightmen receiving money from the parish fund, it is interesting to note that here again civil and religious institutions collaborated – at least on paper. In 1772, the Sheriff Substitute drew up a list of Rancelmen and Lawrightmen to be appointed in the Island of Unst. He appointed, in the North Parish, John Clerk in Velzie, in the mid-parish, Peter Erasmuson in Ua and, in the South Parish, John Hoscason – unfortunately no further indication of his place of residence was written down.³ These names didn't appear in the 1772's rental of Shetland as they didn't own either property lands or lands "said to be feued".⁴ These men were either small udallers or tenants, trusted by their appointer and their community. The appointment's list ends with the following lines:

And the Sherriff Substitute appoints the customary Emolument of two shillings Scots from each house to be paid to the several Lawrightman by the inhabitants of their respective districts and also appoints the Sherriff Clerk to transmit to each of the Lawrightmen proper instructions for their Government. Signed Will. Balfour Sh Subst⁵

The source of the Lawrightmen's salary had changed in about 40 years. In 1772 each house of a district had to pay 2 shillings Scots to their lawrightman: the parish was not involved anymore, even though the appointment of the lawrightmen was done on a parish-base which was concordant with Thomas Gifford's description of their appointment. Eventually, in 1774, two years after the appointment of the lawrightmen of Unst, a case was brought to the Sheriff Court. This process dealt with the theft of plants in the parish of Cunningsburgh. The study of this case shows the existence of at least two rancelmen in Cunningsburgh, Charles Halcrow in

¹ Smith Brian, 'Stockings and Mittens, 1580-1851', in *Shetland Textiles: 800 BC to the Present*, ed. Sarah Laurenson (Lerwick: Shetland Amenity Trust, 2013), 54.

² Andrew Charles O'Dell, *The Historical Geography of the Shetland Isles* (Lerwick, 1939), 156 [Gardie Papers]; Quoted in: Smith Brian, 'Stockings and Mittens, 1580-1851', 54.

³ NAS, RH9/15/157/5, 'Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselman in the Island of Unst', 1.

⁴ NAS, RH4/102, 'Rental of Lordship of Shetland'.

⁵ NAS, RH9/15/157/5, 'Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselman in the Island of Unst', 2.

Aith and Laurence Manson in Tou and of one Lawrightman, Peter Tulloch.¹ We don't know anything about this Peter Tulloch, only that "The Report of the Lawrightman & Ranselmen in the Parish of Cunningsburgh" was written down by a Patrick Tulloch.² Without so much information to corroborate this, it is however highly probable, that this Patrick Tulloch was the clerk and treasurer,³ and probably an Elder as well,⁴ of the Kirk Session of Sandwick and Cunningsburgh. Peter Tulloch probably belonged to Patrick Tulloch's family. This family tie might be one of the reasons why he was appointed lawrightman in Cunningsburgh: his family was considered as honest and was trusted by the members of the élite – minister and Sheriff Substitute – and maybe by the community's members as well. In this process, however, the role of the lawrightman was different compared to his 1733's prerogatives. The lawrightman acted exactly as a rancelman. In the "Direction for the Lawrightman & Ranselmen in the parish of Cunningsburgh", the Sheriff Substitute explained how "[they were] hereby directed to inquire by what proof or witnesses it can be instructed that plants were stolen in the month of March or April last [...] because it must appear that Plants were really stolen before a man can be convicted by circumstantial evidence of stealing them [...]".⁵ This letter was addressed "to Peter Tulloch Lawrightman & the Ranselmen in the Parish of Cunningsburgh".⁶ From this evidence, it appears that the lawrightman and the rancelmen did the same things but it seems that the lawrightman had somehow a higher position in the investigation and that maybe, he coordinated it. This is more similar to what William P. L. Thomson described for an earlier period in Orkney. He explained that the Lawrightmen were the members of the bailie court, they could be Rancelmen and they belonged to the top stratum of the rural society.⁷ Here the sources point toward a distinct officer different from the Rancelman but who might have held a higher status in the local community than that of a Rancelman. Eventually, these two documents dated 1772 and 1774 might show something more: the Sheriff Substitute, William Balfour, had probably a will to reinforce the power of the Sheriff Court. Indeed, he decided to appoint new Rancelmen and Lawrightmen. Did he do it in each parish? No traces are left of this, but there was an appointment of Lawrightmen in Unst in 1772 and there was an active Lawrightman in Cunningsburgh in 1774. He might have devised new instructions for the Lawrightmen between 1772 and 1774. However, it seems that his will to see Lawrightmen

¹ SA, SC12/6/1774/6, 'Petition (Theft - of Plants.) (Criminal)'.

² Ibid. piece 8.

³ SA, CH2/325/1, 'Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842', fol. 1.

⁴ SA, CH2/325/1, 'Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842' 17/04/1763.

⁵ SA, SC12/6/1774/6, 'Petition (Theft - of Plants.) (Criminal)' piece 9.

⁶ Ibid. piece 9.

⁷ Thomson, *Orkney Land and People*, 161–162, 170 and 172.

involved in the local police work didn't last. By 1810, Mr Mouat of Gart wrote some "Observations on the ancient Country Acts of Zetland Submitted to the Honourable the Sheriff Depute and in the hope that this may lead to the Revival of parts of the Acts and of Parochial Magistrates".¹ In the "Act 3 Weights and Measures", he explained that this act "[was] now entirely neglected, their being no Lawright men as formerly to execute that important office."²

Courts in action

The Elders, the Rancelmen, the Lawrightmen as well as the Procurator Fiscal participated in the running of justice on a local basis. But how was the justice administered? What was the judicial procedure? In order to understand how justice technically worked, I'll detail the legal procedure, the territorial jurisdiction and the relation between the courts and the Country Acts. The main goal of these courts was to regulate the community. This study will provide additional data on the administration of justice and on the collaboration between the different courts.

A typical process

Procedures were different at the bailie courts, at the Sheriff Court and at the Kirk Sessions. It might be explained because these courts didn't have the same audience or the same goals or the same jurisdictions. Furthermore, the bailie courts didn't have standardised procedures so the minutes recorded in their minutes books didn't include the same kind of information. In that respect, the clerk of court played a very important role. Knowing the procedural functioning of these courts enables to understand the level and the way in which the communities were regulated as well as the local differences in terms of regulation.

The record keeping and therefore the appearance of the procedure in the bailie courts of Dunrossness, Northmavine and Unst differed vastly. At the bailie court of Dunrossness,

¹ NAS, RH9/15/157/9, 'The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations, 1810', 1.

² Ibid., 2. In 1847, in some "Notes regarding the office of Ranselmen in Zetland, for the consideration of Tho[mas] Neaves Esquire Sheriff of the Country", it was explained that "The nomination of Lawrightmen in each Parish has for a very long time past been discontinued [...]But Ranselmen, as forming a rural police peculiarly adapted to the District, have always existed, tho[ugh] not in such full force and numbers latterly as formerly.", in NAS, RH9/15/157/2, 'Notes Regarding the Office of Ranselmen in Zetland, for the Consideration of Tho[mas] Neaves Esquire Sheriff of the Country' 1847.

Sandwick and Cunningsburgh, the procedure was specific and standardised. The clerk – or maybe clerks – kept a regular procedure from 1730 to 1735. The minutes looked as follow:

1. date and place
2. complainer(s) – complaint
3. defense
4. request for proofs* (report of the process to a specific date*)
5. sworn witnesses*
6. testimonies*
7. judgment
8. punishment

*only if considered necessary by the bailie

Table 34: bailie courts: Dunrossness' minutes

1. date and place
2. petition, complaint or bailie ordinance (report*)
3. defense
4. judgment
5. punishment

*only if considered necessary by the bailie

Table 35: bailie courts: Nortmavine's minutes

1. date and place
2. petition or complaint
3. accusation (report*)
4. defense
5. sworn witnesses / added proofs / survey
6. judgment
7. punishment

*only if considered necessary by the bailie

Table 36: bailie courts: Unst's minutes

The minutes contained pieces of information on the complainer(s) and the defender(s) such as their place of life as well as on the witnesses such as their place of life, their age, their marital status and their level of literacy indicated by whether or not they knew how to sign. The minutes were quite short. They contained a minimum of 27 words and a maximum of 555 words with half of the minutes counting less than 200 words (median: 196.5 words). In Northmavine, the procedure was less standardised. The minutes were sketchy and contained few pieces of information on the individuals in question. Their place of life, for example, was very seldom indicated. The minutes were even shorter than in the Dunrossness' court book. They contained a minimum of 51 words and a maximum of 386 words with half of them containing less than 130 words (median: 129 words). Similarly to Northmavine, the procedure in Unst was vague and imprecise when it came to the individuals involved. The minutes were slightly longer than in Dunrossness and Northmavine: they counted a minimum of 67 words and a maximum of 601 words, with half of the minutes containing less than 350 words (median: 345 words). Why were the court minutes and eventually, the court procedures, so

different? Was it the clerk who didn't properly record the facts? Or was it because of another factor? In Dunrossness, the Procurator Fiscal or Fiscal of Court, Lawrence Sinclair of Goat had a crucial importance. He gave his concurrence in all the private prosecutions while in Unst William Mouat intervened only in five cases out of 20 and in Northmavine there was no trace of there being a Procurator fiscal. Therefore, Lawrence Sinclair of Goat contributed probably to the normalisation of the practical and judicial procedure in Dunrossness. Nevertheless, the bailie courts of Unst and Northmavine were only superficially similar. Indeed, when in Dunrossness, the bailie court records showed only the interest of the court for judicial actions; in Unst, the court book contained descriptions of the scattalds' borders, punds' examinations as well as querries brought forth by the bailie; in Northmavine, the court book enclosed bailie ordinances and cooperation with the Collector of the Excise. It is possible that, in Dunrossness, the bailie undertook the same actions but it was not recorded in the court book and they were not consistent with the charter of franchise. The study of these court books gives the impression of three very different local courts. Even though we're facing conservation difficulties, this must mean something. At least, it indicates that the administration of justice was different from one bailiery to another which means that the communities were regulated differently in these three baileries. There was no homogeneity in the administration of local justice in the first half of the 18th century in Shetland. This is consistent with what was going on in the rest of Scotland at the same period. In that respect, the bailie court minutes differed greatly from the kirk session minutes which could vary according to the clerks but had a similar layout from one parish to another.¹ Indeed, the procedure was comparable in the different Shetland parishes.

- | |
|--|
| <ol style="list-style-type: none"> 1. complained/delated/accused or summoned or "voluntary compearances" 2. defense (more or less) 3. call to another person (e.g.: the father) / witnesses 4. "appointed to appear before the congregation to be rebuked for his/her/their sin and scandal" or fine or both |
|--|

Table 37: Kirk Sessions: minutes

The Kirk Session justice wasn't a personal justice where personal reparation was sought as it was at the bailie court. Justice was expected for the whole parish, for the whole parochial community. When morally-wrong behaviours happened in a parochial community or in the society in general, the Kirk claimed that it could only bring chaos such as plague, famine, uprisings and rebellions within the community.² Therefore, when one person committed a sin

¹ Todd, *The Culture of Protestantism in Early Modern Scotland*, 17–18.

² Mitchison and Leneman, *Girls in Trouble*, 6.

or bad behaviour, he or she was responsible in front of the whole parish and he or she was consequently judged accordingly.

The first thing to note about the Sheriff Court is that there were different types of processes. Compared to the bailie courts and the Kirk Sessions, the procedure was extremely complex and meant heavy records. In the Shetland Archives catalogue, 1,778 separate court cases are listed between 1690 and 1810. These court cases range from accounts to decreets through complaints and petitions with the vast majority of cases being summons. The name of the type of court case refers to the type of document that initiates the case – a petition or a summons – but also to the only remaining documents from a court case – a letter or an account. The following tables present a list of the different types of court cases.

Court cases (1690-1810)	
Account	5
Account of expences in causa	1
Act and warrant	1
Advocation	1
Answers	7
Citation	2
Claim	3
Complaint	56
Criminal libel	4
Declaration	6
Decreet	4
Defences	6
Deposition	2
Discharge	1
Edict	18
Enactment	3
Execution	4
Execution of arrestment	2
Execution of summons	7
Extract	2
Fragment	6
Indictment	3
Information	4
Inhibition	1
Inquest	2
Inventory	9
Inventory of debts	3
Letter	36
Letters of horning and poinding	1
List	8
Memoir	1
Minutes (miscellaneous)	15
Note	3
Objections	1
Papers	8
Petition	767
Precept	20
Precognition	3
Proceedings	2

Process	6
Procuratory	8
Proof	1
Protest	30
Receipt	1
Replies	1
Report	1
Representation	3
Representation for dismissal	1
Retour	1
Service	1
Submisson	1
Summons	692
Testament	1
Verdict	1
Warrant	1
Total	1778
SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1900.	

Table 38: Sheriff Court: Court Cases

Court cases (1690-1810)		
Complaint	56	3%
Letter	36	2%
Petition	767	43%
Precept	20	1%
Protest	30	2%
Summons	692	39%
<i>Miscellaneous</i>	<i>177</i>	<i>10%</i>
Total	1778	100%
SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1900.		

Table 39: Sheriff Court: Court Cases (summary)

Court cases (1699-1799)	
Complaint	8
Criminal libel	1
Fragment	1
Indictment	2
Information	2
Inventory	2
Letter	2
Minutes (miscellaneous)	1
Papers	2
Petition	75
Precognition	1
Proceedings	2
Process	2
Replies	1
Representation	1
Submisson	1
Summons	14
Verdict	1
Total	119
SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1900.	

Table 40: Sheriff Court: Court Cases (rural corpus)

Court cases (1699-1799)		
Complaint	8	7%
Letter	2	2%
Petition	75	63%
Summons	14	12%
<i>Miscellaneous</i>	20	17%
Total	119	100%

SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1900.

Table 41: Sheriff Court: Court Cases (rural corpus - summary)

When we only consider the cases of the rural corpus, the proportions change slightly. Indeed, in this corpus the summons of removing were not taken into consideration and weren't systematically studied.¹ This explains the hiatus in the summons. Nevertheless, the summons and the petitions appear to be the type of court cases – as well as one type of documents – that the court dealt with most frequently. These two documents initiate two different procedures which are supposed to deal with conflicts of a different level of importance. A private petitioner initiated a summary action at the Sheriff Court with a petition while in the case of a summons it was the judicial authority, in Shetland, the Sheriff, which initiated the court case, “informing a person that civil proceedings are being taken against him, detailing the circumstances of the action and the redress sought and citing him to appear in court”.² The other documents presented at the court during a petition process or a summons process could be similar. The bundle contained replies, duplies, accounts, etc. A summons usually meant a more serious issue than a petition but at the Sheriff Court of Shetland, it often happened that summons or petitions dealt with the same kind of issues. Indeed, heritors asked for divisions of common or runrig land in the form of a summons or of a petition. Nevertheless, a summons would put a defender in a more difficult position as he or she would have to appear at court. The detailed functioning of the Sheriff Court is not the prime interest of this dissertation.

The importance of the culture of the written word comes to light when discussing the Sheriff Court procedure. Pages and pages of replies and duplies form the bulk of the cases. The parties hired professional writers in order to write these pages and to respect the procedure and the legal phraseology.³ This culture of the written word strongly differs with the oral culture of the bailie courts and kirk sessions. Indeed, written petitions appear only in the case

¹ From a brief survey in the Shetland Archives catalogue, there might be about 210 summons of removing between 1690 and 1810.

² 'Petitio(u)n(e N.)', *Dictionary of the Scots Language* (Scottish Language Dictionaries Ltd., 2004), <http://www.dsl.ac.uk/entry/dost/petitioune>; 'Petition N.', *Dictionary of the Scots Language* (Scottish Language Dictionaries Ltd., 2004), <http://www.dsl.ac.uk/entry/snd/petition>; 'Summons N., v.', *Dictionary of the Scots Language* (Scottish Language Dictionaries Ltd., 2004), <http://www.dsl.ac.uk/entry/snd/summons>.

³ See for example, James Tulloch: SA, SC12/6/1776/12, 'Summons (for Profits of a Halvers Calf.) (Criminal)'; Henry Ross: SA, SC12/6/1779/13, 'Petition (for Disturbing Petitioner's Tenants.)' 1779; SA, SC12/6/1787/30, 'Petition (for Damages Caused by Defender's Sheep Dog.) (Criminal)'; SA, SC12/6/1792/25, 'Petition (to Poind Mares.)' 1792, John Craigie:

of Northmavine’s bailie court.¹ The development of literacy in Shetland might explained this or it might only be because Northmavine’s bailie court at the difference with Dunrossness’s bailie court let more room for those of the upper social categories to complain or because the bailie read the petitions. Indeed, the importance of the written word at the Sheriff Court is yet another sign of its disconnection with the bulk of Shetland’s society. Robert Houston explains how in Scotland “[e]ducation might be open to both sexes and all social classes in theory, but in practice women and lower social classes were heavily discriminated against either in curriculum or in access to education and its duration.”² He eventually states that “[l]iteracy was firmly related to economic need and to the existing social structure.”³ This wasn’t different in Shetland and a brief survey of the bailie court book of Dunrossness shows that only seven out of 62 witnesses knew how to read, of which there were no women.⁴ Orality was still the basis of local justice and especially the basis for those of the lower social categories.

Witnesses	
he can write	7
he cannot write	46
she cannot write	9
<i>Subtotal</i>	<i>62</i>
n/a	56
Total	118
NAS, RH11/29/1. ‘Dunrossness Sandwick and Cunningsburgh: bailie court Book’, 1731-1735.	

Table 42: bailie court: Witnesses' signature

The disconnection of the Sheriff Court with the interests of the lower social categories and with the interests of the communities is also visible when we study the pursuers.

Claimant at the Sheriff Court (1699-1799)	
Procurator Fiscal	10
Procurator Fiscal and pursuer(s)	9
Pursuer(s)	87
Rancelmen	1
n/a	12
Total	119
SA, SC12/6. ‘Lerwick Sheriff Court Records: Ordinary Court Processes’, 1692-1900.	

Table 43: Sheriff Court: Claimants

In most of the cases the Procurator Fiscal didn’t participate. He didn’t give his concurrence to private prosecution and didn’t initiate government prosecutions. He held a very confidential

¹ SA, D25/3, ‘Fragment of Bailie Court Book of Northmavine, 1744-1747’. This is somehow confirmed in the bailie court of Unst where the only petition presented at court and recorded in the court book was the doing of a member of the élite, a man of literacy, the Rev. John Hay, minister of Unst, in NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fols 8–9.

² Houston, ‘The Literacy Myth?’, 93.

³ *Ibid.*, 94.

⁴ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’.

role exactly like at the bailie courts of Northmavine where the bailie read the petitions. Why then were the bailie courts of Dunrossness and Unst so different and what did it mean for the administration of justice and the regulation of the local community? At the bailie courts of Dunrossness and Unst and at the Kirk Sessions, the type of cases that were judged and the way in which they were prosecuted showed a clear mark of voluntary participation of the élite in the life of the community either in the form of the control of decency at the Kirk Sessions or in the form of the control of common goods and activities at the bailie court. At the Sheriff Court but also to a lesser level at the bailie court of Northmavine, the court answered to the complaints of individuals and sought individual reparations or at least reparations for a circumscribed and defined group.

The court in its territory

The bailies, the Procurators Fiscal and all the individuals taking part in the court system contributed to shape the territory of a court. The study of the territories of the courts sheds light on the way the courts interacted but most importantly, it sheds light on their territorial regulation of the community, mostly through its local agents: the Rancelmen and the Elders and also through the places of justice.

The territories of the bailie courts were the more complex. William P. L. Thomson explains how the Orkney's bailie courts were organised in a different way than on the Scottish mainland. His explanations are also valid for Shetland:

Orkney's bailie courts were rather different from the usual Scottish Barony Courts which the laird convened to deal with petty crime and organise his tenants when cooperation was required. The large number of proprietors in most Orkney parishes, and even within a single township, required a different solution. [...] What was needed was a means of promoting cooperation among proprietors as well as among tenants. Hence Orkney developed a system of bailie courts, organised on a parish or island basis [...].¹

In 1739, the bailies of Burray, Papa Stour, Yell, Unst, Fetlar and Whalsay and Skerries were island bailies, when the bailies of Dunrossness, Sandwick and Cunningsburgh, Walls and Sandness, Wiesdale and Whiteness, Delting, Northmavine and Nesting and Lunnasting were the bailies of parishes and united parishes. The bailie of the parishes of Lerwick, Gulberwick and Quarff was also the bailie of the island of Bressay.² In the meantime, the bailie of the parishes of Tingwall, Aithsting and Sandsting was also the bailie of “the lands in Quarff belonging in property to him”³ – this last situation forms a bridge between the mainland system and the northern islands' system. The Earl of Morton detailed very briefly the territory of the bailie court of Dunrossness, Sandwick and Cunningsburgh in the Charter of Franchise:

¹ William P.L. Thomson, ‘Bailie Courts’, in *Orkney Land and People* (Kirkwall: Orcadian Ltd, 2008), 161.

² SA, SC12/53/2/ page 259, ‘Obligation by Andrew Sinclair, Baillie of the Parishes of Dunrossness, Sandwick and Cunningsburgh, Robert Sinclair of House, Baillie of Island of Burray, Sir John Mitchell of Westshore Baillie of Parish of Tingwall, Aithsting and Sandsting, John Scott of Melbie Baillie of Parishes of Walls and Sandness, George Greig Bailie of Island of Papa Stour, Alexander Sinclair of Brew Baillie of the Parish of Whiteness and Weisdale, Thomas Gifford of Busta Baillie of Delting, James Cheyne of Tannick, Baillie of the Parish of Northmavine, John Scott of Scarpo, Baillie of the Island of Yell, Andrew Scott of Greenwall and Thomas Mouat, Merchant in Uyasound, Baillies of the Island of Unst, William Bruce of Urie, Baillie of the Island of Fetlar, Robert Bruce of Simbester, Baillie of the Islands of Whalsay and Skerries, Robert Hunter of Lunna, Baillie of Nesting and Lunnasting, and James Greig, Baillie of the Island of Bressay, Parishes of Lerwick, Gulberwick and Quarff, to Robert Dick of Frackafeld, for Payment of £40 Sterling, Yearly, to the Commissioners of Excise for North Britain, for the Power to Exact and Levy the Several Excise Duties from the Inhabitants of Zetland, Engrossed on 21 November 1739’.

³ SA, GD150/2534B/7, ‘Commission by George Earl of Morton to Sir John Mitchell of Westshoar, Bart, to Be Bailie of the Parishes of Tingwall, Sandsting and Aithsting, “and the Lands in Quarff Belonging in Property to Him” (I.e. Sir John Mitchell)’.

the said Andrew Sinclair to be bailie of the united paroches Of Dunrossness Sandwick and Cunningsburgh and haill parts pendicles and pertinents of the saids United paroches¹

The territories of the bailie courts – when they were not islands – directly overlapped the territories of the parishes where the Kirk Sessions judged moral decency. For Brian Smith, Shetland’s division into parishes dates from c. 1299-1300, when the Duke Hakon Magnusson abolished the rental and taxation systems of the archipelago. Therefore the division of Shetland into parishes and the settlement of their boundaries came from a secular innovation rather than from a clerical one.² Unfortunately, we have no record of the parishes’ boundaries before the 19th century. However, it is probably safe enough to use the 19th-century Ordnance Survey Maps in order to localise the 18th-century parochial boundaries especially since there were no modification of the parishes’ system in Shetland throughout the 18th and early 19th centuries.³

The Kirk Sessions hold a jurisdiction over a parish or united parishes. In the case of the united parishes of Dunrossness, Sandwick and Cunningsburgh, there were two Kirk Sessions, the minister of the united parishes, the Rev. John Mill, was their moderator. There was one session which jurisdiction extended over the parishes of Sandwick and Cunningsburgh and another one over the parish of Dunrossness. Eventually, the jurisdiction of the Sheriff Court – and here, we should understand, of the Sheriff depute of Shetland – extended over the whole of the archipelago.

These territories came to life in what can be called ‘places of justice’. The kirk session’s place of justice was the church or when in need of a church, another building where the minister preached. The Sheriff depute and his substitutes held their court in Lerwick at the Tolbooth. There were also some itinerant Sheriff courts held in the countryside. Symbolic places of justice should be added such as the parish church doors and the castle gate. Eventually, the Country Acts of Shetland stated that the bailie should hold “their [bailie] courts twice a year,

¹ SA, GD150/2534B/6, ‘Commission by George Earl of Morton to Andrew Sinclair, Brother of Robert Sinclair of Quendall, to Be Bailie of Dunrossness, Sandwick and Cunningsburgh’.

² Smith, ‘On the Nature of Tings: Shetland’s Law Courts from the Middle Ages until 1611’.

³ In January 1788, John Mill explained how he opposed a scheme of division of the parishes of Sandwick and Cunningsburgh: “The Sheriff this month sent me a paper, called a Memorial, signed by himself, three of my principal Heritors, with those of Lerwick and Bressay, for joining Bressay to Lerwick as one parish, and, taking part of Lerwick and Cunningsburgh from Sandwick Parish, to make another parish with Burray and Wharff etc. pretending the promoting of piety thereby, and desiring me to sign the same paper. But I was so far from putting my name to such a scheme as appeared to be calculated for the worldly ease and advantage of the present incumbents of Bressay and Lerwick, and selfish designs in the Lairds: nay, being fully persuaded it would rather prove detrimental to the interests of religion and Christian Knowledge, I assured them I would oppose the design to the utmost of [my] power. They proposed, at same time, to have only one church to serve for this Parish and Sandwick, and the same to be built at Troswick. This design was baffled.”, in Mill, *The Diary of the Rev. John Mill*, 83.

or once at least” at Martinmass and Whitsunday.¹ Once again, the court books of Dunrossness, Sandwick and Cunningsburgh, Northmavine and Unst show differences between the three bailie courts in terms of their places of justice. In Northmavine, the bailie court was static. The court was held at Ollaberry between 1744 and 1747 which is logical since the court book only concerned the inhabitants of Ollabery Quarter.² Similarly, at Unst, even though the place where the court met changed between 1730 and 1731, from Huia to Troll, the court was ‘fenced’ at Troll from 1731 to 1733.³ Again an old parish division explains this situation. Indeed, until the 16th century, the parish of Unst was divided into three parishes: Norwick or the North Parish, Baliasta or the Mid Parish and Lund, the South Parish.⁴ The court book records only the minutes of the bailiery of the “North Parish” of Unst. At Dunrossness, Sandwick and Cunningsburgh there were no such divisions. The court went where the people lived – or tried to go there as often as possible. The minutes indicate that in 1732 and 1734, the court visited the three old parishes: Dunrossness between the 18th and 22nd,⁵ Sandwick on the 26th,⁶ Cunningsburgh on the 28th of February 1732⁷ and back in Sandwick on the 18th of March.⁸ In 1733 and 1735, even though the court was held in three different places – at Dunrossness Kirk, Lud and Cour – the court never left the parish of Dunrossness.⁹ This mobility might be explained by the size of the court jurisdiction: three united parishes formed a large territory compared with a Quarter in Northmavine and a single old parish in Unst. The mobility of the court had an interesting outcome: when the court visited three parishes in a year the number of complaints judged at court increased.

¹ ‘The Old Country Acts’, 84–85; Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 48.

² SA, D25/3, ‘Fragment of Bailie Court Book of Northmavine, 1744-1747’. A “quarter” was “[o]ne of the areas (probably originally a fourth part) into which a parish was divided for the purposes of poor relief and the distribution of elders’ duties” (‘Quarter N., v.’, *Dictionary of the Scots Language* (Scottish Language Dictionaries Ltd., 2004), <http://www.dsl.ac.uk/entry/snd/quarter>.). In the 16th century, there were two parishes on the Northmavine’s peninsula: Northmavine and Ollaberry (Scott, *Fasti Ecclesiae Scoticae*, 7:312.). Ollaberry Quarter corresponded to this old parochial division.

³ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’.

⁴ Scott, *Fasti Ecclesiae Scoticae*, 7:297–98.

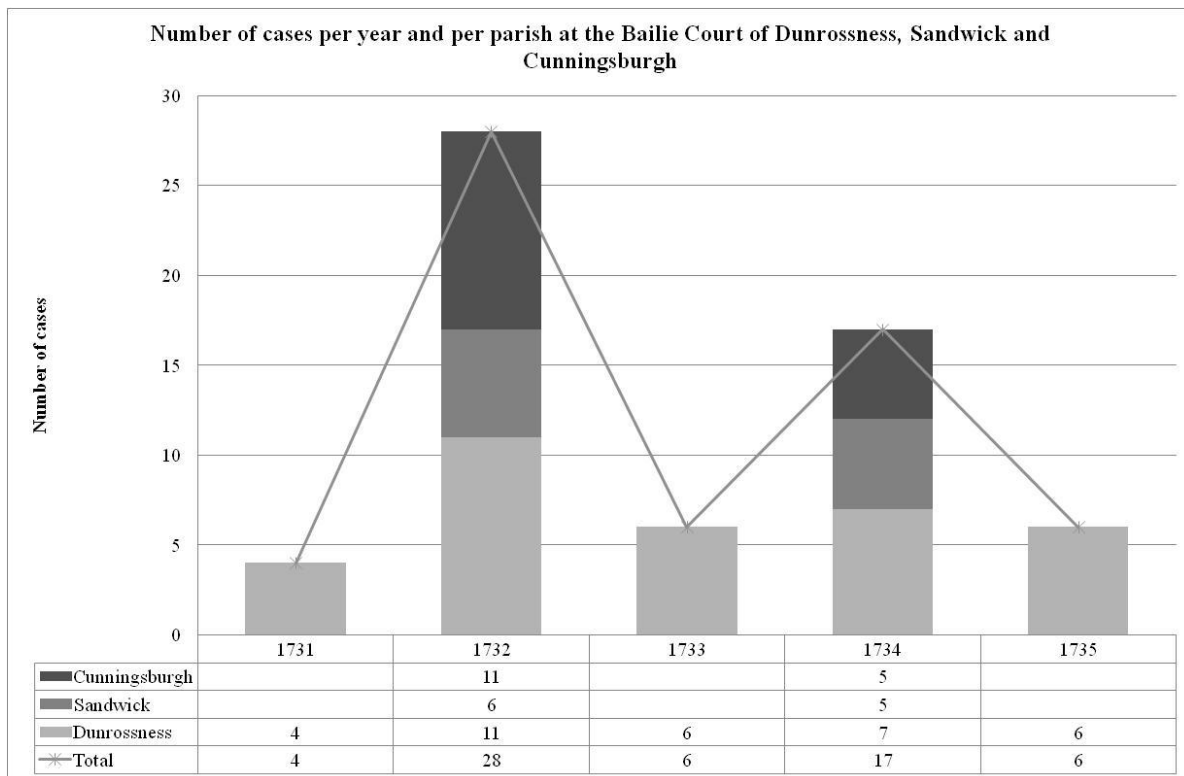
⁵ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fols 5–11.

⁶ *Ibid.*, fols 12–13.

⁷ *Ibid.*, fols 13–16.

⁸ *Ibid.*, fol. 16.

⁹ *Ibid.*, fols 17-19-35.



NAS, RH11/29/1. 'Dunrossness Sandwick and Cunningsburgh: bailie court Book', 1731-1735.

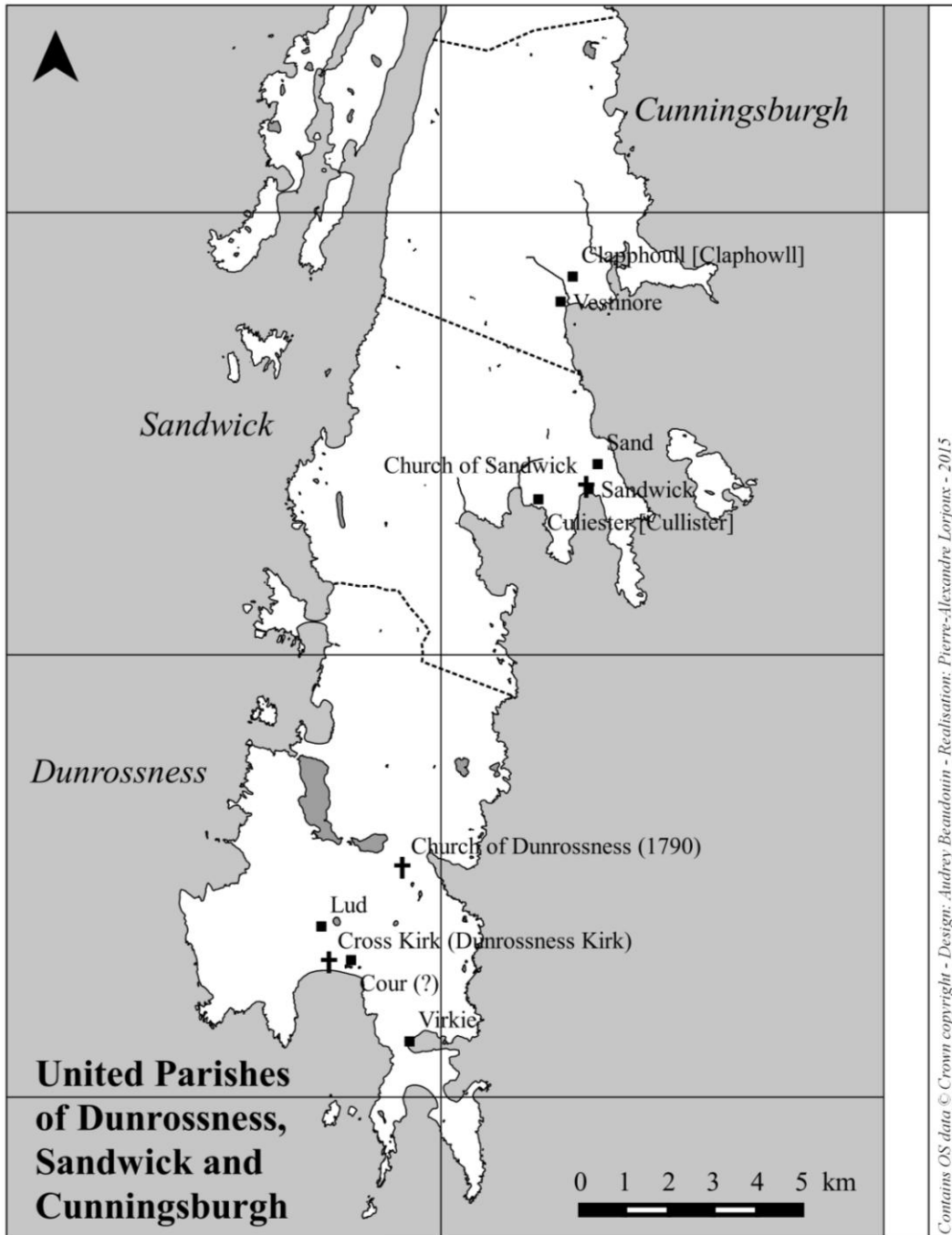
Graph 3: Bailie Courts: Places of justice and number of cases at Dunrossness, Sandwick and Cunningsburgh

Therefore, circuit courts enabled the bailie to keep a closer eye on the conflicts arising within the bailierie's bounds. The inhabitants of Sandwick and Cunningsburgh didn't travel to Dunrossness when the court was held there; similarly they didn't travel to Dunrossness Kirk when their minister preached there every two-week. Was it because it meant much travel or because they were supposed to stay in their own parish? The answer is two-fold: 1) the size of a parish was adequate for a weekly displacement but going further, to another parish required more time and a larger preparation; 2) in Presbyterian Scotland, moving out of a parish, more or less definitely, wasn't an easy thing to do, it was frowned upon and if you wanted to do so you had to be granted a testificate from your parish minister in order to prove your good character in your new parish. This might explain why the inhabitants of Sandwick and Cunningsburgh didn't participate to Dunrossness' court: they didn't belong to Dunrossness' parish; they had the same minister but their own kirk session. But where exactly did the court take place? We know that it gathered at Dunrossness Kirk in Quendale. It was probably within the church but when it comes to the other places in Dunrossness, Sandwick and Cunningsburgh, Unst and Northmavine, there are no further indications. In Orkney, William P. L. Thomson writes that the bailie court of St. Andrews "met in the Chapel of Tolhop (Toab)".¹ In Northmavine, the court might have met up at the old church of Ollaberry

¹ Thomson, 'Bailie Courts', 162.

especially since the court was based on ‘a quarter’, a parochial division but it might also have gathered in a local dwelling house. In Unst, the bailie Thomas Mouat of Garth was probably the owner of the land of Troll. In the rental of 1716, a “Thomas Mouat” possessed 48 merk of arable land in the the “roum” of Troll.¹ The bailie probably held his court in the dwelling house there. In Dunrossness, at the exception of the church of Quendale, no other building is known to have welcomed a court. A prosopographic study of the heritors of the bailiery would probably provide answers on their places of life and might provide clues on where the court met.

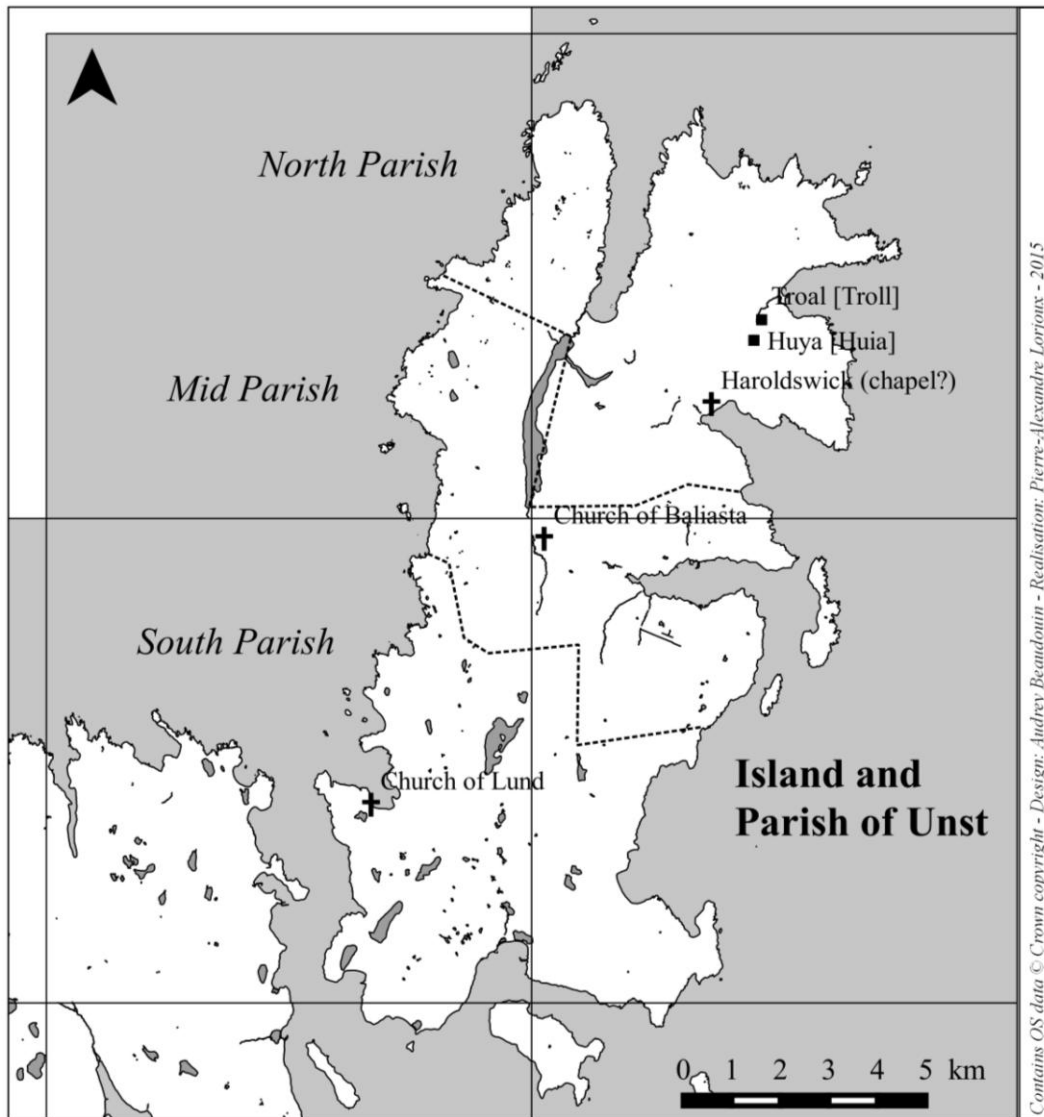
¹ SA, SA4/2255, ‘Gifford’s Rental of Shetland: Transcript and Index’, fol. 87.



- Bailie Court's meeting places
- † Churches

Source: NAS, RH11/29/1. 'Dunrossness Sandwick and Cunningsburgh: Bailie Court Book, 1731-1735.'

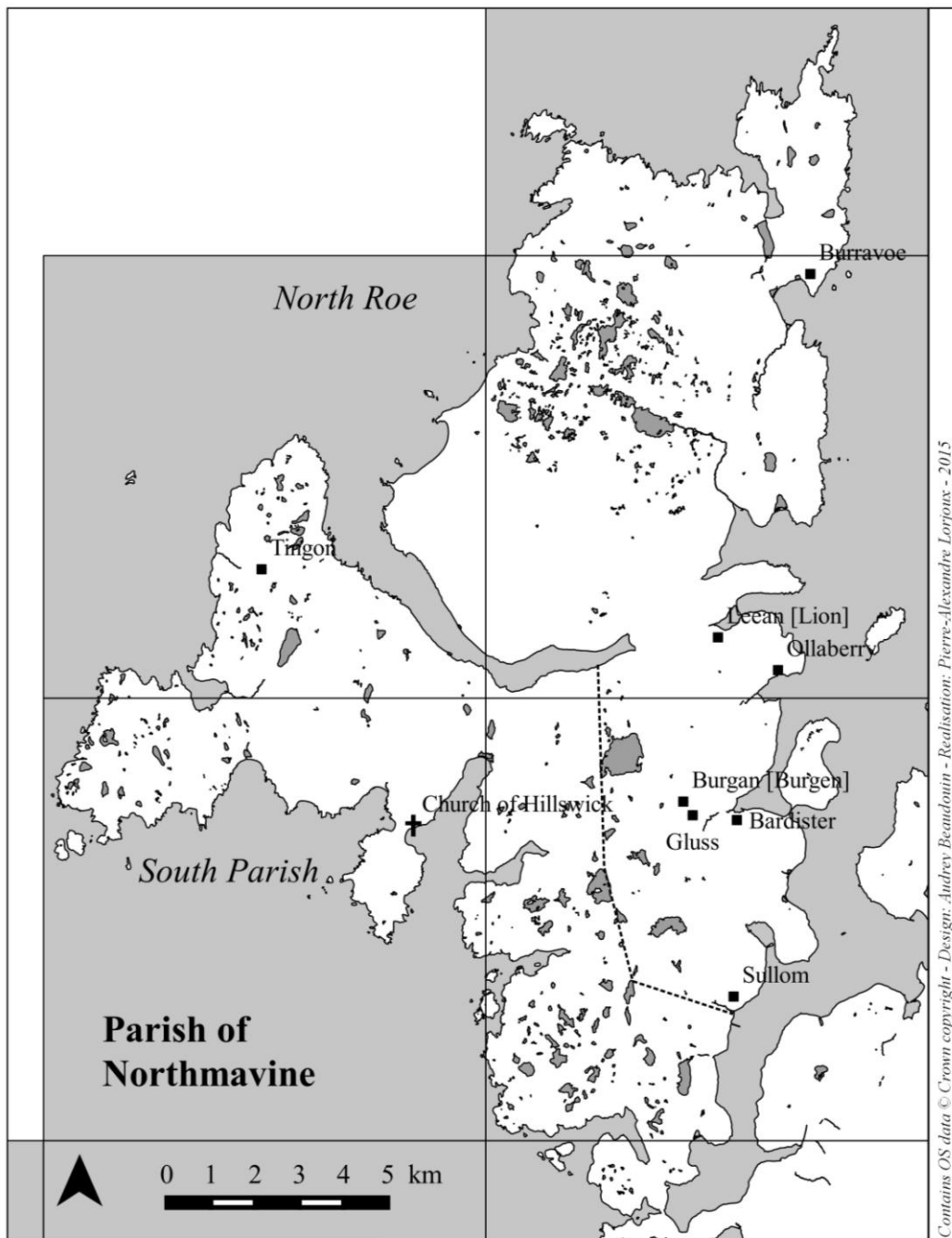
Map 6: Bailiery Courts: Places of justice in Dunrossness, Sandwick and Cunningsburgh



- Bailie Court's meeting places
- ✚ Churches

Source: NAS, RH2/8/33. 'Photostat Copy of Bailie Court Book of the North Parish of Unst, 1731-1733.'

Map 7: Bailiery Courts: Places of justice in Unst



- Bailie Court's meeting places
- ✝ Churches

Source: SA, D25/3. 'Fragment of Bailie Court Book of Northmavine, 1744-1747.'

Map 8: Bailliery Courts: Places of justice in Northmavine

The Kirk Sessions gathered in places of worship but didn't always do so. The session could gather immediately after the Sabbath or could meet at another moment. The kirk sessions' minutes of Dunrossness, Sandwick and Cunningsburgh, Northmavine and Unst provide interesting data on the places where the Kirk Session met and therefore, it provides hypothesis on the type of place where the bailie courts might have met up. Between 1755 and 1786,

Sandwick and Cunningsburgh's "Session met and constitute by prayer" in two different places: in Bremer, and more precisely, at least in 1772, in the schoolhouse of Bremer, and at the Kirk of Sandwick. In Bremer, the Session met to validate the yearly accounts and to distribute money to the poor and it was at the Kirk of Sandwick, once it had been built, that they usually offered their judgement on moral matters. Bremer was actually closer to where the treasurer and clerk of Sandwick and Cunningsburgh lived. Indeed Patrick Tulloch lived in Scarpagirth, at less than 1km from Bremer, when the Church of Sandwick was at more than 5km from his home and it is in Bremer, that the schoolmaster Robert Mcpherson, elected elder in 1763, lived too.¹ In Dunrossness, the same division in places happened: it was at Dunrossness Kirk that judicial matters were dealt with and it was at Scord that the yearly accounts were settled. Where exactly in Scord is another question. Gilbert Goudie writes in his introduction to John Mill's diary that "the Session adjudicated upon these scandals [...] on Sundays, before or after service" and that "[o]ccasionally meetings of the Session were held at the manse; and on one occasion, the case being that of a frail delinquent at Wilsness, near Sumburgh, the minister and two elders proceeded to that place (17th August 1777), and, after a Sessional meeting had been constituted by prayer, the case was dealt with on the spot."² The resolution of a scandal on site was not rare and it happened in Northmavine and in Unst as well. Nevertheless, John Mill's manse was in Skelberry and not in Scord. His manse might have been another place for the kirk session to meet but this doesn't explain where exactly in Scord the kirk session met. Did the clerk or treasurer of the Dunrossness' kirk session live in Scord? Scord lied at only approximately 1km from the site of Dunrossness kirk, in the north west of Quendale, while Skelberry was located at approximately 4km. The closeness of Scord with the site of the kirk might explain why the meetings regarding money happened there but this is only a hypothesis. In Northmavine, it seems that Hillswick was the main centre of the kirk session' activity: it met both at the manse of the minister and at the church. It is difficult to know if they met for specific matters in one or the other place since most of the time the only indication of place is "Hilswick" either for judicial matters or for annual accounts. The session also met in Clothaseter, Voe, Northroe and probably Hamer, either to deal locally with scandal or to distribute locally the poor's money. Here again, the building in which they met wasn't specified in the kirk session's minutes. It is possible that in Northroe, where they met to distribute the poor money, they used the old chapel of Ollaberry parish. In

¹ SA, CH2/325/1, 'Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842', fols 17-18; Mill, *The Diary of the Rev. John Mill*, 201.

² Mill, *The Diary of the Rev. John Mill*, lvii.

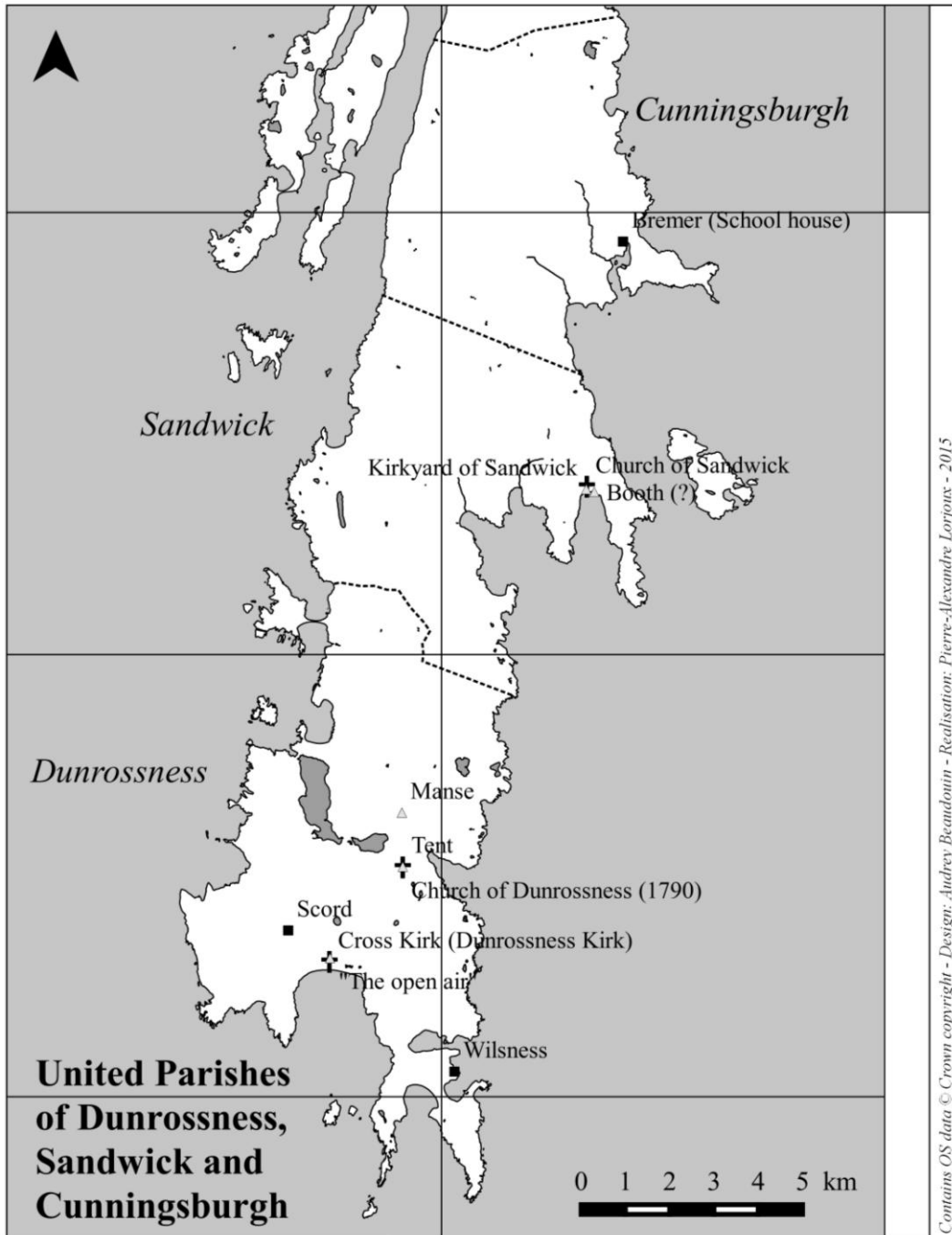
the Old Statistical Accounts of Northmavine, the Rev. William Jack explained that “the present incumbent [himself], because of the vast distance that many are from Hillswick, preaches 3 or 4 times a-year at the north, and most distant end of the parish, and at Ollaberry, the former place of worship”.¹ Even if, in Unst, the kirk session seems to have mostly met at the Kirk of Baliasta between 1720 and 1739, 1739 is an interesting year since it seems that between December 1738 and September 1739, the kirk session met alternatively in Wick and in Haroldswick and came back to Baliasta in October only to meet again in the same month in Haroldswick. Ten years earlier, the same phenomenon happened – to a lesser extent. The kirk session met four times in Haroldswick and once in Virse in the year 1728. They met in Haroldswick either because an Elder or the clerk or the treasurer of the court lived there or because they used one of the chapels of the old parish of Norwick in Haroldswick to be closer to the cases they judged. The sources don’t provide a clear answer. On September 12 1728, “according to appointment the Session met at Virs [...] the which day the minister being very indisposed and not able to attend he appointed William Ogilvy, schoolmaster, to sit with the said Elders”.² In Virse in Norwick, the minister had his glebe.³ The two cases of breach of Sabbath that the kirk session judged on this day were located at Skeggie and Papil, two townships situated approximatively at 850m of Virse. That might explain why the meeting was set up there. Eventually, the meeting in Wick might have taken place at the kirk of Lund, the church of the old South Parish of Unst. In an unpublished email, Brian Smith refers to a testimonial written in 1660 by the session clerk at the kirk at Lund after a church service.⁴ The parishes of Unst and Northmavine were extensive. Similarly to the baileries that overlapped the said parishes, if the kirk session wanted to deal with the scandals and distribute the poor money, they sometimes had to meet closer to the inhabitants. In the case of the baileries the choice was to establish a court in a Quarter or in an old parochial division. For the kirk session, the geographical distribution of the Elders was not enough; they sometimes had to change the place of their meeting either because as in the case of the new mother in Wilsness, Dunrossness, the people couldn’t travel or because showing the presence of the kirk session in another place than in the Church meant showing its strength and coercing people.

¹ William Jack, ‘Parish of Northmaven’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 12, 356, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Northmaving/>.

² SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, 1739 1720, fol. 42.

³ NAS, RH4/102, ‘Rental of Lordship of Shetland’, fol. 9.

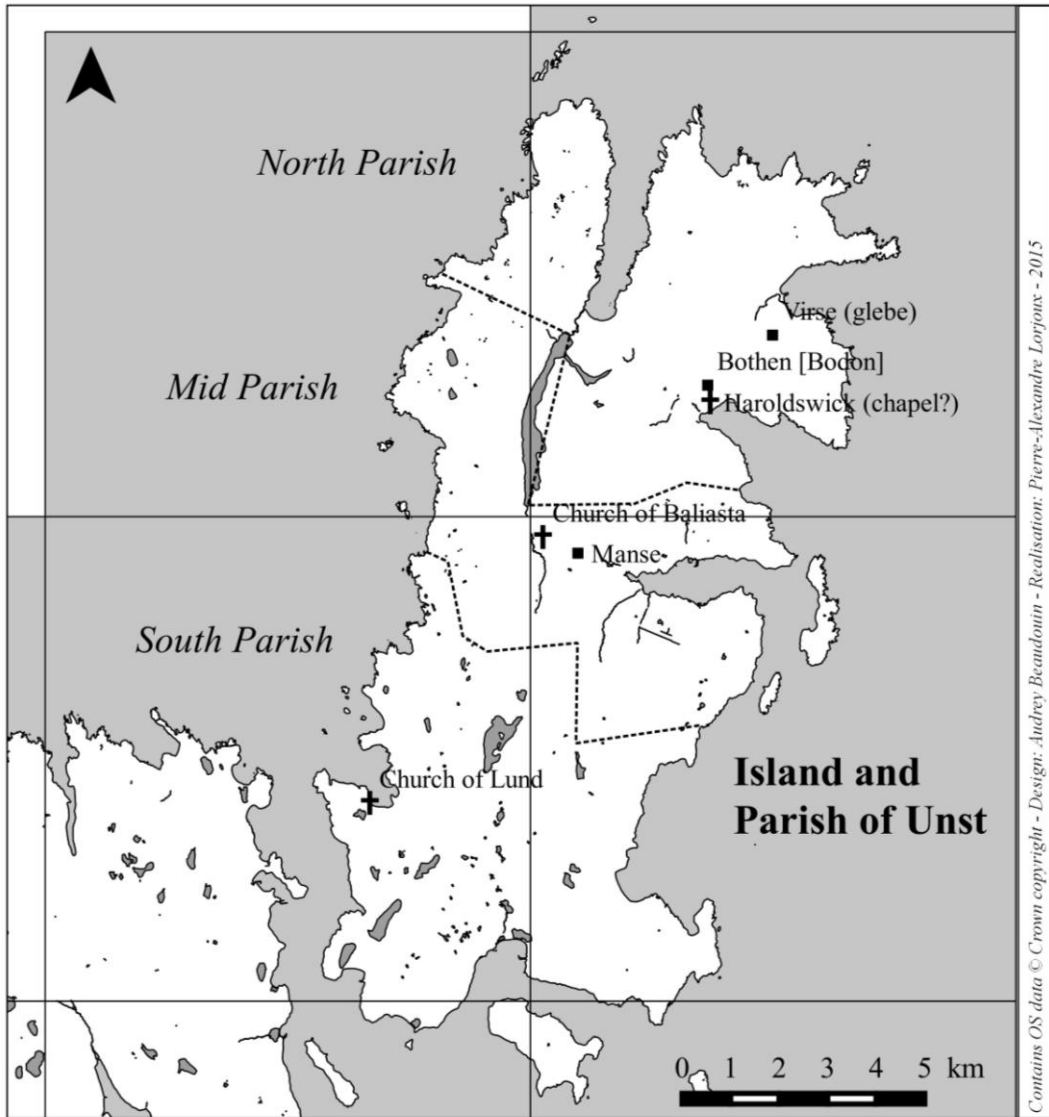
⁴ Brian Smith, ‘Re: Where the Kirk Sessions Met’, 23 January 2015.



- Kirk Session's meeting places
- △ Temporary preaching places
- ✝ Churches

Source: SA, CH2/112/1. 'Dunrossness Kirk Session Minutes, 1764-1841'; SA, CH2/325/1. 'Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842.'

Map 9: Kirk Sessions: Places of justice in Dunrossness, Sandwick and Cunningsburgh

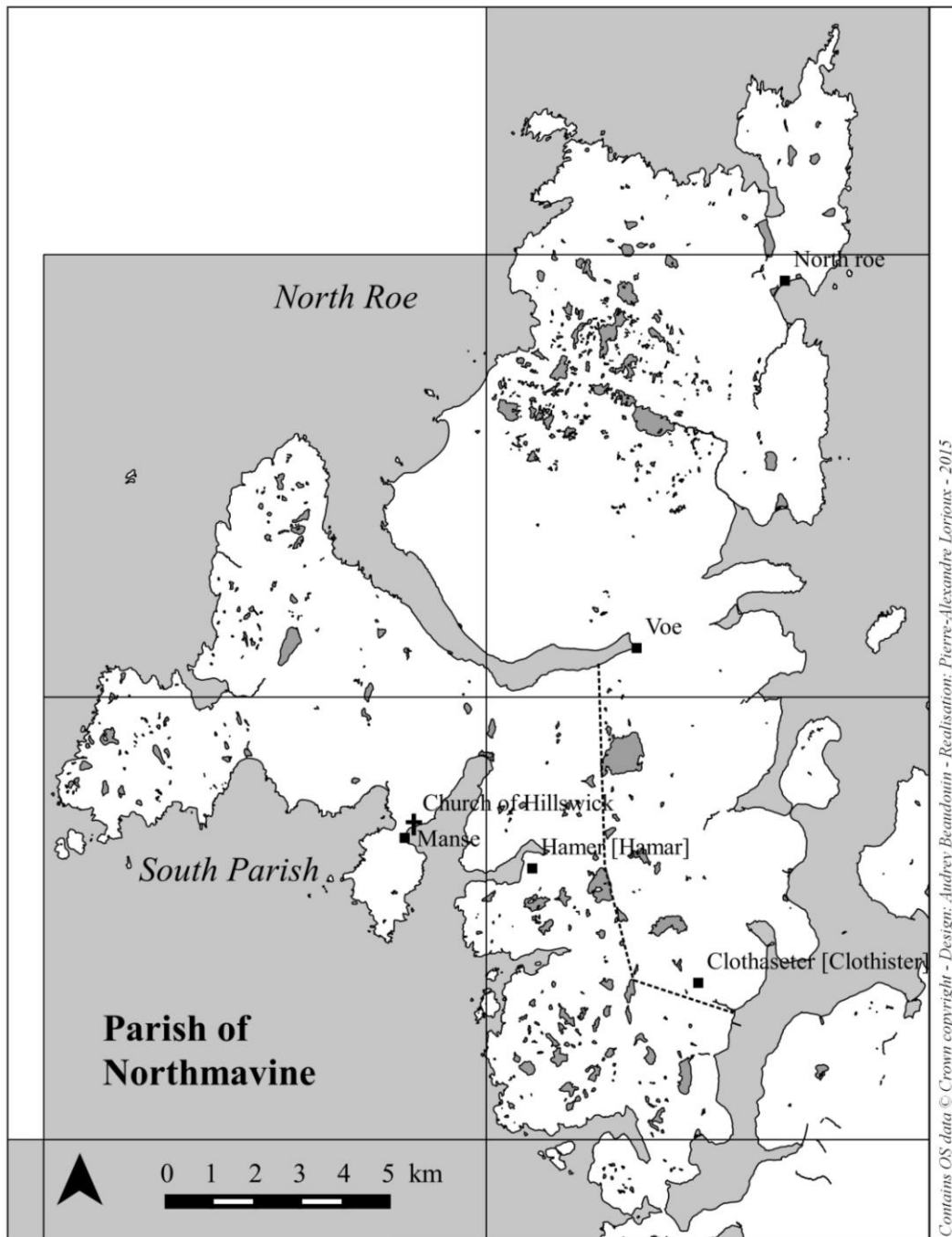


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- Kirk Session's meeting places
- ✚ Churches

Source: SA, CH2/385/1. 'Unst Kirk Session Minutes, 1720-1739.'

Map 10: Kirk Sessions: Places of justice in Unst



- Kirk Session's meeting places
- ✝ Churches

Source: SA, CH2/286/1. 'Northmavine Kirk Session Minutes, 1729-1765'; SA, CH2/286/2. 'Northmavine Kirk Session Minutes, 1765-1834.'

Map 11: Kirk Sessions: Places of justice in Northmavine

The diversity of places where the kirk sessions met sheds light on the inventivity of the sessions and of the ministers when it comes to places of worship and places of justice. In 18th-century Shetland, a constant problem for the Presbyterian Church was the lack of proper churches. Considering only the united parishes of Dunrossness, Sandwick and Cunningsburgh, the story of their churches and of their places of worship in the 18th century is

a representative one. On August 4th 1720, Walter Hugens, the new minister was ordered “in **the kirkyard** of Sandwick for lack of a building”.¹ He and others complained throughout the 1730s of the “ruinous church of Sandwick” and the “ruinous kirk and manse of Dunrossness”.² Similarly, the new minister, William Maxwell, “complained to the General Assembly, 13th May 1740, of the ruinous state of the kirk”.³ In his diary, the Rev. John Mill, ordered in 1743, wrote in 1744 that “[he] found one of [his] Kirks [Cross-Kirk at Quendale] in ruins”.⁴ In the same diary, he explained how “[he was] obliged to preach in **the open air** during the Rebellion”⁵ and how in the early 1750s, “a large vessel from Norway loaded with wood for Irland, was put into Quendal bay [...]. The wood was sold off for profit. However the Kirk of Sandwick and manse of Dunrossness were built with wood [out of it]. The Kirk should have been built first, but as I had **a booth** to preach in [I] preferred the manse, which was built in 1751 and furnished in 1752.”⁶ The kirk of Sandwick was built at the end of the 1750s and early 1760s. On December 23rd 1764, the kirk session of Sandwick and Cunningsburgh met there.⁷ It was not completed however before the second half of the 1760s.⁸ In 1787, John Mill turned his attention towards Cross-Kirk, also called Ness-Kirk, the kirk of Dunrossness in Quendale. In June 1787, “[he] went to attend the Presbytery in Lerwick with a firm resolution to extract the Decreet of Presbtry for a new Church at Dunrossness” since the church in Dunrossnes was “in a ruinous condition”.⁹ It was not before 1790 and after some dispute with local heritors regarding the “spot of ground” where the new church should be built,¹⁰ that John Mill “was called upon to see the foundation for a new Church marked out”.¹¹ On July 11th 1790, he preached “at **a Tent** adjoining to the Wall of the New Church Building on the ground of Brew”.¹² Eventually, on August 22nd 1790, John Mill preached “within the Walls Completed”.¹³ Even if the two churches are built in the early 1790s, John Mill explained how in 1799, “[t]wo ministers from the Missionary Society in

¹ Scott, *Fasti Ecclesiae Scoticae*, 7:283.

² SA, GD150/1890, ‘Petition and Representation by William Maxwell, Minister of Dunrossness, to the Earl of Morton, Concerning Ruinous Church of Sandwick and Manse of Dunrossness, and Concerning His Stipend’ 1736; SA, GD150/2566B/17, ‘Letter from Mr Ross, Lerwick, to William Drummond of Grange. Concerning Excise of Shetland. Ruinous Kirk and Manse of Dunrossness. Presbytery Charge against Rev. Robert Gray for Drunkenness. Inhuman Treatment of Alleged Lepers in Shetland’ 1736.

³ Scott, *Fasti Ecclesiae Scoticae*, 7:283.

⁴ Mill, *The Diary of the Rev. John Mill*, 4.

⁵ *Ibid.*, 7–8.

⁶ *Ibid.*

⁷ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 21.

⁸ Mill, *The Diary of the Rev. John Mill*, 30–31.

⁹ *Ibid.*, 79–80.

¹⁰ *Ibid.*, 87.

¹¹ *Ibid.*, 91.

¹² SA, CH2/112/1, ‘Dunrossness Kirk Session Minutes, 1764-1841’, fol. 57.

¹³ *Ibid.*

Scotland, viz. Mr. James Haldane and Mr. Wm. Innes came here July 1st, who preached to a crowded congregation at **the manse** upon a very short advertisement.”¹ A kirkyard, the open air, a booth, a tent and a manse were all used as places of worship. The kirk sessions might also have met up there. When we consider the case of the “booth” where John Mill preached before the church of Sandwick was erected, it is possible, even if it’s not plainly recorded in the minutes’ book, that this is where the kirk session met on March 9th 1755 when the “Minr. Preached Psalm 30th verse 5 Colld. [obscured] Session met and constitute by prayer”² or on October 26th when “The Minr. lectured Luke 19 from 7 to 10 verse. Collected 6 pence. The said day Session met and constitute by prayer”.³ Before 1764, there are other instances in the minutes’ book where the session met in a non-specified location after the Minister’s sermon. It is possible that they met up at the booth. The localisation of this booth is unknown. It belonged probably to a parochial heritor who lent it to John Mill when the church was in ruins.

When the bailie courts were abolished, there was only one remaining lay court: the Sheriff Court. The court met in Lerwick at the Tolbooth. The centralisation of the court meant a narrower access to judicial process for the bulk of Shetland’s society. Nevertheless, it should be noted here that the Tolbooth wasn’t the only place where the Sheriff Court exerted its judicial powers. First of all, there were some circuit courts. Between 1787 and 1791, the court left Lerwick at least three times in order to hold court at Tingwall, South Laxfirth and Scalloway.⁴ The Sheriff Court could also enforce its announcements or its penalties in the parishes. After the service, the minister could read a petition or any other kind of judicial documents. Copies of warrant or interlocutor could be affixed on the church’s doors or on another remarkable building’s doors such as on the castle gate of Scalloway.⁵ Eventually, the Sheriff Court could locally enforce its penalty. In 1772, directions were given to “John Mowat Sherriff Officer”.⁶ He had “to conduct to Midyell [James Simpson prisoner], & see the Sentence of the Sheriff Court execute upon him viz. that he receive sixteen lashes on his bare back by the hands of the Dempster at the Church of Midyell”.⁷ It was further added that “[John Mowat Sheriff Officer] must observe that [James Simpson prisoner] be not whipped

¹ Mill, *The Diary of the Rev. John Mill*, 118.

² SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 2.

³ *Ibid.*, fol. 3.

⁴ SA, SC12/6/1787/30, ‘Petition (for Damages Caused by Defender’s Sheep Dog.) (Criminal)’; SA, SC12/6/1790/50, ‘Petition (Concerning Swine on the Scattald of Haryilie.)’; SA, SC12/6/1791/3, ‘Minutes of Itinerant Court Held at Scalloway. Contains Following List of Heads of Families [...]’.

⁵ SA, SC12/6/1791/31, ‘Petition (against Swine.)’, 1791.

⁶ SA, SC12/6/1772/17, ‘Indictment (Sheepstealing). (Criminal)’, pt. 3.

⁷ *Ibid.*

till the day after his arrival at Midyell, & not before 12 o’Clock, that people in the neighbourhood may attend the Execution of the Sentence”.¹ This case exposes the possibilities for the Sheriff Court to assert its coercive power and to show its strength locally. In this case of sheepstealing, the violent expression of the judicial power was both an expression of the immorality and seriousness of the crime of sheepstealing in the Scottish society and an expression of the strength of the court and its capacities to make people pay for their crime.

Sheriff Court		Lerwick
<i>Itinerant court (examples)</i>		
Tingwall	06/02/1787	SC12/6/1787/30
South Laxfirth	30/12/1790	SC12/6/1790/50
Scalloway	10/01/1791	SC12/6/1791/3
<i>Places of justice (examples)</i>		
Church of Midyell	to receive sixteen lashes	SC12/6/1772/17
Through the town of Lerwick	due advertisement	SC12/6/1791/31
Church Doors of Lerwick and Tingwall	due advertisement	SC12/6/1791/31
Church doors and castle gate of Scalloway	interlocutor to be affixed	SC12/6/1791/31
Town house door of Lerwick	copies of warrant and deliverance	SC12/6/1791/31
Church of Northmavine	the Petition and this deliverance to be publicly read three several Sundays immediately after divine Service, and before dismissing of the Congregation	SC12/6/1794/16
Church doors of Lerwick and Cunningsburgh or Sandwick	Petition and Interlocutor to be Read next Sabbath immediately after divine Service and before dismissing the Congregation	SC12/6/1795/60
Church doors of Yell	the Petition and this Deliverance to be read Publicly immediately after Divine Service & before dismissing the Congregation	SC12/6/1796/20
Hamnavoe Church	Read 10 July 1796	SC12/6/1796/20
Church of Fetlar	for reading the said Petition and Deliverance immediately after divine Service and before dismissing the Congregation & Execution to be Reclaimed accordingly	SC12/6/1798/22
Kirk of Fetlar	The writhin petition and deliverance thereupon was read before the Congregation for the Time Conveend by Ja[me]s Gordon	SC12/6/1798/22

Table 44: Sheriff Court: places of justice

The kirks appear to have played a crucial part in organising the territory and offering places of justice: they were the only communal building that offered parochially enough room to sit a large assembly of people, to inform them or to gather them. In 1769, twelve witnesses in a process between the William Mitchell, minister of Tingwall and James Halcrow in Burra were all assembled in the Church of Lerwick to testify.² Furthermore, the vast majority of

¹ Ibid.

² SA, SC12/6/1769/1, ‘Criminal Libel (for Killing Petitioner’s Animals, Breaking into the Manse and Slandering Petitioner, Writing to Petitioner a Note Threatening to Secure His Dismissal from the Office of Minister, and Stirring up the People against the Petitioner.) (Criminal)’, sec. 8.

Shetlanders attended church on a regular basis: announcements affixed on the kirk door could be read by numerous parishioners – at least those who knew how to read.

Places of justice contributed to shape the territoriality of a court. Another aspect of this territoriality was the territorial jurisdiction of the court agents such as the Rancelmen and the Elders. Rancelmen and Elders appear in various court records. These punctual appearances make it difficult to map their territorial footprint. Nevertheless, several lists of appointments exist. The men appointed on these lists might have never played their part on the territory. However, these lists show how the Sheriff Substitute or the Ministers imagine the territory in question to be locally administered. In the following tables and maps, the townships of the Rancelmen of Unst and of the Elders of Dunrossness, Sandwick and Cunningsburgh, and Northmavine have been located. Only full lists of names and townships were used. The Ministers or the Sheriff Substitute wrote down these lists when they wanted to change or appoint again all their police force.

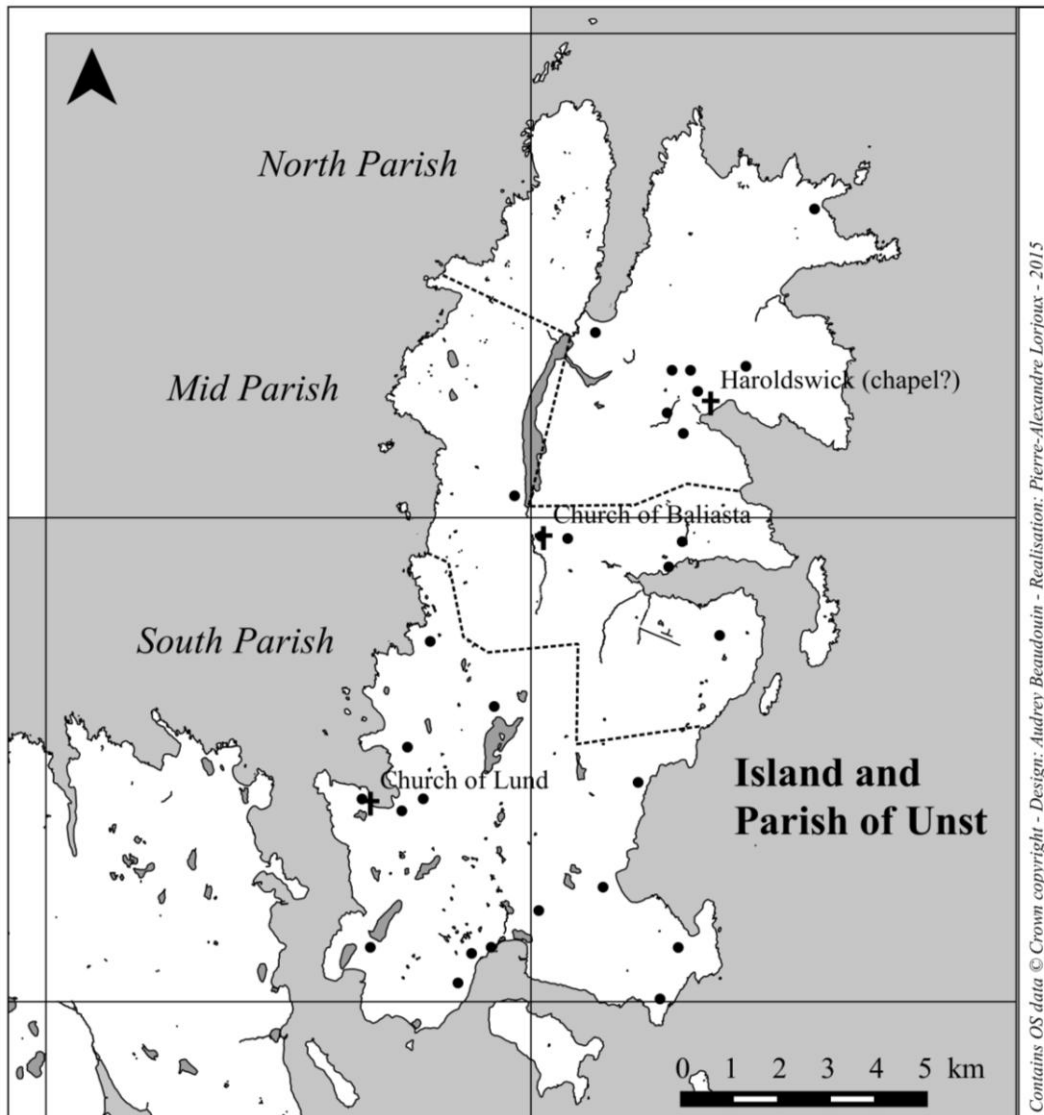
The only lists of appointment of Rancelmen, and Lawrightmen, recorded to this day concern the island and parish of Unst. In 1772 and 1802 the Sheriff Substitutes of Shetland, William Balfour and Walter Scott, appointed Rancelmen on the island of Unst. They did it because they “[took] into consideration that the several abuses non complained of as well as acts of petty theft & other crimes, may be prevented at least detected by the appointment of Lawrightmen and Ranselmen properly qualified as was the constant practice of this Country in times past”¹ and in these documents, the Sheriff Substitutes underlined the importance of the Country Acts in the Rancelmen’s administration of justice.

¹ NAS, RH9/15/157/5, ‘Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselmen in the Island of Unst’.

Forename	Surname	Township	Old parochial division	Scattald
James	Gray	Valsgarth	North Unst	Clibberswick
Lawrence	Erasmuson	Houll	North Unst	Clibberswick
Lawrence	Robertson	Grieggarth	North Unst	Haroldswick
Nicol	Johnston	Houston	North Unst	Haroldswick
James	Bruce	Tipton	North Unst	Ungirsta
Andrew	Bruce	Ungersta	North Unst	Ungirsta
John	Spence	Burrafirth	North Unst	Burrafirth
Andrew	Manson	Ska	North Unst	Skaw
James	Erasmuson	Hundigarth	Mid Unst	Baliasta
James	Abernethe	Deal	Mid Unst	Baliasta
Magnus	Henderson	Buness	Mid Unst	Baliasta
James	Robertson	Houllan	Mid Unst	Baliasta
Peter	Lawrenceson	Scraveled	Mid Unst	Baliasta
John	Sutherland	Scerpo	Mid Unst	South the Voe
Thomas	Smith	Setter	South Unst	Caldback
Lawrence	Isbuster	Vinstrick	South Unst	Underhoull
Alexander	More	Underhoull	South Unst	Underhoull
Andrew	More	Underhoull	South Unst	Underhoull
Thomas	Anderson	Wedbuster	South Unst	Wadbister
James	Rendal	Gardie	South Unst	Sound/Shore
Edward	Scollay	Clepragarth	South Unst	Sound/Shore
Thomas	Arthurson	Uyeasound	South Unst	Uyea, Murrister/Clivocast
James	Ogilvy	Ramnagoe	South Unst	Muness
Magnus	Windwick	Sandwick	South Unst	Sandwick & Framgord
Lawrence	Mowat	Colvadale	South Unst	Colvadale
Thomas	Nisbet	Colvadale	South Unst	Colvadale
Alexander	Fordia	Vigga	South Unst	Week
Alexander	Jameson	Houlnon	South Unst	Collaster/Sellasetter
James	Sinclair	Colvester	South Unst	Collaster/Sellasetter
John	Robertson	Muness	South Unst	Muness
William	Windwick	Hoversta	South Unst	Hoversta & Mailand

NAS, RH9/15/157/5. 'Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselmen in the Island of Unst', 1772. Knox, Susan. *The Making of the Shetland Landscape*. John Donald Publishers Ltd., 2003, 195.

Table 45: Rancelmen: Unst, 1772



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- Rancelmen and Lawrightmen appointed in 1772
- † Churches

Source: NAS, RH9/15/157/5, 'Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselmen in the Island of Unst, 1772.'

Map 12: Rancelmen and Lawrightmen: Unst, 1772

The Rancelmen and Lawrightmen of Unst were appointed following the old parochial division of Unst, already used at the bailie court in the first half of the 18th century. This confirms the links between ecclesiastical division and the administration of lay justice.

Forename	Surname	Township	Scattald	Scat paid in common in 1772
James	Rad	Eneffirth	Hamar (on the boundary with Nibon & Gunnister)	Hammer Scattald: common scat
Andrew	Williamson	Olnessfirth	Hamar	Hammer Scattald: common scat
Christopher	Tulloch	Steness	Eshanness	
Andrew	Williamson	Brewick	Murrion/Braewick	
Gilbert	Williamson	Ocran	Ura	
Arthur	Robertson	Asseter	Ura	
James	Halcrow	Sandwick	Hillswick (and Ness of Hillswick)	Hillswick Scattald: common scat
Magnus	Manson	Fineland	Hillswick (and Ness of Hillswick)	Hillswick Scattald: common scat
Andrew	Williamson	Mangeseter	Hagrister & Mangaster	
Arthur	Johnson	Sulim	Sullom	
Gilbert	Portious	Turvester	Gluss & Bardister	
John	Nicolson	Coloquy	Gluss & Bardister	
Alexander	Williamson	Voe	Collafirth & Ollaberry	Roomsveo Scattald: common scat
John	Manson	Oxnaseter	Collafirth & Ollaberry	Roomsveo Scattald: common scat
Magnus	Stove	Sandvo	North Roe	common scat
Laurence	Coplin	Oya	North Roe	common scat
Andrew	Henderson	Howlland	Skea	Houlland Scattald: common scat

SA, CH2/286/2. 'Northmavine Kirk Session Minutes', 1765-1834, fol. 1.
Knox, Susan. *The Making of the Shetland Landscape*. Edinburgh: John Donald Publishers Ltd., 2003, 195.
NAS, RH4/102. 'Rental of Lordship of Shetland', 1772, fol. 17-19.

Table 46: Elders: Northmavine, 1765

Forename	Surname	Diet	Scattald	Number of communicants/inhabitants (extrapolated) in the diets in 1749	Extrapolation for 1791 based on a constant and equal growth of the different diets	Police ratio
James	Lisk	Bigton	Channerwick	32/94	125	42
John	Anderson	Bigton	Channerwick			
James	Gadie	Bigton	Channerwick			
James	Laurenceson	Rerwick	Scousburgh	15/44	59	29
Thomas	Brown	Rerwick	Scousburgh			
Walter	Henry	Scousburgh	Scousburgh	32-94	125	42
Walter	Colvine	Scousburgh	Scousburgh			
Robert	Ollason	Scousburgh	Scousburgh			
William	Stout	Scatness	Scatness	25/73	98	49
John	Aiken	Scatness	Scatness			
Thomas	Mainland	Scotshall	Quendale Estate	37/109	145	72
William	Aiken	Scotshall	Quendale Estate			
John	Strong	Tolob	Quendale Estate	38/112	149	74
John	Lesslie youngest	Tolob	Quendale Estate			
James	Mainland	Garth	Quendale Estate	42/123	164	55
John	Lesslie [younger]	Garth	Quendale Estate			
Magnus	Irvine	Garth	Quendale Estate			
John	Lesslie	Lud	Quendale Estate	45/132	176	88
John	Stout	Lud	Quendale Estate			
John	Arcus	Hillwell	Quendale Estate	36/106	141	70
Robert	Halcrow	Hillwell	Quendale Estate			
Alexander	Scott	South voe	Quendale Estate	13/38	51	17
Alexander	Aiken	South voe	Quendale Estate			
Nicol	Halcrow	South voe	Quendale Estate			
George	Williamson	Ringasta	Quendale Estate	22/65	86	29
Gawn	Black	Ringasta	Quendale Estate			
John	Lesslie	Ringasta	Quendale Estate			
Henry	Sinclair	Simblester	Fitful Head?	44/129	172	86
John	Malcomson	Simblester	Fitful Head?			
Henry	Sinclair	Skelberry	South Hill	42/123	164	55
Robert	Sinclair	Skelberry	South Hill			
Thomas	Black	Skelberry	South Hill			
Gawn	Gadie	Clumley	Clumlie	33/97	129	65
Thomas	Black	Clumley	Clumlie		Average & Median:	55

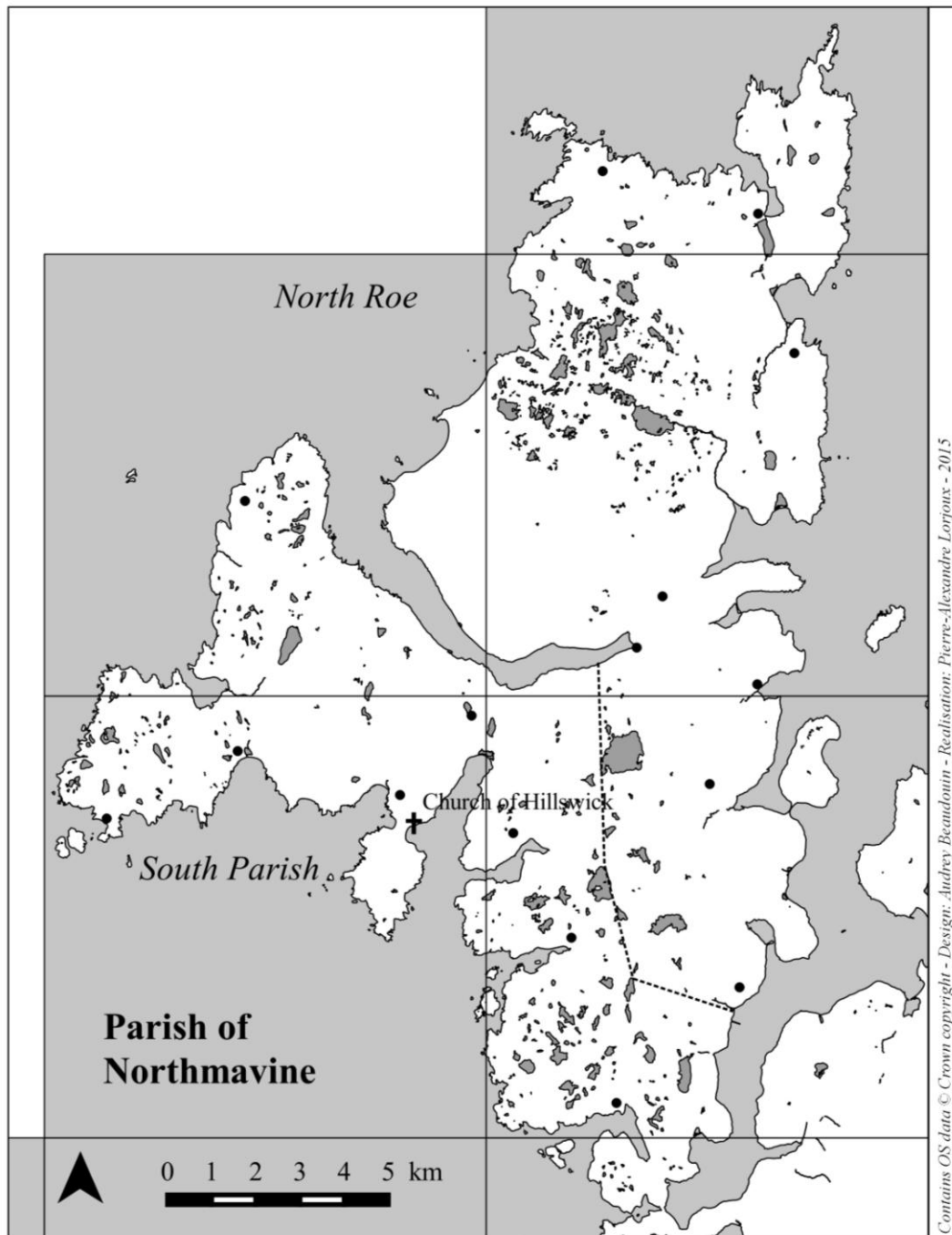
SA, CH2/112/1. 'Dunrossness Kirk Session Minutes', 1764-1841, fol. 59.
Knox, Susan. *The Making of the Shetland Landscape*. Edinburgh: John Donald Publishers Ltd., 2003, 196.
SA, D8/78. 'Notebook of the Reverend John Mill: (b) Number and Names of Communicants in Dunrossness Ministry in 1749', 1743-1749.
Mill, John. 'Parish of Dunrossness in Zetland.' In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 7:394-395.
Accessed 23 November 2011. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Dunrossness/>.

Table 47: Elders: Dunrossness, 1791

Forename	Surname	Township	Scattald
Laurence	Halcrow	Fladabester	Fladdabister
Laurence	Bean	Fladabester	Fladdabister
Laurence	Jamison	Aithseter	North Cunningsburgh
Thomas	Halcrow	Culbinsgirth	North Cunningsburgh
John	Robertson	Scarpagirth	South Cunningsburgh
Laurence	Smith	Vaggirth	South Cunningsburgh
William	Manson	Setter	Sandwick & Leebotten
James	Smith	Leabitn	Sandwick & Leebotten
John	Leask	Sand	Sandwick & Leebotten
Walter	Johnson	Sandwick	Sandwick & Leebotten
Thomas	Black	Hulland	Sandwick & Leebotten
John	Youngclause	Comlawick	Sandwick & Leebotten
James	Youngclause	Comlawick	Sandwick & Leebotten
Nicol	Halcrow	Stove	Sandwick & Leebotten
George	Stout	Hoswick	Hoswick
Nicol	Smith	Mawick	Hoswick
James	Jeamson	Channerwick	Channerwick
James	Thomason	Channerwick	Channerwick
Laurence	Galdie	Willimseter	Channerwick
Malcom	Leaks	Ireland	Channerwick
Alexander	Mouat	Levenwick	Levenwick

SA, CH2/325/1. 'Sandwick and Cunningsburgh Kirk Session Minutes', 1755-1842, fol. 62.
Knox, Susan. *The Making of the Shetland Landscape*. Edinburgh: John Donald Publishers Ltd., 2003, 196.

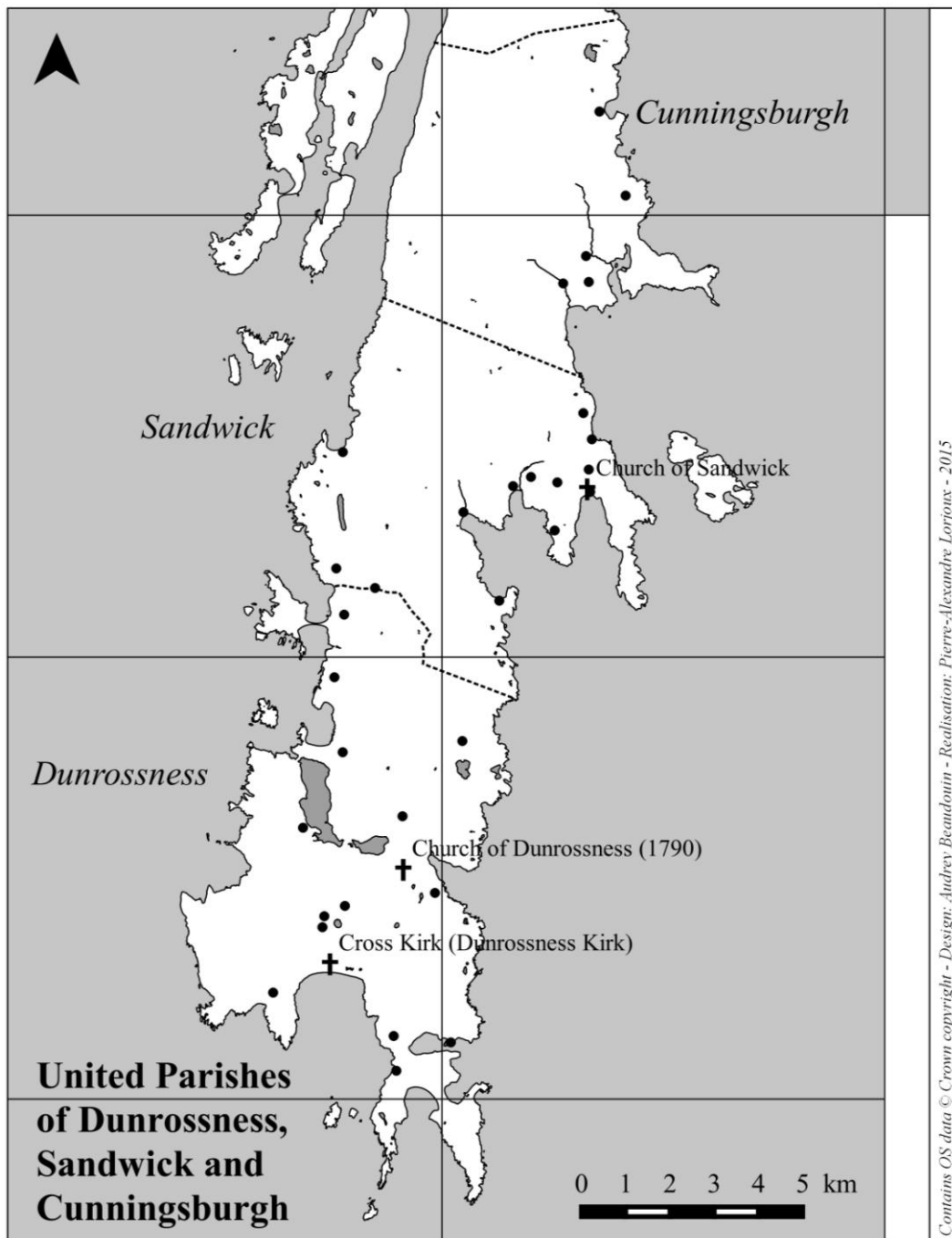
Table 48: Elders: Sandwick and Cunningsburgh, 1791



- Elders of Northmavine appointed in 1765
- † Churches

Source: SA, CH2/286/2. 'Northmavine Kirk Session Minutes, 1765-1834', f. 1.

Map 13: Elders: Northmavine, 1765



- Elders of Dunrossness appointed in 1791
- † Churches

Source: SA, CH2/112/1. 'Dunrossness Kirk Session Minutes, 1764-1841', f. 59; SA, CH2/325/1. 'Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842', f. 62.

Map 14: Elders: Dunrossness, Sandwick and Cunningsburgh, 1791

Similarly to the Rancelmen of Unst, the Elders of Northmavine, Dunrossness, Sandwick and Cunningsburgh covered evenly the territory. Their townships were scattered all around the parish and followed the pattern of arable land distribution and population density. Indeed, in Northmavine, the minister appointed Elders in the north of the parish at Uyea and in the south at Mangester, in the west at Steness and Okran and in the east at Collaquay and Sullom. In

Sandwick and Cunningsburgh, John Mill appointed Elders from the north-east in Fladdabister to the south-west in Ireland. In Dunrossness, John Mill appointed Elders from Bigton in the north-west to Scatness in the south of the parish. Unfortunately, there isn't any consistent election list of Elders for the parish of Unst. In Dunrossness, the minister appointed Elders by 'diet' instead of township or room. The diet was a smaller district than the quarter where the minister would examine the residents as to their religious knowledge.¹ The map of the Elders of Dunrossness doesn't show their township of residence but rather the diet where they lived. For example, the diet of Skelberry contained the room or township of Skelberry, Lunabister, Bremyre, Delster, Dealsbreak, Outvoe and Bodom.² This, however, doesn't prevent the map to show an interesting territorial and cartographical representation of the Elders' jurisdiction.

When looking at the election of Elders especially in the parish of Northmavine, one thing is striking: the links between Elders' jurisdiction and scattalds. In her book, *The Making of the Shetland Landscape*, Susan Knox explains that in the parish of Northmavine, there were 13 scattalds which boundaries "were acquired from a map done for the Busta estate by the factor, Arthur White, on an 1877 Ordnance Survey six-inch map and revised to 1902".³ Furthermore, she noted that Thomas Gifford of Busta created the Scattald of the Ness of Hillswick sometime after 1822 and prior to 1830, separating it from the Scattald of Hillswick.⁴ This is why, it won't be considered in the following analysis as it dates back only from the 1820s. Therefore, only 12 scattalds probably existed in the 18th century. They appear, from north to south, in the following table.

¹ 'Diet N.²', *Dictionary of the Scots Language* (Scottish Language Dictionaries Ltd., 2004), http://www.dsl.ac.uk/entry/snd/diet_n2.

² SA, D8/78, 'Notebook of the Reverend John Mill: (B) Number and Names of Communicants in Dunrossness Ministry in 1749' 1749 1743.

³ Susan Knox, *The Making of the Shetland Landscape* (Edinburgh: John Donald Publishers Ltd., 2003), 212.

⁴ *Ibid.*, 214.

Susan Knox's key	Scattalds in Northmavine (from north to south)	Nb of Elders elected in 1765
47	North Roe	2
48	Skea	1
49	Collafirth & Ollaberry	2
50	Gluss & Bardister	2
51	Sullom	1
52	Hagrister & Mangaster	1
53	Nibon & Grunnister	0
54	Hamar	2
55	Ura	2
56-57	Hillswick (and Ness of Hillswick)	2
58	Murrion/Braewick	1
59	Eshaness	1

Knox, Susan. *The Making of the Shetland Landscape*. Edinburgh: John Donald Publishers Ltd., 2003, 195. SA, CH2/286/2. 'Northmavine Kirk Session Minutes', 1765-1834, fol. 1.

Table 49: Scattalds: Northmavine

This link between the appointment of Elders or Rancelmen and scattalds doesn't appear in plain sight in the sources. The ministers or the Sheriff Substitutes didn't explain that they appointed Elders and Rancelmen conform to the scattalds' division. They wrote that they appointed Elders and Rancelmen conform to diet and old parochial division, i.e. conform to ecclesiastical divisions. However, Northmavine example is very interesting. Each scattald, with the exception of the scattald of Nibon and Gunnister which might be represented by the Elder James Rad living in Ennisfirth, was represented by one or two Elders. The scattalds were, at the micro-level, a strong organisational tool. They structured the landscape and the social and cultural life of the inhabitants. Therefore it is not surprising to see that the appointed Elders came from where the people lived, worked and coerced together. The scattald was a daily, highly-functioning socio-economical and socio-cultural division. Therefore, we could consider that even unconsciously the minister of Northmavine used these divisions to select and elect Elders who were involved in their local district, the scattald, in other collective tasks such as paying the scat together.

Unst and Northmavine have approximatively the same surface but when Northmavine counts 12 scattalds in the 18th century, Unst counts 24 of them. Some of these scattalds were extremely small in extent and could consist of only one township. In the case of the appointment of the Rancelmen in Unst, even though some of the scattalds seemed to have been rancelman-free, this doesn't mean that the rancelmen from the neighbouring scattalds didn't play a police role there as well, especially since the map of the scattalds provided by Susan Knox isn't a map of all the scattalds existing at the same time, it is a map of all the scattalds that existed in Shetland at some point through the early modern period. The appointment of Elders in the parish of Dunrossness, Sandwick and Cunningsburgh followed the same pattern. The demography counted as well. More Elders were appointed in the more

populous diets, for example those located on the vast estate of Quendale, when the Minister didn't appoint any Elders on the scarcely populated area of Clift Hills.

Susan Knox's key	Scattalds in Unst (from north to south)	Nb of Rancelmen appointed in 1772
1	Skaw	1
2	Norwick	0
3	Ungirsta	2
4	Burrafirth	1
5	Queyhouse	0
6	Cliff	0
7	Haroldswick	2
8	Clibberswick	2
9	Baliasta	5
10	South the Voe	1
11	Caldback	1
12	Collaster/Sellasetter	2
13	Underhoull	3
14	Wick	1
15	Colvadale	2
16	Sandwick & Framgord	1
17	Muness	2
18	Uyea, Murrister/Clivocast	1
19	Hoversta & Mailand	1
20	Sound/Shore	2
21	Snabrough	0
22	Snarravoe	0
23	Wadbister	1
24	Heogaland	0

Knox, Susan. *The Making of the Shetland Landscape*. Edinburgh: John Donald Publishers Ltd., 2003, 195.
 NAS, RH9/15/157/5. 'Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselmen in the Island of Unst', 1772.

Table 50: Scattalds: Unst

Susan Knox's key	Scattalds in Dunrossness (from north to south)	Nb of Elders elected in 1791
121	Channerwick	3
123	Scousburgh	5
124	Clumlie	2
125	South Hill	3
126	Fitfull Head	2
127	Scatness	2
Q	Quendale Estate	17

Knox, Susan. *The Making of the Shetland Landscape*. Edinburgh: John Donald Publishers Ltd., 2003, 196.
 SA, CH2/112/1. 'Dunrossness Kirk Session Minutes', 1764-1841, fol. 59.

Table 51: Scattalds: Dunrossness

Susan Knox's key	Scattalds in Sandwick and Cunningsburgh (from north to south)	Nb of Elders elected in 1791
115	Fladdabister	2
116	North Cunningsburgh	2
117	South Cunningsburgh	2
118	Clift Hills	0
119	Sandwick & Leebotten	8
120	Hoswick	2
121	Channerwick	2
122	Levenwick	1

Knox, Susan. *The Making of the Shetland Landscape*. Edinburgh: John Donald Publishers Ltd., 2003, 196. SA, CH2/325/1. 'Sandwick and Cunningsburgh Kirk Session Minutes', 1755-1842, fol. 62.

Table 52: Scattalds: Sandwick and Cunningsburgh

With the exception of the 1749's list of communicants of the united parishes of Dunrossness, Sandwick and Cunningsburgh,¹ there aren't any list or census of inhabitants as detailed, before the 19th century. Therefore it is difficult to know how many men and women are under the surveillance of an Elder or of a Rancelman. An approximate figure is reached in using the data in the Old Statistical Accounts and the numbers of appointed Rancelmen and Elders in the previously quoted lists. The following table shows that the "police" ratio in these three parishes was around 1/60 in the second half of the 18th century: there was one Elder or one Rancelman for about 60 inhabitants. A closer look at the communicants' list of Dunrossness, Sandwick and Cunningsburgh for 1749 shows that there might have been disparities between the administration of local police in the different diets ranging from one elder for 29 persons to one for 88.² However, on the parish level which was the level of the kirk session the median and the average were of one elder for 55 persons.

Parish	Date	Rancelmen or Elders	Number	Number of inhabitants in the parish in the same decade	"Police" ratio
Dunrossness, Sandwick and Cunningsburgh	1791	Elders	55	3,327	1/60
Northmavine	1765	Elders	17	1,109	1/65
Unst	1772	Rancelmen	31	1,853	1/59

SA, CH2/112/1. 'Dunrossness Kirk Session Minutes', 1764-1841, fol. 59.
SA, CH2/286/2. 'Northmavine Kirk Session Minutes', 1765-1834, fol. 1.
SA, CH2/325/1. 'Sandwick and Cunningsburgh Kirk Session Minutes', 1755-1842, fol. 62.
NAS, RH9/15/157/5. 'Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Ranselman in the Island of Unst', 1772.
Jack, William. 'Parish of Northmaven'. In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 12:355. Accessed 1 December 2011. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Northmaving/>.
Mill, John. 'Parish of Dunrossness in Zetland'. In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 7:394-395. Accessed 23 November 2011. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Dunrossness/>.
Mouat, Thomas, and James Barclay. 'Island and Parish of Unst in Shetland'. In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 12:199. Accessed 27 September 2012. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Unst/>.

Table 53: Police ratio: Dunrossness, Northmavine and Unst

¹ SA, D8/78, 'Notebook of the Reverend John Mill: (B) Number and Names of Communicants in Dunrossness Ministry in 1749'.

² Ibid.

Elders and Rancelmen, when appointed, covered evenly the territory of their jurisdiction. Theoretically, the territory was harmoniously regulated with the help of these agents of Kirk and courts. It indicates that the Sheriff Substitutes and the ministers had a good geographical knowledge and a good demographical perception of their territory and of the inhabitants of their jurisdiction.

The court in its temporality

One way to know more about the practical aspects of the courts and its ties with the local communities is to look at when the courts were held and when their agents read the local by-laws.

The double role of the Kirk, both as a place for prayers and a place for justice, was perceptible in its calendar. At Kirk, the minister preached, more or less regularly, and the clerk of the Kirk Session could record these sermons, their dates and the lectured texts along the minutes of the Session but they didn't always do it. In Dunrossness, Sandwick and Cunningsburgh and in Northmavine, the clerk recorded the lectured texts as well as the dates of the services while in Unst, he didn't: he recorded only the dates and contents of the Kirk Session's meetings as well as the dates of the reappearance before the congregation of a judged party. I believe that similarly to the habits in Dunrossness and in Northmavine and in the rest of Scotland, the Session met in Unst most of the time after service. But, how many times in a year did a minister preach before his flock? When did the kirk session meet? The preciseness of the kirk sessions' minutes enables to set up a calendar for a given year. The given year has been chosen for each parish as it is one year with minimal service interruption and with consistent records between January and December of the same year. The following calendar shows the dates of service and kirk session's meeting for the united parishes of Dunrossness, Sandwick and Cunningsburgh in 1768, for Northmavine in 1758 and for Unst in 1725.¹ In 1768, Rev. John Mill, the minister of Dunrossness, Sandwick and Cunningsburgh, preached 38 times in Dunrossness and the Kirk Session met nine times. Nothing happened in June: there weren't any sermons or kirk sessions recorded while in July and August, Rev. John Mill preached eight times in a row and the Session met three times. In Sandwick and Cunningsburgh, the same Rev. John Mill preached 19 times in 1768 and the Kirk Session met five times. Again, the months of July and August were extremely busy. Rev. John Mill sometimes preached on

¹ SA, CH2/112/1, 'Dunrossness Kirk Session Minutes, 1764-1841', fols 12-16; SA, CH2/325/1, 'Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842', fols 28-31; SA, CH2/286/1, 'Northmavine Kirk Session Minutes, 1729-1765', fols 5-7; SA, CH2/385/1, 'Unst Kirk Session Minutes, 1720-1739', 1739 1720, fols 24-29.

the same day in Dunrossness and in Sandwick and Cuningsburgh. The clerk wrote in the kirk session records that Rev. John Mill preached “forenoon at Cross Kirk of Dunrossness & afternoon Lectured at Sandwick”.¹ For the year 1768, the sermons were held quite regularly, almost every two weeks in each parish; only the storm impeded Rev. John Mill to preach. The Session met on a less regular basis, not even once a month. In Northmavine, Rev. William Gifford preached 29 times in 1758, almost twice every month when the Session only met five times in the whole year. Rev. John Hay, in Unst, preached 27 times in 1725 and the Session met 18 times. There weren’t any sermons or Kirk Kession’s meetings in June 1725. The Session met that year between once and twice a month: it had a proper regularity. This brief analysis of the calendar of four parochial Kirk Sessions through one year shows two things. First of all, in the second half of the 18th century, the Kirk Sessions of Dunrossness, Sandwick and Cunningsburgh and Northmavine met on an irregular basis, not even once a month but probably when it was necessary, for example, once an Elder had delated someone. These Sessions were reactive. Their localness enabled them to react fast. Secondly, in the first half of the 18th century, the Kirk Session of Unst met on a regular basis, from once to twice a month. In either form, in its reactivity or its regularity, the Kirk Session looked for efficiency and probably achieved it. There weren’t any reports of moral issues being neglected by the ministers and the Sessions.

¹ SA, CH2/112/1, ‘Dunrossness Kirk Session Minutes, 1764-1841’, fol. 14.

JANUARY					FEBRUARY					MARCH					APRIL					MAY					JUNE				
D	S	C	N	U	D	S	C	N	U	D	S	C	N	U	D	S	C	N	U	D	S	C	N	U	D	S	C	N	U
1					1					1	AA				1	P				1									
2					2					2					2				S	2									
3	P				3					3					3	P				3									
4					4					4					4				S	4			P						
5					5				P/S	5					5					5									
6					6				P	6	P				6					6									
7					7				P	7				S	7					7			P						
8				P	8					8					8	P/S				8									
9					9					9					9				P	9				S					
10	P				10					10					10	P/S				10									
11					11					11					11				P	11									
12					12				P	12				P	12					12									
13					13					13	P/S				13					13									
14					14	P				14				S	14					14									
15					15					15					15					15									
16					16					16					16				P/S	16			S						
17		P		S	17					17				P	17	P				17									
18					18	AA				18					18				S	18			P						
19					19					19					19					19									
20					20				P/S	20					20					20									
21					21	P				21				P	21					21			P						
22				P	22					22					22					22									
23					23					23					23					23			P						
24	P			P	24					24				P	24	P				24									
25					25					25				AA	25				P	25									
26					26				P	26				P	26					26			P						
27					27					27					27					27									
28					28				P/S	28				P	28					28									
29					29					29					29					29									
30					30					30					30					30									
31	P			S	31					31					31					31									

P: Minister preaches; S: Kirk Session meets; AA: Annual accounts; POM: A minister from another parish preaches

JULY					AUGUST					SEPTEMBER					OCTOBER					NOVEMBER					DECEMBER				
D	S	C	N	U	D	S	C	N	U	D	S	C	N	U	D	S	C	N	U	D	S	C	N	U	D	S	C	N	U
1					1					1					1					1					1				
2			P		2					2					2	P				2					2				
3	P			P	3					3			P		3					3					3				
4					4					4					4					4					4		P		
5					5					5					5					5					5				
6					6					6					6	AA				6		storm			6			S	
7					7	P	P		S	7					7					7					7				
8					8					8					8					8					8		P		
9					9					9					9		P			9					9				
10	P/S			S	10					10					10					10					10			P	
11					11					11	P	P			11					11					11	P			
12					12					12					12					12					12				
13					13				P	13					13					13		P			13				
14					14	P/S	P			14					14					14					14				
15					15					15					15			P/S		15					15			S	
16			P		16					16					16	P/S				16					16				
17		P/S			17					17				P	17					17					17				
18					18					18	P	P			18				S	18					18		storm		
19					19					19					19					19					19				
20					20					20					20					20		P			20				
21					21	P	P			21					21					21					21				
22					22					22	POM				22			P		22					22				
23					23					23					23	P				23					23				
24	P	P/S			24					24	POM				24					24					24			P/S	
25					25					25	P				25				S	25					25		storm		
26					26					26	POM				26					26			P		26				
27					27					27					27					27		P/S			27				
28					28	P	P			28					28					28					28				
29					29					29					29			P		29					29				
30					30					30					30		storm			30					30				
31	P/S	P			31					31					31					31					31			P	

Table 54: Kirk Sessions: Calendar

While the Kirk Sessions met after divine service on a more or less regular basis, the bailie courts met on specific periods during the year. Thomas Gifford explained in 1733 how the “country acts [...] are or should be read over twice in the year, at the bailiff-courts, when all the householders are present, at which two courts, being Martinmass and Whitsunday courts”.¹ If there had to be only two bailie courts held in the year in a given bailiery, the bailie courts had to happen around Whitsunday, on the 15th of May or around Martinmass, on the 11th of November. Whitsunday was one of the quarter-days in Scotland. It marked “the legal term of the first half of the year (corresponding to Martinmas in the second half), on which rent, interest, wages and accounts were payable in terms of an Act of 1693, [...] [o]wing to difficulties caused by the change of the calendar in 1752, fourteen days’ grace was allowed for occupiers of property to remove and enter”.² Martinmas was also recognised as one of the days for the hiring of servants.³ Here again, a completely different calendar of court characterised the bailie court of Dunrossness, Sandwick and Cunningsburgh. The bailie courts of Northmavine and Unst followed Thomas Gifford’s instructions: the bailie held court in the second half of May, at Whitsunday and on the following fourteen days, and around Martinmass, between mid-October and mid-November. On October 27 1732, the bailie of Unst held the “Martins[mas] Court 1732”⁴ and at the Whitsunday court of 1731, a servant was placed at the service of the Rev. John Hay “till Martinsmass next”.⁵ In Dunrossness, the bailie held court from the last days of January to the end of February, before and after Candlemas, on the 2nd of February. When the calendars of the bailie courts of Northmavine and Unst can be explained by the traditional term-days, the calendar of the bailie court of Dunrossness, Sandwick and Cunningsburgh, is explained using a calendar of the socio-economic activities of the archipelago or using what Susan Knox called for the 19th century, the “crofting cycle”.⁶ Indeed, between January and February, Shetland’s small landowners, tenants, subtenants and landless were at home, in the bailiery: they mostly participated in “cottage industry” and in “subsistence fishing”, their stock grazing “promiscuously” on the townland.⁷

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 47–48.

² ‘Whitsunday N.’, *Dictionary of the Scots Language* (Scottish Language Dictionaries Ltd., 2004), <http://www.dsl.ac.uk/entry/snd/whitsunday>.

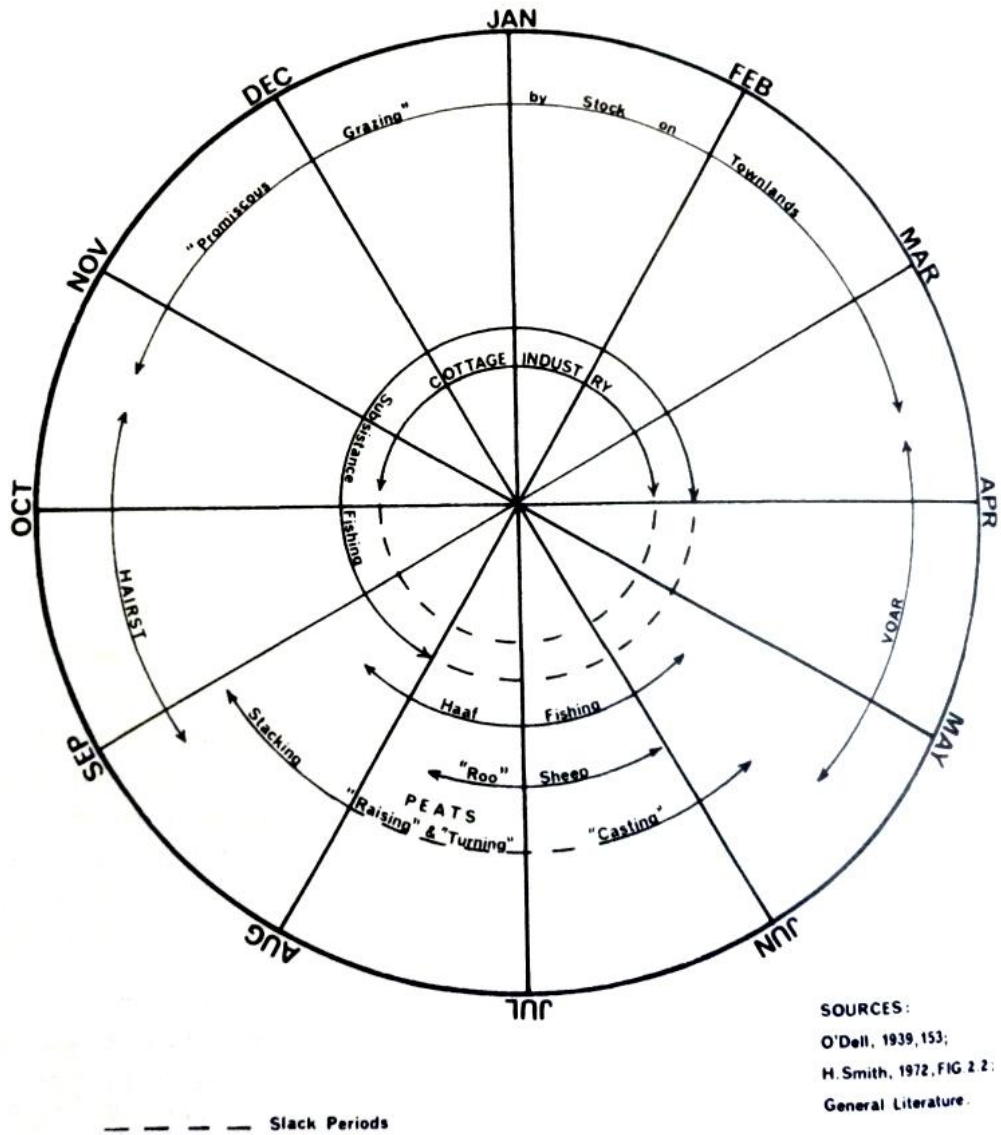
³ ‘Martinmas N.’, *Dictionary of the Scots Language* (Scottish Language Dictionaries Ltd., 2004), <http://www.dsl.ac.uk/entry/snd/martinmas>; Whyte, *Agriculture and Society in Seventeenth Century Scotland*, 39.

⁴ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 15.

⁵ *Ibid.*, fol. 9.

⁶ Knox, *The Making of the Shetland Landscape*, 12.

⁷ *Ibid.*

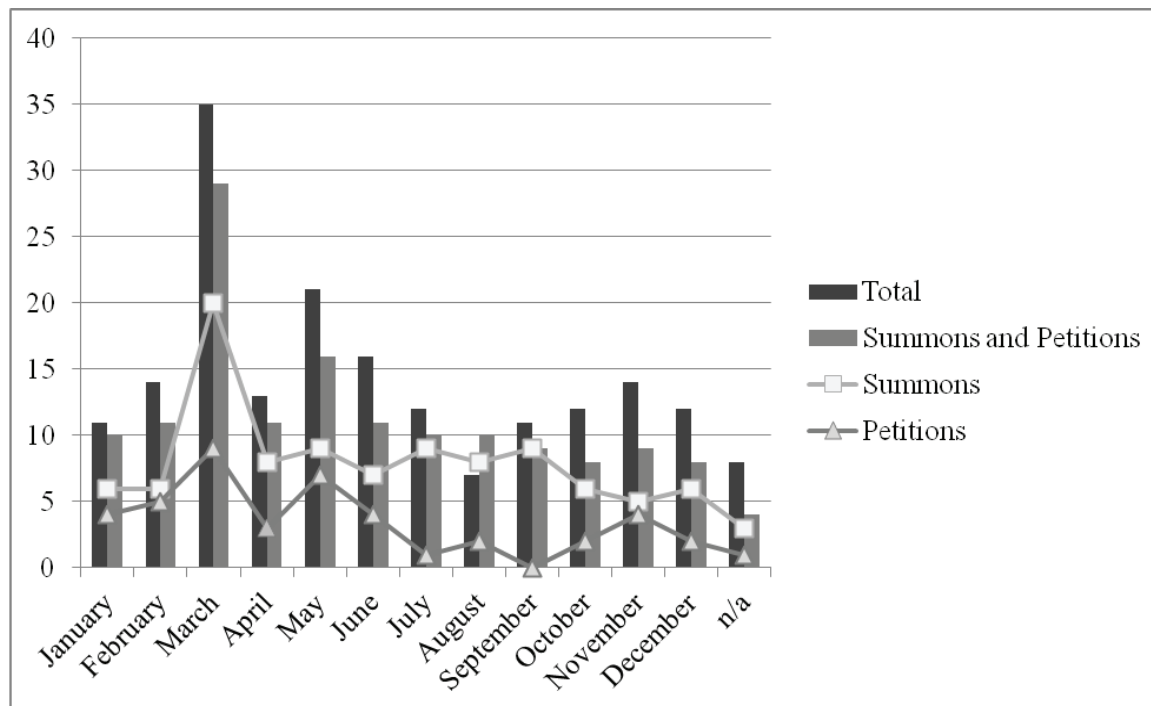


Knox, Susan. *The Making of the Shetland Landscape*. Edinburgh: John Donald Publishers Ltd., 2003, 12.
Table 55: Crofting Cycle

JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	
1	1	1	1	1 Beltane	1	1	1 Lammas	1	1	1	1	Dunrossness
2	2 Candlemas	2	2	2	2	2	2	2	2	2	2	Northmavine
3	3	3	3	3	3	3	3	3	3	3	3	Unst
4	4	4	4	4	4	4	4	4	4	4	4	SC: Sheriff Court
5	5	5	5	5	5	5	5	5	5	5	5	quarter-days and term-days/bailie courts
6	6 SC: Country Acts	6	6	6	6	6	6	6	6	6	6	
7	7	7	7	7	7	7	7	7	7	7	7	
8	8	8	8	8	8	8	8	8	8	8	8	
9	9	9	9	9	9	9	9	9	9	9	9	
10	10 Country Acts	10	10	10	10	10	10	10	10	10	10	
11	11	11	11	11	11	11	11	11	11	11 Martinmas SC: Country Acts	11	
12	12	12	12	12	12	12	12	12	12	12	12	
13	13	13	13	13	13	13	13	13	13	13	13	
14	14	14	14	14	14	14	14	14	14	14	14	
15	15	15	15	15 Whitsunday	15	15	15	15	15	15	15	
16	16	16	16	16	16	16	16	16	16	16	16	
17	17	17	17	17	17	17	17	17	17	17	17	
18	18 Country Acts	18	18	18	18	18	18	18	18	18	18	
19	19	19	19	19	19	19	19	19	19	19	19	
20	20	20	20	20	20	20	20	20	20	20	20	
21	21	21	21	21	21	21	21	21	21	21	21	
22	22	22	22	22	22	22	22	22	22	22	22	
23 Country Acts	23	23	23	23	23	23	23	23	23	23	23	
24	24	24	24	24 Country Acts	24	24	24	24	24	24	24	
25	25	25	25	25	25	25	25	25	25	25	25	
26	26	26	26	26	26	26	26	26	26	26	26	
27	27	27	27	27	27	27	27	27	27 Country Acts	27	27	
28	28	28	28	28	28	28	28	28	28	28	28	
29	29	29	29	29	29	29	29	29	29	29	29	
30 Country Acts	30	30	30	30 Country Acts	30	30	30	30	30	30	30	
31	31	31	31	31	31	31	31	31	31	31	31	

Table 56: bailie courts: Calendar

The calendar of the Sheriff Court uses both divisions of the year: the division in term-days with Whitsunday and Martinmas, and the socio-economic division. A graph representing the number of processes initiated in a month between 1770 and 1779 highlights the use of this double calendar.



SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1900.

Graph 4: Sheriff Court: Processes per month, 1770-1779

The Sheriff Court had a low activity in the month of April which corresponded to seedtime, known as *voar* in Shetland. During seedtime, men were kept busy at the farm and any judicial activity prevented them to successfully take care of their crops. In 1769, James Halcrow in Burra, defender in a process against Rev. William Mitchell, minister of Tingwall, explained that “as the Seid time is now com on and both the Defender and witnesses must be employed in Labouring for ther Bread and support of their Familys. May it Therefor pleas your Lordshipe to adjourn this affair untill some day in May next when the seed time will be over.”¹ The activity of the court was lower as well in the summer months, between June and August, when the men were at sea, fishing for their landlord and during the months of September and October when harvest, known as *hairst* in Shetland, took place. In 1799, John Bruce of Sumburgh petitioned the court in behalf of William, John and James Adamsons. He explained that at the beginning of September, “William, John and James Adamsons were apprehended at

¹ SA, SC12/6/1769/1, 'Criminal Libel (for Killing Petitioner's Animals, Breaking into the Manse and Slandering Petitioner, Writing to Petitioner a Note Threatening to Secure His Dismissal from the Office of Minister, and Stirring up the People against the Petitioner.) (Criminal)', pt. 5.

their dwelling house, [...] carried to Lerwick, & their incarcerated in the Tolbooth”.¹ This meant “[t]hat their whole summer fishing product are now left on their hands, are spoiling for want of their personal attendance to cure them, & at a time when almost all their neighbours have been enabled to deliver over theirs to their Merchants. That in like manner, their crops of hay (on which the few life stock they are possessed of depend) are destroyed for want of their attendance, & the season for cutting down their corns is fast approaching on them”.² When processes went on in the fishing season and at harvest time, the consequences for the defenders, sometimes imprisoned waiting to be judged, could be devastating. The court had its peak of activity in the month of March. Summons and petitions of removal caused this peak. In his book, *The Transformation of Rural Scotland*, Thomas Devine explains how “[i]n Scots law, each tenant who was to lose his lease had to receive a notice of removal”.³ Before 1756, the Act of Parliament of 1555 “Concerning the warning of tenants” stated that:

the warning of all tenants and others to flit and remove from lands, mills, fishings and possessions whatsoever shall be used in the following manner: that is to say, lawful warning being made at anytime within the year forty days before the feast of Whitsunday, either personally or at their dwelling places and at the ground of the lands, and one copy delivered to the wife or servants, and failing thereof to be affixed upon the gates or doors of the dwelling places of the said lands, if there are any, and thereafter the same precept of warning to be read in the parish kirk where the lands lie upon a Sunday before noon at the time of the high mass, and one copy left and affixed upon the most patent door of the kirk forty days before the term⁴

The Act of Sederunt of 1756 passed by the Court of Session detailed the new procedure:

[i]t shall be lawfull for an heritor, or other setter of a tack, in his option, either to use the order prescribed by the Act of Parliament, made in the year 1555, entitled *Act anent the warning of tenants*, and thereupon pursue a warning and ejection, or to bring his action of removing against the tenant before the Judge Ordinary: And such action being called before the Judge ordinary, at least forty days before the term of Whitsunday, shall be held as equal to a warning execute in terms of the said act⁵

With this new procedure, “[t]he summons of removal was granted by a petition before the Sheriff” at least 40 days before the 15th of May, Whitsunday, which meant that the court was very active in March processing the summons of removal in due time. The Sheriff Court followed both a local calendar based on the socio-economical activities of the archipelago and a national calendar based on the Scots law. This example shows, one more time, that Shetland

¹ SA, SC12/6/1799/40, ‘Petition Concerning Theft (Stealing Pursuer’s Hay and Insulting Him.)’, pt. 2.

² Ibid.

³ Devine, *The Transformation of Rural Scotland*, 113.

⁴ K. M. Brown and al., eds., ‘A1555/6/13: Concerning the Warning of Tenants, Chapter 12’, in *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007), <http://www.rps.ac.uk/trans/A1555/6/13>; Devine, *The Transformation of Rural Scotland*, 114.

⁵ William Alexander, ed., ‘14th December 1756: Act of Sederunt Anent Removing’, in *Abridgement of the Acts of Sederunt of the Lords of Council and Session: From the Institution of the College of Justice in May 1532 to the Present Time Including the Whole Acts Now in Force and Use with Notes and References* (Edinburgh: Adam & Charles Black, 1838), 77; Devine, *The Transformation of Rural Scotland*, 114.

Sheriff Court functioned in the same way that any other Sheriff Courts on the Scottish mainland.

During the year, an important event for the local communities had to be included in the calendar of the lay (and religious) courts: the reading of the local by-laws, the Country Acts. The studied corpus contains only two references to Country Acts' reading at the Sheriff Court but these two references shed light on this practice and complement the bailie courts' references. Indeed, in the context of the Sheriff Court, the Country Acts were read in two occasions: at "an Itinerant Sheriff Court held at Tingwall on the 6th February [1787] in presence of the Ranselmen Elders and many heads of families in the parish"¹ and in 1802, after the appointment of Ranselmen on the island of Unst, where "Thomas Mouat caused the said Country Acts to be read in audience of the persons assembled and further directed them also to be read publicly, in the Church the Next Sabeth day after divine service to the whole parishoners there assembled".² In these two examples, the kirk played an important role. In 1802, the Country Acts had to be read in the church, after divine service, somehow at a similar time than a possible Kirk Session, and in 1787, the Country Acts were read in presence of the Elders, members of the Kirk Session of Tingwall. Obviously, both times they were read in presence of ranselmen whose role was to enforce them. The importance of the parish in structuring the local judicial life is furthermore visible when investigating the reading of the Country Acts at the bailie courts. The 40th act detailed how "each [bailie] [should] have the heal country acts authentikly extracted under the steuart clerks hands, and cause read at least the abbreviate thereof in their [bailie] courts twice a year, or once at least, that none may pretend ignorance of the same".³ At the bailie court of Dunrossness, Sandwick and Cunningsburgh and the bailie court of Unst, they were read at least once a year, at the first meeting of the court.⁴ In 1732, the minutes of the court book of Dunrossness, Sandwick and Cunningsburgh, start in that manner:

At Dunrossness Kirk 18th Febry 1732 In a bailie court held by Mr Andrew Sinclair Bailie [of] Dunrossness Sandwick and Cunningsburgh Court lawfully fenced stembord called and Country Acts read the Court adjourned till tomorrow at ten a'clock before noon at Coure where the ranselmen and all others concerned were ordained to attend.

The same year in Unst, the Country Acts were read twice. First, at the Whitsunday court:

¹ SA, SC12/6/1787/30, 'Petition (for Damages Caused by Defender's Sheep Dog.) (Criminal)'.

² NAS, RH9/15/157/6, 'Appointment by the Sheriff of Zetland of Ranselmen for Unst'.

³ 'The Old Country Acts', 84–85.

⁴ NAS, RH11/29/1, 'Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735', fol. 5, 17, 20 and 32; NAS, RH2/8/33, 'Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733', fol. 7, 10, 14, 15, 19 and 23.

Att Troll the 24th May 1732 The bailie court fenced Stembord read and Country Acts in Audience of the Parishoners.

And a second time, on October 27:

Martins[mas] Court 1732 Att Troll 27th Oct[obe]r 1732 Baillie Court called Stembord Country Acts read and the Ransellmen of the Bailliary of the North Parish Examined

There isn't any indication of the Country Acts being read at the bailie court of Northmavine: however, this doesn't mean that they weren't. In these references to Country Acts, the place of the parish church and of the parochial division is striking. At Dunrossness, the Country Acts were read at the kirk. In Unst, the audience was composed of "parishioners" of the "North Parish". Once again, the parochial structures played a great role in organising the coercion of the inhabitants of Shetland. Since the Country Acts themselves stated that 'everyone is presumed to know the law', they were yearly read to the parishioners. This practice indicates that the conservation and knowledge of the Country Acts was a top-down design. The local élite, the Sheriff Substitute, the bailie and its agents, and maybe the ministers took into their hands the duty of reading and repeating the Country Acts. This is a further indication that these written by-laws were a produce of the landed and trading élite of the islands more than a produce of its 'traditional' agriculture and Norse past.

Justice in practice

Offences

The breach of these written by-laws was a serious offence and could be judged at the bailie courts or at the Sheriff Court. The study of the crimes and petty offences judged at the bailie courts, the Sheriff Court and the Kirk Sessions is a way to understand how the local communities worked. This method of looking at the court books in order to understand a local society has been widely used in European history since the 1970s and numerous works were produced.¹ There have been several debates on how to estimate the level of criminality or conflictuality in a society. What should be noted here is that the conflicts and offences judged at court were, similarly to the laws and by-laws, products of their own time in respect of at least two things: the reasons of the conflict or offence and most importantly, the importance

¹ See for example: Leah Leneman, 'Crime and the Courts', in *Living in Atholl, A Social History of the Estates 1685-1785* (Edinburgh: Edinburgh University Press, 1986), 147–75; Aud Mikkelsen Tretvik, *Tretter, Ting Og Tillitsmenn. En Undersøkelse Av Konflikthåndtering I Det Norske Bygdesamfunnet På 1700-Tallet.*, Skriftserie Fra Historisk Institutt Akademisk Avhandling 32 (Trondheim: Norges teknisk-naturvitenskapelige universitet, 2000); The founding article of 'criminality history' in France: Francois Billacois, 'Pour Une Enquête Sur La Criminalité Dans La France d'Ancien Régime', *Annales. Économies, Sociétés, Civilisations*, 1967, 340–49.

given to it by the court by the simple fact that it accepted to judge it. The presence of certain types of conflicts might be explained by the will of the court to eradicate or comfort certain types of actions. For example, both Scots Law and Sheriff Court's processes detailed how much conflictuality came from common lands (scattalds and runrig lands). Indeed, the 1695 'Act concerning the dividing of commonties' and 'Act anent lands lying in runrig' stated that "Our sovereign lord and the estates of parliament" passed the law "for preventing the discords that arise about commonties"¹ and "[took] into their consideration the great disadvantage arising to the whole subjects from lands lying in runrig".² This "great disadvantage" appeared in petitions for division presented at the Sheriff Court in the second half of the 18th century. For example, in 1773, Robert Neven gave a petition for the division of runrig land in Raga and he explained how:

in the Room of Raga & Paroch of Midyell [...] the Different Proprietors have not been able to ascertain their Respective proportions and that the Grounds Grass & c. of the said Room have been only Indistinctly, Injustly & Confusedly Divided amongst the Tenants, Labourers, from time to time who were Ignorant in Such cases, and whereby your Petitioner has Suffered Consierably from the Tenants belonging to the other proprietors who have alternatively Infringed, Invaded [...] both Lands Grass & Havres belonging to him in a most Injurious Violent and Oppressive manner Contrary both to Justice Law Equity & Right in Open Contempt of the Realm Statutes³

The concordance between the acts' and the petition's terminology shouldn't hide away two important things. First of all, the bailie courts' records don't show any sign of conflicts related to common land's ownership. Secondly, this type of processes appeared at the Sheriff Court when the lairds and others started to be interested in the improvement of their land and therefore, their aim was to pinpoint all the negative features of common lands. This doesn't mean that conflicts didn't exist on common land but that the Scots Law and the Sheriff Court records offer only a partial vision of rural conflictuality. Therefore, a typology of the crimes is less interesting in its quantitative approach than in its qualitative approach. In terms of quantity, the offences judged in Shetland should be compared with the rest of Scotland in order to see if the judges' preoccupations and the conflicts were similar. In terms of quality, the information and data contained in processes of various kinds can shed light on the life of the communities.

Counting the conflicts judged in the different courts enables a quantitative approach of the offences. At the Sheriff Court, the number of processes increased dramatically in the second half of the 18th century. An increasing population, the disappearance of overlapping

¹ Brown and al., '1695/5/204: Act Concerning the Dividing of Commonties'.

² Brown and al., '1695/5/156: Act Anent Lands Lying in Runrig'.

³ SA, SC12/6/1773/6, 'Petition for Division of Raga', pt. 1.

jurisdictions and new duties assigned to the Sheriff Court caused this augmentation.¹ Ann E. Whetstone explains in her book *Scottish County Government in the Eighteenth and Nineteenth Centuries* that “[t]he number and regularity of courts depended on the needs of the district” which meant that the situations varied vastly all around Scotland: “in Stirling the court sat regularly about twice in a week in the 1760s, but in Haddington the court met only thirty-four times in 1765”.² Such practices indicate that the conflicts judged at the Sheriff Court depended as well ‘on the needs of the district’. At the Sheriff Court in Shetland, the most important numbers of cases in the rural areas concerned the divisions of common lands, thefts and ‘rural troubles’ of all kind dealing mostly with access to resources and livestock.

Offences in rural areas	1741-1799
<i>Inhabitants in Shetland: 1755: 15,210; 1801: 22,379</i>	
Admiralty	8
Defamation	2
Division of common lands (runrig and scattalds)	21
Miscellaneous	2
Property	2
Rural troubles	59
Theft	22
Violence	2
Total	118
Summons of removal/removing (rural and urban)	101
<small>SA, SC12/6. ‘Lerwick Sheriff Court Records: Ordinary Court Processes’, 1692-1900. Gray Kyd, James, ed. <i>Scottish Population Statistics Including Webster’s Analysis of Population 1755</i>. Edinburgh: T. and A. Constable Ltd., 1952, 65-66. http://www.gro-scotland.gov.uk/files2/the-census/Webster_final.pdf. ‘Abstract of the Answers and Returns to the Shire of Orkney and Shetland’. In <i>Abstract of the Answers and Returns Made pursuant to an Act, Passed in the Forty-First Year of His Majesty King George III. Intituled ‘An Act for Taking an Account of the Population of Great ri tain and the Increase or Diminution Thereof.’: Enumeration, Part II. Scotland:534, 1801.</i> http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20(by%20date)/1801&active=yes&mno=2&tocstate=expandnew&toceq=9400&display=sections&display=tables&display=pagetitles&pageseq=first-nonblank.</small>	

Table 57: Offences: Sheriff Court

Themes of rural troubles’ processes	1741-1799		
Calves	1	Resources	16
Cows	4	Livestock	29
Divots	1		
Encroachment/Scattalds	9		
Herding	4		
Food	1		
Horses	2		
Kelp	8		
Mills	2		
Peat	2		
Rancelmen	1		
Riots	1		
Sheep	10		
Stone quarries	4		
Swine	8		
Wood driven ashore	1		
Total	59		
<small>SA, SC12/6. ‘Lerwick Sheriff Court Records: Ordinary Court Processes’, 1692-1900.</small>			

Table 58: Offences: Rural troubles at the Sheriff Court

¹ Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries*, 22.

² *Ibid.*, 23.

The Kirk Sessions of Shetland didn't deal with any aspect of agricultural life but the cases that they judged impacted the communal life of the inhabitants as well. The numbers and types of offences judged in Shetland Kirk Sessions can be compared with the offences encountered in the parish of Blair Atholl in the Highland and in the parish of Fossoway in the Lowland for which Leah Leneman has drawn up figures. Even though there were differences from one parish to another, the bulk of cases heard at court concerned moral, sexual issues: ante-nuptial fornication and illegitimate child. Slanders, defamations and blasphemy were also severely regarded by the Session.

Kirk Session of Dunrossness	1764-1773	10 years
<i>1755: 2,295 inhabitants in the united parishes of Dunrossness, Sandwick and Cunningsburgh</i>		
Adultery	3	
Ante-nuptial fornication	23	1/3
Illegitimate child	10	1/6
Excommunication	1	
Sabbath breach	1	
Slanders/Defamations/Blasphemy	26	2/5
Total	64	
SA, CH2/112/1. 'Dunrossness Kirk Session Minutes', 1764-1841. Gray Kyd, James, ed. <i>Scottish Population Statistics Including Webster's Analysis of Population 1755</i> . Edinburgh: T. and A. Constable Ltd., 1952, 65. http://www.gro-scotland.gov.uk/files2/the-census/Webster_final.pdf .		

Table 59: Offences: Kirk Session of Dunrossness

Kirk Session of Sandwick and Cunningsburgh	1755-1760	6 years
<i>1755: 2,295 inhabitants in the united parishes of Dunrossness, Sandwick and Cunningsburgh</i>		
Adultery	1	
Ante-nuptial fornication	8	1/3
Illegitimate child	3	
Slanders/Defamations/Blasphemy	6	1/4
Sabbath breach	4	1/6
Theft	2	
n/a	2	
Total	26	
SA, CH2/325/1. 'Sandwick and Cunningsburgh Kirk Session Minutes', 1755-1842. Gray Kyd, James, ed. <i>Scottish Population Statistics Including Webster's Analysis of Population 1755</i> . Edinburgh: T. and A. Constable Ltd., 1952, 65. http://www.gro-scotland.gov.uk/files2/the-census/Webster_final.pdf .		

Table 60: Offences: Kirk Session of Sandwick and Cunningsburgh

Kirk Session of Northmavine	1758-1762	5 years
<i>1755: 1,009 inhabitants</i>		
Ante-nuptial fornication	15	1/2
Illegitimate child	9	1/3
Slanders/Defamations/Blasphemy	8	1/4
Total	32	
SA, CH2/286/1. 'Northmavine Kirk Session Minutes', 1729-1765. Gray Kyd, James, ed. <i>Scottish Population Statistics Including Webster's Analysis of Population 1755</i> . Edinburgh: T. and A. Constable Ltd., 1952, 65. http://www.gro-scotland.gov.uk/files2/the-census/Webster_final.pdf .		

Table 61: Offences: Kirk Session of Northmavine

Kirk Session of Unst	1735-1739	5 years
<i>1755: 1,368 inhabitants</i>		
Adultery	1	
Ante-nuptial fornication	15	1/2
Breach of marriage promise	1	
Illegitimate child	6	1/5
Sabbath breach	3	
Slanders/Defamations/Blasphemy	3	
Superstitious practices	1	
Total	30	
SA, CH2/385/1. 'Unst Kirk Session Minutes', 1720-1739. Gray Kyd, James, ed. <i>Scottish Population Statistics Including Webster's Analysis of Population 1755</i> . Edinburgh: T. and A. Constable Ltd., 1952, 66. http://www.gro-scotland.gov.uk/files2/the-census/Webster_final.pdf .		

Table 62: Offences: Kirk Session of Unst

Kirk Session of Blair Atholl (Highland parish)	1718-1723	1775-1779
<i>1755: 3,257 inhabitants</i>		
Adultery	2	1
Ante-nuptial fornication	9	2
Illegitimate child	37	32
Other offences	14	3
Total	62	38
Leneman, Leah. <i>Living in Atholl, A Social History of the Estates 1685-1785</i> . Edinburgh: Edinburgh University Press, 1986, 97.		

Table 63: Offences: Kirk Session of Blair Atholl

Kirk Session of Fossoway (Lowland parish)	1718-1722	1775-1780
<i>1755: 1,765 inhabitants</i>		
Adultery	0	3
Ante-nuptial fornication	2	4
Illegitimate child	6	6
Other offences	5	5
Total	13	18
Leneman, Leah. <i>Living in Atholl, A Social History of the Estates 1685-1785</i> . Edinburgh: Edinburgh University Press, 1986, 97.		

Table 64: Offences: Kirk Session of Fossoway

The bailie courts could also judge cases of defamation. William P. L. Thomson studied one bailie court in Orkney. He didn't present a quantitative analysis of the conflicts but he gave a list of the topics of conflicts heard at the bailie court of St. Andrews from 1665 to 1674.¹ The court dealt mainly with issues concerning: 1) agricultural management (dykes, pigs, 'sheeprights', sheep marks, sheep dogs and pasture rights), 2) petty theft involving a penalty of less than £10, 3) breach of the peace (riots) and 4) slander, in collaboration with the Kirk Session.² The bailie courts of Shetland also dealt with these types of conflicts. One third of the complaints had to do with the management of common land presented in Shetland as 'breach of the Country Acts'. Another third of these conflicts consisted of violence and riots. Eventually, defamations and thefts counted for about a fourth of these offences.

¹ NAS, RH11/62/1, 'St. Andrews and Deerness: Bailie Court Book, 1665-1674' 1674 1665.

² Thomson, 'Bailie Courts', 163-67.

Offenses	Dunrossness, Sandwick and Cunningsburgh 1731-1735	Northmavine 1744-1747	Unst 1730-1733	Total	
<i>Inhabitants in 1755</i>	2,295	1,009	1,368	4,672	
Breach of the Country Acts (agricultural management)	17		12	29	1/3
Breaking/destroying of dykes		1	2	3	
Debt		1	3	4	
Defamation	11	2		13	1/10
Embezzlement	1	1		2	
Examination of <i>pund</i>			1	1	
Excise of Shetland		1		1	
Fishing		2		2	
Inheritance		2		2	
Over-pasturing		1		1	
Riots and violence	28	1		29	1/3
School wages		1		1	
Servants		1	2	3	
Sheep mark		2	1	3	
Teind		1		1	
Theft	4	1	4	9	1/10
Total	61	18	25	104	
<small>NAS, RH2/8/33. 'Photostat Copy of bailie court Book of the North Parish of Unst', 1731-1733. NAS, RH11/29/1. 'Dunrossness Sandwick and Cunningsburgh: bailie court Book', 1731-1735. SA, D25/3. 'Fragment of bailie court Book of Northmavine', 1744-1747. Gray Kyd, James, ed. <i>Scottish Population Statistics Including Webster's Analysis of Population 1755</i>. Edinburgh: T. and A. Constable Ltd., 1952, 65-66. http://www.gro-scotland.gov.uk/files2/the-census/Webster_final.pdf.</small>					

Table 65: Offences: bailie courts

The offences judged at court meant something for the local community. Committing an ante-nuptial fornication or having an illegitimate child were frowned upon by the Kirk because it considered them as moral depravity but for the community, ante-nuptial fornication and an illegitimate child could also be a burden. There was a risk of undesired pregnancy and a danger for a woman to fall into great poverty once with a child. Furthermore, poor women were considered as a burden for the local communities which had to provide for them. Defamations, slanders and thefts had to be judged and severely punished as they caused a breach of trust and as they might attract God's wrath on the communities. Judging riots and the breach of the agricultural by-laws was a way to socially control physical violence as well as control the rural, collective practices.

Territory of the crime

Where did offences happen? This is not only a question of curiosity but also a question that enables us to analyse conflicts from another angle: what were the territories of conflictuality? What did it mean for the local communities? This question enables us to start evaluating the movements of the inhabitants on their territory. With this analysis, conflictual zones will appear. Sources, however, are difficult to use. The clerks didn't always write meticulously the

information on the place where the offences happened and where the actors (pursuers and defenders) lived, in the minutes of the Kirk Sessions records, the bailie courts books and in the Sheriff Register. In that respect, the Kirk Sessions records of Dunrossness, Sandwick and Cunningsburgh, Northmavine and Unst don't contain sufficient data. The bailie courts books and the processes for 'rural troubles' kept at the Sheriff Court provide a corpus of cases that can be analysed. However, a strict selection has been done. Bailie courts books provided only 38 usable cases: 24 in Dunrossness, three in Northmavine and 11 in Unst, and a selection of 34 exploitable 'rural troubles' was made in the Sheriff Court Register, between 1770 and 1799.

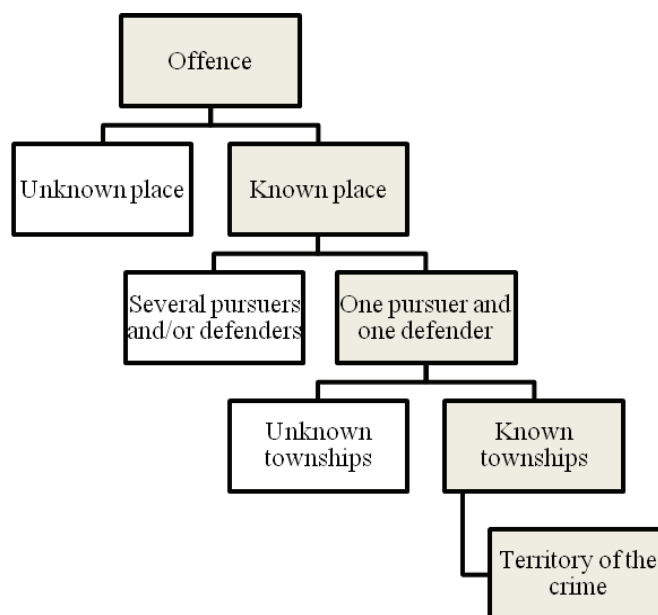


Figure 4: Territory of the crime: Database selection

Statistical results could obviously slightly change if a bigger corpus of cases was used. Nevertheless, the results presented here are significant of the local situation and of the type of courts. Indeed, the results from the bailie courts books and for the Sheriff Register concur with the missions of the courts and with the social origin of the actors at court. At the bailie courts, the offences all happened within the bounds of the parish or parishes over which the Bailie had jurisdiction. This is concordant with the fact that baileries and parishes worked together on several cases and that in the charter of franchise the bounds of the bailiery are similar to those of the local parish or parishes. At the bailie courts, the pursuer and the defender lived in half of the cases in the same township and that's where the offence happened. The other offences occurred in a third township in less than one case out of 10 or in the township of the pursuer only in one case out of seven or in the township of the defender in the same proportion. The defender committed an offence in his township in two out of three

cases. In three-quarters of the cases, he or she perpetrated it in his own scattald. Offences happened in local settings, close to the defender's house but also close to the pursuer's. Conflicts that were judged at the bailie courts were very local offences: in more than nine out of ten cases the offence happened in the scattald of the defender and/or pursuer. Offences committed against the community, mostly breaches of the Country Acts, took place in the scattald where the defenders lived. There was one exception though: in 1732 the bailie court of Unst heard the complaint of Mr Ross, merchant at Uyeasound, a township located on the southern coast of Unst, in the old South Parish. He explained that Anthony and Magnus Williamsons, tenants in Ungersta in the North Parish, owed "the Duty of two merk land for three years".¹ Even though Mr Ross was presented as a merchant at Uyeasound, he had interests in the North Parish and this explains why the process took place there, locally.

Personal offences	Township	Scattald	Parish
Pursuer = Defender	17	18	27
Pursuer ≠ Defender	10	9	0
Defender = Offence	19	22	27
Defender ≠ Offence	8	5	0
Pursuer = Defender = Offence	16	17	27
Defender = Offence	4	4	0
Pursuer = Offence	5	6	0
Offence	2	0	0
Total	27		
NAS, RH2/8/33. 'Photostat Copy of bailie court Book of the North Parish of Unst', 1731-1733. NAS, RH11/29/1. 'Dunrossness Sandwich and Cunningsburgh: bailie court Book', 1731-1735. SA, D25/3. 'Fragment of bailie court Book of Northmavine', 1744-1747.			

Table 66: Territory of the crime: bailie courts

Offences against a community	Township	Scattald	Parish
Defender = Crime	9	9	10
Defender ≠ Crime	1	1	0
Total	10		
NAS, RH2/8/33. 'Photostat Copy of bailie court Book of the North Parish of Unst', 1731-1733. NAS, RH11/29/1. 'Dunrossness Sandwich and Cunningsburgh: bailie court Book', 1731-1735. SA, D25/3. 'Fragment of bailie court Book of Northmavine', 1744-1747.			

Table 67: Territory of the crime: bailie courts and Country Acts

At the Sheriff Court, the results are almost reversed. Almost one out of two offences happened in a third township, where neither the defender nor the pursuer lived. This didn't mean that pursuer and defender lived far away: in about half of the cases, they lived in the same scattald than where the offence was committed. In most of the cases, the defender lived in the scattald and in the parish where the offence happened. These results are concordant with the authority of the Sheriff Court. The processes concerned local defenders but the pursuers could come from another township, another scattald and even, another parish. The

¹ NAS, RH2/8/33, 'Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733', fol. 21.

reason was the social origin of the pursuers. They could be landlords pursuing a tenant or any one who they thought threatened their ownership such as in cases of division of common land, encroachment, theft and crop destruction. They could live in a different parish than the defender. Some of them, such as John Mouat, surveyor of customs, lived in Lerwick. In 1793, he pursued William Mouat, merchant in Burravoe in Yell for the “building [of] a hut on the undivided commonty of Cuppister”.¹ He explained that as a “proprietor of 5 Merk land in the room of Cuppister in the parish of South Yell and consequently of the Common or pasture & other priviledges thereto effering [...] the said room was much injured by the Erection of the said house”.² Therefore he asked the Sheriff substitute to “interdict prohibit and discharge the said Mr Bruce himself and all others imployed by him, from proceeding in the said Erection, or occupying the same or any part of the said individed exclusive Common of Cuppester”.³ This is a typical case of pursuers living in a different parish than where the offence happened. These figures can also hide more complexe local and geographical situations. Indeed, defender and pursuer could come from neighbouring scattalds which means that sometimes, their townships were near by.

	Township	Scattald	Parish
Pursuer = Defender	4	14	17
Pursuer ≠ Defender	30	20	17
Defender = Crime	13	21	28
Defender ≠ Crime	21	13	6
Pursuer = Crime	12	19	20
Pursuer ≠ Crime	22	15	14
Pursuer = Defender = Offence	4	14	16
Defender = Offence	9	7	12
Pursuer = Offence	7	5	4
Offence	14	8	2
Total (1699-1799)	34		

SA, SC12/6. ‘Lerwick Sheriff Court Records: Ordinary Court Processes’, 1692-1900.

Table 68: Territory of the crime: Sheriff Court

These examples bring to light the localness of the bailie courts and the regionalness of the Sheriff Court as well as they show the complexity in terms of location of the offences. Furthermore, the defender’s township or village is important to know and to analyse for another reason. In several cases of defamation or theft, the court judged the character of the defender. It was important that his or her fellow villagers didn’t suspect him of dishonest behaviours.

¹ SA, SC12/6/1793/37, ‘Petition (for Building a Hut on the Undivided Commonty of Cuppister.)’ 1793, pt. 1.

² Ibid.

³ Ibid.

Reputation and trust

In 1774, Laurence Bain, James Williamson and Edward Halcrow in Ocracuoy, in the parish of Cunningsburgh, accused John Smith in Starkagirth of the theft of plants – probably of kale. In his “Direction for the Lawrightman & Ranselmen in the parish of Cunningsbrugh”, the Sheriff substitute, William Balfour asked them, among other things, “to inquire into Smiths Character & behaviour in time past”.¹ Having a ‘good character’, an unblemished reputation, mattered greatly in Shetland, and in the rest of Scotland, in the 18th century. Leah Leneman studied this question in an article published in 2000. She focused on the defamation cases in the records of the Commissary Courts of the county of Argyll and the metropolis of Edinburgh. She explained how looking at “litigation for verbal injury” was a way “to gain a deeper understanding of a particular society at a chosen point in time”.²

I have pointed out earlier that Elders and Rancelmen had to be trusted within the whole religious and judicial system. They should be respectable and impeccable in their daily life. This was important because it brought them legitimacy. It legitimised their coercive actions. Since they were virtuous they could bring to justice the unvirtuous ones. A careful study of the cases judged in the parochial justice courts, in the bailie courts and at the Sheriff Court shows that keeping a good name and a good reputation mattered not only for the Elders and the Rancelmen but also for the other members of the local communities. In Scotland, cases of defamation could be heard in several courts: in the Kirk Sessions, the bailie courts and the Sheriff Courts, but the main courts in mainland Scotland for this kind of cases, especially in the second half of the 18th century, were the Commissary Courts. However, they weren’t any Commissary Court in Shetland at that time. Thus, this study is based on records from the Kirk Sessions, the bailie courts and the Sheriff Court. Cases of defamations but also cases of blasphemy, swearing and cursing have been selected. Slanderers oriented their defamations towards someone specific or towards an explicit group of persons. Blasphemy, swearing and cursing were slightly different from defamation cases because they didn’t imply necessarily an opinion on the reputation of the target but in some cases, the reputation of the target was attacked too, the difference between defamation and cursing or swearing could be difficult to ascertain in these cases. Blasphemies, cursing and swearing belonged to verbal injuries. As such, the Kirk Sessions dealt with these cases and defamation cases similarly: when found guilty, the defenders “were appointed to appear before the congregation in order to be openly

¹ SA, SC12/6/1774/6, ‘Petition (Theft - of Plants.) (Criminal)’, pt. 9.

² Leneman, ‘Defamation in Scotland, 1750–1800’, 209 and 220.

rebuked”.¹ In her book, *The Culture of Protestantism in Early Modern Scotland*, Margo Todd explained how in cases of slander “the formula for reconciliation [...] demanded apology not only to the individual offended, but also to God and the community generally in the kirk”.² Blasphemy, cursing and swearing insulted God and the community as well.

The total number of blasphemy, cursing and defamation cases found in the Kirk Sessions records of Dunrossness, Sandwick and Cunningsburgh, Northmavine and Unst between 1725 and 1790 was 74. The data spread is as follows: five cases in Unst between 1725 and 1738, 35 cases in Sandwick and Cunningsburgh between 1756 and 1790, eight cases in Northmavine between 1759 and 1762, and 25 cases in Dunrossness between 1764 and 1773. There weren't any case of defamation recorded in the court book of the bailie court of Unst. The total number of cases raised before the bailie court of Dunrossness, Sandwick and Cunningsburgh between 1731 and 1735 was 11. There were two cases raised before the bailie court of Northmavine between 1744 and 1747. The Sheriff Court could also prosecute cases of defamations. In Argyll county, the “defamation cases raised before the sheriff court are unlisted and buried within far too many boxes to make any attempt to find them all within a limited period of time feasible”.³ In Shetland it seems that they have been catalogued properly, at least for those prosecuted after 1800. Between 1700 and 1800, only seven cases of defamation and slander appear in the catalogue and four of them concerned inhabitants of Lerwick. A problem of cataloguing can explain that but it is possible that in Shetland at the difference with the rest of Scotland, slanders and defamations continued to be prosecuted at the Kirk Sessions during the thirty last years of the 18th century.⁴ However, the Sheriff Court prosecuted cases of theft and in these processes, the Sheriff depute or his substitute could ask for an inquiry into the reputation of the presumed thief. An exculpatory proof composed of more or less exculpatory witness testimonies could also be presented at court. These documents provide extremely interesting qualitative data about reputation and credit in late 18th-century Shetland.

Defamation, blasphemy and cursing happened in the daily environment of the local community. In 1768, the Kirk Session of Sandwick and Cunningsburgh summoned John Halcrow in Northouse “as guilty of rash and rude swearing by the Holy Name of God, and standing with an oar in his hands, and imprecating damnation against William Sinclair in

¹ For example: SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 40.

² Todd, *The Culture of Protestantism in Early Modern Scotland*, 250–51; Leneman, ‘Defamation in Scotland, 1750–1800’, 227.

³ Leneman, ‘Defamation in Scotland, 1750–1800’, 231.

⁴ *Ibid.*, 210.

Leabitn who was in a boat with him, and severals more were in the same boat, who were all put in a terrible freight at the behaviour of the said John Halcrow” and summoned Charles Adamson who cursed and “threw [Jame] Smith over the boat in which they were”.¹ The same year, the Kirk Session of Dunrossness summoned Laurence Henderson who “pray[ed] that God would Damn one of the Men that was in the Boat with himself because he woud not Row so fast as he woud have” and James Shewan who said “that it woud be well done to drown the Crew belonging to their Boat”.² Boats as men’s places of work were places of verbal injuries. Slander could also take place in fields which were places of work for men and women. In May 1767, Charles Adamson in Bremer verbally abused Katherine Laurencedaughter in Gord when “she was going out to her labouring”: “the said Charles was in her way, holding the plough to a woman that had hired him for that purpose, and the delator wished them good speed, as what good neighbours used to do one another, to which the said Charles answered in a very rude manner that he wanted none of her good speed but the divil might speed her, and prayd God damn her”.³ Two years after, in September 1769 in Levenwick in the parish of Sandwick, Elizabeth Williamdaughter “[took] the Name of God in vain and imprecating damnation to several people in the neighbourhood, who were contending with about some grass”.⁴ Natural resources such as peat and fish could be part of the defamations and of the cursing. In 1732, Alexander Sinclair in Scatness, in the parish of Dunrossness, called Robert Alison’s wife and children “peat thieves” and in the same parish in 1770, Margaret Robertsdaughter “prayed that the Devil might burn [Barbara Stout] & her Peats”.⁵ Harry Johnson called John Read’s son “a Theif of a Ling belonging to Nibon” and Robert Bernardson said that his “pot was more honestly win than [John Williamson’s] whose pot was win by Quendaill stoln salt fish”.⁶ Eventually in 1781 Laurence Leisk in the Punds of Ireland in the parish of Sandwick “[swore] against the fishes of the seas”.⁷ Public places such as the streets of Lerwick or even the bailie courts could be places of slander. In July 1772 John Smith and Magnus Johnson, respective inhabitants of Gord and Bremer in Cunningsburgh, “[swore] by the Holy name of God, upon the publick street at Lerwick”.⁸ In 1725, the Kirk

¹ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fols 28-29-30.

² SA, CH2/112/1, ‘Dunrossness Kirk Session Minutes, 1764-1841’, fol. 16.

³ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fols 27–28.

⁴ SA, CH2/112/1, ‘Dunrossness Kirk Session Minutes, 1764-1841’, fol. 33.

⁵ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 9; SA, CH2/112/1, ‘Dunrossness Kirk Session Minutes, 1764-1841’, fol. 21.

⁶ SA, D25/3, ‘Fragment of Bailie Court Book of Northmavine, 1744-1747’, fol. 6; NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 23.

⁷ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 50.

⁸ *Ibid.*, fol. 38.

Session of Unst summoned Margaret Freser and Robert Sinclair: they were both accused of “[uttering] severale sinful expressions” and “cursing and swearing” before the “belie Court”.¹ Private places weren’t protected from injurious words. In 1738, Thomas Tulloch “very much abused Katharine Nicolson uttering several horrid imprecations against her in her own house” and 22 years after, in 1760, Gilbert Robertson went “into Margaret Halcrow in Gords house some time in January last, in drink, [...] threw reflections on the parish and prayd god should damn those in particular in her house”.²

Verbal injuries happened in local places and they targeted those who lived nearby. In the first paragraph of her article, Leah Leneman explained how “[t]he gendered nature of insults [...] must form a component of any consideration on the subject”.³ Gender mattered not only for the type of insults that could be used: it mattered for the targets. Men and women targeted in majority those who lived close to them: their neighbours, a local family or their servant. They also targeted unspecific named person: person who didn’t seem to have a connection with the offenders worthy of mention in the minutes of the Kirk Session. The clerks didn’t write very often the township of the offender and of its target. There are only twelve usable cases out of 29 concerning unspecific named person and their offender. Nine named persons out of twelve lived in a different township than their offender. However, eight named persons lived in the same scattald as their offender and the remaining four lived in neighbouring scattalds which means that the pursuer and the defender lived at a short distance. In August 1759 in Levenwick in the parish of Sandwick, Ms Williamsdaughter “[cursed] for one of her neighbours, and particularly that expression, that God might give her a bad winter”.⁴ In 1735, Gilbert Georgeson in Scousburgh in the parish of Dunrossness complained against his neighbour, Malcolm Black who “[used] fractious and reproachfull speches against the complainer and particularly in openly asserting that the said complainer had oftentimes put [obscured] his one [?] with unmarked lambs to the great and defamation of the complainer in his good name and reputation”.⁵ In the last decade of the 18th century, John Laurenceson in Sand in the parish of Gulberwick called Thomas Tait in Croap, in the same parish, “a lier and added that him & all the name of Tait were usurping thieves”.⁶ Croap and Sand were two distinct townships but were within 400 meters of each other.

¹ SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, 1739 1720, fols 28–29.

² Ibid., fol. 57; SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 11.

³ Leneman, ‘Defamation in Scotland, 1750–1800’, 209.

⁴ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 10.

⁵ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 35.

⁶ SA, SC12/6/1793/28, ‘Summons of Scandal and Defamation’ 1793, pt. 1.

	Men	Women	Total
"all my enemies"	1		1
boatcrew	4		4
family (ex. family, son, sister-in-law, generation)	2	3	5
named person	19	6	25
neighbour(s)	14	9	23
parishoners	1		1
servant	1		1
township	1		1
n/r	10	3	13
Total	53	21	74
named person: a named person with no mention of a connection with the defender			
n/r: not relevant			
SA, CH2/112/1. 'Dunrossness Kirk Session Minutes', 1764-1841. SA, CH2/286/1. 'Northmavine Kirk Session Minutes', 1729-1765. SA, CH2/325/1. 'Sandwick and Cunningsburgh Kirk Session Minutes', 1755-1842. SA, CH2/385/1. 'Unst Kirk Session Minutes', 1720-1739.			

Table 69: Reputation and trust: Target by gender of defenders

In our corpus, the number of women summoned by the Kirk Session is low. It means that any synthesis or representative explanation is difficult. Nevertheless, it is interesting to note that women might have targeted their neighbours more specifically than men. This would concur with the localness of their gender specific tasks described in the 1790s by the minister of Northmaven: “women look[ed] after domestic concerns, [brought] up their children, cook[ed] the victuals, look[ed] after the cattle, [spun], and knit[ted] stockings; they also assist[ed], and [were] no less laborious than the men in manuring and labouring the grounds, reaping the harvest, and manufacturing their crop”.¹ However, slandering women could also target persons who lived at a longer distance from their own house. In 1799, Martha Sinclair, in the Park of Leebotten in the parish of Sandwick, “call[ed] [Laurance Halcrow Senior in Fladdabister in the parish of Cunningsburgh] a thief by saying that he stole the corn that was at or before that time missing in Fladabister”.² The two townships were separated by about 7km. Martha Sinclair and Laurance Halcrow Senior might have been connected in any way before this process: it is possible that at some point they were neighbours or that they shared common acquaintances. In any case, Martha Sinclair was accused of slandering a man who lived at quite a long distance from her home and from her daily tasks. Pursuers and defenders lived for the most part in the same township or at least in the same scattald. They saw each other on a daily or weekly basis. They shared similar interests, resources and they knew and met the same people. This meant that they could disagree on several topics such as local administration, could compete for resources, for trade and for matrimonial alliances such as in 1737 when Isobell Gardiner, in Urie in the parish of Fetlar, “appeared before the session and

¹ Jack, 'Parish of Northmaven', 358.

² SA, SC12/6/1799/53, 'Summons of Defamation (for Calling Complainer a Thief.)' 1799, pt. 1.

represented that Robert Pitcairn now intending Marriage with Isobell Bruce, had solemnly sworn to marry her the said Gardiner”.¹ The accusations of corn, peat and fish stealing could also be a sign of competition for access to resources. Defamation could also be sign of ongoing process or ongoing rivalry between individuals or family. On May 15 1745, Andrew Ramsay complained before the bailie court of Northmavine that Harry’s Thomason’s wife “called his father a thief & his Grand mother a Witch”.² The said Harry Thomason answered that the pursuer had called his wife “a powshen Thief &c.”.³ This wasn’t the first quarrel between Andrew Ramsay and Harry Thomason. On the same day, Harry Thomason presented a petition before the court in which he complained “that Andrew Ramsay went to his Plantty Coat & pulled down the dyk thereof & Utterly destroyed the plants therein by tearing them & pulling them up by the Roots”.⁴ The judge found Andrew Ramsay guilty. Nevertheless; Andrew Ramsay tried to compensate by complaining against Harry Thomason’s wife. This was quite usual. William P. L. Thomson explained in his book, *Orkney Land and People* that “[o]ne way of repelling an accusation of theft was to make a counter-allegation of slander”.⁵

In Shetland’s courts and this was also the case in the rest of Scotland, “the document setting out the charge tended to be very specific:”⁶ the exact words of the defamations or cursing were mentioned in the minutes or processes. This means that the topic of defamation and cursing can be analysed. First of all, it should be stated that defamation and cursing very often involved a combination of insults, and in Scotland the scope of insults could be extremely large. This had to do with the Scots Law. Scots Law, at the difference with English law, didn’t ask for the pursuer to prove that any harm had been caused by the slander to prosecute the case.⁷ The court only needed to know that the pursuer had been “sensibly hurt in his feelings, or in his fortunes [...] though it may have no effect in blackening a man’s moral character is, by our law, accounted injurious and actionable”.⁸ Charles Hope, Sheriff depute of Shetland, wrote in the summons of defamation against John Laurenceson and Martha Sinclair that “the defaming, scandalising and reproaching, of any person in his good name, fame & reputation [was] a Crime of a high nature & strictly prohibited and discharged, by the Laws of this, and

¹ SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, 1739 1720, fol. 56.

² SA, D25/3, ‘Fragment of Bailie Court Book of Northmavine, 1744-1747’, fol. 4.

³ Ibid.

⁴ Ibid., fol. 3.

⁵ Thomson, ‘Bailie Courts’, 166.

⁶ Leneman, ‘Defamation in Scotland, 1750–1800’, 218.

⁷ Ibid., 211.

⁸ John Borthwick, *A Treatise on the Law of Libel and Slander: As Applied, in Scotland, in Criminal Prosecutions, and in Actions of Damages* (Edinburgh: W. & C. Tait, 1826), 183; quoted in: Leneman, ‘Defamation in Scotland, 1750–1800’, 211.

all other well governed Realms, and the committers thereof severely punishable”.¹ Any kind of injurious words could therefore be considered as defamation. In Shetland, the low corpuses of defamations prevent any definitive answers on the subject. However, the figures concur with what Leah Leneman found for Argyll and Edinburgh.²

	Men	Women	Total
Sexual	1	3	4
Thief	2		2
Insolvent	1		1
Witchcraft	2		2
General	1	1	2
Other	3		3
God and the devil	25	11	36
Total	35	15	50

SA, CH2/112/1. ‘Dunrossness Kirk Session Minutes’, 1764-1841.
 SA, CH2/286/1. ‘Northmavine Kirk Session Minutes’, 1729-1765.
 SA, CH2/325/1. ‘Sandwick and Cunningsburgh Kirk Session Minutes’, 1755-1842.
 SA, CH2/385/1. ‘Unst Kirk Session Minutes’, 1720-1739.

Table 70: Reputation and trust: Defamation and cursing content by sex of target at the Kirk Sessions

	Men	Women	Total
General	1	1	1
Other	1		1
Thief	10		11
Total	12	1	13

NAS, RH11/29/1. ‘Dunrossness Sandwick and Cunningsburgh: bailie court Book’, 1731-1735.
 SA, D25/3. ‘Fragment of bailie court Book of Northmavine’, 1744-1744.

Table 71: Reputation and trust: Defamation content by sex of target at the bailie courts

The ‘general’ category includes “a volley of invectives [...] lacking an accusation that would justify a specific category”³ such as “a Liar [...] a Dog a Godless Worth a Itels hound & vagabond”,⁴ “a Knave or Villain”,⁵ “a perjured knave”⁶ and “thiefs and liars”.⁷ The category ‘insolvent’ covers only one interesting case: in January 1760, Katharine Williamsdaughter was accused of “raising false reports on [Gilbert Robertson in Blost], in saying that he was more in debt to other people in this place than he was able to pay”.⁸ The category ‘other’ comprises more peculiar accusations such as “Murdrous Dogg”.⁹ At the bailie courts, allegations of theft predominated. There were predominant as well at the Commissary Court of Argyll and Edinburgh.¹⁰ Allegations of sexual misconduct appear only in the record of the Kirk Sessions. In Argyll, Leah Leneman counts only five cases of sexual misconduct in a corpus of 74 cases:

¹ SA, SC12/6/1793/28, ‘Summons of Scandal and Defamation’, pt. 117; SA, SC12/6/1799/53, ‘Summons of Defamation (for Calling Complainer a Thief)’, pt. 1.

² Leneman, ‘Defamation in Scotland, 1750–1800’, 218–19.

³ *Ibid.*, 219.

⁴ SA, CH2/286/1, ‘Northmavine Kirk Session Minutes, 1729-1765’, fol. 1.

⁵ SA, CH2/112/1, ‘Dunrossness Kirk Session Minutes, 1764-1841’, fol. 14.

⁶ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 18.

⁷ *Ibid.*, fol. 22; SA, SC12/6/1793/28, ‘Summons of Scandal and Defamation’, pt. 1.

⁸ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 10.

⁹ SA, CH2/112/1, ‘Dunrossness Kirk Session Minutes, 1764-1841’, fol. 11.

¹⁰ Leneman, ‘Defamation in Scotland, 1750–1800’, 218–19.

in all of these the pursuers were women.¹ In Shetland, out of four allegations of sexual misconduct: three concerned women and one concerned a man. This meant, as Leah Leneman argues in her article, that sexual reputation didn't only matter for women, it mattered also for men since "sexual reputation formed a significant component of male honour".²

Knowing the nature of the defaming insults gives a deeper access to the mindset of the local society. Most of the defamations and insults concerned theft and sexual misconduct. In her article, Leah Leneman explains that the common thread between these "disparate slanders" was 'trust' and 'credit'.³ If one adds to the study of defamation the analysis of the various inquiries into the reputation of a defender conducted by the Sheriff Court, the importance of 'trust' and 'credit' appears clearly. A typical question to the witnesses in this type of inquiries could be similar to the question asked in 1796 in a case of violence: "What do you know of the Character of George Grey, is he reputed an honest man or not".⁴ Men and women needed a good reputation in order to participate to the various activities that made their life. People needed credit to participate in commercial activities: their neighbours needed to know that they could pay their debt. That's why when Katharine Williamsdaughter said that Gilbert Robertson couldn't pay his debt it "made the people in this place distrust him."⁵ In *The Protestant Ethic and the Spirit of Capitalism*, Max Weber quoted Benjamin Franklin who wrote in 1748 in his *Advice to a Young Tradesman*:

Remember this saying, *The good paymaster is lord of another man's purse*. He that is known to pay punctually and exactly to the time he promises, may at any time, and on any occasion, raise all the money his friends can spare. This is sometimes of great use. After industry and frugality, nothing contributes more to the raising of a young man in the world than punctuality and justice in all his dealings; therefore never keep borrowed money an hour beyond the time you promised, lest a disappointment shut up your friend's purse for ever. [...] It shows, besides, that you are mindful of what you owe; it makes you appear a careful as well as an honest man, and that still increases your credit.⁶ [Benjamin Franklin's italic]

Max Weber further explained that "[t]he peculiarity of this philosophy of avarice appears to be the ideal of the honest man of recognized credit, and above all the idea of a duty of the

¹ Ibid.

² Bernard Capp, 'The Double Standard Revisited: Plebian Women and Male Sexual Reputation in Early Modern England', *Past and Present* 162, no. 1 (1999): 72; quoted in: Leneman, 'Defamation in Scotland, 1750–1800', 224–25.

³ Leneman, 'Defamation in Scotland, 1750–1800', 226.

⁴ SA, SC12/6/1796/28, 'Petition (Concerning Threatening Behaviour - Introducing Foreign Sheep into the Pursuer's Cro While under the Pursuer's Employment and Refusing to Remove Them by Threatening the Petitioner and Slandering the Women Nearby, "for Which He Merited to Have His Ears Slitt".)' 1796, pt. 10.

⁵ SA, CH2/325/1, 'Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842', fol. 10.

⁶ Benjamin Franklin, 'Advice to a Young Tradesman, Written in the Year 1748', in *The Works of Benjamin Franklin; Containing Several Political and Historical Tracts Not Included in Any Former Edition, and Many Letters Official and Private Not Hitherto Published; with Notes and a Life of the Author*, ed. Jared Sparks, vol. II (Boston: Whittemore, Niles, and Hall, 1856), 88; quoted in: Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, First published 1930 (London and New York: Routledge, 2005), 15.

individual toward the increase of his capital, which is assumed as an end in itself”.¹ For Max Weber honesty and credit formed one of the bases of the spirit of capitalism. He further added that in Benjamin Franklin’s mind “Honesty is useful, because it assures credit; so are punctuality, industry, frugality, and that is the reason they are virtues”.² Without a specific study it is difficult to say what part Shetland’s Protestant ethic played in the attribution of trust and credit, nevertheless Protestant work ethic based on industry and frugality was clearly supported by Shetland élite.

Trust was also important when it came to collective activities on the scattald or on the townland. Sheep farming was one of them. In 1787, the suspicion towards Samuel Anderson in Kergord in the parish of Wesidale, who was “habit & repute a thief”, was so high that Magnus Hunter in Skuron in the said parish “didn’t think that the Pannels flock of Sheep could afford the Mutton & Tallow found in his house”.³ The mistrust of the community might have led to unfounded assertions. A good reputation mattered in judicial cases as well. If taken to court, an investigation into someone’s character could be asked and an impeccable behaviour within the community could mean that the judge would be lenient. This was the case for Samuel Anderson. The Assize “[found] the Indictment proven but recommend[ed] [Samuel Anderson] to the Clemency of the Judge”.⁴ The “exculpatory proof” of this process contained the testimonies of three witnesses who testified of Samuel Anderson’s character. Thomas Hunter in Kergord “[d]epon[ed] that he [did] not know any harm of the Pannel from his own personal knowledge, but that as to his being reputed an honest man he [couldn’t] say”.⁵ James Morrison in South Mustiff “[d]epon[ed] that he [had] heard a bad character of the Pannel, but that it [did] not consist with his own knowledge”.⁶ The last witness, Robert Manson in Houll “[d]epon[ed] that the Pannel [had] but a silly character, by which he mean[t] it is not very good”.⁷ In 1788, John Stout in Scatness in the parish of Dunrossness was “accused of steeling Wool & rooing Sheep”.⁸ He explained that “he never at any other time before those mentioned committed any act of that sort & that because of his candid confession he hopes for lenity & the more especially as he will call his neighbours to speak to his

¹ Weber, *The Protestant Ethic and the Spirit of Capitalism*, 16–17.

² *Ibid.*, 17.

³ SA, SC12/6/1787/35, ‘Complaint (Sheepstealing - Sheep Property of Hercules Anderson in Flamister in Nesting.) (Criminal)’ 1787, pt. 16.

⁴ *Ibid.*, pt. 3.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ SA, SC12/6/1788/6, ‘Information and Complaint (Theft - Stealing Fleeces from Sheep Belonging to Robert Thomson, Tacksman of Sumburgh.) (Criminal)’ 1788.

character of which nothing bad was ever said before”.¹ However, his blunt confession didn’t prevent him from being banished. Stephen Davies explains that as the police force was almost inexistent in Scotland in the early modern ages “there were in practice only two ways in which criminals might be detected: by being caught ‘red-handed’ (in the act) or by accusation of a ‘fama clamosa’ or the voice of the ‘voice of the country’ i.e. by the general suspicion”.² He further argues that “[t]his [practice] meant that reputation was of fundamental importance as a person of ‘mala fama’ or ‘ill repute’ was much more likely to be accused”.³

When someone had been defamed, he or she looked for reparation in his or her good name more than any kind of financial reparation.⁴ When the defamation was proven, the Shetland Kirk Sessions, bailie courts and Sheriff Court restored the pursuer in his or her good name. In February 1734, the bailie of Dunrossness, Sandwick and Cunningsburgh “repon[e]d and restore[d] the s[ai]d John W[illia]mson to his good name and reputation hereby prohibiting and discharging all persons whomever w[i]t[h]in the Bailiarie of Dunrossness Sandwick and Cunningsburgh to object the same to the s[ai]d John W[illia]mson or his family under the penalty of ten pounds Scots money toties quoties”.⁵ Nine years before, the Kirk Session of Unst had rebuked James Lauranceson “for takeing away Thomas Gray his good name”.⁶ In 1761, the Kirk Session of Northmavine went a step further. Catherine Sinclair had been implying “for some time past” that George and Magnus Ratterys were responsible for the “pains & diseases” of their neighbours which “flow not from natural causes or the wise dispersations of good providence but from wicked & diabolish arts practized against them”.⁷ She was sentenced “to appear publicly before the Congregation in order to be rebuked for her faults”.⁸ But this wasn’t enough for the Kirk Session of Northmavine. In a long paragraph, the clerk explained that:

The Session having considered the whole above under their serious Consideration finds that the within petitioners have been wrong’d in their Characters & reputations therefor the Moderator is to Indimate so much to the Congregation publicly & a publick Intimation to be put upon the Church door with Certification that if any person object the same to George or Magnus Ratterys they will be process’d & proceed against according to Law & Justice.⁹

These examples show that once the defamation had been proven, the pursuer couldn’t be attacked on the same grounds by another person in the parish or in the bailiery. They also

¹ Ibid.

² Davies, ‘Law and Order in Stirlingshire, 1637-1747’, 67.

³ Ibid.

⁴ Leneman, ‘Defamation in Scotland, 1750–1800’, 227.

⁵ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 24.

⁶ SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, 1739 1720, fol. 28.

⁷ SA, CH2/286/1, ‘Northmavine Kirk Session Minutes, 1729-1765’, fol. 23.

⁸ Ibid., fol. 25.

⁹ Ibid.

demonstrate that someone's good name or bad reputation followed him or her everywhere: in the bailiery, in the parish or in several parishes in cases of banishment. In her article, Leah Leneman pointed out that "after the Reformation, in Scotland a network of church courts was established, and tight social control was maintained by kirk sessions (parish church courts). Anyone leaving a parish needed a certificate of good behaviour to enter another parish, and individuals would be traced by ministers across the country."¹ This was true in Shetland as well and not only for the Kirk Sessions and their certificates but also for the Sheriff Court and its 'copies of sentence'. Indeed, in 1787, Samuel Anderson was "banished from the Islands of Shetland during all the days of his life".² In order to make sure that Samuel Anderson didn't move from the parish of Wiesdale to another parish in Shetland, Walter Scott, the Sheriff Substitute, "ordaine[d] a Copy of this Sentence to be transmit by the Clerk of Court to the Minister of each charge in Shetland".³ Copies of sentence and certificates were a way to control those who committed offences of all kinds. They were also a way to promote members of the local élite or trustworthy inhabitants such as in 1798 when the Kirk Session of Unst "received as a member and Elder of our Session John Sinclair from Fetlar, now residing in Uyea [after he] presented a Certificate from the Minister and Session of Fetlar of his being ordained an Elder of the Session".⁴

In order to preserve his or her reputation, several rules could be followed. Men and women should privilege public transactions, with witnesses and in daylight. Indeed, one of the commonest cases judged at the bailie courts was the case of going alone, unaccompanied, with a dog on the common pasture hill. This practice was prohibited by one of the Country Acts which stated "that none run after sheep with a dog unaccompanied, or take in and kill any until first shewing the mark to a rancellman, or other honest man".⁵ This act wasn't always respected and those who were caught were tried. In 1732, the Procurator fiscal of the bailie court of Dunrossness, Sandwick and Cunningsburgh complained upon "John Smith Smith for going wt. a sheep dog to the hill unaccompanied contrary to the Countrey Acts".⁶ However, one of the witnesses, George Tulloch, explained that the defender "found Thomas Halcrow in Vadsgarth cautioner and [...] that th[e]r[e]after the s[ai]d cautioner having given over his s[ai]d cautionry he saw the s[ai]d John Smith goe to the hill wt. his dog as formerly

¹ Leneman, 'Defamation in Scotland, 1750–1800', 210.

² SA, SC12/6/1787/35, 'Complaint (Sheepstealing - Sheep Property of Hercules Anderson in Flamister in Nesting.) (Criminal)', pt. 3.

³ Ibid.

⁴ SA, CH2/385/2, 'Unst Kirk Session Minutes, 1797-1843' n.d., fol. 1.

⁵ 'The Old Country Acts', 82 Act 8.

⁶ NAS, RH11/29/1, 'Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735', fol. 15.

but still in company wt. oth[er] men which he declares to be truth as he shall ans[we]r to God”.¹ Acting during the night was an aggravating factor since no one could see what the defender was doing. In 1770, Andrew Gilbertson in Nether Scatsta in Delting “[came] over in the Night time & cutt [the] Teathers wherewith the Swine were Secured & Carry of his Swine”.² His swine had been destroying the pasture of Andrew Mouat in Gluss in Northmavine and this latter decided to tie the said swine. In his petition, Andrew Mouat described the behaviour of Andrew Gilbertson, his coming over in the night time and cutting the ties binding the swine, as “indecent” and he encouraged the Sheriff substitute to take these circumstances into consideration.³ Seven years before at the Kirk Session of Sandwick and Cunningsburgh, Gilbert Robertson in Blosta had been found “guilty of cursing and swearing by the Holy Name of God to Damn [some of his neighbours]”.⁴ The Session usually punished cursing and swearing with a simple exhortation to repentance or one public appearance before the congregation. In this case the Session found that “[the offence] was attended with the aggravating circumstances of being under night and in a boat together” and consequently, appointed Gilbert Robertson in Blosta “to appear publickly before the congregation two Sabbaths for example to others &c.”⁵ Being accompanied and acting in daylight illustrate the need for openness in Shetland’s society in order to gain trustworthiness. Acting in secret was a way to corrupt your own good name. Indeed, in the process against George Gray, a witness named Isabel Moor explained “that [she] refused to take the wooll except in publick before newtral witnesses That [her] honest name should not be bloated by any of [George Gray’s] Secret transactions”.⁶

¹ Ibid.

² SA, SC12/6/1770/2, ‘Petition (Damage by Swine.)’ 1770, pt. 1.

³ Ibid.

⁴ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 17.

⁵ Ibid.

⁶ SA, SC12/6/1796/28, ‘Petition (Concerning Threatening Behaviour - Introducing Foreign Sheep into the Pursuer’s Cro While under the Pursuer’s Employment and Refusing to Remove Them by Threatening the Petitioner and Slandering the Women Nearby, “for Which He Merited to Have His Ears Slitt’.)’, pt. 7.

Conclusion

Shetland's communities were regulated by law and custom. Context is crucial when it comes to interpreting regulations such as law and custom. The context is important because Parliament legislation, written by-laws but also oral custom evolve and change: they aren't inert bodies, they belong to their time. Shetland written by-laws changed from their first enactment in the early 17th century and the version that was used in the 18th century. Various new statutory laws were passed in the second half of the 17th century by the Scottish Parliament and they modified the legal arsenal available to the courts. These changes happened for specific reasons, either in a declaratory manner, they confirmed practices that already existed or in a promulgatory manner, they encouraged changes that could fit to a specific agenda – that was the case at the end of the 17th century when Scottish landowners wanted to encourage new forms of agriculture. These changes also affected the knowledge of law and custom: who knew the law and custom in 18th-century Shetland? It seems fair to state that in the early 18th century, the written by-laws of Shetland must have been known by a large share of the inhabitants – they were regularly read at local courts and churches. However, the majority of the inhabitants didn't know the statutory laws. They belonged to those who were educated. This dichotomy in the knowledge of law contributed to judicial discriminations of the second half of the 18th century.

Parliament legislation, written by-laws and custom formed the basis of regional and local regulations in the 18th century. All the courts before 1747 could act as a parliament and pass acts. It was the case all over Scotland and not only in Shetland. In Shetland, the Sheriff Court – or Stewart Court – re-enacted the Country Acts in the early 18th century. The bailie courts made use of these municipal laws. On the mainland, Baron Courts and even Birlay Courts passed acts that regulated on all aspects of local life from good neighbourhood to 'godly discipline'. The use and knowledge of statutory acts, written by-laws and custom varied: when statutory law was a tool for educated people, custom and written by-laws could be used both by lairds and tenants; they could serve and protect the interests of these two social categories as well as, in some cases, the interests of the landless and poor.

Written by-laws and custom placed good neighbourhood and agricultural practices at the heart of their concerns. Parliament legislation regulated agricultural practices and places – the Scottish parliament was extremely active in that respect in the second half of the 17th century. Written by-laws, custom and statutory laws had different goals when it came to regulating

good neighbourhood and agricultural practices. On the one hand, custom and written by-laws fitted more precisely to local habits, resources and on-going practices when on the other hand, the statutory laws imposed state standards. The custom and written by-laws preserved equality in access and resources while the statutory acts preserved access and resources for one category of the population: the owner of the land. Eventually, these regulations on good neighbourhood and agricultural practices contributed to prescribe a landscape: the custom and written by-laws promoted the building of communal dykes, the communal harvesting of raw materials and communal work on the arable field – what was described in the Country Acts as “conform to the ancient custom formerly observed”.¹ The Parliament legislation allotted spaces on arable land and commonlands in its 1695’s regulation; it prescribed a specific and standardised way of organising space in rural Scotland: the owner of a house should have an almost direct access to both arable and waste lands.

However, these differences in goals between the Parliament legislation and the written by-laws could be challenged by the daily practice of law in the regional and local judicial courts. Shetland Sheriff Court used both the written by-laws and the Parliament legislation in a complementary manner to help preserve the communal practices in Shetland – at least in the last decade of the 18th century. The courts, in their functioning and personnel, could make a difference when it came to implementing the law.

Communities were regulated by judicial institutions and men. These institutions emanated from the Scottish government – then British government – and the Scottish Kirk. The first thing that should be stated here is that it appears that the endless epilogue on the origin of the bailie courts in Shetland doesn’t matter so much in the 18th century. The 17th-century situation might have been different. The separation from the Norwegian laws being a new situation, it’s possible that the organisation of local parish-based courts comparable to bailie courts had a lot to do with the previous Norwegian local courts. However, the organisation and the practices observed in 18th-century Shetland bailie courts records show clear links between the mainland Franchise Courts and the bailie courts in Shetland. They are comparable on various levels with their mainland counterparts. They also show singularities in their form in the same way than mainland Franchise Courts show specialness and localness – the standardisation of local courts being inexistent in the early 18th century. Similarly, the Kirk Sessions in Shetland worked as efficiently, as locally and as singularly as their mainland counterparts.

¹ ‘The Old Country Acts’, 84 act 34.

The efficiency of these courts – civil and ecclesiastical – was based on their collaboration. Until the end of the 18th century – even if it was to a lesser extent in the second half of said century – the courts worked as a judicial network. Harriet J. Cornell explains in her PhD dissertation on social control in 17th-century East Lothian how “Haddingtonshire had an interlinked network of courts and officials that regulated the behaviour and relationships of its ordinary men and women”.¹ She further explains how “social control was experienced from a combination of official sources” and not only from the local Kirk Sessions.² Her conclusions apply to Shetland judicial network in the 18th century as well. These efficient courts, working as a local judicial network, participated to the social control of the inhabitants. W. P. L. Thomson argues that, in the case of Orkney in the early 18th century, “[t]he bailie courts [...] represented a secular form of social control, and the church as it developed in the course of the 18th century was the ecclesiastical and possibly more powerful arm of the same system”.³ The same applied to Shetland as well: the courts, ecclesiastical and civil, collaborated on almost all matters – from ‘godly discipline’ to wrecks – and referred the issues, when necessary, to the ‘most competent court’. They organised a strict social control of the region.

The localness of the courts offered possibilities that the regional court – the Sheriff Court in the second half of the 18th century – didn’t have. The local courts – Kirk Sessions and bailie courts – offered opportunities for the tenants, the servants, the poor and the landless to make their cases heard at court and to receive a verdict on the issues that concerned them. The collaboration between the courts was also rendered more effective by the network of local courts in the early 18th century: the bailie courts and the Kirk Sessions had more frequent interactions it seems and they shared more personnel than in the second half of the 18th century between the Kirk Sessions and the Sheriff Court. The necessity of Vice-Admiral Substitutes illustrates the importance of local personnel who knew the local setting, its inhabitants, its practices and its territories. Without their local substitutes, the Vice-Admiral of Shetland didn’t have the means to control Shetland’s coasts.

Communities were regulated locally, by local men. For these men – Elders, Rancelmen, but also ministers, bailies and Sheriff Substitutes – and for the Shetlanders as a whole the question of trust and credit was primordial. Trust and credit were acquired through a variety of actions and behaviours. The education and familial background of an individual could provide him with enough skills and qualifications to be trusted with a specific office. He was

¹ Cornell, ‘Gender, Sex and Social Control’, 60.

² Ibid.

³ Thomson, *Orkney Land and People*, 173.

considered as honest and as fit for the office – his past and character could even be investigated. Ministers provided testificates to testify of the probity of an individual willing to leave a parish. Credit and trust were often based on a good reputation, a good name. When someone was ‘ill-repute’, he or she could be accused of mischief and he or she couldn’t participate plainly in the life of the community – there was a breach of trust in daily exchanges and communal works.

A good name was often acquired – or lost – in the bounds of an individual’s parish – and sometimes in the neighbouring parish. Shetland parishes and churches were of capital importance in the 18th century. The Kirk supported civil justices in a variety of instances. The parishes served as territory of reference for the bailie courts, for the inquiry in reputation, for the appointment of Rancelmen, for the dissemination of judicial information, etc. The kirks were the quintessential municipal buildings: they served for Kirk Sessions, bailie courts, to read Sheriff Courts letters, to read the by-laws, etc.; and they were built on what could be compared to public fundings – the landowners of a parish collected funds. They were a place in the parish landscape that everybody knew. When they didn’t exist or were in decay, other places served as communal houses but they were less specific and less well known.

The localness of the churches explains – partially – their importance: they were close to home. Localness also explains the legitimacy of the Elders and the Rancelmen. They were locals, who knew the custom, the by-laws, the local inhabitants and their practices. Even if they represented a form of social control they could also have at heart the best interest of their fellow parishioners. These men, but also the Ministers, the Bailies and to some extent, the Sheriff Substitutes knew the local geography of Shetland: they knew the parishes, the scattalds and the townships. They knew how on a local basis the inhabitants worked and they based the appointments of their local officials on this knowledge.

Regulation applied to land, sea and the inhabitants. Parliament statutes, written by-laws and custom concerned not only good neighbourhood and agricultural practices; they also concerned the management of the shores and of the sea resources. The 33rd act of the Country Acts stated:

That none use musel bait, or other bait, but such as all or the most part of the fishers have, under the pain of 10 pounds; and that none fish with haddock lines within voes, from Belton to Martinmass, or so long as they can draw haddocks on hand lines, under the like pain of 10 pounds Scots; and that none taik bait, nor cut tang in another man’s ebb, under the like pain of 10 pounds.¹

When the 41st act declared:

¹ ‘The Old Country Acts’, 84 act 33.

That none go to sea, or be employed about fishing, from sun set on Saturday nights till after sun rising on Monday morning, nor travel by sea or land about their secular affairs or business, or any other way imployed therein on the Sabath-day, except in works of necessity and mercy, under the pain of 10 pounds Scots by and attour the penalties and punishments ordained by law against all sabath-breakers.¹

The 33rd act protected the resources – and most importantly it protected the fish spawn. The 41st act encouraged the ‘godly discipline’ on land and on sea. The Kirk Sessions and the bailie courts had to ensure the enforcement of the Sabbath on land and on sea, as well as the enforcement of ‘godly behaviour’ both on land and on sea. The Kirk Sessions records show that when most of the cases of blasphemy and defamation happened on land, some of them happened on boats. Kirk Sessions jurisdictions spread onto the boats of their parishioners. The shore didn’t form a border beyond which everything was allowed. If reported, a blasphemy or a defamation which happened on a boat was judged by the Kirk Sessions as well.

The Vice-Admiralty Court and the Sheriff Court were an expression of the continuum between land, sea and the inhabitants. The Vice-Admiralty Court judged, among other things, the cases of wrecks and decided on the allocation of wrecked goods. The wrecked goods were shore resources, arriving directly from the sea – through the medium of a ship. Another shore resource, the kelp, was at the heart of several processes at the Sheriff Court in the late 18th century. The Court judged cases of division of kelp shores and allocation of kelp resources. It also authorized the building of fishing lodges on the undivided scattalds. These courts, Vice-Admiralty and Sheriff Courts, both contributed to make the connection between the land, the sea and the inhabitants.

Shetland communities were regulated. This chapter has offered an analysis of how they were regulated. It has also offered a first overview of the various local and network communities of Shetland.

First and foremost was the parish community. In each and every parish of Shetland, parishioners formed a community, though not in a religious sense and not only based on religious practices. Phil Withington and Alexandra Shepard have explained that a community may be defined through its institutional arrangements, practices and roles, its people, its acts and artefacts, its place, its own time and the rhetoric applied to it.² In the case of the parish community, it appears that three institutions based their organisation on the geographic division of the parish and therefore on its inhabitants: the Kirk Sessions were organized on a

¹ Ibid., 85 act 41.

² Alexandra Shepard and Phil Withington, ‘Introduction: Communities in Early Modern England’, in *Communities in Early Modern England: Networks, Place, Rhetoric*, ed. Alexandra Shepard and Phil Withington (Manchester: Manchester University Press, 2000), 12.

parish basis and relied even in some cases on old parish divisions; the Bailies of Shetland were appointed on a parish basis since estate-based bailiery courts didn't fit with Shetland's landholding system; and eventually, the Sheriff Substitute appointed rancelmen in Unst following the old parochial divisions. These institutions used the parish territory on a regular basis. It seems obvious for the Kirk Sessions but it was also the case in the bailie courts, for example, in Unst it was the parishioners who were convened to the court, and at the Sheriff Court, the inquiries in good name and reputation were done on a parish basis. Ministers, bailies, but also Rancelmen and Elders had their role defined within the boundaries of a parish. The parish community was obviously constituted of the Presbyterian flock but not only. Episcopalians belonged to this community as well: they were judged at the bailie courts and, at the Sheriff Court they could have their reputation investigated on a parish basis. People could be temporarily or definitely excluded from the parish community. The Sheriff Court ordoned at several occasions the banishment of thieves from their parish – and often from the neighbouring parishes. This exclusion meant that for these people the community rejected them: it had no trust in them anymore. Credit, collective and communal sociability and submission to justice seem to have been some of the founding acts of the parish community: members of the parish community should be honest; they should act collectively and communally in a number of cases – when they went to the hill, when they harvested floss, but also when they attended church and court; and, they should accept the social control of judicial and police bodies such as the local courts, the Rancelmen and the Elders. The community's territory extended all over the parish. Some communities, however, had more complex territories. In the case of the united parishes of Dunrossness, Sandwick and Cunningsburgh, it seems fair to identify here two parish communities: the Dunrossness community and the Sandwick and Cunningsburgh community. The members of these two communities didn't attend the same church, they didn't attend the same bailie court – the inhabitants of Sandwick and Cunningsburgh participated in the bailie court only when it took place within the boundaries of the parishes of Sandwick and Cunningsburgh –, and they had two different Kirk Sessions. The fact that the same man, John Mill, was the minister of Dunrossness, Sandwick and Cunningsburgh didn't mean that they felt and lived as a united community. This idea is reinforced by the presence of two places of worship, one church in Dunrossness and another one in Sandwick and Cunningsburgh. Parish communities, as not only faith-based communities, seem to have been active communities all along the 18th century in Shetland. The divisions of the church affected the attendance at the Presbyterian kirk in the late 18th century and early 19th century but the other aspects of parish life – credit,

collective and communal work and submission to civil justice – weren't affected. Eventually this community was presented as a whole, as a concrete entity by both members of the community themselves and observers of the community. The Sheriff Court and the bailie courts referred to the parishioners of a said parish; and the parishioners themselves identified as belonging to a specific community: in 1760, when Gilbert Robertson “threw reflections on the parish”,¹ he targeted a specific community, his community, the parish community which he had probably felt excluded from – he had already had to appear before the Kirk Session in a previous affair.

Other local communities were touched upon in this chapter: the scattald and the township communities. These communities could be united under the expression of ‘neighbourhood communities’. The Country Acts regulated the life of the members of these communities. In the 32nd act it was specifically stated

That every scattald have a sufficient pund, under the pain of 10 pounds Scots²

The 36th act made sure

That non contemptuously pasture upon rives flaws, cut floss, or cast peats, in their neighbours scattald, under the pain of 10 pounds Scots, nor that any cut floss before Lammas-day, in their own scattald, and due advertising, the neighbours scattald, under the pain of 40 shillings Scots, *to. qu.*³

These acts mentioned directly the scattald as the locality where ‘good neighbourhood’ should be maintained. Other acts were less precise and didn't specify the territory concerned by the by-law. However, these acts targeted the ‘neighbourhood communities’: villagers (living in a Shetland room or township) or scattalders.⁴ Townships and scattalds served as a geographic grid to elect Elders and Rancelmen. The Elders of Northmavine, Dunrossness and Sandwick and Cunningsburgh represented – almost – all the scattalds of these parishes. In my opinion, this illustrates the fact that Elders were members of active local communities in which they served as moral police officers. These neighbouring communities were defined by collective actions such as the casting of peat and the building of dykes and collective places of work such as the hills and the shores. Their observers or regulators identified them as the communities in which ‘good neighbourhood’ should be maintained. If we consider that the members of the local communities – udallers, tenants, landless and poor – participated alongside the landowners in the elaboration of the Country Acts, then they contributed to their

¹ SA, CH2/385/1, ‘Unst Kirk Session Minutes, 1720-1739’, 1739 1720, fol. 57; SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 11.

² ‘The Old Country Acts’, 84 act 32.

³ Ibid. act 36.

⁴ ‘The Old Country Acts’ see for example: acts 6, 23 and 34.

identification as ‘good neighbours’ and ‘scatalders’. They also identified themselves as “scatt brethren”:¹ brothers of scat or scattald.

It shouldn’t be forgotten that network communities have been approached in this chapter: the police communities and the judicial community. These communities were all-men communities and they overlapped. The police communities were composed of the network of Rancelmen and Elders appointed on a parish basis and, the justice community was composed of a network of judicial and police personnel on a more regional basis.

This chapter which focused mainly on regulation and which used mostly judicial archives from civil or ecclesiastic sources offered a significant focus on parish communities. This is in parts due to the research focus and the materials studied. The importance of the scattald communities will be highlighted in the next chapters.

¹ NAS, RH4/102, ‘Rental of Lordship of Shetland’, fol. 2.

Chapter 3: The community in its environment: the “continuum formed by islanders, land and sea”¹

Skåne is a beautiful place, she thought to herself. Pretty and open. Yet secretive as well. What seemed at first sight to be so flat could suddenly change and reveal deep hollows with houses and farms like isolated islands. She never ceased to be amazed by the nature of the landscape when she drove around [...].²

Henning MANKELL, *The White Lioness*.

*

Building gates and fences played an important part in what could be called ‘communal activities’. Their structures were described and prescribed in the Country Acts. Regulations controlled Shetlanders’ environment: they regulated not only the field systems but also the harvesting of raw materials as well as fishing and multi-tasking (service, ale production, etc.). This chapter examines these three sectors – farming, fishing and craftsmanship – and discusses the importance of Shetlanders’ environment in their organisation and socio-economic activities.

Environment is a complex word. It has multiple meanings and since (unfortunately) this thesis isn’t a work of environmental history I won’t propose a long and critical, historiographical definition here. I will however use some of the concepts that have brought fruitful interpretations in the environmental history field such as Elinor Ostrom’s Common Pool Resources. In this chapter, the word *environment* will be understood as “the state of being encompassed or surrounded”,³ a meaning that isn’t used anymore but which corresponded to the first sense of the verb “to environ” as defined in Samuel Johnson’s dictionary in 1785 and for which he gave the following definition and example:

1. To surround; to encompass; to encircle.

I stand as one upon a rock, Environ’d with a wilderness of sea. *Shakespeare*⁴

As such, a Shetlander standing upon a rock on a hill – to paraphrase William Shakespeare – was environed with a wilderness of *hagi*, the grazing area beyond the township’s dyke, where sheep roamed free and where human activities such as harvesting raw materials took place.

¹ Helen Dawson, ‘Archaeology, Aquapelagos and Islands Studies’, *Shima: The International Journal of Research into Island Cultures* 6, no. 1 (2012): 17.

² Henning Mankell, *The White Lioness: A Kurt Wallander Mystery* (New York: The New Press, 2013), 5.

³ ‘Environment, N.’, *OED Online* (Oxford: Oxford University Press, March 2015), <http://www.oed.com.distant.bu.univ-rennes2.fr/view/Entry/63089?redirectedFrom=environment&>.

⁴ Samuel Johnson, *A Dictionary of the English Language: In Which the Words Are Deduced from Their Originals, and Illustrated in Their Different Significations by Examples from the Best Writers. ... By Samuel Johnson*, The sixth edition, vol. 1 (London: printed for J. F. and C. Rivington, L. Davis, T. Payne and Son, W. Owen, T. Longman, [and 21 others in London], 1785), sec. To Envi’ron.

The word *environment* will also be understood in this chapter as “The area surrounding a place or thing; the environs, surroundings, or physical context.”¹ This definition of the word *environment* dates from Thomas Carlyle’s translation of the German word, *Umgebung*, into *environment* in 1828. Ralph Jessop explains that “the coinage of ‘environment’ deserves to be thoroughly explored as a response to changes in the agrarian economy and landscape of Lowland Scotland” in the late 18th century and early 19th century.² He quotes Nigel Leask who stated that “the philosophical spirit of the age and agricultural improvement [...] fundamentally transformed man’s relationship with nature in practical as in theoretical terms”.³ Ralph Jessop describes how “[i]n sharp contrast to the comparatively unaffected southern English agrarian structures and rural landscape, the transformation of agrarian existence in Scotland during the latter decades of the 18th and the early 19th centuries was so rapid and profound that it seems fair to describe the socio-economic context of the coinage of ‘environment’ as ‘the most dynamically modernising society in Europe’.”⁴ Therefore, in this context of dramatic changes, it seems less of an anachronism to imagine that late 18th-century Scottish communities had a feeling that something was changing abruptly in their surroundings and radically transforming their environs. The *community* but more accurately, the communities, studied in this chapter will be local communities, communities which are tied by a geographical bond, such as township communities and scattald communities, as well as network communities, communities which are tied by a common experience creating a network of individuals sharing similar interests and claims, such as workers communities (fishermen, kelpers, etc.).

Farming and fishing have been studied in Shetland’s historiography. However in some works, farming holds the upper hand and in others, it seems as if fishing was the only activity in Shetland. This vision of an archipelago dedicated entirely to fishing comes from, at least, two sources: 1) 18th century descriptions and maps of the archipelago which emphasised on the economic importance of the fisheries such as Thomas Kitchin’s map published in 1752 and where, among other things, an allegory of abundance represents two women holding fish,⁵

¹ ‘Environment, N.’

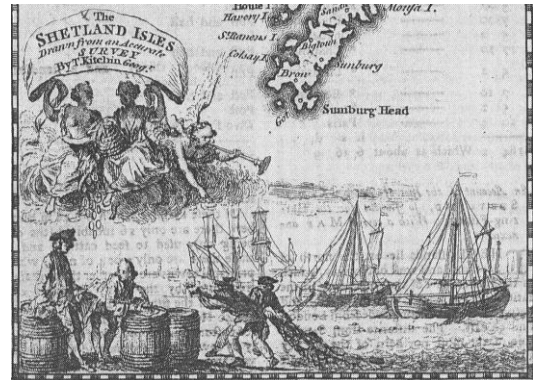
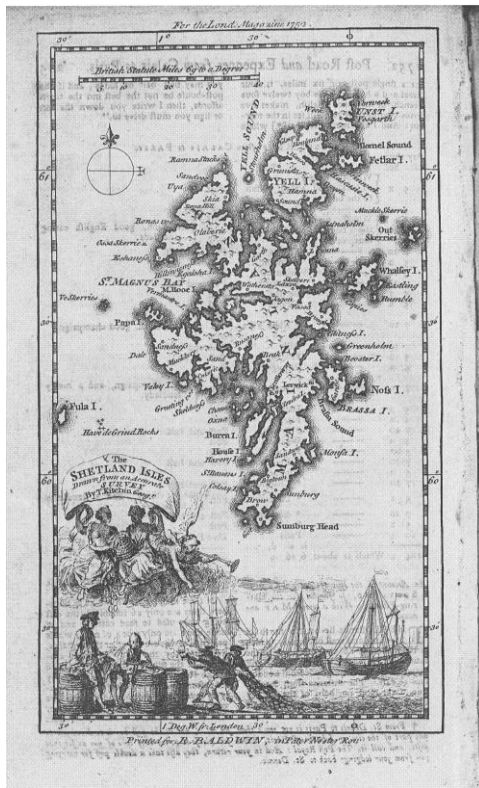
² Ralph Jessop, ‘Coinage of the Term Environment: A Word Without Authority and Carlyle’s Displacement of the Mechanical Metaphor: Coinage of the Term Environment’, *Literature Compass* 9, no. 11 (November 2012): 709.

³ Nigel Leask, *Robert Burns and Pastoral: Poetry and Improvement in Late Eighteenth-Century Scotland* (Oxford: Oxford University Press, 2010), 15; Quoted in: Jessop, ‘Coinage of the Term Environment’, 709.

⁴ Jessop, ‘Coinage of the Term Environment’, 709. Here Ralph Jessop quotes: Simon Schama, *The British Wars 1603-1776, A History of Britain 2* (London: The Bodley Head, 2009), 312.

⁵ Audrey Beaudouin, ‘Were They Only Fishermen?’, *Unkans. Newsletter of the Shetland Museum and Archives*, 2010; NLS, NG.1521.d.9, ‘The Shetland Isles by Thomas Kitchin’ (London: For R. Baldwin, 1752).

and 2) a comparison with the more fertile Orkney which led to an over simplistic description in which “Orcadians were said to be farmers who fished, while on Shetland farmers were known as “fishermen with a plough.””¹



NLS, NG.1521.d.9. ‘The Shetland Isles by Thomas Kitchin’. London: For R. Baldwin, 1752.

Map 15: Shetland Islands: Thomas Kitchin, 1752

Indeed a focus on fishing can lead to a definition of social-relationships and gender relationships based only on male fishing communities and capitalistic and mercantile identification through (male) work. In *The Human Shore*, John R. Gillis explains how “[t]he myth of a separate fisher folk arose simultaneously with the myth of the professional mariner, products of the emerging romance with the sea already visible in the eighteenth century and full-blown in the nineteenth century.”² He further explains how “[w]e tend to exaggerate the proportion of full-time mariners in the early modern world.”³ Agriculture and fishing can only be fully understood if the issue of multi-tasking,⁴ in which they both played an important part, is properly studied. Multi-tasking, polyculture or *pluriactivité* is defined as the manner in which a man or a woman holds one or two (or more) “main occupations” (for example: farming and/or fishing) which “can support a normal household” and a set of “subsidiary occupations” such as knitting, tailoring, shoe-making, etc., which “cannot support a family”

¹ John R. Gillis, *The Human Shore: Seacoasts in History* (Chicago: University of Chicago Press, 2012), 75.

² *Ibid.*, 77.

³ *Ibid.*

⁴ Christopher A. Whatley, ‘Work, Time and Pastimes’, in *A History of Everyday Life in Scotland, 1600 to 1800*, ed. Elizabeth A Foyster and Christopher A. Whatley (Edinburgh: Edinburgh University Press, 2010), 292–93.

explains Ståle Dyrvik.¹ Gérard Le Bouédec details in an article published in 2002 the various works that a coastal man – and his wife – could hold in the early modern ages.² This seminal article provides updated data on *pluriactivité* in the coastal areas as well as on the complexity of work situations in the rural areas.

Looking at the environment and multi-tasking in the same chapter allows overcoming the limitations of an analysis based only on farming and fishing. Looking at multi-tasking offers the possibility to recontextualise the Shetlanders' agrarian and fishing activities as well as their *pluriactivité*. Often agriculture and fishing are strictly separated from multi-tasking. This is the case in Frances J. Shaw's book, *The Northern and Western Islands of Scotland*.³ In the fourth part, she studies the "other occupations within the community"⁴, which she detailed in two chapters: "further activities of the farmer"⁵ and "craftsmen and professional people".⁶ She maintains a clean cut between the farming practices presented deeply in the first chapters and the subsidiary activities of the farmers, and another clean cut between the farmers and the craftsmen presented separately even though she acknowledged that the craftsmen "were also engaged in farming".⁷ More importantly, she considered "fishing" as a "further activity"⁸ even though she recognised that fishing was more important in Shetland than in Orkney.⁹ For practical reasons, a cut between farming, fishing and craftsmanship appears in this chapter but the recontextualisation of these activities, their consideration within the spectre of multitasking as well as the concern for their reliance on local natural resources leads to a more balanced narrative of the communities' life.

This chapter explores the interconnections between socio-economic activities and the environment all along the 18th century. It will be suggested that in Shetland such as in the rest of Scotland and in England, observers and commentators of the 18th centuries deplored the idleness of the inhabitants, the lack of manufactures and the poor state of both fishing and farming, while recognizing that the inhabitants were industrious and that the women performed economically important jobs. It is further argued that multi-tasking was a feature of

¹ See "An Occupational Typology", in Ståle Dyrvik, 'Farmers at Sea: A Study of Fishermen in North Norway, 1801-1920', *Journal of Family History* 18, no. 4 (1993): 347.

² Gérard Le Bouédec, 'La pluriactivité dans les sociétés littorales XVIIe-XIXe siècle', *Annales de Bretagne et des Pays de l'Ouest. Anjou. Maine. Poitou-Charente. Touraine*, no. 109-1 (20 March 2002): 61-90.

³ Frances J. Shaw, *The Northern and Western Islands of Scotland: Their Economy and Society in the Seventeenth Century* (Edinburgh: John Donald Publishers Ltd., 1980), <http://www.getcited.org/pub/102185118>.

⁴ *Ibid.*, 119-51.

⁵ *Ibid.*, 120-31.

⁶ *Ibid.*, 132-51.

⁷ *Ibid.*, 134.

⁸ *Ibid.*, 120-22.

⁹ *Ibid.*, 120.

both male and female lives, evolving along their life time, and allowing them to seize any opportunity that arose. It can be added that these activities – farming, fishing and craftsmanship – were controlled and the natural resources at the heart of these activities were under a specific system of regulation. Eventually, the characters of the farmers-fishermen and the farmers-knitters will come to life and their own environments – the land, the shore and the sea – will offer the scenery for both their dependence and their autonomy.

Industriousness

Discourses on industriousness

In “The Industrial Revolution and the Industrious Revolution”, Jan De Vries explains that there were two discourses in England in the 18th century concerning the working population. There were those, mostly statesmen,¹ who “[denounced] the sloth, fecklessness, and irresponsibility of working people.”² The working population had to be educated: “The factory master not only had to train his workers, he had to train his consumers at the same time, for nothing came harder than regular and intense labour.”³

Others, mostly essay writers, novelists and travellers, gave another picture of the situation. Arthur Young and Daniel Defoe were good examples. They described a situation that they saw during their travels and therefore they became “the chronicler[s] of the industrious revolution.”⁴

These two discourses were simultaneously found in Shetland throughout the 18th century. The main attacks concerned irregularities or working hours and underemployment. Thus according to Edward P. Thomson, the critics wished to fight against the independence of workers.⁵ One of the main aims of these critics was to encourage the erection of manufactures and industrious villages.

Idle people

The discourse referring to the working population as an ‘idle bunch of people’ was mostly built around two arguments: 1) irregular working time and underemployment; 2) want of a good master and bad consumption of goods.

The use of the word ‘idle’ in a Shetland context and regarding the workers population is found in the late 18th century in the words of the Shetland ministers who answered to Sir John Sinclair’s questionnaire:

¹ D. C. Coleman, ‘Labour in the English Economy of the Seventeenth Century’, *The Economic History Review* 8, no. 3 (1 January 1956): 280.

² Jan de Vries, ‘The Industrial Revolution and the Industrious Revolution’, *The Journal of Economic History* 54, no. 2 (1 June 1994): 258.

³ Ibid.

⁴ Ibid.

⁵ Edward P. Thompson, *Temps, Discipline de Travail et Capitalisme Industriel* (Paris: La Fabrique éditions, 2004).

To employ those who have no farms, and are in a great measure idle, manufactories of woollen cloth and fishing-lines should be established.¹

For during one half of the year at least, a great part of the people are idle; and during the other half, what little work they perform can make no adequate return for their labour.²

The same sum expended in establishing a woollen manufacture would have done essential good to the inhabitants, and would have employed many hand which is now idle, or employed in destroying materials, which ought to be turned to a more profitable account.³

And as it is said, that such [fishermen] should be idle the half of their time, might they not also be employed in spinning and making their lines and herring nets?⁴

The want of manufactures is a great loss, as the people, especially women and children, are idle for at least half of the year.⁵

One of the solutions to prevent idleness proposed by the ministers of Bressay, Delting, Northmavine and Aithsting was the erection of woollen manufactures.

One of the reasons of such idleness was the irregularity of work throughout the year and the underemployment that it means for the observers. For “those who have no farms”,⁶ their employment came only during the fishing season in summer and they relied on more irregular work during the rest of the year to feed themselves and their family. The same was even true for those who were employed as farm servants. The minister of the parish of Delting explained that “[a] man-servant, for three quarters of the year, has L. 9 Scots, and a pair of shoes. No man-servant can be got during the fishing season, as they have better wages at the fishing.”⁷ A small udeller or a tenant had to share his time during the year as a fisherman and a farmer.⁸ The women and children were considered as productive elements that should bring their contribution to the household. They were considered by observers as idle during the

¹ John Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 10, 102, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Bressay%2C%20Burra%2C%20and%20Quarff/>.

² John Morison, ‘Parish of Delting’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 1, 390–91, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Delting/>.

³ *Ibid.*, 404–5.

⁴ William Jack, ‘Parish of Northmaven’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 12, 367–68, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Northmaving/>.

⁵ Patrick Barclay, ‘United Parishes of Aithsting and Sandsting’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 7, 595, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Sandsting%20and%20Aithsting/>.

⁶ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 102.

⁷ Morison, ‘Parish of Delting’, 401. See also: Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 200; Barclay, ‘United Parishes of Aithsting and Sandsting’, 587; David Thomson, ‘Parish of Walls and Sandness’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 20, 112, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Walls%20and%20Sandness/>; John Shirreff, *General View of the Agriculture of the Shetland Islands with Observations of the Means of Their Improvement* (Edinburgh: Archibald Constable and Co., 1814), 68.

⁸ Thomas Mouat and James Barclay, ‘Island and Parish of Unst in Shetland’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 12, 193, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Unst/>.

winter season.¹ The irregular working seasons were an important element of the polyculture of the archipelago and it brought a considerable amount of attention from the élite writers and travellers who didn't understand its meaning for the working population but only saw in it a proof of its "sloth, fecklessness and irresponsibility".²

Twenty years after the *Statistical Account*, Arthur Edmondston wrote that:

In the country parishes of Zetland, during the winter time, there is no occupation whatever, but a few branches of handicraft, which are soon exhausted. [...] It is a curious fact in the history of so small a place, that a great proportion of the inhabitants, although apparently in good circumstances, have no certain, or visible means of subsistence, who rise in the morning without any idea how the day is to be spent. This was observed by the Rev. Mr Sands above twenty years ago, and the evil has been increasing ever since.³

His rant against irregularity of work was supported by an argument of demographical value. Arthur Edmondston and John Laing both read Thomas Malthus.⁴ For John Laing, "[i]t is curious to observe how the principles of Mr. Malthus accommodate themselves to, and receive illustration from, the smallest societies".⁵ In Arthur Edmondston's words, if "the inhabitants of Zetland [were] to be reduced by one third of their present number, the details of agriculture and of fishing would be as well performed as before".⁶ At the turn of the nineteenth century, the ideas of Thomas Malthus played an important role all over Scotland on the accounts of employment and poor relief: "the church", explains Rosalind Mitchison "had swallowed whole the concepts of *laissez-faire* economy and Malthusian dogma",⁷ poor relief was a way to encourage idleness and population growth which would lead to a demographic disaster.⁸

In the minds of the élite writers and travellers, another reason of such idleness was the want of a good master and the existence of bad consumption habits. The first reference to a "good master", a man who organised the production to render it better or more efficient was made by Thomas Gifford in 1733:

¹ Barclay, 'United Parishes of Aithsting and Sandsting', 595.

² de Vries, 'The Industrial Revolution and the Industrious Revolution', 258.

³ Arthur Edmondston, *A View of the Ancient and Present State of the Zetland Islands. Including Their Civil, Political, and Natural History, Antiquities and an Account of Their Agriculture, Fisheries, Commerce, and the State of Society and Manners*, vol. 2 (Edinburgh: John Ballantyne and Co., 1809), 145.

⁴ *Ibid.*, 2:149; John Laing, 'Of the Shetland Isles (1806-1807)', in *A Voyage to Spitzbergen Containing an Account of That Country, of the Zoology of the North; of the Shetland Isles; and of the Whale Fishery*, [1818] (Edinburgh: Printed for the author, 1825), 40.

⁵ Laing, 'Of the Shetland Isles (1806-1807)', 40.

⁶ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:147.

⁷ Rosalind Mitchison, 'The Making of the Old Scottish Poor Law', *Past & Present*, no. 63 (1 May 1974): 92.

⁸ Rosalind Mitchison, *The Old Poor Law in Scotland: The Experience of Poverty, 1574-1845* (Edinburgh University Press, 2000), 144; Scott Moir, 'Rosalind Mitchison. The Old Poor Law in Scotland: The Experience of Poverty, 1574-1845. Edinburgh: Edinburgh University Press, 2000. 246 Pp. \$28.00 (Paper), ISBN 978-0-7486-1344-1.', *H-Albion, H-Net Reviews*, 2001, 2.

[...] of the wool they make coarse cloth, stuffs, stockings, &c. but the want of walk-mills is a very great loss to the country, to supply which, and for the encouraging the woollen manufactories there, the right honourable the Earl of Morton has been pleased of late to order a walk-mill to be built at his Lordship's expence, for the benefit of the country [...]

When the walk-mill was ordered the manufacture of the coarse woollen cloth called *wadmail* was already on decline;¹ there is no evidence that the walk-mill was erected.² Nevertheless, the Earl of Morton was willing to bring a new infrastructure that should improve – in his views and in Thomas Gifford's views – the walking of wool and therefore increase the price of the woollen articles. Some of the ministers insisted on the fact that the working population should be taught how to produce woollen stuffs as well as it should be explained how to consume proper goods. The minister of the parish of Bressay, Burra and Quarff explained that “[t]hey are not much disposed to industry; but the reason is obvious; they have no object to call forth their exertions. Convince them that it is their interest to labour, and they will approve themselves good and faithful workmen”³ and that “[t]hey should be taught to turn their raw hides to account, by tanning them”.⁴ The knowledge and the quality of the work of the working population were questioned by ministers. Teaching them how to produce wouldn't be enough if they were not taught how to consume. The consumption of tea and gin was seen as a bad habit that deteriorated both health and household economy. Indeed even if there were “no inns”, the minister of the parish of Aithsting and Sandsting complained about the “perhaps 30 or 40 gin and tea shops, to the great ruin of the morals, health, and circumstances of the inhabitants”.⁵

This discourse wasn't typical to Shetland. Such attacks on the irregularity of working hours, on the said idleness and on the bad consumption habits were found at the same time throughout Great-Britain. In an article published in 1956, D.C. Coleman emphasises two things: the “irregularities of work inherent in the nature of domestic industry”⁶ and the underemployment known in agricultural counties. On this issue he quoted Daniel Defoe who

¹ Samuel Hibbert, *A Description of the Shetland Islands, Comprising an Account of Their Geology, Scenery, Antiquities, and Superstitions* (Edinburgh: Archibald Constable and Co., 1822), 441.

² *Ibid.*, vii.

³ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 201.

⁴ *Ibid.*, 202. See also: Morison, ‘Parish of Delting’, 402; Barclay, ‘United Parishes of Aithsting and Sandsting’, 588.

⁵ Barclay, ‘United Parishes of Aithsting and Sandsting’, 589. See also: Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 201; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 201; Patrick Neill, *A Tour Through Some of the Islands of Orkney and Shetland, With a View Chiefly to Objects of Natural History, but Including Also Occasional Remarks on the State of the Inhabitants, Their Husbandry, and Fisheries* (Edinburgh: A. Constable and Company and John Murray, 1806), 91.

⁶ Coleman, ‘Labour in the English Economy of the Seventeenth Century’, 290.

described these regions as “unemployed counties”;¹ there were “Counties in *England*, where Trade has the least Concern, and where the Inhabitants consist chiefly of Landlord and Tenant, the Gentry and Husbandmen”² since during winter husbandmen apparently didn’t work. Regarding the idleness of the inhabitants, the minister Dugal M’Dougal wrote in the 1790s about the inhabitants of the parishes of Lochgoil-head and Kilmorich, in Argyle, that:

the cottagers are rather indolent, especially after they are successful in the herring fishing; and too many of them spend their time, from the beginning of January to the beginning of April, without any employment, but preparing their nets for the ensuing season. To this, however, there are many exceptions, and some of the cottagers are sedulous and active in supporting their families: It is much to be wished, that the cottagers would carry on the white fishing, during these months of the year, in which so many of them are at present idle.³

This description of the idleness of the inhabitants was one of many examples in the various volumes of the *Statistical Account*. The reasons of the idleness could be different. For Daniel Defoe, people were idle and unemployed in the agricultural counties of England while for the Dugal M’Dougal, their idleness came from their good fishing in the summer. The variety of reasons given for the “sloth and fecklessness” of the inhabitants, was not “usually the product of disinterested observation of actual behaviour. It functioned as part of an ideology that defined the working population’s otherness and incapacity for self-governance” explains Jan De Vries.⁴ The working population had to be educated as workers but also as consumers.⁵ In 1752, Thomas Alcock, a Church of England clergyman in Devon,⁶ wrote the following:

Another new Species of Expence crept in of late Years among the lower Sort is Tea-Drinking. It has been asserted many times in Print, and is indisputably known to be true, that several poor Persons, who receive Charity, have their Tea once, if not twice a Day. In Sea-port Towns, and most Places on the Coast, where, by clandestine Means, Tea is afforded cheaper, it is the ordinary Breakfast of the meanest of the Inhabitants. But for poor Wretches, almost destitute of the common Necessaries of Life, to run daily into such idle Extravagances, is certainly a very ridiculous Piece of Management: For the Expence of the whole Apparatus of Tea, Sugar, Cream, Bread and Butter, &c. must be near treble to that of Milk or Broth, or any common wholesome Breakfast.⁷

¹ Daniel Defoe, *A Plan of the English Commerce: Being a Compleat Prospect of the Trade of This Nation, as Well the Home Trade as the Foreign* (London: Charles Rivington, 1728), 88–90., quoted in: Coleman, ‘Labour in the English Economy of the Seventeenth Century’, 289.

² Defoe, *A Plan of the English Commerce*, 88. [his capitals and his italics]

³ Dugal M’Dougal, ‘United Parishes of Lochgoil-Head and Kilmorich’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 3, 189–90, accessed 5 March 2013, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Argyle/Lochgoil-Head%20and%20Kilmorich/>.

⁴ de Vries, ‘The Industrial Revolution and the Industrious Revolution’, 258.

⁵ Ibid.

⁶ Patrick Woodland, ‘Alcock, Thomas (1709-1798)’, *Oxford Dictionary of National Biography* (Oxford University Press, 2006), <http://www.oxforddnb.com/view/article/296?docPos=2>.

⁷ Thomas Alcock, *Observations on the Defects of the Poor Laws, and on the Causes and Consequences of the Great Increase and Burden of the Poor. With a Proposal for Redressing These Grievances. In a Letter to a Member of Parliament* (Oxford: printed for R. Baldwin junior, at the Rose in Pater-noster Row, and R. Clements, 1752), 47. [his capitals and his italics], shorter version of the quote quoted in: Asa Briggs, *How They Lived. An Anthology of Original Documents Written between 1700 and 1815*, vol. 3 (Oxford: Basil Blackwell, 1969), 306.

The drinking of tea was therefore seen in England as an element of the irresponsibility of the working population since the mid-18th century. For Stana Nenadic, Scottish historian, “[m]any ministers writing for the OSA in the 1790s highlighted the new role of tea in the changing budgets and social practices of ordinary Scots. But they were also critical of the ‘debilitating’ impact where it replaced ‘pottage’ for breakfast.”¹ “The merits of gin were even more dubious”² and in 1751 Henry Fielding noted that for him “the *Gin* alone was the cause of the transgression”.³

Industrious people

The writers had an ambiguous image of the workers population. They presented it as an idle and irresponsible mass but also as a skilful and industrious group. These two images were not paradoxical; they were complementary. In the one hand, you had irresponsible people with bad working hours and bad consuming habits. On the other hand, you had skilful people who could be industrious. Therefore, the only thing that was needed was a good master and an idea for structuring the working force.

In 1701, John Brand explained how Shetlanders “can with some dexterity and skill attained by experience manage their boats, not only because of their frequent passing from isle to isle, and going over the voes or lochs which lie in upon, and cut the Mainland, but by reason of their great fishing, not only for their own use, but for the use of merchants who buy their fishes”.⁴ The fishing skills were emphasized; the manufacturing skills and ingenuity of the islanders were also stressed. In 1774, George Low noted the presence of “Several remarkable geniuses here; [he] heard of one Williamson, a common fisherman, who ha[d] a remarkable mechanical turn, especially for imitation”.⁵ In the 1790s in Bressay, Dunrossness, Fetlar and Aithsting, the parish ministers noticed the same. They also insisted on the fact that the workers were

¹ Stana Nenadic, ‘Necessities: Food and Clothing in the Long Eighteenth Century’, in *A History of Everyday Life in Scotland, 1600 to 1800*, ed. Elizabeth A Foyster and Christopher A. Whatley (Edinburgh: Edinburgh University Press, 2010), 156.

² Briggs, *How They Lived. An Anthology of Original Documents Written between 1700 and 1815*, 3:307.

³ Henry Fielding, *An Enquiry Into the Causes of the Late Increase of Robbers, &c. with Some Proposals for Remedying This Growing Evil* (London: A. Miller, 1751), 29. [his italics], quoted in: Briggs, *How They Lived. An Anthology of Original Documents Written between 1700 and 1815*, 3:307–8.

⁴ John Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, in *A General Collection of the Best and Most Interesting Voyages and Travels in All Parts of the World*, ed. John Pinkerton, vol. 3 (London: Longman, Hurst, &c., 1809), 769.

⁵ George Low, ‘Voyage to Schetland’, in *A Tour Through the Islands of Orkney and Schetland: Containing Hints Relative to Their Ancient Modern and Natural History Collected in 1774*, by George Low (Inverness: Melven Press, 1978), 141.

self-taught.¹ Thus John Menzies wrote that “[t]he people here discover great ingenuity in the different handicraft employments. Most of them are self-taught, and can work at different trades”.² Eventually Arthur Edmondston wrote at the beginning of the 19th century that “[m]any of the Zetlanders have excelled in the mechanical arts, by the mere force of natural genius, without ever having been out of the country, or witnessed the performance of any individuals more expert than themselves”.³

The Shetlanders were ingenuous even though they hadn’t been properly taught how to do and make things. And even if they had irregular working hours, they could work intensively. This was especially true for women who despite what minister Patrick Barclay said about their idleness in winter⁴ were actually very active during the cold season. Indeed George Low described how “[t]he women [of Fair Isle] [were] industrious, constantly at work knitting Stockings, and Gloves, or spinning Lint, and woollen yarn”;⁵ an activity that, according to James Fea, they would mostly do in winter: “[t]he general employment of women and children, and the aged, in winter time, is knitting of stockings, mittens, and night-caps [...]”.⁶

The employment of women and the emphasis on the ingenuity of the workers population were not Shetland-only. Women – and children and the aged – were employed throughout Scotland in a variety of activities.⁷ In the 1790s, the inhabitants of the parish of Dunfermline in Fife were described as followed:

In general, the people are strong, and abundantly quick in learning mechanical employments. Many are remarkably ingenious, industrious, and frugal.⁸

Planned villages and infrastructures

The Shetland writers of the second half of the 18th century had a plan which would counteract the effect of underemployment, idleness and bad consumption habits and would use the industriousness and ingenuity of the inhabitants. They wanted to establish fishing villages

¹ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 199; John Mill, ‘Parish of Dunrossness in Zetland’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 7, 397–98, accessed 23 November 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Dunrossness/>; James Gordon, ‘United Parishes of North Yell and Fetlar’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 13, 287, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Fetlar%20and%20North%20Yell/>; Barclay, ‘United Parishes of Aithsting and Sandsting’, 588.

² Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 199.

³ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:54.

⁴ Barclay, ‘United Parishes of Aithsting and Sandsting’, 595.

⁵ Low, ‘Voyage to Schetland’, 196.

⁶ James Fea, *Considerations of the Fisheries in the Scotch Islands* (London: Printed for the author, 1787), 36. See also: Barclay, ‘United Parishes of Aithsting and Sandsting’, 587.

⁷ Deborah Simonton, ‘Work, Trade and Commerce’, in *Gender in Scottish History Since 1700*, ed. Lynn Abrams, Eleanor Gordon, and Deborah Simonton (Edinburgh: Edinburgh University Press, 2006), 199–234.

⁸ Allan Maclean and John Fernie, ‘Parish of Dunfermline’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 13, n.d., 479, accessed 6 March 2013.

and/or manufacturing villages. Such villages would provide a constant source of employment for the workers population and would put an end to a situation of poverty.

A country so thinly inhabited, and its town so inconsiderably peopled, can never be in a state of much prosperity. A people scattered over the face of the territory they are possessed of may be happy, but unless large bodies are collected in towns they are not likely to be rich or powerful, not being able to combine their efforts for any object, however necessary or important.¹

For Sir John Sinclair and for the Shetland writers, the scattered settlements of the Scots and Shetlanders were one of the causes of the lack of prosperity in Scotland. With such scattered place of life, with “No town or village”,² organising manufactures was rendered more difficult. Therefore, the Shetland writers advocated for the erection of manufacturing villages and fishing villages.

The most interested by manufacturing villages was the minister of the parish of Delting, John Morison. In his answers to Sir John Sinclair he wrote that:

If a canal was cut from the head of Sullom Voe to Busta Voe, which could be done at a very moderate expence, it would open an easy communication between all the most considerable fishing stations in the country, and afford a safe navigation to ships of any size through the middle of the country. If ever such a canal should be cut, the banks of it would be a most convenient situation for a manufacturing village, which is not more wanted in any part of his Majesty's dominions that here [...]³

Another thing essentially necessary would be to erect fishing and manufacturing villages, and the introduction of proper manufactures among them, so that the industrious part of them might have constant employment, which is now far from being the case.⁴

John Morison's hopes to see a canal dug up and a manufacturing village and fishing village erected must be understood in the Scottish context. Before the 18th century, Scotland didn't know villages: with the exception of towns, the settlements were scattered. One of the reasons for building a new village was an agriculturist motive. The Scottish landlords intended to maximise the yields and to simplify the tenure system.⁵ Douglas J. Lockhart explains that “[b]etween 1720 and the 1850s some 490 planned villages, characterized by a regular layout of streets, building plots and adjacent fields (or Lotted Lands) were founded on estates throughout Scotland including 100 or so in north-east Scotland”.⁶ The 100 villages built in north-east Scotland are mapped in Douglas G. Lockhart's “Lotted lands and planned villages

¹ Sir John Sinclair, *General View of the Agriculture of the Northern Counties and Islands of Scotland* (London: Colin Macrae, 1795), xvii–xviii., quoted in: Rosemary Gibson, *The Scottish Countryside. Its Changing Face, 1700-2000* (Edinburgh: John Donald Publishers Ltd, 2007), 102.

² Barclay, ‘United Parishes of Aithsting and Sandsting’, 589.

³ Morison, ‘Parish of Delting’, 390–91.

⁴ Ibid., 403. See also: A Friend to Statistical Inquiries, ‘Parish of Nesting’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 17, 501–2, accessed 31 January 2013, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Nesting/>.

⁵ Lorna J. Philip, ‘The Creation of Settlements in Rural Scotland: Planned Villages in Dumfries and Galloway, 1730–1850’, *Scottish Geographical Journal* 119, no. 2 (2003): 79–80.

⁶ Douglas G. Lockhart, ‘Lotted Lands and Planned Villages in North-East Scotland’, *The Agricultural History Review* 49, no. 1 (1 January 2001): 17.

in north-east Scotland”.¹ One of them is Turriff in Aberdeenshire. The Reverend of the parish of Delting in Shetland, John Morison, was born in 1754 at Balquholly,² a settlement a few miles away from Turriff. The village of Turriff was planned in 1763-4.³ John Morison was also educated in Aberdeen not far away from other planned villages mapped by Douglas G. Lockhart.⁴ As for the canal that John Morison wanted to see dug up between Sullom Voe and Busta Voe, the Scottish mainland again provided him with the idea. Indeed in 1763 work began for the Forth and Clyde Canal. In the 18th century the digging up of canals was seen as a possibility to establish “coast-to-coast connections”.⁵ With a canal cutting Shetland between Sullom Voe and Busta Voe, John Morison dreamed of a coast-to-coast connection –similar to the Forth and Clyde canal – which would facilitate the transport of fish and goods for the main fishing stations of the county.

The interests that John Morison had for the planned villages and a canal are explained by his background. Planned villages could be of various types. Lorna J. Philip gives a typology that combines the works of both Douglas G. Lockhart and J.M. Houston.⁶ One type of villages was “villages associated with fishing and other forms of coastal trade”. Shetland didn’t have fishing villages. It had fishing stations, established on the shores during the fishing season. Both John Morison, in the late 18th century, and Patrick Neill, in the early 19th century, wanted to see fishing villages erected. Patrick Neill detailed his idea:

Were some fishing-villages established in Shetland, and were a few opulent Scots or English companies to open warehouses there, where the natives might dispose of their fish, either green or salted ; and where they might procure boats, lines, salt &c. as they wanted or could purchase, the advantage to the country would probably soon appear. The landlords would then find it their interest to invite more substantial tenants, and to grant long leases, in order to have their lands improved and their rents increased. While one part of the natives would thus be engaged in raising crops and improving the breed of sheep and cattle ; another would be employed, in summer, at the ling and tusk fishery, and in winter at the piltock and shore-fishery ; and each would mutually supply the wants of the other.⁷

¹ Ibid., 19.

² Hew Scott, *Fasti Ecclesiae Scoticae. The Succession of Ministers in the Church of Scotland from the Reformation. Synods of Ross, Sutherland and Caithness, Glenelg, Orkney and of Shetland, the Church in England, Ireland and Overseas*, vol. 7 (Edinburgh: Oliver and Boyd, 1928), 307.

³ ‘Settlements. Planned Villages’ (National Museums of Scotland), 3, accessed 30 January 2013, <http://sites.scran.ac.uk/kestrel3d/settlements/settlements.pdf>; Douglas G. Lockhart, ‘The Planned Villages of Aberdeenshire: The Evidence from Newspaper Advertisements’, *Scottish Geographical Magazine* 94, no. 2 (1978): 101.

⁴ Lockhart, ‘Lotted Lands and Planned Villages in North-East Scotland’, 19.

⁵ Gibson, *The Scottish Countryside*, 135.

⁶ Douglas J. Lockhart, ‘Scottish Village Plans. A Preliminary Analysis’, *Scottish Geographical Magazine*, no. 96 (1980): 141–57; J.M. Houston, ‘Village Planning in Scotland, 1745-1845’, *Advancement of Science*, no. 5 (1948): 129–32; Philip, ‘The Creation of Settlements in Rural Scotland’, 81.

⁷ Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, 103.

Discourses on fishing, farming and manufactures

The establishment of fishing villages in Shetland was, in the mind of Patrick Neill, one of the remedies to fight against the poverty induced by the fishing tenures. His whole idea was to encourage economic specialisation. There should be those who worked as fishermen and those who worked as farmers. On that issue he was not the only one who thought so.

1700-1760s: “Most of the inhabitants are fishers”¹

In Scotland between the 1660s and the 1760s men known as “‘piscatorial optimists’ [...] repeatedly portrayed the fisheries [...] as, potentially, the sources of a prosperous, secure future for the nation” explains Bob Harris in his article ‘Scotland’s Herring Fisheries and the Prosperity of the Nation, c. 1660-1760’.² John Brand, Thomas Gifford and John Campbell can be described as ‘piscatorial enthusiasts’. They both emphasized the fishing possibilities in Shetland, John Brand did so in 1700, Thomas Gifford three decades later and John Campbell’s book was printed in 1750.³ They shared the idea that even though there were some arable lands in Shetland and people were labouring them: Shetlanders were better at fishing.⁴ In his *Historical Description of the Zetland Islands*, Thomas Gifford gave for 17 pages a variation around the line “most of the inhabitants are fishers”.⁵ It sounded like a mantra to convince the readers that there was a great employment-pool of fishermen in Shetland. Twenty years after the Earl of Morton would even offer to provide Shetland fishermen to the Free British Fishery Society.⁶

¹ ‘The Old Country Acts, or Abridgements Thereof’, in *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents*, by Thomas Gifford (Sandwick: Thule Print Ltd, 1976), 3.

² Bob Harris, ‘Scotland’s Herring Fisheries and the Prosperity of the Nation, c.1660-1760’, *Scottish Historical Review* 79, 1, no. 207 (April 2000): 39; ‘piscatorial enthusiast’: T. C. Smout, *Scottish Trade on the Eve of Union 1660-1707* (Edinburgh: Oliver and Boyd, 1963), 220; James R. Coull, ‘Fishery Development in Scotland in the Eighteenth Century’, *Scottish Economic & Social History* 21, no. 1 (May 2001): 1.

³ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’; Thomas Gifford, *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents* (Sandwick: Thule Print Ltd, 1976); John Campbell, *An Exact and Authentic Account of the Greatest White-Herring-Fishery in Scotland: Carried on Yearly in the Island of Zetland, by the Dutch Only* (London: Joseph Davidson, 1750).

⁴ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 769; Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 23–25.

⁵ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 3–19.

⁶ British Library, Add MS 15154, ‘Minutes of the General Meetings and Council of the Society of the Free British Fishery, 1749-1755’ n.d.; Quoted in: Harris, ‘Scotland’s Herring Fisheries and the Prosperity of the Nation, c.1660-1760’, 55.

Dunrossness	p. 3	“Most of the inhabitants are fishers...”
Gulberwick	p. 5	“...the inhabitants are all fishers...”
Tingwall	p. 8	“Most of the inhabitants are fishers...”
Sandsting	p. 11	“...most of the inhabitants are fishers...”
Walls	p. 12	“...most of the inhabitants are fishers...”
Northmavine	p. 13	“The inhabitants of this parish are for the most part fishers...”
Delting	p. 14	“...many of the inhabitants are fishers...”
Nesting	p. 14-15	“...the inhabitants are for the most part fishers...”
Yell	p. 15	“The inhabitants are for the most part fishers...”
North Yell and Fetlar	p. 16	“...the inhabitants [of Fetlar] are for the most part fishers...” “...the inhabitants [of North Yell] are mostly fishers...”
Unst	p. 17	“The inhabitants are for the most part fishers...”
Brassay	p. 18	“The inhabitants are mostly fishers...”
Fair Isle, Foula and Skerries	p. 19	“The inhabitants [of Fair Isle] are all fishers...” “The inhabitants [of Foula] are all fishers...” “...the inhabitants [of the Skerries] are all fishers...”
Gifford, Thomas. <i>An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents</i> . Sandwick: Thule Print Ltd, 1976.		

Table 72: Fishing: Thomas Gifford's mantra

In his *Brief Description of Zetland*, John Brand appeared as a lobbyist: he gave a series of reasons and arguments in favour of the development of fisheries in Britain. First of all, he explained how much fisheries had been extremely favourable to the development of the Dutch economy:

4. The fishing-trade is very lucrative and enriching to those who closely follow it; it is commonly said that it is the fishing which first raised the Netherlands to that pitch of grandeur and wealth which now they have arrived at: hence some historians call the fishery the Gold-mine of Holland, and that by their fishing especially in the British seas; [...] they know the Zetland seas makes their mills to go, therefore they do so warmly pursue this trade, and encourage the undertakers thereof; [...]¹

Bob Harris explains how successive generations of piscatorial enthusiasts in Scotland demonstrated the potential of the exploitation of fisheries “by the extraordinary achievements of the Dutch herring industry from the later sixteenth century”.² The whole title of John Campbell’s essay on herring fishery was:

An Exact and Authentic ACCOUNT Of the Greatest *White-Herring-Fishery* in SCOTLAND, Carried on Yearly in the Island of ZETLAND, by the *DUTCH* ONLY. The *METHOD* the *DUTCH* use in catching the Herrings, and an exact Account of their Way of Curing, and Lasting, or Casking them. And a *METHOD* laid down, Whereby we may easily engross that profitable Branch of Trade in our own Hands. To which is prefix’d, A Description of the Island, its Situation; Produce, the Manners and Customs of the Inhabitants, with their Method of trading with the *DUTCH*.

John Brand as a piscatorial enthusiast used the metaphore of the “Gold-mine of Holland” to lobby for the development of fisheries in Scotland. He also emphasized on the necessity of fishing companies:

5. The consideration of this great gain that doth redound to the trading merchants, hath of late animated some gentlemen and others in Zetland to enter into a society or company for trading in

¹ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 798.

² Harris, ‘Scotland’s Herring Fisheries and the Prosperity of the Nation, c.1660-1760’, 40.

fishes; that whereas strangers make such a good hand with their fishes, they may as well consult their own profit and gain, [...]¹

In 1661, the Scottish Parliament had passed an act to encourage the formation of companies to exploit fisheries.² Nine years after, the Royal Fishery Company was established. It was however dismantled in 1690.³ In the 1690s the Parliament promulgated two acts to stimulate the fishing industry but there was no company created during this time in Scotland.⁴ John Brand advocated for a new fishery company. The enthusiasm of people such as John Brand and Thomas Gifford came from their belief that the fisheries were “pre-eminently a national resource capable of generating wealth, employment, maritime strength and national security”, explains Bob Harris.⁵ For John Brand, incitations to develop this wealth were needed:

6. It hath been though very strange by many that our own fishing, for which we have so great and so inviting advantages beyond others, should yet be so much neglected by ourselves, and left to the improvement of strangers, who reap vast gain from it. And as this deserves the consideration of the government, so it might be expected that the late disappointment, in the holy and wise providence, of this nation’s noble and generous attempt to have settled a foreign plantation, for raising us from the dunghill of contempt and poverty, and advancing our wealth and trade, will excite both these worthy undertakers and others to employ their stocks and endeavours in searching after and digging these mines of the ocean nearer home, [...] And it is more reasonable we should fish in our own seas, than for strangers so to do; and I do greatly question if the Hollanders, Hamburgers or others, would so permit us to fish in any seas so nigh to their land, depending on their sovereignty, as we do them.

And for this end shipping would be encouraged by the government, [...] and for the encouraging of the trade, taxations imposed upon shipping, should be easy, especially now when the trade is so low, that many merchants and ship-masters, after they have hazarded their lives and their all, do return losers home; for it otherwise, no wonder that all concerned in trade be dispirited and discouraged in attempting any thing that is noble, which might tend to the nation’s public good.⁶

John Brand, a Church of Scotland minister ordained at Bo’ness in Linlithgowshire in 1694, visited Orkney and Shetland in April 1700.⁷ He probably compared the situation of Bo’ness, which was at this time the second port of Scotland, counting 2,000 inhabitants, with the situation in Shetland where he thought that fishing could be more organized and supported by the state.⁸ The aim of the laws of the 1690s was to stimulate the fishing industry.⁹ The law of

¹ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 799.

² K. M. Brown and al., eds., ‘1661/1/343: Act for Fishings and Erecting of Companies for Promoting the Same’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1661/1/343>.

³ Harris, ‘Scotland’s Herring Fisheries and the Prosperity of the Nation, c.1660-1760’, 44.

⁴ K. M. Brown and al., eds., ‘1693/4/42: Act for the Faithful Curing and Packing of Herring and Salmon Fish’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1693/4/42>; K. M. Brown and al., eds., ‘1698/7/168: Act for the Encouragement of White Fishing and Herring Fishing’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1698/7/168>.

⁵ Harris, ‘Scotland’s Herring Fisheries and the Prosperity of the Nation, c.1660-1760’, 39–40.

⁶ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 798–800.

⁷ Patrick Cadell, ‘Brand, John (1669-1738)’, *Oxford Dictionary of National Biography* (Oxford University Press, 2004), <http://www.oxforddnb.com/view/article/3253?docPos=2>.

⁸ *Ibid.*

⁹ Harris, ‘Scotland’s Herring Fisheries and the Prosperity of the Nation, c.1660-1760’, 44.

1693 was concerned with proper packing and curing of fish and in 1698 the act encouraged the white and herring fishing.¹ These laws were comparable with the improvement laws of 1695 regarding the division of commonties and run-rig land.² Bob Harris explains that “[t]he readiness of the Scottish Parliament – a revived and newly influential body following the Glorious Revolution – to support the industry in the 1690s and again in 1705 is an aspect of a wider efflorescence after 1689 of what Richard Saville has [...] called ‘economic politics’”.³ Bob Harris further explains that

This politics, a response to the rise of aggressive mercantilism throughout Europe in the later seventeenth century, and the series of severe economic shocks that buffeted the Scottish economy in the second half of the 1690s, brought into sharp focus the role of the state and legal system in supporting economic activities. It also saw, as Colin Kidd has sought to emphasize, the genesis of an ideology of ‘economic improvement and defeudalization imitative of English models’⁴ [...]. Property and labour [...] needed to be free from uncommercial, oppressive feudal restraints.⁵

One of the aims of the acts of division of 1695 was to free the land of the “uncommercial, oppressive feudal restraints” of shared ownership and collectivity. In that respect they were extremely comparable with the piscatorial laws of the 1690s. They were also similar on another level. The acts of division and the piscatorial acts – those of the late 17th century and those enacted in the 18th century – fully entered into action in the late 18th century and early 19th century. In his article ‘Fishery Development in Scotland in the Eighteenth Century’, James R. Coull explains that

Despite the official interest avowed in the industry, the eighteenth century was not, until its end, one of real progress in the herring fishery, and indeed for most of the time it saw no real advance over the previous century. In effect, it was a period of debate, experimentation and trial to find a way forward, and what did emerge in the end was the forward momentum which was to lead in the nineteenth century to Scottish fishing increasing to the status of a world leader.⁶

The same can be said of the division of common lands, arable or waste land. The first half of the 18th century saw the development of experimentation and trial. The Lowlands’

¹ Brown and al., ‘1693/4/42: Act for the Faithful Curing and Packing of Herring and Salmon Fish’; Brown and al., ‘1698/7/168: Act for the Encouragement of White Fishing and Herring Fishing’.

² K. M. Brown and al., eds., ‘1695/5/156: Act Anent Lands Lying in Runrig’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1695/5/156>; K. M. Brown and al., eds., ‘1695/5/204: Act Concerning the Dividing of Commonties’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1695/5/204>.

³ Harris, ‘Scotland’s Herring Fisheries and the Prosperity of the Nation, c.1660-1760’, 45; ‘economic politics’: Richard Saville, ‘Scottish Modernisation Prior to the Industrial Revolution, 1688-1763’, in *Eighteenth-Century Scotland: New Perspectives*, ed. Thomas M. Devine and J. R. Young (East Lothian: Tuckwell Press Ltd, 1999), 8–9.

⁴ Colin Kidd, ‘North Britishness and the Nature of Eighteenth-Century British Patriotisms’, *The Historical Journal* 39, no. 2 (June 1996): 367.

⁵ Harris, ‘Scotland’s Herring Fisheries and the Prosperity of the Nation, c.1660-1760’, 45.

⁶ Coull, ‘Fishery Development in Scotland in the Eighteenth Century’, 1; See also: Harris, ‘Scotland’s Herring Fisheries and the Prosperity of the Nation, c.1660-1760’, 58–59.

commonities were then mostly divided between 1760 and 1815 and a more systematic approach to the division of run-rig land started in the 1790s.¹

With the Act of Union in 1707 and the various laws on the importation of foreign salt to develop Scottish fisheries in the North Atlantic and the North Sea and to prevent the Hollanders and Hamburgers to fish in these areas, the number of fishing boats coming every year in Brassay Sound fell drastically.² However around the 1720s some merchant-lairds developed a new fishing organisation: the fishing tenures.³ The fishing tenures were not a given; other forms of fishing organisation could have been chosen. The creation of the *Board of Trustees for Fisheries, Manufactures and Improvements in Scotland* in 1727 and the several laws on the improvement of fisheries from the 1750s onwards somehow gave legitimacy to the merchant-lairds who were developing the fishing tenures.⁴ Already in 1705, the Parliament of Scotland had passed an ‘Act for advancing the fishing trade in and about this kingdom’ in which it was clearly stated that “encouraging the salmon fishing, white and herring fishings” was “a true and ready way to breed seamen and set many poor and idle people to work”.⁵ Therefore Shetland’s merchant-lairds felt to be in their rights in developing outsets and hiring new fishermen.

From the 1770s: “The fishing is a great obstacle to the improvements in agriculture”⁶

From the 1770s onwards the discourses on fisheries slightly changed in Shetland. The parish ministers who wrote for the Statistical Account were struggling with two ideas: the wealth brought by the fisheries and the agrarian improvement. They were also the witnesses of the Shetlanders’ impoverishment.

¹ Thomas M. Devine, ‘L’évolution Agraire et Sociale Des Lowlands d’Écosse de 1680 À 1815’, *Histoire, Économie et Société* 18, no. 1 (1999): 169–70.

² Danby Pickering, ed., ‘An Act for an Union of the Two Kingdoms of England and Scotland, 5 Anne C. 8’, in *The Statutes at Large, from the Second to the Eighth Year of Queen Anne*, vol. XI (Cambridge: Joseph Bentham, printer to the University, 1764), 196–219; Hance D. Smith, *Shetland Life and Trade 1550-1914* (Edinburgh: John Donald Publishers Ltd., 2003), 39–40 and 46.

³ Brian Smith, “‘Lairds’ and ‘Improvement’ in 17th and 18th Century Shetland’, in *Lairds and Improvement in the Scotland of the Enlightenment*, ed. T. M. Devine (Dundee, Glasgow: Scottish Historical Association, 1979), 14.

⁴ Harris, ‘Scotland’s Herring Fisheries and the Prosperity of the Nation, c.1660-1760’; Coull, ‘Fishery Development in Scotland in the Eighteenth Century’.

⁵ K. M. Brown and al., eds., ‘1705/6/192: Act for Advancing the Fishing Trade in and about This Kingdom’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1705/6/192>.

⁶ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 197.

Brian Smith has studied the poverty induced by the fishing tenures in his ‘Lairds and ‘Improvement’ in the 17th and 18th century Shetland’ and ‘Rents from the sea’.¹ For Brian Smith,

the question of debt and debt-bondage arises again and again, not as an integral feature of fishing tenure, but as a feature which often accompanied it, especially following years of famine. When landlords gave credit, when they gave the Shetlanders goods from their truck-shops, chronic indebtedness for the tenants inevitably followed.²

The references to the situation of poverty and debt-bondage are numerous.³ Patrick Neill was one of them. He had been “horrified by the Shetland system” and engaged in a paper war with a certain *Thule*, a merchant laird from Shetland who disagreed with Patrick Neill’s condemnation.⁴ Patrick Neill described the Zetland method as “a state of more complete vassalage than is perhaps known in any other part of the empire” and he quoted John Menzies, minister of Bressay, Burra and Quarff, who wrote concerning the fishing tenures that “Many services, the marks of slavery, are demanded”.⁵ Patrick Neill and others before him saw the fishing tenures and the debt-bondage as neither a way to increase the fishing revenues nor a way to improve agriculture. Nevertheless the responses given by the writers to their observations were different. There were those who only saw the bad state of Shetland agriculture;⁶ others who explained that the tenure system – mostly the absence of lease – would never lead to agrarian improvement and that it had to be changed;⁷ and others, more radical like Patrick Neill, who advocated for a strict division between husbandry and fishing.¹

¹ Smith, “‘Lairds’ and ‘Improvement’ in 17th and 18th Century Shetland”; Brian Smith, ‘Rents from the Sea’, in *Toons and Tenants, Settlement and Society in Shetland 1299-1899* (Lerwick: Shetland Times Ltd, 2000), 65–80.

² Smith, ‘Rents from the Sea’, 67.

³ See for example: Low, ‘Voyage to Schetland’, 196; Fea, *Considerations of the Fisheries in the Scotch Islands*, 35; Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 197; Gordon, ‘United Parishes of North Yell and Fetlar’, 289–90; A Friend to Statistical Inquiries, ‘Parish of Nesting’, 499; Jack, ‘Parish of Northmaven’, 361–62; Barclay, ‘United Parishes of Aithsting and Sandsting’, 593–94; Thomson, ‘Parish of Walls and Sandness’, 115–16; Robert Jameson, *An Outline of the Mineralogy of the Shetland Islands, and of the Island of Arran: Illustrated with Copper-Plates. With an Appendix; Containing Observations on Peat, Kelp, and Coal* (Edinburgh: Printed for William Creech, 1798), 17; Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, v–vi; Laing, ‘Of the Shetland Isles (1806-1807)’, 38–39.

⁴ Smith, “‘Lairds’ and ‘Improvement’ in 17th and 18th Century Shetland”, 16; Patrick Neill, ‘Answers to Thule’s Strictures. - Published in Scots Magazine for February 1806’, in *A Tour Through Some of the Islands of Orkney and Shetland, With a View Chiefly to Objects of Natural History, but Including Also Occasional Remarks on the State of the Inhabitants, Their Husbandry, and Fisheries* (Edinburgh: A. Constable and Company and John Murray, 1806), 120–41.

⁵ Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, 96; Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 197.

⁶ NAS, RH4/102, ‘Rental of Lordship of Shetland’ 1772, fol. 54; Low, ‘Voyage to Schetland’, 84; Fea, *Considerations of the Fisheries in the Scotch Islands*, 33–34; Laing, ‘Of the Shetland Isles (1806-1807)’, 32; Morison, ‘Parish of Delting’, 394; A Friend to Statistical Inquiries, ‘Parish of Nesting’, 499–501; Jack, ‘Parish of Northmaven’, 354–55; Barclay, ‘United Parishes of Aithsting and Sandsting’, 593–94; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 192.

⁷ Laing, ‘Of the Shetland Isles (1806-1807)’, 33–34, 38–39; Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 197; A Friend to Statistical Inquiries, ‘Parish of Nesting’, 501–2; Barclay, ‘United Parishes of Aithsting

In 1814, John Shirreff promoted the idea that

The fisheries ought by no means to be neglected; nay, on the contrary, they ought to be encouraged and increased by every possible measure that can be devised, without sacrificing objects of greater value. And it is a question meriting the most serious attention, whether it be not practicable to separate the business of the husbandman from that of fisher; for unless this can be accomplished, the agriculture of the country must for ever remain the same as at present, were every other obstacle, both moral and physical removed.²

John Shirreff explained that fishermen should be established in “comfortable cottages, with gardens of a Scotch acre each”³ and “these habitations should, if possible, be situated in some place convenient for winter fishing”;⁴ “the Shetland fishery might be gradually arranged upon the same principles as are followed by the Moray Firth fishermen”.⁵ A few years before, Patrick Neill and Alexander Seton of Preston supported the same ideas.⁶ The accommodations described by John Shirreff would be the basis for the establishment of Patrick Neill’s fishing villages. Regarding the farmers, John Shirreff explained that the farmers “should be encouraged to lease [their farm] for a fixed term of years, say twenty-one, at a moderate defined yearly rent, payable in money”.⁷ Here again both Patrick Neill and Alexander Seton of Preston shared the same opinion.⁸ Already in 1787, James Fea “propos[ed] that convenient spots of ground contiguous to the best fishing places, and previously surveyed, should be purchased, and comfortable houses built thereon, with a cabbage garden, a piece of ground for potatoes annexed to each, being all what a fisherman requires”.⁹ He further argued that “[t]hese could soon become large villages, and in time towns, where each family would be most usefully employed for themselves and the public”.¹⁰

and Sandsting’, 595; Thomson, ‘Parish of Walls and Sandness’, 115–16; Andrew Dishington, ‘United Parishes of Mid and South Yell’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 2, 574–75, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Yellmid%20and%20South/>; Hibbert, *A Description of the Shetland Islands*, 515–19.

¹ Jack, ‘Parish of Northmaven’, 367–68; Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, 103; Patrick Neill, ‘Letter from Sir Alexander Seton of Preston, Containing Observations on the State of the Shetland Islands, and on the Means of Their Improvement’, in *A Tour Through Some of the Islands of Orkney and Shetland, With a View Chiefly to Objects of Natural History, but Including Also Occasional Remarks on the State of the Inhabitants, Their Husbandry, and Fisheries* (Edinburgh: A. Constable and Company and John Murray, 1806), 177–78; Shirreff, *General View of the Agriculture of the Shetland Islands*, 77–80, 98–99.

² Shirreff, *General View of the Agriculture of the Shetland Islands*, 78.

³ *Ibid.*, 99.

⁴ *Ibid.*, 9.

⁵ *Ibid.*, 82.

⁶ Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, 103; Neill, ‘Letter from Sir Alexander Seton of Preston’, 178.

⁷ Shirreff, *General View of the Agriculture of the Shetland Islands*, 99.

⁸ Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, 103; Neill, ‘Letter from Sir Alexander Seton of Preston’, 178.

⁹ Fea, *Considerations of the Fisheries in the Scotch Islands*, 17–18.

¹⁰ *Ibid.*, 18.

In his article ‘The planned villages of Aberdeenshire: The evidence from newspaper advertisements’ Douglas G. Lockhart explains that from 1770 and the rise in the demand for fish, “planned fishing villages became more numerous in the Western Isles and along the Moray Firth”.¹ In the fishing villages established before 1700, the fishermen “had a tradition of cultivating small plots of ground, a practice that continued into the nineteenth century when potatoes were grown on hillside plots in communities such as Pennan [in Aberdeenshire]”.²

In the villages where fishing was supposed to be the main activity only small acreages were farmed: “contemporary writers”, explains Douglas G. Lockhart, “emphasized that it was unwise to provide lotted lands for fishermen. They stressed that these could become a distraction from the business of fishing.”³ That was what James Fea meant when he wrote that “a cabbage garden, a piece of ground for potatoes annexed to each, [were] all what a fisherman require[ed]”.⁴ In his description of the Western Districts of Ross and Cromarty Shires, George Steuart Mackenzie stated that “[he was] satisfied that fishermen ought not to have the possession of more land than is sufficient to provide their families with vegetables for their homely board”.⁵

On the manufactures that should be introduced in Shetland

In the Statistical Account for the parish of Unst the need of a separation between husbandry and fishing was not so clearly established. The writer explained that “[a]n increased bounty upon the fishery” should be made and that at the same time “the teinds, rents, and scatt [converted] into money” in order to “induce the natives to turn their attention more to the improvement of their sheep and wool”.⁶ Eventually, the Rev. William Jack, minister of Northmavine, wrote the following lines:

That employment which gives the readiest relief to poor people, will be pursued before that which is more profitable, if the returns be at more distant period. As there should be many farmers who were not fishers; so it would be also of advantage that every master of a fishing-boat was not a farmer. And as it is said, that such should be idle the half of their time, might they not also be employed in spinning and making their lines and herring nets? might they not also be carpenters, tailors, weavers, among them, but not so as to prevent their attention to the fishing. The making of coarse soap, tanning their leather on a small scale, as the place affords the necessary materials, would be of benefit; as also, the making of salt from sea-water. The women to be employed in spinning coarse linen for sails, and the establishment of an [sic] woollen manufacture would be of

¹ Lockhart, ‘The Planned Villages of Aberdeenshire’, 96.

² Lockhart, ‘Lotted Lands and Planned Villages in North-East Scotland’, 20.

³ Ibid., 31.

⁴ Fea, *Considerations of the Fisheries in the Scotch Islands*, 18.

⁵ George Steuart (Sir) Mackenzie, *General View of the Agriculture of the Counties of Ross and Cromarty: With Observations on the Means of Their Improvement* (London: Richard Phillips, 1810), 243; Quoted in: Lockhart, ‘Lotted Lands and Planned Villages in North-East Scotland’, 31.

⁶ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 201.

the greatest benefit. In short, there is, perhaps, scarcely any parish whatever, that admits of more improvements for the benefit and comfort of the people than this parish of Northmaven.¹

Fishing and agriculture should be two separate things and manufactures should be established in Shetland in order to provide constant employment: these were the ideas of observers at the turn of the 19th century. At this time there were already manufactures in Shetland. However some of the respondents for the Statistical Account as well as Arthur Edmondston were convinced that other kinds of manufactures should be introduced in Shetland: “The manufactures most proper for this country are, 1st, woollen manufactures, in which the inhabitants are so far back”;² a woollen manufacture would produce woollen cloth or coarse cloth. This manufactory would “employ those who have no farms, and are in a great measure idle”.³ For the same reason manufactories of “fishing-lines should be established”.⁴ The fishing-lines manufactories would “secure to the inhabitants a more certain supply of this important article than they can have while they depend entirely on an importation from Hamburg”.⁵ Herrings’ nets should be manufactured and a rope and cordage manufactory “would certainly be advantageous to the country”.⁶ The introduction of a tannery was also considered to be necessary.⁷ Especially since “the place afford[ed] the necessary materials”.⁸ Eventually, a linen manufactory could be established in order to produce sails after the women had learned how to spin flax.⁹

Rural manufactures in practice

In a chapter entitled ‘Work, Time and Pastimes’ published in *A History of Everyday Life in Scotland, 1600-1800*, Christopher A. Whatley argues that “[d]omestically-based textile production had long been carried out in rural Scotland, more so where pastoral and subsistence farming was predominant”.¹⁰ Therefore, it was not so surprising to read in the ministers’ accounts that a woollen manufactory and a linen manufactory should be established

¹ Jack, ‘Parish of Northmaven’, 367–68.

² Morison, ‘Parish of Delting’, 403. See also: Barclay, ‘United Parishes of Aithsting and Sandsting’, 595; Jack, ‘Parish of Northmaven’, 367–68; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:3, 329.

³ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 202.

⁴ Ibid.

⁵ Morison, ‘Parish of Delting’, 403.

⁶ Jack, ‘Parish of Northmaven’, 367–68; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:15.

⁷ Morison, ‘Parish of Delting’, 403; Jack, ‘Parish of Northmaven’, 367–68.

⁸ Jack, ‘Parish of Northmaven’, 367–68.

⁹ Ibid.; Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 202; Dishington, ‘United Parishes of Mid and South Yell’, 572–73.

¹⁰ Whatley, ‘Work, Time and Pastimes’, 280.

in Shetland. They were established all over Scotland at that time. However, there were two surprising things in the idea of introducing linen and woollen manufactories: from the 1580s onwards, Shetland women produced vast quantities of hosiery for internal and external markets and, in the 1770s a linen manufactory had already been established in Shetland with unpositive outcome – it had been a failure.¹

Wool manufactories

In Shetland the sheep were numerous. They were mostly bred for their wool. Their wool was not sheared but it was *rooed*, the fleeces were “plucked with the fingers” from the back of the sheep.² The inhabitants used the wool to manufacture various products. There were different steps in processing the wool in order to make these products.

The carding of wool was not reported in 18th-century materials however this step must have been a preliminary to the spinning of wool. Hand carding was still attested in Shetland at the beginning of the 20th century and the *cairdin* was an important moment of sociability.³ It seems, however, that in the mid-19th century, the “spinning of native wool was done straight from the sheep, without washing”.⁴ Therefore there is no certainty that the wool was hand-carded before it was spun. The spinning of wool was an ordinary activity. The minister of the parishes of Mid and South Yell explained that “[a]ll the women, of every rank and distinction, [were] employed in spinning wool”⁵ and his counterpart in Aithsting and Sandsting added that “[t]he yarn [was] generally spun at night” by the “women-servants”.⁶ After being spun, the wool was either knitted or weaved.⁷ George Low described the women of Fair Isle as “industrious, constantly at work knitting Stockings, and Gloves”⁸ and in the parish of Lerwick, the minister explained that “[t]he only manufacture, carried on in the parish, [was] the knitting of woollen stockings”.⁹ By the end of the 18th century, there were fewer weavers in Shetland than in Orkney where “the old men and women still wore black clothes of coarse

¹ Brian Smith, ‘Stockings and Mittens, 1580-1851’, in *Shetland Textiles: 800 BC to the Present*, ed. Sarah Laurenson (Lerwick: Shetland Amenity Trust, 2013), 52; Smith, *Shetland Life and Trade 1550-1914*, 87.

² Alexander Fenton, *The Northern Isles: Orkney and Shetland* (East Linton: Tuckwell Press Ltd, 1997), 456.

³ *Ibid.*, 464.

⁴ *Ibid.*, 461.

⁵ Dishington, ‘United Parishes of Mid and South Yell’, 572–73.

⁶ Barclay, ‘United Parishes of Aithsting and Sandsting’, 587.

⁷ See for example: Fea, *Considerations of the Fisheries in the Scotch Islands*, 36; Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 202; Morison, ‘Parish of Delting’, 394; Jack, ‘Parish of Northmaven’, 358; Barclay, ‘United Parishes of Aithsting and Sandsting’, 587; Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, 71; Shirreff, *General View of the Agriculture of the Shetland Islands*, 73–74; Laing, ‘Of the Shetland Isles (1806-1807)’, 25; Hibbert, *A Description of the Shetland Islands*, 441.

⁸ Low, ‘Voyage to Schetland’, 196.

⁹ James Sands, ‘Parish of Lerwick’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 3, 418, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Lerwick/>.

undyed *vadmell* or *wadmal*”, explains Alexander Fenton.¹ Nevertheless some ministers indicated to Sir John Sinclair that some weavers lived in their parish.² Arthur Edmondston stated that,

Although that mode of payment [i.e. land-rent paid in *wadmal*] has been long discontinued, the number of weavers in the country is still great. They occur in every parish, and weave blankets, and a kind of cloth, or *claith*, as it is called, for the ordinary wear of the country people.³

What products did the Shetlanders knit and weave? What kind of money did they earn from this production? The prices of the woollen products given thereafter applied to the second half of the 18th century only. Shetlanders weaved blankets or rugs. They knitted caps, night-caps, garters, gloves, mittens and mostly stockings. The prices of stockings varied widely. When described as “coarse stockings”, they were sold between 5s. and 6s. per pair. The “common stockings” were sold at around £3 a pair while the “fine stockings” reached £24 6s. per pair. Thus common stockings cost ten times more than the coarse ones. The fine stockings cost almost one hundred times more than the coarse stockings. Hance Smith offers a very good account of the trade of stockings and woollen manufactures in his *Shetland life and trade*.⁴ He argues that between 1742 and 1800, 3,000 to 24,000 woollen stockings were traded per year in Shetland.⁵

¹ Fenton, *The Northern Isles*, 461.

² Jack, ‘Parish of Northmaven’, 358; Barclay, ‘United Parishes of Aithsting and Sandsting’, 594; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 194.

³ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:3.

⁴ Smith, *Shetland Life and Trade 1550-1914*.

⁵ *Ibid.*, 73.

Products	Prices (£ Scots)	Dates
Blankets		1793, 1809
Caps		1809
Coarse cloth		1793
Coarse stockings	6s. or 8s./pair	1774
	2 ½ s./pair (nominally allowed 5s.)	1793
	5s. to 6s./pair	1814
	5s. to 6s./pair	1822
Common stockings	£1 16s. to £2 7s. 12d./pair	1822
	£3 to £6 11s. 12d./pair	1818
Fine stockings	£21 12s./pair	1774
	16s. to £1 10s./pair (£ sterling)	1793
	£24 6s./pair	1814
	£24 6s./pair	1822
Garters		1787, 1793
Gloves		1787, 1793, 1809
Mittens		1787, 1793
Night-caps		1787, 1793
Rugs	£9 11s. 12d. or £10 16s. to £25 16s./piece	1774
		1818
Stockings		1787, 1793
	1s. or 1 ½ s./day	1793
	5s. to £18./pair	1809
	6s. to £25 3s. 12s./pair	1818
Wool	10s. to 15s./lispound	1793
Woollen yarn		1818

Edmondston, Arthur. *A View of the Ancient and Present State of the Zetland Islands; Including Their Civil, Political, and Natural History; Antiquities and an Account of Their Agriculture, Fisheries, Commerce, and the State of Society and Manners*. 2 vols. Edinburgh: John Ballantyne and Co., 1809.

Fea, James. *Considerations of the Fisheries in the Scotch Islands*. London, 1787.

Hibbert, Samuel. *A Description of the Shetland Islands, Comprising an Account of Their Geology, Scenery, Antiquities, and Superstitions*. Edinburgh: Archibald Constable and Co., 1822.

Laing, John. 'Of the Shetland Isles'. In *A Voyage to Spitzbergen Containing an Account of That Country, of the Zoology of the North; of the Shetland Isles; and of the Whale Fishery*, First edition: 1818., 1–42. Edinburgh: Printed for the author, 1825.

Low, George. 'Voyage to Schetland'. In *A Tour Through the Islands of Orkney and Schetland: Containing Hints Relative to Their Ancient Modern and Natural History Collected in 1774*, by George Low, 64–196. Inverness: Melven Press, 1978.

Shirreff, John. *General View of the Agriculture of the Shetland Islands with Observations of the Means of Their Improvement*. Edinburgh: Archibald Constable and Co., 1814.

Sinclair, John, ed. *Statistical Account 1791-1799. Orkney and Shetland*. Vol. 19. Wakefield: EP Publishing, 1978.

Table 73: Hosiery: Products and prices

The hosiery brought money into the archipelago. In the 1770s, George Low explained that “[w]ool has always been a valuable article in Schetland, now more so than ever; within this last half century it has risen from £3 [5 *sh.* Ster.] to £8 [13 *sh.* 4 *d.*] per lispound, or 26 lb. weight, owing to the vast demand for their coarse Stockings”.¹ Another account of the importance of wool for Shetland is found in the writing of Arthur Edmondston who explained that the income for woollen manufactures went from £204,000 [£17,000 sterling] in 1797 to £60,000 [£5,000 sterling] in 1809.² The reasons for such a decrease were the turn-of-the-

¹ Low, 'Voyage to Schetland', 146.

² Arthur Edmondston, *A View of the Ancient and Present State of the Zetland Islands; Including Their Civil, Political, and Natural History; Antiquities and an Account of Their Agriculture, Fisheries, Commerce, and the State of Society and Manners*, vol. 1 (Edinburgh: John Ballantyne and Co., 1809), 224; Fenton, *The Northern Isles*, 463.

century wars and the lack of qualitative improvement for woollen goods in Shetland, when sheep husbandry increased and wool was promoted on mainland Scotland and in England.¹

It is, however, difficult to know what kind of money or what kind of barter goods the trade in hosiery brought into Shetland's households. In the course of the 18th century, women sold woollen stockings in, at least, three different ways. First, they could sell their stockings directly to buyers: that was probably the case for Shetland's internal market and that was also the case for the 'Dutch market'. After the destroying of 400 Dutch busses in Lerwick harbor by French warships in 1703, the Dutch fleet had been greatly reduced around Shetland, going from about 2,200 vessels during the fishing season to 600 thirty years after.² Nevertheless, the Dutch fleet still bought knitwear when it came to Shetland every year. John Campbell in his *Exact and authentic account of the greatest white-herring-fishery in Scotland: carried on yearly in the island of Zetland, by the Dutch only* published in 1750 gave a very precise and interesting account of what he called the "the Fair or Mart with the *Dutch*":

the common People make many coarse Stockings, which they lay aside until the Beginning of *June*, when their Fair or Mart with the *Dutch* begins, which they call the *Johnsmas Fair*; about this Time, the *Dutch*, to the Number of ten or eleven Hundred Busses have wet their Nets upon the Coast, which they are obliged to do against the Eleventh of *June*, by an express Act of the States-General of the United Provinces; then they come into *Bressa Sound*, to buy Stockings; they have for convoy two or three Ships of War, each carrying ten or twelve Guns; these Ships when they cast Anchor, fire these Guns as a Signal for the Inhabitants all round the Country, and the Isles, to come in, which they accordingly do; then the Coupmen come on Shore with Bags of Money, and buy them all up, at Ten Shillings per Score [...].³

The direct sales with the Dutch brought cash into Shetland's cash-poor households – the exact sums, however, are unknown. Stockings could also be collected by landowners as part of their tenants' rent. Brian Smith explains how in the 1720s a Shetland landowner entered into a contract with a merchant in Lerwick to provide him with about a 1,000 pairs of stockings. Brian Smith argues that "[t]his transaction leads [him] to believe that [the landowner] was getting the stockings from his tenants perhaps as part of their rent, just as Shetland landlords in the new eighteenth century régime demanded their tenants' fish".⁴ Stockings could also be bartered for goods between knitters and landowners, merchants or even the Earl of Morton's agent. Indeed, "[a]round 1753", explains Brian Smith, "the Earl of Morton ordered some coarse and some fine stockings from his agent in Shetland".⁵ What the knitters received in exchange is difficult to establish: they probably received some tea, as well as wool, maybe

¹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:224; Smith, 'Stockings and Mittens, 1580-1851', 56.

² Smith, 'Stockings and Mittens, 1580-1851', 54.

³ Campbell, *An Exact and Authentic Account of the Greatest White-Herring-Fishery in Scotland*, 25; Quoted in: Smith, 'Stockings and Mittens, 1580-1851', 54.

⁴ Smith, 'Stockings and Mittens, 1580-1851', 54.

⁵ Ibid.

some dye and even cash in some cases – what it meant in terms of economic relief for their households is difficult to measure quantitatively, what it meant for Shetland’s economy is easier to assess.¹ The economic importance of knitwear appears through the numbers of stockings’ exchanged, the amount of exports and the continued trade in the 18th century. The importance of Shetland wool for the economy was detailed in a collection of processes at the Sheriff Court in the 1790s.² In 1794 a scab infection, a sheep skin disease, spread in Dunrossness. There, prophylactic measures were taken such as the erection of a dyke. In a petition dated November 29 1794, Gideon Gifford of Busta, “Convienier of the Commissioners of Supply for Zetland”,

Humbly Sheweth That the annual exports of Zetland in Manufactured wool is not less than from £11,000 to £12,000 Sterling yearly. The internal wear of the Country cannot be Estimate at less than £7,000 and sheep used as the article of Provision is not less value to the Country than £4,000. Thus it is evident that the Produce of the Sheep Flocks is worth to the Country above £20,000 Sterling a year without putting a penny out of it for any materiall and far exceeds the value of the Kelp, Beef, Butter Oil & fish exported which last two articles are Often little more than a name, the County for Carrying on the two last Branches being obliged to import annually Supplies to the amount of two third what the fish and Oil Renders even in good years. Of such magnitude is the Produce of the sheep Flocks in Zetland that it almost alone enabled the Tenants in any degree to support during a series of an almost entire failure of Crops, Death of Cattle and very unproductive fishings: Conscious of this it is not to be wondered that the Commissioners of Supply with anxious concern for the welfare of the County received the alarming accounts of the Infection of the Scab among the sheep being by Malevolent People carried to the Northward of the great Dike built across Cunningsburgh about the year 1787 for preventing the Contagion from Spreading [...]³

Even if the annual income from fishing was higher, the woollen manufactures, which didn’t necessitate the use of imported materials, brought a substantial income directly to the Shetlanders, an income which, according to the minister of the parish of Tingwall in 1797, James Sands, was “said to nearly equal to the land rent of the country”.⁴

The importance of sheep and of their wool for Shetland’s economy and for the Shetlanders’ livelihood is also visible in the attention given to the resolution of conflicts and offenses

¹ According to Lynn Abrams, in the 19th-century knitters could receive wool in payment of their work as well as tea and drapery goods. In the ledger of the Linen Company of the 1770s, the spinners received indigo, wool, linen, tea and cash. The knitters must have received similar goods. Lynn Abrams, *Myth and Materiality in a Woman’s World: Shetland 1800-2000*, Reprint (Manchester: Manchester University Press, 2010), 100–108; SA, GD144/102/2, ‘Notebook with Accounts of Lint Delivered to Individuals, and Linen Yarn Received from Them 1771-1772’ n.d.

² SA, SC12/6/1794/11, ‘Petition (for Measures to Prevent Sheep Scab.)’ 1794; SA, SC12/6/1794/12, ‘Petition and Complaint (Spreading Infection among Sheep.)’ 1794; SA, SC12/6/1794/15, ‘Petition (Interdict against Illegal Dyke.)’ 1794; SA, SC12/6/1795/60, ‘Petition (for Intromitting with a Ram Conceivably Infected with Scab.) (Criminal)’ 1795.

³ SA, SC12/6/1794/15, ‘Petition (Interdict against Illegal Dyke.)’, sec. Bundle 8.

⁴ James Sands, ‘Parish of Tingwall’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 21, 280–81, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/General%20Appendixgen%20App%20Vol20/21/274/>; Quoted in: Smith, ‘Stockings and Mittens, 1580-1851’, 58.

concerning sheep. Between 1741 and 1799, 20 offenses and conflicts concerned with sheep or lamb were judged at the Sheriff Court – about one out of six processes of the selected corpus.

Offences/conflicts	1741-1799 (N=119)
Concealment of sheep	1
Damage to sheep	1
Fleece stealing	1
Halvers	1
Lamb stealing	2
Sheep dog	2
Sheep hill	1
Sheep mark	1
Sheep scab	3
Sheep stealing	7
Total	20
SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1900.	

Table 74: Hosiery: Conflicts and offences concerned with sheep at the Sheriff Court

Due to the importance of sheep in the rural economy, there had been very strict rules since the 17th century in Shetland in order to protect the sheep.¹ The parliamentary statutes were also extremely severe towards sheep-stealers. In 1741, the British Parliament passed “An act to render the laws more effectual for preventing the stealing and destroying of sheep, and other cattle”.² This act made it clear that “the person or persons guilty of any such offence, being thereof convicted in due form of law, shall be adjudged guilty of felony, and shall suffer death as in cases of felony”.³ Gwenda Morgan and Peter Rushton explain that sheep-stealing was an important offence in rural counties in England.⁴ However, the men found guilty of sheep-stealing or horse-stealing were rarely executed: in North-East England only 8.8% of the condemned for this offence were executed.⁵

In 1784, Magnus Ninianson, tenant in Swinister, in the parish of Delting, and his wife Christian Fraser were “indicted and accused” of sheep-stealing.⁶ The indictment was a “solemn procedure” and, the judge had to sit with a jury of fifteen men at the Sheriff Court.⁷ In 1784, a jury of fifteen men was appointed. The procurator fiscal reminded in his indictment that “by the Laws of God and of this and every well Governed Realm, The Crime of Theft is

¹ Fenton, *The Northern Isles*, 456.

² Danby Pickering, ed., ‘An Act to Render the Laws More Effectual for Preventing the Stealing and Destroying of Sheep, and Other Cattle, 14 Geo. II C. 6’, in *The Statutes at Large, from the Ninth to the 15th Year of King George II*, vol. XVII (Cambridge: Joseph Bentham, printer to the University, 1765), 419–20.

³ *Ibid.*, 419.

⁴ Gwenda Morgan and Peter Rushton, *Rogues, Thieves And the Rule of Law: The Problem Of Law Enforcement In North-East England, 1718-1820* (London: UCL Press, 1998), 104.

⁵ *Ibid.*, 229.

⁶ SA, SC12/6/1784/2, ‘Criminal Process (Sheep Stealing - a Ewe Belonging to John Nice.) (Criminal)’ 1784.

⁷ *Glossary. Scottish Legal Terms, Latin Maxims and European Community Legal Terms* (Edinburgh: Butterworths, 1992), 39.

Severely punishable”.¹ The jury’s verdict was indeed severe – but they were not hanged. Magnus Ninianson and Christian Fraser were sent for another 13 days in two separate prisons in Lerwick Tolbooth. On October 12 1784, they were “to be set in the Stocks in the Publick Street before the Door of the Tolbooth”.² Magnus Ninianson was to stay there for the space of half an hour, bare head, bare chest and with his hands tied behind his back. Christian Fraser was to “sit in the Stocks for the space of one hour”.³ They should both have “labels affixed on their Breasts Bearing these words: I sit here for stealing a Ewe”.⁴ After what John Mouat, dempster,⁵ should give on the bare back of Magnus Ninianson, “Thirty Stryps”.⁶ Eventually Magnus Ninianson and Christian Fraser were,

banished furth and from the Room of Swinister and Parish of Delting as also from the Parish of Northmavine, and Island of Yell and the Islands lying in Yell sound, from the Ministry of Nesting, Lunnisting, Whalsay and Skerries, the Town and Parish of Lerwick and Gulberwick and the Ministry of Tingwal and that during their Lives and within the space of Two months after the said Twelfth of October next.⁷

The stealing of sheep was not a matter taken lightly by the Sheriff Court. Magnus Ninianson and Christian Fraser’s case was also interesting because in his indictment, the Procurator Fiscal wrote the following:

And then and there [on the Hill and Scattald of Swinister] laying aside all fear of God and regard to the Laws, you or either [both] of you, being unaccompanied, by any Ra[n]c[e]lemen or other Person, stealt an Ewe or sheep from the said Scattald.⁸

The Sheriff Court used both the Scots Law and the Country Acts. The local by-laws were adapted to the local economical and social situation. Four acts out of 41 concerned sheep.⁹ The 8th act stated,

that none keep sheep-dogs but such as are appointed or allowed by the sheriff or bailie [...] and that none run after a sheep unaccompanied [...] and that none mark lambs or row sheep where there is different owners in the flock, but at the sight of sufficient witnesses [...] moreover, if any person shall use a sheep-dog, and run therewith after his own sheep amongst those of his neighbours, unaccompanied, mark, row, or take home any without shewing the same as aforesaid, shall pay for the first fault four angles, for the second, six angles, and for the third, or at any time under the cloud of night, shall be holden and repute a common thief, and punished accordingly.¹⁰

¹ SA, SC12/6/1784/2, ‘Criminal Process (Sheep Stealing - a Ewe Belonging to John Nice.) (Criminal)’, sec. Bundle 1.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ “Public executioner” in Susan C. Rennie, ed., ‘Dempster, Demster, N.’, *Dictionary of the Scots Language. Dictionar O the Scots Leid*, 2004, <http://www.dsl.ac.uk/>.

⁶ SA, SC12/6/1784/2, ‘Criminal Process (Sheep Stealing - a Ewe Belonging to John Nice.) (Criminal)’, sec. Bundle 1.

⁷ Ibid.

⁸ Ibid.

⁹ Acts 7, 8, 10 and 11 in ‘The Old Country Acts’.

¹⁰ Ibid., 82.

Since the sheep pastured in common, to go unaccompanied on a hill was seen as a criminal offense against the community.¹ Trust was crucial for a smooth neighbourly life. The 7th act stated that no one could enter in another man's holm as some holms were private pastures.² The 10th and 11th acts assured that the Rancelmen should try yearly sheep-dogs as well as control the woollen goods.³ In the first half of the 18th century, the Bailie Courts made sure that these acts were respected.

Offences/conflicts	1731-1747 (N=108)
Ew stealing	1
Lamb stealing	2
Sheep dog	11
Sheep hill	4
Sheep mark	5
Sheep pund	3
Sheep stealing	1
Total	27

NAS, RH2/8/33. 'Photostat Copy of Bailie Court Book of the North Parish of Unst', 1731-1733.
 NAS, RH11/29/1. 'Dunrossness Sandwick and Cunningsburgh: Bailie Court Book', 1731-1735.
 SA, D25/3. 'Fragment of Bailie Court Book of Northmavine', 1744-1747.

Table 75: Hosiery: Conflicts and offences concerned with sheep at the Bailie Courts

The main concern of the bailies was the regulation of sheep dogs. Sheep-dogs could be hurtful to both sheep and men. They had to be tried yearly by the Rancelmen who made sure that they wouldn't hurt the sheep. The health of the sheep and their physical integrity were primordial to the production of wool: sheep scab and dog's bites had to be avoided. During the scab epidemic in Dunrossness, Sandwick and Cunningsburgh, Thomas Williamson in Brinnister was accused of intromitting with a ram infected with scab. The Sheriff Substitute explained that such "Wicked & Malicious Conduct" could lead someone to be "Imprisoned for Contempt of Authority, & [...] remain So Confined Upon their own Expences until he or they be tried for the Crime so Committed".⁴ In his defence, Thomas Williamson explained that

[He was] sorry to Intrude more upon the time of the Court but shall Observe That if He had been so Mischievous or foolish as to do any thing that could tend to Bring the Infection among the sheep in Quarff or Gulberwick, nothing Less than Doun right Madness could Vindicate such a measure as His small Sheep Flock is the Great Dependance He Has for cloathing and Feeding his numerous Family, the Loss of which must be ruin to them all.⁵

Thomas Williamson was found not guilty: like any other in Shetland, he protected his sheep flock and the wool that Shetlanders wore and sold.

Kelp making

¹ Fenton, *The Northern Isles*, 456.

² 'The Old Country Acts', 81–82.

³ *Ibid.*, 82.

⁴ SA, SC12/6/1795/60, 'Petition (for Intromitting with a Ram Conceivably Infected with Scab.) (Criminal)', sec. 1.

⁵ *Ibid.*, sec. 2.

Alongside wool manufactures were two other production systems: kelp and linen. Hance Smith argues that “[t]he other two production systems, linen and kelp manufacture, paralleled developments which were taking place simultaneously in Scotland, the former largely under the auspices of the Board of Trustees for Fisheries and Manufactures in Scotland and the landowners, and the latter mainly under the aegis of the landowners”.¹ The burning of kelp in Shetland came from Orkney.² The Orcadians had started to burn kelp in 1721 in the person of James Fea in Stronsay.³ William P. L. Thomson explains that in Orkney “[i]t was kelp which entirely transformed the fortunes of eighteenth century landowners who discovered that their island estates provided them with a new source of unimagined wealth”.⁴ Shetland never reached the same production.⁵ In the 1760s Shetland landowners called for an Orcadian man “to survey their shores and give his opinion on the quantity of kelp which he thought they could produce”.⁶ The production of kelp really started around 20 years after in the 1780s.⁷ Both Robert Jameson and Arthur Edmondston described precisely how kelp was burned in Shetland.⁸

The proprietor or tacksman of the shores, employs a person acquainted with the making of kelp, to burn the tang on them into kelp [...]. The latter manages it by means of women and boys, whom he hires at a low rate [...]. The tang is cut [...] and it is spread on the grass, where it remains until it be sufficiently dried. A pit is then dug in the ground, about five feet long, two and a half deep, and three broad, which is denominated a kelp kiln. A small portion of ware is first kindled, and successive portions are added, till the kiln be nearly filled with a glutinous semi-fluid matter, of a dark blueish-grey colour, which is kelp. When brought to this state, it is raked backwards and forwards, until the whole mass becomes of an equal consistence. It is then allowed to cool, and harden, and in this indurated state it is sent to market.⁹

This description is confirmed by a petition of William Mouat of Garth at the Sheriff Court in 1781:

That in the Month of June last, the Petitioner had by his Servants and others Employed by him Cut Tang Laid it up [far above the highest highwater mark], and spread the same on the Commonty in the Ness of Houlland & Hammivoe, of which Tang Elb & Ness he and his authors have had Immemorial unquestioned Possession, particularly last year He had Tang for at least Ten hundred weight of Kelp Cut dryd & made into Kelp in said place, not in the least opposd or Questiond by any person¹⁰

¹ Smith, *Shetland Life and Trade 1550-1914*, 87.

² Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:2.

³ William P. L. Thomson, ‘Merchant-Lairds and the Great Kelp Boom’, in *The New History of Orkney* (Edinburgh: Birlinn, 2008), 352.

⁴ *Ibid.*

⁵ Shirreff, *General View of the Agriculture of the Shetland Islands*, 74.

⁶ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:5; Smith, *Shetland Life and Trade 1550-1914*, 88; Fenton, *The Northern Isles*, 58.

⁷ Smith, *Shetland Life and Trade 1550-1914*, 88; Fenton, *The Northern Isles*, 58.

⁸ Jameson, *An Outline of the Mineralogy of the Shetland Islands, and of the Island of Arran*, 188–89; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:6–7.

⁹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:6.

¹⁰ SA, SC12/6/1781/13, ‘Petition (Carrying of Tang.)’ 1781, sec. Bundle 1.

The sea-weeds used for the burning of kelp were, according to Arthur Edmondston, “the yellow tang (*fucus nodesus*), and the black tang (*fucus vesiculosus*)”.¹ Once burned, the kelp – and barilla – contained soda or sodium carbonate.² It was “used in soap-making and glass-manufacture”, explains Hance Smith.³ At the end of the 1780s, Orkney’s kelp was mainly sent to Shields and Newcastle for the glass manufactories.⁴

Since the shores were said to be too steep and the bays too shallow in Shetland to harvest enough tang and produce a good quantity of kelp,⁵ Robert Jameson and Arthur Edmondston suggested to the landlords to “[cover] sandy or gravelly shores with stones near the mark of the ebb”.⁶ This would “increase the extent of surface on which [tang] can grow”.⁷ This was not put into action.

Who burned the kelp? Arthur Edmondston and Robert Jameson explained that a landowner could employ a kelp-overseer who in turn could hire women and boys to gather the sea-ware. The kelp-overseer received £30 [£2 10sh. sterling] per ton⁸ while the women and boys made £4 10s. [7sh. 6d. sterling] per month or 2s. per tide when hired.⁹ Do we know more about these men and women? The archives of the Sheriff Court of Shetland bring some light on these people.¹⁰

Kelper (kelp-burner and -cutter)	Kelp-surveyor/shore-surveyor	Kelp-shore	Landowner/taskmaster	SC12/6/-
John Angus in Firth in Delting		Galtagarth, South Yell	Henry Blair	1781/13
Thomas Williamson in Littleseter in South Yell		Galtagarth, South Yell	Henry Blair	
Servants and others employed		Galtagarth, South Yell	William Mouat of Garth	
	William Ogilvy, servant	Galtagarth, South Yell	William Mouat of Garth	1785/14
	William Hoseason, servant	Galtagarth, South Yell	William Bruce of Burravoe	
Donald Gun		Galtagarth,	William Bruce of Burravoe	

¹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:6.

² For a good account of the scientific knowledge on kelp and barilla, see: Jameson, *An Outline of the Mineralogy of the Shetland Islands, and of the Island of Arran*, 186–96; Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, 206–9; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:5–14.

³ Smith, *Shetland Life and Trade 1550-1914*, 118.

⁴ Fea, *Considerations of the Fisheries in the Scotch Islands*, 77–78.

⁵ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 192; Sands, ‘Parish of Lerwick’, 416.

⁶ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:11.

⁷ *Ibid.*, 2:10. See also: Jameson, *An Outline of the Mineralogy of the Shetland Islands, and of the Island of Arran*, 191.

⁸ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 192; Jameson, *An Outline of the Mineralogy of the Shetland Islands, and of the Island of Arran*, 188; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:6; Fenton, *The Northern Isles*, 59.

⁹ Barclay, ‘United Parishes of Aithsting and Sandsting’, 588.

¹⁰ Appendices: **Erreur ! Source du renvoi introuvable.**, 33.

		South Yell		
John Angus	John Angus	Galtagarth, South Yell	William Mouat of Garth	
	Thomas Leask	Galtagarth, South Yell	William Mouat of Garth	
	Thomas Leask, tacksman, Burravoe, Yell	Galtagarth, South Yell	James Mouat	1795/36
A gang of kelpers in the neighbourhood		Galtagarth, South Yell	William Bruce of Burravoe	
	John Scollay in Clothan	Galtagarth, South Yell		1785/14
	Robert Stove in Brough	Galtagarth, South Yell		
	Robert Garthson in Houlland	Galtagarth, South Yell		
	Gilbert Sharp Senior in Hamnavoe	Galtagarth, South Yell		
	Garth Robertson in Brough	Galtagarth, South Yell		
	Laurence Leask, Landmeasurer, Lerwick	Galtagarth, South Yell		1795/36
Magnus Erasmussen, Kelp Cutter, Weisdale		Galtagarth, South Yell		
Magnus Erasmussen, Kelp Cutter, Weisdale		Nesting and Lunnasting	John Bruce, tacksman of Lunna	1796/26
Donald Bain, kelp cutter (from Sandwick), now in Burravoe, Yell		Hosewick, Sandwick	John Bruce of Sumburgh and Halcrows in Hosewick	1797/43
Janet Rusland		Ness of Westshore, Tingwall	Andrew Bolt	1797/50

Table 76: Kelp making: Burners, cutters and surveyors

In 1781 on the shores of Galtagarth in South Yell, Henry Blair's kelpers were John Angus in Firth, Delting and Thomas Williamson in Littleseter, South Yell.¹ William Mouat of Garth hired his "servants and others" to "Cut Tang Laid it up [far above the highest highwater mark], and spread the same on the Commonty in the Ness of Houlland & Hamnivo".² John Angus was hired again four years later by William Mouat of Garth this time and William Bruce of Burravoe employed Donald Gun to cut his kelp.³ The same John Angus was hired by William Mouat of Garth to survey the kelp shores of Galtagarth with the help of Thomas Leask.⁴ The latter did the same 10 years after in 1795.⁵ It was said that in 1795, William Bruce of Burravoe had "a gang of kelpers in the neighbourhood".⁶ The same year, Laurence

¹ SA, SC12/6/1781/13, 'Petition (Carrying of Tang.)', sec. Bundle 1.

² Ibid.

³ SA, SC12/6/1785/14, 'Petition for Division of Tang at Ness of Houlland and Hamnavoe, South Yell' 1785, sec. bundle 12.

⁴ Ibid.

⁵ SA, SC12/6/1795/36, 'Petition (Dispute Regarding Kelp on the Nesses of Houlland and Hamnavoe.)' 1795, sec. bundle 1.

⁶ Ibid.

Leask drew a plan of the Galtagarth kelp shores showing a proper division of the shores between James Mouat and William Bruce of Burravoe.¹ He did so with the help of Magnus Eramuson, kelper, in Weisdale.² The same Magnus Erasmuson was kelper for John Bruce, tacksman of Lunna in 1796 in Nesting.³ In 1797, Donald Bain, kelp cutter, from Sandwick, now in Burravoe, Yell, was put in charge of the kelp cutting and burning for the shores of Hosewick, Sandwick, which belonged to John Bruce of Sumburgh and Halcrows.⁴ The same year, a woman, Janet Rusland, was kelper with others on the Ness of Westshore, Tingwall, for the account of Andrew Bolt.⁵ This list of names is not pointless. John Angus and Magnus Erasmuson were hired because they were famous kelpers; they had the skills. John Angus lived in the parish of Delting and was employed for kelp cutting in South Yell. Magnus Erasmuson was from the parish of Wesidale and was hired to oversee a division of kelp-shores in South Yell and to cut kelp in Nesting. The appointment of a known person to the charge of kelper indicates that this occupation was specific and that as John Angus and Magnus Erasmuson, it was people who detained skills and knowledge who were hired to do it. Women and children, probably the “servants and others” of William Mouat of Garth, were hired to cut the tang and let it dry. Women could also oversee the kelp cutting business. Janet Rusland seemed to have been in charge at the Ness of Westshore. The people that Andrew Bolt hired, among which Janet Rusland, received for cutting and manufacturing the kelp a total of £31 2s. [£2 11sh. 10d. sterling]⁶ for “20 cwt”,⁷ i.e. 20 hundredweight or almost 1 ton. If Janet Rusland was the overseer, as I propose, the sum received by the workers was consistent with what was paid in Unst in the 1790s where the overseer received £30 per ton.⁸

In the 1790s, the total amount of kelp made in Shetland was estimated between 200 or 300 tons per year.⁹ Twenty years later it was estimated between 400 and 500 tons per year.¹⁰ There were geographical variations in the distribution of kelp shores. The united parishes of Aithsting and Sandsting produced between 40 and 50 tons of kelp per year while the parish of

¹ SA, SC12/6/1795/36/8, ‘Petition (Dispute Regarding Kelp on the Nesses of Houlland and Hamnavoe.)’, 1795.

² SA, SC12/6/1795/36, ‘Petition (Dispute Regarding Kelp on the Nesses of Houlland and Hamnavoe.)’, sec. bundle 5.

³ SA, SC12/6/1796/26, ‘Petition (for Interdict against Kelp Cutting.)’ 1796, sec. bundle 1.

⁴ SA, SC12/6/1797/43, ‘Petition (Concerning Kelp Shores of Hoswick.)’ 1797, sec. bundle 1.

⁵ SA, SC12/6/1797/50, ‘Petition for Damages (Awaytaking of Kelp.)’ 1797, sec. bundle 1.

⁶ Ibid.

⁷ Ibid., sec. bundle 12.

⁸ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 192; Jameson, *An Outline of the Mineralogy of the Shetland Islands, and of the Island of Arran*, 188; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:6; Fenton, *The Northern Isles*, 59.

⁹ Morison, ‘Parish of Delting’, 390; Sands, ‘Parish of Lerwick’, 416; Jameson, *An Outline of the Mineralogy of the Shetland Islands, and of the Island of Arran*, 187; Fenton, *The Northern Isles*, 58; Smith, *Shetland Life and Trade 1550-1914*, 88.

¹⁰ Shirreff, *General View of the Agriculture of the Shetland Islands*, 74.

Unst produced 10 tons and in Lerwick, only 6 tons were made per year.¹ The landlords earned between £24 and £48 per ton.² In 1797, when John Scott of Scalloway shared the profits from the sale of one ton of kelp, he gave £24 to Andrew Bolt, co-owner of the shores of Westshore.³ After 1791 and the turn-of-the-century, the prices of kelp increased since there were no sufficient importation of barilla from Spain.⁴ The prices in Edinburgh and London “continued long to be from £60 [£5 sterling] to £96 [£8 sterling] per ton” and it had reached⁵ after 1791, it had reached £132 [£11 sterling] per ton⁶ and £144 [£12 sterling] in 1808 after this date the price of kelp decreased.⁷

The minister of Aithsting and Sandsting, Patrick Barclay, expressed an idea slightly different to that of Robert Jameson on this new manufacture. For Robert Jameson, Shetland wages were too high: kelpers should be paid less. He explained that in the west Highlands the price of labour was between £12 and £18 per ton, almost two times less than in Shetland, and that “from this we may easily perceive the immense profits”:⁸ low wages encouraged labour.⁹ For Patrick Barclay, the kelp manufacture was a way to fight poverty:

This manufacture is but lately introduced, and is of very essential service, as many people earn something at it, who never had or could have earned a penny in any other way.¹⁰

Linen manufactures and straw plaiting

By the end of the 18th century, Shetland kelp trade was lower than in Orkney. The same was true for the linen trade which was “at this time much more highly developed in Orkney” and in the rest of Scotland.¹¹ In his *Shetland life and trade*, Hance Smith details briefly the story of the short lived Shetland linen manufactory:

The linen manufacture [...] was established for six years between 1770 and 1776. From as early as 1765, Lady Mitchell of Westshore was awarded premiums to encourage the spinning of flax, and James Hay [...] was apprenticed under the auspices of the Board to the linen trade in Scotland,

¹ Barclay, ‘United Parishes of Aithsting and Sandsting’, 588; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 192; Sands, ‘Parish of Lerwick’, 416.

² Barclay, ‘United Parishes of Aithsting and Sandsting’, 588; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 192.

³ SA, SC12/6/1797/50, ‘Petition for Damages (Awaytaking of Kelp.)’, sec. bundle 1.

⁴ Jameson, *An Outline of the Mineralogy of the Shetland Islands, and of the Island of Arran*, 187; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:9.

⁵ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:10.

⁶ Jameson, *An Outline of the Mineralogy of the Shetland Islands, and of the Island of Arran*, 187.

⁷ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:10.

⁸ Jameson, *An Outline of the Mineralogy of the Shetland Islands, and of the Island of Arran*, 188.

⁹ Coleman, ‘Labour in the English Economy of the Seventeenth Century’; de Vries, ‘The Industrial Revolution and the Industrious Revolution’.

¹⁰ Barclay, ‘United Parishes of Aithsting and Sandsting’, 588.

¹¹ Smith, *Shetland Life and Trade 1550-1914*, 87. See also: Fenton, *The Northern Isles*, 491–93; William P. L. Thomson, ‘Linen, Fishing and the “Nor Wast”’, in *The New History of Orkney* (Edinburgh: Birlinn, 2008), 363–77; Alastair J. Durie, *The Scottish Linen Industry in the Eighteenth Century* (Edinburgh: John Donald Publishers Ltd, 1979).

before being put in charge of the bleachfield at Catfirth in Nesting. The company, established ‘for carrying on the linen manufacture to its ultimate height’, was backed mainly by landowners and merchants with indirect interests in the haaf fisheries, and in practice existed not so much to manufacture and sell linen as to serve people in Shetland who furnished materials and paid for the weaving of these.¹

Its failure appears in various sources which attempted to provide reasons to such a short life. The minister of Delting gave three reasons for the failure of this scheme: 1) “improper management of those employed to conduct [the linen manufacture]”; 2) “the company beginning on too extensive a plan”; 3) “the people had never been previously instructed in the mode of spinning lint”.² He shared his last explanation being shared with George Low, who passed by the bleachfield at Catfirth when it was still in activity and explained how the new manufacture “[didn’t] seem to have taken; the Schetland people seemingly not being inclined to spinning”.³ Indeed there was no flax growing in Shetland and no knowledge of its spinning.⁴ John Mill, the minister of Dunrossness, agreed with the minister of Delting: one of the reasons for the failure of the linen manufacture was probably mismanagement. Arthur Edmondston shared the same opinion.⁵ John Mill and Arthur Edmondston gave another reason. For John Mill, “the choice of the spot [...] was inconvenient” since there was not “a regular resort from all parts”.⁶ Twenty years after, Arthur Edmondston explained how there had been difficulties to find “a convenient situation for the works”.⁷ These were the four principal reasons explaining the failure of the linen manufacture: 1) mismanagement; 2) financial issues; 3) reluctance to spin; 4) bad situation for the bleachfield. The minister of the parishes of Fetlar and North Yell, James Gordon, gave a fifth set of explanations:

1st, The fair sex here are so accustomed to roam about among the rocks in their earliest moments, (while they are procuring bait for the fishing), that they cannot apply with that diligence that the manufacturing business requires, had they time to do it, as they really have not. 2d, Constant sitting brings on hysteric disorders upon not a few of them⁸

The spinning of lint, just like the spinning of wool, was supposed to be done by women. For James Gordon, they were not incline to spin flax and it was not because they hadn’t learnt but because it was not in their character to sit constantly; it even caused hysteria to some of them. In the 18th century, it was believed that hysteria was caused by a lack of physical work.⁹

¹ Smith, *Shetland Life and Trade 1550-1914*, 87.

² Morison, ‘Parish of Delting’, 404–5.

³ Low, ‘Voyage to Schetland’, 178.

⁴ Morison, ‘Parish of Delting’, 404–5; Fenton, *The Northern Isles*, 491.

⁵ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:4–5.

⁶ Mill, ‘Parish of Dunrossness in Zetland’, 396–97.

⁷ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:5.

⁸ Gordon, ‘United Parishes of North Yell and Fetlar’, 287–88.

⁹ Diana Faber explains in details why being inactive was believed to cause hysteria: “In 1689, Lange put forward his clinical theory in “*Traité des Vapeurs*.” He was probably inspired by the work of Jan van Helmont (1577–1644), who published work on gases and ferments in 1648. Of the four types of ferment that Lange described, it

Even if James Gordon believed that women couldn't sit still, some women managed to produce linen. Between 1771 and 1773, the records of the work of 19 women have been kept in a small notebook which contains the "Acct. [of] Lint delivered & Linen Yarn Received".¹ However, little personal information was recorded.

	Firstname	Lastname	Township	Parish
1	Lillias	Anderson	Gravin	Delting
2	Margaret	Auchinleck		
3	Agatha	Black		
4	Andrina	Clerk		
5	Ann	Cromarty		
6	Andrina	Gifford		
7	Christie	Gifford	Sandibanks	Delting
8	Janet	Gray		
9	Andrina	Halcrow		
10	Jean	Luimsden	Hillswick	Northmavine
11	Olla Petersons daughter	Ollason	Papastour	Walls and Sandness
12	Ann	Omond		
13	Grisel	Omond	Trondavoe	Delting
14	Margaret	Omond		
15	Margaret	Stout	Wathersta	Delting
16	Margaret	Sutherland		
17	Janet	Twal	Papastour	Walls and Sandness
18	Agnes	Williamson	Watherstaness	Delting
19	Marjory	Williamson	Gravin	Delting

SA, GD144/102/2. 'Notebook with Accounts of Lint Delivered to Individuals, and Linen Yarn Received from Them', 1771-1772.

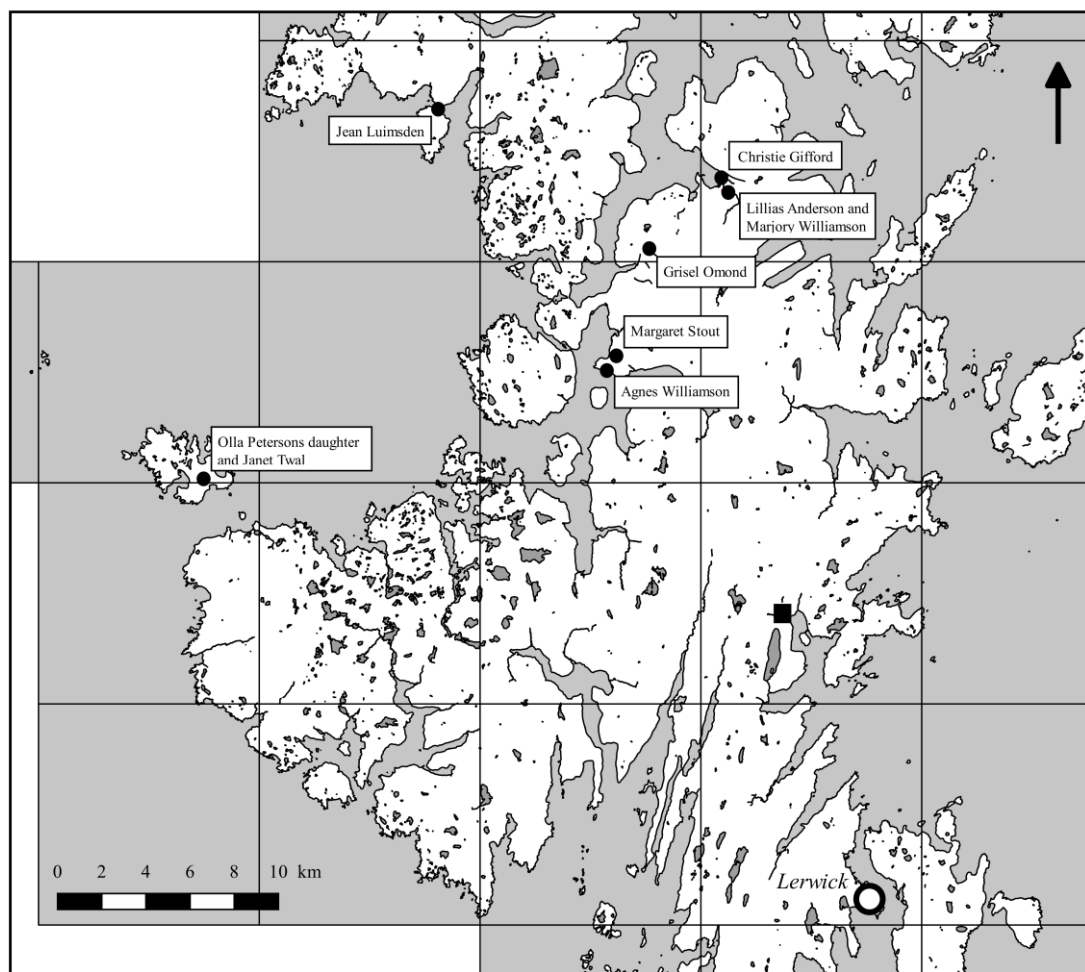
Table 77: Linen manufactures: Lint spinners

Nine of these 19 women had their townships recorded in the notebook. They all lived in North West Shetland, in an arc going from Papa Stour in the South West to Hillswick in the North West through the parish of Delting in the East. These women lived in townships located along the sea shore and most importantly, they lived nearby trading harbours from where their production was dispatched. They didn't live in the direct vicinity of the bleachfield of Catfirth; moreover their townships didn't have direct sea-access to Catfirth. The commentators of the turn of the century pointed out the bad location of the bleachfield which

was the seminal ferment that produced hysteric vapors. As women's ferments were fixed and heavy, he wrote, they did not always reach their destination, the sexual organs. However, if they did, sexual relations were needed to prevent the ferments from rising from the uterus via the nerves to the brain. Indeed, if such a rise did take place it could give rise to hysteric convulsions, delirium, and mania by affecting other organs, provoking spasms, vomiting, functional losses of the sense organs, and commotions of the body. Lange even had a theory to explain why some individuals were more susceptible than others to this pathology. He pointed out that gentle, placid, and amiable people with no sexual problems were generally not at risk. This category included most men whose vapors were too volatile to reach the brain. As for women, those who were married and whose lives were daily filled with hard physical work were less prone to hysteric fits than those of the leisured class. Such thinking called for marriage, a more active life, fresh air, and exercise. Yet vapors now held a certain 'cachet' or mark of distinction, and this social factor discouraged some women from following this advice.", in Diana Faber, 'Hysteria in the Eighteenth Century', in *Brain, Mind and Medicine: Essays in Eighteenth-Century Neuroscience*, ed. Harry Whitaker, C. U. M. Smith, and Stanley Finger (New York: Springer, 2007), 322.

¹ SA, GD144/102/2, 'Notebook with Accounts of Lint Delivered to Individuals, and Linen Yarn Received from Them 1771-1772'.

was located on the East coast of Shetland when a great share of the local spinners lived in townships located on the West coast of the archipelago.



- Spinner
- Bleachfield
- Town

SA, GD144/102/2. 'Notebook with Accounts of Lint Delivered to Individuals, and Linen Yarn Received from Them', 1771-1772.

Map 16: Linen manufactures: Spinners' townships

For their work, Shetland's spinners received payments of varied kinds.

Payments	£ Scots	sh
Cash	24	9
"Balance"	16	13
Wool	10	14
Tea	9	17
Payment to a third person	7	11
Indigo	3	6
Linen	1	16
Total	72	10

SA, GD144/102/2. 'Notebook with Accounts of Lint Delivered to Individuals, and Linen Yarn Received from Them', 1771-1772.

Table 78: Linen manufactures: Spinners' wages

Most of the time, they received cash from one of the landowners invested in the project. The payment in cash could even be allocated to a specific purchase: in 1772, Margaret Omond received “cash from Mr. Gifford to buy a pair shoes”.¹ Some of the accounts weren’t settled and the balance was in favour of the spinners: there is no certitude that they were ever paid for their work. The second and third most common methods of payment were wool and tea. Spinners could also receive indigo – a dyeing agent for textile – and linen. In her seminal book, *Myth and Materiality in a Woman’s World Shetland 1800-2000*, Lynn Abrams explains how in the 19th century knitters could receive wool in payment for their work as well as tea and drapery goods.² Eventually, payment could be made to a third person when a spinner had used his or her services: in 1771 both Agatha Black and Margaret Omond used the services of an Orkney man – however the reason why wasn’t recorded in the notebook. Eventually, in 1802, a straw-plaiting manufacture was introduced in Lerwick.³ Around 90 girls from the countryside worked there daily.⁴ Even if Arthur Edmondston acknowledged that the straw-plaiting manufacture “furnished occupation” to underemployed girls, he thought that this manufacture

tended much to corrupt the morals of the lower classes of people, not only in that town, but over the whole country. The assemblage, in a small place, of a number of young girls, unrestrained by the example, and removed from the protecting care of their parents, and suddenly acquiring comparative wealth, soon lays the foundation of habits of vice and extravagance.⁵

This moral accusation of women work in the early 19th century was a common place. Lynn Abrams argues that “[t]he fears surrounding these working women are reminiscent of identical concerns focused upon the mill girls on the British mainland”.⁶

Some time after the straw-plaiting manufactory was established in Lerwick, a second one opened in the same place and a third one begun in Dunrossness.⁷ They employed daily between 180 and 200 girls. In Lerwick, they worked in two crowded rooms with around 50 girls per room.⁸ The girls earned “a 1s. or 6d. [penny or a penny-halfpenny sterling] for each yard of plaited straw”⁹ “and can make [...] from 12 to 16 or even 20 yards a-day”.¹⁰ For some of them a week work meant £4 4s. or £4 15s. 12d. [7 or 8 s. sterling]¹¹ A London based

¹ Ibid., fol. 9.

² Abrams, *Myth and Materiality in a Woman’s World*, 100–107.

³ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:14.

⁴ Ibid.

⁵ Ibid., 2:65–66; Quoted in: Abrams, *Myth and Materiality in a Woman’s World*, 158–59.

⁶ Abrams, *Myth and Materiality in a Woman’s World*, 159.

⁷ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:14.

⁸ Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, 71.

⁹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:15.

¹⁰ Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, 71.

¹¹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:15.

company established those manufactures.¹ The straw was shipped from Dunstable and when plaited, it was sent to London.² This Shetland straw-plaiting manufacture died out in the 1820s.³ In Orkney, the same company had introduced a straw-plaiting company at the beginning of the 19th century. In 1814, the Orcadian branch employed between 1,200 and 1,400 people and in Shetland, they were only 200.⁴

Compared to kelp and hosiery industries, Shetland's linen and straw-plaiting manufactures had several shortcomings. The first one was that they had to import the raw material: flax didn't grow in Shetland and most of the years the straw produced in Shetland didn't have the standard quality for plaiting.⁵ However, Lynn Abrams explains that the failure of the straw plaiting factories was not caused by "the unreliability of material supplies" but by a difficulty to secure labour.⁶ She argues that "[t]he fact that the women were employed at piece rates according to the quality of the goods they produced may have informed their decision to switch employers".⁷ The same reason might also have contributed to the failure of the linen manufactures.

¹ Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, 71; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:14.

² Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:14.

³ Smith, *Shetland Life and Trade 1550-1914*, 119.

⁴ Fenton, *The Northern Isles*, 270.

⁵ Smith, *Shetland Life and Trade 1550-1914*, 86; Abrams, *Myth and Materiality in a Woman's World*, 87.

⁶ Abrams, *Myth and Materiality in a Woman's World*, 87–88.

⁷ *Ibid.*

Multi-tasking

Women could knit, harvest sea-weed and some of them participated in the linen and straw industries. They could be employed at all these things at the same moment of their life or throughout their life. They could also be servants and help at the farm. Multi-tasking was a crucial part of early modern life in rural Europe. Both men and women multi-tasked. In a historiographic paper published in 2004, Annie Antoine and Martine Cocard explain how multi-tasking is still underestimated by historians. They state that mono-activity has been the norm in agrarian history studies: some historians acknowledge a second activity but seldom work on the concept of multi-tasking or *pluriactivité*. The main cause of this lack of studies is the character of rural history in France as well as in the other European countries which embraced the Annales School's line of thoughts. Indeed,

classic rural history, after the Annales School, calculates prices and production, studies the agrarian structures and social hierarchies, but it avoids *pluriactivité*. In France, in fact, social history is a macro-history which reasons about groups, not individuals. It is a quantitative history that classes and counts, working from predefined categories. Thereby micro-historians ironised on those boxes in which historians have locked all individuals, and whose content was defined based on questionable criteria such as: the profession, but also the reputation, the wealth, all including much of the subjectivity of the historian. For the convenience of the exercise, it was obviously better to have individuals exercising one profession at a time, or which had a main profession acknowledged as such. The man of many trades was too difficult to get into the boxes that historians had made.¹

When the historian gets rid of these boxes, he or she can start to identify *pluriactivité*. The French historians explain that no region in France escaped to multi-tasking in the early modern period.² The same can be said of the different Scottish and Norwegian regions, where both men and women were multi-tasking.³ Rural, coastal, urban areas knew multi-tasking and it happened on islands and mountains.⁴

¹ “L’histoire rurale classique, issue de l’École des Annales, calcule des prix et des productions, étudie les structures agraires et les hiérarchisations sociales, mais elle évite la *pluriactivité*. En France en effet, l’histoire sociale est une macro-histoire qui raisonne sur les groupes et non sur les individus. C’est une histoire sérielle qui classe et qui compte en travaillant à partir de catégories prédéfinies. Le courant de la micro-histoire a de ce fait ironisé sur ces boîtes dans lesquelles les historiens ont enfermé tous les individus, et dont le contenu aurait été défini en fonction de critères bien discutables : la profession, mais aussi l’honorabilité, la richesse, le tout comprenant une bonne part de la subjectivité de l’historien. Pour la commodité de l’exercice, il était évidemment préférable de disposer d’individus exerçant une seule profession à la fois, ou bien auxquels on reconnaissait une profession principale. L’homme aux multiples métiers était trop difficile à faire entrer dans les cases qu’avaient fabriquées les historiens.” in Annie Antoine and Martine Cocard, ‘La Pluriactivité Dans Les Sociétés Rurales. Approche Historiographique’, in *Entre Terre et Mer. Sociétés Littorales et Pluriactivité (XVe-XXe Siècle)*, ed. Gérard Le Bouédec et al. (Rennes: Presses Universitaires de Rennes, 2004), 13–33.

² Ibid.

³ Whatley, ‘Work, Time and Pastimes’; Dyrvik, ‘Farmers at Sea: A Study of Fishermen in North Norway, 1801-1920’.

⁴ A more specific comparison between islands and mountains could be considered: Annie Antoine and Martine Cocard mention the work of Abel Poitrineau on the seasonal mountainous activities and Christopher A. Whatley

Jack-of-all-trades

The lack of studies on multi-tasking was not only accountable to quantitative history but also to scarcity of sources. Annie Antoine and Martine Cocaud explain that

trying to study multi-tasking poses first a problem of sources, at least for all periods for which it is no longer possible to make inquiries. Multi-tasking can be found in directories and in different statistical surveys that were made in the 19th and early 20th century. To make it appear at the individual scale, only the probate inventories show the tools or papers citing multiple activities. They serve to reveal the phenomenon but not to measure it, much less interpret it.¹

Frances J. Shaw shares this view. In her work on the Western and Northern Isles of Scotland in the 17th century she states that

[f]rom evidence such as the acts and proceedings of local courts, the witness lists of sasines and other legal documents, poll tax lists, rentals and testaments, it is not a difficult matter to work out what kinds of craftsmen were to be found in most areas nor to form a very general impression about their distribution. Beyond this, however, the evidence becomes very patchy, and detailed comparisons between one area and another are frequently impossible.²

This observation is relevant for the 18th century as well. Sources providing information on activities, wages and sometimes on geographical repartition of the occupations were quite similar in the 17th and 18th century and were scarce. In the second half of the 18th century, the male and female servants' tax lists provided very valuable information on the house servants: their names, the geographical disparities and a few figures. The archives of the local courts and customs contributed to enlighten the way in which these activities were controlled.

Crafting, producing and selling

Shetlanders were industrious but not in factories: they were multi-tasking at home and in their daily life. Multi-tasking in Shetland took mainly four forms – identified as some of the possible combinations of activities by Annie Antoine and Martine Cocaud:

refers to multi-tasking in the Hebrides. Antoine and Cocaud, 'La Pluriactivité Dans Les Sociétés Rurales. Approche Historiographique'; Whatley, 'Work, Time and Pastimes', 292–93.

¹ "tenter d'étudier la pluriactivité pose d'abord un problème de sources, au moins pour toutes les époques pour lesquelles il n'est plus possible de faire d'enquêtes. On peut la trouver dans les annuaires et les différentes enquêtes statistiques qui ont été faites au XIX^e et au début du XX^e siècle. Pour la faire apparaître à l'échelle individuelle, il n' a guère que les inventaires après décès qui révèlent les outils ou les papiers évoquant des activités multiples. Ils permettent de faire apparaître le phénomène mais pas de le mesurer, encore moins de l'interpréter." in Antoine and Cocaud, 'La Pluriactivité Dans Les Sociétés Rurales. Approche Historiographique'.

² Shaw, *The Northern and Western Islands of Scotland*, 132.

- “market sale of the surplus of family production (*kaufsystem*) and putting out system (*verlagsystem*)”:¹ it was the case of the production of hosiery (*kaufsystem*) and of the short-lived production of linen (*verlagsystem*);
- “family help having an extra activity”:² it concerned, for example, male servants or day-labourers working as fishermen in the summer and female servants knitting goods;
- “summer work on the farm and crafts in the winter”:³ women, children and aged people were employed at the farm in the summer and worked mostly indoors in the winter;
- “farmer hired for his strength or workman working as a day-labourer”:⁴ men working both in the fields and as craftsmen, such as Robert Thompson, presented as a mariner and a farmer but, also hired as a cooper, a wright and a mason,⁵ and women hired to gather kelp.

A fifth form can be added:

- “work in a workshop [...] for some farmers”:⁶ this concerned the short-lived straw-plaiting industry in Shetland.

In 1822, Samuel Hibbert described the *pluriactivité* of the Shetlanders in a short sentence explaining how “almost every peasant, [was] the fabricator of his own rivlins⁷ and shoes, as well as his own tailor, and his own carpenter”.⁸ Contrary to the Orkney Islands for which the Poll Tax Records of 1694 and 1696 provide “lists [which] contain the designations of various local craftsmen”,⁹ there was no similar list for Shetland. In her research Frances J. Shaw uses the 17th-century testamentary inventories.¹⁰ These documents helped her to detail the material possession of men and women at their death in order to see if they practiced or had practiced complementary activities. Gérard Le Bouédec uses the same kind of sources, the *inventaires*

¹ “vente au marché des surplus de la production familiale (*kaufsystem*) ou bien travail à domicile (*putting out system*, ou *verlagsystem*)”, in Antoine and Cocard, ‘La Pluriactivité Dans Les Sociétés Rurales. Approche Historiographique’.

² “aides familiaux exerçant une activité d’appoint”, in Ibid.

³ “travail agricole d’été et artisanat d’hiver”, in Ibid.

⁴ “agriculteur louant ses bras ou ouvrier faisant des journées agricoles”, in Ibid.

⁵ Mill, ‘Parish of Dunrossness in Zetland’, 397–98.

⁶ “travail en atelier, en usine, à la mine de certains agriculteurs”, in Antoine and Cocard, ‘La Pluriactivité Dans Les Sociétés Rurales. Approche Historiographique’.

⁷ “Rivlin, n. 1. A laced shoe made out of the untanned hide of an animal, with the hair outermost and moulded when still pliant to the shape of the foot”, in Susan C. Rennie, ed., ‘Rivlin, N.’, *Dictionary of the Scots Language. Dictionar O the Scots Leid*, 2004, <http://www.dsl.ac.uk/>.

⁸ Hibbert, *A Description of the Shetland Islands*, 471.

⁹ Shaw, *The Northern and Western Islands of Scotland*, 132.

¹⁰ Ibid., 120, 135.

après décès, when he studies *pluriactivité* in coastal societies from the 17th to the 19th century.¹ Unfortunately not one testamentary inventory from the 18th century has survived in Shetland – the list of deeds and testaments start back in 1806, with the testament of the Reverend of Dunrossness, Sandwick and Cunningsburgh, John Mill.² Disparate sources and information such as Samuel Hibbert’s statement must be used in order to seize the different activities of the Shetlanders.

Nevertheless similarly to what Gérard Le Bouédec did in his article on *pluriactivité*,³ a number of activities can be identified and categorized in different groups. In his article, the French historian identifies seven categories of activities: 1) trades in food, drinks and accommodation; 2) clothing trades, from creation to upkeep; 3) leather trades; 4) building trades; 5) trades of sailors, in fisheries or in the Navy; 6) trades in naval constructions; 7) trades in sea products,⁴ and eventually I propose to add the following activities: 8) processing of products into food or drinks, 9) gathering of raw materials and hunting of small animals, and 10) agro-pastoral activities consisting mostly of farming of land and breeding of farm animals, as well as 11) house and farm domesticity.

¹ Le Bouédec, ‘La pluriactivité dans les sociétés littorales XVIIe-XIXe siècle’.

² NAS, CC17/5/6/133-4, ‘Mill, John: Account’ 1806.

³ Le Bouédec, ‘La pluriactivité dans les sociétés littorales XVIIe-XIXe siècle’.

⁴ *Ibid.*, 61.

1- Food, drink and accommodation trades	2- Clothing trades, from creation to upkeep	3- Leather trades	4- Building trades	5- Trades of sailors, in fisheries or in the Navy	6- Trades in naval constructions
- gin and tea seller	- tailor - spinner - knitter - weaver	- shoemaker - tanner	- smith/blacksmith - carpenter - joiner - wright/wheelwright - mason - cooper - slater - builder	- Haaf fishing or summer fishing - Greenland fishing - soldier in the Navy	- boat builder
7- Trades in sea products	8- Processing of organic products into food or drinks	9- Gathering of raw materials and hunting of small animals	10- Farming	11- Domesticity	
- kelper (women and boys) - fish curer (boys)	- butter - oil - meal	- peat cutting - floss harvesting - heather harvesting - quarrying - rabbits (skins) - birds (feathers) - seals (skins)	- labouring (ploughing or delving) - manuring - sowing - planting - harvesting - building dykes - making hay - breeding cattle, sheep and swine - herding the flock	- man servant - man servant qualified for all sorts of farm work - farm servant of inferior skill - boy, or young lad not fully grown - labourer or common day-labourer - gardener - domestic female servants, well qualified to sew and dress linens, hired in gentlemen's families - cook-maids, who have been out of Shetland, and have returned instructed - house maids - women-servants, for the care of the children, and other work within doors - women-servants - ordinary female servants - house-servants - farm maids or women-servants employed in husbandry	
Sinclair, John, ed. <i>Statistical Account 1791-1799. Orkney and Shetland</i> . Vol. 19. Wakefield: EP Publishing, 1978. SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1810.					

Table 79: Multi-tasking: Occupations in the countryside of Shetland in the second-half of the 18th century

This table details the activities that Shetlanders could perform during their life. As said previously, they could work simultaneously on different activities, such as being a female servant and knitter, either throughout one day or one year, or they could be performed gradually during their life. This table shows that putting Shetlanders in boxes as either farmer or fisherman or mason or knitter or shoemaker doesn't make any sense since they could be so many things at the same time. The diversity of appellations for the domesticity highlights the multiplicity of situations in the countryside. Working on the self-denomination of workers could be helpful but it seldom appears in the records and when it does it provides only what the clerk wrote such as "labourer" or even the less precise "tenant" which doesn't start to cover the activities performed by men and women.

It's difficult to know how many people of each craft were present in the different parishes. We have a few data in the *Old Statistical Account*. Indeed the ministers mentioned which kinds of activities were practiced in their parish. The ministers of Dunrossness, North Yell and Fetlar and Nesting didn't mention the presence of any craftsmen. It doesn't mean, however, that they weren't. The minister of Bressay, Burra and Quarff seemed to be very interested in the different occupations of its flock. He very precisely reckoned how many people of each craft lived in the parish:

There are about 79 servants, of both sexes, in these parishes, the greatest part of which are employed in country affairs. There are 11 taylors, 2 smiths, 4 shoemakers, 2 carpenters, 1 joiner, 1 wheelwright.¹

The minister of Sandsting and Aithsting reckoned that "There [were] 3 blacksmiths, 4 masons, many taylors, weavers, wrights, boat-builders, shoemakers, &c."²

¹ Menzies, 'United Parishes of Bressay, Burra, and Quarff', 19.

² Barclay, 'United Parishes of Aithsting and Sandsting', 594.

Activities		Bressay, Burra and Quarff	Delting	Dunrossness	Fetlar and North Yell	Lerwick	Nesting	Northmavine	Sandsting and Aithsting	Tingwall	Unst	Walls	Mid and South Yell
1- Food, drink and accommodation trades	gin and tea seller								30 or 40				
2- Clothing trades, from creation to upkeep	tailor	11						x	x		x		
	spinner							x	x			x	x
	knitter	x	x					x	x				x
	weaver							x	x		x		
3- Leather trades	shoemaker	4						1	x		x		
	tanner		x								x		
4- Building trades	smith/blacksmith	2						x	3				
	carpenter	2									x		
	joiner	1											
	wright/wheelwright	1						2	x		x		
	mason	x	x						4		x		
	cooper										x		
	slater										x		
5- Trades of sailors, in fisheries or in the Navy	Haaf fishing or summer fishing	x	x	x	x		x	x	x		x	x	x
	merchant ships			x									
	Greenland fishing		x	x					x			x	
	soldier in the Navy		x	x	x							x	
6- Trades in naval constructions	boat builder							x					
7- Trades in sea products	fish curer								x				
	oyster/mussel gatherer	x											
	kelper		x					x	x		x		
11- Domesticity	male and female servants	79	x						x		x	x	
	farm servant										x		
	labourer	x											
	day-labourer		x										
	mason's servant								x				
	gardener										x		
	cook maid										x		
farm maid	x	x									x		

11: number of workers employed in a specific activity – daily or occasionally; x: activity identified by a minister; Lerwick: the parish of Lerwick being both rural and urban its figures have been left aside
Sinclair, John, ed. *Statistical Account 1791-1799. Orkney and Shetland*. Vol. 19. Wakefield: EP Publishing, 1978.

Table 80: Multi-tasking: Activities and parishes

This table shows the number and presence of specific work denominations recorded in the Old Statistical Account. The ministers answering to Sir John Sinclair had all their specificities and some mentioned with precision the presence of specific activities when other completely neglected it. This doesn't mean however that the figures given by the ministers are accurate or that in the parishes where no figures were given, inhabitants with specific skills and multi-activities didn't exist. Far from providing any quantitative data, this table consolidates, however, two assertions:

1. Shetlanders were multi-taskers: they fished, they built, they knit, etc.
2. Shetlanders used the resources of the scattalds to live: masons used the stones, kelpers harvested the kelp, and shoemakers and tanners used the tormentil (*Potentilla erecta*) root. Knitters and spinners used the wool of the sheep which pastured on the scattald's *hoga*.

To bring some life back to this list of figures and crosses, we can look in the Sheriff Court Records where some names appear.

	References/Names/Places of life
Blacksmith/smith	- 1803/47: David More (blacksmith), North Yell
Fish curer	- 1788/20: Robert Ross, Sound in Wiesdale - 1808/95: John Fraser, Papa
Gardener	- 1777/13: John Gibb, Bressay - 1793/6: John Omand, Bressay - 1800/80: William Henderson, Scalloway
Labourer	- 1789/23: Magnus White (landlabourer), Tresta - 1795/24: James Pottinger (labourer), Scalloway
Mason	- 1787/38 et 39: Gavin Gadie, Clumlie - 1792/14: Peter Erasmuson, Va - 1792/14: James Abernethie, South Deall - 1794/4: James Hunter, Bigseter - 1800/26: John Irvine, Challister Lerwick Mason Lodge: 1777/12
Servant	- 1699/1: Erasmus Irvine in Kickron, Margaret Magnusdaughter, his servant - 1772/2: Grizel Thomasdaughter, servant in Gloup - 1778/12: Thomas Gilbertson in Whalsay, servant to John Bruce Stewart - 1781/16*: Elizabeth Robertson, pres. servant to Mrs Buchan in Lerwick [was servant to George Linklater in Swinister] - 1789/1: Ann Thomasdaughter, late servant to Magnus Henderson in Tronaster, Lunnasting - 1789/1: Magnus Anderson, servant to Thomas Jamieson, aged 16, Tagon near Olnafirth, Delting - 1789/1: Andrew Harry, alias Anderson, servant to Thomas Jamieson, age 22, Tagon near Olnafirth, Delting - 1789/34: William Henry, sometime servant to Mr William Mitchell, minister of Tingwall - 1789/53: Jean Scott, female servant to James Smith in Funzie in Fetlar - 1789/53: William Wilson, servant to John Ross of Aith in Fetlar - 1792/16: William Mouat, servant to Charles Scott, merchant in Gardie in Mid Yell - 1793/18*: John Bain, servant in Haskussay [was servant to William Spence of Gardie, Mid Yell] - 1793/7: Thomas Ritch, formerly servant to John Bruce Stewart of Simbister Esq., resident in Whalsay - 1796/45*: John Thomason, pres. a servant to James Jameson in Vinsgarth [was servant to Samuel Taylor in Week in Gulberwick] - 1797/41: David Laureceson, servant to Thomas Halcrow in Culbinsgarth - 1798/34 et 38: David Sinclair, servant to Andrew Sinclair in Underhoull - 1798/56: Katharine Aitkin, servant to Peter Laureceson (?) in Easwick - 1799/26: Katharine White, sometime servant to Andrew Tait in South Hammersland - 1800/44: Robina Priest, servant to Andrew Bruce at Uyeasound - 1800/96: Helen Halcrow, sometime servant to James Leask, tailor at Voe in Dunrossness *breach of contract
Shoemaker	- 1777/7 et 1795/24: John Moffat, Scalloway - 1800/26: John Irvine, Challister
Tailor	- 1769/5: John Fea Sr., Dunrossness - 1775/20: Thomas Robertson, Tagon - 1777/7: Frances Ollason, Scalloway - 1795/55: Gilbert Thomason, Scalloway - 1800/96: James Leask, Voe in Dunrossness
Wright/wheelwright	- 1797/10: Thomas Leask, Scalloway
I relied on the Archives catalogue for the names and occupations of the pursuers and defenders. This is only a first survey. This isn't an exhaustive list. SA, SC12/6. 'Lerwick Sheriff Court Records: Ordinary Court Processes', 1692-1810.	

Table 81: Multi-tasking: Craftsmen and servants in the Sheriff Court Records

Even though we know that there were weavers, shoemakers, and so on, it is difficult to know how ‘commercial’ an occupation or a production was. When Samuel Hibbert explained that they were all “the fabricator of [their] own rivlins¹ and shoes, as well as [their] own tailor, and [their] own carpenter”:² did that mean that they never sold to anyone else a part of their production and that it was only orientated towards home-consumption? Or did that mean that they could sometimes sell or barter it to neighbours? What we know for sure is that even those who were engaged in a determined commercial activity, such as the weavers described by Frances J. Shaw in the 17th century, were all engaged in farming as well.³ The interweaving of additional activities and at the same time the constant use of the farming or fishing activity to define the occupations of the early modern Shetlanders is illustrated in the first statistical information available on a larger scale. The three censuses of 1801, 1811 and 1821 are very good examples of the problem of work categories. Indeed in the “observations, enumeration and parish register abstracts”, the occupations categories were the following: “Families chiefly employed in Agriculture”, “Families chiefly employed in Trade, Manufactures, or Handicraft”, and “all other families not comprised in the two preceding classes”.⁴ Even if the word “chiefly” might lead us to think that there was something more than “Agriculture” or “Trade” in the life of those families, their other occupations didn’t appear. And this was even a problem for those who collected the data. In the census of 1801, it was stated that “In the Returns from Shetland, in general, it appears that the Inhabitants are chiefly employed in Agriculture, except in the Summer Months, when such of the Males as are able are employed

¹ “Rivlin, n. 1. A laced shoe made out of the untanned hide of an animal, with the hair outermost and moulded when still pliant to the shape of the foot”, in Rennie, ‘Rivlin, N.’

² Hibbert, *A Description of the Shetland Islands*, 471.

³ Shaw, *The Northern and Western Islands of Scotland*, 134.

⁴ ‘Abstract of the Answers and Returns to the Shire of Orkney and Shetland’, in *Abstract of the Answers and Returns Made pursuant to an Act, Passed in the Forty-First Year of His Majesty King George III. Intituled ‘An Act for Taking an Account of the Population of Great Britain, and the Increase or Diminution Thereof.’: Enumeration, vol. Part II. Scotland, 1801, 534*, [http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20\(by%20date\)/1801&active=yes&mno=2&tocstate=expandnew&tocseq=9400&display=sections&display=tables&display=pagetitles&pageseq=first-nonblank](http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20(by%20date)/1801&active=yes&mno=2&tocstate=expandnew&tocseq=9400&display=sections&display=tables&display=pagetitles&pageseq=first-nonblank); ‘Abstract of Answers and Returns to the Population Act, 1 Geo. III. 1811, Shire of Orkney & Shetland’, in *Abstract of Answers and Returns to the Population Act, 1 Geo. III. 1811*, vol. Scotland, 1811, 496–97, [http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20\(by%20date\)/1811/Great%20Britain&active=yes&mno=5&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=529](http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20(by%20date)/1811/Great%20Britain&active=yes&mno=5&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=529); ‘Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94: Shire of Orkney and Shetland’, in *Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94*, vol. Scotland, 1821, 524–26, [http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20\(by%20date\)/1821&active=yes&mno=7&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=562](http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20(by%20date)/1821&active=yes&mno=7&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=562).

in the Fishery”¹. In 1821, the confusion was even greater because it affected directly the figures in the table:

The mixed occupation of the Inhabitants of Aithsting and Sandsting, and of Brassay and Barra, has caused almost all the families to be ascribed to agriculture in the latter, to the fishery in the former. In the rest of Shetland, they are generally ascribed to agriculture. In some of the Orkney Islands, the same doubt has evidently had a like effect.²

This way to classify and enumerate human activities is biased on several points:

1. it is highly probable that it was the person who wrote the Shetland Returns who determined the chief occupations of the people and not the people themselves;
2. in this kind of statistical enquiry, the work of women, children and aged people was completely obliterated and therefore, the complexity of the occupations within one household was reduced to nothing;
3. it is clearly indicated in the footnotes of the tables that the seasonal variations were impossible to be taken into consideration.

	Families chiefly employed in Agriculture		Families chiefly employed in Trade, Manufactures, or Handicraft		All other families not comprised in the two preceding Classes	
	1811	1821	1811	1821	1811	1821
Aithsting and Sandsting (1)	94%	95%	0%	3%	6%	2%
Bressay, Burra, and Quarff	88%	88%	3%	6%	9%	5%
Delting	97%	94%	3%	5%	0%	1%
Dunrossness, Sandwick, Cunningsburgh, & Fair Isle	84%	84%	0%	1%	16%	15%
Lerwick and Gulberwick (2)	12%	10%	33%	29%	55%	62%
Lunnasting, Nesting, Skerries and Whalsay (3)	100%	98%	0%	1%	0%	1%
Northmavine	93%	97%	2%	2%	4%	2%
Tingwall, Whitness, and Weisdale	75%	74%	5%	3%	21%	24%
Unst	99%	79%	1%	0%	1%	21%
Walls, Sandness, Papa & Foula	100%	97%	0%	1%	0%	2%
Yell, North, and Fetlar	100%	88%	0%	0%	0%	12%
Yell, South & Mid	93%	95%	2%	3%	5%	3%
Corrected total	83%	79%	5%	5%	12%	16%
(1) because of the summer fishing, the number of families employed in agriculture had been placed in the category "all other families"						
(2) calculated total for the annum 1821: total numbers presented separately for the two parishes for the annum 1821						
(3) calculated total for the annum 1811: total numbers presented separately for the three parishes for the annum 1811						
‘Abstract of Answers and Returns to the Population Act, 51 Geo. III. 1811, Shire of Orkney & Shetland’. In <i>Abstract of Answers and Returns to the Population Act, 51 Geo. III. 1811</i> , Scotland:496–97, 1811. http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20(by%20date)/1811/Great%20Britain&active=yes&mno=5&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=529 .						
‘Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94: Shire of Orkney and Shetland’. In <i>Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94</i> , Scotland:524–26, 1821. http://histpop.org/ohpr/servlet/PageBrowser?path=Browse/Census%20(by%20date)/1821&active=yes&mno=7&tocstate=expandnew&display=sections&display=tables&display=pagetitles&pageseq=562 .						

Table 82: Multi-tasking: 1811 and 1821 Censuses

¹ ‘Abstract of the Answers and Returns to the Shire of Orkney and Shetland’, 534.

² ‘Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94: Shire of Orkney and Shetland’, 525.

In 1811 and 1821, the “Families chiefly employed in Agriculture” were far more numerous than the “Families chiefly employed in Trade, Manufactures, or Handicraft” and “All other families not comprised in the two preceding Classes” – respectively 83% and 79%. But as I explained previously these statistics don’t really mean anything since they don’t take into consideration the seasonal variations of work as well as all the additional activities performed in the families and the work of women, children and aged. The biased character of these figures can also be read in the materials where it was mentioned that “There [were] only 3 persons in this parish who make their living by their trade alone; two wrights and one shoemaker”.¹ The minister of Sandsting and Aithsting described even more clearly the Shetland situation when he wrote that:

There are no sectaries of any denomination; - no town or village; - no distinct division can be made by their occupations or situations in life. There are 3 blacksmiths, 4 masons, many taylors, weavers, wrights, boat-builders, shoemakers, &c.; but none earn their bread by that occupation alone: *Every man almost is fisher, farmer, and artificer; so that hardly any man in the parish, except the minister, makes his bread by one trade.*² [My italics]

Even if providing a clear picture of the occupations’ repartition in Shetland – both geographically and throughout the 18th century – is almost impossible what matters here the most is to see that men and women could be employed at a variety of occupations and their employment was not regulated on a daily basis. Examples of men with multiple activities appear visibly in the records from time to time. John Mill, the minister of Dunrossness, wrote in his returns for the Statistical Account of Scotland that

Of late, a small sloop that goes upon the fishing, and to different parts of the country, was built by one Robert Thompson, a native of Fair Isle, and who was for several years a schoolmaster there, under the Society for propagating Christian Knowledge. He is now a farmer and mariner, an excellent cooper, a wright, and mason, by the force of a mechanical genius, without having ever been an apprentice to any of these professions. His sloop was built from the keel, and completely rigged and equipped by himself.³

This type of extreme multi-tasking was probably found all over Europe in the early modern period. Edward P. Thompson gives the example of a “methodical farming weaver” who kept a diary in 1782-1783. In his journal, Cornelius Ashworth of Wheatley detailed all the activities that he did on a daily basis. A variety of tasks appear under our eyes: he was employed in weaving, “harvesting and threshing, churning, ditching, gardening”, “preparing a calf stall and fetching the tops of tree plain threes home” and also “jobbing with a horse and cart, picking cherries, working on a mill dam, attending a Baptist association and a public hanging”.⁴ Annie Antoine and Martine Cocaud have also identified some of these extreme multi-taskers, one of

¹ Jack, ‘Parish of Northmaven’, 358.

² Barclay, ‘United Parishes of Aithsting and Sandsting’, 594.

³ Mill, ‘Parish of Dunrossness in Zetland’, 397–98.

⁴ E. P. Thompson, *Customs in Common* (London: Merlin Press, 1991), 372.

them Claude Cohergne owned land, rented land, and “sifted wheat, worked as a mason, bought “different goods”, bread, firewood, shoes, wires, pullets, chestnuts, employed masons, labourers and had his horse shoed...”¹ In the inventory the notary presented him as a day-labourer: here again the terminology used didn’t take into account “his whole activities and his social status”.²

Servants

In the *Old Statistical Account*, the minister of Bressay, Burra and Quarff gave precious figures. He wrote that “There [were] about 79 servants, of both sexes, in these parishes, the greatest part of which [were] employed in country affairs.”³ In the 1790s, 1,225 persons inhabited this parish composed of two isles – Bressay and Burra – and a mainland area – Quarff. The servants represented 6.50% of the inhabitants and they were, according to John Menzies, the minister, mostly employed as farm servants. This assertion is confirmed with the study of the male and female servants’ tax lists of the 1780s.⁴

The historian Jean Aitchison explains that,

[i]n order to raise money for the wars fought during the reign of George III, taxes were levied on masters and mistresses employing servants. The tax applied to the employment of male servants from 1777-1792, and to female servants from 1785-1792. The tax levied varied from year to year, with bachelor masters paying additional tax. There were exemptions for servants employed in husbandry, manufacture, and any trade or calling by which the employer gained a livelihood. Also, for every two children under the age of fourteen living in the household, one female servant could be employed without a tax liability. [...] Duty was payable on servants retained or employed as Maitre d’Hotel, House-steward, Master of the Horse, Groom of the Chamber, Valet de Chambre, Butler, Under-butler, Clerk of the Kitchen, Confectioner, Cook, House-porter, Footman, Running Footman, Coachman, Groom, Postilion, Stable-boy, Helpers in Stables, Gardener not being a Day Labourer, Park-keeper, Gamekeeper, Huntsman or Whipper-in, Waiters in Taverns, Coffee-houses, Inns, Alehouses. It was also payable on female servants, although their job description was not stated.⁵

These servants will be called “non-essential” in the following paragraphs – similarly to the ScotlandsPlaces’ terminology.⁶ There were more non-essential female servants than male. Indeed Jean Aitchison details how the tax was primarily aimed at those, in town or in the country, who could afford domestic or personal servants. The women could be both domestic

¹ Jean-François Solnon, *Sources d’histoire de la France moderne: XVIe XVIIe XVIIIe siècle* (Paris: Larousse, 1994), 756–59; Quoted in: Antoine and Cocard, ‘La Pluriactivité Dans Les Sociétés Rurales. Approche Historiographique’.

² Antoine and Cocard, ‘La Pluriactivité Dans Les Sociétés Rurales. Approche Historiographique’.

³ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 199.

⁴ NAS, E326/5, ‘Male Servant Tax Rolls 1777-1792’ n.d.; NAS, E326/6, ‘Female Servant Tax Rolls 1785-1792’ n.d.

⁵ Jean Aitchison, *Servants in Ayrshire 1750-1914*, Ayrshire Monographs 26 (Ayr: Ayrshire Archaeological and Natural History Society, 2001), 15–16.

⁶ ‘Female Servant Tax Rolls 1785-1792’, *ScotlandsPlaces*, accessed 17 February 2014, <http://www.scotlandsplaces.gov.uk/digital-volumes/historical-tax-rolls/female-servant-tax-rolls-1785-1792>.

and agricultural servants¹ something that trained butlers or cooks couldn't be. Therefore women were employed more massively and could be hired by less wealthy people. Women's wages were also slightly lower than men's and men couldn't be employed all-year long in Shetland because of the fishing industry.

¹ Aitchison, *Servants in Ayrshire 1750-1914*, 11.

	as appearing in the <i>Old Statistical Account</i>	in Pounds Scots (£)
Domestic female servants, well qualified to sew and dress linens, hired in gentlemen's families	- 40s. to 45s./annum + tea (2)	- £24 to £27/annum + tea
Cook-maids, who have been out of Shetland, and have returned instructed	- 40s. to 45s./annum + tea (2)	- £24 to £27/annum + tea
House maids	- 20s. to 25s./annum, besides some gratuities (3)	- £12 to £15/annum, besides some gratuities
Women-servants, for the care of the children, and other work within doors	- L. 1 Sterling, a shirt at 3s. and a pair of shoes at 2s. or 3s./annum (4)	- £12, a shirt at £1 16s. and a pair of shoes at £1 3s. 12d. or £1 16s./annum (=£15 19s. 12d. or £13 16s./annum)
House-servants	- L.9 to L.15 Scots/annum (5)	- £9 to £15/annum
Women-servants	- L.12 to L.8 Scots, if "hands to themselves" ¹ /annum (1)	- £8 ² to £12/annum
Ordinary female servants	- 10s. to 15s./annum (2)	- £6 to £9/annum
Farm maids or women-servants employed in husbandry	- 10s., a pair of shoes and a shirt/annum (3) - L.6 Scots and a pair of shoes/annum (4) - L.9 Scots/annum (5)	- £6., a pair of shoes and a shirt/annum - £6 and a pair of shoes/annum - £9/annum
Man servant	- L.9 Scots and a pair of shoes/9 months (4) - L.15 to L.18. Scots/9 months (1) - L.10 4s. Scots/9 months (5)	- £9 and a pair of shoes/9 months - £15 to £18/9 months - £10 4s./9 months (12 months: £12 (+ shoes) to £18) (9 months as land servant+10 weeks as sea servant: £21 to £46)
Man servant qualified for all sorts of farm work	- 30s. to 35s./annum + a pair of shoes and board (2)	- £18 to £21/annum + a pair of shoes and board
Farm servant of inferior skill	- 20s. to 25s./annum (2)	- £12 to £15/annum
Boy, or young lad not fully grown	- 15s. to 20s./annum (2)	- £9 to £12/annum
Labourer or common day-labourer or a mason's servant	- 6d./day [+ board and lodging] (3) - 6d./day [+ board and lodging] (4) - 6d./day [+ board and lodging] (1)	- 6s./day [+ board and lodging] - 6s./day [+ board and lodging] - 6s./day [+ board and lodging]
Gardener	"Gardeners, and in general, all other servants from Scotland, receive somewhat higher wages here than in their own country." (2)	
[+ board and lodging] i.e. probably already included in the calculation but not mentioned as such in the <i>Old Statistical Account</i>		
¹ "that is, liberty to spin and knit stockings, for their own behoof and emolument, at leisure hours", in (1)		
² "if hands to themselves"		
(1) Barclay, Patrick. "United Parishes of Aithsting and Sandsting." In <i>The Statistical Accounts of Scotland 1791-1799</i> , edited by John (sir) Sinclair, 7:580-97. Accessed December 1, 2011. http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Sandsting%20and%20Aithsting/ .		
(2) Mouat, Thomas, and James Barclay. "Island and Parish of Unst in Shetland." In <i>The Statistical Accounts of Scotland 1791-1799</i> , edited by John (sir) Sinclair, 12:182-202. Accessed September 27, 2012. http://stat-acc-scot.edina.ac.uk/sas/sas.asp/?account=1&accountrec=2515&action=publicdisplay&county=Shetland&monospace=&naecache=6&navbar=&nohighlight=&pagesize=&parish=Unst&sessionid=0262d5e138e87a06f0e1cc30e04ea4a6&transcript=&twoup=		
(3) Menzies, John. "United Parishes of Bressay, Burra, and Quarff." In <i>The Statistical Accounts of Scotland 1791-1799</i> , edited by John (sir) Sinclair, 10:194-203. Accessed December 1, 2011. http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Bressay%2C%20Burra%2C%20and%20Quarff/ .		
(4) Morison, John. "Parish of Delting." In <i>The Statistical Accounts of Scotland 1791-1799</i> , edited by John (sir) Sinclair, 1:385-408. Accessed December 1, 2011. http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Delting/ .		
(5) Thomson, David. "Parish of Walls and Sandness." In <i>The Statistical Accounts of Scotland 1791-1799</i> , edited by John (sir) Sinclair, 20:97-116. Accessed December 1, 2011. http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Walls%20and%20Sandness/ .		

Table 83: Servants: Wages

Even if they were more numerous, we know less about the female servants than about the male. The names of almost all the non-essential male servants were written down in the tax lists as well as their profession. A few female servants' are known by their own names but "their job description was not stated".¹ The reason was probably simple and was given earlier: women servants could do a variety of tasks and could be "domestic and agricultural servants".²

Even if their names were not recorded in the tax lists, the results of the study of these documents are very interesting. Firstly, it's possible to emphasize the difference between agricultural parishes such as Dunrossness and fishing parishes such as Unst and Northmavine. In Unst and Northmavine, there were relatively more non-essential female servants than in Dunrossness: in the last decade of the 18th century in Northmavine and Unst non-essential female servants represented about 3-4‰ when in Dunrossness they were only 1‰. The possibilities of employment varied for women. In fishing parishes, they could count on being hired by merchants or merchants-lairds who owned a house or a booth in the parish.

	178 5- 86	178 6- 87	178 7- 88	178 8- 89	178 9- 90	179 0- 91	179 1- 92	inhabitants in the 1780s	inhabitants in the 1790s	servants/inhabita nts in the 1780s	servants/inhabita nts in the 1790s
North mavin e	5	5	5	n/a	5	7	7	1,657	1,786	3 ‰	4 ‰
Dunro ssness	2	2	2	3	4	4	4	2,942	3,327	1 ‰	1 ‰
Unst	2	4	2	7	5	6	7	1,853	1,988	1 ‰	4 ‰

NAS, E326/6. "Female Servant Tax Rolls," 1785-1792.

Table 84: Multi-tasking: Non-essential female servants per inhabitants

Secondly, almost all the ministers employed non-essential female servants. Between 1788 and 1790, John Morrison, the minister of Delting, employed two non-essential female servants. At this time he had two children under the age of 14 so he paid the tax duty only for one servant.³ Similarly, for the tax year 1790-1791, John Mill, the minister of Dunrossness, had two children under the age of 14 and two non-essential female servants: he only paid the tax duty for one of them.⁴ About sixty years before the drawing up of the female servant tax lists, John Hay, minister of Unst, employed a female servant, Ursulla Francesdaughter, as well as a male servant, Thomas Lyon. Ursulla Francesdaughter "was found by the Elders to be with child and had given Thos. Lyon a man Servt. of [John Hay] for father"⁵. The Minister considered

¹ Ibid., 16.

² Ibid., 11.

³ NAS, E326/6/14, 'Female Servant Tax: Counties M-W, Jul 1788-Apr 1789.' 1788, fol. 163; NAS, E326/6/18, 'Female Servant Tax: Counties M-W, Jul 1789-Apr 1790.' 1789, fol. 156.

⁴ NAS, E326/6/22, 'Female Servant Tax: Counties M-W, Jul 1790-Apr 1791.' 1790, fol. 118.

⁵ NAS, RH2/8/33, 'Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733' n.d., 8-9.

that, under the circumstances, Ursulla Francesdaughter couldn't stay under his roof and therefore, he "craved that some Method may be fallen upon for Supplying your petitioner in a womans Servt. till Novr."¹. The decision of the bailie court was that "upon consideration found Severalls could be spared and that in particular Laur. Manson in Westerhouse could spare his daur. Janet"². The minister John Hay had to count a female servant in his personnel. Thirdly, most of the time there was only one non-essential female servant in a household. In 1785-1786 only five households out of seventy-five had more than one servant: four of them had two non-essential female servants and one of them had five non-essential female servants.³ In 1789-1790, there were seventy-six households who hired non-essential female servants and nineteen of them had more than one of them.⁴ Eighteen households had two non-essential female servants and one of them had three women's servants. This meant that women's servants worked mostly alone as domestic servants – nevertheless they could be working with agricultural servants. Fourthly, the names of the non-essential female servants were rarely transcribed in the tax lists. The names of some servants were written down only in the first year of the servants' tax list. Maybe be it is because they remained servants in the same household in the following years. Unfortunately, names weren't given for all the servants.⁵ Furthermore, at the difference with the non-essential male servants there wasn't in the printed tables any "quality" column.⁶ From these data only, it is difficult to know if there were trained Scottish women from the mainland who served wealthy Shetlanders. Using the family names in order to determine if women came from Shetland or mainland Scotland is clearly inappropriate.⁷ Fifthly, the number of non-essential female servants increased slightly between 1785-1786 and 1789-1790 but mostly in Lerwick. Various explanations can be thought of: a growing population in the town, an increase in wealth and the concentration of power and wealth in Lerwick. Eventually, this is also a geographical differentiation: women were more likely to find a job as non-essential servants in a fishing parish and in Lerwick which meant that they could or had to be mobile in order to find a servant's position.

¹ *Ibid.*, 9.

² *Ibid.*

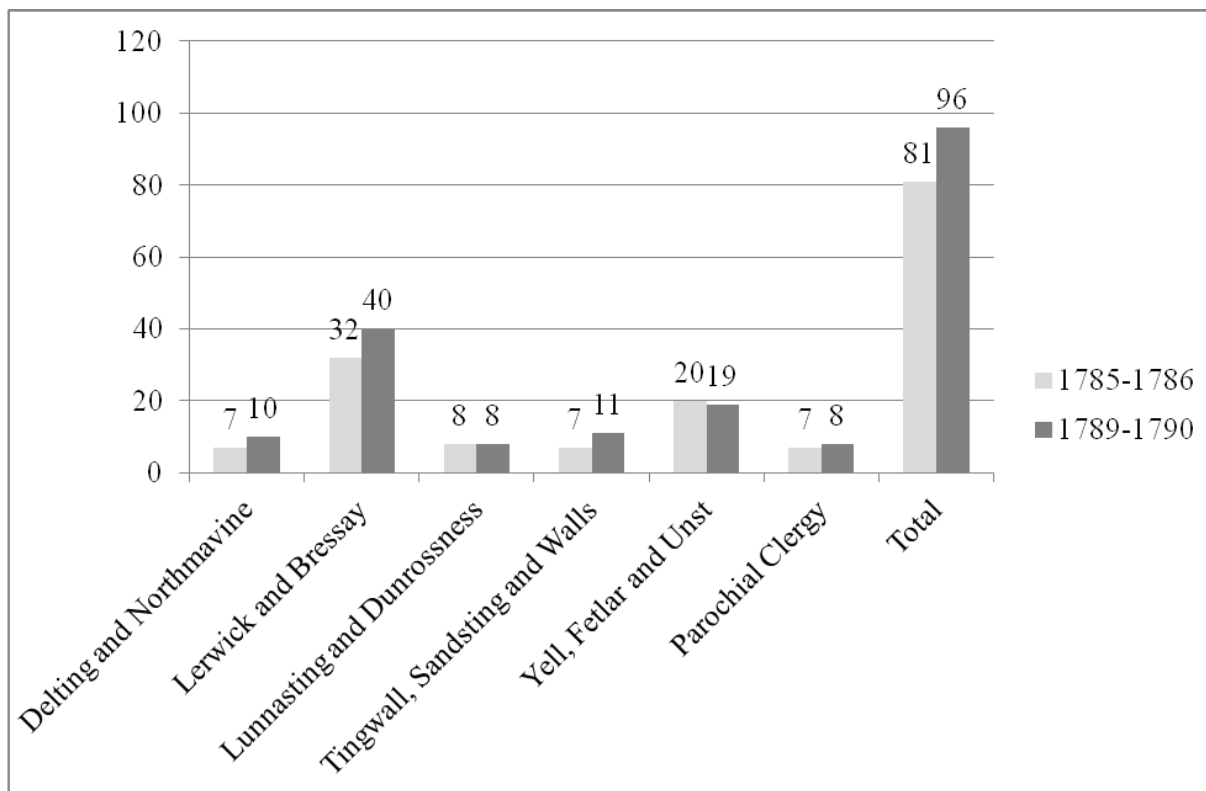
³ NAS, E326/6/2, 'Female Servant Tax: Counties M-W, Jul 1785-Apr 1786.' 1785, fols 119–121.

⁴ NAS, E326/6/18, 'Female Servant Tax: Counties M-W, Jul 1789-Apr 1790.', fols 155–156.

⁵ NAS, E326/6, 'Female Servant Tax Rolls 1785-1792'.

⁶ NAS, E326/5, 'Male Servant Tax Rolls 1777-1792'.

⁷ Smith, "Lairds" and "Improvement" in 17th and 18th Century Shetland', 11.



NAS, E326/6. "Female Servant Tax Rolls," 1785-1792.

Graph 5: Servants: Non-essential female servants

The non-essential male servants were far less numerous in Shetland. In 1785-1786, there were 81 non-essential female servants for 14 non-essential male servants.¹ The reason for this disparity has been given earlier: the non-essential male servants were qualified workers, employed in the wealthiest households of the country. Those who employed male servants in Shetland also employed female servants – that was the case of the minister of Unst, John Hay, in the 1730s. These male servants were skilled (3 gardeners and 8 body servants) but also “menial” (3 menial servants), literally ‘unskilled’. It is difficult to know if they were from Shetland or recruited in Scotland but two out of three gardeners were named Omond, they could have been of the same family. Another reason for this low number of male servants was the possibility for the men to find employment and higher wages at the summer fishing.

The writers of the 18th-century described the life and role of female and male, agricultural and domestic servants. Their descriptions provide other information such as wages, conditions of recruitment, shortage of servants, etc. Since the authorities considered farm servants as ‘essential’ servants, they weren’t recorded in the tax lists, neither were the day-labourers. Without a study of the merchants-lairds’ documents, quantifying the number of agricultural servants is almost impossible and even with a study of these materials it will be extremely

¹ NAS, E326/6/2, ‘Female Servant Tax: Counties M-W, Jul 1785-Apr 1786.’, fols 119–121; NAS, E326/5/5, ‘Male Servants Tax: Counties, 1785-1786’ 1785, fol. 181.

difficult to provide exact figures: the employments of workers, labourers and other extra hands to help for the agro-pastoral activities was extremely fluid and was found not only in the ranks of the landowners but also amongst tenants .

Royal Navy and Greenland whaling employment

The employment's situation in Shetland in the 18th century gets even more complex when we add another level: the men's employment in the Navy and Greenland fishery. In his *Shetland Life and Trade*, in a part entitled "The spirit of improvement" Hance Smith explains that the Greenland whale fishery and the Royal Navy were two "major source[s] of new employment" in the second half of the 18th century.¹ He refers to Thomas Gifford who in 1733 had underlined the fact that "the Greenland and Herring Fishery Companies of Britain proposed Lerwick as a most commodious port for lodging their stores in".² However Hance Smith further explains how "it [was] first mentioned as an established practice in 1755"; the first mention of impressment dates also from 1755.³ It is difficult to know how many men participated in the Greenland fisheries or were impressed in the Navy. Jonathan Wills in an article published in 1976 explains that "[a]s with Greenland whaling, we have no precise record of the numbers enlisted in Shetland for the Navy."⁴ Hance Smith suggests that there was "[a] competition between the two forms of employment in times of war".⁵ Indeed he shows that the competition "[was] largely responsible for the contraction of the fishery in wartime and its expansion in peacetime".⁶

¹ Smith, *Shetland Life and Trade 1550-1914*, 89.

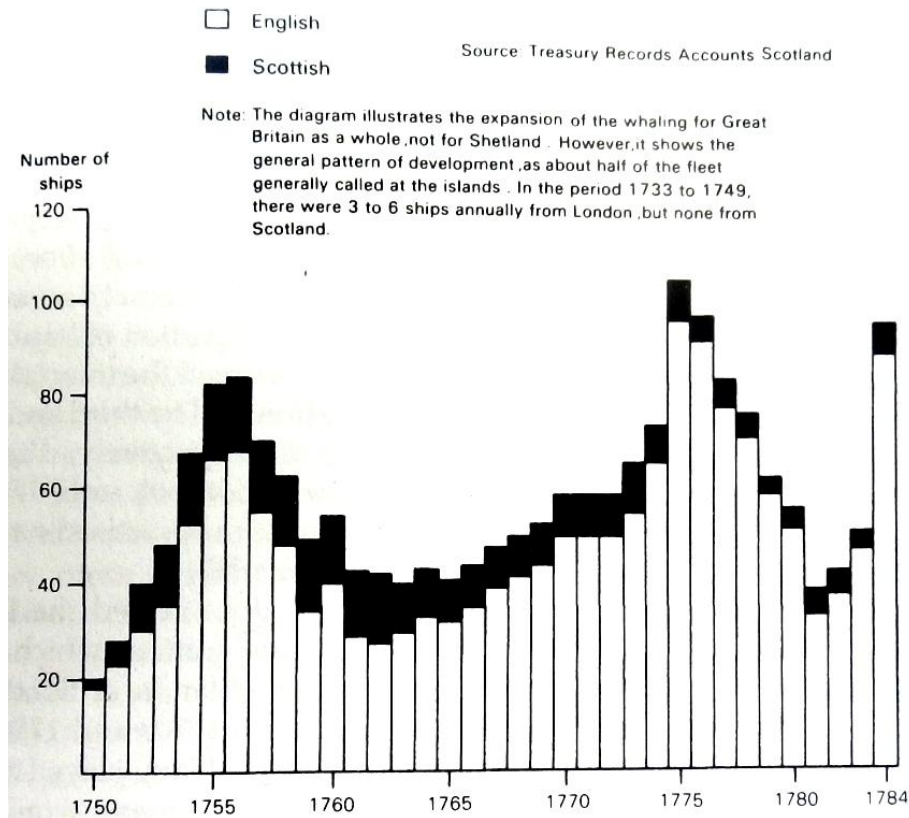
² Ibid., 88; Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 7.

³ Smith, *Shetland Life and Trade 1550-1914*, 88–89.

⁴ Jonathan Wills, 'The Volunteers', *The New Shetlander*, no. 117 (1976): 28.

⁵ Smith, *Shetland Life and Trade 1550-1914*, 88.

⁶ Ibid.



Smith, Hance D. *Shetland Life and Trade 1550-1914*. Edinburgh: John Donald Publishers Ltd., 2003, p. 89.

Table 85: Multi-tasking: Greenland whaling

Both Greenland whaling and the Royal Navy could be said to have a ‘seasonal model of employment’. The seasonality of war appears in its short-term temporality such as during the Seven Years War or the American Revolutionary War; when the Greenland fisheries employed men every year from March to August. In an article published in 1984, Alan Beattie gives the example of one “John Bruce of Ungersta, late RN” who paid his rent in Unst in 1782 and “presumably he was a survivor who returned home and there lived some years before his death.”¹ In the 1790s, the minister of Aithsting and Sandsting, wrote that “[d]uring the American war four men enlisted for soldiers, [...] [a total of 20 men] went from this parish, and only eight returned, or are alive.”²

The conditions of employment varied greatly: the Greenland whalers chose – for most of them – to work seasonally on the whaling ships while the Royal Navy seamen of Shetland were impressed which means that for most of them, they were forced to work for the Royal Navy. Shetland seamen were impressed: they were seized by press gangs either upon shore or while they were still onboard merchant or fishing ships. Shetland historiographical tradition

¹ Alan Beattie, ‘Shetlanders in the Royal Navy in the Time of the Press Gang Part 1’, *The New Shetlander*, no. 150 (1984): 28.

² Barclay, ‘United Parishes of Aithsting and Sandsting’, 597.

on this matter – as well as British historical tradition – sees impressment as an extremely cruel system of drafting men into the Royal Navy and as particularly unfair in Shetland. Many stories detail how men of old ages were impressed in a very malicious and brutal manner. Jonathan Wills tells stories of boys taken from the Bressay School in 1808 and of a young boy from Bressay taken the year after “in an open boat in the Bardastrom tiderace to the south of the island as a punishment for resisting impressments.”¹ Arthur Edmondston, already in 1809, expressed a concern that would become a hot topic in Shetland press gang history. He wrote that Shetland paid a higher tribute to the Royal Navy than the rest of Britain: “Upwards of three thousand natives of this country are at present in the Navy, a proportion exceeding that of the most populous maritime county in Britain.”² Furthermore Shetlanders were seen as achieved seamen. Again Arthur Edmondston wrote that “those who engage for this voyage [i.e. Greenland whaling] are conceived to be complete seamen, they are looked upon as fair game by the impress officer, and are hunted down with remorseless perseverance.”³ James Gordon, the minister of Fetlar, wrote in his answers to Sir John Sinclair that Shetlanders were “esteemed sailors inferior to none in the kingdom”.⁴ Already in 1751, an anonymous travel writer, after having described in length the wealth that properly managed herring fisheries could bring to the Kingdom of Britain, added that “[t]hese Fisheries, which have been scandalously neglected, if duly attended to, will not only prove a happy Source of future Wealth to these Nations, but also certain and admirable Nurseries for training up Seamen; our Fleets might on a sudden be expeditiously mann'd, and our Merchant Ships fitted out with Hands, to the unspeakable Advantage of Commerce”.⁵ However these “esteemed sailors” didn’t necessarily want to engage in the Royal Navy. Many stories detailed how they tried to hide away from the press gangs. Peter Jamieson in an article published in 1968 writes – in a very dramatic and misogynist way – how

[w]hen word came that the gangs were coming ashore, every able-bodied man and boy made for “hoidy-holls” in the hills and the caves along the shore, where they stayed until the women gave the “all clear.” Boys would be covered over with earth on the rigs, or hidden inside desses of hay and skroos of corn. Some were hidden under fish in big casks and vats, and at times rowed up inside a sail. Many fought with the navymen, the women lending a hand with ferocity that put the fear of death on armed sailors. The bluejackets however usually got the upper hand, bundling their victims into the boats, regardless of the tearful wailing and entreaties of the women.⁶

¹ Wills, ‘The Volunteers’, 29.

² Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:67–68.

³ *Ibid.*, 2:68.

⁴ Gordon, ‘United Parishes of North Yell and Fetlar’, 290.

⁵ *A Voyage to Shetland, the Orkneys, and the Western Isles of Scotland*. (London: C. Corbet, 1751), 14.

⁶ Peter Jamieson, ‘The Press Gang in Shetland’, *The New Shetlander*, no. 87 (1968): 14.

These stories seem to have occurred particularly in the period following 1803 – when impressments intensified in Shetland.

The organisation of employment for the Greenland whaling was quite different: men were keener to embark on Greenland whaling ships than on those of the Royal Navy, “sometimes the threat of impressments induced more men to go into the whaling, as in 1777.”¹ Hance Smith explains how “agencies were set up by local Shetland merchants in Lerwick to supply stores on credit to the Shetland members of the whaling crews and to handle the men’s wages on behalf of the whaling companies through the masters of the whale ships.”²

If a precise account of the men who embarked on Greenland whaling vessels or on Royal Navy ships isn’t possible, Jonathan Wills tries to provide an estimate of the proportion of men who served at some point in the Navy as for the Greenland whalers the Old Statistical Accounts provide some data. In “The Volunteers”, Jonathan Wills refers to Walter Scott of Scottshall, John Shirreff and Arthur Edmondston who all gave an order of magnitude of the number of whalers.³ The “most precise reporter” was Arthur Edmondston who wrote that

[b]etween 1793 and 1801 the late Mr Walter Scott, regulating officer, enlisted eleven hundred men for the navy; and the whole population of Shetland did not much exceed twenty-two thousand souls. Upwards of three thousands natives of this country are at present [i.e. 1809] in the navy, a proportion exceeding that of the most populous maritime county in Britain. About six hundred men go annually to Greenland [...].⁴

This comment led Jonathan Wills to conclude that “[f]rom such observations we must draw the remarkable conclusion that between 1793 and 1815 something like 50 or 60 per cent of the adult male population had served at one time or another in the Navy, and that between 1803 and 1808 possibly a third were at sea in any one year”.⁵ He further details the intense periods of press gang activity: high between 1777 and 1780 (it corroborates with the analysis of Hance Smith between Greenland whaling and Royal Navy), moderate between 1793 and 1801, intense between 1803 and 1812.⁶ Two sentences in the Old Statistical Account of the parish of Delting illustrate the situation before 1777: “It is a fact well ascertained, that in the year 1763, there were 900 Shetland men paid off. What number remained in the fleet after the peace it is impossible to say.”⁷ Regarding Greenland, whalers we know that in the 1800s 600

¹ Smith, *Shetland Life and Trade 1550-1914*, 89.

² *Ibid.*, 88.

³ John Kemp, *Observations on the Islands of Shetland, and Their Inhabitants* (Edinburgh: Highland Society, 1801); Shirreff, *General View of the Agriculture of the Shetland Islands*; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809; Quoted in: Wills, ‘The Volunteers’, 28.

⁴ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:67–68; Quoted in: Wills, ‘The Volunteers’, 29.

⁵ Wills, ‘The Volunteers’, 29.

⁶ *Ibid.*

⁷ Morison, ‘Parish of Delting’, 396.

men went annually to Greenland and “by the 1780s,” explains Hance Smith, “a scheme was drawn up for the supply of about 1,000 men to the Greenland fleet”.¹

*

Through crafting (knitting!), producing, selling, serving a master, whaling or serving the Navy, men and women of Shetland multi-tasked. It is impossible to provide clear-cut quantitative data but the mass of qualitative information enable to conclude that men and women of Shetland were all at one point in their life involved in multi-tasking either as farmer-fisherman-crafter, as farmer-fisherman-whaler, as farmer-knitter, as farmer-knitter-servant, etc.

Wages

What does a study of wages bring to the understanding of Shetland’s communities and their functioning? A study of wages helps us to understand what multi-tasking brought to the household in terms of cash and kind. It also helps to seize the place of Shetland in Scotland regarding the wages of its rural population in the 18th century.

Craftsmen and servants

In their seminal work on *Prices, food and wages in Scotland*, A. J. S. Gibson and T. C. Smout start the chapter entitled “Wages in money and kind” with the following explanation:

Wages were highly complex in early modern society, in Scotland as elsewhere. They might be paid entirely in money or entirely in kind, or in a mixture of both. They might be paid differently to the same person for different kinds of work (money with food at harvest, money alone for other day labour). They might be paid at higher rates in summer than in winter.²

In these few lines the two authors pinpoint the main difficulties a researcher encounters when he or she starts investigating the early modern Scottish wages. In their book, A. J. S. Gibson and T. C. Smout detail the sources that they used and can be used by other researchers in order to examine the Scottish wages. They distinguish four kinds of sources: 1) “account books and papers of employers”, 2) “statement of maximum wage rates set down by town council and justices of peace”, 3) reports of “ministers and others in the *Statistical account* of the 1790s”, and 4) poll-tax lists of the 1690s.³ These evidences have their “own advantages

¹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:68; Smith, *Shetland Life and Trade 1550-1914*, 89.

² A. J. S. Gibson and T. C. Smout, *Prices, Food and Wages in Scotland 1550-1780* (Cambridge: Cambridge University Press, 1995), 261.

³ Ibid.

and pitfalls”¹. The sources that I’ve used in this study are the reports of the ministers published in the *Old Statistical Accounts*. It’s not what A. J. S. Gibson and T. C. Smout used for rural labour. In order to understand “primarily day labourers, [they] have used the records of estates where the landlord employed workers directly”². Their use of the ministers’ reports has been mostly retrospective: the ministers assessing and comparing the wages paid at the end of the 18th century with what they knew or remembered from the previous decades.³ In my case, the ministers’ reports and Arthur Edmondston’s list of wages are the only data I have used.⁴ This choice means that the quantified information concerns only the 1770s onwards but some of the ministers’ comments indicate specificities in the way wages were paid and these can be studied in time and compared with the Scottish mainland situation. It should be noted that the ministers who wrote about wages in their reports were not that numerous. To my knowledge, there were only five ministers out of twelve who transcribed precisely the amount of the wages: the ministers of the parishes of Aithsting and Sandsting,⁵ Bressay, Burra and Quarff,⁶ Delting,⁷ Unst⁸ and Walls and Sandness.⁹

The ministers’ reports hold several difficulties. They include un-standardised information such as the money in which the wages were given: were they given in Scots or in Sterling’s money? Were the board and ‘bontage’ computed in the given wages? Sometimes, it’s easy to identify the disparities between the ways ministers wrote the information but it’s not always the case. I’ve tried to be very cautious in setting up the following table. I have privileged the ministers’ terminology for the different working categories and I’ve indicated the wages for which I think board and lodging were computed into money even when it was not obviously stated by the minister.

	as appearing in the <i>Old Statistical Account</i>	in Pounds Scots (£)
Tailor	- 8d. to 10d./piece (1) - 1s. 4d./day [board already included in the calculation] (2)	- 8s. to 10s./piece - 16s. [board already included in the calculation]
Shoemaker	- 8d. to 10d./piece [board already included in the calculation] (2)	- 8s. to 10s./piece [board already included in the calculation]

¹ Ibid.

² Ibid., 262.

³ Ibid., 269.

⁴ *The Statistical Account of Scotland, 1791-1799*, New ed. (Wakefield: EP Publishing, 1978); Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:342–43.

⁵ Barclay, ‘United Parishes of Aithsting and Sandsting’.

⁶ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’.

⁷ Morison, ‘Parish of Delting’.

⁸ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’.

⁹ Thomson, ‘Parish of Walls and Sandness’.

Carpenter	- 1s. 6d. to 1s. 8d./day [board already included in the calculation](2)	- 18s. to £1/day [board already included in the calculation]
Wright	- 10d./day (1) - 16d./day (3) - 16d. to 20d./day [board already included in the calculation] (2)	- 10s./day - 16s./day - 16s. to £1/day [board already included in the calculation]
Mason	- 15d. to 18d./day (3) - 10d. to 1s. 2d./day [+ board and lodging] (4) - 10d. to 14d./day [+ board and lodging] (1) - 10d. to 1s./day [board already included in the calculation] (2)	- 15s. to 18s./day - 10s. to 14s./day [+ board and lodging] - 10s. to 14s./day [+ board and lodging] - 10s. to 12s./day [+ board and lodging]
Slater	- 16d./day [board already included in the calculation] (2)	- 16s./day [board already included in the calculation]
Boat builder	- 8d. to 10d./piece (1)	- 8s. to 10s./piece
Haaf fishing or summer fishing	- L.16 to L.28 Scots for 10 weeks (4) - L.12 to L.24 Scots for 10 weeks (1) - L.18 to L.22 Scots for 10 weeks (5)	- £16 to £28 for 10 weeks (4) - £12 to £24 for 10 weeks (1) - £18 to £22 for 10 weeks (5)
Greenland fishing	- 30s. to 40s./month (4)	- £18 to £24/month
Kelper (women and boys)	- 7s. 6d./month or 2d./tide (1)	- £4 10s. 6d./month or 2s./tide
Fish curer (boys)	- L.6 to L.10 Scots for 10 weeks (1)	- £6 to £10 Scots for 10 weeks (1)
<p>(1) Barclay, Patrick. "United Parishes of Aithsting and Sandsting." In <i>The Statistical Accounts of Scotland 1791-1799</i>, edited by John (sir) Sinclair, 7:580–97. Accessed December 1, 2011. http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Sandsting%20and%20Aithsting/.</p> <p>(2) Mouat, Thomas, and James Barclay. "Island and Parish of Unst in Shetland." In <i>The Statistical Accounts of Scotland 1791-1799</i>, edited by John (sir) Sinclair, 12:182–202. Accessed September 27, 2012. http://stat-acc-scot.edina.ac.uk/sas/sas.asp?account=1&accountrec=2515&action=publicdisplay&county=Shetland&monospace=&naecache=6&navbar=&nohighlight=&pagesize=&parish=Unst&session-id=0262d5e138e87a06f0e1cc30e04ea4a6&transcript=&twoup=.</p> <p>(3) Menzies, John. "United Parishes of Bressay, Burra, and Quarff." In <i>The Statistical Accounts of Scotland 1791-1799</i>, edited by John (sir) Sinclair, 10:194–203. Accessed December 1, 2011. http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Bressay%2C%20Burra%2C%20and%20Quarff/.</p> <p>(4) Morison, John. "Parish of Delting." In <i>The Statistical Accounts of Scotland 1791-1799</i>, edited by John (sir) Sinclair, 1:385–408. Accessed December 1, 2011. http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Delting/.</p> <p>(5) Thomson, David. "Parish of Walls and Sandness." In <i>The Statistical Accounts of Scotland 1791-1799</i>, edited by John (sir) Sinclair, 20:97–116. Accessed December 1, 2011. http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Walls%20and%20Sandness/.</p>		

Table 86: Multi-tasking: Price of labour

Generally speaking, the researchers who worked on the questions of wages noted a clear unbalance between women's and men's wages in early modern Scotland. Men's wages were usually higher than those of women for comparable works. Was it the case in Shetland at the end of the 18th century? The scarce information that can be pulled off the ministers' reports gives a portrait consistent with the Scottish mainland situation. The male farm servants received higher wages than their female counterparts. Qualified male farm servants were paid

between £18 and £21 per annum and they received a pair of shoes and board.¹ The women received between £6 and a pair of shoes² and £6 10s., a pair of shoes and a shirt³ which amounted probably to around £9⁴ if we use the value of the shirt and shoes that John Morison, minister of the parish of Delting, provided.⁵ The house servants' situation is slightly more complex since there's no wages' indication for qualified male domestic servants to compare with female domestic servants. Nevertheless, when we look at the unqualified servants, the 'men servants', the 'house servants' and 'women servants', we note that women's wages were theoretically only slightly lower than those of men. Men received a sum equivalent to £12⁶ to £18⁷ per annum when women were paid between £8⁸ and £15⁹ per annum. However, men servants were actually paid far more than women since they received three-quarter of their yearly wage plus their "sea fee". Men servants could be paid between £21 and £46 per annum. This sum included their wages as land and sea servants. It should be noted that these servants, presented here as domestic servants, could obviously do a mixture of domestic and farm activities but their particularity was that they would never be present at the farm during the summer months.

Cash and kind

How were these working men and women paid? Did they receive their wage in kind or in money? How were they paid compared to their Scottish counterparts? I shall start here with some general observations on the way wages were paid in 18th-century Shetland. As early as 1725, the *Compend of the Country Acts for directing the Rancell Men...* informs us that masters had to give servants "meat and fee duly and reasonably"¹⁰ and in the last decade of the 18th century, ministers explained how "[i]n this country, every labourer, and workman of all kinds must be maintained in the family where they work"¹¹ and that "[a] pair of shoes in the year is a common perquisite throughout the island, to all ordinary male and female

¹ Mouat and Barclay, 'Island and Parish of Unst in Shetland', 193.

² Morison, 'Parish of Delting', 401.

³ Menzies, 'United Parishes of Bressay, Burra, and Quarff', 200.

⁴ Thomson, 'Parish of Walls and Sandness', 122.

⁵ Morison, 'Parish of Delting', 401.

⁶ Ibid.

⁷ Barclay, 'United Parishes of Aithsting and Sandsting', 587.

⁸ Ibid.

⁹ Thomson, 'Parish of Walls and Sandness', 112.

¹⁰ Thomas Gifford, 'A Compend of the Country Acts for Directing the Rancell Men, and Society for Regulating of Servants, and Reformation of Manners, with Their Instructions', in *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents* (Sandwick: Thule Print Ltd, 1976), 93 Act 19.

¹¹ Morison, 'Parish of Delting', 400. See also: Menzies, 'United Parishes of Bressay, Burra, and Quarff', 200; Barclay, 'United Parishes of Aithsting and Sandsting', 587.

servants.”¹ What is described here was typical of the Scottish wage system in the early modern period. Working men and women could be paid partly in cash, food and ‘bontage’.² In the Lowlands of Scotland, where payment in kind disappeared throughout the 18th century, “unmarried male and female servants [...] did obtain a cash wage but were also boarded within the farm steading and received both food and accommodation as part of their contracts”, writes Thomas M. Devine in his *Clearance and Improvement*.³ In his answer to Sir John Sinclair Patrick Barclay, the minister of Aithsting and Sandsting, clearly stated that workers were “maintained by the employer”⁴. In Shetland, most workers received a payment in cash, boarding and male and female servants received a ‘bontage’, a payment in kind as well. This ‘bontage’ was in shoes for male and female servants as well as in shirts.⁵ Qualified female domestic servants received tea along with a quite high money wage.⁶ These commodities were sometimes presented separately of the wage in money in the ministers’ reports but as it was the case in Unst, “[t]heir Board, which [was] always supplied by the employer, [was] included in this calculation”.⁷ This practice makes it more difficult to apprehend and compare the wages’ situation in different geographical areas.

In Scotland, Shetland belonged wage-wise to a north-west zone of low wages, for agricultural labourers and for rural craftsmen.⁸ In her study of “Agricultural wage rates...,” Valerie Morgan explains that

[i]n terms of the variation in value of cash payments very wide differences are clearly visible with rates over 50 percent above the national average in Renfrewshire and north Lanarkshire and at the other extreme rates more than 50 percent below average in the Outer Hebrides, the Northern Isles, and the mainland north of Inverness.

Even if it is difficult to compare wages, expressed sometimes in money and kind, sometimes only in money and sometimes in pounds Scots or sterling, it is possible to stress severe differences between regions. Indeed if we compare the “Yearly Averages for Male General Labourers’ Annual Cashes Wages for Scotland as a Whole”, we note that Shetland’s wage varied between £9 and £21 with shoes and board per annum when the Scottish average between 1791 and 1797 varied between about £72 and £96 yearly. The same can be said of

¹ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 193.

² Aitchison, *Servants in Ayrshire 1750-1914*, 62–63; Valerie Morgan, ‘Agricultural Wage Rates in Late Eighteenth-Century Scotland’, *The Economic History Review* 24, no. 2 (1971): 184; Gibson and Smout, *Prices, Food and Wages in Scotland 1550-1780*, 269.

³ T.M. Devine, *Clearance and Improvement: Land, Power and People in Scotland, 1700-1900* (Edinburgh: John Donald Publishers Ltd., 2006), 155.

⁴ Barclay, ‘United Parishes of Aithsting and Sandsting’, 587.

⁵ Morison, ‘Parish of Delting’, 401; Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 200; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 193.

⁶ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 193.

⁷ *Ibid.*, 194.

⁸ Gibson and Smout, *Prices, Food and Wages in Scotland 1550-1780*, 275.

“Female General Labourers” who received an average wage of £36 when Shetland’s farm servants received a maximum of £9. The explanation of these wide differences is complex. Two easy answers are first, the possibilities for men to earn extra cash when they spent their summer at sea and the possibilities for women to have their “hands to themselves”.¹ Regarding non-agricultural wages, A. J. S Gibson and T. C. Smout provide figures for rural craftsmen. They explain that “[t]he evidence from the *Statistical account* of rural craftsmen’s wages shows a range from 12s. to 24s. in the 1790s in the different counties, but most are from around 16s. to 18s. by then: the lowest wages are in the north, the highest in the Central Belt.”² Indeed at the exception of one report indicating rural masons being paid from 15s. to 18s. per day³ – the proximity with the parish of Lerwick might explain this high wage; the other reports stated that masons were paid between 10s. and 14s. per day with board.⁴ These figures placed Shetland’s masons in the lower bracket of the Scottish masons’ wages. If we turn towards day-labourers, A. J. S Gibson and T. C. Smout write that day labourers’ wages were “about 14s. a day in summer (10s. in winter) in the north-east and western borders and 7s. a day in summer (still 5s. in winter) in Ross and Cromarty”,⁵ in the north-west of Scotland. In Shetland, they received a wage of 6s. per day with their board. This figure is comparable to what similarly-employed men earned in Ross and Cromarty.

Shetland’s specificities

Regarding Shetland wages as a whole, there are two things that seem to be particular to Shetland: 1) the system of the ‘land and sea fee’ for servants and 2) the possibility for women servants to have their “*hands to themselves*” [in italic in the original text]⁶. The *Dictionary of the Scots Language* reports the use of the expression as being only found in Shetland. The expression seems to be found in the first time in Patrick Barclay’s report for the parishes of Aithsting and Sandsting and appears again at the end of the 19th century in George Stewart, *Fireside Tales*.⁷ Indeed, women servants could be paid less than the average wage (about £10) if they had their ““*hands to themselves;*” that [was], liberty to spin and knit stockings, for their own behoof and emolument, at leisure hours. The yarn [was] generally spun at night,

¹ Barclay, ‘United Parishes of Aithsting and Sandsting’, 587.

² Gibson and Smout, *Prices, Food and Wages in Scotland 1550-1780*, 275.

³ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 200.

⁴ Morison, ‘Parish of Delting’, 400; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 194; Barclay, ‘United Parishes of Aithsting and Sandsting’, 587.

⁵ Gibson and Smout, *Prices, Food and Wages in Scotland 1550-1780*, 279.

⁶ Barclay, ‘United Parishes of Aithsting and Sandsting’, 587.

⁷ *Ibid.*; George Stewart, *Shetland Fireside Tales Or, the Hermit of Trosswickness*, 2nd edition (Lerwick: T. & J. Manson, 1892), 247; Susan C. Rennie, ed., ‘Hand N., v.’, *Dictionary of the Scots Language. Dictionar O the Scots Leid*, 2004, <http://www.dsl.ac.uk/entry/snd/hand>.

when they would otherwise be idle; and, when carrying dung, or travelling on the road, they [were] always knitting.”¹ I don’t know of anywhere else where a complementary productive activity meant a diminution of the wage for female servants. What was the reason for such an arrangement? It is difficult to say. Was it because women could make a great deal of complementary money with the knitting of stockings? Brian Smith explains in “Stockings and mittens, 1580-1851” that

[i]n 1724 a Shetland landowner entered into a contract with a merchant to provide him with 700 or a thousand pairs of ‘good and sufficient coarse mixed stockings’, at £70 Scots per 200 pairs. In due course the landowner provided 1,000. The transaction leads [Brian Smith] to believe that he was getting the stockings from his tenants perhaps as part of their rent, just as Shetland landlords in the new eighteenth century regime demanded their tenants’ fish. As sure as can be, the landlord wasn’t knitting them.²

This is a very plausible explanation but it is also possible that as early as the beginning of the 18th century, Shetland women of all kinds would be “encouraged” by different types of incentive to knit. For example, the masters of women servants could give them less money wage than average and in return they would take all their knitting either for cash or, again, for kind. It is difficult to know how much a women could earn from this complementary trade but it must, at least, have been enough to cover the discrepancy between her low money wage and the average wage paid to women servants. The explanation could also be more practical: the minister of Aithsting and Sandsting after explaining that women were paid less when they had “their hands to themselves” wrote that “[women servants’] service to the master [was] often very inconsiderable; and they would not get meat for their work in any other place.”³ The reason for this practical arrangement was maybe that women servants didn’t have a lot of work to do in the more humble houses and therefore were not paid the average wage – even though they still received their board – but they could sell their knitting products.

If we come back to the system of “land and sea service”⁴ it is to observe that similarly to the rest of Scotland, summer months were a moment of wage competition. On the mainland, the servants asked for higher wages during the summer since the work they had to do could be physically exhausting but more importantly because their employer couldn’t do without them: fields had to be ploughed, and crops sown and harvested.⁵ In Shetland, the fishing tenures’ system organised by the merchants-lairds, i.e. those who possessed both land and were merchants or had connections or contracts with merchants, was the source of a unique

¹ Barclay, ‘United Parishes of Aithsting and Sandsting’, 587.

² Smith, ‘Stockings and Mittens, 1580-1851’, 54.

³ Barclay, ‘United Parishes of Aithsting and Sandsting’, 587.

⁴ Gifford, ‘A Compend of the Country Acts’, 93 Act 25.

⁵ Aitchison, *Servants in Ayrshire 1750-1914*, 12; Gibson and Smout, *Prices, Food and Wages in Scotland 1550-1780*, 279; Morgan, ‘Agricultural Wage Rates in Late Eighteenth-Century Scotland’, 200.

situation. This situation was concretised on paper by the chamberlain, Thomas Gifford, in 1725. I've chose to quote in length the two by-laws which dealt with this issue:

For encouragement of fishing, upon which the general benefit of the county very much depends, that every householder who is not a fisher, and having servants or sons capable to go to sea, be allowed to go with any fisher that wants them, for reasonable fees, the months of May, June, and July, the one-half of which fee so earned to belong to the master, and the other half to the servant, beside his whole ordinary fee; and that the society for regulating of servants appoint reasonable fees for all servants both for land and sea service, so as masters may not be imposed upon, nor servants defrauded of what is their due; and that both masters and servants observe the said appointment, under the pain of three pounds Scots money.¹

You endeavour to suply (sic) fishers with men, conform to the act thereanent, so as no honest man's boat be set ashore for want of men, and that you appoint reasonable fees or hire for those that serve at sea, and see them duly paid; and that if masters maltreat their servants, that you order such servant to those who will use them better.²

These two texts explained how in order to “encourage” the fisheries, land servants could be employed at sea during the months of May, June, and July. A compensation's scheme was established for the land masters: they would receive one half of the sea fee of their servants. The servant received the other half of the fee plus their “whole ordinary fee”³. This was not exactly similar to the “Act regarding servants going loose”⁴ that “compelled the servants to serve for a year rather than from Martinmas (11th November) to Whitsunday (15th May).”⁵ This Act of the Scottish Parliament tried to eliminate the risks for a master to employ his own servant at a higher wage during the summer months. It contained a similar idea than the Shetland system. Since servants were absent during the summer months their master received compensation: they could, maybe, hire another farm servant or a day labourer with this money. I don't think that a similar compensation's scheme was still in force in the last years of the 18th century. In their reports, the ministers explained that “[n]o man-servant can be got for the whole year”⁶ and that “[n]o man-servant can be got during the fishing season, as they have better wages at the fishing”⁷. They also indicated the wage that sea servants could receive but never mentioned that this wage was then shared with their master. My guess is that probably by the end of the century the system had become more complex than at the beginning. Men of all kinds could be employed at sea during the summer, indeed “[e]very

¹ Gifford, ‘A Compend of the Country Acts’, 95–96 Act 25.

² Thomas Gifford, ‘Commission and Instructions to the Society for Regulating of Servants and Reformation of Manners’, in *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents* (Sandwick: Thule Print Ltd, 1976), 97 Act 6.

³ Gifford, ‘A Compend of the Country Acts’, 95 Act 25.

⁴ K. M. Brown and al., eds., ‘1621/6/33: Act XXI: Regarding Servants Going Loose and Leaving Their Master's Service’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1621/6/33>.

⁵ Aitchison, *Servants in Ayrshire 1750-1914*, 12.

⁶ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 200.

⁷ Morison, ‘Parish of Delting’, 401.

householder [was] an independent tenant and fisher.”¹ Furthermore men servants were never employed for a full-year anymore. Therefore they were not earning anymore their “whole ordinary fee”². They could be hired on land for nine months and on sea for ten weeks. Those who earned this sea wage were not necessarily servants during the rest of the year. There was always a difficulty to define them: I have explained earlier that in the census of 1801, it was stated that “[i]n the Returns from Shetland, in general, it appears that the Inhabitants are chiefly employed in Agriculture, except in the Summer Months, when such of the Males as are able are employed in the Fishery.”³

On the studied period – 1770-1809 – the wages in Shetland increased. This gradual progression of wages followed the price rises of provisions. John Mill, the minister of the parish of Dunrossness, explained in the Old Statistical Account that “[t]he prices of provisions are greatly raised within these 30 or 40 years. A fat ox or cow was then [£18] now [£32] and other provisions in proportion. Butter, from [£1 7s. 12d.] is now [£4 4s.] or [£4 15s. 12d.] *per* 30lb. weight.”⁴

¹ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 193.

² Gifford, ‘A Compend of the Country Acts’, 95 Act 25.

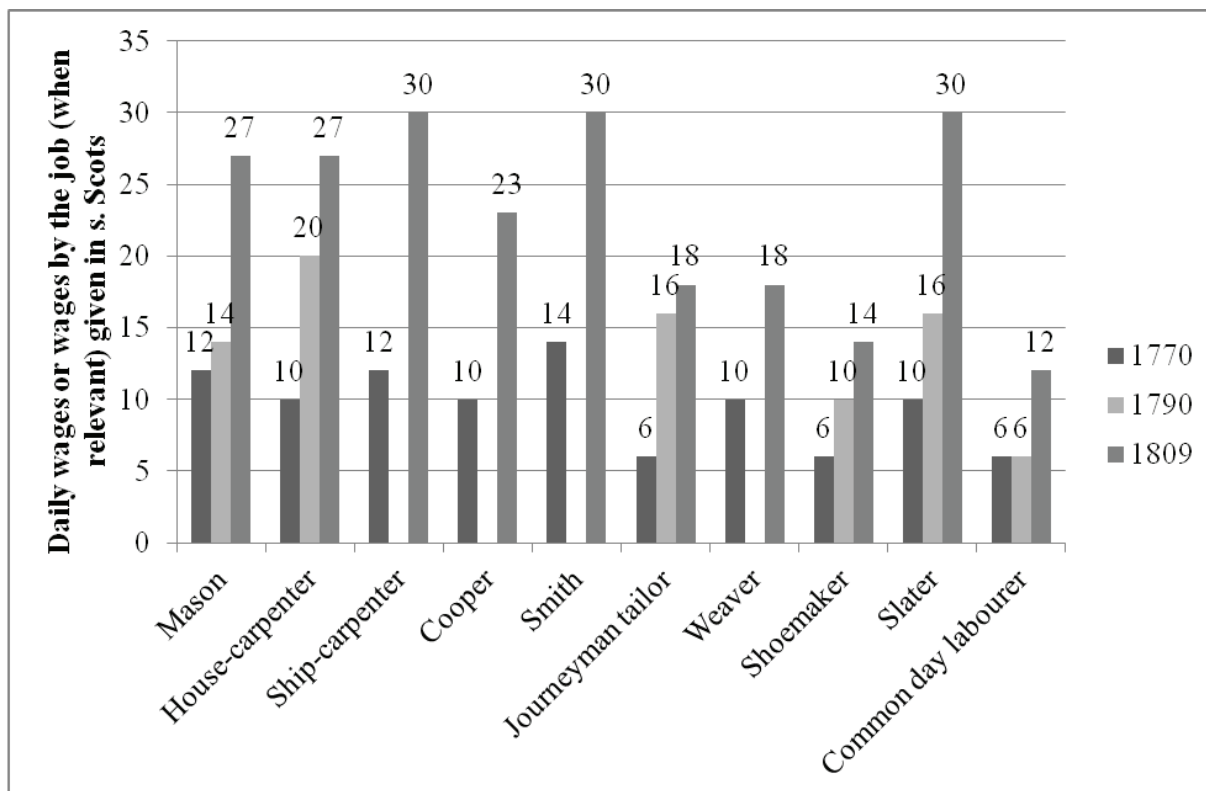
³ ‘Abstract of the Answers and Returns to the Shire of Orkney and Shetland’, 534.

⁴ Mill, ‘Parish of Dunrossness in Zetland’, 397. The following table provides data on the prices of provisions in the late 18th century. A comparison between the wage rates and these prices would require its own study. We shouldn’t forget what A. J. S Gibson and T. C. Smout write in *Prices, food and wages in Scotland*: “The problems of investigating the standard of living in Scotland at any point before the mid twentieth century are enormous, as they must be for any country before government begins to collect modern statistical data on income, prices and employment. These problems are of two kinds: conceptual, concerning the nature and meaning of a ‘standard of living’, and practical, concerning the accumulation of appropriate evidence.” (Gibson and Smout, *Prices, Food and Wages in Scotland 1550-1780*, 337.)

Prices of provisions in the 1790s			
	£	s.	d.
Beef (per pound)		1	6
Living calf	1		
Calf skin		15	
Sheep	3		
Lamb		18	
Pig		8	
Goose		8	
Chicken		2	
Hen		4	
Cock		2	
Butter (30lb. weight)	4	15	12
Fat ox or cow	42		

Mill, John. “Parish of Dunrossness in Zetland.” In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 7:391–98. Accessed November 23, 2011. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Dunrossness/>, 397.

Morison, John. “Parish of Delting.” In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 1:385–408. Accessed December 1, 2011. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Delting/>, 400.



Edmondston, Arthur. *A View of the Ancient and Present State of the Zetland Islands. Including Their Civil, Political, and Natural History, Antiquities and an Account of Their Agriculture, Fisheries, Commerce, and the State of Society and Manners*. Vol. 2. 2 vols. Edinburgh: John Ballantyne and Co., 1809, 342-343.

Sinclair, John, ed. *Statistical Account 1791-1799. Orkney and Shetland*. Vol. 19. Wakefield: EP Publishing, 1978.

Table 87: Prices of labour from 1770 to 1809

Controls

Shetland's communities were regulated communities. A network of courts controlled their activities on land and on sea. "[T]he kirk", explains Harriet Cornell, has been placed by historians "at the centre of social control in early modern Scottish parishes".¹ She continues and states that "[e]cclesiastical discipline, prescribed in the *The First Book of Discipline* as necessary for the establishment of a godly society, was the vehicle through which social control was made possible."² However traditional historiography has had the tendency to neglect the role of secular courts in maintaining a social order.³ Social control was "made possible by the use of formal and informal methods of enforcement" both in ecclesiastical courts and in secular courts.⁴ This was the case when parishioners 'delated,' accused, their counterparts for being pregnant or for any other moral breaches. Ecclesiastical and secular

¹ Harriet Jane Cornell, 'Gender, Sex and Social Control: East Lothian, 1610-1640' (PhD dissertation, University of Edinburgh, 2012), 118.

² Ibid.

³ Ibid., 123, 132-33.

⁴ Ibid., 121.

courts collaborated in order to enforce godly discipline. In 17th-century East Lothian social control took two forms: 1) “the regulation of the movements and activities of the individual and the household”; 2) “the regulation of sex and sexual relationship”.¹ The first form interests us more specifically. Indeed, we ought to know in what respects did ecclesiastical courts and secular courts control movements and activities?

Control of movements

The control of movements in 18th-century Shetland took two forms. Firstly, men and women willing to move from a parish to another had to ask their kirk session for a testimonial. This document certified of their good behaviour. Secondly, servants – and especially female servants – as strangers into households were extremely controlled. In 1621, the act “Regarding servants going loose and leaving their master’s service”² was enacted by the Parliament of Scotland. In the 18th century, it was still this act that regulated the employment of servants in the countryside.³ This act dealt with a particular problem: it was said that servants tended to leave their master after Whitsunday in order to obtain higher wages during the hardest months in the fields – harvest season, etc. This situation was presented as an “economic disadvantage” for the farmers.⁴ In Shetland the Act of Parliament was coupled, at the beginning of the 18th century, with two sets of local regulations and with three acts from the *Country Acts* of Shetland. In the *Country Acts*, acts 12, 22 and 41 dealt with the control of servants. Acts 12 and 22 were pretty much a Shetland version of the 1621-act of the Parliament of Scotland. Servants couldn’t leave their master unless they had reached the due term⁵ and masterless or underemployed men and women could be “put [...] to another master, that [needed] servants”⁶. It is probable that by the end of the 18th century, Act 22 wasn’t followed anymore as “[t]his was also a salutary regulation but would now be reckoned an infringement on liberty.” wrote Mr Mouat of Garth in 1810.⁷ The third act didn’t deal directly with the servants but with all of those who breached the Sunday Sabbath in being employed “about fishing, from sun set on Saturday nights till after sun rising on Monday morning, [or]

¹ Ibid., 122.

² Brown and al., ‘1621/6/33: Act XXI: Regarding Servants Going Loose and Leaving Their Master’s Service’; Quoted in: Aitchison, *Servants in Ayrshire 1750-1914*, 12.

³ Aitchison, *Servants in Ayrshire 1750-1914*, 12.

⁴ Ibid.

⁵ ‘The Old Country Acts’, 82 Act 12.

⁶ Ibid., 83 Act 22.

⁷ NAS, RH9/15/157/9, ‘The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations, 1810’ 1810.

[travelling] by sea or land about their secular affairs or business, or any other way employed”¹. This last act echoed with the “Act discharging execution of captions for debt on Lord’s day or upon days of fasting and thanksgiving” enacted by the Scottish Parliament in 1644 where it was “declare[d] that all acts made against salmon fishing or any other labour on the Lord’s day be not only against servants who actually do the work, but also the same shall be extended against masters whose hired servants they are, if the servants working be either with the masters’ knowledge or with their approbation or connivance.”² In 1725, Thomas Gifford, steward and justiciar depute of Shetland, enacted “by authority of the said stuart court”³ *A Compend of the Country Acts for directing the Rancell Men, and Society for regulating of Servants, and Reformation of Manners, with their Instructions*⁴ and a *Commission and Instructions to the Society for regulating of Servants and Reformations of Manners*⁵. These two texts are very interesting since they provide us with information on how the local élite wanted to control the servants but also the behaviours of the Shetlanders as a whole. However, there is, to my knowledge, no direct trace of their practical use. At the difference of the *Old Country Acts*, they weren’t directly mentioned at court in the resolution of process regarding servants. One of the reasons for the inactivity of such by-laws might be that they essentially took over the principles of the Scots Law and of the *Country Acts*. Such activity of the secular authorities on the question of social control wasn’t specific to Shetland, a century before in Haddington, “the sheriff court, burgh court and justices of the peace worked together to control vagabonds” and in the “kirk sessions, the policing of vagabonds was extended to the regulations of beggars”.⁶

It seems that the reason for such a set of regulations in Shetland was the shortage of servants that happened in the first half of the 18th century. There should be more investigation on this question since we don’t know exactly the extent of such shortage compared with other Scottish regions or if it was just a way for the Shetland élite to control the population and to establish the system for its fishing tenures. In mainland Scotland too, it appears that “great

¹ ‘The Old Country Acts’, 85 Act 41.

² K. M. Brown and al., eds., ‘1644/6/205: Act Discharging Execution of Captions for Debt on the Lord’s Day or upon Days of Fasting and Thanksgiving’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1644/6/205>; Aitchison, *Servants in Ayrshire 1750-1914*, 13.

³ Gifford, ‘A Compend of the Country Acts’, 90.

⁴ Gifford, ‘A Compend of the Country Acts’.

⁵ Gifford, ‘Commission and Instructions’.

⁶ Cornell, ‘Gender, Sex and Social Control’, 135.

attention was given to the shortage of good servants and frequent inclination for them to indulge in idleness.”¹ In Shetland Thomas Gifford wrote in 1725 that,

the frequent marriages of such as have no visible stock, whereupon to subsist, many young fellows having no sooner got whole cloaths, but they imagine themselves too genteel to serve, and being once married and set up for themselves, they can live as they list; and thus many such are quickly reduced, either to extreme poverty, or tempted to bad practices, whereby also a generation of idle beggars is produced, and the families of honest and industries people are reduced and brought low for want of servants.²

In order to prevent this shortage of servants, a “society for regulating of servants” was set up and its prerogatives appeared in the *Commission and Instructions to the Society for regulating of Servants and Reformation of Manners*. The *Society* should be active on a certain number of issues and *rancelmen* should also participate in controlling the lives and works of servants. They had to control issues regarding the morals of the servants: their religious behaviour and knowledge as well as their general misbehaviours with their master or in society. They also had to deal with their conditions of employment: hiring and wages. On the first issue, the *rancelmen* controlled that they didn’t breach the Sabbath,³ a common social control performed in the rest of Scotland as well, and that they should be “instructed in the principles of our holy religion, and taught the shorter catechism”⁴ and eventually, the *Society* could “inspect all families within the parish, and at least twice in the year, and to enquire how masters discharge the duties incumbent upon them towards their children and servants [...] and if servants are honest, obedient and tractable to their masters”⁵. The *rancelmen* and the members of the *Society* had also to deal with the difficulties that could arise in the relationship between master(s) and servant(s). Indeed the *Society* had to “hear all complaints betwixt masters and servants, and determine them, conform to justice”⁶ and the *rancelmen* had to control “[t]hat whatsoever servant, male or female, shall wilfully disobey their master or mistress’s lawfull commands, or give them provoking and unbecoming language, shall in the first place be liable to rebuke, exhortation, and moderate correction”⁷. However the most important roles of the *rancelmen* and of the *Society for regulating of servants* concerned the appointment of servants, their fees and their conditions of removal. The *rancelmen* and the *Society* controlled the movement of servants. Indeed there were no less than nine acts concerned with this question enacted in these documents.⁸ On the one hand, the *rancelmen*

¹ Aitchison, *Servants in Ayrshire 1750-1914*, 14.

² Gifford, ‘A Compend of the Country Acts’, 89–90.

³ *Ibid.*, 90 Act 1.

⁴ *Ibid.*, 91 Act 7.

⁵ Gifford, ‘Commission and Instructions’, 96 Act 1.

⁶ *Ibid.* Act 3.

⁷ Gifford, ‘A Compend of the Country Acts’, 91 Act 8.

⁸ *Ibid.*, 91–94 Acts 7, 8, 9, 18, 19 and 25; Gifford, ‘Commission and Instructions’, 96–97 Acts 2, 3 and 6.

and the *Society* verified if the servants were free to be hired which meant that they weren't working for another master at the time of their employment. The disrespect of this rule could lead to the master being fined and "losing the servant".¹ On the other hand, they controlled that "no servant remove from their [master's or mistress'] service, but upon lawful warning of their master or mistress half a year before the term they design to remove"² and one of them, a *rancelman* or a member of the *Society*, had to be present as a witness of such declaration.³ In mainland Scotland, it seems that to leave a situation, a servant had only to give a three-month notice in front of two witnesses.⁴ If a servant wanted to work in another parish, he or she had firstly to

mak[e] application to the society for regulating of servants, who not finding such servant as good encouragement as they can have elsewhere, then they are to recommend them to the session for a testimonial, and then they are free to serve in any parish they please, providing such servant bring securities from the baillie or kirk session of the parish where they are to settle [...].⁵

In the early 18th century, Shetland's secular authorities intended to control servants' movements through both the *Society* and the testimonial's system.

Control of activities

The last role of the *Society* was to appoint servants' fees "as they deserve[d], and [was] common in the country"⁶. They also had to appoint land and sea wages.⁷ Indeed "for encouragement of fishing, upon which the general benefit of the country very much depend[ed]", it was stated "that every householder who is not a fisher, and having servants or sons capable to go to sea, be allowed to go with any fisher that wants them"⁸. The *Society* appointed spared servants not only to fishermen but also to those who "hath absolute need of them"⁹. There is no trace of its practical action and we don't know if the *Society* ever appointed fees and servants in Shetland. In the rest of Scotland, it was the Justices of the peace which fixed the wages of workmen, labourers and servants.¹⁰ In Shetland, the quasi-absence of a Justice of the peace meant that Thomas Gifford as Stewart and Justiciar depute enacted by-laws that created a committee, the *Society*, which should fix the wages of servants.

¹ Gifford, 'A Compend of the Country Acts', 92 Act 9.

² Ibid., 91 Act 8.

³ Ibid. Act 8; Gifford, 'Commission and Instructions', 96 Act 3.

⁴ Aitchison, *Servants in Ayrshire 1750-1914*, 15.

⁵ Gifford, 'A Compend of the Country Acts', 93 Act 18.

⁶ Ibid. Act 19.

⁷ Ibid., 93-94 Act 25; Gifford, 'Commission and Instructions', 97 Act 6.

⁸ Gifford, 'A Compend of the Country Acts', 93 Act 25.

⁹ Gifford, 'Commission and Instructions', 96 Act 2.

¹⁰ Aitchison, *Servants in Ayrshire 1750-1914*, 11; Gibson and Smout, *Prices, Food and Wages in Scotland 1550-1780*, 265.

But who were those who formed the *Society for regulating of servants*? What did all these regulations mean for the servants themselves but also for the masters and mistresses? How were these sets of regulations practically used at court? The *Society for regulating of servants* was a parish-based society composed of householders who had been formerly elders or *rancelmen* of the parish and who were considered as “the most intelligent honest men in the parish”¹ and were appointed members of the *Society* by the baillie after an inquiry of their good character. The fact that these men had to be formerly elders and *rancelmen* meant that they knew the parish and the parishioners like the back of their hand. This practice highlights the fact that ecclesiastical and secular courts collaborated once again.

For the servants, all these regulations: Scots Law, *Old Country Acts*, *Compend of the Country Acts...* and the *Commission and Instructions...* meant that their activities were strictly regulated. They couldn’t do how they pleased. For example they couldn’t leave their mistress or master whenever they wanted. However it also meant that they could be protected: their master or mistress had to pay their wage respectively to what had been decided by the *Society*. These regulations had also strong consequences for Shetland’s masters and mistresses. They meant that they could always be appointed a servant if they said that they needed one and most importantly, for those who were engaged in the newly born fishing tenures: it meant that they would always be appointed fishermen since male servants could dispose of their months of May, June and July to go fishing with another master even if they were engaged to work during the year with someone else.² Even if the *Society*’s role was also to protect the servants of the mistreatment of their master or mistress,³ I agree with Jean Aitchison when she writes that “the master-servant relationship was not only governed by the prevailing structures of the law and the contemporary ethos engendered by the Church, but above all by the unequal interpersonal relationship which existed in practice, with the balance of power tilted very considerably in favour of the master or mistress”⁴.

The *Country Acts* and the statutory laws were used at court. However there is no trace of the use of the *Compend* and of the *Commission and Instructions*. The servants appeared at court for several reasons – reasons which could be complementary. They were judged because they had broken 1) religious obligations; 2) their contract; 3) the Sabbath and because 4) a servant had to be appointed to someone who needed one. In her study of the servants in Ayrshire, Jean Aitchison writes that “[w]omen servants were particularly vulnerable to the sexual

¹ Gifford, ‘Commission and Instructions’, 96.

² Gifford, ‘A Compend of the Country Acts’, 93 Act 25.

³ Ibid., 91 Act 7; Gifford, ‘Commission and Instructions’, 97 Act 6.

⁴ Aitchison, *Servants in Ayrshire 1750-1914*, 26.

appetite of their masters or of their master's son."¹ She refers to various Kirk sessions cases where it clearly appears that female servants bore the child of their master and it is important to note that "[m]aids who became pregnant could expect to be dismissed"². Even if in Shetland, traces of such dismissing are inexistent we can ask ourselves if the judicial exposure of the state of a female servant could lead directly to the termination of her employment. We know that it was at least the case in one process. In 1731, Ursulla Francesdaughter "was found by the Elders to be with child"³. Her master, the minister John Hay considering that she "had given Thos. Lyon a man Servt. of his for father which put him under necessity to part w/ her it not being Convenient both should cohabit" decided that he had to remove her as his servant.⁴ Was it the case for all the other female servants found to be with child in Shetland in the 18th century?⁵ It is difficult to say but it seems that it was the case in mainland Scotland. In 17th century East Lothian "servants caught engaging in illicit sexual activity risked facing enforced dismissal from their posts", writes Harriet Cornell.⁶ This brings us to the appointment of a replacing servant. Theoretically since 1725 it was the *Society for regulating of servants* which was supposed to appoint a new servant to a master. In the 1731's case, the procedure undertaken by the baillie court seems to correspond with what was urged in the *Commission and Instructions* but the name of the society never appeared. Indeed, the Reverend John Hay explained that he "craved that some Method may be fallen upon for Supplying your petitioner in a womans Servt. till Novr. next and for that and that a Generall Vote of the honest men in the parish be taken *as ordinary in Such cases* to see where one can be must Conveniently spared"⁷ [my italics]. I have chosen to quote in length the verdict of this case since it gave the name of the men chosen to appoint a female servant to John Hay, the name of the said servant and the way in which she should be hired and paid:

the Judge having Seen & Considered the above petition ordains the whole householders in the Parish to be here prt. on Munday att ten a Clock forenoon to give in their Seperat Verdict upon the above petition and ordains Extracts Att Troll said day the above petition being read in audience of the foresaid inhabitants then Convened the Judge finds it highly reasonable that the said petitioner should be Supply'd w/ a Womans Servt. where she can be best spared *and for the better understanding thereof doth appoint Laur. Bruce in [Pheilie] Willm. Bruce in Tupton Gilbert Smith in Deal Andw. Josephson in Sotland and Laur. Laurenceson All of them being perfectly acquainted w/ the Circumstance of the place relating to the above Supplication to give in their Verdicts accordingly* and that betwixt two a Clock

¹ Ibid., 24.

² Ibid., 43.

³ NAS, RH2/8/33, 'Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733', 8.

⁴ Ibid., 8-9.

⁵ A quick survey of the records of the Kirk sessions of Northmavine, Sandwick and Cunningsburgh gave me at least seven cases of female servants being with child: SA, CH2/286/1, 'Northmavine Kirk Session Minutes, 1729-1765' n.d., fol. 9, 11, 13 and 29; SA, CH2/325/1, 'Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842' n.d.; SA, CH2/385/2, 'Unst Kirk Session Minutes, 1797-1843' n.d.

⁶ Cornell, 'Gender, Sex and Social Control', 125.

⁷ NAS, RH2/8/33, 'Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733', 9.

afternoon the said persons undertook the same and upon consideration found Severalls could be spared and that in particular Laur. Manson in Westerhouse could spare his daur. Janet Wherefore upon the Verdict of the above persons the Judge ordained the said Laurence his daughter to go home at the Rend. Mr. John Hay his Service and there to stay till Martinsmass if they cannot further agree Prohabiting and Discharging any person to harbour or keep the said Janet this date Under the penalty of one Merk Silver for each night She shall be so detained from the petitioner his Service and further appoints the Minr. to receive maintain and pay the said Janet Lawfull fee till martinsmass next and ordains Extracts. Tho. Mouat¹ [my italics]

Even if the name of the *Society* didn't appear it clearly looked as if the bailie court of Unst respected the *Commission and Instructions*. In 1744, the bailie court of Northmavine judged Robert Mouat for having kept his brother at his service when he could have been at the service of those who “had an absolute Necessity for [servants]”.² In 1730 in the bailie court of Unst, the bailie judged a breach of contract. William Bruce in Tupton complained that Esphine Smetton in Burrafirth “desert[ed] his Service Novr. 1729 without having warned him and Craved her Service for the following year”. Esphine Smetton denied and argued that she “discharged her Self of his Service about the first of August”. Her statement was eventually acknowledged as true by the pursuer and she was definitely liberated from her master service.³ Elizabeth Robertson, John Bain and John Thomason were judged for the same reason at the Sheriff Court in the second half of the century.⁴ Jean Aitchison states that in Ayrshire “servants could be imprisoned for failing to serve for the appointed hire”⁵. On a different issue, in 1773, the Kirk session of Sandwick and Cunningsburgh judged Grisel Tait in Sandwick. She was guilty of Sabbath breaking. Nevertheless, she explained that “her Mistress Margaret Morison had ordered her so to do [i.e. to carry a burden]”. The said mistress denied ordering to carry the burden and only the servant, Grisel Tait, was found guilty.⁶ This judgement of the Kirk respected the Scots Law and the *Old Country Acts*: it was forbidden to carry on business on a Sunday and if it was carried on without “the masters’ knowledge” or without “their approbation or connivance”,⁷ the servant would be the only person blamed.

This study of the control of servants’ movements and activities shows how this population was strictly ruled, how their possibility of changes were framed by a set of regulations, laws

¹ Ibid.

² SA, D25/3, ‘Fragment of Bailie Court Book of Northmavine, 1744-1747’ n.d., 1.

³ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, 3.

⁴ SA, SC12/6/1781/6, ‘Petition (Breach of Contract.)’ 1781; SA, SC12/6/1793/18, ‘Petition (Breach of Contract.)’ 1793; SA, SC12/6/1796/45, ‘Petition (Breach of Contract.)’ 1796.

⁵ Aitchison, *Servants in Ayrshire 1750-1914*, 12.

⁶ SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’, fol. 39.

⁷ Brown and al., ‘1644/6/205: Act Discharging Execution of Captions for Debt on the Lord’s Day or upon Days of Fasting and Thanksgiving’.

and by-laws as well as by men who were in charge of controlling that they followed strictly these legislations. The activities of rural craftsmen were also under strict regulations.

The *Country Acts* regulated the work of smiths and weavers: *rancelmen* took up inventories of “all work wrought by them”.¹ The *rancelmen* controlled the wool knitters and fishing-lines’ makers as well. The knitters and fishing-lines’ makers had to show their stocks to the *rancelmen* so they could “compare the same with the stock of the makers”.² Brewers were also controlled: they couldn’t “sell ale dearer, nor effierent to the price of the malt”.³ In 1810, we’re told that the necessity for such a country act “[had] fled as Excise men [had] arived”.⁴ We can imagine that Collectors of Customs and Excise had an effectual action on the prices of ale from the middle of the 18th century onwards. The *Country Acts* regulations seem to have been instituted to 1) prevent theft; 2) control the quality and standards of the production; 3) sell on a possible market – local, national and international – for the produced goods.

Rancelmen, the principal investigators of theft in Shetland, were supposed to prevent theft between craftsmen by controlling the stocks and investigating any discrepancies.⁵ They were also tasked to control the quality and the standards of production. In the 1725’s *Compend of the Country Acts for directing the Rancell men*, the *rancelmen* had to control the quality of butter, oil and coarse stockings⁶ but it was *lawrightmen* who should “be appointed for receiving the butter and oil, conform to the old country act.”⁷ Butter and wool-based products were items that were severely controlled – at least on paper. These productions participated in the payment of rents.⁸ Over the course of the 18th century the payment of the rent in kind progressively disappeared all over Scotland. Until the first decades of the 17th century rents could be paid in kind partly in *wadmel*. The *wadmel* was a coarse woollen cloth that served as payment in the Dano-Norwegian real but with the disruption of the legal links with Norway and the changes in the markets of goods, *wadmel* couldn’t be marketed anymore.⁹ The production stopped and weavers progressively stopped weaving *wadmel*. Some of them might have changed production and weaved other kind of woollen cloths – they seldom appeared in

¹ ‘The Old Country Acts’, 82 Act 11.

² Ibid. Act 11.

³ Ibid., 83 Act 20.

⁴ NAS, RH9/15/157/9, ‘The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations, 1810’.

⁵ ‘The Old Country Acts’, 82 Act 11.

⁶ Gifford, ‘A Compend of the Country Acts’, 93 Acts 22, 23 and 24.

⁷ Ibid. Act 23.

⁸ Smith, *Shetland Life and Trade 1550-1914*, 20.

⁹ Ibid., 20 and 37.

the *Statistical Accounts* of the 1790s. In the 18th century the wool served mostly as the raw material for knitting.

<i>Country Acts</i>
11. That the rancellmen [sic] be yearly sworn and examined, or as often as needful and give an account to the sheriff or bailie anent their diligence; and that they see all wool-skins, heads, and marks whatsoever [sic]; and that they see all cloths and stockings made of wool, and compare the same with the stock of the makers; and all lines and tomes [cord] made of horse-hair, and keep account thereof; and that they take up inventories from Smiths and Websters [weavers] of all work wrought by them; and that none refuse rancelling, or to give up inventories, or quarrel, or offend at rancelling, under the pain to be repute and punished as thieves.
20. That no brewer sell ale dearer, nor effierent to the price of the malt; and that it be sufficient drink and measure, under the pain of confiscation.
21. That none mix ale, beer, or wine, under the pain of confiscation.
<i>Compend of the Country Acts</i>
22. That no person bring any butter for payment of land-rent, or otherways to be sold, but such as is clean from hairs, bland, and other dirt, and sufficiently salted, under the pain of forty shillings Scots, for each insufficient parcel presented; and for the first fault, the insufficient butter to be returned to the owner; and for the second, the butter to be forfault for the use of the poor of the parish.
23. That no person present fish-oil for payment of any rent, or for sale, but such as is sufficiently boiled thin, free of drag, and all other mixture, under the pain of forty shillings for each insufficient parcel thereof presented; and that law right men [sic] be appointed for receiving the butter and oil, conform to the old country act.
24. That all coarse stockings for sale be made of double yarn sufficiently walked, under the pains contained in the acts there anent made.
“A Compend of the Country Acts for Directing the Rancell Men, and Society for Regulating of Servants, and Reformation of Manners, with Their Instructions.” In <i>An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents</i> , 89–96. Sandwick: Thule Print Ltd, 1976. “The Old Country Acts, or Abridgements Thereof.” In <i>An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents</i> , 81–85. Sandwick: Thule Print Ltd, 1976.

Table 88: Multi-tasking: control of goods

The *Country Acts* and *Compend of the Country Acts*... weren't the only legal apparatus used to control Shetland multi-tasking men and women. The Acts of Parliament stated on the different occupations that Scottish men and women could have. Controls over the quality of the products and their price appeared as early as 1428: “in sheriffdoms each baron shall cause pricing in their baronies, and punish the trespassers as the warden does in the burghs”.¹ This meant that the baron had to “examine and price the material and workmanship of each craft, and set it to a certain price” and that the “ordinance shall be extended to masons, wrights, smiths, taylors, websters and all such others generally whose fees and handling shall be priced as is said before”.² In the burghs, it was said that “a warden chosen of every craft by the council of the burgh [...] shall examine and price the material and workmanship”.³ In Shetland, it was the *rancelmen* who had to “see all wool-skins, heads, and marks whatsoever; and [...] see all cloths and stockings made of wool, and compare the same with

¹ K. M. Brown and al., eds., ‘1428/3/4: Item, Concerning the Men of Crafts in Burghs’, in *Records of the Parliaments of Scotland to 1707* (St Andrews: University of St Andrews, 2015), <http://www.rps.ac.uk/trans/1428/3/4>.

² Ibid.

³ Ibid.

the stock of the makers; and all lines and tomes made of horse-hair, and keep accounts thereof; and [...] take up inventories from Smiths and Websters of all work wrought by them”¹. The practical control of the *rancelmen* and *lawrightmen* over the productions of the Shetlanders smiths, weavers, tanners, knitters, etc. is not easily perceivable. In the first half of the 18th century, there’s no sign of their roles as workmanship’s controllers in the judicial records of the bailie courts; on the opposite, the role of the *rancelmen* as agro-pastoral constables appears clearly: they controlled or investigated the possession of sheep and their markings, the owners of sheep dog, the date when floss was cut, etc. There is no trace of any control over craftsmen in the Sheriff Court Records of the second half of the 18th century.

Quality of wool and butter

In his paper “Stockings and mittens, 1580-1851” Brian Smith explains that “[d]uring the eighteenth century Shetland officials – men – got very agitated about the quality of the coarse hosiery.”² Then he quotes an extract of an act published in 1725 in the *Compend of the Country Acts...* which stated “[t]hat all coarse stockings for sale be made of double yarn sufficiently walked”.³ Brian Smith adds that a few years later, the chamberlain of Shetland, Thomas Gifford of Busta, had the lawrightman of each parish “to put his mark upon [stockings for sale] of 1st, 2nd and 3rd socks according to their goodness”.⁴ “And for a moment in 1779”, explains Brian Smith, “control of the quality of knitted stockings became an obsession in Shetland”.⁵ Merchants complained to the Commissioners of Supply who appointed a committee composed of local landlords who came up with “absurd regulations” which didn’t seem to have been in use afterwards...⁶ At the same period, various writers wrote about the importance of wool and wool improvement in Shetland and in Britain as a whole. Some parish’s ministers encouraged the development of financial solutions to increase the quality of Shetland wool such as a premium for buying Shetland-made clothes or “any fortunate concurrence of circumstances, that might induce the natives to turn their attention more to the improvement of their sheep and wool”.⁷ The agriculturists didn’t focus their attention only on arable land but also on sheep breeding. Different solutions for improving

¹ ‘The Old Country Acts’, 82 Act 11.

² Smith, ‘Stockings and Mittens, 1580-1851’, 54.

³ Gifford, ‘A Compend of the Country Acts’, 93 Act 24; Quoted in: Smith, ‘Stockings and Mittens, 1580-1851’, 54.

⁴ Smith, ‘Stockings and Mittens, 1580-1851’, 54.

⁵ Ibid.

⁶ Ibid., 54–56.

⁷ Barclay, ‘United Parishes of Aithsting and Sandsting’, 595; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 201.

wool concerned animal husbandry. The minister of the parish of Northmavine proposed that “shepherds from Scotland” be settled in the parish so that the Shetlanders could imitate them and develop proper sheep pastures.¹ Samuel Hibbert stated that summer herding was unknown and that it led to wild sheep.² The development of herding was not the only solution considered. The introduction of a new breed in Shetland was also contemplated. This introduction was proposed by the *Committee of the Highland Society for the Improvement of British Wool*.³ Alexander Fenton considers that “the growth of the Shetland woollen trade as an organised cottage industry has its origins in 1790, when the recently formed Highland Agricultural Society of Scotland appointed a Committee to consider the subject”.⁴ John Mill who was in contact with the committee explained in his diary that,

in former times, English wool, that was esteemed the best in the world, was of late so far degenerate as to [cause the country to] pay 600,000 £ ster. annually for Spanish wool, and as the finest wool was now found in the North and West Isles of Scotland, the Society foresaid have laid rules for bettering the breed of wool.⁵

He corresponded directly with Sir John Sinclair who sent him in 1791 “5 different sorts of wool”, “not only from Spain but from Thibet in Africa [sic], Colchis in Asia, and from the East Indies, for improvement of the breed”.⁶ Two years after, in 1793, Sir John Sinclair founded the *Board of Agriculture and Internal Improvement*.⁷ One of the Board’s aims was to improve the quality of sheep and wool.⁸ Twenty years after nothing had really changed in Shetland. In 1818, John Laing explained that “[t]he people of these isles [had] attempted to introduce a larger breed of sheep from Britain, but the inclemency of the climate rendered their labours abortive”.⁹ John Shirreff proposed to increase the quality of wool and sheep with the introduction of Merino “fleece”, the division of scattalds and the development of sheep-walks.¹⁰

¹ Jack, ‘Parish of Northmaven’, 367–68. See also: John Shirreff, ‘The Following Is an Extract of a Paper on Shetland Sheep, Communicated by Mr. Thomas Johnston, to the British Wool Society, about Twenty Years Ago’, in *General View of the Agriculture of the Shetland Islands with Observations of the Means of Their Improvement* (Edinburgh: Archibald Constable and Co., 1814), 43–48.

² Hibbert, *A Description of the Shetland Islands*, 438.

³ Highland Society of Scotland, *Report of the Committee of the Highland Society of Scotland, to Whom the Subject of Shetland Wool Was Referred. With an Appendix, Containing Some Papers, Drawn up by Sir John Sinclair and Dr. Anderson, in Reference to the Said Report*. (Edinburgh, 1790).

⁴ Fenton, *The Northern Isles*, 461.

⁵ John Mill, *The Diary of the Reverend John Mill, Minister of the Parishes of Dunrossness Sandwick and Cunningsburgh in Shetland, 1740-1803. With Selections from Local Records and Original Documents Relating to the District*, ed. Gilbert Goudie (Edinburgh: Edinburgh University Press, 1889), 92–93.

⁶ *Ibid.*, 94.

⁷ *Ibid.*, 98–99; On the Old Board of Agriculture, see Rosalind Mitchison’s seminal article: Rosalind Mitchison, ‘The Old Board of Agriculture (1793–1822)’, *The English Historical Review* LXXIV, no. 290 (1959): 41–69.

⁸ Mill, *The Diary of the Rev. John Mill*, 98–99; Mitchison, ‘The Old Board of Agriculture (1793–1822)’, 42.

⁹ Laing, ‘Of the Shetland Isles (1806-1807)’, 26.

¹⁰ Shirreff, *General View of the Agriculture of the Shetland Islands*, 94–98.

A strict control of the quality and standards of production meant for the landowners of Shetland that they could sell at a good price to a national or international market the goods that were given to them in kind as part of the rent of their tenants.¹ In 1733 Thomas Gifford wrote that:

the oxen serve for plowing the ground, and the cows for giving milk, of which they make butter, wherewith most of the land rent is paid, and it is as good as any where else when rightly made; but the people being careless in making the rent butter, it is undervalued at foreign markets, which is a great loss to the country, and some efforts have been used of late to oblige the people to make the butter right, so they begin to make it better.²

A bad quality of butter, for example, meant that its monetary value was compromised. The quality of butter, oil and woollen stockings had to be controlled since they meant, for those who commercialised them after receiving them as rent or bargain, a certain amount of money in cash.³ The reference to a butter of bad quality given as rent is also found in the writing of Thomas Laing in 1822 but he then explained that at this time “[t]his custom, however, [was] generally relinquished, and the butter converted into money”⁴.

¹ Smith, *Shetland Life and Trade 1550-1914*, 58–59.

² Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 25–5.

³ Smith, *Shetland Life and Trade 1550-1914*, 58–59.

⁴ Laing, ‘Of the Shetland Isles (1806-1807)’, 24.

Land, shores and sea

In numerous texts published in the second half of the 18th century and in the first decades of the 19th century, Shetland's agriculture is described as in extremely bad state. One example of these descriptions is Samuel Hibbert's following quotation:

Nothing can better display the debased state of the husbandry of Shetland, than the fact that the carcasses of the whales are in general allowed to taint the air until they are completely devoured by gulls and crows.¹

This quotation is not only interesting because it expresses the shared view between authors on “the debased state of the husbandry of Shetland” but also because it connects the land, husbandry, and the sea, the carcasses of the whales. Indeed, Shetland's husbandry and the sea were connected in complementary ways: the sea was, among other things, a source of energy, in the form of fertilisers used on Shetland's soils. Nevertheless, in this short quotation Samuel Hibbert didn't regret the disappearance of the co-relationship between land and sea. Samuel Hibbert as well as numerous other authors in the late 18th century and early 19th century, all supporters of the improvement, regretted the absence of agricultural development and productive specialisation such as the division of work between farmers, fishermen and craftsmen. In order to understand how Shetland's communities were organised, we need to analyse in what respect Shetland's land-based, shore-based and sea-based activities offered various places of complementary interactions between the different members of a community. A land-based activity isn't necessarily performed on arable land; it can also be performed on what has been called ‘waste land’, ‘uncultivated land’ or ‘temporary cultivated land’. Indeed, in recent years in European historiography a focus on waste land enabled historians to rethink the integrations of different territories such as arable land, woodland, moorland, etc. within the functioning of human activities, and most particularly, within agrarian or rural societies.² This is partly due to the re-discovery of commons and common lands and of environmental issues but it is also due to a less stereotyped analysis of the different territories of a farmstead with a focus on the complementarities and the porosities rather than on the differences between waste land and cultivated land. Furthermore, this division between cultivated and

¹ Hibbert, *A Description of the Shetland Islands*, 424–25.

² See for example, for France: Corinne Beck, Fabrice Guizard, and Bernard Bodinier, eds., *Lisières, Landes, Marais et Friches : Les Usages de L'inculte de l'Antiquité Au XXIe Si cle*, Revue du Nord, Hors Série: Art et Archéologie 18 (Lille: Université Charles de Gaule - Lille 3, 2013); for Scotland: T. C. Smout, Alan R. MacDonald, and Fiona Watson, eds., *A History of the Native Woodlands of Scotland, 1500-1920* (Edinburgh: Edinburgh University Press, 2007); for Norway: Ingunn Holm, Sonja Innselset, and Ingvild Øye, eds., *'Utmark': the Outfield as Industry and Ideology in the Iron Age and the Middle Ages*, University of Bergen Archaeological Series (Bergen: University of Bergen, 2005).

uncultivated land was based on an anachronistic and even ‘imperialistic’ take on rural history. Indeed, it is in the division between *ager*, *saltus* and *silva* that the division between cultivated and uncultivated land originated.¹ This division places Roman history as the source of all European rural history and builds a direct line between the Roman ages and early modern, nay modern history, in term of rural landscape. Even if *ager*, *saltus* and *silva* are useful tools to understand the functioning of an agrarian territory, they can’t be used as explanatory terms when it comes to early modern history. Local, regional or national contemporary divisions are more appropriate. In Shetland, this means that we need to talk about and define what township, townland, scattald, hagi, rig-and-rendal, infield, outfield, hills and pastures were. These divisions never represented only a geographic division; they also incorporated elements of social interactions.

¹ Beck, Guizard, and Bodinier, *Lisi res Landes Marais et Friches : Les Usages de L’inculte de l’Antiquité Au XXIe Siècle*, 9 and 209.

Land ownership and tenancy

Holding and renting the land

Landowners

In Shetland, the landowning system was described in several works in the late 18th century and early 19th century, most of the time by visitors or ministers. However, two documents, Thomas Gifford's description of the islands dated 1733¹ and the 1772's Rental of Shetland² offer an interesting inside view of landownership in Shetland throughout the 18th century. In 18th-century Shetland, the land belonged to two different categories: it was either udal land or "kings land".³ Udal land was supposed to be owned without a charter, without a superior, and in theory, it was transmitted within a kinship network. This system had led to the compartmentalisation and fragmentation of udal estates. From the Middle Ages onward, udal land started to be sold to interested buyers, thus breaking up the kinship network's rule. However, when udal land was sold it kept its specificities such as taxes and privileges falling upon it, and it kept its name even though it had lost one of its main characters: kinship. For Jonathan Wills this meant that the land was udal but not the tenure.⁴ He further explains in his dissertation how some of these udal lands were then feued, which meant that "charters had been taken out" upon them.⁵ Jonathan Wills calls them "feued udal land".⁶ In the 1772's Rental, William Balfour explained how "more than half of all the udal lands in Shetland were thus infeodated in the year 1664".⁷ This question of the 'infeodation' of Shetland's udal land is an important part of the heated debate on the so-called feudalisation and Scottification of Shetland. In my opinion, Brian Smith offers, maybe not a conclusion, but at least a conclusive point on this issue in a paper published in 1979.⁸ He explains how some historians repeated a "fairly neutral statement" written down by Thomas Gifford in his description and used it in "more or less vulgar forms".⁹ Indeed in 1733, Thomas Gifford wrote how

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*.

² NAS, RH4/102, 'Rental of Lordship of Shetland'.

³ *Ibid.*, fol. 2.

⁴ Jonathan Wills, 'Of Laird and Tenant: A Study of the Social and Economic Geography of Shetland in the Eighteenth and Early Nineteenth Centuries, Based on the Garth and Gardie Estate Manuscripts.' (PhD thesis, University of Edinburgh, 1975), 81.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ NAS, RH4/102, 'Rental of Lordship of Shetland', 2.

⁸ Smith, "'Lairds" and "Improvement" in 17th and 18th Century Shetland', 11.

⁹ *Ibid.*

many Scottish people came over to [Shetland], some in a civil, others in an ecclesiastic capacity, and settled here, who in process of time acquired most of the arable land from the antient inhabitants, who became their tenants.¹

Brian Smith explains how “later historians repeated this fairly neutral statement in more or less vulgar forms” and how this statement served two complementary interpretations of Shetland’s history. There were those who believed in “biological or racial determinism” and “erected and anti-Scottish theory of modern Shetland history” and those who believed in a form of “legal determinism” who believed that “Scotsmen [...] introduced something called ‘feudalism’ into Shetland, and obliterated the native, ‘odal’ system of landholding”.² He further explains that the weak point of these theories is “[their] treatment of ‘lairds’”.³ Brian Smith states that “[f]eudalism is important in the history of Shetland, but only because of its *absence*”.⁴ In the 17th and 18th centuries, Shetland lairds didn’t feudalise the udal land, “[t]here remained odallers in every parish: diminishing in numbers, it’s true, but then they had been diminishing in numbers for centuries”.⁵ The lairds had a “negative attitude to feuing”, and in the late 16th and early 17th centuries “[t]hey went to the length of deliberately calling themselves ‘odallers’”.⁶

Alongside the udal land possessed either by small odallers or by large landowners who bought them, there were a few kings land. The kings land were of two kinds: feued lands and property lands. In the 1772’s Rental, it was explained that feued land and property land were “in common speech both comprehended under the general designation kings lands as distinguished from udal lands”.⁷ Feued lands had been secured by charters through the feuing process. Feud duties were paid by the landowners to the donee of the crown rents. Property lands used to belong to the Crown in property. In 1733, the Chamberlain of Shetland rented them out to tenants. In 1772, Sir Laurence Dundas, Shetland’s Earl, dealt directly with their management.

What was the proportion of each type of lands in Shetland throughout the 18th century? The data collected in three rentals of Shetland, dated 1716, 1733 and 1772, has been presented in three ternary diagrams.

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 31; Smith, “‘Lairds’ and ‘Improvement’ in 17th and 18th Century Shetland”, 11.

² Smith, “‘Lairds’ and ‘Improvement’ in 17th and 18th Century Shetland”, 11.

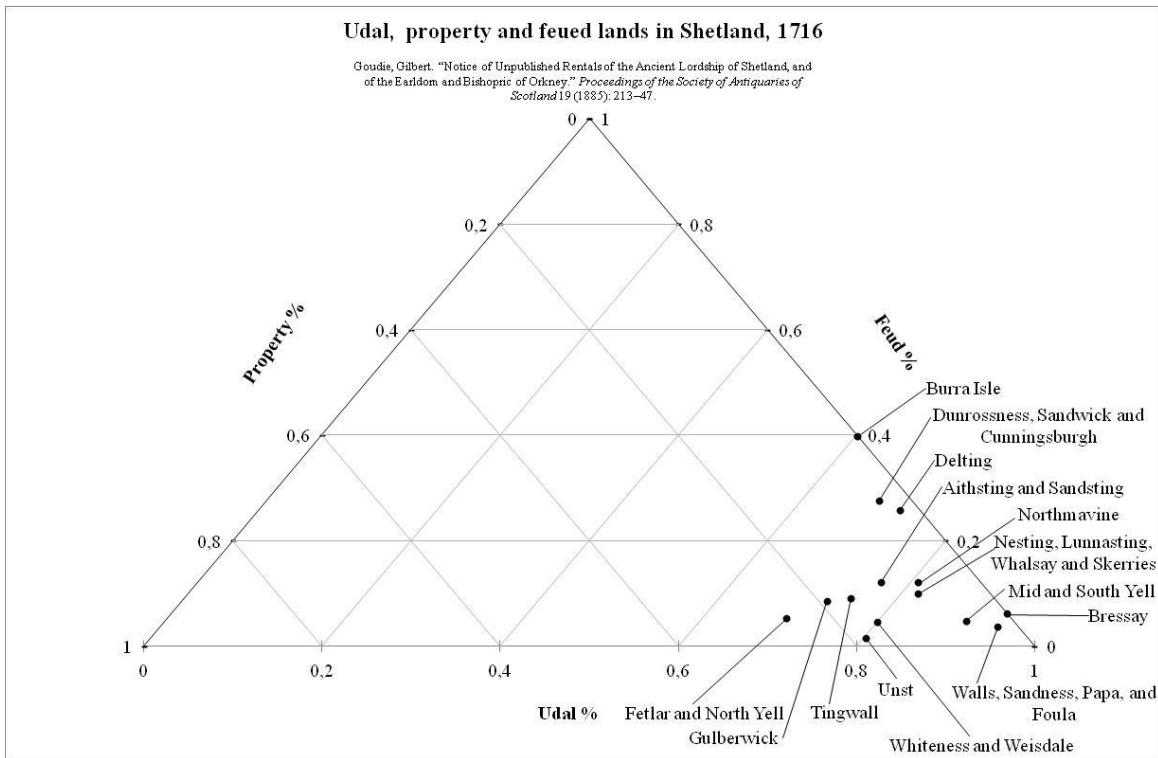
³ *Ibid.*

⁴ *Ibid.*, 13.

⁵ *Ibid.* One could say that even though the land wasn’t feudalised, Shetland society came under a feudalisation of its institutions but even there the lairds didn’t have any responsibility on what happened: Brian Smith explains how the Scottish Privy Council abolished the Norse laws and the lairds only helped to implement the new system.

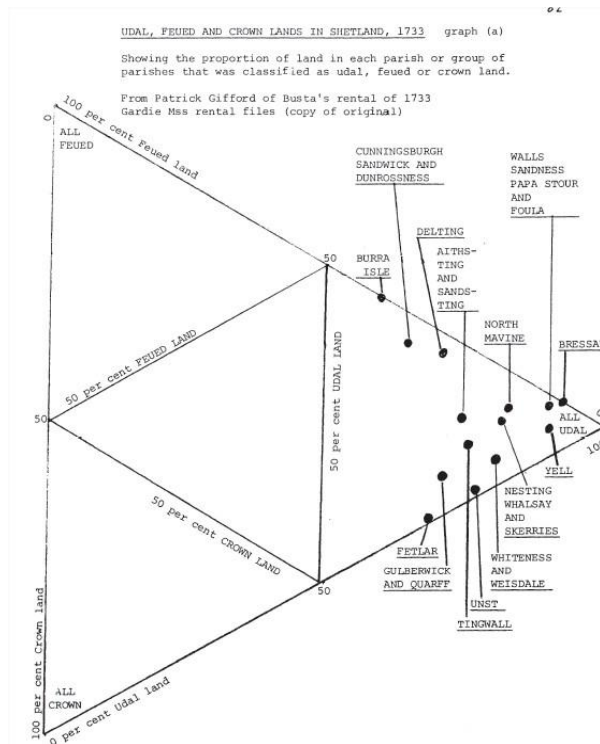
⁶ *Ibid.*, 12.

⁷ NAS, RH4/102, ‘Rental of Lordship of Shetland’, 2.



Goudie, Gilbert. 'Notice of Unpublished Rentals of the Ancient Lordship of Shetland, and of the Earldom and Bishopric of Orkney'. *Proceedings of the Society of Antiquaries of Scotland* 19 (1884-1885): 213-47.

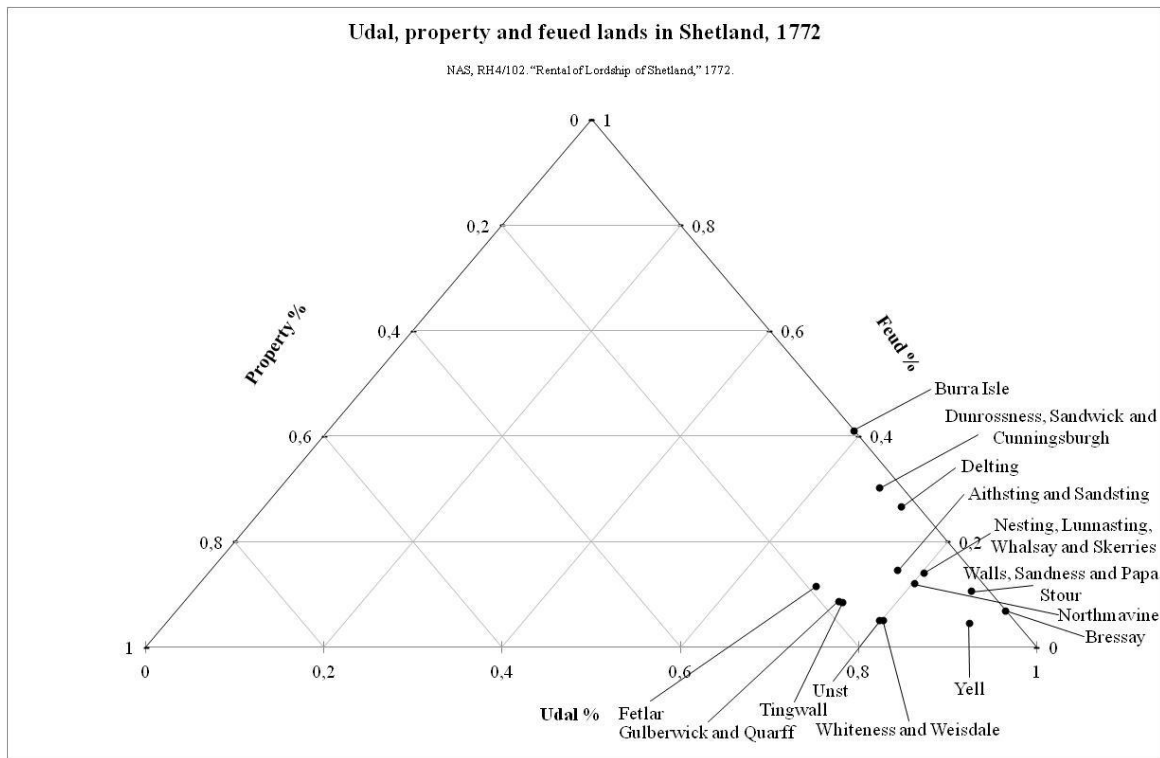
Graph 6: Holding the land: Udal, property and feued lands, 1716



On this diagram "Crown land" is used for "property land".

Wills, Jonathan. 'Of Laird and Tenant: A Study of the Social and Economic Geography of Shetland in the Eighteenth and Early Nineteenth Centuries, Based on the Garth and Gardie Estate Manuscripts.' University of Edinburgh, 1975, 82.

Graph 7: Holding the land: Udal, property and feued lands, 1733



NAS, RH4/102. 'Rental of Lordship of Shetland', 1772.

Graph 8: Holding the land: Udal, property and feued lands, 1772

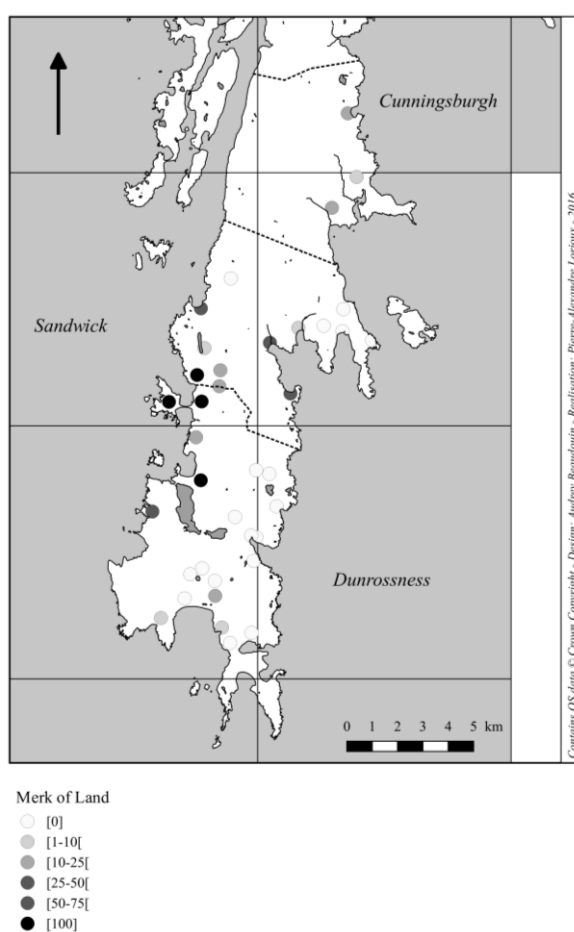
The three diagrams illustrate what Brian Smith has described as the “lethargic policy” of the lairds.¹ Throughout the 18th century, there were no changes in the administration of lands and in the meantime, lairds were reluctant to feuing. It meant that lands’ status didn’t change but it didn’t mean that there wasn’t an internal land market. There were, however, different areas in Shetland where one type of land ownership predominated over the others. Jonathan Wills detailed how there was more udal land in the less fertile parishes of the north than in the southern parishes – at the exception of Bressay and Cunningsburgh. On the opposite side of the spectrum, feued land were found mostly in the southern parishes of Dunrossness and Sandwick, at the exception of Cunningsburgh, and in Burra and Delting, but in these fertile parishes the property land were still more numerous than the feued land.² One of the reasons for these slight differences might be that before the 18th century, owners tried to secure their land by feuing land in the more fertile areas. However, as shown in the diagrams, they didn’t keep on feuing fertile lands in the 18th century.

How, then, did individuals possess land? For some landowners, it is possible to list the merks of land and the types of land that they possessed in a said parish. The availability of sources

¹ Smith, “Lairds” and “Improvement” in 17th and 18th Century Shetland’, 13.

² Wills, ‘Of Laird and Tenant’, 81–83.

determines which landowners can be studied. In the meantime, it is possible to study the evolution of the number of landowners in a said parish. In the united parishes of Dunrossness, Sandwick and Cunningsburgh, John Stewart of Bigton possessed about 384 mk of land in 1733.¹ In the peninsula of Northmavine, Gideon Gifford of Busta owned ca. 672 mk of land in the years about 1780.² While in 1797, Thomas Mouat of Garth possessed about 204 mk of land in the parish of Unst – he was the 6th largest landowner on the island of Unst at that time.³ These three landowners could also own land in other parishes. In terms of social status they held different places within the Shetland society but they all belonged to the group of ‘the lairds’, a “clearly identifiable class” which consisted of landowners owning 200 or more merks of land.⁴



SA, GD144/7/27. ‘Rental of Bigtown’s Lands in Dunrossness, Sandwick and Cunningsburgh, Towns, Merks, Tenants’ Names, Butter, Money’, 1733.

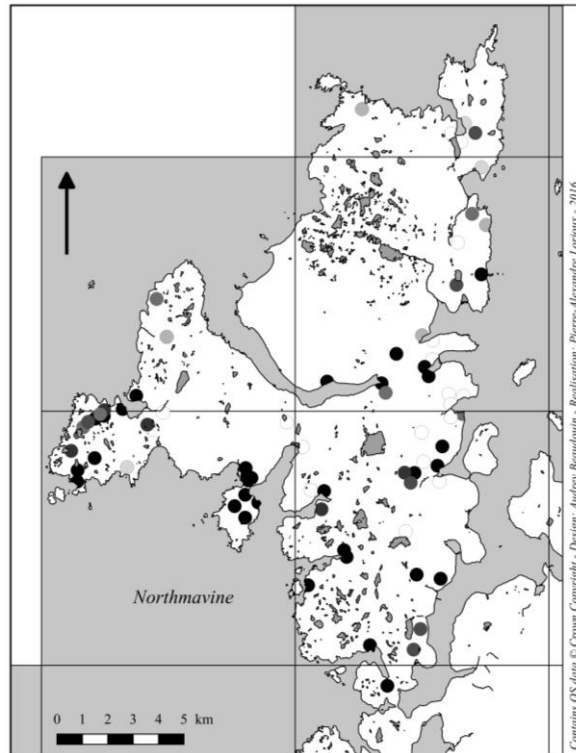
Map 17: Landowners: Percentage of land merk held by Bigton in each township

¹ SA, GD144/7/27, ‘Rental of Bigtown’s Lands in Dunrossness, Sandwick and Cunningsburgh, Towns, Merks, Tenants’ Names, Butter, Money’ 1733.

² SA, D24/56/83, ‘Rental of Lands of Gideon Gifford of Busta in Parishes of Northmavine and Delting (Incomplete), Undated. but circa 1780, with Names of Tenants and Merks of Land Rented’ ca 1780.

³ Wills, ‘Of Laird and Tenant’, 168.

⁴ *Ibid.*, 108.

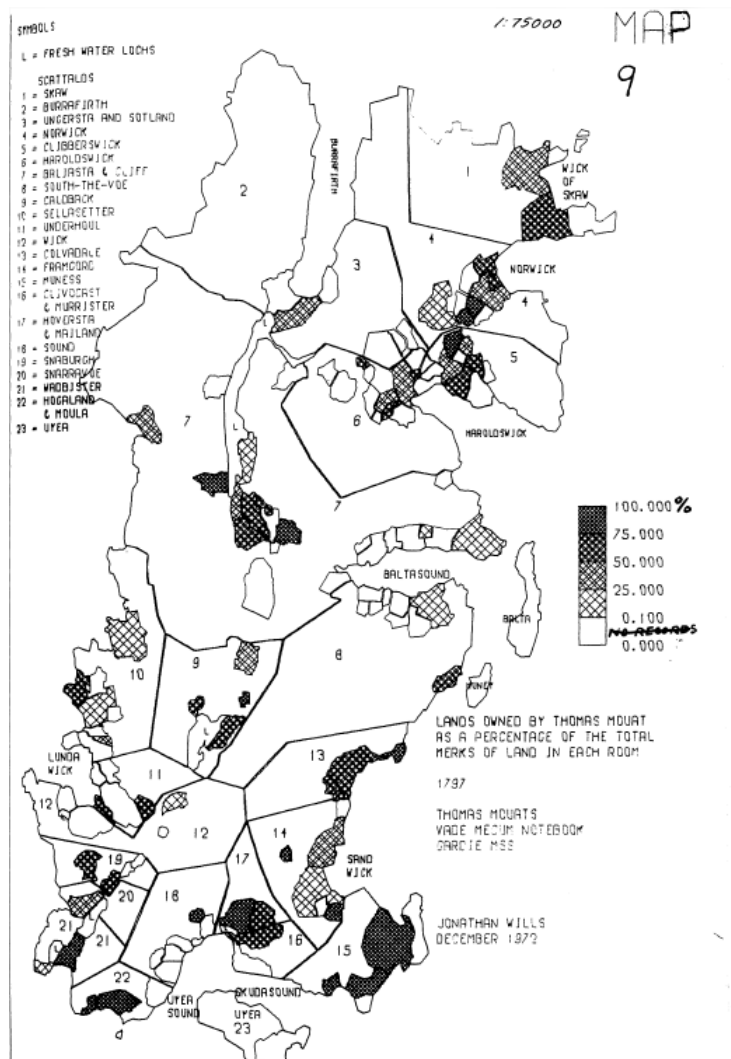


Merk of land

- [0]
- [1-10[
- [10-25[
- [25-50[
- [50-75[
- [75-100[
- [100]

SA, D24/56/83, 'Rental of Lands of Gideon Gifford of Busta in Parishes of Northmavine and Delting (Incomplete), Undated. but circa 1780, with Names of Tenants and Merks of Land Rented' ca 1780.

Map 18: Landowners: Percentage of land merk held by Busta in each township



Wills, Jonathan. 'Of Laird and Tenant: A Study of the Social and Economic Geography of Shetland in the Eighteenth and Early Nineteenth Centuries, Based on the Garth and Gardie Estate Manuscripts.' University of Edinburgh, 1975, map 9.

Map 19: Landowners: Percentage of land merk held by Garth in each township

First of all, in the parish of Northmavine, out of 78 townships, Busta possessed all the lands in 71 townships. It appears that in the north of the peninsula, Busta had less of a monopoly on landholding but even there, he held most of the lands. Bigton held most of the land in townships surrounding the heart of its estate: the township of Bigton on the west coast of the parish of Dunrossness. In 1797, Thomas Mouat of Garth was very well settled in the whole island of Unst at the exception, maybe, of the areas surrounding Baltasound. Nevertheless, he possessed 100 % of the lands in several townships.¹ Bigton, Busta and Garth possessed both feued land and udal land. For example, in 1772 Busta possessed 122,50 mk of feued land and about 550 mk of udal land in Northmavine.² When comparing the rental of 1772 and Busta's rental of 1780, it appears that in nine townships out of 71 he possessed both udal land and feued land. It was the case in the township of Sulom where in 1780 he possessed 36 mk land,

¹ Ibid., 174.

² NAS, RH4/102, 'Rental of Lordship of Shetland'.

28 of them were udal land and 8 of them were “said to be feued” in 1772.¹ The previous maps give an interesting survey of what could be called the ‘fragmented estates’ of Shetland lairds: they possessed lands in scattered townships and, this doesn’t appear on the maps, they possessed lands in different parishes as well. The monopoly that they had in various areas over landholding provided them with a dominant social position either regarding the land market or when it came to landowners-tenants relationships. A phenomenon of land concentration reinforced this dominant position throughout the 18th century. Indeed when compared to the number of landowners in a parish at the beginning of the 18th century, the number of landowners in the early 19th century had dramatically dropped. The case of the united parishes of Dunrossness, Sandwick and Cunningsburgh is, in that respect, extremely interesting. The rental of 1716 and role of heritors dated 1806-1807 provide two comparative lists of townships with their respective landowners.² If we take into consideration only the townships included in both lists, there was out of fourteen townships included in both lists, a phenomenon of land concentration in eleven of them. Some of the townships even knew a drastic diminution of the number of landowners such as in Blosta where there were ten landowners in 1716 and only one in 1806-1807, in Levenwick there were 16 landowners at the beginning of the 18th century and only one a century after and the record is held by the township of Hillwell where there were eighteen landowners in 1716 and only one 1806-1807. This trend illustrates the progressive disappearance of the udallers,³ the sale of their udal land to bigger landowners and the phenomenon of land concentration which saw the advent of fewer landowners but with bigger fragmented estates.

Tenants

The lairds but also the remaining udallers “very few of whom owned more than 20 merks of land”,⁴ settled tenants on their lands. In Robert Sinclair of Quendale’s judicial rental dated 1747, the link between landowner and tenant(s) clearly appear. Indeed, the first three deponents were identified as “all tennents that Quendal has in Fladabister & none of them have Tacks”.⁵ The Halcrows, identified as the last udallers in Cunningsburgh,¹ also had

¹ SA, D24/56/83, ‘Rental of Lands of Gideon Gifford of Busta in Parishes of Northmavine and Delting (Incomplete), Undated. but circa 1780, with Names of Tenants and Merks of Land Rented’, fol. 2; NAS, RH4/102, ‘Rental of Lordship of Shetland’, fol. 18.

² SA, SA4/2255, ‘Gifford’s Rental of Shetland: Transcript and Index’ 1716; NAS, RH9/15/249, ‘Roll of Heritors in United Parishes of Dunrossness, Fair Isle, Sandwick and Cunningsburgh, Cited by Summons of Modification at Instance of Minister, 1806-1807’ 1806.

³ Smith, “‘Lairds’ and ‘Improvement’ in 17th and 18th Century Shetland”, 13.

⁴ Wills, ‘Of Laird and Tenant’, 108.

⁵ NAS, CS96/3272, ‘Robert Sinclair of Quendal. Judicial Rental’ 1747, fol. 4.

tenants on their lands: Jerom Halcrow in Deepdale, Laurence Halcrow in Gott, James Halcrow elder and Nicol Halcrow in Aithsetter had all settled tenants on lands that they possessed respectively in Uldegirth, Gord, Claphoull and Hoswick.² Robert Sinclair of Quendale was one of the biggest landowner at this time and similarly to the other lairds and udallers he signed barely any leases with his tenants. Indeed tenants could be settled on their land through direct leases or indirect leases via a tacksman. These leases could be oral or written. Oral leases were farming or sharecropping contracts. Written leases concerned steelbow tacks, tacksmen's contracts, wadsets and a few fishing tenure contracts. In the Scottish Lowlands, the first half of the 18th century saw considerable changes in terms of lease. Thomas Devine explains that at this time "written leases were virtually universal with verbal agreements between landlord and tenant confined on the whole to very small possessions or to cases where tenancies were being let on an annual basis prior to reorganisation."³

The commentators on Shetland life at the end of the 18th century disapproved severely of oral leases. This point of view wasn't new in Scottish history: when visiting Scotland in 1689, Thomas Morer "attributed the lack of enclosures [and thus of improvements] to the supposed prevalence of short leases".⁴ Ian D. Whyte studied the early introduction of written leases in Scotland in the seventeenth century and for him, these written leases had a 'positive effect' on Scottish agriculture leading to early improvements in the countryside.⁵ However, he differentiated two areas in Scotland: arable and pastoral areas. He explained that in the arable areas, written leases were more abundant since the tenants could directly contribute to improvements while in pastoral areas, the charges of improvement weighted only on the shoulders of the landowners.⁶ His explanation seems very schematic since it completely forgets the agrarian aspect that also existed in pastoral areas. Indeed it is more a question of focus on a specific market that explains the choices of the landowners. Landowners who focused on the wool or meat market tended to forget the agrarian aspect of their estates and granted very few written leases. In Shetland, late 18th-century ministers couldn't be more severe with oral leases. Some of them, such as the Rev. John Menzies, only mentioned that

¹ Smith, "'Lairds' and 'Improvement' in 17th and 18th Century Shetland", 13.

² NAS, CS96/3272, 'Robert Sinclair of Quendal. Judicial Rental', fol. 20, 21, 23, 29 and 53.

³ T. M. Devine, *The Transformation of Rural Scotland: Social Change and the Agrarian Economy, 1660-1815* (Edinburgh: John Donald Publishers Ltd, 1999), 21.

⁴ Ian D. Whyte, 'Written Leases and Their Impact on Scottish Agriculture in the Seventeenth Century', *Agricultural History Review* 27, no. 1 (1979): 1.

⁵ Whyte, 'Written Leases and Their Impact on Scottish Agriculture in the Seventeenth Century'.

⁶ *Ibid.*, 7-8.

only “Few leases [were] granted” and that “Fishing [was] a great obstacle to improvements in agriculture, the chief object of the proprietors being to have as many fishermen upon their grounds as possible.”¹ Others, such as the Rev. John Morison, were more straightforward. He explained that:

improvements by lime, or any other means, [was] seldom attempted here, for this obvious reason, that the tenants [had] no leases: They consider[ed] themselves as the tenants of a day, and [had] neither inclination nor spirit to attempt any effectual improvement of the grounds they possess[ed]; thinking, and with justness, that another may reap the benefit of all the endeavours they might use to meliorate their farms.²

In these cases, the ministers blamed the focus of landowners on market-oriented fishing which prevented them to offer written leases to their tenants and therefore, prevented improvement in Shetland. Those engaged in oral leases with their landowners engaged in conventional farming or sharecropping, either in the form of fishing tenures or in the form of farming to halves. In conventional farming, the rent either in goods and/or money as well as services was the only binding agreement between the tenant and his or her landlord. The fishing tenures defined by Brian Smith as a specific type of sharecropping engaged the tenants in giving to their landlords not only “a fixed proportion of *one* crop (the norm in share-cropping); they gave them the *whole* proceeds of their summer fishing”.³ They also had to pay “a (low) land-rent, in butter and cash”.⁴ It should be understood here that fishing was a condition of tenure.⁵ Written contracts were rare: unwritten leases for fishing tenure predominated. In the few contracts or agreements established between a merchant-laird and his or her tenants “the link between tenure and fishing”,⁶ to quote Brian Smith, appeared clearly. In a “Remonstrance by Thomas Gifford of Busta to and agreement with the inhabitants of Northmaven”, Thomas Gifford explained that “[his] oun tenents [...] [stood] bound by their tacks” to deliver him fish and that “[he had] a naturall right and power to oblidge [his] oun tenents to accept therof”.⁷ He further detailed how

[he promised] and oblidge[th] [himself] and [his] successors to furnish them with all necessarys they shall need for carrying on the fishing at ordinary prices in the cuntrie, to receive all ther whit fish at the booth of Hildsweek, all seasons of the year, and to pay the comon price they have always got

¹ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 197; See also: A Friend to Statistical Inquiries, ‘Parish of Nesting’, 502.

² Morison, ‘Parish of Delting’, 392; See also: Jack, ‘Parish of Northmaven’, 367–68; Barclay, ‘United Parishes of Aithsting and Sandsting’, 595; Thomson, ‘Parish of Walls and Sandness’, 115; Dishington, ‘United Parishes of Mid and South Yell’, 575.

³ Smith, ‘Rents from the Sea’, 65.

⁴ *Ibid.*, 66.

⁵ *Ibid.*, 71.

⁶ *Ibid.*, 73.

⁷ SA, D6/131/2, ‘Remonstrance by Thomas Gifford of Busta to and Agreement with Inhabitants of Northmavine (Named), Whereby the Latter Undertake to Deliver Their Fish to the Former’ 1726; Brian Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899* (Lerwick: Shetland Times Ltd, 2000), 90.

for them, and to receive from them yearlie at least thirtie last of herrings, and what mor I can convenientlie take at the rate of £thrie pounds Scots per barrel.¹

What appears here are some of the features of a sharecropping contract: a landowner collects half or more in this case, of his or her tenants' crop and in exchange can furnish the tools necessary for the production, either as part of the contract or at a low price. Fish, however, wasn't the only product that his tenants had to deliver; they should also deliver "ther buter, oyll and herrings".² Another trace of fishing tenure agreements appears in the complaint of one Lady Mitchell at the baillie court of Sandsting and Aithsting. In 1743 she was a landowner in the parish and explained

that her hail tennents in Sandsting & Aithsting in general Dispose off and Sell their penny Worths, such as Fish, Butter, Oyle and Slaughter Beasts, etc. to other people, without giving her the first offer of the same, and *is contrary to her Agreement with them as Tennants* [sic]. [my italics]³

In this quotation and in Thomas Gifford's remonstrance, it appears that the delivery of other goods such as butter, oil and slaughter beasts could also be a condition of tenure and, in my opinion, entered as well in the fishing tenure's sharecropping contracts. If tenants didn't respect their contract "penalties [were] contained in their Respective Tacks".⁴

At last, a contract between Sir John Mitchell of Westhore and his tenant Thomas Fordyce for the rent of "eight merks land in the island of Fetlar in the room of Aith in Zetland" shows clearly the implications of a fishing tenure tack in the 1770s: what the tenant ought to deliver to his laird and what the laird had to provide to his or her tenant in exchange.⁵ In his *Toons and Tenants*, Brian Smith has transcribed the contract entirely.⁶ I've chosen to quote a long passage on the conditions of tenure:

And on the other part the said Thomas Fordyce, by his acceptance hereof, binds and obliges himself, his heirs, executors and successors and intromittors with his goods and gear whatsoever, to make good and thankful payment and delivery to the said Sir John Mitchell, his heirs and successors, or to their factors in their name, of the sum of six pounds eight shillings Scots money, as the money rent of the said lands, at the term of Martinmass, and that yearly dureing the currency of this tack, beginning in this current year for the crop of the same, and so forth yearly thereafter, dureing the other years of this tack; and further, the said Thomas Fordyce engageth himself and his forsaid, duiring the existence of this tack, to fitt out, on their own charges, the fourth share of a

¹ SA, D6/131/2, 'Remonstrance by Thomas Gifford of Busta to and Agreement with Inhabitants of Northmavine (Named), Whereby the Latter Undertake to Deliver Their Fish to the Former'; Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 90.

² SA, D6/131/2, 'Remonstrance by Thomas Gifford of Busta to and Agreement with Inhabitants of Northmavine (Named), Whereby the Latter Undertake to Deliver Their Fish to the Former'; Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 90.

³ 'Annals of the County of Zetland. No. XVII.', *The Shetland Times*, 28 August 1897, 6; Smith, 'Rents from the Sea', 74.

⁴ 'Annals of the County of Zetland. No. XVII.', 6.

⁵ SA, D7/71/23, 'Contract between Sir John Mitchell of Westshore and Thomas Fordyce, Tenant in Grutton, Whereby Mitchell Sets to Fordyce 8 Merks Land in Aith in Fetlar, and Fordyce Agrees to Fit out a Share of a Six-Oared Boat for the Ling Fishing' 1774; Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 94.

⁶ Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 94-95.

six oard boat to the haff for ling fishing, dureing the fishing or summer season each year, as other tenants in the country do, the said boat to have to the extent of betwixt thirty and forty growndlines of sixty fathoms each, sufficiently provided with hooks and other fishing materialls; and it is agreed that the fishing, both cod and ling and tusk, shall be delivered unsplit to the said Sir John Mitchell and his foresaids at his booth in Funzie, or any other place within the island of Fetlar he shall appoint most convenient, as the said Thomas Fordyce hereby, for him and his foresaids, sells to the said Sir John Mitchell the whole ling, cod and tusk to be caught by him and partners dureing this tack, at the rate of four pence [sterlin interlined], each ling of twenty seven inches, and all ling under that size to be made up in the usual methods of guilding fish according to the practice of this country; one penny sterling each tusk of fourteen inches and upward; one penny and half penny sterling each cod or eighteen inches and upwards. And the said Thomas Fordyce also sells to the said Sir John Mitchell and his foresaids his whole other product made by him on the said farm, such as cattle, oyl and others, the said Sir John Mitchell paying for each article thereof conform to the current price in the country for the time, upon payment or offer thereof, the said Sir John Mitchell be preferable to all other persons whatsoever; again the said Sir John Mitchell is to provide the said Thomas Fordyce in boats and other fishing materialls at the current price for the time, so as that the said Thomas Fordyce, for want of these materialls, shall not be hindered in prosecuting the fishing business; further, the said Thomas Fordyce obliges himself to pay the ordinary number of days labour of one man each day, with the cess or land tax and other publick burdens yearly, according to the practice of this country, and also to keep up the houses and dykes in good repairs, and to leave them and the land in the same condition at the end of this tack, without any warning or process in law to that effect, and both parties engageth to perform their respective parts of the premises to each other, under the penal sum of twenty four pound Scots money to be paid by the party failing the other party besides performance.¹

With this type of contract,² the merchants-lairds secured a monopoly over the products of Shetland that they could sell on the national or international market. They also made sure that their tenants bought their necessary materials from them only.

Shetland landowners had ‘maritimised’ their estate. With the establishment of fishing tenures, the maritime and coastal areas expanded in the life of Shetland tenants who had to fish for their landowner. During the summer, they lived on the shore, sometimes sleeping in their boat or housed in fishermen's lodges built at distance from the townships and nearby beaches from where the fishermen went fishing and where the fish was cured. Shetland men could also leave the archipelago for months to go whaling on Greenland vessels or to engage in the Navy. Although no planned fishing village was built in Shetland, while there were many examples on the Scottish mainland,³ it seems reasonable to compare the situation in Shetland with that of Ouessant in the late 18th century which “like other Breton islands, turn progressively towards fishing”.⁴ To define this transformation, Emmanuelle Charpentier uses the concept of ‘maritimation’ developed by geographers who define it as an “individual or

¹ SA, D7/71/23, ‘Contract between Sir John Mitchell of Westshore and Thomas Fordyce, Tenant in Grutton, Whereby Mitchell Sets to Fordyce 8 Merks Land in Aith in Fetlar, and Fordyce Agrees to Fit out a Share of a Six-Oared Boat for the Ling Fishing’; Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 94–95.

² Brian Smith has transcribed three other contracts: Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 95–97.

³ Lockhart, ‘Lotted Lands and Planned Villages in North-East Scotland’.

⁴ Emmanuelle Charpentier, ‘Le Littoral et Les Hommes : Espaces et Sociétés Des Côtes Nord de La Bretagne Au XVIIIe Siècle’ (Université Rennes 2, Université Européenne de Bretagne, 2009), 235, <http://tel.archives-ouvertes.fr/tel-00458863>.

collective acculturation process to a natural environment: the sea” which requires “the practice of human activities directly induced by the marine environment.”¹ However in the case of Shetland ‘maritimisation’ had already happened between the high middle ages and the trade with Norway and the ‘scatlands’, and the 15th century when the merchants from North Germany engaged in trade with the Shetlanders. For that reason, the intensification and systematization of the male presence at sea during the 18th century can be defined as the ‘second maritimisation’ of Shetland, a predominantly male maritimisation because women continued to work on the land and were not yet working in sea-related industries.

The ‘maritimisation’ of the landowners’ estate led to what Brian Smith describes as debt-bondage. Landowners had a monopoly on their tenants fishing therefore, when they “gave credit, when they gave the Shetlanders goods from their truck-shop, chronic indebtedness for the tenants inevitably followed.”² Debt-bondage, however, wasn’t “an integral feature of fishing tenure”; it “often accompanied it, especially following years of famine.”³ Eventually, Brian Smith concludes that the 17th century crises and the economic power grab of the merchant-lairds led them from “a relatively free state into a relatively unfree one” where they had to give their labour in exchange of land and credit.⁴ I will argue in the following part of this chapter that although Shetland tenants were unfree in the 18th century, they remained independent, in the sense that with the exception of the summer months and of a few days of labour services for their landowners, they ‘owned’ (the rest of) their time.

Farming to halves, another form of sharecropping, might have been more widespread in Shetland than what appears from the documents but the absence of written leases as well as its more casual implementation between landlord and tenants or tenants and sub-tenants make it more difficult to seize its importance.⁵ Farming to halves included, similarly to conventional farming and fishing tenures, the payment of a rent in money and/or kind but it also included the share in half of the growth of a flock, a fattened animal or the produce of the land. Indeed, three documents illustrate the three types of halvers. In 1762 “Thomas Mouat [had] sheep in

¹ Françoise Péron, ‘De La Maritimité...’, in *La Maritimité Aujourd’hui*, ed. Françoise Péron and Jean Rieucou (Paris: L’Harmattan, 1996), 14; Charpentier, ‘Le Littoral et Les Hommes’, 235.

² Smith, ‘Rents from the Sea’, 67.

³ Ibid.

⁴ Ibid., 80.

⁵ Elizabeth Griffiths and Mark Overton, *Farming to Halves: The Hidden History of Sharefarming in England from Medieval to Modern Times* (Palgrave Macmillan, 2009).

halfs twixt him and John Bruce Stewart of Simbister”¹ and in 1776 a process at the Sheriff Court informs us that

Patrick Torrie, Did about the year one thousand Seven hundred and sixty six Give out & Deliver to James Laurenceson Tenant in Easter quarff a Milk fostered Cow calf in Halvers, one half to the Stere and profits thereof, together with the same part of the said calf, to belong to and become the property of each of the Parties, according to the use and Practice of this Country in the like Cases.²

Eventually in 1754, Rev. John Mill explained how “providentially, [he] was put upon a better method of setting of [his] land in halvers and keeping only one servant in the house, whereby [he] had more profit and less trouble”.³ Oral leases establishing either farming or sharecropping formed the vast majority of contracts between tenants and landowners. These oral leases were of “indeterminate length”⁴ or renewable one-year leases.⁵ In Robert Sinclair of Quendale’s judicial rental dated 1747, out of 342 tenants only two of them had signed a tack and two of them a wadset.⁶ A tack was the rent of a tacksman who could hold a longer lease and “farmed out his land to sub-tenants” and a wadset was a “conveyance of land in pledge for, or in satisfaction of, a debt or obligation”.⁷ Written leases concerned only a tiny part of the population:⁸ about 1.17 % according to Quendale’s judicial rental. Written leases, it seems, were contracted between landlords and ‘educated tenants’ with a higher social position than the rest of the tenants and sub-tenants. Arthur Edmondston identified these “few instances” as “comparatively rare”.⁹

Indeed, at the exception of Margaret Halcrow, a soluta who couldn’t sign, the three other tenants entering into either a wadset or a tack, knew how to sign. Margaret Halcrow, Laurence Tulloch, Nicol Tulloch and James Forbes had larger tenures than the median size of 4 mk of land per tenant or the average of 4.7 mk of land per tenant – Arthur Edmondston gave an average of 5 mk of land per tenant in 1809, with most of the tenants renting between 3 and 12 mk of land.¹⁰ Nicol Tulloch and James Forbes also had specific employment which

¹ SA, GD144/137/40, ‘Complaint by Thomas Mouat in Lavenwick against Malcolm Halcrow, Son of the Deceased Malcom Halcrow of Claphoul in Cunningsburgh, Concerning Dispute about Sheep [Sheep in Halves]’ 1762, fol. 1.

² SA, SC12/6/1776/12, ‘Summons (for Profits of a Halvers Calf.) (Criminal)’ 1776, sec. 1. This case is very interesting: the parties explained the different halvers’ traditions in Quarff and Tingwall and a short list of persons involved “in Partnership or Halvers cattle” in different parishes is provided.

³ Mill, *The Diary of the Rev. John Mill*, 18.

⁴ Wills, ‘Of Laird and Tenant’, 275.

⁵ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:150.

⁶ NAS, CS96/3272, ‘Robert Sinclair of Quendal. Judicial Rental’.

⁷ Ian H. Adams, *Agrarian Landscape Terms*, Institute of British Geographers Special Publication 9 (London: Institute of British Geographers, 1976), 19, 23.

⁸ Wills, ‘Of Laird and Tenant’, 275.

⁹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:150; See also: Shirreff, *General View of the Agriculture of the Shetland Islands*, 34.

¹⁰ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:149–50.

connected them either directly to their landlord or provided them with a higher position in the rural stratigraphy. Indeed Nicol Tulloch was “employed by Quendal to go into the Island of Moussay and look after the affairs thereof and that at severall times in the year”.¹ James Forbes was a Shipmaster in Dunrossness and owned 6 mk of land in Clumlie and an outbreck in The Brecks which he rented to Gilbert Irvine, James Gadie and John Jameson.² Eventually, the wadsetter Laurence Tulloch was also an udaller: he owned directly 1.8 mk land in Scarpagirth.³ These Shetland tacksmen and wadsetters were similar to their Scottish counterparts. Wadsetters were “merely creditor[s] of the landowner enjoying use and free tenure of part of his estate as long as the debt remained unpaid”.⁴ They could be fellow lairds, members of a landed or legal or commercial families, or “large tenants who had succeeded in accumulating enough capital to lend some to the laird”.⁵ Margaret Halcrow and Laurence Tulloch didn’t pay any land-rent to Quendale. It is difficult to know from where they had gathered the wealth to be in that specific position but they were, or had been in the case of Margaret Halcrow’s husband, large tenants. In Scotland, tacksmen were either “viceroy[s] or [kinsmen] who had a purely passive role as middleman between the landlord and the man who cultivated the ground” – this definition was only valid in “the Highlands and part of the adjacent areas” – or either “any farming tenant who had been given a lease (‘a ‘tack’) for a term of years”.⁶ In Shetland, the clan system didn’t exist so tacksmen didn’t necessarily belong to the kinship of the landowners but they belonged to a privileged circle, close to the landowners, both in wealth and education. They could be “themselves farmers”, such as Nicol Tulloch, and they “lived [...] off the difference between what they could get by subletting the land they occupied and what they had to pay in rent to the proprietor”.⁷ Jonathan Wills added that “[t]acksmen made either profit from the difference between the current market price of such commodities as fish and butter and the traditional rental or conversion price stated in the lairds rental”.⁸ Written leases or tacks could be extremely complex and could include a sharecropping element such as in a steelbow tack. A steelbow tack was a lease in which “the landlord of a farm stocked the farm on an undertaking by his tenant to restore their equivalentents at the end of the lease”.⁹ It came from “*steel*, the metal, implying something

¹ NAS, CS96/3272, ‘Robert Sinclair of Quendal. Judicial Rental’, fol. 163.

² *Ibid.*, fol. 84, 88–89 and 97.

³ *Ibid.*, fol. 28.

⁴ T. C. Smout, *A History of the Scottish People, 1560-1830* (London: Fontana Press, 1998), 128.

⁵ *Ibid.*, 128–29.

⁶ *Ibid.*, 129.

⁷ *Ibid.*, 316.

⁸ Wills, ‘Of Laird and Tenant’, 109.

⁹ *Glossary. Scottish Legal Terms*, 90.

fixed, rigid” and “*bow*, undivided farm or principal farmhouse”, explains Alexander Fenton.¹ The goods contained in the tack were described as “steelbow goods” and “consist[ed] in corn, cattle straw, and implements of husbandry delivered by the landlord to his tenant, by means of which the tenant [was] enabled to stock and labour the farm, and in consideration of which he [became] bound to return articles equal in quantity and quality at the expiration of the lease”.² This type of contract was similar to the French “*cheptel de fer*”.³ In 1797 a process at the Sheriff Court informs us “That the late John Bruce of Sumburgh father of one of your petitioners & husband of the other, did upon the 11th day of Jany. 1785 set in steelbow to Robert Thomson a lease of the rooms of Sumburgh & Willsness, & whole crop & stock thereupon, with sundry articles of implements of husbandry & materials of fishing, as the said tack & relative articles & inventory herewith produced doth shew”.⁴ This very dense process – 46 items are kept in the Shetland Archives – details the complexity of a steelbow tack and the enormous amount of documents produced for such a contract. This type of tack was “seldom practised in Zetland, and granted only to individuals who [were] otherwise in respectable circumstances”.⁵

The consequences of oral leases received at least two different interpretations in the historiography. In the improvers’ perspective and for historians which followed this perspective: oral leases prevented any improvement. Tenants could leave or be expelled almost without notice and therefore, it wasn’t of any interest for them to improve the land if they weren’t sure to receive the fruits of their hard work. In 1814, John Shirreff described the situation in his *General View of the Agriculture of the Shetland Islands*:

When lands are let to a tenant no stipulations are made as to the mode of agriculture he is to exercise: he may impoverish or he may improve the ground as he pleases, on question is asked on this head by the proprietor.⁶

For the 1970s’ historians, such as Jonathan Wills, oral leases were a guarantee of independence for the tenants. Indeed, the Shetland historian wrote in his PhD dissertation, that “many [tenants] preferred to remain tenants at will so that they could give the lairds notice

¹ Fenton, *The Northern Isles*, 446.

² George Watson, ‘Steelbow Goods’, *ell’s Dictionary and Digest of the Law of Scotland Adapted to the Present State of the Law and in Great Part Re-Written* (Edinburgh: Bell & Bradfute, 1882); Fenton, *The Northern Isles*, 446–47.

³ Watson, ‘Steelbow Goods’; Fenton, *The Northern Isles*, 447.

⁴ SA, SC12/6/1797/66, ‘Petition for Sequestration [Steelbow Tack and Inventory]’ 1797, sec. 1.

⁵ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:150; Another view is expressed in: Patrick Neill, ‘From the Bath Society’s Papers, Vol. vi P. 277. et seq. “On Shetland,” by J. Thompson. [1792.]’, in *A Tour Through Some of the Islands of Orkney and Shetland, With a View Chiefly to Objects of Natural History, but Including Also Occasional Remarks on the State of the Inhabitants, Their Husbandry, and Fisheries* (Edinburgh: A. Constable and Company and John Murray, 1806), 147.

⁶ Shirreff, *General View of the Agriculture of the Shetland Islands*, 34.

when it suited them”.¹ A further interpretation in Shetland’s context was offered by the ministers for whom oral leases kept tenants in poverty. It should be stated that even though tenants with oral leases “could give the lairds notice when it suited them” throughout the 18th century, their state of vulnerability increased during this period. The focus of the lairds on the development of fisheries and the settlement of new farmers-fishermen brought instability for the tenants. It is possible, such as explained by Jonathan Wills, that not all the summons of removal presented at the Sheriff Court at the end of the 18th century ended in the eviction of tenants but the pressure and the uncertainty of the situation must have been difficult to deal with, especially in the last decade of the 18th century and first years of the 19th century when landowners started to show new agricultural interests and wished to implement written leases.²

When oral and written leases were granted, rents and accommodations were set.³ In the island of Unst, the landowner “[furnished] the tenant, gratis, with a house, barn, and stable”, in the rest of Shetland, “this expence [was] divided between [the tenant and the landowner], but the chief proportion of it always [fell] on the landholder”.⁴ The tenant had to keep his house “in a state of repair”.⁵ This duty appeared in 26th act of the Country Acts which stated “That none remove from land or houses of their own accord, or shall demolish or take away any thing belonging thereto, although furnished by themselves, under the pain of 20 pounds beside payment of the damage”.⁶ The organisation of the rent and taxes system was more complicated than the allocation of houses.

Land-rent and taxes

Tenants had to pay a land-rent (at the exception of the wadsetters) but they also fell under numerous taxes which were levied, in theory, on the landowners but in practice, these taxes were charged to the tenants.⁷ The following table provides a summary of the land-rent and taxes which were exacted in the 18th century.

¹ Wills, ‘Of Laird and Tenant’, 275.

² *Ibid.*, 276–77.

³ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:149 and 155.

⁴ *Ibid.*, 1:149.

⁵ *Ibid.*

⁶ ‘The Old Country Acts’, 84.

⁷ NAS, CS96/3272, ‘Robert Sinclair of Quendal. Judicial Rental’; Wills, ‘Of Laird and Tenant’, 108.

Tenants/Subtenants				
<i>Landowner</i>	<i>Donee of the crown rights or lessee</i>	<i>Clergyman</i>	<i>Public</i>	<i>Lessees</i>
Land rent (landmails)	Scat	Corn teind (half)	Cess (British land-tax and casual impositions) (one half)	Hawk hen (e.g. Dunrossness, Sandwick and Cunningburgh: Sinclair of Quendale)
Grassum	Wattle	Casual teinds	Salary of the parish schoolmaster (contribution)	
Service	Sheep and ox penny	Service		
Fowl	Corn teind (half)			
<i>Hogaleaves</i> (to the heritors of a given scattald)				

Heritors		
Feuars	Owner-occupiers (udallers)	
<i>Donee of the crown rents or lessee</i>		<i>Public</i>
Feu duties	Scat	Cess (British land-tax and casual impositions) (one half)
	Wattle	Salary to the parish schoolmaster (contribution)
	Sheep and ox penny	Church and school buildings (contribution)

Table 89: Land-rent and taxes: tenants and heritors

A tenant paid to his or her landowner(s) a land-rent, a grassum, he provided services and fowls and could pay the hogaleaves. Land-rent was computed in merk of land. A merk of land was “an indefinite quantity or extent of grounds”.¹ The merks of land in each township had a specific value: they were “divided into different classes, such as six-penny, nine-penny, and twelve-penny merks”.² These numbers “designat[ed] certain differences in the rents of the merks according to their size and produce”.³ These divisions, dating from the middle Ages, were originally founded on real differences such as quality or quantity of land but in the 18th century, they were “very inaccurate measures of the relative value of the different classes of merks”, indeed “it sometimes happen[ed], that a six-penny merk [was] as large and productive as a twelve-penny one”.⁴ Even though these distinctions weren’t updated to standardise their values in the 18th century, they still served as referent to determine the land-rent. In Northmavine, “[e]ach penny land [was] uniformly valued at 1 1/3 merk weight of butter; and the money [...] 1s. and 1/3s. Scots of rent payable to the proprietor” at the end of the 18th

¹ Shirreff, *General View of the Agriculture of the Shetland Islands*, 21.

² Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:151; Shirreff, *General View of the Agriculture of the Shetland Islands*, 21.

³ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:151; Shirreff, *General View of the Agriculture of the Shetland Islands*, 21.

⁴ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:151; Shirreff, *General View of the Agriculture of the Shetland Islands*, 21.

century.¹ In this parish, the value of the land-rent for a tweldepenny merk land was estimated at £1 12sh. Scots or “32s. Scots”.² In Unst, the respondents for the Old Statistical Account estimated that “the proprietors of the land receive[d] for the arable part of every merk, [16s. Scots] of yearly rent”.³ In Dunrossness and Sandwick, the value of the land-rent oscillated in 1747 between £1 12sh. Scots/mk of land in Lie where the arable land was overblown with sand and £4 4sh./mk of land in Bakkasetter, a fertile township at the south end of the Loch of Spiggie and the west end of the loch of Brow.⁴ When he described the 18th-century land-rent of Unst, Jonathan Wills concluded with a very strong statement:

As the reader will have guessed, the main points about both the skat and the rent in this period were that they were confused, distorted, complicated and above all extremely easy to manipulate in the favour of laird, tacksman or superior.⁵

Indeed, the land-rent was never updated in the 18th century and the earlier distinctions didn't make sense anymore. Lands of apparent similar quality and quantity in neighbouring townships could even pay different land-rent.⁶ Variations of land-rent were extreme all over Shetland. The three examples of Dunrossness, Northmavine and Unst already show great disparities.

A right of entry, the grassum, considered as the pasturage part of the rent for the Unst respondents in the Old Statistical Account,⁷ became an annual payment since tenants failed to pay the grassum on their entry.⁸ All the sources seem to indicate that the grassum was valued at 8s. Scots/mk of land.⁹ It was probably included in the land-rent at some point in the 18th century and contributed to its increase.¹⁰ In 1822, Samuel Hibbert explained how

The little landlord demanded along with rent, the acknowledgment of a grassum or renty, and many menial services, such as annual presents, casting the lord's peats, or labouring for him a certain number of days.¹¹

¹ Jack, 'Parish of Northmaven', 352.

² Ibid.

³ Mouat and Barclay, 'Island and Parish of Unst in Shetland', 196.

⁴ It is possible that in these figures, the grassum was included as it isn't clearly specified in the judicial rental (8sh. Scots/mk). Since Quendale didn't own land in Cunningsburgh, the value of the land-rent charged there didn't appear in the rental.

⁵ Wills, 'Of Laird and Tenant', 303.

⁶ Ibid.

⁷ Mouat and Barclay, 'Island and Parish of Unst in Shetland', 196.

⁸ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 63–64; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:152; Hibbert, *A Description of the Shetland Islands*, 322.

⁹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 64; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:152; Mouat and Barclay, 'Island and Parish of Unst in Shetland', 196.

¹⁰ Wills, 'Of Laird and Tenant', 303.

¹¹ Hibbert, *A Description of the Shetland Islands*, 322.

Indeed, Robert Sinclair of Quendale's judicial rental clearly shows the existence of services. Of the 342 tenants testifying in the judicial rental, 145 of them were Quendale's tenants. 76 of his tenants had to perform annual "days work" "at such times in the year as Quendale require[d]".¹ The work days ranged from two to 10 days per annum, but five out of nine tenants worked nine days per annum. The type of work performed by these tenants wasn't detailed in the rental: they might have been employed "for the purpose of casting peats, or [for] other labours of husbandry".² However, Quendale had 15 tenants who were specially charged in casting the peats and 10 other tenants who had to work "a week in summer time about leading of peats when thereto required"³ and/or to deliver a horse and a boy for the leading of peats. Eventually, John Fea, "a Taylor to his Employment" who lived in Cour and rented for a low rent "a piece of ground" in the Gardens of Quendale, was "bound to serve the family in the way of his calling".⁴ These services varied geographically in Shetland. In his "Vade Mecum", Thomas Mouat explained that "[d]ays wor [were] various, in some parishes out of use, in others 3, 4 and 6 [were] paid."⁵ In 1780, Busta engaged his tenants to work three days per annum for him, in Sandsting, it was six days.⁶ Also it is possible to say that they also depended on the landlord and on the configuration of his estate. Indeed, Quendale's tenants in Sandwick were employed in the casting and leading of peats while his tenants in Dunrossness were exacted "days work". The centre of his estate, Quendale, was located in the south of the parish of Dunrossness. He exacted "days work" to his tenants in the said parish and therefore had an impressive workforce available for free to work for him.

¹ NAS, CS96/3272, 'Robert Sinclair of Quendal. Judicial Rental', fol. 89.

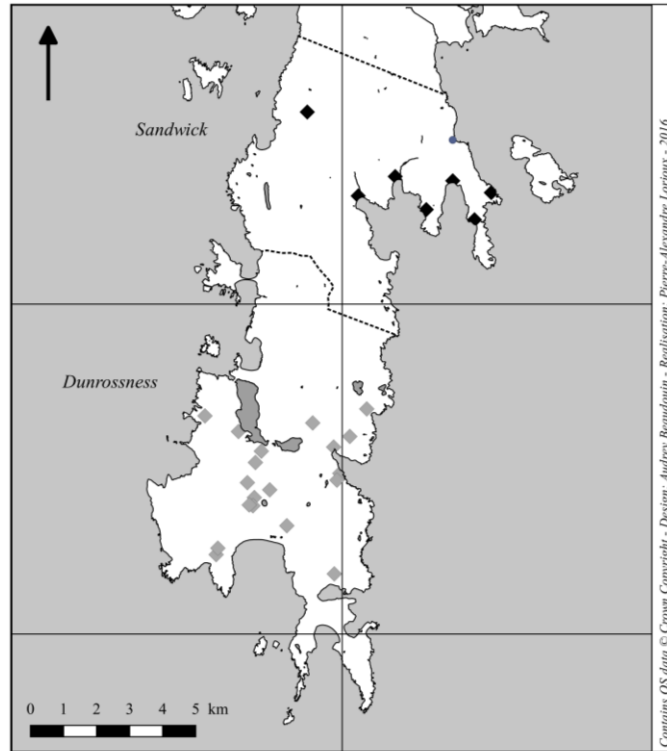
² Hibbert, *A Description of the Shetland Islands*, 324.

³ NAS, CS96/3272, 'Robert Sinclair of Quendal. Judicial Rental', fol. 43.

⁴ *Ibid.*, fol. 135.

⁵ Jonathan Wills, 'Appendix 3. An Extract from Thomas Mouat's "Vade Mecum" notebook Describing the Various Payments from Lands in Shetland (1777-1814)', in *Of Laird and Tenant: A Study of the Social and Economic Geography of Shetland in the Eighteenth and Early Nineteenth Centuries, Based on the Garth and Gardie Estate Manuscripts*. (Edinburgh: University of Edinburgh, 1975), 472.

⁶ SA, D24/56/83, 'Rental of Lands of Gideon Gifford of Busta in Parishes of Northmavine and Delting (Incomplete), Undated. but circa 1780, with Names of Tenants and Merks of Land Rented', fol. 9; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:154.



- ◆ Casting peats and leading peats
- ◆ Days work

NAS, CS96/3272. 'Robert Sinclair of Quendale's Judicial Rental', 1747.

Map 20: Land-rent and taxes: labour service

Tenants									
Bailie (until 1747)			Laird				Clergyman		
<u>Days services</u>	3 days/annum	“Days services (being three yearly out off each Family dues to the Baillies)” (1)	<u>Days work</u>	- average in Shetland: 3 days/annum (2) - for Quendale: 2-10 days/annum - median for Quendale: 9 days/annum (3) - for Busta: 3 days/annum (4) - in Sandsting: 6 days/annum (2)	“at such times in the year as Quendale requires” (3) “as his Master demands” (3) “converted at Three pence each altho’ charged at [6d.?] when not performed” (4) “Days work are various, in some parishes out of use, in others 3, 4 and 6 are paid.” (5)	76	<u>Days labour</u>	3 days/annum	“The minister has also three days labour in the year from each family, at such periods as he chooses to demand it.” (2)
			<u> Casting peats</u>	few days	“a days service in the season when thereto required” (3)	15			
			<u> Leading peats</u>	3 days/summer A horse and a boy	“a week in summer time about leading of peats when thereto required” (3)	10			
			<u> Tailor</u>		“bound to serve the family in the way of his calling” (3)	1			

- (1) NAS, RH9/15/177, “List of Parishes and Islands within Orkney and Zetland (exclusive of Bishopric of Orkney) and of Examinable Persons in Each Parish and Island, Heads of Families, Days’ Services, and Perquisites of Wattle and Custall Penny, besides Emoluments of Court” 1748, f. 1.
- (2) Arthur Edmondston, *A View of the Ancient and Present State of the Zetland Islands; Including Their Civil, Political, and Natural History; Antiquities and an Account of Their Agriculture, Fisheries, Commerce, and the State of Society and Manners*, vol. 1 (Edinburgh: John Ballantyne and Co., 1809), 154, 165.
- (3) NAS, CS96/3272, “Robert Sinclair of Quendal. Judicial Rental” 1747.
- (4) SA, D24/56/83, “Rental of Lands of Gideon Gifford of Busta in Parishes of Northmavine and Delting (incomplete), Undated but circa 1780, with Names of Tenants and Merks of Land Rented” ca 1780, f. 9.
- (5) Jonathan Wills, “Appendix 3. An Extract from Thomas Mouat’s ‘Vade Mecum’ Notebook Describing the Various Payments from Lands in Shetland (1777-1814),” in *Of Laird and Tenant: A Study of the Social and Economic Geography of Shetland in the Eighteenth and Early Nineteenth Centuries, Based on the Garth and Gardie Estate Manuscripts*. (Edinburgh: University of Edinburgh, 1975), 472.

Table 90: Land-rent and taxes: services

Geographic variations existed as well for the exaction of poultry fowls. Arthur Edmondston wrote in 1809 that “[o]n the Mainland there [was] an exaction of a fowl for every merk of land; but the islands [were] exempted from this payment”.¹ This was exactly what Quendale exacted from his tenants every year, in the years preceding 1747.² Eventually, tenants living in townships which didn’t exist when the first rentals were established for the payment of scat, called outsets and setter lands, or tenants who lived on small islands without a “right of commonage upon the mainland”³ could pay a specific tax to access to the resources of the hagi or hoga, “that part of Scatald next adjacent to the towns”,⁴ the “pasture ground”,⁵ or in Jonathan Wills’ words, “the accurate name for the commons in the hill”.⁶ Indeed for those tenants who lived on lands where scat wasn’t exacted or for those who lived on lands which didn’t have a direct access to peat resources or pasturage, they had the possibility to pay a tax called hogaleave (also spelled hogalieve, hogalif or hogalive).⁷ They paid this tax to the “to the proprietors, or possessors of the Lands upon whose commons they pasture their cattle, and from whence they take their peats, earth and turf for manure &c.”.⁸ They paid the hogaleave to the heritors of the townships which had a scat-related access to the hoga. The hogaleaves were divided between the various heritors. Indeed, in 1741 “Sumburgh, Greenwall & the def[ende]r [i.e. William Mouat] made a division of the Hogalives payable to Norwich the said division was to stand Good forever and belong to them as marked by Sumburgh hand. S. G. M.”.⁹ When these payments were made, individuals or townships had access to the resources of the hoga. It was in that manner that the room of Gardon had access to “peats and thatch from Snasbrough, for which they pay a yearly payment called hogaleave”¹⁰ or that the tenants of Clibberswick “[were] compelled to pay Hogalieve to the other Heretors of Norwick Scatald

¹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:155.

² NAS, CS96/3272, ‘Robert Sinclair of Quendal. Judicial Rental’.

³ SA, Hay & Compagny Papers, Rental of Shetland; Quoted in: Brian Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, in *Essays in Shetland History: Heidursrit to T.M.Y. Manson*, ed. Barbara E Crawford (Lerwick: Shetland Times Ltd, 1984), 103.

⁴ NAS, E341/45, “Excerpt from Introduction to the Rental of the Lordship of Shetland” Regarding Skat’ 1829, fol. 3.

⁵ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:149.

⁶ Wills, ‘Of Laird and Tenant’, 351.

⁷ Wills, ‘Appendix 3. An Extract from Thomas Mouat’s “Vade Mecum” notebook Describing the Various Payments from Lands in Shetland (1777-1814)’, 473; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:149; Wills, ‘Of Laird and Tenant’, 280 and 341; Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 104.

⁸ NAS, E341/45, “Excerpt from Introduction to the Rental of the Lordship of Shetland” Regarding Skat’, fol. 3.

⁹ SA, SC12/6/1741/1, ‘Replies by William Mouat Contra William Hay Concerning Mill and Lands of Norwick, Unst.’ 1741, sec. 1.

¹⁰ A.W. Johnston, ed., ‘Scattald Marches of Unst, 1771’, *Old-Lore Miscellany of Orkney, Shetland, Caithness and Sutherland* 3 (1910): 217; Quoted in: Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 104.

for this liberty [i.e. casting peats]”.¹ The amount of the yearly payment “seldom exceed[ed] three shillings [sterling]”.²

Those who paid the hogaleaves did so in order to have access to the hoga, the “commons in the hill”³ but most of the tenants in Shetland had a direct access to the hoga through the payment of the scat. The scat was a land-tax which “was levied on arable land”, but “it was nonetheless paid *for the use of* a whole bundle of privileges inside and outside the merely arable part of the township”.⁴ One of these privileges was to have access to the hoga and its resources. Most of the townships in Shetland paid the scat: the setter-land, the outsets and the islands without a right of commonage on the mainland were the only exceptions. The scat “[was] levied upon the merks land *pro rata* each merk land paying an equal proportion of the whole charge in the Town”.⁵ Before the 1469, the scat was paid to the Crown of Denmark and Norway: it was originally a Norwegian tax, *skattr*. In the 18th century, the Chamberlain collected the scat and transferred it “to the Crown of Britain” but “in 1742 the crown rights over Orkney and Zetland were disposed, by an irredeemable grant, to the earls of Morton [...] until 1766, when they were sold to sir Laurence Dundas”.⁶ In theory, the landowners paid the scat to the Chamberlain or to the donee of the Crown rents, but in practice, the scat was charged on the tenants.⁷ In his dissertation, Jonathan Wills starts his argumentation on “[t]he Problem of Skat” by stating that “[t]he subject of Orkney and Shetland Skatts is almost as hazardous an area of scholarly investigation as the proverbial ridge and furrow, but some understanding of it is essential to our investigation of the development of Shetland townships.”⁸ The present thesis, however, isn’t an investigation of the development of Shetland townships. What we need to grasp is how a tenant or a small udaller could be affected by the payment of scat. Jonathan Wills uses the example of the scattald of Norwick in Unst to detail the payment of the scat and gives a conclusion at the scale of the island of Unst. First of all, not all the rooms in the scattald of Norwick paid scat: outsets and glebe-land paid no scat.⁹ The scat was paid in butter, fish oil and money. In 1733, the scat of Norwick was divided as follow:

¹ NAS, RH4/102, ‘Rental of Lordship of Shetland’, fol. 52.

² Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:149.

³ Wills, ‘Of Laird and Tenant’, 351.

⁴ Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 100.

⁵ NAS, RH4/102, ‘Rental of Lordship of Shetland’, fol. 3.

⁶ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:159.

⁷ Wills, ‘Of Laird and Tenant’, 108.

⁸ *Ibid.*, 283.

⁹ *Ibid.*, 285.

Norwick 144 merks	Lispund of butter	Merk of butter	Can of fish oil	£	s.	d.
	4	-	8	8	8	
conversion rate	£3 Scots per lispund		6s. Scots per can			
Total in d.	2880d.		576d.			2014d.
Grand total						5470d.

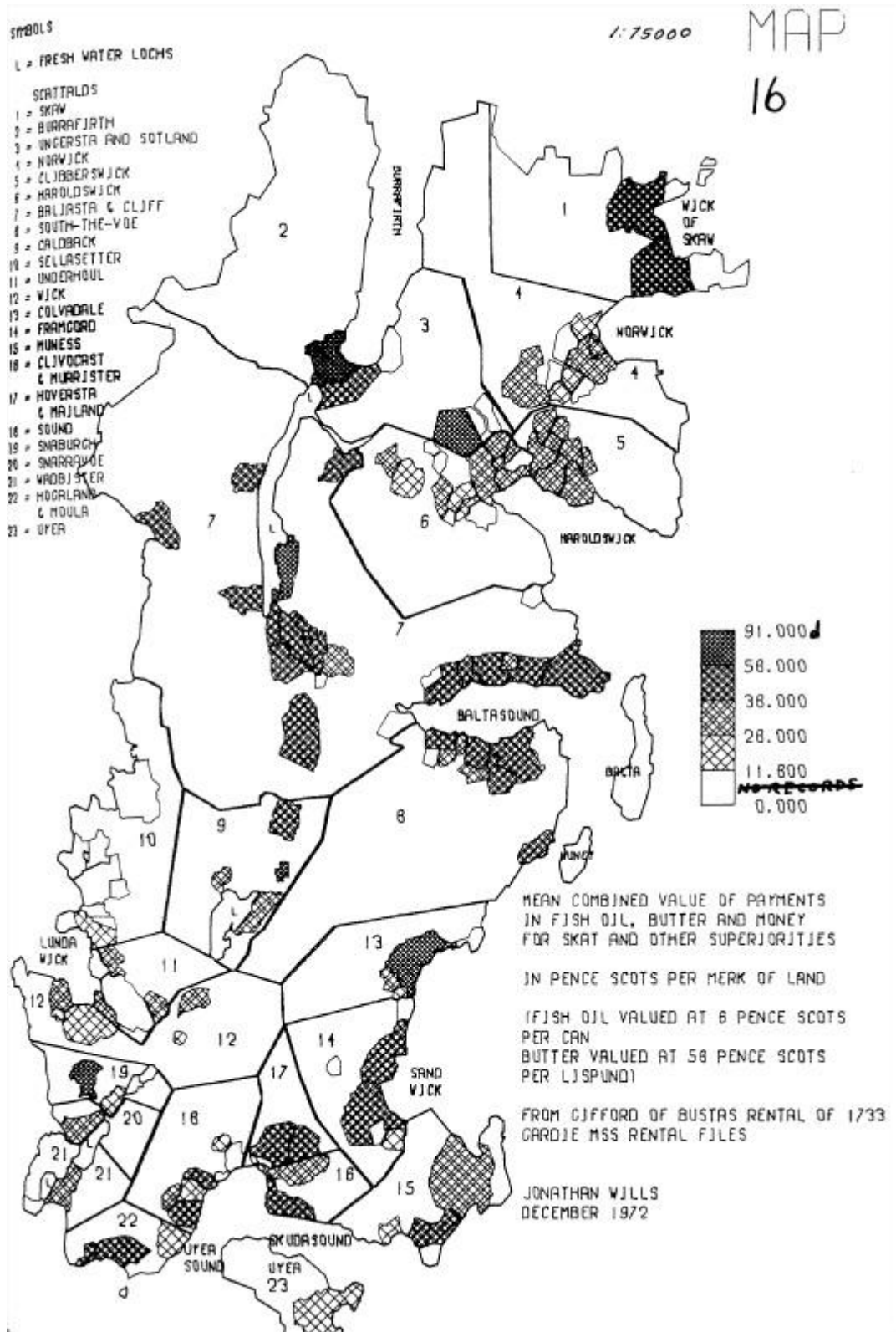
Wills, Jonathan. 'Of Laird and Tenant: A Study of the Social and Economic Geography of Shetland in the Eighteenth and Early Nineteenth Centuries, Based on the Garth and Gardie Estate Manuscripts.' University of Edinburgh, 1975, 286.

Table 91: Land-rent and taxes: the scat of Norwick

About fifteen years before, in 1716, the scat of Norwick was similarly divided – although 148 mk of land paid scat because the 4 mk of the room of Vellie were probably included in the computation.¹ This meant that the scattald of Norwick paid about 37d. of scat per merk land. In his dissertation, Jonathan Wills has mapped the scat of Unst, following several criteria. One of the maps represents the “mean combined value of payments in fish oil, butter and money for skat”, ‘in pence Scots per merk of land’.²

¹ SA, SA4/2255, ‘Gifford’s Rental of Shetland: Transcript and Index’, fol. 87.

² Wills, ‘Of Laird and Tenant’, 293.



Wills, Jonathan. 'Of Laird and Tenant: A Study of the Social and Economic Geography of Shetland in the Eighteenth and Early Nineteenth Centuries, Based on the Garth and Gardie Estate Manuscripts.' University of Edinburgh, 1975, 293.
Map 21: Land-rent and taxes: the scat of Unst

This map is interesting since it shows that most rooms paid between 38d. and 58d. of scat but it also shows that they were “wide variations even within Unst in the amount of skatt charged on tenants”.¹ Eventually, Jonathan Wills concludes that

by 1733, these variations did not seem to be related in any precise way to such physical factors as distance from the sea, fertility of soil, balance between arable and grazing or location within the island. [...] [Skat] was exacted in a very arbitrary fashion merely as a source of revenue for Royal favourites. All thought had gone of a tax proportionally adjusted to the capabilities of the land and its inhabitants.²

In 1809, Arthur Edmondston reckoned that the scat varied from 3d. to 1sh. 2d. sterling per merk of land or between 36d. and 168d. Scots per merk of land, which fits approximately with what Jonathan Wills has found for Unst and shows again that there were wide variations all over Shetland.³ Arthur Edmondston described the tax in the early 19th century as “unequal and partial” as “[i]t [bore] little or no relation to the present situation or value of the lands, and [had] been imposed originally without any prospective view to the future state of the country”.⁴

Often computed in the rental along the scat was another tax charged on the tenants and levied by the Chamberlain and, then, the donee of the crown rents: the “wattle rent”, “in commemoration of the prayers of a good sainted lay which the Shetlanders, in Popish times, purchased as an intercession for their manifold sins”.⁵ For Thomas Gifford, Robert Stewart earl of Orkney added this ‘protection tax’ to the rental of Shetland when he became “proprietor of the bishop’s rents of Orkney and Zetland”.⁶ Tenants also paid the “ox and sheep silver” also called, the “ox and sheep money” or “ox and sheep penny”. Two versions on the first imposition of this duty coexisted: it was either a ‘maintenance tax’ of “an ox and 12 sheep out of every parish” or “an imposition of Earl Patrick Stewart, at the time of building his castle of Scalloway”.⁷ The wattle and the ox and sheep silver were both “proportioned upon the mark lands in each parish”.⁸ In 1809, Arthur Edmondston stated that these taxes were payable to Lord Dundas and that there were valued at 12d. Scots per merk of land each, combined it amounted to 24d./mk of land.⁹ In 1716, the scattalds of Scatness, Sullom and Ska paid respectively £18 4sh. Scots, £5 14sh. Scots and £5 6sh. Scots of Wattle and Sheep and Ox Penny. These payments gave approximate figures of: 30d. Scots/mk of land, 16d./mk and

¹ Ibid., 283.

² Ibid., 295.

³ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:160.

⁴ Ibid.

⁵ Hibbert, *A Description of the Shetland Islands*, 321.

⁶ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 66.

⁷ Ibid.; Shirreff, *General View of the Agriculture of the Shetland Islands*, 18.

⁸ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 66.

⁹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:161.

19d./mk. Here again, the figures of the beginning of the 18th century fit with Arthur Edmondston's valuation and show wide variations all over Shetland.

The tenants also paid teinds which were "divided into corn teind and casual teinds".¹ Arthur Edmondston explained how in the early 19th century, the corn teind "[was] divided between the minister and the proprietor of the crown rents, and the share of the latter is denominated *umbith* or *umboth* duty".² In the early 18th century, Thomas Gifford described how "[t]hese rents [were] half of the corn tythes of each parish in Zetland, excepting the united parishes of Tingwall, Whitness, and Wisdale".³ These exceptions seemed to still be valid almost a century after when Arthur Edmondston wrote his description. The teind, "the tenth part of the produce of land or industry",⁴ "if paid in kind, [was] every tenth sheaf" and "when commuted, [was] paid in butter and oil, in proportion of about three-fourths of a *can* or gallon of oil, and from three to four marks of butter per merk of land."⁵ At the end of the 18th century and early 19th century, some authors, such as John Shirreff described Shetland's "teind system" as more oppressive than in any other part of the British Empire. He explained how teinds were "commonly farmed by tacksmen, which [was] the most oppressive mode of collecting them".⁶ In order to illustrate the hardship in which the Shetlanders were, he quoted lengthily a memorial presented before the Teind Court. In this memorial, the heritors of Northmavine detailed how the teind-gatherer or teind-collector abused the tenants in over-charging them.⁷ The teind-gatherer collected not only the corn teind but also the "casual or vicarage teinds".⁸ These teinds were described in the memorial of Northmavine and they also appeared in Quendale's judicial rental.⁹ In addition to the corn teind, tenants were teindable or liable for payment of the cow teind, sheep or lamb teind and boat teind. Arthur Edmondston explained in 1809 how these "very precarious" casual teinds were paid. The repartition was as follows:

¹ *Ibid.*, 1:163.

² *Ibid.*

³ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 64.

⁴ Susan C. Rennie, ed., 'TEIND, N., v.', *Dictionary of the Scots Language. Dictionar O the Scots Leid*, 2004, <http://www.dsl.ac.uk/>.

⁵ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:163.

⁶ Shirreff, *General View of the Agriculture of the Shetland Islands*, 24.

⁷ *Ibid.*, 25–33.

⁸ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:164.

⁹ Shirreff, *General View of the Agriculture of the Shetland Islands*, 26–33; NAS, CS96/3272, 'Robert Sinclair of Quendale's Judicial Rental' 1747.

Boat teind	for every six-oared boat engaged in the summer ling fishing	from ten to sixteen ling or three cans of oil
Corn teind	for every merk of land for every merk of land	every ten sheaf three-fourths of a can or gallon of oil, and from three to four marks of butter
Cow teind	for every milk cow	from two to four marks of butter
Sheep teind	for every thirty sheep	one sheep and three marks of wool
Sheep teind	for every sheep under thirty	one penny or twopence a-head

Edmondston, Arthur. *A View of the Ancient and Present State of the Zetland Islands; Including Their Civil, Political, and Natural History; Antiquities and an Account of Their Agriculture, Fisheries, Commerce, and the State of Society and Manners*. Vol. 1. 2 vols. Edinburgh: John Ballantyne and Co., 1809, 163-165.

Table 92: Teinds: Arthur Edmondston, 1809

Similarly to the other taxes in Shetland, the amounts of casual teinds varied geographically. The memorial of Northmavine detailed “the teinds at present exigible or exacted in the parish of Northmaven”:¹

Boat teind	for each six-oared engaged in the summer ling fishing for each four-oared engaged in the summer ling fishing	15 ling (2.5 ling of teind for each man) (£3 3s.) 10 ling (2.5 ling of teind for each man) (£2 2s.)
Calf teind	for each calf	1s.
Corn teind	for every merk of land, when in kind for every merk of land, when in butter for every merk of land, when in money	tenth-sheaf ca. 3.5 mark of butter ca. 7s.
Cow teind	for each cow	three marks butter
Lamb teind	30-40 head p. lamb-teind	one lamb
Sheep teind	30-40 head p. lamb-teind	3 marks wool per lamb of teind

SA, D24/7a/34. ‘Memorial for Rev. William Jack in Process of Augmentation of Teinds’, c 1794.
Shirreff, John. *General View of the Agriculture of the Shetland Islands with Observations of the Means of Their Improvement*. Edinburgh: Archibald Constable and Co., 1814, 26-33.

Table 93: Teinds: Memorial of Northmavine, ca. 1794

Northmavine’s example already shows variations with Arthur Edmondston’s description in terms of teinds’ denominations but also in terms of means of payment. However, the amounts of the similar teinds concurred.² Eventually, the teinds paid in the united parishes of Dunrossness, Sandwick and Cunningsburgh shed further light on the local variations. The tenants paid teind on corn, sheep, cow and boat when they had an actual participation in the production of corn, the farming of sheep and cow or summer fishing.

¹ Shirreff, *General View of the Agriculture of the Shetland Islands*, 26; Wills, ‘Appendix 3. An Extract from Thomas Mouat’s “Vade Mecum” notebook Describing the Various Payments from Lands in Shetland (1777-1814)’.

² See also: Wills, ‘Appendix 3. An Extract from Thomas Mouat’s “Vade Mecum” notebook Describing the Various Payments from Lands in Shetland (1777-1814)’.

Boat teind	for each six-oared boat for each four-oared boat	a half boat: £1 10s. a third part: £1 5s. one boat: £2 5s. a half boat: £1 2s. 6d. (14s. when in bad conditions) a fourth part: 11s. 3d. a third part: 15s.
Calf silver	for each calf	1s. Scots
Corn teind	for every merk of land, when in kind for every merk of land, when in butter and oil for every merk of land, when in money	tenth-sheaf 4 marks of butter and 2/3 can of oil 10s. to £1
Cow or Bow teind	for each forrow cow for each tid cow	3 marks of butter 5 marks of butter (2s. Scots/mk of butter)
Lamb teind	average paid	8s. 3d. per tenant
NAS, CS96/3272. 'Robert Sinclair of Quendale's Judicial Rental', 1747.		

Table 94: Teinds: Quendale's judicial rental, 1747

The Memorial on teinds of the inhabitants of Northmavine as well as Arthur Edmondston in 1809 added to the casual teinds the exaction of three days labour by the minister. Indeed, Arthur Edmondston explained how “[t]he minister [had] also three days labour in the year from each family, at such periods as he [chose] to demand it”¹ and the memorial of Northmavine stated that the seventh type of teinds “exigible or exacted in the parish” was “[a] claim by the minister to three days work from each family in the parish”.²

Eventually, the tenants could participate in financing three things in the late 18th century. They were liable to pay one half of the cess, or British land-tax, which was collected by the commissioners of supply and amounted to about 3s 6d. Scots per merk of land; the landowners paid the other half.³ They contributed to pay the salary of the schoolmaster. Arthur Edmondston reckoned that for this payment “a general average over the whole country may be taken at 2d. for each merk of land payable by the tenant”.⁴ They could also pay what was called the ‘hawk hen’ which was “an exaction of a hen from every house or *reek*”.⁵ It used to be “a regular payment in kind to the king’s falconer” and it was “afterwards given in lease to different individuals”.⁶ The extent of this payment is unknown. Arthur Edmondston explained in 1809 that this exaction “[had] been falling into disuse for several years”.⁷ Fifty years before in Robert Sinclair of Quendale’s judicial rental, six tenants, all living in the parish of Sandwick in the area of the bays of Sandwick and Hoswick, paid in ‘hens’.⁸ Four of

¹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:164–65.

² Shirreff, *General View of the Agriculture of the Shetland Islands*, 26.

³ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:165–66.

⁴ *Ibid.*, 1:166.

⁵ *Ibid.*, 1:165.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ NAS, CS96/3272, ‘Robert Sinclair of Quendale’s Judicial Rental’, fols 35–36, 38, 40, 41–42, 51–52.

them gave a half cock and a half hen as part of their payment in poultry,¹ and two of them, both of them Halcrows, living in Hoswick and engaged in peat services during the summer, paid “a Haulk hen” to Quendale.²

The land-rent and the other taxes could be variously paid.

“Of the several Denominations of the Crown rent of Zetland [...] and how paid”		
Land-rent and taxes	When?	How?
Scat	Martinmass in the subsequent year	butter, fish, oil <i>wadmel</i> (converted into money)
Land-rent (landmail)	Lammas in the subsequent year Martinmass in the subsequent year	butter <i>wadmel</i> (converted into money)
Grassum	annual payment	money
Corn teind (umboth duty)	in the subsequent year	butter, oil, money
Wattle	Lammas in the present year	money
Ox and sheep money (silver)	Lammas in the present year	money

Gifford, Thomas. *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents*. Sandwick: Thule Print Ltd, 1976, 61-68.

Table 95: Payments: Thomas Gifford, 1733

“The teinds at present exigible or exacted in the parish of Northmaven” and in the united parishes of Dunrossness, Sandwick and Cunningsburgh		
	<i>Northmavine</i>	<i>Dunrossness, Sandwick and Cunningsburgh</i>
Corn-teind	tenth-sheaf butter money	tenth-sheaf butter and oil money
Sheep teind	wool	
Lamb teind	lambs	money
Cow teind	butter	butter money
Calf teind	money	money
Boat teind	ling-fish	money

NAS, CS96/3272. ‘Robert Sinclair of Quendale’s Judicial Rental’, 1747.
SA, D24/7a/34. ‘Memorial for Rev. William Jack in Process of Augmentation of Teinds’, c 1794.
Shirreff, John. *General View of the Agriculture of the Shetland Islands with Observations of the Means of Their Improvement*. Edinburgh: Archibald Constable and Co., 1814, 26-33.

Table 96: Payments: Memorial of Northmaven, ca. 1794 and Quendale’s Judicial Rental, 1747

Already in the first half of the 18th century, the low-amount taxes, such as grassum, wattle and ox and sheep penny, were mostly exacted in money. The scat was paid in butter, fish and oil and could also be paid in money. The land-rent could be paid in butter and in money. Eventually, the teinds were paid in different ways. Most of the time, they were paid with the produce of the activities that they intended to tax: e.g. wool and lambs for the sheep and lamb teind, butter for the cow teind and fish for the boat teind. The corn-teind was exacted in kind, i.e. the teind-collector drew a tenth-sheaf, in butter or in money. The way taxes were exacted corresponded to the elements of Shetland economy: a low availability of cash for the tenants vs. a high availability of livestock’s resources such as butter and wool and fish resources such as fish and oil. However, it seems that landowners tended to privilege money progressively in

¹ *Ibid.*, fol. 35–36, 38, 40 and 41–42.

² *Ibid.*, fols 51–52.

the 18th century. In Quendale's rental the landmail was paid only in money.¹ The tenants and teindables in the united parishes of Dunrossness, Sandwick and Cunningsburgh paid their teinds mostly in money: boat teind, calf teind and lamb teind were paid exclusively in money. About 11% of the tenants liable to cow teind paid it in money as well. It is a low figure but it shows that money compensation for cow teind was possible. Eventually, 68% of tenants who paid the corn-teind to Quendale paid it in money. A mere 2% paid it in butter and oil and Quendale drew the tenth sheaf for about 30% of those tenants who owed him corn teind.² This interest for teinds exacted in money appeared clearly in the memorial of Northmavine. The memorialists explained how teinds paid in kind were "oppressive". First of all, the tax base could be more easily changed when exacted in kind such as in the case of the sheep and lamb teind where "the minister or his tacksmen [had] for these last five years arbitrarily, and of their own authority, presumed to increase the teind, by exacting three marks wool, and one lamb for every *thirty*, instead of *forty* sheep."³ The only solution "to prevent oppression" was to convert this teind into money.⁴ The memorialists pleaded for a similar conversion of the corn-teind. For them, the corn-teind paid in kind "[was] found by experience to be most oppressive in exaction" since it "depriv[ed] these tenants and their families of the provisions absolutely necessary for their subsistence".⁵ The memorialists were even more direct when they explained how corn teind payable in money "was just the footing on which the memorialists and their tenants would wish all the payments of the teind to be made; and they have only to regret, that at present so small a proportion of the teind is payable in this manner."⁶ This analysis of the memorialists and, supposedly, of their tenants as well didn't really fit with what Robert Sinclair of Quendale experienced in Dunrossness. Teinds exacted in kind weren't a perfect system but, if he wanted to, a landowner could adapt them maybe more easily to a local situation. Indeed, in Dunrossness, Robert Sinclair of Quendale drew a sheaf in two different cases. Firstly, when the harvest was subjected to intense variability, Quendale decided to adjust the corn teind to the capability of the land and therefore could exact corn teind when corn was available such as in the case of Laurence Sutherland in Noness who "[paid no fixed rent because he [had] sometimes corn & sometimes not: when he [had] Corn his Masters [drew] the third sheaf".⁷ It was also probably the case for the rooms of

¹ NAS, CS96/3272, 'Robert Sinclair of Quendale's Judicial Rental'.

² Ibid.

³ Shirreff, *General View of the Agriculture of the Shetland Islands*, 29.

⁴ Ibid.

⁵ Ibid., 26–27.

⁶ Ibid., 28.

⁷ NAS, CS96/3272, 'Robert Sinclair of Quendale's Judicial Rental', fol. 49.

Lie, Qhuamm of Garth, Carston of Garth, Garthbanks and the Cleap of Garth which were all overblown by sand and therefore had variable grain yields and where “Quendal [drew] the Corn teind of the whole room.”¹ In Lie, the situation was so difficult that “this Room of Lie being much wasted by Sand, the master Grow down the Rents as he thinks proper”.² Secondly, In the case of Lie, Qhuamm of Garth, Carston of Garth, Garthbanks and the Cleap of Garth, it was also possible that Quendale drew the tenth sheaf directly because of their location. Indeed, these rooms as well as the rooms of Noss, Ringasta, Culsetter, Breck of Hillwell, Hillwell, Gord of Hillwell, Gorshouse of Hillwell, Lud of Hillwell, Garth and Scatness were all located in the direct vicinity of the centre of Robert Sinclair’s estate in Quendale. These rooms might have acted for Quendale as the demesne of his estate. He had a direct control over them. He even appointed a “ground officer”, a supervisor of tenants’ activities, in Hillwell in the person of John Burgar who didn’t pay any rent for his 2.25 mk of land, “the same being allowed him yearly for his service”.³ The tenants in most of these rooms also provided Quendale with days of service.

The collective and the individual in the land-rent and taxes

Tenants during their days of service lived a collective experience when they led the peat, when they casted it or when they collectively worked “as [their] Master demand[ed]”. Services, even though they were compulsory and imposed by their landowner, offered a moment of sociability. Could taxpaying be another moment of sociability? First of all, it should be reminded that the evaluation of a tax could be based on a collective entity. Indeed, in 1716 the rental of Shetland presented the amount of scat payable per scattald in the first column, and sometimes subdivided per room such as in the case of the scattald of “Kunningsburgh besouth the burn”, and in the second column the amount of the scat was divided between the different portioners of the rooms.⁴ In 1772, the rental kept on presenting scat amounts organised by scattalds or townships.⁵ In 1716, the tenants and owners-occupiers of the scattald of Scatness, in Dunrossness paid a total scat of four lispounds of butter, sixteen cans of oil and £11 8s. Scots. These amounts were divided between fourteen portioners. If they had tenants, they charged them accordingly. That was the case of Scotshall, who paid

¹ *Ibid.*, fols 112–114, 126–131.

² *Ibid.*, 113–14.

³ *Ibid.*, fol. 122.

⁴ SA, SA4/2255, ‘Gifford’s Rental of Shetland: Transcript and Index’, fol. 9.

⁵ NAS, RH4/102, ‘Rental of Lordship of Shetland’.

“per him selfe and tenents”.¹ In his “What is a scattald?”,² Brian Smith explains that in the 16th and early 17th century “it’s likely, although there isn’t a great deal of information on the subject, that the inhabitants of a scattald paid their scat collectively”.³ In the rentals of c. 1500 and 1628,⁴ the total payment was paid per area and not by individuals but such collective payments fell into disuse and in the rental of 1716, even if the total sum was computed by scattald, the payments were made by individuals.⁵ However in the same rental we learn that in the scattald of Quarff, Nicol Anderson in Easter Quarff, Thomas Malcomson in Westerquarff and John Smith in Mewhouse still paid their scat “for [them] self & [their] neighbors”.⁶

In Robert Sinclair of Quendale’s judicial rental, land-rent and corn-teind were organised based on townships or rooms and probably, originally, on the quality of their arable land. The room of Lie overblown with sand paid only £1 12s./mk of land-rent when the room of Bakkasetter, a fertile area, paid £4 4s./mk of land, both rooms in Dunrossness.⁷ Similarly, in Aithsetter tenants paid a corn-teind of 10s. Scots/mk of land when in Blosta they paid 16s./mk of land, both rooms in Cunningsburgh, lying at less than a kilometre of distance.⁸ Eventually, the casual teinds were organised on a parish base: all the parishioners were in theory liable to the same teind if they possessed the same number of cows, sheep or shares in a boat. The situation of each individual, at the exception of those excluded from paying taxes such as Quendale’s ground officer, didn’t count in assessing the tax. Taxes and land-rent were based on the tenanted lands and their location, i.e. their parish, their scattald and their township. Did that mean that tenants could pay their tax collectively? Tenants didn’t pay collectively *per se*, they all had a certain amount of land-rent, scat or teinds to pay to their landowner. Nevertheless, they knew what each other had to pay and the moment of payment, even though it was an individual action, was a neighbourly and collective moment. In 1747 when tenants reflected on what they had to pay to Robert Sinclair of Quendale, several of them described the collective moment of payment of their taxes and expressed their knowledge of their neighbours’ taxes. Tenants knew of their neighbours’ taxes because they lived nearby. Indeed, George Mouat in Levenwick explained how as a “door neighbour [...] [he] [had] had occasion

¹ SA, SA4/2255, ‘Gifford’s Rental of Shetland: Transcript and Index’, fol. 4.

² Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’; Brian Smith, ‘What Is a Scattald?’, in *Toons and Tenants, Settlement and Society in Shetland 1299-1899* (Lerwick: Shetland Times Ltd, 2000), 37–63.

³ Smith, ‘What Is a Scattald?’, 39; Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 102.

⁴ NAS, GD1/336/1, ‘Skat Book of Zetland’ ca 1500; NAS, E41/7, ‘Rental of Shetland’ 1628.

⁵ Smith, ‘What Is a Scattald?’, 39.

⁶ SA, SA4/2255, ‘Gifford’s Rental of Shetland: Transcript and Index’, fol. 21; Smith, ‘What Is a Scattald?’, 39; Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 102.

⁷ NAS, CS96/3272, ‘Robert Sinclair of Quendale’s Judicial Rental’, fols 112–114, 98–99.

⁸ *Ibid.*, fols 9–12.

often to hear his [neighbour] payment” and Thomas Gilbertson in Scousburgh stated that as “he [was] in the neighbourhood and [had] heard that such were his [neighbour] payments”.¹ Tenants could hear their neighbours and they could see them. Laurence Smith in Sandwick explained how “he was many years ago a tennent in that Room [Houlland] & [had] seen them pay their rents to their Master”.² Others, due to their employments, witnessed the proceedings. John Burgar, Quendale’s ground officer in Hillwell, explained how “his employment [had] led him to see the tennents Count with their Masters” and Andrew Harper in Skelberry, “servant to both Andrew and James Forbes for several years”, “[had] witnessed their accounting with Quendal and seen them pay their rents”.³ Eventually, if someone was in the incapacity to pay his or her rent, solidarity between neighbours was activated. In Levenwick, Robert Mouat, aged 72, “carried Gavin Gadie rent to Quendale at the same time that he counted with him himself, Gavin having been for some time confined to a sick bed”.⁴ Gavin Gadie lived in Clumlie which meant that on his way to Quendale’s, Robert Mouat stopped in Clumlie and collected the rent for Gavin Gadie to give to his landowner.⁵ Tax payment wasn’t done behind closed doors: it wasn’t a private thing. It was shared between the members of a local community and most precisely between the inhabitants of a township or of interweaving townships when arable lands were cultivated by tenants in interwoven or nearby townships.

If tenants knew what their neighbours paid and the amount of land they cultivated, it’s possible that they were able to identify their position within the social stratigraphy of a room, a scattald and even a parish. They could compare the amount of their land-rent, scat and teinds with their neighbours and position themselves on a land-based or tax-based social ladder. They knew if they belonged to the group of outsetters or if they belonged to those who had less or more than 6 mk of land to live on. In the rental of 1772, William Balfour explained that “in this Island 6 merks of land is the least that will do”,⁶ if the man or men of the household fished in the summer obviously. Robert Sinclair of Quendale’s judicial rental offers the possibility to assess the proportion of these three groups of tenants in the united parishes of Dunrossness, Sandwick and Cunningsburgh in 1747.

¹ Ibid., fols 67–68, 76.

² Ibid., 42.

³ Ibid., fols 122, 145–146.

⁴ Ibid., fols 62–63.

⁵ Ibid., fols 83, 62–63.

⁶ NAS, RH4/102, ‘Rental of Lordship of Shetland’, fol. 49. I want to thank Brian Smith for having pointed that out to me: Brian Smith, ‘RE: Taxes and Social Hierarchy’, 23 June 2015.

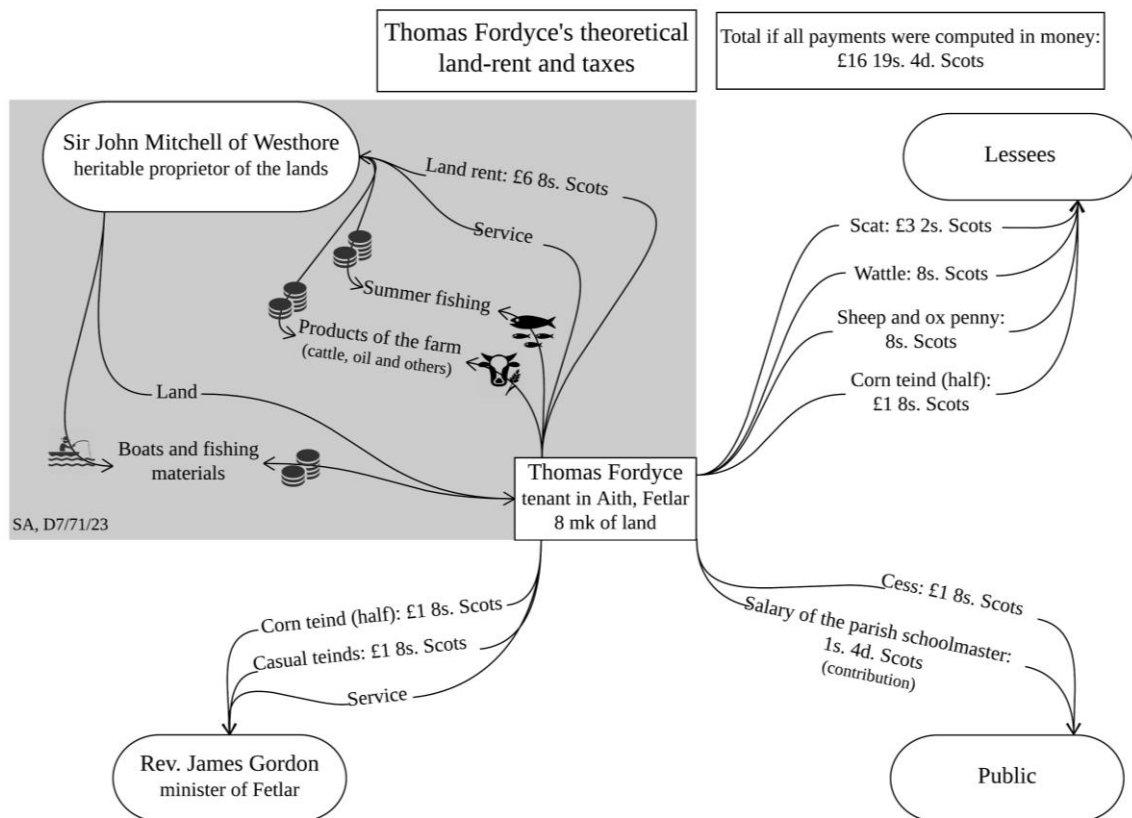
Those who lived in the southern parishes of Shetland in the 18th century belonged mostly to tenants' families. Lairds, mini-lairds or udallers' families amounted to only 14% of those who lived in the parishes. However, great disparities existed among tenants. 70% of tenants' families lived on less than 6 mk of arable land. In William Balfour's opinion, having less than 6 mk of land made it almost impossible to escape debt-bondage. With these small farms, men were "2 or £300 often more, in debt to their landlords & to continue so all their lives", most importantly, "the consequence [was] now considered by the most intelligent people of the Country, simply as an exchange of a wealthy or substantial peasantry for perhaps a greater number of beggars."¹ Living on less than 6 mk land was extremely difficult: it meant that meal should be purchased when the food gap needed to be bridged. Buying meal meant that these tenants had to find resources anywhere they could: all the members of the family were engaged in multi-tasking lives. For the other 21% of tenants, who tenanted 6 mk of land or more, they might have had more stability in their life and experienced less variable food situations but they still had to develop strategies to bring a more or less regular cash flow and keep on with these approaches. The 'theoretical example' of Thomas Fordyce is a good example. The following figure is based on the data provided by the fishing tenure contract signed by Sir John Mitchell of Westshore and Thomas Fordyce in 1774 as well as on the data provided by various sources which indicate the average amount of taxes or "publick burdens" that a tenant should pay.² This figure highlights the diversity of taxes paid by one Shetland tenant in the 1770s and the monopoly of the landowner on his tenant's production. William Balfour, again, explained that

If by unsuccessful fishing or bad crops, [a tenant] contracted debt it was nothing to him, for he had nothing to lose. If he was an able man and could pull an oar, he knew the value set upon him by the Heretor to whom the whole profits of the fishing generally accrue, would induce him to supply his wants rather than want his fishing [...].³

¹ NAS, RH4/102, 'Rental of Lordship of Shetland', fol. 54; Smith, "'Lairds" and "Improvement" in 17th and 18th Century Shetland', 15–16.

² SA, D7/71/23, 'Contract between Sir John Mitchell of Westshore and Thomas Fordyce, Tenant in Grutton, Whereby Mitchell Sets to Fordyce 8 Merks Land in Aith in Fetlar, and Fordyce Agrees to Fit out a Share of a Six-Oared Boat for the Ling Fishing'; Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 94–95; NAS, CS96/3272, 'Robert Sinclair of Quendale's Judicial Rental'; SA, D24/7a/34, 'Memorial for Rev. William Jack in Process of Augmentation of Teinds' c 1794; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809; Wills, 'Appendix 3. An Extract from Thomas Mouat's "Vade Mecum" notebook Describing the Various Payments from Lands in Shetland (1777-1814)'.

³ NAS, RH4/102, 'Rental of Lordship of Shetland', fol. 54; Smith, "'Lairds" and "Improvement" in 17th and 18th Century Shetland', 15.



Edmondston, Arthur. *A View of the Ancient and Present State of the Zetland Islands; Including Their Civil, Political, and Natural History; Antiquities and an Account of Their Agriculture, Fisheries, Commerce, and the State of Society and Manners*. Vol. 1. 2 vols. Edinburgh: John Ballantyne and Co., 1809.

NAS, CS96/3272. 'Robert Sinclair of Quendale's Judicial Rental', 1747.

SA, D7/71/23. 'Contract between Sir John Mitchell of Westshore and Thomas Fordyce, Tenant in Grutton, Whereby Mitchell Sets to Fordyce 8 Merks Land in Aith in Fetlar, and Fordyce Agrees to Fit out a Share of a Six-Oared Boat for the Ling Fishing', 1774.

SA, SA4/2255. 'Gifford's Rental of Shetland: Transcript and Index', 1716.

Shirreff, John. *General View of the Agriculture of the Shetland Islands with Observations of the Means of Their Improvement*. Edinburgh: Archibald Constable and Co., 1814, 26-33.

Wills, Jonathan. 'Of Laird and Tenant: A Study of the Social and Economic Geography of Shetland in the Eighteenth and Early Nineteenth Centuries, Based on the Garth and Gardie Estate Manuscripts.' University of Edinburgh, 1975.

Figure 5: Land-rent and taxes: Thomas Fordyce, 1774

Some large tenants, who had more than 10 mk of land (about 2% of the tenants' group), could be considered either as going up or down: they could be large tenants engaged in other commercial activities such as James Forbes, shipmaster in Dunrossness,¹ they could also be factors or tacksmen of an estate engaged in commercial activities as well,² or they could be mini-lairds 'downgrading' to the status of tenants. Jonathan Wills described these mini-lairds as men "who might own 50 or 100 merks of land, but we often find that these were men who were either on their way up the social pyramid, expanding their small estates, or the heirs of bankrupt erstwhile lairds, selling their land under pressure to settle with creditors", while the lairds "who were nearly always merchant lairds as well, were a clearly identifiable class,

¹ NAS, CS96/3272, 'Robert Sinclair of Quendale's Judicial Rental', 88–89.

² Wills, 'Of Laird and Tenant', 109.

mostly owning 200 or more merks of land”.¹ The category of the udallers is a bit more difficult to describe. Jonathan Wills explained that by 1800 “very few of [the udallers] owned more than 20 merks of land”.² It was a complex category because it wasn’t monolithic: there could be udallers who were owners-occupiers only or who were owners-occupiers and let out some of their lands to tenants or eventually who were owners-occupiers and tenanted some land from another owner. In Quendale’s rental the udallers possessed an average of 7.42 mk of land (median: 7.99 mk) and the udallers-tenants an average of 7.57 mk of land (median: 6 mk) when the tenants owned an average of 4.34 mk of land (median: 4 mk). This shows that even if they were less numerous than centuries before, udallers still had a specific place in the social ladder, with more than half of them owing more than 6 mk of land. James Halcrow, one of the Halcrows of Cunningsburgh,³ owned 14 mk of land in his own name, rented 4 mk of land from Sumburgh, all this in Claphoull, and possessed another 3 mk of land in the same township that he rented to Patrick Tulloch.⁴

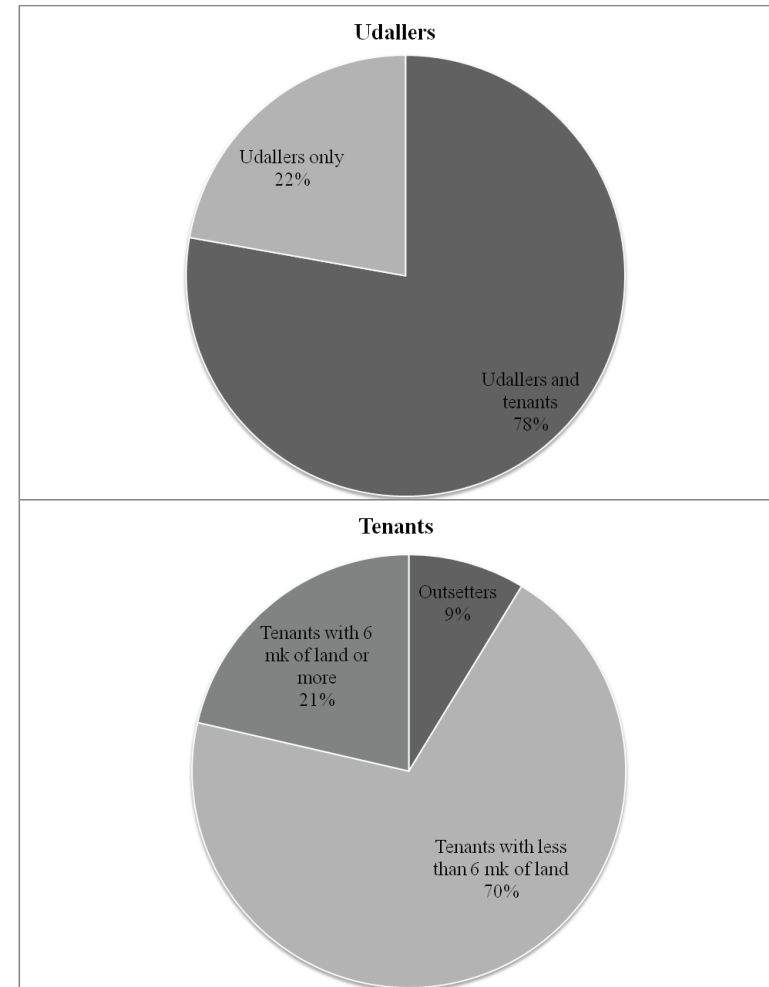
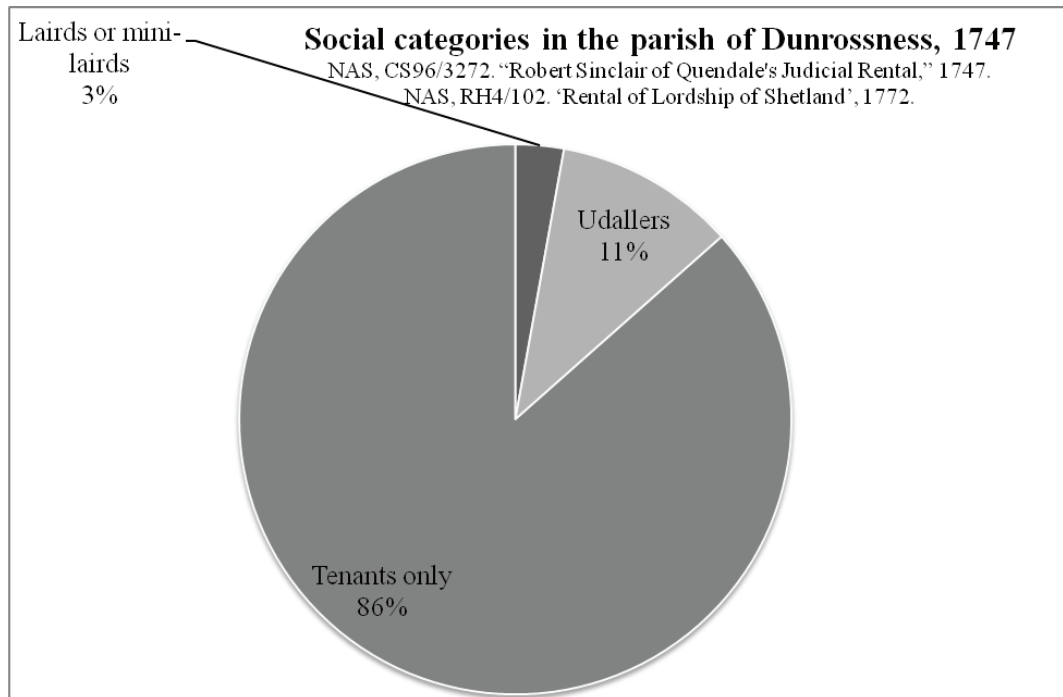
Dunrossness’ social repartition might be extended to the rest of Shetland, on three conditions only: 1) to see these figures only as approximates of a complex and always evolving situation, 2) to assess downward the number of udallers’ families in the other parishes – the Halcrows of Cunningsburgh tend to swell the numbers and 3) to consider that the landless and the subtenants don’t appear in this stratigraphy.

¹ Ibid., 108.

² Ibid.

³ Smith, “‘Lairds’ and ‘Improvement’ in 17th and 18th Century Shetland”, 13.

⁴ NAS, CS96/3272, ‘Robert Sinclair of Quendale’s Judicial Rental’, fol. 26 and 28.



NAS, CS96/3272. 'Robert Sinclair of Quendale's Judicial Rental', 1747.

NAS, RH4/102. 'Rental of Lordship of Shetland', 1772, fol. 49.

Graph 9: Land ownership and tenancy: Social categories in the parish of Dunrossness, 1747

Was Shetland that different from the rest of Scotland in terms of land ownership and tenancy? Early modern Scotland, including Shetland, was a land of diversity: from the Lowlands to the Highlands and the Northern Isles, the ways in which the land was held were multiple. The Highlands knew the clan system, the Lowlands the feudal system and the Northern Isles were udal but this schematic division is also too restrictive. If we look at more specific points, I've already wrote that in the Lowlands, written leases considerably increased from the end of the 17th century to become "virtually universal" in the first half of the 18th century.¹ This wasn't, however, the case in the Highlands.²

Fishing tenures, farming to halves and steelbow tacks were all examples of sharecropping in Shetland. On mainland Scotland, Robert Dodgshon has studied steelbow tacks and "thirders and teinders" in 18th-century Scotland.³ He has proven, explain Elizabeth Griffiths and Mark Overton,

how sharefarming was used at opposite ends of the economic and social spectrum. In the Highlands and Islands, deplorable [sic] conditions required landowners to behave paternalistically and look after their tenants and crofters. While in the improving Lowlands, it enabled landowners to exploit an increasing profitable grain market. In this way, steelbow provided security to impoverished rural communities and at the same time formed a bridge to a fully capitalist agriculture.⁴

Christopher Smout, in his famous *A History of the Scottish People, 1560-1830*, details how

[m]any peasants, especially in the Highlands and the west held by 'steelbow' tenure, by which the landlord himself provided stock and seed with the land in the same way as the 'metayer' system of France. This was not necessarily more benevolent or advantageous to the tenant than other tenures, but it did provide an incoming peasant with the working capital to start husbandry. [...] The whole relationship was essentially paternal [...].⁵

In Shetland in the end of the 18th century, steelbow was used as a capitalist tool but not for the grain market, for the fish market; the fishing tenures didn't contribute to "look after" the islands' tenants but could definitely be seen as a paternalistic approach to land tenure where the landlords settled their tenants, providing them "with houses, biggings, yards, outside, inside", providing "boats and other fishing materials at the current price for the time",⁶ but

¹ Devine, *The Transformation of Rural Scotland*, 21.

² T.M. Devine, 'The Highland and Lowland Clearances', in *Clearance and Improvement: Land, Power and People in Scotland, 1700-1900* (Edinburgh: John Donald Publishers Ltd., 2006), 102.

³ Robert A. Dodgshon, *Land and Society in Early Scotland* (Oxford: Oxford University Press, 1982), 245–46.

⁴ Griffiths and Overton, *Farming to Halves*, 42–43.

⁵ Smout, *A History of the Scottish People, 1560-1830*, 131–32.

⁶ SA, D7/71/23, 'Contract between Sir John Mitchell of Westshore and Thomas Fordyce, Tenant in Grutton, Whereby Mitchell Sets to Fordyce 8 Merks Land in Aith in Fetlar, and Fordyce Agrees to Fit out a Share of a Six-Oared Boat for the Ling Fishing'; Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 94–95.

most importantly, buying their summer fishing and farm products at a low price and keeping them in a debt-bondage relationship.¹

In terms of taxes and land-rent, mainland Scotland didn't know the scat. The land-rent, however, was progressively commuted from kind to money which was also the case in Shetland.² Services progressively disappeared as well.³ Teinds were also exacted in kind the rest of Scotland. James R. Coull explains that “[t]here were various places in which teind payments on fish, which had originated before the Reformation, were still being collected by tacksmen”.⁴

Working together on land, on the shore and on sea

Townlands

Infield-outfield and ‘house’-run-rig

The history of run-rig in Scotland and in the Northern Isles has been extremely well studied by two scholars, respectively Robert A. Dodgshon and William P. L. Thomson. William P. L. Thomson has written a conclusive paper on the history of run-rig in Shetland and its evolution throughout the 18th and 19th centuries.⁵ What I want to highlight here is the situation of run-rig before 1750 in Shetland with its farm structure.

The arable land was organised in Shetland as in the rest of Scotland. It was divided between outfield and infield within the borders of a township; the township stood either as a single unit or was separated between ‘houses’ or farms within which the tenant-holdings were organised in run-rig or field-strips. By the end of the 18th centuries the respondents of the Old Statistical Account differentiated two types of arable land in the townland: the infield and the outfield.⁶ On the maps of division of the arable land of the 1820s the same distinction was made.⁷ This distinction was “one of quality and method of cultivation rather than one of position.”⁸

¹ Smith, ‘Rents from the Sea’; Smith, “‘Lairds” and “Improvement” in 17th and 18th Century Shetland’.

² Devine, *The Transformation of Rural Scotland*, 23.

³ *Ibid.*, 22.

⁴ Coull, ‘Fishery Development in Scotland in the Eighteenth Century’, 13–14.

⁵ William P. L. Thomson, ‘Township, “House” and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland’, in *The Shaping of Shetland*, ed. Val Turner (Lerwick: The Shetland Times Ltd., 1998), 107–27.

⁶ See for example: Barclay, ‘United Parishes of Aithsting and Sandsting’, 585–86.

⁷ SA, SA6/18, ‘Manuscript Plan of the Room and Lands of Funzie, Island of Fetlar’ 1829; William P. L. Thomson, ‘Funzie, Fetlar: A Shetland Run-rig Township in the Nineteenth Century’, *Scottish Geographical Magazine* 86, no. 3 (1 December 1970): 170–85.

⁸ Thomson, ‘Funzie, Fetlar’, 177.

William P. L. Thomson explains that the terms were “generally used at this period, but is doubtful if they were originally used in either Orkney or Shetland.”¹ The use of the British terms might have only served to describe a practical situation which had been established some time before but which hadn’t been baptised or named. The improvers who used for this system the terms of infield-outfield might have only been trying to make Shetland’s system fit in their categories. Establishing a date from which such a distinction operated in Shetland isn’t an easy task and it requires its own investigation. In ‘The Nature and Development of Infield-Outfield in Scotland’ Robert A. Dodgshon argues that the notion which attributes to the infield-outfield system “an early origin” comes from the idea that it was “a primitive system of farming”.² However he reminds the reader that

not only are still very dependent on eighteenth-century evidence, but more important, the bulk of this evidence has largely been drawn from the descriptions of late eighteenth-century writers, many of whom, in attempt to emphasize the virtues of the new at the expense of the old, dealt with the system in what can only be described as a highly critical and condemnatory fashion.³

The first evidence of an infield-outfield system in mainland Scotland, comparable to what was described by the writers of the 18th century, dates from the late 15th century. Robert A. Dodgshon proposes the 15th century has the period of development of the outfield of proprietary run-rig touns – touns where the arable land of different owners lied intermixed.⁴

In Shetland, similarly with mainland Scotland, the infield and outfield arable patches were divided in strips of land called run-rig. It is known in Shetland as *rigga rendal*, *rig and rendal* or *rig about*.⁵ At the end of the 18th century, the minister of Dunrossness, Sandwick and Cunningsburgh, John Mill, described the the field-system of Shetland. He wrote that the “small farms [were] parcelled out in discontinuous plots and run-rigg, termed here *rigg* and *rendal*.”⁶ He had already described such a system in 1775 when he explained that “[i]n November [he] obtained a life-rent tack of Sumburgh’s ten marks land in Skelberry, which lies Rigg and Rendal, (as called) with my glebelands”.⁷ About forty years before that, the minister of the parish of Unst, John Hay complained to the bailie court that swine had destroyed his lands, and particularly “ane ridge called the Cud dale [...], the Qalt ridge [...], the Little Skeof[ir]th [...], the kirk ridge [and] the Strugga”.⁸ To identify the ridges, owners

¹ Ibid.

² Robert A. Dodgshon, ‘The Nature and Development of Infield-Outfield in Scotland’, *Transactions of the Institute of British Geographers*, no. 59 (1 July 1973): 1.

³ Ibid.

⁴ Ibid., 15.

⁵ Thomson, ‘Funzie, Fetlar’, 170.

⁶ Mill, ‘Parish of Dunrossness in Zetland’, 398.

⁷ Mill, *The Diary of the Rev. John Mill*, 45.

⁸ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 12.

and neighbours gave the names. Alexander Fenton suggests that “some of the names point to rigs of particular kinds.”¹ He gives the example of ridges’ names based on the Norwegian dialectal, *spjell*, a strip of ground and of names based on *dall*, *deld* or *dale*, a share, a portion, in Old Norse (*deild*) and in Scots (from Old English *dāl* or *dǣl*), thus the name “Cud dale”.² In the beginning of the century, John Brand wrote of the “few ridges” near the coast that Shetland’s farmers laboured.³

In the first half of the 18th century, “the township”, explains William P. L. Thomson, “can be envisaged as a confederation of ‘houses’, bound together by an encircling hill dyke and united by shared interests in unevenly distributed resources such as arable land, grass and meadow hay.”⁴ These ‘houses’ or farms “might be each occupied by a single tenant, but they were often divided into two, three or more quite distinct tenant holdings.”⁵ The township was therefore divided between farms and this internal division was marked in the landscape by the fact that structures such as *punds*, *garths* and inner dykes were associated to one specific farm.⁶

In one farm, tenants shared portions of arable land which lied intermixed together but only at the scale of the farm. The run-rig system was therefore a ‘house’ run-rig and not a ‘whole township run-rig’. The example of the farm of Graven in the township of Laxobigging, Delting, though from the early 19th century is a good example of the possible state of run-rig in the first half of the 18th century.

¹ Fenton, *The Northern Isles*, 44.

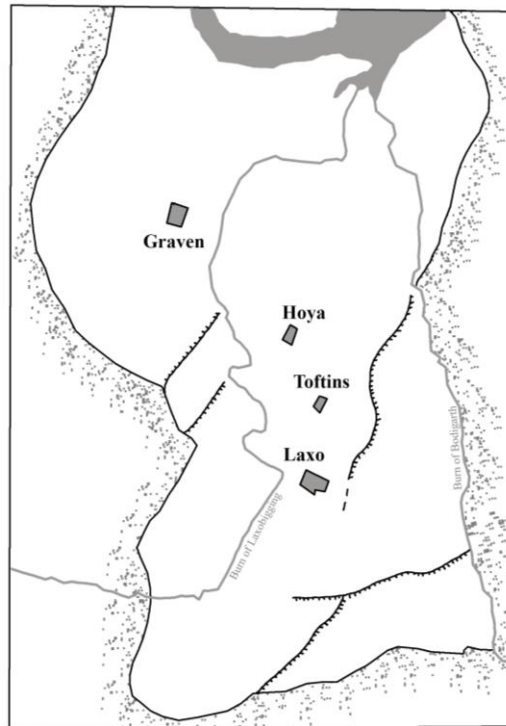
² *Ibid.*, 44–45; NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fōl. 11.

³ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 769.

⁴ Thomson, ‘Township, “House” and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland’, 107.

⁵ *Ibid.*

⁶ *Ibid.*

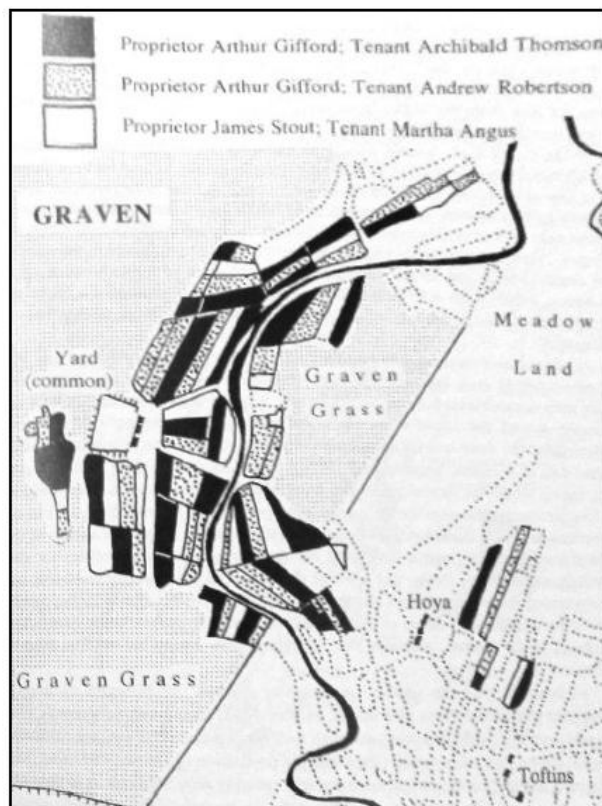


Laxobigging

Old dyke

Thomson, William P. L. 'Township, "House" and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland'. In *The Shaping of Shetland*, edited by Val Turner, 107–27. Lerwick: The Shetland Times Ltd., 1998, 111.

Map 22: Townlands: plan of the township of Laxobigging



Thomson, William P. L. 'Township, "House" and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland'. In *The Shaping of Shetland*, edited by Val Turner, 107–27. Lerwick: The Shetland Times Ltd., 1998, 121.

Map 23: Townlands: plan of the 'house' of Graven, Laxobigging

Three tenants rented out the 18-merk land of the farm of Graven: Martha Angus rented 4 merks and Andrew Robertson and Archibald Thomson, each 7 merks.¹ It shouldn't be forgotten here that merks of land didn't represent an area of land they were a value, a proportionate share of the arable land.² If one tenant rented out 10 mk in a township of 100 mk he or she should receive 10% of arable land. William P. L. Thomson argues that "Graven was remarkably close to achieving the run-rig ideal that shares should take into account both the area and the quality of land."³ He further details that

the tenants received almost exactly 0.7 acres of arable land for each merk they possessed, and the arable land of all three tenants was in the proportion 46% infield to 54% outfield. In contrast to this exact division two large tracts of very poor grassland within the hill dykes were held pro indivisio (in common) between them.⁴

These tenants rented their land from two different heritors: James Stout owned the 4 mk of land rented out by Martha Angus and Arthur Gifford the 14 other merks rented out by Andrew Robertson and Archibald Thomson. However the lairds were for nothing in the translation of the merks into run-rig. This had been done by the tenants or their predecessors. William P. L. Thomson states that "[t]he lairds' concern was rent; land was the business of the tenants."⁵ The arable land of Graven lied in proprietary run-rig, a common feature for the 'fragmented estates' of Shetland.⁶

What was at the heart of this repartition of the arable land and meadows was the idea of equality in the repartition of land of different quality, arable but also meadow and grass. In the case of Graven the meadow land weren't divided but held in common but in other 'houses', joint use or rotations of units could exist.⁷ Co-operation was also a cornerstone of the run-rig system within 'houses' – but also within township. At Graven the three tenants "co-operated for hay-making, and divided the crop in the field."⁸ This wasn't, however, a communal farm. William P. L. Thomson argues that "run-rig achieved a precise definition of each tenant's entitlement as an individual;" each tenant knew precisely where his or her ridges and what proportion of the meadow land and grass he or she held.⁹ This "clear understanding," explains William P. L. Thomson, "was the best guarantee of the 'good neighbourhood' which living

¹ Ibid., 110.

² Fenton, *The Northern Isles*, 45.

³ Thomson, 'Township, "House" and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland', 110.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Fenton, *The Northern Isles*, 47.

⁸ Thomson, 'Township, "House" and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland', 112.

⁹ Ibid.

and working in close proximity required.”¹ I agree with William O. L. Thomson and argue that the Country Acts of Shetland in their formulation were a reminder of the role of each person as individual in maintaining ‘good neighbourhood’. The penalties provided by the by-laws were individual; there was no communal penalty for an individual’s offense. It’s unclear however if when a structure was owned in common such as a bridge, a *pund* or a corn yard, the penalty provided by the Country Act was divided between the number of defenders or requested for each defender.² At Graven the yard was held in common; the tenants lived in a single row of houses behind which the yard was located. Most of the times, it seems, yards weren’t shared between tenants. They belonged to the *townmail* or *toonmels* which at the end of the 18th century “consisted of the house, yard, kailyard and some adjacent land” before that, in 17th-century Orkney, the word applied to individually-owned patches of arable land close to the farmer’s house.³ I suggest that in 18th-century Shetland, townmails could consist of both the grass outside the house where tethered animals could graze and the enclosed cultivated areas near the house such as the kailyard. Therefore townmails were both grass and arable land owned individually outside the run-rig system.⁴ The farm of Graven also possessed a *pund*, the “Pund of Graven”. *Punds* were enclosures which usually served to impound the animals but they could also be used after a while as intermittent cropping enclosures.⁵ However there was no *garth* at Graven; “*garths* were much bigger than *punds* and consisted of large tracts of rough grassland running out to the hill.”⁶ Inner dykes which separated pasture areas within the township dyke from arable land could also be built but no traces of them is found at Graven.⁷

Productions: grains and techniques

The respondents of the Old Statistical Accounts of Shetland gave a pretty detailed account of the production of grain in Shetland in the late 18th century. Information on varieties, manure and rotation can be gathered from these sources. Earlier sources also exist. At the beginning of the 18th century, John Brand and Thomas Gifford both noted that barley and oats were

¹ Ibid.

² ‘The Old Country Acts’; NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’ n.d.; NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’.

³ Thomson, ‘Funzie, Fetlar’, 174; Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 32.

⁴ Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 32; Thomson, ‘Funzie, Fetlar’, 174.

⁵ Thomson, ‘Township, “House” and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland’, 120.

⁶ Ibid.

⁷ Ibid., 122.

grown in Shetland.¹ The type of barley grown in Shetland was known as bere or *bigg*; it is a six-row barley. The oats was probably black or grey oats.² Bere was the primary crop. According to John Brand, they took their barley “to be the best grain, it agreeing better with the ground than oats.”³ John Brand and Thomas Gifford agreed upon the fact that Shetland’s grain production didn’t satisfy the yearly needs of the archipelago. There were some districts where the arable land was better in quality and quantity;⁴ Dunrossness, the area of Scalloway, Ustness, some places on the isle of Unst had “some pleasant spots in [them] well furnished with grass and corn”.⁵ Because the production in Shetland wasn’t sufficient to feed the inhabitants during the whole year, barley was imported from Orkney (and Scotland) either in the form of meal and malt or as seeds before the sowing season.⁶ John Brand gave us some indications of the possible yields for grain in Sheland – he didn’t specify if he spoke about bere or oats, my guess would be that it was more probably bere since it was the main crop. He wrote that “some years they will have twenty-fold of increase, but this is rarer, for at other times, in several places, they will scarce have the double of their seed.”⁷ Commentators of the Highland and Hebridean farming mentioned the existence of “exceptional local yields of over 10x.”⁸ John Brand’s yields for bere of 20x seems vaguely exaggerated even if it was in the best areas. Yields of 2x were probably more frequent.⁹ Shetland’s yields weren’t sufficient to feed the inhabitants. Furthermore, Shetland’s climate often ruined or diminished dramatically a harvest such as “in 1740, a year in which there was a smallpox epidemic and which also had a long and particularly severe winter.”¹⁰

In order to keep yields as high as possible Shetland’s arable land were manured. John Brand explained that Shetlanders manured the “corn land about their houses”.¹¹ Does-it mean that arable land which stood further away from their house didn’t receive manure or that the distinction between infield and outfield wasn’t operative at this date? The question is raised

¹ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 770; Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 24.

² Fenton, *The Northern Isles*, 335.

³ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 770.

⁴ Dunrossness: Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 3.

⁵ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 769–70.

⁶ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 24; Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 770.

⁷ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 770.

⁸ Robert A. Dodgshon, *From Chiefs to Landlords: Social and Economic Change in the Western Highlands and Islands, c. 1493-1820* (Edinburgh: Edinburgh University Press, 1998), 221.

⁹ For Orkney, see: Fenton, *The Northern Isles*, 334.

¹⁰ William P.L. Thomson, ‘Population and Depopulation’, in *Shetland and the Outside World 1469-1969*, ed. Donald Withrington, Aberdeen University Studies, no. 1 (Oxford: Oxford University Press for University of Aberdeen, 1983), 157.

¹¹ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 769.

but I won't propose an answer here. The arable land, at least a part of it, was manured in the early 18th century. Sources from the end of the century help us understand the condition in which both rotation and manuring happened.¹ At the end of the century, “[t]he main outfield crop”, explains Alexander Fenton, “was black oats” and “[a]s a rule [...] the outfield oats got no manure.”² There were some exceptions but when outfield received manure “it was of a weaker quality than that applied to the infield.”³ On the infield, bere was the main crop. It alternated with oats with no regular rhythm: “the manure always preceding the bere crop” and “[i]f manure was plentiful two crops of bere might be taken before one of oats.”⁴

According to the Country Acts, labouring started in April that's when the hill dykes were supposed to be “sufficiently built [...] so as all cattle may be kept without decks from the time that the labouring begins”.⁵ Sowing must have happened around the first of May, since the 6th act also stated that

whatsoever person shall wilfully allow their cattle to tread upon their neighbours ploughed land and meadows, *before the first of May*, shall pay for each swine ten shillings, for each sheep two shillings, for each horse, mare, or colt six shillings; *doubling the said pains after the first of May*, besides payment of the damages [...].⁶ [my italics]

By the end of the century oats were sown from mid-March to April and bere from late April to May. The harvesting took place in September and October.⁷ About a hundred years earlier, John Brand stated that the harvest in Shetland was “much later” than in the rest of Scotland, “for they judge it very early if they get their corns in against the middle of October”.⁸

The harvest was a collective moment. Alexander Fenton explains that “[t]he need to get the ripe crop cut and stoked quickly meant that many more people were needed at this most intensive period of the farming year.”⁹ At Graven the tenants divided the crop in the field together. Sources from the 19th and 20th century attest of celebrations at the end of harvest with food being exchanged but at the exception of Martin Martin who in 1695 explained that in Orkney “there is one day in Harvest on which the Vulgar abstain from Work, because of an Ancient and foolish Tradition, that if they do their Work, the ridges will bleed”,¹⁰ there is no

¹ Barclay, ‘United Parishes of Aithsting and Sandsting’, 585–87; Sands, ‘Parish of Tingwall’, 276–77.

² Fenton, *The Northern Isles*, 282.

³ *Ibid.*

⁴ *Ibid.*, 283.

⁵ ‘The Old Country Acts’, 81 act 6.

⁶ *Ibid.* act 6.

⁷ Fenton, *The Northern Isles*, 335.

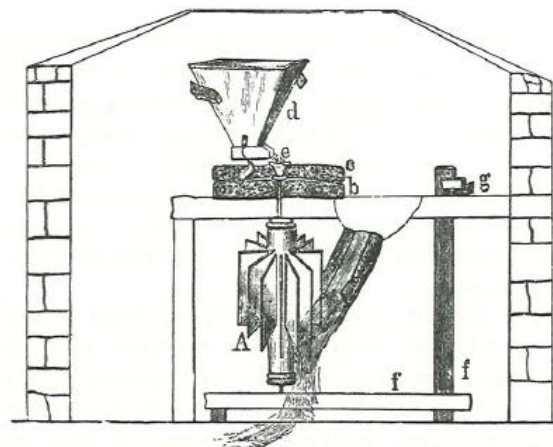
⁸ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 770.

⁹ Fenton, *The Northern Isles*, 338.

¹⁰ *Ibid.*; Martin Martin, *A Description of the Western Islands of Scotland [...] To Which Is Added a Brief Description of the Isles of Orkney, and Schetland, 1695* (London: Andrew Bell, 1703), 367–68.

trace of such celebrations in Shetland; such practices might have existed in the 18th century but, to my knowledge, we don't have any references.

Once bere and oats had been threshed and dried they could be ground. In Shetland “hand-mills and water-mills existed happily side by side;” there were no multures’ rights like in Orkney but owners of mill could ask for a payment if someone wished to use their mill.¹ Shetland water-mills were horizontal mills. They were private structures owned individually or collectively. They were built “near small streams in hilly or at least sloping terrain” and were connected to the stream by a system of millrace and sluice gate; sometimes dams were added “to build up the necessary head of water.”² The earliest illustration of a Shetland’s water-mill dates from 1774.³ John Low explained, how in the area of Sound and Gulberwick near Lerwick, “[he] saw the [i.e. his] first Schetland mill for grinding Oats and Bear”.⁴ He was, however, lukewarm with the technology. He stated that it ground grain “in but a clumsy manner, little better than a hand-mill or quern, only it saves hand labour.”⁵



EXPLANATION.

A. The Water Wheel; b. The Under Stone; c. The Upper Stone; d. The Hopper; e. The Shoe, for restraining the corn lest it should run too fast out of the Hopper. To it is fastened a small log of wood which, striking upon the unevennesses of the stone, makes the corn run out; f. f. The Leaver; g. its Wedge.

“It consists of a very simple set of machinery; a small horizontal wheel for the water to play on, the top of its axis runs thro’ the lower and supports the upper stone as in other water-mills; a hopper and shoe with a leaver to level the upper stone completes the apparatus.”

Low, George. ‘Voyage to Schetland’. In *A Tour Through the Islands of Orkney and Schetland: Containing Hints Relative to Their Ancient Modern and Natural History Collected in 1774*, by George Low, 74. Inverness: Melven Press, 1978.

Figure 6: Water-mill: Shetland's earliest illustration, 1774

¹ Fenton, *The Northern Isles*, 389; SA, SC12/6/1741/1, ‘Replies by William Mouat Contra William Hay Concerning Mill and Lands of Norwick, Unst.’

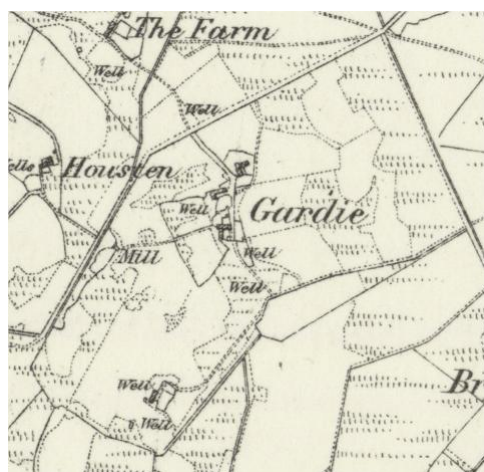
² Fenton, *The Northern Isles*, 396.

³ *Ibid.*, 401.

⁴ Low, ‘Voyage to Schetland’, 74.

⁵ *Ibid.*

Replies and Answers before the Sheriff Court dating from 1741 and 1746 illustrate the manners in which a mill could be built and possessed in the first half of the 18th century.¹ In 1741 William Mouat told the story of how he became possessor of a mill in the ‘house’ of Gardie. In 1732 Thomas Mouat and John Hay had built together the mill on the land of the ‘house’ of Gardie in Haroldswick scattald. The heritor of the land, Magnus Henderson of Gardie, gave them permission to build the mill “on Condition to Satisfy his Tennant for the Ground Occupied by the Miln house, & besides to allow him to Miln his Corns without demanding payment.”² The tenant of Gardie, whose name remains unknown, had therefore to agree with the location of the mill and the right to use it without payment. Tenants from neighbouring farms who wished to do the same had probably to pay Thomas Mouat and John Hay for the use of the mill. When John Hay died in February 1734, Thomas Mouat bought his share to Mrs Hay for the sum of £12 Scots, which was half the value of the mill. As heir of Thomas Mouat, William Mouat owned the mill of Gardie.³



Extract of: Ordnance Survey. ‘Shetland, Sheet II; Surveyed: 1878, Published: 1882’. OS Six-Inch 1st Edition, 1843-1882, 1882.

Canmore, SC463604, RCAHMS, and John R. Hume. *Gardie, Horizontal Mill General View of Mill, 1976*. <https://canmore.org.uk/collection/463604>.

Figure 7: Water-mill: the mill of Gardie

Regarding another mill, the mill of Skea, William Mouat explained in his “Answers contra William Hay” that as far as can be remembered, “as far as the year 1640” the mill was known as the “mill of Skea”, Baliasta scattald.⁴ When this mill was built exactly and by who is unknown but its ownership was contested in the mid-18th century. For the heritors of Skea,

¹ SA, SC12/6/1741/1, ‘Replies by William Mouat Contra William Hay Concerning Mill and Lands of Norwick, Unst.’

² Ibid. bundle 1.

³ Ibid. bundle 1.

⁴ Ibid. bundle 2.

and William Mouat among them, the mill belonged to Skea. He explained that “since the year 1704 to 1746 [it] has been solely repaired & possessed by the Possessors of Skea”.¹ The mill was used by their tenants in Skea. This was contested by William Hay who argued that it belonged to the ‘house’ of Gue. William Mouat’s last argument was that “there is not one single instance in the whole island of Unst, that a Miln is called the Miln of one place and belong to another.”² In early 18-century, Shetland mills, it appears, could be built by private individuals, alone or in partnership with one or more people; they could also be older structures used by farms without a specific knowledge of who had built them. In this situation, the heritors of a place did the up keep and considered the mill as their own. Their tenants didn’t pay for grinding but it is possible that if other tenants wished to grind their bere or oats there they had to pay a fee. The mills were either built within the township’s dyke such as in the case of the mill of Gardie or without such as in the case of the mill of Skea where it was built on the scattald.

At the end of the 18th century, Patrick Barclay, the minister of Aithsting and Sandsting, stated that “every man has his own water-mill or hand-quern, and grinds his own crop.”³ Mills had developed in Shetland since they were quite easy to build “having been perfected for subsistence economies; simple to construct from limited resources, eliminating the need for gearing, and using a minimum of iron.”⁴ Some streams attracted the building of mills because they were located in the most efficient place; they emanated from a loch which was dammed to gain a large quantity of controllable water, for that reason they were often built distant from the farmstead.⁵ On a coloured plan dating from 1764 we see two mills built along the stream between the loch of Asta and Scalloway Voe. When a stream had a sufficient flow, several mills were often built along it.

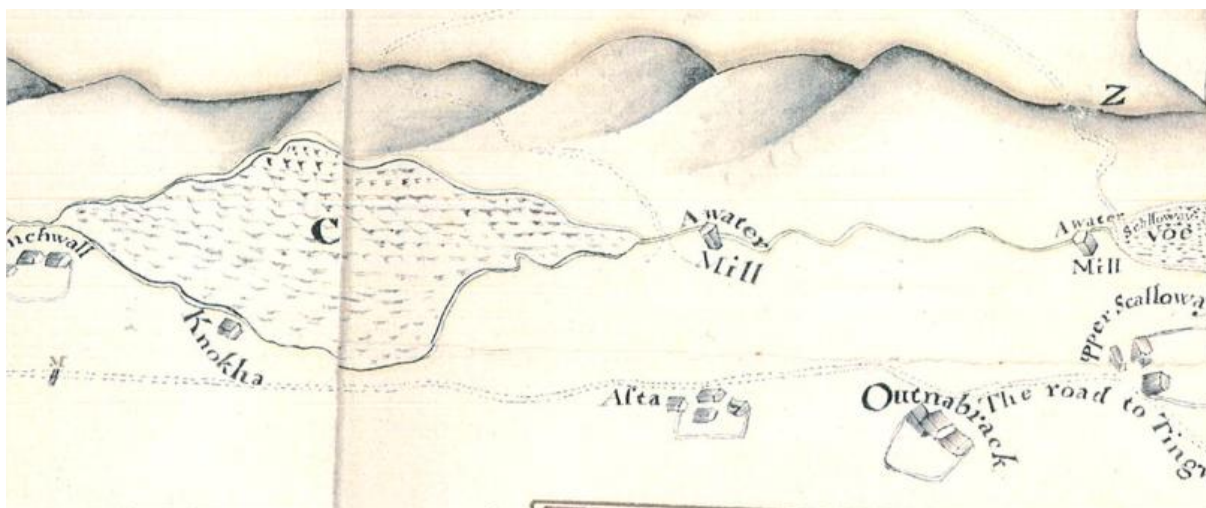
¹ Ibid. bundle 2.

² Ibid. bundle 2.

³ Barclay, ‘United Parishes of Aithsting and Sandsting’, 587; Fenton, *The Northern Isles*, 389.

⁴ Ian Tait, ‘Crop Buildings’, in *Shetland Vernacular Buildings, 1600-1900* (Lerwick: Shetland Times, 2012), 396.

⁵ Ibid., 397.



SA, GD150/2564/50. 'Coloured Plan by William Aberdeen, of the Lochs of Tingwall, Asta', 1764.

Figure 8: Water-mill: mills on the burn of Asta

Shetland and capitalist agriculture

The Shetland Ministers, who criticised openly the poverty brought by the fishing tenures, were, nevertheless, supporters of agricultural 'improvement'. They used the same arguments as those who criticised the "feudal system" on the Scottish mainland.¹ The fishing tenures, like the feudal system, were obstacles to improvement. The Ministers argued that the common fields and practices, the lack of written leases and the inadequate size of the farms prevented anyone from improving the state of agriculture in Shetland. These opinions were shared all over Scotland. Eric J. Hobsbawm, in his article 'Scottish Reformers and Capitalist Agriculture', quotes James Anderson, Scottish agriculturist, who in his *Essays relating to Agricultural Affairs* published in 1796 listed the "obstacles to the advancement of agriculture".² The first one was "Commonable lands" that had to be understood as "common fields and practices".³ The second obstacle was "Commons", here "lands held in common by the community".⁴ Then were listed "Minute divisions of property", "Intermixture of property" and "Mills", after what ten other obstacles were enumerated.⁵ Eric J. Hobsbawm concluded that:

The major reforms necessary were clearly in the field of property rights. What was required was to transform the land into a commodity. This in turn implied (a) the freedom to sell or mortgage land without restraint, and (b) its transformation into property units suitable for bourgeois enterprise,

¹ Eric Hobsbawm, 'Scottish Reformers of the Eighteenth Century and Capitalist Agriculture', in *Peasants in History: Essays in Honour of Daniel Thorner*, ed. Eric Hobsbawm (Bombay: Oxford University Press, 1980), 5.

² James Anderson, *Essays Relating to Agriculture and Rural Affairs*, vol. 3 (Edinburgh: Bell & Bradfute, 1796), 19–20. Quoted in: Hobsbawm, 'Scottish Reformers of the Eighteenth Century and Capitalist Agriculture', 8.

³ Hobsbawm, 'Scottish Reformers of the Eighteenth Century and Capitalist Agriculture', 8.

⁴ Ibid.

⁵ Anderson, *Essays Relating to Agriculture and Rural Affairs*, 3:19–20. Quoted in: Hobsbawm, 'Scottish Reformers of the Eighteenth Century and Capitalist Agriculture', 8.

i.e. disentangling the owner's or lessee's right to dispose of it from the multiplicity of collective or individual obligations in which peasant customs and the 'feudal system' had enmeshed it.¹

By the end of the 18th century, the landowners of Shetland, though concentrated on the maritime part of their estate started to divide, enclose and 'improve' land. New crops and new techniques were adopted in the last decades of the 18th century. I shall give only a short survey of these changes which only started to happen – at the exception of the cultivation of potatoes which were cultivated since the 1750s.

Between 1793 and 1797, six processes before the Sheriff Court mentioned division or enclosure of the commons and common fields (scattalds and run-rig land) which had already happened in different places without any legal process.² Thus in a process of 1793, John Bruce of Catfirth insisted on the fact that Gidon Gifford of Busta had already enclosed lands on the scattald of Olnafirth. He considered that this argument was sufficient to give him the legitimacy to enclose land on the scattald of Schurron that he considered as his property. He added that the opponents of this enclosure were "against the present existing laws in favour of planting, enclosing and improving properties" thus referring to the Act of Parliament of 1695 concerning the division of commonities.³ For each of these processes, the Sheriff or the pursuer proposed to stop these 'illegal' activities until a proper act of division. This method put pressure on the defenders to make them go before the Court of Session or the Sheriff Court to ask for a legal division of these spaces.

In some of these enclosures new could be tested. Already in 1733, potatoes were known in Shetland, but they started to be planted on a larger scale from the 1750s.⁴ Alexander Fenton argues that "[t]he introduction and spread of the potato was a matter of considerable importance in areas where the bere and oat crops were barely enough to last through the season, and where the mainstay of the daily diet had to be dairy products, cabbage and kail, and fish caught at the shore."⁵ At the end of the century, bere and potatoes were the main infield crops. Potatoes were incorporated in rotational sequences with bere and oats.⁶

¹ Hobsbawm, 'Scottish Reformers of the Eighteenth Century and Capitalist Agriculture', 11.

² SA, SC12/6/1793/8, 'Petition (for Enclosing Part of the Undivided Commonity of Schurron in Wiesdale.)' 1793; SA, SC12/6/1797/27, 'Petition for Interdict (Quarrying Stones in Otterswick.)' 1797; SA, SC12/6/1797/43, 'Petition (Concerning Kelp Shores of Hoswick.)'; SA, SC12/6/1793/37, 'Petition (for Building a Hut on the Undivided Commonity of Cuppister.)' 1793; SA, SC12/6/1797/1, 'Petition (Concerning Casting Peats on PGluss Isle.)' 1797.

³ SA, SC12/6/1793/8, 'Petition (for Enclosing Part of the Undivided Commonity of Schurron in Wiesdale.)' bundle 8.

⁴ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 24; Fenton, *The Northern Isles*, 416.

⁵ Fenton, *The Northern Isles*, 416.

⁶ *Ibid.*, 416–17.

In the first years of the 19th century, Patrick Neill observed a technique for the cultivation of potatoes; “[he saw some promising lazy-bed potatoes”].¹ The lazy-bed technique or lazy-bed way was used in mainland Scotland as well as in Shetland in the second half of the 18th century.² Oats could also be cultivated that way. In 1774 John Low explained how Shetlanders proceeded:

They mark out a piece of moss into beds, after the same manner as I have seen them plant Potatoes in Scotland, called the lazy-bed way; they then throw up the moss, earth, sand, &c. from the ditch, and sowing the oats on the stuff thus cast upon it thrives wonderfully.³

This technique was particularly adapted to Shetland as it drained wet soils.⁴ This technique, however, wasn’t accepted by the Shetland Agricultural Society when it granted premiums for the “Cultivation of Green Crops”, the “Breaking of Waste Ground” and the “Improvement of Live Stock”.⁵ Established in 1815, the first aim of the society was “to inquire particularly into the present state of Shetland, into the conditions of its inhabitants, and into the means of its improvement.”⁶ Its second aim was “to take such measures as may seem most effectual for encouraging and promoting Husbandry, in all its branches; for the introduction of useful Trades and Manufactures; for the extension and improvement of the Fisheries; for facilitating the Communication through the various districts of the country; and, finally, for promoting the Industry and Improvement of Shetland in every possible way.”⁷ This program meant that every year premiums were given to farmers who accomplished specific ‘improvement’. The original members were all important landowners in the islands.⁸ The “Rules of the Competition” were clearly established: only tenants and udallers could compete; they should register to compete; “drilled turnips” were preferred to the “broad cast”; and “the ground newly broken out, must have been sufficiently trenched to the depth of at least ten inches.”⁹ This ground “must lye together in straight and equal ridges; lazy beds will not be allowed to compete.”¹⁰ It seems that in the 1810s lazy-beds were already considered as out of fashion and that there were more effective ways to ‘improve’ the arable land of Shetland than with this method.

¹ Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, 74.

² Ronald Miller, ‘Lazy-Bed Cultivation in Scotland’, *Norveg. Tidsskrift for Folkelivsgransking/Journal of Norwegian Ethnology*, no. 13 (1968): 95–96, 103.

³ Low, ‘Voyage to Schetland’, 179.

⁴ Fenton, *The Northern Isles*, 285; Miller, ‘Lazy-Bed Cultivation in Scotland’, 96.

⁵ SA, SA4/3000/11/5/2, ‘First Annual Report of the Committee of the Shetland Society’ 1815, 11–12.

⁶ SA, SA4/3000/11/5/1, ‘Regulations of the Shetland Society, Instituted 3 May 1815’ 1815.

⁷ *Ibid.*

⁸ *Ibid.*, 8.

⁹ SA, SA4/3000/11/5/2, ‘First Annual Report of the Committee of the Shetland Society’, 12.

¹⁰ *Ibid.*

The cultivation of turnips started to appear in landowners' gardens in the middle of the 18th century.¹ The respondents of the Old Statistical Account gave indications on the state of the cultivation of turnips in their parish: in Dunrossness and Fetlar, they were cultivated along other vegetables such as carrots or radishes, probably in gardens, but in the rest of Shetland they seemed to have been quite uncommon in the late 18th century.² The first evidence of field cultivation in Shetland dates from the beginning of the 19th century in Bressay.³ The cultivation of turnips slowly increased in Shetland in the first decades of the 18th century.

New enclosures came with these new crops and new techniques. *Planticrues*, pens in which kail was sown to grow as a strong plant and then transported to the kail-yard. There were plots of arable land newly laboured on the other side of the hill dyke and progressively incorporated to the arable land of the township. Eventually, there were outsets, farms that were newly created and enclosed on the commons by the landowners who wished to settle new tenants with a fishing-contract.⁴

Outlying lands, shores and the sea

“What is a scattald?”⁵ What is a hagi?

In this region of scattered settlements, ‘houses’ with their arable land, meadow and grass land formed the localest, territorial unit of life. They belonged to a township which aggregated these ‘houses’ behind a dyke. At a superior territorial level came the scattalds. Scattalds were an extremely important part of Shetland’s life in the 18th century; they served, among other things, as territorial units of regulation and as territorial units of tax levy but most importantly there were territories of resources. Brian Smith, Shetland’s archivist and historian, wrote two versions of a seminal article on the ‘genealogy’ or ‘archeology’, of the scattalds. In 1984, he published “What is a Scattald? Rural Communities in Shetland, 1400-1900” and in 2000, he published a renewed version simply as “What is a scattald?” in his influential book *Toons and tenants: settlement and society in Shetland, 1299-1899*.⁶ In both versions, he started early on with a long quote from the Lord Napier’s Crofting Commission Parliamentary Papers. The Shetland archivist explained how during Lord Napier’s investigation on the issue of crofting,

¹ Fenton, *The Northern Isles*, 412.

² Ibid.

³ Ibid.

⁴ Susan Knox, *The Making of the Shetland Landscape* (Edinburgh: John Donald Publishers Ltd., 2003), 36–42.

⁵ Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’.

⁶ Ibid.; Smith, ‘What Is a Scattald?’

“Shetlanders had been asking and answering a [...] question: ‘What is a scattald?’”¹ So in 1984 and 2000, Brian Smith gave the floor to John Spence, a school teacher and inspector of Poor in Nesting, and to George Sinclair, a fish-curer and merchant in Ollaberry, who both explained to Lord Napier what the scattalds meant for them in 1883:

Shetland crofters have possessed the right of pasturage on the hills during a period of at least 900 years. Since the days of King Harold Harfagre of Norway, it has been held in lieu of a tax said to have been first imposed by him on the freeholders... in the islands... This tax was called scat, hence the common is called scathold, or holding in lieu of scat.²

[F]rom time immemorial the people have had the use of it, and it has been an understood thing that they were to have the scathold with the croft, because the crofts could not keep their families without the scathold.

[The Chairman] Do they consider they have a firmer right to this scathold than to the arable portion of the land? – Yes, they do, it appears that its name would imply that – a commony for the common people.³

These two quotations provide valuable information on the history of scattalds. The scattald’s origin was Norwegian but the debate on its first acceptance isn’t entirely closed. The word ‘scattald’ was directly connected to the Old Norse word, *skattr*, tax or land-tax.⁴ For some authors, the scat was paid solely on cultivated land.⁵ For others, the ‘scathold’ was the pasturage held in common, *hold*, in return for the payment of the scat.⁶ Brian Smith studied the scatbooks, rentals for the payment of the scat, of c. 1500, 1628 and 1716, and he concluded “that although the scat was levied on arable land, it was nonetheless paid *for the use of* a whole bundle of privileges inside and outside the merely arable part of the township”.⁷ These rentals provided another answer. Even though the very origin of the territorial unit was difficult to pinpoint, the rentals indicated that the scat was paid by a community of townships, grouped together.⁸ The size of these districts varied greatly, not through time, but in space: “the island of Unst, for instance, contained the minute scattald of

¹ Smith, ‘What Is a Scattald?’, 37.

² *Evidence Taken by Her Majesty’s Commissioners of Inquiry into the Conditions of the Crofters and Cottars in the Highlands and Islands of Scotland*, vol. 2 (Mallaig: Digitised and Presented in PDF format by Lochaber College, 2007), 1430, <http://www.whc.uhi.ac.uk/napier-commission/highlands-and-islands-commission-volume-2/view>; Quoted in: Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 100.

³ *Evidence Taken by Her Majesty’s Commissioners of Inquiry into the Conditions of the Crofters and Cottars in the Highlands and Islands of Scotland*, 2:1344; Quoted in: Smith, ‘What Is a Scattald?’, 37.

⁴ Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 99.

⁵ *Ibid.*, 100.

⁶ *Ibid.*

⁷ NAS, GD1/336/1, ‘Skat Book of Zetland’; NAS, E41/7, ‘Rental of Shetland’; SA, SA4/2255, ‘Gifford’s Rental of Shetland: Transcript and Index’; Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 100.

⁸ Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 100.

Kews [or Kehouse], a single township, and also the scattald of Baliasta, incorporating nineteen”.¹

The territory of a scattald was divided as such: in a first circle was the townland of the ‘house’ or ‘houses’, and then came the outlying lands, i.e. the lands lying on the other side of the hill dyke and eventually, the foreshore, when the farms lied close to the see – which was the case for most of Shetland’s farms. William P. L. Thomson explained that in Orkney, and it was also the case in Shetland, “[s]ometimes, in the same way as a Norwegian farm extended from ‘fjord to fjell [mountain]’, rights were expressly said to extend from the highest point in the hill to the lowest point in the ebb, thus asserting a claim to a share, not just of every different quality of land, but of whatever other resources were available”.² The written descriptions of scattalds show how these territories stretched to the top of the hills. In 1731, the scattald of Skaw on the island of Unst stretched “to the top of the hill called Sodersfeal”.³

This additional reference to the Norwegian origin of the scattald offers a point of comparison with the Norwegian territorial organisation of farmed land and uncultivated land. In Norway, from medieval times to the early modern times, the land in rural, mountainous or coastal areas was divided between *innmark* and *utmark*. The *innmark*, the inner circle, consisted of “the farmland proper within the fence (*innan garðs*), consisting of plots of arable land, meadows and enclosed pastures”.⁴ The *utmark*, the first outer circle, was “the outlying portion of the farm – outfields and waste outside the fence (*utan garðs*)”.⁵ The second outer circle, the common wasteland or *almennigr*, extended further away from the farm.⁶ Often translated wrongly as ‘outfield’, the *utmark* didn’t belong to the farmland since it extended further away, on the other side of the *utmarksgjerde*,⁷ the township fence, hedge or dyke that surrounded the *innmark*.⁸ In that respect, the Norwegian *utmark* can be compared with the Shetland *hagi* or

¹ SA, SA4/2255, ‘Gifford’s Rental of Shetland: Transcript and Index’, fols 89–90; Smith, ‘What Is a Scattald?’, 39; Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 101–2.

² William P. L. Thomson, ‘Old-Style Farming’, in *The New History of Orkney* (Edinburgh: Birlinn, 2008), 321.

³ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 5.

⁴ Ingvild Øye, ‘Farming Systems and Rural Societies Ca. 800-1350’, in *Norwegian Agricultural History*, ed. Reidar Almås, illustrated edition (Tapir Academic Press, 2004), 112. See also the pioneer work of Halvard Bjørkvik edited in the similarly pioneer project of Andreas Holmsen: Halvard Bjørkvik, ‘The Farm Territories. Habitation and Field Systems, Boundaries and Common Ownership’, in *The Old Norwegian Peasant Community*, ed. Andreas Holmsen (Oslo: Scandinavian Society for Economic and Social History and Historical Geography, 1956), 33–61.

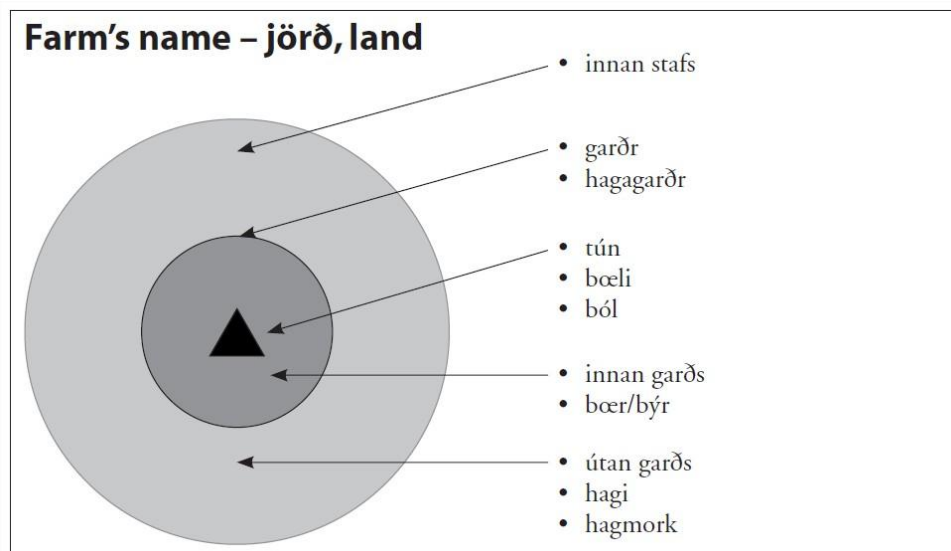
⁵ Øye, ‘Farming Systems and Rural Societies Ca. 800-1350’, 112–13.

⁶ *Ibid.*, 113.

⁷ Hans Sevatald, ‘Institutions and Innovations: Property and Land Use in Norwegian Outfields’, *Norsk Geografisk Tidsskrift-Norwegian Journal of Geography* 60, no. 1 (2006): 77.

⁸ The work of Ingvild Øye on Norwegian medieval *utmark* is extremely valuable. She has written several articles, participated to and organised conferences on the subject. In her introduction to the book, *‘Utmark’: The Outfield as Industry and Ideology in the Iron Age and Middle Ages*, she explained how “The Scandinavian

hoga described by Jonathan Wills as “the accurate name for the commons in the hill”.¹ In her introduction to the book, *‘Utmark’: The Outfield as Industry and Ideology in the Iron Age and Middle Ages*, Ingvild Øye, a Norwegian archaeologist, drew a diagram of the “[t]erms for the different zones within the medieval farm”.²



Øye, Ingvild. 'Introduction'. In *‘Utmark’: the Outfield as Industry and Ideology in the Iron Age and the Middle Ages*, edited by Ingunn Holm, Sonja Innselset, and Ingvild Øye, 10. University of Bergen Archaeological Series. Bergen: University of Bergen, 2005.

Figure 9: Scattalds: terms of the different zones within the medieval Norwegian farm

The farm, *tún*, is located at the centre of the diagram. The inner centre represents the farmland within the fence, *innan garðs*. Then comes the fence, *garðs*, separating the farmland from the outlying fields, *-utan garðs*, also called *hagi*. Eventually, further away the wild commons, *innan stafs*, lie. In Shetland, the hill dyke surrounded the infield and outfield lands of the townland and on the other side of this dyke was the pasture land, the *hagi* or *hoga*.³ Nevertheless, it should be noted that even though the Old Norse word ‘hagi’ or ‘hoga’ is an

concept ‘utmark’ lacks a corresponding denotation in English terminology. The term denotes natural-geographical environments such as forests, moorland, mountains and coastal areas, and economic, social and cultural aspects of these landscapes as parts of agricultural systems, as a complementary component to the infield. The concept can, however, also denote the resources, use and production in a reason the periphery of the core settlement seen in their own context. In the first sense, ‘utmark’ may perhaps best be translated with the terms outfield or wasteland. The English noun outland has, however, been used to cover its wider meaning.” in ‘Introduction. “Utmark”. The Outfield as Industry and Ideology in the Iron Age and the Middle Ages’, 9, accessed 20 August 2012, http://uib.academia.edu/IngvildOye/Papers/1232322/Introduction_Utmark_The_Outfield_as_Industry_and_Ideology_in_the_Iron_Age_and_the_Middle_Ages. See also: Ingvild Øye, ‘Utmarka I Vestnordisk Perspektiv’, in *From Nature to Script*, ed. Helgi Þorláksson and Þóra Björg Sigurðardóttir (Reykholt: Snorrastofa, cultural and medieval centre, 2012), 49–78.

¹ Wills, ‘Of Laird and Tenant’, 351.

² ‘Introduction. “Utmark”. The Outfield as Industry and Ideology in the Iron Age and the Middle Ages’, 10.

³ Audrey Beaudouin, ‘Autour de La Question Des Cultures Temporaires : Les Îles Shetland et Les Systèmes Agraires de Norvège et d’Écosse (XVe-XIXe Siècle)’, in *Cultures Temporaires et Féodalité : Les Rotations Culturelles et L’appropriation Du Sol Dans l’Europe Médiévale et Moderne*, ed. Roland Viader and Christine Rendu, Flaran (Toulouse: Presses Universitaires du Mirail, 2014), 225–26.

interesting tool for historians to describe “that part of Scattald next adjacent to the towns”,¹ it wasn’t used anymore in the 18th century. The word ‘hagi’ or its variant hoga appeared only in place names such as Lamb Hoga in Fetlar and in the word ‘hogaleave’ but the expression ‘pasture in the hills’ or the word ‘scattald’ were used instead to describe the outlying fields.²

The scattalders, the inhabitants of a scattald, possessed a number of privileges. The most important seems to have been the right to common pasture on the hills. The verb, “to scat”, “refer to the practice of townships grazing together in one place,” used for the first time at an undefined date was still in use at the end of the 19th century.³ The scattalders could, within the limits of their districts, have their livestock pasture on the hills as well as on the arable land after the harvest. They could cast peat, harvest raw materials for construction and crafts such as turf or floss. They had the right to a share of the sea-weed on the foreshore, to driven wood, wrecked goods and stranded whales.⁴

I argue that the sea was also part of the scattald. It was not defined as such by the inhabitants themselves but if we consider that within a scattald, *innmark* and *utmark* were two areas, complementary to each other in terms of resources, then the sea belonged to the *utmark* in Shetland. In the Norwegian historiographical tradition, “[t]he sea, as a resource for communication, fishing, and hunting, is generally considered part of the *utmark*.”⁵ With the sea considered as part of the *utmark* we can avoid the traditional dichotomy between land and sea, which coastal history’s and Island studies” scholars have criticised as being inoperative in coastal and insular contexts.⁶

¹ NAS, E341/45, “Excerpt from Introduction to the Rental of the Lordship of Shetland” Regarding Skat’, fol. 3.

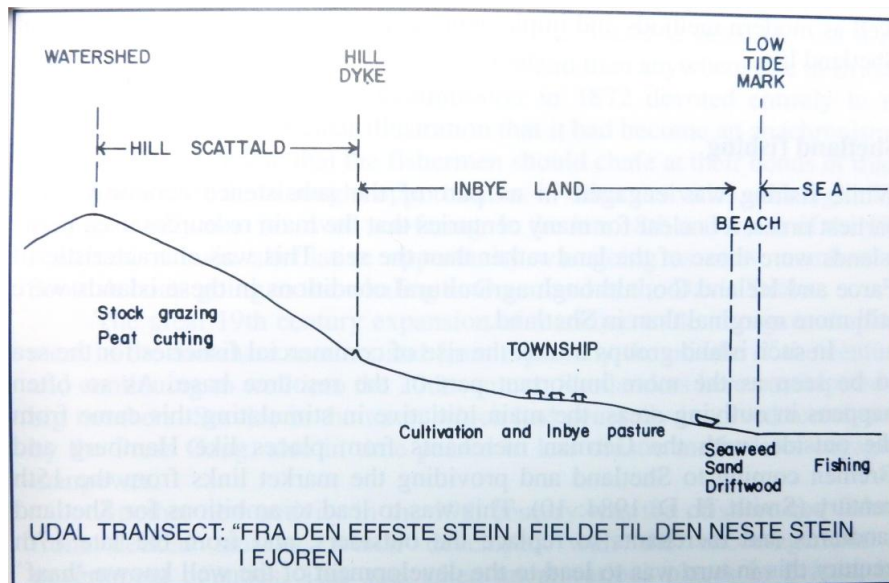
² Fenton, *The Northern Isles*, 33.

³ Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 102.

⁴ *Ibid.*, 102–3.

⁵ Reidar Bertelsen, ‘The Sea as “Innmark” or “Utmark”’, in *‘Utmark’: the Outfield as Industry and Ideology in the Iron Age and the Middle Ages*, ed. Ingunn Holm, Sonja Innselset, and Ingvild Øye (Bergen: University of Bergen, 2005), 21. In this paper Reidar Bertelsen argues that the male landscape of sea-oriented prehistoric townships could also be divided between three spaces: *tun*, *stø* and sea. Such a typology isn’t appropriate for 18th-century Shetland.

⁶ Audrey Beaudouin, ‘Aux Marges Du Townland : L’inculte Dans Les Îles Shetland Au XVIIIe Siècle’, in *Lisi res Landes Marais et Friches : Les Usages de L’inculte de l’Antiquité Au XXIe Siècle*, vol. 18, Hors-Série Archéologie (Lisières, landes, marais et friches : les usages de l’inculte de l’Antiquité au XXIe siècle, Lille: Revue du Nord, 2013), 169.



Coull, James R. 'Shetland: The Land, Sea and Human Environments'. In *Shetland's Northern Links: Language and History*, edited by Doreen J. Waugh and Brian Smith, 71. Edinburgh: Scottish Society for Northern Studies, 1996.

Figure 10: Scattald: 'udal transect'

When considering the “udal transect” of Shetland’s landscape, James R. Coull states

as well as land for cultivation and grazing, it included provision for peat as assential fuel; and unlike feudal law, in giving foreshore rights it gace in this environment valuable extra rights which included driftwood, as well as seaweed and sand which could be put on the land; *in addition it gave access to the sea for fishing.* [my italics]¹

Without any specific explanations, James R. Coull includes the sea in the areas (hill scattald, inbye land, beach, sea) where Shetlanders had privileges. During most of the year, Shetland fishermen could fish for themselves. There was no monopoly on fish catch; inhabitants fished and ate it. The sea was an extension of the scattald; it didn’t have boundaries like the scattald had but inhabitants on the sea coast had direct access to it. For the rare inland scattalders, it was a different matter. In the 1770s the situation of the scattald of Cliff on Unst “in the Centre of the Island, at a distance from the Sea is considered a disadvantage.”² Their use of the resources of the sea for agriculture or as food must have been less regular than for those who lived along the coast.

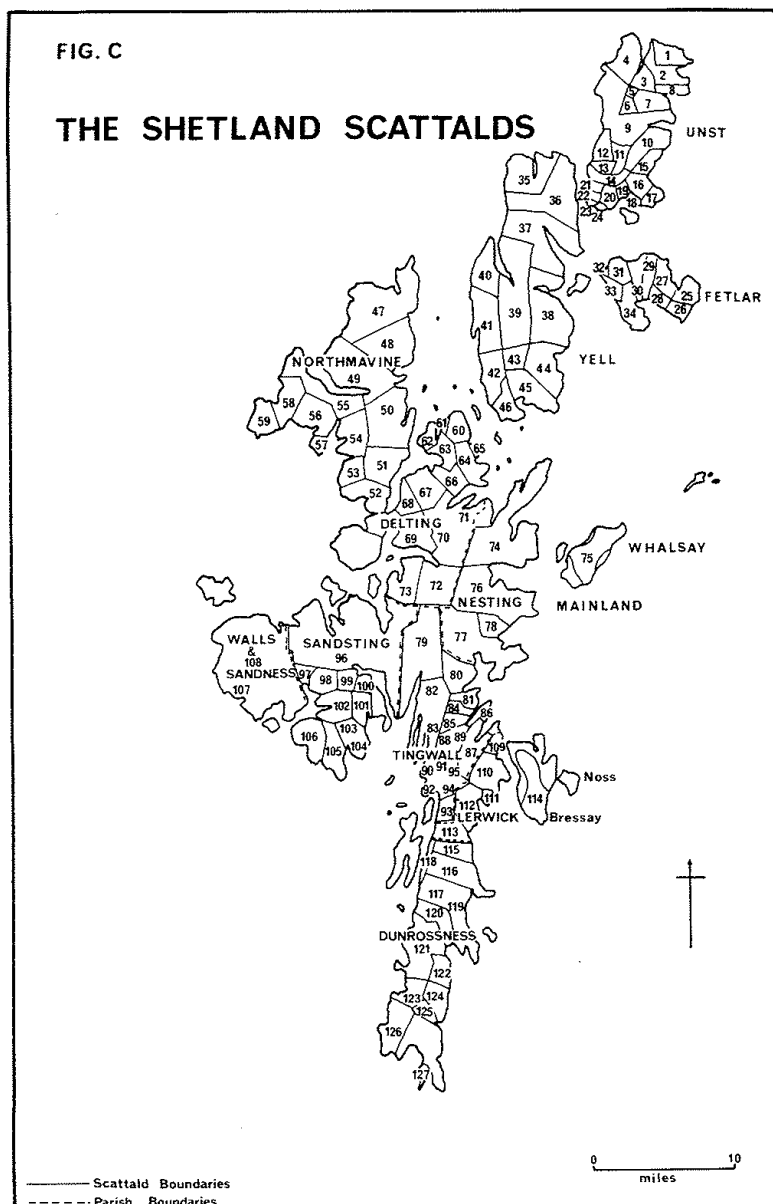
Susan Knox has mapped Shetland scattalds in her PhD dissertation, *The Making of the Shetland Landscape*.³ Her map is extremely convenient as it displays all the scattalds that existed at some point in Shetland. In the Appendix A, she explained how she proceeded to map all the Shetland scattalds. The map eventually produced was a “virtually complete map”

¹ James R. Coull, ‘Shetland: The Land, Sea and Human Environments’, in *Shetland's Northern Links: Language and History*, ed. Doreen J. Waugh and Brian Smith (Edinburgh: Scottish Society for Northern Studies, 1996), 71.

² NAS, RH4/102, ‘Rental of Lordship of Shetland’, fol. 52.

³ Knox, *The Making of the Shetland Landscape*, 194.

more than a chronologically accurate map.¹ Eventually, Susan Knox didn't map the scattalds that existed prior to what she called the "Quendale estate". The missing districts are the scattalds of "Tholop, Lie, Hestingsgot, Exnaboe, Oxensta, Deall, Gairth, Brow, Southvoe, Hillwell, Noss, Luaseter, Trossweek, Ringasta, Skelberie and Quandell" which all appeared in the 1716's rental as scat-paying districts.² These scattalds contained mainly one township.



Knox, Susan. *The Making of the Shetland Landscape*. Edinburgh: John Donald Publishers Ltd., 2003, 194.

Figure 11: Scattalds: map of Shetland scattalds

At the beginning of the 18th century, the scattalds were territorial units which included the townland, the outlying lands and the foreshore from one to several townships. The scattalders paid the scat and this granted them access to the resources of this territory. They had a

¹ Ibid., 197.

² SA, SA4/2255, 'Gifford's Rental of Shetland: Transcript and Index'.

collective property of the the uncultivated outlying lands and collective uses both on the outlying lands and on the townlands.

Shetland insiders, ministers and lairds, and outsiders, visitors and scientists, described these outlying lands, “the uncultivated part” of these islands.¹ From John Brand in 1700 to Sir John Sinclair in his report of the Old Statistical Account in the early 19th century, they all provided valuable descriptions of what Brian Smith has called “a source of comfort”.² They described what they saw as “a desert, barren, unimprovable rock” but in the meantime they offered amazing description of the various and complementary resources that these outlying lands provided.³ In a report published in 1814, Sir John Sinclair wrote in the first section of the 11th chapter that “[i]t would certainly be desirable to know, not only the total extent of waste land in every different county of Scotland, but also how much the waste [was] capable of being cultivated”.⁴ The following section of the report dealt with “the Origine and Nature of Peat-Moss”,⁵ “the Draining of Flow-Moss”,⁶ the “Flooding of Waste Lands”,⁷ “the Improvement of Land covered with Moss”⁸ and the “Rotations on Peat”.⁹ All these sections dealt with technics and strategies to conquer arable land from waste land in the ‘spirit of agricultural improvement’. In the same section, Sir John Sinclair noted that 20% of Scottish lands were under cultivation at the end of the 18th century. In Shetland, 4% of the lands were under cultivation.¹⁰ The 96% of uncultivated land were covered mostly with blanket peats – bog covered with sphagnum moss, an acid milieu mostly conditioned by atmospheric water.¹¹ The descriptions of Shetland’s waste land published in the 18th century suffered from prejudices mostly in the form of disgust towards what could be called ‘a waste land landscape’ or ‘a non-arable landscape’, a landscape misunderstood by the improvers. The landscape of the Shetland Islands wasn’t the only one to produce this kind of revulsion: most of the landscapes wich weren’t ‘grain-based landscape’ produced this blatant disgust. One of the most famous of these travelling improvers, Arthur Young, wrote of his horror when travelling in the

¹ Low, ‘Voyage to Schetland’, 97.

² Smith, ‘What Is a Scattald?’, 37.

³ Low, ‘Voyage to Schetland’, 67.

⁴ John (sir) Sinclair, ed., *Appendix to the General Report of the Agricultural State, and Political Circumstances, of Scotland, Drawn up for the Consideration of the Board of Agriculture and Internal Improvement*, vol. 2 (Edinburgh: Archibald Constable and Co., 1814), 1.

⁵ *Ibid.*, 2:2–14.

⁶ *Ibid.*, 2:15–16.

⁷ *Ibid.*, 2:17–37.

⁸ *Ibid.*, 2:38–52.

⁹ *Ibid.*, 2:53–59.

¹⁰ *Ibid.*, 2:2.

¹¹ David Spence, *Shetland’s Living Landscape: A Study in Island Plant Ecology* (Sandwick: Thule Press, 1979), 21; José Durfort, *Les Tourbières de Bretagne*, Les Cahiers Naturalistes de Bretagne (Mèze: Biotope, 2007), 24.

“miserable province” of Brittany, a “country not much further advanced, at least in skill, than among the Hurons”, a “wild mixture of desert and cultivation, half savage, half human”.¹ This wasn’t different from what Honoré de Balzac would write in the early 19th century when he compared in *Les Chouans* the Breton people with the Mohicans and the “Redskins of northern America”.² Samuel Hibbert stated in 1822 that “compared indeed with a water-mill of Scotland or England, the grinding apparatus of Shetland seemed designed for a race of pigmies”.³ Eric Richards explained in his book on the Highland Clearances how the writers of the late 18th and early 19th centuries “commonly regarded [Highlanders] as an aboriginal fringe of the British nation, still awaiting civilisation”.⁴ Shetlanders fell in the same category. Arthur Edmondston wrote in 1809 that “[t]he Zetland Islands, although they have long constituted an integral part of Great Britain, and their utility to it, especially in a maritime point of view, be obvious and acknowledged; yet their productions, resources, and internal economy, are less generally known than those of the most distant colony of the empire”.⁵ The writers of the 18th century and early 19th century didn’t engage in a global thinking on the technological, economical, energy-related and ecological complementarities between cultivated land and uncultivated land. Already in 1701, John Brand described the “mossy and mountainous, all covered over with heath” landscape of Shetland and added that this “kind of ground would require much labour and expence to bring in either to be grazing or corn land, if at all in many places they could get it done”.⁶ Thirty years later, Thomas Gifford explained how “[t]hese islands lying in the 13th north climate, and surrounded with the sea, cannot be thought very fertile; and being all mountains and marshes, so soked with the almosy perpetual rains that fall here, especially in the winter season, the ground is kept so cold, that little or nothing can grow out of it, especially the inland part, which is generally all covered with heath and moss”.⁷ Eventually in 1776, George Low expressed the relief that he felt when he saw thin signs of agriculture in an otherwise bleak landscape:

¹ Elizabeth A. Bohls and Ian Duncan, eds., ‘Arthur Young, Travels, during the Years 1787, 1788 and 1789. Undertaken More Particularly with a View of Ascertaining the Cultivation, Wealth, Resources and National Prosperity, of the Kingdom of France (1792)’, in *Travel Writing 1700-1830: An Anthology* (Oxford: Oxford University Press, 2005), 41–42.

² Honoré de Balzac, *Les Chouans*, 2e édition (Bruxelles: L. Hauman, 1835), 42.

³ Hibbert, *A Description of the Shetland Islands*, 466; See also: *Ibid.*, 96–97 and 541; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:v.

⁴ Eric Richards, *History of the Highland Clearances: Agrarian Transformation and the Evictions, 1746-1886*, vol. 1 (London: Croom Helm, 1982), 113; Quoted in: J. I. Little, “‘Agricultural Improvement and Highland Clearance: The Isle of Arran, 1766-1829’”, *Scottish Economic & Social History* 19, no. 2 (1 November 1999): 134.

⁵ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:v–vi.

⁶ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 765.

⁷ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 23.

Here I cannot help observing how much the imagination is relieved even by small things; in travelling over the Schetland mountains of this part of the country, one on one hand sees nothing but the dismal prospect of lofty ridges scarce covered with any thing else than mosses and liverworts, and here and there patches of a sort of rough bent grass; on the other, these scrapes of Schetland improvements dearly won from the bosoms of their rocks, yet these very scrapes, which would scarce be taken notice of elsewhere, here contribute much to mend the view and give the country a habitable look which otherwise could certainly be doubtful.¹

With romanticism, the descriptions of the early 19th century can take a more exalted turn but it is still in the comparison between arable land and uncultivated land that the authors found their inspiration. John Laing who first published his *Voyage to Spitzbergen* in 1818 was a good example. He wrote how one night he went out on a boat and “sailed round some of the headlands of Unst [in Shetland]”. There,

The scene was truly sublime: – fogs immured their summits; the noise, of the sea dashing against the rocks; and the screams of the eagles and other birds of prey, which there enjoy perfect security; combined with the sombre and terrific appearance exhibited by these bulwarks of nature, impressed us with awe and a pleasing kind of astonishment. The prospect to me was quite novel. I had formerly been familiar only with champaign countries; but I had no difficulty in declaring, that it was from some such scene as this only, that one could form an adequate conception of natural magnificence.

The face of the country exhibits a prospect of black craggy mountains and marshy plains, interspersed with some verdant spots which appear smooth and fertile. Neither tree nor shrub is to be seen, except the juniper and heath.²

Although these writers despaired at such a landscape or compared it always with “champaign countries”, they all noted that the vast outlying fields played an important role in Shetland’s economy.

Fuel, materials and food

In the 1790s, Andrew Dishington, the minister of Mid and South Yell, wrote the following statement:

Though their crops, with the strictest economy, cannot maintain their families above 7 or 8 months in the year, yet, by the natural advantages they enjoy, of plenty of fuel, and immense quantity of small fish, I may venture to affirm, that, they live fully as well, and many more comfortably, than the generality of the peasants in Scotland.³

But peats and small fish weren’t the only “natural advantages” that Shetland inhabitants enjoyed. In the space of their scattald they could gather fuel, materials and food.

Peat was the only fuel in the archipelago. In 1733 Thomas Gifford explained that “[f]or fuel they have peat or turf, dug out of the moss at the beginning of summer, and dried with the sun, and so put up in stacks for use, some whereof are little inferior to the best coals.”⁴ The Country Acts of Shetland protected the valued resource. It was forbidden to cast peats in a

¹ Low, ‘Voyage to Schetland’, 78–79.

² Laing, ‘Of the Shetland Isles (1806-1807)’, 18–19.

³ Dishington, ‘United Parishes of Mid and South Yell’, 574.

⁴ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 24.

neighbouring scattalds.¹ The regulation served probably to encourage a preservation of the resource in the scattalder's own scattald as well as in the scattald of his or her neighbours. There were variations in terms of accessibility to peat and quality of peat. Already at the beginning of the 18th century, John Brand explained that “[t]hrough the isles for fewel they have good peats in abundance, though in some places they are at a distance from them, as those who live in the Skerries are obliged to bring them from other isles, as from Whalsey [...]; some living in Dunrossness are at loss this way, they not having the moss at hand, as generally they have in other places on the Main[land].”² In Walls and Sandness, the peats were “easily procured, and [were] excellent of their kind, except in the island of Papa, where they [were] sandy.”³ In the island of Unst, the resource in peat had been almost exhausted by the end of the 18th century. The “hills of Vallafeld and Saxaforth” were said to be the last “principal resources”.⁴ This meant that “many inhabitants [were] at a very inconvenient distance from [the peats]” and that “[s]ome [found] it more commodious to import their peats from the neighbouring island of Yell.”⁵ The ministers of the Old Statistical Account insisted on the importance of peat for Shetlanders.⁶ The cutting of peat or *casting* of peat happened every year. Thomas Gifford wrote that it began at the beginning of summer. From later sources, Alexander Fenton proposes an account of peat casting, raising and turning, and stacking.⁷ He explains that “[p]eat casting began in May after the township dykes had been repaired, when most of the seed had been sown.”⁸ Once cut, the peats were laid on the ground at the back of the bank; dykes of laid peats could also be built to help squeeze the water out of them. About two or three weeks after peats had been cut out of the peat bank, they were ‘raised’ into small piles or pyramids to allow the air to go through. Eventually in the month of July, the transporting or ‘fliting’ of peats took place. When they arrived, they were piled up into big stacks close to the houses.⁹

The scattalds offered the possibilities to harvest, to gather or to collect a quantity of materials which were used to make objects, as fodder, litter or manure and for buildings and dykes.

¹ ‘The Old Country Acts’, 84 act 36.

² Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 772.

³ Thomson, ‘Parish of Walls and Sandness’, 112.

⁴ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 195.

⁵ *Ibid.*

⁶ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 195, 201; Morison, ‘Parish of Delting’, 385, 400–401; Sands, ‘Parish of Lerwick’, 414; Jack, ‘Parish of Northmaven’, 358; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 194–95; Thomson, ‘Parish of Walls and Sandness’, 112.

⁷ For example, see: Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:176–77.

⁸ Fenton, *The Northern Isles*, 225.

⁹ *Ibid.*, 228–32.

Rushes or *floss* were extremely important as they were used to make ropes which served for the roof of houses but also to make baskets such as *kishies* used to transport the peat.¹ This valuable resource was protected by the Country Acts which regulated its opening date. Floss couldn't be cut before Lammas, the first of August, and the other inhabitants of a scattald had to be 'advertised'.² People guilty of cutting floss before the opening date, were brought before the Sheriff Court, such as in 1790 when William Irvine South Lee and George Laurenceson in Deal, both Rancelmen, "found James Manson Junior in the Hill upon Lambs Eve with floss in his custody".³ In 1810 it was said the 36th act of the Country Act was "very necessary and usefull in all its parts & aught to be strictly inforced".⁴ The reason main reason why, was detailed as follow:

Floss is an herb or plant like Bent, which grows in the hills upon a Deep moss soil, and is very usefull to every tenant in Shetland for making Simmonds "or Ropes" with which they make Caisies, or Baskets of Straw for their Peats, manure &c. and it aught not to be cut in the hill before Lammas, or before the fishermen return from the Ling fishing, for two good reasons – first, because there are in every Parish or Scattald a few greedy old men at home who generally make a practise of cutting it up in large quantities too early in the season, and thus they deprive the fishermen of their due proportion of it which they have an equal right. Secondly because its being Cut too early before its Seed is ripe and has fallen into the ground, prevent its growth and Spreading, and it is known to have worn out totally in many places by this irregular conduct.⁵

John Mill, the minister of Dunrossness, indicated the presence of "a few shrubby, roan [rowan] trees, and willows in the more sheltered valleys."⁶ Willows could be used to make *kishies* as well.⁷ Men and women of Shetland made their own clothes and shoes and in order to tan leather they used the root of the tormentil or *Potentilla erecta*. The flower belongs to the rose family; it is found in "[d]ry heathy places" and was said to be "common" by Thomas Edmondston in his *Flora of Shetland* in 1845.⁸ He wrote that "the large præmorse root (termed "Earth bark") is used as a substitute for oak bark in tanning, for which purpose its intense astringency well fits it."⁹ When John Low visited Shetland, on the island of Foula, he listed products that were used to make dye:

Many Dye stuffs are made from the rock scurfs in Foula, particularly a fine reddish purple, called here Coreolet [corcolit¹⁰] (*Lichen tartareus*: Fl. Suec. 1070); a yellowish brown, with what they

¹ Ibid., 254, 264.

² 'The Old Country Acts', 84 act 36.

³ SA, SC12/6/1790/50, 'Petition (Concerning Swine on the Scattald of Haryilie.)' 1790 bundle 2; See also: NAS, RH11/29/1, 'Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735', fol. 9.

⁴ NAS, RH9/15/157/9, 'The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations, 1810', fol. 26.

⁵ Ibid.

⁶ Mill, 'Parish of Dunrossness in Zetland', 392.

⁷ Fenton, *The Northern Isles*, 250.

⁸ Thomas Edmondston, *A Flora of Shetland: Comprehending a List of the Flowering and Cryptogamic Plants of the Shetland Islands, with Remarks on Their Topography, Geology, and Climate* (Aberdeen: G. Clark, 1845), 35.

⁹ Ibid.

¹⁰ Fenton, *The Northern Isles*, 459.

call Old man (*L. saxatilis*: Fl. Suec. 1075); yellow, with Heath, and several others. Coreolet is a saleable commodity from Foula. They prepare it by grinding it to powder and steeping in urine for several days, when it is made up in balls of a pound and a half, ready for use. Worsted is boiled in a sufficient quantity of this till colour is as deep as is desired, without any other process.¹

Seaweed, heath and grass were harvested to serve as fodder, litter or manure.² Seaweed was a protected resource. No one could cut seaweed or *tang* “in another man’s ebb”.³ Seaweed also served to make kelp. When it was used as manure it was harvested in spring or in autumn and winter.⁴ Bog-hay or coarse-hay made from heaths and rushes was cut about Lammas and dried before using it as bedding for cattle.⁵ The respondents of Unst described the whole process in their answers to Sir John Sinclair:

quantities of grass and short heath are, in August every year, mown upon the hills, and after being left for some time to wither, carried home, put up in stacks like hay, and used from time to time in spreading the *byres*, so as to keep the cattle dry and warm amidst the dung accumulating under them.⁶

Then there were products which were used for buildings or dykes. It was the case of stones, slates and *flaws*. Pasturing upon “rives *flaws*” was forbidden by the 36th act of the Country Act.⁷ *Flaws* were a kind of divot used in thatching the roofs; they were a thin layer of turf ‘rived’ or torn up by hand from the surface of the peat bank.⁸ *Pones*, thin oval strips of green turf, were laid over the roofing timbers.⁹ In the 1770s when William Hay built a fishermen’s lodge in Northmavine he carried from Yell “Ponds and divots” to thatch his lodge.¹⁰

In 1733 there were quarries of “free-stone” and slates in several places.¹¹ At the end of the century, the slate quarries of Bressay were said to supply the whole of Shetland.¹² The “free-stones” of Shetland were sandstone, mostly located in the western, southern and central parishes, while in the north and west of the archipelago granite dominated. Quarries of sandstone or granite were open to obtain rock when there was no earlier structure which would have been a source of rubble. In the 18th century, the increase of population led to the

¹ Low, ‘Voyage to Schetland’, 102–3.

² Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 195, 196; Morison, ‘Parish of Delting’, 390; Jack, ‘Parish of Northmaven’, 358; Barclay, ‘United Parishes of Aithsting and Sandsting’, 381; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 192; Thomson, ‘Parish of Walls and Sandness’, 99.

³ ‘The Old Country Acts’, 84 act 33.

⁴ Fenton, *The Northern Isles*, 278.

⁵ *Ibid.*, 422.

⁶ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 192.

⁷ ‘The Old Country Acts’, 84 act 36.

⁸ Susan C. Rennie, ed., ‘Flaw, N.’, *Dictionary of the Scots Language. Dictionar O the Scots Leid* (Scottish Language Dictionaries Ltd., 2004), <http://www.dsl.ac.uk/>.

⁹ Fenton, *The Northern Isles*, 175; On the pons and flaws, see: Ian Tait, ‘Building Techniques’, in *Shetland Vernacular Buildings, 1600-1900* (Lerwick: Shetland Times, 2012), 136–41.

¹⁰ SA, SC12/6/1779/17, ‘Petition for Interdict (for Building a House on the Petitioner’s Property at Fedaland.)’ 1779 bundle 2.

¹¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 24.

¹² Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 201.

opening of on-off quarries.¹ However this more intense quarrying could be a source of conflict. In 1796 John Bruce Stewart of Simbister petitioned the Sheriff Depute of Shetland, he

Humbly Sheweth That John Bruce Tacksm[a]n of the petitioners Lands in Catfirth in the parish of Nesting has for some time pas been in the practice of Quarrying lime Stone on the petitioner grounds in the room of Gletness thereby deteriorating the grounds to the great prejudice of the tenants and the petitioners property.²

“Walls”, explains Ian Tait, “were usually drystone, although earth, mortar or clay was used in better buildings (primarily dwellings) to bind stones together and render the wall draught-proof.”³ It was already the case in the early 18th century when John Brand visited the islands. He explained that “in some houses there [was] a little lime, clay, or any such thing for cementing of the building”.⁴ Lime was made from limestone burnt in a kiln to obtain hydraulic lime. Limestone was found all around the archipelago. It was progressively used throughout the 18th century.⁵ In 1774, John Low noted that the farmhouses towards Eshaness were “neatly built, mostly of stone and lime”.⁶ In 1797 in Grobsness, in South Delting, George Barron

built a Booth on the richest part of the Meadow just at the back of the beach [...], has now begun to build Piers and quarry Stones for building Houses & Inclosures on design to appropriate the same to himself, as also to cut up the pasture for Peats for burning Lime for his buildings [...].⁷

The wrecks which happened on the coasts of Shetland also brought their quantities of materials which could be used for buildings. They were ‘harvested’ on the shore by the inhabitants of a scattald – legally or illegally. The following tables show the number and the cargo of vessels which wrecked on the coast of Dunrossness, Northmavine and Unst between 1700 and 1799.

	Dunrossness, Sandwick and Cunningsburgh (N=61)	Northmavine (N=17)	Unst (N=34)	Total (N=102)
1700-1709	6	3	3	12
1710-1719	3	2	2	7
1720-1729	2	0	1	3
1730-1739	6	5	2	13
1740-1749	8	1	3	12
1750-1759	6	0	1	7
1760-1769	6	2	3	11
1770-1779	11	0	5	16

¹ Tait, ‘Building Techniques’, 96–98.

² SA, SC12/6/1796/24, ‘Petition (for Interdict against Quarrying Limestone on Pursuer’s Land in Gletness.)’ 1796 bundle 1; SA, SC12/6/1797/27, ‘Petition for Interdict (Quarrying Stones in Otterswick.)’, See also: SA, SC12/6/1797/47, ‘Petition for Interdict (Quarrying.)’ 1797.

³ Tait, ‘Building Techniques’, 100.

⁴ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 772.

⁵ Tait, ‘Building Techniques’, 101.

⁶ Low, ‘Voyage to Schetland’, 134.

⁷ SA, SC12/6/1797/38, ‘Petition for Interdict (against Quarrying.)’ 1797 bundle 1.

1780-1789	4	2	4	10
1790-1799	9	2	10	21
max. 1794	5	1	1	7
max. 1795	1	0	3	4
max. 1733/1735	0/0	2/2	0/0	2/2

SA, D1/400, “‘Wreck Registers’ of Robert Stuart Bruce [1873 - 1951],” bk. 1, 3, 4, 19 and 22.

Table 97: Fuel, materials and food: ship wrecks in decades

	Cargo	Dunrossness, Sandwick and Cunningsburgh (N=61)	Northmavine (N=17)	Unst (N=34)	Total
Drink	Gin	1		1	2
	Cognac	1			1
	Rum	1			1
	Tea	1			1
	Wine	1			1
Food	Fish or stockfish	3	1	3	7
	Oil	3	1	2	6
	Salt	1		3	4
	Sugar	2		1	3
	Rye	1		1	2
	Mutton			1	1
	Wheat			1	1
	Butter	1			1
	Cheese	1			1
Meal	1			1	
Fuel	Coal			1	1
Maritime store	Fishing materials			1	1
	Naval store	1			1
Metal	Iron or iron goods	5		3	8
	Lead	1			1
Other	Tallow	2		3	5
	Tar	3	1	1	5
	Eider down			1	1
	Sheep			1	1
	Potash		1		1
	Tobacco	1			1
Textile	Flax	3		1	4
	Hemp	1		2	3
	Coarse hose			1	1
	Russian hides			1	1
	Wool			1	1
	Calico	1			1
	China silk	1			1
Linseed	1			1	
Wood	Timber	14	2	2	18
	Deals	2	2	4	8
	Fire wood or logs of wood	3	3		6
	Pipe staves or staves	1		1	2
	Battens	1			1
	Baulks	1			1
	Masts	1			1
Other goods or	5		3	8	

	general cargo				
	“A Costlie loding aboard”		1		1
	Skat			3	3
	N/A	20	5	9	34

SA, D1/400, “‘Wreck Registers’ of Robert Stuart Bruce [1873 - 1951],” bk. 1, 3, 4, 19 and 22.

Table 98: Fuel, materials and food: number of ships which wrecked on the Shetland coast with their cargo

The tides could bring different types of materials on the beaches among them timber was particularly important and looked for by the inhabitants. In 1733 Thomas Gifford explained that

The timber brought here from Norway is very dear, and the poor inhabitants are not able to buy it. So many of them depend upon that wreck timber, which they call Godsend, and still think they have a better title to it, than any else have, and therewith they repair their small houses.¹

Alexander Fenton states that the shipwrecks were “a major source of wood” on these tree-less islands.² Iron goods were also quite appreciated. In Dunrossness in 1734 at the bailie court, Laurence Leisk, a witness, testified that “he heard the said Allexander Young object to the said Thomas Young two bars or goads of iron alledged stolen by him of the wreck iron belonging to Busta.”³

These wrecks also brought food and drinks; gin, cognac, rum and wine when found by an inhabitant must have been kept secret. Food stuffs if they weren’t too damaged by the wreck were also probably appreciated. The hills also brought food and drinks. There was no problem of accessibility to fresh water in Shetland as there were “plenty of fresh water springs, besides the lakes and burns.”⁴ It is important because in other insular contexts such as the Breton isles, the fresh water resource could be a problem in the early modern period.⁵ The inhabitants fished trout and eels in the lakes; *flouks* or flounders were also said to be fished in fresh-water.⁶ Sea trout were caught when they entered into burns around the end of September.⁷

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 52.

² Fenton, *The Northern Isles*, 111.

³ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 22.

⁴ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 24; See also: Jack, ‘Parish of Northmaven’, 349; Barclay, ‘United Parishes of Aithsting and Sandsting’, 381; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 183; Thomson, ‘Parish of Walls and Sandness’, 102.

⁵ Thomas Chiron, ‘Les îles de Bretagne et leurs ressources en eau : trois siècles de gestion communale (XVIIIe-XXe siècle)’, *Annales de Bretagne et des Pays de l’Ouest. Anjou. Maine. Poitou-Charente. Touraine*, no. 116–2 (30 June 2011): 121–39.

⁶ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 12, 37; Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 196; Morison, ‘Parish of Delting’, 387; Mill, ‘Parish of Dunrossness in Zetland’, 394; Sands, ‘Parish of Lerwick’, 415; Jack, ‘Parish of Northmaven’, 349; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 190; Thomson, ‘Parish of Walls and Sandness’, 102; Sands, ‘Parish of Tingwall’, 276.

⁷ Morison, ‘Parish of Delting’, 387; Gordon, ‘United Parishes of North Yell and Fetlar’, 283; Barclay, ‘United Parishes of Aithsting and Sandsting’, 381.

Berries such as gooseberries, *rizzer-berries* or red currants and strawberries could be found in sheltered areas.¹ They were also crowberries, a common heathland species, which was qualified in 1845 by Thomas Edmondston as the “staple indigenous fruit” of Shetland.² At the beginning of the 19th century, the inhabitants of Greenmow, Cunningsburgh, complained that their road to the hill had been cut by a ditch by the inhabitants of Blosta. They used these roads, they said, to

[transport] their pets and other subjects such as flaws and Berry from the hill and occasionally in the winter tim drives their Cattle to the hill [...].³

What interests me here is that berries were listed along with peats, flaws and cattle, making them, in my opinion, articles of importance for the inhabitants, bringing them the precious vitamin C. Since they were harvested on the hill these berries were probably crowberries.⁴

Shetlanders hunted rabbits and probably some wild birds as well, such as ducks.⁵ They were caught for their flesh but also for their skin and feathers. In 1776 2,506 rabbit skins were sold and sent coastwise.⁶ In the 1750s otters were said to be numerous in the islands. They were knocked down with sticks, their skins sold and their fat producing oil.⁷ Thomas Gifford and the respondents of the Old Statistical Account gave long lists of sea- and wild-birds in their description.⁸ Shetlanders caught sea-fowls in the cliffs. The eggs and the young kittiwakes were “esteemed more delicate than chickens” and “form[ed] a considerable part of the food of the inhabitants upon these coasts, in the season when they [were] to be obtained.”⁹ Already in the beginning of the 18th century, the inhabitants of Foula were said to be the best catchers of sea-fowls in Shetland.¹⁰

On the beaches and rocks, they gathered shell-fish either as food or as bait. Thomas Gifford listed the shellfish. “There [were]”, he wrote, “in most places of these islands plenty of shell

¹ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 772; Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 24; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:182–83.

² Edmondston, *A Flora of Shetland*, xvii.

³ SA, D24/87/6, ‘Letter by Lochend’s Tenants in Aith and Greenmow to James Greig, Lerwick, Anent Ditch Cut across Road by Sumburgh Tenants in Blosta’ 1822, fol. 1.

⁴ Kåre Lunden, ‘Recession and New Expension 1350-1814’, in *Norwegian Agricultural History*, ed. Reidar Almås (Trondheim: Tapir Academic Press, 2004), 177.

⁵ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 26; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 187.

⁶ Smith, *Shetland Life and Trade 1550-1914*, 75.

⁷ Campbell, *An Exact and Authentic Account of the Greatest White-Herring-Fishery in Scotland*, 7.

⁸ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 26–27; Morison, ‘Parish of Delting’, 407; Mill, ‘Parish of Dunrossness in Zetland’, 394; Jack, ‘Parish of Northmaven’, 364; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 188–89; Thomson, ‘Parish of Walls and Sandness’, 100, 104.

⁹ Morison, ‘Parish of Delting’, 407; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 189.

¹⁰ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 779; Low, ‘Voyage to Schetland’, 103–4; Thomson, ‘Parish of Walls and Sandness’, 100.

fish, such as oysters, muscles, cockles, cullock spouts, buckies, wilks, limpet, crabs, and partans; but very few lobsters.”¹ On lobsters, the minister of Dunrossness, one century later wrote that “[t]he rocks on the coast produce abundance of lobsters, crabs, oyseters, &c.”² Bait, similarly to *tang* was protected. The same Country Act forbade to “taike bait [...] in another man’s ebb”.³ Mussels were either “dredged from beds or *scaups* [scaups or scaps in 18th-century sources] [...] or gathered by hand in the *mussel-ebb*, the beds exposed at ebb-tide.”⁴ A process before the Admiralty Court of Shetland in 1780 shows how important to fishermen and their family mussels and mussel-bait were. The pursuer, William Mouat of Garth, explained to the Vice Admiral of Orkney and Shetland

That the 54 Merks of Land of Nether Scatsta the Ness thereof and the shores as far as the Lowest of the Ebb, the 36 Merks land of Garth 36 Merks land of Coldback & Seven merks land in Urka with the shores of these lands as far as the Lowest of the Ebb [margin: all in the parish of North Delting] the Shellfish & Mussell Scaups thereon are his sole property known as separate from all others for time Past Immemorial, that he has appropriate these sheelfish & mussels for the use of his Tenants fishers thereon as need for Bait as for a Considerable part of the Subsistence of them their wives and Children in times of scarcity as the present and of Totall want of small fish as is notour this summer [...].⁵

The rooms of Nether Scatsta, Garth, Coldback and Urka had direct access to the shore. As heritor in these rooms, William Mouat of Garth possessed rights on the shores; his tenants benefited from these rights as well. He stated that mussels were used for bait, and in that respect they were protected by the Country Acts, but also that they were a subsistence food for the inhabitants. Shellfish in general were presented as such in the 18th century: they were the food of the poor in difficult times. Similar practices were attested on the coasts of Brittany.⁶ The other shellfish listed by Thomas Gifford and the respondents of the Old Statistical Account were cockles, *buckies* or whelk (or any mollusc of the genus *Buccinum*), *wilks* or periwinkles, limpets (mollusc of the genus *Patella*), *spouts* or razor-clam, *partans* or crabs and oysters.⁷

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 28.

² Mill, ‘Parish of Dunrossness in Zetland’, 394.

³ ‘The Old Country Acts’, 84 act 33.

⁴ Fenton, *The Northern Isles*, 541.

⁵ SA, SC12/6/1780/6, ‘Petition (Concerning Encroachment on Mussel Scaups.) (Admiralty)’ 1780 bundle 1; See also: SA, D24/8/1, ‘Summons by John Goodlad Younger in Trondra with Concourse of the Procurator Fiscal of Admiralty Court against John Laing in Scalloway Concerning Destruction of Mussel Scap in Trondra’ 1771; SA, D24/8/2, ‘Summons by Alexander Law & James Law, and Andrew Goodlad & Hynd Goodlad, in Trondra, with Concourse of the Procurator Fiscal of Admiralty Court, against Scott Laing in Scalloway and Others, Concerning Destruction of Mussel Scap in Trondra’ 1771.

⁶ Charpentier, ‘Le Littoral et Les Hommes’, 257–58.

⁷ Low, ‘Voyage to Schetland’, 80; Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 202; Mill, ‘Parish of Dunrossness in Zetland’, 394; Jack, ‘Parish of Northmaven’, 362; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 190; Fenton, *The Northern Isles*, 541–44.

When they weren't at the summer fishing, men fished for themselves. They caught *sillocks* and *pillocks*, respectively coalfish in their first and second years;¹ “these small fish are of great use to the country people, who feed upon them most part of the year, and of their livers they make considerable quantity of oil”, wrote Thomas Gifford.² The respondents of the Old Statistical Account insisted on the importance of these fish which “[contributed] greatly to the sustenance of the poorer inhabitants.”³ The oil they prepared with the livers was part of the rent. John Brand explained that the oil “made of the livers of fishes, [...] [was] sent south for the making of soap, or [was] otherwise disposed of, as may be most advantageous.”⁴ Haddocks were also caught; mussel bait was needed to catch them.⁵ Similarly to mussels, the Country Acts regulated haddock fishing: haddock lines couldn't be used in the bays between the 30th of April and the 11th of November, or as long as haddock was fished with hand-lines.⁶ The reason was simple: spawning season happened during the summer months (from May to November) and the long and full of hooks haddock lines tended to destroy the young fish and jeopardised the fishing for the rest of the year.⁷

Whales, when caught, were almost never eaten; their blubber served to prepare oil.⁸ Customary practices regulated their catch; they were divided into three equal parts – one for the Admiral, one for those who caught them, and one for the owner of the ground where they were driven ashore.⁹ However, William Jack, the minister of Northmavine, explained that “[i]n 1741, by reason of extreme scarcity then prevailing, some families were induced privately to make use of their flesh, and all such declared it to be equal to any other beef.”¹⁰

Eventually, medical uses of herbs, spring and shellfish were attested. At the end of the 18th century on the island of Unst, “the common people gather[ed] scurvy grass, trefoil, and some

¹ Fenton, *The Northern Isles*, 527.

² Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 27.

³ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 190; Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 196; Morison, ‘Parish of Delting’, 407, 389–90; Mill, ‘Parish of Dunrossness in Zetland’, 394; Sands, ‘Parish of Lerwick’, 416; A Friend to Statistical Inquiries, ‘Parish of Nesting’, 499; Jack, ‘Parish of Northmaven’, 346; Barclay, ‘United Parishes of Aithsting and Sandsting’, 589; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 190; Thomson, ‘Parish of Walls and Sandness’, 102; Dishington, ‘United Parishes of Mid and South Yell’, 574.

⁴ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 769.

⁵ Fenton, *The Northern Isles*, 598.

⁶ ‘The Old Country Acts’, 84 act 33.

⁷ NAS, RH9/15/157/9, ‘The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations, 1810’, fols 17–19.

⁸ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 27–28; Fenton, *The Northern Isles*, 545.

⁹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 27–28; Fenton, *The Northern Isles*, 545.

¹⁰ Jack, ‘Parish of Northmaven’, 362–63.

other plants that grow in the island, for their medicinal qualities.”¹ About a century before, John Brand had explained that

[m]any excellent herbs [were] found growing here, though little known or made use of [...]. They [had] much scurvy-grass, God so ordering it in his wise providence that *juxta venenum nascitur antidotum*, that seeing the scurvy is the common disease of the country, they should have the remedy at hand.²

The same use of the scurvy-grass was attested at the end of the 17th century by Martin Martin. He also wrote that “[t]he Jaundice [was] commonly cured by drinking the Powder of shell-snails [periwinkles] among their Drink, in the space of three or fours days.”³ In Unst again, the respondents of the Old Statistical Account explained that “[t]he waters of a copious spring, called Yelaburn, or Hiclaburn, (the *burn of health*), although pure from all mixture, are esteemed, in the neighbourhood, to be highly beneficial to health.”⁴

In *Commoners* Jeanette M. Neeson gives a similar taxonomy of the resources of the commons in England.⁵ She ends her account by stating that “[i]f animals were food from the commons, animals were fed from the commons too.”⁶

Animals fed from scattalds

Shetland farmers produced oat and bere but comparatively to their Orkney counterparts there production was never commercial and in some parishes it barely attained a sustenance level – if subsistence can only be achieved with grain. For that reason, taxes were never exacted in grain – at the exception of the corn-teind which could be exacted in kind, butter or money. Land-rent and taxes were exacted in money but also in livestock produce: lambs, wool, poultry and butter. Shetland rural economy was a mixed-farming and animal husbandry system, or in Ian Tait’s words “[I]ivestock husbandry was one half of the subsistence farming that supported Shetland’s population until the 19th century”.⁷ The livestock provided supplies to prepare food and drinks, to fashion clothing and shoes, to bring cash, to enable transportation and to pay rent and taxes. To cite a few examples: swine were slaughtered and provided pork, cow’s milk was turned into butter to pay rent and buttermilk was used as a drink, sheep wool and cow leather were turned into cloths and shoes, woolen stockings were

¹ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 187.

² Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 772.

³ Martin, *A Description of the Western Islands of Scotland*, 374; Fenton, *The Northern Isles*, 542.

⁴ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 185.

⁵ J.M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820*, Reprint (Cambridge: Cambridge University Press, 1996), 166–70.

⁶ *Ibid.*, 170.

⁷ Ian Tait, ‘Livestock Buildings’, in *Shetland Vernacular Buildings, 1600-1900* (Lerwick: Shetland Times, 2012), 289.

sold on local and international markets and shelties, Shetland ponies, offered the most effective means of transportation on the islands.

It is, however, difficult to precisely state the number of farm animals and the composition of the flock that tenants managed. In his *Historical Description*, Thomas Gifford wrote the following sentence, more or less in this form, for the thirteen parishes that he described: “They [the parish inhabitants] have sheep, cows, oxen, and horses”.¹ Thirty years before, John Brand wasn’t more talkative. He explained that “kine, sheep, hens, and almost all victuals” were sold at a good price to busses fishing around Shetland.² Other sources can provide a more distinct picture of the farmers’ flocks. Robert Sinclair’s judicial rental can provide an overview of farmers’ herds. Taxes paid by the tenants in butter or in cash can be transformed into number of cows and sheep. Out of the 355 tenants and udallers recorded in the rental, 326 of them paid the bow teind and 177 of them, the lamb teind. This means that almost all the tenants kept at least one cow: this is concurrent with the idea that almost all the tenants kept a cow since they had to pay their taxes in butter. In the 1790s, the minister of Mid and South Yell, Andrew Dishington, explained how they “[had] no need of any considerable stock to begin life; all that is required being a cow, a pot, a spade, a tusker, a buthie, fishing rods, and a rug, or blanket”.³ A cow was an essential element for the farm. Regarding sheep, it would appear that almost exactly half of the tenants kept sheep. Taking into account only the bow teind paid in butter and the lamb teind paid in money, it is possible to evaluate the number of cows and sheep per tenants. The following tables present the results.

Repartition	Individuals (tenants and udallers)
<1 cow	3
1 cow	69
2-3 cows	93
3-4 cows	49
4-5 cows	29
5 cows +	10
<i>Total</i>	<i>253</i>
Number of entries (tenants and udallers)	355
Number of Bow-teind paying individuals	326
Number of individuals paying Bow-teind only in butter	253
Average number of cows per individual	2.40
Median number of cows per individual	2

NAS, CS96/3272. “Robert Sinclair of Quendal. Judicial Rental,” 1747.

Table 99: Livestock: Cows in 1747

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 3–19.

² Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 770.

³ Dishington, ‘United Parishes of Mid and South Yell’, 574.

Repartition	Individuals (tenants and udallers)
[1-9] sheep	57
]9-12[sheep	18
[12-23[sheep	51
]23-40[sheep	9
>=40 sheep	3
<i>Total</i>	<i>138</i>
Number of entries (tenants and udallers)	355
Number of Lamb-teind paying individuals	177
Number of individuals paying Lamb-teind only in money	138
Average number of sheep per individual	12.6
Median number of sheep per individual	9.1

NAS, CS96/3272. "Robert Sinclair of Quendal. Judicial Rental," 1747.

Table 100: Livestock: Sheep in 1747

In 1747, almost all the tenants kept one cow, and the vast majority of them (70 %) kept more than two cows. Only half of the tenants kept sheep. The average number of sheep per individual was twelve, with a majority of tenants having more than nine sheep (59 %). A look at the ratio sheep/cattle can help estimate the variety of situations in terms of sheep and cattle distribution. Two tenants lived in the township of Vestinore in Cunningsburgh. The township held 18 mk of land and they held 11.1 mk of land in neighbouring townships. They kept a total amount of eleven cows and between 68 and 87 sheep. They had an approximate ratio of one cow for seven sheep and of three sheep for one merk of land. In Sandwick, the ratios were slightly different: the sheep/cattle ratio was of ca. three sheep for one cow and ca. two sheep for one merk of land. The ratio in Ringasta, Dunrossness, combined the previous situations: the sheep/cattle ratio was of 3:1 and the sheep/merk of land ratio of 3:1. The sheep/cattle ratio was comparable with the situation in Ustaness, Whiteness, a century before, but there they had only ca. one sheep per merk of land.

Date	Parish	Township	Merk land	Tenants	Merk land	Sheep	Cows
1747	Cunningsburgh	Vestinore	18	2	29.1	68-87	11
1747	Sandwick	Sandwick	34	9	34	51-65	20
1747	Dunrossness	Ringasta	16	4	17	43-55	16
1602-1604	Whiteness	Ustaness	72	n/a	n/a	80	25

NAS, CS96/3272. "Robert Sinclair of Quendal. Judicial Rental," 1747.

Wills, Jonathan. "Appendix 5. Examples of Sheep/cattle Ratios from the Court Books of Shetland, 1602-1604 from Donaldson (1958) p. 16." In *Of Laird and Tenant: A Study of the Social and Economic Geography of Shetland in the Eighteenth and Early Nineteenth Centuries, Based on the Garth and Gardie Estate Manuscripts.*, 481-82. Edinburgh: University of Edinburgh, 1975.

Table 101: Livestock: Sheep/cattle ratios

The ministers variously described the composition of the parish flock in the late 18th century in their answers to Sir John Sinclair's questionnaire. Even if the figures change slightly from one parish to another, it is safe enough to say that families kept an average of three cows. If, similarly to the situation in Dunrossness in 1747, only half of the families kept sheep, it meant

that sheep-keeping families took care of ca. 46 sheep – from 18 sheep in Dunrossness to 80 in Sandsting and Aithsting. The figures from 1747 and the 1790s are concordant with the specificities of the areas; indeed the southern parishes of Shetland were more oriented towards agriculture than the northern parishes where sheep husbandry was more important.

	Milk cows	Oxen and young cattle	Sheep	Horses	Families	Merk of land
Bressay, Burra and Quarff	500	n/a	5000	n/a	216	ca. 672.5
Delting	700	n/a	n/a	n/a	223	853
Dunrossness, Sandwick and Cunningsburgh	2000	1000	5000	n/a	570 (including Fair Isle)	1959
“country part” of the parish of Lerwick	200	n/a	1500	n/a	ca. 60	n/a
Sandsting and Aithsting	850	56 oxen (14 ploughs)	c. 9000	>800	ca. 220	771.5
Unst	1150	1850	6600	1000	ca. 340	2192

Barclay, Patrick. “United Parishes of Aithsting and Sandsting.” In *The Statistical Account of Scotland 1791-1799*, edited by John (sir) Sinclair, 7:585, 593 and 595.

Menzies, John. “United Parishes of Bressay, Burra, and Quarff.” In *The Statistical Account of Scotland 1791-1799*, edited by John (sir) Sinclair, 10:198.

Mill, John. “Parish of Dunrossness in Zetland.” In *The Statistical Account of Scotland 1791-1799*, edited by John (sir) Sinclair, 7:393 and 395.

Morison, John. “Parish of Delting.” In *The Statistical Account of Scotland 1791-1799*, edited by John (sir) Sinclair, 1:393-394

Mouat, Thomas, and James Barclay. “Island and Parish of Unst in Shetland.” In *The Statistical Account of Scotland 1791-1799*, edited by John (sir) Sinclair, 12:187-188 and 199.

Sands, James. “Parish of Lerwick.” In *The Statistical Account of Scotland 1791-1799*, edited by John (sir) Sinclair, 3:418 and 420

from Dunrossness’ figures, we can reckon that there were an average of 5.84 persons/family.

NAS, RH4/102. “Rental of Lordship of Shetland,” 1772.

Table 102: Livestock: Old Statistical Account

This table also indicates that other animals entered into a tenant’s flock: horses. The farmers also kept swine as well as poultry such as chickens, ducks, hens, turkeys and geese.¹

The sheep of Shetland were described in the early 19th century as being

very small compared with those of the southern parts of Scotland and England, the carcase not weighing on an average more than thirty pounds. They have short tails and small horns, and the ears stand erect. They are of different colours; as white, grey, black, speckled, and of a dusky brown called *moorit*. The grey is the most prevailing colour.²

The Country Acts regulated various aspects of sheep husbandry, most importantly its herding with sheep dogs.³ Sheep, as I have already written, were of great value to the inhabitants who used their wool to make their own clothes but also to knit and sell their productions. Thomas

¹ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 200; Morison, ‘Parish of Delting’, 400; Jack, ‘Parish of Northmaven’, 364; Thomson, ‘Parish of Walls and Sandness’, 107; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 187–88; Barclay, ‘United Parishes of Aithsting and Sandsting’, 587.

² Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:210.

³ ‘The Old Country Acts’, 81–84 acts 8, 9, 10, 17 and 37.

Gifford stated that in the early 18th century “[o]f the sheep-milk they [made] some butter and cheese, which [was] not reckoned so good as that of the cows milk”.¹

Horses were also numerous on Shetland’s scattalds. The descriptions in the 18th century and early 19th century insisted on their small size, their hardiness and on the fact that they were extremely adapted to Shetland’s peculiar terrain.² In 1774, John Low described the horses of Shetland:

Here I had an excellent opportunity of viewing the little Schetland Pownies, which are not specifically different from other horses, but rendered the least of the European species by hard treatment. Buchanan calls them *Equulei Orcadenses et Schetlandici asino haud majores, laboris patientissimi*; but tho’ they are now confined to the latter, they preserve their character of excellent work beasts, capable of enduring much fatigue, and, for their size, strong; the least of them carrying double, tho’ to tell the truth it is a too great load. The least I could see on the moor was 35 inches high.³

The inhabitants used them for draught work, as pack-horses and for transport. The respondents of two parishes, Aithsting and Sandsting and Unst, for the Old Statistical Account gave some approximation of the number of horses in their parish. In Aithsting and Sandsting, they were more than 800 and in Unst, 1,000, which meant an average of more than three horses per family.⁴ Ian Tait gives the figure of one or two animals per family as an average for Shetland.⁵ Shetlanders needed these horses for many services; therefore it seems relevant that each family would try to own *shelties*. Alexander Fenton states that they were a “part of the community’s resources”.⁶ Their importance in the life of the Shetlanders is illustrated by a process before the bailie court of Dunrossness. In 1732, the procurator fiscal of the court complained against John Alison and Alexander Sinclair in Scatness for “a mutual ryot committed and threatning to stick one another with drawn knives”.⁷ John Alison appeared and explained that “Alexander Sinclair threatned to stick him or his horse with a knife and refers the truth thereof to his oath and acknowledges he delated the same to Robert Moodie rancelman”.⁸ In this process, it seems as if the human life and the life of a horse were put at the same level. John Alison wasn’t only upset that Alexander Sinclair threatened his life but also that he threatened his horse’s life. The Old Country Acts protected the “very

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 25.

² Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 771; Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 25; Campbell, *An Exact and Authentic Account of the Greatest White-Herring-Fishery in Scotland*, 8–9; Jack, ‘Parish of Northmaven’, 364; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 188.

³ Low, ‘Voyage to Schetland’, 68.

⁴ Barclay, ‘United Parishes of Aithsting and Sandsting’, 594; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 188.

⁵ Tait, ‘Livestock Buildings’, 316–17.

⁶ Fenton, *The Northern Isles*, 244.

⁷ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 6.

⁸ *Ibid.*

serviceable” animals.¹ Indeed, Shetland horses were means of transportation but they also provided another resource; “Horsehair”, writes Alexander Fenton, “was a valuable commodity, used to make ropes, fishing lines, bird snares”.² The 14th Country Act stated “that none cut away other man’s horse-tail or main [mane]”.³ It was also forbidden to “ride, labour, or use, any other man’s horse without liberty of the owner” but as Alexander Fenton states it: “[t]he illicit riding of ponies [...] left no detectable evidence”.⁴

Inhabitants also kept swine or hogs. Arthur Edmondston offered quite a vivid description of these animals:

They [were] of a small size, and a dusky brown colour. The nose [was] broad and very cartilaginous, and the ears are long and erect. Their bodies [were] covered with a profusion of long thick bristles, which [gave] them a singular appearance: when fed for some time on board of ship, on wholesome vegetable aliment, they [became] less bristly, and the flesh [was] very delicate.⁵

Swine were important in the food basket of the inhabitants. They were “the only species of animal food, which the poorer classes of people can afford to bring up for their own consumption” wrote again Arthur Edmondston.⁶ The respondents for the parish of Unst in the 1790s wrote that swine “afford[ed] hams that [were] excellent, when properly cured.”⁷ In theory, the number that each tenants or udallers could keep was regulated by the Country Acts. Thomas Gifford explained that “they [could] be much more numerous than they [were], but, being found very hurtful in turning up and spoiling the grass ground, the people [were] restricted by a country act to such a small number proportionable to the land they labour, which number they must not exceed.”⁸ The 36th act forbade anyone to have “more swine than four upon a last of land over winter”.⁹ In John J. Graham’s *Shetland Dictionary* the last is presented as “an old measurement of land, 18 marks”. This would have been extremely restrictive. In 1747 there were nine tenants living in Sandwick, in the united parishes of Dunrossness, Sandwick and Cunningsburgh. They cultivated 34 mk of the 36 mk land of the township.¹⁰ Henry Tulloch, in Sand, cultivated the last two merks.¹¹ It amounted to a total of 2 lasts of land. In theory the inhabitants of Sandwick could only keep eight swine. In Troswick, four tenants shared the 12 mk of land or the 2/3 last of land, which meant that they could only

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 25.

² Fenton, *The Northern Isles*, 244.

³ act 14 ‘The Old Country Acts’, 83.

⁴ Ibid. act 14; Fenton, *The Northern Isles*, 245.

⁵ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:242.

⁶ Ibid., 2:244–45.

⁷ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 188.

⁸ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 26.

⁹ ‘The Old Country Acts’, 84 act 36.

¹⁰ NAS, CS96/3272, ‘Robert Sinclair of Quendale’s Judicial Rental’, fols 41–46.

¹¹ Ibid., fols 35–36.

keep 2.67 swine, less than one per inhabitant.¹ In 1774 George Tait in South Laxfirth kept three swine, described by his opponent at the Sheriff Court, as “a parcel of swine”.² Numerous problems of swine rooting up the ground or destroying harvest were reported before the bailie courts in the early 18th century and before the Sheriff Court in the late 18th century.³ In the early 19th century, the situation was such that a commentator concluded “it is difficult or in the present state of the police so impracticable to make the Tenants take care of their Swine & prevent their doing mischief by rooting over the ground that I would be better for the community were they extirpated entirely.”⁴

I have already established that tenants and small udallers owned at least own cow. The ox and cows of Shetland, were said to be “like the horse, [...] of small size”;⁵ the cows were “of various colours”, some “curiously speckled and spotted”.⁶ With cows, Shetlanders had milk; with it they made butter which was part of their rent. They could also eat or sell the meat. Milk could be transformed into *bland*, a fermented drink which was a substitute for beer or ale.⁷ In the late 18th century it was said that “[c]heese was never made here.”⁸ Alexander Fenton confirms the absence of Shetland cheese-making at the end of the 18th century but refers to “good cheese” made in the early 17th century.⁹ Eventually it should be noted that the inhabitants drank milk or as John Brand put it “[t]heir ordinary drink [was] milk or water, or milk and water together”.¹⁰ When considering the fact that in late 18th century England, keeping a cow was an important part of the household organisation, Jane Humphries insists on the fact that “[m]ilk provided a gratifying addition to the monotonous diet of the adult worker, but more importantly, it was crucial to the healthy development of laborers’ children.”¹¹

Shetlanders also kept poultry. The respondents for the Old Statistical Account of the parish of Unst wrote that “[t]he tame fowls [were] geese, ducks, pigeons, dunghill fowls, and a few

¹ Ibid.

² SA, SC12/6/1774/7, ‘Complaint (Compensation for Potatoes Destroyed by Swine.)’ 1774 bundles 1 and 2.

³ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’; NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’; SA, SC12/6, ‘Lerwick Sheriff Court Records: Ordinary Court Processes 1692-1900’ n.d.

⁴ NAS, RH9/15/157/9, ‘The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations, 1810’, fol. 27.

⁵ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:209.

⁶ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 188.

⁷ Fenton, *The Northern Isles*, 443; See for example: Campbell, *An Exact and Authentic Account of the Greatest White-Herring-Fishery in Scotland*, 16–17.

⁸ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 198.

⁹ Fenton, *The Northern Isles*, 438.

¹⁰ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 770.

¹¹ Jane Humphries, ‘Enclosures, Common Rights, and Women: The Proletarianization of Families in the Late Eighteenth and Early Nineteenth Centuries’, *The Journal of Economic History* 50, no. 1 (1990): 24.

turkies.”¹ How many tenants or small udallers kept is a difficult question to answer. We know that in 1747 poultry was part of the rent of 113 tenants in the parishes of Dunrossness and Sandwick. It was valued at one fowl per merk. The average number of fowls given to Quendale was 3.4.² This figure proves that tenants must have possessed quite a number of poultry to be able to give up to 3 fowls. Ian Tait notes that “poultry were kept as part of the subsistence agriculture”.³

Livestock husbandry in Shetland was “adapted to accommodate the seasonal nature of land management”, writes Ian Tait.⁴ For most of the year, the animals pastured on the grazing grounds of the scattalds. Thomas Gifford explained in 1733 how the sheep “they lie summer and winter in the open fields exposed to the rigour of the season; and have no food but what they can find for themselves”.⁵ About twenty years after, John Campbell described how Shetland horses “they are never kept within Doors, but foaled in the Fields, live inf the Fields, and die in the Fields”.⁶ The grazing of livestock as well as its herding and *punding* were regulated by the Country Acts. Shetlanders had to keep out “their neighbours ploughed land or meadows” their swine, sheep, horse and mare by the building and up keeping of the hill-dyke.⁷ They had to “keep good neighbourhood” by tethering, herding and folding or *punding* their cattle in day and night time.⁸ They had to keep their swine upon “their own ground”, never letting them pasture on “their neighbours land, meadows, grass, commonalty and pasturage”.⁹ Eventually every scattald had to have “a sufficient *pund*”.¹⁰

The system was the following: sheep and horses were never kept indoors; they pastured on the grazing grounds in all seasons; during the winter, the cattle were in the *byre* with the poultry and the swine, which could also be kept in the house with young lambs. In the summer, they all pastured on the hoga. Nevertheless, the Country Acts stated that they should be *punded* and this, in order to keep their neighbours “skaithless”.¹¹ *Pund* or *rett* was a communal enclosure built on the scattald to pound the township’s sheep. It was a seasonal overnight pen

¹ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 188.

² NAS, CS96/3272, ‘Robert Sinclair of Quendale’s Judicial Rental’.

³ Tait, ‘Livestock Buildings’, 352.

⁴ Ibid.

⁵ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 25.

⁶ Campbell, *An Exact and Authentic Account of the Greatest White-Herring-Fishery in Scotland*, 8–9.

⁷ ‘The Old Country Acts’, 81 act 6.

⁸ Ibid. act 6.

⁹ Ibid. act 6.

¹⁰ Ibid., 84 act 32.

¹¹ See for example: NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 12; SA, SC12/6/1777/14, ‘Complaint (Failure to Herd.) (Criminal)’ 1777.

which was built when no hill-dyke had been erected around the township.¹ Ian Tait explains that it was “more expedient to erect an inclosure into which sheep were penned compared to the effort of building dykes”.² These *punds* were communal enclosures where all the sheep were driven at once. In the late 18th century, there was no hill-dyke in Fetlar and sheep were pounded as a flock, “each farm’s duty of penning being proportional to the number of sheep it held”.³ There were also holding pens for horses to pound them at night when the hill-dyke was absent or defective. These pens were communal in the scattald and individual in the townland.⁴ From the beginning of Spring, the cattle were secured at night on the hill during some weeks to familiarise them with their new surrounding and prevent them to return to the townland.⁵ Sties were also built for swine on the scattald and they were located distant from the township to prevent ravages in the townland.⁶ Eventually, scattald huts were built for birds to keep them off the crops during the summer.⁷

This was the theoretical organisation but it didn’t always work that well. In 1732, William Sinclair represented “Papills town” at the bailie court of North Unst.⁸ He explained that he had found six horses belonging to “William in Sundell and his son” and two horses belonging to Erasmus Abramson; these horses had been left “unpounded and unhampered” on the hill.⁹ William in Sundell and his son were found guilty on breaching the Country Act and were fined in the sum of £10 Scots each. Erasmus Abramson was also found guilty but he was “doubly guilty of breaking the Country Acts”.¹⁰ Firstly, he had left his horses un-pounded; secondly “he did go & brake ward unwarrantably and take his horses”.¹¹ Erasmus Abramson had broken two acts: the 6th act which ordered him to keep his horses out of his neighbours’ ground but also the 35th act which stated “[t]hat all horses belonging either to utscalders or inscalders, oppressing and overlaying the neighbourhood, be instantly removed, after due advertisement given to the owners, and at the kirk door, under the pain of being confiscat and escheat to the king.”¹² The verdict however is unclear; parts of the text being unreadable but

¹ Tait, ‘Livestock Buildings’, 303–4.

² *Ibid.*, 319–20.

³ *Ibid.*, 323.

⁴ *Ibid.*, 318.

⁵ *Ibid.*, 303.

⁶ *Ibid.*, 349.

⁷ *Ibid.*, 352.

⁸ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 17.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² ‘The Old Country Acts’, 81, 84 acts 6 and 35.

what can be gathered is that he had at least to pay a fine of £10 Scots.¹ In the early 19th century, the 35th act against “Stray Horses &c.” was still judged “very necessary” and “Every part of [the 6th act] [was] most necessary at present & well adapted to the general benefite of Landlords & tenants in this Country”.² The observer of the Country Acts in 1810 explained that

In place of Dykes being built or repaired before the first of March, they in general lye down at present till the middle or end of May, and then are very imperfectly repaired – And of Course during the Spring & Seedtime, Sheep, Horses & Cattle are trespassing upon and eating up the young Corn & grass within Dykes – every tenant Complains of this, & yet they are all more or less guilty of the Crime they Complain of.³

It is an interesting opinion, knowing that there were more hill-dykes in the late 18th century than at the beginning and that it meant that the number of communal *punds* was also decreasing.⁴ Still, there was some dissatisfaction coming from landowners on the up keeping of dykes and on the absence of proper *punding*. The same observer stated that “[t]he inhabitants Should be obliged to keep their Sheep tame, & to pund or fold them over nights during summer & harvest until the Corn is taken into the yards.”⁵

The building of dykes or enclosures was a communal activity. Another communal task was *rooing*. Sheep in Shetland weren’t sheared; they were *rooed*. John Brand, in the early 18th century, described the action of *rooing* without using its Shetland name. He wrote that Shetlanders “neither wash nor clip their sheep, nor have any sheers for that end, but pull the wool off them with their hands”.⁶ The action of pulling the wool off manually was called *rooing*. Thirty years later Thomas Gifford specified that “in the month of May their fleece begins to loosen, and then it is pulled off, and against winter another is grown up sufficient to protect them from the cold.”⁷ The same practice was attested a century later when Arthur Edmondston stated that

[t]his operation is called *rooing* the sheep. They are left very bare after it; but the people say, that the wool on the animal continues much finer when removed in this manner, than by the shears.⁸

Rooing was an extremely organised operation. The sheep had to be gathered from the surrounding hills. In order to do so, sheepdogs of the “shepherd dog kind” were used to gather

¹ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 17.

² NAS, RH9/15/157/9, ‘The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations, 1810’, fols 2, 26.

³ *Ibid.*, fol. 3.

⁴ Tait, ‘Livestock Buildings’, 359.

⁵ NAS, RH9/15/157/9, ‘The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations, 1810’, fol. 5.

⁶ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 770.

⁷ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 25.

⁸ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:211.

the flock.¹ These dogs were key elements in the organisation of *rooing* but they were also extremely controlled. Since they were allowed to go among them and drive the sheep they had to be well trained not to hurt them. Country Acts regulated the use of these sheepdogs. First, they had to be “appointed or allowed by the sheriff or baillie, with the advice of special honest men in the parish”; then, it was forbidden to “run after sheep with a dog unaccompanied”; eventually, all dogs had to “be tryed yearly by the baillie or by the rancellmen, and other honest men in the parishes; and if any be found to have dogs that take, or may take sheep, who are not allowed to keep sheep-dogs, shall pay according to the former act [i.e. £10 Scots]”.² If unlawful dogs were found they were to be hanged.³ Between 1730 and 1735, the bailie courts of Dunrossness and north Unst judged between them fifteen cases of individuals going unaccompanied to the hills with sheepdogs. In 1732 the procurator fiscal of the bailie court of Dunrossness complained upon John Smith “for going with a sheep dog to the hill unaccompanied contrary to the Countrey Acts.”⁴ Witnesses were summoned to prove the matter. One of them, George Tulloch, explained that John Smith had been authorized to keep a sheepdog by “Thomas Halcrow in Vadsgarth cautioner” and that he had seen him “goe to the hill with his dog [...] but still in company with other men”.⁵ Therefore the judge discharged the said John Smith. In 1730 the bailie of North Unst, Thomas Mouat organised the yearly ‘trial’ of sheepdogs. I chose to quote lengthways the procees:

As to sheep Doggs the only Persons that have them in the Parish are Andrew Anderson in Sotland, Robert Williamsson in Netwhey, Walter Manson in Ungersta, William Bruce in Tupton, Robert Grey in Huver, Walter Nisbet in Ulliska, Andrew Josephson in Burrafirth; The Judge having interrogate the parishoners of they had suffered any Skaith or received any Damage by the above Doggs or if the Persons in whose custody they were had observed the Act of Running with them accompany’d with witnesses. It was answered that they had sustained no loss what may and for ought they knew they had punctiullay observed the Act with respect no running with said Doggs The Judge ordained the hail persons above mentioned to bring in their respective warrants for holding of the said Doggs against to morrow att twelve a clock [...]. Tho[mas] Mouat

The Judge is fully satisfied with the above persons their order for keeping of sheep doggs is having been granted by the Late Bailie & inserted in his books [...].⁶

In the early 18th century, there were only six persons authorised to keep sheepdogs in the north Parish of Unst. The previous bailie had given the authorisation to these men and it had been recorded in the bailie court book. These sheepdogs accompanied by their masters and by the owners of the sheep drove them “into a small circular enclosure called a *crue*, for the

¹ Ibid., 2:225.

² ‘The Old Country Acts’, 82 acts 8 and 10.

³ Ibid. act 10.

⁴ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 15.

⁵ Ibid.

⁶ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 4.

purpose of taking off the wool.”¹ The *crue* was the sheepfold used for *rooing*. A *crue* was a stone pen generally rounded with dykes flaring out for the entrance.² Several sheepfolds were built on the scattald to make sure that all the animals were caught. These structures were owned and used communally.³ The *rooing* of sheep happened in May, or near midsummer.⁴ It was a public event; a moment when people were ‘accompanied’. Indeed the Country Acts stated “that none mark lambs or row sheep where there is different owners in the flock, but as the sight of sufficient witnesses”.⁵ Marking lamb took place at the same moment that *rooing*. Men gathered together on a day that had probably been decided by the bailie or the rancelmen. They drove the sheep into the *crue* and looked for their sheep, marked on the ear with a specific identification, and for the lambs which they claimed and marked. They could proceed to the *rooing* once they had shown the rancelmen that the sheep belonged to them. At the end of the studied period, Samuel Hibbert explained that marking and *rooing* were still “publicly proclaimed, and on the day fixed, all the men of a district turn out, and drive their common flock [...] into rude inclosures, named *punds* or *crues*.” He added that “the civil officers (who were in former days the bailiff and ranselmen of a district) appear as arbiters of all disputes.”⁶

Like run-rig strips of land, sheep belonged to owners. They didn’t form a communal flock which proceeds would be divided between the different inhabitants. The grazing organisation meant that only collective work could bring fairness between the sheep owners.

The hill dyke as a porous membrane

Cultivating outside the dyke

In Scotland, Norway and Shetland, vegetables were cultivated outside the dyke separating the arable land from the waste land. Kail and turnips were cultivated on the “terres incultes”, the waste land, the *utmark* in Norway, the commonties in Scotland and the hagi in Shetland. Ian Whyte explains that in Scotland taxes were rarely levied on vegetables so it is difficult to

¹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:211.

² Tait, ‘Livestock Buildings’, 323–24.

³ *Ibid.*, 323.

⁴ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 25; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:211; Hibbert, *A Description of the Shetland Islands*, 439.

⁵ ‘The Old Country Acts’, 828.

⁶ Hibbert, *A Description of the Shetland Islands*, 439.

know how many were sown, planted and then harvested.¹ In Shetland and in the North of Scotland, in Caithness, enclosures for the cultivation of kail started to be made in the waste land in the 18th century. In Shetland, these enclosures were called “planticruies”. Alexander Fenton explains how “[f]or starting off the plants from seed, a small ‘penn or bught’ was used, such enclosures being made by even the poorest of the people.”² The Scottish ethnographer adds that “[t]enants could have more than one, and there was little or no restriction on anyone who wished to choose a spot for a planticrue on the common grazings.”³ They were located “on the flattest part of the shore, close by the sea, where the frost is best avoided”, explained Patrick Neill who visited the neighbouring archipelago of Orkney in 1804.⁴ Planticruies could be of all shapes: square, rectangular or round, and had an average of 4.6-9 m across. The method was “[to sow] the seed in the planticruies in July to August, and transplanted to the kailyards in April to May of the following year.”⁵ The planticruies worked as “nurseries”⁶ to protect the ‘baby kails’ when the sheep and cattle could roam on the arable land once the crops had been harvested and to protect them from the harsh gale of winter. In Caithness similar enclosures known as ‘plant tofts’ or ‘plant cots’ were also made to sow kail. Alexander Fenton compares these plant tofts with the planticruies of Shetland and Orkney and explains that the plant tofts “were made in June in the common, by enclosing an eight to a tenth of an acre with a turf dyke about 6 ft (1.8 m) high. In July the surface of the enclosure was pared with a spade and the turf dried and burned as a fertiliser, before the seed was sown.”⁷ Cottagers and small farmers made these plant tofts. These techniques developed all along the 18th century at the same time than the kailyards appeared.⁸

In Norway the method of culture of turnips was closer to the paring and burning than to the planticruies. Kåre Lunden explains that turnip “was undoubtedly fairly widely grown in the Middle Ages, and according to some authors was nearly on every farms in the 17th and 18th century, though in small quantities, often in small, burnt patches in the woods (*reitar*).”⁹

What was the socio-economic role of these cultures on the other side of the dyke? What does it say of the empirical knowledge of the communities? For Ester Boserup, paring and burning

¹ Ian Whyte, *Agriculture and Society in Seventeenth Century Scotland* (Edinburgh: John Donald Publishers Ltd., 1979), 64.

² Fenton, *The Northern Isles*, 101. For specific information on the building of planticruies, see: Tait, ‘Crop Buildings’, 440–47.

³ Fenton, *The Northern Isles*, 103.

⁴ Neill, *A Tour Through Some of the Islands of Orkney and Shetland*, 123; Fenton, *The Northern Isles*, 103.

⁵ Fenton, *The Northern Isles*, 104.

⁶ *Ibid.*

⁷ *Ibid.*, 104–5.

⁸ *Ibid.*, 101–5.

⁹ Lunden, ‘Recession and New Expansion 1350-1814’, 177.

such as *reitar* promises very good harvests with a low intensity work. Even if it is almost impossible to identify the yields of the planticrues, plant tofts or *reitar*, it appears that men privileged these cultures because they needed a low intensity work and produced high or satisfying yields. Grain production not being the main focus in the Highlands, Shetland and Norway, these yields may reflect a desire to secure food supply. Why then did they want to secure their food supply? In Shetland, the increase of population from the 1720s onwards was parallel with the development of the planticrues. This analysis can be confirmed by the thesis of Ester Boserup who sees a clear connection between demographic pressure and agrarian change.¹ These cultures were a way to increase the food basket and at the same time to provide nutrients. “Kail”, explains Alexander Fenton, “was a valuable food because it could to some extent act as a specific against the prevalent disease of scurvy, especially in the days before the potatoes, a source of vitamin C, were grown.”² In Norway,

[a] source from Vestlandet in 1745 testifies that scurvy was the most common illness. It seems reasonable that scurvy was a major problem. The cultivation of potatoes, which in later centuries solved this problem, had its national breakthrough in the years following 1809, and the growing of vegetables and fruit seem to have been very limited in earlier times. The main source for vitamin C until the 19th century seems to have been turnip.³

Both in Shetland and in Norway, the ‘waste land’ provided the inhabitants with the possibility to grow a primordial source of vitamin C. Kail was “popular [...] beyond doubt, for it [appeared] frequently in law cases where offenders were charged with the theft of kail”.⁴ Processes of crop destruction by sheep also contained mentions of kail. In 1774, John Smith in Starkigarth in the parish of Cunningsburgh was “accused, at least represented by Laurence Bain & others Inhabitants of that Parish of having stolen Cabbage Plants, at least of having in his Custody or planted in his yard Plants which he did not raise himself”. His answers shed light on the collective aspects of planticrues and on the interwoven aspects of township life in the parish of Cunningsburgh:

[John Smith] declares that he had Plants sown last season in partnership with Olla Smith in Aith his father & some of these which fell to his share were part of the Plants set in his yard. Some of the plant in question he had from Margaret Ollasdaughter in Bremer his mother in law & he had some that grew in the same Crub belonging to Erick Johnson in Gord the Declarants’ Grand Uncle, so that he hath no Plants but what he came honestly by.⁵

In 1777, Thomas Jameson in Veensgarth, James Chappie in Burra, and Gilbert Goodlad in Deall, all in the parish of Tingwall accused ten inhabitants of the same parish of failure to herd and by it of destroying their cabbage plants:

¹ Ester Boserup, *Évolution agraire et pression démographique* (Paris: Flammarion, 1970), 84.

² Fenton, *The Northern Isles*, 101.

³ Lunden, ‘Recession and New Expansion 1350-1814’, 177.

⁴ Fenton, *The Northern Isles*, 101.

⁵ SA, SC12/6/1774/6, ‘Petition (Theft - of Plants.) (Criminal)’ 1774 bundle 10.

All, and every one of Them, Oppress, Hurt, & Injure the Complainers in their Plants, kail, Corns &c by beings owners, Holders & Keepers of a Parcel or Flock of Ailmark, Lawless, or Unlawful, Sheep Pretending indeed to Pasture in the Hill called “Harrislees”, but in Reality pasturing in no Settled Scattle, but running from place to place, Destroying the Complainers’ corn & hay after it is builded upon the winter Steeth in the Corn-yard, and their Plants in the Planticotts, by Climbing in over, in the night time, the Roofs &c of Office Houses, and thereby getting into the Complainers’ corn-yards, Destroying their Kail, Corn & Hay, and Climbing in over the Dykes of Planticotts Six foot high, and eating up and otherwise Destroying their Plants.¹

Stealing plants of kail or destroying them was a great offence since they brought a valuable source of vitamin C and improved the food basket of the inhabitants. Furthermore, even though they didn’t need a high intensity work, they needed to be taken care of. Inhabitants had placed hope, time, collective work and knowledge in these plants. They protected their resource by bringing to justice those who, they thought, destroyed their work.

These communities in Shetland and Norway developed empirical knowledge based on observation, practice and reproduction of mechanisms. Erik Pontoppidan recalled, in the middle of the 18th century, the empirical knowledge developed by the Finnish farmers and imported in Norway concerning the cultivation by fire. He explained how “the concentration of the vegetative spirit in the ashes, [...], before it can evaporate, impregnates the corn with such wonderful fecundity.”² This type of knowledge was shared in Scotland, Norway and Shetland, where even if paring and burning cultures didn’t exist, peat ashes were used to fertilise the soil. Alexander Fenton described the process of knowledge acquisition in the following manner:

Since fire can release substances in the soil in a form that makes them assimilable by growing plants as nutrients, this [i.e. using peat ashes] was a wise move, however empirically the knowledge was gained.³

Empirical knowledge is also to argue with the planticrues where an effective system of soil renewal was needed since “Brassica is very exhausting to the soil”: “the old earth from the crue was supposed to be taken out and replaced in the scattald where the fresh turf had been removed”.⁴

Animals and seaweed on arable land

Empirical knowledge and energy transfer were also at the core of another shape-shifting aspect of the arable land/waste land organisation. Fertilising the land through the use of animal manure and seaweeds was another way to blur the distinction between arable and

¹ SA, SC12/6/1777/14, ‘Complaint (Failure to Herd.) (Criminal)’ bundle 1.

² Erik Pontoppidan, *The Natural History of Norway*, vol. 2 (London: Printed for A. Linde, 1755), 105, <http://find.galegroup.com/ecco/infomark.do?&source=gale&prodId=ECCO&userGroupName=abes&tabID=T001&docId=CW3307443483&type=multipage&contentSet=ECCOArticles&version=1.0>.

³ Fenton, *The Northern Isles*, 281.

⁴ *Ibid.*, 104.

waste. During the summer, the livestock grazed on the common hills but during the winter it was a different matter. When the harvest was stacked in the corn-yards, the hill-dyke was open. Alexander Fenton describes precisely the moment when the *grinds*, from the Old Norse, *grind*, gate, were open. His description is based on an early 20th-century account;¹ it is however a revealing description for the historian or the archaeologist who through paper or material traces only catches snippets of this specific moment.² Alexander Fenton explains how

[a]s soon as the crops were off the ground in the autumn, the dykes were breached, and the stock were free to roam on the townland, which now became a common grazing too. The Shetland phrase was to *slip de okregert* (Old Norse *akr(a)gerði*, enclosure of arable land), to leave the okregert or enclosed arable open for the animals by leaving the *grinds* (Old Norse *grind*, gate) or gates open. The date for opening the dykes was not precisely fixed, and would vary with the state of the weather and date of harvest, but the slipping of the okregert was a strong incentive to the slower tenants to get their crops off the ground and into the stackyard at the same time as their neighbours.³

The grazing of livestock on the townland offered possibilities to take care of the livestock at a season when going out of the house could be difficult, to regulate fodder access in an economy where the resource was scarce, and to manure the ground without any intensive work. Indeed the townland provided grazing and was itself manured; the sheep and horse dung furnishing a small but genuine fertiliser to the ground. The notion that Shetland's landscape was one where livestock was constantly on the hills, far away from the townland is biased. In the winter, sheep and horses could come close to the farmsteads. Arthur Edmondston gave the account of horses which in the winter time “approach[ed] the houses, and appear[ed] to supplicate assistance”.⁴ Cattle, lambs, swine and poultry were kept indoors. Keeping the townland opened in winter meant that Shetlanders offered another grazing space to their livestock. It didn't make the winter less harsh though; when the weather was extremely bad, horses and sheep died in numbers.⁵ It was said that during some rude winters sheep and horses fed on seaweed.⁶

¹ Jessie M. E. Saxby, ‘Shetland Phrase Dand Idiom. Part II’, *Old Lore Miscellany* I, no. VII (1908): 268; Fenton, *The Northern Isles*, 89.

² On the question of the use of ethnographic descriptions in rural history or archaeology, see: Christine Rendu, ‘Les Cultures Temporaires. Des Modèles Ethnographiques Aux Questions Archéologiques’, in *Cultures Temporaires et Féodalité. Les Rotations Culturelles et L'appropriation Du Sol Dans l'Europe Médiévale et Moderne*, ed. Roland Viader and Christine Rendu, *Flaran* 34 (Toulouse: Presses Universitaires du Mirail, 2014), 259–80.

³ Fenton, *The Northern Isles*, 89.

⁴ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:206–7.

⁵ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 25; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 188.

⁶ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 2:212.

Seaweed was also a resource that moved from outside the dyke to inside the dyke. It was an important source of manure, most of the time combined with animal and earth compost. Seaweed contains nitrogen and potassium, as well as phosphorus, but not as much as animal manure. In Orkney, it was extremely beneficial to the sandy soils.¹ The minister of Walls and Sandness in Shetland had the same analysis. The soil of his parish “[b]eing partly sandy, it agrees best with sea-weed for manure, the want of which has frequently reduced the place to scarcity; though in plentiful years it can afford a considerable supply to other parishes.”² Alexander Fenton explains that “[s]eaweed was spread fresh if it came at the time of Spring cultivation and sowing, but in Autumn and Winter it was composted with earth and animal manure.”³ In Shetland, at the difference with Orkney, “seaweed generally formed part of a compost”.⁴ It was less systematically used and it was mostly present in areas with a good access to the shore. The respondents of the parish of Unst stated that “[t]ang and sea ware [were] used as manures, wherever they [could] be produced.”⁵ The manure used at the end of the 18th century in Aithsting and Sandsting was one of the examples of compost made with seaweed; it was composed of cow dung, earth and seaweed and applied on the outfield land.⁶ Coastal townships could also apply “seaweed in winter, compost in spring, and seaweed again if available.”⁷ Similar practices were observed on the coasts of Northwest Europe, such as in Ayrshire, Guernsey and Brittany.⁸

The importance of building the hill dyke

In Scotland, arable lands were divided between infield and outfield. Beyond these lands, we find the ‘head dyke’, a dyke separating arable land and meadows from the common grazing and other areas such as lochs and forests. In Shetland the system was similar. The lands of the infield-outfield were surrounded by a dyke, known as the hill-dyke, which separated them from the *hagi*, the common pasture. In Norway, arable lands were aggregated within the *innmark*, a fence, the *utmarksgjerde* or *bøgard* separated it from the *utmark*, often translated

¹ Fenton, *The Northern Isles*, 275.

² Thomson, ‘Parish of Walls and Sandness’, 99.

³ Fenton, *The Northern Isles*, 278.

⁴ *Ibid.*, 283.

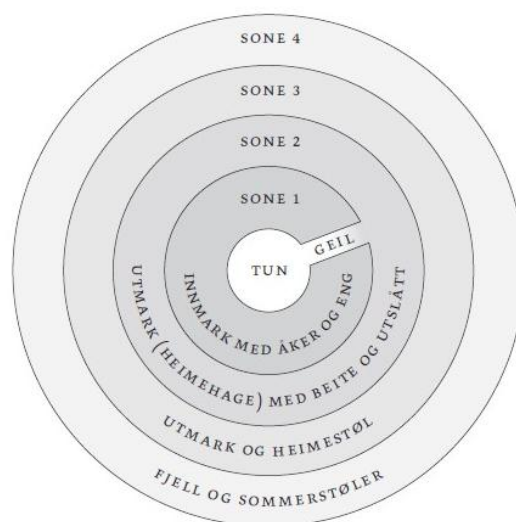
⁵ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 192.

⁶ Barclay, ‘United Parishes of Aithsting and Sandsting’, 586.

⁷ Fenton, *The Northern Isles*, 283.

⁸ *Ibid.*, 279; Jeanette M. Neeson, ‘Commons Sense: The Failure and Success of British Commons’ (Property and Commons: The new issues of shared access and innovation, Paris, 2013), 279, http://www.mshparisnord.fr/ANR-PROPICE/25-26_avril/neeson_british-commons.pdf; Charpentier, ‘Le Littoral et Les Hommes’, 288, 304.

wrongly with the word ‘outfield’, a better translation in my opinion is the expression ‘outlying fields’ or ‘uplands’.¹ Annie Antoine has shown the existence of a field system or agrarian system in halos in western France.² If we transfer this system to Shetland, there would be a first halo with the infield, the lands cultivated more often and which demanded a higher intensity work, a second halo with the outfield, not necessarily farther from the farmstead, and a third halo with the common grazing, the peat banks, the shore, the lochs, the streams, etc. The second halo would be separated from the third halo by a dyke. However, these halos would be connected by a gate. Ingvild Øye’s diagram of ‘operating zones’, *driftssoner*, shows how connected were the *innmark* and the *utmark*, through the *geil*, a stone-lined cattle road sometimes surrounded by stone walls.³ “The animals”, explains Arne Lie Christensen, “were droven from the barn in the *tun*, through the *geil*, to pasture ground in the *utmark*.”⁴



- Zone 1: ‘tun’ and innmark with arable land and meadows
- Zone 2: utmark (home garden) with pasture and hayfields
- Zone 3: utmark and shielings
- Zone 4: mountain and summer shielings

Øye, Ingvild. ‘Utmarka I Vestnordisk Perspektiv’. In *From Nature to Script. Reykholt, Environment, Centre, and Manuscript Making*, edited by Helgi Þorláksson and Þóra Björg Sigurðardóttir, 52. Reykholt: Snorrastofa, Cultural and Medieval Centre, 2012.

Figure 12: Agro-pastoral system: Ingvild Øye's 'operating zones'

¹ Sevatdal, ‘Property and Land Use in Norwegian Outfields’, 77; Ian Tait, ‘Settlement and Agricultural Landscape’, in *Shetland Vernacular Buildings, 1600-1900* (Lerwick: Shetland Times, 2012), 55; Janken Myrdal, ‘Farming and Feudalism, 1000-1700’, in *The Agrarian History of Sweden, 4000 BC to AD 2000*, ed. Janken Myrdal and Mats Morell (Lund: Nordic Academic Press, 2011), 94; Arne Lie Christensen, *Den norske byggeskikken: hus og bolig på landsbygda fra middelalder til vår egen tid* (Oslo: Pax Forlag, 1995), 82.

² Annie Antoine, ‘Cycles Cultureux, Usages et Appropriation de L’espace Rural (France, Fin Du Moyen Âge Époque Moderne). Les Enjeux D’une Comparaison Avec Le Modèle Anglais’, in *Cultures Temporaires et Féodalité. Les Rotations Culturelles et L’appropriation Du Sol Dans l’Europe Médiévale et Moderne*, ed. Roland Viader and Christine Rendu, Flaran 34 (Toulouse: Presses Universitaires du Mirail, 2014), 157–58.

³ Ingvild Øye, ‘Utmarka I Vestnordisk Perspektiv’, in *From Nature to Script. Reykholt, Environment, Centre, and Manuscript Making*, ed. Helgi Þorláksson and Þóra Björg Sigurðardóttir (Reykholt: Snorrastofa, Cultural and Medieval Centre, 2012), 52; Christensen, *Den norske byggeskikken*, 82.

⁴ “Dyra ble ført fra fjøset inne på tunnet, gjennom geilen og på beite i utmarka.”, in Christensen, *Den norske byggeskikken*, 82.

In Norway, Scotland and Shetland, the dyke or fence that surrounded the arable and meadow lands from the outlying fields held a special position in the agro-pastoral system. These types of enclosures existed before the early modern period. In Norway, the earliest version of the manuscript of the *Frostatingsloven* dates from 1260.¹ This Law code mentions the « big fence » (ON. *Stoðugarðr*), how it must be built and how it must be used.² Scottish researchers underline the importance of the head dyke or hill dyke when it comes to organising a township's space.³ Hill dykes in Shetland existed since the Middle Ages but they didn't enclose all the townlands.⁴ The percentage of enclosed townlands increased from the Middle Ages to the Early Modern Period and by the late 17th century “most of the arable ground [...] was enclosed with dykes”.⁵

In Scotland, Chris Dalglish describes archaeological sites where it is possible to locate parallel traces of head dykes. It is probable that land was first cultivated on the other side of the dyke and that a ‘new’ dyke, enclosing the new arable land, was built after a little bit higher on the hill.⁶ Similar extension of hill dykes happened in Shetland in the 18th century. Susan Knox, in *The Making of the Shetland Landscape*, explains how

[i]n addition to the enclosure of outsets as small separate farms, the expansion of arable land was also accomplished by the outward extension of town dykes. There are several cases of heritors of a town entering into an agreement whereby they would mutually extend their town dykes outwards and enclose a section of the common land lying adjacent to the dykes. Thereafter they would subdivide the ground thus enclosed among themselves according to their respective interests.⁷

A sketch of the “Town of Ness comprehending The Rooms of Toft, Breckon & Houlland” shows the “expansion of the Townlands” from 1796 and the progression of the dyke on the hill.⁸

¹ Jan Ragnar Hagland and Jørn Sandnes, eds., *Frostatingslova* (Oslo: Norske samlaget, 1994), ix.

² ‘Gjerde’, *Kultur Historisk Leksikon For Nordisk Middel Alder* (Copenhagen: Rosenkilde og Bagger, 1961), 290.

³ Fenton, *The Northern Isles*, 89; Whyte, *Agriculture and Society in Seventeenth Century Scotland*, 61.

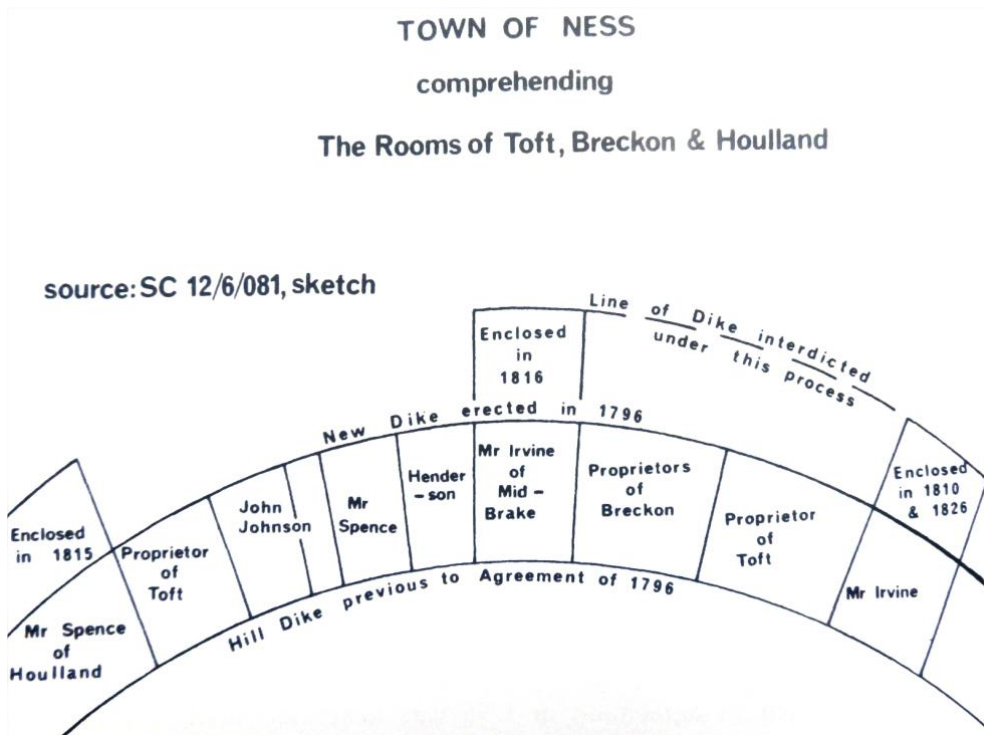
⁴ Tait, ‘Settlement and Agricultural Landscape’, 58.

⁵ Robert Monteith, *Description of the Islands of Orkney and Shetland*, ed. Robert Sibbald, 1st edition: 1711 (Edinburgh, 1845), 3; Tait, ‘Settlement and Agricultural Landscape’, 58.

⁶ Chris Dalglish, *Rural Society in the Age of Reason: An Archaeology of the Emergence of Modern Life in the Southern Scottish Highlands* (New York: Kluwer Academic/Plenum Publishers, 2003), 92.

⁷ Knox, *The Making of the Shetland Landscape*, 42. On this issue, see also: Tait, ‘Settlement and Agricultural Landscape’, 59–62.

⁸ Knox, *The Making of the Shetland Landscape*, 44.



Knox, Susan. *The Making of the Shetland Landscape*. Edinburgh: John Donald Publishers Ltd., 2003, 44.

Map 24: Hill dyke: new dyke on the hill

Cultivating outside the dyke was possible both in Scotland and in Shetland; the dyke was not the ultimate limit of the arable ground. It served as a protective wall only at a specific time of the year. The gate as a door in the dyke, as the physical link between the townland and the *hagi*, was an essential part of the organisation of the agro-pastoral system of Shetland. The Gulathing law, the Landslov and the Country Acts of Shetland regulated the building and the use of the gate.¹ The 6th Country Act clearly stated the following points:

That good neighbourhood be observed and kept by timous and sufficient bigging of decks, and putting up of grinds and passages, keeping and closing the same [...]; that all decks be sufficiently built before the last of March, so as all cattle may be kept without decks from the time that the labouring begins; and whatsoever person shall wilfully allow their cattle to tread upon their neighbours ploughed land and meadows, before the first of May, shall pay for each swine ten shillings, for each sheep two shillings, for each horse, mare, or colt six shillings; doubling the said pains after the first of May, besides payment of the damages; and that they pay forty shillings for each *winter slop* found in their decks after the first of May; That whoever neglects to close the grinds, or breaks down, and goes over decks, shall pay for each time they do so forty shillings Scots, besides the damages [...] ² [my italics]

“Good neighbourhood” in this agro-pastoral system was kept if the dykes, the gates and the passages were set up and closed when necessary. The Country Acts didn’t regulate the date for opening the dyke, such as Alexander Fenton explains, but it clearly stated that “winter slop[s]” existed and that in order to protect the arable land they needed to be repaired or

¹ Laurence M. Larson, trans., *The Earliest Norwegian Laws. Being the Gulathing Law and the Frostathing Law*, Records of Civilization, no. 20 (New York, 1935), 96; Absalon Taranger, ed., *Magnus Lagaboters Landslov* (Christiania: Cammermeyers Boghandel, 1915), 132–33; ‘The Old Country Acts’, 81 act 6.

² ‘The Old Country Acts’, 81 act 6.

closed from the end of March. They were several ways to go through the dykes: gates or grinds and “winter slop[s]”. Alexander Fenton and Ian Tait both describe the grinds of Shetland in their respective ethnographical work.¹ Ian Tait explains that “Shetland gates were not tightly fitted, allowing removal when animals were let back into the *tun* or when repairs were effected.”² Shetland gates were made to be removed: in their architecture they included the idea that they should be easily opened or disconnected from the dyke and therefore, let the animals within the dykes. “Winter slops” were small screees either man-made or caused by the winter rains or gales through which animals could go and which had to be repaired before the ground was ploughed.

Dykes were by excellence communal elements of the landscape. Their architecture and the possibility for men to maintain them were based on what offered the scattald: stones and turf were the two main materials of these dykes. Their maintenance, explains Ian Tait, “was a communal responsibility; only after it was complete could cultivation commence.”³ The maintenance was divided between the heritors or the tenants of a township who had the obligation to repair their portion of the dyke according to their farm’s size.⁴ In Laxobigging, Delting, “[t]he fourteen tenants had a township perimeter of over three miles to keep up”.⁵

In 1810, in the “Observations on the ancient Country Acts of Zetland”, it was stated that “every part of this act [Act 6]” was considered as “most necessary” and further developed

[that it was] well adapted to the general benefite of Landlords & tenants in this Country, which is evident to any person the least acquainted with the tenantry in it, and also to the tenants and fishers themselves, and yet almost every one of its usefull & beneficial regulations are in general neglected, by which the inhabitants suffer a Considerable loss yearly – In place of Dykes being built or repaired before the first of March, they in general lye down at present till the middle or end of May, and then are very imperfectly repaired – And of Course during the Spring & Seedtime, Sheep, Horses & Cattle are trespassing upon and eating up the young Corn & grass within Dykes – every tenant Complains of this, & yet they are all more or less guilty of the Crime they Complain of.⁶

This comment of the country act illustrates what Ian Tait has explained for the early 19th century: the population had increased in Shetland (fishing tenures were one of the reasons) and cultivated land had expanded as well, which meant that “the necessity for maintaining a stockproof dyke” had also increased.⁷

¹ Fenton, *The Northern Isles*, 99; Tait, ‘Settlement and Agricultural Landscape’, 63–69.

² Tait, ‘Settlement and Agricultural Landscape’, 66.

³ *Ibid.*, 61.

⁴ Fenton, *The Northern Isles*, 89; Tait, ‘Settlement and Agricultural Landscape’, 61–62.

⁵ Thomson, ‘Township, “House” and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland’, 122; Tait, ‘Settlement and Agricultural Landscape’, 62.

⁶ NAS, RH9/15/157/9, ‘The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations, 1810’, fols 2–3.

⁷ Tait, ‘Settlement and Agricultural Landscape’, 58–59.

These dykes, even though they ‘needed’ to be built, weren’t necessarily taken care of. The courts had to deal with complaints concerning the destruction of crops, plants and hays and the failure to build a proper dyke. These processes illustrate “[t]he importance of the dykes in the old communities, and the collective responsibility for their maintenance” already “underlined by the Country Acts from Shetland”.¹ I studied two examples of the importance of dyke building, and not only of the hill dyke, in the bailie court and Sheriff Court records. In 1777, two groups of townships were in dispute on “the Hill called ‘Harrislees’”.² Sheep had destroyed kails in the planticrues and had eaten the harvest of corn and hay. For the inhabitants of the townships of Veensgarth, Burra and Dale, located in the south of the hill, the fault laid with the inhabitants of Uresland, Gott and Greenwall, located in the west of the hill, who didn’t have a proper shepherd. While for the people of Uresland, Gott and Greenwall,

it should be granted that they [i.e. the sheep] might have been in the Corn yards of the Complainers; which they might, very easily do, by reason of the badness of the Corn yard dykes, in over which they are said to have come; [...]. And whereas it is a general Rule in this Country, Enacted in the Country Acts, and confirmed by the decision of several Judges in cases of the like nature, and by practice in general for Time out of mind, that the Dykes or Hedges of Corn yards should be built, kept Six foot or upwards perpendicular height [...].³

So, on one side the fault laid in the absence of a shepherd and on the other hand on the absence of a sufficiently high corn dyke. Similarly in 1732, the scattalders of Skaw accused the scattalders of Norwick and Clibberswick, to have neglected their duty in terms of *pund* maintenance and herding in the common *pund* of Nesmoore. This negligence led to destructions: “the towns of Ska being the most adjacent were Continually Exposed to Skaith”.⁴

These two processes show what Pierre Lemonnier has described for the Baruya villages: the object dyke “communicates a social order”.⁵ The Baruya fence is “too sturdy to be mundane”⁶ and the construction of these fences gives the opportunity for the Baruyas to reaffirm masculine domination, co-operation, co-initiation and family links.⁷ Shetland dykes weren’t excessively sturdy; they had to be built to a ‘sufficient’ height to prevent the animals from passing over them. However these dykes and these processes reveal, in my opinion, more than

¹ Fenton, *The Northern Isles*, 99–100.

² SA, SC12/6/1777/14, ‘Complaint (Failure to Herd.) (Criminal)’ bundle 1.

³ Ibid. bundle 2.

⁴ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 11.

⁵ Vincent Charpentier, ‘Les Archéologues et Anthropologues S’intéresseraient-Ils Exclusivement Aux Objets ?’, mp3, *Le Salon Noir* (France Culture, 17 October 2012), <http://www.franceculture.fr/player/reecouter?play=4517647>.

⁶ Pierre Lemonnier, ‘Too Sturdy To Be Mundane: A Baruya Garden Fence’, in *Mundane Objects: Materiality and Non-Verbal Communication* (Walnut Creek: Left Coast Press, 2012), 21–44.

⁷ Ibid.; Charpentier, ‘Les Archéologues et Anthropologues S’intéresseraient-Ils Exclusivement Aux Objets ?’

an element of Shetland landscape and of the organisation of the agro-pastoral system. The impossibility for a village, a group of villages or a scattald to build sufficiently high dykes testifies of the impossibility for the men of these places to work collectively. The maintenance of sufficiently high dykes highlights the solidarity and the solidity of the masculine relationships within a township or a scattald. In the chapter on “Farming and Feudalism, 1000-1700” in the *Agrarian History of Sweden*, Janken Myrdal has a similar analysis. He writes that – and I quote him lengthily –

[a] most important innovation, tying the village community together, was new fencing practices. The villagers created common infields, consisting of fields and pastures enclosed by a single fence, and by joining forces instead of fencing each parcel of land separately the farmers could save themselves considerable time and labour. Every villager then became dependent on all the others' work. A single gap in the fence would open up all the fields to marauding animals, domestic or wild. No mismanagement could be allowed. This required regulation. In the sections of the regional laws, and indeed the national law, governing village communities, fencing actually took up more paragraphs than any other common task in the villages. If anyone broke the fencing regulations the farmers could invoke the law and turn to a higher court [...] Hundreds of kilometres of wooden fences were built, and gave a distinctive structure to the landscape, dividing it into the fenced *inmark* (infields) and beyond them the *utmark* (outlying lands) where livestock were grazed. Even in the eighteenth century, fencing was still the most important communal issue in the majority of Swedish villages.¹

Even if there were no wild animals in Shetland to protect against, there were more in the dykes than their economic value: they tied the community together. Tenants counted on each other. In Shetland, Alexander Fenton tells that some dykes even had supposed supernatural origins.² In Norway, Hans Sevatdal explains that “[e]ven mentally, culturally and spiritually this fence [*utmarksgjerde*] had important functions in ordering the landscape.”³ To sum up, here is a sentence of Alexander Fenton which synthesises the role of the (hill) dyke in Shetland: “[i]t was not fortress wall that encapsulated the community, not a dividing line, but a link between the elements of the township.”⁴

¹ Myrdal, ‘Farming and Feudalism, 1000-1700’, 94.

² Fenton, *The Northern Isles*, 89.

³ Sevatdal, ‘Property and Land Use in Norwegian Outfields’, 77.

⁴ Fenton, *The Northern Isles*, 89.

“Amphibious inhabitants”¹ facing changes

Facing a demographic imbalance

Early marriages and smallpox inoculation

In the first decades of the 18th century, the servants could only be spared to go fishing.² The men and women who settled and married too early were badly considered. In the ‘Compend of the Country Acts’ and in the Country Acts, it was clearly stated “[t]hat none be allowed to marry, who has not forty pounds Scots of free gear to set up house upon, or some lawfull [sic] trade whereby to subsist”³ and “that none let house or land to such persons”⁴. Unmarried servants were supposed to go fishing in summer, to earn money for several years and then to marry and establish themselves. At the end of the 18th century the situation had completely changed: Alexander Fenton writes that “the old Country Act that had prohibited marriage unless the couple had £40 Scots of free gear was ignored.”⁵ A bachelor was said to be “a very singular phenomenon in this country”⁶. The minister of Delting, John Morison, explained that “[w]hen they ha[d] been one season at the fishing, they generally consider[ed] themselves as men. They [were] encouraged to marriage by their landlords, in order to prevent them from leaving the county”⁷. Eventually, the minister of Walls and Sandness, David Thomson, put in plain words the fact that early marriage was a tactic to escape being forced into the Navy:

One reason why few young men remain unmarried, is, because, if not married, they are sure to be fixed upon, by the landmasters, for the service of the navy, when a draft for that service is required from the country; and rather than be forced from their native soil, and the society of their friends, they will submit to many inconveniences.⁸

Thus, the merchants-lairds were said to encourage early marriage in order to restrain the young men to leave Shetland or to be impressed in the Navy but also to fish for them.⁹ In the early 19th century, Thomas Mouat of Garth offered another opinion on early marriage and its control. He wrote that even though the 13th Country Act “[had] been dictated by prudential

¹ Penny Fielding, ‘Ultima Thule: The Limits of the North’, in *Scotland and the Fictions of Geography*, Cambridge Studies in Romanticism (Cambridge: Cambridge University Press, 2008), 114.

² Gifford, ‘A Compend of the Country Acts’, 95–96 Act 25.

³ *Ibid.*, 92 Act 17.

⁴ ‘The Old Country Acts’, 82 Act 13.

⁵ Fenton, *The Northern Isles*, 56.

⁶ Dishington, ‘United Parishes of Mid and South Yell’, 574.

⁷ Morison, ‘Parish of Delting’, 395.

⁸ Thomson, ‘Parish of Walls and Sandness’, 106.

⁹ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 199; Morison, ‘Parish of Delting’, 395; Dishington, ‘United Parishes of Mid and South Yell’, 574; Barclay, ‘United Parishes of Aithsting and Sandsting’, 593–94; Thomson, ‘Parish of Walls and Sandness’, 106.

motives, its execution would now be esteemed tyranny.”¹ Times had changed since the early 18th century; the Enlightenment had brought ideas of human choice and freedom. Men and women were getting married younger in Shetland and the writers argued that one of the consequences of early marriage was the rapid increase in population.

In his *La Civilisation de l'Europe classique* Pierre Chaunu formulates the idea that “the age at marriage for women is the true contraceptive weapon of classical Europe”.² Therefore the installation of young married couples on plot of land contributed to the increase of population in Shetland; women being young they had a more successful and longer reproductive cycle while in the meantime diseases such as smallpox were progressively controlled.³ In a paper on the demographic trends in Shetland, William P. L. Thomson explains that in the first half of the 18th century the population was subjected to various epidemics of smallpox, scarlet fever, whooping cough and measles. Smallpox, introduced in Scotland in the early 17th century and in Shetland around 1700, struck several times during the century but only the epidemics of the first half had a severe impact on the demography.⁴ In 1700, John Brand assured that it had killed a third of the population in some parishes.⁵ In the first half of the century, the food production was also less stable than after the introduction of the cultivation of potatoes, the increase in the production of kale and the supply of famine relief in the 1780s.⁶ There were still, however, periods of dearth after 1750. The effects of the fishing tenures on the demography started to be felt in the second half of the 18th century when combined with the improvement of the food basket and the recuperation from the previous epidemics.⁷ Two writers of the early 19th century concerned with this situation, referred to the work of “Mr Malthus” to develop their point of view.⁸ John Laing explained that “[b]efore the proprietors of land became so deeply engaged in the fishing business, juvenile or premature marriages were, in these islands, looked on as next to a crime, because thereby the population might increase to such a degree as to become ruinous and oppressive to the whole community.”⁹ He added that “[f]or this reason, a regulation was made against marriage” and referred to the

¹ NAS, RH9/15/157/9, ‘The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations, 1810’, fol. 12.

² Pierre Chaunu, *La Civilisation de l'Europe classique* (Paris: Arthaud, 1984), 158.

³ Thomson, ‘Population and Depopulation’, 154; Deborah A. Symonds, ‘Death, Birth and Marriage in Early Modern Scotland’, in *A History of Everyday Life in Scotland, 1600 to 1800*, ed. Elizabeth A Foyster and Christopher A. Whatley (Edinburgh: Edinburgh University Press, 2010), 97.

⁴ Thomson, ‘Population and Depopulation’, 154.

⁵ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 768.

⁶ Thomson, ‘Population and Depopulation’, 156–57; Fenton, *The Northern Isles*, 101–5, 416–20.

⁷ Thomson, ‘Population and Depopulation’, 159.

⁸ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:149–52; Laing, ‘Of the Shetland Isles (1806-1807)’, 40.

⁹ Laing, ‘Of the Shetland Isles (1806-1807)’, 40.

Country Acts, which “salutary law [was] now never enforced”.¹ He concluded his analysis with a few lines which saluted the ‘effectiveness’ of the Malthusian theory: “It is curious to observe how the principles of Mr. Malthus accommodate themselves to, and receive illustration from, the smallest societies.”² For William P. L. Thomson the ministers and respondents of the Old Statistical Account “writing only a few years before Malthus’s *Essay on Population*, [were] almost obsessed by the early marriages and the improvident breeding of the poor, to which they not unnaturally attributed the increasing population.”³ This wasn’t the case of the respondents of Unst who believed that the smallpox inoculations were the reason for such an increase.⁴ William P. L. Thomson disagrees with the ministers’ views and by extension with John Laing’s and Arthur Edmondston’s. For him two explanations might be given to the increase of population in the second half of the 18th century: 1) “a fall in the death rate due to inoculation and perhaps the introduction of famine relief”; 2) “an increase in the birth rate, due in turn to earlier marriages following the introduction in commercial fishing”.⁵ Evidences, he concludes, suggest

that the population increase was due to a decline in the death rate rather than to an increase in the birth rate. Small pox mortality alone seems to have been sufficient to prevent any increase in population and perhaps to cause an actual decrease. The birth rate does not appear to have been particularly high, and may actually have been dropping due to the pressure of the population on resources. If we accept this, it follows that the subdivision of crofts was simply a matter of population pressure, and the result of any deliberate population policy on the part of the landlords.⁶

The problem with this explanation and William P. L. Thomson admits it himself, is that “[the birth rates] figures must be hedged around by so many cautions that they may be of little value.”⁷ Church records in Shetland were especially “fragmentary and ill-kept” and William P. L. Thomson’s figures are “mostly based on baptisms rather than on births and, by not taking into account infant mortality before baptism, they underestimate the number of births.”⁸ They also underestimate the number of births since all the baptisms weren’t recorded. William Jack, the minister of Northmavine, stated that “[t]he baptism register cannot be regularly kept, on account of the many private baptisms, in which they must be indulged, because of their great distance from their place of worship.”⁹ William P. L. Thomson’s mono-causal explanation isn’t satisfying. In my opinion it is the concomitance

¹ Ibid.

² Ibid.

³ Thomson, ‘Population and Depopulation’, 160.

⁴ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 199.

⁵ Thomson, ‘Population and Depopulation’, 160.

⁶ Ibid., 161–62.

⁷ Ibid., 161.

⁸ Ibid.

⁹ Jack, ‘Parish of Northmaven’, 356; See also: Thomson, ‘Parish of Walls and Sandness’, 106.

between the fall in the death rate and a slight increase in the birth rate which allowed such an intense population increase in Shetland. Even a low birth rate, if higher than in the first half of the 18th century, might have contributed to the increase of population. Regarding the subdivisions of farms and the creation of outsets, it is true that a population pressure could have led to this situation but it should be remembered that outsets started to appear before the inoculation of smallpox. In 1747, the parishes of Dunrossness, Sandwick and Cunningsburgh counted at least forty outsets and by 1770 the number of outsets was already estimated at 380 in the whole of Shetland.¹ The increase in population in Shetland is, in my opinion, a result of both the smallpox inoculation and the orientation of landowners towards commercial fishing. Between 1755 and 1821, the number of inhabitants was increased from 15,210 to 26,145.² Before that it is possible that the number of inhabitants in 1700 was greater than in 1755 because of the famines and epidemics which raged in the first fifty years of the century.³

Sex imbalance

Population growth wasn't the only demographic change which took place in the second half of the 18th century. Haaf fishing, Greenland whaling and the Navy were all employments which meant that men were at sea for an important part of the year or for several years. The summer season was therefore a 'women's season' on land. Furthermore the death rate at sea in the 18th century was high. Men and women drowned at sea; men whose summer activity was to fish for their landowner were on the front line. In 1700 John Brand explained how "[s]ailing about these coasts is often very dangerous, whence the waters prove graves to many of the inhabitants."⁴ He told the story of a man and his sister who were "cast away going by the shore to Dunrossness and [...] perished" and then described the various lethal dangers of the sea around Shetland.⁵ Thirty years after Thomas Gifford explained how "that rapid current that runs off Sumburgh-head, called the *Roust* [...] [was] often fatal to the poor fishermen".⁶ John Mill, the minister of Dunrossness, Sandwick and Cunningsburgh, made dozens of references in his diary to wrecks and deaths at sea. In 1774 he wrote that on the 21st of June

¹ NAS, CS96/3272, 'Robert Sinclair of Quendale's Judicial Rental'; Smith, 'What Is a Scattald?', 46.

² James Gray Kyd, ed., *Scottish Population Statistics Including Webster's Analysis of Population 1755* (Edinburgh: T. and A. Constable Ltd., 1952); 'Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94: Shire of Orkney and Shetland'.

³ Thomson, 'Population and Depopulation', 152.

⁴ Brand, 'A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701', 733.

⁵ Ibid.

⁶ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 3–4.

“three boats with sixteen men were lost at the North Maving fishing, whereby ‘tis said that sixty children were left fatherless”.¹

The Old Statistical Account provides the first statistical data on this issue. Some ministers recorded the number of men and women and widows and widowers in their parish and commented on the demographic imbalance between men and women. This was the case of John Mill who stated that

[t]he number of females greatly exceeds the males, as the young men leave the country in numbers every year; being commonly inclined to a seafaring life, they resort to England and Holland but chiefly to London, where they serve on board the navy, merchant ships, or Greenlanders.²

	Bressay, Burra and Quarff	Northmavine	Sandsting and Aithsting	Total	%
Men	559	796	630	1985	46%
Women	666	990	655	2311	54%

Menzies, John. ‘United Parishes of Bressay, Burra, and Quarff’. In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 10:198. Accessed 1 December 2011. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Bressay%2C%20Burra%2C%20and%20Quarff/>.

Jack, William. ‘Parish of Northmaven’. In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 12:356. Accessed 1 December 2011. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Northmaving/>.

Barclay, Patrick. ‘United Parishes of Aithsting and Sandsting’. In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 7:592-594. Accessed 1 December 2011. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Sandsting%20and%20Aithsting/>.

Table 103: Sex imbalance: three parishes in the 1790s

Women, it appears, were already more numerous than men in the 1790s. In the parishes of Bressay, Burra and Quarff, North Yell and Fetlar, Northmavine and Sandsting, the ministers’ accounts show a clear imbalance between men and women and widows and widowers: the women represented a share of 54% of the total population; the widowers in the parishes of Fetlar and North Yell and Northmavine counted for 71% of the population of widows and widowers; and in Fetlar and North Yell the unmarried women represented 65 % of the unmarried men and women.

	Fetlar	North Yell	Northmaven	Sandsting and Aithsting	Total	%
Widowers	17	2	10	14	43	27%
Widows	26	11	34	46	117	73%

Gordon, James. ‘United Parishes of North Yell and Fetlar’. In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 13:285-286. Accessed 27 September 2012. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Fetlar%20and%20North%20Yell/>.

Jack, William. ‘Parish of Northmaven’. In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 12:356. Accessed 1 December 2011. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Northmaving/>.

Barclay, Patrick. ‘United Parishes of Aithsting and Sandsting’. In *The Statistical Accounts of Scotland 1791-1799*, edited by John (sir) Sinclair, 7:592-594. Accessed 1 December 2011. <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Sandsting%20and%20Aithsting/>.

Table 104: Sex imbalance: widows and widowers

Figures from the parish of Sandsting and Aithsting are also extremely interesting. The minister recorded the number of men and women per age. The age pyramid shows that the imbalance really starts when men and women reached their young adult life and started to work: men went to work on Greenland whaling vessels, engaged in the Navy or were lost at

¹ Mill, *The Diary of the Rev. John Mill*, 41.

² Mill, ‘Parish of Dunrossness in Zetland’, 395.

sea. The respondents for the parish of Unst reached the same conclusion. They explained that the number of marriages would be greater

did not so many of the young go to sea. Some go aboard Greenland ships, which anchor every year in Balta Sound, both in sailing to the North Seas, and in their return. Unst furnishes the tenth part of 100 seamen whom the Shetland are, by agreement, obliged to furnish to government for the Royal Navy, upon any extraordinary emergency. Fishing boats are sometimes lost, too, by accidents at sea.¹

In Northmavine, William Jack felt the need to justify why “[a] register of deaths [had] not yet been attempted to be kept” by the fact that there were “many burial places in the parish, and [...] many accidents by sea.”² With men dying at sea or engaging on Greenland vessels or in the Navy in the beginning of their adult life, more women than men were unmarried and the widows were more numerous than the widowers. In the 1790s for 100 men, there were 116 women and “in 1821 there were 121 women for every 100 men”, has calculated Lynn Abrams.³ Indeed in the early 19th century the same trend followed: population increased and the imbalance between men and women widened.

	1801	1811	1821
Men	9,945	10,024	11,801
Women	12,434	12,891	14,344
Total	22,379	22,915	26,145
Nb of women for every 100 men	125	129	121

¹Abstract of Answers and Returns to the Population Act, 51 Geo. III. 1811, Shire of Orkney & Shetland’. In *Abstract of Answers and Returns to the Population Act, 51 Geo. III. 1811*, Scotland:496–97, 1811.
²Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94: Shire of Orkney and Shetland’. In *Abstract of Answers and Returns under The Population Act, 1 Geo. IV. C. 94*, Scotland:524–26, 1821.
³Abstract of the Answers and Returns to the Shire of Orkney and Shetland’. In *Abstract of the Answers and Returns Made pursuant to an Act, Passed in the Forty-First Year of His Majesty King George III. Intituled ‘An Act for Taking an Account of the Population of Great ri tain and the Increase or Diminution Thereof.’: Enumeration, Part II*. Scotland:534, 1801.

Table 105: Sex imbalance: censuses 1801-1821

In *Myth and Materiality in a woman’s world: Shetland 1800-2000*, Lynn Abrams studies these “surplus women”.⁴ She explains that the censuses even “underestimated the true sex imbalance” since “[t]he figures were taken in early April each year, before the season for men departing for the fishing”.⁵ The reasons for this imbalance were similar than those at the end of the 18th century: “the much higher propensity of men to migrate, the long-term absence of men from their homes on account of the nature of the fishing industry and associated sea trades, and a high death rate amongst men at sea.”⁶ Women, it appeared, were less willing to leave home. In 1850, only nineteen women left the islands.⁷ Lynn Abrams explains that

¹ Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 200.

² Jack, ‘Parish of Northmaven’, 356.

³ Abrams, *Myth and Materiality in a Woman’s World*, 66.

⁴ *Ibid.*, 65–80.

⁵ *Ibid.*, 65–66.

⁶ *Ibid.*, 67.

⁷ *Ibid.*, 68.

consequences of this sex imbalance were both structural and cultural.¹ Lynn Abrams's analysis of these consequences are based on figures from the censuses of 1851 onwards therefore some of her conclusions are probably inappropriate for the first half of the 19th century. Her main points are that the marriage rate was lower in Shetland than in the rest of Scotland. Women had less chance of finding a marriage partner.² The mean average age at marriage was higher than in the rest of Scotland which "[questions] the conventional wisdom that the system of fishing-tenure encouraged early marriage".³ However we were already in the second half of the 19th century. What the writers of the Statistical Accounts described in the late 18th century must have been felt at least from the 1770s – and maybe even before. The employment and transport possibilities from Shetland to the rest of Britain had dramatically changed in one century and therefore early marriages which the ministers described in the 1790s weren't happening in Shetland anymore. Lynn Abrams also adds that it had consequences on the number of celibates or 'never married'. The proportion was higher than in Scotland and there was a greater "discrepancy between the marriage fortunes of men and women".⁴ All this, "a low marriage rate and a high average age at marriage for women as well as a relatively high occurrence of widowhood in a woman's childbearing years, resulted in a low birth rate" – at least for the years between 1861 and 1911.⁵ The lack of data for the 18th century makes the comparison almost impossible.

However there is one exception. Lynn Abrams's analysis of the place of unmarried women and widows in the society is of great interest for the 18th century and can be compared with a few references in the materials. Lynn Abrams explains that "society with a large proportions of singletons, whether unmarried or widowed, tend to exhibit particular patterns of household formation."⁶ The proportion of complex households and single-person households appeared to have been higher than usual. Furthermore household structures are closely related to the type of economy; "the extended or multiple household was a functional necessity" in Shetland's mixed economy.⁷ Multi-tasking and extended or multiple households fit well together. Lynn Abrams further states that "a household structure that facilitated the operation of multiple tasks was one which incorporated a range of persons of different ages and both sexes."⁸ At the

¹ Ibid., 69.

² Ibid., 69–70.

³ Ibid., 70.

⁴ Ibid., 71.

⁵ Ibid., 73.

⁶ Ibid., 74.

⁷ Ibid., 75.

⁸ Ibid.

end of the 18th century, the minister of Sandsting and Aithsting explained that in his parish “in many of these families, there are two sets of children; the father and his family, and the eldest son married, and has a family.”¹ In these households two generations lived together. These complex households even if they tended to bring more economic stability to the families thus united didn’t solve the issue of unmarried and widowed women. In the 19th century, Lynn Abrams explains that in an economy based on a male contract, the fishing contract, the only possibilities for women to survive was either to contribute to another household or to live impoverished on the outskirts of townships on outsets.² She gives the example of an all-female household living in 1851 on the edge of Dale, in the parish of Tingwall.³ Quendale’s judicial rental might give us the possibility to have an idea of the social status of female-headed household in the parish of Dunrossness, Sandwick and Cunningsburgh in the middle of the 18th century. On the 355 deponents twenty one were women: two were married and testified for their sick husband; the rest of them were *soluta*, unmarried or widows. Cordelia Beattie argues that *soluta* was an umbrella word for the widows and never-married in medieval England.⁴ This might have been the case in Shetland too since Helen Duncan was presented as a *soluta* but it was added that “twenty years [had] passed since the deceais of her husband”.⁵ It was also the case of Girzell Gilbertsdaughter who “depones that she and her deceast husband John Bairnson have for upwards of twenty years laboured three merks of the Room of Hillwall”.⁶ The fourteen *soluta* were between 38 and 60 years of age while the two unmarried women, Martha Duncan and Jannet Mouat, were respectively 33 and 30 years old.⁷ Did it mean that past 35 years old a woman was considered as a ‘spinster’? It is difficult to say since there is no certainty that the *soluta* were never-married women. The three widows were 30, 50 and 70 years old. The case of Grizel Johnsdaughter, 30 years old, shows that widowhood could happen during the childbearing years. Only Margaret Halcrow, a *soluta* aged 60 years, lived on an outset in Fladdabister. The others all cultivated arable land. With the exception of Margaret Scot in Tholop who possessed 9 mk of land, they all possessed less than the 6 mk of land considered by William Balfour as “the least that will do”.⁸ The average

¹ Barclay, ‘United Parishes of Aithsting and Sandsting’, 593.

² Abrams, *Myth and Materiality in a Woman’s World*, 75–76.

³ *Ibid.*, 76.

⁴ Amy M. Froide, *Never Married: Singlewomen in Early Modern England* (Oxford: Oxford University Press, 2005), 159.

⁵ NAS, CS96/3272, ‘Robert Sinclair of Quendale’s Judicial Rental’, 44.

⁶ *Ibid.*, fols 118–119.

⁷ *Ibid.*, fols 33, 107–108.

⁸ NAS, RH4/102, ‘Rental of Lordship of Shetland’, fol. 49. I want to thank Brian Smith for having pointed that out to me: Smith, ‘RE: Taxes and Social Hierarchy’.

number of merks of land was 3.3 – it was lower than the total average of land merk of 4.34. This meant that women necessarily needed to find other sources of revenues than what they could earn from their arable land. They needed to sell hosiery, to work for other families, to harvest kelp, etc. The parish might also have helped them.

Widows whose “children were left fatherless” received help from the kirk sessions through the poor rolls.¹ In Sandwick and Cunningsburgh between 1755 and 1759 and 1795 and 1799, women represented 5/6th of persons helped by the kirk session. The minister of Sandsting and Aithsting stated that “[t]he frequent misfortunes at fishing, greatly increase the number of widows and orphans, who must receive occasional supply.”² However widows and orphans couldn’t make a living on what they received from the poor rolls; they had to contribute in any way possible to their own household or to another household with any kind of handicrafts or they risked to fall into greater poverty. The minister of Sandsting and Aisthing complained that even though “[t]he revenues of the parish were certainly increased [...] the number of women and children, who [could] do nothing for themselves or landlord, in much greater proportion.”³ In order “to encourage industry and relieve unavoidable distress”, a fund, the Fishermen’s fund, was established in 1812, “as a permanent provision for the widows and orphans of those fishermen, who may be lost in the prosecution of their employment, and also for such as shall become unable by age or infirmity to earn their subsistence”.⁴ The first subscription for voluntary donations took place in 1810 and the fund was established two years after.⁵ In order to beneficiate from this fund fishermen and their family had to pay entry money and a yearly subscription. They also had to have been subscribers for at least four years.⁶ Similarly to the poor money of the kirk sessions, the “Philanthropic Societies” such as the Zetland Patriotic Society provided just enough to help out widows and orphans; the fund worked as an insurance company.⁷ Even with this charitable money women needed to bring an income to the household, either in good or money, to avoid marginalisation.

¹ Mill, *The Diary of the Rev. John Mill*, 41.

² Barclay, ‘United Parishes of Aithsting and Sandsting’, 591.

³ *Ibid.*, 592.

⁴ SA, D40/226, ‘Prospectus for Fund to Provide for Widows and Orphans of Fishermen’ ca 1810.

⁵ SA, D40/523, ‘Printed History and Laws of the Associated Zetland Fishermen’s Fund.’ 1812, 3–4.

⁶ *Ibid.*, 12.

⁷ SA, D40/226, ‘Prospectus for Fund to Provide for Widows and Orphans of Fishermen’, 1.

Repartition of work

One of the cultural consequences of the numerous spinsters and widows of Shetland was that the concept of family economy widened “to incorporate clusters of female of various age”.¹ If we come back to the 18th century, the early marriages, sex imbalance and mixed economy of the islands meant that women played an essential role in the economy of the islands. I have described their involvement in the hosiery trade, linen and straw plaiting manufactures as well as in the production of kelp. The minister of the parish of Northmavine, William Jack, gave a pretty detailed description of the different tasks of a woman:

Employment of the Inhabitants. – The women look after domestic concerns, bring up their children, cook the victuals, look after the cattle, spin, and knit stockings; they also assist, and are no less laborious than the men in manuring and labouring the grounds, reaping the harvest, and manufacturing their crop. The children are taught very early to be helpful in the affairs of the house; many of the young women are employed in May and August in cutting sea-weed for kelp. The boys are early employed in fishing.²

By the end of the 18th century the repartition of tasks in a household had changed. The sex imbalance and the absence of men in summer meant that women had to participate in tasks that were usually attributed to men; this is what William Jack’s “no less laborious than the men” means. If we compare the tasks attributed to women in Shetland in the 1790s to a gender index for various household tasks based on “a study of a large number of ethnographical descriptions of different populations groups in various parts of the world”, we note that Shetland’s women performed tasks which were usually ascribed to men. In Shetland women prepared the soil and herd cattle; these two tasks are usually almost exclusively performed by men.

¹ Abrams, *Myth and Materiality in a Woman’s World*, 78.

² Jack, ‘Parish of Northmaven’, 358.

Hunting at sea	100	Gathering wild herbs and plants	20
Hunting on land	99		
Fishing	87		
Clearing trees	91	Tending crops	45
Soil preparation	73	Harvesting	45
Sowing	54		
Slaughtering	92	Milking	44
Herding animals	82	Herding small animals	36
		Dairying	14
Working metal	100	Basket-making	43
Working stone	96	Weaving	33
Working bone and horn	95	Making pots	21
House-building	77	Spinning	14
Dressing furs and skins	55		
Lighting fires	62	Preparing meat and fish	33
		Gathering firewood	27
		Cooking	8
		Preparing plant foods	6

Figure 1.2 A gender index for various household tasks. A value of a hundred means the work was exclusively male, a value of zero means it was exclusively female. An intermediate value means it was done to a varying degree by both men and women. The figures are based on a study of a large number of ethnographical descriptions of different population groups in various parts of the world (after Murdock & Provost 1973).

Myrdal, Janken. *The Agrarian History of Sweden: From 4000 Bc to Ad 2000*. Nordic Academic Press, 2011, 27.

Table 106: Gender index for various household tasks

Facing the ‘second maritimisation’

Whole-township-run-rig

Women prepared the soil at a specific moment of Shetland history. Indeed by the end of the 18th century, the number of ploughs on the islands had considerably declined and in the meantime the number of delling spades had greatly increased. Alexander Fenton has studied this mechanism. He explains that “[c]ultivation by spade came to be a mark of Shetland farming after the fragmentation of farms and the creation of outsets in the eighteenth and nineteenth centuries, when the smaller scale of the enterprises led to some replacement of the plough by the spade.”¹ The ministers in the Old Statistical Account are excellent sources on the disappearance of the spade. Earlier references from 1772 and 1774 also show that the replacement of the plough by the spade had already started. In the rental of Shetland of 1772, William Balfour in his critics of the fishing tenures explained that “[a fisherman] needed no oxen, for he and his wife could, with the assistance of a child or two, when grown up a little, delve their possession.”² A wife could be of assistance in the delving of the ground. Spades were used at first by men, women and children using the lighter harrows but spades were easier to handle than ploughs and therefore women could “see to such work when the men

¹ Fenton, *The Northern Isles*, 285.

² NAS, RH4/102, ‘Rental of Lordship of Shetland’, fol. 54.

were fishing.”¹ When “delving by teams of people”, women were included in the teams.² In Dunrossness John Mill described how teams of “5 or 6 men and women, will turn over as much land in a day, as a Scotch plough with 8 or 10 oxen.”³ The plough, however, didn’t disappear completely. In Dunrossness, Unst, Mid and South Yell and Northmavine most of the land was delved up;⁴ in Aithing and Sandsting and Delting, the spade was used to “complement the plough”.⁵

The ‘disappearance’ of the plough was connected with the “proliferation of run-rig”.⁶ The scattered pattern of tenants’ holding encouraged the use of a lighter labouring tool. From 1750 to the 1830s, the shape of run-rig transformed in Shetland, from a mostly ‘house’-based run-rig to a “whole-township-run-rig”.⁷ William P. L. Thomson has portrayed these changes in his paper ‘Township, ‘House’ and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland’. He explains that changes didn’t come from ‘improvement’ but from the subdivision of holdings organised by the landowners in order to accommodate more fishermen: “population pressures brought about the same run-rig proliferation as in pre-famine Ireland.”⁸ From the fragmentation of holdings “a highly complicated, fragmented and dispersed landscape emerge[d]” and “a shift from the ‘house’ to the whole township as the unit within which sharing took place” occurred.⁹ William P. Thomson’s study is based on the maps of the division of run-rig of three townships: Norwick, Unst (1822), Laxobigging, Delting (1827) and Funzie, Fetlar (1829). Let us focus on the example of Funzie which was in the words of William P. L. Thomson the township where “[t]he concept of ‘whole township run-rig’ was carried to its ultimate conclusion.”¹⁰ There is evidence that a ‘house’ structure existed in Fetlar at least until 1776, when the existence of “a compact two-tenant farm”, Nurgie, is attested.¹¹ However by 1829 the old farm structure had been replaced by a ‘whole township run-rig’ pattern. William P. L. Thomson explains that in 1829 there were

nine tenants who rented 7 merks each and lived on terms of strict equality, although they were not all tenants of the same laird. Throughout the entire township rigs were counted off in groups of

¹ Fenton, *The Northern Isles*, 288, 289.

² *Ibid.*, 286.

³ Mill, ‘Parish of Dunrossness in Zetland’, 393; Quoted in: Fenton, *The Northern Isles*, 286–88.

⁴ Mill, ‘Parish of Dunrossness in Zetland’, 393; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 192; Dishington, ‘United Parishes of Mid and South Yell’, 574; Jack, ‘Parish of Northmaven’, 355.

⁵ Barclay, ‘United Parishes of Aithsting and Sandsting’, 585–86; Morison, ‘Parish of Delting’, 391–92; Fenton, *The Northern Isles*, 286.

⁶ Thomson, ‘Township, “House” and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland’, 108.

⁷ *Ibid.*, 117.

⁸ *Ibid.*, 108.

⁹ *Ibid.*

¹⁰ *Ibid.*, 117.

¹¹ *Ibid.*, 118.

nine, one rig being allocated to each tenant. Within each group the tenants' rigs did not appear in any regular order, so it is likely that they had been allocated by lot. Grassland was similarly divided into a multitude of little grazing sections and allocated in the same way. The net result was the maximum possible dispersal of each tenant's land in 'whole township run-rig' throughout what was again a very large township.¹



Thomson, William P. L. 'Township, "House" and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland'. In *The Shaping of Shetland*, edited by Val Turner, 119. Lerwick: The Shetland Times Ltd., 1998.

Figure 13: Whole-township-runrig: Funzie, Fetlar

In order to minimise distance between the lodgings and the field strips, the settlement enlarged in the middle of the township and several outlying house-sites were abandoned. There is no trace in the archives of this re-organisation: it was an informal event organised by the tenants themselves who devised this system to provide "equal shares of everything" to each other because "they [had] equal rents".² Runrig wasn't conducted by the lairds. It was quite the opposite actually. They despised it and didn't understand its reasons and its organisation. However tenants built a landscape in which they all had "shares proportional to

¹ Ibid., 117–18.

² Ibid., 124.

marks in terms both of quantity and quality”.¹ William P. L. Thomson argues that this is “the very key to understanding run-rig”: “fairness was more important than convenience.”²

Fishermen’s lodges

Runrig proliferated in the townships and along the coast new settlements were born. Even if planned fishing villages weren’t built in Shetland,³ unlike the rest of Scotland.⁴ The ‘littoralisation’ of the economy with the development of the kelp manufacture and commercial fishing structure brought new features on the coasts of Shetland. Kelp kilns were built close to the shore: “the shallow stone-lined pits” stood “above a beach”.⁵ “Sitting depended on proximity to the harvesting shore,” explains Ian Tait, “although accessibility to enable people to carry baskets from beach to kiln was also a consideration.”⁶ Though Ian Tait and Alexander Fenton have both studied these structures there isn’t, to my knowledge, any map of the location of kelp kilns along the coast of Shetland. The “scarcity of evidence” noted by Ian Tait renders this task extremely difficult.⁷

Other structures were built near to the shores and these structures are better known: the fishermen’s lodges. The building of these lodges led to conflicts over the use of the unenclosed scattald or over property rights. Seasonal fishing stations were established in Shetland by the 1730s.⁸ Thomas Gifford in 1733 ordered “3 or 400 lbs of Iron Ketles”, for Alexander Fenton it means that “[they] were no doubt to be used by the fishermen and in their boats and lodges, which may indicate that the kind of fishing organisation involving stations where the men lived for the season in small, stone-built lodges, had already begun”.⁹ Ian Tait has studied these vernacular buildings and he explains that “[t]o lesson distance from fishing grounds, stations were built on headlands and islands, often distant from *tuns*, and fishermen stayed there in seasonal dwellings for weeks at a time.”¹⁰

The building of these lodges wasn’t without consequences. Indeed lodges were built on common ground and it meant they privatised a part of the scattald. Processes at the Sheriff Court show that even by the end of the 18th century, once the commercial fishing had

¹ Ibid.

² Ibid.

³ Morison, ‘Parish of Delting’, 403; A Friend to Statistical Inquiries, ‘Parish of Nesting’, 501–2.

⁴ Lockhart, ‘Lotted Lands and Planned Villages in North-East Scotland’.

⁵ Ian Tait, ‘Maritime Buildings’, in *Shetland Vernacular Buildings, 1600-1900* (Lerwick: Shetland Times, 2012), 500.

⁶ Ibid.

⁷ Tait, ‘Maritime Buildings’.

⁸ Ibid., 494.

⁹ Fenton, *The Northern Isles*, 572; Tait, ‘Maritime Buildings’, 494.

¹⁰ Tait, ‘Maritime Buildings’, 494.

flourished in Shetland, building lodges on the scattald wasn't always welcome by local landowners. The foreshore and the shore were of important concern for the Parliament. In its interest for the development of fisheries, a Parliament act, passed in 1756, stated

That all and every person or persons employed in the said fishery, on the coasts of that part of Great Britain called Scotland, or on the coasts of Orkney, Shetland, or any of the said islands, shall have and exercise the free use of all ports, harbours, shores and forelands, in that part of Great Britain called Scotland, or in Orkney, Shetland, or any of the said islands, below the highest high water mark, and for the space of one hundred yards on any waste or uncultivated land, beyond such mark, within the land, for landing their nets, casks, and other materials, ustensils and stores, and for erecting tents, huts and stages, and for the landing, pickling, curing, drying, and reloading their fish, without paying any foreland or other dues, or any other sum or sums of money, or other consideration whatsoever [...].¹

This extract of the act of 1756 was almost exactly copied in the “Answers for William Bruce To the petition of Mr John Mouat”.² In 1793, John Mouat petitioned the Sheriff Court against William Bruce. He accused him to have built “in the year 1789 [...] a Hutt in the Ness & Exclusive undivided Common of Cuppester” and “[t]hat at the time of erection of the said Hutt it appeared for the sole purpose of Curing or drying off fish in the proper season & therefore Mr Bruce was not interrupted in his intention”, however John Mouat apparently discovered that William Bruce “proceeded to repair the foresaid Hutt & Convert the same into a Habitation (it is thought from its size &c.) for the accommodation for one or more Tenants”.³ If it was true: this would be considered as an encroachment on John Mouat’s property. In his Answers, William Bruce argued that “this Hutt [was] built, and occupied for the purpose Comprehended in the above recited act, must of consequence be sanctioned & protected thereby, notwithstanding the Petitioners pretended property in Cupaster, and therefore as the Respondent neither did nor does intend the said Hutt for any other Purpose than the Reception & preservation of his fish & fishing materials”.⁴ In his Replies, John Mouat further stated that the said fishing hut was a “permanent house with stone & mortar, [had] a selate Roof lofts chemneys & Glass Windows, & [was] larger & better than any tenants house in the parish, upon undivided good pasture ground wherein your petitioner is a proprietor, that is judged unlawfull, and as such a house is neither Tent nor stage”.⁵ This didn’t convince the Sheriff Substitute who gave his final verdict in September 1793 and explained “that under the Act 1756 Mr Bruce the Defender may Erect tents and stages thereon, (or Lodges as they are called in Shetland) under the Restriction & for the purposes

¹ Danby Pickering, ed., ‘An Act for Encouraging the Fisheries in That Part of Great Britain Called Scotland, 29 Geo. II C. 23’, in *The Statutes at Large, from the 26th to the 30th Year of King George II*, vol. XXI (Cambridge: Joseph Bentham, printer to the University, 1766), 438.

² SA, SC12/6/1793/37, ‘Petition (for Building a Hut on the Undivided Commony of Cuppister.)’, sec. 5.

³ *Ibid.*, sec. 1.

⁴ *Ibid.*, sec. 5.

⁵ His underscore; *Ibid.*, sec. 4.

mentioned in the said Act”.¹ The Parliament act through the verdict of the Sheriff Substitute helped transform locally the foreshore landscape with the addition of lodges which might have evolved sometimes in more permanent fishermen houses to encourage the development of fisheries. The Sheriff Substitute had the possibility to encourage the building of fishing infrastructures such as fishing lodges and consequently, to participate in the evolution of the fishing geography of the Shetland Islands.

The fishing station of Fethaland in the north of Northmavine is an excellent example of the impact on the landscape of the fishermen’s lodges. Samuel Hibbert, again, offered a description not without judgment of this fishing station:

On the narrow isthmus of low marshy land, that connects the peninsula of Feideland to the Mainland, is interspersed, with all the disorder of a gypsy [sic] encampment, a number of these savage huts named summer lodges, and in the centre of them is a substantial booth, used by a factor for curing fish.²

The fishing station of Fethaland belongs to the sites studied by the SCAPE, a charity focused on the Scottish Coastal Archaeology and the Problem of Erosion. Surveys and aerial photos of the site have been taken in order to document the structure and the conservation state of the fishing station. When “a house and a retail shop” were built on the isthmus of Fethaland in North Northmavine, questions of property arose.³ Gideon Gifford of Busta petitioned the Sheriff Court in 1779 to forbid William Hay, a merchant in West Sandwick, to build there. He explained that he had demolished what had been built yet but that William Hay wished to rebuild a house and threatened the life of Busta and his servants.⁴ William Hay defended himself and stated that he wasn’t building “a house and a retail shop” but that he had “a Hut or Lodge [...] solely for the purpose of accommodating himself & Boats Crew during the fishing season, to which privilege your Petitioner is entitled by Act of Parliament”.⁵ His lodge, however, “was demolished to the very foundation”.⁶ Boat crews “authorized by Gideon Gifford of Busta” had proceeded to this destruction.⁷ The said Busta argued that the act of Parliament regarding the building of fishing hut didn’t allow anyone to build on someone else’s property;⁸ to which William Hay answered that what his fishing lodge “was built within

¹ Ibid., sec. 1.

² Hibbert, *A Description of the Shetland Islands*, 507–8.

³ SA, SC12/6/1779/17, ‘Petition for Interdict (for Building a House on the Petitioner’s Property at Fedaland.)’; For another process on fishing lodges and property, see: SA, SC12/6/1792/8, ‘Summons (for Destroying Petitioner’s Fishing Lodge at Fethaland.)’ 1792.

⁴ SA, SC12/6/1779/17, ‘Petition for Interdict (for Building a House on the Petitioner’s Property at Fedaland.)’ bundle 1.

⁵ Ibid. bundle 2.

⁶ Ibid. bundle 2.

⁷ Ibid. bundle 2.

⁸ Ibid. bundle 3.

the Limits allowed or presented by the Act of Parliament; upon a barren Spot or Rock, where neither Grass, nor any other kind of Vegetables can grow more than can grow out a quarry of flint stone, or upon the surface of the sea.”¹ He acknowledged “[t]hat this Waste & uncultivated Spot as well as the adjoining or adjacent shores, Rocks, Strands, Grounds & &c. belong to the Respondent’s Estate [Busta’s estate]”.² Eventually, the Sheriff Substitute took a decision: he considered that there wasn’t enough proof that William Hay was a fisherman and that he wouldn’t use this building for something else than a fishermen’s lodge. Therefore he forbade the said Hay to build on the land of Busta. However he added that his decision should not authorize “any violation of the Liberties granted to fishermen upon waste or uncultivated grounds by the Statute before mentioned”.³ Fishermen were allowed to build lodges both on private or common ground if the lodges served exclusively as fishermen’s lodges during the fishing season.

This process shows that the littoral became an extremely attractive place. Economic interests were protected by their owners and space was shared at minima by those who considered that they had a monopoly in the sector. Conflicts arose from these practices and the Sheriff Court played an important role in mitigating these quarrels. However the decisions of the Sheriff Court had an influence on the development of commercial fishing. In the example of Gideon Gifford of Busta and William Hay, the court clearly took position in favour of Busta who had the privilege of operating from his fishing station in Fethaland. In ca. 1840, the fishing station was presented as follow:

Fethaland is enclosed with a Dyke but is believed to have been on the commony three generations back. Consists of outsets from Mr. Giffords property of Brebister.⁴

The ground of the fishing station of Fethaland had been at some point in the 18th century privatised by the Gifford of Busta family. They build fishermen’s lodges there and progressively allowed others to build booths to keep goods inside. By 1840 there were about thirty one lodges and seven booths. Samuel Hibbert’s plate of Fethaland shows this thriving life:

¹ Ibid. bundle 4.

² Ibid. bundle 4.

³ Ibid. bundle 6.

⁴ SA, D6/40/6, ‘Booklet Containing Detailed Account of Fishing Lodges and Their Possessors at Stennis, Hamnavoe and Fethaland, Undated’ ca 1840, pt. 3.



Fishing Station of Fethaland.

Hibbert, Samuel. *A Description of the Shetland Islands, Comprising an Account of Their Geology, Scenery, Antiquities, and Superstitions*. Edinburgh: Archibald Constable and Co., 1822, 529.

Figure 14: Fishermen's lodges: Fethaland

Some of the lodges were “on the beach (most of them) but a few are on the grass; All use the grass to spread their lines upon”.¹ In the booklet which contained information on the booths and lodges of Fethaland, it was also stated that “Lodges have been at Fethaland for time immemorial”.² This might implied that as early as the beginning of the 18th century and the first fishing contracts, fishermen’s lodges were built on the isthmus by the Busta family.

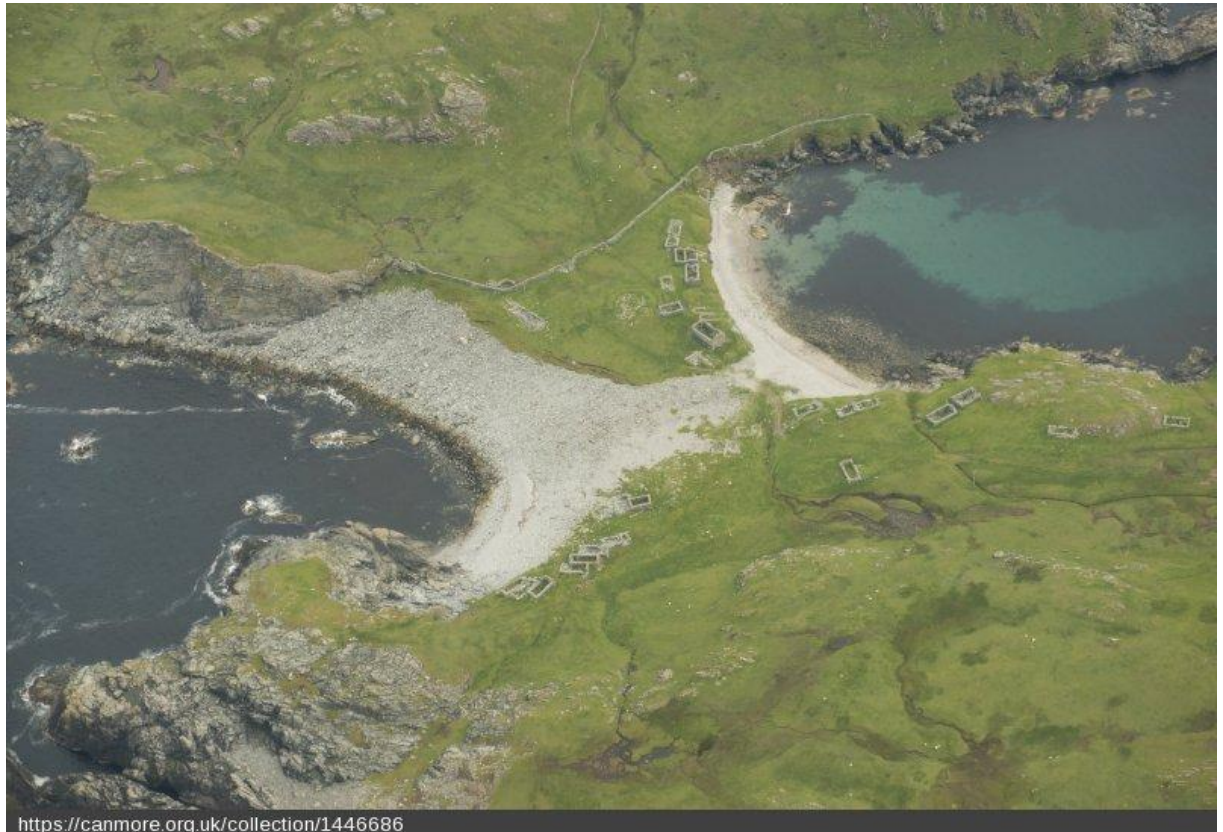
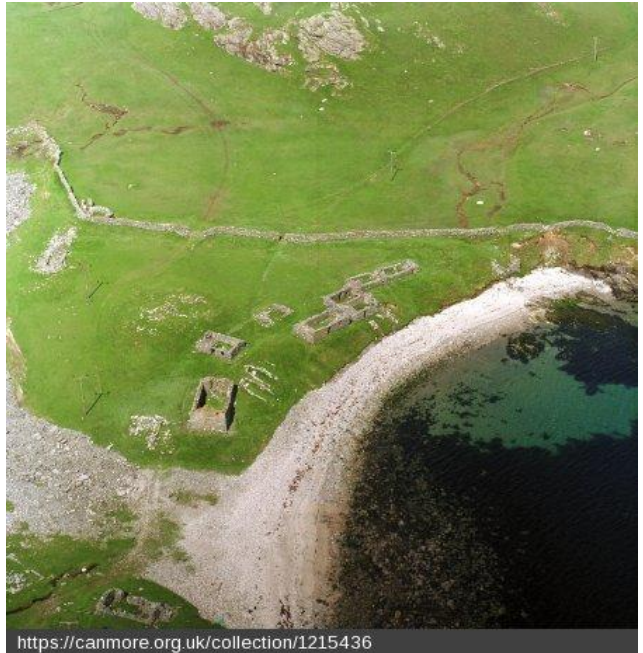
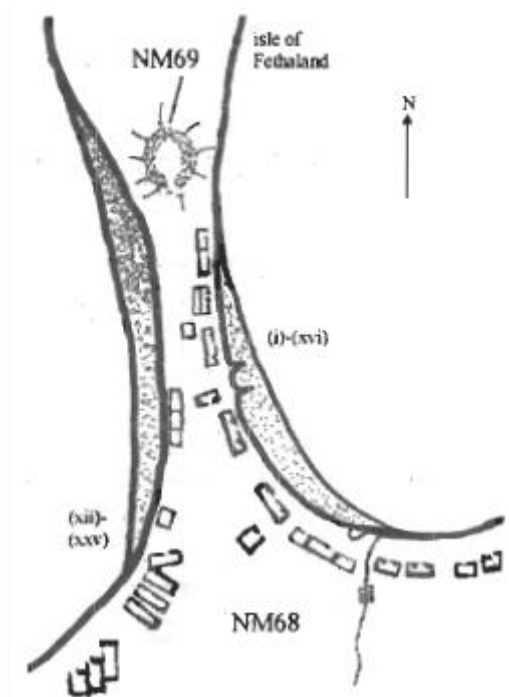
A plan of the remaining structures of Fethaland as well as aerial photos show the extent of the site on the isthmus and on the adjoining grounds. Two *nousts* are particularly visible on the aerial photograph; they are located at the head of the foreshore.³ Nousts were built “[i]f a boat was out of use or was kept at a station outwith the season”.⁴

¹ Ibid.

² Ibid.

³ Graeme Wilson and Hazel Moore, ‘Report on a Coastal Zone Assessment Survey of Northmavine, Shetland, October-November 1997’ (Shetland Amenity Trust and Historic Scotland), 335, accessed 12 September 2016, http://www.scapetrust.org/pdf/Shetland1/northmavine_3.pdf.

⁴ Tait, ‘Maritime Buildings’, 498.



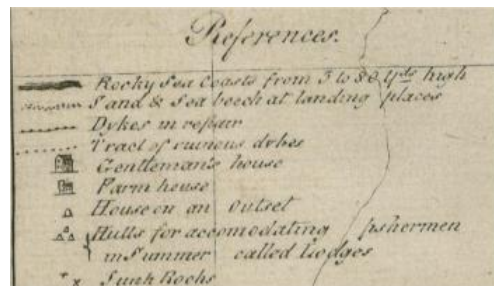
Wilson, Graeme, and Hazel Moore. 'Report on a Coastal Zone Assessment Survey of Northmavine, Shetland, October-November 1997'. Shetland Amenity Trust and Historic Scotland: 335. Accessed 12 September 2016. http://www.scapetrust.org/pdf/Shetland1/northmavine_3.pdf.
 Canmore, SC1215436, and RCAHMS Aerial Photography. Oblique Aerial View Centred on the Remains of the Fishing Station and Prehistoric House, Taken from the S., 2003. <https://canmore.org.uk/collection/1215436>.
 Canmore, DP197414, and RCAHMS Aerial Photography. *Oblique Aerial View of Fethaland, Northmavine, Looking NE.*, 2014. <https://canmore.org.uk/collection/1446686>.

Figure 15: Fishermen's lodges: Fethaland's survey and aerial photographs

Both Fethaland and Uyea stations appeared on “Plan of the north part of Northmavine from Uyea to Brebister” of ca. 1785. The fishing station of Fethaland is especially detailed.



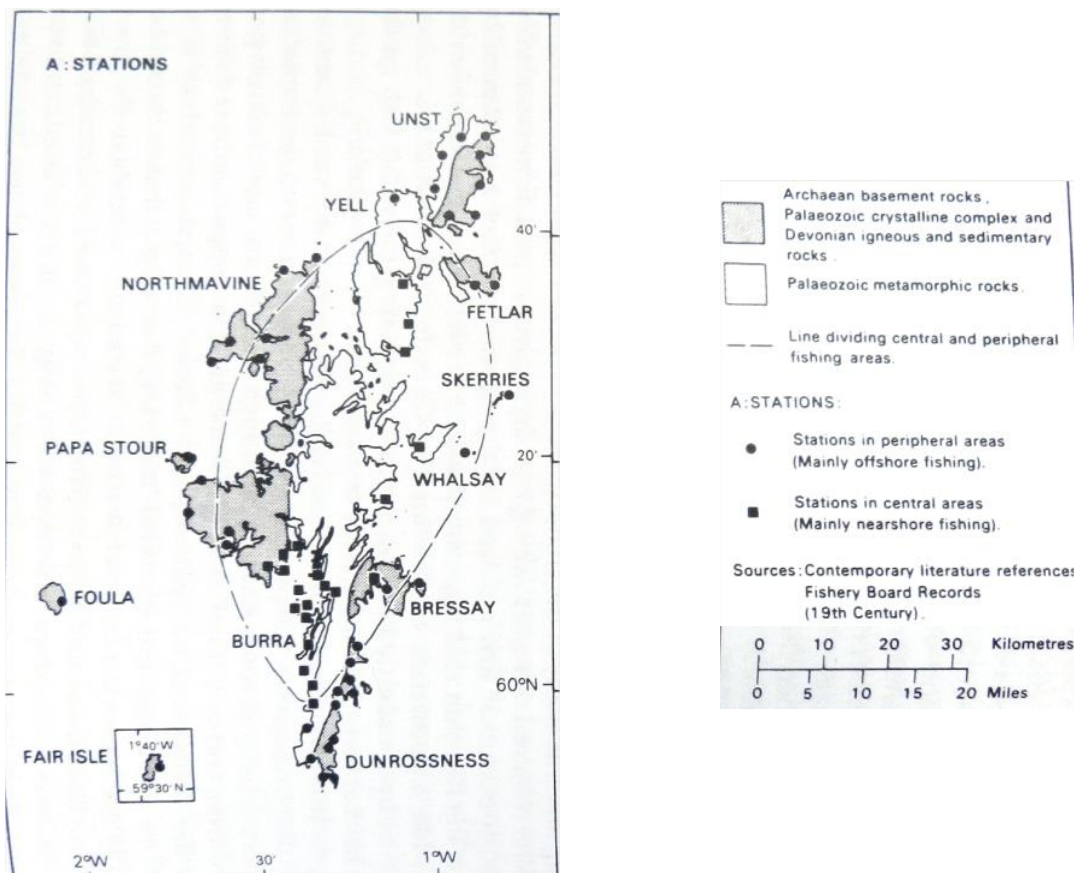
NAS, RHP685. 'Plan of the North Part of Northmavine from Uyea to Brebister', c1780.
Map 25: Fishermen's lodges: Fethaland and Uyea ca. 1785



Extract of: NAS, RHP685. 'Plan of the North Part of Northmavine from Uyea to Brebister', c1780.

Map 26: Fishermen's lodges: Fethaland ca. 1785

How many of these fishermen's lodges were disseminated along Shetland's coasts is difficult to say. However Hance Smith has mapped the fishing stations of the 18th century.



Smith, Hance D. *Shetland Life and Trade 1550-1914*. Edinburgh: John Donald Publishers Ltd., 2003, 50.

Map 27: Fishermen's lodges: fishing stations

It is interesting to note that Northmavine which “hath immemorially been for the Ling fishing, the best Station in Shetland” possessed a low number of fishing stations compared, for example, to the parish of Dunrossness, Sandwick and Cunningsburgh which wasn’t known for its fishing but rather for its agriculture. This might indicate that in Northmavine the fishing stations received many men in the summer season and therefore that many lodges were built there. William Jack, the minister of the parish detailed the number of boats which stationed at six fishing stations.¹ The station of Fethaland was the largest with its 60 boats stationed there in the 1790s.² There must not have been less than 717 men who were stationed during the summer season in the fishing stations of Northmavine; it amounted to 40% of the total population of Northmavine. Even considering that men came from other parishes, it must still mean that most of the fishermen of this parish were stationed there and therefore spent their summer away from their township.

Fishing station	Number of boats (1)	Remarks (1)
Stenness	40-50	from this and the neighbouring parishes during the fishing season*
Hamnavoe	12-15	
Ronas Voe	4-5	
Uyea	14	
Sandvoe	5	
Fetheland	60	from this and the parishes of Yell and Delting*
Total number of boats	135-149	
Total number of fishermen (4-oars boat or 6-oars boats)	540-894	
Average number of men	717	
*“Thirty or forty of these boats came from neighbouring isles, but belonged to heritors with land in the parish.” (2)		
(1) Jack, William. ‘Parish of Northmaven’. In <i>The Statistical Accounts of Scotland 1791-1799</i> , edited by John (sir) Sinclair, 12:351. Accessed 1 December 2011. http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Northmaving/ .		
(2) Fenton, Alexander. <i>The Northern Isles: Orkney and Shetland</i> . East Linton: Tuckwell Press Ltd, 1997, 573.		

Table 107: Fishermen’s lodges: stations of Northmavine, 1790s

The ‘second maritimisation’ transformed the landscape of Shetland. The arable land of the subdivided holdings wasn’t ploughed anymore, it was delved. The men of Shetland spent the summer at fishing stations where fishing lodges were built on common or privatised ground. However, the scattalds still offered what Brian Smith has called a “breathing space”.³

Scattalds as “breathing space”⁴

Even considering the first encroachments on the scattalds of Shetland such as the outsets, the planticrues, the fishermen’s lodges or any other enclosed ground, the scattalds of Shetland

¹ Jack, ‘Parish of Northmaven’, 351.

² Ibid.

³ Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 109.

⁴ Ibid.

remained mostly unclosed throughout the 18th and early 19th centuries. Brian Smith argues in his famous paper “What is a scattald?” that “[b]y leaving the scattalds virtually unenclosed, and devoting their energies to the maritime part of their estates, [the merchant lairds] gave the Shetlanders a breathing space.”¹ I don’t intend here to bring new information or a new perspective on the subject: I’ll present Brian Smith’s main points and develop them with further examples when needed.

Brian Smith’s first point is that “[l]andlords sought to attract and conciliate fishing tenants by providing small farms and extensive pastures for them.”² He gives examples from William Balfour’s rental of the 1770s which “is full of remarks” on the scattalds’ pasture, peat, seaweed, etc.³ Access to a scattald with good pasture land and peat wasn’t only a selling point for the landowners it was also a guarantee that the fishermen could survive; at least it was what William Balfour thought. William Balfour stated that “the scattalds were they are extensive and commodious are the great support of the inhabitants”.⁴ Jeanette M. Neeson reports a similar comment made by Gilbert White on the Hampshire downs. He wrote in the 1780s that

[s]uch forests and wastes [...] are of considerable services to neighbourhoods that verge upon them, by furnishing them with peat and turf for their firing; with fuel for the burning of their lime; and with ashes for their grasses; and by maintaining their geese and their stock of young cattle at little or no expense.⁵

When there was not an appropriate scattald for the tenants or when the peat resources were ill-available such as in the case of Haroldswick he wrote that “Sir Lawrence Dundas might accommodate a Boats crew had he houses for them only securing them Peats from Norwick Scatald” or in the case of Urigarth, Hammer and Midgarth, that “Sir Lawrence Dundas hath property in them to accommodate two Fishermen well but the distance from Peats is such as to render a number of horses necessary.”⁶ The peat resources but also the pasture grounds were two key resources for the Shetlanders who without them faced great socio-economical risks.

Brian Smith’s second point is that in the 18th century “Shetland scattalds were popular with everyone.”⁷ He explains that “the law courts did their bit to protect them”; they did it, from the 1720s to the early 19th century, by re-enunciating the Country Acts which rules protected

¹ Smith, ‘What Is a Scattald?’, 47.

² Ibid., 45.

³ Ibid.

⁴ NAS, RH4/102, ‘Rental of Lordship of Shetland’; Quoted in: Smith, ‘What Is a Scattald?’, 46.

⁵ Gilbert White, *The Natural History of Selborne (1788-1789)* (London: Penguin Classics, 1977), 24; Quoted in: Neeson, *Commoners*, 173.

⁶ NAS, RH4/102, ‘Rental of Lordship of Shetland’, fols 52–53.

⁷ Smith, ‘What Is a Scattald?’, 46.

the common resources on the scattald.¹ But what about the practical aspects of the protection of scattalds at court? In the first half of the 18th century, the bailieries protected the scattalds and its resources. Seventeen breaches of the Country Acts were judged at the bailiery court of Dunrossness and another twelve in Unst in the span of only a few years.² These breaches concerned mostly cases of men going unaccompanied on the hill or with an inappropriate sheep dog. These men disregarded the 8th act of the Country Act which forbade any one to “run after sheep with a dog, unaccompanied, or take in and kill any until first shewing the mark to a rancellman”.³ Other cases concerned the cutting of floss (act 36 of the Country Acts), the possession of swine (acts 6 and 36), horses on the scattald (act 35) or the erection of dykes or punds (acts 6, 27 and 32).⁴

Breach of the Country Acts (agricultural management)	1730-1735
Pund and dykes	3
Floss	1
Horses	2
Sheep (going unaccompanied on the hill/sheep dog)	15
Swine	3
Servant desertion	1
Total	25
NAS, RH2/8/33. ‘Photostat Copy of Bailie Court Book of the North Parish of Unst’, 1731-1733.	
NAS, RH11/29/1. ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book’, 1731-1735.	

Table 108: Offences: Breach of the Country Acts at the Bailie Courts

In all these cases the Country Acts served as the basis of the judge’s verdict. Scattalds resources such as pasture and floss needed protection since, as William Balfour would have said they were “the great support of the inhabitants”.⁵ In 1732, a group of ten inhabitants in Dunrossness, “Andrew Charleson in Skelberry, Thomas Mulla there, Andrew Harper there, Thomas Linklitter there, Gilbert Henderson in Rearwick, George Browns son there, William Sinclair there, Anne Rendals son there, James Yonson there, and John Sinclair in Myre” were judged “for cutting of floss before the time appointed by the Countrey Acts”.⁶ The 36th act clearly stated “that none cut floss before Lammas-day, in their own scattald, and due advertising, the neighbours of the scattald under the pain of 40 shillings Scots”.⁷ The judge fined each of them in accordance with the Country Acts in the sum of 40 shillings Scots.⁸ In 1732 at the bailiery court of North Unst, four men, “Lawrence Bruce in Pheil William Bruce

¹ Ibid.

² NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’; NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’.

³ ‘The Old Country Acts’, 82.

⁴ ‘The Old Country Acts’.

⁵ NAS, RH4/102, ‘Rental of Lordship of Shetland’; Quoted in: Smith, ‘What Is a Scattald?’, 46.

⁶ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 9.

⁷ ‘The Old Country Acts’, 84.

⁸ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 9.

in Tupton, William Farquhar in Deal and Silvester Jamson in Slaiton” were judged because their swine had destroyed the meadow ground of Clisboe belonging to John Ogilvy of Stove”.¹ In his verdict, the judge

ordains the hail above named persons to pay Six Shillings Scots for Each Swine to the Complainer within term of Law and in regard they have pastured their Swine over Different Scattles fines and americiates Each of the proprietors of the said Swine in the Sum of three lib: Scotts to be paid to the Clerk of Court within term of Law Discharging and Strictly prohibiting any person in this Bailliary to pasture their Swine over other Scattles or to have more Swine than conform to their Labourings as Limited in the Country Acts Under pain of ten lib: Scotts money immediately to be pay’d by the Contraveners by and autour making up the Damages and ordains Extracts.²

The 6th act contained regulations towards swine and the judge reminded it to the inhabitants.³

The bailiery courts did protect the scattalds. I have proven in Chapter 2 that the Sheriff Court used the Country Acts and protected the scattald as well, most notably in cases of swine rooting. Therefore it is possible to argue that the scattalds were not only protected on paper, they were also protected in practice both at the bailiery courts in the first half of the 18th century and at the Sheriff Court in the second half.

Brian Smith’s third and last point is that resistance to new enclosures “didn’t signal the last gasp of threatened communities, but are rather proof of the continued vitality of Shetland’s rural communities.”⁴ He gives the example of landowners and tenants who

did in a tumultuous manner [...] enter the inclosure of the Blett [in the scattald of South Cunningsburgh], with spaisds and other instruments of agriculture, and without any rule or rhyme or reason, each heritor and heritors tenants appropriated such a peice of the said grounds [...] to his own use.⁵

Scattalds were “still alive and kicking” by the early 19th century.⁶ Coupled together with multi-tasking and run-rig, I argue that they were an answer to debt-bondage and sex imbalance.

¹ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 12.

² Ibid.

³ ‘The Old Country Acts’, 81.

⁴ Smith, ‘What Is a Scattald?’, 47.

⁵ SA, SC12/6/1787/1, ‘Draft Submission Concerning Division’ 1787; Quoted in: Smith, ‘What Is a Scattald?’, 47.

⁶ Smith, ‘What Is a Scattald?’, 47.

Multi-tasking, run-rig and scattalds as answers

Organisation of time

This chapter started with the voices of the landowners and the ministers: they were concerned with the idleness of the inhabitants. This idleness they said was due to the irregularity of work throughout the year and underemployment. Jeanette M. Neeson and Edward P. Thompson both note that these critics towards idleness and irregularity of employments were parallel with critics of commons and common fields. Jeanette M. Neeson explains that “critics of commons” accused commoners of being “lazy”.¹ Edward P. Thompson argues that “in the unenclosed countryside, the classical case against open field and common was in its inefficiency and wastefulness of time, for the small farmer or cottager”.² With Edward P. Thompson’s work in mind,³ Christopher A. Whatley explains that “[u]nder assaults were customary practices – the aim being to create an army of workers whose sole source of support was the wage earned in return for a given amount of regular labour.”⁴

According to Jeanette M. Neeson, living off the commons meant that they were less need for regular wages, especially “where commons were rich reserves”, “[t]ime there was customarily spent on other things as well as work for wages.”⁵ Indeed Shetlanders who had “extensive and commodious scattalds”,⁶ just like inhabitants of the Hampshire downs and East Anglian fens that she describes, were busy at grazing cattle, casting peat, gathering floss, sea-weed and berries, repairing thatch; “this time was never available to employers, it was never purchasable.”⁷

Scattalders owned their time. There was in Shetland, as in the commons of England, what Edward P. Thompson describes as “a disregard for clock time”.⁸ The “notation of time which arises in such context”, explains Edward P. Thompson, “has been described as task-orientation.”⁹ The organisation of time in Shetland, as well as in coastal, insular and rural parishes on mainland Scotland, was task-oriented. It doesn’t mean that clock-time didn’t matter in pre-industrialised Scotland. Christopher A. Whatley explains that bells, drummer or

¹ Neeson, *Commoners*, 178.

² E. P. Thompson, ‘Time, Work-Discipline and Industrial Capitalism’, in *Customs in Common* (London: Penguin Books, 1993), 378.

³ Whatley, ‘Work, Time and Pastimes’, 287.

⁴ *Ibid.*, 292.

⁵ Neeson, *Commoners*, 178.

⁶ NAS, RH4/102, ‘Rental of Lordship of Shetland’; Quoted in: Smith, ‘What Is a Scattald?’, 46.

⁷ Neeson, *Commoners*, 178.

⁸ Thompson, ‘Time, Work-Discipline and Industrial Capitalism’, 357.

⁹ *Ibid.*, 358.

piper announced the onset of evening and in the countryside the length of the day of a hired day labourer was understood to be twelve hours.¹ In Shetland too there are indications that clock-time could put rhythm in a day. In the early 18th century the bailie courts convened or summoned the inhabitants at a precise given time. At the bailie court of Dunrossness, Adam Isibister in Bottom was “summoned till tomorrow ten a cloack before noon at this place”.² In Unst, on the 29th May 1731, the judge ordained “the whole householders in the Parish to be here present on Munday att ten a Clock forenoon”.³ How did Shetlanders keep track of time? Around 1790 in England “even cottagers may have wooden clocks costing less than twenty shillings”;⁴ before that recorded time was the prerogative of the higher ranks. Things were different in Shetland where “factory made clocks started becoming common [...] in the latter half of the 19th century.” Ian Tait explains that in order “to determine the time of day”, Shetlanders used time-markers which “were sited on hills near to settlement, and were used by observing the alignment of the sun in relation to the cairn.”⁵ The alignment between the farmstead, the cairn and the sun often marked mid-day; the “other times could be estimated depending on the time of year.”⁶ Scattalders could therefore organise their day according to what time it was but they could also organise it in terms of tasks to accomplish. Things started to change in the beginning of the 19th century. At that time Samuel Hibbert explained that “the curing and drying of fish taken at the Stenness Haaf, is conducted at Hillswick with great regularity, a bell ringing for the cessation and the resumption of labour.”⁷ A bell forced rhythm into the work of the fishermen. They had to start and be back at a given time.

Before these changes, Shetlanders’ organisation of time was task-oriented. According to Edward P. Thomson, it followed ““natural” rhythms””.⁸ I will call them ‘environmental rhythms’. These environmental rhythms were of three types: tides, days (day-light) and seasons. However it doesn’t mean that the inhabitants were subjected to tides, days or seasons but that their notation of time was based on them.

In their respective books, Susan Knox and Hance Smith have made figures representing the seasonality of work.⁹ They have, however, focused on the main products and productions of Shetland, those that were in the rentals – fish, sheep, cattle, meal – as well as fuel – peat. They

¹ Whatley, ‘Work, Time and Pastimes’, 287.

² NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’, fol. 9.

³ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 9.

⁴ Thompson, ‘Time, Work-Discipline and Industrial Capitalism’, 368.

⁵ Tait, ‘Settlement and Agricultural Landscape’, 72.

⁶ Ibid.

⁷ Hibbert, *A Description of the Shetland Islands*, 519.

⁸ Thompson, ‘Time, Work-Discipline and Industrial Capitalism’, 357.

⁹ Knox, *The Making of the Shetland Landscape*, 12; Smith, *Shetland Life and Trade 1550-1914*, 47.

do make references to “house stocking manufacture” or “cottage industry” but they don’t mention the type of productions and products which were needed for these industries.¹ With this in mind, I propose a more detailed calendar. I haven’t categorised these tasks and their products between the townland, the hoga, the shore or the sea; so many of them belonged to two categories. I’ve chosen to organise them by season. Tasks or activities that happened on an irregular basis such as the killing of whales weren’t recorded in the table. Some of these activities had regulated opening and/or ending dates they have been indicated with a star (*); others depended on weather, and on the early or late arrival of spring or winter. What this table gives to see is that throughout the year tasks of divers intensities were allocated to specific months or seasons or as Edward P. Thompson puts it: “The work pattern was one of alternative bouts of intense labour and idleness.”² These tasks sometimes required a full day and sometimes needed only a few hours. Thus the environmental time also included the notion of day. A day, from waking up to sleeping, was organised following specific requirements, weather and also what the individual wished to do. Cows had to be milked everyday; weather had to be as dry as possible to cut hay; berries needed to be ripened to be harvested. Christopher A. Whatley argues that “[I]abouring people set their own pace of work, and devoted time to crop- and animal-tending, searching for fuel and engaging in other activities that indicated a considerable degree of self-sufficiency.”³ I would argue that it also indicated a certain degree of independence. Every day could be different for a scattalder in Shetland; the only compulsory thing was that men were employed at fishing during the summer time and this, every day.

¹ Knox, *The Making of the Shetland Landscape*, 12; Hance D. Smith, *Shetland Life and Trade 1550-1914* (Edinburgh: John Donald Publishers Ltd., 2003), 47.

² Thompson, ‘Time, Work-Discipline and Industrial Capitalism’, 373.

³ Whatley, ‘Work, Time and Pastimes’, 287.

	January	February	March	April	May	June	July	August	September	October	November	December
seaweed												
up keep of dykes			*									
livestock inside dyke												
livestock outside dyke or stabled												
kale (yards)												
peat casting												
ploughing/sowing (voar)												
berries												
bog-hay												
haaf fishing												
kale (planticrues)												
peat raising and turning												
peat stacking												
rooing												
sea-birds												
harvest (hairst)												
heather												
rushes or floss								*				
dairy products												
fish oil												
herbs												
rabbits												
shellfish												
subsistence fishing (e.g. sea trout)												

*The Old Country Acts, or Abridgements Thereof". In *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents*, 81–85. Sandwick: Thule Print Ltd, 1976.
 Sinclair, John, ed. *Statistical Account 1791-1799. Orkney and Shetland*. Vol. 19. Wakefield: EP Publishing, 1978.
 Fenton, Alexander. *The Northern Isles: Orkney and Shetland*. East Linton: Tuckwell Press Ltd, 1997.
 Neeson, J.M. *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820*. Reprint. Cambridge: Cambridge University Press, 1996, 181-182.

Table 109: Calendar: Scattalders' activities

Women and household

Men who worked at the summer fishing earned between £12 and £28 for ten weeks but as Jane Humphries demonstrates in her article “Enclosures, Common Rights, and Women: The Proletarianization of Families in the Late Eighteenth and Early Nineteenth Centuries” men were not the sole breadwinners in the pre-capitalist households. Women, children and aged contributed to family subsistence and especially with resources from the commons. The notion that only men were breadwinners was based on at least two misconceptions: 1) ahistoric stereotypes; 2) the idea that no income came from the commons. Jane Humphries explains that

[m]isled by ahistoric stereotypes of male breadwinners and appurtenant wives and children, economic historians have overlooked the commons’ value in facilitating subsistence from wives and children, contributions which were not insubstantial compared with the male wage or with what women and children themselves could earn in wages.¹

The second misconception was that there was no proper income earned off the commons. The late 18th- and early 19th-century writers “despised these activities”, writes Jane Humphries.² She quotes William Stevenson who in 1813 offered a judgemental view on the commons’ activities; they were “miserable productions and trifling employments”.³ Historians of the 20th and 21st centuries also had difficulties to deal with this issue. Indeed the “history of fuel, food and materials from commons suffers from a shortage of the kind of records that establish its economic history”, explains Jeanette M. Neeson.⁴ She adds that “[t]hough there is no lack of evidence of use there is a dearth of evidence that would plot the history of the income value of each commodity.”⁵ The history of commons’ resources and the history of vegetables, referred to in the beginning of this chapter, suffer from the same disease: their products weren’t taxed and therefore their traces in the records are mainly qualitative. We know what the scattalders of Shetland “had for the taking”; we also know that they sold goods; there was also probably some black market.⁶ The problem is that we don’t have any account book which details the income value of these products.

Jane Humphries gives some clues on the importance of the commons in terms of income for the household. She calculates the income value of a cow kept on the commons, of peat cutting

¹ Humphries, ‘Enclosures, Common Rights, and Women: The Proletarianization of Families in the Late Eighteenth and Early Nineteenth Centuries’, 18–19.

² *Ibid.*, 32.

³ William Stevenson, *General View of the Agriculture of the County of Surrey* (London: Richard Phillips, 1809), 459; Quoted in: Humphries, ‘Enclosures, Common Rights, and Women: The Proletarianization of Families in the Late Eighteenth and Early Nineteenth Centuries’, 32.

⁴ Neeson, *Commoners*, 159.

⁵ *Ibid.*

⁶ *Ibid.*

and making besom brooms for sale in late 18th-early 19th-century England. For each of these resources the income that they provided offered wasn't negligible. The besom brooms income value "compares not unfavourably with what women could make in other employment",¹ and "the annual income from the cow was often more than half the adult male laborer's wage and an average-priced cow would pay for itself in about a year."² In the case of peat cutting it could even have the advantage to be done "in slack times and in odd hours when there was no money to be made by working for someone else."³ If we consider scattalders' uses of the waste, peat it appeared brought a considerable stability to households when it was located near the township. Evaluating the income value of peat is, however, quite difficult. The commons not only provided fuel, materials and food, they also offered pasture ground. On these pasture grounds animal fed. Sheep were kept in numbers in Shetland and the hosiery market was prosperous in the 18th century – less so in the first half though. What did it mean for the households? We can compare the price of stockings and the wages of both women farm servant and men at sea, which was the most paid employment that Shetland male tenants could get. The average price of coarse stockings at the end of the 18th century was between 6s. and 8s. (72d.-96d). A woman farm servant earned an annual wage of £9 (2160d.) and a man hired for ten weeks for the summer fishing received between £12 (2880d.) and £28 (6720d.) of wage. Considering these wages and the average price of stockings, women had to knit and sell between twenty two and thirty pairs of coarse stockings to reach the wages of a woman farm servant and between thirty and ninety three to reach what a fisherman earned in his ten weeks. How many pair of stockings a woman could knit yearly is hard to say but if we consider that they knitted (only) one pair of stockings every month, they brought to their household between £3 12s. (864d.) and £4 16s. (1152d.) amounted to a third or a half of what a woman farm servant earned and about a fifth or a sixth of what a fisherman earned. This wasn't an insignificant income – especially since twelve pairs of stockings per years was probably a low number. It also explains why house servants were less paid when they had their "hands to themselves" than when they didn't have the liberty to knit stockings.⁴ When they had their "hands to themselves" they received only £8 per annum compared to the £12 that they received if they didn't knit which means that the income value provided by the sale of hosiery must have at least covered the discrepancy between the two wages. Our estimations

¹ Humphries, 'Enclosures, Common Rights, and Women: The Proletarianization of Families in the Late Eighteenth and Early Nineteenth Centuries', 32.

² *Ibid.*, 31.

³ *Ibid.*, 34.

⁴ Barclay, 'United Parishes of Aithsting and Sandsting', 587.

of £3 12s. and £4 16s. must therefore be in the lower range of what a knitter could earn in a year. However these estimations concern women who had a direct access to wool. About half of the tenants' families in Dunrossness in 1747 didn't own sheep so women needed to buy wool before they could start knitting. The scattalds were also a "hidden wealth" for the inhabitants in the sense that they brought employment as well as subsistence.¹ With their wages of £4 10s. 6d. (1086d.) per month, women and men kelpers increased consistently the income of their household.

Complex households and female-headed households benefited from the scattalds' resources. Widows and singletons could keep livestock on the scattald. They could inherit it, buy it if they had the means or family members could provide them with it; "[t]he guardians", writes Jane Humphries, "purchased cows for older women to try to keep them off the rates."² Men, women, children and aged contributed to earning wages such as in the case of kelpers (women and children), fish curers (boys and older men), farm or domestic servants (girls) and also "by exploiting traditional rights to common resources."³ Shetlanders gathered fuel, materials and food on scattalds for their own use, for sale or to offer as gift.

Communities

The respondents of the Old Statistical Account explained that sea-trouts were fished every year using nets located in the mouth of rivulets between August and September.⁴ According to James Sands, the minister of Lerwick, the sea-trouts weren't fished in sufficient quantities to be sold.⁵ The minister of delting, John Morisson has another explanation: "[n]o fish of this kind are ever sold, but given in presents through the neighbourhood."⁶ Jeanette Neeson proposes an analysis of gift giving in a commoning economy: "Every commoning economy provided the materials for small exchanges – gift of things like blackberries, dandelion wine, jam, or labour in carrying home wood or reeds."⁷ These gifts were "all significant": they could help impoverished families; they made connections with each other; these connections

¹ Neeson, *Commoners*, 176–77.

² The "rates" or "poor rate" was the system of poor relief in England. Humphries, 'Enclosures, Common Rights, and Women: The Proletarianization of Families in the Late Eighteenth and Early Nineteenth Centuries', 38–39.

³ *Ibid.*, 38.

⁴ Barclay, 'United Parishes of Aithsting and Sandsting', 581; Morison, 'Parish of Delting', 387; Gordon, 'United Parishes of North Yell and Fetlar', 283.

⁵ Sands, 'Parish of Lerwick', 415.

⁶ Morison, 'Parish of Delting', 387.

⁷ Neeson, *Commoners*, 180.

established “a kind of safety net.”¹ Gifts were also proof of solvency “because the ability to give required possession in the first place.”²

These gifts exchanged between neighbours could support poor families, maybe widows or female-headed households. They established a bond between neighbours which engaged in a relationship based on solidarity and familiarity. However the scattalds didn’t offer resources only for the poorest: they were “a resource for almost everyone”³ – provided that one had a right of access to the scattald.

Since the scattalds remained (partially) unenclosed throughout the 18th century, collective activities on the commons stayed alive. At the beginning of the 19th century, Arthur Edmondston explained that

The casting of peats long constituted a species of festival all over Zetland. Thirty or forty men were invited to cut peats on a certain day, and they were sumptuously entertained for their trouble; and this the same party performed to different individuals in the same season. This practice is still continued in a few places.⁴

About twenty years before, the minister of Delting had described a similar scene:

The only fuel is peat. This article is not to be bought. Every householder employs such a number of friends and neighbours as he thinks necessary, to dig the proper quantity. These are entertained with meat in abundance, spirits and tobacco. The expence, on these occasions, may be about 1s. 8d. for each man employed.⁵

With the scattalds unenclosed a common calendar was kept. The casting of peat happened at the same date for several individuals. *Floss* cutting should only start on the first of August (Lammas day). Dykes had to be repaired before the end of March and once the crop had been harvested and stocked in the yards, the hill dyke was open for the livestock.

Scattalds weren’t unenclosed and run-rig fields were still the main system for the organisation of the arable land which meant that ploughing or delving needed to be done at about the same time to keep ‘good neighbourhood’. In “Everyday Structures, Rhythms and Spaces”, Robert A. Dodgshon explains that “the need for farmers to work together, to synchronise their routines of husbandry, was secured by general acts of good neighbourhood.”⁶ In Shetland these acts were the Country Acts, re-enunciated at the beginning of the 18th century and lauded in the early 19th century.⁷ They regulated uses on the scattalds and on the arable fields.

¹ Ibid.

² Ibid., 181.

³ Ibid., 174.

⁴ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 1809, 1:178.

⁵ Morison, ‘Parish of Delting’, 400–401.

⁶ Robert A. Dodgshon, ‘Everyday Structures, Rhythms and Spaces’, in *A History of Everyday Life in Scotland, 1600 to 1800*, ed. Elizabeth A. Foyster and Christopher A. Whatley (Edinburgh: Edinburgh University Press, 2010), 41.

⁷ ‘The Old Country Acts’.

Eventually Arthur Edmondston's description of the peat festival contributes to prove that the scattald was both a place of work and leisure. A similar festival happened in May and June in the central Highland "when whole townships or the greater part of the inhabitants celebrated their departure for the upland shielings – the summer grazing, a sign that summer had arrived, a period of replenishment for humans and livestock alike."¹ To this description, Christopher A. Whatler adds "that to an extent that would diminish in the nineteenth century, work and leisure – and pleasure – intermingled".² Jeanette M. Neeson notes the same thing for the English commoners. Since gathering "had its seasons", "people tended to work together to bring each harvest in, and often to mix work with pleasure."³ She then gives a detailed account of the communal gathering activities that men, women and children performed throughout the year.

All these moments brought the collective in the life of individuals, either in the form of gift, work cooperation or leisure. Mutuality and sociability were key words for the scattalds 18th century Shetland, not only because scattalders shared a common space but also because they shared resources and they shared moments. They spent time together; it contributed to building their sense of belonging to a community. The scattald community was the cornerstone of Shetland communal life in the 18th and early 19th century.

¹ Whatley, 'Work, Time and Pastimes', 289.

² Ibid.

³ Neeson, *Commoners*, 181.

Conclusion

Shetland's communities seized opportunities in their environment. They weren't subjected to it though; they used resources to both perpetuate generations and to better their own life. They were active in their environment, organising their tasks, their days and their social life. However it wasn't always understood by the higher ranks of the society. Shetland's élite or the commentators on Shetland life in the 18th and early 19 century acknowledged that Shetlanders were industrious people but they despised their idleness, especially during what they called 'the winter months'. This kind of discourses happened all over Great-Britain during the 18th century. One of the things that was criticised was the irregularity of work of the tenants. The local élite didn't accept anymore that tenants could be the masters of their own time. In Shetland, the fishing tenures were a way to limit the irregularities of hours; though during the 'winter months', the tenants still had the upper hand on the organisation of their time. It was the same thing for the discourses on specialisation. Shetland élite and commentators complained that the tenants, instead of focusing on one specific activity, were both farmer and fisherman. They also criticised the absence of manufactures on the islands. However local craftsmanship existed but they were looked upon with disdain. These productions didn't belong to well organised system, where a 'good master' could impose rules and hours. The production of hosiery was part of the 'cottage industry' of Shetland; it wasn't organised by the merchant-lairds – even though they offered opportunities to sell the products or, it could also be said, that they tried to take control of the trade. However, the production of hosiery was never a system organised from the top down. It was a bottom up system, with tenants, particularly women, producing, exchanging and selling their products. This system would change, however, in the 19th century with the development of the truck-system. Women were at the heart of the new productions or manufactures of Shetland at the end of the 18th century, straw-plaiting and kelp making employed women.

Shetland tenant, male or female, was multi-tasking. He or she combined in one day, one year or one life different activities or tasks. Some of these activities were strictly regulated and the productions controlled. It was the case of the servants. They were submitted to strict rules and their employment and movements were controlled. Since servants lived with their master, their 'decency' was also controlled. It wasn't admitted for a servant to behave in certain ways, for example to be pregnant out of the bonds of matrimony, because it shed suspicion on the household where she lived. Servants and the other waged workers of Shetland received wages

which were comparable in terms of value with what their counterparts in Northern Scotland earned for the same tasks. There were specificities in Shetland though with the employment of men for the summer fishing and the possibilities for women servants to be paid a little less and have their 'hand to themselves' to knit hosiery in the evening or in their spare time to earn more money. The system of wages in Shetland, low and partly in kind (clothes, shoes and boarding) has to be understood in the context of the economy of the tenants; the land-rents and teinds in Shetland were still collected in kind in the 18th century even though the land-rent was progressively commuted from kind to money.

The systems of landownership and tenancy in Shetland were complex. It included a share-cropping element in the form of the fishing-tenures. A fishing-tenure was a tenure on which a tenant gave the whole of his summer fishing to his landlord; the landlord bought his fish at a fixed price. A low land-rent – and the teinds – were also collected. This system was at the heart of the 'second maritimisation' of Shetland. Landowners and male tenants turned all their attention towards fishing – as tenants were bound to fish for their landlords – and this affected both the local economy and the landscape of Shetland.

Tenants shared their arable land and paid their land-rent within the limits of their 'house' or 'township'. Their different landowners could possess runrig lands. Shetland tenants within the same township could cultivate land which belonged to different landlords; and they could also be the tenants of different landlords, thus cultivating strips of land in runrig in the same township but which belonged to different owners. Landowners had 'fragmented estates'. Sometimes 'pockets' of townships were owned by the same landlord; it was the case of some townships in the south of Dunrossness where Quendale owned all the arable land or in the western coast of Northmavine where Busta owned arable land in entire townships. But arable lands were discontinuous; only 4% of the landmass was cultivated in the early 19th century. Between the one township arable land and the neighbouring townships, tracks of pasture land, hills, wetlands, etc. fragmented the landscape, therefore fragmenting the estates of the landowners.

Within the 'house' and later the township, the notion of fairness was the basis of the allocation of runrig land, either in terms of quantity or quality. Mowing the hay and the harvest were collective activities but the possession was individual or joint, never communal. Tenants cultivated *bere*, oats and potatoes on the arable land. The harvest was a moment of great intensity both in terms of work but also of sociability and ritual. In order to cultivate the ground, fertilisers were needed. They came from outside the townland, outside the hill-dyke, from the *hoga*, the common pasture, or the shore. The complementarity between the

townland, the *hoga*, the shore and the sea was the key to the success or at least the good functioning of a Shetland township. Fuel came from the *hoga* and food from the townland, the *hoga*, the sea and the shore; materials and animals were constantly in movement between the two places: bog-hay was mowed on the hills but served in the *byre*, seaweed were used as a fertiliser, sheep and horses manured the land in winter and provided all sorts of services – transport, draught force, wool, meat, etc. And these are only a few examples of the complementarity between the two spaces. This system was based on movement: movements of animals, men and women and products. The hill-dyke was built around the township but didn't encapsulate them; it was an expression of the solidity of the bonds between the inhabitants of the township – it was the same thing for the *pund* on the scattald in the first half of the 18th century. The hill-dyke connected these two spaces and the separation it let appear in the landscape was only a seasonal and animal one. Men and women could still pass the dyke and carry out their tasks on any side of the dyke.

The 'second maritimisation' led to changes. Landowners subdivided the farms and arable land; they built outsets on the scattald; population increased – by the incentive of the landowners and by the inoculation of smallpox. It also led to the apparition of a sex imbalance: men carried out summer fishing, went on whaling vessels or engaged in the Navy, some left the country for good and others died at the sea. Women were already more numerous than men in the late 18th century. The seasonal activity of men as well as the necessity for women to earn their living changed the repartition of work in the household. In the late 18th century, women prepared the soil which is in most cultures an activity almost entirely carried out by men. The 'second maritimisation' also led to landscape modification. The population pressure and the fragmentation of arable land encouraged the tenants to modify their runrig organisation. 'House-runrig' slowly disappeared in favour of 'whole-township-runrig' characterized by a large scale runrig, extremely fragmented, which could incorporate new arable ground, but always respecting the notion of fairness in the proportional access to arable land, meadows and grass land. Another landscape modification was the 'masculinisation' of the shores, especially in fishing stations' areas with the development of coastal structures such as merchant booths or fishermen's lodges.

The scattald, however, was still protected. It was protected by Shetland élite, landowners and local government officials, who re-enunciated the Country Acts and who before the Sheriff Court tried to maintain a status quo; there were changes happening (outsets, enclosures, planticruets, etc.) but for now the scattalds, and the runrig lands, remained undivided and unenclosed. This meant that men and women kept a hold over the organisation of their tasks

and time. Men – or husbands and their wife – were ‘unfree’, bound to their landlords; they had to fish for them, but they remained independent throughout most of the year. Multi-tasking allowed this independence: it brought subsistence and employment. Women, for example, provided for their households in different ways, either in gathering and collecting resources from the *hoga* and the shores, in making hosiery and selling them or through employments via kelp making for example.

Eventually, these communities were still alive and adapting to the new limits imposed on their lives by the system of tenancy. They kept a common calendar, common activities and a common space; they shared moments of sociability and leisure such as during the peat casting ‘festival’. Arne Lie Christensen in his book *Den norske byggeskikken: hus og bolig på landsbygda fra middelalder til vår egen tid* starts an analysis of the ‘Landscape of the pre-industrial farm’ with the following quote from the daughter of a fisherman in Gratangen in Troms who depicted her childhood home in the early 20th century:

Home was large in northern Norway. Home was the work space where everyone was – the young, the grownups, the old ones. And the work space was large. It was not just houses for humans and animals and the obvious land around them. It was also outlying areas, where we mowed hay, forest where we got fuel and timber, and mountains where every ‘creatures’ got food for many months. In the work space there were also *naust*, lake, home sea and great sea in Lofoten and Finnmark. We all lived within all of this large work space and we made it a home.¹

This was probably how tenants and udallers felt about their scattald; the scattald with the *hoga*, shores, the sea and the runrig land was home.

This chapter sheds light on the scattald communities and township communities; local communities based on localness, common practices, solidarity and boundaries. These communities were exclusive. Access to the scattald resources was only granted to those who paid the scat or the hogaleave. In these communities, direct relations were established between the scattalders or between the inhabitants of a township or ‘house’. Social interactions and common interests were shared. It was the case for the management of the runrig land and livestock husbandry; the system worked only if tenants with similar interests worked alongside and respected the calendar of practices. Without being a community enthusiast, I have proven that scattald communities were a safety net for impoverished families but most importantly they were important for everybody, not only for the weakest of the territory. These local communities were based on the fair distribution of resources: arable

¹ “Hjemmet var stort i Nord-Norge. For hjemmet det var arbeidsplassen der alle var med - de små, de voksne, de gamle. Og arbeidsplassen var stor. Det var ikke bare husene for mennesker og dyr og den opplagte jorda omkring dem. Det var også utmarka. der vi hentet høy og hjelpefôr, skogen som vi fikk brensel og vyrke fra, og fjellet der alle 'kretturen' fikk mat i mange måneder. Til arbeidsplassen hørte også naustet, sjøen, hjemnehavet og det store hav i Lofoten og Finnmark. Alle levde med i alt på denne store arbeidsplassen og gjorde den til et hjem.”, in Christensen, *Den norske byggeskikken*, 80.

land, meadows, grass land but also peat, seaweed, rushes, etc. They were based on collective work: dyke building, harvesting of raw materials, sheep *rooing*, etc. They were based on free access to resources and space; people had the liberty to move in the township and on the scattald.

Chapter 4: Evolutions of a community

She paused at the top of the hill to catch her breath, looking down at the glassy surface of the lake between the trees. She was sixty-three years old now and, according to her own calculations, she needed five more years to complete her life's work: *The History of Swedish Walkways*. In this book she would reveal that paths were amongst the most important clues to ancient settlements and their way of life. Paths were not laid out only for the simplest way of getting from A to B. On the contrary, she had ample evidence for the numerous religious and cultural factors that determined where and how paths made their way across the landscape.¹

Henning Mankell, *Before the Frost*.

*

Activities on the scattalds were multiple; they led to many possibilities for the inhabitants not only because they brought resources and independence but also because they were places of movement, transmission and changes.

Movement is a difficult subject to deal with in early modern society. Mobility, social and geographic, has been studied but it is another subject;² it considers movement at another scale, in a larger geographical context which often includes a change in place of life and considers it figuratively as movement in a social setting. However there were probably in Shetland similar mobility patterns that those described by Ian Whyte for 17th-century Scotland or by Jeremy Hayhoe for 18th-century Northern Burgundy. In his book titled *Strangers and Neighbours. Rural Migration in Eighteenth-Century Northern Burgundy*, he starts the introduction with the example of “Jean Boizot, a thirty-six-year old ploughman living in a hamlet of le Brouillard within the parish of Vic-sous-Thil”.³ In a court case this man explained that in the space of about five years he had moved and lived in three different villages or hamlets: Chazelle-en-Morvan, Vic-sous-Thil and le Brouillard. All these places were located in a perimeter of less than 10 km.⁴ This type of mobility must have been present in Shetland. This isn't what I have been investigating but I can give the account of at least two men who moved from one village to another. In 1797 Henry Smith a seventy nine years old tenant lived in Troubletown in the parish of Quarff but “he had lived in Fladabister [in the parish of Cunningsburgh] with his father Laurence Smith until he was about twenty years of age”.⁵ To go from Fladdabister to Troubletown, a man had to walk a distance of about 4 km through hills and swampy ground.

¹ Henning Mankell, *Before The Frost: A Linda Wallander Mystery*, trans. Ebba Segerberg (New York: The New Press, 2013), 65.

² I.D. Whyte, ‘Population Mobility in Early Modern Scotland’, in *Scottish Society 1500–1800*, ed. Robert Allen Houston and Ian D. Whyte (Cambridge: Cambridge University Press, 1989), 37–58.

³ Jeremy Hayhoe, *Strangers and Neighbours: Rural Migration in Eighteenth-Century Northern Burgundy* (Toronto: University of Toronto Press, 2016), 1.

⁴ Ibid.

⁵ SA, SC12/6/1797/29, ‘Petition (to Fix Boundaries of Scattald of Quarff - the Pursuer's Tenants Having Been Molested by the Men of Fladabister While Building a Cro.)’ 1797 bundle 2.

A year after, John Sinclair an Elder of Fetlar had moved to Uyea in the parish of Unst. He had crossed the sea between the two islands, lying at a distance of about 5 km. When he “presented a certificate from the Minister and Session of Fetlar of his being an Elder of that Session” he was admitted as an Elder in the session of Unst too.¹ Women were probably also moving. The absence of examples here doesn’t exclude them from geographical and social mobility. However I’ll deal with the movement, and the means of transport of the Shetlanders, not with their mobility. An interesting synthesis by Alastair Durie of ‘Movement, Transport, and Travel’ in Scotland in the early modern period was published in *A History of Everyday Life in Scotland, 1600 to 1800*.² More detailed accounts of daily transport were published in *Transport and Communication*, the 8th volume of the Compendium of Scottish Ethnology edited by Kenneth Veitch.³

This study of movement confers a spatial dimension to the community: where did members of the community go? How did they go there? Why did they move? How often did they move? This brings us to regular uses of the space and, with this regularity, to yearly territorial events such as the *hagrie*, the annual perambulation along the marches of the scattalds. The *hagrie* held in itself the idea of memory and history of the place. It was also there to remember the boundaries within which the custom as *lex loci* lied upon.⁴ Edward P. Thompson makes a great account of the bond between custom, place and perambulation in *Customs in Common*.⁵ To illustrate the fact that younger generations had “to imprint [the boundaries] upon their memories”, Edward P. Thompson uses an example from Shetland, the case of Fredman Stickle, quoted in 1984 by Brian Smith in his ‘What is a Scattald? Rural Communities in Shetland, 1400-1900’.⁶

Therefore it is the question of evolution in all its meanings, as movement, as the process of revealing and as the process of development that this chapter will explore. It will ask the question of the role of time and place in the shaping and transformation of community. How

¹ SA, CH2/385/2, ‘Unst Kirk Session Minutes, 1797-1843’ n.d., fol. 1.

² Alastair Durie, ‘Movement, Transport and Travel’, in *A History of Everyday Life in Scotland, 1600 to 1800*, ed. Elizabeth A Foyster and Christopher A. Whatley (Edinburgh: Edinburgh University Press, 2010), 252–72.

³ Kenneth Veitch and Anne Gordon, ‘Traditional Ferries’, in *Transport and Communications*, ed. Kenneth Veitch, vol. 8, 14 vols, Scottish Life and Society: Compendium of Scottish Ethnology (Edinburgh: John Donald in association with the European Ethnological Research Centre, 2009), 191–226; Alexander Fenton, ‘Back Transport and Horse Draught before Made Roads’, in *Transport and Communications*, ed. Kenneth Veitch, vol. 8, 14 vols, Scottish Life and Society: Compendium of Scottish Ethnology (Edinburgh: John Donald in association with the European Ethnological Research Centre, 2009), 295–313.

⁴ E. P. Thompson, ‘Custom, Law and Common Right’, in *Customs in Common* (London: Merlin Press, 1991), 97.

⁵ Thompson, ‘Custom, Law and Common Right’.

⁶ *Ibid.*, 98; Brian Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, in *Essays in Shetland History: Heidursrit to T.M.Y. Manson*, ed. Barbara E Crawford (Lerwick: Shetland Times Ltd, 1984), 104.

did Shetlanders move and how did it affect their perception of landscape and community? Which history was transmitted within the community? How was it transmitted? And what were the results of such transmission?

Movement and Transport

Shetland in the late 18th century and early 19th century was, similarly to the rest of Scotland, a centre of attraction for numerous travelers.¹ All had their reasons to come to Shetland. For some it was scientific reasons, others travelled for specific projects. All had in common that in order to go to Shetland they had to take a boat and sail through the North Sea and North Atlantic Ocean.² Traveling to Shetland isn't what interests us however. These travellers described the life of the inhabitants, the landscape, the social relationships and the improvements needed on the islands; they also described the internal movement on the islands and to the islands. Their commentaries shed light on a difficult topic. Alastair Durie in "Movement, Transport and Travel" explains that

[a] key problem which dogs discussion of this topic is that we have little, if any, hard evidence as to the scale, distances and frequency of internal movement. [...] Much, in fact, virtually all, of the movement of the ordinary people has left no trace, especially humdrum and mundane, the daily round, the weekly trip to market or fair, to church on Sunday (virtually the only traffic on the Sabbath) and even the occasional outing to a well or spring.³

There are, however, a few references coming either from travellers' accounts but also from more practical sources such as courts records; it is on this data that I'll base the following analysis.

Movement and transport are ways to discover one's surroundings and they are also way to make sense of the landscape. Movement might also be for leisure. In her poem "Description of Sound, near Lerwick", Margaret Chalmers described her walk home:

The evening hour, and fast declining sun,
Remind me it is time to think of home.
I'll take my lingering circuit by the East,
and travel round the green Peninsula.
Shall I the North or Southern Isthmus choose?
Both stretch their white and curving arms of beach
To lead me to it by the eastern course.
The opposing Isthmuses, the western knolls,
And the Peninsula a circle form
Around a Loch, whose pure transparency,
Opposing boundaries of white and green,
And site sequester'd, pleasing union form.⁴

¹ Durie, 'Movement, Transport and Travel', 262–67.

² Derek Flinn, *Travellers in a Bygone Shetland: An Anthology* (Edinburgh: Scottish Academic Press, 1989).

³ Durie, 'Movement, Transport and Travel', 253.

⁴ Margaret Chalmers, 'Description of Sound, near Lerwick', in *Poems* (Newcastle: S. Hodgson, 1813), 111; Partially quoted in: Penny Fielding, 'Ultima Thule: The Limits of the North', in *Scotland and the Fictions of Geography*, Cambridge Studies in Romanticism (Cambridge: Cambridge University Press, 2008), 154.

These moments of leisure are extremely difficult to seize for the social categories of the small udallers, tenants and landless; the higher social categories are better documented.¹ Another example of such a moment of leisure or rest took place in a coastal, rural area of Shetland. In 1794 in order to prove that some sheep eating corn and passing over dyke weren't his, Andrew Roberston decided to herd them during the night. However, it didn't go according to plan:

he had it in his power easily to secure them [i.e. the sheep] on a Beach at the foot of the Town which they had to grass over. Accordingly he came to Caldback but would allow non to watch with him but a boy. But in place of watching they laid there down & slept [sic] till towards morning. And by that time the sheep had come and had eaten & destroyed a great deal of Corn to your Petitioners [...].²

Going out for leisure was a possibility; even falling asleep on the spot. However, much of the movement and transport had to do with day-to-day activities. “Scotland was not a society without movement, but”, explains Alastair Durie, “most movements were only short in distance, collecting water and fuel, to the fields, infields or ‘out’, pasture or commons or to the shielings. In some areas there was the slog of cutting and collecting peats, perhaps from a moss at some distance.”³ The question is then, what did these short distance movements meant for the local and network communities? Or, in other words: in what respects did movement contribute to shape the communities?

Land-ways and sea ways

Mossy paths and paved roads

Travelling in Shetland by foot was described as being extremely difficult in the 18th century. There were almost no roads to accommodate an easy travel through Shetland. In the beginning of the 18th century, John Brand travelling through Shetland explained that it was “so dangerous” to travel “even to the inhabitants”.⁴ He blamed the “mossy, soft, and spungy” soil of Shetland. In order to make his point he gave the exemples of the ministers of Yell and Tingwall who “fell into such a mossy and loose piece of ground” and were saved with great

¹ Durie, ‘Movement, Transport and Travel’.

² SA, SC12/6/1794/1, ‘Petition (Going Unaccompanied to Sheep Hill.)’ 1794.

³ Durie, ‘Movement, Transport and Travel’, 254.

⁴ John Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, in *A General Collection of the Best and Most Interesting Voyages and Travels in All Parts of the World*, ed. John Pinkerton, vol. 3 (London: Longman, Hurst, &c., 1809), 783–84.

difficulty.¹ A century later, John Shirreff presented quite a dark portrait of Shetland's road system. He wrote that

[t]he general Road Act of Scotland has never as yet been carried into execution in Shetland; nor has any Road Bill passed the Legislature for making or repairing roads within the bounds of these islands. In fact, so far as is known to the Reporter, the only made road in Shetland is from Lerwick to the parish of Tingwall, which does not extend to more than four miles in length, every other communication from one part to another being just such as takes place in every unimproved country.²

This type of discourse on the bad quality of roads wasn't found only in Shetland. In the rest of Scotland, similar comments were made. The state of the roads in mainland Scotland in the pre-improvement period was said to be "deplorable".³ The writers of the Old Statistical Accounts of Scotland agreed on the difficulty to travel in Scotland before the first road improvements.⁴ John Mill, the minister of Dunrossness, wrote in his answers to Sir John Sinclair the following analysis of the state of roads in Shetland:

One of the principal means of improvement to this country would be good roads, as, at present, no cart or carriage whatever can be used for the transport of goods on the soft surface of the country, particularly to the northward. Two roads are especially needed, viz. from Lerwick to Scalloway, the two principal towns of Zetland, the distance is only 4 miles; and from Lerwick through Tingwall parish to the parish of Delton, and thence to Yell sound, through the very heart of the country, which is not above 12 miles; but in some places, the peat moss is so deep as to be impassable on horseback.⁵

Even with a horse, Shetland moss made it difficult for locals to travel and to exchange goods on land. He insisted on the necessity of building a road between Lerwick and Scalloway the two main towns of Shetland. George Low proceeded on this road in 1774 and described how "the road lying over the mountains, and thro' deep peat mosses [made] travelling not only wearisome but dangerous."⁶ The first road to be made was between Lerwick and Tingwall at

¹ Ibid.

² John Shirreff, *General View of the Agriculture of the Shetland Islands with Observations of the Means of Their Improvement* (Edinburgh: Archibald Constable and Co., 1814), 72.

³ Henry Hamilton, *An Economic History of Scotland in the Eighteenth Century* (Oxford: Clarendon Press, 1963), 223; Quoted in: Durie, 'Movement, Transport and Travel', 252.

⁴ Durie, 'Movement, Transport and Travel', 256.

⁵ John Mill, 'Parish of Dunrossness in Zetland', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 7, 398, accessed 23 November 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Dunrossness/>. See also: John Morison, 'Parish of Delting', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 1, 405-6, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Delting/>; A Friend to Statistical Inquiries, 'Parish of Nesting', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 17, 500, accessed 31 January 2013, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Nesting/>; Patrick Barclay, 'United Parishes of Aithsting and Sandsting', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 7, 589, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Sandsting%20and%20Aithsting/>; Thomas Mouat and James Barclay, 'Island and Parish of Unst in Shetland', in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 12, 202, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Unst/>.

⁶ George Low, 'Voyage to Schetland', in *A Tour Through the Islands of Orkney and Schetland: Containing Hints Relative to Their Ancient Modern and Natural History Collected in 1774*, by George Low (Inverness: Melven Press, 1978), 75.

the end of the 18th century;¹ John Shirreff presented this road as being “the only made road in Shetland” but even though “[i]t afford[ed] indeed some facility to travellers, in as much as hard gravek is much better to walk or ride upon than deep mire; but every one [knew] that it [was] still as impossible to drive a loaded cart from Tingwall to Lerwick”.² This was the first of a series of road ‘improvement’. On mainland Scotland, the first improvements in the road system started approximately in the 1750s and by the end of the century, great changes had happened.³ In Shetland, the chronology was slightly different. Since road improvement was parallel and complementary with agrarian improvement, it is not surprising to find that most of the roads in Shetland were built from the middle of the 19th century onwards.⁴ This complementarity between agrarian improvement and road improvement appears in one comment made in the early 19th century by Alexander Seton of Preston who explained in a letter to Patrick Neill that the islands were “totally destitute” of roads. He stated that roads should be built “as they facilitate the execution of every other improvement, they may be said to be the mother of all, and should be attended to as the very first.”⁵ He was maybe a reader of Adam Smith who stated in his *Wealth of Nations* that “[g]ood roads, canals and navigable rivers [...] are the greatest of all improvements.”⁶ One year after its institution, the Society made a clear call to the necessity to ‘improve’ roads in Shetland. They wrote:

It is a fact fully demonstrated by the experience of all those parts of the kingdom, which have preceeded us in improvement, that ROADS form an indispensable preliminary, and tend more to accelerate the progress of cultivation, and the extension of trade, than any other work of public nature which can be undertaken.⁷

Here again the parallel between agrarian improvement and road improvement was drawn. Shetland’s improvers, the members of the Society, considered that agrarian improvement without proper roads wouldn’t be complete.

¹ James Sands, ‘Parish of Tingwall’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 21, 282, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/General%20Appendixgen%20App%20Vol20/21/274/>; SA, SA4/3000/11/5/3, ‘Second Annual Report of the Committee of the Shetland Society’ 1816, 8; Hance D. Smith, *Shetland Life and Trade 1550-1914* (Edinburgh: John Donald Publishers Ltd., 2003), 218.

² Shirreff, *General View of the Agriculture of the Shetland Islands*, 72; SA, SA4/3000/11/5/3, ‘Second Annual Report of the Committee of the Shetland Society’, 8.

³ Durie, ‘Movement, Transport and Travel’, 261.

⁴ Flinn, *Travellers in a Bygone Shetland: An Anthology*, n.p.; Smith, *Shetland Life and Trade 1550-1914*, 219.

⁵ Patrick Neill, ‘Letter from Sir Alexander Seton of Preston, Containing Observations on the State of the Shetland Islands, and on the Means of Their Improvement’, in *A Tour Through Some of the Islands of Orkney and Shetland, With a View Chiefly to Objects of Natural History, but Including Also Occasional Remarks on the State of the Inhabitants, Their Husbandry, and Fisheries* (Edinburgh: A. Constable and Company and John Murray, 1806), 180.

⁶ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, An Electronic Classics Series Publication (Hazleton: PSU-Hazledton, 2005), 127; Quoted in: Durie, ‘Movement, Transport and Travel’, 252.

⁷ SA, SA4/3000/11/5/3, ‘Second Annual Report of the Committee of the Shetland Society’, 7–8.

However Shetlanders, tenants and udallers, had before that used the network of “mossy” roads on a daily basis. Shetlanders, just like any other rural, coastal Scottish men or women, “could and did walk, and everywhere.”¹ In the early 19th century, John Laing who also insisted on the absence of proper roads, explained how “the foot-paths [were] made over the hills by the horses, cattle, and sheep.”² Horses, cattle and sheep weren’t the only mammals to walk on the hills: Shetlanders had their paths. Finding these paths isn’t an easy task. There are mentions of people walking from a township to another one, but which way did they take? Paths left archaeological traces in the landscape in the form of bridges. Ian Tait explains that “[a]t Gossigill, Olnafirth, a superior quality *brigg* crosses the steep-sided stream on the otherwise unmarked track to the nearby farm of Kurkigarth.”³ Shetland hydrography meant that several streams and rivulets had to be crossed, some could be easily crossed on foot but others, especially after heavy rain, needed to be crossed by a bridge. In 1753 John Mill, the minister of Dunrossness, told the story of a day when he was “obliged to take a different route from what [he] intended, and go by a bridge, because of a swell in the burn”.⁴ Bridges, similarly with hill dykes, were communal buildings in Shetland. The Country Acts stated “[t]hat all briggs and common passages be kept in repair by the persons used to repair them”.⁵ Bridges were probably maintained following the same repartition than the dykes: each portionner of a town worked on the town bridge for the upkeep. These bridges have been studied by Ian Tait who details both the etymology of the word *brigg*, probably from the Scoto-English, *brig*, a bridge and their architecture. Most of the bridges were of small size: “[h]eavy rocks were placed at either side of the stream to shore up the bank from undercutting the bridge, and a slab was laid over the top, heavy enough so as not be dislodged by a stream in spate.”⁶ One bridge was even established to enable proper connection between close islands. In his answers to Sir John Sinclair, John Menzies, the minister of the united parishes of Bressay, Burra and Quarff wrote that “[t]he islands of Burra and House are situated on the W. side of the main

¹ Durie, ‘Movement, Transport and Travel’, 254.

² John Laing, ‘Of the Shetland Isles (1806-1807)’, in *A Voyage to Spitzbergen Containing an Account of That Country, of the Zoology of the North; of the Shetland Isles; and of the Whale Fishery*, [1818] (Edinburgh: Printed for the author, 1825), 35.

³ Ian Tait, ‘Settlement and Agricultural Landscape’, in *Shetland Vernacular Buildings, 1600-1900* (Lerwick: Shetland Times, 2012), 71.

⁴ John Mill, *The Diary of the Reverend John Mill, Minister of the Parishes of Dunrossness Sandwick and Cunningsburgh in Shetland, 1740-1803. With Selections from Local Records and Original Documents Relating to the District*, ed. Gilbert Goudie (Edinburgh: Edinburgh University Press, 1889), 13.

⁵ ‘The Old Country Acts, or Abridgements Thereof’, in *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents*, by Thomas Gifford (Sandwick: Thule Print Ltd, 1976), 84 act 30.

⁶ Tait, ‘Settlement and Agricultural Landscape’, 71.

land, and separated from it by a narrow sound. They lie so near to one another, that there is a communication between them by a bridge.”¹

Bridges, however, weren't the only traces left by paths in the landscape. Ian Tait explains that

[a]lthough devoid of any roads, both *tun* and *skattald* were crossed by unmarked tracks that people were habituated to use, following the shortest routes and easiest terrain. Routes were not marked in any way, let alone surfaced, other than be indicated by *virdeks* where they crossed expansive areas of hilly terrain.²

These waymarks, *virdeks*, weren't frequent: Shetlanders' familiarity with the terrain made them circumscribed to “the extensive moorlands of Yell and in areas prone to mists.”³ On paper, traces of these tracks appeared sometimes when a conflict arose. In 1822, Lochend's tenants in Aith and Greensmow, Cunningsburgh, complained that Sumburgh's tenants in Blosta cut a road that they were using with a ditch. They described this track as following:

a rod is been ocupid from the hed of Aiths vo upward towards Bremire and Goard & from that towards the hill not only before the planking of North Cunningsbruge but even since, through which rod Lochends tenants in Greenmow is hitherto transported their pets and other subjects such as flaws and Berry from the hill and occasionally in the winter tim drives their Cattle to the hill through said rod [...].⁴

The tenants in Blosta, they explained, “stop said rod by making a tranch or dich so as nothing can occape [?] said rod in safty only because a part of said rod cross their medow”.⁵ Eventually, the procurator fiscal for the Sheriff Court of Lerwick sent the Sheriff Officer, Magnus Mouat “to let the ditch be filled up by you [i.e. the tenants in Blosta] or at your expenses”.⁶ Such a record gives us the possibility to almost see the foot path in the landscape. Furthermore it emphasises the necessity of the *hagi* and of its access for the inhabitants who collect not only peat and *flaws* but also berries. Is it possible to map this track? Records of the division of scattalds might give us some clues on where this road exactly was – on some of the plans of division, peat roads or public road to market were expressly drawn and named. When we look at the “Bound plans of the scattalds of North Cunningsburgh, Fladdabister and Clift Hills, Dunrossness, Shetland” drawn in 1882-1883, a road named “Access Road” meanders from the head of Aith Voe through the township of Gord and then to the hill, and on

¹ John Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 10, 195, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Bressay%2C%20Burra%2C%20and%20Quarff/>.

² Tait, ‘Settlement and Agricultural Landscape’, 70.

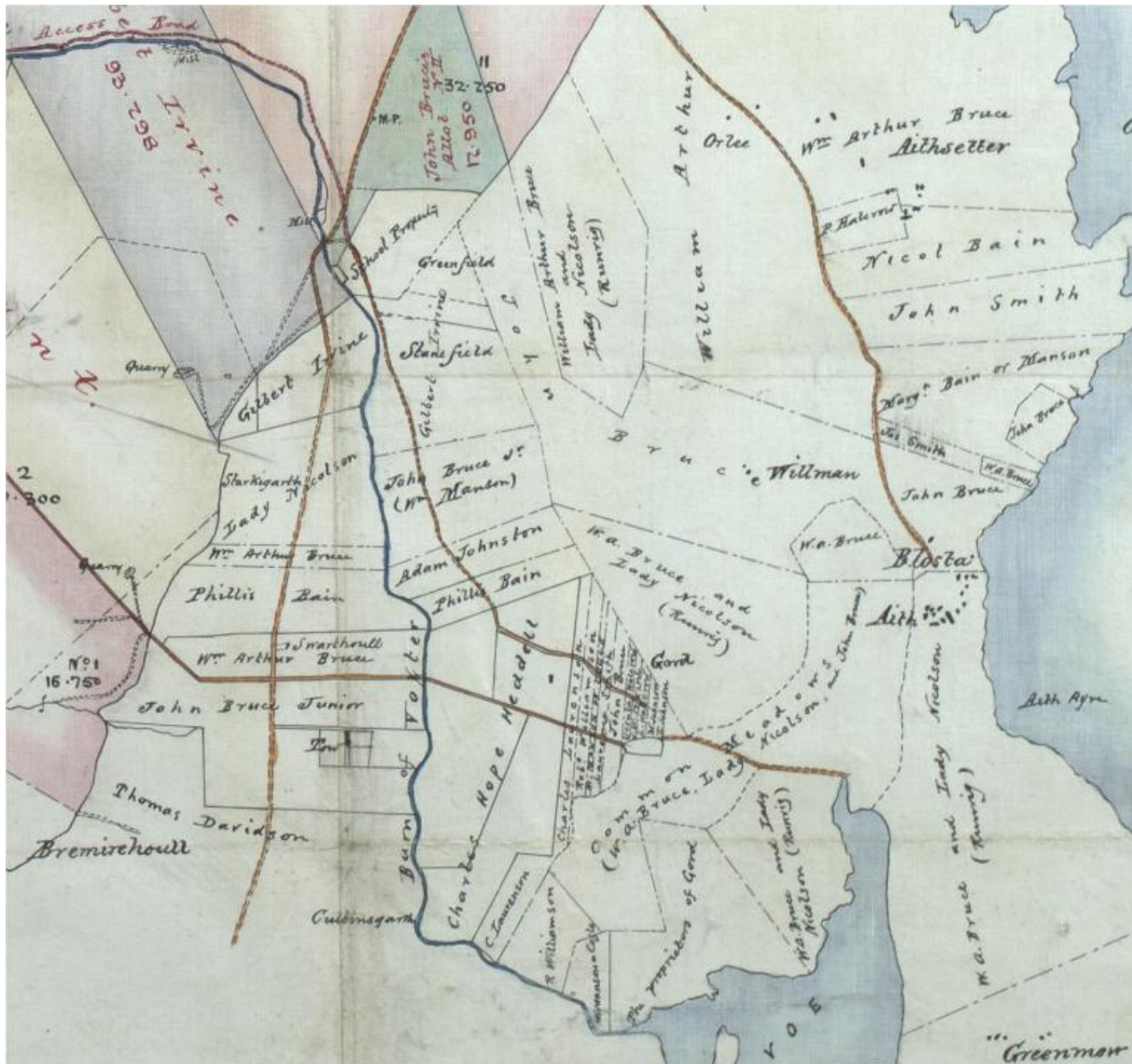
³ *Ibid.*, 71.

⁴ SA, D24/87/6, ‘Letter by Lochend's Tenants in Aith and Greenmow to James Greig, Lerwick, Anent Ditch Cut across Road by Sumburgh Tenants in Blosta’ 1822.

⁵ *Ibid.*

⁶ SA, D24/87/5, ‘Notice by James Greig to Named Tenants in Blosta, Anent Cutting of Ditch across Road Used by Tenants of Greenmow’ 1822.

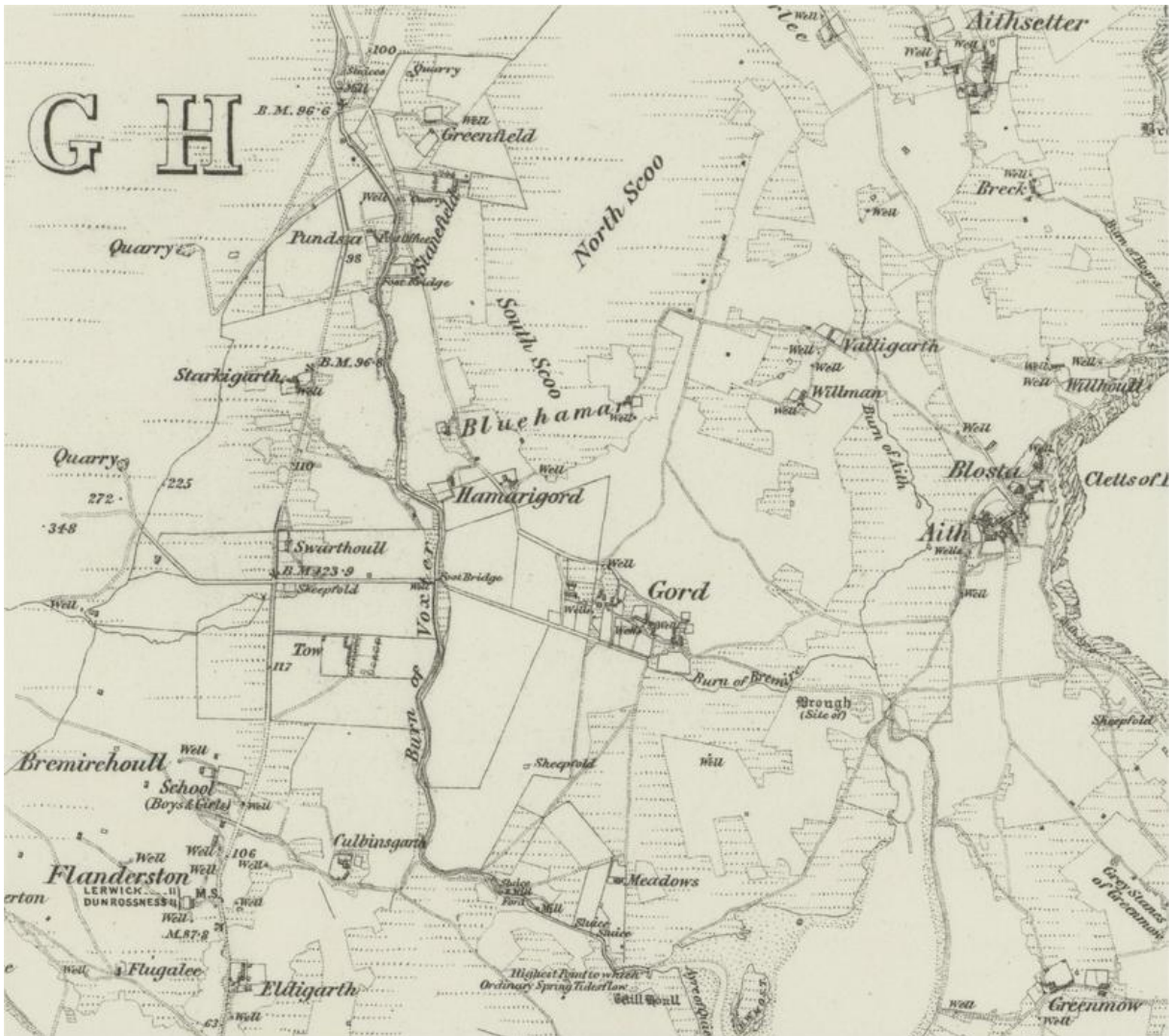
the OS Six Inch survey of the same period, a track leaves Greenmow to join another track that goes up the hill in Gord.¹



Extract of: NAS, RHP3962. 'Bound Plans of the Scattalds of North Cunningsburgh, Fladdabister and Clift Hills, Dunrossness, Shetland', 1881-1882.

Map 28: Foot-paths: Aith Voe to the hill

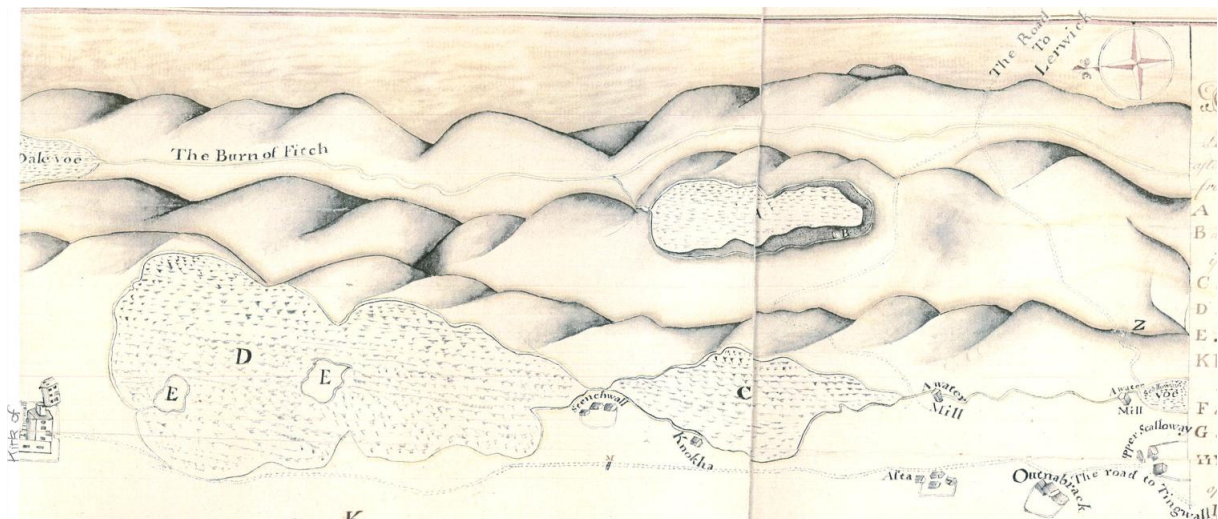
¹ Ordnance Survey, 'Shetland, Sheet LIX; Surveyed: 1878, Published: 1882', OS Six-Inch 1st Edition, 1843-1882, 1882, <http://maps.nls.uk/os/6inch/view/?sid=74430923>.



Extract of: Ordnance Survey. 'Shetland, Sheet LIX; Surveyed: 1878, Published: 1882'. OS Six-Inch 1st Edition, 1843-1882, 1882. <http://maps.nls.uk/os/6inch/view/?sid=74430923>.

Map 29: Foot-paths: Greenmow to the hill

Was it the road that the tenants of Blosta wanted to see stopped? It is difficult to say. However materials such as the plans of division of scattald might offer opportunities to study Shetland tracks' networks' in depth with an appropriate method. Eventually, even if 18th-century maps in Shetland are a rare thing, they can prove very useful. It is the case of the "Coloured plan by William Aberdeen, of the lochs of Tingwall, Asta". On this map drawn in 1764, William Aberdeen figured foot-tracks which went up the hills from Upper Scalloway to Lerwick and along the shore of the lochs of Tingwall between Upper Scalloway and the Kirk of Tingwall; this path went along the townships of Outnabreck, Asta, Knokha and Steinswall. This map gives us to see that although Shetland's paved roads were inexistant at this time, the paths' network was dynamic and connected the townships between them.



Extract of: SA, GD150/2564/50. 'Coloured Plan by William Aberdeen, of the Lochs of Tingwall, Asta', 1764.

Map 30: Foot-paths: From Upper Scalloway to Lerwick and to the Kirk of Tingwall

Eventually, we shouldn't forget that these informal paths which connected the townships to each other were also internal to the township. There were foot-paths which enabled people to move from their house to their fields and so on. In the *Compendium of Scottish Ethnology* Alexander Fenton explains that

There was also, however, within joint farming communities and estates, a network of paths and tracks which served immediately local needs. These have been little studied. They gave access to individual strips and patches of land and were not necessarily all permanent features, but could change position according to the cropping situation in any one year or sequence of years. Along these, men and women, horses and cartes, sledges and slipes (slide-cars) passed to and from the fields without infringing the land of their neighbours.¹

These roads in the middle of the arable land left only small traces in the records dating from the 18th century. However they are visible on plans of division of runrig, from the last years of the 18th century onwards. These plans studied by William P. L. Thomson show footpaths within the townland, meandering between the infields, the meadows and the outfield.² The best example is obviously the plan of Funzie in Fetlar (1829) where the track goes from the *grind* to the booth, and meanders along the runrig strips of the infield and the outfield.³

¹ Fenton, 'Back Transport and Horse Draught before Made Roads', 295–96.

² William P. L. Thomson, 'Township, "House" and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland', in *The Shaping of Shetland*, ed. Val Turner (Lerwick: The Shetland Times Ltd., 1998), 107–27.

³ SA, SA6/18, 'Manuscript Plan of the Room and Lands of Funzie, Island of Fetlar' 1829.

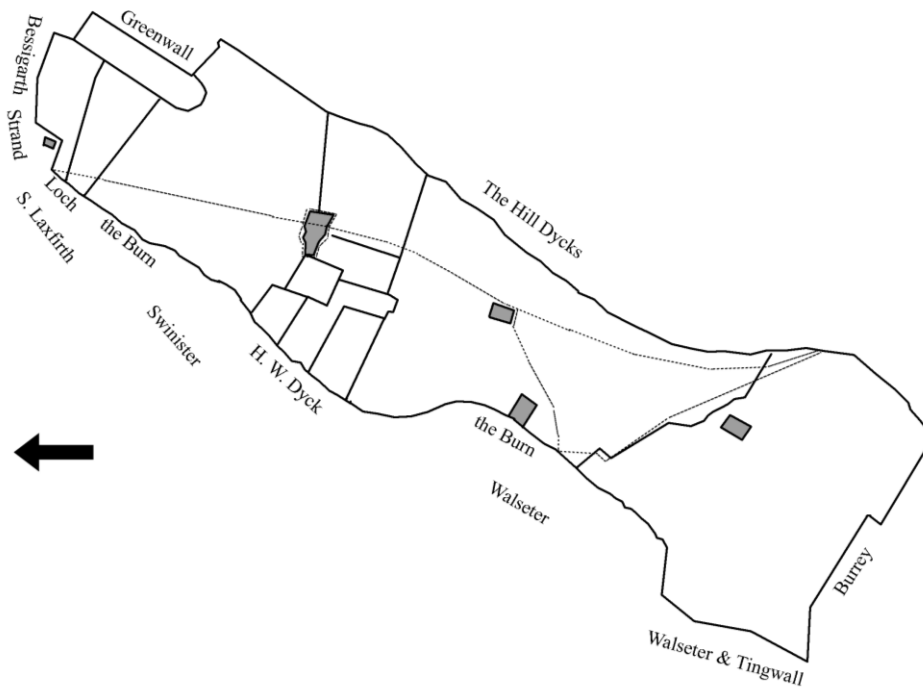


Extract of: SA, SA6/18. 'Manuscript Plan of the Room and Lands of Funzie, Island of Fetlar', 1829. Thomson, William P. L. 'Township, "House" and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland'. In *The Shaping of Shetland*, edited by Val Turner, 107–27. Lerwick: The Shetland Times Ltd., 1998, 119.

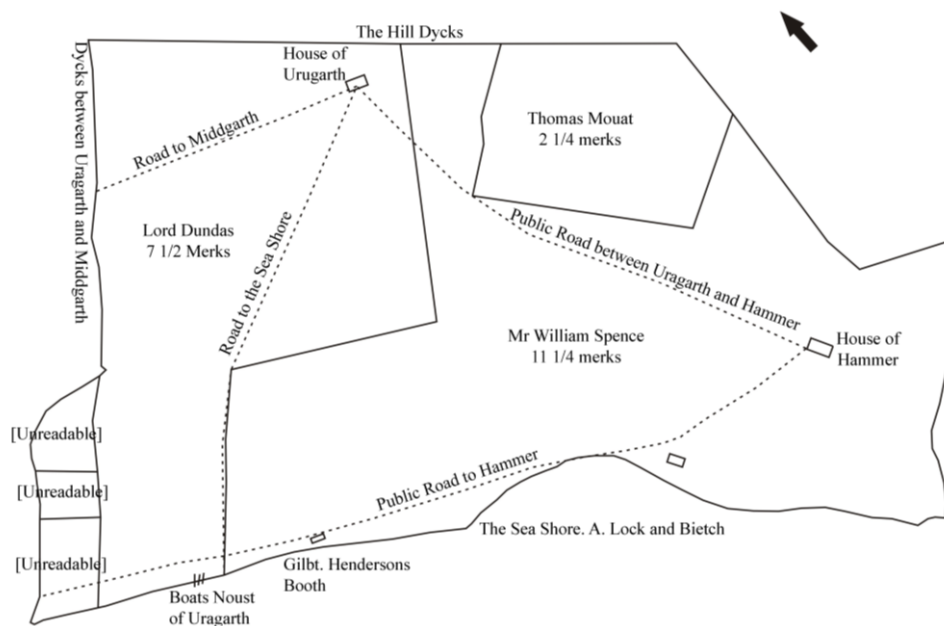
Map 31: Foot-paths: From Upper Scalloway to Lerwick and to the Kirk of Tingwall

Earlier plans such as the plans of division of Goat, Uresland and Vinsgarth and Hammer and Vogarth, even though they don't show runrig and only show the enclosed arable plots, confirm the existence of foot-paths within the township, going from one farmstead to the other or to the sea shore.¹

¹ SA, SC12/6/1794/13/7, 'Summons of Division of Run-rig Lands of Goat, Uresland and Vinsgarth', 1794; SA, SC12/6/1799/37/2, 'Summons of Division of Run-rig Lands of Hammer and Vogarth', 1799.



SA, SC12/6/1794/13/7, 'Summons of Division of Runrig Lands of Goat, Uresland and Vinsgarth', 1794.
Map 32: Foot paths: Goat, Uresland and Vinsgarth, 1794



SA, SC12/6/1799/37/2, 'Summons of Division of Runrig Lands of Hammer and Vogarth', 1799.
Map 33: Foot paths: Hammer and Vogarth, 1799

Alexander Fenton tells us that in Scotland “men and women, horses [...] passed to and from the fields”.¹ The role of horses in Shetland transport system was crucial in the early modern period. James Fea explained in 1787 that “[t]he horses in these islands, called by the natives *Shelties*, are generally small, but so well proportioned that they are very fit for labour, or for

¹ Fenton, ‘Back Transport and Horse Draught before Made Roads’, 295–96.

travelling through the country among the rocks and mosses, so peculiar to its position.”¹ Throughout the 18th century, shelties transported people and carried seaweed for manure.² In 1701, John Brand explained that these “little horses [...] although so small yet are they full of vigour and life, and some not so high as others often proved to be the strongest, yea, there are some whom an able man can lift up in his arms, yet will they carry him and a woman being him eight miles forward and as many back”.³ Fifty years later, John Campbell added that “notwithstanding their Smalness, they are both strong and active [...] and carry some Sea-Weed, to dung the Ground in Seed-Time.”⁴ In 1733, Thomas Gifford stated that these horses were “very serviceable to the country people” and that they could “carry a man over these mountains and mosses, where a large horse could be of no use.”⁵ In the last decades of the 18th century, ponies were “employed in [Sandsting and Aithsting] in carrying peats and turf” and in Tingwall “the manure [was] carried from the dunghill on horses”.⁶

Eventually it should be noted that horses were for hire. In 1774 George Low explained that shelties were “much employed” when the Dutch came ashore; they hired shelties “as riding [was] prescribed as a corrector and preventive against such diseases as befall people that have been long confined on shipboard.”⁷ Thomas Gifford gave the amount of the fare for horse-hire in the 1730s. It was of 1s. Scots per mile “and something to the boy”.⁸

Ferries

Since it was difficult to travel on land, 18th-century writers noted that Shetlanders explored another possibility: they travelled by sea. In 1701 John Brand explained that “the easiest and safest way of travelling [was] by sea in boats about the skirts of the isles”.⁹ About 70 years later, George Low stated that “the Schetland people generally obviate these difficulties [i.e. travelling on land] by travelling mostly by water, by far less fatiguing and more expeditious, as in a journey of 50 miles, by the situation of the numerous Voes, they are seldom obliged to

¹ James Fea, *Considerations of the Fisheries in the Scotch Islands* (London: Printed for the author, 1787), 85–86.

² Alexander Fenton, *The Northern Isles: Orkney and Shetland* (East Linton: Tuckwell Press Ltd, 1997), 240–41.

³ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 771.

⁴ John Campbell, *An Exact and Authentic Account of the Greatest White-Herring-Fishery in Scotland: Carried on Yearly in the Island of Zetland, by the Dutch Only* (London: Joseph Davidson, 1750), 9.

⁵ Thomas Gifford, *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents* (Sandwick: Thule Print Ltd, 1976), 25.

⁶ Barclay, ‘United Parishes of Aithsting and Sandsting’, 594; Sands, ‘Parish of Tingwall’, 277; Fenton, *The Northern Isles*, 241.

⁷ Low, ‘Voyage to Schetland’, 68.

⁸ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 86; Arthur Edmondston, *A View of the Ancient and Present State of the Zetland Islands. Including Their Civil, Political, and Natural History, Antiquities and an Account of Their Agriculture, Fisheries, Commerce, and the State of Society and Manners*, vol. 2 (Edinburgh: John Ballantyne and Co., 1809), 342.

⁹ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 769.

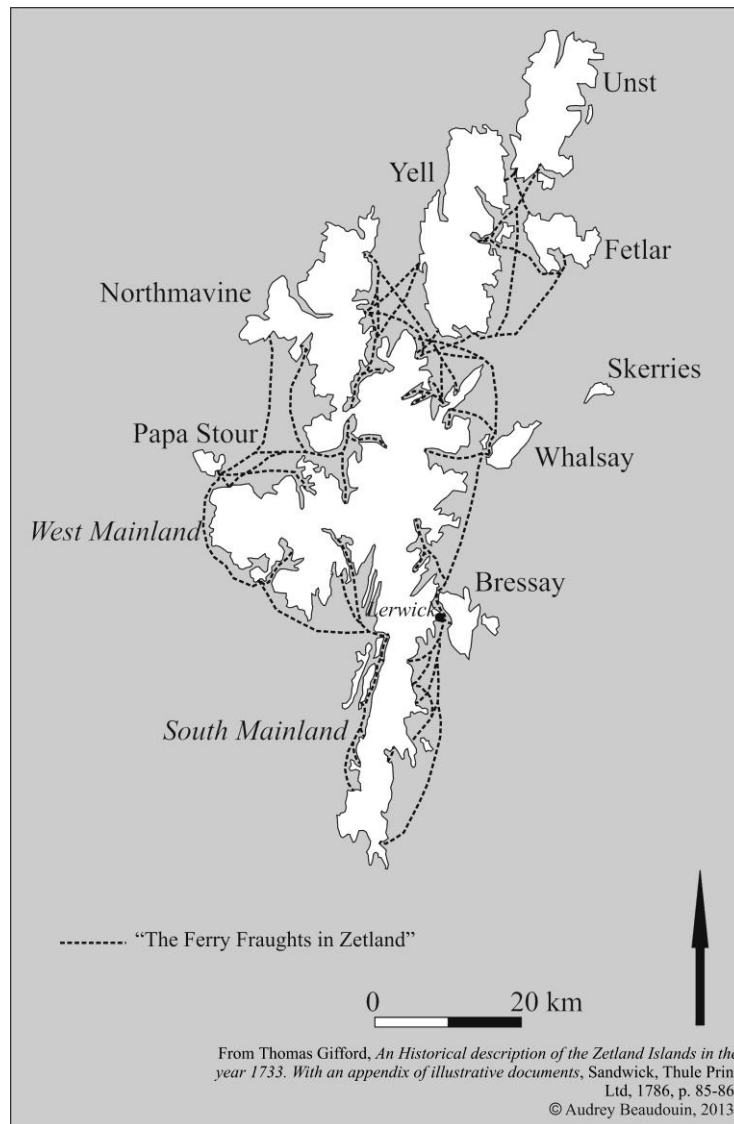
travel 10 by land”.¹ Shetlanders travelled by sea; they owned a boat or a share in a boat. They had the knowledge to sail from one place to another and sometimes they needed to travel longer distances or to carry specific loads. However similarly to the foot-paths, it is extremely difficult to map their daily sailings. They left their township and went in the direction that they needed to take. However, it is possible to find traces of these routes and of their point of departures with different types of materials. Two descriptions of the Shetland Islands present a list of the “Ferry Fraughts in Zetland”, Thomas Gifford’s *Historical Account* and Arthur Edmondston’s *View of the Ancient and Present State of the Zetland Islands*.² In both these documents, the authors established a list of the freights of boat in the archipelago. In 1733, 6-oar boats and 4-oar boats could be hired.³ These lists of freights offer us the possibility to map the established ferry freights in the Shetland Islands in the 18th century.⁴ The first reaction one can have at the view of these map is the impression of inter-connectivity: it seems at a first look that all the parishes of Shetland were interconnected through either direct ferries or with a succession of ferries. Indeed, it was possible to take a ferry from Dunrossness to Lerwick and then to Whalsay. From the island of Whalsay ferries led to the north of the Mainland from where one could take a ferry to Yell or Unst. Some places, however were less connected to the rest of the archipelago: there weren’t any regular ferry freight between the Mainland and Foula, Fair Isle or the Skerries. Nevertheless, this feeling of interconnectivity is probably what struck the visitors when they came to Shetland and noted that Shetlanders ‘obviated’ the difficulties of travelling by land.

¹ Low, ‘Voyage to Schetland’, 79.

² Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 85–86; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 2:340–42.

³ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 85–86.

⁴ A similar map for the end of the 19th century has been established by Hance Smith: Smith, *Shetland Life and Trade 1550-1914*, 219.



Gifford, Thomas. *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents*. Sandwick: Thule Print Ltd, 1976, 85-86.

Map 34: Ferries: Thomas Gifford, 1733

Traces of these ferries were also perceptible on maps and in the landscape. These traces in the landscape are what Christer Westerdahl has described as “land remains” or as “boat houses” in his categories of sources of the “maritime cultural landscape”.¹ He describes how in Norway “there are hundreds of house (*naust*) foundations on the shore for ships of considerable size”.² Ian Tait has worked on the boat shelter, *noost* or *nust*, but also on boat draw, *steed*, and jetty, *virr*, in Shetland. In the summer Shetlanders kept their boat on the beach; from there they left to go fishing or to travel. In the winter, however, a boat was

¹ Christer Westerdahl, ‘The Maritime Cultural Landscape’, *The International Journal of Nautical Archaeology* 21, no. 1 (1992): 8, 10.

² *Ibid.*, 10.

generally “propped in its *nust* [...] with battens arranged to keep its keel off the ground.”¹ These boat shelters made either of a few stones for the walls in the sheltered areas or of higher walls in the less protected areas,² indicate the presence of the starting point of a sea route from this place. In places where there were shingle beaches, “boats were drawn easily” from the beach, explains Ian Tait, but “on rugged shores provision was made to provide access, and the “steed” was a constructed component of the *nust*” constituting in a cleared strip protected by a retaining wall on each side.³ Eventually, Ian Tait notes that “where boats were often unloading, a bulwark, or *virr*, was sometimes created by building-up a vertical face of boulders and a paved area behind it”; “to avoid hauling a boat up the shore it was common practice to build a short jetty in the intertidal zone at which vessels could temporarily lie.”⁴ Precisely dating the structures analysed by the ethnographer is a difficult task: are there traces of these buildings on paper? Ian Tait further explains that “[s]hores accessible to boats were limited, so in most *tuns* the *nusts* were close together and were often contiguous.”⁵ This might have been quite a remarkable feature in the landscape. As remarkable features in the landscape, boat shelters appear on at least two maps. On the “Plan of the Common of Fitful (Fitfill) and adjacent rooms” drawn in 1818, the surveyor indicated the presence of “boats strand” near the beach of Spiggie.⁶ He drew boat-shaped figures which remind us of the shape of *noosts* described by Ian Tait. This map indicates that in the early 19th century, boats were hauled up the shore near the township of Littleness. The map of the division of runrig of Hammer and Vogarth (1799) shows the “Boats noust” of Uragarth.⁷

¹ Ian Tait, ‘Maritime Buildings’, in *Shetland Vernacular Buildings, 1600-1900* (Lerwick: Shetland Times, 2012), 469.

² *Ibid.*, 469–70.

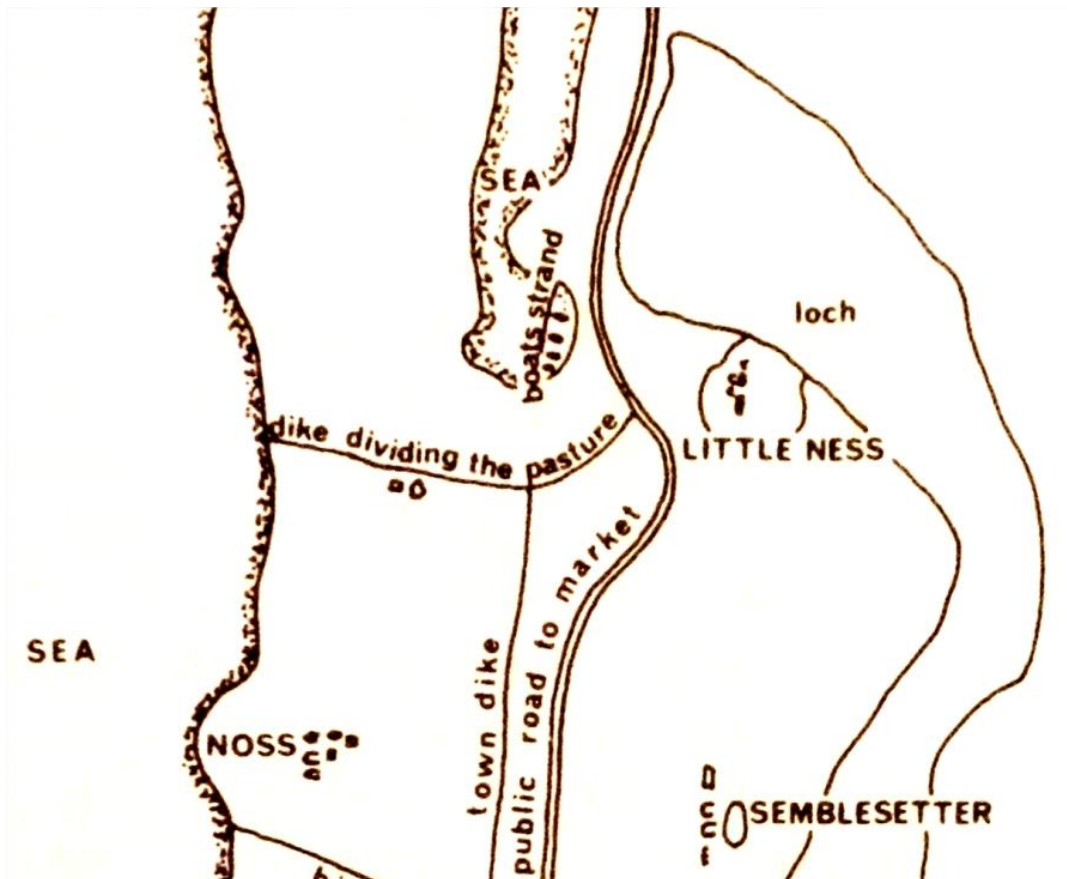
³ *Ibid.*, 473.

⁴ *Ibid.*, 479–81.

⁵ *Ibid.*, 475.

⁶ NAS, RHP4003, ‘Plan of the Common of Fitful (Fitfill) and Adjacent Rooms’, 1818. Note also the presence of a foot-path named “public road to market”.

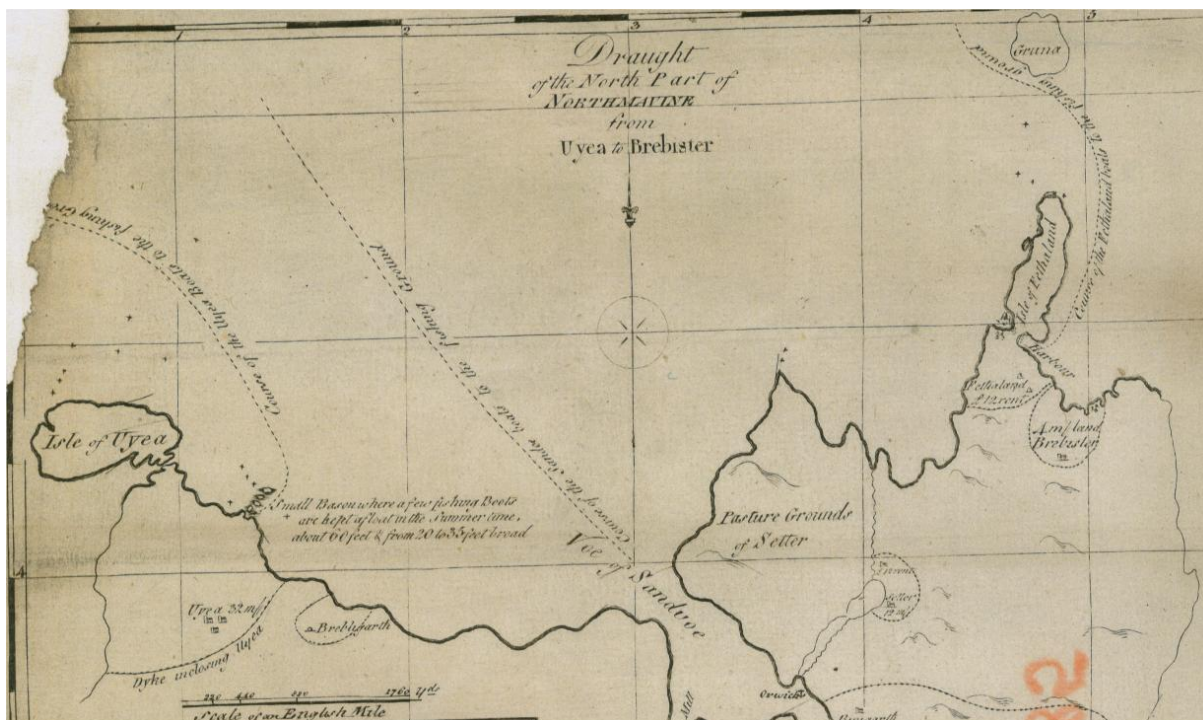
⁷ SA, SC12/6/1799/37/2, ‘Summons of Division of Run-rig Lands of Hammer and Vogarth’.



Extract of: NAS, RHP4003. 'Plan of the Common of Fitful (Fitfill) and Adjacent Rooms', 1818.
 Knox, Susan. *The Making of the Shetland Landscape*. Edinburgh: John Donald Publishers Ltd., 2003, 79.
Map 35: Ferries: Noosts

Eventually, one last map draws our attention. It is the “Plan of the north part of Northmavine from Uyea to Brebister”, drawn ca. 1780.¹ This map shows the course of the Uyea, Sandvoe and Fethaland boats to the fishing grounds. This map doesn’t represent the ferries that connected Shetlanders between each other but it does show that sailing routes were known and could be mapped.

¹ NAS, RHP685, 'Plan of the North Part of Northmavine from Uyea to Brebister', c1780.



Extract of: NAS, RHP685. 'Plan of the North Part of Northmavinne from Uyea to Brebister', c1780.

Map 36: Fishing grounds: Course of boats

In the early 19th century, the ferries which were organised between the coasts of Shetland were said to be expensive. For Arthur Edmondston, “[i]n no department of general expenditure have greater changes taken place, than in what respects the rates of travelling”.¹ He explained that “[w]hile the country acts were recognized, every ferry had its fixed price, for every occurrence there was a specific arrangement, and every thing was conducted in principles of equity and uniformity.”² This connection between Country Acts and prices of ferry is, in my opinion, not appropriate. The Country Acts didn’t regulate the prices of ferries. Arthur Edmondston was mistaken. In Thomas Gifford’s *Historical Account*, the “Ferry Fraughts in Zetland” were printed on the same page than the last act of the Country Acts,³ nevertheless it didn’t mean that there were regulated prices. Thomas Gifford made a list of the amounts of the the average ferry prices. It wasn’t standardised. However the same idea that the ferries were expensive and ill-organised in the early 19th century was expressed by Samuel Hibbert in 1822 when he wrote that “[his] labour [was] much impeded by the Shetland boatmen, who, notwithstanding they were engaged at a specific sum, for the purpose of landing me at different points of the islands, were as impatient of the least delay as they were

¹ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 2:340.

² *Ibid.*, 2:340–41.

³ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 85.

extortionate in their charges.”¹ He concluded with this final judgement: “In no part of Great Britain is boat-travelling more extravagant than in Shetland.”² In my opinion, Samuel Hibbert was maybe victim of being over-charged by the boatsmen as he was a foreign traveller. It could also be added that ferries, though ‘ill-organised’ were still easily accessible. This idea was expressed in the late 18th century by the minister of Sandsting and Aithsting who wrote that “[t]here were, however, no stated ferry boats [in his parish]; but the people [were] very ready to assist and forward their neighbours, often for nothing, and at best for a very small hire.”³

Similar complaints towards the price of ferries were made in the northern Highlands of Scotland where “the very considerable revenue exacted [...] by the different proprietors of their respective ferries” “obtrude[ed] itself upon the mind of the traveller”.⁴ Kenneth Veitch and Anne Gordon tell us that “ferry fares varied depending on the length and difficulty of the crossing, and the load being transported” but that some landowners or corporations who held the right of ferries could ask for high fares or even “[rent] out to a tenant for a considerable sum.”⁵ Ferries which crossed rivers, firths, tidal reaches, etc. existed in many regions of Scotland;⁶ in 1798 Isaac Forsyth explained how “by crossing the Moray Frith at the ferry of Kessock at Inverness, and the Frith of Comarty at that town, the distance from Inverness to Tain is lessened 14 miles; and by crossing the Moray Firth at Fort George, the distance from Nairn to Tain by Cromarty is 30 miles shorter, than by coasting round the Friths by Beaulie and Dingwall.”⁷ These ferries shortened the distance and favoured the relationships and exchanges between local people.

A continuum

Transport in early modern Scotland was intermodal: people switch from horses to ferries or from walking to sailing. In December 1690 John Allan a thirty year old itinerant preacher in the north-east of Scotland, described his intermodal travel and how he “met with some who

¹ Samuel Hibbert, *A Description of the Shetland Islands, Comprising an Account of Their Geology, Scenery, Antiquities, and Superstitions* (Edinburgh: Archibald Constable and Co., 1822), 454–55.

² *Ibid.*, 455.

³ Barclay, ‘United Parishes of Aithsting and Sandsting’, 590.

⁴ Isaac Forsyth, *A Survey of the Province of Moray; Historical, Geographical, and Political*. (Aberdeen: Printed for Isaac Forsyth, Bookseller, Elgin, 1798), 338–39; Quoted in: David Worthington, ‘A “passage Exceeding Hazardous”? The Ferries of the Beaulie, Cromarty and Dornoch Firths before 1900’, *University of the Highlands and Islands Blog*, 19 May 2014, <https://thinkuhiblog.wordpress.com/2014/05/19/a-passage-exceeding-hazardous-the-ferries-of-the-beaulie-cromarty-and-dornoch-firths-before-1900/>.

⁵ Veitch and Gordon, ‘Traditional Ferries’, 193, 201.

⁶ *Ibid.*, 191.

⁷ Forsyth, *A Survey of the Province of Moray; Historical, Geographical, and Political.*, 338.

had empty horses, from whom [he] got one betwixt the ferries and sent back that which [he] had. [He] had two miles to go on foot to Newmore after crossing the ferry of Inverbrackie, for [he] could not get a horse for hire. But got a boy who carried [his] boots & clock [cloak?] the most of the way.”¹ Throughout his journey on the Black Isle, John Allan walked, took ferries and rode a horse. It didn’t bother him. All the places were interconnected in a way or another and that was what mattered, even if it took time to travel. Similarly Shetlanders moved with the help of a variety of transports. All those who visited Shetland in the 18th century and early 19th century explained that they walked, took ferries and rode horses. At the end of our studied period, Samuel Hibbert described how on his journey from Collafirth to Hillswick, Northmavine, he first engaged a boat to Gluss Ayre and then “[o]n the next morning, [he] proceeded west, mounted on a sheltie, over the soft scatholds of the country”.² Eventually Kenneth Veitch and Anne Gordon explain that in early modern Scotland

[o]n the majority of overland routes, therefore, travellers who encountered a stretch of water had to rely on ferries. Some of these went over rivers, some over the arms of the sea or crossed tidal reaches, which, though, fordable at low water, needed a boat to cross them at high tide, and other went over long narrow lochs that otherwise would have forced a long detour.³

It was a common thing for an overland journey to be sequenced by field-tracks and sea-tracks which provided the most direct and shortest access to a location.

The continuum between land and sea and the movement of the inhabitants of Shetland can be illustrated by their use of the cliffs. Sea-fowls provided eggs, food and feathers. They lived on cliffs. Therefore Shetlanders didn’t stop at the cliffs: they went down. The best climbers in Shetland were “[t]he Foula people” wrote George Low and all over Shetland, in St Ninian, Noss, Fair Isle, etc. the cliffs were places of movements,⁴ not conventional though, but which illustrate how Shetlanders used all the spaces on the archipelago.

This portrait of Shetland movement and transport also fits with the addition of the sea within the *utmark* of Shetlanders. The sea was part of the ‘living environment’, *espace de vie*, of the Shetlanders, a space arising from the daily practice of a given territory.⁵ Emmanuelle Charpentier has proven in her thesis that the shore belonged to the category of the ‘living

¹ John Barrett, *Mr James Allan: The Journey of a Lifetime* (Kinloss: Librario, 2004), 274; Quoted in: Durie, ‘Movement, Transport and Travel’, 258.

² Hibbert, *A Description of the Shetland Islands*, 517–18.

³ Veitch and Gordon, ‘Traditional Ferries’, 191.

⁴ Campbell, *An Exact and Authentic Account of the Greatest White-Herring-Fishery in Scotland*, 46–47; Fea, *Considerations of the Fisheries in the Scotch Islands*, 91; Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 2:20; David Thomson, ‘Parish of Walls and Sandness’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 20, 103–4, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Walls%20and%20Sandness/>; Fenton, *The Northern Isles*, 112–13.

⁵ Emmanuelle Charpentier, ‘Le Littoral et Les Hommes : Espaces et Sociétés Des Côtes Nord de La Bretagne Au XVIIIe Siècle’ (Université Rennes 2, Université Européenne de Bretagne, 2009), 152, <http://tel.archives-ouvertes.fr/tel-00458863>.

environnement' for the coastal people of northern Brittany;¹ in my opinion the sea belonged, as well, to the 'living environment' of Shetlanders. There were paths both on land and on sea: they were foot-paths or tracks on land and ferry's routes on sea. Land, shore, cliffs and sea were spaces of work: farming, breeding, kelp and sea-food harvesting, fowling and eventually fishing were activities which instead of separating the different zones where they took place, united these different environements in one single environnement: the 'living environment' of the Shetlanders.

Connecting local communities and network communities

I have mentioned some of the reasons why Shetlanders moved either on a daily basis or more occasionally. If we try to organise the causes of movement we can sort them out in, at least, three categories: the daily and seasonal movements related to multi-tasking; the weekly movements related to parish life; and the movements of the local police officers such as Elders, Rancelmen and Sheriff Court Officers.

Multi-tasking

As multi-taskers, Shetlanders performed different activities in one day or in a week. For these activities they needed to move from a point A to a point B. However, only scarce traces of these movements exist. I have already presented the dispute between the tenants of Greenmow and Aith and the tenants of Blosta. They used the road to cast peat and *flaws* and to harvest berrie, etc.² Other records insist on movements related to three specific activities: the transportation of raw materials, the transfer of cattle from one place to another and the rendez-vous at the market fair. Eventually it shouldn't be forgotten that servants could be employed only seasonally and therefore travelled between their place of life and their master's house.

The transfer of cattle has already been touched upon with the case of the inhabitants of Greenmow: during the winter, they sometimes drove their cattle to the hill.³ Transfer of cattle could also include intermodal transport. Already in the early 17th century, *holms* were

¹ Ibid., 152–74.

² SA, D24/87/6, 'Letter by Lochend's Tenants in Aith and Greenmow to James Greig, Lerwick, Anent Ditch Cut across Road by Sumburgh Tenants in Blosta'.

³ Ibid.

“employed for feeding Bestial.”¹ In Shetland dialect, a *holm* is a “small uninhabited island, an islet”.² Sheep or cows were transported on these *holms* were they had the possibility to pasture without needing any kind of surveillance or without building a dyke. These holms were protected by the Country Acts; the 7th act stated “[t]hat none go into other mens holms or isles under the pain of ten pounds for the first fault, twenty for the second, and for the third to be repute as thieves”.³ It was a serious offense to go into someone else’s *holm* as their sheep or cattle weren’t herd and therefore, no one could certify that nothing was stolen. The reason for such a severe by-law was that a great value was attached to holms since “[m]any of the holms afford[ed] a very fine succulent pasture for black cattle, and for sheep destined for the table, such spots being indeed the chief place where they [were] fattened”, explained Samuel Hibbert at the end of our studied period.⁴ In 1733 Thomas Gifford detailed how “[t]here [were] several holms belonging to this parish [i.e. Dunrossness, Sandwick and Cunningsburgh], only used for pasture of little value, save one called Moussy [Moussa] [...]. There has been some arable ground in it, but it is now only used for pasture.”⁵ About twenty years later, the *holm* of Moussa still served as pasture ground for the cattle of the laird of Quendale. Nicol Tulloch in Cullister and Henry Smith in Burraland, tenants of Robert Sinclair of Quendale were employed by the said Quendale “to go into the Island of Moussay, and look after the affairs thereof and that all severall times in the Year, whereby he [had] had Occasion to See the Number of Bestiall that [were] fed thereupon and to know what number it might maintain”.⁶ In his deposition for the Judicial Rental of Quendale, Nicol Tulloch added “[t]hat the Island [had] always been for pasturing of Cattle, Horse & Sheep, and seldom or never tiled and sown with Corns.”⁷ Nicol Tulloch and Henry Smith didn’t mention that they were the ones who brought the cattle on the *holm*. However, if we consider that they worked for Quendale in order to administrate his interests on the islet, it is possible that they transported some cattle to the *holm* at some point; at least, they took their boat several times to go on the island and check on the cattle. Both lived in the immediate vicinity of the island. Henry Smith, in Burraland, was the closest. The township of Burraland was located directly on the coast facing Moussa Sound, the sound separating the old parish of Sandwick and the *holm* of

¹ Robert Monteith, *Description of the Islands of Orkney and Shetland*, ed. Robert Sibbald, 1st edition: 1711 (Edinburgh, 1845), 14. See also: Fea, *Considerations of the Fisheries in the Scotch Islands*, 79.

² Thomas Edmondston, *An Etymological Glossary of the Shetland and Orkney Dialect with Some Observations of Names of Places in Shetland* (Edinburgh: Adam and Charles Black, 1866), 49.

³ ‘The Old Country Acts’, 81 act 7.

⁴ Hibbert, *A Description of the Shetland Islands*, 420.

⁵ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 4–5.

⁶ NAS, CS96/3272, ‘Robert Sinclair of Quendale’s Judicial Rental’ 1747, 163–64.

⁷ *Ibid.*, 163.

Moussa. From the township of Burriland and the coast of Moussa there was only about 1 km. The township of Cullister was located close to Hos Wick, a little bit further from Moussa, at about 2.5 km from Burriland by land. Several times in the year, these men, hired by Quendale, crossed the Moussa Sound to check on his cattle. As multi-taskers they moved between their respective townships to the island of Moussa, all these places being located in the same scattald, the scattald of Sandwick and Leebotten.

In the case of the inhabitants of Greenmow, they went up the will to cast peat and *flaws*. They brought back this fuel and raw materials to their township.¹ Most of the multi-taskers of Shetland were at some point during the year directly involved with one of these activities or in relation with people involved with them. There were also some places where raw materials were more abundant or places which had a good location for internal transport; these places appeared to have held peculiar positions in terms of transport and delivery of these materials. In 1791 in Trebister in the parish of Lerwick (also called Gulberwick), the factor of Sir Laurence Dundas, Thomas Bolt merchant in Lerwick, asked for the division of the peat moss. He argued

That for severall years past the [...] Heritors and their Tenants at least some of the said Heritors and other persons having or pretending to have Liberty from them have Cutt large Quantities of Peats upon the Commonty or Peat Muir of the said Lands of Trabester, Called the Ness of Trabester and which is the Exclusive property of the said Room, In so much that beside the Necessary fewel for the Tenants own houses, large quantities have been Cutt and Carried off the Ground by some of the Heritors for their fewel in Lerwick and Considerable Quantities have been cut for sale and actually sold in Lerwick by the Tenants possessors of the said room of Trabester [...].²

The tenants of Trebister casted peat in the peat moss of the Ness of Trebister and sold it to the inhabitants of Lerwick. The transport was made by boat. The necessity of a boat in the transportation of peat from Trebister to Lerwick was futher stressed in the proposition of division drawn up by James and Lawrance Leisk where they explained that

all the Lotts is [sic] Drawn Narrow at the foot so as to make it more conveniant for boating in their Peats. There being only two Landing, or Loading places, to which Loading places all parties have equall Right and Tittle, without being intercepted by those who may be nearest to it, so far as they do not Dammage their peats or occupy any of their moss.³

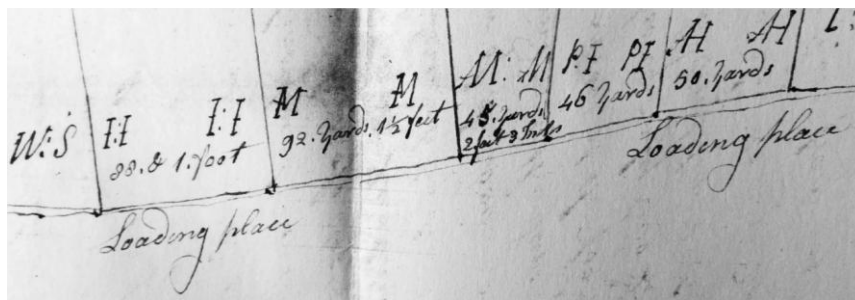
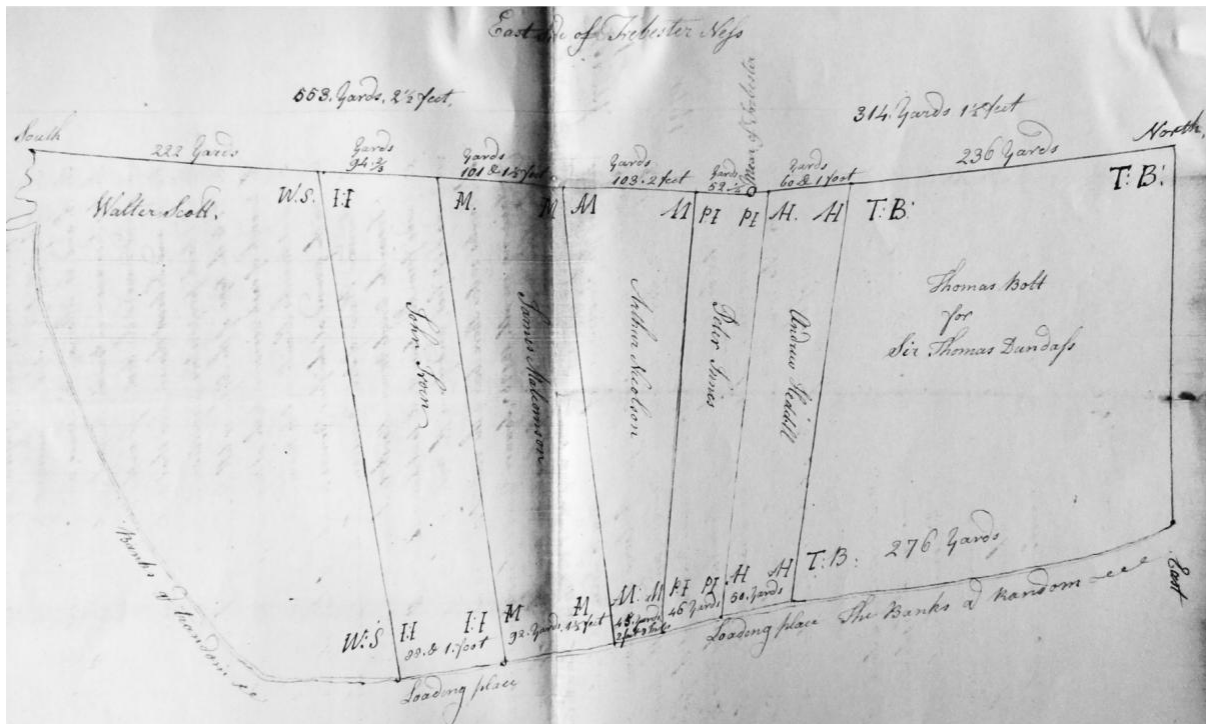
In their division, James and Lawrence Leask considered the question of loading peat on boat and transporting it to Lerwick. On the plan of the proposed division they carefully noted the two loading places where tenants could load boats with peat.⁴

¹ SA, D24/87/6, 'Letter by Lochend's Tenants in Aith and Greenmow to James Greig, Lerwick, Anent Ditch Cut across Road by Sumburgh Tenants in Blosta'.

² SA, SC12/6/1791/14, 'Petition (Division of Peat Moss.)' 1791 bundle 1.

³ Ibid. bundle 5.

⁴ SA, SC12/6/1791/14/5, 'Petition (Division of Peat Moss.)', 1791.



Extract of: SA, SC12/6/1791/14/5. 'Petition (Division of Peat Moss.)', 1791.

Map 37: Ferries: Loading places

On the question of peat again, the minister of the parish of Bressay, Burra and Quarff, John Menzies, was almost proud to announce that “[a]lmost all the inhabitants of Lerwick [were] supplied with peats from the hills of Bressay, and almost the whole people of Shetland with slates from its excellent quarries” and that “[t]he people of Quarff [were] frequently employed in transporting goods from the one side of the country to the other, which brings them in considerable sums.”¹ The inhabitants of Bressay and Trebister went to the peat banks to cast peat and those of Bressay went also to the quarries to mine slate, after what they had to deliver the materials to the town of Lerwick and in some cases to the rest of Shetland as wekk. In order to go to Lerwick or to any other place of the archipelago they had to take a boat to go through Bressay Sound. On land, both on Bressay and in Lerwick, horses were probably used to transport peat and slates. The inhabitants of Quarff enjoyed a favourable position in the archipelago geography. The parish was in the direct vicinity of the town of Lerwick.

¹ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 201–2.

Furthermore, Quarff was located at one of the narrowest passages on mainland Shetland between the west coast and the east coast. This parish had direct access to the sea on its west coast, in the township of Wester Quarff and on its east coast in the township of Easter Quarff.¹ Eventually, one last movement can be analysed here: the annual movement to “Johnsmas fair”.² In the beginning of the 18th century, John Brand explained how Dutch fishermen who came for the herring fishing bought “[s]tockings [...] brought by the country people from all quarters to Lerwick, and sold to these fishers”.³ The same thing was attested in the 1730s by Thomas Gifford even though he explained that only “few or none of those busses [were] coming in, and those that [came], if they [bought] a few stockings, it [was] at a very low price”.⁴ Forty years after, George Low insisted again on the fact that “the whole time the [Dutch] fleet lay in the country people flocked to Lerwick with loads of coarse Stockings, Gloves, Night caps, Rugs, and a very few articles of fresh provision.”⁵ In the early 19th century Arthur Edmondston complained that “the late and present wars interrupted the intercourse between the Dutch and the Zetlanders”.⁶ He further added that “the assemblage of the busses in Bressa Sound, about the 24th of June, constituted an annual fair, where every variety of this species of manufacture was exposed to sale.”⁷ Even if the early 19th century saw less of these transactions between Shetlanders and Dutch fishermen, the annual movement of the “Johnsmas fair” brought Shetlanders from all around the archipelago to Bressay Sound, Lerwick.⁸ In order to arrive there, they either had to walk, ride or sail and obviously they could walk and ride and sail: intermodal transport was the key of this June event. They crossed their township’s boundaries, their scattald’s marches, their parish’s borders to eventually arrive in Lerwick.

These daily and seasonal movements are only a few examples of the variety of movements with intermodal transports, which multi-taskers experienced during one year. These movements meant that Shetland multi-taskers developed a good knowledge of their ‘living environment’. It was such a good knowledge that George Low complained that in Sandness he “[c]rossed thro’ seven miles of hills without a single house, and scarce a path to direct the

¹ Both attested in: NAS, RH4/102, ‘Rental of Lordship of Shetland’ 1772, fol. 32.

² Campbell, *An Exact and Authentic Account of the Greatest White-Herring-Fishery in Scotland*, 25; Quoted in: Brian Smith, ‘Stockings and Mittens, 1580-1851’, in *Shetland Textiles: 800 BC to the Present*, ed. Sarah Laurenson (Lerwick: Shetland Amenity Trust, 2013), 54.

³ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 797.

⁴ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 6.

⁵ Low, ‘Voyage to Schetland’, 67.

⁶ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 2:2.

⁷ Ibid.

⁸ Campbell, *An Exact and Authentic Account of the Greatest White-Herring-Fishery in Scotland*, 25; Quoted in: Smith, ‘Stockings and Mittens, 1580-1851’, 54.

unacquainted traveller.”¹ Shetland multi-taskers moved through townships, scattalds, parishes and these movements extended to the sea immediately along the coasts. Movement also meant that they saw each other, that they collaborated. Robert Mouat in Levenwick went to Gavin Gadie’s house in Clumlie, at about 3.3 km, to collect his rent and then carried both their rent to Quendale, located at about 6 km from Clumlie, which made him walk a round trip of about 20 km in a straight line.² They were also those boatmen who helped their neighbours with a ferry or “the neighbouring inhabitants [of Yell Sound], who serve[d] as pilots” to cross the dangerous sound.³ Movement also meant that Shetland multi-taskers possessed good skills and knowledge in terms of orientation on land, riding of a horse, sailing and orientation on sea. These skills and knowledge were transmitted to one generation to the other and served the entire communities as well as those visiting the archipelago.

Parish

All the generations of Shetland met once a week at kirk; all the Presbyterians at least. Going to church was a weekly movement. At the end of our studied period, Samuel Hibbert told the vivid story of how

[he] arrived there [at the Kirk of Baliasta, on the island of Unst] on the Sabbath morning: the natives of the Vale were all in motion in their way to the Kirk of Baliasta. The peasant had returned home from the bleak scathold, where he had ensnared the unshod poney that was destined to convey him to the parish kirk. [...] The Shetlander then mounted his tiny courser, his suspended heels scarcely spurning the ground. But among the goodly company journeying to the kirk, females and boys graced the back of the sheltie with much more effect than long-legged adults of the male sex, whose toes were often obliged to be suddenly raised, for the purpose of escaping the contact of an accidental boulder that was strewed in the way. [...] The parishioners at length arrived near the kirk, when each rider in succession, whether of high or low degree, looked out for as green a site of ground as could be selected, and, after dismounting, carefully unravelled the tether which had been tied to the neck of the animal.⁴

This long description leads to think that all the inhabitants from the neighbouring valley along the Loch of Cliff came to church on their sheltie, it is probably an exaggeration but it seems highly probable that a large amount of Shetlanders came weekly on their horse to church; some of them were at several kilometres from their church.

Baliasta, the township where the kirk of the parish of Unst was built, was located in the middle of the island which meant that for someone living in the north of the parish, at Skaw, for example, there were about 9 km in a straight line to go to church and a bit more than 10 km in a straight line for someone living in Heogland in the south of the parish. In

¹ Low, ‘Voyage to Schetland’, 119.

² NAS, CS96/3272, ‘Robert Sinclair of Quendale’s Judicial Rental’, fols 62–63.

³ Barclay, ‘United Parishes of Aithsting and Sandsting’, 590; Low, ‘Voyage to Schetland’, 147.

⁴ Hibbert, *A Description of the Shetland Islands*, 399.

Northmavine, it was slightly different. The kirk was located in Hillswick and therefore for a parishioner living in the north of the parish, in Uyea for example, the kirk was at more than 15 km, in a straight line, which meant through several streams and lochs, through Ronas Hill and through Ronas Voe: a very hard journey to do every Sunday. William Jack, the minister of Northmavine, explained in the Old Statistical Account that three or four times a year he preached in the north of the parish “because of the vast distance that many [were] from Hillswick”.¹ In Dunrossness, Sandwick and Cunningsburgh, the old church of Dunrossness was located in the southern part of the united parishes and the kirk of Sandwick was located in the township of Sandwick close to the bay of the same name. The inhabitants of Fladdabister in northern Cunningsburgh had more than 8 km in a straight line to travel to the church of Sandwick and the inhabitants of Bigton, in northern Dunrossness, had about the same distance to travel to Cross Kirk in Quendale. This means that for those living far away from the kirk shelties and boats were maybe the more appropriate means of transportation. Those living closest to the church probably walked.

What Samuel Hibbert also stated was that Shetlanders ‘of low degree’ rode a sheltie and that both women and children also travelled on horses. His statement is supported what John Mill, the minister of Dunrossness, who explained in 1788 that “[his] dear wife was enabled to ride to Church” and a few years after by the minister of Sandsting and Aithsting, Patrick Barclay who stated that “horses [...] [were] employed in the parish in carrying peats and turf, and in riding to church.”² Men, women and children who possessed horses, from the highest to the lowest social categories, came to church on a sheltie: this must have been the only option especially for those living far away from the church. In some cases, they went to church only every two weeks such as in the united parishes of Dunrossness, Sandwick and Cunningsburgh where the minister preached in aleternance at Dunrossness Kirk and at Sandwick Kirk.

This weekly movement brought together all the inhabitants of a parish, they met on road, they talked, they exchanged news and they travelled through their environment; an environment that might not have been easy to travel in but which they learned and mastered. In Dunrossness, the sand drift made the walk or the ride to church more difficult but it pleased Samuel Hibbert’s poetic eyes:

Then might the pious natives of Dunrossness be observed in their weekly pilgrimage to the parish-kirk, to pursue a toilsome peregrination through deep lodgements [sic] of sand, overwhelmed, at

¹ William Jack, ‘Parish of Northmaven’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 12, 356, accessed 1 December 2011, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Northmaving/>.

² Mill, *The Diary of the Rev. John Mill*, 84; Barclay, ‘United Parishes of Aithsting and Sandsting’, 594.

the same time, in clouds of drifted particles that obscured the horizon, through which horsemen and footmen were dimly descried at a distance, like the ghosts of Ossian through the dun clouds of rocky Morven.¹

Police

In a less poetic manner, the Elders of the Kirk also moved. They met every week for the kirk session which took place in the church or in another place such as in Sandwick where the kirk session met, at least in 1772, in the schoolhouse of Bremer.² To these regular movements more punctual movements were also added. It was especially the case when Elders went to deal with a case locally when someone was sick or in poor health such as in 1777 when the minister of Dunrossness and two elders met at Wilsness near Sumburgh to deal with the case of a “frail delinquent”.³ Other ‘police’ officers, such as the Rancelmen moved regularly. It was in the job description of the Rancelmen to ‘rancel’, to go into the houses of the inhabitants and look for stolen goods but they could also apprehend a thief, catch an animal, divide and count sheep, survey an area, etc. All these activities meant that they were regularly moving in their surroundings. They could also survey and measure dykes. Their movements were sometimes limited when neighbours didn’t want them to survey their dykes. In 1732 fifteen inhabitants of the townships of Okraqouy, Fladdabister, East House and the Pund were accused of “stoping hindring and impeding the rancelmen from sighting their dykes threatening to beat them in case they offered”.⁴ They refused to let the rancelmen approach their dykes and check if “they [had built] their dicks [sic] sufficiently and timeously”.⁵ In 1787 when the Sheriff Substitute directed the rancelmen of Cunningsburgh and Fladdabister “to measure the whole dykes” they were instructed to do so “in conjunction” with the Sheriff Officers.⁶ Sheriff Officers had also to carry information to pursuers, defenders or witnesses. In 1787 James Jameson, Sheriff Officer in the island of Fetlar, was granted a warrant “to serve a Copy thereof and of this deliverance upon John Jameson Defender”.⁷ In the same bundle, James Jameson explained himself how “[he] did Conform to the said warrant in all points, a full double whereof with a full double of the foregoing Petition whereon the same

¹ Hibbert, *A Description of the Shetland Islands*, 112.

² SA, CH2/325/1, ‘Sandwick and Cunningsburgh Kirk Session Minutes, 1755-1842’ n.d., fols 17–18.

³ Mill, *The Diary of the Rev. John Mill*, lvii.

⁴ NAS, RH11/29/1, ‘Dunrossness Sandwick and Cunningsburgh: Bailie Court Book 1731-1735’ n.d., fol. 13.

⁵ Thomas Gifford, ‘A Compend of the Country Acts for Directing the Rancell Men, and Society for Regulating of Servants, and Reformation of Manners, with Their Instructions’, in *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents* (Sandwick: Thule Print Ltd, 1976), 95 act 26 VI.

⁶ SA, SC12/6/1787/1, ‘Draft Submission Concerning Division’ 1787 bundle 7.

⁷ SA, SC12/6/1787/28, ‘Representation and Petition (Concerning Cutting Peats on Petitioner’s Pasture.)’ 1787 bundle 1.

proceeded with an [sic] just Copy of Citation thereto subjoined [he] delivered to the said John Jameson personally Apprehended in Houll aforesaid which Copy of Citation was signed by [him] [i.e. James Mowat]”.¹ Sheriff Officers were also employed in surveying or counting animals. Indeed in 1798, John Gray, Sheriff Officer in Unst, was appointed to go “[a]ccompanied by such persons as the Petitioner [should] appoint to attend him, to search the Towns and commons where swine [was] to be found, and to secure them”.² Other Sheriff Officers had to transfer prisoners from Lerwick to the prisoners’ parish. In 1772 it was the case of John Mowat who had to transfer James Simpson, prisoner in Lerwick to the church of Mid Yell to “receive sixteen lashes on his bare back by the hands of the Dempster”.³ In order to execute this order, the Sheriff Substitute, William Balfour, “[had] orderd a lispund of meal to be given [to John Mowat], & [had] also given [to John Mowat] Seven shillings to pay Boats hire in case he need[ed] them.”⁴ James Mowat was reminded that “no body employed in this Service [was] entitled to wages save the Lerwick Boatmen [...] If [he went] in a Lerwick boat the men [would] be paid their freight when they return. [He would give] them Bread out of the meal above mention’d, if [he was] detain’d by bad weather.”⁵ This last quote shows that intermodal transport was used by Sheriff Officers who needed to convey prisoners from Lerwick to an island off the mainland. It also shows that only the Lerwick boatmen were ‘approved’ by the Sheriff Court to convey the prisoner. Did it have something to do with the cost of ferry? Or was it just a way to make sure that prisoners were effectively transported to where they needed to go? There isn’t any decisive answer but what is sure is that Lerwick’s boat men held a specific position in the eyes of the Sheriff Court when it came to transferring prisoners. Transferring prisoners, surveying, counting animals or carrying information all these tasks meant that Sheriff Officers moved frequently either throughout Shetland or within their respective parish.

Wandering “as free as the wind” in a marked-out space

Elders, Rancelmen and Sheriff Officers had a very detailed knowledge of their ‘living environment’ which they explored on a more or less regular basis. Similarly the multi-taskers of Shetland, farmers-fishermen-workers or farmers-knitters, men, women or children moved

¹ Ibid. bundle 1.

² SA, SC12/6/1798/20, ‘Petition (for Warrant to Regulate Swine.)’ 1798.

³ SA, SC12/6/1772/17, ‘Indictment (Sheepstealing). (Criminal)’ 1772 bundle 3.

⁴ Ibid. bundle 3.

⁵ Ibid. bundle 3.

throughout Shetland, mostly within their scattald and parish but also throughout Shetland. It seems that they even walked around quite easily even with all the restrictions made on movements especially by the Kirk; it should be reminded that in the early 18th century, Shetland servants had to be recommended for a testimonial by the Society for Regulating of Servants before they left their parish to settle elsewhere and they had to “bring securities from the baillie or kirk session of the parish where they are to settle”.¹ For Alastair Durie during most of the year “life was slow and undisturbed by movement to or throughout the parishes” on mainland Scotland.² His perception of the situation is contradicted by the study of Shetlanders’ movements through their own parish and to other parishes. This is intensified by the fact that some scattalds boundaries cut across parish boundaries.³ This was the case of Swining in the parish of Lunnasting which was part of the scattald of Collafirth in Delting.⁴ Therefore an inhabitant of the township of Swining would regularly cross the border of his or her parish in order to enjoy the resources of his or her scattald. Walking freely on the scattald hills was described in the 19th century as something typical from Shetland. First in 1809 Arthur Edmondston in his *View of the Ancient and Present State of the Zetland Islands* stated that

Notwithstanding the various sources of disgust to which the lower classes of people in Zetland are exposed, yet no individuals feel a stronger attachment to their native country, or a more ardent desire to revisit it.

Nescio, qua natale solum dulcedine cunctos ducit.

Whatever other difficulties he may have to surmount, or restraints to endure, the Zetlander has the uncontrolled liberty of ranging over every field. No penal prohibitions oppose his passage through extensive enclosures, which, in other countries, the selfish possessor deems fit to be pressed only, by his own sacred feet. The hills and the rocks are all his own, and there is something in the exuberant wildness that surrounds him, congenial to his own unlettered mind.⁵

Less than forty years after, the Reverend John Bryden, the minister of Sandsting and Aithsting assured that

There is nothing resembling a road in the parish, unless a piece which I made some years ago, through the glebe, and carried on about half a mile towards the kirk. But there is a decided disinclination to walk on the road, because it wears the rivelvins too fast, and because a road would imply a restriction to a particular path; whereas the Shetlander's delight is to range uncontrolled, and “to wander as free as the wind on his mountains.”⁶

¹ Gifford, ‘A Compend of the Country Acts’, 93 Act 18.

² Durie, ‘Movement, Transport and Travel’, 253.

³ Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 105.

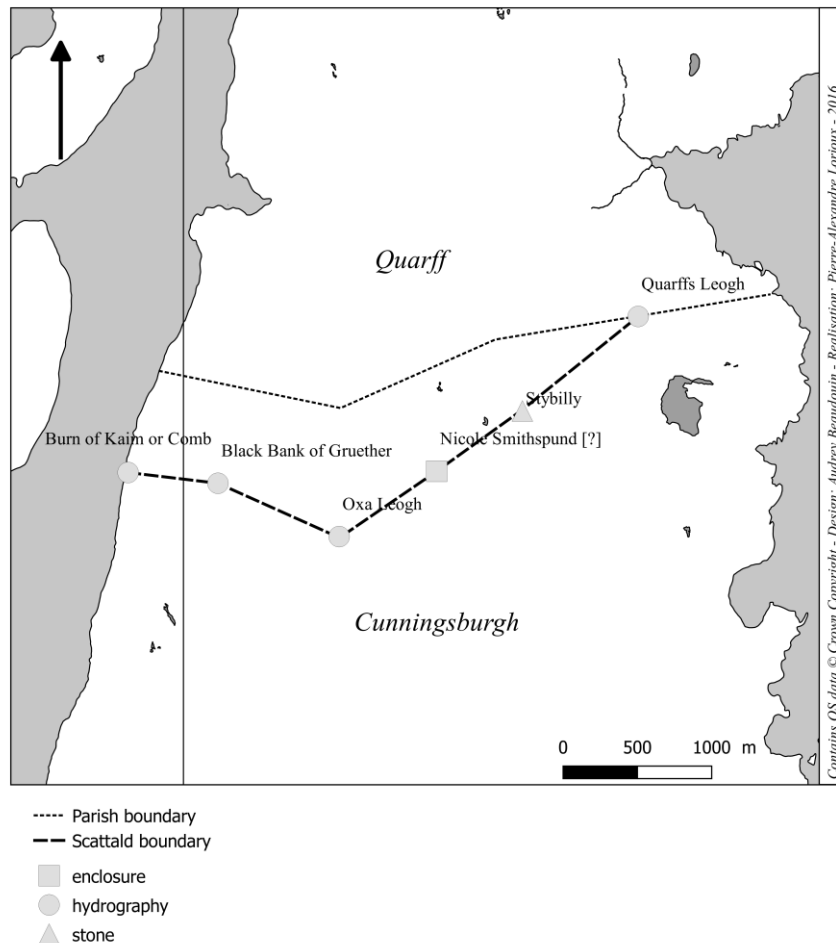
⁴ SA, SA4/2255, ‘Gifford’s Rental of Shetland: Transcript and Index’ 1716, fols 70, 74; Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 105.

⁵ Edmondston, *A View of the Ancient and Present State of the Zetland Islands*, 2:79.

⁶ John Bryden, ‘United Parishes of Sandsting and Aithsting’, in *The New Statistical Account of Scotland: Sutherland, Caithness, Orkney, Shetland, General Index*, vol. XV, *The New Statistical Account of Scotland* (Edinburgh and London: William Blackwood and Sons, 1845), 134.

In the 19th century, even though the scattalds were ‘under attack’ and were progressively individualised Shetlanders kept right and will to walk on the hills of the *hagi*. They didn’t necessarily follow foot-paths. They knew their ‘living environment’. The physical boundaries of the scattalds are one of the signs of this knowledge. Materials from the end of the 17th century to the middle of the 19th century show that Shetlanders marked out their respective scattalds with specific landmarks.

Shetlanders lived on their scattald: they moved, they worked, they harvested raw materials and they probably did a whole lot of other things. In 1797 in a process to fix the boundaries between the scattalds of Quarff and Fladdabister a deponent, “Henry Smith in Troubletown in the Parish of Quarff, Married, Aged seventy nine years or thereby” while giving the location of the landmarks between the two scattalds, furnished amazing details on the activities, that he had been told or saw, being performed on both scattalds near the said landmarks.¹



SA, SC12/6/1797/29, ‘Petition (to Fix Boundaries of Scattald of Quarff - the Pursuer’s Tenants Having Been Molested by the Men of Fladabister While Building a Cro.)’, 1797.

Map 38: Scattald boundaries: Quarff

¹ SA, SC12/6/1797/29, ‘Petition (to Fix Boundaries of Scattald of Quarff - the Pursuer’s Tenants Having Been Molested by the Men of Fladabister While Building a Cro.)’ bundle 2.

He started with explaining that on the first landmark called Quarffs Leogh, there were “formerly [...] Bridges over this Leogh for transporting the superiors butter from the south Parishes to Laxfirth in Tingwall parish [...], and that he has been told these Bridges were kept in Repair by the tenants of Quarff & Fladabister jointly”.¹ The uncultivated part of the scattald, the *hoga*, was a place of movement where bridges, such as those on Quarffs Leogh, were built to facilitate the transport and were maintained by the scattald communities who shared the march. Henry Smith continued and explained that the second landmark called “Stybilly or Stewbilly” had been built “with stones by an old man (for keeping his swine) who was generally known by the name of Billy of Quarff”.² This Billy, one day, went on the *hoga*; he collected stones and built a sty to protect the young animals and the brood sow from bird attack.³ He remembered “one John Erasmuson a tenant on Easterquarff, occupying & possessing” the third landmark called “Nicole Smiths Pund”.⁴ John Erasmuson used this pund as a sheep fold probably to round up his sheep for marking or plucking. “Sheepfolds”, writes Ian Tait, “were dotted over the *skattald* to ensure all animals were caught”.⁵ Furthermore Henry Smith remembered “that the people of Quarff, Riving flaes and striking thatch, close to the said marches which they continued to do uninterruptedly and deserted only when the ground for that purpose wore out”.⁶ Near “Nicole Smiths Pund” the *hoga* was intensively used: a sheepfold was located there and the scattalders of Quarff came nearby to rive *flaws* and strike thatch. In this part of the *hoga* the riving of flaws and the striking of thatch was so intense that the resources ran out. At the fifth landmark, “a Leogh or deep gully, called the black Bank of Groother or Gruether” he explained how cattle and sheep were driven on the *hoga*.⁷ Eventually, he detailed some activities which were performed near the scattald march, for example “he & the other tenants [...] cut their floss close to the Line of March at Oxa Leogh [the sixth landmark], where they also Rive their flaes and [...] swine stys of Westerquarff are close to the Black bank of Gruether [the fifth landmark] & have been uninterruptedly possessed by the tenants there”.⁸ Henry Smith provided a vivid portrait of the activities and movements on the *hoga*. However he didn’t forget that a scattald also contained

¹ Ibid. bundle 2.

² Ibid. bundle 2.

³ Ian Tait, ‘Livestock Buildings’, in *Shetland Vernacular Buildings, 1600-1900* (Lerwick: Shetland Times, 2012), 350.

⁴ SA, SC12/6/1797/29, ‘Petition (to Fix Boundaries of Scattald of Quarff - the Pursuer’s Tenants Having Been Molested by the Men of Fladabister While Building a Cro.)’ bundle 2.

⁵ Tait, ‘Livestock Buildings’, 323.

⁶ SA, SC12/6/1797/29, ‘Petition (to Fix Boundaries of Scattald of Quarff - the Pursuer’s Tenants Having Been Molested by the Men of Fladabister While Building a Cro.)’ bundle 2.

⁷ Ibid. bundle 2.

⁸ Ibid. bundle 2.

the shores and towards the end of his deposition, he detailed how they were used: “the Tenants and Tacksmen of Quarff Cut tang at the west side, as far south as the burn of the Kaim or Comb [the fourth landmark] Uninterruptedly”.¹ The landmarks between the scattalds of Quarff and Fladdabister consisted of two march stones, one in Quarffs Leogh and the other in Stybilly, a pund at Nicole Smiths pund, a burn, the Burn of Kaim, and two swampy grounds, the Black Bank of Gruether and the Oxa Leogh.

The landmarks which identified the boundaries of a scattald needed to be seen by the inscattalders and the utscattalders. In that respect, Henry Smith was often told by “the late Adam Halcrow of Aithsetter [...] that the tenants on North Cunningsburgh could go north with their cattle to the Black Bank of Gruether but they durst go no further.”² When they saw the Black Bank of Gruether, they stopped their cattle or went another way. The landmarks had to be clearly identifiable in the landscape. Henry Smith declared “that at this hour this march [i.e. Stybilly] [was] clearly & distinctly to be seen”.³ In a Sheriff Court process in 1793 the petitioners stated that marches between the scattalds of Girlsta and Catfirth were “still visable & known at this day”.⁴ An analysis of the landmarks located on the boundaries of twenty one scattalds in seven different parishes, highlights the importance of the singularity of landmarks.

Categories	Description	Total	Grand total
stone/rock	march stone/march stones	30	39
	great stone/standing stone/rock	7	
	white stone	2	
	stone in the flood mark	1	
hydrography	burn/spring	8	17
	mire/rivulet in swampy ground	4	
	water/loch	3	
	bridge	1	
	well	1	
Hill/hillock	hill/hillock	7	7
enclosure	dyke	3	5
	ground anciently enclosed	1	
	pund/sheep cro	2	
sea coast	geo	2	4
	sea bank	2	
promontory/headland	ness	2	3
	peninsula	1	
ancient structure	watch place	2	2
present structure	booth	1	1
		Total	78

¹ Ibid. bundle 2.

² Ibid. bundle 2.

³ Ibid. bundle 2.

⁴ SA, SC12/6/1793/8, ‘Petition (for Enclosing Part of the Undivided Commonty of Schurron in Wiesdale.)’ 1793 bundle 4.

Smith, Brian. 'Description of the Scattald Marches of Yell, 1667'. In *Toons and Tenants, Settlement and Society in Shetland 1299-1899*, 84–88. Lerwick: Shetland Times Ltd, 2000.
 SA, SC12/6/1797/45. 'Summons of Molestation (Concerning Kelp Houses at Aith.)', 1797.
 SA, SC12/6/1797/29. 'Petition (to Fix Boundaries of Scattald of Quarff - the Pursuer's Tenants Having Been Molested by the Men of Fladabister While Building a Cro.)', 1797.
 SA, D12/79. 'Papers Regarding Right of Possessors of Uyea to Cut Peat in Scattald of Clivocast', 17th-18th century.
 SA, SC12/6/1793/8. 'Petition (for Enclosing Part of the Undivided Commonty of Schurron in Wiesdale.)', 1793.
 NAS, RH2/8/33. 'Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733', 1731-1733.

Table 110: Scattalds: types of landmark

Location of stone-made landmark	
hill/hillock	14
mire/rivulet in swampy ground	8
geo/sea bank	8
undetermined waste land	3
burn	2
undetermined location	1
flood mark	1
<i>noust</i>	1
skerrie	1
Total	39

Smith, Brian. 'Description of the Scattald Marches of Yell, 1667'. In *Toons and Tenants, Settlement and Society in Shetland 1299-1899*, 84–88. Lerwick: Shetland Times Ltd, 2000.
 SA, SC12/6/1797/45. 'Summons of Molestation (Concerning Kelp Houses at Aith.)', 1797.
 SA, SC12/6/1797/29. 'Petition (to Fix Boundaries of Scattald of Quarff - the Pursuer's Tenants Having Been Molested by the Men of Fladabister While Building a Cro.)', 1797.
 SA, D12/79. 'Papers Regarding Right of Possessors of Uyea to Cut Peat in Scattald of Clivocast', 17th-18th century.
 SA, SC12/6/1793/8. 'Petition (for Enclosing Part of the Undivided Commonty of Schurron in Wiesdale.)', 1793.
 NAS, RH2/8/33. 'Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733', 1731-1733.

Table 111: Scattalds: locations of stone-made landmarks

Half of the landmarks were made of stones. Most of them were march stone or march stones, called *hagmark*, which in some occasions were “purposely built, not simply heaped up” explains Ian Tait.¹ These stone-made landmarks were for more than a third of them located on the top of a hill or a hillock which rendered their location more remarkable; some of them were even standing stones or white stones. Other stone-made landmarks were located in swampy grounds or mires. In such places they must have been easy to single out and therefore easily seen. The second type of landmarks was those related to hydrography. Burns, waters and lochs were landscape features which marked the landscape and were frequently used by the scattalders either for setting up mills, fetching drinking water or fishing. Scattalders knew the location of these resources and therefore of the corresponding landmarks. Hills or hillocks without heap of stones on their top also served as landmark as well as enclosures either on the scattald (cro, pund, etc.) or near townships (hill dyke). Almost all of Shetland scattalds had a direct access to the sea so specific geographic features on the coast such as *geos*, creeks, served to mark the boundaries. Less frequent geographic features such as ness and peninsula were easily identifiable by the inhabitants and offered a good landmark. Eventually, ancient and present structures such as watch places and booths were used as a landmark. “This

¹ Tait, 'Settlement and Agricultural Landscape', 55.

territory is not only measured and travelled”, explains Daniel Pichot for the medieval village of western France, “it is identified, marked and more, all this participates to the very constitution of the village heritage.”¹ The same applied to Shetland scattalds’ territories were the landmarks, as “singular objects”, “[marked] the landscape, both in the physical space and in the mental and imaginary space.”²

All these landmarks were located relative to each other, either using the four cardinal points or lateralisation (left and right). Sometimes topographical features helped localise a landmark. It was the case of the *meeth* of Stava Skerries which helped locate the place called Hagmark between the scattalds of Norwick and Ungersta near Burra Firth.³ A *meeth* or *mid* was a fishing mark. Ian Tait explains that “[p]eople located fishing grounds by means of sea marks, features that were distinctive and used in alignment to one another to ascertain a fixed position at sea.”⁴ These *meeths* included natural topography, buildings and some remodelled structures. The fishing mark of Stava Skerries is interesting because it served as both a fishing mark and a landmark. Ian Tait tells us that the landmark at Housavord (Ward of Norwick) also served as a sea-mark.⁵ These *meeths* brought in the same space both land and sea; when men walked they oriented themselves with these marks and on sea, when they fished or sailed, they did the same thing.

Landmarks were also located relative to other features but this time man-made features. Indeed kirks, chapels, dykes, *nousts*, kilns, skeos, etc. could serve to position a landmark. The “first merch-merk” deviding the scattalds of Houlland and Burgh on Yell “[stood] upon of the little hill or Hillock be-east the little peice of dyke, which is builded from the north end of the locke or water besyd the kirk of North Yell”.⁶ Here a dyke and the kirk of North Yell served to locate the landmark. In Unst, the landmark on the east coast between the scattalds of Clibberswick and Haroldswick was located between “a oven [i.e. a kiln] to the eastward of Bothon’s Booth and to the westward of the Skeo [i.e. a drying hut] of Valsgarth”.⁷

¹ “Ce territoire n’est pas seulement mesuré et parcouru, il est aussi identifié, balisé et bien plus, participe de la constitution même du patrimoine villageois.”, in Daniel Pichot, *Le Village Éclaté : Habitat et Société Dans Les Campagnes de l’Ouest Au Moyen Âge*, Histoire (Rennes: Presses universitaires de Rennes, 2002), 239.

² “mais surtout objets singuliers qui marquent le paysage, tant dans l’espace physique que mental et imaginaire.”, in *Ibid.*

³ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’ n.d., fol. 6.

⁴ Tait, ‘Maritime Buildings’, 482.

⁵ NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’, fol. 5; Tait, ‘Maritime Buildings’, 483.

⁶ Brian Smith, ‘Description of the Scattald Marches of Yell, 1667’, in *Toons and Tenants, Settlement and Society in Shetland 1299-1899* (Lerwick: Shetland Times Ltd, 2000), 85.

⁷ A.W. Johnston, ed., ‘Scattald Marches of Unst, 1771’, *Old-Lore Miscellany of Orkney, Shetland, Caithness and Sutherland* 5 (1910): 125.

But did the skeo of Valsgarth always serve as a landmark? The question of the continuity of landmarks is an important one as it can challenge or reinforce the notion that pre-industrial rural societies were “motionless”.¹ The study of the evolution or non-evolution of the scattald boundaries is possible with materials from the island of Unst: one description of the scattalds of the north parish in 1731, another one in 1771 and the maps of divisions of the scattalds of this area drawn up in the second half of the 19th century. At first glance, the scattald boundaries seem to be exactly identical but when we dig deeper we realise that some landmarks slightly changed. There seems to have been different types of changes or variations:

1. landmarks which appeared in only one description: e.g. in 1771 the “great grey stone”;
2. landmarks whose name varied between 1731 and the 19th century: e.g. “Stribbles Virda” became “a stone on the top of the hill” and a “standing stone”;
3. landmarks whose name changed or location slightly changed between 1731 and the 19th century: e.g. “Iwla” in 1731 and “Scotties Wart” in 1771;
4. landmarks described in 1731 and in the 19th but not in 1771: e.g. Stenerloge;
5. landmarks which weren’t recorded in 1731 but recorded in 1771 and in the 19th century: e.g. “small water course on the banks”;
6. landmarks with a specific name in 1731 and 1771 but which only appeared as “MP” or “March Point” in the 19th-century maps.

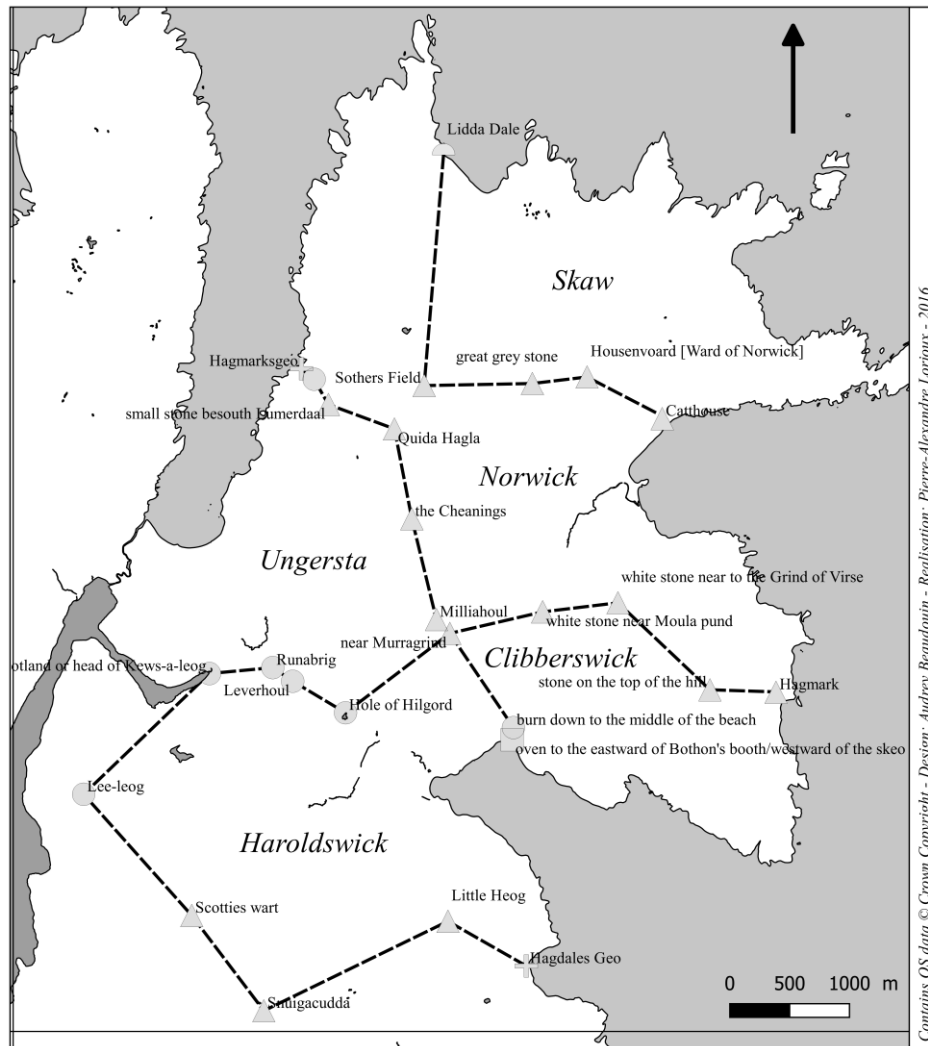
There was also the case of “Maugerhoull or the Shemens” which appeared as being the same place in 1731, identified in 1771 as only “the Cheanings” and in the 19th century as two different landmarks, “Mangershall” and “Chemings”.

Scattalds	1731	1771	1825-1861	Reference
Skaw-Norwick	Lidda Dale	Lidda Dale	Lidda Dale	RHP6468 (1860)
Skaw-Norwick	Sothers Fields	Sothers Fields	Sothers Fields	RHP6468 (1860)
Skaw-Norwick		great grey stone		
Skaw-Norwick	Housavord [Ward of Norwick]	Housensvord [Ward of Norwick]	Wart of Skaw [Ward of Norwick]	RHP6468 (1860)
Skaw-Norwick	Cat house	Cat house	Cat house	RHP6468 (1860)
Norwick-Ungersta	Milla-houla	Milla-houla	Milla-houla	RHP14989 (1825)
Norwick-Clibberswick	Hagmark	Hagmark	Hagmark	RHP6468 (1860)
Norwick-Clibberswick	Stribbles Virda	a stone on the top of the hill	standing rock	RHP6468 (1860)

¹ Emmanuel Le Roy Ladurie, ‘L’histoire immobile’, *Annales. Histoire, Sciences Sociales* 29, no. 3 (1974): 673–92.

Norwick-Clibberswick	Quida or the of Hoggdale white stone	a white stone without the dykes of Norwick near to the Grind of Virse	March Point	RHP6468 (1860)
Norwick-Clibberswick	Stenerloge		March Point	RHP6468 (1860)
Norwick-Clibberswick	Mullagardie	Mullapund	Mullapund	RHP49412 (1861)
Norwick-Ungersta-Clibberswick-Haroldswick	Muragrind	Muragrind	Muragrind	RHP49412 (1861)
Ungersta-Burrafirth	the middle of the sand	the burn which separates Burrafirth or West the Burn from Sotland or East the Burn, ends in the sea	burn mouth of Lingarth	RHP6467 (1848)
Ungersta-Haroldswick	Ness of Sotland	Ness of Sotland	Ness of Sotland	RHP14989 (1825)
Ungersta-Haroldswick	Runna Brigg	Runna Brigg	Runna Brigg	RHP6470 (1835)
Ungersta-Haroldswick	Lavachine	Leverhoul	Knowe of Westergardie	RHP6470 (1835)
Ungersta-Haroldswick	[...]alsgord	Hole of Hilgord		
Norwick-Ungersta	Maugerhoull or the Shemens		Mangershall	RHP6468 (1860)
Norwick-Ungersta	Maugerhoull or the Shemens	the Cheanings	Chemings	RHP6468 (1860)
Norwick-Ungersta	Hagmark	Quida Hagla	White Haglay	RHP14989 (1825)
Norwick-Ungersta		small water course on the banks	March Point	RHP14989 (1825)
Norwick-Ungersta		small stone besouth Lumerdaal	March Point	RHP14989 (1825)
Norwick-Ungersta	Hagmir Geo	Hagmir Geo	March Point	RHP14989 (1825)
Clibberswick-Haroldswick	Bothen's booth	an oven to the eastward of Bothen's booth/westward of the Skeo of Valsgarth	Bothen's booth/Skeo of Valsgarth	RHP6468 (1860)
Clibberswick-Haroldswick		the burn down to the middle of the beech		
Haroldswick-Queyhouse	Laira leog	Laira leog	Laira leog	RHP6470 (1835)
Haroldswick-Cliff	Iwla	Scotties Wart	March Point	RHP6470 (1835)
Haroldswick-Cliff	Munmuidshoul	Snuigacudda	March Point	RHP6470 (1835)
Haroldswick-Baliasta	Little Heog	Little Heog	Little Heog	RHP6470 (1835)
Haroldswick-Baliasta	Geo of Hagdale	Geo of Hagdale	Geo of Hagdale	RHP6470 (1835)
To improve the readability when it was possible the spelling of the first OS 6-inch survey or of the maps of division has been chosen; when there was no trace of the places either on the OS survey or on the maps of division, the original spelling has been kept.				
NAS, RH2/8/33. 'Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733', 1731-1733.				
Johnston, A.W., ed. 'Scattald Marches of Unst, 1771.' <i>Old-Lore Miscellany of Orkney, Shetland, Caithness and Sutherland</i> 5 (1910): 125–29.				
NAS, RHP14989. 'Photostat Copy of Plan of Division of the Scattald of Ungirsta, and (on Reverse of Plan) Minute of Agreement', 1825.				
NAS, RHP6470. 'Plan of Division of the Scattald of Haroldswick, Unst, Shetland', 1835.				
NAS, RHP6467. 'Plan of the Division of the Scattald of Baliasta, Shetland', 1848.				
NAS, RHP6468. 'Plan of the Scattalds of Norwick and Clibberswick, Shetland', 1860.				
NAS, RHP49412. 'Photocopy of Plan of Scattalds of Northwick (Norwick) and Clibberswick on Island of Unst, with Table of Contents [Cf. RHP 6468-9]', 1861.				

Table 112: Scattalds: landmarks in north Unst



- Scattald boundaries
- ◐ hill/hillock
- hydrography
- present structure
- ⊕ sea coast
- ▲ stone/rock

Johnston, A.W., ed. 'Scattald Marches of Unst, 1771.' *Old-Lore Miscellany of Orkney, Shetland, Caithness and Sutherland* 5 (1910): 125–29.

Map 39: Scattalds: landmarks and boundaries in north Unst, 1771

These variations might be explained by several reasons such as the negligence of the clerk, the misinterpretation of the Shetland dialect, the absence of proper witnesses, etc. but, in my opinion, there is also the possibility that these small variations are a proof of a 'living scattald'. The scattalders of north Unst reinvented the marches of their respective scattald. Most of the landmarks were transmitted from one generation to the other but there were places where new stones were set up, such as between Skaw and Norwick with the "great grey stone" or where place-names or the actual location of the landmark evolved such as in "Iwla" or later "Scotties Wart". This is another proof that the scattalds were 'inhabited': people

moved, worked, collected resources, etc. on a daily basis and therefore they made new memories and had new or transformed landmarks to transmit. The statement of Gilbert Goudie in 1889 described perfectly well the place of the scattald in the inhabitants' life:

so clearly is the Skathald identified with the very life of the people that frequently a whol district is known and denominated by the Skathald to which the occupants have right in common – e.g. ‘the Skathald of...’ [...] in place of designating the residents by the townships which are contained in the district.¹

To which Brian Smith concludes that “[o]nce interlopers had been excluded, scattalds became ‘neighbourhood’”;² he also writes that “scattalds were living communities rather than private property”.³ I couldn't agree more with him: scattalds were ‘communities’ with rights of way, temporary foot-paths, communal bridges, landmarks and so on. The scattalders, the members of these local communities, learned and remembered these landmarks through yearly perambulations called *hagries* which similarly to the Breton *troménies* “[could] draw the community space”⁴.

¹ Gilbert Goudie, ‘Skathald’, *The Scottish Leader*, 5 November 1889; Quoted in: Brian Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899* (Lerwick: Shetland Times Ltd, 2000), 44.

² Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 44.

³ Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 101.

⁴ “Les processions [...] peuvent dessiner l’espace communautaire”, in Pichot, *Le Village Éclaté : Habitat et Société Dans Les Campagnes de l’Ouest Au Moyen Âge*, 240.

History and Memory

Brian Smith has dealt with the question of *hagrie* in “What is a scattald? He explains there that “the ‘hagrie’ (Old Norse, *haga-reið*, ‘pasture-ride’), [was] the ceremony of establishing the boundaries of a scattald.”¹ There he quotes Laurence Jamieson, a tenant in Channerwick who in 1829 “recalled how, years previously, “the Channerwick people took a little lassie to the spot to witness the placing of the stone, and gave her three scelps upon her loare, by which he understands her hip [Old Norse *laer*, thigh], and for which she received a shilling””. In this quote appear both memory and ritual two elements of what has been described since Maurice Halbwachs as ‘collective memory’.

In her book *Memory in Culture*, Astrid Erll presents Maurice Halbwach’s definition of collective memory as following:²

1. Collective memory as the organic memory of the individual, which operates within the framework of a sociocultural environment.
2. Collective memory as the creation of shared versions of the past which results through interaction, communication, media, and institutions within small social groups as well as large cultural communities.”³

History and Memory are not the same entity. Maurice Halbwach in the early 20th century criticised history as being a compound of details that are all of the same importance and are not prioritized regarding the point of view of given social groups.⁴ “He made a sharp distinction”, explains Peter Burke, “between collective memory, which was a social construct, and written history, which he considered – in a somewhat old-fashioned positivist way – to be objective.”⁵ However the historical sciences have greatly evolved since the first half of the 20th century and “current studies of the history of historical writing treat it much as Halbwachs treated memory, as the product of a social group”.⁶ It is this “relativist view of the history of history” that has led Peter Burke to use the expression “history as social memory”.⁷ In order to study social memory, historians should build “a critique of the reliability of reminiscence on the lines of the traditional critique of historical documents” and they should be concerned with “memory as a historical phenomenon, with what might be called the social history of remembering.”⁸ It is this specific issue that I want to tackle here. How did Shetland

¹ Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 43.

² Maurice Halbwachs, *La Mémoire Collective* (Paris: Presses Universitaires de France, 1968).

³ Astrid Erll, *Memory in Culture*, trans. Sara B. Young (Basingstoke: Palgrave Macmillan, 2011), 15.

⁴ “L’histoire est une et l’on peut dire qu’il n’y a qu’une histoire”, in Halbwachs, *La Mémoire Collective*, 74.

⁵ Peter Burke, ‘From “History as Social Memory”’, in *The Collective Memory Reader*, ed. Jeffrey K. Olick, Vered Vinitzky-Seroussi, and Daniel Levy (Oxford: Oxford University Press, 2011), 188.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*, 189.

communities remember? How was the past used and transmitted in these communities? How did it contribute to build a collective memory?

Identifying history

Which elements of the past were identified by both Shetlanders and external writers as being part of the archipelago history?

Tangible heritage and the outside world

The writers who published books about Shetland Islands in the 18th and early 19th century followed the evolutions of antiquarianism. Alain Schnapp explains that since the 16th century the antiquarians considered that “the soil is a part of human history, so antiquarians should contrive to categorise and interpret the innumerable mass of potential remains, *generis infinita*” and that “with no writing, no memory, unless we consider the remains buried in the ground as the language of another type of story, intelligible to who will pay attention to the material traces of the past.”¹

In this, as also in all the parishes of Zetland, there are several old buildings, called Pight-Houses, which I shall have occasion to mention afterwards. [...] Moussy, in which is one of these Pights houses, a great part whereof is yet standing, called The Castle of Moussy.²

In this citation from his *Historical Description*, Thomas Gifford of Busta offered a description of one example of what can be called the Shetland tangible heritage; here, the so called “Picts houses”. Thomas Gifford didn’t know it but these “Picts houses” were Brochs, wheelhouses, aisled roundhouses or earth-houses (souterrains).³ Excavated Brochs in Shetland are dated between 300 BC and 150 AD.⁴ The other structures were built from around 150 AD and the period around 500 AD.⁵ In a non exhaustive account I have numbered not less than thirty one references to these structures in fourteen different works – thirteen references for the work of George Low alone.⁶ It could be interesting to compare the knowledge of the 18th century with

¹ “le sol est une part de l’histoire des hommes, alors l’antiquaire doit s’ingénier à classer et à interpréter l’innombrable masse des vestiges potentiels, *generis infinita*” and “sans écriture, pas de mémoire, sauf à considérer les vestiges enfouis dans le sol comme le langage d’un autre type d’histoire, intelligible à qui saura prêter attention aux traces matérielles du passé”, in Alain Schnapp, *La Conquête Du Passé* (Paris: Editions Carré, 2000), 180.

² Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 4.

³ Noel Fojut, *Prehistoric and Viking Shetland* (Lerwick: Shetland Times Ltd, 2006), 57, 74–75.

⁴ *Ibid.*, 57.

⁵ *Ibid.*, 74–75.

⁶ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 4; Low, ‘Voyage to Schetland’, 73, 87, 119, 126–28, 148, 151, 169, 176, 180–81, 186; Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 202; Morison, ‘Parish of Delting’, 401; James Sands, ‘Parish of Lerwick’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 3, 420, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Lerwick/>; Jack, ‘Parish of Northmaven’, 365; Mouat and Barclay, ‘Island

what we know today of these sites especially since the name “Picts houses” was given to pretty much everything that was in stone and had a circular shape. The Broch which was in the best shape was the Broch of Moussa on a small islet in the south-east coast of the mainland:

What here [i.e. Moussa] strikes a stranger most, and indeed is the greatest antique curiosity in these isles, is the Burgh or Castle, the most entire of any in Schetland.¹

It figured on the map of the Blaeu’s Atlas in 1654 and in 1662 as “the ancient brugh of Mousa”:



Extract from: Blaeu, Willem Janszoon, and Joan Blaeu. ‘Orcadvm et Schetlandiæ Insularvm Accuratissima Descriptio’. Amsterdam: Blaeu, 1662. <http://maps.nls.uk/atlas/blaeu-maior/browse/6/page/144>.

Map 40: Tangible heritage: Broch of Mousa

References to these ancient structures were numerous but references to structures built in a closer past, the Viking Age and Norse period, weren’t mentioned in the records. It is peculiar because on the one hand references to Norse buildings were absent and on the other references to the Norse origins of the inhabitants were numerous. Remains of Norse longhouses were probably visible in the landscape. Their rectangular architecture, assimilable with dykes or enclosures of any kind, may have prevented any kind of special tradition around them. They weren’t identified as singular and therefore no tradition was built around them.² The longhouse, at the difference with the Broch which was usually located on the top of a hill or a promontory, was located in the valleys close to other houses. There is no evidence of

and Parish of Unst in Shetland’, 200; Thomson, ‘Parish of Walls and Sandness’, 112; Andrew Dishington, ‘United Parishes of Mid and South Yell’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 2, 575, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Yellmid%20and%20South/>; Fea, *Considerations of the Fisheries in the Scotch Islands*, 80; Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 765, 780–82.

¹ Low, ‘Voyage to Schetland’, 181.

² On the question of place-names and singular landscape objects, see : Elisabeth Zadora-Rio, ‘Archéologie et Toponymie : Le Divorce’, *Les Petits Cahiers d’Anatole* 8 (2001): 10.

Norse archaeological sites used as landmarks at the difference with Brochs which were used as scattalds' landmarks, probably under the name of "Watch Place".

There is one exception though. The assembly site on the holm of Tingwall was mentioned in the work of John Brand, Thomas Gifford and George Low.¹ This site is the exception that confirms the rule. If it was remembered it was because it was singular. It was said to be located on a small holm on the loch of Tingwall which made it a remarkable location and made easier its identification as a place of history and its transmission to future generations.

The 18th-century writers described the castles of Scalloway, Tingwall and Muness, Unst.² These two castles had common features: they both represented a somehow non-successful life, they were erected by foreigners and they both had an inscription on the front wall that reminded the inhabitants of what they were and by who they had been built. In both cases, those who built the castle were described by the writers as foreigners, not from Shetland. In Scalloway, it was Patrick Earl of Orkney (c. 1566-1615) who built the castle at the beginning of the 17th century. There is an extensive literature on this Earl since he is considered to be the worst Earl in the history of Orkney and Shetland. John Brand in the early 18th century explained how the oppression occurred:

the Earl greatly oppressed both Orkney and Zetland; and particularly at the building of this house, his land lay very heavy on the poor people, by causing them in great number to be employed about the building, which could not but divert them from their ordinary work, as fishing, &c. whereby they provided sustenance for themselves and families.³

In Muness, the castle was built at the end of the 16th century "by Laurence Bruce, who [was] said to have been from Cultmalundie, in Perthshire, and to have fled [either] in consequence of having slain a neighbour in an affray".⁴ In the case of Lawrence Bruce of Muness, Shetland was presented as a land of exile where he could live and prosper.⁵ Patrick Earl of Orkney had a completely different story. Since he abused the Shetlanders in different ways and he didn't recognise the particularities of Shetland he was presented as a bad man whose arrogance led to his own failure. The inscription on the frontispiece was a constant reminder of the arrogance of the Earl towards the inhabitants:

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 9–10; Low, 'Voyage to Schetland', 77; Brand, 'A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701', 792–93.

² Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 8–9; Low, 'Voyage to Schetland', 75–150; Mouat and Barclay, 'Island and Parish of Unst in Shetland', 200; Hibbert, *A Description of the Shetland Islands*, 176.

³ Brand, 'A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701', 777. See also: Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 8–9.

⁴ Mouat and Barclay, 'Island and Parish of Unst in Shetland', 200.

⁵ Low, 'Voyage to Schetland', 150.

Patricius Steuardus Orchadiæ et Zetlandiæ Comes. I. V. R. S. Cujus fundamen saxum est, dom'illa manebit labilis e contra si sit arena perit A. D. 1600;¹

That house whose foundation is on a rock shall stand; but if the sand it shall fall.²

This inscription sounded like a metaphor for the illegitimate power which the Earl had over the inhabitants.

Churches, chapels and churchyards of the “Popish times” were reminders of the old Christianity and sanctity of the place but also of the integration of the Shetlanders in a transformation which transformed the entire Scottish state: the Presbyterian Reformation.³

The archaeological remains of these churches or chapels could also be seen as traces of an evil that was defeated by the inhabitants.

At the Church of Norwick a Popish Chapel, pretty entire, particularly the altar, which is cut asbestos; every grave is marked with a cross at the head, the only remain (and that, to them, insignificant) of Popery to be found among them.⁴

Towards the end of our studied period, Samuel Hibbert wrote the story of “a very neat chapel, erected by the Spaniards [in Sands Voe, Scalloway] during the time they were detained in Shetland.”⁵

The story that Samuel Hibbert told, said that “a galleon belonging to the famous Spanish Armada, [...] sank on a haddock-sand near Reawick Head, now called the Meeth.”⁶ After what, the sailors built a chapel. Several accounts of the presence of seamen from the Spanish Armada in Shetland were diffused during the early modern period. It was said that the vessel of the duke de Medina Sidonia of the Spanish Armada was wrecked on Fair Isle in 1588.⁷ In 1702, the sound of Bressay was the scene of an attack of the French who burnt 150 vessels.⁸ These stories and the scenes where they took place were points of connections between Shetland and the rest of the world. This was clearly stated in the version of the story given by John Brand who wrote that:

The signal defeat and overthrow of the Spanish Armada, [...] called Invincible Armada, anno 1588, is famous in history, which was especially caused by stormy winds and tempests, some thereby sinking at sea, others splitting upon the coasts both of England and France, and especially upon the north of Scotland, Orkney and Zetland; and the Fair Isle at the honour of the Duke of Medina's being driven in shore upon it, under whose conduct this navy was [...].⁹

¹ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 8–9.

² Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 777.

³ Low, ‘Voyage to Schetland’, 135, 188; Sands, ‘Parish of Lerwick’, 420; Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 786.

⁴ Low, ‘Voyage to Schetland’, 154–55.

⁵ Hibbert, *A Description of the Shetland Islands*, 474.

⁶ *Ibid.*, 574.

⁷ Low, ‘Voyage to Schetland’, 167; Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 795.

⁸ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 5–6.

⁹ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 795.

Shetland was somehow at the same time than France and England at the centre of European geopolitical events and this reflected the commercial situation in Shetland with its merchants from all around northern Europe; the sound of Bressay was the most important commercial harbour in Shetland and was the place where the French attack of 1702 took place.

Intangible heritage

When looking at the Scandinavian intangible heritage in the 18th century, one of the first things that strikes the readers of the descriptions of the islands is the constant reminder by the descriptors of the fact that Shetland people spoke or used to speak Norn. In 1787, James Fea explained that “[m]any Scotch families have settled in the Shetlands [...] but the vulgar of the natives are descended from the Norwegians, and speak a corrupt dialect of their primitive language.”¹ The Norn is a Scandinavian language derived from the Norse language tracing back to the Vikings’ settlements in Orkney and Shetland. This linguistic information was known by the descriptors and from their comments by the native speakers themselves. Indeed, George Low made the connection between the settlement of Norse populations and the Norwegian language; he wrote that

Whether the Islands of Orkney and Zetland were first peopled from Scotland or Norway is uncertain, our historians being very superficial in the accounts, but it is certain they were long in the possession of the Norwegians, and the most of the inhabitants to this day being Patronymicks, and of Norwegian extract; and all the islands and places in it retain their Norwegian names.²

However in the 18th century, the writers insisted on the modifications and on the geographical differences in the knowledge of the Norn.³ The accents between certain parishes and islands of the archipelago were also noticeably different.⁴ What the descriptors also noted was the progressive abandonment of the language during the course of the 18th century. At the end of the century, the ministers who answered to Sir John Sinclair wrote that the language of the Shetlanders was “the same with that of the inhabitants of North Britain” or “as in the Continent of Scotland” and even that the place-names were “evidently of Norwegian or Danish extraction, languages at present unknown in these islands”.⁵ I won’t propose a

¹ Fea, *Considerations of the Fisheries in the Scotch Islands*, 79–80; See also: Barclay, ‘United Parishes of Aithsting and Sandsting’, 596; Mouat and Barclay, ‘Island and Parish of Unst in Shetland’, 200.

² Low, ‘Voyage to Schetland’, 142–43.

³ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 767; Low, ‘Voyage to Schetland’, 105, 196.

⁴ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 767.

⁵ Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 203; Morison, ‘Parish of Delting’, 408; Sands, ‘Parish of Tingwall’, 278.

linguistic analysis of this change. It has been done with precision by Michael Barnes and Brian Smith.¹

More than only using, repeating, or even droning out words without knowing their knowledge, the speakers and the descriptors of the islands had a fairly good knowledge of the meaning and sometimes of the etymology of the Norn vocabulary that they still used. Early in the 18th century, John Brand noted that Shetlanders had “some Norish words which they commonly use, which we understood not till they were explained; such as *air*, which signifies a sand-bank; *oyse*, an inlet of the sea; *voe*, a creek or bay, &c.”² At the end of the 18th century, five ministers gave to Sir John Sinclair the “Danish or Norwegian origin” of the name of their parish.³ However the respondent in Nesting had to concede that

Nesting, like the greater number, if not all the names of places in the Shetland Islands, is evidently of Norwegian extraction. Its meaning is unknown, the Norse language being at present no longer spoken in Shetland.⁴

Insiders and outsiders sometimes believed in fantasist meaning but they were most of the times referring to the linguistic connections between Norn and either Old Norse or contemporary Norwegian or Danish.⁵

The practice of the language and the language in itself encountered modifications and eventually a slow disappearance in the 18th century. However the Norn language and its vocabulary was the base of the geographical terminology in the 18th century Shetland Islands. The writers were eager to describe how the words used to name the different hills, bays, beaches were particularly accurate. In Delting and in Northmavine, the ministers wrote that the place-names of Shetland were from “the Norwegian language” and were “very expressive of the situation and convenience of the place”.⁶ David Thomson, the minister of Walls and Sandness, even proposed the etymology of a few place-names:

Names of the Places – Most of these are derived from the Norwegian language. And have, like all original languages, a local signification: Such as, *Goard*, which denotes a dwelling; *Gersta*, a

¹ M. P Barnes, *The Norn Language of Orkney and Shetland* (Lerwick: The Shetland Times Ltd., 1998); Brian Smith, ‘The Development of the Spoken and Written Shetland Dialect: A Historian’s View’, in *Shetland’s Northern Links: Language and History*, ed. Doreen J. Waugh (Edinburgh: Scottish Society for Northern Studies, 1996), 30–43.

² Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 767; See also: Hibbert, *A Description of the Shetland Islands*, 233–34.

³ Morison, ‘Parish of Delting’, 385; Menzies, ‘United Parishes of Bressay, Burra, and Quarff’, 194; Mill, ‘Parish of Dunrossness in Zetland’, 391; James Gordon, ‘United Parishes of North Yell and Fetlar’, in *The Statistical Accounts of Scotland 1791-1799*, ed. John (sir) Sinclair, vol. 13, 179, accessed 27 September 2012, <http://stat-acc-scot.edina.ac.uk/link/1791-99/Shetland/Fetlar%20and%20North%20Yell/>; Sands, ‘Parish of Lerwick’, 414.

⁴ A Friend to Statistical Inquiries, ‘Parish of Nesting’, 498.

⁵ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 765; Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 22; Thomson, ‘Parish of Walls and Sandness’, 97.

⁶ Morison, ‘Parish of Delting’, 408; Jack, ‘Parish of Northmaven’, 347; See also: Low, ‘Voyage to Schetland’; Barclay, ‘United Parishes of Aithsting and Sandsting’, 596.

division between lands; *Rickaness*, a point of land for grazing horses; *Houll*, or *Houlland*, an habitation on an eminence; *Holm*, a small island; *Voe*, an inlet of the sea.¹

The place-names were mainly from Norse origin and even if they had suffered changes and for some of them disappeared, they structured the social landscape of the inhabitants.² These place-names were attributed to settlements, dykes, stones, hills, peat-banks and so on which formed the basis of the scattalds' landmarks. Even if the writers didn't recall the scattalds as the main Norwegian feature of the islands, their origin was described in a more or less fantasist way.³

The role of the scattald community was to remember the borders of its scattald. A 'physical' or 'oral' recollection went along a 'written' recollection. The 'physical' or 'oral' recollection was the ceremonial process of "riding along the marches" called *hagrie*.⁴ In this procession along the marches, the older inhabitants presented the different stones marks to the younger. The 'physical' act of remembering was consolidated by a stroke in the back of the head given to the younger by the older and the offering of a coin of money.⁵ This procession was codified in the *Country Acts* under the following article:

39. That the bishop [bailie] of each parish, with twelve honest men there, ride the marches of the parish, betwixt the 1st of October and the last of April, yearly, or when required thereunto by the Scattalders, under the pain of 40 pounds.⁶

When performed by the bailie and these "twelve honest men" the *hagri* could leave a trace on paper: a 'written' recollection of the boundaries. Descriptions of the scattalds' marches not as plans or maps but as texts are kept in the archives some were probably recorded at the occasion of *hagri*,⁷ others presented the borders in a court case.⁸ In each situation the community played the main role: its collective memory was activated. The written language was English but the stones marches and the structural borders' elements had Norn names transmitted and conserved inside the communities. The description of the boundaries of the scattald of Clibberswick, Unst, in 1731 is good example of this combination of English and Norn:

Clibberswick Scattel Clibberswick and Papells town bordering with Norwick its East march is a stone Stone [sic] stand agon the East end of the hill called the hill of Clibberswick being a stone

¹ Thomson, 'Parish of Walls and Sandness', 112.

² Doreen J. Waugh, 'Toponymie et Vocabulaire Maritimes Des Îles Shetland', in *L'héritage Maritime Des Vikings En Europe de l'Ouest*, ed. Elisabeth Ridel (Caen: Presses Universitaires de Caen, 2002), 377–400.

³ Low, 'Voyage to Schetland', 163; Mouat and Barclay, 'Island and Parish of Unst in Shetland', 196, 201–2; Hibbert, *A Description of the Shetland Islands*, 300–301.

⁴ Smith, 'What Is a Scattald? Rural Communities in Shetland, 1400-1900', 104; Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 43.

⁵ Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 44.

⁶ 'The Old Country Acts', 84.

⁷ Scattald of Yell, 1667: SMITH, 2000, p. 84-88; Scattald of Unst, 1731: NRS, RH2/8/33 fol. 4-7.

⁸ SA, Aith: SC12/6/1797/45/1; Quarff and Fladdabister: SC12/6/1797/29/2; Girlsta: SC12/6/1793/8/4.

called Hagmarck or march being a stone with a Clift from thence streaching along the right of the said hill westward to another march one the forenamed hill called Stribbles Virda from thence by the said Course to a white stone in the place called Vare over above Hogsdale called Quida or the white stone of Hogsdale [...].¹

Place-names were of Norn origin but what about people's names? Sources are pretty clear about the fact that patronymic names were still in use in Shetland in the 18th century. The writers and the inhabitants also reckoned that this practice was inherited from the Norwegian or Danish times.² This anthroponomical practice was described interestingly by Thomas Gifford as coupled together with the land, and even with the land inheritance: men and women carried out the name of their father and owned a land transmitted linearly from one generation to the following one. He wrote that

[...] Patrick Gilbertson, of Ilsburgh, an old man about ninety years, alive at writing hereof, reckons himself the 22d generation, in a lineal succession, possessors of Ilsburgh, stiled (sic) Patronymics.³

With the patronymic naming practice the community strengthened the identification and the individualisation of its own members. Each individual had a distinct first name and a patronymic name and could be identified from one to another. This practice allowed a wider variety of association between first-name and patronymic name making the homonymy cases rarer than with the classical first-name and surname association.⁴ This situation was presented by John Brand:

It is observable that the names of the descendants of the old inhabitants differ from the names of others now numerous among them, for these only have a name without a firname, save what is taken from their father's name, and by adding son or daughter thereunto, exemp. gra. Agnes >Magnus daughter; [...] they use also to design them by the places where they ordinarily reside, as Agnes Magnus daughter in Trebister, that so she may be discriminated from another woman of the same name living in another place.⁵

The identification of an individual was based on his or her father's name creating inside the community a visible line of belonging. To avoid completely homonymy and also to identify entirely a person, his or her place of life was associated with his or her name. Once again: name and land were united to distinguish, individualise but also include a man or a woman inside his or her communities.

Eventually, local custom and the judicial and police practices were also pointed out as coming from the past. In 1810, "observations on the ancient Country Acts of Zetland" were drawn up "in the hope that this may lead to the Revival of parts of the Acts and of Parochial Magistrates" and before that, in 1772, the Sheriff Substitute of Shetland had appointed

¹ NAS, RH2/8/33, 'Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733', fol. 5.

² Low, 'Voyage to Schetland', 142–43.

³ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 21.

⁴ P. G. Mewett, 'Exiles, Nicknames, Social Identities and the Production of Local Consciousness in a Lewis Crofting Community', in *Belonging: Identity and Social Organisation in British Rural Cultures*, ed. Anthony P. Cohen (Manchester: Manchester University Press, 1982), 222–46.

⁵ Brand, 'A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701', 767.

Rancelmen and Lawrightmen in the parish of Unst “as was the constant practice of this Country in times past”.¹

Language, landscape, names, land and custom all came from the past. Their transmission was fundamental in the expression and affirmation of the communities.

Transmitting history

In his work *History as social memory*, Peter Burke details the five media of transmission of history or social memory as he defines it. These five media are: 1) oral traditions; 2) memoirs and written records; 3) images; 4) actions; 5) space.² I’ll touch upon four different ways of transmission of social memory: written and oral transmission as well as transmission through actions and space.

Written transmission

In the 18th century, we can divide the written records in three categories: those which were written by: 1) Shetlanders or Orcadians; 2) foreigners (travellers or antiquarians); 3) Ministers of the Church of Scotland. Practical records such as rentals, judicial records, etc. were another way to transmit history but I won’t deal with them here. I will focus on the written descriptions of Shetland.

What were the references used by the 18th-century writers to write Shetland history? We can start with what is called nowadays in the historical sciences “manuscript sources”. Thomas Gifford referred to charters that he used in order to explain the transmission of lands in Shetland.³ George Low made extensively use of manuscript sources. He used a “Copy of a Paper from Gideon Gifford, Esq. of Busta, anent the Holdings, Divisions of Lands, &c., in Schetland,”⁴ “a Paper concerning Unst, put into my hands by the Rev. Mr William Archibald, Minister of Unst,”⁵ and “a Paper put into my hands by Andw. Bruce, Esqr. of Urie, anent Fetlar”.⁶ These texts were not direct sources; they were descriptions by Shetlanders of the life

¹ NAS, RH9/15/157/5, ‘Appointment by the Sherriff Substitute of Zetland of Lawrightmen & Rancelmen in the Island of Unst’ 1772, fol. 1; NAS, RH9/15/157/9, ‘The Old Country Acts or Abridgment Thereof with Some Later Additions Thereto, Recorded in Sheriff Court Books of Shetland, with Observations, 1810’ 1810, fol. 1.

² Burke, ‘From “History as Social Memory”’, 189–90.

³ Ex. Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 38–40.

⁴ Low, ‘Voyage to Schetland’, 142.

⁵ *Ibid.*, 161.

⁶ *Ibid.*, 175.

in the archipelago and of its history but in themselves and in the uses which George Low had of them, they were manuscript sources.

The writers also used classical works of reference within the European intellectual culture in the 18th century. The work of the Roman historian, Tacitus was extensively quoted as well as the work of Pliny the Elder.¹ Venerable Bede and Boethius who wrote respectively in the 7th and 6th centuries were also called as references.² Both Tacitus and Pliny the Elder referred to the island of *Thule*, the mythical end of the world, in their work. For some writers *Thule* was the island of Foula in Shetland. The use of quotations from both the *Life of Agricola* and the work of Pliny appeared in the descriptions of Shetland and served the writers in their demonstration. The Reverend James Gordon, Minister of Fetlar and North Yell, gave a very detailed explanation of the reason why Foula was the *Thule* of the Ancients.

[...] according to Tacitus in *Vita Agricola*, because, *despecta est et Thyle, quam bactenus nex et biems habdebat: Mars quo que pigrum et grave remigantibus, perbibent*. The place seen by the Romans could be no other than the island Foula, which probably then was called Thule, though it now has got the name of Foula; for it is a certain fact, that throughout the whole of Shetland, the snow frequently covers the top of the hills; when there is none to be met with on the plains [...].³

The references to *Thule* as the ancient name of Foula also appeared on maps which as iconographical records were also a media transmitting social memory.



Extract from: NLS, A.116.a.19(5). 'The Map of Schetland by Robert Miln'. Edinburgh: Sir R. Sibbald, 1711.

Map 41: Written transmission: Foula as *Thule*

¹ Fea, *Considerations of the Fisheries in the Scotch Islands*, 83; Dishington, 'United Parishes of Mid and South Yell', 575; Gordon, 'United Parishes of North Yell and Fetlar', 279–80; Thomson, 'Parish of Walls and Sandness', 98.

² Gordon, 'United Parishes of North Yell and Fetlar', 279; Brand, 'A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701', 782.

³ Gordon, 'United Parishes of North Yell and Fetlar', 280.

The other references used came from the works of Conradus Celtis, Joseph Scaliger, Samuel Bochart and David Calderwood; some of these authors also wrote about the *Thule* of the Ancients and they were often quoted by writers.¹ These writers, from Roman historians to German humanists such as Conradus Celtis and early modern Scottish historians such as David Calderwood, served as references; they brought legitimacy to the work of John Brand, Thomas Gifford, George Low and the writers of the Statistical Accounts of Scotland.

Another question is: Did these men who wrote on Shetland history in the 18th and early 19th century read each other and copy each other's work? In the work of John Fea, there was a reference to the book edited by Sir Robert Sibbald with a description of Shetland dating from the 17th century.² There was also a reference in the book of Thomas Gifford to the work of the Scottish historian John Spotiswoode.³ George Low referred to the previous work of John Brand.⁴ To support as well as improve and increase the volume of their work, the writers used previous knowledge and quoted previous authors who wrote on Shetland in a very methodological and academic way of reporting data from other persons – for example, “*Vide Brand, p. 90*”.⁵

Even if they used the classics and other works of reference, the writers also indicated when they didn't believe in the previous writers' theories.⁶

Our historians, such as I have consulted, have given but a very brief and lame, and in some things a false account of those places, especially Zetland, which is unknown to the most of the nation, if not that they have only heard there were such isles as the Zetlandick. It is true, there is one Mr. Wallace, a late minister in Orkney, who hath gratified the world by giving a description of the Orkney isles; but neither Zetland nor Caithness doth he meddle with.⁷

In the 18th century, the knowledge on the history of Shetland was evolving; it went along side the evolution of archaeology or antiquarianism which developed more scientific approaches and the advent of men such as William Stukeley, the English antiquarian.⁸

The written history of Shetland was transmitted by members of the social élite of both Shetland and Scotland and its recipients also belonged to upper social categories. This social bias meant that written transmission wasn't the media through which memories were transmitted.

¹ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 782, 795; Fea, *Considerations of the Fisheries in the Scotch Islands*, 82–83.

² Fea, *Considerations of the Fisheries in the Scotch Islands*, 83–84.

³ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 32, 40.

⁴ Low, ‘Voyage to Schetland’, 75, 77.

⁵ *Ibid.*

⁶ *Ibid.*, 77.

⁷ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 733.

⁸ Schnapp, *La Conquête Du Passé*, 212–19.

Oral transmission

For most of the inhabitants what they knew of their history came from oral transmission. The 18th-century writers gave the sources of some of their information: the oral tradition of the Shetland Islands inhabitants. Their descriptions pointed out that social memory was passed on from one generation to the other through oral tradition. The writers referred to their sources the following way: “I have been told”, “I’ve been informed”, “someone told me” and “for some”.¹

The information transmitted orally had a hierarchy in term of quality of information. The members of the élite were often considered as giving the best information on the islands.² Furthermore rural popular culture and its corollary oral tradition was “despised and derided by contemporaries” in the 18th century.³ Bob Bushaway explains that it “was the subject for humour or condemnation by élite culture” such as expressed in the work of George Low who wrote that “Wisdale Parish [was] Remarkable for the superstitious regard anciently paid by the more ignorant inhabitants to its Church”.⁴ For David Vincent, historian,

if the oral tradition largely defined the pre-industrial popular culture, the significance of its decline revolved around the question of superstition. The world of those whose horizons were limited by the oral tradition was suffused with the supernatural.⁵

The upper social categories who wrote the descriptions of Shetland also had a tendency like their European counterparts at the same period to believe more in the “inscription” than in the “tradition”.⁶ The inscriptions on the castles of Scalloway and Muness would always be more trustworthy than any kind of oral tradition. Also rural popular culture was attacked by the landowners who saw it as an obstacle to improvement.⁷ However oral tradition could be called in order to clear up point where the academic knowledge on the question was silent. Thus George Low wrote that “[w]hat these [circles of stones] were tradition is entirely silent” or “tradition says nothing to clear up the point”.⁸

¹ Low, ‘Voyage to Schetland’, 156–57, 167; Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 782; Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 8.

² Low, ‘Voyage to Schetland’, 103, 107.

³ Bob Bushaway, “‘Things Said or Sung a Thousand Times’: Customary Society and Oral Culture in Rural England, 1700-1900”, in *The Spoken Word: Oral Culture in Britain, 1500-1850*, ed. Adam Fox and Daniel Woolf (Manchester: Manchester University Press, 2003), 256.

⁴ Ibid.; Low, ‘Voyage to Schetland’, 79.

⁵ David Vincent, ‘The Decline of the Oral Tradition in Popular Culture’, in *Popular Culture and Custom in Nineteenth-Century England*, ed. Robert D. Storch (London: Croom Helm, 1982), 31.

⁶ “quoi de plus fiable que l’inscription face à la tradition ?”, in Schnapp, *La Conquête Du Passé*, 181.

⁷ Bushaway, “‘Things Said or Sung a Thousand Times’: Customary Society and Oral Culture in Rural England, 1700-1900”, 256; Audrey Beaudouin, ‘The Scandinavian Intangible Heritage of the Shetland Islands in the 18th Century’ (Conférence, The Inaugural St Magnus Conference - Centre for Nordic Studies, Kirkwall, 15/04 2011).

⁸ Low, ‘Voyage to Schetland’, 156–57.

The word was often transmitted by an old person. Adam Fox explained in his work on *Oral and Literate Culture* that the old people were a constant in oral tradition.¹ They were the best and most effective way of transmission and were considered as such by the others: neighbours or collectors of stories. Writers took a certain joy in describing the case of very old age in the Shetland Islands.² The elderly people were inevitable in the conservation of knowledge. It was on the shoulders of the ancient people to remember the scattalds' borders:

[...] the whole Heritors of each parish, with those of the Conterminous parish, or parishes Should meet accompanied by the oldest and most sensible in each of these Parishes and Should retrace the ancient Scattald marches [...] it therefore becomes necessary immediately to take the Oaths of John Nicolson and Thomas Manson in Westerquarff, and Henry Smith In Troubletown there, the first of whom is so aged & infirm that he is not only unable to travel to Lerwick, but may reasonably be supposed to be dead before the said meeting of Heritors Can take place, and the other Two are very old and infirm men & not able to travel at any great distance.³

Active and spatial transmission

The “the oldest and most sensible” persons of the parish of Quarff and Fladdabister appeared to have been three men, “very old and infirm men” who had to testify at court. This was the case for the processes from the end of the 18th century onwards where there were discussions over the division of scattalds. The landmarks and boundaries of scattalds had been transmitted to the middle of the 18th century, when the Franchise Courts were abolished, during the ‘commemoration’ of the *hagrie* with the bailie at the head of the perambulation.⁴ After that Brian Smith states that “Shetlanders continued to memorise their scattald boundaries with great care.”⁵

The medium of transmission used in the case of the *hagrie* is action. Peter Burke explains that

[a]ctions transmit memories as they transmit skills, from master to apprentice for example. Many of them leave no traces for later historians to study but rituals actions in particular are often recorded, including rituals of ‘commemorations’ [...] These rituals are reenactments of the past, acts of memory but they are also attempts to impose interpretations of the past, to shape memory. They are in every sense collective re-presentations.⁶

The transmission of the social memory of the scattalds was performed through active and spatial transmission. Once a year, the inhabitants of a scattald were supposed to gather all together in order to conduct the *hagrie*. The Country Act codified this practice which should

¹ Adam Fox, *Oral and Literate Culture in England, 1500-1700* (Oxford: Oxford University Press, 2002), 275–79.

² Low, ‘Voyage to Schetland’, 81, 107, 129, 161; Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’, 768; Morison, ‘Parish of Delting’, 394.

³ SA, SC12/6/1797/29, ‘Petition (to Fix Boundaries of Scattald of Quarff - the Pursuer’s Tenants Having Been Molested by the Men of Fladabister While Building a Cro.)’.

⁴ Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 44.

⁵ Ibid.

⁶ Burke, ‘From “History as Social Memory”’, 190.

take place between October 1 and April 30,¹ during which season both agricultural and fishing activity were at their lowest intensity. The *hagri* was a typical ceremony of perambulation along the borders of the scattald. It aimed to check that the memory of the landmarks and borders were transmitted and that there were no encroachments on the scattald.² Brian Smith states that the boundaries “were too well known to be written down”,³ fortunately some records have been kept.⁴

Who was there to perform the *hagri*? “Twelve honest men” of the *scattald* were supposed to lead;⁵ there were probably some old men who could remember the landmarks – such as in the records of the Sheriff Court. Children were asked to join during this procession that connected generations through space and history. During the perambulation, these children could be beaten in order to “imprint the marches on their memories”.⁶ Such practices were recorded at the beginning of the 19th century:

At a perambulation of the scattald marches of Unst in the year 1818 or 1819... mister Mowat to make it to be the better remembered that Tonga was the march, gave Fredman Stickle, one of the parties present... a crack over the back with his horse-whip.⁷

Transmitting the social memory of the scattald as a local community which had social, cultural and economical interactions was performed through a yearly action, a ‘commemoration’ of the community through the checking and memorising of its boundaries. This active transmission of social memory was in the case of the scattald a spatial transmission as well. The history of the scattald was not only transmitted by the performance but also by the appropriation of the space by the whole community. Maurice Halbwachs explained how

place and group have each received the imprint of the other. Therefore every phase of the group can be translated into spatial terms, and its residence is but the juncture of all these terms. Each aspect, each detail, of this place has a meaning intelligent only to members of the group, for each portion of its space corresponds to various and different aspects of the structure and life of their society, at least of what is most stable in it.⁸

¹ ‘The Old Country Acts’, 83.

² Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 43.

³ *Ibid.*

⁴ See for example : *Ibid.*, 84–88; NAS, RH2/8/33, ‘Photostat Copy of Bailie Court Book of the North Parish of Unst 1731-1733’; A.W. Johnston, ed., ‘Scattald Marches of Unst, 1771’, *Old-Lore Miscellany of Orkney, Shetland, Caithness and Sutherland* 3 (1910): 100–102, 162–63, 217–19; A.W. Johnston, ed., ‘Scattald Marches of Unst, 1771’, *Old-Lore Miscellany of Orkney, Shetland, Caithness and Sutherland* 4 (1910): 33–36, 91–93, 192–93; Johnston, ‘Scattald Marches of Unst, 1771’, 1910.

⁵ ‘The Old Country Acts’, 83.

⁶ Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 43.

⁷ SA, D16/389/25/1, ‘Copy Interlocutor by Commissioner in Proof in Process of Division of Scattald of Baliasta, Unst, 12 October 1843’ 1843; Quoted in: Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 44; Thompson, ‘Custom, Law and Common Right’, 98; Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 104.

⁸ Maurice Halbwachs, *On Collective Memory*, trans. Lewis A. Coser (Chicago: University of Chicago Press, 1992), 54.

The space of the scattald in itself transmitted the social memory of the community. The stability of its boundaries and landmarks which has been nuanced but was evident reinforced their feeling of belonging for the members of the community. Here we should remember the description that Henry Smith gave of the borders of the scattalds of Quarff and Fladdabister: each landmark was associated with a specific action, an aspect of their communal life territorially registered. A conclusion on this issue is brought by Jeanette M. Neeson who recalls in her paper ‘Common Sense: The Failure and Success of British Commons’ that

we know that commons were more than sources of products and rights they were places too: places of solitude, of familiarity, of ritual, of memory. They embodied all the associations of a life, the lives of the people you knew and the lives of the people living before you.¹

History and identification

Immemorability, abstract time and space

When the inhabitants talked about their history and the memory of the scattalds, the notion of immemorability and of immemorial times was inevitable. They dated intangible structures as follow: “in old time”, “in time of Poperie/Popery”, “immemorable times”, “immemorial times”, “in the days of superstition” and “... past the memory of man”.² At the same time political and military events were known with a very accurate precision by writers. For them, the dating method was the following: “in *anno...*”³

What was frequently presented as “immemorable” or “immemorial” in rural popular culture in the early modern times could be compared with what Maurice Halbwachs described as *le temps abstrait*, i.e. abstract time.⁴ This mathematical time is essentially useful when men think about objects or phenomena without date and which are not changing through time.⁵ This description corresponds to the scattalds but also to the naming practices and to the

¹ Jeanette M. Neeson, ‘Commons Sense: The Failure and Success of British Commons’ (Property and Commons: The new issues of shared access and innovation, Paris, 2013), 3, http://www.mshparisnord.fr/ANR-PROPICE/25-26_avril/neeson_british-commons.pdf.

² Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’; Gifford, *An Historical Description of the Zetland Islands in the Year 1733*; Low, ‘Voyage to Schetland’; John Sinclair, ed., *Statistical Account 1791-1799. Orkney and Shetland*, vol. 19 (Wakefield: EP Publishing, 1978); SA, SC12/6, ‘Lerwick Sheriff Court Records: Ordinary Court Processes 1692-1900’ n.d.

³ Brand, ‘A Brief Description of Orkney, Zetland, Pightland-Firth, and Caithness, 1701’; Gifford, *An Historical Description of the Zetland Islands in the Year 1733*; Low, ‘Voyage to Schetland’; Sinclair, *Statistical Account 1791-1799. Orkney and Shetland*; SA, SC12/6, ‘Lerwick Sheriff Court Records: Ordinary Court Processes 1692-1900’.

⁴ Halbwachs, *La Mémoire Collective*, 95.

⁵ Ibid.

transmission of land and by-laws; and it was “less the time than the spatial frame [...] which mainly intervene[ed]” as a catalyser of social memory.¹

The notion of immemorability had in Shetland a structuring role. The immemorial times could also cover a biblical nature transcending the community. The fact that the origin of the scattalds was not precisely remembered gave a strong argument in favour of their importance and necessity within the communities. Thus in 1793, James Scott of Scalloway used the fact that “the Ancient boundaries of their Scattalds [Wiesdale and Nesting] distinctly known by indisputable & undeniable Marches fixed thereon perhaps some Centuries ago and the same also made known by Old people residing in the Parish of Nesting to their Successors from time to time” as an argument of legitimacy against the enclosure of a common ground.²

Generations

The transmission of social memory was active and spatial. It was also a trans-generational transmission of memory. Old people were called to court to transmit the location of the scattalds landmarks and they were probably the one who passed on their location to younger people. Those young people had to follow the perambulation, listen and receive. They received knowledge, a strike on the head or on the thigh and money. This is what Maurice Halbwachs called the living bond of generations. He wrote that history is not always dead; there is also a history that is alive. This history is somehow transmitted from the grand-parents to the grand-children.³ The transmission of scattalds boundaries from the grand-parents to the grand-children was also a way for the grand-children to realise that the customs such as the scattald privileges were based on an older basis.⁴ Marc Bloch described this bond between generations in an article published in 1925 and titled ‘Mémoires collectives, traditions et coutumes’:

In rural societies [...] it is not unusual that during the day, while parents are busy in the fields or doing a thousand chores at home, young children remain in the custody of the “old”, and it is from them, as much and even more than from their own parents, that they receive the legacy of customs and traditions of every kind.⁵

¹ “moins le temps que le cadre spatial [...] qui intervient surtout”, in *Ibid.*, 93.

² SA, SC12/6/1793/8, ‘Petition (for Enclosing Part of the Undivided Commony of Schurron in Wiesdale.)’.

³ Halbwachs, *La Mémoire Collective*, 52.

⁴ *Ibid.*, 53–54.

⁵ “Dans les sociétés rurales [...] il arrive assez fréquemment que, pendant la journée, alors que père et mère sont occupés aux champs ou aux mille travaux de la maison, les jeunes enfants restent confiés à la garde des “vieux”, et c’est de ceux-ci, autant et même plus que de leurs parents directs, qu’ils reçoivent les legs des coutumes et des traditions de toute sorte.”, in Marc Bloch, “Mémoire collective, traditions et coutumes”, in *Revue de Synthèse Historique*, 118-120, 1925, p. 79 quoted by *Ibid.*, 50.

This close bond between the young and the old members of a community could be strengthened by specific language practices such as the denomination of members of a community. In Shetland, the specific denomination of the inhabitants of a scattald strengthened the bond between the members. In 1772 Thomas Balfour in the rental of Shetland wrote that “the inhabitants of the Towns within the same Scattald are called scatt brethren”.¹ These inhabitants were “inscattalders” while those who didn’t live in the same scattald were called the “utscattalders”.² They were inhabitants of the “Skathald of...”, wrote Gilbert Goudie.³ The transmission of the scattald landmarks was also a way to insist of who belonged to the scattald and who was excluded from it.

Identification

On a local scale, it seems that the scattald was the basis of the Shetlanders’ identity. They called “scatt brethren”, “scatlers”, “inscalders”.⁴ On a wider scale, it is difficult to state on how the Norwegian and Scottish histories interfered in their identification process. Yet it is possible to over-interpret the three following quotations:

22. That bounds have no more persons in their families than effierent [sic] to their estates and land labouring, and that they put one or more of them to another master, that needs servants, conform to the ancient custom of the country.⁵

Bounds: The survival of the ancient Norse term *bondi*, peasant farmer, by which the great body of the population of Norway were designated.⁶

That which seems to favour the Norwegians pretension is, that the names of the islands and places in them are all Danish, and continue so for the most part to this day; and the customs, manners, and language of the old Zetlanders, with their way of living, were the same as in Norway, even down to the time of some old men living; and the greatest part of the vulgar inhabitants, and some of considerable note here, still reckon themselves of Danish extract, and are all Patronymics, whereby they are distinguished from those that have come from the continent of Britain, who all have surnames, and have for many years past been the most considerable, though the least numerous.⁷

The first and second quotations might give the impression that the Norwegian heritage was so interiorised that the Shetland rural inhabitants still called themselves *bondi*. However this word is a *hapax legomenon*. To my knowledge, for the whole 18th century, it appears only in this document (and in its copies). We can’t give it more value than acknowledging that the Country Acts were probably inspired by a previous Norwegian Lawbook. The second

¹ NAS, RH4/102, ‘Rental of Lordship of Shetland’, fol. 3; Also in: Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 42.

² ‘The Old Country Acts’, 84; Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 104.

³ Goudie, ‘Skathald’; Quoted in: Smith, *Toons and Tenants. Settlement and Society in Shetland 1299-1899*, 44.

⁴ Smith, ‘What Is a Scattald? Rural Communities in Shetland, 1400-1900’, 104.

⁵ ‘The Old Country Acts’, 83.

⁶ Gilbert Goudie, ‘The Old Country Acts, of Abridgements Thereof [The Fouds, Lawrightmen, and Ranselmen of Shetland Parishes]’, *Proceedings of the Society of Antiquaries of Scotland*, 14 March 1892, 200.

⁷ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 21.

quotation is even more difficult to deal with. Patronymic system and linear possession of land, two features of the intangible heritage of Shetland, seemed in the writing of Thomas Gifford to almost provide a ‘national’ identity to the Shetlanders. However, before the 19th century and the creation of the Nation-States, the notion of ‘nationalism’ is irrelevant.¹ Everybody, from a villager to a burgher, described his-self or her-self in comparison with someone from another community. Thus the Shetlanders were described as different from the inhabitants of the Scottish mainland, but they also described themselves as different from one parish to another, and from one scattald to another.

Both these quotations and especially the third one have been subjected to over-interpretation.² This over-interpretation is due to at least two things: 1) 19th and 20th-century nationalism and romanticism; 2) over-estimation of what has been called the Scottification of Shetland. The romanticism as well as nationalism of the 19th century contributed to emphasis the Norse heritage in Shetland; it could even be seen in the novel, *The Pirate*, of the Scottish writer Sir Walter Scott published in 1821.³ Nationalism and romanticism led to the production of various works which highlighted the Norse heritage of Shetland.⁴ This was concomitant and actually linked with the over-estimation of Scottification. Scottification “as an implicit principle leading to the two archipelagos’ [Orkney and Shetland] transfer to the Scottish king in 1468 and 1469, and the prevailing of Scottish culture” is a one-way political and cultural transfer.⁵ In the case of Shetland, this idea came from a single quotation of Thomas Gifford who wrote that

after Zetland became subject to the crown of Scotland, many Scottish people came over to it, some in a civil, others in an ecclesiastic capacity, and settled here, who in process of time acquired most of the arable land from the antient inhabitants, who became their tenants.⁶

Brian Smith has stated that Thomas Gifford “has definitely been a bad influence, as historians have repeated his analysis virtually word for word”.⁷ In William P. L. Thomson’s opinion for

¹ Eric Hobsbawm, *Nations et Nationalisme Depuis 1780: Programme, Mythe, Réalité* (Paris: Folio, 2001).

² Brian Smith, “‘Lairds’ and ‘Improvement’ in 17th and 18th Century Shetland”, in *Lairds and Improvement in the Scotland of the Enlightenment*, ed. T. M. Devine (Dundee, Glasgow: Scottish Historical Association, 1979), 11.

³ Walter Scott, *The Pirate* (Edinburgh: Archibald Constable and Co., 1822).

⁴ See for example: Gilbert Goudie, ‘The Fouds, Lawrightmen, and Ranselmen of Shetland’, in *The Celtic and Scandinavian Antiquities of Shetland*, by Gilbert Goudie (Edinburgh: Blackwood, 1904), 229–46; Gordon Donaldson, ‘The Scots Settlement in Shetland’, in *Shetland and the Outside World 1469-1969*, ed. Donald Withrington, Aberdeen University Studies 1 (Oxford: Oxford University Press for University of Aberdeen, 1983), 8–19.

⁵ Randi Bjørshol Wærdahl, ‘The Norwegian Realm and the Norse World: A Historiographic Approach’, in *The Norwegian Domination and the Norse World, C.1100-c.1400*, ed. Steinar Imsen (Trondheim: Tapir Academic Press, 2010), 48.

⁶ Gifford, *An Historical Description of the Zetland Islands in the Year 1733*, 31.

⁷ Brian Smith, ‘Introduction’, in *An Historical Description of the Zetland Islands in the Year 1733. With an Appendix of Illustrative Documents*, ed. Brian Smith (Sandwick: Thule Print Ltd, 1976), iii.

Orkney and in my opinion for Shetland, there was no such thing as a one-way cultural transfer. If Scottification happened then ‘Orknification’ and ‘Shetlandification’ also took place.¹ If we were to take only two examples of ‘Shetlandification’ we could cite those Scottish men who in the 17th century changed their names to fit with Shetland patronymic system or the Franchise Courts which were ‘shetlandified’ to fit with Shetland landholding pattern.²

¹ ‘Orknification’ was coined in William P. L. Thomson, *The New History of Orkney* (Edinburgh: Birlinn, 2008), 191.

² Donaldson, ‘The Scots Settlement in Shetland’, 14; Thomson, *The New History of Orkney*, 191; William P.L. Thomson, ‘Bailie Courts’, in *Orkney Land and People* (Kirkwall: Orcadian Ltd, 2008), 161.

Conclusion

Shetland's communities were built in the intersection of localness, movement and evolution. Movement: because on a daily basis, parishioners and scattalders used the footpaths, formal and informal tracks which meandered in their landscape. The state of the road in Shetland was poor, but this situation seems to have been mostly an issue for the ministers and the commentators of the 18th and 19th century. Shetlanders had developed strategies to counter this difficulty. First, they knew their landscape. They had the occasion to learn all its details and therefore to select the best itinerary to go from one place to the other – these itineraries could also be transmitted between individuals. Then, they adopted shelties as efficient means of transport. Their hardiness meant that, even if harsh winters could kill horses, they were most of the time safe, pasturing on the scattald and allowing the tenants to have a means of transport, pack-saddle and draught without having to feed them or keep them stabled. Eventually, tenants moved with an intermodal transport system. Their roads didn't stop to the edge of the sea. Ferries, regular or not, gave them the opportunity to travel to Lerwick, to other islands, to places that were hardly reachable by foot. The study of movement shows that a real 'continuum' between men, land and sea existed in Shetland. This 'continuum' is also illustrated by the use of fishing mark as landmark or vice versa. The landmarks on the boundaries of Shetland scattalds, such as Housavord (the Ward of Norwick) in Unst, could serve from both land and sea.

The parish, scattald and township communities were based on localness but also on network. Men and women travelled throughout Shetland. Fishermen from different parishes met at the summer fishing and shared fishermen's lodges and women from all around Shetland traded hosiery at Lerwick. In doing these activities, Shetland men and women built other relationships; they entered in new communities, the network communities of fishermen and knitters. The local territory wasn't the only territory that they knew but it was their main territory of identification. They went beyond the borders of their scattald but it remained the functioning cell which provided food, family and friends or social interaction, work and perpetuation. They were born, grew up, married and died. But they weren't submitted to the circle of life: during all their life they transmitted their knowledge of the communities' boundaries, both physical and symbolic, to the following generations. Epeli Hau'Ofa in *Our Sea of Islands* states that

Those who maintain that the people of Oceania live from day to day, not really caring for the long-term benefits, are unaware of the elementary truth known by most native Islanders: that they plan for generations, for the continuity and improvement of their families and kin groups.¹

Remembering the scattald landmarks wasn't something that Shetlanders did only for themselves or for their counterparts at a given time; they did it for the future, for the generations to come. With these landmarks, scattalders could physically experience the separation between 'us and them'. The landscape bore the marks of this separation. Scattalders shared a common identity and had a self-understanding of who they were; they were brothers of the same scattald. They transmitted the memories of this 'family', not only the memory of the scattald's boundaries but also the memory of those of the past. When Henri Smith described the marches between Quarff and Fladabister he referred to his father, his grand-father, but also to Billy of Quarff who had built a sty on the scattald and to John Erasmuson who used to possess the *pund* built by Nicole Smith – a *pund* which bore the name of its builder. Scattalders such as Henri Smith also transmitted the memory of practices: *floss*, peat, berries, heath, etc. were harvested on the scattald; land was allocated in certain ways in the townland. There were however some evolutions: scattald communities weren't motionless. Landmarks could evolve and the fragmentation of runrig show that tenants could adapt locally to new circumstances.

¹ Epeli Hau'ofa, 'Our Sea of Islands', in *We Are the Ocean: Selected Works* (Honolulu: University of Hawaii Press, 2008), 38.

Conclusion

In order to study the communities of Shetland, I needed to take some precautions. I had to determine if the fact that Shetland is an archipelago mattered. The work of Island studies scholars was, in that respect, extremely helpful. They developed the idea that islands in different geographical settings are connected to the rest of world. This notion is in opposition with the idea that islands work as quasi-laboratory settings – some islands, though can be laboratory, the case of the archipelago of Spielberg nowadays is interesting. What Island studies scholars also brought to this study is the idea that the insular space must be studied as a whole: the land, the shore and the sea all belong to the environment of the people who live on an island. The shore particularly is a place of connections between the sea and the land, and Shetland inhabitants in the 18th century made use of the possibilities that it brought. However, if taken into its historical context, the notion of *islandness* is not necessarily operative. The feeling of *islandness* possibly felt by insular people changes though time. It isn't something shared equally all along the history of an island society. In that respect it is possible that Shetlanders nowadays have a stronger feeling of *islandness* than their counterparts in the 18th century who lived in a world where the difficulties of transport didn't only affect islands but also inland areas and whose identification process wasn't based on their belonging to a geographic entity. The work undertaken by several rural historians was also helpful in understanding how communities in Shetland functioned. Some of them are local historians who not only ask specific questions related to their study field but also observe more general movements, observable from the local scale. Community studies scholars, historians, sociologists or ethnologists, helped me to understand that a study of communities must rely on the observations of different criteria and one of them is the observation of common practices. Localness is often an element at the base of the community but starting from a territorial division risks reinforcing the inscription of a community within a given territory, forgetting that individuals can belong to several communities at the same time.

The first step I took was to observe how Shetland rural society was regulated and controlled. From this study, the parish communities emerged. Although the local by-laws, the Country Acts, mainly regulated tasks undertaken within the territory of the scattald or the township, these regulations were carried out within the framework of the parish and they were supported by the coercive power of the Kirk of Scotland, which offered a very effective and organised framework in the early modern period. It should be reminded that the first act of the Country

Acts stated “That the bailie in each parish concur and assist in the discipline of the Kirk and execution thereof.”¹ These by-laws were re-enunciated several times in the 18th century by Shetland local government. The landholding and merchant class of Shetland took control of these regulations. The regulation of practices, coming either from the bailie courts or from the Sheriff Court, was top down. It is true that the bailie courts offered a more local and easier possibility for the resolution of conflicts between tenants but the landowners had the power; they were the judges. The only local men who were associated with the functioning of justice in the baileries and parishes were the Rancelmen and the Elders. These men working respectively for the civil court and ecclesiastical court knew the local practices, the local territory and the men who lived there. But to be trusted to enquire into the lives of the inhabitants, they needed to be perfect example of honesty. They belonged themselves to a network community that of the ‘police officers’ of Shetland, often present at both courts, ecclesiastical or civil, and interacting with each other almost on a daily basis. They also belonged to a wider community: the parish community. The experience of the territory, not least because of the weekly ride or walk to church, the organisation of civil justice within the framework of the ecclesiastical territory, the control by Elders, lay representatives of the minister, and lastly the sociabilisation which took place in the moments when the courts summoned the inhabitants, all contributed to create a community. The modalities can be summed up in this way: a territory travelled, a regular sociabilisation, representative of the institutions belonging to the community and appointed on its territory, and a similar justice for all within the borders of this space. Parishioners had a self-understanding of who they were; they had to be honest and respect the principles of both the civil and ecclesiastical courts. Those who didn’t respect these principles were excluded from the community – it was the case of the thieves of sheep or wool who were banished from their parish.

The importance of the parish community in the life of the Shetlanders might be a bias from the sources and the object of studies. The Kirk collaborated with the bailie courts and the Sheriff Court and was at the heart of the Scottish system of social control. So in a way, we could say that studying local justice in early modern Scotland should, in theory, bring the parochial community to light. It is true, there is a certain bias from the sources and the studied objects but the individuals studied, the tenants and udallers themselves, used the parish as a space of identification. A good reputation was acquired or lost within the parish boundaries – this was also probably connected to the fact that the Kirk was the moral compass of its flock

¹ ‘The Old Country Acts’, 81 act 1.

but not only. Shetlanders moved within their parish; they had interactions with each other; they exchanged goods; therefore it seems understandable that a good reputation should not only be kept at a scattald level but also at a parish level.

The study of the tasks, the movements and the collective memory of tenants and udallers of Shetland brought to light another community: the scattald community. This study started from the realisation that Shetland tenants were represented as idle and underemployed. An analysis of the sources showed that far away from being idle, the tenants accomplished a variety of tasks, either in a day, a week, a season or a year. They were not only the fishermen-farmers described in studies on coastal or rural areas they were multi-tasking and independent. It is necessary to go beyond the picture of the fishermen-farmers and to include multi-tasking women, such as the knitters-farmers of Shetland as well as to take into consideration, for their substantial contribution to the household economy, the irregular tasks and employment that inhabitants carried out and which were at the heart of their independence. The idea of independence doesn't ignore the tenorial status of tenants in 18th century Shetland. They were unfree; they were bound to give their fish to their landlord. But they were independent for several reasons. They could organise their arable land as they wished; they transformed the pattern of run-rig throughout the 18th century. They benefited of various means of subsistence from the scattalds – fuel, materials, food and drinks came from there. The scattalds also brought possibilities of employment; women were employed at collecting the seaweed, men could be employed at quarrying. These tasks were based on what the scattalds could give: what the arable land, the meadows, the hills, the shores and the sea provided. Tenants and udallers were masters of their own time – they organised their day as they wished, minus daily obligations such as milking a cow or seasonal obligations such as the requirement to fish for their landlord in summer.

These activities, although some of them were regulated and controlled by the local government, were often despised by the observers and commentators of Shetland life because they didn't correspond to their ideas of economic rationality. Some of these men by setting up the fishing tenures succeeded, at least during the summer season, to make the male tenants work within a restrictive framework comparable to the rhythm of a factory. The working time of the men was controlled by the merchant-lairds; at the beginning of the 19th century a bell rang “for the cessation and resumption of labour” at the fishing station of Hillswick.¹ But all these tasks accomplished by the tenants did exist. In all their tasks within the scattald, men,

¹ Hibbert, *A Description of the Shetland Islands*, 519.

women and children met, interacted and established bonds of solidarity and affection. These bonds were reinforced by the idea that the sharing of resources was at the heart of the social life in Shetland. When he wrote on the social meaning of run-rig in Shetland, William P. L. Thomson explained that “[s]haring all the resources available to the community according to an individual’s entitlement was a very ancient principle, firmly embedded in the Shetland consciousness, and as old as the concept of scattald.”¹ Fairness, interactions, the knowledge of a marked-out territory and the transmission of a collective memory established the boundaries of the community. The scattalders were fair with each other within the boundaries of the scattald. However those who didn’t belong to this territory and who didn’t share the same resources weren’t treated the same way. They were *utscattalders*. They were ‘them’ not ‘us’. This is one of the reasons why we shouldn’t have an idyllic vision of the local communities. They excluded those who were ‘repute as thieves’ as well as those who didn’t have access to the scattald. The payment of the *hogaleave* helped to overcome this exclusion but it didn’t give a status of scattalder. There were strict boundaries between scattalds, preventing encroachments from the inhabitants of a neighbouring scattald but preventing also resource sharing between communities. This didn’t mean that it wasn’t done on an informal basis but theoretically it wasn’t allowed. Neighbouring scattalders could be in need – of food, of materials, etc. – they still wouldn’t have the right to come on the neighbouring scattald. The scattalders interacted with each other on a daily basis, for what could be considered as ‘informal interactions’ or during more formal or solemn moments such as the harvest or the casting of peat. During these moments, as well as on a daily basis, they moved on a territory which became theirs. They experienced a common territory, delimited and marked-out, which further completed their feeling of belonging. The collective memory and common identification shared by the scattalders strengthened these communities. Scattalders transmitted knowledge of the past and of the present to the young generations. They taught them the scattalds boundaries, either through the yearly perambulation of the scattald marches or through more informal medium such as the explanation of a father to his son, illustrated by the case of Henri Smith of Troubletown who learned where to go and to not go with the sheep on the hill by his father. Eventually, the inhabitants of a same scattald were identified as such; they were scattalders, inhabitants of the ‘Scattald of...’, and also ‘scat brethren’. The transmission of the notion of fairness, of the knowledge of practices and spaces was imprinted on the collective memory of the community and was part of their common identification.

¹ Thomson, ‘Township, “House” and Tenant-Holding; The Structure of Run-Rig Agriculture in Shetland’, 124.

In this thesis, I have shown that the notion of a “continuum formed by islanders, land and sea”¹ was appropriate for the Shetland Islands in the 18th century. Indeed customary practices, local by-laws, bailie courts, Sheriff Court, Admiralty Court and kirk sessions all dealt with matters of men, land, shore and sea. Customary practices applied for example on land with the allocation of run-rig strips as well as on the foreshore with the specific division of wrecked goods and beached whales. The local by-laws protected the resources on land, regulated the ‘good neighbourhood’ but also ruled on seaweed, haddock fishing, baits and the use of boats on Sabbath day. The Sheriff Court and Admiralty Court dealt with cases of wrecks. These cases involved both land and sea: wrecked goods were often ‘fished’ by inhabitants, and then transported on land and eventually, disseminated in the parish – sold, exchanged, transformed... Eventually, the kirk sessions rebuked plunderers of wrecks.

Tenants and udallers were employed in a variety of tasks and work which belonged to this continuum. Men fished, winter fishing or summer fishing; they lived in fishermen’s lodges established as close as possible to the fishing ground; men and women gathered seaweed either to make kelp or as manure for the arable land; women, children and men collected shellfish either as bait or as subsistence food. Both men and women experienced this continuum.

Movement was also a way to experience this continuum as transport was intermodal in Shetland in the 18th century. A man or a woman could walk, ride a sheltie and then take a boat. A difference between the means of transport was maybe felt by the inhabitants since death at sea was quite common but their experience of the sea and their knowledge of the sea routes might have rendered the necessity of transport more important than their fear of dying. The knowledge of the sea routes to the fishing grounds or to land were transmitted orally but they were also marks in the landscape that helped to locate a fishing ground or a sea route. These marks, the *mids* or *meeths*, were located on land. Some of them also served as landmark, march stones for the scattald boundaries.

In this thesis, I have also tried to illuminate general structures or processes which affected not only Shetland in the early modern period but also the rest of Scotland and in some cases, North West Europe as well. Indeed, the process of standardisation of justice has been explored. The abolition of the Franchise Courts in the middle of the 18th century left room for a standardised Scottish court: the Sheriff Court. This court, although standardised in its functioning and its personnel, was also ‘shetlandified’. The Country Acts of Shetland were

¹ Helen Dawson, ‘Archaeology, Aquapelagos and Islands Studies’, *Shima: The International Journal of Research into Island Cultures* 6, no. 1 (2012): 17.

used by the Court and they served in its judgements. With the standardisation of justice at the kingdom-scale, state careers could be started or be enriched with a position in Shetland. Shetland belonged to a national employment pool for state and church representative.

The questions of enclosures, ‘improvement’ and economic specialisation have also been touched upon, only touched upon because the divisions of scattalds, economic specialisation and enclosures happened in the 19th century in Shetland. This knowledge is in itself very valuable as it shows that even though the discourses and mentalities of Shetland élite and commentators were pro-improvement, pro-enclosures and pro-economic specialisation, nothing happened until the 19th century. The Shetland merchant-lairds were satisfied with the economic stability that the fishing-tenures brought them and therefore they neglected the arable part of their estate, living the scattald unenclosed. The commons of Shetland were protected by a *status quo* between the merchant-lairds, the government officials and the tenants. There was no specific ‘improvement’ before the beginning of the 19th century.

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This research on the communities of Shetland in their living environment in the 18th century and early 19th century proves that in order to understand local communities their complexity must be taken into consideration. Someone belongs to a community not only because he or she lives in a given place but also because he or she shares common interests, a common rhythm, collective practices, resources, and eventually receive and transmit the social memory of the community.

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SA, SA6/18. 'Manuscript Plan of the Room and Lands of Funzie, Island of Fetlar', 1829.

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SA, SC12/6/1741/1. 'Replies by William Mouat Contra William Hay Concerning Mill and Lands of Norwick, Unst.', 1741.

SA, SC12/6/1754/4. 'Petition (Craving That the Lands of the Estate of Voegarh Be Set in Tack.) C. December 1754', 1754.

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- SA, SC12/6/1759/3. 'Extract Proceedings Concerning the Petronella of Enchuysen and the Hope of Schiedam, Stranded at Sandwick. (Admiralty)', 1759.
- SA, SC12/6/1769/1. 'Criminal Libel (for Killing Petitioner's Animals, Breaking into the Manse and Slandering Petitioner, Writing to Petitioner a Note Threatening to Secure His Dismissal from the Office of Minister, and Stirring up the People against the Petitioner.) (Criminal)', 1769.
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- SA, SC12/6/1773/5. 'Petition (Claiming That Defender Has Laboured Pursuer's Ground Which He Rents from Mr John Mackvicker in Sandsound.)', 1773.
- SA, SC12/6/1773/6. 'Petition for Division of Raga', 1773.
- SA, SC12/6/1774/7. 'Complaint (Compensation for Potatoes Destroyed by Swine.)', 1774.
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Abstract:

In a rental of the arable land of Shetland, written in the early 1770s, the following expression appeared: “The inhabitants of the Towns within the same Scattald are called scatt brethren.” These few words triggered a series of questions. What is a scattald? What is the scatt? Who are these ‘scatt brothers’? Research at the National Records of Scotland and at the Shetland Archives as well as the reading of academic literature on the questions of communities, commons, custom, local judicial systems and rural life in the early modern period led to the writing of a thesis on communities in the 18th century. These communities lived in a peculiar geographical context: the Shetland Islands. Without underestimating the role of the local environment in the life of the Shetlanders, this thesis shows that the surroundings of the Shetlanders were more a place of possibilities than a place of restrictions; it brought constraints, but any other surroundings in early modern Europe had its limitations. The life on the islands of Shetland was as anywhere else on mainland Scotland at the same period a life based on local resources and which saw the development of a market economy with its advantages and disadvantages for the inhabitants. In Shetland the market economy took the form of the fishing tenures with their specific share-cropping contracts.

In order to understand these communities the thesis starts with how they were regulated. The regulations, the courts and their personnel all had a role to play in the social control of the members of the communities. This thesis also explores the activities of the communities’ members in their environment. Shetland as well as several regions in Northwest Europe at the same time was a place of *pluriactivité*, multi-tasking. Through multi-tasking and access to the commons, the scattald communities of Shetland kept a certain level of independence even in time of debt-bondage. This paradoxical relationship was rendered possible by an almost unlimited access to the commons throughout the 18th century, a time during which the movement on the commons were possible and the transmission of the memory of their boundaries stayed alive. Changes, however, happened on the islands during these times. The fishing tenures were only one element of these changes: women started to outnumber men, the size of the arable land cultivated by one household diminished, the protected commons were slowly nibbled, and a regional court offered more possibilities for justice to the higher ranks than to the tenants... Eventually, this thesis argues that local communities in 18th-century Shetland offered protection to women and men who through them had an organised support system.

Keywords: Shetland – Great-Britain – 18th century – communities – commons

Résumé :

Dans un rentier des terres arables des îles Shetland, écrit au début des années 1770, l’expression suivante apparut : « Les habitants des villages d’un même scattald sont appelés frères de scatt ». Ces quelques mots déclenchèrent une série de questions : qu’est-ce qu’un *scattald* ? Qu’est-ce que le scatt ? Qui sont ces frères de *scatt* ? Des recherches aux Archives Nationales d’Écosse et aux archives des îles Shetland ainsi que la lecture de travaux universitaires sur les questions des communautés, des communs, des coutumes, des systèmes de justice locale et sur la vie rurale à l’époque moderne conduisirent à l’écriture de cette thèse sur les communautés des îles Shetland au XVIII^e siècle. Ces communautés vivaient dans un contexte géographique particulier. Sans sous estimer le rôle de l’environnement local dans la vie des Shetlandais, cette thèse montre que celui-ci était plus un espace de possibilités que de restrictions ; il apportait des contraintes, mais tout autre environnement dans l’Europe moderne avait aussi ses limites. La vie dans les îles Shetland était, comme n’importe où en Écosse à la même époque, fondée sur les ressources locales et le développement de l’économie de marché apporta ses avantages et ses inconvénients aux habitants. Dans les îles Shetland, l’économie de marché entraîna le développement des tenures à poissons avec leurs contrats particuliers de métayage.

Pour comprendre ces communautés, la thèse s’ouvre sur la manière dont elles étaient régulées. Les lois, les cours et le personnel judiciaire avaient tous un rôle à jouer dans le contrôle social des membres des communautés. Cette thèse explore aussi les activités des membres des communautés dans leur environnement. Les îles Shetland comme de nombreuses régions du nord-ouest de l’Europe à la même époque, étaient un espace de pluriactivité. À travers la pluriactivité et l’accès aux communs, les communautés shetlandaises des *scattalds* gardèrent un certain niveau d’indépendance même à une époque où existait la servitude pour dettes. Cette relation particulière fut rendue possible par un accès presque illimité aux communs pendant tout le XVIII^e siècle, époque pendant laquelle les déplacements sur les communs étaient possibles et où la transmission de la mémoire de ses frontières restait vivante. Des changements eurent cependant lieu sur les îles Shetland à cette époque. Les tenures à poissons ne furent qu’un élément de ces changements : les femmes commencèrent à être plus nombreuses que les hommes, la taille des terres arables cultivées par foyer diminua, les communs protégés furent lentement grignotés, et la cour de justice régionale offrit plus de possibilités de justice aux plus hauts rangs qu’aux tenanciers... Finalement, cette thèse soutient qu’au XVIII^e siècle, les communautés locales shetlandaises offraient une protection aux femmes et aux hommes qui à travers elles avaient un système de soutien organisé.

Mots-clés : Shetland – Grande-Bretagne – XVIII^e siècle – communautés – communs