

4 'Believing Na Evill Nor Injury': Space, Place, And Crime In Sixteenth-Century Scottish Burghs

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NOTICE: This is the peer reviewed version of the following article: Falconer, J. R. D. (2025). "4 'Believing na evill nor injury': Space, place, and crime in sixteenth-century Scottish Burghs". In A. Kennedy, A. McGregor, A. Kilday, A. Cudney, E. Ewan, G. Watson, J. McDougall, J.R.D. Falconer, S. Cipriano, S. Carballo, S. Eaton, & S. Dye (Eds.), *Deviance and Marginality in Early Modern Scotland*. Boydell and Brewer: Boydell and Brewer (pp. 61-76), which has been published in final form at <https://doi.org/10.1515/9781805435112-008>.

Permanent link to this version <https://hdl.handle.net/20.500.14078/4305>

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Chapter 4: ‘Believing na evill nor injury’: Space, Place, and Crime in Sixteenth-Century Scottish Burghs

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On 1 August 1582, around ‘five hours efter noone’, Margaret Cryst, Jonet Porteous, and Elizabeth Crawford violently assaulted Margaret Leggat in ‘hir own dwelling hous’ in Canongate.¹ After entering Leggat’s home, the trio ‘cast her downe upoun the floore’, punched and kicked her ‘in the wambe’, grabbed her by the arms, pulled off her curche (cap), and proceeded to strike her repeatedly with a set of iron tongs. Afterward, the group departed the house, taking with them the iron tongs and a piece of linen broadcloth. At first glance, the account suggests that this was a simple case of theft with violence. However, the entire encounter needs to be set within a broader, ongoing dispute. The court records go on to state that after leaving the house, Cryst ‘came at the samyn tyme upoun’ Alison Leggat and her husband, Robert Bond. She began to verbally assault the couple, calling Alison a ‘comon theif, biche huir, and the said Robert a comoun theif’. Cryst added that ‘the said Alesoun wold do with the said robert as she did with hir first guid man and that all the bairnis quhilkis she buir was neuer ane of thame his bot uther mens’. But this was not the end of Cryst’s attack on the Leggat family. Later that evening, Cryst went to ‘the duelling house of Duncan Garlaw’ where Alison and Robert were at their supper ‘in maist quiet manner’. In front of Garlaw, Cryst repeated the ‘former iniurious wordis’.

¹ The following two paragraphs are based on cases found in ECA, Canongate Burgh Court Books, 1569-1666, GB236/SL150/1/4, pp. 289-90.

None of the accounts explicitly identify what motivated Cryst to commit these acts. Yet, through each of her distinct actions, Cryst sought to disturb the Leggat/Bond household and violate the safe confines of the family's lived space. Importantly, the records make clear that Margaret and Alison Leggat were not entirely scatheless in the matter. According to the next account in the court records, Margaret Leggat had gone to Cryst's house a few hours before the events already discussed. Leggat confronted Cryst in the adjoining 'clois' and 'cruelly' assaulted her 'on divers partis of hir bodie'. The indictment continues with allegations that Alison Leggat had also gone to the same close, and there struck Cryst on the head with a baton and, 'intending to have slane the said Margaret', punched and kicked her 'upon her wambe'. In her testimony, Cryst emphasised that she had been in a 'most peaceable and quiet manner doing her lawsome business within her clois lande believing na evill truble nor skayth of na manner' when both assaults took place. For their actions, the court convicted Margaret Cryst and Margaret Leggat and ordered them to make amends; the court found Alison innocent of all charges, and chose not to prosecute Porteous or Crawford, indicating that their involvement came at Cryst's 'spetial causing and comanding'.

Like most cases of interpersonal violence brought before Scottish burgh courts in the latter half of the sixteenth century, Margaret Cryst's case sheds light on how burgh residents managed ongoing disputes. It also highlights how the location and time of day at which petty criminal offences occurred could transform how individuals experienced urban places. Throughout this period, Scots frequently resorted to committing a variety of petty offences to right perceived wrongs, to restore order after conflict disrupted the peace, and to achieve justice that they believed the courts had failed to provide.² Their actions were rooted in the belief that unresolved conflicts,

² See for example J. R. D. Falconer, *Crime and Community in Reformation Scotland: Negotiating Power in a Burgh Society* (London, 2012); E. Ewan, 'Scottish Portias: Women in the Courts in Mediaeval Scottish Towns', *Journal of the Canadian Historical Association*, 3:1 (1992), 27-43.

like most social ills, posed a significant threat to more than just the immediate victims; like a disease, they threatened the social body.³ When left untreated, they could become a dangerous contagion that weakened the community's social bonds. While offenders employed minor offences to resolve disputes, from a magistrate's perspective, their criminal actions, whether petty or 'serious', posed an equal, if not greater, threat to the social body. Thus, when Thomas Straquhen assaulted John Hay on a Dundee street in 1558, the court clerk noted that such actions were 'in gret contempt of the acts and statuts of this burgh and ane evill example to utheris'.⁴

Fear of the threat that any unresolved conflict posed explains, at least in part, how making amends became deeply 'embedded in the fabric of Scottish justice'.⁵ Order was achieved through a negotiation of social power between individuals or individual households, each seeking to balance out the challenges they faced daily.⁶ This essay argues that across the spectrum of early modern burgh society, petty offences were a form of social exchange with the power to shape social relations and influence how individuals experienced urban places. Central to this form of social exchange was the fact that most offenders wanted an audience for their crime or at the very least were unconcerned about whether their actions remained concealed or hidden from view. Thus, as part of the process of re-setting social relations, most petty offences committed in Scottish burghs during this period took place out in the open or during a time of day when others were close by to witness or hear the exchange. **In exploring these dynamics, the chapter will also complicate**

³ In 1593, Aberdeen's town council concluded that a large number of the burgh population were, 'by reason of some unlawful cause and odious crimes [...] very contagious enemies to the common weill of this burgh'. ACA, Council, Baillie and Guild Court Registers (CA) 1/1/30/16-17.

⁴ DCA, Burgh and Head Court Book, 1558-1561, 29/07/1558.

⁵ J. Wormald, 'Bloodfeud, Kindred and Government in Early Modern Scotland', *Past & Present*, 87 (1980), 54-97, at p. 54; Falconer, *Crime and Community*.

⁶ J. R. D. Falconer, 'Mony utheris divars odious crymes': Women, Petty Crime and Power in Later Sixteenth Century Aberdeen', *Crimes & Misdemeanours*, 4:1 (2010), 7-36; Falconer, *Crime and Community*.

the link between ‘deviance’ and marginality’ established in the rest of this volume by demonstrating that transgressive behaviour was not necessarily an expression or consequence of social isolation. Deviance, instead, could be firmly rooted within the social mainstream.

[A] Using Urban Space

To some extent, the built environment of early modern Scottish burghs helped to facilitate this form of social exchange.⁷ Burgage plots were often separated by ditches, walls, or fences, marking some separate living space between neighbours. However, such barriers tended to be poorly constructed and offered only a thin veil of privacy.⁸ Court records reveal that having relatively easy access to most places within a burgh made the negotiation of what constituted acceptable social exchange a crucial aspect of urban life. They also guide us to the fact that the built places and social boundaries found in Scottish urban centres were much more than a simple backdrop to daily life.⁹ Importantly, these sources highlight the fact that urban life was about place – the built environment or landscape, local social systems, and the framework of social relations.¹⁰ It was

⁷ For an excellent introduction to Scottish towns, see E. P. Dennison, *The Evolution of Scotland's Towns: Creation, Growth and Fragmentation* (Edinburgh, 2018).

⁸ Inquiries into early modern concepts of ‘private’ and ‘public’ suggest that the contemporary meanings of these words were varied and ‘unstable’ to the point of being entirely elusive. What can be discerned from contemporary perspectives on private and public space is a contrast between the former as ‘secretive and hidden’ and the latter as ‘shared and visible’. See for example L. Gowing, ‘The Freedom of the Streets’: Women and Social Space, 1560-1640’, in P. Griffiths & M. Jenner (eds), *Londinopolis: A Social and Cultural History of Early Modern London, 1500-1750* (Manchester, 2000), pp. 130-151; E. Longfellow, ‘Public, Private, and the Household in Early Seventeenth-century England’, *Journal of British Studies*, 45:2 (2006), 313-34; J. Nugent, ‘None Must Meddle Betueene Man and Wife’: Assessing Family and the Fluidity of Public and Private in Early Modern Scotland’, *Journal of Family History*, 35:3 (2010), 219-31.

⁹ A. White, ‘The Impact of the Reformation on a Burgh Community: The Case of Aberdeen’, in M. Lynch (ed.) *The Early Modern Town in Scotland* (London, 1987), pp. 81-101; E. P. Dennison, A. Simpson & G. Simpson, ‘The Growth of Two Towns’, in E.P. Dennison, D. Ditchburn and M. Lynch (eds), *Aberdeen Before 1800* (East Linton, 2000), pp. 13-43; L. Stewart, *Urban Politics & The British Civil Wars* (Leiden, 2005); E. P. Dennison and M. Lynch, ‘Crown, Capital, and Metropolis Edinburgh and Canongate: The Rise of a Capital and an Urban Court’, *Journal of Urban History*, 32:1 (2005), 22-43.

¹⁰ P. Withington, *The Politics of Commonwealth: Citizens and Freemen in Early Modern England* (Cambridge, 2005), p. 88.

also about space, or a ‘practiced place’, where the actions of urban social actors transformed the built environment through their everyday use.¹¹ As some have suggested, ‘space was the medium through which society was produced’.¹²

Burgh court records make clear that inhabitants had a keen awareness of their burgh’s built environment and of the expected use of public or private urban spaces. Individuals navigated burgh streets, markets, taverns, closes, and shops; they met with their neighbours, discussed trade, conducted business, and witnessed and participated in a variety of social exchanges – all within a context framed by written regulations and customary rules. While intended to help maintain order and stability, such regulations were rooted in gendered notions of the appropriate behaviour that defined the proper ‘use’ of shared and individual spaces.¹³ Crucially, these social practices produced ‘space’ and contributed to how individuals experienced urban life. Moreover, an internalised sense of these rules influenced the specific actions of perpetrators of interpersonal violence, theft, or acts of vandalism and how their victims responded to these acts. Victim testimonies highlight the physical and emotional harm suffered as a result of petty crimes. They also provide insight into the sites where individuals chose to commit their criminal activities and how perpetrators and victims experienced such places before, during, and, sometimes, after the crimes.

¹¹ M. De Certeau, *The Practice of Everyday Life*, trans. S. Rendall (Berkeley and Los Angeles, 1998), p. 117.

¹² A. Flather, *Gender and Space in Early Modern England* (Woodbridge, 2007), p. 2; Certeau, *The Practice of Everyday Life*; H. Lefebvre & C. Levich, ‘The Everyday and Everydayness’, *Yale French Studies*, 73 (1987), 7-11.

¹³ R. Houston, ‘People, Space, and Law in Late Medieval and Early Modern Britain and Ireland’, *Past & Present*, 230:1 (2016), 47-89, at p. 86; Gowing, ‘The freedom of the streets’, at p. 132; G. Walker & J. Kermode, ‘Introduction’, in J. Kermode & G. Walker (eds), *Women, Crime and the Courts in Early Modern England* (Chapel Hill, 1994), p. 4.

Occasionally, victim testimonies also convey contemporary expectations of the proper use of urban space. Having suffered a violent attack, theft, or destruction of their property, victims understood the offence as a violation of what should have otherwise been a regulated, safe space. In many instances, the act of offending was predicated on such an awareness. Feelings of fear and apprehension, safety and assuredness, often informed by power and gender relations, imposed meaning on the urban landscape. Even when the court records fail to capture how individuals felt in particular locations within a burgh, it is clear that gender undoubtedly informed the ‘symbolic connotations of space’.¹⁴ There was also an element of negotiation at play. In cases where an ongoing dispute resulted in some form of interpersonal violence, the perpetrator’s actions, despite being ‘in contempt of the acts and statutes’ of the burgh, were often motivated by an interest in maintaining or restoring, rather than undermining, order and stability to their lives. More importantly, these cases highlight that such crimes were committed not by marginal groups, but by a cross-section of burgh inhabitants.

Although recent histories of crime place criminals in well-defined locations inhabited by marginal groups, a close examination of Scottish burgh court records for this period reveals that the individuals most likely to commit interpersonal violence, theft, vandalic crime, or statutory offences did not live a static existence on the margins; in terms of lifestyle, these were not individuals who only on occasion ‘moved, worked, and lived in proper citizens’ space’.¹⁵ Most individuals convicted of committing petty offences in Scottish burghs were not career criminals. Their experience reflects Paul Griffiths’ warning that “criminalities’ are moral titles and any

¹⁴ R. Pain, ‘Crime, Social Control, and Spatial Constraint: A Study of Women’s Fear of Sexual Violence’ (Unpublished PhD thesis, University of Edinburgh, 1994), p. 417.

¹⁵ P. Burke, *The Historical Anthropology of Early Modern Italy* (Cambridge, 1987), pp. 3-7; P. Griffiths, ‘Overlapping Circles: Imagining Criminal Communities in London, 1545-1645’, in A. Shepard and P. Withington (eds), *Communities in Early Modern England: Networks, Place, and Rhetoric* (Manchester, 2000), pp. 115-33, at p. 129.

person might one day step outside the law'.¹⁶ More importantly, cases found in the burgh court records show that social boundaries were at times quite permeable, that committing an offence did not immediately make an individual a criminal or exclude them (permanently) from belonging.¹⁷ By most accounts, the act of making amends (either through the courts or through a coerced, extra-legal action) was meant to restore a wrongdoer to their place in burgh society. Court-imposed acts of making amends most often took the form of fines, donations, and public acts of repentance. Banishment from the burgh, either temporarily or permanently, was the harshest punishment magistrates could use to deal with petty offenders in early modern Scottish burghs.¹⁸ This was often imposed as a last resort and was an indication that the courts and their officers saw no other remedy for the victim or one that would restore the offender or the town to proper order. Thus, in November 1561, Robert Jak, an Aberdonian tailor, was brought before the burgh court, labelled a 'common brigand' and 'nightwalker', and charged with robbing various persons within the burgh. For his crimes, the court banished Jak from the burgh permanently.¹⁹

[A] Sensing Space

Scholars should be cautious when analysing the language used in burgh court records. Often, it is difficult to know with certainty whether descriptions of the offences, motives, consequences, or impact originated with the court clerk who documented the events or with the individuals more directly involved. Regardless, the words and phrases convey a contemporary sentiment about how

¹⁶ *Ibid.*

¹⁷ For a discussion of this, see Falconer, *Crime and Community*; B. Herrup, 'Law and Morality in Seventeenth-century England', *Past & Present*, 106 (1985), 102-123.

¹⁸ On banishment as a punishment, see Falconer, *Crime and Community*, 35-43; E. Ewan, 'Crossing Borders and Boundaries: The Use of Banishment in Sixteenth-Century Scottish Towns', in S. Butler & K. J. Kesselring (eds), *Crossing Borders: Boundaries and Margins in Medieval and Early Modern Britain: Essays in Honour of Cynthia J. Neville* (Leiden, 2018), pp. 237-57.

¹⁹ ACA, CA/1/1/24/300.

crime could alter an individual's sense of space. When William Cullen, a Canongate tailor, 'invaded' his neighbour John Kirkwood's 'dwelling house and buith' in the middle of the afternoon and struck Kirkwood's son on the forehead with a small sword, his actions undermined the family's expected sense of security and imposed on the space a hostility not naturally existing there.²⁰ On 6 June 1575, the Aberdeen burgh court convicted two burgh officers, Alexander and Thomas Rolland, of striking a bellman while he was 'executing his office' and for 'manessing of Patrick Menzies bailie'.²¹ The Rollands were obviously unimpressed by these Aberdonian officeholders or their actions while serving the burgh. Their frustration became even more apparent two weeks later when the court convicted Thomas Rolland for the 'violent occupation of the townhouse'.²² From the perspective of the assize that heard Rolland's case, he deliberately set out to disrupt the space the burgh magistrates occupied daily. The clerks in Canongate and Aberdeen saw in Cullen's and Rolland's actions an attempt to dominate violently spaces that should have been left undisturbed.

Conversely, when Isobel Pratt went to John Bolly's workbooth to pick up a set of tongs that he had promised to have ready for her, she believed the space to be safe. According to testimony Pratt provided to the court, she entered Bolly's booth 'in most quiet and sober manner', and, awaiting Bolly, she stood at the 'duir of the said John's booth seekand na manner of injuries nor manner of evil to have been done'. At this point, Bolly 'moved by ire and malice concealed in his heart put violent hands on Isobel and struck with his faldit neif [fist] to hir head'.²³ Whether the words used to describe this exchange belong to Pratt or the clerk documenting the encounter, they emphasise the fact that Pratt was meeting an expectation that 'good' women were to conduct

²⁰ ECA, GB236/SL150/1/3, p. 43.

²¹ ACA, CA/5/1 Baillie Court Books, 1st Series (6 June 1575).

²² ACA, CA/5/1 (17 June 1575).

²³ ECA, GB236/SL150/2, p. 518.

their ‘public’ activities ‘quietly and unobtrusively’. Bolly’s actions, however, draw attention to the permeable boundaries between perceived public and private spheres.²⁴ The exchange between Pratt and Bolly may have resulted from a business transaction gone wrong. Regardless, it is likely that Bolly’s actions were reinforced by a sense of confidence he felt from being in ‘his’ workbooth, a familiar space shaped by his daily experiences. As Amanda Flather has demonstrated, ‘spaces can be gendered, even when they are shared by men or women, through perception, experience and use’.²⁵ Regardless of what was behind the conflict, Bolly may have also sensed Pratt’s vulnerability, being alone and within his space, and sought to exploit that for his own gain.²⁶ Having ‘home’ advantage could prove a favourable condition for such actions.

This was abundantly clear to two Canongate officers tasked by the bailies with distraining goods from John Morrison’s dwelling house on account of Morrison’s outstanding debts. Upon entering the home in February 1583, the officers were met by Morrison and his wife, who began hurling insults at them. When one of the officers tried to carry off a set of pewter plates, the pair tore them out of his hands and knocked the cap off his head, causing it to land in a fire. The officer, who had been simply following the bailies’ orders, stooped down to retrieve his hat, burned his fingers in the process, and then suffered further indignity when the couple drove him from the house at sword point. Given the proximity of their neighbours and the lively street life, numerous witnesses likely observed Morrison and his wife’s violent defence of their house against an

²⁴ E. Ewan, ‘Crime of Culture? Women and Daily Life in Late-Medieval Scotland’, in Y. G. Brown & R. Ferguson (eds.) *Twisted Sisters: Women, Crime, and Deviance in Scotland since 1400* (East Linton, 2002), pp. 117-36, at pp. 117-18.

²⁵ A. Flather, ‘Early Modern Gender and Space: A Methodological Framework’, *La(s) casa(s) en la Edad Moderna* (2017), 23-44, at p. 29.

²⁶ See for example Koskella, ‘Gendered Exclusions’; Flather, *Gender and Space*; Gowing, “The freedom of the streets”.

unwelcome (albeit legitimate) invasion.²⁷ Through their use of verbal and physical violence, the pair sought to preserve the integrity and dignity of their dwelling place and their control over that space. The court's decision to convict Morrison and his wife only for failure to repay the debt, acquitting them of any wrongful behaviour against the officers, could be taken as an indication that the bailies recognised that the couple's sense of place warranted their spirited defence.²⁸ As John Carter Wood has argued, 'violence [could be] employed to define and defend space'.²⁹

In the cases examined so far, the individuals involved expressed spatial awareness. Moreover, they (or the clerk documenting their case) conveyed clear expectations of how members of the burgh community ought to experience urban places. Isobel Pratt, Alison Leggat, and Margaret Cryst all emphasised their belief that while in their house or yard, or while they were conducting business, they should have encountered 'na manner of injuries' and 'na evill truble nor skayth'. They also reflected on the fact that at the time they experienced a violent challenge from their neighbours, their minds were 'quiet and sober', and their own actions were 'lawsome' and 'peaceable'. Whether genuine or rhetorical, these sentiments reveal a contemporary set of beliefs. Crucially, a distinction emerges between how individuals experienced urban space as victims compared with how they experienced it as offenders. While the court clerks may have emphasised this distinction in their accounts, the specific nature of these offences suggest that the perpetrators purposely sought to equalise the relationship, restore a sense of security, or establish a sense of empowerment that had been previously compromised through an ongoing conflict.

²⁷ R. Laitinen, 'Nighttime Street Fighting and the Meaning of Place: A Homicide in a Seventeenth-century Swedish Provincial Town', *Journal of Urban History*, 33:4 (2007), 602-19, at p. 616; A. Korhonen, 'To See and to be Seen: Beauty in the Early Modern London Street', *Journal of Early Modern History*, 12:3-4 (2008), 335-60.

²⁸ ECA, GB236/SL150/1/5, p. 228.

²⁹ J. C. Wood, 'Locating Violence: The Spatial Production and Construction of Physical Aggression', in K. D. Watson (ed.), *Assaulting the Past: Violence and Civilization in Historical Context* (Newcastle, 2007), pp. 20-37, at pp. 22-3.

A similar objective is apparent in the methods Andrew Low used to prosecute a dispute with Margaret Watson and her husband, Robert Stones. According to the testimony provided to the burgh court, Low, ‘with malise and set purpois’, chased Watson from her yard into her house, throwing stones at her back while calling her a common thief. Having followed Watson into the house, he began ‘cast[ing] stones at the said Robert himself being sitting in tables with honest persons and molesting the said Robert and Margaret’. The assize also heard that one of Watson and Stones’ neighbours, Margaret Henryson, had come to the door of the house, obviously curious about the commotion Low’s intrusion caused. The clerk noted that Henryson, ‘believing na evill nor injury as said’, became Low’s next victim when he ‘cruelly’ struck her on the mouth and nose with his ‘faldit neifs’. Like so many of the cases heard in Scottish burgh courts during this period, this was not a simple case of one malcontent seeking to disrupt the peace, break the law, or violate his neighbours; the assize also heard that Stones and Watson had previously visited Low’s house, assaulted his daughter Helen, and attacked Low by ‘riving the hair out of his beard [...] besides [saying] divers injurious words and specially of the said Andrew that he is mensworne [perjured] thief and thief of his hands’.³⁰ By targeting Stones and Watson in their home, and with a greater audience present, Low defiled their lived space in a way comparable to what he had experienced in his own home when the couple assaulted him and his daughter. As was the case with Margaret Cryst and the Leggat family, Low’s actions reflect an intent to restore and repair the damaged reputation and integrity of his household.

A dispute between Elizabeth Ferguson, Isobel Kinkaid, and their respective female servants resulted in several altercations across various Canongate locations, spanning twenty-two months from July 1573 to May 1675. Physical assaults took place at Ferguson’s dwelling house, at the

³⁰ ECA, GB236/SL 150/1/4, p. 102.

tavern run by Kinkaid's husband, William Carmichael, and at the house belonging to Ferguson's mother. Meanwhile, verbal violence occurred on the 'kingis calsay' and on the street outside the tavern. The testimonies provided describe the level of violence: fists and feet used to injure the body, insult and accusation to bruise the reputation of each of the women involved, as well as the proprietor of the tavern. But this exchange also had the potential to harm more than just those immediately involved. Following the physical assault on Ferguson and her servant at Ferguson's home, the pair followed Kinkaid and her servant onto the bustling streets of Canongate. They declared that Kinkaid was a 'comon bordallar [keeper of brothels] sayand that she kept ane bordall [brothel]'.³¹

Impugning the respectability of the family's tavern was an effective way for Ferguson to attempt a rebalancing of the power dynamic that emerged from the assault she experienced outside her house.³² Not only did her words have the power to diminish Kinkaid's household's ability to earn an income, but they also stained the establishment and any burgh inhabitant who chose to spend time in that space. Each site where violence erupted between the foursome was 'public' in the sense that others – Ferguson's immediate neighbours, the burgh's community members, and the tavern's patrons – held expectations of each space. In addition, this conflict did not play out in secret, veiled, or isolated locations that would obscure the violence from eyewitnesses. This was partly because these types of activities were part of daily life in the burgh; they were a form of social exchange that shaped and reshaped a burgh community's physical and social boundaries.

Assaults, thefts, and destructive behaviour could also have a more apparent corruptive impact on urban space. In 1574, using the 'depositione of famous witnesses', the Aberdeen burgh

³¹ ECA, GB236/SL 150/1/1, 408-9; ECA, GB236/SL 150/2/, 169

³² Elizabeth Ewan has argued that 'alehouses were often associated in the popular mind with dubious and criminal activities [...] Working in an alehouse was not necessarily a good road to social respectability'. Ewan, 'Crime or Culture', p. 124.

court convicted John Sanders of wilful disobedience and for disturbing the town by climbing up the north side of the tolbooth and ‘brakin the top of the knob’.³³ Two decades earlier, David Spanky had denigrated Dundee’s court by proclaiming publicly that ‘yare wes na justice [to be found] in the tolbouthe’.³⁴ From Spanky’s perspective, the people of Dundee could find no satisfaction in law at the central site in the burgh where residents were expected to seek justice. In his mind, the magistrates’ previous decisions and actions had undermined the integrity of the tolbooth. Clearly, the magistrates did not see it the same way. To restore their reputation and that of the tolbooth, the court ordered Spanky to make amends by donating to the almshouse and publicly seeking the bailies’ forgiveness. In response, Spanky sought ‘remedy of the law’ alleging that there was ‘grievous harm done to him’ by the court. Even though both sides of this dispute had different notions of whose actions had caused harm to the reputation of the tolbooth, both sought justice that would repair that damage.

On occasion, an individual might also pretend to be unaware of the space they occupied or less bothered by the impact their actions had on a particular place. Andrew Spicer has recently shown that divine worship and holy services *made* a church ‘sacred space’.³⁵ Churches could also be ‘theatres of conflict’.³⁶ In 1583, Aberdeen burgh court declared that because Patrick Leslie and George Troup had assaulted each other in St Nicholas kirk, ‘being the house and place dedicat to God’, their actions made their ‘cryme more odious and haynous’.³⁷ This was also the case on new year’s day 1552, when a conflict between Alexander Ferguson and John Downe became violent

³³ ACA, CA/1/1/28/227.

³⁴ DCA, Burgh and Head Court Book, 1550-1554, 29/7/1551.

³⁵ The emphasis is mine. A. Spicer, “What kind of house a kirk is’: Conventicles, Consecrations and the Concept of Sacred Space in post-Reformation Scotland”, W. Coster and A. Spicer (ed.), *Sacred Space in Early Modern Europe* (Cambridge, 2011), pp. 81-103, at pp. 90-1; See also M. Graham, ‘Conflict and Sacred Space in Reformation-Era Scotland’, *Albion*, 33:3 (2001), 371-87.

³⁶ S. Carroll, *Enmity and Violence in Early Modern Europe* (Cambridge, 2023), p. 406.

³⁷ ACA, CA/1/1/31/325.

within St Nicholas kirk. For instigating the fight and for ‘strubling the gud town and kirk and stopping of godly service’, the court required Ferguson to set things right.³⁸ He was to ‘appear at the time of high mass with two pounds of wax in his hands and ask God and the town forgiveness of his offence [...] and gif he does siklik in tym to cum to be banist of the town’.³⁹ Obviously unsatisfied with how the court had attempted to settle the matter, John Downe and Alexander Johnson reciprocated two weeks later by attacking Ferguson in the kirk ‘in tym of goddis seruice’. The court ordered Johnson to appear before the congregation at Candlemas and replicate the acts of repentance the court had previously ordered Ferguson to discharge.⁴⁰ If performing specific acts and functions made a space sacred, then the opposite may also be true. Any sacrilegious appropriation, violation, or desecration of sacred places disturbed that space, necessitating positive actions to restore its sanctity.

It is difficult to conclude definitively that burgh residents were more likely to commit petty offences in high-traffic areas of the burghs. Still, the high streets, markets, and even the kirk(yard)s were common sites of interpersonal assaults. Whether jostling in the populated areas of the burgh or seeking a larger audience to bear witness, using such space to resolve conflict and address wrongdoing through extralegal means could provide a deterrent to further wrongdoing and establish a legacy. It also mirrored the legitimate processes of regulating the community. Burgh councils, elected annually, worked with the provost, bailies, and deans of guilds to create wide-ranging statutes that regulated life in the towns. Collectively, the magistracy also established the guidelines for punishing crime. Elizabeth Ewan has suggested that the public nature of publishing these guidelines – often by open proclamation at the market cross – paralleled how officials

³⁸ ACA, CA/1/1/21/288.

³⁹ *Ibid.*

⁴⁰ ACA, CA/1/1/21/302.

punished the offender: publicly and at a site where magistrates could expect a larger audience.⁴¹ Thus, the market cross or the kirk were frequent sites of public punishment. For example, Thomas Durrant, William Forest, and Besse Allan were each placed in the govis (stocks) in Aberdeen ‘thair to stand with [a] crown of paper on thair heids fra nyne houris to twelf and thereafter to be present to the mercat croce to stand publickly schewand the caus of thair demerits wherefor they war convikit’.⁴²

On occasion, the courts could require offenders to return to their crime-scene to make their amends. Their actions helped cleanse the space while also engaging those living close to that location to participate in an act of restoration. For example, in 1585 Anabell Chalmer returned to William Mackournay’s dwelling house to make her court-mandated amends after she had previously visited the home and attacked William’s wife and daughter.⁴³ While restoring peace and order was the intended objective of public punishments, it also left an impression on the audience and formed associations with the space. According to witness testimony, when David Low struck Marion Kyntor on Aberdeen’s high street he was not content to rely solely on physical violence to overpower his victim; Low also attacked Kyntor’s reputation by making the public claim that her deceased husband, James Ewyn, had been ‘leid to the gallowis, his hands were bound behind his bak’.⁴⁴ For his offence, the bailies ordered Low to appear within the tolbooth, publicly revoke the words spoken against Kyntor and her husband, and ask the injured party’s forgiveness.

⁴¹ E. Ewan, “Tongue You Lied’: The Role of the Tongue in Rituals of Public Penance in Late Medieval Scotland’, in E. Craun, (ed.) *The Hands of the Tongue: Essays on Deviant Speech* (Kalamazoo, 2007), pp. 115-36.

⁴² ACA, CA/1/1/27/174.

⁴³ ACA, CA/5/1 (18 Feb 1585).

⁴⁴ ACA, CA/5/1 (10 May 1595).

[A] Secrecy and Observation

The location and type of offence influenced how people perceived urban spaces, as did the timing of these crimes. Most of the previously examined cases highlight the willingness of individuals to commit offences during daylight hours. But there should be little doubt that offences committed after nightfall, described in the records as ‘under the silence of night’, could add a heightened sense of terror and vulnerability for victims.⁴⁵ If a victim was found in their bed or roused from their sleep, disoriented and off-guard, by a noisy intruder, the crime could have an impact not only on the individual but also on the space that had previously been a sanctuary for its occupant. As others have argued, it could at once allow for a respite from the day’s labours while creating an opportunity for some to exploit the possibilities that darkness provides.⁴⁶ Ordinances passed throughout this period suggest that Scottish magistrates, at least, were most concerned with the possibility of the latter, with individuals behaving improperly on burgh streets and being out of doors after sundown.⁴⁷ In Edinburgh, for example, the town council ordered that no persons remain on the streets ‘after the ringing of the ten-hour bell at night’.⁴⁸ Many of the accounts convey the typical perception held by the magistracy that those inclined towards disobedience and towards being outside their dwelling house after dark were drunk and idle persons, usually masterless or without connection to the burgh, who spent their time lurking in dark corners, ‘persewit the

⁴⁵ For example, of the 1,861 cases prosecuted in Aberdeen’s burgh court between 1540 and 1590, less than 1 per cent (seven) of those cases involved activities that took place at night. Of course, we must be mindful of the ‘dark figure of unrecorded crime’, those incidents of wrongdoing that were never prosecuted and thus left no record behind. We also have to consider uneven recording from burgh to burgh. Based on surviving records, there was only a single case in Dundee and ten cases in Canongate during this same period. Nonetheless, the records suggest that the majority of petty criminal activities took place during the day.

⁴⁶ B. D. Palmer, *Culture of Darkness: Night Travels in the Histories of Transgression* (New York, 2000), pp. 17-8; A. R. Ekirch, *At Day’s Close: Night in Times Past* (New York, 2006); C. Koslofsky, ‘Princes of Darkness: The Night at Court, 1650-1750’, *The Journal of Modern History*, 79:2 (2007), 235-73.

⁴⁷ For an example of this type of ordinance passed in Aberdeen, see NRS, CH2/448/1, St. Nicholas Kirk Session, p. 7.

⁴⁸ *Ibid.*

nichtbouris and inhabitantis of this burgh, bot committit divers robreis and utheris villannyis, unworthy to be hard of in a weelee governit citie'.⁴⁹

In 1594, Aberdeen's bailie court convicted a local minister, Thomas Bissett, of using weapons prohibited by law and for attacking Andrew Gray and James Walker on the burgh's street 'under silence of the night'.⁵⁰ Like the vast majority of individuals brought before the burgh courts on account of wrongdoing, Bissett was not a career criminal, nor what contemporaries would have considered a ne'er do well. Driving home the point that individuals believed that the burgh ought to be quiet after sundown, a dittay against James Anderson and Andrew Hay alleges that the pair had gone to the dwelling house belonging to Walter Strange and 'his wyf' on 31 July 'under silence of nyt at 10 hours at evin *be way of oppression*'. According to testimony provided, the alleged victims described the horrific incident by reference to the fact that they were 'at thair dwelling house [and] wes in quiet and sober manner to have passit to yair beddis'.⁵¹ The contrast is clear: the appropriate use of their living space was, in the minds of the victims, altered by the actions of the alleged intruders.⁵² Contemporaries were undoubtedly worried about the shroud of secrecy that nighttime created. There was a common perception in this period that nighttime offered more opportunities for criminal activity, akin to dark alleys harbouring criminals during the day. As Roger Ekirch has argued, 'night gave birth to the rule of law', preventing victims from protecting themselves from harm while limiting neighbours from coming to aid those in need.⁵³

⁴⁹ *RPCS, First Series*, Vol. 9, p. 133.

⁵⁰ ACA, CA/5/1 (7 March 1594/5).

⁵¹ ECA, GB236/SL150/1/2, pp. 236-7.

⁵² As David Postles has argued, 'to perpetuate an abuse in its space was to abuse the dignity of the town'. D. Postles, 'The Marketplace as Space in Early Modern England', *Social History*, 29:1 (2004), 41-58, at p. 42.

⁵³ Ekirch, *At Day's Close*, pp. 84-8.

Yet, it was not always the case that nighttime aided the culprit by providing a greater shroud of secrecy for their illicit activities. After Walter Cassy attacked Marion Sherar in her own house ‘vnder silence of nycht’, the bailies noted that it was the testimony of ‘divers famous witnesses’ that contributed to Cassy’s conviction for the crime.⁵⁴ One evening in March 1577, Isobel Balzart and her daughter Elizabeth Jameson attacked Balzart’s sister-in-law, Alison Watson, in her dwelling house ‘under silence of the night’. According to the clerk, Watson escaped ‘certain death’ only through the aid of ‘God and her neighbours’.⁵⁵ Despite curfews and the fear of night, neighbours were often close enough at hand to intervene and prevent an assault from becoming deadly. With ‘sett purpose and provocation’ and ‘in most detestable and shameful manner under silence of night’, John Murray and Richard Brewer, two close friends from Leith, broke ‘gods and our sovereign lords peace’ on the night of 25 November 1583.⁵⁶ It is unclear what sparked this conflict; the two frequently drank together in each other’s ‘dwelling houses’ and attended the kirk together on a regular basis. According to the bailies, Murray ‘would have slane him in his own house if not Richard better defended and the supply of gud and godly neighbours’. Whatever caused the two men to come to blows, their actions undoubtedly disturbed their houses and the entire neighbourhood. This was no minor scuffle. The magistrates convicted Murray and Brewster of using weapons, drawing blood, smashing doors, stealing goods, mutilating fingers, and invading each other’s houses. For their violent crimes, the court demanded that the two men repair the damage to their relationship and the damage caused to Murray’s door. In response, both men made ‘faith they feared dred bodily harm’. Despite the magistrates’ best intentions to restore the peace

⁵⁴ ACA, CA/1/1/28/493.

⁵⁵ ECA, GB236/SL150/1/3, p. 1125.

⁵⁶ The rest of this paragraph is based on information in ECA, GB236/SL150/1/4, pp. 358-60.

between the two men, the activities of 25 November had left a lasting impression on the two families, the familiar places they frequented, and their neighbours.

If the availability of ‘gud and godly neighbours’ could help aid individuals like Alison Watson and Richard Brewster, then their proximity, enabling them to observe, could also sometimes help offenders achieve their objectives. On 28 July 1584, at eight o’clock in the evening, ‘and thairby under silence and cloud of night’, a foursome of brothers, each a burgess and a bonnet-maker, came to the dwelling house of William Symmer, also a bonnet-maker. According to the account, Symmer had been sitting quietly and soberly at his supper when the brothers began yelling at him from the street.⁵⁷ Although the Canongate burgh court clerk employed the formulaic ‘expecting no evil or harm nor injury from no persons’, he noted that Symmer ‘especially’ expected no harm from the individuals now invading his space.⁵⁸ The clerk emphasised that Symmer should have had no reason to fear his would-be assailants, implying familiarity with the group and a sense of safety among friends. What followed then was particularly, and intentionally, distressing for Symmer. The clerk noted that the brothers taunted Symmer ‘be thair braggis, boistis, dispitful talk openly in presens of the haille neighbours dwelland nairby’. One of the brothers, Robert Paterson, demanded that if Symmer wanted to avoid being hung by the foursome, then he should come out of his house and publicly make amends for having previously assaulted another of the brothers, William Paterson. The brothers’ call for Symmer to leave his house’s more restricted space and engage them on the street suggests that they wanted their actions to have a wider impact.

An important aspect of this case is that the entire encounter involved the Paterson brothers’ premeditated use of the street in front of Symmer’s house as a public stage for their ritualised justice. In this regard, they attempted to appropriate the legitimate use of public space from the

⁵⁷ ECA, GB236/SL150/1/5, pp. 118-20.

⁵⁸ *Ibid.*

magistrates for punishing wrongdoers. The dittay suggests that Symmer had previously made his court-mandated amends for the offence he committed against William Paterson, but ‘not being penitent enough’, the Paterson brothers sought fuller reparation.⁵⁹ While it is true that the brothers had gone to Symmer’s house at ‘nighttime’ to seek their ‘justice’, their actions suggest that they did not want a shroud of secrecy for their activities. The fact that burgh clerks often identified the period after seven o’clock in the evening, even in the summer when the days were longer, as being ‘under the silence of the night’ points to a social construction of safe time that paralleled the social construction of safe space. The Paterson brothers chose a time when Symmer was likely to be found in his dwelling house and when Symmer’s neighbours would also be present to witness the exchange. Since Symmer’s reputation and credit in the burgh were as much the intended targets as his body, the Patersons’ activities required a larger audience.⁶⁰ In the end, the court acquitted the brothers of the charges of violence and uttering threats; however, they were each convicted of disturbing the town’s, and their neighbours’, peace.⁶¹ According to the magistrates, the real danger the Paterson brothers posed was to the peace and tranquility of the streets and to the magistrates’ authority to police the use of urban space.

[A] Conclusion

Individual experiences in Scottish burghs helped to create lasting impressions. These impressions shaped how individuals interacted with those locations moving forward, turning them into

⁵⁹ *Ibid.*

⁶⁰ E. Ewan, ‘Many Injurious Words’: Defamation and Gender in Late Medieval Scotland’, in R. A. McDonald (ed.), *History, Literature, and Music in Scotland, 700-1560* (Toronto, 2002), pp. 163-86; L. Gowing, ‘Language, Power and the Law: Women’s Slander Litigation in Early Modern London’, in J. Kermode & G. Walker (eds), *Women, Crime and the Courts in Early Modern England* (Chapel Hill, 1994), pp. 26-48.

⁶¹ ECA, GB236/SL150/1/5, pp. 118-20.

meaningful places.⁶² Streets connected the different quarters or zones within early modern Scottish burghs, enabling social exchange and the exchange of goods, creating space for the exercise of both legitimate and illegitimate power. The locations where petty offences occurred, the time of day at which they took place, the nature of those offences, and how the courts punished offenders, reveal the often-negligible distinction between appropriate and appropriated uses of shared spaces such as markets, streets, churches, and public buildings. Illustrating this point, because of their dissatisfaction with how the magistrates had previously carried out the task of punishing Symmer, the Patersons attempted to force him to make further amends on the streets of Canongate.

Contemporary court records reveal that petty offences influenced how individuals thought about their built environment, how they responded to conflict, and how they conceptualised neighbourliness. They also reveal how sixteenth-century allusions to neighbourliness were illusory. While contemporary clerks and magistrates might overemphasise the danger of acts committed under silence of the night and threats posed by maintaining a shroud of secrecy, they rarely acknowledged that prescriptive ideals like neighbourliness were in many ways a veil cast over social relations, obscuring the inherent tensions within urban communities. For the most part, these tensions were kept in check by statutes, good governance, and community values. But, on occasion, they led to forms of social exchange that could be disruptive. Such exchange was not always intended to undermine burgh ideals and customs; often, individuals resorted to such behaviour to restore the order disturbed by their neighbours' actions. Ultimately, the records do not inform us as to whether the Paterson brothers and William Symmer restored their working relationship, or whether Murray and Brewster resumed their routine of drinking together nightly and attending the kirk on the sabbath as friends, or whether other damaged reputations were fully

⁶² Houston, 'People, space, and law', p. 85.

restored and neighbourliness resumed. Petty offences, like other forms of social exchange, helped early modern Scots to develop expectations about particular places within their burgh. Through their social actions and social exchanges, individuals like Margaret Cryst, Elizabeth Kinkaid, William Symmer, or Richard Brewster witnessed their lived places transformed by petty offences.

While therefore the other essays in this book explore the intimate relationship between deviance and marginality, this chapter serves as reminder that the two were not always mutually dependent. Illegal, transgressive, and deviant behaviour was also an important tool of social exchange for people firmly located within the mainstream, and to be ‘deviant’ was not necessarily a signal – or a cause – of marginality.