

When did Orkney and Shetland become part of Scotland? A contribution to the debate¹

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1

The question in my title has been uttered on a few occasions recently, most often by people who pine nostalgically about Orkney's and Shetland's old connections with Scandinavia.² I try to answer it by looking carefully at relations between the Scottish and Danish crowns, and their discussions about the matter, from the fifteenth to the eighteenth centuries.

Everything I write about here was the result of the whims of kings. No inhabitant of Shetland or Orkney played the slightest part in any of the events I shall be discussing. Unlike some of my predecessors in the debate, I don't revere monarchs. I neither admire nor prefer James III or Christian III.

The kings were interested in revenue. During the middle ages they called Orkney and Shetland, and their other Atlantic islands, their 'scatlands': the countries which paid tax.³ Before 1468 kings of Scotland coveted the islands, especially Orkney, because they were valuable, and so that they could farm them out to noblemen or at other times to tax-collectors. Afterwards they held on to them. The Danish kings wanted them back, for exactly the same reasons. Just as the kings were cynical about Orkney and Shetland, I am cynical about the kings.

I divide my remarks into three parts. First I will look in detail at what happened in 1468 and 1469, and what the parties intended to happen. Secondly, I will discuss attempts by Denmark to get Orkney and Shetland back, from 1549 to 1667, and also a few by both Denmark and England to give them away to somebody else. I will even be describing some not very well-known attempts by Scotland to give them back to Denmark. I deal at length with these events, because historians have not studied them very critically in the past.⁴

¹ I gave an early version of this paper as a lecture in the Shetland Museum and Archives in September 2007. I am very grateful for assistance to John Ballantyne, Logie Barrow, Peder Gammeltoft, Lynn Goodlad, Steinar Imsen, Remco Knooihuisen, Athol Murray and Steve Murdoch.

² See for instance articles in the fortunately short-lived *Shetland Independent Newsletter*, May - December 2007.

³ Grethe Authén Blom, 'Skattland', in *Kulturhistorisk Leksikon for Nordisk Middelalder*, 15, 1982, cols. 446-50.

⁴ There are informative accounts of attempts by Denmark to redeem the islands, but they rarely examine, except perfunctorily, the circumstances in which the attempts were made, or the balance of forces between the parties. They are: Thormodus Torffæus, *Orcades seu Rerum Orcadensium Historiae*, Copenhagen 1697, pp.207-28; Gilbert Goudie, 'The Danish claims upon Orkney and Shetland', *Proceedings of the Society of Antiquaries of Scotland*, 21, 1886-7, pp.236-51; 'Delavaud', 'Les origines Norvégiennes des archipels Écossais (872-1667)', *Annales des Sciences Politiques*, 25, 1910, pp.188-98; Fredrik Scheel, 'Orknøerne og Hjaltland i pantsættelsestiden 1468-1667', *Historisk Tidsskrift* (Norwegian), 5th series, 1, 1912, pp.410-20; and Gordon Donaldson,

That is the background. At the end I try to answer the question in my title. It is a conundrum, but if we use common sense I think we can arrive at a solution.

2

In 1969, exactly 500 years after Orkney and Shetland were pawned to Scotland, Barbara Crawford revisited what had happened during the negotiations about the marriage of James III and Margaret of Denmark, and why.⁵ Her treatment of the diplomatic events is judicious and penetrating. But Crawford is a mourner at the funeral of Scandinavian Orkney and Shetland. As a result, her account of the background to and results of the pawning, as opposed to the mechanics of it, deserves careful scrutiny.

The Northern Isles, she tells us, 'have always formed part of the same North Sea complex as Norway and Denmark'.⁶ They haven't. For most of their histories, Orkney and Shetland have been linked, strategically and culturally, with parts of north Britain. In fact there is no evidence that anyone from Scandinavia ever saw the Northern Isles until the ninth century.

The islands' links with Scandinavia were the result of conquest in the ninth century,⁷ and could never be entirely secure. As early as 1281 the kings of Scotland and Norway agreed that Orkney should become part of Scotland if Norway defaulted on her obligations in yet another royal marriage.⁸ As is well-known, there were Scots adventurers and clerics in Orkney long before 1468; and there may have been more in Shetland than we know about.

Of course, none of that was an argument for pawning Orkney and Shetland to Scotland. But it explains why Christian I eventually thought of doing so. In 1460 in the French town of Bourges, during the first phase of a discussion about a Scoto-Danish royal marriage, the Scots ambassadors demanded an outright gift of Orkney and Shetland.⁹ And the Danes didn't say an outright No.

Crawford portrays the events of the 1460s as a contest between Christian I and James II and James III of Scotland about the islands, with Scotland as aggressor. She regards the

'Problems of sovereignty and law in Orkney and Shetland', *Stair Society Miscellany Two*, Edinburgh 1985, pp.37-40. L. Laursen, *Danmark-Norges Traktater 1523-1750*, 3-7, Copenhagen 1916-23, also contains extremely useful documents and commentary on the subject, culled from the Danish royal archives.

⁵ Barbara E. Crawford, 'The pawning of Orkney and Shetland: a reconsideration of the events of 1460-1469', *Scottish Historical Review*, 48, 1969, pp.35-53. Her other important study of the subject is 'The earldom of Orkney and lordship of Shetland: a reinterpretation of their pledging to Scotland in 1468-70', *Saga-Book*, 17, 1967-8, pp.156-76.

⁶ Crawford, 'The pawning', p.35.

⁷ Brian Smith, 'Not welcome at all: Vikings and the native population in Orkney and Shetland', in Jane Downes and Anna Ritchie, eds., *Sea Change: Orkney and Northern Europe in the later Iron Age AD 300-800*, Bålgavies 2003, pp.145-50.

⁸ *Diplomatarium Norvegicum*, 19, Kristiania 1910-14, p.206.

⁹ Hans Knudsen and C.F. Wegener, eds., *Diplomatarium Christierni Primi*, Copenhagen 1856, p.128. For good accounts of the discussions of 1460 see Kai Hørby, 'Christian I and the pawning of Orkney', *Scottish Historical Review*, 48, 1969, pp.54-7, and Thomas Riis, *Should auld Acquaintance be forgot: Scottish-Danish Relations c.1450-1707*, 1, Odense 1988, pp.16-18.

diplomatic situation thus created as 'extremely difficult' for Christian, the result of the Scots' 'hardline attitude' and their obdurate 'political will'.¹⁰

Other Norwegian and British scholars have regarded the transactions in a different way: not as conflict but as *collusion* between the states. 'It is not probable', wrote A.W. Brøgger in 1929, 'that the Danish king ever seriously contemplated the redemption of the mortgage'.¹¹ Gordon Donaldson felt the same,¹² and so do I. Christian's failure to consult his Norwegian council, who would have objected; the appearance of the bishop of Orkney, formerly Christian's servant, as an ambassador on the Scottish side of the negotiations;¹³ the earl of Orkney's exchange of his rights with the king of Scotland (see below): these tell-tale events suggest to me that the argument concerning collusion is right. I disagree with Crawford's proposition that Christian 'did not conspire with the Scots to betray his outlying possessions'.¹⁴ I think that is exactly what he did.

Christian finally made up his mind what to do in 1468, because he couldn't stump up the main part of a dowry for his daughter in her forthcoming marriage to James III. We 'give, grant, pledge and mortgage and place under assured pledge and security', he said, 'all and sundry our lands of the islands of the Orkneys, with all and sundry rights, services and their rightful pertinents, pertaining or that in whatsoever manner may pertain to us and our predecessors, kings of Norway, by royal right'.¹⁵ And nine months later, on 28 May 1469, he threw in Shetland as well, because he couldn't afford the balance of his debt.¹⁶

The nature of the transactions of 1468 and 1469 is clear enough. However, in the twentieth century some commentators began to reinterpret them in an unhelpful way. The Orkney antiquarian John Mooney argued that Christian's phrases 'all and sundry our lands of the islands of the Orkneys', and 'all and sundry our lands of the islands of Shetland', didn't mean Orkney and Shetland as a whole, but only the lands in those islands that the kings of Denmark owned as crown property.¹⁷ In other words, he only mortgaged a fraction of the

¹⁰ Barbara E. Crawford, 'The bishopric of Orkney within the archdiocese of Trondheim, 1152/3-172', *New Orkney Antiquarian Journal*, 4, 2009, pp.64, 66.

¹¹ A.W. Brøgger, *Ancient Emigrants*, Oxford 1929, p.196.

¹² John Mooney, ed., *Charters and other Records of the City and Royal Burgh of Kirkwall*, Aberdeen 1952, p.113, citing discussions with Donaldson. Thelma Jexlev, an expert on Danish documents of the period, has expressed the opinion that Christian 'had no intention whatever to redeem the islands', and suggests that the 1468 document about Orkney 'was probably put down according to the draft the Scots had brought': *The Orcadian*, 29 August 1968. Donaldson returned to the question in 1985, in 'Sovereignty and law', pp.19-22, an exemplary discussion.

¹³ Crawford regards the appearance of Bishop William in the Scots delegation as 'quite inappropriate' ('The bishopric of Orkney', p.65), and suggests that he may have been present under duress ('The pawning', p.49 and note). But it is far more likely that he was there with the full agreement of his past and future masters, as part of their joint project. Soon after the 1469 transaction Christian commended Bishop William to James III, and asked James to employ him as his daughter's tutor (Arild Huitfeldt, *Danmarks Riges Krønike: Christian I's historie*, Copenhagen 1599, p.192). The membership of the embassy was a matter for the parties concerned, not for modern historians.

¹⁴ Crawford, 'The pawning', p.52.

¹⁵ Mooney, *Charters*, pp.100, 107.

¹⁶ John H. Ballantyne and Brian Smith, eds., *Shetland Documents 1195-1579*, Lerwick 1999, pp.17-18.

¹⁷ John Mooney, *The Cathedral and Royal Burgh of Kirkwall*, Kirkwall 1943, pp.14, 187-8. Mooney's account was well-thought of for a while: see for instance 'T.M.Y.M.' (T.M.Y. Manson), 'The cession of Orkney and Shetland, 1468-72', in Gordon Donaldson, ed., *Common Errors in*

islands. Willie Thomson makes the shrewd point, in his *New History of Orkney*, that people who argue in this way are, subconsciously or not, trying to *limit* the transactions: in certain ways they are trying to pretend that they didn't happen.¹⁸

But the argument is nonsense. As the Scots legal historian Jardine Dobie pointed out, immediately after Mooney's book was published, the documents refer explicitly to Christian's lands *of* the islands of Orkney and Shetland, not *in* those islands.¹⁹ In 1468 and 1469 Christian mortgaged Orkney and Shetland *as a whole* to the king of Scotland: the right to collect taxes from them, the right to administer the law in them, and the right to extract fines from miscreants in their courts.

After May 1469 Christian did nothing more about the islands. He turned his attention to other matters. But the king of Scotland didn't neglect Orkney and Shetland: far from it. During the next seven years James III acted decisively to bind them closer to Scotland. Once again, the lack of protest from Copenhagen points to collusion.

First, James came to an agreement with William Sinclair, where that nobleman gave up his right to be earl of Orkney (as he had been since 1434).²⁰ That was an important event for a reason historians have not noticed. The fact that Sinclair gave up his right to the earldom to the king of Scotland meant by definition that Christian had already transferred the right to bestow it to James III, whatever Mooney imagined.

Secondly, and crucially, James annexed Orkney and Shetland to his crown on 20 February 1472. He promised that they should 'nocht ... be gevin away in tyme to cum to na persoune nor persounis, except anerly til ane the kingis sonnys of lauchefull bed'.²¹ The plan was that the islands should be governed by the crown, and administered on the king's behalf by his own governors and tax-collectors – while leaving open the possibility that they might be gifted to a respectable nobleman sometime in the future. Accordingly, in August the same year James appointed the bishop of Orkney as his lessee.²²

Shetland and Orkney still had their own legal and administrative institutions, of course: their own parliaments and officials, especially the elected official called a lawman. No-one tried to change that for a long time.²³ But an event happened in 1476, four years after the annexation, that gives us a hint of how things would change eventually. That year James III's exchequer got a bill from the lawman of Orkney for his salary: not just for that year, but for the four years since 1472. James paid up. But in the account there is a significant caveat: that the salary should only be paid in future with the king's special permission.²⁴ There were no lawmen in Scotland. James was willing to countenance such an official in Orkney, but he intended to keep an eye on him.

Scottish History, London 1956, p.9; T.B. Smith, 'The law relating to the treasure', in Alan Small et al., eds., *St Ninian's Isle and its Treasure*, 1, Oxford 1973, p.152.

¹⁸ William P.L. Thomson, *The New History of Orkney*, Edinburgh 2001, p.201.

¹⁹ 'J.D.' (Jardine Dobie), review in *Old-Lore Miscellany of Orkney, Shetland, Caithness and Sutherland*, 10, 1935-46, p.290.

²⁰ *Register of the Great Seal of Scotland*, 2, Edinburgh 1882, p.207.

²¹ Records of the Parliaments of Scotland, <http://www.rps.ac.uk/mss/1472/14>, accessed 5 January 2010.

²² *Exchequer Rolls of Scotland*, 8, Edinburgh 1885, pp.224-5.

²³ Brian Smith, 'On the nature of tings: Shetland's law courts from the middle ages until 1611', *New Shetlander*, no. 250, 2009, pp.37-45.

²⁴ *Exchequer Rolls*, 8, p.364.

James's final act about the islands was far-reaching in a different way. Six months after the annexation Pope Sixtus IV created an archbishopric in Scotland, based at St. Andrews; and he attached the bishopric of Orkney to it.²⁵ At a stroke the ecclesiastical affairs of Orkney and Shetland had been taken over by the church in Scotland, no doubt with the full approval of James.

Perhaps significantly, the authorities in Scandinavia scarcely noticed what had happened. In the early 1520s the archbishop of Trondheim sent a German clergyman, Zutpheldus Wardenberg, to the papal court, to find out why the islands were no longer part of his metropolitan. Zutpheldus burrowed for a long time in the archives, and at last found Sixtus's papal bull of 1472. He sent a copy of it to the archbishop, and gave him some advice about how to get his bishopric back.²⁶ But by that time it was too late.

3

Christian I had taken no further interest in Orkney and Shetland, and his three successors, Kings Hans, Christian II and Frederick I, took very little more. But others had very firm views about the subject. The kings may have been bored, but their councils were furious. The Norwegians were especially annoyed, because (as I have said) Christian hadn't consulted them when he mortgaged the islands. Even before King Hans was crowned they were complaining bitterly about the subject. In February 1482, during some negotiations with Sweden about who should rule the whole of Scandinavia, they insisted that Orkney and Shetland had to be redeemed. It was the first item on their list of demands.²⁷ And when Hans's coronation took place, a year later, the councils made him swear an oath to do something about it.²⁸ His Danish and Norwegian councils regarded the mortgage of the islands as a national affront.

What did Hans do? He wrote a letter to James III, around 1486. We don't have a copy of it, but we have James's reply.²⁹ Hans had heard a rumour that James was clearing the native inhabitants of Orkney and Shetland out of the islands, and replacing them with Scots, who would then be governed by Scots language and laws. That news, said Hans, had provoked no little indignation in his council. He seems to have hinted that there might be a response by armed force.

James hastened to soothe his brother-in-law. He had removed none of the inhabitants of the islands from their birthplace, he said; nor had he altered the language or laws in use there. He advised against any hasty action: instead he promised to send an embassy to Denmark the following summer.

But he added some cryptic remarks. He reminded Hans that there were pacts in force that had been concluded between James and Hans's father. James promised to adhere to those pacts, and he suggested pointedly that Hans should do the same. In particular, he advised Hans not to try to rescind the dowry that Christian had given to Hans's sister Margaret in 1468 and 1469.

²⁵ *Norges Gamle Love*, 2nd series, 2, Oslo 1914-34 pp.510-15, with a useful introductory note.

²⁶ *Diplomatarium Norvegicum*, 7, Christiania 1869, pp.623-7.

²⁷ *Norges Gamle Love*, 2nd series, 2, p.300.

²⁸ *Norges Gamle Love*, 2nd series, 3, Oslo 1966-81, p.11 and note.

²⁹ Edinburgh University Library, Laing mss., La. III-322, pp.16-17.

These are curious references. First of all, James is cautious. He reassures Hans that he won't be changing things in the islands. At the same time, he speaks mysteriously about the negotiations of 1468-9, and hints that Hans is somehow trying to infringe the agreements made then.

A story was beginning to emerge, on the Scottish side, that the Danish claim to the islands was less secure than the Danes insisted. The Italian chronicler Giovanni Ferreri, writing in the mid-sixteenth century, said that Christian had renounced his claim to Orkney and Shetland in 1473, when James IV was born.³⁰ I now think that the story emerged at an earlier date than historians have imagined. In a record of 1504, James IV referred to 'the renunciation and ourgeving of our ... grantschir [Christian I] of his richt and clame of the lordschip of Orknay to umquhileoure derrest fader [James III] ... and to his successouris'.³¹ Crawford has suggested that this is a reference to the impignations of 1468 and 1469.³² But the document doesn't say so. Instead it speaks about a renunciation and 'overgiving' of Christian's claim to the islands, not just to James, but to James's successors.

I don't mean that there definitely was such a renunciation, although I think there might have been. If there was, the Scots lost their copy of the document, or they would have produced it. In 1526 we find another early reference to it, or rather to the alleged Danish copy. It hasn't been noticed by historians. That year one John Skrimgeour appeared before a committee of the Scots parliament.³³ He told them that he had been in Denmark, and had discovered that a copy of what he called 'the discharge of Orknay and Schetland' was extant and available there. Skrimgeour can only have meant the elusive renunciation document. He urged that the parliamentary committee should 'laubour' to acquire a copy for the king. Once again, I don't say for certain that there was such a paper. But the rumours about it may have had more substance than historians have suggested.

Meanwhile, Hans seems to have been loath to do anything practical about redeeming the islands. Amusingly, he behaved every now and then as if he had. In 1490, for instance, he gave Dutch merchants rights to trade in the waters around Shetland;³⁴ and a year later he gave a Shetlander, Sir David Sinclair, a gift of church revenues in Orkney.³⁵ He issued some legislation that he said should be applicable in Shetland.³⁶ In 1502 he even appointed an archdeacon of Shetland – but the king of Scotland ousted his appointee.³⁷ The thing that Hans didn't do, however, was offer money to the Scots to get back the islands.

Nor did his successors. Christian II swore the usual oath to get back the islands at his coronation, in 1513.³⁸ Ironically, it was Scotland who raised the subject first. In June 1514

³⁰ In Hector Boethius, *Scotorum Historiae Prima Gentis Origine. cum aliarum et rerum et gentium illustratione non vulgari ...*, Paris 1574, p.389.

³¹ *Register of the Privy Seal of Scotland*, 1, Edinburgh 1908, pp.151-2.

³² Barbara E. Crawford, 'Scotland's foreign relations: Scandinavia', in Jennifer M. Brown, ed., *Scottish Society in the Fifteenth Century*, London 1977, p.93n.

³³ Records of the Parliament of Scotland, <http://www.rps.ac.uk/mss/1526/6/14>, accessed 5 January 2010.

³⁴ *Diplomatarium Norvegicum*, 6, Christiania 1864, pp.643-4.

³⁵ A.W. Johnston and Amy Johnston, eds., *Orkney and Shetland Records*, 1, London 1907-13, pp.56-7.

³⁶ *Shetland Documents 1195-1579*, p.29.

³⁷ *Shetland Documents 1195-1579*, p.25.

³⁸ *Norges Gamle Love*, 2nd series, 4/1, Oslo 1995, p.32.

John Stewart, the 3rd duke of Albany and regent of Scotland, an heir to the Scottish throne, wrote some instructions for an envoy to Denmark. Scotland needed soldiers in a war with England, and Albany hoped to get 6,000 of them from King Christian. In return he offered Orkney and Shetland.³⁹

There is no doubt that Christian got the message, because a month later he wrote a letter to the inhabitants of Orkney. 'Dear friends,' he began, 'you know that you rightly belong under the crown of Norway, even though you are pawned to the king of Scotland. But we intend to redeem your land very soon for the crown of Norway, to remain under us and the king of Norway, as it ought to be by right.'⁴⁰ He signed off by asking them to pay dues to the archbishop of Trondheim – unaware, as I said before, that the Orcadians had been part of a different metropolitan for forty years. But nothing happened.⁴¹ Christian didn't take the opportunity to redeem the islands.

And something similar happened ten years later. By that time Christian had been deposed and had been replaced as king by his uncle, Frederick I. Scotland was in danger from England again. Albany approached Frederick in February 1524,⁴² and again in May.⁴³ This time he wanted money to pay soldiers. If Frederick cannot provide it, he said to his envoy in May, 'let him send gold, if he can, to redeem the province of Orkney, pledged to Scotland for 100,000 florins [*sic*]'. Then Scotland would pay the men, and 'the said province [would] revert to his [Frederick's] rule [*potestatem*]'. Nothing could have been clearer than that. But once again not a thing changed. Orkney and Shetland stayed as they were.

4

By this time Shetland and Orkney had been governed by Scotland for half a century. Time hadn't stood still here. What was happening in the islands?

Some historians have exaggerated the alleged continuing contacts between Shetland and Norway during the sixteenth century. Writing in 1978 Barbara Crawford said:⁴⁴

Shetlanders continued to look to Bergen as their nearest centre of commerce, administration and law, and probably social arrangements. It is well known that transactions concerning land in Shetland were dealt with by royal officials in Bergen

³⁹ Marguerite Wood, ed., *Flodden Papers: diplomatic correspondence between the courts of France and Scotland 1507-1517*, Edinburgh 1933, pp.113-14.

⁴⁰ *Diplomatarium Norvegicum*, 1, Christiania 1847-9, pp.751-2.

⁴¹ But perhaps partly because of lack of co-operation by the Scots. On 16 June 1515 Albany wrote what seems to be a response to Christian's letter (National Library of Scotland, Adv. MS.35.5.9B, folio 216 *verso*), referring to the Danish demands for redemption and for acknowledgment of the archbishop. Albany said that he would attend to the matter in due course. It looks as if, by that time, his need for Danish assistance had become less pressing.

⁴² C.F. Wegener, ed., *Aarsberetninger fra det Kongelige Geheimearchiv. indeholdene Bidrag til Dansk Historie*, 3, Copenhagen 1861-5, pp.113-15.

⁴³ Wegener, *Aarsberetninger*, 3, p.118.

⁴⁴ Barbara E. Crawford, 'Sir David Sinclair of Sumburgh: "foud" of Shetland and governor of Bergen Castle', in John R. Baldwin, ed., *Scandinavian Shetland: an ongoing tradition?* Edinburgh 1978, p.1. Crawford's source for her statement is 'Goudie 1904, *passim*'. I can find one such sentence in Gilbert Goudie's *Antiquities of Shetland*, Edinburgh 1904, p.216, more cautious than Crawford's.

throughout the sixteenth century ... for only there could Shetlanders get justice according to their own laws.

I know of just three occasions after 1469 when landowners asked Norwegian courts to deal with problems about their Shetland estates, or to register deeds concerning them. In each case the landowners, or some of them, lived in Norway.⁴⁵ Shetlanders used local courts for such purposes, and eventually consulted the supreme court in Edinburgh about graver questions.⁴⁶ Willie Thomson once cited a fourth alleged example, which at first sight looks significant. According to Thomson, in the 1530s the chief magistrate of Shetland 'arranged for the quite minor sale of five marks of land in Fetlar to be registered in Bergen'. That would be striking if it were true. But it isn't. There is no such statement in the document.⁴⁷

The idea that there were close commercial arrangements between Shetland and Norway in the sixteenth century is also an overstatement. The vast majority of Shetland's trading ties in that period were with Germany. Some entrepreneurs in the North Isles had a little trade carrying timber from Norway to Shetland, but it was a minor operation. Shetland's economic ties with Norway had been diminishing for years. It is probably significant that in 1580 the old rule that Orcadian and Shetland shipowners coming to Norway should enter toll-free was abolished.⁴⁸

From the 1530s to the 1580s Denmark had two kings who were more determined than their predecessors to get Orkney and Shetland back, and I want to discuss their campaigns in detail. Their efforts failed, and there were good reasons why. One of them was the very fact that, as time passed, the Shetlanders and Orcadians were less interested in their motherland.

During his first years on the throne Christian III had other things to think about: the war of the mid-1530s between Denmark and the town of Lübeck, for instance. In 1535 Christian's ambassador Peter Svave actually offered Orkney, and Iceland, to Henry VIII of England, in return for assistance against the Lübeckers.⁴⁹ As at other times, no action followed.

But Christian had sworn to retrieve the islands, in 1536,⁵⁰ and he began to think of ways to do so. In 1538 he turned his attention to Shetland. Christian approached, or was approached by a Shetlander living in his kingdom, Gervald Willemsen. Gervald had family connexions with Yell, and had been present in that island to fight a court case in the summer of 1538.⁵¹ When he returned to Scandinavia he found that Christian had plans for him. Christian gave him a commission to be lawman of Shetland.⁵² As Steinar Imsen has pointed out, such an appointment wasn't legal.⁵³ The king of Scotland was in charge

⁴⁵ *Shetland Documents 1195-1579*, pp.39, 40, 51.

⁴⁶ For many examples see *Shetland Documents 1195-1579*, *passim*.

⁴⁷ Thomson, *New History*, p.240. The document in question is in *Shetland Documents 1195-1579*, p.39. Thomson has removed the erroneous statement in the latest (2008) edition of his work.

⁴⁸ Jørn Sunde, 'Den Norske So', *Norske Magasin*, 2, Christiania 1868, p.89; Knut Helle, *Orknøyene i Norsk Historie – The Orkneys in Norwegian History*, Bergen 1988, pp. 14, 26.

⁴⁹ Wegener, *Aarsberetninger*, 3, 1861-5, p.253.

⁵⁰ *Samling af Dankse Kongers Haandfæstninger og andre lignende acter*, Copenhagen 1856-8, p.86.

⁵¹ *Shetland Documents 1195-1579*, pp.40-2.

⁵² C.C.A. Lange, ed., *Norske Rigsregistrarer*, 1, 1861, p.57.

⁵³ Steinar Imsen, *Bondekommunalisme fra Magnus Lagabøte til Kristian Kvart, del 2: Lydriketiden*, Trondheim 1994, p.262.

of Shetland, and Shetland already had a lawman: Neils Thomasson of Aith, who had been elected at the lawthing at Tingwall in July 1532.⁵⁴

Christian went ahead with his plan. He wrote to James V to ask for protection for Gervald 'for a sojourn among the Shetlanders ... from whom he is sprung'. James didn't smell a rat. In July 1539 he wrote back to Christian to say that he had received the letter of introduction for Gervald, and that he had given him a royal diploma which would 'secure his personal safety and his property ... among the islanders.'⁵⁵

Whatever else happened, Christian's stratagem didn't work. If there was an uprising in favour of his lawman when he got to Shetland, we have no record of it. Neils Thomasson went on doing the job until at least 1549, and we never hear of Gervald again. His daughter was still living in Mid Yell in 1574, but Gervald probably went home, his commission unfulfilled. Shetland's links with Scandinavia were diminishing, and Christian should have realised that this kind of entryism, as we might call it, wouldn't work.

And I suspect that James V wasn't amused: after all, he had been set up. A few months later he made a voyage to Orkney,⁵⁶ and abolished the office of lawman there. He also annexed Orkney and Shetland to the crown for a second time, removing them once more from Sinclair hands, and handed them as a dowry to his bride Mary of Guise.⁵⁷

As we shall see, Christian's successor tried the lawman trick again, a quarter of a century later, with even feebler results. Apart from that, all the attempts after 1539 by Denmark to get the islands back were diplomatic. Sometimes the initiative came from elsewhere. In 1546, for instance, Francis I of France tried abortively to re-establish the old triple alliance between his country, Scotland and Denmark, by promoting a marriage between Christian's son Magnus and Mary Queen of Scots. He canvassed Christian's support by saying that he could get back Orkney in the process.⁵⁸

Some historians have argued that when the Danish kings discussed these matters they were just going through the motions: ticking off one of the items in their coronation oath. I am certain that is not true of Christian III and his son. In 1549 Christian began a concerted diplomatic effort to redeem the islands.⁵⁹ He levied a special tax to pay for the redemption,⁶⁰ and tried to enlist the help of the French in the matter. In September he wrote to the earl of Arran in Scotland, demanding a rendezvous in Orkney the following

⁵⁴ *Shetland Documents 1195-1579*, p.196.

⁵⁵ *Shetland Documents 1195-1579*, p.44.

⁵⁶ Jamie Cameron, *James V: the personal rule. 1528-1542*, East Linton 1998, pp.245-6.

⁵⁷ Records of the Parliaments of Scotland, <http://www.rps.ac.uk/mss/1540/12/26>, accessed 5 January 2010.

⁵⁸ Chr. De Treschow, 'Contributions to the history of Queen Elizabeth, London 1871 (Proposal of marriage made by King Frederik II of Denmark to Queen Elizabeth)', *Historisk Tidsskrift* (Danish), 4th series, 2, 1870-2, p.901.

⁵⁹ The best account of these events is Thorkild Lyby Christensen, 'The earl of Rothes in Denmark', in Ian B. Cowan and Duncan Shaw, eds., *The Renaissance and Reformation in Scotland: essays in honour of Gordon Donaldson*, Edinburgh 1983, pp.69-73. For further material see the near-contemporary account by Niels Krag, *Den Stormægtigste Konge Kong Christian den Tredie. konge til Danmark og Norge ... &c. hans historie*, 1, Copenhagen 1776, pp.335-6, 342-3; and L. Laursen, ed., *Danmark-Norges Traktater*, 3, Copenhagen 1916, pp.2-4.

⁶⁰ 'Tegnelser over alle Lande fra 1549', *Danske Magazin*, 4th series, 4, Copenhagen 1878, p.363.

May, so that his representatives could hand over the money and take over the administration of the islands.⁶¹

We now begin to recognise the Scottish tactics, which were repeated in all the subsequent negotiations. Arran replied that the wars in which Scotland were embroiled, and the fact that Mary Queen of Scots was a minor, meant that he couldn't respond instantly. He promised to send an ambassador, with full instructions, as soon as possible. In April George Leslie, earl of Rothes, arrived in Denmark. He pointed out that James V had given Orkney and Shetland to his bride in 1540, and that they couldn't simply be handed to Denmark. In a subsequent letter he said that Mary Queen of Scots would come of age in three years and four months, and then (he hinted) Christian would have everything that he wanted.⁶²

Christian didn't like what he heard. He insisted that the Scots should set out any arguments that they had against the Danish redemption within a year; if they didn't, he said, the islands must be delivered instantly. He refused to countenance any diplomatic alliance between Denmark and Scotland in the meantime.⁶³ Christian was firm. But his firmness had no result. Scotland had the islands, and possession was 100 per cent of the law.

There were rumours that Christian was considering military action. But the Danish historian Thorkild Lyby Christensen doubts that there was any such plan. Orkney and Shetland were too far away, and too minor in value, to be worth a military expedition.⁶⁴ But it's a story we shall hear again.

5

The next diplomatic attempt took place in 1560. Frederick II had come to the throne, and almost immediately he wrote to Scotland, from his 'Cimbrian hunting-seat', to demand the islands back. '[I]t is of the greatest importance', he said, 'that these islands be at length, after so many years, restored and added to our kingdom; and we to this end, do not decline [to make] payment of the money due'.⁶⁵ An English diplomat was in Edinburgh when the letter arrived, and he wrote to William Cecil, Queen Elizabeth's chief adviser, to predict what the Scottish response would be. It will be, he said, the same as in the past: 'that a free releace and quyetance hath byne made of the hole, by [Frederick's] predycessors for them and their heires for ever'.⁶⁶ Once again, that idea that the Danes had given up their right to Orkney and Shetland. But the Scots didn't dare say any such thing: as I have said, even if there had been such a renunciation there was no documentary proof of it. Instead

⁶¹ The text of the letter, from a Danish copy, is in Torffæus, *Orcades*, pp.207-09. A Scottish copy is in the National Library of Scotland, Wodrow mss., folio lvi.

⁶² Christiansen, 'The earl of Rothes', pp.71-2.

⁶³ Torffæus, *Orcades*, pp.211-13; Scottish copy and translation into Scots in the National Library of Scotland, Wodrow mss., folio lvi.

⁶⁴ Christensen, 'The earl of Rothes', p.73n. In the summer of 1555 Christian III sent a fleet across the North Sea, and once again, there were rumours, unfounded, that his aim was to reclaim Orkney and Shetland: Pamela E. Ritchie, *Mary of Guise in Scotland. 1548-1560: a political career*, East Linton 2002, pp.119-22.

⁶⁵ *Facsimiles of National Manuscripts of Scotland*, part 3, Southampton 1871, unpaginated. The volume contains the Latin text, an English translation and a facsimile of the document.

⁶⁶ *Calendar of State Papers relating to Scotland and Mary, Queen of Scots*, 1, Edinburgh 1898, p.493.

they replied, politely, that they were unable to answer Frederick, because Mary Queen of Scots was still in France.⁶⁷ Another polite brush-off. Again, there were rumours that the Danes were preparing a fleet, to take the islands back militarily,⁶⁸ again it failed to arrive.

From now on Scottish obfuscation was always the order of the day. Four years later a Scots ambassador headed for Denmark to negotiate a treaty. Among his secret instructions was a paragraph about the islands. 'Incaise ony thing be proponit to yow twitching Orknay and Zetland,' his advisers recommended,⁶⁹

twich na wyse that string, bot safer as ye may flee the cloise, allegeing that ye ar na wyse instructit ony thing in that heid, nor nevir hard ony questioun or contraversic maid within this realme at ony tyme anent that mater, and thairfore can gif na answuer thairto.

The Scots' tactic was thus to be polite and vague. They avoided doing anything to inflame the situation: in December 1567, for instance, the Scottish parliament decided that Orkney and Shetland could retain their own laws.⁷⁰

Briefly, in the early 1570s, Frederick tried his father's old lawman trick again. Again, it was a disaster. He had entered into discussions with Robert Stewart, who had received a grant of Orkney and Shetland from his half-sister Mary Queen of Scots in 1564. Robert, a reckless sort of man, sent Frederick an offer of the 'supremacie and dominioun' of Orkney and Shetland, 'als fre as thay war of auld annex to the crown of Denmark'. Frederick sent back a commission to Robert to be his governor in the islands, hidden in a roll of cloth; and he also sent him a lawman called Laurence Carnes.⁷¹ Carnes is an Orkney name, but there is no other reference to Laurence, so we may assume that he was an expatriate islander in Denmark, just like Gervald Willemsen. And just as Christian III had misjudged the opinion in Shetland, Frederick got the Orkney situation wrong too. Robert Stewart was deeply unpopular in the islands, and soon afterwards found himself in jail for what the Scottish regent regarded as treason.⁷² After 1573 there were no more Danish attempts to install officials in Orkney or Shetland.

Instead, Frederick made the biggest diplomatic effort of them all. In the summer of 1585 he sent two of his councillors to Scotland, Manderup Parsberg and Henrik Below, accompanied by a brilliant legal scholar, Dr Nicolas Theophilus.⁷³ It was a 'gret and magnifik ambassade', as the Scots diplomat James Melville put it, '... with a sexscore of persones, in twa braue schippis'. The ambassadors were 'propper men weill cled efter thaire owin faschioun', accompanied by 'four scoir personis, tuel thair of in gold chenyis'.⁷⁴ They had the redemption money with them.⁷⁵ Dr Nicolas had had the run of

⁶⁷ *Calendar of State Papers relating to Scotland and Mary, Queen of Scots*, 1, p.516.

⁶⁸ *Calendar of State Papers Foreign, Elizabeth*, 3, London 1865, p.305.

⁶⁹ *Register of the Privy Council of Scotland*, 14, Edinburgh 1898, p.198.

⁷⁰ *Shetland Documents 1195-1579*, p.126.

⁷¹ *Shetland Documents 1195-1579*, p.163; Forty-sixth report of Deputy Keeper of Public Records, *British Parliamentary Papers*, 1886, 37, p.24.

⁷² *The Historie and Life of King James the Sext, MDLXVI - MDXCVI*, Edinburgh 1825, p.157. For a careful account of these events see Peter D. Anderson, *Robert Stewart earl of Orkney, lord of Shetland 1533-1593*, pp.86-7.

⁷³ Frederick's letter to James VI, asking him to receive the embassy, is published in Sir William Fraser, *Memorials of the Earls of Haddington*, 2, Edinburgh 1889, p.52.

⁷⁴ Melville's is by far the best account of these events: *Memoirs of his own Life by Sir James Melville of Halhill, MDXLIX - MDXCIII*, Edinburgh 1827, pp.335-46.

the Danish archives, and at Dunfermline he regaled the Scottish king with a lecture on the Danish claim. He spent a long time rubbishing the idea that the Danes had ever renounced their right to Orkney and Shetland.⁷⁶

There was an implied *quid pro quo* in the Danish demands. The Danes wanted Orkney and Shetland; but they hinted that a mutually satisfactory royal marriage might follow redemption. '[I]f the embassy met with a good reception from the king', said the Spanish ambassador, 'they were empowered to treat of his marriage with the daughter of their master'.⁷⁷ But the Scots didn't co-operate. The ambassadors were treated with gross discourtesy: as Melville says, they were 'mishandled, ruffled, trifled, drifted and delayed'. They heard rumours that King James had insulted their kingdom: he had said that the Danish kings were descended from merchants. At one point they set out to walk from Dunfermline to St. Andrews, because no-one had provided them with horses.⁷⁸

At the last minute, however, James sweet-talked them. He told them that because of plague he didn't have access to his records in Edinburgh; but that he would look at them in due course, and send an ambassador to Denmark to answer their claim.⁷⁹ He gave them a gold chain. And with that they had to be content.

6

It should be clear by now, and it must have been clear to the Danes, that the Scottish crown had no intention of giving up Orkney and Shetland. Dr Nicolas might as well have stayed at home: no-one in Scotland was interested in his lecture. A small problem remained for the Scots, however, and once again it concerned a Danish princess. As time went on James VI decided that he definitely wanted to marry one. And when Scottish ambassadors travelled to Denmark, as they did several times in the late 1580s, to discuss such a liaison, they knew that the Danes would bring up the inconvenient subject of Orkney and Shetland again.⁸⁰ In 1587, before one such visit, the Scots ambassadors wrote some questions for James VI to answer about their tactics. Their thirteenth question was: 'If the king of Denmark wil haif an answer anent Orknay befor he enter on any other treatie, quhat sal we doe?' James's answer was a single Latin word, '*Prodigiosum*'.⁸¹ Ominous. He was worried.

But everything came right for the Scots in the end. Just as the Scottish side had prevailed by making large demands in 1468 and 1469, so they kicked off with bold ones in 1589. At first they demanded that, as part of the marriage negotiations, the Danes should waive all their rights to Orkney and Shetland.⁸² The Danes refused, of course, and gave the Scots

⁷⁵ *Memoirs of the Affairs of Scotland by David Moysie. MDLXXVII - MDCIII*, Edinburgh 1830, p.53.

⁷⁶ The lecture is transcribed in Torffæus, *Orcades*, pp.219-21.

⁷⁷ *Calendar of Letters and State Papers relating to English Affairs. preserved principally in the Archives of Simancas*, 3, London 1896, p.544.

⁷⁸ *Memoirs of his own Life*, pp.337, 338.

⁷⁹ *Historie and Life of King James the Sext*, pp.211-12.

⁸⁰ For lively and sometimes amusing contemporary accounts of this stage in the game see Robert Vans Agnew, ed., *Correspondence of Sir Patrick Waus of Barnbarroch. Knight*, 2, Edinburgh 1887, pp.373-9, 396-400; Annie I. Cameron, ed., *The Warrender Papers*, 2, Edinburgh 1932, pp.35-42.

⁸¹ *Warrender Papers*, 2, p.46.

⁸² *Register of the Privy Council of Scotland*, 14, Edinburgh 1898, pp.369-70; *Calendar of Scottish Papers*, 10, Edinburgh 1936, p.104.

ambassadors a hard time, presumably as revenge for the events of 1585. But eventually there was compromise. Frederick II had died during the negotiations, and his successor, Christian IV, was only a child. So there was a postponement until Christian reached his majority.⁸³ Then there was a decision that the claims of both countries should be placed in suspension: that the claim of the kings of Denmark and Norway to Shetland and Orkney should remain open, but that in the meantime Scotland should remain in undisturbed possession.⁸⁴

And that state of suspension went on during the next fifty years. In 1606 and 1614 James VI, by then James I of England as well, and a decidedly important person, persuaded Christian IV to keep postponing any discussion of the matter.⁸⁵ 'Some slight friction arose over the Danish claim to the Orkneys,' the Venetian ambassador reported in 1607, 'but Denmark will not press the point, being well aware that she would gain nothing and would lose the friendship of England.'⁸⁶ Then in 1621 Denmark and England signed a major treaty, and there was a clause in it that the matter should remain quiescent during the lifetime of the two kings.⁸⁷ Another Venetian remarked, the following year: 'His [James's] closest relations are with the king of Denmark, his brother-in-law, that crown having abandoned its claims to the Orkneys.'⁸⁸ It must have seemed so. And in 1639 there was another treaty, with the same provision.⁸⁹

It was of course during these years, from the 1590s to the 1630s, that Orkney and Shetland began to change radically. During the regime of Earl Patrick Stewart, Shetland's law-courts had continued to use the old Norwegian lawbook of the islands; but when Patrick fell from power the Scottish privy council abolished the local 'foreign laws' in both groups of islands.⁹⁰ James I promulgated a third act of annexation, in 1612,⁹¹ and from then on Orkney and Shetland were administered by sheriffs, until Charles I gave them to the earl of Morton in 1643.⁹²

There were two final attempts by the Danes to redeem the islands. In 1640 the Scottish Covenanters rose up against Charles I. Christian had just signed a treaty in which he promised not to mention Orkney and Shetland; but this was too good an opportunity to miss. On 9 August he sent instructions to Korfits Ulfeldt and Greger Krabbe, his

⁸³ Records of the Parliaments of Scotland, <http://www.rps.ac.uk/mss/1592/4/70>, accessed 5 January 2010.

⁸⁴ *Register of the Privy Council of Scotland*, 4, Edinburgh 1911, p.824; Laursen, *Danmark-Norges Traktater*, 3, Copenhagen 1916, pp.21-4.

⁸⁵ Torffæus, *Orcades*, p.226.

⁸⁶ *Calendar of State Papers and Manuscripts relating to English Affairs existing in the Archives and Collections of Venice and in other libraries of Northern Italy*, 10, London 1900, p.519.

⁸⁷ Laursen, *Danmark-Norges Traktater*, 3, Copenhagen 1916, p.385.

⁸⁸ *Calendar of State Papers and Manuscripts relating to English Affairs existing in the Archives and Collections of Venice and in other libraries of Northern Italy*, 17, London 1911, p.458.

⁸⁹ Laursen, *Danmark-Norges Traktater*, 4, 1917, p.204.

⁹⁰ John H. Ballantyne and Brian Smith, eds., *Shetland Documents 1580-1611*, Lerwick 1994, pp.261-2.

⁹¹ Records of the Parliaments of Scotland, <http://www.rps.ac.uk/mss/1612/10/22>, accessed 5 January 2010.

⁹² Records of the Parliaments of Scotland, <http://www.rps.ac.uk/mss/1644/6/268>, accessed 5 January 2010.

ambassadors to England.⁹³ He advised them to tell Charles that Orkney and Shetland were of no use to his crown, because they had been farmed out to Sir William Dick, a merchant in Edinburgh who was a pro-Covenanter. Christian, who was clearly well-informed, said that his nephew would never be able to extract a dollar's worth of revenue from the islands. He offered to garrison Orkney with German mercenaries to use against the Covenanters. Nothing came of the proposal. But a couple of years later Charles mortgaged the city of Newcastle to Denmark, instead, in return for military support.⁹⁴ Pawning was still popular.

The final Danish move to redeem Orkney and Shetland came in 1667, in the reign of Frederick III, and nowadays we hear more about that attempt than any of the others. It took place at the end of the second Anglo-Dutch war, when Denmark briefly took the side of the Netherlands against England. There was a story that the Danish Admiral Heldt was about to set sail to claim the islands.⁹⁵ We all know what happened next. The Danes came forward with their request to redeem, at the town of Breda in Holland, and the English ambassadors said that they had no instructions. But then the assembled company agreed that, as the Orkney lawyer W.P. Drever put it in 1900, the Danish right was 'unprescribed and non-proscribable'.⁹⁶

It is a ringing phrase, and many writers have uttered it, or variations on it. As John Tudor put it, in 1883,⁹⁷ 'the right of redemption was said by the Plenipotentiaries assembled at Breda, not only not to have been barred by prescription, but to be imprescribable'. And in 1859 the Orcadian antiquary David Balfour stated firmly that 'the Plenipotentiaries of Europe ... attested that the right of redemption was' (wait for it) 'unprescribed and imprescribable'.⁹⁸ In other words, according to these commentators, the Danish right to claim Orkney and Shetland had and perhaps still has no time limit.

Ringy, but wrong. None of the antiquaries bothered to look at the record of what was actually decided at Breda about Orkney and Shetland. In fact, David Balfour just made up the phrase.

What happened at Breda wasn't exciting, as far as Orkney and Shetland were concerned. The Danish ambassadors, Peder Charisius and Poul Klingenberg, asked for the restoration of the islands with great insistence (*urgentissime postulata fuit*).⁹⁹ We don't have to guess

⁹³ C.F. Bricka and J.A. Fridericia, eds., *Kong Christian den Fjerdtes Egenhændige Breve*, 4, Copenhagen 1969, pp.378-9; for background see Steve Murdoch, *Britain, Denmark-Norway and the House of Stuart 1603-1660: a diplomatic and military analysis*, East Linton 2000, pp.97-8. But '[t]he plan came to nothing', says Mark Charles Fissel, 'because Charles had no money and was unwilling to cede the Orkneys': *The Bishops' Wars. Charles I's campaigns against Scotland, 1638-1640*, Cambridge 1994, p.173.

⁹⁴ Steve Murdoch, 'Newcastle in pawn', *Northern Review*, 9-10, 2001, pp.18-24.

⁹⁵ P.W. Becker, *Samlinger til Danmarks Historie under Kong Frederik den Tredies Regiering af udenlandske Archiver*, 2, Copenhagen 1857, p.196.

⁹⁶ W.P. Drever, *Udal Law in the Orkneys and Zetland*, Edinburgh 1900, p.3.

⁹⁷ John R. Tudor, *The Orkneys and Shetland, their past and present state*, London 1883, p.60.

⁹⁸ David Balfour, *Oppressions of the Sixteenth Century in the Islands of Orkney and Zetland*, Edinburgh 1859, p.xiii.

⁹⁹ Lieuwe van Aitzema, *Saken van Staet en Oorlogh, in ende omirent de Vereenigde Nederlanden*, 6, s'Gravenhage 1672, pp.192-3, 196-7. For further documents about Breda and Orkney and Shetland see J. Dumont, *Corps Universel Diplomatique du Droit des Gens, contenant un recueil des traités de paix, d'alliance, &c.*, 7/1, Amsterdam 1731, p.56-7; Grimur Thomsen, 'Den nordiske nationalitet paa Shetlands- og Orknøerne', *Annaler for Nordisk Oldkyndighed og Historie*,

what the English ambassadors, led by the supercilious Denzil Holles, said in return: that they had no instructions about the matter, and that they wanted any reference to it to be erased from the draft treaty. They made the not unreasonable point that the ownership of Orkney and Shetland had nothing to do with the Anglo-Dutch war.

The Danes submitted, on condition that, as they put it, 'the suspension and withdrawal of the demand for the restitution of the islands should be understood not to prejudice the rights of their king, and should not derogate in any way from his claims.' The claims, they said, should 'remain whole and entire until a more favourable occasion, whether it presents itself sooner or later'.

The key word is 'until'. The plenipotentiaries agreed that the claim was unexpired; but they certainly didn't say it was imprescriptible. They said that the question should remain open until the Danes next raised it. But the Danes never did.

In 1669 Charles II annexed Orkney and Shetland to the crown for the fourth and final time,¹⁰⁰ following an argument that he had had with the earl of Morton about a shipwreck.¹⁰¹ He handed the islands to the usual succession of tax-collectors from the mainland of Scotland. Interestingly, Charles had offered Orkney and Shetland to the Netherlands in 1652/3, along with the Scilly Isles: these kings had all sorts of plans for islands.¹⁰²

But Orkney's and Shetland's histories were about to change course. By the end of the seventeenth century the islands' economies were in crisis. The German merchants stopped coming to Shetland, and their place was taken by a class of local merchant-lairds. For the first time for hundreds of years, especially in Shetland, affairs began to be organised locally. Queen Anne handed the islands back to the earl of Morton in 1707,¹⁰³ but from then on the earl's tax-collectors were home-grown. By the mid-eighteenth century Orkney was developing a major kelp industry, and Shetland had become the centre of great

Copenhagen 1862, pp.24-8; Laursen, *Danmark-Norges Traktater*, 7, 1923, pp.218-21. Schœel, 'Orknøerne og Hjaltland', pp.419-20, gives a useful account of the events at Breda.

¹⁰⁰ Records of the Parliaments of Scotland, <http://www.rps.ac.uk/mss/1669/10/33>, accessed 5 January 2010.

¹⁰¹ According to a recent crackpot theory, Charles re-annexed the islands as a response to the Breda treaty, because he had realised that his and his predecessors' intromissions with them had been illegal: Stuart Hill, 'Forvik. An examination of the source of the UK government's authority in Shetland', <http://www.freeshetland.com/ForvikTheBook.pdf>, accessed 5 January 2010. But a contemporary lord advocate of Scotland gave a clear account of the situation: 'The Isles of Orkney and Zetland, were impignorated to the Earl of Morton's predecessors ... but this Earl had married the Earl of Middleton's daughter, and so all pains was taken to divest him of this opulent fortune, and chance furnisht his enemies with a considerable pretext; for Mortoun had intromitted with a Dutch vessel, which shipwreckt upon the coast of Norway, during the late war, in which were found 12,000 *lib.* Sterling of gold ... whereupon his right was reduc'd in the Session, and this decreet was ratified in Parliament, and these Isles annext to the crown, to remain as a part of its patrimony in all time coming': Sir George Mackenzie of Rosehaugh, *Memoirs of the Affairs of Scotland from the Restoration of K. Charles II*, Edinburgh 1821, pp.175-6. The ship was the *Kennemerland*, wrecked in Shetland in 1664.

¹⁰² *State Papers collected by Edward, earl of Clarendon*, 3, Oxford 1767, pp.85, 89; *Calendar of the Clarendon State Papers preserved in the Bodleian Library*, 2, Oxford, 1869, p.249. I am grateful to John Ballantyne for these references.

¹⁰³ Records of the Parliaments of Scotland, <http://www.rps.ac.uk/mss/1706/10/305>, accessed 5 January 2010.

fisheries. In 1749 Frederick V of Denmark briefly raised the question of the ownership of the islands, and this time of their fishing grounds, but he didn't do so formally.¹⁰⁴ There were no more Danish claims.

I am not keen on what is called counterfactual history. Historians have enough to do in sorting out what happened in the past, without branching out into what might have happened, or could have happened. But there is one retrospective prediction that I would like to make about this matter.

In 1697 the Icelandic historian Tormod Torffæus wrote a big book about the history of Orkney. He dedicated it to Christian V of Denmark, and in his drooling dedication he referred to Orkney as 'your province'.¹⁰⁵ The third part of his work was devoted to, as he put it, 'the unceasing attempts by the most powerful kings of Denmark and Norway for the peaceful restitution of their rights to the Orkneys and Shetland adjacent'.¹⁰⁶

Torffæus's work, based on documents in the Danish archives, was mainly about the attempts of Christian III and Frederick II to redeem the islands, just as mine has been. He only devotes a few pages to the period after 1585. But dealing with Christian IV's abortive attempt of 1640, he makes an interesting remark that hasn't been preserved elsewhere. He says that at that point the Danish council was confidently predicting which Danish nobleman would be given Orkney and Shetland to govern.¹⁰⁷

We can make a good guess what would have happened if Charles I had accepted Christian's overtures in 1640. Just as Charles handed Orkney and Shetland to the earl of Morton in 1643, so Christian IV would have gifted them to Morton's counterpart in Denmark. That would have been worse. One of the reasons we know this is because we know what happened to the Faroe Islands. In the mid-seventeenth century, under the Danish government's loving care, those islands descended into destitution. They were oppressed by trading companies and individuals favoured by the crown, especially the ruthless Gabel family.¹⁰⁸ Anyone who imagines that Orkney and Shetland would have had a different experience is being sentimental.

7

The question remains: amidst all the acts of parliament and diplomacy, when did Orkney and Shetland become part of Scotland? There have been some hilarious answers to the question, not least from those who imagine that Denmark's right of redemption still exists. In 1968 the then Labour government was trying to amalgamate some public services in Shetland with their counterparts on the Scottish mainland. At that very moment Barbara Crawford, then a research student, found in the British Museum an old copy of the document pawning Shetland to Scotland. There was huge press interest, because British

¹⁰⁴ *Genealogisch-Historische Nachrichten von den Europäischen Höfen zutragen*, 140. Leipzig 1750, pp.695-6; cf. *Gentleman's Magazine*, 19, 19 September 1749.

¹⁰⁵ Torffæus, *Orcaedes*, dedication (unpaginated).

¹⁰⁶ Torffæus, *Orcaedes*, p.207. According to Jon Eriksen, 'Thormod Torfesens biographic', *Minerva*, December 1787, p.307, Christian V encouraged Torffæus to set out the Danish claims at length.

¹⁰⁷ Torffæus, *Orcaedes*, p.227.

¹⁰⁸ For a good account see Jonathan Wylie, *The Faroe Islands: interpretations of history*, Lexington 1987, pp.26-39.

scholars hadn't been aware of the transcript till then:¹⁰⁹ the document had been assumed lost. Grace Halcrow of the Shetland Conservative and Unionist Association addressed a meeting in Edinburgh on the subject. 'It would now be very easy for Norway to take back Shetland alone,' she announced. 'All they [have] to do [is] to lodge something like £8000 in Kirkwall Cathedral, and Shetland would belong to Norway!' She got a standing ovation.¹¹⁰

The *Shetland Times* then contacted experts in Norway. A spokesperson from the foreign ministry hurriedly said that 'the Orkney and Shetland Islands must be considered properties of the pawnee', and a professor of law at Oslo University confirmed that 'after 500 years, there could never be any question of [Norway] exercising sovereignty rights over the islands'.¹¹¹

So when did that constitutional change happen? We can look at the question from a legal/theoretical or from a practical point of view. A lawyer might choose some year after July 1667 as the date in question, when the European ambassadors left the question open. That is complicated by the fact that the Danes didn't raise the matter again; in other words, the question was never tested.¹¹²

As time passed, the alleged Danish right to redeem was regarded as a 'dead subject',¹¹³ or a joke. In 1907 J. Cathcart Wason, M.P. for Orkney and Shetland, said in the House of Commons that 'the King of Norway has moral and legal claims on the Shetland Isles', and asked 'if the material wellbeing of the Shetlanders would be better under Norwegian than British rule'. The Prime Minister replied: 'I hardly imagine that this question can be seriously intended.' Cheers ensued.¹¹⁴

In the 1960s, however, during the years around the 500th centenary of the pawning of the islands, some commentators were still agitated about the matter. At a celebratory conference in Orkney in 1968, attended by Scandinavian and Scots academics, the librarian of the county argued that Norway's loss of the islands had been inevitable. He said that Christian I had realised that Norse influence in the west was unsustainable. Some Scots historians who were present objected: they 'could not accept inevitability as a legitimate means of interpreting history'.¹¹⁵ They were still yearning for the Scandinavian connection.

There was anxiety in Shetland too. T.M.Y. Manson had said in 1965 that, prior to any celebrations taking place, it was 'absolutely essential' that an international treaty be

¹⁰⁹ The discovery is discussed in the *Shetland Times* of 8 March 1968. The British Museum text had actually been printed in Norway during the First World War and in Sweden in 1895.

¹¹⁰ Halcrow gave her lecture to the 98th annual general meeting of the Orkney and Zetland Association, chaired by Gordon Donaldson. 'Almost 100 such dinners have been held ...', Donaldson said, 'but never have we met in such a blaze of publicity': *Shetland Times*, 22 March 1968.

¹¹¹ *Shetland Times*, 22 March 1968.

¹¹² The usual response to this legal/theoretical question is Arthur Edmondston's: 'The silence of the kings of Denmark on the subject since 1667, has surely buried the claim in prescription, and it may now be considered as for ever lost': *A View of the Ancient and Present State of the Zetland Islands*, 1, Edinburgh 1809, p.106.

¹¹³ Goudie, 'The Danish claims', p.236.

¹¹⁴ *Shetland Times*, 10 August 1907.

¹¹⁵ Sebastian Scibert, *Reception and Construction of the Norse Past in Orkney*, Frankfurt am Main 2008, p.225.

concluded between Britain and Denmark, confirming the British right to the islands.¹¹⁶ Gordon Donaldson agreed. 'If Britain does have sovereignty *de jure*,' he mused, 'an historian would like to know – and I think he has a right to know – from what point in time such sovereignty can be dated'.¹¹⁷ I.C. MacGibbon, a contributor to the discussion from the Department of Public International Law at the University of Edinburgh, gave a measured response. 'The doubts about sovereignty over Shetland entertained by Dr Manson', he said, '... are not shared by either the British or Norwegian governments. Would it not be wiser simply to let the matter rest at that?'¹¹⁸

I too prefer to take a practical view. However strong the Danish claim might have been, in theory, the Danes never had a chance of succeeding. On three occasions when Scotland offered Orkney and Shetland to them on a plate, they seem to have declined. They waited eighty years before making their first diplomatic attempt to redeem the islands. And when Scotland said no, they had no follow-up plan: the rumours of armed force were just rumours. There was no international body to whom they could make their case. And from 1590 until 1640 they agreed to let the matter rest, during a period when Orkney and Shetland were changing rapidly every year.

Just as important, the Danish attempts to install officials in Shetland and Orkney were utter failures. The Danes had no feel for the situation here: Frederick II's attempt to make the unpopular Robert Stewart his representative in the islands was especially crass. By the seventeenth century there is evidence that Shetlanders viewed the remnants of their Scandinavian legal arrangements with deep suspicion, wielded as they were by then by oppressive local landowners. As a Shetlander said around 1635,¹¹⁹

[t]he Danisch lawes ought to have no respect heir now efter so long tyme since the annexation of the countrie of Yetland to the crowne of Scotland, bot ought to be altogether abolisched. ... And if such a rycht be allowit ... it will strenthen and encourage the ... oppressors to commit moe oppressions.

That doesn't sound like a manifesto for the Back to Denmark movement to me.

I go back to the beginning. Christian I pawned Orkney and Shetland to Scotland in 1468 and 1469, and gave no thought to them thereafter. James III took rapid action. The key moment, and the answer to our question, is the day when James and his parliament annexed the islands to the crown, and sent his servants here to collect taxes and administer the law. Nothing was ever the same again. Orkney and Shetland became part of Scotland on 20 February 1472.

¹¹⁶ *Shetland Times*, 9 July 1965. Manson was still arguing for a treaty when the celebrations began: *The Orcadian*, 29 August 1968.

¹¹⁷ *Shetland Times*, 20 August 1965. Donaldson went on agonising about the question until 1985:

'Sovereignty and law', pp.24-5.

¹¹⁸ *Shetland Times*, 10 September 1965.

¹¹⁹ Shetland Archives, SC12/65/3, p.11.